VOLUME I

CODE OF IOWA

1977

CONTAINING

ALL STATUTES OF A GENERAL AND PERMANENT NATURE

To and including the Acts of a permanent nature
of the Sixty-sixth General Assembly, 1976

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

1976

14.17 Citation of permanent Code or supplements. The permanent Codes or supplements thereto published subsequent to the adjournment of the extra session of the Fortieth General Assembly shall be known and cited as "The Code .....", or "supplement to the Code .....", giving year of edition of such Code or supplement thereto.

14.18 Citation of session laws. The session laws of each general assembly shall be known and cited as "..... ..... Session of the ..... General Assembly, Chapter (or File No.) ....., Section ....." (inserting the appropriate number).

14.19 Citation of prior Codes. All prior Codes and supplements shall be cited by the year in which published.

Chapters of the Code are cited as whole numerals; as chapter 180 or chapter 180G.

Sections are cited as decimal numerals; as section 180.5 or section 180G.54. Occasionally, sections are divided into subsections as 1., 2., 3. etc.; and subsections into paragraphs *a*, *b*, *c* etc.; and paragraphs into subparagraphs as (1), (2), (3) etc. Example: section 180G.54, subsection 1, paragraph "a", subparagraph (3). This may be abbreviated as 180G.54[1,*a*, (3)].

Section 14.20 of the Code of Iowa is as follows:

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

PREFACE TO CODE 1977

The Code of 1977 is published pursuant to section 14.15 which requires that a new Code or supplement be issued "after the final adjournment of the second regular session of the general assembly." It follows substantially the Code of 1975 as to form and the only material changes are the addition of the laws and of the amendments passed by the sessions of the Sixty-sixth 1975 Session and the Sixty-sixth 1976 Session of the General Assembly. It was deemed advisable, and because of the popular reception, to continue to publish the Code in two volumes with the index bound separately in a distinguishing color. The section numbers as they appear in the two volumes are clearly marked on the back for convenience in selection.

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

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

Attention is directed to notes placed at the end of some sections relating to the effective date. These notes are due to practice of the General Assembly in postponing such effectiveness for a year or more after enactment.

The new criminal Code revision is not included since it will not be effective until January 1, 1978.

The proper method of citing sections and the parts thereof is explained on the previous page.

To provide a quick method to determine where the Acts of the General Assemblies appear in the Code, Tables of Corresponding Sections have been prepared and placed in the back of volume II. A Table of Corresponding Sections from the Code of 1975 to the Code of 1977 is also provided.

Due to the great amount of editorial work involved, it has not been possible to complete a new index. However, considerable time and effort have been expended to incorporate the recent Acts in a revised index.

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

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

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

Statehouse
Des Moines, Iowa

Wayne A. Faupel

Phyllis Barry

CODE EDITORS

ALL ORDERS FOR LEGAL PUBLICATIONS, INCLUDING THE CODE, SHOULD BE ADDRESSED TO THE IOWA STATE PRINTING DIVISION, GRIMES OFFICE BUILDING, DES MOINES, IOWA 50319.

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363E	Repealed	
364	Powers and duties of cities	1905
365	Transferred to chapter 400	
365A	Transferred to chapter 509A	
366	Repealed	
367	Repealed	
368	City development	1910
368A	Repealed	
369	Repealed	
370	Repealed	
371	Repealed	
372	Organization of city government	1915
373	Repealed	
374	Repealed	
374A	Repealed	
375	Repealed	
376	City elections	1921
377	Repealed	
378	Repealed	
378A	Repealed	
379	Repealed	
379A	Repealed	
379B	Repealed	
380	City legislation	1924
381	Repealed	
382	Repealed	
383	Repealed	
384	City finance	1926
385	Repealed	
386	Self-supported municipal improvement districts	1956
386A	Repealed	
386B	Repealed	
386C	Repealed	
387	Repealed	
388	City utilities	1963
389	Repealed	
390	Joint electrical utilities	1964

CHAPTER		PAGE
390A	Repealed	
391	Repealed	
391A	Repealed	
392	Administrative agencies	1967
393	Repealed	
394	Zoological gardens	1969
395	Repealed	
396	Repealed	
397	Repealed	
397A	Repealed	
398	Repealed	
398A	Repealed	
399	Repealed	
400	Civil service	1970
401	Repealed	
402	Repealed	
403	Urban renewal law	1917
403A	Low-rent housing law	1988
404	Repealed	
405	Municipal assistance fund	1997
405A	Repealed	
406	Repealed	
407	Repealed	
408	Repealed	
408A	Repealed	
409	Plats	1998
410	Disabled and retired firemen and policemen	2006
411	Retirement systems for policemen and firemen	2010
412	Municipal utility retirement system	2021
413	Housing law	2022
414	Municipal zoning	2038
415	Repealed	
416	Repealed or transferred	
417	Repealed	
418	Repealed	
419	Municipal support of industrial projects	2042
420	Cities under special charter	2048

ABBREVIATIONS

C51	Code of 1851
R60	Revision of 1860
C73	Code of 1873
C97	Code of 1897
S'02	Supplement of 1902
S'07	Supplement of 1907
S13	Supplement 1913
SS15	Supplemental Supplement 1915
C24	Code of 1924
C27	Code of 1927
C31	Code of 1931
C35	Code of 1935
C39	Code of 1939
C46	Code of 1946
C50	Code of 1950
C54	Code of 1954
C58	Code of 1958
C62	Code of 1962
C66	Code of 1966
C71	Code of 1971
C73	Code of 1973
C75	Code of 1975
GA	General Assembly
§ or Sec.	Section
Ch	Chapter
Et seq.	And following
HF	House File
SF	Senate File
Ex	Extra Session
R.C.P.	Rules of Civil Procedure
Stat. L.	Statutes at Large (U.S.)
U.S.C.	United States Code

HISTORICAL CHRONOLOGICAL OUTLINE
OF

CODES AND SESSION LAWS

1. Territorial or other governmental jurisdictions over the territory which is now the state of Iowa.
2. Assemblies and session laws—territorial and state.
3. Official and private codes with code revision publications.

(Date shown at each Iowa territorial and state session is starting date; G.A. means General Assembly; Stat. L. means United States Statutes at Large; vol. means volume.)

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

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

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

STATUTES APPLICABLE:

Laws Adopted by the Governor and the Judges of the Territory. (1 vol., reprint of 1886) passed at the following sessions:
1. January 12, 1801
2. January 30, 1802
3. February 16, 1802
4. October 1, 1804 (Republished with laws governing Missouri Territory, see Missouri Territory below).

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

STATUTES APPLICABLE:

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

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

STATUTES APPLICABLE:

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

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

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

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

STATUTES APPLICABLE:

Ordinance for Government of the Northwest Territory, July 13, 1787

Laws of the Territory of Michigan, 1827 (1 vol.)

Laws of Legislative Boards, 1821-1823 (1 vol.)

Acts of Legislative Councils—First to Sixth sessions and Sixth special session—1824 to 1835 (several volumes).

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

STATUTES APPLICABLE:

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

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

STATUTES APPLICABLE:

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

Territorial Session Laws—1839–1840, November 4, 1839

Territorial Session Laws, extra session—1840, July 6, 1840

Territorial Session Laws—1840–1841, November 2, 1840

Territorial Session Laws—1841–1842, December 6, 1841

Territorial Session Laws—1842–1843, December 5, 1842

Revised Statutes of Iowa Territory, 1843 (compilation, commonly called "Blue Book")
Territorial Session Laws—1843–1844, December 4, 1843
Territorial Session Laws, extra session—1844, June 17, 1844
Territorial Session Laws—1845, May 5, 1845
Territorial Session Laws—1845–1846, December 1, 1845

STATE OF IOWA (Territorial Sessions end—State Sessions begin).
1 G.A. November 30, 1846 (Ch. 78,§5 made Territorial Laws applicable to the state of Iowa. Iowa became a state December 28, 1846)
1 G.A. January 3, 1848, extra session
2 G.A. December 3, 1848
3 G.A. December 3, 1850

Code 1851 (enacted) effective July 1, 1851. See 3 G.A., Ch 98,§5
4 G.A. December 6, 1852
5 G.A. December 4, 1854
5 G.A. July 2, 1856, extra session
6 G.A. December 1, 1856
Constitutional Debates (2 vols.) 1857
Journal of Convention (1 vol.) 1857
7 G.A. January 4, 1858
Laws of the Board of Education, 1858-1861
Report of Code Commission on Civil Practice, 1859 (1 vol.)
8 G.A. January 9, 1860

Revision of 1860 (compiled, except part III Civil Practice and part IV Criminal Practice, which were enacted July 4, 1860). Acts do not appear in session laws.
8 G.A. May 15, 1861, extra session
9 G.A. January 13, 1862
9 G.A. September 3, 1862, extra session
10 G.A. January 11, 1864
11 G.A. January 8, 1866
12 G.A. January 13, 1868
13 G.A. January 10, 1870

Templin's Compendium of Repeals and Amendments, 1871 (a private publication).
Proposed revision, 1872 (2 vols.) as reported to 14th G.A.
Code Commission's Report, 1872 (1 vol.)
14 G.A. January 8, 1872
Report of Code Commissioners [with proposed revision] 1873 (1 vol.) as reported to 14th Adj. G.A.
14 G.A. January 15, 1873, adjourned session

Code 1873 (enacted), effective September 1, 1873, see §49 thereof. Acts do not appear in session laws of adjourned session
15 G.A. January 12, 1874

Overton's Annotated Code of Civil Procedure for Iowa and Wisconsin, 1875 (a private publication)
16 G.A. January 10, 1876
17 G.A. January 14, 1878

Templin's Compendium of Repeals and Amendments, 1878 (a private publication)

Stacy's Code of Civil Procedure, 1878 (a private publication)

Davis' Criminal Code 1879 (a private publication)
18 G.A. January 12, 1880

McClain's Annotated Statutes, 1880 (2 vols., a private publication)

Miller's Rev. and Anno. Code 1880 (includes statutes to July 4, 1880, and annotations including vol. 51 Iowa—some editions in 1 vol.; other editions in 2 vols., a private publication)
19 G.A. January 9, 1882

Miller's Rev. and Anno. Code 1883 (includes statutes to July 4, 1882, and annotations including vol. 59 Iowa, a private publication)
20 G.A. January 14, 1884

McClain's Supplement, 1882–1884 (a private publication)

McClain's Annotated Statutes, 1884 (1 vol., same as McClain's Statutes, 1880, 2 vols., with the supplement 1882–1884 bound therein)

Miller's Rev. and Anno. Code 1884 (includes statutes to July 4, 1884, and annotations including vol. 61 Iowa, a private publication)

Miller's Annotated Code 1886 (published in 1885, includes statutes to July 4, 1884, and annotations including vol. 64 Iowa—some editions in 1 vol.; other editions in 2 vols., a private publication)
21 G.A. January 11, 1886
22 G.A. January 9, 1888

McClain's Annotated Code 1888 (some editions in 1 vol.; other editions in 2 vols., a private publication)

Miller's Rev. and Anno. Code 1888 (includes statutes to July 4, 1888, and annotations including May term, 1888, a private publication)
23 G.A. January 13, 1890

Miller's Rev. and Anno. Code 1888–1890 (same as edition of 1888 together with Acts 23 G.A., and annotations including May term 1890—some editions in 1 vol.; other editions in 2 vols., a private publication)
24 G.A. January 11, 1892

McClain's Supplement 1888–1892 (a private publication)
25 G.A. January 8, 1894
26 G.A. January 13, 1896

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

Code 1897 (enacted), effective October 1, 1897, see §50 thereof, [two editions]. Acts do not appear in session laws of extra session
27 G.A. January 10, 1898
28 G.A. January 8, 1900
29 G.A. January 13, 1902

Supplement of 1902 (compiled)
30 G.A. January 11, 1904
31 G.A. January 8, 1906
32 G.A. January 14, 1907

Supplement of 1907 (compiled—contained all of supplement of 1902)
32 G.A. August 31, 1908, extra session
33 G.A. January 11, 1909
34 G.A. January 9, 1911
35 G.A. January 13, 1913

Supplement of 1913 (compiled—contained all of supplements of 1902 and 1907)
36 G.A. January 11, 1915

Supplemental Supplement of 1915 (compiled)
37 G.A. January 8, 1917
38 G.A. January 13, 1919
38 G.A. July 2, 1919, extra session

Compiled Code of 1919 (included all law to date as determined by the Code Commission, with repealed and obsolete matter omitted; only a limited edition published as a preliminary step in Code Revision)
Code Commission's Report, 1919 (1 vol.)
39 G.A. January 10, 1921

Supplement to Compiled Code 1921
Supplement to Code Commission's Report, 1922
Code Revision Bills, 1922 (as revised after 39 G.A.)
Briefs of Code Commission Bills, 1922
40 G.A. January 8, 1923

Supplement to Compiled Code 1923
Code Revision Bills, 1923 (as revised after 40 G.A.)
Minutes of Code Supervising Committee, 1924 (original in Code Editor's office)
40 G.A. December 4, 1923, extra session
40 G.A. July 22, 1924, adjourned session

Code 1924 (compiled, except for those chapters which were revised and enacted by the 40th ExG.A.). Only those acts which were effective on publication appear in session laws. The remaining Code Revision acts were effective on October 28, 1924
41 G.A. January 12, 1925
42 G.A. January 10, 1927

Code 1927 (compiled)
42 G.A. March 5, 1928, extra session
43 G.A. January 14, 1929
44 G.A. January 12, 1931

Code 1931 (compiled)
45 G.A. January 9, 1933
45 G.A. November 6, 1933, extra session
46 G.A. January 14, 1935

Code 1935 (compiled)
46 G.A. December 21, 1936, extra session
47 G.A. January 11, 1937
48 G.A. January 9, 1939

Code 1939 (compiled)
49 G.A. January 13, 1941
50 G.A. January 11, 1943
50 G.A. January 26, 1944, extra session
51 G.A. January 8, 1945

Code 1946 (compiled)
52 G.A. January 13, 1947
52 G.A. December 16, 1947, extra session
53 G.A. January 10, 1949

Code 1950 (compiled)
54 G.A. January 8, 1951
55 G.A. January 12, 1953

Code 1954 (compiled)
56 G.A. January 10, 1955
57 G.A. January 14, 1957

Code 1958 (compiled)
58 G.A. January 12, 1959
59 G.A. January 9, 1961

Code 1962 (compiled)
60 G.A. January 14, 1963
60 G.A. February 24, 1964, extra session
61 G.A. January 11, 1965

Code 1966 (compiled)
62 G.A. January 9, 1967
63 G.A. (1st Session) January 13, 1969
63 G.A. (2nd Session) January 12, 1970

Code 1971 (compiled)
64 G.A. (1st Session) January 11, 1971
64 G.A. (2nd Session) January 10, 1972

Code 1973 (compiled)
65 G.A. (1st Session) January 8, 1973
65 G.A. (2nd Session) January 14, 1974

Code 1975 (compiled)
66 G.A. (1st Session) January 13, 1975
66 G.A. (2nd Session) January 12, 1976

Code 1977 (compiled)

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

THE DECLARATION OF INDEPENDENCE

IN CONGRESS, JULY 4, 1776

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

The unanimous Declaration of the thirteen united States of America.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For quartering large bodies of armed troops among us:

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

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

For imposing taxes on us without our Consent:

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

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

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

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

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

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

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

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

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

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

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

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

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

JOHN HANCOCK.

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

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

Rhode Island. — STEP. HOPKINS, WILLIAM ELLERY.

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

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

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

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

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

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

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

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

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

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

ARTICLES OF CONFEDERATION

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

PREAMBLE.

ARTICLE I. Style of confederacy.

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

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

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

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

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

ARTICLE VII. Military appointments.

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

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

ARTICLE X. Powers of the committee of the states.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The United States in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also that no State shall be deprived of territory for the benefit of the United States.

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

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States.—fixing the standard of weights and measures throughout the

United States.—regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated—establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

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

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

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

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

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

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

Article XIII. Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by

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

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

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

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

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

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

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

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

WILLIAM ELLERY, JOHN COLLINS.
HENRY MARCHANT,

On the part and behalf of the State of Connecticut.

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

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

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

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

JNO. WITHERSPOON, NATHL. SCUDDER.

On the part and behalf of the State of Pennsylvania.

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

On the part & behalf of the State of Delaware.

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

On the part and behalf of the State of Maryland.

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

On the part and behalf of the State of Virginia.

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

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

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

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

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

On the part & behalf of the State of Georgia.

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

AUTHENTICATION OF RECORDS

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

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

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

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

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

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

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

State and Territorial Nonjudicial Records; Full Faith and Credit

SEC. 1739. All nonjudicial records or books kept in any public office of any State, Territory, or Possession of the United States, or copies thereof, shall be proved or admitted in any court or office in any other State, Territory, or Possession by the attestation of the custodian of such records or books, and the seal of his office annexed, if there be a seal, together with a certificate of a judge of a court of record of the county, parish, or district in which such office may be kept, or of the Governor, or secretary of state, the chancellor or keeper of the great seal, of the State, Territory, or Possession that the said attestation is in due form and by the proper officers.

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

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

CONSTITUTION OF THE UNITED STATES OF AMERICA

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

PREAMBLE.

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

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

ARTICLE I.

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

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

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

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

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

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

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

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

ing of the Legislature, which shall then fill such Vacancies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

cises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

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

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

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

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

To establish Post Offices and post Roads;

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

To constitute Tribunals inferior to the supreme Court;

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

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

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

To provide and maintain a Navy;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE. II.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE. III.

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

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

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

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

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

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

ARTICLE. IV.

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

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

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

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

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

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

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

ARTICLE. V.

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

Statutory provision, ch 55

ARTICLE. VI.

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

This Constitution, and the Laws of the United States which shall be made in Pursu-

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

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

ARTICLE. VII.

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

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

Attest WILLIAM JACKSON Secretary — GO WASHINGTON— Presidt and deputy from Virginia

New Hampshire	JOHN LANGDON NICHOLAS GILMAN
Massachusetts	NATHANIEL GORHAM RUFUS KING
Connecticut	WM SAML JOHNSON ROGER SHERMAN
New York.....	ALEXANDER HAMILTON
New Jersey	WIL: LIVINGSTON DAVID BREARLEY. WM. PATERSON. JONA: DAYTON.
Pennsylvania	B FRANKLIN THOMAS MIFFLIN ROBT MORRIS GEO. CLYMER THOS FITZSIMONS JARED INGERSOLL JAMES WILSON GOUV MORRIS
Delaware	GEO: READ GUNNING BEDFORD jun JOHN DICKINSON RICHARD BASSETT JACO: BROOM
Maryland	JAMES MCHENRY DAN OF ST THOS JENIFER DANL CARROLL
Virginia	JOHN BLAIR— JAMES MADISON JR.
North Carolina	WM BLOUNT RICHD DOBBS SPAIGHT. HU WILLIAMSON
South Carolina	J. RUTLEDGE CHARLES COTESWORTH PINCKNEY CHARLES PINCKNEY PIERCE BUTLER.
Georgia	WILLIAM FEW ABR BALDWIN

In Convention Monday, September 17th 1787.

Present

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

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

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

By the Unanimous Order of the Convention.

GO WASHINGTON Presidt.

W. JACKSON Secretary.

AMENDMENTS TO THE CONSTITUTION.

AMENDMENT 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the

free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 2.

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

AMENDMENT 3.

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

AMENDMENT 4.

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

AMENDMENT 5.

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

AMENDMENT 6.

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

AMENDMENT 7.

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

AMENDMENT 8.

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

AMENDMENT 9.

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

AMENDMENT 10.

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

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

AMENDMENT 11.

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

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

AMENDMENT 12.

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

Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

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

AMENDMENT 13.

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

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

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

AMENDMENT 14.

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

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

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

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

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

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

AMENDMENT 15.

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

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

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

AMENDMENT 16.

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

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

AMENDMENT 17.

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

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

This amendment shall not be so construed as to affect the election or term of any Senator

chosen before it becomes valid as part of the Constitution.

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

AMENDMENT 18.

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

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

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

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

Repealed by amendment 21, December 5, 1933.

AMENDMENT 19.

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

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

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

AMENDMENT 20.

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

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

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

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

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

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

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

AMENDMENT 21.

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

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

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

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

AMENDMENT 22.

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

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

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

AMENDMENT 23.

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

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

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

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

AMENDMENT 24.

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

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

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

AMENDMENT 25.

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

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

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

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

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

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

AMENDMENT 26.

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

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

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

There was pending at the time of this publication an amendment relating to sexual discrimination, see 64GA, chapter 1140.

CONSTITUTION OF THE STATE OF IOWA

1846

[This Constitution has been superseded by the Constitution of 1857 which follows]

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

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

ARTICLE 1.

BILL OF RIGHTS

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

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

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

4. **Religious test.** No religious test shall be required as a qualification for any office or public trust, and no person shall be deprived of any of his rights, privileges or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion.

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

6. **Laws uniform.** All laws of a general nature shall have a uniform operation.

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

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

9. **Trial by jury.** The right of trial by jury shall remain inviolate; but the general assembly may authorize trial by a jury of a less number than twelve men in inferior courts.

10. **Rights of persons accused.** In all criminal prosecutions, the accused shall have a right to a speedy trial by an impartial jury; to be informed of the accusation against him; to be confronted with the witnesses against

him; to have compulsory process for his own witnesses, and to have the assistance of counsel.

11. **Indictment.** No person shall be held to answer for a criminal offence, unless on presentment or indictment by a grand jury, except in cases cognizable before a justice of the peace, or arising in the army or navy, or in the militia, when in actual service, in time of war or public danger.

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

13. **Habeas corpus.** The writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

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

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

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

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

18. **Property.** Private property shall not be taken for public use without just compensation.

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

20. **Petition.** The people have the right freely to assemble together to counsel for the common good; to make known their opinions to their representatives, and to petition for a redress of grievances.

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

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

23. **Slavery.** Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this state.

24. **Reservation.** This enumeration of rights shall not be construed to impair or deny others, retained by the people.

ARTICLE 2.

RIGHT OF SUFFRAGE.

1. **Electors.** Every white male citizen of the United States of the age of twenty-one years, who shall have been a resident of the state six months next preceding the election, and the county in which he claims his vote twenty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law.

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

3. **Same.** No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

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

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

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

ARTICLE 3.

OF THE DISTRIBUTION OF POWERS.

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

LEGISLATIVE DEPARTMENT.

1. **Legislative authority.** The legislative authority of this state shall be vested in a Senate and House of Representatives, which shall be designated the General Assembly of the State of Iowa; and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

2. **Sessions.** The sessions of the General Assembly shall be biennial, and shall commence on the first Monday of December next ensuing the election of its members; unless the governor of the state shall, in the interim, convene the General Assembly by proclamation.

3. **Members of the house of reps.** The members of the House of Representatives shall be chosen every second year, by the qualified electors of their respective districts, on the first Monday in August; whose term of office shall continue two years from the day of the general election.

4. **Eligibility.** No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years; be a free white male citizen of the United States, and have been an inhabitant of this state or territory one year next preceding his election; and at the time of his election, have an actual residence of thirty days in the county or district he may be chosen to represent.

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

6. **Same, and classed.** The number of senators shall not be less than one-third, nor more than one-half the representative body; and at the first session of the general assembly, after this constitution takes effect, the senators shall be divided by lot, as equally as may be, into two classes; the seats of the senators of the first class shall be vacated at the expiration of the second year, so that one half shall be chosen every two years.

7. **Same.** When the number of senators is increased, they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as practicable.

8. **Elections determined.** Each house shall choose its own officers and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

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

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

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

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

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

14. **Doors open.** The doors of each house shall be open, except on such occasion as, in the opinion of the house, may require secrecy.

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

16. **Bills.** Bills may originate in either house, except bills for revenue, which shall always originate in the house of representatives, and may be amended, altered, or rejected by the other; and every bill having passed both houses, shall be signed by the speaker and president of their respective houses.

17. **To be approved, &c.** Every bill which shall have passed the general assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it; but if not, he shall return it with his objections, to the house in which it originated, which shall enter the same upon the journal and proceed to reconsider it; if, after such reconsideration, it again pass both houses, by yeas and nays, by a majority of two-thirds of the members of each house present, it shall become a law notwithstanding the governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, Sunday excepted, the same shall be a law in like manner as if he had signed it, unless the general assembly, by adjournment, prevent such return.

18. **Receipts, &c.** An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the general assembly.

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

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

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

22. **Disqualification.** No person holding any lucrative office under the United States, or this state, or any other power, shall be eligible to the general assembly: Provided, That offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmasters whose compensation does not exceed one hundred dollars per annum, shall not be deemed lucrative.

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

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

25. **Compensation of members.** Each member of the general assembly shall receive a compensation to be fixed by law, for his services, to be paid out of the treasury of the state. Such compensation shall not exceed two dollars per day for the period of fifty days from the commencement of the session, and shall not exceed the sum of one dollar per day for the remainder of the session: when convened in extra session by the governor, they shall receive such sums as shall be fixed for the first fifty days of the ordinary session. They shall also receive two dollars for every twenty miles they travel, in going to and returning from their place of meeting, on the most usual route: Provided, however, That the members of the first general assembly under this constitution shall receive two dollars per day for their services during the entire session.

26. **Laws.** Every law shall embrace but one object, which shall be expressed in the title.

27. **Published.** No law of the general assembly, of a public nature, shall take effect until the same shall be published and circulated in the several counties of this state, by authority. If the general assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the state.

28. **Divorce.** No divorce shall be granted by the general assembly.

29. **Lotteries.** No lottery shall be authorized by this state; nor shall the sale of lottery tickets be allowed.

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

31. **Census — apportionment.** Within one year after the ratification of this constitution, and within every subsequent term of two years, for the term of eight years, an enumeration of all the white inhabitants of this state shall be made, in such manner as shall be directed by law. The number of senators and representatives shall, at the first regular session of the general assembly, after such enumeration, be fixed by law, and apportioned among the several counties according to the number of white inhabitants in each; and [the general assembly] shall also, at every subsequent regular session, apportion the house of representatives; and every other regular session the senate, for eight years; and the house of representatives shall never be less than twenty-six, nor greater than thirty-nine, until the number of white inhabitants shall be one hundred and seventy-five thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-nine nor exceeding seventy-two.

32. **Districts.** When a congressional, senatorial, or representative district shall be composed of two or more counties, it shall not be

entirely separated by any county belonging to another district; and no county shall be divided in forming a congressional, senatorial, or representative district.

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

34. **Salaries.** For the first ten years after the organization of the government, the annual salary of the governor shall not exceed one thousand dollars; secretary of state five hundred dollars; treasurer four hundred dollars; auditor six hundred dollars; judges of the supreme and district courts, each one thousand dollars.

ARTICLE 4.

EXECUTIVE DEPARTMENT.

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

2. **Election and term.** The governor shall be elected by the qualified electors at the time and place of voting for members of the general assembly, and shall hold his office four years from the time of his installation, and until his successor shall be qualified.

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

4. **Returns of election.** The returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in presence of both houses of the general assembly. The person having the highest number of votes shall be governor; but in case any two or more have an equal and the highest number of votes, the general assembly shall, by joint vote, choose one of said persons so having an equal and the highest number of votes, for governor.

5. **Commander.** The governor shall be commander-in-chief of the militia, the army and navy of this state.

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

7. **Same.** He shall see that the laws are faithfully executed.

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

9. **Convening assembly.** He may, on extraordinary occasions, convene the general assembly, by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.

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

11. **Adjournment.** In case of disagreement between the two houses, with respect to the time of adjournment, the governor shall have power to adjourn the general assembly to such time as he may think proper, provided it be not beyond the time fixed for the meeting of the next general assembly.

12. **Disqualification.** No person shall, while holding any other office under the United States, or this state, execute the office of governor, except as hereinafter expressly provided.

13. **Pardons, &c.** The governor shall have power to grant reprieves and pardons, and commute punishments after conviction, except in cases of impeachment.

14. **Compensation.** The governor shall, at stated times, receive for his services, a compensation which shall neither be increased nor diminished during the time for which he shall have been elected.

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

16. **Commissions, &c.** All grants and commissions shall be in the name and by the authority of the people of the State of Iowa sealed with the great seal of this state, signed by the governor and countersigned by the secretary of state.

17. **Secretary, auditor and treasurer.** A secretary of state, auditor of public accounts, and treasurer, shall be elected by the qualified electors, who shall continue in office two years. The secretary of state shall keep a fair register of all the official acts of the governor, and shall, when required, lay the same, together with all papers, minutes, and vouchers relative thereto, before either branch of the general assembly, and shall perform such other duties as shall be assigned him by law.

18. **Secretary acts as governor.** In case of the impeachment of the governor, his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the secretary of state, until such disability shall cease, or the vacancy be filled.

19. **Further vacancies provided for.** If, during the vacancy of the office of governor, the secretary of state shall be impeached, displaced, resign, die, or be absent from the state, the powers and duties of the office of governor shall devolve upon the president of the senate; and should a vacancy occur by impeachment, death, resignation, or absence from the state of the president of the senate, the speaker of the house of representatives shall act as governor till the vacancy be filled.

ARTICLE 5.

JUDICIAL DEPARTMENT.

1. **Courts.** The judicial power shall be vested in a Supreme Court, District Courts, and such inferior courts as the general assembly may from time to time establish.

2. **Supreme court.** The Supreme Court shall consist of a chief justice and two associates, two of whom shall be a quorum to hold court.

3. **Judges elected—jurisdiction.** The judges of the supreme court shall be elected by joint vote of both branches of the general assembly, and shall hold their courts at such time and place as the general assembly may direct, and hold their offices for six years, and until their successors are elected and qualified, and shall be ineligible to any other office during the term for which they may be elected. The supreme court shall have appellate jurisdiction only in all cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the general assembly may by law prescribe. The supreme court may have power to issue all writs and process necessary to do justice to parties, and exercise a supervisory control over all inferior judicial tribunals, and the judges of the supreme court shall be conservators of the peace throughout the state.

4. **District judge elected—jurisdiction of district court.** The District Court shall consist of a judge, who shall be elected by the qualified voters of the district in which he resides, at the township election, and hold his office for the term of five years, and until his successor is elected and qualified, and shall be ineligible to any other office during the term for which he may be elected. The district court shall be a court of law and equity, and have jurisdiction in all civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law. The judges of the district courts shall be conservators of the peace in their respective districts. The first session of the general assembly shall divide the state into four districts, which may be increased as the exigencies require.

5. **Prosecuting attorney — clerk of district court.** The qualified voters of each county, shall at the general election elect one prosecuting attorney and one clerk of the district court, who shall be residents therein, and who shall hold their several offices for the term of two years and until their successors are elected and qualified.

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

ARTICLE 6.

MILITIA.

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

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

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

ARTICLE 7.

STATE DEBTS.

1. **Limitation of state indebtedness.** The general assembly shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, with any previous debts or liabilities, exceed the sum of one hundred thousand dollars, except in case of war, to repel invasion, or suppress insurrection, unless the same shall be authorized by some law for some single object or work to be distinctly specified therein; which

law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years of the time of the contracting thereof, and shall be irrepealable until the principal and the interest thereon shall be paid and discharged; but no such law shall take effect, until at a general election it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt thereby created; and such law shall be published in at least one newspaper in each judicial district, if one is published therein, throughout the state, for three months preceding the election at which it is submitted to the people.

ARTICLE 8.

INCORPORATIONS.

1. **Banking prohibited.** No corporate body shall hereafter be created, renewed or extended, with the privilege of making, issuing, or putting in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money. The general assembly of this state shall prohibit, by law, any person or persons, association, company or corporation, from exercising the privileges of banking, or creating paper to circulate as money.

2. **Corporations.** Corporations shall not be created in this state by special laws, except for political or municipal purposes; but the general assembly shall provide by general laws, for the organization of all other corporations, except corporations with banking privileges, the creation of which is prohibited. The stockholders shall be subject to such liabilities and restrictions as shall be provided by law. The state shall not directly or indirectly become a stockholder in any corporation.

ARTICLE 9.

EDUCATION AND SCHOOL LANDS.

1. **Superintendent of public instruction.** The general assembly shall provide for the election by the people, of a Superintendent of Public Instruction, who shall hold his office for three years, and whose duties shall be prescribed by law, and who shall receive such compensation as the general assembly may direct.

2. **School fund.** The general assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement. The proceeds of all lands that have been or hereafter may be granted by the United States to this state, for the support of schools, which shall hereafter be sold or disposed of, and the five hundred thousand acres of land granted to the new states, under an act of congress distributing the proceeds of the public lands among the several states of the Union, approved A. D. 1841 and all estates of deceased persons, who may have died without leaving a will or heir; and also such per cent. as may be granted by congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the general assembly may provide, shall be inviolably appropriated to the support of common schools throughout the state.

3. **System of common schools.** The general assembly shall provide for a system of common schools, by which a school shall be kept up and supported in each school district, at least three months in every year; and any school district neglecting to keep up and support such a school may be deprived of its proportion of the interest of the public fund during such neglect.

4. **Fines, &c. appropriated.** The money which shall be paid by persons as an equivalent for exemption from military duty, and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, shall be exclusively applied, in the several counties in which such money is paid or fine collected, among the several school districts of said counties, in the proportion to the number of inhabitants in such districts, to the support of common schools, or the establishment of libraries, as the general assembly shall, from time to time, provide by law.

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

ARTICLE 10.

AMENDMENTS TO THE CONSTITUTION.

1. **Amendments.** If at any time the general assembly shall think it necessary to revise or amend this constitution, they shall provide by law for a vote of the people for or against a convention, at the next ensuing election for members of the general assembly. In case a majority of the people vote in favor of a convention, said general assembly shall provide for an election of delegates to a convention, to be held within six months after the vote of the people in favor thereof.

ARTICLE 11.

MISCELLANEOUS.

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

2. **Counties.** No new county shall be laid off hereafter, nor old county reduced to less contents than four hundred and thirty-two square miles.

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

ARTICLE 12.

SCHEDULE.

1. **Legal process not affected.** That no inconvenience may arise from the change of a territorial government to a permanent state government, it is declared that all writs, actions, prosecutions, contracts, claims and rights shall continue as if no change had taken place in this government; and all process which may, before the organization of the judicial department under this constitution, be issued under the authority of the territory of Iowa, shall be as valid as if issued in the name of the state.

2. **Laws remain in force.** All the laws now in force in this territory, which are not repugnant to this constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the general assembly of this state.

3. **Fines go to state.** All fines, penalties and forfeitures accruing to the territory of Iowa, shall accrue to the use of the state.

4. **Prosecutions, recognizances, bonds, &c. remain.** All recognizances heretofore taken, or which may hereafter be taken, before the organization of the judicial department under this constitution, shall remain valid, and shall pass to and may be prosecuted in the name of the state. And all bonds executed to the governor of this territory, or to any other officer in his official capacity, shall pass over to the governor of the state, or other proper state authority, and to their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly. All criminal prosecutions and penal actions which may have arisen, or may arise, before the organization of the judicial department under this constitution, and which shall then be pending, may be prosecuted to judgment and execution in the name of the state.

5. **Officers continue.** All officers, civil and military, now holding their offices and appointments in this territory, under the authority of the United States, or under the authority of this territory, shall continue to hold and execute their respective offices and appointments until superceded under this constitution.

6. **First general election.** The first general election under this constitution shall be held at such time as the governor of the territory, by proclamation, may appoint, within three months after its adoption, for the election of a governor, two representatives in the congress of the United States, (unless congress shall provide for the election of one representative,) members of the general assembly and one auditor, treasurer, and secretary of state. Said election shall be conducted in accordance with the existing laws of this territory; and said governor, representatives in the congress of the United States, auditor, treasurer, and secretary of state, duly elected at said election, shall continue to discharge the duties of their respective offices for the time prescribed by this constitution, and until their successors are elected and qualified. The returns of said election shall be made in conformity to the existing laws of this territory.

7. **Apportionment of members of general assembly.** Until the first enumeration of the inhabitants of this state, as directed by this constitution, the following shall be the apportionment of the general assembly:

The county of Lee shall be entitled to two senators and five representatives;

The county of Van Buren, two senators and four representatives;

The counties of Davis and Appanoose, one senator and one representative, jointly;

The counties of Wapello and Monroe, one senator jointly, and one representative each;

The counties of Marion, Polk, Dallas, and Jasper, one senator and two representatives jointly;

The county of Des Moines, two senators and four representatives;

The county of Henry, one senator and three representatives;

The county of Jefferson, one senator and three representatives;

The counties of Louisa and Washington, one senator jointly, and one representative each;

The counties of Keokuk and Mahaska, one senator jointly, and one representative each;

The counties of Muscatine, Johnson, and Iowa, one senator and one representative jointly, and Muscatine one representative, and Johnson and Iowa one representative jointly;

The counties of Scott and Clinton, one senator jointly, and one representative each;

The counties of Cedar, Linn, and Benton, one senator jointly; the county of Cedar one representative, and the counties of Linn and Benton one representative jointly;

The counties of Jackson and Jones, one senator and two representatives;

The counties of Dubuque, Delaware, Clayton, Fayette, Buchanan, and Black Hawk, two senators and two representatives jointly;

And any county attached to any county for judicial purposes shall, unless otherwise provided for, be considered as forming part of such county, for election purposes.

8. **First session.** The first meeting of the general assembly under this constitution shall be at such time as the governor of the territory may by proclamation appoint, within four months after its ratification by the people, at Iowa City, in Johnson county, which place shall be the seat of government of the State of Iowa until removed by law.

Done in Convention, at Iowa City, this eighteenth day of May, in the year of our Lord one thousand eight hundred and forty-six, and of the Independence of the United States of America the seventieth.

In testimony whereof, we have hereunto subscribed our names:

ENOS LOWE, President.

Thomas Dibble, Erastus Hoskin, David Galland, Sulifand S. Ross, Shepherd Leffler, Curtis Bates, Wm. G. Coop, John Ronalds, Samuel A. Bissell, Socrates H. Tryon, Wareham G. Clark, William Hubbel, John J. Selman, George Berry, John Conrey, Josiah Kent, Joseph H. Hedrick, Sylvester G. Matson, S. B. Shelledy, James Grant, George Hobson, H. P. Haun, Stewart Goodrell, Sanford Harned, David Olmstead, G. W. Bowie, Alvin Saunders, William Steele, T. McCraney, F. K. O'Ferrall, J. Scott Richman.

Attest, WM. THOMPSON, Secretary.

CONSTITUTION OF THE STATE OF IOWA

1857

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

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

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

Boundaries. Beginning in the middle of the main channel of the Mississippi River, at a point due East of the middle of the mouth of the main channel of the Des Moines River, thence up the middle of the main channel of the said Des Moines River, to a point on said river where the Northern boundary line of the State of Missouri—as established by the constitution of that State—adopted June 12th. 1820 —crosses the said middle of the main channel of the said Des Moines River; thence Westwardly along the said Northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersects the middle of the main channel of the Missouri River; thence up the middle of the main channel of the said Missouri River

to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollett's Map; thence up the main channel of the said Big Sioux River, according to the said map, until it is intersected by the parallel of forty three degrees and thirty minutes North latitude; thence East along said parallel of forty three degrees and thirty minutes until said parallel intersects the middle of the main channel of the Mississippi River; thence down the middle of the main channel of said Mississippi River to the place of beginning.

ARTICLE I.

BILL OF RIGHTS.

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

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

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

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

Referred to in §735.3 of the Code

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

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

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

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

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

See also §§777.16, 780.22

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

See Code §605.16

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

*As to indictment and the number of grand jurors, see Amendment [9]

For civil jurisdiction of Justice of Peace, see Art. XI,§1; but see 64GA, chapter 1124

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

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

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

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

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

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

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

*See Amendment [13]

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

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

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

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

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

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

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

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

ARTICLE II.

RIGHT OF SUFFRAGE.

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

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

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

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

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

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

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

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

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

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

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

See Code §39.1

ARTICLE III.

OF THE DISTRIBUTION OF POWERS.

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

LEGISLATIVE DEPARTMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Adjournments. SEC. 14. Neither house shall, without the consent of the other, adjourn for

more than three days, nor to any other place than that in which they may be sitting.

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

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

Statutory provisions, §§3.4, 3.5 of the Code

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

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

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

Statutory provisions, §14.10(5) of the Code.

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

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

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

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

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

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

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

Statutory provisions, Code §§2.11 to 2.15.

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

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

Supplementary provisions, §3.7 et seq. of the Code.

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

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

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

*This section repealed by Amendment [34]

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

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

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

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

For changing the names of persons;

For the incorporation of cities and towns;

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

For locating or changing county seats.

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

Laws uniform, see Article I, §6

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

See §3.14 of the Code

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

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

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

**This section repealed by Amendment [17]

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

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

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

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

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

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

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

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

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

See Amendment [12]

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

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

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

Legislative districts. SEC. 39.
Amendment [29]

ARTICLE IV.

EXECUTIVE DEPARTMENT.

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

Election and term. SEC. 2. [*The Governor shall be elected by the qualified electors at the time and place of voting for members of the General Assembly, and shall hold his office two years from the time of his installation, and until his successor is elected and qualified.*]*
*In 1972 this section was repealed and a substitute adopted in lieu thereof: See Amendment [32]

Lieutenant governor—returns of elections. SEC. 3. [*There shall be a Lieutenant Governor, who shall hold his office two years, and be elected at the same time as the Governor. In voting for Governor and Lieutenant Governor, the electors shall designate for whom they vote as Governor, and for whom as Lieutenant Governor. The returns of every election for Governor, and Lieutenant Governor, shall be sealed up and transmitted to the seat of government of the State, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.*]*
For statutory provisions, see Code §50.35
*In 1972 this section was repealed and a substitute adopted in lieu thereof: See Amendment [32]

Election by general assembly. SEC. 4. The persons respectively having the highest number of votes for Governor and Lieutenant Governor, shall be declared duly elected; but in case two or more persons shall have an equal and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of said persons Governor, or Lieutenant Governor, as the case may be.
See Amendment [19] relating to death or failure to qualify

Contested elections. SEC. 5. Contested elections for Governor, or Lieutenant Governor, shall be determined by the General Assembly in such manner as may be prescribed by law.
For statutory provisions, see Code §§58.1-58.7

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

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

Duties of governor. SEC. 8. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices.
Duty as to state accounts, §79.8 of the Code

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

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

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

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

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

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

Terms—compensation of lieutenant governor. SEC. 15. [*The official term of the Governor, and Lieutenant Governor, shall commence on the second Monday of January next after their election, and continue for two years, and until their successors are elected and qualified. The Lieutenant Governor, while acting as Governor, shall receive the same pay as provided for Governor; and while presiding in the Senate, shall receive as compensation therefor, the same mileage and double the per diem pay provided for a Senator, and none other.*]*
See Code §2.13
*In 1972 this section was repealed and a substitute adopted in lieu thereof: See Amendment [32]

Pardons—reprieves—commutations. SEC. 16. The Governor shall have power to grant re-

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

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

Referred to in §7.14(1, 2) of the Code

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

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

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

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

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

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

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

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

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

ARTICLE V.

JUDICIAL DEPARTMENT.

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

Court of appeals, §684.31 of the Code

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

See sec. 10 following; also §684.1 of the Code.

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

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

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

Jurisdiction, Rules of Civil Procedure, number 331
See §624.2 of the Code
*This section was amended in 1962: See Amendment [21]

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

*the Supreme Court, during the term for which he was elected.]**

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

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

Statutory provision, §602.1 of the Code

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

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

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

For statutory provisions relative to salary of judges of the supreme court, see §684.17 and the biennial salary Act

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

Judicial districts—supreme court. SEC. 10. *The state shall be divided into eleven judicial districts; and after the year eighteen hundred and sixty,* the general assembly may re-organize the judicial districts and increase or diminish the number of districts, or the number of judges of the said court, and may increase the number of judges of the supreme court; but such increase or diminution shall not be more than one district, or one judge of either court, at any one session; and no re-organization of the districts, or diminution of the number of judges, shall have the effect of removing a judge from office. Such re-organization of the districts, or any change in the boundaries thereof, or increase or diminution of the number of judges, shall take place every four years thereafter, if necessary, and at no other time.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VI.

MILITIA.

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

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

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

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

ARTICLE VII.

STATE DEBTS.

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

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

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

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

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

For statutory provisions, see Code §§6.2, 6.4

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

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

Motor vehicle fees and fuel taxes. SEC. 8.

See Amendment [18]

ARTICLE VIII.

CORPORATIONS.

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

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

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

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

Banking associations. SEC. 5. No Act of the General Assembly, authorizing or creating corporations or associations with banking powers, nor amendments thereto shall take effect, or

in any manner be in force, until the same shall have been submitted, separately, to the people, at a general or special election, as provided by law, to be held not less than three months after the passage of the Act, and shall have been approved by a majority of all the electors voting for and against it at such election.

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

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

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

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

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

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

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

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

Analogous provision, §491.39 of the Code

ARTICLE IX.

EDUCATION AND SCHOOL LANDS.

1st. EDUCATION.*

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

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

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

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

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

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

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

same manner as the journals of the General Assembly.

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

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

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

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

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

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

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

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

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

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

*The board of education was abolished in 1864 by 10 GA, ch 52, §1. For statutory provisions, see Code §262.1 et seq.

2nd. SCHOOL FUNDS AND SCHOOL LANDS.

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

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

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

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

*This section repealed by Amendment [35]

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

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

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

ARTICLE X.

AMENDMENTS TO THE CONSTITUTION.

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

For statutory provisions, see Code §§6.1, 6.3 to 6.7, 49.43 to 49.50

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

Convention. SEC. 3. [*At the general election to be held in the year one thousand eight hundred and seventy, and in each tenth year thereafter, and also at such times as the General Assembly may, by law, provide, the question, "Shall there be a Convention to revise the Constitution, and amend the same?" shall be decided by the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting at such election, for and against such proposition, shall decide in favor of a Convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such Convention.*]*

*In 1964 this section was repealed and a substitute adopted in lieu thereof: See Amendment [22]

ARTICLE XI.

MISCELLANEOUS.

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

Nonindictable misdemeanors, jurisdiction, Art. I, §11
[The office of Justice of Peace has been abolished by 64GA, chapter 1124.]

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

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

Statutory limitation, §§346.24, 346.25 of the Code
See 64GA, ch 1088

Boundaries of state. SEC. 4. The boundaries of the State may be enlarged, with the consent of Congress and the General Assembly.

Oath of office. SEC. 5. Every person elected or appointed to any office, shall, before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States, and of this State, and also an oath of office.

See §63.10 of the Code

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

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

Seat of government established—state university. SEC. 8. The seat of Government is hereby permanently established, as now fixed by law, at the City of Des Moines, in the County of Polk; and the State University, at Iowa City, in the County of Johnson.

See 5G.A., ch 72

ARTICLE XII.

SCHEDULE.

Supreme law—constitutionality of acts. SECTION 1. This Constitution shall be the supreme law of the State, and any law inconsistent therewith, shall be void. The General Assembly shall pass all laws necessary to carry this Constitution into effect.

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

Proceedings not affected. SEC. 3. All indictments, prosecutions, suits, pleas, plaints, process, and other proceedings pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, and injunctions, shall be carried on in the several courts, in the same manner as now provided by law; and all offences, misdemeanors, and crimes that may have been committed before the taking effect of this Constitution, shall be subject to indictment, trial and punishment, in the same manner as they would have been, had not this Constitution been made.

Fines inure to the state. SEC. 4. [*All fines, penalties, or forfeitures due, or to become due, or accruing to the State, or to any County therein, or to the school fund, shall inure to the State, county, or school fund, in the manner prescribed by law.*]*

*This section repealed by Amendment [35]

Bonds in force. SEC. 5. All bonds executed to the State, or to any officer in his official capacity, shall remain in force and inure to the use of those concerned.

First election for governor and lieutenant governor. SEC. 6. The first election under this Constitution shall be held on the second Tuesday in October, in the year one thousand eight hundred and fifty seven, at which time the electors of the State shall elect the Governor and Lieutenant Governor. There shall also be elected at such election, the successors of such State Senators as were elected at the August election, in the year one thousand eight hundred and fifty-four, and members of the House of Representatives, who shall be elected in accordance with the Act of apportionment, enacted at the session of the General Assembly which commenced on the first Monday of December One thousand eight hundred and fifty six.

First election of officers. SEC. 7. The first election for Secretary, Auditor, and Treasurer of State, Attorney General, District Judges, Members of the Board of Education, District Attorneys, members of Congress and such State officers as shall be elected at the April election, in the year One thousand eight hundred and fifty seven, (except the Superintendent of Public Instruction,) and such county officers as were elected at the August election, in the year One thousand eight hundred and fifty-six, except Prosecuting Attorneys, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-eight: *Provided,* That the time for which any District Judge or other State or County officer elected at the April election in the year One thousand eight hundred and fifty eight, shall not extend beyond the time fixed for filling like offices at the October election in the year one thousand eight hundred and fifty eight.

For judges of supreme court. SEC. 8. The first election for Judges of the Supreme Court, and such County officers as shall be elected at the August election, in the year one thousand eight hundred and fifty-seven, shall be held on the second Tuesday of October, in the year One thousand eight hundred and fifty-nine.

General assembly—first session. SEC. 9. The first regular session of the General Assembly shall be held in the year One thousand eight hundred and fifty-eight, commencing on the second Monday of January of said year.

Senators. SEC. 10. Senators elected at the August election, in the year one thousand eight hundred and fifty-six, shall continue in office

until the second Tuesday of October, in the year one thousand eight hundred and fifty nine, at which time their successors shall be elected as may be prescribed by law.

Offices not vacated. SEC. 11. Every person elected by popular vote, by vote of the General Assembly, or who may hold office by executive appointment, which office is continued by this Constitution, and every person who shall be so elected or appointed, to any such office, before the taking effect of this constitution, (except as in this Constitution otherwise provided,) shall continue in office until the term for which such person has been or may be elected or appointed shall expire: but no such person shall continue in office after the taking effect of this Constitution, for a longer period than the term of such office, in this Constitution prescribed.

Judicial districts. SEC. 12. The General Assembly, at the first session under this Constitution, shall district the State into eleven Judicial Districts, for District Court purposes; and shall also provide for the apportionment of the members of the General Assembly, in accordance with the provisions of this Constitution.

Submission of constitution. SEC. 13. This Constitution shall be submitted to the electors of the State at the August election, in the year one thousand eight hundred and fifty-seven, in the several election districts in this State. The ballots at such election shall be written or printed as follows: Those in favor of the Constitution, "New Constitution — Yes." Those against the Constitution, "New Constitution— No." The election shall be conducted in the same manner as the general elections of the State, and the poll-books shall be returned and canvassed as provided in the twenty-fifth chapter of the code, and abstracts shall be forstracts shall be canvassed in the manner provided for the canvass of State officers. And if it shall appear that a majority of all the votes warded to the Secretary of State, which abcast at such election for and against this Constitution are in favor of the same, the Governor shall immediately issue his proclamation stating that fact, and such Constitution shall be the Constitution of the State of Iowa, and shall take effect from and after the publication of said proclamation.

Proposition to strike out the word "white". SEC. 14. At the same election that this Constitution is submitted to the people for its adoption or rejection, a proposition to amend the same by striking out the word "White" from the article on the Right of Suffrage, shall be separately submitted to the electors of this State for adoption or rejection in manner following—Namely:

A separate ballot may be given by every person having a right to vote at said election, to be deposited in a separate box; and those given for the adoption of such proposition shall have the words, "Shall the word 'White' be stricken out of the Article on the Right of Suffrage? Yes." And those given against the proposition shall have the words, "Shall the word 'White' be stricken out of the Article on the Right of Suffrage? No." And if at said election the number of ballots cast in favor of said proposition shall be equal to a majority of those cast for and against this Constitution, then said word "White" shall be stricken from said Article and be no part thereof.

This proposition failed to be adopted but see Amendment [1]

Mills county. SEC. 15. Until otherwise directed by law, the County of Mills shall be in and a part of the sixth Judicial District of this State.

Sec. 16. For provisions relative to biennial election, see Amendment [11]: See also Amendment [14]

Done in Convention at Iowa City, this fifth day of March in the year of our Lord One thousand eight hundred and fifty seven, and of the Independence of the United States of America, the eighty first.

In testimony whereof we have hereunto subscribed our names.

TIMOTHY DAY	A. H. MARVIN	S. AYERS
S. G. WINCHESTER	J. H. EMERSON	HARVEY J. SKIFF
DAVID BUNKER	R. L. B. CLARKE	J. A. PARVIN
D. P. PALMER	JAMES A. YOUNG	W. PENN. CLARKE
GEO. W. ELLS	D. H. SOLOMON	JEREMIAH HOLLINGSWORTH
J. C. HALL	M. W. ROBINSON	WM. PATTERSON
JOHN. H. PETERS	LEWIS TODHUNTER	D. W. PRICE.
WM. A. WARREN	JOHN EDWARDS	ALPHEUS SCOTT
H. W. GRAY	J. C. TRAER	GEORGE GILLASPY
ROBT. GOWER	JAMES F. WILSON	EDWARD JOHNSTONE
H. D. GIBSON	AMOS HARRIS	AYLETT R COTTON.
THOMAS SEELY	JNO T. CLARK	

Attest:

TH: J. SAUNDERS, *Secretary.*

E. N. BATES *Asst. Secretary.*

FRANCIS SPRINGER *President*

PROCLAMATION.

Whereas an instrument known as the "New Constitution of the State of Iowa" adopted by the constitutional convention of said State on the fifth day of March A. D. 1857 was submitted to the qualified electors of said State at the annual election held on Monday the third day of August 1857 for their approval or rejection.

And whereas an official canvass of the votes cast at said election shows that there were Forty thousand three hundred and eleven votes cast for the adoption of said Constitution and Thirty eight thousand six hundred and eighty-one votes were cast against its adoption, leaving a majority of sixteen hundred and thirty votes in favor of its adoption.

Now therefore I, JAMES W. GRIMES, Governor of said State, by virtue of the authority conferred upon me, hereby declare the said New Constitution to be adopted, and declare it to be the supreme law of the State of Iowa.

In testimony whereof I have hereunto set my hand and affixed the Great Seal of the State of Iowa.

L.S. Done at Iowa City this Third day of September A. D. 1857 of the Independence of the United States the eighty second and of the State of Iowa the eleventh.

JAMES W. GRIMES

By the Governor,
ELIJAH SELLS,
Secretary of State.

AMENDMENTS TO THE CONSTITUTION

AMENDMENTS OF 1868

[1] 1st Strike the word "white," from Section 1 of Article II thereof;

[2] 2d Strike the word "white," from Section 33 of Article III thereof;

[3] 3d Strike the word "white," from Section 34 of Article III thereof;

[4] 4th Strike the word "white," from Section 35 of Article III thereof;

[5] 5th Strike the word "white," from Section 1 of Article VI thereof;

The first of these amendments was submitted to the electorate with the Constitution in 1857 but was defeated.

AMENDMENT OF 1880

[6] Strike out the words "free white" from the third line of Section four (4) of Article three (III) of said Constitution, relating to the legislative department.

AMENDMENTS OF 1884

[7] General election. [*Amendment 1. The general election for State, District County and Township officers shall be held on the Tuesday next after the first Monday in November.*]*

*The above amendment, published as section 7 of Article II, was repealed by Amendment **[14]**

[8] Judicial districts. Amendment 2. At any regular session of the General Assembly the State may be divided into the necessary Judicial Districts for District Court purposes, or the said Districts may be reorganized and the number of the Districts and the Judges of said Courts increased or diminished; but no re-organization of the Districts or diminution of the Judges shall have the effect of removing a Judge from office.

See section 10 of Article V

[9] Grand jury. Amendment 3. The Grand Jury may consist of any number of members not less than five, nor more than fifteen, as the General Assembly may by law provide, or the General Assembly may provide for holding persons to answer for any criminal offense without the intervention of a Grand Jury.

See section 11 of Article I

[10] Amendment 4. That Section 13 of Article V of the Constitution be stricken therefrom, and the following adopted as such Section.

County attorney. SEC. 13. [*The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter elect a County Attorney, who shall be a resident of the county for which he is elected, and shall hold his office for two years, and until his successor shall have been elected and qualified.*]*

*In 1970 this section was repealed; See Amendment **[31]**

AMENDMENTS OF 1904

[11] AMENDMENT NO. 1

Add as Section 16, to Article XII of the Constitution, the following:

General election. SEC. 16. [*The first general election after the adoption of this amendment shall be held on the Tuesday next after the first Monday in November in the year one thousand nine hundred and six, and general elections shall be held biennially thereafter. In the year one thousand nine hundred and six there shall be elected a governor, lieutenant-governor, secretary of state, auditor of state, treasurer of state, attorney general, two judges of the supreme court, the successors of the judges of the district court whose terms of office expire on December 31st, one thousand nine hundred and six, state senators who would otherwise be chosen in the year one thousand nine hundred and five, and members of the house of representatives. The terms of office of the judges of the supreme court which would otherwise expire on December 31st, in odd numbered years, and all other elective state, county and township officers whose terms of office would otherwise expire in January in the year one thousand nine hundred and six, and members of the general assembly whose successors would otherwise be chosen at the general election in the year one thousand nine hundred and five, are hereby ex-*

*tended one year and until their successors are elected and qualified. The terms of offices of senators whose successors would otherwise be chosen in the year one thousand nine hundred and seven are hereby extended one year and until their successors are elected and qualified. The general assembly shall make such changes in the law governing the time of election and term of office of all other elective officers as shall be necessary to make the time of their election and terms of office conform to this amendment, and shall provide which of the judges of the supreme court shall serve as chief justice. The general assembly shall meet in regular session on the second Monday in January, in the year one thousand nine hundred and six, and also on the second Monday in January in the year one thousand nine hundred and seven, and biennially thereafter.]**

Practically the same amendment as the above was ratified in 1900, but the supreme court, in the case of State ex rel. Bailey v. Brookhart, 113 Iowa 250, held that said amendment was not proposed and adopted as required by the constitution, and did not become a part thereof

*The above amendment of 1904 has apparently been superseded by Amendment [14]

[12] AMENDMENT NO. 2*

That Sections thirty-four (34) thirty-five (35) and thirty-six (36) of Article three (III) of the Constitution of the State of Iowa, be repealed and the following be adopted in lieu thereof.

Senators — number — method of apportionment. SEC. 34. [*The Senate shall be composed of fifty members to be elected from the several senatorial districts, established by law and at the next session of the general assembly held following the taking of the state and national census, they shall be apportioned among the several counties or districts of the state, according to population as shown by the last preceding census.*]**

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

**See Amendment [16]; also Art. III, sec. 6

Representatives — number — apportionment. SEC. 35. [*The House of Representatives shall consist of not more than one hundred and eight members. The Ratio of representation shall be determined by dividing the whole number of the population of the state as shown by the last preceding state or national census, by the whole number of counties then existing or organized, but each county shall constitute one representative district and be entitled to one representative, but each county having a population in excess of the ratio number, as herein provided of three fifths or more of such ratio number shall be entitled to one additional representative, but said addition shall extend only to the nine counties having the greatest population.*]*

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

Ratio of representation. SEC. 36. [*The General Assembly shall, at the first regular session held following the adoption of this amendment, and at each succeeding regular session held next after the taking of such census, fix the ratio of representation, and apportion the additional representatives, as herein before required.*]*

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

[13] AMENDMENT OF 1908

That there be added to Section eighteen (18) of Article one (I) of the Constitution of the State of Iowa, the following:

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

[14] AMENDMENT OF 1916

To repeal Section seven (7) of Article two (II) of the Constitution of Iowa and to adopt in lieu thereof the following, to-wit:

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

The above amendment repealed Amendment [7], which was published as section 7 of Article II; See also Amendment [11]

For statutory provisions, see Code §39.1

In 1916 a proposed amendment to extend the election franchise to women was defeated by the people

In 1917 a second proposed prohibition amendment was defeated by the people

In 1919 a second proposed amendment to enfranchise women was nullified by a procedural defect in failure to publish

[15] AMENDMENT OF 1926

Strike out the word "male" from Section four (4) of Article three (III) of said constitution, relating to the legislative department.

[16] AMENDMENT OF 1928*

[*That the period (.) at the end of said section thirty-four (34) of Article three (III) of the Constitution of the state of Iowa be stricken and the following inserted :*

", but no county shall be entitled to more than one (1) senator."]**

See Art. III, sec. 6

*The above amendment was repealed by Amendment [26]

**Applicable to Amendment [12]

[17] AMENDMENT OF 1936

Amend Article three (III) by repealing Section thirty-three (33) relating to the state census.

[18] AMENDMENT OF 1942

That Article Seven (VII) of the Constitution of the State of Iowa be amended by adding thereto, as Section eight (8) thereof, the following:

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

AMENDMENTS OF 1952

[19] Amendment 1. Section four (4) of Article IV of the Constitution of Iowa is amended by adding thereto the following:

Death of governor-elect or failure to qualify. If, upon the completion of the canvass of votes for Governor and Lieutenant Governor by the General Assembly, it shall appear that the person who received the highest number of votes for Governor has since died, resigned, is unable to qualify, fails to qualify, or for any other reason is unable to assume the duties of the office of Governor for the ensuing term, the powers and duties of the office shall devolve upon the person who received the highest number of votes for Lieutenant Governor until the disability is removed and, upon inauguration, he shall assume the powers and duties of Governor.

[20] Amendment 2. Section nineteen (19) of Article IV of the Constitution of the State of Iowa is repealed and the following adopted in lieu thereof:

Gubernatorial succession. SEC. 19. If there be a vacancy in the office of Governor and the Lieutenant Governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the office of Governor, the President pro tempore of the Senate shall act as Governor until the vacancy is filled or the disability removed; and if the President pro tempore of the Senate, for any of the above causes, shall be incapable of performing the duties pertaining to the office of Governor the same shall devolve upon the Speaker of the House of Representatives; and if the Speaker of the House of Representatives, for any of the above causes, shall be incapable of performing the duties of the office of Governor, the Justices of the Supreme Court shall convene the General Assembly by proclamation and the General Assembly shall organize by the election of a President pro tempore by the Senate and a Speaker by the House of Representatives. The General Assembly shall thereupon immediately proceed to the election of a Governor and Lieutenant Governor in joint convention.

Referred to in §7.14(2) of the Code

Practically the same amendments were proposed in 1947 but nullified by a procedural defect in 1949 by failure to publish before the election

AMENDMENT OF 1962

[21] Article Five (V) is amended in the following manner:

1. Section four (4) is amended by striking from lines eight (8) and nine (9) of such section the words, "exercise a supervisory" and inserting in lieu thereof the words, "shall exercise a supervisory and administrative".

2. Sections three (3), five (5), nine (9) and eleven (11) are repealed.

3. The following sections are added thereto:

Vacancies in courts. SEC. 15. Vacancies in the Supreme Court and District Court shall be filled by appointment by the Governor from lists of nominees submitted by the appropriate judicial nominating commission. Three nominees shall be submitted for each Supreme Court vacancy, and two nominees shall be submitted for each District Court vacancy. If the Governor fails for thirty days to make the appointment, it shall be made from such nominees by the Chief Justice of the Supreme Court.

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

There shall be a District Judicial Nominating Commission in each judicial district of the state. Such commissions shall make nominations to fill vacancies in the District Court within their respective districts. Until July 4, 1973, and thereafter unless otherwise provided by law, District Judicial Nominating Commissions shall be composed and selected as follows: There shall be not less than three nor more than six appointive members, as provided by law, and an equal number of elective members on each such commission, all of

whom shall be electors of the district. The appointive members shall be appointed by the Governor. The elective members shall be elected by the resident members of the bar of the district. The district judge of such district who is senior in length of service shall also be a member of such commission and shall be its chairman.

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

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

Salaries—qualifications—retirement. SEC. 18. Judges of the Supreme Court and District Court shall receive salaries from the state, shall be members of the bar of the state and shall have such other qualifications as may be prescribed by law. Judges of the Supreme Court and District Court shall be ineligible to any other office of the state while serving on said court and for two years thereafter, except that District Judges shall be eligible to the office of Supreme Court Judge. Other judicial officers shall be selected in such manner and shall have such tenure, compensation and other qualification as may be fixed by law. The General Assembly shall prescribe mandatory retirement for Judges of the Supreme Court and District Court at a specified age and shall provide for adequate retirement compensation. Retired judges may be subject to special assignment to temporary judicial duties by the Supreme Court, as provided by law.

AMENDMENT OF 1964

[22] Section three (3) of Article ten (X) of the Constitution of the State of Iowa is repealed and the following adopted in lieu thereof:

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

AMENDMENT OF 1966

[23] Section twenty-six (26) of Article III is amended by striking from line four (4) the word "fourth" and inserting in lieu thereof the word "first".

AMENDMENTS OF 1968

[24] Amendment 1. Section two (2) of Article three (III) of the Constitution of the State of Iowa is hereby repealed and the following adopted in lieu thereof:

Annual sessions of General Assembly. SEC. 2. [*The General Assembly shall meet in session on the second Monday of January of each year. The Governor of the state may convene the General Assembly by proclamation in the interim.*]*

*In 1974 this section was repealed and a substitute adopted: See Amendment [36]

[25] Amendment 2. Article three (III), legislative department, Constitution of the State of Iowa is hereby amended by adding the following new section:

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

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

[26] Amendment 3. Section six (6) of Article three (III) section thirty-four (34) of Article three (III) and the 1904 and 1928 amendments thereto, sections thirty-five (35) and thirty-six (36) of Article three (III) and the 1904 amendment to each such section, and section thirty-seven (37) of Article three (III) are hereby repealed and the following adopted in lieu thereof:

Senators—number and classification. SEC. 6. The number of senators shall total not more than one-half the membership of the house of representatives. Senators shall be classified so that as nearly as possible one-half of the members of the senate shall be elected every two years.

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

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

Referred to in §49.3

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

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

[27] Amendment 4. Section sixteen (16) of article three (III) of the Constitution of the State of Iowa is hereby amended by adding the following new paragraph at the end thereof:

Item veto by Governor. The Governor may approve appropriation bills in whole or in part, and may disapprove any item of an appropriation bill; and the part approved shall become a law. Any item of an appropriation bill disapproved by the Governor shall be returned, with his objections, to the house in which it originated, or shall be deposited by him in the office of the Secretary of State in the case of an appropriation bill submitted to the Governor for his approval during the last three days of a session of the General Assembly, and the procedure in each case shall be the same as provided for other bills. Any such item of an appropriation bill may be enacted into law notwithstanding the Governor's objections, in the same manner as provided for other bills.

[28] Amendment 5. Section twenty-five (25) of Article three (III) of the Constitution of the State of Iowa is hereby repealed and the following adopted in lieu thereof:

Compensation and expenses of General Assembly. SEC. 25. Each member of the General Assembly shall receive such compensation and allowances for expenses as shall be fixed by law but no General Assembly shall have the power to increase compensation and allowances effective prior to the convening of the next General Assembly following the session in which any increase is adopted.

AMENDMENTS OF 1970

[29] Amendment 1. Article three (III) of the Constitution of the State of Iowa is hereby amended by adding thereto the following new section:

Legislative districts. SEC. 39. In establishing senatorial and representative districts, the

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

[30] Amendment 2. Section one (1) of Article two (II) of the Constitution, as amended in 1868, is hereby repealed and the following is hereby adopted in lieu thereof:

Electors. SEC. 1. Every citizen of the United States of the age of twenty-one years, who shall have been a resident of this state for such period of time as shall be provided by law and of the county in which he claims his vote for such period of time as shall be provided by law, shall be entitled to vote at all elections which are now or hereafter may be authorized by law. The General Assembly may provide by law for different periods of residence in order to vote for various officers or in order to vote in various elections. The required periods of residence shall not exceed six months in this state and sixty days in the county.

See Amendments 19 and 26 to U.S. Constitution

[31] Amendment 3. Section thirteen (13) of Article five (V) of the Constitution of the State of Iowa as amended by Amendment 4 of the Amendments of 1884 is hereby repealed. [County Attorney]

AMENDMENTS OF 1972

[32] Amendment 1. Section two (2) of Article four (IV) of the Constitution of the State of Iowa is repealed and the following adopted in lieu thereof:

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

Section three (3) of Article four (IV) of the Constitution of the State of Iowa is hereby repealed and the following adopted in lieu thereof:

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

Section fifteen (15) of Article four (IV) of the Constitution of the State of Iowa is hereby repealed and the following adopted in lieu thereof:

Terms—compensation of lieutenant governor. SEC. 15. The official term of the Governor, and Lieutenant Governor, shall commence on the second Monday of January next after their election, and continue until their successors are elected and qualify. The Lieutenant Governor, while acting as Governor, shall receive the same compensation as provided for Governor; and while presiding in the Senate, and between sessions such compensation and expenses as provided by law.

Section twenty-two (22) of Article four (IV) of the Constitution of the State of Iowa is repealed and the following adopted in lieu thereof:

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

Section twelve (12) of Article five (V) of the Constitution of the State of Iowa is repealed and the following adopted in lieu thereof:

Attorney general. SEC. 12. The General Assembly shall provide, by law, for the election of an Attorney General by the people, whose term of office shall be four years, and until his successor is elected and qualifies.

[33] Amendment 2. Article five (V), Constitution of the State of Iowa, is hereby amended by adding thereto the following new section:

Retirement and discipline of judges. [SEC. 19.] In addition to the legislative power of impeachment of judges as set forth in Article three (III), sections nineteen (19) and twenty (20) of the Constitution, the Supreme Court shall have power to retire judges for disability and to discipline or remove them for good cause, upon application by a commission on judicial qualifications. The General Assembly shall provide by law for the implementation of this section.

[34] Amendment 3. Section twenty-eight (28) of Article three (III) of the Constitution of the State of Iowa is hereby repealed. [Lottery prohibition]

AMENDMENTS OF 1974

[35] Amendment 1. **Apportionment of fines.**

Section four (4), subdivision two (2) entitled "School Funds and School Lands", of Article nine (IX) of the Constitution of the State of Iowa is hereby repealed.

Section four (4) of Article twelve (XII) of the Constitution of the State of Iowa is hereby repealed.

[36] Amendment 2. Section two (2) of Article three (III) of the Constitution of the State of Iowa, as amended by amendment number one (1) of the Amendments of 1968 to the Constitution of the State of Iowa, is repealed and the following adopted in lieu thereof:

Annual sessions of General Assembly—special sessions. The General Assembly shall meet in session on the second Monday of January of each year. Upon written request to the presiding officer of each House of the General Assembly by two-thirds of the members of each House, the General Assembly shall convene in special session. The Governor of the state may convene the General Assembly by proclamation in the interim.

IOWA-MISSOURI BOUNDARY COMPROMISE

48th GENERAL ASSEMBLY

State of Iowa

CHAPTER 304
H. F. 651

AN ACT to provide for the relinquishment of jurisdiction over certain lands lying in Lee County, State of Iowa, to the State of Missouri.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. The Des Moines river in its present course, as heretofore declared by the Congress of the United States, shall be and remain the true boundary line between the State of Missouri and the State of Iowa.

SEC. 2. The State of Iowa hereby relinquishes all jurisdiction to all lands in Lee County lying south and west of the Des Moines River, being south and east of the east and west boundary line between the States of Iowa and Missouri.

SEC. 3. The title of record in Missouri to any lands, the jurisdiction of which is relinquished to the State of Iowa, shall be accepted as the record title by the courts of Iowa.

SEC. 4. Nothing in this act shall be deemed or construed to affect pending litigation, if any, affecting the title to any of the land being relinquished by the State of Missouri to the State of Iowa. Provided further that any matter now in controversy and affecting the title to the land being relinquished by the State of Missouri to the State of Iowa shall be continued in the courts of the State of Missouri until the final determination thereof and such final determination shall be accepted by the courts of the State of Iowa with full force and effect.

SEC. 5. The land being relinquished to the State of Iowa, upon which taxes have been lawfully imposed in the State of Missouri during the year preceding transfer, shall not thereafter be subject to the imposition of taxes in the State of Iowa until the next succeeding year.

SEC. 6. The effective date of the relinquishment of jurisdiction over the lands herein described shall be midnight of the thirty-first (31st) day of December following the passage of the Act of Congress approving the relinquishment of jurisdiction.

SEC. 7. This Act shall be void and of no effect unless a similar Act relinquishing and waiving to the State of Iowa all claim of jurisdiction over land lying north and east of the Des Moines River is passed by the legislature of the State of Missouri at its present session.

SEC. 8. (Effective on publication, April 23, 1939.)

60th GENERAL ASSEMBLY

State of Missouri

Laws 1939, P. 475
S. B. 350

AN ACT authorizing the compromising and settling of a controversy between the State of Missouri and the State of Iowa over a part of the boundary between said states caused by a shifting of the channel of the Des Moines River and providing for the reaffirmance and re-establishing of said boundary line as being the Des Moines River, as heretofore established by Congress, and providing for the relinquishment of all claim of jurisdiction by Missouri to all lands lying north and east of the Des Moines River, and providing that the title of record in Iowa to any lands, the jurisdiction of which is relinquished by the State of Missouri, shall be accepted as the record title by the Courts of the State of Missouri, and providing further for the disposition of pending litigation, and providing for the jurisdiction of the courts over said land, the imposition of taxes thereon, and the effective date of this Act, and providing that said Act shall be void and of no effect unless a similar Act is passed by the Legislature of the State of Iowa, at its present session, relinquishing all claim of jurisdiction over all land lying south and west of the Des Moines River, with an emergency clause, and declaring this to be a revision bill, and also a subject matter recommended by the Governor in a special message to the General Assembly.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. The Des Moines River shall be the true boundary line as between Missouri and Iowa.

SEC. 2. The State of Missouri hereby relinquishes all jurisdiction to all lands lying north and east of the Des Moines River.

SEC. 3. The title of record in Iowa to any lands, the jurisdiction of which is relinquished to the State of Missouri, shall be accepted as the record title by the Courts of the State of Missouri.

SEC. 4. Nothing in this Act shall be deemed or construed to affect pending litigation, if any, affecting the title to any of the land being relinquished by the State of Iowa to the State of Missouri. Provided further that any matter now in controversy and affecting the title to the land being relinquished by the State of Iowa to the State of Missouri shall be continued in the courts of the State of Iowa until the final determination thereof, and such final determination shall be accepted by the Courts of the State of Missouri with full force and effect.

SEC. 5. The land being relinquished to the State of Missouri, upon which taxes have been lawfully imposed in the State of Iowa during the year preceding transfer, shall not thereafter be subject to the imposition of taxes in the State of Missouri until the next succeeding year.

SEC. 6. The effective date of the relinquishment of jurisdiction over the land herein described shall be midnight of the thirty-first (31st) day of December following the passage of the Act of Congress approving the relinquishment of jurisdiction.

SEC. 7. This Act shall be void and of no effect unless a similar act relinquishing and waiving to the State of Missouri, all claim of jurisdiction over land in Lee County, Iowa, lying south and west of the Des Moines River is passed by the Legislature of the State of Iowa at its present session.

SEC. 8. A controversy existing between the Courts of the State of Missouri and the Courts of the State of Iowa as to which has jurisdiction over certain land abutting upon the Des Moines River and between the County of Lee in Iowa and the County of Clark in Missouri as to the right to levy and collect taxes on said land and so that the public peace may be preserved, creates and there is an emergency which exists within the meaning of the Constitution and this Act shall take effect and be in force from and after its passage and approval.

SEC. 9. By reason of revising the Statutes relating to boundaries of counties and settling a dispute as to the boundary between this state and the State of Iowa which is the northern boundary of Clark County, the General Assembly hereby declares this bill to be a revision bill within the meaning of Section 41, Article IV, of the Constitution of Missouri; and also, this bill has in pursuance of Section 41, Article IV, of the Constitution of Missouri been recommended by the Governor, by special message, for the consideration of the General Assembly.

[House committee substitute for Senate Bill No. 350. Effective June 16, 1939.]

ACT OF CONGRESS

Approved August 10, 1939
53 U. S. Public Laws 1345

WHEREAS, under date of December 13, 1937, the State of Missouri commenced suit against the State of Iowa in the Supreme Court of the United States for the purpose of determining the boundary line between the County of Clark in the State of Missouri and the County of Lee in the State of Iowa; and

WHEREAS, by stipulation filed in the said Supreme Court of the United States, it was proposed that the legislature of Iowa and the legislature of Missouri pass like bills, the State of Missouri waiving and relinquishing to the State of Iowa all jurisdiction to lands lying North and East of the Des Moines River, now in the County of Clark, State of Missouri, and the State of Iowa waiving and relinquishing to the State of Missouri all lands lying South and West of the Des Moines River, and now in the County of Lee, State of Iowa, and that said Acts be submitted to the Congress of the United States for its approval; and

WHEREAS, in accordance with said stipulation, the Forty-eighth General Assembly of the State of Iowa did at such session pass such Act, this Act being known and designated as House File No. 651, Acts of the Forty-eighth General Assembly of Iowa, bearing the signatures of John R. Irwin, Speaker of the House; Bourke B. Hickenlooper, President of the Senate; and the signature and approval of George A. Wilson, Governor of Iowa, under date of April 18th, 1939, said Act being thereupon properly published and becoming law under date of April 23, 1939; and

WHEREAS, said Act provided in substance that the Des Moines River in its present course as heretofore declared by the Congress of the United States, shall be and remain the true boundary line between the State of Missouri and the State of Iowa; that the State of Iowa relinquishes all jurisdiction to all lands in Lee County lying South and West of the Des Moines River, being South and East of the East and West boundary line between the States of Iowa and Missouri, and that the effective date of the relinquishment of jurisdiction shall be as of midnight of the 31st day

of December following the passage of the Act of Congress approving the relinquishment of jurisdiction; and

WHEREAS, in accordance with stipulation as aforesaid, the Sixtieth General Assembly of the State of Missouri did, at such session, pass a like Act, this Act being known and designated as Senate Bill 350 of the Acts of the Sixtieth General Assembly of Missouri and bearing the signature and approval of Lloyd C. Stark, Governor of Missouri, under date of June 16, 1939; and

WHEREAS, said Act provides in substance that the Des Moines River shall be the true boundary line as between Missouri and Iowa; that the State of Missouri relinquishes all jurisdiction to all lands lying North and East of the Des Moines River and that the effective date of the relinquishment of jurisdiction over the land herein described shall be as of midnight of the 31st day of December following the passage of the Act of Congress approving the relinquishment of jurisdiction; and

WHEREAS, the said Acts of the States of Iowa and Missouri constitute an agreement between said States establishing a boundary between said States; Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the Congress is hereby given to such agreement and to the establishment of such boundary; and said Acts of the States of Iowa and Missouri are hereby approved. [Pub. Res. No. 47, 76th Congress.]

Approved, August 10, 1939.

IOWA-NEBRASKA BOUNDARY COMPROMISE

50th GENERAL ASSEMBLY

State of Iowa

CHAPTER 306

H. F. 437

AN ACT to establish the boundary line between Iowa and Nebraska by agreement; to cede to Nebraska and to relinquish jurisdiction over lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska; to provide that the provisions of this Act become effective upon the enactment of a similar and reciprocal law by Nebraska and the approval of and consent to the compact thereby effected by the Congress of the United States of America and to declare an emergency.

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

SECTION 1. On and after the enactment of a similar and reciprocal law by the State of Nebraska, and the approval and consent of the Congress of the United States of America, as hereinafter provided, the boundary line between the States of Iowa and Nebraska shall be described as follows:

Commencing at a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861½ feet west of the S. E. corner of said section, and running thence northwesterly to a point on the south line of lot 4 of section 10, in township 15 N., of range 13 E. of the sixth principal meridian, 2,275 feet east of the S. W. corner of the N. W. ¼ of the S. E. ¼ of said section 10; thence northerly, to a point on the north line of lot 4 aforesaid, 2,068 feet east of the center line of said section 10; thence north, to a point on the north line of section 10, 2,068 feet east of the quarter section corner on the north line of said section 10; thence northerly, to a point 312 feet west of the S. E. corner of lot 1, in section 3, township 15 N., range 13 E., aforesaid; thence northerly, to a point on the section line between sections 2 and 3, 358 feet south of the quarter section corner on said line; thence northeasterly, to the center of the S. E. ¼ of the N. W. ¼ of section 2 aforesaid; thence east, to the center of the W. ½ of lot 5, otherwise described as the S. W. ¼ of the N. W. ¼ of section 1, in township 15, range 13, aforesaid; thence southeasterly, to a point on the south line of lot 5 aforesaid, 1,540 feet west of the center of section 1, last aforesaid; thence south 2,050 feet, to a point 1,540 feet west of the north and south open line through said section 1; thence southwesterly, to the S. W. corner of the N. E. ¼ of the S. W. ¼ of section 21, in township 75 N., range 44 W. of the fifth principal meridian; thence southeasterly, to a point 660 feet south of the N. E. corner of the N. W. ¼ of the N. E. ¼ of section 28, in township 75 N., range 44 W., aforesaid; and said line produced to the center of the channel of the Missouri river; thence up the middle of the main channel of the Missouri river to a point opposite the middle of the main channel of the Big Sioux river.

Commencing again at the point of beginning first named, namely, a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861½ feet west of S. E. corner of said section, and running thence southeasterly to a point 660 feet east of the S. W. corner of the N. W. ¼ of the N. W. ¼ of section 28, in township 75 N., range 44 W. of the fifth principal meridian, and said line produced to the center of the channel of the Missouri river; thence down the middle

of the main channel of the Missouri river to the northern boundary of the State of Missouri.

The said middle of the main channel of the Missouri river referred to in this act shall be the center line of the proposed stabilized channel of the Missouri river as established by the United States engineers' office, Omaha, Nebraska, and shown on the alluvial plain maps of the Missouri river from Sioux City, Iowa, to Rulo, Nebraska, and identified by file numbers AP-1 to 4 inclusive, dated January 30, 1940, and file numbers AP-5 to 10 inclusive, dated March 29, 1940, which maps are now on file in the United States engineers' office at Omaha, Nebraska, and copies of which maps are now on file with the secretary of state of the State of Iowa and with the secretary of state of the State of Nebraska.

SEC. 2. The State of Iowa hereby cedes to the State of Nebraska and relinquishes jurisdiction over all lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska.

SEC. 3. Titles, mortgages, and other liens good in Nebraska shall be good in Iowa as to any lands Nebraska may cede to Iowa and any pending suits or actions concerning said lands may be prosecuted to final judgment in Nebraska and such judgments shall be accorded full force and effect in Iowa.

SEC. 4. Taxes for the current year may be levied and collected by Nebraska or its authorized governmental subdivisions and agencies on lands ceded to Iowa and any liens or other rights accrued or accruing, including the right of collection, shall be fully recognized and the county treasurers of the counties affected shall act as agents in carrying out the provisions of this section: *Provided,* that all liens or other rights accrued or accruing, as aforesaid, shall be claimed or asserted within five years after this act becomes effective, and if not so claimed or asserted, shall be forever barred.

SEC. 5. The provisions of this act shall become effective only upon the enactment of a similar and reciprocal law by the State of Nebraska and the approval of and consent to the compact thereby effected by the Congress of the United States of America. Said similar and reciprocal law shall contain provisions identical with those contained herein for the cession to Iowa of all lands now in Nebraska but lying easterly of said boundary line described in section 1 of this act and contiguous to lands in Iowa and also contain provisions identical with those contained in sections 3 and 4 of this act but applying to lands ceded to Nebraska.

SEC. 6. (Effective on publication, April 21, 1943.)

56th GENERAL ASSEMBLY

State of Nebraska

CHAPTER 130
L. B. 438

AN ACT to establish the boundary line between Iowa and Nebraska by agreement; to cede to Iowa and to relinquish jurisdiction over lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa; to provide that the provisions of this act shall become effective upon the approval of and consent of the Congress of the United States of America to the compact effected by this act and House File 437 of the 1943 Session of the Iowa Legislature; to repeal Chapter 121, Session Laws of Nebraska, 1941; and to declare an emergency.

Be it enacted by the people of the state of Nebraska,

SECTION 1. That on and after the approval and consent of the Congress of the United States of America to this act and a similar and reciprocal act enacted by the Legislature of the State of Iowa, as hereinafter provided, the boundary line between the States of Iowa and Nebraska shall be described as follows:

Commencing at a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861½ feet west of the S. E. corner of said section, and running thence northwesterly to a point on the south line of lot 4 of section 10, in township 15 N., of range 13 E. of the sixth principal meridian, 2,275 feet east of the S. W. corner of the N. W. ¼ of the S. E. ¼ of said section 10; thence northerly, to a point on the north line of lot 4 aforesaid, 2,068 feet east of the center line of said section 10; thence north, to a point on the north line of section 10, 2,068 feet east of the quarter section corner on the north line of said section 10; thence northerly, to a point 312 feet west of the S. E. corner of lot 1, in section 3, township 15 N., range 13 E., aforesaid; thence northerly, to a point on the section line between sections 2 and 3, 358 feet south of the quarter section corner on said line; thence northeasterly, to the center of the S. E. ¼ of the N. W. ¼ of section 2 aforesaid; thence east, to the center of the W. ½ of lot 5, otherwise described as the S. W. ¼ of the N. W. ¼ of section 1, in township 15, range 13, aforesaid; thence southeasterly, to a point on the south line of lot 5 aforesaid, 1,540 feet west of the center of section 1, last aforesaid; thence south 2,050 feet, to a point 1,540 feet west of the north and south open line through said section 1; thence southwesterly, to the S. W. corner of the N. E. ¼ of the S. W. ¼ of section 21, in township 75 N., range 44 W. of the fifth principal meridian; thence southeasterly, to a point

660 feet south of the N. E. corner of the N. W. ¼ of the N. E. ¼ of section 28, in township 75 N., range 44 W., aforesaid; and said line produced to the center of the channel of the Missouri river; thence up the middle of the main channel of the Missouri river to a point opposite the middle of the main channel of the Big Sioux river.

Commencing again at the point of beginning first named, namely, a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861½ feet west of S. E. corner of said section, and running thence southeasterly to a point 660 feet east of the S. W. corner of the N. W. ¼ of the N. W. ¼ of section 28, in township 75 N., range 44 W. of the fifth principal meridian, and said line produced to the center of the channel of the Missouri river; thence down the middle of the main channel of the Missouri river to the northern boundary of the State of Missouri.

The said middle of the main channel of the Missouri river referred to in this act shall be the center line of the proposed stabilized channel of the Missouri river as established by the United States engineers' office, Omaha, Nebraska, and shown on the alluvial plain maps of the Missouri river from Sioux City, Iowa, to Rulo, Nebraska, and identified by file numbers AP-1 to 4 inclusive, dated January 30, 1940, and file numbers AP-5 to 10 inclusive, dated March 29, 1940, which maps are now on file in the United States engineers' office at Omaha, Nebraska, and copies of which maps are now on file with the Secretary of State of the State of Iowa and with the Secretary of State of the State of Nebraska.

SEC. 2. The State of Nebraska hereby cedes to the State of Iowa and relinquishes jurisdiction over all lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa.

SEC. 3. Titles, mortgages, and other liens good in Iowa shall be good in Nebraska as to any lands Iowa may cede to Nebraska, and any pending suits or actions concerning said lands may be prosecuted to final judgment in Iowa and such judgment shall be accorded full force and effect in Nebraska.

SEC. 4. Taxes for the current year may be levied and collected by Iowa, or its authorized governmental subdivisions and agencies, on lands ceded to Nebraska and any liens or other rights accrued or accruing including the right of collection, shall be fully recognized and the county treasurers of the counties affected shall act as agents in carrying out the provisions of this section; Provided, that all liens or other rights accrued or accruing, as aforesaid, shall be claimed or asserted within five years after this act becomes effective, and if not so claimed or asserted, shall be forever barred.

SEC. 5. The provisions of this act shall become effective only upon the approval and consent of the Congress of the United States of America to the compact effected by this act and the similar and reciprocal act enacted by the 1943 Session of the Legislature of Iowa as House File 437 of that body.

SEC. 6. That Chapter 121, Session Laws of Nebraska, 1941, is repealed.

SEC. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.

Approved May 7, 1943.

ACT OF CONGRESS

Approved July 12, 1943

U. S. PUBLIC LAWS
[PUBLIC LAW 134—78TH CONGRESS]
[CHAPTER 220—1ST SESSION]
[H. R. 2794]

AN ACT to approve and consent to the compact entered into by Iowa and Nebraska establishing the boundary between Iowa and Nebraska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the approval and consent of the Congress is hereby given to the compact effected by an Act enacted by the Legislature of the State of Iowa entitled "An Act to establish the boundary line between Iowa and Nebraska by agreement; to cede to Nebraska and to relinquish jurisdiction over lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska; to provide that the provisions of this Act become effective upon the enactment of a similar and reciprocal law by Nebraska and the approval of and consent to the compact thereby effected by the Congress of the United States of America and to declare an emergency", approved April 15, 1943 (House File 437, Acts of the Fiftieth General Assembly), and the similar and reciprocal Act enacted by the State of Nebraska entitled "A bill for an Act to establish the boundary line between Iowa and Nebraska by agreement; to cede to Iowa and to relinquish jurisdiction over lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa; to provide that the provisions of this Act shall become

effective upon the approval of and consent of the Congress of the United States of America to the compact effected by this Act and House File 437 of the 1943 Session of the Iowa Legislature; to repeal Chapter 121, Session Laws of Nebraska, 1941; and to declare an emergency", approved May 7, 1943 (Legislative bill 438, Fifty-sixth session of the Nebraska State Legislature).

Approved July 12, 1943.

ADMISSION OF IOWA INTO THE UNION

AN ACT FOR THE ADMISSION OF THE STATES OF IOWA AND FLORIDA INTO THE UNION.

[*Approved March 3, 1845.*]

WHEREAS, the people of the Territory of Iowa did, on the seventh day of October, eighteen hundred and forty-four, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and State government; and whereas, the people of the Territory of Florida did, in like manner, by their delegates, on the eleventh day of January, eighteen hundred and thirty-nine, form for themselves a constitution and State government, both of which said constitutions are republican; and said conventions having asked the admission of their respective Territories into the Union as States, on equal footing with the original States;

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the States of Iowa and Florida be, and the same are hereby, declared to be States of the United States of America, and are hereby admitted into the Union on equal footing with the original States, in all respects whatsoever.

SEC. 2. *And be it further enacted*, That the following shall be the boundaries of the said State of Iowa, to wit: Beginning at the mouth of the Des Moines river, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude passing through the mouth of the Mankato or Blue-Earth river, thence west along the said parallel of latitude to a point where it is intersected by a meridian line, seventeen degrees and thirty minutes west of the meridian of Washington city, thence due south to the northern boundary line of the State of Missouri, thence eastwardly following that boundary to the point at which the same intersects the Des Moines river, thence by the middle of the channel of that river to the place of beginning.

SEC. 3. *And be it further enacted*, That the said State of Iowa shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the said State of Iowa, so far as the said rivers shall form a common boundary to said State, and any other State or States now or hereafter to be formed or bounded by the same: Such rivers to be common to both: And that the said river Mississippi, and the navigable waters leading into the same, shall be common highways, and forever free as well to the inhabitants of said State, as to all other citizens of the United States, without any tax, duty, impost, or toll therefor, imposed by the said State of Iowa.

SEC. 4. *And be it further enacted*, That it is made and declared to be a fundamental condition of the admission of said State of Iowa into the Union, that so much of this act as relates to the said State of Iowa shall be assented to by a majority of the qualified electors at their township elections, in the manner and at the time prescribed in the sixth section of the thirteenth article of the constitution adopted at Iowa city the first day of November, anno Domini eighteen hundred and forty-four, or by the legislature of said State. And as soon as such assent shall be given, the President of the United States shall announce the same by proclamation; and therefrom and without further proceedings on the part of Congress, the admission of the said State of Iowa into the Union, on an equal footing in all respects whatever with the original States, shall be considered as complete.

SEC. 5. *And be it further enacted*, That said State of Florida shall embrace the territories of East and West Florida, which by the treaty of amity, settlement and limits between the United States and Spain, on the twenty-second day of February, eighteen hundred and nineteen, were ceded to the United States.

SEC. 6. *And be it further enacted*, That until the next census and apportionment shall be made, each of said States of Iowa and Florida shall be entitled to one representative in the House of Representatives of the United States.

SEC. 7. *And be it further enacted*, That said States of Iowa and Florida are admitted into the Union on the express condition that they shall never interfere with the primary disposal of the public lands lying within them, nor levy any tax on the same whilst remaining the property of the United States: *Provided*, That the ordinance of the convention that formed the constitution of Iowa, and which is appended to the said constitution, shall not be deemed or taken to have any effect or validity, or to be recognized as in any manner obligatory upon the Government of the United States.

AN ACT SUPPLEMENTAL TO THE ACT FOR THE ADMISSION OF THE STATES OF IOWA AND FLORIDA INTO THE UNION.

[*Approved March 3, 1845.*]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the State of Iowa as elsewhere within the United States.

SEC. 2. *And be it further enacted,* That the said State shall be one district, and be called the district of Iowa; and a district court shall be held therein, to consist of one judge, who shall reside in the said district, and be called a district judge. He shall hold, at the seat of government of the said State, two sessions of the said district court annually, on the first Monday in January, and he shall, in all things, have and exercise the same jurisdiction and powers which were by law given to the judge of the Kentucky district, under an act entitled "An act to establish the judicial courts of the United States." He shall appoint a clerk for the said district, who shall reside and keep the records of the said court at the place of holding the same; and shall receive, for the services performed by him, the same fees to which the clerk of the Kentucky district is by law entitled for similar services.

SEC. 3. *And be it further enacted,* That there shall be allowed to the judge of the said district court the annual compensation of fifteen hundred dollars, to commence from the date of his appointment, to be paid quarterly at the treasury of the United States.

SEC. 4. *And be it further enacted,* That there shall be appointed in the said district, a person learned in the law, to act as attorney for the United States; who shall, in addition to his stated fees, be paid annually by the United States two hundred dollars, as a full compensation for all extra services: the said payments to be made quarterly, at the treasury of the United States.

SEC. 5. *And be it further enacted,* That a marshal shall be appointed for the said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as are prescribed and allowed to marshals in other districts; and shall, moreover, be entitled to the sum of two hundred dollars annually, as a compensation for all extra services.

SEC. 6. *And be it further enacted,* That in lieu of the propositions submitted to the Congress of the United States, by an ordinance passed on the first day of November, eighteen hundred and forty-four, by the convention of delegates at Iowa city, assembled for the purpose of making a constitution for the State of Iowa, which are hereby rejected, the following propositions be, and the same are hereby, offered to the legislature of the State of Iowa, for their acceptance or rejection; which, if accepted, under the authority conferred on the said legislature, by the convention which framed the constitution of the said State, shall be obligatory upon the United States:

First. That section numbered sixteen in every township of the public lands, and, where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools.

Second. That the seventy-two sections of land set apart and reserved for the use and support of a university, by an act of Congress approved on the twentieth day of July, eighteen hundred and forty, entitled "An act granting two townships of land for the use of a university in the Territory of Iowa," are hereby granted and conveyed to the State, to be appropriated solely to the use and support of such university, in such manner as the legislature may prescribe.

Third. That five entire sections of land, to be selected and located under the direction of the legislature, in legal divisions of not less than one quarter section, from any of the unappropriated lands belonging to the United States within the said State, are hereby granted to the State for the purpose of completing the public buildings of the said State, or for the erection of public buildings at the seat of government of the said State, as the legislature may determine and direct.

Fourth. That all salt springs within the State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the said State for its use; the same to be selected by the legislature thereof, within one year after the admission of said State, and the same, when so selected, to be used on such terms, conditions, and regulations, as the legislature of the State shall direct: *Provided,* That no salt spring, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State: *And provided, also,* That the General Assembly shall never lease or sell the same, at any one time, for a longer period than ten years, without the consent of Congress.

Fifth. That five per cent. of the net proceeds of sales of all public lands lying within the said State, which have been, or shall be sold by Congress, from and after the admission of said State, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said

State, as the legislature may direct: *Provided,* That the five foregoing propositions herein offered are on the condition that the legislature of the said State, by virtue of the powers conferred upon it by the convention which framed the constitution of the said State, shall provide, by an ordinance, irrevocable without the consent of the United States, that the said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents, respectively.

AN ACT TO DEFINE THE BOUNDARIES OF THE STATE OF IOWA

[*Approved August 4, 1846*]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following shall be, and they are hereby, declared to be the boundaries of the State of Iowa, in lieu of those prescribed by the second section of the act of the third of March, eighteen hundred and forty-five, entitled "An Act for the Admission of the States of Iowa and Florida into the Union," viz. Beginning in the middle of the main channel of the Mississippi River, at a point due east of the middle of the mouth of the main channel of the Des Moines River; thence up the middle of the main channel of the said Des Moines River, to a point on said river where the northern boundary line of the State of Missouri, as established by the constitution of that State, adopted June twelfth, eighteen hundred and twenty, crosses the said middle of the main channel of the said Des Moines River; thence, westwardly, along the said northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersect the middle of the main channel of the Missouri River; thence, up the middle of the main channel of the said Missouri River, to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollet's map; thence, up the main channel of the said Big Sioux River, according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east, along said parallel of forty-three degrees and thirty minutes, until said parallel intersect the middle of the main channel of the Mississippi River; thence, down the middle of the main channel of said Mississippi River, to the place of beginning.

SEC. 2. * * * * *

SEC. 3. * * * * *

SEC. 4. *And be it further enacted,* That so much of the act of the third of March, eighteen hundred and forty-five, entitled "An Act for the Admission of the States of Iowa and Florida into the Union," relating to the said State of Iowa, as is inconsistent with the provisions of this act, be and the same is hereby repealed. [9 Stat. L. 52]

AN ACT FOR THE ADMISSION OF THE STATE OF IOWA INTO THE UNION

[*Approved December 28, 1846.*]

WHEREAS, the people of the Territory of Iowa did, on the eighteenth day of May, anno Domini eighteen hundred and forty-six, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and State government—which constitution is republican in its character and features—and said convention has asked admission of the said Territory into the Union as a State, on an equal footing with the original States, in obedience to "An Act for the Admission of the States of Iowa and Florida into the Union," approved March third, eighteen hundred forty-five [5 Stat. L. 742, 743.], and "An Act to define the Boundaries of the State of Iowa, and to repeal so much of the Act of the third of March, one thousand eight hundred and forty-five as relates to the Boundaries of Iowa," which said last act was approved August fourth, anno Domini eighteen hundred and forty-six [9 Stat. L. 52.]; Therefore—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Iowa shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatsoever.

SEC. 2. *And be it further enacted,* That all the provisions of "An Act supplemental to the Act for the Admission of the States of Iowa and Florida into the Union," approved March third, eighteen hundred and forty-five [5 Stat. L. 788-790.], be, and the same are hereby declared to continue and remain in full force as applicable to the State of Iowa, as hereby admitted and received into the Union.

Approved, December 28, 1846. [9 Stat. L. 117.]

AN ACT AND ORDINANCE ACCEPTING THE PROPOSITIONS MADE BY CONGRESS ON THE ADMISSION OF IOWA INTO THE UNION AS A STATE

[Approved January 15, 1849.]

SECTION 1. *Be it enacted and ordained by the General Assembly of the State of Iowa,* That the propositions to the State of Iowa on her admission into the Union, made by the act of Congress, entitled "An act supplemental to the act for the admission of the States of Iowa and Florida into the Union," approved March 3, 1845, and which are contained in the sixth section of that act, are hereby accepted in lieu of the propositions submitted to Congress by an ordinance, passed on the first day of November, eighteen hundred and forty-four, by the convention of delegates which assembled at Iowa City on the first Monday of October, eighteen hundred and forty-four, for the purpose of forming a Constitution for said State, and which were rejected by Congress: *Provided,* The General Assembly shall have the right, in accordance with the provisions of the second section of the tenth article of the Constitution of Iowa, to appropriate the five per cent. of the net proceeds of sales of all public lands lying within the State, which have been or shall be sold by Congress from and after the admission of said State, after deducting all expenses incident to the same, to the support of common schools.

SECTION 2. *And be it further enacted and ordained,* as conditions of the grants specified in the propositions first mentioned in the foregoing section, irrevocable and unalterable without the consent of the United States, that the State of Iowa will never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands, the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war with Great Britain, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, County, Township, or other purposes, for the term of three years from and after the dates of the patents respectively.

SECTION 3. It is hereby made the duty of the Secretary of State, after the taking effect of this act, to forward one copy of the same to each of our Senators and Representatives in Congress, who are hereby required to procure the consent of Congress to the diversion of the five per cent. fund indicated in the proviso to the first section of this act.

SECTION 4. This act shall take effect from and after its publication in the weekly newspapers printed in Iowa City.

IOWA*

Iowa was organized as a Territory by Act of June 12, 1838, effective July 3, from a portion of Wisconsin Territory. The limits were defined as follows in the Act[1] creating it:

all that part of the present Territory of Wisconsin which lies west of the Mississippi river, and west of a line drawn due north from the headwaters or sources of the Mississippi to the Territorial line.

The approximate position of the outlet of Lake Itasca, which is generally accepted as the source of the Mississippi, is latitude 47° 15⅓′, longitude 95° 12½′. The river runs northwestward for about 6 miles before it turns east. The north-south boundary line across the western part of the Lake of the Woods is in longitude 95° 09′ 11.6″ (p. 14).

The following clause from an Act passed in 1839 is supplementary to the Act above quoted:[2]

That the middle or center of the main channel of the Mississippi shall be deemed, and is hereby declared, to be the eastern boundary line of the Territory of Iowa, so far or to such extent as the said Territory is bounded eastwardly by or upon said river.

On March 3, 1845, an Act was approved for the admission of Iowa to the Union as a State, but the Act required that the assent of the people of Iowa be given to it by popular vote. In this Act the boundaries were given as follows:[3]

That the following shall be the boundaries of said State of Iowa, to wit: Beginning at the mouth of the Des Moines River, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude passing through the mouth of the Mankato or Blue-Earth river [latitude 44° 10′], thence west along the said parallel of latitude to a point where it is intersected by a meridian line, seventeen degrees and thirty minutes west of the meridian of Washington city, thence due south to the northern boundary line of the State of Missouri, thence eastwardly following that boundary to the point at which the same intersects the Des Moines river, thence by the middle of the channel of that river to the place of beginning.

These boundaries were not acceptable to the people and by a popular vote were rejected.

Another constitutional convention was held in May, 1846, and Congress passed an Act, approved August 4, 1846, fixing the boundaries in accordance with the wishes of the people and described as follows:

Beginning at the middle of the main channel of the Mississippi River at a point due east of the middle of the mouth of the main channel of the Des Moines River; thence up the middle of the main channel of the said Des Moines River to a point on said river where the northern boundary line of the State of Missouri, as established by the constitution of that State, adopted June twelfth, eighteen hundred and twenty, crosses the said middle of the main channel of the said Des Moines River; thence westwardly along the said northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersect the middle of the main channel of the Missouri River, thence up the middle of the main channel of the said Missouri River, to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollet's map; thence up the main channel of the said Big Sioux River, according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east along said parallel of forty-three degrees and thirty minutes, until said parallel intersect the middle of the main channel of the Mississippi River; thence down the middle of the main channel of said Mississippi River to the place of beginning.

Iowa was finally declared admitted to full statehood by Act of December 28, 1846.

The admission of Iowa appears to have left a large area to the north and west unattached, which so remained until Minnesota Territory was organized in 1849.

The Act of August 4, 1846, directed that a long-standing dispute between Missouri and Iowa Territory regarding their common boundary* be referred to the United States Supreme Court for adjudication. The area claimed by both was a strip of land about 10 miles wide and 200 miles long, north of the present boundary. Missouri maintained that the clause in that state's enabling Act, "the rapids of the river Des Moines," referred to rapids in the river of that name and not to rapids of a similar name in the Mississippi, also that the Indian boundary line run and marked in 1816 by authority of the United States, known as the Sullivan line,** was erroneously established. A line claimed by Missouri was run by J. C. Brown in 1837 by order of the State legislature.

The United States Supreme Court decided in 1849 that the Sullivan line of 1816 is the correct boundary and ordered that it be resurveyed. The report of the commissioners ap-

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[1] 5 Stat. L. 235.
[2] 5 Stat. L. 357.
[3] 5 Stat. L. 742.
*Reprinted from "Geological Survey Bulletin 817."

*The northern boundary of Missouri had been established as "100 miles north of the junction of the Missouri and Kaw (Kansas) rivers and thence east * * *." (See 7 Howard 660 and 10 Howard 1.)

**Sullivan had disregarded the changing declination of his compass as he proceeded east; hence the southern boundary of Iowa is a curve. The following is a quotation from the commissioner's records as reported in 10 Howard (U.S.) 1,5: "We soon satisfied ourselves that the line run by Sullivan was not only not a due east line, but that it was not straight. That more or less northing should have been made in the old line was to have been expected from the fact that Sullivan ran the whole line with one variation of the needle, and that variation too great. This would account for the fact that the northing increases as he progressed east."

pointed by the court to re-mark the line was accepted in 1851.

So many of the marks on this line as established in 1850 had become lost or destroyed that the United States Supreme Court in 1896 ordered that certain parts be re-established, especially those between mileposts 50 and 55. Accordingly 20 miles of line was resurveyed by officers of the United States Coast and Geodetic Survey in 1896, and durable monuments of granite or iron were established thereon. The geographic position of milepost No. 40 was determined as latitude 40° 34.4′, longitude 95° 51′, and that of No. 60 as latitude 40° 34.6′, longitude 93° 28′.

The survey of the north boundary of Iowa on the parallel of 43° 30′, authorized by congressional Act of March 3, 1849, was completed in 1852. The position for each end of the line and for several intermediate points was determined astronomically.

This is the first State thus far noted having a boundary referred to the Washington meridian. Congress by Act approved September 28, 1850, ordered:

That hereafter the meridian of the observatory at Washington shall be adopted and used as the American meridian for all astronomic purposes and * * * Greenwich for nautical purposes.

THE CODE OF IOWA

1977

AS AUTHORIZED BY CHAPTER FOURTEEN HEREOF

TITLE I

SOVEREIGNTY AND JURISDICTION OF THE STATE, AND THE LEGISLATIVE DEPARTMENT

CHAPTER 1

SOVEREIGNTY AND JURISDICTION OF THE STATE

1.1 State boundaries.
1.2 Sovereignty.
1.3 Concurrent jurisdiction.
1.4 Acquisition of lands by United States.
1.5 Federal fish and game refuge.
1.6 Conditions.
1.7 Legislative grant.
1.8 Applicability of statute.
1.9 National forests.
1.10 Offenses.
1.11 Keokuk cemetery and Knoxville hospital —assumption of jurisdiction.
1.12 Jurisdiction of Indian settlement.
1.13 Existing trusts not affected.
1.14 Tribal ordinances or customs enforced.
1.15 Attorney appointed by state in civil actions.

1.1 State boundaries. The boundaries of the state are as defined in the preamble of the Constitution. [C51,§1; R60,§1; C73,§1; C97,§1; C24, 27, 31, 35, 39,§1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§1.1]

Referred to in §1.2

1.2 Sovereignty. The state possesses sovereignty coextensive with the boundaries referred to in section 1.1, subject to such rights as may at any time exist in the United States in relation to public lands, or to any establishment of the national government. [C51,§2; R60,§2; C73,§2; C97,§2; C24, 27, 31, 35, 39,§2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§1.2]

1.3 Concurrent jurisdiction. The state has concurrent jurisdiction on the waters of any river or lake which forms a common boundary between this and any other state. [C51,§3; R60,§3; C73,§3; C97,§3; C24, 27, 31, 35, 39,§3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§1.3]

See Act of Congress, Aug. 4, 1846 [9 Stat. L. p. 52]

1.4 Acquisition of lands by United States. The United States of America may acquire by condemnation or otherwise for any of its uses or purposes any real estate in this state, and may exercise jurisdiction thereover but not to the extent of limiting the provisions of the laws of this state.

This state reserves, when not in conflict with the Constitution of the United States or any law enacted in pursuance thereof, the right of service on real estate held by the United States of any notice or process authorized by its laws; and reserves jurisdiction, except when used for naval or military purposes, over all offenses committed thereon against its laws and regulations and ordinances adopted in pursuance thereof.

Such real estate shall be exempt from all taxation, including special assessments, while held by the United States except when taxation of such property is authorized by the United States. [R60,§§2197, 2198; C73,§4; C97, §4; S13,§§4-a–4-d, 2024-c; C24, 27, 31, 35, 39,§4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§1.4]

Referred to in §§1.8, 1.11

1.5 Federal fish and game refuge. The state of Iowa hereby consents that the government of the United States may in any manner acquire in this state such areas of land or water or of land and water as said government may deem necessary for the establishment of the "Upper Mississippi River Wild Life and Fish Refuge" in accordance with the Act of Congress, approved June 7, 1924, [16USC, ch 8] provided the states of Illinois, Wisconsin, and Minnesota grant a like consent. [C27, 31, 35, §4-a1; C39,§4.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §1.5]

Referred to in §§1.6, 1.8

1.6 Conditions. Any acquisition by the government of the United States of land and

water, or of land or water, under section 1.5 shall be first approved by the state conservation commission, by the state conservation director of this state, and the executive council. [C27, 31, 35,§4-a2; C39,§4.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§1.6]
Referred to in §1.8

1.7 Legislative grant. There is hereby granted to the government of the United States, so long as it shall use the same as a part and for the purposes of the said "Upper Mississippi River Wild Life and Fish Refuge", all areas of land subject to overflow and not used for agricultural purposes or state fish hatcheries or salvaging stations, owned by this state within the boundaries of the said refuge, as the same may be established from time to time under authority of the said Act of Congress. [C27, 31, 35,§4-a3; C39,§4.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§1.7]
Referred to in §1.8

1.8 Applicability of statute. Section 1.4 shall apply to all lands acquired under sections 1.5 to 1.7. [C27, 31, 35,§4-a4; C39,§4.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§1.8]

1.9 National forests. The consent of the state of Iowa is hereby given to the acquisition by the United States, by purchase, gift, or condemnation with adequate compensation, of such lands in Iowa as in the opinion of the federal government may be needed for the establishment, consolidation and extension of national forests or for the establishment and extension of wild life, fish and game refuges and for other conservation uses in the state, and may exercise jurisdiction thereover but not to the extent of limiting the provisions of the laws of this state. This section shall not, in any manner or to any extent, modify, limit or affect the title and ownership of the state to all wild life as provided in section 109.2; provided, that the state of Iowa shall retain a concurrent jurisdiction with the United States in and over lands so acquired so far that civil process in all cases, and such criminal process as may issue under the authority of the state of Iowa against any persons charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this law had not been passed. [C35,§4-f1; C39,§4.5; C46, 50, 54, 58, 62, 66, 71, 73, 75,§1.9]

1.10 Offenses. Power is hereby conferred upon the Congress of the United States to pass such laws and to make or provide for the making of such rules, of both a civil and criminal nature, and provide punishment therefor, as in its judgment may be necessary for the administration, control and protection of such lands as may be from time to time acquired by the United States under the provisions of this law. [C35,§4-f2; C39,§4.6; C46, 50, 54, 58, 62, 66, 71, 73, 75,§1.10]

1.11 Keokuk cemetery and Knoxville hospital—assumption of jurisdiction. At the time of the return of jurisdiction over lands occupied by the veterans administration hospital located in Knoxville, Marion county, Iowa, and the Keokuk National Cemetery at Keokuk located in Lee county, Iowa, by the administrator of veterans affairs to the state of Iowa, the state of Iowa assumes criminal and civil jurisdiction on both grounds in the same manner as provided in section 1.4. [66 GA, ch 1051, §1]

1.12 Jurisdiction of Indian settlement. The state of Iowa hereby assumes jurisdiction over civil causes of actions between Indians or other persons or to which Indians or other persons are parties arising within the Sac and Fox Indian settlement in Tama county. The civil laws of this state shall obtain on the settlement and shall be enforced in the same manner as elsewhere throughout the state. [C71, 73, 75,§1.12]
Referred to in §§1.13, 1.14, 252.43

1.13 Existing trusts not affected. Nothing in sections 1.12 to 1.15 shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein. [C71, 73, 75,§1.13]
Referred to in §1.14

1.14 Tribal ordinances or customs enforced. Any tribal ordinance or custom heretofore or hereafter adopted by the governing council of the Sac and Fox Indian settlement in Tama county in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to sections 1.12 to 1.15. [C71, 73, 75,§1.14]
Referred to in §1.13

1.15 Attorney appointed by state in civil actions. In all civil causes of action wherein the state of Iowa or any of its subdivisions or departments is a party, and a member of the Sac and Fox Indian settlement is a party, the district court of Iowa shall appoint competent legal counsel at all stages of hearing, appeal and final determination for any Indian not otherwise represented by legal counsel, in any domestic relations matter, including, but not limited to, matters pertaining to dependency, neglect, delinquency, care or custody of minors. The court shall fix and allow reasonable compensation for the services of said attorney, costs of transcripts and depositions, and investigative expense, which shall be paid as a claim by the office of county auditor from the welfare fund of the county where the said

action is commenced, and said county shall be refunded and paid for all sums so paid for legal counsel, transcripts and depositions, and investigative expense out of any funds in the state treasury not otherwise appropriated upon filing claim with the state comptroller. [C71, 73, 75,§1.15]

Referred to in §§1.13, 1.14

CHAPTER 1A

GREAT SEAL OF IOWA

1A.1 Seal—device—motto.

1A.1 Seal — device — motto. The secretary of state be, and he is, hereby authorized to procure a seal which shall be the great seal of the state of Iowa, two inches in diameter, upon which shall be engraved the following device, surrounded by the words, "The Great Seal of the State of Iowa"—a sheaf and field of standing wheat, with a sickle and other farming utensils, on the left side near the bottom; a lead furnace and pile of pig lead on the right side; the citizen soldier, with a plow in his rear, supporting the American flag and liberty cap with his right hand, and his gun with his left, in the center and near the bottom; the Mississippi river in the rear of the whole, with the steamer *Iowa* under way; an eagle near the upper edge, holding in his beak a scroll, with the following inscription upon it: Our liberties we prize, and our rights we will maintain. [1GA, ch 112; C75,§1A.1]

EDITOR'S NOTE: The Act of the First General Assembly of the State of Iowa creating the Great Seal, approved February 25, 1847, is hereby reproduced in the descriptive part.

There seem to be no further enactments, repeals or amendments and no codification of this law appears in the various Codes. See *Annals of Iowa*, Volume XI, pages 561, 576. Constitutional provision for a great seal is contained in Article IV, section 20 but no description is there provided.

CHAPTER 2

GENERAL ASSEMBLY

See reference in §68.16

Truck lengths, annual review, see §307.10(5)

2.1 Sessions—place.
2.2 Designation of general assembly.
2.3 Temporary organization.
2.4 Certificates of election.
2.5 Temporary officers—committee on credentials.
2.6 Permanent organization.
2.7 Officers—tenure.
2.8 Oaths.
2.9 Journals.
2.10 Salaries and expenses—members of general assembly and lieutenant governor.
2.11 Officers and employees—compensation.
2.12 Expenses of general assembly.
2.13 Issuance of warrants.
2.14 Meetings of standing committees.
2.15 Duties of standing committees.
2.16 Prefiling legislative bills.
2.17 Freedom of speech.
2.18 Contempt.
2.19 Punishment for contempt.
2.20 Warrant—execution.
2.21 Fines—collection.
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2.23 Witness—attendance compulsory.
2.24 Witnesses—compensation.
2.25 Joint conventions.
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2.27 Canvass of votes for governor.
2.28 Tellers.
2.29 Election—vote—how taken—second poll.
2.30 Certificates of election.
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2.33 to 2.40 Reserved.

LEGISLATIVE COUNCIL

2.41 Legislative council created.
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2.44 Expenses of council and special interim committees.
2.45 Committees of the legislative council.
2.46 Duties.
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2.48 Legislative fiscal bureau established.
2.49 Functions of legislative fiscal bureau.
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2.58 Service bureau.
2.59 Director.
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2.65 Information and assistance.
2.66 Office and supplies—expenses.
2.67 Census preparations — commission established.
2.68 Cities authorized to draw proposed precincts.

2.1 Sessions—place. The sessions of the general assembly shall be held annually at the seat of government, unless the governor shall convene them at some other place in times of pestilence or public danger. Each annual session of the general assembly shall commence on the second Monday in January of each year. The general assembly may recess from time to time during each year in such manner as it may provide, subject to Article III, section 14 of the Constitution of the state of Iowa. [C51, §4; R60,§13; C73,§5; C97,§5; C24, 27, 31, 35, 39, §5; C46, 50, 54, 58, 62, 66, 71, 73, 75,§2.1]

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

A special session of the general assembly shall be designated as an extraordinary session in the particular year of a numbered general assembly. [C71, 73, 75,§2.2]

See also §14.18

2.3 Temporary organization. At ten o'clock a.m. on the second Monday in January of each odd-numbered year, the general assembly shall convene. The president of the senate, or in his absence some person claiming to be a member, shall call the senate to order. If necessary, a temporary president shall be chosen from the persons claiming to be elected senators. Some person claiming to be elected a member of the house of representatives shall call the house to order. The persons present claiming to be elected to the senate shall choose a secretary, and those of the house of representatives, a clerk on a temporary basis. [C51, §5; R60,§14; C73,§6; C97,§6; C24, 27, 31, 35, 39,§6; C46, 50, 54, 58, 62, 66,§2.2; C71, 73, 75,§2.3]

2.4 Certificates of election. The selected secretary and clerk shall receive and file the certificates of election presented, each for his own house, and make a list therefrom of the persons who appear to have been elected members of the respective houses. [C51,§6; R60,§15; C73,§7; C97,§7; C24, 27, 31, 35, 39,§7; C46, 50, 54, 58, 62, 66,§2.3; C71, 73, 75,§2.4]

2.5 Temporary officers—committee on credentials. The persons appearing to be members shall proceed to elect such other officers as may be requisite and when so temporarily organized shall choose a committee of five, who shall examine and report upon the credentials of the persons claiming to be members. [C51,§7; R60,§4; C73,§8; C97,§8; C24, 27, 31, 35, 39,§8; C46, 50, 54, 58, 62, 66,§2.4; C71, 73, 75,§2.5]

2.6 Permanent organization. The members reported by the committee as holding certificates of election from the proper authority shall proceed to the permanent organization of their respective houses by the election of officers and shall not be challenged as to their qualifications during the remainder of the term for which they were elected. [C51,§8; R60,§5; C73,§9; C97,§9; C24, 27, 31, 35, 39,§9; C46, 50, 54, 58, 62, 66,§2.5; C71, 73, 75,§2.6]

2.7 Officers — tenure. The president pro tempore of the senate and the speaker of the house of representatives shall hold their offices until the first day of the meeting of the next general assembly. All other officers elected by either house shall hold their offices for the same terms, unless sooner removed, except as may be otherwise provided by resolution or rules of the general assembly. [R60, §16; C73,§13; C97,§17; C24, 27, 31, 35, 39,§10; C46, 50, 54, 58, 62, 66,§2.6; C71, 73, 75,§2.7]

2.8 Oaths. Any member may administer oaths necessary in the course of business of the house of which he is a member, and, while acting on a committee, in the course of business of such committee. [C51,§10; R60,§7; C73, §10; C97,§10; C24, 27, 31, 35, 39,§11; C46, 50, 54, 58, 62, 66,§2.7; C71, 73, 75,§2.8]

2.9 Journals. The secretary of the senate and the clerk of the house of representatives shall preserve copies of the printed daily journals of their respective bodies, as corrected, certify to their correctness, and file them with the secretary of state at the adjournment of each session of the general assembly. The secretary of state shall cause the same to be bound and preserved as the original journals of the senate and the house in the manner as shall be specified by the president of the senate and speaker of the house. [C97,§132; C24, 27, 31, 35, 39,§13; C46, 50, 54, 58, 62, 66, 71, 73, 75, §2.9]

Printing of journals, §§17.15–17.17

2.10 Salaries and expenses—members of general assembly and lieutenant governor. Members of the general assembly and the lieutenant governor shall receive salaries and expenses as provided by this section.

1. Every member of the general assembly except the speaker of the house and majority and minority floor leaders of the senate and house shall receive an annual salary of eight thousand dollars for each year while serving as a member of the general assembly. The majority and minority floor leaders of the senate and house shall receive an annual salary of nine thousand five hundred dollars for

each year while serving in such capacity. In addition, each such member shall receive the sum of twenty dollars per day for expenses of office, except travel, for each day the general assembly is in session commencing with the first day of a legislative session and ending with the day of final adjournment of each legislative session as indicated by the journals of the house and senate. However, members from Polk county shall receive ten dollars per day. Travel expenses shall be paid at the rate established by section 79.9 for actual travel in going to and returning from the seat of government by the nearest traveled route for not more than one time per week during a legislative session. However, any increase from time to time in the mileage rate established by section 79.9 shall not become effective for members of the general assembly until the convening of the next general assembly following the session in which the increase is adopted; and this provision shall prevail over any inconsistent provision of any present or future statute.

2. The lieutenant governor shall receive an annual salary of twelve thousand dollars. Personal expense and travel allowances shall be the same for the lieutenant governor as for a senator. The lieutenant governor while performing administrative duties of the office of lieutenant governor when the general assembly is not in session or serving as the president of the senate during special sessions of the general assembly shall receive sixty dollars per diem and reimbursement for expenses incurred in performing such duties. The salary, per diem, and expenses of the lieutenant governor provided for under this subsection, including office and staff expenses, shall be paid from funds appropriated to the office of the lieutenant governor by the general assembly.

3. The speaker of the house shall receive an annual salary of twelve thousand dollars for each year while serving as the speaker of the house. Expense and travel allowances shall be the same for the speaker of the house as provided for other members of the general assembly.

4. When a vacancy occurs and the term of any member of the general assembly is not completed, he shall receive a salary or compensation proportional to the length of his service computed to the nearest whole month. A successor elected to fill such vacancy shall receive a salary or compensation proportional to his length of service computed to the nearest whole month commencing with such time as the successor is officially determined to have succeeded to such office.

5. The state comptroller shall pay the travel and expenses of the members of the general assembly and the lieutenant governor semimonthly commencing with the first pay period after the names of such persons are officially certified. The salaries of the members of the general assembly and lieutenant governor shall be paid in twelve equal installments after each pay period of the first six months of each calendar year. The presiding officers of the two houses of the general assembly shall jointly certify to the state comptroller the names of the members, officers, and employees of their respective houses and the salaries and mileage to which each is entitled. Travel and expense allowances shall be paid upon the submission of vouchers to the state comptroller indicating a claim for the same. Such vouchers shall be submitted no more frequently than once each month.

6. In addition to the salaries and expenses authorized by this section, members of the general assembly shall be paid forty dollars per day, except the speaker of the house who shall be paid sixty dollars per day, and necessary travel and actual expenses incurred in attending meetings for which per diem or expenses are authorized by law for members of the general assembly who serve on statutory boards, commissions, or councils, and for standing or interim committee or subcommittee meetings subject to the provisions of section 2.14, or when on authorized legislative business when the general assembly is not in session. However, if a member of the general assembly or the lieutenant governor is engaged in authorized legislative business at a location other than at the seat of government during the time the general assembly is in session, payment may be made for the actual transportation and lodging costs incurred because of the business. Such per diem or expenses shall be paid promptly from funds appropriated pursuant to section 2.12.

7. If a special session of the general assembly is convened, members of the general assembly shall receive, in addition to their annual salaries, the sum of forty dollars per day for each day the general assembly is actually in special session, and the same travel allowances and expenses as authorized by this section. [C51,§11; R60,§18; C73,§12; C97,§§12, 14; S13,§12; C24, 27, 31, 35,§§14-a1, 14-a2, 14-a3; C39,§§**14, 14.1, 14.2, 14.3, 15, 16, 17**; C46, 50, 54, 58, 62, 66,§§2.11, 2.12, 2.13, 2.14, 2.15, 2.16, 2.17; C71, 73, 75,§2.10; 66GA, ch 65,§1, ch 1052,§1]

Referred to in §§2.51, 18A.5, 28B.4, 80B.8, 93.5, 249B.6, 261.4, 272B.2, 304.4, 749B.19

Constitution, Amendment No. 5 of 1968
See Const., Art. IV,§15

2.11 Officers and employees—compensation. Each house of the general assembly may employ such officers and employees as it shall deem necessary for the conduct of its business. The compensation of the chaplains, officers, and employees of the general assembly shall be fixed by joint action of the house and senate by resolution at the opening of each session, or as soon thereafter as conveniently can be done. Such persons shall be furnished by the state such supplies as may be necessary for the proper discharge of their duties. [C73, §12; C97,§§13, 152; C24, 27, 31, 35, 39,§§**18, 19**; C46, 50, 54, 58, 62, 66,§§2.18, 2.19; C71, 73, 75, §2.11]

2.12 Expenses of general assembly. There is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to pay for legislative printing and all current and miscellaneous expenses of the general assembly, authorized by either the senate or the house, and the state comptroller is hereby authorized and directed to issue warrants for such items of expense upon requisition of the president and secretary of the senate or the speaker and chief clerk of the house.

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary, for each house of the general assembly for the payment of any unpaid expense of the general assembly incurred during or in the interim between sessions of the general assembly, including but not limited to salaries and necessary travel and actual expenses of members and expenses of standing and interim committees or subcommittees and per diem or expenses for members of the general assembly who serve on statutory boards, commissions, or councils for which per diem or expenses are authorized by law. The state comptroller is hereby authorized and directed to issue warrants for such items of expense upon requisition of the president and secretary of the senate for senate expense or the speaker and chief clerk of the house for house expense.

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary for the renovation, remodeling, or preparations of the legislative chambers, legislative offices, or other areas or facilities used or to be used by the legislative branch of government, and for the purchase of such legislative equipment and supplies deemed necessary to properly carry out the functions of the general assembly. The state comptroller is hereby authorized and directed to issue warrants for such items of expense, whether incurred during or between sessions of the general assembly, upon requisition of the president and secretary of the senate for senate expense or the speaker and chief clerk of the house for house expense. [C46, 50, 54, 58, 62, 66,§§2.10, 2.20; C71, 73, 75, §2.12; 66GA, ch 1052,§2]

Referred to in §§2.10, 2.16, 2.43, 2.44, 2.67, 2A.3, 18A.5, 28B.4, 68B.10, 80B.8, 93.5, 97B.8, 249B.6, 261.4, 272B.2, 304.4, 749B.19, 750.8

2.13 Issuance of warrants. The state comptroller shall also issue to each officer and employee of the general assembly, during legislative sessions or interim periods, upon vouchers signed by the president and secretary of the senate or the speaker and chief clerk of the house, warrants for the amount due for services rendered. Such warrants shall be paid out of any moneys in the treasury not otherwise appropriated. [C97,§§15, 16; C24, 27, 31, 35, 39,§20; C46, 50, 54, 58, 62, 66,§§2.21, 2.22; C71, 73, 75,§2.13]

2.14 Meetings of standing committees.

1. A standing committee of either house or a subcommittee when authorized by the chairman of the standing committee, may meet when the general assembly is not in session in the manner provided in this section and upon call pursuant to the rules of the house or senate. In case of vacancy in the chairmanship or in his absence, the ranking member shall act as chairman. A standing committee or subcommittee may act on bills and resolutions in the interim between the first and second regular sessions of a general assembly. The date, time and place of any meeting of a standing committee shall, by the person or persons calling the meeting, be reported to and be available to the public in the office of the director of the legislative service bureau at least five days prior to the meeting.

2. The legislative service bureau shall provide staff assistance for standing committees when authorized by the legislative council. The chairman of the committee or subcommittee shall notify the legislative service bureau in advance of each meeting.

3. Interim studies utilizing the services of the legislative service bureau must be authorized by the general assembly or the legislative council. A standing committee may also study and draft proposed committee bills. However, unless the subject matter of a study or proposed committee bill has been assigned to a standing committee for study by the general assembly or legislative council, the services of the legislative service bureau cannot be utilized. Nonlegislative members shall not serve upon any study committee, unless approved by the legislative council. A standing committee may hold public hearings and receive testimony upon any subject matter within its jurisdiction.

Nonlegislative members of study committees shall be paid their necessary travel and actual expenses incurred in attending committee or subcommittee meetings for the purposes of the study.

4. Standing committees and subcommittees of standing committees may meet when the general assembly is not in session under the following conditions:

a. A standing committee may meet one time at the discretion of the chairman.

b. Additional meetings of standing committees or their subcommittees shall be authorized by the legislative council; however, such authorization may be given at any one time for as many meetings as deemed necessary by the legislative council.

c. Any study committee, other than an interim committee provided for in subsection 3 of this section, which utilizes staff of the legislative service bureau may meet at such times as authorized by the legislative council.

5. When the general assembly is not in session, a member of the general assembly shall be paid forty dollars per day and his necessary travel and actual expenses incurred in attending meetings of a standing committee or subcommittee of which he is a member in addition

to his regular compensation. Such compensation and expenses shall be allowed only if the member attends a meeting of the committee or subcommittee for at least four hours. [C71, 73, 75,§2.14]

Referred to in §§2.10, 2.15

2.15 Duties of standing committees. The powers and duties of standing committees shall include, but shall not be limited to, the following:

1. Introducing legislative bills and resolutions.

2. Conducting investigations with the approval of either or both houses during the session, or the legislative council during the interim, with authority to call witnesses, administer oaths, issue subpoenas, and cite for contempt.

3. Requiring reports and information from state agencies as well as the full co-operation of their personnel.

4. Selecting nonlegislative members when conducting studies as provided in section 2.14.

5. Undertaking in-depth studies of governmental matters within their assigned jurisdiction, not only for the purpose of evaluating proposed legislation, but also for studying existing laws and governmental operations and functions to determine their usefulness and effectiveness, as provided in section 2.14.

6. Reviewing the operations of state agencies and departments.

7. Giving thorough consideration to, establishing priorities for, and making recommendations on all bills assigned to committees.

8. Preparing reports to be made available to members of the general assembly containing the committee's findings, recommendations, and proposed legislation. [C71, 73, 75,§2.15]

2.16 Prefiling legislative bills. Any member of the general assembly or any person elected to serve in the general assembly, or any standing committee, may sponsor and submit legislative bills and joint resolutions for consideration by the general assembly, before the convening of any session of the general assembly. Each house may approve rules for placing prefiled standing committee bills or joint resolutions on its calendar. Such bills and resolutions shall be numbered, printed, and distributed in a manner to be determined by joint rule of the general assembly or, in the absence of such rule, by the legislative council. All such bills and resolutions, except those sponsored by standing committees, shall be assigned to regular standing committees by the presiding officers of the houses when the general assembly convenes.

Departments and agencies of state government shall, at least ten days prior to the convening of each session of the general assembly, submit copies to the legislative service bureau of proposed legislative bills and joint resolutions which such departments desire to be considered by the general assembly. The legislative service bureau shall review such proposals and submit them in proper form to the presiding officer in each house of the general assembly for referral to the proper standing committee.

The costs of carrying out the provisions of this section shall be paid pursuant to section 2.12. [C71, 73, 75,§2.16]

2.17 Freedom of speech. A member of the general assembly shall not be held for slander or libel in any court for words used in any speech or debate in either house or at any session of a standing committee. [C51,§9; R60, §6; C73,§11; C97,§11; C24, 27, 31, 35, 39,§22; C46, 50, 54, 58, 62, 66,§2.23; C71, 73, 75,§2.17]

2.18 Contempt. Each house has authority to punish for contempt, by fine or imprisonment or both, any person who commits any of the following offenses against its authority:

1. Arresting a member, knowing him to be such, in violation of his privilege, or assaulting, or threatening to assault, or threatening any harm to the person or property of, a member, knowing him to be such, for anything said or done by him in such house as a member thereof.

2. Attempting by menace, or by force, or by any corrupt means to control or influence a member in giving his vote, or to prevent his giving it.

3. Disorderly or contemptuous conduct, tending to disturb its proceedings.

4. Refusal to attend, or to be sworn, or to affirm, or to be examined, as a witness before it, or before a committee thereof, when duly subpoenaed.

5. Assaulting or preventing any person going before it, or before any of its committees, by its order, the offender knowing such fact.

6. Rescuing or attempting to rescue any person arrested by its order, the offender knowing of such arrest.

7. Impeding any officer of such house in the discharge of his duties as such, the offender knowing his official character. [C51,§12; R60, §8; C73,§14; C97,§18; C24, 27, 31, 35, 39,§23; C46, 50, 54, 58, 62, 66,§2.24; C71, 73, 75,§2.18]

2.19 Punishment for contempt. Fines and imprisonment for contempt shall be only by virtue of an order of the proper house, entered on its journals, stating the grounds thereof. [C51,§14; R60,§10; C73,§15; C97,§19; C24, 27, 31, 35, 39,§24; C46, 50, 54, 58, 62, 66,§2.25; C71, 73, 75,§2.19]

2.20 Warrant — execution. Imprisonment for contempt shall be effected by a warrant, under the hand of the presiding officer, for the time being, of the house ordering it, countersigned by the acting secretary or clerk, in the name of the state, and directed to the sheriff or jailer of the proper county. Under such warrant, the proper officer will be authorized to commit and detain the person. [C51,§14;

R60,§10; C73,§15; C97,§19; C24, 27, 31, 35, 39,§25; C46, 50, 54, 58, 62, 66,§2.26; C71, 73, 75,§2.20]

2.21 Fines—collection. Fines for contempt shall be collected by a warrant, directed to any proper officer of any county in which the offender has property, and executed in the same manner as executions for fines issued from courts of record, and the proceeds paid into the state treasury. [C51,§14; R60,§10; C73,§15; C97,§19; C24, 27, 31, 35, 39,§26; C46, 50, 54, 58, 62, 66,§2.27; C71, 73, 75,§2.21]

2.22 Punishment—effect. Imprisonment for contempt shall not extend beyond the session at which it is ordered, and shall be in a facility designated by the presiding officer.

Punishment for contempt shall not constitute a bar to any other proceeding, civil or criminal, for the same act. [C51,§§13, 15; R60, §§9, 11; C73,§16; C97,§20; C24, 27, 31, 35, 39,§27; C46, 50, 54, 58, 62, 66,§2.28; C71, 73, 75,§2.22]

2.23 Witness — attendance compulsory. Whenever a committee of either house, or a joint committee of both, is conducting an investigation requiring the personal attendance of witnesses, any person may be compelled to appear before such committee as a witness by serving an order upon him, which service shall be made in the manner required in case of a subpoena in a civil action in the district court. Such order shall state the time and place a person is required to appear, be signed by the presiding officer of the body by which the committee was appointed, and attested by its acting secretary or clerk; or, in case of a joint committee, signed and attested by such officers of that body. [C73,§17; C97,§21; C24, 27, 31, 35, 39,§28; C46, 50, 54, 58, 62, 66,§2.29; C71, 73, 75, §2.23]

Referred to in §2.24

2.24 Witnesses — compensation. Witnesses called by a standing or joint committee shall be entitled to the same compensation for attendance under section 2.23 as before the district court but shall not have the right to demand payment of their fees in advance. [C73,§18; C97,§22; C24, 27, 31, 35, 39,§29; C46, 50, 54, 58, 62, 66,§2.30; C71, 73, 75,§2.24]

See §§622.69, 622.72

2.25 Joint conventions. Joint conventions of the general assembly shall meet in the house of representatives for such purposes as are provided by law. The president of the senate, or, in his absence, the president pro tempore of the senate shall preside at such joint conventions.

The speaker of the house of representatives may, for purposes of canvass of votes for governor and lieutenant governor and for the inauguration of such officers, designate any suitable hall at the seat of government as the hall of the house of representatives. [R60, §§674, 675; C73,§19; C97,§23; C24, 27, 31, 35, 39, §30; C46, 50, 54, 58, 62, 66,§2.31; C71, 73, 75,§2.25]

Referred to in §2.28

2.26 Secretary — record. The clerk of the house of representatives shall act as secretary of the convention, and he and the secretary of the senate shall keep a fair and correct record of the proceedings of the convention, which shall be entered on the journal of each house. [R60,§677; C73,§21; C97,§25; C24, 27, 31, 35, 39, §31; C46, 50, 54, 58, 62, 66,§2.32; C71, 73, 75,§2.26]

Referred to in §2.28

2.27 Canvass of votes for governor. The general assembly shall meet in joint session on the same day the assembly first convenes in January of 1979 and every four years thereafter as soon as both houses have been organized, and canvass the votes cast for governor and lieutenant governor and determine the election. If an election is necessary under section 69.13(1) to fill a vacancy in the office of lieutenant governor, the general assembly shall similarly meet on the day it convenes in the January following that election and canvass the vote cast for the office. When the canvass is completed, the oath of office shall be administered to the persons or person so declared elected. Upon being inaugurated the governor shall deliver to the joint assembly any message he or she may deem expedient. [S13, §30-a; C24, 27, 31, 35, 39,§32; C46, 50, 54, 58, 62, 66,§2.33; C71, 73, 75,§2.27; 66GA, ch 66,§1, ch 81,§1]

Referred to in §2.28

2.28 Tellers. After the time for the meeting of the joint convention has been designated each house shall appoint three tellers, and the six shall act as judges of the election.

Canvassing the votes for governor and lieutenant governor shall be conducted substantially according to the provisions of sections 2.25 through 2.28. [R60,§676; C73,§§20, 26; C97, §§24, 30; C24, 27, 31, 35, 39,§§33, 34; C46, 50, 54, 58, 62, 66,§§2.34, 2.35; C71, 73, 75,§2.28]

2.29 Election — vote — how taken — second poll. When any officer is to be elected by joint convention, the names of the members shall be arranged in alphabetical order by the secretaries, and each member shall vote in the order in which his name stands when so arranged. The name of the person voted for, and the names of the members voting, shall be entered in writing by the tellers, who, after the secretary shall have called the names of the members a second time, and the name of the person for whom each member has voted, shall report to the president of the convention the number of votes given for each candidate.

If no person shall receive the votes of a majority of the members present, a second poll may be taken, or as many polls as may be required until some person receives a majority. [R60,§§678, 679, 680; C73,§§22, 23; C97,§§26, 27; C24, 27, 31, 35, 39,§§35, 36; C46, 50, 54, 58, 62, 66, §§2.36, 2.37; C71, 73, 75,§2.29]

2.30 Certificates of election. When any person shall have received a majority of the votes, the president shall declare him to be elected,

and shall, in the presence of the convention, sign two certificates of such election, attested by the tellers, one of which he shall transmit to the governor, and the other shall be preserved among the records of the convention and entered at length on the journal of each house. The governor shall issue a commission to the person so elected. [R60,§682; C73,§25; C97,§29; C24, 27, 31, 35, 39,§37; C46, 50, 54, 58, 62, 66,§2.38; C71, 73, 75,§2.30]

2.31 Adjournment. If the purpose for which the joint convention is assembled is not concluded, the president shall adjourn or recess the same from time to time as the members present may determine. [R60,§681; C73,§24; C97,§28; C24, 27, 31, 35, 39,§38; C46, 50, 54, 58, 62, 66,§2.39; C71, 73, 75,§2.31]

2.32 Confirmation of appointments — rejected nominees not eligible. When the nomination of a public officer is required to be confirmed by the senate, the nomination shall not be considered by the senate until it shall have been referred to a committee of five senators who shall, if possible, represent different political parties. The committee shall be appointed by the president of the senate, without motion, and shall report to the senate. The consideration of the nomination by the senate shall not be made on the same legislative day on which the nomination is so referred, unless it be the last day of the session. When a nomination has been so considered by the senate and approval has been refused, the nominee shall not be eligible for an interim appointment to any position requiring confirmation by the senate, prior to the convening of the next regular session of the general assembly. [C27, 31, 35,§38-b1; C39,§38.1; C46, 50, 54, 58, 62, 66,§2.40; C71, 73, 75,§2.32]

2.33 to 2.40 Reserved.

LEGISLATIVE COUNCIL

Study of social services department, see 66GA, ch 1044,§1

2.41 Legislative council created. There is hereby created a continuing legislative council of twenty members which shall be entitled the legislative council. The council shall be composed of the president pro tempore of the senate, the speaker of the house of representatives, the majority and minority floor leaders of the senate, the chairman of the senate committee on appropriations, the minority party ranking member of the senate committee on appropriations, five members of the senate appointed by the president of the senate, the majority and minority floor leaders of the house of representatives, the chairman of the house committee on appropriations, the minority party ranking member of the house committee on appropriations, and five members of the house of representatives appointed by the speaker of the house of representatives. The lieutenant governor shall be an ex officio nonvoting member of the council. Of the five members appointed by the president of the senate and speaker of the house, three from each house shall be appointed from the majority party and two from each house shall be appointed from the minority party. Members shall be appointed prior to the adjournment of the first regular session of each general assembly and shall serve for two-year terms ending upon the convening of the following general assembly or when their successors are appointed. Vacancies on the council, including vacancies which occur when a member of the council ceases to be a member of the general assembly, shall be filled by the president of the senate and the speaker of the house respectively. Insofar as possible, upon appointment of members of the council during each regular session of the general assembly, at least two members of the council from each house shall be reappointed. The council shall hold regular meetings at a time and place fixed by the council and shall meet at any other time and place as the council may deem necessary. [C58,§2.46; C62, 66, 71, 73,§2.49; C75, §2.41]

2.42 Powers and duties of council. The legislative council shall select its officers and prescribe its rules and procedure. The powers and duties of the council shall include, but not be limited to, the following:

1. To establish policies for the operation of the legislative service bureau, including the priority to be given to research requests and the distribution of research reports.

2. To appoint the director of the legislative service bureau for such term of office as may be set by the council.

3. To prepare reports to be submitted to the general assembly at its regular sessions.

4. To appoint interim study committees consisting of members of the legislative council and members of the general assembly of such number as the council shall determine. Nonlegislative members may be included on such committees when the council deems the participation of such members advantageous to the conduct of the study.

5. To conduct studies and evaluate reports of studies assigned to study committees and make recommendations for legislative or administrative action thereon. Recommendations shall include such bills as the legislative council may deem advisable.

6. To co-operate with other states to discuss mutual legislative and governmental problems.

7. To recommend staff for the legislative council and the standing committees in co-operation with the chairman of such standing committees.

8. To recommend changes or revisions in the senate and house rules and the joint rules for more efficient operation of the general assembly and draft proposed rule amendments, resolutions, and bills as may be required to carry out such recommendations, for consideration by the general assembly.

9. To recommend to the general assembly

the names and numbers of standing committees of both houses.

10. To establish rules for the style and format for drafting and preparing of legislative bills and resolutions.

11. To consult with the Code editor with regard to the printing and publishing of the Code of Iowa and session laws, including but not limited to: The style and format to be used in publishing such documents, the frequency of publications, the contents of such publications, the numbering system to be used in the Code and session laws, the preparation of editorial comments or notations, the correction of errors, the type of print to be used, the number of volumes to be published, recommended revisions of the Code and session laws, the letting of contracts for the publication of the Code and session laws, and any other matters deemed necessary to the publication of a uniform and understandable Code of laws.

12. To establish policies for the operation of the legislative fiscal bureau.

13. To appoint the director of the legislative fiscal bureau* for such term of office as may be set by the council. [C58,§2.47; C62, 66, 71, 73,§2.50; C75,§2.42]

*See also §2.48

2.43 General supervision over legislative facilities, equipment, and arrangements. The legislative council in co-operation with the officers of the senate and house shall have the duty and responsibility for preparing for each session of the general assembly. Pursuant to such duty and responsibility, the legislative council may assign areas in the state capitol or other state buildings, in consultation with the director of the department of general services and the capitol planning commission, for use of the general assembly or legislative agencies. The legislative council may authorize the renovation, remodeling and preparation of the physical facilities used or to be used by the general assembly and award contracts pursuant to such authority to carry out such preparation. The legislative council may purchase supplies and equipment deemed necessary for the proper functioning of the legislative branch of government.

In carrying out its duties under this section, the legislative council shall consult with the director of the department of general services and the capitol planning commission, but shall not be bound by any decision of the director in respect to the responsibilities and duties provided for in this section. The legislative council may direct the director of the department of general services or other state employees to carry out its directives in regard to the physical facilities of the general assembly, or may employ other personnel to carry out such functions.

The costs of carrying out the provisions of this section shall be paid pursuant to section 2.12. [C71, 73,§2.51; C75,§2.43]

Referred to in §18.8

2.44 Expenses of council and special interim committees. Members of the legislative council shall be reimbursed for actual and necessary expenses incurred in the performance of their duties, and shall receive a per diem of forty dollars for each day in which engaged in the performance of such duties. However, such per diem compensation and expenses shall not be paid when the general assembly is actually in session at the seat of government. Such expenses and per diem shall be paid in the manner provided for in section 2.12.

Members of special interim study committees which may from time to time be created and members of the legislative fiscal committee who are not members of the legislative council shall be entitled to receive the same expenses and compensation provided for the members of the legislative council. [C97,§181; S13,§181; C24, 27, 31, 35, 39,§44; C46, 50,§2.46; C54,§2.45; C58,§§2.45, 2.48; C62, 66,§§2.45, 2.51; C71, 73,§§2.45, 2.52; C75,§2.44; 66GA, ch 1052,§3]

2.45 Committees of the legislative council. The legislative council shall be divided into committees, which shall include but not be limited to:

1. The legislative service committee which shall be composed of six members of the legislative council, consisting of three members from each house, to be appointed by the legislative council. The legislative service committee shall select a chairman from its membership, and shall determine policies relating to the operation of the legislative service bureau, subject to the approval of the legislative council.

2. The legislative fiscal committee, which shall be composed of the chairmen and the ranking minority party members of the committees on appropriations of the house and senate and two members of the legislative council, one chosen by the president of the senate and one chosen by the speaker of the house of representatives. In addition, four members of the committee who are not members of the legislative council and who are members of a committee on appropriations; one member shall be appointed from each party by the president of the senate and the speaker of the house of representatives, respectively. The legislative fiscal committee shall determine policies for the legislative fiscal bureau and shall direct the administration of performance audits and visitations, subject to the approval of the legislative council.

3. The legislative administration committee which shall be composed of six members of the legislative council, consisting of three members from each house, to be appointed by the legislative council. The legislative administration committee shall perform such duties as are assigned it by the legislative council. [C97,§181; S13,§181; C24, 27, 31, 35, 39,§§39, 40; C46, 50,§§2.41, 2.42; C54, 58, 62, 66, 71, 73,§2.41; C75,§2.45]

2.46 Duties. The legislative fiscal committee may, subject to the approval of the legislative council:

1. *Budget.* Gather information relative to budget matters for the purpose of aiding the legislature to properly appropriate money for the functions of government, and to report their findings to the legislature.

2. *Examination.* Examine the reports and official acts of the executive council and of each officer, board, commission, and department of the state, in respect to the conduct and expenditures thereof and the receipts and disbursements of public funds thereby.

3. *Reorganization.* Make a continuous study of all offices, departments, agencies, boards, bureaus and commissions of the state government and shall determine and recommend to each session of the legislature what changes therein are necessary to accomplish the following purposes:

a. To reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of state government.

b. To increase the efficiency of the operations of the state government to the fullest extent practicable within the available revenues.

c. To group, co-ordinate, and consolidate judicial districts, agencies and functions of the government, as nearly as may be according to major purposes.

d. To reduce the number of offices, agencies, boards, commissions, and departments by consolidating those having similar functions, and to abolish such offices, agencies, boards, commissions and departments, or functions thereof, as may not be necessary for the efficient and economical conduct of state government.

e. To eliminate overlapping and duplication of effort on the part of such offices, agencies, boards, commissions and departments of the state government.

4. *Performance audit.* Determine by means of a performance audit whether state offices, departments, agencies, boards, bureaus, and commissions:

a. Are conducting authorized activities and programs pursuant to objectives intended by the general assembly.

b. Are conducting programs and activities and expending funds appropriated to them in an efficient and effective manner.

c. Are conducting programs and activities and expending funds appropriated to them in compliance with the Acts of the general assembly and the Code. [C97,§§181, 182; S13, §181; C24, 27, 31, 35, 39,§§**42, 45**; C46, 50,§§2.44, 2.47; C54, 58, 62, 66, 71, 73,§2.43; C75,§2.46]

2.47 Procedure. The chairmen of the committees on appropriations shall serve as co-chairmen of the legislative fiscal committee. The legislative fiscal committee shall determine its own method of procedure and shall meet as often as deemed necessary, subject to the approval of the legislative council. It shall keep a record of its proceedings which shall be open to public inspection, and it shall inform the legislative council in advance concerning the dates of meetings of the committee. [C75, §2.47]

2.48 Legislative fiscal bureau established. There is established a legislative fiscal bureau which shall operate under the direction and control of the legislative fiscal committee, subject to the approval of the legislative council. The administrative head of the legislative fiscal bureau shall be the legislative fiscal director. The legislative fiscal bureau shall co-operate with and serve all members of the general assembly, the legislative fiscal committee, and committees of the general assembly.

The legislative fiscal director* shall be appointed by the legislative council, upon recommendation of the legislative fiscal committee. His compensation, and the compensation of employees of the legislative fiscal bureau, shall be fixed by the legislative council. [C62, 66, 71, 73,§2.46; C75,§2.48]

*See also §2.42(13)

2.49 Functions of legislative fiscal bureau. The legislative fiscal bureau shall:

1. By continuous review of state expenditures, revenues and analysis of budget through an audit, performance audit, and preaudit, if necessary, or such other means deemed necessary, ascertain the facts, compare cost, workload and other data, and make recommendations to the general assembly concerning the state's budget and revenue of the departments, boards, commissions, and agencies of the state.

2. Report to the legislative fiscal committee as required by the legislative fiscal committee and the legislative council and to the general assembly after the convening of each legislative session of a general assembly and make such other reports as may be required by either the legislative council or the general assembly.

3. Furnish information and act in an advisory capacity to the committees on appropriations and committees on ways and means of the general assembly and their several subcommittees when so requested.

4. Assist standing committees and members of the general assembly in attaching fiscal notes to legislative bills and resolutions as provided by the rules of the general assembly.

5. Submit to each member of the general assembly quarterly a report of the current status of major state funds, a comparison of income with estimates used by the general assembly and other revenue and expenditure information which the legislative fiscal committee determines will be informative for members of the general assembly. The state comptroller shall co-operate with the legislative fiscal bureau in the development of the

report. The legislative fiscal committee shall approve the style and format of the report.

6. Perform such other duties as shall be assigned to the bureau by the legislative fiscal committee or by the general assembly. [C62, 66, 71, 73,§2.47; C75,§2.49]

2.50 Duties of legislative fiscal director. The legislative fiscal director shall:

1. Employ and supervise all employees of the legislative fiscal bureau in such positions and at such salaries as shall be authorized by the legislative council.

2. Supervise all expenditures of the legislative fiscal bureau with the approval of the legislative council.

3. Attend, or designate a representative who shall attend, the budget hearings required by section 8.26 and may offer explanations or suggestions and make inquiries with respect to such budget hearings. [C62, 66, 71, 73,§2.47; C75,§2.50]

2.51 Visitations. The legislative fiscal committee, with the approval of the legislative council, may direct a subcommittee, which shall be composed of the chairmen and minority party ranking members of the appropriate subcommittees of the committees on appropriations of the senate and the house of representatives and the chairmen of the appropriate standing committees of the general assembly, to visit the offices and facilities of any state office, department, agency, board, bureau, or commission to review programs authorized by the general assembly and the administration of the programs. When the legislative fiscal committee visits the offices and facilities of any state office, department, agency, board, bureau, or commission to review programs authorized by the general assembly and the administration of the programs, there shall be included the chairmen and minority party ranking members of the appropriate subcommittees of the committees on appropriations of the senate and the house of representatives. The subcommittee and the legislative fiscal committee shall be provided with information by the legislative fiscal bureau concerning budgets, programs, and legislation authorizing programs prior to any visitation. Members of a committee shall be compensated pursuant to section 2.10, subsection 6. The subcommittee shall make reports and recommendations as required by the legislative fiscal committee. [C75,§2.51]

2.52 Access. The director and his designated agents and employees shall at all times have access to all state offices, departments, agencies, boards, bureaus, and commissions, and to the books, records, and other instrumentalities and properties used in the performance of their statutory duties, and all state offices, departments, agencies, boards, bureaus, and commissions shall co-operate with the director in the performance of the foregoing duty, and shall make available to him such books, records, instrumentalities, and property. [C62, 66, 71, 73,§2.48; C75,§2.52]

2.53 Actuarial services. Any actuarial services and costs to be incurred on behalf of the general assembly for development of legislation relating to retirement systems shall not be incurred until after public bidding for such services has been completed. However, it shall not be required that the lowest bid be accepted. [66GA, ch 1053,§2]

2.54 to 2.57 Reserved.

LEGISLATIVE SERVICE BUREAU

2.58 Service bureau. There is hereby created a legislative service bureau which shall operate under the direction and control of the legislative council. The administrative head of the legislative service bureau shall be the director of the bureau. The bureau shall cooperate with and serve all members of the general assembly, the legislative council, and committees of the general assembly. It shall upon proper request of members and committees of the general assembly prepare research reports upon any governmental matter. Such research reports and the findings therein shall not contain any recommendations. The bureau shall assist and serve any standing or interim committee of the general assembly upon request, approved by the legislative council. The bureau shall draft and prepare bills for committees and individual members of the general assembly. Research and bill drafting requests made between sessions shall be in the manner provided for by the legislative council. The legislative council shall have the sole power and duty to allocate the work load of the bureau but may delegate such duty to the legislative service bureau director. [C58, §2.49; C62, 66,§2.52; C71, 73, 75,§2.58]

2.59 Director. The director of the service bureau shall serve on a full-time basis and shall have the following powers and duties:

1. He shall be in charge of the research and bill drafting functions of the bureau.

2. He shall employ and supervise all employees of the legislative service bureau in such positions and at such salaries as shall be authorized by the legislative council.

3. To employ, with the approval of the legislative council or its chairman, such temporary employees as may be required to provide research and bill drafting services prior to and during sessions of the general assembly. Such employees shall be under the supervision of the director and shall be paid from the funds appropriated to the bureau.

4. With the approval of the legislative council or its chairman, he may employ such technical consultants as may be necessary to provide research and bill drafting services on a salary or fee basis. [C58,§2.50; C62, 66,§2.53; C71, 73, 75,§2.59; 66GA, ch 1054,§2]

2.60 Salary of director. The salary of the director of the legislative service bureau shall be set by the legislative council. [C58,§2.51; C62, 66,§2.54; C71, 73, 75,§2.60]

2.61 Requests for research. Requests for research on governmental matters may be made to the legislative service bureau by either house of the general assembly, committees of either house of the general assembly, special interim committees of the general assembly, the legislative council, or upon petition by twenty or more members of the general assembly. Any legislative committee may request the service bureau to do research on any matter under consideration by such committee. For each such request the legislative council may, if deemed advisable, authorize a special interim study committee to conduct the research study or may request a standing committee to conduct such study. Members on a study committee shall be appointed by the council and shall consist of at least one member of the council and such other members of the majority and minority parties of the senate and the house of representatives as the council may designate. As far as practicable, a study committee shall include members of standing committees concerned with the subject matter of the study. No legislator shall serve on more than two study committees. Nonlegislative members having special knowledge of the subject under study may be appointed by the council to a study committee but such members shall be nonvoting members of such committee. The legislative service bureau shall assist study committees on research studies when authorized by the legislative council. [C58,§2.52; C62, 66,§2.55; C71, 73, 75,§2.61]

2.62 Powers. Special interim study committees shall have the following powers and duties:

1. Elect officers and adopt necessary rules for the conduct of business.

2. Conduct research on any matter connected with the study assigned by the legislative council.

3. Hold hearings.

4. Make regular progress reports to the legislative council.

5. Make a report, which may include recommendations, to the legislative council. Copies of study committee reports shall be made available to members of the general assembly and may be made available to other interested individuals upon request. The reports shall not be final until approved by the legislative council. [C62, 66,§2.57; C71, 73, 75,§2.62]

2.63 Meetings. Special interim study committees shall first meet at the call of the ranking legislative council member assigned to the study committee, and shall thereafter meet at such time as study committee members shall so designate. Any legislator may attend any study committee meeting or any hearing held by a study committee. All study committee meetings shall be open to the public. [C62, 66,§2.58; C71, 73, 75,§2.63]

2.64 Assistance by bureau. The legislative service bureau may provide the following assistance to standing and special interim study committees, as authorized by the legislative council:

1. Handle administrative affairs, including correspondence, record keeping, and scheduling of meetings.

2. Perform the research required for any study. Priority for studies shall be determined by the legislative council.

3. Arrange for the help of state employees and technical consultants whose assistance is needed.

4. Prepare research reports, and, upon the request of a committee, prepare that committee's report. [C62, 66,§2.60; C71, 73, 75,§2.64]

2.65 Information and assistance. The legislative service bureau may call upon any department, agency or office in the state, or any political subdivision of the state, for such information and assistance as may be needed in the performance of the duties of the service bureau and such information and assistance shall be furnished insofar as the same shall be within the resources and authority of such departments, agencies, offices, and political subdivisions. Nothing herein shall be construed to require the production or opening of any public records which are required by law to be kept private or confidential.

The service bureau may co-operate with other states and the federal government in the exchange of research reports, information, and materials. [C58,§2.53; C62, 66,§2.61; C71, 73, 75, §2.65]

2.66 Office and supplies—expenses. The office of the service bureau shall be located in the statehouse. Supplies, postage, and equipment may be requisitioned from the department of general services. Expenses of the legislative service bureau shall be paid upon the approval of the director of the bureau and, if an extraordinary expense, upon the approval of the legislative council or its chairman. Funds appropriated for per diem and expenses of the legislative council, legislative fiscal committee, and special interim study committees shall be paid and administered in the manner provided by the legislative council. [C58,§2.54; C62, 66,§2.62; C71, 73, 75,§2.66; 66GA, ch 23,§2]

2.67 Census preparations — commission established.

1. There is established a census liaison commission, composed of the president of the senate, the president pro tempore of the senate, the speaker of the house of representatives, the speaker pro tempore of the house of representatives, the majority and minority floor leaders of the senate, the majority and minority floor leaders of the house of representatives, the governor, and the state chairpersons

of the two major political parties in the state, or their respective designees. Necessary staff assistance shall be provided to the commission by the legislative service bureau. The commission shall also be entitled to obtain upon request the services of personnel of and the use of maps or other pertinent materials available to the state commissioner of elections, and to the transportation inventory division of the state department of transportation.

2. The census liaison commission shall:

a. Oversee preparations for and make decisions necessary to conclusion of arrangements with the United States bureau of the census, pursuant to United States public law 94–171, regarding the plan and form for reporting population data from the 1980 federal decennial census needed by the general assembly to fulfill its constitutional mandate to redistrict the state for election of members of the United States house of representatives and of the general assembly in 1982 and thereafter.

b. Obtain, prepare in appropriate form and provide to the United States bureau of the census such maps of political subdivisions of this state as are necessary to implement the arrangement concluded under paragraph "*a*" of this subsection.

c. Have authority to authorize expenditures of reasonable sums for purchase and preparation of maps or copies of maps needed under paragraph "*b*" of this subsection. The costs so incurred shall be paid as provided by section 2.12.

3. This section shall expire December 31, 1980. [66GA, ch 1055,§1]

2.68 Cities authorized to draw proposed precincts. The council of any city which concludes that it is likely to be necessary or desirable to redraw precincts in that city after the 1980 federal decennial census may cause proposed precinct boundaries to be drawn not later than January 31, 1977, in accordance with all applicable requirements of law except that more recent indicators of population may be used in lieu of data from the 1970 federal decennial census. The proposed precinct boundaries shall be of no current legal force or effect in administration of elections or of any other governmental function, and drawing them shall not constitute a violation of section 49.3. Proposed precinct boundaries so drawn may be submitted to the census liaison commission for use in developing a plan and form for reporting of population data from the 1980 federal decennial census for districting purposes.

Nothing in this section shall be construed to commit any city which has prepared proposed precinct boundaries to adopt those boundaries in compliance with sections 49.3 and 49.7 subsequent to the 1980 federal decennial census, nor to commit the general assembly to follow the proposed precinct boundaries in any redistricting required after that census. [66GA, ch 1055,§2]

CHAPTER 2A

COMMISSION ON COMPENSATION, EXPENSES AND SALARIES FOR ELECTED STATE OFFICIALS

2A.1 Commission established.
2A.2 Terms.
2A.3 Expenses.
2A.4 Meetings—duties.
2A.5 Consideration by general assembly.

2A.1 Commission established. There is established a commission to be known as the commission on compensation, expenses and salaries for elected state officials, hereinafter referred to as "the commission". The commission shall be composed of fifteen members, five of whom shall be appointed by the governor, five of whom shall be appointed by the president of the senate, and five of whom shall be appointed by the speaker of the house of representatives. Members of the commission shall be appointed without regard to political affiliation and shall not be state officials or employees, employees of any state department, board, commission, or agency or of any political subdivision of the state. [C73, 75,§2A.1]

2A.2 Terms. Members of the commission shall serve for a term of office of five years, and for the initial commission, one member appointed by each shall be appointed to serve for five years, one for four years, one for three years, one for two years, and one for one year. Vacancies on the commission shall be filled for the unexpired term in the same manner as the original appointment. [C73, 75,§2A.2]

2A.3 Expenses. Members of the commission shall serve without compensation, but shall receive actual and necessary expenses, including travel at the state rate. Payment shall be made from funds available pursuant to section 2.12; however, members appointed by the governor shall be paid from funds appropriated to the office of the governor. [C73, 75,§2A.3]

2A.4 Meetings—duties. The commission shall elect its own chairman from among its membership and shall meet on the call of the chairman to review compensation and ex-

penses received by members of the general assembly and salaries of the other elective state officials. The commission shall review compensation and expenses paid to members of the general assembly and salaries paid to other elective state officials, and statutory judicial officers, and shall review compensation, expenses, and salaries paid for comparable positions in other states, the federal government, and private enterprise. Based on such review and other factors deemed relevant, the commission shall make its determination as to compensation and expense levels for members of the general assembly and as to salary levels for other elective state officials to be recommended to the governor and the members of the general assembly. No later than February 1, 1973, and each two years thereafter, the commission shall report to the governor and to the general assembly its recommendations for compensation and expenses for members of the general assembly and for salaries for other elective state officials. [C73, 75,§2A.4]

2A.5 Consideration by general assembly. The general assembly shall consider the recommendations of the commission in determining compensation and expenses for members of the general assembly and salaries for other elective state officials. [C73, 75,§2A.5]

CHAPTER 3

STATUTES AND RELATED MATTERS

3.1 Form of bills.
3.2 Bill drafting instructions.
3.3 Headnotes and historical references.
3.4 Bills—approval—passage over veto.
3.5 Failure of governor to return bill.
3.6 Acts—where deposited.
3.7 Acts effective July 1 or August 15.
3.8 Publication of Acts.
3.9 Designation of papers.
3.10 Acts effective—certification.
3.11 Private Acts—when effective.
3.12 Appropriation Acts—effective for fiscal year.
3.13 Pro rata disbursement of appropriations.
3.14 Certain appropriations prohibited.
3.15 Copies of Acts effective by publication.
3.16 Cost of publishing.
3.17 to 3.19 Reserved.
3.20 Directions to future general assemblies.

3.1 Form of bills. Bills designed to amend, revise, codify, or repeal a law:

1. Shall refer to the numbers of the sections or chapters of the Code to be amended or repealed, but it shall not be necessary to refer to such sections or chapters in the title.

2. Shall refer to the number and session of the general assembly and of the sections and chapters of the Acts thereof to be amended in case the bill relates to a section or sections of an Act not appearing in the Code or codified in a supplement to the Code.

3. All references to statutes shall be expressed in words, followed by the numerals in parentheses when specified in the bill drafting instructions promulgated by the legislative council, and if omitted the Code editor in preparing Acts for publication in the session laws shall supply the same.

4. The title to a bill shall contain a brief statement of the purpose of the bill, however all detail matters properly connected with the subject so expressed may be omitted from the title. [C73,§38; C97,§41; S13,§§41-a,-b; C24, 27, 31, 35, 39,§47; C46, 50, 54, 58, 62, 66, 71, 73, 75, §3.1]

Form and style of printing bills, §17.18
See 211 Iowa 612

3.2 Bill drafting instructions. The legislative council shall, in consultation with the director of the legislative service bureau and the Code editor, promulgate rules and instructions for the drafting of legislative bills and resolutions not otherwise in conflict with the provisions of law and the rules of the senate and the house. [C71, 73, 75,§3.2]

3.3 Headnotes and historical references. Proper headnotes may be placed at the beginning of a section of a bill, and at the end of the section there may be placed a reference to the section number of the Code, or any session law from which the matter of the bill was taken, but, except as provided in the Uniform Commercial Code, section 554.1109, neither said headnotes nor said historical references shall be considered as a part of the law as enacted. [C24, 27, 31, 35, 39,§49; C46, 50, 54, 58, 62, 66, 71, 73, 75,§3.3]

3.4 Bills—approval—passage over veto. If the governor approves a bill, he shall sign and date it; if he returns it with his objections and it afterwards passes as provided in the Constitution, a certificate, signed by the presiding officer of each house in the following form, shall be endorsed thereon or attached thereto: "This bill (or this item of an appropriation bill, as the case may be), having been returned by the governor, with his objections, to the house in which it originated, and, after reconsideration, having again passed both houses by yeas and nays by a vote of two-thirds of the members of each house, has become a law

this ..... day of ....." [C51, §§16, 17; R60,§§19, 20; C73,§§28, 29; C97,§32; C24, 27, 31, 35, 39,§50; C46, 50, 54, 58, 62, 66, 71, 73, 75, §3.4; 66GA, ch 67,§1]

Constitutional provision, Art. III,§16

3.5 Failure of governor to return bill. When a bill has passed the general assembly, and is not returned by the governor within three days as provided in the Constitution, it shall be authenticated by the secretary of state endorsing thereon: "This bill, having remained with the governor three days (Sunday excepted), the general assembly being in session, has become a law this .... day of ....., ..., Secretary of State." [C51,§18; R60,§21; C73,§30; C97,§33; C24, 27, 31, 35, 39,§51; C46, 50, 54, 58, 62, 66, 71, 73, 75,§3.5]

Constitutional provision, Art. III,§16

3.6 Acts—where deposited. The original Acts of the general assembly shall be deposited with and kept by the secretary of state. [C51, §19; R60,§22; C73,§31; C97,§34; C24, 27, 31, 35, 39,§52; C46, 50, 54, 58, 62, 66, 71, 73, 75,§3.6]

3.7 Acts effective July 1 or August 15. All Acts and resolutions of a public nature passed at regular sessions of the general assembly shall take effect on the first day of July following their passage, unless some specified time is provided in the Act, or they have sooner taken effect by publication. All Acts and resolutions of a public nature which are passed prior to July 1 at a regular session of the general assembly and which are approved by the governor on or after such July 1, shall take effect on August 15 next after his approval. However, this section shall not apply to Acts provided for in section 3.12, Acts which specify when they take effect, or Acts which take effect by publication. [C51,§22; R60,§25; C73,§34; C97,§37; C24, 27, 31, 35, 39,§53; C46, 50, 54, 58, 62, 66, 71, 73, 75,§3.7]

Acts of private nature, §3.11
Constitution, Art. III,§26 and amendment of 1966; see also amendments by 62GA, chs 83, 84 and 85

3.8 Publication of Acts. Acts which are to take effect from and after publication in newspapers shall be published in two or more papers. [C51,§21; R60,§24; C73,§33; C97,§36; S13,§36; C24, 27, 31, 35, 39,§54; C46, 50, 54, 58, 62, 66, 71, 73, 75,§3.8]

S13,§36, editorially divided

3.9 Designation of papers. In case either or both of the papers named in the Act should fail or decline to publish said Act as required therein, the secretary of state may designate another paper or papers in which publication shall be made, and if such papers are not designated in the Act, the same may be designated by the secretary of state, and the Act published accordingly. [C73,§33; C97,§36; S13, §36; C24, 27, 31, 35, 39,§55; C46, 50, 54, 58, 62, 66, 71, 73, 75,§3.9]

3.10 Acts effective—certification. All such Acts shall take effect from and after the date of the last publication, and the secretary of state shall make and sign, on the original roll of each of such Acts, a certificate, stating in what papers it was published, and the date of the last publication in each of them, which certificate and the printing thereof at the foot of the Act shall be presumptive evidence of the facts therein stated. [C51,§21; R60,§24; C73, §33; C97,§36; S13,§36; C24, 27, 31, 35, 39,§56; C46, 50, 54, 58, 62, 66, 71, 73, 75,§3.10]

Proof of publication, §622.92

3.11 Private Acts—when effective. Acts of a private nature which do not prescribe the time when they take effect, shall do so on the thirtieth day next after they have been approved by the governor, or endorsed as provided in this chapter. [C51,§20; R60,§23; C73, §32; C97,§35; C24, 27, 31, 35, 39,§57; C46, 50, 54, 58, 62, 66, 71, 73, 75,§3.11]

3.12 Appropriation Acts—effective for fiscal year. All annual appropriations shall be for the fiscal year beginning with July 1 and ending with June 30 of the succeeding year and when such appropriations are made payable quarterly, the quarters shall end with September 30, December 31, March 31, and June 30; but nothing in this section shall be construed as increasing the amount of any annual appropriation. [S13,§116-a; C24, 27, 31, 35, 39,§58; C46, 50, 54, 58, 62, 66, 71, 73, 75,§3.12]

Referred to in §§3.7, 3.13

3.13 Pro rata disbursement of appropriations. Annual appropriations shall be disbursed in accordance with the provisions of the Acts granting the same pro rata from the time such Acts shall take effect up to the first day of the succeeding quarter as provided in section 3.12. [S13,§116-b; C24, 27, 31, 35, 39,§59; C46, 50, 54, 58, 62, 66, 71, 73, 75,§3.13]

3.14 Certain appropriations prohibited. No appropriations shall be made to any institution not wholly under the control of the state. [S13,§116-c1; C24, 27, 31, 35, 39,§60; C46, 50, 54, 58, 62, 66, 71, 73, 75,§3.14]

Constitution, Art. III,§31

3.15 Copies of Acts effective by publication. The secretary of state shall, immediately after an Act of a general nature takes effect by publication, furnish a certified copy of such Act to each clerk of the district court, who shall retain the same on file for public inspection for at least six months, and shall furnish copies thereof on payment of a fee of ten cents for each one hundred words. [SS15,§36-a; C24, 27, 31, 35, 39,§61; C46, 50, 54, 58, 62, 66, 71, 73, 75, §3.15]

3.16 Cost of publishing. The compensation for the publication of laws which are ordered by the general assembly to take effect by publication, unless otherwise fixed, shall be audited and paid by the state, and shall be the rates of legal advertisements allowed by law. There is hereby provided from any money in the state treasury not otherwise appropriated, a sum sufficient to pay for such publication.

[C73,§44; C97,§47; C24, 27, 31, 35, 39,§62; C46, 50, 54, 58, 62, 66, 71, 73, 75,§3.16]

See also ch 585

3.17 to 3.19 Reserved.

3.20 Directions to future general assemblies. The following principles shall be used by the general assembly in determining whether a procedure should be established and the type of procedure which should be established, for the state licensure of an occupation or profession:

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

2. The examining board shall pursue a meaningful examination and enforcement procedure which upholds the level of competency of the licensee to insure that the public interest is protected. [C75,§3.20]

CHAPTER 4

CONSTRUCTION OF STATUTES

Referred to in §§91A.2, 162.2(2), 514B.1

4.1 Rules.
4.2 Common law rule of construction.
4.3 References to other statutes.
4.4 Presumption of enactment.
4.5 Prospective statutes.
4.6 Ambiguous statutes—interpretation.
4.7 Conflicts between general and special statutes.
4.8 Irreconcilable statutes.
4.9 Official copy prevails.
4.10 Re-enactment of statutes—continuation.
4.11 Conflicting amendments to same statutes—interpretation.
4.12 Acts or statutes are severable.
4.13 General savings provision.

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

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

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

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

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

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

6. *Mentally ill.* The words "mentally ill person" include mental retardates, lunatics, distracted persons, and persons of unsound mind. No person who is hospitalized or detained for treatment of mental illness shall be deemed or presumed to be incompetent in the absence of a finding of incompetence made pursuant to section 229.27.

7. *Issue.* The word "issue" as applied to descent of estates includes all lawful lineal descendants.

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

9. *Personal property.* The words "personal property" include money, goods, chattels, evidences of debt, and things in action.

10. *Property.* The word "property" includes personal and real property.

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

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

13. *Person.* Unless otherwise provided by law "person" means individual, corporation, government or governmental subdivision or

agency, business trust, estate, trust, partnership or association, or any other legal entity.

Referred to in §109A.1, 172A.16

14. *Seal.* Where the seal of a court, public office or officer, or public or private corporation, may be required to be affixed to any paper, the word "seal" shall include an impression upon the paper alone, as well as upon wax or a wafer affixed thereto or an official ink stamp if a notarial seal.

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

16. *Will.* The word "will" includes codicils.

17. *Written — in writing — signature.* The words "written" and "in writing" may include any mode of representing words or letters in general use. A signature, when required by law, must be made by the writing or markings of the person whose signature is required. If a person is unable due to a physical handicap to make a written signature or mark, that person may substitute the following in lieu of a signature required by law:

a. His or her name written by another upon the request and in the presence of the handicapped person; or,

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

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

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

20. *Executor—administrator.* The term "executor" includes administrator, and the term "administrator" includes executor, where the subject matter justifies such use.

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

22. *Computing time—legal holidays.* In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday, provided that, whenever by the provisions of any statute or rule prescribed under authority of a statute, the last day for the commencement of any action or proceedings, the filing of any pleading or motion in a pending action or proceedings or the perfecting or filing of any appeal from the decision or award of any court, board, commission or official falls on a Saturday, a Sunday, the first day of January, the twelfth day of February, the third Monday in February, the last Monday in May, the fourth day of July, the first Monday in September, the eleventh day of November, the fourth Thursday in November, the twenty-fifth day of December, and the following Monday whenever any of the foregoing named legal holidays may fall on a Sunday, and any day appointed or recommended by the governor of Iowa or the president of the United States as a day of fasting or thanksgiving, the time therefor shall be extended to include the next day which is not a Saturday, Sunday or such day hereinbefore enumerated.

Referred to R.C.P. 366

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

24. *Clerk—clerk's office.* The word "clerk" means clerk of the court in which the action or proceeding is brought or is pending; and the words "clerk's office" means his office.

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

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

27. "Child" includes child by adoption.

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

29. "Preceding" and "following" when used by way of reference to a chapter or other part of a statute mean the next preceding or next following chapter or other part.

30. A quorum of a public body is a majority of the number of members fixed by statute.

31. "Rule" includes "regulation."

32. Words in the present tense include the future.

33. "United States" includes all the states.

34. The word "week" means seven consecutive days.

35. The word "year" means twelve consecutive months.

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

a. The word "shall" imposes a duty.

b. The word "must" states a requirement.

c. The word "may" confers a power.

37. *Appellate court.* The term "appellate court" means and includes both the supreme court and the court of appeals. Where an act, omission, right, or liability is by statute conditioned upon the filing of a decision by an

appellate court, the term means any final decision of either the supreme court or the court of appeals. [C51,§§26, 2513; R60,§§29, 4121, 4123, 4124; C73,§45; C97,§48; C24, 27, 31, 35, 39, §63; C46, 50, 54, 58, 62, 66, 71, 73, 75,§4.1; 66GA, ch 68,§1, ch 139,§32, ch 1056,§1 ch 1241,§26]

Referred to in §§43.49, 50.24, 109A.1, 172A.16, 362.2, 713.44, 718.24, R.C.P. 366
Similar provision, §26.6

4.2 Common law rule of construction. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. Its provisions and all proceedings under it shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice. [C51, §2503; R60,§2622; C73,§2528; C97,§3446; C24, 27, 31, 35, 39,§64; C46, 50, 54, 58, 62, 66, 71, 73, 75, §4.2]

4.3 References to other statutes. Any statute which adopts by reference the whole or a portion of another statute of this state shall be construed to include subsequent amendments of the statute or the portion thereof so adopted by reference unless a contrary intent is expressed. [C58, 62, 66, 71, 73, 75,§4.3]

4.4 Presumption of enactment. In enacting a statute, it is presumed that:

1. Compliance with the Constitutions of the state and of the United States is intended.
2. The entire statute is intended to be effective.
3. A just and reasonable result is intended.
4. A result feasible of execution is intended.
5. Public interest is favored over any private interest. [C73, 75,§4.4]

4.5 Prospective statutes. A statute is presumed to be prospective in its operation unless expressly made retrospective. [C73, 75,§4.5]

4.6 Ambiguous statutes—interpretation. If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

1. The object sought to be attained.
2. The circumstances under which the statute was enacted.
3. The legislative history.
4. The common law or former statutory provisions, including laws upon the same or similar subjects.
5. The consequences of a particular construction.
6. The administrative construction of the statute.
7. The preamble or statement of policy. [C73, 75,§4.6]

4.7 Conflicts between general and special statutes. If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision. [C73, 75,§4.7]

4.8 Irreconcilable statutes. If statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment* by the general assembly prevails. If provisions of the same Act are irreconcilable, the provision listed last in the Act prevails. [C73, 75,§4.8]

*See Attorney General opinion, May 16, 1973

4.9 Official copy prevails. If the language of the official copy of a statute conflicts with the language of any subsequent printing or reprinting of the statute, the language of the official copy prevails. [C73, 75,§4.9]

4.10 Re-enactment of statutes — continuation. A statute which is re-enacted, revised or amended is intended to be a continuation of the prior statute and not a new enactment, so far as it is the same as the prior statute. [C73, 75,§4.10]

4.11 Conflicting amendments to same statutes—interpretation. If amendments to the same statute are enacted at the same or different sessions of the general assembly, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment by the general assembly prevails. [C73, 75,§4.11]

4.12 Acts or statutes are severable. If any provision of an Act or statute or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act or statute which can be given effect without the invalid provision or application, and to this end the provisions of the Act or statute are severable. [C73, 75,§4.12]

4.13 General savings provision. The re-enactment, revision, amendment, or repeal of a statute does not affect:

1. The prior operation of the statute or any prior action taken thereunder;
2. Any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder;
3. Any violation thereof or penalty, forfeiture, or punishment incurred in respect thereto, prior to the amendment or repeal; or
4. Any investigation, proceeding, or remedy in respect of any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

If the penalty, forfeiture, or punishment for any offense is reduced by a re-enactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment if not already imposed shall be imposed according to the statute as amended. [C73, 75,§4.13]

CHAPTER 5

UNIFORM STATE LAWS

5.1 Commission on uniform laws—vacancies.
5.2 Tenure—compensation—expenses.
5.3 Organization.
5.4 Duties—reports.

5.1 Commission on uniform laws—vacancies. The governor shall appoint three commissioners, each of whom shall be a member of the bar of this state, in good standing, who shall constitute and be known as the commission on uniform state laws, and upon the death, resignation, or refusal to serve of any of the commissioners so appointed, the governor shall make an appointment to fill the vacancy so caused, such new appointment to be for the unexpired balance of the term of the original appointee. [C24, 27, 31, 35, 39,§65; C46, 50, 54, 58, 62, 66, 71, 73, 75,§5.1]

5.2 Tenure—compensation—expenses. Said commissioners shall hold office for a term of four years, and until their successors are duly appointed, but nothing herein contained shall be construed to render a commissioner who has faithfully performed his duties ineligible for reappointment. No member of said commission shall receive any compensation for his services as commissioner, but each commissioner shall be entitled to receive his actual disbursements for expenses in performing the duties of his office. [C24, 27, 31, 35, 39,§66; C46, 50, 54, 58, 62, 66, 71, 73, 75,§5.2]

5.3 Organization. The commissioners shall meet at the state capitol at least once in two years and shall organize by the election of one of their number as chairman and another as secretary, who shall hold their respective offices for a term of two years and until their successors are elected and qualified. [C24, 27, 31, 35, 39,§67; C46, 50, 54, 58, 62, 66, 71, 73, 75, §5.3]

5.4 Duties—reports. It shall be the duty of each of said commissioners to attend the meeting of the national conference of commissioners on uniform state laws, or to arrange for the attendance of at least one of their number at such national conference, and both in and out of such national conference they shall do all in their power to promote uniformity in state laws, upon all subjects where uniformity may be deemed desirable and practicable; said commission shall report to the legislature at its next session, and from time to time thereafter as said commission may deem proper, an account of its transactions, and its advice and recommendations for legislation. This report shall be printed for presentation to each legislature. It shall also be the duty of said commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws and generally to devise and recommend such additional legislation or other or further course of action as shall tend to accomplish the purposes of this chapter. [C24, 27, 31, 35, 39,§68; C46, 50, 54, 58, 62, 66, 71, 73, 75,§5.4]

CHAPTER 6

CONSTITUTIONAL AMENDMENTS AND PUBLIC MEASURES

6.1 Publication of proposed amendment.
6.2 Publication of proposed public measure.
6.3 Proof of publication—record—report to legislature.
6.4 Submission at general election.
6.5 Submission at special election.
6.6 Certification—sample ballot.
6.7 Proclamation.
6.8 Canvass—declaration of result—record.
6.9 Expenses.
6.10 Action to test legality.
6.11 Parties.

6.1 Publication of proposed amendment. Whenever any proposition to amend the Constitution has passed the general assembly and been referred to the next succeeding legislature, the state commissioner of elections shall cause the same to be published, once each month, in two newspapers of general circulation in each congressional district in the state, for the time required by the Constitution. [C97,§55; S13,§55; C24, 27, 31, 35, 39,§69; C46, 50, 54, 58, 62, 66, 71, 73, 75,§6.1]

Referred to in §6.3
Time of publication, Constitution, Art. X,§1
Voting on public measures, see §§49.43–49.50

6.2 Publication of proposed public measure. Whenever any public measure has passed the general assembly which under the Constitution

must be published and submitted to a vote of the entire people of the state, the state commissioner of elections shall cause the same to be published, once each month, in at least one newspaper of general circulation in each county in the state, for the time required by the Constitution. [C24, 27, 31, 35, 39,§70; C46, 50, 54, 58, 62, 66, 71, 73, 75,§6.2]

Referred to in §6.3
Time of publication, Constitution, Art. VII,§5
Voting on public measures, see §§49.43–49.50

6.3 Proof of publication—record—report to legislature. Proof of the publication specified in sections 6.1 and 6.2 shall be made by the affidavits of the publishers of the newspapers designated by the state commissioner of elections and such affidavits, with the certificate of the state commissioner of the selection of such newspapers, shall be filed in his office, recorded in a book kept for that purpose, and preserved by him, and in the case of constitutional amendments he shall report to the following legislature his action in the premises. [C97,§55; S13,§55; C24, 27, 31, 35, 39,§71; C46, 50, 54, 58, 62, 66, 71, 73, 75,§6.3]

Constitution, Art. X,§1

6.4 Submission at general election. Whenever a public measure has passed the general assembly which under the Constitution must be submitted to a vote of the entire people of the state and no time is fixed by the Constitution or legislature for such submission, or whenever a proposition to amend the Constitution has been adopted by two succeeding general assemblies and no time is fixed by the last general assembly adopting the same for its submission to the people, said measure or amendment shall be submitted to the people at the ensuing general election, in the manner required by law. [C97,§56; C24, 27, 31, 35, 39, §72; C46, 50, 54, 58, 62, 66, 71, 73, 75,§6.4]

Submission, §§6.1, 6.2, 6.5, 49.43–49.50; Constitution, Arts. VII,§5, and X

6.5 Submission at special election. The general assembly may provide for the submission of a constitutional amendment to the people at a special election for that purpose, at such time as it may prescribe, proclamation for which election shall be made by the governor, and the same shall in all respects be governed and conducted as prescribed by law for the submission of a constitutional amendment at a general election. [C97,§58; C24, 27, 31, 35, 39, §73; C46, 50, 54, 58, 62, 66, 71, 73, 75,§6.5]

Constitution, Art. X,§1
See note under §6.4

6.6 Certification—sample ballot. The state commissioner of elections shall, not less than fifty-five days preceding any election at which a constitutional amendment or public measure is to be submitted to a vote of the entire people of the state, transmit to the county commissioner of elections of each county a certified copy of such amendment or measure and a sample of the ballot to be used in such cases, prepared in accordance with law. [C24, 27, 31, 35, 39,§74; C46, 50, 54, 58, 62, 66, 71, 73, 75,§6.6]

Constitution, Art. X,§1

6.7 Proclamation. Whenever a proposition to amend the Constitution is to be submitted to a vote of the electors, the governor shall issue a proclamation of that fact, and of the date when the proposition is to be voted on, at least sixty days before that date. [C97,§57; C24, 27, 31, 35, 39,§75; C46, 50, 54, 58, 62, 66, 71, 73, 75,§6.7]

Additional provisions, §39.4 et seq.
Constitution, Art. X,§1

6.8 Canvass—declaration of result—record. The judges of election, county boards of canvassers, and other election officials shall canvass the vote on any constitutional amendment or public measure, and make return thereof, in the same manner as required by law for the canvass and return of the vote for public officers. The board of state canvassers shall canvass such returns, declare the result, and enter the same of record, immediately following and in connection with the proofs of publication of such amendment or measure, in the book kept for that purpose by the secretary of state. [C97,§56; C24, 27, 31, 35, 39,§76; C46, 50, 54, 58, 62, 66, 71, 73, 75,§6.8]

Canvass of votes, ch 50

6.9 Expenses. Expenses incurred under the provisions of this chapter shall be audited and allowed by the state comptroller, and paid out of any money in the state treasury not otherwise appropriated. [C97,§59; C24, 27, 31, 35, 39,§77; C46, 50, 54, 58, 62, 66, 71, 73, 75,§6.9]

6.10 Action to test legality. Whenever an amendment to the Constitution of the state of Iowa shall have been proposed and agreed to by the general assembly and shall have been agreed to by the succeeding general assembly, any taxpayer may file suit in equity in the district court at the seat of government of the state, challenging the validity, legality or constitutionality of such amendment, or the procedure connected therewith, and in such suit the district court shall have jurisdiction to determine the validity, legality or constitutionality of said amendment or the procedure connected therewith, and enter its decree accordingly, and may grant a writ of injunction enjoining the governor and state commissioner of elections from submitting such constitutional amendment, if it, or the procedure connected therewith, shall have been found to be invalid, illegal or unconstitutional. [C31, 35,§77-d1; C39,§77.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§6.10]

General procedure, §§619.2, 619.3, 624.7, 686.3, 686.6, 686.18

6.11 Parties. In such suit the taxpayer shall be plaintiff and the governor and state commissioner of elections shall be defendants. Any taxpayer may intervene, either as party plaintiff or defendant. [C31, 35,§77-d2; C39, §77.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§6.11]

TITLE II
EXECUTIVE DEPARTMENT

CHAPTER 7
GOVERNOR

Identification and use of publicly owned automobiles, etc., §§740.20–740.22

7.1 Office—secretary.
7.2 Journal.
7.3 Counsel.
7.4 Expenses.
7.5 Highway construction patents.
7.6 Reward for arrest.
7.7 Accounting.
7.8 Salary.
7.9 Federal funds accepted.
7.10 Emergency highway peace officers.
7.11 Purpose.
7.12 Supervisor designated.
7.13 Governor-elect expense fund.
7.14 Disability of governor to act.
7.15 Federal funds for highway safety.
7.16 Vacancies filled at less than statutory salary.

7.1 Office—secretary. The governor shall keep his office at the seat of government, in which shall be transacted the business of the executive department of the state. He shall keep a secretary at said office during his absence. [C73,§55; C97,§60; C24, 27, 31, 35, 39,§78; C46, 50, 54, 58, 62, 66, 71, 73, 75,§7.1]

7.2 Journal. He shall cause a journal to be kept in the executive office, in which a record shall be made of each official act as done, except if in cases of emergency an act is done away from the office, such entry shall be made as soon thereafter as may be. He shall cause a like military record to be kept of his acts done as commander in chief. [C73,§§56, 57; C97,§61; C24, 27, 31, 35, 39,§79; C46, 50, 54, 58, 62, 66, 71, 73, 75,§7.2]

7.3 Counsel. Whenever the governor is satisfied that an action or proceeding has been commenced which may affect the rights or interests of the state, he may employ counsel to protect such rights or interests; and when any civil action or proceeding has been or is about to be commenced by the proper officer in behalf of the state, he may employ additional counsel to assist in the cause. [C51,§40; R60,§44; C73,§59; C97,§63; C24, 27, 31, 35, 39,§80; C46, 50, 54, 58, 62, 66, 71, 73, 75,§7.3]

Employment by executive council, §13.7

7.4 Expenses. The expenses thus incurred, and those caused in executing the laws, may be allowed by him and paid from the contingent fund. [C51,§41; R60,§45; C73,§60; C97,§64; C24, 27, 31, 35, 39,§81; C46, 50, 54, 58, 62, 66, 71, 73, 75,§7.4]

7.5 Highway construction patents. The governor, whenever he deems such action to be in the interest of the public, shall have power to direct the attorney general to appear for and on behalf of any county, city or other municipality of this state or for and on behalf of any officer thereof or contractor therewith, whenever any such county, city or other municipality or officer or contractor is a party to any action or proceeding in any court wherein is involved the validity of any alleged patent on any matter or thing entering into highway, bridge, or culvert construction, or on any parts thereof, and may employ such legal assistance in addition to the attorney general as he may deem necessary and may pay for the same out of any fund in the state treasury not otherwise appropriated. Whenever the attorney general is so directed by the governor it shall be his duty to comply therewith. [S13, §64-a; C24, 27, 31, 35, 39,§82; C46, 50, 54, 58, 62, 66, 71, 73, 75,§7.5]

Employment by executive council, §13.7

7.6 Reward for arrest. Whenever the governor is satisfied that a crime has been committed within the state, punishable by imprisonment in the penitentiary for a term of ten years or more, and the person committing the same has not been arrested or has escaped from arrest or custody or his whereabouts is unknown, he may in his discretion offer a reward not exceeding five hundred dollars for the arrest and delivery to the proper authorities of such persons, which reward, upon the certificate of the governor that the same has been earned, shall be audited and paid by the state.

The reward shall be paid only upon the conviction of the person, and if appealed, only after a final decision of an appellate court has been rendered which affirms that conviction. [R60,§57; C73,§58; C97,§62; C24, 27, 31, 35, 39,§83; C46, 50, 54, 58, 62, 66, 71, 73, 75,§7.6; 66GA, ch 1241,§27]

7.7 Accounting. All fees paid to the governor shall be turned over to the treasurer of state. [SS15,§4-e; C24, 27, 31, 35, 39,§84; C46, 50, 54, 58, 62, 66, 71, 73, 75,§7.7]

7.8 Salary. The salary of the governor shall be as fixed by the general assembly. [C50, 54, 58, 62, 66, 71, 73, 75,§7.8]
See salary Act

7.9 Federal funds accepted. The governor is authorized to accept for the state, the funds provided by any Act of Congress for the benefit of the state of Iowa, or its political subdivisions, provided there is no agency to accept and administer such funds, and he is authorized to administer or designate an agency to administer the funds until such time as an agency of the state is established for that purpose. [C66, 71, 73, 75,§7.9]

7.10 Emergency highway peace officers. Whenever the governor is satisfied that a state of emergency exists, or is likely to exist, on the public streets or highways of this state, because of violations of chapter 321, he shall designate any employee or employees of this state as peace officers pursuant to section 748.3, subsection 6, until such time as the governor is satisfied the state of emergency is ended. [C66, 71, 73, 75,§7.10]
Referred to in §7.12

7.11 Purpose. Individuals so designated shall have the full duties and rights of peace officers under the Code, for the purpose of enforcing the motor vehicle laws and ordinances of this state, and shall be provided with an identifying badge and card. [C66, 71, 73, 75, §7.11]
Referred to in §7.12

7.12 Supervisor designated. The governor, in exercising the power conferred upon him by sections 7.10 and 7.11, may designate one employee or officer of the state to supervise all persons designated as peace officers hereunder, and they shall be fully responsible to him for all acts performed pursuant to these sections. [C66, 71, 73, 75,§7.12]

7.13 Governor-elect expense fund. There is hereby created as a permanent fund in the office of the treasurer of state a fund to be known as the "governor-elect expense fund". For the purpose of establishing and maintaining said fund, for each biennium, there is hereby appropriated thereto from funds in the general fund not otherwise appropriated the sum of ten thousand dollars, or so much thereof as may be necessary, to pay for office space, supplies, postage, and secretarial and clerical salaries after the day of the election and before the day of the inauguration for a first term governor-elect. Any balance in said fund at the end of each biennium shall revert to the general fund. Said fund shall be subject at all times to the warrant of the state comptroller, drawn upon written requisition of the governor-elect. In event of a contested election, no distribution of the fund will be made until such time as the general assembly certifies the results of the election. [C66, 71, 73, 75,§7.13]

7.14 Disability of governor to act.

1. Whenever it appears that the governor is unable to discharge the duties of his office for reason of disability pursuant to Article IV, section 17, Constitution of Iowa, the person next in line of succession to the office of the governor, or the chief justice, may call a conference consisting of the person who is chief justice, the person who is director of mental health, and the person who is the dean of medicine at the state University of Iowa. Provided, if either the director or dean is not a physician duly licensed to practice medicine by this state he may assign a member of his staff so licensed to assist and advise on the conference. The three members of the conference shall within ten days after the conference is called examine the governor. Within seven days after the examination, or if upon attempting to examine the governor the members of the conference are unable to examine him because of circumstances beyond their control, they shall conduct a secret ballot and by unanimous vote may find that the governor is temporarily unable to discharge the duties of the office.

2. The finding of or failure to find a disability shall be immediately made public, and in case the governor is found to be unable to discharge the duties of the office, the person next in line of succession to the office of governor shall be immediately notified. After receiving the notification such person may, under Article IV, section 17, and amendment 2 of 1952, Constitution of Iowa, become governor until the disability be removed.

3. Whenever a governor who is unable to discharge the duties of the office believes his disability to be removed, he may call a conference consisting of the three persons referred to as members of such a conference in subsection 1. The three members of the conference shall within ten days examine the disabled governor. Within seven days after the examination they shall conduct a secret ballot and by unanimous vote may find the disability removed.

4. The finding of or failure to find the disability removed shall be immediately made public. [C66, 71, 73, 75,§7.14]

7.15 Federal funds for highway safety. The governor, in addition to other duties and responsibilities conferred upon him by the Constitution and laws of this state, is hereby empowered to contract for the benefits available to this state under any Act of Congress for highway safety, law enforcement, or other related programs, and in so doing, to co-operate with federal and state agencies, private and public organizations, and with individuals, to effectuate the purposes of these enactments. The governor shall be responsible for and is hereby empowered to administer, either through his office or through one or more state departments or agencies designated by him or any combination of the foregoing the highway safety, law enforcement and related programs of this state and those of its political subdivisions, all in accordance with said Acts and the Constitution of the state of Iowa, in implementation thereof. [C71, 73, 75,§7.15]
Referred to in §80.26

7.16 Vacancies filled at less than statutory salary. The governor or other appointing authority may, when appointing or employing any person for which a salary is specifically provided by the appropriation bill, appoint a person to fill the vacancy at a lesser salary than that provided by the appropriation bill. [C71, 73, 75,§7.16]

CHAPTER 7A

PLANNING AND PROGRAMMING OFFICE

Winterization for low-income elderly, 66GA, ch 110,§15

7A.1 Office created.
7A.2 Definitions.
7A.3 Primary responsibility.
7A.4 State agencies and officers to co-operate.
7A.5 Review by governor.
7A.6 Board of regents exemption.
7A.7 Municipal affairs.

7A.1 Office created. There is hereby created the office for planning and programming which will be directly attached to and a part of the office of the governor. The governor may appoint a director of planning and programming and other necessary personnel. Employees of the office shall serve at the pleasure of the governor. Where required by federal statutes, employees shall be covered under the provisions of chapter 19A. [C71, 73, 75,§7A.1]

7A.2 Definitions. For purposes of this chapter, unless the context otherwise requires:

1. *"Federal aid"* means any federal grants, loans, or other federal assistance whether or not state or local funds are required to match or contribute toward the costs of the program for which the aid is available.

2. *"Private aid"* means any grants, loans, or other assistance available from nonprofit corporations, foundations, and all private or nongovernmental sources, whether or not state or local funds are required to match or contribute toward the costs of the program for which the aid is available.

3. *"State agency"* means any departments, boards, commissions, or agencies of state government, or any subunit thereof, except the legislative and judicial departments and agencies thereof.

4. *"Local governments"* means any counties, municipal corporations, or other political subdivisions of this state. [C71, 73, 75,§7A.2]

7A.3 Primary responsibility. The primary responsibility of the office for planning and programming shall be to co-ordinate the development of physical, economic, and human resource programs and to promote efficient and economic utilization of federal, state, local, and private resources. To this end, the office shall:

1. Prepare comprehensive state-wide recommendations and plans, as directed by the governor.

2. Prepare and submit economic reports appraising the economic situation of the state, economic growth and development of the state as it pertains to employment and income, and any other economic factors, as directed by the governor.

3. Co-ordinate its activities with the state comptroller so that any comprehensive state-wide planning program is consistent with the anticipated future income of the state, and so that comprehensive state-wide programs are consistent and are included within the governor's budget submitted to the general assembly.

4. Provide technical assistance as requested by state agencies.

5. Enter into interagency agreements with state agencies in developing plans and programs.

6. Contract with universities, consultants, and other public and private agencies, in developing plans and programs.

7. Design, establish, and maintain a state resource center for compiling information, data, and other materials, which will be available at the request of the governor, the general assembly, state agencies, and local governments to aid in formulating, developing, adopting, and implementing plans and programs.

8. Analyze the quality and quantity of services required for the orderly growth of the state, taking into consideration the relationship of activities, capabilities, and future plans of local governments, private enterprise, the state and federal government, and regional units established under any state or federal legislation, and make recommendations to the governor and the general assembly for the establishment and improvement of such services.

9. Work to harmonize the planning activities of all state agencies.

10. Consult with and advise state agencies concerning plans and programs filed with the federal government relative to any federal aid program.

11. Provide assistance to the general assembly or any of its committees, when requested.

12. Apply for, receive, administer, and utilize federal or other funds available for achieving the purposes of this chapter.

13. Inquire into methods of planning and program development, and the conduct of affairs of state government; prescribe adequate systems of records for planning and programming purposes; prescribe the establishment and implementation of standards for effective planning and programming; and exercise all other powers necessary in discharging the powers and duties prescribed by this chapter.

14. Develop and submit other plans, programs, and reports, as directed by the governor.

15. Compile and maintain current information on available and pending federal and private aid programs, and make such information available to state agencies and local governments.

16. Provide assistance, as requested, to state agencies and local governments in preparing applications for federal or private aid.

17. Compile and maintain current information relating to the amount of federal and private aid being received and disbursed by state agencies and local governments; report annually to the governor and the general assembly on such receipts and disbursements during the preceding fiscal year, and on the adequacy of programs financed by federal and private aid in this state.

18. Analyze the relations of federal and private aid programs with state and locally financed programs and make recommendations to state agencies, local governments, the governor, and the general assembly on means of avoiding duplication of activity and of increasing efficiency in programs financed by federal or private aid. [C71, 73, 75,§7A.3]

7A.4 State agencies and officers to co-operate. All state agencies and officers shall provide the office of planning and programming with any information it requests pertaining to its duties under this chapter, shall assist the office in carrying out its duties, and shall provide the office with a copy of all official grant-in-aid applications, together with a copy of any program plan developed to meet federal requirements, prior to submission of such application to the federal government. [C71, 73, 75,§7A.4]

Referred to in §7A.6

7A.5 Review by governor. The governor shall review, examine, and evaluate all plans and programs filed with the office for planning and programming. If it is determined that any two or more plans or programs are contradictory or duplicate one another, the governor shall determine which plan or program shall prevail and which contradictory items or duplications shall be deleted from the other plans or programs. The governor's decision on such matters shall be final and binding. With respect to institutions governed by the board of regents, this authority shall be limited to those plans or programs which are partially or wholly supported by federal grants-in-aid. It is further understood that the governor's authority to delete contradictory or duplicating plans or programs shall be limited with regard to such institutions to conflicts of plans or programs of regents institutions with plans or programs of other state agencies or institutions. The governor may study the feasibility and desirability of establishing and maintaining various central locations throughout the state where services and aid may be rendered to the political subdivisions and residents of the state. He shall report to the general assembly the results of such study and make recommendations in regard thereto. [C71, 73, 75, §7A.5]

Referred to in §7A.6

7A.6 Board of regents exemption. Board of regents institutions shall be exempt from the provisions of sections 7A.4 and 7A.5 insofar as grant-in-aid applications are concerned, and shall be required to submit only a copy of their grant application cover page and budget forms at the time of submissions to the federal agency. [C71, 73, 75,§7A.6]

7A.7 Municipal affairs. A division of municipal affairs shall be established within the office for planning and programming. The division shall:

1. Utilize grants or other financial assistance made available by the state, federal government, or any other public or private sources for performing the functions of the division. Nothing in this subsection shall prevent or impair the powers of other state agencies or local governments to contract for, receive, or utilize grants directly from the federal or local governments or from any other public or private source.

2. Provide planning assistance and co-ordination, upon request, to local and area planning units. All present governmental units who engage in planning activities which are supported by local, state, or federal funds shall in no way be prevented or impaired in such planning activities.

3. Perform such other functions and activities as are not inconsistent with the general purposes of this chapter. [C71, 73, 75,§7A.7]

CHAPTER 8

BUDGET AND FINANCIAL CONTROL ACT

Referred to in §§20.5, 80B.14, 123.11, 215A.9, 261.2(5), 307.8, 313.4, 313.5, 467D.15, 476.10

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8.3 Governor.
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THE BUDGET

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8.43 Salary adjustment fund.
8.44 Reporting additional funds received.
8.45 Purchase of real estate by state departments.
8.46 to 8.50 Reserved.
8.51 Fiscal year of political subdivisions.

8.1 Title. This chapter shall be known and may be cited as the "Budget and Financial Control Act". [C35,§84-e1; C39,§**84.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.1]

8.2 Definitions. When used in this chapter:

1. The terms *"department and establishment"* and *"department"* or *"establishment"*, mean any executive department, commission, board, institution, bureau, office, or other agency of the state government, including the state department of transportation, except for funds which are required to match federal aid allotted to the state by the federal government for highway special purposes, and except the courts, by whatever name called, other than the legislature, that uses, expends or receives any state funds.

2. *"State funds"* means any and all moneys appropriated by the legislature, or money collected by or for the state, or an agency thereof, pursuant to authority granted by any of its laws.

3. *"Private trust funds"* means any and all endowment funds and any and all moneys received by a department or establishment from private persons to be held in trust and expended as directed by the donor.

4. *"Special fund"* means any and all government fees and other revenue receipts earmarked to finance a governmental agency to which no general fund appropriation is made by the state.

5. *"Repayment receipts"* means those moneys collected by a department or establishment that supplement an appropriation made by the legislature.

6. *"Budget"* means the budget document required by this chapter to be transmitted to the legislature.

7. *"Government"* means the government of the state of Iowa.

8. *"Unencumbered balance"* means the unobligated balance of an appropriation after charging thereto all unpaid liabilities for goods and services and all contracts or agreements payable from an appropriation or a special fund.

9. *"Code"* or *"the Code"* means the Code of Iowa. [C35,§84-e2; C39,§**84.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.2]

8.3 Governor. The governor of the state shall have:

1. Direct and effective financial supervision over all departments and establishments, and every state agency by whatever name now or hereafter called, including the same power and supervision over such private corporations, persons and organizations that may receive,

pursuant to statute, any funds, either appropriated by, or collected for, the state, or any of its departments, boards, commissions, institutions, divisions and agencies.

2. The efficient and economical administration of all departments and establishments of the government.

3. The initiation and preparation of a balanced budget of any and all revenues and expenditures for each regular session of the legislature. [C35,§84-e3; C39,§**84.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.3]

8.4 State comptroller—salary—bond. There is hereby created an office to be known as "office of state comptroller", which shall be directly attached to the office of the governor and shall be under the general direction, supervision and control of the governor. Such office shall be in immediate charge of an officer to be known as "state comptroller", who shall be appointed by the governor, with the approval of two-thirds of the senate, and shall hold office at his pleasure and shall receive a salary as fixed by the general assembly. Before entering upon the discharge of his duties, he shall take the constitutional oath of office and he shall give a surety bond in such penalty as may be fixed by the governor, payable to the state, but such penalty shall not be less than twenty-five thousand dollars conditioned upon the faithful discharge of his duties. The premium on his bond shall be paid out of the state treasury. [C24,§§309, 311–316; C27,§§309, 311, 313–316; C31,§§309, 311, 314–316, 1063; C35, §84-e4; C39,§**84.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.4]

See biennial salary Act

8.5 General powers and duties. The state comptroller shall have the power and authority to:

1. *Assistants.* Employ, with the approval of the governor, two assistant comptrollers and such clerical assistants as he may find necessary.

2. *Compensation of employees.* Fix the compensation, with the approval of the governor, of any person employed by him, provided that the total amount paid in salaries shall not exceed the appropriation made for that purpose.

3. *Discharge of employees.* Discharge any employee of his department.

4. *Miscellaneous duties.* Exercise and perform such other powers and duties as may be prescribed by law. [C51,§§50–58; R60,§§71–79, 1967; C73,§§66–74; C97,§§89–97, 162; S13,§§89, 162, 163-a, 170-e,-f; SS15,§§170-r,-s,-t,-u; C24,§§102–109, 391–407; C27,§§102–109, 130-a1, 391–407; C31, §§102–109, 130-a1, 391–397, 397-d1, 398–407; C35, §84-e5; C39,§**84.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.5; 66GA, ch 1056,§2]

Referred to in §261.2(5)
See chapter 19A for merit employment system

8.6 Specific powers and duties. The specific duties of the state comptroller shall be:

1. *Audit of claims.* To audit all demands by the state, and to preaudit all accounts submitted for the issuance of warrants.

2. *Collection and payment of funds—monthly payments.* To control the payment of all moneys into the treasury, and all payments from the treasury by the preparation of appropriate warrants, or warrant checks, directing such collections and payment and to advise the state treasurer monthly in writing of the amount of public funds not currently needed for operating expenses. Whenever the state treasury includes state funds that require distribution to counties, municipalities or other political subdivisions of this state, and said counties, municipalities and other political subdivisions do certify to the state comptroller that warrants will be stamped for lack of funds within the thirty-day period following said certification, the state comptroller may partially distribute such funds on a monthly basis. Whenever the Code requires that any fund be paid by a specific date, the comptroller shall prepare a final accounting and shall make a final distribution of any remaining funds prior to that date.

3. *Contracts.* To certify, record and encumber all formal contracts to prevent overcommitment of appropriations and allotments.

4. *Forms.* To prescribe all accounting and business forms and the system of accounts and reports of financial transactions by all departments and agencies of the state government other than those of the legislative branch, and to consult with all state officers and agencies which receive reports and forms from county officers, in order to devise standardized reports and forms which will permit computer processing of the information submitted by county officers, and to prescribe forms on which each municipality, at the time of preparing estimates required under section 24.3, shall be required to compile in parallel columns the following data and estimates for immediate availability to any taxpayer upon request:

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

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

c. For the proposed budget year, an estimate

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

d. To insure uniformity, accuracy, and efficiency in the preparation of budget estimates by municipalities subject to chapter 24, the comptroller shall prescribe the procedures to be used and instruct the appropriate officials of the various municipalities on implementation of the procedures.

Referred to in §218.85

5. *Accounts.* To keep the central budget and proprietary control accounts of the state government. Budget accounts are those accounts maintained to control the receipt and disposition of all funds, appropriations and allotments. Proprietary accounts are those accounts relating to assets, liabilities, income and expense.

6. *Preaudit system.* To establish and fix a reasonable imprest cash fund for each state department and institution for disbursement purposes where needed; provided, that these revolving funds shall be reimbursed only upon vouchers approved by the state comptroller. It is the purpose of this subdivision to establish a preaudit system of settling all claims against the state, but the preaudit system shall not be applicable to the institutions under the control of the state board of regents or to the state fair board.

7. *Fair board and board of regents.* To control the financial operations of the state fair board and the institutions under the state board of regents:

a. By charging all warrants issued to the respective educational institutions and the state fair board to an advance account to be further accounted for and not as an expense which requires no further accounting.

b. By charging all collections made by the educational institutions and state fair board to the respective advance accounts of the institutions and state fair board, and by crediting all such repayment collections to the respective appropriations and special funds.

c. By charging all disbursements made to the respective allotment accounts of each educational institution or state fair board and by crediting all such disbursements to the respective advance and inventory accounts.

d. By requiring a monthly abstract of all receipts and of all disbursements, both money and stores, and a complete account-current each month from each educational institution and the state fair board.

Referred to in §§8.31, 11.2

8. *Custody of records.* To have the custody of all books, papers, records, documents, vouchers, conveyances, leases, mortgages, bonds and other securities appertaining to the fiscal affairs and property of the state, which are not required to be kept in some other office.

9. *Apportionment of interest.* To apportion the interest of the permanent school fund on the first Monday of March of each year, among the several counties in proportion to the number of persons between five and twenty-one years of age in each, as shown by the last report filed with him by the superintendent of public instruction.

See §§257.18(18), 302.13

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

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

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

13. *Certification for levy.* On February 1 the state comptroller shall, for each year of the biennium, certify to the department of revenue, the amount of money to be levied for general state taxes.

Referred to in §444.22

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

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

16. *Rules.* To make such rules, subject to the approval of the governor, as may be necessary for effectively carrying on the work of the state comptroller's office. The comptroller may, with the approval of the executive council, require any state official, agency, department or commission, to require any applicant, registrant, filer, permit holder or license holder, whether individual, partnership, trust or corporation, to submit to said official, agency,

department or commission, the social security or the tax number or both so assigned to said individual, partnership, trust or corporation.

17. *Budget report.* The comptroller shall prepare and file in his office, on or before the first day of December of each even-numbered year, a state budget report, which shall show in detail the following:

a. Classified estimates in detail of the expenditures necessary, in his judgment, for the support of each department and each institution and department thereof for the ensuing biennium.

b. A schedule showing a comparison of such estimates with the askings of the several departments for the current biennium and with the expenditures of like character for the last two preceding bienniums.

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

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

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

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

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

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

i. Statements showing:

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

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

(3) The estimated condition of the treasury at the end of the next biennium, if his recommendations are adopted.

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

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

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

(7) Such other data or information as the comptroller may deem advisable.

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

19. *Division of social services.* For the purpose of performing the duties of the comptroller provided in this chapter as applied to the divisions of the department of social services controlling state institutions, the comptroller shall assign an employee of his office to check and audit all claims against such directors before such claims are approved by such directors. He shall keep all records and accounts relating to the expenditures of the directors. He shall, in the checking and auditing of claims against the directors and keeping the records and accounts of such directors, be under the direction and supervision of the comptroller, and act as an agent of said comptroller. The commissioner of the department of social services shall furnish said employee of the comptroller with office space and such help and assistants as may be necessary to properly perform the duties therein specified.

20. *Workers' compensation claims.* To employ appropriate staff to handle and adjust claims of state employees for workers' compensation benefits pursuant to chapters 85, 85A, and 86, or with the approval of the executive council contract for such services or purchase workers' compensation insurance coverage for state employees or selected groups of state employees. The state comptroller shall quarterly determine an appropriate amount, based upon the cost of workers' compensation insurance, that shall be collected from the agencies, departments or divisions which have not received an appropriation for the payment of workers' compensation insurance and which operate from moneys other than from the general fund and such payments shall be deposited in the general fund. [C51,§50; R60,§§71, 1967; C73,§66; C97,§89; S13,§§89, 161-a; C24, 27, 31, §§102, 130, 329; C35,§84-e6; C39,§84.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.6; 66GA, ch 1057,§1]

Referred to in §§8.31, 11.2, 218.85, 218.86, 218.89, 444.22
Auditor for transportation department appointed, §313.20
Report to governor, §17.3
See §§218.84–218.89

8.7 Accounting. The comptroller may at any time require any person receiving money, securities, or property belonging to the state, or having the management, disbursement, or other disposition of the same, an account of which is kept in his office, to render statements thereof and information in reference thereto. [C51,§52; R60,§73; C73,§68; C97,§91; C24, 27, 31, §104; C35,§84-e7; C39,§84.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.7]

45GA, ch 4,§7, editorially divided

8.8 Stating account. If any officer who is accountable to the treasury for any money or property neglects to render an account to the comptroller within the time prescribed by law, or, if no time is so prescribed, then, within twenty days after being required so to do by the comptroller, the comptroller shall state an account against him from the books of his office, charging ten percent damages on the whole sum appearing due, and interest at the rate of six percent per annum on the aggregate from the time when the account should have been rendered; all of which may be recovered by action brought on such account, or on the

official bond of such officer. [C51,§54; R60,§75; C73,§70; C97,§93; C24, 27, 31,§105; C35,§84-e8; C39, §84.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.8]

Referred to in §8.10

8.9 Compelling payment. If any such officer fails to pay into the treasury the amount received by him within the time prescribed by law, or, having settled with the comptroller, fails to pay the amount found due, the comptroller shall charge such officer with twenty percent damages on the amount due, with interest on the aggregate from the time the same became due at the rate of six percent per annum, and the whole may be recovered by an action brought on such account, or on the official bond of such officer, and he shall forfeit his commission. [C51,§55; R60,§76; C73,§71; C97, §94; C24, 27, 31,§106; C35,§84-e9; C39,§84.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.9]

Referred to in §8.10

8.10 Defense to claim. The penal provisions in sections 8.8 and 8.9 are subject to any legal defense which the officer may have against the account as stated by the comptroller, but judgment for costs shall be rendered against the officer in the action, whatever be its result, unless he rendered an account within the time named in sections 8.8 and 8.9. [C51,§56; R60, §77; C73,§72; C97,§95; C24, 27, 31,§107; C35,§84-e10; C39,§84.10; C46, 50, 54, 58, 62, 66, 71, 73, 75, §8.10]

8.11 Requested credits — oath required. When a county treasurer or other receiver of public money seeks to obtain credit on the books of the comptroller's office for payment made to the treasurer, before giving such credit, the comptroller shall require him to take and subscribe an oath that he has not used, loaned, nor appropriated any of the public money for his private benefit, nor the benefit of any other person. [C51,§57; R60,§78; C73,§73; C97,§96; C24, 27, 31,§108; C35,§84-e11; C39,§84.11; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.11]

8.12 Requisition for information. In those cases where the comptroller is authorized to call upon persons or officers for information, or statements, or accounts, he may issue his requisition therefor in writing to the person or officer called upon, allowing reasonable time, which, having been served and return made thereon to the comptroller, as a notice in a civil action, shall be evidence of the making of the requisition therein expressed. [C51,§58; R60,§79; C73,§74; C97,§97; C24, 27, 31,§109; C35, §84-e12; C39,§84.12; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.12]

8.13 Claims—limitations. The state comptroller shall be limited in authorizing the payment of claims, as follows:

1. *Three months limit.* No claim shall be allowed by the state comptroller's office when such claim is presented after the lapse of three months from its accrual. Claims by state employees for benefits pursuant to chapters 85, 85A and 86 shall be subject to limitations provided in such chapters.

2. *Convention expenses.* No claims for expenses in attending conventions, meetings, conferences or gatherings of members of any association or society organized and existing as quasi-public association or society outside the state of Iowa shall be allowed at public expense, unless authorized by the executive council; and claims for such expenses outside of the state shall not be allowed unless the voucher is accompanied by so much of the minutes of the executive council, certified to by its secretary, showing that such expense was authorized by said council. This section shall not apply to claims in favor of the governor, attorney general, Iowa state commerce commissioners, or to trips referred to in section 217.20.

3. *Payment from fees.* No claims for per diem and expenses payable from fees shall be approved for payment in excess of such fees where the law provides that such expenditures are limited to the special funds collected and deposited in the state treasury. [C51,§53; R60,§74; C73,§69; C97,§92; S13,§170-f; SS15, §§170-s,-t; C24, 27, 31,§§393, 398, 407; C35,§84-e13; C39,§84.13; C46, 50, 54, 58, 62, 66, 71, 73, 75, §8.13; 66GA, ch 1057,§2]

8.14 Claims—approval. The state comptroller before approving a claim shall determine:

1. That the creation of the claim is clearly authorized by law.

2. That the claim has been authorized by an officer or official body having legal authority to so authorize and that the fact of such authorization has been certified to said comptroller by such officer or official body.

3. That all legal requirements have been observed, including notice and opportunity for competition, if required by law.

4. That the claim is in proper form as the state comptroller may provide.

5. That the charges are reasonable, proper, and correct and no part of said claim has been paid. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.14]

8.15 Vouchers. Before a warrant or equivalent shall be issued for any claim payable from the state treasury, there shall be filed an itemized voucher which shall show in detail the items of service, expense, thing furnished, or contract upon which payment is sought. There shall be attached the claimant's original invoice to a department's approved voucher which shall indicate in detail the items of service, expense, thing furnished, or contract upon which payment is sought.

Vouchers for postage, stamped envelopes, and postal cards may be audited as soon as an order therefor is entered. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.15]

8.16 Warrants—form. Each warrant shall bear on the face thereof the signature or a facsimile thereof of the comptroller, or the sig-

nature or a facsimile thereof of an assistant comptroller in case of the vacancy in the office of the comptroller; a proper number, date, amount, name of payee, a reference to the law under which it is drawn, whether for salaries or wages, services or supplies, and what kind of supplies, and from what office or department, or for any other general or special purposes whatsoever, or in lieu thereof, a coding system may be used, which particulars shall be entered in a warrant register kept for that purpose in the order of issuance; and, as soon as practicable after issuing such warrant register, the comptroller shall certify a duplicate thereof to the treasurer. [C31,§102(8); C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.16]

8.17 Required payee. All warrants shall be drawn to the order of the person, firm, or contractor entitled to payment or compensation, except that when goods or material are purchased in foreign countries, warrants may be drawn upon the treasurer of state, payable to bearer for net amount of invoice and current exchange, and the treasurer of state shall furnish such foreign draft payable to order of person, firm, or corporation from whom purchase is made. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §8.17]

8.18 Prohibited payee. In no case shall warrants be drawn in the name of the certifying office, department, board, or institution, or in the name of an employee of the same, except for personal service rendered or expense incurred by said employee, unless there be express statutory authority therefor. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.18]

8.19 Claims exceeding appropriations. No claim shall be allowed when the same will exceed the amount specifically appropriated therefor. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.19]

8.20 Cancellation of state warrants. The state comptroller as of March 31, June 30, September 30, and December 31 of each year shall cancel and request the treasurer of state to stop payment on all state warrants which have been outstanding and unredeemed by the state treasurer for one year or longer. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.20]

See §249.8

THE BUDGET

See §8.6(17)

8.21 Budget transmitted. Not later than February 1 of the year of each biennial legislative session, the governor shall transmit to the legislature a document to be known as a budget, setting forth his financial program for each of the fiscal years of the ensuing biennium and having the character and scope hereinafter set forth. [SS15,§191-b; C24, 27, 31,§334; C35,§84-e14; C39,§84.14; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.21]

Referred to in §8.27

8.22 Nature and contents. The budget shall consist of three parts, the nature and contents of which shall be as follows:

PART I

Referred to in Part III

Governor's budget message. Part I shall consist of the governor's budget message, in which he shall set forth:

1. His program for meeting all the expenditure needs of the government for each of the years of the biennium to which the budget relates, indicating the classes of funds, general or special, from which such appropriations are to be made and the means through which such expenditures shall be financed.

2. Financial statements giving in summary form:

a. The condition of the treasury at the end of the last completed fiscal year, the estimated condition of the treasury at the end of the year in progress, and the estimated condition of the treasury at the end of each of the two years to which the budget relates if his budget proposals are put into effect.

b. Statements showing the bonded indebtedness of the government, debt authorized and unissued, debt redemption and interest requirements and condition of the sinking funds, if any.

c. A summary of appropriations recommended for each of the two years of the biennium to which the budget relates for each department and establishment and for the government as a whole, in comparison with the actual expenditures for the last completed fiscal year and the estimated expenditures for the year in progress.

d. A summary of the revenue, estimated to be received by the government during each of the two years of the biennium to which the budget relates, classified according to sources, in comparison with the actual revenue received by the government during the last completed fiscal year and estimated income during the year in progress.

e. Such other financial statements, data and comments as in his opinion are necessary or desirable in order to make known in all practicable detail the financial condition and operation of the government and the effect that the budget as proposed by him will have on such condition and operations.

If the estimated revenues of the government for the ensuing biennium as set forth in the budget on the basis of existing laws, plus the estimated amounts in the treasury at the close of the year in progress, available for expenditure in the ensuing biennial period is less than the aggregate recommended for the ensuing biennial period as contained in the budget, the governor shall make recommendations to the legislature in respect to the manner in which such deficit shall be met, whether by an increase in the state tax or the imposition of new taxes, increased rates on existing taxes, or otherwise, and if the aggregate of such estimated revenues, plus estimated balances in the treasury is greater than such recommended appropriations for the ensuing biennial period, he shall make such recommendations in refer-

ence to the application of such surplus to the reduction of debt or otherwise, to the reduction in taxation, or to such other action as in his opinion is in the interest of the public welfare.

PART II
Referred to in Part III

Recommended appropriations. Part II shall present in detail for each of the two years of the ensuing biennium his recommendations for appropriations to meet the expenditure needs of the government from each general class of funds, in comparison with actual expenditures for each of said purposes during the last completed fiscal year and estimated expenditures for the year in progress, classified by departments and establishments and indicating for each the appropriations recommended for:

1. Meeting the cost of administration, operation, and maintenance of such departments and establishments.

2. Appropriations for meeting the cost of land, public improvements, and other capital outlays in connection with such departments and establishments.

Each item of expenditure, actual or estimated, and appropriations recommended for administration, operation and maintenance of each department or establishment shall be supported by detailed statements showing the actual and estimated expenditures and appropriations classified by objects according to a standard scheme of classification to be prescribed by the state comptroller, hereinabove provided for.

PART III

Appropriation bills. Part III shall embrace a draft or drafts of appropriation bills having for their purpose to give legal sanction to the appropriations recommended to be made in Parts I and II. Such appropriation bills shall indicate the funds, general or special, from which such appropriations shall be paid, but such appropriations need not be in greater detail than to indicate the total appropriation to be made for:

1. Administration, operation, and maintenance of each department and establishment for each fiscal year of the biennium.

2. The cost of land, public improvements, and other capital outlays for each department and establishment, itemized by specific projects or classes of projects of the same general character. [SS15,§191-b; C24, 27, 31,§§332, 333, 335; C35,§84-e15; C39,**§84.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.22]

Referred to in §§8.25, 8.27

8.23 Biennial departmental estimates. On, or before, September 1, next prior to each biennial legislative session, all departments and establishments of the government shall transmit to the state comptroller, hereinabove provided for, on blanks to be furnished by him, estimates of their expenditure requirements, including every proposed expenditure, for each fiscal year of the ensuing biennium, classified so as to distinguish between expenditures estimated for (1) administration, operation and maintenance, and (2) the cost of each project involving the purchase of land or the making of a public improvement or capital outlay of a permanent character, together with such supporting data and explanations as may be called for by the state comptroller, hereinabove provided for. In case of the failure of any department or establishment to submit such estimates within the time above specified, the governor shall cause to be prepared such estimates for such department or establishment as in his opinion are reasonable and proper. The state comptroller shall furnish standard budget request forms to each department or agency of state government. [S13,§163-a; SS15,§191-a; C24, 27, 31,§§327, 328; C35,§84-e16; C39,**§84.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.23]

Referred to in §§8.25, 19A.4, 247.3, 467D.13

8.24 Biennial estimate of income. On, or before, October 1, next prior to each biennial legislative session, the state comptroller, hereinabove provided for, shall prepare an estimate of the total income of the government for each fiscal year of the ensuing biennium, in which the several items of income shall be listed and classified according to sources or character, departments or establishments producing said funds and brought into comparison with the income actually received during the last completed fiscal year and the estimated income to be received during the year in progress. [C35,§84-e17; C39,**§84.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.24]

Referred to in §8.25

8.25 Tentative budget. Upon the receipt of the estimates of expenditure requirements called for by section 8.23 and the preparation of the estimates of income called for by section 8.24 and not later than December 1, next succeeding, the state comptroller, hereinabove provided for, shall cause to be prepared a tentative budget conforming as to scope, contents and character to the requirements of section 8.22 and containing the estimates of expenditures and revenue as called for by sections 8.23 and 8.24, which tentative budget shall be transmitted to the governor. [C24, 27, 31,§332; C35,§84-e18; C39,**§84.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.25]

Referred to in §8.26

8.26 Hearings. Immediately upon the receipt by him of the tentative budget provided for by section 8.25 the governor shall make provision for public hearings thereon, at which he may require the attendance of the heads and other officers of all departments, establishments and other persons receiving or requesting the grant of state funds and the giving by them of such explanations and suggestions as they may be called upon to give or as they may desire to offer in respect to items of requested appropriations in which they are interested. The governor shall also extend

invitations to the governor-elect and the state comptroller to be present at such hearings and to participate in the hearings through the asking of questions or the expression of opinion in regard to the items of the tentative budget. [C24, 27, 31,§331; C35,§84-e19; C39, §84.19; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.26]

Referred to in §2.50

8.27 Preparation of budget. Following his inauguration, the governor shall proceed to the formulation of the budget provided for by sections 8.21 and 8.22. [C35,§84-e20; C39,§84.20; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.27]

8.28 Supplemental estimates. The governor shall transmit to the legislature supplemental estimates for such appropriations as in his judgment may be necessary on account of laws enacted after transmission of the budget, or as he deems otherwise in the public interest. He shall accompany such estimates with a statement of the reasons therefor, including the reasons for their omission from the budget. Whenever such supplemental estimates amount to an aggregate which, if they had been contained in the budget, would have required the governor to make a recommendation for the raising of additional revenue, he shall make such recommendation. [C35,§84-e21; C39,§84.21; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.28]

8.29 Budget analysts at institutions of higher learning—unified accounting system. There shall be budget analysts attached to each of the three universities by the state comptroller. The purpose of the budget analysts shall be to provide liaison between the regents institutions and the comptroller's office in preparation and execution of the budgets and to research and accumulate financial and statistical data relative to the budgets. The budget analysts shall work closely with the financial and administrative officers of the institutions and the central office of the board of regents.

All financial and statistical data and information prepared or accumulated by the budget analysts shall be made available to the governor and the general assembly for their needs in budgeting and appropriation legislation.

The budget analysts shall be provided with adequate office space, equipment and supplies by the institutions. Salary and travel expenses shall be paid by the state comptroller's office.

The state board of regents, with the approval of the state comptroller, shall establish a uniform budgeting and accounting system for the institutions of higher education under its control, and shall require each of the institutions of higher education to begin operating under the uniform system not later than June 30, 1976. [C71, 73, 75,§8.29; 66GA, ch 60,§11]

EXECUTION OF THE BUDGET

8.30 Availability of appropriations. The appropriations made shall not be available for expenditure until allotted as provided for in section 8.31. All appropriations now or hereafter made are hereby declared to be maximum and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named in the event that the estimated budget resources during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full. The governor shall restrict allotments only to prevent an overdraft or deficit in any fiscal year for which appropriations are made. [C35,§84-e23; C39, §84.23; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.30]

8.31 Quarterly requisitions — exceptions — modifications. Before an appropriation for administration, operation and maintenance of any department or establishment shall become available, there shall be submitted to the governor, not less than twenty days before the beginning of each quarter of each fiscal year, a requisition for an allotment of the amount estimated to be necessary to carry on its work during the ensuing quarter. Such requisition shall contain such details of proposed expenditures as may be required by the governor.

The governor shall approve such allotments, unless he finds that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, in which event he may modify such allotments to the extent he may deem necessary in order that there shall be no overdraft or deficit in the several funds of the state at the end of such fiscal year, and shall submit copies of the allotments thus approved or modified to the head of the department or establishment concerned, and to the state comptroller, hereinabove provided for, who shall set up such allotments on his books and be governed accordingly in his control of expenditures.

Allotments of appropriations made for equipment, land, permanent improvements, and other capital projects may, however, be allotted in one amount by major classes or projects for which they are expendable without regard to quarterly periods.

Allotments thus made may be subsequently modified by the governor either upon the written request of the head of the department or establishment concerned, or in the event the governor finds that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, upon his own initiative to the extent he may deem necessary in order that there shall be no overdraft or deficit in the several funds of the state at the end of such fiscal year; and the head of the department or establishment and the state comptroller, hereinabove provided for, shall be given notice of such modification in the same way as in the case of original allotments.

Provided, however, that the allotment requests of all departments and establishments collecting governmental fees and other revenue which supplement a state appropriation shall attach to the summary of requests a statement showing how much of the proposed allotments are to be financed from (1) state ap-

propriations, (2) stores, and (3) repayment receipts.

The procedure to be employed in controlling the expenditures and receipts of the state fair board and the institutions under the state board of regents, whose collections are not deposited in the state treasury, will be that outlined in section 8.6, subsection 7.

The finding by the governor that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, as provided herein, shall be subject to the concurrence in such finding by the executive council before reductions in allotment shall be made, and in the event any reductions in allotment be made, such reductions shall be uniform and prorated between all departments, agencies and establishments upon the basis of their respective appropriations. [C35,§84-e24; C39,§**84.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.31]

Referred to in §§8.30, 8.32
See 1958 Opinion of Atty. Gen. page 58

8.32 Conditional availability of appropriations. All appropriations made to any department or establishment of the government as receive or collect moneys available for expenditure by them under present laws, are declared to be in addition to such repayment receipts, and such appropriations are to be available as and to the extent that such receipts are insufficient to meet the costs of administration, operation, and maintenance, or public improvements of such departments:

Provided, that such receipts or collections shall be deposited in the state treasury as part of the general fund or special funds in all cases, except those collections made by the state fair board, the institutions under the state board of regents and the state conservation commission.

Provided further, that no repayment receipts shall be available for expenditures until allotted as provided in section 8.31; and

Provided further, that the collection of repayment receipts by the state fair board and the institutions under the state board of regents shall be deposited in a bank or banks duly designated and qualified as state depositories, in the name of the state of Iowa, for the use of such boards and institutions, and such funds shall be available only on the check of such boards or institutions depositing them, which are hereby authorized to withdraw such funds, but only after allotment by the governor as provided in section 8.31; and

Provided further, that this chapter shall not apply to endowment or private trust funds or to gifts to institutions owned or controlled by the state or to the income from such endowment or private trust funds, or to private funds belonging to students or inmates of state institutions.

The provisions of this chapter shall not be construed to prohibit the state fair board from creating an emergency or sinking fund out of the receipts of the state fair and state appropriation for the purpose of taking care of any emergency that might arise beyond the control of the board of not to exceed three hundred thousand dollars, provided, however, that any expenditure from said fund shall be subject to the approval of the executive council. Neither shall the provisions of this chapter be construed to prohibit the state fair board from retaining an additional sum of not to exceed three hundred fifty thousand dollars to be used in carrying out the provisions of chapter 173. [C35,§84-e25; C39,§**84.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.32]

8.33 Limit of expenditures—reversion. No obligation of any kind whatsoever shall be incurred or created subsequent to the last day of the fiscal term for which an appropriation is made, except when specific provision otherwise is made in the Act making the appropriation. On the last day of the fiscal term it shall be the duty of the head of each department, board, or commission, or officer receiving the appropriation under any Act, to file with the state comptroller a list of all obligations incurred, and for which warrants have not been drawn, up to and including that date. On September 30, or as otherwise provided in an appropriation Act, following the close of each fiscal term all unencumbered or unobligated balances of appropriations made for said fiscal term shall revert to the state treasury and to the credit of the fund from which the appropriation or appropriations were made, except that capital expenditures for the purchase of land or the erection of the buildings or new construction shall continue in force until the attainment of the object or the completion of the work for which such appropriations are made unless the Act making the appropriation for the capital expenditure contains a specific provision relating to a time limit for incurring an obligation or reversion of funds. This section shall not be construed to repeal the provisions of sections 19.11 to 19.14. [C35,§84-e26; C39,§**84.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.33; 66GA, ch 69,§1]

Referred to in §§25.2, 327H.24

8.34 Charging off unexpended appropriations. Except as otherwise provided by law, the comptroller shall transfer to the fund from which any appropriation was made, any unexpended or unencumbered balance of such appropriation remaining at the expiration of three months after the close of the biennial fiscal term for which the appropriation was made. At the time the transfer is made on the books of his office he shall certify such fact to the treasurer of state, who shall make corresponding entries on the books of the treasurer's office. [C27, 31,§130-a1; C35,§84-a1; C39, §**84.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.34]

8.35 General supervisory control. The governor and the state comptroller and any officer of the office of state comptroller, hereinabove provided for, when authorized by the governor, are hereby authorized to make such in-

quiries regarding the receipts, custody and application of state funds, existing organization, activities and methods of business of the departments and establishments, assignments of particular activities to particular services and regrouping of such services, as in the opinion of the governor, will enable him to make recommendations to the legislature, and, within the scope of the powers possessed by him, to order action to be taken, having for their purpose to bring about increased economy and efficiency in the conduct of the affairs of government. [C35,§84-e27; C39,**§84.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.35]

8.36 Fiscal year. The fiscal year of the government shall commence on the first day of July and end on the thirtieth day of June. This fiscal year shall be used for purposes of making appropriations and of financial reporting and shall be uniformly adopted by all departments and establishments of the government. [C35,§84-e28; C39,**§84.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.36]

8.37 Biennial fiscal term. The biennial fiscal term of the state ends on the thirtieth day of June in each odd-numbered year, and the succeeding biennial fiscal term begins on the day following. [C73,§129; C97,§123; S13, §123; C24, 27, 31,§129; C35,§84-a2: C39,**§84.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.37]

8.38 Misuse of appropriations. No state department, institution, or agency, or any board member, commissioner, director, manager, or other person connected with any such department, institution, or agency, shall expend funds or approve claims in excess of the appropriations made thereto, nor expend funds for any purpose other than that for which the money was appropriated, except as otherwise provided by law. A violation of the foregoing provision shall make any person violating same, or consenting to the violation of same liable to the state for such sum so expended, together with interest and costs, which shall be recoverable in an action to be instituted by the attorney general for the use of the state, which action may be brought in any county of the state. [C35,§84-e29; C39,**§84.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.38]

Referred to in §467D.15

8.39 Use of appropriations — transfer. No appropriation nor any part thereof shall be used for any other purpose than that for which it was made except as otherwise provided by law; provided that the governing board or head of any state department, institution, or agency may, with the written consent and approval of the governor and state comptroller first obtained, at any time during the biennial fiscal term, partially or wholly use its unexpended appropriations for purposes within the scope of such department, institution, or agency.

Provided, further, when the appropriation of any department, institution, or agency is insufficient to properly meet the legitimate expenses of such department, institution, or agency of the state, the state comptroller, with the approval of the governor, is authorized to transfer from any other department, institution, or agency of the state having an appropriation in excess of its necessity, sufficient funds to meet that deficiency.

Any transfer made under the provisions of this section shall be reported to the legislative fiscal committee* on a monthly basis. The report shall cover each calendar month and shall be due the tenth day of the following month. The report shall contain the following: The amount of each transfer; the date of each transfer; the department to which the transfer was made; the department and fund from which the transfer was made; a brief explanation of the reason for the transfer; and such other information as may be required by the committee. A summary of all transfers made under the provisions of this section shall be included in the annual report of the legislative fiscal committee. [C97,§187; SS15,§170-q; C24, 27, 31,§345; C35,§84-a3; C39,**§84.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.39]

Referred to in §§24.24, 125.27, 313.5, 327H.24
*See §2.45

8.40 Misdemeanors — removal — impeachment. A refusal to perform any of the requirements of this chapter, and the refusal to perform any rule or requirement or request of the governor or the state comptroller made pursuant to or under authority of this chapter, by any board member, commissioner, director, manager, building committee, or other officer or person connected with any institution, or other state department or establishment as herein defined, shall subject the offender to a penalty of two hundred fifty dollars, to be recovered in an action instituted in the district court of Polk county by the attorney general for the use of the state, and shall also constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. If such offender be not an officer elected by vote of the people, such offense shall be sufficient cause for removal from office or dismissal from employment by the governor upon thirty days' notice in writing to such offender; and, if such offender be an officer elected by vote of the people, such offense shall be sufficient cause to subject the offender to impeachment. [S13,§163-a; C24, 27, 31,§330; C35,§84-e30; C39,**§84.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§8.40]

Constitutionality, 45GA, ch 4,§31
Misdemeanor, punishment, §687.7
Omnibus repeal, 45GA, ch 4,§33

8.41 and 8.42 Repealed by 58GA, ch 69,§1.

8.43 Salary adjustment fund. There is created a "salary adjustment fund" to be used to segregate funds appropriated by the general assembly to be distributed to various state departments to fund certain salary increases for designated state employees. Funds distributed from the salary adjustment fund shall be sub-

ject to the approval of the governor and state comptroller. [66GA, ch 50,§27]

8.44 Reporting additional funds received. Upon receiving federal funds or any other funds from any public or private sources except gifts or donations made to institutions for the personal use or for the benefit of members, patients or inmates and receipts from the gift shop of merchandise manufactured by members, patients, or inmates, the state departments, agencies, boards, and institutions receiving such funds shall submit a written report within thirty days after receipt of such funds to the state comptroller. The report shall state the source of the funds that supplement or replace state appropriations for institutional operations, the amount received, and the terms under which such funds are received. [C71, 73, 75,§8.44]

8.45 Purchase of real estate by state departments. Purchases of real estate as provided by law may be made by a state department on written contracts providing for payment over a period of years but the obligations thereon shall not constitute a debt or charge against the state of Iowa nor against the funds of the department for which said purchases are made. Purchase payments shall be made from only capital funds appropriated for that purpose. All state-appropriated capital funds used for any one purchase contract shall be taken entirely from a single capital appropriation and shall be set aside for that purpose. In event of default, the only remedy of the seller shall be against the property itself in rem, pursuant to chapter 654. In no event shall a deficiency judgment be entered or enforced against the state or the department making the purchase. The provisions of chapter 656 prescribing how a real estate contract may be forfeited shall, in no event, be applicable. In a foreclosure proceeding pursuant to this section and chapter 654, the department making the purchase and the attorney general shall be the only defendants who need be named and such department and the attorney general may be served personally or by restricted certified mail. The department and the attorney general shall have thirty days from the date of completed service in which to appear. [C71, 73, 75,§8.45]

8.46 to 8.50 Reserved.

8.51 Fiscal year of political subdivisions. The fiscal year of cities, counties, and other political subdivisions of the state shall begin July 1 and end the following June 30. For the purpose of this section, the term political subdivision includes school districts. [C75,§8.51]

The temporary provisions of sections 8.51 to 8.59 appearing in the Code 1975 are omitted.

CHAPTER 8A

STATE COMMUNICATIONS AND EDUCATIONAL RADIO AND TELEVISION

Transferred to ch 18, division V

CHAPTER 8B

MIDWEST NUCLEAR COMPACT

8B.1 Form of compact.
8B.2 Board member appointed by governor.
8B.3 Bylaws filed.
8B.4 Workers' compensation.

8B.1 Form of compact. The midwest nuclear compact, hereinafter called "the compact", is hereby enacted and entered into with all other states legally joining therein, in the form substantially as follows:

ARTICLE I—POLICY AND PURPOSE

The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the midwest and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities and skills requires systematic encouragement, guidance, assistance, and promotion from the party states on a cooperative basis. It is the policy of the party states to undertake such co-operation on a continuing basis. It is the purpose of this compact to provide the instruments and framework for such a co-operative effort in nuclear and related fields, to enhance the economy of the midwest and contribute to the individual and community well-being of the region's people.

ARTICLE II—THE BOARD

a. There is hereby created an agency of the party states to be known as the "midwest nuclear board", hereinafter called "the board". The board shall be composed of one member from each party state designated or appointed

in accordance with the law of the state which he represents, and serving and subject to removal in accordance with such law. The law of each state also shall make specific provision for the appointment of alternates who are authorized and empowered to act for and on behalf of the board member in his absence. The designating or appointing authority promptly shall inform the board of the identity of its member thereon, designated alternate or alternates, and changes therein. If more than one alternate is designated, the designating authority also shall inform the board of the order in which the alternates are empowered to act.

b. The federal government may be represented on the board without vote, if provision is made by federal law for such representation.

c. The board members of the party states shall each be entitled to one vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the board are cast in favor thereof.

d. The board shall have a seal.

e. The board shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The board shall appoint an executive director who shall serve at its pleasure and who also shall act as secretary, and who, together with the treasurer and such other personnel as the board may require, shall be bonded in such amounts as the board may require.

f. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions.

g. The board may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old-age and survivors insurance provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

h. The board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

i. The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state or the United States, or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. Any arrangements pursuant to this paragraph or paragraph "*h*" of this Article shall be detailed in the annual report of the board. Such report shall include the identity of the donor, lender or contractor, the nature of the transaction, and the conditions, if any.

j. The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

k. The board shall adopt bylaws for the conduct of its business, and shall have the power to amend and rescind these bylaws. The board shall publish its bylaws in convenient form, and shall file a copy thereof, and of any amendment thereto, with the designated agency or officer in each of the party states.

l. The board annually shall make to the governor and legislature of each party state, a report covering the activities of the board for the preceding year, and embodying such recommendations as may have been adopted by the board. The board may issue such additional reports as it may deem desirable.

ARTICLE III—FINANCE

a. The board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

b. Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One-half of the total amount of each budget of estimated expenditures shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the last decennial federal census; one-quarter of each such budget shall be apportioned among the party states in equal shares; and one-quarter of each such budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the federal census-taking agency. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

c. The board may meet any of its obligations in whole or in part with funds available to it under Article II "*i*" of this compact, provided

that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under Article II "*i*" hereof, the board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

d. Expenses and other reasonable costs for each member of the board in attending board meetings shall be met by the board.

e. The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the board.

f. The accounts of the board shall be open at any reasonable time for inspection by duly authorized representatives of the party states and by persons authorized by the board.

ARTICLE IV—ADVISORY AND TECHNICAL COMMITTEES

The board may establish such advisory and technical committees as it may deem necessary, membership on which may include representatives of industry, labor, commerce, agriculture, medicine, health and education; other professional, scientific, and civic groups and interests; officials of local, state and federal government; and representatives of the general public, and may co-operate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

ARTICLE V—POWERS

The board shall have power to:

a. Encourage and promote co-operation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields.

b. Ascertain and analyze on a continuing basis the position of the midwest with respect to the employment in industry of nuclear and related scientific findings and technologies.

c. Encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, by-products, and all other appropriate adaptations of scientific and technological advances and discoveries.

d. Collect, correlate, and disseminate information relating to civilian uses of nuclear energy, materials, and products, and other products and processes resulting from the application of related science and technology.

e. Conduct, or co-operate in conducting, programs of training for state and local personnel engaged in any aspects of:

1. Nuclear industry, medicine, or education, or the promotion or regulation thereof.

2. Applying nuclear scientific advances or discoveries, and any industrial, commercial or other processes resulting therefrom.

3. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materials, products, by-products, installations, or wastes, or to safety in the production, use and disposal of any other substances peculiarly related thereto.

f. Organize and conduct, or assist and co-operate in organizing and conducting, demonstrations or research in any of the scientific, technological or industrial fields to which this compact relates.

g. Undertake such nonregulatory functions with respect to nonnuclear sources of radiation as may promote the economic development and general welfare of the midwest.

h. Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields.

i. Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states or their subdivisions in nuclear and related fields, as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency, with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

j. Consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, by-products, wastes, and any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis.

k. Consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields.

l. Advise and consult with the federal government concerning the common position of the party states in respect to nuclear and related fields.

m. Co-operate with the atomic energy commission, the national aeronautics and space administration, the office of science and technology, or any agencies successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

n. Act as licensee, contractor or subcontractor of the United States government or any party state with respect to the conduct of any

research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one or more other powers conferred upon the board by this compact.

o. Prepare, publish and distribute, with or without charge, such reports, bulletins, newsletters, or other materials as it deems appropriate.

p. Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to co-ordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents. The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact. Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall co-ordinate requests for aid pursuant to Article VI of this compact and the furnishing of aid in response thereto. Unless the party states concerned expressly otherwise agree, the board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states. However, the plan or plans of the board in force pursuant to this paragraph shall provide for reports to the board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances. From time to time, the board shall analyze the information gathered from reports of aid pursuant to Article VI and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available.

ARTICLE VI—MUTUAL AID

a. Whenever a party state, or any state or local governmental authorities therein, request aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

b. Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid.

c. No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

d. All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

e. Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of officers, employees and equipment incurred in connection with such request: Provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

f. Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

ARTICLE VII—SUPPLEMENTARY AGREEMENTS

a. To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of Article V of this compact, any two or more of the party states, acting by their duly constituted administrative officials, may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify its purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this Article shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or the activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

b. Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. The board, if requested, may administer or otherwise assist in the operation of any supplementary agreement.

c. No party to a supplementary agreement entered into pursuant to this Article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

d. The provisions of this Article shall apply to supplementary agreements and activities thereunder, but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake co-operative arrangements or projects.

ARTICLE VIII—OTHER LAWS AND RELATIONS

Nothing in this compact shall be construed to:

a. Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

b. Limit, diminish, affect, or otherwise impair jurisdiction exercised by the atomic energy commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative Act of Congress; nor limit, diminish, affect, or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor.

c. Alter the relations between and respective internal responsibilities of the government of a party state and its subdivisions.

d. Permit or authorize the board to exercise any regulatory authority or to own or operate any nuclear reactor for the commercial generation of electric energy; nor shall the board own or operate any nuclear facility or installation on a commercial or profit-making basis.

ARTICLE IX—ELIGIBLE PARTIES, ENTRY INTO FORCE AND WITHDRAWAL

a. Any or all of the states of Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin shall be eligible to become party to this compact.

b. As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law: Provided that it shall not become initially effective until enacted into law by six states.

c. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until two years after the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw. A withdrawing state shall be liable for any obligations which it may have incurred on account of its party status up to the effective date of withdrawal, except that if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal it shall remain liable to the extent of such obligation.

ARTICLE X—SEVERABILITY AND CONSTRUCTION

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the Constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof. [C73, 75,§8B.1]

8B.2 Board member appointed by governor. The member and any alternate member of the midwest nuclear board representing the state shall be appointed by the governor. [C73, 75, §8B.2]

8B.3 Bylaws filed. The midwest nuclear board shall file with the secretary of state copies of its bylaws and any amendments thereto as required under Article II "*k*" of the compact. [C73, 75,§8B.3]

8B.4 Workers' compensation. The provisions of chapter 85 and any benefits payable thereunder shall apply and be payable to any persons dispatched to another state pursuant to Article VI of the compact. If the aiding personnel are officers or employees of subdivisions of this state, they shall be entitled to the same workers' compensation or other benefits in case of injury or death to which they would have been entitled if injured or killed while engaged in coping with a nuclear incident in their jurisdictions of regular employment. [C73, 75,§8B.4; 66GA, ch 1084,§43]

CHAPTER 9

SECRETARY OF STATE

Identification and use of publicly owned automobiles, etc. §§740.20–740.22

9.1 Duties—records.
9.2 Records relating to cities.
9.3 Commissions.
9.4 Fees.
9.5 Salary.

9.1 Duties—records. The secretary of state shall keep his office at the seat of government, and perform all duties required of him by law; he shall have charge of and keep all the Acts and resolutions of the territorial legislature and of the general assembly of the state, the enrolled copies of the Constitutions of the state, and all bonds, books, records, maps, registers, and papers which are now or may hereafter be deposited to be kept in his office, including all books, records, papers, and property pertaining to the state land office. [C51, §43; R60,§59; C73,§61; C97,§66; C24, 27, 31, 35, 39,§85; C46, 50, 54, 58, 62, 66, 71, 73, 75,§9.1]

Designated as state commissioner of elections, §47.1

9.2 Records relating to cities. He shall receive and preserve in his office all papers transmitted to him in relation to city development, including incorporation, discontinuance, or boundary adjustment; and shall keep an alphabetical list of cities in a book provided for that purpose, in which shall be entered the name of the city, the county in which situated, and the date of incorporation, discontinuance, or boundary adjustment. [R60,§1046; C73,§65; C97,§67; C24, 27, 31, 35, 39,§86; C46, 50, 54, 58, 62, 66, 71, 73, 75,§9.2]

9.3 Commissions. All commissions issued by the governor shall be countersigned by the secretary, who shall register each commission in a book to be kept for that purpose, specifying the office, name of officer, date of commission, and tenure of office, and forthwith forward to the state comptroller a copy of said registration. [C51,§44; R60,§60; C73,§62; C97, §68; S13,§68; C24, 27, 31, 35, 39,§87; C46, 50, 54, 58, 62, 66, 71, 73, 75,§9.3]

9.4 Fees. The secretary of state shall collect all fees directed by law to be collected by him, including the following:

1. For certificate, with seal attached, two dollars.

2. For a copy of any law or record, upon the request of any private person or corporation, a fee to be determined by the secretary of state not to exceed ten cents per page. [C51,§2524; R60,§4133; C73,§3756; C97,§85; C24, 27, 31, 35, 39, §88; C46, 50, 54, 58, 62, 66, 71, 73, 75,§9.4; 66GA, ch 1058,§2]

9.5 Salary. The salary of the secretary of state shall be as fixed by the general assembly. [C31, 35,§88-c1; C39,§88.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§9.5]

See salary Act

CHAPTER 10

LAND OFFICE

10.1 Records.
10.2 Separate grants.
10.3 Tract books.
10.4 Land office—how kept—certified copies.
10.5 Patents.
10.6 When patents issued.
10.7 Corrections.
10.8 Maps—field notes—records—papers.
10.9 Color of title relinquished.
10.10 Quitclaim deeds.
10.11 Lists of federal granted lands.
10.12 Dubuque and Pacific Railroad lands.
10.13 University lands.
10.14 Effect of patents.

10.1 Records. The books and records of the land office shall be so kept as to show and preserve an accurate chain of title from the general government to the purchaser of each smallest subdivision of land; to preserve a permanent record, in books suitably indexed, of all correspondence with any of the departments of the general government in relation to state lands; to preserve, by proper records, copies of the original lists furnished by the selecting agents of the state, and of all other papers in relation to such lands which are of permanent interest. [R60,§§92, 95; C73,§83; C97, §72; C24, 27, 31, 35, 39,§89; C46, 50, 54, 58, 62, 66, 71, 73, 75,§10.1]

10.2 Separate grants. Separate tract books shall be kept for the university lands, the saline lands, the half-million acre grant, the sixteenth sections, the swamplands, and such other lands as the state now owns or may hereafter own, so that each description of state lands shall be kept separate from all others, and each set of tract books shall be a complete

record of all the lands to which they relate. [R60,§94; C73,§84; C97,§73; C24, 27, 31, 35, 39,§90; C46, 50, 54, 58, 62, 66, 71, 73, 75,§10.2]

10.3 Tract books. Said tract books shall be ruled in a manner similar to those used in the United States land offices, so as to record each tract by its smallest legal subdivisions, its section, township, and range, to whom sold, and when, the price per acre, to whom patented, and when. [R60,§93; C73,§85; C97,§74; C24, 27, 31, 35, 39,§91; C46, 50, 54, 58, 62, 66, 71, 73, 75, §10.3]

10.4 Land office—how kept—certified copies. The land office shall be kept open during business hours. The documents and records therein shall be subject to inspection by parties having an interest therein, and certified copies thereof, signed by the secretary, with the seal of his office attached, shall be deemed presumptive evidence of the facts to which they relate, and on request they shall be furnished by him for a reasonable compensation. [R60, §101; C73,§86; C97,§75; C24, 27, 31, 35, 39,§92; C46, 50, 54, 58, 62, 66, 71, 73, 75,§10.4]

10.5 Patents. Patents for lands shall issue from the land office, shall be signed by the governor and recorded by the secretary; and each patent shall contain therein a marginal certificate of the book and page on which it is recorded, which certificate shall be signed by the secretary, and all patents shall be delivered free of charge. [R60,§97; C73,§87; C97,§76; C24, 27, 31, 35, 39,§93; C46, 50, 54, 58, 62, 66, 71, 73, 75,§10.5]

10.6 When patents issued. No patents shall be issued for any lands belonging to the state, except upon the certificate of the person or officer specially charged with the custody of the same, setting forth the appraised value per acre, name of person to whom sold, date of sale, price per acre, amount paid, name of person making final payment, and of person who is entitled to the patent, and, if thus entitled by assignment from the original purchaser, setting forth fully such assignment, which certificate shall be filed and preserved in the land office.

Whenever the governor is satisfied that the purchase price has been paid by the person to whom the sale has been made and that a patent has not been issued to the purchaser, a patent shall be issued, signed by the governor and secretary of state and recorded by the secretary of state. The passage of seventy-five years from the date of sale without issuance of a patent shall be conclusive proof that the purchase price has been paid. [R60,§§98, 99; C73,§88; C97,§77; C24, 27, 31, 35, 39,§94; C46, 50, 54, 58, 62, 66, 71, 73, 75,§10.6]

10.7 Corrections. The secretary is authorized and required to correct all clerical errors of his office in name of grantee and description of tract of land conveyed by the state, found upon the records of such office; he shall attach his official certificate to each conveyance so corrected, giving the reasons therefor; record the same with the record of the original conveyance, and make the necessary corrections in the tract and plat books of his office. Such corrections, when made in accordance with the foregoing provisions, shall have the force and effect of a deed originally correct, subject to prior rights accrued without notice. [C73,§89; C97,§78; C24, 27, 31, 35, 39,§95; C46, 50, 54, 58, 62, 66, 71, 73, 75,§10.7]

10.8 Maps — field notes — records — papers. The secretary of state shall receive and safely keep in his office, as public records, any field notes, maps, records, or other papers relating to the public survey of this state, whenever turned over to the state in pursuance of law; the United States at all times to have free access thereto for the purpose of taking extracts therefrom or making copies thereof. [C73,§90; C97,§79; C24, 27, 31, 35, 39,§96; C46, 50, 54, 58, 62, 66, 71, 73, 75,§10.8]

10.9 Color of title relinquished. Whenever the governor is satisfied by the commissioner of the general land office that the title to any lands which may have been certified to the state under any of the several grants is inferior to the rights of any valid interfering pre-emptor or claimant, he is authorized and required to release by deed of relinquishment such color of title to the United States, to the end that the requirements of the interior department may be complied with, and that such tract or tracts of land may be patented by the general government to the legal claimants. [C73,§91; C97,§80; C24, 27, 31, 35, 39,§97; C46, 50, 54, 58, 62, 66, 71, 73, 75,§10.9]

10.10 Quitclaim deeds. Whenever the governor is satisfied by proper record evidence that any tract of land which may have been deeded by virtue of any donation or sale to the state is not the land intended to have been described, and that an error has been committed in making out the transfers, in order that such error may be corrected, he is authorized to quitclaim the same to the proper owner thereof, and to receive a deed or deeds for the lands intended to have been deeded to the state originally. [C73,§92; C97,§81; C24, 27, 31, 35, 39,§98; C46, 50, 54, 58, 62, 66, 71, 73, 75,§10.10]

10.11 Lists of federal granted lands. In cases where lands have been granted to the state of Iowa by Act of Congress, and certified lists of lands inuring under the grant have been made to the state by the commissioner of the general land office, as required by Act of Congress, and such lands have been granted, by Act of the general assembly, to any person or company, and such person or company shall have complied with and fulfilled the conditions of the grant, the secretary of state is hereby authorized to prepare, on the application of such person or company, or on the application of a party claiming title to any land through such person or company, a list or lists of lands

situated in each county inuring to such applicant, from the lists certified by the commissioner of the general land office, as aforesaid, which shall be signed by the governor of the state, and attested by the secretary of state, with the state seal, and then be certified to by the secretary to be true and correct copies of the lists made to this state, and deliver them to such applicant, who is hereby authorized to have them recorded in the proper county, and when so recorded they shall be notice to all persons the same as deeds now are, and shall be evidence of title in such grantee, or his or its assigns, to the lands therein described, under the grant of Congress by which the lands were certified to the state, so far as the certified lists made by the commissioner aforesaid conferred title to the state; but where lands embraced in such lists are not of the character embraced by such Acts of Congress or the Acts of the general assembly of the state, and are not intended to be granted thereby, the lists, so far as these lands are concerned, shall be void; but lands in litigation shall not be included in such lists until the actions are determined and such lands adjudged to be the property of the company; nor shall the secretary include, in any of the lists so certified to the state, lands which have been adjudicated by the proper courts to belong to any other grant, or adjudicated to belong to any county or individual under the swampland grant, or any homestead or pre-emption settlement; nor shall said certificate so issued confer any right or title as against any person or company having any vested right, either legal or equitable, to any of the lands so certified. [C73,§93; C97,§82; C24, 27, 31, 35, 39,§**99**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§10.11]

10.12 Dubuque and Pacific Railroad lands. The secretary of state is hereby authorized upon the application of any person claiming title under the trust deeds executed by the Dubuque and Pacific Railroad Company, to secure its construction bonds, to any lands included in the list of lands certified to the state of Iowa, by the commissioner of the general land office and approved by the secretary of the interior, as selected to satisfy the grant made to the state of Iowa, by Act of Congress approved May 15, 1856 [11 Stat. L.9], in aid of the construction of a railroad from Dubuque to Sioux City; to certify said land as inuring to the grantees of the said Dubuque and Pacific Railroad Company, which certificate shall be signed by the governor, and attested by the secretary of state, with the seal of the state, and deliver the same to such applicant who is hereby authorized to have said certificate recorded in the county in which the land so certified is situated, and when so recorded, shall be notice to all persons the same as deeds now are, and shall be evidence of the title from the state of Iowa to any person deriving title to said land under the Dubuque and Pacific Railroad Company, to the land therein described under the grant of Congress by which the land was certified to the state so far as the certified lists made by the commissioner aforesaid, conferred title to the state, but where lands embraced in such lists are not of the character embraced by such Acts of Congress or the Acts of the general assembly of the state, and are not intended to be granted thereby, the lists so far as these lands are concerned, shall be void; nor shall the secretary include, in any of the lists so certified to the state, lands which have been adjudicated by the proper courts to belong to any other grant, or adjudicated to belong to any county or individual under the swampland grant, or any homestead or pre-emption settlement; nor shall said certificate so issued confer any right or title as against any person or company having any vested right, either legal or equitable, to any of the lands so certified. [C39,§**99.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§10.12]

10.13 University lands. The secretary of state is hereby authorized to issue patents for lands, the legal title to which is vested in the state University of Iowa, in cases wherein it is shown to the satisfaction of the governor and attorney general that such lands have been in fact sold by the authority of the state and paid for, and that the certificates of purchase have been lost or destroyed. [C97,§83; C24, 27, 31, 35, 39,§**100**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§10.13]

10.14 Effect of patents. The patents thus issued shall inure to the benefit of the original purchaser and his grantees only, and a clause to this effect shall be inserted in the patent. [C97,§84; C24, 27, 31, 35, 39,§**101**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§10.14]

CHAPTER 11

AUDITOR OF STATE

Identification and use of publicly owned automobiles, etc., §§740.20–740.22

AUDIT OF STATE DEPARTMENTS

11.1 Definition.
11.2 Annual settlements.
11.3 Repealed by 66GA, ch 70,§1.
11.4 Report of audits.
11.5 Method of keeping accounts.

AUDIT OF COUNTIES, CITIES AND SCHOOL DISTRICTS

11.6 Examination of counties—exception for hospitals.
11.7 State auditors.
11.8 Assistants.

11.9 County, municipal and school auditors' salaries.
11.10 Examinations.
11.11 Scope of examinations.
11.12 Subpoenas.
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11.14 Reports—public inspection.
11.15 Report filed with county attorney.
11.16 Duty of attorney general.
11.17 Disclosures prohibited.
11.18 Examination of cities, townships, and schools.
11.19 Auditor's powers and duties.
11.20 Bills—audit and payment.
11.21 Repayment—objections.
11.22 Uniform system of accounting.
11.23 Duty to install.

REPORTS

11.24 Title of Act.
11.25 Reports required.
11.26 Repealed by 64GA, ch 1088,§206.
11.27 Biennial report.
11.28 Individual audit reports.
11.29 Fees.
11.30 Salary.
11.31 Repealed by 64GA, ch 1088,§206.
11.32 Certified accountants employed.

AUDIT OF STATE DEPARTMENTS

11.1 Definition. The term "department" shall be construed to mean any authority charged by law with official responsibility for the expenditure of public money of the state and any agency receiving money from the general revenues of the state. [C24, 27, 31,§339; C35,§101-a1; C39,**§101.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.1]

Referred to in §24.24

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

Provided, that the accounts, records, and documents of the treasury department shall be audited daily.

Provided further, that a preliminary audit of the educational institutions and the state fair board shall be made periodically, at least quarterly, to check the monthly reports submitted to the comptroller's office as required by section 8.6, subsection 7 and that a final audit of such state agencies shall be made at the close of each fiscal year. [C97,§161; S13, §161-a; C24, 27, 31,§340; C35,§101-a2; C39,**§101.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.2]

Referred to in §24.24

11.3 Repealed by 66GA, ch 70,§1.

11.4 Report of audits. The auditor of state shall make or cause to be made and filed and kept in his office written reports of all audits and examinations, which reports shall set out in detail the following:

1. The actual condition of such department found to exist on every examination.

2. Whether, in his opinion,

a. All funds have been expended for the purpose for which appropriated.

b. The department so audited and examined is efficiently conducted, and if the maximum results for the money expended are obtained.

c. The work of the departments so audited or examined needlessly conflicts with or duplicates the work done by any other department.

3. All illegal or unbusinesslike practices.

4. Any recommendations for greater simplicity, accuracy, efficiency, or economy in the operation of the business of the several departments and institutions.

5. Comparisons of prices paid and terms obtained by the various departments for goods and services of like character and reasons for differences therein, if any.

6. Any other information which, in his judgment, may be of value to him.

All such reports shall be filed and kept in his office.

The state auditor is hereby authorized to obtain, maintain, and operate, under his exclusive control such offset printing machinery as may be necessary to print confidential reports and documents originating in the auditor's office. [S13,§161-a; C24, 27, 31,§342; C35,§101-a4; C39, §101.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.4]

Referred to in §§11.28, 18.58, 24.24

11.5 Method of keeping accounts. Each department and institution of the state shall keep its records and accounts in such form and by such methods as to be able to exhibit in its reports the matters required by the auditor of state, unless otherwise specifically prescribed by law. Each department and institution of the state shall keep its records and accounts in a current condition. The failure of the head of any department of the state to comply with this provision shall be ground for his suspension from office. [S13,§161-a; C24, 27, 31,§343; C35,§101-a5; C39,**§101.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.5]

Referred to in §24.24
Suspension of state officers, ch 67

AUDIT OF COUNTIES, CITIES AND SCHOOL DISTRICTS

11.6 Examination of counties — exception for hospitals. The financial condition and transactions of all counties shall be examined once each year by the auditor of state. Provided however that, in lieu of an examination by state accountants the local governing body

of county hospitals organized under chapters 347 and 347A and memorial hospitals organized under chapter 37, in case it elects to do so, may contract with or employ certified or registered public accountants, certified and registered in the state of Iowa, and pay for the same from the proper public funds; in the same manner and under the same conditions as provided in sections 11.18 and 11.19 for cities and school districts. The report of such examination of a county or county memorial hospital filed by the accountant employed with the auditor of state, as required by section 11.19, shall be in the form prescribed by the auditor of state.

The auditor of state shall, at the time of the audit of each county, inquire into the payment of salaries of county officers with special attention to uniformity of application of statutes. If he finds any irregularity he shall forthwith report the same to the county attorney and the attorney general of the state for appropriate action. [S13,§§100-d, 1056-a11,-a13; C24, 27, 31, 35, 39,§**113**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.6]

Referred to in §123.58

11.7 State auditors. The auditor of state shall appoint such number of state auditors as may be necessary to make such examinations. Said auditors shall be of recognized skill and integrity, familiar with the system of accounting in county, school and municipal offices, and with the laws relating to the county, school and municipal affairs. Each auditor shall give bond in the sum of two thousand dollars, conditioned as bonds of county officers, which bonds shall be approved and filed as bonds of state officers. Such auditors shall be subject at all times to the direction of said auditor of state. [S13,§§100-a, 1056-a11; C24, 27, 31, 35, 39,§**114**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §11.7]

Referred to in §123.58
Conditions, approval, filing of bonds, §§64.2, 64.19, 64.23

11.8 Assistants. The auditor of state shall appoint such additional assistants to the auditors as may be necessary, who shall be subject to discharge at any time by the auditor. [S13, §100-a; C24, 27, 31, 35, 39,§**115**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.8]

11.9 County, municipal and school auditors' salaries. County, municipal and school auditors and their assistants shall, in addition to salary, be reimbursed for their actual and necessary expenses. Salary payments shall include a prorated amount for vacation and sick leave. All payments shall be paid from funds in the state treasury upon certification of the auditor of state, and the general fund shall be reimbursed as provided in sections 11.20 and 11.21. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.9]

11.10 Examinations. Said auditors shall have the right while making said examinations, to examine all papers, books, records, and documents of any of said officers and shall have the right, in the presence of the custodian or his deputy, to have access to the cash drawers and cash in the official custody of such officer, and a like right, during business hours, to examine the public accounts of the county, school or city in any depository which has public funds in its custody pursuant to the law. [S13,§§100-d, 1056-a11; C24, 27, 31, 35, 39,§**116**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.10]

Referred to in §123.58
Depositories, §454.12

11.11 Scope of examinations. All examinations shall be made without notice to the office examined. On every examination inquiry shall be made as to the financial condition and resources of the county, school or city; whether the cost price for improvements and material in said county, school or city is in excess of the cost price for like things in other counties, schools or cities of the state; whether the county, school or city authorities are complying with the law; and whether the accounts and reports are being accurately kept. [S13, §§100-d, 1056-a11; C24, 27, 31, 35, 39,§**117**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.11]

Referred to in §123.58

11.12 Subpoenas. The auditor of state and all auditors shall, in all matters pertaining to an authorized examination, have power to issue subpoenas of all kinds, administer oaths and examine witnesses, either orally or in writing, and the expense attending the same, including the expense of taking oral examinations in shorthand, shall be paid as other expenses of the auditor. [S13,§§100-d, 1056-a11; C24, 27, 31, 35, 39,§**118**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.12]

Expenses, §11.21

11.13 Refusal to testify. In case any witness duly subpoenaed refuses to attend, or refuses to produce documents, books, and papers, or shall attend and refuse to make oath or affirmation, or, being sworn or affirmed, shall refuse to testify, the auditor of state or his auditor may apply to the district court, or any judge of said district having jurisdiction thereof, for the enforcement of attendance and answers to questions as provided by law in the matter of taking depositions. [S13, §100-d; C24, 27, 31, 35, 39,§**119**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.13]

Procedure for contempt, §§622.76, 622.77, 622.84, 622.102; also ch 665

11.14 Reports—public inspection. A report of such examination shall be made in triplicate signed and verified by the officers making the examination; one copy to be filed with the auditor of state, one copy with the officer under investigation, and one copy to the county auditor who shall transmit same to the board of supervisors if a county office is under investigation, or with the president of the school board if a school is under investigation, or with the mayor and the council if a city office is under examination. All reports shall be open to public inspection, including copies on file in the office of the state auditor, and refusal on the part of any public official to permit such inspection when such reports have been filed with him

shall constitute a misdemeanor and shall be punishable by a fine not to exceed fifty dollars or by imprisonment in the county jail not to exceed fifteen days.

In addition to the foregoing, notice that the report has been filed shall be forwarded immediately to each newspaper, radio station or television station located in the county, municipality or school district which is under investigation or audit; except that if there is no newspaper, radio station or television station located therein, such notice shall be sent to the official newspapers of the county. [S13, §§100-d, 1056-a11; C24, 27, 31, 35, 39,§120; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.14]

Referred to in §123.58

11.15 Report filed with county attorney. If said examination discloses any irregularity in the collection or disbursement of public funds or in the abatement of taxes a copy of said report shall be filed with the county attorney and it shall be his duty to co-operate with the state auditor, and, in proper cases, with the attorney general, to secure the correction of the irregularity. [S13,§100-d; C24, 27, 31, 35, 39,§121; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.15]

11.16 Duty of attorney general. In the event such examination discloses any grounds which would be ground for removal from office, a fourth copy of said report shall be provided and filed by the auditor of state in the office of the attorney general of the state, who shall thereupon take such action as, in his judgment, the facts and circumstances warrant. [S13,§100-d; C24, 27, 31, 35, 39,§122; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.16]

11.17 Disclosures prohibited. No such auditor shall make any disclosure of the result of any investigation, except as he is required by law to report the same or to testify in court. Any violation of this provision shall be ground for removal. [S13,§100-d; C24, 27, 31, 35, 39, §123; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.17]

11.18 Examination of cities, townships, and schools. The financial condition and transactions of all cities and city offices, merged areas, area education agencies and all school offices in school districts, shall be examined at least once each year, except that cities having a population of seven hundred or more but less than two thousand shall be examined at least once every four years, and cities having a population of less than seven hundred may be examined as otherwise provided in this section. Such examination shall cover the fiscal year next preceding the year in which the audit is conducted. The examination of school offices shall include an audit of activity funds. Examinations may be made by the auditor of state, or in lieu of the examination by state accountants the local governing body whose accounts are to be examined, in case it elects so to do, may contract with, or employ, certified or registered public accountants, certified and registered in the state of Iowa, and pay the same from the proper public funds. If a city, merged area, area education agency or school district elect to have the audit made by certified or registered public accountants, it must so notify the auditor of state within sixty days after the close of the fiscal year to be examined. A city must so notify the state auditor by filing a resolution of the council. Such notification and designation shall remain in effect until rescinded or modified by a subsequent resolution of the council filed with the state auditor. If any city, merged area, area education agency or school district does not file such notification with the auditor of state within the required period, the auditor of state is authorized to make the examination and cover any period which has not been previously examined.

Any township or municipal corporation not embraced within the foregoing provisions of this chapter may, on application to the auditor of state, secure an examination of its financial transactions and condition of its funds, or a like examination shall be had on application of one hundred or more taxpayers, or if there are fewer than five hundred taxpayers, then by five percent thereof. In lieu of such examination by state accountants, the local governing body may contract with, or employ, certified or registered public accountants and pay the same from the proper public funds.

In addition to his powers and duties under other provisions of the Code, the auditor of state may at any time, if he deems such action to be in the public interest, cause to be made a complete or partial audit of the financial condition and transactions of any city, county, school corporation, governmental subdivision, or any office thereof, even though an audit for the same period has been made by certified or registered public accountants. Such state audit shall be made and paid for as provided in this chapter, except that in the event an audit covering the same period has previously been made and paid for, the costs of such additional state audit shall be paid from any funds available in the office of the auditor of state. This paragraph shall not be construed to grant any new authority to have audits made by certified or registered public accountants. [S13,§§100-e, 1056-a12; C24, 27, 31, 35, 39,§124; C46, 50, 54, 58, 62, 66, 71, 73, 75, §11.18]

Referred to in §§11.6, 11.19, 123.58, 230A.16, 364.5

11.19 Auditor's powers and duties. Where an examination is made under contract with, or employment of, certified or registered public accountants, the auditor shall, in all matters pertaining to an authorized examination, have all of the powers and be vested with all the authority of state auditors employed by the auditor of state, and the cost and expense of the examination shall be paid by the city, school district, or township procuring the examination. An itemized sworn statement of the per diem and expense of the auditor shall be filed with the clerk of the city, township, or

school district, before payment thereof. Upon completion of such examination, a signed copy thereof shall be filed by the accountant employed with the auditor of state.

All reports shall be open to public inspection, including copies on file in the office of the state auditor, and refusal on the part of any public official to permit such inspection when such reports have been filed with him, shall constitute a misdemeanor and shall be punishable by a fine not to exceed fifty dollars or by imprisonment in the county jail not to exceed fifteen days.

In addition to the foregoing, notice that the report has been filed shall be forwarded immediately to each newspaper, radio station or television station located in the city, school district or township which is under investigation or audit; except that if there is no newspaper, radio station or television station located therein, the notice shall be sent to the official newspapers of the county.

Failure to file such report with the auditor of state shall bar such accountant from making any city, or school audits thereafter under the provisions of section 11.18. [C39,§**124.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.19]

Referred to in §§11.6, 230A.16

11.20 Bills—audit and payment. Where the examination is made by the state auditor under the provisions of this chapter, each auditor shall file with the auditor of state an itemized, certified and sworn voucher of his expense for the time such auditor is actually engaged in such examination. On the fifteenth and last days of each month each auditor shall file in triplicate with the auditor of state a certified statement of the actual days engaged in each such examination. The salaries shall be included in a semimonthly payroll. Upon approval of the auditor of state the state comptroller is hereby authorized to issue warrants for the payment of said vouchers and salary payments, including a prorated amount for vacation and sick leave, from any unappropriated funds in the state treasury. Repayment to the state shall be made as provided by section 11.21. [S13,§§100-a,-e, 1056-a11; C24, 27, 31, 35, 39,§**125**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.20]

Referred to in §§11.9, 11.21

11.21 Repayment — objections. Upon payment by the state of the salary and expenses, the auditor of state shall file with the warrant-issuing officer of the county, municipality or school, whose offices were examined, a sworn statement consisting of the itemized expenses paid and prorated salary costs paid under section 11.20. Upon audit and approval by the board of supervisors, council or school board, the said warrant-issuing officer shall draw his warrant for said amount on the general fund of the county, municipality or school in favor of the auditor of state, which warrant shall be placed to the credit of the general fund of the state. In the event of the disapproval of any items of said statement by the county, municipality, or school authorities, written objections shall be filed with the auditor of state within thirty days from the filing thereof. Disapproved items of said statement shall be paid the auditor of state upon receiving final decisions emanating from public hearing established by the auditor of state.

Whenever the county board of supervisors, the school board, or the council shall file written objections on the question of compensation and expenses with the auditor of state, he or his representative shall hold a public hearing in the municipality where the examination was made and shall give the complaining board notice of the time and place of hearing. After such hearing he shall have the power to reduce the compensation and expenses of the auditor whose bills have been questioned. Any auditor who shall be found guilty of falsifying his expense vouchers or engagement report shall be immediately discharged by the auditor of state and shall not be eligible for re-employment. Such auditor must thereupon reimburse the auditor of state for all such compensation and expenses so found to have been overpaid to him and in the event of his failure to do so, the auditor of state may collect the same amount from the auditor's bondsman by suit, if necessary. [S13,§§100-a,-e, 1056-a11; C24, 27, 31, 35, 39,§**126**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §11.21]

Referred to in §§11.9, 11.20, 123.58

11.22 Uniform system of accounting. The auditor of state shall prescribe a uniform system of blanks and forms for all financial accounts, receipts, and reports of all county offices. Said system shall, as far as practicable, follow the classifications and definitions of such transactions in use in the national census office, when not in conflict with the laws of this state. Said blanks and forms shall, by said auditor, be revised, from time to time, in order to render the same more efficient and to meet changes in the law. [S13,§§100-b, 550-a, 741-a, 1056-a10,-a13; C24, 27, 31,§111; C35,§130-a2; C39,§**130.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §11.22]

11.23 Duty to install. It shall be the specific duty of each county and school officer to install and use in his office a system of uniform blanks and forms as prescribed by law. State auditors are charged with the specific duty to assist all such officers in installing said system. [S13,§§100-b,-c, 1056-a10; C24, 27, 31,§112; C35,§130-a3; C39,§**130.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.23]

Referred to in §123.58

REPORTS

11.24 Title of Act. This Act* shall be known and may be cited as the "State Audit Act". [C35,§130-e1; C39,§**130.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.24]

*45GA, ch 5

11.25 Reports required. The auditor of state shall make the following reports:

1. A biennial report to the governor and the general assembly of all operations of his office.

2. Individual audit reports giving the results of all examinations and audits of all departments and establishments and all fiscal officers of the state and local governments. [C35, §130-e2; C39,§130.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.25]

Biennial report, §17.3

11.26 Repealed by 64GA, ch 1088,§206.

11.27 Biennial report. The biennial report shall include:

1. A narrative report and such statistical statements as the state auditor deems essential to display the results of his audits of the state departments and establishments.

2. Statistics on building and loan associations now required by law to be published biennially. The biennial report shall also include the results of his audit of the documents and the records of the state comptroller's office created in the budget and financial control Act, which records shall be audited by him; and, the results of his audit of all taxes and other revenue collected and paid into the treasury, and the sources thereof. This report shall also include his recommendations to improve the business methods of the government and any other matters having for their purpose to bring about increased economy and efficiency in the conduct of the affairs of the government. [C35,§130-e4; C39,§130.6; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.27; 66GA, ch 5,§2]

See §332.3(27), Report on Iowa state association of counties

11.28 Individual audit reports. The individual audit reports shall include exhibits and schedules to report data similar to that now required by section 11.4, and shall as nearly as possible correspond and be prepared similar in form to the audit reports rendered by certified public accountants, and such reports shall include information as to the assets and liabilities of the various departments and institutions audited as of the beginning and close of the fiscal year audited, the receipts and expenditures of cash, the disposition of materials and other properties, and the net income and net operating cost. These reports shall also set forth the cost as to each inmate, member, or student per year in the various classifications of expenses, and shall make comparisons thereof, and shall give such other information, suggestions, and recommendations as may be deemed of advantage and to the best interests of the taxpayers of the state; provided, that the daily audit report of the state treasury shall be submitted to the state comptroller; provided, further, that copies of all individual audit reports of all state departments and establishments shall be transmitted to the executive council and to the state comptroller's office after the completion of each audit, and that copies of all local government audits shall, until otherwise provided, be also supplied to the comptroller's office; provided, further, that copies of such audit reports shall also be supplied to the officers of the counties, schools, and cities, as now provided by law; and, provided further, that summaries of the findings, recommendations, and comparisons, together with any other information deemed essential, shall be printed and distributed to members of the legislature, and such officials, including state officers, as may be designated by the executive council. [C35,§130-e5; C39, §130.7; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.28]

Constitutionality, 45GA, ch 5,§12
Omnibus repeal, 45GA, ch 5,§13

11.29 Fees. The auditor of state shall collect such fees as are provided for in the title on savings and loan associations.* [C97,§100; C24, 27, 31,§110; C35,§130-a4; C39,§130.8; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.29]

*See §§534.56, 534.61

11.30 Salary. The salary of the auditor of state shall be as fixed by the general assembly. [C31, 35,§130-c1; C39,§130.9; C46, 50, 54, 58, 62, 66, 71, 73, 75,§11.30]

See salary Act

11.31 Repealed by 64GA, ch 1088,§206.

11.32 Certified accountants employed. Nothing in this chapter will prohibit the auditor of state, with the prior written permission of the state executive council, from employing certified public accountants or registered public accountants for specific assignments. Under the provision of this section, the auditor of state may employ such accountants for any assignment now expressly reserved to the auditor of state. Payments, after approval by the executive council, will be made to the accountants so employed from funds from which the auditor of state would have been paid had he performed the assignment, or if no such specific funds are indicated, then payment will be made from the funds of the executive council. [C66, 71, 73, 75,§11.32]

CHAPTER 12

TREASURER OF STATE

Identification and use of publicly owned automobiles, etc., §§740.20–740.22

12.1 Office—accounts.
12.2 Daily balance sheet.
12.3 Record and payment of warrants.
12.4 Receipts.
12.5 Payment.
12.6 Report to and account with comptroller.

12.7 Interest on bonds.
12.8 Investment or deposit of surplus.
12.9 Repealed by 57GA, ch 54,§1.
12.10 Deposits by state officers.
12.11 Unclaimed fees.
12.12 Statement required.
12.13 Payment of claims.
12.14 Statement itemized.
12.15 Comptroller and treasurer to keep account.
12.16 Swampland indemnity.
12.17 Biennial report.
12.18 Salary.
12.19 Six months' limit on checks.
12.20 Issuance of new check.

12.1 Office—accounts. The treasurer shall keep his office at the seat of government, and shall keep an accurate account of the receipts and disbursements at the treasury in books kept for that purpose, in which he shall specify the names of the persons from whom money is received, and on what account, and the time thereof. [C51,§62; R60,§83; C73,§75; C97,§101; C24, 27, 31, 35, 39,§131; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.1]

12.2 Daily balance sheet. The treasurer of state shall so keep the books of his office that at the close of each day's business the account of each fund will show the balance or deficit therein, and show also the total amount of the money in the state treasury, and should the books not be in balance, the daily statement shall show the amount of the surplus or deficit by which the books fail to balance. [C24, 27, 31, 35, 39,§132; C46, 50, 54, 58, 62, 66, 71, 73, 75, §12.2]

12.3 Record and payment of warrants. The treasurer of state shall keep a record of warrants issued as certified by the state comptroller, and receive in payment of public dues the warrants so issued in conformity with law, and redeem the same, if there be money in the treasury not otherwise appropriated, and on receiving any such warrant shall cause the person presenting it to endorse it, and shall indicate on its face in a suitable manner that it has been redeemed, and keep a record of warrants redeemed showing the name of the person to whom paid, date of payment, and amount of interest paid. [C51,§63; R60,§84; C73,§76; C97,§102; C24, 27, 31, 35, 39,§133; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.3]

12.4 Receipts. When money is paid him, the treasurer shall execute receipts in duplicate therefor, stating the fund to which it belongs, one of which must be delivered to the comptroller in order to obtain the proper credit, and the treasurer must be charged therewith. [C51,§64; R60,§85; C73,§77; C97,§103; C24, 27, 31, 35, 39,§134; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.4]

12.5 Payment. He shall pay no money from the treasury but upon the warrants of the comptroller, and only in the order of their presentation. [C51,§65; R60,§86; C73,§78; C97, §104; S13,§104; C24, 27, 31, 35, 39,§135; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.5]

Related provisions, §§8.6, 74.5
Warrants not paid for want of funds, §§74.1–74.8

12.6 Report to and account with comptroller. Once in each week he shall certify to the comptroller the number, date, amount, and payee of each warrant taken up by him, with the date when taken up, and the amount of interest allowed; and on the first Monday of January, and the first day of April, July, and October, annually, he is directed to account with the comptroller and deposit in his office all such warrants received at the treasury, and take the comptroller's receipt therefor. [C51, §67; R60,§88; C73,§80; C97,§106; S13,§106; C24, 27, 31, 35, 39,§137; C46, 50, 54, 58, 62, 66, 71, 73, 75, §12.6]

Analogous provisions, §334.7

12.7 Interest on bonds. When interest on any bonds of the state becomes due, the treasurer shall provide funds for the payment thereof on the day and at the place where payable; and persons holding such bonds are required to present the same at such place within ten days from such day, at the expiration of which time the funds remaining unexpended and vouchers for interest paid shall be returned to the treasury. [C73,§82; C97,§108; C24, 27, 31, 35, 39,§138; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.7]

Deposits in general, ch 453

12.8 Investment or deposit of surplus. The treasurer of state shall invest or deposit, as provided by law, any of the public funds not currently needed for operating expenses and shall do so upon receipt of monthly notice from the state comptroller of such amount not so needed. In the event of loss on redemption or sale of securities, where invested as prescribed by law, and any such transaction is reported to the executive council, neither the treasurer nor comptroller shall be personally liable but such loss shall be charged against such funds as would have received the profits or interest of the investment and there is hereby appropriated from such funds an amount as may be so required. [C24, 27, 31, 35, 39,§141; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.8]

Referred to in §453.7(2)
Investment or deposit, §452.10

12.9 Repealed by 57GA, ch 54,§1.

12.10 Deposits by state officers. All elective and appointive state officers, boards, commissions, and departments, except the state fair board, the state board of regents, Iowa state commerce commission, and the commissioner of the department of social services, shall, within ten days succeeding the collection there-

of, deposit, with the treasurer of state, or to the credit of said treasurer in any depository by him designated, ninety percent of all fees, commissions, and moneys collected or received; the balance actually collected in cash, remaining in the hands of any officer, board, or department shall not exceed the sum of five thousand dollars and no money collected shall be held more than thirty days. This section does not apply to the Iowa housing finance authority.* [C73,§3778; C97,§191; S13,§170-d; C24, 27, 31, 35, 39,§**143**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.10; 66GA, ch 138,§37]

Referred to in §§524.207, 685.3
*Ch 220

12.11 Unclaimed fees. All officers, boards, and commissions of the state government shall on the first Monday in January and July of each year pay to the treasurer of state for the use of the state, all fees and charges not belonging to the said office, and in his or its hands at the date of preceding payment, even though unpresented checks are outstanding against said funds, and take the treasurer's receipt therefor. [C27, 31, 35,§143-b1; C39, §**143.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.11]

Analogous provision, §606.16

12.12 Statement required. At the time of making such payment the officer, board or commission shall furnish the said treasurer a written statement which shall show in detail the amount due each person and for what due and such other information as may be necessary to clearly designate each claim. A duplicate of such statement and receipt shall be filed with the comptroller. [C27, 31, 35,§143-b2; C39,§**143.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.12]

Analogous provision, §606.17

12.13 Payment of claims. The comptroller shall charge the treasurer of state with the amount of the payment as so much state revenue and shall enter the various claims upon the proper records as claims allowed, and on demand and proper proof by the person entitled thereto shall issue warrants accordingly, provided such demand is made within five years from the time the treasurer received said funds. [C27, 31, 35,§143-b3; C39,§**143.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.13]

Analogous provision, §606.18

12.14 Statement itemized. Each deposit shall be accompanied by an itemized statement of the sources from which the money has been collected, and the funds to be credited, a duplicate of which shall, at the time, be filed with the comptroller. [S13,§170-d; C24, 27, 31, 35, 39, §**144**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.14]

12.15 Comptroller and treasurer to keep account. The treasurer and comptroller shall each keep an accurate account of the moneys so deposited. [S13,§170-f; C24, 27, 31, 35, 39, §**145**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.15]

12.16 Swampland indemnity. All swampland indemnity money paid by the federal government to this state under any Act of Congress relating thereto shall be paid by the treasurer of state to the county treasurer of the county where the land, on account of which such payment is made, is located. The county treasurer shall be liable on his bond for the safe custody of said funds and shall promptly notify the board of supervisors of the receipt thereof. Said funds shall be applied by the said supervisors as required by law. [S13,§§116-d,-e,-f; C24, 27, 31, 35, 39,§**146**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.16]

12.17 Biennial report. The treasurer of state shall, biennially, at the time provided by law, report to the governor the state of the treasury and exhibit therein the amount received and paid out by the treasurer since his last report, and the balance remaining in the treasury. [C51,§68; R60,§89; C73,§81; C97,§107; C24, 27, 31, 35, 39,§**147**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.17]

See also §258.12
Time of report, §17.3

12.18 Salary. The salary of the treasurer of state shall be as fixed by the general assembly. [C31, 35,§147-c1; C39,§**147.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.18]

See salary Act

12.19 Six months' limit on checks. On the first day of each quarter of each fiscal year of the state, the state treasurer shall stop payment on and make void all treasury checks dated six months or more prior to that date, and the state treasurer shall not redeem any such check thereafter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.19]

12.20 Issuance of new check. Upon presentation of any check voided as above provided by the holder thereof after said six months' period, the state treasurer is hereby authorized to issue to said holder, a new check for the amount of the original check. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§12.20]

CHAPTER 13

ATTORNEY GENERAL

Identification and use of publicly owned automobiles, etc., §§740.20–740.22

13.1 Department of justice.
13.2 Duties.
13.3 Disqualification—substitute.
13.4 Assistant attorneys general.
13.5 Assistant for department of revenue.
13.6 Assistant for social services department.
13.7 Special counsel.
13.8 Expenses.
13.9 Salary.

13.1 Department of justice. The department of justice, with the attorney general as head thereof, shall be located at the seat of government. [R60,§124; C73,§§150, 3770; C97, §§208, 211; S13,§§208, 211; C24, 27, 31, 35, 39,§**148**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§13.1]

13.2 Duties. It shall be the duty of the attorney general, except as otherwise provided by law to:

1. Prosecute and defend all causes in the appellate courts in which the state is a party or interested.

2. Prosecute and defend in any other court or tribunal, all actions and proceedings, civil or criminal, in which the state may be a party or interested, when, in his judgment, the interest of the state requires such action, or when requested to do so by the governor, executive council, or general assembly.

3. Prosecute and defend all actions and proceedings brought by or against any state officer in his official capacity.

4. Give his opinion in writing, when requested, upon all questions of law submitted to him by the general assembly or by either house thereof, or by any state officer, elective or appointive. Questions submitted by state officers must be of a public nature and relate to the duties of such officer.

5. Prepare drafts for contracts, forms, and other writings which may be required for the use of the state.

6. Report to the governor, at the time provided by law, the condition of his office, opinions rendered, and business transacted of public interest.

7. Supervise county attorneys in all matters pertaining to the duties of their offices, and from time to time to require of them reports as to the condition of public business entrusted to their charge.

8. Promptly account, to the treasurer of state, for all state funds received by him.

9. Keep in proper books a record of all official opinions, and a register of all actions, prosecuted and defended by him, and of all proceedings had in relation thereto, which books shall be delivered to his successor.

10. Perform all other duties required by law.

11. Inform prosecuting attorneys and assistant prosecuting attorneys to the state of all changes in law and matters pertaining to their office and establish programs for the continuing education of prosecuting attorneys and assistant prosecuting attorneys. The attorney general may accept funds, grants and gifts from any public or private source which shall be used to defray the expenses incident to implementing his duties under this subsection. [R60,§§124–127, 130, 131; C73,§§150–153; C97, §§208–210; S13,§208-a; C24, 27, 31, 35, 39,§**149**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§13.2; 66GA, ch 1241,§28]

Biennial report, §17.6

13.3 Disqualification—substitute. If, for any reason, the attorney general be disqualified from appearing in any action or proceeding, the executive council shall appoint some suitable person for that purpose and defray the reasonable expense thereof from any unappropriated funds in the state treasury. The department involved in the action or proceeding shall be requested to recommend a suitable person to represent it and when the executive council concurs in the recommendation the person recommended shall be appointed. [C24, 27, 31, 35, 39,§**150**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§13.3; 66GA, ch 1059,§2]

13.4 Assistant attorneys general. The attorney general may appoint a first assistant attorney general and such other assistant attorneys general as may be authorized by law, who shall devote their entire time to the duties of their positions. The assistant attorneys general shall, subject to the direction of the attorney general, have the same power and authority as the attorney general. [C97, §212; S13,§212; C24, 27, 31, 35, 39,§**151**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§13.4]

Special assistants: Claims against state, §25.4; transportation department, §307.23

13.5 Assistant for department of revenue. The attorney general may appoint one assistant attorney general to perform and supervise the legal work of the department of revenue, and in such event the salary and necessary traveling expenses of such assistant attorney general shall be paid from the appropriation to said department of revenue, and upon request of the attorney general the department of revenue shall provide and equip a suitable office and the necessary secretarial assistance for such assistant attorney general. [C39,§**151.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§13.5]

13.6 Assistant for social services department. The attorney general may appoint one assistant attorney general to perform and supervise the legal work of the division of child and family services of the department of social services, and in such event the salary and necessary traveling expenses of such assistant attorney general shall be paid from the appropriation to said division, and upon request of the attorney general the commissioner of the department of social services shall provide and equip a suitable office and the necessary secretarial assistance for such assistant attorney general. [C39,§**151.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§13.6]

See §234.8

13.7 Special counsel. No compensation shall be allowed to any person for services as an attorney or counselor to any executive department of the state government, or the head thereof, or to any state board or commission, but the executive council may employ legal assistance, at a reasonable compensation, in any pending action or proceeding to protect the interests of the state, but only upon a sufficient showing, in writing, made by the attor-

ney general, that the department of justice cannot for reasons stated by the attorney general perform said service, which reasons and action of the council shall be entered upon its records. When the attorney general determines that the department of justice cannot perform legal service in an action or proceeding, the executive council shall request the department involved in the action or proceeding to recommend legal counsel to represent the department. If the attorney general concurs with the department that the person recommended is qualified and suitable to represent the department, the person recommended shall be employed. If the attorney general does not concur in the recommendation, the department shall submit a new recommendation. This section shall not affect the office of the commerce counsel, the transportation regulation board counsel, or the legal counsel of the Iowa department of job service. [S13,§208 -b; C24, 27, 31, 35, 39,§152; C46, 50, 54, 58, 62, 66, 71, 73, 75,§13.7; 66GA, ch 1059,§3, ch 1068,§38]

Referred to in §17A.8(9)
Attorney for administrative rules review committee, §17A.8, subsection 9
Attorney for historical society, 66GA, ch 1158,§11
Commerce counsel, §475.7
Employment by governor, §§7.3–7.5
Job services, §96.17(1)
Transportation regulation board counsel, §307.18

13.8 Expenses. The attorney general and his assistants shall be repaid their actual and necessary expenses incurred in transacting their official duties at places other than the seat of government. [C73,§3770; C97,§211; S13, §211; C24, 27, 31, 35, 39,§153; C46, 50, 54, 58, 62, 66, 71, 73, 75,§13.8]

13.9 Salary. The salary of the attorney general shall be as fixed by the general assembly, and the salaries of the first assistant attorney general and other assistant attorneys general shall be such as may be fixed by law. [C31, 35,§153-c1; C39,§153.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§13.9]

See salary Act

CHAPTER 13A

PROSECUTING ATTORNEYS TRAINING CO-ORDINATOR

13A.1 Definitions.
13A.2 Establishment.
13A.3 Membership and terms.
13A.4 Organization.
13A.5 Meetings.
13A.6 Report required.
13A.7 Expenses paid.
13A.8 Duties.
13A.9 Authority.
13A.10 Receipt of funds.
13A.11 Citation.

13A.1 Definitions. As used in this chapter unless the context otherwise requires:

1. *"Council"* means the prosecuting attorneys training co-ordinator council.

2. *"Executive director"* means the executive director of the council.

3. *"Office"* means the office of prosecuting attorneys training co-ordinator established in this chapter.

4. *"Prosecuting attorneys"* means county attorney, district attorney, or any attorney charged with responsibility of prosecution of violation of state laws. [66GA, ch 71,§1]

13A.2 Establishment.

1. The office of prosecuting attorneys training co-ordinator is established as an autonomous entity in the department of justice.

2. The head of the office is the prosecuting attorneys training co-ordinator council.

3. The chief administrative officer of the office is the executive director who shall be a regular employee of the department of justice and appointed by the council. He shall hold office at the pleasure of the council. He shall perform the functions and duties assigned to him by the council. The council may employ other persons as it deems necessary to implement this chapter. [66GA, ch 71,§2]

13A.3 Membership and terms. The council shall consist of five members as follows:

1. The attorney general or his designated representative.

2. The president of the Iowa county attorneys association or its successor.

3. Three members elected by the Iowa county attorneys association or its successor.

A member shall vacate his appointment upon termination of his official position as a prosecuting attorney or an attorney general. A vacancy shall be filled in the same manner as the original appointment. A member appointed to fill a vacancy created other than by expiration of a term on the council shall be appointed for the unexpired term of the member whom he is to succeed in the same manner as the original appointment. Any member may be reappointed for an additional term.

The terms of the elected members shall be three years and shall begin January 1, 1976, but initial terms shall be staggered so that the elected members shall serve terms of one, two, and three years respectively. [66GA, ch 71,§3]

13A.4 Organization. The council shall designate from among its members a chairman and vice chairman who shall serve for one-year terms and who may be re-elected. Mem-

bership on the council shall not constitute holding a public office, and members of the council shall not be required to take and file oaths of office before serving on the council. A member of the council shall not be disqualified from holding any public office or employment by reason of membership on the council, nor shall one member forfeit the office or employment, by reason of appointment under this chapter, notwithstanding the provisions of any law, ordinance or city charter. [66GA, ch 71, §4]

13A.5 Meetings. The council shall meet at least four times each year and shall hold meetings when called by the chairman, or in the absence of the chairman, by the vice chairman or when called by the chairman upon the written request of three members of the council. The council shall establish its own procedures and requirements with respect to quorum, place and conduct of its meetings and other matters. [66GA, ch 71,§5]

13A.6 Report required. The council shall make an annual report to the governor and to the Iowa county attorneys association or its successor regarding its efforts to implement the purposes of this chapter. [66GA, ch 71,§6]

13A.7 Expenses paid. The members of the council shall serve without compensation but shall be entitled to their actual expenses in attending meetings and in the performance of their duties. [66GA, ch 71,§7]

13A.8 Duties. The council shall keep the prosecuting attorneys and assistant prosecuting attorneys of the state informed of all changes in law and matters pertaining to their office to the end that a uniform system of conduct, duty and procedure is established in each county of the state. [66GA, ch 71,§8]

13A.9 Authority. The council may:

1. Enter into agreements with other public or private agencies or organizations to implement this chapter.
2. Co-operate with and assist other public or private agencies or organizations to implement this chapter.
3. Make recommendations to the general assembly on matters pertaining to its responsibilities under this chapter. [66GA, ch 71,§9]

13A.10 Receipt of funds. The council may accept funds, grants and gifts from any public or private source which shall be used to defray the expenses incident to implementing its responsibilities under this chapter. [66GA, ch 71,§10]

13A.11 Citation. This chapter shall be known and may be cited as the "Prosecuting Attorneys Training Co-ordinator Act of 1975". [66GA, ch 71,§11]

CHAPTER 14

CODE EDITOR

Referred to in §18.59

14.1 Code editor appointed.
14.2 to 14.5 Repealed by 64GA, ch 80,§13.
14.6 Code editor's duties.
14.7 Repealed by 63GA, ch 1014,§4.
14.8 Recommendations—printing and reference.
14.9 Table of corresponding sections.
14.10 Session laws.
14.11 Original enrolled bills.
14.12 Style of Code.
14.13 Editorial work.
14.14 Formal matters omitted.
14.15 Future Codes.
14.16 Preparation.
14.17 Citation of permanent Code or supplements.
14.18 Citation of session laws.
14.19 Citation of prior Codes.
14.20 Official statutes.
14.21 Publication of parts of Code.
14.22 Appropriation.

14.1 Code editor appointed. The supreme court shall appoint a Code editor who shall serve at the pleasure of the court. [C51,§46; R60,§§62, 113, 115, 144; C73,§§35, 155, 156; C97, p. 5,§§38, 216; S13, p. 3; SS15,§§224-c,-h; C24, 27, 31, 35, 39,§156; C46, 50, 54, 58, 62, 66,§14.3; C71, §14.5; C73, 75,§14.1]

14.2 to 14.5 Repealed by 64GA, ch 80,§13.

14.6 Code editor's duties. His duties shall be to:

1. Submit such recommendations as he deems proper to each general assembly for the purpose of amending, revising, and codifying such portions of the law as may be conflicting, redundant, or ambiguous, and to lay said recommendations before the presiding officers of each house.

2. Edit and compile the Code so that the same may be printed as herein provided.

3. Prepare the manuscript copy of all laws, Acts, and joint resolutions passed at each session of the general assembly, and arrange the same in chapters with comprehensive index and in such manner that each chapter will show the number of the house or senate file, and cause the same to be printed by the superintendent of printing. In so doing the Code editor shall have the right to the possession of the enrolled Acts and shall have sole charge of

the editing and proofreading notwithstanding the provisions of section 18.76.

4. Prepare and cause to be published, at such times as the supreme court shall by order direct, the rules of civil procedure, the rules of appellate procedure, and supreme court rules.

5. Prescribe a uniform style and form by which an agency shall prepare and file a rule pursuant to chapter 17A which shall correlate each rule to a uniform numbering system* devised by the Code editor.

6. Notify an agency whose rule is not in the proper style and form pursuant to subsection 5. If the rule is not properly redrafted within six months of notification, it shall be void. [C51,§46; R60,§§62, 113, 115, 144; C73,§§35, 155, 156; C97,p.5,§§38, 216; S13,p.3; SS15,§§224-c,-h; C24, 27, 31, 35, 39,§**156**; C46, 50, 54,§14.3; C54, 58, 62, 66,§§14.3, 17A.9; C71, 73, 75,§14.6; 66GA, ch 1241,§29]

*See also §17A.6
Amendment by 65GA, ch 1090,§27, effective May 1, 1975, 66GA, ch 72,§1

14.7 Repealed by 63GA, ch 1014,§4.

14.8 Recommendations—printing and reference. The recommendations of the editor of the Code shall be printed in such numbers as the director of the department of general services deems necessary for public use, and when laid before the presiding officers of the respective houses shall be referred in each house to appropriate committees. [C24, 27, 31, 35, 39,§**157**; C46, 50, 54, 58, 62, 66,§14.4; C71, 73, 75,§14.8]

14.9 Table of corresponding sections. The Code editor may from time to time, publish tables showing the placement of various statutes and Acts of the general assembly and their corresponding sections in succeeding Codes. [C71, 73, 75,§14.9]

14.10 Session laws.

1. The size, style, type, binding, general arrangement and tables of the session laws shall be printed and published in such manner as specified by the Code editor in consultation with the legislative council.

2. The Acts of each general assembly shall, as nearly as possible, be arranged in the same consecutive order in which the same or similar subject matters are arranged in the Code.

3. Chapters of the first regular session shall be numbered from one and chapters of the second regular session shall be numbered from one thousand one.

4. The secretary of state shall prepare and deliver to the Code editor for insertion in the session laws a correct list of state officers and deputies, judges of the supreme and district courts including district associate judges, and judicial magistrates and members of the general assembly.

5. There shall also be inserted in the session laws, the statement of the condition of the state treasury as provided by the Constitution. Said statement shall be furnished by the state comptroller.

See Constitution, Art. III,§18; §17.3

6. The enrolling clerks of the house and senate shall make arrangements whereby the Code editor will receive suitable copies of all Acts and resolutions as soon as the same are enrolled. [C73,§36; C97,§39; SS15,§224-i; C24, 27, 31, 35,§§162, 162-d1, 163, 164, 165, 167; C39, §§**221.1–221.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §14.10]

14.11 Original enrolled bills. In the preparation of the Code the editor of the Code shall have the right to the possession of the enrolled bills. [C24, 27, 31, 35, 39,§**166**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§14.11]

14.12 Style of Code. The Code shall be prepared and published substantially in the following form **and style:**

1. The printing of the text shall be in a manner specified by the Code editor in consultation with the legislative council.

2. The Code shall be numbered in a manner specified by the Code editor in consultation with the **legislative council.**

3. Each section shall be indicated by a number printed in boldface type.

4. Each section shall have appropriate catchwords or headnote printed in boldface type contrasting with the text and followed immediately by the text of the section.

5. Proper historical references or source notes shall immediately follow the last word of each section.

6. The Code provided for herein shall include:

a. An analysis of the Code by titles and chapters.

b. The Declaration of Independence.

c. Articles of Confederation.

d. The Constitution of the United States.

e. Laws of the United States relating to the authentication of records.

f. The Constitution of Iowa.

g. The Act admitting Iowa into the union as a state.

h. Chapter analysis at the head of each chapter.

i. All of the statutes of Iowa of a general and permanent nature.

j. The rules of the supreme court, rules of civil procedure and rules of appellate procedure.

k. An index covering the Constitution and statutes of the state of Iowa and the rules of the supreme court, rules of civil procedure and rules of appellate procedure.

7. The Code editor may insert under any section a reference to any other related section, subject matter, or editorial comment or annotation deemed useful to a proper understanding of the Code.

8. The chapter number shall appear at the top of each page.

9. The Code shall be printed upon a good quality of paper in a manner specified by the Code editor in consultation with the legislative council according to the recommendations prepared by the superintendent of printing. [C97, p.5; S13,p.3; C24, 27, 31, 35, 39,§**168**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§14.12; 66GA, ch 1241,§30]

See also §§2.42, 14.15

14.13 Editorial work. The Code editor in preparing the copy for an edition of the Code and the Iowa departmental rules shall have power to:

1. Correct therein all misspelled words in the original enrollments.

2. Correct all manifest grammatical and clerical errors including punctuation but without changing the meaning.

3. Transpose sections or to divide sections so as to give to distinct subject matters a section number but without changing the meaning.

4. Prepare comments deemed necessary for a proper explanation of the manner of printing the section or chapter of the Code. [C24, 27, 31, 35, 39,§**169**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §14.13]

14.14 Formal matters omitted. When any Act of the general assembly subsequent to the issuance of the Code of 1924 contains in the substantive part of the Act a reference to a section of the Code and designates such section by such reference as "Code 1924", "Code 1927", "Code 1931", etc., or the equivalent thereof, the Code editor is directed in the preparation of the ensuing Code to omit the year indicated by such reference. [C27, 31, 35,§169-b1; C39, §**169.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§14.14]

14.15 Future Codes. A new Code or supplements thereto shall be issued as soon as possible after the final adjournment of the second regular session of the general assembly. Supplements to the Code may be issued in such manner as shall be determined by the Code editor in consultation with the legislative council. The Code editor shall, immediately after the issuance of a new Code, prepare copy for the ensuing Code or supplement thereto, and at all times keep the same revised to date in the files of his office. The printing board shall cause such Code or supplement thereto to be printed in the manner specified by the Code editor in consultation with the legislative council and the proofreading on such Code shall be solely under the direction and control of the Code editor. [C24, 27, 31, 35, 39,§**170**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§14.15]

See also §§2.42, 14.12(9)

14.16 Preparation. All new editions of the Code or supplements thereto shall be so prepared and printed that each section of the general statute law shall appear in said new edition in its new or finally revised and amended form. All sections of law of a general nature enacted after the last preceding Code shall be inserted in each new edition in such logical order as the editor of the Code may determine.

All new editions of the Code or supplements thereto may be printed in one or more volumes as shall be determined by the majority of a committee consisting of the Code editor, the chief justice of the supreme court and the superintendent of printing. [C24, 27, 31, 35, 39,§**171**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§14.16]

14.17 Citation of permanent Code or supplements. The permanent Codes or supplements thereto published subsequent to the adjournment of the extra session of the Fortieth General Assembly shall be known and cited as "The Code.....", or "supplement to the Code .....", giving year of edition of such Code or supplement thereto. [C24, 27, 31, 35, 39,§**172**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§14.17]

14.18 Citation of session laws. The session laws of each general assembly shall be known and cited as "..... ..... Session of the ..... General Assembly, Chapter (or File No.) ....., Section ....." (inserting the appropriate number). [C24, 27, 31, 35, 39, §**173**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§14.18]

See §2.2

14.19 Citation of prior Codes. All prior Codes and supplements shall be cited by the year in which published. [C24, 27, 31, 35, 39, §**174**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§14.19]

14.20 Official statutes. The Code and session laws published under authority of the state shall constitute the only authoritative publications of the statutes of this state. No other publications of the statutes of the state shall be cited in the courts or in the reports or rules thereof. [C97,p.5; S13,p.3; C24, 27, 31, 35, 39,§**175**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§14.20]

14.21 Publication of parts of Code. The printing division may cause to be printed from time to time, in the form of leaflets, folders, or pamphlets and in such numbers as the division deems reasonable, parts of the Code for the use of public officers. Such orders shall be limited to actual needs as shown by experience or other competent proof, and the printing shall, as far as practicable, be done from the plates or slugs from which the Code has been printed.

Commencing July 1, 1977, the Code editor shall cause to be compiled, indexed and published in loose-leaf form all rules of civil procedure, rules of criminal procedure*, rules of appellate procedure, and supreme court rules. The Code editor shall cause to be distributed supplements to the compilation on or before the effective date of either new rules, or amendments to or the repeal of existing rules. All expenses incurred by the Code editor under this paragraph shall be defrayed under the provisions of section 14.22. There shall be established a price for the compilation of rules, and a separate price for each supplement. The price of the compilation and of supplements

shall represent the costs of compiling and indexing, plus the amounts charged for printing and distribution. A single copy of each compilation and of each supplement shall be distributed free of charge to each of the persons or agencies referred to in section 18.97, subsections 1, 2, 5, 6, 7, 8 and 15. [C97,p.5; S13,p.3; C24, 27, 31, 35, 39,§176; C46, 50, 54, 58, 62, 66, 71, 73, 75,§14.21; 66GA, ch 67,§2, ch 1056,§3]

See also §17.27
Election laws published, 66GA, ch 1060,§1
*These rules are effective January 1, 1978

14.22 Appropriation. There is hereby appropriated out of any money in the treasury not otherwise appropriated an amount sufficient to defray all expenses incurred in the carrying out of the provisions of this chapter, but before any obligations for expenditure from this appropriation shall be incurred the same shall be approved by the comptroller. [C24, 27, 31, 35, 39,§177; C46, 50, 54, 58, 62, 66, 71, 73, 75,§14.22]

Referred to in §§14.21, 17A.6(4)

CHAPTER 15

STATE PRINTING

Transferred to ch 18, division II

CHAPTER 16

SPANISH-SPEAKING PEOPLES COMMISSION— GOVERNOR'S AD HOC COMMITTEES

16.1 Notice to general assembly.
16.2 Commission created — terms — compensation.
16.3 Organization.
16.4 Commission employees.
16.5 Duties.
16.6 Powers.
16.7 Report.
16.8 Commission termination.

16.1 Notice to general assembly. The governor shall within ten days following the establishment of any ad hoc committee, council or task force give written notice of such action to the general assembly. The written notice shall describe the objectives and the scope of proposed activities of the ad hoc committee, council or task force. If the ad hoc committee, council or task force is established while the general assembly is in session, the written notice shall be transmitted to the lieutenant governor and the speaker of the house and shall be printed in the journals of the senate and the house of representatives. If the ad hoc committee, council or task force is established when the general assembly is not in session the written notice shall be transmitted to the legislative council. [66GA, ch 1061,§2]

16.2 Commission created—terms—compensation. There is created a Spanish-speaking peoples commission which shall consist of nine members, appointed by the governor from a list of nominees submitted by the governor's Spanish-speaking peoples task force. The members of the commission shall be appointed during the month of June and shall serve for terms of two years commencing July 1 of each odd-numbered year. However members of the initial commission shall be appointed not later than July 31, 1976 and shall serve until July 1, 1979. Members appointed in 1976 or in an odd-numbered year shall continue to serve until their respective successors are appointed. Vacancies in the membership of the commission shall be filled by the original appointing authority and in the manner of the original appointments. Members shall receive forty dollars per diem and actual and necessary expenses incurred while serving in their official capacity. [66GA, ch 1061,§3]

16.3 Organization. The commission shall select from its membership a chairperson and other officers as it deems necessary and shall meet not less than six times a year. A majority of the members of the commission shall constitute a quorum. [66GA, ch 1061,§4]

16.4 Commission employees. The commission may employ a director and clerical staff who shall be qualified by experience to assume the responsibilities of their several offices. The director shall be the administrative officer of the commission and shall serve the commission by gathering and disseminating information, forwarding proposals and evaluations to the governor, the general assembly, and state agencies, carrying out public education programs, conducting hearings and conferences, and performing other duties necessary for the proper operation of the commission. [66GA, ch 1061,§5]

16.5 Duties. The commission shall:

1. Co-ordinate, assist, and co-operate with the efforts of state departments and agencies to serve the needs of Spanish-speaking persons in the fields of education, employment, health, housing, welfare, and recreation.

2. Develop, co-ordinate, and assist other public organizations which serve Spanish-speaking persons.

3. Evaluate existing programs and proposed legislation affecting Spanish-speaking persons, and propose new programs.

4. Stimulate public awareness of the problems of Spanish-speaking persons by conducting a program of public education and encouraging the governor and the general assembly to develop programs to deal with these problems.

5. Conduct training programs for Spanish-speaking persons to enable them to assume leadership positions on the community level.

6. Conduct a survey of the Spanish-speaking people in Iowa in order to ascertain their needs.

7. Work to establish a Spanish-speaking information center in the state of Iowa. [66GA, ch 1061,§6]

16.6 Powers. The commission shall have all powers necessary to carry out the functions and duties specified in this chapter, including, but not limited to the power to establish advisory committees on special studies, to solicit and accept gifts and grants, promulgate rules according to chapter 17A, and to contract with public and private groups to conduct its business. All departments, divisions, agencies and offices of the state shall make available upon request of the commission information which is pertinent to the subject matter of the study and which is not by law confidential. [66GA, ch 1061,§7]

16.7 Report. The commission shall make a detailed report of its activities, studies, findings, conclusions and recommendations to the general assembly not later than February 15 of each odd-numbered year. [66GA, ch 1061,§8]

16.8 Commission termination. Without affirmative action by the general assembly the Spanish-speaking people's commission shall expire on June 30, 1979. [66GA, ch 1061,§9]

Continuation, see 66GA, ch 1061,§10

CHAPTER 17

OFFICIAL REPORTS AND DOCUMENTS

Referred to in §§18.28, 18.80, 18.50, 18.59, 524.216

17.1 Official reports—preparation.
17.2 Made to governor.
17.3 Biennial reports—time covered and date of filing.
17.4 Annual reports—time covered and date of filing.
17.5 Governor.
17.6 Attorney general.
17.7 Repealed by 64GA, ch 1088,§206.
17.8 Superintendent of banking.
17.9 State department of transportation.
17.10 Commerce commission.
17.11 Repealed by 65GA, ch 139,§31.
17.12 Delay.
17.13 Governor may grant extension.
17.14 Number of copies—style.
17.15 Legislative journals.
17.16 Legislative proceedings.
17.17 Corrected journals.
17.18 Legislative bills.
17.19 Legalizing Acts of local nature.
17.20 Miscellaneous documents.
17.21 Legal publications.
17.22 Price.
17.23 Price of departmental reports.
17.24 Repealed by 63GA, ch 1014,§6.
17.25 New editions.
17.26 Number printed.
17.27 Other necessary publications—when necessary to sell.
17.28 Governor may fix filing date.
17.29 Title pages—complimentary insertions.
17.30 Inventory of state property.
17.31 and 17.32 Repealed by 58GA, ch 76,§1.
17.33 State publications to libraries.

17.1 Official reports — preparation. State officials, boards, commissions, and heads of departments shall prepare and file written official reports, in simple language and in the most concise form consistent with clearness and comprehensiveness of matter, required by law or by the governor.

Before filing any report its author shall carefully edit the same and strike therefrom all minutes of proceedings, and all correspondence, petitions, orders, and other matter which can be briefly stated, or which is not important information concerning public affairs, and consolidate so far as practicable all statistical tables.

Any report failing to comply substantially with this section shall be returned to its author for correction, and until made so to comply shall not be printed.

This section shall not be construed as depriving the superintendent of printing of the right to edit and revise said report. [C24, 27,

31, 35, 39,§244; C46, 50, 54, 58, 62, 66, 71, 73, 75, §17.1]

Referred to in §476.16

17.2 Made to governor. All official reports shall be made to the governor unless otherwise provided.

Reports after being filed with the governor and considered by him shall be delivered to the superintendent of printing. [C24, 27, 31, 35, 39,§245; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.2]

Industrial commissioner's report transmitted to general assembly, §86.9

17.3 Biennial reports — time covered and date of filing. Reports of the following officials and departments shall cover the biennial period ending June 30 in each even-numbered year, and shall be filed as soon as practicable after the end of the reporting period:

1. State comptroller on fiscal condition of state.
2. Treasurer of state as to the condition of the treasury.
3. Secretary of agriculture.
4. Superintendent of public instruction.
5. Commissioner of the department of social services.
6. Board of regents.
7. Superintendent of printing.
8. Industrial commissioner.
9. Commissioner of public health.
10. Commissioner of labor.
11. State historical board.
12. State librarian.
13. Library commission.
14. Department of general services.
15. State conservation director.
16. Adjutant general.

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

The officials and departments required by this section to file reports shall submit the reports on standardized forms furnished by the state comptroller. All officials and agencies submitting reports shall consult with the state comptroller and the director of the office of planning and programming, and shall devise standardized report forms for submission to the governor and members of the general assembly. [C73,§125; C97,§122; S13,§122; C24, 27, 31, 35, 39,§246; C46, 50, 54, 58, 62, 66, 71, 73, 75, §17.3; 66GA, ch 67,§§3, 4]

Referred to in §455B.7(4)
Adjutant general, §29A.12
Auditor of state, §§11.25, 11.27
Board of accountancy, §116.3
Board of parole, §247.32
Board of regents, §262.26
Commissioner of public health, §§135.37, 136.10
Industrial commissioner, §86.9
Labor commissioner, §91.4(5)
Secretary of agriculture, §159.15
Secretary of executive council, §19.6
Social services board, §235.2, subsection 5, and §251.3(3)
Soldiers home, §219.21
State board for vocational education, §§259.4(15), 259.8
State comptroller, Const., Art. III, §18. Also §§8.6, 8.21–8.25, 14.10, 262.22, 302.18
State conservation director, §109.10
State department of revenue, §421.17 (12) and (13)
State historical board, §303.5(5)
State soil conservation committee, §467A.11
Superintendent of public instruction, §§257.18(18), 258.13
Treasurer of state, §§12.17, 258.12

17.4 Annual reports—time covered and date of filing. Reports of the following officials and departments shall cover the year ending December 31 of each year, and shall be filed as soon as practicable after said date:

1. Commissioner of insurance.
2. Apiarist.
3. State geologist.
4. Fire marshal.
5. Board of accountancy.*
6. Board of engineering examiners.
7. Inspector of passenger boats.**
8. Higher education facilities commission.

[C24, 27, 31, 35, 39,§247; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.4]

*See §116.3(3)
**Report abolished
Apiarist, §160.13
Board of architectural examiners, §118.4
Board of educational examiners, §260.29
City development board, §368.10
Commission for the blind, §601B.6(7)
Commissioner of insurance, §§505.12, 505.13
Department of environmental quality executive committee, §455B.7
Engineering examiners, §114.10
Fair board, §173.21
Fire marshal, §100.33
Higher education facilities commission, §261.15
Iowa beer and liquor control council, §123.55
Merit employment commission, §19A.7
Printing division, §18.27(5)
Savings and loan supervisor, §534.58
State department of revenue, §422.75
State geologist, §305.7
Status of women commission, §601.8

17.5 Governor. The biennial report of the governor to the general assembly on reprieves, commutations, pardons, and remission of fines and forfeitures shall cover the two years ending with December 31 immediately preceding the convening of the general assembly in regular session, in odd-numbered years, and shall be filed as soon as practicable after said date. [C24, 27, 31, 35, 39,§248; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.5; 66GA, ch 1056,§4]

17.6 Attorney general. The biennial report of the attorney general shall cover the two-year period ending with December 31 in even-numbered years and shall be filed as soon as practicable after the expiration of said period but not later than March 1. [C24, 27, 31, 35, 39,§249; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.6; 66GA, ch 1056,§5]

17.7 Repealed by 64GA, ch 1088,§206.

17.8 Superintendent of banking. The annual report of the superintendent of banking shall cover the year ending June 30 of each year, and shall be filed as soon as practicable after said date and not later than September 1. [C24, 27, 31, 35, 39,§**251**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.8]

Annual report, §524.216

17.9 State department of transportation. The annual report of the state department of transportation shall cover the year ending June 30 and shall be filed not later than September 1 of each year, provided the summary report of county highway engineers may be filed on a date not later than February 1. [C24, 27, 31, 35, 39,§**252**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.9]

Additional provision, §307A.2(8)
Research and engineering reports, §310.36

17.10 Commerce commission. The annual report of the Iowa state commerce commission* shall, as to all statistical data, cover the year ending December 31 preceding the filing of the report, and the proceedings of the commission to date of filing the report each year. Said report shall be filed on or before December 1. The commission shall determine the manner in which such annual report shall be published. [C24, 27, 31, 35, 39,§**253**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.10]

Referred to in §476.16
*See also ch 307
Additional provision, §327C.6

17.11 Repealed by 65GA, ch 139,§31.

17.12 Delay. Should the governor deem the delay in filing a report to be unreasonable he shall take such steps as will correct the delinquency. [C24, 27, 31, 35, 39,§**255**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.12]

17.13 Governor may grant extension. The governor shall have authority to grant an extension of time for the completion of any report or any portion thereof, but in the case of any delay deemed by him to be unnecessary or unreasonable he shall take whatever steps may be necessary to have the delayed report prepared for filing. [C24, 27, 31, 35, 39,§**256**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.13]

17.14 Number of copies—style. The annual and biennial reports shall be published, printed, and bound in such number as the superintendent of printing may order. The officials and heads of departments shall furnish the superintendent with information necessary to determine the number of copies to be printed.

They shall be printed on good paper, in legible type with pages substantially six inches by nine inches in size. They may be divided for binding where one portion should receive larger distribution than another, or be issued in parts or sections for greater convenience. [C73,§130; C97,§125; S13,§125; C24, 27, 31, 35, 39,§**257**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.14]

17.15 Legislative journals. The record of the transactions of the senate and house shall be published in a daily journal, printed in number as authorized by the general assembly or directed by the superintendent of printing. The completed journals shall be published in book form, with index and record of bills, in an edition of such number as shall jointly be specified by the presiding officers of the two houses of the general assembly in library binding and such number as shall jointly be specified by the presiding officers of the two houses of the general assembly in paper covers. There shall also be printed for the general assembly or the members thereof such other material necessary for the transaction of legislative business. [C97,§§127, 130; SS15,§§132-b,-d; C24, 27, 31, 35, 39,§**259**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.15]

17.16 Legislative proceedings. The reports of the legislative proceedings shall be delivered by the secretary of the senate and the chief clerk of the house to the superintendent of printing promptly upon completion, and he shall cause such reports to be printed in accordance with the contracts covering the same. He shall require that proof copies of the daily journal be furnished the next legislative day after date and shall promptly deliver them to the sergeants at arms of each house. The corrections and changes made therein by the general assembly shall be made before the printing of the corrected or completed journal. [C24, 27, 31, 35, 39,§**260**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.16]

17.17 Corrected journals. The journal, as corrected by order of the general assembly, shall be printed promptly and be delivered by the superintendent to the sergeants at arms of each house. An index, record and history of bills, and list of bills passed, shall be prepared by the superintendent of printing for the completed edition of the journal. [C24, 27, 31, 35, 39,§**261**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.17]

17.18 Legislative bills. The bills introduced in the general assembly shall be printed on good paper. The style and format of such bills shall be specified by the rules but in the absence of such rules by the legislative council. The number of copies of each bill to be printed unless otherwise ordered shall be fixed by the superintendent according to the needs of the general assembly, and to supply subscribers therefor. [C24, 27, 31, 35, 39,§**262**; C46, 50, 54, 58 62, 66, 71, 73, 75,§17.18]

Recommendations of Code editor, §14.8

17.19 Legalizing Acts of local nature. A bill which seeks to legalize the acts of any official or board or other official body, in regard to any matter of public nature or for any person or persons, company or corporation, shall not be considered until it is printed as a bill and distributed to members of the general assembly, and the printing shall be without expense to the state. The superintendent of printing shall

not order any such bill printed until he has received a deposit to cover the cost thereof at the rate which shall be fixed under the current contract for legislative printing for the bills, and shall exclude from the journals all such bills and the newspaper publication of such bill shall be without expense to the state, and same shall not be published until the cost of same has been paid to the secretary of state. [C24, 27, 31, 35, 39,§263; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.19]

Additional requirements, §585.1

17.20 Miscellaneous documents. There shall be published, printed, and bound, uniform with the official reports, unless otherwise provided, and for the periods indicated, the following miscellaneous documents, each of which shall be compiled by the head or secretary of the department or association having charge thereof:

1. Iowa book of agriculture, biennially.
2. Iowa official register, biennially.
3. Assessments by department of revenue relative to public utilities, annually. [C24, 27, 31, 35, 39,§264; C46, 50, 54, 58, 62, 66, 71, 73, 75, §17.20]

17.21 Legal publications. The Code or supplements thereto, Iowa administrative code, rules of civil procedure, rules of appellate procedure, and supreme court rules, session laws, annotations, tables of corresponding sections and reports of the supreme court, unless otherwise specifically provided by law, shall be printed, and paid for in the same manner as other public printing. [C97,§§218–224; SS15, §224-d; C24, 27, 31, 35, 39,§265; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.21; 66GA, ch 1241,§31]

Amendment by 65GA, ch 1090,§29, effective May 1, 1975, 66GA, ch 72,§1

17.22 Price. Said publications shall be sold at a price to be established by dividing the total cost only, of printing, binding, distribution and paper stock by the total number printed of each edition.

1. Code or supplements thereto and Iowa administrative code.
2. Session laws.
3. Daily journals and bills.
4. Book of annotations to the Code.
5. Supplements to the book of annotations.
6. Tables of corresponding sections to the Code.
7. Reports of the supreme court, and reports of the court of appeals.
8. Rules of civil procedure, rules of appellate procedure and supreme court rules.

The Iowa administrative code shall be distributed with each order for purchase of the Code and the price set for the Code and administrative code as provided above shall include the cost of both the Code and administrative code. However, the Iowa administrative code or its supplements may be distributed separately. There shall be established a price for the Iowa administrative code and a separate price for its supplements. The price charged for the Iowa administrative code or its supplements shall represent the cost of compiling and indexing plus the amount charged for the printing and distribution of the Iowa administrative code or its supplements.

When the Code is published in more than one volume the superintendent of printing may distribute each volume on order, after payment of the estimated purchase price for the set, when said volume becomes available. [C27, 31, 35,§265-a1; C39,§265.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.22; 66GA, ch 29,§2, ch 1062,§3, ch 1241,§32]

Amendment by 65GA, ch 1090,§30, effective May 1, 1975, 66GA, ch 72,§1
45GA, ch 9,§7, editorially divided
See §18.101

17.23 Price of departmental reports. The state superintendent of printing shall establish and fix a selling price for all other state departmental reports and any other state publications it may designate, which price per volume shall be the amount charged any person, other than public officials, who may desire to purchase the same; such price shall cover the cost of printing and distribution. The superintendent may distribute gratis to such state or local public officials, or offices, he may deem necessary, copies of departmental annual reports. [C35,§265-e1; C39,§265.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.23]

17.24 Repealed by 63GA, ch 1014,§6.

17.25 New editions. New editions of the Code or supplements thereto, book of annotations, reports of the supreme court, and reports of the court of appeals may be published by the superintendent of printing when the supply on hand of the last edition becomes exhausted and when a new edition is necessary in order to meet the demand. [C24, 27, 31, 35, 39,§267; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.25; 66GA, ch 1241,§33]

17.26 Number printed. The number of each edition of the Code or supplements thereto, tables of corresponding sections and session laws shall be determined by the superintendent of printing unless expressly determined by presiding officers of the general assembly. [C73,§37; C97,§40; C24, 27, 31, 35, 39,§268; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.26]

17.27 Other necessary publications—when necessary to sell. There may be published other miscellaneous documents, reports, bulletins, books, and booklets that are needed for the use of the various officials and departments of state, or are of value for the information of the general assembly or the public, in form and number most useful and convenient, to be determined by the superintendent of printing.

When such publications, except supplements to the Iowa administrative code, paid for by public funds furnished by the state, contain reprints of statutes or rules, or both, they

shall be sold and distributed at cost by the department ordering same if the cost per publication is one dollar or more, unless a central library or depository is established. Such publications shall be obtained from the superintendent of printing on requisition by the department and the selling price, if any, shall be determined by the superintendent by dividing the total cost of printing, paper, distribution and binding by the number printed. Said price shall be set at the nearest multiple of ten to the quotient thus obtained. Distribution of such publications shall be made by the superintendent gratis to public officers, purchasers of licenses from state departments required by statute and departments. Funds from the sale of such publications shall be deposited monthly in the general fund of the state except the cost of distribution shall be deposited in the permanent revolving fund established in section 18.57. [C24, 27, 31, 35, 39,§269; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.27; 66GA, ch 29,§3]

Amendment by 65GA, ch 1090,§31, effective May 1, 1975, 66GA, ch 72,§1
Additional geological reports, §305.9
Publication of director of institutions bulletins, §218.46
Publication of parts of Code, §14.21

17.28 Governor may fix filing date. The governor shall have the right to fix a date for the completion of or filing of any copy or manuscript for any miscellaneous document or other publication, or for any portion of the manuscript, and to compel compliance with such orders the same as in the case of the official reports. The superintendent of printing shall report to the governor any failure to furnish manuscript or other delay affecting any publication. [C24, 27, 31, 35, 39,§270; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.28]

17.29 Title pages — complimentary insertions. The superintendent of printing shall provide the necessary printer's copy for a suitable title page for each publication requiring such title which shall contain the name of the author, but no such title shall have written or printed thereon or attached thereto the words "Compliments of" followed by the name of the author, nor any other words of similar import. [C24, 27, 31, 35, 39,§271; C46, 50, 54, 58, 62, 66, 71, 73, 75,§17.29]

17.30 Inventory of state property. Each state board, commission, department and division of state government and each institution under the control of the department of social services and the state board of regents and each division of the state department of transportation shall be responsible for keeping a written, detailed, up-to-date inventory of all real and personal property belonging to the state and under their charge, control and management. Such inventories shall be in such form as may be prescribed by the director of the department of general services.

Inventories maintained in the files of each such agency of state government shall be open to public inspection and available for the information of the executive council and director of the department of general services. [C46, 50, 54, 58,§§17.30–17.32; C62, 66, 71, 73, 75,§17.30]

17.31 and 17.32 Repealed by 58GA, ch 76,§1.

17.33 State publications to libraries. Upon the request of any library in Iowa which is designated by the federal government as a depository for federal documents, the superintendent of printing shall send to such library one copy, at no cost, of any state publication made available to his office. For each publication a separate request shall be required. Such library shall keep such publications in its collection and make them available to the public. [C62, 66, 71, 73, 75,§17.33]

See also §18.96

CHAPTER 17A

ADMINISTRATIVE PROCEDURE ACT

Referred to in:

§§14.6(5) 16.6 18.4 19A.9 20.6 29C.9 29C.10 29C.19 47.1 47.8 56.2 56.6 56.8 56.10 56.20 80B.11 85.45 86.17 88.5 88A.3 91.4 91A.9 91A.12 93.7 96.6 96.11 97B.4 99B.13 101.5 101A.5 104.3 104.13 109A.3 111.41 123.21 125.7 125.13 125.15 135C.14 135C.36 135C.43 135D.16 138.18 144.3 144.34 148.11 152.10 154A.4 157.14 158.15 162.16 217.3 163.30 164.1 164.19 172A.13 172B.3 172C.5 172C.6 181.18 187.4 187.8 187.13 196.2 204.201 204.301 206.19 217.23 217.30 220.5 224B.5 224B.22 230A.16 234.38 234.39 237A.12 249.4 257.25(10) 272A.8 273.9 280A.38 281.9 285.1 303.5 304.7 304.17 306.6 306C.2 306C.4 307.10 307.19 307A.2 313A.6 316.1 316.9 321.193 321.210 321.238 321.486 321G.2 324.59 326.33 327C.7 327C.39 327D.160 327F.37 327G.15 327G.16 328.19 337A.4 368.10 384.15 421.1 421.17 425.37 427A.1 434.11 438.10 441.47 442.13 455.32(11) 455.33(5) 455B.5 455B.7 455B.78 455B.87 455B.88 455B.103 476.2 476A.4 476A.11 476A.12 505.8 507B.12 514B.17 514B.23 524.1207 527.11 527.12 533.6 537.6117 567.9 600.8 600.22 601A.5 749A.6 753.21

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17A.1 Citation and statement of purpose.

1. This chapter may be cited as the "Iowa Administrative Procedure Act."

2. This chapter is intended to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public. Nothing in this chapter is meant to discourage agencies from adopting procedures providing greater protections to the public or conferring additional rights upon the public; and save for express provisions of this chapter to the contrary, nothing in this chapter is meant to abrogate in whole or in part any statute prescribing procedural duties for an agency which are greater than or in addition to those provided here. This chapter is meant to apply to all rule-making and contested case proceedings and all suits for the judicial review of agency action that are not specifically excluded from this chapter or some portion thereof by its express terms or by the express terms of another chapter.

The purposes of the Iowa administrative procedure Act are: To provide legislative oversight of powers and duties delegated to administrative agencies; to increase public accountability of administrative agencies; to simplify government by assuring a uniform minimum procedure to which all agencies will be held in the conduct of their most important functions; to increase public access to governmental information; to increase public participation in the formulation of administrative rules; to increase the fairness of agencies in their conduct of contested case proceedings; and to simplify the process of judicial review of agency action as well as increase its ease and availability. In accomplishing its objectives, the intention of this chapter is to strike a fair balance between these purposes and the need for efficient, economical and effective government administration. The chapter is not meant to alter the substantive rights of any person or agency. Its impact is limited to procedural rights with the expectation that better substantive results will be achieved in the everyday conduct of state government by improving the process by which those results are attained. [C75,§17A.1]

17A.2 Definitions. As used in this chapter:

1. *"Agency"* means each board, commission, department, officer or other administrative office or unit of the state. "Agency" does not mean the general assembly, the courts, the governor or a political subdivision of the state or its offices and units. Unless provided otherwise by statute, no less than two-thirds of the members eligible to vote of a multimember agency shall constitute a quorum authorized to act in the name of the agency.

2. *"Contested case"* means a proceeding including but not restricted to ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.

3. *"License"* includes the whole or a part of any agency permit, certificate, approval, registration, charter or similar form of permission required by statute.

4. *"Licensing"* includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

5. *"Party"* means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

6. *"Person"* means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

7. *"Rule"* means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of an existing rule, but does not include:

a. A statement concerning only the internal management of an agency and which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

b. A declaratory ruling issued pursuant to section 17A.9, or an interpretation issued by an agency with respect to a specific set of facts and intended to apply only to that specific set of facts.

c. An intergovernmental, interagency, or intra-agency memorandum, directive, manual or other communication which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

d. A determination, decision, or order in a contested case.

e. An opinion of the attorney general.

f. Those portions of staff manuals, instructions or other statements issued by an agency which set forth criteria or guidelines to be used by its staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when the disclosure of such statements would: (1) Enable law violators to avoid detection; or (2) facilitate disregard of requirements imposed by law; or (3) give a clearly improper advantage to persons who are in an adverse position to the state.

Referred to in §17A.3, subsection 1, paragraph "c"

g. A specification of the prices to be charged for goods or services sold by an agency as distinquished from a license fee, application fee, or other fees.

h. A statement concerning only the physical servicing, maintenance or care of publicly owned or operated facilities or property.

i. A statement relating to the use of a particular publicly owned or operated facility or property, the substance of which is indicated to the public by means of signs or signals.

j. A decision by an agency not to exercise a discretionary power.

k. A statement concerning only inmates of a penal institution, students enrolled in an educational institution, or patients admitted to a hospital, when issued by such an agency.

8. *"Rule-making"* means the process for adopting, amending, or repealing a rule.

9. *"Agency action"* includes the whole or a part of an agency rule or other statement of law or policy, order, decision, license, proceeding, investigation, sanction, relief, or the equivalent or a denial thereof, or a failure to act, or any other exercise of agency discretion or failure to do so, or the performance of any agency duty or the failure to do so.

10. *"Agency member"* means an individual who is the statutory or constitutional head of an agency, or an individual who is one of several individuals who constitute the statutory or constitutional head of an agency. [C54, 58, 62, 66, 71, 73,§17A.1; C75,§17A.2]

Referred to in §§172D.1, 476A.1 Court Rule 116

17A.3 Public information—adoption of rules—availability of rules and orders.

1. In addition to other requirements imposed by Constitution or statute, each agency shall:

a. Adopt as a rule a description of the organization of the agency which states the general course and method of its operations, and the methods by which and location where the public may obtain information or make submissions or requests.

b. Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available to the public, including a description of all forms and instructions that are to be used by the public in dealing with the agency.

c. Make available for public inspection all rules, and make available for public inspection and index by subject, all other written statements of law or policy, or interpretations formulated, adopted or used by the agency in the discharge of its functions. Except as otherwise required by Constitution or statute, or in the use of discovery under the Iowa rules of civil procedure or in criminal cases, an agency shall not be required to make available for public inspection those portions of its staff manuals, instructions or other statements excluded from the definition of "rule" by section 17A.2, subsection 7, paragraph *"f"*.

d. Make available for public inspection and index by name and subject all final orders, decisions and opinions: Provided that to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets, an agency shall delete identifying details when it makes available for public inspection any final order, decision or opinion; however, in each case the justification for the deletion shall be explained fully in writing.

2. No agency rule or other written statement of law or policy, or interpretation, order, decision or opinion is valid or effective against any person or party, nor shall it be invoked by the agency for any purpose, until it has been made available for public inspection and indexed as required by subsection 1, paragraphs *"c"* and *"d"*. This provision is not applicable in favor of any person or party who has actual timely knowledge thereof and the burden of proving such knowledge shall be on the agency. [C75,§17A.3]

17A.4 Procedure for adoption of rules.

1. Prior to the adoption, amendment, or repeal of any rule an agency shall:

a. Give notice of its intended action by submitting two copies of the notice to the Code editor to be published in the "Iowa Administrative Code" created pursuant to section 17A.6. Any notice of intended action shall be published at least thirty-five days in advance of the action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon.

b. Afford all interested persons not less than twenty days to submit data, views or arguments in writing. If timely requested in writing by twenty-five interested persons, by a governmental subdivision, by the administrative rules review committee, by an agency, or by an association having not less than twenty-five members, the agency must give interested persons an opportunity to make oral presentation according to agency rules which give the public not less than twenty days notice of the time when and the place

where oral presentation may be made, and which provide for the presentation prior to agency action on the rule which is the subject of the proceeding. The agency shall consider fully all written and oral submissions respecting the proposed rule. Within one hundred eighty days following either the notice published according to the provisions of subsection 1, paragraph *"a"* or within one hundred eighty days after the last date of the oral presentations on the proposed rule, whichever is later, the agency shall adopt a rule pursuant to the rule-making proceeding or shall terminate the proceeding by publishing notice of termination in the Iowa administrative code. If requested to do so by an interested person, either prior to adoption or within thirty days thereafter, the agency shall issue a concise statement of the principal reasons for and against the rule it adopted, incorporating therein the reasons for overruling considerations urged against the rule.

c. Upon the request of at least two members of the administrative rules review committee publish in the Iowa administrative code an estimate of the economic impact of the proposed rule adoption, amendment, or repeal upon all persons affected by it and upon the agency itself. If the agency determines that such an estimate cannot be formulated the reasons for impossibility of formulation shall be published instead of the estimate. An estimate shall be published at least fifteen days in advance of the adoption, amendment or repeal of the rule. In the case of a rule issued under subsection 2 or made effective under the provisions of section 17A.5, subsection 2, paragraph *"b"*, an estimate, or the reasons for the impossibility of formulating an estimate shall be published within thirty days of the request.

2. When an agency for good cause finds that notice and public participation would be impracticable, or contrary to the public interest, the provisions of subsection 1 shall be inapplicable if the rule which is so adopted provides by its own terms that it shall be effective for only one hundred eighty specified days. If an agency for good cause finds that notice and public participation would be unnecessary, subsection 1 shall be inapplicable. The agency shall incorporate in each rule issued in reliance upon this provision either the finding and a brief statement of the reasons therefor, or a statement that the rule is within a very narrowly tailored category of rules whose issuance has previously been exempted from subsection 1 by a special rule relying on this provision and including such a finding and statement of reasons for the entire category. In any action contesting a rule adopted pursuant to this subsection, the burden of proof shall be on the agency to show that the procedures of subsection 1 were impracticable, unnecessary, or contrary to the public interest and that, if a category of rules was involved, the category was very narrowly tailored.

3. No rule adopted after July 1, 1975, is valid unless adopted in substantial compliance with the above requirements of this section. However, a rule shall be conclusively presumed to have been made in compliance with all of the above procedural requirements of this section if it has not been invalidated on the grounds of noncompliance in a proceeding commenced within two years after its effective date.

4. *a.* If the administrative rules review committee created by section 17A.8 or the attorney general finds objection to all or some portion of a proposed rule because that rule is deemed to be unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to the agency, the committee or attorney general may, in writing, notify the agency of the objection prior to the effective date of such a rule. In the case of a rule issued under subsection 2, or a rule made effective under the terms of section 17A.5, subsection 2, paragraph *"b"*, the committee or attorney general may notify the agency of such an objection within seventy days of the date such a rule became effective. The committee or the attorney general shall also file a certified copy of such an objection in the office of the secretary of state within the above time limits and a notice to the effect that an objection has been filed shall be published in the next supplement to the "Iowa Administrative Code". The burden of proof shall then be on the agency in any proceeding for judicial review or for enforcement of the rule heard subsequent to the filing to establish that the rule or portion of the rule timely objected to according to the above procedure is not unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to it.

b. If the agency fails to meet the burden of proof prescribed for a rule objected to according to the provisions of paragraph "*a*" of this subsection, the court shall declare the rule or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs. Such court costs shall include a reasonable attorney fee and shall be payable by the state comptroller from the support appropriations of the agency which issued the rule in question.

5. Upon the vote of two-thirds of its members the administrative rules review committee may delay the effective date of a rule seventy days beyond that permitted in section 17A.5, unless the rule was promulgated under section 17A.5, subsection 2, paragraph *"b"*. This provision shall be utilized by the committee only if further time is necessary to study and examine the rule. Notice of an effective date that was delayed under this provision shall be published in the Iowa administrative code. [C66, 71,§§17A.6, 17A.7; C73,§§17A.6, 17A.7, 17A.17; C75,§17A.4; 66GA, ch 1063,§§1,2]

Referred to in §§17A.7, 17A.8, 93.7(10), 519A.4

17A.5 Filing and taking effect of rules.

1. Each agency shall file in the office of the secretary of state three certified copies of each rule adopted by it. Two copies of each rule shall be forwarded to the Code editor. The secretary of state shall keep a permanent register of the rules open to public inspection.

2. Each rule hereafter* adopted is effective thirty-five days after filing, as required in this section, and indexing and publication as required by section 17A.6, except that:

a. If a later date is required by statute or specified in the rule, the later date is the effective date.

b. Subject to applicable constitutional or statutory provisions, a rule becomes effective immediately upon filing with the secretary of state, or at a subsequent stated date prior to indexing and publication, or at a stated date less than thirty-five days after filing, indexing and publication, if the agency finds:

(1) That a statute so provides;

(2) That the rule confers a benefit or removes a restriction on the public or some segment thereof; or

(3) That this effective date is necessary because of imminent peril to the public health, safety or welfare. In any subsequent action contesting the effective date of a rule promulgated under this paragraph, the burden of proof shall be on the agency to justify its finding. The agency's finding and a brief statement of the reasons therefor shall be filed with and made a part of the rule. Prior to indexing and publication, the agency shall make reasonable efforts to make known to the persons who may be affected by it a rule made effective under the terms of this paragraph. [C54, 58, 62,§§17A.3, 17A.4; C66, 71, 73,§17A.8; C75,§17A.5; 66GA, ch 1063,§3]

Referred to in §§17A.4, 519A.4
*Act effective July 1, 1975

17A.6 Publication of rules.

1. The Code editor shall cause* to be compiled, indexed and published in loose-leaf form all rules adopted by each agency and notice of all proposed rule-making by each agency. The Code editor further shall cause to be published supplements to this publication at least every other week which supplements shall contain, in such a form that they may be filed in the appropriate places in the compilation, all rules and notice of proposed rules filed for publication in the prior two weeks. The Code editor shall devise a uniform numbering system for rules and may renumber rules before publication to conform with the system.

2. The Code editor may omit or cause to be omitted from the publication any rule the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency at no more than its cost of reproduction, and if the publication contains a notice stating the specific subject matter of the omitted rule and stating how a copy thereof may be obtained.

3. This publication, which shall be known as the "Iowa Administrative Code", shall be made available upon request to all persons who subscribe to it through the state printing division. Copies of this Code so made available shall be kept current by the division.

4. All expenses incurred by the Code editor under this section shall be defrayed under the provisions of section 14.22. [C54, 58, 62, 66,§§14.3, 17A.9; C71, 73,§14.6(5); C75,§17A.6; 66GA, ch 1063,§4]

Referred to in §17A.5
*Superintendent of printing in department of general services, see §18.27(1)
Amendment by 65GA, ch 1090,§6, effective May 1, 1975, 66GA, ch 72,§1

17A.7 Petition for adoption of rules. An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. Within sixty days after submission of a petition, the agency either shall deny the petition in writing on the merits, stating its reasons for the denial, or initiate rule-making proceedings in accordance with section 17A.4, or issue a rule if it is not required to be issued according to the procedures of section 17A.4, subsection 1. [C75,§17A.7]

17A.8 Administrative rules review committee.

1. There is created the "Administrative Rules Review Committee." The committee shall be bipartisan and shall be composed of the following members:

a. Three senators appointed by the president of the senate.

b. Three representatives appointed by the speaker of the house.

2. A committee member shall be appointed prior to the adjournment of a regular session convened in an odd-numbered year. The term of office shall be for four years beginning May 1 of the year of appointment. However, a member shall serve until a successor is appointed. A vacancy on the committee shall be filled by the original appointing authority for the remainder of the term. A vacancy shall exist whenever a committee member ceases to be a member of the houses from which the member was appointed.

3. A committee member shall be paid a forty-dollar per diem for each day in attendance and shall be reimbursed for actual and necessary expenses. There is appropriated from money in the general fund not otherwise appropriated an amount sufficient to pay costs incurred under this section.

4. The committee shall choose a chairperson from its membership and prescribe its rules of procedure. The committee may employ a secretary or may appoint the Code editor or a designee to act as secretary.

5. A regular committee meeting shall be held at the seat of government on the second Tuesday of each month. Unless impracticable in advance of each such meeting the subject matter to be considered shall be published in the Iowa administrative code. A special committee meeting may be called by the chairperson at any place in the state and at any time. Unless impracticable, in advance of each special meeting notice of the time and place of such meeting and the subject matter to be considered shall be published in the Iowa administrative code.

6. The committee shall meet for the purpose of selectively reviewing rules, whether proposed or in effect. A regular or special committee meeting shall be open to the public and an interested person may be heard and present evidence. The committee may require a representative of an agency whose rule or proposed rule is under consideration to attend a committee meeting.

7. The committee may refer a rule to the speaker of the house and the president of the senate at the next regular session of the general assembly. The speaker and the president shall refer such a rule to the appropriate standing committee of the general assembly.

8. If the committee finds objection to a rule, it may utilize the procedure provided in section 17A.4, subsection 4. In addition or in the alternative, the committee may include in the referral, under subsection 7, a recommendation that this rule be overcome by statute. If the committee of the general assembly to which a rule is referred finds objection to the referred rule, it may recommend to the general assembly that this rule be overcome by statute. This section shall not be construed to prevent a committee of the general assembly from reviewing a rule on its own motion.

9. Notwithstanding section 13.7, the committee may employ necessary legal and technical staff. [C54, 58, 62,§17A.2; C66, 71, 73,§§17A.2–17A.4, 17A.10; C75,§17A.8; 66GA, ch 1063,§5]

Referred to in §17A.4(4)

17A.9 Declaratory rulings by agencies. Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision, rule or other written statement of law or policy, decision or order of the agency. Rulings disposing of petitions have the same status as agency decisions or orders in contested cases. [C75,§17A.9]

Referred to in §§17A.2(7), 17A.19

17A.10 Informal settlements—waiver.

1. Unless precluded by statute, informal settlements of controversies that may culminate in contested case proceedings according to the provisions of this chapter are encouraged. Agencies shall prescribe by rule specific procedures for attempting such informal settlements prior to the commencement of contested case proceedings. This subsection shall not be construed to require either party to such a controversy to utilize the informal procedures or to settle the controversy pursuant to those informal procedures.

2. The parties to a contested case proceeding may, by written stipulation representing an informed mutual consent, waive any provision of this chapter relating to such proceedings. In addition to consenting to such a waiver in individual cases, an agency may, by rule, express its consent to such a waiver as to an entire class of cases. [C75,§17A.10]

Referred to in §421.17

17A.11 Presiding officer — administrative hearing officers.

1. The presiding officer in evidentiary hearings required to be conducted by an agency according to the provisions of this chapter governing contested cases shall be the agency, one or more members of a multimember agency, or an administrative hearing officer appointed according to the terms of this section. Each agency needing the services of one or more permanent full-time or part-time administrative hearing officers shall appoint as many of them to its staff as are necessary for this purpose. Agencies shall assign administrative hearing officers to cases in rotation unless it is not feasible. Administrative hearing officers shall not perform duties inconsistent with their duties and responsibilities as hearing officers.

2. Administrative hearing officers shall be covered by the merit system of personnel administration, chapter 19A. The Iowa merit employment department or other appropriate agency specified in section 19A.3 shall, insofar as practicable, provide for different classes of administrative hearing officers with different salary scales.

3. An agency whose work load is such that the appointment of a permanent full-time or part-time administrative hearing officer is unwarranted, or an agency whose work load is such that one or more additional administrative hearing officers are temporarily required, may use administrative hearing officers selected by the Iowa merit employment department from other agencies having hearing officers that are temporarily available and that are qualified to preside at the hearings held by the agency requesting the temporary use of a hearing officer. In cases where an agency borrows one or more administrative hearing officers from other agencies, the salaries and expenses of those administrative hearing officers shall be apportioned and charged to the several agencies according to their use. [C75, §17A.11]

17A.12 Contested cases—notice—hearing—records.

1. In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice in writing delivered either by personal service as in civil actions or by certified mail return receipt requested. How-

ever, an agency may provide by rule for the delivery of such notice by other means. Delivery of the notice referred to in this subsection shall constitute commencement of the contested case proceeding.

2. The notice shall include:

a. A statement of the time, place and nature of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. A reference to the particular sections of the statutes and rules involved.

d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

3. If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, proceed with the hearing and make a decision in the absence of the party.

4. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense.

5. Unless precluded by statute, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing.

6. The record in a contested case shall include:

a. All pleadings, motions and intermediate rulings.

b. All evidence received or considered and all other submissions.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings thereon.

e. All proposed findings and exceptions.

f. Any decision, opinion or report by the officer presiding at the hearing.

7. Oral proceedings shall be open to the public and shall be recorded either by mechanized means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the agency for at least five years from the date of decision.

8. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record. [C75,§17A.12]

Referred to in §§17A.13, 17A.16, 476A.4

17A.13 Subpoenas—discovery.

1. Agencies shall have all subpoena powers conferred upon them by their enabling acts or other statutes. In addition, prior to the commencement of a contested case by the notice referred to in section 17A.12, subsection 1, an agency having power to decide such cases shall have authority to subpoena books, papers, records and any other real evidence necessary for the agency to determine whether it should institute such a contested case proceeding. After the commencement of a contested case, each agency having power to decide contested cases shall have authority to administer oaths and to issue subpoenas in such cases. Discovery procedures applicable to civil actions shall be available to all parties in contested cases before an agency. Evidence obtained in such discovery may be used in the hearing before the agency if that evidence would otherwise be admissible in the agency hearing. Agency subpoenas shall be issued to a party on request. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with the law applicable to the issuance of subpoenas or discovery in civil actions. In proceedings for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in cases of willful failure to comply.

2. An agency that relies on a witness in a contested case, whether or not an agency employee, who has made prior statements or reports with respect to the subject matter of the witness' testimony, shall, on request, make such statements or reports available to parties for use on cross-examination, unless those statements or reports are otherwise expressly exempt from disclosure by Constitution or statute. Identifiable agency records that are relevant to disputed material facts involved in a contested case, shall, upon request, promptly be made available to a party unless the requested records are expressly exempt from disclosure by Constitution or statute. [C75,§17A.13]

17A.14 Rules of evidence—official notice. In contested cases:

1. Irrelevant, immaterial, or unduly repetitious evidence should be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be preju-

diced substantially, any part of the evidence may be required to be submitted in verified written form.

2. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

3. Witnesses at the hearing, or persons whose testimony has been submitted in written form if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

4. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

5. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. [C75,§17A.14]

17A.15 Final decisions—proposed decisions—conclusiveness—review by the agency.

1. When the agency presides at the reception of the evidence in a contested case, the decision of the agency is a final decision.

2. When the agency did not preside at the reception of the evidence in a contested case, the presiding officer shall make a proposed decision. Findings of fact shall be prepared by the officer presiding at the reception of the evidence in a contested case unless the officer becomes unavailable to the agency. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

3. When the presiding officer makes a proposed decision, that decision then becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties or by rule. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the agency, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the agency, present oral arguments to the agency members who are to render the final decision.

4. This section shall not preclude an agency from instituting a system whereby the proposed decision of a presiding officer in a contested case may be appealed to, or reviewed on motion of, a body consisting of one or more persons that is between the presiding officer and the agency. If an agency institutes such a system of intermediate review, the proposed decision of the presiding officer becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the intermediate reviewing body within the time provided by rule. An intermediate reviewing body may be vested with all or a part of the power which it would have in initially making the decision. A decision of such an intermediate reviewing body is also a proposed decision and shall become the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. In cases where there is an appeal from a proposed decision rendered by a presiding officer to an intermediate reviewing body, or where such a proposed decision is reviewed on motion of an intermediate reviewing body, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the intermediate reviewing body, present oral arguments to those who are to render the decision.

5. When an appeal from an agency decision in a contested case may be taken to another agency pursuant to statute, or a second agency may according to statute review on its own motion the decision in a contested case by the first agency, the appeal or review shall be deemed a continuous proceeding as though before one agency. A decision of the first agency in such a case is a proposed decision and shall become the final decision without further proceedings unless there is an appeal to, or review on motion of, the second agency within the time provided by statute or rule. In deciding an appeal from or review of a proposed decision of the first agency, the second agency shall have all those powers conferred upon it by statute and shall afford each party an opportunity to file exceptions, present briefs and, with its consent, present oral arguments to agency members who are to render the final decision. [C75,§17A.15]

17A.16 Decisions and orders—rehearing.

1. A proposed or final decision or order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be

accompanied by a concise and explicit statement of underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. Parties shall be promptly notified of each proposed or final decision or order by the delivery to them of a copy of such decision or order in the manner provided by section 17A.12, subsection 1.

2. Any party may file an application for rehearing, stating the specific grounds therefor and the relief sought, within twenty days after the issuance of any final decision by the agency in a contested case. A copy of such application shall be timely mailed by the applicant to all parties of record not joining therein. Such an application for rehearing shall be deemed to have been denied unless the agency grants the application within twenty days after its filing. [C75,§17A.16]

Referred to in §§17A.19, 163.30

17A.17 Ex parte communications and separation of functions.

1. Unless required for the disposition of ex parte matters specifically authorized by statute, individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in a contested case, shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with any person or party, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules.

However, without such notice and opportunity for all parties to participate, individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in a contested case may communicate with members of the agency, and may have the aid and advice of persons other than those with a personal interest in, or those engaged in prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties.

2. Unless required for the disposition of ex parte matters specifically authorized by statute, parties or their representatives in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in that contested case, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules. The agency's rules may require the recipient of a prohibited communication to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceeding. As sanctions for violations, the rules may provide for a decision against a party who violates the rules; for censuring, suspending or revoking a privilege to practice before the agency; and for censuring, suspending or dismissing agency personnel.

3. No individual who participates in the making of any proposed or final decision in a contested case shall have prosecuted or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or pending factually related controversy that may culminate in a contested case, involving the same parties. Nor shall any such individual be subject to the authority, direction or discretion of any person who has prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy, involving the same parties.

4. A party to a contested case proceeding may file a timely and sufficient affidavit asserting disqualification according to the provisions of subsection 3, or asserting personal bias of an individual participating in the making of any proposed or final decision in that case. The agency shall determine the matter as part of the record in the case. When an agency in these circumstances makes such a determination with respect to an agency member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case. [C75,§17A.17]

17A.18 Licenses.

1. When the grant, denial, or renewal of a license is required by Constitution or statute to be preceded by notice and opportunity for an evidentiary hearing, the provisions of this chapter concerning contested cases apply.

2. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking judicial review of the agency order or a later date fixed by order of the agency or the reviewing court.

3. No revocation, suspension, annulment or withdrawal, in whole or in part, of any license is lawful unless, prior to the institution of agency proceedings, the agency gave written, timely notice by personal service as in civil actions or by restricted certified mail to the licensee of facts or conduct and the provisions of law which warrant the intended action, and the licensee was given an opportunity to show, in an evidentiary hearing conducted according to the provisions of this chapter for contested cases, compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety

or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. [C75,§17A.18]

Referred to in §421.17

17A.19 Judicial review. Except as expressly provided otherwise by another statute referring to this chapter by name, the judicial review provisions of this chapter shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action. However, nothing in this chapter shall abridge or deny to any person or party who is aggrieved or adversely affected by any agency action the right to seek relief from such action in the courts.

1. A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter. When agency action is pursuant to rate regulatory powers over public utilities or common carriers and the aggrievement or adverse effect is to the rates or charges of a public utility or common carrier, the agency action shall not be final until all agency remedies have been exhausted and a decision prescribing rates which satisfy the requirements of those provisions of the Code has been rendered. A preliminary, procedural or intermediate agency action is immediately reviewable if all adequate administrative remedies have been exhausted and review of the final agency action would not provide an adequate remedy. If a declaratory ruling has not been rendered within thirty days after the filing of a petition therefor under section 17A.9, or if the agency declines to issue such a declaratory ruling after receipt of a petition therefor, any administrative remedy available under section 17A.9 shall be deemed inadequate or exhausted.

2. Proceedings for judicial review shall be instituted by filing a petition either in Polk county district court or in the district court for the county in which the petitioner resides or has its principal place of business. When a proceeding for judicial review has been commenced, a court may, in the interest of justice, transfer the proceeding to another county where the venue is proper. Within ten days after the filing of a petition for judicial review file stamped copies of the petition shall be mailed by the petitioner to all parties named in the petition and, if the petition involves review of agency action in a contested case, all parties of record in that case before the agency. Such mailing shall be jurisdictional and shall be addressed to the parties at their last known mailing address. Proof of mailing shall be by affidavit. Any party of record in a contested case before an agency wishing to intervene and participate in the review proceeding thereon must file an appearance within forty-five days from the time the petition is filed.

3. If a party files an application under section 17A.16, subsection 2, for rehearing with the agency, the petition for judicial review must be filed within thirty days after that application has been denied or deemed denied. If a party does not file an application under section 17A.16, subsection 2, for rehearing, the petition must be filed within thirty days after the issuance of the agency's final decision in that contested case. If an application for rehearing is granted, the petition for review must be filed within thirty days after the issuance of the agency's final decision on rehearing. In cases involving a petition for judicial review of agency action other than the decision in a contested case, the petition may be filed at any time petitioner is aggrieved or adversely affected by that action.

4. The petition for review shall name the agency as respondent and shall contain a concise statement of:

a. The nature of the agency action which is the subject of the petition.

b. The particular agency action appealed from.

c. The facts on which venue is based.

d. The grounds on which relief is sought.

e. The relief sought.

5. The filing of the petition for review does not itself stay execution or enforcement of any agency action. Upon application the agency or the reviewing court may, in appropriate cases, order such a stay pending the outcome of the judicial review proceedings.

6. Within thirty days after filing of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of any contested case which may be the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

7. In proceedings for judicial review of agency action a court may hear and consider such evidence as it deems appropriate. In proceedings for judicial review of agency action in a contested case, however, a court shall not itself hear any further evidence with respect to those issues of fact whose determination was entrusted by Constitution or statute to the agency in that contested case proceeding. Before the date set for hearing a petition for judicial review of agency action in a contested case, application may be made to the court for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the court that the addi-

tional evidence is material and that there were good reasons for failure to present it in the contested case proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court and mail copies of the new findings or decisions to all parties.

8. The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant any other appropriate relief from the agency action, equitable or legal and including declaratory relief, if substantial rights of the petitioner have been prejudiced because the agency action is:

a. In violation of constitutional or statutory provisions;

b. In excess of the statutory authority of the agency;

c. In violation of an agency rule;

d. Made upon unlawful procedure;

e. Affected by other error of law;

f. In a contested case, unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole; or

g. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion. [C75,§17A.19]

Referred to in §§87.26, 99A.6, 601A.15

17A.20 Appeals. An aggrieved or adversely affected party to the judicial review proceeding may obtain a review of any final judgment of the district court under this chapter by appeal to the supreme court. The appeal shall be taken as in other civil cases, although the appeal may be taken regardless of the amount involved. [C75,§17A.20]

17A.21 Inconsistency with federal law. If it is determined by the attorney general that any provision of this chapter would cause denial of funds or services from the United States government which would otherwise be available to an agency of this state, or would otherwise be inconsistent with requirements of federal law, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds or services or to eliminate the inconsistency with federal requirements. If the attorney general makes such a suspension determination, he shall report it to the general assembly at its next session. This report shall include any recommendations in regard to corrective legislation needed to conform this chapter with the federal law. [C75,§17A.21]

17A.22 Agency authority to implement chapter. Agencies shall have all the authority necessary to comply with the requirements of this chapter through the issuance of rules or otherwise. [C75,§17A.22]

17A.23 Construction. Except as expressly provided otherwise by this chapter or by another statute referring to this chapter by name, the rights created and the requirements imposed by this chapter shall be in addition to those created or imposed by every other statute now* in existence or hereafter* enacted. If any other statute now* in existence or hereafter* enacted diminishes any right conferred upon a person by this chapter or diminishes any requirement imposed upon an agency by this chapter, this chapter shall take precedence unless the other statute expressly provides that it shall take precedence over all or some specified portion of this named chapter.

The Iowa administrative procedure Act shall be construed broadly to effectuate its purposes. This chapter shall also be construed to apply to all agencies not expressly exempted by this chapter or by another statute specifically referring to this chapter by name; and except as to proceedings in process on July 1, 1975, this chapter shall be construed to apply to all covered agency proceedings and all agency action not expressly exempted by this chapter or by another statute specifically referring to this chapter by name. [C75,§17A.23]

*Act effective July 1, 1975

CHAPTER 18

GENERAL SERVICES DEPARTMENT

DIVISION I
GENERAL PROVISIONS

18.1 Definitions.
18.2 Department established.
18.3 Duties.
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DIVISION I
GENERAL PROVISIONS

18.1 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Director"* means the director of the department of general services or his designee.

2. *"Department"* means the department of general services.

3. *"Governmental subdivision"* means a county, city, school district, or combination thereof.

4. *"Competitive bidding procedures"* means the advertisement for, solicitation of, or the procurement of bids; the manner and condition in which bids are received; and the procedure by which bids are opened, accepted, or rejected.

5. *"Bid specification"* means the standards or qualities which must be met before a contract to purchase will be awarded and any terms which the director has set as a condition precedent to the awarding of a contract.

6. *"State communications"* means a system to serve communications needs of state departments and agencies.

7. *"State agency"* means an executive board, commission, bureau, division, office, or department of the state. [C73,§19B.1; C75,§18.1]

18.2 Department established. There is created a department of general services which shall be attached to the office of the governor and shall be under his general direction, supervision, and control. The office shall be in charge of a director, who shall be appointed by the governor, with the approval of two-thirds of the senate. The director shall be employed on a permanent basis. He shall not hold any other office, engage in any political activity, accept or solicit, directly or indirectly, any political contributions, and shall not use his office to support the candidacy of anyone for elective or appointive office. The director shall hold office at the governor's pleasure and shall receive a salary at a rate fixed by the governor not to exceed twenty-five thousand dollars per annum. Before entering upon the discharge of his duties, the director may be required to give a surety bond in such amount as may be fixed by the governor. The premium on the bond shall be paid out of funds appropriated to the department.

The director shall be a qualified administrator. [C73,§19B.2; C75,§18.2]

Transfer of functions, 64GA, ch 84,§14

18.3 Duties. The duties of the director shall include but not necessarily be limited to the following:

1. Establishing and developing, in co-operation with the various state agencies, a system of uniform standards and specifications for purchasing. When the system is developed, all items of general use shall be purchased through the department, except items used by the state department of transportation, institutions under the control of the board of regents, the commission for the blind, and any other agencies exempted by law.

The director may purchase items through the state department of transportation, institutions under the control of the board of regents and any other agency exempted by law from centralized purchasing. These state agencies shall upon request furnish the director with a list of and specifications for all items of office equipment, furniture, fixtures, motor vehicles, heavy equipment and other related items to be purchased during the next quarter and the date by which the director must file with the agency the quantity of items to be purchased by the state agency for the department of general services. The department of general services shall be liable to the state agency for the proportionate costs the items purchased for it bear to the total purchase price. When items purchased have been delivered, the state agency shall notify the director and after receipt of the purchase price shall release the items to the director or upon his order.

2. Administering the provisions of sections 18.114 to 18.121.

3. Administering the provisions of sections 18.26 to 18.103.

4. Providing for the proper maintenance of the state capitol, grounds, and equipment and all other state buildings, grounds, and equipment at the seat of government, except those referred to in section 601B.6, subsection 9.

5. Administering the provisions of sections 18.132 to 18.152.

6. Establishing, supervising, and maintaining a central mail unit for the use of all state officials, agencies, and departments located at the seat of government.

7. Installing a records system for the keeping of records which are necessary for a proper audit and effective operation of the department. [C51,§§45, 60; R60,§§61, 81, 2170; C73, §§119, 120, 121; C97,§§147, 148, 150, 164, 165; S13, §§150, 157, 164, 165; SS15,§147; C24, 27, 31, 35, 39, §§273, 282, 296; C46, 50, 54, 58, 62, 66, 71,§§18.2, 19.4, 19.18; C73,§§19.4, 19B.3; C75,§18.3; 66GA, ch 67,§69, ch 1064,§1]

Referred to in §18.14

18.4 Rules. The director shall adopt rules in accordance with the provisions of chapter 17A which are necessary for the exercise of the powers and duties granted by this chapter and the proper administration of the department. [C73,§19B.4; C75,§18.4]

18.5 Prohibited interests. The director shall not have any pecuniary interest, directly or indirectly, in any contract for supplies furnished to the state, or in any business enterprise involving any expenditure by the state. A violation of the provisions of this section shall be a misdemeanor, and on conviction thereof the director shall be fined in a sum not exceeding one thousand dollars and removed from office. [C97,§153; C24, 27, 31, 35, 39,§275; C46, 50, 54, 58, 62, 66, 71,§18.4; C73,§19B.5; C75, §18.5]

Similar provisions, §§68B.3, 86.7, 252.29, 262.10, 314.2, 347.15, 362.5, 403.16, 403A.22, 553.23, 741.11

18.6 Competitive bidding. The director shall promulgate rules establishing competitive bidding procedures.

1. All items purchased by the department shall be purchased by a competitive bidding procedure. However, the director may exempt by regulation purchases of noncompetitive items and purchases in lots or quantities too small to be effectively purchased by competitive bidding. Preference shall be given to purchasing Iowa products and purchases from Iowa based businesses if the bids submitted

therefor are comparable in price to bids submitted by out-of-state businesses and otherwise meet the required specifications.

2. The director may also exempt the purchase of an item from a competitive bidding procedure when he determines that the best interests of the state will be served due to an immediate or emergency need for the item.

3. The director shall have the power to contract for the purchase of items by the department. Contracts for the purchase of items shall be awarded on the basis of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price.

4. The director may refuse all bids on any item and institute a new bidding procedure.

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

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

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

8. The director shall establish rules providing that any state agency may, upon request, purchase directly from a vendor if the direct purchasing is as economical or more economical than purchasing through the department, or upon a showing that direct purchasing by the state agency would be in the best interests of the state due to an immediate or emergency need.

Any state agency denied the opportunity to purchase separately by the director may appeal the decision to the executive council. The executive council shall hear and determine the appeal in the same manner as an appeal filed by an aggrieved bidder.

Any member of the executive council may bring before the council for review a decision of the director granting a state agency request for direct purchasing. The executive council shall hear and review the director's decision in the same manner as an appeal filed by an aggrieved bidder, except that the three-day period for filing for review shall not apply. [R60,§2169; C73,§121; C97,§166; S13,§§166, 167; C24, 27, 31, 35, 39,§§**297, 298**; C46, 50, 54, 58, 62, 66, 71,§§19.20, 19.21; C73,§19B.6; C75,§18.6]

18.7 Appeal. Any bidder whose bid is timely filed, and who is aggrieved by the award of the director, may appeal the director's decision by filing written appeal with the executive council within three days, exclusive of Saturdays, Sundays and legal holidays.

The executive council shall hear and determine such appeal within thirty days. Reasonable notice of the hearing shall be given to all interested parties, allowing them an opportunity to appear, be heard, and present any relevant and material evidence. The executive council may affirm the award of the director, reverse his decision and accept the proposal of another bidder, or refuse all proposals and order the director to readvertise. Any member of the executive council may also bring any award by the director before the executive council for review by filing a written notice with the director within three days of an award, exclusive of Saturdays, Sundays and legal holidays. The decision of the executive council shall be final. [C73,§19B.7; C75,§18.7]

18.8 Capitol buildings and grounds — services. The director shall provide necessary telephone, telegraph, lighting, fuel, and water services for the state buildings and grounds located at the seat of government, except the buildings and grounds referred to in section 601B.6, subsection 9.

The director shall establish, supervise, and maintain a central mail unit for the use of all state officials and agencies located at the seat of government. All state officials and agencies located at the seat of government shall be required to dispatch first and second class mail and parcel post mail, at the mail unit for the purpose of having the mail sealed, metered, and posted.

The director shall allow a department to seal, meter or stamp, and post mail directly from such department if it would be more efficient and economical.

Postage shall not be furnished to the general assembly, its members, officers, employees, or committees.

The director shall assign office space in the capitol building, other state buildings, except the buildings and grounds referred to in section 601B.6, subsection 9, and elsewhere in the city of Des Moines, for all executive and judicial state agencies. Assignments may be changed at any time. The various officers to whom rooms have been so assigned may control the same while the assignment to them is in force. Official apartments shall be used only for the purpose of conducting the business of the state. The term "capitol" or "capitol building" as used in the Code shall be descriptive of all buildings upon the capitol grounds. The assignment and use of physical facilities for the general assembly shall be pursuant to section 2.43.

The director shall appoint a superintendent of buildings and grounds, who shall serve at the pleasure of the director and shall not be governed by the provisions of chapter 19A. [C51,§§45, 60; R60,§§61, 81, 2170; C73,§§120, 121; C97,§§145, 152, 164, 165, 168; S13,§§152, 164, 165, 168; SS15,§147; C24, 27, 31,§§272, 295, 296, 303;

C35,§§295, 296, 296-e1, 303; C39,§§**295, 296, 296.1, 303**; C46, 50, 54, 58, 62, 66, 71, §§18.1, 19.15, 19.18, 19.19, 19.26; C73,§19B.8; C75,§18.8]

18.9 Revolving fund. The director shall keep an accurate itemized account for each state agency purchasing through the department, state agency using services provided for by the department, and postage supplied by the department.

1. At the end of each month the director shall render a statement to each state agency for the actual cost of items purchased through the department, the actual cost of services and postage used by the agency. The monthly statement shall also include a fair proportion of the cost of administration of the department of general services during the month. The portion of administrative costs shall be determined by the director subject to review by the executive council upon complaint from any state agency adversely affected.

2. Statements rendered to the various state agencies shall be paid by the state agencies in the manner determined by the state comptroller's office. When the statements are paid the sums shall be credited to the general service revolving fund. If any funds accrued to the revolving fund in excess of two hundred twenty-five thousand dollars and there is no anticipated need or use for such funds, the governor shall order the excess funds credited to the general fund of the state. [C97,§169; C24, 27, 31, 35, 39,§**305**; C46, 50, 54, 58, 62, 66, 71,§19.28; C73,§19B.9; C75,§18.9]

18.10 Capitol buildings and grounds—rules. The director shall establish, publish, and enforce rules regulating and restricting the use by the public of the capitol buildings and grounds. The rules when established shall be posted in conspicuous places about the buildings and grounds. Any person violating any rule, except a parking regulation, shall be guilty of a misdemeanor and upon conviction be punished by a fine of not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days. [C27, 31, 35,§275-b1; C39,§**275.1**; C46, 50, 54, 58, 62, 66, 71, §18.5; C73,§19B.10; C75,§18.10]

18.11 Parking regulations. The director shall establish, publish, and enforce rules regulating, restricting, or prohibiting the use by state officials, state employees, and the public, of motor vehicle parking facilities at the state capitol complex. The rules established by the director may establish fines for violations and a procedure for payment of the fines. The director may order payment of a fine and enforce the order in the district court.

Motor vehicles parked in violation of the rules may be removed without the owner's or operator's consent and at the owner's or operator's expense. Motor vehicles removed and not claimed within thirty days of their removal or vehicles abandoned within the capitol grounds, may be disposed of in accordance with the provisions of sections 321.85 through 321.91.

The parking rules established shall be posted in conspicuous places at the capitol complex. Copies of the rules shall be made available to all state officials and employees and any other person who requests a copy of the rules.

All fines collected by the department shall be forwarded to the treasurer of state and deposited in the general fund. [C73,§19B.11; C75,§18.11]

18.12 Duties—state buildings. In addition to his other duties the director shall:

1. See that all visitors, at proper hours, are properly escorted over capitol grounds and capitol buildings, free of expense.

2. Have at all times, charge of and supervision over the janitors, and other employees of the department in and about the capitol and other state buildings, except the buildings and grounds referred to in section 601B.6, subsection 9, at the seat of government.

3. Institute, in the name of the state, and with the advice and consent of the attorney general, civil and criminal proceedings against any person for injury or threatened injury to any public property under his control.

4. Keep in his office a complete record containing an itemized account of all state property, including furniture and equipment, under his care and control, and plans and surveys of the public grounds, buildings, and underground constructions at the seat of government.

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

6. At the time provided by law, make a verified report which shall cover all transactions for the preceding annual, fiscal or calendar period and show in detail:

a. All expenditures made on account of the department for public buildings and property.

b. The condition of all real and personal property of the state under his care and control, together with a report of any loss or destruction, or injury to any such property, with the causes thereof.

c. The measures necessary for the care and preservation of the property under his control.

d. Any recommendations as to methods which would tend to render the public service more efficient and economical.

e. Any other matter ordered by the governor.

7. Contract, with the approval of the executive council, for the repair, remodeling or, if the condition warrants, demolition of all buildings and grounds of the state at the seat of government for which no specific appropriation has been made, if the cost of repair, remodeling or demolition will not exceed one hundred thousand dollars when completed. The cost of repair projects for which no spe-

cific appropriation has been made shall be paid from the fund provided in section 19.29.

8. Dispose of all personal property of the state under his control when it becomes unnecessary or unfit for further use by the state. Proceeds from the sale of personal property shall be deposited in the state general fund.

9. Lease all buildings and office space necessary to carry out the provisions of this chapter or necessary for the proper functioning of any state agency at the seat of government, with the approval of the executive council if no specific appropriation has been made. The cost of any lease for which no specific appropriation has been made shall be paid from the fund provided in section 19.29.

10. Perform all other duties required by law. [C73,§120; C97,§§147, 148, 150, 151, 164; S13, §§150, 151, 164, 165; SS15,§147; C24, 27, 31, 35, 39, §§273, 274, 296, 300; C46,§§18.2, 18.3, 19.18, 19.23; C50, 54, 58, 62, 66, 71,§§18.2, 18.3, 18.6, 19.18, 19.23; C73,§19B.12; C75,§18.12; 66GA, ch 1032,§3; ch 1064,§2]

Referred to in §18.16

18.13 Federal funds. Neither the provisions of this chapter nor rules adopted pursuant thereto shall apply in any situation where such provision or rule is in conflict with governing federal regulation or where the provision or rule would jeopardize the receipt of federal funds.

If it is determined by the attorney general that any provision of this chapter would cause denial of funds or services from the United States government which would otherwise be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds or services. [C73,§19B.13; C75,§18.13]

18.14 Control of warehouses. The governor may by executive order transfer the control and management of any warehouse, except warehouses under the control of the Iowa beer and liquor control department, under the control of any state agency which is in all instances included within centralized purchasing under section 18.3, to the director of the department of general services. [C75,§18.14]

18.15 Services and commodities accepted. The director of the department of general services is also authorized to accept services, commodities and surplus property and make provision for warehousing and distribution to various departments and subdivisions of the state, and such other agencies, institutions and authorized recipients within the state as may be from time to time designated in federal statutes and rules. [C39,§4283.03; C46, 50, 54, 58, 62, 66, 71, 73,§283.2; C75,§18.15]

18.16 Rent revolving fund created—purpose.

1. There is created a permanent rent revolving fund which shall be used by the department to pay the lease or rental costs of all buildings and office space necessary for the proper functioning of any state agency at the seat of state government as provided in section 18.12, subsection 9, except that this fund shall not be used to pay the rental or lease costs of a state agency which has not received funds budgeted for rental or lease purposes.

2. The director shall pay the lease or rental fees to the renter or lessor and submit a monthly statement to each state agency for which building and office space is rented or leased. The lease or rental cost shall be paid by the state agency to the department of general services in the same manner as other expenses of the state agency are paid and the payment shall be credited to the rent revolving fund. [66GA, ch 1032,§2]

18.17 to 18.25 Reserved.

DIVISION II
STATE PRINTING

18.26 Director. The director of the department of general services or his designee shall administer the provisions of this division. [C24, 27, 31, 35, 39,§178; C46, 50, 54, 58, 62, 66, 71, 73,§15.1; C75,§18.26]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.27 Duties. The director of the department of general services shall:

1. Let contracts, except as provided in section 18.49, for all printing for all state offices, departments, boards, and commissions when the cost of the printing is payable out of any taxes, fees, licenses, or funds collected for state purposes.

2. Direct the manner, form, style, and quantity of all public printing when not otherwise expressly prescribed by law.*

*See §14.12(9)

3. Employ and discharge all assistants necessary to enable the director to perform his duties and determine the compensation of the assistants when not otherwise determined by law.

4. Prescribe rules, not inconsistent with law.

5. Make annual, fiscal or calendar reports to the governor of the cost of the public printing for each department during the preceding fiscal term, with recommendations of any retrenchments that can be made therein.

6. Perform all other duties required by law. [C24, 27, 31, 35, 39,§183; C46, 50, 54, 58, 62, 66, 71, 73,§15.6; C75,§18.27]

Referred to in §§18.3, 18.28, 18.30, 18.50, 18.59
Blanks relative to university hospitals, §§225.30, 255.27
Printing for board of educational examiners, §260.29
Style of Code, §14.12
Time of annual report, §17.4

18.28 "Printing" defined. As used in chapter 17 and sections 18.26 to 18.103, "printing" means the reproduction of an image from a printing surface made generally by a contact impression that causes a transfer of ink or the reproduction of an impression by a pho-

tographic process and shall include binding and may include material, processes, or operations necessary to produce a finished printed product, but shall not include binding, rebinding or repairs of books, journals, pamphlets, magazines and literary articles by any library of the state or any of its offices, departments, boards and commissions held as a part of their library collection.

For the purposes of this chapter, the reproduction of ten or more copies from one original on any convenience office copier located in the city of Des Moines is printing and shall not be permitted without the approval of the superintendent of printing. [C24, 27, 31, 35, 39,§184; C46, 50, 54, 58, 62, 66, 71, 73,§15.7; C75,§18.28]

Referred to in §§18.3, 18.30, 18.50

18.29 Printing for state institutions. The power of the director to let contracts shall not embrace printing for any state penal, correctional or board of regents institution, or area vocational schools, area community colleges, or school corporations under the jurisdiction of the state department of public instruction when the institution is able and desires to do its own printing. [C24, 27, 31, 35, 39,§185; C46, 50, 54, 58, 62, 66, 71, 73,§15.8; C75,§18.29]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.30 Contracts with state institutions. The director may, without advertising for bids, enter into contracts or make provision for doing any of the work coming under the provisions of chapter 17 and sections 18.26 to 18.103 at any school or institution under the ownership or control of the state. The work shall be done under conditions substantially the same as those provided for in the case of contracts with individuals and the same standard of quality or product shall be required. [C24, 27, 31, 35, 39,§186; C46, 50, 54, 58, 62, 66, 71, 73,§15.9; C75,§18.30]

Referred to in §§18.3, 18.28, 18.50

18.31 Specifications and rules. The director shall, from time to time, adopt and print specifications and rules covering all matters relating to printing that are the subject of contracts. The specifications and rules shall contain, among other things, the following:

1. Provisions for the grouping of the work to be done or material furnished, so far as the same can be made the subject of general contracts, into classes according to the character or use thereof, or with relation to the department for which intended, or in any manner most convenient for securing bids and entering into contracts. All or any part of the printing needed for any department, board, or commission may be placed in a class by itself.

2. Estimates of the probable amount of work to be done, or material to be purchased, under each class or item, during the period of the proposed contracts.

3. Provisions for furnishing and keeping on file samples of work or stock, and other things necessary to assure compliance with the contracts.

4. Fixed standards for books and booklets, and for other printing so far as practicable, and for stock and material.

5. A schedule of maximum rates or prices, so far as the same can be made applicable, with provision that bids not within the maximum (each class being computed as a unit), may be rejected.

6. Details as to the delivery of stock to the state and placing the same in possession of contractors, and for delivery of the finished product and for a complete accounting for stock and reasonable allowance for waste where it is unavoidable.

7. A rule as to part payment for work in process of completion, or material in process of delivery, in proportion to the part completed or delivered.

8. General regulations necessary to assure prompt and satisfactory compliance with the proposed contracts, the submission of samples, the delivery of the product (which may be at the expense of the state), the preparation and filing of bills, and such general matters as will assure to the state the utmost economy and efficiency. [C24, 27, 31, 35, 39,§187; C46, 50, 54, 58, 62, 66, 71, 73,§15.10; C75,§18.31]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.32 Advertisements for bids. The director shall advertise for bids for the doing of the public printing. [C24, 27, 31, 35, 39,§188; C46, 50, 54, 58, 62, 66, 71, 73,§15.11; C75,§18.32]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.33 Requirements. Advertisements shall state where and how specifications and other necessary information may be obtained, the time during which the director will receive bids, and the day, hour, and place when bids will be publicly opened and contracts awarded. [C24, 27, 31, 35, 39,§189; C46, 50, 54, 58, 62, 66, 71, 73,§15.12; C75,§18.33]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.34 Information furnished. The director shall supply prospective bidders and others on request with the specifications and rules, blank forms for bids, samples of printing so far as possible, and all other information pertaining to the subject. [C24, 27, 31, 35, 39,§190; C46, 50, 54, 58, 62, 66, 71, 73,§15.13; C75,§18.34]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.35 Specifications public. The specifications shall be kept on file in the office of the director, open to public inspection, together with samples so far as possible, of the work to be done or the material to be furnished. [C24, 27, 31, 35, 39,§191; C46, 50, 54, 58, 62, 66, 71, 73,§15.14; C75,§18.35]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.36 Form of bids. Bids must be:

1. In writing and only on the blanks furnished with the specifications.

2. Signed by the bidder.

3. Submitted in sealed envelopes which shall be properly endorsed.

4. In the hands of the director by the time fixed in the advertisements for bids. [C24, 27, 31, 35, 39,§192; C46, 50, 54, 58, 62, 66, 71, 73, §15.15; C75,§18.36]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.37 Deposit with bid or yearly bond. Each bidder must deposit with the director at the time he files his bid, a certified check payable to the state treasurer for an amount to be fixed in the specifications, either covering all classes or items, or separate checks for each bid in case he makes more than one bid, or in lieu of checks the bidder may furnish a yearly bond in an amount to be established by the director. Checks deposited by unsuccessful bidders, and by successful bidders when they have entered into the contract, shall be returned to them. [C24, 27, 31, 35, 39,§193; C46, 50, 54, 58, 62, 66, 71, 73,§15.16; C75,§18.37]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.38 Opening of bids — award. All bids shall be publicly opened and read and the contracts let at the time and place fixed therefor, or on the adjourned day or days named by the director, of which adjournment all parties shall take notice. In the award of contracts, due consideration shall be given not only to the price bid, but to the mechanical and other equipment, and financial responsibility of the bidder, and his ability and experience in the performance of like or similar contracts. [C24, 27, 31, 35, 39,§194; C46, 50, 54, 58, 62, 66, 71, 73, §15.17; C75,§18.38]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.39 Rejection of bids — procedure. The director shall have the right to reject any or all bids, and in case of rejection or because of failure of a bidder to enter into a contract, the director may advertise for and secure new bids. [C24, 27, 31, 35, 39,§195; C46, 50, 54, 58, 62, 66, 71, 73,§15.18; C75,§18.39]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.40 Combination of bidders. When the director is satisfied that bidders have presented bids pursuant to an agreement, understanding, or combination to prevent free competition, he shall reject all of them and readvertise for bids as in the first instance. [C24, 27, 31, 35, 39,§196; C46, 50, 54, 58, 62, 66, 71, 73,§15.19; C75,§18.40]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.41 Acceptance of bid. Each accepted bid shall have endorsed thereon, over the signature of the director, the word "accepted" with the date of acceptance. This endorsement shall constitute immediate notice to the bidder of the fact of acceptance. [C24, 27, 31, 35, 39, §197; C46, 50, 54, 58, 62, 66, 71, 73,§15.20; C75, §18.41]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.42 Duration of contract. Contracts for printing and for work and material relating thereto shall be for a period not exceeding three years. [C24, 27, 31, 35, 39,§198; C46, 50, 54, 58, 62, 66, 71, 73,§15.21; C75,§18.42]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.43 Duty to enter into contract — forfeiture. Each successful bidder must within ten days after the award, enter into a contract in accordance with his bid, and unless this is done, or the delay is for reasons satisfactory to the director, the certified check submitted with the bid shall be forfeited to the state. The specifications on which the bid is made shall constitute a part of the contract. [C24, 27, 31, 35, 39,§199; C46, 50, 54, 58, 62, 66, 71, 73,§15.22; C75,§18.43]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.44 Contract provisions. The contracts shall, among other provisions, provide that:

1. The contractor shall complete all unfinished portions of jobs or orders in hand at the expiration of the contract.

2. The contract may be canceled, or other agreed penalty imposed, for failure to perform the terms thereof in a manner satisfactory to the director.

3. The contractor may be released on such conditions as may be agreed on, in case of injury to his plant by fire, or other providential contingency.

4. In order to avoid delay and inconvenience in the departments, and unnecessary transportation charges to the state, deliveries of printing for the various state officials, departments, boards, and commissions shall be made in the manner the director, after consultation with the various departments, orders. [C24, 27, 31, 35, 39,§200; C46, 50, 54, 58, 62, 66, 71, 73,§15.23; C75,§18.44]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.45 Bond. A bond for the faithful performance of the contract shall be required in connection with each contract, in an amount to be fixed by the director. The bond shall be filed with and approved by the director. [C24, 27, 31, 35, 39,§201; C46, 50, 54, 58, 62, 66, 71, 73, §15.24; C75,§18.45]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.46 Written orders. No printing shall be performed under any contract except on written orders therefor, on detailed forms prescribed by the director, and signed by the director or by some person authorized by the director. Every order shall designate the contract under which the order is given, the class of the required printing, the definite quantity and kind thereof, and be issued in duplicate with a stub copy preserved. A separate series of stubs and duplicates shall be used for each class of printing. [C24, 27, 31, 35, 39,§202; C46, 50, 54, 58, 62, 66, 71, 73,§15.25; C75,§18.46]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.47 Assistants outside Des Moines. The director may, at the various points in the state, outside the city of Des Moines, at which state institutions or departments are located, appoint assistants and empower the assistants to issue in the name of the director, orders for printing. Assistants shall be furnished with a copy of the contract under which the orders are to be given, necessary blank order books and proper instructions as to their procedure. Assistants on issuing an order shall immediately forward the original thereof to the director. [C24, 27, 31, 35, 39,§**203**; C46, 50, 54, 58, 62, 66, 71, 73,§15.26; C75,§18.47]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.48 Acceptance of printing—penalty. No printing shall be accepted as in compliance with the contract when not of the grade of workmanship which is usually employed by first-class printers on printing of this class, nor when the printing is not of the full quality contracted for. If immediate necessity and lack of time to procure printing elsewhere compel the use of defective printing furnished by a contractor, it shall be accepted without approval, and one-half of the contract price thereon shall be deducted as liquidated damages for breach of contract. [C24, 27, 31, 35, 39, §**204**; C46, 50, 54, 58, 62, 66, 71, 73,§15.27; C75, §18.48]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.49 Contracts by institutional heads. The director may authorize the managing board, or head, or chief executive officer of any institution or department of the state located outside the city of Des Moines to secure, under the specifications of the director, competitive bids for printing needed by the institution or department, and submit the bids to the director. If the director approves any of the bids, the authorized board, head, or officer may contract for the printing, but the contract shall not be valid until a duplicate copy is filed with and approved by the director. [C24, 27, 31, 35, 39,§**205**; C46, 50, 54, 58, 62, 66, 71, 73,§15.28; C75, §18.49]

Referred to in §§18.3, 18.27, 18.28, 18.30, 18.50

18.50 Emergency contracts. The director may at any time award a special contract or may authorize his assistants to award a special contract for any work or material coming within the provisions of chapter 17 and sections 18.26 to 18.103 but not included in contracts already in existence, or which cannot properly be made the subject of a general contract, if the amount of each contract shall not exceed the amount of two thousand dollars, and if special bids have been duly solicited by the director from persons or firms engaged in the kind of work under consideration who have indicated a desire to bid on the class of work to be done. [C24, 27, 31, 35, 39,§**206**; C46, 50, 54, 58, 62, 66, 71, 73,§15.29; C75, §18.50]

Referred to in §§18.3, 18.28, 18.30

18.51 Paper. The director may contract for paper as part of the printing or may purchase paper and furnish the same to the contractor. All paper purchased for use of the state shall, when practicable, have a distinguishing mark or water line by which it can be identified. [R60,§2170; C73,§121; C97,§165; S13,§165; C24, 27, 31, 35, 39,§**207**; C46, 50, 54, 58, 62, 66, 71, 73, §15.30; C75,§18.51]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.52 Paper account. The director shall keep an accurate account with anyone doing printing for the state, and charge him with the value of all paper drawn, and credit him with all paper used on behalf of the state, and compel an accounting for all paper not so used. [C97,§169; C24, 27, 31, 35, 39,§**208**; C46, 50, 54, 58, 62, 66, 71, 73,§15.31; C75,§18.52]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.53 Account with each department. The director shall keep an account with each separate officer, board, department, and commission of the state to which printing is furnished by the state, in a manner to show in detail at all times what printing has been furnished, and the cost thereof. [C24, 27, 31, 35, 39,§**209**; C46, 50, 54, 58, 62, 66, 71, 73,§15.32; C75,§18.53]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.54 Budget estimates. Each official, board, department, commission or agency of the state shall file as part of its budget its estimate of expenditures for printing and these expenditures shall be paid from its official, board, department, commission or agency appropriation. [C24, 27, 31, 35, 39,§**210**; C46, 50, 54, 58, 62, 66, 71, 73,§15.33; C75,§18.54]

Referred to in §§18.3, 18.28, 18.30, 18.50, 18.55

18.55 Director to separate items. Should the amount of a warrant for printing include printing for more than one officer, board, department, or commission, the director shall at once furnish the treasurer with a statement of the correct amounts chargeable under section 18.54 to each officer, board, department, or commission. [C24, 27, 31, 35, 39,§**211**; C46, 50, 54, 58, 62, 66, 71, 73,§15.34; C75,§18.55]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.56 Vouchers—form—audit. All bills accruing under contracts for printing shall be filed with the director. They shall be in duplicate, or in larger numbers if ordered by the director, verified and itemized with full details necessary for computation according to the terms of the contract and orders given in relation thereto or according to law, and shall be accompanied by samples of the work or materials when practicable and when ordered by the director.

All bills shall be examined and approved by the director and the duplicate vouchers passed to the state comptroller.

All bills approved by the director shall be endorsed accordingly before presentation to the comptroller. [C24, 27, 31, 35, 39,§212; C46, 50, 54, 58, 62, 66, 71, 73,§15.35; C75,§18.56]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.57 Centralized printing department. A centralized printing department is hereby established under the jurisdiction of the director.

A permanent revolving fund is established and may be used in making payments for supplying paper stock, offset printing, copy preparation, binding, distribution costs, and original payment of printing and binding claims for any of the state departments, bureaus, commissions or institutions. All salaries and expenses properly chargeable thereto shall be paid from this fund. The director may also use the fund for the purchase of replacement or additional equipment, if a sufficient balance will remain in the fund to enable the continued operation of the centralized printing department.

The director shall periodically render a statement to each state department, bureau, commission or institution for the cost of paper stock, offset printing, copy preparation, distribution or binding supplied thereto. The expense shall be paid by the state departments, bureaus, commissions or institutions in the same manner as other expenses of the departments are paid, and the sum shall be credited to the centralized printing revolving fund. If a surplus accrues to the fund for which there is no anticipated need or use, the governor shall order the surplus turned over to the general fund of the state. [C54, 58, 62, 66, 71, 73, §15.36; C75,§18.57; 66GA, ch 29,§4]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.58 Printing machinery centralized—exception. All printing presses, except such presses owned by the auditor of state and purchased pursuant to the provisions of section 11.4, and other printing equipment owned by the state and in the possession of any department, commission, agency, or board located in the city of Des Moines shall be centralized in a state building in the city of Des Moines under the control of the director.

All office copiers and other duplicating equipment owned by or in the possession of executive and judicial departments, commissions, agencies, or boards located in the city of Des Moines shall be under the jurisdiction of the director. The director may lease or purchase the duplicating machines as are necessary for each of the departments with funds from the revolving fund and assess the costs of operating the duplicating machines to the appropriate department. [C54, 58, 62, 66, 71, 73,§15.37; C75,§18.58]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.59 Powers and duties. The director is hereby authorized and directed:

1. To possess himself of all presses and other printing equipment, inventory all of the described equipment, and with the approval of the executive council sell the above-described machinery and equipment that is no longer necessary or is unfit for use.

2. To maintain the machinery and equipment and in his discretion, when the equipment is outmoded and becomes obsolescent, to purchase machinery and equipment for replacement purposes.

3. To make the printing department, its machinery and equipment available for the state printing services when in his discretion it is to the best interests of the state that it, rather than the contract procedure provided by section 18.27 shall be used; and to effectuate this power and direction, the director shall adopt suitable rules for the administration and fulfillment of the power and direction hereby imposed.

4. To install and maintain an accurate accounting system appropriate and fitted to the purposes and the operations of this department. Each official, board, department, commission or agency shall requisition the director for its printing needs, accompanying such requisition with a statement of costs of compilation and editorial work upon the material to be published.

5. To avoid duplication, overlapping and redundancy of pamphlets and publications, other than official documents and books and publications authorized by chapters 14 and 17, to examine the contents of proposed pamphlets or publications and to approve or disapprove such pamphlets or publications only for such reason; and to effectuate this power, the director shall adopt rules for its administration. C54, 58, 62, 66, 71, 73,§15.38; C75,§18.59]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.60 Cost systems maintained by departments. Each official, board, department, commission or agency located outside the city of Des Moines, who maintains printing equipment, or does any printing for the state or its departments shall likewise keep an accurate cost system and make report each June 30 to the director of the amounts, and these shall be included in the annual, fiscal or calendar report of the director. [C54, 58, 62, 66, 71, 73,§15.39; C75,§18.60]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.61 Departmental pamphlets—costs. Each official, board, department, commission and agency, who as part of its membership fee provides pamphlets and books, shall furnish all the costs of such publications. These costs shall be included in their printing budget. [C54, 58, 62, 66, 71, 73,§15.40; C75,§18.61]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.62 Paper stock drawn. All mimeograph paper, envelopes and other paper stock to be used in their Des Moines offices shall be drawn by the several state departments and agencies from the general services department with its

approval and charged to the several officials, boards, departments, commissions or agencies and paid from the printing appropriation of each board, official, department, commission or agency. [C54, 58, 62, 66, 71, 73,§15.41; C75,§18.62]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.63 Approval required for printing. No department or commission of state located in the city of Des Moines shall expend any funds for the publication or distribution of books or pamphlets or reports unless the publication thereof be expressly required by law or approved by the director. A violation of this section shall constitute misfeasance in office.

The director may establish a central library and depository from which shall be distributed all books, pamphlets, documents, reports and publications not required by law to be otherwise distributed. The director shall from time to time establish the cost of printing and distribution or mailing each book, pamphlet, report, document and publication. The director shall, thereafter, cause to be delivered, sent, or mailed to anyone requesting a book, pamphlet, report, document, or publication upon receipt of the cost thereof plus distribution or mailing charges. Anyone may examine a copy of any book, pamphlet, document, report or publication at the central library and depository. The director may exempt from the provisions of this section any pamphlet or publication which only lists the services available from a state department or agency. [C62, 66, 71, 73,§15.43; C75,§18.63; 66GA, ch 29,§5]

Referred to in §§18.3, 18.28, 18.30, 18.50
See Atty. Gen. Opinion, Sept. 25, 1969

18.64 to 18.73 Reserved.

DIVISION III
SUPERINTENDENT OF PRINTING

18.74 Appointment. The director of the department of general services shall appoint a person to administer the provisions of this division. This person shall be known as the superintendent of printing and shall serve at the pleasure of the director without being subject to the provisions of chapter 19A. [SS15,§144-e; C24, 27, 31, 35, 39,§213; C46, 50, 54, 58, 62, 66, 71, 73,§16.1; C75,§18.74]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.75 Duties. The superintendent of printing shall:

1. Have an office at the seat of government and devote his entire time to the duties of his position.

2. Have charge of the office equipment and supplies of the printing board and of the stock, if any, required in connection with printing contracts.

3. Have general supervision of all matters pertaining to the enforcement of contracts for printing.

4. Prepare the specifications and advertisements for printing.

5. Have control and direction of the document department.

6. Have legal custody of all Codes, session laws, books of annotations, tables of corresponding sections, publications, except premium lists published by the Iowa state fair board, containing reprints of statutes or administrative rules, or both, reports of state departments, and reports of the supreme court, and sell, account for, and distribute the same as provided by law.

7. Be responsible on his official bond for the public property coming into his possession.

8. In odd-numbered years, compile for publication the Iowa official register which shall contain historical, political, and other statistics of general value, but nothing of a partisan character.

9. Annually, September 1, cause to be printed a report in pamphlet form, to be paid for out of the general fund not otherwise appropriated, and distributed upon request, the name, residence, official title, salary received during the previous fiscal year, the base salary as computed on July 1 of the current fiscal year; and traveling and subsistence expense of the personnel of each of the departments, boards, and commissions of the state government except personnel who receive an annual salary of less than three hundred dollars. The number of the personnel and the total amount received by them shall be shown for each department in the salary book. The head of each department, board or commission shall, on request of the superintendent, furnish the latter with the data covering the particular department, board or commission. The report shall be distributed upon request without charge to each member of the general assembly, elected state officers, and department heads. Any other person who wants a report may purchase a copy for five dollars per copy. All funds from the sale of the report shall be deposited to the general fund. All employees who have drawn salaries, fees, or expense allowances from more than one department or subdivision shall be listed separately under the proper departmental heading.

10. Perform such other duties as are necessary, or incident to his position, or which may be ordered by the director, or required by law. [C97,§§70, 218–223; S13,§70; SS15,§§144-h,-i,-j, 224-d; C24, 27, 31, 35, 39,§215; C46, 50, 54, 58, 62, 66, 71, 73,§16.2; C75,§18.75; 66GA, ch 67,§70, ch 73,§1]

Referred to in §§18.3, 18.28, 18.30, 18.50
Data for official register, §§19.6, 26.4
Sale and distribution, §§17.22, 18.95–18.99

18.76 Manuscript — editing — general directions. The manuscript of every report or document, or for any book, booklet, bulletin, or anything to be printed, or a copy thereof, shall be transmitted to the superintendent of printing at the time it is filed or as soon as it is ready for printing, with all photographs, drawings, maps, engravings, charts, or other mate-

rial properly a part thereof. He shall edit, revise, condense, and arrange the same for printing, simplify where practicable the typographical arrangement, and, when not otherwise covered, give all necessary instructions for the type, illustrations, headings, titles, paper, cover, binding, and other similar details. Except in reference to the publication or printing of legislative publications the authority here given to edit, revise, condense, and eliminate portions of manuscript shall apply notwithstanding any provisions elsewhere. Where tables or other matters are once printed it shall be sufficient thereafter to refer to the same without repeating them. [SS15,§144-i; C24, 27, 31, 35, 39,§216; C46, 50, 54, 58, 62, 66, 71, 73,§16.3; C75,§18.76]

Referred to in §§14.6, 18.3, 18.28, 18.30, 18.50

18.77 Co-operation. It shall be the duty of the said superintendent to advise with the officials and heads of departments as to the preparation of manuscript or copy for any printed matter, so the same may be handled in the most economical manner in the editing and printing. Officials or employees shall conform so far as practicable to all regulations of the superintendent for the improvement of the reports or other publications, or for decreasing the expense of preparation, printing, or distribution. [SS15,§144-i; C24, 27, 31, 35, 39, §217; C46, 50, 54, 58, 62, 66, 71, 73,§16.4; C75, §18.77]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.78 Appeals. In case of a disagreement between the superintendent and the head of any department as to the editing of manuscript, an appeal may be taken to the executive council which shall have authority to determine the matter in controversy. [SS15, §144-i; C24, 27, 31, 35, 39,§218; C46, 50, 54, 58, 62, 66, 71, 73,§16.5; C75,§18.78]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.79 Record relative to documents. The superintendent shall keep a record of the number of each report or document ordered printed, the number received, and the number and manner of distribution. [SS15,§144-j; C24, 27, 31, 35, 39,§219; C46, 50, 54, 58, 62, 66, 71, 73, §16.6; C75,§18.79]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.80 Reserve supply. The superintendent shall designate, subject to the approval of the director, the number of copies of reports and publications to be held in reserve, and copies thus held in reserve shall be distributed only upon the written request of the head of the department, approved by the superintendent, and ordered by the director. [SS15,§144-j; C24, 27, 31, 35, 39,§220; C46, 50, 54, 58, 62, 66, 71, 73, §16.7; C75,§18.80]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.81 Unused documents. The superintendent shall from time to time report to the director any documents in his custody deemed not needed and which have been printed five years or more, and if the report has the written approval of the head of the department from which the documents were issued, the director may condemn and order the documents sold, and the proceeds turned into the unappropriated funds of the state. If a department no longer exists, approval by the head of the department shall not be required. If the condemned documents cannot be sold the director may order them destroyed. [SS15,§144-l; C24, 27, 31, 35, 39,§221; C46, 50, 54, 58, 62, 66, 71, 73, §16.8; C75,§18.81]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.82 Custody of documents and storage rooms. The superintendent shall receive and have the custody of the Iowa documents, reports, and all other printed matter and make and supervise the distribution of the same in such manner as will be most economical and useful to the public. He shall have charge of the state storage building or rooms, in which he shall keep the reports and documents. [SS15,§§144-m,-n; C24, 27, 31, 35, 39,§222; C46, 50, 54, 58, 62, 66, 71, 73,§16.9; C75,§18.82]

Referred to in §§18.3, 18.28, 18.30, 18.50
Geological reports, §18.93

18.83 Information as to documents. The superintendent shall advise the public of the publication of reports and documents and of the nature of the material therein, and give information as to the publications that are for free distribution and how to obtain them. [SS15,§§144-j,-n; C24, 27, 31, 35, 39,§223; C46, 50, 54, 58, 62, 66, 71, 73,§16.10; C75,§18.83]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.84 Mailing lists. The superintendent shall require from officials or heads of departments mailing lists, or addressed labels or envelopes, for use in distribution of reports and documents. He shall revise such lists, eliminating duplications and adding thereto libraries, institutions, public officials, and persons having actual use for the material. He shall arrange such lists so as to reduce to the minimum the postage or other cost for delivery. [SS15,§144-n; C24, 27, 31, 35, 39,§224; C46, 50, 54, 58, 62, 66, 71, 73,§16.11; C75,§18.84]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.85 Copies to departments. The superintendent shall furnish the various officials and departments with copies of their reports needed for office use or to be distributed to persons calling for the same. [SS15,§144-n; C24, 27, 31, 35, 39,§225; C46, 50, 54, 58, 62, 66, 71, 73,§16.12; C75,§18.85]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.86 Assembly members. The official reports, the miscellaneous documents and other publications upon request, and the completed journals of the general assembly and ten copies of the official register, shall be sent to each member of the general assembly, and, so far as they are available, additional copies upon their request. [SS15,§144-n C24, 27, 31, 35, 39,§226; C46, 50, 54, 58, 62, 66, 71, 73,§16.13; C75,§18.86]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.87 Libraries. The completed journals of the general assembly, and the official register shall be sent to each free public library in Iowa, the state library, the library commission, libraries at state institutions, and college libraries. [SS15,§§144-m,-n; C24, 27, 31, 35, 39, §227; C46, 50, 54, 58, 62, 66, 71, 73,§16.14; C75, §18.87]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.88 Newspapers. The journals of the general assembly and the official register shall be sent to each newspaper of general circulation in Iowa, and editors of newspapers in Iowa shall be entitled to other publications on request when they are available. [SS15,§§144-m, -n; C24, 27, 31, 35, 39,§228; C46, 50, 54, 58, 62, 66, 71, 73,§16.15; C75,§18.88]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.89 Congressional library. Two copies of each publication shall be sent to the library of Congress. [C97,§126; S13,§126; SS15,§§144-m,-n; C24, 27, 31, 35, 39,§229; C46, 50, 54, 58, 62, 66, 71, 73,§16.16; C75,§18.89]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.90 County auditors. The completed journals of the general assembly, and the official register shall be sent to each county auditor, who shall be required to keep the same at all times available for the inspection of the public. [C97,§126; S13,§126; SS15,§§144-m,-n; C24, 27, 31, 35, 39,§230; C46, 50, 54, 58, 62, 66, 71, 73,§16.17; C75,§18.90]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.91 School libraries. The official register shall be distributed, in addition to the foregoing provisions to the school libraries. [C97, §71; S13,§71; C24, 27, 31, 35, 39,§231; C46, 50, 54, 58, 62, 66, 71, 73,§16.18; C75,§18.91]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.92 General distribution. The superintendent may send additional copies of publications to other state officials, individuals, institutions, libraries, or societies that may make request therefor. [C24, 27, 31, 35, 39,§233; C46, 50, 54, 58, 62, 66, 71, 73,§16.19; C75,§18.92]

Referred to in §§18.3, 18.28, 18.30, 18.50
Reports of engineering examiners, §114.10

18.93 Geological reports. The reports and bulletins of the geological survey shall be placed at the disposal of the state geologist. [C97,§126; S13,§126; C24, 27, 31, 35, 39,§234; C46, 50, 54, 58, 62, 66, 71, 73,§16.20; C75,§18.93]

Referred to in §§18.3, 18.28, 18.30, 18.50
Sale and distribution of reports, §305.10

18.94 Purchase by municipalities—accounting. The board of supervisors may purchase and pay for out of the general fund such additional number of copies of the Code and session laws as may be deemed necessary for the use of county and township officers. The council or commission of each city shall have like power in order to supply the public offices of the city.

Each officer, except a state officer, at the expiration of his term of office, shall deliver any Code and sessions laws furnished to him to his successor in office. [C73,§§39, 40, 43; C97,p.4, §§43, 46; S13, pp. 1, 2, §§43, 46; C24, 27, 31, 35, 39, §236; C46, 50, 54, 58, 62, 66, 71, 73,§16.21; C75, §18.94]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.95 Old Codes—free distribution. The superintendent of printing may distribute gratuitously, to law enforcement officers and other persons in his discretion, the Code of 1897 and all supplements and supplemental supplements thereto; also all Codes which have been issued subsequent to the Code of 1897 and which have been supplanted by a newly issued Code; also all session laws which antedate the publication of the last issued Code by at least four years; provided that he shall maintain in reserve such number of copies of each such books as may be fixed by the director. Such reserve when fixed shall not be distributed except on the order of the executive council. [S13,§46-a; C24, 27, 31, 35, 39,§237; C46, 50, 54, 58, 62, 66, 71, 73,§16.22; C75,§18.95]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.96 Distribution to colleges. Upon application, in writing, from the librarian or chief executive officer of any incorporated college in this state, the superintendent of printing shall, upon the approval of the director, forward to said applicant, without charge, bound volumes of the laws enacted. [S13,p.3; C24, 27, 31, 35, 39, §238; C46, 50, 54, 58, 62, 66, 71, 73,§16.23; C75, §18.96]

Referred to in §§18.3, 18.28, 18.30, 18.50
See also §17.33

18.97 Code—session laws. The superintendent of printing shall make free distribution of the Code, rules of civil procedure, rules of appellate procedure, supreme court rules, the Acts of each general assembly, and, upon request, the Iowa administrative code as follows:

1. To state law library for exchange purposes	100 copies
2. To law library of state University of Iowa for exchange purposes	75 copies
3. To state historical department	5 copies
4. To state historical society	5 copies
5. To each judge of the supreme court, the court of appeals and the district court, two copies; and to each district associate judge and each judicial magistrate	1 copy
6. To each judge of the federal courts in Iowa	1 copy
7. To the clerk of the supreme court of Iowa	1 copy
8. To the clerk of each federal court in Iowa	1 copy
9. To each state institution under the control of either the state board of regents or the state department of social services	1 copy
10. To each elective state officer	2 copies

11. To the separate departments of principal state offices and each major subdivision thereof ..... 1 copy

12. To each member of the present and subsequent general assemblies. 1 copy

13. To chief clerk of the house .. 1 copy

14. To secretary of the senate .... 1 copy

15. To the following offices such number of copies as will enable them to perform the duties of their respective offices.

a. Code editor.

b. Attorney general.

c. Legislative service bureau.

d. Legislative fiscal bureau.

e. Court administrator.

16. To the clerk of the district court, the county attorney, the county auditor, the county recorder, county and city assessor, the county treasurer, the sheriff, and the administrator of each area education agency in the state and also for use in each courtroom of the district court ..... 1 copy

17. To library of Congress and the library of the United States supreme court ..... 1 copy each

18. To library of the Iowa State University of science and technology and the libraries at the state University of Iowa and University of Northern Iowa ..... 1 copy each

19. To library of the United States department of justice ..... 1 copy

20. To library of the judge advocate general, United States department of defense ..... 1 copy

21. To library of the United States department of agriculture ..... 1 copy

22. To library of the United States department of labor ..... 1 copy

23. To legal staff, office of public debt, United States treasury department ..... 1 copy

24. To library of the United States department of state ..... 1 copy

25. To law library of the United States department of the interior .. 1 copy

26. To library of the United States department of internal revenue .... 1 copy

27. To each member of the Iowa congressional delegation ..... 1 copy

28. To each board of supervisors for each county ..... 1 copy

29. To each juvenile referee ..... 1 copy

[C73,§39; C97,p.4, §42; S13,p.1, §42; C24, 27, 31, 35,§235; C39,**§238.1**; C46, 50, 54, 58, 62, 66, 71, 73,§16.24; C75,§18.97; 66GA, ch 1056,§6, ch 1063, §6, ch 1241,§34]

Referred to in §§18.3, 18.28, 18.30, 18.50
Distribution to libraries, §17.33
Distribution of election laws, 66GA, ch 1060,§2
Amendment by 65GA, ch 1090,§28, effective May 1, 1975, 66GA, ch 72,§1

18.98 Book of annotations and tables of corresponding sections. The superintendent of printing shall make free distribution of the book of annotations to the Code, and of the supplements to said book of annotations, and of the book of tables of corresponding sections of the Code, as follows:

1. To state law library for exchange purposes ..... 60 copies

2. To law library of state University of Iowa for exchange purposes 75 copies

3. To state historical department 2 copies

4. To state historical society ..... 1 copy

5. To the office of each judge of the supreme court, court of appeals and district court, including district associate judges and judicial magistrates, and to each judge of the federal courts in Iowa ..... 1 copy

6. To the office of each clerk of the federal courts in this state, and of the supreme and district courts of this state ..... 1 copy

7. To the office of governor, secretary of state, auditor of state, treasurer of state, commissioner of insurance, and commerce counsel, each ..... 1 copy

8. To the office of attorney general ..... 10 copies

9. To each member of the general assembly upon their request ..... 1 copy

10. To the office of the Code editor 5 copies

11. To the office of each county auditor, and county attorney ..... 1 copy

12. To each courtroom of the district courts ..... 1 copy

13. To the library of the supreme court of the United States ..... 1 copy

14. To the office of the legislative service bureau and to the office of the legislative fiscal bureau ..... 1 copy

[C27, 31, 35,§238-a2; C39,**§238.2**; C46, 50, 54, 58, 62, 66, 71, 73,§16.25; C75,§18.98; 66GA, ch 1241, §35]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.99 Appellate court reports. The supreme court shall cause to be furnished without charge copies of any publication containing official reports of the supreme court and the court of appeals to the chambers of each judge of the district court in each county and to such other governmental agencies as the supreme court shall direct. [R60,§119; C73,§159; C97,§215; SS15,§224-e; C24, 27, 31, 35, 39,**§239**; C46, 50, 54, 58, 62, 66, 71, 73,§16.28; C75,§18.99; 66GA, ch 1241,§36]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.100 Exchange. The volumes delivered to the state [law] library shall be used for the purpose of effecting exchange with other states, foreign countries and provinces, for similar reports. All books received in such exchange shall become a part of the state library. [R60,§119; C73,§159; C97,§215; SS15, §224-e; C24, 27, 31, 35, 39,§240; C46, 50, 54, 58, 62, 66, 71, 73,§16.29; C75,§18.100]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.101 Legislative journals and bills. The daily journals of the general assembly and the printed bills shall be sent by the superintendent of printing by mail to subscribers therefor. The journals and bills for both houses for any one session may be purchased for such sum as is fixed by the state printing board. The said superintendent shall cause to be printed a sufficient number of copies to fill orders received and reported to him. [C97,§§127, 130; SS15,§§132-b,-c,-d; C24, 27, 31, 35, 39,§241; C46, 50, 54, 58, 62, 66, 71, 73,§16.30; C75,§18.101]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.102 Index to bills. The secretary of the senate and the chief clerk of the house shall throughout each legislative session compile and cause to be printed a cumulative bulletin of bills and joint resolutions which bulletin shall contain a brief history of each bill, and detailed information as to the status of legislation and shall be conveniently indexed. The bulletin shall be printed and delivered one day before the mid-term recess of each legislature and thereafter twenty-five days after the end of said recess except as may otherwise be provided by the joint rules of the general assembly. The last issue of each bulletin shall be brought down to the time of final adjournment and shall be promptly furnished to all members of the general assembly and to such others as the superintendent may determine. [C24, 27, 31, 35, 39,§242; C46, 50, 54, 58, 62, 66, 71, 73,§16.31; C75,§18.102]

Referred to in §§18.3, 18.28, 18.30, 18.50, 18.103

18.103 Enrolling clerks to keep records. The enrolling clerks of the senate and house shall, under the directions of the secretary of the senate and house, respectively, keep a daily cumulative record of the information required in section 18.102 and in such manner that the same may be promptly furnished to the superintendent at the close of each week. [C24, 27, 31, 35, 39,§243; C46, 50, 54, 58, 62, 66, 71, 73, §16.32; C75,§18.103]

Referred to in §§18.3, 18.28, 18.30, 18.50

18.104 to 18.113 Reserved.

DIVISION IV
DISPATCHER OF STATE AUTOMOBILES

18.114 Authority in department of general services. The authority to assign all state-owned motor vehicles to state officers and employees, or to state offices, departments, bureaus, and commissions, except the state department of transportation, institutions under the control of the state board of regents, the commission for the blind, and any other agencies exempted by law shall be vested in the department of general services. [C39,§308.1; C46, 50, 54, 58, 62, 66, 71, 73,§21.1; C75,§18.114; 66GA, ch 67,§69]

Referred to in §18.3

18.115 Vehicle dispatcher—employees—duties. In order to carry out the powers vested in him by this chapter, the director of the department of general services shall appoint a state vehicle dispatcher and such other employees as may be necessary to carry out the provisions of this chapter. The state vehicle dispatcher shall serve at the pleasure of the director and shall not be governed by the provisions of chapter 19A. Subject to the approval of the director, the state vehicle dispatcher shall have the following duties:

1. He shall assign to a state officer or employee or to a state office, department, bureau, or commission, one or more motor vehicles which may be required by the officer or department, after the officer or department has shown the necessity for such transportation. The state vehicle dispatcher shall have the power to assign a motor vehicle either for part time or full time. He shall have the right to revoke the assignment at any time.

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

3. The state vehicle dispatcher shall install a record system for the keeping of records of the total number of miles state-owned motor vehicles are driven and the per-mile cost of operation of each motor vehicle. Every state officer or employee shall keep a record book to be furnished by the state vehicle dispatcher in which the officer or employee shall enter all purchases of gasoline, lubricating oil, grease, and other incidental expense in the operation of the motor vehicle assigned to him, giving the quantity and price of each purchase, including the cost and nature of all repairs on the motor vehicle. Each operator of a state-owned motor vehicle shall promptly prepare a report at the end of each month on forms furnished by the state vehicle dispatcher and forward the same to him at the statehouse, giving the information the state vehicle dispatcher may request in the report. The state vehicle dispatcher shall each month compile the costs and mileage of state-owned motor vehicles from the reports and keep a cost history card on each motor vehicle and the costs shall be reduced to a cost-per-mile basis for each motor vehicle. It shall be the duty of the state vehicle dispatcher to call to the attention of the head of any department to which a motor ve-

hicle has been assigned any evidence of the mishandling or misuse of any state-owned motor vehicle which is called to his attention.

4. The state vehicle dispatcher shall purchase all new motor vehicles for all branches of the state government, except the state department of transportation, institutions under the control of the state board of regents, the commission for the blind, and any other agencies exempted by law. Before purchasing any motor vehicle he shall make requests for public bids by advertisement and he shall purchase the vehicles from the lowest responsible bidder for the type and make of motor vehicle designated at a purchase price approved by the executive council.

5. All used motor vehicles turned in to the state vehicle dispatcher shall be disposed of by public auction, and the sales shall be advertised in a newspaper of general circulation one week in advance of sale, and the receipts from the sale shall be deposited in the depreciation fund to the credit of that unit within the department or agency turning in the vehicle; except that, in the case of a used motor vehicle of special design, the state vehicle dispatcher may, with the approval of the executive council, instead of selling it at public auction, authorize the motor vehicle to be traded for another vehicle of similar design.

6. The state vehicle dispatcher may authorize the establishment of motor pools consisting of a number of state-owned motor vehicles under his supervision and which he may cause to be stored in a public or private garage. If a pool is established by the state vehicle dispatcher, any state officer or employee desiring the use of a state-owned motor vehicle on state business shall notify the state vehicle dispatcher of the need for a vehicle within a reasonable time prior to actual use of the motor vehicle. The state vehicle dispatcher may assign a motor vehicle from the motor pool to the state officer or employee. If two or more state officers or employees desire the use of a state-owned motor vehicle for a trip to the same destination for the same length of time, the state vehicle dispatcher may assign one vehicle to make the trip.

7. The state vehicle dispatcher shall cause to be marked on every state-owned motor vehicle a sign in a conspicuous place which indicates its ownership by the state except cars requested to be exempt by the commissioner of public safety or the director of the department of general services. All state-owned motor vehicles shall display registration plates bearing the word "official" except cars requested to be furnished with ordinary plates by the commissioner of public safety or the director. The state vehicle dispatcher shall keep an accurate record of the registration plates used on all state cars.

8. The state vehicle dispatcher shall have the authority to make such other rules regarding the operation of state-owned motor vehicles, with the approval of the director of the department of general services, as may be necessary to carry out the purpose of this chapter. All rules adopted by the vehicle dispatcher shall be approved by the director before becoming effective.

9. All gasoline used in state-owned automobiles shall be purchased at cost from the various installations or garages of the state department of transportation, state board of regents, department of social services, or state car pools throughout the state, unless such purchases are exempted by the vehicle dispatcher. The vehicle dispatcher shall study and determine the reasonable accessibility of these state-owned sources for the purchase of gasoline. If these state-owned sources for the purchase of gasoline are not reasonably accessible, the vehicle dispatcher shall authorize the purchase of gasoline from other sources. The vehicle dispatcher may prescribe a manner, other than the use of the revolving fund, in which the purchase of gasoline from state-owned sources shall be charged to the department or agency responsible for the use of the automobile. The vehicle dispatcher shall prescribe the manner in which oil and other normal automobile maintenance for state-owned automobiles may be purchased from private sources, if they cannot be reasonably obtained from a state car pool. The state vehicle dispatcher may advertise for bids and award contracts for the furnishing of gasoline, oil, grease, and vehicle replacement parts for all state-owned vehicles. [C39,§308.3; C46, 50, 54, 58, 62, 66, 71, 73,§21.2; C75,§18.115; 66GA, ch 67, §69, ch 74,§1]

Referred to in §§18.3, 601J.5
Marking vehicles generally, §740.21
"Official" plates, §§321.19, 321.170
Police car plates, §321.19
See salary Act

18.116 Violations—withdrawing use of vehicle. If any state officer or employee violates any of the provisions of this chapter, the state vehicle dispatcher shall have the authority to withdraw the assignment of any state-owned motor vehicle to any such state officer or employee. An appeal from such order by the state vehicle dispatcher may be taken to the executive council whose decision shall be final. [C39, §308.4; C46, 50, 54, 58, 62, 66, 71, 73,§21.3; C75, §18.116]

Referred to in §18.3

18.117 Private use—rate for state business. No state officer or employee shall use any state-owned motor vehicle for his own personal private use, nor shall he be compensated for driving his own motor vehicle except if such is done on state business with the approval of the state vehicle dispatcher, and in such case he shall receive fifteen cents per mile. A statutory provision stipulating necessary, mileage, travel, or actual expenses reimbursement to a state officer shall be construed to fall under this fifteen cents limitation unless specifically provided otherwise. Any peace of-

ficer as defined in section 748.3 who is required to use his private vehicle in the performance of his official duties shall receive reimbursement for mileage expense at the rate of fifteen cents per mile. However, the state vehicle dispatcher may delegate authority to officials of the state, and department heads, for the use of private vehicles on state business up to a yearly mileage figure established by the director of general services and approved by the executive council. When a state motor vehicle has been assigned to a state officer or employee he shall not collect mileage for the use of his personal vehicle unless the state vehicle assigned to him is not usable.

This section shall not apply to elected officers of the state. judges of the district court, judges of the supreme court. or officials and employees of the state whose mileage is paid by other than state agencies. [C39,§**308.5**; C46, 50, 54, 58, 62, 66, 71, 73,§21.4; C75,§18.117; 66GA. ch 74,§2]

Referred to in §18.3
See also §79.9

18.118 Penalty for private use. Any state officer or employee found guilty of violating the rules of the state vehicle dispatcher shall, upon conviction, be fined not to exceed one hundred dollars or imprisoned not to exceed thirty days in the county jail. [C39,§**308.6**; C46, 50, 54, 58, 62, 66, 71, 73,§21.5; C75,§18.118]

Referred to in §18.3
Omnibus repeal, 48GA, ch 131,§7
Private use of public property generally, §740.20

18.119 Revolving fund — replenishment. There is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of twenty-five thousand dollars, which shall be known as the vehicle dispatcher revolving fund. From this fund shall be paid all purchases of gasoline, oil, tires, repairs, and all other general expenses incurred in the operation of state-owned motor vehicles, and all salaries and expenses of the vehicle dispatcher's office shall be paid from said fund.

At the end of each month the state vehicle dispatcher shall render a statement to each state department or agency thereof for the actual cost of operation of all motor vehicles assigned to such department or agency, together with a fair proportion of the cost of administration of the state vehicle dispatcher's office during such month, as shall be determined by him, all subject to review by the executive council upon complaint of any state department or agency adversely affected. Such expense shall be paid by the state departments or agencies in the same manner as other expenses of such department are paid, and when such cost of operation and administration is paid by the department, such sum shall be credited to the vehicle dispatcher revolving fund. If any surplus accrues to said revolving fund in excess of twenty-five thousand dollars for which there is no anticipated need or use, the governor may order such surplus turned over to the general fund of the state. [C46, 50, 54, 58, 62, 66, 71, 73,§21.6; C75,§18.119]

Referred to in §18.3

18.120 Replacement fund. The vehicle dispatcher shall maintain a depreciation fund for the purchase of replacement motor vehicles and additions to the fleet. The dispatcher's records shall show the total funds deposited by and credited to each department or agency thereof. At the end of each month, the state vehicle dispatcher shall render a statement to each state department or agency thereof for additions to the fleet and depreciation on each motor vehicle assigned to and owned by such department or agency. Such depreciation expense shall be paid by the state departments or agencies in the same manner as other expenses of such department are paid, and shall be deposited in the depreciation fund to the credit of the individual motor vehicle within the department or agency thereof. The funds credited to each department or agency thereof shall remain the property of the department or agency. However, at the end of each biennium, the state vehicle dispatcher shall cause to revert to the fund from which it accumulated any unassigned depreciation. [C71, 73, §21.7; C75,§18.120]

Referred to in §18.3

18.121 Assistants. The director of the department of general services may at various points in the state, outside the city of Des Moines, where state institutions or departments are located, appoint and empower assistants to administer in the name of the state vehicle dispatcher. [C73,§21.8; C75,§18.121]

Referred to in §18.3

18.122 to 18.131 Reserved.

DIVISION V

STATE COMMUNICATIONS AND EDUCATIONAL RADIO AND TELEVISION

18.132 Purpose. It is the intent of the general assembly in providing for state communications, that an educational radio and television facility, including provision for closed circuit television, be established to serve the entire state, and that communications of state government be co-ordinated to effect maximum practical consolidation and joint use of communications services. [C71, 73,§8A.1; C75, §18.132]

Referred to in §18.3

18.133 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"State communications"* means a system to serve communications needs of state departments and agencies.

2. *"Director"* means the director of the department of general services or his designee.

3. *"Council"* means the communications advisory council.

4. *"Radio and television facility"* means transmitters, towers, studios, and all necessary associated equipment for educational broadcasting.

5. *"Board"* means the educational radio and television facility board. [C71, 73,§8A.2; C75, §18.133]

Referred to in §18.3

18.134 Administration—director of general services. All councils, boards, and commissions created by this chapter shall be placed, for administrative purposes, in the office of the director.

Before any obligations for expenditures shall be incurred from appropriations made under the provisions of this chapter the same shall be approved by the director. [C71, 73,§8A.3; C75,§18.134]

Referred to in §18.3

18.135 Rules. The director shall promulgate rules relating to state communications in accordance with the provisions of this chapter. The director shall also adopt and provide for standard communications procedures and policies to be used by all departments and agencies of state government.

Communications activities of departments of state government which affect the overall operation of state communications shall fall within the administrative jurisdiction of the director for review and action upon request from any department of state government.

Communications activities which are operational and the responsibility of a particular department of state government shall continue to fall within the administrative jurisdiction of that department of state government and be financed through its appropriations.

The director and the state educational radio and television facility board shall co-ordinate their activities to achieve the maximum possible co-operation and effective use of the available facilities. [C71, 73,§8A.4; C75,§18.135]

Referred to in §18.3

18.136 Advisory council. The state communications advisory council shall provide guidance to the director in the development, administration, unification and standardization of communication services to meet normal and emergency requirements of all state departments. The council shall consist of the following persons or their designated representatives:

1. The superintendent of public instruction.
2. The commissioner of public safety.
3. The adjutant general.
4. The chairman of the state transportation commission.
5. The president of the state board of regents.
6. The chairman of the council on social services.
7. The chairman of the state educational radio and television facility board. [C71, 73, §8A.5; C75,§18.136]

Referred to in §18.3

18.137 Educational facility board created. There is hereby created a state educational radio and television facility board for the purpose of planning, establishing, and operating an educational radio and television facility and such other communications services as may prove necessary in aid of the accomplishment of the educational objectives of the state. [C71, 73,§8A.6; C75,§18.137]

Referred to in §18.3

18.138 Membership. The board shall be composed of nine members who shall be selected in the following manner:

1. Three members shall be appointed by the state board of public instruction from its own membership or from the personnel of the state department of public instruction.

2. Three members shall be appointed by the state board of regents from its own membership or from among its employees or employees of institutions under the jurisdiction of the board.

3. Three members shall be appointed by the governor, at least one of whom shall be from a regionally accredited private four-year college or university. [C71, 73,§8A.7; C75,§18.138]

Referred to in §§18.3, 18.139, 18.140

18.139 Terms of office. Terms of office for members of the board shall be for three years. Initial appointments in each of the three categories of appointment provided in section 18.138 shall be for one, two, and three years respectively, and thereafter all appointments, except appointments to fill a vacancy shall be for a term of three years. Terms shall commence on July 1 of the year of the appointment. [C71, 73,§8A.8; C75,§18.139]

Referred to in §18.3

18.140 Vacancies. A vacancy on the board shall be as defined in section 277.29, insofar as applicable. Termination of qualifying employment, under any of the categories of appointment specified in section 18.138 shall also create a vacancy. Vacancies shall be filled by the authority making the original appointment of the person whose membership has been vacated. [C71, 73,§8A.9; C75,§18.140]

Referred to in §18.3

18.141 Officers. The council and board shall each elect from their respective memberships a chairman and vice-chairman who shall each serve for one year and who may be re-elected. Membership on the council or board shall not constitute holding a public office and members shall not be required to take and file oaths of office before serving. No member shall be disqualified from holding any public office or employment by reason of his appointment or membership on either the council or the board nor shall any member forfeit any such office or employment by reason of his appointment to the council or board, notwithstanding the provisions of any general, special or local law, ordinance or city charter. [C71, 73,§8A.10; C75, §18.141]

Referred to in §18.3

18.142 Compensation and expenses. The members of both the council and the board shall be paid a forty-dollar per diem and be reimbursed for travel and actual and necessary expenses involved in attending meetings and in the performance of their duties. All per diem and expense moneys paid to the members shall be paid from funds appropriated to the department of general services. [C71, 73,§8A.11; C75,§18.142]
Referred to in §18.3

18.143 Meetings. Both the council and the board shall meet separately at least four times each year and shall hold special meetings when called by the appropriate chairman or in the absence of the chairman by the vice-chairman or by the chairman upon written request of four members. Both the council and the board shall establish procedures and requirements with respect to quorum, place and conduct of meetings. [C71, 73,§8A.12; C75,§18.143]
Referred to in §18.3

18.144 Advisory committees. The board shall appoint at least two advisory committees as follows:

1. Advisory committee on general operations and policy.
2. Advisory committee on curricula and educational matters.

Duties of said advisory committees, and such additional advisory committees as the board may from time to time appoint, shall be specified in rules of internal management adopted by the board. [C71, 73,§8A.13; C75,§18.144]
Referred to in §18.3

18.145 Federal funds. The board, the governor, or the director may apply for and accept federal or nonfederal gifts, loans, or grants of funds and to use the same to pay all or part of the cost of carrying out any project under the provisions of this chapter. [C71, 73,§8A.14; C75,§18.145]
Referred to in §18.3

18.146 Purchase or lease of property. The board shall have power to purchase or lease property, equipment, and services and to improve same for proper educational communications uses, and to dispose of property and equipment when not necessary for their purposes. [C71, 73,§8A.15; C75,§18.146]
Referred to in §§18.3, 18.150

18.147 Channels, licenses and permits. The board shall make applications for all necessary channels, frequencies, licenses, and permits in aid of carrying out their purposes. [C71, 73, §8A.16; C75,§18.147]
Referred to in §18.3

18.148 Joint use of facilities. The board and director may arrange for joint use of available services and facilities.

No charge or fee shall be paid by the state of Iowa or any of its boards, commissions, agencies, and departments for any installation of any communication equipment, or rate for the use thereof if the attorney general has filed a complaint on behalf of the state of Iowa questioning the fairness and reasonableness of said charge, rate or fee, unless the Iowa commerce commission shall upon hearing affirmatively find that such charge, fee, and rate is fair and reasonable. [C71, 73,§8A.17; C75, §18.148]
Referred to in §18.3

18.149 Director educational facilities. The board shall appoint an educational facilities director who shall not be included in the Iowa merit system and fix his compensation if it is not otherwise provided by law. All appointments of personnel needed to administer this chapter shall be without reference to political party affiliation, religious beliefs, sex, marital status, race, color, or national origin. The total amount of compensation for employees shall be subject to the limitation of the appropriation and other funds lawfully available. C71, 73,§8A.18; C75,§18.149]
Referred to in §18.3

18.150 Local boards. Nothing in this division shall prohibit local boards of education from owning, operating, improving and maintaining educational radio and television stations and transmitters now in existence and operation. Local boards of education are hereby empowered and authorized to enter into such agreements with the state educational radio and television facility board as are contemplated in section 18.146. [C71, 73,§8A.19; C75,§18.150]
Referred to in §18.3

18.151 Competition with private sector. It is the intent of the general assembly that the state educational radio and television facility board of the department of general services shall not compete with the private sector by actively seeking revenue from its operations. It is not the intent of the general assembly to prohibit the receipt of charitable contributions as defined by section 170 of the Internal Revenue Code. All moneys received after July 1, 1973, by the state educational radio and television facility board of the department of general services from all sources except amounts appropriated by the general assembly or received under Acts of the Sixty-fifth General Assembly, chapter 100, section 4, shall become the property of the state of Iowa and shall be promptly deposited in the state general fund. [C75,§18.151]
Referred to in §18.3

18.152 Location of facilities. The state educational radio and television facility board may locate its administrative offices and production facilities outside the city of Des Moines, Iowa, and on land acquired by the board from the Area XI Community College at Ankeny, Iowa. [C71, 73,§8A.21; C75,§18.152]
Referred to in §18.3

18.153 Annuity contracts. At the request of an employee through contractual agreement the board may arrange for the purchase of

group or individual annuity contracts for any of its respective employees from any company the employee may choose that is authorized to do business in this state and through an Iowa-licensed insurance agent that the employee may select, for retirement or other purposes and may make payroll deductions in accordance with such arrangements for the purpose of paying the entire premium due and to become due under such contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits afforded under section 403b of the Internal Revenue Code of 1954 and amendments* thereto. The employee's rights under such annuity contract shall be nonforfeitable except for the failure to pay premiums.

Whenever an existing tax-sheltered annuity contract is to be replaced by a new contract the agent or representative of the company shall submit a letter of intent to the company being replaced, to the insurance commissioner of the state of Iowa, and to his own company at least thirty days prior to any action by registered mail. This letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract. [C75,§18.153]

*Acts 65GA, ch 1167, effective July 1, 1974

CHAPTER 18A

CAPITOL PLANNING COMMISSION

18A.1 Commission created.
18A.2 Terms.
18A.3 Duties.
18A.4 Organization.
18A.5 Compensation and expenses.
18A.6 Repealed by 63GA, ch 25,§2.

18A.1 Commission created. There is hereby created the capitol planning commission composed of nine members: (1) Four members of the general assembly serving as ex officio nonvoting members, two thereof to be appointed by the speaker of the house from the membership thereof, two to be appointed by the lieutenant governor from the membership of the senate, and (2) three residents of the state of Iowa to be appointed by the governor, and (3) the director of the department of general services or his designee and the state architect provided by section 218.58. [C62, 66, 71, 73, 75, §18A.1; 66GA, ch 1052,§4]

18A.2 Terms. The terms of office of the nonofficial appointees shall be four years and until their successors are appointed. Vacancies therein shall be filled by the governor, such vacancy appointees to serve for the unexpired term of the original appointee. The terms of office of the members of the general assembly herein shall be for four years unless sooner terminated by ceasing to be members of the general assembly in which event the vacancies thus created shall be filled by the speaker of the house or the lieutenant governor as the case may be, the members so appointed to serve for the unexpired term of their predecessors. The terms of office of all members of the capitol planning commission in office on July 4, 1965, are continued to May 1, 1967, on which date all terms shall terminate. Prior to said date appointments shall be made for succeeding members as follows:

From the house of representatives, one for a term of two years and one for a term of four years.

From the senate, one for a term of two years and one for a term of four years.

For successors to nonofficial appointees one for a term of two years and two for terms of four years.

All terms of members of the commission shall begin on May 1 of each odd-numbered year beginning with May 1, 1967. [C62, 66, 71, 73, 75,§18A.2]

18A.3 Duties. It shall be the duty of the commission to advise upon the location of statues, fountains and monuments and the placing of any additional buildings on the capitol grounds, the type of architecture and the type of construction of any new buildings to be erected on the state capitol grounds as now encompassed or as subsequently enlarged, and repairs and restoration thereof, and it shall be the duty of the officers, commissions, and councils charged by law with the duty of determining such questions to call upon the commission for such advice.

The commission shall, in co-operation with the director of the department of general services, develop and implement within the limits of its appropriation, a five-year modernization program for the capitol complex. [C62, 66, 71, 73, 75,§18A.3]

18A.4 Organization. The commission shall enter into its duties as soon as this resolution is effective and as soon as the membership has been filled as herein specified; shall organize by the selection of a chairman and a secretary drawn from the membership of the commission, who shall serve at the pleasure of the commission. [C62, 66, 71, 73, 75,§18A.4]

18A.5 Compensation and expenses. The members of the commission shall be reimbursed for their actual and necessary expenses and shall be paid a forty-dollar per diem while in attendance at any meeting of the commission held at the seat of government and shall be reimbursed for their expenses for going to and from the seat of government to attend a meeting. All per diem and expense moneys

paid to the nonlegislative commissioners shall be paid from funds appropriated to the commission. Service of the director of the department of general services and the state architect upon this commission shall be an additional duty conferred by statute. Legislative members of the commission shall receive payment pursuant to section 2.10 and section 2.12. [C62, 66, 71, 73, 75,§18A.5; 66GA, ch 1052,§5]

18A.6 Repealed by 63GA, ch 25,§2.

Master plan for expansion of capitol grounds, see 61GA, ch 481

CHAPTER 19

EXECUTIVE COUNCIL

Referred to in §152.3

19.1 Membership.
19.2 Secretary.
19.3 Records kept.
19.4 Repealed by 65GA, ch 121,§18.
19.5 Repealed by 64GA, ch 84,§99.
19.6 Report for official register.
19.7 Repealed by 66GA, ch 1074,§31.
19.8 Anticipation of revenues.
19.9 Compromise of claims.
19.10 Court costs.
19.11 Report of unexpended balances.
19.12 Notice to transfer balance.
19.13 Order of transfer.
19.14 Duty to transfer.
19.15 Repealed by 64GA, ch 84,§99.
19.16 Veteran's newsstand.
19.17 to 19.28 Repealed by 64GA, ch 84,§99.
19.29 Performance of duty—expense.
19.30 Necessary record.
19.31 Additional compensation and expenses.
19.32 Repealed by 61GA, ch 139,§7.
19.33 Employee awards.

19.1 Membership. The executive council shall consist of the:

1. Governor,
2. Secretary of state,
3. Auditor of state,
4. Treasurer of state, and
5. Secretary of agriculture.

A majority shall constitute a quorum. No deputy shall act on the council for his principal. [R60,§993; C73,§111; C97,§155; C24, 27, 31, 35, 39,§276; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.1]

19.2 Secretary. The executive council shall choose a secretary who shall hold office during its pleasure, and perform such duties as may be required by law or by the executive council. [R60,§999; C73,§§119, 120; C97,§§156, 157; S13, §§156, 157; C24, 27, 31, 35, 39,§277; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.2]

Additional duties, §111.1

19.3 Records kept. He shall keep a complete record of the proceedings of the executive council. [C73,§119; C97,§§156, 157; S13, §157; C24, 27, 31, 35, 39,§278; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.3]

19.4 Repealed by 65GA, ch 121,§18.

19.5 Repealed by 64GA, ch 84,§99.

19.6 Report for official register. He shall, as soon as practicable after January 1 of each odd-numbered year, prepare a report of the proceedings of the executive council for the two preceding calendar years. Said report shall include a statement of:

1. The official canvass of the votes cast at the last general election.
2. Other acts of said council that are of general interest.

Said report shall be published in the Iowa official register. [C73,§120; C97,§157; S13,§157; C24, 27, 31, 35, 39,§284; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.6]

Time of filing report, §17.3

19.7 Repealed by 66GA, ch 1074,§31. See §296.20.

19.8 Anticipation of revenues. The executive council may anticipate the revenues for any year, when the current revenues for such year are insufficient to pay all warrants issued in said year, by causing state warrants, in an amount not exceeding the estimated state revenues for said year, and drawing not to exceed five percent per annum, to be issued, advertised, and sold on sealed bids to the highest bidder. All bids and all records pertaining thereto, and the names of all purchasers shall be kept on file. [S13,§170-a; C24, 27, 31, 35, 39, §287; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.8]

19.9 Compromise of claims. The executive council, on a written report to it by the attorney general together with his opinion as to the legal effect of the facts, may determine by resolution to be duly entered in its official records, the terms on which claims of doubtful equity or collectibility, and in favor of the state, may be compromised and settled with all or any of the parties thereto. Such terms may be withdrawn prior to acceptance, or in case the debtor fails to comply therewith within a reasonable time. The attorney general shall have full authority to execute all papers necessary to effect any such settlement. [S13, §170-h; C24, 27, 31, 35, 39,§288; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.9]

Referred to in §421.5

19.10 Court costs. If sufficient funds for court costs have not been appropriated to a state department, or if sufficient funds are not otherwise available for such purposes within the budget of a state department, the executive council may pay, out of any money in the state treasury not otherwise appropriated, expenses incurred, or costs taxed to the state, in any proceeding brought by or against any of the state departments or in which the state is a party or is interested. This section shall not be construed to authorize the payment of travel or other personal expenses of state officers or employees. [S13,§170-i; C24, 27, 31, 35, 39,§289; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.10; 66GA, ch 75,§1, ch 1059,§4]

19.11 Report of unexpended balances. All commissions, boards, officers, or persons placed in charge, by statute, of special work for which a specific appropriation of state funds has been made, shall, biennially, report to the executive council the progress of such special work, the balance on hand in such fund, a list of all unpaid bills, and the amount of each, then outstanding, with such other information as the council shall from time to time require. [SS15, §170-q; C24, 27, 31, 35, 39,§290; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.11]

Referred to in §8.33

19.12 Notice to transfer balance. When said council is satisfied that the work for which such special fund was created has been completed or abandoned, it shall fix a day for hearing on the question whether the unexpended balance then on hand should be transferred to the general revenue fund of the state, and shall cause a ten days' notice of such hearing to be given such commission, board, officer, or person, at which hearing showing may be made why such unexpended balance should not be so transferred. [SS15,§170-q; C24, 27, 31, 35, 39, §291; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.12]

Referred to in §8.33

19.13 Order of transfer. If after such hearing the council shall find that said special work has been completed or abandoned, and that there is no good reason why such transfer should not then be made, such findings shall be made a matter of record in the minutes of its proceedings, and the secretary of the council shall at once file a copy of such proceedings with the state comptroller. [SS15,§170-q; C24, 27, 31, 35, 39,§292; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.13]

Referred to in §8.33

19.14 Duty to transfer. The state comptroller shall, on receipt from the secretary of the council of a copy of such record, make such transfer. [SS15,§170-q; C24, 27, 31, 35, 39,§293; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.14]

Referred to in §8.33

19.15 Repealed by 64GA, ch 84,§99.

19.16 Veteran's newsstand. The executive council shall, on the application of any disabled, honorably discharged soldier, sailor, marine, or woman who served in the military or naval forces of the United States in the late Civil war, Spanish-American war, Philippine insurrection, China relief expedition, World War I, World War II from December 7, 1941, to December 31, 1946, both dates inclusive, or the Korean conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, or the Vietnam Conflict at any time between August 5, 1964, and ending on the date the armed forces of the United States are directed by formal order of the government of the United States to cease hostilities, both dates inclusive, cause to be reserved in the state capitol a reasonable amount of space in the lobby of said state capitol to be used by such applicant rent-free as a stand for the sale of news, tobaccos, and candies and may in such application permit installation of merchandise vending machines. Should there be more than one applicant for such reserved space, the executive council shall award the same to the person in its opinion most deserving of the same. The executive council shall prescribe the regulations by which the stand shall be operated. [C39,§295.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §19.16; 66GA, ch 76,§1]

Referred to in §601C.2
Courthouses, §332.5

19.17 to 19.28 Repealed by 64GA, ch 84,§99.

Payments by executive council under §§19.18 and 19.19, Code 1971, legalized, 65GA, ch 121,§19

19.29 Performance of duty—expense. The executive council shall not employ others, or incur any expense, for the purpose of performing any duty imposed upon such council when such duty may, without neglect of their usual duties, be performed by the members, or by their regular employees, but, subject to such limitation, the council may incur the necessary expense to perform or cause to be performed any legal duty imposed on said council, and pay the same out of any money in the state treasury not otherwise appropriated. [S13, §§170-l,-n,-p; C24, 27, 31, 35, 39,§306; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.29]

Referred to in §§18.12, 19.30

19.30 Necessary record. Before incurring any expense authorized by section 19.29, the council shall, in each case, by resolution, entered upon its records, set forth the necessity for incurring such expense, the special fitness of the one employed to perform such work, the definite rate of compensation or salary allowed, and the total amount of money that may be expended. Compensation or salary for personal services in such cases must be determined by unanimous vote of all members of the council. [S13,§§170-m,-n; C24, 27, 31, 35, 39, §307; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.30]

19.31 Additional compensation and expenses. Members of the executive council and its regular employees shall be paid no additional salary or compensation for special service, but shall receive their necessary traveling expenses, including subsistence, when absent

from the seat of government on official business. [S13,§170-o; C24, 27, 31, 35, 39,§308; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.31]

19.32 Repealed by 61GA, ch 139,§7; see ch 104A.

19.33 Employee awards.

1. The executive council, upon recommendation by an employing department, may authorize payment of a cash incentive award to any employee who develops a practical plan for increased efficiency, economy, or cost reduction for his department or for the operations of the state government. An incentive award under this section shall not exceed one thousand dollars.

Wherever used in this section, "department" includes any department, agency, board, bureau, or commission of this state.

2. Any department may adopt a cost reduction plan which shall provide for a reduction in the number of employees or operating costs of the department below the number or amount which would otherwise be authorized. The executive council, upon recommendation by the department, may authorize payment of a cash incentive award to each employee in the department who will be required to perform additional duties or contribute additional effort as a result of the cost reduction plan. The executive council shall authorize such awards only if it determines that the cost reduction plan is in the best interests of the state, and cost reduction plan less the amount of the cash only if the estimated net savings due to the incentive award revert to the fund from which originally appropriated. The total amount of all awards under this section with respect to any cost reduction plan shall not exceed one-fourth of the estimated savings due to the cost reduction plan. The amount of the award to each employee shall be approved by the executive council.

3. Awards made pursuant to this section shall be paid out of the appropriated funds of the department employing the persons receiving the awards.

4. Before authorizing an award under this section, the executive council shall submit the departmental recommendation to the comptroller and to the legislative fiscal director, each of whom shall submit his independent evaluation within fifteen days. [C71, 73, 75,§19.33]

CHAPTER 19A

STATE MERIT SYSTEM OF PERSONNEL ADMINISTRATION

Referred to in §§7A.1, 17A.11, 18.8, 18.74, 18.115, 20.5, 20.18, 35C.4, 47.8, 56.9, 88.2, 88A.6, 91A.9, 96.11(4), 103A.6, 104.4, 123.20(5), 135C.16, 135C.18, 147.98, 147.103, 147.114, 147.116, 157.7, 158.6, 217.23, 220.6, 303.6–303.8, 303A.5, 303A.6, 307.12, 307A.8, 455B.2, 455B.3, 502.601, 524.208, 601H.4, 749A.1

The Iowa merit employment commission shall promulgate rules to carry out such reassignment or transfer and shall arbitrate and decide any written appeal made by any employee concerning any transfer, reassignment, or reclassification made necessary by the department of transportation Act. No employee shall lose any benefits he may have accrued, including but not limited to salary, retirement, vacation, sick leave, or longevity, because of reassignment; see 65GA, ch 1180,§199.

19A.1 General purpose.
19A.2 Definitions.
19A.3 Applicability—exceptions.
19A.4 Merit employment department created.
19A.5 Director—appointment and removal.
19A.6 Qualifications of commissioners — appointment.
19A.7 Commission duties.
19A.8 Director's duties.
19A.9 Rules adopted.
19A.10 Use of buildings for examinations, etc.
19A.11 Aid by state employees—records and information.
19A.12 All two-year employees covered.
19A.13 Certification of payrolls—actions.
19A.14 Appeal to appointing authority.
19A.15 Records public.
19A.16 Services to political subdivisions.
19A.17 Oaths and subpoenas.
19A.18 Discrimination prohibited.
19A.19 Prohibited actions.
19A.20 Penalty.
19A.21 Acceptance of grants.
19A.22 Other inconsistent laws.
19A.23 Longevity pay prohibited—exception.
FEDERAL PROGRAMS EXEMPT
19A.24 Temporary emergency employment.
19A.25 Political activity prohibited.
19A.26 Penalty applicable.

19A.1 General purpose. The general purpose of this chapter is to establish for the state of Iowa a system of personnel administration based on the merit principles and scientific methods governing the appointment, promotion, welfare, transfer, layoff, removal and discipline of its civil employees, and other incidents of state employment. All appointments and promotions to positions in the state service shall be made solely on the basis of merit and fitness, to be ascertained by competitive examinations, except as hereinafter specified. [C71, 73, 75,§19A.1]

Referred to in §19A.24

19A.2 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Department"* means the Iowa merit employment department.

2. *"Director"* means the director of the Iowa merit employment department.

3. *"Commission"* means the Iowa merit employment commission.

4. *"Merit system"* means the merit system established under this chapter.

5. *"Appointing authority"* means the chairman or person in charge of divisions of the state government including, but not limited to, boards, bureaus, commissions, departments and other divisions or an employee designated to employ persons by such an appointing authority. [C71, 73, 75,§19A.2]

Referred to in §19A.24

19A.3 Applicability—exceptions. The merit system shall apply to all employees of the state and to all positions in the state government now existing or hereafter established except the following:

1. The general assembly, employees of the general assembly, other officers elected by popular vote, and persons appointed to fill vacancies in elective offices.

2. All board members and commissions whose appointments are otherwise provided for by the statutes of the state of Iowa, and one stenographer or secretary for each full-time member of each board and commission, and one principal assistant or deputy in each department.

3. Three principal assistants or deputies for each elective official and one stenographer or secretary for each elective official and each principal assistant or deputy thereof, also all supervisory employees and their confidential assistants.

4. The personal staff of the governor.

5. All employees under the supervision of the attorney general or his assistants.

6. All presidents, deans, directors, teachers, professional and scientific personnel, and student employees under the jurisdiction of the state board of regents.

7. The superintendent of public instruction and members of the professional staff of the department of public instruction, appointed under the provisions of section 257.24, who possess a current, valid teacher's certificate or who are assigned to vocational activities or programs.

8. Patients or inmates employed in state institutions.

9. Persons employed by the commission for the blind and the division of vocational rehabilitation or any successor thereto.

10. Part-time professional employees who are paid a fee or who are under contract for service basis and are not engaged in administrative duties.

11. Officers and enlisted personnel of the armed services under state jurisdiction.

12. All judges and all employees of the courts.

13. All physicians, psychiatrists, and heads of institutions under the jurisdiction of the department of social services.

14. All appointments other than boards or commissions which are by law made by the governor or executive council; one stenographer or secretary for each; one principal assistant or deputy for each; and all administrative assistants or deputies employed by the director of the Iowa development commission.

15. Members of the Iowa highway safety patrol and other peace officers employed by the department of public safety.

16. Employees of the educational radio and television facility board.

17. Summer employment appointments during the period May 15 through September 15.

18. The administrative head of each of the divisions of the department of social services.

19. The director of transportation, his deputy, and his divisional administrators, one secretary or stenographer for each, and one administrative assistant or deputy for each.

20. The chief administrative officer of each board or commission who is appointed by the board or commission and one stenographer or secretary for the chief administrative officer.

21. Employees of the public employment relations board .

Nothing in this section shall authorize the employment of any stenographer, secretary, assistant or deputy not otherwise authorized by law.

Nothing herein shall be construed as precluding the appointing authority from filling any position in the manner in which positions in the merit system are filled.

The state board of regents and the educational radio and television facility board shall adopt rules for their employees, which rules shall not be inconsistent with the objectives of this chapter, and which shall be subject to approval of the Iowa merit employment commission. If at any time the director determines that the board of regents merit system or the educational radio and television facility boards merit system does not comply with the intent of this chapter, he, subject to the approval of the commission, shall have authority to direct correction thereof and the rules of the board shall not be in compliance until the corrections are made.

Institutions under the department of social services shall be authorized to qualify and employ applicants under rules adopted by the commission. [C71, 73, 75,§19A.3; 66GA, ch 2,§3, ch 77,§§1, 2]

Referred to in §§17A.11, 19A.24, 56.9, 125.8, 224B.4, 249B.5

19A.4 Merit employment department created. There is hereby established a department of merit employment to be known as the "Iowa merit employment department," the executive head of which shall be the director of merit

employment. In the department there shall be a merit employment commission of five members with the powers and duties hereinafter enumerated. The provisions of section 8.23 shall apply to this department. [C71, 73, 75, §19A.4]

Referred to in §19A.24

19A.5 Director—appointment and removal. The merit employment commission shall appoint a director of merit employment who shall be experienced in the field of personnel administration, and who is in known sympathy with the application of merit principles in public employment. The commission shall establish for the class of director, minimum requirements of education and experience which are pertinent to the duties of the position. The restrictions as to political activity of the members of the commission shall likewise apply to the director. The director of merit employment shall serve at the pleasure of the commission. [C71, 73, 75,§19A.5]

Referred to in §19A.24

19A.6 Qualifications of commissioners — appointment.

1. The members of the commission shall be citizens of the United States and residents of Iowa and shall be in sympathy with the application of merit principles to public employment. No member of the commission shall be a member of any local, state, or national committee of a political party or an officer or member of a committee in any partisan political club or organization, or hold or be a candidate for any paid elective public office. The commission shall be nonpartisan in its scope and function, it being provided, however, that no more than three members thereof shall be from the same political party.

2. The governor shall appoint members of the merit employment commission. Members appointed to the commission shall be subject to approval of two-thirds of the members of the senate. The merit employment commission appointed shall hold office in the following manner: One member until July 1, 1969, one member until July 1, 1971, and one member until July 1, 1973.* Thereafter, each member shall be appointed for a term ending six years from the date of expiration of the term for which his predecessor was appointed. Where a vacancy may exist, the governor shall appoint for the unexpired portion of the term, and if the general assembly is not then in session, the governor shall, upon the convening of the general assembly, promptly report the appointment to the senate for confirmation.

*Three original members. Two additional members terms; one to serve until July 1, 1973 and one to serve until July 1, 1975

3. A member of the commission may be removed by the governor only for cause, after being given a copy of charges against him and an opportunity to be heard publicly on such charges before the governor. A copy of the charges and transcript of the record of the hearing shall be filed with the secretary of state.

4. Members of the commission shall receive per diem while engaged in their official duties, the same rate as paid members of the general assembly. They shall be paid their actual and necessary travel and other official expenditures necessitated by their official duties.

5. The commission shall elect one of its members as chairman. It shall meet at such time and place as shall be specified by call of the chairman or the director. At least one meeting shall be held bimonthly. All meetings shall be open to the public. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. Three commissioners shall constitute a quorum for the transaction of business. [C71, 73, 75,§19A.6]

Referred to in §19A.24

19A.7 Commission duties. In addition to the duties expressly set forth elsewhere in this chapter, the commission shall:

1. Represent the public interest in the improvement of personnel administration in the state merit system.

2. Advise the governor and the director on problems concerning personnel administration.

3. Foster the interest of institutions of learning and of industrial, civic, professional, and employee organizations in the improvement of personnel standards in the state merit system.

4. Make any investigation which it may consider desirable concerning the administration of personnel in the state merit system and make recommendations to the director with respect thereto.

5. Make an annual report and special reports and recommendations to the governor. [C71, 73, 75,§19A.7]

Referred to in §19A.24
Annual report, §17.4

19A.8 Director's duties. The director, as executive head of the department, shall direct and supervise all of the administrative and technical activities of the department. In addition to the duties imposed by the director elsewhere in this chapter, it shall be his duty:

1. To apply and carry out this law and the rules adopted thereunder.

2. To attend meetings of the commission and to act as its secretary and keep minutes of its proceedings.

3. To establish and maintain a roster of all employees in the state merit system in which there shall be set forth, as to each employee, the class title, pay or status, and other pertinent data.

4. To appoint such employees of the department and such experts and special assistants as may be necessary to carry out effectively the provisions of this chapter. Staff employees shall be appointed in accordance with the provisions of this chapter.

5. To foster and develop, in co-operation with appointing authorities and others, programs for the improvement of employee effectiveness,

including training, safety, health, counseling, and welfare.

6. To encourage and exercise leadership in the development of effective personnel administration within the several departments in the state merit system, and to make available the facilities of the department of merit employment to this end.

7. To investigate the operation and effect of this law and of the rules made thereunder and to report semiannually his findings and recommendations to the commission.

8. To make an annual report to the commission regarding the work of the department and such special reports as he may consider desirable.

9. To perform any other lawful acts which he may consider necessary or desirable to carry out the purposes and provisions of this chapter.

The director shall designate, with the approval of the commission, an employee of the department to act for him in his absence or inability from any cause to discharge the powers and duties of this office.

The director shall utilize appropriate persons, including officers and employees in the state merit system to assist in the preparation and rating of tests. The director shall confer with agency personnel to assist in preparing examinations for professional and technical classes. An appointing authority may excuse any employee in his division from his regular duties for the time required for his work as an examiner. Such officers and employees shall not be entitled to extra pay for their services as examiners but shall be paid their necessary traveling and other expenses.

The director shall quarterly render a statement to those covered departments which operate in whole or in part from other than general fund appropriations for a pro rata share of the cost of administration of the merit employment department. Such expense shall be paid by the state departments or agencies in the same manner as other expenses of such department are paid and the moneys received shall be deposited in the general fund of the state. [C71, 73, 75,§19A.8]

Referred to in §19A.24

19A.9 Rules adopted. The merit employment commission shall adopt and may amend rules for the administration and implementation of this chapter in accordance with chapter 17A. The director shall prepare and submit proposed rules to the commission. The rules shall provide:

1. For the preparation, maintenance, and revision of a position classification plan from a schedule by separate department for each position and type of employment not otherwise provided by law in state government as approved by the executive council for all positions in the merit system, based upon duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class, in the same geographical area. After such classification has been approved by the commission, the director shall allocate the position of every employee in the merit system to one of the classes in the plan. Any employee or agency officials affected by the allocation of a position to a class shall, after filing with the director a written request for reconsideration thereof in such manner and form as the director may prescribe, be given a reasonable opportunity to be heard thereon by the director. An appeal may be made to the commission or to a qualified classification committee appointed by the commission. No allocation or reallocation of a position by the director to a different classification shall become effective if such allocation or reallocation may result in the expenditure of funds in excess of the total amount budgeted for the department of the appointing authority until approval has been obtained from the state comptroller.

Whenever the public interest may require a diminution or increase of employees in any position or type of employment not otherwise provided by law, or the creation or abolishment of any such position or type of employment, the governor with the approval of the executive council, acting in good faith, shall so notify the commission. Thereafter such position or type of employment shall stand abolished or created and the number of employees therein reduced or increased. Schedules of positions and type of employment not otherwise provided by law shall be reviewed at least once each year by the governor and submitted to the executive council for continuing approval.

2. For a pay plan within the purview of an appropriation made by the general assembly and not otherwise provided by law for all employees in the merit system, after consultation with appointing authorities with due regard to the results of a collective bargaining agreement negotiated under the provisions of chapter 20 and after a public hearing held by the commission. Such pay plan shall become effective only after it has been approved by the executive council after submission from the commission. Review of the pay plan for revisions shall be made in the same manner at the discretion of the director, but not less than annually. The annual review by the director shall be made available to the governor a sufficient time in advance of collective bargaining negotiations to permit its recommendations to be considered during such negotiations. Each employee shall be paid at one of the rates set forth in the pay plan for the class of position in which employed and, unless otherwise designated by the commission, shall begin employment at the first step of the established range for the employee's class. Unless otherwise established by law, the governor, with the approval of the executive council, shall establish a pay plan for all exempt positions in the executive branch

of government except for employees of the governor, board of regents, the state educational radio and television facility board, the superintendent of public instruction and members of the professional staff of the department of public instruction, appointed under the provisions of section 257.24, who possess a current, valid teacher's certificate or who are assigned to vocational activities or programs, the commission for the blind, members of the Iowa highway safety patrol and other peace officers, as defined in section 97A.1, employed by the department of public safety, and officers and enlisted personnel of the armed services under state jurisdiction.

Referred to in §§114.9, 116.3, 118.2, 118A.5, 120.3, 147.102, 152.2, 313.4

3. For open competitive examinations to test the relative fitness of new applicants for the respective positions. Such examinations shall be practical in character and shall relate to such matters as will fairly test the ability of the applicant to discharge the duties of the position to which appointment is sought.

Where the Code of Iowa establishes certification, registration and licensing provisions, such documents shall be considered prima-facie evidence of basic skills accomplishment and such persons shall be exempt from further basic skills testing.

Examinations need not be held until after the rules have been adopted, the service classified, and a pay plan established, but shall be held no later than one year after September 1, 1967. Such examinations shall be announced publicly at least fifteen days in advance of the date fixed for the filing of applications therefor, and shall be advertised through the communications media. The director may, however, in his discretion, continue to receive applications and examine candidates for a period adequate to assure a sufficient number of eligibles to meet the needs of the system, and may add the names of successful candidates to existing eligible lists in accordance with their respective ratings.

4. For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, and conduct. Vacancies shall be filled by promotion whenever practicable and in the best interest of the system and shall be by competitive or non-competitive examination. Such examinations shall be of the same nature and content as those used in establishing competitive registers for the class. A promotion means a change in the status of an employee, from a position in one class to a position in another class having a higher entrance salary.

5. For the establishment of eligible lists for appointment and promotion, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Eligibility for appointment from any such list shall continue for at least one year and not longer than three years.

6. For the rejection of candidates or eligibles who fail to comply with reasonable requirements such as physical condition, training and experience, or who are habitual criminals or alcoholics who have not been rehabilitated from the use of alcohol for a period of six months, or addicted to narcotics, or who have attempted any deception or fraud in connection with an examination.

7. For the appointment by the appointing authority of a person standing among the highest ten percent on the appropriate eligible list to fill a vacancy or among highest five if there are less than fifty on the list.

8. For a probation period of six months, excluding educational or training leave, before appointment may be made complete, and during which period a probationer may be discharged or reduced in class or rank, or replaced on the eligible list. The appointing authority shall within ten days prior to the expiration of an employee's probation period notify the director in writing whether the services of the employee have been satisfactory or unsatisfactory. If the employee's services are unsatisfactory, he shall be dropped from the payroll on or before the expiration of his probation period. If satisfactory, the appointment shall be deemed permanent. The determination of the appointing authority shall be final and conclusive.

9. For emergency employment for not more than sixty calendar days in any twelve-month period without examination, and for intermittent employment for not more than one hundred twenty calendar days in any twelve-month period. For intermittent employment the employee must have had a probationary, permanent, or temporary appointment.

10. For provisional employment without competitive examination when there is no appropriate eligible list available. No such provisional employment shall continue longer than one hundred eighty calendar days nor shall successive provisional appointments be allowed, except during the first two years after September 1, 1967 in order to avoid stoppage of orderly conduct of the business of the state.

11. For transfer from a position in one department to a similar position in another department involving similar qualifications, duties, responsibilities, and salary ranges. Whenever an employee transfers or is transferred from one state department or agency to another state department or agency, his seniority rights, any accumulated sick leave, and accumulated vacation time, as provided in the law, shall be transferred to the new place of employment and credited to him.

12. For reinstatement of persons who have attained permanent status and who resign in good standing or who are laid off from their positions without fault or delinquency on their part, within a period equal to the period of their continuous employment with the state but for a period of not longer than two years.

13. For establishing in co-operation with the appointing authorities a system of service records of all employees in the classified service, which service records shall be considered in determining salary increases provided in the pay plan; as a factor in promotion tests; as a factor in determining the order of layoffs because of lack of funds or work and in reinstatement; as a factor in demotions, discharges or transfers; and for the regular evaluation, at least annually, of the qualifications and performance of all employees in the classified service.

14. For layoffs by reason of lack of funds or work, or organization, and for re-employment of employees so laid off, giving primary consideration in both layoffs and re-employment to performance record and secondary consideration to seniority in service. Any employee who has been laid off may keep his name on a preferred employment list for one year, which list shall be exhausted by the agency enforcing the layoff before selection of an employee may be made from the register in his classification.

15. For imposition, as a disciplinary measure, of a suspension from the service without pay for not longer than thirty days.

16. For discharge, suspension, or reduction in rank or grade for any of the following causes: Failure to perform assigned duties, inadequacy in performing assigned duties, negligence, inefficiency, incompetence, insubordination, unrehabilitated alcoholism or narcotics addiction, dishonesty, any act or conduct which adversely affects the employee's performance or the agency employing him, and any other good cause for discharge, suspension, or reduction. The person discharged, suspended, or reduced shall be given a written statement of the reasons for his discharge, suspension, or reduction within twenty-four hours after the discharge, suspension, or reduction. A copy thereof shall be filed with the director. All persons concerned with the administration of this chapter shall use their best efforts to insure that this chapter and rules hereunder shall not be a means of protecting or retaining unqualified or unsatisfactory employees, and to cause the discharge, suspension, or reduction in rank of all employees who should be discharged, suspended, or reduced for any of the causes stated in this subsection.

17. For establishment of a uniform plan for resolving employee grievances and complaints.

18. For attendance regulations, and special leaves of absence, with or without pay, or reduced pay in the various classes of positions in the classified service. Annual sick leave and vacation time shall be granted in accordance with section 79.1.

19. For the development and operation of programs to improve the work effectiveness and morale of employees in the merit system, including training, safety, health, welfare, counseling, recreation, and employee relations.

20. Notwithstanding any provisions to the contrary, no rule or regulation shall be adopted by the department which would deprive the state of Iowa, or any of its agencies or institutions of federal grants or other forms of financial assistance.

21. For veterans preference through a provision that honorably separated veterans who served on active duty in the armed forces of the United States in any war, campaign or expedition for which a campaign badge or service medal has been authorized by the government of the United States shall have five points added to the grade or score attained in qualifying examinations for appointment to jobs.

Veterans who have a service-connected disability or are receiving compensation, disability benefits or pension under laws administered by the veterans administration shall have ten points added to the grades attained in qualifying examinations. A veteran who has been awarded the Purple Heart for disabilities incurred in action shall be considered to have a service-connected disability.

22. For acceptance of the qualifications, requirements, regulations, and general provisions established under other sections of the Code pertaining to professional registration, certification, and licensing.

23. For the establishment of work test appointments for positions of unskilled labor, attendants, aides, janitors, food service workers, laundry workers, porters, elevator operators, custodial or similar types of employment when the character of the work makes it impracticable to supply the needs of the service effectively by written or other type of competitive examination. If this subsection conflicts with any other provisions of this chapter, the provisions of this subsection shall govern the positions to which it applies. All persons appointed to the positions specified in this subsection shall serve a probationary period in accordance with this chapter, may acquire permanent status, and are subject to the same rules as other classified employees. Such persons shall be required to pass promotional examinations as prescribed by this chapter and the rules adopted by the merit employment commission before they may be promoted to a higher classification. [C71, 73, 75,§19A.9; 66GA, ch 1066,§1]

Referred to in §§19A.12, 19A.24, 114.9, 116.3, 118.2, 118A.5, 120.3, 147.102, 313.4

19A.10 Use of buildings for examinations, etc. All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the department the reasonable use of public buildings under their control, and furnish heat, light, and furniture for any examination, hearing, or investigation authorized by this chapter. The department shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished. [C71, 73, 75,§19A.10]

Referred to in §19A.24

19A.11 Aid by state employees—records and information. All officers and employees of the

state shall comply with and aid in all proper ways in carrying out the provisions of this chapter and the rules and orders thereunder. All officers and employees shall furnish any records or information which the director or the commission may require for any purpose of this chapter. The director may institute and maintain any action or proceeding at law or in equity that he considers necessary or appropriate to secure compliance with this chapter and the rules and orders thereunder.

The director may, with the approval of the commission, delegate to a person under the merit system in any department, agency, board, commission, or installation thereof, located away from the seat of government any of the duties herein imposed upon the director. [C71, 73, 75,§19A.11]

Referred to in §19A.24

19A.12 All two-year employees covered. An employee holding a position covered by this chapter as of September 1, 1967, and who has held such position or other position covered by this chapter for two consecutive years or more immediately prior to September 1, 1967, shall be given permanent appointment as stated in section 19A.9, subsection 8, provided that:

1. The employee has been certified by the director as having met the minimum qualifications established for the classification of the position held, and the employee has been recommended by the appointing authority as having given satisfactory service during the prior period of employment, or

2. The employee who does not meet the minimum qualifications established for the classification of the position held, but has been recommended by the appointing authority as having given satisfactory service during the prior period of service and has been certified by the director as having passed a qualifying examination for the position.

An employee holding a position covered by this chapter who fails to obtain permanent status by either of the options described in subsections 1 and 2 of this section, or who has been employed for a period of less than two consecutive years immediately prior to September 1, 1967, shall be permitted to apply for the position held or any other position covered by this chapter through the qualifying and examining procedure established under this chapter, and may be appointed to such position on a noncompetitive basis.

Nothing herein shall preclude the reclassification or reallocation as provided by this chapter of any position held by any such incumbent. Appointments made subsequent to September 1, 1967 and prior to establishment of an eligible list shall be subject to the provisions of this chapter and the rules of the commission concerning provisional appointments. [C71, 73, 75,§19A.12]

Referred to in §19A.24

19A.13 Certification of payrolls — actions. No state disbursing or auditing officer shall make or approve or take part in making or approving any payment for personal service to any person holding a position in the merit system unless the payroll voucher or account of such pay bears the certification of the director, or of his authorized agent, that the persons named therein have been appointed and employed in accordance with the provisions of this chapter and the rules and orders thereunder, and that funds are available for the payment of the persons.

The director may for proper cause withhold certification from an entire payroll or from any specific item or items thereon. The director may, however, provide that certification of payrolls may be made once every six months, and such certification shall remain in effect except in the case of any officer or employee whose status has changed after the last certification of his payroll. In the latter case no voucher for payment of salary to such employee shall be issued or payment of salary made without further certification by the director.

Any citizen may maintain an action in accordance with the terms of the Iowa administrative procedure Act to restrain a disbursing officer from making any payment in contravention of any provision of this chapter, rule or order thereunder. Any sum paid contrary to any provision of this chapter or any rule or order thereunder may be recovered in an action in accordance with the terms of the Iowa administrative procedure Act maintained by any citizen, from any officer who made, approved, or authorized such payment or who signed or countersigned a voucher, payroll, check, or warrant for such payment, or from the sureties on the official bond of any such officer. All moneys recovered in any such action shall be paid into the state treasury.

Any person appointed or employed in contravention of any provision of this chapter or of any rule or order thereunder who performs service for which he is not paid, may maintain an action in accordance with the terms of the Iowa administrative procedure Act against the officer or officers who purported so to appoint or employ him to recover the agreed pay for such services or the reasonable value thereof if no pay was agreed upon. No officer shall be reimbursed by the state at any time for any sum paid to such person on account of such services.

If the director wrongfully withholds certification of the payroll voucher or account of any employee, such employee may maintain a proceeding in accordance with the terms of the Iowa administrative procedure Act in the courts to compel the director to certify such a payroll voucher or account. [C71, 73, 75, §19A.13]

Referred to in §19A.24

19A.14 Appeal to appointing authority. Any employee who is discharged, suspended, or

reduced in rank or grade, except during his probation period, may appeal to the appointing authority and if not satisfied, may, within thirty days after such discharge, reduction, or suspension appeal to the commission for review thereof. Upon such review, both the appealing employee and the appointing authority whose action is reviewed shall, within thirty days following the date of filing of the appeal to the commission, have the right to a hearing closed to the public, unless a public hearing is requested by the employee, and to present evidentiary facts thereat. Technical rules of evidence shall not apply at any hearing so held. If the commission finds that the action complained of was taken by the appointing authority for any political, religious, racial, national origin, sex, age or nonmerit reasons, the employee shall be reinstated to his former position without loss of pay for the period of the suspension. In all other cases the merit employment commission shall have jurisdiction to hear and determine the rights of merit system employees and may affirm, modify, or reverse any case on its merits. Judicial review of the action of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act. [C71, 73, 75, §19A.14]

Referred to in §19A.24

19A.15 Records public. The records of the department, except personal information in an employee's file if the publication of such information would serve no proper public purpose, shall be public records and shall be open to public inspection, subject to reasonable rules as to the time and manner of inspection which may be prescribed by the director. Each employee shall have access to his personal file.

Any applicant for a position subject to the provisions of this chapter shall be permitted to review, in accordance with such rules as the director may prescribe, any test, grade, or evaluation resulting from the application for employment. [C71, 73, 75,§19A.15]

Referred to in §19A.24

19A.16 Services to political subdivisions. Subject to the rules approved by the commission, the director may enter into agreements with any municipality or political subdivision of the state to furnish services and facilities of the agency to such municipality or political subdivision in the administration of its personnel on merit principles. Any such agreement shall provide for the reimbursement to the state of the reasonable cost of the services and facilities furnished. All municipalities and political subdivisions of the state are authorized to enter into such agreements.

Nothing in this chapter shall affect any municipal civil service programs presently established under and pursuant to the provisions of chapter 400. [C71, 73, 75,§19A.16]

Referred to in §19A.24

19A.17 Oaths and subpoenas. The commission, each member of the commission, and the director shall have power to administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter. Any person who shall fail to appear in response to a subpoena or produce any books or papers pertinent to any such investigation or hearing or who shall knowingly give false testimony therein shall be guilty of a misdemeanor. [C71, 73, 75,§19A.17]

Referred to in §19A.24

19A.18 Discrimination prohibited. No person shall be appointed or promoted to, or demoted or discharged from, any position in the merit system, or in any way favored or discriminated against with respect to employment in the merit system because of his political or religious opinions or affiliations or race or national origin or sex, or age.

No person holding a position in the classified service shall, during his working hours or when performing his duties or when using state equipment or at any time on state property, take part in any way in soliciting any contribution for any political party or any person seeking political office, nor shall such employee engage in any political activity that will impair his efficiency during working hours or cause him to be tardy or absent from his work. The provisions of this section do not preclude any employee from holding any office for which no pay is received or any office for which only token pay is received.

No person shall seek or attempt to use any political endorsement in connection with any appointment to a position in the merit system.

No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the merit system, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration.

No employee shall use his official authority or influence for the purpose of interfering with an election or affecting the results thereof.

Any officer or employee in the merit system who violates any of the provisions of this section shall be subject to suspension, dismissal, or demotion subject to the right of appeal herein.

The commission shall adopt any rules necessary for further restricting political activities of persons holding positions in the classified service, but only to the extent necessary to comply with federal standards in order that the present Iowa merit system council shall be absorbed by the Iowa merit employment department. In any event all employees shall retain the right to vote as they please and to express their opinions on all subjects.

Any officer or employee in the merit system who shall become a candidate for any partisan

elective office for remuneration shall, commencing thirty days prior to the date of the primary or general election and continuing until such person is eliminated as a candidate, either voluntarily or otherwise, automatically receive leave of absence without pay and during such period shall perform no duties connected with the office or position so held. [C71, 73, 75,§19A.18]

Referred to in §§19A.24, 19A.25

19A.19 Prohibited actions. No person shall make any false statement, certificate, mark, rating, or report with regard to any test, certification, or appointment made under any provision of this chapter or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter and the rules hereunder.

No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the merit system.

No employee of the department, examiner, or other person shall defeat, deceive, or obstruct any person in his right to examination, eligibility certification, or appointment under this chapter, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the merit system. [C71, 73, 75,§19A.19]

Referred to in §§19A.24, 19A.25

19A.20 Penalty. Any person who willfully violates any provision of this chapter or any rules adopted in accordance with this chapter shall be guilty of a misdemeanor and upon conviction shall be punished therefor by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C71, 73, 75,§19A.20]

Referred to in §§19A.24, 19A.26
Constitutionality, 62GA, ch 95,§21

19A.21 Acceptance of grants. The department is authorized and directed to accept on behalf of the state any grant or contribution, federal or otherwise, made to assist in meeting the cost of carrying out the purpose of this chapter.

All federal grants to and the federal receipts of this department are hereby appropriated for the purpose set forth in such federal grants or receipts. [C71, 73, 75,§19A.21]

Referred to in §19A.24

19A.22 Other inconsistent laws. The provisions of this chapter, including but not limited to its provisions on employees and positions to which the merit system apply, shall prevail over any inconsistent provisions of the Code and all subsequent Acts unless such subsequent Acts provide a specific exemption from the merit system. [C71, 73, 75, §19A.22]

Referred to in §19A.24

19A.23 Longevity pay prohibited—exception. No state employee subject to the provisions of this chapter shall be entitled to longevity pay except those employees granted longevity pay pursuant to section 313.4, subsection 3. [C73, 75,§19A.23]

Referred to in §19A.24

FEDERAL PROGRAMS EXEMPT

19A.24 Temporary emergency employment. Notwithstanding the provisions of sections 19A.1 to 19A.23, a person employed under a temporary, emergency employment utilization program funded by the federal government which program does not exceed one year and which program is not subject to merit system standards by federal law, shall be exempt from this chapter except as provided by this division. [66GA, ch 78,§1]

Referred to in §19A.25

19A.25 Political activity prohibited. The provisions of section 19A.18 relating to political activity and the civil penalties contained in such section shall apply to this division. Section 19A.19 relating to prohibited actions shall, where consistent with the provisions of section 19A.24, apply to this division. [66GA, ch 78,§2]

19A.26 Penalty applicable. Any person violating the provisions of this division shall be subject to the penalty provided for in section 19A.20. [66GA, ch 78,§3]

CHAPTER 19B

GENERAL SERVICES DEPARTMENT

Transferred to ch 18, division I

CHAPTER 20

PUBLIC EMPLOYMENT RELATIONS (COLLECTIVE BARGAINING)

Referred to in §§19A.9, 279.14

This chapter shall become effective on July 1, 1974, but the provisions of this chapter relative to the duty to bargain shall not become effective until July 1, 1975. However, public employees of the state, its boards, commissions, departments, and agencies may not bargain collectively until June 1, 1976

20.1 Public policy.
20.2 Title.
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20.6 General powers and duties of the board.
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20.20 Mediation.
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20.22 Binding arbitration.
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20.24 Notice and service.
20.25 Internal conduct of employee organizations.
20.26 Employee organizations—political contributions.
20.27 Conflict with federal aid.

20.1 Public policy. The general assembly declares that it is the public policy of the state to promote harmonious and co-operative relationships between government and its employees by permitting public employees to organize and bargain collectively; to protect the citizens of this state by assuring effective and orderly operations of government in providing for their health, safety, and welfare; to prohibit and prevent all strikes by public employees; and to protect the rights of public employees to join or refuse to join, and to participate in or refuse to participate in, employee organizations. [C75,§20.1]

20.2 Title. This chapter shall be known as the "Public Employment Relations Act." [C75,§20.2]

20.3 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Public employer"* means the state of Iowa, its boards, commissions, agencies, departments, and its political subdivisions including school districts and other special purpose districts.

2. *"Governing body"* means the board, council, or commission, whether elected or appointed, of a political subdivision of this state, including school districts and other special purpose districts, which determines the policies for the operation of the political subdivision.

3. *"Public employee"* means any individual employed by a public employer, except individuals exempted under the provisions of section 20.4.

4. *"Employee organization"* means an organization of any kind in which public employees participate and which exists for the primary purpose of representing public employees in their employment relations.

5. *"Board"* means the public employment relations board established under section 20.5.

6. *"Strike"* means a public employee's refusal, in concerted action with others, to report to duty, or his willful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment.

7. *"Confidential employee"* means any public employee who works in the personnel offices of a public employer or who has access to information subject to use by the public employer in negotiating or who works in a close continuing working relationship with public officers or representatives associated with negotiating on behalf of the public employer.

"Confidential employee" also includes the personal secretary of any of the following: Any elected official or person appointed to fill a vacancy in an elective office, member of any board or commission, the administrative officer, director, or chief executive officer of a public employer or major division thereof, or the deputy or first assistant of any of the foregoing.

8. *"Mediation"* means assistance by an impartial third party to reconcile an impasse between the public employer and the employee

organization through interpretation, suggestion, and advice.

9. *"Arbitration"* means the procedure whereby the parties involved in an impasse submit their differences to a third party for a final and binding decision or as provided in this chapter.

10. *"Impasse"* means the failure of a public employer and the employee organization to reach agreement in the course of negotiations.

11. *"Professional employee"* means any one of the following:

a. Any employee engaged in work:

(1) Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

(2) Involving the consistent exercise of discretion and judgment in its performance;

(3) Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(4) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

b. Any employee who:

(1) Has completed the courses of specialized intellectual instruction and study described in paragraph *"a"*, subparagraph 4, of this subsection, and

(2) Is performing related work under the supervision of a professional person to qualify himself or herself to become a professional employee as defined in paragraph *"a"* of this subsection.

12. *"Fact-finding"* means the procedure by which a qualified person shall make written findings of fact and recommendations for resolution of an impasse. [C75,§20.3]

20.4 Exclusions. The following public employees shall be excluded from the provisions of this chapter:

1. Elected officials and persons appointed to fill vacancies in elective offices, and members of any board or commission.

2. Representatives of a public employer, including the administrative officer, director or chief executive officer of a public employer or major division thereof as well as his deputy, first assistant, and any supervisory employees.

Supervisory employee means any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. All school superintendents, assistant superintendents, principals and assistant principals shall be deemed to be supervisory employees.

3. Confidential employees.

4. Students working as part-time public employees twenty hours per week or less, except graduate or other postgraduate students in preparation for a profession who are engaged in academically related employment as a teaching, research, or service assistant.

5. Temporary public employees employed for a period of four months or less.

6. Commissioned and enlisted personnel of the Iowa national guard.

7. Judges of the supreme court, district judges, district associate judges and judicial magistrates, and the employees of such judges and courts.

8. Patients and inmates employed, sentenced or committed to any state or local institution.

9. Persons employed by the state department of justice.

10. Persons employed by the commission for the blind. [C75,§20.4]

Referred to in §§20.3(3), 279.23

20.5 Public employment relations board.

1. There is established a board to be known as the "Public Employment Relations Board." The board shall consist of three members appointed by the governor, with approval of two-thirds of the senate. No more than two members shall be of the same political affiliation and no member shall engage in any political activity while holding office and the members shall devote full time to their duties.

Each member shall be appointed for a term of four years, except that of the members first appointed, two members shall be appointed for a term of two years commencing July 1, 1974, and ending June 30, 1976, and one member shall be appointed for a term of four years commencing July 1, 1974, and ending June 30, 1978.

The member first appointed for a term of four years shall serve as chairman and each of his successors shall also serve as chairman.

2. Any vacancy on the commission which may occur when the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days following the convening of the next session of the general assembly. Prior to the expiration of the thirty-day period, the governor shall transmit to the senate for its approval the name of the appointee for the unexpired portion of the regular term. Any vacancy occurring when the general assembly is in session shall be filled in the same manner as regular appointments are made, and before the end of such session,

and for the unexpired portion of the regular term.

3. In selecting the members of the board, consideration shall be given to their knowledge, ability, and experience in the field of labor-management relations. The chairman shall receive an annual salary of twenty-four thousand dollars. The remaining two members shall each receive an annual salary equal to ninety percent of the salary received by the chairman.

4. The board may employ such persons as are necessary for the performance of its functions. Personnel of the board shall be employed pursuant to the provisions of chapter 19A.

5. Members of the board and other employees of the board shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses and salaries shall be paid from appropriations for such purposes and the board shall be subject to the budget requirements of chapter 8. [C75,§20.5]

Referred to in §20.3(5)

20.6 General powers and duties of the board. The board shall:

1. Administer the provisions of this chapter.

2. Collect, for public employers other than the state and its boards, commissions, departments, and agencies, data and conduct studies relating to wages, hours, benefits and other terms and conditions of public employment and make the same available to any interested person or organization.

3. Maintain, after consulting with employee organizations and public employers, a list of qualified persons representative of the public to be available to serve as mediators and arbitrators and establish their compensation rates.

4. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the board, or persons appointed or employed by the board, including hearing officers for the performance of its functions. The board may petition the district court at the seat of government or of the county wherein any hearing is held to enforce a board order compelling the attendance of witnesses and production of records.

5. Adopt rules in accordance with the provisions of chapter 17A as it may deem necessary to carry out the purposes of this chapter. [C75,§20.6]

20.7 Public employer rights. Public employers shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act, the exclusive power, duty, and the right to:

1. Direct the work of its public employees.

2. Hire, promote, demote, transfer, assign and retain public employees in positions within the public agency.

3. Suspend or discharge public employees for proper cause.

4. Maintain the efficiency of governmental operations.

5. Relieve public employees from duties because of lack of work or for other legitimate reasons.

6. Determine and implement methods, means, assignments and personnel by which the public employer's operations are to be conducted.

7. Take such actions as may be necessary to carry out the mission of the public employer.

8. Initiate, prepare, certify and administer its budget.

9. Exercise all powers and duties granted to the public employer by law. [C75,§20.7]

20.8 Public employee rights. Public employees shall have the right to:

1. Organize, or form, join, or assist any employee organization.

2. Negotiate collectively through representatives of their own choosing.

3. Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the state.

4. Refuse to join or participate in the activities of employee organizations, including the payment of any dues, fees or assessments or service fees of any type. [C75,§20.8]

Referred to in §20.10

20.9 Scope of negotiations. The public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon. Negotiations shall also include terms authorizing dues checkoff for members of the employee organization and grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties. If an agreement provides for dues checkoff, a member's dues may be checked off only upon the member's written request and the member may terminate the dues checkoff at any time by giving thirty days' written notice. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession.

Nothing in this section shall diminish the authority and power of the merit employment department, board of regents' merit system, educational radio and television facility board's merit system, or any civil service commission established by constitutional provision, statute, charter or special act to recruit employees, prepare, conduct and grade examinations, rate candidates in order of their relative scores for certification for appointment or promotion or for other matters of classification, reclassification or appeal rights in the classified service of the public employer served.

The public employee retirement systems provided under chapters 97A, 97B, 410, and 411 shall be excluded from the scope of negotiations. [C75,§20.9]

Referred to in §§20.10, 20.17

20.10 Prohibited practices.

1. It shall be a prohibited practice for any public employer, public employee or employee organization to willfully refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.

2. It shall be a prohibited practice for a public employer or his designated representative willfully to:

a. Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter.

b. Dominate or interfere in the administration of any employee organization.

c. Encourage or discourage membership in any employee organization, committee or association by discrimination in hiring, tenure, or other terms or conditions of employment.

d. Discharge or discriminate against a public employee because he has filed an affidavit, petition or complaint or given any information or testimony under this chapter, or because he has formed, joined or chosen to be represented by any employee organization.

e. Refuse to negotiate collectively with representatives of certified employee organizations as required in this chapter.

f. Deny the rights accompanying certification or exclusive recognition granted in this chapter.

g. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this chapter.

h. Engage in a lockout.

3. It shall be a prohibited practice for public employees or an employee organization or for any person, union or organization or their agents willfully to:

a. Interfere with, restrain, coerce or harass any public employee with respect to any of his rights under this chapter or in order to prevent or discourage his exercise of any such right, including, without limitation, all rights under section 20.8.

b. Interfere, restrain, or coerce a public employer with respect to rights granted in this chapter or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances.

c. Refuse to bargain collectively with a public employer as required in this chapter.

d. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this chapter.

e. Violate section 20.12.

f. Violate the provisions of sections 736B.1 to 736B.3, which are hereby made applicable to public employers, public employees and public employee organizations.

g. Picket in a manner which interferes with ingress and egress to the facilities of the public employer.

h. Engage in, initiate, sponsor or support any picketing that is performed in support of a strike, work stoppage, boycott or slowdown against a public employer.

i. Picket for any unlawful purpose.

4. The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of any unfair labor practice under any of the provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit. [C75,§20.10]

Referred to in §§20.11, 279.19

20.11 Prohibited practice violations.

1. Proceedings against a party alleging a violation of section 20.10, shall be commenced by filing a complaint with the board within ninety days of the alleged violation causing a copy of the complaint to be served upon the accused party in the manner of an original notice as provided in this chapter. The accused party shall have ten days within which to file a written answer to the complaint. However, the board may conduct a preliminary investigation of the alleged violation, and if the board determines that the complaint has no basis in fact, the board may dismiss the complaint. The board shall promptly thereafter set a time and place for hearing in the county where the alleged violation occurred. The parties shall be permitted to be represented by counsel, summon witnesses, and request the board to subpoena witnesses on the requestor's behalf. Compliance with the technical rules of pleading and evidence shall not be required.

2. The board may designate a hearing officer to conduct the hearing. The hearing officer shall have such powers as may be exercised by the board for conducting the hearing and shall follow the procedures adopted by the board for conducting the hearing. The decision of the hearing officer may be appealed to the board and the board may hear the case de novo or upon the record as submitted before the hearing officer, utilizing procedures governing appeals to the district court in this section so far as applicable.

3. The board shall appoint a certified shorthand reporter to report the proceedings and the board shall fix the reasonable amount of compensation for such service, which amount shall be taxed as other costs.

4. The board shall file its findings of fact and conclusions of law. If the board finds that the party accused has committed a prohibited practice, the board may, within thirty days of its decision, enter into a consent order with the party to discontinue the practice, or petition the district court for injunctive relief pursuant to rules of civil procedure 320 to 330.

5. Any party aggrieved by any decision or order of the board may within ten days from the date such decision or order is filed, appeal therefrom to the district court of the county in which the hearing was held, by filing with the board a written notice of appeal setting forth in general terms the decision appealed from and the grounds of the appeal. The board shall forthwith give notice to the other parties in interest.

6. Within thirty days after a notice of appeal is filed with the board, it shall make, certify, and file in the office of the clerk of court to which the appeal is taken, a full and complete transcript of all documents in the case, including any depositions and a transcript or certificate of the evidence together with the notice of appeal.

7. The appeal shall be triable at any time after the expiration of twenty days from the date of filing the transcript by the board and after twenty days' notice in writing by either party and the board upon the other.

8. The transcript as certified and filed by the board shall be the record on which the appeal shall be heard, and no additional evidence shall be heard. In the absence of fraud, the findings of fact made by the board shall be conclusive if supported by substantial evidence on the record considered as a whole.

9. Any order or decision of the board may be modified, reversed, or set aside on one or more of the following grounds and on no other:

a. If the board acts without or in excess of its powers.

b. If the order was procured by fraud or is contrary to law.

c. If the facts found by the board do not support the order.

d. If the order is not supported by a preponderance of the competent evidence on the record considered as a whole.

10. When the district court, on appeal, reverses or sets aside an order or decision of the board, it may remand the case to the board for further proceedings in harmony with the holdings of the court, or it may enter the proper judgment, as the case may be. Such judgment or decree shall have the same force and effect as if action had been originally brought and tried in said court. The assessment of costs in such appeals shall be in the discretion of the court.

11. An appeal may be taken to the supreme court from any final order, judgment, or decree of the district court. [C75,§20.11]

Referred to in §§20.13, 20.14

20.12 Strikes prohibited.

1. It shall be unlawful for any public employee or any employee organization, directly or indirectly, to induce, instigate, encourage, authorize, ratify or participate in a strike against any public employer.

2. It shall be unlawful for any public employer to authorize, consent to, or condone a strike; or to pay or agree to pay any public employee for any day in which the employee participates in a strike; or to pay or agree to pay any increase in compensation or benefits to any public employee in response to or as a result of any strike or any act which violates subsection 1. It shall be unlawful for any official, director, or representative of any public employer to authorize, ratify or participate in any violation of this subsection. Nothing in this subsection shall prevent new or renewed bargaining and agreement within the scope of negotiations as defined by this chapter, at any time after such violation of subsection 1 has ceased; but it shall be unlawful for any public employer or employee organization to bargain at any time regarding suspension or modification of any penalty provided in this section or regarding any request by the public employer to a court for such suspension or modification.

3. In the event of any violation or imminently threatened violation of subsection 1 or 2, any citizen domiciled within the jurisdictional boundaries of the public employer may petition the district court for the county in which the violation occurs or the district court for Polk county for an injunction restraining such violation or imminently threatened violation. Rules of civil procedure 320 to 330 regarding injunctions shall apply. However, the court shall grant a temporary injunction if it appears to the court that a violation has occurred or is imminently threatened; the plaintiff need not show that the violation or threatened violation would greatly or irreparably injure him; and no bond shall be required of the plaintiff unless the court determines that a bond is necessary in the public interest. Failure to comply with any temporary or permanent injunction granted pursuant to this section shall constitute a contempt punishable pursuant to chapter 665. The punishment shall not exceed five hundred dollars for an individual, or ten thousand dollars for an employee organization or public employer, for each day during which the failure to comply continues, or imprisonment in a county jail not exceeding six months, or both such fine and imprisonment. An individual or an employee organization which makes an active good faith effort to comply fully with the injunction shall not be deemed to be in contempt.

4. If a public employee is held to be in contempt of court for failure to comply with an injunction pursuant to this section, or is convicted of violating this section, he shall be ineligible for any employment by the same public employer for a period of twelve months. His public employer shall immediately discharge him, but upon his request the court shall stay his discharge to permit further judicial proceedings.

5. If an employee organization or any of its officers is held to be in contempt of court for failure to comply with an injunction pursuant to this section, or is convicted of violating this section, the employee organization shall be immediately decertified, shall cease to represent the bargaining unit, shall cease to receive any dues by checkoff, and may again be certified only after twelve months have elapsed from the effective date of decertification and only after a new compliance with section 20.14. The penalties provided in this section may be suspended or modified by the court, but only upon request of the public employer and only if the court determines the suspension or modification is in the public interest.

6. Each of the remedies and penalties provided by this section is separate and several, and is in addition to any other legal or equitable remedy or penalty. [C75,§20.12]

Referred to in §20.10

20.13 Bargaining unit determination.

1. Board determination of an appropriate bargaining unit shall be upon petition filed by a public employer, public employee, or employee organization.

2. Within thirty days of receipt of a petition or notice to all interested parties if on its own initiative, the board shall conduct a public hearing, receive written or oral testimony, and promptly thereafter file an order defining the appropriate bargaining unit. In defining the unit, the board shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among public employees, the history and extent of public employee organization, geographical location, and the recommendations of the parties involved.

3. Appeals from such order shall be governed by appeal provisions provided in section 20.11.

4. Professional and nonprofessional employees shall not be included in the same bargaining unit unless a majority of both agree. [C75,§20.13]

Referred to in §20.14

20.14 Bargaining representative determination.

1. Board certification of an employee organization as the exclusive bargaining representative of a bargaining unit shall be upon a petition filed with the board by a public employer, public employee, or an employee organization and an election conducted pursuant to section 20.15.

2. The petition of an employee organization shall allege that:

a. The employee organization has submitted a request to a public employer to bargain collectively with a designated group of public employees.

b. The petition is accompanied by written evidence that thirty percent of such public employees are members of the employee organization or have authorized it to represent them for the purposes of collective bargaining.

3. The petition of a public employee shall allege that an employee organization which has been certified as the bargaining representative does not represent a majority of such public employees and that the petitioners do not want to be represented by an employee organization or seek certification of an employee organization.

4. The petition of a public employer shall allege that it has received a request to bargain from an employee organization which has not been certified as the bargaining representative of the public employees in an appropriate bargaining unit.

5. The board shall investigate the allegations of any petition and shall give reasonable notice of the receipt of such a petition to all public employees, employee organizations and public employers named or described in such petitions or interested in the representation questioned. The board shall thereafter call an election under section 20.15, unless:

a. It finds that less than thirty percent of the public employees in the unit appropriate for collective bargaining support the petition for decertification or for certification.

b. The appropriate bargaining unit has not been determined pursuant to section 20.13.

6. The hearing and appeal procedures shall be the same as provided in section 20.11. [C75,§20.14]

Referred to in §§20.12, 20.15

20.15 Elections.

1. Upon the filing of a petition for certification of an employee organization, the board shall submit two questions to the public employees at an election in an appropriate bargaining unit. The first question on the ballot shall permit the public employees to determine whether or not such public employees desire exclusive bargaining representation. The second question on the ballot shall list any employee organization which has petitioned for certification or which has presented proof satisfactory to the board of support of ten percent or more of the public employees in the appropriate unit.

2. If a majority of the votes cast on the first question is in the negative, the public employees shall not be represented by an employee organization. If a majority of the

votes cast on the first question is in the affirmative, then the employee organization receiving a majority of the votes cast on the second question shall represent the public employees in an appropriate bargaining unit.

3. If none of the choices on the ballot receive the vote of a majority of the public employees who could be represented by an employee organization, the board shall conduct a runoff election among the two choices receiving the greatest number of votes.

4. Upon written objections filed by any party to the election within ten days after notice of the results of the election, if the board finds that misconduct or other circumstances prevented the public employees eligible to vote from freely expressing their preferences, the board may invalidate the election and hold a second election for the public employees.

5. Upon completion of a valid election in which the majority choice of the employees who could be represented by an employee organization is determined, the board shall certify the results of the election and shall give reasonable notice of the order to all employee organizations listed on the ballot, the public employers, and the public employees in the appropriate bargaining unit.

6. A petition for certification as an exclusive bargaining representative shall not be considered by the board for a period of one year from the date of the certification or noncertification of an exclusive bargaining representative or during the duration of a collective bargaining agreement which shall not exceed two years. A collective bargaining agreement with the state, its boards, commissions, departments, and agencies shall be for two years and the effective date of any such agreement shall be July 1 of odd-numbered years. However, if a petition for decertification is filed during the duration of a collective bargaining agreement, the board shall award an election under this section not more than one hundred eighty days nor less than one hundred fifty days prior to the expiration of the collective bargaining agreement. If an employee organization is decertified, the board may receive petitions under section 20.14, provided that no such petition and no election conducted pursuant to such petition within one year from decertification shall include as a party the decertified employee organization. [C75,§20.15]

Referred to in §20.14

20.16 Duty to bargain. Upon the receipt by a public employer of a request from an employee organization to bargain on behalf of public employees, the duty to engage in collective bargaining shall arise if the employee organization has been certified by the board as the exclusive bargaining representative for the public employees in that bargaining unit. [C75,§20.16]

20.17 Procedures.

1. The employee organization certified as the bargaining representative shall be the exclusive representative of all public employees in the bargaining unit and shall represent all public employees fairly. However, any public employee may meet and adjust individual complaints with a public employer.

2. The employee organization and the public employer may designate any individual as its representative to engage in collective bargaining negotiations.

3. Negotiating sessions, including strategy meetings of public employers or employee organizations, mediation and the deliberative process of arbitrators shall be exempt from the provisions of chapter 28A. Hearings conducted by arbitrators shall be open to the public.

4. The terms of a proposed collective bargaining agreement shall be made public and reasonable notice shall be given to the public employees prior to a ratification election. The collective bargaining agreement shall become effective only if ratified by a majority of those voting by secret ballot.

5. Terms of any collective bargaining agreement may be enforced by a civil action in the district court of the county in which the agreement was made upon the initiative of either party.

6. No collective bargaining agreement or arbitrators' decision shall be valid or enforceable if its implementation would be inconsistent with any statutory limitation on the public employer's funds, spending or budget or would substantially impair or limit the performance of any statutory duty by the public employer. A collective bargaining agreement or arbitrators' award may provide for benefits conditional upon specified funds to be obtained by the public employer, but the agreement shall provide either for automatic reduction of such conditional benefits or for additional bargaining if the funds are not obtained or if a lesser amount is obtained.

7. If agreed to by the parties nothing in this chapter shall be construed to prohibit supplementary bargaining on behalf of public employees in a part of the bargaining unit concerning matters uniquely affecting those public employees or co-operation and co-ordination of bargaining between two or more bargaining units.

8. The salaries of all public employees of the state under a merit system and all other fringe benefits which are granted to all public employees of the state shall be negotiated with the governor or his designee on a state-wide basis, except those benefits which are not subject to negotiations pursuant to the provisions of section 20.9.

9. A public employee or any employee organization shall not negotiate or attempt to negotiate directly with a member of the governing board of a public employer if the public employer has appointed or authorized a bar-

gaining representative for the purpose of bargaining with the public employees or their representative, unless the member of the governing board is the designated bargaining representative of the public employer. [C75, §20.17]

Referred to in §20.22

20.18 Grievance procedures. An agreement with an employee organization which is the exclusive representative of public employees in an appropriate unit may provide procedures for the consideration of public employee grievances and of disputes over the interpretation and application of agreements. Negotiated procedures may provide for binding arbitration of public employee grievances and of disputes over the interpretation and application of existing agreements. An arbitrator's decision on a grievance may not change or amend the terms, conditions or applications of the collective bargaining agreement. Such procedures shall provide for the invoking of arbitration only with the approval of the employee organization, and in the case of an employee grievance, only with the approval of the public employee. The costs of arbitration shall be shared equally by the parties.

Public employees of the state shall follow either the grievance procedures provided in a collective bargaining agreement, or in the event that no such procedures are so provided, shall follow grievance procedures established pursuant to chapter 19A. [C75,§20.18]

20.19 Impasse procedures—agreement of parties. As the first step in the performance of their duty to bargain, the public employer and the employee organization shall endeavor to agree upon impasse procedures. Such agreement shall provide for implementation of these impasse procedures not later than one hundred twenty days prior to the certified budget submission date of the public employer. If the parties fail to agree upon impasse procedures under the provisions of this section, the impasse procedures provided in sections 20.20 to 20.22 shall apply. [C75,§20.19]

20.20 Mediation. In the absence of an impasse agreement between the parties or the failure of either party to utilize its procedures, one hundred twenty days prior to the certified budget submission date, the board shall, upon the request of either party, appoint an impartial and disinterested person to act as mediator. It shall be the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator may not compel the parties to agree. [C75, §20.20]

Referred to in §20.19

20.21 Fact-finding. If the impasse persists ten days after the mediator has been appointed, the board shall appoint a fact-finder representative of the public, from a list of qualified persons maintained by the board. The fact-finder shall conduct a hearing, may administer oaths, and may request the board to issue subpoenas. The fact-finder shall make written findings of facts and recommendations for resolution of the dispute and, not later than fifteen days from the day of appointment, shall serve such findings on the public employer and the certified employee organization.

The public employer and the certified employee organization shall immediately accept the fact-finder's recommendation or shall within five days submit the fact-finder's recommendations to the governing body and members of the certified employee organization for acceptance or rejection. If the dispute continues ten days after the report is submitted, the report shall be made public by the board. [C75,§20.21]

Referred to in §20.19

20.22 Binding arbitration.

1. If an impasse persists after the findings of fact and recommendations are made public by the fact-finder, the parties may continue to negotiate or, the board shall have the power, upon request of either party, to arrange for arbitration, which shall be binding. The request for arbitration shall be in writing and a copy of the request shall be served upon the other party.

2. Each party shall submit to the board within four days of request a final offer on the impasse items with proof of service of a copy upon the other party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached and the name of its selected arbitrator. The parties may continue to negotiate all offers until an agreement is reached or a decision rendered by the panel of arbitrators.

As an alternative procedure, the two parties may agree to submit the dispute to a single arbitrator. If the parties cannot agree on the arbitrator within four days, the selection shall be made pursuant to subsection 5. The full costs of arbitration under this provision shall be shared equally by the parties to the dispute.

3. The submission of the impasse items to the arbitrators shall be limited to those issues that had been considered by the fact-finder and upon which the parties have not reached agreement. With respect to each such item, the arbitration board award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitration board or to the recommendation of the fact-finder on each impasse item.

4. The panel of arbitrators shall consist of three members appointed in the following manner:

a. One member shall be appointed by the public employer.

b. One member shall be appointed by the employee organization.

c. One member shall be appointed mutually by the members appointed by the public employer and the employee organization. The last member appointed shall be the chairman of the panel of arbitrators. No member appointed shall be an employee of the parties.

d. The public employer and employee organization shall each pay the fees and expenses incurred by the arbitrator each selected. The fee and expenses of the chairman of the panel and all other costs of arbitration shall be shared equally.

5. If the third member has not been selected within four days of notification as provided in subsection 2, a list of three arbitrators shall be submitted to the parties by the board. The two arbitrators selected by the public employer and the employee organization shall determine by lot which arbitrator shall remove the first name from the list submitted by the board. The arbitrator having the right to remove the first name shall do so within two days and the second arbitrator shall have one additional day to remove one of the two remaining names. The person whose name remains shall become the chairman of the panel of arbitrators and shall call a meeting within ten days at a location designated by him.

6. If a vacancy should occur on the panel of arbitrators, the selection for replacement of such member shall be in the same manner and within the same time limits as the original member was chosen. No final selection under subsection 9 shall be made by the board until the vacancy has been filled.

7. The panel of arbitrators shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed in this section.

8. From the time of appointment until such time as the panel of arbitrators makes its final determination, there shall be no discussion concerning recommendations for settlement of the dispute by the members of the panel of arbitrators with parties other than those who are direct parties to the dispute. The panel of arbitrators may conduct formal or informal hearings to discuss offers submitted by both parties.

9. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

10. The chairman of the panel of arbitrators may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such powers to other members of the panel of arbitrators. The chairman of the panel of arbitrators may petition the district court at the seat of government or of the county in which any hearing is held to enforce the order of the chairman compelling the attendance of witnesses and the production of records.

11. A majority of the panel of arbitrators shall select within fifteen days after its first meeting the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties, or the recommendations of the fact-finder on each impasse item.

12. The selections by the panel of arbitrators and items agreed upon by the public employer and the employee organization, shall be deemed to be the collective bargaining agreement between the parties.

13. The determination of the panel of arbitrators shall be by majority vote and shall be final and binding subject to the provisions of section 20.17, subsection 6. The panel of arbitrators shall give written explanation for its selection and inform the parties of its decision. [C75,§20.22]

Referred to in §20.19

20.23 Legal actions. Any employee organization and public employer may sue or be sued as an entity under the provisions of this chapter. Service upon the public employer shall be in accordance with law or the rules of civil procedure. Nothing in this chapter shall be construed to make any individual or his assets liable for any judgment against a public employer or an employee organization. [C75,§20.23]

20.24 Notice and service. Any notice required under the provisions of this chapter shall be in writing, but service thereof shall be sufficient if mailed by restricted certified mail, return receipt requested addressed to the last known address of the parties, unless otherwise provided in this chapter. Refusal of restricted certified mail by any party shall be considered service. Prescribed time periods shall commence from the date of the receipt of the notice. Any party may at any time execute and deliver an acceptance of service in lieu of mailed notice. [C75,§20.24]

20.25 Internal conduct of employee organizations.

1. Every employee organization which is certified as a representative of public employees under the provisions of this chapter shall file with the board a registration report,

signed by its president or other appropriate officer. The report shall be in a form prescribed by the board and shall be accompanied by two copies of the employee organization's constitution and bylaws. A filing by a national or international employee organization of its constitution and bylaws shall be accepted in lieu of a filing of such documents by each subordinate organization. All changes or amendments to such constitutions and bylaws shall be promptly reported to the board.

2. Every employee organization shall file with the board an annual report and an amended report whenever changes are made. The reports shall be in a form prescribed by the board, and shall provide the following information:

a. The names and addresses of the organization, any parent organization or organizations with which it is affiliated, the principal officers, and all representatives.

b. The name and address of its local agent for service of process.

c. A general description of the public employees the organization represents or seeks to represent.

d. The amounts of the initiation fee and monthly dues members must pay.

e. A pledge, in a form prescribed by the board, that the organization will comply with the laws of the state and that it will accept members without regard to age, race, sex, religion, national origin or physical disability as provided by law.

f. A financial report and audit.

3. The constitution or bylaws of every employee organization shall provide that:

a. Accurate accounts of all income and expenses shall be kept, and annual financial report and audit shall be prepared, such accounts shall be open for inspection by any member of the organization, and loans to officers and agents shall be made only on terms and conditions available to all members.

b. Business or financial interests of its officers and agents, their spouses, minor children, parents or otherwise, that conflict with the fiduciary obligation of such persons to the organization shall be prohibited.

c. Every official or employee of an employee organization who handles funds or other property of the organization, or trust in which an organization is interested, or a subsidiary organization, shall be bonded. The amount, scope, and form of the bond shall be determined by the board.

4. The governing rules of every employee organization shall provide for periodic elections by secret ballot subject to recognized safeguards concerning the equal right of all members to nominate, seek office, and vote in such elections, the right of individual members to participate in the affairs of the organization, and fair and equitable procedures in disciplinary actions.

5. The board shall prescribe rules necessary to govern the establishment and reporting of trusteeships over employee organizations. Establishment of such trusteeships shall be permitted only if the constitution or bylaws of the organization set forth reasonable procedures.

6. An employee organization that has not registered or filed an annual report, or that has failed to comply with other provisions of this chapter, shall not be certified. Certified employee organizations failing to comply with this chapter may have such certification revoked by the board. Prohibitions may be enforced by injunction upon the petition of the board to the district court of the county in which the violation occurs. Complaints of violation of this section shall be filed with the board.

7. Upon the written request of any member of a certified employee organization, the auditor of state may audit the financial records of the certified employee organization. [C75, §20.25]

20.26 Employee organizations—political contributions. An employee organization shall not make any direct or indirect contribution out of the funds of the employee organization to any political party or organization or in support of any candidate for elective public office.

Any employee organization which violates the provisions of this section or fails to file any required report or affidavit or files a false report or affidavit shall, upon conviction, be subject to a fine of not more than two thousand dollars.

Any person who willfully violates this section, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall, upon conviction, be subject to a fine of not more than one thousand dollars or imprisoned for not more than thirty days or shall be subject to both such fine and imprisonment. Each individual required to sign affidavits or reports under this section shall be personally responsible for filing such report or affidavit and for any statement contained therein he knows to be false.

Nothing in this section shall be construed to prohibit voluntary contributions by individuals to political parties or candidates.

Nothing in this section shall be construed to limit or deny any civil remedy which may exist as a result of action which may violate this section. [C75,§20.26]

20.27 Conflict with federal aid. If any provision of this chapter jeopardizes the receipt by the state or any of its political subdivisions of any federal grant-in-aid funds or other federal allotment of money, the provisions of this chapter shall, insofar as the fund is jeopardized, be deemed to be inoperative. [C75,§20.27]

CHAPTER 21

WAR SURPLUS COMMODITIES BOARD

21.1 Board created.
21.2 Organization of board—expenses.
21.3 Meetings—quorum.
21.4 Powers and duties.
21.5 Revolving fund.

21.1 Board created. A state war surplus commodities board is hereby created and established hereinafter referred to as the "board", to consist of the commissioner of the department of social services or any division director assigned by him, a member of the state board of regents, a member of the state transportation commission, a member of the executive council of the state, a member of the state conservation commission, the commissioner of the Iowa state department of health, a member of the department of public instruction, a member of the Iowa development commission, and the director of the department of general services. [C46, 50, 54, 58, 62, 66, 71, 73,§20.1; C75,§21.1]

21.2 Organization of board—expenses. The board shall select the chairman from among its members. The secretary of the executive council of the state shall be secretary of the state war surplus commodities board. Members of the board shall serve as ex officio members of their respective agencies and shall receive the compensation as provided for their position, and shall be reimbursed for their actual and necessary traveling expenses incurred in performing their duties as members of the board. [C46, 50, 54, 58, 62, 66, 71, 73, §20.2; C75,§21.2]

21.3 Meetings—quorum. The board shall meet at least once each month and shall hold special meetings on call of the chairman. Four members shall constitute a quorum. The board shall establish such rules as it may deem necessary to govern its own procedure. [C46, 50, 54, 58, 62, 66, 71, 73,§20.4; C75,§21.3]

21.4 Powers and duties. The powers and duties of the board shall be to:

1. Collect and assemble or cause to be collected or assembled all pertinent information available regarding surplus equipment, merchandise, supplies, surplus war materials and other governmental property that may be purchased from the federal government or any division thereof, which information shall be a public record available to anyone.

2. Enter into contract for and purchase from the federal government of equipment, property and supplies for the use of the state, its agencies or departments, or any township, county, city and independent or consolidated school districts or any local governmental unit.

3. Enter into contract with or sell to any township, county, city and school district or any local governmental unit or the state, its departments, commissions, boards or agencies, any equipment, property, and supplies that the board has purchased from the federal government, provided, however, that the township, county, city and school district or any local governmental unit, the state, its departments, commissions, boards or agencies, reimburses the board for the purchase price and expense connected with acquiring said equipment, property, and supplies.

4. The board may contract or make any purchase or sale up to fifty thousand dollars but any contract, purchase, or sale in excess of fifty thousand dollars must first be approved by the executive council before said contract, purchase, or sale is made.

5. To provide for the warehousing and distribution of such surplus war commodities, as may be given to the state by the federal government, among the various departments and subdivisions of the state. [C46, 50, 54, 58, 62, 66, 71, 73,§20.5; C75,§21.4]

21.5 Revolving fund. There is hereby set aside from the emergency relief fund, for a revolving fund for the use of the state war surplus commodities board, the sum of five hundred thousand dollars or as much thereof as may be necessary for it to perform its duties, to be used by the board in the purchase of property, and all moneys received or recovered by the board from whatever source shall be credited to the revolving fund. [C46, 50, 54, 58, 62, 66, 71, 73,§20.6; C75,§21.5]

Constitutionality, 51GA, ch 60,§8

CHAPTER 22

APPEAL BOARD—STATE INSTITUTION CONSTRUCTION CONTRACTS

Referred to in §§24.24, 64.6(23)

22.1 Board created.
22.2 Vacancies and removals.
22.3 Jurisdiction.
22.4 Compensation and expense.

22.1 Board created. There shall be nominated by the governor and appointed in the manner required for the appointment of the state comptroller, two competent persons to act with the comptroller as members of an appeal board in certain cases. Their terms of office shall be for four years, beginning on the first day of July of each odd-numbered year. [C24, 27, 31, 35, 39,§346; C46, 50, 54, 58, 62, 66, 71, 73, 75,§22.1]

Method of appointment, §8.4

22.2 Vacancies and removals. Vacancies in appointments of such members of the appeal board shall be filled and the removal from office shall be accomplished in the same manner as provided for the comptroller. [C24, 27, 31, 35, 39,§348; C46, 50, 54, 58, 62, 66, 71, 73, 75, §22.2]

Vacancies, §69.8

22.3 Jurisdiction. The said members of the appeal board and the state comptroller shall sit and act together as a board of appeal and the comptroller shall be chairman of the board. Said board shall only consider and determine appeals from the action of the state board of regents, the commissioner of the department of social services, or the state fair board in respect to the letting of contracts for buildings or other improvements in which the amount involved is in excess of twenty-five thousand dollars. The hearings before the board shall be de novo and the evidence shall be preserved on file. The decision of the board shall be final and be entered of record in the office of the comptroller. [C24, 27, 31, 35, 39,§349; C46, 50, 54, 58, 62, 66, 71, 73, 75,§22.3]

22.4 Compensation and expense. The members of the appeal board, other than the comptroller, shall be paid on a per diem basis and the amount of their compensation shall be fixed by the executive council. [C24, 27, 31, 35, 39,§350; C46, 50, 54, 58, 62, 66, 71, 73, 75,§22.4]

CHAPTER 23

PUBLIC CONTRACTS AND BONDS

Referred to in §§24.24, 111A.6, 330A.12, 346.27, 346A.2, 384.25, 384.83, 386.14, 390.3, 463.4, 463.6
See also chs 72, 73, 75 and 76 relating to public contracts and bonds

23.1 Terms defined.
23.2 Notice of hearing.
23.3 Objections—hearing—decision.
23.4 Appeal.
23.5 Information certified to appeal board.
23.6 Notice of hearing on appeal.
23.7 Hearing and decision.
23.8 Enforcement of performance.
23.9 Nonapproved contracts void.
23.10 Witness fees—costs.
23.11 Report on completion.
23.12 Issuance of bonds—notice.
23.13 Objections.
23.14 Notice of hearing.
23.15 Decision.
23.16 Bonds and taxes void.
23.17 Unpaid revenue bonds—effect.
23.18 Bids required—procedure.
23.19 Sale of municipal bonds without hearing or contract.
23.20 Bid bonds.

23.1 Terms defined. The words "public improvement" as used in this chapter shall mean any building or other construction work to be paid for in whole or in part by the use of funds of any municipality.

The word "municipality" as used in this chapter shall mean county, except in the exercise of its power to make contracts for secondary road improvements, township, school corporation, state fair board, state board of regents, and state department of social services.

The words "appeal board" as used in this chapter shall mean the "state appeal board", composed of the auditor of state, treasurer of state, and state comptroller. [C24, 27, 31, 35, 39,§351; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.1]

Referred to in §§25A.2, 390.3

23.2 Notice of hearing. Before any municipality shall enter into any contract for any public improvement to cost five thousand dollars or more, the governing body proposing to make such contract shall adopt proposed plans and specifications and proposed form of contract therefor, fix a time and place for hearing thereon at such municipality affected thereby or other nearby convenient place, and give notice thereof by publication in at least one newspaper of general circulation in such municipality at least ten days before said hearing. [C24, 27, 31, 35, 39,§352; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.2]

Referred to in §§297.7, 390.3

23.3 Objections—hearing—decision. At such hearing, any person interested may appear and file objections to the proposed plans, specifications or contract for, or cost of such improvement. The governing body of the municipality proposing to enter into such contract shall hear said objections and any evidence for or against the same, and forthwith enter of record its decision thereon. [C24, 27, 31, 35, 39,§353; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.3]

Referred to in §390.3

23.4 Appeal. Interested objectors in any municipality equal in number to one percent of those voting for the office of president of the United States or governor, as the case may be, at the last general election in said municipality, but in no event less than twenty-five, may appeal from the decision to the appeal board by serving notice thereof on the clerk or secretary of such municipality within ten days after such decision is entered of record.

The notice shall be in writing and shall set forth the objections to such decision and the grounds for such objections; provided that at least three of the persons signing said notice shall have appeared at the hearing and made objection, either general or specific, to the adoption of the proposed plans, specifications or contract for, or cost of such improvement. [C24, 27, 31, 35, 39,§**354**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.4]

Referred to in §390.3

23.5 Information certified to appeal board. In case an appeal is taken, such body shall forthwith certify and submit to the appeal board for examination and review the following:

1. A copy of the plans and specifications for such improvement.
2. A copy of the proposed contract.
3. An estimate of the cost of such improvement.
4. A report of the kind and amount of security proposed to be given for the faithful performance of the contract and the cost of such security.
5. A copy of the objections, if any, which have been urged by any taxpayer against the proposed plans, specifications or contract, or the cost of such improvement.
6. A separate estimate of the architect's or engineer's fees and cost of supervision.
7. A statement of the taxable value of the property within the municipality proposing to make such improvement.
8. A statement of the several rates of levy of taxes in such municipality for each fund.
9. A detailed statement of the bonded and other indebtedness of such municipality.
10. In case of state institutions and state fair board, the last three requirements may be omitted. [C24, 27, 31, 35, 39,§**355**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.5]

Referred to in §390.3

23.6 Notice of hearing on appeal. The appeal board shall forthwith fix a time and place in the municipality or nearby convenient place for hearing said appeal, and notice of such hearing shall be given by certified mail to the executive officer of the municipality, and to the first five persons whose names appear upon the notice of appeal, at least ten days before the date fixed for such hearing.

The hearing on contracts for the state institutions and state fair board shall be at the seat of government. [C24, 27, 31, 35, 39,§**356**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.6]

Referred to in §390.3

23.7 Hearing and decision. At such hearing, the appellants and any other interested person may appear and be heard. The appeal board shall examine, with the aid of competent assistants, the entire record, and if it shall find that the form of contract is suitable for the improvement proposed, that the improvement and the method of providing for payment therefor is for the best interests of the municipality and the taxpayers therein, and that such improvements can be made within the estimates therefor, it shall approve the same. Otherwise, it may reject the same as a whole or, it shall recommend such modifications of the plans, specifications, or contract, as in its judgment shall be for the public benefit, and if such modifications are so made, it shall approve the same.

The appeal board shall certify its decision to the body proposing to enter into such contract unless it shall have rejected the same as a whole, whereupon the municipality shall advertise for bids and let the contract subject to the approval of the appeal board which shall at once render its final decision thereon and transmit the same to the municipality. [C24, 27, 31, 35, 39,§**357**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.7]

Referred to in §390.3

23.8 Enforcement of performance. After any contract for any public improvement has been completed and any five persons interested request it, the appeal board shall examine into the matter as to whether or not the contract has been performed in accordance with its terms, and if on such investigation it finds that said contract has not been so performed, and so reports to the body letting such contract, it shall at once institute proceedings on the contractor's bond for the purpose of compelling compliance with the contract in all of its provisions. [C24, 27, 31, 35, 39,§**358**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.8]

Referred to in §390.3

23.9 Nonapproved contracts void. If an appeal is taken, no contract for public improvements shall be valid unless the same is finally approved by the appeal board. In no case shall any municipality expend for any public improvement any sum in excess of five percent more than the contract price without the approval of the appeal board. [C24, 27, 31, 35, 39, §**359**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.9]

Referred to in §390.3

23.10 Witness fees—costs. Witness fees and mileage for witnesses on hearing appeals shall be the same as in the district court; but objectors or appellants shall not be allowed witness fees or mileage. Costs of hearings and appeals shall be paid by the municipality. [C24, 27, 31, 35, 39,§**361**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.10]

Referred to in §390.3
Witness fees, §622.69

23.11 Report on completion. Upon the completion of the improvement the executive officer or governing board of the municipality shall file with the appeal board a verified report showing:

1. The location and character of the improvement.
2. The total contract price for the completed improvement.
3. The total actual cost of the completed improvement.
4. By whom, if anyone, the construction was supervised.
5. By whom final inspection was made.
6. Whether or not the improvement complies with its contract, plans, and specifications.
7. Any failure of the contractor to comply with the plans and specifications. [C24, 27, 31, 35, 39,§362; C46, 50, 54, 58, 62, 66, 71, 73, 75, §23.11]

Referred to in §390.3

23.12 Issuance of bonds — notice. Before any municipality shall institute proceedings for the issuance of any bonds or other evidence of indebtedness payable from taxation, excepting such bonds or other evidence of indebtedness as have been authorized by a vote of the people of such municipality, and except such bonds or obligations as it may be by law compelled to issue, a notice of such action, including a statement of the amount and purpose of said bonds or other evidence of indebtedness shall be published at least once in a newspaper of general circulation within such municipality at least ten days before the meeting at which it is proposed to issue such bonds. [C24, 27, 31, 35, 39,§363; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.12]

Referred to in §§262.65, 262A.13, 263A.11, 357B.4, 359.45, 419.13
Sixty percent vote required, §75.1

23.13 Objections. At any time before the date fixed for the issuance of such bonds or other evidence of indebtedness, interested objectors in any municipality equal in number to one percent of those voting for the office of president of the United States or governor, as the case may be, at the last general election in said municipality, but in no event less than twenty-five, may file a petition in the office of the clerk or secretary of the municipality setting forth their objections thereto. [C24, 27, 31, 35, 39,§364; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.13]

Referred to in §§359.45, 419.13

23.14 Notice of hearing. Upon the filing of any such petition, the clerk or secretary of such municipality shall immediately certify a copy thereof, together with such other data as may be necessary in order to present the questions involved, to the appeal board, and upon receipt of such certificate, petition, and information, it shall fix a time and place for the hearing of such matter, which shall be not less than ten nor more than thirty days thereafter. Said hearing shall be held in the municipality in which it is proposed to issue such bonds or other evidence of indebtedness, or in some other nearby convenient place fixed by the appeal board. Notice of such hearing shall be given by certified mail to the executive officer of the municipality and to the five persons whose names first appear on the petition at least ten days before the date of such hearing. [C24, 27, 31, 35, 39,§365; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.14]

Referred to in §§359.45, 419.13

23.15 Decision. The appeal board shall determine the matters involved in such appeal. Its decision shall be certified to the executive officer of the municipality affected. Judicial review of the action of the appeal board may be sought in accordance with the terms of the Iowa administrative procedure Act.

In case there is no appeal, the board of the municipality affected may issue such bonds or other evidence of indebtedness, if legally authorized so to do, in accordance with the proposition published, but in no greater amount.

In case of an appeal, the municipality may issue such bonds or other evidence of indebtedness in accordance with the decision of the appeal board. [C24, 27, 31, 35, 39,§366; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.15]

Referred to in §§359.45, 419.13

23.16 Bonds and taxes void. Any bonds or other evidence of indebtedness issued contrary to the provisions of this chapter, and any tax levied or attempted to be levied for the payment of any such bonds or interest thereon, shall be null and void. [C24, 27, 31, 35, 39,§367; C46, 50, 54, 58, 62, 66, 71, 73, 75,§23.16]

Referred to in §§357B.4, 359.45, 419.13

23.17 Unpaid revenue bonds—effect. It shall be lawful for any municipality to issue revenue bonds, the principal and interest of which are to be paid solely from revenue derived from the operations of the project for which such bonds are issued, notwithstanding that there are other revenue bonds remaining unpaid which have not matured, provided payment of principal and interest of such other revenue bonds is not impaired thereby. [C62, 66, 71, 73, 75,§23.17]

23.18 Bids required—procedure. When the estimated total cost of construction, erection, demolition, alteration or repair of any public improvement exceeds five thousand dollars, the municipality shall advertise for bids on the proposed improvement by two publications in a newspaper published in the county in which the work is to be done, the first of which shall be not less than fifteen days prior to the date set for receiving bids, and shall let the work to the lowest responsible bidder submitting a sealed proposal; provided, however, if in the judgment of the municipality bids received be not acceptable, all bids may be rejected and new bids requested. All bids must be accompanied, in a separate envelope, by a deposit of money or certified check in an

amount to be named in the advertisement for bids as security that the bidder will enter into a contract for the doing of the work. The municipality shall fix said bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The checks or deposits of money of the unsuccessful bidders shall be returned as soon as the successful bidder is determined, and the check or deposit of money of the successful bidder shall be returned upon execution of the contract documents. This section shall not apply to the construction, erection, demolition, alteration or repair of any public improvement when the contracting procedure for the doing of the work is provided for in another provision of law. [C62, 66, 71, 73, 75,§23.18]

Referred to in §§297.7, 346.27

23.19 Sale of municipal bonds without hearing or contract. Any other law to the contrary notwithstanding, any municipality may authorize, sell, issue and deliver its bonds without regard to whether or not notice and hearing on the plans, specifications and form of contract for the public improvement to be paid for in whole or in part from the proceeds of said bonds has theretofore been given, and without regard to whether or not any contract has theretofore been awarded for the construction of said improvement. The foregoing provision shall not apply to bonds which are payable solely from special assessment levied against benefited property. [C66, 71, 73, 75, §23.19]

23.20 Bid bonds. Notwithstanding any other provisions of the Code, any contracting authority may authorize the use of bid bonds executed by corporations authorized to contract as surety in Iowa and on a form prescribed by the contracting authority, in lieu of certified or cashiers checks or any other form of security otherwise required of a bidder to accompany his bid on a public improvement project. The full amount of the bid bond shall be forfeited to the contracting authority in liquidation of damages sustained in the event that the bidder fails to execute the contract as provided in the specifications or by law in the same manner and amount as other forms of authorized security. [C73, 75,§23.20]

CHAPTER 24

LOCAL BUDGET LAW

Referred to in §§8.6, 29C.9, 111A.6, 145A.14, 176A.8(9), 176A.10, 230A.13, 298.1, 309.97, 384.19, 441.16, 442.24

The purpose of the change in the fiscal year for political subdivisions is explained in 64GA, ch 1020 as amended by 65GA, ch 1096. For the effective dates of these changes, see 65GA, ch 1096,§§4 and 61. See also §8.51. Task force for study of local government services and finance, 66GA, ch 1067,§§34-37

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24.1 Short title. This chapter shall be known as the "Local Budget Law." [C24, 27, 31, 35, 39,§368; C46, 50, 54, 58, 62, 66, 71, 73, 75, §24.1]

24.2 Definition of terms. As used in this chapter and unless otherwise required by the context:

1. The word "municipality" shall mean the county, school corporation, and all other public bodies or corporations that have power to levy or certify a tax or sum of money to be collected by taxation, but shall not include any city, drainage district, township, or road district.

2. The words "levying board" shall mean board of supervisors of the county and any other public body or corporation that has the power to levy a tax.

3. The words "certifying board" shall mean any public body which has the power or duty to certify any tax to be levied or sum of money to be collected by taxation.

4. The words "fiscal year" shall mean the period of twelve months beginning on July 1 and ending on the thirtieth day of June.

The fiscal year of cities, counties, and other political subdivisions* of the state shall begin July 1 and end the following June 30.

5. The word "tax" shall mean any general or special tax levied against persons, property, or business, for public purposes as provided by law, but shall not include any special assessment nor any tax certified or levied by township trustees.

6. The words "state board" shall mean the state appeal board as created by section 24.26. [C24, 27, 31, 35, 39,§369; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.2]

Referred to in §§24.25, 74.1, 384.2
*Includes school districts, see §8.51

24.3 Requirements of local budget. No municipality shall certify or levy in any fiscal year any tax on property subject to taxation unless and until the following estimates have been made, filed, and considered, as hereinafter provided:

1. The amount of income thereof for the several funds from sources other than taxation.

2. The amount proposed to be raised by taxation.

3. The amount proposed to be expended in each and every fund and for each and every general purpose during the fiscal year next ensuing, which in the case of municipalities shall be the period of twelve months beginning on the first day of July of the current calendar year.

4. A comparison of such amounts so proposed to be expended with the amounts expended for like purposes for the two preceding years. [C24, 27, 31, 35, 39,§370; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.3]

Referred to in §§8.6, 24.9

24.4 Time of filing estimates. All such estimates and any other estimates required by law shall be made and filed a sufficient length of time in advance of any regular or special meeting of the certifying board or levying board, as the case may be, at which tax levies are authorized to be made to permit publication, discussion, and consideration thereof and action thereon as hereinafter provided. [C24, 27, 31, 35, 39,§371; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.4]

Referred to in §24.9

24.5 Estimates itemized. The estimates herein required shall be fully itemized and classified so as to show each particular class of proposed expenditure, showing under separate heads the amount required in such manner and form as shall be prescribed by the state board. [C24, 27, 31, 35, 39,§372; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.5]

Referred to in §24.9

24.6 Emergency fund—levy. Each municipality as defined herein, may include in the estimate herein required, an estimate for an emergency fund. Each such municipality shall have power to assess and levy a tax for such emergency fund at a rate not to exceed twenty-seven cents per thousand dollars of assessed value of taxable property of the municipality, provided that no such emergency tax levy shall be made until such municipality shall have first petitioned the state board to make such levy and received its approval thereof. Transfers of moneys may be made from the emergency fund to any other fund of the municipality for the purpose of meeting deficiencies in any such fund arising from any cause, provided, however, that no such transfer shall be made except upon the written approval of the state board, and then only when such approval is requested by a two-thirds vote of the governing body of said municipality. Approval may be granted by the state board upon an application approved by a two-thirds vote of the board of supervisors of a county to use this fund for the purpose of matching funds available to such county from federal programs including, but not limited to, crime control, public health, disaster services, highway safety, juvenile delinquency, narcotics control and pollution. [C24, 27, 31, 35, 39,§373; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.6; 66GA, ch 1074,§23]

Referred to in §§24.9, 24.14, 24.37, 29C.20

24.7 Supplemental estimates. Supplemental estimates for particular funds may be made for levies of taxes for future years when the same are authorized by law. Such estimates may be considered, and levies made therefor at any time by filing the same, and upon giving notice in the manner required in section 24.9. Such estimates and levies shall not be considered as within the provisions of section 24.8. [C27, 31, 35,§373-a1; C39,§373.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.7]

Referred to in §24.9

24.8 Estimated tax collections. The amount of the difference between the receipts esti-

mated from all sources other than taxation and the estimated expenditures for all purposes, including the estimates for emergency expenditures, shall be the estimated amount to be raised by taxation upon the assessable property within the municipality for the next ensuing fiscal year. The estimate shall show the number of dollars of taxation for each thousand dollars of the assessed value of all property that is assessed. [C24, 27, 31, 35, 39, §374; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.8]

Referred to in §§24.7, 24.9

24.9 Filing estimates—notice of hearing—amendments. Each municipality shall file with the secretary or clerk thereof the estimates required to be made in sections 24.3 to 24.8, at least twenty days before the date fixed by law for certifying the same to the levying board and shall forthwith fix a date for a hearing thereon, and shall publish such estimates and any annual levies previously authorized as provided in section 76.2, with a notice of the time when and the place where such hearing shall be held at least ten days before the hearing. Provided that in municipalities of less than two hundred population such estimates and the notice of hearing thereon shall be posted in three public places in the district in lieu of publication.

For a county, such publication shall be in the official newspapers thereof.

For any other municipality such publication shall be in a newspaper published therein, if any, if not, then in a newspaper of general circulation therein.

Budget estimates adopted and certified in accordance with this chapter may be amended and increased as the need arises to permit appropriation and expenditure during the fiscal year covered by such budget of unexpended cash balances on hand at the close of the preceding fiscal year and which cash balances had not been estimated and appropriated for expenditure during the fiscal year of the budget sought to be amended, and also to permit appropriation and expenditure during the fiscal year covered by such budget of amounts of cash anticipated to be available during such year from sources other than taxation and which had not been estimated and appropriated for expenditure during the fiscal year of the budget sought to be amended. Such amendments to budget estimates may be considered and adopted at any time during the fiscal year covered by the budget sought to be amended. by filing such amendments and upon publishing the same and giving notice of the public hearing thereon in the manner required in this section. Within twenty days of the decision or order of the certifying or levying board, such proposed amendment of the budget shall be subject to protest, hearing on such protest, appeal to the state appeal board and review by such body, all in accordance with the provisions of sections 24.27 to 24.32, so far as applicable. Amendments to budget estimates accepted or issued under the provisions of this section shall not be considered as within the provisions of section 24.14. [C24, 27, 31, 35, 39,§375; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.9]

Referred to in §§24.7, 24.42, 442.4

24.10 Levies void. The verified proof of the publication of such notice shall be filed in the office of the county auditor and preserved by him. No levy shall be valid unless and until such notice is published and filed. [C24, 27, 31, 35, 39,§376; C46, 50, 54, 58, 62, 66, 71, 73, 75, §24.10]

24.11 Meeting for review. The certifying board or the levying board, as the case may be, shall meet at the time and place designated in said notice, at which meeting any person who would be subject to such tax levy, shall be heard in favor of or against the same or any part thereof. [C24, 27, 31, 35, 39,§377; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.11]

24.12 Record by certifying board. After the hearing has been concluded, the certifying board shall enter of record its decision in the manner and form prescribed by the state board and shall certify the same to the levying board, which board shall enter upon the current assessment and tax roll the amount of taxes which it finds shall be levied for the ensuing fiscal year in each municipality for which it makes the tax levy. [C24, 27, 31, 35, 39,§378; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.12]

40ExGA, ch 4,§69, editorially divided

24.13 Procedure by levying board. Any board which has the power to levy a tax without the same first being certified to it, shall follow the same procedure for hearings as is hereinbefore required of certifying boards. [C24, 27, 31, 35, 39,§379; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.13]

24.14 Tax limited. No greater tax than that so entered upon the record shall be levied or collected for the municipality proposing such tax for the purpose or purposes indicated; and thereafter no greater expenditure of public money shall be made for any specific purpose than the amount estimated and appropriated therefor, except as provided in sections 24.6, 24.15 and section 343.11, subsection 4. All budgets set up in accordance with the statutes shall take such funds, allocations made by sections 123.53, 324.79 and 405.1, into account, and all such funds, regardless of their source, shall be considered in preparing the budget, all as is provided in this chapter. [C24, 27, 31, 35, 39,§380; C46, 50, 54, 58, 62, 66, 71, 73, 75, §24.14]

Referred to in §24.9

24.15 Further tax limitation. No tax shall be levied by any municipality in excess of the estimates published, except such taxes as are approved by a vote of the people, but in no case shall any tax levy be in excess of any limitation imposed thereon now or hereafter by the Constitution and laws of the state. [C24,

27, 31, 35, 39,§381; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.15]

Referred to in §24.14
Tax limit, Constitution, Art. XI,§3

24.16 Expenses—how paid. The cost of publishing the notices and estimates required by this chapter, and the actual and necessary expenses of preparing the budget shall be paid out of the general funds of each municipality respectively. [C24, 27, 31, 35, 39,§382; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.16]

24.17 Budgets certified. The local budgets of the various political subdivisions shall be certified by the chairman of the certifying board or levying board, as the case may be, in duplicate to the county auditor not later than March 15 of each year on blanks prescribed by the state board, and according to the rules and instruction which shall be furnished all certifying and levying boards in printed form by the state board.

One copy of the budget shall be retained on file in his office by the county auditor and the other shall be certified by him to the state board. [C24, 27, 31, 35, 39,§383; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.17; 66GA, ch 79, §1]

Referred to in §442.5
Amendment effective January 1, 1975; 66GA, ch 79,§27

24.18 Summary of budget. Before forwarding copies of local budgets to the state board, the county auditor shall prepare a summary of each budget, showing the condition of the various funds for the fiscal year, including the budgets adopted as herein provided. Said summary shall be printed as a part of the annual financial report of the county auditor, and one copy shall be certified by him to the state board. [C24, 27, 31, 35, 39,§384; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.18]

24.19 Levying board to spread tax. At the time required by law the levying board shall spread the tax rates necessary to produce the amount required for the various funds of the municipality as certified by the certifying board, for the next succeeding fiscal year, as shown in the approved budget in the manner provided by law. One copy of said rates shall be certified to the state board. [C24, 27, 31, 35, 39,§385; C46, 50, 54, 58, 62, 66, 71, 73, 75, §24.19]

24.20 Tax rates final. The several tax rates and levies of the municipalities thus determined and certified in the manner provided in the preceding sections, except such as are authorized by a vote of the people, shall stand as the tax rates and levies of said municipality for the ensuing fiscal year for the purposes set out in the budget. [C24, 27, 31, 35, 39,§386; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.20]

24.21 Transfer of inactive funds. Subject to the provisions of any law relating to municipalities, when the necessity for maintaining any fund of the municipality has ceased to exist, and a balance remains in said fund, the certifying board or levying board, as the case may be, shall so declare by resolution, and upon such declaration, such balance shall forthwith be transferred to the fund or funds of the municipality designated by such board, unless other provisions have been made in creating such fund in which such balance remains. [C24, 27, 31, 35, 39,§387; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.21]

24.22 Transfer of active funds—poor fund. Upon the approval of the state board, it shall be lawful to make temporary or permanent transfers of money from one fund of the municipality to another fund thereof; but in no event shall there be transferred for any purpose any of the funds collected and received for the construction and maintenance of secondary roads. The certifying board or levying board, as the case may be, shall provide that money temporarily transferred shall be returned to the fund from which it was transferred within such time and upon such conditions as the state board shall determine, provided that it shall not be necessary to return to the emergency fund, or to any other fund no longer required, any money transferred therefrom to any other fund. No transfer shall be made to a poor fund unless there is a shortage in said fund after the maximum permissible levy has been made for said fund. [C24, 27, 31, 35, 39,§388; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.22]

Analogous provisions, §252.43

24.23 Supervisory power of state board. The state board shall exercise general supervision over the certifying boards and levying boards of all municipalities with respect to budgets and shall prescribe for them all necessary rules, instructions, forms, and schedules. The best methods of accountancy and statistical statements shall be used in compiling and tabulating all data required by this chapter. [C24, 27, 31, 35, 39,§389; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.23]

24.24 Violations. Failure on the part of any public official to perform any of the duties prescribed in chapters 22, 23, and this chapter, and sections 8.39 and 11.1 to 11.5, shall constitute a misdemeanor, and shall be sufficient ground for removal from office. [C24, 27, 31, 35, 39, §390; C46, 50, 54, 58, 62, 66, 71, 73, 75,§24.24]

Punishment, §687.7

24.25 Estimates submitted by departments.

1. On or before January 1 of each year, each elective or appointive officer or board, except tax certifying boards as defined in section 24.2, subsection 3, having charge of any county office or department shall prepare and submit to the county auditor the following:

a. An estimate of the actual expenditures of such office or department during the current fiscal year;

b. A statement of the requested expenditures to be budgeted for such office for the next fiscal year;

c. An estimate of the revenues, except property tax, to be collected for the county by such office during the current fiscal year;

d. An estimate of the revenues, except property tax, to be collected for the county by such office during the next fiscal year.

Such estimates and statements shall be itemized in the same manner as the various expenditures and revenues are itemized in the records of the auditor.

2. On or before January 20 of each year, the auditor shall submit to the board of supervisors, a compilation of the various office and department estimates in as much detail as they were submitted to him. With this compilation, the auditor shall show the itemized expenditures and revenues for the two years preceding the current fiscal year and an estimate of the cash and unencumbered balances of each county fund at the end of the current fiscal year.

3. The board of supervisors, in the preparation of the county budget as required by this chapter, shall have authority to consult with any such county officer or board concerning his budget estimates and requests and to adjust the budget requests for any such county office or department. [C58, 62, 66, 71, 73, 75, §24.25]

24.26 State appeal board. There is hereby created to administer this Act* a state board to be known as the state appeal board, which state board shall consist of the

1. Comptroller,
2. Auditor of state, and
3. Treasurer of state

each of whom shall personally serve as a member of the state board during his tenure of office. At its first meeting, which shall be held within thirty days after July 4, 1937, and at each annual meeting held thereafter, the state board shall organize by the election, from their own number, of a chairman and a vice-chairman; and by appointing a secretary. Two members of the state board shall constitute a quorum for the transaction of any business. The state board may, from time to time, as such services are required, appoint one or more competent and specially qualified persons as deputies, to appear and act for it at initial hearings as hereinafter provided. The annual meeting of the state board shall be held on the second Tuesday of January in each year. Each deputy appointed by the state board shall be entitled to receive the amount of his traveling and other necessary expenses actually incurred while engaged in the performance of his official duties as hereinafter set out. Such expenses to be audited and approved by the state board and proper receipts filed therefor. [C39,**§390.1**; C46, 50, 54,§24.25; C58, 62, 66, 71, 73, 75,§24.26]

Referred to in §24.2
*47GA, ch 91

24.27 Protest to budget. Not later than the first Tuesday in April, a number of persons in any municipality equal to one-fourth of one percent of those voting for the office of president of the United States or governor, as the case may be, at the last general election in said municipality, but the number shall not be less than ten, and the number need not be more than one hundred persons, who are affected by any proposed budget, expenditure or tax levy, or by any item thereof, may appeal from any decision of the certifying board or the levying board, as the case may be, by filing with the county auditor of the county in which such municipal corporation is located, a written protest setting forth their objections to such budget, expenditure or tax levy, or to one or more items thereof, and the grounds for such objections. Upon the filing of any such protest, the county auditor shall immediately prepare a true and complete copy of said written protest, together with the budget, proposed tax levy or expenditure to which objections are made, and shall transmit the same forthwith to the state board, and shall also send a copy of such protest to the certifying board or to the levying board, as the case may be. [C39, §390.2; C46, 50, 54,§24.26; C58, 62, 66, 71, 73, 75, §24.27; 66GA, ch 1067,§15]

Referred to in §§24.9, 24.43

24.28 Hearing on protest. The state board, within a reasonable time, shall fix a date for an initial hearing on such protest and shall designate a deputy to hold such hearing, which shall be held in the county or in one of the counties in which such municipality is located. Notice of the time and place of such hearing shall be given by certified mail to the chief executive officer of the municipality and to the first ten property owners whose names appear upon such protest, at least five days before the date fixed for such hearing. At all such hearings, the burden shall be upon the objectors with reference to any proposed item in the budget which was included in the budget of the previous year and which such objectors propose should be reduced or excluded; but the burden shall be upon the certifying board or the levying board, as the case may be, to show that any new item in the budget, or any increase in any item thereof, is necessary, reasonable, and in the interest of the public welfare. [C39,**§390.3**; C46, 50, 54, §24.27; C58, 62, 66, 71, 73, 75,§24.28]

Referred to in §§24.9, 24.29, 24.43

24.29 Appeal. The deputy designated to hear any particular appeal shall attend in person and conduct such hearing in accordance with the procedure prescribed in section 24.28, and shall promptly report the proceedings had at such hearing, which report shall become a part of the permanent record of the state board. At the request of either party, or on his own motion, the deputy shall employ a stenographer to report the proceedings, in which event the stenographic notes shall be filed with the report. Either party desiring to have a transcript of such notes presented to

the state board with the deputy's report, may have the same made at his initial expense, such expense to eventually follow the result. [C39,§390.4; C46, 50, 54,§24.28; C58, 62, 66, 71, 73, 75,§24.29]

Referred to in §§24.9, 24.43

24.30 Review by and powers of board. It shall be the duty of the state board to review and finally pass upon all proposed budget expenditures, tax levies and tax assessments from which appeal is taken and it shall have power and authority to approve, disapprove, or reduce all such proposed budgets, expenditures, and tax levies so submitted to it upon appeal, as herein provided; but in no event may it increase such budget, expenditure, tax levies or assessments or any item contained therein. Said state board shall have authority to adopt rules not inconsistent with the provisions of this chapter, to employ necessary assistants, authorize such expenditures, require such reports, make such investigations, and take such other action as it deems necessary to promptly hear and determine all such appeals; provided, however, that all persons so employed shall be selected from persons then regularly employed in some one of the offices of the members of said state board. [C39,§390.5; C46, 50, 54,§24.29; C58, 62, 66, 71, 73, 75,§24.30]

Referred to in §§24.9, 24.43

24.31 Rules of procedure—record. The manner in which objections shall be presented, and the conduct of hearings and appeals, shall be simple and informal and in accordance with the rules prescribed by the state board for promptly determining the merits of all objections so filed, whether or not such rules conform to technical rules of procedure. Such record shall be kept of all proceedings, as the rules of the state board shall require. [C39, §390.6; C46, 50, 54,§24.30; C58, 62, 66, 71, 73, 75,§24.31]

Referred to in §§24.9, 24.43

24.32 Decision certified to county. After a hearing upon such appeal, the state board shall certify its decision with respect thereto to the county auditor, and such decision shall be final. The county auditor shall make up his records in accordance with such decision and the levying board shall make its levy in accordance therewith. Upon receipt of such decision, the county auditor shall immediately notify both parties thereof, whereupon the certifying board shall correct its records accordingly, if necessary. Final disposition of all such appeals shall be made by the state board on or before April 24 of each year. [C39,§390.7; C46, 50, 54,§24.31; C58, 62, 66, 71, 73, 75,§24.32]

Referred to in §§24.9, 24.43

24.33 Appropriation for expenses. For the purpose of carrying out the provisions of this Act*, there is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of five thousand dollars, or so much thereof as is necessary, for each annual period. [C39,§390.8; C46, 50, 54,§24.32; C58, 62, 66, 71, 73, 75,§24.33]

*47GA, ch 91
Omnibus repeal, 47GA, ch 91,§5

24.34 Unliquidated obligations. A city, county, or other political subdivision may establish an encumbrance system for any obligation not liquidated at the close of the fiscal year in which the obligation has been encumbered. The encumbered obligations may be retained upon the books of the city, county, or other political subdivision until liquidated, all in accordance with generally accepted governmental accounting practices. [C75, §24.34]

BUDGET LIMITATIONS FOR FISCAL YEARS 1976-77, 1977-78, AND 1978-79

24.35 Definitions. As used in this division:

1. *"Base year"* means the preceding fiscal year.

2. *"Political subdivision"* means a county, a city having a population of more than seven hundred fifty persons or any other local public body or corporation having a property tax budget subject to limitation under sections 24.36 to 24.38 of this division.

3. *"Total budget"* means the budget including amendments for all funds or programs of a political subdivision.

4. *"Property tax budget"* means those parts of the total budget of a political subdivision to be derived from property taxation and subject to the maximum dollar levy limitations under sections 24.36 to 24.38 of this division.

5. *"Person"* means eligible elector as defined in section 39.3.

6. *"State appeal board"* means the state appeal board created under section 24.26. [66GA, ch 1067, §1]

24.36 City levy limitation. The maximum amount in dollars which may be levied by a city with a population of more than seven hundred fifty over the amount in dollars levied for the base year shall be limited to an aggregate increase of nine percent for the fiscal year beginning July 1, 1976 and seven percent for the fiscal years beginning July 1, 1977 and July 1, 1978 for the following designated property tax levies, except as otherwise provided in this division:

1. The general fund levy authorized pursuant to section 384.1.

2. The tax levy for the purpose of carrying out the terms of a contract for the use of a bridge by a city situated on a river over which a bridge has been built authorized pursuant to section 384.12, subsection 8.

3. The tax levy for the operation and maintenance of a municipal transit system and for the creation of a reserve fund for the system authorized pursuant to section 384.12, subsection 10.

4. The tax levy for the lease of a building or complex of buildings to be operated as a civic center authorized pursuant to section 384.12, subsection 11.

5. The tax levy for operating and maintaining a civic center owned by a city authorized pursuant to section 384.12, subsection 12.

6. The tax levy for planning a sanitary disposal system authorized pursuant to section 384.12, subsection 13.

7. The tax levy for an aviation authority authorized pursuant to section 384.12, subsection 14.

8. The tax levy for an authority for a joint city-county building authorized pursuant to section 384.12, subsection 15.

9. The tax levy for a levee improvement fund authorized pursuant to section 384.12, subsection 16.

10. The tax levy to aid a railway authorized pursuant to section 384.12, subsection 17.

11. The tax levy to maintain an institution received by gift or devise authorized pursuant to section 384.12, subsection 18.

12. The tax levy for the emergency fund authorized pursuant to section 384.8. [66GA, ch 1067, §2]

Referred to in §24.35

24.37 County levy limitation. The maximum amount in dollars which may be levied by a county over the amount in dollars levied for the base year shall be limited to an aggregate increase of nine percent for the fiscal year beginning July 1, 1976 and seven percent for the fiscal years beginning July 1, 1977 and July 1, 1978, for the following designated property tax levies, except as otherwise provided in this division:

1. The tax levy for the emergency fund authorized pursuant to section 24.6.

2. The tax levy for the development, operation, and maintenance of a memorial building or monument authorized pursuant to section 37.8.

3. The tax levy for the purchase of voting machines authorized pursuant to section 52.3.

4. The tax levy for the county conservation board authorized pursuant to section 111A.6.

5. The tax levy for indemnity payments and the inspection and testing program relating to bovine brucellosis eradication authorized pursuant to section 164.23.

6. The tax levy for the bovine tuberculosis eradication fund authorized pursuant to section 165.18.

7. The tax levy for the fairground fund authorized pursuant to sections 174.13 and 174.17.

8. The tax levy for the purpose of maintaining a county or multicounty juvenile home authorized pursuant to section 232.22.

9. The tax levy for the veteran affairs fund authorized pursuant to section 250.1.

10. The tax levy for secondary road construction and maintenance authorized pursuant to section 309.7.

11. The tax levy for the road clearing fund authorized pursuant to section 317.19.

12. The tax levy for the purchase of weed eradicating equipment and materials authorized pursuant to section 317.20.

13. The tax levy for an aviation authority authorized pursuant to section 330A.15.

14. The tax levy for the maintence and improvement of cemeteries in the county authorized pursuant to section 332.3.

15. The tax levy for public disposal grounds authorized pursuant to section 332.32.

16. The tax levy for the operation, control, maintenance, and management of health centers authorized pursuant to section 346A.2.

17. The tax levy for the payment of claims for bounties on wild animals authorized pursuant to section 350.8.

18. The tax levy for the maintenance of a county library authorized pursuant to section 358B.13.

19. The tax levy for the entering of contracts for the use of city libraries authorized pursuant to section 358B.18.

20. The tax levy for ordinary county revenue and the election expense fund authorized pursuant to section 444.9.

21. The tax levy for the county orphan fund authorized pursuant to section 444.11.

22. The tax levy for the purpose of planning a sanitary disposal project or of paying interest and principal on bonds issued pursuant to section 346.23 which levy is authorized pursuant to section 455B.81.

23. The tax levy for flood and erosion control projects authorized pursuant to section 467B.9.

24. The tax levy for the maintenance of property received by a county by gift or devise authorized pursuant to section 565.8. [66GA, ch 1067, §3]

Referred to in §24.35

24.38 Agricultural education levy limitation. The maximum amount in dollars which may be levied for the county agricultural extension education program authorized pursuant to section 176A.10 over the amount in dollars levied for the base year shall be limited to an increase of nine percent for the fiscal year beginning July 1, 1976, and seven percent for the fiscal years beginning July 1, 1977, and July 1, 1978, except as otherwise provided in this division. [66GA, ch 1067, §5]

Referred to in §24.35

24.39 Duties of state comptroller.

1. As soon as practicable after the effective date of this division, the state comptroller shall give notice of the requirements of this division and distribute such forms as required

to the governing bodies of the political subdivisions of this state.

2. The state comptroller shall review the certified total budget of each political subdivision and calculate the dollar amount and percentage increase of the property tax budget for the fiscal years beginning July 1, 1976, July 1, 1977, and July 1, 1978, over the property tax budget for the base year.

3. If the property tax budget of a political subdivision for the fiscal year beginning July 1, 1976, July 1, 1977, or July 1, 1978, exceeds the property tax budget of such political subdivision for the base year by more than nine percent, the state comptroller shall reduce the certified total budget to provide a property tax budget increase of nine percent and return the certified total budget to the governing body with notification that, following a public hearing as provided in section 24.41 of this division, the total budget shall be recertified with a property tax budget increase not exceeding nine percent or that, without a public hearing, the certified total budget shall be submitted to the state appeal board for approval as provided in section 24.40 of this division if the increase of more than nine percent is needed.

4. If the property tax budget of a political subdivision for the fiscal year beginning July 1, 1977, or July 1, 1978, exceeds the property tax budget of such political subdivision for the base year by more than seven percent but not more than nine percent, the state comptroller shall reduce the certified total budget to provide a property tax budget increase of seven percent and return the certified total budget to the governing body with notification that a public hearing must be held as provided in section 24.41 of this division. [66GA, ch 1067,§6]

Referred to in §24.40

24.40 Approval of state appeal board.

1. Upon receipt of the notification from the state comptroller as provided in section 24.39, subsection 3 of this division, the governing body of such political subdivision shall petition the state appeal board to approve the total budget of the political subdivision not later than seven days following receipt of notification if the increase of more than nine percent is needed. However, if the governing body, upon receipt of such notification, finds that an increase in the property tax budget above nine percent is not justified, the governing body shall publish notice of and conduct a public hearing for the purpose of approving a total budget which includes a property tax budget increase of nine percent or less. The public hearing shall be carried out according to the provisions of section 24.41 of this division except that, for the total budget for the fiscal year beginning July 1, 1976, the public hearing shall be held within twenty days after the receipt of notification.

2. A petition to the state appeal board under this division shall be submitted in writing on forms furnished by the state comptroller citing the unusual circumstances as outlined in subsection 3 of this section, which create the need for property tax budget expenditures in excess of nine percent of the base year's property tax budget expenditures and accompanied by such supporting documents as required by the state appeal board. The state appeal board shall conduct a public hearing on the petition in the county or in one of the counties in which the political subdivision is located and may request additional information. The state appeal board shall hear and consider any appeal made by persons affected by the total budget of a political subdivision at the same time the petition of the governing board of such political subdivision is heard and considered.

3. If a political subdivision has unusual circumstances, creating a need for additional budget expenditures in excess of nine percent of the base year's property tax expenditures, the following unusual circumstances shall be the basis for justifying a property tax budget increase exceeding nine percent:

a. Any unusual increase in population as determined by the preceding certified federal census.

b. Natural disaster or other emergencies.

c. Unusual problems relating to major new functions required by state law.

d. Unusual staffing problems.

e. Unusual need for additional funds to permit continuance of a program which provides substantial benefit to its residents.

f. Unusual need for a new program which will provide substantial benefit to residents, if the political subdivision establishes the need and the amount of necessary increased cost.

g. Need for increased expenditures by a political subdivision having unusually low total budget expenditures for the base year because of property tax levy limitations otherwise provided by law.

4. The state appeal board may approve or modify the base year's total budget expenditures of any political subdivision which changes accounting procedures.

5. The state appeal board shall approve the total budget as requested or reduce the amount of increased expenditures. All decisions of the board under this division shall be made in accordance with reasonable and uniform policies which shall be consistent to carry out the provisions of this division. The board shall take into account the intent of this division to provide property tax relief and to provide reasonable control of costs of the political subdivisions of this state.

6. Upon decision of the board, the state comptroller shall make the necessary changes in the total budget of the political subdivision and certify the total budget to the governing body of the political subdivision and the appropriate county auditors. [66GA, ch 1067,§7]

Referred to in §§24.39, 24.41, 24.44

24.41 Additional public hearing—fiscal years 1977-78 and 1978-79.

Upon receipt of the notification from the state comptroller that the property tax budget of the certified total budget of a political subdivision for the fiscal year beginning July 1, 1977, or July 1, 1978, exceeds seven percent but not more than nine percent of the property tax budget of such political subdivision for the base year, the governing body of such political subdivision shall publish notice of and conduct a public hearing not later than April 15. The date, time and location of the public hearing and the information required to be published under section 24.42 of this division, shall be published in a newspaper having general circulation throughout the political subdivision not less than five days before the date of hearing. Thereafter, the total budget shall be recertified, with or without changes that may be made after the hearing, to the county auditor and the state comptroller not later than April 15. If, after such hearing, the property tax budget for the fiscal year beginning July 1, 1977, or July 1, 1978, exceeds the property tax budget of the base year by more than nine percent, such budget shall be subject to the approval of the state appeal board as provided in section 24.40. [66GA, ch 1067,§8]

Referred to in §§24.39, 24.40, 24.43, 24.44

24.42 Budget process—notice of public hearing. In addition to the requirements of this chapter and chapter 384, division II, relating to the publication of notice and public hearing on a budget of a political subdivision, the public notice of a hearing on a total budget shall include the following information:

1. The percentage and the dollar amount increase or decrease for the total budget and the property tax budget of the political subdivision.

2. The percentage and the dollar amount increase or decrease of each fund included in the proposed total budget and the property tax budget.

3. A statement showing the allowable growth percentages established by the general assembly and the dollar amount of increase represented by such percentages for the proposed total budget and the property tax budget of the political subdivision.

4. A statement of the major reasons for the proposed increases in the proposed total budget and the property tax budget.

5. A comparison of the percentages and dollar amounts proposed to be expended with the percentages and dollar amounts expended or proposed to be expended during the current fiscal year as amended to the date of publication which information shall be displayed in the publication in the form of a pie graph. The graphs shall be prepared for both fiscal years with one pie graph for each fiscal year showing the sources of anticipated revenue and one pie graph for each fiscal year showing the proposed budget expenditures by category of services.

The provisions of this section shall not apply to publication of notice for a hearing on a total budget for the fiscal year beginning July 1, 1976, required under section 24.9 or 384.16 if the notice of hearing has been published before the effective date of this division, but it shall apply to any other notice for a hearing on a total budget or amendment to a total budget required by this division or other provision of law for the fiscal years beginning July 1, 1976, July 1, 1977, and July 1, 1978. [66GA, ch 1067,§9]

Referred to in §24.41

24.43 Exception to dates for budget appeal. Notwithstanding sections 24.27 to 24.32 and 384.19, persons affected by a certified total budget of a political subdivision which conducts a public hearing as provided in section 24.41 of this division, shall have ten days following recertification of such budget to file a petition to protest to the state appeal board. All other time limitations or dates specified in sections 24.27 to 24.32 and 384.19 shall be correspondingly changed or extended to allow the same amount of time for the protest hearing and the decision of the state board that would exist had the appeal to the state appeal board been filed as provided in section 24.27 or 384.19. [66GA, ch 1067,§10]

24.44 Property tax carryover. If a political subdivision adopts a total budget for the fiscal year beginning July 1, 1976, which does not include an increase in the amount of property tax levy for the property tax budget computed in dollars which exceeds or is equal to nine percent, the political subdivision may levy property taxes for the succeeding fiscal year in excess of a seven percent increase and be exempt from the provisions of sections 24.40 and 24.41 of this division. Also, if a political subdivision adopts a total budget for the fiscal year beginning July 1, 1977, which does not include an increase in the amount of property tax levy for the property tax budget computed in dollars which exceeds or is equal to seven percent, the political subdivision may levy property taxes for the succeeding fiscal year in excess of a seven percent increase and be exempt from the provisions of sections 24.40 and 24.41 of this division. However, the exemption from the provisions of sections 24.40 and 24.41 of this division shall be applicable only if the additional property tax levy for the property tax budget does not raise in dollars an amount which exceeds the seven percent increase for the fiscal year beginning July 1, 1977 or July 1, 1978 and the difference between the amount in dollars which the political subdivision levied during the base year and the amount in dollars which the political subdivision could have levied during the base year under this division. [66GA, ch 1067,§11]

24.45 Property tax levy limitation not affected. The provisions of this division shall not be construed as removing or otherwise affecting the property tax levy limitations otherwise provided by law for any fund, account, or program in the total budget of a political subdivision. [66GA, ch 1067,§12]

24.46 Budget appeal not affected. The provisions of this division shall not be construed to prohibit or affect a protest filed with the state appeal board by persons affected by the total budget of a political subdivision. [66GA, ch 1067,§13]

24.47 Special chartered cities. It is the intention of the general assembly that the provisions of this division shall apply to special chartered cities. The state appeal board may adopt such rules relating to budget forms and procedures as the state appeal board deems necessary to carry out the provisions of this division regarding special chartered cities. [66GA, ch 1067,§14]

CHAPTER 25

CLAIMS AGAINST THE STATE AND BY THE STATE

Referred to in §25A.19

25.1 Receipt, investigation, and report.
25.2 Examination of report—approval or rejection—payment.
25.3 Filing with general assembly—testimony.
25.4 Assistant attorney general—salary.
25.5 Testimony—filing with board.
25.6 Claims by state against municipalities.
25.7 Claims refused—effect.
25.8 Limitation on claims to be considered.

25.1 Receipt, investigation, and report. When a claim is filed or made against the state, on which in the judgment of the comptroller the state would be liable except for the fact of its sovereignty or which has no appropriation available for its payment, the comptroller shall deliver said claim to the state appeal board. The state appeal board shall make a record of the receipt of said claim and forthwith deliver same to the special assistant attorney general for claims who shall, with a view to determining the merits and legality thereof, fully investigate said claim, including the facts upon which it is based and report in duplicate his findings and conclusions of law to the state appeal board. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§25.1]

Referred to in §25A.19

25.2 Examination of report—approval or rejection—payment. The state appeal board with the recommendation of the special assistant attorney general for claims may approve or reject claims against the state of less than ten years covering the following: Outdated warrants; outdated sales and use tax refunds; license refunds; additional agricultural land tax credits; outdated invoices; fuel and gas tax refunds; outdated homestead and veterans' exemptions; outdated funeral service claims; tractor fees; registration permits; outdated bills for merchandise; services furnished to the state; claims by any county or county official relating to the personal property tax credit; and refunds of fees collected by the state. Payments authorized by the state appeal board shall be paid from the appropriation or fund of original certification of the claim, except, that if such appropriation or fund has since reverted under section 8.33 then such payment authorized by the state appeal board shall be out of any money in the state treasury not otherwise appropriated. Notwithstanding the provisions of this section, the state comptroller may reissue outdated warrants. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§25.2]

25.3 Filing with general assembly—testimony. On the second day after the convening of each regular session of the general assembly, the state appeal board shall file with the clerk of the house of representatives and the secretary of the senate a list of all claims rejected by the state appeal board together with a copy of the report made to it by the special assistant attorney general for claims and its recommendation thereon for each claim, which report and recommendation shall be delivered to the claims committee of the house and senate. Any testimony taken by the special assistant attorney general for claims shall be preserved by the state appeal board and made available to the claims committee of the general assembly. [C24, 27, 31,§405; C46, 50, 54, 58, 62, 66, 71, 73, 75,§25.3]

25.4 Assistant attorney general—salary. The attorney general shall appoint a special assistant attorney general for claims who shall, under the direction of the attorney general, investigate and report on all claims between the state and other parties, which may be referred to the state appeal board, and on any other claims or matters which the state appeal board or the attorney general may direct. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§25.4; 66GA, ch 1059,§5]

Referred to in §25A.19

25.5 Testimony—filing with board. The special assistant attorney general for claims shall fully investigate each claim and the facts upon which same is based and may take testimony in the form of affidavits or otherwise, and in connection therewith he shall ex officio be empowered to administer oaths, to compel the attendance of witnesses and certify to any district court for contempt. All testimony, affidavits, and other papers in connection with a claim, obtained by the special assistant attorney general for claims in making his investigation shall be filed with his report to the state appeal board. [C24, 27, 31,§403; C46, 50, 54, 58, 62, 66, 71, 73, 75,§25.5]

Referred to in §25A.19

25.6 Claims by state against municipalities. The state appeal board shall have power and authority to investigate and collect claims which the state may have against municipal or political corporations in the state including counties, cities, townships, and school corporations. The board shall refer any such claim to the special assistant attorney general for claims, when any such claim has not been promptly paid, and if the special assistant attorney general for claims is not able to collect the full amount of said claim, he shall fully investigate same and report to the state appeal board his findings of fact and conclusions of law, together with any recommendation he may have as to said claim. Thereafter the state appeal board may effect a compromise settlement with the debtor in such amount and under such terms as the said board may deem just and equitable in view of the findings and conclusions reported to it. In the event the state appeal board is unable to collect a claim in full or effect what it has determined to be a fair compromise, it shall deliver same to the attorney general for such action as he shall determine and the special assistant attorney general for claims is specifically charged with carrying out the directions of the attorney general with reference thereto. When any claim is compromised by the state appeal board, it shall file in the office of the comptroller a statement as to the settlement, together with a true copy of the agreement of settlement, and if in settlement an amount less than the face amount is accepted in full, the proper entries shall be made in the books of the comptroller, and auditor of state showing the amount of the claim, the amount of the settlement and the amount charged off. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§25.6]

25.7 Claims refused — effect. When any claim against the state has been presented to the general assembly through the state appeal board, and the general assembly has failed or refused to make an appropriation therefor, such failure or refusal to appropriate shall constitute an adjudication against said claim, which shall bar any further proceedings before the general assembly for the payment of same. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§25.7]

Referred to in §25A.19

25.8 Limitation on claims to be considered. No claim against the state shall be considered or allowed by the general assembly except it be presented before the state appeal board as provided in this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§25.8]

CHAPTER 25A

STATE TORT CLAIMS ACT

Referred to in §§29C.6, 189.18, 217.31, 235A.20, 313.16, 554.10105, 749A.9, 749B.6

25A.1 Citation and applicability.
25A.2 Definitions.
25A.3 Adjustment and settlement of claims.
25A.4 District court to hold hearings.
25A.5 When suit permitted.
25A.6 Applicable rules.
25A.7 Appeal.
25A.8 Judgment as bar.
25A.9 Compromise and settlement.
25A.10 Award conclusive on state.
25A.11 Payment of award.
25A.12 Report by comptroller.
25A.13 Limitation of actions.
25A.14 Exceptions.
25A.15 Attorney's fees and expenses.
25A.16 Remedies exclusive.
25A.17 Adjustment of other claims.
25A.18 Extension of time.
25A.19 Claims before appeal board.
25A.20 Liability insurance.
25A.21 Officers and employees defended.
25A.22 Actions in federal court.

25A.1 Citation and applicability. This chapter may be cited as the "Iowa Tort Claims Act". Every provision of this chapter is applicable and of full force and effect notwithstanding any inconsistent provision of the Iowa administrative procedure Act. [C66, 71, 73, 75,§25A.1]

25A.2 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"State agency"* includes all executive departments, agencies, boards, bureaus, and commissions of the state of Iowa, and corporations whose primary function is to act as, and while acting as, instrumentalities or agencies of the state of Iowa, whether or not authorized to sue and be sued in their own names. This definition shall not be construed to include any contractor with the state of Iowa.

2. *"State appeal board"* means the state appeal board as defined in section 23.1.

3. *"Employee of the state"* includes any one or more officers, agents, or employees of the state or any state agency, including members of the general assembly, and persons acting on behalf of the state or any state agency in any official capacity, temporarily or permanently in the service of the state of Iowa, whether with or without compensation. Professional personnel, including medical doctors, osteopathic physicians and surgeons, osteopathic physicians, optometrists and dentists, who render services to patients and inmates of state institutions under the jurisdiction of the department of social services are to be considered employees of the state, whether such personnel are employed on a full-time basis or render such services on a part-time basis on a fee schedule or arrangement, but shall not include any contractor doing business with the state.

4. *"Acting within the scope of his office or employment"* means acting in his line of duty as an employee of the state.

5. *"Claim"* means:

a. Any claim against the state of Iowa for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the state while acting within the scope of his office or employment, under circumstances where the state, if a private person, would be liable to the claimant for such damage, loss, injury, or death.

b. Any claim against an employee of the state for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission, except an act of malfeasance in office or willful and wanton conduct, of any employee of the state while acting within the scope of his office or employment.

6. *"Award"* means any amount determined by the state appeal board to be payable to a claimant under section 25A.3, and the amount of any compromise or settlement under section 25A.9. [C66, 71, 73, 75,§25A.2; 66GA, ch 80,§§1, 2]

Referred to in §§25A.19, 25A.22

25A.3 Adjustment and settlement of claims. Authority is hereby conferred upon the state appeal board, acting on behalf of the state of Iowa, subject to the advice and approval of the attorney general, to consider, ascertain, adjust, compromise, settle, determine, and allow any claim as defined in this chapter. If any claim is compromised, settled, or allowed in an amount of more than five thousand dollars, the unanimous approval of all members of the state appeal board and the attorney general shall be required and the approval of the district court of the state of Iowa for Polk county shall also be required.

Claims made under this chapter shall be filed with the state comptroller, who shall acknowledge receipt on behalf of the state appeal board.

The state appeal board shall adopt rules and procedures for the handling, processing and investigation of claims, according to the provisions of the Iowa administrative procedure Act. [C66, 71, 73, 75,§25A.3]

Referred to in §§25A.2, 25A.15

25A.4 District court to hold hearings. The district court of the state of Iowa for the district in which the plaintiff is resident or in which the act or omission complained of occurred, or where the act or omission occurred outside of Iowa and the plaintiff is a nonresident, the Polk county district court, sitting without a jury, shall have exclusive jurisdiction to hear, determine, and render judgment on any suit or claim as defined in this chapter. However, the laws and rules of civil procedure of this state on change of place of trial shall apply to such suits.

The state shall be liable in respect to such claims to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances, except that the state shall not be liable for interest prior to judgment or for punitive damages. Costs shall be allowed in all courts to the successful claimant to the same extent as if the state were a private litigant.

The immunity of the state from suit and liability is waived to the extent provided in this chapter.

A suit is commenced under this chapter by serving the attorney general or his duly authorized delegate in charge of the tort claims division by service of an original notice. The state shall have thirty days within which to enter its general or special appearance.

If suit is commenced against an employee of the state pursuant to the provisions of this chapter, an original notice shall be served upon the employee in addition to the requirements of this section. The employee of the state shall have the same period to enter a general or special appearance as the state. [C66, 71, 73, 75,§25A.4; 66GA, ch 80,§3]

25A.5 When suit permitted. No suit shall be permitted under this chapter unless the state appeal board has made final disposition of the claim; except that if the state appeal board does not make final disposition of a claim within six months after the claim is made in writing to the state appeal board, the claimant may, by notice in writing, withdraw the claim from consideration of the state appeal board and begin suit under this chapter. Disposition of or offer to settle any claim made under this chapter shall not be competent evidence of liability or amount of damages in any suit under this chapter. [C66, 71, 73, 75,§25A.5]

Referred to in §25A.13

25A.6 Applicable rules. In suits under this chapter, the forms of process, writs, pleadings, and actions, and the practice and procedure, shall be in accordance with the rules of civil procedure promulgated and adopted by the supreme court of the state. The same provisions for counterclaims, setoff, interest upon judgments, and payment of judgments, shall be applicable as in other suits brought in the district courts of the state. However, no writ of execution shall issue against the state or any state agency by reason of any judgment under this chapter. [C66, 71, 73, 75,§25A.6]

25A.7 Appeal. Judgments in the district courts in suits under this chapter shall be subject to appeal to the supreme court of the state in the same manner and to the same extent as other judgments of the district courts. [C66, 71, 73, 75,§25A.7]

25A.8 Judgment as bar. The final judgment in any suit under this chapter shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the state or the employee of the state whose act or omission gave rise to the claim. However, this section shall not apply if the court rules that the claim is not permitted under this chapter. [C66, 71, 73, 75,§25A.8; 66GA, ch 80,§4]

25A.9 Compromise and settlement. With a view to doing substantial justice, the attorney general is authorized to compromise or settle any suit permitted under this chapter, with the approval of the court in which suit is pending. [C66, 71, 73, 75,§25A.9]

Referred to in §§25A.2, 25A.15

25A.10 Award conclusive on state. Any award made under this chapter and accepted by the claimant shall be final and conclusive on all officers of the state of Iowa, except when procured by means of fraud, notwithstanding any other provisions of law to the contrary.

The acceptance by the claimant of such award shall be final and conclusive on the claimant, and shall constitute a complete release by the claimant of any claim against the state and against the employee of the state whose act or omission gave rise to the claim, by reason of the same subject matter. [C66, 71, 73, 75,§25A.10]

25A.11 Payment of award. Any award to a claimant under this chapter, and any judgment in favor of any claimant under this chapter, shall be paid promptly out of appropriations which have been made for such purpose, if any; but any such amount or part thereof which cannot be paid promptly from such appropriations shall be paid promptly out of any money in the state treasury not otherwise appropriated. Payment shall be made only upon receipt of a written release by the claimant in a form approved by the attorney general. [C66, 71, 73, 75,§25A.11]

25A.12 Report by comptroller. The state comptroller shall annually report to the general assembly all claims and judgments paid under this chapter. Such report shall include the name of each claimant, a statement of the amount claimed and the amount awarded, and a brief description of the claim. [C66, 71, 73, 75, §25A.12]

25A.13 Limitation of actions. Every claim and suit permitted under this chapter shall be forever barred, unless within two years after such claim accrued, the claim is made in writing to the state appeal board under this chapter. The time to begin a suit under this chapter shall be extended for a period of six months from the date of mailing of notice to the claimant by the state appeal board as to the final disposition of the claim or from the date of withdrawal of the claim from the state appeal board under section 25A.5, if the time to begin suit would otherwise expire before the end of such period.

If a claim is made or filed under any other law of this state and a determination is made by a state agency or court that this chapter provides the exclusive remedy for the claim, the time to make a claim and to begin a suit under this chapter shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by a state agency, if the time to make the claim and to begin the suit under this chapter would otherwise expire before the end of such period. The time to begin a suit under this chapter may be further extended as provided in the preceding paragraph.

This section is the only statute of limitations applicable to claims as defined in this chapter. [C66, 71, 73, 75,§25A.13; 66GA, ch 80,§5]

25A.14 Exceptions. The provisions of this chapter shall not apply with respect to any claim against the state, to:

1. Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion be abused.

2. Any claim arising in respect to the assessment or collection of any tax or fee, or the detention of any goods or merchandise by any law enforcement officer.

3. Any claim for damages caused by the imposition or establishment of a quarantine by the state, whether such quarantine relates to persons or property.

4. Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse or process, libel, slander, misrepresentation, deceit, or interference with contract rights.

5. Any claim by an employee of the state which is covered by the Iowa workers' compensation law or the Iowa occupational disease law.

6. Any claim based upon damage to or loss or destruction of private property, both real and personal, or personal injury or death, when such damage, loss, destruction, injury or death occurred as an incident to the training, operation, or maintenance of the national guard while not in "active state service" as defined in section 29A.1, subsection 5. [C66, 71, 73, 75,§25A.14; 66GA, ch 80,§6]

Referred to in §189.18

25A.15 Attorney's fees and expenses. The court rendering a judgment for the claimant under this chapter, or the state appeal board, with the advice and approval of the attorney general, making an award under section 25A.3, or the attorney general making an award under section 25A.9, as the case may be, shall, as a part of the judgment or award, determine and allow reasonable attorney's fees and expenses, to be paid out of but not in addition to the amount of judgment or award recovered, to the attorneys representing the claimant. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be subject to a fine of not more than one thousand dollars or imprisonment for not more than one year, or both. [C66, 71, 73, 75,§25A.15]

25A.16 Remedies exclusive. From and after March 31, 1965, the authority of any state agency to sue or be sued in its own name shall not be construed to authorize suits against such state agency on claims as defined in this chapter. The remedies provided by this chapter in such cases shall be exclusive. [C66, 71, 73, 75,§25A.16]

25A.17 Adjustment of other claims. Nothing contained herein shall be deemed to repeal any provision of law authorizing any state agency to consider, ascertain, adjust, compromise, settle, determine, allow, or pay any claim other than a claim as defined in this chapter. [C66, 71, 73, 75,§25A.17]

25A.18 Extension of time. If a claim is made or a suit is begun under this chapter, and if a determination is made by the state appeal board or by the court that the claim or suit is not permitted under this chapter for any reason other than lapse of time, the time to make a claim or to begin a suit under any other applicable law of this state shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by the state appeal board, if the time to make the claim or begin the suit under such other law would otherwise expire before the end of such period. [C66, 71, 73, 75,§25A.18]

25A.19 Claims before appeal board. Section 25.7 shall not apply to claims as defined in this chapter, except as expressly provided in section 25A.2. The other provisions of chapter 25 shall not apply to claims as defined in this chapter. However, any or all of the provisions of sections 25.1, 25.4, and 25.5 may be made applicable to claims as defined in this chapter by agreement between the attorney general and the state appeal board from time to time. [C66, 71, 73, 75,§25A.19]

25A.20 Liability insurance. Whenever a claim or suit against the state is covered by liability insurance, the provisions of the liability insurance policy on defense and settlement shall be applicable notwithstanding any inconsistent provisions of this chapter. The attorney general and the state appeal board shall co-operate with the insurance company. [C66, 71, 73, 75,§25A.20]

25A.21 Officers and employees defended. The state shall defend any employee of the state, whether elected or appointed and, except in cases of malfeasance in office, willful and unauthorized injury to persons or property, or willful and wanton conduct, shall save harmless and indemnify such employees of the state against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of their employment or duties. [66GA, ch 80,§7]

25A.22 Actions in federal court. The state shall defend, indemnify and hold harmless an employee of the state in any action commenced in federal court under section 1983, Title 42, United States Code, against the employee for acts of the employee while acting in the scope of employment. If the acts or omissions of the employee, upon which the action is based, are within the exceptions to claim as defined in section 25A.2, subsection 5, paragraph "*b*", the state shall not indemnify or hold harmless the employee. [66GA, ch 80,§7]

CHAPTER 26

CENSUS

26.1 Federal and state co-operation.
26.2 Federal census.
26.3 Publication.
26.4 Publication in official register.
26.5 Evidence.
26.6 Population of counties, townships and cities.

26.1 Federal and state co-operation. The executive council is authorized, so far as practicable, to co-operate with the census bureau of the United States in the gathering, compilation, and publication of census statistics. [S13, §177-a; C24, 27, 31, 35, 39,§424; C46, 50, 54, 58, 62, 66, 71, 73, 75,§26.1]

26.2 Federal census. The secretary of state shall, whenever a general census is taken by the federal government, procure from the supervisor of such census, or other proper federal official, a copy of such part of said census as gives the population of the state of Iowa by counties, by townships, and by cities, and file the same in his office and attach thereto, dated and signed by him, a certificate that the same is the census report furnished to him by said federal official. [S13,§177-c; C24, 27, 31, 35, 39, §425; C46, 50, 54, 58, 62, 66, 71, 73, 75,§26.2]

26.3 Publication. He shall at once cause such census report and certificate to be published once in each of two daily newspapers of the state and of general circulation, and from and after the date of such publication said census shall be in full force and effect throughout the state. On payment of a fee of two dollars he shall furnish a certified copy of the whole or any part of such census report. [S13, §177-c; C24, 27, 31, 35, 39,§426; C46, 50, 54, 58, 62, 66, 71, 73, 75,§26.3]

26.4 Publication in official register. The superintendent of printing shall publish said federal census report and certificate aforesaid in full in each copy of the Iowa official register. [S13,§177-c; C24, 27, 31, 35, 39,§427; C46, 50, 54, 58, 62, 66, 71, 73, 75,§26.4]

26.5 Evidence. Said certified census records in the office of the secretary of state, and said authorized publications, including the certificates attached thereto, shall be competent evidence of all matters therein contained. [S13, §177-c; C24, 27, 31, 35, 39,§428; C46, 50, 54, 58, 62, 66, 71, 73, 75,§26.5]

40GA, ch 226,§21, editorially divided

26.6 Population of counties, townships and cities. Whenever the population of any county, township or city is referred to in any law of this state, it shall be determined by the last preceding certified federal census unless otherwise provided. Whenever a special federal census is taken by any city, the mayor and council shall certify the census as soon as possible to the secretary of state and to the treasurer of state as otherwise herein provided, and upon the failure to do so, the treasurer of state shall, after six months from the date of the special census, withhold allocation from the state to the city of any moneys the amount of which is based on the population of the city, and shall continue to do so until such time as certification by the mayor and council is made, or until the next decennnial federal census. If there be a difference between the original certified record in the office of the secretary of state and the publshed census the former shall prevail. [C97,§177; S13,§177-c; C24, 27, 31, 35, 39,§429; C46, 50, 54, 58, 62, 66, 71, 73, 75,§26.6; 66GA, ch 1056,§7]

Similar provision, §4.1(26)

CHAPTER 27

DEPUTIES OF STATE OFFICERS

27.1 Deputies.
27.2 Deputy to qualify.

27.1 Deputies. The secretary, auditor, treasurer of state, and secretary of agriculture may each appoint, in writing, any person, except one holding a state office, as deputy, for whose acts the appointing officer shall be responsible, and from whom the appointing officer shall require bond, which appointment and bond must be approved by the officer having the approval of the principal's bond, and such appointment may be revoked in the same manner. The appointment and revocation shall be filed with and kept by the secretary of state. The state shall pay the reasonable cost of the bonds required by this section. [C51,§§411–413, 416; R60,§§642–644, 647; C73,§§766–768, 770, 3756–3758; C97,§§87, 99, 116; S13,§§87, 99, 116; C24, 27, 31, 35, 39,§430; C46, 50, 54, 58, 62, 66, 71, 73, 75, §27.1]

Deputy county officers, §341.1

27.2 Deputy to qualify. The deputy shall qualify by taking the oath of the principal, to be endorsed upon and filed with the certificate of appointment, and when so qualified he shall, in the absence or disability of the appointing officer, unless otherwise provided, perform all the duties pertaining to the office of the appointing officer. [C51,§§411, 412, 416; R60,§§642, 643, 647; C73,§§766, 767, 770; C97,§§87, 99, 116; S13,§§87, 99, 116; C24, 27, 31, 35, 39,§431; C46, 50, 54, 58, 62, 66, 71, 73, 75,§27.2]

Deputy may not act on executive council, §19.1
Oath of principal, §63.10

CHAPTER 27A

UPPER MISSISSIPPI RIVERWAY COMPACT

27A.1 Compact with other states.
27A.2 Membership of commission.
27A.3 Agreements with state agencies.
27A.4 Payments in lieu of taxes.
27A.5 No conflict of local functions.
27A.6 When effective.

27A.1 Compact with other states. The upper Mississippi riverway compact is hereby enacted into law and entered into with all other states which legally join therein in substantially the following form:

UPPER MISSISSIPPI RIVERWAY COMPACT

ARTICLE I—FINDINGS

The party states find that:

a. Increasing population pressures have already begun to make the need for open space an urgent concern, and to make it inevitable that the balanced development and preservation of a comfortable environment to meet present and future requirements for healthful recreation can be secured only through systematic and co-ordinated action.

b. The boundary character of the upper Mississippi river emphasizes the regional character of many present and potential resources.

c. Despite the continuing usefulness of informal co-operation among agencies of the several states and local governments, the size of the upper Mississippi region, the complexity of its economic and social development, and the resource needs of its people require a formal instrument for joint and co-operative action in the development and maintenance of a sound and attractive upper Mississippi region.

ARTICLE II—PURPOSE AND POLICY

a. It is the purpose of this compact to:

1. Secure the mutual advantages and benefits that can accrue to the people of the party states from the preservation, use and development of the unique scenery, recreational opportunities, fisheries, wildlife, water resources, historic sites and other natural assets along the upper Mississippi river.

2. Develop and maintain means for continuing co-operation among the party states: (*a*) In obtaining, protecting, administering and preserving natural and recreational resources, (*b*) and in planning for the orderly development of commerce, industry, agriculture, and local governmental institutions and units.

3. Encourage the establishment and maintenance of natural and cultivated areas of greenery and other areas of open space throughout the upper Mississippi region in order to serve the aesthetic and recreational needs of the public.

b. It is the policy of the party states and of this compact to pursue the purposes set forth in paragraph "*a*" of this article in such ways as to:

1. Foster and take maximum advantage of public and private interest in the upper Mississippi region in a manner that will harmonize the needs of agricultural, industrial and other economic progress with the development, preservation and maintenance of an attractive and comfortable environment.

2. Hold in highest trust for the benefit of the public the special blessings and natural advantages of the upper Mississippi area.

ARTICLE III—UPPER MISSISSIPPI RIVERWAY DISTRICT

a. The upper Mississippi riverway district, hereinafter called "the district", is hereby established. The district shall consist of the following land and water areas:

1. The Mississippi river, including any islands, sandbars, and marshy areas therein or formed thereby, from lock and dam number 2 near Hastings, Minnesota to lock and dam number 19 at the southern boundary of Iowa in the vicinity of Keokuk, Iowa and Hamilton, Illinois.

2. The area lying on either side of the shores of the portion of the Mississippi river described in item 1 hereof, to a distance of one mile from such shores, except that pursuant to procedures detailed in this article, the distances from the shores may be varied in order to include land and water areas appropriate to the purposes of this compact.

b. The upper Mississippi riverway commission established by this compact shall prepare, adopt, and from time to time revise a map of the district. Prior to the initial adoption of the map, the commission shall give due public notice of the proposed adoption, and shall hold at least one public hearing thereon in each of the party states. Prior to any revision of the map, the commission shall hold, on due public notice, at least one hearing in each of the states where a proposed change would alter the boundaries of the district.

c. Upon the request of a party state or states, the commission, after satisfaction of the requirements of paragraph "*b*" of this article, may revise the map of the district to include additional land and water areas contiguous to the district. If the commission believes that any such addition would further the purposes of this compact, it may make recommendations therefor to the appropriate party state or states.

d. The map adopted by the commission pursuant to this article and currently in force shall be conclusive evidence of the area and boundaries of the district.

ARTICLE IV—THE COMMISSION

a. There is hereby established an agency of the party states to be known as the "Upper Mississippi Riverway Commission", hereinafter called "the commission". The commission shall be composed of four commissioners from each party state. One of the commissioners from each party state shall be the administrative head of the state agency having responsibility for the outdoor recreational programs of the state government. If there be more than one such agency, the commissioner shall be designated, in accordance with the laws of that state, from among the relevant agency heads. The other three commissioners from each party state shall be appointed and serve in such manner as the laws of their respective party states may provide. A commissioner who

is a state agency head may be represented on the commission by an alternate, if the laws of his state so provide. An alternate shall have full power to act for his principal: Provided that the commission, in such manner as its bylaws may provide, has been notified of the designation and identity of the alternate.

Referred to in §27A.2

b. The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. Each commissioner and alternate shall receive due notice of commission meetings and of the intended matters for consideration thereat, in accordance with the bylaws of the commission.

c. The commission shall have a seal.

d. The commission may sue and be sued in its own name.

e. The commission shall elect annually from among its members a chairman, and a vice-chairman who shall be from different states, and a treasurer. The commission shall appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission. The executive director, the treasurer, and such other personnel as the commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the commission.

f. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, with the approval of the commission, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

g. The commission may establish and maintain independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old-age survivors and disability insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

h. The commission may accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.

i. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of land or interests therein, water or interests therein, money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services accepted pursuant to paragraph "*h*" of this article shall be a matter of public record kept by the commission. Such record shall include the nature, amount and conditions, if any, of the donation, grant or services accepted and the identity of the donor or lender.

Referred to in Article IX(*d*)

j. The commission may establish and maintain such facilities as may be necessary for the transacting of its business.

k. The commission may acquire, hold and convey real and personal property and any interests therein.

l. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

m. The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been made by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE V—POWERS

In addition to any powers conferred on the commission elsewhere in this compact or pursuant thereto, the commission shall have power to:

a. 1. Acquire, manage, and operate park and other recreational facilities within the district.

2. Regulate the use of its properties by the general public and maintain suitable forces of peace officers to assist therein.

3. Engage in and co-ordinate the planning of park and related recreational facilities and programs within the district.

4. Recommend common park and recreational policies to the party states or their subdivisions with respect to the district and its environs.

5. Develop and recommend measures for the protection of areas in the vicinity of any or all of its properties and any natural, historic, scenic, or recreational areas within, or in the vicinity of the district, which will promote and provide protection for their park and recreational potential and which will prevent the creation or perpetuation of conditions detracting therefrom.

6. Establish and maintain recreational, cultural, and nature study programs relating to

or benefiting from location within or use of its facilities and premises.

b. Conduct studies and develop recommendations to the present and future protection, use and development in the public interest of the lands, river valleys and waters in, adjacent to, or affecting the upper Mississippi riverway district or boundary areas between party states; and assist in co-ordinating the studies, conservation efforts and planning undertaken by the several departments, agencies or municipalities of the states party to this compact with respect to such lands, river valleys and waters; and assist in the participation by the states party to this compact in federal programs which relate to the present and future protection, use and development in the public interest of such lands, river valleys and waters; with respect to:

1. Joint regional planning for the development of such areas;

2. Measures for controlling air and water pollution, maintaining water quality, and controlling water use;

3. Programs for control of soil and river bank erosion and the general improvement of the river basins;

4. Diversions of waters to and from the rivers;

5. Other restrictions, regulations or programs the commission may recommend to the party states.

c. The commission shall make recommendations, review and correlate studies of the federal government and other agencies, develop plans and evolve findings and do all things necessary and proper to carry out the powers conferred upon the commission by this compact; provided that no recommendation, plan or finding of the commission except with respect to its own properties shall have the force of law or be binding upon or limit the powers of any party state or its departments, agencies or municipalities.

d. All departments, agencies, and officers of party states and their regional and local planning agencies shall co-operate with the commission and shall give the commission reasonable prior notice of plans and activities affecting the responsibilities of the commission.

e. Hold public hearings with respect to any matter within the purview of this compact.

f. Contract with any public or private persons and entities.

g. Do all things necessary or appropriate and incidental to the implementation of powers conferred upon it by this compact.

ARTICLE VI—TAXATION

The commission and its properties shall not be subject to taxation by any of the party states or their subdivisions. In any case where the commission owns property within a subdivision or local taxing district, which pursuant to the laws of that state is subject to state payment in lieu of taxes, if owned by the state, the state in which such subdivision or local taxing district is situated shall assume such liability, if any, for local taxes.

ARTICLE VII—CO-ORDINATED SERVICES

a. Whenever it appears that two or more parks, sites, recreational or cultural attractions or facilities would be enhanced in their usefulness or interest to the public by the co-ordination of particular services or by the common provision thereof, the commission may provide such services or arrange for their provision on a co-ordinated basis. The services referred to in this paragraph may include, but need not be limited to, the development of recreational or other programs utilizing the advantages and attractions of the parks, sites, recreational or cultural attractions or other facilities concerned in an integrated or sequential manner by tourists or other patrons; the advertising and promotion of enjoyment of regional clusters of facilities and attractions; the development and designation of areas containing two or more facilities or attractions; and the development and operation of facilities such as accommodations for the general public which will add to the accessibility or convenience of enjoyment of the facilities and attractions concerned.

b. The commission may act pursuant to this article either with respect to facilities and attractions which are owned and operated by it; owned and operated by other public or nonprofit bodies, or some of which are owned and operated by the commission and some of which are owned and operated by such other bodies. Whenever the commission provides services wholly or partly for other public or nonprofit bodies, it shall do so only by mutual consent and pursuant to sufficient arrangements for the proper allocation of costs and any other responsibilities involved.

ARTICLE VIII—CHARGES AND CONCESSIONS

a. Consistent with the policy of placing and keeping public recreational facilities within the means of the general public, the commission may open any or all of its properties and facilities to the public without charge or may fix and collect reasonable user charges calculated to reimburse it in whole or in part for the cost of the properties in question and their maintenance.

b. The terms of any concession granted by the commission shall be such as to limit the concessionaire to a just and reasonable profit and to assure the reliable performance and continuance of services appropriate to the park and recreational purposes of this compact.

c. Whenever the commission finds that any of its properties or facilities suitable for use by the public may be appropriately operated by a party state or subdivision thereof it may provide, by lease or contract, for such operation. In any such case, the lease or contract shall contain conditions sufficient to assure the maintenance, management and operation of the property or facilities in a manner consistent with the purposes of this compact and the policies of the commission.

ARTICLE IX—FINANCE
Referred to in §27A.6

a. The commission shall submit to the governor or designated officer or officers of each party state budgets of estimated expenditures for such periods as may be required by the laws of that party state for presentation to the legislature thereof.

b. The commission shall make its budgets of estimated expenditures and appropriation requests in two parts: One shall be an "operations budget", and the other shall be a "capital outlay budget".

c. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Such recommendations and requests for appropriations pursuant to an operations budget shall be apportioned equally among the party states. Capital outlay budgets and requests for appropriations therefor shall be on the basis of specific real properties, projects or facilities to be newly constructed, acquired, enlarged or rehabilitated. The primary principle governing requests for appropriations pursuant to capital outlay budgets shall be that the state in which the property, project or facility is to be located shall supply the major part of any appropriated funds necessary for initial construction, acquisition, enlargement or rehabilitation, but that other party states may be requested to contribute thereto if the location of the property, project or facility is such that the people of such other state will be especially benefited thereby. Upon completion of construction, acquisition, enlargement or rehabilitation, subsequent expenditures for administration of the property, project or facility shall be chargeable to the operations budget.

d. The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under article IV "*i*" of this compact or otherwise acquired by it: Provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner.

e. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

f. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

g. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE X—LAND AND WATER USE
Referred to in Article XII(*b*)

a. The commission shall study means of preserving and developing the scenic values of both public and private property. In this connection, it shall consult with appropriate agencies of the party states and their subdivisions within the district, and may acquire scenic or other easements or make such other agreements as may be suitable for preserving or securing patterns or features of land and water use that will be consistent with the purposes of this compact.

b. The commission may assist the party states and any of their subdivisions in studying or formulating measures for land or water use regulation affecting the district and may make recommendations with respect to particular instances of land or water use practice, restrictions or requirements, or the absence thereof.

c. The commission may develop standards for the regulation of the use of land and water resources, including zoning and subdivision control measures, and may make recommendations to the states and their subdivisions with respect to the implementation and application of such standards. The commission upon request shall be entitled to receive notice of any public hearing held prior to the adoption or revision of a zoning or subdivision control law or ordinance and shall have standing to appear and submit either oral or written testimony with respect thereto. The commission also may comment by any appropriate means on any land or water use matter affecting the district with particular reference to the purposes of this compact and the responsibilities of the commission thereunder.

ARTICLE XI—ADVISORY AND TECHNICAL COMMITTEES

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private persons and public officials, and in furthering any of its activities may co-operate with and use the services of any such committees and the organizations which the members represent.

ARTICLE XII—EFFECT ON OTHER LAWS, RIGHTS AND AUTHORITY

Nothing in this compact shall be construed to:

a. Withdraw or limit the jurisdiction of any party state or of the United States over the district or any part thereof.

b. Impair or limit the application of any law or ordinance of a party state or any subdivision thereof to that portion of the district lying within its territory, except as to the necessity for compliance with article X of this compact, and except that the commission shall have power to make and enforce rules and regula-

tions relating to the use of its property and facilities.

c. Make any employee or agent of the commission an employee or agent of any party state or subdivision thereof, or make any entity other than the commission legally responsible for the acts or omissions of the commission, its employees and agents.

ARTICLE XIII—ENTRY INTO FORCE AND WITHDRAWAL

a. This compact shall enter into force when enacted into law by any three of the states of Illinois, Iowa, Minnesota and Wisconsin. Thereafter it shall become effective as to any other named state upon enactment by it into law.

b. The state of Missouri may become a party to the compact by enacting the same into law. In such event the district may be expanded to include such territory within the state of Missouri and such additional territory within the state of Illinois as may be mutually agreeable to the party states and commission.

c. A party state may withdraw from this compact by enacting a statute repealing the same. Any such withdrawal shall take effect five years after the governor of the withdrawing state shall have notified the governors of all other party states in writing of the withdrawal.

d. Upon receipt of a notice of withdrawal, the remaining party states shall determine whether they desire to continue the compact in force among themselves. If they decide to terminate the compact, they shall by timely negotiation and action provide for the winding up of the affairs of the commission and the disposition of its properties.

e. Any state which withdraws from the compact prior to termination thereof as among all the party states shall acquire all real property of the commission situated within its territory by payment to the commission of the fair value thereof at the time when the withdrawal takes effect, less its allocation during the life of the commission for the acquisition of real property.

ARTICLE XIV—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [C71, 73, 75,§27A.1]

Referred to in §§27A.2, 27A.6

27A.2 Membership of commission. The director of the Iowa state conservation commission shall be a permanent member from Iowa of the upper Mississippi riverway commission and may designate an alternate in accordance with article IV *"a"* of the compact. The governor shall appoint the three remaining members from Iowa of the commission. Such members may also be members of another board or commission established by law. The appointment of the remaining three members shall be confirmed by a two-thirds vote of the senate. Vacancies occurring while the general assembly is not in session shall be filled by appointment of the governor and submitted to the senate for confirmation as herein provided, within thirty days of convening of the next regular session of the general assembly. The members so appointed shall serve for a period of four years, except that for the initial appointments, the governor shall appoint one member to serve until June 30, 1969, one member to serve until June 30, 1970, and one member to serve until June 30, 1971. Commission members from this state shall, upon certification by the comptroller, be reimbursed for the actual and necessary expenses incurred by them in the discharge of their duties. [C71, 73, 75,§27A.2]

Referred to in §27A.6

27A.3 Agreements with state agencies. The commission may enter into an agreement with any agency of this state for the inclusion of commission employees in any program of retirement, health, medical, or other benefits for public employees. The employees of the commission shall be placed in the same position regarding obligations, benefits, and eligibility as employees of this state, and the commission shall have responsibility for such employer contributions as may be borne by this state on behalf of its employees who participate in the program. [C71, 73, 75,§27A.3]

27A.4 Payments in lieu of taxes. The state shall make payments in lieu of taxes to compensate for the loss of tax revenues occasioned by the fact that property is owned by the upper Mississippi riverway commission, and thereby exempt from taxation by subdivisions of this state. [C71, 73, 75,§27A.4]

27A.5 No conflict of local functions. Anything in this chapter to the contrary notwithstanding, none of the functions, powers, duties and discretions of the upper Mississippi riverway district or the upper Mississippi riverway commission shall supersede or limit the functions, powers, duties and discretions of counties, townships, school districts, cities, levee districts, drainage districts, levee and drainage districts, or any other governmental subdivision or of their governing officials. [C71, 73, 75, §27A.5]

27A.6 When effective. Sections 27A.2 and the biennial appropriation* shall not be effective until at least two other states enact laws or legislation pursuant to such state's constitution that will allow such state to become a member state to the upper Mississippi river compact. Nothing contained in such compact shall be construed to pledge the general assembly of the state of Iowa to appropriate to the commission any specific funds or money even though such funds or money is requested by the commission pursuant to article IX of the compact; nor shall anything therein contained be construed to or actually effect any transfer of the state of Iowa's rights, title, and interest in and to any of the lands and water within the boundaries of the upper Mississippi riverway district. The upper Mississippi riverway commission and the Iowa members thereof shall not be an agency, board or commission of the state of Iowa; the acts of the commission shall be the acts, only, of the commission and not the state of Iowa. The employees of such commission shall not be employees of the state of Iowa. [C71, 73, 75,§27A.6]

*See 62GA, ch 97,§5

CHAPTER 28

IOWA DEVELOPMENT COMMISSION

28.1 Creation of commission—terms.
28.2 Compensation and expenses.
28.3 Director—duties.
28.4 Commission employees.
28.5 Repealed by 64GA, ch 84,§99.
28.6 Meetings and rules.
28.7 Duties of commission.
28.8 Powers.
28.9 Warrants.
28.10 Planning assistance to governmental agencies.
28.11 Corporation for receiving and disbursing funds.
28.12 and 28.13 Repealed by 64GA, ch 89,§2.
28.14 Incorporators.
28.15 Board of directors.
28.16 Accepting grants in aid.

28.1 Creation of commission—terms. There is hereby created and established a commission to be known as "The Iowa Development Commission", hereinafter referred to as "the commission", to consist of eleven members, all of whom shall be appointed by the governor.

The commission shall be nonpartisan and the members shall be appointed without reference to their political affiliation. The governor shall appoint one of said members as chairman and one as vice chairman. As the terms of the members so appointed shall expire, their successors shall be appointed, each for a term of four years; provided, however, that upon the death, disability, or resignation of any member, the governor shall appoint a person to serve for the unexpired term. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§28.1]

28.2 Compensation and expenses. The members of the commission shall be paid a forty-dollar per diem and shall be reimbursed for their actual and necessary expense incurred in performing their duties as members of the commission. All per diem and expense moneys paid to the members shall be paid from funds appropriated to the commission. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§28.2]

28.3 Director—duties. The director shall be appointed by the governor, subject to the approval of two-thirds of the members of the senate, and shall serve at the pleasure of the governor.

The governor shall fix his compensation which shall be payable out of the funds of the commission. The director shall not be a member of the commission.

A director appointed when the general assembly is not in session shall serve at the pleasure of the governor, but his term shall expire thirty days after the general assembly next convenes, unless during such thirty days he be approved by two-thirds of the members of the senate.

The director shall attend the meetings of the commission and shall serve as its secretary, and shall have general charge of the work of the commission, subject to its orders and direction, and shall serve at the pleasure of the governor. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§28.3]

28.4 Commission employees. The commission shall be empowered to employ such assistants, clerks, and stenographers as its business may require. All said employees shall be paid from the funds hereinafter appropriated to the commission. The director, subject to approval by the governor, may employ administrative assistants or deputies, and shall assign sufficient employees for the purpose of pursuing the development of an Iowa grain alcohol motor fuel industry. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§28.4]

28.5 Repealed by 64GA, ch 84,§99.

28.6 Meetings and rules. The commission shall meet once each month, and shall hold special meetings on call of the chairman. Five members shall constitute a quorum. The commission shall adopt such rules as it may deem necessary to govern its own procedure. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§28.6]

28.7 Duties of commission. It shall be the duty of the commission to:

1. Collect and assemble, or cause to have collected and assembled, all pertinent information available regarding the industrial and agricultural and recreational opportunities and possibilities of the state of Iowa, including raw materials and products that may be produced therefrom; power and water resources; transportation facilities; available markets; the availability of labor; the banking and financing facilities; the availability of industrial sites; the advantages of the state as a whole, and the particular sections thereof, as industrial locations; the development of a grain alcohol motor fuel industry and its related products; and such other fields of research and study as the commission may deem necessary. Such information, as far as possible, shall consider both the encouragement of new industrial enterprises in the state and the expansion of industries now existing within the state, and allied fields to such industries.

2. Acquaint the people of Iowa with the industries located within the state, and the industrial, agricultural, and recreational opportunities existing in the state; and to encourage closer co-operation between the various industries of the state themselves and with the people of the state.

3. Encourage new industrial enterprises to locate in Iowa, by legitimate educational and advertising mediums directed to point out the opportunities of the state as a commercial, industrial, and agricultural field of opportunity, and by solicitation of industrial enterprises.

4. Aid in the promotion and development of manufacturing in Iowa, the Iowa development commission, may adopt a label or trade-mark bearing the words "Made in Iowa" or "Product of Iowa" together with any other appropriate design or inscription and this label or trade-mark shall be registered in the office of the secretary of state.

a. The Iowa development commission shall have the right to register or file such label or trade-mark under the laws of the United States or any foreign country which permits such registration, making such registration as an association or through an individual for the use and benefit of the Iowa development commission.

b. The commission shall grant authority to use such label or trade-mark to such persons or firms who make a satisfactory showing to the commission that the products on which the label or trade-mark is to be used are bona fide Iowa products. Such trade-mark or label use shall be registered with the commission.

c. No person, firm, partnership, or corporation shall use the said label or trade-mark or advertise the same, or attach the same on any manufactured article or agricultural product except as provided herein.

5. Encourage the traveling public to visit Iowa, by the disseminating of information as to the natural advantages of the state, its lakes and resorts, and its highways and other facilities for transient travel.

6. Do such other and further acts as shall, in the judgment of the commission, be necessary and proper in fostering and promoting the industrial and agricultural development and economic welfare of the state of Iowa.

7. Provide that any inventor whose research is funded in whole or in part by the state shall assign to the state such a proportionate part of his rights to a letter patent to the state. Royalties or earnings derived from a letter patent shall be paid to the treasurer of state and credited by him to the general fund of the state.

8. Advise, consult, and co-operate with the agricultural marketing division of the department of agriculture in the promotion of Iowa agricultural products. [S13,§§3138-c1,-c2,-c3,-c5; C24, 27, 31, 35, 39,§§**9876, 9878, 9879, 9881–9883**; C46,§§28.7, 549.1, 549.3, 549.4, 549.6–549.8; C50, 54, 58, 62, 66, 71, 73, 75,§28.7]

Referred to in §548.13(4)

28.8 Powers. In the performing of its duties, the commission is hereby empowered and authorized to make and enter into contracts, and to generally do all such things as in its judgment may be necessary, proper and expedient in accomplishing its duties herein enumerated; provided, however, that as far as may be practicable in performing its duties in connection with the collection and assembling of information, the commission shall co-operate with boards, commissions, agencies and institutions of this state, and shall have access to any and all records, data, information and statistics of such other boards, commissions, agencies and institutions of this state, and upon such terms as may be mutually agreed upon to have such studies and research conducted as may be necessary and proper, the cost thereof to be paid out of the funds hereinafter appropriated to the commission.

The commission is authorized to seek advice and counsel of informed individuals, or any agricultural, industrial, professional, labor or trade association, or business or civic group in the accomplishment of the aims and objectives of this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§28.8]

28.9 Warrants. The comptroller is authorized and directed to draw warrants on the treasurer of state for the several sums and for the purposes specified in this chapter upon duly itemized and verified vouchers that have been approved by the chairman or director of the commission. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§28.9]

Constitutionality, 51GA, ch 63,§12

28.10 Planning assistance to governmental agencies. To insure the economic and orderly development of the state, the Iowa development commission is authorized to:

1. Perform state and interstate comprehensive planning and related activities.

2. Perform planning for metropolitan or regional areas or areas of rapid urbanization including interstate areas.

3. Provide planning assistance to cities, other municipalities, counties, groups of adjacent communities, metropolitan and regional areas, and official governmental planning agencies.

4. To assist public or private universities and colleges and urban centers to:

a. Organize, initiate, develop, and expand programs which will provide special training in skills needed for economic and efficient community development.

b. Support state and local research that is needed in connection with community development.

5. Apply for, receive, contract for, and expend federal funds and grants and funds and grants from other sources. [C62, 66, 71, 73, 75, §28.10]

28.11 Corporation for receiving and disbursing funds. The Iowa development commission is hereby authorized to form a corporation under the provisions of chapter 504 for the purpose of receiving and disbursing funds from public or private sources to be used to further the overall development and well-being of the state. [C66, 71, 73, 75,§28.11]

Referred to in §§28.14, 28.15, 28.16

28.12 and 28.13 Repealed by 64GA, ch 89,§2.

28.14 Incorporators. The incorporators of the corporation formed under sections 28.11, 28.15 and 28.16, shall be:

1. The chairman of the Iowa development commission.

2. The director of the Iowa development commission.

3. A member of the Iowa development commission selected by the chairman. [C66, 71, 73, 75,§28.14]

Referred to in §§28.15, 28.16

28.15 Board of directors. The board of directors of the corporation formed under sections 28.11, 28.14 and 28.16 shall be the members of the Iowa development commission or their successors in office. [C66, 71, 73, 75,§28.15]

Referred to in §§28.14, 28.16

28.16 Accepting grants in aid. The corporation formed under sections 28.11, 28.14 and 28.15 is hereby authorized to accept grants of money or property from the federal government or any other source and may upon its own order use its money, property or other resources for any of the purposes herein. [C66, 71, 73, 75,§28.16]

Referred to in §§28.14, 28.15

CHAPTER 28A

OFFICIAL MEETINGS OPEN TO PUBLIC

Referred to in §20.17(3), 279.15, 279.24, 605.28

28A.1 Closed meetings prohibited.
28A.2 Citizen's right to be present.
28A.3 Closed session by vote of members.
28A.4 Advance notice of meetings.
28A.5 Minutes kept.
28A.6 Exceptions.
28A.7 Enforcement of rights.
28A.8 Penalty.

28A.1 Closed meetings prohibited. All meetings of the following public agencies shall be public meetings open to the public at all times, and meetings of any public agency which are not open to the public are prohibited, unless closed meetings are expressly permitted by law:

1. Any board, council, or commission created or authorized by the laws of this state.

2. Any board, council, commission, trustees, or governing body of any county, city, township, school corporation, political subdivision, or tax-supported district in this state.

3. Any committee of any such board, council, commission, trustees, or governing body.

Wherever used in this chapter, "public agency" or "public agencies" includes all of the foregoing, and "meeting" or "meetings" includes all meetings of every kind, regardless of where the meeting is held, and whether formal or informal. [C71, 73, 75,§28A.1]

28A.2 Citizen's right to be present. Every citizen of Iowa shall have the right to be present at any such meeting. However, any public agency may make and enforce reasonable rules for conduct of persons attending its meetings and situations where there is not enough room for all citizens who wish to attend a meeting. [C71, 73, 75,§28A.2]

28A.3 Closed session by vote of members. Any public agency may hold a closed session by affirmative vote of two-thirds of its members present, when necessary to prevent irreparable and needless injury to the reputation of an individual whose employment or discharge is under consideration, or to prevent premature disclosure of information on real estate proposed to be purchased, or for some other exceptional reason so compelling as to override the general public policy in favor of public meetings. The vote of each member on the question of holding the closed session and the reason for the closed session shall be en-

tered in the minutes, but the statement of such reason need not state the name of any individual or the details of the matter discussed in the closed session. Any final action on any matter shall be taken in a public meeting and not in closed session, unless some other provision of the Code expressly permits such action to be taken in a closed session. No regular or general practice or pattern of holding closed sessions shall be permitted. [C71, 73, 75,§28A.3]

Referred to in §372.13

28A.4 Advance notice of meetings. Each public agency shall give advance public notice of the time and place of each meeting, by notifying the communications media or in some other way which gives reasonable notice to the public. When it is necessary to hold an emergency meeting without notice, the nature of the emergency shall be stated in the minutes. [C71, 73, 75,§28A.4]

28A.5 Minutes kept. Each public agency shall keep minutes of all its meetings showing the time and place, the members present, and the action taken at each meeting. The minutes shall be public records open to public inspection. [C71, 73, 75,§28A.5]

28A.6 Exceptions. This chapter does not apply to any court, jury, or military organization. [C71, 73, 75,§28A.6]

28A.7 Enforcement of rights. The provisions of this chapter and all rights of citizens under this chapter may be enforced by mandamus or injunction, whether or not any other remedy is also available. In the alternative, rights under this chapter also may be enforced by an action for judicial review according to the provisions of the Iowa administrative procedure Act, if the meeting involved is a meeting of an "agency" as defined in that Act. [C71, 73, 75,§28A.7]

28A.8 Penalty. Any person knowingly violating or attempting to violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars. [C71, 73, 75,§28A.8]

CHAPTER 28B

INTERSTATE CO-OPERATION COMMISSION

28B.1 Membership of commission.
28B.2 Purpose.
28B.3 Committees.
28B.4 Report.

28B.1 Membership of commission. The Iowa commission on interstate co-operation is hereby established. It shall consist of thirteen members to be appointed as follows:

1. Five members of the senate to be appointed by the president thereof.

2. Five members of the house of representatives to be appointed by the speaker of the house.

3. Three administrative officers to be appointed by the governor.

Appointments shall be made during April of the first regular session of the general assembly. Members shall take office on May 1 following their appointment and serve until their successors are appointed and take office.

The governor, the president of the senate and the speaker of the house of representatives shall be ex officio honorary nonvoting members of the commission.

The director of the legislative service bureau shall serve as secretary of the commission. [C62, 66, 71, 73, 75,§28B.1]

28B.2 Purpose. It shall be the function of this commission:

1. To carry forward the participation of this state as a member of the council of state governments.

2. To encourage and assist the legislative, executive, administrative and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise, with officials and employees of the other states, of the federal government, and of local units of government.

3. To encourage co-operation between this state and other units of government in the adoption of compacts and uniform laws and in working relationships with officials of other states. [C62, 66, 71, 73, 75,§28B.2]

28B.3 Committees. The commission shall establish such committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure intergovernmental harmony, and may perform other functions for the commission in obedience to its decision. Subject to the approval of the commission, the member or members of each such committee shall be appointed by the chairman of the commission. State officials or employees who are not members of the commission on interstate co-operation may be appointed as members of any such committee. The commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such committee. [C62, 66, 71, 73, 75, §28B.3]

28B.4 Report. The commission shall report to the governor and to the legislature within fifteen days after the convening of each gen-

eral assembly, and at such other time as it deems appropriate. Its members and the members of all committees which it establishes shall be reimbursed for their travel and other necessary expenses in carrying out their obligations under this chapter and legislative members shall be paid a per diem of forty dollars for each day in which engaged in the performance of their duties, such per diem and legislators' expenses to be paid from funds appropriated by sections 2.10 and 2.12. Expenses of administrative officers, state officials, or state employees who are members of the Iowa commission on interstate co-operation or a committee appointed by the commission shall be paid from funds appropriated to the agencies or departments which such persons represent except as may otherwise be provided by the general assembly. Expenses of citizen members who may be appointed to committees of the commission may be paid from funds as authorized by the general assembly. Expenses of the secretary or employees of the secretary and support services in connection with the administration of the commission shall be paid from funds appropriated to the legislative service bureau unless otherwise provided by the general assembly. Expenses of commission members shall be paid upon approval of the chairman or the secretary of the commission. [C62, 66, 71, 73, 75,§28B.4; 66GA, ch 1,§2]

CHAPTER 28C

INTERAGENCY LIAISON COMMITTEE

28C.1 Committee created—duties.

28C.1 Committee created — duties. The commissioner of the department of social services, the board of regents, the commissioner of health, the commissioner of the department of public instruction, vocational rehabilitation and the director of job service shall meet together annually the first week in April. Such meetings shall be called by the commissioner of health acting as chairman of the annual meeting, for the purpose of co-ordinating and integrating activities which involve the personnel of two or more divisions, and shall designate one representative from each of their agencies as a member of an interagency liaison committee. This committee shall meet at least quarterly to consider areas of mutual joint interest and responsibility. Minutes shall be kept of such meetings and made available to the legislature. It shall select a chairperson who shall be responsible to implement decisions reached by the committee. All activities, which would involve personnel from two or more of these agencies, shall be presented to each board concerned by the committee representative of that board or administrative head at any regular meeting or at the annual joint meeting. When approved by the board or administrative head of each agency involved, the activities will be implemented by the chairperson of the interagency liaison committee which, however, may delegate responsibility to the most appropriate person for carrying out the work. [C62, 66, 71, 73, 75,§28C.1; 66GA, ch 1068,§1]

CHAPTER 28D

INTERCHANGE OF FEDERAL, STATE AND LOCAL GOVERNMENT EMPLOYEES

Referred to in §§93.3, 476A.13

28D.1 Declaration of policy.
28D.2 Definitions.
28D.3 Authority to interchange employees.
28D.4 Status of employees.
28D.5 Travel expenses.
28D.6 Status of certain employees.
28D.7 Travel expenses.
28D.8 Administration.

28D.1 Declaration of policy. The state of Iowa recognizes that intergovernmental co-operation is an essential factor in resolving problems affecting this state and that the interchange of personnel between and among governmental agencies at the same or different levels of government is a significant factor in achieving such co-operation.| [C66, 71, 73, 75, §28D.1]

28D.2 Definitions. For the purposes of this chapter:

1. "Sending agency" means any department or agency of the federal government or a state or local government which sends any employee thereof to another government agency under this chapter.

2. "Receiving agency" means any department or agency of the federal government or

a state or local government which receives an employee of another government under this chapter. [C66, 71, 73, 75,§28D.2]

28D.3 Authority to interchange employees.

1. Any department, agency, or instrumentality of the state, county, city, municipality, land-grant college, or college or university operated by the state or any local government is authorized to participate in a program of interchange of employees with departments, agencies, or instrumentalities of the federal government, another state or locality, or other agencies, municipalities, or instrumentalities of this state as a sending or receiving agency.

2. The period of individual assignment or detail under an interchange program shall not exceed twenty-four months, except that an employee may be assigned for an additional twenty-four-month period upon the agreement of the employee and both the sending and receiving agencies. No employee shall be assigned or detailed without his expressed consent or by using undue coercion to obtain said consent. Details relating to any matter covered in this chapter may be the subject of an agreement between the sending and receiving agencies. Elected officials shall not be assigned from a sending agency nor detailed to a receiving agency. [C66, 71, 73, 75,§28D.3]

Referred to in §28D.4

28D.4 Status of employees.

1. Employees of a sending agency participating in an exchange of personnel as authorized in section 28D.3 may be considered during such participation to be:

a. On detail to regular work assignments of the sending agency, or

b. In a status of leave of absence from their positions in the sending agency.

2. Employees who are on detail shall be entitled to the same salary and benefits to which they would otherwise be entitled and shall remain employees of the sending agency for all other purposes except that the supervision of their duties during the period of detail may be governed by agreement between the sending agency and the receiving agency.

3. Employees who are in a leave of absence status as provided herein shall be carried on leave without pay; except they may be granted annual leave or other time off with pay to the extent authorized by law and may be granted authorized sick leave in circumstances considered by the sending agency to justify such leave. Except as otherwise provided in this chapter, employees who are in a leave of absence status shall have the same rights, benefits, and obligations as employees generally who are in such leave status but notwithstanding any other provision of law such employees may be entitled to credit the period of such assignment toward benefits as employees of the sending agency.

4. Any employee who participates in an exchange under the terms of this section who suffers disability or death as a result of personal injury arising out of and in the course of an exchange, or sustained in performance of duties in connection therewith, shall be treated, for the purposes of the sending agency's employee compensation program, as an employee, as defined in such Act, who has sustained such injury in the performance of such duty, but shall not receive benefits under that Act for any period for which he is entitled to and elects to receive similar benefits under the receiving agency's employee compensation program. [C66, 71, 73, 75,§28D.4]

28D.5 Travel expenses. A sending agency in this state may, in accordance with the travel regulations of such agency, pay the travel expenses of employees assigned to a receiving agency on either a detail or leave basis, but shall not pay the travel expenses of such employees incurred in connection with their work assignments at the receiving agency. If the assignment or detail will be for a period of time exceeding eight months, travel expenses may include expenses of transportation of immediate family, household goods, and personal effects to and from the location of the receiving agency. If the period of assignment is less than eight months, the sending agency may pay a per diem allowance to the employee on assignment or detail. [C66, 71, 73, 75,§28D.5]

28D.6 Status of certain employees.

1. When any unit of government of this state acts as a receiving agency, employees of the sending agency who are assigned under authority of this chapter may be given appointments in the receiving agency covering the periods of such assignments, with compensation to be paid from receiving agency funds or without compensation, or be considered to be on detail to the receiving agency.

2. Appointments of persons so assigned may be made without regard to the laws or regulations governing the selection of employees of the receiving agency.

3. Employees who are detailed to the receiving agency shall not by virtue of such detail be considered to be employees thereof, except as provided in subsection 4. The supervision of the duties of such employees, as well as the contribution of each agency to the salary or wage of such employees during the period of detail, may be governed by agreement between the sending agency and the receiving agency. The agreement shall be subject to the approval of the executive council for state participation and the local governing body in the case of an agreement involving a political subdivision of the state.

4. Any employee of a sending agency assigned in this state who suffers disability or death as a result of personal injury arising out of and in the course of such assignment, or sustained in the performance of duties in connection therewith, shall be treated for the purpose of receiving agency's employee compen-

sation program, as an employee, as defined in such Act, who has sustained such injury in the performance of such duty, but shall not receive benefits under that Act for any period for which he elects to receive similar benefits as an employee under the sending agency's employee compensation program. [C66, 71, 73, 75,§28D.6]

28D.7 Travel expenses. A receiving agency in this state may, in accordance with the travel regulations of such agency, pay travel expenses of persons assigned thereto under this chapter during the period of such assignments on the same basis as if they were regular employees of the receiving agency. [C66, 71, 73, 75,§28D.7]

28D.8 Administration. The Iowa merit employment department is hereby directed to explore means of implementing this chapter and to assist departments, agencies, and instrumentalities of the state and its political subdivisions in participating in employee interchange programs. [C66, 71, 73, 75,§28D.8]

CHAPTER 28E

JOINT EXERCISE OF GOVERNMENTAL POWERS

Referred to in §§28F.1, 253.11, 278.1, 309.19, 357B.3, 359.42, 361.3, 364.5, 384.76, 392.4, 455B.23, 455.32(10), 476A.13

28E.1 Purpose.
28E.2 Definitions.
28E.3 Joint exercise of powers.
28E.4 Agreement with other agencies.
28E.5 Specifications.
28E.6 Additional provisions.
28E.7 Obligations not excused.
28E.8 Filing and recording.
28E.9 Status of interstate agreement.
28E.10 Approval of statutory officer.
28E.11 Agency to furnish aid.
28E.12 Contract with other agencies.
28E.13 Powers are additional to others.
28E.14 No limitation on contract.
28E.15 District agency.
28E.16 Election for bonds.
28E.17 Transit policy—joint agreement—city debt.
28E.18 to 28E.20 Reserved.

UNIFIED LAW ENFORCEMENT

28E.21 Definition.
28E.22 Referendum for tax.
28E.23 Budget.
28E.24 Expansion of district.
28E.25 City civil service and retirement.
28E.26 Duration of agreements for law enforcement purposes.

28E.1 Purpose. The purpose of this chapter is to permit state and local governments in Iowa to make efficient use of their powers by enabling them to provide joint services and facilities with other agencies and to co-operate in other ways of mutual advantage. This chapter shall be liberally construed to that end. [C66, 71, 73, 75,§28E.1]

28E.2 Definitions. For the purposes of this chapter, the term "public agency" shall mean any political subdivision of this state; any agency of the state government or of the United States; and any political subdivision of another state. The term "state" shall mean a state of the United States and the District of Columbia. The term "private agency" shall mean an individual and any form of business organization authorized under the laws of this or any other state. [C66, 71, 73, 75,§28E.2]

Referred to in §§28F.2, 361.1, 455B.75

28E.3 Joint exercise of powers. Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having such power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency. [C66, 71, 73, 75,§28E.3]

28E.4 Agreement with other agencies. Any public agency of this state may enter into an agreement with one or more public or private agencies for joint or co-operative action pursuant to the provisions of this chapter, including the creation of a separate entity to carry out the purpose of the agreement. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies involved shall be necessary before any such agreement may enter into force. [C66, 71, 73, 75,§28E.4]

28E.5 Specifications. Any such agreement shall specify the following:

1. Its duration.

2. The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created.

3. Its purpose or purposes.

4. The manner of financing the joint or co-operative undertaking and of establishing and maintaining a budget therefor.

5. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

6. Any other necessary and proper matters. [C66, 71, 73, 75,§28E.5]

28E.6 Additional provisions. If the agreement does not establish a separate legal entity to conduct the joint or co-operative undertaking, the agreement shall also include:

1. Provision for an administrator or a joint board responsible for administering the joint or co-operative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.

2. The manner of acquiring, holding and disposing of real and personal property used in the joint or co-operative undertaking. [C66, 71, 73, 75,§28E.6]

28E.7 Obligations not excused. No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, said performance may be offered in satisfaction of the obligation or responsibility. [C66, 71, 73, 75,§28E.7]

28E.8 Filing and recording. Before entry into force, an agreement made pursuant to this chapter shall be filed with the secretary of state and recorded with the county recorder. [C66, 71, 73, 75,§28E.8]

28E.9 Status of interstate agreement. If an agreement entered into pursuant to this chapter is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States said agreement shall have the status of an interstate compact. Such agreements shall, before entry into force, be approved by the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state.

In any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest, and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state. [C66, 71, 73, 75,§28E.9]

28E.10 Approval of statutory officer. If an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction. [C66, 71, 73, 75,§28E.10]

28E.11 Agency to furnish aid. Any public agency entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or co-operative undertaking by providing such personnel or services therefor as may be within its legal power to furnish. [C66, 71, 73, 75,§28E.11]

28E.12 Contract with other agencies. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties. [C66, 71, 73, 75,§28E.12]

28E.13 Powers are additional to others. The powers granted by this chapter shall be in addition to any specific grant for intergovernmental agreements and contracts. [C66, 71, 73, 75,§28E.13]

28E.14 No limitation on contract. Any contract or agreement authorized by this chapter shall not be limited as to period of existence, except as may be limited by the agreement or contract itself. [C66, 71, 73, 75,§28E.14]

28E.15 District agency. A planning commission, council of governments or similar organization formed under the provisions of this chapter shall, upon designation as such by the governor, serve as a district, regional or metropolitan agency for comprehensive planning for its area for the purpose of carrying out the functions as defined for such agency by federal, state and local laws and regulations. [C73, 75,§28E.15]

28E.16 Election for bonds. When bonds which require a vote of the people are to be issued for financing joint facilities of a county and one or more cities within the county, pursuant to an agreement made under the authority of this chapter, or pursuant to other provisions of law, the board of supervisors and the council of each city shall arrange for a single election on the question of issuing the bonds, but if the county and the cities are proposing

to make separate bond issues, the ballot shall contain separate questions, one to be voted upon by all voters of the county, and one or more to be voted upon only by the voters of the city which is to make a separate bond issue. [C75,§28E.16]

28E.17 Transit policy — joint agreement — city debt.

1. It is the public policy of this state to encourage the establishment or acquisition of urban mass transit systems and the equipment, maintenance and operation thereof by public agencies in co-operation with, and with the assistance of the urban mass transportation administration of the United States department of transportation, pursuant to the provisions of the Urban Mass Transportation Act of 1964, as amended, Title 49, sections 1601 et seq., United States Code, which requires unification or official co-ordination of local mass transportation services on an area-wide basis as a condition of such assistance.

2. An agreement between one or more cities and other public agencies for this purpose may be made and carried out without an election and the agency created thereby may jointly exercise through a board of trustees as provided by the agreement all the rights, powers, privileges and immunities of cities related to the provision of mass transportation services, except the authority to incur bonded indebtedness.

3. A city which is a party to a joint transit agency may issue general corporate purpose bonds for the support of a capital program for the joint agency in the following manner:

a. The council shall give notice and conduct a hearing on the proposal in the manner set forth in section 384.25. However, the notice must be published at least ten days prior to the hearing, and if a petition valid under section 362.4 is filed with the clerk of the city prior to the hearing, asking that the question of issuing the bonds be submitted to the qualified electors of the city, the council shall either by resolution declare the proposal abandoned or shall direct the county commissioner of elections to call a special election to vote upon the question of issuing the bonds. Notice of the election and its conduct shall be in the manner provided in section 384.26.

b. If no petition is filed, or if a petition is filed and the proposition of issuing bonds is approved at the election, the council may proceed with the authorization and issuance of the bonds.

An agreement may provide for full or partial payment from transit revenues to the cities for meeting debt service on such bonds.

This subsection shall be construed as granting additional power without limiting the power already existing in cities, and as providing an alternative independent method for the carrying out of any project for the issuance and sale of bonds for the financing of a city's share of a capital expenditures project of a joint transit agency, and no further proceedings with respect to the authorization of the bonds shall be required. [C75,§§28G.1–28G.4; 66GA, ch 203,§3]

28E.18 to 28E.20 Reserved.

UNIFIED LAW ENFORCEMENT

28E.21 Definition. For the purpose of this division, the term "unified law enforcement district" means a district established by agreement under the provisions of this chapter by counties, or portions thereof, or cities to provide law enforcement within the boundaries of the member political subdivisions. [66GA, ch 1072,§1]

28E.22 Referendum for tax. In every county that establishes a unified law enforcement district, the board of supervisors may, and upon receipt of a petition signed by five percent of the qualified electors residing in the unified law enforcement district shall, submit a proposition to the county electorate residing in the unified law enforcement district at any countywide election providing for the establishment of a public safety fund and the levy of a tax on taxable property located in the unified law enforcement district at rates not exceeding the rate specified in section 28E.23 for the purpose of providing additional moneys for the operation of the unified law enforcement district.

At the election the ballot shall be prepared in substantially the form for submitting special questions at general elections and the form of the proposition shall be substantially as follows:

"Shall a tax the amount of which will not exceed the amount which would be raised by a uniform one dollar and sixty-two cents per thousand dollars of assessed value of the taxable property in the unified law enforcement district be authorized for a period of not exceeding five years?"

Yes ☐ No ☐

Such moneys collected pursuant to the tax levy shall be in addition to other federal, state, and local moneys available for law enforcement purposes to the county and cities located in the unified law enforcement district. A county or city which is included in a unified law enforcement district shall not reduce the percent of its total general fund budget used for law enforcement purposes because of additional moneys collected pursuant to the voted levy.

If a majority of the qualified electors voting on the proposition approve the proposition, the board of supervisors shall levy the tax as provided in section 28E.23. [66GA, ch 1072,§2]

28E.23 Budget. The auditor of each county in which a unified law enforcement district is

located shall, in conjunction with the county sheriff, or administrative director of the law enforcement agency, on or before January 10 of each year make an estimate of the amount of revenue deemed necessary for the operation of the unified law enforcement district and in conjunction with the county board of supervisors and the city councils of the unified law enforcement district determine the amount of revenue available from sources other than the tax levy authorized by this division and determine the amount of revenue needed to be raised by the tax levy authorized by this division under the terms of an agreement executed under the provisions of this chapter. The auditor of each such county shall then transmit the budget estimate in dollars to the county board of supervisors and to the city councils located within the unified law enforcement district.

The amount of the tax shall not exceed the amount which would be raised by a uniform one dollar and sixty-two cents per thousand dollars of assessed value on all taxable property in the unified law enforcement district. The method of computing the tax levy shall be determined by the county board of supervisors unless the agreement under this chapter specifies a method.

The county board of supervisors and the council of each city located within the unified law enforcement district shall review the proposed budget and anticipated revenue and certify a tax levy to the county auditor on the assessed value of the taxable property in the unified law enforcement district which shall be determined by one of the following methods:

1. Levies based upon population computed as follows:

a. Compute the per capita cost by dividing the anticipated total cost to the unified law enforcement district as determined pursuant to this section into the total population of the district.

b. Separate levies for the public safety fund shall be computed for all of the unincorporated area and for each incorporated area in the unified law enforcement district. The levies shall in each case be that amount which, when applied to the assessed value in the area for which the levy is computed, will raise an amount equal to the per capita cost of the unified law enforcement to the unified law enforcement district multiplied by the population of the district; or

2. Different levies for each city and the unincorporated area of the county located in the unified law enforcement district based upon the percentage of service to be provided to each political subdivision in the district.

The council of any city or the county board of supervisors may veto the budget and the auditor and county sheriff shall revise the budget until it has the approval of the county board of supervisors and councils of all cities in the unified law enforcement district.

The taxes collected pursuant to the tax levy and other funds available to the unified law enforcement district shall be placed in the public safety fund and used only for unified law enforcement purposes. [66GA, ch 1072,§3]

Referred to in §28E.22

28E.24 Expansion of district. Cities may join an established unified law enforcement district upon the affirmative vote of the city council and a tax may be levied for unified law enforcement purposes only upon the affirmative vote of qualified electors of the city voting in the manner provided in this division. A city joining a unfied law enforcement district shall contract with the unified law enforcement district for services until the beginning of a fiscal year when the city may become a member.

A unified law enforcement district may encompass more than one county. [66GA, ch 1072,§4]

28E.25 City civil service and retirement. The inclusion of a city in a unified law enforcement district shall not affect the prior establishment of a civil service system under chapter 400 or a pension or retirement system under either chapter 410 or 411. [66GA, ch 1072,§5]

28E.26 Duration of agreements for law enforcement purposes. An agreement under this chapter to provide joint or co-operative services or facilities for law enforcement purposes shall not be executed for less than a three-year period. [66GA, ch 1072,§6]

CHAPTER 28F

JOINT FINANCING OF PUBLIC WORKS AND FACILITIES

28F.1 Scope of chapter.
28F.2 Definitions.
28F.3 Revenue bonds.
28F.4 Use of proceeds—negotiability.
28F.5 Source of payment—rates and charges, pledge of revenues.
28F.6 Bonds not debts of the public agencies.
28F.7 Operation of project.
28F.8 Details of revenue bonds.
28F.9 Issuance of bond anticipation notes.
28F.10 Refunding bonds.
28F.11 Eminent domain.
28F.12 Additional powers of the entity.

28F.1 Scope of chapter. This chapter is intended to provide a means for the joint financing by public agencies of works or facilities useful and necessary for the collection, treatment, purification and disposal in a sanitary manner of liquid and solid waste, sewage, and industrial waste, also water supply systems, swimming pools or golf courses. The provisions of this chapter shall be deemed to apply to the acquisition, construction, reconstruction, ownership, operation, repair, extension or improvement of such works or facilities, by a separate administrative or legal entity created pursuant to chapter 28E. When the legal entity created under this chapter is comprised solely of cities, counties, and sanitary districts established under chapter 358, or any combination thereof, the entity shall be both a corporation and a political subdivision with the name under which it was organized. The legal entity may sue and be sued, contract, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter the same at pleasure, and execute all the powers conferred in this chapter. [C71, 73, 75,§28F.1; 66GA, ch 1069,§1, ch 1070,§1]

Referred to in §§28F.2, 28F.3

28F.2 Definitions. The terms "public agency", "state", and "private agency" shall have the meanings prescribed by section 28E.2. The term "project" or "projects" shall mean any works or facilities referred to in section 28F.1 and shall include all property real and personal, pertinent thereto or connected with such project or projects, and the existing works or facilities, if any, to which such project or projects are an extension, addition, betterment or improvement. [C71, 73, 75, §28F.2]

28F.3 Revenue bonds. An entity created to carry out an agreement authorizing the joint exercise of those governmental powers enumerated in section 28F.1 shall have power to construct, acquire, own, repair, improve, expand, operate and maintain a project or projects necessary to carry out the purposes of such agreement, and to issue from time to time revenue bonds payable from the revenues derived from such project or projects, or any combination of such projects, to finance the cost or part of the cost of the acquisition, construction, reconstruction, repair, extension or improvement of such project or projects, including the acquisition for the purposes of such agreement, of any property, real or personal or mixed therefor. The power of the entity to issue revenue bonds shall not be exercised until authorized by resolution duly adopted by each of the public agencies participating in such agreement. Public agencies participating in such an agreement may not withdraw or in any way terminate, amend, or modify in any manner to the detriment of the bondholders said agreement if revenue bonds or obligations issued in anticipation of the issuance of said revenue bonds have been issued and are then outstanding and unpaid as provided for herein. Any revenue bonds for the payment and discharge of which, upon maturity or upon redemption prior to maturity, provision has been made through the setting apart in a reserve fund or special trust account created pursuant to this chapter to insure the payment thereof, of moneys sufficient for that purpose or through the irrevocable segregation for that purpose in a sinking fund or other fund or trust account of moneys sufficient therefor, shall be deemed to be no longer outstanding and unpaid within the meaning of any provision of this chapter. [C71, 73, 75,§28F.3; 66GA, ch 1069,§2, ch 1071,§1]

Referred to in §28F.4

28F.4 Use of proceeds—negotiability. Revenue bonds may be issued, as provided in section 28F.3, to provide all or any part of the funds required to finance the cost of the acquisition, construction, reconstruction, repair, extension or improvement of any project or projects or other purposes authorized under this chapter and such cost shall include, but shall not be limited to, administrative expenses, acquisition and construction costs, engineering, fiscal or financial and legal expenses, surveys, plans and specifications, interest during such construction, reconstruction, repair, extension or improvement or acquisition and for one year after completion of such construction, reconstruction, repair, extension or improvement or after acquisition of the project or projects, initial reserve funds, acquisition of real or personal property, including franchises, and such other costs as are necessary and incidental to the construction, reconstruction, repair, extension or improvement, or acquisition of such project or projects and the financing thereof. Such an entity shall have the power to retain and enter into agreements with engineers, fiscal agents, financial advisers, attorneys, architects or other consultants or advisers for planning, supervision and financing of such project or projects upon such terms and conditions as shall be deemed advisable and in the best interest of the entity. Bonds issued under the provisions of this chapter are declared to be investment securities under the laws of the state of Iowa. [C71, 73, 75,§28F.4]

28F.5 Source of payment — rates and charges, pledge of revenues. Such an entity shall have the power to pledge all or part of the net revenues of a project or projects to the payment of the principal of and interest on the bonds issued pursuant to this chapter and shall provide by resolution authorizing the issuance of said bonds that such net revenues of the project or projects shall be set apart in a sinking fund for that purpose and kept separate and distinct from all other revenues of the entity. The principal of and interest on the bonds so issued shall be secured by a pledge of such net revenues of the project or projects in the manner and to the extent pro-

vided in the resolution authorizing the issuance of said bonds.

Such an entity shall have the power to fix, establish and maintain such rates, tolls, fees, rentals or other charges and collect the same from the public agencies participating in the agreement or from private agencies or persons for the payment of the services and facilities provided by said project or projects. Such rates, tolls, fees, rentals or other charges shall be so fixed, established and maintained and revised from time to time whenever necessary as will always provide revenues sufficient to pay the cost of maintaining, repairing and operating the project or projects, to pay the principal of and interest on the bonds then outstanding which are payable therefrom as the same become due and payable, to provide adequate and sufficient reserves therefor, to provide for replacements, depreciations and necessary extensions and enlargements and to provide a margin of safety for the making of such payments and providing such reserves. Notwithstanding the foregoing such an entity shall have the further right to pledge to the payment of the bonds issued pursuant to this chapter, in addition to the net revenues of the project or projects pledged therefor, such other moneys that it may have and which are lawfully available therefor.

In order to pay the rates, tolls, fees, rentals or other charges levied against a public agency by an entity for the payment of the services and facilities provided by a project or projects authorized by this chapter, public agencies participating in such an agreement shall have the power by ordinance to fix, establish and maintain, rates or other charges for the use of and the services and facilities rendered by said project or projects. Such rates or charges may be so fixed, established and maintained and revised from time to time whenever necessary as will always provide such public agencies with sufficient revenue to pay the rates, tolls, fees, rentals or other charges levied against it by the entity for the payments of the services and facilities provided by said project or projects. All such rates or charges to be paid by the owners of real property, if not paid as by the ordinance provided, when due, shall constitute a lien upon such real property served by such project or projects, and shall be collected in the same manner as general taxes. [C71, 73, 75,§28F.5]

Referred to in §28F.6

28F.6 Bonds not debts of the public agencies. The principal of and interest on the bonds issued by an entity under the provisions of this chapter shall be payable solely from and secured by the net revenues of the project or projects and from other funds of the entity lawfully available therefor as provided in section 28F.5 and said bonds shall not in any respect be a general obligation of any public agency participating in said entity nor shall the entity or any public agency participating in said entity be in any manner liable by reason of such net revenues or other funds being insufficient to pay said bonds. All bonds issued by the entity shall contain a recital on their face that neither the payment of the principal nor any part thereof nor any interest thereon constitutes a debt, liability or obligation of any of the public agencies participating in the agreement creating such entity or of the entity itself, except that the entity shall be liable for the payment of such bonds from the net revenues derived from the project or projects and from the other moneys lawfully available therefor and pledged thereto pursuant to the provisions of the resolution which authorized their issuance. Said bonds issued by the entity shall be authorized by resolution which may be adopted at the same meeting at which it was introduced by a majority of the members of the governing body of the entity. The terms, conditions and provisions for the authorization, issuance, sale, and security of said bonds and of the holders thereof shall be set forth in said resolution. [C71, 73, 75,§28F.6]

28F.7 Operation of project. Such an entity shall operate, maintain and preserve the project or projects in good repair and working order, and shall operate the project or projects in an efficient and economical manner, provided, however, that the entity may lease or rent the project or projects or any part thereof, or otherwise provide for the operation of the project or projects or any part thereof in such manner and upon such terms as the governing body of the entity shall direct. [C71, 73, 75,§28F.7]

28F.8 Details of revenue bonds. Revenue bonds issued pursuant to the provisions of this chapter shall bear interest at a rate or rates not exceeding seven per centum per annum, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may be payable in such medium of payment, at such place or places within the state, may carry such registration privileges, may be subject to such terms of prior redemption, with or without premium, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form otherwise, as such resolution or subsequent resolutions shall provide. [C71, 73, 75,§28F.8]

See also §75.11

28F.9 Issuance of bond anticipation notes. Such an entity shall have the power, at any time and from time to time after the issuance of bonds thereof shall have been authorized, to borrow money for the purposes for which such bonds are to be issued in anticipation of the receipt of the proceeds of the sale of such bonds and within the authorized maximum amount of such bond issue. Any such loan shall be paid within three years after the date of the initial loan. Bond anticipation notes shall be issued for all moneys so borrowed under the provisions of this section, and such notes may be renewed from time to time, but all such renewal notes shall mature

within the time above limited for the payment of the initial loan. Such notes shall be authorized by resolution of the governing body of the entity and shall be in such denomination or denominations, shall bear interest at such rate or rates not exceeding the maximum rate permitted by the resolution authorizing the issuance of the bonds, shall be in such form and shall be executed in such manner, all as such entity shall prescribe. If such notes shall be renewal notes, they may be exchanged for notes then outstanding on such terms as the governing body of the entity shall determine. The governing body of the entity may, in its discretion, retire any such notes from the revenues derived from the project or projects or from such other moneys of the entity which are lawfully available therefor or from a combination of each, in lieu of retiring them by means of bond proceeds, provided, however, that before the retirement of such notes by any means other than the issuance of bonds it shall amend or repeal the resolution authorizing the issuance of the bonds in anticipation of the proceeds of the sale of which such notes shall have been issued so as to reduce the authorized amount of the bond issue by the amount of the notes so retired. Such amendatory or repealing resolution shall take effect upon its passage. [C71, 73, 75,§28F.9]

28F.10 Refunding bonds. Refunding bonds may be issued by an entity in a principal amount sufficient to provide funds for the payment (including premium, if any) of bonds issued by said entity pursuant to the provisions of this chapter to be refunded thereby and the interest thereon and in addition for the payment of all expenses incident to the calling, retiring, or paying of such outstanding bonds to be refunded, such refunding bonds may also finance the construction of a project or projects authorized by this chapter or the improvement, addition, betterment or extension of an existing project or projects so authorized. Said refunding bonds shall not be issued to refund the principal of and interest on any bonds to be refunded unless such bonds mature or are redeemable under their terms within ten years from the date of delivery of the refunding bonds. The proceeds of said refunding bonds to be used for the payment of the principal of, interest on and redemption premiums, if any, on said bonds to be refunded which will not be due and payable immediately shall be deposited in trust for the sole purpose of making such payments in a bank or trust company within the state. Any moneys in such trust fund, prior to the date such funds will be needed for the payment of such principal of, interest on and redemption premiums, if any, of such outstanding bonds to be refunded, may be invested or reinvested as provided in the resolution authorizing said refunding bonds. Refunding bonds shall be issued in the same manner and detail as revenue bonds herein authorized. [C71, 73, 75, §28F.10]

28F.11 Eminent domain. Any public agency participating in an agreement authorizing the joint exercise of governmental powers pursuant to this chapter may exercise its power of eminent domain to acquire interests in property, under provisions of law then in effect and applicable to such public agency, for the use of the entity created to carry out such agreement. Any interests in property so acquired shall be deemed acquired for a public purpose of the condemning public agency, and the payment of the costs of such acquisition may be made pursuant to such agreement or to any separate agreement between or among said public agency and such entity or the other public agencies participating in such entity or any of them. Upon payment of such costs, any property so acquired shall be and become the property of the entity. [C71, 73, 75,§28F.11]

28F.12 Additional powers of the entity. If the entity is comprised solely of cities, counties, and sanitary districts established under chapter 358 or any combination thereof, the entity shall have in addition to all the powers enumerated in this chapter, the powers which a county has with respect to solid waste disposal projects referred to in section 332.44 despite any contrary provision of this chapter. [66GA, ch 1069,§3]

CHAPTER 28G

URBAN MASS TRANSIT SYSTEM

Repealed by 66GA, ch 203,§4

CHAPTER 28H

AMERICAN REVOLUTION BICENTENNIAL COMMISSION

This chapter repealed effective July 1, 1977; 66GA, ch 1122,§5

28H.1 Commission established.
28H.2 Duties.
28H.3 Donations.

28H.1 Commission established. There is hereby established a commission to be known as the Iowa American revolution bicentennial commission, hereinafter referred to as the commission, for the purpose of planning, encouraging, developing and co-ordinating the commemoration of the American revolution bicentennial.

1. The Iowa commission shall be composed of:

a. Two members of the senate appointed by the president of the senate, each of whom shall be a member of a different political party.

b. Two members of the house of representatives, appointed by the speaker of the house of representatives, each of whom shall be a member of a different political party.

c. The secretary of state, superintendent of the state historical society, curator of the Iowa state department of history and archives, director of the state conservation commission, president of the state University of Iowa, president of Iowa State University of science and technology, president of the University of Northern Iowa, director of the Iowa development commission, chairman of the Iowa state fair and world food exposition study committee, and the secretary of the Iowa state fair board.

d. Seven citizens of the state appointed by the governor, one of whom shall be designated by the governor as chairman of the commission.

2. Members of the commission shall serve without compensation.

3. The commission may recommend additional persons to assist it in its work, and the governor shall appoint such persons, and any others he deems necessary, to serve as honorary members.

4. The secretary of the Iowa state fair board shall serve as secretary to the commission.

5. Vacancies shall be filled in the same manner in which the original appointments are made. [C75,§28H.1]

28H.2 Duties. The duties of the commission shall be:

1. To prepare an overall program for commemorating the bicentennial of the American revolution in Iowa, and to plan, encourage, develop, and co-ordinate observances and activities commemorating the historic events and attitudes associated with the American revolution.

2. In preparing its plans and program, the commission shall give due consideration to any related plans and programs developed by local and private groups, and it may designate special committees with representatives from such bodies to plan, develop and co-ordinate specific activities.

3. In all planning, the commission shall give special emphasis to the ideas associated with the revolution which have been important in the development of Iowa. The manner in which Iowa's development has been made possible by immigrants from all over the world who were inspired by the freedoms made possible by the American revolution, and the manner in which Iowa's development may be used to assist people all over the world in mankind's quest for freedom.

4. The commission shall submit to the governor a comprehensive report incorporating its specific recommendations for the commemoration of the American revolution bicentennial and related events. This report may recommend activities including, but not limited to:

a. The production, publication and distribution of books, pamphlets, films and other educational materials on the history, culture and political thought of the period of the American revolution.

b. Bibliographical and documentary projects and publications.

c. Conferences, convocations, lectures, seminars and other programs.

d. The development of libraries, museums, historic sites and exhibits, including mobile exhibits.

e. Ceremonies and celebrations commemorating specific events.

f. Programs and activities on a national and international scale emphasizing the significance of the American revolution in the development of Iowa and its implications for present and future generations in Iowa and around the world.

5. The report of the commission shall include recommendations for the allocation of financial and administrative responsibilities among the public and private authorities and organizations recommended for participation by the commission. The report shall also include proposals for legislation and administrative action the commission considers necessary to carry out its recommendations. The governor shall transmit the commission's report to the general assembly, together with any comments and recommendations for legislation, and a report of administrative actions taken by him. [C75,§28H.2]

28H.3 Donations. The commission may accept donations of money, personal property or personal services.

1. All money donated to the commission shall be deposited with the treasurer of state and is appropriated to the commission. All expenditures of the commission shall be by warrant of the state comptroller on vouchers of the chairman of the commission in accordance with budgets approved by the executive council.

2. All historical property acquired by the commission shall be deposited for preservation in state or local libraries or museums or otherwise disposed of in consultation with the curator of the Iowa department of history and archives.

3. All real property, not of historical significance, shall become the property of the state and may be sold for funds needed to celebrate the bicentennial or may be used as a site for the bicentennial celebration. [C75,§28H.3]

TITLE III

MILITARY CODE AND RELATED MATTERS

CHAPTER 29

DEPARTMENT OF PUBLIC DEFENSE

29.1 Military and civil forces co-ordinated.
29.2 Military division.
29.3 Disaster services.

29.1 Military and civil forces co-ordinated. There shall be an agency of the state government to be known as the department of public defense of the state of Iowa, which shall be composed of the military agency as provided in the laws of this state and the office of disaster services as provided in the laws of the state. The adjutant general, state of Iowa, shall be executive director of the department of public defense. [C66, 71, 73, 75,§29.1; 66GA, ch 1074, §24]

29.2 Military division. There shall be within the department of public defense, as a division thereof, a state military agency which shall be styled and known as the "military division, department of public defense", with the adjutant general as the executive director thereof. The term military division shall include the office of the adjutant general and all functions, responsibilities, powers and duties of the adjutant general of the state of Iowa and the military forces of the state of Iowa as provided in the laws of the state. [C66, 71, 73, 75,§29.2]

29.3 Disaster services. There shall be within the department of public defense of the state government, as a division thereof, an office of disaster services which shall be styled and known as the "office of disaster services, department of public defense"*, with a director of the office of disaster services who shall be the head thereof. The adjutant general, as the executive director of the department of public defense shall exercise supervisory authority over the division. [C66, 71, 73, 75,§29.3; 66GA, ch 1074,§25]

*See ch 29C

CHAPTER 29A

MILITARY CODE

Referred to in §35.9

29A.1 Definitions.
29A.2 Army national guard and air national guard created.
29A.3 Units of guard.
29A.4 Organization — armament — equipment and discipline.
29A.5 Government, discipline and uniforming.
29A.6 Military forces of state.
29A.7 Commander in chief.
29A.8 Active service.
29A.9 Field training.
29A.10 Inspections.
29A.11 Adjutant general — appointment, term and removal.
29A.12 Powers and duties — special police.
29A.13 Military land.
29A.14 Leasing facilities.
29A.15 Merit and service badges.
29A.16 Deputy adjutant general and assistants.
29A.17 Governor's staff.
29A.18 Federal fiscal officer.
29A.19 Quartermaster.
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29A.21 Powers and duties.
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29A.27 Pay and allowances—injury or death benefit board.
29A.28 Leave of absence of civil employees.
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29A.31 Unlawful organizations.
29A.32 Repealed by 58GA, ch 85,§6.
29A.33 Per capita allowance to company.
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29A.35 Use for military only.
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AMBULANCE SERVICE
29A.79 Emergency helicopter ambulance.

29A.1 Definitions. The following words, terms, and phrases when used in this chapter shall have the respective meanings herein set forth:

1. "*Militia*" shall mean the forces provided for in the Constitution of Iowa.

2. "*National guard*" shall mean the Iowa units, detachments and organizations of the national guard of the United States and the air national guard of the United States as such forces are defined in the National Defense Act and Acts amendatory thereto, the Iowa national guard and the Iowa air national guard.

3. "*Company*" shall mean the smallest administrative military unit and shall include a company of infantry, engineers, signal corps, a flight of the air service, a battery of field artillery, or any similar organization in any branch authorized by federal law for this state, including a permanent detachment.

4. "*Battalion*" shall mean two or more companies grouped together by competent orders for command purposes including battalions as shown in appropriate federal tables of organization.

5. "*Active state service*" shall mean service on behalf of the state in case of public disaster, riot, tumult, breach of the peace, resistance of process, or whenever any of the foregoing is threatened, whenever called upon in aid of civil authorities, or under martial law, or at encampments ordered by state authority, or upon any other state duty requiring the entire time of the organization or person. Active state service does not include and shall not mean training or duty required or authorized under Title 32, United States Code, sections 502 through 505, or any federal regulations duly promulgated thereunder; nor shall such service mean any other training or duty required or authorized by federal laws and regulations.

Referred to in §25A.14(6)

6. "*Federal service*" shall mean service exclusively under federal laws and regulations.

7. "*On duty*" shall mean and include drill periods, all other training, and service which may be required under state or federal law, regulations, or orders, and the necessary travel of an officer or enlisted person to the place of performance of such duty and return home after performance of such duty, but shall not include federal service.

8. "*In service of the United States*" and "Not in service of the United States" used herein, shall have the same meaning as such terms have in the National Defense Act of Congress (39 Stat. L. ch 134), approved June 3, 1916, and amendments thereto.

9. "*Officer*" shall mean and include commissioned officers and warrant officers.

10. "*Law and regulations*" means and includes state and federal law and regulations.

11. "*Advisory council*" shall mean a board composed of the eleven senior officers of the Iowa national guard, to include all federally recognized general officers, except those assigned to headquarters, Iowa national guard (army and air), and senior commanders of the Iowa national guard, of whom eight shall be officers of the Iowa army national guard and three shall be officers of the Iowa air national guard who command organizations with authorized strength of not less than two hundred personnel.

12. Except when otherwise expressly defined herein military words, terms and phrases shall have the meaning commonly ascribed to them in the military profession. [C97,§2168; S13, §2215-f2; C24, 27, 31,§433; C35,§467-f2; C39, §467.02; C46, 50,§29.2; C54, 58, 62,§29.1; C66, 71, 73, 75,§29A.1]

Referred to in §25A.14(6)

29A.2 Army national guard and air national guard created. There is hereby created the Iowa national guard to consist of the Iowa army national guard and the Iowa air national guard. The Iowa army national guard shall be composed of such organized land forces, individual officers, state headquarters, and detachments, as may be prescribed from time to time by proper authority. The Iowa air national guard shall be composed of such organized air forces, individual officers, state headquarters, and detachments, as may be prescribed from time to time by proper authority. [C51,§621; R60,§1002; C73,§1039; C97, §2167; S13,§2215-f1; C24, 27, 31,§432; C35,§467-f1; C39,**§467.01**; C46, 50,§29.1; C54, 58, 62,§29.2; C66, 71, 73, 75,§29A.2]

29A.3 Units of guard. The Iowa units, detachments, and organizations of the national guard of the United States and the air national guard of the United States shall consist of such units, detachments, and organizations, as may be specified by the secretary of defense with the approval of the governor, in accordance with law and regulations. [C73,§1045; C97,§2168; SS15,§2215-f4; C24, 27, 31,§435; C35, §467-f7; C39,**§467.07**; C46, 50,§29.7; C54, 58, 62, §29.3; C66, 71, 73, 75,§29A.3]

29A.4 Organization—armament—equipment and discipline. The organization, armament, equipment and discipline of the national guard, and the militia when called into active state service, except as hereinafter specifically provided, shall be the same as that which is now or may be hereafter prescribed under the provisions of federal law and regulations as to those requirements which are mandatory therein, but as to those things which are optional therein they shall become effective when an order or regulation to that effect shall have been promulgated by the governor. [C51, §§623–631; R60,§§1004–1015; C73,§§1038–1057; C97,§§2182, 2186; S13,§§2215-f3,-f8,-f9; C24, 27, 31, §§434, 439, 440; C35,§§467-f6,-f9,-f10; C39,§§**467.06, 467.09, 467.10**; C46, 50,§§29.6, 29.9, 29.10; C54, 58, 62,§29.4; C66, 71, 73, 75,§29A.4]

29A.5 Government, discipline and uniforming. The national guard shall be subject to the provisions of federal law and regulations relating to the government, discipline and uniforming thereof; and to the provisions of this chapter and to regulations published pursuant hereto. [C51,§631; R60,§1012; C73,§1044; C97, §2205; S13,§§2215-f6,-f7; C24, 27, 31,§§437, 438; C35,§467-f8; C39,**§467.08**; C46, 50,§29.8; C54, 58, 62,§29.5; C66, 71, 73, 75,§29A.5]

29A.6 Military forces of state. The military forces of the state of Iowa shall consist of the national guard and the militia. [C51,§621; R60, §1002; C73,§1039; C97,§2167; S13,§2215-f1; C24, 27, 31,§432; C35,§467-f1; C39,**§467.01**; C46, 50,§29.1; C54, 58, 62,§29,6; C66, 71, 73, 75,§29A.6]

29A.7 Commander in chief. The governor shall be the commander in chief of the military forces, except so much thereof as may be in federal service. The governor may employ the military forces of the state for the defense or relief of the state, the enforcement of its laws, the protection of life and property, and emergencies resulting from disasters or public disorders as defined in section 29C.2. [C51,§623; R60,§1004; C73,§1051; C97,§§2169, 2170; S13, §2215-f19; C24, 27, 31,§449; C35,467-f26,-f28; C39, §§**467.26, 467.28**; C46, 50,§§29.26, 29.28; C54, 58, 62,§29.7; C66, 71, 73, 75,§29A.7; 66GA, ch 1074, §26]

Constitutional provisions, Art. IV,§7

29A.8 Active service. The governor shall have the power to order into active state service such of the military forces of the state, including retired national guardsmen, both army and air, as he may deem proper, under command of such officer as he may designate in cases of insurrection or invasion, or imminent danger thereof, or for the purpose of aiding the civil authorities of any political subdivision of the state in maintaining law and order in such subdivision in cases of breaches of the peace or imminent danger thereof, if the law enforcement officers of such subdivision are unable to maintain law and order, and the civil authorities request such assistance. If circumstances necessitate the establishment of a military district under martial law and the general assembly is not convened, such district shall be established only after the governor has issued a proclamation convening an extraordinary session of the general assembly. [C51, §623; R60,§1004; C73,§1051; C97,§§2169, 2170; S13, §2215-f19; C24, 27, 31,§449; C35,§§467-f28,-f29; C39,§§**467.28, 467.29**; C46, 50,§§29.28, 29.29; C54, 58, 62,§§29.7, 29.8; C66, 71, 73, 75,§§29A.7, 29A.8; 66GA, ch 1074,§27]

29A.9 Field training. The governor may order the national guard into camp for field training for such period or periods as he may direct. He may, in his discretion, order such organizations or personnel of the national guard, or persons who have retired from the national guard, both army and air, as he may deem proper, to active state service, or duty, or to assemble for purposes of drill, instruction, parade, ceremonies, guard and escort duty, and schools of instruction, and prescribe all regulations and requirements therefor.

The governor shall also provide for the participation of the national guard, or any portion thereof, in field training at such times and places as may be designated by the secretary of defense. [C73,§1049; C97,§§2184, 2185; S13, §2215-f21; C24, 27, 31,§450; C35,§467-f51; C39, §467.53; C46, 50,§29.53; C54, 58, 62,§29.9; C66, 71, 73, 75,§29A.9; 66GA, ch 1074,§28]

29A.10 Inspections. The governor may order such inspections of the different organizations, units, and personnel of the national guard as he may deem proper and necessary.

The form and mode of inspection shall be prescribed by the adjutant general. [C73, §1049; C97,§2191; S13,§2215-f22; C24, 27, 31,§451;

C35,§467-f52; C39,§467.54; C46, 50,§29.54; C54, 58, 62,§29.10; C66, 71, 73, 75,§29A.10]

29A.11 Adjutant general — appointment, term and removal. There shall be an adjutant general of the state who shall be appointed and commissioned by the governor upon the recommendation of a majority of the advisory council. When a majority of the members of the advisory council are in federal service in time of war, said appointment shall be made by the governor without such recommendation. The rank of the adjutant general shall be at least that of brigadier general and he shall hold office for a term of four years. At the time of his appointment he shall be a federally recognized commissioned officer of the national guard with not less than ten years military service in the armed forces of this state or of the United States, at least five of which have been commissioned service, and who shall have reached the grade of a field officer. He shall be removed only upon conviction of a felony or upon conviction by a court-martial or upon termination of his federal recognition. [C73,§1054; C97,§2174; SS15, §2215-f14; C24, 27, 31,§445; C35,§467-f40; C39, §467.42; C46, 50,§29.42; C54, 58, 62,§29.11; C66, 71, 73, 75,§29A.11]

29A.12 Powers and duties—special police. The adjutant general shall have control of the military department, and perform such duties as pertain to the office of the adjutant general under law and regulations. He shall superintend the preparation of all letters and reports required by the United States from the state, and perform all the duties prescribed by law. He shall have charge of the state military reservations, and all other property of the state kept or used for military purposes. The adjutant general may by order entered of record commission one or more of the employees of the military department as special police. Such special police shall on the premises of any state military reservation or other state military property have and exercise the powers of regular peace officers. It shall be the duty of the adjutant general to cause an inventory to be taken at least once each year of all military stores, property and funds under his jurisdiction. In each year preceding a regular session of the general assembly he shall prepare a detailed report of the transactions of his office, the expenses thereof, and such other matters as shall be required by the governor for the period since the last preceding report, and the governor may at any time require a similar report.

The adjutant general shall make and preserve by counties a permanent registry of the graves of all persons who shall have served in the military or naval forces of the United States in time of war, and whose mortal remains rest in Iowa.

The adjutant general is authorized to enter into an agreement with the secretary of defense to operate the water plant at Camp Dodge for the use and benefit of the United States, and the state of Iowa upon such terms and conditions as shall be approved by the governor. [C73,§§1054, 1055; C97,§2175; SS15, §2215-f15; C24, 27, 31,§§446, 446-c1, 447; C35, §467-f42; C39,§467.44; C46, 50,§29.44; C54, 58, 62, §29.12; C66, 71, 73, 75,§29A.12]

Time of filing report, §17.3

29A.13 Military land. The adjutant general, with the approval of the governor, is authorized to expend from the funds appropriated for the support and maintenance of the national guard, and the permanent Camp Dodge improvement fund, such amounts as he may deem necessary for the purchase of additional land, constructing, equipping, and improving state military reservations, installations, and firing ranges, owned or leased by the state of Iowa or the United States for the use and benefit of the national guard and for the maintenance of all such facilities. [S13,§2215-f41; C24, 27, 31,§466; C35,§467-f43; C39,§467.45; C46, 50,§29.45; C54, 58, 62,§29.13; C66, 71, 73, 75, §29A.13]

29A.14 Leasing facilities. The adjutant general shall have authority to operate or lease any of the facilities at Camp Dodge. Any income or revenue derived from such operation or leasing shall be deposited with the state treasurer as a Camp Dodge permanent improvement fund. [C35,§467-f44; C39,§467.46; C46, 50,§29.46; C54, 58, 62,§29.14; C66, 71, 73, 75, §29A.14]

29A.15 Merit and service badges. The adjutant general, from the funds appropriated for the support and maintenance of the national guard, shall procure and issue to the members of the national guard, entitled thereto, merit or service badges or other appropriate awards for such service and periods of service under such regulations and according to the design and pattern thereof, as may be determined by the adjutant general. Members of the national guard who, by order of the president, have served or shall serve in federal forces during national emergency, shall be entitled to count the period of such federal service toward the procurement of a service badge. [S13,§2215-f34; C24, 27, 31,§462; C35, §467-f53; C39,§467.55; C46, 50,§29.55; C54, 58, 62, §29.15; C66, 71, 73, 75,§29A.15]

29A.16 Deputy adjutant general and assistants. The governor shall appoint a deputy adjutant general, who shall be a commissioned officer of the army national guard or the air national guard, and an assistant adjutant general for the army national guard who shall be a commissioned officer of the army national guard, and an assistant adjutant general for the air national guard who shall be a commissioned officer of the air national guard, upon the recommendation of the adjutant general. They shall have such rank as is consistent with federal law and regulations to and including the rank of brigadier general and at the time of their appointment shall be fed-

erally recognized commissioned officers of the national guard with not less than five years' service in the national guard or in the armed forces of the United States, at least three years of which shall have been commissioned service and they shall have reached the grade of a field officer. They shall be removed upon termination of their federal recognition.

The deputy adjutant general shall serve in the office of the adjutant general and aid him by performing such duties as the adjutant general may assign him. In the absence or disability of the adjutant general he shall perform the duties of that office as acting adjutant general. Each assistant adjutant general shall be responsible for such duties with the army national guard or the air national guard, respectively, as may be prescribed by the adjutant general. [C73,§1054; C97,§2174; SS15,§2215-f14; C24, 27, 31,§445; C35,§467-f41; C39,**§467.43**; C46, 50,§29.43; C54, 58, 62,§29.16; C66, 71, 73, 75, **§29A.16**]

29A.17 Governor's staff. The military and naval staff of the governor shall consist of the adjutant general, who shall be the chief of staff; the assistant adjutant general, who shall be the assistant chief of staff and such aides, residents of the state, as the governor may appoint, or may detail from the armed forces of the state.

The aides appointed shall be commissioned at a rank not higher than the military rank of colonel or the naval rank of captain, except in the case of a person who holds or has held a higher rank in the armed forces of the state or nation in which case the commission may issue for such higher rank. [C73,§1054; C97, §2174; SS15,§2215-f14; C24, 27, 31,§445; C35,§467-f27; C39,**§467.27**; C46, 50,§29.27; C54, 58, 62, §29.17; C66, 71, 73, 75,§29A.17]

29A.18 Federal fiscal officer. The governor, pursuant to federal authority, shall detail, upon recommendation of the adjutant general, a federally recognized commissioned officer of the national guard who shall be property and fiscal officer of the United States for the state of Iowa. Such officer may be removed upon the recommendation of the adjutant general.

The property and fiscal officer shall receipt and account for all funds and property belonging to the United States in possession of the national guard, and shall make such returns and reports concerning the same as may be required by the secretary of defense. He shall render, through the department of defense, such accounts of federal funds entrusted to him for disbursement as may be required. Before entering upon the performance of his duties as property and fiscal officer he shall be required to give good and sufficient bond to the United States, the amount thereof to be determined by the secretary of defense, for the faithful performance of his duties and for the safekeeping and proper disposition of the federal property and funds entrusted to his care. The said property and fiscal officer may also be the quartermaster and property officer of the state. [R60,§1013; C73,§1050; C97,§2190; S13, §2215-f12; C24, 27, 31,§443; C35,§467-f45; C39, **§467.47**; C46, 50,§29.47; C54, 58, 62,§29.18; C66, 71, 73, 75,§29A.18]

29A.19 Quartermaster. There shall be detailed a commissioned officer of the national guard or one retired therefrom with not less than ten years' service in the Iowa national guard or the Iowa air national guard and who shall have attained the grade of a field officer, to be the quartermaster and property officer of the state, and as such, shall have charge of and be accountable for, under the adjutant general, all state military property, and who may be the United States property and fiscal officer. He shall keep such property returns and reports on the same and shall give such bond to the state of Iowa as the governor may direct. [S13,§2215-f28; C24, 27, 31,§456; C35,§§467-f18,-f46; C39,**§§467.18, 467.48**; C46, 50,§§29.18, 29.48; C54, 58, 62,§29.19; C66, 71, 73, 75,§29A.19]

29A.20 Officers. Officers of the national guard shall be selected from the classes of persons having the qualifications prescribed by federal law and regulations. They shall be appointed by the governor upon the recommendation of their superiors in the chain of command, provided that they shall have successfully passed such tests as to physical, moral, and professional fitness, as shall be prescribed by law and regulations. Each officer shall take an oath of office and shall hold office until he shall have attained the maximum age of retirement that is prescribed by federal law or regulations pertaining to officers of the armed forces of the United States, unless his commission or warrant is sooner vacated by resignation, death or as hereinafter provided. In case the officer has no immediate superiors, within the state, in the chain of command, he shall be appointed, as above provided, upon the recommendation of the adjutant general. A commission shall designate the arm or branch of service in which the officer is commissioned. Provided, however, that no person shall be appointed a commissioned or warrant officer who has not reached his eighteenth birthday at or prior to the time of such appointment. [C51,§§624, 626–628; R60, §§1005, 1007–1009; C73,§§1047, 1048; C97,§§2176–2180; S13,§2215-f10; C24, 27, 31,§441; C35,§467-f11; C39,**§467.11**; C46, 50,§29.11; C54, 58, 62,§29.20; C66, 71, 73, 75,§29A.20]

29A.21 Powers and duties. In addition to the powers and duties prescribed in this chapter all officers of the national guard shall have the same powers and perform like military duties as officers of similar rank and position in the armed forces of the United States insofar as may be authorized by law. Officers are authorized to administer oaths in all matters connected with the service. [C35,§467-f16; C39,**§467.16**; C46, 50,§29.16; C54, 58, 62,§29.21; C66, 71, 73, 75,§29A.21]

29A.22 Fitness determined — vacation of commissions. The moral character, capacity and general fitness for the service of any national guard officer may be determined at any time by an efficiency board as provided by federal law and regulations. Commissions or warrants of officers of the national guard may be vacated upon resignation, absence without leave for three months, upon the recommendation of an efficiency board, or pursuant to sentence of a court-martial. Any officer permanently removing from the state shall resign his commission or warrant upon request of the adjutant general or make application to be placed upon the inactive list, and upon failure to do so, his commission or warrant shall be revoked by the governor. Officers rendered surplus by the disbandment of their organization shall be disposed of as provided by law and regulations. Subject to the approval of their superior commanders and the adjutant general officers may, upon their own application, be placed on the inactive list, as such list may be authorized by law and regulations. [C97,§§2183, 2199; S13,§2215-f11; C24, 27, 31,§442; C35,§467-f12; C39,§**467.12**; C46, 50,§29.12; C54, 58, 62,§29.22; C66, 71, 73, 75,§29A.22]

29A.23 Roll of retired officers. Any officer of the national guard who shall have served as such officer for a period of not less than ten years in the national guard, or who shall have served, for a period of not less than ninety days, in the armed forces of the United States during any war, and who is honorably discharged therefrom, and who shall have served as such officer in the national guard for a period of not less than five years, who resigns or is retired, or who is now or may hereafter become disabled and retired, may, upon his request in writing to the adjutant general, stating his grounds therefor, be placed, by order of the commander in chief, on a roll in the office of the adjutant general to be known as the "roll of retired officers". Any officer registered on the roll of retired officers is entitled to wear the uniform of the rank last held by him on state or other occasions of ceremony, when the wearing of such uniform is not in conflict with federal law.

The adjutant general shall have the power, on good cause shown, to retire any officer, as herein provided, in the next higher grade than that held by said officer during his military service. [C35,§467-f15; C39,§**467.15**; C46, 50, §29.15; C54, 58, 62,§29.23; C66, 71, 73, 75,§29A.23]

29A.24 Unassigned list. There shall be maintained in the office of the adjutant general a list to be known as the unassigned list, to which officers may be transferred, pending their resignation or removal from the service. Any officer may be transferred by the adjutant general to such unassigned list upon the recommendation of his commanding officer, either immediate or remote. Before such transfer is made the adjutant general shall notify the officer, either in person or by certified mail mailed to his last known address of the intended transfer. The officer shall have ten days from the date of mailing of said notice in which to apply to the adjutant general for an efficiency board. Should the officer fail to apply for an efficiency board, the transfer shall be made upon the expiration of the ten-day period. If the officer requests an efficiency board, the adjutant general will be governed by the finding of such board. All officers transferred to such unassigned list shall remain subject to military discipline and to courts-martial for military offenses to the same extent and in like manner as if upon the active list. [C35,§467-f13; C39,§**467.13**; C46, 50,§29.13; C54, 58, 62,§29.24; C66, 71, 73, 75,§29A.24]

29A.25 Enlistments. All enlistments in the national guard shall be as prescribed by federal law and regulations. [C97,§2173; S13,§2215-f13; C24, 27, 31,§444; C39,§**467.22**; C46, 50,§29.22; C54, 58, 62,§29.25; C66, 71, 73, 75,§29A.25]

29A.26 State headquarters and detachment. The number and grade of officers and enlisted personnel in the state headquarters and headquarters detachment shall be as prescribed by federal law and regulations, but in case of war, invasion, insurrection, riot or imminent danger thereof, the governor may temporarily increase such force to meet such emergency.

All officers appointed to the state headquarters and headquarters detachment shall have had previous military experience and shall hold their positions until they shall have reached the age of retirement herein provided, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by an efficiency board or a court-martial, as the exigencies of the case may warrant, legally convened for that purpose, and vacancies among said officers shall be filled by appointment from the officers of the national guard. [C51,§§624, 626–628; R60,§§1005, 1007–1009; C73,§§1047, 1048; C97,§§2176–2180; S13,§2215-f10; C24, 27, 31,§441; C35,§467-f23; C39, §**467.23**; C46, 50,§29.23; C54, 58, 62,§29.26; C66, 71, 73, 75,§29A.26]

29A.27 Pay and allowances — injury or death benefit board. Officers and enlisted men while in active state service shall receive the same pay and allowances as are paid for the same rank or grade for service in the armed forces of the United States. When in active state service, except when such service is for the purpose of training, enlisted men shall receive additional pay in the sum of five dollars per day; provided, however, that no employee of the state who receives pay from the state as such employee during said active state service shall receive the additional pay herein provided for enlisted men.

In the event any officer or enlisted man shall be killed while on duty or in active state service, in line of duty, or shall die as the result of injuries received or as a result of illness or disease contracted while on duty or in active state service, in line of duty, his dependents,

as defined by the workers' compensation law of the state, shall receive the maximum compensation provided by the said law.

Any officer or enlisted man who suffers injuries or contracts disease, in line of duty, while on duty or in active state service, shall receive hospitalization and medical treatment, and during the period that he is totally disabled from engaging in any gainful occupation he shall also receive the pay and allowances of his grade. In the event of partial disability, he shall be allowed such partial pay and allowances as may be determined by a board of three officers to be appointed by the governor. At least one member of the board shall be a medical officer.

Any claim for death, illness, or disease contracted in line of duty while on duty or in active state service, shall be filed with the adjutant general within six months from the date of death or contraction of the illness or disease.

Where the provisions of this section may be applicable or at such other times as he may consider it necessary, the adjutant general shall appoint a board of officers, one of whom shall be a medical officer, upon the occurrence of each instance of an accident or incident resulting in the injury, illness, disease, or death of a member of the military forces of the state. The board of officers shall be appointed for the purpose of determining eligibility of individuals designated in this section for benefits authorized therein. The adjutant general shall appoint such a board at least once each year for the purpose of determining the continuation of eligibility of all recipients of such benefits. The boards provided herein shall be in addition to the board authorized for appointment by the governor for the purpose of determining entitlement to partial pay and allowances for partial disability as heretofore provided.

Judicial review of any decision of the board may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review must be filed within a period of thirty days from date of mailing by the adjutant general by certified mail of notice of such decision. Within thirty days after the filing of such a petition for judicial review, the adjutant general shall make, certify, and file in the office of the clerk of the district court in which the judicial review is sought a full and complete transcript of all documents in the proceeding. The transcript shall include any depositions and a transcript or certification of the evidence, if reported. The attorney general of Iowa, upon the request of the adjutant general, shall represent the board appointed by the adjutant general against whom any such appeal has been instituted.

The provisions herein provided shall apply to all individuals receiving benefits under this section or who subsequently may become entitled to such benefits.

All payments herein provided for shall be paid on the approval of the adjutant general from the contingent fund of the executive council.

In the event benefits for death, injuries or illness are paid in part by the federal government, the state shall pay only the balance necessary to constitute the above designated amounts.

No payment received by any officer or enlisted man under the provisions of this section shall bar the right of such officer or enlisted man, or their heirs or representatives, to recover damages from any partnership, corporation, firm or persons whomsoever who otherwise would be liable, nor shall any such sums received under the provisions of this section reduce the amount of damages recoverable by such officer, enlisted man, or their heirs or representatives, against any partnership, corporation, firm or persons whomsoever who otherwise would be liable. [C51,§625; R60, §1006; C73,§1051; C97,§§2189, 2212, 2213; S13, §2215-f23; C24, 27, 31,§452; C35,§§467-f21,-f31; C39,§§**467.21, 467.31**; C46, 50,§§29.21, 29.31; C54, 58, 62,§29.27; C66, 71, 72, 73, 75,§29A.27; 66GA, ch 1084,§43]

29A.28 Leave of absence of civil employees. All officers and employees of the state, or a subdivision thereof, or a municipality other than employees employed temporarily for six months or less, who are members of the national guard, organized reserves or any component part of the military, naval, or air forces or nurse corps of this state or nation, or who are or may be otherwise inducted into the military service of this state or of the United States, shall, when ordered by proper authority to active state or federal service, be entitled to a leave of absence from such civil employment for the period of such active state or federal service, without loss of status or efficiency rating, and without loss of pay during the first thirty days of such leave of absence. The proper appointing authority may make a temporary appointment to fill any vacancy created by such leave of absence. [C35,§467-f25; C39, §**467.25**; C46, 50,§29.25; C54, 58, 62,§29.28; C66, 71, 73, 75,§29A.28]

29A.29 Payment from treasury—exception. When in active state service, the compensation of officers and enlisted men and expenses of the national guard and claims for death, injury and illness of the members thereof, incurred in line of duty, shall be paid out of any funds in the state treasury not otherwise appropriated. However, if funds for compensation and expenses have been appropriated for compensation and expenses of persons on full-time active state service pursuant to a specific Act of the general assembly, such persons shall be paid from funds appropriated pursuant to such Act. [C51,§625; R60,§1006; C73,§1051; C97, §§2189, 2212, 2213; S13,§2215-f23; C24, 27, 31,

§452; C35,§467-f31; C39,§467.31; C46, 50,§2931; C54, 58, 62,§29.29; C66, 71, 73, 75,§29A.29; 66 GA, ch 1073,§2]

29A.30 Inactive guard. An inactive national guard may be organized and maintained in such manner as may be prescribed or authorized by law and regulations. [C35,§467-f14; C39, §467.13; C46, 50,§29.14; C54, 58, 62,§29.30; C66, 71, 73, 75,§29A.30]

29A.31 Unlawful organizations. It shall be unlawful for any body of persons, other than the national guard and the troops of the United States, to associate themselves together as a military organization within the limits of this state without the written permission of the governor, which the governor may at any time revoke, but this provision shall not prevent civic, social, or benevolent organizations from wearing uniforms and swords not in conflict with the other provisions of this chapter. [C97,§2200; S13,§2215-f5; C24, 27, 31,§436; C35, §467-f3; C39,§467.03; C46, 50,§29.3; C54, 58, 62, §29.31; C66, 71, 73, 75,§29A.31]

29A.32 Repealed by 58GA, ch 85,§6.

29A.33 Per capita allowance to company. Each company or similar unit of the national guard showing attendance and actual drill of those present for such drills as are prescribed in compliance with the national defense Act or amendments thereto, or substitutes therefor, and such regulations as may be prescribed from time to time by the secretary of defense, pursuant thereto, shall receive an annual allowance for military purposes, in the sum of five dollars per capita, to be paid in semiannual installments on the basis of two dollars and fifty cents per capita. For the purpose of computing each semiannual installment the per capita strength shall be the average enlisted strength of the unit, for that semiannual period, provided however, that in the event the average attendance of any unit during any semiannual period falls below fifty percent of the average enlisted strength of such unit in that period, such allowance shall not be paid for that period. The semiannual periods herein referred to shall begin January 1 and July 1. Such allowance shall be paid from the funds appropriated for the support and maintenance of the national guard, and the adjutant general shall prescribe regulations governing its expenditure. [SS15,§2215-f27; C24, 27, 31,§455; C35,§467-f50; C39,§467.52; C46, 50,§29.52; C54, 58, 62,§29.33; C66, 71, 73, 75,§29A.33]

29A.34 Clothing and equipment. The commanding officer of a company receiving clothing or equipment for the use of his command shall distribute same to the members of his command, taking receipts and requiring the return of each article at such time and place as he shall direct.

Upon the direction of any company commander it shall be the duty of the county attorney to bring action in the name of the state of Iowa against any person for the recovery of any property issued by said company commander or his predecessor, or for the value thereof as set forth in the price list promulgated by the federal government.

All sums so collected shall be paid to such company commander and used for the replacement of military property charged to the organization. [C51,§629; R60,§1010; C73,§1050; C97,§2190; SS15,§2215-f31; C24, 27, 31,§459; C35, §§467-f55,-f56; C39,§§467.57, 467.58; C46, 50, §§29.57, 29.58; C54, 58, 62,§29.34; C66, 71, 73, 75, §29A.34]

29A.35 Use for military only. All arms, clothing, equipment, and other military property furnished or issued by the federal government or the state or for which an allowance has been made, shall be used for military purposes only, and each officer and enlisted person upon being separated from the military forces of the state, or upon demand of the commanding officer, shall forthwith surrender such military property in the officer's or enlisted person's possession to said commanding officer. Any member of the national guard who shall neglect to return to the armory of the unit, or place in charge of the commanding officer of the organization to which the member belongs, any arms, clothing, equipment, or other military property or portion thereof, belonging to the federal government or the state, upon being notified by said commanding officer to do so, shall be guilty of a misdemeanor. [S13, §2215-f35; C24, 27, 31,§463; C35,§467-f4; C39, §467.04; C46, 50,§29.4; C54, 58, 62,§29.35; C66, 71, 73, 75,§29A.35]

29A.36 Injury or destruction of property. Every person who shall willfully or wantonly injure or destroy any articles of arms, clothing, equipment, or other military property furnished or issued by the federal government or the state, and refuses to make good such injury or loss; or who shall sell, dispose of, secrete or remove the same with intent to sell or dispose of it, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than four months, or by both such fine and imprisonment. [R60, §1014; C73,§1050; C97,§2194; S13,§2215-f32; C24, 27, 31,§460; C35,§467-f57; C39,§467.59; C46, 50, §29.59; C54, 58, 62,§29.36; C66, 71, 73, 75,§29A.36]

29A.37 Bond of officers. Each officer responsible or accountable for property for military use, or funds of the state or of the United States, shall execute and deliver to the adjutant general a bond therefor, with sureties to be approved by the governor, and payable to the state, in such amount as may be fixed by the governor, conditioned for the proper care, use, and return in good order, wear, use and unavoidable loss and damage excepted, of all such state and United States property, and the proper care and faithful disbursement and accounting of all such funds coming into the hands of such officer. Provided, however, that

the adjutant general, with the approval of the governor, may obtain an adequate indemnity bond covering all or part of the officers so accountable or responsible, in which case the officers so covered shall not be required to furnish individual bonds as hereinbefore provided.

Upon the violation of any of the conditions of any bond executed and delivered under the provisions of this section, action thereon shall be brought by the adjutant general on behalf of the state. It shall be the duty of the attorney general of the state to prosecute all actions upon such bonds. No further payments shall be made under any provision of this chapter to the accountable officer of any organization or unit who does not fully and satisfactorily account to the adjutant general for all moneys theretofore paid to him under any provision of this chapter. [R60,§1013; C73, §1050; C97,§2190; S13,§2215-f12; C24, 27, 31,§443; C35,§467-f17; C39,§**467.17**; C46, 50,§29.17; C54, 58, 62,§29.37; C66, 71, 73, 75,§29A.37]

29A.38 Misdemeanors. Any officer or enlisted person of the national guard who knowingly makes any false certificate of muster or false return of federal or state property or funds in the officer's or enlisted person's possession shall be guilty of a misdemeanor. [C97, §2192; S13,§2215-f30; C24, 27, 31,§458; C35,§467-f19; C39,§**467.19**; C46, 50,§29.19; C54, 58, 62,§29.38; C66, 71, 73, 75,§29A.38]

29A.39 Embezzlement. Any officer or enlisted person of the national guard who willfully neglects or refuses to apply all money, in the officer's or enlisted person's possession drawn from the state treasury, to the purpose for which such money was appropriated or who fails or refuses to account for or return any state or federal property or funds in the officer's or enlisted person's possession shall be guilty of the crime of embezzlement by bailee and punished accordingly. [C97,§2192; S13, §2215-f30; C24, 27, 31,§458; C35,§467-f20; C39, §**467.20**; C46, 50,§29.20; C54, 58, 62,§29.39; C66, 71, 73, 75,§29A.39]

See §710.4

29A.40 False wearing of uniform. No member of the national guard shall wear the uniform thereof while not on duty without permission from competent authority. No person, firm, or corporation, other than a military organization or the members of veterans of such organizations organizing for the benefit of all its members, shall incorporate under the name of, or adopt any trade name which embodies the name or designation, officially or generally recognized as the name of a military organization now or heretofore in existence, or any distinctive part of such name. Any person found guilty of a violation of any of the provisions of this section shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail not to exceed thirty days.

Any person who, without authority under the laws of the United States or of one of the states, wears the uniform of, or a distinctive part of the uniform of the armed forces of the United States, shall be guilty of a misdemeanor, and shall be punished as provided in this section. [S13,§2215-f35; C24, 27, 31,§463; C35,§467-f4; C39,§**467.04**; C46, 50,§29.4; C54, 58, 62,§29.40; C66, 71, 73, 75,§29A.40]

29A.41 Exemption from jury and other exemptions. Every officer and enlisted person of the national guard while in active state service shall be exempt from jury duty. No member of the national guard shall be arrested, or served with any summons, order, warrant or other civil process after having been ordered to any duty, or while going to, attending, or returning from, any place to which the officer or enlisted person is required to go for military duty. Nothing herein shall prevent the officer's or enlisted person's arrest by order of a military officer or for a felony or breach of the peace committed while not in the actual performance of the officer's or enlisted person's duty. The articles of equipment personally owned by such members shall be exempt from seizure or sale for debt. Every member of the national guard who has faithfully served the full term of the member's commission, warrant or enlistment, shall, upon application, be entitled to an honorable discharge, exempting the member from military duty except in time of war or public danger. [C97,§2209; S13,§2215-f33; C24, 27, 31,§461; C35,§467-f24; C39,§**467.24**; C46, 50,§29.24; C54, 58, 62,§29.41; C66, 71, 73, 75, §29A.41; 66GA, ch 1074,§29]

29A.42 Trespass or interference. Any person who shall trespass upon any military reservation, camp, or armory, in violation of the orders of the commander thereof, or officer charged with the responsibility therefor, or shall molest, or interfere with any member of the national guard, in the discharge of his duty, shall be guilty of a misdemeanor. The commanding officer of such force may order the arrest of such person and cause him to be delivered to a peace officer or magistrate. [C97, §2188; S13,§2215-f29; C24, 27, 31,§457; C35,§467-f54; C39,§**467.56**; C46, 50,§29.56; C54, 58, 62, §29.42; C66, 71, 73, 75,§29A.42]

Punishment, §687.7

29A.43 Discrimination prohibited—leave of absence. No person, firm, or corporation, shall discriminate against any officer or enlisted person of the national guard or organized reserves of the armed forces of the United States because of his membership therein. No employer, or agent of any employer, shall discharge any person from employment because of being an officer or enlisted person of the military forces of the state, or hinder or prevent the officer or elected person from performing any military service such person may be called

upon to perform by proper authority. Any member of the national guard or organized reserves of the armed forces of the United States ordered to temporary active duty for the purpose of military training or ordered on active state service, shall be entitled to a leave of absence during the period of such duty or service from the member's private employment, other than employment of a temporary nature, and upon completion of such duty or service the employer shall restore such person to the position held prior to such leave of absence, or employ such person in a similar position, provided, however, that such person shall give evidence to the employer of satisfactory completion of such training or duty, and further provided that such person is still qualified to perform the duties of such position. Such period of absence shall be construed as an absence with leave, and shall in no way affect the employee's rights to vacation, sick leave, bonus, or other employment benefits relating to the employee's particular employment. Any person violating any of the provisions of this section shall be punished by a fine of not to exceed one hundred dollars, or by imprisonment in the county jail for a period of not to exceed thirty days. [C35,§467-f5; C39,§**467.05**; C46, 50, §29.5; C54, 58, 62,§29.43; C66, 71, 73, 75,§29A.43]

29A.44 Assault on guardsman. Whenever the national guard is called into service under proclamation of the governor for the performance of any duties contemplated in this chapter any person who willfully assaults, or fires at, or throws any dangerous missiles at, against, or upon any member or body of the national guard so engaged, or civil officer or other persons lawfully aiding or assisting them in the discharge of their duties, shall be deemed guilty of a felony and upon conviction shall be imprisoned in the state penitentiary for not more than two years. [C35,§467-f30; C39,§**467.30**; C46, 50,§29.30; C54, 58, 62,§29.44; C66, 71, 73, 75,§29A.44]

29A.45 Martial law. When a military district is established under martial law, the chief justice or an associate justice of the supreme court may, upon written agreement of the parties or their attorneys, on good cause being shown, order any civil or criminal case on file in the office of the clerk of any court of record within the military district transferred to any court of record outside of the military district. The said cause shall be docketed without fee and proceed in all respects with the same force and effect as though transferred on a change of venue. When the said military district is dissolved, the cause and all proceedings in connection therewith may be retransferred by the supreme court to the original court, where it shall be redocketed without fee. [C39, §**467.32**; C46, 50,§29.32; C54, 58, 62,§29.45; C66, 71, 73, 75,§29A.45]

29A.46 Military court or commission. The governor may establish within such military district a military court or commission to take jurisdiction and cognizance of all public offenses against the peace and dignity of the state, and the violation of ordinances and military rules which are now, or may hereafter be, promulgated or enacted for the preservation of law and order and the public safety.

The military court or commission may make such orders, judgments, and decrees in civil cases as may be agreed upon by the litigants or their attorneys, or as may be necessary because of an emergency or to prevent waste, with the same force and effect as though made and entered by a judge of the district court. The said court or commission shall have full power and authority to issue all necessary process for the conduct of its proceedings, and like power to compel the attendance of witnesses therein as are exercised by civil courts of the state. [C39,§**467.33**; C46, 50,§29.33; C54, 58, 62,§29.46; C66, 71, 73, 75,§29A.46]

29A.47 Arrests and subpoenas. Troops occupying a military district established under martial law, may, if necessary, pursue, arrest and subpoena persons wanted in said military district, anywhere within the state of Iowa.

All peace officers of the state shall serve process and execute the orders of a military court in the same way and to the same extent as corresponding instruments of civil courts. [C35,§467-f34; C39,§§**467.32, 467.36**; C46, 50, §§29.32, 29.36; C54, 58, 62,§29.47; C66, 71, 73, 75, §29A.47]

29A.48 Commitment and fines. In default of payment of any fine imposed by any military court acting under martial law, or by any courts-martial, the offender shall be committed to any county jail designated by any court of this state for a period equal to one day for each three dollars of fine imposed and unpaid. [C35,§467-f35; C39,§**467.37**; C46, 50,§29.37; C54, 58, 62,§29.48; C66, 71, 73, 75,§29A.48]

29A.49 Military jails. The keepers and wardens of all county jails or state institutions are required to receive and confine all military offenders or other persons when delivered to them, under a certificate of commitment of a military court or commanding officer, for and during the term of sentence or confinement as set forth in said commitment. [C35,§467-f36; C39,§**467.38**; C46, 50,§29.38; C54, 58, 62,§29.49; C66, 71, 73, 75,§29A.49]

29A.50 Immunity. The commanding officer and members of any of the military forces engaged in the suppression of an insurrection, the dispersion of a mob, or the enforcement of the laws, shall have the same immunity as peace officers. [C35,§467-f37; C39,§**467.39**; C46, 50,§29.39; C54, 58, 62,§29.50; C66, 71, 73, 75, §29A.50]

29A.51 Suit or proceeding—defense. In the event any suit or proceeding shall be commenced in any court by any person against any officer of the military forces for any act done by such officer in the officer's official

capacity in the discharge of any duty under this chapter, or against any enlisted person acting under the authority or order of any such officer, or by virtue of any warrant issued by the officer pursuant to law, it shall be the duty of the attorney general or state judge advocate, upon the request of the adjutant general, to defend any member of the military forces of the state against whom any such suit or proceeding has been instituted. The costs of such defense shall be paid out of any funds in the state treasury not otherwise appropriated. Before any suit or proceeding shall be filed or maintained against any officer or enlisted person as herein provided, the plaintiff shall be required to give security, to be approved by the court in a sum not less than one hundred dollars to secure the costs. If the plaintiff fails to recover judgment, such costs shall be taxed and judgment rendered therefor against the plaintiff and the plaintiff's sureties. When troops are called into active state service by the governor under martial law or as aid to the civil authorities, in addition to the judge advocate's other duties, any judge advocate on duty with such troops may be appointed by the attorney general as an assistant attorney general, without pay for the judge advocate's services for acting in such capacity. [C35,§467-f38; C39,§467.40; C46, 50, §29.40; C54, 58, 62,§29.51; C66, 71, 73, 75,§29A.51]

29A.52 Malice must be proved. No action or proceeding shall be maintained against any officer appointing a military court or against any member of a military court or commission, officer or agent acting under its authority, or reviewing its proceedings, on account of the imposition of a fine or penalty or for the execution of a sentence of any person, unless it be shown that such officer, member or agent has acted from motives of malice. [C35,§467-f39; C39,§467.41; C46, 50,§29.41; C54, 58, 62,§29.52; C66, 71, 73, 75,§29A.52]

29A.53 Call by president of U. S. Whenever the United States is invaded or in danger of invasion from any foreign nation, or of rebellion against the authority of the government of the United States, or the president is unable, with the regular forces at his command, to execute the laws of the union, it shall be lawful for the president to call forth such number of the national guard as he may deem necessary to assist in repelling such invasion, suppressing such rebellion, or to assist in enabling him to execute such laws, and to issue his orders for that purpose, through the governor to such officers of the national guard as he may think proper; and the president may specify, in his call, the period for which such service is required, and the guard so called forth shall continue to serve during the term so specified, either within or without the territory of the United States, unless sooner relieved by order of the president.

Whenever the president shall require, in any of the designated instances, more troops than can be supplied by the national guard, the governor shall, in his discretion, organize forthwith such other national guard forces as he may deem necessary, or order into the service of the United States so many of the unorganized militia of the state as is required, designating the same by draft if a sufficient number do not volunteer, and shall commission officers therefor.

Officers and enlisted personnel called into federal service through the national guard shall upon completion of such service continue to serve the balance of their enlistment period the same as though it had not been interrupted by such service. [C97,§2169; S13, §2215-f18; C24, 27, 31,§448; C35,§467-f58; C39, §467.60; C46, 50,§29.60; C54, 58, 62,§29.53; C66, 71, 73, 75,§29A.53]

29A.54 Expense allowance of general officers. Each federally recognized general officer of the Iowa army national guard and the Iowa air national guard shall receive an annual expense allowance in the sum of four hundred and fifty dollars, payable during each calendar year, in such sums and at such times as requested by the said general officers, provided however, that no payment shall be made during such time as such general officers are in federal service. The adjutant general of Iowa shall have custodial and administrative responsibility of such funds. [C54, 58, 62,§29.54; C66, 71, 73, 75,§29A.54]

29A.55 Insurance. The adjutant general is hereby authorized to procure insurance against the liability of officers and enlisted personnel of the national guard, and employees of the adjutant general by reason of claims for bodily injuries, death, or property damage, made upon such officers, enlisted personnel and employees resulting from their operation of a motor vehicle while in the performance of their duties. [C54, 58, 62,§29.55; C66, 71, 73, 75, §29A.55]

29A.56 Claims. The adjutant general is hereby authorized to appoint a claims board or boards each composed of not less than three nor more than five officers of the national guard, to consider, investigate and settle claims to be paid out of funds not otherwise appropriated, on account of damage to or loss or destruction of private property, both real and personal, or personal injury or death, when such damage, loss, destruction, injury or death is caused as an incident to the training, practice, operation or maintenance of the national guard where the amount of such claim does not exceed one thousand dollars; provided, that no claim shall be considered unless presented within one year after the occurrence of the accident or incident out of which such claim arises; provided further, that any such settlements made by such boards shall be subject to approval (1) by the adjutant general and (2) by the executive council; provided further, that any such settlements made by

such boards, approved by the adjutant general and approved by the executive council shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary; provided further, that no claim shall be allowed hereunder arising from accident or incident occurring while the unit, detachment, or organization of the Iowa national guard involved is in federal service. [C54, 58, 62, §29.56; C66, 71, 73, 75,§29A.56]

29A.57 Armory board. The governor shall appoint an armory board which shall consist of the adjutant general, at least two officers from the active commissioned personnel of the national guard, and at least one other person, who is a citizen of the state of Iowa, of good moral character. One member of such board shall have had at least five years' experience in the building construction trade. The board shall meet at such times and places as are ordered by the governor. The members, so appointed, shall serve at the pleasure of the governor. Members of the board shall receive compensation of thirty dollars and actual expenses for each day actually employed under the provisions of this chapter.

The board shall be empowered to acquire land or real estate by purchase, contract for purchase, gift, or bequest and to acquire, own, contract for the construction of, erect, purchase, maintain, alter, operate, and repair installations and facilities of the Iowa national guard and the Iowa air national guard when funds for the same are made available by the federal government, the state of Iowa municipalities, corporations or individuals. The title to such property so acquired shall be taken in the name of the state of Iowa and such real estate may be sold or exchanged by the executive council, upon recommendation of the board, when no longer needed for the purpose for which it was acquired.

In carrying out the provisions of this section, the armory board may:

1. Borrow money.

2. Mortgage any real estate acquired and the improvements erected thereon when purchasing or improving the same, in order to secure necessary loans.

3. Pledge the rents, profits, and income received from any such property for the discharge of obligations executed.

No obligation created hereunder shall ever be or become a charge against the state of Iowa, but all such obligations, including principal and interest, shall be payable solely:

1. From the net rents, profits, and income arising from the property so pledged or mortgaged.

2. From the net rents, profits, and income which have not been pledged for other purposes arising from any other installation and facility or like improvement under the control and management of said board, or,

3. From the income derived from gifts and bequests for installations and facilities under the control of the armory board.

All property, real or personal, acquired by, and all bonds, debentures or other written evidences of indebtedness, given as security by said board, shall be exempt from taxation.

When property acquired by the armory board, under the provisions of this law, shall be free and clear of all indebtedness, the title of such property shall pass to the state of Iowa.

There shall be no liability to the state of Iowa under the provisions of this section. No member of the armory board and no member of the state executive council shall be held to any personal or individual liability for any action taken by them under the provisions of this chapter.

The board shall fix the amount to be paid to commanding officers of each division, brigade, battle group, battalion, company, or other unit of the national guard for headquarters expenses and shall provide by regulation how the same shall be disbursed by such commanding officers. The actions of the armory board shall be subject to the approval of the governor.

The allowances made by the armory board shall, when approved by the governor, be paid from the funds appropriated for the support and maintenance of the national guard. [C24, 27, 31,§453; C35,§467-f47; C39,§467.49; C46, 50, §29.49; C54, 58, 62,§29.57; C66, 71, 73, 75,§29A.57]

29A.58 Armories leased. The armory board as lessee, may lease property to be used for armory purposes and other training of the national guard. Leases may be made for any term not to exceed twenty years. Rents under such leases shall be paid from funds appropriated for the support and maintenance of the national guard.

The armory board as lessor or sublessor may, for a term not to exceed twenty years, lease property under the control of the board for purposes other than armory or military use when the leasing does not interfere with the use of such property for military purposes. The rental proceeds thereof shall be paid to the adjutant general for deposit into the general fund of the state.

Where the armory board is lessee, leases made under the provisions of this section may provide for an option to purchase the leased property and may make provision for the application upon the purchase price of rental payments made under the lease. Payments of special tax assessments arising under such leases may be paid from funds appropriated for the support and maintenance of the national guard. [C24, 27, 31,§453; C35,§467-f47; C39, §467.49; C46, 50,§29.49; C54, 58, 62,§29.58; C66, 71, 73, 75,§29A.58; 66GA, ch 16,§3]

29A.59 Approval of executive council. All action of the armory board in connection with

the acquiring of land or real estate, or improvements thereon, or the disposal of same, or the creation of any indebtedness, shall be with the approval of the state executive council. [C54, 58, 62,§29.59; C66, 71, 73, 75,§29A.59]

29A.60 Property exempt from taxation. All personal and real property held and used for armory or military purposes shall be exempt from taxation; and it shall be lawful for any county or city which owns public utilities to grant to any organization or unit of the national guard, which is stationed in such place, the free use of such public utilities. [S13, §2215-f40; C24, 27, 31,§465; C39,§467.50; C46, 50, §29.50; C54, 58, 62,§29.60; C66, 71, 73, 75,§29A.60]

29A.61 Fines. Fines may be paid to a court or to an officer executing its process. The amount of any fine imposed may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due him, until said fine is liquidated. Any sum so deducted from any state pay or allowance shall be turned in to the court which imposed the fine and shall be paid over by the officer receiving the same in like manner as provided for other fines and moneys collected.

The proceeds of all fines in summary, general, and special courts-martial cases shall be paid to the adjutant general and paid into the maintenance fund of the national guard, and all costs of prosecution shall be paid out of the same fund. [C35,§467-f60; C39,§467.62; C46, 50, §29.62; C54, 58,62,§29.78; C66, 71, 73, 75,§29A.61]

29A.62 Immunity from prosecution. No action or proceeding shall be prosecuted or maintained against a member of a military court or officer or person acting under its authority or reviewing its proceeding on account of the approval or imposition or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any warrant, writ, execution, or process, of a military court. [C35,§467-f37; C39,§467.39; C46, 50,§29.39; C54, 58, 62,§29.80; C66, 71, 73, 75,§29A.62]

29A.63 Jurisdiction presumed. The jurisdiction of the courts and boards established by this chapter shall be presumed. [C39,§467.33; C46, 50,§29.33; C54, 58, 62,§29.81; C66, 71, 73, 75, §29A.63]

29A.64 Custom and usage. All matters relating to the organization, discipline, and government of the military forces not otherwise provided for in this chapter, shall be decided by the custom, regulations, and usage of the armed forces of the United States. [C35,§467-f61; C39,§467.63; C46, 50,§29.63; C54, 58, 62, §29.82; C66, 71, 73, 75,§29A.64]

IOWA STATE GUARD

29A.65 Activation. Whenever any part of the national guard is in federal service the governor may activate such part of the unorganized militia, to be designated the "Iowa State Guard", as he may deem necessary, subject to provisions of federal law and regulations relating to such military organizations. [C46, 50,§29.64; C54, 58, 62,§29.83; C66, 71, 73, 75, §29A.65]

29A.66 Applicable powers and duties. The powers and duties of the governor, the adjutant general and the assistant adjutant general, with relation to the Iowa state guard shall be the same as those powers and duties prescribed in this chapter for such officers with relation to the national guard. [C46, 50, §29.65; C54, 58, 62,§29.84; C66, 71, 73, 75,§29A.66]

29A.67 Chief of staff. In the event the state headquarters of the national guard is inducted into federal service, the governor shall appoint a chief of staff for the Iowa state guard. [C46, 50,§29.64; C54, 58, 62,§29.85; C66, 71, 73, 75, §29A.67]

29A.68 Applicable provisions. The provisions of this chapter pertaining to the administration and employment of the national guard shall be applicable to the Iowa state guard. The rules relating to, appointment of officers, enlistments, term and conditions of service in, and discharge from, the Iowa state guard shall be such as are directed by the governor. [C46, 50,§29.65; C54, 58, 62,§29.86; C66, 71, 73, 75, §29A.68]

29A.69 Officers and duties. The powers and duties of officers and enlisted personnel of the Iowa state guard shall be the same as those prescribed in this chapter for officers and enlisted personnel of the national guard and the punitive and disciplinary provisions of this chapter relating to the national guard shall be applicable to the Iowa state guard. [C46, 50, §§29.16, 29.33; C54, 58, 62,§29.87; C66, 71, 73, 75, §29A.69]

29A.70 Immunity and exemption. The provisions of this chapter relating to immunity from suit and exemption from personal liability of members of the national guard shall apply to members of the Iowa state guard. [C46, 50,§29.39; C54, 58, 62,§29.88; C66, 71, 73, 75, §29A.70]

29A.71 Pay and allowances. Officers and enlisted personnel of the Iowa state guard while in active state service shall receive the same pay, allowances, and compensation as provided by law for members of the Iowa national guard. [C46, 50,§§29.31, 29.67; C54, 58, 62,§29.89; C66, 71, 73, 75,§29A.71]

29A.72 Expense. Any expense necessary for organizing, equipping, and maintaining the Iowa state guard shall be paid on approval of the governor by warrant drawn on any state funds not otherwise appropriated, or funds now or hereafter appropriated for the maintenance of the national guard. [C46, 50,§29.68; C54, 58, 62,§29.90; C66, 71, 73, 75,§29A.72]

29A.73 Immunity from national service. The Iowa state guard shall not be called, ordered or in any manner drafted as such into the military service of the United States. However, no person shall by reason of his membership in the Iowa state guard be exempt from federal military service under federal law. [C46, 50,§29.66; C54, 58, 62,§29.91; C66, 71, 73, 75, §29A.73]

POWERS OF ATTORNEY EXECUTED BY SERVICE PERSONNEL

29A.74 Death of principal—effect. Except as otherwise provided in this chapter no agency created by a power of attorney in writing given by a principal who is at the time of execution, or who after executing such power of attorney becomes, either a member of the armed forces of the United States, or a person serving as a merchant seaman outside the limits of the United States included within the fifty states and the District of Columbia, or a person outside said limits by permission, assignment or direction of any department, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal.

Except as otherwise provided in this chapter no report or listing either official or otherwise, of "missing" or "missing in action" shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal or notice of any facts indicating the same, or shall operate to revoke the agency. [C46, 50,§§29.69, 29.71; C54, 58, 62,§29.92; C66, 71, 73, 75,§29A.74]

Referred to in §29A.76

29A.75 Affidavit. An affidavit, executed by an attorney in fact or agent, setting forth that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death or otherwise, or notice of any facts indicating the same, shall, in the absence of fraud, be conclusive proof of the nonrevocation or nontermination of the power at such time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this state, such affidavit (when authenticated for record in the manner prescribed by law) shall likewise be recordable. [C46, 50,§29.70; C54, 58, 62,§29.93; C66, 71, 73, 75,§29A.75]

Referred to in §29A.76

29A.76 Express revocation or termination. Sections 29A.74 and 29A.75 of this chapter shall not operate to alter, invalidate, or in any manner affect any express provision for revocation or termination contained in any power of attorney. [C46, 50,§29.72; C54, 58, 62,§29.94; C66, 71, 73, 75,§29A.76]

NATIONAL GUARD AWARDS

29A.77 Posthumous grants. A member of the Iowa national guard, who was not retired, and was otherwise qualified for any state service award or for state appointment or promotion to a higher grade or rank as provided in this chapter, and who was unable to receive such award or appointment or promotion by reason of death, is eligible for posthumous grant of the award of state appointment or promotion to a higher grade or rank. The adjutant general shall present the award or evidence of the state appointment or promotion to the next of kin of the deceased member. [C71, 73, 75,§29A.77]

29A.78 Repealed by 66GA, ch 1176,§6.

AMBULANCE SERVICE

29A.79 Emergency helicopter ambulance. The adjutant general shall develop a plan within the Iowa national guard for an emergency helicopter ambulance service to transport persons who require emergency medical treatment or require emergency transfer between hospitals and to transport emergency medical supplies, equipment or personnel.

The Iowa national guard shall be requested to provide the emergency helicopter ambulance service from its available manned helicopters when the plan is implemented on order of the governor at the request of the Iowa highway safety patrol, or the administrative heads of the hospitals located in Iowa, unless the Iowa national guard does not have a manned helicopter available or is in active service under the armed forces of the United States.

The adjutant general shall establish policies and procedures to carry out the provisions of this section. The policies and procedures shall provide that the emergency helicopter ambulance service shall be co-ordinated and supplemental to, and not competitive with conventional ambulance services. In determining whether an emergency exists the policies and procedures shall give reasonable consideration to the risk of death or permanent injury due to delayed treatment resulting from: Remoteness of an area from any hospital, the absence or unavailability of conventional ambulance services, and the distance to be traveled in a transfer between hospitals. [C73, 75,§29A.79]

CHAPTER 29B

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GENERAL JURISDICTION

29B.1 Persons subject to code. This chapter applies to all members of the state military forces who are not in federal service. [C66, 71, 73, 75,§29B.1]

29B.2 Jurisdiction to try personnel. Each person discharged from the state military forces who is later charged with having fraudulently obtained his discharge is, subject to section 29B.44, subject to trial by court-martial on that charge and is after apprehension subject to this code while in the custody of the military for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this code committed before the fraudulent discharge.

No person who has deserted from the state military forces may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service. [C66, 71, 73, 75,§29B.2]

29B.3 Territorial applicability of code. This code applies throughout the state. It also applies to all persons otherwise subject to this code while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside the state with the same jurisdiction and powers as to persons subject to this code as if the proceedings were held inside the state and offenses committed outside the state may be tried and punished either inside or outside the state. [C66, 71, 73, 75,§29B.3]

APPREHENSION AND RESTRAINT

29B.4 Apprehension. Apprehension is the taking of a person into custody. Any person authorized by this code, or by regulations issued under it, to apprehend persons subject to this code, any marshal of a court-martial appointed pursuant to the provisions of this code, and any peace officer authorized to do so by law, may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this code and to apprehend persons subject to this code who take part therein. [C54, 58, 62,§29.65; C66, 71, 73, 75,§29B.4]

29B.5 Apprehension of deserters. Any civil officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the state military forces and deliver him into the custody of the state military forces. If an offender is apprehended outside the state his return to the area must be in accordance with normal extradition procedures or reciprocal agreement. [C66, 71, 73, 75,§29B.5]

29B.6 Imposition of restraint. Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, di-

recting him to remain within certain specified limits. Confinement is the physical restraint of a person.

An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code or through any person authorized by this code to apprehend persons.

A commanding officer may authorize warrant officers, petty officers or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

A commissioned officer or a warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated. [C54, 58, 62,§29.66; C66, 71, 73, 75,§29B.6]

29B.7 Probable cause. No person may be ordered apprehended or into arrest or confinement except for probable cause.

This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified. [C54, 58, 62,§29.66; C66, 71, 73, 75,§29B.7]

29B.8 Restraint of persons charged with offenses. Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this code is placed in arrest or confinement prior to trial, after charges are placed against him, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him within sixty days of informing the accused or to dismiss the charges and release him. [C35,§467-f35; C39,§467.37; C46, 50,§29.37; C54, 58, 62,§29.67; C66, 71, 73, 75,§29B.8]

29B.9 Posting of bond. The accused may post bond in the amount ordered by the convening authority but not to exceed twice the authorized fine for such offense, however, no bond is permitted for capital offenses. [C66, 71, 73, 75,§29B.9]

29B.10 Confinement in jails. Persons confined other than in a guardhouse, whether before, during or after trial by a military court, shall be confined in civil jails, penitentiaries, or prisons. [C66, 71, 73, 75,§29B.10]

29B.11 Reports and receiving of prisoners. Every commander of a guard, master-at-arms, warden, keeper, or officer of a city or county jail or of any other jail, penitentiary, or prison, to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment. [C54, 58, 62,§29.68; C66, 71, 73, 75,§29B.11]

29B.12 Punishment prohibited before trial. Subject to section 29B.58, no person, while being held for trial or the result of a trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline. [C66, 71, 73, 75, §29B.12]

29B.13 Delivery of offenders to civil authorities. Under such regulations as may be prescribed under this code a person subject to this code who is on active state duty who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, shall be held to interrupt the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence. [C35,§467-f61; C39,§467.63; C46, 50,§29.63; C54, 58, 62,§29.61; C66, 71, 73, 75,§29B.13]

NONJUDICIAL PUNISHMENT

29B.14 Commanding officers nonjudicial punishment. Under such regulations as the adjutant general may prescribe any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

1. Upon officer of his command:

a. Withholding of privileges for not more than two consecutive weeks,

b. Restriction to certain specified limits with or without suspension from duty, for not more than two consecutive weeks, or

c. If imposed by a commanding officer of the state military forces of field grade or above, a fine or forfeiture of pay and allowances of not more than twenty-five dollars.

2. Upon other military personnel of his command:

a. Withholding of privileges for not more than two consecutive weeks,

b. Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks,

c. Extra duties for not more than fourteen days, which need not be consecutive, and for not more than two hours per day, holidays included,

d. Reduction to the lowest or any intermediate grade within his promotion authority,

e. If imposed by an officer exercising special court-martial jurisdiction over the offender, a fine or forfeiture of pay and allowances of not more than ten dollars.

A person punished under this section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command, or superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges and property affected.

The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section, but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

Whenever a punishment of forfeiture of pay and allowances is imposed under this section, the forfeiture may apply to pay or allowances accruing on or after that punishment is imposed and to any pay and allowances accrued before that date. [C54, 58, 62, §29.62; C66, 71; 73, 75,§29B.14]

Referred to in §§29B.18, 29B.44

COURTS-MARTIAL

29B.15 Courts-martial of state military forces not in federal service—jurisdiction—forms and proceedings. In the state military forces not in federal service, there are general, special, and summary courts-martial constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures provided for those courts.

The three kinds of courts-martial are:

1. General courts-martial, consisting of a law officer and not less than five members;

2. Special courts-martial, consisting of not less than three members; and

3. Summary courts-martial, consisting of one commissioned officer. [C35,§§467-f33,-f61; C39,§§467.35, 467.63; C46, 50,§§29.35, 29.63; C54, 58, 62,§29.69; C66, 71, 73, 75,§29B.15]

29B.16 Jurisdiction of courts-martial in general. Each force of the state military forces has court-martial jurisdiction over all persons subject to this code. [C35,§§467-f33,-f61; C39, §§467.35, 467.63; C46, 50,§§29.35, 29.63; C54, 58, 62,§29.69; C66, 71, 73, 75,§29B.16]

Referred to in §§29B.17, 29B.18

29B.17 Jurisdiction of general courts-martial. Subject to section 29B.16, general courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under such limitations as the adjutant general may prescribe, adjudge any of the following punishments:

1. A fine of not more than two hundred dollars;

2. Forfeiture of pay and allowances not to exceed one thousand dollars;

3. A reprimand;

4. Dismissal or dishonorable discharge;

5. Reduction of a noncommissioned officer to the ranks; or

6. Any combination of these punishments. [C39,§467.33; C46, 50,§29.33; C54, 58, 62,§29.71; C66, 71, 73, 75,§29B.17]

29B.18 Jurisdiction of special or summary courts-martial. Subject to section 29B.16, special courts-martial have jurisdiction to try persons subject to this code for any offense for which they may have been punished under this code. A special court-martial has the same powers of punishment as a general court-martial except that a fine imposed by a special court-martial may not be more than one hundred dollars for a single offense.

Subject to section 29B.16, summary courts-martial have jurisdiction to try persons subject to this code, except officers, for any offense made punishable by this code.

No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto, unless under section 29B.14 he has been permitted and has elected to refuse punishment under that section. If objection to trial by summary court-martial is made by an accused who has not been permitted to refuse punishment under section 29B.14, trial shall be ordered by special or general court-martial, as may be appropriate.

A summary court-martial may sentence to a fine of not more than twenty-five dollars for a single offense, to forfeiture of pay and allowances, not to exceed two-thirds of one month's pay, and to reduction of a noncommissioned officer to the ranks. [C54, 58, 62,§§29.72, 29.73; C66, 71, 73, 75,§29B.18]

29B.19 Sentences of dismissal or dishonorable discharge to be approved by the governor. In the organized militia not in federal service, no sentence of dismissal or dishonorable dis-

charge may be executed until it is approved by the governor. [C54, 58, 62,§29.75; C66, 71, 73, 75,§29B.19]

29B.20 Complete record. A dishonorable discharge, bad conduct discharge or dismissal may not be adjudged by any court-martial unless a complete record of the proceedings and testimony before the court has been made. [C66, 71, 73, 75,§29B.20]

Referred to in §29B.60

29B.21 Confinement instead of fine. In the state military forces, not in federal service, a court-martial may, instead of imposing a fine, sentence to confinement for not more than one day for each three dollars of the authorized fine. [C35,§467-f35; C39,§467.37; C46, 50,§29.37; C54, 58, 62,§29.74; C66, 71, 73, 75,§29B.21]

29B.22 Judge advocates and legal officers. The adjutant general shall appoint an active or retired officer of the state military forces as state judge advocate. To be eligible for appointment, an officer must be a member of the bar of the highest court of the state and must have been a member of the bar of the state for at least five years.

The adjutant general may appoint as many assistant state judge advocates as he considers necessary. To be eligible for appointment, assistant state judge advocates must be active officers of the state military forces and members of the bar of the highest court of the state.

Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice; and the staff judge advocate of any command may communicate directly with the staff judge advocate of a superior or subordinate command, or with the state judge advocate.

No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense, in any case may later act as staff judge advocate or legal officer to any reviewing authority upon the same case. [C66, 71, 73, 75,§29B.22]

APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

29B.23 Who may convene general courts-martial. In the state military forces not in federal service, general courts-martial may be convened by the governor, or by the adjutant general of the state of Iowa. [C39,§467.33; C46, 50,§29.33; C54, 58, 62,§29.71; C66, 71, 73, 75, §29B.23]

29B.24 Special courts-martial of state military forces not in federal service—who may convene. In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. When any such officer is an accuser, the court shall be convened by superior competent authority.

A special court-martial may not try a commissioned officer. [C54, 58, 62,§29.72; C66, 71, 73, 75,§29B.24]

29B.25 Summary courts-martial—who may convene. In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a division, brigade, regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial consisting of an assistant state judge advocate. The proceedings shall be informal.

When only one commissioned officer is present with a command or detachment he shall be the summary court officer of that command or detachment and shall hear and determine all summary court-martial cases brought before him. [C54, 58, 62,§29.73; C66, 71, 73, 75, §29B.25]

29B.26 Who may serve on courts-martial. Any commissioned officer of or on duty with the state military forces is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

Any warrant officer of or on duty with the state military forces is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

Any enlisted member of the state military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the convening of the court, the accused personally has requested in writing, that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

In this section, the word "unit" means any regularly organized body of the state military forces not larger than a company, a squadron, or a body corresponding to one of them.

When it can be avoided, no person subject to this code may be tried by a court-martial any member of which is junior to him in rank or grade.

When convening a court-martial, the convening authority shall detail as members thereof such members as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer, staff judge advocate, or as counsel in the same case. If within the command of the convening authority there is present and not otherwise disqualified a commissioned officer who is a member of the bar of the highest court of the state and of appropriate rank and grade, the convening authority shall appoint him as president of a special court-martial. Although this requirement is binding on the convening authority, failure to meet it in any case does not divest a military court of jurisdiction. [C66, 71, 73, 75,§29B.26]

29B.27 Law officer of a general court-martial. The authority convening a general court-martial shall detail as law officer thereof a commissioned officer who is a member of the bar of the highest court of the state, or a member of the bar of a federal court, and who is certified to be qualified for such duty by the state judge advocate. No person is eligible to act as law officer in a case if he is the accuser of a witness or has acted as investigating officer or as counsel in the same case.

The law officer may not consult with the members of the court, other than on the form of the findings as provided in section 29B.40. except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court. [C35,§467-f38; C39,§467.40; C46, 50,§29.40; C54, 58, 62,§29.79; C66, 71, 73, 75,§29B.27]

29B.28 Detail of trial counsel and defense counsel. For each general and special court-martial the authority convening the court shall detail trial counsel and defense counsel and such assistants as he considers appropriate. No person who has acted as investigating officer, law officer, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel, or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

Trial counsel or defense counsel detailed for a general court-martial must be a person who is a member of the bar of the highest court of the state, or a member of the bar of a federal court.

In the case of a special court-martial:

1. If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

2. If the trial counsel is a member of the bar of the highest court of the state, the defense counsel detailed by the convening authority must also be a member of the bar of the highest court of the state. [C66, 71, 73, 75,§29B.28]

Referred to in §§29B.39, 29B.67

29B.29 Detail or employment of reporters and interpreters. Under such regulations as the adjutant general may prescribe, the convening authority of a general or special court-martial or court of inquiry shall detail or employ certified court reporters, who shall record the proceedings of and testimony taken before that court. Under like regulations, the convening authority of a military court may detail or employ interpreters who shall interpret for the court. C66, 71, 73, 75,§29B.29]

29B.30 Absent and additional members. No member of a general or special court-martial may be absent or excused after the accused has been arraigned except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

Whenever a general court-martial is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. When the new members have been sworn, the trial shall proceed as if no evidence has been previously introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel. [C66, 71, 73, 75,§29B.30]

PRETRIAL PROCEDURES

29B.31 Charges and specifications. Charges and specifications shall be signed by a person subject to this code under oath before a person authorized by this code to administer oaths and shall state:

1. That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

2. That they are true in fact to the best of his knowledge and belief.

Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable. [C54, 58, 62,§29.64; C66, 71, 73, 75,§29B.31]

Referred to in §29B.50

29B.32 Compulsory self-incrimination prohibited. No person subject to this code may

compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

No person subject to this code may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

No person subject to this code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

No statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial. [C66, 71, 73, 75,§29B.32]

29B.33 Investigation. No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed above, no further investigation of that charge is necessary under this section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

The requirements of this section are binding on all persons administering this code but failure to follow them does not divest a military court of jurisdiction. [C66, 71, 73, 75, §29B.33]

29B.34 Forwarding of charges. When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges to the adjutant general direct, together with the investigation and allied papers. If that is not practicable, he shall report in writing to the adjutant general the reasons for delay. [C66, 71, 73, 75,§29B.34]

29B.35 Advice of state judge advocate and reference for trial. Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the state judge advocate for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of the investigation.

If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made. [C66, 71, 73, 75, §29B.35]

29B.36 Service of charges. The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objection, be brought to trial before a general court-martial within a period of five days after the service of the charges upon him, or before a special court-martial within a period of three days after the service of the charges upon him. [C66, 71, 73, 75, §29B.36]

TRIAL PROCEDURE

29B.37 Adjutant general may prescribe rules. The procedures, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the adjutant general by regulations, which shall, so far as he considers practicable, apply the principles of law and the rule of evidence generally recognized in the trial of criminal cases in the courts of the state, but which may not be contrary to or inconsistent with this code. [C66, 71, 73, 75, §29B.37]

29B.38 Unlawfully influencing action of court. No authority convening a general, special, or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, law officer, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. Any violation of this section shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.38]

29B.39 Duties of trial counsel and defense counsel. The trial counsel of a general or special court-martial shall prosecute in the name of the state, and shall, under the direction of the court, prepare the record of the proceedings.

The accused has the right to be represented in his defense before a general or special court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under section 29B.28. Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the president of the court.

In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 29B.28, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 29B.28, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused. [C66, 71, 73, 75, §29B.39]

29B.40 Sessions. Whenever a general or special court-martial deliberates or votes, only the members of the court may be present. After a general court-martial has finally voted on the findings, the court may request the law officer and the reporter to appear before the court to put the findings in proper form, and those proceedings shall be on the record. All other proceedings, including any other consultation of the court with counsel or the law officer, shall be made a part of the record, and shall be in the presence of the accused, the defense counsel, the trial counsel, and in general court-martial cases, the law officer. [C66, 71, 73, 75,§29B.40]

Referred to in §29B.27

29B.41 Continuances. A court-martial may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just. [C66, 71, 73, 75,§29B.41]

29B.42 Challenges. Members of a general or special court-martial and the law officer of a general court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

Each accused and the trial counsel is entitled to one peremptory challenge, but the law officer may not be challenged except for cause, as outlined in rules of civil procedure 187 *"f"* and stated to the court. [C66, 71, 73, 75,§29B.42]

29B.43 Oaths. The law officer, interpreters, and, in general and special courts-martial, members, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

Each witness before a military court shall be examined on oath or affirmation. [C66, 71, 73, 75,§29B.43]

29B.44 Statute of limitations. A person charged with desertion or absence without leave in time of war, or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

Except as otherwise provided in this section, a person charged with desertion in time of peace or with the offense punishable under section 29B.112 is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

Except as otherwise provided in this section, a person charged with any offense is not liable to be tried by court-martial or punished under section 29B.14 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer

exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 29B.14.

Periods in which the accused was absent from territory in which the state has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section. [C66, 71, 73, 75,§29B.44]

Referred to in §29B.2

29B.45 Former jeopardy. No person may, without his consent, be tried a second time in any military court of the state for the same offense.

No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this section. [C66, 71, 73, 75,§29B.45]

29B.46 Pleas of the accused. If an accused arraigned before a court-martial makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty. [C66, 71, 73, 75,§29B.46]

29B.47 Opportunity to obtain witnesses and other evidence. The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the adjutant general may prescribe.

The president of a court-martial or a summary court officer may:

1. Issue a warrant for the arrest of any accused person who having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

2. Issue subpoenas duces tecum and other subpoenas;

3. Enforce by attachment the attendance of witnesses and the production of books and papers; and

4. Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the state.

Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and shall be executed by civil officers as prescribed by laws of the state. [C35,§467-f37; C39,§467.39; C46, 50, §29.39; C54, 58, 62,§29.76; C66, 71, 73, 75,§29B.47]

29B.48 Refusal to appear or testify. Any person not subject to this code who:

1. Has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer and designated to take a deposition to be read in evidence before such a court;

2. Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the state; and

3. Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce; is guilty of an offense against the state and a military court may punish him in the same manner as the civil courts of the state. [C66, 71, 73, 75,§29B.48]

29B.49 Contempts. A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for thirty days or a fine of one hundred dollars, or both. [C66, 71, 73, 75,§29B.49]

29B.50 Depositions. At any time after charges have been signed, as provided in section 29B.31, any party may take depositions under the procedure set forth in Iowa rules of civil procedure, numbers 140 through 166. [C66, 71, 73, 75,§29B.50]

29B.51 Admissibility of records of courts of inquiry. In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry, and if the same issue was involved or if the accused consents to the introduction of such evidence.

Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

Such testimony may also be read in evidence before a court of inquiry or a military board. [C66, 71, 73, 75,§29B.51]

29B.52 Voting and rulings. Voting by members of a general or special court-martial upon questions or challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes. The count shall be checked by the president, who shall forthwith announce the results of the ballot to the members of the court.

The law officer of a general court-martial and the president of a special court-martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a general court-martial or by the president of a special court-martial upon any interlocutory question other than a motion for a finding of not guilty, or the question of the accused's sanity, is final and constitutes the ruling of the court. However, the law officer or president may change the ruling at any time during the trial except a ruling on a motion for a finding of not guilty that was granted. Unless a ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 29B.53 beginning with the junior in rank.

Before a vote is taken on the findings, the law officer of a general court-martial and the president of a special court-martial shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court:

1. That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

2. That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

3. That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

4. That the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the state. [C66, 71, 73, 75, §29B.52]

29B.53 Number of votes required. No person may be convicted of an offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

All sentences shall be determined by the concurrence of two-thirds of the members present at the time that the vote is taken.

All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused. [C66, 71, 73, 75,§29B.53]

Referred to in §29B.52

29B.54 Court to announce action. A court-martial shall announce its findings and sentence to the parties as soon as determined. [C66, 71, 73, 75,§29B.54]

29B.55 Record of trial. Each court-martial shall keep a separate record of the proceedings of the trial of each case brought before it and the record shall be authenticated by the signatures of the president and the law officer. If the record cannot be authenticated by either the president or the law officer, by reason of his death, disability or absence, it shall be signed by a member in lieu of him. If both the president and the law officer are unavailable, the record shall be authenticated by two members. A record of the proceedings of a trial in which the sentence adjudged includes a bad-conduct discharge or is more than that which could be adjudged by a special court-martial shall contain a verbatim account of the proceedings and testimony before the court. All other records of trial shall contain such matter and be authenticated in such manner as the adjutant general may by regulation prescribe.

A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated. If a verbatim record of trial by general court-martial is not required, but has been made, the accused may buy such a record under such regulations as the adjutant general may prescribe. [C66, 71, 73, 75,§29B.55]

SENTENCES

29B.56 Cruel and unusual punishments prohibited. Punishment by cruel or unusual punishment may not be adjudged by any court-martial or inflicted upon any person subject to this code. [C66, 71, 73, 75,§29B.56]

29B.57 Maximum fines. The punishment which a court-martial may direct for an offense may not exceed limits prescribed by this code. [C66, 71, 73, 75,§29B.57]

29B.58 Effective date of sentences. Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial but periods during which the sentence to confinement is suspended shall be excluded in computing the service of the term of confinement, provided, however, that credit be given for confinement served prior to trial. Regulations prescribed by the adjutant general may provide that sentences of confinement may not be executed until approved by designated officers.

All other sentences of courts-martial are effective on the date ordered executed. [C66, 71, 73, 75,§29B.58]

Referred to in §29B.12

29B.59 Execution of confinement. A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the state military forces or in any jail, penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary or prison by the courts of the state or of any political subdivision thereof.

The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

The keepers, officer, and wardens of city or county jails and of other jails, penitentiaries, or prisons shall receive persons ordered into confinement before trial and persons committed to such confinement by a military court and shall confine them according to law. No such keeper, officer or warden may require payment of any fee or charge for so receiving or confining a person. [C66, 71, 73, 75,§29B.59]

REVIEW BY COURT-MARTIAL

29B.60 Execution of sentence—suspension of sentence. Except as provided in sections 29B.20 and 29B.65, a court-martial sentence, unless suspended, may be ordered executed by the convening authority when approved by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence as approved by him. [C66, 71, 73, 75,§29B.60]

29B.61 Initial action of record. After a trial by court-martial the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or by the adjutant general. [C66, 71, 73, 75,§29B.61]

29B.62 Same — general court-martial records. The convening authority shall refer the record of each general court-martial to the state judge advocate, who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. [C66, 71, 73, 75, §29B.62]

29B.63 Reconsideration and revision. If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

1. For reconsideration of a finding of not guilty, or a ruling which amounts to a finding of not guilty;

2. For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this code; or

3. For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory. [C66, 71, 73, 75,§29B.63]

29B.64 Rehearings. If the convening authority disapproves the findings and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. [C66, 71, 73, 75,§29B.64]

29B.65 Review of records—disposition. If the convening authority is the governor or adjutant general, his action on the review of any record of trial is final.

In all other cases not covered by this section, if the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, whether or not suspended, the entire record shall be sent to the appropriate staff judge advocate of the state force concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the staff judge advocate or legal officer shall then be sent to the state judge advocate for review.

All other special and summary court-martial records shall be sent to the staff judge advocate of the appropriate force of the state military forces and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations prescribed by the adjutant general.

The state judge advocate shall review the record of trial in each case sent to him for review as provided under this section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the state judge advocate is limited to questions of jurisdiction.

The state judge advocate shall take final action in any case reviewable by him.

In a case reviewable by the appropriate state judge advocate under this section, the state judge advocate may act only with respect to the findings and sentence as approved by the convening authority. He may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and determines, on the basis of the entire record, should be approved. In consideration of the record, he may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the state judge advocate sets aside the findings and sentence, he may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.

In a case reviewable by the state judge advocate under this section, he shall instruct the convening authority to act in accordance with his decision on the review. If he has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

The state judge advocate may order one or more boards of review each composed of not less than three commissioned officers of the state military forces, each of whom must be a member of the bar of the highest court of the state. Each board of review shall review the record of any trial by special court-martial including a sentence to a bad-conduct discharge, referred to it by the state judge advocate. Boards of review have the same authority on review as the state judge advocate has under this section. [C66, 71, 73, 75,§29B.65]

Referred to in §29B.60

29B.66 Error of law — lesser included offenses. A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm so much of the finding as includes a lesser included offense. [C66, 71, 73, 75,§29B.66]

29B.67 Review counsel. Upon the final review of a sentence of a general court-martial or of a sentence to a bad-conduct discharge, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate, and before the appropriate state judge advocate.

Upon the request of an accused entitled to be so represented, the state judge advocate shall appoint a lawyer who is a member of the state military forces and who has the qualifications prescribed in section 29B.28, if available, to represent the accused before the reviewing authority, before the staff judge advocate, and before the appropriate state judge advocate, in the review of cases specified in this section.

If provided by him, an accused entitled to be so represented may be represented by civilian counsel before the reviewing authority, before the staff judge advocate and before the appropriate state judge advocate. [C66, 71, 73, 75,§29B.67]

29B.68 Vacation of suspension. Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the adjutant general in cases involving a general court-martial sentence and to the commanding officer of the force of state military forces of which the probationer is a member in all other cases covered by this section. If the adjutant general or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence. [C66, 71, 73, 75,§29B.68]

29B.69 Petition for a new trial. At any time within two years after approval by the convening authority of a court-martial sentence which extends to dismissal, dishonorable or bad-conduct discharge, the accused may petition the governor for a new trial on ground of newly discovered evidence of fraud on the court-martial. [C66, 71, 73, 75,§29B.69]

Referred to in §29B.72

29B.70 Remission or suspension. A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

The governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial. [C66, 71, 73, 75,§29B.70]

29B.71 Restoration. Under such regulations as the adjutant general may prescribe, all

rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or rehearing.

If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the adjutant general shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

If a previously executed sentence of dismissal is not imposed on a new trial, the adjutant general shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the governor alone to such commissioned grade and with such rank as in the opinion of the governor that former officer would have attained had he not been dismissed. The reappointment of such a former officer may be made if a position vacancy is available under applicable tables of organization. All times between the dismissal and reappointment shall be considered as service for all purposes. [C66, 71, 73, 75,§29B.71]

29B.72 Finality of proceedings — findings and sentences. The proceedings, findings, and sentences of court-martial as reviewed and approved, as required by this code, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval, as required by this code, are final and conclusive. Orders publishing the proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided in section 29B.69. [C66, 71, 73, 75,§29B.72]

PUNITIVE ARTICLES

29B.73 Persons to be tried or punished. No person may be tried or punished for any offense provided for in this code unless it was committed while he was in a duty status. [C66, 71, 73, 75,§29B.73]

29B.74 Principals. Any person subject to this code who:

1. Commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or

2. Causes an act to be done which if directly performed by him would be punishable by this code;

is a principal. [C66, 71, 73, 75,§29B.74]

29B.75 Accessory after the fact. Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial or punishment shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.75]

29B.76 Conviction of lesser included offenses. An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein. [C66, 71, 73, 75,§29B.76]

29B.77 Attempts. An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated. [C66, 71, 73, 75, §29B.77]

29B.78 Conspiracy. Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.78]

29B.79 Solicitation. Any person subject to this code who solicits or advises another or others to desert in violation of section 29B.82 or mutiny in violation of section 29B.91 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 29B.96 or sedition in violation of section 29B.91 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.79]

29B.80 Fraudulent enlistment—appointment or separation. Any person who:

1. Procures his own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

2. Procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to

his eligibility for that separation;
shall be punished as a court-martial may direct. [C97,§§2196–2198; SS15,§2215-f63; C24, 27, 31,§464; C35,§467-f59; C39,§467.61; C46, 50,§29.61; C54, 58, 62,§29.63(1); C66, 71, 73, 75,§29B.80]

29B.81 Unlawful enlistment — appointment or separation. Any person subject to this code who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct. [C66, 71, 73, 75, §29B.81]

29B.82 Desertion. Any member of the state military forces who:

1. Without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

2. Quits his unit, organization or place of duty with intent to avoid hazardous duty or to shirk important services; or

3. Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the armed forces of the United States, without duly disclosing the fact that he has not been regularly separated;
is guilty of desertion.

Any commissioned officer of the state military forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.82]

Referred to in §29B.79

29B.83 Absence without leave. Any person subject to this code who, without authority:

1. Fails to go to his appointed place of duty at the time prescribed;

2. Goes from that place; or

3. Absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;
shall be punished as a court-martial may direct. [C97,§§2196–2198; SS15,§2215-f63; C24, 27, 31,§464; C35,§467-f59; C39,§467.61; C46, 50,§29.61; C54, 58, 62,§29.63(3); C66, 71, 73, 75,§29B.83]

29B.84 Missing movement. Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct. [C66, 71, 73, 75, §29B.84]

29B.85 Contempt toward officials. Any person subject to this code who uses contemptuous words against the president, the governor, or the governor of any other state, territory, commonwealth, or possession in which that person may be serving, shall be punished as a court-martial may direct. [C97,§§2196–2198; SS15,§2215-f63; C24, 27, 31,§464; C35,§467-f59; C39,§467.61; C46, 50,§29.61; C54, 58, 62,§29.63(4); C66, 71, 73, 75,§29B.85]

29B.86 Disrespect toward superior commissioned officer. Any person subject to this code who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct. [C97, §§2196–2198; SS15,§2215-f63; C24, 27, 31,§464; C35,§467-f59; C39,§467.61; C46, 50,§29.61; C54, 58, 62,§29.63(5); C66, 71, 73, 75,§29B.86]

29B.87 Assaulting or willfully disobeying superior commissioned officer. Any person subject to this code who:

1. Strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

2. Willfully disobeys a lawful command of his superior commissioned officer;
shall be punished as a court-martial may direct. [C97,§§2196–2198; SS15,§2215-f63; C24, 27, 31,§464; C35,§467-f59; C39,§467.61; C46, 50,§29.61; C54, 58, 62,§29.63(6); C66, 71, 73, 75,§29B.87]

29B.88 Insubordinate conduct toward warrant officer, noncommissioned officer or petty officer. Any warrant officer or enlisted member who:

1. Strikes or assaults a warrant officer, noncommissioned officer or petty officer, while that officer is in the execution of his office;

2. Willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

3. Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;
shall be punished as a court-martial may direct. [C97,§§2196–2198; SS15,§2215-f63; C24, 27, 31,§464; C35,§467-f59; C39,§467.61; C46, 50,§29.61; C54, 58, 62,§29.63(7); C66, 71, 73, 75,§29B.88]

29B.89 Failure to obey order or regulation. Any person subject to this code who:

1. Violates or fails to obey any lawful general order or regulation;

2. Having knowledge of any other lawful order issued by a member of the state military forces which it is his duty to obey, fails to obey the order; or

3. Is derelict in the performance of his duties;
shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.89]

29B.90 Cruelty and maltreatment. Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.90]

29B.91 Mutiny or sedition. Any person subject to this code who:

1. With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance against that authority is guilty of mutiny;

2. With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

3. Fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct. [C97, §§2196–2198; SS15,§2215-f63; C24, 27, 31,§464; C35,§467-f59; C39,§467.61; C46, 50,§29.61; C54, 58, 62,§29.63(8); C66, 71, 73, 75,§29B.91]

Referred to in §29B.79

29B.92 Resistance, breach of arrest and escape. Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.92]

29B.93 Releasing prisoner without proper authority. Any person subject to this code who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law. [C97,§§2196–2198; SS15,§2215-f63; C24, 27, 31,§464; C35,§467-f59; C39,§467.61; C46, 50, §29.61; C54, 58, 62,§29.63(9); C66, 71, 73, 75, §29B.93]

29B.94 Unlawful detention of another. Any person subject to this code who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.94]

29B.95 Noncompliance with procedural rules. Any person subject to this code who:

1. Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code; or

2. Knowingly and intentionally fails to enforce or comply with any provisions of this code regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.95]

29B.96 Misbehavior before the enemy. Any person subject to this code who before or in the presence of the enemy:

1. Runs away;

2. Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

3. Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

4. Casts away his arms or ammunition;

5. Is guilty of cowardly conduct;

6. Quits his place of duty to plunder or pillage;

7. Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the state military forces;

8. Willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture or destroy; or

9. Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to the state, or to any other state, when engaged in battle;

shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.96]

Referred to in §29B.79

29B.97 Subordinate compelling surrender. Any person subject to this code who compels or attempts to compel the commander of any of the state military forces of the state, or of any other state, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.97]

29B.98 Improper use of countersign. Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.98]

29B.99 Forcing a safeguard. Any person subject to this code who forces a safeguard shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.99]

29B.100 Captured or abandoned property. All persons subject to this code shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody or control.

Any person subject to this code who:

1. Fails to carry out the duties prescribed herein;

2. Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit or advantage to himself or another directly or indirectly connected with himself; and

3. Engages in looting or pillaging;

shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.100]

29B.101 Aiding the enemy. Any person subject to this code who:

1. Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

2. Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.101]

29B.102 Misconduct of a prisoner. Any person subject to this code who, while in the hands of the enemy in time of war:

1. For the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

2. While in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.102]

29B.103 False official statements. Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct. [C97,§§2196–2198; SS15,§2215-f63; C24, 27, 31, §464; C35,§467-f59; C39,§467.61; C46, 50,§29.61; C54, 58, 62,§29.63(2); C66, 71, 73, 75,§29B.103]

29B.104 Property other than military property—waste, spoilage or destruction. Any person subject to this code who, while in a duty status, willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of the state shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.104]

29B.105 Improper hazarding of vessel. Any person subject to this code who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

Any person subject to this code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.105]

29B.106 Drunken or reckless driving. Any person subject to this code who operates any vehicle while under the influence of an alcoholic beverage, a narcotic, hypnotic or other drug, or any combination of such substances, or in a reckless or wanton manner, shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.106]

Referred to in §321B.2
"Alcoholic beverage" defined; see §321B.2

29B.107 Drunk on duty—sleeping on post—leaving post before relief. Any person subject to this code who is found drunk on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial may direct. [C97, §§2196–2198; SS15,§2215-f63; C24, 27, 31,§464; C35,§467-f59; C39,§467.61; C46, 50,§29.61; C54, 58, 62,§29.63(10); C66, 71, 73, 75,§29B.107]

29B.108 Dueling. Any person subject to this code who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.108]

29B.109 Malingering. Any person subject to this code who for the purpose of avoiding work, duty or service in the state military forces:

1. Feigns illness, physical disablement, mental lapse or derangement; or

2. Intentionally inflicts self-injury;

shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.109]

29B.110 Riot or breach of peace. Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.110]

29B.111 Provoking speeches or gestures. Any person subject to this code who uses provoking or reproachful words or gestures toward any other person subject to this code shall be punished as a court-martial may direct. [C66, 71, 73, 75,§29B.111]

29B.112 Perjury. Any person subject to this code who in a judicial proceeding or in a court of justice conducted under this code willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct. [C66, 71, 73, 75, §29B.112]

Referred to in §29B.44

29B.113 Frauds against the government. Any person subject to this code:

Who, knowing it to be false or fraudulent:

1. Makes any claim against the United States, the state, or any officer thereof; or

2. Presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the state, or any officer thereof;

Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state, or any officer thereof:

1. Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

2. Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

3. Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

Who, having charge, possession, custody, or control of any money, or other property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state; shall, upon conviction, be punished as a court-martial may direct. [C97,§§2196-2198; SS15, §2215-f63; C24, 27, 31,§464; C35,§467-f59; C39, §467.61; C46, 50,§29.61; C54, 58, 62,§29.63(13); C66, 71, 73, 75,§29B.113]

29B.114 Larceny and wrongful appropriation. Any person subject to this code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind:

1. With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

2. With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct. [C66, 71, 73, 75, §29B.114]

29B.115 Conduct unbecoming an officer and a gentleman. Any commissioned officer who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct. [C97,§§2196-2198; SS15, §2215-f63; C24, 27, 31,§464; C35,§467-f59; C39, §467.61; C46, 50,§29.61; C54, 58, 62,§29.63(11); C66, 71, 73, 75,§29B.115]

29B.116 General article. Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the organized militia, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. However, cognizance may not be taken of, and jurisdiction may not be extended to, the crimes of murder, manslaughter, rape, robbery, maiming, sodomy, arson, extortion, assault, burglary, or housebreaking, jurisdiction of which is reserved to civil courts. [C97,§§2196-2198; SS15,§2215-f63; C24, 27, 31,§464; C35,§467-f59; C39,§467.61; C46, 50, §29.61; C54, 58, 62,§29.63(12); C66, 71, 73, 75, §29B.116]

MISCELLANEOUS PROVISIONS

29B.117 Courts of inquiry. Courts of inquiry to investigate any matter may be convened by the adjutant general or by any other person designated by the adjutant general for that purpose, whether or not the persons involved have requested such an inquiry.

A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel. [C97,§§2196-2198; SS15,§2215-f36; C24, 27, 31,§464; C35,§467-f32; C39,§467.34; C46, 50,§29.34; C54, 58, 62,§29.70; C66, 71, 73, 75,§29B.117]

29B.118 Complaints or wrongs. Any member of the state military forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the governor or adjutant general. [C66, 71, 73, 75, §29B.118]

29B.119 Redress of injuries to property. Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the state military forces, he may, subject to such regulations as the adjutant general may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided herein, on any disbursement officer for the payment by him to the injured parties of the damages so assessed and approved.

Any person subject to this code who is accused of causing willful damage to property has the right to be represented by counsel, to summon witnesses in his behalf, and to cross-examine those appearing against him. He has the right of appeal to the next higher commander. [C66, 71, 73, 75,§29B.119]

29B.120 Process of military courts. Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the state and the witnesses, books and records sought are also so located.

Process and mandates may be issued by summary courts-martial, provost courts, or the president of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by regulations issued under this code.

All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this code, no such officer may demand or require payment of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith. [C35,§467-f34; C39,§467.36; C46, 50,§29.36; C54, 58, 62,§29.77; C66, 71, 73, 75, §29B.120]

CHAPTER 29C

DISASTER SERVICES AND PUBLIC DISORDERS

Chapter 29C, Code 1975, repealed by 66GA, ch 1074,§1

29C.1 Statement of policy.
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29C.20 Contingent fund—governmental subdivisions disaster aid.
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29C.1 Statement of policy. Because of existing and increasing possibility of the occurrence of disasters, and in order to insure that preparations of this state will be adequate to deal with such disasters, and to provide for the common defense and to protect the public peace, health and safety, and to preserve the lives and property of the people of the state, it is the policy of this state:

1. To establish a state office of disaster services and to authorize the establishment of local organizations for disaster services in the political subdivisions of the state.

2. To confer upon the governor and upon the executive heads or governing bodies of the political subdivisions of the state the emergency powers provided in this chapter.

3. To provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to co-operate with the federal government with respect to the carrying out of disaster services functions. [C62,§28A.3; C66, 71, 73, 75,§29C.3; 66GA, ch 1074,§2]

29C.2 Definitions. "*Disaster*" means man-made catastrophes and natural occurrences such as fire, flood, earthquake, tornado, windstorm, which threaten the public peace, health, and safety of the people or which damage and destroy public or private property. The term includes enemy attack, sabotage, or other hostile action from without the state.

"*Public disorder*" means such substantial interference with the public peace as to constitute a significant threat to the health and safety of the people or a significant threat to public or private property. The term includes insurrection, rioting, looting, and persistent violent civil disobedience. [66GA, ch 1074,§3]

Referred to in 29A.7
Section 29C.2, Code 1975, repealed by 66GA, ch 1074,§1

29C.3 Proclamation of state of public disorder by governor.

1. The governor may, after finding a state of public disorder exists, proclaim a state of public disorder emergency. This proclamation shall be in writing, indicate the area affected and the facts upon which it is based, be signed by the governor, and be filed with the secretary of state.

2. Notice of a proclamation of a state of public disorder emergency shall be given by the secretary of state by publication in a newspaper of general circulation in the area affected, by broadcast through radio and television serving the area affected, and by posting signs at conspicuous places within this area. The exercise of the special powers by the governor under this section shall not be precluded by the lack of giving notice if the giving of notice has been diligently attempted. All orders and rules promulgated under the proclamation shall be given public notice by the governor in the area affected.

3. A state of public disorder emergency shall continue for ten days, unless sooner terminted by the governor. The general assembly may, by concurrent resolution, rescind a proclamation of a state of public disorder emergency. If the general assembly is not in session, the legislative council may, by a majority vote, rescind this proclamation. Rescission shall be effective upon filing of the concurrent resolution or resolution of the legislative council with the secretary of state.

4. The governor may, during the existence of a state of public disorder emergency, prohibit:

a. Any person being in a public place during the hours declared by the governor to be a period of curfew if this period does not exceed twelve hours in any one day and if its area of its application is specifically designated.

b. Public gatherings of a designated number of persons within a designated area.

c. The manufacture, use, possession, or transportation of any device or object designed to explode or produce uncontained combustion.

d. The possession of any flammable or explosive liquids or materials in a glass or uncapped container, except in connection with normal operation of motor vehicles or normal home and commercial use.

e. The possession of firearms or any other deadly weapon by a person other than at that person's place of residence or business, except by law enforcement officers.

f. The sale, purchase, or dispensing of alcoholic beverages.

g. The sale, purchase, or dispensing of such other commodities as are designated by the governor.

h. The use of certain streets or highways by the public.

i. Such other activities as the governor reasonably believes should be prohibited to help maintain life, health, property, or the public peace. [66GA, ch 1074,§4]

29C.4 Judicial protections. The supreme court shall promulgate rules for emergency proceedings to be effective upon the declaration of a state of public disorder emergency in order that the constitutional rights of all persons taken into custody shall be adequately protected. [66GA, ch 1074,§5]

29C.5 Office of disaster services. There is created an office of disaster services within the department of public defense. The office of dis-

aster services shall be responsible for the administration of emergency planning matters, including emergency resource planning in this state, co-operation with and support of the civil air patrol, and co-ordination of available services in the event of a disaster. [C62,§28A.1; C66, 71, 73, 75,§29C.1; 66GA, ch 1074,§6]

See §29.3

29C.6 Proclamation of disaster emergency by governor. In exercising the governor's powers and duties under this chapter and to effect the policy and purpose, the governor may:

1. After finding a disaster exists or is imminently threatened, proclaim a state of disaster emergency. This proclamation shall be in writing, indicate the area affected and the facts upon which it is based, be signed by the governor, and be filed with the secretary of state. A state of disaster emergency shall continue for thirty days, unless sooner terminated or extended in writing by the governor. The general assembly may, by concurrent resolution, rescind this proclamation. If the general assembly is not in session, the legislative council may, by majority vote, rescind this proclamation. Rescission shall be effective upon filing of the concurrent resolution or resolution of the legislative council with the secretary of state. A proclamation of disaster emergency shall activate the disaster response and recovery aspect of the state, local and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan applies, and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available.

2. When, at the request of the governor, the president of the United States has declared a major disaster to exist in this state, enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by disaster victims and to make such units available to any political subdivision of the state, to assist any political subdivision of this state which is the locus of temporary housing for disaster victims, to acquire sites necessary for such temporary housing and to do all things required to prepare such sites to receive and utilize temporary housing units, by advancing or lending funds available to the governor from any appropriation made by the legislature or from any other source, allocating funds made available by any agency, public or private, or becoming a copartner with the political subdivision for the execution and performance of any temporary housing for disaster victims project. Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims, and to enter into whatever arrangements are necessary to prepare or equip such sites to utilize the housing units. The governor may temporarily suspend or modify, for not to exceed sixty days, any public health, safety, zoning, transportation, or other requirement of law or regulation within this state when by proclamation, he deems such suspension or modification essential to provide temporary housing for disaster victims.

3. When the president of the United States has declared a major disaster to exist in the state and upon the governor's determination that a local government of the state will suffer a substantial loss of tax and other revenues from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the local government for a loan, receive and disburse the proceeds of any approved loan to any applicant local government, determine the amount needed by any applicant local government to restore or resume its governmental functions, and certify the same to the federal government; however, no application amount shall exceed twenty-five percent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurs. The governor may recommend to the federal government, based upon his review, the cancellation of all or any part or repayment when, in first three full fiscal year period following the major disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character.

4. When a disaster emergency is proclaimed, notwithstanding any other provision of law, through the use of state agencies or the use of any of the political subdivisions of the state, clear or remove from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety or public or private property. The governor may accept funds from the federal government and utilize such funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water. Authority shall not be exercised by the governor unless the affected local government, corporation, organization or individual shall first present an additional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, such corporation, organization or individual shall first agree to hold harmless the state or local government against any claim arising from such removal. When the governor provides for clearance of debris or wreckage, employees of the designated state agencies or individuals appointed by the state may enter upon private land or waters and perform any tasks necessary to the removal or clearance operation. Any state employee or

agent complying with orders of the governor and performing duties pursuant to such orders under this chapter shall be considered to be acting within the scope of his employment within the meaning specified in chapter 25A.

5. When the president of the United States has declared a major disaster to exist in the state and upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund such financial assistance, subject to such terms and conditions as may be imposed upon the grant and enter into an agreement with the federal government pledging the state to participate in the funding of the financial assistance authorized in an amount not to exceed twenty-five percent thereof, and, if state funds are not otherwise available to the governor, accept an advance of the state share from the federal government to be repaid when the state is able to do so.

6. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders or rules, of any state agency, if strict compliance with the provisions of any statute, order or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency by stating in a proclamation such reasons. Upon the request of a local governing body, the governor may also suspend statutes limiting local governments in their ability to provide services to aid disaster victims.

7. On behalf of this state, enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of this state.

8. Delegate any administrative authority vested in him under this chapter and provide for the subdelegation of any such authority.

9. Co-operate with the president of the United States and the heads of the armed forces, the disaster services and emergency planning agencies of the United States and other appropriate federal officers and agencies and with the officers and agencies of other states in matters pertaining to disaster recovery and emergency planning of the state and nation.

10. Utilize all available resources of the state government as reasonably necessary to cope with the disaster emergency and of each political subdivision of the state.

11. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating disaster services.

12. Subject to any applicable requirements for compensation, commandeer or utilize any private property if he finds this necessary to cope with the disaster emergency.

13. Direct the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery.

14. Prescribe routes, modes of transportation, and destinations in connection with evacuation.

15. Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises in such area.

16. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles. [C62,§28A.3; C66, 71, 73, 75,§29C.3; 66GA, ch 1074,§7]

29C.7 Powers and duties of adjutant general. The adjutant general, as the executive director of the department of public defense and under the direction and control of the governor, shall have supervisory direction and control of the office of disaster services and shall be responsible to the governor for the carrying out of the provisions of this chapter. In the event of disaster beyond local control, the adjutant general may assume direct operational control over all or any part of the disaster services and emergency planning functions within this state. [C66, 71, 73, 75,§29C.3; 66GA, ch 1074,§8]

29C.8 Powers and duties of director.

1. The office of disaster services shall be under the management of a director appointed by the governor.

2. The director shall be vested with the authority to administer disaster services and emergency planning affairs in this state and shall be responsible for preparing and executing the disaster services and emergency planning programs of this state subject to the direction of the adjutant general.

3. The director, upon the direction of the governor and supervisory control of the executive director of the department of public defense, shall:

a. Prepare a comprehensive plan and program for the disaster recovery, emergency operation, and emergency resource management of this state. The plan and program shall be integrated into and co-ordinated with the emergency plans of the federal government and of other states to the fullest possible extent and co-ordinate the preparation of plans and programs for disaster services and emergency operations and planning by the political subdivisions and various state departments of this state. The plans shall be integrated into and co-ordinated with a comprehensive state emergency program for this state as co-ordinated by the director of the office of disaster services to the fullest possible extent.

b. Make such studies and surveys of the industries, resources and facilities in this state as may be necessary to ascertain the capabili-

ties of the state for disaster recovery, disaster planning and operations, and emergency resource management, and to plan for the most efficient emergency use thereof.

c. Provide technical assistance to any joint county-municipal disaster services and emergency planning administration requiring such assistance in the development of a disaster services and recovery plan and program.

4. The director, with the approval of the governor and upon recommendation of the adjutant general, may employ a deputy director and such technical, clerical, stenographic and other personnel and make such expenditures within the appropriation or from other funds made available to the department of public defense for purposes of disaster services and emergency planning, as may be necessary to carry out the purposes of this chapter. [C62, §§28A.4, 28A.5; C66, 71, 73, 75,§§29C.4, 29C.5; 66GA, ch 1074,§9]

29C.9 Joint county-municipal administration.

1. The county boards of supervisors, city councils and boards of directors of school districts shall co-operate with the office of disaster services to carry out the provisions of this chapter. Boards of supervisors and city councils shall form a joint county-municipal disaster services and emergency planning administration. Such joint administration shall be composed of a member of the county board of supervisors and the mayor or his representative of the city governments within the county and the sheriff of such county. One member of the joint administration shall be designated as chairperson and one as vice chairperson. The joint administration shall appoint a co-ordinator who possesses such qualifications as established by rule of the director of the office of disaster services as provided in chapter 17A. The co-ordinator shall be responsible to the joint administration for the administration and co-ordination of all disaster services and emergency planning matters throughout the county, subject to the direction and control of the joint administration. The disaster services and emergency planning co-ordinator shall prepare a comprehensive countywide disaster plan that shall be subject to the approval of the state office of disaster services. The plan shall be integrated into and co-ordinated with the disaster plans of the state office of disaster services and other political subdivisions within the state. Each county and city located within the county may appropriate money from the general fund of the county or city for the purpose of paying expenses relating to disaster services and emergency planning matters of such joint administration and establish a joint county-municipal disaster services fund in the office of the county treasurer. The county and cities located in that county may deposit moneys in such fund, which fund shall be for the purpose of paying expenses relating to disaster services and emergency planning matters of such joint administration. Any reimbursement, matching funds, or moneys received from sale of property obtained through the surplus property program or moneys obtained from any source in connection with the disaster services and emergency planning program, shall be deposited in the joint disaster services fund. Withdrawal of moneys from the joint county-municipal disaster services fund may be made on warrants drawn by the county auditor, supported by claims and vouchers signed by the chairperson or vice chairperson of the joint administration and the co-ordinator of the joint county-municipal disaster services and emergency planning administration.

2. No later than November 15 of each year the joint county-municipal disaster services co-ordinator and the joint administration shall prepare a proposed budget of all expenses for the ensuing fiscal year. The proposed budget shall include estimated expenses that might be incurred in the event of a natural disaster including, but not limited to, hurricanes, tornadoes, windstorms, or floods, and the necessary training, warning, protection facilities and equipment necessary to minimize the loss of life in the event of acts of aggression. The budget shall contain an itemized list of the proposed salaries of disaster services and emergency planning personnel, their number and their compensation, the estimated amount needed for personnel benefits, travel and transportation, transportation of equipment, rent. communications and utilities, printing and reproduction, supplies and material, equipment, and other services needed. Each year, the chairperson of the joint administration shall, by written notice, call a meeting of the joint administration to consider such proposed budget. The joint administration shall adopt a budget for the ensuing federal fiscal year not later than January 15. At such meeting, the joint administration shall authorize:

a. The number of personnel for disaster services and emergency planning activities, full-time and part-time employment;

b. The salaries and compensation of disaster services and emergency planning employees. Those employees coming under the merit system will include salary scheduled for various classes in which the salary of a class is adjusted to the responsibility and difficulty of the work;

c. The amount of operating expenses as contained in the proposed budget.

All expenditures shall be subject to the provisions of chapter 24, and the chairperson or vice chairperson of the joint administration are declared to be the certifying officials.

3. The joint administration shall be responsible for the direction, administration, and co-ordination of disaster services and emergency planning matters in the county. The joint administration shall co-ordinate its services in the event of a disaster. The co-ordinator may, with the approval of the joint administration, employ such technical, clerical and administra-

tive personnel as may be required and necessary to carry out the purposes of this section. The joint administration shall fix the compensation of such persons so employed to be paid out of the disaster services and emergency planning fund created by this chapter.

4. If an approved comprehensive countywide disaster plan has not been prepared within one year after the effective date of this chapter and the director of the office of disaster services finds that satisfactory progress is not being made toward the completion of such plan, or if the director finds that a joint county-municipal disaster services and emergency planning administration has failed to appoint a qualified co-ordinator as provided in this chapter, the director shall notify the governing bodies of the counties and cities affected by the failure and the governing bodies shall not appropriate any moneys to the joint county-municipal disaster services fund until the disaster plan is prepared and approved or a qualified co-ordinator is appointed. If the director finds that a city or county has appointed an unqualified co-ordinator, the director shall notify the governing body of such city or county citing the qualifications which are not met and the governing body shall not approve the payment of the salary or expenses of the unqualified co-ordinator, unless appointed under section 29C.10, subsection 3. [C62,§28A.7; C66, 71, 73, 75,§29C.7; 66GA, ch 1074,§10]

29C.10 County or city co-ordinator.

1. Each board of supervisors and city council shall appoint a co-ordinator of disaster services and emergency planning for that county or city, who shall possess such qualifications as established by rule of the director of the office of disaster services as provided in chapter 17A. The co-ordinator shall serve as the co-ordinator of disaster services and emergency planning for that city or county and shall also serve as an operations officer for the joint administration.

2. The county boards of supervisiors in any two or more adjacent counties may, by mutual agreement, act as a joint board to appoint one co-ordinator qualified as established by rule of the director of the office of disaster services, who shall be the official co-ordinator of disaster services and emergency planning for each of the counties, shall work with any joint county-municipal disaster services and emergency planning administrations which may have been formed within any of the counties, and shall provide such services as may be carried on jointly to the mutual benefit of all counties involved. Such agreement shall be in writing, shall be approved by the office of disaster services director, and shall be entered in the respective minutes of each county board. The co-ordinator so appointed shall be appointed for a term of one to two years, but in no event longer than the period of time the mutual agreement by the boards is to be in effect. The written agreement shall provide for the determination of the cost of the joint program and the manner of allocation of such cost to each board for inclusion in the budget of the respective boards. For the payment of the salary and expenses of the co-ordinator and such other necessary expenses as may be incurred, the boards shall designate one board to make such payments and be reimbursed by the other board or boards pursuant to the joint agreement. The boards may meet together for the transaction of joint business.

3. The co-ordinator employed by the county boards of supervisors may also serve as a joint county-municipal disaster services co-ordinator for any joint county-municipal disaster services administration if a joint administration has been formed in any of the counties in which the co-ordinator is serving. Where the co-ordinator also serves as a joint county-municipal disaster services co-ordinator, any city included in the joint administration may appropriate funds for the payment of the salary and expenses of the co-ordinator in the same manner the city may appropriate money under the joint administration. The joint county-municipal disaster services and emergency planning administration, a city council, or a board of supervisors may by a unanimous vote appoint a co-ordinator who does not meet the qualifications established by the director. Such appointment shall be interim in nature. An interim co-ordinator shall not hold office for more than one year unless he or she shall have met the qualifications established by the director. [C66, 71, 73, 75,§29C.7; 66GA, ch 1074, §12]

Referred to in §29C.9

29C.11 Local mutual aid arrangements.

1. The co-ordinator of each local organization for disaster services shall, in collaboration with other public and private agencies within this state, develop mutual aid arrangements for reciprocal disaster services and recovery aid and assistance in case of disaster too great to be dealt with unassisted. Such arrangements shall be consistent with the office of disaster services plan and program, and in time of emergency it shall be the duty of each local organization for disaster services preparedness to render assistance in accordance with the provisions of such mutual aid arrangements.

2. The co-ordinator of each local organization for disaster services may, subject to the approval of the governor, enter into mutual aid arrangements with disaster services agencies or organizations in other states for reciprocal disaster services and recovery aid and assistance in case of disaster too great to be dealt with unassisted. [66GA, ch 1074,§12]

29C.12 Use of existing facilities. In carrying out the provisions of this chapter, the governor and the executive director of the department of public defense, and the executive officers or governing boards of political subdivi-

sions of the state shall utilize, to the maximum extent practicable, the services, equipment, supplies and facilities of existing departments, officers, and agencies of the state and of political subdivisions at their respective levels of responsibility. [C62,§28A.8; C66, 71, 73, 75,§29C.8; 66GA, ch 1074,§13]

29C.13 Funds by grants or gifts.

1. If the federal government or any agency or officer thereof shall offer to the state or through the state to any political subdivision of the state, services, equipment, supplies, materials, or funds by way of gift, grant or loan, for purposes of disaster services and emergency planning, the governor or such political subdivision, acting with the consent of the governor and through its executive officer or governing body, may authorize any officer of the state or of the political subdivision to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer and rules of the agency making the offer.

2. If any person shall offer to the state or to any political subdivision of the state, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of disaster services and emergency planning, the governor or executive officer of such political subdivision, may accept such offer and, upon such acceptance, the governor of the state or executive officer or governing body of such political subdivision may authorize any officer of the state or of the political subdivision to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer. [C66, 71, 73, 75,§29C.9; 66GA, ch 1074,§14]

29C.14 Comptroller to issue warrants. The state comptroller shall draw warrants on the treasurer of state for the purposes specified in this chapter, upon duly itemized and verified vouchers that have been approved by the director of the office of disaster services. [C62, §28A.9; C66, 71, 73, 75,§29C.10; 66GA, ch 1074, §15]

29C.15 Tax exempt purchases. All purchases under the provisions of this chapter shall be exempt from the taxes imposed by sections 422.43 and 423.2. [C62,§28A.10; C66, 71, 73, 75,§29C.11; 66GA, ch 1074,§16]

29C.16 Political activity prohibited.

1. A person employed by any organization for disaster services or emergency resources management established under this chapter shall not:

a. During working hours or when performing official duties or when using public equipment or at any time on public property, take part in any way in soliciting any contribution for any political party or any person seeking political office. The provisions of this section do not preclude any employee from holding any nonpartisan elective office for which no pay is received or any office for which only token pay is received.

b. Seek or attempt to use any political endorsement in connection with any appointment to a position created under this chapter.

c. Use any official authority or influence for the purpose of interfering with an election or affecting the results thereof.

2. Any employee of an organization for disaster services or emergency resource management shall not become a candidate for any partisan elective office. [C62,§28A.11; C66, 71, 73, 75,§29C.12; 66GA, ch 1074,§17]

Section 29C.16, Code 1975, repealed by 66GA, ch 1074,§1

29C.17 Oath of members and employees. Each person who is appointed to serve in an organization for disaster services shall, before entering upon his duties, take an oath in writing, before a person authorized to administer oaths in this state, which oath shall be substantially as follows:

I, ..., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the state of Iowa, against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfuly discharge the duties upon which I am about to enter. [C62,§28A.12; C66, 71, 73, 75,§29C.13; 66GA, ch 1074,§18]

29C.18 Enforcement duties.

1. It shall be the duty of every organization for disaster services and emergency planning established pursuant to this chapter and of the officers thereof to execute and enforce such orders or rules made by the governor, or under his authority and the orders or rules made by subordinate organizations and not contrary or inconsistent with the orders or rules of the governor.

2. A peace officer, when in full and distinctive uniform or displaying a badge or other insignia of authority, may arrest without a warrant any person violating or attempting to violate in such officer's presence any order or rule, made pursuant to this chapter. This authority shall be limited to those rules which affect the public generally. [C66, 71, 73, 75, §29C.15; 66GA, ch 1074,§19]

29C.19 Rules and order exempted. Any order issued or rule promulgated by a state agency during a declared disaster emergency and pursuant to the provisions of this chapter shall be exempt from being issued or promulgated as provided in chapter 17A. [66GA, ch 1074,§20]

29C.20 Contingent fund—governmental subdivisions disaster aid.

1. A contingent fund is created in the state treasury for the use of the executive council

which may be expended for the purpose of paying the expenses of suppressing any insurrection or riot, actual or threatened, when state aid has been rendered by order of the governor, and for repairing, rebuilding, or restoring any state property injured, destroyed, or lost by fire, storm, theft, or unavoidable cause, and for aid to any governmental subdivision in an area declared by the governor to be a disaster area due to natural disasters or to expenditures necessitated by the governmental subdivision toward averting or lessening the impact of such potential disaster, where the effect of such disaster or such action on the governmental subdivision is the immediate financial inability to meet the continuing requirements of local government. Upon application by a governmental subdivision in such an area, accompanied by a showing of obligations and expenditures necessitated by such actual or potential disaster in such form and with such further information as the executive council may require, such aid may be made in the discretion of the executive council and, if made, shall be in the nature of a loan up to a limit of seventy-five percent of the showing of such obligations and expenditures. The loan, without interest, shall be repaid by the maximum annual emergency levy as authorized by section 24.6. The aggregate total of such loans shall not exceed one million dollars during any fiscal year. A loan shall not be for any obligation or expenditure occurring more than two years previous to the application.

2. The proceeds of such loan shall be applied toward the payment of costs and obligations necessitated by such actual or potential disaster and the reimbursement of local funds from which such expenditures have been made. Any such project for repair, rebuilding or restoration of state property for which no specific appropriation has been made, shall, before work is begun, be subject to approval or rejection by the executive council.

3. If the president, at the request of the governor, has declared a major disaster to exist in this state, the executive council may make financial grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot otherwise adequately be met from other means of assistance. The amount of a financial grant shall not exceed five thousand dollars in the aggregate to an individual or family in any single major disaster declared by the president. All grants authorized to individuals and families will be subject to the federal government providing no less than seventy-five percent of each grant and the declaration of a major disaster in the state by the president of the United States.

4. If the president, at the request of the governor, has declared a major disaster to exist in this state, the executive council may lease or purchase sites and develop such sites to accommodate temporary housing units for disaster victims.

5. For the purposes of this section, "*governmental subdivision*" means any political subdivision of this state. [C73,§120; C97,§170; C24, 27, 31, 35, 39,§286; C46, 50, 54, 58, 62, 66, 71, 73, 75,§19.7; 66GA, ch 1074,§21]

29C.21 Interstate civil defense and disaster compact authorized. The interstate civil defense and disaster compact, shall be in effect with all jurisdictions which have joined or which may join in the form substantially as contained in this section, provided that other jurisdictions have signified their joinder with this state by enactment without limitation as to parties or in some other manner sufficient in law to make it clear that joinder has been effected with this state.

The contracting states solemnly agree:

ARTICLE 1. The purpose of this compact is to provide mutual aid among the states in meeting any emergency or disaster. The prompt, full, and effective utilization of the resources of the respective states, including the resources as may be available from the United States government or any other source, are essential to the safety, care, and welfare of the people in the event of disaster, and any other resources, including personnel, equipment, or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the civil defense agencies or similar bodies of the states that are parties to this contract. The directors of civil defense of all party states shall constitute a committee to formulate plans to take all necessary steps for the implementation of this contract.

ART. 2. It shall be the duty of each party state to formulate civil defense plans and programs for application within such state. There shall be frequent consultation between the representatives of the states and with the United States government and the free exchange of information and plans, including inventories of any materials and equipment available for civil defense. In carrying out civil defense plans and programs the party states shall so far as possible provide and follow uniform standards, practices and rules in regard to:

1. Insignia, arm bands and any other distinctive articles to designate and distinguish the different civil defense services;

2. Blackouts and practice blackouts, air-raid drills, mobilization of civil defense forces and other tests and exercises;

3. Warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith;

4. The effective screening or extinguishing of all lights and lighting devices and appliances;

5. Shutting off water mains, gas mains, electric power connections and the suspension of all other utility services;

6. All materials or equipment used or to be used for civil defense purposes in order to assure that such materials and equipment will be easily and freely interchangeable when used in or by any other party state;

7. The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during and subsequent to drills or attacks;

8. The safety of public meetings or gatherings; and

9. Mobile support units.

ART. 3. Any party state requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with terms of the contract; but the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges and immunities as if they were performing their duties in the state in which normally employed or rendering services. Civil defense forces will continue under the command and control of their regular leaders but the organizational units will come under the operational control of the civil defense authorities of the state receiving assistance.

ART. 4. Whenever a person holds a license, certificate, or other permit issued by a state evidencing the meeting of qualifications for professional, mechanical or other skills, such person may render aid involving such skill in any party state to meet an emergency or disaster and the state shall give due recognition to such license, certificate or other permit as if issued in the state in which aid is rendered.

ART. 5. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies used in connection with rendering aid.

ART. 6. If the pattern and detail of the machinery for mutual aid among two or more states differs from that appropriate among other party states, this instrument contains elements of a broad base common to all states, and nothing contained in it shall preclude any state from entering into supplementary agreements with another state or states. Such supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment and supplies.

ART. 7. Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of such forces if members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms is if the injury or death were sustained within such state.

ART. 8. A party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost incurred in connection with such request; but any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate the services to the receiving party state without charge or cost and any two or more party states may enter into supplementary agreements establishing a different allocation of costs as among those states. The party state receiving aid may accept relief from the federal government from any liability and the party state supplying civil defense forces may accept reimbursement from the federal government for the compensation paid to and the transportation, subsistence, and maintenance expenses and supplies of such forces during the time of the rendition of such aid or assistance outside the state.

ART. 9. Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party states and the various local civil defense areas. Such plans shall include the manner of transporting evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. The plans shall provide that the party state receiving evacuees shall be reimbursed generally for the actual and necessary expenses incurred in receiving and caring for evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. The expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States government under plans approved by it. After the termination of the emergency or disaster the party state of which the evacuees are resident shall assume the responsibility for the

ultimate support or repatriation of such evacuees.

ART. 10. This compact shall be available to any state, territory or possession of the United States, and the District of Columbia. The term *"state"* may also include any neighboring foreign country or province or state thereof.

ART. 11. The committee established pursuant to article 1 of this compact may request the civil defense agency of the United States government to act as an informational and coordinating body under this compact, and representatives of such agency of the United States government may attend meetings of the committee.

ART. 12. This compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying and shall be subject to approval by Congress unless prior congressional approval has been given. Duly authenticated copies of this compact and of supplementary agreements entered into by the party states shall, at the time of their approval, be deposited with each of the party states and the civil defense agency and other appropriate agencies of the United States government.

ART. 13. This compact shall continue in force and remain binding on each party state until the legislature or the governor of the party state takes action to withdraw. The action shall not be effective until thirty days after notice has been sent by the governor of the party state desiring to withdraw to the governors of all other party states.

ART. 14.

1. This article shall be in effect only as among those states which have enacted it into law or in which the governors have adopted it pursuant to constitutional or statutory authority sufficient to give it the force of law as part of this compact. Nothing contained in this article or in any supplementary agreement made in implementation thereof shall be construed to abridge, impair or supersede any other provision of this compact or any obligation undertaken by a state pursuant thereto, except that if its terms so provide, a supplementary agreement in implementation of this article may modify, expand or add to any such obligation as among the parties to the supplementary agreement.

2. In addition to the occurrences, circumstances and subject matters to which preceding articles of this compact make it applicable, this compact and the authorizations, entitlements and procedures thereof shall apply to:

a. Searches for and rescue of persons who are lost, marooned, or otherwise in danger;

b. Action useful in coping with disasters arising from any cause or designed to increase capability to cope with any such disasters;

c. Incidents, or the imminence thereof, which endanger the health or safety of the public and which require the used of special equipment, trained personnel or personnel in larger numbers than are locally available in order to reduce, counteract or remove the danger;

d. The giving and receiving of aid by subdivisions of party states;

e. Exercises, drills or other training or practice activities designed to aid personnel to prepare for, cope with, or prevent any disaster or other emergency to which this compact applies.

3. Except as expressly limited by this compact or a supplementary agreement in force pursuant thereto, any aid authorized by this compact or such supplementary agreement may be furnished by any agency of a party state, a subdivision of such state, or by a joint agency of any two or more party states or of their subdivisions. Any joint agency providing such aid shall be entitled to reimbursement therefor to the same extent and in the same manner as a state. The personnel of such a joint agency, when rendering aid pursuant to this compact, shall have the same rights, authority and immunity as personnel of party states.

4. Nothing in this article shall be construed to exclude from the coverage of articles 1 to 13 of this compact any matter which, in the absence of this article, could reasonably be construed to be covered thereby. [C62,§28A.3; C66, 71, 73, 75,§29C.3; 66GA, ch 1074,§22]

CHAPTER 30

MILITARY MATERIAL STORES

30.1 Prohibited use of terms.
30.2 False advertising.
30.3 Penalties.

30.1 Prohibited use of terms. No owner, proprietor, manager or person in charge or control of any privately owned or operated store, shop, or other place of business, in, at, or from which goods, wares, or merchandise are sold or offered for sale to the public, shall use, or cause or permit to be used, as the name or designation, or as a part of the name

or designation, of such store, shop or other place of business, any of the following words or expressions, viz.: "Army," "Navy," "Marine," "Coast Guard," "Post Exchange," "Government," "GI," "P-X," or any other word or expression denoting or relating to an agency or activity of the United States government or importing or implying that such store, shop or other place of business is owned or operated by the United States government or its military or naval forces or any agency of the United States government. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§30.1]

30.2 False advertising. No such owner, proprietor, manager, or person in charge or control of any such privately owned or operated store, shop, or other place of business, or person employed in the sale of goods, wares, or merchandise therein, shall in any manner advertise or assert or imply that any such goods, wares, or merchandise were made for or acquired from the United States government or its military or naval forces or any agency of the United States government, if such advertisement, assertion, or implication be contrary to the fact. Without limiting the general effect of the foregoing prohibitions, it is expressly provided that any designation, express or implied, of any stock, lot or group of goods, wares, or merchandise as having been made for or acquired from such government, forces, or agency, shall constitute a violation of such prohibitions unless all of the articles in the stock, lot, or group so designated shall have been made for or acquired from such government, forces, or agency. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§30.2]

30.3 Penalties. If any person shall violate any of the provisions of this chapter, he shall be guilty of a misdemeanor and, on the occasion of the first conviction, shall be fined not less than ten dollars nor more than one hundred dollars and, on the occasion of the second or any subsequent conviction, shall be imprisoned not less than one day nor more than thirty days, according to the discretion of the court, within said limits, in any case. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§30.3]

CHAPTER 31

STATE BANNER—DISPLAY OF FLAG

31.1 Specifications of state banner.
31.2 Use of state banner.
31.3 Flags on public buildings.
31.4 Mother's Day.
31.5 Independence Sunday.
31.6 Columbus Day.
31.7 Veterans Day.
31.8 Youth Honor Day.
31.9 Herbert Hoover Day.

31.1 Specifications of state banner. The banner designed by the Iowa society of the Daughters of the American Revolution and presented to the state, which banner consists of three vertical stripes of blue, white, and red, the blue stripe being nearest the staff and the white stripe* being in the center, and upon the central white stripe being depicted a spreading eagle bearing in its beak blue streamers on which is inscribed, in white letters, the state motto, "Our liberties we prize and our rights we will maintain" and with the word "Iowa" in red letters below such streamers, as such design now appears on the banner in the office of the governor of the state of Iowa, is hereby adopted as a distinctive state banner, for use on all occasions where a distinctive state symbol in the way of a banner may be fittingly displayed. [C24, 27, 31, 35, 39,§468; C46, 50, 54, 58, 62, 66, 71, 73, 75,§31.1]

*Editor Note: On the original design, the white stripe was about equal to the sum of the others

31.2 Use of state banner. Such design may be used as a distinctive state banner and may as such be displayed on all proper occasions where the state is officially represented as distinct from other states, either at home or abroad, or wherever it may be proper to distinguish the citizens of Iowa from the citizens of other states, such display in all cases to be subservient to and along with the display of the national emblem and, when displayed with the latter, to be placed beneath the stars and stripes. [C24, 27, 31, 35, 39,§469; C46, 50, 54, 58, 62, 66, 71, 73, 75,§31.2]

31.3 Flags on public buildings. It shall be the duty of the custodians of all public buildings of the state to raise over such building the flag of the United States of America, upon each secular day when weather conditions are favorable, and it shall be the duty of any board of public officers charged with the duty of providing for the supplies of any such public building to provide, in connection with other supplies for any such building of the state, a suitable flag for the purposes herein provided. [S13,§2804-c; C24, 27, 31, 35, 39,§470; C46, 50, 54, 58, 62, 66, 71, 73, 75,§31.3]

Display of flags on school sites, §280.5

31.4 Mother's Day. The governor of this state is hereby authorized and requested to issue annually a proclamation calling upon our state officials to display the American flag on all state and school buildings, and the people of the state to display the flag at their

homes, lodges, churches, and places of business, on the second Sunday in May, known as Mother's Day, as a public expression of reverence for the homes of our state, and to urge the celebration of Mother's Day in said proclamation in such a way as will deepen home ties, and inspire better homes and closer union between the commonwealth, its homes, and their sons and daughters. [C24, 27, 31, 35, 39, §471; C46, 50, 54, 58, 62, 66, 71, 73, 75,§31.4]

31.5 Independence Sunday. The governor is hereby authorized and requested to issue annually a proclamation, calling upon the citizens of Iowa to assemble themselves in their respective communities for the purpose of holding suitable religious-patriotic services and the display of the American colors, in commemoration of the signing of the Declaration of Independence, on Independence Sunday, which is hereby established as the Sunday preceding the Fourth of July of each year, or on the Fourth when that date falls on Sunday. [C27, 31, 35,§471-b1; C39,§471.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§31.5]

31.6 Columbus Day. The governor of this state is hereby authorized and requested to issue annually a proclamation, calling upon our state officials to display the American flag on all state and school buildings and the people of the state to display the flag at their homes, lodges, churches, and places of business on the twelfth day of October, known as Columbus Day; to commemorate the life and history of Christopher Columbus and to urge that services and exercises be had in churches, halls and other suitable places expressive of the public sentiment befitting the anniversary of the discovery of America. [C35,§471-g1; C39,§471.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§31.6]

31.7 Veterans Day. The governor is hereby authorized and requested to issue annually a proclamation designating the eleventh day of November as Veterans Day and calling upon the people of Iowa to observe it as a legal holiday in honor of those who have been members of the armed forces of the United States, and urging state officials to display the American flag on all state and school buildings and the people of the state to display the flag at their homes, lodges, churches and places of business; that business activities be held to the necessary minimum; and that appropriate services and exercises be had expressive of the public sentiments befitting the occasion. C58, 62, 66, 71, 73, 75,§31.7]

31.8 Youth Honor Day. The governor of this state is hereby requested and authorized to issue annually a proclamation designating the thirty-first day of October of each year as "Youth Honor Day." [C62, 66, 71, 73, 75,§31.8]

31.9 Herbert Hoover Day. The Sunday which falls on or nearest the tenth day of August of each year is hereby designated as Herbert Hoover Day, which shall be a recognition day in honor of the late President Herbert Hoover. The governor is hereby authorized and requested to issue annually a proclamation designating such Sunday as Herbert Hoover Day and calling on the people and officials of the state of Iowa to commemorate the life and principles of Herbert Hoover, to display the American flag, and to hold appropriate services and ceremonies. [C71, 73, 75, §31.9]

CHAPTER 32

DESECRATION OF FLAG

32.1 Desecration of flag or insignia.
32.2 Actions for penalty.
32.3 "Federal flag and insignia" defined.
32.4 "State flag and insignia" defined.
32.5 Presumptive evidence of desecration.
32.6 Enforcement.

32.1 Desecration of flag or insignia. Any person who in any manner, for exhibition or display, shall place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement of any nature, upon any flag, standard, color, ensign, shield, or other insignia of the United States, or upon any flag, ensign, great seal, or other insignia of this state, or shall expose or cause to be exposed to public view, any such flag, standard, color, ensign, shield, or other insignia of the United States, or any such flag, ensign, great seal, or other insignia of this state, upon which shall have been printed, painted, or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose any article or substance, being an article of merchandise or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed, a representation of any such flag, standard, color, ensign, shield, or other insignia of the United States, or any such flag, ensign, great seal, or other insignia of this state, to advertise, call attention to, decorate, mark, or distinguish the article or substance on which so

placed, or who shall publicly mutilate, deface, defile or defy, trample upon, cast contempt upon, satirize, deride or burlesque, either by words or act, such flag, standard, color, ensign, shield, or other insignia of the United States, or flag, ensign, great seal, or other insignia of this state, or who shall, for any purpose, place such flag, standard, color, ensign, shield, or other insignia of the United States, or flag, ensign, great seal, or other insignia of this state, upon the ground or where the same may be trod upon, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than thirty days and shall also forfeit a penalty of fifty dollars for each such offense, to be recovered, with costs, in a civil action or suit in any court having jurisdiction. [S13,§5028-a; C24, 27, 31, 35, 39,§472; C46, 50, 54, 58, 62, 66, 71, 73, 75,§32.1]

37GA, ch 411, editorially divided

32.2 Actions for penalty. Such action or suit may be brought by and in the name of the state, on the relation of any citizen thereof, and such penalty, when collected, less the reasonable cost and expense of action or suit and recovery, to be certified by the clerk of the district court of the county in which the offense is committed, shall be paid into the county treasury for the benefit of the school fund, and two or more penalties may be sued for and recovered in the same action or suit. [S13,§5028-a; C24, 27, 31, 35, 39,§473; C46, 50, 54, 58, 62, 66, 71, 73, 75,§32.2]

32.3 "Federal flag and insignia" defined. The words "flag, standard, color, ensign, shield, or other insignia of the United States" as used in this chapter, shall include any flag, standard, color, ensign, shield, or other insignia of the United States, or any picture or representation of any of them, made of any substance or represented on any substance, and of any size, evidently purporting to be any such flag, standard, color, insignia, shield, or other insignia of the United States of America, or a picture or a representation of any of them. [S13,§5028-a; C24, 27, 31, 35, 39,§474; C46, 50, 54, 58, 62, 66, 71, 73, 75,§32.3]

32.4 "State flag and insignia" defined. The words "flag, ensign, great seal, or other insignia of this state" as used in this chapter, shall include any flag, ensign, great seal, or other insignia, or any picture or any representation of any of them, made of any substance or represented on any substance, and of any size, evidently purporting to be any such flag, ensign, great seal, or other insignia of the state, or a picture or a representation of any of them. [S13,§5028-a; C24, 27, 31, 35, 39, §475; C46, 50, 54, 58, 62, 66, 71, 73,75,§32.4]

32.5 Presumptive evidence of desecration. The possession by any person other than a public officer, as such, of any flag, standard, color, ensign, shield, or other insignia of the United States, or flag, ensign, great seal, or other insignia of this state, on which shall be anything made unlawful by this chapter, or of any article or substance or thing on which shall be anything made unlawful by this chapter, shall be presumptive evidence that the same is in violation of this chapter. [S13, §5028-a; C24, 27, 31, 35, 39,§476; C46, 50, 54, 58, 62, 66, 71, 73, 75,§32.5]

32.6 Enforcement. It shall be the duty of the sheriffs of the various counties, chiefs of police, and city marshals to enforce the provisions of this chapter, and for failure to do so they may be removed as by law provided.

This chapter shall not be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant, or commission of appointment to office, ornamental picture, article of jewelry, or stationery for use in private correspondence, on any of which shall be printed, painted, or placed, said flag, disconnected from any advertisement.

Nothing in this chapter shall be construed as rendering unlawful the use of any trademark or trade emblem actually adopted by any person, firm, corporation, or association prior to January 1, 1895. [C24, 27, 31, 35, 39, §477; C46, 50, 54, 58, 62, 66, 71, 73, 75,§32.6]

General removal law, §66.1

CHAPTER 33

PUBLIC HOLIDAYS

33.1 Legal public holidays.
33.2 Paid holidays.

33.1 Legal public holidays. The following are legal public holidays:

1. New Year's Day, January 1.
2. Lincoln's Birthday, February 12.
3. Washington's Birthday, the third Monday in February.
4. Memorial Day, the last Monday in May.
5. Independence Day, July 4.
6. Labor Day, the first Monday in September.
7. Veterans Day, November 11.
8. Thanksgiving Day, the fourth Thursday in November.
9. Christmas Day, December 25. [C71, 73, 75, §33.1]

33.2 Paid holidays. State employees are granted, except as provided in the third paragraph of this section, the following holidays off from employment with pay:

1. New Year's Day, January 1.
2. Washington's Birthday, the third Monday in February.
3. Memorial Day, the last Monday in May.
4. Independence Day, July 4.
5. Labor Day, the first Monday in September.
6. Thanksgiving Day, the fourth Thursday in November.
7. Friday after Thanksgiving, the Friday following Thanksgiving Day.
8. Christmas Day, December 25.
9. Two other holidays, each to be designated annually by the executive council.

The executive council may designate days off from employment with pay in addition to those enumerated in this section for state employees at its discretion.

If a holiday enumerated in this section falls on Saturday, the preceding Friday shall be granted and if a holiday enumerated in this section falls on Sunday, the following Monday shall be granted. In those cases, where by nature of the employment a state employee must be required to work on a holiday the provisions of the first paragraph of this section shall not apply, however, compensation shall be made on the basis of the employee's straight time hourly rate for a forty-hour work week and shall be made in either compensatory time off or cash payment, at the discretion of the appointing authority.

No holiday granted to a state employee by this section can be considered as vacation time and shall not be included in the amount of vacation to which a state employee is entitled. [C75,§33.2; 66GA, ch 50,§1]

Amendment effective January 1, 1976; 66GA, ch 50,§41

CHAPTER 34

PENSIONS

Repealed by 65GA, ch 1099,§1

CHAPTER 35

BONUS BOARD

WORLD WAR I

Referred to in §§35C.3, 250.11

Service compensation appropriation, 66GA, ch 11,§§1(*b*), 2; also ch 12

35.1 Creation of board.
35.2 Investment of bonus and disability fund.
35.3 Choice of investments.
35.4 Collection and disposition of interest.
35.5 Payment of claims.
35.6 Rules.
35.7 Orphans educational fund.
35.8 Money comprising fund.
35.9 Expenditure by board.
35.10 Eligibility and payment of aid.
35.11 Expenses chargeable to fund.
35.12 Children of prisoners of war.

35.1 Creation of board. There is hereby created a board to be known as the "bonus board" to consist of the state auditor, the state treasurer, the adjutant general and the adjutant of the Iowa department of the American Legion. [C39,§**482.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§35.1]

Referred to in §§35.12, 35A.7, 35B.6

35.2 Investment of bonus and disability fund. The treasurer of state shall invest such portions of the additional bonus and disability fund created by section 8, chapter 332, Acts of the thirty-ninth general assembly, not needed for current payments awarded by the bonus board. [C27, 31, 35,§145-b1; C39,§**482.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§35.2]

Referred to in §§35.6, 35.12

35.3 Choice of investments. The treasurer of state shall invest in bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, by any agency or instrumentality thereof, or by the state of Iowa, or any investment authorized for the Iowa public employees' retirement system in section 97B.7, subsection 2, paragraph "*b*" except that investment in common stocks shall not be permitted. [C27, 31, 35, §145-b2; C39,§**482.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§35.3]

Referred to in §§35.6, 35.12

35.4 Collection and disposition of interest. The interest from such investments shall be collected by the treasurer of state and shall constitute a part of the additional bonus and

disability fund provided by section 8, chapter 332, Acts of the thirty-ninth general assembly, to be disbursed by the treasurer of state upon the order of said bonus board for the purposes prescribed in said section. [C27, 31, 35,§145-b3; C39,§482.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, §35.4]

Referred to in §§35.6, 35.12

35.5 Payment of claims. When any award from such additional bonus and disability fund is made by said bonus board, payment shall be made in the manner provided in section 7*, chapter 332, Acts of the thirty-ninth general assembly. [C27, 31, 35,§145-b4; C39,§482.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§35.5]

Referred to in §§35.6, 35.12
*See §8.6(2)

35.6 Rules. Said bonus board shall have power to establish such rules as the board deems necessary to carry out the provisions of sections 35.2 to 35.5. [C27, 31, 35,§145-b5; C39,§482.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, §35.6]

Referred to in §35.12

35.7 Orphans educational fund. The bonus board is hereby authorized and empowered to administer the war orphans educational aid fund as hereinafter provided. [C39,§482.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§35.7]

Referred to in §35.12

35.8 Money comprising fund. Any money hereafter appropriated for the purpose of aiding in the education of children of honorably discharged men or women who served in the military or naval forces of the United States in World War I or World War II, as provided by this chapter, shall be known as the war orphans educational aid fund. [C39,§482.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§35.8]

Referred to in §35.12

35.9 Expenditure by board. Said bonus board is authorized to expend not to exceed four hundred dollars per year for any one child who shall have lived in the state of Iowa for two years preceding application for aid hereunder, and who is the child of a man or woman who died during World War I between the dates of April 6, 1917, and June 2, 1921, or during World War II between the dates of September 16, 1940, and December 31, 1946, both dates inclusive, or the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, or the Vietnam Conflict at any time between August 5, 1964, and ending on the date* the armed forces of the United States are directed by formal order of the government of the United States to cease hostilities, both dates inclusive, while serving in the military or naval forces of the United States, to include members of the reserve components performing service or duties required or authorized under chapter 39, United States Code and Title 32, United States Code, sections 502 through 505, and active state service required or authorized under chapter 29A, or as a result of such service, to defray the expenses of tuition, matriculation, laboratory and similar fees, books and supplies, board, lodging, and any other reasonably necessary expense for such child or children incident to attendance at any educational or training institution of college grade, or in any business or vocational training school of standards approved by said bonus board, said educational institutions to be located within the state of Iowa.

A child eligible to receive funds under the provisions of this section shall not receive more than two thousand dollars during his lifetime. [C39,§482.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§35.9; 66GA, ch 76,§2]

Referred to in §35.12
*See §427.3(4)

35.10 Eligibility and payment of aid. Eligibility for aid hereunder shall be determined upon application to the Iowa bonus board, whose decision shall be final. The eligibility of eligible applicants shall be certified by the adjutant general of Iowa to the comptroller of Iowa, and all amounts that may be or may become due to any individual or any training institution under this chapter shall be paid to the individual or institution by said comptroller upon receipt by him of certification by the president or governing board of such educational or training institution as to accuracy of charges made, and as to the attendance of the individual at such educational or training institution. It shall be proper for the bonus board to pay over said annual sum of four hundred dollars to such educational or training institution in a lump sum, or in such installments as the circumstances may warrant, upon receiving from such institution such written undertaking as the bonus board may require to assure the use of said funds for such child for the authorized purposes and for no other purpose. No person shall be eligible for the benefits of this chapter until he shall have graduated from a high school or educational institution offering a course of training equivalent to high school training. C39,§482.10; C46, 50, 54, 58, 62, 66, 71, 73, 75, §35.10]

Referred to in §35.12

35.11 Expenses chargeable to fund. Any expense incurred in carrying out the provisions of this chapter shall be chargeable to this fund. [C39,§482.11; C46, 50, 54, 58, 62, 66, 71, 73, 75,§35.11]

Referred to in §35.12

35.12 Children of prisoners of war. In addition to the duties enumerated in sections 35.1 through 35.11, the bonus board shall be responsible for administering the program created by this section.

The state shall provide funds from moneys appropriated to the bonus board, sufficient when coupled with other state and federal grants and aids, to pay all fees, including fees designated as tuition and fees for books, for

attendance at any institution of higher education, or any post-high school, vocational school, technical school, trade school, or professional school located within this state by a child who shall have lived in the state for two years preceding application for such benefits and who is the child of a person classified as a prisoner of war or missing in action during the Vietnam Conflict as defined in section 35.9. The benefits provided by this section shall be for a term not exceeding thirty-six months of full-time enrollment, whether continuous or noncontinuous, in the course of study undertaken, however, if the parent of the person receiving benefits is released from a prison or is no longer classified as missing in action, the education benefits provided by this section shall terminate at the end of the current school year of the school in which the person receiving benefits is attending. [C73, 75,§35.12]

CHAPTER 35A

SERVICE COMPENSATION

WORLD WAR II

35A.1 Debt authorized.
35A.2 Bonds—form.
35A.3 Service compensation fund.
35A.4 Persons entitled—basis of compensation.
35A.5 College students excluded.
35A.6 Omitted.
35A.7 Duties of bonus board.
35A.8 Applications.
35A.9 False statements—penalty.
35A.10 Repealed by 55GA, ch 55,§14.
35A.11 Exemptions.
35A.12 Tax levy.
35A.13 Appropriation—reversion.
35A.14 Authority of state treasurer.
35A.15 Bonds to be sold.
35A.16 Limitation of indebtedness.

35A.1 Debt authorized. The state of Iowa is hereby authorized to become indebted in the amount of eighty-five million dollars and in evidence thereof there shall be issued and sold negotiable coupon bonds of said state as hereinafter provided, and the proceeds thereof shall be paid into the treasury of the state to be expended for the payment of service compensation to the persons defined in section 35A.4, or for the benefit of such persons as prescribed by section 35A.4, and for expenses incurred in carrying out the provisions of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§35A.1]

Referred to in §35A.16

35A.2 Bonds—form. The treasurer of the state is hereby directed to cause to be prepared negotiable coupon bonds of this state in the amount of eighty-five million dollars, such bonds to bear interest at the rate of not to exceed two and one-half percent per annum which interest shall be paid semiannually. Such bonds shall be issued so that said indebtedness shall be payable in twenty equal annual installments, the last of which shall be within twenty years from the date of issue, bonds to be callable in numerical order on six months' notice at one hundred one and one-half percent of the par value. Said bonds shall be signed by the governor under the great seal of said state, attested by the secretary of state and countersigned by the treasurer of state, and the full faith, credit and resources of the state of Iowa shall be pledged for the payment thereof. The interest coupons attached to said bonds shall bear the lithographed facsimile signatures of said officials. The treasurer of state shall sell said bonds to obtain funds to carry out the provisions of this chapter, and to make the payments hereinafter provided. Such bonds shall be sold at not less than the par value thereof and accrued interest thereon to the highest and most responsible bidder after advertising for a period of twenty consecutive days, Sundays excepted, in at least two daily newspapers printed in the state of Iowa. Advertisements of sale shall recite that the treasurer of state, in his discretion, may reject any or all bids received and, in such event, he shall readvertise for bids in the form and manner above described as many times as in his judgment may be necessary to effect a satisfactory sale. If any of said bonds are not presented for payment within ten years after maturity they shall be barred. [C50, 54, 58, 62, 66, 71, 73, 75,§35A.2]

Referred to in §§35A.14, 35A.15

35A.3 Service compensation fund. The proceeds of such bonds so paid into the treasury of state shall constitute a service compensation fund and shall be distributed to the persons entitled thereto as hereinafter prescribed. Said eighty-five million dollars is hereby appropriated out of said service compensation fund for the purpose of carrying out the provisions of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§35A.3]

Referred to in §35A.13

35A.4 Persons entitled—basis of compensation. Every person, male or female, who served on active duty, in the armed forces of the United States, at any time between September 16, 1940, and September 2, 1945, both dates inclusive, and who at the time of entering into such service was a legal resident of the state of Iowa, and who had maintained

such residence for a period of at least six months immediately prior thereto, and was honorably separated or discharged from such service, or is still in active service in an honorable status, or has been retired, or has been furloughed to a reserve, or has been placed on inactive status, shall be entitled to receive from the service compensation fund ten dollars for each month that such person was in active domestic service and twelve and one-half dollars for each month that such person was in active foreign service, all prior to December 31, 1946, not to exceed a total sum of five hundred dollars, provided that such person served for a period of not less than one hundred twenty days prior to December 31, 1946. Compensation for a fraction of a month shall not be considered unless it be sixteen days or more in which event it shall be computed as a full month. No person shall be entitled to such compensation who received a bonus or compensation of like nature, as provided in this chapter, from another state. No person shall be entitled to such compensation who being in the service of the armed forces of the United States, subsequent to September 16, 1940, refused on conscientious, political, religious, or other grounds to subject himself or herself to military discipline. Service in the merchant marine shall not be considered for the purposes of this chapter. The surviving unremarried widow or widower, child or children, stepchild or stepchildren, mother, father, or person standing in loco parentis, in the order named and none other, of any deceased person, shall be paid the compensation that such deceased person would be entitled to under this chapter, if living; but, if any person has heretofore died or shall hereafter die, from service-connected causes incurred between September 16, 1940, and December 31, 1946, the first of survivors as hereinbefore designated and in the order named, shall be paid five hundred dollars, regardless of the length of such service. [C50, 54, 58, 62, 66, 71, 73, 75,§35A.4]

Referred to in §§35A.1, 35A.7, 35A.8, 35A.15

35A.5 College students excluded. Active duty in the armed forces of the United States shall include all time for which credit is received in the computation of terminal leave, including such leave time as provided for by federal statutes, including Armed Forces Leave Act of 1946*, and attendance at an armed forces school including such schools conducted at a college, university, or similar institution of learning, but shall exclude time pursuing a course of instruction in a college, university, or other institution of learning as a duly enrolled student. [C50, 54, 58, 62, 66, 71, 73, 75, §35A.5]

*60 Stat. L. 963

35A.6 Omitted as obsolete, see 55GA, ch 55,§1.

35A.7 Duties of bonus board. It shall be the duty of the bonus board created by section 35.1 to administer the provisions of this chapter, to examine all applications and approve or disapprove the same and make any investigation necessary to establish facts. Judicial review of any decision of the board may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review must be filed within a period of thirty days from date of mailing by certified mail of notice of such disapproval. Within thirty days after the filing of such a petition for judicial review the bonus board shall make, certify and file in the office of the clerk of the district court in which the judicial review is sought, a full and complete transcript of all documents in the proceeding, including any depositions, a transcript or certification of the evidence, if reported. When any application has been approved by the bonus board, payment shall be made to the applicant in accordance with the provisions of this chapter. It shall be the duty of the bonus board to prepare vouchers and transmit the same to the state comptroller in payment of the bonus claims provided for herein and other necessary administrative expenses; said state comptroller shall issue a warrant for the amount stated therein and the state treasurer shall pay such warrants out of said bonus fund. The bonus board is hereby empowered to employ such assistants and incur such other expenses as may be necessary for such administration and carrying out of the provisions of this chapter, and the funds necessary for such administration and carrying out the provisions of this chapter shall be expended from said compensation fund; such assistants as said bonus board may determine shall give bond in such amount as may be fixed by said bonus board, and shall, whenever practicable, be persons within the classes as defined in section 35A.4. The bonus board is hereby empowered to make, adopt and promulgate such rules for the carrying out of the provisions of this chapter as it deems necessary and expedient and which are not inconsistent with any provisions of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§35A.7]

35A.8 Applications. Before receiving any compensation under the provisions of this chapter, the claimant, or his successor in interest, shall file with the bonus board, application on forms provided by bonus board; such application must be so filed on or before December 31, 1950. Such application shall state facts sufficient to establish the status of such applicant within a class as defined in section 35A.4, and shall be duly verified. [C50, 54, 58, 62, 66, 71, 73, 75,§35A.8]

35A.9 False statements—penalty. Whoever knowingly makes a false statement, oral or written, relating to a material fact in supporting a claim under the provisions of this chapter, shall be punished by a fine of not more than one thousand dollars or be imprisoned for not more than one year, or both, and shall

forfeit all benefits he or she might have been entitled to under this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§35A.9]

35A.10 Repealed by 55GA, ch 55,§14.

35A.11 Exemptions. All payments and allowances made under this chapter shall be exempt from taxation and from levy and sale on execution and all bonds issued hereunder shall be exempt from taxation. [C50, 54, 58, 62, 66, 71, 73, 75,§35A.11]

35A.12 Tax levy. To provide for the payment of the principal of said bonds so issued and sold and the interest thereon as the same become due and mature, there is hereby imposed and levied upon all of the taxable property within the state of Iowa in addition to all other taxes, a direct annual tax for each of the years said bonds are outstanding sufficient in amount for the payment of principal of said bonds as it shall become due, and sufficient in amount to produce additional sums as may be needed to pay the interest on said bonds each year for twenty years. The treasurer of the state shall annually certify to the department of revenue prior to the time for levy of general state taxes the amount of money required to be raised to pay the principal and interest on such bonds maturing in the ensuing year, and said department of revenue shall annually fix the rate per centum necessary to be levied and assessed upon the valuation of the taxable property within this state to produce funds sufficient to pay the principal of and interest upon such bonds as the same become payable, and such additional annual direct tax shall be levied, certified, assessed and collected at the same time and in the same manner as are taxes for general state purposes. [C50, 54, 58, 62, 66, 71, 73, 75,§35A.12]

35A.13 Appropriation—reversion.

1. There is hereby appropriated from the general fund of the state not otherwise appropriated, the sum of fifty million dollars to the service compensation fund established by section 35A.3, to pay certain compensation to Iowa veterans of the armed forces of the United States in World War II.

2. There is hereby appropriated from the general fund of the state from funds not otherwise appropriated the sum of eight million dollars, or so much thereof as may be necessary to carry out the provisions of the following paragraph, to the service compensation fund provided for by section 35A.3. Notwithstanding the provisions of any other statute or statutes, the balance remaining in the service compensation fund after the payment of all expenditures herein authorized shall revert to the general fund of the state.

3. The sum herein appropriated shall be used for the purpose of paying claims filed with the World War II service compensation board on or before December 31, 1950, which have been, or might hereafter be, allowed by that board and to pay the expenses of the administration of that board in carrying out its duties as prescribed by the provisions of this chapter. There is hereby reverted to the general fund of the state the sum of four hundred and fifty thousand dollars from funds appropriated.

4. There is hereby reappropriated from the funds appropriated by subsection 2 which remain to the credit of the World War II service compensation fund and are not needed for the purpose of carrying out the provisions of subsection 3, an amount sufficient to carry out the provisions of subsection 5.

5. The bonus board as provided in this chapter is hereby authorized to pay World War II service compensation as provided for by the provisions of this chapter to applicants who file claims for such compensation between the dates of July 1, 1953, and June 30, 1957, provided such applicants are otherwise found eligible for such compensation according to the conditions and provisions of this chapter.

6. There is hereby appropriated from the general fund of the state, from funds not otherwise appropriated, the sum of fifty-five thousand dollars or so much thereof as may be necessary to the service compensation fund provided for by section 35A.3. The sum herein appropriated shall be used for the purpose of paying claims, filed on or before June 30, 1957, which have been, or may hereafter be, allowed by the bonus board and to pay the expenses of the administration in carrying out the duties as prescribed by the provisions of this chapter.

Notwithstanding the provisions of any other statute or statutes the balance remaining in the service compensation fund, after the payment of all expenditures herein authorized, shall revert to the general fund of the state. [C50, 54, 58, 62, 66, 71, 73, 75,§35A.13]

Referred to in §35A.15

35A.14 Authority of state treasurer. The treasurer of the state of Iowa is hereby authorized and directed to sell thirty-five million dollars of bonds, as provided in section 35A.2, and his authority and direction therein to sell in excess of said sum is hereby revoked. [C50, 54, 58, 62, 66, 71, 73, 75,§35A.14]

Referred to in §35A.15

35A.15 Bonds to be sold. The treasurer of the state of Iowa is hereby directed to sell the bonds referred to in section 35A.14 as follows:

Group 1. To sell immediately eight million seven hundred fifty thousand dollars of bonds, being numbers one to eight thousand seven hundred fifty, inclusive, of one thousand dollars each, maturing on or before December 2, 1953, in the manner provided in section 35A.2.

Group 2. To sell eight million seven hundred fifty thousand dollars of bonds, being numbers eight thousand seven hundred fifty-one to seventeen thousand five hundred, inclusive, of one thousand dollars each, maturing on or before December 2, 1958, in the manner provided in section 35A.2, but the sales shall be

delayed until the funds appropriated in section 35A.13 hereof and the proceeds of group one have all been used for the payment of the compensation provided in section 35A.4.

Group 3. To sell eight million seven hundred fifty thousand dollars of bonds, being numbers seventeen thousand five hundred one to twenty-six thousand two hundred fifty, inclusive, of one thousand dollars each, maturing on or before December 2, 1963, in the manner provided in section 35A.2, but the sales shall be delayed until the funds appropriated in section 35A.13 and the proceeds of groups one and two have all been used for the payment of the compensation provided in section 35A.4.

Group 4. To sell eight million seven hundred fifty thousand dollars of bonds, being numbers twenty-six thousand two hundred fifty-one to thirty-five thousand, inclusive, of one thousand dollars each, maturing on or before December 2, 1968, in the manner provided in section 35A.2, but the sales shall be delayed until the funds appropriated in section 35A.13 and the proceeds of groups one, two and three have all been used for the payment of the compensation provided in section 35A.4. [C50, 54, 58, 62, 66, 71, 73, 75,§35A.15]

35A.16 Limitation of indebtedness. No debt in excess of thirty-five million dollars shall be contracted by authority of section 35A.1 and the sale of bonds in excess of said amount is hereby expressly forbidden. [C50, 54, 58, 62, 66, 71, 73, 75,§35A.16]

Saving clause, 53GA, ch 49,§5

CHAPTER 35B

KOREAN VETERANS' BONUS

35B.1 Debt authorized.
35B.2 Bonds—form.
35B.3 Service compensation fund.
35B.4 Persons entitled—basis of compensation.
35B.5 College students excluded.
35B.6 Administration of fund.
35B.7 Duties.
35B.8 Applications.
35B.9 False statements—penalty.
35B.10 Exemptions.
35B.11 Tax levy.

35B.1 Debt authorized. The state of Iowa is hereby authorized to become indebted in the amount of twenty-six million dollars and in evidence thereof there shall be issued and sold negotiable coupon bonds of said state as hereinafter provided, and the proceeds thereof shall be paid into the treasury of the state to be expended for the payment of service compensation to the persons defined in section 35B.4, or for the benefit of such persons as prescribed by said section, and for expenses incurred in carrying out the provisions of this chapter. [C58, 62, 66, 71, 73, 75,§35B.1]

35B.2 Bonds—form. The treasurer of the state is hereby directed to cause to be prepared negotiable coupon bonds of this state in the amount of twenty-six million dollars, such bonds to bear interest at the rate of not to exceed two and one-half percent per annum which interest shall be paid semiannually, such bonds shall be issued so that said indebtedness shall be payable in twenty equal annual installments, the last of which shall be within twenty years from the date of issue, bonds to be callable in numerical order on six months' notice at one hundred one and one-half percent of the par value. Said bonds shall be signed by the governor under the great seal of said state, attested by the secretary of state and countersigned by the treasurer of state, and the full faith, credit and resources of the state of Iowa shall be pledged for the payment thereof. The interest coupons attached to said bonds shall bear the lithographed facsimile signatures of said officials. The treasurer of state shall sell said bonds to obtain funds to carry out the provisions of this chapter, and to make the payments hereinafter provided, such bonds shall be sold at not less than the par value thereof and accrued interest thereon to the highest and most responsible bidder after advertising for a period of twenty consecutive days, Sundays excepted, in at least two daily newspapers printed in the state of Iowa. Advertisements of sale shall recite that the treasurer of state, in his discretion, may reject any or all bids received and, in such event, he shall readvertise for bids in the form and manner above described as many times as in his judgment may be necessary to effect a satisfactory sale. If any of said bonds are not presented for payment within ten years after maturity they shall be barred. [C58, 62, 66, 71, 73, 75,§35B.2]

35B.3 Service compensation fund. The proceeds of such bonds so paid into the treasury of state shall constitute a service compensation fund and shall be distributed to the persons entitled thereto as hereinafter prescribed. Said twenty-six million dollars is hereby appropriated out of said service compensation fund for the purpose of carrying out the provisions of this chapter. [C58, 62, 66, 71, 73, 75,§35B.3]

35B.4 Persons entitled—basis of compensation. Every person, male or female, who served on active duty, in the armed forces of the United States, at any time between June

27, 1950, and July 27, 1953, both dates inclusive, and who at the time of entering into such service was a legal resident of the state of Iowa, and who had maintained such residence for a period of at least six months immediately prior thereto, and was honorably separated or discharged from such service, or is still in active service in an honorable status, or has been retired, or has been furloughed to a reserve, or has been placed on inactive status, shall be entitled to receive from the service compensation fund ten dollars for each month that such person was in active domestic service, and twelve and one-half dollars for each month that such person was in active foreign service, all prior to July 27, 1953, not to exceed a total sum of five hundred dollars, provided that such person served for a period of not less than one hundred twenty days prior to November 25, 1953. Compensation for a fraction of a month shall not be considered unless it be sixteen days or more in which event it shall be computed as a full month. No person shall be entitled to such compensation who received a bonus or compensation of like nature, as provided in this chapter, from another state. No person shall be entitled to such compensation who being in the service of the armed forces of the United States, subsequent to June 26, 1950, refused on conscientious, political, religious, or other grounds to subject himself or herself to military discipline. Service in the merchant marine shall not be considered for the purposes of this chapter. The surviving unremarried widow or widower, child or children, mother, father, or person standing in loco parentis, in the order named and none other, of any deceased person, shall be paid the compensation that such deceased person would be entitled to under this chapter, if living; but, if any person has heretofore died or shall hereafter die, from service-connected causes incurred between June 27, 1950, and July 27, 1953, both dates inclusive, and who has not received the benefits of this chapter, the first of survivors as hereinbefore designated and in the order named, shall be paid five hundred dollars, regardless of the length of such service, and provided further that if such eligible beneficiary is a minor at the time such compensation is payable, same may be paid to a custodian duly recognized by United States Veterans Administration. [C58, 62, 66, 71, 73, 75,§35B.4]

Referred to in §§35B.1, 35B.7, 35B.8

35B.5 College students excluded. Active duty in the armed forces of the United States shall include all time for which credit is received in the computation of terminal leave, including such leave time as provided for by federal statutes, including Armed Forces Leave Act of 1946, and attendance at an armed forces school including such schools conducted at a college, university, or similar institution of learning but excluding any period he was assigned by the armed forces to a civilian institution for a course of education or training which was substantially the same as established courses offered to civilians, or as a cadet or midshipman, however enrolled, at one of the service academies. [C58, 62, 66, 71, 73, 75,§35B.5]

35B.6 Administration of fund. The administration of the service compensation fund shall be under the control of the bonus board created by section 35.1. [C58, 62, 66, 71, 73, 75, §35B.6]

35B.7 Duties. It shall be the duty of the said board to administer the provisions of this chapter, to examine all applications and approve or disapprove the same and make any investigation necessary to establish facts. Judicial review of any decision of the board may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review must be filed within a period of thirty days from date of mailing by certified mail of notice of such disapproval. Within thirty days after the filing of a petition for judicial review the board shall make, certify and file in the office of the clerk of the district court in which the judicial review is sought a full and complete transcript of all documents in the proceeding, including any depositions, a transcript or certification of the evidence, if reported. When any application has been approved by the board, payment shall be made to the applicant in accordance with the provisions of this chapter. It shall be the duty of the board to prepare vouchers and transmit the same to the state comptroller in payment of the bonus claims provided for herein and other necessary administrative expenses; said state comptroller shall issue a warrant for the amount stated therein and the state treasurer shall pay such warrants out of said bonus fund. The board is hereby empowered to employ such assistants and incur such other expenses as may be necessary for such administration and carrying out of the provisions of this chapter, and the funds necessary for such administration and carrying out the provisions of this chapter shall be expended from said compensation fund; such assistants as said board may determine shall give bond in such amount as may be fixed by said board, and shall, whenever practicable, be persons within the classes as defined in section 35B.4. The board is hereby empowered to make, adopt and promulgate such rules for the carrying out of the provisions of this chapter as it deems necessary and expedient and which are not inconsistent with any provisions of this chapter. [C58, 62, 66, 71, 73, 75,§35B.7]

35B.8 Applications. Before receiving any compensation under the provisions of this chapter, the claimant, or his successor in interest, shall file with the board, application on forms provided by said board; such application must be so filed on or before July 4, 1963. Such application shall state facts sufficient to estab-

lish the status of such applicant within a class as defined in section 35B.4, and shall be duly verified. [C58, 62, 66, 71, 73, 75,§35B.8]

35B.9 False statements—penalty. Whoever knowingly makes a false statement, oral or written, relating to a material fact in supporting a claim under the provisions of this chapter, shall be punished by a fine of not more than one thousand dollars or be imprisoned for not more than one year, or both, and shall forfeit all benefits he or she might have been entitled to under this chapter. [C58, 62, 66, 71, 73, 75,§35B.9]

35B.10 Exemptions. All payments and allowances made under this chapter shall be exempt from taxation and from levy and sale on execution and all bonds issued hereunder shall be exempt from taxation. [C58, 62, 66, 71, 73, 75,§35B.10]

35B.11 Tax levy. To provide for the payment of the principal of said bonds so issued and sold and the interest thereon as the same become due and mature, there is hereby imposed and levied upon moneys and credits and other intangible personal property subject to taxation at other than the general property rate a direct annual tax of twenty-seven cents per thousand dollars of assessed valuation upon the dollar, which shall be additional to all other taxes levied upon such intangible personal property, any other provisions of the Code notwithstanding, for each of the years said bonds are outstanding. There is also hereby imposed and levied upon all other taxable property within the state of Iowa, in addition to all other taxes, a direct annual tax for each of the years said bonds are outstanding, sufficient in amount, together with the receipts from the tax imposed upon moneys and credits and other intangible personal property, for the payment of principal of said bonds as it shall become due, and sufficient in amount to produce additional sums as may be needed to pay the interest on said bonds each year for twenty years. The twenty-seven cents per thousand dollars of assessed valuation tax upon moneys and credits and other intangible personal property shall be collected in the same manner as other taxes upon moneys and credits and intangible personal property and shall be remitted to the treasurer of state and applied to the payment of the principal and interest of the soldiers' bonus bonds. The treasurer of the state shall annually certify to the department of revenue prior to the time for levy of general state taxes the amount of money required to be raised to pay the principal and interest on such bonds, maturing in the ensuing year, and said department of revenue shall annually fix the rate necessary to be levied and assessed upon the valuation of the taxable property within this state to produce funds sufficient to pay the principal of and interest upon such bonds as the same become payable, taking into consideration the receipts to be derived from the twenty-seven cents per thousand dollars tax imposed upon moneys and credits and other intangible personal property, and such additional annual direct tax shall be levied, certified, assessed and collected at the same time and in the same manner as are taxes for general state purposes. If any funds remain after the final payment of all legal claims and expenses, they shall be transferred to the general fund of the state of Iowa. [C58, 62, 66, 71, 73, 75,§35B.11; 66GA, ch 67,§67]

Referred to in §427.1(22)
Constitutionality, 56GA, ch 61,§12

CHAPTER 35C

VIETNAM VETERANS' BONUS

35C.1 Persons entitled to receive compensation.
35C.2 Definition of active duty.
35C.3 Service compensation board.
35C.4 Applications for compensation — approval.
35C.5 Time for making applications.
35C.6 False statement—penalty.
35C.7 Tax exemption.

35C.1 Persons entitled to receive compensation. Every person who served not less than one hundred twenty days on active duty, in the armed forces of the United States, at any time between July 1, 1958 and ending on August 4, 1964, both dates inclusive, and who at the time of entering into service was a legal resident of the state of Iowa, and who had maintained such residence for a period of at least six months immediately prior thereto, and was honorably separated or discharged from such service, or is still in active service in an honorable status, or has been retired, or has been furloughed to a reserve, or has been placed on inactive status, shall be entitled to receive from the service compensation fund seventeen dollars and fifty cents, if he earned either a Vietnam service medal or an armed forces expeditionary medal-Vietnam, or can otherwise establish service in Vietnam during that period, for each month that such person was in the Vietnam service area, between July 1, 1958 and August 4, 1964, both dates inclusive, not to exceed a total sum of five hundred dollars.

Every person otherwise qualified under this section and who earned either a Vietnam service medal or an armed forces expeditionary medal-Vietnam for service between the period commencing August 5, 1964 and ending June 30, 1973, or can otherwise establish service in the Vietnam service area during that period, shall be entitled to receive from the service compensation fund seventeen dollars and fifty cents for each month that such person was in the Vietnam service area and twelve dollars and fifty cents for each month that such person was not in the Vietnam service area, not to exceed a total sum of five hundred dollars.

Every person otherwise qualified under this section, except that he did not earn either the Vietnam service medal or the armed forces expeditionary medal-Vietnam, and did not serve in the Vietnam service area, shall be entitled to receive from the service compensation fund twelve dollars and fifty cents for each month that such person was in active service during the time between August 5, 1964 and June 30, 1973, both dates inclusive, not to exceed a total sum of three hundred dollars.

Compensation under this chapter shall not be paid for a fraction of a month unless it be sixteen days or more in which event it shall be computed as a full month.

No person shall be entitled to such compensation who received a bonus or compensation of like nature, as provided in this chapter, from another state. A person shall not be entitled to such compensation who being in the service of the armed forces of the United States, subsequent to July 1, 1958 refused on conscientious, political, religious, or other grounds to subject himself to military discipline. Service in the merchant marine shall not be considered for the purposes of this chapter. Service for six months or less for the sole purpose of training shall not be considered for the purposes of this chapter. The surviving widow or widower, child or children, mother, father, or person standing in loco parentis, in the order named and none other, of any deceased person, shall be paid the compensation that such deceased person would be entitled to under this chapter, if living; but, if any person has heretofore died or shall hereafter die, or is disabled, from service-connected causes incurred during the period and in the area for which he is able to receive compensation under this chapter, and who has not received the benefits of this chapter, he or the first of survivors as designated by this chapter and in the order named, shall be paid five hundred dollars or three hundred dollars, whichever maximum rate he would have been entitled to receive, regardless of the length of such service. If an eligible beneficiary is a minor at the time compensation is payable, the same may be paid to a custodian duly recognized by the United States veterans administration. [C75, §35C.1]

Referred to in §35C.4

35C.2 Definition of active duty. "Active duty" in the armed forces of the United States means full-time duty in the armed forces of the United States, excluding active duty for training purposes only and excluding any period a person was assigned by the armed forces to a civilian institution for a course of education or training which was substantially the same as established courses offered to civilians, or as a cadet or midshipman, however enrolled, at one of the service academies. [C75,§35C.2]

Referred to in §427.3

35C.3 Service compensation board. There is created a board to be known as the "service compensation board" to consist of the persons who serve on the bonus board created by chapter 35. [C75,§35C.3]

35C.4 Applications for compensation—approval. It is the duty of the service compensation board to administer the provisions of this chapter, to examine all applications and approve or disapprove the same and make any investigation necessary to establish facts. In the event an application is disapproved by the board, the claimant may appeal to the district court of the state of Iowa in and for the county of his legal residence within a period of thirty days from date of mailing by registered mail of notice of such disapproval. The appeal shall be perfected by filing in the office of the board, a written notice of appeal setting forth the order or finding appealed from and the grounds of the appeal. Within thirty days after the filing of such notice of appeal the board shall make, certify, and file in the office of the clerk of the district court to which the appeal is taken, a full and complete transcript of all documents in the proceeding, including any depositions, a transcript or certification of the evidence, if reported, including the notice of appeal. The clerk shall immediately docket such appeal. The appeal shall be heard in such district court as in equity de novo. Appeal may be taken to the supreme court from any final order or judgment or decree of the district court. A claimant who successfully appeals the disapproval of an application shall be paid such amount as he is entitled to as determined by the court from the service compensation fund and, in addition, he shall be paid the actual amount of legal fees incurred which legal fees shall be paid in the same manner as administrative costs. When any application has been approved by the board, payment shall be made to the applicant in accordance with the provisions of this chapter. It is the duty of the board to prepare vouchers and transmit the same to the state comptroller in payment of the compensation claims provided for in this

chapter and other necessary administrative expenses. The state comptroller shall issue a warrant for the amount stated therein and the treasurer of state shall pay such warrants out of said service compensation fund. The board may employ such assistants and incur such other expenses as may be necessary for such administration and the carrying out of the provisions of this chapter, and the funds necessary for such administration and carrying out the provisions of this chapter shall be expended from the service compensation fund. Such assistants as the board may determine shall be exempt from the provisions of chapter 19A and shall give bond in an amount as may be fixed by the board, and shall, whenever practicable, be persons within the classes as defined in section 35C.1. The board may make, adopt and promulgate rules for the carrying out of the provisions of this chapter as it deems necessary and expedient and which are not inconsistent with any provisions of this chapter. [C75,§35C.4]

35C.5 Time for making applications. Before receiving any compensation under the provisions of this chapter, the claimant, or his successor in interest, shall file with the service compensation board, application on forms provided by the board. The application shall be filed within four years subsequent to June 30, 1973. [C75,§35C.5]

35C.6 False statement—penalty. Whoever knowingly makes a false statement, oral or written, relating to a material fact in supporting a claim under the provisions of this chapter, shall be punished by a fine of not more than one thousand dollars or be imprisoned for not more than one year, or punished by both such fine and imprisonment, and shall forfeit all benefits he or she might have been entitled to under this chapter. [C75, §35C.6]

35C.7 Tax exemption. All payments and allowances made under this chapter shall be exempt from taxation and from levy and sale on execution. [C75,§35C.7]

CHAPTER 36

REVOLUTIONARY WAR MEMORIAL COMMISSION

Repealed by 65GA, ch 1100,§1

CHAPTER 37

MEMORIAL HALLS AND MONUMENTS FOR SOLDIERS, SAILORS, AND MARINES

Referred to in §§11.6, 37.3, 347.14(9), 347.24, 347A.7

37.1 Memorial buildings and monuments.
37.2 Petition.
37.3 Election.
37.4 Notice.
37.5 Acquisition of site.
37.6 Bonds.
37.7 Levy for bonds.
37.8 Levy for maintenance.
37.9 Commissioners appointed—vacancies.
37.10 Qualifications—method of appointing.
37.11 When posts do not exist.
37.12 When one post fails to act.
37.13 When posts do not act.
37.14 Selection of successors.
37.15 Ex officio member.
37.16 Disbursement of funds.
37.17 Gifts and bequests.
37.18 Name—uses.
37.19 Record—monuments—how inscribed.
37.20 Funds, monuments, and memorials previously initiated.
37.21 Joint memorials.
37.22 Unexpended funds.
37.23 Contract to repay.
37.24 Investment of funds.
37.25 Accumulations.
37.26 General powers.
37.27 Nursing homes with memorial hospitals.

37.1 Memorial buildings and monuments. Memorial buildings and monuments designed to commemorate the service rendered by soldiers, sailors, and marines of the United States may be erected and equipped at public expense in the manner provided by this chapter by:

1. Any county which has not heretofore made an appropriation for such purpose under any prior law.

2. Any city operating under any form of government. [C97,§§435, 436; C24, 27, 31, 35, 39, §483; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.1]

37.2 Petition. The petition for the erection and equipment of any such hall or monument shall request the submission of the proposition to a vote of the people and shall:

1. When it is proposed to erect the same at the expense of the county, be signed by ten percent of the qualified electors thereof as shown by the election register used in the last preceding general election, or by a majority of the members of the Grand Army of the Republic, the Spanish-American War Veterans Association, Veterans of World War I, the American Legion, Disabled American Veterans of the World War, Veterans of Foreign Wars of the United States, Marine Corps League and American Veterans of World War II (AMVETS) of the county.

2. When it is proposed to erect the same at the expense of a city be subject to the provisions of section 362.4.

3. Set forth therein the purpose of the memorial proposed, as outlined in section 37.18. [C97,§435; C24, 27, 31, 35, 39,§484; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.2]

Not applicable to "Veterans of World War I" in cities over 150,000 population, 60GA, ch 76,§3

37.3 Election. Upon the filing of the requisite petition, the board of supervisors, or city council, as the case may be, shall cause the proposition to be submitted at a regular election, or at a special election to be called if requested in the petition, in substantially the following form:

"Shall the county (or city) of ..... erect and equip (or purchase and equip) a memorial building (or erect a monument) as provided in chapter 37 of the Code for the purpose of .....

(set forth purpose

.....

of memorial as outlined in section 37.18)

and issue bonds in the sum of ..... dollars to cover the expense of the same (or levy a tax of ..... per thousand dollars of assessed value for a period of ..... years to defray the expense of the same)?" [C24, 27, 31, 35, 39,§485; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.3]

37.4 Notice. Notice of such election shall be given by publication in one newspaper published or having general circulation in the county or city, as the case may be, as provided in section 362.3. Such notice shall state the purpose of the memorial proposed as outlined in section 37.18. [C97,§435; C24, 27, 31, 35, 39,§486; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.4]

37.5 Acquisition of site. When the proposition to erect any such building or monument has been carried by a majority vote of all voters voting thereon, any such county shall have the power to purchase grounds suitable for a site for any such building or monument. [C24, 27, 31, 35, 39,§487; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.5]

Condemnation procedure, ch 472
Vote required to authorize bonds, §75.1

37.6 Bonds. For the purpose of providing funds for the acquisition of necessary ground therefor, and for purchasing, erecting, constructing, or reconstructing such building or monument, and for the necessary equipment therefor, the county may issue bonds to be known as liberty memorial bonds, to be issued and sold as provided by law relative to general county bonds; it shall provide for portions of such bonds to become due at different, definite periods, but none in more than twenty years from date. In issuing such bonds, such county may become indebted in an amount which, added to all other indebtedness, shall not exceed five percent of the actual value of the taxable property in such county as determined by the last state and county tax lists. Such bonds shall bear interest at a rate not exceeding seven percent per annum. Bonds issued by a city must be issued in accordance with provisions of law relating to general corporate purpose bonds of a city. [C24, 27, 31, 35, 39,§488; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.6]

City bonds, ch 384, div. III
County bonds, ch 346
Maturity and payment, ch 76
Sale of bonds, ch 75
See 63GA, ch 87,§60

37.7 Levy for bonds. For the purpose of liquidating such bonds together with the interest thereon, such county shall levy upon all the property within the limits thereof, subject to taxation for such purpose, in addition to all other taxes provided by law, a special tax not exceeding in any one year one dollar and eight cents per thousand dollars of assessed value for a period of not exceeding twenty years. [C24, 27, 31, 35, 39,§489; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.7]

37.8 Levy for maintenance. For the development, operation, and maintenance of such building or monument constructed, purchased, or donated under this chapter, there may be thereafter levied a tax as follows:

1. By a county owning same, not to exceed thirty-three and three-fourths cents per thousand dollars of assessed value of taxable property within said county.

2. By a city owning same, not to exceed eighty-one cents per thousand dollars of assessed value on all the taxable property within the city, as provided in section 384.12, subsection 2. [C24, 27, 31, 35, 39,§490; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.8; 66GA, ch 67,§67]

Referred to in §24.37

37.9 Commissioners appointed — vacancies. When the proposition to erect any such building or monument has been carried by a majority vote, the board of supervisors or the city council, as the case may be, shall appoint a commission consisting of five members, in the manner and with the qualifications hereinafter provided, which shall have charge and supervision of the erection of said building or monument, and when erected, the management and control thereof.

The term of office of each member shall be three years, and any vacancies occurring in the membership shall be filled in the same manner as the original appointment.

Commencing with the commissioners elected to take office after January 1, 1952, one commissioner shall be elected for a term of one year, two commissioners shall be elected for a term of two years, and two commissioners shall be elected for a term of three years, or in each of the foregoing instances until his successor is elected and qualified. Thereafter, the successors in each instance shall hold office for a term of three years.

The commissioners having the management and control of a memorial hospital shall, within ten days after their appointment, qualify by taking the usual oath of office, but no bonds shall be required of them except as hereinafter provided. The commissioners shall organize by electing a chairman, secretary, and treasurer. The secretary and treasurer shall each file with the chairman of the commission a surety bond in such sum as the commission may require, with sureties approved by the commission, for the use and benefit of the memorial hospital. The reasonable costs of such bonds shall be paid from operating funds of the hospital. The secretary shall immediately report to the county auditor and county treasurer the names of the chairman, secretary, and treasurer of the commission. The commission shall meet at least once each month. Three members of the commission shall constitute a quorum for the transaction of business. The secretary shall keep a complete record of its proceedings.

Memorial hospital funds shall be received, disbursed, and accounted for in the same manner and by the same procedure as provided by section 347.12. [C97,§436; C24, 27, 31, 35, 39, §491; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.9]

Referred to in §37.21

37.10 Qualifications—method of appointing. Each such commissioner shall be an honorably discharged soldier, sailor, or marine of the United States, selected in the following manner:

Within sixty days after the election, each post of the Grand Army of the Republic, Spanish-American War Veterans, Veterans of World War I, and the American Legion, Disabled American Veterans of the World War, Veterans of Foreign Wars of the United States, Marine Corps League and American Veterans of World War II (AMVETS) in the county or city, as the case may be, shall appoint three delegates who shall, within ninety days after such election, meet in convention in the county or city, as the case may be, and by ballot select five commissioners, whose names shall be forthwith furnished to the board of supervisors, or the city council, as the case may be, whereupon said board of supervisors or city council shall by resolution appoint them as such commissioners. [C97, §436; C24, 27, 31, 35, 39,§492; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.10]

Not applicable to "Veterans of World War I" in cities over 150,000 population, 60GA, ch 76,§3

37.11 When posts do not exist. In case no post of any one of said associations is maintained in the county or city, as the case may be, then those which do exist shall proceed in the manner above provided and elect said commissioners. [C24, 27, 31, 35, 39,§493; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.11]

37.12 When one post fails to act. In case any post which does exist fails to send delegates to said convention, then the delegates which do attend shall proceed as above indicated and elect said commissioners. [C24, 27, 31, 35, 39,§494; C46, 50, 54, 58, 62, 66, 71, 73, 75, §37.12]

37.13 When posts do not act. In case no convention of delegates from said posts meets and elects said commissioners, then the board of supervisors of the county, or the city council, as the case may be, shall, at the expiration of ninety days after the election to erect a building or monument, select and appoint five commissioners. [C24, 27, 31, 35, 39, §495; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.13]

37.14 Selection of successors. Not less than sixty days before the expiration of the term of office of said commissioners, their successors in office shall be selected in the manner above provided, but if no selection shall have been made in said manner at the expiration of said term of office, then the board of supervisors, or the city council, as the case may be, shall appoint such successors. [C24, 27, 31, 35, 39, §496; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.14]

37.15 Ex officio member. In case any such memorial hall or building shall be a city hall, coliseum or auditorium, the mayor of such city may be an ex officio member of the commission heretofore provided for, in which case there shall be selected but four commissioners as otherwise provided, and such four, together with the mayor, shall constitute a commission of five. [C24, 27, 31, 35, 39,§497; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.15]

37.16 Disbursement of funds. All funds voted under the provisions of this chapter shall be disbursed by the county or city officers, only upon the written order of said commissioners. Such commission shall report to and make settlement with the board of supervisors or the city council, as the case may be, at the time and in the manner required of county and city officers. [C97,§436; C24, 27, 31, 35, 39,§498; C46, 50, 54, 58, 62, 66, 71, 73, 75, §37.16]

Collection and accounting of fees, ch 342
Examination of accounts, §343.5
Reports by city officers, §§384.22, 388.4
Settlement of accounts, §332.3
Settlement with county treasurer, §452.6

37.17 Gifts and bequests. Gifts and bequests to any county or city, or to the commission, for any of the purposes provided in this chapter, may be accepted and the property shall be used in accordance with the provisions of this chapter, and as may be

expressly designated by the donor. [C24, 27, 31, 35, 39,§499; C46, 50, 54, 58, 62. 66, 71, 73, 75, §37.17]

37.18 Name—uses. Any such memorial hall or building shall be given an appropriate name and shall be available so far as practical for the following purposes:

1. The special accommodations of soldiers, sailors, marines, nurses, and other persons who have been in the military or naval service of the United States.

2. For military headquarters, memorial rooms, library, assembly hall, gymnasium, natatorium, club room, and rest room.

3. County or city hall offices for any county or municipal purpose, community house, recreation center, memorial hospital, and municipal coliseum or auditorium.

4. Similar and appropriate purposes in general community and neighborhood uses, under the control and regulation of the custodians thereof.

5. Athletic contests, sport and entertainment spectaculars, expositions, meetings, conventions and all food and beverage services incident thereto.

The term "memorial hall" or "memorial building" as in this chapter provided shall also mean and include such parking grounds, ramps, buildings or facilities as the commission may build, acquire by purchase or lease or gift to be used for purposes not inconsistent with the uses as set out in this section. [C24, 27, 31, 35, 39,§500; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.18]

Referred to in §§37.2, 37.3, 37.4, 37.27

37.19 Record—monuments—how inscribed. When any such memorial hall shall be erected, the commission shall cause to be kept a record therein which shall contain the name of each soldier, sailor, and marine, who served honorably in any of the wars in which the United States has been engaged, and who enlisted or entered the service from the county or city, as the case may be, stating the time of his service, the name of the war and organization in which he served, and whether or not he died in the service.

When any such monuments shall be erected, the names of the deceased soldiers, sailors, and marines referred to in this section shall be placed thereon, and from time to time the names of others who subsequently die. [C97, §435; C24, 27, 31, 35, 39,§501; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.19]

37.20 Funds, monuments, and memorials previously initiated. In any case of funds heretofore raised or in the process of being raised, by tax levy or other provision of law heretofore existing, for any of the purposes provided by this chapter, the board of supervisors or the city council, as the case may be, shall cause such funds to be used and applied to all intents and purposes for the acquisition of necessary ground and the purchase, erection, construction or reconstruction and equipment of such monument or memorial building in the same manner and to the same extent as if such funds had been raised for said purpose by a bond issue, as provided in this chapter, and all the provisions of this chapter shall apply to said funds.

All other provisions of this chapter shall apply to any monument or memorial heretofore constructed or hereafter constructed from funds raised under any provision of law heretofore existing.

In all cases covered by this section, the taking effect of this chapter shall fix the time for the selection and appointment of the commissioners to all intents and purposes the same as an election on the proposition to erect a memorial building or monument, as provided in this chapter. [C24, 27, 31, 35, 39,§502; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.20]

37.21 Joint memorials. Any city may join with the county or township in which such city is located in the joint erection or purchase of memorial buildings or monuments and suitable ground and equipment therefor, and the maintenance thereof, providing the council of such city and the board of supervisors of such county or the township trustees can so agree, but in cases where commissioners have already been appointed under section 37.9, such agreement shall be between such commissioners, but if only one of such parties has appointed commissioners, then such agreement shall be between the commissioners already appointed and the council of such city or the board of supervisors of such county or the township trustees, as the case may be. [C27, 31, 35,§502-b1; C39,§502.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.21]

Referred to in §360.4

37.22 Unexpended funds. Whenever in any county, funds have been raised by taxation for the purpose of erecting and maintaining memorial buildings or monuments, and said funds are under control of a commission as provided in this chapter, and said funds have remained unexpended for a period of five years or more, and when no unpaid obligation exists against said funds, the said commission, or a majority of the members thereof, may disburse said funds for the erection, purchase or improvement of one or more memorial buildings, monuments, parks, playgrounds, swimming pools, homes or club rooms for duly incorporated and acting posts or chapters of veterans' organizations operating under a United States Congressional charter, in the county. [C31, 35,§502-c1; C39,§502.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.22]

Referred to in §§37.24, 37.26

37.23 Contract to repay. When such erection, purchase or improvement has been made, the commission shall take from the posts or chapters which are beneficiaries of such erec-

tion, purchase or improvement, the promissory obligation of such posts or chapters to repay the amount expended by the commission with or without annual interest, together with such security as the commission may require. [C31, 35,§502-c2; C39,§502.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.23]

Referred to in §37.26

37.24 Investment of funds. Funds not disbursed as provided in section 37.22 may be invested by said commission in such securities as are authorized by section 682.23. [C31, 35, §502-c3; C39,§502.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.24]

Referred to in §37.26

37.25 Accumulations. All interest accumulations shall become part of the principal fund and all uninvested funds shall be kept on deposit with the county treasurer. [C31, 35,§502-c4; C39,§502.5; C46, 50, 54, 58, 62, 66, 71, 73, 75, §37.25]

Referred to in §37.26

37.26 General powers. For the purpose of carrying out the provisions of sections 37.22 to 37.25, the commission shall have authority to receive and to convey title to real estate, to take mortgage or other security and to release or transfer the same. [C31, 35,§502-c5; C39, §502.6; C46, 50, 54, 58, 62, 66, 71, 73, 75,§37.26]

37.27 Nursing homes with memorial hospitals. In the event that a memorial building has been constructed for the purpose of a hospital pursuant to this chapter, and particularly pursuant to section 37.18, additions thereto for hospital purposes, and nursing homes to be operated in conjunction with such hospital may be erected or acquired by following the procedure outlined in chapter 347 and particularly section 347.2 with the commissioners acting in the same manner and fashion as the hospital trustees under chapter 347, and with the procedure in all other respects to be identical. [C62, 66, 71, 73, 75,§37.27]

CHAPTER 38

REGISTRATION OF ALIENS

38.1 Registration of aliens.

38.1 Registration of aliens. When a state of war exists between the United States and a foreign country, or, in the judgment of the governor, public safety or necessity requires such action, the governor may, by proclamation, direct every subject or citizen of such foreign countries as the governor may designate in such proclamation, who are in this state, or who may from time to time come into the state, to appear within twenty-four hours after the date specified in such proclamation or after arrival within the state, before such public authorities as the governor may designate in such proclamation, and personally register his or her name, residence, business, length of stay and such other information as the governor may require. Such proclamation shall be published in such newspapers as the governor may designate. Every person to whom such proclamation is applicable shall also comply with such rules of personal identification as the governor shall from time to time prescribe. The occupant of every private residence, and the owner, lessee or proprietor, operating or managing every hotel, inn, boarding or rooming house, shall, within twenty-four hours after the date specified in such proclamation, notify such public authorities of the presence therein of every subject or citizen of a foreign country to whom such proclamation is applicable, and shall each day thereafter notify such public authorities of the arrival thereat or departure therefrom of every such subject or citizen. A failure to comply with any such proclamation or to perform any act required by this section shall be a misdemeanor, and punishable by a fine not exceeding one thousand dollars, or imprisonment for one year, or both. [C24, 27, 31, 35, 39,§503; C46, 50, 54, 58, 62, 66, 71, 73, 75,§38.1]

CHAPTER 38A

EMERGENCY EXECUTIVE AND JUDICIAL SUCCESSION

Repealed by 64GA, ch 92,§1

CHAPTER 38B

EMERGENCY LEGISLATIVE SUCCESSION

Repealed by 63GA, ch 1033,§1

CHAPTER 38C

EMERGENCY LOCATION OF STATE GOVERNMENT

Repealed by 64GA, ch 92,§1

CHAPTER 38D

EMERGENCY LOCATION OF LOCAL GOVERNMENTS

Repealed by 64GA, ch 92,§1

TITLE IV

ELECTIONS AND OFFICERS

CHAPTER 39

TIME OF ELECTION AND TERM OF OFFICE

Referred to in §§43.5, 275.35, 277.3, 280A.15, 280A.39, 296.4, 298.18, 353.12, 360.1, 372.2, 376.1, 400.2
Chapter applicable to primary elections, §43.5

39.1 General election.
39.2 Special elections.
39.3 Definitions.
39.4 Proclamation concerning revision of Constitution.
39.5 Repealed by 65GA, ch 136,§401.
39.6 Notice of special election.
39.7 Time of choosing officer.
39.8 Term of office.
39.9 State officers—term.
39.10 United States senators.
39.11 Repealed by 59GA, ch 296,§2.
39.12 Repealed by 55GA, ch 114,§29.
39.13 Repealed by 58GA, ch 319,§1.
39.14 Repealed by 59GA, ch 296,§2.
39.15 State senators.
39.16 Representatives.
39.17 County officers.
39.18 Board of supervisors and township trustees.
39.19 Repealed by 63GA, ch 218,§11.
39.20 City officers.
39.21 Nonpartisan offices.
39.22 Township officers.
39.23 Township clerk.
39.24 School officers.
39.25 Sex no disqualification.

39.1 General election. The general election shall be held throughout the state on the first Tuesday after the first Monday in November of each even-numbered year. [C51,§239; R60, §459; C73,§573; C97,§1057; S13,§1057-a; C24, 27, 31, 35, 39,§**504**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §39.1]

Constitution, Amendments of 1904 (No. 1), 1916

39.2 Special elections.

1. All special elections which are authorized or required by law, unless the applicable law otherwise requires, shall be held on Tuesday. No special election may be held on the first or second Tuesday preceding and following the primary and the general elections.

2. A special election may be held on the same day as a regularly scheduled election if the two elections are not in conflict within the meaning of section 47.6, subsection 2. A special election may be held on the same day as a regularly scheduled election with which it does so conflict if the commissioner who is responsible for conducting the elections concludes that to do so will cause no undue difficulties.

3. When voting is to occur on the same day in any one precinct for two or more elections, they shall be considered one election for purposes of administration including but not limited to publishing notice of the election, preparation of the precinct election register and completion of tally sheets after the polling place has closed. [C51,§237; R60,§460; C73,§574; C97,§1058; C24, 27, 31, 35, 39,§**505**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§39.2; 66GA, ch 81,§2, ch 1075, §1]

Referred to in §§47.6, 57.3

39.3 Definitions. The definitions established by this section shall apply wherever the terms so defined appear in this chapter and in chapters 43, 44, 45 and 47 to 53 and 56 unless the context in which any such term is used clearly requires otherwise.

1. *"Eligible elector"* means a person who possesses all of the qualifications necessary to entitle him to be registered to vote, whether or not he is in fact so registered.

2. *"Qualified elector"* means a person who is registered to vote pursuant to chapter 48.

3. *"General election"* means the biennial election for national or state officers, members of Congress and of the general assembly, county and township officers, and for the choice of other officers or the decision of questions as provided by law.

4. *"Primary election"* means that election by the members of various political parties for the purpose of placing in nomination candidates for public office held as required by chapter 43.

5. *"City election"* means any election held in a city for nomination or election of the officers thereof including a city primary or runoff election.

6. *"School election"* means that election held pursuant to section 277.1.

7. *"Special election"* means any other election held for any purpose authorized or required by law.

8. *"Election"* means a general election, primary election, city election, school election or special election.

9. *"City"* means a municipal corporation including a town, but not including a county, township, school district, or any special purpose district or authority. When used in relation to land area, "city" includes only the land area within the city limits.

10. *"Commissioner"* means the county commissioner of elections as defined in section 47.2.

11. *"State commissioner"* means the state commissioner of elections as defined in section 47.1.

12. *"Absentee ballot"* means any ballot authorized by chapter 53.

13. *"Registrar"* means the state registrar of voters designated by section 47.7.

14. *"Registration commission"* means the state voter registration commission established by section 47.8. [C97,§1089; C24, 27, 31, 35, 39, §**720**; C46, 50, 54, 58, 62, 66, 71, 73,§49.2; C75, §39.3; 66GA, ch 81,§3, HF 1011,§2]

Referred to in §§24.35, 45.3, 46.25, 362.2, 609.7

39.4 Proclamation concerning revision of Constitution. In the years in which the Constitution requires, or at other times when the general assembly by law provides for, a vote on the question of calling a convention and revising the Constitution, the governor shall at least sixty days before the general election issue a proclamation directing that at the general election there be proposed to the people the following question:

"Shall there be a convention to revise the Constitution, and propose amendment or amendments to same?" [C97,§1061; SS15,§**1061**; C24, 27, 31, 35, 39,§**507**; C46, 50, 54, 58, 62, 66, **71**, 73, 75,§39.4]

Constitutional requirement, Amendment of 1964

39.5 Repealed by 65GA, ch 136,§401.

39.6 Notice of special election. A proclamation shall be issued before any election ordered by the governor, designating the office to be filled or the public question to be submitted at the election and designating the time at which such election shall be held; and the commissioner of each county in which such election is to be held shall give notice thereof, as provided in section 49.53. [R60,§§462, 464; C73, §§577, 579; C97, §§1061, 1063; SS15,§1061; C24, **27, 31, 35, 39,§§506, 509**; C46, 50, 54, 58, 62, 66, 71, 73,§§39.3, 39.6; C75,§39.6]

Additional provision, §6.7

39.7 Time of choosing officer. At the general election next preceding the expiration of the term of any officer, his successor shall be elected. [R60,§461; C73,§575: C97,§1059: C24, 27, 31, 35, 39,§**510**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §39.7]

39.8 Term of office. The term of office of all officers chosen at a general election for a full term shall commence on the first day of January following the election which is not a Sunday or legal holiday, except when otherwise provided by the Constitution or by statute; that of an officer chosen to fill a vacancy shall commence as soon as he has qualified therefor. [R60,§462; C73,§576; C97,§1060; S13,§1060; C24, 27, 31, 35, 39,§**511**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§39.8]

Governor and lieutenant governor, Const., Amendment of 1972, No. 32
Judges of supreme and district courts, Const., Amendment 1962

39.9 State officers — term. The governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, and attorney general shall be elected for a term of four years at the general election held in the year 1974 and every four years thereafter. [C51,§239; R60,§§465, 466; C73,§§580, 581; C97,§§1064, 1065; S13,§1065; C24, 27, 31, 35, 39,§**512**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§39.9]

Referred to in §§43.6, 43.78

39.10 United States senators. Senators in the Congress of the United States shall be elected in the same manner in which state officers are elected. [R60,§674; C73,§26; C97,§30; S13,§1087-c; C24, 27, 31, 35, 39,§**513**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§39.10]

Term of office, Constitution (U.S.), Amendment 17
Vacancy in U.S. senate, see §69.13

39.11 Repealed by 59GA, ch 296,§2.

39.12 Repealed by 55GA, ch 114,§29.

39.13 Repealed by 58GA, ch 319,§1.

39.14 Repealed by 59GA, ch 296,§2.

39.15 State senators. Senators in the general assembly shall be elected at the general election in the respective senatorial districts and shall hold office for the term of four years. [C51,§239; R60,§471; C73,§588; C97,§1071; S13, §1071; C24, 27, 31, 35, 39,§**518**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§39.15]

39.16 Representatives. Members of the house of representatives shall be elected at the general election in the respective representative districts and hold office for the term of two years. [C51,§239; R60,§470; C73,§587; C97, §1070; S13,§1070; C24, 27, 31, 35, 39,§**519**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§39.16]

39.17 County officers. There shall be elected in each county at the general election to be held in the year 1976 and every four years thereafter, a clerk of the district court, an auditor and a sheriff who shall hold office for a term of four years.

There shall be elected in each county at the general election to be held in 1974 and each four years thereafter, a treasurer, a recorder and a county attorney who shall hold office for a term of four years. [C51,§§96, 239; R60,§§224,

472, 473; C73,§589; C97,§1072; S13,§1072; C24, 27, 31, 35, 39,§520; C46, 50, 54, 58, 62, 66, 71, 73, 75,§39.17]

Referred to in §§43.6, 43.77, 69.13

39.18 Board of supervisors and township trustees. There shall be elected, biennially, in counties and townships, members of the board of supervisors and township trustees, respectively, to succeed those whose terms of office will expire on the first day of January following the election which is not a Sunday or legal holiday. The term of office of each supervisor or trustee shall be four years, except as otherwise provided by section 331.25, subsection 2, and section 331.26, subsection 4. [C51,§239; R60,§475; C73,§§295, 591; C97,§§411, 1074; S13,§1074; SS15,§411; C24, 27, 31, 35, 39, §521; C46, 50, 54, 58, 62, 66, 71, 73, 75,§39.18]

See §§331.1 and 331.2

39.19 Repealed by 63GA, ch 218,§11.

39.20 City officers. The times at which officers of cities shall be elected and their terms of office shall be as provided by or established pursuant to sections 376.1 and 376.2. [C75, §39.20]

Temporary provisions before July 1, 1975, see 65GA, ch 136,§10, ch 1101,§89

39.21 Nonpartisan offices. There shall be elected at each general election, on a nonpartisan basis, the following officers:

1. Regional library trustees as required by section 303B.3.

2. County public hospital trustees as required by section 347.25.

3. Soil conservation district commissioners as required by section 467A.5. [66GA, ch 229, §5]

39.22 Township officers. Township trustees and the township clerk shall, in townships which embrace no city, be elected by the voters of the entire township. In townships which embrace a city, said officers shall be elected by the voters of the township who reside outside the corporate limits of such city; but any such officer may be a resident of said city. [C27, 31, 35,§523-b1; C39,§523.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§39.22]

39.23 Township clerk. There shall be elected, at the general election held in the year 1974 and every four years thereafter, in each civil township one township clerk, who shall hold his office for the term of four years. [C51,§239; R60,§475; C73,§591; C97,§1075; S13, §1075; C24, 27, 31, 35, 39,§524; C46, 50, 54, 58, 62, 66, 71, 73, 75,§39.23]

39.24 School officers. Members of boards of directors of community and independent school districts, and boards of directors of merged areas shall be elected at the school election. Their respective terms of office shall be three years, except as otherwise provided by section 280A.12. [C75,§39.24]

Directors, §274.7

39.25 Sex no disqualification. No person shall be disqualified on account of sex from holding any office created by the statutes of this state. [C24, 27, 31, 35, 39,§526; C46, 50, 54, 58, 62, 66, 71, 73, 75,§39.25]

CHAPTER 40

CONGRESSIONAL DISTRICTS

Referred to in §§275.35, 277.3, 280A.15, 280A.39, 296.4, 298.18, 353.12, 360.1, 372.2, 376.1

40.1 Districts designated.

40.1 Districts designated. The state of Iowa is hereby organized and divided into six congressional districts, which shall be composed, respectively, of the following counties:

1. The first district shall consist of the counties of Benton, Poweshiek, Iowa, Johnson, Scott, Washington, Louisa, Muscatine, Jefferson, Henry, Des Moines, Van Buren and Lee.

2. The second district shall consist of the counties of Winneshiek, Allamakee, Fayette, Clayton, Delaware, Dubuque, Linn, Jones, Jackson, Cedar and Clinton.

3. The third district shall consist of the counties of Worth, Mitchell, Howard, Hancock, Cerro Gordo, Floyd, Chickasaw, Wright, Franklin, Butler, Bremer, Hamilton, Hardin, Grundy, Black Hawk, Buchanan, Marshall and Tama.

4. The fourth district shall consist of the counties of Polk, Jasper, Marion, Mahaska, Keokuk, Lucas, Monroe, Wapello, Appanoose and Davis.

5. The fifth district shall consist of the counties of Carroll, Greene, Boone, Story, Harrison, Shelby, Audubon, Guthrie, Dallas, Pottawattamie, Cass, Adair, Madison, Warren, Mills, Montgomery, Adams, Union, Clarke, Fremont, Page, Taylor, Ringgold, Decatur and Wayne.

6. The sixth district shall consist of the counties of Lyon, Osceola, Dickinson, Emmet, Kossuth, Winnebago, Sioux, O'Brien, Clay, Palo Alto, Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Woodbury, Ida, Sac, Calhoun, Webster, Monona and Crawford. [C27, 31, 35,§526-a1; C39,§526.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§40.1]

Constitutional provision, Amendment No. 8 of 1968

CHAPTER 41

STATE SENATE AND REPRESENTATIVE DISTRICTS

Established by Order of the Supreme Court, March 31, 1972, amended May 15, 1972.

See: In re Legislative Districting of General Assembly (64GA, ch 95), 193N.W. 2d 784

Referred to in §§275.35, 277.3, 280A.15, 280A.39, 296.4, 298.18, 353.12, 360.1, 372.2, 376.1

As used in this chapter, each reference to a specific city, town, township, street or road means the city, town, township, street or road so identified as its boundaries or location existed on April 1, 1970, the official date of the 1970 United States decennial census. Unless otherwise stated in this chapter, territory added to or taken from any city, town or township after April 1, 1970, shall be regarded as a part of the city, town or township to which the territory belonged on that date, for the purposes of this chapter.

References to "towns" in this chapter are to the political status of such incorporated places prior to the Home Rule Act. Such places are now designated as "cities."

41.1 Representative districts. 41.2 Senate districts.

41.1 Representative districts. The state of Iowa is hereby divided into one hundred representative districts, as follows:

1. The first representative district shall consist of:

a. In Lyon county, Sioux, Larchwood, Allison, Riverside, Midland, Centennial, Logan, Cleveland, Rock, Liberal, Lyon, Richland, Doon, Garfield and Wheeler townships.

b. In Sioux county:

(1) Settlers, Sioux, Rock, Lincoln, Sheridan, Garfield, Plato, Welcome, Capel, Eagle, Center, West Branch, Floyd and Sherman townships.

(2) That portion of Buncombe township lying outside the corporate limits of the city of Hawarden.

(3) That portion of Holland township lying outside the corporate limits of the city of Orange City.

2. The second representative district shall consist of:

a. In Plymouth county, Portland, Preston, Grant, Elgin, Fredonia, Meadow, Westfield, Johnson, Washington, America, Marion, Sioux, Liberty, Plymouth, Stanton and Union townships.

b. In Sioux county:

(1) Logan, Washington, Reading, Nassau and East Orange townships.

(2) That portion of the city of Orange City lying within Holland township.

(3) That portion of the city of Hawarden lying within Buncombe township.

3. The third representative district shall consist of:

a. In Clay county:

(1) Waterford and Riverton townships.

(2) That portion of Summit township lying outside the corporate limits of the town of Fostoria.

b. In Dickinson county:

(1) Silver Lake, Diamond Lake, Excelsior, Lakeville, Westport and Okoboji townships.

(2) That portion of Lakeville township lying outside the corporate limits of the town of Okoboji.

(3) That portion of Spirit Lake township lying west of a line beginning at the point where the boundary line between Spirit Lake and Center Grove townships intersects with the west corporate limit of the city of Spirit Lake and proceeding generally north and east along that corporate limit to the point where it meets the south corporate limit of the town of Orleans and proceeding first northeasterly and then south along the common corporate limits of the city of Spirit Lake and the town of Orleans to the point where the south corporate limit of the town of Orleans turns east and proceeding along that corporate limit to its intersection with the shore line of Spirit Lake and proceeding along the eastern and northern shore line of Spirit Lake to its intersection with the western boundary of Mini-Wakan state park and proceeding north along the western boundary of Mini-Wakan state park to its intersection with an east-west road, the center line of which is the boundary between the states of Iowa and Minnesota.

(4) That portion of the town of Okoboji bounded by a line beginning at the point where the northern corporate limits of the town of Okoboji intersects with the shore line of West Okoboji lake and proceeding in a southeasterly direction on the corporate limits of the town of Okoboji to its intersection with Sanborn street and proceeding west on Sanborn street to its intersection with Furlam street and proceeding west on Furlam street to its intersection with Lake Shore road and proceeding northwesterly along Lake Shore road to its intersection with the corporate limits of the town of Okoboji.

(5) The town of Arnolds Park.

(6) That portion of the town of West Okoboji lying in Center Grove township.

(7) That portion of the town of Milford lying in Milford township.

c. In Lyon county, Elgin, Grant and Dale townships.

d. In O'Brien county:

(1) Floyd, Franklin, Lincoln and Hartley townships.

(2) That portion of the city of Sheldon lying within Carroll township.

e. All of Osceola county.

f. In Sioux county, Grant and Lynn townships.

4. The fourth representative district shall consist of:

a. In Clay county:

(1) Meadow, Lake, Sioux and Freeman townships and the city of Spencer.

(2) That portion of the town of Fostoria lying in Summit township.

b. In Dickinson county:

(1) Superior, Richland and Lloyd townships.

(2) That portion of Center Grove township lying outside the corporate limits of the towns of Okoboji, Arnolds Park and West Okoboji.

(3) That portion of the town of Okoboji not contained within the third representative district, as described in subsection 3 of this section.

(4) That portion of Milford township lying outside the corporate limits of the town of Milford.

(5) That portion of Spirit Lake township lying outside the third representative district as described in subsection 3 of this section.

c. In Emmet county, Estherville township.

d. In Palo Alto county, Lost Island and Highland townships.

5. The fifth representative district shall consist of:

a. In Buena Vista county, Nokomis township.

b. In Cherokee county, Marcus, Liberty, Cedar, Amherst, Sheridan, Cherokee, Afton, Tilden, Rock, Pilot and Pitcher townships.

c. In Clay county, Lone Tree township.

d. In O'Brien county:

(1) Summit, Center, Omega, Baker, Dale, Highland, Caledonia, Union, Liberty and Waterman townships.

(2) That portion of Carroll township lying outside the corporate limits of the city of Sheldon.

e. In Plymouth county:

(1) Henry township.

(2) Remsen township exclusive of that portion of the town of Remsen included in the second representative district, as described in subsection 2 of this section.

6. The sixth representative district shall consist of:

a. In Buena Vista county, Brooke, Barnes, Lee, Poland, Elk, Scott, Lincoln, Fairfield, Washington, Grant, Coon, Hayes, Providence and Newell townships, and the cities of Sioux Rapids and Storm Lake.

b. In Cherokee county, Spring township.

c. In Clay county, Clay, Lincoln, Gillett Grove, Logan, Peterson, Douglas, Herdland and Garfield townships.

d. In O'Brien county, Grant township.

e. In Palo Alto county, Silver Lake, Booth, Rush Lake and Ellington townships.

f. In Pocahontas county, Swan Lake, Cummins and Powhatan townships.

7. The seventh representative district shall consist of:

a. In Hancock county, the town of Corwith.

b. In Humboldt county, Wacousta, Delana, Humboldt, Vernon, Rutland and Grove townships.

c. In Kossuth county:

(1) Seneca, Fenton, Lotts Creek, Union, Whittemore, Cresco, Irvington, Prairie, Garfield, Riverdale, Sherman and LuVerne townships, and the city of Algona.

(2) That portion of the town of Lone Rock lying within Burt township.

d. In Palo Alto county, Walnut, Vernon, Independence, Emmetsburg, Freedom, Fairfield, Great Oak, Nevada, Fern Valley and West Bend townships.

e. In Pocahontas county, Des Moines township and the town of Rolfe.

8. The eighth representative district shall consist of:

a. In Emmet county, Emmet, Ellsworth, Lincoln, Iowa Lake, Center, Swan Lake, Armstrong Grove, Twelve Mile Lake, High Lake, Jack Creek and Denmark townships.

b. In Hancock county, that portion of the city of Forest City lying in Madison township.

c. In Kossuth county:

(1) Eagle, Grant, Springfield, Hebron, Swea, Harrison, Ledyard, Lincoln, Greenwood, Ramsey, German, Portland, Buffalo, Plum Creek and Wesley townships.

(2) That portion of Burt township lying outside the corporate limits of the town of Lone Rock.

d. All of Winnebago county.

9. The ninth representative district shall consist of:

a. In Cerro Gordo county, Grant township.

b. In Franklin county, Wisner township.

c. In Hancock county:

(1) Bingham, Crystal, Ellington, Orthel, Britt, Garfield, Concord, Erin, Liberty, Ell, Amsterdam, Twin Lake and Avery townships.

(2) That portion of Madison township lying outside the corporate limits of the city of Forest City.

(3) Those portions of Boone and Magor townships lying outside the corporate limits of the town of Corwith.

d. In Wright county:

(1) Boone, Norway, Belmond, Pleasant, Iowa, Liberty, Lake, Eagle Grove, Dayton and Troy townships.

(2) That portion of the city of Clarion lying within Grant and Lincoln townships.

(3) The town of Woolstock.

10. The tenth representative district shall consist of:

a. In Franklin county:

(1) Richland, Ross, West Fork, Scott, Marion, Mott, Ingham, Morgan, Hamilton, Reeve, Oakland, Lee and Grant townships, the city of Hampton, and the town of Sheffield.

(2) That portion of the town of Ackley lying in Osceola township.

b. In Hardin county, Alden, Hardin, Etna, Buckeye, Ellis, Jackson and Clay townships.

c. In Wright county:

(1) Blaine, Wall Lake and Vernon townships.

(2) Those portions of Grant and Lincoln townships lying outside the corporate limits of the city of Clarion.

(3) That portion of Woolstock township lying outside the corporate limits of the town of Woolstock.

11. The eleventh representative district shall consist of the following portions of Cerro Gordo county:

a. Clear Lake, Portland, Union, Mount Vernon, Bath, Owen, Grimes, Pleasant Valley, Geneseo and Dougherty townships, and the city of Clear Lake.

b. That portion of Mason township lying east of U. S. highway 65.

c. That portion of the city of Mason City which is bounded by a line beginning at the point at which U. S. highway 65 intersects the southernmost corporate limit of the city of Mason City and proceeding north along U. S. highway 65 to the point where the line which was on April 1, 1970, the corporate limit of the city of Mason City turns east from that highway and proceeding along the line which was on April 1, 1970, the corporate limit of the city of Mason City to its intersection with South Carolina avenue and proceeding north along South Carolina avenue to its intersection with the Chicago, Milwaukee, St. Paul and Pacific railroad track and proceeding easterly along that railroad track to its intersection with the Chicago and Northwestern railroad track and proceeding north along that railroad track to its intersection with Sixth street southeast and proceeding west along Sixth street southeast to its intersection with Federal avenue and proceeding north along Federal avenue to its intersection with Seventeenth street northwest and proceeding west along Seventeenth street northwest to its intersection with Madison avenue and proceeding south along Madison avenue to its intersection with Twelfth street northwest and proceeding west along Twelfth street northwest to its intersection with the Chicago and Northwestern railroad track and proceeding southerly along that railroad track to its intersection with Ninth street northwest and proceeding west along Ninth street northwest to its intersection with Jackson avenue and proceeding south along Jackson avenue to its intersection with Eighth street northwest and proceeding west along Eighth street northwest to its intersection with Pierce avenue and proceeding north along Pierce avenue to its intersection with Twelfth street northwest and proceeding from that intersection first north and then continuing along the line which was on April 1, 1970, the corporate limit of the city of Mason City to its intersection with the west corporate limit of the city of Mason City and proceeding in a clockwise direction along the corporate limit of the city of Mason City to its intersection with the beginning point.

12. The twelfth representative district shall consist of:

a. In Cerro Gordo county:

(1) Lincoln, Lake and Lime Creek townships.

(2) Those portions of the city of Mason City and of Mason township not included in representative district eleven, as described in subsection 11 of this section.

b. All of Worth county.

13. The thirteenth representative district shall consist of:

a. In Cerro Gordo county, Falls township.

b. In Floyd county:

(1) Rock Grove, Rudd, Floyd, Cedar, Rockford, Ulster, Scott, Union and Pleasant Grove townships.

(2) That portion of the city of Charles City and St. Charles township bounded on the north and west by Floyd, Ulster and Union townships, partially bounded on the north and east by Niles township, and having as the remainder of its boundary a line beginning at the point where the boundary between St. Charles and Niles townships, the northern corporate limit of the city of Charles City, and the eastern corporate limit of the city of Charles City intersect and proceeding south along the eastern corporate limit of the city of Charles City to its intersection with the Chicago, Milwaukee, St. Paul and Pacific railroad track and proceeding southwesterly along that railroad track to its intersection with "E" street and proceeding south along "E" street to its intersection with Fifth avenue and proceeding east along Fifth avenue to its intersection with "F" street and proceeding south along "F" street to its intersection with First avenue and proceeding west along First avenue to its intersection with Patten avenue and proceeding southwesterly along Patten avenue to its intersection with Clark street and proceeding southeasterly along Clark street to its intersection with College avenue and proceeding southwesterly along College avenue and its extension to its intersection with the main channel of the Cedar river and proceeding

southerly along the main channel of the Cedar river to its intersection with the corporate limit of the city of Charles City and proceeding west and north along that corporate limit to its intersection with the Charles City western railroad track and proceeding southwesterly along that railroad track to its intersection with the western boundary of St. Charles township.

c. In Mitchell county:

(1) Otranto, Union, Stacyville, Newburg, St. Ansgar, Liberty, Rock, Mitchell, Burr Oak, Osage, Cedar, West Lincoln and East Lincoln townships.

(2) That portion of Wayne township lying outside the corporate limits of the town of McIntire.

14. The fourteenth representative district shall consist of:

a. In Chickasaw county, Deerfield, Washington, Jacksonville, Chickasaw, Dayton, New Hampton, Bradford, Richland and Dresden townships.

b. In Floyd county:

(1) Niles township.

(2) Those portions of the city of Charles City and St. Charles township not included in the thirteenth representative district, as described in subsection 13 of this section.

c. In Howard county:

(1) Oak Dale, Chester, Forest City, Jamestown, Saratoga, Howard Center, Vernon Springs, Afton, Howard and Paris townships.

(2) That portion of New Oregon township lying outside the corporate limits of the town of Protivin.

d. In Mitchell county:

(1) Jenkins and Douglas townships.

(2) The town of McIntire.

15. The fifteenth representative district shall consist of:

a. In Bremer county, Leroy, Sumner No. 2, Fremont, Dayton, Maxfield and Franklin townships, and the city of Sumner.

b. In Chickasaw county, Utica, Stapleton and Fredericksburg townships.

c. In Fayette county, Eden, Bethel, Banks, Center, Westfield, Fremont, Harlan, Smithfield, Oran, Jefferson and Scott townships, and the town of Fayette.

d. In Howard county, the town of Protivin.

e. In Winneshiek county, Jackson township.

16. The sixteenth representative district shall consist of:

a. In Fayette county, Auburn, Dover, Clermont, Windsor, Union and Pleasant Valley townships, and the city of West Union.

b. In Howard county, Albion township.

c. In Winneshiek county, Fremont, Burr Oak, Hesper, Highland, Orleans, Bluffton, Canoe, Lincoln, Madison, Decorah, Sumner, Calmar, Springfield, Frankville, Washington, Military and Bloomfield townships.

17. The seventeenth representative district shall consist of:

a. All of Allamakee county.

b. In Clayton county:

(1) Grand Meadow, Monona, Giard, Mendon, Marion, Wagner, Farmersburg, Clayton, Garnavillo, Volga and Jefferson townships.

(2) That portion of the town of Littleport lying in Cox Creek township.

(3) That portion of the town of Osterdock lying in Mallory township.

c. In Winneshiek county, Pleasant and Glenwood townships.

18. The eighteenth representative district shall consist of:

a. In Clayton county:

(1) Highland, Boardman, Read, Sperry, Cass, Lodomillo, Elk, Millville and Buena Vista townships.

(2) That portion of Cox Creek township lying outside the corporate limits of the town of Littleport.

(3) That portion of Mallory township lying outside the corporate limits of the town of Osterdock.

b. In Delaware county:

(1) Richland, Honey Creek, Elk, Colony and Delaware townships.

(2) That portion of Bremen township lying outside the corporate limits of the city of Dyersville.

c. In Dubuque county:

(1) Liberty, Concord, and Jefferson townships.

(2) That portion of Peru township lying outside the corporate limits of the towns of Durango and Sageville.

(3) That portion of the unincorporated area of Dubuque township bounded by a line beginning at the intersection of Peru road and the boundary between Peru and Dubuque townships and proceeding southerly along Peru road to its intersection with Boleyn road and proceeding west along Boleyn road to its intersection with a north-south road running generally parallel to and approximately 250 feet east of state highway 386 and proceeding north approximately 600 feet along that road to its intersection with an east-west road connecting the previously described north-south road with state highway 386 and proceeding west along the latter road to its intersection with state highway 386 and proceeding south along state highway 386 to its intersection with Roberts lane and proceeding west along Roberts lane to its intersection with Hi View drive and proceeding generally southeast along Hi View drive to its easternmost intersection with Briener drive near the point where Diana Lee drive intersects Briener drive and proceeding east along Briener drive to its intersection with state highway 386 and proceeding southwesterly along state highway 386 to its intersection with the corporate limit of

the town of Sageville and proceeding first southeasterly and then in a clockwise manner along the corporate limit of the town of Sageville to the point where it turns west from U. S. highway 52, and continuing southerly along U. S. highway 52 to its intersection with the north corporate limit of the city of Dubuque and proceeding first east and continuing along the corporate limit of the city of Dubuque to its intersection with the main channel of the Mississippi river and proceeding northerly along the main channel of the Mississippi river to its intersection with the boundary between Dubuque and Peru townships and proceeding west along that boundary to the point of beginning.

(4) That portion of the city of Dubuque not included in the nineteenth, twentieth, and twenty-first representative districts, as described in subsections 19, 20, and 21, respectively, of this section.

d. In Fayette county, Illyria, Fairfield and Putnam townships.

19. The nineteenth representative district shall consist of that portion of the city of Dubuque bounded by a line beginning at a point on the main channel of the Mississippi river opposite the northernmost entry from the Mississippi river to the Lake Peosta channel and proceeding southwesterly along the center of the Lake Peosta channel to its intersection with East Sixteenth street and proceeding west along East Sixteenth street to its intersection with Kerper boulevard and proceeding north along Kerper boulevard to its intersection with Fengler street and proceeding northwesterly along Fengler street to its intersection with Garfield avenue and proceeding northeasterly along Garfield avenue to its intersection with Ann street and proceeding southeasterly along Ann street to its intersection with the Chicago, Milwaukee, St. Paul and Pacific railroad track and proceeding northeasterly along that railroad track to its intersection with Dock street and proceeding northwesterly along Dock street to its intersection with Rhomberg avenue and proceeding northeasterly along Rhomberg avenue to its intersection with Decatur street and proceeding northwesterly along Decatur street to its intersection with Lincoln avenue and proceeding southwesterly along Lincoln avenue to its intersection with Ascension street and proceeding northwesterly along Ascension street to Prescott street and proceeding northeasterly along Prescott street to its intersection with Roosevelt street and proceeding northerly along Roosevelt street to its intersection with the corporate limit of the city of Dubuque and turning first south and then continuing to proceed along the corporate limit of the city of Dubuque to its intersection with Central avenue and proceeding southerly along Central avenue to its intersection with West Thirty-second street and proceeding westerly along West Thirty-second street to its intersection with Saunders street and proceeding southwesterly along Saunders street to its intersection with the northwestward extension of Davenport street and proceeding southeasterly along the northwestward extension of Davenport street and Davenport street to its intersection with West Twenty-eighth street and proceeding westerly along West Twenty-eighth street to its intersection with Broadway street and proceeding southerly along Broadway street to its intersection with King street and proceeding westerly along King street to its intersection with Fulton street and proceeding southerly along Fulton street and continuing in a southerly direction along a line labeled "rim of bluff" on maps of the city of Dubuque prepared by the United States bureau of the census for the taking of the 1970 federal decennial census (which line forms a part of the boundary between precincts 23 and 24 of the city of Dubuque as established by the city subsequent to the taking of the 1970 federal decennial census) to the intersection of that line with Valeria street and proceeding westerly along Valeria street to its intersection with Kaufmann avenue and proceeding southerly along Kaufmann avenue to its intersection with Hempstead street and proceeding southwesterly along Hempstead street to its intersection with Lowell street and proceeding east along Lowell street to its intersection with Schroeder street and proceeding south along Schroeder street to its intersection with Clarke drive and proceeding northeasterly along Clarke drive to its intersection with Foye street and proceeding south along Foye street to its intersection with West Locust street and proceeding west along West Locust street to its intersection with Pierce street and proceeding south along Pierce street to its intersection with Quigley lane and proceeding easterly along Quigley lane to its intersection with Catherine street and proceeding south along Catherine street to its intersection with West Seventeenth street and proceeding southwesterly along West Seventeenth street to its intersection with Cox street and proceeding southerly along Cox street to its intersection with Loras boulevard and proceeding northeasterly along Loras boulevard to its intersection with Prairie street and proceeding southerly along Prairie street to its intersection with West Eleventh street and proceeding easterly along West Eleventh street to its intersection with Spruce street and proceeding southerly along Spruce street to its intersection with University avenue and proceeding southeasterly along University avenue to its intersection with West Eighth street and proceeding west along West Eighth street to its intersection with Airhill street and proceeding northeasterly along Airhill street to University avenue and proceeding southwesterly along University avenue to its intersection with Alta Vista street and proceeding southerly along Alta Vista street to its intersection with Oxford street and proceeding easterly along Oxford street to its intersection with Harvard street and proceeding southerly along Harvard street to its intersection with Alta Vista street and

proceeding northwesterly along Alta Vista street to its intersection with Carlotta street and proceeding westerly along Carlotta street to its intersection with Alpine street and proceeding southerly along Alpine street to its intersection with West Fifth street and proceeding westerly along West Fifth street to its intersection with Nevada street and proceeding south along Nevada street to its intersection with West Third street and proceeding westerly along West Third street to its intersection with Booth street and proceeding southerly along Booth street to Langworthy street and proceeding westerly along Langworthy street to its intersection with College street and proceeding northerly along College street to its intersection with West Third street and proceeding southwesterly along West Third street to its intersection with Grandview avenue and proceeding southeasterly along Grandview avenue to its intersection with Whelan street and proceeding southwesterly along Whelan street to its intersection with Bradley street and proceeding southeasterly along Bradley street to its intersection with Rider street and proceeding northeasterly along Rider street to its intersection with Grandview avenue and proceeding southeasterly along Grandview avenue to its intersection with Bryant street and proceeding northerly along Bryant street to its intersection with Mount Loretta avenue and proceeding easterly along Mount Loretta avenue to Saint George street and proceeding southerly along Saint George street to Tressa street and proceeding easterly along Tressa street to its intersection with Samuel street and proceeding southeasterly along Samuel street to its intersection with Southern avenue and proceeding northerly along Southern avenue to its intersection with Railroad avenue and proceeding northeasterly along Railroad avenue and its extension to the main channel of the Mississippi river and proceeding northerly along the main channel of the Mississippi river to the point of beginning.

20. The twentieth representative district shall consist of that portion of the city of Dubuque partially bounded on the east by representative district nineteen, as described in subsection 19 of this section, and having as the remainder of its boundary a line beginning at the intersection of the north corporate limit of the city of Dubuque with Central avenue, which is a point on the boundary of representative district nineteen, and proceeding first west and then in a counterclockwise manner along the corporate limit of the city of Dubuque to the point where that portion of the corporate limit of the city of Dubuque which coincides with the north boundary of Table Mound township intersects the Illinois Central railroad track and proceeding northwesterly along that railroad track to its intersection with Fremont street and proceeding northeasterly along Fremont street to its intersection with Dodge street and proceeding northeasterly along Dodge street to its intersection with Grandview avenue, which is also a point on the boundary of representative district nineteen.

21. The twenty-first representative district shall consist of:

a. In Dubuque county:

(1) Center, Vernon, Table Mound, Mosalem and Washington townships.

(2) That portion of Dubuque township not included in representative district eighteen, as described in subsection 18 of this section.

(3) That portion of Taylor township lying outside the corporate limits of the town of Farley.

(4) The town of Durango and that portion of the town of Sageville lying in Peru township.

(5) A part of the city of Dubuque bounded on the north and west by the nineteenth and twentieth representative districts, as described in subsections 19 and 20 of this section, on the south by Table Mound and Mosalem townships, and on the east by the Mississippi river.

b. In Jackson county:

(1) Prairie Springs, Tete Des Morts, Richland, Bellevue, Farmers Creek, Perry, Jackson, Washington, Van Buren, Iowa, Union and Monmouth townships.

(2) That portion of South Fork township lying outside the corporate limits of the city of Maquoketa.

(3) That portion of the town of Spragueville lying in Fairfield township.

(4) That portion of the town of Zwingle lying in Otter Creek township.

22. The twenty-second representative district shall consist of:

a. In Delaware county:

(1) Coffins Grove, Oneida, Prairie, Milo, Delhi, North Fork, Adams, Hazel Green, Union and South Fork townships.

(2) That portion of the city of Dyersville lying within Bremen township.

b. In Dubuque county:

(1) New Wine, Iowa, Dodge, Cascade, Whitewater and Prairie Creek townships.

(2) That portion of the town of Farley lying within Taylor township.

c. In Jackson county:

(1) Butler and Brandon townships.

(2) That portion of Otter Creek township lying outside the corporate limits of the town of Zwingle.

d. In Jones county, Castle Grove, Lovell, Cass, Richland, Washington, Scotch Grove and Clay townships and the city of Monticello.

23. The twenty-third representative district shall consist of:

a. In Cedar county:

(1) Fremont, Dayton, Massillon and Red Oak townships.

(2) That portion of the town of Mechanicsville lying within Pioneer township.

(3) The town of Lowden.

b. In Clinton county, Sharon, Brookfield, Bloomfield, Waterford and Liberty townships.

c. In Jackson county:

(1) Maquoketa township.

(2) That portion of the city of Maquoketa lying within South Fork township.

(3) That portion of Fairfield township lying outside the corporate limits of the town of Sprague ville.

d. In Jones county, Wayne, Fairview, Jackson, Madison, Wyoming, Greenfield, Rome, Hale and Oxford townships.

24. The twenty-fourth representative district shall consist of:

a. In Cedar county:

(1) Linn, Cass, Center, Fairfield, Inland, Gower, Springdale, Iowa, Rochester, Sugar Creek and Farmington townships.

(2) That portion of Pioneer township lying outside the corporate limits of the city of Mechanicsville.

(3) That portion of Springfield township lying outside the corporate limits of the town of Lowden.

b. In Clinton county, Grant, Welton, Spring Rock, Olive and Orange townships.

c. In Johnson county, Cedar, Graham, Scott and Lincoln townships.

d. In Scott county:

(1) Liberty, Allens Grove, Winfield, Cleona and Hickory Grove townships.

(2) That portion of Sheridan township lying outside the corporate limits of the city of Davenport.

(3) A part of the city of Davenport bounded by a line beginning at the intersection of the north corporate limit of the city of Davenport with state highway 150 and proceeding southeasterly along the route of state highway 150 (portions of which are Northwest boulevard and Harrison street) to its intersection with North Division street and proceeding northerly along North Division street to its intersection with the north corporate limit of the city of Davenport and proceeding first west and continuing along the corporate limits of the city of Davenport to the point of beginning.

25. The twenty-fifth representative district shall consist of:

a. In Johnson county:

(1) Monroe, Jefferson, Big Grove, Oxford and Madison townships.

(2) Those portions of Clear Creek and Penn townships lying outside the corporate limits of the city of Coralville.

b. In Linn county:

(1) Bertram, College, Putnam and Franklin townships.

(2) That portion of the city of Cedar Rapids bounded by a line beginning at the point where Seventy-sixth avenue southwest (which is the south corporate limit of the city of Cedar Rapids) intersects Edgewood road southwest (which is the west corporate limit of the city of Cedar Rapids) and proceeding north along Edgewood road southwest to its intersection with the Chicago and Northwestern railroad track and proceeding easterly along the Chicago and Northwestern railroad track to its intersection with U. S. highways 30 and 218 and proceeding north along U. S. highways 30 and 218 to its intersection with Thirty-third avenue southwest and proceeding northeasterly and east along Thirty-third avenue southwest to its intersection with Woodland drive southwest and proceeding northeasterly along Woodland drive southwest to its intersection with Wing road southwest and proceeding east along Wing road southwest to its intersection with Outlook drive southwest and proceeding northerly along Outlook drive southwest to its intersection with Twenty-ninth avenue southwest and proceeding east along Twenty-ninth avenue southwest to its intersection with Bowling street southwest and proceeding south along Bowling street southwest to its intersection with the Chicago and Northwestern railroad track and proceeding easterly along that railroad track to its intersection with the southward extension of the easternmost boundary of Jones park and proceeding north and west along the boundary of Jones park to its intersection with Fruitland boulevard and proceeding north along Fruitland boulevard to its intersection with Ely avenue southwest and proceeding east along Ely avenue southwest to its intersection with "C" street southwest and proceeding southeast along "C" street southwest to its intersection with Summit avenue southwest and proceeding east along Summit avenue southwest and its eastward extension to the main channel of the Cedar river and proceeding generally northward along the main channel of the Cedar river to its intersection with a line extended due south from the southwest corner of Van Vechten park and proceeding north along that line and continuing to follow the western and northern boundary of Van Vechten park to its intersection with Twenty-first street southeast and proceeding north along Twenty-first street southeast to its intersection with Mount Vernon road southeast and proceeding east along Mount Vernon road southeast to its intersection with Memorial drive southeast and proceeding north along Memorial drive southeast to its intersection with Dalewood avenue southeast and proceeding first east, then north, and again east along Dalewood avenue southeast to its intersection with Thirtieth street southeast and proceeding north along Thirtieth street southeast to its intersection with Bever avenue southeast and proceeding east along Bever avenue southeast to its intersection with Thirty-fourth street southeast and proceeding north along Thirty-fourth street southeast to its intersection with the portion of the corporate limits of the city of Cedar Rapids which

runs easterly from Thirty-fourth street southeast at a point just north of Random road and proceeding first easterly and continuing to follow the corporate limit of the city of Cedar Rapids to the point of beginning.

26. The twenty-sixth representative district shall consist of that portion of the city of Cedar Rapids partially bounded on the east and south by representative district twenty-five, as described in subsection 25 of this section, and having as the remainder of its boundary a line beginning at the point where the main channel of the Cedar river intersects a line drawn due south from the southwest corner of Van Vechten park, which intersection is a point on the boundary of representative district twenty-five, and proceeding first westerly and then northerly along the main channel of the Cedar river to its intersection with the southwestward extension of Fourth avenue southeast and proceeding northeast along Fourth avenue southeast to its intersection with Second street southeast and proceeding northwest along Second street southeast to its intersection with Second avenue southeast and proceeding northeast along Second avenue southeast to its intersection with the Chicago, Rock Island and Pacific railroad track and proceeding southeast along that railroad track to its intersection with Third avenue southeast and proceeding northeast along Third avenue southeast to its intersection with Tenth street southeast and proceeding southeast along Tenth street southeast to its intersection with Mount Vernon road southeast and proceeding easterly along Mount Vernon road southeast to its intersection with Fourteenth street southeast and proceeding north along Fourteenth street southeast to its intersection with Fifth avenue southeast and proceeding west along Fifth avenue southeast to its intersection with the northward continuation of Fourteenth street southeast and proceeding north along Fourteenth street southeast to its intersection with Third avenue southeast and proceeding northeast along Third avenue southeast to the northwestward continuation of Fourteenth street southeast and proceeding northwest along Fourteenth street southeast to its intersection with Second avenue southeast and proceeding southwest along Second avenue southeast to its intersection with Thirteenth street southeast and proceeding northwest along Thirteenth street southeast and Thirteenth street northeast to its intersection with "C" avenue northeast and proceeding northeast along "C" avenue northeast to its intersection with Sixteenth street northeast and proceeding northwest along Sixteenth street northeast to its intersection with the Chicago, Milwaukee, St. Paul and Pacific railroad track and proceeding northeast along that railroad track to its intersection with Seventeenth street northeast and proceeding northerly along Seventeenth street northeast to its intersection with Greene avenue northeast and proceeding west along Greene avenue northeast to its intersection with Sixteenth street northeast and proceeding north along Sixteenth street northeast to its intersection with "J" avenue northeast and proceeding west along "J" avenue northeast to its intersection with Maplewood drive northeast and proceeding north along Maplewood drive northeast to its intersection with Wildwood drive northeast and continuing north along Wildwood drive northeast to its intersection with Elmhurst drive northeast and proceeding west along Elmhurst drive northeast to its intersection with Oakland road northeast and proceeding north along Oakland road northeast to its intersection with Twenty-ninth street northeast and proceeding east along Twenty-ninth street northeast to its intersection with Wildwood court northeast and proceeding north along Wildwood court northeast to its intersection with Thirtieth street northeast and proceeding west along Thirtieth street northeast to its intersection with Oakland road northeast and proceeding northerly along Oakland road northeast to its intersection with Thirty-fifth street northeast and proceeding east along Thirty-fifth street northeast to its intersection with "F" avenue northeast and proceeding south along "F" avenue northeast to its intersection with Thirty-second street northeast and proceeding east along Thirty-second street northeast to its intersection with "C" avenue northeast running north from Thirty-second street northeast and proceeding north along "C" avenue northeast to its intersection with Thirty-third street northeast and proceeding east along Thirty-third street northeast to its intersection with First avenue and proceeding south along First avenue to its intersection with Thirty-second street southeast and proceeding east along Thirty-second street southeast to its intersection with the Chicago, Milwaukee, St. Paul and Pacific railroad track and proceeding north along that railroad track to its intersection with Thirty-fifth street drive southeast and proceeding east along Thirty-fifth street drive southeast and its eastward extension to the corporate limit of the city of Cedar Rapids and proceeding first south and continuing to follow the corporate limit of the city of Cedar Rapids to the point just north of Random road where the corporate limit of the city of Cedar Rapids turns eastward from Thirty-fourth street southeast, which is also a point on the boundary of representative district twenty-five.

27. The twenty-seventh representative district shall consist of:

a. In Benton county, the town of Walford.

b. In Linn county:

(1) Fayette, Clinton and Fairfax townships.

(2) That portion of the city of Cedar Rapids partially bounded on the east and south by representative district twenty-five, as described in subsection 25 of this section, and having as the remainder of its boundary a line beginning at the point where the Chicago and

Northwestern railroad tracks intersect Edgewood road southwest, which is a point on the boundary of representative district twenty-five, and proceeding in a clockwise manner along the corporate limit of the city of Cedar Rapids to the point where that portion of the corporate limit which parallels or coincides with Westwood drive northwest intersects Edgewood road northwest and proceeding south along Edgewood road northwest to its intersection with Sue lane northwest and proceeding east along Sue lane northwest to its intersection with Patricia lane northwest and proceeding north along Patricia lane northwest to its intersection with Johnson avenue northwest and proceeding east along Johnson avenue northwest to its intersection with Twenty-fourth street northwest running north from Johnson avenue northwest and proceeding north along Twenty-fourth street northwest to its intersection with "D" avenue northwest and proceeding easterly along "D" avenue northwest to its intersection with Twenty-third street northwest and proceeding north along Twenty-third street northwest to its intersection with "E" avenue northwest and proceeding east along "E" avenue northwest to its intersection with Eighteenth street northwest and proceeding south along Eighteenth street northwest to its intersection with Johnson avenue northwest and proceeding first east and then southeasterly along Johnson avenue northwest to its intersection with Maple drive northwest and proceeding east along Maple drive northwest to its intersection with Fourteenth street northwest and proceeding south along Fourteenth street northwest to its intersection with First avenue west and proceeding first east and then northeasterly along First avenue west to its intersection with Twelfth street southwest and proceeding southeast along Twelfth street southwest to its intersection with Fifth avenue southwest and proceeding east along Fifth avenue southwest to its intersection with the Chicago, Milwaukee, St. Paul and Pacific railroad track and proceeding northerly along that railroad track to its intersection with Second avenue southwest and proceeding northeasterly along Second avenue southwest to its intersection with Eighth street southwest and proceeding south along Eighth street southwest to its intersection with Third avenue southwest and proceeding northeasterly along Third avenue southwest to its intersection with Seventh street southwest and proceeding southeasterly along Seventh street southwest to its intersection with Fifth avenue southwest and proceeding east along Fifth avenue southwest to the southward extension of Seventh street southwest and proceeding south along Seventh street southwest to its intersection with Eighth avenue southwest and proceeding east along Eighth avenue southwest to its intersection with Sixth street southwest and proceeding south along Sixth street southwest to its intersection with the Chicago, Milwaukee, St. Paul and Pacific railroad track and proceeding northeasterly along that railroad track to its intersection with Fourth street southwest and proceeding south along Fourth street southwest to its intersection with Sixteenth avenue southwest and proceeding west along Sixteenth avenue southwest to its intersection with Sixth street southwest and proceeding south along Sixth street southwest to its intersection with Twenty-second avenue southwest and proceeding west along Twenty-second avenue southwest to its intersection with Eighth street southwest and proceeding south along Eighth street southwest to its intersection with Wilson avenue southwest and proceeding east along Wilson avenue southwest and continuing along Ely avenue southwest to its intersection with Fruitland boulevard southwest, which intersection is a point on the boundary of representative district twenty-five.

28. The twenty-eighth representative district shall consist of that portion of the city of Cedar Rapids bounded on the east, south and west by representative districts twenty-six, twenty-five and twenty-seven, as described in subsections 26, 25 and 27, respectively, of this section, and having as the remainder of its boundary a line beginning at the intersection of Westwood drive northwest and Edgewood road northwest, which is a point on the boundary of representative district twenty-seven, and proceeding north along Edgewood road northwest to its intersection with "O" avenue northwest and proceeding east along "O" avenue northwest to its intersection with Hillside drive running north from "O" avenue northwest and proceeding north along Hillside drive northwest to its intersection with Elaine drive northwest and proceeding east along Elaine drive northwest to its intersection with Thirtieth street northwest and proceeding south along Thirtieth street northwest to its intersection with "O" avenue northwest and proceeding east along "O" avenue northwest to its intersection with Ellis boulevard northwest and proceeding north along Ellis boulevard northwest to its intersection with Penn avenue northwest and proceeding west along Penn avenue northwest to its intersection with Eighth street northwest and proceeding north along Eighth street northwest to its intersection with "Q" avenue northwest and proceeding east along "Q" avenue northwest to its intersection with Ellis boulevard northwest and proceeding northwesterly along Ellis boulevard northwest to its intersection with Ellis lane northwest and proceeding northeasterly along the extension of Ellis lane northeast to its intersection with the Chicago, Rock Island and Pacific railroad track running east of and generally parallel with the Cedar river and proceeding northwesterly along that railroad track to its intersection with "J" avenue northeast and proceeding southeasterly along "J" avenue northeast to its intersection with Shaver road running north from "J" avenue northeast and proceeding north along Shaver

road to its intersection with Coldstream avenue northeast and proceeding easterly along Coldstream avenue northeast to its intersection with Circle drive northeast and proceeding north along Circle drive to its intersection with Sharwood drive northeast and proceeding east along Sharwood drive northeast to its intersection with Sierra drive northeast and proceeding south along Sierra drive northeast to its intersection with Coldstream avenue northeast and proceeding east along Coldstream avenue northeast to its intersection with the Wabash railroad track and proceeding north along that railroad track to its intersection with Glass road northeast and proceeding easterly along Glass road northeast to its intersection with Center Point road northeast and proceeding north along Center Point road northeast to its intersection with Richmond road northeast and proceeding east along Richmond road northeast to its intersection with Ozark street northeast and proceeding south along Ozark street northeast to its intersection with Keith drive northeast and proceeding east along Keith drive northeast to its intersection with Mark street northeast and proceeding north along Mark street northeast to its intersection with Richmond road northeast and proceeding first east and then northeasterly along Richmond road northeast to its intersection with Hollywood boulevard northeast and proceeding easterly along Hollywood boulevard northeast to its intersection with Oakland road northeast and proceeding south along Oakland road northeast to its intersection with Thirty-fifth street northeast, which is a point on the boundary of representative district twenty-six.

29. The twenty-ninth representative district shall consist of the following portions of Linn county:

a. Those portions of the unincorporated territory of Marion township lying:

(1) South of the southern corporate limit of the city of Marion and west of state highways 13 and 150.

(2) Between the corporate limits of the cities Cedar Rapids and Marion.

b. The city of Marion.

c. That portion of the city of Cedar Rapids partially bounded on the south by representative districts twenty-six and twenty-eight, as described in subsections 26 and 28 of this section, and having as the remainder of its boundary a line beginning at the intersection of Richmond road northeast with Center Point road northeast, which is a point on the boundary of representative district twenty-eight, and proceeding northerly along Center Point road northeast to its intersection with Forty-second street northeast and proceeding west along Forty-second street northeast to its intersection with Wenig road and proceeding north along Wenig road to its intersection with White Pine drive northeast and proceeding first east and then north along White Pine drive northeast to its intersection with Towne House drive northeast and proceeding westerly along Towne House drive northeast to its intersection with Wenig road and proceeding north along Wenig road to its intersection with Forty-ninth street northeast and proceeding east along Forty-ninth street northeast to its intersection with the Wabash railroad track and proceeding northwesterly along the Wabash railroad track to its intersection with the Chicago, Milwaukee, St. Paul and Pacific railroad track and proceeding easterly along that railroad track to its intersection with Center Point road northeast and proceeding south along Center Point road northeast to its intersection with Fiftieth street northeast and proceeding east along Fiftieth street northeast to its intersection with Collins road northeast and proceeding east along Collins road northeast to its intersection with Old Marion road northeast and proceeding east on Old Marion road to its intersection with the Chicago, Milwaukee, St. Paul and Pacific railroad track and proceeding southerly along that railroad track, a portion of which at that point forms the corporate limit of the city of Cedar Rapids, and continuing to follow the corporate limit in a clockwise manner to the point where it intersects the eastward extension of Thirty-fifth street drive southeast, which intersection is a point on the boundary of representative district twenty-six.

30. The thirtieth representative district shall consist of the following portions of Linn county:

a. Jackson, Boulder, Washington, Otter Creek, Maine, Buffalo, Monroe, Brown and Linn townships.

b. That portion of Marion township not included in representative district twenty-nine as described in subsection 29 of this section.

c. That portion of the city of Cedar Rapids not included in representative districts twenty-five through twenty-nine, inclusive, as described in subsections 25, 26, 27, 28 and 29, respectively, of this section.

31. The thirty-first representative district shall consist of:

a. In Benton county, Bruce, Cedar, Harrison, Polk, Monroe, Jackson, Taylor, Benton, Homer, Big Grove, Eden, and Canton townships, the town of Shellsburg and the city of Vinton.

b. In Black Hawk county:

(1) Fox, Spring Creek and Big Creek townships.

(2) That portion of Cedar township bounded by a line beginning at the point where county road D-35 intersects the western boundary of Cedar township and proceeding east along county road D-35 to its intersection with Foulk road and proceeding south along Foulk road to its intersection with the south boundary line of township 88 north, range 12 west and proceeding east along the south boundary of township 88 north, range 12 west to its intersection with U.S. highway 218 and proceeding

northwesterly along U.S. highway 218 to its intersection with the east-west center line of section 33, and proceeding east along that center line to the east boundary of section 33 and proceeding north along the east boundary of sections 33 and 28 to the north boundary of section 28 and proceeding west along the north boundary of section 28 to its intersection with a road located on or near the north-south center line of the west half of section 21, all in township 88 north, range 12 west, and proceeding north and northwest along that road to its intersection with McKeller road and proceeding northeasterly along the line of McKeller road extended to the main channel of the Cedar river, which at that point is a part of boundary of Cedar township, and proceeding first southeasterly and continuing along the boundary of Cedar township in a clockwise manner to the point of beginning.

c. In Buchanan county, Westburg, Sumner, Liberty, Middlefield, Jefferson, Homer, Cono and Newton townships and the town of Jesup.

d. In Linn county, Grant and Spring Grove townships.

e. In Tama county, Clark and Oneida townships.

32. The thirty-second representative district shall consist of:

a. In Buchanan county:

(1) Fairbank, Hazelton, Buffalo, Madison, Washington, Byron and Fremont townships.

(2) That portion of Perry township lying outside the corporate limits of the town of Jesup.

b. In Black Hawk county:

(1) Bennington, Lester, Poyner and Barclay townships.

(2) That portion of Cedar township not included in the thirty-first representative district, as described in subsection 31.

(3) All of East Waterloo township outside the corporate limits of the city of Waterloo except:

(a) That portion bounded by a line beginning at the point where Moline road intersects the corporate limits of the city of Waterloo and proceeding north along Moline road to its intersection with the boundary line of Mount Vernon township and proceeding west along the Mount Vernon township line to its intersection with the corporate limits of the city of Waterloo and proceeding south and east along the corporate limits of the city of Waterloo to the point of beginning.

(b) That portion bounded by a line beginning at the point where state highway 281 intersects the corporate limits of the city of Waterloo and proceeding east along state highway 281 to its intersection with the boundary line of Poyner township and proceeding north along the boundary line of Poyner township to its intersection with Newell street and proceeding west along Newell street to its intersection with the corporate limits of the city of Waterloo and proceeding south along the corporate limit of the city of Waterloo to the point of beginning.

(c) That portion bounded on the north, east and south by the corporate limits of the city of Waterloo and on the west by Cedar Falls township.

33. The thirty-third representative district shall consist of the following portions of Black Hawk county:

a. That area lying immediately west of the southern part of the city of Waterloo, shown on maps prepared by the U.S. bureau of the census for the 1970 federal decennial census as lying in a part of Black Hawk township and in a part of the unincorporated territory of Cedar Falls township, a portion of which has subsequently been annexed by the city of Cedar Falls, and all of which is bounded by a line beginning at the intersection of West Ridgeway avenue and county highway "K" running south from West Ridgeway avenue and proceeding south along county highway "K" to its intersection with West Shaulis road and proceeding east along West Shaulis road to the point where it first intersects the western corporate limit of the town of Hudson and proceeding generally south along the corporate limit of the town of Hudson to the point where it intersects county highway "M" and proceeding southwesterly along county highway "M" to its intersection with the boundary between sections 33 and 34, township 88 north, range 14 west, and proceeding south along that boundary to the south boundary of Black Hawk township and proceeding east and north along the boundary of Black Hawk township to its intersection with the southern corporate limit of the city of Waterloo and proceeding west and north along the corporate limit of the city of Waterloo to the point where it intersects the line which was on April 1, 1970, the southern corporate limit of the city of Cedar Falls and proceeding west along the line which was on April 1, 1970, the southern corporate limit of the city of Cedar Falls to its intersection with Hudson road and proceeding south along Hudson road to its intersection with West Ridgeway avenue and proceeding west along West Ridgeway avenue to the point of beginning.

b. That portion of the city of Waterloo bounded by a line beginning at the point where the common corporate limit of the cities of Cedar Falls and Waterloo intersects University avenue (U.S. highway 218) and proceeding southeasterly along University avenue (U.S. highway 218) and continuing southeasterly along Headford avenue to its intersection with Ansborough avenue and proceeding north along Ansborough avenue to its intersection with Hartman avenue and proceedng west along Hartman avenue to its intersection with Chalmer avenue and proceeding south along Chalmer avenue to its intersection with Janney avenue and proceeding west along Janney avenue to its intersection with Wilbur avenue and proceeding north along Wilbur avenue to

its intersection with Falls avenue and proceeding east along Falls avenue to its intersection with Ansborough avenue and proceeding north along Ansborough avenue to its intersection with Rainbow drive and proceeding east along Rainbow drive to its intersection with Westfield avenue and proceeding south and southeasterly along Westfield avenue to its intersection with Cleveland street and proceeding south along Cleveland street and continuing south along Fletcher avenue to its intersection with Black Hawk creek and proceeding southwesterly along Black Hawk creek to its intersection with Ansborough avenue and proceeding south along Ansborough avenue to its intersection with the south boundary of Hope Martin Memorial park and proceeding east along that boundary and continuing east along Reber avenue to its intersection with Drexel avenue and proceeding south along Drexel avenue to its intersection with Kingsley avenue and proceeding east along Kingsley avenue to its intersection with Euclid avenue and proceeding south along Euclid avenue to its intersection with Columbia circle and proceeding westerly and southerly along Columbia circle to its intersection with Kingbard boulevard and proceeding easterly along Kingbard boulevard to its intersection with Clough street and proceeding south along Clough street to its intersection with West Fourth street and proceeding northeast along West Fourth street to its intersection with Kimball avenue and proceeding south along Kimball avenue to its intersection with Forest avenue and proceeding east along Forest avenue to its intersection with Vermont street and proceeding south along Vermont street to its intersection with Hawthorne avenue and proceeding east along Hawthorne avenue to its intersection with West Sixth street and proceeding north along West Sixth street to its intersection with Bertch avenue and proceeding east along Bertch avenue to its intersection with West Ninth street and proceeding north along West Ninth street to its intersection with Johnson street and proceeding southeast along Johnson street to its intersection with Williston avenue and proceeding east along Williston avenue to its intersection with West Eleventh street and proceeding south along West Eleventh street to its intersection with Liberty avenue and proceeding east along Liberty avenue to its intersection with Ohio street and proceeding south along Ohio street to its intersection with Ridgeway avenue and proceeding east along Ridgeway avenue and its eastward extension to the main channel of the Cedar river, which is also the corporate limit of the city of Waterloo and proceeding first southwesterly and continuing in a clockwise manner around the corporate limit of the city of Waterloo to the point of beginning.

34. The thirty-fourth representative district shall consist of that portion of the city of Waterloo bounded on the west and partially bounded on the south by representative district thirty-three, as described in subsection 33 of this section, and having as the remainder of its boundary a line beginning at the intersection of Rainbow drive and West Conger street, which is a point on the boundary of representative district thirty-three, and proceeding northeasterly along West Conger street to its intersection with the main channel of the Cedar river and proceeding southeasterly along the main channel of the Cedar river to its intersection with East Mullan avenue and proceeding northeasterly along East Mullan avenue to its intersection with Almond street and proceeding east along Almond street to its intersection with East Fourth street and proceeding north along East Fourth street to its intersection with Quincey street and proceeding east along Quincey street to its intersection with Mobile street and proceeding south along Mobile street to its intersection with the Illinois Central railroad track and proceeding southeasterly along that railroad track to its intersection with Glenwood street and proceeding east along Glenwood street to its intersection with Steely street and proceeding north along Steely street to its intersection with the Chicago and Great Western railroad track and proceeding eastward along the Chicago and Great Western railroad track to its intersection with the spur line of the Waterloo railroad track and proceeding southeasterly and south along that railroad track to its intersection with Independence avenue and proceeding east along Independence avenue to its intersection with the corporate limit of the city of Waterloo and proceeding first south and continuing in a clockwise manner along the corporate limit of the city of Waterloo to its intersection with the eastward extension of Ridgeway avenue, which is also a point on the boundary of representative district thirty-three.

35. The thirty-fifth representative district shall consist of the following portions of Black Hawk county:

a. That portion of Mount Vernon township lying outside the corporate limits of the city of Cedar Falls, as established by the annexation to the city of Cedar Falls effective May 25, 1971.

b. Those portions of the unincorporated territory of East Waterloo township not included in representative district thirty-three, as described in subsection 33 of this section.

c. That portion of the unincorporated territory of Cedar Falls township bounded on the south, west and north by the corporate limits of the city of Cedar Falls and on the east by East Waterloo township.

d. Those portions of the city of Cedar Falls bounded by lines described as follows:

(1) Beginning at the intersection of the common corporate limit of the cities of Cedar Falls and Waterloo with the eastward extension of Green Hill road and proceeding west along the extension of Green Hill road and Green Hill road to its intersection with Round street and proceeding north along Round

street to its intersection with the westward continuation of Green Hill road and proceeding west along Green Hill road and its westward extension to its intersection with the southward extension of McClain drive and proceeding north along the extension of McClain drive and McClain drive to its intersection with Waterloo road and proceeding northwest along Waterloo road to its intersection with Victory drive and proceeding northerly along Victory drive to its intersection with Acorn lane and proceeding easterly along Acorn lane to its intersection with Ashland avenue and proceeding north along Ashland avenue to its intersection with Hawthorn drive and proceeding west along Hawthorn drive to its intersection with Victory drive and proceeding north along Victory drive to its intersection with Sunnyside drive and proceeding east along Sunnyside drive to its intersection with Ashland avenue and proceeding north along Ashland avenue to its intersection with Madison street and proceeding west along Madison street to its intersection with Virgil street and proceeding north along Virgil street to its intersection with Rainbow drive and proceeding east along Rainbow drive to its intersection with the north-south center line of section 18, township 89 north, range 13 west, and proceeding north along that line to its intersection with the main channel of the Cedar river, which is also the corporate limit of the city of Cedar Falls, and proceeding first easterly and continuing in a clockwise manner along the corporate limit of the city of Cedar Falls to the point of beginning.

(2) Beginning at the intersection of Lake street and Leversee road, which at that point is the common corporate limit of the cities of Cedar Falls and Waterloo, and proceeding west along Lake street to its intersection with Big Woods road and proceeding north along Big Woods road to its intersection with Lone Tree road and proceeding westerly along Lone Tree road to its intersection with Center street and proceeding south along Center street to its intersection with Lantz avenue and proceeding west along Lantz avenue to its intersection with Clark street and proceeding south along Clark street to its intersection with Western avenue and proceeding west along Western avenue to its intersection with Elm street and proceeding south along Elm street to its intersection with Cedar street and proceeding west along Cedar street and its westward extension to its intersection with the east boundary of Black Hawk park and proceeding first north and continuing along the boundary of Black Hawk park to the point where that boundary intersects or coincides with the corporate limit of the city of Cedar Falls as established by the annexation of May 25, 1971, and proceeding along that corporate limit in a clockwise manner to the point of beginning.

e. That portion of the city of Waterloo not included in representative districts thirty-three and thirty-four, as described in subsections 33 and 34, respectively, of this section.

36. The thirty-sixth representative district shall consist of the following portions of Black Hawk county:

a. Union township.

b. That portion of Washington township lying outside the corporate limit of the town of Janesville and outside the corporate limit of the city of Cedar Falls as that corporate limit was established by the annexation of May 25, 1971.

c. Those portions of the unincorporated territory of Cedar Falls township and of the city of Cedar Falls not included in representative district thirty-five, as described in subsection 35 of this section.

37. The thirty-seventh representative district shall consist of:

a. In Black Hawk county, that portion of the town of Janesville lying within Washington township.

b. In Bremer county, Polk, Douglas, Frederika, Lafayette, Warren, Washington, Jackson and Jefferson townships and the city of Waverly.

c. In Butler county, Coldwater, Dayton, Fremont, West Point, Jackson, Butler, Jefferson, Shell Rock, Albion and Beaver townships.

d. In Floyd county, Riverton township.

38. The thirty-eighth representative district shall consist of:

a. In Black Hawk county:

(1) Orange, Lincoln and Eagle townships.

(2) That portion of Black Hawk township not included in representative district thirty-three, as described in subsection 33 of this section.

b. In Butler county, Bennezette, Pittsford, Madison, Ripley, Washington and Monroe townships.

c. In Franklin county, Geneva and Osceola townships.

d. In Grundy county, German, Pleasant Valley, Beaver, Fairfield, Shiloh, Colfax, Lincoln, Grant, Palermo, Washington, Black Hawk and Clay townships.

e. In Marshall county, Vienna township.

f. In Tama county, Lincoln, Grant, Buckingham, Geneseo, Spring Creek, Crystal, Perry, Carlton and Howard townships.

39. The thirty-ninth representative district shall consist of the following portions of Marshall county:

a. Le Grand township and all of the city of Marshalltown.

b. That portion of Timber Creek township lying south and east of a line beginning at the point where U. S. highway 30 intersects with the corporate limits of the city of Marshalltown and proceeding west along U. S. highway 30 to its intersection with the eastern boundary of section 16, township 83 north, range 18 west, and proceeding south along the eastern boundary of sections 16, 21, 28 and 33, township 83 north, range 18 west, to its intersection with the northern boundary of Jefferson township.

40. The fortieth representative district shall consist of:

a. In Grundy county, Melrose and Felix townships.

b. In Hardin county, Sherman, Tipton, Pleasant, Eldora, Concord, Grant, Providence and Union townships and the city of Eldora.

c. In Jasper county:

(1) Clear Creek, Independence, Malaka, Sherman and Poweshiek townships.

(2) That portion of Washington township lying outside the corporate limits of the city of Colfax.

d. In Marshall county:

(1) Liberty, Bangor, Liscomb, Iowa, Taylor, Marion, Minerva, Marietta, State Center, Washington, Eden, Logan, Jefferson and Green Castle townships.

(2) That portion of Timber Creek township which is not included in the thirty-ninth representative district, as described in subsection 39 of this section.

e. In Story county, Lincoln, Sherman and Collins townships.

41. The forty-first representative district shall consist of the following portions of Story county:

(1) Milford, Grant, Nevada and New Albany townships.

(2) Those portions of Washington and Franklin townships and the city of Ames bounded by a line beginning at the southernmost point at which the corporate limit of the city of Ames intersects the boundary of Grant township and proceeding westerly along the corporate limit of the city of Ames to its intersection with a road running east from South Sixteenth street in the city of Ames and proceeding west along that road to the point where it again intersects the corporate limit of the city of Ames, and proceeding generally south and west along the corporate limit of the city of Ames to its intersection with U. S. highway 69 and proceeding north along U. S. highway 69 to its intersection with Squaw Creek and proceeding westerly along Squaw Creek to its intersection with South Maple avenue and proceeding north along South Maple avenue to its intersection with South Second street and proceeding east along South Second street to its intersection with South Oak avenue and proceeding north along South Oak avenue to its intersection with Lincoln way and proceeding west on Lincoln way to its intersection with Squaw Creek and proceeding north along Squaw Creek to its intersection with the Chicago and Northwestern railroad track and proceeding northwesterly along that railroad track to its intersection with the northward extension of Hyland avenue and proceeding south along the extension of Hyland avenue and Hyland avenue to its intersection with Ross road and proceeding west along Ross road to its intersection with Wisconsin avenue and proceeding north on Wisconsin avenue to its intersection with Ontario street and proceeding west on Ontario street to its intersection with Michigan avenue and proceeding south on Michigan avenue to its intersection with Ross road and proceeding west on Ross road to its intersection with Garfield avenue and proceeding north on Garfield avenue to its intersection with Ontario street and proceeding west on Ontario street to its intersection with the Boone county boundary line and proceeding north on the Boone county boundary line to its intersection with the Chicago and Northwestern railroad track and proceeding easterly along that railroad track to its intersection with the corporate limits of the city of Ames and proceeding in a clockwise manner along the corporate limits of the city of Ames to the point of beginning.

42. The forty-second representative district shall consist of:

a. In Boone county, that portion of the town of Sheldahl lying in Garden township.

b. In Polk county:

(1) Lincoln, Elkhart and Washington townships.

(2) That portion of Franklin township lying outside the corporate limits of the town of Bondurant.

(3) That portion of the town of Sheldahl lying in Union township.

c. In Story county:

(1) Palestine, Union and Indian Creek townships.

(2) That portion of Washington township, outside the corporate limits of the city of Ames, lying south of U. S. highway 30.

(3) That portion of the city of Ames not included in representative district forty-one, as described in subsection 41 of this section.

43. The forty-third representative district shall consist of:

a. In Boone county:

(1) Harrison and Jackson townships.

(2) That portion of Dodge township outside the corporate limits of the town of Fraser.

(3) That portion of Colfax township outside the corporate limits of the town of Luther.

b. All of Hamilton county.

c. In Story county:

(1) Lafayette, Howard, Warren and Richland townships.

(2) That portion of Franklin township not included in representative district forty-one, as described in subsection 41 of this section.

(3) That portion of Washington township bounded on the south by U. S. highway 30, on the east by the corporate limit of the city of Ames, on the north by the Franklin township boundary and on the west by the Boone county boundary.

d. In Webster county, that portion of Washington township lying outside the corporate limits of the town of Duncombe.

44. The forty-fourth representative district shall consist of:

a. In Boone county:

(1) Grant, Pilot Mound, Amaqua, Yell, Des Moines, Beaver, Marcy, Worth, Union, Peoples, Cass and Douglas townships.

(2) That portion of Garden township lying outside the corporate limits of the town of Sheldahl.

(3) That portion of the town of Fraser lying in Dodge township.

b. In Greene county, Dawson, Paton, Bristol, Hardin, Junction, Franklin and Washington townships.

45. The forty-fifth representative district shall consist of:

a. In Humboldt county, Avery, Weaver, Corinth, Beaver, Lake and Norway townships, the city of Humboldt and the town of Dakota City.

b. In Webster county:

(1) Badger and Newark townships.

(2) Those portions of Cooper township and of the city of Fort Dodge bounded by a line beginning at the point where the Deer Creek, Badger, Douglas and Cooper township boundary lines intersect and proceeding southerly along the Cooper township boundary line to its intersection with the corporate limits of the city of Fort Dodge and proceeding south along the corporate limits of the city of Fort Dodge to its intersection with Seventh street and proceeding along Seventh street to its junction with Sixth street and proceeding south along Sixth street to its intersection with Dakota street and proceeding east on Dakota street to its intersection with Seventh street and proceeding south on Seventh street to its intersection with the Illinois Central railroad track and proceeding southeasterly along that railroad track to its intersection with Herring street and proceeding northeast along Herring street to its intersection with Fifth avenue and proceeding northeast along Fifth avenue to its intersection with Twelfth street and proceeding north along Twelfth street to its intersection with Fourth avenue south and proceeding east on Fourth avenue south to its intersection with Twenty-first street and proceeding south on Twenty-first street to its intersection with Fifth avenue south and proceeding east along Fifth avenue south to its intersection with Twenty-ninth street and proceeding south on Twenty-ninth street to its intersection with Eighth avenue south and proceeding east on Eighth avenue south to its intersection with a north-south line running south from Eighth avenue south between Thirtieth and Thirty-first streets, which was a part of the 1960 corporate limit of the city of Fort Dodge and is shown on maps prepared by the U. S. bureau of the census for the 1970 federal decennial census as a part of the boundary between enumeration districts 36 and 37 in the city of Fort Dodge, and proceeding south along this line to its intersection with the eastward extension of Tenth avenue and proceeding west on the extension of Tenth avenue and Tenth avenue to its intersection with Twenty-ninth street and proceeding south along Twenty-ninth street to its intersection with Eleventh avenue south and proceeding west along Eleventh avenue south to its intersection with Twenty-second street and proceeding south along Twenty-second street to its intersection with Thirteenth avenue south and proceeding east along Thirteenth avenue south to its intersection with Twenty-fourth street and proceeding south along Twenty-fourth street to its intersection with Fifteenth avenue south and proceeding west along Fifteenth avenue south to its intersection with Twenty-second street and proceeding south along Twenty-second street to its intersection with the corporate limit of the city of Fort Dodge and proceeding first east and continuing along the corporate limit of the city of Fort Dodge to its intersection with U. S. highway 20 and proceeding east along U. S. highway 20 to its intersection with the east boundary of Cooper township and proceeding north and west along the boundary of Cooper township to the point of beginning.

46. The forty-sixth representative district shall consist of the following portions of Webster county:

a. Jackson, Deer Creek, Johnson, Douglas, Colfax, Fulton, Elkhorn, Pleasant Valley, Otho, Roland, Clay, Burnside, Sumner, Webster, Yell, Gowrie, Lost Grove, Dayton and Hardin townships.

b. Those portions of Cooper township and of the city of Fort Dodge not included in the forty-fifth representative district, as described in subsection 45 of this section.

c. That portion of the town of Duncombe lying in Washington township.

47. The forty-seventh representative district shall consist of:

a. All of Calhoun county.

b. In Carroll county:

(1) Kniest, Sheridan and Jasper townships.

(2) That portion of the town of Breda lying in Wheatland township.

c. In Greene county, Cedar and Highland townships.

d. In Pocahontas county, Marshall, Sherman, Center, Roosevelt, Garfield, Dover, Grant, Lincoln, Lake, Cedar, Colfax, Bellville and Lizard townships.

e. In Sac county:

(1) Wall Lake and Coon Valley townships.

(2) That portion of the town of Lake View lying in Viola township.

48. The forty-eighth representative district shall consist of:

a. In Buena Vista county, Maple Valley township.

b. In Carroll county, that portion of Wheatland township lying outside the corporate limits of the town of Breda.

c. In Cherokee county, Silver and Diamond townships.

d. In Crawford county, Soldier, Morgan, Otter Creek, Stockholm, Jackson and Milford townships.

e. All of Ida county.

f. In Sac county:

(1) Eureka, Eden, Delaware, Douglas, Cook, Boyer Valley, Jackson, Cedar, Richland, Clinton, Wheeler, Levey and Sac townships.

(2) That portion of Viola township lying outside the corporate limits of the town of Lake View.

49. The forty-ninth representative district shall consist of:

a. In Cherokee county, Grand Meadow and Willow townships.

b. In Plymouth county, Hancock, Perry, Hungerford, Lincoln, Elkhorn and Garfield townships.

c. In Woodbury county:

(1) Concord, Banner, Arlington, Rutland, Union and Wolf Creek townships.

(2) That portion of Kedron township lying outside the corporate limits of the town of Anthon.

(3) That portion of the city of Sioux City bounded by a line beginning at the intersection of the eastern and northern city limits of the city of Sioux City and proceeding west along the city limits of the city of Sioux City to its intersection with Rustin street and proceeding south along Rustin street to its intersection with Forty-sixth street and proceeding east along Forty-sixth street to its intersection with Harrison street and proceeding south along Harrison street to its intersection with Forty-fourth street and proceeding east along Forty-fourth street to its intersection with Central street and proceeding south along Central street to its intersection with Floyd boulevard and proceeding northeast along Floyd boulevard to its intersection with Forty-first street running south from Floyd boulevard and proceeding southeast along Forty-first street to its intersection with the westernmost track of the Illinois Central railroad and proceeding southwest along that railroad track to its intersection with the eastward extension of Thirty-third street and proceeding west along the extension of Thirty-third street and Thirty-third street to its intersection with Pavonia street and proceeding north along Pavonia street and its northwestward extension to its intersection with Forty-first street and proceeding west along Forty-first street to its intersection with Cheyenne boulevard and proceeding southwesterly along Cheyenne boulevard to its intersection with Thirty-seventh street and proceeding westerly along Thirty-seventh street to its junction with Thirty-eighth street and continuing westerly along Thirty-eighth street to its intersection with Jones street and proceeding south along Jones street to its intersection with Thirty-fourth street and proceeding west along Thirty-fourth street to its intersection with Pierce street and proceeding south along Pierce street to its intersection with Thirty-first street and proceeding west along Thirty-first street to its intersection with Douglas street and proceeding south along Douglas street to its intersection with Thirtieth street and proceeding east along Thirtieth street to its intersection with Pierce street and proceeding south along Pierce street to its intersection with Twenty-ninth street and proceeding west along Twenty-ninth street to its intersection with Stone Park boulevard and proceeding northwesterly along Stone Park boulevard to its intersection with Summit street running south from Stone Park boulevard and proceeding south along Summit street to its intersection with an unnamed roadway which is part of Grandview park and proceeding southwesterly along this unnamed roadway to its intersection with McDonald street and proceeding southerly along McDonald street to its intersection with Twenty-fourth street and proceeding east along Twenty-fourth street to its intersection with Pierce street and proceeding south along Pierce street to its intersection with Twenty-third street and proceeding east along Twenty-third street to its intersection with Nebraska street and proceeding south along Nebraska street to its intersection with Twenty-second street and proceeding west along Twenty-second street to its intersection with Pierce street and proceeding south along Pierce street to its intersection with Fifteenth street and proceeding east along Fifteenth street to its intersection with Nebraska street and proceeding south along Nebraska street to its intersection with Fourteenth street and proceeding east along Fourteenth street to its intersection with Jackson street and proceeding south along Jackson street to its intersection with Thirteenth street and proceeding east along Thirteenth street to its intersection with Virginia street and proceeding north along Virginia street to its intersection with Fourteenth street and proceeding east along Fourteenth street to its intersection with Floyd boulevard and proceeding south along Floyd boulevard to its intersection with Eleventh street and proceeding east along Eleventh street to its intersection with Lewis boulevard and proceeding north along Lewis boulevard to its intersection with Fourteenth street and proceeding east along Fourteenth street to its intersection with Cornelia street and proceeding southeasterly along Cornelia street to its intersection with Martha street and proceeding north along Martha street to its intersection with Fourteenth street and proceeding east along Fourteenth street to the end of Fourteenth street at a point on the south line of section 24, township 89, range 47, where the north-south line of section 24 intersects an unnamed road and proceeding first north and continuing along the unnamed road to its intersection with the east corporate limit of the

city of Sioux City and proceeding north along the east corporate limit to the beginning point.

50. The fiftieth representative district shall consist of that portion of the city of Sioux City partially bounded on the east and south by representative district forty-nine, as described in subsection 49 of this section, and having as the remainder of its boundary a line beginning at the intersection of Pierce street with Sixteenth street, which is a point on the boundary of representative district forty-nine, and proceeding west along Sixteenth street to its intersection with Summit street and proceeding south along Summit street to its junction with Bluff street and continuing southerly along Bluff street to its intersection with West Eighth street and proceeding southeasterly along West Eighth street to its junction with Ninth street and continuing southeasterly along Ninth street to its intersection with Perry street and proceeding southwesterly along Perry street to its intersection with West Sixth street and proceeding northwesterly along West Sixth street to its intersection with West street and proceeding southerly along West street to its intersection with West Fourth street and proceeding west along West Fourth street to its intersection with Casselman street and proceeding north along Casselman street to its intersection with West Sixth street and proceeding west along West Sixth street to its intersection with Blair street and proceeding south along Blair street to its intersection with West Fourth street and proceeding westerly along West Fourth street to its intersection with War Eagle road and proceeding southwesterly along War Eagle road and its extension to its intersection with the Iowa-South Dakota boundary, which is also the corporate limit of the city of Sioux City, and proceeding first west and continuing along the corporate limit of the city of Sioux City to its intersection with Rustin street, which is also a point on the boundary of representative district forty-nine.

51. The fifty-first representative district shall consist of that portion of the city of Sioux City partially bounded by the Iowa-Nebraska-South Dakota boundary and by representative districts forty-nine and fifty, as described in subsections 49 and 50, respectively, of this section, and having as the remainder of its boundary a line beginning at the point where the Woodbury-Concord township boundary line intersects with the east corporate limit of the city of Sioux City, which is a point on the boundary of representative district forty-nine, and proceeding south along the corporate limits of the city of Sioux City to its intersection with Morningside avenue and proceeding northwesterly along Morningside avenue to its intersection with Glenn avenue and proceeding westerly along Glenn avenue to its intersection with South Cypress street and proceeding south along South Cypress street to its intersection with Bushnell avenue and proceeding west along Bushnell avenue to its intersection with South Lakeport street and proceeding north along South Lakeport street to its intersection with Sixth avenue and proceeding east along Sixth avenue to its intersection with Palmetto street and proceeding north along Palmetto street to its intersection with Morningside avenue and proceeding west along Morningside avenue to its intersection with South Lakeport street and proceeding north along South Lakeport street and its northward extension to its intersection with Stone avenue and proceeding west along Stone avenue to its intersection with Royce street and proceeding south along Royce street to its intersection with Vine avenue and proceeding west along Vine avenue to its intersection with South Glass street and proceeding south along South Glass street to its intersection with Peters avenue and proceeding east along Peters avenue to its intersection with Sioux trail and proceeding southeasterly along Sioux trail to its intersection with Orleans avenue and proceeding westerly along Orleans avenue to its intersection with South Glass street and proceeding south along South Glass street to its intersection with Seventh avenue and proceeding west along Seventh avenue to its intersection with South Paxton street and proceeding south along South Paxton street to its intersection with Glenn avenue and proceeding west along Glenn avenue to its intersection with South Cecelia street and proceeding north on South Cecelia street to its intersection with Sixth avenue and proceeding west on Sixth avenue to its intersection with South Alice street and proceeding south along South Alice street to its intersection with Glenn avenue and proceeding west along Glenn avenue to its intersection with South Lewis boulevard and proceeding south along South Lewis boulevard to its intersection with the southern boundary of Floyd park and proceeding west along the southern Floyd park boundary and its extension to the main channel of the Missouri river, which is also the Iowa-Nebraska boundary and the corporate limit of the city of Sioux City, and proceeding first northerly and continuing along the main channel of the Missouri river to its intersection with the southwesterly extension of War Eagle road, which is a point on the boundary of representative district fifty.

52. The fifty-second representative district shall consist of:

a. In Monona county:

(1) Fairview, Lake, West Fork, Grant, Maple, Cooper, and Ashton townships.

(2) That portion of the town of Whiting lying in Lincoln township.

(3) That portion of Kennebec township lying outside the corporate limits of the town of Castana.

b. In Woodbury county:

(1) Woodbury, Floyd, Moville, Liberty, Grange, West Fork, Grant, Miller, Morgan, Rock, Lakeport, Sloan, Willow, Little Sioux, Oto and Liston townships.

(2) That portion of the town of Anthon lying in Kedron township.

(3) That portion of the city of Sioux City not included in representative districts forty-nine, fifty and fifty-one, as described in subsections 49, 50 and 51, respectively, of this section.

53. The fifty-third representative district shall consist of:

a. In Crawford county:

(1) Charter Oak, Hanover, Goodrich, Willow, Paradise, Denison, Boyer and Union townships.

(2) That portion of the city of Denison lying in East Boyer township.

b. In Harrison county, Little Sioux, Jackson, Allen, Lincoln, Harrison, Morgan, Raglan, Magnolia, Boyer, Clay, Taylor, Calhoun, Jefferson and Cincinnati townships.

c. In Monona county:

(1) Lincoln, Franklin, Belvidere, Jordan, Center, St. Clair, Soldier, Sherman, Sioux, Spring Valley and Willow townships and the city of Onawa.

(2) That portion of the town of Castana lying in Kennebec township.

54. The fifty-fourth representative district shall consist of:

a. In Harrison county, Douglas, Cass, St. Johns, La Grange, Union and Washington townships.

b. In Pottawattamie county, Rockford, Boomer, Neola, Minden, Pleasant, Knox, Layton, Crescent, Hazel Dell, Norwalk, York, James, Valley, Lincoln, Center, Wright and Waveland townships.

c. In Shelby county, Grove, Washington, Cass, Lincoln, Shelby, Fairview, Monroe and Clay townships and the city of Harlan.

55. The fifty-fifth representative district shall consist of:

a. In Audubon county, Viola township.

b. In Carroll county, Arcadia, Maple River, Grant, Glidden, Washington, Roselle, Pleasant Valley, Richland, Newton and Union townships and the city of Carroll.

c. In Crawford county:

(1) Westside, Hayes, and Nishnabotny townships.

(2) That portion of East Boyer township lying outside the corporate limits of the city of Denison.

d. In Greene county, Kendrick, Scranton, Jackson and Grant townships and the city of Jefferson.

e. In Guthrie county, Orange township.

56. The fifty-sixth representative district shall consist of:

a. In Audubon county, Lincoln, Cameron, Douglas, Leroy, Melville, Sharon, Hamlin, Greeley, Oakfield, Exira and Audubon townships.

b. In Carroll county, Ewoldt and Eden townships and the town of Manning.

c. In Cass county, Brighton, Pymosa, Benton, Grant and Washington townships.

d. In Crawford county, Washington and Iowa townships.

e. In Greene county, Willow and Greenbrier townships.

f. In Guthrie county:

(1) Highland, Dodge, Union, Seely, Victory, Bear Grove, Baker and Valley townships.

(2) That portion of Grant township lying outside the corporate limits of the town of Adair.

(3) That portion of Thompson township lying outside the corporate limits of the town of Casey.

g. In Shelby county, Union, Greeley, Jefferson, Westphalia, Douglas, Polk, Center and Jackson townships.

57. The fifty-seventh representative district shall consist of:

a. In Adair county, Jefferson township and that portion of the town of Stuart lying in Stuart township.

b. In Dallas county, Dallas, Spring Valley, Beaver, Des Moines, Lincoln, Washington, Sugar Grove, Grant, Linn, Colfax, Adel, Walnut and Van Meter townships.

c. In Guthrie county, Richland, Cass, Jackson, Beaver, Penn and Stuart townships.

58. The fifty-eighth representative district shall consist of:

a. In Adair county, Lincoln, Grove, Harrison, Lee, Greenfield, Grand River, Orient and Union townships.

b. In Clarke county, Washington, Fremont and Liberty townships.

c. In Dallas county, Union, Adams and Boone townships.

d. In Madison county, Penn, Madison, Jefferson, Lee, Jackson, Douglas, Union, Crawford, Webster, Lincoln, Scott, South, Monroe, Walnut and Ohio townships and the city of Winterset.

e. In Warren county:

(1) Linn, Jefferson, Jackson, White Oak, Virginia and Squaw townships.

(2) That portion of Greenfield township not included in representative district sixty-eight, as described in subsection 68 of this section.

59. The fifty-ninth representative district shall consist of the following portions of Polk county:

a. Jefferson and Madison townships and the cities of Urbandale and Windsor Heights.

b. That portion of Union township lying outside the corporate limit of the town of Sheldahl.

c. All of Webster township outside the corporate limits of the cities of Des Moines and Urbandale except that portion bounded on the north by interstate highways 35 and 80 and on

the west by the eastern corporate limit of the city of Urbandale.

d. That portion of the city of Des Moines lying north and west of a line beginning at the point where Hickman road intersects the common corporate limits of the cities of Des Moines and Windsor Heights and proceeding east along Hickman road to its intersection with Merle Hay road and proceeding north along Merle Hay road to its intersection with the common corporate limits of the cities of Des Moines and Urbandale.

60. The sixtieth representative district shall consist of the following portions of Polk county:

a. That portion of Webster township, including part of the town of Johnston, bounded on the north and partially bounded on the west by representative district fifty-nine, as described in subsection 59 of this section, on the east by Saylor township, on the south by the corporate limits of the city of Des Moines, and partially bounded on the west by the corporate limits of the city of Urbandale.

b. That portion of the city of Des Moines bounded on the west by representative district fifty-nine, as described in subsection 59 of this section, and having as the remainder of its boundary a line beginning at the point where University avenue intersects the common corporate limits of the cities of Des Moines and Windsor Heights, which is a point on the boundary of representative district fifty-nine, and proceeding east on University avenue to its intersection with Forty-first street and proceeding north along Forty-first street to its intersection with Franklin avenue and proceeding east along Franklin avenue to its intersection with Thirty-sixth street and proceeding south along Thirty-sixth street to its intersection with Jefferson avenue and proceeding east along Jefferson avenue to its intersection with Thirtieth street and proceeding north along Thirtieth street to its intersection with Hickman road and proceeding west along Hickman road to its intersection with Thirty-eighth street and proceeding north along Thirty-eighth street to its intersection with Douglas avenue and proceeding east along Douglas avenue to its intersection with Thirtieth street and proceeding north along Thirtieth street to its intersection with Seneca avenue and proceeding west along Seneca avenue to its intersection with Lawnwoods drive and proceeding north along Lawnwoods drive to its intersection with Madison avenue and proceeding west along Madison avenue to its intersection with Lower Beaver road and proceeding northwesterly along Lower Beaver road to its intersection with Aurora avenue and proceeding east along Aurora avenue to the boundary between sections 20 and 21, township 79 north, range 24 west, and proceeding north along that section line to the point where it coincides with the corporate limit of the city of Des Moines and continuing first north and then following the corporate limit of the city of Des Moines to the point where it intersects the corporate limit of the city of Urbandale, which is also a point on the boundary of representative district fifty-nine.

61. The sixty-first representative district shall consist of the following portions of Polk county:

a. Crocker and Saylor townships.

b. That portion of the city of Ankeny lying in Douglas township.

c. That portion of the city of Des Moines bounded by a line beginning at the point where East Fourteenth street intersects the north corporate limits of the city of Des Moines and proceeding south along East Fourteenth street to its intersection with East Arthur avenue running west from East Fourteenth street and proceeding west along East Arthur avenue to its intersection with North Union street and proceeding north along North Union street to its intersection with East Sheridan avenue and proceeding west along East Sheridan avenue to its intersection with Cornell avenue and proceeding north along Cornell avenue to its intersection with Douglas avenue and proceeding west along Douglas avenue to its intersection with Cambridge street and proceeding south along Cambridge street to its intersection with Euclid avenue and proceeding west along Euclid avenue to its intersection with Sixth avenue and proceeding north along Sixth avenue to its intersection with Clinton avenue and proceeding west along Clinton avenue to its intersection with Eighth street and proceeding south along Eighth street to its intersection with Euclid avenue and proceeding west along Euclid avenue to its intersection with Eleventh street and proceeding north along Eleventh street to its intersection with the north corporate limit of the city of Des Moines, and proceeding east along the corporate limit of the city of Des Moines to the point of beginning.

62. The sixty-second representative district shall consist of that portion of the city of Des Moines bounded on the west and north by representative districts sixty and sixty-one, as described in subsections 60 and 61 of this section, and having as the remainder of its boundary a line beginning at the point where East Arthur avenue intersects York street, which is a point on the boundary of representative district sixty-one, and proceeding south along York street to its intersection with Thompson avenue and proceeding west along Thompson avenue to its intersection with East Ninth street and proceeding south along East Ninth street to its intersection with Jefferson avenue and proceeding east along Jefferson avenue to its intersection with East Twelfth street and proceeding south along East Twelfth street to its intersection with East Washington avenue and proceeding west along East Washington avenue to its intersection with Pennsylvania avenue and proceeding south along Pennsylvania avenue to its intersection with

the westerly continuation of East Washington avenue and proceeding westerly along East Washington avenue to its intersection with the Des Moines river and proceeding southwesterly along the main channel of the Des Moines river to its intersection with University avenue and proceeding west along University avenue to its intersection with Eleventh street and proceeding north along Eleventh street to its intersection with Clark street and proceeding west along Clark street to its intersection with Harding road and proceeding south along Harding road to its intersection with Forest avenue and proceeding west along Forest avenue to its intersection with Twenty-fifth street and proceeding south along Twenty-fifth street to its intersection with University avenue and proceeding west along University avenue to its intersection with Thirtieth street and proceeding north along Thirtieth street to its intersection with Jefferson avenue, which is a point on the boundary of the sixtieth representative district.

63. The sixty-third representative district shall consist of the following portions of Polk county:

a. Delaware and Clay townships.

b. That portion of Douglas township outside the corporate limits of the city of Ankeny.

c. That portion of the city of Bondurant lying in Franklin township.

d. That portion of the city of Des Moines lying north and east of a line beginning at the point where East University avenue intersects the east corporate limit of the city of Des Moines and proceeding west along East University avenue to its intersection with East Thirtieth street and proceeding north along East Thirtieth street to its intersection with East Washington avenue and proceeding west on East Washington avenue to its intersection with East Twenty-ninth street and proceeding north along East Twenty-ninth street to its intersection with Arthur avenue and proceeding west along Arthur avenue to its intersection with Hubbell avenue and proceeding southwesterly along Hubbell avenue to its intersection with Farwell road and proceeding northwesterly along Farwell road to its intersection with Arthur avenue and proceeding west along Arthur avenue to its intersection with Lay street and proceeding south along Lay street to its intersection with Guthrie avenue and proceeding west along Guthrie avenue to its intersection with East Twenty-fourth street and proceeding north along East Twenty-fourth street to its intersection with Hull avenue and proceeding west along Hull avenue to its intersection with MacVicar freeway and proceeding north along MacVicar freeway to its intersection with the north corporate limit of the city of Des Moines.

64. The sixty-fourth representative district shall consist of that portion of the city of Des Moines bounded on the east, north, and west by the boundaries of representative districts sixty-three, sixty-one and sixty-two, as described in subsections 63, 61 and 62, respectively, of this section, and having as the remainder of its boundary a line beginning at the point where University avenue intersects the Des Moines river, which is a point on the boundary of representative district sixty-two, and proceeding southerly along the main channel of the Des Moines river to its intersection with Southeast Sixth street and proceeding north along Southeast Sixth street to its intersection with Shaw street and proceeding east along Shaw street to its intersection with Southeast Ninth street and proceeding south along Southeast Ninth street to its intersection with Maury street and proceeding east along Maury street to its intersection with Southeast Fourteenth street and proceeding south along Southeast Fourteenth street to its intersection with the Des Moines river and proceeding easterly along the main channel of the Des Moines river to its intersection with the Chicago, Rock Island and Pacific railroad track and proceeding northerly along that railroad track to its intersection with the Chicago, Rock Island and Pacific railroad track running generally east and west, south of Dean avenue, and proceeding easterly along that railroad track to its intersection with East Thirtieth street and proceeding north along East Thirtieth street to its intersection with Dean avenue and proceeding east along Dean avenue to its intersection with the east corporate limit of the city of Des Moines and proceeding north along the east corporate limit of the city of Des Moines to its intersection with University avenue, which is a point on the boundary of representative district sixty-three.

65. The sixty-fifth representative district shall consist of that portion of the city of Des Moines bounded on the north and partially bounded on the west by representative districts sixty-two, sixty and fifty-nine, as described in subsections 62, 60 and 59, respectively, of this section, and having as the remainder of its boundary a line beginning at the point where the southernmost corporate limit of the city of Windsor Heights and the corporate limit of the city of Des Moines diverge and proceeding southerly along the corporate limit of the city of Des Moines to its intersection with Walnut Creek and proceeding southeasterly along Walnut Creek to its intersection with Fifty-sixth street and proceeding north along Fifty-sixth street to its intersection with Grand avenue and proceeding easterly along Grand avenue to its intersection with Thirty-first street and proceeding south along Thirty-first street to its intersection with Terrace drive and proceeding easterly along Terrace drive to its intersection with Twenty-eighth street and proceeding south along Twenty-eighth street to its intersection with the Chicago, Milwaukee, St. Paul and Pacific railroad track and proceeding northeasterly along that railroad track to its intersection with Fleur drive and proceeding northeasterly along Fleur drive

to its intersection with Eighteenth street and proceeding north along Eighteenth street to its intersection with Grand avenue and proceeding east along Grand avenue to its intersection with Seventeenth street and proceeding north along Seventeenth street to its intersection with Center street and proceeding west along Center street to its intersection with Eighteenth street and proceeding north along Eighteenth street to its intersection with School street and proceeding west along School street to its intersection with Harding road and proceeding north along Harding road to its intersection with Atkins street and proceeding west along Atkins street to its intersection with Twenty-first street and proceeding north along Twenty-first street to its intersection with University avenue and proceeding easterly along University avenue to its intersection with Harding road and proceeding north along Harding road to its intersection with Forest avenue, which is a point on the boundary of representative district sixty-two.

66. The sixty-sixth representative district shall consist of the following portions of Polk county:

a. That portion of Walnut township, including the city of Clive, lying outside the corporate limits of the cities of Des Moines, Urbandale and Windsor Heights.

b. That portion of the unincorporated territory of Bloomfield township lying outside the corporate limits of the city of Des Moines and west of the west boundary of sections 20, 29 and 32, township 78 north, range 24 west.

c. The city of West Des Moines.

d. That portion of the city of Des Moines bounded on the north by representative district sixty-five, as described in subsection 65 of this section, and lying west of a line beginning at the point where Fleur drive intersects Eighteenth street, which is a point on the boundary of representative district sixty-five, and proceeding south along Fleur drive to its intersection with the corporate limits of the city of Des Moines.

67. The sixty-seventh representative district shall consist of that portion of the city of Des Moines partially bounded on the east and north by representative district sixty-four, as described in subsection 64 of this section, bounded on the north and west by representative districts sixty-two, sixty-five and sixty-six, as described in subsections 62, 65 and 66, respectively, of this section and having as the remainder of its boundary a line beginning at the point where Watrous avenue intersects Fleur drive and proceeding east along Watrous avenue to its intersection with Southwest Fourteenth street and proceeding south along Southwest Fourteenth street to its intersection with McKinley avenue and proceeding east along McKinley avenue to its intersection with Southwest Ninth street and proceeding north along Southwest Ninth street to its intersection with Watrous avenue and proceeding east along Watrous avenue to its intersection with Southeast Fourteenth street and proceeding north along Southeast Fourteenth street to its intersection with the main channel of the Des Moines river, which is a point on the boundary of representative district sixty-four.

68. The sixty-eighth representative district shall consist of:

a. In Polk county:

(1) Four Mile and Allen townships and the town of Pleasant Hill.

(2) That portion of the unincorporated territory of Bloomfield township not included in representative district sixty-six, as described in subsection 66 of this section.

(3) That portion of the city of Des Moines bounded on the north and west by representative districts sixty-three, sixty-four, sixty-seven and sixty-six, as described in subsections 63, 64, 67 and 66, respectively, of this section.

b. In Warren county, that portion of Greenfield township bounded by a line beginning at the point where Clover Hill street intersects with the northern boundary of Warren county and proceeding south along to its intersection with Greenfield parkway and proceeding east along Greenfield parkway to its intersection with Villa drive and proceeding north along Villa drive to its intersection with Marlou parkway and proceeding east along Marlou parkway to its intersection with Plaza lane and proceeding south along Plaza lane to its intersection with Greenfield parkway and proceeding east along Greenfield parkway to its intersection with Lista lane and proceeding north along Lista lane and its northward extension to its intersection with Southwold street and proceeding northerly along Southwold street to its intersection with the northern Warren county boundary line and proceeding west along the Warren county line to the point of beginning.

69. The sixty-ninth representative district shall consist of:

a. In Jasper county:

(1) Mound Prairie, Palo Alto, Des Moines and Fairview townships.

(2) That portion of the city of Newton lying in Newton township which is not included in the seventieth representative district as described in subsection 70 of this section.

(3) The town of Colfax.

b. In Marion county, Red Rock, Summit, Pleasant Grove and Union townships.

c. In Polk county, Beaver and Camp townships.

d. In Warren county, Allen, Richland, Palmyra and Union townships.

70. The seventieth representative district shall consist of:

a. In Jasper county:

(1) Mariposa, Hickory Grove, Kellogg, Rock Creek, Buena Vista, Richland, Elk Creek and Lynn Grove townships.

(2) That portion of Newton township lying outside the corporate limits of the city of Newton.

(3) That portion of the city of Newton bounded by a line beginning at the point where North Fourth avenue intersects the corporate limit of the city of Newton and proceeding east along North Fourth avenue to its intersection with West Eighth street and proceeding south along West Eighth street to its intersection with the Chicago, Rock Island and Pacific railroad track and proceeding northeasterly along that railroad track to its intersection with First street and proceeding south along First street to its intersection with South Eighth avenue and proceeding east along South Eighth avenue to its intersection with East Fifth street and proceeding north along East Fifth street to its intersection with South Fifth avenue and proceeding west along South Fifth avenue to its intersection with East Fifth street and proceeding north along East Fifth street to its intersection with First avenue and proceeding east along First avenue to its intersection with East Thirteenth street and proceeding north along East Thirteenth street to its intersection with North Fourth avenue and proceeding east along North Fourth avenue to its intersection with East Nineteenth street and proceeding north along East Nineteenth street to its intersection with North Fifth avenue and proceeding east along North Fifth avenue to its intersection with the northward extension of East Nineteenth street running south from North Fourth avenue and proceeding north on that extension of East Nineteenth street to its intersection with the corporate limits of the city of Newton, and proceeding first north and continuing along the corporate limit of the city of Newton to the point of beginning.

b. In Mahaska county, Richland, Prairie, Union, Black Oak and Madison townships.

c. In Marion county, Lake Prairie township.

d. In Poweshiek county:

(1) Washington, Sugar Creek and Union townships.

(2) That portion of Jackson township lying outside the corporate limits of the town of Barnes City.

71. The seventy-first representative district shall consist of:

a. In Benton county:

(1) Kane and Union townships and the city of Belle Plaine.

(2) That portion of Iowa township lying outside the corporate limits of the town of Luzerne.

b. In Iowa county, Honey Creek township.

c. In Poweshiek county, Chester, Sheridan, Madison, Jefferson, Grant, Malcom and Pleasant townships and the city of Grinnell.

d. In Tama county, Carroll, Indian Village, Toledo, Tama, Otter Creek, York, Highland, Columbia, Richland and Salt Creek townships.

72. The seventy-second representative district shall consist of:

a. In Benton county:

(1) Eldorado, Fremont, Leroy, St. Clair and Florence townships.

(2) That portion of the town of Luzerne lying in Iowa township.

b. In Iowa county, Marengo, Washington, Lenox, Hartford, Sumner, Hilton, Iowa, Lincoln, Pilot, Troy, York, Dayton, English, Fillmore and Greene townships.

c. In Johnson county:

(1) Hardin, Union, Washington and Sharon townships.

(2) That portion of Liberty township lying outside the corporate limits of the town of Hills.

d. In Keokuk county, Liberty township.

e. In Poweshiek county, Bear Creek, Warren, Scott, Lincoln and Deep River townships.

73. The seventy-third representative district shall consist of the following portions of Johnson county:

a. That portion of West Lucas township outside the corporate limits of the cities of Iowa City and Coralville and the town of University Heights.

b. The city of Coralville and the town of University Heights.

c. That portion of the city of Iowa City bounded by a line beginning at the point where the northward extension of Van Buren street intersects the north corporate limit of the city of Iowa City and proceeding south along the northward extension of Van Buren street to its intersection with Whiting avenue and proceeding west along Whiting avenue to its intersection with Ridge road and proceeding first in a northwesterly direction and continuing along Ridge road to its intersection with North Dubuque street and proceeding south along North Dubuque street to its intersection with Ronalds street and proceeding east along Ronalds street to its intersection with Gilbert street and proceeding south along Gilbert street to its intersection with Fairchild street and proceeding west along Fairchild street to its intersection with North Dubuque street and proceeding south along North Dubuque street to its intersection with Washington street and proceeding east along Washington street to its intersection with Linn street and proceeding south along Linn street to its intersection with Burlington street and proceeding east along Burlington street to its intersection with Gilbert street and proceeding south along Gilbert street to its intersection with Court street and proceeding east along Court street to its intersection with Johnson street and proceeding south along Johnson street to its intersection with Bowery street and proceeding east along Bowery street

to its intersection with Lucas street and proceeding south along Lucas street to its intersection with Page street and proceeding east along Page street to its intersection with the Chicago, Rock Island and Pacific railroad track and proceeding southeasterly on that railroad track to its intersection with Summit street and proceeding south along Summit street to its intersection with Walnut street and proceeding east along Walnut street to its intersection with Clark street and proceeding south along Clark street to its intersection with Kirkwood avenue and proceeding west along Kirkwood avenue to its intersection with Marcy street and proceeding south along Marcy street to its intersection with Florence street and proceeding west along Florence street to its intersection with Keokuk street and proceeding southerly along Keokuk street to its intersection with the highway 6 by-pass and proceeding northwesterly along the highway 6 by-pass to its intersection with the main channel of the Iowa river and proceeding southerly along the main channel of the Iowa river to its intersection with the corporate limits of the city of Iowa City and proceeding first southerly and continuing along the corporate limits of the city of Iowa City to the point of beginning.

74. The seventy-fourth representative district shall consist of the following portions of Johnson county:

a. Newport, East Lucas and Pleasant Valley townships.

b. The town of Hills.

c. That portion of the city of Iowa City not contained in the seventy-third representative district, as described in subsection 73 of this section.

75. The seventy-fifth representative district shall consist of:

a. In Johnson county, Fremont township.

b. In Louisa county, Oakland, Union, Columbus City, Concord, Grandview, and Port Louisa townships.

c. In Muscatine county:

(1) Wapsinonoc, Goshen, Pike, Lake, Bloomington, Orono, Cedar, Seventy-six and Fruitland townships.

(2) That portion of the city of Muscatine bounded by a line beginning at the point where the main channel of the Mississippi river (which is the corporate limit of the city of Muscatine) intersects the southeastward extension of Locust street and proceeding northwesterly along the extension of Locust street and Locust street to its intersection with Fifth street and proceeding northeasterly along Fifth street to its intersection with Chestnut street and proceeding northwesterly along Chestnut street to its intersection with Eighth street and proceeding northeasterly along Eighth street to its intersection with Orange street and proceeding northwesterly along Orange street to its intersection with Eleventh street and proceeding southwesterly along Eleventh street to its intersection with Mulberry avenue and proceeding northwesterly along Mulberry avenue to its intersection with Woodlawn avenue and proceeding northeasterly along Woodlawn avenue to its intersection with Isette avenue and proceeding northerly along Isette avenue to its intersection with Clay street and proceeding northeasterly along Clay street to its intersection with Mad Creek and proceeding northerly along Mad Creek to its intersection with the north corporate limit of the city of Muscatine and proceeding first west and continuing in a counterclockwise direction along the corporate limits of the city of Muscatine to the beginning point.

76. The seventy-sixth representative district shall consist of:

a. In Muscatine county:

(1) Moscow, Wilton, Fulton, Sweetland and Montpelier townships.

(2) That portion of the city of Muscatine not included in representative district seventy-five, as described in subsection 75 of this section.

b. In Scott county:

(1) Blue Grass and Buffalo townships.

(2) That portion of the city of Davenport bounded by a line beginning at the point where state highway 150 intersects the north corporate limit of the city of Davenport and proceeding southeast and south along state highway 150 (a portion of which is Northwest boulevard) to its junction with North Pine street and continuing south along North Pine street to its intersection with West Forty-fifth street and proceeding west along West Forty-fifth street to its intersection with North Pine street and proceeding south along North Pine street to its intersection with Kimberly road and proceeding west along Kimberly road to its intersection with Silver Creek and proceeding southerly along Silver Creek to its intersection with Duck Creek and proceeding easterly along Duck Creek to its intersection with Division street and proceeding south along Division street to its intersection with Garfield street and proceeding west along Garfield street to its intersection with Wilkes avenue and proceeding south along Wilkes avenue to its intersection with Hayes street and proceeding west along Hayes street to its intersection with Howell street and proceeding south along Howell street to its intersection with West Central Park avenue and proceeding west along West Central Park avenue to its intersection with Fairmount street and proceeding north along Fairmount street to its intersection with Garfield street (or its westward extension) and proceeding west along Garfield street (or its westward extension) to its intersection with Zenith avenue and proceeding south along Zenith avenue to its intersection with West Locust street and proceeding west along West Locust street to its intersection with Wisconsin avenue and proceeding southerly

along Wisconsin avenue to its intersection with Telegraph road and proceeding westerly along Telegraph road to its intersection with the west corporate limit of the city of Davenport and proceeding first north and then continuing in a clockwise manner along the corporate limit of the city of Davenport to the point of beginning.

77. The seventy-seventh representative district shall consist of the following portions of Clinton county:

a. Deep Creek, Elk River, Washington, Center, Lincoln, Hampshire, Spring Valley and DeWitt townships.

b. That portion of the city of Clinton bounded by a line beginning at the point where Elvira road intersects the west corporate limit of the city of Clinton and proceeding east along Elvira road to its intersection with the western boundary of Harding school grounds and Emma Young park and proceeding south along the western boundary of Harding school grounds and Emma Young park to its intersection with the southern boundary of Emma Young park and proceeding east along the southern boundary of Emma Young park to its intersection with the northward extension of South Fourteenth street and proceeding south along the northward extension of South Fourteenth street to its intersection with Second avenue south and proceeding east on Second avenue south to its intersection with Bluff boulevard and proceeding southwesterly along Bluff boulevard to its intersection with South Ninth street and proceeding south along South Ninth street to its intersection with Seventh avenue and proceeding east along Seventh avenue to its intersection with South Seventh street and proceeding north along South Seventh street to its intersection with Fourth avenue south and proceeding east along Fourth avenue south to its intersection with South Fifth street and proceeding south along South Fifth street to its intersection with Seventh avenue south and proceeding east along Seventh avenue south to its intersection with the main channel of the Mississippi river (which is the corporate limit of the city of Clinton) and proceeding first north and then in a counterclockwise manner along the corporate limit to the point of beginning.

78. The seventy-eighth representative district shall consist of:

a. In Clinton county:

(1) Eden and Camanche townships.

(2) That portion of the city of Clinton not included in representative district seventy-seven, as described in subsection 77 of this section.

b. In Scott county:

(1) Butler, Princeton, Lincoln and Le Claire townships.

(2) That portion of the unincorporated territory of Pleasant Valley township lying north and east of a line beginning at the easternmost point where East Sixty-seventh street intersects the north corporate limit of the city of Bettendorf and proceeding east on East Sixty-seventh street to its intersection with Devils Glenn road and proceeding south on Devils Glenn road to its intersection with the corporate limit of the city of Bettendorf and proceeding in an easterly and southerly direction along the corporate limit of the city of Bettendorf to its intersection with the main channel of the Mississippi river (which is the Iowa-Illinois boundary).

(3) That portion of the city of Davenport lying north and east of a line beginning at the point where East Sixty-seventh street intersects the east corporate limit of the city of Davenport and proceeding westerly along East Sixty-seventh street to its intersection with Utica Ridge road and proceeding southwesterly along Utica Ridge road to its intersection with East Fifty-third street and proceeding west along East Fifty-third street to its intersection with Jersey Ridge road and proceeding north along Jersey Ridge road to its intersection with East Sixtieth street and proceeding east along East Sixtieth street to its intersection with Jersey Ridge road and proceeding north along Jersey Ridge road to its intersection with interstate highway 80 and proceeding west along interstate highway 80 to its intersection with Eastern avenue and proceeding north along Eastern avenue to its intersection with the north corporate limit of the city of Davenport.

79. The seventy-ninth representative district shall consist of the following portions of Scott county:

a. The city of Bettendorf and the towns of Panorama Park and Riverdale.

b. That portion of the unincorporated territory of Pleasant Valley township not included in representative district seventy-eight, as described in subsection 78 of this section.

c. That portion of the city of Davenport bounded by a line beginning at the point where Kimberly road intersects the common corporate limit of the cities of Bettendorf and Davenport and proceeding northwesterly along Kimberly road to its intersection with Jersey Ridge road and proceeding southerly along Jersey Ridge road to its intersection with Locust street and proceeding east along Locust street to its intersection with Woodland avenue and proceeding south along Woodland avenue to its intersection with Middle road and proceeding southwesterly along Middle road to its junction with East street and proceeding southeasterly along East street to its intersection with Belle avenue and proceeding south along Belle avenue to its intersection with Kirkwood boulevard and proceeding southeasterly along Kirkwood boulevard to its intersection with Jersey Ridge road and proceeding south along Jersey Ridge road to its intersection with East Eleventh street and proceeding east along East Eleventh street to its intersection with River drive and proceeding southeasterly along River drive to its intersection with McClelland boulevard and with another street which runs

southwesterly from that intersection and which is also known as River drive and proceeding southwesterly along the latter River drive to its intersection with the southerly extension of Edgehill terrace and proceeding southwesterly along the southern extension of Edgehill terrace to its intersection with the main channel of the Mississippi river (which is the corporate limit of the city of Davenport) and proceeding first easterly and continuing along the corporate limit of the city of Davenport to the point of beginning.

80. The eightieth representative district shall consist of that portion of the city of Davenport bounded on the west, north and east by representative districts seventy-six, twenty-four, seventy-eight and seventy-nine, as described in subsections 76, 24, 78 and 79, respectively, of this section, and having as the remainder of its boundary a line beginning at the point where Jersey Ridge road intersects Locust street, which is a point on the boundary of representative district seventy-nine, and proceeding west along Locust street to its intersection with Farnam street and proceeding north along Farnam street to its intersection with East Pleasant street and proceeding west along East Pleasant street to its intersection with Pershing avenue and proceeding north along Pershing avenue to its intersection with East High street and proceeding easterly along East High street to its intersection with Iowa street and proceeding north along Iowa street to the end of the 2100 numbering block thereof and proceeding easterly from that point to the westernmost point on that portion of East Lombard street running west from Le Claire street and proceeding east along East Lombard street to its intersection with Le Claire street and proceeding south along Le Claire street to its intersection with East High street and proceeding east along East High street to its intersection with Farnam street and proceeding north along Farnam street to its intersection with Rusholme street and proceeding west along Rusholme street to its intersection with Pershing avenue and proceeding north along Pershing avenue to its intersection with Central Park avenue and proceeding westerly along Central Park avenue to its intersection with Harrison street and proceeding south along Harrison street to its intersection with West Lombard street and proceeding west along West Lombard street to its intersection with Division street and proceeding north along Division street to its intersection with West Central Park avenue and proceeding west along West Central Park avenue to its intersection with Howell street, which is a point on the boundary of representative district seventy-six.

81. The eighty-first representative district shall consist of that portion of the city of Davenport bounded on the east and north by representative districts seventy-nine and eighty, as described in subsections 79 and 80, respectively, of this section, and having as the remainder of its boundary a line beginning at the point where Division street intersects Lombard street, which is a point on the boundary of representative district eighty, and proceeding south along Division street to its intersection with West Ninth street and proceeding southwesterly along West Ninth street to its intersection with the Chicago, Rock Island and Pacific railroad track and proceeding easterly along that railroad track to its intersection with Warren street and proceeding north along Warren street to its intersection with West Fifth street and proceeding east along West Fifth street to its intersection with Brown street and proceeding north along Brown street to its intersection with West Sixth street and proceeding east along West Sixth street to its intersection with Scott street and proceeding south along Scott street to its intersection with West Fifth street and proceeding east along West Fifth street to its intersection with Harrison street and proceeding north along Harrison street to its intersection with West Eighth street and proceeding east along West Eighth street to its intersection with Main street and proceeding south along Main street to its intersection with West Seventh street and proceeding east along West Seventh street and East Seventh street to its intersection with Iowa street and proceeding south along Iowa street to its intersection with East Sixth street and proceeding easterly along East Sixth street to its intersection with Oneida avenue and proceeding southerly along Oneida avenue to its intersection with River drive and proceeding easterly along River drive to its intersection with College avenue and proceeding south on the southward extension of College avenue to its intersection with the main channel of the Mississippi river (which is the corporate limit of the city of Davenport) and proceeding east along the main channel of the Mississippi river to its intersection with the southward extension of Edgehill terrace, which is a point on the boundary of representative district seventy-nine.

82. The eighty-second representative district shall consist of that portion of the city of Davenport bounded on the west, north, and east by representative districts seventy-six, eighty and eighty-one, as described in subsections 76, 80 and 81, respectively, of this section, and bounded on the south by the main channel of the Mississippi river, which is the corporate limit of the city of Davenport.

83. The eighty-third representative district shall consist of:

a. In Des Moines county:

(1) Washington, Yellow Springs, Huron, Pleasant Grove, Franklin, Benton and Jackson townships.

(2) That portion of Flint River township lying outside the corporate limits of the cities of Burlington and West Burlington and outside the corporate limits of the town of Middletown.

(3) That portion of the city of West Burlington lying north of U.S. highway 34.

(4) That portion of the city of Burlington lying west and north of a line beginning at the point where Sunnyside avenue intersects with Melvin avenue and proceeding south along Melvin avenue to its intersection with Lenox avenue and proceeding west along Lenox avenue to its intersection with Racine avenue and proceeding south on Racine avenue to its intersection with the Burlington Northern railroad track and proceeding west along that railroad track to its intersection with West Burlington avenue and proceeding south along West Burlington avenue to its intersection with U.S. highway 34.

b. In Henry county:

(1) Wayne, Scott, Trenton, Marion, Canaan, Tippecanoe, Center and New London townships and the city of Mount Pleasant.

(2) That portion of Jefferson township lying outside the corporate limits of the town of Coppock.

c. In Louisa county, Elm Grove, Marshall, Wapello, Jefferson, Morning Sun and Eliot townships.

84. The eighty-fourth representative district shall consist of the following portions of Des Moines county:

a. Tama township.

b. That portion of the city of Burlington not included in representative districts eighty-three and eighty-five, as described in subsections 83 and 85, respectively, of this section.

c. That portion of the city of West Burlington not included in representative district eighty-three, as described in subsection 83 of this section.

85. The eighty-fifth representative district shall consist of:

a. In Des Moines county:

(1) Danville, Union and Concordia townships.

(2) That portion of the town of Middletown lying in Flint River township.

(3) That portion of the city of Burlington lying south of a line beginning at the point where the easterly extension of South street intersects the main channel of the Mississippi river, which is the corporate limit of the city of Burlington, and proceeding in a westerly direction along the extension of South street and South street to its junction with Sumner street and proceeding south along Sumner street to its junction with the boundary line between ward six and ward seven, as established by an ordinance of the city of Burlington, and proceeding west on that boundary line to its intersection with Perkins avenue and proceeding northerly along Perkins avenue to its intersection with South street and proceeding westerly along South street to its intersection with Garfield avenue and proceeding south along Garfield avenue to its northernmost intersection with Louisa street and proceeding west on Louisa street to its intersection with Starr avenue and proceeding south on Starr avenue to its intersection with the boundary line between the aforesaid wards six and seven and proceeding west along that boundary to its intersection with the corporate limit of the city of Burlington.

b. In Lee county:

(1) Pleasant Ridge, Denmark, West Point, Washington and Green Bay townships.

(2) That portion of the city of Fort Madison lying east and north of a line beginning at the point where the north corporate limit of the city of Fort Madison intersects Twenty-sixth street and proceeding south along Twenty-sixth street to its intersection with "I" avenue and proceeding west along "I" avenue to its intersection with Twenty-seventh street and proceeding north along Twenty-seventh street to its intersection with "I" avenue and proceeding west along "I" avenue to its intersection with Twenty-eighth street and proceeding north along Twenty-eighth street to its intersection with "H" avenue and proceeding west along "H" avenue to its intersection with Thirty-second street and proceeding south along Thirty-second street to its intersection with "L" avenue and proceeding west along "L" avenue to its intersection with Thirty-fourth street and proceeding south along Thirty-fourth street to its intersection with the corporate limit of the city of Fort Madison and proceeding first northeasterly and then south along the corporate limits of the city of Fort Madison to its intersection with the main channel of the Mississippi river.

86. The eighty-sixth representative district shall consist of:

a. In Henry county, Salem, Jackson and Baltimore townships.

b. In Lee county:

(1) Cedar, Marion, Franklin, Van Buren, Charleston, Jefferson, Des Moines, Montrose and Jackson townships and the city of Keokuk.

(2) That portion of the city of Fort Madison not included in representative district eighty-five, as described in subsection 85 of this section.

87. The eighty-seventh representative district shall consist of:

a. In Henry county, that portion of the town of Coppock lying in Jefferson township.

b. All of Jefferson county.

c. In Keokuk county, Steady Run, Jackson and Richland townships.

d. In Lee county, Harrison township.

e. All of Van Buren county.

f. In Wapello county, Competine township.

g. In Washington county:

(1) Clay township.

(2) That portion of the town of Brighton lying in Brighton township.

88. The eighty-eighth representative district shall consist of:

a. In Keokuk county, Prairie, Adams, English River, Washington, Van Buren, Plank,

Lafayette, Warren, Sigourney, West Lancaster, East Lancaster and Clear Creek townships.

b. In Washington county:

(1) Lime Creek, English River, Iowa, Seventy-six, Cedar, Jackson, Highland, Dutch Creek, Franklin, Washington, Oregon, Marion and Crawford townships.

(2) That portion of Brighton township lying outside the corporate limits of the town of Brighton.

89. The eighty-ninth representative district shall consist of:

a. In Mahaska county, that portion of the city of Eddyville lying in Harrison township.

b. In Monroe county, Bluff Creek, Pleasant, Troy and Mantua townships.

c. In Wapello county:

(1) Columbia, Richland, Highland, Cass, Polk, Dahlonega, Pleasant, Washington, Agency and Adams townships.

(2) That portion of Center township lying north of the part of old U.S. highway 34 running west from the city of Ottumwa and the corporate limit of the city of Ottumwa, and that portion of Center township enclosed by the corporate limit of the city of Ottumwa and the boundary line of Dahlonega township.

(3) That portion of the city of Ottumwa bounded by a line beginning at the point where the west corporate limit of the city of Ottumwa intersects the Des Moines river and proceeding southeasterly along the main channel of the Des Moines river to its intersection with the extension of Cass street and proceeding northeasterly along Cass street to its intersection with the Burlington Northern railroad track and proceeding southeasterly along that railroad track to its intersection with Marion street and proceeding northeasterly along Marion street to its intersection with Fifth street and proceeding southeasterly along Fifth street to its intersection with Court street and proceeding northeasterly along Court street to its intersection with Green street and proceeding southerly along Green street to its intersection with Gara street and proceeding easterly along Gara street to its intersection with Jefferson street and proceeding southeasterly along Jefferson street to its intersection with Ogden street and proceeding easterly along Ogden street to its intersection with Ash street and proceeding south along Ash street to its intersection with Main street and proceeding southeasterly along Main street to its intersection with Iowa avenue and proceeding south along Iowa avenue to its intersection with Mable street and proceeding southeasterly along Mable street to its intersection with May street and proceeding southwesterly along May street to its intersection with Bertha street and proceeding southwesterly along Bertha street to its intersection with Walnut avenue and proceeding south along Walnut avenue to its intersection with the corporate limit of the city of Ottumwa and proceeding first east and continuing in a counterclockwise manner along the corporate limit of the city of Ottumwa to the point of beginning.

90. The ninetieth representative district shall consist of:

a. In Appanoose county, that portion of Washington township lying outside the corporate limit of the town of Moulton.

b. All of Davis county.

c. In Wapello county:

(1) Green and Keokuk townships.

(2) That portion of Center township not included in representative district eighty-nine, as described in subsection 89 of this section.

(3) That portion of the city of Ottumwa not included in representative district eighty-nine, as described in subsection 89 of this section.

91. The ninety-first representative district shall consist of:

a. In Keokuk county, Benton township.

b. In Lucas county, Pleasant and Cedar townships.

c. In Mahaska county:

(1) Scott, Jefferson, East Des Moines, West Des Moines, Garfield, Lincoln, Cedar, Spring Creek, White Oak, Adams, Monroe and Pleasant Grove townships and the city of Oskaloosa.

(2) That portion of Harrison township lying outside the corporate limits of the town of Eddyville.

d. In Marion county:

(1) Clay, Liberty and Indiana townships.

(2) That portion of the unincorporated territory of Knoxville township lying east of state highway 14.

(3) That portion of the city of Knoxville lying east of a line beginning at the point where that part of the corporate limit of the city of Knoxville running east and west on approximately the line of Hobert street extended eastward intersects with the northward extension of Kent street and proceeding south along the extension of Kent street and Kent street to its intersection with Marion street and proceeding east along Marion street to its intersection with Second street and proceeding south along Second street to its intersection with Main street and proceeding east along Main street to its intersection with Third street and proceeding north along Third street to its intersection with Marion street and proceeding east along Marion street to its intersection with Fifth street and proceeding south along Fifth street to its intersection with Montgomery street and proceeding west along Montgomery street to its intersection with Fourth street and proceeding south along Fourth street to its intersection with Competine street and proceeding east on Competine street to its intersection with Fifth street and proceeding south on Fifth street to its intersection with the south corporate limit of the city of Knoxville.

e. In Monroe county:

(1) Cedar, Union and Wayne townships.

(2) The town of Melrose.

f. In Poweshiek county, that portion of the town of Barnes City lying in Jackson township.

92. The ninety-second representative district shall consist of:

a. In Lucas county, Liberty, English and Lincoln townships and the city of Chariton.

b. In Marion county:

(1) Franklin, Dallas and Washington townships.

(2) That portion of Knoxville township and the city of Knoxville not included in representative district ninety-one, as described in subsection 91 of this section.

c. In Warren county, Lincoln, Otter, Belmont, Liberty and Whitebreast townships and the city of Indianola.

93. The ninety-third representative district shall consist of:

a. In Appanoose county:

(1) Independence, Chariton, Taylor, Union, Johns, Walnut, Douglas, Udell, Lincoln, Bellair, Vermillion, Sharon, Franklin, Pleasant, Caldwell and Wells townships and the city of Centerville.

(2) That portion of the town of Moulton lying in Washington township.

b. In Clarke county, Jackson and Franklin townships.

c. In Lucas county, Otter Creek, Jackson, Whitebreast, Union, Warren, Benton and Washington townships.

d. In Monroe county:

(1) Guilford, Franklin, Monroe and Urbana townships.

(2) That portion of Jackson township lying outside the corporate limits of the town of Melrose.

e. In Wayne county:

(1) Richman, Washington, Union, Wright, Clay, Benton, Corydon, South Fork, Warren, Jackson, Walnut, Grand River, Clinton, Howard and Monroe townships.

(2) That portion of the town of Clio lying in Jefferson township.

94. The ninety-fourth representative district shall consist of:

a. In Clarke county, Madison, Troy, Ward, Osceola, Doyle, Knox and Green Bay townships and the city of Osceola.

b. All of Decatur county.

c. In Madison county, Grand River township.

d. In Ringgold county, Jefferson, Tingley, Union, Washington, Liberty, Monroe, Rice, Poe, Athens, Lotts Creek and Riley townships and the town of Mount Ayr.

e. In Union county:

(1) Lincoln, Dodge, New Hope, Highland, Union, Jones, Grant, Sand Creek and Pleasant townships.

(2) That portion of the city of Creston lying east of a line beginning at the point where the northward extension of Pine street intersects the north corporate limit of the city of Creston and proceeding south along the extension of Pine street and Pine street to its intersection with Howard street and proceeding east along Howard street to its intersection with Cedar street and proceeding south along Cedar street to its intersection with the Burlington Northern railroad track and proceeding southwesterly along that railroad track to its intersection with Division street and proceeding south along Division street to its intersection with the south corporate limit of the city of Creston.

f. In Wayne county, that portion of Jefferson township lying outside the corporate limit of the town of Clio.

95. The ninety-fifth representative district shall consist of:

a. In Adair county, Adair, Summit, Walnut, Eureka, Prussia, Jackson, Summerset, Washington, Bridgewater and Richland townships.

b. In Adams county:

(1) Lincoln, Washington, Carl, Colony, Douglas, Prescott, Union and Mercer townships.

(2) That portion of Quincy township lying outside the corporate limits of the town of Corning.

c. In Cass county, Grove, Franklin, Lincoln, Cass, Bear Grove, Union, Massena, Pleasant, Noble, Edna and Victoria townships and the city of Atlantic.

d. In Guthrie county:

(1) That portion of the town of Adair lying in Grant township.

(2) That portion of the town of Casey lying in Thompson township.

e. In Union county:

(1) Spaulding, Douglas and Platte townships.

(2) That portion of the city of Creston not included in representative district ninety-four, as described in subsection 94 of this section.

96. The ninety-sixth representative district shall consist of:

a. In Adams county:

(1) Nodaway, Jasper and Grant townships.

(2) That portion of the town of Corning lying in Quincy township.

b. In Montgomery county, Sherman, Pilot Grove, Douglas, Frankfort, Washington, Scott and East townships and the town of Villisca.

c. In Page county, Douglas, Valley, Tarkio, Nodaway, Nebraska, Lincoln, Harlan, East River, Colfax, Amity and Buchanan townships.

d. In Ringgold county, Lincoln, Grant, Waubonsie, Benton, Clinton and Middle Fork townships.

e. All of Taylor county.

97. The ninety-seventh representative district shall consist of:

a. All of Fremont county.

b. In Mills county:

(1) Anderson, Indian Creek, White Cloud and Deer Creek townships.

(2) That portion of the town of Tabor lying in Rawles township.

c. In Montgomery county, Lincoln, Garfield, Red Oak, West and Grant townships.

d. In Page county, Pierce, Fremont, Grant, Morton and Washington townships.

98. The ninety-eighth representative district shall consist of:

a. In Mills county:

(1) St. Mary's, Oak, Ingraham, Plattville, Glenwood, Center, Silver Creek and Lyons townships and the town of Malvern.

(2) That portion of Rawles township outside the corporate limit of the town of Tabor.

b. In Pottawattamie county:

(1) Lake, Hardin, Washington, Belknap, Keg Creek, Silver Creek, Carson, Macedonia and Grove townships.

(2) Those portions of Garner and Lewis townships lying outside the corporate limits of the city of Council Bluffs.

(3) Those portions of the city of Council Bluffs:

(a) Lying east of a line beginning at the point where the west boundary of section 20, township 75 north, range 43 west, intersects the north corporate limit of the city of Council Bluffs and proceeding south along that section line to its intersection with Pierce street and proceeding northwesterly along Pierce street to its intersection with McPherson avenue and proceeding southeasterly along McPherson avenue to its intersection with Gleason avenue and proceeding west along Gleason avenue to its intersection with a north-south line which was in 1960 the corporate limit of the city of Council Bluffs, and which is labeled "Fence along bluff" on maps prepared by the U.S. bureau of the census for the 1970 federal decennial census, and proceeding south along that north-south line to its intersection with Franklin avenue and proceeding westerly along Franklin avenue to its intersection with Hazel street and proceeding south along Hazel street to its intersection with Lindbergh drive and proceeding west along Lindbergh drive to its intersection with Madison avenue and proceeding northwesterly along Madison avenue to its intersection with Graham avenue and proceeding southerly along Graham avenue to its intersection with Tostevin street and proceeding south along Tostevin street to its intersection with state highway 375 and proceeding southeasterly along state highway 375 to its intersection with the east corporate limit of the city of Council Bluffs.

(b) Lying south and east of a line beginning at the westernmost point where the east corporate limit of the city of Council Bluffs intersects the former route of U.S. highway 275 and proceeding west on the former route of U.S. highway 275, which is designated as a part of the boundary between census tracts 313 and 315 on maps prepared by the U.S. bureau of the census for the 1970 federal decennial census, to its junction with Wright road and continuing west on Wright road to its intersection with South Eleventh street and proceeding south on South Eleventh street to its intersection with First avenue and proceeding west on First avenue to its intersection with Indian Creek ditch and proceeding southerly along Indian Creek ditch to its intersection with the main channel of the Missouri river.

99. The ninety-ninth representative district shall consist of that portion of the city of Council Bluffs bounded on the east by representative district ninety-eight, as described in subsection 98 of this section, on the south and west by the main channel of the Missouri river, and bounded on the north by a line beginning at the point where interstate highway 480 intersects with the Missouri river and proceeding easterly on interstate highway 480 to its junction with Broadway and continuing east along Broadway to its intersection with Eighth street and proceeding north along Eighth street to its intersection with Washington avenue and proceeding easterly along Washington avenue to its intersection with First street and proceeding southeasterly along First street to its intersection with Broadway and proceeding northeasterly along Broadway to its intersection with Union street and proceeding southeasterly along Union street to its intersection with Pierce street and proceeding northeast along Pierce street to its intersection with Frank street and proceeding northwest along Frank street to its intersection with Broadway and proceeding northeast along Broadway to its intersection with Thomas street and proceeding southeast along Thomas street to its intersection with Pierce street and proceeding easterly along Pierce street to its intersection with McPherson avenue, which is a point on the boundary of representative district ninety-eight.

100. The one hundredth representative district shall consist of the following portions of Pottawattamie county:

a. That portion of the city of Council Bluffs not included in representative districts ninety-eight and ninety-nine, as described in subsections 98 and 99, respectively, of this section.

b. The city of Carter Lake. [C27, 31, 35, §§526-b1,-b2; C39,§§**526.3, 526.4**; C46, 50, 54, 58, 62,§§42.1, 42.2; C66,§41.3; C71,§41.4; C73, 75,§41.1]

Referred to in §41.2
Amendment effective July 1, 1975

41.2 Senate districts. The state of Iowa is hereby divided into fifty senatorial districts, each composed of two of the representative districts established by section 41.1, as follows:

1. The first senatorial district shall consist of the first and second representative districts.

2. The second senatorial district shall consist of the third and fourth representative districts.

3. The third senatorial district shall consist of the fifth and sixth representative districts.

4. The fourth senatorial district shall consist of the seventh and eighth representative districts.

5. The fifth senatorial district shall consist of the ninth and tenth representative districts.

6. The sixth senatorial district shall consist of the eleventh and twelfth representative districts.

7. The seventh senatorial district shall consist of the thirteenth and fourteenth representative districts.

8. The eighth senatorial district shall consist of the fifteenth and sixteenth representative districts.

9. The ninth senatorial district shall consist of the seventeenth and eighteenth representative districts.

10. The tenth senatorial district shall consist of the nineteenth and twentieth representative districts.

11. The eleventh senatorial district shall consist of the twenty-first and twenty-second representative districts.

12. The twelfth senatorial district shall consist of the twenty-third and twenty-fourth representative districts.

13. The thirteenth senatorial district shall consist of the twenty-fifth and twenty-sixth representative districts.

14. The fourteenth senatorial district shall consist of the twenty-seventh and twenty-eighth representative districts.

15. The fifteenth senatorial district shall consist of the twenty-ninth and thirtieth representative districts.

16. The sixteenth senatorial district shall consist of the thirty-first and thirty-second representative districts.

17. The seventeenth senatorial district shall consist of the thirty-third and thirty-fourth representative districts.

18. The eighteenth senatorial district shall consist of the thirty-fifth and thirty-sixth representative districts.

19. The nineteenth senatorial district shall consist of the thirty-seventh and thirty-eighth representative districts.

20. The twentieth senatorial district shall consist of the thirty-ninth and fortieth representative districts.

21. The twenty-first senatorial district shall consist of the forty-first and forty-second representative districts.

22. The twenty-second senatorial district shall consist of the forty-third and forty-fourth representative districts.

23. The twenty-third senatorial district shall consist of the forty-fifth and forty-sixth representative districts.

24. The twenty-fourth senatorial district shall consist of the forty-seventh and forty-eighth representative districts.

25. The twenty-fifth senatorial district shall consist of the forty-ninth and fiftieth representative districts.

26. The twenty-sixth senatorial district shall consist of the fifty-first and fifty-second representative districts.

27. The twenty-seventh senatorial district shall consist of the fifty-third and fifty-fourth representative districts.

28. The twenty-eighth senatorial district shall consist of the fifty-fifth and fifty-sixth representative districts.

29. The twenty-ninth senatorial district shall consist of the fifty-seventh and fifty-eighth representative districts.

30. The thirtieth senatorial district shall consist of the fifty-ninth and sixtieth representative districts.

31. The thirty-first senatorial district shall consist of the sixty-first and sixty-second representative districts.

32. The thirty-second senatorial district shall consist of the sixty-third and sixty-fourth representative districts.

33. The thirty-third senatorial district shall consist of the sixty-fifth and sixty-sixth representative districts.

34. The thirty-fourth senatorial district shall consist of the sixty-seventh and sixty-eighth representative districts.

35. The thirty-fifth senatorial district shall consist of the sixty-ninth and seventieth representative districts.

36. The thirty-sixth senatorial district shall consist of the seventy-first and seventy-second representative districts.

37. The thirty-seventh senatorial district shall consist of the seventy-third and seventy-fourth representative districts.

38. The thirty-eighth senatorial district shall consist of the seventy-fifth and seventy-sixth representative districts.

39. The thirty-ninth senatorial district shall consist of the seventy-seventh and seventy-eighth representative districts.

40. The fortieth senatorial district shall consist of the seventy-ninth and eightieth representative districts.

41. The forty-first senatorial district shall consist of the eighty-first and eighty-second representative districts.

42. The forty-second senatorial district shall consist of the eighty-third and eighty-fourth representative districts.

43. The forty-third senatorial district shall consist of the eighty-fifth and eighty-sixth representative districts.

44. The forty-fourth senatorial district shall consist of the eighty-seventh and eighty-eighth representative districts.

45. The forty-fifth senatorial district shall consist of the eighty-ninth and ninetieth representative districts.

46. The forty-sixth senatorial district shall consist of the ninety-first and ninety-second representative districts.

47. The forty-seventh senatorial district shall consist of the ninety-third and ninety-fourth representative districts.

48. The forty-eighth senatorial district shall consist of the ninety-fifth and ninety-sixth representative districts.

49. The forty-ninth senatorial district shall consist of the ninety-seventh and ninety-eighth representative districts.

50. The fiftieth senatorial district shall consist of the ninety-ninth and one hundredth representative districts. [C27, 31, 35,§§526-a2; C39, §526.2; C46, 50, 54, 58, 62,§41.1; C66,§41.2; C71, §41.5; C73, 75,§41.2]

CHAPTER 42

STATE REPRESENTATIVE DISTRICTS

Repealed by 60 ExGA, ch 1,§3; see ch 41

CHAPTER 43

PARTISAN NOMINATIONS—PRIMARY ELECTION

Referred to in §§39.3, 50.1, 52.28, 275.35, 277.3, 280A.15, 280A.39, 296.4, 298.18, 353.12, 360.1, 372.2, 376.1

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43.120 Bribery—illegal voting.
43.121 Nominations by petition or nonparty organizations.
43.122 Repealed by 65GA, ch 136,§401.

43.1 Primary election construed. The primary election required by this chapter shall be construed to be an election by the members of various political parties for the purpose of placing in nomination candidates for public office. [S13,§1087-a2; C24, 27, 31, 35, 39,§527; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.1]

43.2 "Political party" defined. The term "political party" shall mean a party which, at the last preceding general election, cast for its candidate for president of the United States or for governor, as the case may be, at least two percent of the total vote cast for all candidates for that office at that election. It shall be the responsibility of the state commissioner to determine whether any organization claiming to be a political party qualifies as such under the foregoing definition.

A political organization which is not a "political party" within the meaning of this section may nominate candidates and have the names of such candidates placed upon the official ballot by proceeding under chapters 44 and 45. [S13,§1087-a3; C24, 27, 31, 35, 39,§528; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.2]

Referred to in §§49.58, 56.18, 99B.7, 422.9(2,c)
Nominations by petition or nonparty organizations, §43.121

43.3 Offices affected by primary. Candidates of all political parties for all offices which are filled at a regular biennial election by direct vote of the people shall be nominated at a primary election at the time and in the manner hereinafter directed. [S13,§1087-a1; C24, 27, 31, 35, 39,§529; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.3]

Nomination and election of judges, ch 46

43.4 Political party precinct caucuses. Delegates to county conventions of political parties and party committee members shall be elected at precinct caucuses held not later than the second Monday in May of each even-numbered year. The state central committee of each political party shall set the date for said caucuses. In accordance therewith, the county chairperson of each political party shall issue the call for said caucuses. The county chairperson shall file with the commissioner the meeting place of each precinct caucus at least seven days prior to the date of holding such caucus.

There shall be selected among those present at a precinct caucus a chairman and a secretary who shall forthwith certify to the county central committee and the county commissioner the names of those elected as party committeemen and delegates to the county convention.

The central committee of each political party shall notify the delegates and committeemen so elected and certified of their election and of the time and place of holding the county convention. Such conventions shall be held either preceding or following the primary election but no later than ten days following the primary election and shall be held on the same day throughout the state. [S13,§1087-a1; C24, 27, 31, 35, 39,§530; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.4; 66GA, ch 81,§6]

Referred to in §43.90

43.5 Applicable statutes. The provisions of chapters 39, 47, 48, 49, 50, 51, 52, 53, 56, 57, 58,

59, 61, 62 and 738 shall apply, so far as applicable, to all primary elections, except as hereinafter provided. [S13,§1087-a1; C24, 27, 31, 35, 39,§531; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.5]

Criminal offenses, §§43.119, 43.120
General criminal statutes, ch 738

43.6 Nomination of U.S. senators, state and county officers. Candidates for the office of senator in the congress of the United States, the offices listed in section 39.9, county supervisor and the offices listed in section 39.17 shall be nominated in the year preceding the expiration of the term of office of the incumbent.

1. When a vacancy occurs in the office of senator in the congress of the United States, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture or attorney general and section 69.13, subsection 1, requires that the vacancy be filled for the balance of the unexpired term at a general election, candidates for the office shall be nominated in the preceding primary election if the vacancy occurs seventy-five or more days prior to the date of that primary election. If the vacancy occurs less than ninety days before the date of that primary election, the state commissioner shall accept nomination papers for that office only until five o'clock p.m. on the sixtieth day before the primary election, the provisions of section 43.11 notwithstanding. If the vacancy occurs later than seventy-five days before the date of that primary election, but not less than seventy-five days before the date of the general election, the nominations shall be made in the manner prescribed by this chapter for filling vacancies in nominations for offices to be voted for at the general election.

2. When a vacancy occurs in the office of county supervisor or any of the offices listed in section 39.17 and section 69.13, subsection 2, requires that the vacancy be filled for the balance of the unexpired term at a general election, candidates for the office shall be nominated in the preceding primary election if the vacancy occurs sixty or more days prior to the date of that primary election. If the vacancy occurs less than seventy-five days before the date of that primary election, the commissioner shall accept nomination papers for that office only until five o'clock p.m. on the forty-ninth day before the primary election, the provisions of section 43.11 notwithstanding. If the vacancy occurs later than sixty days before the date of that primary election, but not less than sixty days before the date of the general election, the nominations shall be made in the manner prescribed by this chapter for filling vacancies in nominations for offices to be voted for at the general election. [R60,§674; C73,§26; C97,§30; S13,§1087-c; C24, 27, 31, 35, 39,§532; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.6; 66GA, ch 81,§7]

Vacancies filled by governor, §69.8(1, 2)

43.7 Time of holding. The primary election by all political parties shall be held at the usual voting places of the several precincts on the first Tuesday after the first Monday in June in each even-numbered year. [S13,§1087-a4; C24, 27, 31, 35, 39,§533; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.7]

43.8 State commissioner to furnish blanks. The state commissioner shall, at state expense, furnish blank nomination papers, in the form provided in this chapter, to any qualified elector who desires to petition for the nomination of any candidate, or to any person who intends to be a candidate, for any office for which nomination papers are required to be filed in his office. [S13,§1087-a11; C24, 27, 31, 35, 39,§534; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.8]

Referred to in §43.9

43.9 Commissioner to furnish blanks. The commissioner shall, at county expense, perform the duty specified in section 43.8, as to all offices for which nomination papers are required to be filed in his office. [S13,§1087-a11; C24, 27, 31, 35, 39,§535; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.9]

43.10 Blanks furnished by others. Blank nomination papers which are in form substantially as provided by this chapter may be used even though not furnished by the state commissioner or commissioner. [C24, 27, 31, 35, 39,§536; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.10]

43.11 Filing of nomination papers. Nomination papers in behalf of a candidate shall be filed:

1. For an elective county office, in the office of the county commissioner not later than five o'clock p.m. on the fifty-fifth day prior to the day fixed for holding the primary election.

2. For United States senator, for an elective state office, for representative in Congress, and for member of the general assembly, in the office of the state commissioner not earlier than eighty-five days nor later than five o'clock p.m. on the sixty-seventh day prior to the day fixed for holding the primary election. [S13, §1087-a10; C24, 27, 31, 35, 39,§537; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.11]

Referred to in §§43.6, 43.13, 43.77

43.12 Noting time of filing. The officer receiving nomination papers for filing shall endorse thereon the day, and time of day, of filing. [C24, 27, 31, 35, 39,§538; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.12]

43.13 Failure to file nomination papers. The name of a candidate for any office named in section 43.11 shall not be printed on the official primary ballot of the candidate's party unless nomination papers are filed as therein provided except as otherwise permitted by section 43.23. [S13,§1087-a10; C24, 27, 31, 35, 39,§539; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.13; 66GA, ch 81,§8]

43.14 Form of nomination papers. All nomination papers shall be about eight and one-half by thirteen inches in size and in substantially the following form:

"I, the undersigned, an eligible elector of .....county or legislative district, and state of Iowa, hereby nominate ..... of ..... county or legislative district, state of Iowa, who has affiliated with and is a member of the ..... party, as a candidate for the office of ..... to be voted for at the primary election to be held on ....."

No signatures shall be counted unless they are on sheets each having such form written or printed at the top thereof. Nomination papers on behalf of candidates for seats in the general assembly need only designate the number of the senatorial or representative district, as appropriate, and not the county or counties, in which the candidate and the petitioners reside. [S13,§1087-a10; C24, 27, 31, 35, 39,§540; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.14]

43.15 Requirements in signing. The following requirements shall be observed in the signing and preparation of nomination blanks:

1. Each signer may sign as many nomination papers for the same office as there are officers to be elected to said office, and no more.

2. Each signer shall add his residence, with street and number, if any, and the date of signing.

3. All signers, for all nominations, of each separate part of a nomination paper, shall reside in the same county, representative or senatorial district for members of the general assembly.

4. When more than one sheet is used, the sheets shall be neatly arranged and securely fastened together before filing, and shall be considered one nomination paper.

5. Only one candidate shall be petitioned for or nominated in the same nomination paper. [S13,§1087-a10; C24, 27, 31, 35, 39,§541; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.15]

43.16 Withdrawals and additions not allowed. A nomination paper, when filed, shall not be withdrawn nor added to, nor any signature thereon revoked. This section shall not be construed to prohibit the person on whose behalf the paper was filed from withdrawing as a candidate. However, the name of the candidate who has withdrawn must still be printed on the ballot, unless the withdrawal occurs at a time when the procedure prescribed by section 43.23 may be used. [S13,§1087-a10; C24, 27, 31, 35, 39,§542; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.16; 66GA, ch 81,§9]

Withdrawal of candidacy, §§43.76, 44.9

43.17 Affidavit to nomination papers. The affidavit of an eligible elector shall be appended to each such nomination paper, or papers, if more than one for any candidate, stating that to the best of his or her knowledge and belief all the persons who have signed the paper or papers are electors of that county or legislative district; that they signed the same with full knowledge of the contents thereof; that their respective residences are truly stated therein; and that each signer signed the same on the date stated opposite his or her name. The candidate being nominated by the paper or papers may sign the affidavit only if he or she personally circulated the paper or papers. If the affiant also signed the nomination paper, that signature shall not be counted toward the total required by section 43.20. [S13,§1087-a10; C24, 27, 31, 35, 39, §543; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.17; 66GA, HF 1011,§3]

Referred to in §280A.15

43.18 Affidavit by candidate. Every candidate shall make and file an affidavit in substantially the following form:

"I, ..., being duly sworn, say that I reside at ..... street, city of ....., county of ..... in the state of Iowa; that I am eligible to the office for which I am a candidate, and that the political party with which I affiliate is the ..... party; that I am a candidate for nomination to the office of ..... to be made at the primary election to be held on ....., and hereby request that my name be printed upon the official primary ballot as provided by law, as a candidate of that party. I furthermore declare that if I am nominated and elected I will qualify as such officer.

I am aware that I am required to organize a candidate's committee which shall file an organization statement and disclosure reports if it receives contributions, makes expenditures, or incurs indebtedness in excess of one hundred dollars for the purpose of supporting my candidacy for public office.

.....
(Signed)

Subscribed and sworn to (or affirmed) before me by ..... on this ..... day of ....., 19.....

.....
(Name)

....."
(Official title)

[S13,§1087-a10; C24, 27, 31, 35, 39,§544; C46, 50, 54, 58, 62, 66, 71, 73,§43.18; C75,§§43.18, 56.5(4); 66GA, ch 57,§2]

Referred to in §§43.19, 43.21, 420.130

43.19 Manner of filing affidavit. The affidavit provided in section 43.18 shall be filed with the nomination papers when such papers are required; otherwise alone. [S13,§1087-a10; C24, 27, 31, 35, 39,§545; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.19]

Nomination paper not required, §43.21

43.20 Signatures required—more than one office prohibited. Nomination papers shall be signed by eligible electors as follows:

1. If for a state office, or United States senator, by at least one percent of the voters of the candidate's party, in each of at least ten counties of the state, and in the aggregate not less than one-half of one percent of the total

vote of the candidate's party in the state, as shown by the last general election.

2. If for a representative in Congress, in districts composed of more than one county, by at least two percent of the voters of the candidate's party, as shown by the last general election, in each of at least one-half of the counties of the district, and in the aggregate not less than one percent of the total vote of the candidate's party in such district, as shown by the last general election. If for a representative in the general assembly, not less than fifty voters of the representative district; and if for a senator in the general assembly, not less than one hundred voters of the senatorial district.

3. If for an office to be filled by the voters of the county or for the office of county supervisor elected from a district within the county, by at least two percent of the party vote in the county or supervisor district, as shown by the last general election, or by at least one hundred persons, whichever is less.

In each of the above cases, the vote to be taken for the purpose of computing the percentage shall be the vote cast for president of the United States or for governor, as the case may be.

No candidate for public office shall cause nomination papers to remain filed in the office of the state commissioner or the commissioner on the last day for filing nomination papers, for more than one office to be filled at the primary election.

Any candidate for public office, to be voted for at a primary election, who has filed nomination papers for more than one office shall, not later than the final date for filing, notify the state commissioner or the commissioner by affidavit, for which office he elects to be a candidate, which in no case shall be more than one. In the event no such election is made by such date by the candidate, the state commissioner shall not certify his name to be placed on the ballot for any office nor shall the commissioner place his name on the ballot in any county. [S13,§1087-a10; C24, 27, 31, 35, 39,§**546**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.20]

Referred to in §43.17

43.21 Township office. The name of a candidate for a township office shall be printed on the official primary ballot of his party if he files his personal affidavit, in the form prescribed by section 43.18, with the commissioner not later than five o'clock p.m. of the fifty-fifth day prior to the primary election. If prior to that time there is presented to the commissioner a nomination paper signed by at least ten eligible electors of the township requesting that the name of any person be placed on the primary ballot as a candidate for a township office, and the nomination paper is not accompanied by the candidate's personal affidavit, the commissioner shall advise the candidate that such an affidavit is required before his name may be placed on the ballot. [S13, §1087-a10; C24, 27, 31, 35, 39,§**547**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.21]

43.22 Nominations certified. The state commissioner shall, at least fifty-five days before a primary election, furnish to the commissioner of each county a certificate under his hand and seal, which certificate shall show:

1. The name and post-office address of each person for whom a nomination paper has been filed in his office, and for whom the voters of said county have the right to vote at said election.

2. The office for which such person is a candidate.

3. The political party from which such person seeks a nomination. [S13,§1087-a12; C24, 27, 31, 35, 39,§**548**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.22]

Referred to in §43.23

43.23 Death or withdrawal of primary candidate.

1. When any person who has filed with the state commissioner nomination papers as a candidate in a primary election dies or withdraws on or after the seventy-fifth day prior to the primary election, the appropriate convention or central committee of that person's political party may designate one additional primary election candidate for the nomination that person was seeking, if the designation is submitted to the state commissioner in writing by five o'clock p.m. on the sixtieth day prior to the date of the primary election. The name of any candidate so submitted shall be included in the appropriate certificate or certificates furnished by the state commissioner under section 43.22.

2. When any person who has filed with the commissioner nomination papers as a candidate in a primary election dies or withdraws on or after the sixtieth day prior to the primary election, the appropriate convention or central committee of that person's political party may designate one additional primary election candidate for the nomination that person was seeking, if the designation is submitted to the commissioner in writing by five o'clock p.m. on the forty-ninth day prior to the primary election. The name of any candidate so submitted shall be placed on the appropriate ballot or ballots by the commissioner. [C66, 71, 73, 75,§43.59(1); 66GA, ch 81,§10]

Referred to in §§43.13, 43.16

43.24 Repealed by 65GA, ch 136,§401.

43.25 Correction of errors. The commissioner shall correct any errors or omissions in the names of candidates and any other errors brought to his knowledge before the printing of the ballots. [S13,§1087-a12; C24, 27, 31, 35, 39,§**552**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.25]

43.26 Ballot—form. The official primary election ballot shall be prepared, arranged, and printed substantially in the following form:

PRIMARY ELECTION BALLOT
(Name of Party)
of
.....Township or Precinct, ... Ward, City of ....., County of ....., State of Iowa.
Primary election held on the .....day of June, 19.....

FOR UNITED STATES SENATOR
(Vote for one.)
☐ Sally K. Brown
☐ J. R. Wayne
☐ .....

FOR UNITED STATES REPRESENTATIVE
(Vote for one.)
☐ Betty Williams
☐ William Sanders
☐ .....

FOR GOVERNOR
(Vote for one.)
☐ Patricia Collins
☐ William Longley
☐ .....

(Followed by other elective state and district officers in order.)

FOR COUNTY AUDITOR
(Vote for one.)
☐ Gladys Strong
☐ Robert Thompson
☐ .....

(Followed by other elective county officers in order.)

FOR TOWNSHIP CLERK
(Vote for one.)
☐ Dolores Black
☐ John Raymond
☐ .....

FOR TOWNSHIP TRUSTEES
(Vote for two.)
☐ Margaret Jones
☐ William Jones
☐ H. S. Wilson
☐ .....

[S13,§1087-a14; C24, 27, 31, 35, 39,§553; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.26]

43.27 Printing of ballots. The ballots of each political party shall be printed in black ink, on separate sheets of paper, uniform in color, quality, texture, and size, with the name of the political party printed at the head of said ballots, which ballots shall be prepared by the commissioner in the same manner as for the general election, except as in this chapter provided. [S13,§1087-a13; C24, 27, 31, 35, 39,§554; C46, 50, 54, 58, 62, 66, 71, 73, 75, §43.27]

Preparation of ballots, §§43.28, 49.27, 49.30–49.51, 49.57, 49.58

43.28 Names of candidates—arrangement. The names of all candidates for offices shall be arranged and printed upon the primary election ballots under the direction of the commissioner. If there are more candidates for nomination by a political party to an office than the number of persons to be elected to that office at the general election, the names of the candidates of that party for that nomination shall be rotated on the primary election ballot by the commissioner in the manner prescribed by section 49.31. [S13,§1087-a13; C24, 27, 31, 35, 39,§§556, 557; C46, 50,§§43.28, 43.29; C54, 58, 62, 66, 71, 73, 75,§43.28]

43.29 Repealed by 65GA, ch 136,§401.

43.30 Sample ballots. The commissioner shall take from the official printed ballots of each precinct a suitable number of ballots of each political party, and shall write or stamp, in red ink, near the top of each ballot, the words "sample ballot" and shall sign or stamp his official signature thereunder. Said ballots shall be delivered to the precinct election officials, but shall not be voted, received, or counted. Said precinct election officials shall, before the opening of the polls, cause said sample ballots to be posted in and about the polling places. [S13,§1087-a15; C24, 27, 31, 35, 39, §558; C46, 50, 54 58, 62, 66, 71, 73, 75,§43.30; 66GA, ch 67,§68]

43.31 to 43.35 Repealed by 65GA, ch 136,§401.

43.36 Australian ballot. The Australian ballot system as now used in this state, except as herein modified, shall be used at said primary election. The endorsement of the precinct election officials and the facsimile of the commissioner's signature shall appear upon the ballots as provided for general elections. [S13,§1087-a6; C24, 27, 31, 35, 39,§564; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.36]

Australian ballot system, ch 49
Endorsement by precinct election officials, §49.82
Signature of commissioner, §49.57

43.37 Repealed by 65GA, ch 136,§401.

43.38 Voter confined to party ticket. The elector shall be allowed to vote for candidates for nomination on the ballot of the party with which he is registered as affiliated, and shall receive no other ballot. The voter shall return the ballot, folded, to one of the precinct election officials who shall deposit it in the ballot box. [S13,§1087-a6; C24, 27, 31, 35, 39,§566; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.38]

43.39 Ballot for another party's candidate. If any primary elector write upon his ticket the name of any person who is a candidate for the same office upon some other party ticket than that upon which his name shall be so written, such ballot shall be so counted for such person only as a candidate of the party upon whose ballot his name is written, and shall in no case be counted for such person as a candidate upon any other ticket. [S13, §1087-a6; C24, 27, 31, 35, 39,§567; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.39]

43.40 Repealed by 65GA, ch 136,§401.

43.41 Change or declaration of party affiliation before primary. Any qualified elector who desires to change or declare his or her political

party affiliation, may, before the close of registration for the primary election, file a written declaration stating the change of party affiliation with the county commissioner of registration who shall enter a notation of such change on the registration records. [S13,§1087-a8; C24, 27, 31, 35, 39,§569; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.41; 66GA, ch 81,§11]

Criminal offenses, §738.24

43.42 Change or declaration of party affiliation at polls. Any qualified elector may change or declare a party affiliation at the polls on election day and shall be entitled to vote at any primary election. Each elector doing so shall sign an affidavit which shall be in substantially the following form:

CHANGE OR DECLARATION OF PARTY AFFILIATION

I do solemnly swear or affirm that I have in good faith changed my previously declared party affiliation, or declared my party affiliation, and now desire to be a member of the ..... party.

.....
Signature of elector

.....
Address

Approved:

.....
Precinct election official

Each change or declaration of a qualified elector's party affiliation so received shall be reported by the precinct election officials to the commissioner of registration who shall enter a notation of the change on the registration records. [S13,§1087-a8,-a9; C24, 27, 31, 35, 39,§§570, 572; C46, 50, 54, 58, 62, 66, 71, 73,§43.42; C75,§§43.42, 43.44; 66GA, ch 81,§12]

43.43 Repealed by 65GA, ch 136,§401.

43.44 Repealed by 66GA, ch 81,§154.

43.45 Counting ballots and returns. Upon the closing of the polls the precinct election officials shall immediately:

1. Place the ballots of the several political parties in separate piles.

2. Separately count the ballots of each party, and make the correct entries thereof on the tally sheets.

3. Certify to the number of votes cast upon the ticket of each political party for each candidate for each office.

4. Seal the ballots cast on behalf of each of the parties in separate envelopes, and on the outside of such envelope write or print the names of said party's candidates for all offices and opposite each name enter the number of votes cast for such candidate in said precinct.

5. Seal all the envelopes of all political parties in one large envelope and on the outside thereof, or on a paper attached thereto, enter the number of votes cast by each party in said precinct.

6. Seal the precinct election register and the tally sheets and certificates of the precinct election officials in an envelope, or other secure container, on the outside of which are written or printed in perpendicular columns the names of the several political parties with the names of the candidates for the different offices under their party name, and opposite each candidate's name enter the number of votes cast for such candidate in said precinct.

7. Enter at the bottom of each party column on said envelope the total vote cast by said party in said precinct.

8. Communicate the results of the ballots cast for each candidate for office upon the ticket of each political party, in the manner required by section 50.11, to the commissioner of the county in which said polls are located, who shall remain on duty until the results are communicated to him from each polling place in the county. [S13,§1087-a17; C24, 27, 31, 35, 39,§573; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.45]

43.46 Delivering returns. The precinct election officials shall deliver all election supplies, by noon of the day after the close of the polls, to the commissioner who shall carefully preserve them and deliver the returns and envelopes containing ballots, in the condition in which received except as is otherwise required by sections 50.20 to 50.22, to the county board of supervisors. [S13,§1087-a17; C24, 27, 31, 35, 39,§574; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.46; 66GA, ch 81,§13, HF 1011,§4]

Referred to in §43.47

43.47 Messenger sent for returns. If the returns from any precinct are not delivered as provided in section 43.46, the commissioner shall forthwith send a messenger for the missing returns, and the messenger shall be paid as provided by section 50.47 for such services. [S13,§1087-a17; C24, 27, 31, 35, 39,§575; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.47]

Messengers, §50.23

43.48 Elector may ascertain vote cast. Any elector of the county shall have the right, before the day fixed for canvassing the returns, to ascertain the vote cast for any candidate in any precinct in the county, as shown on the outside of the envelope containing the election register. [S13,§1087-a17; C24, 27, 31, 35, 39, §576; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.48]

43.49 Canvass by county board. On the Monday following the primary election, the board of supervisors shall meet, open and canvass the returns from each voting precinct in the county, and make abstracts thereof, stating in words written at length:

1. The number of ballots cast in the county in each precinct by each political party, separately, for each office.

2. The name of each person voted for and the number of votes given to each person for each different office.

If the day designated by this section for the canvass is a public holiday, the provisions of section 4.1, subsection 22, shall apply. [S13, §1087-a19; C24, 27, 31, 35, 39,§577; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.49; 66GA, ch 81,§14]

Referred to in §43.67

43.50 Signing and filing of abstract. The members of the board shall sign said abstracts and certify to the correctness thereof, and file the same with the commissioner. [S13,§1087-a19; C24, 27, 31, 35, 39,§578; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.50]

43.51 Finality of canvass. Such canvass and certificate shall be final as to all candidates for nomination to any elective county office or office of a subdivision of a county. [S13,§1087-a19; C24, 27, 31, 35, 39,§579; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.51]

43.52 Nominees for county office. The nominee of each political party for any office to be filled by the voters of the entire county, or for the office of county supervisor elected from a district within the county, shall be the person receiving the highest number of votes cast in the primary election by the voters of that party for the office, and that person shall appear as the party's candidate for the office on the general election ballot.

If no candidate receives thirty-five percent or more of the votes cast by voters of the candidate's party for the office sought, the primary is inconclusive and the nomination shall be made as provided by section 43.78, subsection 1, paragraphs *"d"* and *"e"*.

When two or more nominees are required, as in the case of at-large elections, the nominees shall likewise be the required number of persons who receive the greatest number of votes cast in the primary election by the voters of the nominating party, but no candidate is nominated who fails to receive thirty-five percent of the number of votes found by dividing the number of votes cast by voters of the candidate's party for the office in question by the number of persons to be elected to that office. If the primary is inconclusive under this paragraph, the necessary number of nominations shall be made as provided by section 43.78, subsection 1, paragraphs *"d"* and *"e"*. [S13,§1087-a19; C24, 27, 31, 35, 39,§580; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.52; 66GA, ch 81,§15]

Referred to in §§43.53, 43.66, 43.77
Nomination by convention, §43.97

43.53 Nominees for subdivision office—write-in candidates. The nominee of each political party for any office to be filled by the voters of any township or other political subdivision within the county shall be the person receiving the highest number of votes cast in the primary election by the voters of that party for the office and that person shall appear as the party's candidate for the office on the general election ballot. A person whose name is not printed on the official primary ballot shall not be declared nominated as a candidate for such office in the general election unless that person receives the greater of at least five votes or a number of votes equal to at least five percent of the votes cast in the subdivision at the last preceding general election for the party's candidate for president of the United States or for governor, as the case may be. Nomination of a candidate for the office of county supervisor elected from a district within the county shall be governed by section 43.52 and not by this section. [S13,§1087-a19; C24, 27, 31, 35, 39,§581; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.53; 66GA, ch 81,§16]

Referred to in §§43.77, 43.116

43.54 Right to place on ballot. Each candidate so nominated shall be entitled to have his name printed on the official ballot to be voted for at the general election without other certificate. [S13,§1087-a19; C24, 27, 31, 35, 39,§582; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.54]

43.55 Nominee certified. The board of supervisors shall separately prepare and certify a list of the candidates of each party so nominated. It shall deliver to the chairperson of each party central committee for the county a copy of the list of candidates nominated by that party; and shall also certify and deliver to the chairperson a list of the offices to be filled by the voters of the county for which no candidate of that party was nominated, together with the names of all of the candidates for each of these offices who were voted for at the primary election and the number of votes received by each of such candidates. [S13,§1087-a19; C24, 27, 31, 35, 39,§583; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.55; 66 GA, ch 81,§17]

43.56 Recount. Any candidate whose name appears upon the official primary ballot of any voting precinct may require the board of supervisors of the county in which such precinct is situated to recount the ballots cast in any such precinct as to the office for which he was a candidate, by filing with the commissioner not later than one o'clock p.m. on Friday after the official canvass made by the board of supervisors is finished, a showing in writing, duly sworn to by such candidate, that fraud was committed, or error or mistake made, in counting or returning the votes cast in any such precinct as to the office for which he was a candidate. [S13,§1087-a18; C24, 27, 31, 35, 39,§584; C46, 50, 54, 58, 62, 66, 71, 73, 75, §43.56]

43.57 Showing must be specific. The showing for such recount must be specific, and from it there must appear reasonable ground to believe that a recount of the ballots would produce a result as to the applicant's candidacy different from the returns made by the precinct election officials. [S13,§1087-a18; C24, 27, 31, 35, 39,§585; C46, 50, 54, 58, 62, 66, 71, 73, 75, §43.57; 66GA, ch 67,§68]

43.58 Recount granted. If such showing is made to the satisfaction of the board, it shall thereupon recount the ballots cast in any such precinct for the office for which the contestant was a candidate, and if the result reached by the board on the recount of the ballots as to such office be different from that returned by the precinct election officials, it shall be substituted therefor as the true and correct return

and so regarded in all subsequent proceedings. The action of the board shall be final and no other contest of any kind shall be permitted. The commissioner shall promptly notify the state commissioner of any recount the board decides to make and shall subsequently, at the earliest practicable time, inform the state commissioner whether any change in the outcome of the election resulted from the recount. [S13, §1087-a18; C24, 27, 31, 35, 39,§**586**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.58; 66GA, ch 67,§68, HF 1011,§5]

43.59 Repealed by 66GA, ch 81,§154

43.60 Abstracts to state commissioner. The county board of supervisors shall also make a separate abstract of the canvass as to the following offices and certify to the same and forthwith forward it to the state commissioner, viz:

1. United States senator.
2. All state offices.
3. United States representative.
4. Senators and representatives in the general assembly. [S13,§1087-a20; C24, 27, 31, 35, 39,§**588**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.60; 66GA, ch 81,§18]

Referred to in §43.61

43.61 Returns filed and abstracts recorded. When the canvass is concluded, the board shall deliver the original returns to the commissioner, who shall file the same and record each of the abstracts mentioned in section 43.60, in the election book. [SS15,§1087-a21; C24, 27, 31, 35, 39,§**589**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §43.61]

43.62 Publication of proceedings. The published proceedings of the board of supervisors relative to the canvass shall be confined to a brief statement of:

1. The names of the candidates nominated by the electors of the county or subdivision thereof and the offices for which they are so nominated.
2. The offices for which no nomination was made by a political party participating in the primary, because of the failure of the candidate to receive the legally required number of votes cast by the party for such office. [SS15,§1087-a21; C24, 27, 31, 35, 39,§**590**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.62; 66GA, ch 81,§19]

43.63 Canvass by state board. On the second Friday after the primary election, the executive council shall meet as a canvassing board, and open and canvass the abstract returns received from each county in the state. The board shall make an abstract of its canvass, stating in words written at length, the number of ballots cast by each political party, separately, for each office designated in the abstracts forwarded to the state commissioner, the names of all the persons voted for, and the number of votes received by each person for each office, and shall sign and certify thereto. [S13,§1087-a22; C24, 27, 31, 35, 39,§**591**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.63]

Referred to in §43.67

43.64 State canvass conclusive. The canvass and certificates by the state board of canvassers shall be final as to all candidates named therein. [S13,§1087-a22; C24, 27, 31, 35, 39,§**592**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.64]

43.65 Who nominated. The candidate of each political party for nomination for each office to be filled by the voters of the entire state, and for each seat in the United States house of representatives, the Iowa house of representatives and each seat in the Iowa senate which is to be filled, who receives the highest number of votes cast by the voters of that party for that nomination shall be the candidate of that party for that office in the general election. However, if there are more than two candidates for any nomination and none of the candidates receives thirty-five percent or more of the votes cast by voters of that party for that nomination, the primary is inconclusive and the nomination shall be made as provided by section 43.78, subsection 1, paragraph *"a"*, *"b"* or *"c"*, whichever is appropriate. [S13, §1087-a22; C24, 27, 31, 35, 39,§**593**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.65; 66GA, ch 81,§20]

Referred to in §§43.66, 43.77
Nomination by convention, §§43.101, 43.109

43.66 Write-in candidates. The fact that the candidate who receives the highest number of votes cast for any party's nomination for an office to which section 43.52 or 43.65 is applicable is a person whose name was not printed on the official primary election ballot shall not affect the validity of the person's nomination as a candidate for that office in the general election. However, if there is no candidate on the official primary ballot of a political party for nomination to a particular office, a write-in candidate may obtain the party's nomination to that office in the primary if the candidate receives a number of votes equal to at least thirty-five percent of the total vote cast for all of that party's candidates for that office in the last preceding primary election for which the party had candidates on the ballot for that office. When two or more nominees are required, the division procedure prescribed in section 43.52 shall be applied to establish the minimum number of write-in votes necessary for nomination. If the primary is inconclusive, the necessary nominations shall be made in accordance with section 43.78, subsection 1. [S13,§§1087-a25,-a26; C24, 27, 31, 35, 39,§§**594, 625, 643**; C46, 50, 54, 58, 62, 66, 71, 73,§§43.66, 43.98, 43.106; C75,§43.66; 66GA, ch 81, §21]

43.67 Nominee's right to place on ballot. Each candidate so nominated shall be entitled to have his or her name printed on the official ballot to be voted at the general election without other certificate, except that a candidate whose name was not printed on the official pri-

mary election ballot must execute and deliver to the commissioner or the state commissioner, as the case may be, an affidavit in substantially the following form:

"I, ..., being duly sworn, say that I reside at ..... street, city of ....., county of ....., in the state of Iowa; that I am a candidate for election to the office of ..... at the election to be held on ....., as the candidate of the ..... (name of political party) and hereby request that my name be so printed upon the official ballot for that election as provided by law. I furthermore declare that I am eligible to the office for which I am a candidate and that if I am elected I will qualify as such officer.

I am aware that I am required to organize a candidate's committee which shall file an organization statement and disclosure reports if it receives contributions, makes expenditures, or incurs indebtedness in excess of one hundred dollars for the purpose of supporting my candidacy for public office.

.....
(Signed)

Subscribed and sworn to (or affirmed) before me by ..... on this ..... day of ....., 19.....

.....
(Name)

....."
(Official title)

Each candidate required to execute the foregoing affidavit shall be so notified by the commissioner immediately upon completion of the canvass held under section 43.49, or by the state commissioner immediately upon completion of the canvass held under section 43.63 as the case may be. If the candidate does not execute and deliver the affidavit by five o'clock p.m. on the seventh day following completion of such canvass, the commissioner or state commissioner shall not cause that candidate's name to be placed upon the official general election ballot. [S13,§1087-a22; C24, 27, 31, 35, 39,§595; C46, 50, 54, 58, 62, 66, 71, 73, 75, §43.67; 66GA, HF 1011,§6]

43.68 Certified list of nominees. The state board of canvassers shall prepare and certify separate lists of the candidates nominated by each party, as shown by the state canvass, and deliver to the chairman of each party central committee for the state a copy of the list of candidates nominated by the party which said chairman represents. [S13,§1087-a22; C24, 27, 31, 35, 39,§596; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.68]

43.69 Certificates in case of failure to nominate. Said state board shall, at once after completing its canvass, prepare separate certificates for each political party as to each office for which no candidate was nominated by such party. Such certificates shall show the names of the several candidates for each of these offices who were voted for at the primary election and the number of votes received by each of said candidates. These certificates shall be sent to the respective chairpersons of the state central committee of each political party. [S13,§1087-a22; C24, 27, 31, 35, 39,§§597, 598; C46, 50, 54, 58, 62, 66, 71, 73,§43.69; C75,§§43.69, 43.70; 66GA, ch 81,§22]

43.70 Repealed by 66GA, ch 81,§154.

43.71 Messenger sent for abstracts. If returns of abstracts have not been received by the state canvassing board from all the counties by the time fixed for the state canvass, the state commissioner shall immediately send a messenger after the missing abstracts, and the board may adjourn from time to time until the abstracts are received. [S13,§1087-a22; C24, 27, 31, 35, 39,§599; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.71]

43.72 State returns filed and recorded. When the canvass is concluded, the board shall deliver the original abstract returns to the state commissioner, who shall file the same in his office and record the abstracts of the canvass of the state board and certificates attached thereto in the book kept by him known as the election book. [S13,§1087-a23; C24, 27, 31, 35, 39,§600; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.72]

43.73 State commissioner to certify nominees. Not less than fifty-five days before the general election the state commissioner shall certify to each commissioner, under separate party headings, the name of each person nominated as shown by the official canvass made by the executive council, or as certified to him by the proper persons when any person has been nominated by a convention or by a party committee, or by petition, the office to which he is nominated, and the order in which the tickets of the several political parties shall appear on the official ballot.

The state commissioner shall similarly certify to the appropriate commissioner or commissioners at the earliest practicable time the names of nominees for a special election, called under section 69.14, submitted to the state commissioner pursuant to section 43.78, subsection 4. [C97,§1105; S13,§1087-a23; SS15,§1105; C24, 27, 31, 35, 39,§§601, 602; C46, 50, 54, 58, 62, 66, 71, 73,§43.73; C75,§§43.73, 43.74; 66GA, HF 1011,§7]

Referred to in §49.37

43.74 Repealed by 66GA, ch 81,§154.

43.75 Tie vote. In case of a tie vote resulting in no nomination for any office, the tie shall forthwith be determined by lot by the board of canvassers. [S13,§1087-a24; C24, 27, 31, 35, 39,§603; C46, 50, 54, 58, 62, 66, 71, 73, 75, §43.75]

43.76 Withdrawal of nominated candidates.

1. A candidate nominated in a primary election for any office for which nomination papers are required to be filed with the state commissioner may withdraw as a nominee for that office on or before, but not later than, the

seventy-fifth day prior to the date of the general election by so notifying the state commissioner in writing.

2. A candidate nominated in a primary election for any office for which nomination papers are required to be filed with the commissioner may withdraw as a nominee for that office on or before, but not later than, the sixtieth day prior to the date of the general election by so notifying the commissioner in writing. [C66, 71, 73, 75,§43.59(2); 66GA, ch 81,§23]

Referred to in §43.77
See §44.9

43.77 What constitutes a ballot vacancy. A vacancy on the general election ballot exists when any political party lacks a candidate for an office to be filled at the general election because:

1. No person filed under section 43.11 as a candidate for the party's nomination for that office in the primary election, or all persons who filed under section 43.11 as candidates for the party's nomination for that office in the primary election subsequently withdrew as candidates, were found to lack the requisite qualifications for the office or died before the date of the primary election, and no candidate received a sufficient number of write-in votes to be nominated.

2. The primary election was inconclusive as to that office because no candidate for the party's nomination for that office received the number of votes required by section 43.52, 43.53 or 43.65, whichever is applicable.

3. The person nominated in the primary election as the party's candidate for that office subsequently withdrew as permitted by section 43.76 was found to lack the requisite qualifications for the office, or died, at a time not later than the seventy-fifth day before the date of the general election in the case of an office for which nomination papers must be filed with the state commissioner and not later than the sixtieth day before the date of the general election in the case of an office for which nomination papers must be filed with the county commissioner.

4. A vacancy has occurred in the office of senator in the congress of the United States, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture or attorney general, under the circumstances described in section 69.13, subsection 1, less than seventy-five days before the primary election and not less than seventy-five days before the general election, or in the office of county supervisor or any of the offices listed in section 39.17, under the circumstances described in section 69.13, subsection 2, less than sixty days before the primary election and not less than sixty days before the general election. [S13,§§1087-a24–1087-a27; C24, 27, 31, 35, 39,§§611, 624, 628, 633, 636, 637; C46, 50, 54, 58, 62, 66, 71, 73,§§43.84, 43.97, 43.101, 43.106, 43.109, 43.110; C75,§§43.84, 43.97, 43.101, 43.109, 43,110; 66GA ch 81,§24]

43.78 Filling ballot vacancies.

1. A vacancy on the general election ballot may be filled by the political party in whose ticket the vacancy exists, as follows:

a. For senator in the Congress of the United States or any office listed in section 39.9, by the party's state convention, which may be reconvened by the state party chairperson if the vacancy occurs after the convention has been held or too late to be filled at the time it is held. However, a vacancy so occurring with respect to the offices of secretary of state, auditor of state, treasurer of state or secretary of agriculture may be filled by the party's state central committee in lieu of reconvening the state convention.

b. For representative in the Congress of the United States, by the party's congressional district convention, which may be convened or reconvened as appropriate by the state party chairperson.

c. For senator or representative in the general assembly, by the party precinct committee members whose precincts lie within the senatorial or representative district involved, who shall be convened or reconvened as appropriate by the state party chairperson. The party's state constitution or bylaws may allow the voting strength of each precinct represented at such a convention to be made proportionate to the vote cast for the party's candidate for the office in question in the respective precincts at the last general election for that office.

d. For any office to be filled by the voters of an entire county, by the party's county convention, which may be reconvened by the county party chairperson if the vacancy occurs after the convention has been held or too late to be filled at the time it is held.

e. For the office of county supervisor elected by the voters of a district within the county, by the delegates to the party's county convention who represent the precincts lying within that district, who shall be convened or reconvened as appropriate by the county party chairperson.

f. For any other partisan office filled by the voters of a subdivision of a county, by those members of the party's county central committee who represent the precincts lying within that district, who shall be convened or reconvened as appropriate by the county party chairperson. However this paragraph shall not apply to partisan city offices in special charter cities for which candidates are nominated under this chapter, but such ballot vacancies shall be filled as provided by section 43.116.

2. The name of any candidate designated to fill a vacancy on the general election ballot in accordance with subsection 1, paragraph *"a"*, *"b"* or *"c"* shall be submitted in writing to the state commissioner not later than five o'clock p.m. on the sixty-seventh day prior to the date of the general election.

3. The name of any candidate designated to fill a vacancy on the general election ballot in accordance with subsection 1, paragraph *"d"*, *"e"*, *or "f"* shall be submitted in writing to the commissioner not later than five o'clock p.m. on the fifty-fifth day prior to the date of the general election.

4. Political party candidates for a vacant seat in the United States house of representatives or the general assembly which is to be filled at a special election called pursuant to section 69.14 shall be nominated in the manner provided by subsection 1 of this section for filling a vacancy on the general election ballot for the same office. The name of any candidate so nominated shall be submitted in writing to the state commissioner, as required by section 43.88, at the earliest practicable time. [S13,§§1087-a24–1087-a27; C24, 27, 31, 35, 39, §§**604–607, 608, 609, 611, 614, 624, 633, 636, 637**; C46, 50, 54, 58, 62, 66, 71, 73, §§43.76–43.79, 43.81, 43.82, 43.84, 43.87, 43.97, 43.101, 43.106, 43.109, 43.110; C75,§§43.76–43.79, 43.81, 43.82, 43.84, 43.87, 43.97, 43.101, 43.109, 43.110; 66GA, ch 81,§25; HF 1011,§§8, 9, 76, ch 1080,§1]

Referred to in §§43.52, 43.65, 43.66, 43.73, 49.58
See §§69.8(1) and 69.13 for filling vacancies

43.79 Death of candidate after time for withdrawal. The death of a candidate nominated as provided by law for any office to be filled at a general election, during the period beginning on the seventy-fourth day before the general election, in the case of any candidate whose nomination papers were filed with the state commissioner, or beginning on the fifty-ninth day before the general election, in the case of any candidate whose nomination papers were filed with the commissioner, and ending on the last day before the general election shall not operate to remove the deceased candidate's name from the general election ballot. If the deceased candidate was seeking the office of senator or representative in the Congress of the United States, governor, lieutenant governor, attorney general, senator or representative in the general assembly or county supervisor, section 49.58 shall control. If the deceased candidate was seeking any other office, and as a result of the candidate's death a vacancy is subsequently found to exist, the vacancy shall be filled as provided by chapter 69. [S13,§1087-a24a; C24, 27, 31, 35, 39,§**607**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.79; 66GA, ch 81,§26]

43.80 Vacancies in nominations of presidential electors. Vacancies in nominations of presidential electors shall be filled by the party central committee for the state. The party central committee may at any time nominate alternate presidential electors to serve if the nominated or elected presidential electors are for any reason unable to perform their duties. [C31, 35,§607-c1; C39,§**607.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.80; 66GA, ch 81,§27]

43.81 and 43.82 Repealed by 66GA, ch 81, §154.

43.83 Vacancies in office of congressman. A candidate to be voted on at a special election occasioned by a vacancy in the office of United States representative, shall be nominated by a convention duly called by the district central committee not less than twenty-five days prior to the date set for the special election. [S13,§1087-a24; C24, 27, 31, 35, 39,§**610**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.83]

43.84 Repealed by 66GA, ch 81,§154.

43.85 County convention reconvened. When a nomination is directed to be made by a district convention composed of more than one county, and the county convention in any county of the district has adjourned without selecting delegates to such convention, the county convention shall be reconvened for the purpose of making such selection. [C24, 27, 31, 35, 39,§**612**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §43.85]

43.86 and 43.87 Repealed by 66GA, ch 81, §154.

43.88 Certification of nominations. Nominations made by state, district, and county conventions, shall, under the name, place of residence, and post-office address of the nominee, and the office to which he is nominated, and the name of the political party making the nomination, be forthwith certified to the proper officer by the chairman and secretary of the convention, or by the committee, as the case may be, and if such certificate is received in time, the names of such nominees shall be printed on the official ballot the same as if the nomination had been made in the primary election.

Nominations made to fill vacancies at a special election shall be certified to the proper official not less than twenty days prior to the date set for the special election. In the event the special election is to fill a vacancy in the general assembly while it is in session or within forty-five days of the convening of any session, the time limit herein provided shall not apply. [S13,§1087-a24; C24, 27, 31, 35, 39,§**615**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.88]

Referred to in §43.78

43.89 Repealed by 61GA, ch 89,§15.

43.90 Delegates. The county convention shall be composed of delegates elected at the last preceding precinct caucus. Delegates shall be persons who are or will by the date of the next general election become eligible electors and who are residents of the precinct. The number of delegates from each voting precinct shall be determined by a ratio adopted by the respective party county central committees, and a statement designating the number from each voting precinct in the county shall be filed by such committee not later than the time the list of precinct caucus meeting places required by section 43.4 is filed in the office of the commissioner. If the required statement is not filed, the commissioner shall fix the num-

ber of delegates from each voting precinct. [S13,§1087-a25; C24, 27, 31, 35, 39,§**617**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.90; 66GA, HF 1011, §10]

43.91 Voter at caucus must be precinct resident. Any person voting at a precinct caucus must be a person who is or will by the date of the next general election become an eligible elector and who is a resident of the precinct. A list of the names and addresses of each person to whom a ballot was delivered or who was allowed to vote in each precinct caucus shall be prepared by the caucus chairman and secretary who shall certify such list to the commissioner at the same time as the names of those elected as delegates and party committeemen are so certified. [C66, 71, 73, 75,§43.91]

43.92 Date of caucus published. The date, time, and place of each precinct caucus of a political party shall be published at least twice in at least one newspaper of general circulation in the precinct. Such publication shall be made not more than thirty days and not less than five days before the date of the caucus. Such publication shall also state in substance that each voter affiliated with the specified political party may attend the precinct caucus. Publication in a news item or advertisement in such newspaper shall constitute publication for the purposes of this section. The cost of such publication, if any, shall be paid by the political party. [C66, 71, 73, 75,§43.92]

43.93 Place of holding caucus. Each precinct caucus shall be held in a building which is publicly owned or is suitable for and from time to time made available for holding public meetings wherever it is possible to do so. [66GA, ch 81,§28]

43.94 Term of office of delegates. The term of office of delegates to the county convention shall begin on the day following their election at the precinct caucus, and shall continue for two years and until their successors are elected. [S13,§1087-a25; C24, 27, 31, 35, 39,§**621**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.94]

43.95 Calling convention to order. When the delegates, or a majority thereof, or when delegates representing a majority of the precincts, thus elected, shall have assembled in the county convention, the convention shall be called to order by the chairman of the county central committee, who shall present the certified list of delegates and members of the county central committee. If the convention is being held after the primary election, the chairman shall also present a list of the offices for which no nomination was made at the primary election by reason of the failure of any candidate for any such office to receive the legally required number of votes cast by such party therefor. [S13,§1087-a25; C24, 27, 31, 35, 39,§**622**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.95]

43.96 Proxies prohibited. If any precinct shall not be fully represented the delegates present from such precinct shall cast the full vote thereof, if the rules of the convention, party bylaws or constitution so permit, and there shall be no proxies. [S13,§1087-a25; C24, 27, 31, 35, 39,§**623**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.96]

43.97 Duties performable by county convention. The said county convention shall:

1. Make nominations to fill vacancies on the general election ballot as provided by law.

2. Transact such other business as required or permitted by the political party's state constitution or bylaws, or the rules of the convention.

3. Elect delegates to the next ensuing regular state convention and to all district conventions of that year upon such ratio of representation as may be determined by the party organization for the state, district or districts of the state, as the case may be. Delegates to district conventions need not be selected in the absence of any apparent reason therefor. Delegates shall be persons who are or will by the date of the next general election become eligible electors and who are residents of the county. [S13,§1087-a25; C24, 27, 31, 35, 39,§**624**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.97; 66GA, ch 81,§29]

Legally required vote, §§43.52, 43.53

43.98 Repealed by 65GA, ch 136,§401.

43.99 Party committee persons. Two members of the county central committee for each political party shall, at the precinct caucuses, be elected from each precinct. The term of office of a member shall begin at the time specified by the party's state constitution or bylaws and shall continue for two years and until his or her successor is elected and qualified, unless sooner removed by the county central committee for inattention to duty or incompetency. The party's state constitution or bylaws may permit the election of additional central committee members from each precinct in a number proportionate to the vote cast for the party's candidates for office in the respective precincts at preceding general elections. [S13,§1087-a25; C24, 27, 31, 35, 39,§**626**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.99; 66GA, ch 81,§30]

43.100 Central committee—duties. The county central committee shall organize within ten days before or after the day of the county convention. Each member elected to the county central committee shall receive written notice at least five days in advance of the time and place of the organizational meeting.

Every county central committee shall adopt a constitution and bylaws which shall govern the committee's operation. A copy of the constitution and bylaws so adopted shall be kept on file at the office of the commissioner for the county in which the central committee exists and at the office of the state commissioner. Amendments to a county central committee's

constitution or bylaws shall upon adoption be filed in the same manner as the original documents.

Vacancies in such committee may be filled by majority vote of the committee, or at a precinct caucus called pursuant to the party's state constitution or bylaws. [S13,§1087-a25; C24, 27, 31, 35, 39,§627; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.100; 66GA, ch 81,§31]

Referred to in §56.2

43.101 District conventions. Each political party may hold a congressional district convention upon the call of the state party chairperson to:

1. Elect or nominate members of the party's state central committee.

2. Make nominations to fill vacancies on the general election ballot as provided by law.

3. Transact such other business as required or permitted by the party's state constitution or bylaws, or the rules of the convention. [S13, §1087-a26; C24, 27, 31, 35, 39,§§628, 633; C46, 50, 54, 58, 62, 66, 71, 73,§§43.101, 43.106; C75,§43.101; 66GA, ch 81,§32]

Legally required vote, §43.65

43.102 Repealed by 66GA, ch 81,§154.

43.103 Duty of county commissioner. The commissioner, in case the district delegates for his county have not been selected, shall deliver a copy of said call to the chairman of the convention which selects said delegates. [S13, §1087-a26; C24, 27, 31, 35, 39,§630; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.103]

43.104 Organization. The organization of a district convention and the procedure therein shall be substantially the same as in the state convention. [S13,§1087-a26; C24, 27, 31, 35, 39, §631; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.104]

Organization, §43.108

43.105 Repealed by 66GA, ch 81,§154.

43.106 Repealed by 65GA, ch 1101,§105.

43.107 State convention. Each political party shall hold a state convention either preceding or following the primary election. The state central committee of each political party shall designate the time and place of the state convention, which shall transact such business as is required or permitted by the party's state constitution or bylaws or by the rules of the convention. [S13,§1087-a27; C24, 27, 31, 35, 39,§634; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.107; 66GA, HF 1011,§11]

Referred to in §43.111

43.108 Organization — proxies prohibited. The convention shall be called to order by the chairperson of the state central committee, or that individual's designee who shall thereupon present a list of delegates, as certified by the various county conventions, and effect a temporary organization. If any county shall not be fully represented, the delegates present from such county shall cast the full vote thereof if the rules of the convention, party bylaws or constitution so allow, and there shall be no proxies. [S13,§1087-a27; C24, 27, 31, 35, 39,§635; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.108; 66GA, ch 81,§33]

Organization of district convention, §43.104

43.109 Nominations authorized. The state convention may make nominations to fill vacancies on the general election ballot as provided by law. [S13,§1087-a27; C24, 27, 31, 35, 39, §636; C46, 50, 54, 58, 62, 66, 71, 73,§43.109; C75, §§43.109, 43.110; 66GA, ch 81,§34]

Legally required vote, §43.65

43.110 Repealed by 66GA, ch 81,§154.

43.111 State party platform, constitution, bylaws and central committee. The state convention held by each political party pursuant to section 43.107 shall adopt a state platform, adopt or amend a state party constitution, and bylaws if desired, and transact other business which may properly be brought before it. A copy of the constitution and any bylaws so adopted or amended shall be kept on file in the office of the state commissioner.

There shall be selected at or prior to each political party's state convention a state party central committee consisting of an equal number of members from each congressional district, which number shall be determined by the party constitution or bylaws, who shall be elected or nominated by the district convention or caucus.

The state central committee so selected may organize at pleasure for political work as is usual and customary with such committees, adopt bylaws, provide for the governing of party auxiliary bodies, and shall continue to act until succeeded by another central committee selected as required by this section. The receipts and disbursements of each political party's state party central committee shall be audited annually by a certified public accountant selected by the state party central committee and the audit report shall be filed with the state commissioner. [S13,§1087-a27; C24, 27, 31, 35, 39,§638; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.111]

Referred to in §56.2

43.112 Nominations in certain cities. This chapter shall, so far as applicable, govern the nominations of candidates by political parties for all offices to be filled by a direct vote of the people in cities acting under a special charter in 1973 and having a population of over fifty thousand, except all such cities as adopt a plan of municipal government which specifically provides for a nonpartisan primary election.

Sections 43.114 to 43.118 shall apply only to cities to which this chapter is made applicable by this section. [S13,§1087-a34; C24, 27, 31, 35, 39,§639; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.112]

Referred to in §§43.114, 43.115, 43.116, 43.117, 376.3
See ch 376

43.113 Repealed by 66GA, ch 81,§154.

43.114 Time of holding special charter city primary. In special charter cities holding a municipal primary election under the provisions of section 43.112 such primary shall be held on the first Tuesday in October of the year in which general municipal elections are held. [S13,§1087-a34; C24, 27, 31, 35, 39,§641; C46, 50,§§43.114, 420.2; C54, 58, 62, 66, 71, 73, 75, §43.114]

Referred to in §§43.112, 43.115, 376.3

43.115 Nomination papers—number of signers. All candidates for nominations to be made in primary elections held pursuant to section 43.112 shall file nomination papers with the city clerk not less than thirty days prior to the date of the election as established by section 43.114, except that candidates for precinct committee member shall file affidavits of candidacy as required by section 420.130. The number of eligible electors signing petitions required for printing the name of a candidate upon the official primary ballot shall be one hundred for an office to be filled by the voters of the entire city and twenty-five for an office to be filled by the voters of a subdivision of the city.

A candidate for precinct committee member may also file as a candidate for one additional office, any statute to the contrary notwithstanding. [S13,§1087-a34; C24, 27, 31, 35, 39,§642; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.115; 66GA, ch 81, §35]

Referred to in §§43.112, 43.116, 376.3

43.116 Ballot vacancies in special charter city elections.

1. A vacancy on the ballot for an election at which city officers are to be chosen, and for which candidates have been nominated under this chapter, exists when any political party lacks a candidate for an office to be filled at that election because:

a. No person filed at the time required by section 43.115 as a candidate for the party's nomination for that office in the city primary election held under section 43.112, or all persons who did so subsequently withdrew as candidates, were found to lack the requisite requirements for the office or died before the date of the city primary election, and no candidate received a number of write-in votes sufficient for nomination under section 43.53; or

b. The person nominated in the city primary election as the party's candidate for that office withdrew by giving written notice to that effect to the city clerk not later than five o'clock p.m. on the day of the canvass of that city primary election.

2. A ballot vacancy as defined by this section may be filled by the city central committee of the party on whose ticket the vacancy exists or, in the case of an officer elected by the voters of a district within the city, by those members of the committee who represent the precincts lying within that district. The name of a candidate so designated to fill such a ballot vacancy shall be submitted in writing to the city clerk not later than five o'clock p.m. on the seventh day following the city primary election. [66GA, HF 1011,§12]

Referred to in §§43.78, 43.112, 376.3

43.117 Plurality vote nominates and elects. A plurality shall nominate the party candidate for all offices filled by elections authorized by section 43.112, and a plurality shall elect the precinct committeemen. [S13,§1087-a34; C24, 27, 31, 35, 39,§644; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.117]

Referred to in §§43.112, 376.3

43.118 Expense. The entire expense of conducting said municipal primary election and preparation of election registers shall be audited by the city council and paid by the city. [S13,§1087-a34; C24, 27, 31, 35, 39,§645; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.118]

Referred to in §§43.112, 376.3

43.119 Misconduct. Any party committeeman or any primary election officer or public officer upon whom a duty is imposed by this chapter or by chapters herein made applicable, who shall willfully neglect to perform any such duty, or who shall willfully perform it in such a way as to hinder the objects thereof, or shall disclose to anyone, except as may be ordered by any court of justice, the manner in which a ballot may have been voted, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not to exceed one year, or by both such fine and imprisonment. [S13,§1087-a31; C24, 27, 31, 35, 39,§646; C46, 50, 54, 58, 62, 66, 71, 73, 75, §43.119]

Applicable section, §43.5

43.120 Bribery—illegal voting. Whoever is guilty of any of the following acts shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than six months, to wit:

1. Offering or giving a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at a primary election.

2. Receiving and accepting such bribe by an elector entitled to vote at any primary election.

3. Making false answers to any of the provisions of this chapter relative to his qualifications and party affiliations.

4. Willfully voting or offering to vote at a primary election by a person who has not met the qualifications to vote.

5. Willfully voting or offering to vote at a primary election by one who knows himself not to be a qualified elector of the precinct where he votes or offers to vote.

6. Violating any provision of this chapter, or any provision of law made applicable to this chapter.

7. Knowingly procuring, aiding, or abetting any violation specified in this section. [S13, §1087-a33; C24, 27, 31, 35, 39,§647; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.120]

Applicable section, §43.5

43.121 Nominations by petition or nonparty organizations. This chapter shall not be construed to prohibit nomination of candidates for office by petition, or by nonparty organizations, as provided in chapters 44 and 45, but no person so nominated shall be permitted to use the name, or any part thereof, of any political party authorized or entitled under this chapter to nominate a ticket by primary vote, or that has nominated a ticket by primary vote under this chapter. [S13,§1087-a29; C24, 27, 31, 35, 39,§648; C46, 50, 54, 58, 62, 66, 71, 73, 75,§43.121; 66GA, ch 81,§36]

Nominations by petition, ch 45

43.122 Repealed by 65GA, ch 136,§401.

CHAPTER 44

NOMINATIONS BY NONPARTY POLITICAL ORGANIZATIONS

Referred to in §§39.3, 43.2, 43.121, 275.35, 277.3, 280A.15, 280A.39, 296.4, 298.18, 353.12, 360.1, 372.2, 376.1, 376.3, 376.6, 376.8

44.1 Political nonparty organizations.
44.2 Nominations certified.
44.3 Certificate.
44.4 Nominations and objections — time and place of filing.
44.5 Notice of objections.
44.6 Hearing before state commissioner.
44.7 Hearing before commissioner.
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44.9 Withdrawals.
44.10 Effect of withdrawal.
44.11 Vacancies filled.
44.12 Insufficient time for convention.
44.13 Certificates in matter of vacancies.
44.14 Filing of certificates.
44.15 Presumption of validity.
44.16 Correction of errors.

44.1 Political nonparty organizations. Any convention or caucus of eligible electors representing a political organization which is not a political party as defined by law, may, for the state, or for any division or municipality thereof, or for any county, or for any subdivision thereof, for which such convention or caucus is held, make one nomination of a candidate for each office to be filled therein at the general election. However, in order to qualify for any nomination made for a state-wide elective office by such a political organization there shall be in attendance at the convention or caucus where the nomination is made a minimum of two hundred fifty eligible electors including at least one eligible elector from each of twenty-five counties. In order to qualify for any nomination to the office of United States representative there shall be in attendance at the convention or caucus where the nomination is made a minimum of fifty eligible electors who are residents of the congressional district including at least one eligible elector from each of at least one-half of the counties of the congressional district. In order to qualify for any nomination to an office to be filled by the voters of a county or of a city there shall be in attendance at the convention or caucus where the nomination is made a minimum of ten eligible electors who are residents of the county or city, as the case may be, including at least one eligible elector from at least one-half of the voting precincts in that county or city. In order to qualify for any nomination made for the general assembly there shall be in attendance at the convention or caucus where the nomination is made a minimum of ten eligible electors who are residents of the representative district or twenty eligible electors who are residents of the senatorial district, as the case may be, with at least one eligible elector from one-half of the voting precincts in the district in each case. The names of all delegates in attendance at such convention or caucus and such fact shall be certified to the state commissioner together with the other certification requirements of this chapter. [C97,§1098; C24,§649; C27, 31, 35,§655-a1; C39,§655.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§44.1]

Referred to in §44.2
Political party defined, §43.2

44.2 Nominations certified. Nominations made under section 44.1 shall be certified by the chairman and secretary of the convention or caucus, who shall enter their place of residence opposite their signatures, and attach to said certificate their affidavit to the effect that the certificate is true. [C97,§1099; C24,§650; C27, 31, 35,§655-a2; C39,§655.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§44.2]

Referred to in §44.3

44.3 Certificate. The certificate required by section 44.2 shall:

1. State the following information:

a. The name of each candidate nominated.

b. The office to which each candidate is nominated.

c. The name of the political organization making such nomination, expressed in not more than five words.

d. The place of residence of each nominee, with the street or number thereof, if any.

e. In case of presidential electors, the names of the candidates for president and vice president shall be added to the name of the organization.

f. The name and address of each member of the organization's executive or central committee.

g. The provisions, if any, made for filling vacancies in nominations.

h. The name and address of each delegate or voter in attendance at a convention or caucus where a nomination is made.

2. Be accompanied by an affidavit executed by the candidate nominated by the convention or caucus, in substantially the following form:

"I, ..., being duly sworn, say that I reside at ..... street, city of ....., county of ....., in the state of Iowa; that I am a candidate for election to the office of ..... at the election to be held on ....., as the candidate of the ..... (name of political organization) and hereby request that my name be so printed upon the official ballot for that election as provided by law. I furthermore declare that I am eligible to the office for which I am a candidate and that if I am elected I will qualify as such officer.

.....
(Signed)

Subscribed and sworn to (or affirmed) before me by ..... on this ..... day of ....., 19....

.....
(Name)

.....
(Official title)"

The affidavit required to be filed under the provisions of this section shall include a statement in substantially the following form:

I am aware that I am required to organize a candidate's committee which shall file an organization statement and disclosure reports if it receives contributions, makes expenditures, or incurs indebtedness in excess of one hundred dollars for the purpose of supporting my candidacy for public office.

[C97,§1099; C24,§650; C27, 31, 35,§655-a3; C39, §**655.03**; C46, 50, 54, 58, 62, 66, 71, 73,§44.3; C75, §§44.3, 56.5(4); 66GA, ch 57,§3, ch 81,§37]

Additional certification, §44.13

44.4 Nominations and objections—time and place of filing. Nominations made under the provisions of this chapter and chapter 45 which are required to be filed in the office of the state commissioner shall be filed in that office not more than eighty-five days nor later than five o'clock p.m. on the sixty-seventh day prior to the date of the general election to be held in November; and those nominations made for a special election called pursuant to section 69.14 shall be filed not less than twenty days prior to the date of an election called upon at least forty days' notice and not less than seven days prior to the date of an election called upon at least ten days' notice. Nominations made pursuant to this chapter and chapter 45 which are required to be filed in the office of the commissioner shall be filed in that office not later than five o'clock p.m. on the fifty-fifth day prior to the date of the general election. Nominations made under this chapter or chapter 45 for city office shall be filed not more than sixty-five days nor later than five o'clock p.m. on the fortieth day prior to the city election with the city clerk, who shall process them as provided by law.

Objection to the legal sufficiency of a certificate of nomination or to the eligibility of a candidate may be filed by any person who would have the right to vote for a candidate for the office in question. Such objections must be filed with the officer with whom such certificate is filed and within the following time:

1. Those filed with the state commissioner, not less than sixty days before the day of election.

2. Those filed with the commissioner, not less than fifty days before the day of election.

3. Those filed with the city clerk, at least thirty days prior to the municipal election.

4. In case of nominations to fill vacancies occurring after the time when an original nomination for any office is required to be filed, objections shall be filed within three days after the filing of the certificate. [C97,§1103; C24, §654; C27, 31, 35,§655-a4; C39,§**655.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§44.4; 66GA, ch 67,§5]

See §45.4

44.5 Notice of objections. When objections are filed notice shall forthwith be given to the candidate affected thereby, addressed to his place of residence as given in the certificate of nomination, stating that objections have been made to said certificate, also stating the time and place such objections will be considered. [C97,§1103; C24,§654; C27, 31, 35,§655-a5; C39,§**655.05**; C46, 50 54, 58, 62, 66, 71, 73, 75,§44.5]

44.6 Hearing before state commissioner. Objections filed with the state commissioner shall be considered by the secretary of state and auditor of state and attorney general, and a majority decision shall be final; but if the objection is to the certificate of nomination of one or more of the above named officers, said officer or officers so objected to shall not pass upon the same, but their places shall be filled, respectively, by the treasurer of state, the governor, and the secretary of agriculture. [C97, §1103; C24,§654; C27, 31, 35,§655-a6; C39,§**655.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§44.6]

44.7 Hearing before commissioner. Objections filed with the commissioner shall be considered by the county auditor, clerk of the district court, and county attorney, and a majority decision shall be final; but if the objection is to the certificate of nomination of one or more of the above named county officers,

said officer or officers so objected to shall not pass upon such objection, but their places shall be filled, respectively, by the county treasurer, the sheriff, and county recorder. [C97,§1103; C24,§654; C27, 31, 35,§655-a7; C39,§**655.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§44.7]

44.8 Hearing before mayor. Objections filed with the city clerk shall be considered by the mayor and clerk and one member of the council chosen by the council by ballot, and a majority decision shall be final; but if the objection is to the certificate of nomination of either of those city officials, he shall not pass upon said objection, but his place shall be filled by a member of the council against whom no such objection exists, chosen as above provided. [C97,§1103; C24,§654; C27, 31, 35,§655-a8; C39,§**655.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§44.8]

44.9 Withdrawals. Any candidate named under this chapter may withdraw his or her nomination by a written request, signed and acknowledged by that person before any officer empowered to take acknowledgment of deeds. Such withdrawal must be filed as follows:

1. In the office of the state commissioner, at least sixty days before the day of election.

2. In the office of the proper commissioner, at least fifty days before the day of the election.

3. In the office of the proper school board secretary or city clerk, at least thirty-five days before the day of a regularly scheduled school or city election.

4. In the office of the state commissioner, in case of a special election to fill vacancies in Congress or the general assembly, not more than:

a. Twenty days after the date on which the governor issues the call for a special election to be held on at least forty days' notice.

b. Five days after the date on which the governor issues the call for a special election to be held on at least ten but less than forty days' notice.

5. In the office of the proper commissioner, school board secretary or city clerk, in case of a special election to fill vacancies, at least twenty-five days before the day of election. [C97,§1101; SS15,§1101; C24,§652; C27, 31, 35, §655-a9; C39,§**655.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§44.9; 66GA, ch 81,§38, HF 1011,§13]

See §§43.76, 45.4, 376.4

44.10 Effect of withdrawal. No name so withdrawn shall be printed on the official ballot under such nomination. [C97,§1101; SS15, §1101; C24,§652; C27, 31, 35,§655-a10; C39,§**655.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§44.10]

See §45.4

44.11 Vacancies filled. If a candidate named under this chapter declines a nomination, or dies before election day, or should any certificate of nomination be held insufficient or inoperative by the officer with whom it is required to be filed, or in case any objection made to any certificate of nomination, or to the eligibility of any candidate therein named, is sustained by the board appointed to determine such questions, the vacancy or vacancies thus occasioned may be filled by the convention, or caucus, or in such manner as such convention or caucus has previously provided. The vacancy or vacancies shall be filled not less than sixty days prior to the election in the case of nominations required to be filed with the state commissioner, not less than fifty days prior to the election in the case of nominations required to be filed with the commissioner, and not less than thirty-five days prior to the election in the case of nominations required to be filed in the office of the school board secretary or city clerk. [C97,§1102; C24, §653; C27, 31, 35,§655-a11; C39,§**655.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§44.11; 66GA, HF 1011, §14]

Referred to in §44.14

44.12 Insufficient time for convention. If the time is insufficient for again holding such convention or caucus, or in case no such previous provisions have been made, such vacancy shall be filled by the regularly elected or appointed executive or central committee of the particular division or district representing the political organization holding such convention, or caucus. [C97,§1102; C24,§653; C27, 31, 35,§655-a12; C39,§**655.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§44.12]

44.13 Certificates in matter of vacancies. The certificates of nominations made to supply such vacancies shall state, in addition to the facts required in an original certificate, the name of the original nominee, the date of his death or declination of nomination, or the fact that the former nomination has been held insufficient or inoperative, and the measures taken in accordance with the above requirements for filling a vacancy, and shall be signed and sworn to by the presiding officer and secretary of the convention, or caucus, or by the chairman and secretary of the committee, as the case may be. [C97,§1102; C24,§653; C27, 31, 35,§655-a13; C39,§**655.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§44.13]

Referred to in §44.14
Original certificates, §44.3

44.14 Filing of certificates. Certificates of nominations made to fill vacancies, as required by section 44.13, shall be filed with the officer designated and at the time required by section 44.11. [C97,§1104; SS15,§1104; C24,§655; C27, 31, 35,§655-a14; C39,§**655.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§44.14; 66GA, ch 81,§39, HF 1011, §15]

44.15 Presumption of validity. Certificates thus filed, and being apparently in conformity with law, shall be regarded as valid, unless objection in writing thereto shall be made, and, under proper regulations, shall be open to public inspection, and preserved by the receiv-

ing officer for not less than six months after the election is held. [C97,§1104; SS15,§1104; C24,§655; C27, 31, 35,§655-a15; C39,§655.15; C46, 50, 54, 58, 62, 66, 71, 73, 75,§44.15]

See §45.4

44.16 Correction of errors. Any error found in such certificate may be corrected by the substitution of another certificate, executed as is required for an original. [C97,§1104; SS15, §1104; C24,§655; C27, 31, 35,§655-a16; C39,§655.16; C46, 50, 54, 58, 62, 66, 71, 73, 75,§44.16]

CHAPTER 45

NOMINATIONS BY PETITION

Referred to in §§39.3, 43.2, 43.121, 44.4, 49.104, 53.23, 275.35, 277.3, 280A.15, 280A.39, 296.4, 298.18, 303B.3, 347.25, 353.12, 360.1, 372.2, 376.1, 376.3, 376.6, 376.8, 467A.5

45.1 Nominations by petition.
45.2 Adding name by petition.
45.3 Preparation of petition and affidavit.
45.4 Filing — presumption—withdrawals—objections.

45.1 Nominations by petition. Nominations for candidates for state offices may be made by nomination paper or papers signed by not less than one thousand eligible electors of the state; for candidates for offices filled by the voters of a county, district or other division by such papers signed by eligible electors residing in the county, district or division equal in number to at least two percent of the total vote received by all candidates for president of the United States or governor, as the case may be, at the last preceding general election in such county, district or division; and for township, city or ward, by such papers signed by not less than twenty-five eligible electors, residents of such township, city or ward. [C97,§1100; C24,§651; C27, 31, 35,§655-a17; C39,§655.17; C46, 50, 54, 58, 62, 66, 71, 73, 75,§45.1]

Referred to in §45.3

45.2 Adding name by petition. The name of a candidate placed upon the ballot by any other method than by petition shall not be added by petition for the same office in the same election. [C97,§1100; C24,§651; C27, 31, 35, §655-a18; C39,§655.18; C46, 50, 54, 58, 62, 66, 71, 73, 75,§45.2; 66GA, ch 81,§40]

Other methods, chs 43, 44

45.3 Preparation of petition and affidavit. Each eligible elector who signs a nominating petition drawn up in accordance with this chapter shall add to the signature his or her residence address and the date of signing. The person whose nomination is proposed by the petition may not sign it. Before the petition is filed, there shall be endorsed upon or attached to it:

1. The affidavit of at least one eligible elector, stating that each of the persons who signed the petition did so voluntarily and is an eligible elector of the state, as defined by section 39.3, who is (or would be, if registered) entitled to vote for the candidate nominated by the petition. The candidate being nominated by the petition may sign the affidavit only if he or she personally circulated the petition. If the affiant also signed the nominating petition, that signature shall not be counted toward the total required by section 45.1.

2. An affidavit executed by that candidate, in substantially the following form:

"I, ..., being duly sworn, say that I reside at ..... street, city of ....., county of ....., in the state of Iowa; that I am a candidate for election to the office of ....., at the election to be held on ....., and hereby request that my name be printed upon the official ballot for that election as provided by law. I furthermore declare that I am eligible to the office for which I am a candidate and that if I am elected I will qualify as such officer.

.....
(Signed)

Subscribed and sworn to (or affirmed) before me by ..... on this ..... day of ....., 19.....

.....
(Name)

.....
(Official title)"

The affidavit required to be filed under the provisions of this section shall include a statement in substantially the following form:

I am aware that I am required to organize a candidate's committee which shall file an organization statement and disclosure reports if it receives contributions, makes expenditures, or incurs indebtedness in excess of one hundred dollars for the purpose of supporting my candidacy for public office. [C97,§1100; C24, §651; C27, 31, 35,§655-a19; C39,§655.19; C46, 50, 54, 58, 62, 66, 71, 73,§45.3; C75,§§45.3, 56.5(4); 66GA, ch 57,§4, ch 81,§41; HF 1011,§16]

Referred to in §376.11

45.4 Filing — presumption — withdrawals —objections. The time and place of filing nomination petitions, the presumption of validity thereof, the right of a candidate so nominated to withdraw and the effect of such withdrawal, and the right to object to the legal sufficiency

of such petitions, or to the eligibility of the candidate, shall be governed by the law relating to nominations by political organizations which are not political parties. [C97,§1104; SS15,§1104; C24,§§652, 654, 655; C27, 31, 35,§655-a20; C39,§655.20; C46, 50, 54, 58, 62, 66, 71, 73, 75,§45.4]

Statutes applicable, ch 44

CHAPTER 46

NOMINATION AND ELECTION OF JUDGES

Referred to in §§275.35, 277.3, 280A.15, 280A.39, 296.4, 298.18, 353.12, 360.1, 372.2, 376.1, 602.18(10), 684.43

46.1 Appointment of state judicial nominating commissioners.
46.2 Election of state judicial nominating commissioners.
46.3 Appointment of district judicial nominating commissioners.
46.4 Election of district judicial nominating commissioners.
46.5 Vacancies.
46.6 Equal seniority.
46.7 Eligibility to vote.
46.8 Bar registration.
46.9 Conduct of elections.
46.10 Nomination of elective nominating commissioners.
46.11 Certification of commissioners.
46.12 Notification of vacancy and resignation.
46.13 Notice of meetings.
46.14 Nomination.
46.15 Appointments to be from nominees.
46.16 Terms of judges.
46.17 Time of judicial election.
46.18 Eligibility of voters.
46.19 Election registers.
46.20 Declaration of candidacy.
46.21 Conduct of elections.
46.22 Voting.
46.23 General election and absent voter laws.
46.24 Results of election.
46.25 Eligible elector defined.

46.1 Appointment of state judicial nominating commissioners. The governor shall appoint, subject to confirmation by the senate, one eligible elector of each congressional district to the state judicial nominating commission for a six-year term beginning July 1. The terms of no more than three nor less than two of such members shall expire within the same two-year period. The governor shall within thirty days following the organization of each regular session of the general assembly, appoint for a like term, with approval of the senate, a successor to the member of the commission from a congressional district whose term of office will expire June 30 following. [C66, 71, 73, 75,§46.1]

46.2 Election of state judicial nominating commissioners. The resident members of the bar of each congressional district shall elect one eligible elector of such district to the state judicial nominating commission for a six-year term beginning July 1. The terms of no more than three nor less than two of such members shall expire within the same two-year period, the expiration dates being governed by the expiration dates of the terms of the original appointive members. The members of the bar of the respective congressional districts shall in January, immediately preceding the expiration of the term of a member of the commission, elect a successor for a like term. [C66, 71, 73, 75,§46.2]

46.3 Appointment of district judicial nominating commissioners. In January 1972 the governor shall appoint five eligible electors of each judicial election district to the district judicial nominating commission for terms commencing February 1, 1972. He shall appoint two such commissioners to serve until January 31, 1974, two to serve until January 31, 1976, and one to serve until January 31, 1978. In the month of January when each of those terms expires and every six years thereafter the governor shall appoint district judicial nominating commissioners for six-year terms. [C66, 71, 73, 75,§46.3]

46.4 Election of district judicial nominating commissioners. In January 1972 the resident members of the bar of each judicial election district shall elect five eligible electors of the district to the district judicial nominating commission for terms commencing February 1, 1972. One of such commissioners shall serve until January 31, 1974, two until January 31, 1976, and two until January 31, 1978, as determined by lot by such commissioners. In the month of January when each of those terms expires and every six years thereafter such members of the bar of the respective judicial election districts shall elect district nominating commissioners for six-year terms. [C66, 71, 73, 75,§46.4]

46.5 Vacancies. When a vacancy occurs in the office of appointive judicial nominating commissioner, the chairman of the particular commission shall promptly notify the governor in writing of such fact. Vacancies in the office of appointive judicial nominating commissioner shall be filled by appointment by the governor. The term of state judicial nominating commissioners so appointed shall commence upon their appointment pending confirmation

by the senate at the then session of the general assembly or at its next session if it is not then in session. The term of district judicial nominating commissioners so appointed shall commence upon their appointment.

Except where the term has less than ninety days remaining, vacancies in the office of elective member of the state judicial nominating commission shall be filled by a special election within the congressional district where the vacancy occurs, such election to be conducted as provided in sections 46.9 and 46.10.

Vacancies in the office of elective judicial nominating commissioner of district judicial nominating commissions shall be filled by majority vote of the authorized number of elective members of the particular commission, at a meeting of such members called in the manner provided in section 46.13. The term of judicial nominating commissioners so chosen shall commence upon their selection.

If a vacancy occurs in the office of chairman of a judicial nominating commission, or in the absence of the chairman, the members of the particular commission shall elect a temporary chairman from their own number. [C66, 71, 73, 75,§46.5]

Referred to in §46.9

46.6 Equal seniority. If the judges of longest service (other than the chief justice) of the supreme court or of the district court in a district are of equal service, the eldest of such judges shall be chairman of the particular judicial nominating commission. [C66, 71, 73, 75,§46.6]

46.7 Eligibility to vote. To be eligible to vote in elections of judicial nominating commissioners, a member of the bar must have registered in writing with the clerk of the district court of the county of his residence at the last bar registration preceding such election. A judge who has been admitted to the bar of the state of Iowa shall be considered a member of the bar. [C66, 71, 73, 75,§46.7]

Referred to in §602.45

46.8 Bar registration. A book known as the bar register shall be maintained in each county in the office of the clerk of the district court. Where there are two county seats in a county, the bar register shall be maintained at the more populous county seat. In the first week of May of each odd-numbered year the clerk of the supreme court shall by mail direct each clerk of the district court maintaining a bar register to publish and post the notice hereafter prescribed, but failure of such a clerk of the district court to give the notice shall not invalidate an election of judicial nominating commissioners thereafter held. In May of each odd-numbered year each such clerk of the district court shall post in his office and publish once in an official newspaper in his county a notice substantially as follows:

"NOTICE TO THE BAR

..... County, Iowa

Each member of the bar of the State of Iowa residing in this county is notified to register in writing his name, address, and year of admission to the Iowa bar, in the office of the undersigned in May, 19...., to be eligible to vote in elections of judicial nominating commissioners.

.....
(Name of Clerk)
Clerk of District Court"

On June 1 of each odd-numbered year, each such clerk of the district court shall certify to the clerk of the supreme court the names, addresses, and years of admission of the members of the bar who registered during the preceding month. The clerk of the supreme court shall promptly ascertain from his record of admissions whether the individuals so certified are members of the bar of the state of Iowa and shall delete from the certified list any who are not. [C66, 71, 73, 75,§46.8]

Referred to in §602.45

46.9 Conduct of elections. When an election of judicial nominating commissioners is to be held, the clerk of the supreme court shall cause ballots to be mailed in accordance with the current certified list of resident members of the bar to such members of the proper districts, substantially as follows:

Iowa State (or Iowa .....Judicial District)
Judicial Nominating Commission

BALLOT

To be cast by the resident members of the bar of the ..... Congressional (or Judicial) District of Iowa.

Vote for (state number) for Iowa State (or Iowa ..... Judicial District) judicial nominating commissioner(s) for term commencing .....

☐ JOHN DOE
☐ RICHARD ROE
☐ .....
☐ .....

To be counted, this ballot must be completed and mailed or delivered to Clerk of the Supreme Court of Iowa, Des Moines, Iowa, not later than January 31, 19.... (or the appropriate date under section 46.5 in case of an election to fill a vacancy).

DESTROY BALLOT IF NOT USED

The elector receiving the most votes shall be elected. When more than one commissioner is to be elected, the electors receiving the most votes shall be elected, in the same number as the offices to be filled.

The ballot must be completed and mailed or delivered to the clerk of the supreme court prior to expiration of the period within which the election must be held.

The ballots shall be counted under the direction of the clerk of the supreme court. [C66, 71, 73, 75,§46.9]

Referred to in §46.5

46.10 Nomination of elective nominating commissioners. In order to have his name printed on the ballot for state or district judicial nominating commissioner, an eligible elector must file in the office of the clerk of the supreme court at least thirty days prior to expiration of the period within which the election must be held a nominating petition signed by at least fifty resident members of the bar of the congressional district in case of a candidate for state judicial nominating commissioner, or at least ten resident members of the bar of the judicial district in case of a candidate for district judicial nominating commissioner. No member of the bar may sign more nominating petitions for state or district judicial nominating commissioner than there are such commissioners to be elected.

Ballots for state and district judicial nominating commissioners shall contain blank lines equal to the number of such commissioners to be elected, where names may be written in. [C66, 71, 73, 75,§46.10]

Referred to in §46.5

46.11 Certification of commissioners. The governor and the clerk of the supreme court respectively shall promptly certify the names and addresses of appointive and elective judicial nominating commissioners to the state commissioner of elections and the chairman of the respective nominating commissions. [C66, 71, 73, 75,§46.11]

46.12 Notification of vacancy and resignation. When a vacancy occurs or will occur within sixty days in the supreme court, the court of appeals or district court, the state commissioner of elections shall forthwith so notify the chairman of the proper judicial nominating commission. The chairman shall call a meeting of the commission within ten days after such notice; if he fails to do so, the chief justice shall call such meeting.

When a judge of the supreme court, court of appeals or district court resigns, he shall submit a copy of his resignation to the state commissioner of elections at the time he submits his resignation to the governor; and when a judge of the supreme court, court of appeals or district court dies, the clerk of district court of the county of his residence shall in writing forthwith notify the state commissioner of elections of such fact. [C66, 71, 73, 75,§46.12; 66GA, ch 1241,§37]

Vacancies in initial court of appeals, see 66GA, ch 1241, §37

46.13 Notice of meetings. The chairman of each judicial nominating commission shall give the members of the commission at least five days' written notice by mail of the time and place of every meeting, except as to members who execute written waivers of notice at or before the meeting or unless the commission at its next previous meeting designated the time and place of the meeting. [C66, 71, 73, 75,§46.13]

Referred to in §46.5

46.14 Nomination. Each judicial nominating commission shall carefully consider the individuals available for judge, and within sixty days after receiving notice of a vacancy shall certify to the governor and the chief justice the proper number of nominees, in alphabetical order. Such nominees shall be chosen by the affirmative vote of a majority of the full statutory number of commissioners upon the basis of their qualifications and without regard to political affiliation. Nominees shall be members of the bar of Iowa, shall be residents of the state or district of the court to which they are nominated, and shall be of such age that they will be able to serve an initial and one regular term of office to which they are nominated before reaching the age of seventy-two years. No person shall be eligible for nomination by a commission as judge during the term for which he was elected or appointed to that commission. Absence of a commissioner or vacancy upon the commission shall not invalidate a nomination. The chairman of the commission shall promptly certify the names of the nominees, in alphabetical order, to the governor and the chief justice. [C66, 71, 73, 75,§46.14]

46.15 Appointments to be from nominees. All appointments to the supreme court and court of appeals shall be made from the nominees of the state judicial nominating commission, and all appointments to the district court shall be made from the nominees of the district judicial nominating commission. Nominees to the court of appeals shall have the qualifications prescribed for nominees to the supreme court.

Vacancies in the court of appeals shall be filled by appointment by the governor from a list of nominees submitted by the state judicial nominating commission. Three nominees shall be submitted for each vacancy. If the governor fails to make an appointment within thirty days after a list of nominees has been submitted, the appointment shall be made from the list of nominees by the chief justice of the supreme court. [C66, 71, 73, 75,§46.15; 66GA, ch 1241,§38]

46.16 Terms of judges. Subject to the provisions of sections 605.24 and 605.25 and to removal for cause:

1. The initial term of office of judges of the supreme court, court of appeals and district court shall be for one year after appointment and until January 1 following the next judicial election after expiration of such year; and

2. The regular term of office of judges of the supreme court retained at a judicial election shall be eight years, and of judges of the court of appeals and district court so retained shall be six years, from the expiration of their initial or previous regular term as the case may be.

For the purpose of initial appointments to the court of appeals, two of the judges appointed shall serve an irregular term ending

December 30 of the fourth year after expiration of the initial term prescribed in subsection 1 and two of the judges appointed shall serve an irregular term ending December 30 of the fifth year after expiration of the initial term prescribed in subsection 1. Expiration of irregular terms shall be deemed expiration of regular terms for all purposes. [C66, 71, 73, 75, §46.16; 66GA, ch 1241,§39]

Referred to in §684.43

46.17 Time of judicial election. Judicial elections shall be held at the time of the general election. [C66, 71, 73, 75,§46.17]

Referred to in §602.29

46.18 Eligibility of voters. Electors entitled to vote at the general election shall be entitled to vote at the judicial election. All voting procedures provided by chapter 53 for absent voting by armed forces in general elections shall be applicable to judicial elections. [C66, 71, 73, 75,§46.18]

Referred to in §602.29

46.19 Election registers. The election registers used for the general election shall also constitute the election registers for the judicial election. [C66, 71, 73, 75,§46.19]

Referred to in §602.29

46.20 Declaration of candidacy. At least ninety days prior to the judicial election preceding expiration of his or her initial or regular term of office, a judge of the supreme court, court of appeals or district court including district associate judges may file a declaration of candidacy with the state commissioner of elections, whereupon such judge shall stand for retention or rejection at that election. If a judge fails to file such declaration, his or her office shall be vacant at the end of his or her term. District associate judges filing such a declaration shall stand for retention in the county of their residence. [C66, 71, 73, 75, §46.20; 66GA, ch 1241,§40]

Referred to in §602.29

46.21 Conduct of elections. At least fifty-five days prior to each judicial election, the state commissioner of elections shall certify to the county commissioner of elections of each county a list of the judges of the supreme court, court of appeals and district court including district associate judges to be voted on in such county at that election. The county commissioner of elections shall place the names upon the ballot in the order in which they appear in the certificate, unless only one county is voting thereon. The state commissioner of elections shall rotate the names in the certificate by county, or the county commissioner of elections shall rotate them upon the ballot by precinct if only one county is voting thereon. The names of all judges to be voted on shall be placed upon one ballot, which shall be in substantially the following form:

STATE OF IOWA
JUDICIAL BALLOT
(Date)

VOTE ON ALL NAMES BY PLACING AN X IN THE APPROPRIATE BOX AFTER EACH NAME.

SUPREME COURT

Shall the following judges of the Supreme Court be retained in office?

JOHN DOE	YES ☐	NO ☐
RICHARD ROE	YES ☐	NO ☐

COURT OF APPEALS

Shall the following judges of the Court of Appeals be retained in office?

JOHN DOE	YES ☐	NO ☐
RICHARD ROE	YES ☐	NO ☐

DISTRICT COURT

Shall the following judge or associate judge of the District Court be retained in office?

JOHN SMITH	YES ☐	NO ☐

[C66, 71, 73, 75,§46.21; 66GA, ch 1241,§41]

Referred to in §602.29
Voting mark generally, see §49.92

46.22 Voting. Voting at judicial elections shall be by separate paper ballot or by voting machine in the space provided for public measures. If paper ballots are used the election judges shall offer a ballot to each voter. Separate ballot boxes for the general election ballots and the judicial election ballots shall not be required. The general election ballot and the judicial election ballot may be voted in the same voting booth. [C66, 71, 73, 75,§46.22]

Referred to in §§49.30, 602.29

46.23 General election and absent voter laws. So far as applicable general election and absent voter laws shall apply to judicial elections. An application for an absent voter ballot for a general election shall also constitute an application for an absent voter ballot for a judicial election to be held at the same time, and the ballots shall be mailed or delivered to the voter together. The sealed envelope transmitted by the absent voter to the county commissioner of elections containing the absent voter general election ballot may also contain the judicial election ballot. [C66, 71, 73, 75, §46.23]

Referred to in §602.29

46.24 Results of election. A judge of the supreme court, court of appeals, or district court including a district associate judge must receive more affirmative than negative votes to be retained in office. When the poll is closed, the election judges shall publicly canvass the vote forthwith. The board of supervisors shall canvass the returns at its meeting on Monday after the election, and shall promptly certify the number of affirmative and negative votes on each judge to the state commissioner of elections.

The state board of canvassers shall, at the time of canvassing the vote cast at a general election, open and canvass all of the returns for the judicial election. Each judge of the supreme court, court of appeals or district

court including a district associate judge who has received more affirmative than negative votes shall receive from the state board of canvassers an appropriate certificate so stating. [C66, 71, 73, 75,§46.24; 66GA, ch 1241,§42]

Referred to in §602.29
Constitutionality, 60GA, ch 80,§28

46.25 Eligible elector defined. As used in this chapter, the term "eligible elector" has the meaning assigned that term by section 39.3. [C75,§46.25]

CHAPTER 47

ELECTION COMMISSIONERS

Chapter applicable to primary elections, §43.5
Referred to in §§39.3, 43.5, 275.35, 277.3, 280A.15, 280A.39, 296.4, 298.18, 353.12, 360.1, 372.2, 376.1

47.1 State commissioner of elections.
47.2 County commissioner of elections.
47.3 Election expenses.
47.4 Voter qualifications.
47.5 Purchasing by competitive bidding.
47.6 Dates for special elections.
47.7 State registrar of voters.
47.8 Voter registration commission—composition—duties.

47.1 State commissioner of elections. The secretary of state is designated as the state commissioner of elections and shall supervise the activities of the county commissioners of elections. There is established within the office of the secretary of state a division of elections which shall be under the direction of the state commissioner of elections. The state commissioner of elections may appoint a person to be in charge of the division of elections who shall perform such duties as may be assigned by the state commissioner of elections. The state commissioner of elections shall prescribe uniform election practices and procedures, shall prescribe the necessary forms required for the conduct of elections, and shall adopt rules, pursuant to chapter 17A, to carry out the provisions of this section. [C71,§49A.6; C73, 75,§47.1; 66GA, ch 81,§42, HF 1011,§17]

Referred to in §39.3
See also 56.5(4)

47.2 County commissioner of elections. The county auditor of each county is designated as the county commissioner of elections in each county. The county commissioner of elections shall conduct voter registration pursuant to chapter 48 and conduct all elections within the county.

When an election is to be held as required by law or is called by a political subdivision of the state and the political subdivision is located in more than one county, the county commissioner of elections of the county having the greatest taxable base within the political subdivision shall conduct that election. The county commissioners of elections of the other counties in which the political subdivision is located shall co-operate with the county commissioner of elections who is conducting the election.

The commissioner may designate as a deputy county commissioner of elections any officer of a political subdivision who is required by law to accept nomination papers filed by candidates for office in that political subdivision, and when so designated that person shall assist the commissioner in administering elections conducted by the commissioner for that subdivision. The designation of a person as a deputy commissioner of elections pursuant to this section, once made, shall continue in effect until the designation is withdrawn by the commissioner. [C73, 75,§47.2; 66GA, ch 81,§43]

Referred to in §§39.3, 49.51, 52.25, 56.4, 277.6, 277.20, 280A.15, 303B.3

47.3 Election expenses. The costs of conducting a special election called by the governor, general election, and the primary election held prior to the general election shall be paid by the county.

The cost of conducting other elections shall be paid by the political subdivision for which the election is held. The costs shall include, but not be limited to, the printing of the ballots and the election register, publication of notices, printing of declaration of eligibility affidavits, compensation for precinct election boards, canvass materials, and the preparation and installation of voting machines. The county commissioner of elections shall certify to the county board of supervisors a statement of cost for an election. The cost shall be assessed by the county board of supervisors against the political subdivision for which the election was held.

Costs of registration and administrative and clerical costs shall not be charged as a part of the election costs.

If voting machines are used in any election, the county commissioner of elections shall not charge any political subdivision of the state a rental fee for the use of any voting machines.

The cost of maintenance of voter registration records and of preparation of election registers and any other voter registration lists

required by the commissioner in the discharge of the duties of that office shall be paid by the county. Administrative and clerical costs, incurred by the registrar in discharging the duties of that office shall be paid by the state. [C97,§1129; S13,§§1129, 2754; SS15,§1087-a5; C24, §§560, 835, 4203; C27,§§560, 718-b18, 4203; C31, 35,§§560, 718-b18, 4216-c15; C39,§§**560, 718.18, 4216.15**; C46, 50, 54, 58, 62, 66, 71,§§43.32, 48.18, 49.118, 277.15; C73,§§43.32, 47.3, 277.15; C75, §47.3; 66GA, HF 1011,§§18, 19, SF 1280,§43]

Referred to in §275.26
For compensation of precinct election officials, see §49.20

47.4 Voter qualifications.

1. Every citizen of the United States of the age of eighteen years or older who is a resident of this state shall be an eligible elector.

2. Every qualified elector of the state shall have only one voting residence.

3. Every citizen of the United States of the age of eighteen or older is presumed to have a residence some place in the United States for the purpose of voting for president and vice president of the United States.

4. A person's residence, for voting purposes only, is the place which he declares is his home with the intent to remain there permanently or for a definite or indefinite or undeterminable length of time.

5. Every eligible elector shall be registered pursuant to the provisions of chapter 48 to qualify to vote in any election.

If a person who meets the above requirements moves to a new residence, within or without the state, and does not meet the voter requirements at his new residence, he may vote at his former precinct in Iowa until he meets the voter requirements of his new residence. However, a person who has moved to a new residence and fails to register to vote at his new residence after becoming eligible to do so shall not thereafter be entitled to vote at his former precinct in Iowa. [**C97**, §2747; C24, 27,§4196; C31, 35,§4216-c12; C39, **§4216.12**; C46, 50, 54, 58, 62, 66,§277.12; C71, §§49A.1-49A.5, 277.12; C73,§§47.4, 277.12; C75, §47.4]

47.5 Purchasing by competitive bidding.

1. The commissioner shall take bids for goods and services which are needed in connection with registration of voters or preparation for or administration of elections and which will be performed or provided by persons who are not employees of the commissioner under the following circumstances:

a. In any case where it is proposed to purchase data processing services. The commissioner shall give the registrar written notice in advance on each occasion when it is proposed to have data processing services, necessary in connection with the administration of elections, performed by any person other than the registrar or an employee of the county. Such notice shall be made at least thirty days prior to publication of the specifications.

b. In the case of arrangements for printing of ballots, where the cost of the printing will exceed five thousand dollars.

c. In all other cases, where the cost of the goods or services to be purchased will exceed one thousand dollars.

d. No bids shall be required for legal services.

2. When it is proposed to purchase any goods or services, other than data processing services, in connection with administration of elections, the commissioner shall publish notice to bidders, including specifications regarding the goods or services to be purchased or a description of the nature and object of the services to be retained, in a newspaper of general circulation in the county not less than fifteen days before the final date for submission of bids. The commissioner shall also file a copy of the bid specifications in the office of the state commissioner for a period of not less than twenty days prior to such final date. When competitive bidding procedures are used, the purchase of goods or services shall be made from the lowest responsible bidder which meets the specifications or description of the services needed or the commissioner may reject all bids and readvertise. In determining the lowest responsible bidder, various factors may be considered, including but not limited to the past performance of the bidder relative to quality of product or service, the past experience of the purchaser in relation to the product or service, the relative quality of products or services, the proposed terms of delivery and the best interest of the county.

3. The procedure for purchasing data processing services in connection with administration of elections shall be the same as prescribed in subsection 2, except that the required copy of the bid specifications shall be filed with the registrar rather than the state commissioner. The specifications for data processing contracts relative to voter registration records shall be specified by the registration commission. The registrar shall, not later than the final date for submission of bids, inform the commissioner in writing whether the state comptroller's data processing facilities are currently capable of furnishing the services the county proposes to purchase, and if so the cost to the county of so obtaining the services as determined in accordance with the standard charges therefor adopted by the registration commission. The commissioner, with approval of the board of supervisors, may reject all bids and enter into an arrangement with the registrar for the services to be furnished by the state. The commissioner may recommend and the board of supervisors may approve purchasing the needed services from the lowest responsible bidder, however if the needed services could be obtained through the registrar at a lower cost, the board shall publish notice twice in a newspaper of general circulation in the county of its intent to accept such bid and of the difference in the amount of the bid

and the cost of purchasing the needed services from the state comptroller's data processing facilities through the registrar. Each contract for the furnishing of data processing services, necessary in connection with the administration of elections, by any person other than the registrar or an employee of the county shall be executed with the contractor by the board of supervisors of the county purchasing the services, but only after the contract has been reviewed and approved by the registration commission. Such contract shall be of not more than one year's duration. Each county exercising the option to purchase such data processing services from a provider other than the registrar shall provide the registrar, at the county's expense, original and updated voter registration lists in a form and at times prescribed by rules promulgated by the registration commission.

4. Any election or registration data or records which may be in the possession of a contractor shall remain the property of the commissioner. Contracts with a private person relating to the maintenance and use of voter registration data, which were properly entered into in compliance with this section and with all other laws relating to bidding on such contracts, shall remain in force only until the most recently negotiated termination date of that contract. A new contract with the same provider may be entered into in accordance with subsection 3. [C75,§47.5; 66GA, HF 1011, §20]

Referred to in §47.7

47.6 Dates for special elections.

1. The governing body of any political subdivision which has authorized a special election to which section 39.2 is applicable shall by written notice inform the commissioner who will be responsible for conducting the election of the proposed date of the special election. If the proposed date of the special election coincides with the date of a regularly scheduled election, the notice shall be given no later than five o'clock p.m. on the last day on which nomination papers may be filed for the regularly scheduled election. Otherwise, the notice shall be given at least thirty days in advance of the date of the proposed special election. Upon receiving the notice, the commissioner shall promptly give written approval of the proposed date unless it appears that the special election, if held on that date, would conflict with a regular election or with another special election previously scheduled for that date.

2. For the purpose of this section, a conflict between two elections exists only when one of the elections would require use of precinct boundaries which differ from those to be used for the other election, or when some but not all of the qualified electors of any precinct would be entitled to vote in one of the elections and all of the qualified electors of the same precinct would be entitled to vote in the other election. Nothing in this subsection shall deny a commissioner discretionary authority to approve holding a special election on the same date as another election, even though the two elections may be defined as being in conflict, if the commissioner concludes that to do so will cause no undue difficulties. [66GA, ch 81,§44; HF 1011,§21]

47.7 State registrar of voters.

1. The senior administrator of data processing services in the office of the state comptroller is designated the state registrar of voters, and shall regulate the preparation, preservation and maintenance of voter registration records, the preparation of precinct election registers for all elections administered by the commissioner of any county, and the preparation of other data on voter registration and participation in elections as shall be requested and purchased at actual cost of preparation and production by a political party or any resident of this state, except as otherwise provided by section 48.5, subsection 2, paragraph *"d"*. The registrar shall maintain a log, which shall be a public record, showing all lists and reports which have been requested or generated or which are capable of being generated by existing programs of the data processing services in the office of the state comptroller.

2. The registrar shall offer to each county in the state the opportunity to arrange for performance of all functions referred to in subsection 1 by the data processing facilities of the state comptroller's office, commencing at the earliest practicable time, at a cost to the county determined in accordance with the standard charges for those services adopted by the registration commission. A county may accept this offer without taking bids under section 47.5.

3. Any county may use its own data processing facilities for voter registration record keeping and utilization functions, if the system design and the form in which the registration records are kept conform to specifications established by rules promulgated by the registration commission. Each county exercising the option to maintain its own voter registration records under this subsection shall provide the registrar, at the county's expense, original and updated voter registration lists in a form and at times prescribed by the registrar. [66GA, HF 1011,§22]

Referred to in §39.3

47.8 Voter registration commission—composition—duties.

1. There is established a state voter registration commission which shall meet at least once each month to make and review policy, promulgate rules and establish procedures to be followed by the registrar in discharging the duties of that office. The commission shall consist of the state commissioner of elections or his or her designee and the state chairpersons of the two political parties whose candidates for president of the United States or governor, as the case may be, received the

greatest and next greatest number of votes in the most recent general election, or their respective designees, who shall serve without additional salary or reimbursement.

2. The registration commission shall prescribe the forms required for voter registration by rules promulgated pursuant to chapter 17A.

3. The registrar shall provide staff services to the commission and shall make available to it all information relative to the activities of the registrar's office in connection with the registration of voters in this state which may be requested by any commission member. The commission may authorize the registrar to employ such additional staff personnel as it deems necessary to permit the duties of the registrar's office to be adequately and promptly discharged. Such personnel shall be employed pursuant to chapter 19A.

4. The registration commission shall annually adopt a set of standard charges to be made for the services the registrar is required to offer to the several commissioners, and for furnishing of voter registration records which are requested by persons other than the registrar, the state commissioner or any commissioner pursuant to section 48.5, subsection 2. These charges shall be sufficient to reimburse the state for the actual cost of furnishing such services or information, and shall be specified by unit wherever possible. The standard charges shall be adopted by the commission by January 15 of each calendar year. [66GA, HF 1011,§22]

Referred to in §39.3

CHAPTER 48

PERMANENT REGISTRATION

Referred to in §§39.3, 43.5, 47.2, 47.4, 53.38, 275.35, 277.3, 280A.15, 280A.39, 296.4, 298.18, 353.12, 360.1, 372.2, 376.1, 444.9

Chapter applicable to primary elections, §43.5

Permanent registration on any election day prior to January 1, 1975, see 65GA, ch 136,§400, ch 1101,§§92, 94

Temporary provisions applicable to elections prior to January 1, 1975, see 65GA, ch 136,§399, ch 1101,§§95, 96

48.1 Commissioner of registration.
48.2 Who may register.
48.3 Registration by mail.
48.4 Commissioner of registration—duties.
48.5 Registration records.
48.6 Form of records.
48.7 Notice of change of name or address.
48.8 Election registers.
48.9 Repealed by 64GA, ch 1025,§35.
48.10 Deceased persons—record.
48.11 Registration time limits.
48.12 Registration receipt.
48.13 and 48.14 Repealed by 64GA, ch 1025,§35.
48.15 Challenges.
48.16 Penalties.
48.17 Qualification of officers.
48.18 Repealed by 64GA, ch 1025,§35.
48.19 Repealed by 65GA, ch 122,§26.
48.20 Repealed by 64GA, ch 98,§20.
48.21 Repealed by 64GA, ch 1025,§35.
48.22 to 48.25 Repealed by 65GA, ch 136,§401.
48.26 Repealed by 64GA, ch 1025,§35.
48.27 Mobile deputy registrars—qualifications—duties.
48.28 Repealed by 64GA, ch 1025,§35.
48.29 Removal of registration.
48.30 Notification of changes in registration.
48.31 Cancellation of registration.
48.32 Annual report.

48.1 Commissioner of registration. The commissioner of elections of each county is designated the commissioner of registration for that county, and may designate the city clerk of any city in the county, or the secretary of the board of directors of any school district which has its office in that county, as a deputy commissioner of registration who shall be responsible for voter registration, subject to the supervision of the county commissioner. The commissioner of registration or an employee of the commissioner of registration may visit each high school located in the county, during the month of May of each year, and offer to register any person who is eligible under section 48.2 to be registered. [C27, 31, 35,§718-b1; C39,§**718.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§48.1; 66GA, ch 81,§45]

48.2 Who may register. Any person who is an eligible elector may register to vote by personally submitting a completed voter registration form to the commissioner of registration or a deputy commissioner of registration in the elector's county of residence. Any person who is an eligible elector in all respects except age may, at any time during the six months next preceding his or her eighteenth birthday, register to vote in the county of his or her residence. When a person less than eighteen years of age registers, the commissioner shall maintain a record of the registration, so as to clearly indicate that it will not take effect until the registrant's eighteenth birthday and that the person is registered and qualifies to vote in any election held on or after that date. [C75,§48.2; 66GA, ch 81,§46]

Referred to in §§48.1, 48.3

48.3 Registration by mail. As an alternative to the method of registration prescribed by section 48.2, any person entitled to register under that section may submit a completed voter registration form to the commissioner of registration in the person's county of residence by postage paid United States mail. A registration form or the envelope containing one or more registration forms for the use of individual registrants who are related to each other within the first degree of consanguinity or affinity and who reside at the same address shall be postmarked by the twenty-fifth day prior to an election or the registration will not take effect for that election. A separate registration form shall be signed by each individual registrant. Within five working days after receiving a registration by mail, the commissioner shall send the registrant a receipt of the registration by first class mail marked "do not forward". If the receipt is returned by the postal service the commissioner shall treat the registration as prescribed by section 48.31, subsection 7. An improperly addressed or delivered registration form shall be forwarded to the appropriate county commissioner of registration within two working days after it is received by any other official. [66GA, ch 81,§47, HF 1010,§1]

Referred to in §§48.7, 48.11, 49.80

48.4 Commissioner of registration—duties. The commissioner of registration shall, under the direction of the registration commission and the registrar, supervise the registration of all eligible electors within the county, and shall appoint such deputies and clerks as may be necessary, from the two political parties receiving the highest vote at the last general election. The number of such deputies and clerks at the central registration office, shall be equally divided between the members of the two said political parties. These appointments shall be subject to the approval of the county board of supervisors. The commissioner of registration shall provide such printed forms and blanks as may be necessary, together with such other supplies and equipment as are necessary to properly carry out the provisions of this chapter. Registration places shall be established throughout the cities and county. [C27, 31, 35,§718-b4; C39, §**718.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§48.4; 66GA, ch 81,§48, HF 1011,§23]

Referred to in §48.5

48.5 Registration records.

1. The county commissioner of registration shall maintain the registration records of all qualified electors in the county in accordance with rules promulgated by the registration commission. Registration records shall not be removed from that office or other designated locations except upon court order, and shall be open to inspection by the public at reasonable times.

2. Any person may request of the registrar and shall receive, upon payment of the cost of preparation, a list of qualified electors and other data on registration and participation in elections, in accordance with the following requirements and limitations:

a. Each list shall be produced in the order and form specified by the requester, so long as that order and form are within the capacity of the record maintenance system used by the registrar.

b. Each list shall reflect all additions, changes and deletions made prior to the fifth day before the list was prepared.

c. The registrar shall not be required to provide lists or data during the fifteen days prior to the date of the primary election, the general election, the regular city election held pursuant to section 376.1, or the annual school election in any order or form other than that utilized to conduct the election, if the preparation of a list in any other order or form requested would impede the preparation of the election registers for that election.

d. The county chairperson of each political party, as defined in section 48.4 and the chairperson of each state political party central committee may each request and shall receive without charge three lists or reports during the two-year period prior to each general election, in the order and form requested. The lists or data requested by the county chairpersons shall pertain only to qualified electors of that county. The lists or reports requested under this paragraph shall be delivered on or before the date specified by the requester, if the requester gives at least thirty days advance notice of that date and the timing of the request and the order and form specified do not conflict with the restrictions of paragraph "*c*" of this subsection.

e. A periodic updating of the registration lists showing all additions, changes and deletions since the previous updating shall be provided at least once each fourteen days except during the two weeks prior to the close of registration before any election, when it shall be provided daily if requested. Each requester under this paragraph shall receive the updating data at the same time, which shall be determined by the registrar, but in an order and form specified by the requester. Each requester, except those who obtained the initial list of qualified electors under paragraph "*d*" of this subsection, shall pay the cost of duplicating the updating data before receiving a copy thereof.

3. Neither the duplicate registration records open to public inspection nor any list obtained under subsection 2 shall be used for any purpose of any kind or nature, other than to request a registrant's vote or any other bona fide political purpose. The commissioner or registrar shall keep a list of the name, address, telephone number, and social security number of each person who copies or obtains copies of the registration lists. Any person that uses such lists in violation of this section shall, upon conviction, be imprisoned in the county jail, not to exceed one year, or

be fined not to exceed one thousand dollars, or by both such fine and imprisonment, for each violation.

4. Beginning not later than January 1, 1977, every voter registration record shall be maintained in computer readable form according to the specifications of the registrar. [C27, 31, 35,§718-b5; C39,**§718.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§48.5; 66GA, ch 81,§49, HF 1011,§24]

Referred to in §§47.7, 47.8

48.6 Form of records. The registration forms shall be large enough to contain the necessary information required in legible writing and shall be suitable for mailing. The registration form shall require the following information to be provided:

1. The name of the applicant in full.

2. Residence, giving name and number of the street, avenue, or other location of the dwelling, and such additional clear and definite description as may be necessary to give the exact location of the residence of the applicant. Post-office box numbers shall not be used unless no other method of identifying the residence exists for the community.

3. Date of birth.

4. Sex.

5. Date of registration.

6. Ward, precinct, school district, and such other districts in which the registrant resides which are empowered to call special elections. To assist in making this determination the commissioner may also request other information including but not limited to telephone number, fire district number or township, range and section number of the location of the applicant's residence. The commissioner may if necessary obtain the needed information from other sources, but shall in no case decline to register an applicant because the applicant is unable to provide any of the information referred to in this subsection.

7. Name, if different than current name, and address given on applicant's last previous registration.

8. Party affiliation. No party affiliation need be stated if the applicant declines to make such statement.

9. A statement in substantially the following form:

"I state that I am or will be an eligible elector at any election at which I attempt to vote and that all of the information I have given upon this voter registration form is true. I hereby authorize cancellation of any prior registration to vote in this or any other jurisdiction and my eligibility to vote in any jurisdiction where voter registration is not required. I am aware that fraudulently registering, or attempting to do so, is a felony under Iowa law." At the time the registration is signed by the eligible elector it shall also be signed by a mobile registrar, employee of the commissioner's office, or other eligible elector.

10. The social security number of the applicant, if available.

11. The signature of the applicant.

A receipt of registration shall be given to each applicant, indicating the date the registration will become effective. [C27, 31, 35, §§718-b6, 718-b11; C39,**§§718.06, 718.11**; C46, 50, 54, 58, 62, 66, 71,§§48.6, 48.11; C73, 75,§48.6; 66 GA, ch 81,§50, ch 1076,§§2, 3]

Referred to in §§48.15, 48.27

48.7 Notice of change of name or address. The commissioner of registration shall make available forms for use by qualified electors in giving notice of a legal change of name or a change of address within the county, or both. The notice shall provide space for the qualified elector's current name in full and the address of the exact location where he or she currently resides, the full name under which the elector was previously registered, if a legal change of name has occurred, the previous residence address of the elector, if a change of address has occurred, and the elector's signature. If the commissioner of registration receives written notification of a change of name or address from any qualified elector in the county and the notice does not contain the required information, the commissioner shall immediately send by forwardable mail to the elector at his or her last known address notice that the elector's registration is defective. Upon receipt of any valid change of name or address notice, on or before the last day of registration before any election, the commissioner of registration shall make entry of the change, as necessary, on the original and duplicate registration lists and the elector shall be qualified to vote under the new name or in the new election precinct, or both, as the case may be. If a qualified elector fails to notify the commissioner of registration of a change of legal name or of residence address before the close of registration for any election the elector shall not be qualified to vote at that election, except that if a change of residence address or change of name does not require printing the qualified elector's name in a different election register for that election, the qualified elector shall be allowed to vote. A precinct election official shall have such an elector complete a registration form of the type prescribed for use by electors registering under section 48.3, at the polls and shall return the card to the commissioner with the election supplies. Upon receipt of the registration form, if the election was conducted for a political subdivision located in more than one county and the elector has listed a new address which is outside the commissioner's own county, the commissioner shall forward the form to the commissioner of the elector's county of residence. [C27, 31, 35,§§718-b6, b7; C39,**§§718.06, 718.07**; C46, 50, 54, 58, 62, 66, 71, 73,§48.7; C75,§§48.6(1), 48.7; 66GA, ch 81,§51, HF 1011,§25]

48.8 Election registers. The county commissioner of registration shall prepare an election register for each county precinct between

the time of the closing of registration and election day. The election register shall be a copy of the list of all qualified electors of the precinct and shall be in a form prescribed by the state commissioner of elections.

If the name of a registered elector does not appear in the election register, the county commissioner of elections may authorize a correction to the election register by the judges of election at the precinct. Authorization to correct the election register need not be in writing and may be transmitted by telephone. The authorization must verify the registration in question and be made by the county commissioner of elections who shall make a written record verifying every authorized correction. [C27, 31, 35,§§718-b8, 718-b9, 718-b13; C39, §§718.08, 718.09, 718.13; C46, 50, 54, 58, 62, 66, 71,§§48.8, 48.9, 48.13; C73, 75,§48.8]

48.9 Repealed by 64GA, ch 1025,§35.

48.10 Deceased persons—record. It is the mandatory duty of each local registrar and deputy registrar of vital statistics to provide the commissioner of registration of his county with a certified list of the names and last known addresses, and social security numbers and dates of birth, if known, of all persons eighteen years of age or over who have died in his county. Such lists shall be delivered by the tenth day of each month. The commissioner of registration, shall, upon receipt of such report, examine the original registration list and shall remove the registration records of all registered persons certified by the local registrar or deputy registrar of vital statistics as deceased. [C27, 31, 35,§718-b10; C39,§718.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§48.10]

48.11 Registration time limits. The county commissioner of registration shall register, on forms prescribed by the state commissioner of elections, electors for elections in a precinct until the close of registration in the precinct. An elector may register during the time registration is closed in the elector's precinct but the registration shall not become effective until registration opens again in his precinct.

Registration shall close in a precinct at five o'clock p.m., ten days before an election, except as provided in section 48.3. The commissioner's office shall be open from eight o'clock a.m. until at least six o'clock p.m. on the day registration closes prior to each regularly scheduled election. [C27, 31, 35,§718-b11; C39, §718.11; C46, 50, 54, 58, 62, 66, 71, 73, 75,§48.11; 66GA, ch 81,§52, HF 1011,§26]

48.12 Registration receipt. A receipt of registration shall be given or sent to each person who registers under this chapter. If any person registers to vote while registration is closed preceding any election, the commissioner shall maintain a record of the registration so as to clearly indicate that it will not take effect until the day after the election for which registration is closed and that the person is registered and qualified to vote in any election held on or after that date. [C75,§48.6; 66GA, ch 81,§53]

§48.12, Code 1975, repealed by 66GA, ch 81,§53

48.13 and 48.14 Repealed by 64GA, ch 1025, §35.

48.15 Challenges. Any person may challenge a registration at any time by filing a written challenge with the commissioner of registration. The commissioner of registration shall immediately give five days' notice of a hearing by registered or certified mail to the challenger and the person challenged. If the person challenged fails to appear, his or her name shall be removed from the registration list. However, if the person challenged notifies the commissioner prior to the date set for the hearing of inability to appear on the date specified, the commissioner may reschedule the hearing. At such hearing the commissioner shall hear such evidence as he or she deems to have probative value. The person challenged shall be required to sign an affidavit as provided in section 48.6, subsection 9, and may then be questioned concerning his or her voting residence and qualifications. In all cases the commissioner shall decide the right to the entry under the evidence. Either party may appeal to the district court of the county in which the challenge is made, and a date for the hearing shall be fixed and the decision of such court shall be final. [C27, 31, 35,§718-b15; C39, §718.15; C46, 50, 54, 58, 62, 66, 71, 73, 75,§48.15; 66GA, ch 81,§54]

48.16 Penalties. Any officer or employee, or any person who has contracted with a commissioner to perform services in the implementation of this chapter, who shall willfully fail to perform or enforce any of the provisions of this chapter, or who shall unlawfully or fraudulently remove any registration card or record from its proper compartment in the registration records, or who shall willfully destroy any record provided by this chapter, or any person who shall willfully or fraudulently register more than once, or register under any but his or her true name, or votes or attempts to vote by impersonating another who is registered, or who willfully or fraudulently registers in any election precinct where he or she is not a resident at the time of registering, or who adds a name or names to a page or pages, or who violates any of the provisions of this chapter, shall be guilty of felony and, upon conviction, shall be imprisoned in the state penitentiary for not less than one year. For the purposes of this section, the alteration or destruction of any machine readable compilation of voter registration records which has not been replaced by a more recent revision of the same record shall constitute destruction of a record provided by this chapter. [C27, 31, 35,§718-b16; C39,§718.16; C46, 50, 54, 58, 62, 66, 71, 73, 75,§48.16; 66GA, HF 1011,§27]

48.17 Qualification of officers. Before entering upon his duties, each officer or clerk in whatever capacity shall subscribe to an oath in such form as provided by the state commissioner. [C27, 31, 35,§718-b17; C39,§718.17; C46, 50, 54, 58, 62, 66, 71, 73, 75,§48.17]

48.18 Repealed by 64GA, ch 1025,§35.

48.19 Repealed by 65GA, ch 122,§26.

48.20 Repealed by 64GA, ch 98,§20.

48.21 Repealed by 64GA, ch 1025,§35.

48.22 to 48.25 Repealed by 65GA, ch 136,§401.

48.26 Repealed by 64GA, ch 1025,§35.

48.27 Mobile deputy registrars—qualifications—duties.

1. Mobile deputy registrars shall be appointed by the county commissioner of registration not more than one hundred eighty days prior to any general election or not more than one hundred twenty days prior to any primary, or partisan city election, or any election held pursuant to section 69.14, in accordance with the following guidelines:

a. Mobile deputy registrars shall be selected from lists of nominees submitted to the county commissioner of registration by the county chairman of the two political parties receiving the highest number of votes in that county in the last preceding general election.

b. Each political party shall submit a list of nominees and may request not more than one person for each one thousand one hundred residents or major fraction thereof in the county to be appointed as mobile deputy registrars.

c. The county commissioner of registration shall make the requested number of appointments from the lists submitted by the county chairmen not more than thirty days from the date the lists of nominees were submitted. If persons listed by the county chairman cannot serve or are disqualified, the county chairman may add additional names to his list. The additional persons shall be appointed within five days if the next election is to be held within ninety-five days.

d. The appointment of mobile deputy registrars from one political party shall not be contingent upon the other political party submitting a list of nominees.

e. The fact that any political party does not submit a list including the full number of names which may be appointed shall not preclude the appointment of the full number of persons to which any other political party is entitled.

f. The term of office of mobile deputy registrars appointed under the provisions of this subsection shall expire at five o'clock p.m. on the day registration closes prior to the general election or at the time the mobile deputy registrar returns his supplies to the county commissioner of registration, whichever occurs first.

g. When an election has been called pursuant to section 69.14, mobile deputy registrars shall be appointed within three days after submission of a list of nominees by the county chairman of either of the two political parties whose candidates for president of the United States or for governor, as the case may be, received the largest and next largest number of votes in the county at the last general election.

2. There is established in each county a permanent board of mobile deputy registrars who shall be selected from lists of nominees submitted to the county commissioner of registration by the county chairman of the two political parties polling the highest number of votes in the county in the last preceding general election. The chairmen of the two political parties shall submit a list of nominees to serve as registrars on the permanent mobile deputy registrar board not later than January 15 of each year. The county commissioner of registration shall, not later than January 31 of each year, appoint one person from each political party for each ten thousand residents or major fraction thereof in the county to serve as mobile deputy registrars on the permanent mobile deputy registrar board. The county commissioner of registration shall appoint at least two mobile deputy registrars to serve on the board in each county from each political party. If a county chairman of a political party does not submit a list of nominees for the permanent mobile deputy registrar board, the county commissioner of registration shall appoint persons known to be members of that political party to serve as permanent mobile deputy registrars. The term of office of permanent mobile deputy registrars shall commence on the date of appointment and shall continue until December 31 of that year.

3. Mobile deputy registrars shall meet the following qualifications:

a. Mobile deputy registrars shall reside in the county of the county commissioner of registration making the appointment.

b. Mobile deputy registrars shall be persons of known good character who are at least eighteen years of age and who are familiar with the registration laws of the state. Mobile deputy registrars shall be persons who have clear handwriting and who exhibit to the commissioner the capability for making records in a neat and accurate manner. The commissioner may require a handwriting sample to insure that this requirement is fulfilled.

c. Mobile deputy registrars shall take a training course prescribed by the commissioner and upon completion thereof shall take an oath of office administered by the commissioner.

d. No candidate for an office to be filled by the voters at any election shall serve as a mobile deputy registrar.

4. Mobile deputy registrars shall perform their duties according to the following guidelines:

a. They shall secure registration of eligible voters anywhere in the jurisdiction of the county commissioner of registration. It shall be unlawful for any mobile deputy registrar to refuse to register any eligible voter and any unreasonable refusal shall be a misdemeanor.

b. Mobile deputy registrars shall register electors on registration forms provided by the county commissioner of registration. These forms shall be as prescribed by section 48.6 except that they shall be numbered and accounted for by the mobile deputy registrar to the county commissioner of registration, and that there shall be provided on each form a space for the mobile deputy registrar's signature. The mobile deputy registrar shall sign the form and identify himself or herself in the presence of the voter with appropriate identity papers or badge provided by the county commissioner of registration. The mobile deputy registrar shall give the voter a receipt signed by the mobile deputy registrar stating that such person is duly registered.

c. Mobile deputy registrars shall serve without compensation from any source.

d. Mobile deputy registrars shall return all completed registration records at least weekly to the county commissioner of registration except that completed registration records shall be turned in at least every two working days during the last ten days of registration. All completed and unused material must be turned in no later than six o'clock on the day registration closes for the election. The commissioner shall make suitable arrangements for registration material to be received from mobile deputy registrars until that hour on the day registration closes for each election which is not a regularly scheduled election unless the commissioner's office remains open until at least six o'clock p.m. on that day. Failure to return registration materials as required by this paragraph shall be a misdemeanor.

e. Mobile deputy registrars shall not influence the elector in designating party affiliation during the registration process.

5. Each mobile deputy registrar shall be responsible to the county commissioner of registration for properly registering electors in accordance with the requirements and the restrictions of this chapter. The commissioner may terminate the appointment of a mobile deputy registrar who is not properly registering electors, and shall immediately terminate the appointment upon the written request of the county chairperson of the party from whose list of nominees the mobile deputy registrar was selected. When an appointment is terminated the county commissioner of registration shall promptly notify the county chairperson of the political party which nominated the mobile deputy registrar whose appointment has been terminated, and shall appoint another person within five days from a list of substitute nominees provided by that county chairperson. A mobile deputy registrar whose appointment is terminated shall immediately return all his or her supplies to the county commissioner of registration. If a mobile deputy registrar's appointment is terminated within thirty days of an election, other than by request of the county chairperson of the party from whose list of nominees the mobile deputy registrar was appointed, a replacement shall be appointed within twenty-four hours from a list of substitute nominees provided by the appropriate county chairperson. [C66, 71, 73, 75,§48.27; 66GA, ch 81,§§55–57, HF 1011,§§28–30]

48.28 Repealed by 64GA, ch 1025,§35.

48.29 Removal of registration. Upon registration in any county of an eligible elector who was previously a resident of another county, if that individual was a qualified elector in the former county of residence, his or her name shall be struck from the record of voters currently registered in the former county of residence. If the registrar at any time discovers that the same individual is registered at more than one residence location, the commissioner or commissioners involved shall be informed and shall follow the procedure prescribed by section 48.31, subsection 7. [C73, 75,§48.29; 66 GA, ch 81,§58, HF 1011, §31]

48.30 Notification of changes in registration. The clerk of the district court shall promptly notify the county commissioner of registration of changes of name and of convictions of infamous crimes or felonies, of legal declarations of incompetence made after a proceeding held pursuant to section 229.27, and of diagnosis of severe or profound mental retardation of persons of voting age. The clerk of the district court shall also notify the county commissioner of registration of the restoration of citizenship of a person who has been convicted of an infamous crime or felony and of the finding that a person is of good mental health. The notice will not restore voter registration. The county commissioner of registration shall notify the person whose citizenship has been restored or who has been declared to be in good mental health that his registration to vote was canceled and he must register again to become a qualified elector. [C73, 75,§48.30; 66GA, ch 139,§33]

48.31 Cancellation of registration. The registration of a qualified elector shall be canceled in any of the following instances:

1. The elector fails to vote once in the last preceding four consecutive calendar years.

2. The elector registers to vote in another place.

3. The elector does not record a change of address.

4. The elector dies.

5. The clerk of district court sends notification of an elector's conviction of an infamous crime or felony.

6. The clerk of district court sends notification of a legal determination that the elector is severely or profoundly mentally retarded, or has been found incompetent in a proceeding held pursuant to section 229.27, or is otherwise under conservatorship or guardianship by reason of incompetency. Certification by the clerk that any such person has been found no longer incompetent by a court, or the termination by the court of any such conservatorship or guardianship shall qualify any such ward to again be an elector, subject to the other provisions of this chapter.

7. When first-class mail, which is designated "not to be forwarded", was addressed to the elector at the address shown on the registration records and is returned by the postal service.

Whenever a registration is canceled, notice of the cancellation shall be sent to the registrant at his last known address shown upon the registration records. Such notice shall be sent first-class mail and bear the words "Please Forward". However, notice is not necessary when the cancellation is due to death or if an authorization for the removal of his registration is received as provided in this chapter. [C73, 75,§48.31; 66GA, ch 139,§34, HF 1011,§32]

Referred to in §§48.3, 48.29, 50.19

48.32 Annual report. The county commissioner of elections shall make reports as required by the registrar. On August 1 of each year the registrar shall report the number of persons registered in each political party in each county. [C27, 31, 35,§718-b14; C39,§718.14; C46, 50, 54, 58, 62, 66, 71,§48.14; C73, 75,§48.32; 66GA, HF 1011,§33]

CHAPTER 49

METHOD OF CONDUCTING ELECTIONS

Referred to in §§39.3, 43.5, 50.1, 51.3, 52.1, 52.25, 52.27, 52.28, 52.31, 145A.7, 176A.16, 275.35, 277.33, 280A.15, 280A.39, 296.4, 298.18, 346.27, 353.12, 357.12, 357C.7, 358.5, 360.1, 372.2, 376.1, 462.3

Chapter applicable to primary elections, §43.5

Criminal offenses, ch 738; also §§43.119, 43.120

49.1 Elections included.
49.2 Repealed by 65GA, ch 136,§401.
49.3 Election precincts.
49.4 Precincts drawn by county board.
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49.6 Power to combine township and city precincts.
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49.14 Repealed by 61GA, ch 94,§1.
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49.16 Tenure of election board panel.
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49.18 Vacancies occurring on election day.
49.19 Unpaid officials, paper ballots optional for certain city elections.
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49.26 Commissioner to decide method of voting.
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49.28 Commissioner to furnish registers and supplies.
49.29 Voting by ballot or machine.
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49.42 Form of official ballot.
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49.47 Notice on ballots.
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49.49 Repealed by 66GA, ch 81,§154.
49.50 Endorsement and delivery of ballots.
49.51 Commissioner to control printing.
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49.53 Publication of ballot and notice.
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49.55 Delivery of supplies to officials.
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49.64 Number ballots delivered.
49.65 Packing ballots — delivery — receipts — records.
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49.70 Precinct election officials furnished instructions.
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49.77 Ballot furnished to voter.
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49.99 Writing name on ballot.
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49.104 Persons permitted at polling places.
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49.107 Prohibited acts on election day.
49.108 Penalty.
49.109 Employees entitled to time to vote.
49.110 Intimidation of employees by employer.
49.111 Unlawful acts.
49.112 Penalty.
49.113 Official neglect or misconduct.
49.114 Repealed by 65GA, ch 136,§401.
49.115 Repealed by 64GA, ch 1124,§282.
49.116 and 49.117 Repealed by 65GA, ch 136, §401.
49.118 Repealed by 64GA, ch 1025,§35.
49.119 Penalty.
49.120 Promise of position.
49.121 Promise of influence.
49.122 Penalty.
49.123 Courthouse open on election day.
49.124 Training course by commissioner.
49.125 Compensation of trainees.
49.126 Manual by state commissioner.
49.127 Commissioner to examine machines.

49.1 Elections included. The provisions of this chapter shall apply to all elections except those special elections which by the terms of the statutes authorizing them are exempt from the provisions of this chapter. [C97,§1088; C24, 27, 31, 35, 39,§719; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.1]

49.2 Repealed by 65GA, ch 136,§401.

49.3 Election precincts. Election precincts shall be drawn by the county board of supervisors in all unincorporated portions of each county, and by the city council of each city in which it is necessary or deemed advisable to establish more than one precinct. Precincts established as provided by this chapter shall be used for all elections, except where temporary merger of established precincts is specifically permitted by law for certain elections, and no political subdivision shall concurrently maintain different sets of precincts for use in different types of elections. Election precincts shall be drawn so that:

1. No precinct shall have a total population in excess of three thousand five hundred, as shown by the most recent federal decennial census.

2. Each precinct is contained wholly within an existing legislative district, except:

a. When adherence to this requirement would force creation of a precinct which includes the places of residence of fewer than fifty qualified electors.

See 65GA, ch 1101,§97

b. When the general assembly by resolution designates a period after the federal decennial census is taken and before the next succeeding reapportionment of legislative districts required by Article III, section 35, Constitution of the state of Iowa as amended in 1968, during which precincts may be drawn without regard to the boundaries of existing legislative districts. [C51,§245; R60,§480; C73,§§501, 605; C97,§1090; S13,§1090; C24, 27, 31, 35, 39,§§721, 722, 723; C46, 50, 54, 58, 62, 66, 71, 73,§§49.3, 49.4, 49.5; C75,§49.3]

Referred to in §§2.68, 49.6, 49.7, 49.8, 277.6, 280A.23
Exceptions, §§49.4–49.8

49.4 Precincts drawn by county board. In the absence of contrary action by the board

of supervisors, each civil township which does not include any part of a city of over two thousand population, and the portion of each civil township containing any such city which lies outside the corporate limits of that city or those cities, shall constitute an election precinct.

1. Where a civil township, or the portion of a civil township outside the corporate limits of any city of over two thousand population contained therein, is divided into two or more election precincts, the precincts shall be so drawn that their total populations shall be reasonably equal on the basis of data available from the most recent federal decennial census.

2. Counties using alternative supervisor representation plans two or three, as described in section 331.8, shall be apportioned into single-member supervisor districts on the basis of population. In counties using representation plan three, the boundaries of supervisor districts shall follow the boundaries of election precincts.

3. Notwithstanding any other provision of this chapter, the Indian Settlement lying in Tama, Toledo and Indian Village townships of Tama county shall be an election precinct, and the polling place of that precinct shall be located in the structure commonly called the Indian School located in section 19, township 83 north, range 15 west, or in such structure as designated by the election commissioner of Tama county. [C73,§603; C97,§1090; S13,§1090; C24, 27, 31, 35, 39,§§722, 725; C46, 50, 54, 58, 62, 66, 71, 73,§§49.4, 49.7; C75,§49.4; 66GA, HF 1011, §34]

Referred to in §§49.7, 49.8, 280A.23

49.5 City precincts. The council of a city where establishment of more than one precinct is necessary or deemed advisable shall at the time required by law, by ordinance definitely fixing the boundaries, divide the city into such number of election precincts as will best serve the convenience of the voters. As used in this section, the term "the convenience of the voters" refers to, but is not necessarily limited to, the use of precinct boundaries which can be readily described to and identified by voters and ease of access by voters to their respective precinct polling places by reasonably direct routes of travel. Before final adoption of any change in election precinct boundaries pursuant to this section or section 49.6, the council shall permit the commissioner not more than ten days time to offer comments on the proposed reprecincting.

1. Election precincts within the same city shall be so drawn that their total populations shall be reasonably equal on the basis of the most recent federal decennial census, but equality of population among precincts shall not take precedence over consideration of the convenience of voters as defined in this section. The boundaries of each precinct shall follow the boundaries of areas for which official population figures are available from the most recent federal decennial census, however, in cities for which block-by-block data from that census are not available and where all or some of the areas for which data from that census are available are not suitable for forming precincts, the city council may use other reliable and documented indicators of population distribution in forming precincts in the city or any portion of it.

2. Each city of over twenty-five thousand population shall enter into the necessary arrangements with the United States bureau of the census or its successor agency for the next succeeding federal decennial census to be taken in the city on a block-by-block basis. Any charge therefor imposed on the city by the federal government, which the city would not otherwise be liable to pay, may be reported to the state commissioner, who shall forward the report to the next regular session of the general assembly. The city shall preserve data on the composition and population of each area within its boundaries defined as a city block for the most recent federal decennial census. Precincts in the city shall to the greatest extent practicable follow the boundaries of such areas.

3. Cities using any form of city government authorized by law in which some or all members of the city council are elected from wards shall be apportioned into wards on the basis of population. The ward boundaries shall follow the boundaries of election precincts. [C97, §1090; S13,§1090; C24, 27, 31, 35, 39,§723; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.5]

Referred to in §§49.7, 49.8, 49.10, 280A.23

49.6 Power to combine township and city precincts. Election precincts composed partially of unincorporated territory and partially of all or any part of a city may be established within a single county in any manner which is not contrary to section 49.3 and is mutually satisfactory to the board of supervisors and the city council of the city involved. [C97, §1090; S13,§1090; C24, 27, 31, 35, 39,§724; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.6]

Referred to in §49.5, 280A.23

49.7 When reprecincting required. Each county board of supervisors and city council shall make any changes in precinct boundaries necessary to comply with sections 49.3, 49.4 and 49.5 not earlier than July 1 nor later than December 31 of the year immediately following each year in which the federal decennial census is taken, unless the general assembly by joint resolution establishes different dates for compliance with these sections. Any or all of the publications required by section 49.11 may be made after December 31 if necessary. Each county board and city council shall notify the state commissioner and the commissioner whenever the boundaries of election precincts are changed and shall provide a map delineating the new boundary lines. Upon failure of any county board or city council to make the required changes by the dates established by or pursuant to this section, the state commis-

sioner shall make or cause to be made the necessary changes as soon as possible, and shall assess to the county or city, as the case may be, the expenses incurred in so doing. The state commissioner may request the services of personnel of and materials available to the legislative service bureau to assist him in making any required changes in election precinct boundaries which become his responsibility. [C73,§603; C97,§1090; S13,§1090; C24, 27, 31, 35, 39,§§722, 723; C46, 50, 54, 58, 62, 66, 71, 73,§§49.4, 49.5; C75,§49.7]

Referred to in §§2.68, 49.8

49.8 Changes in precincts. After any required changes in precinct boundaries have been made following each federal decennial census, at the time established by or pursuant to section 49.7, the county board or city council shall make no further changes in precinct boundaries until after the next federal decennial census, except in the following circumstances:

1. When deemed necessary by the board of supervisors of any county because of a change in the location of the boundaries, dissolution or establishment of any civil township, the boundaries of precincts actually affected may be changed as necessary to conform to the new township boundaries.

2. When territory is annexed to a city the city council may attach all or any part of the annexed territory to any established precinct or precincts which are contiguous to the annexed territory, however this subsection shall not prohibit establishment of one or more new precincts in the annexed territory.

3. A city may have one special federal census taken each decade and the population figures obtained may be used to revise precinct boundaries in accordance with the requirements of sections 49.3 and 49.5.

4. When the boundaries of any county supervisor, city council, or school director district, or any other district from which one or more members of any public representative body other than the general assembly are elected by the voters thereof, are changed by annexation, reprecincting or other means, the change shall not result in the term of any officer elected from the former district being terminated before or extended beyond the expiration of the term to which the officer was last elected.

5. Precinct boundaries established by or pursuant to section 49.4, and not changed under subsection 1 since the most recent federal decennial census, may be changed once during the period beginning January 1 of the second year following a year in which a federal decennial census is taken and ending June 30 of the year immediately following the year in which the next succeeding federal decennial census is taken, if the commissioner recommends and the board of supervisors finds that the change will effect a substantial savings in election costs. [C73,§603; C97,§1090; S13,§1090; C24, 27, 31, 35, 39,§§722, 723; C46, 50, 54, 58, 62, 66, 71, 73,§§49.4, 49.5; C75,§49.8]

Referred to in §275.25

49.9 Proper place of voting. No person shall vote in any precinct but that of his residence. [C73,§605; C97,§1090; S13,§1090; C24, 27, 31, 35, 39,§727; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.9]

49.10 Polling places for certain precincts.

1. Polling places for precincts outside the limits of a city, but within the township, or originally within and set off as a separate township from the township in which the city is in whole or in part situated, and a polling place for a township which entirely surrounds another township containing a city, may be fixed at some room or rooms in the courthouse or in some other building within the limits of the city as the commissioner may provide.

2. If the commissioner determines, or if a petition be filed with him ninety days before any primary, general or special election stating that there is no suitable or adequate polling place within a township constituting a voting precinct and that it is desirable and to the interest of the voters of that township voting precinct that a voting place be designated for it outside its territorial limits, the commissioner shall fix a polling place for that precinct, outside its territorial limits, which he deems convenient to the electors of the township precinct. A petition submitted under this subsection must be signed by eligible electors of the precinct exceeding in number one-half the total number of votes cast in the township precinct for the office of president of the United States or governor, as the case may be, at the last preceding general election. When the commissioner has fixed such a polling place it shall remain the polling place at all subsequent primary, general and special elections, until such time as he shall fix a different polling place for the precinct.

3. In any city in which precinct lines have been changed to comply with section 49.5, the commissioner may fix the polling place for any precinct outside the boundaries of the precinct if there is no building or facility within the precinct suitable and available for use as a polling place. In so doing, the commissioner shall fix the polling place at the point nearest the precinct which is suitable and available for use as a polling place and is reasonably accessible to voters of the precinct. No single room or area of any building or facility shall be fixed as the polling place for more than one precinct unless there are separate entrances thereto each clearly marked on the days on which elections are held as the entrance to the polling place of a particular precinct, and suitable arrangements are made within such room or area to prevent direct access from the polling place of any precinct to the polling place of any other precinct. When the commissioner has fixed such a polling place for any precinct it shall remain the polling place at all

subsequent elections, except elections for which the precinct is merged with another precinct as permitted by section 49.11, until the boundaries of the precinct are changed or the commissioner fixes a new polling place, except that the polling place shall be changed to a point within the boundaries of the precinct at any time not less than sixty days before the next succeeding election that a building or facility suitable for such use becomes available within the precinct.

4. If two or more contiguous townships have been combined into one election precinct by the board of supervisors, the commissioner shall provide a polling place which is convenient to all of the electors in the precinct. [C97,§1091; S13,§1091; C24, 27, 31, 35, 39,§728; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.10]

49.11 Notice of boundaries of precincts—merger or division. The board of supervisors or council shall number or name the several precincts established, and cause the boundaries of each to be recorded in the records of said board of supervisors or council, as the case may be, and publish notice thereof in some newspaper of general circulation, published in such county or city, once each week for three consecutive weeks, the last to be made at least thirty days before the next general election. The precincts thus established shall continue until changed in the manner provided by law, except that for any election other than the primary or general election or any special election held under section 69.14, the county commissioner of elections may:

1. Consolidate two or more precincts into one. However, he shall not do so if there is filed with him at least twenty days before the election a petition signed by twenty-five or more eligible electors of any precinct requesting that it not be merged with any other precinct. There shall be attached to the petition the affidavit of an eligible elector of the precinct that the signatures on the petition are genuine and that all of the signers are to the best of the affiant's knowledge and belief eligible electors of the precinct.

If a special election is to be held in which only those qualified electors residing in a specified portion of any established precinct are entitled to vote, that portion of the precinct may be merged by the commissioner with one or more other established precincts or portions of established precincts for the special election, and the right to petition against merger of a precinct shall not apply.

2. Divide any precinct permanently established under this section which contains all or any parts of two or more mutually exclusive political subdivisions, each of which is independently electing one or more officers on the same date, into two or more temporary precincts and designate a polling place for each.

3. Notwithstanding the provisions of the first unnumbered paragraph of this section the commissioner may consolidate precincts for any election including a primary and general election if one of the precincts involved consists entirely of dormitories that are closed at the time the election is held. [C73,§604; C97, §§1092, 2755; S13,§2755; C24,§§729, 4205; C27, §§729, 4205, 4216-b2; C31, 35,§§729, 4216-c5; C39, §§729, 4216.05; C46, 50, 54, 58, 62, 66, 71, 73, §§49.11, 277.5; C75,§49.11]

Referred to in §§49.7, 49.10, 49.13, 49.16

49.12 Election boards. There shall be appointed in each election precinct an election board which shall ordinarily consist of five precinct election officials. However, in precincts using only one voting machine at any one time, and in precincts voting by paper ballot where no more than one hundred votes were cast in the last preceding similar election, the board shall consist of three precinct election officials; and in precincts using more than two voting machines one additional precinct election official may be appointed for each such additional machine. Double election boards may be appointed for any precinct as provided by chapter 51. Not more than a simple majority of the members of the election board in any precinct, or of the two combined boards in any precinct for which a double election board is appointed, shall be members of the same political party or organization if one or more qualified electors of another party or organization are qualified and willing to serve on the board.

If double counting boards are not appointed for precincts using paper ballots and using only three precinct election officials a fourth precinct election official shall be appointed from the election board panel to serve beginning at 8:00 p.m. to assist in counting the paper ballots. [C51,§§246, 248, 1111; R60,§§481, 483, 2027, 2030, 2031; C73,§§606, 1717, 1719; C97, §§1093, 2746, 2751, 2756; S13,§2756; SS15,§§1087-a5, 1093; C24,§§559, 730, 731, 735, 4165, 4195, 4209, 4211; C27,§§559, 730, 731, 735, 4165, 4195, 4209, 4211-b2; C31, 35,§§559, 730, 731, 735, 4165, 4216-c10; C39,§§559, 730, 731, 735, 4165, 4216.10; C46, 50,§§43.31, 49.12, 49.13, 49.17, 49.19, 276.12, 277.10; C54, 58, 62, 66, 71, 73,§§43.31, 49.12, 49.13, 49.17, 275.19, 277.10; C75,§49.12; 66GA, ch 81, §59]

Referred to in §§49.16, 49.18, 50.21, 50.22, 53.23

49.13 Commissioner to appoint members, chairperson.

1. The membership of each precinct election board shall be appointed by the commissioner, not less than fifteen days before each election held in the precinct, from the election board panel drawn up as provided in section 49.15. Precinct election officials shall be qualified electors of the county, or other political subdivision within which precincts have been merged across county lines pursuant to section 49.11, subsection 1 in which they are appointed. Preference shall be given to appointment of residents of a precinct to serve as precinct election officials for that precinct, but the commissioner may appoint other residents of the county where necessary.

2. Each election board member shall be a member of one of the two political parties whose candidates for president of the United States or for governor, as the case may be, received the largest and next largest number of votes in the precinct at the last general election, except that persons not members of either of these parties may be appointed to serve for any election in which no candidates appear on the ballot under the heading of either of these political parties.

3. In appointing the election board to serve for any election in which candidates' names do appear under the heading of these political parties, the commissioner shall give preference to the persons designated by the respective county chairpersons of these political parties for placement on the election board panel, as provided by section 49.15, in the order that they were so designated. However, the commissioner may for good cause decline to appoint a designee of a county chairperson if that chairperson is notified and allowed two working days to designate a replacement.

4. The commissioner shall designate one member of each precinct election board as chairperson of that board, and also of the counting board authorized by chapter 51 if one is appointed, with authority over the mechanics of the work of both boards. [C97,§1093; SS15,§1093; C24, 27, 31, 35, 39,§733; C46, 50, 54, 58, 62, 66, 71, 73,§49.15; C75,§49.13; 66GA, ch 81,§60]

Referred to in §§49.15, 49.18, 49.89, 50.21, 51.2, 52.9, 52.36, 53.22, 53.23

49.14 Repealed by 61GA, ch 94,§1.

49.15 Commissioner to draw up election board panel. Not less than twenty days before each primary election, the commissioner shall draw up for each precinct an election board panel from which members of the precinct election board shall be appointed for each election held in the precinct during the ensuing two years. Each panel shall include members of each of the political parties referred to in section 49.13, whose names may be designated by the county chairpersons of each of these political parties not less than thirty days prior to each primary election. The commissioner may place on the election board panel names of persons known by the commissioner to be members of these political parties, if the respective county chairpersons fail to designate a sufficient number of names, and may also add names of persons, whether or not they are members of either of these political parties, who have advised the commissioner they are willing to serve on the election board for elections in which no candidates appear on the ballot under the heading of either of these political parties, or whom either the city council of a city of three thousand five hundred or less population or a school board has advised the commissioner at least thirty days before each primary election are willing to serve without pay at elections conducted for that school district or city, as the case may be, during the tenure of the election board panel on which these names are included. [C97,§1093; SS15,§1093; C24, 27, 31, 35, 39,§733; C46, 50, 54, 58, 62, 66, 71, 73, 75, §49.15; 66GA, ch 81,§61]

Referred to in §§49.13, 49.16, 49.19, 51.2, 53.20

49.16 Tenure of election board panel. Each person whose name is placed on the election board panel as provided in section 49.15, shall remain available for appointment to the election board of the precinct, subject to the provisions of section 49.12, until a new panel is drawn up unless his name is sooner deleted from the panel by the commissioner. The election board for each election held in the precinct shall be drawn from the panel, however:

1. No person shall serve on the election board at any election in which he or any person related to him within the third degree of consanguinity or affinity is a candidate to be voted upon in that precinct, and it shall be the responsibility of each person whose name is listed on the election board panel to notify the commissioner not less than fifteen days before any election at which he is ineligible to serve by reason of this subsection. However, this subsection shall not apply in the case of any candidate or relative of a candidate seeking an office or nomination which no opposing candidate is seeking. Any candidate for an office or for nomination to an office to which two or more persons are to be elected at large is unopposed, for the purpose of this subsection, if the number of candidates for the office or nomination does not exceed the number of persons to be elected or nominated.

2. When all or portions of two or more precincts are merged for any election as permitted by section 49.11, subsection 1, the commissioner may appoint the election board for the merged precinct from the election board panels of any of the precincts so merged. When any permanent precinct is divided as permitted by section 49.11, subsection 2, the commissioner shall so far as possible appoint the election board for each of the temporary precincts so created from the election board panel of the permanent precinct.

3. Persons whose names are listed on the election board panel shall not be required to serve on the election board for any election which by the terms of the statute authorizing it is exempt from the provisions of this chapter. The necessary officers for such elections shall be designated as provided by law or, if there is no applicable statute, by the commissioner.

4. In appointing the election board for any election conducted for a city of three thousand five hundred or less population, or any school district, the commissioner may give preference to any persons who are willing to serve without pay at those elections. [C75,§49.16; 66GA, ch 81,§62]

Referred to in §49.19

49.17 Repealed by 65GA, ch 136,§401.

49.18 Vacancies occurring on election day. If, at the opening of the polls in any precinct, there shall be a vacancy in the office of a precinct election official, the vacancy shall be filled by the commissioner or, with his approval and for that election only by the members of the board present, consideration being given to the political party affiliation of the person appointed if necessary in order to comply with the requirements of sections 49.12 and 49.13. [C51,§§247, 1111; R60,§§482, 2027, 2030, 2031; C73,§§607, 1717, 1719; C97,§§1093, 2746, 2751, 2756; S13,§2756; SS15,§§1087-a5, 1093; C24,§§559, 736, 737, 4195, 4209, 4211; C27,§§559, 736, 737, 4195, 4209, 4211-b2; C31, 35,§§559, 736, 737, 4216-c10; C39,§§559, 736, 737, 4216.10; C46, 50, 54, 58, 62, 66, 71, 73,§§43.31, 49.18, 49.19, 277.10; C75,§49.18]

49.19 Unpaid officials, paper ballots optional for certain city elections. The commissioner may appoint unpaid election precinct officials to election boards, as provided by sections 49.15, 49.16 and 49.20, or elect not to use voting machines even though they are available, as permitted by section 49.26, or both, for any election held for a city, even if the city has a population of more than three thousand five hundred, if there is no contest for any office on the ballot and no public question is being submitted to the voters at that election. [C75, §49.19; 66GA, HF 1011,§35]

See §49.73

49.20 Compensation of members. The members of election boards shall receive two dollars per hour while engaged in the discharge of their duties and shall be reimbursed for actual and necessary travel expense, except that persons whom the commissioner has been advised prior to their appointment to the election board are willing to serve without pay at elections conducted for any school district or a city of three thousand five hundred or less population shall receive no compensation for service at those elections. Compensation shall be paid to members of election boards only after the vote has been canvassed and it has been determined in the course of such canvass that the election record certificate has been properly executed by the election board. [SS15,§§1087-a5, 1093; C24, 27, 31, 35, 39,§§560, 738; C46, 50, 54, 58, 62, 66, 71, 73,§§43.32, 49.20; C75,§49.20]

Referred to in §§49.19, 53.22
Rate, see §79.9

49.21 Polling places—accessible to elderly and handicapped persons. It is the responsibility of the commissioner to designate a polling place for each precinct in the county.

Upon the application of the commissioner, the authority which has control of any buildings or grounds supported by taxation under the laws of this state shall make available the necessary space therein for the purpose of holding elections, without charge for the use thereof.

Except as otherwise provided by law, the polling place in each precinct in the state shall be located in a central location if a building is available. However, first consideration shall be given to the use of public buildings supported by taxation.

In the selection of polling places, consideration shall also be given to the use of buildings accessible to elderly and physically disabled persons. [C51,§§222, 245; R60,§§444, 480; C73, §§391, 603; C97,§§566, 1113, 2755; S13,§2755; C24, 27,§§739, 4205; C31, 35,§§739, 4216-c7; C39,§§739, 4216.07; C46, 50, 54, 58, 62, 66, 71, 73,§§49.21, 277.7; C75,§49.21]

49.22 Repealed by 65GA, ch 136,§401.

49.23 Notice of change. When a change is made from the usual polling place for the precinct or when the precinct polling place for any primary or general election is different from that used for the precinct at the last preceding primary or general election, notice of such change shall be given by publication in a newspaper of general circulation in the precinct not more than fifteen nor less than five days prior to the day on which the election is to be held. In addition a notice of the present polling place for the precinct shall be posted, not later than the hour at which the polls open on the day of the election, on each door to the usual or former polling place in the precinct and shall remain there until the polls have closed. [C51,§222; R60,§444; C73,§391; C97,§566; C24, 27, 31, 35, 39,§741; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.23]

49.24 Schoolhouses as polling places. In precincts outside of cities the election shall, if practicable, be held in a public school building. Any damage to the building or furniture resulting from the election shall be paid by the county. [C97,§1113; C24, 27, 31, 35, 39,§742; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.24; 66GA, ch 81, §63]

Schoolhouses as polling places, §297.9

49.25 Equipment required at polling places.

1. In any county or portion of a county for which voting machines have been acquired under section 52.2 the commissioner shall determine pursuant to section 49.26, in advance of each election conducted for a city of three thousand five hundred or less population, or any school district, and individually for each precinct, whether voting in that election shall be by machine or by paper ballot.

2. The commissioner shall furnish to each precinct, in advance of each election, voting machines meeting the requirements of chapter 52 or voting booths, as the case may be, in the following number:

a. At each regularly scheduled election, at least one for every three hundred fifty voters who voted in the last preceding similar election held in the precinct.

b. At any special election at which the ballot contains only a single public measure or

only candidates for a single office or position, the number determined by the commissioner.

3. The commissioner shall furnish to each precinct where paper ballots are to be used for any election, in advance of that election, the necessary ballot boxes, suitably equipped with locks and keys, and shall insure that the arrangement and construction of voting booths at the polling place in each precinct are as follows:

a. Each booth shall be at least three feet square, and have three sides enclosed, the side in front to open and shut by a door swinging outward, or closed with a curtain.

b. Each side of the booth shall be seven feet high, and the door or curtain shall extend to within two feet of the floor, and shall be closed while the voter is preparing his ballot.

c. Each booth shall contain a shelf at least one foot wide, at a convenient height for writing, and shall be well lighted.

d. The booths shall be so built and arranged, if possible, as to be permanent, so that after the election they may be taken down and deposited with the commissioner or his or her designee for safekeeping and for future use. [C51,§254; R60,§489; C73,§614; C97,§§1113, 1130, 2756; S13,§§1130, 2756; C24, 27,§§743, 744, 4209; C31, 35,§§743, 744, 4216-c14; C39,§§**743, 744, 4216.14**; C46, 50, 54, 58, 62, 66, 71, 73,§§49.25, 49.26, 277.14; C75,§49.25; 66GA, ch 81,§64, HF 1011,§§36, 37]

Referred to in §49.81

49.26 Commissioner to decide method of voting. When voting machines are available for an election precinct, the commissioner shall determine in advance of each election conducted for a city of three thousand five hundred or less population or any school district in which voting occurs in that precinct whether voting there shall be by machine or paper ballot. If the commissioner concludes, on the basis of voter turnout for recent similar elections and factors considered likely to affect voter turnout for the forthcoming election, that voting will probably be so light as to make preparation and use of paper ballots less expensive than preparation and use of a voting machine, paper ballots shall be used. [S13, §2754; C24, 27,§4203; C31, 35,§4216-c15; C39, §**4216.15**; C46, 50, 54, 58, 62, 66, 71, 73,§277.15; C75,§49.26; 66GA, ch 81,§65]

Referred to in §§49.19, 49.25, 52.9

49.27 Precincts where some electors may not vote for all candidates or questions. When the territory of a precinct is such that one or more of the candidates or questions on the ballot in any election may not be legally voted upon by all qualified electors of the precinct, the commissioner may not place those candidates or questions upon a voting machine which may be used by qualified electors of the entire precinct unless the machine is equipped with a device, readily operable by the election official attending the machine, by which that portion of the machine on which those candidates or questions appear may be locked when the machine is to be used by a qualified elector not eligible to vote for those candidates or questions. If the voting machines in any precinct to which this section is applicable are not so designed, the commissioner may place the candidates or questions for which not all voters of the precinct may legally vote on one or more, but not all, of the voting machines in the precinct. In any precinct to which this section is applicable and in which neither of the foregoing procedures are feasible, or in which all voting is by paper ballot, the commissioner shall prepare separate ballots for the candidates or questions which may not be legally voted upon by all qualified electors of the precinct, and shall furnish a separate ballot box in which only those ballots shall be deposited. [C60,§§2097, 2105; C73,§§1800, 1801; C97,§§1107, 1130, 2794; S13,§§1090, 1130; SS15,§§1107, 2794, 2794-a; C24, 27, 31, 35, 39,§§**745, 770, 4142, 4168**; **C46, 50,§§49.27, 49.52, 274.24, 276.15; C54, 58, 62,** 66, 71, 73,§§49.27, 49.52, 275.22; C75,§49.27]

49.28 Commissioner to furnish registers and supplies. The commissioner shall prepare and furnish to each precinct an election register, and all other books, blanks, materials, and supplies necessary to carry out the provisions of this chapter. Voter registration records shall be kept so that the election register for each precinct contains the names of no electors except those eligible to vote in that precinct. When a precinct lies in more than one political subdivision or district from which any officer is elected, the election register must clearly indicate who are the qualified electors of each political subdivision or district in which the precinct lies, including school director districts. [C51,§255; R60,§490; C73,§615; C97,§§1113, 1132, 2756; S13,§§1087-a16, 2756; C24, 27,§§561, 746, 4209; C31, 35,§§561, 746, 4216-c14; C39,§§**561, 746, 4216.14**; C46, 50, 54, 58, 62, 66, 71, 73,§§43.33, 49.28, 277.14; C75,§49.28; 66GA, ch 81,§66]

49.29 Voting by ballot or machine. In all elections regulated by this chapter, the voting shall be by ballots printed and distributed as provided by law, or by voting machines meeting the requirements of chapter 52. [C73,§1808; C97,§§1097, 2754; S13,§2754; C24, 27,§§747, 4198; C31, 35,§§747, 4216-c13; C39,§§**747, 4216.13**; C46, 50, 54, 58, 62, 66, 71, 73,§49.29, 277.13; C75,§49.29]

49.30 All candidates on one ballot—exception. The names of all candidates to be voted for in each election precinct, other than presidential electors, shall be printed on one ballot, except as otherwise required by section 46.22 and except that at any election where voting machines are used, and it is impossible to place the names of all candidates on the machine ballot, the commissioner may provide a separate printed ballot for the candidates for judge of district court and the township ticket, or either; one of each of said printed ballots to be furnished each qualified voter. [C51,§256; R60,§491; C73,§616; C97,§1106; S13,§1106; C24, 27,

31, 35, 39,§748; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.30]

Referred to in §§49.31, 52.10

49.31 Arrangement of names on ballot.

1. All nominations of any political party or group of petitioners, except as provided in section 49.30, shall be placed under the party name or title of such party or group, as designated by them in their certificates of nomination or petitions, or if none be designated, then under some suitable title, and the ballot shall contain no other names, except as provided in section 49.32.

2. The commissioner shall prepare a list of the election precincts of the county, by arranging the various townships and cities in the county in alphabetical order, and the wards or precincts in each city or township in numerical order under the name of such city or township. The commissioner shall then arrange the surnames of each political party's candidates for each office to which two or more persons are to be elected at large alphabetically for the respective offices for the first precinct on the list; thereafter, for each political party and for each succeeding precinct, the names appearing first for the respective offices in the last preceding precinct shall be placed last, so that the names that were second before the change shall be first after the change. The procedure for arrangement of names on ballots provided in this section shall likewise be substantially followed in elections in political subdivisions of less than a county.

3. The ballots for any city elections or school elections, or any special election at which any office is to be filled on a nonpartisan basis shall contain the names of all nominees or candidates arranged in alphabetical order by surname under the heading of the office to be filled. When a city election, school election or special election to fill an office is held in more than one precinct, the candidates' names shall be rotated on the ballot from precinct to precinct in the manner prescribed by subsection 2.

4. If electors in any precinct are entitled to vote for more than one nominee or candidate for a particular office, the heading for that office on the precinct ballot shall be immediately followed by a notation of the number of nominees or candidates for that office for whom each elector may vote. Provision shall be made on the ballot to allow the elector to write in the name of any person for whom he or she desires to vote for any office or nomination on the ballot. [C97,§1106; S13,§§1106, 2754; C24, 27, §§749, 4203; C31, 35,§§749, 4216-c8; C39,§§749, 4216.08; C46, 50, 54, 58, 62, 66, 71, 73,§§49.31, 277.8; C75,§49.31; 66GA, ch 81,§67]

Referred to in §§43.28, 49.53, 52.10

49.32 Candidates for president in place of electors. The candidates for electors of president and vice president of any political party or group of petitioners shall not be placed on the ballot, but in the years in which they are to be elected the names of candidates for president and vice president, respectively, of such parties or group of petitioners shall be placed on the ballot, as the names of candidates for United States senators are placed thereon, under their respective party, petition, or adopted titles for each political party, or group of petitioners, nominating a set of candidates for electors. [C97,§1106; S13,§1106; C24, 27, 31, 35, 39,§750; C46, 50, 54, 58, 62, 66, 71, 73, 75, §49.32]

Referred to in §§49.31, 52.10

49.33 One square for president and vice president. Upon the left-hand margin of each separate column of the ballot, immediately opposite the names of the candidates for president and vice president, a single square, the sides of which shall not be less than one-fourth of an inch in length, shall be printed in front of a bracket enclosing the names of the said candidates for president and vice president. The votes for said candidates shall be counted and certified to by the election board in the same manner as the votes for other candidates. [C24, 27, 31, 35, 39,§751; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.33]

Referred to in §52.10
Canvass of votes, ch 50

49.34 Repealed by 66GA, ch 81,§154.

49.35 Order of arranging tickets on ballot. Each list of candidates nominated by a political party or a group of petitioners shall be termed a ticket. Each ticket shall be placed in a separate vertical column or horizontal row on the ballot, in the order determined pursuant to section 49.37 by the authorities charged with the printing of the ballots. However, if a total of more than seven tickets are to be placed on the ballot the state commissioner may authorize a method of placement in which the groups of petitioners are not all placed in separate individual columns or rows. [C97,§1106; S13,§1106; C24, 27, 31, 35, 39,§753; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.35; 66GA, ch 81,§68]

Referred to in §52.10
Order of names in primaries, §43.28

49.36 Candidates of nonparty organization. The term "group of petitioners" as used in the foregoing sections shall embrace an organization which is not a political party as defined by law. [C24, 27, 31, 35, 39,§754; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.36]

Referred to in §52.10
Nonparty organization, §43.2; also ch 44
Political party defined, §43.2

49.37 Columns or rows to be separated.

1. Each column or row containing a ticket or tickets, each preceded by the name of a political party or a group of petitioners, shall be separated by a distinct line appearing on the ballot. The names of candidates for nonpartisan offices shall be placed on a separate column or row on the ballot.

2. The commissioner shall arrange the ballot in conformity with the certificate issued

by the state commissioner under section 43.73, in that the names of the respective candidates on each political party ticket shall appear in the order they appeared on the certificate, above or to the left of the nonparty political organization tickets. [C97,§1106; S13,§1106; C24, 27, 31, 35, 39,§755; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.37; 66GA, ch 81,§69]

Referred to in §§49.35, 52.10

49.38 Candidate's name to appear but once. The name of a candidate shall not appear upon the ballot in more than one place for the same office, whether nominated by convention, primary, caucus, or petition, except as hereinafter provided. [C97,§1106; S13,§1106; C24, 27, 31, 35, 39,§756; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.38]

Referred to in §52.10

49.39 Dual nomination. When two or more political parties, or when two or more political organizations which are not political parties, or when a political party and a political organization which is not a political party, nominate the same candidate for the same office, such nominee shall forthwith designate, in writing, the political party name, or the political organization name, under which he desires to have his name printed on the official ballot for the ensuing general election; such written designation shall be filed with the officer with whom the nomination paper, or certificate of nomination by a convention or caucus, is filed and the name of such nominee shall appear on the ballot in accordance therewith. [C97,§1106; S13, §§1087-a6, 1106; C24, 27, 31, 35, 39,§757; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.39]

Referred to in §§49.40, 52.10

49.40 Failure to designate. If the designation referred to in section 49.39 be not filed, the following rules shall govern:

1. If the nomination be by two or more political parties, the name of such nominee shall be printed under the party designation under which nomination papers were first filed in his behalf.

2. If the nomination be by a political party and also by a political organization which is not a political party, the name of such nominee shall be printed under the name of the political party or political organization first filing nomination papers, or certificate of nomination, as the case may be.

3. If the nomination be by two or more political organizations which are not political parties, the name of such nominee shall be printed under the name of the political organization first filing a certificate of nomination of such candidate. [C97,§1106; S13,§§1087-a6, 1106; C24, 27, 31, 35, 39,§758; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.40]

Referred to in §52.10

49.41 Repealed by 59GA, ch 296,§2.

49.42 Form of official ballot. The ballot for the general election shall be arranged in vertical columns or horizontal rows each of which shall be substantially in the following form:

○ REPUBLICAN	○ DEMOCRATIC	○ PROHIBITION	○ UNION LABOR
☐ For President, A.... B...., of Ohio.	☐ For President, N.... O...., of Virginia.	☐ For President, A.... B...., of Maine.	☐ For President, N.... O...., of Idaho.
☐ For Vice President, C.... D...., of New York.	☐ For Vice President, P.... Q...., of Indiana.	☐ For Vice President, C.... D...., of Illinois.	☐ For Vice President, P.... Q...., of Ohio.
For United States Senator.	For United States Senator.	For United States Senator.	For United States Senator.
☐ E.... F....,	☐ R.... S....,	☐ E.... F....,	☐ R.... S....,
For United States Representative,	For United States Representative,	For United States Representative,	For United States Representative,
☐ G.... H....,	☐ T.... U....,	☐ G.... H....,	☐ T.... U....,
For Governor,	For Governor,	For Governor,	For Governor,
☐ I.... J....,	☐ V.... W....,	☐ I.... J....,	☐ V.... W....,
For Lieutenant Governor,	For Lieutenant Governor,	For Lieutenant Governor,	For Lieutenant Governor,
☐ K.... L....	☐ X.... Y....	☐ K.... L....	☐ X.... Y....

[C97,§1106; S13,§1106; C24, 27, 31, 35, 39,§760; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.42; 66GA, ch 81,§70]

Referred to in §§52.10, 52.12

49.43 Constitutional amendment or other public measure. In precincts using paper ballots all public measures to be voted upon by an elector at a given election shall be printed upon one ballot of some color other than white. In precincts using voting machines all public measures shall be placed in the question row on the machine; however if it is impossible to place all the public measures on the machine ballot, or if only a portion of the qualified electors of the precinct are entitled to vote upon any measure presented, the commissioner may provide a separate paper ballot for the public measure or measures. [C97,

§1106; S13,§1106; C24, 27, 31, 35, 39,§§**761, 762, 767**; C46, 50, 54, 58, 62, 66, 71, 73,§§49.43, 49.44; C75,§§49.43, 49.49; 66GA, ch 81,§71]

Referred to in §§49.44, 49.45, 145A.7, 455.197(6)
Constitution, Art. X,§1
See also §52.24

49.44 State commissioner to prepare summary. When a proposed constitutional amendment or other public measure to be decided by the voters of the entire state is to be voted upon, the state commissioner shall prepare a written summary of the amendment or measure. The summary shall be printed immediately preceding the text of the proposed amendment or measure on the paper ballot referred to in section 49.43 and, in precincts where the amendment or measure will be voted on by machine, shall be placed in the voting machine inserts as required by section 52.25. [C73,§49.43; C75,§49.44]

Referred to in §§52.25, 145A.7, 455.197(6)
Constitution, Art. X,§1

49.45 General form of ballot. Ballots referred to in section 49.43 shall be substantially in the following form:

"Shall the following amendment to the Constitution (or public measure) be adopted?" Yes ☐ No ☐

(Here insert the summary, if it be for a constitutional amendment or state-wide public measure, and in full the proposed constitutional amendment or public measure.) [C97,§1106; S13,§1106; C24, 27, 31, 35, 39,§**763**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.45]

Referred to in §§145A.7, 455.197(6)
Constitution, Art. X,§1

49.46 Marking ballots on public measures. The elector shall designate his vote by a cross mark, thus, "X", or a check mark, thus, "√", placed in the proper square. [C97,§1106; S13, §1106; C24, 27, 31, 35, 39,§**764**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.46]

Referred to in §§145A.7, 455.197(6)
Constitution, Art. X,§1

49.47 Notice on ballots. At the top of ballots on such public measures shall be printed the following:

"[Notice to voters. For an affirmative vote upon any question submitted upon this ballot make a cross (X) mark or check (√) in the square after the word 'Yes'. For a negative vote make a similar mark in the square following the word 'No'.]" [S13,§1106; C24, 27, 31, 35, 39,§**765**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §49.47]

Referred to in §§145A.7, 455.197(6)
Constitution, Art. X,§1

49.48 Repealed by 64GA, ch 101,§4.

49.49 Repealed by 66GA, ch 81,§154.

49.50 Endorsement and delivery of ballots. Ballots on such public measures shall be endorsed and given to each voter by the precinct election officials, as in case of ballots generally, and shall be subject to all other laws governing ballots for candidates, so far as the same shall be applicable. [S13,§1106; C24, 27, 31, 35, 39,§**768**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.50]

Constitution, Art. X,§1

49.51 Commissioner to control printing. The commissioner shall have charge of the printing of the ballots to be used for any election held in the county, unless the commissioner delegates that authority as permitted by this section. The commissioner may delegate this authority only to another commissioner who is responsible under section 47.2 for conducting the elections held for a political subdivision which lies in more than one county, and only with respect to printing of ballots containing only public questions or the names of candidates to be voted upon by the qualified electors of that political subdivision. Only one facsimile signature, that of the commissioner under whose direction the ballot is printed, shall appear on the ballot. It is the duty of the commissioner to insure that the arrangement of any ballots printed under his or her direction conforms to all applicable requirements of this chapter. [C97, §1107; S13,§§1106, 2754; SS15,§1107; C24, 27,§§**767**, 769, 771, 4203; C31, 35,§§767, 769, 771, 4216-c8; C39,§§**767, 769, 771, 4216.08**; C46, 50, 54, 58, 62, 66, 71, 73,§§49.51, 49.53, 277.8; C75,§§49.49, 49.51; 66GA, ch 81,§72]

Referred to in §49.57

49.52 Repealed by 65 GA, ch 136,§401.

49.53 Publication of ballot and notice. The commissioner shall not less than four nor more than twenty days prior to the day of each election, except those for which different publication requirements are prescribed by law, publish notice of the election. The notice shall contain a facsimile of the portion of the ballot containing the first rotation as prescribed by section 49.31, subsection 2, and shall show the names of all candidates or nominees and the office each seeks, and all public questions, to be voted upon at the election. The sample ballot published as a part of the notice may at the discretion of the commissioner be reduced in size relative to the actual ballot but such reduction shall not cause upper case letters appearing on the published sample ballot to be less than five-thirty-sixth of an inch high in candidates' names or in summaries of public measures. The notice shall also state the date of the election, the hours the polls will be open, the location of each polling place at which voting is to occur in the election, and the names of the precincts voting at each polling place, but the statement need not set forth any fact which is apparent from the portion of the ballot appearing as a part of the same notice. The notice shall be published in at least one newspaper, as defined in section 618.3, which is published in the county or other political subdivision in which the election is to occur or, if no newspaper is published there, in at least one newspaper of substantial circulation in the county or political

subdivision. For the general election or the primary election the foregoing notice shall be published in at least two newspapers published in the county representing, if possible, the two political parties whose candidates for president of the United States or for governor, as the case may be; received the largest and next largest number of votes in the county at the last preceding general election. However, if there is only one newspaper published in the county, publication in one newspaper shall be sufficient. [C51,§1110; R60,§§463, 2027, 2030; C73,§§578, 1718, 1719; C97,§§1062, 1112, 2746, 2750, 2751, 2755; S13,§§1087-a12, 2750, 2755; C24, §§508, 550, 551, 790, 4195, 4197, 4208; C27,§§508, 550, 551, 790, 4195, 4197, 4208, 4211-b1, 4216-b3; C31, 35,§§508, 550, 551, 590, 4216-c3; C39,§§**508, 550, 551, 790, 4216.03**; C46, 50, 54,§§39.5, 43.23, 43.24, 49.72, 277.3; C58, 62, 66, 71, 73,§§39.5, 43.23, 43.24, 43.29, 49.72, 277.3; C75,§49.53; 66GA, ch 81,§73, HF 1011,§38]

Referred to in §§39.6, 49.54, 49.73, 52.35, 275.35, 280A.15, 280A.39, 296.4, 298.18, 345.6, 364.2, 368.19, 384.26
Publication of ballot, city elections, §376.5

49.54 Cost of publication. The cost of the publication required by section 49.53, shall not exceed an amount determined by the director of the state department of general services or his designee. [C73,§3832; C97,§§1112, 1293; S13, §1293; C24, 27, 31, 35, 39,§§**772, 796**; C46, 50, 54, 58, 62, 66, 71, 73,§§49.54, 49.72; C75,§49.54]

49.55 Delivery of supplies to officials. In all cases the necessary election supplies, including paper ballots for precincts where they are to be used, shall be furnished the precinct election officials not less than one hour before the opening of the polls on the morning of the election. [C97,§1107; SS15,§1107; C24, 27, 31, 35, 39,§773; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.55]

Referred to in §§49.65, 52.15

49.56 Maximum cost of printing. The cost of printing the official election ballots and printed supplies for voting machines shall not exceed an amount determined by the director of the department of general services or his designee. [SS15,§1107; C24, 27, 31, 35, 39,§774; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.56]

Referred to in §53.46

49.57 Method and style of printing ballots. Ballots shall be prepared as follows:

1. They shall be on plain white paper, through which the printing or writing cannot be read.

2. The party name shall be printed in capital letters, not less than one-fourth of an inch in height.

3. The names of candidates shall be printed in capital letters, not less than one-eighth, nor more than one-fourth of an inch in height.

4. A square, the sides of which shall not be less than one-fourth of an inch in length, shall be printed at the beginning of each line in which the name of a candidate is printed, except as otherwise provided.

5. On the outside of the ballot, so as to appear when folded, shall be printed the words "Official ballot", a designation of the ballot rotation, if any, the date of the election, and a facsimile of the signature of the commissioner who has caused the ballot to be printed pursuant to section 49.51. [C97,§1109; S13,§1109; C24, 27, 31, 35, 39,§775; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.57; 66GA, ch 81,§74, HF 1011,§39]

One square for president, etc., §49.33
Signature in primary elections, §43.36

49.58 Effect of death of certain candidates. If any candidate nominated by a political party, as defined in section 43.2, for the office of senator or representative in the congress of the United States, governor, lieutenant governor, attorney general, or senator or representative in the general assembly dies during the period beginning on the seventy-fourth day and ending on the last day before the general election, or if any candidate so nominated for the office of county supervisor dies during the period beginning on the fifty-ninth day and ending on the last day before the general election, the vote cast at the general election for that office shall not be canvassed as would otherwise be required by chapter 50. Instead, a special election shall be held on the first Tuesday after the second Monday in December, for the purpose of electing a person to fill that office. Each candidate for that office whose name appeared on the general election ballot shall also be a candidate for the office in the special election, except that the deceased candidate's political party may designate another candidate in substantially the manner provided by section 43.78 for filling vacancies on the general election ballot. However, a political party which did not have a candidate on the general election ballot for the office in question may similarly designate a candidate for that office in the special election. The name of any replacement or additional candidate so designated shall be submitted in writing to the state commissioner, or the commissioner in the case of a candidate for county supervisor, not later than five o'clock p.m. on the first Tuesday after the date of the general election. No other candidate whose name did not appear on the general election ballot as a candidate for the office in question shall be placed on the ballot for the special election, in any manner. The special election shall be held and canvassed in the manner prescribed by law for the general election. [C97,§1108; C24, 27, 31, 35, 39,§776; C46, 50, 54, 58, 62, 66, 71, 73, 75, §49.58; 66GA, ch 81,§75]

Referred to in §43.79
Section 49.58, Code 1975, repealed 66GA, ch 81,§75

49.59 to 49.62 Repealed by 66GA, ch 81,§154.

49.63 Time of printing—inspection and correction. Ballots shall be printed and in the possession of the commissioner in time to enable him to furnish ballots to absent voters as provided by sections 53.8 and 53.11. The printed ballots shall be subject to the inspection of

candidates and their agents. If mistakes are discovered, they shall be corrected without delay, in the manner provided in this chapter. [C97,§1110; C24, 27, 31, 35, 39,§781; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.63]

Ballot to absent voter, §53.2
Correction of primary ballots, §43.25

49.64 Number ballots delivered. The commissioner shall cause ballots of the kind to be voted in each precinct, to be delivered to the precinct election officials as follows: In general elections which are presidential elections seventy-five ballots for every fifty votes, or fraction thereof, cast in said precinct at the last preceding general election which was also a presidential election; and in general elections which are not presidential elections, seventy-five ballots for every fifty votes, or fraction thereof, cast therein at the last preceding general election which was not a presidential election. [C97,§1110; C24, 27, 31, 35, 39,§782; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.64]

49.65 Packing ballots—delivery—receipts—records. The required number of ballots for each precinct shall be wrapped and sealed, and each package shall be clearly marked on the outside to indicate the number of ballots contained in the package and the name or number of the precinct and the location of the polling place for which they are intended. The ballots shall be delivered to the precinct election officials together with other necessary election supplies, as provided by section 49.55, and one of the officials shall sign a receipt for the ballots which receipt shall be preserved by the commissioner. The commissioner shall keep a record of the number of ballots delivered for each polling place, the person who signed the receipt for them, and the time they were delivered, on a form which also provides space for the entries required by section 50.10. [C97, §1110; C24, 27, 31, 35, 39,§783; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.65]

Referred to in §50.10

49.66 Reserve supply of ballots. The commissioner shall provide and retain at his office an ample supply of ballots, in addition to those distributed to the several voting precincts, and if at any time the ballots furnished to any precinct shall be lost, destroyed, or exhausted before the polls are closed, on written application, signed by a majority of the precinct election officials of such precinct, or signed and sworn to by one of such officials, he shall immediately cause to be delivered to such officials, at the polling place, such additional supply of ballots as may be required, and sufficient to comply with the provisions of this chapter. [C97,§1110; C24, 27, 31, 35, 39, §784; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.66]

49.67 Form of reserve supply. For general elections, the supply of ballots so retained shall only equal the number provided for the precinct casting the largest vote at the preceding general election, and shall include only the portions of the various tickets to be voted for throughout the entire county, with blank spaces in which the names of candidates omitted may be written by the voter, and with blank spaces in the endorsement upon the back of such ballots, in which the name of the precinct shall be written by the precinct election officials. [C97,§1110; C24, 27, 31, 35, 39, §785; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.67]

49.68 State commissioner to furnish instructions. The state commissioner with the approval of the attorney general shall prepare, and from time to time revise, written instructions to the voters relative to voting, and shall furnish each commissioner with copies of the instructions. Such instructions shall cover the following matters:

1. The manner of obtaining ballots.
2. The manner of marking ballots.
3. That unmarked or improperly marked ballots will not be counted.
4. The method of gaining assistance in marking ballots.
5. That any erasures or identification marks, or otherwise spoiling or defacing a ballot, will render it invalid.
6. Not to vote a spoiled or defaced ballot.
7. How to obtain a new ballot in place of a spoiled or defaced one.
8. Upon the right of an employee to absent himself for two hours for the purpose of voting, by application for leave so to do made before the day of election, without deduction from his salary or wages.
9. Any other matters thought necessary.

[C97,§1111; C24, 27, 31, 35, 39,§§786, 787; C46, 50, 54, 58, 62, 66, 71, 73,§§49.68, 49.69; C75,§49.68]

49.69 Repealed by 65GA, ch 136,§401.

49.70 Precinct election officials furnished instructions. The commissioner shall cause copies of the foregoing instructions to be printed in large, clear type, under the heading of "Card of Instructions", and shall furnish the precinct election officials with a sufficient number of such cards as will enable them to comply with section 49.71. [C97,§1111; C24, 27, 31, 35, 39,§788; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.70]

49.71 Posting instruction cards and sample ballots. The precinct election officials, before the opening of the polls, shall cause said cards of instructions to be securely posted as follows:

1. One copy in each voting booth.
2. Not less than four copies, with an equal number of sample ballots, in and about the polling place. [C97,§1112; C24, 27, 31, 35, 39, §789; C46, 50, 54, 58, 62, 66, 71, 73, 75§49.71]

Referred to in §49.70
Sample primary ballots, §43.30
Sample voting machine ballots, §52.13

49.72 Absentee voters designated before polling place opened. The commissioner shall deliver to each precinct election board not less than one hour before the time at which the polls are to open for any election the list of all

qualified electors of that precinct who have been given or sent an absentee ballot for that election, and the election board shall immediately designate those qualified electors who are so listed and therefore not entitled to vote in person at the polls, as required by section 53.19. [C75,§49.72]

See §§49.53, 49.54

49.73 Time of opening and closing polls.

1. At all elections, except as otherwise permitted by this section, the polls shall be opened at seven o'clock a.m., or as soon thereafter as vacancies on the precinct election board have been filled. On the basis of voter turnout for recent similar elections and factors considered likely to so affect voter turnout for the forthcoming election as to justify shortened voting hours for that election, the commissioner may direct that the polls be opened at twelve o'clock noon for:

a. Any school district election.

b. Any election conducted for a city of three thousand five hundred or less population.

c. Any election conducted for a city of more than three thousand five hundred population if there is no contest for any office on the ballot and no public question is being submitted to the voters at that election.

2. The commissioner shall not shorten voting hours for any election if there is filed in the commissioner's office, at least twenty-five days before the election, a petition signed by at least fifty eligible electors of the school district or city, as the case may be, requesting that the polls be opened not later than seven o'clock a.m. All polling places where the candidates of or any public question submitted by any one political subdivision are being voted upon shall be opened at the same hour, except that this requirement shall not apply to merged areas established under chapter 280A. The hours at which the respective precinct polling places are to open shall not be changed after publication of the notice required by section 49.53. The polling places shall be closed at nine o'clock p.m. for state primary and general elections and other partisan elections, and for any other election held concurrently therewith, and at eight o'clock p.m. for all other elections. [C51,§251; R60,§486; C73,§611; C97,§§1096, 2751, 2754, 2756; S13,§§1087-a6, 1096, 2754, 2756; C24, 27,§§565, 791, 4202, 4211; C31, 35,§§565, 791, 4216-c9; C39, §§565, 791, 4216.09; C46, 50, 54, 58, 62, 66, 71, 73,§§43.37, 49.73, 277.9; C75,§49.73; 66GA, ch 81,§76, HF 1011,§40, SF 1280,§44]

49.74 Qualified electors entitled to vote after closing time. Every qualified elector who is on the premises of his precinct polling place at the time the polling place is to be closed for any election shall be permitted to vote in that election. Wherever possible, when there are persons on the premises of a polling place awaiting an opportunity to claim their vote at the time the polling place is to be closed, the election board shall cause those persons to move inside the structure in which the polling place is located and shall then shut the doors of the structure and shall not admit any additional persons to the polling place for the purpose of voting. If it is not feasible to cause persons on the premises of a polling place awaiting an opportunity to claim their vote at the time the polling place is to be closed to move inside the structure in which the polling place is located, the election board shall cause those persons to be designated in some reasonable manner and shall not receive votes after that time from any persons except those qualified electors so designated. [C27, 31, 35, §791-a1; C39,§791.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.74]

Referred to in §52.32

49.75 Oath. Before opening the polls, each of the board members shall take the following oath: "I, A. B., do solemnly swear that I will impartially, and to the best of my knowledge and ability, perform the duties of precinct election official of this election, and will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same." [C51,§249; R60,§484; C73,§609; C97,§§1094, 2756; S13,§2756; C24, 27,§§792, 4209; C31, 35,§§792, 4216-c11; C39, §§792, 4216.11; C46, 50, 54, 58, 62, 66, 71, 73, §§49.75, 277.11; C75,§49.75]

Referred to in §§51.5, 53.22
Counting board oath, §51.5

49.76 How administered. Any one of the precinct election officials present may administer the oath to the others, and it shall be entered in the election records, subscribed by the person taking it, and certified by the officer administering it. [C51,§250; R60,§485; C73,§610; C97,§1095; SS15,§1087-a5; C24, 27, 31, 35, 39, §§559, 793; C46, 50, 54, 58, 62, 66, 71, 73,§§43.31, 49.76; C75,§49.76]

49.77 Ballot furnished to voter.

1. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form:

VOTER'S DECLARATION OF ELIGIBILITY

I do solemnly swear or affirm that I am a resident of the ..... precinct, ... ward or township, city of ....., county of ....., Iowa.

I am a qualified elector. I have not voted and will not vote in any other precinct in said election.

(For primary election only:) I am affiliated with the ..... party.

I understand that any false statement in this declaration is a criminal offense punishable as provided by law.

.....
Signature of Voter

.....
Address

Approved:

.....
Board Member

2. One of the precinct election officials shall announce the elector's name aloud for the benefit of any persons present pursuant to section 49.104, subsections 2, 3 or 5. Any of those persons may upon request view the signed declarations of eligibility.

3. A precinct election official may require of an elector unknown to the official, identification upon which the elector's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote.

4. A person whose name does not appear on the election register of the precinct in which that person claims the right to vote shall not be permitted to vote unless the commissioner informs the precinct election officials that an error has occurred and that the person is a qualified elector of that precinct. If the commissioner finds no record of the person's registration but the person insists that he or she is a qualified elector of that precinct, the precinct election officials shall allow the person to cast a ballot in the manner prescribed by section 49.81. [C97,§1114; C24,§§794, 795; C27, 31, 35,§§718-b20, 794, 795; C39,§§**718.21, 794, 795**; C46, 50, 54, 58, 62, 66, 71,§§48.21, 49.77, 49.78; C73, 75,§49.77; 66GA, ch 81,§77, HF 1011,§41]

Referred to in §§49.81, 50.6, 52.32

49.78 Repealed by 64GA, ch 1025,§35.

49.79 Challenges. Any person offering to vote may be challenged as unqualified by any precinct election official or elector; and it is the duty of each official to challenge any person offering to vote whom the official knows or suspects is not duly qualified. A ballot shall be received from a voter who is challenged, but only in accordance with section 49.81. [C51, §258; R60,§493; C73,§619; C97,§1115; S13,§1087-a9; C24, 27, 31, 35, 39,§§**571, 796**; C46, 50, 54, 58, 62, 66, 71, 73,§§43.43, **49.79**; C75,§49.79; 66GA, ch 81,§78]

49.80 Examination on challenge.

1. When the status of any person as a qualified elector is so challenged, the precinct election officials shall explain to him the qualifications of an elector, and may examine him under oath touching his qualifications as a voter.

2. In case of any challenges of an elector at the time he or she is offering to vote in a precinct, a precinct election official may place such person under oath and question him or her as, (*a*) where he or she maintains his or her home; (*b*) how long he or she has maintained his or her home at such place; (*c*) if he or she maintains a home at any other location; (*d*) his or her age. The precinct election official may permit the challenger to participate in such questions. The challenged elector shall be allowed to present to the official such evidence and facts as the elector feels sustains the fact that he or she is qualified to vote. Upon completion thereof, if the challenge is withdrawn, the elector may cast his or her vote in the usual manner. If the challenge is not withdrawn, section 49.81 shall apply.

3. The commissioner shall send to each precinct an alphabetical list of all registrants in that precinct whose receipts were returned by the postal service pursuant to section 48.3 during the period after the last election and prior to the pending election. Any person whose name appears on the list, even if that person's name also appears on the election register, shall be allowed to cast a ballot only in the manner prescribed by section 49.81. [C51,§259; R60,§494; C73,§620; C97,§1115; C24, 27, 31, 35, 39,§**797**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.80; 66GA, ch 81,§79]

49.81 Procedure for challenged voter to cast ballot.

1. A prospective voter who is prohibited under section 49.77, subsection 4, or 49.80 from voting except under this section shall be permitted to cast a paper ballot. If a booth meeting the requirement of section 49.25 is not available at that polling place, the precinct election officials shall make alternative arrangements to insure the challenged voter the opportunity to vote in secret. The marked ballot, folded as required by section 49.84, shall be delivered to a precinct election official who shall immediately seal it in an envelope of the type prescribed by subsection 4. The sealed envelope shall be deposited in a special envelope marked "ballots for special precinct" and shall be considered as having been cast in the special precinct established by section 53.20 for purposes of the postelection canvass.

2. Each person who casts a challenged ballot under this section shall receive a printed statement in substantially the following form: "Your qualifications as an elector have been challenged for the following reasons:

1. .....
2. .....
3. .....

Your right to vote will be reviewed by the special precinct counting board on ..... You have the right and are encouraged to make a written statement and submit additional written evidence to this board supporting your qualifications as an elector. This written statement and evidence may be given to an election official of this precinct on election day or mailed or delivered to the county commissioner of elections, but must be received prior to noon on ..... at ..... If your ballot is not counted you will receive notification of this fact."

3. Any elector may present written statements or documents, supporting or opposing the counting of any challenged ballot, to the

precinct election officials on election day, until the hour for closing the polls. Any statements or documents so presented shall be delivered to the commissioner when the election supplies are returned.

4. The individual envelopes used for each paper ballot cast pursuant to subsection 1 shall have printed upon them:

"Challenged Elector's Ballot

I believe I am a qualified elector of this precinct. I registered to vote in this county on or about ..... at ..... I have not moved to a different precinct since that time without recording the new address with the commissioner. I am a United States citizen, at least eighteen years of age.

....
(signature of elector) (address of elector)

....
(signature of precinct election official) (date)

Reason for challenge:

.....
....."

[66GA, ch 67,§63, ch 81,§80, HF 1011,§§42, 43]

Referred to in §§49.77, 49.79, 49.80, 50.20, 50.21
Section 49.81, Code 1975, repealed by 66GA, ch 81,§80

49.82 Voter to receive one ballot—endorsement. One of the precinct election officials shall give the voter one and only one of each of the ballots to be voted at that election in that precinct, except as provided by section 49.100, on the back of which a precinct election official shall endorse his initials so that they may be seen when the ballot is properly folded. No ballot without the required official endorsement shall be deposited in the ballot box. [C97,§§1116, 1117; C24, 27, 31, 35, 39,§799; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.82]

Endorsement in primary elections, §43.36

49.83 Names to be marked on election register. The name of each voter shall be marked on the election register by a precinct election official when the voter's declaration of eligibility has been approved by the officials. [C51, §260; R60,§495; C73,§621; C97,§1116; C24, 27, 31, 35, 39,§800; C46, 50, 54, 58, 62, 66, 71, 73, 75, §49.83]

49.84 Marking and return of ballot. On receipt of the ballot, the voter shall immediately retire alone to one of the voting booths, and without delay mark his ballot, and, before leaving the voting booth, shall fold the ballot so as to conceal the marks thereon, and deliver it to one of the precinct election officials. No identifying mark or symbol shall be endorsed on the back of his ballot. [C51,§257; R60,§492; C73,§617; C97,§§1117, 1119; S13,§1119; C24, 27, 31, 35, 39,§801; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.84]

Referred to in §49.81

49.85 Depositing ballots. One of the precinct election officials shall at once, after receiving the ballot, in the presence of the voter, deposit it in the ballot box. [C51,§257; R60,§492; C73, §617; C97,§1117; C24, 27, 31, 35, 39,§802; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.85]

49.86 Failure to vote—return of ballot. Any voter who, after receiving an official ballot, decides not to vote, shall, before entering the voting booth, surrender to the election officers the official ballot which has been given him, and such fact shall be noted on the election records. A refusal to surrender such ballot shall subject the person so offending to immediate arrest and the penalties provided for violation of this chapter. [C97,§1117; C24, 27, 31, 35, 39,§803; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.86]

Penalty, §49.119

49.87 Prohibited ballot—taking ballot from polling place. No voter shall vote or offer to vote any ballot except such as he has received from the precinct election officials, nor take or remove any ballot from the polling place before the close of the poll. [C97,§1117; C24, 27, 31, 35, 39,§804; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.87]

49.88 Limitation on persons in booth and time for voting. No more than one person shall be allowed to occupy any voting booth at any time. No person shall occupy such booth for more than three minutes to cast his vote. Nothing in this section shall prohibit assistance to voters under section 49.90. [C97,§1117; C24, 27, 31, 35, 39,§805; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.88]

49.89 Selection of officials to assist voters. At, or before, the opening of the polls, the election board of each precinct shall select two members of the board, of different political parties in the case of any election in which candidates appear on the ballot under the heading of either of the political parties referred to in section 49.13, to assist voters who may be unable to cast their votes without assistance. Voters who are blind may have the assistance of any person they may select. [C97,§1118; C24, 27, 31, 35, 39,§806; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.89]

Referred to in §§49.90, 52.18, 52.30

49.90 Assisting voter. Any voter who may declare upon oath that he or she cannot read the English language, or is, by reason of any physical disability other than intoxication, unable to cast a vote without assistance, shall, upon request, be assisted by said two officers, or alternatively by any other person the voter may select if the voter is blind in casting the vote. Said officers, or person selected by the blind voter, shall cast the vote of the voter requiring assistance, and shall thereafter give no information regarding the same. If any elector because of a handicap cannot enter the building where the polling place for the elector's precinct of residence is located, the two officers shall take a paper ballot to the vehicle occupied by the handicapped elector and allow the elector to cast the ballot in

the vehicle. If a handicapped elector cannot cast a ballot on a voting machine the elector shall be allowed to cast a paper ballot, which shall be opened immediately after the closing of the polling place by the two precinct election officials designated under section 49.89, who shall register the votes cast thereon on a voting machine in the polling place before the votes cast there are tallied pursuant to section 52.21. To preserve so far as possible the confidentiality of each handicapped elector's ballot, the two officers shall proceed substantially in the same manner as provided in section 53.24. In precincts where all voters use paper ballots, those cast by handicapped voters shall be deposited in the regular ballot box and counted in the usual manner. [C97, §1118; C24, 27, 31, 35, 39,§807; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.90; 66GA, ch 81,§81, HF 1011,§44]

Referred to in §§49.88, 52.18, 52.26, 52.30, 53.22

49.91 Assistance indicated on register. The precinct election officials shall mark upon the election register the name of any elector who received such assistance in casting his vote. [C97,§1118; C24, 27, 31, 35, 39,§808; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.91]

Referred to in §§52.18, 52.26, 52.30

49.92 Voting mark. The voting mark shall be a cross or check which shall be placed in the circle at the head of a ticket, or in the squares opposite the names of candidates. The fact that the voting mark is made by an instrument other than a black lead pencil shall not affect the validity of the ballot unless it appears that the color or nature of the mark is intended to identify the ballot contrary to the intent of section 49.107, subsection 7. [C97, §§1119, 1121; S13,§§1119, 1121; C24, 27, 31, 35, 39,§809; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.92]

Referred to in §49.98

49.93 But one vote for same office except in groups. No voter shall vote for more than one candidate for the same office, nor for a greater number of candidates for two or more offices of the same class than there are offices of such class to be filled at such election. [C97, §1120; S13,§1120; C24, 27, 31, 35, 39,§810; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.93]

Referred to in §49.98

49.94 How to mark a straight ticket. If the names of all the candidates for whom a voter desires to vote in any election other than the primary election appear upon the same ticket, and he desires to vote for all candidates whose names appear upon such ticket he may do so in any one of the following ways:

1. He may place a cross or check in the circle at the top of such ticket without making a cross or check in any square beneath said circle.

2. He may place a cross or check in the square opposite the name of each such candidate without making any cross or check in the circle at the top of such ticket.

3. He may place a cross or check in the circle at the top of such ticket and also a cross or check in any or all of the squares beneath said circle. [C97,§§1119, 1120; S13,§§1119, 1120; C24, 27, 31, 35, 39,§811; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.94]

Referred to in §49.98

49.95 Voting part of ticket only. If the names of all the candidates for whom the voter desires to vote appear upon a single ticket but he does not desire to vote for all of the candidates whose names appear thereon, he shall place a cross or check in the square opposite the name of each such candidate for whom he desires to vote without making any cross or check in the circle at the top of such ticket. [C97,§§1119, 1120; S13,§§1119, 1120; C24, 27, 31, 35, 39,§812; C46, 50, 54, 58, 62, 66, 71, 73, 75, §49.95]

Referred to in §49.98

49.96 Group candidates for offices of same class. Where two or more offices of the same class are to be filled at the same election, and all of the candidates for such offices, for whom the voter desires to vote, appear upon his party ticket at the top of which he has marked a cross or check in the circle, he need not otherwise indicate his vote for such candidate; but if the name of any candidate for whom he desires to vote for such office appears upon a different ticket, then as to such group of candidates the cross or check in the circle does not apply and to indicate his choice the voter must place a cross or check in the square opposite the name of each such candidate for whom he desires to vote whether the same appears under such marked circle or not. [C97,§§1119, 1120; S13,§§1119, 1120; C24, 27, 31, 35, 39,§813; C46, 50, 54, 58, 62, 66, 71, 73, 75, §49.96]

Referred to in §49.98

49.97 How to mark a mixed ticket. If the names of all candidates for whom a voter desires to vote do not appear upon the same ticket, he may indicate the candidates of his choice by marking his ballot in any one of the following ways:

1. He may place a cross or check in the circle at the top of a ticket on which the names of some of the candidates for whom he desires to vote appear and also a cross or check in the square opposite the name of each other candidate of his choice, whose name appears upon some ticket other than the one in which he has marked the circle at the top.

2. He may place a cross or check in the square opposite the name of each candidate for whom he desires to vote without placing any cross or check in any circle. [C97,§§1119, 1120; S13,§§1119, 1120; C24, 27, 31, 35, 39,§814; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.97]

Referred to in §49.98

49.98 Counting ballots. The ballots shall be counted according to the markings thereon, respectively, as provided in sections 49.92 to

49.97, and not otherwise. If, for any reason, it is impossible to determine from a ballot, as marked, the choice of the voter for any office, such ballot shall not be counted for such office. When there is a conflict between the cross or check in the circle on one ticket and the cross or check in the square on another ticket on the ballot, the cross or check in the square shall be held to control, and the cross or check in the circle in such case shall not apply as to that office. Any ballot marked in any other manner than as authorized in sections 49.92 to 49.97, and in such manner as to show that the voter employed such mark for the purpose of identifying his ballot, shall be rejected. [C97, §1120; S13,§1120; C24, 27, 31, 35, 39,§815; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.98]

49.99 Writing name on ballot. The voter may also insert in writing in the proper place the name of any person for whom he desires to vote and place a cross or check in the square opposite thereto. The writing of such name shall constitute a valid vote for the person whose name has been written on the ballot without regard to whether the voter has made a cross or check opposite thereto. The making of a cross or check in a square opposite a blank without writing a name therein, shall not affect the validity of the remainder of the ballot. [C97,§1119; S13,§1119; C24, 27, 31, 35, 39, §816; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.99]

49.100 Spoiled ballots. Any voter who shall spoil his ballot may, on returning the same to the precinct election officials, receive another in place thereof, but no voter shall receive more than three ballots, including the one first delivered to him. None but ballots provided in accordance with the provisions of this chapter shall be counted. [C97,§1121; S13, §1121; C24, 27, 31, 35, 39,§817; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.100]

Referred to in §49.82

49.101 Defective ballot does not nullify vote. No ballot properly marked by the voter shall be rejected:

1. Because of any discrepancy between the printed ballot and the nomination paper, or certificate of nomination, or certified abstract of the canvassing board.

2. Because of any error in stamping or writing the endorsement thereon by the officials charged with such duties.

3. Because of any error on the part of the officer charged with such duty in delivering the wrong ballots at any polling place. [C97, §1122; C24, 27, 31, 35, 39,§818; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.101]

49.102 Defective ballots. Said defective ballots shall be counted for the candidate or candidates for such offices named in the nomination papers, certificate of nomination, or certified abstract. [C97,§1122; C24, 27, 31, 35, 39,§819; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.102]

49.103 Wrong ballots. Said wrong ballots shall be counted as cast for all candidates for whom the voter had the right to vote, and for whom he did vote. [C97,§1122; C24, 27, 31, 35, 39,§820; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.103]

49.104 Persons permitted at polling places. The following persons shall be permitted to be present at and in the immediate vicinity of the polling places, provided they do not solicit votes:

1. Any person who is by law authorized to perform or is charged with the performance of official duties at the election.

2. Any number of persons, not exceeding three from each political party having candidates to be voted for at such election, to act as challenging committees, who are appointed and accredited by the executive or central committee of such political party or organization.

3. Any number of persons not exceeding three from each of such political parties, appointed and accredited in the same manner as above prescribed for challenging committees, to witness the counting of ballots. Subject to the restrictions of section 51.11, the witnesses may observe the counting of ballots by a counting board during the hours the polls are open in any precinct for which double election boards have been appointed.

4. Any peace officer assigned or called upon to keep order or maintain compliance with the provisions of this chapter, upon request of the commissioner or of the chairman of the precinct election board.

5. One observer representing any nonparty political organization, any candidate nominated by petition pursuant to chapter 45, or any other nonpartisan candidate in a city or school election, appearing on the ballot of the election in progress. [C97,§1124; S13,§1087-a9; C24, 27, 31, 35, 39,§§571, 821; C46, 50, 54, 58, 62, 66, 71, 73, §§43.43, 49.104; C75,§49.104; 66GA, ch 81,§82]

Referred to in §§49.77, 51.11

49.105 Ordering arrest. Any precinct election official shall order the arrest of any person who conducts himself in a noisy, riotous, tumultuous or disorderly manner at or about the polls, so as to disturb the election, or insults or abuses the officials, or commits a breach of the peace, or violates any of the provisions of this chapter. If the person so arrested is a qualified elector of the precinct which that polling place serves, and has not yet voted, he shall be permitted to do so before being removed from the polling place. [C51, §253; R60,§488; C73,§613; C97,§1128; C24, 27, 31, 35, 39,§§822, 823; C46, 50, 54, 58, 62, 66, 71, 73, §§49.105, 49.106; C75,§49.105]

49.106 Repealed by 65GA, ch 136,§401.

49.107 Prohibited acts on election day. The following acts, except as specially authorized by law, are prohibited on any election day:

1. Loitering, congregating, electioneering, posting of signs, treating voters, or soliciting

votes, during the receiving of the ballots, either on the premises of any polling place or within three hundred feet of any outside door of any building affording access to any room where the polls are held, or of any outside door of any building affording access to any hallway, corridor, stairway, or other means of reaching the room where the polls are held, except this subsection shall not apply to the posting of signs on private property not a polling place.

2. Interrupting, hindering, or opposing any voter while in or approaching the polling place for the purpose of voting.

3. A voter allowing any person to see how his ballot is marked.

4. A false statement by a voter as to his ability to mark his ballot.

5. Interfering or attempting to interfere with a voter when inside the enclosed space, or when marking his ballot.

6. Endeavoring to induce a voter to show how he marks, or has marked his ballot.

7. Marking, or causing in any manner to be marked, on any ballot, any character for the purpose of identifying such ballot. [C97,§§1124, 1134; S13,§1137-a5; C24, 27, 31, 35, 39,§824; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.107]

Referred to in §§49.92, 49.108
Assisting voter, §49.90
Opposing by challenge, §49.79
Voting mark, §49.92

49.108 Penalty. Any violation of the provisions of section 49.107 shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment for not less than ten days nor more than thirty days in the county jail, or by both fine and imprisonment. [C97,§1134; C24, 27, 31, 35, 39, §825; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.108]

49.109 Employees entitled to time to vote. Any person entitled to vote at a general election in this state who does not have three consecutive hours in the period between the time of the opening and the time of the closing of the polls during which he is not required to be present at work for an employer, shall be entitled to such time off from his work time to vote as will in addition to his nonworking time total three consecutive hours during the time the polls are open. Application by any employee for such absence shall be made individually and in writing prior to the date of the election, and the employer shall designate the period of time to be taken. Such voter shall not be liable to any penalty nor shall any deduction be made from his regular salary or wages on account of such absence. [C97,§1123; C24, 27, 31, 35, 39,§826; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.109]

Referred to in §49.110

49.110 Intimidation of employees by employer. Any employer who shall refuse to an employee the privilege conferred by section 49.109, or shall subject such employee to a penalty or reduction of wages because of the exercise of such privilege, or shall in any manner attempt to influence or control such employee as to how he shall vote, by offering any reward, or threatening discharge from employment, or otherwise intimidating or attempting to intimidate such employee from exercising his right to vote, shall be punished by a fine of not less than five dollars nor more than one hundred dollars. [C97,§1123; C24, 27, 31, 35, 39,§827; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.110]

49.111 Unlawful acts. It shall be unlawful for any person, prior to the closing of the polls, willfully to do any of the following acts:

1. Destroy, deface, tear down, or remove any list of candidates, card of instruction, or specimen ballot posted as provided by law.

2. Remove or destroy any of the supplies or articles furnished for the purpose of enabling voters to prepare their ballots. [C97,§1135; C24, 27, 31, 35, 39,§828; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.111]

Referred to in §49.112
Posting required, §§43.30, 49.71

49.112 Penalty. Any person violating section 49.111 shall be fined not less than ten dollars nor more than one hundred dollars, or imprisoned not less than ten nor more than thirty days, or be punished by both said fine and imprisonment. [C97,§1135; C24, 27, 31, 35, 39,§829; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.112]

49.113 Official neglect or misconduct. Any public officer upon whom a duty is imposed by this chapter, who shall willfully neglect to perform such duty, or who shall willfully perform it in such a way as to hinder the object thereof, or shall disclose to anyone, except as may be ordered by any court of competent jurisdiction, the manner in which any ballot may have been voted, shall be punished by a fine of not less than five dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment. [C97,§1137; C24, 27, 31, 35, 39,§830; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.113]

49.114 Repealed by 65GA, ch 136,§401.

49.115 Repealed by 64GA, ch 1124,§282.

49.116 and 49.117 Repealed by 65GA, ch 136, §401.

49.118 Repealed by 64GA, ch 1025,§35.

49.119 Penalty. Any person violating or attempting to violate any provisions or requirements of this chapter, or failing or refusing to comply with any order or command of an election officer, made in pursuance of the provisions of this chapter, shall, unless otherwise provided, be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment of not less than twenty days, nor more than six months, in the county jail. [C97,§1133; C24, 27, 31, 35, 39,§836; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.119]

49.120 Promise of position. It shall be unlawful for any candidate for any office to be voted for at any election, prior to his nomination or election, to promise, either directly or indirectly, to support or use his influence in behalf of any person or persons for any position, place, or office, or to promise directly or indirectly to name or appoint any person or persons to any place, position, or office in consideration of any person or persons supporting him or using his, her, or their influence in securing his or her nomination, election, or appointment. [S13,§1134-a; C24, 27, 31, 35, 39,§837; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.120]

Referred to in §49.122

49.121 Promise of influence. It shall be unlawful for any person to solicit from any candidate for any office to be voted for at any election, or any candidate for appointment to any public office, prior to his nomination, election, or appointment, a promise, directly or indirectly, to support or use his or her influence in behalf of any person or persons for any position, place, or office, or a promise either directly or indirectly to name or appoint any person or persons to any place, position, or office in consideration of any person or persons supporting him or her, or using his, her, or their influence in securing his or her nomination, election or appointment. [S13, §1134-b; C24, 27, 31, 35, 39,§838; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.121]

Referred to in §49.122

49.122 Penalty. Any person violating any of the provisions of sections 49.120 and 49.121 shall be deemed guilty of a misdemeanor and punished by a fine of not less than fifty dollars nor more than three hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months. [S13, §1134-c; C24, 27, 31, 35, 39,§839; C46, 50, 54, 58, 62, 66, 71, 73, 75,§49.122]

49.123 Courthouse open on election day. The courthouse of each county shall remain open on election day. [C71, 73, 75,§49.123]

49.124 Training course by commissioner. It shall be the duty of the commissioner to conduct, not less than three days before each primary and general election, a training course of not more than two hours for all election personnel, and the commissioner may do so before any other election he administers. Such personnel shall include all precinct election officials and any other persons who will be employed in or around the polling places on election day. At least two precinct election officials who will serve on each precinct election board at the forthcoming election shall attend the training course, and if the entire board does not attend, those members who do attend shall so far as possible be persons who have not previously attended a similar training course. [C71, 73, 75,§49.124]

49.125 Compensation of trainees. All election personnel attending such training course shall be paid for attending such course for a period not to exceed two hours, and shall be reimbursed for travel to and from the place where the training is given at the rate specified in section 79.9 if the distance involved is more than five miles. The wages shall be two dollars per hour and payment of wages and mileage for attendance shall be made at the time that payment is made for duties performed on election day. [C71, 73, 75,§49.125; 66GA, ch 81,§83]

49.126 Manual by state commissioner. It shall be the duty of the state commissioner to provide a training manual and such additional materials as may be necessary to all commissioners for conducting the required training course and to revise the manual from time to time as may be necessary. [C71, 73, 75,§49.126]

49.127 Commissioner to examine machines. It shall be the duty of each commissioner to determine that all voting machines are operational and functioning properly and that all materials necessary for the conduct of the election are in his possession and are correct. [C71, 73, 75,§49.127]

CHAPTER 49A

RESIDENCY REQUIREMENTS FOR ELECTIONS

Repealed by 64GA, ch 1025,§35; see §47.4

CHAPTER 50

CANVASS OF VOTES

Referred to in §§39.3, 43.5, 49.58, 52.37, 53.23, 275.35, 277.3, 280A.15, 280A.39, 296.4, 298.18, 346.27, 353.12, 360.1, 372.2, 376.1

Chapter applicable to primary elections, §43.5. Criminal offenses, ch 738; also §§43.119, 43.120

50.1 Canvass by officials.
50.2 One tally list in certain machine precincts.
50.3 Double or defective ballots.
50.4 Ballots objected to.
50.5 Disputed ballots returned separately.
50.6 Votes in excess of voter declarations.

50.7 Error on county office—township office.
50.8 Error on state or district office—tie vote.
50.9 Return of ballots not voted.
50.10 Record of ballots returned.
50.11 Proclamation of result.
50.12 Return and preservation of ballots.
50.13 Destruction of ballots.
50.14 Destruction of primary election ballots.
50.15 Destruction in abeyance pending contest.
50.16 Tally list of board.
50.17 Return of election register.
50.18 Repealed by 65GA, ch 136,§401.
50.19 Preservation of books—when destroyed.
50.20 Notice of number of challenged ballots.
50.21 Special precinct board reconvened.
50.22 Special precinct board to determine challenges.
50.23 Messengers for missing tally lists.
50.24 Canvass by board of supervisors.
50.25 Abstract of votes in the general election.
50.26 Duplicate abstracts.
50.27 Declaration of election.
50.28 Tally lists filed.
50.29 Certificate of election.
50.30 Abstracts forwarded to state commissioner.
50.31 Abstracts for governor and lieutenant governor.
50.32 Endorsement on other envelopes.
50.33 Forwarding of envelopes.
50.34 Missing abstracts.
50.35 Abstracts on governor.
50.36 Envelopes containing other abstracts.
50.37 State canvassing board.
50.38 Time of state canvass.
50.39 Abstract.
50.40 Record of canvass.
50.41 Certificate of election.
50.42 Certificates mailed.
50.43 Senator or congressman.
50.44 Tie vote.
50.45 Canvass public—result determined.
50.46 Special elections—canvass and certificate.
50.47 Messengers for election tally lists.

50.1 Canvass by officials. At every election conducted under chapter 49, except the primary election provided for by chapter 43, and at every other election unless the law authorizing the election otherwise requires, the vote shall be canvassed at each polling place by the election board in the manner prescribed by this chapter. When the poll is closed, the precinct election officials shall forthwith, and without adjournment:

1. Publicly canvass the vote, and credit each candidate with the number of votes counted for him.

2. Ascertain the result of the vote.

3. Prepare in writing a list of any apparently or possibly erroneous information appearing in the precinct election register.

4. Designate two election board members, not members of the same political party, who shall each separately keep a tally list of the count. [C51,§§261, 266; R60,§§496, 501; C73, §§622, 626; C97,§1138; C24, 27, 31, 35, 39,§840; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.1]

Referred to in §§50.2, 52.32

50.2 One tally list in certain machine precincts. In any precinct where an election is held by means of voting machines which deliver, immediately upon conclusion of the voting, multiple copies of a printed record of the votes cast and the totals for each candidate or question appearing on the face of the machine, the requirement of section 50.1, subsection 4 that two election board members keep separate tally lists of the vote count shall not apply. [66GA, ch 81,§84, HF 1011,§45]

Referred to in §52.32

50.3 Double or defective ballots. If two or more marked ballots are so folded together as to appear to be cast as one, the precinct election officials shall endorse thereon "Rejected as double". Such ballots shall not be counted, but shall be folded together and kept as hereinafter directed. Every ballot not counted shall be endorsed "Defective" on the back thereof. [C51,§262; R60,§497; C73,§623; C97,§1139; C24, 27, 31, 35, 39,§842; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.3]

Referred to in §§50.5, 52.32

50.4 Ballots objected to. Every ballot objected to by a precinct election official or challenger, but counted, shall be endorsed on the back thereof, "Objected to", and there shall also be endorsed thereon, and signed by the officials, a statement as to how it was counted. [C97,§1139; C24, 27, 31, 35, 39,§843; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.4]

Referred to in §§50.5, 52.32

50.5 Disputed ballots returned separately. All ballots endorsed as required by sections 50.3 and 50.4 shall be enclosed and securely sealed in an envelope, on which the precinct election officials shall endorse "Disputed ballots", with a signed statement of the precinct in which, and date of the election at which, they were cast. [C97,§1139; C24, 27, 31, 35, 39, §844; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.5]

Referred to in §52.32

50.6 Votes in excess of voter declarations. If the number of votes cast for any office or on any question exceeds the number of voters declarations of eligibility signed as required by section 49.77, such fact shall be certified, with the number of the excess, in the return. [C51, §263; R60,§498; C73,§627; C97,§1140; C24, 27, 31, 35, 39,§845; C46, 50, 54, 58, 62, 66, 71, 73, 75, §50.6]

Referred to in §52.32

50.7 Error on county office—township office. If, in case of such excess, the vote of the precinct where the error occurred would change the result as to a county office if the person appearing to be elected were deprived of so many votes, then the election shall be set aside as to him in that precinct, and a new election ordered therein; but no person who was not a qualified elector in that precinct at the time of the general election shall be allowed to vote at such special election. If the error occurs in relation to an office of a city, school district, township, or of any special district whose elections may be conducted under this chapter, the governing body of the political subdivision involved may order a new election or not, in their discretion. [C51, §263; R60,§498; C73,§627; C97,§1140; C24, 27, 31, 35, 39,§846; C46, 50, 54, 58, 62, 66, 71, 73, 75, §50.7]

Referred to in §52.32

50.8 Error on state or district office — tie vote. If the error be in relation to a district or state office, it shall be certified with the number of the excess to the state commissioner. If the error affects the result of the election, the canvass shall be suspended and a new vote ordered in the precinct where the error occurred. When there is a tie vote due to such an excess, there shall be a new election. No person who was not a qualified elector in that precinct at the time of the general election shall be allowed to vote at such special election. When the new vote is taken and returned, the canvass shall be completed. [C51, §263; R60,§498; C73,§627; C97,§1140; C24, 27, 31, 35, 39,§847; C46, 50, 54, 58, 62, 66, 71, 73, 75, §50.8]

Referred to in §52.32

50.9 Return of ballots not voted. Ballots not voted, or spoiled by voters while attempting to vote, shall be returned by the precinct election officials to the commissioner, and a receipt taken therefor, and they shall be preserved for six months. [C51,§269; R60,§504; C73, §630; C97,§1141; C24, 27, 31, 35, 39,§848; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.9]

C97, §1141, editorially divided
Referred to in §52.32

50.10 Record of ballots returned. The commissioner shall enter on the record maintained as required by section 49.65 a notation of the number and character of the ballots returned from each precinct, and the time when and the person by whom they are returned. [C97, §1141; C24, 27, 31, 35, 39,§849; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.10]

Referred to in §§49.65, 52.32

50.11 Proclamation of result. When the canvass is completed one of the precinct election officials shall publicly announce the total number of votes received by each of the persons voted for, the office for which he is designated, as announced by the designated tally keepers, and the number of votes for, and the number of votes against, any proposition which shall have been submitted to a vote of the people, and he shall communicate said information by telephone or telegraph or in person to the commissioner who is conducting the election immediately upon completion of the canvass; and the commissioner shall remain on duty until such information is communicated to him from each polling place in his county. [C97,§1142; C24, 27, 31, 35, 39,§850; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.11]

Referred to in §§43.45, 51.7, 52.21, 52.32, 52.37

50.12 Return and preservation of ballots. Immediately after making such proclamation, and before separating, the board members of each precinct in which votes have been received by paper ballot shall fold in two folds, and string closely upon a single piece of flexible wire, all ballots which have been counted by them, except those endorsed "Rejected as double", "Defective", or "Objected to", unite the ends of such wire in a firm knot, seal the knot in such a manner that it cannot be untied without breaking the seal, enclose the ballots so strung in an envelope, and securely seal such envelope. The precinct election officials shall return all the ballots to the commissioner, who shall carefully preserve them for six months. [C51,§269; R60,§504; C73,§630; C97,§1142; C24, 27, 31, 35, 39,§851; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.12]

Referred to in §§50.17, 52.22, 52.32, 53.40, 53.41

50.13 Destruction of ballots. If at the expiration of six months no contest is pending, the commissioner, without opening the package in which they have been enclosed, shall destroy the same, in the presence of two electors, one from each of the two leading political parties, who shall be designated by the chairman of the board of supervisors. [C97,§1143; S13,§1143; C24, 27, 31, 35, 39,§852; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.13]

Referred to in §§53.40, 53.41

50.14 Destruction of primary election ballots. The ballots cast at a primary election, with the nomination papers, shall, where no contest is pending, be destroyed ten days prior to the holding of the general election following the primary election at which said ballots were cast. [C97,§1143; S13,§§1087-a10, 1143; C24, 27, 31, 35, 39,§853; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.14]

Referred to in §§53.40, 53.41

50.15 Destruction in abeyance pending contest. If a contest is pending, the ballots shall be kept until the contest is finally determined, and then so destroyed. [C97,§1143; S13,§1143; C24, 27, 31, 35, 39,§854; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.15]

Referred to in §§53.40, 53.41

50.16 Tally list of board. The tally list shall be prepared in writing by the election board, giving, in legibly printed numerals, the whole number of ballots cast for each officer, except those rejected, the name of each person voted

for, and the number of votes given to each person for each different office; which tally list shall be signed by the precinct election officials, and be substantially as follows:

At an election at.....in.....township, or in .....precinct of.....city or township, in.....county, state of Iowa, on the .....day of.....A.D....., there were.... ballots cast for the office of.....of which

A.....B.....had.....votes.

C.....D.....had.....votes.

(and in the same manner for any other officer). A true tally list:

L.... M... } Election Board
N.... O... } Members.
P.... Q... }

Attest: { R..... S..... } Designated Tally
{ T..... U..... } Keepers.

[C51,§§267, 303; R60,§§502, 537; C73,§§628, 661; C97,§1144; C24, 27, 31, 35, 39,§855; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.16]

Referred to in §52.23

50.17 Return of election register. The precinct election register prepared for each election, together with the ballots to be returned pursuant to section 50.12, if any, and the signed and attested tally list, shall be delivered to the commissioner by one of the precinct election officials by noon of the day following the election. [C51,§268; R60,§§333, 503, 1131; C73,§§503, 629; C97,§1145; C24, 27, 31, 35, 39, §856; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.17; 66GA, ch 81,§85]

Referred to in §§52.32, 738.19

50.18 Repealed by 65GA, ch 136,§401.

50.19 Preservation of books — when destroyed. The commissioner may destroy precinct election registers, the declarations of eligibility signed by voters, and other material pertaining to an election, except the tally lists, six months after the election if no contest is pending. If a contest is pending all election materials shall be preserved until final determination of the contest. Before destroying the election registers and declarations of eligibility, the commissioner shall prepare records as necessary to permit compliance with section 48.31, subsection 1. [C51,§268; R60,§§333, 503, 1131; C73,§§503, 629; C97,§1145; C24, 27, 31, 35, 39,§858; C46, 50, 54, 58, 62, 66, 71, 73, 75, §50.19; 66GA, ch 81,§86]

50.20 Notice of number of challenged ballots. The commissioner shall compile a list of the number of challenged ballots cast under section 49.81 in each precinct. The list shall be made available to the public as soon as possible, but in no case later than nine o'clock a.m. on the second day following the election. Any elector may examine the list during normal office hours, and may also examine the affidavit envelopes bearing the ballots of challenged electors until the reconvening of the special precinct board as required by this chapter. Only those persons so permitted by section 53.23, subsection 4, shall have access to the affidavits while that board is in session. Any elector may present written statements or documents, supporting or opposing the counting of any challenged ballot, at the commissioner's office until the reconvening of the special precinct board. [66GA, ch 81,§87]

50.21 Special precinct board reconvened. The commissioner shall reconvene the election board of the special precinct established by section 53.20 at noon on the third day following each election which is required by law to be canvassed on the Monday following the election. If the canvass of the election is required at any earlier time, the special precinct election board shall be reconvened at noon on the day following the election. If no challenged ballots were cast in the county pursuant to section 49.81 at any election, the special precinct election board need not be so reconvened. If the number of challenged ballots so cast at any election is not sufficient to require reconvening of the entire election board of the special precinct, the commissioner may reconvene only the number of members required, but in so doing shall observe the requirements of sections 49.12 and 49.13. [66GA, ch 81,§87]

50.22 Special precinct board to determine challenges. Upon being reconvened, the special precinct election board shall review the information upon the envelopes bearing the challenged ballots, and all evidence submitted in support of or opposition to the right of each challenged person to vote in the election. The board may divide itself into panels of not less than three members each in order to hear and determine two or more challenges simultaneously, but each panel shall meet the requirements of section 49.12 as regards political party affiliation of the members of each panel. The decision to count or reject each ballot shall be made upon the basis of the information given on the envelope containing the challenged ballot, the evidence concerning the challenge, the registration and the returned receipts of registration. If a challenged ballot is rejected, the person casting the ballot shall be notified by the commissioner within ten days of the reason for the rejection, on the form prescribed by the state commissioner pursuant to section 53.25, and the envelope containing the challenged ballot shall be preserved unopened and disposed of in the same manner as spoiled ballots. The challenged ballots which are accepted shall be counted in the manner prescribed by section 53.24. The commissioner shall make public the number of challenged ballots rejected and not counted, at the time of the canvass of the election. [66GA, ch 81,§87, HF 1011,§46]

50.23 Messengers for missing tally lists. The commissioner shall send messengers for all tally lists not received in the commissioner's office by noon of the day following the election. The expense of securing such tally lists shall

be paid by the county. [C51,§270; R60,§505; C73, §634; C97,§1148; C24, 27, 31, 35, 39,§862; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.23; 66GA, ch 81, §88]

Mileage paid messengers, §50.47

50.24 Canvass by board of supervisors. The county board of supervisors shall meet to canvass the vote at nine o'clock on the morning of the first Monday after the day of each election to which this chapter is applicable, unless the law authorizing the election specifies another date for the canvass. If that Monday is a public holiday, the provisions of section 4.1, subsection 22 shall control. Upon convening, the board shall open and canvass the tally lists and shall prepare abstracts stating, in words written at length, the number of votes cast in the county, or in that portion of the county in which the election was held, for each office or on each question on the ballot for the election. The abstract shall further indicate the name of each person who received votes for each office on the ballot, and the number of votes each person named received for that office, and the number of votes for and against each question submitted to the voters at the election. [C51,§§271, 304, 305; R60, §§335, 506, 538, 539, 1131; C73,§§502, 503, 631, 635, 662; C97,§§1146, 1149; C24, 27, 31, 35, 39, §§859, 860, 863; C46, 50, 54, 58, 62, 66, 71, 73, §§50.20, 50.21, 50.24; C75,§50.24; 66GA, ch 81,§89]

Referred to in §277.20, 376.7, 376.9

50.25 Abstract of votes in the general election. At the canvass of the general election, the abstract of the votes for each of the following classes shall be made on a different sheet:

1. President and vice president of the United States.

2. Senator in the Congress of the United States.

3. Representative in the Congress of the United States.

4. Governor and lieutenant governor.

5. A state officer not otherwise provided for.

6. Senator or representative in the general assembly by districts.

7. A county officer. [C51,§§272, 304, 305; R60,§§507, 538, 539; C73,§§636, 662; C97,§1150; S13,§1150; C24, 27, 31, 35, 39,§864; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.25]

Additional provision, §6.8
Judges, §46.24

50.26 Duplicate abstracts. All abstracts of votes cast in the general election, except the abstracts of votes for county officers, shall be made in duplicate, and signed by the board of county canvassers. One of said abstracts shall be forwarded to the state commissioner, and the other filed by the commissioner. [C51, §§272, 304, 305; R60,§§507, 538, 539; C73,§§637, 662; C97,§1151; S13,§1151; C24, 27, 31, 35, 39, §865; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.26]

50.27 Declaration of election. Each abstract of the votes for such officers as the county alone elects at the general election, except district judges and senators and representatives in the general assembly, or of the votes for officers of political subdivisions whose elections are conducted by the commissioner, shall contain a declaration of whom the canvassers determine to be elected. Each abstract of votes for and against each public question submitted to and decided by the voters of the county alone, or of a single political subdivision whose elections the county board canvasses, shall contain a declaration of the result as determined by the canvassers. When a public question has been submitted to the voters of a political subdivision whose elections the county board canvasses, the commissioner shall certify a duplicate of the abstract and declaration to the governing body of the political subdivision. [C51,§275; R60,§509; C73,§639; C97, §1152; C24, 27, 31, 35, 39,§866; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.27]

Referred to in §§57.2, 277.20, 280A.15

50.28 Tally lists filed. When the canvass is concluded, the board shall deliver the original tally lists to the commissioner, who shall file the same, and record each of the abstracts above mentioned in the election book. [C51, §276; R60,§§335, 510; C73,§640; C97,§1154; C24, 27, 31, 35, 39,§867; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.28]

50.29 Certificate of election. When any person is thus declared elected, there shall be delivered to him a certificate of election, under the official seal of the county, in substance as follows:

STATE OF IOWA }
..... County. }

At an election holden in said county on the .... day of ....., A.D. ..... A..... B..... was elected to the office of .....for the term of ..... years from the ..... day of ....., A. D..... (or if he was elected to fill a vacancy, say for the residue of the term ending on the..... day of....., A.D. .....), and until his successor is elected and qualified.

C..... D.....,
President of Board of Canvassers.

Witness, E..... F.....,
County Commissioner of Elections
(clerk).

Such certificate shall be presumptive evidence of his election and qualification. [C51, §277; R60,§§511, 514; C73,§641; C97,§1155; C24, 27, 31, 35, 39,§868; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.29]

50.30 Abstracts forwarded to state commissioner. The commissioner shall, within ten days after the election, forward to the state commissioner in separate, securely sealed envelopes, one of the said duplicate abstracts of votes for each of the following offices:

1. President and vice president of the United States.

2. Senator in Congress.

3. Representative in Congress.

4. Governor and lieutenant governor.

5. Senator or representative in the general assembly by districts.

6. A state officer not otherwise specified above. [C51,§§283, 284, 305; R60,§§517, 518, 539; C73,§§645, 662; C97,§1157; S13,§1157; C24, 27, 31, 35, 39,§869; C46, 50, 54, 58, 62, 66, 71, 73, 75, §50.30]

50.31 Abstracts for governor and lieutenant governor. The envelope containing the abstracts of votes for governor and lieutenant governor shall be endorsed substantially as follows: "Abstract of votes for governor and lieutenant governor from ..... county". After being so endorsed said envelope shall be addressed, "To the Speaker of the House of Representatives". [C51,§283; R60, §517; C73,§645; C97,§1157; S13,§1157; C24, 27, 31, 35, 39,§870; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.31]

Referred to in §50.32

50.32 Endorsement on other envelopes. Said remaining envelopes shall be endorsed substantially in the manner provided in section 50.31, with changes necessary to indicate the particular office, and each shall be addressed, "To the State Commissioner of Elections". [C51,§§283, 305; R60,§§517, 539; C73,§§645, 662; C97,§1157; S13,§1157; C24, 27, 31, 35, 39,§871; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.32]

50.33 Forwarding of envelopes. Said envelopes, including the one addressed to the speaker, after being prepared, sealed, and endorsed as aforesaid, shall be placed in one package and forwarded to the state commissioner. [C51,§§284, 305; R60,§§518, 539; C73, §§645, 662; C97,§1157; S13,§1157; C24, 27, 31, 35, 39,§872; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.33]

50.34 Missing abstracts. If the abstracts from any county are not received at the office of the state commissioner within fifteen days after the day of election, he shall send a messenger to the commissioner of such county, who shall furnish him with them, or, if they have been sent, with a copy thereof, and he shall return them to the state commissioner without delay. [C51,§285; R60,§519; C73,§649; C97,§1158; C24, 27, 31, 35, 39,§873; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.34]

Mileage paid messengers, §50.47

50.35 Abstracts on governor. The envelopes containing the abstracts of votes for governor and lieutenant governor shall not be opened by the state commissioner, but he shall securely preserve the same and deliver them to the speaker of the house of representatives at the time said abstracts are canvassed as provided by law. [C24, 27, 31, 35, 39,§874; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.35]

Canvass for governor, §2.27 et seq.; also Const., Art. IV,§3

50.36 Envelopes containing other abstracts. All other envelopes containing abstracts of votes shall be kept by the state commissioner, unopened, until the time fixed by law for the canvass of such abstracts, and they shall then be opened only in the presence of the state board of canvassers. [C51,§286; R60,§520; C73, §650; C97,§1159; C24, 27, 31, 35, 39,§875; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.36]

Canvass by state canvassers, §50.38

50.37 State canvassing board. The executive council shall constitute a board of canvassers of all abstracts of votes required to be filed with the state commissioner, except for the offices of governor and lieutenant governor. No member of such board shall take part in canvassing the votes for an office for which he is a candidate. Any clerical error found by the state board of canvassers shall be corrected by the county commissioner in a letter addressed to the state board of canvassers. [C51, §287; R60,§521; C73,§§647, 651; C97,§§1160, 1162; S13,§1162; C24, 27, 31, 35, 39,§876; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.37]

Additional provisions, §6.8

50.38 Time of state canvass. On the twentieth day after the day of election, the board of state canvassers shall open and canvass all of the tally lists. If they are not received from all the counties, it may adjourn, not exceeding twenty days, for the purpose of obtaining them, and, when received, shall proceed with the canvass. The tally lists of votes cast for senators and representatives in the general assembly shall be canvassed at least twenty days prior to the convening of the general assembly. [C51,§§288, 306; R60,§§522, 540; C73, §§647, 652, 663; C97,§§1161, 1162; S13,§1162; C24, 27, 31, 35, 39,§877; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.38]

Canvass under special election, §50.46

50.39 Abstract. It shall make an abstract stating, in words written at length, the number of ballots cast for each office, the names of all the persons voted for, for what office, the number of votes each received, and whom it declares to be elected, and if a public question has been submitted to the voters of the state, the number of ballots cast for and against the question and a declaration of the result as determined by the canvassers; which abstract shall be signed by the canvassers in their official capacity and as state canvassers, and have the seal of the state affixed. [C51,§§289, 306; R60,§§523, 540; C73,§§653, 663; C97,§1163; C24, 27, 31, 35, 39,§878; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.39]

50.40 Record of canvass. The state commissioner shall file the abstracts when received and shall have the same bound in book form to be kept by him as a record of the result of said state election, to be known as the state election book. [C51,§290; R60,§524; C73,§654; C97,§1164; S13,§1164; C24, 27, 31, 35, 39,§879; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.40]

50.41 Certificate of election. Each person declared elected by the state board of canvassers shall receive a certificate thereof, signed by the governor, or, in his absence, by the secretary of state, with the seal* of state affixed, attested by the other canvassers, to be in substance as follows:

STATE OF IOWA:

To A..... B....., Greeting: It is hereby certified that, at an election holden on the ..... day of ..... you were elected to the office of.....of said state, for the term of ..... years, from and after the ..... day of ..... (or if to fill a vacancy, for the residue of the term, ending on the ..... day of .....).

Given at the seat of government this..... day of .....

If the governor be absent, the certificate of the election of the secretary of state shall be signed by the auditor. The certificate to members of the legislature shall describe, by the number, the district from which the member is elected. [C51,§§288, 306; R60,§§522, 540; C73, §§652, 657, 663; C97,§1165; C24, 27, 31, 35, 39, §880; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.41]

*See ch 1A

50.42 Certificates mailed. The state commissioner shall prepare and deliver or mail certificates of election to the persons declared elected. [C51,§§292, 294; R60,§§526, 528; C73, §§648, 656, 658; C97,§1167; C24, 27, 31, 35, 39, §881; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.42]

50.43 Senator or congressman. The certificate of the election of a senator or representative in Congress shall be signed by the governor, with the seal of the state affixed, and be countersigned by the secretary of state. [C51, §294; R60,§528; C73,§658; C97,§1166; C24, 27, 31, 35, 39,§882; C46, 50, 54, 58, 62, 66, 71, 73, 75, §50.43]

50.44 Tie vote. If more than the requisite number of persons, including presidential electors, are found to have an equal and the highest number of votes, the election of one of them shall be determined by lot. The name of each of such candidates shall be written on separate pieces of paper, as nearly uniform in size and material as possible, and placed in a receptacle so that the names cannot be seen. In the presence of the board of canvassers, one of them shall publicly draw one of such names, and such person shall be declared elected. The result of such drawing shall be entered upon the abstract of votes and duly recorded, and a certificate of election issued to such person, as provided in this chapter. [C51,§§281, 282, 307, 316; R60,§§515, 516, 541, 547; C73,§§632, 643, 644, 664; C97,§§1169, 2754; S13,§2754; C24,§§883, 4204; C27,§§883, 4204, 4211-b8; C31, 35,§§883, 4216-c21; C39,§§883, 4216.21; C46, 50, 54, 58, 62, 66, 71, 73,§§50.44, 277.21; C75,§50.44]

50.45 Canvass public — result determined. All canvasses of tally lists shall be public, and the persons having the greatest number of votes shall be declared elected. [C51,§§262, 273, 307; R60,§§497, 508, 541; C73,§§623, 638, 664; C97, §1170; C24, 27, 31, 35, 39,§884; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.45]

50.46 Special elections—canvass and certificate. When a special election has been held to fill a vacancy, pursuant to section 69.14, the board of county canvassers shall meet at one o'clock in the afternoon of the second day thereafter, and canvass the votes cast thereat. The commissioner, as soon as the canvass is completed, shall transmit to the state commissioner an abstract of the votes so canvassed, and the state board, within five days after receiving such abstracts, shall canvass the tally lists. A certificate of election shall be issued by the county or state board of canvassers, as in other cases. All the provisions regulating elections, obtaining tally lists, and canvass of votes at general elections, except as to time, shall apply to special elections. [R60,§673; C73, §§791–793; C97,§1171; C24, 27, 31, 35, 39,§885; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.46]

Certificate, §§50.29, 50.41

50.47 Messengers for election tally lists. Messengers sent for the tally lists of elections shall be paid from the state or county treasury for necessary travel expense. [C51,§295; R60, §529; C73,§3827; C97,§1172; C24, 27, 31, 35, 39, §886; C46, 50, 54, 58, 62, 66, 71, 73, 75,§50.47]

Referred to in §43.47
Messengers, §§43.47, 50.23, 50.34
Rate, see §79.9

CHAPTER 51

DOUBLE ELECTION BOARDS

Referred to in §§39.3, 43.5, 49.12, 49.13, 275.35, 277.3, 280A.15, 280A.39, 296.4, 298.18, 353.12, 360.1, 372.2, 376.1
Chapter applicable to primary elections, §43.5

51.1 Election counting board.
51.2 Appointment.
51.3 "Receiving" and "counting" boards defined.
51.4 Duties of receiving board.
51.5 Oath.
51.6 Administration of oath.
51.7 Duties of double boards.
51.8 Ballot boxes.
51.9 Manner of counting.
51.10 Secrecy of ballot.
51.11 Presence of persons.

51.12 Counting quarters—guarding ballots.
51.13 Certification of count—returns.
51.14 Compensation of board.
51.15 Applicability of law.
51.16 Violations.
51.17 Circulation of information.

51.1 Election counting board. In all election precincts the board of supervisors may authorize the commissioner to appoint for each primary and general election five additional precinct election officials to be known as the election counting board. [C24, 27, 31, 35, 39, §887; C46, 50, 54, 58, 62, 66, 71, 73, 75,§51.1]

39GA, ch 60,§1, editorially divided
Referred to in §51.3
Election boards, §49.12

51.2 Appointment. The members of the election counting board shall be appointed by the commissioner from the election board panel drawn up as provided by section 49.15. The requirements of section 49.13, relative to political party affiliation of members of the election board appointed to serve for partisan elections shall apply to the membership of the election counting board. [C24, 27, 31, 35, 39, §§888, 890; C46, 50, 54, 58, 62, 66, 71, 73,§§51.2, 51.4; C75,§51.2]

Referred to in §51.3
Duties, §§51.7, 51.9, 51.13

51.3 "Receiving" and "counting" boards defined. The precinct election officials as provided in chapter 49 shall be known as the "receiving board" and it shall be their duty to supervise the casting of ballots at said election, and the precinct election officials provided for in sections 51.1 and 51.2 shall be known as the "counting board." [C24, 27, 31, 35, 39,§889; C46, 50, 54, 58, 62, 66, 71, 73, 75,§51.3]

39GA, ch 60,§2, editorially divided
Regular election boards, §49.12

51.4 Duties of receiving board. The receiving board shall perform all the functions of precinct election officials as provided by law except as to counting and certifying the vote as by this chapter provided. [C24, 27, 31, 35, 39,§890; C46, 50, 54, 58, 62, 66, 71, 73, 75,§51.4]

Duties, §§51.7, 51.9, 51.13

51.5 Oath. All board members shall take an oath as provided in section 49.75, for precinct election officials and in addition to such oath the counting board shall take the following oath:

"I.....do swear (or affirm) that I will duly attend to the ensuing election during the continuance thereof as a member of the counting board; that I will not, prior to the closing of the polls, communicate in any manner, directly or indirectly, by word or sign, the progress of the counting, nor the result so far as ascertained, nor any information whatsoever in relation thereto; that I will make and return a perfect return of the said election, and will in all things truly, impartially, and faithfully perform my duty respecting the same to the best of my judgment and ability; that I am not directly or indirectly interested in any bet or wager on the result of this election." [C24, 27, 31, 35, 39,§891; C46, 50, 54, 58, 62, 66, 71, 73, 75,§51.5]

39GA, ch 60,§7, editorially divided
Oath, §49.75

51.6 Administration of oath. This oath shall be administered at the time the board enters upon its duties by a precinct election official of the receiving board who is hereby empowered to administer such oath. [C24, 27, 31, 35, 39,§892; C46, 50, 54, 58, 62, 66, 71, 73, 75,§51.6]

51.7 Duties of double boards. The counting boards shall proceed to the respective voting places to which they have been appointed, at one o'clock p. m., or in any precinct in which the commissioner shall deem it necessary, at such earlier hour after nine o'clock a.m., as the commissioner may direct, and shall take charge of the ballot box containing the ballots already cast in that precinct. It shall retire to a partitioned space or room provided for that purpose and there proceed to count and tabulate the ballots as it shall find them deposited in the ballot box. The receiving board shall continue to receive the votes of electors in the other box provided, until such time as the counting board shall have finished counting and tabulating the ballots cast in the first ballot box. The two boards shall then exchange the first box for the second box and so continue until they have counted and tabulated all the votes cast on that election day. When the hour arrives for closing the polls, the receiving board shall certify to all matters pertaining to casting of ballots and shall then unite with the counting board in the counting of ballots. The precinct election officials shall then divide the ballots not counted and each group of officials shall proceed to canvass their portion of the same. When the canvass has been completed the officials shall report the result of their canvass in the manner provided by section 50.11. [C24, 27, 31, 35, 39,§893; C46, 50, 54, 58, 62, 66, 71, 73, 75,§51.7]

Tally list, §50.16

51.8 Ballot boxes. It shall be the duty of the commissioner to provide the precinct election officials with such ballot boxes and other election supplies as may be required to be furnished in duplicate to accomplish the purpose of this chapter. [C24, 27, 31, 35, 39,§894; C46, 50, 54, 58, 62, 66, 71, 73, 75,§51.8]

51.9 Manner of counting. Whenever the counting board receives from the receiving board the ballot box, they shall also be furnished a statement from the receiving board giving the number of voters declarations of eligibility signed up to that time, which shall

equal the number of votes in the ballot box. The counting board shall on opening the ballot box first count the ballots therein. If the number of ballots found in the ballot box exceeds the number as shown by the statement received from the receiving board the counting board members shall proceed to examine the official endorsement of said ballots, and, if any ballots are found that do not bear proper official endorsement, said ballots shall be kept separate and a record of such ballots shall be made and returned under the head of excess ballots. The counting board shall then proceed to count the ballots as now provided by law. [C24, 27, 31, 35, 39,§895; C46, 50, 54, 58, 62, 66, 71, 73, 75,§51.9]

Counting general election ballots, ch 50
Counting primary ballots, §43.45

51.10 Secrecy of ballot. The space or room occupied by the counting board shall be policed in such manner as to prevent any person, or persons, from gaining information regarding the progress of the count before the polls are closed. [C24, 27, 31, 35, 39,§896; C46, 50, 54, 58, 62, 66, 71, 73, 75,§51.10]

51.11 Presence of persons. No person shall be admitted into the space or room where such ballots are being counted until the polls are closed, except the counting board and the witnesses appointed and accredited under section 49.104, subsection 3. It shall be unlawful for any witness to communicate or attempt to communicate, directly or indirectly, information regarding the progress of the count at any time before the polls are closed. [C24, 27, 31, 35, 39,§897; C46, 50, 54, 58, 62, 66, 71, 73, 75, §51.11; 66GA, ch 81,§90]

Referred to in §49.104

51.12 Counting quarters—guarding ballots. The commissioner shall provide suitable places for the counting of ballots, but when it becomes necessary to remove the ballot box from one room to another, or from one building to another, and at all times when they are in possession of the counting board, they shall be under constant observation of at least one counting board member from each political party. [C24, 27, 31, 35, 39,§898; C46, 50, 54, 58, 62, 66, 71, 73, 75,§51.12]

51.13 Certification of count—returns. Both boards shall certify to all matters pertaining to counting and canvassing of votes and shall return all materials and ballots to the commissioner as provided by law. [C24, 27, 31, 35, 39, §899; C46, 50, 54, 58, 62, 66, 71, 73, 75,§51.13]

Return of election register and ballots, §§50.5, 50.9, 50.12, 50.17

51.14 Compensation of board. Compensation for counting board members shall be the same as provided by law for precinct election officials. [C24, 27, 31, 35, 39,§900; C46, 50, 54, 58, 62, 66, 71, 73, 75,§51.14]

Compensation, §49.20

51.15 Applicability of law. This chapter shall apply to all general and primary elections, but shall not apply where voting machines are used. [C24, 27, 31, 35, 39,§901; C46, 50, 54, 58, 62, 66, 71, 73, 75,§51.15]

51.16 Violations. Any precinct election official violating the provisions of this chapter shall be guilty of a misdemeanor, and, upon conviction thereof, shall be liable to a fine of not to exceed five hundred dollars, or imprisonment in the county jail not to exceed six months. Any person so convicted shall be disfranchised for five years thereafter. [C24, 27, 31, 35, 39,§902; C46, 50, 54, 58, 62, 66, 71, 73, 75, §51.16; 66GA, ch 67,§68]

39GA, ch 60,§8, editorially divided
Referred to in §51.17

51.17 Circulation of information. Anyone circulating or attempting to circulate any information with reference to the result of the counted ballots shall be guilty of a misdemeanor and punished as provided by section 51.16. [C24, 27, 31, 35, 39,§903; C46, 50, 54, 58, 62, 66, 71, 73, 75,§51.17]

CHAPTER 52

ALTERNATIVE VOTING SYSTEMS

Referred to in §§39.3, 43.5, 49.25, 49.29, 275.35, 277.3, 280A.15, 280A.39, 296.4, 298.18, 353.12, 360.1, 372.2, 376.1

Chapter applicable to primary elections, §43.5

52.1 Alternative voting systems—definitions.
52.2 Purchase.
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ELECTRONIC VOTING SYSTEMS
52.26 Authorized electronic voting system.
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52.28 Electronic voting system ballot forms.
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52.32 Procedure upon closing polls.
52.33 Absentee voting by electronic voting system.
52.34 Counting center established.
52.35 Equipment tested.
52.36 Commissioner in charge of counting center.
52.37 Counting center tabulation procedure.

52.1 Alternative voting systems — definitions.

1. At all elections conducted under chapter 49, and at any other election unless specifically prohibited by the statute authorizing the election, votes may be cast, registered, recorded and counted by means of either voting machines or electronic voting systems, in accordance with this chapter.

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

a. "Voting machine" means a mechanical device, meeting the requirements of section 52.7, designated for use in casting, registering, recording and counting votes at an election.

b. "Electronic voting system" means a system employing special paper ballots or ballot cards and ballot labels, under which votes are:

(1) Cast by voters by marking special paper ballots with a vote marking device, or by marking ballot cards by use of a voting punch device; and

(2) Thereafter counted by use of automatic tabulating equipment.

c. "Special paper ballot" means a printed ballot designed to be marked by a voter with a vote marking device.

d. "Vote marking device" means a pen, pencil or similar writing tool for use in marking a special paper ballot, so designed or fabricated that the mark it leaves may be detected and the vote so cast counted by automatic tabulating equipment.

e. "Ballot card" means a tabulating card on which votes may be recorded by a voter by use of a voting punch device.

f. "Ballot label" means the cards, papers, booklet, pages or other material on which appear the names of offices and candidates and the statements of public questions to be voted on at any election by means of ballot cards.

g. "Voting punch device" means an apparatus to which is affixed a ballot label, and in which a ballot card may be inserted and marked by the voter by piercing the ballot card at appropriate points with a stylus provided for the purpose. The hole or mark made by the stylus may be round, square, rectangular or any other shape that will clearly indicate the intent of the voter.

h. "Ballot" includes a special paper ballot and a ballot card and its associated ballot label. In appropriate contexts, "ballot" also includes conventional paper ballots.

i. "Automatic tabulating equipment" means apparatus, including but not limited to electronic data processing machines, which may be utilized to ascertain the manner in which either special paper ballots or ballot cards have been marked by voters, and count the votes marked thereon.

j. "Counting center" means any place selected by the commissioner where automatic tabulating equipment is available, or is placed, for the purpose of counting votes marked on ballots cast in two or more precincts. [S13, §1137-a7; C24, 27, 31, 35, 39,§904; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.1; 66GA, ch 81,§91]

52.2 Purchase. The board of supervisors of any county may, by a majority vote, authorize, purchase, and order the use of either voting machines or an electronic voting system in any one or more voting precincts within said county until otherwise ordered by said board of supervisors. Voting machines and an electronic voting system may be used concurrently at different precincts within any county, but not at the same precinct. [S13,§1137-a8; C24, 27, 31, 35, 39,§905; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.2; 66GA, ch 81,§92]

Referred to in §§49.25, 52.34

52.3 Terms of purchase — tax levy. The county board of supervisors, on the adoption and purchase of a voting machine or an electronic voting system, may provide for the payment therefor in such manner as they may deem for the best interest of the county, and may for that purpose issue bonds, certificates of indebtedness, or other obligations, which shall be a charge on the county, or levy not to exceed thirteen and one-half cents per thousand dollars of assessed value. Any amounts so levied and collected in excess of actual costs of voting machines shall revert to the general fund of the county. Such bonds, certificates, or other obligations may be issued with or without interest, payable at such time

or times as the county board may determine, but shall not be issued or sold at less than par. [S13,§1137-a14; C24, 27, 31, 35, 39,§906; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.3; 66GA, ch 81,§93]
Referred to in §24.37

52.4 Examiners—term—removal. The governor shall appoint three members to a board of examiners for voting machines and electronic voting systems, not more than two of whom shall be from the same political party. The examiners shall hold office for the term of five years, subject to removal at the pleasure of the governor. [S13,§1137-a9; C24, 27, 31, 35, 39,§907; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.4; 66GA, ch 81,§94]

52.5 Examination of machine. Any person or corporation owning or being interested in any voting machine or electronic voting system may call upon the said examiners to examine the said machine or system, and make report to the state commissioner upon the capacity of the said machine or system to register the will of voters, its accuracy and efficiency, and with respect to its mechanical perfections and imperfections. Their report shall be filed in the office of the state commissioner and shall state whether in their opinion the kind of machine or system so examined can be safely used by such voters at elections under the conditions prescribed in this chapter. If the report states that the machine or system can be so used, it shall be deemed approved by the examiners, and machines or systems of its kind, may be adopted for use at elections as herein provided. Any form of voting machine or system not so approved cannot be used at any election. Prior to actual purchase by any county of any particular electronic voting system which has been approved for use in this state, the state commissioner shall formulate, with advice and assistance of the examiners, and adopt rules governing the development of vote counting programs and all procedures used in actual counting of votes by means of that system. [S13,§1137-a10; C24, 27, 31, 35, 39,§908; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.5; 66GA, ch 81,§95]
S13,§1137-a10, editorially divided

52.6 Compensation. Each examiner is entitled to one hundred fifty dollars for his or her compensation and expenses in making such examination and report, to be paid by the person or corporation applying for such examination. No examiner shall have any interest whatever in any machine or system reported upon. Provided that each examiner shall receive not to exceed fifteen hundred dollars and reasonable expenses in any one year; and all sums collected for such examinations over and above said maximum salaries and expenses shall be turned in to the state treasury. [S13,§1137-a10; C24, 27, 31, 35, 39,§909; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.6; 66GA, ch 81,§96]

52.7 Construction of machine approved. A voting machine approved by the state board of examiners for voting machines and electronic voting systems must be so constructed as to provide facilities for voting for the candidates of at least seven different parties or organizations, must permit a voter to vote for any person for any office although not nominated as a candidate by any party or organization, and must permit voting in absolute secrecy.

It must also be so constructed as to prevent voting for more than one person for the same office, except where the voter is lawfully entitled to vote for more than one person for that office; and it must afford him an opportunity to vote for any or all persons for that office as he is by law entitled to vote for and no more, at the same time preventing his voting for the same person twice.

It may also be provided with one ballot in each party column or row containing only the words "presidential electors", preceded by the party name, and a vote for such ballot shall operate as a vote for all the candidates of such party for presidential electors.

Such machine shall be so constructed as to accurately account for every vote cast upon it. [S13,§1137-a11; C24, 27, 31, 35, 39,§910; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.7; 66GA, ch 81,§97]
Referred to in §52.1

52.8 Experimental use. The board of supervisors of any county may provide for the experimental use at an election in one or more districts, of a voting machine or electronic voting system which it might lawfully adopt, without a formal adoption thereof; and its use at such election shall be as valid for all purposes as if it had been lawfully adopted. [S13, §1137-a12; C24, 27, 31, 35, 39,§911; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.8; 66GA, ch 81,§98]

52.9 Duties of local authorities—certificate of test. The commissioner having jurisdiction of any precinct for which the board of supervisors has adopted voting by machine shall, as soon as practicable thereafter, provide for the precinct polling place one or more voting machines in complete working order, and shall thereafter keep them in repair, and shall have the custody thereof and of the furniture and equipment of the polling place when not in use at an election. The machines shall be used for voting at all elections unless the commissioner directs otherwise pursuant to section 49.26. If it shall be impracticable to supply each and every election precinct for which machine voting has been adopted with a voting machine or voting machines at any election following such adoption, as many may be supplied as it is practicable to procure, and the same may be used in such election precincts as the commissioner may direct.

It shall be the duty of the commissioner or the commissioner's duly authorized agents to examine and test the voting machines to be used at any election, after the machines have been prepared for the election and not less than twelve hours before the opening of the

polls on the morning of the election. The county chairperson of each political party referred to in section 49.13 shall be notified in writing of the time said machines shall be examined and tested so that they may be present, or have a representative present. Those present for the examination and testing shall sign a certificate which shall read substantially as follows:

The Undersigned Hereby Certify that, having duly qualified, we were present and witnessed the testing and preparation of the following voting machines; that we believe the same to be in proper condition for use in the election of .....
..... 19...., that each registering counter of the machine is set at 000; that the public counter is set at 000; that the seal numbers and the protective counter numbers are as indicated below.

Signed
.....
Republican
.....
Democrat
.....
.....
Voting machine custodian
Dated.....19....

Machine Number	Protective Counter Number	Seal Number
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

On those voting machines presently equipped with an after-election latch and on all machines placed in use after January 1, 1961, in this state, the after-election latch shall be fully used by the election officials. [S13,§1137-a13; C24, 27, 31, 35, 39,§**912**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.9; 66GA, ch 81,§99]

52.10 Ballots—form. All ballots shall be printed in black ink on clear, white material, of such size as will fit the ballot frame, and in as plain, clear type as the space will reasonably permit. The party name for each political party represented on the machine shall be prefixed to the list of candidates of such party. The order of the list of candidates of the several parties or organizations shall be arranged as provided in sections 49.30 to 49.42, except that the lists may be arranged in horizontal rows or vertical columns. [S13,§1137-a15; C24, 27, 31, 35, 39,§**913**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.10]

52.11 Locking of unused party row. At all general elections the commissioner in preparing the ballot upon every voting machine shall cause the party row next underneath the names of the Republican candidates, and also the party row underneath the names of the Democratic candidates, to be locked and left blank except when more than five political parties have nominated candidates whose names are entitled to be placed on the official ballot. [C27, 31, 35,§913-a1; C39,§**913.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.11]

52.12 Exception—party circle and general form. The provisions of section 49.42 shall not be applicable to voting machines owned prior to April 1, 1921, by any county or municipality insofar as they relate to the party circle and the form of the ballot generally; but nothing herein contained shall prohibit the use of voting machines equipped to comply with the foregoing provisions. [C24, 27, 31, 35, 39,§**914**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.12]

52.13 Sample ballots. The commissioner shall provide for each precinct polling place at which votes are to be cast by machine two sample ballots, which shall be arranged in the form of a diagram showing the entire front of the voting machine as it will appear after the official ballots are arranged for voting on election day. Such sample ballots shall be open to public inspection at such polling place during the day of election. [S13,§1137-a16; C24, 27, 31, 35, 39,§**915**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.13]

52.14 Two sets of ballots. Two sets of ballots shall be provided for each polling place for each election for use in the voting machine. [S13,§1137-a17; C24, 27, 31, 35, 39,§**916**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.14]

52.15 Delivery of ballots and supplies. The voting machine ballots and other necessary supplies shall be delivered to the board members of each precinct in which votes are to be cast by machine at the time required by section 49.55. [S13,§1137-a18; C24, 27, 31, 35, 39, §**917**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.15]

52.16 Duties of election officers—independent ballots. The election board of each precinct in which votes are to be cast by machine shall meet at the precinct polling place, at least one hour before the time set for the opening of the polls at each election, and shall proceed to arrange the furniture, stationery, and voting machine for the conduct of the election. The board shall cause at least two instruction cards to be posted conspicuously within the polling place. If not previously done, they shall arrange, in their proper place on the voting machine, the ballots containing the names of the offices to be filled at such election, and the names of the candidates nominated therefor. If not previously done, the machine shall be so arranged as to show that no vote has been cast, and the same shall not be thereafter operated, except by electors in voting. Before the polls are open for election, the board shall carefully examine every machine and see that no vote has been cast, and the same shall be subject to inspection of the election officers. Ballots voted for any person whose name does not appear on the machine as a nominated candidate for office, are herein

referred to as independent ballots. When two or more persons are to be elected to the same office, and the machine requires that all independent ballots voted for that office be deposited in a single receptacle or device, an elector may vote in or by such receptacle or device for one or more persons whose names do not appear upon the machine with or without the names of one or more persons whose names do so appear. With that exception, and except for presidential electors, no independent ballot shall be voted for any person for any office whose name appears on the machine as a nominated candidate for that office; any independent ballot so voted shall not be counted. An independent ballot must be cast in its appropriate place on the machine, or it shall be void and not counted. [S13,§1137-a19; C24, 27, 31, 35, 39,§918; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.16]

52.17 Voting machine in plain view. The exterior of the voting machine and every part of the polling place shall be in plain view of the election officers. The voting machine shall be placed at least three feet from every wall and partition of the polling place, and at least four feet from the precinct election officials' table. [S13,§1137-a20; C24, 27, 31, 35, 39,§919; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.17; 66GA, ch 67,§68]

52.18 Method of voting. After the opening of the polls, the precinct election officials shall not allow any voter to enter the voting machine booth until they ascertain that he is duly entitled to vote. Only one voter at a time shall be permitted to enter the voting machine booth to vote. The operating of the voting machine by the elector while voting shall be secret and obscured from all other persons, except as provided by sections 49.89, 49.90 and 49.91 in cases of voting by assisted electors. No voter shall remain within the voting machine booth longer than three minutes, and if he shall refuse to leave it after the lapse of three minutes, he shall be removed by the officials. [S13,§1137-a21; C24, 27, 31, 35, 39,§920; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.18; 66GA, ch 81,§100]

52.19 Instructions. In case any elector after entering the voting machine booth shall ask for further instructions concerning the manner of voting, two precinct election officials of opposite political parties shall give such instructions to him; but no precinct election official or other election officer or person assisting an elector shall in any manner request, suggest, or seek to persuade or induce any such elector to vote any particular ticket, or for any particular candidate, or for or against any particular amendment, question, or proposition. After receiving such instructions, such elector shall vote as in the case of an unassisted voter. [S13,§1137-a22; C24, 27, 31, 35, 39,§921; C46, 50, 54, 58, 62, 66, 71, 73, 75, §52.19]

52.20 Injury to machine. No voter, or other person, shall deface or injure the voting machine or the ballot thereon. It shall be the duty of the precinct election officials to enforce the provisions of this section. During the entire period of an election, at least one of their number, designated by them from time to time, shall be stationed beside the entrance to the booth and shall see that it is properly closed after a voter has entered it to vote. He shall also, at such intervals as he may deem proper or necessary, examine the face of the machine to ascertain whether it has been defaced or injured, to detect the wrongdoer, and to repair any injury. [S13,§1137-a23; C24, 27, 31, 35, 39, §922; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.20]

52.21 Canvass of vote—tally sheet. As soon as the polls of the election are closed, the precinct election officials thereat shall immediately lock the voting machine against voting and open the counting compartments in the presence of all persons who may be lawfully within the polling place, and proceed to canvass the vote. Said officials shall use a voting machine return and tally sheet in substantially the following form:

VOTING MACHINE RETURN AND TALLY SHEET

..... ELECTION ..... 19....., COUNTY OF .....

	President and Vice President	United States Senator	United States Representative	Governor	Lt. Governor	Etc.
Republican Party	1A (name of candidate)	2A	3A	4A	5A	6A
Machine No.						
Machine No.						
Machine No.						
Machine No.						
Machine No.						
Return Sheet Total						
Democratic Party	1B (name of candidate)	2B	3B	4B	5B	6B
Machine No.						
Machine No.						
Machine No.						
Machine No.						
Machine No.						
Return Sheet Total						
Independents	1C (name of candidate)	2C	3C	4C	5C	6C
Machine No.						
Machine No.						
Machine No.						
Machine No.						
Machine No.						
ETC.						
Public Measures	1F For	2F Against	3F	4F	5F	6F
Machine No.						
Machine No.						
Machine No.						
Machine No.						
Machine No.						
Return Sheet Total						

The reverse side of said return shall carry a certificate in substantially the following form:

CERTIFICATE OF ELECTION OFFICIALS AND CANVASS

STATE OF IOWA }
COUNTY OF.....} ss.

We, the undersigned Precinct Election Officials for ....., Precinct No. .... of the county of ..... and state of Iowa, do hereby certify that ..... voting machine ..... (was or were) used in the above-mentioned precinct at the ..... Election held on the ..... day of ....., 19.....

"1. That before opening of the polls we compared the ballot labels on (the or each) machine with the sample ballots furnished, and found the names, numbers and letters thereon agreed.

"2. That we compared the number on the seal which sealed the curtain lever and the number on the protective counter and we found the same as follows:

Machine	Curtain Lever Seal	Protective Counter
No.....	No.....	No.....
No.....	No.....	No.....
No.....	No.....	No.....
No.....	No.....	No.....

"3. That the public counter was set at 000 and that we opened the rear of (the or each) machine and examined every registering counter and that each registered 000.

"4. That the following statement shows the number of the seal with which the curtain lever was sealed, the number on the public counter and the number on the protective counter after the poll was closed and the vote thereon canvassed and the machine locked:

Machine	Curtain Lever Seal	Protective Counter	Public Counter
No.	No.	No.....	No.....
No.	No.	No.....	No.....
No.	No.	No.....	No.....
No.	No.	No.....	No.....

"5. That we are Precinct Election Officials of the.....Election in and for....., Precinct No. ..... in the county of ..... and state of Iowa, on the ..... day of ....., 19...., and that we have canvassed all the votes registered on the voting machines for each candidate, and all irregular ballots written on the paper roll of each machine used in said precinct, and do hereby severally certify that the canvass thereof was duly and legally made, and the result of said canvass is correctly set forth in the within return-sheet statement, and that the said statement is true in all respects.

Dated this .... day of ....., 19....

.....
.....
.....
.....
.....
.....
Precinct Election Officials"

After the canvass has been completed the officials shall immediately report the result of the canvass in the manner provided by section 50.11. [S13,§1137-a24; C24, 27, 31, 35, 39,§923; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.21]

Referred to in §§49.90, 52.23

52.22 Locking machine. The precinct election officials shall, as soon as the count is completed and fully ascertained as in this chapter required, lock the machine against voting, and it shall so remain until thirty days after the proclamation of the results of said election, except that it shall remain locked only ten days after a primary election, and only two days after a city primary election, if such election is not contested.

In cities in which the council has chosen a runoff election in lieu of a primary pursuant to section 376.9, the machine shall remain locked only two days after the regular city election if the canvass shows that a runoff election is required, and the election is not contested. However, if the machines in any precinct are so constructed as to deliver, immediately upon conclusion of the voting at any election, multiple copies of a printed record of the votes cast and the totals for each candidate or question appearing on the face of the machine, the machines may be unlocked immediately following the canvass of votes by the county board of supervisors unless the precinct election board informs the commissioner that the printed record produced by the machine is smeared, torn or otherwise unreadable. In the latter case, the machines shall be kept locked for the period of time prescribed for machines which do not print such a record.

Whenever independent ballots have been voted, the officials shall return all of such ballots properly secured in a sealed package as prescribed by section 50.12. [S13,§1137-a25; C24, 27, 31, 35, 39,§924; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.22; 66GA, ch 81,§101]

Independent ballots, §52.16
Looking unused party row, §52.11

52.23 Written statements of election. After the total vote for each candidate has been ascertained, and before leaving the room or voting place, the precinct election officials shall make and sign the canvass forms referred to in section 52.21, which canvass shall serve as a written statement of election. Said canvass statement shall be in lieu of the tally list required in section 50.16. [S13,§1137-a26; C24, 27, 31, 35, 39,§925; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.23]

52.24 What statutes apply—separate ballots. All of the provisions of the election law not inconsistent with the provisions of this chapter shall apply with full force to all counties adopting the use of voting machines. Nothing in this chapter shall be construed as prohibiting the use of a separate ballot for public measures. [S13,§1137-a27; C24, 27, 31, 35, 39, §926; C46, 50, 54, 58, 62, 66, 71, 73, 75,§52.24]

See also §§49.43, 49.44

52.25 Summary of amendment or public measure. The question of a constitutional con-

vention, amendments and public measures including bond issues may be voted on the voting machines in the following manner:

The entire convention question, amendment or public measure shall be printed and displayed prominently in at least two places within the voting precinct and on the left-hand side inside the curtain of each voting machine, said printing to be in conformity with the provisions of chapter 49. The public measure shall be summarized by the commissioner and in the largest type possible printed on the inserts used in said voting machines, except that:

1. In the case of the question of a constitutional convention, or of an amendment or measure to be voted on in the entire state, the summary to be placed in the voting machine inserts shall be worded by the state commissioner of elections as required by section 49.44; and

2. In the case of a public question to be voted on in a political subdivision lying in more than one county, the summary shall be worded by the commissioner responsible under section 47.2 for conducting that election. [C62, 66, 71, 73, 75,§52.25; 66GA, ch 81,§102]

Referred to in §49.44

ELECTRONIC VOTING SYSTEMS

52.26 Authorized electronic voting system. Every electronic voting system approved by the state board of examiners for voting machines and electronic voting systems shall:

1. Provide for voting in secrecy, except as to persons entitled by sections 49.90 and 49.91 to assistance.

2. Permit each voter to vote at any election for any candidate for each office and upon each public question with respect to which the voter is entitled by law to vote, while preventing the voter from voting more than once upon any public question or casting more votes for any office than there are persons to be elected to that office.

3. Permit a voter to vote for any person for any office on the ballot at that election, whether or not the person's name is printed on the ballot.

4. Be so constructed or designed that, when voting in a primary election in which candidates are nominated by political parties, a voter is limited to the candidates for the nominations of the political party with which that voter is affiliated.

5. Be so constructed or designed that in presidential elections the voter casts a vote for the presidential electors of any party or political organization by a single mark or punch made opposite the name of the candidates of that party or organization for the offices of both president and vice president of the United States, and so that the voter is also provided the opportunity to write in the name of any person for whom the voter desires to vote for president or vice president of the United States.

6. Be so constructed or designed as to permit voting for candidates for nomination or election of at least seven different political parties or organizations, and to permit voting for all of the candidates of any one political party or organization by a single mark or punch, at any one election.

7. The voting punch device shall be so constructed and designed so if an elector makes an error in marking the ballot, the machine shall indicate the error and permit the elector to make a correction according to the provisions of section 52.30, subsection 4. [66GA, ch 81,§103]

52.27 Commissioner to provide electronic voting equipment. The commissioner having jurisdiction of any precinct for which the board of supervisors has adopted voting by means of an electronic voting system shall, as soon as practicable thereafter, provide for use at each election held in the precinct special paper ballots and vote marking devices, or ballot cards, ballot labels and voting punch devices, as the case may be, in appropriate numbers. The commissioner shall have custody of all equipment required for use of the electronic voting system, and shall be responsible for maintaining it in good condition and for storing it between elections. All provisions of chapter 49 relative to times and circumstances under which voting machines are to be used in any election and the number of voting machines to be provided shall also govern the use of electronic voting systems, when applicable. [66GA, ch 81,§104]

52.28 Electronic voting system ballot forms.

1. The commissioner of each county in which the use of an electronic voting system in one or more precincts has been authorized shall determine the arrangement of candidates names and public questions upon the ballot or ballots used with the system. The ballot information, whether placed on the special paper ballot, the ballot card or the ballot label, shall be arranged as required by chapters 43 and 49, and by any relevant provisions of any statutes which specify the form of ballots for special elections, so far as possible within the constraints of the physical characteristics of the electronic voting system in use in that county. The state commissioner may adopt rules requiring a reasonable degree of uniformity among counties in arrangement of electronic voting system ballots.

2. Where voting is to occur by use of ballot cards, ballot labels and a voting punch device, the ballot labels must be arranged on or in the voting punch device in the places provided for that purpose. Voting squares may be before or after the names of candidates and statements of questions, and shall be of such size as is compatible with the type of electronic voting system in use in that county. Ballots and ballot labels shall be printed in as plain and clear type and size as the space

available will reasonably permit. Ballot cards shall be provided with tear-off stubs which shall be of a size suitable for the ballots or ballot cards used and for the requirements of the voting punch device. The ballots or ballot cards may contain special printed marks and holes as required for proper positioning and reading of the ballots by the automatic tabulating equipment. Where ballots or ballot cards are bound into pads, they may be bound at the top or bottom or at either side. [66GA, ch 81,§105]

52.29 Electronic voting system sample ballots. The commissioner shall provide for each precinct where an electronic voting system is in use at least four sample special paper ballots, or combinations of ballot cards and ballot labels, as the case may be, which shall be exact copies of the official ballots as printed for that precinct. The sample ballots shall be arranged in the form of a diagram showing the special paper ballot or the front of the voting punch device, as the case may be, as it will appear to the voter in that precinct on election day. The sample ballots shall be posted prominently within the polling place, and shall be open to public inspection during the hours the polls are open on election day. [66GA, ch 81,§106]

52.30 Procedure where votes cast on ballot cards. The provisions of this section shall apply to any precinct for those elections at which votes are to be received on ballot cards in that precinct.

1. The commissioner shall cause the voting punch devices to be put in order, set, adjusted and made ready for voting when delivered to the precinct polling places. Before the opening of the polls, the precinct election officials shall compare the ballot cards and ballot labels with the sample ballots furnished, and see that the names, numbers and letters thereon agree and shall so certify on forms provided for this purpose. The certification shall be filed with the election returns.

2. Each voter shall be instructed how to use the voting punch device before entering the voting booth. In addition to the instructions printed on the ballot cards or ballot labels, instructions to voters shall be posted in each voting booth or place on the voting punch device. Any voter who requests further instructions as to the manner of voting, after entering the voting booth, shall receive the instructions from two precinct election officials, who shall not be members of the same political party if the election is one in which candidates are to be nominated or elected upon a partisan ballot. The precinct election officials shall give the necessary instruction without attempting in any manner to influence the voter to vote for any particular candidate or ticket, or for or against any public question. After receiving such instructions, the voter shall vote without further assistance, except as otherwise provided by sections 49.89, 49.90 and 49.91.

3. A separate write-in ballot, which may be in the form of a paper ballot or ballot card, or may be printed on the envelope in which the voter places his ballot card after voting, shall be provided where necessary to permit voters to write in the names of persons whose names are not printed on the ballot. If a separate write-in ballot is used, it must be placed by the voter in the same envelope with the regular ballot card.

4. A voter who spoils or defaces a ballot card or marks it erroneously shall return the card to the precinct election officials with stub folded so as not to disclose any choices made. The precinct election officials shall deliver to the voter another ballot card, but no voter may receive more than three ballot cards including the one originally delivered to the voter. Upon return of a defective ballot card, a precinct election official shall cancel it by writing in ink on the back the word "spoiled". The canceled ballot card shall be placed, without detaching the ballot stub, with spoiled ballots to be returned to the commissioner.

5. After marking the ballot card, the voter shall place it inside the ballot envelope and return it to the election official, who shall remove the stub and deposit the envelope with the ballot inside it in the ballot box. Ballot cards from which the stub has been removed by anyone except a precinct election official shall not be deposited in the ballot box, but shall be marked "spoiled" and returned to the commissioner. [66GA, ch 81,§107]

Referred to in §52.26

52.31 Procedure where votes cast on special paper ballots. Preparations for voting and voting at any election in a precinct where votes are to be received on special paper ballots shall be in accordance with the provisions of chapter 49 governing voting upon conventional paper ballots. However, before entering the voting booth each voter shall be cautioned to mark the ballot only with a vote marking device provided in the booth. [66GA, ch 81,§108]

52.32 Procedure upon closing polls. The provisions of this section shall apply, in lieu of sections 50.1 to 50.12 to any precinct for those elections at which voting is conducted by means of an electronic voting system.

1. At the time for closing of the polls, or as soon thereafter as all persons entitled under section 49.74 to do so have cast their votes, the precinct election officials in each precinct where voting punch devices are in use shall secure the devices against further voting. They shall then open the ballot box and count the number of ballots or envelopes containing ballots that have been cast to determine whether the number of ballots cast exceeds the number of declarations of eligibility signed as required by section 49.77. If so, that fact shall be reported in writing to the commissioner together with the number of excess

ballots and the reason for the excess, if known.

2. The precinct election officials shall next count the write-in votes cast in the precinct, if any. If ballot cards are used, and separate write-in ballots or envelopes for recording write-in votes are used, all ballots or envelopes on which write-in votes have been recorded shall be serially numbered, starting with the number one, and the same number shall be placed on the regular ballot card of that voter. The precinct election official shall compare the write-in votes with the votes cast on the ballot card. If the total number of votes for any office exceeds the number allowed by law, a notation to that effect shall be entered on the back of the ballot card and the votes for the office involved shall not be counted.

3. The precinct election officials shall place all ballots that have been cast in a container provided by the commissioner for the purpose, which shall be sealed in the presence of all of the precinct election officials. They shall then each affix their signatures to a statement attesting that the requirements of this section have been complied with, and the statement shall be returned to the commissioner with the election register as required by section 50.17. [66GA, ch 81,§109]

52.33 Absentee voting by electronic voting system. In any county in which the board of supervisors has adopted voting by means of an electronic voting system, the commissioner may elect to also conduct absentee voting by use of such a system if the system so used is compatible with the counting center serving the precinct polling places in the county where voting is by means of an electronic voting system. In any other county, the commissioner may with approval of the board of supervisors conduct absentee voting by use of an electronic voting system. All provisions of chapter 53 shall apply to such absentee voting, so far as applicable. When a ballot card is used for voting by mail it shall be accompanied by a stylus, voter instructions, and a specimen ballot showing the proper positions to vote on the ballot card for each candidate or public question. The card shall be mounted on material suitable to receive the punched out chip. In counties where absentee voting is conducted by use of an electronic voting system, the special precinct counting board shall, at the time required by chapter 53, prepare absentee ballots for delivery to the counting center in the manner prescribed by this chapter. [66GA, ch 81,§110]

52.34 Counting center established. Before authorizing the purchase and ordering the use of an electronic voting system under section 52.2, the county board of supervisors shall, with advice of the commissioner, determine whether counting center equipment is to be purchased as a part of the system and operated by the county, or the county will enter into an arrangement to have its ballots tabulated at a counting center maintained by another county. The arrangement may be reviewed and revised, with approval of the board of supervisors, at any time. If a county acquires and operates a counting center at which ballots cast in one or more other counties are tabulated, the commissioner of the county acquiring and operating the center, or that commissioner's designee, shall be responsible for and in control of the operation of that counting center at all times, regardless of the origin of the ballots being tabulated at any particular time. [66GA, ch 81,§111]

52.35 Equipment tested. Within five days prior to the date of any election at which votes are to be cast by means of an electronic voting system, the commissioner in charge of the counting center where votes so cast are to be tabulated shall have the automatic tabulating equipment tested to ascertain that it will correctly count the votes cast for all offices and on all public questions. The procedure for conducting the test shall be as follows:

1. The county chairperson of each political party shall be notified in writing of the time the test will be conducted, so that they may be present or have a representative present. The commissioner may also include such notice in the notice of the election published as required by section 49.53. The test shall be open to the public.

2. The test shall be conducted by processing a preaudited group of ballots punched or marked so as to record a predetermined number of valid votes for each candidate, and on each public question, on the ballot. The test group shall include for each office and each question one or more ballots having votes in excess of the number allowed by law for that office or question, in order to test the ability of the automatic tabulating equipment to reject such votes. The county chairperson of a political party may submit an additional test group of ballots which, if so submitted, shall also be tested. If any error is detected, its cause shall be ascertained and corrected and an errorless count obtained before the automatic tabulating equipment is approved. When so approved, a statement attesting to the fact shall be signed by the commissioner and sent immediately to the state commissioner.

3. The test group of ballots used for the test shall be clearly labeled as such, and retained in the counting center. The test prescribed in subsection 2 shall be repeated immediately before the start of the official tabulation of ballots cast in the election, and again immediately after the tabulation is completed. The test group of ballots and the programs used for the counting procedure shall be sealed, retained for the time required for and disposed of in the same manner as ballots cast in the election. [66GA, ch 81,§112]

52.36 Commissioner in charge of counting center. All proceedings at the counting cen-

ter shall be under the direction of the commissioner and open to the public. The proceedings shall be under the observation of at least one member of each of the political parties referred to in section 49.13, designated by the county chairperson or, if the chairperson fails to make a designation, by the commissioner. No person except those employed and authorized by the commissioner for the purpose shall touch any ballot or ballot container. [66GA, ch 81,§113]

52.37 Counting center tabulation procedure. The tabulation of ballots cast by means of an electronic voting system, at a counting center established pursuant to this chapter, shall be conducted as follows:

1. The sealed ballot container from each precinct shall be delivered to the counting center by two of the election officials of that precinct, not members of the same political party, who shall travel together in the same vehicle and shall have the container under their immediate joint control until they surrender it to the commissioner or the commissioner's designee in charge of the counting center. The commissioner or designee shall, in the presence of the two precinct election officials who delivered the container, enter on a record kept for the purpose that the container was received and the condition of the seal upon receipt.

2. After the record required by subsection 1 has been made, the ballot container shall be opened. If any ballot is found damaged or defective, so that it cannot be counted properly by the automatic tabulating equipment, a true duplicate shall be made in the presence of witnesses and substituted for the damaged or defective ballot, or the valid votes on a defective ballot may be manually counted at the counting center by at least two employees of the commissioner, whichever method is best suited to the system being used. All duplicate ballots shall be clearly labeled as such, and shall bear a serial number which shall also be recorded on the damaged or defective ballot.

3. The record printed by the automatic tabulating equipment, with the addition of a record of any write-in or other votes manually counted pursuant to this chapter, shall constitute the official return of the precinct. Upon completion of the tabulation of the votes from each individual precinct, the result shall be announced and reported in substantially the manner required by section 50.11.

4. If for any reason it becomes impracticable to count all or any part of the ballots with the automatic tabulation equipment, the commissioner may direct that they be counted manually, in accordance with chapter 50 so far as applicable. [66GA, ch 81,§114]

CHAPTER 53

ABSENT VOTERS LAW

Referred to in §§39.3, 43.5, 46.18, 52.33, 275.35, 277.3, 280A.15, 280A.39, 296.4, 298.18, 353.12, 360.1, 372.2, 376.1, 462.12

Chapter applicable to primary elections, §43.5

53.1 Right to vote—conditions.
53.2 Application for ballot.
53.3 to 53.6 Repealed by 64GA, ch 1025,§35.
53.7 Solicitation by public employees.
53.8 Ballot mailed.
53.9 and 53.10 Repealed by 64GA, ch 1025,§35.
53.11 Personal delivery of absentee ballot.
53.12 Duty of commissioner.
53.13 Voter's affidavit on envelope.
53.14 Party affiliation.
53.15 Marking ballot.
53.16 Taking and subscribing oath.
53.17 Mailing or delivering ballot.
53.18 Manner of preserving ballot and application.
53.19 Listing absentee ballots.
53.20 Special precinct established.
53.21 Repealed by 65GA, ch 136,§401.
53.22 Balloting by confined persons.
53.23 Special precinct election board.
53.24 Counties using voting machines.
53.25 Rejecting ballot.
53.26 Rejected ballots—how handled.
53.27 Rejection of ballot—return of envelope.
53.28 and 53.29 Repealed by 65GA, ch 136,§401.
53.30 Ballot envelope preserved.
53.31 Challenges.
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53.33 Repealed by 65GA, ch 136,§401.
53.34 False affidavit.
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ABSENT VOTING BY ARMED FORCES

53.37 "Armed forces" defined.
53.38 Affidavit constitutes registration.
53.39 Request for ballot.
53.40 Request requirements — transmission of ballot.
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53.43 Identification on envelope.
53.44 Administration of oath.
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53.46 Powers and duties of state commissioner.
53.47 Materials furnished by department of general services.
53.48 Postage on ballots.
53.49 Applicable to armed forces and other citizens.
53.50 Appropriation.
53.51 Rule of construction.
53.52 Inconsistent provisions—rule.

53.1 Right to vote—conditions. Any qualified elector may, subject to the provisions of this chapter, vote at any election:

1. When he expects to be absent on election day during the time the polls are open from the precinct in which he is a qualified elector.

2. When, through illness or physical disability, the elector expects to be prevented from going to the polls and voting on election day. [SS15,§1137-b; C24, 27, 31, 35, 39,§927; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.1; 66GA, ch 81, §115]

Referred to in §§53.2, 53.49

53.2 Application for ballot. Any qualified elector, under the circumstances specified in section 53.1, may on any day, except election day, and not more than seventy days prior to the date of the election, make written application to the commissioner for an absentee ballot.

Nothing in this section shall be construed to require that a written communication mailed to the commissioner's office to request an absentee ballot, or any other document except the absent voter's affidavit required by section 53.13, be notarized as a prerequisite to receiving or marking an absentee ballot or returning to the commissioner an absentee ballot which has been voted.

Each application shall contain the name and signature of the qualified elector, the address at which he is qualified to vote, and the name or date of the election for which the absentee ballot is requested, and such other information as may be necessary to determine the correct absentee ballot for the qualified elector. If insufficient information has been provided, the commissioner shall, by the best means available, obtain the additional necessary information. [SS15,§§1137-c,-d; C24, 27, 31, 35, 39,§§928, 930; C46, 50, 54, 58, 62, 66, 71,§§53.2, 53.4; C73, 75,§53.2]

Referred to in §§53.22, 53.39, 53.49

53.3 to 53.6 Repealed by 64GA, ch 1025,§35.

53.7 Solicitation by public employees. It shall be unlawful for any employee of the state or any political subdivision thereof to solicit any application or request for application for an absentee ballot, or to take an affidavit in connection with any absentee ballot. However, any such employee may take such affidavit in connection with an absentee ballot which is cast by the qualified elector in person in the office where such employee is employed in accordance with section 53.11. This section shall not apply to any elected official. [SS15,§1137-d; C24, 27, 31, 35, 39,§933; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.7]

Referred to in §53.49

53.8 Ballot mailed.

1. Upon receipt of an application for an absentee ballot and immediately after the absentee ballots are printed, it shall be the duty of the commissioner to mail an absentee ballot to the applicant within twenty-four hours, except as otherwise provided in subsection 3. The absentee ballot shall be enclosed in an unsealed envelope bearing a serial number and affidavit. The absentee ballot and unsealed envelope shall be enclosed in a carrier envelope which bears the same serial number as the unsealed envelope. The absentee ballot, unsealed envelope, and carrier envelope shall be enclosed in a third envelope to be sent to the qualified elector.

2. If an application is received so late that it is unlikely that the absentee ballot can be returned in time to be counted on election day, the commissioner shall enclose with the absentee ballot a statement to that effect. The statement shall also point out that it is possible for the applicant to personally deliver his completed absentee ballot to the office of the commissioner at any time before the closing of the polls on election day.

3. When an application for an absentee ballot is received by the commissioner of any county from a qualified elector who is a patient in a hospital in that county or a resident of any facility in that county shown to be a health care facility by the list of licenses provided the commissioner under section 135C.29, the absentee ballot shall be delivered to the elector and returned to the commissioner in the manner prescribed by section 53.22. However, if the application is received more than ten calendar days before the election, the commissioner shall mail to the applicant within twenty-four hours a letter in substantially the following form:

"Your application for an absentee ballot for the election to be held on ..... has been received. This ballot will be personally delivered to you by a bipartisan team sometime during the ten days preceding the election. If you will not be at the address from which your application was sent during any or all of the ten-day period immediately preceding the election, contact this office and arrangements will be made to have your absentee ballot delivered at a time when you will be present at that address."

Nothing in this subsection nor in section 53.22 shall be construed to prohibit a qualified elector who is a hospital patient or resident of a health care facility, or who anticipates entering a hospital or health care facility before the date of a forthcoming election, from casting an absentee ballot in the manner prescribed by section 53.11. [SS15,§§1137-c,-d; C24, 27, 31, 35, 39,§§928, 930; C46, 50, 54, 58, 62, 66, 71, §§53.2, 53.4; C73,§53.2; C75,§53.8; 66GA, ch 81, §116, HF 1011,§47]

Referred to in §§49.63, 53.22, 53.49, 135C.29

53.9 and 53.10 Repealed by 64GA, ch 1025, §35.

53.11 Personal delivery of absentee ballot. The commissioner shall deliver an absentee ballot to any qualified elector applying in person at his office not more than forty days before the date of the general election and the

primary election, and for all other elections, as soon as the ballot is available. The qualified elector shall immediately mark the ballot, enclose it in a ballot envelope with proper affidavit, and return the absentee ballot to the commissioner. The commissioner shall record the numbers appearing on the application and ballot envelope along with the name of the qualified elector. The commissioner of any county in which there is located a city of five thousand or more population, which is not the county seat, may permit qualified electors to appear in person at some designated place within each such city and there cast an absentee ballot in the manner prescribed by this section. [SS15,§1137-e; C24, 27, 31, 35, 39, §937; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.11; 66GA, HF 1011,§48]

Referred to in §§49.63, 53.7, 53.8, 53.22, 53.42, 53.49

53.12 Duty of commissioner. The commissioner shall enclose the absentee ballot in an unsealed envelope, to be furnished by him, which envelope shall bear upon its face the words "county commissioner of elections", the address of his office, and the same serial number appearing on the unsealed envelope shall be affixed to the application. The seal of the officer notarizing the affidavit shall, if possible, be placed on the affidavit envelope in such a manner that the ballot will not be marked by the seal, however, if the officer's seal makes an imprint on the ballot that marking shall not invalidate the ballot. [SS15,§1137-f; C24, 27, 31, 35, 39,§938; C46, 50, 54, 58, 62, 66, 71, 73, 75, §53.12]

Referred to in §53.49

53.13 Voter's affidavit on envelope. On the unsealed envelope shall be printed an affidavit form prescribed by the state commissioner of elections. [SS15,§1137-f; C24, 27, 31, 35, 39,§939; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.13]

Referred to in §§53.2, 53.49

53.14 Party affiliation. Said affidavit shall designate the voter's party affiliation only in case the ballot enclosed is a primary election ballot. [SS15,§1137-f; C24, 27, 31, 35, 39,§940; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.14]

Referred to in §53.49

53.15 Marking ballot. The qualified elector, on receipt of an absentee ballot, shall, in the presence of the officer notarizing the affidavit, mark such ballot in such manner that such officer will not know how such ballot is marked.

Qualified electors who are blind, cannot read, or because of any other physical disability, are unable to mark their own absentee ballot, may have the assistance of any person the qualified elector may select. [SS15,§1137-g; C24, 27, 31, 35, 39,§941; C46, 50, 54, 58, 62, 66, 71, 73, 75, §53.15]

Referred to in §53.49

53.16 Taking and subscribing oath. After marking such ballot, the voter shall, before said officer, make and subscribe to the affidavit on the reverse side of the envelope, and, in the presence of such officer, fold such ballot, or ballots, separately, so as to conceal the markings thereon, and deposit the same in said envelope, which shall then be securely sealed. [SS15,§1137-g; C24, 27, 31, 35, 39,§942; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.16]

Referred to in §§53.22, 53.49

53.17 Mailing or delivering ballot. The sealed envelope containing the absentee ballot shall be enclosed in a carrier envelope which shall be securely sealed. The sealed carrier envelope shall be delivered by the qualified elector or his designee to the commissioner or a deputy in his office, or mailed, postage paid, to the office of the commissioner. The carrier envelope shall be received by the commissioner until eight o'clock p.m. on election day. [SS15,§137-g; C24, 27, 31, 35, 39,§943; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.17; 66GA, ch 81,§117]

Referred to in §53.49

53.18 Manner of preserving ballot and application. Upon receipt of the absentee ballot, the commissioner shall at once record the number appearing on the application and ballot envelope and time of receipt of such ballot and enclose the same, unopened, together with the application made by the qualified elector, in a large carrier envelope on which shall appear the words "This envelope contains an absent voter's ballot for the election", and securely seal the same. [SS15,§§1137-h,-i; C24, 27, 31, 35, 39,§944; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.18]

Referred to in §53.49

53.19 Listing absentee ballots. The commissioner shall maintain a list of the absentee ballots provided to qualified electors, the serial number appearing on the unsealed envelope, the date the application for the absentee ballot was received, and the date the absentee ballot was sent to the qualified elector requesting the absentee ballot.

The commissioner shall provide each precinct election board with a list of all qualified electors from that precinct who have received an absentee ballot. The precinct officials shall immediately designate on the election register those qualified electors who have received an absentee ballot and are not entitled to vote in person at the polls.

However, any qualified elector who has received an absentee ballot and not voted it, may surrender the unmarked absentee ballot to the precinct officials and vote in person at the polls. The precinct officials shall mark the uncast absentee ballot "void" and return it to the commissioner. Any qualified elector who has been sent an absentee ballot by mail but for any reason has not received it may present himself at his precinct polling place on election day and sign an affidavit to that effect, after which he shall be permitted to vote in person. The form of the affidavit for use in such cases shall be prescribed by the

state commissioner. [C71,§53.4; C73,§53.2; C75, §53.19]

Referred to in §§49.72, 53.49

53.20 Special precinct established. There is established in each county a special precinct to be known as the absentee ballot and special voters precinct. Its jurisdiction shall be coterminous with the borders of the county, for the purposes specified by sections 53.22 and 53.23, and the requirement that precincts not cross the boundaries of legislative districts shall not be applicable to it. The commissioner shall draw up an election board panel for the special precinct in the manner prescribed by section 49.15, having due regard for the nature and extent of the duties required of members of the election board and the election officers to be appointed from the panel. [66GA, ch 81, §118]

Referred to in §§49.81, 50.21, 53.22, 53.49

53.21 Repealed by 65GA, ch 136,§401.

53.22 Balloting by confined persons.

1. *a.* A qualified elector who has applied for an absentee ballot, in a manner other than that prescribed by section 53.11, and who is a resident or patient in a health care facility or hospital located in the county to which the application has been submitted shall be delivered the appropriate absentee ballot by two special precinct election officers, one of whom shall be a member of each of the political parties referred to in section 49.13, who shall be appointed by the commissioner from the election board panel for the special precinct established by section 53.20. The special precinct election officers shall be sworn in the manner provided by section 49.75 for election board members, shall receive compensation as provided in section 49.20 and shall perform their duties during the ten calendar days preceding the election and on election day if all ballots requested under section 53.8, subsection 3 have not previously been delivered and returned.

b. If an applicant under this subsection notifies the commissioner that he or she will not be available at the health care facility or hospital address at any time during the ten-day period immediately prior to the election, but will be available there at some earlier time, the commissioner shall direct the two special precinct election officers to deliver the applicant's ballot at an appropriate time prior to the ten-day period immediately preceding the election. If a person who so requested an absentee ballot has been dismissed from the health care facility or hospital, the special precinct election officers may take the ballot to the elector if he or she is currently residing in the county.

c. The special precinct election officers shall both notarize each absent voter's affidavit as required by section 53.16; any such officer who is not a notary public shall be provided with a stamp containing that person's name and the words "special precinct election officer" and may notarize the absentee affidavits so delivered by signing them and applying the stamp. The special precinct election officers shall travel together in the same vehicle and both shall be present when an applicant casts his or her absentee ballot. If either or both of the special election officers fails to appear at the time the duties set forth in this section are to be performed, the commissioner shall at once appoint some other person, giving preference to persons designated by the respective county chairpersons of the political parties described in section 49.13, to carry out the requirements of this section. The persons authorized by this subsection to deliver an absentee ballot to an applicant may assist the applicant in filling out the ballot as permitted by section 49.90. The voted absentee ballots shall be deposited in a sealed container which shall be returned to the commissioner on the same day.

2. Any qualified elector who becomes a patient or resident of a hospital or health care facility within three days prior to the date of any election may request an absentee ballot during that period or on election day. As an alternative to the application procedure prescribed by section 53.2, the qualified elector may make the request directly to the officers who are delivering and returning absentee ballots under this section. Alternatively, the request may be made by telephone to the office of the commissioner not later than four hours before the close of the polls. If the requestor is found to be a qualified elector of that county, these officers shall deliver the appropriate absentee ballot to the qualified elector in the manner prescribed by this section. [C71, 73, 75,§53.17; 66GA, ch 67,§64, ch 81,§119, ch 1056,§38, HF 1011,§49]

Referred to in §§53.8, 53.20, 53.49, 135C.29
Section 53.22, Code 1975, repealed 66GA, ch 81,§119

53.23 Special precinct election board.

1. The election board of the absentee ballot and special voters precinct shall be appointed by the commissioner in the manner prescribed by sections 49.12 and 49.13, except that the number of precinct election officials appointed to the board shall be sufficient to complete the counting of absentee ballots by ten o'clock p.m. on election day.

2. The board's powers and duties shall be the same as those provided in chapter 50 for precinct election officials in regular precinct polling places. However, the election board of the special precinct shall receive from the commissioner and count all absentee ballots for all precincts in the county; when two or more political subdivisions in the county hold elections simultaneously the special precinct election board shall count absentee ballots cast in all of the elections so held. The tally list shall be recorded on forms prescribed by the state commissioner.

3. The commissioner shall set the convening time for the board, allowing a reasonable

amount of time to complete counting all absentee ballots by ten o'clock p.m. on election day. The commissioner may direct the board to meet on the day prior to the election solely for the purpose of reviewing the absentee voters' affidavits appearing on the sealed ballot envelopes if in the commissioner's judgment this procedure is necessary due to the number of absentee ballots received, but under no circumstances shall a sealed ballot envelope be opened before the board convenes on election day.

4. The room where members of the special precinct election board are engaged in counting absentee ballots during the hours the polls are open shall be policed so as to prevent any person other than those whose presence is authorized by this subsection from obtaining information about the progress of the count. The only persons who may be admitted to that room are the members of the board, one challenger representing each political party, one observer representing any nonparty political organization or any candidate nominated by petition pursuant to chapter 45 or any other nonpartisan candidate in a city or school election appearing on the ballot of the election in progress, and the commissioner or the commissioner's designee. It shall be unlawful for any of these persons to communicate or attempt to communicate, directly or indirectly, information regarding the progress of the count at any time before the polls are closed.

5. The special precinct election board shall not release the results of its tabulation on election day until all of the ballots it is required to count on that day have been counted, nor release the tabulation of challenged ballots accepted and counted under chapter 50 until that count has been completed. [SS15, §1137-j; C24, 27, 31, 35, 39,§949; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.23; 66GA, ch 81,§120]

Referred to in §§50.20, 53.20, 53.49

53.24 Counties using voting machines. In counties which provide the absentee ballot counting board with a voting machine, the absentee ballot envelopes shall be opened by the counting board and shall, without being unfolded, be thoroughly intermingled in some proper manner, after which they shall be unfolded and, under the personal supervision of all the precinct election officials, be registered on the voting machine the same as if the absent voter had been present and voted in person. When two or more political subdivisions in the county are holding separate elections simultaneously, the commissioner may arrange the machine so that the absentee ballots for more than one such election may be recorded on the same machine. [C24, 27, 31, 35, 39,§950; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.24; 66GA, ch 67,§68]

Referred to in §§49.90, 50.22, 53.49

53.25 Rejecting ballot. In case the absentee voter's affidavit is found to be insufficient, or that the applicant is not a duly qualified elector in such precinct, or that the ballot envelope is open, or has been opened and resealed, or that the ballot envelope contains more than one ballot of any one kind, or that said voter has voted in person, such vote shall not be accepted or counted.

If the absentee ballot is rejected prior to the opening of the ballot envelope, the voter casting the ballot shall be notified by a precinct election official by the time the canvass is completed of the reason for the rejection on a form prescribed by the state commissioner of elections. [SS15,§1137-j; C24, 27, 31, 35, 39, §951; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.25; 66GA, ch 67,§68]

Referred to in §§50.22, 53.49

53.26 Rejected ballots—how handled. Every ballot not counted shall be endorsed on the back thereof "Rejected because (giving reason therefor)." All rejected ballots shall be enclosed and securely sealed in an envelope on which the precinct election officials shall endorse "Defective ballots", with a statement of the precinct in which and the date of the election at which they were cast, signed by the precinct election officials and returned to the same officer and in the same manner as by law provided for the return and preservation of official ballots voted at such election. [SS15, §1137-j; C24, 27, 31, 35, 39,§952; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.26; 66GA, ch 67,§68]

Referred to in §53.49
Return of rejected ballots, §50.5

53.27 Rejection of ballot—return of envelope. If the ballot is rejected, said ballot envelope, with the affidavit of the voter endorsed thereon, shall be returned with said rejected ballot in the envelope endorsed "Defective ballots." [C24, 27, 31, 35, 39,§953; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.27]

Referred to in §53.49

53.28 and 53.29 Repealed by 65GA, ch 136, §401.

53.30 Ballot envelope preserved. The ballot envelope having the qualified elector's affidavit thereon shall be preserved. [C24, 27, 31, 35, 39,§956; C46, 50, 54, 58, 62, 66, 71, 73, 75, §53.30]

Referred to in §53.49

53.31 Challenges. The vote of any absent voter may be challenged for cause and the precinct election officials of election shall determine the legality of such ballot as in other cases. [SS15,§1137-k; C24, 27, 31, 35, 39,§957; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.31; 66GA, ch 67,§68]

Referred to in §53.49
Challenges, §§49.79–49.81

53.32 Ballot of deceased voter. When it shall be made to appear by due proof to the precinct election officials that any elector, who has so marked and forwarded his ballot, has died before the ballot envelope is opened, then

the ballot of such deceased voter shall be endorsed, "Rejected because voter is dead", and be returned to the commissioner; but the casting of the ballot of a deceased voter shall not invalidate the election. [SS15,§1137-l; C24, 27, 31, 35, 39,§958; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.32; 66GA, ch 67,§68]

Referred to in §53.49

53.33 Repealed by 65GA, ch 136,§401.

53.34 False affidavit. Any person who shall willfully swear falsely to any of such affidavits shall be guilty of perjury, and punished accordingly. [SS15,§1137-n; C24, 27, 31, 35, 39,§960; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.34]

Referred to in §53.49

53.35 Refusal to return ballot. Any person who, having procured an official ballot or ballots, shall willfully neglect or refuse to cast or return the same in the manner provided, or who shall willfully violate any provision of this chapter, shall, unless otherwise provided, be fined not to exceed one hundred dollars, or imprisoned in the county jail not to exceed thirty days. Any person who applies for a ballot and willfully neglects or refuses to return the same shall be deemed to have committed an offense in the county to which such ballot was returnable. [SS15,§1137-n; C24, 27, 31, 35, 39,§961; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.35]

Referred to in §53.49

53.36 Offenses by officers. If any commissioner or any election officer shall refuse or neglect to perform any of the duties prescribed by this chapter, or shall violate any of the provisions thereof, he shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not to exceed ninety days. [SS15,§1137-n; C24, 27, 31, 35, 39,§962; C46, 50, 54, 58, 62, 66, 71, 73, 75,§53.36]

Referred to in §53.49

ABSENT VOTING BY ARMED FORCES

53.37 "Armed forces" defined. The term "armed forces of the United States," as used in this division shall mean the army, navy, marine corps, coast guard, and air force of the United States.

For the purpose of absentee voting only, there shall be included in the term "armed forces of the United States" the following:

1. Spouses and dependents of members of the armed forces while in active service.

2. Members of the merchant marine of the United States and their spouses and dependents.

3. Civilian employees of the United States in all categories serving outside the territorial limits of the several states of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them, whether or not the employee is subject to the civil service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by the Congress.

4. Members of religious groups or welfare agencies assisting members of the armed forces, who are officially attached to and serving with the armed forces, and their spouses and dependents. [C54, 58, 62, 66, 71, 73, 75, §53.37]

Referred to in §53.49

53.38 Affidavit constitutes registration. Whenever a ballot is requested pursuant to section 53.39 on behalf of a voter in the armed forces of the United States, the affidavit upon the ballot envelope of such voter, if he or she is found to be an eligible elector of the county to which the ballot is submitted, shall constitute a sufficient registration under the provisions of chapter 48 and the commissioner shall place the voter's name on the registration record as a qualified elector, if it does not already appear there. [C54, 58, 62, 66, 71, 73, 75,§53.38; 66GA, ch 81,§121]

53.39 Request for ballot. The provisions of section 53.2 shall not apply in connection with the primary and general elections in the case of a qualified elector of the state of Iowa serving in the armed forces of the United States; in any such case an application for ballot as provided for in said section shall not be required and an absent voter's ballot shall be sent or made available to any such voter upon a request being made therefor as provided for in this division. All official ballots to be voted by qualified absent voters in the armed forces of the United States at the primary election and the general election shall be printed prior to forty days before the said respective elections and shall be available for transmittal to such qualified electors in the armed forces of the United States forty days prior to the respective elections. The provisions of this chapter shall apply to absent voting by qualified voters in the armed forces of the United States at said elections except as modified by the provisions of this division. [C54, 58, 62, 66, 71, 73, 75,§53.39]

Referred to in §53.38

53.40 Request requirements — transmission of ballot. Request in writing for ballot for the primary election and for the general election may be made by any member of the armed forces of the United States who is or will be a qualified voter on the day of the election at which said ballot is to be cast, at any time prior to either of said elections, the request stating for which election the request is made. In the case of the general election such request may likewise be made, not more than seventy days before said election, for and on behalf of a voter in the armed forces of the United States by a spouse, parent, parent-in-law, adult brother, adult sister, or adult child of any such voter, residing in the county of said voter's residence, provided that any such request made by other than the voter may be re-

quired to be made on forms prescribed by the Iowa servicemen's ballot commission.

A request shall show the residence (including street address, if any) of the voter, the age of the voter, and length of residence in the city or township, county and state, and shall designate the address to which the ballot is to be sent, and in the case of the primary election, the party affiliation of such voter. Such request shall be made to the commissioner of the county of the voter's residence, provided that if the request is made by the voter to any elective state, city or county official, the said official shall forward it to the commissioner of the county of the voter's residence, and such request so forwarded shall have the same force and effect as if made direct to the commissioner by the voter.

The commissioner shall immediately on the fortieth day prior to the particular election transmit ballots to the voter by mail or otherwise, postage prepaid, as may be directed by the Iowa servicemen's ballot commission, requests for which are in his hands at that time, and thereafter so transmit ballots immediately upon receipt of requests for same. A request for ballot for the primary election which does not state the party affiliation of the voter making the request shall be void and of no effect. A request which does not show that the person for whom ballot is requested will be a qualified voter in the precinct in which said ballot is to be cast on the day of the election for which the ballot is requested, shall not be honored; provided that a request which states the age and the city, including street address, if any, or township, and county wherein the voter resides, and which shows a sufficient period of residence, shall be sufficient to show that he is such a qualified voter. A request by the voter containing substantially the information required herein shall be sufficient.

If the affidavit on the ballot envelope shows that the affiant is not a qualified voter on the day of the election at which said ballot is offered for voting, the envelope shall not be opened, but the envelope and ballot contained therein shall be preserved and returned by the precinct election officials to the commissioner, who shall preserve same for the period of time and under the conditions provided for in sections 50.12 to 50.15. [C54, 58, 62, 66, 71, 73, 75,§53.40; 66GA, ch 67,§68]

53.41 Records by commissioner. The commissioner of each county shall establish and maintain a record of all requests for ballots which are made, and of all ballots transmitted, and the manner of transmittal, from and received in his office under the provisions of this division. In the event more than one request for absent voter's ballot for a particular election shall be made to the commissioner by or on behalf of a voter in the armed forces of the United States, the request first received shall be honored, except that if one of the requests is made by the voter himself, and a request on his behalf has not been previously honored, such request of the voter shall be honored in preference to a request made on his behalf by another. Not more than one ballot shall be transmitted by the commissioner to any voter for a particular election. In the event the commissioner shall receive more than one absent voter's ballot, provided for by this division, from or purporting to be from any one voter for a particular election, all of said ballots so received from or purporting to be from such voter shall be null and void, and the commissioner shall not deliver any of said ballots to the precinct election officials of election, but shall retain them in his office, and preserve them for the period and under the conditions provided for in sections 50.12 to 50.15. [C54, 58, 62, 66, 71, 73, 75,§53.41; 66GA, ch 67,§68]

53.42 Voting in person in commissioner's office. Notwithstanding the provision as to time found in section 53.11 any qualified voter in the armed forces of the United States may personally appear in the office of the commissioner of the county of his residence and there vote an absent voter's ballot at any time not earlier than forty days before the primary or general election, as the case may be. [C54, 58, 62, 66, 71, 73, 75,§53.42]

53.43 Identification on envelope. The envelopes used in connection with voting by absent voter's ballot by voters who are members of the armed forces of the United States, shall have stamped or printed on them the words "Serviceman's Ballot" and a designation of the election at which said ballot is to be cast, either "Primary Election" or "General Election", as the case may be. [C54, 58, 62, 66, 71, 73, 75,§53.43]

53.44 Administration of oath. Any commissioned officer in the armed forces of the United States, or any person authorized by the government of the United States to administer oaths to members of the armed forces of the United States are authorized to administer and attest any oath required in connection with the voting of an absent voter's ballot by a voter in the armed forces of the United States. Such officer or person shall show his rank and branch of service or other legal qualifications in connection with his signature in attesting any oath. [C54, 58, 62, 66, 71, 73, 75,§53.44]

53.45 Repealed by 65GA, ch 136,§401.

53.46 Powers and duties of state commissioner. The state commissioner is authorized and empowered:

1. To make rules for the purpose of carrying out the provisions and intent of this division;

2. To prescribe and direct the preparation of specially printed ballots, envelopes and other papers of different size and weight to be used in connection with absent voting by voters in the armed forces of the United States, if,

in the discretion of the state commissioner, he shall determine that such a special ballot and other papers will facilitate voting by such voters; provided that the content of any such specially printed matter shall be the same as that used for absent voters generally in the particular precinct in which said serviceman's ballot is to be cast, and provided further that such ballots, envelopes and other papers shall be substantially uniform in size and weight throughout the state; and provided further that the provisions of section 49.56, establishing the maximum cost of printing ballots, shall apply to the cost of printing any such specially printed ballots by the several counties;

3. To prescribe any forms that are not otherwise prescribed by law, and which in the judgment of the state commissioner are necessary to facilitate the carrying out of the purposes and intent of this division;

4. To arrange for special transportation of ballots in co-operation with the government of the United States through any authorized instrumentality thereof and to that end the state commissioner is empowered to direct the commissioners of the several counties of the state to send ballots to voters in the armed forces of the United States other than in the usual course of mail;

5. To employ such clerical assistance as he may require in carrying out his functions, to purchase and requisition any office supplies he may require, and certify for payment the expenses of carrying out his functions under this division;

6. To call upon any department or division of the state government for information and assistance in connection with carrying out the provisions of this division;

7. To co-operate with any authorized departments, agencies and instrumentalities of the government of the United States in effecting the intent and purposes of this division. [C54, 58, 62, 66, 71, 73, 75,§53.46]

53.47 Materials furnished by department of general services. In order to establish uniformity in size, weight and other characteristics of the ballot and facilitate its distribution and return, the department of general services shall upon direction of the state commissioner purchase any material needed for any special ballots, envelopes and other printed matter, and sell any such materials to the several counties of the state at cost plus handling and transportation costs.

There is hereby appropriated to the department of general services from the general fund of the state such sums as may be necessary to purchase any materials provided for herein. The proceeds from sale of such materials to counties shall be turned into the general fund of the state upon receipt of same by the department of general services. [C54, 58, 62, 66, 71, 73, 75,§53.47]

53.48 Postage on ballots. In the event the government of the United States or any branch, department, agency or other instrumentality thereof shall make provision for sending of any voting matter provided for in this division through the mails postage free, or otherwise, the election officials of the state of Iowa and of the several counties of the state are authorized to make use thereof under the direction of the state commissioner. [C54, 58, 62, 66, 71, 73, 75,§53.48]

53.49 Applicable to armed forces and other citizens. The provisions of this division as to absent voting shall apply only to absent voters in the armed forces of the United States as defined for the purpose of absentee voting in section 53.37. The provisions of sections 53.1 to 53.36, shall apply to all other qualified voters not members of the armed forces of the United States.

However, citizens of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them shall be accorded the privilege of absentee voting in the same manner as members of the armed forces. [C54, 58, 62, 66, 71, 73, 75,§53.49]

53.50 Appropriation. There is hereby appropriated to the state commissioner from the general fund of the state such sums as are necessary for him to pay his expenses and perform his functions under this division. Warrants shall be drawn by the comptroller upon certification by the state commissioner or his deputy. [C54, 58, 62, 66, 71, 73, 75,§53.50]

53.51 Rule of construction. This division shall be liberally construed in order to provide means and opportunity for qualified voters of the state of Iowa serving in the armed forces of the United States to vote at the primary and general elections. [C54, 58, 62, 66, 71, 73, 75, §53.51]

53.52 Inconsistent provisions — rule. The provision or provisions of this division which are inconsistent with any provision or provisions of any other existing statute or any part of any such other existing statute, shall prevail. Likewise, the provision or provisions of any other existing statute or any part of any other existing statute which is not inconsistent with this division, shall prevail. [C54, 58, 62, 66, 71, 73, 75,§53.52]

CHAPTER 54

PRESIDENTIAL ELECTORS

54.1 Time of election—qualifications.
54.2 How elected.
54.3 Canvass.
54.4 Nonpolitical parties.
54.5 Presidential nominees.
54.6 Certificate.
54.7 Meeting—certificate.
54.8 Certificate of governor.
54.9 Compensation.

54.1 Time of election — qualifications. At the general election in the years of the presidential election, or at such other times as the Congress of the United States may direct, there shall be elected by the voters of the state one person from each congressional district into which the state is divided, and two from the state at large, as electors of president and vice-president, no one of whom shall be a person holding the office of senator or representative in Congress, or any office of trust or profit under the United States. [C51,§301; R60,§535; C73,§659; C97,§1173; S13,§1173; C24, 27, 31, 35, 39,§963; C46, 50, 54, 58, 62, 66, 71, 73, 75,§54.1]

54.2 How elected. A vote for the candidates of any political party, or group of petitioners, for president and vice-president of the United States, shall be conclusively deemed to be a vote for each candidate nominated in each district and in the state at large by said party, or group of petitioners, for presidential electors and shall be so counted and recorded for such electors. [C24, 27, 31, 35, 39,§964; C46, 50, 54, 58, 62, 66, 71, 73, 75,§54.2]

54.3 Canvass. The canvass of the votes for candidates for president and vice-president of the United States and the returns thereof shall be a canvass and return of the votes cast for the electors of the same party or group of petitioners, respectively, and the certificate of such election made by the governor shall be in accord with such return. [C24, 27, 31, 35, 39,§965; C46, 50, 54, 58, 62, 66, 71, 73, 75,§54.3]

54.4 Nonpolitical parties. The term "group of petitioners" as used in this chapter shall embrace an organization which is not a political party as defined by law. [C24, 27, 31, 35, 39,§966; C46, 50, 54, 58, 62, 66, 71, 73, 75,§54.4]

Nonparty organization defined, §43.2

54.5 Presidential nominees. The names of the candidates for president and vice-president, respectively, of a political party as defined in the law relating to primary elections, shall, at least sixty-five days prior to the election, be certified to the state commissioner by the chairman and secretary of the state central committee of said party. [C24, 27, 31, 35, 39, §967; C46, 50, 54, 58, 62, 66, 71, 73, 75,§54.5]

"Political party" defined, §43.2

54.6 Certificate. At the expiration of ten days from the completed canvass, the governor, under his hand and the seal of state, shall issue to each presidential elector declared elected a certificate of his election, the same in substance as required in other cases, and shall notify him to attend at the seat of government on the first Monday after the second Wednesday in December next following his election, reporting his attendance to him. If there be a contest of the election, no certificate shall issue until it is determined. [C51,§308; R60,§542; C73, §665; C97,§1168; C24, 27, 31, 35, 39,§968; C46, 50, 54, 58, 62, 66, 71, 73, 75,§54.6]

Certificate of election, §50.41

54.7 Meeting—certificate. The presidential electors shall meet in the capitol, at the seat of government, on the first Monday after the second Wednesday in December next following their election. If, at the time of such meeting, any elector for any cause is absent, those present shall at once proceed to elect, from the citizens of the state, a substitute elector or electors, and certify the choice so made to the governor, and he shall immediately cause the person or persons so selected to be notified thereof. [C51,§§308–310; R60,§§542–544; C73, §§665–667; C97,§1174; C24, 27, 31, 35, 39,§969; C46, 50, 54, 58, 62, 66, 71, 73, 75,§54.7]

54.8 Certificate of governor. When so met, the said electors shall proceed, in the manner pointed out by law, with the election, and the governor shall duly certify the result thereof, under the seal of the state, to the United States secretary of state, and as required by Act of Congress relating to such elections. [C51,§311; R60,§545; C73,§668; C97,§1175; C24, 27, 31, 35, 39,§970; C46, 50, 54, 58, 62, 66, 71, 73, 75,§54.8]

54.9 Compensation. The electors shall each receive a compensation of five dollars for every day's attendance, and the same mileage as members of the general assembly which shall be paid from funds not otherwise appropriated from the general fund of the state. [C51,§312; R60,§546; C73,§669; C97,§1176; C24, 27, 31, 35, 39,§971; C46, 50, 54, 58, 62, 66, 71, 73, 75,§54.9; 66GA, ch 82,§1]

CHAPTER 55

AMENDMENTS TO FEDERAL CONSTITUTION

Federal constitutional provision, Art. V
Repealed by 66GA, ch 1077,§1

CHAPTER 56

CAMPAIGN FINANCE DISCLOSURE

Referred to in §§39.3, 43.5, 66.1
Chapter applicable to primary elections, §43.5

56.1 Citation.
56.2 Definitions.
56.3 Committee treasurer—duties.
56.4 Reports filed with commission.
56.5 Organization statement.
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56.7 Reports signed.
56.8 Commission—duties.
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56.10 Duties of commission.
56.11 Complaints—procedure.
56.12 Contribution in name of another—prohibited.
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56.14 and 56.15 Repealed by 66GA, ch 1078,§16.
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56.21 Funds—application to comptroller.
56.22 Distribution of campaign fund—restrictions on use.
56.23 Funds—campaign expenses only.
56.24 Reversion of funds.
56.25 Income tax form—checkoff space.
56.26 Appropriation.
56.27 Funds from unknown source—escheat.
56.28 Candidate's committee.
56.29 Insurance, savings and loan and banking corporations restrictions.
56.30 Forms mailed.

56.1 Citation. This chapter may be cited as the "Campaign Disclosure-Income Tax Checkoff Act". [C75,§56.1]

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

1. "*Candidate*" means any individual who has taken affirmative action to seek nomination or election to a public office but shall exclude any judge standing for retention in a judicial election.

2. "*Public office*" means any federal, state, county, city, or school office filled by election.

3. "*County office*" includes the office of drainage district trustee.

4. "*Contribution*" means:

a. A gift, loan, advance, deposit, rebate, refund, or transfer of money or a gift in kind.

b. The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee for any such purpose.

"Contribution" shall not include services provided without compensation by individuals volunteering their time on behalf of a candidate or political committee except when organized or provided on a collective basis by a business, trade association, labor union, or any other organized group or association. "Contribution" shall not include refreshments served at a campaign function so long as such refreshments do not exceed fifty dollars in value or transportation provided to a candidate so long as its value computed at a rate of ten cents per mile does not exceed fifty dollars in value.

5. "*Person*" means, without limitation, any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, labor union, or any other legal entity.

6. "*Political committee*" means a committee, but not a candidate's committee, which shall consist of persons organized for the purpose of accepting contributions, making expenditures, or incurring indebtedness in the aggregate of more than one hundred dollars in any one calendar year for the purpose of supporting or opposing a candidate for public office or ballot issue.

7. "*State statutory political committee*" means a committee as defined in section 43.111.

8. "*County statutory political committee*" means a committee as defined in section 43.100.

9. "*Campaign function*" means any meeting related to a candidate's campaign for election.

10. "*Commission*" means the campaign finance disclosure commission created under section 56.9.

11. *"State income tax liability"* means the state individual income tax imposed under section 422.5 reduced by the sum of the deductions from the computed tax as provided under section 422.12.

12. *"Fund-raising event"* means any campaign function to which admission is charged or at which goods or services are sold.

13. *"Candidate's committee"* means the committee designated by the candidate to receive contributions, expend funds, or incur indebtedness in excess of one hundred dollars in any calendar year on behalf of the candidate.

14. *"Committee"* includes a political committee and a candidate's committee.

15. *"Disclosure report"* means a statement of contributions received, expenditures made, and indebtedness incurred on forms prescribed by rules promulgated by the commission in accordance with chapter 17A. [C75, §56.2; 66GA, ch 57,§§5, 6, ch 1078,§1]

"State commissioner" and "commissioner" defined, §39.3

56.3 Committee treasurer—duties.

1. Every political committee shall appoint a treasurer. An expenditure shall not be made by the treasurer or his designee for or on behalf of a political committee without the approval of the chairman of the political committee, or the candidate.

2. Every person who receives contributions in excess of one hundred dollars for a political committee shall, not later than fifteen days from the date of receipt of the contributions or on demand of the treasurer, render to the treasurer an account of the total of all contributions; including the name and address of the persons making a contribution in excess of ten dollars, the amount of such contribution, and the date on which the contributions were received. All funds of a political committee shall be segregated from any personal funds of officers, members, or associates of the political committee.

3. The treasurer of a political committee shall keep a detailed and exact account of:

a. All contributions made to or for the political committee.

b. The name and mailing address of every person making contributions in excess of ten dollars, and the date and amount of the contribution.

c. All disbursements made from contributions by or on behalf of the political committee.

d. The name and mailing address of every person to whom any expenditure is made, the date and amount of the expenditure and the name and address of, and office sought by each candidate, if any, on whose behalf the expenditure was made. Notwithstanding the provisions of this paragraph, the treasurer may keep a miscellaneous account for disbursements of less than five dollars which need only show the amount of the disbursement so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed one hundred dollars.

e. Notwithstanding the provisions of subsection 3, paragraph *"d"*, of this section, when an expenditure is made by a political committee in support of the entire state or local political party ticket, only the name of the party shall be given.

4. The treasurer shall preserve all records required to be kept by this section for a period of one year from the date of the election. [C75,§56.3]

56.4 Reports filed with commission. All statements and reports required to be filed under this chapter for a state office shall be filed with the commission. All statements and reports required to be filed under this chapter for a county, city or school office shall be filed with the commissioner. Statements and reports on a ballot issue shall be filed with the commissioner responsible under section 47.2 for conducting the election at which the issue is voted upon, except that statements and reports on a statewide ballot issue shall be filed with the commission. State statutory political committees shall file all statements and reports with the commission. All other statutory political committees shall file the statements and reports with the commissioner with a copy sent to the commission.

Political committees supporting or opposing candidates for both federal office and any elected office created by law or the Constitution of the state of Iowa shall file statements and reports with the commission in addition to any federal reports required to be filed with the secretary of state. [S13,§1137-a1,-a3; C24, 27, 31, 35, 39,§§974, 975; C46, 50, 54, 58, 62, 66, 71, 73,§§56.3, 56.4; C75,§56.4; 66GA, ch 57,§7, ch 1078,§2]

56.5 Organization statement.

1. Every committee, as defined in this chapter, shall file a statement of organization within ten days from the date of its organization.

2. The statement of organization shall include:

a. The name and mailing address of the committee.

b. The name, mailing address, and position of the committee officers.

c. The name, address, office sought, and the party affiliation of all candidates whom the committee is supporting and if the committee is supporting the entire ticket of any party, the name of the party.

d. The disposition of funds which will be made in the event of dissolution if the committee is not a statutory committee.

e. Such other information as may be required by this chapter or rules adopted pursuant to this chapter.

f. A signed statement by the treasurer of the committee which shall be in the following form:

"I am aware that I am required to file disclosure reports if the committee receives contributions, makes expenditures, or incurs indebtedness in excess of one hundred dollars in a calendar year for the purpose of supporting or opposing any candidate for public office or ballot issue."

3. Any change in information previously submitted in a statement of organization or notice in case of dissolution of the committee shall be reported to the commission or commissioner not more than thirty days from the date of the change or dissolution.

4. A list, by office and district, of all candidates who have filed an affidavit of candidacy in the office of the secretary of state shall be prepared by the secretary of state and delivered to the commission not more than ten days after the last day for filing nomination papers. [S13,§1137-a1; C24, 27, 31, 35, 39,§973; C46, 50, 54, 58, 62, 66, 71, 73,§56.2; C75,§56.5; 66GA, ch 57,§§8, 9, ch 1078,§3]

56.6 Disclosure reports.

1. Each treasurer of a committee shall file with the commission or commissioner disclosure reports of contributions received and disbursed on forms prescribed by rules as provided by chapter 17A. The reports from all committees, except those committees for municipal and school elective offices, shall be filed on the twenty-fifth day or mailed by certified mail by the twenty-fourth day of January, May, July and October of each year. The January report shall be current to the end of the month preceding the filing. The May, July and October reports shall be current as of five days prior to the filing deadline. The January report shall be the annual report. Committees for municipal and school elective offices and ballot issues shall file reports five days prior to any election in which the name of the candidate or the ballot issue which they support or oppose appears on the printed ballot and thirty days following the final election in a calendar year in which the candidate's name or the ballot issue appears on the ballot. A committee supporting or opposing a candidate for a municipal or school elective office or a ballot issue shall continue to file a disclosure statement every thirty days until it dissolves. These reports shall be current to five days prior to the filing deadline. A state statutory political committee and congressional district committees as authorized by the constituition of the state statutory political committee shall not be subject to the provisions of this subsection if the state statutory political committee files copies of campaign disclosure reports as required by federal law with the commission at such times as the reports are required to be filed under federal law, provided that the federal reports contain all information required by this chapter.

2. If any committee, after having filed a statement of organization or one or more disclosure reports, dissolves or determines that it shall no longer receive contributions or make disbursements, the treasurer of the committee shall notify the commission or the commissioner within thirty days following such dissolution by filing a dissolution report on forms prescribed by the commission. Moneys refunded in accordance with a dissolution statement shall be considered a disbursement or expense but the names of persons receiving refunds need not be released or reported unless the contributors' names were required to be reported when the contribution was received.

3. Each report under this section shall disclose:

a. The amount of cash on hand at the beginning of the reporting period.

b. The name and mailing address of each person who has made one or more contributions of money to the committee including the proceeds from any fund-raising events except those reportable under paragraph *"g"* of this subsection, when the aggregate amount in a calendar year exceeds the amount specified in the following schedule:

(1) For any candidate for school or township office	$ 25
(2) For any candidate for city office	$ 25
(3) For any candidate for county office	$ 25
(4) For any candidate for the general assembly	$ 50
(5) For any candidate for the Congress of the United States	$100
(6) For any candidate for state-wide office	$100
(7) For any state statutory political committee	$100
(8) For any county statutory political committee	$ 50
(9) For any ballot issue	$ 25

c. The total amount of contributions made to the political committee during the reporting period and not reported under paragraph *"b"* of this subsection.

d. The name and mailing address of each person who has made one or more in kind contributions to the committee when the aggregate market value of the in kind contribution in a calendar year exceeds the amount specified in subsection 3, paragraph *"b,"* of this section. In kind contributions shall be designated on a separate schedule from schedules showing contributions of money.

e. Each loan to any person or committee within the calendar year in an aggregate amount in excess of those amounts enumerated in the schedule in paragraph *"b"* of this subsection, together with the name and mailing address of the lender and endorsers and the date and amount of such loans. Loans shall be reported on the contributions section of the disclosure statement.

f. The total amount of proceeds from any fund-raising event. Contributions and sales at fund-raising events which involve the sale of a product acquired at less than market value and sold for an amount of money in excess of the amount specified in paragraph *"b"* of this subsection shall be designated separately from in kind and monetary contributions and the report shall include the name and address of the donor, a description of the product, the market value of the product, the sales price of the product, and the name and address of the purchaser.

g. The name and mailing address of each person to whom disbursements or loan repayments have been made by the committee from contributions during the reporting period and the amount and date of each disbursement except that disbursements of less than five dollars may be shown as miscellaneous disbursements so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed one hundred dollars.

h. The amount and nature of debts and obligations owed in excess of those amounts stated in the schedule in paragraph "*b*" of this section by the committee. Loans made to a committee and reported under paragraph "*b*" of this subsection shall not be considered a debt or obligation under this paragraph. A loan made by a committee to any person shall be considered a disbursement.

i. Such other information as may be required by this chapter or rules adopted pursuant to this chapter.

j. The aggregate amount received by a candidate or an officeholder in any form of an honorarium in excess of those amounts enumerated in the schedule in paragraph "*b*" of this subsection.

4. If no contributions have been accepted nor any disbursements made or indebtedness incurred during that reporting period, the treasurer of the committee shall file a disclosure statement which shows only the amount of cash on hand at the beginning of the reporting period.

5. A committee shall not dissolve until all debts and obligations are paid or transferred and the remaining money in the account is distributed according to the organization statement. [S13,§§1137-a1, -a3; C24, 27, 31, 35, 39, §§972, 973, 975, 976; C46, 50, 54, 58, 62, 66, 71, 73,§§56.1, 56.2, 56.4, 56.5; C75,§56.6; 66GA, ch 57, §§10, 11, ch 1078,§§4–6]

1975 amendments to this section effective November 21, 1975
1976 amendments effective January 1, 1977

56.7 Reports signed.

1. A report or statement required to be filed by a treasurer of a political committee, a candidate, or by any other person, shall be signed by the person filing the report.

2. A copy of every report or statement shall be preserved by the person filing it or his successor for at least one year following the filing of the report or statement. [C75,§56.7]

56.8 Commission—duties.

1. The commission shall:

a. Develop forms for the filing of reports and statements required to be filed under this chapter.

b. Furnish the necessary forms to persons required to file reports and statements and to the commissioners.

c. Distribute the necessary forms to each commissioner to be furnished to persons required to file reports and statements.

2. The commissioners shall furnish the necessary forms to persons required to file reports and statements in their office.

3. The commission and the commissioner shall:

a. Make the reports and statements filed available for public inspection and copying, not later than the end of the day following the day during which a report or statement was received. There may be a charge which shall be established by rule as provided under chapter 17A for copying these reports and statements. Upon receipt of payment, the commission shall mail copies of reports to persons requesting them. Information copied from reports and statements shall not be used by any person other than statutory political committees for the purpose of soliciting contributions or for any commercial purpose.

b. Preserve the reports and statements for a period of five years from the date of receipt.

c. Prepare and publish such other reports as may be deemed appropriate. [S13,§1137-a4; C24, 27, 31, 35, 39,§977; C46, 50, 54, 58, 62, 66, 71, 73,§56.6; C75,§56.8; 66GA, ch 57,§12]

56.9 Campaign finance disclosure commission—created.

1. There is created a campaign finance disclosure commission which shall consist of five members, not more than three of whom shall be from the same political party. The governor shall appoint the members of the commission for a term of six years, subject to the confirmation of the senate. Of the members first appointed one member shall be appointed for a term of two years, two members shall be appointed for a term of four years, and two members shall be appointed for a term of six years, beginning July 1, 1973. Any vacancy shall be filled by appointment for the unexpired portion of the term in accordance with the provisions for regular appointment insofar as is applicable.

2. The commission shall elect one member to serve as chairman and one member to serve as vice chairman. The vice chairman shall act as the chairman in the absence or disability of the chairman or in the event of a vacancy in that office.

3. Members of the commission shall, while serving on the business of the commission, be entitled to receive a per diem of forty dollars and actual and necessary expenses actually incurred in the performance of their duties.

4. The commission shall employ a full-time executive secretary who shall be the chief administrative officer and such personnel as are necessary to carry out the duties of the commission. Notwithstanding the provisions of section 19A.3, subsection 3, all of its employees, except the executive secretary, shall be employed subject to the provisions of chapter 19A. [C75,§56.9; 66GA, ch 57,§13]

Referred to in §56.2

56.10 Duties of commission. The commission shall:

1. Review the contents of all disclosure reports and other statements filed with the commission and promptly advise each committee of errors found. The commission may, upon its own motion, initiate action and conduct a hearing under section 56.11, subsections 1 and 2. The commission may require the county commissioner to file summary reports with it periodically.

2. Prepare and publish a manual setting forth examples of approved uniform systems of accounts for use by persons required to file statements and reports by this chapter.

3. Assure that the statements and reports which have been filed in accordance with this chapter are available for public inspection and copying during the regular office hours of the commission and county commissioners.

4. Adopt rules pursuant to chapter 17A to carry out the provisions of this chapter.

5. Determine, in case of dispute, at what time a person has become a candidate. [C75, §56.10; 66GA, ch 58,§14, ch 1078,§7]

56.11 Complaints—procedure.

1. Any eligible elector may file a complaint of an alleged violation with the commission. The complaint shall be verified and supported by affidavit detailing the circumstances of the violation alleged. The commission may initiate action on its own motion by filing a complaint accompanied by such an affidavit. Within twenty-four hours after receipt of a complaint or initiation of its own complaint, the commission shall notify the person, candidate or committee against whom the complaint is made of receipt or initiation of the complaint, and until it has done so it shall make no investigation of any kind into the campaign affairs of the person, candidate or committee. Unless the commission concludes that there is no reasonable basis for a complaint which has been filed, it shall set a date for a hearing on the complaint which shall be not more than fifteen days after the date the complaint is received or initiated by the commission. The commission shall serve the person, candidate or committee against whom the complaint is made a copy of the complaint and supporting affidavit and notice of the hearing in the manner provided by the rules of civil procedure. Copies of the complaint, affidavit and notice shall also be sent to each of the other candidates, if any, for the office affected. If a complaint is filed or initiated less than fifteen days before the election at which the office affected is to be filled, the commission shall set the hearing at the earliest possible date so as to allow the issue to be resolved prior to the election. An extension of time for the hearing may be granted when both parties mutually agree on an alternate date for the hearing.

2. The commission shall investigate the complaint and conduct the hearing. Upon request of the commission, the county attorney or the attorney general shall assist the commission in any investigation and report to it as directed. The commission shall have the power to subpoena and review all records of a candidate or committee required to be kept under this chapter. Due process, including the right to be represented by counsel, shall be accorded the accused. The commission shall provide for the confidentiality of the records of a candidate or committee during the investigation and hearing process and shall provide for confidential hearings only if requested by either party to the complaint, except that if the commission itself is a complainant it may not request a confidential hearing. After the hearing the commission shall determine whether or not there are reasonable grounds to believe that a violation of the provisions of this chapter did occur. The commission shall send a copy of its findings of fact and decision to the person, candidate or committee against which the complaint was filed and to each candidate for the public office affected. The commission may assess the cost of such hearings against either party involved in the hearing.

3. If the commission finds reasonable grounds to believe that the person, candidate, or committee has engaged in an act or practice which constitutes a violation of this chapter, the commission shall report the suspected violation of law to the United States attorney, the attorney general, or the county attorney, as the case may be, with a recommendation of appropriate action to be taken.

4. Upon receipt of the report and recommendations of the commission, the county attorney or attorney general shall review the report and recommendation and within five days of receiving the report institute the recommended actions and any other action for relief, including a permanent or temporary injunction, restraining order or other appropriate remedy in the district court in and for the county in which the accused resides or shall advise the commission that in his judgment the case does not merit prosecution. In the event the county attorney or attorney general does not initiate the recommended action within five days of receipt or if he advises against

prosecution of the report, the commission may take the report before any judge of the district court, who shall determine if sufficient cause exists to warrant action. If the judge of the district court finds that the report warrants prosecution, the county attorney or attorney general shall immediately commence the action or disqualify himself. In the event of disqualification, the commission may retain an attorney to represent it and commence the action. The county attorney, attorney general, or United States attorney, may also institute criminal action. [C75,§56.11; 66GA, ch 1078, §§8, 9]

Referred to in §56.10
1976 amendments effective January 1, 1977

56.12 Contribution in name of another—prohibited. A person shall not make a contribution or expenditure in the name of another person, and a person shall not knowingly accept a contribution or expenditure made by one person in the name of another.

Any candidate or committee receiving funds, the original source of which was a loan, shall be required to list the lender as a contributor. No candidate or committee shall knowingly receive funds from a contributor who has borrowed the money without listing the original source of said money. [C75,§56.12]

56.13 Action of committee imputed to candidate. Action by any person or political committee on behalf of a candidate, if known and approved by the candidate, shall be deemed action by the candidate. It shall be presumed that a candidate approves such action if he had knowledge thereof and failed to file a statement of disavowal with the commissioner or commission and take corrective action within seventy-two hours thereof.

Any person who makes expenditures or incurs indebtedness, other than incidental expenses incurred in performing volunteer work, in support or opposition of a candidate for public office shall notify the appropriate committee and provide necessary information for disclosure reports.

However, this section shall not be construed to require duplicate reporting of anything reported under this chapter, by a political committee, or of action by any person which does not constitute a contribution. [C75,§56.13; 66GA, ch 57,§15]

56.14 and 56.15 Repealed by 66GA, ch 1078, §16.

56.16 Penalty. Any person who willfully violates any provisions of this chapter shall upon conviction, be subject to a fine of not more than one thousand dollars or imprisonment in the county jail for not more than thirty days. [S13,§1137-a6; C24, 27, 31, 35, 39, §980; C46, 50, 54, 58, 62, 66, 71, 73,§56.9; C75, §56.16]

56.17 Applicability to federal candidates.

1. The requirements of this chapter relative to disclosure of contributions shall apply to candidates and political committees for federal office only in the event such candidates are not subject to a federal law requiring the disclosure of campaign financing. Any such federal law shall supersede the provisions of this chapter.

2. The provisions of this chapter under which money from the Iowa election campaign fund may be made available to or used for the benefit of candidates and candidates' committees shall apply to candidates for federal office and their candidates' committees only if matching funds to pay a portion of their campaign expenses are not available to such candidates or their committees from the federal government. [C75,§56.17; 66GA, ch 1078,§10]

Referred to in §56.21
1976 amendments effective January 1, 1977

56.18 Checkoff—income tax. Any person whose state income tax liability for any taxable year is one dollar or more may designate one dollar of such liability to be paid over to the Iowa election campaign fund for the account of any specified political party, as defined by section 43.2 when submitting his state income tax return to the department of revenue. In the case of a joint return of husband and wife having a state income tax liability of two dollars or more, each spouse may designate that one dollar be paid to any such account in the fund. The director of revenue shall revise the income tax form to allow the designation of political contributions to a political party on the face of the tax return and immediately above the signature lines. [C75,§56.18]

Referred to in §§56.19, 56.20

56.19 Fund created. The "Iowa election campaign fund" is created within the office of the treasurer of state. The fund shall consist of funds paid by persons having an Iowa income tax liability as provided in section 56.18. The director of revenue shall remit funds collected as provided in section 56.18 to the treasurer of state who shall deposit such funds in the appropriate account within the Iowa election campaign fund. Any interest income received by the treasurer of state from investment of moneys deposited in the fund shall be deposited in the Iowa election campaign fund. Such funds shall be subject to payment to the chairperson of the specified political party by the state comptroller in the manner provided by section 56.22. [C75,§56.19; 66GA, ch, 1078,§11]

Referred to in §56.20
1976 amendments effective January 1, 1977

56.20 Rules promulgated. The state director of revenue, in co-operation with the state comptroller and campaign finance disclosure commission, shall administer the provisions of sections 56.18 to 56.26 and they shall promul-

gate all necessary rules in accordance with chapter 17A. [C75,§56.20]

56.21 Funds — application to comptroller. Any candidate for a partisan public office, except as otherwise provided by section 56.17, subsection 2, may receive campaign funds from the Iowa election campaign fund through the state central committee of the candidate's political party. However, the state central committee of each political party shall have discretion which of the party's candidates for public office shall be allocated campaign funds out of money received by that party from the Iowa election campaign fund. [C75,§56.21; 66GA, ch 1078,§12]

Referred to in §56.20
1976 amendments effective January 1, 1977

56.22 Distribution of campaign fund—restrictions on use.

1. The money accumulated in the Iowa election campaign fund to the account of each political party in the state shall be remitted to the party on the first business day of each month by warrant of the state comptroller drawn upon the fund in favor of the state chairperson of that party. The money received by each political party under this section shall be used as directed by the party's state statutory political committee.

2. Funds distributed to statutory political committees pursuant to this chapter shall not be used to support or oppose the nomination of any candidate. Nothing in this subsection shall be construed to prohibit a statutory political committee from using such funds to pay expenses incurred in arranging and holding a nominating convention. [C75,§56.22; 66GA, ch 1078,§13]

Referred to in §§56.19, 56.20
1976 amendments effective January 1, 1977

56.23 Funds—campaign expenses only. The chairman of the state statutory political committee shall produce evidence to the state comptroller and campaign finance disclosure commission not later than thirty days after the election returns have been certified by the board of state canvassers, that all funds paid for the campaign expenses of that election have been utilized exclusively for such campaign expenses.

The campaign finance disclosure commission shall issue, prior to the payment of any money, guidelines which explain which expenses and evidence thereof qualify as acceptable campaign expenses.

Should the campaign finance disclosure commission and the state comptroller determine that any part of the funds have been used for noncampaign or improper expenses, they may order the political party or the candidate to return all or any part of the total funds paid to that political party for that election. When such funds are returned, they shall be deposited in the general fund of the state. [C75,§56.23]

Referred to in §56.20

56.24 Reversion of funds. All funds on account for the campaign expenses of any designated political party which are not utilized by that political party by January 1 of the year following a general election, shall revert to the general fund of the state. [C75,§56.24]

Referred to in §56.20

56.25 Income tax form—checkoff space. The director of revenue shall provide space for this campaign finance income tax checkoff on the most frequently used Iowa income tax form. An explanation shall be included which clearly states that this checkoff does not constitute an additional tax liability. The form shall provide for the taxpayer to designate that the checkoff shall go to the political party of his choice. [C75,§56.25]

Referred to in §56.20

56.26 Appropriation. There is appropriated from the Iowa election campaign fund within the office of the treasurer of state such funds as are legally payable from such fund in accordance with the provisions of this chapter. [C75,§56.26]

Referred to in §56.20

56.27 Funds from unknown source — escheat. The expenditure of funds from an unknown or unidentifiable source received by a candidate or committee is prohibited. Such funds received by a candidate or committee shall escheat to the state. Any candidate or committee receiving such contributions shall remit such contributions to the state comptroller for deposit in the general fund of the state. Persons requested to make a contribution at a fund-raising event shall be advised that it is illegal to make a contribution in excess of ten dollars unless the person making the contribution also provides his or her name and address. [66GA, ch 57,§16]

56.28 Candidate's committee. Each candidate for public office shall organize one, and only one, candidate's committee if the candidate anticipates receiving contributions, making expenditures, or incurring indebtedness in excess of one hundred dollars in a calendar year. [66GA, ch 57,§16]

56.29 Insurance, savings and loan and banking corporations restrictions.

1. Except as provided in subsection 3 of this section, it shall be unlawful for any insurance company, savings and loan association, bank, and corporation organized pursuant to the laws of this state or any other state, territory, or foreign country, whether for profit or not, or any officer, agent, representative thereof acting for such insurance company, savings and loan association, bank, or corporation, to contribute any money, property, labor, or thing of value, directly or indirectly, to any committee, or for the purpose of influencing the vote of any elector, except that such resources may be so expended in connection with a utility franchise election held pursuant to section 364.2, subsection 4, however all such

expenditures shall be subject to the disclosure requirements of this chapter.

2. Except as provided in subsection 3 of this section, it shall be unlawful for any member of any committee, or employee or representative thereof, or candidate for any office or the representative of such candidate, to solicit, request, or knowingly receive from any insurance company, savings and loan association, bank, and corporation organized pursuant to the laws of this state or any other state, territory, or foreign country, whether for profit or not, or any officer, agent, or representative thereof, any money, property, or thing of value belonging to such insurance company, savings and loan association, bank, or corporation for campaign expenses, or for the purpose of influencing the vote of any elector. Nothing in this section shall be construed to restrain or abridge the freedom of the press or prohibit the consideration and discussion therein of candidacies, nominations, public officers, or public questions.

3. It shall be lawful for any insurance company, savings and loan association, bank, and corporation organized pursuant to the laws of this state or any other state or territory, whether or not for profit, and for the officers, agents and representatives thereof, to use the money, property, labor, or any other thing of value of any such entity for the purposes of soliciting its stockholders, administrative officers and members for contributions to a committee sponsored by that entity and of financing the administration of a committee sponsored by that entity. The entity's employees to whom the foregoing authority does not extend may voluntarily contribute to such a committee but shall not be solicited for contributions. All contributions made under authority of this subsection shall be subject to the disclosure requirements of this chapter. A committee member, committee employee, committee representative, candidate or representative referred to in subsection 2 lawfully may solicit, request, and receive money, property and other things of value from a committee sponsored by an insurance company, savings and loan association, bank, or corporation as permitted by this subsection.

4. The restrictions imposed by this section relative to making, soliciting or receiving contributions shall not apply to a nonprofit corporation or organization which uses those contributions to encourage registration of voters and participation in the political process, or to publicize public issues, or both, but does not use any part of those contributions to endorse or oppose any candidate for public office or support or oppose ballot issues.

5. Any person convicted of a violation of any of the provisions of this section shall be subject to imprisonment in the county jail for not more than one year and by a fine not to exceed one thousand dollars. [S13,§§1641-h,-i,-k; C24, 27, 31, 35, 39,§§8405–8407; C46, 50, 54, 58, §§491.69–491.71; C62, 66, 71, 73, 75,§§491.69–491.71, 496A.145; 66GA, ch 57,§16, ch 1078,§14]

56.30 Forms mailed. At least thirty days prior to each filing date, the commission and the commissioner shall mail the proper forms to each committee which is required to file a report with them. The commission shall mail the appropriate forms to the statutory political committees. [66GA, ch 57,§16]

CHAPTER 57

CONTESTING ELECTIONS—GENERAL PROVISIONS

Referred to in §43.5
Chapter applicable to primary elections, §43.5

57.1 Standing to bring contest—grounds for contest.
57.2 Certificate withheld.
57.3 Terms defined.
57.4 Change of result.
57.5 Recanvass in case of contest.
57.6 Other contests.
57.7 Contest court for contest of public measure.

57.1 Standing to bring contest — grounds for contest.

1. Elections may be contested under this chapter as follows:

a. The election of any person to any county office, to a seat in either branch of the general assembly, to a state office, to the office of senator or representative in Congress, or to the office of presidential elector may be contested by any eligible person who received votes for the office in question.

b. The outcome of the election on a public measure may be contested by petition of the greater of ten eligible electors or a number of eligible electors equalling one percent of the total number of votes cast upon the public measure; each petitioner must be a person who was entitled to vote on the public measure in question or would have been so entitled if registered to vote.

2. Grounds for contesting an election under this chapter are:

a. Misconduct, fraud or corruption on the part of any election official or of any board of canvassers of sufficient magnitude to change the result of the election.

b. That the incumbent was not eligible to the office in question at the time of election.

c. That prior to the election the incumbent had been duly convicted of an infamous crime, and that the judgment had not been reversed, annulled or set aside, nor the incumbent pardoned, at the time of the election.

d. That the incumbent has given or offered to any elector, or any precinct election official or canvasser of the election, any bribe or reward in money, property, or thing of value, for the purpose of procuring his or her election.

e. That illegal votes have been received or legal votes rejected at the polls, sufficient to change the result of the election.

f. Any error in any board of canvassers in counting the votes, or in declaring the result of the election, if the error would affect the result.

g. Any other cause or allegation which, if sustained, would show that a person other than the incumbent was the person duly elected to the office in question, or would show that the outcome of the election on the public measure in question was contrary to the result declared by the board of canvassers. [C51,§§339, 341, 368, 380, 387; R60,§§569, 571, 598, 610, 617; C73,§§692, 718, 730, 737; C97,§1198; C24, 27, 31, 35, 39,§**981**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§57.1; 66GA, ch 67,§68, HF 1011,§50]

57.2 Certificate withheld. If notice of a contest of the election of an officer is filed before the certificate of election is delivered to the incumbent, or notice of a contest of the declared result of an election on a public measure is filed before a duplicate of the abstract of votes upon the measure and of the county board's declaration is certified pursuant to section 50.27, the certificate or duplicate abstract and declaration shall be withheld until the determination of the contest. If the certificate of election or duplicate abstract and declaration have been issued, the commissioner shall send the persons or political subdivisions affected by the notice of contest a statement advising them that the election is being contested and that the certificate or duplicate abstract and declaration are not valid until the election contest is resolved. [C51,§367; R60,§597; C73,§713; C97,§1219; C24, 27, 31, 35, 39,§**982**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§57.2; 66GA, HF 1011,§51]

57.3 Terms defined. The term "incumbent" in this chapter means the person whom the canvassers declare elected. The term "election" in this chapter means the voting for a particular office, or the voting for or against a particular public measure, including the notice and other preparations for voting required by law and the tallying and canvass of the votes cast, section 39.2 notwithstanding. [C51,§340; R60,§570; C73,§693; C97,§1199; C24, 27, 31, 35, 39,§**983**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§57.3; 66GA, HF 1011,§52]

57.4 Change of result. When the misconduct, fraud, or corruption complained of is on the part of the precinct election officials in a precinct, it shall not be held sufficient to set aside the election, unless the rejection of the vote of that precinct would change the result as to that office. [C51,§342; R60,§572; C73,§694; C97,§1200; C24, 27, 31, 35, 39,§**984**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§57.4; 66GA, ch 67,§68]

57.5 Recanvass in case of contest. The parties to any contested election shall have the right, in open session of the court or tribunal trying the contest, and in the presence of the officer having them in custody, to have the ballots opened, and all errors of the precinct election officials in counting or refusing to count ballots corrected by such court or tribunal. [C97,§1143; S13,§1143; C24, 27, 31, 35, 39, §**985**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§57.5; 66GA, ch 67,§68]

57.6 Other contests. All the provisions of the chapter in relation to contested elections of county officers shall be applicable, as near as may be, to contested elections for other offices, and for public measures except as herein otherwise provided, and in all cases process and papers may be issued to and served by the sheriff of any county. [C51, §§379, 396; R60,§§609, 626; C73,§§729, 745; C97, §1250; C24, 27, 31, 35, 39,§**986**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§57.6; 66GA, HF 1011,§55]

Contesting election of county officers, ch 62

57.7 Contest court for contest of public measure. The court for the trial of a contested election on a public measure shall consist of one person designated by the petitioners who are contesting the election, who shall be designated in writing by the petitioners at the time the contest is filed, one person designated by the county commissioner of elections to represent the interests adverse to those of the petitioners, and a third person who shall be chosen jointly by the designees of the petitioners and of the commissioner. If the persons selected by the petitioners and the county commissioner of elections cannot agree on a third person, the chief judge of the judicial district in which the contest is filed shall appoint a third person to serve. [66GA, HF 1011, §56]

CHAPTER 58

CONTESTING ELECTIONS OF GOVERNOR AND LIEUTENANT GOVERNOR

Referred to in §43.5
Chapter applicable to primary elections, §43.5
Constitution, Art. IV,§5

58.1 Notice—grounds.
58.2 Notice to incumbent.
58.3 Houses notified.
58.4 Contest court.
58.5 Powers and proceedings.
58.6 Testimony.
58.7 Judgment.

58.1 Notice—grounds. The contestant for the office of governor or lieutenant governor shall, within thirty days after the proclamation of the result of the election, deliver to the presiding officer of each house of the general assembly a notice of his intent to contest, and a specification of the grounds of such contest, as provided in chapter 62. [C51,§388; R60,§618; C73,§738; C97,§1239; C24, 27, 31, 35, 39,§987; C46, 50, 54, 58, 62, 66, 71, 73, 75,§58.1]

58.2 Notice to incumbent. As soon as the presiding officers have received the notice and specifications, they shall make out a notice, directed to the incumbent, including a copy of the specifications, which shall be served by the sergeant at arms. [C51,§389; R60,§619; C73, §739; C97,§1240; C24, 27, 31, 35, 39,§988; C46, 50, 54, 58, 62, 66, 71, 73, 75,§58.2]

58.3 Houses notified. The presiding officers shall also immediately make known to their respective houses that such notice and specifications have been received. [C51,§390; R60, §620; C73,§740; C97,§1241; C24, 27, 31, 35, 39,§989; C46, 50, 54, 58, 62, 66, 71, 73, 75,§58.3]

58.4 Contest court. Each house shall forthwith proceed, separately, to choose seven members of its own body in the following manner:

1. The names of members of each house, except the presiding officer, written on similar paper tickets, shall be placed in a box, the names of the senators in their presence by their secretary, and the names of the representatives in their presence by their clerk.

2. The secretary of the senate in the presence of the senate, and the clerk of the house of representatives in the presence of the house, shall draw from their respective boxes the names of seven members each.

3. As soon as the names are thus drawn, the names of the members drawn by each house shall be communicated to the other, and entered on the journal of each house. [C51,§391; R60,§621; C73,§741; C97,§1242; C24, 27, 31, 35, 39, §990; C46, 50, 54, 58, 62, 66, 71, 73, 75,§58.4]

58.5 Powers and proceedings. The members thus drawn shall constitute a committee to try and determine the contested election, and for that purpose shall hold their meetings publicly at the place where the general assembly is sitting, at such times as they may designate; and may adjourn from day to day or to a day certain, not more than four days distant, until such trial is determined; shall have power to send for persons and papers, and to take all necessary means to procure testimony, extending like privileges to the contestant and the incumbent; and shall report their judgment to both branches of the general assembly, which report shall be entered on the journals of both houses. [C51,§392; R60,§622; C73,§742; C97,§1243; C24, 27, 31, 35, 39,§991; C46, 50, 54, 58, 62, 66, 71, 73, 75,§58.5]

58.6 Testimony. The testimony shall be confined to the matters contained in the specifications. [C51,§393; R60,§623; C73,§743; C97, §1244; C24, 27, 31, 35, 39,§992; C46, 50, 54, 58, 62, 66, 71, 73, 75,§58.6]

58.7 Judgment. The judgment of the committee pronounced in the final decision on the election shall be conclusive. [C51,§394; R60, §624; C73,§744; C97,§1245; C24, 27, 31, 35, 39, §993; C46, 50, 54, 58, 62, 66, 71, 73, 75,§58.7]

CHAPTER 59

CONTESTING ELECTIONS FOR SEATS IN THE GENERAL ASSEMBLY

Referred to in §43.5
Chapter applicable to primary elections, §43.5

59.1 Statement served.
59.2 Subpoenas.
59.3 Depositions.
59.4 Return of depositions.
59.5 Statement and depositions—notice.
59.6 Power of general assembly.

59.1 Statement served. The contestant for a seat in either branch of the general assembly shall, prior to twenty days before the first day of the next session, serve on the incumbent a statement of notice of contest which shall allege a fact or facts, believed true by the contestant which, if true, would alter the outcome of the election. [C51,§381; R60,§611;

C73,§731; C97,§1233; C24, 27, 31, 35, 39,§994; C46, 50, 54, 58, 62, 66, 71, 73, 75,§59.1]

Statement of contest, §62.5

59.2 Subpoenas. Any judge or clerk of a court of record may issue subpoenas in the above cases, as in those provided in chapters 61 and 62, and compel the attendance of witnesses thereunder. [C51,§382; R60,§612; C73, §732; C97,§1234; C24, 27, 31, 35, 39,§995; C46, 50, 54, 58, 62, 66, 71, 73, 75,§59.2]

59.3 Depositions. Depositions may be taken in such cases in the same manner and under the same rules as in an action at law in the district court, but no cause for taking the same need be shown. [C51,§383; R60,§613; C73, §733; C97,§1235; C24, 27, 31, 35, 39,§996; C46, 50, 54, 58, 62, 66, 71, 73, 75,§59.3]

Depositions in general, R.C.P. 153 et seq.

59.4 Return of depositions. A copy of the statement, and of the notice for taking depositions, with the service endorsed, and verified by affidavit if not served by an officer, shall be returned to the officer taking the depositions, and then, with the depositions, shall be sealed up and transmitted to the secretary of state, with an endorsement thereon showing the nature of the papers, the names of the contesting parties, and the branch of the general assembly before whom the contest is to be tried. [C51,§384; R60,§614; C73,§734; C97,§1236; C24, 27, 31, 35, 39,§997; C46, 50, 54, 58, 62, 66, 71, 73, 75,§59.4]

59.5 Statement and depositions—notice. The secretary shall deliver the same unopened to the presiding officer of the house in which the contest is to be tried, on or before the second day of the session, regular or special, of the general assembly next after taking the depositions, and the presiding officer shall immediately give notice to his house that such papers are in his possession. [C51,§385; R60, §615; C73,§735; C97,§1237; C24, 27, 31, 35, 39,§998; C46, 50, 54, 58, 62, 66, 71, 73, 75,§59.5]

59.6 Power of general assembly. Nothing herein contained shall be construed to abridge the right of either branch of the general assembly to grant commissions to take depositions, or to send for and examine any witness it may desire to hear on such trial. [C51,§386; R60,§616; C73,§736; C97,§1238; C24, 27, 31, 35, 39, §999; C46, 50, 54, 58, 62, 66, 71, 73, 75,§59.6]

CHAPTER 60

CONTESTING ELECTIONS OF PRESIDENTIAL ELECTORS

60.1 Court of contest.
60.2 Clerk.
60.3 Oath.
60.4 Statement.
60.5 Organization and trial.
60.6 Judgment.
60.7 Contestant to file bond.

60.1 Court of contest. The court for the trial of contested elections for presidential electors or for the office of senator or representative in Congress shall consist of the chief justice of the supreme court, who shall be presiding judge of the court, and four judges of the district court to be selected by the supreme court, two of whom, with the chief justice, shall constitute a quorum for the transaction of the business of the court. If the chief justice should for any cause be unable to attend at the trial, the judge longest on the supreme court bench shall preside in place of the chief justice; and any question arising as to the membership of the court shall be determined by the members of the court not interested in the question. [C97,§1246; C24, 27, 31, 35, 39,§1000; C46, 50, 54, 58, 62, 66, 71, 73, 75,§60.1]

C97,§1246, editorially divided

60.2 Clerk. The secretary of state shall be the clerk of the court, or, in his absence or inability to act, the clerk of the supreme court. [C97,§1246; C24, 27, 31, 35, 39,§1001; C46, 50, 54, 58, 62, 66, 71, 73, 75,§60.2]

60.3 Oath. Each member of the court, before entering upon the discharge of his duties, shall take an oath before the secretary of state, or some officer qualified to administer oaths, that he will support the Constitution of the United States and that of the state of Iowa, and that, without fear, favor, affection, or hope of reward, he will, to the best of his knowledge and ability, administer justice according to law and the facts in the case. [C97,§1246; C24, 27, 31, 35, 39,§1002; C46, 50, 54, 58, 62, 66, 71, 73, 75,§60.3]

60.4 Statement. The contestant shall file the statement provided for in chapter 62 in the office of the secretary of state within ten days from the day on which the returns are canvassed by the state board of canvassers, and, within the same time, serve a copy of the same, with a notice of the contest, on the incumbent. [C97,§1247; C24, 27, 31, 35, 39,§1003; C46, 50, 54, 58, 62, 66, 71, 73, 75,§60.4]

60.5 Organization and trial. The clerk of the court shall, immediately after the filing of the statement, notify the judges herein named, and fix a day for the organization of the court within three days thereafter, and also notify the parties to the contest. The judges shall meet on the day fixed, and organize the court,

and make and announce such rules for the trial of the case as they shall think necessary for the protection of the rights of each party and a just and speedy trial of the case, and commence the trial of the case as early as practicable thereafter, and so arrange for and conduct the trial that a final determination of the same and judgment shall be rendered at least six days before the first Monday after the second Wednesday in December next following. [C97,§1248; C24, 27, 31, 35, 39,§1004; C46, 50, 54, 58, 62, 66, 71, 73, 75,§60.5]

60.6 Judgment. The judgment of the court shall determine which of the parties to the action is entitled to hold the office and shall be authenticated by the presiding judge and clerk of the court and filed with the secretary of state; and the judgment so rendered shall constitute a final determination of the title to the office, and a certificate of appointment shall be issued to the successful party. [C97,§1249; C24, 27, 31, 35, 39,§1005; C46, 50, 54, 58, 62, 66, 71, 73, 75,§60.6]

60.7 Contestant to file bond. The contestant shall file in the office of the clerk of the supreme court a bond, with security to be approved by the clerk of the supreme court, in such amount as shall be set by the presiding judge of the court, conditional to pay all costs in case the election be confirmed or the contest dismissed. The presiding judge shall further set the date upon which the required bond shall be filed. If the required bond is not filed by the date set, the contest shall stand dismissed by operation of law. [C71, 73, 75, §60.7]

CHAPTER 61

CONTESTING ELECTIONS OF STATE OFFICERS

Referred to in §§43.5, 59.2
Chapter applicable to primary elections, §43.5

61.1 Contest court.
61.2 Clerk.
61.3 Statement filed.
61.4 Selection of court.
61.5 Notice of selection.
61.6 Organization.
61.7 Repealed by 61GA, ch 97,§3.
61.8 Delivery of papers.
61.9 Time of trial.
61.10 Notice to incumbent—trial.
61.11 Subpoenas—depositions.
61.12 Judgment filed—execution.
61.13 Power of judge.
61.14 Compensation of judges.

61.1 Contest court. The court for the trial of contested state offices, except that of governor and lieutenant governor, shall consist of three district judges, not interested, who shall be selected by the chief justice of the supreme court. [C51,§369; R60,§599; C73,§719; C97,§1224; C24, 27, 31, 35, 39,§1006; C46, 50, 54, 58, 62, 66, 71, 73, 75,§61.1]

61.2 Clerk. The secretary of state shall be the clerk of this court; but if the person holding that office is a party to the contest, the clerk of the supreme court, or, in case of his absence or inability, the auditor of state shall be clerk. [C51,§370; R60,§600; C73,§720; C97, §1225; C24, 27, 31, 35, 39,§1007; C46, 50, 54, 58, 62, 66, 71, 73, 75,§61.2]

61.3 Statement filed. The statement, as provided in chapter 62 must be filed with such clerk within thirty days from the day when incumbent was declared elected. [C51,§371; R60, §601; C73,§721; C97,§1226; C24, 27, 31, 35, 39, §1008; C46, 50, 54, 58, 62, 66, 71, 73, 75,§61.3]

61.4 Selection of court. Upon the filing of such statement, the chief justice of the supreme court shall select the membership of the court to try such contest, and immediately certify such selection to the clerk of the supreme court. Vacancies shall also be filled by the chief justice. [C24, 27, 31, 35, 39,§1009; C46, 50, 54, 58, 62, 66, 71, 73, 75,§61.4]

61.5 Notice of selection. The clerk of the supreme court, on receipt of such certificate, shall forthwith in writing notify the members of such court of contest of their selection. [C51, §372; R60,§602; C73,§722; C97,§1227; C24, 27, 31, 35, 39,§1010; C46, 50, 54, 58, 62, 66, 71, 73, 75, §61.5]

61.6 Organization. The members so selected for said contest court shall meet at the seat of government within ten days after said notification and qualify by taking the oath required in case of contest over the office of presidential elector, and proceed, at said place, with the discharge of their duties. [C51, §375; R60,§605; C73,§725; C97,§1229; C24, 27, 31, 35, 39,§1011; C46, 50, 54, 58, 62, 66, 71, 73, 75, §61.6]

Oath, §60.3

61.7 Repealed by 61GA, ch 97,§3.

61.8 Delivery of papers. Upon the organization of said court of contest, all papers in the possession of the clerk of the supreme court shall be forthwith delivered to said court of contest. [C24, 27, 31, 35, 39,§1013; C46, 50, 54, 58, 62, 66, 71, 73, 75,§61.8]

61.9 Time of trial. The time for the trial of any contest relative to a state office shall not be set beyond the last Monday in January following the election. [C51,§372; R60,§602; C73, §722; C97,§1227; C24, 27, 31, 35, 39,§1014; C46, 50, 54, 58, 62, 66, 71, 73, 75,§61.9]

61.10 Notice to incumbent—trial. Upon the organization of said court of contest, the court shall cause a notice of said contest to be served on the incumbent, together with a copy of the statement of contest filed by the contestant. No trial shall be held sooner than twenty days following said notice, except by consent of all parties. [C51,§372; R60,§602; C73,§722; C97, §1227; C24, 27, 31, 35, 39,§1015; C46, 50, 54, 58, 62, 66, 71, 73, 75,§61.10]

61.11 Subpoenas—depositions. The secretary of state, the several clerks of the supreme and district courts, under their respective seals of office, and either of the judges of the supreme or district courts, under their hands, may issue subpoenas for witnesses to attend this court; and disobedience to such process may be treated as a contempt. Depositions may also be taken as in the case of contested county elections. [C51,§373; R60,§603; C73,§723; C97,§1228; C24, 27, 31, 35, 39,§1016; C46, 50, 54, 58, 62, 66, 71, 73, 75,§61.11]

Contempts, ch 665
Depositions in county contest, §62.16

61.12 Judgment filed—execution. A transcript of the judgment rendered by such court, filed in the office of the clerk of the supreme court, shall have the force and effect of a judgment of the supreme court, and execution may issue therefrom in the first instance against the party's property generally. [C51,§377; R60,§607; C73,§727; C97,§1231; C24, 27, 31, 35, 39,§1017; C46, 50, 54, 58, 62, 66, 71, 73, 75,§61.12]

61.13 Power of judge. The presiding judge of this court shall have authority to carry into effect any order of the court, after the adjournment thereof, by attachment or otherwise. [C51,§378; R60,§608; C73,§728; C97,§1232; C24, 27, 31, 35, 39,§1018; C46, 50, 54, 58, 62, 66, 71, 73, 75,§61.13]

61.14 Compensation of judges. The judges shall be entitled to receive for their travel and attendance the sum of twelve dollars each per day, with such mileage as is allowed to members of the general assembly, to be paid from the state treasury. [C51,§376; R60,§606; C73, §726; C97,§1230; C24, 27, 31, 35, 39,§1019; C46, 50, 54, 58, 62, 66, 71, 73, 75,§61.14]

CHAPTER 62

CONTESTING ELECTIONS OF COUNTY OFFICERS

Referred to in §§43.5, 58.1, 59.2, 60.4, 61.3, 376.10
Chapter applicable to primary elections, §43.5

62.1 Contest court.
62.2 Judges.
62.3 Clerk.
62.4 Sheriff to attend.
62.5 Statement.
62.6 Bond.
62.7 When auditor is party.
62.8 Names of voters specified.
62.9 Trial—notice.
62.10 Place of trial.
62.11 Subpoenas.
62.12 Postponement.
62.13 Procedure—powers of court.
62.14 Sufficiency of statement.
62.15 Amendment—continuance.
62.16 Testimony.
62.17 Voters required to testify.
62.18 Judgment.
62.19 How enforced.
62.20 Appeal.
62.21 Judgment.
62.22 Process—fees.
62.23 Compensation.
62.24 Costs.
62.25 How collected.

62.1 Contest court. The court for the trial of contested county elections shall be thus constituted: The chairman of the board of supervisors shall be the presiding officer, and the contestant and incumbent may each name a person who shall be associated with him. [C51, §343; R60,§573; C73,§695; C97,§1201; C24, 27, 31, 35, 39,§1020; C46, 50, 54, 58, 62, 66, 71, 73, 75, §62.1]

62.2 Judges. The contestant and incumbent shall each file in the auditor's office, on or before the day of trial, a written nomination of one associate judge of the contested election, who shall be sworn in manner and form as trial jurors are in trials of civil actions; if either the contestant or the incumbent fails to nominate, the presiding judge shall appoint for him. When either of the nominated judges fails to appear on the day of trial, his place may be filled by another appointment under the same rule. [C51,§§347, 348; R60,§§577, 578; C73,§700; C97,§1206; C24, 27, 31, 35, 39,§1021; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.2]

62.3 Clerk. The county auditor shall be clerk of this court, and keep all papers, and record the proceedings in the election book, in manner similar to the record of the proceedings of the district court, but when the county

auditor is a party, the court shall appoint a suitable person as clerk, whose appointment shall be recorded. [C51,§344; R60,§574; C73, §696; C97,§1202; C24, 27, 31, 35, 39,§1022; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.3]

62.4 Sheriff to attend. The court or presiding judge may direct the attendance of the sheriff or a deputy when necessary. [C51, §359; R60,§589; C73,§708; C97,§1214; C24, 27, 31, 35, 39,§1023; C46, 50, 54, 58, 62, 66, 71, 73, 75, §62.4]

62.5 Statement. The contestant shall file in the office of the county auditor, within twenty days after the day when the incumbent was declared elected, a written statement of his intention to contest the election, setting forth the name of the contestant, and that he or she is qualified to hold such office, the name of the incumbent, the office contested, the time of the election, and the particular causes of contest, which statement shall be verified by the affidavit of the contestant, or some elector of the county, that the causes set forth are true as he verily believes. [C51,§345; R60,§575; C73,§697; C97,§1203; C24, 27, 31, 35, 39,§1024; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.5]

C97,§1203, editorially divided

62.6 Bond. The contestant must also file with the county auditor a bond, with security to be approved by said auditor, conditioned to pay all costs in case the election be confirmed, or the statement be dismissed, or the prosecution fail. [C51,§345; R60,§575; C73,§697; C97, §1203; C24, 27, 31, 35, 39,§1025; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.6]

62.7 When auditor is party. When the auditor is a party, the clerk of the district court shall receive such statement and approve such bond. [C73,§697; C97,§1203; C24, 27, 31, 35, 39,§1026; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.7]

62.8 Names of voters specified. When the reception of illegal or the rejection of legal votes is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, with the precinct where they voted or offered to vote, shall be set forth in the statement. [C51,§346; R60,§576; C73, §698; C97,§1204; C24, 27, 31, 35, 39,§1027; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.8]

62.9 Trial—notice. The chairman of the board of supervisors shall thereupon fix a day for the trial, not more than thirty nor less than twenty days thereafter, and shall cause a notice of such trial to be served on the incumbent, with a copy of the contestant's statement, at least ten days before the day set for trial. [C51,§§347, 349, 350; R60,§§577, 579, 580; C73, §699; C97,§1205; C24, 27, 31, 35, 39,§1028; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.9]

62.10 Place of trial. The trial of contested county elections shall take place at the county seat, unless some other place within the county is substituted by the consent of the court and parties. [C51,§357; R60,§587; C73,§707; C97, §1213; C24, 27, 31, 35, 39,§1029; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.10]

62.11 Subpoenas. Subpoenas for witnesses may be issued at any time after the notice of trial is served, either by the clerk of the district court or by the county auditor, and shall command the witnesses to appear at ...., on ...., to testify in relation to a contested election, wherein A.... B.... is contestant and C.... D.... is incumbent. [C51,§§352, 356; R60,§§582, 586; C73,§§704, 706; C97,§1210; C24, 27, 31, 35, 39,§1030; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.11]

62.12 Postponement. The trial shall proceed at the time appointed, unless postponed for good cause shown by affidavit, the terms of which postponement shall be in the discretion of the court. [C51,§353; R60.§583; C73,§701; C97,§1207; C24, 27, 31, 35, 39,§1031; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.12]

62.13 Procedure — powers of court. The proceedings shall be assimilated to those in an action, so far as practicable, but shall be under the control and direction of the court, which shall have all the powers of the district court necessary to the right hearing and determination of the matter, to compel the attendance of witnesses, swear them and direct their examination, to punish for contempt in its presence or by disobedience to its lawful mandate, to adjourn from day to day, to make any order concerning intermediate costs, and to enforce its orders by attachment. It shall be governed by the rules of law and evidence applicable to the case. [C51,§§354, 358, 361; R60,§§584, 588, 591; C73,§702; C97,§1208; C24, 27, 31, 35, 39, §1032; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.13]

62.14 Sufficiency of statement. The statement shall not be dismissed for want of form, if the particular causes of contest are alleged with such certainty as will sufficiently advise the incumbent of the real grounds of contest. [C51,§355; R60,§585; C73,§705; C97,§1211; C24, 27, 31, 35, 39,§1033; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.14]

C97,§1211, editorially divided

62.15 Amendment—continuance. If any part of the causes are held insufficient, they may be amended, but the incumbent will be entitled to an adjournment, if he states on oath that he has matter of answer to the amended causes, for the preparation of which he needs further time. Such adjournment shall be upon such terms as the court thinks reasonable; but if all the causes are held insufficient and an amendment is asked, the adjournment shall be at the cost of contestant. If no amendment is asked for or made, or in case of entire failure to prosecute, the proceedings may be dismissed. [C51,§§355, 361; R60,§§585, 591; C73,§705; C97, §1211; C24, 27, 31, 35, 39,§1034; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.15]

62.16 Testimony. The testimony may be oral or by deposition, taken as in an action at

law in the district court. [C51,§351; R60,§581; C73,§703; C97,§1209; C24, 27, 31, 35, 39,§1035; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.16]

Depositions in general, R.C.P. 153 et seq.

62.17 Voters required to testify. The court may require any person called as a witness, who voted at such election, to answer touching his qualifications as a voter, and, if he was not a qualified voter in the county where he voted, then to answer for whom he voted. [C51,§360; R60,§590; C73,§709; C97,§1215; C24, 27, 31, 35, 39, §1036; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.17]

62.18 Judgment. The court shall pronounce judgment whether the incumbent or any other person was duly elected, and adjudge that the person so declared elected will be entitled to his certificate. If the judgment be against the incumbent, and he has already received the certificate, the judgment shall annul it. If the court find that no person was elected, the judgment shall be that the election be set aside. [C51,§362; R60,§592; C73,§714; C97,§1220; C24, 27, 31, 35, 39,§1037; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.18]

62.19 How enforced. When either the contestant or incumbent shall be in possession of the office, by holding over or otherwise, the presiding judge shall, if the judgment be against the party so in possession of the office and in favor of his antagonist, issue an order to carry into effect the judgment of the court, which order shall be under the seal of the county, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to him all books and papers belonging to the same; and the sheriff shall execute such order as other writs. [C73,§715; C97,§1221; C24, 27, 31, 35, 39,§1038; C46, 50, 54, 58, 62, 66, 71, 73, 75, §62.19]

Referred to in §62.20

62.20 Appeal. The party against whom judgment is rendered may appeal within twenty days to the district court, but, if he be in possession of the office, such appeal will not supersede the execution of the judgment of the court as provided in section 62.19, unless he gives a bond, with security to be approved by the district judge in a sum to be fixed by him, and which shall be at least double the probable compensation of such officer for six months, which bond shall be conditioned that he will prosecute his appeal without delay, and that, if the judgment appealed from be affirmed, he will pay over to the successful party all compensation received by him while in possession of said office after the judgment appealed from was rendered. The court shall hear the appeal in equity and determine anew all questions arising in the case. [C73,§716; C97,§1222; S13,§1222; C24, 27, 31, 35, 39,§1039; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.20]

Presumption of approval of bond, §682.10

62.21 Judgment. If, upon appeal, the judgment is affirmed, the district court may render judgment upon the bond for the amount of damages, against the appellant and the sureties thereon. [C73,§717; C97,§1223; C24, 27, 31, 35, 39,§1040; C46, 50, 54, 58, 62, 66, 71, 73, 75, §62.21]

62.22 Process—fees. The style, form, and manner of service of process and papers, and the fees of officers and witnesses, shall be the same as in the district court, so far as the nature of the case admits. [C51,§§356, 374; R60, §§586, 604; C73,§§706, 724; C97,§1212; C24, 27, 31, 35, 39,§1041; C46, 50, 54, 58, 62, 66, 71, 73, 75, §62.22]

62.23 Compensation. The judges shall be entitled to receive four dollars a day for the time occupied by the trial. [C51,§363; R60,§593; C73,§710; C97,§1216; C24, 27, 31, 35, 39,§1042; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.23]

62.24 Costs. The contestant and the incumbent are liable to the officers and witnesses for the costs made by them, respectively; but if the election be confirmed, or the statement be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs; and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs. [C51,§364; R60,§594; C73,§711; C97,§1217; C24, 27, 31, 35, 39,§1043; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.24]

62.25 How collected. A transcript of the judgment may be filed and recorded in the office of the clerk of the district court and shall have the effect of a judgment of that court and execution may issue thereon. [C51,§365; R60,§595; C73,§712; C97,§1218; C24, 27, 31, 35, 39, §1044; C46, 50, 54, 58, 62, 66, 71, 73, 75,§62.25]

CHAPTER 63

TIME AND MANNER OF QUALIFYING

63.1 Time.
63.2 Repealed by 56GA, ch 71,§1.
63.3 Unavoidable casualty.
63.4 Contest.
63.5 Governor and lieutenant governor.
63.6 Judges.
63.7 Officer holding over.
63.8 Vacancies—time to qualify.
63.9 Temporary officer.
63.10 Other officers.
63.11 Oath on bond.
63.12 Re-elected incumbent.
63.13 Approval conditioned.

63.1 Time. Each officer, elective or appointive, before entering upon his duties as such, shall qualify by taking the prescribed oath and by giving, when required, a bond, which qualification shall be perfected, unless otherwise specified, before noon of the second secular day in January of the first year of the term for which such officer was elected. [C51, §§319, 334, 335; R60,§§549, 564, 565; C73,§§670, 685–687; C97,§1177; S13,§1177; C24, 27, 31, 35, 39, §1045; C46, 50, 54, 58, 62, 66, 71, 73, 75,§63.1]

Prescribed oath, §§63.5, 63.6, 63.10; bonds, ch 64
Unavoidable casualty, §63.3

63.2 Repealed by 56GA, ch 71,§1.

63.3 Unavoidable casualty. When on account of sickness, the inclement state of the weather, unavoidable absence, or casualty, an officer has been prevented from qualifying within the prescribed time, he may do so within ten days after the time herein fixed. [C97, §1177; S13,§1177; C24, 27, 31, 35, 39,§1047; C46, 50, 54, 58, 62, 66, 71, 73, 75,§63.3]

Referred to in §69.12
General time to qualify, §§63.1, 63.4–63.8

63.4 Contest. In case the election of an officer is contested, the successful party shall qualify within ten days after the decision is rendered. [C51,§335; R60,§565; C73,§687; C97, §1177; S13,§1177; C24, 27, 31, 35, 39,§1048; C46, 50, 54, 58, 62, 66, 71, 73, 75,§63.4]

63.5 Governor and lieutenant governor. The governor and lieutenant governor shall each qualify within ten days after the result of the election shall be declared by the general assembly, by taking an oath in its presence, in joint convention assembled, administered by a judge of the supreme court, to the effect that he will support the Constitution of the United States and the Constitution of the state of Iowa, and will faithfully and impartially, and to the best of his knowledge and ability, discharge the duties incumbent upon him as governor, or lieutenant governor, of this state. [C51,§§320, 334; R60,§§550, 564; C73,§§671, 685; C97,§1178; C24, 27, 31, 35, 39,§1049; C46, 50, 54, 58, 62, 66, 71, 73, 75,§63.5]

63.6 Judges. All judges of courts of record shall qualify before taking office following appointment by taking and subscribing an oath to the effect that they will support the Constitution of the United States and that of the state of Iowa, and that, without fear, favor, affection, or hope of reward, they will, to the best of their knowledge and ability, administer justice according to the law, equally to the rich and the poor. [C51,§§322, 334; R60,§§552, 564; C73,§§673, 685; C97,§1179; C24, 27, 31, 35, 39, §1050; C46, 50, 54, 58, 62, 66, 71, 73, 75,§63.6]

Failure to take oath, §740.11

63.7 Officer holding over. When it is ascertained that the incumbent is entitled to hold over by reason of the nonelection of a successor, or for the neglect or refusal of the successor to qualify, he shall qualify anew, within the time provided by section 63.8. [C51,§338; R60,§568; C73,§690; C97,§1195; S13,§1195; C24, 27, 31, 35, 39,§1051; C46, 50, 54, 58, 62, 66, 71, 73, 75,§63.7]

63.8 Vacancies — time to qualify. Persons elected or appointed to fill vacancies, and officers entitled to hold over to fill vacancies occurring through a failure to elect, appoint, or qualify, as provided in chapter 69, shall qualify within ten days from such election, appointment, or failure to elect, appoint, or qualify, in the same manner as those originally elected or appointed to such offices. [C51,§440; R60,§668; C73,§786; C97,§1275; C24, 27, 31, 35, 39, §1052; C46, 50, 54, 58, 62, 66, 71, 73, 75,§63.8]

Referred to in §§63.7, 69.12

63.9 Temporary officer. Any person temporarily appointed to fill an office during the incapacity or suspension of the regular incumbent shall qualify, in the manner required by this chapter, for the office so to be filled. [C73, §691; C97,§1194; C24, 27, 31, 35, 39,§1053; C46, 50, 54, 58, 62, 66, 71, 73, 75,§63.9]

Similar provisions, §§67.8, 68.5

63.10 Other officers. All other civil officers, elected by the people or appointed to any civil office, unless otherwise provided, shall take and subscribe an oath substantially as follows:

"I, ..., do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of the office of ..... (naming it) in (naming the township, city, county, district, or state, as the case may be), as now or hereafter required by law." [C51,§§331, 332; R60,§§561, 562, 1084, 1132; C73,§§504, 514, 675, 676; C97,§1180; C24, 27, 31, 35, 39,§1054; C46, 50, 54, 58, 62, 66, 71, 73, 75,§63.10]

Referred to in §§63.11, 257.13, 467A.6
Exceptions as to oath, §§63.5, 63.6
Failure to take oath, §740.11

63.11 Oath on bond. Every civil officer who is required to give bond shall take and subscribe the oath provided for in section 63.10, on the back of his bond, or on a paper attached thereto, to be certified by the officer administering it. [C51,§331; R60,§561; C73,§675; C97, §1181; C24, 27, 31, 35, 39,§1055; C46, 50, 54, 58, 62, 66, 71, 73, 75,§63.11]

Officers required to give bonds, ch 64
See also §§64.15, 64.19

63.12 Re-elected incumbent. When the incumbent of an office is re-elected, he shall qualify as above directed, but a judge retained at a judicial election need not requalify. [C51, §338; R60,§568; C73,§690; C97,§1193; C24, 27, 31, 35, 39,§1056; C46, 50, 54, 58, 62, 66, 71, 73, 75, §63.12]

C97,§1193, editorially divided

63.13 Approval conditioned. When the re-elected officer has had public funds or property in his control, under color of his office, his bond shall not be approved until he has produced and fully accounted for such funds and

property to the proper person to whom he should account therefor; and the officer or board approving the bond shall endorse upon the bond, before its approval, the fact that the said officer has fully accounted for and produced all funds and property before that time under his control as such officer. [C73,§690; C97,§1193; C24, 27, 31, 35, 39,§**1057**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§63.13]

CHAPTER 64

OFFICIAL AND PRIVATE BONDS

Referred to in §§215.12, 332.43, 524.210

64.1 Bond not required.
64.2 Conditions of bond of public officers.
64.3 Liability of surety.
64.4 Conditions of other bonds.
64.5 Want of compliance—effect.
64.6 State officers—amount of bonds.
64.7 Amount of bond, when not fixed by law.
64.8 County officers.
64.9 Minimum bonds of county officers.
64.10 Bond of county treasurer.
64.11 Expense of bonds paid by county.
64.12 Township clerk—expense of bond.
64.13 Municipal officers.
64.14 Repealed by 64GA, ch 1088,§227.
64.15 Bonds of deputy officers and clerks.
64.16 Minimum number of sureties—qualifications.
64.17 Surety company bonds.
64.18 Beneficiary of bond.
64.19 Approval of bonds.
64.20 Time for approval.
64.21 Approval by auditor.
64.22 Failure of board to approve—application to judge.
64.23 Custody of bond.
64.24 Recording.
64.25 Failure to give bond.

64.1 Bond not required. Bonds shall not be required of the following public officers:

1. Governor.

2. Lieutenant governor.

3. Members of the general assembly.

4. Judges of the supreme and district courts and district associate judges.

5. Township trustees.

6. Aldermen, councilmen, and commissioners of cities, other than mayors. [C51,§323; R60,§553; C73,§674; C97,§1182; S13,§1182; SS15, §694-c11; C24, 27, 31, 35, 39,§**1058**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.1]

64.2 Conditions of bond of public officers. All other public officers, except as otherwise specially provided, shall give bond with the conditions, in substance, as follows:

"That as ..... (naming the office), in ..... (city, township, county, or state of Iowa), he will render a true account of his office and of his doings therein to the proper authority, when required thereby or by law; that he will promptly pay over to the officer or person entitled thereto all moneys which may come into his hands by virtue of his office; that he will promptly account for all balances of money remaining in his hands at the termination of his office; that he will exercise all reasonable diligence and care in the preservation and lawful disposal of all money, books, papers, securities, or other property appertaining to his said office, and deliver them to his successor, or to any other person authorized to receive the same; and that he will faithfully and impartially, without fear, favor, fraud, or oppression, discharge all duties now or hereafter required of his office by law."

The attachment of a renewal certificate to an existing bond shall not constitute compliance with this section. [C51,§324; R60,§§554, 1084, 1132; C73,§§504, 514, 674; C97,§1183; C24, 27, 31, 35, 39,§**1059**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §64.2]

Referred to in §§64.13, 358B.10
Construction of public bonds, §666.1

64.3 Liability of surety. The sureties on such bond shall be liable for all money or public property that may come into the hands of such officer at any time during his possession of such office. [C51,§324; R60,§§554, 1084, 1132; C73,§§504, 514, 674; C97,§1183; C24, 27, 31, 35, 39, §**1060**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.3]

64.4 Conditions of other bonds. All other bonds required by law, when not otherwise specially provided, shall be conditioned as the bonds of public officers. [S13,§§1177-a,-d; C24, 27, 31, 35, 39,§**1061**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.4]

64.5 Want of compliance—effect. All bonds required by law shall be construed as impliedly containing the conditions required by statute, anything in the terms of said bonds to the contrary notwithstanding. [C51,§337; R60, §567; C73,§689; C97,§1192; S13,§1177-c; C24, 27, 31, 35, 39,§**1062**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §64.5]

Implied conditions, §314.1

64.6 State officers—amount of bonds. State officers shall give bonds, the premiums being paid by the state, in an amount as follows:

1. Secretary of state, auditor of state, attorney general, clerk of the supreme court, not less than ten thousand dollars.

2. Treasurer of state, not less than three hundred thousand dollars.

3. The commissioner and the directors of divisions of the department of social services in control of state institutions, twenty-five thousand dollars.

4. Each treasurer of a state institution under the control of the state board of regents shall furnish a surety bond, the amount thereof to be determined by the said board.

5. Commissioner of public health, secretary of agriculture, and each Iowa state commerce commissioner, not less than five thousand dollars.

6. Superintendent of public instruction, not less than two thousand dollars.

7. Superintendent of public buildings and grounds, such amount as the executive council may fix.

8. Commissioner of insurance, fifty thousand dollars.

9. Superintendent of banking, one hundred thousand dollars.

10. State fire marshal, five thousand dollars.

11. Labor commissioner, two thousand dollars.

12. Deputy labor commissioner, one thousand dollars.

13. Members state conservation commission, five thousand dollars.

14. State conservation director, ten thousand dollars.

15. Officers appointed by state conservation commission, one thousand dollars.

16. Secretary of executive council, such amount as the executive council may fix.

17. State librarian, five thousand dollars.

18. Law librarian, three thousand dollars.

19. Director of the historical museum and archives, one thousand dollars.

20. Superintendent of printing, five thousand dollars.

21. Industrial commissioner, one thousand dollars.

22. Members state transportation commission, ten thousand dollars.

23. Members of appeal board under chapter 22, five thousand dollars.

24. All other public officers, in the amount provided by law, or as fixed under section 64.7.

25. Judicial magistrates, five thousand dollars.

The state shall pay the reasonable costs of bonds required by this section. [C51,§325; R60, §555; C73,§677; C97,§1183; C24, 27, 31, 35, 39, §1063; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

1. [C51,§326; R60,§§128, 556; C73,§678; C97, §1184; C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

2. [C51,§326; R60,§556; C73,§678; C97,§1184; C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §64.6]

3. [S13,§2727-a2; C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

4. [R60,§1739; C73,§1614; C97,§2654; C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §64.6]

5. [C97,§1184; C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

6. [C51,§326; C73,§678; C97,§1184; C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §64.6]

7. [C97,§145; SS15,§147; C24, 27, 31, 35, 39, §**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

8. [S13,§1683-r; C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

9. [C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

10. [S13,§2468-a; C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

11. [C97,§2469; S13,§2469; C24, 27, 31, 35, 39, §**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

12. [C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

13. [C31,§1703-d7; C35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

14. [C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

15. [SS15,§2562; C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

16. [S13,§157; C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

17. [C51,§446; R60,§691; C73,§1890; C97,§2860; S13,§2881-h; C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

18. [C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

19. [S13,§2881-h; C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6; 66GA, ch 67, §6]

20. [SS15,§144-g; C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

21. [C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

22. [SS15,§1527-s; C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

23. C24, 27,§347; C31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

24. [C24, 27, 31, 35, 39,§**1063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.6]

25. [C73, 75,§64.6]

Referred to in §257.14

64.7 Amount of bond, when not fixed by law. In all cases where no amount or a minimum amount is fixed by law for the official bond of a public officer, the approving officer or board shall fix the bond at such amount as public interest may require. [C24, 27, 31, 35, 39,§**1064**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.7]

Referred to in §64.6

64.8 County officers. The bonds of the following county officers, viz.: Clerks of the district courts, county attorneys, recorders, auditors, sheriffs and assessors shall each be in a penal sum of not less than ten thousand dollars each per annum. [C51,§§326, 327; R60, §§556, 557; C73,§678; C97,§1185; S13,§1185; C24, 27, 31, 35, 39,§**1065**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.8]

64.9 Minimum bonds of county officers. Bonds of members of the board of supervisors, clerks of the district courts, county auditors, sheriffs, and county attorneys shall not be in less sum than ten thousand dollars each. [C51, §327; R60,§557; C73,§678; C97,§1185; S13,§§1182-a, 1185; C24, 27, 31, 35, 39,§**1066**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.9]

64.10 Bond of county treasurer. The bond of the county treasurer shall be in the sum of twenty-five thousand dollars per annum. [C24, §1066; C27, 31, 35,§1066-a1; C39,§**1066.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.10]

64.11 Expense of bonds paid by county. If any county treasurer, clerk of the district court, county attorney, recorder, auditor, sheriff, medical examiner, members of soldiers relief commission, members of the board of supervisors, engineer, steward or matron shall elect to furnish a bond with any association or incorporation as surety as provided in this chapter, the reasonable cost of such bond shall be paid by the county where the bond is filed. [S13,§1185; C24, 27, 31, 35, 39,§**1067**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.11]

Surety company bonds authorized, §64.17

64.12 Township clerk—expense of bond. All bonds required of the township clerk shall be furnished and paid for by the township. [C27, 31, 35,§1067-b1; C39,§**1067.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.12]

64.13 Municipal officers. The bonds of all municipal officers who are required to give bonds shall each be in such penal sum as may be provided by law or as the council shall from time to time prescribe by ordinance; but the council may provide for a surety bond running to the city and covering all city officers and employees not otherwise covered and conditioned as specified for bonds in section 64.2. [R60,§§1084, 1132; C73,§§504, 514; C97,§1185; S13,§1185; C24, 27, 31, 35, 39,§**1068**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.13; 66GA, ch 203,§6]

Bonds not required, §64.1

64.14 Repealed by 64GA, ch 1088,§227.

64.15 Bonds of deputy officers and clerks. Bonds required by law of deputy state, county and city officers shall, unless otherwise provided, be in such amounts as may be fixed by the governor, board of supervisors, or the council, as the case may be, with sureties as required for the bonds of the principal, and filed with the same officer. The giving of such bond shall not relieve the principal from liability for the official acts of the deputy. The reasonable cost of the bonds required of deputy county officers, clerks and cashiers employed by county officers shall be paid by the county where the bond is filed. [C51,§411; R60,§642; C73,§766; C97,§1186; C24, 27, 31, 35, 39, §**1069**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.15]

Bonds of deputies, §§27.1, 341.4
See also §§63.11, 64.19

64.16 Minimum number of sureties—qualifications. Every bond required by this chapter, except as hereinafter specified, shall be executed with at least two sureties, each of whom shall be a freeholder of the state. The bonds of the state treasurer and of the county treasurer shall have not less than four sureties, possessed of like qualifications. [C51,§§328, 329; R60,§§558, 559; C73,§679; C97,§1187; C24, 27, 31, 35, 39,§**1070**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §64.16]

64.17 Surety company bonds. Any association or incorporation which does the business of insuring the fidelity of others, and which has authority by law to do business in this state, shall be accepted as surety upon bonds required by law. [C97,§1187; C24, 27, 31, 35, 39, §**1071**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.17]

64.18 Beneficiary of bond. All bonds of public officers shall run to the state, and be for the use and benefit of any corporation, public or private, or person injured or sustaining loss, with a right of action in the name of the state for its or his use. [C51,§325; R60,§555; C73,§677; C97,§1188; S13,§1188; C24, 27, 31, 35, 39,§**1072**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.18]

64.19 Approval of bonds. Bonds shall be approved:

1. By the governor, in case of state and district officers, elective or appointive.

2. By the board of supervisors, in case of county officers, township clerks, and assessors.

3. By a judge or the clerk of the district court of the county in question, in case of members of the board of supervisors.

4. By the township clerk, in case of other township officers.

5. By the council, or as provided by ordinance in case of city officers. [C51,§330; R60, §560; C73,§680; C97,§1188; S13,§§1182-a, 1188; C24, 27, 31, 35, 39,§**1073**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.19; 66GA, ch 203,§7, 8]

Bonds of notary public, §77.4
See §§63.11, 64.15

64.20 Time for approval. All bonds shall be approved or disapproved within five days after their presentation for that purpose, and endorsed, in case of approval, to that effect and filed. [C51,§330; R60,§560; C73,§680; C97,§1188; S13,§1188; C24, 27, 31, 35, 39,§**1074**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.20]

64.21 Approval by auditor. When a bond, approvable by the board of supervisors, of any public officer is presented after the final adjournment of the January session of said board, except those of the county auditor and

treasurer, the auditor may approve such bond, in which case he shall report his action to the board at its next session. The action of the auditor in approving the bond shall stand as the action of the board unless the board enters its disapproval. If such disapproval be entered, the new bond must be given within five days from the date of such decision, but the old bond shall stand good for all acts done up to the time of the approval of the new bond. [C51,§330; R60,§560; C73,§680; C97,§1189; C24, 27, 31, 35, 39,§**1075**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.21]

64.22 Failure of board to approve—application to judge. If the board of supervisors refuses or neglects to approve the bond of any county officer, he may within five days thereafter, or after the expiration of the time allowed for such approval, present the same for approval to a judge of the district court of the proper district, who shall fix a day for the hearing. Notice of such hearing shall be given the board and return made in the same manner as in a civil action, and the court or judge at the time fixed shall, unless good cause for postponement be shown, proceed to hear the matter and approve the bond, if found sufficient, and such approval shall have the same force and effect as an approval by the board. [C73,§681; C97,§1190; C24, 27, 31, 35, 39,§**1076**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.22]

Notice and return, ch 617

64.23 Custody of bond. The bonds and official oaths of public officers shall, after approval and proper record, be filed:

1. For all state officers, elective or appointive, except those of the secretary of state and judicial magistrate, with the secretary of state. Bonds and official oaths of judicial magistrates shall be filed in the office of the district court clerk.

2. For the secretary of state, with the state auditor.

3. For county and township officers, except those of the county auditor, with the county auditor.

4. For county auditor, with the county treasurer.

5. For members of the board of supervisors, with the clerk of the district court.

6. For officers of cities, and officers not otherwise provided for, in the office of the officer or clerk of the body approving the bond, or in cities, as otherwise provided by ordinance. [C51,§333; R60,§563; C73,§682; C97,§§1188, 1191; S13,§§1182-a, 1188; C24, 27, 31, 35, 39,§**1077**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.23; 66GA, ch 203, §§9, 10]

64.24 Recording. The secretary of state, each county auditor, district court clerk, and each auditor or clerk of a city, shall keep a book, to be known as the "Record of Official Bonds", and all official bonds shall be recorded therein in full as follows:

1. In the record kept by the secretary of state, the official bonds of all state officers, elective or appointive, except the bonds of notaries public.

2. In the record kept by the county auditor, the official bonds of all county officers, elective or appointive, and township clerks.

3. In the record kept by the city auditor or clerk, the official bonds of all city officers, elective or appointive.

4. In the record kept by the district court clerk, the official bonds of judicial magistrates.

Said records shall have an index which, under the title of each office, shall show the name of each principal, his sureties, and the date of the filing of the bond.

A bond when recorded shall be returned to the officer charged with the custody thereof. [C73,§683; C97,§1196; S13,§1196; C24, 27, 31, 35, 39,§**1078**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.24]

64.25 Failure to give bond. Any officer who acts in an official capacity without giving bond when such bond is required shall be fined in an amount not exceeding the amount of the bond required of him. [C73,§684; C97,§1197; C24, 27, 31, 35, 39,§**1079**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§64.25]

CHAPTER 65

ADDITIONAL SECURITY AND DISCHARGE OF SURETIES

65.1 Additional security.
65.2 New bond.
65.3 Effect.
65.4 Sureties on bonds of public officers.
65.5 Notice.
65.6 Subpoenas.
65.7 Hearing—order—effect.
65.8 Failure to comply.
65.9 Repealed by 64GA, ch 1124,§282.
65.10 Sureties on other bonds.
65.11 Return of premium by surety.

65.1 Additional security. Whenever the governor shall deem it advisable that the bonds of any state officer shall be increased and the security enlarged, or a new bond given, he shall notify said officer of the fact, the amount of new or additional security to be given, and the time when the same shall be executed; which said new security shall be

approved and filed as provided by law. [R60, §660; C73,§772; C97,§1280; C24, 27, 31, 35, 39, §1080; C46, 50, 54, 58, 62, 66, 71, 73, 75,§65.1]

Referred to in §65.3
Approval and filing of bonds, §§64.19, 64.23

65.2 New bond. Any officer or board who has the approval of another officer's bond, when of the opinion that the public security requires it, upon giving ten days' notice to show cause to the contrary, may require him to give additional security by a new bond, within a reasonable time to be prescribed. [C51,§§418, 419; R60,§§649, 650; C73,§773; C97, §1281; C24, 27, 31, 35, 39,§1081; C46, 50, 54, 58, 62, 66, 71, 73, 75,§65.2]

Referred to in §65.3
Approval, §64.19

65.3 Effect. If a requisition made under either section 65.1 or section 65.2 be complied with, both the old and the new seeurity shall be in force; if not, the office shall become and be declared vacant, and the fact be certified to the proper officer, to be recorded in the election book or township record. [C51,§420; R60, §§651, 661; C73,§774; C97,§1282; C24, 27, 31, 35, 39,§1082; C46, 50, 54, 58, 62, 66, 71, 73, 75,§65.3]

65.4 Sureties on bonds of public officers. When any surety on the bond of a public officer desires to be relieved of his obligation, he may petition the approving officer or board for relief, stating the grounds therefor. [C51,§421; R60,§652; C73,§775; C97,§1283; C24, 27, 31, 35, 39, §1083; C46, 50, 54, 58, 62, 66, 71, 73, 75,§65.4]

Approving officers, §64.19

65.5 Notice. The surety shall give the principal at least twenty-four hours' notice of the presenting and filing of the petition, with a copy thereof. At the expiration of this notice the approving officer may hear the matter, or may postpone it, as justice requires. [C51, §422; R60,§653; C73,§776; C97,§1284; C24, 27, 31, 35, 39,§1084; C46, 50, 54, 58, 62, 66, 71, 73, 75, §65.5]

65.6 Subpoenas. The approving officer may issue subpoenas in his official name for witnesses, compel them to attend and testify, in the same way an officer authorized to take depositions may. [C51,§427; R60,§658; C73,§780; C97,§1288; C24, 27, 31, 35, 39,§1085; C46, 50, 54, 58, 62, 66, 71, 73, 75,§65.6]

Enforcing attendance, etc., §§622.84, 622.102

65.7 Hearing—order—effect. If, upon the hearing, there appears substantial ground for apprehension, the approving officer or board may order the principal to give a new bond and to supply the place of the petitioning surety within a reasonable time to be prescribed, and, upon such new bond being given, the petitioning surety upon the former bond shall be declared discharged from liability on the same for future acts, which order of discharge shall be entered in the proper election book, but the bond will continue binding upon those who do not petition for relief. [C51,§424; R60,§655; C73,§777; C97,§1285; C24, 27, 31, 35, 39, §1086; C46, 50, 54, 58, 62, 66, 71, 73, 75,§65.7]

65.8 Failure to comply. If the new bond is not given as required, the office shall be declared vacant, and the order to that effect entered in the proper election book. [C51,§425; R60,§656; C73,§778; C97,§1286; C24, 27, 31, 35, 39, §1087; C46, 50, 54, 58, 62, 66, 71, 73, 75,§65.8]

65.9 Repealed by 64GA, ch 1124,§282.

65.10 Sureties on other bonds. When the principal on the bond has been appointed by a judge or court or is under the jurisdiction of a court, the petition for release must be presented to said court and the release shall be made subject to the orders of said court.

Such petition for release may be presented either by the principal or the surety on the bond.

Sureties on other bonds required by law who desire to be released of their obligation may proceed in the manner required for release in case of bonds of public officers.

The provisions of this section shall not apply to sureties on bonds given to secure the performance of contracts for public works, nor to sureties on appearance bonds in criminal cases. [C51,§421; R60,§652; C73,§775; C97, §1283; S13,§1177-b; C24, 27, 31, 35, 39,§1089; C46, 50, 54, 58, 62, 66, 71, 73, 75,§65.10]

Release of obligation, §65.4

65.11 Return of premium by surety. When a surety is released as heretofore provided, he shall refund to the party entitled thereto the premium paid, if any, less a pro rata part thereof for the time said bond has been in force. [S13,§1177-b; C24, 27, 31, 35, 39,§1090; C46, 50, 54, 58, 62, 66, 71, 73, 75,§65.11]

CHAPTER 66

REMOVAL FROM OFFICE

Referred to in §§123.12, 807.9, 601G.5, 601G.20

66.1 Removal by court.
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66.20 Judgment of removal.
66.21 Hearing on appeal.
66.22 Effect of appeal.
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66.24 Want of probable cause.
66.25 Expense of judge and reporter.
66.26 Appointive state officers.
66.27 Subpoenas—contempt.
66.28 Witness fees.
66.29 City elective officers.
66.30 Ordinance.

66.1 Removal by court. Any appointive or elective officer, except such as may be removed only by impeachment, holding any public office in the state or in any division or municipality thereof, may be removed from office by the district court for any of the following reasons:

1. For willful or habitual neglect or refusal to perform the duties of his office.

2. For willful misconduct or maladministration in office.

3. For corruption.

4. For extortion.

5. Upon conviction of a felony.

6. For intoxication, or upon conviction of being intoxicated.

7. Upon conviction of violating the provisions of chapter 56. [S13,§1258-c; C24, 27, 31, 35, 39,§**1091**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.1]

Impeachable officers, Constitution, Art. III, §20
Industrial commissioner, §86.7
Member state board of regents, §262.4
Municipal officers, §§66.29, 372.15
Notary public, §77.11
Peace officers, §32.6
State comptroller, §8.4

66.2 Jurisdiction. The jurisdiction of the proceeding provided for in this chapter shall be as follows:

1. As to state officers whose offices are located at the seat of government, the district court of Polk county.

2. As to state officers whose duties are confined to a district within the state, the district court of any county within such district.

3. As to county, municipal, or other officers, the district court of the county in which such officers' duties are to be performed. [C24, 27, 31, 35, 39,§**1092**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.2]

66.3 Who may file petition. The petition for removal may be filed:

1. By the attorney general in all cases.

2. As to state officers, by not fewer than twenty-five electors of the state.

3. As to any other officer, by five qualified electors of the district, county, or municipality where the duties of the office are to be performed.

4. As to district officers, by the county attorney of any county in the district.

5. As to all county and municipal officers, by the county attorney of the county where the duties of the office are to be performed. [S13, §1258-d; C24, 27, 31, 35, 39,§**1093**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.3]

66.4 Bond for costs. If the petition for removal is filed by anyone other than the attorney general or the county attorney, the court shall require the petitioners to file a bond in such amount and with such surety or sureties as the court may require, said bond to be approved by the clerk, to cover the costs of such removal suit, including attorney fees, if final judgment is not entered removing the officer charged. [C35,§1093-e1; C39,§**1093.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.4]

Presumption of approval of bond, §682.10

66.5 Petition—other pleading. The petition shall be filed in the name of the state of Iowa. The accused shall be named as defendant, and the petition, unless filed by the attorney general, shall be verified. The petition shall state the charges against the accused and may be amended as in ordinary actions, and shall be filed in the office of the clerk of the district court of the county having jurisdiction. The petition shall be deemed denied but the accused may plead thereto. [S13,§§1258-d,-e; C24, 27, 31, 35, 39,§**1094**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.5]

Amendments generally, R.C.P. 85(d), 88, 89, and 247

66.6 Notice. Upon the filing of a petition, notice of such filing and of the time and place of hearing shall be served upon the accused in the manner required for the service of notice of the commencement of an ordinary action. Said time shall not be less than ten days nor more than twenty days after completed service of said notice. [S13,§1258-f; C24, 27, 31, 35, 39,§**1095**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.6]

Service of notice, ch 617

66.7 Suspension from office. Upon presentation of the petition to the court, the court may suspend the accused from office, if in its judgment sufficient cause appear from the petition and affidavits which may be presented in support of the charges contained therein. [S13,§1258-g; C24, 27, 31, 35, 39,§**1096**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.7]

66.8 Effect of suspension. In case of suspension, the order shall be served upon the officer in question and it shall be unlawful for him to exercise or attempt to exercise any of the functions of his office until such suspension is revoked. [C24, 27, 31, 35, 39,§**1097**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.8]

66.9 Salary pending charge. An order of the district court suspending a public officer

from the exercise of his office, after the filing of a petition for the removal from office of such officer, shall, from the date of such order, automatically suspend the further payment to said officer of all official salary or compensation until said petition has been dismissed, or until said officer has been acquitted on any pending indictments charging misconduct in office. [C35,§1097-e1; C39,§**1097.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.9]

66.10 Governor to direct filing. The governor shall direct the attorney general to file such petition against any of said officers whenever he has reasonable grounds for such direction. The attorney general shall comply with such direction and prosecute such action. [S13, §§1258-d,-e; C24, 27, 31, 35, 39,§**1098**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.10]

Referred to in §66.11

66.11 Duty of county attorney. The county attorney of any county in which an action is instituted under section 66.10 shall, at the request of the attorney general, appear and assist in the prosecution of such action. In all other cases instituted in his county, the county attorney shall appear and prosecute when the officer sought to be removed is other than himself. [S13,§1258-d; C24, 27, 31, 35, 39, §**1099**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.11]

66.12 Special prosecutor. When the proceeding is brought to remove the county attorney, the court may appoint an attorney to appear in behalf of the state and prosecute such proceedings. [S13,§1258-d; C24, 27, 31, 35. 39,§**1100**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.12]

66.13 Application for outside judge. At any time not less than five days prior to the time the accused is required to appear, a copy of the petition may be filed by either party in the office of the clerk of the supreme court, together with an application to the supreme court for the appointment of a judge outside the judicial district in which the trial is to be had to hear said petition. [S13,§1258-f; C24, 27, 31, 35, 39,§**1101**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.13]

66.14 Appointment of judge. It shall be the duty of the chief justice of the supreme court, upon the filing of said copy and application, or in his absence or inability to act, any justice thereof, to forthwith issue a written commission directing a district judge outside of such district to proceed to the county in which the complaint was filed, and hear the same. The clerk of the supreme court shall transmit a certified copy of said order to the clerk of the district court where the cause is pending. [S13,§1258-f; C24, 27, 31, 35, 39,§**1102**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.14]

66.15 Order by appointed judge. Upon the receipt of such commission, said judge shall immediately make an order fixing a time and place of hearing in the county in which the petition is filed. Said time shall not be less than ten days nor more than twenty days from the date of the order. [S13,§1258-f; C24, 27, 31, 35, 39,§**1103**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.15]

66.16 Filing order—effect. Said order shall be forwarded to the clerk of the district court of the county in which the hearing is to be had. Said order shall supersede the time and place specified in any notice already served. [S13,§1258-f; C24, 27, 31, 35, 39,§**1104**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.16]

66.17 Notice to accused. The clerk shall file said order, and forthwith give the defendant, by mail, notice of the time and place of hearing. [S13,§1258-f; C24, 27, 31, 35, 39,§**1105**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.17]

66.18 Nature of action—when triable. The proceeding shall be summary in its nature and shall be triable as an equitable action. [S13,§1258-g; C24, 27, 31, 35, 39,§**1106**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.18]

Trial of equitable action, ch 624

66.19 Temporary officer. Upon such suspension, the board or person authorized to fill a vacancy in the office shall temporarily fill the office by appointment. In case of a suspension of a clerk or sheriff, the district court may supply such place by appointment until a temporary appointment shall be made. Such orders of suspension and temporary appointment of county and township officers shall be certified to the county auditor, and be by him entered in the election book; those of city officers, certified to the clerk and entered upon the records; in case of other officers, to the person or body making the original appointment. [C51,§§404, 407, 410; R60,§§635, 638, 641; C73,§§752, 753, 758; C97,§1257; S13,§1258-g; C24, 27, 31, 35, 39,§**1107**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.19]

66.20 Judgment of removal. Judgment of removal, if rendered, shall be entered of record, and the vacancy forthwith filled as provided by law. [S13,§1258-h; C24, 27, 31, 35, 39, §**1108**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.20]

Removal under indictment, §740.8
Vacancies in office, ch 69

66.21 Hearing on appeal. In case of appeal, the supreme court shall fix the time of hearing and the filing of abstracts and arguments, and said cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the appeal is taken, provided the abstract and arguments are filed in said court in time for said action to be heard. [S13,§1258-i; C24, 27, 31, 35, 39,§**1109**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.21]

66.22 Effect of appeal. The taking of an appeal by the defendant and the filing of a supersedeas bond shall not operate to stay the proceedings of the district court, or restore said defendant to office pending such appeal.

[S13,§1258-i; C24, 27, 31, 35, 39,§1110; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.22]

66.23 Effect of dismissal. If the petition be dismissed on final hearing on the merits, the defendant shall have judgment against the state, if the action was instituted by the attorney general, and against the county, city or other subdivision of the state if the action is otherwise instituted, for the reasonable and necessary expenses incurred by the defendant in making his defense, including a reasonable attorney fee, to be fixed by the court or judge. Such payment shall be made out of any funds in the state treasury not otherwise appropriated, or out of the general fund of the county, city or other subdivision of the state, as the case may be. [S13,§1258-i; C24, 27, 31, 35, 39,§1111; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.23]

66.24 Want of probable cause. If the action is instituted upon complaint of citizens, and it appears to the court that there was no reasonable cause for filing the complaint, such expense may be taxed as costs against the complaining parties. [S13,§1258-i; C24, 27, 31, 35, 39,§1112; C46, 50, 54, 58, 62, 66, 71, 73, 75, §66.24]

66.25 Expense of judge and reporter. A judge who is required to preside at such hearing, outside of his judicial district, and the judge's official reporter who is required to report such hearing, shall be allowed, from the state treasury, their necessary and actual expenses incurred by reason of such hearing. [S13,§1258-j; C24, 27, 31, 35, 39,§1113; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.25]

66.26 Appointive state officers. Any appointive state officer may also be removed from office by a majority vote of the executive council for any of the following causes:

1. Habitual or willful neglect of duty.
2. Any disability preventing a proper discharge of the duties of his office.
3. Gross partiality.
4. Oppression.
5. Extortion.
6. Corruption.
7. Willful misconduct or maladministration in office.
8. Conviction of felony.
9. A failure to produce and fully account for all public funds and property in his hands at any inspection or settlement.
10. Becoming ineligible to hold the office.

[S13,§1258-b; C24, 27, 31, 35, 39,§1114; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.26]

Industrial commissioner, §86.7
Member state board of regents, §262.4
State comptroller, §8.4

66.27 Subpoenas—contempt. The executive council, in any investigation held by it, may issue subpoenas for witnesses and for the production of records, books, papers, and other evidence. If a witness, duly subpoenaed, refuses to appear, or refuses to testify, or otherwise refuses to comply with said subpoena, such fact shall be certified by such council to the district court or judge of the county where the hearing is being held and said court or judge shall proceed with said refusal as though the same had occurred in a legal proceeding before said court or judge. [C24, 27, 31, 35, 39, §1115; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.27]

Contempts, ch 665

66.28 Witness fees. Said witnesses, if in the employ of the state, shall not be entitled to any witness fees, but shall receive the mileage allowed witnesses in the district court. Other witnesses shall receive the fees and mileage allowed witnesses in district court. A sum sufficient to pay said fees and mileage is hereby appropriated out of any unappropriated funds in the state treasury. [C24, 27, 31, 35, 39, §1116; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.28]

Witness fees, §§622.69–622.75

66.29 City elective officers. Any city officer elected by the people may be removed from office, after hearing on written charges filed with the council of such city for any cause which would be ground for an equitable action for removal in the district court, but such removal can only be made by a two-thirds vote of the entire council. [R60,§1087; C73,§516; C97,§1258; SS15,§1258; C24, 27, 31, 35, 39,§1117; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.29]

Removal of municipal officers, §§66.1, 372.15

66.30 Ordinance. The council may, by ordinance, provide as to the manner of preferring and hearing such charges. No person shall be twice removed by the council from the same office for the same offense. Proceedings before the council shall not be a bar to proceedings in the district court as in this chapter provided. [R60,§1087; C73,§516; C97, §1258; S13,§1258-a; SS15,§1258; C24, 27, 31, 35, 39, §1118; C46, 50, 54, 58, 62, 66, 71, 73, 75,§66.30]

CHAPTER 67

SUSPENSION OF STATE OFFICERS

67.1 Commission to examine accounts.
67.2 Power of commission.
67.3 Refusal to obey subpoena—fees.
67.4 Nature of report.
67.5 Duty of governor.
67.6 Effect of order—penalty.
67.7 Salary pending charge.
67.8 Temporary appointment.

67.9 Governor to protect state.
67.10 Governor to report to general assembly.
67.11 Failure to impeach or convict.
67.12 Compensation and expenses of commissioners.
67.13 Reports revealing grounds of removal.

67.1 Commission to examine accounts. The governor shall, when of the opinion that the public service requires such action, appoint, in writing, a commission of three competent accountants and direct them to examine the books, papers, vouchers, moneys, securities, and documents in the possession or under the control of any state officer, board, commission, or of any person expending or directing the expenditure of funds belonging to or in the possession of the state. [R60,§§46, 47, 55, 56; C73,§759; C97,§1259; C24, 27, 31, 35, 39,§1119; C46, 50, 54, 58, 62, 66, 71, 73, 75,§67.1]

67.2 Power of commission. Said commissioners while in session shall have power to issue subpoenas, to call any person to testify in reference to any fact connected with their investigation, and to require such persons to produce any paper or book which the district court might require to be produced. Each commissioner shall have power to administer oaths. [R60,§54; C73,§765; C97,§1260; C24, 27, 31, 35, 39,§1120; C46, 50, 54, 58, 62, 66, 71, 73, 75, §67.2]

67.3 Refusal to obey subpoena — fees. If any witness, duly subpoenaed, refuses to obey said subpoena, or refuses to testify, said commission shall certify said fact to the district court of the county where the investigation is being had and said court shall proceed with said witness in the same manner as though said refusal had occurred in a legal proceeding before said court or judge.

Witnesses shall be paid in the manner provided for witnesses before the executive council and from the same appropriation. [C24, 27, 31, 35, 39,§1121; C46, 50, 54, 58, 62, 66, 71, 73, 75, §67.3]

Contempts, ch 665
Payment of witnesses before council, §66.28
Witness fees, §622.69 et seq.

67.4 Nature of report. Such accountants shall make out a full, complete, and specific statement of the transactions of said officer with, for, or on behalf of the state, showing the true balances in each case, and report the same to the governor, with such suggestions as they may think proper. [R60,§§46, 47, 55, 56; C73,§759; C97,§1259; C24, 27, 31, 35, 39,§1122; C46, 50, 54, 58, 62, 66, 71, 73, 75,§67.4]

67.5 Duty of governor. The governor, if he finds from said report that matters exist which would be grounds for removing said officer from office, shall proceed as follows:

1. If the officer is an elective state officer, not removable under impeachment proceedings, or if said officer is an appointive state officer, he shall lay a copy of said report before the attorney general.

2. If the officer is an appointive state officer, he shall also lay a copy of said report before the executive council.

3. If the officer is one who is removable only under impeachment proceedings he shall, by written order, forthwith suspend such officer from the exercise of his office, and require him to deliver all the moneys, books, papers, and other property of the state to him, to be disposed of as hereinafter provided. [R60,§48; C73,§760; C97,§1261; C24, 27, 31, 35, 39,§1123; C46, 50, 54, 58, 62, 66, 71, 73, 75,§67.5]

Failure to keep proper accounts, §11.5
Impeachable officers, Constitution, Art. III, §20; also §68.1
Removal by executive council, §66.26
Suspension member state board of regents, §262.5

67.6 Effect of order—penalty. It shall be unlawful for such officer, after the making of such order of suspension, to exercise or attempt to exercise any of the functions of his office until such suspension shall be revoked; and any attempt by the suspended officer to exercise such office shall be punished by imprisonment in the county jail not more than one year, or by a fine not exceeding one thousand dollars, or by both fine and imprisonment. [R60,§49; C73,§761; C97,§1261; C24, 27, 31, 35, 39,§1124; C46, 50, 54, 58, 62, 66, 71, 73, 75, §67.6]

67.7 Salary pending charge. An order of the governor suspending an impeachable state officer from the exercise of his office shall, from the date of said order, automatically suspend the further payment to said officer of all official salary or compensation, except as herein provided. If articles of impeachment are duly voted against said officer during the general assembly first convening after said order, and the accused is convicted thereon, all right to said suspended salary or compensation shall be deemed forfeited by said officer. If said articles are not so voted, or if the said officer be acquitted on duly voted articles, the said suspended salary or compensation shall be forthwith paid to said officer, unless an indictment or its equivalent, growing out of his misconduct while in office, is then pending against the said officer, in which case said salary or compensation shall be paid to said officer only on his acquittal or the dismissal of the charges. [C35,§1124-e1; C39,§1124.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§67.7]

67.8 Temporary appointment. On the making of such order, the governor shall appoint a temporary incumbent of said office. Such appointee, after qualifying, shall perform all the duties and enjoy all the rights belonging to the said office, until the removal of the suspension of his predecessor, or the appointment or election of a successor. [R60,§51; C73,§762; C97,

§1262; C24, 27, 31, 35, 39,§**1125**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§67.8]

Qualification by temporary officer, §§63.9, 68.5

67.9 Governor to protect state. When the governor shall suspend any public officer, he shall direct the proper legal steps to be taken to indemnify the state from loss. [R60,§52; C73, §763; C97,§1263; C24, 27, 31, 35, 39,§**1126**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§67.9]

67.10 Governor to report to general assembly. Forthwith after the organization of the general assembly first convening after the making of said order of suspension, the governor shall lay before it the order and all information and evidence relating thereto in his possession. [C24, 27, 31, 35, 39,§**1127**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§67.10]

67.11 Failure to impeach or convict. The adjournment of such assembly without voting articles of impeachment against such officer or a verdict of "not guilty" on such articles duly preferred, shall work a revocation of such order of suspension. [C24, 27, 31, 35, 39,§**1128**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§67.11]

67.12 Compensation and expenses of commissioners. These commissioners shall be paid a forty-dollar per diem and be reimbursed for actual and necessary expenses, which sum shall be paid out of any unappropriated funds in the state treasury. [R60,§53; C73,§764; C97, §1264; C24, 27, 31, 35, 39,§**1129**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§67.12]

67.13 Reports revealing grounds of removal. When any report as to the condition of a state office, other than the report of said commission, is made and filed under authority of law, and said report reveals grounds for the removal from office of a public officer, the person filing said report shall also file a copy thereof with the governor and with the attorney general. [C24, 27, 31, 35, 39,§**1130**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§67.13]

CHAPTER 68

IMPEACHMENT

68.1 Impeachment defined.
68.2 Specification of charges—majority must concur.
68.3 Board of managers—articles.
68.4 Notice to governor.
68.5 Officer suspended — temporary appointment.
68.6 President of senate—notice to senate.
68.7 Warrant of arrest.
68.8 Appearance—answer—counsel.
68.9 Organization of court.
68.10 Powers of court.
68.11 Record of proceedings — administering oaths.
68.12 Process for witnesses.
68.13 Punishment.
68.14 Compensation—fees—payment.

68.1 Impeachment defined. An impeachment is a written accusation against the governor, or a judge of the supreme or district court, or other state officer, by the house of representatives before the senate, of a misdemeanor or malfeasance in office. [R60,§4937; C73,§4546; C97,§5469; C24, 27, 31, 35, 39,§**1131**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§68.1]

68.2 Specification of charges — majority must concur. An impeachment must specify the offenses charged as in an indictment. If more than one misdemeanor or malfeasance is charged, each shall be stated separately and distinctly. A majority of all the members of the house of representatives elected must concur in the impeachment. [C51,§§3157, 3158; R60,§§4938-4940; C73,§§4547-4549; C97,§5470; C24, 27, 31, 35, 39,§**1132**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§68.2]

68.3 Board of managers — articles. When an impeachment is concurred in, the house of representatives shall elect from its own body seven members whose duty it shall be to prosecute the same, and, as a board of managers, they shall be authorized to exhibit and present articles of impeachment in accordance with the resolutions of the house previously adopted. [C97,§5471; C24, 27, 31, 35, 39,§**1133**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§68.3]

68.4 Notice to governor. When an impeachment is concurred in, the clerk of the house of representatives must forthwith in writing notify the governor thereof. [C97, §5472; C24, 27, 31, 35, 39,§**1134**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§68.4]

68.5 Officer suspended—temporary appointment. Every officer impeached shall be suspended by the governor from the exercise of his official duties until his acquittal, and the governor shall forthwith appoint some suitable person to temporarily fill the office, and he, having qualified as required by law, shall perform all the duties and enjoy all the rights pertaining to the office until the removal of the suspension of his predecessor or the election of a successor. [C51,§3165; R60,§4948; C73,§4554; C97,§5473; C24, 27, 31, 35, 39,§**1135**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§68.5]

Qualification by temporary officer, §§63.9, 67.8

68.6 President of senate—notice to senate. If the president of the senate is impeached, notice thereof must be immediately given to the senate, which shall thereupon choose another president, to hold his office until the result of the trial is determined. [C51,§3167; R60,§4949; C73,§4555; C97,§5474; C24, 27, 31, 35, 39,§**1136**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§68.6]

68.7 Warrant of arrest. When presented with an impeachment, the senate must forthwith cause the person accused to be arrested and brought before it. The warrant of arrest or other process shall be issued by the secretary of the senate, signed by him, and may be served by any person authorized by the senate or president. [C51,§§3159, 3160; R60,§§4941, 4942; C73,§§4550, 4551; C97,§5475; C24, 27, 31, 35, 39,§**1137**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§68.7]

Approval of warrant and expenses, §§79.12, 79.13

68.8 Appearance—answer—counsel. Upon the appearance of the person impeached, he is entitled to a copy of the impeachment, and to a reasonable time in which to answer the same, and shall be allowed counsel as in an ordinary criminal prosecution. [C51,§3161; R60,§4943; C73,§4552; C97,§5476; C24, 27, 31, 35, 39,§**1138**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§68.8]

Referred to in §336B.2
Right to counsel, §775.4
Time to plead, §775.11

68.9 Organization of court. When an impeachment is presented, the senate shall, after the hour of final adjournment of the legislature, be forthwith organized as a court of impeachment for the trial thereof, at the capitol.

An oath or affirmation shall be administered by the secretary of the senate to its president, and by him to each member of that body, to the effect that he will truly and impartially try and determine the charges of impeachment according to the law and evidence.

No member shall sit on the trial or give his evidence thereon until he has taken such oath or affirmation.

The organization of such court shall be perfected when such presiding officer and the members present, but not less than a majority of the whole number, have taken and subscribed the oath or affirmation. [C51,§3162; R60,§4944; C73,§4553; C97,§5477; C24, 27, 31, 35, 39,§**1139**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§68.9]

68.10 Powers of court. The court of impeachment shall sit in the senate chamber, and have power:

1. To compel the attendance of its members as the senate may do when engaged in the ordinary business of legislation.

2. To establish rules necessary for the trial of the accused.

3. To appoint from time to time such subordinate officers, clerks, and reporters as are necessary for the convenient transaction of its business, and at any time to remove any of them.

4. To issue subpoenas, process, and orders, which shall run into any part of the state, and may be served by any adult person authorized so to do by the president of the senate, or by the sheriff of any county, or his deputy, in the name of the state, and with the same force and effect as in an ordinary criminal prosecution, and to compel obedience thereto.

5. To exercise the powers and privileges conferred upon the senate for punishment as for contempts in the chapter entitled "General Assembly".

6. To adjourn from time to time, and to dissolve when its work is completed. [C97,§5478; C24, 27, 31, 35, 39,§**1140**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§68.10]

Contempts, §§2.18-2.23, ch 665

68.11 Record of proceedings—administering oaths. The secretary of the senate, in all cases of impeachment, shall keep a full and accurate record of the proceedings, which shall be a public record; and shall have power to administer all requisite oaths or affirmations, and issue subpoenas for witnesses. [R60,§4959; C73,§4570; C97,§5479; C24, 27, 31, 35, 39,§**1141**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§68.11]

68.12 Process for witnesses. The board of managers and counsel for the person impeached shall each be entitled to process for compelling the attendance of persons or the production of papers and records required in the trial of the impeachment. [C97,§5480; C24, 27, 31, 35, 39,§**1142**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§68.12]

68.13 Punishment. When any person impeached is found guilty, judgment shall be rendered for his removal from office and his disqualification to hold any office of honor, trust, or profit under the state. [C97,§5481; C24, 27, 31, 35, 39,§**1143**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§68.13]

68.14 Compensation—fees—payment. The presiding officer and members of the senate, while sitting as a court of impeachment, and the managers elected by the house of representatives, shall receive the sum of six dollars each per day, and shall be reimbursed for mileage expense in going from and returning to their places of residence by the ordinary traveled routes; the secretary, sergeant at arms, and all subordinate officers, clerks, and reporters, shall receive such amount as shall be determined upon by a majority vote of the members of such court. The same fees shall be allowed to witnesses, to officers, and to other persons serving process or orders, as are allowed for like services in criminal cases, but no fees can be demanded in advance. The state

treasurer shall, upon the presentation of certificates signed by the presiding officer and secretary of the senate, pay all of the foregoing compensations and the expenses of the senate incurred under the provisions of this chapter.

[C97,§5482; C24, 27, 31, 35, 39,§1144; C46, 50, 54, 58, 62, 66, 71, 73, 75,§68.14]

Rate, see §79.9
Sheriff's fees, §337.11
Witness fees, §622.69 et seq.
Witnesses in criminal cases, ch 781

CHAPTER 68A

EXAMINATION OF PUBLIC RECORDS

Referred to in §§93.7, 103A.17, 144.43, 235A.15, 279.16, 279.24, 455B.40, 524.215, 749B.18

68A.1 Public records defined.
68A.2 Citizen's right to examine.
68A.3 Supervision.
68A.4 Hours when available.
68A.5 Enforcement of rights.
68A.6 Penalty.
68A.7 Confidential records.
68A.8 Injunction to restrain examination.
68A.9 Denial of federal funds.

68A.1 Public records defined. Wherever used in this chapter, "public records" includes all records and documents of or belonging to this state or any county, city, township, school corporation, political subdivision, or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing. [C71, 73, 75,§68A.1]

68A.2 Citizen's right to examine. Every citizen of Iowa shall have the right to examine all public records and to copy such records, and the news media may publish such records, unless some other provision of the Code expressly limits such right or requires such records to be kept secret or confidential. The right to copy records shall include the right to make photographs or photographic copies while the records are in the possession of the lawful custodian of the records. All rights under this section are in addition to the right to obtain certified copies of records under section 622.46. [C71, 73, 75, §68A.2]

68A.3 Supervision. Such examination and copying shall be done under the supervision of the lawful custodian of the records or his authorized deputy. The lawful custodian may adopt and enforce reasonable rules regarding such work and the protection of the records against damage or disorganization. The lawful custodian shall provide a suitable place for such work, but if it is impracticable to do such work in the office of the lawful custodian, the person desiring to examine or copy shall pay any necessary expenses of providing a place for such work. All expenses of such work shall be paid by the person desiring to examine or copy. The lawful custodian may charge a reasonable fee for the services of the lawful custodian or his authorized deputy in supervising the records during such work. If copy equipment is available at the office of the lawful custodian of any public records, the lawful custodian shall provide any person a reasonable number of copies of any public record in the custody of the office upon the payment of a fee. The fee for the copying service as determined by the lawful custodian shall not exceed the cost of providing the service. [C71, 73, 75,§68A.3; 66GA, ch 1079,§1]

68A.4 Hours when available. The rights of citizens under this chapter may be exercised at any time during the customary office hours of the lawful custodian of the records. However, if the lawful custodian does not have customary office hours of at least thirty hours per week, such right may be exercised at any time from nine o'clock a.m. to noon and from one o'clock p.m. to four o'clock p.m. Monday through Friday, excluding legal holidays, unless the citizen exercising such right and the lawful custodian agree on a different time. [C71, 73, 75,§68A.4]

68A.5 Enforcement of rights. The provisions of this chapter and all rights of citizens under this chapter may be enforced by mandamus or injunction, whether or not any other remedy is also available. In the alternative, rights under this chapter also may be enforced by an action for judicial review according to the provisions of the Iowa administrative procedure Act, if the records involved are records of an "agency" as defined in that Act. [C71, 73, 75,§68A.5]

68A.6 Penalty. It shall be unlawful for any person to deny or refuse any citizen of Iowa any right under this chapter, or to cause any such right to be denied or refused. Any person knowingly violating or attempting to violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars. [C71, 73, 75,§68A.6]

68A.7 Confidential records. The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release information:

1. Personal information in records regarding a student, prospective student, or former student of the school corporation or educational institution maintaining such records.

2. Hospital records and medical records of the condition, diagnosis, care, or treatment of a patient or former patient, including outpatient.

3. Trade secrets which are recognized and protected as such by law.

4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.

5. Peace officers investigative reports, except where disclosure is authorized elsewhere in this Code.

6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

7. Appraisals or appraisal information concerning the purchase of real or personal property for public purposes, prior to public announcement of a project.

8. Iowa development commission information on an industrial prospect with which the commission is currently negotiating.

9. Criminal identification files of law enforcement agencies. However, records of current and prior arrests shall be public records.

10. Personal information in confidential personnel records of the military department of the state.

11. Personal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors and school districts. [C71, 73, 75,§68A.7]

Referred to in §789A.1

68A.8 Injunction to restrain examination. In accordance with the rules of civil procedure the district court may grant an injunction restraining the examination (including copying) of a specific public record, if the petition supported by affidavit shows and if the court finds that such examination would clearly not be in the public interest and would substantially and irreparably injure any person or persons. The district court shall take into account the policy of this chapter that free and open examination of public records is generally in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Such injunction shall be subject to the rules of civil procedure except that the court in its discretion may waive bond. Reasonable delay by any person in permitting the examination of a record in order to seek an injunction under this section is not a violation of this chapter, if such person believes in good faith that he is entitled to an injunction restraining the examination of such record. [C71, 73, 75,§68A.8]

68A.9 Denial of federal funds. If it is determined that any provision of this chapter would cause the denial of funds, services or essential information from the United States government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information. [C71, 73, 75,§68A.9]

CHAPTER 68B

CONFLICTS OF INTEREST OF PUBLIC OFFICERS AND EMPLOYEES

68B.1 Title of Act.
68B.2 Definitions.
68B.3 When public bids required.
68B.4 When sales prohibited.
68B.5 Gifts solicited or accepted.
68B.6 Services against state prohibited.
68B.7 Ban for two-year period after service.
68B.8 Additional penalty.
68B.9 Actions commenced.
68B.10 Legislative ethics committee.

68B.1 Title of Act. This chapter shall be known as the "Iowa Public Officials Act". [C71, 73, 75,§68B.1]

68B.2 Definitions. When used in this chapter, unless the context otherwise requires:

1. "*Compensation*" means any money, thing of value, or financial benefit conferred in return for services rendered or to be rendered.

2. "*Legislative employee*" means any full-time officer or employee of the general assembly but shall not include members of the general asembly.

3. "*Member of the general assembly*" means any individual duly elected to the senate or the house of representatives of the state of Iowa.

4. "*Regulatory agency*" means department of agriculture, industrial commissioner, bureau of labor, department of job service, department of banking, insurance department of Iowa, state department of health, department of public safety, department of public instruction, state board of regents, department of social services, department of revenue, Iowa state commerce commission, Iowa beer and liquor control department, board of pharmacy examiners, state conservation commission, state department of transportation, Iowa state civil rights commission, department of soil conservation, department of public defense, and Iowa natural resources council.

5. "*Employee*" means any full-time, salaried employee of the state of Iowa and does not in-

clude part-time employees or independent contractors. Employee shall include but not be limited to all clerical personnel.

6. *"Official"* means any officer of the state of Iowa receiving a salary or per diem whether elected or appointed or whether serving full time or part time. Official shall include but not be limited to all supervisory personnel and members of state agencies and shall not include members of the general assembly or legislative employees.

7. *"State agency"* means any state department or division, board, commission, or bureau of the state including regulatory agencies.

Whenever the terms "legislative employee", "member of the general assembly", "employee", or "official" are used in this chapter, the term shall be interpreted to include any firm or association of which any of the above is a member or partner and any corporation of which any of the above holds ten percent or more of the stock either directly or indirectly. The use of the above terms shall also include wives and unemancipated minor children. [C71, 73, 75,§68B.2; 66GA, ch 1068,§38]

68B.3 When public bids required. No official, employee, member of the general assembly, or legislative employee shall sell any goods having a value in excess of five hundred dollars to any state agency unless pursuant to an award or contract let after public notice and competitive bidding. This section shall not apply to the publication of resolutions, advertisements, or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law. [C71, 73, 75,§68B.3]

Referred to in §68B.8
Similar provisions, §§18.5, 86.7, 252.29, 262.10, 314.2, 347.15, 362.5, 403.16, 403A.22, 741.11

68B.4 When sales prohibited. No official or employee of any regulatory agency shall sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the regulatory authority of the agency of which he is an official or employee. [C71, 73, 75,§68B.4]

Referred to in §68B.8

68B.5 Gifts solicited or accepted. No official, employee, member of the general assembly, or legislative employee shall, directly or indirectly, solicit, accept, or receive any gift having a value of twenty-five dollars or more whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form. No person shall, directly or indirectly, offer or make any such gift to any official, employee, member of the general assembly, or legislative employee which has a value in excess of twenty-five dollars. Nothing herein shall preclude campaign contributions or gifts which are unrelated to legislative activities or to state employment. [C71, 73, 75, §68B.5]

Referred to in §68B.8

68B.6 Services against state prohibited. No official, employee, or legislative employee shall receive, directly or indirectly, or enter into any agreement, express or implied, for any compensation, in whatever form, for the appearance or rendition of services by himself or another against the interest of the state in relation to any case, proceeding, application, or other matter before any state agency, any court of the state of Iowa, any federal court, or any federal bureau, agency, commission or department. [C71, 73, 75,§68B.6]

Referred to in §68B.8

68B.7 Ban for two-year period after service. No person who has served as an official or employee of a state agency shall within a period of two years after the termination of such service or employment appear before such state agency or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which such person was directly concerned and in which he personally participated during the period of his service or employment.

No person who has served as the head of or on a commission or board of a regulatory agency or as a deputy thereof, shall within a period of two years after the termination of such service receive compensation for any services rendered on behalf of any person, firm, corporation, or association in any case, proceedings, or application before the department with which he so served wherein his compensation is to be dependent or contingent upon any action by such agency with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit, or in promoting or opposing, directly or indirectly, the passage of bills or resolutions before either house of the general assembly. [C71, 73, 75,§68B.7]

68B.8 Additional penalty. In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violates the provisions of section 68B.3 through 68B.6 and this section shall be guilty of a misdemeanor and may be suspended from his position. [C71, 73, 75,§68B.8]

68B.9 Actions commenced. Actions to enforce the provisions of this chapter may be commenced by any legal resident of the state of Iowa who is eighteen years of age or more at the time of commencing the action or by the attorney general. [C71, 73, 75,§68B.9]

68B.10 Legislative ethics committee. There shall be an ethics committee in the senate and an ethics committee in the house, each to consist of seven members; three members to be appointed by the majority leader in each house, two members by the minority leader in each house and two individuals who shall not be employees of the general assembly by the chief justice of the Iowa supreme court.

The two individuals appointed by the chief justice of the supreme court shall receive a per diem of forty dollars and travel expenses at the same rate as paid members of interim committees for attending meetings of the ethics committee. Members of the general assembly shall receive a per diem of forty dollars and travel expenses at the same rate as paid members of interim committees for attending meetings held when the general assembly is not in session. The per diem and expenses shall be paid from funds appropriated by section 2.12.

Each committee shall elect a chairman and shall have the following powers, duties and functions:

1. Prepare a code of ethics within thirty days after the commencement of the session.

2. Prepare rules relating to lobbyists and lobbying activities in the general assembly.

3. Issue advisory opinions interpreting constitutional and statutory provisions relating to legislators and lobbyists as well as interpreting the code of ethics and rules issued pursuant to this section. Opinions shall be issued when approved by a majority of the seven members and may be issued upon the request of a member of the general assembly or upon the committee's initiation.

4. Investigate complaints and charges against members of its house and if warranted, report the results of such investigation to its house with recommendations for further action.

5. Recommend legislation relating to legislative ethics and lobbying activities.

The code of ethics and rules relating to lobbyists and lobbying activities shall not become effective until approved by the members of the house to which the proposed code and rules apply. The code or rules may be amended either upon the recommendation of the ethics committee or by members of the general assembly.

Violation of the code of ethics may result in the suspension of a member from the general assembly and the forfeiture of his salary if directed by a two-thirds vote of the house to which the member belongs. Such suspension or forfeiture of salary shall be for such duration as specified in the directing resolution provided however, that it cannot extend beyond the date of adjournment of the session. Violation of the rules relating to lobbyists and lobbying activities may result in the suspension of any lobbyist if directed by a two-thirds vote of the house wherein the violation occurred. [C71, 73, 75, §68B.10]

The Chief Justice of Iowa on January 9, 1973, appointed four members of the Legislative Ethics Committee.

CHAPTER 69

VACANCIES IN OFFICE—BOARD MEMBERS—VOTING

Referred to in §§43.79, 63.8

69.1 Holding over.
69.2 What constitutes vacancy.
69.3 Possession of office.
69.4 Resignations.
69.5 Vacancy in general assembly.
69.6 Vacancy in state boards.
69.7 Duty of officer receiving resignation.
69.8 Vacancies—how filled.
69.9 Person removed not eligible.
69.10 Appointments.
69.11 Tenure of vacancy appointee.
69.12 Officers elected to fill vacancies—tenure.
69.13 Vacancies in certain offices.
69.14 Special election to fill vacancies.
69.15 Board members — nonattendance — vacancy.
69.16 Appointive boards—political affiliation.
69.17 Employees as members—voting.

69.1 Holding over. Except when otherwise provided, every officer elected or appointed for a fixed term shall hold office until his successor is elected and qualified, unless he resigns, or is removed or suspended, as provided by law. [C51,§241; C73,§784; C97,§1265; C24, 27, 31, 35, 39,§1145; C46, 50, 54, 58, 62, 66, 71, 73, 75,§69.1]

69.2 What constitutes vacancy. Every civil office shall be vacant upon the happening of either of the following events:

1. A failure to elect at the proper election, or to appoint within the time fixed by law, unless the incumbent holds over.

2. A failure of the incumbent or holdover officer to qualify within the time prescribed by law.

3. The incumbent ceasing to be a resident of the state, district, county, township, city, or ward by or for which he was elected or appointed, or in which the duties of his office are to be exercised. This subsection shall not apply to appointed city officers.

4. The resignation or death of the incumbent, or of the officer-elect before qualifying.

5. The removal of the incumbent from, or forfeiture of, his office, or the decision of a competent tribunal declaring his office vacant.

6. The conviction of incumbent of an infamous crime, or of any public offense involving the violation of his oath of office. [C51,§§334, 429; R60,§§564, 662, 1132; C73,§§504,

686, 781; C97,§1266; C24, 27, 31, 35, 39,§1146; C46, 50, 54, 58, 62, 66, 71, 73, 75,§69.2]

Referred to in §340A.4
Duty of holdover officer to requalify, §63.7
Vacancy on board of supervisors, §331.12
Vacancy on school board, §277.29

69.3 Possession of office. When a vacancy occurs in a public office, possession shall be taken of the office room, the books, papers, and all things pertaining thereto, to be held until the qualification of a successor, as follows: Of the office of the county auditor, by the clerk of the district court; of the clerk or treasurer, by the county auditor; of any of the state officers, by the governor, or, in his absence or inability at the time of the occurrence, as follows: Of the secretary, by the treasurer; of the auditor, by the secretary; of the treasurer, by the secretary and auditor, who shall make an inventory of the money and warrants therein, sign the same, and transmit it to the governor; and the secretary shall take the keys of the safe and desks, after depositing the books, papers, money and warrants therein, and the auditor shall take the key of the office room. [C51, §444; R60,§671; C73,§788; C97,§1267; C24, 27, 31, 35, 39,§1147; C46, 50, 54, 58, 62, 66, 71, 73, 75, §69.3]

69.4 Resignations. Resignations in writing by civil officers may be made as follows, except as otherwise provided:

1. By the governor, to the general assembly, if in session, if not, to the secretary of state.

2. By state senators and representatives, and all officers appointed by the senate or house, or by the presiding officers thereof, to the respective presiding officers of the senate and house, when the general assembly is in session, and such presiding officers shall immediately transmit to the governor information of the resignation of any member thereof; when the general assembly is not in session, all such resignations shall be made to the governor.

3. By senators and representatives in Congress, all officers elected by the qualified voters in the state or any district or division thereof larger than a county, or chosen by the general assembly, all judges of courts of record, all officers, trustees, inspectors, and members of all boards and commissions now or hereafter created under the laws of the state, and all persons filling any position of trust or profit in the state, for which no other provision is made, to the governor.

4. By all county and township officers, to the county auditor, except that of the auditor, which shall be to the board of supervisors.

5. By all councilmen and officers of cities, to the clerk or mayor. [C51,§430; R60,§663; C73, §782; C97,§1268; C24, 27, 31, 35, 39,§1148; C46, 50, 54, 58, 62, 66, 71, 73, 75,§69.4]

69.5 Vacancy in general assembly. When a vacancy shall occur in the office of senator or representative in the general assembly, except by resignation, the auditor of the county of his residence shall notify the governor of such fact and the cause. [C51,§443; R60,§672; C73,§§789, 790; C97,§1269; C24, 27, 31, 35, 39, §1149; C46, 50, 54, 58, 62, 66, 71, 73, 75,§69.5]

69.6 Vacancy in state boards. In case of a vacancy from any cause, other than resignation or expiration of term, occurring in any of the governing boards of the state institutions, the secretary thereof shall immediately notify the governor. [C97,§1270; C24, 27, 31, 35, 39, §1150; C46, 50, 54, 58, 62, 66, 71, 73, 75,§69.6]

69.7 Duty of officer receiving resignation. An officer receiving any resignation, or notice of any vacancy, shall forthwith notify the board, tribunal, or officer, if any, empowered to fill the same by appointment. [C97,§1271; C24, 27, 31, 35, 39,§1151; C46, 50, 54, 58, 62, 66, 71, 73, 75,§69.7]

69.8 Vacancies—how filled. Vacancies shall be filled by the officer or board named, and in the manner, and under the conditions, following:

1. *United States senator.* In the office of United States senator, when the vacancy occurs when the senate of the United States is in session, or when such senate will convene prior to the next general election, by the governor. An appointment made under this subsection shall be for the period until the vacancy is filled by election pursuant to law.

2. *State offices.* In all state offices, judges of courts of record, officers, trustees, inspectors, and members of all boards or commissions, and all persons filling any position of trust or profit in the state, by the governor, except when some other method is specially provided. An appointment made under this subsection to a state office subject to section 69.13, subsection 1, shall be for the period until the vacancy is filled by election pursuant to law.

3. *Supreme court appointees.* In the offices of clerk and Code editor, by the supreme court.

4. *County offices.* In county offices, by the board of supervisors.

5. *Board of supervisors.* In the membership of the board of supervisors, by the clerk of the district court, auditor, and recorder.

6. *Clerk of the district court.* In the office of the clerk of the district court, by the said court or by a judge thereof, by order entered of record in the court journal which order shall be effective until the vacancy shall be filled in the manner provided by law.

7. *Township offices.* In township offices, including trustees, by the trustees, but where the offices of the three trustees are all vacant, the county board of supervisors shall have the power to either instruct the county auditor to fill the vacancies or adopt a resolution stating that the board will exercise all powers and duties assigned by law to the trustees of the township in which such vacancies exist, until such time as the vacancies may be filled by election. [C51,§436; R60,§664; C73,§§513, 783, 794; C97,§1272; S13,§1272; C24, 27, 31, 35, 39,

§1152; C46, 50, 54, 58, 62, 66, 71, 73, 75,§69.8; 66GA, HF 1011,§57]

Auditor temporarily to act as recorder, §335.1
General power of governor, Constitution, Art. IV,§10
Special county medical examiner, §339.2
Vacancies in municipal offices, see §372.13(2)

69.9 Person removed not eligible. No person can be appointed to fill a vacancy who has been removed from office within one year next preceding. [C51,§441; R60,§669; C73,§787; C97, §1273; C24, 27, 31, 35, 39,§1153; C46, 50, 54, 58, 62, 66, 71, 73, 75,§69.9]

69.10 Appointments. Appointments under the provisions of this chapter shall be in writing, and filed in the office where the oath of office is required to be filed. [C51,§439; R60, §667; C73,§785; C97,§1274; C24, 27, 31, 35, 39, §1154; C46, 50, 54, 58, 62, 66, 71, 73, 75,§69.10]

Place of filing oath, §64.23

69.11 Tenure of vacancy appointee. An officer filling a vacancy in an office which is filled by election of the people shall continue to hold until the next election at which such vacancy can be filled, as provided in section 69.12, and until a successor is elected and qualified. Appointments to all other offices, made under this chapter, shall continue for the remainder of the term of each office, and until a successor is appointed and qualified. [C51,§§429, 439; R60,§§662, 667, 1101; C73,§§530, 781, 785; C97, §1276; C24, 27, 31, 35, 39,§1155; C46, 50, 54, 58, 62, 66, 71, 73, 75,§69.11]

Referred to in §230A.6

69.12 Officers elected to fill vacancies—tenure. When a vacancy occurs in any nonpartisan elective office of a political subdivision of this state, the vacancy shall be filled pursuant to this section. As used in this section, "pending election" means any election at which there will be on the ballot either the office in which the vacancy exists, or any other office to be filled or any public question to be decided by the voters of the same political subdivision.

1. If the unexpired term in which the vacancy occurs has more than seventy days to run after the date of the next pending election, the vacancy shall be filled in accordance with this subsection. The fact that absentee ballots were distributed or voted before the vacancy occurred or was declared shall not invalidate the election.

a. A vacancy shall be filled at the next pending election if it occurs:

(1) Sixty or more days prior to the election, if it is a general or primary election.

(2) Forty-five or more days prior to the election, if it is a regularly scheduled school or city election.

(3) Forty or more days prior to the election, if it is a special election.

b. Nomination papers on behalf of candidates for a vacant office to be filled pursuant to paragraph *"a"* of this subsection shall be filed, in the form and manner prescribed by applicable law, by five o'clock p.m. on:

(1) The fifty-fifth day prior to a general or primary election.

(2) The fortieth day prior to a regularly scheduled school or city election.

(3) The twenty-fifth day prior to a special election.

c. A vacancy which occurs at a time when paragraph *"a"* of this subsection does not permit it to be filled at the next pending election shall be filled by appointment as provided by law until the succeeding pending election.

2. When the unexpired term of office in which the vacancy occurs will expire within seventy days after the date of the next pending election, or after the date of a preceding election in which that office was on the ballot, the person elected to the office for the succeeding term shall also be deemed elected to fill the remainder of the unexpired term. If the vacancy is on a multimember body to which more than one nonincumbent is elected for the succeeding term, the nonincumbent who received the most votes shall be deemed elected to fill the remainder of the unexpired term. A person so elected to fill an unexpired term shall qualify within the time required by sections 63.3 and 63.8. Unless other requirements are imposed by law, qualification for the unexpired term shall also constitute qualification for the full term to which the person was elected. [C51,§§431–435; R60,§§672, 1083, 1101; C73,§§513, 530, 789, 794, 795; C97,§§1277, 1278; C24, 27, 31, 35, 39,§§1156, 1157; C46, 50, 54, 58, 62, 66, 71, §§69.12, 69.13; C73, 75,§69.12; 66GA, ch 81,§122, HF 1011,§§58, 59]

Referred to in §§69.11, 230A.6, 277.30, 279.6, 280A.12, 347.10, 347A.1, 358.9, 372.13, 467A.5

69.13 Vacancies in certain offices.

1. *Senator in Congress and elective state officers.* If a vacancy occurs in the office of senator in the Congress of the United States, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture or attorney general seventy-five or more days prior to a general election, and the unexpired term in which the vacancy exists has more than seventy days to run after the date of that general election, the vacancy shall be filled for the balance of the unexpired term at that general election and the person elected to fill the vacancy shall assume office as soon as a certificate of election has been issued and the person has qualified.

2. *County officers.* If a vacancy occurs in the office of county supervisor or in any of the offices listed in section 39.17 sixty or more days prior to a general election, and the unexpired term in which the vacancy exists has more than seventy days to run after the date of that general election, the vacancy shall be filled for the balance of the unexpired term at that general election and the person elected to fill the vacancy shall assume office as soon as

a certificate of election has been issued and the person has qualified. [66GA, ch 81,§§4, 5]

Referred to in §§2.27, 43.6, 43.77, 69.8

69.14 Special election to fill vacancies. A special election to fill a vacancy shall be held for a representative in Congress, or senator or representative in the general assembly, when the body in which such vacancy exists is in session, or will convene prior to the next general election, and the governor shall order, not later than five days from the date the vacancy exists, a special election, giving not less than forty days' notice of such election. In the event the special election is to fill a vacancy in the general assembly while it is in session or within forty-five days of the convening of any session, the time limit herein provided shall not apply and the governor shall order such special election at the earliest practical time, giving at least ten days' notice thereof. Any special election called under this section must be held on a Tuesday. [C51,§443; R60,§672; C73,§789; C97,§1279; C24, 27, 31, 35, 39,§1158; C46, 50, 54, 58, 62, 66, 71, 73, 75,§69.14; 66GA, ch 81,§123]

Referred to in §§43.73, 43.78, 44.4, 48.27, 49.11, 50.46
See §43.78, subsection 4

69.15 Board members—nonattendance—vacancy. Any person who has been appointed by the governor to any board under the laws of this state shall be deemed to have submitted his resignation from such office if either of the following events occurs:

1. He does not attend three or more consecutive regular meetings of such board. This paragraph does not apply unless the first and last of the consecutive meetings counted for this purpose are at least thirty days apart.

2. He attends less than one-half of the regular meetings of such board within any period of twelve calendar months beginning on July 1 or January 1. This paragraph does not apply unless such board holds at least four regular meetings during such period. This paragraph applies only to such a period beginning on or after the date when he takes office as a member of such board.

If such person received no notice and had no knowledge of a regular meeting and gives the governor his sworn statement to that effect within ten days after he learns of the meeting, such meeting shall not be counted for the purposes of this section.

The governor in his discretion may accept or reject such resignation. If he accepts it, he shall notify such person, in writing, that his resignation is accepted pursuant to this section. The governor shall then make another appointment to such office. Such appointment shall be made in the same manner and for the same term as in the case of other vacancies caused by resignation from such office.

As used in this section, "board" includes any commission, committee, agency, or governmental body which has three or more members. [C71, 73, 75,§69.15]

69.16 Appointive boards — political affiliation. It is declared the policy of the state of Iowa that all appointive boards, commissions, and councils of the state established by the Code if not otherwise provided by law shall be bipartisan in their composition. No person shall be appointed or reappointed to any board, commission, or council established by the Code if the effect of that appointment or reappointment would cause the number of members of the board, commission, or council belonging to one political party to be greater than one-half the membership of the board, commission, or council plus one.

In the case where the appointment of members of the general assembly is allowed, and the law does not otherwise provide, if an even number of legislators are appointed they shall be equally divided by political party affiliation; if an odd number of members of the general assembly is appointed, the number representing a certain political party shall not exceed by more than one the legislative members of the other political party who may be appointed. This section shall not apply to any board, commission, or council established by the Code for which other restrictions regarding the political affiliations of members are provided by law or for which the membership is appointed by more than one person. [66GA, ch 1081,§1]

69.17 Employees as members — voting. If an employee of an appointive board, commission, or council is a member of the board, commission, or council, that employee shall not be a voting member. Payment of per diem and expenses shall not cause a member to be considered an employee of that board, commission or council. [66GA, ch 1081,§2]

CHAPTER 70

VETERANS PREFERENCE LAW

Referred to in §372.8

Veterans preference laws applicable to newsstands in the capitol, §19.16, in courthouses, §332.5; discrimination against members of armed forces, §29A.43; leave of absence, §29A.28; paroles for persons entering military service, §247.9; pardon for paroled persons in military service, §248.4; no tuition at public school, §282.6; general tax relief, chapters 250 and 427; homestead tax credit, §§425.2—425.4, 425.11, 425.15; retirement for policemen and firemen, §§411.9, 411.10.

70.1 Appointments and promotions.
70.2 Physical disability.
70.3 Duty to investigate and appoint.
70.4 Mandamus—judicial review.
70.5 Appeals.
70.6 Removal—certiorari—judicial review.
70.7 Burden of proof.
70.8 Exceptions.

70.1 Appointments and promotions. In every public department and upon all public works in the state, and of the counties, cities, and school corporations thereof, honorably discharged men and women from the military or naval forces of the United States in any war in which the United States was or is now engaged, including the Philippine Insurrection, China Relief Expedition, and the Korean Conflict at any time between June 25, 1950 and January 31, 1955, both dates inclusive, and the Vietnam Conflict beginning August 5, 1964, and ending on the date the armed forces of the United States are directed by formal order of the government of the United States to cease hostilities, both dates inclusive, who are citizens and residents of this state shall be entitled to preference in appointment, employment, and promotion over other applicants of no greater qualifications. For the purposes of this section World War II shall mean service in the armed forces of the United States between December 7, 1941, and December 31, 1946, both dates inclusive. [S13, §1056-a15; C24, 27, 31, 35, 39§**1159**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§70.1; 66GA, ch 76,§3]

Referred to in §70.5

70.2 Physical disability. The persons thus preferred shall not be disqualified from holding any position hereinbefore mentioned on account of age or by reason of any physical disability, provided such age or disability does not render such person incompetent to perform properly the duties of the position applied for. [S13,§1056-a15; C24, 27, 31, 35, 39,§**1160**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§70.2]

70.3 Duty to investigate and appoint. When any preferred person shall apply for appointment or employment under this chapter, the officer, board, or person whose duty it is or may be to appoint or employ some person to fill such position or place shall, before appointing or employing anyone to fill such position or place, make an investigation as to the qualifications of said applicant for such place or position, and if the applicant is of good moral character and can perform the duties of said position so applied for, as hereinbefore provided, said officer, board, or person shall appoint said applicant to such position, place, or employment. Said appointing officer, board or person shall set forth in writing and file for public inspection, the specific grounds upon which it is held that the person appointed is entitled to said appointment, or in the case such appointment is refused, the specific grounds for the refusal thereof. [S13,§1056-a15; C24, 27, 31, 35, 39,§**1161**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§70.3]

70.4 Mandamus—judicial review. A refusal to allow said preference, or a reduction of the salary for said position with intent to bring about the resignation or discharge of the incumbent, shall entitle the applicant or incumbent, as the case may be, to maintain an action of mandamus to right the wrong. At their election such parties may, in the alternative, maintain an action for judicial review in accordance with the terms of the Iowa administrative procedure Act if that is otherwise applicable to their case. [S13,§§1056-a15, -a16; C24, 27, 31, 35, 39,§**1162**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§70.4]

Referred to in §70.5

70.5 Appeals. In addition to the remedy provided in section 70.4, an appeal may be taken by any person belonging to any of the classes of persons to whom a preference is hereby granted, from any refusal to allow said preference, as provided in this chapter, to the district court of the county in which such refusal occurs. The appeal shall be made by serving upon the appointing board within twenty days after the date of the refusal of said appointing officer, board, or persons to allow said preference, a written notice of such appeal stating the grounds of the appeal; a demand in writing for a certified transcript of the record, and all papers on file in his office affecting or relating to said appointment. Thereupon, said appointing officer, board, or person shall, within ten days, make, certify, and deliver to appellant such a transcript; and the appellant shall, within five days thereafter, file the same and a copy of the notice of appeal with the clerk of said court, and said notice of appeal shall stand as appellant's complaint and thereupon said cause shall be accorded such preference in its assignment for trial as to assure its prompt disposition. The court shall receive and consider any pertinent evidence, whether oral or documentary, concerning said

appointment from which the appeal is taken, and if the court shall find that the said applicant is qualified as defined in section 70.1, to hold the position for which he has applied, said court shall, by its mandate, specifically direct the said appointing officer, board or persons as to their further action in the matter. An appeal may be taken from judgment of the said district court on any such appeal on the same terms as an appeal is taken in civil actions. At their election parties entitled to appeal under this section may, in the alternative, maintain an action for judicial review in accordance with the terms of the Iowa administrative procedure Act if that is otherwise applicable to their case. [C35,§1162-g1; C39, §1162.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§70.5]

Appeals, R.C.P. 335, 336, and 353

70.6 Removal—certiorari—judicial review. No person holding a public position by appointment or employment, and belonging to any of the classes of persons to whom a preference is herein granted, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, and with the right of such employee or appointee to a review by a writ of certiorari or at such person's election, to judicial review in accordance with the terms of the Iowa administrative procedure Act if that is otherwise applicable to their case. [S13,§1056-a16; C24, 27, 31, 35, 39,§1163; C46, 50, 54, 58, 62, 66, 71, 73, 75,§70.6]

70.7 Burden of proof. The burden of proving incompetency or misconduct shall rest upon the party alleging the same. [S13,§1056-a16; C24, 27, 31, 35, 39,§1164; C46, 50, 54, 58, 62, 66, 71, 73, 75,§70.7]

40GA, ch 227,§6, editorially divided

70.8 Exceptions. Nothing in this chapter shall be construed to apply to the position of private secretary or deputy of any official or department, or to any person holding a strictly confidential relation to the appointing officer. [S13,§1056-a16; C24, 27, 31, 35, 39,§1165; C46, 50, 54, 58, 62, 66, 71, 73, 75,§70.8]

CHAPTER 71

NEPOTISM

71.1 Employments prohibited.
71.2 Payment prohibited.

71.1 Employments prohibited. It shall hereafter be unlawful for any person elected or appointed to any public office or position under the laws of the state or by virtue of the ordinance of any city in the state, to appoint as deputy, clerk, or helper in said office or position to be paid from the public funds, any person related by consanguinity or affinity, within the third degree, to the person elected, appointed, or making said appointment, unless such appointment shall first be approved by the officer, board, council, or commission whose duty it is to approve the bond of the principal; provided this provision shall not apply in cases where such person appointed receives compensation at the rate of six hundred dollars per year or less, nor shall it apply to persons teaching in public schools, nor shall it apply to the employment of clerks of members of the general assembly. [C24, 27, 31, 35, 39,§1166; C46, 50, 54, 58, 62, 66, 71, 73, 75,§71.1]

Approving officers and boards, §64.19
Computation of degrees, §4.1(23)

71.2 Payment prohibited. No person so unlawfully appointed or employed shall be paid or receive any compensation from the public money and such appointment shall be null and void and any person or persons so paying the same or any part thereof, together with his bondsmen, shall be liable for any and all moneys so paid. [C24, 27, 31, 35, 39,§1167; C46, 50, 54, 58, 62, 66, 71, 73, 75,§71.2]

CHAPTER 72

DUTIES RELATIVE TO PUBLIC CONTRACTS

Referred to in §255.24

(See also ch 23 relating to public contracts and bonds)

72.1 Unauthorized contracts.
72.2 Executive council may authorize indebtedness.
72.3 Divulging contents of sealed bids.
72.4 Penalty.

72.1 Unauthorized contracts. Officers empowered to expend, or direct the expenditure of, public money of the state shall not make any contract for any purpose which contemplates an expenditure of such money in excess of that authorized by law. [R60,§2181; C73,§127; C97,§§185, 186; C24, 27, 31, 35, 39,§1168; C46, 50, 54, 58, 62, 66, 71, 73, 75,§72.1]

Analogous provision, §348.10

72.2 Executive council may authorize indebtedness. Nothing herein contained shall prevent the incurring of an indebtedness on account of support funds for state institutions, upon the prior written direction of the executive council, specifying the items and amount of such indebtedness to be increased, and the necessity therefor. [C97,§186; C24, 27, 31, 35, 39,§1169; C46, 50, 54, 58, 62, 66, 71, 73, 75,§72.2]

72.3 Divulging contents of sealed bids. No public officer or deputy thereof, if any, shall directly or indirectly or in any manner whatsoever, at any other time or in any other manner than as provided by law, open any sealed bid or convey or divulge to any person any part of the contents of a sealed bid, on any proposed contract concerning which a sealed bid is required or permitted by law. [S13, §1279-a; C24, 27, 31, 35, 39,§1170; C46, 50, 54, 58, 62, 66, 71, 73, 75,§72.3]

Referred to in §72.4

72.4 Penalty. A violation of the provisions of section 72.3 shall, in addition to criminal liability, render the violator liable, personally and on his bond, if any, to liquidated damages in the sum of one thousand dollars for each violation, to inure to and be collected by the state, county, city, school corporation or other municipal corporation of which the violator is an officer or deputy. [S13,§1279-a; C24, 27, 31, 35, 39,§1171; C46, 50, 54, 58, 62, 66, 71, 73, 75,§ 72.4]

CHAPTER 73

PREFERENCE FOR IOWA PRODUCTS AND LABOR

See also ch 23 relating to public contracts and bonds

73.1 Preference authorized—conditions.
73.2 Advertisements for bids—form.
73.3 Iowa labor.
73.4 "Person" defined.
73.5 Violations.
73.6 Iowa coal.
73.7 Bids and contracts.
73.8 Name of producer and mine.
73.9 Violations—remedy.
73.10 Exceptions.
73.11 Inconsistency with federal law.

73.1 Preference authorized — conditions. Every commission, board, committee, officer or other governing body of the state, or of any county, township, school district or city, and every person acting as contracting or purchasing agent for any such commission, board, committee, officer or other governing body shall use only those products and provisions grown and coal produced within the state of Iowa, when they are found in marketable quantities in the state and are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states. [C27, 31, 35,§1171-b1; C39,§1171.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§73.1]

73.2 Advertisements for bids — form. All requests hereafter made for bids and proposals for materials, products, supplies, provisions and other needed articles to be purchased at public expense, shall be made in general terms and by general specifications and not by brand, trade name or other individual mark. All such requests and bids shall contain therein a paragraph in easily legible print, reading as follows:

"By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the state of Iowa." [C27, 31, 35,§1171-b2; C39,§1171.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§73.2]

73.3 Iowa labor. Every commission, board, committee, officer or other governing body of the state, or of any county, township, school district or city, and every person acting as contracting agent for any such commission, board, committee, officer or other governing body of the state, or of any county, township, school district or city, shall give preference to Iowa labor in the constructing or building of any public improvement or works, and every contract entered into by any such commission, board, committee, officer or other governing body of the state for the construction or building of any public improvement or works shall contain a provision requiring that preference shall be given to Iowa domestic labor in the constructing or building of such public improvement or works. [C31, 35,§1171-d1; C39,§1171.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§73.3]

Referred to in §73.5

73.4 "Person" defined. A person shall be deemed to be a domestic laborer of this state if he is a citizen and has resided in this state

for more than six months. [C31, 35,§1171-d2; C39,§1171.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, §73.4]

Referred to in §73.5

73.5 Violations. Any officer or person who is connected with, or is a member or agent or representative of any commission, board, committee, officer or other governing body of this state, or of any county, township, school district, city, or contractor, who fails to give preference to Iowa labor as required in sections 73.3 and 73.4, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not to exceed one hundred dollars, or by imprisonment in the county jail for not to exceed thirty days. Each separate case of failure to give preference to Iowa labor shall constitute a separate offense. [C31, 35, §1171-d3; C39,§1171.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§73.5]

73.6 Iowa coal. It shall be unlawful for any commission, board, county officer or other governing body of the state, or of any county, township, school district or city, to purchase or use any coal, except that mined or produced within the state by producers who are, at the time such coal is purchased and produced, complying with all the workers' compensation and mining laws of the state. The provisions of this section shall not be applicable if coal produced within the state cannot be procured of a quantity or quality reasonably suited to the needs of such purchaser, nor if the equipment now installed is not reasonably adapted to the use of coal produced within the state, nor if the use of coal produced within the state would materially lessen the efficiency or increase the cost of operating such purchaser's heating or power plant, nor to mines employing miners not now under the provisions of the workers' compensation Act or who permit the miners to work in individual units in their own rooms. [C39,§1171.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, §73.6; 66GA, ch 1084,§43]

Referred to in §§73.7, 73.9, 73.10

73.7 Bids and contracts. Before any user of coal designated in section 73.6, whose annual consumption of coal exceeds, in delivered value, the sum of three hundred dollars, shall purchase any coal, it shall make request for bids for such coal by advertising in a newspaper published in the county in which the purchaser has its principal office, and such advertisement shall, among other things, state the date, time and place such bids shall be received, which date and time shall not be less than fifteen days after publication, and the advertisement shall contain the approximate quantity and description of coal to be purchased, and the bids for such coal shall be opened in public at the time, date and place indicated in the said advertisement and, unless the purchasing body shall determine that the general good of the state, including the best interests of the taxpayer and the employment of labor, the adaptability of the coal offered, or the efficiency and cost of operation of purchaser's plant makes it advisable to do otherwise, the contract shall be let to the lowest responsible bidder, but any and all bids may be rejected; however, if all bids are rejected, then an advertisement for bids shall again be made as hereinbefore provided. After any bid is accepted, a written contract shall be entered into and the successful bidder shall furnish a good and sufficient bond with qualified sureties for the faithful performance of the contract. Any contract for purchase of coal provided for in sections 73.6 to 73.9 may contain the provision that the purchaser may, in the event of an emergency, purchase coal elsewhere without advertising for bids in any year, for not more than ten percent of said purchaser's annual coal requirements. [C39, §1171.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§73.7]

Referred to in §§73.8, 73.9, 73.10

73.8 Name of producer and mine. No bid for coal produced in Iowa which comes under the provisions of section 73.7, shall be considered unless it states the name of the producer and gives the location of the mine from which the coal is to be produced. [C39,§1171.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§73.8]

Referred to in §§73.7, 73.9, 73.10

73.9 Violations—remedy. Any contract entered into or carried out in whole or in part, in violation of the provisions of sections 73.6 to 73.8 shall be void and such contract or any claim growing out of the sale, delivery or use of the coal specified therein, shall be unenforceable in any court. In addition to any other proper party or parties, any unsuccessful bidder at a letting provided for in said sections shall have the right to maintain an action in equity to prevent the violation of the terms of said sections. [C39,§1171.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§73.9]

Referred to in §§73.7, 73.10

73.10 Exceptions. The provisions of sections 73.6 to 73.9 shall not apply to municipally owned and operated public utilities. [C39, §1171.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§73.10]

73.11 Inconsistency with federal law. If it is determined by the attorney general that any provision of this chapter would cause denial of funds or services from the United States government which would otherwise be available, or would otherwise be inconsistent with requirements of federal law, such provision shall be suspended, but only to the extent necessary to prevent denial of such funds or services or to eliminate the inconsistency with federal requirements. [C75,§73.11]

CHAPTER 74

PUBLIC WARRANTS NOT PAID FOR WANT OF FUNDS

Referred to in §§384.10, 455.198

74.1 Applicability.
74.2 Endorsement and interest.
74.3 Record of warrants.
74.4 Assignment of warrant.
74.5 Call for payment.
74.6 Mailing notice—terminating interest.
74.7 Endorsement of interest.
74.8 School district warrants.

74.1 Applicability. This chapter shall apply to all warrants which are legally drawn on a public treasury, including the treasury of a city, and which, when presented for payment, are not paid for want of funds.

This chapter and its procedures shall also apply whenever a municipality, as defined in section 24.2, or a city shall determine that there are not or will not be sufficient funds on hand to pay the legal obligations of a fund. Said municipality is authorized to provide for the payment of such present and future obligations by drawing one or more anticipatory warrants payable to a bank or other business entity authorized by law to loan money in an amount or amounts legally available and believed to be sufficient to cover the anticipated deficiencies. The duties imposed on the treasurer by this chapter may be assigned by the city council to another city officer. [C35, §1171-f1; C39,§**1171.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§74.1]

74.2 Endorsement and interest. Except as provided in section 74.8, when any such warrant is presented for payment, and not paid for want of funds, or only partially paid, the treasurer shall endorse the fact thereon, with the date of presentation, and sign said endorsement, and thereafter said warrant or the balance due thereon, shall draw interest at five percent per annum on state and county warrants, and five percent per annum on city and school warrants, unless the treasurer arranges for the sale of said warrant at par at a lower rate of interest. [C51,§§65, 153; R60,§§86, 361; C73,§§78, 328, 1748; C97,§§104, 483, 660, 2768; S13,§§104, 483; C24, 27, 31,§§135, 4318, 5160, 5645, 7496; C35,§1171-f2; C39,§**1171.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§74.2]

Referred to in §74.8

74.3 Record of warrants. The treasurer shall keep a record of all warrants so endorsed, which record shall show the number and amount, the date of presentation, and the name and post-office address of the holder, of each warrant. [C51,§§66, 153; R60,§§87, 361; C73,§§79, 328; C97,§§105, 483, 660; S13,§483; C24, 27, 31, §§136, 5160, 5646, 7496; C35,§1171-f3; C39,§**1171.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§74.3]

74.4 Assignment of warrant. When any warrant shall be assigned or transferred after being so endorsed, the assignee or transferee shall be under duty, for his own protection, to notify the treasurer in writing of such assignment or transfer and of his post-office address. Upon receiving such notification, the treasurer shall correct the aforesaid record accordingly. [C24, 27, 31,§7497; C35,§1171-f4; C39,§**1171.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§74.4]

74.5 Call for payment. When the treasurer has funds on hand in the fund on which such warrants are drawn, sufficient to pay a warrant, he shall, by notice posted at his office and in a place readily accessible to the public, call said warrant or warrants for payment, giving the number thereof. Said warrants shall be paid in the order of presentation. [C51,§§66, 153; R60,§§87, 361; C73,§§79, 328; C97,§§105, 484, 660; C24, 27, 31,§§136, 5161, 5647; 7496; C35,§1171-f5; C39,§**1171.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §74.5]

74.6 Mailing notice — terminating interest. In addition to the posting aforesaid, the treasurer shall mail to each holder of a warrant, in accordance with the aforesaid record, a notice of his readiness to pay said warrant, describing it by number and amount, and note the date of such mailing on the record aforesaid. On the expiration of thirty days from the date of said mailing, interest on said warrant shall cease irrespective of the posting aforesaid. [C51,§§66, 153; R60,§§87, 361; C73,§§79, 328; C97,§§105, 484, 660; C24, 27, 31,§§136, 5161, 5647, 7496, 7498; C35,§1171-f6; C39,§**1171.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§74.6]

74.7 Endorsement of interest. When a warrant which legally draws interest is paid, the treasurer shall endorse upon it the date of payment, and the amount of interest allowed. [C51,§153; R60,§361; C73,§328; C97,§§484, 660; C24, 27, 31,§§5161, 5646, 5648, 7496; C35,§1171-f7; C39,§**1171.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §74.7]

Analogous section, §452.2

74.8 School district warrants. The treasurer of a school district shall sell the warrants at the maximum rate of interest provided in section 74.2 or at a lower rate of interest.

Each bank or other business entity authorized by law to loan money which refuses to purchase such warrants at the rate of interest provided in this section or at a lower rate of interest, shall submit a certificate of refusal to the treasurer of the school district.

If the treasurer of a school district is unable to sell the warrants at the maximum rate of

interest provided in this section or at a lower rate of interest and receives at least two certificates of refusal, the treasurer may offer the warrants for public sale, by publishing notice of the sale for two consecutive weeks in a newspaper of general circulation in the jurisdiction of the governing body issuing the warrants, giving not less than ten days' notice of the time and place of the sale. The notice shall include a statement of the amount of the warrants offered for sale.

Sealed bids may be received at any time up to the time all bids are opened. The treasurer shall sell the warrants to the lowest bidder, however, the treasurer may reject all bids and readvertise the sale of such warrants pursuant to the provisions of this section.

This provision shall apply only to school districts whose anticipated receipts allocable to the current budget are at least equal to their legally approved budget for the current year. [C71, 73, 75,§74.8]

Referred to in §74.2

CHAPTER 75

AUTHORIZATION AND SALE OF PUBLIC BONDS

Referred to in §§145A.17, 262.57, 262A.5, 263A.3, 274.37, 309.52, 313A.13, 332.44, 346.4, 346.23, 346A.3, 384.27, 384.29, 384.68, 384.82, 384.83, 386.14, 394.2, 403.12(5)

See also ch 23 relating to public contracts and bonds

75.1 Bonds—election—vote required.
75.2 Notice of sale.
75.3 Sealed and open bids.
75.4 Rejection of bids.
75.5 Selling price.
75.6 Commission and expense.
75.7 Penalty.
75.8 Sale of state bonds.
75.9 Exchange of bonds.
75.10 Denominations of bonds.
75.11 Interest rate on bonds and interest rate on assessments.
75.12 Maximum interest rates.

75.1 Bonds—election—vote required. When a proposition to authorize an issuance of bonds by a county, township, school corporation, city, or by any local board or commission, is submitted to the electors, such proposition shall not be deemed carried or adopted, anything in the statutes to the contrary notwithstanding, unless the vote in favor of such authorization is equal to at least sixty percent of the total vote cast for and against said proposition at said election.

All ballots cast and not counted as a vote for or against the proposition shall not be used in computing the total vote cast for and against said proposition.

When a proposition to authorize an issuance of bonds has been submitted to the electors under this section and the proposal fails to gain approval by the required percentage of votes, such proposal, or any proposal which incorporates any portion of the defeated proposal, shall not be submitted to the electors for a period of six months from the date of such regular or special election. [C31, 35, §1171-d4; C39,§1171.18; C46, 50, 54, 58, 62, 66, 71, 73, 75,§75.1]

75.2 Notice of sale. When public bonds are offered for sale, the official or officials in charge of such bond issue shall, by advertisement published for two or more successive weeks in at least one newspaper located in the county, give notice of the time and place of sale of said bonds, the amount to be offered for sale, and any further information which may be deemed pertinent. [C24, 27, 31, 35, 39,§1172; C46, 50, 54, 58, 62, 66, 71, 73, 75,§75.2]

75.3 Sealed and open bids. Sealed bids may be received at any time prior to the calling for open bids. After the sealed bids are all filed, the official or officials shall call for open bids. After all of the open bids have been received the substance of the best open bid shall be noted in the minutes. The official or officials shall then open any sealed bids that may have been filed and they shall note in the minutes the substance of the best sealed bid. [C24, 27, 31, 35, 39,§1173; C46, 50, 54, 58, 62, 66, 71, 73, 75,§75.3]

75.4 Rejection of bids. Any or all bids may be rejected, and the sale may be advertised anew, in the same manner, or the bonds or any portion thereof may thereafter be sold at private sale to any one or more of such bidders, or other persons, by popular subscription or otherwise. In case of private sales, the said bonds shall be sold upon terms not less favorable to the public than the most favorable bid made by a bona fide and responsible bidder at the last advertised sale. [C24, 27, 31, 35, 39, §1174; C46, 50, 54, 58, 62, 66, 71, 73, 75,§75.4]

75.5 Selling price. No public bond shall be sold for less than par, plus accrued interest. [C24, 27, 31, 35, 39,§1175; C46, 50, 54, 58, 62, 66, 71, 73, 75,§75.5]

75.6 Commission and expense. No commission shall be paid, directly or indirectly, in connection with the sale of a public bond. No

expense shall be contracted or paid in connection with such sale other than the expenses incurred in advertising such bonds for sale. [C24, 27, 31, 35, 39,§1176; C46, 50, 54, 58, 62, 66, 71, 73, 75,§75.6]

75.7 Penalty. Any public officer who fails to perform any duty required by this chapter or who does any act prohibited by this chapter, shall be guilty of a misdemeanor. [C24, 27, 31, 35, 39,§1177; C46, 50, 54, 58, 62, 66, 71, 73, 75, §75.7]

Punishment, §687.7

75.8 Sale of state bonds. All contracts for the sale of bonds issued by the state shall be subject to the approval of the executive council. [C24, 27, 31, 35, 39,§1178; C46, 50, 54, 58, 62, 66, 71, 73, 75,§75.8]

75.9 Exchange of bonds. Nothing in this chapter shall be deemed to prevent the exchange of bonds for legal indebtedness evidenced by bonds, warrants, or judgments as otherwise provided by law. [C24, 27, 31, 35, 39, §1179; C46, 50, 54, 58, 62, 66, 71, 73, 75,§75.9]

75.10 Denominations of bonds. Notwithstanding any other provisions in the statutes to the contrary, issues of public bonds of every kind and character by counties, cities and school corporations shall be issued in amounts of one hundred dollars or multiples thereof not to exceed ten thousand dollars. This provision shall not apply to bonds, the interest or principal, or both, of which are payable out of special assessments against benefited properties. [C66, 71, 73, 75,§75.10]

75.11 Interest rate on bonds and interest rate on assessments. No bonds payable from special assessments shall be sold bearing a higher rate of interest than is payable on the assessments from which such bonds are made payable. [C71, 73, 75,§75.11]

75.12 Maximum interest rates. Unless otherwise provided by law, the maximum rates of interest on all bonds issued by a city shall be as follows:

1. General obligation bonds or other evidences of indebtedness payable from general taxation may bear interest at a rate not exceeding seven percent per annum.

2. Revenue bonds or obligations, the principal and interest of which are to be paid solely and only from the revenue derived from the operations of the project for which the bonds or obligations are issued, may bear interest at a rate not exceeding seven and one-half percent per annum. This subsection shall not apply to revenue bonds issued pursuant to chapter 419.

3. Special assessment bonds or certificates, the principal and interest of which are payable from special assessments levied against benefited property may bear interest at a rate not exceeding seven percent per annum. [66GA, ch 203,§5]

CHAPTER 76

MATURITY AND PAYMENT OF BONDS

Referred to in §§145A.18, 280A.20, 296.1, 298.18, 309.73, 330.7, 330.16, 346A.3, 384.32, 386.11, 394.1
See also ch 23 relating to public contracts and bonds

76.1 Mandatory retirement.
76.2 Mandatory levy.
76.3 Tax limitations.
76.4 Permissive application of funds.
76.5 Exceptions.
76.6 Place of payment.

EXTENSION OR RENEWAL OF BONDS

76.7 Particular bonds affected—payment.
76.8 Laws applicable.
76.9 No limit of former power.

76.1 Mandatory retirement. Hereafter issues of bonds of every kind and character by counties, cities, and school corporations shall be consecutively numbered. The annual levy shall be sufficient to pay the interest and approximately such portion of the principal of the bonds as will retire them in a period not exceeding twenty years from date of issue. Each issue of bonds shall be scheduled to mature serially in the same order as numbered. [C27, 31, 35,§1179-b1; C39,§1179.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§76.1]

76.2 Mandatory levy. The governing authority of these political subdivisions before issuing bonds shall, by resolution, provide for the assessment of an annual levy upon all the taxable property in such public corporation sufficient to pay the interest and principal of such bonds within a period named not exceeding twenty years. A certified copy of this resolution shall be filed with the county auditor or auditors of the counties, as the case may be, in which such public corporation is located; and the filing thereof shall make it a duty of such officer or officers to enter annually this levy for collection until funds are realized to pay the bonds in full.

If the resolution is so filed prior to April 1, said annual levy shall begin with the tax levy of the year of filing. If the resolution is filed

after April 1 in any year, such levy shall begin with the levy of the fiscal year succeeding the year of the filing of such resolution. However, the governing authority of a political subdivision may adjust any levy of taxes made under the provisions of this section, for the purpose of adjusting the annual levies and collections in accordance with the provisions of this Act,* subject to the approval of the state comptroller. [C27, 31, 35,§1179-b2; C39, §**1179.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§76.2]

Referred to in §24.9
*64GA, ch 1020

76.3 Tax limitations. Tax limitations in any law for the issuance of bonds shall be based on the latest equalized actual valuation then existing and shall only restrict the amount of bonds which may be issued. For the sole purpose of computing the amount of bonds which may be issued as a result of the application of any such tax limitation, all interest on the bonds in excess of that accruing in the first twelve months may be excluded from the first annual levy of taxes, so that the need for including more than one year's interest in the first annual levy of taxes to pay the bonds and interest shall not operate to further restrict the amount of bonds which may be issued, and in certifying the annual levies to the county auditor or auditors such first annual levy of taxes shall be sufficient to pay all principal of and interest on said bonds becoming due prior to the next succeeding annual levy and the full amount of such first annual levy shall be entered for collection by said auditor or auditors, as provided in this chapter. [C31, 35,§1179-c1; C39,§**1179.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§76.3]

76.4 Permissive application of funds. Whenever the governing authority of such political subdivision shall have on hand funds derived from any other source than taxation which may be appropriated to the payment either of interest or principal, or both principal and interest of such bonds, such funds may be so appropriated and used and the levy for the payment of the bonds correspondingly reduced. [C27, 31, 35,§1179-b3; C39,§**1179.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§76.4]

76.5 Exceptions. The provisions of this chapter shall not apply to bonds, the interest or principal of which are payable out of the primary road fund or out of special assessments against benefited property. [C27, 31, 35, §1179-b4; C39,§**1179.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§76.5]

76.6 Place of payment. The principal and interest of all bonds of a public corporation in this state are payable at the office of the treasurer or public official charged with the duty of making payment, unless the proceedings of the governing body authorizing the issuance of the bonds provide that the bonds and interest thereon may also be payable at one or more banks or trust companies within or without the state of Iowa or as may be otherwise provided by chapter 419. [C35, §1179-f1; C39,§**1179.6**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§76.6]

EXTENSION OR RENEWAL OF BONDS

76.7 Particular bonds affected — payment. Counties, cities and school corporations may at any time or times extend or renew any legal indebtedness or any part thereof they may have represented by bonds or certificates where such indebtedness is payable from a limited annual tax or from a voted annual tax, and may by resolution fund or refund the same and issue bonds therefor running not more than twenty years to be known as funding or refunding bonds, and make provision for the payment of the principal and interest thereof from the proceeds of an annual tax for the period covered by such bonds similar to the tax authorized by law or by the electors for the payment of the indebtedness so extended or renewed. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §76.7]

Referred to in §76.9

76.8 Laws applicable. All laws relating to the issuance of funding or refunding bonds by counties, cities and school corporations, as the case may be, not inconsistent with the provisions herein contained and to the extent the same may be applicable, shall govern the issuance of the funding and refunding bonds for the purpose herein authorized. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§76.8]

Referred to in §76.9

76.9 No limit of former power. Sections 76.7 and 76.8 shall be construed as granting additional power without limiting the power already existing in counties, cities and school corporations. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §76.9]

CHAPTER 77

NOTARIES PUBLIC

77.1 Appointment.
77.2 Terms—expiration date.
77.3 Notice of expiration of term.
77.4 Conditions.
77.5 Repealed by 64GA, ch 103,§13.
77.6 Revocation—notice.
77.7 Powers within state.
77.8 Repealed by 63GA, ch 97,§2.
77.9 Oaths and protest by interested notary.
77.10 Corporation employee as notary.
77.11 Improperly acting as notary.
77.12 Acting under maiden name.

77.13 Record to be kept.
77.14 Death—resignation—removal.
77.15 Neglect to deposit records.
77.16 Neglect of executor to deposit records.
77.17 Change of residence.
77.18 Duty of secretary of state as to records.
77.19 Notary fees.

77.1 Appointment. The secretary of state may at any time appoint one or more notaries public and may at any time revoke such appointment. [C51,§78; R60,§195; C73,§258; C97, §373; S13,§373; C24, 27, 31, 35, 39,§**1197**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§77.1]

77.2 Terms—expiration date. All terms shall be for a period of three years and shall expire on the thirtieth day of September. [C51,§78; R60,§195; C73,§258; C97,§373; S13,§373; C24, 27, 31, 35, 39,§**1198**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§77.2]

77.3 Notice of expiration of term. The secretary of state shall, on or before August 1 preceding the expiration of each commission, notify each notary public of such expiration and furnish him with a blank application for reappointment and a blank bond. [C97,§373; S13,§373; C24, 27, 31, 35, 39,§**1199**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§77.3]

77.4 Conditions. Before any such commission is delivered to the person appointed, he shall:

1. Procure a seal, or an ink stamp of a size and design approved by the secretary of state, on which shall be included the words "Notarial Seal" and "Iowa", with his surname at length and at least the initials of his given name. The embossed impression made by the seal may be blackened, but permanent black ink shall be used for fixing an impression with the official ink stamp. The seal or stamp may include the date of expiration of the notary's commission, but the date of expiration shall not be mandatory.

2. Execute a bond to the state of Iowa in the sum of five hundred dollars conditioned for the true and faithful execution of the duties of his office, which bond, when secured by personal surety, shall be approved by the clerk of the district court of the county of his residence; all other bonds shall be approved by the secretary of state.

3. Write on said bond, or a paper attached thereto, his signature, and place thereon a distinct impression of his official seal.

4. File such bond with attached papers, if any, in the office of the secretary of state.

5. Remit the sum of seven dollars fifty cents for the three-year period provided by law to the secretary of state.

When the secretary of state is satisfied that the foregoing requirements have been fully complied with, he shall execute and deliver a commission to the person appointed.

A facsimile signature of the secretary of state and the seal of his office may be affixed to the certificate of commission in lieu of a personal signature. [C51,§§80, 83; R60,§§197, 200, 207-209; C73,§259; C97,§374; S13,§374; C24, 27, 31, 35, 39,§**1200**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §77.4]

77.5 Repealed by 64GA, ch 103,§13.

77.6 Revocation—notice. Should the commission of any person appointed notary public be revoked by the secretary of state, he shall immediately notify such person through the mail. [C73,§261; C97,§376; S13,§376; C24, 27, 31, 35, 39,§**1202**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §77.6]

77.7 Powers within state. Each notary is invested, within the state of Iowa, with the powers and shall perform the duties which pertain to that office by the custom and law of merchants. [C51,§79; R60,§196; C73,§262; C97, S13,§377; C24, 27, 31, 35, 39,§**1203**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§77.7]

77.8 Repealed by 63GA, ch 97,§2.

77.9 Oaths and protest by interested notary. Any notary public, who is at the same time an officer, director, or stockholder of a corporation, is also hereby invested with the power to administer oaths to any officer, director, or stockholder of such corporation in any matter wherein said corporation is interested, and is hereby authorized to protest for nonacceptance or nonpayment, bills of exchange, drafts, checks, notes, and other negotiable or nonnegotiable instruments which may be owned or held for collection by such corporation, as fully and effectually as if he were not an officer, director, or stockholder of such corporation. [C24, 27, 31, 35, 39,§**1205**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§77.9]

77.10 Corporation employee as notary. Any employee of a corporation who is a notary public and who is not otherwise financially interested in the subject matter of said instrument, is hereby authorized to take acknowledgments of any person on an instrument running to such corporation, regardless of the title or position that said notary shall hold as an employee of such corporation. [C39,§**1205.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§77.10]

77.11 Improperly acting as notary. If any notary public exercises the duties of his office after the expiration of his commission, or when otherwise disqualified, or appends his official signature to documents when the parties have not appeared before him, he shall be fined not less than fifty dollars, and shall be removed from office by the secretary of state.

[R60,§210; C73,§3975; C97,§4912; C24, 27, 31, 35, 39,§1206; C46, 50, 54, 58, 62, 66, 71, 73, 75,§77.11]

77.12 Acting under maiden name. When a female has, prior or subsequent to the adoption of this Code, been commissioned a notary public, and has, after the issuance of said commission and prior to the expiration thereof, contracted a marriage, the official acts of such notary public after said marriage and prior to the expiration of said commission shall not be deemed illegal or insufficient because, after said marriage, she performed said official acts under the name in which said commission was issued. [C24, 27, 31, 35, 39,§1207; C46, 50, 54, 58, 62, 66, 71, 73, 75,§77.12]

77.13 Record to be kept. Every notary public is required to keep a true record of all notices given or sent by him, with the time and manner in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with a copy of the instrument in relation to which the notice is served, and of the notice itself. [C51,§81; R60,§198; C73,§263; C97,§378; C24, 27, 31, 35, 39, §1208; C46, 50, 54, 58, 62, 66, 71, 73, 75,§77.13]

77.14 Death—resignation—removal. On the death, resignation, or removal from office of any notary, his records, with all his official papers, shall, within three months therefrom, be deposited in the office of the secretary of state. [C51,§85; R60,§202; C73,§264; C97,§379; C24, 27, 31, 35, 39,§1209; C46, 50, 54, 58, 62, 66, 71, 73, 75,§77.14]

77.15 Neglect to deposit records. If any notary, on his resignation or removal, neglects for three months so to deposit them, he shall be guilty of a misdemeanor and be liable in an action to any person injured by such neglect. [C51,§85; R60,§202; C73,§264; C97,§379; C24, 27, 31, 35, 39,§1210; C46, 50, 54, 58, 62, 66, 71, 73, 75,§77.15]

Punishment, §687.7

77.16 Neglect of executor to deposit records. If an executor or administrator of a deceased notary willfully neglects, for three months after his acceptance of that appointment, to deposit in the secretary of state's office the records and papers of a deceased notary which came into his hands, he shall be held guilty of a misdemeanor. [C51,§85; R60,§202; C73,§264; C97,§379; C24, 27, 31, 35, 39,§1211; C46, 50, 54, 58, 62, 66, 71, 73, 75,§77.16]

Punishment, §687.7

77.17 Change of residence. If a notary remove his residence from the state of Iowa, such removal shall be taken as a resignation. [C51,§86; R60,§203; C73,§265; C97,§380; C24, 27, 31, 35, 39,§1212; C46, 50, 54, 58, 62, 66, 71, 73, 75, §77.17]

77.18 Duty of secretary of state as to records. The secretary of state shall receive and safely keep all such records and papers of the notary in the cases above-named, and shall give attested copies of them, under the seal of his office, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary. [C51,§87; R60,§204; C73,§266; C97,§381; C24, 27, 31, 35, 39,§1213; C46, 50, 54, 58, 62, 66, 71, 73, 75,§77.18]

Fees, §77.19

77.19 Notary fees. Notaries public shall be entitled to the following fees:

1. For all services in connection with the legal protest of a bill or note, two dollars.
2. For being present at a demand, tender, or deposit and noting the same, seventy-five cents.
3. For administering an oath, ten cents.
4. For certifying to an oath under his official seal, twenty-five cents.
5. For any other certificate under seal, twenty-five cents. [C51,§2542; R60,§4151; C73, §3801; C97,§382; C24, 27, 31, 35, 39,§1214; C46, 50, 54, 58, 62, 66, 71, 73, 75,§77.19]

CHAPTER 78

ADMINISTRATION OF OATHS

78.1 General authority.
78.2 Limited authority.
78.3 Jurat by deputy.

78.1 General authority. The following officers are empowered to administer oaths and to take affirmations:

1. Judges of the supreme and district courts, including district associate judges and judicial magistrates.

2. Official court reporters of district courts in taking depositions under appointment or by agreement of counsel.

3. Clerks and deputy clerks of the supreme and district courts.

4. Notaries public.

5. Examiners appointed by the state commerce commission under the provisions of section 327C.11.

6. Certified shorthand reporters. [C51,§§227, 979, 980, 1594; R60,§§201, 449, 1843, 1844, 2684;

C73,§§277, 278, 396; C97,§393; C24, 27, 31, 35, 39, §1215; C46, 50, 54, 58, 62, 66, 71, 73, 75,§78.1]

Referred to in §§78.2, 277.28
Fees for administering and certifying oaths, §77.19
Members of general assembly, §2.8

78.2 Limited authority. The following officers and persons are empowered to administer oaths and to take affirmations in any matter pertaining to the business of their respective office, position, or appointment:

1. Governor, secretary of state, secretary of agriculture, auditor of state, treasurer of state, attorney general.

2. Members of all boards, commissions, or bodies created by law.

3. All county officers other than those named in section 78.1.

4. Mayors and clerks of cities, precinct election officials, township clerks, assessors, and surveyors.

5. All duly appointed referees or appraisers.

6. All investigators for supplemental assistance as provided for under chapter 249.

7. Fieldmen, auditors, and other employees of the income, corporation, and sales tax division of the department of revenue, as set forth in chapter 422. [C51,§§980, 1865; R60,§§1844, 3201; C73,§§277, 278; C97,§393; C24, 27, 31, 35, 39, §1216; C46, 50, 54, 58, 62, 66, 71, 73, 75,§78.2; 66GA, ch 67,§§7, 68]

Referred to in §§277.28, 586.1
Veterinary assistants, §163.5

78.3 Jurat by deputy. In preparing a jurat to an oath or affirmation administered by a deputy, it shall be sufficient for the deputy to affix his own name, together with the designation of his official position, and the seal of his principal, if any. [C24, 27, 31, 35, 39,§1217; C46, 50, 54, 58, 62, 66, 71, 73, 75,§78.3]

CHAPTER 79

SALARIES, FEES, MILEAGE, EXPENSES IN GENERAL AND DISABILITY PROGRAM FOR STATE EMPLOYEES

79.1 Salaries—payment—vacations—sick leave—injuries in line of duty.
79.2 Promotion, discharge, demotion or suspension—absence not considered.
79.3 Appraisers of property.
79.4 When fees payable.
79.5 Fees payable in advance.
79.6 Receipt for fees paid.
79.7 Report of fees.
79.8 State accounts—inspection.
79.9 Charge for use of automobile.
79.10 Mileage and expenses—prohibition.
79.11 Mileage and expenses—when unallowable.
79.12 Warrants prohibited.
79.13 Particulars required.
79.14 "United fund" defined.
79.15 Payroll deduction.
79.16 Interview or moving expenses.
79.17 to 79.19 Reserved

EMPLOYEES DISABILITY PROGRAM

79.20 Employees disability program.
79.21 Disability plan — revolving, trust or special funds.
79.22 Employees disability plan — permanent financing.

79.1 Salaries — payment — vacations — sick leave — injuries in line of duty. Salaries specifically provided for in an appropriation Act of the general assembly shall be in lieu of existing statutory salaries, for the positions provided for in any such Act, and all salaries, including longevity where applicable by express provision in the Code, shall be paid according to the provisions of chapter 91A and shall be in full compensation of all services, including any service on committees, boards, commissions or similar duty for Iowa government, except for members of the general assembly. All employees of the state including highway maintenance employees of the state department of transportation shall earn two weeks' vacation per year during the first year of employment and through the fourth year of employment, and three weeks' vacation per year during the fifth and through the eleventh year of employment, and four weeks' vacation per year during the twelfth year and all subsequent years of employment, with pay. One week vacation shall be equal to the number of hours in the employee's normal work week. Vacation allowances shall be accrued according to the provisions of chapter 91A as provided by the rules of the Iowa merit employment department. Said vacations shall be granted at the discretion and convenience of the head of the department, agency or commission, except that in no case may an employee be granted vacation in excess of the amount earned by the employee. In the event that the employment of an employee of the state is terminated the provisions of chapter 91A relating to such termination shall apply.

If said termination of employment shall be by reason of the death of the employee, such vacation allowance shall be paid to the estate of the deceased employee if such estate shall be opened for probate. If no estate be opened, the allowance shall be paid to the surviving

spouse, if any, or to the legal heirs if no spouse survives.

Payments authorized by this section shall be approved by the department and paid from the appropriation or fund of original certification of the claim.

Leave of absence of two and one-half working days each month with pay may be granted in the discretion of the head of any department, agency or commission to employees of such department, agency or commission when necessary for medically related disability; unused portions of such leave for any one year may be accumulative to a total of ninety working days. Leave of absence in excess of two and one-half working days each month may be granted on recommendation of the head of any department, agency, or commission and with the approval of the executive council for an employee when unusual circumstances resulting from employment are present which will cause hardship for the employee. It is further provided that employees of institutions under the state board of regents who are employed for nine months or more in any twelve-month period shall be entitled, in the discretion of the board, to a leave of absence with pay of two and one-half working days for each month of employment when necessary for medically related disability, and such portion as is unused may be accumulated to a total of ninety working days.

The head of any department, agency, or commission may grant an educational leave to employees for whom the head of the department, agency, or commission is responsible and funds appropriated by the general assembly may be used for such purposes. The head of such department, agency, or commission shall notify the legislative council of all educational leaves granted within fifteen days of the granting of the educational leave. If the head of a department, agency or commission fails to notify the legislative council of an educational leave the expenditure of funds appropriated by the general assembly for the educational leave shall not be allowed. [C73, §3780; C97,§1289; C24, 27, 31, 35, 39,§**1218**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§79.1; 66GA, ch 90, §14, ch 1001,§§15, 16, ch 1082,§1]

Referred to in §§19A.9, 218.17

79.2 Promotion, discharge, demotion or suspension—absence not considered. When supported by the verification of the attending physician that an absence is nceessary in the best interest of the health and well-being of the employee, an absence for medically related disability shall not be considered in actions for promotion, discharge, demotion or suspension of the employee. [66GA, ch 1082,§2]

79.3 Appraisers of property. The compensation of appraisers appointed by authority of law to appraise property for any purpose shall be fifty cents per hour for each appraiser for the time necessarily spent in effecting the appraisement and the mileage expense for the distance traveled in going to and returning from the place of appraisement, which shall, unless otherwise provided, be paid out of the property appraised or by the owner thereof. [C51,§2550; R60,§4158; C73,§3813; C97,§1290; SS15,§1290-a; C24, 27, 31, 35, 39,§**1219**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§79.2]

Rate, see §79.9

79.4 When fees payable. When no other provision is made on the subject, the party requiring any service shall pay the fees therefor upon the same being rendered, and a bill of particulars being presented, if required. [C51,§2557; R60,§4164; C73,§3837; C97,§1295; C24, 27, 31, 35, 39,§**1221**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§79.4]

79.5 Fees payable in advance. All fees, unless otherwise specifically provided, are payable in advance, if demanded, except in the following cases:

1. When the fees grow out of a criminal prosecution.
2. When the fees are payable by the state or county.
3. When the orders, judgments, or decrees of a court are to be entered, or performed, or its writs executed. [C73,§3842; C97,§1298; C24, 27, 31, 35, 39,§**1222**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§79.5]

79.6 Receipt for fees paid. Every person charging fees shall, if required by the person paying them, give him a receipt therefor, setting forth the items, and the date of each. [C51,§2549; R60,§4157; C73,§3836; C97,§1294; C24, 27, 31, 35, 39,§**1223**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§79.6]

79.7 Report of fees. All officers required by the provisions of this Code to collect and pay over fines and fees shall, except as otherwise provided, on the first Monday in July in each year, make report thereof under oath to the board of supervisors of the proper county, showing the amount of fines assessed, and the amount of fines and fees collected, together with vouchers for the payment of all sums collected to the proper officer. [R60, §4314; C73,§3973; C97,§1301; C24, 27, 31, 35, 39, §**1224**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§79.7]

79.8 State accounts—inspection. The books, accounts, vouchers, and funds belonging to, or kept in, any state office or institution, or in the charge or under the control of any state officer or person having charge of any state funds or property, shall, at all times, be open or subject to the inspection of the governor or any committee appointed by him, or by the general assembly or either house thereof; and the governor shall see that such inspection of the office of state treasurer is made at least four times in every twelve months. [C57,§§59, 69; R60,§§80, 90; C73,§132; C97,§184; C24, 27, 31, 35, 39,§**1225**; C46 50, 54, 58, 62, 66, 71, 73, 75, §79.8]

Constitution, Art. IV,§8

79.9 Charge for use of automobile. When a public officer or employee, other than a state officer or employee, is entitled to be paid for expenses in performing a public duty, a charge shall be made, allowed and paid for the use of an automobile of fifteen cents per mile for actual and necessary travel. A statutory provision stipulating necessary, mileage, travel, or actual reimbursement to a public officer or employee shall be construed to fall within this fifteen cents limitation unless specifically provided otherwise. Any peace officer as defined in section 748.3 who is required to use his private vehicle in the performance of his official duties shall receive reimbursement for mileage expense at the rate of fifteen cents per mile. [C31, 35,§1225-d1; C39,**§1225.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§79.9]

Referred to in §§2.10, 49.125, 307A.2, 309.20
44GA, ch 12,§6, editorially divided
State officers and employees mileage allowance, §18.117; see also §607.5, jurors fees

79.10 Mileage and expenses — prohibition. No law shall be construed to give to a public officer or employee both mileage and expenses for the same transaction. [C31, 35,§1225-d2; C39,**§1225.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §79.10]

Analogous provision, §337.11, subsection 10

79.11 Mileage and expenses—when unallowable. No public officer or employee shall be allowed either mileage or transportation expense when he is gratuitously transported by another, nor when he is transported by another public officer or employee who is entitled to mileage or transportation expense. [C31, 35,§1225-d3; C39,**§1225.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§79.11]

79.12 Warrants prohibited. No warrant shall be issued requiring any peace officer to go beyond the boundaries of the state at public expense except with the approval of a judge of the district court. [C35,§1225-e1; C39, **§1225.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§79.12]

79.13 Particulars required. The board of supervisors shall not approve any claim for mileage or other traveling expenses presented by any peace officer including the sheriff and his deputies unless the destinations, and number of miles covered in each trip are given, or, in the case of extended trips, unless railroad, hotel, and other traveling expenses, excepting meals, are verified by receipts. [C35, §1225-e2; C39,**§1225.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§79.13]

When mileage untaxable, §127.19

79.14 "United fund" defined. As used in this section and section 79.15 "United Fund" means the organization conducting the single, annual, consolidated effort to secure funds for distribution to agencies engaged in charitable and public health, welfare and service purposes, which commonly is known as the United Fund, or the United Campaign, United Community Services, Community Chest or other organization which serves in place of the United Fund organization in communities where an organization known as the United Fund is not organized. [C66, 71, 73, 75,§79.14]

79.15 Payroll deduction. The state comptroller may, upon personal written request of any state officer or employee, deduct each regular payroll period from the salary or wages of the officer or employee the amount specified therein for payment to the United Fund. The moneys so deducted shall be paid over promptly to the united fund designated by the officer or employee. Such deductions may be made notwithstanding that the compensation paid in cash to such officer or employee is thereby reduced below the minimum prescribed by law. Payment to such officer or employee of compensation less such deduction shall constitute a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such employee during the period covered by such payment. Such request for deduction may be withdrawn at any time by filing a written notification of withdrawal with the state comptroller. [C66, 71, 73, 75,§79.15]

Referred to in §79.14

79.16 Interview or moving expenses. If approved by the appointing or employing authority, a person who interviews for a position with the state shall be reimbursed for expenses incurred in the interview at the same rate provided for state employees for reimbursement for expenses for state business. If approved by the appointing or employing authority, a person who is hired in a position with the state shall receive reimbursement for moving expenses incurred after the time the person is hired. However, expenses incurred in moving this person's household goods and other personal effects shall be reimbursed only to the extent the expense is for the packing and moving of ten thousand pounds or less of these goods and effects. Also, reimbursement for moving expenses shall not include reimbursement for the expense of moving animals. [66GA, ch 83,§1]

Similar provision, §307A.2

79.17 to 79.19 Reserved.

EMPLOYEES DISABILITY PROGRAM

79.20 Employees disability program. There is created a state employees disability insurance program which shall be administered by the executive council and which shall provide disability benefits in an amount and for the employees as provided in this section. The monthly disability benefits shall provide twenty percent of monthly earnings if employed less than one year, forty percent of monthly earnings if employed one year or more but less than two years, and sixty percent of monthly earnings thereafter, reduced by primary and family social security determined at the time social security disability payments commence, workers' compensation if applicable, and any other state sponsored sickness or disability

benefits payable. No subsequent social security increases shall be used to further reduce the insurance benefits payable. State employees shall receive credit for the time they were continuously employed prior to and on July 1, 1974. The following provisions shall apply to the employees disability insurance program:

1. Waiting period . . . ninety working days of continuous sickness or accident disability.

2. Maximum period benefits paid . . . sickness or accident disability to age sixty-five.

3. Minimum and maximum benefits . . . not less than fifty dollars per month and not exceeding two thousand dollars per month.

4. All permanent full-time state employees shall be covered under the employees disability insurance program, except the members of the general assembly, board members and members of commissions who are not full-time state employees, and state employees who on July 1, 1974, are under another disability program financed in whole or in part by the state. [C75,§79.20; 66GA, ch 1084,§43]

Referred to in §§79.21, 79.22
Effective and implemented January 1, 1975, 65GA, ch 1001,§10

79.21 Disability plan—revolving, trust or special funds. The executive council shall compute and bill against departmental revolving, trust or special funds the costs of including permanent full-time employees who are paid from such funds under the disability program provided for in section 79.20. This section shall not apply to employees who are paid from the primary road fund.

A supplemental authorization is hereby provided from those funds under this section for which the general assembly has established an operating budget, unless otherwise provided, in an amount necessary for the disability insurance program. [C75,§79.21]

Referred to in §79.22
Appropriation, 65GA, ch 1001,§10

79.22 Employees disability plan — permanent financing. There is appropriated for each fiscal year* to the executive council such funds as are necessary to finance the state employees disability insurance program created by section 79.20.

1. Funds for financing the state employees disability insurance program for permanent full-time state employees of the state department of transportation are appropriated from the primary road fund.

2. Funds for financing the state employees disability insurance program for permanent full-time employees of the office of the state board of regents, permanent full-time employees of the Iowa school for the deaf, and permanent full-time employees of the Iowa school for the blind are appropriated from the general fund of the state.

3. Funds for financing the state employees disability insurance program for all other eligible permanent full-time state employees, excluding those included under section 79.21, are appropriated from the general fund of the state. [C75,§79.22; 66GA, ch 67,§69]

*Beginning July 1, 1975

TITLE V

POLICE POWER

CHAPTER 80

DEPARTMENT OF PUBLIC SAFETY

All rules, regulations, forms, orders, and directives promulgated by and in effect for the department of public safety under the provisions of chapter 321 relating to the registration of motor vehicles, motor vehicle inspection, and the licensing of drivers of motor vehicles, chapter 321A relating to financial responsibility, chapter 321B relating to the implied consent law, chapter 321F relating to leasing and renting of vehicles, and chapter 322 relating to motor vehicle dealer licensing shall continue in full force and effect as rules, regulations, forms, orders, and directives of the state department of transportation until amended or supplemented by affirmative action of the state transportation commission; see 65GA, ch 1180,§198
Transfer of employees to department of transportation; see 65GA, ch 1180,§199

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80.1 Department created. There is hereby created a department of the state government which shall be known and designated as the department of public safety, which shall consist of a commissioner of public safety and of such officers and employees as may be required, one of whom shall be an attorney admitted to practice law in this state. Such attorney shall be an assistant attorney general appointed by the attorney general who shall fix his salary. The department shall reimburse the attorney general for the salary and expense of such assistant attorney general and furnish him a suitable office if requested by the attorney general. [C39,§1225.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.1]

80.2 Commissioner—appointment. The chief executive officer of the department of public safety shall be the commissioner of public safety. The governor shall appoint, with the approval of two-thirds of the members of the senate, a commissioner of public safety, who shall be a person of high moral character, of good standing in the community in which the commissioner lives, of recognized executive and administrative capacity, and who shall not be selected on the basis of political affiliation. The commissioner of public safety shall devote full time to the duties of this office; the commissioner shall not engage in any other trade, business, or profession, nor engage in any partisan or political activity. The commissioner shall serve at the pleasure of the governor, at an annual salary as fixed by the general assembly. [C39,§1225.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.2]

See salary Act

80.3 Vacancy. A commissioner of public safety appointed when the general assembly is not in session shall serve at the pleasure of the governor, but his term shall expire thirty days after the general assembly next convenes in regular session, unless during such thirty days he be approved by two-thirds of the members of the senate. [C39,§1225.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.3]

80.4 Highway patrol. The Iowa highway safety patrol established in the department of public safety shall consist of a complement of not to exceed four hundred ten persons. The patrol shall be under the direction of the commissioner. [C27, 31,§5017-a1; C35,§§5018-g1,-g2; C39,§**1225.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.4; 66GA, ch 84,§1]

Twenty additional members paid from federal funds, 66GA, ch 58,§4

80.5 Officers of patrol. The commissioner is authorized to appoint a chief, a first and second assistant and all other supervisory officers of said patrol. All appointments and promotions shall be made on the basis of seniority and merit examination. There shall not be more than twenty supervisory officers in the said patrol unless the membership thereof is increased to such a number as to require the appointment of additional supervisory officers. [C39,§**1225.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.5]

80.6 Impersonating officer — uniform. Any person who impersonates a member of the Iowa safety patrol or other officer or employee of the department, or wears a uniform likely to be confused with the official uniform of any such officer, with intent to deceive anyone, shall be guilty of a misdemeanor and be punished as provided in section 321.482. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.6]

80.7 Railway special agents. The commissioner may appoint as special agent any person who is regularly employed by a common carrier by rail to protect the property of said common carrier, its patrons, and employees. Such special agents shall not receive any compensation from the state. [C39,§**1225.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.7]

Referred to in §§80.15, 80.16

80.8 Patrolmen and employees — salaries. The commissioner, with the approval of the governor, shall appoint such deputies, inspectors, officers, clerical workers and other employees as may be required to properly discharge the duties of this department.

The commissioner may delegate to the members of the Iowa highway safety patrol such additional duties in the enforcement of this chapter as he may deem proper and incidental to the duties now imposed upon them by law.

The salaries of all members and employees of the department and the expenses of the department shall be provided for by the legislative appropriation therefor. The compensation of the members of the highway patrol shall be fixed according to grades as to rank and length of service by the commissioner with the approval of the governor. The members of the highway patrol shall be paid additional compensation in accordance with the following formula: When members of the highway patrol have served for a period of five years their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described five-year period; when members thereof have served for a period of ten years their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described ten-year period, such sums being in addition to the increase provided herein to be paid after five years of service; when members thereof have served for a period of fifteen years their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described fifteen-year period, such sums being in addition to the increases previously provided for herein; when members thereof have served for a period of twenty years their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described twenty-year period, such sums being in addition to the increases previously provided for herein. While on active duty each patrolman shall also receive a flat daily sum as fixed by the commissioner with the approval of the governor for meals while away from the office to which he has been assigned and within his district. [C27, 31,§5017-a1; C35,§5018-g9; C39,§**1225.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.8]

80.9 Duties of department. It shall be the duty of the department of public safety to prevent crime, to detect and apprehend criminals and to enforce such other laws as are hereinafter specified. The members of the department of public safety, except clerical workers therein, when authorized by the commissioner of public safety shall have and exercise all the powers of any peace officer of the state.

1. They shall not exercise their general powers within the limits of any city, except:

a. When so ordered by the direction of the governor;

b. When request is made by the mayor of any city, with the approval of the commissioner;

c. When request is made by the sheriff or county attorney of any county with the approval of the commissioner;

d. While in the pursuit of law violators or in investigating law violations;

e. While making any inspection provided by this chapter, or any additional inspection ordered by the commissioner;

f. When engaged in the investigating and enforcing of fire and arson laws;

g. When engaged in the investigation and enforcement of laws relating to narcotic, counterfeit, stimulant, and depressant drugs.

When any member of the department shall be acting in co-operation with any other local peace officer, or county attorney in general criminal investigation work, or when acting on a special assignment by the commissioner, his jurisdiction shall be state-wide.

However, the above limitations shall in no way be construed as a limitation as to their power as officers when a public offense is being committed in their presence.

2. In more particular, their duties shall be as follows:

a. To enforce all state laws;

b. To enforce all laws relating to traffic on the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and buses; to see that proper safety rules are observed and to give first aid to the injured;

c. To investigate all fires; to apprehend persons suspected of arson; to enforce all safety measures in connection with the prevention of fires; and to disseminate fire-prevention education;

d. To collect and classify, and keep at all times available, complete information useful for the detection of crime, and the identification and apprehension of criminals. Such information shall be available for all peace officers within the state, under such regulations as the commissioner may prescribe;

e. To operate such radio broadcasting stations as may be necessary in order to disseminate information which will make possible the speedy apprehension of lawbreakers, as well as such other information as may be necessary in connection with the duties of this office.

f. Provide protection and security for persons and property on the grounds of the state capitol complex.

3. They may administer oaths, acknowledge signatures, and take voluntary testimony pursuant to their duties as provided by law. [C73,§120; C97,§§147, 148; SS15,§§65-b, 147; C24, §§273, 13410; C27, 31,§§273, 5017-a1, 13410; C35, §§273, 5018-g6, 13410; C39,§§**273, 1225.13**; C46, 50, 54, 58, 62, 66, 71,§§18.2(1,4), 80.9; C73, §§19A.3(4), 80.9; C75,§§18.3(4), 80.9; 66GA, ch 85,§1, ch 1064,§3]

Criminal conspiracy rules filed, 64GA, ch 50,§1(2)

80.10 Peace officers short course. For the instruction of law enforcement officers of this state, including members and prospective members of the department of public safety and peace officers of the several counties, townships and cities, the commissioner of public safety is hereby authorized and directed to utilize the existing peace officers short course and the laboratories and facilities in connection therewith in the college of law of the state University of Iowa. [C39,§**1225.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.10]

80.11 Course of instruction. The course or courses of instruction for peace officers shall include instruction in the following subjects and such others as shall be deemed advisable by the college of law and the commissioner of public safety:

1. Criminal law.
2. Identification of criminals and fingerprinting.
3. Methods of criminal investigation.
4. Rules of criminal evidence.
5. Presentation of cases in court.
6. Making of complaints and securing of criminal warrants.
7. Securing and use of search warrants.
8. How to secure extradition and return.
9. Small arms instruction.
10. Regulation of traffic.
11. First aid. [C39,§**1225.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.11]

80.12 Attendance at short course. The commissioner of public safety is authorized to send members of the department of public safety to any course of instruction for peace officers, not exceeding a total of six weeks' length in any one year, given by the college of law of the state University of Iowa, or the course of instruction in public safety education given at Iowa State University of science and technology, and such members shall be considered on duty while in attendance upon such authority. The legislative body in any county may authorize the attendance at such course of any law enforcing officer under the jurisdiction of such county and may provide for the payment of the actual and necessary expenses of such person while in attendance, which payment shall be made out of the general fund of such county. [C39,§**1225.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.12]

80.13 Training schools. The commissioner is authorized to hold a training school for candidates for or members of the department of public safety, and may send to recognized training schools such members as the commissioner may deem advisable. The expenses of such school of training shall be paid in the same manner as other expenses of the patrol. [C27, 31,§5017-a1; C35,§5018-g10; C39,§**1225.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.13]

80.14 Diplomas. To each person satisfactorily completing the course of study prescribed, an appropriate certificate or diploma shall be issued. [C39,§**1225.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.14]

80.15 Examination — oath — probation — dismissal. No applicant for membership in the department of public safety, except clerical workers and special agents appointed under section 80.7, shall be appointed as a member until he has passed a satisfactory physical and mental examination. In addition, such applicant must be a citizen of the United States, of good moral character, and be not less than twenty-two years of age. The mental examination shall be conducted under the direction or supervision of the commissioner of public safety and may be oral or written or both. Each applicant shall take an oath on becoming a member of the force, to uphold the laws and Constitution of the United States and of the state of Iowa. During the period of twelve months after appointment, any member of the

department of public safety, except members of the present Iowa highway safety patrol who have served more than six months, shall be subject to dismissal at the will of the commissioner. After the twelve months' service, no member of the department, who shall have been appointed after having passed the beforementioned examinations, shall be subject to dismissal unless charges have been filed with the secretary of the executive council and a hearing held before the executive council, if requested by said member of the department, at which he shall have an opportunity to present his defense to such charges. The decision of the executive council by majority vote shall be final, subject to the right of judicial review in accordance with the terms of the Iowa administrative procedure Act. All rules regarding the enlistment, appointment, and employment affecting the personnel of the department shall be established by the commissioner with the approval of the governor. [C27, 31,§5017-a1; C35,§5018-g3,-g5; C39,§1225.19; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.15]

Referred to in §§80.25, 80.29, 80.30, 80.31, 97A.1

80.16 Bonds. All special agents appointed by the commissioner of public safety pursuant to section 80.7 shall furnish bond as required by the commissioner in the amount of five thousand dollars. All members of the state department of public safety excepting the members of the clerical force shall be bonded for the faithful performance of their duties, in such an amount as the commissioner of public safety may deem necessary, but not less than five thousand dollars for any one position, and clerical employees may be so bonded. The commissioner is authorized to purchase bond coverage with departmental funds, either in blanket bond form or in individual bond form or in any combination thereof. [C24, §13409; C27, 31,§§5017-a1, 13409; C35,§§5018-g8, 13409; C39,§1225.20; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.16]

80.17 General allocation of duties. In general, the allocation of duties of the department of public safety shall be as follows:

1. Commissioner's office.
2. Division of statistics and records.
3. Division of criminal investigation and bureau of identification.
4. Division of highway safety and uniformed force.
5. Division of fire protection.
6. Division of inspection.
7. Division of capitol security.

Nothing in the aforesaid allocation of duties shall be interpreted to prevent flexibility in interdepartmental operations or to forbid other divisional allocations of duties in the discretion of the commissioner of public safety. [SS15,§147; C24, 27, 31, 35, 39,§§273(4), 1225.21; C46, 50, 54, 58, 62, 66, 71,§§18.2(4), 80.17; C73,§§19B.12(2), 80.17; C75,§§18.12(2), 80.17; 66GA, ch 1064,§4]

Bureau of criminal identification, ch 749
Division of beer and liquor law enforcement, §80.25
Drug law enforcement, §80.27

80.18 Expenses and supplies. It shall be the duty of the commissioner of public safety to provide for the members of the department when on duty, suitable uniforms, subsistence, arms, equipment, quarters, and other necessary supplies, and also the expense and means of travel and boarding the members of the department, according to rules made by the commissioner, as may be provided by appropriation. [SS15,§65-c; C24,§13408; C27, 31,§§5017-a1, 13408; C35,§§5018-g7, 13408; C39,§1225.22; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.18]

Referred to in §324.76

80.19 Public safety education. The commissioner may co-operate with any recognized agency in the education of the public in highway safety.

Any recognized agency receiving appropriations of state money for public safety shall annually file with the auditor of state an itemized statement of all its receipts and expenditures. [C39,§1225.23; C46, 50, 54, 58, 62, 66, 71, 73, 75, §80.19]

80.20 Divisional headquarters. The commissioner of public safety may, subject to the approval of the governor, establish divisional headquarters at various places in the state. Supervisory officers may be at all times on duty in each district headquarters. [C39, §1225.24; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.20; 66GA, ch 251,§2]

80.21 Fees and rewards. No fees or rewards shall be retained personally by members of the department in addition to their salaries, and any such fees or rewards earned by any members of said department shall be credited to the fund as herein provided to pay the expenses of this department. All salaries herein provided for and all expenses incurred under the provisions of this chapter shall be allowed and audited in the same manner as in other state offices, and shall be payable out of moneys hereafter appropriated. [C27, 31,§5017-a1; C35,§5018-g11; C39,§1225.25; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.21]

DUPLICATION IN POLICE OFFICERS PROHIBITED

80.22 Prohibition on other departments. All other departments and bureaus of the state are hereby prohibited from employing special peace officers or conferring upon regular employees any police powers to enforce provisions of the statutes, which are specifically reserved by this Act* to this department. But the commissioner of public safety shall, upon the requisition of the attorney general, from time to time assign for service in the department of justice such of its officers, not to exceed six in number, as may be requisitioned by the attorney general for special service in the department of justice, and when so assigned such officers shall be under the exclusive direction and control of the attorney general. [C24, 27, 31, 35,§1340.7; C39,§1225.26; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.22]

*48GA, ch 120

80.23 "Special state agents" construed. Whenever mention is made, in the Code, of "special state agents" in connection with law enforcement, the same shall be construed to mean members of the state department of public safety. [C39,§1225.27; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.23]

80.24 Industrial disputes. The police employees of the department shall not be used or called upon for service within any municipality in any industrial dispute unless actual violence has occurred therein, and then only either by order of the governor or on the request of the chief executive officer of the municipality or the sheriff of the county wherein the dispute has occurred if such request is approved by the governor. [C39,§1225.28; C46, 50, 54, 58, 62, 66, 71, 73, 75,§80.24]

80.25 Division of beer and liquor enforcement. The commissioner of public safety shall establish a division of beer and liquor law enforcement and appoint a chief enforcement officer to head the division. The commissioner of public safety shall appoint other agents needed in the division as are necessary to enforce the provisions of Title VI of the Code. All enforcement officers, assistants, and agents of the division, excluding clerical workers, shall be subject to the provisions of section 80.15. [C73, 75,§80.25]

Referred to in §123.14

80.26 Federal funds for highway safety. The commissioner of public safety, when authorized by the governor pursuant to section 7.15, may accept, administer and expend funds provided by any Act of Congress for highway safety, law enforcement or any activities generally related to the duties of the department of public safety as provided in this chapter. [C71, 73, 75,§80.26]

80.27 Drug law enforcement by department. The state department of public safety shall be primarily responsible for the enforcement of all laws and rules relating to any controlled substance or counterfeit substance, except for making accountability audits of the supply and inventory of controlled substances in the possession of pharmacists, doctors, hospitals, and health care facilities as defined in section 135C.1, subsection 8, as well as in the possession of any and all other individuals or institutions authorized to have possession of any controlled substances.

As used in this chapter, the terms "controlled substances" and "counterfeit substances" shall be the same as defined in section 204.101, subsections 6 and 7, respectively. [C71, 73, 75,§80.27]

80.28 Agents transferred from pharmacy board. All agents of the board of pharmacy examiners who, on May 8, 1970, are either engaged in the enforcement of laws or rules relating to controlled or counterfeit substances, except whose primary responsibility is making accountability audits, are hereby transferred to and shall be considered part of the department of public safety. Salary and expenses for such transferred agents included in the budget of the board of pharmacy examiners shall be transferred to the department of public safety by the state comptroller upon the effective date of the transfer. [C71, 73, 75, §80.28]

80.29 Conditions of employment — retirement system. Such transferred agents shall not be subject to the requirements and conditions of employment as set forth in section 80.15. Such transferred agents shall become members of the Iowa department of public safety peace officers' retirement, accident and disability system, shall receive any benefits from such system, and shall be required to contribute to or pay any funds into such system.

There is hereby appropriated from the general fund of the state eleven thousand dollars, or as much as may be necessary, to the department of public safety for the state's prior years contributions to the peace officers' retirement system for the transferred agents. Prior years' contributions shall include those years for which the transferred agents were employed by the board of pharmacy examiners. State funds contributed and employees' contributions to the Iowa public employees' retirement system during the period of employment of the transferred agents by the board of pharmacy examiners shall be transferred to the peace officers' retirement system by the employment security commission on May 8, 1970. Contributions to be made by the transferred agents for prior years to the peace officers' retirement system for the period of employment with the board of pharmacy examiners shall be computed by the peace officers' retirement board as of the date of transfer. The board, in making the computation for contributions, shall take into effect the transfers of the employees' contribution from the Iowa public employees' retirement system. The transferred agents shall make payable to the peace officers' retirement system the amount so computed by July 1, 1971. [C71, 73, 75,§80.29]

80.30 Additional employees. Except as provided in this section, from and after May 8, 1970, any additional individuals hired by the state department of public safety for the purpose of enforcement of laws relating to controlled or counterfeit substances shall be subject to the provisions of section 80.15 and such individuals shall be covered by the provisions of chapter 97A. They shall be entitled to receive the benefits provided in chapter 97A, and will be required to make such contributions and payments into the system as are required by such chapter. However, if there is an individual who is not able to meet the qualifications established by section 80.15 or chapter 97A and he otherwise possesses experience and training which qualifies him as

a person capable of enforcing laws relating to controlled or counterfeit substances, he may be hired by the commissioner of public safety notwithstanding. [C71, 73, 75,§80.30]

80.31 Voluntary submission to conditions. Nothing in these sections shall be construed as in any manner or degree prohibiting a transferred agent from voluntarily submitting himself to the provisions of section 80.15, and, if such transferred agent satisfactorily meets the requirements of such section, he shall be subject to all the general duties and responsibilities of other members of the department of public safety and shall be entitled to all benefits available to other members of the department of public safety. [C71, 73, 75,§80.31]

80.32 Repealed by 65GA, ch 11,§8.

80.33 Access to drug records by agents. Every person required by law to keep records, and any carrier maintaining records with respect to any shipment containing any controlled or counterfeit substances shall, upon request of an authorized agent of the department of public safety, designated by the commissioner of public safety, permit such agent at reasonable times to have access to and copy such records. For the purpose of examining and verifying such records authorized agents of the department of public safety, designated by the commissioner of public safety, may enter at reasonable times any place or vehicle in which any controlled or counterfeit substance is held, manufactured, dispensed, compounded, processed, sold, delivered, or otherwise disposed of and inspect such place or vehicle, and the contents thereof. For the purpose of enforcing laws relating to controlled or counterfeit substances, and upon good cause shown, personnel of the division of drug law enforcement in the department of public safety shall be allowed to inspect audits and records in the possession of the state board of pharmacy examiners. [C71, 73, 75,§80.33]

80.34 Powers of peace officers. Any authorized agent of the department of public safety designated to conduct examinations, investigations, or inspections and enforce the laws relating to controlled or counterfeit substances shall have all the powers of other peace officers and may arrest without warrant for offenses under this chapter committed in his presence or, in the case of a felony, if he has probable cause to believe that the person arrested has committed or is committing such offense. Such officers shall have the same powers as other peace officers to seize controlled substances or articles used in the manufacture or sale of controlled substances which they have reasonable grounds to believe are in violation of law. Such controlled substances or articles shall be subject to condemnation. [C71, 73, 75,§80.34]

Constitutionality, 64GA, ch 148,§612

80.35 Transition. Persons employed by the department of general services as capitol security force officers shall be transferred to the division of capitol security of the department of public safety on July 1, 1976. Persons transferred pursuant to this section shall retain their positions as capitol security officers, shall not be subject to the requirements and conditions of section 80.15 and shall remain under the Iowa public employees' retirement system. Persons employed after July 1, 1976 by the department of public safety as capitol security officers within the division of capitol security shall be subject to the requirements and conditions of section 80.15, except those requirements relating to age, and shall be subject to the Iowa public employees' retirement system. The minimum age for persons employed by the division of capitol security shall be eighteen. [66GA, ch 1064,§5]

CHAPTER 80A

LICENSING PRIVATE DETECTIVES

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80A.11 Badges or insignia.
80A.12 Penalties.

80A.1 Definitions. The following words and phrases when used in this chapter shall for the purposes of this chapter have the meanings respectively ascribed to them, the singular to include the plural and the masculine gender to include the feminine gender:

1. *"Private detective business or profession"* shall mean and include the business of making for hire, reward or gratis an investigation or investigations for the purpose of obtaining information with reference to any of the following matters: Crimes against a commonwealth or wrongs done or threatened; the habits, conduct, movement, whereabouts, associations, transactions, reputation or character of any person, firm or corporation; the credibility of witnesses or other persons; the location or recovery of lost or stolen property; the causes,

origin of or responsibility for fires or accidents or injuries or damages to persons or to real or personal property; or concerning the truth or falsity of any statement or representation; or the business of securing for hire, reward, or gratis evidence to be used before investigation committees, boards of award or arbitration, or in the trial of civil or criminal cases, or the business of furnishing for hire, reward, or gratis guards or other persons to protect persons or property; or to prevent the theft or the unlawful taking or use of real or personal property, or the business of performing the services of such guard or other person for any of said purposes.

2. *"Detective agency"* shall mean and include any person, firm or corporation engaged in the private detective business who advertises as such or employs one or more detective agents in conducting such business.

3. *"Private detective"* shall mean and include any person who advertises himself as such or who singly conducts a private detective business without the assistance of any other detective agents other than those employed as such on a part-time basis only and who do not make such an occupation their principal business or means of livelihood.

4. *"Detective agent"* shall mean any person or operative employed by a detective agency or private detective and engaging in any of the activities of the private detective business or profession as defined in this section.

5. *"Commissioner"* or "commissioner of public safety" shall mean the commissioner of public safety of the state of Iowa. [C50, 54, 58, 62, 66, 71, 73, 75,§80A.1]

80A.2 Persons exempt. The provisions of this chapter shall not apply to any detective or officer belonging to and on the payroll of the police force of the United States, or of any state, or of any county, city or village thereof, appointed or elected by due authority of law; nor to any person in the employ of the police force or police department or law enforcement agency of any state, or of any county, city or village thereof in the performance of his official duties; nor to any county attorney; nor to any attorneys-at-law in the regular practice of their profession; nor to any person, firm or corporation whose business is solely the making of investigations and adjustments for insurance companies or the furnishing of information with respect to the business and financial standing and credit of persons, firms or corporations; nor to any person making any investigation of any matter in which such person or the person, firm or corporation by whom such person is solely employed is interested or involved nor to any person making any investigation for any person, firm or corporation engaged in the business of transporting persons or property in interstate commerce, nor to any person or persons, firm or corporation while engaged in the collection, editing or dissemination of news for or on behalf of any newspaper, magazine, radio broadcasting station or press or wire news services. [C50, 54, 58, 62, 66, 71, 73, 75, §80A.2]

80A.3 Personal license. It shall be unlawful for any person to engage in or attempt to engage in business as a private detective without first obtaining a license therefor issued by the commissioner of public safety. [C50, 54, 58, 62, 66, 71, 73, 75,§80A.3]

80A.4 Agency license. It shall be unlawful for any person, firm or corporation to conduct or engage in business as a detective agency or to employ persons to act as detective agents in the conduct of such business without first obtaining a license therefor issued by the commissioner of public safety, which license shall include authority for the detective agency to employ detective agents. [C50, 54, 58, 62, 66, 71, 73, 75,§80A.4]

80A.5 Requirements for license. Every application for a private detective or detective agency license, as required by this chapter shall be made to the commissioner of public safety and shall be in such form as the commissioner may prescribe and shall contain a showing that the applicant has qualified under the following conditions:

1. That the applicant is at least eighteen years of age.

2. That the applicant is a citizen of the United States.

3. That the applicant is of good moral character and has not been convicted of a felony.

Each applicant shall submit to the commissioner of public safety with his application such pictures and fingerprints of himself and such description of his physical characteristics and appearance as and in the manner and upon such forms as the commissioner of public safety may prescribe. In the event that the applicant is a partnership, all of the members thereof actively engaged in the detective business in this state shall have such qualifications as are prescribed in subsections 1, 2, and 3 of this section, and shall submit such pictures, fingerprints and descriptions of his physical characteristics and appearance as are hereby required to be submitted by individual applicants; and in the event that the applicant is a corporation, the articles of incorporation shall authorize the corporation to engage in the business of conducting a detective agency and at least one officer or executive officer and every corporate officer actively participating in the detective business in this state shall have such qualifications as are required by subsections 1, 2, and 3 of this section; and shall submit such pictures, fingerprints and descriptions of his physical characteristics and appearance as are required by this section to be submitted by individual applicants. Upon approval of the applications and the passing by the applicant of an examination prescribed and conducted by the commissioner of public

safety to ascertain the qualifications, fitness and competency of the applicant to engage in the private detective business or profession, the commissioner of public safety shall issue a license to such applicant as a private detective or as a detective agency, as the case may be, upon the filing with said commissioner of public safety by such applicant of a surety bond which, in the case of a detective agency, shall be in an amount not less than two thousand dollars and which, in the case of a private detective, shall be in an amount of not less than one thousand dollars, issued by a corporate surety company authorized to do business in the state and approved by the commissioner of public safety, conditioned for the faithful, lawful and honest conduct of such applicant and those employed by such applicant in carrying on the private detective business, which bond shall be in such form as the commissioner of public safety may prescribe and shall be taken in the name of the people of the state and shall provide that any person, firm or corporation injured by a breach of the conditions of such bond may bring an action on the said bond in the name of the people of the state of Iowa for the use of such person, firm or corporation so injured to recover legal damages suffered by reason of such breach; provided, however, that the aggregate liability of the surety for all such damages shall in no event exceed the amount of said bond. [C50, 54, 58, 62, 66, 71, 73, 75, §80A.5]

Referred to in §80A.10

80A.6 Expiration of license—fee. Licenses issued under the provisions of this chapter shall expire on the last day of December each year. Applicants for licenses shall deposit with each application a fee equal to the fee herein prescribed for such license and if the application be approved, said amount shall be applied on the license fee, but if such application is disapproved, the same shall not be returnable or refunded. The annual license fee for a private detective shall be ten dollars. The annual license fee for a private detective agency shall be twenty-five dollars. When a license is issued in the month of February or in succeeding months, the fee therefor shall be computed on the basis of one-twelfth of the annual license fee, as provided herein, multiplied by the number of unexpired months of the year, including the month in which said license is issued. Whenever any such fee so computed contains a fractional part of a dollar, it shall be computed as of the nearest fractional quarter-dollar thereto. [C50, 54, 58, 62, 66, 71, 73, 75,§80A.6]

80A.7 Display of license. There shall be conspicuously displayed in the place or places of business or office or offices of every private detective or detective agency, the license issued to said private detective or detective agency, pursuant to this chapter, or a full-size facsimile reproduction of said license. [C50, 54, 58, 62, 66, 71, 73, 75,§80A.7]

80A.8 Identification cards. Every private detective agency and private detective shall issue to each of its officers and detective agents an identification card which shall include a physical description and the fingerprints of and a picture of said officer or detective agent. Such identification cards shall be in such form as approved by the commissioner of public safety and there shall be imprinted upon or attached to said identification card a facsimile reproduction of the license issued to said detective agency pursuant to this chapter. It shall be unlawful for any detective agency or private detective to employ any person as a detective agent unless at the time of such employment there is issued to such detective agent an identification card as provided in this section. It shall be unlawful for any person to act as a detective agent unless he has in his immediate possession an identification card as provided in this section. [C50, 54, 58, 62, 66, 71, 73, 75,§80.A.8]

80A.9 Duplicate license. A duplicate license shall be issued by the commissioner of public safety upon the payment of a fee therefor in the amount of one dollar and the filing with him in such form as he shall prescribe, a statement under oath that the original license has been lost or destroyed and that, if the original license is recovered, such original or the duplicate issued will be returned immediately to the commissioner of public safety for cancellation. [C50, 54, 58, 62, 66, 71, 73, 75, §80A.9]

80A.10 Suspension or revocation. The commissioner of public safety may either refuse to issue or may suspend or may revoke a license issued by him, pursuant to this chapter for any one or any combination of the following reasons:

1. Fraud in obtaining a license.

2. Violation of any of the terms and provisions of this chapter.

3. If the holder of any license or a member of any partnership or an officer of any corporation licensed by the commissioner of public safety, pursuant to the provisions of this chapter, has been adjudged guilty of the commission of a crime involving moral turpitude.

4. If the holder of any license is found guilty of willful betrayal of any information obtained by the licensee in the course of the conduct of the private detective business.

5. Upon the disqualification or insolvency of the surety on the licensee's bond, unless such licensee files a new bond with sufficient surety within fifteen days of the receipt of notice from the commissioner.

6. If the licensee or applicant for a license shall fail to have any of the qualifications as provided in section 80A.5. [C50, 54, 58, 62, 66, 71, 73, 75,§80A.10]

80A.11 Badges or insignia. Unless otherwise authorized by law, no person, while en-

gaged in any activity of the private detective business or profession, as defined by this chapter, shall wear, carry or display any distinctive or identifying badge or insignia pertaining to said business or profession other than that prescribed or approved by the commissioner and, in the event that a private detective or any officer or employee of a detective agency shall wear a uniform while engaged in any activity of the private detective business or profession as defined in this chapter, there shall be conspicuously displayed thereon such distinctive identifying badges or insignia as the commissioner may prescribe or approve and the manner of displaying such badges or insignia shall be subject to the approval of the commissioner. "Uniform" as used in this section shall mean any manner of dress of a particular style and distinctive appearance as distinguished from ordinary clothing customarily used and worn by the general public. [C50, 54, 58, 62, 66, 71, 73, 75,§80A.11]

80A.12 Penalties. Any person, firm or corporation who violates any of the provisions of this chapter or who makes any false statement or representation in any application or statement filed with the commissioner of public safety, as required by this chapter, or any person who falsely states or represents that he has been or is a private detective or advertises himself as such, or any person, firm or corporation who engages in the private detective business or profession as defined in this chapter, without being possessed of a current, valid license therefor, as provided by this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment. [C50, 54, 58, 62, 66, 71, 73, 75,§80A.12]

CHAPTER 80B

IOWA LAW ENFORCEMENT ACADEMY

Referred to in §§107.14, 341A.6
Tuition at approved facility, 65GA, ch 1108,§§3, 4

80B.1 Citation.
80B.2 Intent.
80B.3 Definitions.
80B.4 Academy created.
80B.5 Administration.
80B.6 Council created—membership.
80B.7 Officers of council.
80B.8 Compensation and expenses.
80B.9 Meetings.
80B.10 Annual report.
80B.11 Rules.
80B.12 Agreements with other agencies.
80B.13 Authority of council.
80B.14 Budget submitted to comptroller.
80B.15 Library and media resource center.

80B.1 Citation. This chapter shall be known as the "Iowa law enforcement academy and council Act." [C71, 73, 75,§80B.1]

80B.2 Intent. It is the intent of the legislature in creating the academy and the council to maximize training opportunities for law enforcement officers, to co-ordinate training and to set standards for the law enforcement service, all of which are imperative to upgrading law enforcement to professional status. [C71, 73, 75,§80B.2]

80B.3 Definitions. When used in this chapter:

1. "Academy" means the Iowa law enforcement academy.

2. "Council" means the Iowa law enforcement academy council.

3. "Law enforcement officer" means an officer appointed by the state conservation commission, a member of a police force or other agency or department of the state, county or city regularly employed as such and who is responsible for the prevention and detection of crime and the enforcement of the criminal laws of this state and all individuals, as determined by the council, who by the nature of their duties may be required to perform the duties of a peace officer. [C71, 73, 75,§80B.3]

80B.4 Academy created. There is hereby created the Iowa law enforcement academy as a central law enforcement training facility, in order to serve the best interests of the state in carrying out the intent and purpose of this chapter. The academy shall be situated at Camp Dodge and the council shall enter into an agreement with the adjutant general which agreement shall provide for the use of certain of the facilities at Camp Dodge, for the remodeling and conversion of existing structures to classrooms and dormitory space, and for the use of land for the site of an administration building. The agreement shall be on such terms and conditions as are necessary to carry out the purpose of this chapter. [C71, 73, 75, §80B.4]

80B.5 Administration. The administration of the Iowa law enforcement academy and

council Act shall be vested in the office of the governor. A director of the academy and such staff as may be necessary for it to function shall be employed pursuant to the Iowa merit system. [C71, 73, 75,§80B.5]

80B.6 Council created—membership. There is hereby created the Iowa law enforcement academy council which shall consist of the following members:

1. The attorney general, or his designated representative.

2. Two members of the senate serving as ex officio nonvoting members, not more than one of whom will be from the same political party, appointed by the lieutenant governor for a term of four years commencing on August 15, 1974.

3. Two members of the house of representatives serving as ex officio nonvoting members, not more than one of whom will be from the same political party, appointed by the speaker of the house for a term of two years commencing on August 15, 1974.

4. Two members appointed by the governor with the consent of the senate. One member shall be appointed by the governor for a term of four years commencing on August 15, 1974. One member shall be appointed by the governor for a term of two years commencing on August 15, 1974. All succeeding appointments by the governor shall be for a term of four years.

5. One member, knowledgeable in law enforcement, appointed by the superintendent of public instruction from an area school for a term of two years commencing on August 15, 1974. All succeeding appointments by the superintendent of public instruction shall be for a term of four years.

6. One member from the higher education facilities commission for a term of four years commencing on August 15, 1974. This member shall be the commissioner who represents the private colleges.

7. One member appointed by the commissioner of social services from the division of adult corrections for a term of two years commencing on August 15, 1974. All succeeding appointments by the commissioner of social services shall be for a term of four years.

8. One member appointed by the commissioner of public safety from the department of public safety for a term of four years commencing on August 15, 1974.

9. One member elected by the state board of regents for a term of four years commencing August 15, 1974.

In the event a member appointed pursuant to this section is unable to complete his term, the vacancy shall be filled for the unexpired term in the same manner as the original appointment. [C71, 73, 75,§80B.6; 66GA, ch 1052, §6]

80B.7 Officers of council. The council shall elect from its membership a chairman and a vice chairman each of whom shall serve for a term of one year and who may be re-elected. Membership on the council shall not constitute holding a public office and members of the council shall not be required to take and file oaths of office before serving on the council. No member of the council shall be disqualified from holding any public office or employment by reason of his appointment or membership on the council, nor shall any member forfeit any such office or employment by reason of his appointment to the council, notwithstanding the provisions of any general, special or local law, ordinance or city charter. [C71, 73, 75,§80B.7]

80B.8 Compensation and expenses. The members of the council, who are not employees of the state or a political subdivision, shall be paid a forty-dollar per diem. All members of the council shall be reimbursed for necessary and actual expenses incurred in attending meetings and in the performance of their duties. All per diem and expense moneys paid to nonlegislative members shall be paid from funds appropriated to the Iowa law enforcement academy. Legislative members of the council shall receive payment pursuant to section 2.10 and section 2.12. [C71, 73, 75,§80B.8; 66GA, ch 1052,§7]

80B.9 Meetings. The council shall meet at least four times each year and shall hold special meetings when called by the chairman or, in the absence of the chairman, by the vice chairman, or by the chairman upon written request of six members of the council. The council shall establish procedures and requirements with respect to quorum, place, and conduct of meetings. [C71, 73, 75,§80B.9]

80B.10 Annual report. The council shall make an annual report to the governor, the attorney general, and the commissioner of public safety which shall include pertinent data regarding the standards established and the degree of participation of agencies in the training program. [C71, 73, 75,§80B.10]

80B.11 Rules. The director of the academy, subject to the approval of the council, shall promulgate rules in accordance with the provisions of this chapter and chapter 17A, giving due consideration to varying factors and special requirements of law enforcement agencies relative to the following:

1. Minimum entrance requirements, minimum qualifications for instructors, course of study, attendance requirements, and equipment and facilities required at approved law enforcement training schools. Minimum age requirements for entrance to approved law enforcement training schools shall be eighteen years of age.

2. Minimum basic training requirements law enforcement officers employed after July 1, 1968, must complete in order to remain eligible for continued employment and the time within which such basic training must be completed.

3. Categories or classifications of advanced in-service training program and minimum courses of study and attendance requirements for such categories or classifications.

4. Minimum standards of physical, educational, mental and moral fitness which shall govern the recruitment, selection and appointment of law enforcement officers.

5. Exemptions from particular provisions of this chapter in case of any state, county or city, if, in the opinion of the council, the standards of law enforcement training established and maintained by such governmental agency are as high or higher than those established pursuant to this chapter; or revocation in whole or in part of such exemption, if in its opinion the standards of law enforcement training established and maintained by such governmental agency are lower than those established pursuant to this chapter. [C71, 73, 75,§80B.11]

80B.12 Agreements with other agencies. The director with the approval of the council may enter into agreements with other public and private agencies, colleges and universities to carry out the intent of this chapter. [C71, 73, 75,§80B.12]

80B.13 Authority of council. The council may:

1. Designate members to visit and inspect any law enforcement training school, or examine the curriculum or training procedures, for which application for approval has been made.

2. Issue certificates to law enforcement training schools qualifying under the regulations of the council.

3. Authorize the issuance of certificates of graduation or diplomas by approved law enforcement training schools to law enforcement officers who have satisfactorily completed minimum courses of study.

4. Make recommendations to the governor, the attorney general, the commissioner of public safety and the legislature on matters pertaining to qualification and training of law enforcement officers and other matters considered necessary to improve law enforcement services.

5. Co-operate with federal, state and local enforcement agencies in establishing and conducting local or area schools, or regional training centers for instruction and training of law enforcement officers.

6. Direct research in the field of law enforcement and accept grants for such purposes.

7. Accept applications for attendance of the academy from persons other than those required to attend. [C71, 73, 75,§80B.13]

Appropriations, see 62GA, ch 112,§14

80B.14 Budget submitted to comptroller. The Iowa law enforcement academy council shall submit to the state comptroller, annually and in such form as required by chapter 8 estimates of its expenditure requirements. Such estimates shall include the costs of administration, maintenance, and operation, and the cost of any proposed capital improvements or additional programs. [C71, 73, 75, §80B.14]

80B.15 Library and media resource center. The academy shall be the principal law enforcement library and media resource center and shall co-ordinate the use of law enforcement media resources with training centers and educational institutions offering a two-year program in law enforcement to insure for the efficient use of state law enforcement media resources.

The academy shall offer state media resource assistance to any law enforcement training center certified by the Iowa law enforcement academy council. [66GA, ch 1083, §2]

CHAPTER 80C

IOWA CRIME COMMISSION

80C.1 Declaration of policy and purpose.
80C.2 Commission established.
80C.3 Commission functions.
80C.4 Duty to file report.
80C.5 Acceptance of grants.
80C.6 Commission membership.

80C.1 Declaration of policy and purpose. The general assembly finds that the increasing incidence of crime threatens the peace, security and general welfare of the state and its citizens. To prevent crime, to insure the maintenance of peace and good order, and to assure the greater safety of the people, law enforcement, judicial administration, and corrections must be better co-ordinated, intensified and made more effective at all levels of government. [C71, 73, 75,§80C.1]

80C.2 Commission established. There is hereby established the Iowa crime commission, hereinafter called the commission. The commission shall be within the office of the governor. [C71, 73, 75,§80C.2]

80C.3 Commission functions. The commission shall act as the state law enforcement planning agency for purposes established by state or federal agencies. The commission may conduct inquiries, investigations, analyses and

studies of all state, county, and city departments and agencies concerned with the problems of crime, and the commission may conduct inquiries, investigations, analyses, and studies into the incidence and causes of crime in Iowa, in co-operation with state, area, city and county agencies; and develop a state-wide program of interagency co-operation, in association with federal agencies and officials, and those of other states concerned with the problems of crime and based thereupon may make recommendations to the governor, general assembly, and state agencies to carry out the policy and purposes of this chapter. The commission in co-operation with city, county and area agencies, and in conformity with such guidelines as may be promulgated by federal agencies, shall direct research, planning and action programs in furtherance of the policy and purpose of this chapter. [C71, 73, 75, §80C.3]

80C.4 Duty to file report. The commission during the continuance of its operations shall file periodic reports of its progress with the governor, and shall present a report to each annual session of the general assembly. [C71, 73, 75,§80C.4]

80C.5 Acceptance of grants. The commission with approval of the governor may accept funds, grants, services, facilities and property from any source, and all such receipts of the commission, including gifts, grants-in-aid and other revenue, are hereby appropriated for carrying out the purposes of this chapter. The expenditure of any funds available to the commission shall be by warrant to the treasurer of the state, drawn by the state comptroller upon vouchers authorized by the executive director of the commission.

The commission may:

1. Expend such moneys as may be appropriated by the general assembly, or otherwise shall be available, for study, research, investigation, planning and implementation.

2. Make grants to cities, counties and areas pursuant to law and such regulations as may be applicable.

3. Provide supplies, facilities, personnel and staff for the function and operations of the commission, and for such other purposes as may be necessary and proper to accomplish the policy of this chapter. [C71, 73, 75,§80C.5]

80C.6 Commission membership. The commission shall consist of nine members who are concerned with and knowledgeable about the problems of criminal justice and who are appointed by the governor as follows:

1. Five members representative of law enforcement and criminal justice agencies maintaining programs to reduce and control crime, two of whom shall be officials of cities or counties, two of whom shall be officials of the state and one of whom shall be a representative of a juvenile justice agency.

2. Four citizen members who have demonstrated knowledge and concern in the prevention and control of crime and delinquency. At least one citizen member shall be appointed to represent the citizens of the state who are affected by unemployment, low income or substandard housing.

The governor shall appoint an executive director of the commission who shall be his official representative, and who shall be the principal executive administrator of the commission.

All commissioners designated by the governor shall serve at the governor's pleasure. No member of the general assembly shall be appointed as a voting member of the commission. [C71, 73, 75,§80C.6; 66GA, ch 86,§1]

CHAPTER 81

ITINERANT MERCHANTS

81.1 Definition of the included class.
81.2 License required.
81.3 Application—contents—fees.
81.4 Insurance policies and bonds required.
81.5 Department as process agent.
81.6 Service of original notice.
81.7 Issuance of license—plates.
81.8 Nontransferability.
81.9 Revocation of license.
81.10 Departmental rules.
81.11 Fees to treasurer.
81.12 Exemption from peddler's license.
81.13 Penalties.
81.14 Injunction proceedings.

81.1 Definition of the included class.

1. When used in this chapter:

a. "Motor vehicle" shall have the same meaning as when used in any statutes regulating the use and operation of motor vehicles; provided, that in this chapter the term shall always include as one vehicle a tractor-semitrailer or tractor-trailer combination.

b. "Highway" shall mean any thoroughfare defined by any statute or ordinance as a public highway or street.

c. "Person" shall mean a natural person, firm, partnership, association, corporation, trust, trustee, lessee, or receiver, as the context may require, regardless of the gender of the pronoun used in conjunction therewith.

d. "Department" shall mean the motor vehicle department* of the state.

e. "Established place of business" shall mean any permanent warehouse, building, or structure, at which a permanent business is carried on throughout the year or usual production or marketing season in good faith, and at which stocks of the property being transported are produced, stored, or kept in quantities reasonably adequate for, and usually carried for the requirements of such business, and which is recognized as a permanent place of business. It shall not mean tents, temporary stands or other temporary quarters.

f. "Insurance company" shall mean any insurance company, insurance association, reciprocal or interinsurance exchange authorized to do business in the state of Iowa.

g. "Itinerant merchant" shall mean any person who transports personal property for sale by him within this state, by use of a motor vehicle, except as herein otherwise provided.

2. The term *"itinerant merchant"* shall not mean or include the following:

a. A person using a motor vehicle, operated by him or his agent, for the transportation of milk, dairy products, grain, fruits, feed, seed, vegetables, livestock, poultry, or other agricultural products, produced or fed by him on a farm operated by him, or any person using a motor vehicle for the transportation of newspapers, books, or magazines.

b. A person transporting property when such transportation is incident to a business conducted by him at an established place of business operated by him, either within or without this state, and when said property is being transported to or from said established place of business, and when the entire course of such transportation extends not more than three hundred and fifty miles from said established place of business; provided, however, that when the entire course of said transportation is for the purpose of delivery of said property subsequent to sale thereof said three hundred and fifty miles restriction shall not apply.

c. A person licensed under the provisions of sections 203.6 or 203.7.

d. A person operating in the manner of an itinerant merchant, buying or selling within a radius of fifty miles from his residence, provided he has secured a permit, upon the payment of a fee of one dollar to cover expense of mailing and manufacture, upon application to the county treasurer or the department, said permit to set forth the city or township of his residence and the Iowa motor vehicle license number of the vehicle used by him. The permit shall be carried by such operator at all times.

e. A salesman selling manufactured articles produced by his employer who sells the same to retail dealers for the purpose of resale.

3. Any person operating in the manner of an itinerant merchant claiming exemption because of interstate operations by passing through or across the state, shall obtain from the department a permit without payment of fee for each trip or operation. This permit shall state the date the trip is to be made, type of load to be carried, approximate route to be traversed, and source and destination of load. [C39,§**1225.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §81.1]

Referred to in §81.2
*See §321.2

81.2 License required. No person shall engage in business or use any motor vehicle in this state as an itinerant merchant, as defined and fixed in section 81.1, without complying with the chapter and without obtaining from the department the license required by this chapter. [C39,§**1225.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§81.2]

81.3 Application—contents—fees. An application for a license to engage in business as an itinerant merchant shall be made to the department or county treasurer upon forms to be prepared by the department. The county treasurer shall retain a fee of fifty cents from each itinerant merchant license fee. A separate application and license shall be required for each motor vehicle to be operated. In addition to any other essential information required by the department, said application shall state the following: Name and legal status of the applicant; his business address; if a natural person his residence address; if not a natural person the names and business and residence addresses of the principal and managing officers, agents or partners; a general description of the business to be conducted and the area in this state in which it will be conducted; an exact description of the motor vehicle to be used including the make, type, manufacturer's rated loading capacity, motor number, serial number, place where registered, and registration or license number; such application shall be sworn to.

Upon payment of the license fee as hereinafter determined, the department shall issue a license which shall entitle the applicant to be an itinerant merchant. The fee shall be based upon the maximum weight of the load which said merchant may transport at any one time and shall be as follows: On not to exceed one thousand pounds at one time, ten dollars; on not to exceed three thousand pounds at one time, twenty-five dollars; on a load in excess of three thousand pounds at one time, forty dollars. Provided, however, that the license fee of an itinerant merchant for transportation of property in a motor vehicle which is licensed under chapter 321 shall be the sum of two dollars regardless of the weight of the load. The fee shall be reduced fifty percent after June 30. Each license shall expire at the end of the calendar year. [C39,§**1225.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§81.3]

81.4 Insurance policies and bonds required.

1. No license shall be issued by the department until the applicant shall have filed with each application, and the same have been approved by the department, an insurance policy and a bond issued by a company as herein defined authorized to do business within the state of Iowa as follows:

a. An indemnity bond in the penal sum of five hundred dollars for an itinerant merchant operating with more than twenty-five hundred pounds actual load. Such bond shall be in such form as may be prescribed by the department for the purpose of protecting the public against fraud, conditioned upon the use of honest weights, measures, and grades, if the commodities to be handled by the itinerant merchant are those customarily sold by weight, measure and grade; accurate representation as to quality or class of such commodities, and the actual payment of checks, drafts, debentures or other securities delivered by each itinerant merchant in exchange for the purchase of commodities to be handled by him. The surety on such bond shall be a surety company authorized to engage in the surety business in this state. In such bond the surety shall appoint the head of the motor vehicle department the agent of the surety for the service of process in the event that personal service cannot be had upon it within the state and shall designate the post-office address to which process against said surety in any suit on said bond may be sent or served. Whenever the bond provided for in this section shall be exhausted, the department shall forthwith cancel the license. Said license so canceled shall be renewed for the balance of the period for which issued by filing an additional bond with corporate surety in like amount conditioned as required in the previous bond.

Nothing in this section shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished by any prior recovery or recoveries as the case may be.

No suit or action against the surety on any such bond shall be brought later than one year from the accrual of the cause of action thereon.

b. A liability insurance policy which shall bind the obligors to pay damages for injuries to persons and damage to property resulting from the negligent operation of the motor vehicle operated under authority of the itinerant merchant's license, said policy or bond to be conditioned to pay any sum up to five thousand dollars for personal injury to or death of one individual, and up to ten thousand dollars for personal injuries or deaths resulting from any single accident, and up to one thousand dollars for damage to property in any single accident.

2. Every insurance policy and bond filed with the department under the provisions of this chapter shall contain an endorsement or provision that the same shall not be canceled by the obligor, shall not expire, and shall not become reduced in amount, until ten days after notice thereof by certified United States mail has been sent to the department. Upon receipt of such notice the department shall immediately send the itinerant merchant at his last known address by restricted certified mail, a notice advising him that unless a new insurance policy or bond is filed prior to the time such cancellation, expiration or reduction becomes effective, the license of such itinerant merchant shall be revoked at the time such cancellation, expiration or reduction becomes effective. If a new policy or bond is not filed in accordance with such notice the department must revoke said license at said time.

3. Any person having a cause of action against the itinerant merchant arising out of the matters described in paragraph "*a*" of subsection 1 of this section may join said itinerant merchant and the surety on his bond in the same action, or may sue said surety without joining said itinerant merchant in the action if the itinerant merchant is deceased or if it is impossible to obtain jurisdiction of his person within the state. [C39,§**1225.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§81.4]

Referred to in §81.9

81.5 Department as process agent. Before a license shall issue, the applicant shall sign and file with the department an irrevocable power of attorney appointing the department his agent to accept service of original notice, in the event that personal service cannot be had upon the applicant in this state, for all causes of action against him arising out of the conduct of his business as an itinerant merchant and the operation of the motor vehicle described in the application. [C39,§**1225.34**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§81.5]

Referred to in §81.6

81.6 Service of original notice. Whenever service of original notice in any cause of action described in section 81.5 cannot be made upon the itinerant merchant or the bonding company within the state of Iowa, such service may be made upon either or both by sending sufficient copies of such original notice to the department by certified United States mail. The department shall immediately upon receipt thereof endorse upon each copy the date and hour received and shall file one copy, whereupon service of said original notice shall be deemed to be completed upon said itinerant merchant or said bonding company as of the date of said filing. The department shall immediately send one copy of said original notice to said itinerant merchant or one copy to said bonding company or to both at the last known address of each, by restricted certified mail. The venue of any such action may be laid in any county of this state in which said cause of action arose, or in any other place authorized by law. [C39,§**1225.35**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§81.6]

81.7 Issuance of license—plates. Upon the approval of the application and upon compliance with the terms of this chapter, the department shall issue to the applicant a license as an itinerant merchant. Such license shall be numbered, shall specifically describe the itinerant merchant and the motor vehicle as they are described in the application, and shall at all times be carried in the cab of the motor vehicle described and be subject to inspection by any proper person. The department shall also issue to the itinerant merchant a license plate containing the same number as the license, of distinctive color and size, which shall at all times be displayed on the rear of the motor vehicle described in the license. [C39,§**1225.35**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §81.7]

81.8 Nontransferability. No license or license plate issued pursuant to this chapter may be sold or transferred, and no license or license plate may be transferred from one vehicle to another. [C39,§**1225.37**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§81.8]

81.9 Revocation of license. The department may revoke any license or permit issued under the provisions of this chapter after proper hearing before it, by the sending of due notice thereof by restricted certified mail, to the itinerant merchant at his last known address, not less than twenty days before the date of said hearing, for any of the following causes:

1. Failure to comply with the provisions of this chapter or to pay the sales tax as provided by law or misrepresentation of the source, condition, quality, weight or measure of the products sold by the itinerant merchant.

2. If any judgment recovered against any itinerant merchant with reference to the operation of his business remains unpaid for a period of six months, provided such judgment be not stayed under a supersedeas bond upon appeal from such judgment.

The department shall give immediate notice of the revocation of any license issued under the provisions of this chapter, to the surety or insurance company issuing the bond or policy to the licensee as provided in section 81.4. [C39,§**1225.38**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §81.9]

81.10 Departmental rules. The department shall make and enforce such rules for the administration of this chapter as may be necessary and proper. [C39,§**1225.39**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§81.10]

81.11 Fees to treasurer. All fees received by the department from the issuance of licenses shall be deposited monthly with the treasurer of state. [C39,§**1225.40**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§81.11]

81.12 Exemption from peddler's license. Nothing in this chapter shall be construed to repeal or amend any statute delegating authority to any county or municipal corporation to license, tax, or regulate peddlers or itinerant merchants; provided that any person licensed under the provisions of this chapter shall not be required to obtain the license required by section 444.13. [C39,§**1225.41**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§81.12]

81.13 Penalties. Any person violating any provision of this chapter shall be guilty of a misdemeanor, except as herein otherwise provided, and shall upon conviction thereof be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail not exceeding thirty days. [C39,§**1225.42**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§81.13]

81.14 Injunction proceedings. Any county attorney may commence an action in any court of competent jurisdiction, in the name of the state as plaintiff on the relation of such county attorney, to enjoin any person from violating any of the provisions of this chapter. Such action may be maintained upon due showing that the defendant has violated any of the provisions of this chapter. [C39,§**1225.43**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§81.14]

Constitutionality, 48GA, ch 209,§15

CHAPTER 81A

TRANSIENT MERCHANTS

81A.1 Definitions.
81A.2 License required.
81A.3 Application for license.
81A.4 Bond required.
81A.5 Issuance of license.
81A.6 License fee.
81A.7 Misrepresentation.
81A.8 Revocation.
81A.9 Penalty.

81A.1 Definitions. The term "transient merchant" as used herein shall mean and include every merchant, whether an individual person, a firm, corporation, partnership or association, and whether owner, agent, bailee, consignee or employee, who shall bring or cause to be brought within the state of Iowa any goods, wares or merchandise of any kind, nature or description, with the intention of temporarily or intermittently selling or offering to sell at retail such goods, wares or merchandise within the state of Iowa. The term "transient merchant" shall also mean and include every merchant, whether an individual person, a firm, corporation, partnership or an association, who shall by himself or itself, or by

agent, consignee or employee temporarily or intermittently engage in or conduct at one or more locations a business within the state of Iowa for the sale at retail of any goods, wares or merchandise of any nature or description. A merchant engaging in business shall be presumed to be temporarily or intermittently in business unless it is the intention of such merchant to remain continuously in business at each location where he is engaged in business within the state of Iowa as a merchant for a period of more than sixty days. The provisions of this chapter shall not be construed to apply to persons selling at wholesale to merchants, nor to transient vendors of drugs, nor to persons running a huckster wagon, or selling or distributing livestock feeds, fresh meats, fish, fruit, or vegetables, nor to persons selling their own work or production either by themselves or employees. [C58, 62, 66, 71, 73, 75,§81A.1]

81A.2 License required. It shall be unlawful for any transient merchant as herein defined, to sell, dispose of, or offer for sale any goods, wares or merchandise of any kind, nature or description, at any time or place within the state of Iowa, outside the limits of any city in the state of Iowa, or within the limits of any city in the state of Iowa that has not by ordinance provided for the licensing of transient merchants, unless such transient merchant, as herein defined, shall have a valid license as herein provided and shall have complied with the regulations herein set forth. [C58, 62, 66, 71, 73, 75,§81A.2]

81A.3 Application for license. Any transient merchant as defined herein, desiring a transient merchant's license shall at least ten days prior to the first day any sale is made, file with the secretary of state of the state of Iowa an application in writing duly verified by the person, firm, corporation, partnership or association proposing to sell or offer to sell at retail any goods, wares or merchandise, or to engage in or conduct a temporary or intermittent business for the sale at retail of any goods, wares or merchandise, which application shall state the following facts:

1. The name, residence and post-office address of the person, firm, corporation, partnership or association making the application, and if a corporation, the names and addresses of the officers thereof, and if a firm, partnership or association and not a corporation, the names and addresses of all members thereof.

2. If the application be made by an agent, bailee, consignee or employee, the application shall so state and set out the name and address of such agent, bailee, consignee or employee and shall also set out the name and address of the owner of the goods, wares and merchandise to be sold or offered for sale.

3. The application shall state whether or not the applicant has an Iowa retailers sales tax permit and if the applicant has such permit, shall state the number of such permit.

4. If the applicant be a corporation, the application shall state whether or not the applicant is an Iowa corporation or a foreign corporation, and if a foreign corporation, shall state whether or not such corporation is authorized to do business in Iowa.

5. The value of the goods to be sold or offered for sale or the average inventory to be carried by any such transient merchant engaging in or conducting an intermittent or temporary business as the case may be.

6. The date or dates upon which said goods, wares or merchandise shall be sold or offered for sale, or the date or dates upon which it is the intention of the applicant to engage in or conduct a temporary or intermittent business.

7. The location and address where such goods, wares or merchandise shall be sold or offered for sale, or such business engaged in or conducted. [C58, 62, 66, 71, 73, 75,§81A.3]

81A.4 Bond required. At the time of filing said application and as a part thereof, the applicant shall file with the secretary of state a bond, with sureties to be approved by the secretary of state, in a penal sum two times the value of the goods, wares or merchandise to be sold or offered for sale or the average inventory to be carried by such transient merchant engaged in or conducting an intermittent or temporary business as the case may be as shown by the application, running to the state of Iowa, for the use and benefit of any purchaser of any merchandise from such transient merchant who might have a cause of action of any nature arising from or out of such sale against the applicant or the owner of such merchandise if other than the applicant; the bond to be further conditioned on the payment by the applicant of all taxes that may be payable by, or due from, the applicant to the state of Iowa or any subdivision thereof, the bond to be further conditioned for the payment of any fines that may be assessed by any court against the applicant for violation of the provision of this chapter, and further conditioned for the payment and satisfaction of any and all causes of action against the applicant commenced within one year from the date of sale thereof, and arising from such sale, provided, however, that the aggregate liability of the surety for all such taxes, fines and causes of action shall in no event exceed the principal sum of such bond. In such bond the applicant and surety shall appoint the secretary of state, the agent of the applicant and surety for the service of process. In the event of such service, the agent upon whom such service is made shall within five days after the date of service, mail by ordinary mail a true copy of the process served upon him to each party for whom he is served, addressed to the last known address of such party. Failure to so mail said copy shall not, however, affect the jurisdiction of the court. Such bond shall contain the consent of the applicant and surety that the district court of the county in which the plain-

tiff may reside or Polk county, Iowa, shall have jurisdiction of all actions against the applicant or surety, or both, arising out of the sale. The state of Iowa, or any subdivision thereof, or any person having a cause of action against the applicant or surety arising out of said sale may join the applicant and surety on such bond in the same action, or may in such action sue either the applicant or the surety alone. [C58, 62, 66, 71, 73, 75,§81A.4]

81A.5 Issuance of license. Upon receiving an application for a transient merchant's license, the secretary of state shall investigate or cause to be investigated, the reputation and character of the applicant. If, upon making such investigation, the secretary of state is satisfied that the statements and representations contained in the application are true, and that the applicant is of good reputation and character, and the holder of an Iowa retailer's sales tax permit, and if a foreign corporation, has authority to do business in the state of Iowa, he shall issue to the applicant a license as a transient merchant upon payment of the fee as herein prescribed for the period of time requested in said application and for use at the location and place where it is stated in said application the sale will be held or the business conducted, both of which shall be set out in said license. Such license shall be valid only for the period of time and at the location and place described therein. [C58, 62, 66, 71, 73, 75,§81A.5]

81A.6 License fee. Prior to issuing the said transient merchant's license, the secretary of state shall collect for the state of Iowa a license fee in the sum of twenty-five dollars for each day the applicant, as shown by his application, shall propose to sell or offer for sale any goods, wares or merchandise, or for each day the applicant, as shown by his application, proposes to engage in and conduct a business as a transient merchant as the case may be. [C58, 62, 66, 71, 73, 75,§81A.6]

81A.7 Misrepresentation. It shall be unlawful for any transient merchant making sales or engaging in or conducting a business under a transient merchant's license to make any false or misleading statements or representation regarding any article sold or offered for sale by such transient merchant as to condition, quality, original cost, or cost to such transient merchant of any article sold or offered for sale or to sell or offer for sale goods, wares or merchandise of a value in excess of the value thereof as shown by said application, or to sell or offer for sale at retail any goods, wares or merchandise, or to engage in or conduct an intermittent or temporary business on any days or at any place other than those shown by such license. [C58, 62, 66, 71, 73, 75, §81A.7]

81A.8 Revocation. The secretary of state may revoke any license issued under the provisions of this chapter after proper hearing before him, by the sending of due notice of said hearing by registered letter to the "transient merchant" at his last known address, return receipt requested, not less than twenty days before the date of said hearing, for any of the following causes:

1. For any violations of the provisions of this chapter.
2. For failure to pay the sales tax as provided by law or misrepresentation of the source, condition, quality, weight or measure of the product sold by the "transient merchant."
3. If any judgment recovered against any "transient merchant" with reference to the operation of his business remains unpaid for a period of six months provided such judgment be not stayed under a supersedeas bond upon appeal from such judgment.

The secretary of state shall give immediate notice of the revocation of any license issued under the provisions of this chapter to the surety or sureties furnishing the bond provided for herein.

In the event of such revocation, no other "transient merchant" license shall be issued to such applicant for a period of two years thereafter. [C58, 62, 66, 71, 73, 75,§81A.8]

81A.9 Penalty. Any merchant, whether an individual person, a firm, corporation, partnership or association violating any of the provisions of this chapter shall, upon conviction, be fined in a sum not to exceed one hundred dollars, or be imprisoned not to exceed thirty days in jail. Each sale made in violation of the provisions hereof shall be and constitute a separate offense. [C58, 62, 66, 71, 73, 75, §81A.9]

Constitutionality, 56GA, ch 77,§10

CHAPTER 82

DEPARTMENT OF MINES AND MINERALS

Repealed by 65GA, ch 189,§81
Duties transferred to soil conservation department, ch 467A; see also ch 83A

CHAPTER 83

GYPSUM MINES

Repealed by 65GA, ch 139,§31

CHAPTER 83A

MINES

Coal research project at Iowa State University, see 65GA, ch 1065
Effect of prior orders by mine inspector before August 15, 1973, see 65GA, ch 139,§25

83A.1 Policy.
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83A.3 Advisory board.
83A.4 Terms.
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83A.13 Registering site of mine.
83A.14 Bond.
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83A.23 Form of bond.
83A.24 Single bond for multiple sites.
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83A.27 Hearing on violations.
83A.28 Forfeiture of bond.
83A.29 Penalty for failure to register.
83A.30 Governor's approval of rules.
83A.31 Environmental standards.

83A.1 Policy. It is hereby declared to be the policy of this state to provide for the rehabilitation and conservation of land affected by surface mining and thereby to preserve natural resources, protect and perpetuate the taxable value of property, and protect and promote the health, safety and general welfare of the people of this state. [C71, 73, 75,§83A.1]

83A.2 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Overburden"* means all of the earth and other materials which lie above natural deposits of coal, gypsum, clay, stone, sand, gravel or other minerals, and includes all earth and other materials disturbed from their natural state in the process of surface mining.

2. *"Surface mining"* means the mining of coal, gypsum, clay, stone, sand, gravel or other ores or mineral solids for sale or for processing or consumption in the regular operation of a business by removing the overburden lying above the natural deposits and mining directly from the natural deposits exposed, or by mining directly from deposits lying exposed in their natural state. Removal of overburden and mining of limited amounts of any ores or mineral solids other than coal shall not be considered surface mining when done only for the purpose and to the extent necessary to determine the location, quantity, or quality of the natural deposit, if the ores or mineral solids removed during exploratory excavation or mining are not sold, processed for sale, or consumed in the regular operation of a business.

3. *"Operator"* means any person, firm, partnership, or corporation engaged in and controlling a mining operation but shall not include a political subdivision of the state of Iowa.

4. *"Active site"* means a site where surface mining is being conducted.

5. *"Inactive site"* means a site where surface mining is not being conducted but where overburden has been disturbed in the past for the purpose of conducting surface mining and an operator anticipates conducting further surface mining operations in the future.

6. *"Pit"* means a tract of land from which overburden has been or is being removed for the purpose of surface mining.

7. *"Affected land"* means the area of land from which overburden has been removed or upon which overburden has been deposited or both.

8. *"Spoil bank"* means overburden removed from its natural position and deposited elsewhere in the process of surface mining.

9. *"Ridge"* means a lengthened elevation of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

10. *"Peak"* means a projecting point of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

11. *"Department"* means the department of soil conservation.

12. *"Committee"* means the state soil conservation committee.

13. *"Advisory board"* means the "land rehabilitation advisory board" in the department.

14. *"Administrator"* means the administrative officer of the department responsible for administration or enforcement of this chapter or his designee.

15. *"Mine"* means any underground or surface mine developed and operated for the purpose of extracting any ores or mineral solids. [C24, 27, 31, 35, 39,§1244; C46, 50, 54, 58, 62, 66, §82.27; C71, 73,§§82.27, 83A.2; C75,§83A.2; 66GA, ch 87,§3]

Referred to in §83A.7

83A.3 Advisory board. There is hereby established within the department of soil conservation a land rehabilitation advisory board which shall consist of seven members appointed by the governor, as follows:

1. The state forester or a member educated and experienced in the field of forestry.

2. The state geologist or a member educated and experienced in the field of geology.

3. One member educated and experienced in the field of agronomy.

4. One member representing the state conservation commission.

5. One member representing the Iowa natural resources council.

6. Two members representing Iowa surface mining operators. The state association or groups representing each of the industries engaged in surface mining in Iowa, or their managing boards, may jointly submit to the governor in each year when an industry representative is to be appointed a list of two or more persons qualified for the appointment. If a list is submitted, the governor shall appoint to the advisory board at least one of the persons named on the list.

Members of the advisory board may at any time request representatives of any federal, state, local, or private agency or group to serve in a consulting capacity with the advisory board. [C71, 73, 75,§83A.3]

83A.4 Terms. Members of the advisory board shall serve for terms of three years.

Vacancies on the advisory board shall be filled for the unexpired term of the vacancy in the same manner as the original appointment. Members of the advisory board shall serve without compensation but shall be allowed actual and necessary expenses while engaged in official duties upon certification of the chairman of the advisory board to the department. [C71, 73, 75,§83A.4]

83A.5 Meetings of board. Prior to August 1 of each year, the advisory board shall meet and organize and shall elect a chairman and such other officers as advisory board members shall deem necessary. The chairman shall be responsible for calling meetings of the advisory board. Advisory board meetings shall be held at least quarterly and at such other times as the chairman of the advisory board or the chairman of the committee deems necessary or upon the request of four or more advisory board members. [C71, 73, 75,§83A.5]

83A.6 Duties of board. The advisory board shall:

1. Advise the department on any matter relating to administration and enforcement of this chapter.

2. Advise the department with respect to surface mined land rehabilitation demonstration projects.

3. Advise the department on the gathering, preparation, and dissemination of information on methods of rehabilitating land which has been surface mined and on any state, federal, or other financial assistance which may be available to assist in paying the cost of rehabilitation of the land.

The department shall inform the advisory board of all complaints received relating to mining and mining operations. [C71, 73, 75, §83A.6; 66GA, ch 67,§8]

83A.7 Mining license. No person, firm, partnership, or corporation shall engage in surface mining or operation of an underground mine or mines, as defined by section 83A.2, without first obtaining a license from the department. Licenses shall be issued upon application submitted on a form provided by the department and shall be accompanied by a fee of fifty dollars. Each applicant shall be required to furnish on the form information necessary to identify the applicant. Licenses shall expire one year from date of issuance and shall be renewed by the department upon application submitted within thirty days prior to the expiration date and accompanied by a fee of ten dollars. [C71, 73, 75,§83A.7]

Referred to in §83A.14

83A.8 Suspension or revocation of license. The department may, with approval of the committee, commence proceedings to suspend, revoke, or refuse to renew a license of any licensee for repeated or willful violation of any of the provisions of this chapter or of the federal Coal Mine Health and Safety Act of 1969 or the federal Metal and Nonmetallic Mine Safety Act. The department shall by certified mail or personal service serve on the licensee notice in writing of the charges and grounds upon which the license is to be suspended, revoked, or will not be renewed. The notice shall include the time and the place at which a hearing shall be held before the committee to determine whether to suspend, revoke, or refuse to renew the license. The hearing shall be not less than fifteen nor more than thirty days after the mailing or service of the notice. [C71, 73, 75,§83A.8]

83A.9 Hearing — counsel. Any licensee whose license the department proposes to suspend, revoke, or refuse to renew shall have the right to counsel and may produce witnesses and present statements, documents, and other information in his behalf at the hearing. If after full investigation and hearing the licensee is found to have willfully or repeatedly violated any of the provisions of this chapter or of the federal Coal Mine Health and Safety Act of 1969 or the federal Metal and Nonmetallic Mine Safety Act, the committee may affirm or modify the proposed suspension, revocation, or refusal to renew the license. When the committee finds that a license should be suspended or revoked or should not be renewed, the department shall so notify the licensee in writing by certified mail or by personal service. [C71, 73, 75,§83A.9]

83A.10 Notice—effective date of suspension. Suspension or revocation of a license shall become effective thirty days after the mailing or service of notice to the licensee. When the department proposes to deny an application for renewal of a license and administrative proceedings relevant to the renewal application are pending or in progress on the date the license is to expire, the license shall remain in force until the proceedings have been completed if the licensee has paid the renewal fee. If the committee finds the license should not be renewed, the renewal fee shall be refunded and the license shall expire on the expiration date or thirty days after mailing or service of notice to the licensee, whichever is later. [C71, 73, 75,§83A.10]

83A.11 Judicial review. Judicial review of the action of the board or department may be sought in accordance with the terms of the Iowa administrative procedure Act. [C71, 73, 75,§83A.11]

83A.12 Repealed by 65GA, ch 1090,§211, effective July 1, 1975.

83A.13 Registering site of mine.

1. Within fifteen days prior to beginning mining or removal of overburden at any surface mining site not previously registered, an operator engaging in mining in this state shall register the site with the department. Application for registration shall be made upon a form provided by the department. The registration fee shall be established by the department in an amount equal to the cost of administering the registration provisions of this chapter, as estimated by the department. The application shall include a description of the tract or tracts of land where the site is located and the estimated number of acres at the site to be affected by the mine. The description shall include the section, township, range, and county in which the land is located and shall otherwise describe the land with sufficient certainty to determine the location and to distinguish the land to be registered from other lands. The application shall include a statement explaining the authority of the applicant's legal right to operate a mine on the land.

2. The application shall be accompanied by a mine and rehabilitation plan which shall include the following:

a. The character and thickness of the ores, or mineral solids, and overburden to be disturbed.

b. The method of redistribution of the overburden.

c. The final configuration of affected land.

d. Samples of overburden.

e. Data upon which the mine plan is based.

3. On the basis of information and data required to be submitted pursuant to this section the department may designate the site for which application for registration is made unsuitable for surface coal mining if:

a. The department determines that land rehabilitation required under this chapter is not physically or biologically feasible; or

b. The operation results in significant damage to important historic, cultural, scientific and esthetic values and natural systems; or

c. The operation results in a substantial loss of or reduction in long-range productivity of water supply or of food or fiber products; or

d. The operation substantially endangers life and property, including areas subject to frequent flooding and areas of unstable geology.

Land on which surface coal mining is authorized by the department pursuant to this chapter on or before July 1, 1975 or where substantial legal and financial commitments for the operation are in existence prior to September 1, 1973 shall not be designated unsuitable.

4. A person who falsifies information required to be submitted under this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one hundred dollars or by imprisonment for a period not to exceed thirty days or be punished by both such fine and imprisonment. [C71, 73, 75,§83A.13; 66GA, ch 87,§4]

Referred to in §§83A.15, 83A.16, 83A.21, 83A.29

83A.14 Bond. The application for registration shall be accompanied by a bond or security as required under sections 83A.23 or 83A.24 if overburden is removed. After ascertaining that the applicant is licensed under section 83A.7 and is not in violation of this chapter with respect to any site previously registered with the department, the department shall register the site and shall issue the applicant written authorization to conduct surface mining on the site. Nothing in this section shall require land which has been mined or from which overburden has been removed before July 1, 1976 to meet the standards in section 83A.31. Authorization shall not be issued to conduct surface coal mining in areas desig-

nated unsuitable pursuant to section 83A.13. [C71, 73, 75,§83A.14; 66GA, ch 87,§5]

Referred to in §§83A.15, 83A.16, 83A.21, 83A.24

83A.15 Amendment or cancellation. An operator may at any time apply for amendment or cancellation of registration of any site. The application for amendment or cancellation of registration shall be submitted by the operator on a form provided by the department and shall identify as required under section 83A.13 the tract or tracts of land to be added to or removed from registration. If the application is for an increase in the area of a registered site, the application shall be processed in the same manner as an application for original registration. If the application is to cancel registration of any or all of the unmined part of a site, the department shall after ascertaining that no overburden has been disturbed or deposited on the land order release of the bond or the security posted on the land being removed from registration and cancel or amend the operator's written authorization to conduct surface mining on the site. Fees for amendment or cancellation of registration shall be determined as provided in section 83A.14. No land where overburden has been disturbed or deposited shall be removed from registration or released from bond or security under this section. [C71, 73, 75,§83A.15]

Referred to in §§83A.21, 83A.23, 83A.24

83A.16 Transfer to new operator. If control of an active site or the right to conduct any future mining at an inactive site is acquired by an operator other than the operator holding authorization to conduct surface mining on the site, the new operator shall within fifteen days apply for registration of the site in the new operator's name. The application shall be made and processed as provided under sections 83A.13 and 83A.14. The former operator's bond or security shall not be released until the new operator's bond or security has been accepted by the department. [C71, 73, 75,§83A.16]

Referred to in §§83A.17, 83A.21

83A.17 Spoil banks. Every operator authorized under this chapter to engage in surface mining on a site where mining operations disturb overburden containing acid-forming materials shall, when feasible, avoid placing on the surfaces of spoil banks any materials likely to form acid in amounts which will prevent or impede establishment of desirable vegetation on the spoil banks. After completion of mining operations the operator shall within the time specified in section 83A.19:

1. Grade spoil banks to slopes having a maximum of one foot of vertical rise for each four feet of horizontal distance except that where the original topography of the affected land was steeper than one foot of vertical rise for each four feet of horizontal distance, the spoil bank shall be graded to blend with the surrounding terrain.

2. Construct an earth dam at any site where a lake or pond may be formed to properly control the drainage of acidic water from the site.

3. Provide for the vegetation of the spoil banks created by removal of overburden as prescribed by the department before release of the bond as provided in section 83A.19.

4. Cover, with at least two feet of earth or spoil material, acid-forming materials present in a mineral seam exposed by mining operations if the exposed acid-forming materials are not covered by impounded water.

A bond or security posted under this chapter to assure rehabilitation of land affected by surface mining shall not be released until all rehabilitation work required by this section and section 83A.31 has been performed to the department's satisfaction, except when a replacement bond or security is posted by a new operator under section 83A.16. [C71, 73, 75, §83A.17; 66GA, ch 87,§6]

Referred to in §§83A.19, 83A.21, 83A.23, 83A.28

83A.18 Periodic reports. Every operator shall file with the department a periodic report for each site under registration indicating whether the site is presently active or inactive. Each report shall make reference to the most recent registration of the site and shall show:

1. The location and extent of all land on the site affected by surface mining during the period covered by the report.

2. The extent to which removal of mineral products from all or any part of the affected land has been completed.

A report as prescribed by this section shall be filed not later than twelve months after original registration of the site and prior to the expiration of each subsequent twelve-month period thereafter. A report shall also be filed within thirty days after completion of all surface mining operations at the site regardless of the date of the last preceding report. Forms on which periodic reports required by this section shall be filed shall be provided by the department. [C71, 73, 75,§83A.18]

Referred to in §§83A.19, 83A.21

83A.19 Rehabilitation of land. An operator of a surface mine shall rehabilitate land affected by surface mining within twelve months after the filing of a report required under section 83A.18 indicating the mining of any part of a site has been completed. Each operator, upon completion of any rehabilitation work required by section 83A.17 and section 83A.31, shall apply to the department in writing for approval of the work. The department shall within a reasonable time determined by departmental rule inspect the completed rehabilitation work. Upon determination by the department that the operator has satisfactorily completed all required rehabilitation work on the land included in the application, the department shall release the bond or security on the rehabilitated land, shall remove the land from registration, and shall terminate or amend as necessary the

operator's authorization to conduct surface mining on the site. [C71, 73, 75,§83A.19; 66GA, ch 87,§7]

Referred to in §§83A.17, 83A.20, 83A.21, 83A.24, 83A.31

83A.20 Extension of time. The time for completion of rehabilitation work may be extended upon presentation by the operator of evidence satisfactory to the department that rehabilitation of affected land cannot be completed within the time specified by section 83A.19 without unreasonably impeding removal of mineral products from other parts of an active site or future removal of mineral products from an initiative site. [C71, 73, 75, §83A.20]

Referred to in §83A.21

83A.21 Political subdivision engaged in mining. Any political subdivision of the state of Iowa which engages or intends to engage in surface mining shall meet all requirements of sections 83A.13 to 83A.20 and section 83A.31 except the subdivision shall not be required to post bond or security on registered land. When a political subdivision engaging in surface mining violates any provision of this chapter or any rule adopted by the department pursuant to this chapter, the department shall notify the chief administrative officer or governing body of the subdivision. If after a reasonable time determined by the department, the subdivision has not commenced corrective measures approved by the department, the violation shall be referred to the committee. The chief administrative officer or governing body of the subdivision shall be notified in writing of the referral. [C71, 73, 75, §83A.21; 66GA, ch 87,§8]

83A.22 Hearing on violation. Upon receipt of the referral, the committee shall schedule a hearing on the violation by the political subdivision within thirty days after the date of receipt. The committee shall upon written request from the chief administrative officer or governing board afford representatives of the subdivision the right to appear before the committee at the hearing. Representatives of the subdivision shall have the right to counsel, and may produce witnesses and present statements, documents, and other information with respect to the alleged violation for consideration of the committee at the hearing. If the committee determines the subdivision is in violation of any of the provisions of this chapter or of any rule adopted by the department pursuant to this chapter, the committee shall request the attorney general to institute proceedings to enjoin the subdivision from conducting further surface mining operations until the subdivision has completed corrective measures to the satisfaction of the department. [C71, 73, 75,§83A.22]

83A.23 Form of bond. Each bond filed with the department by an operator pursuant to this chapter shall be in a form prescribed by the department, payable to the state of Iowa, and conditioned upon faithful performance by the operator of all requirements of this chapter and all rules adopted by the department pursuant to this chapter. The bond shall be signed by the operator as principal and by a corporate surety licensed to do business in Iowa as surety. In lieu of a bond, the operator may deposit cash or government securities with the department on the same conditions as prescribed by this section for filing of bonds. The amount of the bond or other security required to be filed with an application for registration of a surface mining site, or to increase the area of a site previously registered, shall be equal to the estimated cost of rehabilitating the site as required under section 83A.17 and section 83A.31. The estimated cost of rehabilitation of each individual site shall be determined by the department on the basis of relevant factors including, but not limited to, topography of the site, mining methods being employed, depth and composition of overburden, and depth of the mineral deposit being mined. The department may require an applicant for registration or amendment of registration of a site to furnish information necessary to estimate the cost of rehabilitating the site. The penalty of the bond or the amount of cash or securities on deposit may be increased or reduced from time to time in accordance with section 83A.15. [C71, 73, 75,§83A.23; 66GA, ch 87,§9]

Referred to in §§83A.14, 83A.24

83A.24 Single bond for multiple sites. Any operator who registers with the department two or more surface mining sites may elect, at the time the second or any subsequent site is registered, to post a single bond in lieu of separate bonds on each site. Any single bond so posted shall be in an amount equal to the estimated cost of rehabilitating all sites the operator has registered, determined as provided in section 83A.23. The penalty of a single bond on two or more surface mining sites may be increased or decreased from time to time in accordance with sections 83A.14, 83A.15, and 83A.19. When an operator elects to post a single bond in lieu of separate bonds previously posted on individual sites, the separate bonds shall not be released until the new bond has been accepted by the department. [C71, 73, 75,§83A.24]

Referred to in §83A.14

83A.25 Cancellation of bond. No bond filed with the department by an operator pursuant to this chapter may be canceled by the surety without at least ninety days' notice to the department. If the license to do business in Iowa of any surety of a bond filed with the department is suspended or revoked, the operator, within thirty days after receiving notice thereof from the department, shall substitute for the surety a corporate surety licensed to do business in Iowa. Upon failure of the operator to make substitution of surety as herein provided, the department shall have the right to suspend the operator's authorization to conduct surface mining on the site covered by the

bond until substitution has been made. The commissioner of insurance shall notify the department whenever the license of any surety to do business in Iowa is suspended or revoked. [C71, 73, 75,§83A.25]

83A.26 Inspection of site. The administrator of the department or his designee may enter at all times upon any lands on which any operator is authorized to operate a mine for the purpose of determining whether the operator is or has been complying with the provisions of this chapter. The department shall give written notice to any operator who violates any of the provisions of this chapter or any rules adopted by the department pursuant to this chapter. If corrective measures approved by the department are not commenced within ninety days, the violation shall be referred to the committee. The operator shall be notified in writing of the referral. All operators shall co-operate with the department in seeking methods of operation which will cause minimum disruption to the land and property adjoining a mining operation. [C71, 73, 75,§83A.26]

83A.27 Hearing on violations. Upon receipt of the referral, the committee shall schedule a hearing on the violation by the operator within thirty days after the date of receipt. The committee shall upon written request afford the operator the right to appear before the committee at the hearing. The operator shall have the right to counsel, and may produce witnesses and present statements, documents, and other information with respect to the alleged violation. If the committee determines that the operator is in violation of this chapter or of any rule adopted by the department pursuant to this chapter, the committee shall request the attorney general to institute bond forfeiture proceedings. [C71, 73, 75,§83A.27]

83A.28 Forfeiture of bond. The attorney general, upon request of the committee, shall institute proceedings for forfeiture of the bond posted by an operator to guarantee rehabilitation of a site where the operator is in violation of any of the provisions of this chapter or any rule adopted by the department pursuant to this chapter. Forfeiture of the operator's bond shall fully satisfy all obligations of the operator to rehabilitate affected land covered by the bond. The department shall have the power to rehabilitate as required by section 83A.17 and section 83A.31 any surface mined land with respect to which a bond has been forfeited, using the proceeds of the forfeiture to pay for the necessary rehabilitation work. [C71 73, 75,§83A.28; 66GA, ch 87,§10]

83A.29 Penalty for failure to register. Any operator who fails to make timely application for registration of each site where mining is being conducted is guilty of a misdemeanor and on conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment not to exceed thirty days, or both such fine and imprisonment. Each day mining activities are conducted at a site for which no application for registration has been made as required under section 83A.13 shall constitute a separate violation. [C71, 73, 75,§83A.29]

83A.30 Governor's approval of rules. A plan or rules setting health and safety standards for surface mining within this state shall not be valid or effective until approved by the governor after ascertaining that proper funding for such a program is available and that such a program does not duplicate a program provided by any federal agency. [C71, 73, 75, §83A.30]

83A.31 Environmental standards. A surface coal mining operation for which application for registration is made on and after July 1, 1976 and, with respect to lands from which the overburden has not been removed, any coal mining operation existing on July 1, 1976 shall comply with the following environmental standards:

1. Spoil, debris, soil and waste materials from the cut made to obtain access to the coal seam shall be placed according to a plan approved by the department.

2. A diverse, effective and permanent vegetative cover capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation shall be established on all affected land. Plant succession includes crop succession if the land had the capability of the crop succession before registration of a site. Introduced species may be used in the revegetation process where necessary to achieve the rehabilitation work required by the department under this chapter. If the effectiveness of the revegetation requirements of this subsection cannot be determined by the department before the expiration of the twelve-month period allowed for rehabilitation pursuant to section 83A.19, the department shall extend the time for rehabilitation as necessary to meet the requirements of this subsection. The department may retain a portion of the bond or other security under this chapter as necessary to assure performance of the requirements of this subsection.

3. Topsoil shall be removed in a separate layer and replaced on the backfill area, or if not utilized immediately, segregated in a separate pile from other spoil. For purposes of this chapter "topsoil" means a nontoxic soil substrate capable of sustaining vegetation as required in this section. This soil substrate may consist of the A, B, and C soil horizons, a strata beneath these soil horizons, or a mixture of the two. When the topsoil is not replaced in time to avoid deterioration of the topsoil, a cover by approved quick-growing plant species shall be maintained to preserve the topsoil from wind and water erosion, to free it from contamination by acid or toxic material from other strata or drainage, and

to assure that the topsoil is in a usable condition for vegetation purposes under subsection 2. If the topsoil is of insufficient quantity or of poor quality for sustaining vegetation and if other strata can be shown to be more suitable for vegetation requirements, the operator shall remove, segregate, preserve, and replace in a like manner the other strata which is best able to support vegetation. If the department approves, the operator shall not be required to separate the topsoil and other strata of subsoil if a mix of the topsoil, subsoil and soil nutrient is equally suitable for vegetation requirements. The operator shall remove, segregate, and replace the mix of topsoil and other strata in a manner prescribed by the department.

4. All coal mine wastes, coal processing wastes, acid forming or other toxic materials present in the overburden, or other wastes shall be buried in approved pits and the operator shall stabilize all waste piles in designated areas through construction and compacted layers with incombustible and impervious materials assuring that the leachate will not pollute surface or ground waters and that the final contour of the waste pile will be compatible with natural surroundings and stabilized and revegetated according to the provisions of this chapter.

5. With respect to the use of impoundments for the disposal of coal mine wastes, coal processing wastes or other liquid or solid wastes, the operator shall incorporate engineering practices approved by the department for the design and construction of water retention facilities to insure that:

a. The construction shall be designed to achieve necessary stability with an adequate margin of safety to protect the health and safety of the public and shall, at a minimum, be compatible with that of structures constructed under Public Law 83-566 (Title 16, United States Code, section 1006).

b. Leachate will not pollute surface or ground water.

c. Mine wastes which are determined as unsuitable for construction constituents by sound engineering methods and design practices shall not be used in the construction of water impoundments, water retention facilities, dams or settling ponds. [66GA, ch 87,§§1, 2]

Referred to in §§83A.14, 83A.17, 83A.19, 83A.21, 83A.23, 83A.28

CHAPTER 84

OIL AND GAS WELLS

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84.1 Declaration of policy. It is hereby declared to be in the public interest to foster, to encourage, and to promote the development, production, and utilization of natural resources of oil and gas in the state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas be had and that the correlative rights of all owners be fully protected; and to encourage and to authorize such measures as will result in the greatest possible economic recovery of oil and gas within the state to the end that the landowners, the royalty owners, the producers, and the general public realize and enjoy the greatest possible good from these vital natural resources. It is hereby further declared that the general welfare of the people requires that the underground and surface water of the state be

protected from pollution and conserved in the best interests of the people of the state. [C39, §1360.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§84.1]

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

1. *"Waste"* means and includes

a. Physical waste, as that term is generally understood in the oil and gas industry,

b. The inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy,

c. The location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes, or tends to cause, reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas,

d. The inefficient storing of oil, and

e. The production of oil or gas in excess of transportation or marketing facilities or in excess of reasonable market demand.

2. *"Person"* means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.

3. *"Oil"* means and includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.

4. *"Gas"* means and includes all natural gas and all other fluid hydrocarbons which are produced at the wellhead and not hereinabove defined as oil.

5. *"Pool"* means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

6. *"Field"* means the general area underlaid by one or more pools.

7. *"Owner"* means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others.

8. *"Producer"* means the owner of a well or wells capable of producing oil or gas or both.

9. *"Product"* means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural-gas gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or by-products derived from oil or gas, and blends or mixtures of two or more liquid products or by-products derived from oil or gas, whether hereinabove enumerated or not.

10. *"Reasonable market demand"* means the demand for oil or gas for reasonable current requirements for consumption and use within and without the state, together with such quantities as are reasonably necessary for building up or maintaining reasonable working stocks and reasonable reserves of oil or gas or product.

11. *"Illegal oil"* means oil which has been produced from any well within the state in excess of the quantity permitted by any rule or order of the council.

12. *"Illegal gas"* means gas which has been produced from any well within this state in excess of the quantity permitted by any rule or order of the council.

13. *"Illegal product"* means any product derived in whole or in part from illegal oil or illegal gas.

14. *"Certificate of clearance"* means a permit prescribed by the council for the transportation or the delivery of oil or gas or product and issued or registered in accordance with the rule or order requiring such permit.

15. The word *"and"* includes the word *"or"* and the use of the word "or" includes the word "and". The use of the plural includes the singular and the use of the singular includes the plural.

16. *"Council"* means Iowa natural resources council as defined in chapter 455A. [C66, 71, 73, 75,§84.2]

84.3 Waste prohibited. Waste of oil and gas is prohibited. [C66, 71, 73, 75,§84.3]

84.4 Jurisdiction of council. The council has the duty of administering the provisions of this chapter. The state geologist shall act as administrator with the duty and responsibility of enforcing the regulations and orders of the council applicable to the crude petroleum oil and natural gas resources of this state and the provisions of this chapter. The council has the duty and authority to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other facts exist which justify action. The council acting through the office of the state geologist has the authority:

1. To require:

a. Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the refining or intrastate transportation of oil and gas;

b. The making and filing of all mechanical well logs and the filing of directional surveys if taken, and the filing of reports on well loca-

tion, drilling and production, and the filing free of charge of samples and core chips and of complete cores less tested sections when requested in the office of the state geologist within six months after the completion or abandonment of the well;

c. The drilling, casing, operation, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas stratum, the pollution of fresh water supplies by oil, gas, or highly mineralized water, to prevent blowouts, cavings, seepages, and fires, and to prevent the escape of oil, gas, or water into workable coal or other mineral deposits;

d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules of the council prescribed to govern the production of oil and gas on state and private lands within the state of Iowa;

e. That the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured by such means and upon such standards as may be prescribed by the council;

f. The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios;

g. Certificates of clearance in connection with the transportation or delivery of any native and indigenous Iowa produced crude oil, gas, or any product;

h. Metering or other measuring of any native and indigenous Iowa produced crude oil, gas, or product in pipe lines, gathering systems, barge terminals, loading racks, refineries, or other places; and

i. That every person who produces, sells, purchases, acquires, stores, transports, refines, or processes native and indigenous Iowa produced crude oil or gas in this state shall keep and maintain within this state complete and accurate records of the quantities thereof, which records shall be available for examination by the council or its agents at all reasonable times, and that every such person file with the council such reports as it may prescribe with respect to such oil or gas or the products thereof.

2. To regulate:

a. The drilling, producing, and plugging of wells, and all other operations for the production of oil or gas;

b. The shooting and chemical treatment of wells;

c. The spacing of wells;

d. Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; and

e. Disposal of highly mineralized water and oil field wastes.

3. To limit and to allocate the production of oil and gas from any field, pool, or area.

4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

5. To promulgate and to enforce rules and orders to effectuate the purposes and the intent of this chapter.

6. To make rules or orders for the classification of wells as oil wells or dry natural gas wells; or wells drilled, or to be drilled, for geological information, or as wells for secondary recovery projects, or wells for the disposal of highly mineralized water, brine, or other oil field wastes, or wells for the storage of dry natural gas, or casinghead gas, or wells for the development of reservoirs for the storage of liquid petroleum gas. [C39,§§**1360.04, 1360.05**; C46, 50, 54, 58, 62,§§84.4, 84.5; C66, 71, 73, 75, §84.4]

84.5 Drilling permit required. It shall be unlawful to commence operations for the drilling of a well for oil or gas or commence operations to deepen any well to a different geological formation without first giving the state geologist notice of intention to drill, or without first obtaining a permit from the state geologist, under such rules as may be prescribed by the council and paying to the council a fee of fifty dollars for such well. Such fee shall be used by the council for administering this chapter, including the payment of expenses incurred in publishing legal notice. [C39,§**1360.03**; C46, 50, 54, 58, 62,§84.3; C66, 71, 73, 75,§84.5]

84.6 Council shall determine market demand and regulate the amount of production. The council shall determine market demand for each marketing district and regulate the amount of production as follows:

1. The council shall limit the production of oil and gas within each marketing district to that amount which can be produced without waste, and which does not exceed the reasonable market demand.

2. Whenever the council limits the total amount of oil or gas which may be produced in the state or a marketing district, the council shall allocate or distribute the allowable production among the pools therein on a reasonable basis, giving, where reasonable under the circumstances to each pool with small wells of settled production, an allowable production which prevents the general premature abandonment of such wells in the pool.

3. Whenever the council limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction were imposed, which limitation is imposed either incidental to, or without, a limitation of the total amount of oil or gas produced in the marketing district wherein the pool is located, the council shall allocate or distribute the allowable production among the

several wells or producing properties in the pool on a reasonable basis, preventing or minimizing reasonable avoidable drainage, so that each property will have the opportunity to produce or to receive its just and equitable share, subject to the reasonable necessities for the prevention of waste.

4. In allocating the market demand for gas as between pools within marketing districts, the council shall give due regard to the fact that gas produced from oil pools is to be regulated in a manner as will protect the reasonable use of its energy for oil production.

5. The council shall not be required to determine the reasonable market demand applicable to any single pool, except in relation to all other pools within the same marketing district, and in relation to the demand applicable to the marketing district. In allocating allowables to pools, the council may consider, but shall not be bound by nominations of purchasers to purchase from particular fields, pools, or portions thereof. The council shall allocate the total allowable for the state in such manner as prevents undue discrimination between marketing districts, fields, pools, or portions thereof resulting from selective buying or nomination by purchasers. [C66, 71, 73, 75,§84.6]

84.7 Council shall set spacing units. The council shall set spacing units as follows:

1. When necessary to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the council shall establish spacing units for a pool. Spacing units when established shall be of uniform size and shape for the entire pool, except that when found to be necessary for any of the purposes above-mentioned, the council is authorized to divide any pool into zones and establish spacing units for each zone, which units may differ in size and shape from those established in any other zone.

2. The size and shape of spacing units are to be such as will result in the efficient and economical development of the pool as a whole.

3. An order establishing spacing units for a pool shall specify the size and shape of each unit and the location of the permitted well thereon in accordance with a reasonably uniform spacing plan. Upon application, if the state geologist finds that a well drilled at the prescribed location would not produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, the state geologist is authorized to enter an order permitting the well to be drilled at a location other than that prescribed by such spacing order; however, the state geologist shall include in the order suitable provisions to prevent the production from the spacing unit of more than its just and equitable share of the oil and gas in the pool.

4. An order establishing units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the state geologist from time to time to include additional areas determined to be underlaid by such pool. When found necessary for the prevention of waste, or to avoid the drilling of unnecessary wells or to protect correlative rights, an order establishing spacing units in a pool may be modified by the state geologist to increase the size of spacing units in the pool or any zone thereof, or to permit the drilling of additional wells on a reasonable uniform plan in the pool, or any zone thereof. Orders of the state geologist may be appealed to the council within thirty days. [C39, §1360.02; C46, 50, 54, 58, 62,§84.2; C66, 71, 73, 75,§84.7]

84.8 Integration of fractional tracts.

1. When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the owners and royalty owners thereof may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling the council upon the application of any interested person, shall enter an order pooling all interests in the spacing unit for the development and operations thereof. Each such pooling order shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, his just and equitable share. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be deemed for all purposes, the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

2. Each such pooling order shall make provision for the drilling and operation of a well on the spacing unit, and for the payment of the reasonable actual cost thereof by the owners of interests in the spacing unit, plus a reasonable charge for supervision. In the event of any dispute as to such costs the council shall determine the proper costs. If one or more of the owners shall drill and operate, or pay the expenses of drilling and operating the well for the benefit of others, then, the owner or owners so drilling or operating shall, upon complying with the terms of section 84.10, have a lien on the share of production from the spacing unit accruing to the interest of each of the other owners for the payment of his proportionate share of such expenses. All the oil and gas subject to the lien shall be marketed and sold and the proceeds applied in payment of the expenses secured by such lien as provided for in section 84.10. [C66, 71, 73, 75,§84.8]

Referred to in §84.10

84.9 Voluntary agreements for unit operation valid. An agreement for the unit or co-operative development and operation of a field or pool, in connection with the conduct of a repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or any other method of operation, including water floods, is authorized and may be performed and shall not be held or construed to violate any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade, if the agreement is approved by the council as being in the public interest, protective of correlative rights, and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas. Such agreements bind only the persons who execute them, and their heirs, successors, assigns, and legal representatives. [C66, 71, 73, 75,§84.9]

84.10 Liens for development and operating costs. A person to whom another is indebted for expenses incurred in drilling and operating a well on a drilling unit required to be formed as provided for in section 84.8, may, in order to secure payment of the amount due, fix a lien upon the interest of the debtor in the production from the drilling unit or the unit area, as the case may be, by filing for record, with the recorder of the county where property involved, or any part thereof, is located, an affidavit setting forth the amount due and the interest of the debtor in such production. The person to whom the amount is payable may, at the expense of the debtor, store all or any part of the production upon which the lien exists until the total amount due, including reasonable storage charges, is paid or the commodity is sold at foreclosure sale and delivery is made to the purchaser. The lien may be foreclosed as provided for with respect to foreclosure of a lien on chattels. [C66, 71, 73, 75,§84.10]

Referred to in §84.8

84.11 Rules covering practice before council.

1. The council shall prescribe rules governing the practice and procedure before it.

2. No order, or amendment thereof, except in an emergency, shall be made by the council without a public hearing upon at least ten days' notice. The public hearing shall be held at such time and place as may be prescribed by the council, and any interested person shall be entitled to be heard.

3. When an emergency requiring immediate action is found to exist the council is authorized to issue an emergency order without notice of hearing, which shall be effective upon promulgation. No emergency order shall remain effective for more than fifteen days.

4. Any notice required by this chapter shall be given at the election of the council either by personal service or by letter to the last recorded address and one publication in a newspaper of general circulation in the state capital city and in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated. The notice shall issue in the name of the state, shall be signed by the state geologist, shall specify the style and number of the proceeding, the time and place of the hearing, and shall briefly state the purpose of the proceeding. Should the council elect to give notice by personal service, such service may be made by any officer authorized to serve process, or by any agent of the council, in the same manner as is provided by law for the service of original notices in civil actions in the district court of the state. Proof of the service by such agent shall be by the affidavit of the person making personal service.

5. All orders issued by the council shall be in writing, shall be entered in full and indexed in books to be kept by the state geologist for that purpose, and shall be public records open for inspection at all times during reasonable office hours. A copy of any rule or order certified by the state geologist or any officer of the council shall be received in evidence in all courts of this state with the same effect as the original.

6. The council may act upon its own motion, or upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the council, the council shall promptly fix a date for a hearing thereon, and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The council shall enter its order within thirty days after the hearing. [C66, 71, 73, 75,§84.11]

84.12 Summoning witnesses, administering oaths, requiring production of records—hearing examiners appointed.

1. The council shall have the power to summon witnesses, to administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted. No person shall be excused from attending and testifying, or from producing books, papers, and records before the council or a court, or from obedience to the subpoena of the council or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; provided, that nothing herein contained shall be construed as requiring any person to produce any books, papers, or records, or to testify in response to any inquiry not pertinent to some question lawfully before such council or court for determination. No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of his objections, he may be required to testify or produce evidence, documentary or otherwise, before the council or court, or in obedience to subpoena; provided, that no person testifying shall be exempted from pros-

ecution and punishment for perjury committed in so testifying.

2. In case of failure or refusal on the part of any person to comply with the subpoena issued by the council, or in case of the refusal of any witness to testify as to any matter regarding which he may be interrogated, any court in the state, upon the application of the council, may issue an attachment for such person and compel him to comply with such subpoena, and to attend before the council and produce such records, books, and documents, for examination, and to give his testimony. Such courts shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

3. The council may appoint a hearing examiner or examiners to conduct hearings required by this chapter. When so appointed, such hearing examiner or examiners shall have and exercise all of the powers delegated to the council by this section. [C66, 71, 73, 75,§84.12]

84.13 Person adversely affected—rehearing. Any person adversely affected by any order of the council may within thirty days after its effective date apply to the council in writing for a rehearing. The application for rehearing shall be acted upon within fifteen days after its filing, and if granted, the rehearing shall be held without undue delay. [C66, 71, 73, 75,§84.13]

84.14 Appeal to district court—procedure of appeal.

1. Judicial review of action of the council may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of Polk county or in the district court of any county in which the property affected or some portion thereof is located.

2. If at the time of filing of the petition for judicial review suspension of the order is asked for, the council shall enter an order fixing the amount of the supersedeas bond. Within ten days after the entry of an order by the council which fixes the amount of the bond, the petitioner must file with the council a supersedeas bond in the required amount and with proper surety; upon approval of the bond, the council shall suspend the order complained of until its final disposition upon review. The bond shall run in favor of the state of Iowa for the use and benefit of any person who may suffer damage by reason of the suspension of the order in the event the same is affirmed by the district court. If the order of the council is not superseded, it shall continue in force and effect as if no petition for judicial review was pending.

3. The district court shall, insofar as is practicable, give precedence to petitions for judicial review of orders of the council. [C66, 71, 73, 75,§84.14]

84.15 Acquisition and handling illegal oil and gas prohibited—seizure of illegal oil and gas and sale thereof.

1. The sale, purchase, acquisition, transportation, refining, processing, or handling of illegal oil, illegal gas, or illegal product is hereby prohibited. However, no penalty by way of fine shall be imposed upon a person who sells, purchases, acquires, transports, refines, processes, or handles illegal oil, illegal gas, or illegal product unless

a. Such person knows, or is put on notice, of facts indicating that illegal oil, illegal gas, or illegal product is involved, or

b. Such person fails to obtain a certificate of clearance with respect to such oil, gas, or product where prescribed by order of the council, or fails to follow any other method prescribed by an order of the council for the identification of such oil, gas or product.

2. Illegal oil, illegal gas, and illegal product are declared to be contraband and are subject to seizure and sale as herein provided; seizure and sale to be in addition to any and all other remedies and penalties provided in this chapter for violations relating to illegal oil, illegal gas, or illegal product. Whenever the council believes that any oil, gas or product is illegal, the council acting by the attorney general, shall bring a civil action in rem in the district court of the county where such oil, gas, or product is found, to seize and sell the same, or the council may include such an action in rem for the seizure and sale of illegal oil, illegal gas, or illegal product in any suit brought for an injunction or penalty involving illegal oil, illegal gas, or illegal product. Any person claiming an interest in oil, gas, or product affected by any such action shall have the right to intervene as an interested party in such action.

3. Actions for the seizure and sale of illegal oil, illegal gas, or illegal product shall be strictly in rem, and shall proceed in the name of the state as plaintiff against the illegal oil, illegal gas, or illegal products as defendant. No bond or similar undertaking shall be required of the plaintiff. Upon the filing of the petition for seizure and sale, the attorney general shall issue a notice, with a copy of the complaint attached thereto, which shall be served in the manner provided for service of original notices in civil actions, upon any and all persons having or claiming any interest in the illegal oil, illegal gas, or illegal products described in the petition. Service shall be completed by the filing of an affidavit by the person making the service, stating the time and manner of making such service. Any person who fails to appear and answer within the period of thirty days shall be forever barred by the judgment based on such service. If the court, on a properly verified petition, or affidavits, or oral testimony, finds that grounds for seizure and

for sale exist, the court shall issue an immediate order of seizure, describing the oil, gas, or product to be seized and directing the sheriff of the county to take such oil, gas, or product into his custody, actual or constructive, and to hold the same subject to the further order of the court. The court, in such order of seizure, may direct the sheriff to deliver the oil, gas, or product seized by him under the order to an agent appointed by the court as the agent of the court; such agent to give bond in an amount and with such surety as the court may direct, conditioned upon his compliance with the orders of the court concerning the custody and disposition of such oil, gas, or product.

4. Any person having an interest in oil, gas, or product described in an order of seizure and contesting the right of the state to the seizure and sale thereof may, prior to the sale thereof as herein provided, obtain the release thereof, upon furnishing bond to the sheriff approved by the court, in an amount equal to one hundred fifty percent of the market value of the oil, gas, or product to be released, and conditioned as the court may direct upon redelivery to the sheriff of such product released or upon payment to the sheriff of the market value thereof as the court may direct, if and when ordered by the court, and upon full compliance with the further orders of the court.

5. If the court, after a hearing upon a petition for the seizure and sale of oil, gas, or product, finds that such oil, gas, or product is contraband, the court shall order the sale thereof by the sheriff in the same manner and upon the same notice of sale as provided by law for the sale of personal property on execution of judgment entered in a civil action except that the court may order that the illegal oil, illegal gas, or illegal product be sold in specified lots or portions and at specified intervals. Upon such sale, title to the oil, gas, or product sold shall vest in the purchaser free of the claims of any and all persons having any title thereto or interest therein at or prior to the seizure thereof, and the same shall be legal oil, legal gas, or legal product, as the case may be, in the hands of the purchaser.

6. All proceeds derived from the sale of illegal oil, illegal gas, or illegal product, as above provided, after payment of costs of suit and expenses incident to the sale and all amounts paid as penalties provided for by this chapter shall be paid to the state treasurer and credited to the general fund. [C66, 71, 73, 75, §84.15]

84.16 Penalties.

1. Any person who violates any provision of this chapter, or any rule or order of the council shall be subject to a penalty of not more than one thousand dollars for each act of violation and for each day that such violation continues, unless the penalty for such violation is otherwise specifically provided for and made exclusive in this chapter.

2. If any person, for the purpose of evading this chapter, or any rule or order of the council, shall make or cause to be made any false entry or statement in a report required by this chapter or by any such rule or order, or shall make or cause to be made any false entry in any record, account, or memorandum required by this chapter, or by any such rule or order, or shall omit, or cause to be omitted, from any such record, account, or memorandum, full, true, and correct entries as required by this chapter, or by any such rule or order, or shall remove from this state or destroy, mutilate, alter or falsify any such record, account, or memorandum, such person shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than five thousand dollars or imprisonment in a county jail for a term not exceeding six months, or to both such fine and imprisonment.

3. Any person knowingly aiding or abetting any other person in the violation of any provision of this chapter, or any rule or order of the council shall be subject to the same penalty as that prescribed by this chapter for the violation by such other person.

4. The penalties provided in this section shall be recoverable by suit filed by the attorney general in the name and on behalf of the council, in the district court of the county in which the defendant resides, or in which any defendant resides, if there be more than one defendant, or in the district court of any county in which the violation occurred. The payment of any such penalty shall not operate to legalize any illegal oil, illegal gas, or illegal product involved in the violation for which the penalty is imposed, or to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of such violation. [C66, 71, 73, 75,§84.16]

84.17 Action to restrain violation or threatened violation.

1. Whenever it appears that any person is violating or threatening to violate any provision of this chapter, or any rule or order of the council, the council shall bring suit against such person in the district court of any county where the violation occurs or is threatened, to restrain such person from continuing such violation or from carrying out the threat of violation. In any such suit, the court shall have jurisdiction to grant to the council, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders, preliminary injunctions, temporary, preliminary, or final orders restraining the movement or disposition of any illegal oil, illegal gas, or illegal product, any of which the court may order to be impounded or placed in the custody of an agent appointed by the court.

2. If the council shall fail to bring suit to enjoin a violation or threatened violation of any provision of this chapter, or any rule or order of the council, within ten days after receipt of written request to do so by any person who is or will be adversely affected by such violation, the person making such request may bring suit in his own behalf to restrain such violation or threatened violation in any court in which the council might have brought suit. The council shall be made a party defendant in such suit in addition to the person violating or threatening to violate a provision of this chapter, or a rule or order of the council, and the action shall proceed and injunctive relief may be granted to the council or the petitioner without bond in the same manner as if suit had been brought by the council. [C66, 71, 73, 75,§84.17]

84.18 Mineral rights taxed separately. All rights and interests in or to oil, gas or other minerals underlying land, whether created by or arising under deed, lease, reservation of rights, or otherwise, which rights or interests are owned by any person other than the owner of the land, shall be assessed and taxed separately to the owner of such rights or interests in the same manner as other real estate. The taxes on such rights or interests which are not owned by the owner of the land shall not be a lien on the land. [C66, 71, 73, 75,§84.18]

84.19 Rate. In order to pay the costs of assessment and collection and provide a reasonable minimum standard of taxation, the taxes on any such rights or interests not owned by the owner of the land, shall be not less than five cents per acre. [C66, 71, 73, 75, §84.19]

84.20 Tax sale — redemption by owner. When any such rights or interests not owned by the owner of the land are sold at tax sale, and when the owner of such rights or interests does not redeem under the provisions of chapter 447 within ninety days after such tax sale, the owner of the land shall thereafter have the same right of redemption as the owner of such rights or interests has, and redemption by the owner of the land shall terminate all right of redemption of the owner of such rights or interests. [C66, 71, 73, 75,§84.20]

84.21 Lease of public lands. The state, counties and cities and other political subdivisions are hereby authorized to lease publicly owned lands under their respective jurisdictions for the purpose of oil or gas exploration and production. Any such leases shall be entered into on behalf of the state by the executive council, on behalf of counties by the board of supervisors, on behalf of cities by the council thereof and on behalf of other political subdivisions by the governing body thereof. Such leases shall be upon such terms and conditions as may be agreed upon.

Revenues derived from the leasing of state-owned lands shall be paid into the general fund of the state. Revenues derived from the leasing of other public lands shall be paid into the general fund of the respective lessor political subdivision. [C39,§1360.10; C46, 50, 54, 58, 62, §84.10; C66, 71, 73, 75,§84.21]

Constitutionality, 60GA, ch 84,§21

84.22 Duty to have forfeited lease released—affidavit of noncompliance—notice to landowner—remedies. When any oil or gas lease, heretofore, or hereafter, given on land situated in Iowa and recorded, shall become forfeited by failure of lessee to comply with its provisions or of the Iowa law, it shall be the duty of lessee, within sixty days after date of forfeiture of any such lease, to have such lease surrendered in writing, duly acknowledged and placed on record in the county where the leased land is situated, or lease may be released by a marginal release on margin of record thereof, without cost to owner of land described therein. If said lessee shall fail to execute and record a release of such recorded lease within the time provided for, then the owner of the land may execute and file with the recorder of the county or counties in which such forfeited lease has been recorded an affidavit of noncompliance in substantially the following form:

AFFIDAVIT OF NONCOMPLIANCE

State of Iowa }
County of ..... } ss.

....., being first duly sworn, upon his oath deposes and says that he is ..... as referred to in an oil and gas mining lease dated the .... day of ....., 19.., and which lease is recorded in Volume ....., Page ...., of the County Records of ..... County, ..., and which said lease covers the following described lands: .....
.....

And further, deponent says that on the .... day of ....., 19..., under the terms of said lease, there should have been paid to him or deposited to his credit in the ..... Bank of ..... the sum of .....Dollars ($....), the payment of which was necessary in order to keep the above described lease in force and effect. Deponent hereby swears the above payment has never been made to him or his representatives, in money or otherwise, nor has same been deposited to his credit in the above bank.

And further, deponent says that there has been no drilling or development of any nature or kind whatsoever done on the land covered by the lease referred to herein, as called for under the terms of said lease.

.....
.....

Subscribed and sworn to before me, a Notary Public for the State of Iowa, this .... day of ....., 19.....

.....
Notary Public

My commission expires .....

AFFIDAVIT OF THE BANKER

State of .... }
County of... } ss.

I, ..., (Cashier) (President) of the .....Bank of ....., being first duly sworn, upon my oath hereby declare that there has not been deposited to the credit of ..... in the .....Bank of ....., by ..... or any other party, any sum of money whatsoever, in payment of rental under the terms of said oil and gas mining lease herein referred to.

Witness my hand this .... day of ....., 19....

.....
(Cashier) (President) of .....Bank

Subscribed and sworn to before me, a Notary Public for the State of Iowa on the ..... day of ....., 19.....

.....
Notary Public

My commission expires .....

If the lessee shall, within thirty days after the filing of such affidavit, give notice in writing to the county recorder of the county where said land is located that said lease has not been forfeited and that said lessee still claims that said lease is in full force and effect, then the said affidavit shall not be recorded but the county recorder shall notify the owner of the land of the action of the lessee, and the owner of the land shall be entitled to the remedies provided by this chapter for the cancellation of such disputed lease. If the lessee shall not notify the county recorder as above provided, then the county recorder shall record said affidavit, and thereafter the record of the said lease shall not be notice to the public of the existence of said lease or of any interest therein or rights thereunder, and said record shall not be received in evidence in any court of the state on behalf of the lessee against the lessor, and said lease shall stand forfeited. [C39,§1360.06; C46, 50, 54, 58, 62,§84.6; C66, 71, 73, 75,§84.22]

84.23 Action to obtain release—damages, costs and attorney's fees—attachment. Should the owner of such lease neglect or refuse to execute a release as provided by this chapter, or contend lease is in full force and effect, then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such release, and he may also recover in such action the sum of one hundred dollars as damages, and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and he may also recover any additional damages that the evidence in the case will warrant. In all such actions, writs of attachment may issue as in other cases. [C39,§1360.07; C46, 50, 54, 58, 62, §84.7; C66, 71, 73, 75,§84.23]

84.24 Extension upon contingency — affidavit. If a recorded lease contains the statement of any contingency upon the happening of which the term of any such lease may be extended, the owner of said lease may at any time before the expiration of the definite term of said lease file with said county recorder an affidavit setting forth the description of the lease, that the affiant is the owner thereof and the facts showing that the required contingency has happened, or the record of such lease shall not impart notice to the public of the continuance of said lease. This affidavit shall be recorded in full by the county recorder and such record together with that of the lease shall be due notice to the public of the existence and continuing validity of said lease, until the same shall be forfeited, canceled, set aside, or surrendered according to law. [C39,§1360.08; C46, 50, 54, 58, 62,§84.8; C66, 71, 73, 75,§84.24]

84.25 Liens for labor or materials and of contractor and subcontractor—manner of perfecting liens—enforcement of liens. Provisions of chapter 572 as to mechanic's liens or labor and materials furnished for improvements on real estate and of contractors and subcontractors, shall apply to labor and materials furnished for gas or oil wells, or pipe lines, and such liens shall not attach on the real estate, but shall attach to the whole of the lease held, and upon the gas or oil wells, buildings and appurtenances and pipe lines for which said labor or materials were furnished, and shall be perfected and enforced as provided by said chapter. [C39,§1360.09; C46, 50, 54, 58, 62,§84.9; C66, 71, 73, 75,§84.25]

CHAPTER 85

WORKERS' COMPENSATION

Referred to in §§8.6, 8.13, 8B.4, 86.8, 86.9, 86.12, 86.13, 86.20, 86.39, 87.1, 87.2, 87.13, 87.14, 87.21, 87.24, 627.13

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SECOND INJURY COMPENSATION ACT

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EXTRATERRITORIAL EMPLOYMENT

85.71 Employment outside of state.

85.1 To whom not applicable. Except as provided in subsection 5 of this section, this chapter shall not apply to:

1. Any employee engaged in any type of service in or about a private dwelling except that after July 1, 1974, this chapter shall apply to such persons who earn two hundred dollars or more from such employer for whom employed at the time of the injury during the thirteen consecutive weeks prior to the injury, provided said employee is not a regular member of the household. For purposes of this subsection "member of the household" is defined to be the spouse of the employer or relatives of either the employer or spouse residing on the premises of the employer.

2. Persons whose employment is purely casual and not for the purpose of the employer's trade or business, except that after July 1, 1974, this chapter shall apply to such employees who earn two hundred dollars or more from such employer for whom employed at the time of the injury during the thirteen consecutive weeks prior to the injury.

3. Persons engaged in agriculture, insofar as injuries incurred by employees while engaged in agricultural pursuits or any operations immediately connected therewith whether on or off the premises of the employer, except:

a. This chapter shall apply to such persons not specifically exempted by paragraph *"b"* of this subsection if at the time of injury such person is employed by an employer whose total cash payroll to one or more persons other than those exempted by paragraph *"b"* of this subsection amounted to one thousand dollars or more during the preceding calendar year.

b. The following persons or employees or groups of employees shall be specifically included within the terms of the exemption from coverage of this chapter provided by this subsection:

(1) The spouse of the employer and parents, brothers, sisters, children and stepchildren of either the employer or the spouse of the employer; and

(2) Any person engaged in agriculture as a farm operator or spouse of such farm operator or parents, brothers, sisters, children and stepchildren of either such farm operator or spouse while exchanging labor with another farm operator or spouse of such other farm operator or parents, brothers, sisters, children, and stepchildren of either such other farm operator or spouse for the mutual benefit of any or all such persons; and

(3) The president, vice president, secretary, treasurer, of a family farm corporation and their spouses and parents, brothers, sisters, children and stepchildren of such officers and their spouses who are employed by such corporation, the primary purpose of which, although not necessarily the stated purpose, is farming or ownership of agricultural land, and while such officer or person related to the officer is engaged in agricultural pursuits or any operation immediately connected therewith whether on or off the premises of the employer.

4. As between a municipal corporation or city, and any person or persons receiving any

benefits under, or who may be entitled to benefits from, any "firemen's pension fund" or "policemen's pension fund" of any municipal corporation or city, under the provisions of chapter 411, except volunteer firemen and except as otherwise provided by law.

5. Employers, including employers of employees engaged in any type of service in or about a private dwelling, employers of persons whose employment is of a casual nature and not for the purpose of the employer's trade or business, and employers of persons engaged in agriculture, may with respect to any such employee or person or classification of employees exempt by subsections 1, 2 and 4 and subsection 3, paragraph "*a*" of this section from coverage provided by this chapter, other than any such employee or classification of employees with respect to whom a rule of liability or a method of compensation has been or may be established by the Congress of the United States, assume a liability for compensation imposed upon employers by this chapter for the benefit of employees within the coverage of this chapter. Employers of employees, persons or classifications of employees exempted by paragraph "*b*" of subsection 3 of this section may also with respect to any such employee, person or classification of employees assume a liability for compensation imposed upon employers by this chapter by the purchase of valid workers' compensation insurance specifically including separate classifications for (*a*) such persons who are the spouse and parents, brothers, sisters, children and stepchildren of either the employer or his spouse, (*b*) persons engaged in exchanging labor and (*c*) the president, vice president, treasurer and secretary of a family farm corporation, their spouses and parents, brothers, sisters, children or stepchildren of such officers and their spouses. The purchase of and acceptance by any such employer of valid workers' compensation insurance applicable to such employee or person or classification of employees shall constitute as to such employer an assumption by such employer of such liability without any further act on the part of such employer, but only with respect to such employee or person or such classification of employees as are within the coverage of the said workers' compensation insurance contract. Whenever under the provisions of this subsection an employer voluntarily elects to assume the liability for the payment of compensation to such employees or persons or such classification of employees by the purchase of valid workers' compensation insurance, the liability of such employer shall take effect and continue from the effective date of such workers' compensation insurance contract as long only as such insurance contract shall be in force. Upon such an election, such employee or person or classification of employees shall accept compensation in the manner provided by the chapter and the employer shall be relieved from any other liability for recovery of damage, or other compensation for such injury.

6. Persons entitled to benefits pursuant to chapter 411. [S13,§2477-m; C24, 27, 31, 35, 39, §**1361**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.1; 66GA, ch 1084,§§1, 43]

Referred to in §§85.2, 85,61, 85.62, 87.16, 87.21
Amendment by 66GA, ch 1084 effective January 1, 1977

85.2 Compulsory when. Where the state, county, municipal corporation, school corporation, area education agency, or city under any form of government is the employer, the provisions of this chapter for the payment of compensation and amount thereof for an injury sustained by an employee of such employer shall be exclusive, compulsory, and obligatory upon both employer and employee, except as otherwise provided in section 85.1. For the purposes of this chapter elected and appointed officials shall be employees. [S13, §2477-m; C24, 27, 31, 35, 39,§**1362**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.2]

85.3 Acceptance presumed—notice to nonresident employers.

1. Every employer, not specifically excepted by the provisions of this chapter, shall provide, secure, and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employee arising out of and in the course of the employment, and in such cases, the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury.

2. Any employer who is a nonresident of the state, for whom services are performed within the state by employees entitled to rights under this or chapter 85A by virtue of having such services performed shall be subject to the jurisdiction of the industrial commissioner and to all of the provisions of this chapter, chapters 85A, 86, and 87, as to any and all personal injuries sustained by an employee arising out of and in the course of such employment within this state.

Such employer shall be deemed to have appointed the secretary of state of this state as its lawful attorney upon whom may be served any and all notices authorized or required by the provisions of this chapter, chapters 85A, 86, and 87 and to agree that any and all such services of notice on the secretary of state shall be of the same legal force and validity as if personally served upon such nonresident employer in this state. [S13,§2477-m; C24, 27, 31, 35, 39,§**1363**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §85.3]

Referred to in §§86.36, subsections 2, 5 and 6, 87.13

85.4 to 85.15 Repealed by 63GA, ch 1051,§3.

85.16 Willful injury—intoxication. No compensation under this chapter shall be allowed for an injury caused:

1. By the employee's willful intent to injure himself or to willfully injure another.

2. When intoxication of the employee was the proximate cause of the injury.

3. By the willful act of a third party directed against the employee for reasons personal to such employee. [S13,§§2477-m,-m1; C24, 27, 31, 35, 39,§1376; C46, 50, 54, 58, 62, 66, 71, 73, 75, §85.16]

85.17 Repealed by 63GA, ch 1051,§5.

85.18 Contract to relieve not operative. No contract, rule, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this chapter except as herein provided. [S13,§2477-m7; C24, 27, 31, 35, 39,§1378; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.18]

85.19 Repealed by 63GA, ch 1051,§5.

85.20 Rights of employee exclusive. The rights and remedies provided in this chapter or chapter 85A for an employee on account of injury or occupational disease for which benefits under this chapter or chapter 85A are recoverable, shall be the exclusive rights and remedies of such employee, his personal or legal representatives, dependents, or next of kin, at common law or otherwise, on account of such injury or occupational disease against his employer; or any other employee of such employer, provided that such injury or occupational disease arises out of and in the course of such employment and is not caused by the other employee's gross negligence amounting to such lack of care as to amount to wanton neglect for the safety of another. [S13,§2477-m2; C24, 27, 31, 35, 39,§1380; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.20]

Referred to in §85.22

85.21 Repealed by 63GA, ch 1051,§7.

85.22 Liability of others — subrogation. When an employee receives an injury or incurs an occupational disease for which compensation is payable under this chapter or chapter 85A, and which injury or occupational disease is caused under circumstances creating a legal liability against some person, other than his employer or any employee of such employer as provided in section 85.20 to pay damages, the employee, or his dependent, or the trustee of such dependent, may take proceedings against his employer for compensation, and the employee or, in case of death, his legal representative may also maintain an action against such third party for damages. When an injured employee or his legal representative brings an action against such third party, a copy of the original notice shall be served upon the employer by the plaintiff, not less than ten days before the trial of the case, but a failure to give such notice shall not prejudice the rights of the employer, and the following rights and duties shall ensue:

1. If compensation is paid the employee or dependent or the trustee of such dependent under this chapter, the employer by whom the same was paid, or his insurer which paid it, shall be indemnified out of the recovery of damages to the extent of the payment so made, with legal interest, except for such attorney fees as may be allowed, by the district court, to the injured employee's or his personal representative's attorney, and shall have a lien on the claim for such recovery and the judgment thereon for the compensation for which he is liable. In order to continue and preserve the lien, the employer or insurer shall, within thirty days after receiving notice of such suit from the employee, file, in the office of the clerk of the court where the action is brought, notice of the lien.

2. In case the employee fails to bring such action within ninety days, or where a city or a city under special charter is such third party, within thirty days after written notice so to do given by the employer or his insurer, as the case may be, then the employer or his insurer shall be subrogated to the rights of the employee to maintain the action against such third party, and may recover damages for the injury to the same extent that the employee might. In case of recovery, the court shall enter judgment for distribution of the proceeds thereof as follows:

a. A sum sufficient to repay the employer for the amount of compensation actually paid by him to that time.

b. A sum sufficient to pay the employer the present worth computed on a six percent basis of the future payments of compensation for which he is liable, but such sum thus found shall not be considered as a final adjudication of the future payments which the employee shall receive and the amount received by the employer, if any, in excess of that required to pay the compensation shall be paid to the employee.

c. The balance, if any, shall be paid over to the employee.

3. Before a settlement shall become effective between an employee or an employer and such third party who is liable for the injury, it must be with the written consent of the employee, in case the settlement is between the employer or insurer and such third person; and the consent of the employer or insurer, in case the settlement is between the employee and such third party; or on refusal of consent, in either case, then upon the written approval of the industrial commissioner.

4. A written memorandum of any settlement, if made, shall be filed by the employer or insurance carrier in the office of the industrial commissioner.

5. For subrogation purposes hereunder, any payment made unto an injured employee, his guardian, parent, next friend, or legal representative, by or on behalf of any third party, his or its principal or agent liable for, connected with, or involved in causing an injury to such employee shall be considered as having been so paid as damages resulting from

and because said injury was caused under circumstances creating a legal liability against said third party, whether such payment be made under a covenant not to sue, compromise settlement, denial of liability or otherwise.

6. When the state of Iowa has paid any compensation or benefits under the provisions of this chapter, the word "employer" as used in this section shall mean and include the state of Iowa. [S13,§2477-m6; C24, 27, 31, 35, 39,§1382; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.22; 66GA, ch 1057,§3

Referred to in §85.68

85.23 Notice of injury—failure to give. Unless the employer or his representative shall have actual knowledge of the occurrence of an injury received within ninety days from the date of the occurrence of the injury, or unless the employee or someone on his behalf or a dependent or someone on his behalf shall give notice thereof to the employer within ninety days from the date of the occurrence of the injury, no compensation shall be allowed. [S13,§2477-m8; C24, 27, 31, 35, 39,§1383; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.23; 66GA, ch 1084,§2]

Referred to in §§85.35, 86.11

85.24 Form of notice. No particular form of notice shall be required, but may be substantially as follows:

To .....

You are hereby notified that on or about the .....day of ....., 19...., personal injury was sustained by ....., while in your employ at .....
(Give name and place employed and point where located when injury occurred.)
.....; and that compensation will be claimed therefor.

Signed .....

No variation from this form of notice shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received an injury in the course of his employment on or about a specified time, at or near a certain place. [S13,§2477-m8; C24, 27, 31, 35, 39,§1384; C46, 50, 54, 58, 62, 66, 71, 73, 75, §85.24]

85.25 Service of notice. The notice may be served on anyone upon whom an original notice may be served in civil cases. Service may be made by any person, who shall make return verified by affidavit upon a copy of the notice, showing the date and place of service and upon whom served; but no special form of the return of service of the notice shall be required. It shall be sufficient if the facts therefrom can be reasonably ascertained. The return of service may be amended at any time. [S13,§2477-m8; C24, 27, 31, 35, 39,§1385; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.25]

Service of notice, R.C.P. 56(a)

85.26 Limitation of actions. No original proceedings for compensation shall be maintained in any case unless such proceedings shall be commenced within two years from the date of the injury causing such death or disability for which benefits are claimed.

No claim or proceedings for benefits shall be maintained by any person other than the injured employee, his dependent or his legal representative, if entitled to benefits. [C24, 27, 31, 35, 39,§1386; C46, 50, 54, 58, 62, 66, 71, 73, 75, §85.26]

Referred to in §§86.13, 86.20

85.27 Professional and hospital services release of information—absolved from liability—charges—prosthetic devices. The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatrial, physical rehabilitation, nursing, ambulance and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one permanent prosthetic device.

Any employee, employer or insurance carrier making or defending a claim for benefits agrees to the release of all information to which they have access concerning the employee's physical or mental condition relative to the claim and further waives any privilege for the release of such information. Such information shall be made available to any party or their attorney upon request. Any institution or person releasing such information to a party or their attorney shall not be liable criminally or for civil damages by reason of the release of such information. If release of information is refused the party requesting such information may apply to the industrial commissioner for relief. The information requested shall be submitted to the industrial commissioner who shall determine the relevance and materiality of the information to the claim and enter an order accordingly.

Charges believed to be excessive or unnecessary may be referred to the industrial commissioner for determination, and the commissioner may, in connection therewith, utilize the procedures provided in sections 86.38 and 86.39 and conduct such inquiry as he shall deem necessary. Any institution or person rendering treatment to an employee whose injury is compensable under this section agrees to be bound by such charges as allowed by the industrial commissioner and shall not recover in law or equity any amount in excess of that set by the commissioner.

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. The treatment must be offered promptly and be rea-

sonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, he should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care. In an emergency, the employee may choose his care at the employer's expense, provided the employer or his agent cannot be reached immediately. [S13,§2477-m9; C24, 27, 31, 35, 39,§1387; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.27; 66GA, ch 1084,§3]

Referred to in §§85.29, 85.31, 85.34, 85.37, 86.34

85.28 Burial expense. When death ensues from the injury, the employer shall pay the reasonable expenses of burial of such employee, not to exceed one thousand dollars, which shall be in addition to other compensation or any other benefit provided for in this chapter. [S13,§2477-m9; C24, 27, 31, 35, 39,§1388; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.28]

Referred to in §§85.35, 86.11

85.29 Liability in case of no dependents. When the injury causes death of an employee who leaves no dependents, then the employer shall pay the reasonable expense of the employee's sickness, if any, and the expense of burial, as provided in sections 85.27 and 85.28, and this shall be the only compensation; provided that if, from the date of the injury until the date of the death, any weekly compensation shall have become due and unpaid up to the time of the death, the same shall be payable to the estate of the deceased employee. [S13,§2477-m9; C24, 27, 31, 35, 39,§1389; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.29]

85.30 Maturity date and interest. Compensation payments shall be made each week beginning on the eleventh day after the injury, and each week thereafter during the period for which compensation is payable, and if not paid when due, there shall be added to such weekly compensation payments, interest at six percent from date of maturity. [C24, 27, 31, 35, 39,§1391; C46, 50, 54, 58, 62, 66, 71, 73, 75, §85.30; 66GA, ch 1084,§4]

Amendment by 66GA, ch 1084, effective July 1, 1977

85.31 Death cases—dependents.

1. When death results from the injury, the employer shall pay the dependents who were wholly dependent on the earnings of the employee for support at the time of his injury, during their lifetime, compensation upon the basis of eighty percent per week of the employee's average weekly spendable earnings, commencing from the date of his death as follows:

a. To the widow or widower for life or until remarriage, provided that upon remarriage two years' benefits shall be paid to the widow or widower in a lump sum, if there are no children entitled to benefits.

b. To any child of the deceased until the child shall reach the age of eighteen, provided that a child beyond eighteen years of age shall receive benefits to the age of twenty-five if actually dependent, and the fact that a child is under twenty-five years of age and is enrolled as a full-time student in any accredited educational institution shall be a prima facie showing of actual dependency.

c. To any child who was physically or mentally incapacitated from earning at the time of the injury causing death for the duration of the incapacity from earning.

d. To all other dependents as defined in section 85.44 for the duration of the incapacity from earning.

The weekly benefit amount shall not exceed a weekly benefit amount, rounded to the nearest dollar, equal to sixty-six and two-thirds percent of the state average weekly wage paid employees as determined by the Iowa department of job service under the provisions of section 96.3 and in effect at the time of the injury, provided, that as of July 1, 1975; July 1, 1977; July 1, 1979; and July 1, 1981, the maximum weekly benefit amount rounded to the nearest dollar shall be increased so that it shall equal one hundred percent, one hundred thirty-three and one-third percent, one hundred sixty-six and two-thirds percent and two hundred percent, respectively, of the state average weekly wage as determined above; provided further, that such weekly compensation shall not be less than thirty-six dollars per week, except if at the time of his injury his earnings are less than thirty-six dollars per week, then the weekly compensation shall be a sum equal to the full amount of his weekly earnings. Such compensation shall be in addition to the benefits provided by sections 85.27 and 85.28.

2. When the injury causes the death of a minor employee whose earnings were received by the parent and such parent was wholly dependent upon the earnings of the minor employee for support at the time of his injury, the compensation to be paid such parent shall be the weekly compensation for an adult with like earnings. For the purposes of this section a stepparent shall be regarded as a parent only when the stepparent has actually received his principal support from the stepchild who died as a result of compensable injuries.

3. If the employee leaves dependents only partially dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid, shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of the injury.

4. Where an employee is entitled to compensation under this chapter for an injury received, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability therefor shall terminate.

5. Except as otherwise provided by treaty, whenever, under the provisions of this and chapters 86 and 87, compensation is payable to a dependent who is an alien not residing in the United States at the time of the injury, the employer shall pay fifty percent of the compensation herein otherwise provided to such dependent, and the other fifty percent shall be paid into the second injury fund in the custody of the treasurer of state. But if the nonresident alien dependent is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefits of such law in as favorable degree as herein extended to the nonresident alien, then said compensation which would otherwise be payable to such dependent shall be paid into the second injury fund in the custody of the treasurer of state. [S13,§§2477-m9,-m10; C24, 27, 31, 35, 39,**§1392**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.31; 66GA, ch 1068,§38, ch 1084,§5]

Referred to in §§85.43, 85.45

85.32 When compensation begins. Except as to injuries resulting in permanent partial disability, compensation shall begin on the fourth day of disability after the injury.

If the period of incapacity extends beyond the fourteenth day following the date of injury, then the compensation due during the third week shall be increased by adding thereto an amount equal to three days of compensation. [S13,§2477-m9; C24, 27, 31, 35, 39,**§1393**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.32; 66GA, ch 1084,§6]

Referred to in §85.33
Amendment by 66GA, ch 1084, effective July 1, 1977

85.33 Temporary disability. The employer shall pay to the employee for injury producing temporary disability and beginning upon the fourth day thereof, weekly compensation benefit payments for the period of his disability, including the increase in cases to which section 85.32 applies. [S13,§2477-m9; C24, 27, 31, 35, 39,**§1394**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §85.33; 66GA, ch 1084,§7]

Referred to in §§85.34, 85.62, 279.40
Amendment by 66GA, ch 1084, effective July 1, 1977

85.34 Permanent disabilities. Compensation for permanent disabilities and during a healing period for permanent partial disabilities shall be payable to an employee as provided in this section. In the event weekly compensation under section 85.33 had been paid to any person for the same injury producing a permanent partial disability, any such amounts so paid shall be deducted from the amount of compensation payable for the healing period.

1. *Healing period.* If an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the date of the injury, and until he has returned to work or competent medical evidence indicates that recuperation from said injury has been accomplished, whichever comes first.

2. *Permanent partial disabilities.* Compensation for permanent partial disability shall begin at the termination of the healing period provided in subsection 1 hereof. Such compensation shall be in addition to the benefits provided by sections 85.27 and 85.28. Such compensation shall be based upon the extent of such disability and upon the basis of eighty percent per week of the employee's average weekly spendable earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to sixty-one and one-third percent of the state average weekly wage paid employees as determined by the Iowa department of job service under the provisions of section 96.3 and in effect at the time of the injury, provided that as of July 1, 1975; July 1, 1977; July 1, 1979; and July 1, 1981, the maximum weekly benefit amount rounded to the nearest dollar shall be increased so that it shall equal ninety-two percent, one hundred twenty-two and two-thirds percent, one hundred fifty-three and one-third percent, and one hundred eighty-four percent, respectively, of the state average weekly wage as determined above; provided that no employee shall receive as compensation less than thirty-six dollars per week, except if at the time of his injury his earnings are less than thirty-six dollars per week, then the weekly compensation shall be a sum equal to the full amount of his weekly earnings; and for all cases of permanent partial disability such compensation shall be paid as follows:

a. For the loss of a thumb, weekly compensation during sixty weeks.

b. For the loss of a first finger, commonly called the index finger, weekly compensation during thirty-five weeks.

c. For the loss of a second finger, weekly compensation during thirty weeks.

d. For the loss of a third finger, weekly compensation during twenty-five weeks.

e. For the loss of a fourth finger, commonly called the little finger, weekly compensation during twenty weeks.

f. The loss of the first or distal phalange of the thumb or of any finger shall equal the loss of one-half of such thumb or finger and the weekly compensation shall be paid during one-half of the time but not to exceed one-half of the total amount for the loss of such thumb or finger.

g. The loss of more than one phalange shall equal the loss of the entire finger or thumb.

h. For the loss of a great toe, weekly compensation during forty weeks.

i. For the loss of one of the toes other than the great toe, weekly compensation during fifteen weeks.

j. The loss of the first phalange of any toe shall equal the loss of one-half of such toe and the weekly compensation shall be paid during one-half of the time but not to exceed one-half of the total amount provided for the loss of such toe.

k. The loss of more than one phalange shall equal the loss of the entire toe.

l. For the loss of a hand, weekly compensation during one hundred ninety weeks.

m. The loss of two-thirds of that part of an arm between the shoulder joint and the elbow joint shall equal the loss of an arm and the compensation therefor shall be weekly compensation during two hundred fifty weeks.

n. For the loss of a foot, weekly compensation during one hundred fifty weeks.

o. The loss of two-thirds of that part of a leg between the hip joint and the knee joint shall equal the loss of a leg, and the compensation therefor shall be weekly compensation during two hundred twenty weeks.

p. For the loss of an eye, weekly compensation during one hundred forty weeks.

q. For the loss of an eye, the other eye having been lost prior to the injury, weekly compensation during two hundred weeks.

r. For the loss of hearing in one ear, weekly compensation during fifty weeks, and for the loss of hearing in both ears, weekly compensation during one hundred seventy-five weeks.

s. The loss of both arms, or both hands, or both feet, or both legs, or both eyes, or any two thereof, caused by a single accident, shall equal five hundred weeks and shall be compensated as such, however, if said employee is permanently and totally disabled he may be entitled to benefits under subsection 3.

t. For permanent disfigurement of the face or head which shall impair the future usefulness and earnings of the employee in his occupation at the time of receiving the injury, weekly compensation, for such period as may be determined by the industrial commissioner according to the severity of the disfigurement, but not to exceed one hundred fifty weeks.

u. In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs *"a"* through *"t"* hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the disability bears to the body of the injured employee as a whole.

If it is determined that an injury has produced a disability less than that specifically described in said schedule, compensation shall be paid during the lesser number of weeks of disability determined, as will not exceed a total amount equal to the same percentage proportion of said scheduled maximum compensation.

3. *Permanent total disability.* Compensation for an injury causing permanent total disability shall be upon the basis of eighty percent per week of the employee's average weekly spendable earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to sixty-six and two-thirds percent of the state average weekly wage paid employees as determined by the Iowa employment security commission under the provisions of section 96.3 and in effect at the time of the injury provided that as of July 1, 1975; July 1, 1977; July 1, 1979; and July 1, 1981, the maximum weekly benefit amount rounded to the nearest dollar shall be increased so that it shall equal one hundred percent, one hundred thirty-three and one-third percent, one hundred sixty-six and two-thirds percent and two hundred percent, respectively, of the state average weekly wage as determined above. No employee shall receive as compensation less than thirty-six dollars per week, except if at the time of his injury his earnings are less than thirty-six dollars per week, then the weekly compensation shall be a sum equal to the full amount of his weekly earnings; said weekly compensation shall be payable during the period of his disability.

Such compensation shall be in addition to the benefits provided in sections 85.27 and 85.28. No compensation shall be payable under this subsection for any injury for which compensation is payable under subsection 2 of this section. In the event compensation has been paid to any person under any provision of this chapter or chapter 85A for the same injury producing a total permanent disability, any such amounts so paid shall be deducted from the total amount of compensation payable for such permanent total disability. [S13,§2477-m9; C24, 27, 31, 35, 39,§§**1394–1396**; C46, 50, 54, 58, §§85.33–85.35; C62, 66, 71, 73, 75,§85.34; 66GA, ch 1068,§38; ch 1084,§§8-12]

Referred to in §§85.62, 279.40

85.35 Settlement in contested case. When no memorandum of agreement has been filed and approved by the industrial commissioner, the parties to a contested case may enter into a settlement of any claim arising under this chapter or chapter 85A, providing for final disposition of the claim. The settlement shall be in writing and submitted to the industrial commissioner for approval. The settlement shall not be approved unless evidence of a bona fide dispute exists concerning any of the following:

1. The claimed injury arose out of or in the course of the employment.

2. The injured employee gave notice under section 85.23.

3. The original proceeding was filed within two years from the date of the injury causing death or disability for which compensation is claimed.

4. The injury was caused by the employee's willful intent to injure himself or to willfully injure another.

5. Intoxication of the employee was the proximate cause of the injury.

6. The injury was caused by the willful act of a third party directed against the employee for reasons personal to such employee.

7. This chapter or chapter 85A applies to the party making the claim.

Approval by the industrial commissioner shall be binding on the parties and shall not be construed as an original proceeding. Notwithstanding any provisions of this chapter and chapters 85A, 86, and 87, an approved settlement shall constitute a final bar to any further rights arising under this chapter and chapters 85A, 86, and 87. Such payment shall not be construed as the payment of weekly compensation. [C75,§85.35; 66GA, ch 1084,§13]

85.36 Basis of computation. The basis of compensation shall be the weekly earnings of the injured employee at the time of the injury. Weekly earnings means gross salary, wages, or earnings of an employee to which such employee would have been entitled had he worked the customary hours for the full pay period in which he was injured, as regularly required by his employer for the work or employment for which he was employed, computed or determined as follows and then rounded to the nearest dollar:

1. In the case of an employee who is paid on a weekly pay period basis, the weekly gross earnings.

2. In the case of an employee who is paid on a biweekly pay period basis, one-half of the biweekly gross earnings.

3. In the case of an employee who is paid on a semimonthly pay period basis, the semimonthly gross earnings multiplied by twenty-four and subsequently divided by fifty-two.

4. In the case of an employee who is paid on a monthly pay period basis, the monthly gross earnings multiplied by twelve and subsequently divided by fifty-two.

5. In the case of an employee who is paid on a yearly pay period basis, the weekly earnings shall be the yearly earnings divided by fifty-two.

6. In the case of an employee who is paid on a daily, or hourly basis, or by the output of the employee, the weekly earnings shall be computed by dividing by thirteen the earnings, not including overtime or premium pay, of said employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury.

7. In the case of an employee who has been in the employ of the employer less than thirteen calendar weeks immediately preceding the injury, his weekly earnings shall be computed under subsection 6, taking the earnings, not including overtime or premium pay, for such purpose to be the amount he would have earned had he been so employed by the employer the full thirteen calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation.

8. If at the time of the injury the hourly earnings have not been fixed or cannot be ascertained, the earnings for the purpose of calculating compensation shall be taken to be the usual earnings for similar services where such services are rendered by paid employees.

9. In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the weekly earnings shall be taken to be one-fiftieth of the total earnings which the employee has earned from all occupations during the twelve calendar months immediately preceding the injury.

10. In the case of an employee who earns either no wages or less than the usual weekly earnings of the regular full-time adult laborer in the line of industry in which he is injured in that locality, the weekly earnings shall be one-fiftieth of the total earnings which the employee has earned from all employment during the twelve calendar months immediately preceding the injury but shall be not less than an amount equal to thirty-five percent of the state average weekly wage paid employees as determined by the Iowa employment security commission under the provisions of section 96.3, and in effect at the time of the injury.

a. In computing the compensation to be allowed a volunteer fireman, his earnings as a fireman shall be disregarded and he shall be paid the maximum compensation allowable under the workers' compensation law.

b. If the employee was an apprentice or trainee when injured, and it is established under normal conditions his earnings should be expected to increase during the period of disability, that fact may be considered in computing his weekly earnings.

c. In computing the compensation to be paid to any employee who, before the accident for which he claims compensation, was disabled and drawing compensation under the provisions of this chapter, the compensation for each subsequent injury shall be apportioned according to the proportion of disability caused by the respective injuries which he shall have suffered.

Paragraph "*c*" of this subsection shall not apply to compensable injuries arising under the second injury compensation Act. [S13, §2477-m15; C24, 27, 31, 35, 39,§1397; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.36; 66GA, ch 1084,§§14, 15, 43]

85.37 Compensation schedule. In all cases where an employee receives a personal injury causing temporary disability, or causing a permanent partial disability for which compensation is payable during a healing period, compensation for such temporary disability or for

such healing period shall be upon the basis provided herein. The weekly benefit amount payable to any employee for any one week shall be upon the basis of eighty percent of the employee's weekly spendable earnings, but shall not exceed an amount, rounded to the nearest dollar, equal to sixty-six and two-thirds percent of the state average weekly wage paid employees as determined by the Iowa department of job service under the provisions of section 96.3 and in effect at the time of the injury provided that as of July 1, 1975; July 1, 1977; July 1, 1979; and July 1, 1981, the maximum weekly benefit amount rounded to the nearest dollar shall be increased so that it shall equal one hundred percent, one hundred thirty-three and one-third percent, one hundred sixty-six and two-thirds percent, and two hundred percent, respectively, of the state average weekly wage as determined above. Total weekly compensation for any employee shall not exceed eighty percent per week of the employee's weekly spendable earnings; provided further, that such compensation shall not be less than thirty-six dollars per week, except if at the time of his injury his earnings are less than thirty-six dollars per week, then he shall receive in weekly payments a sum equal to the full amount of his weekly earnings.

Such compensation shall be in addition to the benefits provided by sections 85.27 and 85.28. [S13,§2477-m9; C24, 27, 31, 35, 39,§**1390**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.37; 66GA, ch 1068,§38, ch 1084,§16]

Referred to in §85.34

85.38 Reduction of obligations of employer.

1. *Contributions or donations.* The compensation herein provided shall be the measure of liability which the employer has assumed for injuries or death that may occur to employees in his employment subject to the provisions of this chapter, and it shall not be in anywise reduced by contribution from employees or donations from any source.

2. *Credit for benefits paid under group plans.* In the event the disabled employee shall receive any benefits, including medical, surgical or hospital benefits, under any group plan covering nonoccupational disabilities contributed to wholly or partially by the employer, which benefits should not have been paid or payable if any rights of recovery existed under this chapter or chapter 85A, then such amounts so paid to said employee from any such group plan shall be credited to or against any compensation payments, including medical, surgical or hospital, made or to be made under this chapter or chapter 85A. Such amounts so credited shall be deducted from the payments made under these chapters. Any nonoccupational plan shall be reimbursed in the amount so deducted. This section shall not apply to payments made under any group plan which would have been payable even though there was an injury under this chapter or an occupational disease under chapter 85A. Any employer receiving such credit shall keep such employee safe and harmless from any and all claims or liabilities that may be made against them by reason of having received such payments only to the extent of such credit. [S13, §2477-m12; C24, 27, 31, 35, 39,§**1398**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.38]

85.39 Examination of injured employees. After an injury, the employee, if so requested by his employer, shall submit himself for examination at some reasonable time and place within the state and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this state, without cost to the employee; but if the employee requests, he shall, at his own cost, be entitled to have a physician or physicians of his own selection present to participate in such examination. Whenever an employee is required to leave his work for which he is being paid wages to attend upon such requested examination, he shall be compensated at his regular rate for the time he shall have lost by reason thereof, and he shall be furnished transportation to and from the place of examination, or the employer may elect to pay him the reasonable cost of such transportation. The refusal of the employee to submit to such examination shall deprive him of the right to any compensation for the period of such refusal. When a right of compensation is thus suspended, no compensation shall be payable for the period of suspension.

Whenever an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, he shall, upon application to the commissioner and at the same time delivery of a copy to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of his own choice, and reasonably necessary transportation expenses incurred for such examination. The physician chosen by the employee shall have the right to confer with and obtain from the employer-retained physician sufficient history of the injury to make a proper examination. [S13,§2477-m11; C24, 27, 31, 35, 39,§**1399**; C46, 50, 54, 58, 62,§85.39; C66, 71, 73, 75,§§85.34(2), 85.39; 66GA, ch 1084,§17]

85.40 Statement of earnings. The employer shall furnish, upon request of an injured employee or dependent or any legal representative acting for such person, a statement of the earnings, wages, or salary and other matters relating thereto during the year or part of the year that such employee was in the employment of such employer for the year preceding the injury; but not more than one report shall be required on account of any one injury. [C24, 27, 31, 35, 39,§**1400**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.40]

85.41 Refusal to furnish statement. On failure of the employer to furnish such statement of earnings for thirty days after receiving

written request therefor from an injured employee, his agent, attorney, dependent, or legal representative, such employer shall pay a penalty of twenty-five dollars for each offense to be collected by the commissioner in any court having jurisdiction and paid into the state treasury. [C24, 27, 31, 35, 39,§1401; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.41]

85.42 Conclusively presumed dependent. The following shall be conclusively presumed to be wholly dependent upon the deceased employee:

1. The surviving spouse, with the following exceptions:

a. When it is shown that at the time of the injury the surviving spouse had willfully deserted deceased without fault of the deceased, then such survivor shall not be considered as dependent in any degree.

b. When the surviving spouse was not married to the deceased at the time of the injury.

2. A child or children under eighteen years of age, and over said age if physically or mentally incapacitated from earning, whether actually dependent for support or not upon the parent at the time of his or her death. An adopted child or children shall be regarded the same as issue of the body. A child or children, as used herein, shall also include any child or children conceived but not born at the time of the employee's injury, and any compensation payable on account of any such child or children shall be paid from the date of their birth. A stepchild or stepchildren shall be regarded the same as issue of the body only when the stepparent has actually provided the principal support for such child or children. [S13,§2477-m16; C24, 27, 31, 35, 39,§1402; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.42]

Referred to in §85.43

85.43 Payment to spouse. If the deceased employee leaves a surviving spouse qualified under the provisions of section 85.42, the full compensation shall be paid to her or him, as provided in section 85.31; provided that where a deceased employee leave a surviving spouse and a dependent child or children the industrial commissioner may make an order of record for an equitable apportionment of the compensation payments.

If the spouse dies, the benefits shall be paid to the person or persons wholly dependent on deceased, if any, share and share alike. If there are none wholly dependent, then such benefits shall be paid to partial dependents, if any, in proportion to their dependency for the periods provided in section 85.31.

If the deceased leaves dependent child or children who was or were such at the time of the injury, and the surviving spouse remarries, then and in such case, the payments shall be paid to the proper compensation trustee for the use and benefit of such dependent child or children for the period provided in section 85.31. [S13,§2477-m16; C24, 27, 31, 35, 39, §1403; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.43]

85.44 Payment to actual dependents. In all other cases, a dependent shall be one actually dependent or mentally or physically incapacitated from earning. Such status shall be determined in accordance with the facts as of the date of the injury. In such cases if there is more than one person, the compensation benefit shall be equally divided among them. If there is no one wholly dependent and more than one person partially dependent, the compensation benefit shall be divided among them in the proportion each dependency bears to their aggregate dependency. [S13,§2477-m16; C24, 27, 31, 35, 39,§1404; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.44]

Referred to in §85.31

85.45 Commutation. Future payments of compensation may be commuted to a present worth lump sum payment on the following conditions:

1. When the period during which compensation is payable can be definitely determined.

2. When it shall be shown to the satisfaction of the industrial commissioner that such commutation will be for the best interest of the person or persons entitled to the compensation, or that periodical payments as compared with a lump sum payment will entail undue expense, hardship, or inconvenience upon the employer liable therefor.

3. When the recipient of commuted benefits is a minor employee, the industrial commissioner may order that such benefits be paid to a trustee as provided in section 85.49.

4. When a person seeking a commutation is a widow or widower, a permanently and totally disabled employee, or a dependent who is entitled to benefits as provided in section 85.31, subsection 1, paragraphs "*c*" and "*d*", the future payments which may be commuted shall not exceed the number of weeks which shall be indicated by probability tables designated by the industrial commissioner for death and remarriage, subject to the provisions of chapter 17A. [S13,§2477-m14; C24, 27, 31, 35, 39,§1405; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.45]

85.46 Proceedings for commutation. A written petition for commutation may be made to the industrial commissioner. Notice of the filing or presentation of such petition shall be served upon the opposite party or parties as provided in section 86.36. [S13,§2477-m14; C24, 27, 31, 35, 39,§1406; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.46]

85.47 Basis of commutation. When the commutation is ordered, the industrial commissioner shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments capitalized at their present value and upon the basis of interest, calculated at five percent per annum. Upon the payment of such amount the employer shall be discharged from all further liability on account of such injury or death, and be entitled to a

duly executed release, upon filing which the liability of such employer under any agreement, award, finding, or judgment shall be discharged of record. [S13,§2477-m14; C24, 27, 31, 35, 39,§**1407**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §85.47]

85.48 Partial commutation. When partial commutation is ordered, the industrial commissioner shall fix the lump sum to be paid at an amount which will equal the future payments for the period commuted, capitalized at their present value upon the basis of interest calculated at five percent per annum, with provisions for the payment of weekly compensation not included in such commutation, subject to any provisions of the law applicable to such unpaid weekly payments; all remaining payments, if any, to be paid at the same time as though such commutation had not been made. [S13,§2477-m15; C24, 27, 31, 35, 39, §**1408**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.48]

85.49 Trustees for incompetent. When a minor or mentally incompetent dependent is entitled to weekly benefits under this chapter or chapter 85A, payment shall be made to the clerk of the district court for the county in which the injury occurred, who shall act as trustee, and the money coming into his hands shall be expended for the use and benefit of the person entitled thereto under the direction and orders of a judge of the district court, in which such county is located. The clerk of the district court, as such trustee, shall qualify and give bond in such amount as the judge may direct, which may be increased or diminished from time to time as the court may deem best. The cost of such bond shall be paid by the county as the court may direct by written order directed to the auditor of the county who shall issue a warrant therefor upon the treasurer of the county. If the domicile or residence of such minor or mentally incompetent dependent be within the state but in a county other than that in which the injury to the employee occurred the industrial commissioner may order and direct that weekly benefits to such minors or incompetents be paid to the clerk of the district court of the county wherein they shall be domiciled or reside.

If the domicile or residence of such minor or mentally incompetent dependent be outside the state of Iowa the industrial commissioner may order and direct that benefits to such minors or incompetents be paid to a guardian, conservator, or legal representative duly qualified under the laws of the jurisdiction wherein the minors or incompetents shall be domiciled or reside. Proof of the identity and qualification of such guardian, conservator, or other legal representative shall be furnished to the industrial commissioner. [S13,§2477-m13; C24, 27, 31, 35, 39,§**1409**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.49; 66GA, ch 1084,§18]

Referred to in §85.45

85.50 Report of trustee. The clerk of the district court as such trustee shall, on or before September 30 of each year, make annual reports to the court of all money or property received or expended for each person for whom he is acting as trustee.

Every clerk of the district court of every county upon his completion of his term of office, or upon his resignation, removal from office or otherwise becoming disqualified as such clerk shall make an accounting and final report to be approved by a judge of the district court for said county and all funds and other property shall be delivered to the successor in the office of such clerk. [S13,§2477-m13; C24, 27, 31, 35, 39,§**1410**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.50]

85.51 Alien dependents in foreign country. In case a deceased employee for whose injury or death compensation is payable leaves surviving him an alien dependent or dependents residing outside the United States, the consul general, consul, vice-consul, or consular agent of the nation of which the said dependent or dependents are citizens, or the duly appointed representative of such consular official resident in the state of Iowa, shall be regarded as the exclusive representative of such dependent or dependents, and said consular officials or their representatives shall have the same rights and powers in all matters of compensation which said nonresident aliens would have if resident in the state of Iowa. [C24, 27, 31, 35, 39,§**1411**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §85.51]

85.52 Consular officer as trustee. Such consular officer or his duly appointed representative resident in the state of Iowa shall file in the district court of the county in which the accident occurred resulting in the death of said employee evidence of his authority, and thereupon the court shall appoint him a trustee for such nonresident alien dependents, and thereafter he shall be subject to the jurisdiction of said court until his final report of distribution and payment has been filed and approved. Such consular official or his said representative shall qualify as such trustee by giving bond with approved sureties in a sum to be fixed by said court, and the amount of said bond may be increased or decreased from time to time as said court may direct. [C24, 27, 31, 35, 39,§**1412**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.52]

85.53 Notice to consular officer. If such consular officer, or his duly appointed representative, shall file with the industrial commissioner evidence of his authority, the industrial commissioner shall notify such consular officer or his representative of the death of all employees leaving alien dependent, or dependents, residing in the country of said consular officer so far as same shall come to his knowledge. [C24, 27, 31, 35, 39,§**1413**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.53]

85.54 Contracts to avoid compensation. Any contract of employment, relief benefit, or insurance, or other device whereby the employee is required to pay any premium or premiums for insurance against the compensation provided for in this chapter, shall be null and void; and any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punishable by a fine not less than ten dollars nor more than fifty dollars for each offense. [S13,§2477-m17; C24, 27, 31, 35, 39,§1414; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.54]

85.55 Waivers prohibited—physical defects. No employee or dependent to whom this chapter applies, shall have power to waive any of the provisions of this chapter in regard to the amount of compensation which may be payable to such employee or dependent hereunder. However, any person who has some physical defect which increases the risk of injury, may, subject to the approval of the industrial commissioner, enter into a written agreement with his employer waiving compensation for injuries which may occur directly or indirectly because of such physical defect, provided, however, that such waiver shall not affect the employee's benefits to be paid from the second injury fund under the provisions of section 85.64. [S13,§2477-m17; C24, 27, 31, 35, 39,§1415; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.55]

85.56 Repealed by 66GA, ch 1084,§41]

85.57 Employees in interstate commerce. So far as permitted, or not forbidden, by any Act of Congress, employers engaged in interstate or foreign commerce and their employees working only in this state shall be bound by the provisions of this chapter in like manner and with the same force and effect in every respect as by this chapter provided for other employers and employees. [S13,§2477-m21; C24, 27, 31, 35, 39,§1417; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.57]

85.58 Employees of state. All valid claims now due or which may hereafter become due employees of the state under the provisions of this chapter shall be paid out of any funds in the state treasury not otherwise appropriated. [C24, 27, 31, 35, 39,§1418; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.58]

See also appropriation Acts

85.59 Payment of state employees. The state comptroller is hereby authorized and directed to draw warrants on the state treasury for any and all amounts due state employees under the provisions of this chapter. [C24, 27, 31, 35, 39,§1419; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.59; 66GA, ch 1057,§4]

85.60 Repealed by 66GA, ch 1057,§5.

85.61 Definitions. In this and chapters 86 and 87, unless the context otherwise requires, the following definitions of terms shall prevail:

1. *"Employer"* includes and applies to any person, firm, association, or corporation, state, county, municipal corporation, school corporation, area education agency, township as an employer of volunteer firemen only, benefited fire district and the legal representatives of a deceased employer.

2. *"Worker"* or *"employee"* means a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer, every executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the employer, and including officials elected or appointed by the state, counties, school districts, area education agencies, municipal corporations, or cities under any form of government, and including members of the Iowa highway safety patrol and conservation officers, except as hereinafter specified.

3. The following persons shall not be deemed "workers" or "employees":

a. A person whose employment is purely casual and not for the purpose of the employer's trade or business except as otherwise provided in section 85.1.

b. An independent contractor.

c. Partners; directors of any corporation who are not at the same time employees of such corporation; or directors, trustees, officers or other managing officials of any nonprofit corporation or association who are not at the same time full-time employees of such nonprofit corporation or association.

4. The term *"worker"* or *"employee"* shall include the singular and plural of both sexes. Any reference to a worker or employee who has been injured shall, when such worker or employee is dead, include his dependents as herein defined or his legal representatives; and where the worker or employee is a minor or incompetent, it shall include his guardian, next friend, or trustee. Notwithstanding any law prohibiting the employment of minors all minor employees shall be entitled to the benefits of this chapter and chapters 86 and 87 regardless of the age of such minor employee.

5. The words *"injury"* or *"personal injury"* shall be construed as follows:

a. They shall include death resulting from personal injury.

b. They shall not include a disease unless it shall result from the injury and they shall not include an occupational disease as defined in section 85A.8.

6. The words *"personal injury arising out of and in the course of the employment"* shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and

subjects them to dangers incident to the business.

7. The word "*court*" wherever used in this and chapters 86 and 87, unless the context shows otherwise, shall be taken to mean the district court.

8. The term "*volunteer firemen*" shall mean any active member of an organized volunteer fire department in this state and any other person performing services as a volunteer fireman for a municipality, township or benefited fire district at the request of the chief or other person in command of the fire department of such municipality, township or benefited fire district, or of any other officer of such muncipality, township or benefited fire district having authority to demand such service, and who is not a full-time member of a paid fire department. A person performing such services shall not be classified as a casual employee.

9. "*Pay period*" means that period of employment for which the employer customarily or regularly makes payments to his employees for work performed or services rendered.

10. "*Payroll taxes*" means the following:

a. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal Revenue Code of 1954, and regulations pursuant thereto, as amended to July 1, 1976, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which he was injured, and

b. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under chapter 422, and any rules pursuant thereto, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which he was injured; and

c. An amount equal to the amount required on July 1 preceding the injury by the Social Security Act of 1935 as amended to July 1, 1976, to be deducted or withheld from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the calendar year in which he was injured.

11. "*Spendable weekly earnings*" is that amount remaining after payroll taxes are deducted from gross weekly earnings.

12. "*Gross earnings*" means recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits. [S13,§2477-m16; C24, 27, 31, 35, 39,§1421; C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.61; 66GA, ch 194, §10, ch 1084,§§19, 43]

85.62 Inmates of county jail. The county board of supervisors of any county may elect to include as an employee for purposes of this chapter any person confined as an inmate in a county jail or confined in any other facility in lieu of confinement in a county jail. If such election is made, the provisions of section 85.1, subsection 5, shall apply to such county. If an inmate in the performance of his work in connection with the maintenance of a county jail or other local facility, or in connection with any industry maintained therein, or with any highway or public works activity outside a county jail or other local facility sustains an injury arising out of and in the course thereof, he shall, be awarded and paid compensation at the minimum rate as provided in this chapter. If death results from such injury, death benefits shall be awarded and paid to the dependents of the inmate. If any such person is awarded weekly compensation under the provisions of this section and is still committed to the county jail or other facility, his compensation benefits under section 85.33 or section 85.34, subsection 1, shall be paid to the county for so long as he shall remain so committed. Weekly compensation benefits awarded pursuant to section 85.34, subsection 2, shall be held in trust and paid to such person as provided in this chapter upon his final discharge or parole, whichever occurs first. In the event such person is recommitted to the county jail or other facility prior to receiving in full, his weekly benefits pursuant to section 85.33 or section 85.34, subsection 1, such benefits shall again be paid to the county for so long as he shall remain so recommitted. Also, weekly benefits under section 85.34, subsection 2, shall be suspended and again held in trust until such person is again released by final discharge or parole, whichever first occurs. However, the industrial commissioner may, if he finds that dependents of the person awarded weekly compensation pursuant to section 85.33 or section 85.34, subsections 1 and 2, would require welfare aid as a result of terminating the compensation, order such weekly compensation to be paid to a responsible person for the use of his dependents. [C73, 75,§85.62]

SECOND INJURY COMPENSATION ACT

85.63 Title of Act. This division shall be known and referred to as the "Second Injury Compensation Act." [C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.63]

Referred to in §86.12

85.64 Limitation of benefits. If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently disabled by a compensable injury which has resulted in the loss of or loss of use of another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had

been no pre-existing disability. In addition to such compensation, and after the expiration of the full period provided by law for the payments thereof by the employer, the employee shall be paid out of the "Second Injury Fund" created by this division the remainder of such compensation as would be payable for the degree of permanent disability involved after first deducting from such remainder the compensable value of the previously lost member or organ.

Any benefits received by any such employee, or to which he may be entitled, by reason of such increased disability from any state or federal fund or agency, to which said employee has not directly contributed, shall be regarded as a credit to any award made against said second injury fund as aforesaid. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.64]

Referred to in §85.55

85.65 Payments to second injury fund. The employer, or, if insured, his insurance carrier in each case of compensable injury causing death shall pay to the treasurer of state for the second injury fund the sum of one hundred dollars, said payment to be made at the time compensation payments are begun, or at the time the burial expenses are paid in a case where there are no dependents; provided, however, that such payments shall be required only in cases of injury resulting in death coming within the purview of this chapter and occurring after July 4, 1945. These payments shall be in addition to any payments of compensation to injured employees or their dependents, or of burial expenses as provided in this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §85.65]

85.66 Second injury fund—payments—custodian. When the total amount of such payments provided for in the preceding section, together with accumulated interest thereon and earnings, equals or exceeds fifty thousand dollars no further contributions to said fund shall be required; but whenever, thereafter, the amount of such sum shall be reduced below thirty thousand dollars by reason of payments made to employees pursuant to the provisions of this division, the said contributions shall be resumed forthwith and shall continue until such sum, together with accumulated interest and earnings, shall again amount to fifty thousand dollars. The industrial commissioner shall promulgate rules for the maintenance of the second injury fund and the making of contributions thereto, and shall determine when the contributions shall be made to said fund and when they shall be suspended; and he is hereby empowered and authorized to enforce said rules and the collection of said contributions.

Moneys so collected shall constitute a "Second Injury Fund", in the custody of the treasurer of state, to be disbursed only for the purposes stated in this division, and shall not at any time be appropriated or diverted to any other use or purpose. The treasurer of state shall invest any surplus moneys thereof in securities which constitute legal investments for state funds under the laws of this state, and may sell any of the securities in which said fund is invested, if necessary, for the proper administration or in the best interests of said fund. Disbursements from such fund shall be paid by the treasurer of state only upon the written order of the industrial commissioner. The treasurer of state as custodian of such fund shall quarterly furnish to the industrial commissioner a statement of the fund, setting forth the balance of moneys in said fund, the income of the fund, specifying the source of all income, the payments out of the fund, specifying the various items of such payments, and setting forth the balance of the fund remaining to its credit. Such statement shall be open to public inspection in the office of the industrial commissioner. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.66]

85.67 Administration of fund—special counsel. The industrial commissioner shall be charged with the conservation of the assets of the second injury fund, and the collection of contributions thereto. In furtherance of this purpose, the attorney general shall appoint a member of his staff to represent the industrial commissioner and the fund in all proceedings and matters arising under this division. In his award the industrial commissioner shall specifically find the amount the injured employee shall be paid weekly, the number of weeks compensation which shall be paid by the employer, the date upon which payments out of the fund shall begin, and, if possible, the length of time such payments shall continue. The industrial commissioner shall administer the provisions of this division in connection with and under the same procedure as other cases arising under this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.67]

85.68 Actions. The industrial commissioner, on behalf of the second injury fund created under the provisions of this division, shall have a cause of action under the provisions of section 85.22 to the same extent as an employer against any person not in the same employment by reason of whose negligence or wrong the subsequent injury of such previously disabled person was caused. Any such action shall be brought by the industrial commissioner on behalf of said fund, and any recovery, less the necessary and reasonable expenses incurred by the industrial commissioner, shall be paid to the treasurer of state and credited to said fund. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.68]

85.69 Federal contributions. The treasurer of state is hereby authorized to receive and credit to said fund any sum or sums that may at any time be contributed to the state by the United States or any agency thereof, under any Act of Congress or otherwise, to which the state may be or become entitled by reason of

any payments made to any previously disabled person out of said fund. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§85.69]

Referred to in §86.12
This division is an amendment to this chapter. See 51GA, ch 81,§10

VOCATIONAL REHABILITATION PROGRAM

85.70 Additional payment for attendance. An employee who has sustained an injury resulting in permanent partial or permanent total disability, for which compensation is payable under this chapter, and who cannot return to gainful employment because of such disability, shall upon application to and approval by the industrial commissioner be entitled to a twenty-dollar weekly payment from the employer in addition to any other benefit payments, during each full week in which he is actively participating in a vocational rehabilitation program recognized by the state board for vocational education. The industrial commissioner's approval of such application for payment may be given only after a careful evaluation of available facts, and after consultation with the employer or the employer's representative. Judicial review of the decision of the industrial commissioner may be obtained in accordance with the terms of the Iowa administrative procedure Act and in section 86.26. Such additional benefit payment shall be paid for a period not to exceed thirteen consecutive weeks except that the industrial commissioner may extend the period of payment not to exceed an additional thirteen weeks if the circumstances indicate that a continuation of training will in fact accomplish rehabilitation. [C71, 73, 75,§85.70]

EXTRATERRITORIAL EMPLOYMENT

85.71 Employment outside of state. If an employee, while working outside the territorial limits of this state, suffers an injury on account of which he, or in the event of his death, his dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this state, such employee, or in the event of his death resulting from such injury, his dependents, shall be entitled to the benefits provided by this chapter, provided that at the time of such injury:

1. His employment is principally localized in this state, that is, his employer has a place of business in this or some other state and he regularly works in this state, or if he is domiciled in this state, or

2. He is working under a contract of hire made in this state in employment not principally localized in any state, or

3. He is working under a contract of hire made in this state in employment principally localized in another state, whose workers' compensation law is not applicable to his employer, or

4. He is working under a contract of hire made in this state for employment outside the United States. [C75,§85.71; 66GA, ch 1084,§43]

CHAPTER 85A

OCCUPATIONAL DISEASE COMPENSATION

Referred to in §§8.13, 85.3, 85.20, 85.22, 85.27, 85.34, 85.35, 85.38, 85.49, 86.8, 86.20

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85A.1 Short title. This chapter shall be known and referred to as the "Iowa Occupational Disease Law". [C50, 54, 58, 62, 66, 71, 73, 75,§85A.1]

85A.2 Employers included. All employers as defined by the workers' compensation law of Iowa and who are engaged in any business or industrial process hereinafter designated and described are employers within the provisions of this chapter and shall be subject thereto. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.2; 66GA, ch 1084,§43]

85A.3 Employees covered. All employees as defined by the workers' compensation law of Iowa employed in any business or industrial process hereinafter designated and described and who in the course of their employment are exposed to an occupational disease as herein defined are subject to the provisions of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.3; 66GA, ch 1084,§43]

85A.4 Disablement defined. Disablement as that term is used in this chapter is the event or condition where an employee becomes actually incapacitated from performing his work or from earning equal wages in other suitable employment because of an occupational disease as defined in this chapter in the last occupation in which such employee is injuriously exposed to the hazards of such disease. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.4]

85A.5 Compensation payable. All employees subject to the provisions of this chapter who shall become disabled from injurious exposure to an occupational disease herein designated and defined within the conditions, limitations and requirements provided herein, shall receive compensation, reasonable surgical, medical, osteopathic, chiropractic, physical rehabilitation, nursing and hospital services and supplies therefor, and burial expenses as provided in the workers' compensation law of Iowa except as otherwise provided in this chapter.

If, however, an employee incurs an occupational disease for which he would be entitled to receive compensation if he were disabled as provided herein, but is able to continue in employment and requires medical treatment for said disease, then he shall receive reasonable medical services therefor. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.5; 66GA, ch 1084,§43]

85A.6 Dependents—defined. Dependents of a deceased employee whose death has been caused by an occupational disease as herein defined and under the provisions, conditions and limitations of this chapter shall be those persons defined as dependents under the workers' compensation law of Iowa and such dependents shall receive compensation benefits as provided by said law. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.6; 66GA, ch 1084,§43]

85A.7 Limitations and exceptions. The provisions of this chapter providing payment of workers' compensation on account of occupational disease as defined and set out in this chapter, shall be subject to the following limitations and exceptions:

1. No compensation shall be payable if the employee, at the time of entering the employment of the employer in writing falsely represented himself to said employer as not having been previously disabled, laid off or compensated, or having lost time by reason of an occupational disease.

2. No compensation for death because of an occupational disease shall be payable to any person whose relationship to the deceased employee arose subsequent to the beginning of the first compensable disability, except only after-born children of a marriage existing at the beginning of such disability.

3. When such occupational disease causes the death of an employee and there are no dependents entitled to compensation, then the employer shall pay the medical, hospital and burial expenses as is provided by the workers' compensation law, and shall also pay to the treasurer of the state for the use and benefit of the second injury compensation fund such amount as is required by the second injury compensation law.

4. Where such occupational disease is aggravated by any other disease or infirmity not of itself compensable, or where disability or death results from any other cause not of itself compensable but is aggravated, prolonged or accelerated by such an occupational disease, and disability results such as to be compensable under the provisions of this chapter, the compensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease was the sole cause of the disability or death, as such occupational disease bears to all the causes of such disability or death. Such reduction or limitation in compensation shall be effected by reducing either the number of weekly payments or the amount of such payments as the industrial commissioner may determine is for the best interests of the claimant or claimants.

5. No compensation shall be allowed or payable for any disease or death intentionally self-inflicted by the employee or due to his intoxication, or due to his being a narcotic drug addict, his commission of a misdemeanor or felony, his refusal to use a safety appliance or health protective, his refusal to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work, or his failure or refusal to perform or obey any statutory duty. The burden of establishing any such ground shall rest upon the employer.

6. No compensation shall be payable or allowed in any case where the last injurious exposure to the hazards of such occupational disease occurred prior to the effective date of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75, §85A.7; 66GA, ch 1084,§43]

85A.8 Occupational disease defined. Occupational diseases shall be only those diseases which arise out of and in the course of the employee's employment. Such diseases shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment. Such disease must be incidental to the character of the business, occupation or process in which

the employee was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which an employee has or would have been equally exposed outside of said occupation is not compensable as an occupational disease. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.8]

Referred to in §85.61

85A.9 Repealed by 65GA, ch 144,§30.

85A.10 Last exposure — employer liable. Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease, shall be liable therefor. The notice of injury and claim for compensation as hereinafter required shall be given and made to such employer, provided, that in case of pneumoconiosis, the only employer liable shall be the last employer in whose employment the employee was last injuriously exposed to the hazards of the disease during a period of not less than sixty days. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.10]

85A.11 Diagnosis for brucellosis. When any employee is clinically diagnosed as having brucellosis (undulant fever), it shall not be considered that the employee has the disease unless the clinical diagnosis is confirmed by:

1. A positive blood culture for brucella organisms, or

2. A positive agglutination test which must be verified by not less than two successive positive agglutination tests, each of which tests shall be positive in a titer of one to one hundred sixty or higher. Said subsequent agglutination tests must be made of specimens taken not less than seven nor more than ten days after each preceding test.

The specimens for the tests required herein must be taken by a licensed practicing physician or osteopathic physician, and immediately delivered to the state hygienic laboratory of the state department of health at Iowa City, and each such specimen shall be in a container upon which is plainly printed the name and address of the subject, the date when the specimen was taken, the name and address of the subject's employer and a certificate by the physician or osteopathic physician that he took the specimen from the named subject on the date stated over his signature and his address.

The state hygienic laboratory shall immediately make the test and upon completion thereof it shall send a report of the result of such test to the physician or osteopathic physician from whom the specimen was received and also to the employer.

In the event of a dispute as to whether the employee has brucellosis, the matter shall be determined as any other disputed case. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.11]

85A.12 Disablement or death following exposure—limitations. An employer shall not be liable for any compensation for an occupational disease unless such disease shall be due to the nature of an employment in which the hazards of such disease actually exist, and which hazards are characteristic thereof and peculiar to the trade, occupation, process, or employment, and such disease actually arises out of the employment, and unless disablement or death results within three years in case of pneumoconiosis, or within one year in case of any other occupational disease, after the last injurious exposure to such disease in such employment, or in case of death, unless death follows continuous disability from such disease commencing within the period above limited for which compensation has been paid or awarded or timely claim made as provided by this chapter and results within seven years after such exposure.

In any case where disablement or death was caused by latent or delayed pathological conditions, blood, or other tissue changes or malignancies due to occupational exposure to X rays, radium, radioactive substances or machines, or ionizing radiation, the employer shall not be liable for any compensation unless claim is filed within ninety days after disablement or death or after the employee had knowledge or in the exercise of reasonable diligence should have known his disablement was caused by overexposure to ionizing radiation or radioactive substances, and its relation to employment. [C50, 54, 58, 62, 66, 71, 73, 75, §85A.12]

85A.13 Provisions relating to pneumoconiosis.

1. *Pneumoconiosis defined.* Whenever used in this chapter, "pneumoconiosis" shall mean the characteristic fibrotic condition of the lungs caused by the inhalation of dust particles.

2. *Presumptions.* In the absence of conclusive evidence in favor of the claim, disability or death from pneumoconiosis shall be presumed not to be due to the nature of any occupation within the provisions of this chapter unless during the ten years immediately preceding the disablement of the employee who has been exposed to the inhalation of dust particles over a period of not less than five years, two years of which shall have been in employment in this state.

3. *Compensation payable.* Except as in this chapter otherwise provided, compensation for disability from uncomplicated pneumoconiosis shall be payable in accordance with the provisions hereof; provided, however, that no compensation shall be payable for disability from pneumoconiosis of less than thirty-three and one-third percent of total, and provided further that, during the transitory period, the aggregate compensation payable to employees and

their dependents for disability and death for uncomplicated pneumoconiosis shall be limited as follows: If disablement occurs or in case of no claim for prior disablement, if death occurs in the third calendar month after October 1, 1947, the total compensation and death benefits payable shall not exceed the sum of five hundred dollars. If disablement occurs or in case of no claim for prior disablement, if death occurs during the next calendar month, the total compensation and death benefits payable shall not exceed five hundred fifty dollars. Thereafter, the total amount or limit of the compensation and death benefits payable for disability and death shall be increased at the rate of fifty dollars per month, the aggregate payable in each case to be limited according to the foregoing formula for the month in which disability occurs, or, in case of no claim for prior disablement, in which death occurs. Such progressive increase in the limits of the aggregate compensation and benefits for disability and death shall continue until the limit upon such benefits fixed in the workers' compensation law is reached, and thereafter the total aggregate of such compensation and benefits shall be the total compensation and benefits otherwise provided in the workers' compensation law.

4. *Pneumoconiosis complicated with other diseases.* In case of disability or death from pneumoconiosis complicated with tuberculosis of the lungs, compensation shall be payable as for uncomplicated pneumoconiosis, provided, however, that the pneumoconiosis was an essential factor in causing such disability or death. In case of disability or death from pneumoconiosis complicated with any other disease, or from any other disease complicated with pneumoconiosis, the compensation shall be reduced as herein provided. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.13; 66GA, ch 1084,§43]

85A.14 Restriction on liability. No compensation shall be payable under this chapter for any condition of physical or mental ill-being, disability, disablement, or death for which compensation is recoverable on account of injury under the workers' compensation law. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.14; 66GA, ch 1084,§43]

85A.15 Employers limit of liability. Payments of compensation and compliance with other provisions herein by the employer or his insurance carrier in accordance with the findings and orders of the industrial commissioner or the court in judicial review proceedings, shall discharge such employer from any and all further obligation. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.15]

85A.16 Reference to compensation law. The provisions of the workers' compensation law, so far as applicable, and not inconsistent herewith, shall apply in cases of compensable occupational diseases as specified and defined herein. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.16; 66GA, ch 1084,§43]

85A.17 Disability. Compensation payable under this chapter for temporary disability, permanent total disability or permanent partial disability, shall be such amounts as are provided under the workers' compensation law. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.17; 66GA, ch 1084,§43]

85A.18 Notice of disability or death—filing of claims. Except as herein otherwise provided, procedure with respect to notice of disability or death, as to the filing of claims and determination of claims shall be the same as in cases of injury or death arising out of and in the course of employment under the workers' compensation law. Written notice shall be given to the employer of an occupational disease by the employee within ninety days after the first distinct manifestation thereof, and in the case of death from such an occupational disease, written notice of such claim shall also be given to the employer within ninety days thereafter. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.18; 66GA, ch 1084,§43]

85A.19 Autopsy. Upon the filing of a claim for compensation for death from an occupational disease where an autopsy is necessary in order to accurately and scientifically ascertain and determine the cause of death, such autopsy shall be ordered by the industrial commissioner and shall be made under the supervision of the medical examiner of the county in which death occurs or in any county where the body of such employee may be taken.

The industrial commissioner may designate a duly licensed physician to perform or attend such autopsy and to certify his findings thereon. Such findings shall be filed in the office of the industrial commissioner. The industrial commissioner may also exercise such authority on his own motion or on application made to him at any time, upon the presentation of facts showing that a controversy may exist in regard to the cause of death or the existence of any occupational disease. All proceedings for compensation shall be suspended upon refusal of a claimant or claimants to permit such autopsy when so ordered and no compensation shall be payable. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.19]

85A.20 Medical board. There is hereby created a medical board for occupational diseases which shall consist of the industrial hygiene physician of the state department of health and two physicians selected by the dean of the college of medicine of the state University of Iowa, from the staff of said college, who shall be qualified to diagnose and report on occupational diseases. The medical board shall have the use, without charge, of all necessary laboratory and other facilities of the college of medicine and of the university hos-

pital at the state University of Iowa, and of the state department of health in performing its duties prescribed herein. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.20]

85A.21 Controverted medical questions. Controversial medical questions may be referred by the industrial commissioner to the medical board for investigation and report to the industrial commissioner when agreed to by the parties or on his own motion. No award shall be made in any case where controversial medical questions have been referred to the board until the board shall have duly investigated the case and made its report with respect to all such medical questions. The date of disablement, if in dispute, shall be deemed a medical question. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.21]

85A.22 Examination of employee by medical board. The medical board, upon reference to it by the industrial commissioner of a claim for occupational disease, shall notify the claimant or claimants and the employer or his insurance carrier to appear before the medical board at a time and place stated in the notice. If the employee be living, he shall appear before the medical board at the time and place specified to submit to such clinical and X-ray examinations as the medical board may require. The claimant and the employer shall each be entitled, at his own expense, to have present at all examinations conducted by the medical board, a physician admitted to practice in the state, who shall be given every reasonable facility for participating in every such examination. If a physician admitted to practice in the state shall certify that the employee is physically unable to appear at the time and place designated by the medical board, such board shall, on notice to the parties, change the time and place of examination to such other time and place as may reasonably facilitate the examination of the employee. Proceedings shall be suspended and no compensation be payable for any period during which the employee may refuse to submit to such examination. [C50, 54, 58, 62, 66, 71, 73, 75, §85A.22]

85A.23 Medical board's report—date of disablement. The medical board shall, as soon as practicable after it has completed its consideration of the case, report in writing its findings and conclusions on every medical question in controversy. If the date of disablement is controverted and cannot be fixed exactly, the medical board shall fix the most probable date having regard to all the circumstances of the case. The medical board shall also include in its report the name and address of the physician or physicians if any who appeared before it and what if any medical reports and X-rays were considered by it. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.23]

85A.24 Findings and report. The medical board shall file its report in triplicate with the industrial commissioner who shall mail or deliver a certified copy thereof to the claimant and to the employer. The report of the medical board shall become a part of the record of the case. The industrial commissioner shall make his decision or award in the case based upon the entire record. The report of the medical board in any case may be remanded by the commissioner to the board for reconsideration and further report. The members of the medical board shall not be prohibited from testifying before the industrial commissioner, board of arbitration, or any other person, commission or court as to the results of the examination or the condition of any employee examined by the board. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.24]

85A.25 Existing diseases barred. There shall be no liability for the payment of compensation under the provisions of this chapter to any person who on October 1, 1947 is suffering with an occupational disease. An employer may at his own expense require his employees to submit to a physical examination prior to October 1, 1947, and in the case of new employees employed after July 4, 1947, within ninety days of the commencement of the employment of such new employees, for the purpose of determining whether any such person is affected with or has an occupational disease. In the event it is determined by such examination that any employee is suffering from or is affected with an occupational disease, the employer may require the employee to waive in writing any claim for compensation under the provisions of this chapter on account thereof as a condition to continuing in the employment of the employer.

In cases of dispute as to the existence of the disease the controversy may be referred to the industrial commissioner who shall decide the matter and who may, upon his own motion or by agreement of the parties, submit the controverted question to the medical board provided herein for its investigation and report, and said board shall immediately proceed with the investigation and with the examination of the employee and forthwith make its report to the industrial commissioner. Said examination shall be made and the investigation conducted in the same manner as is provided herein as to other controverted medical questions. The industrial commissioner shall then make his decision on the matter, and said decision shall have the same force and effect and be subject to all the other provisions of law applicable the same as any other decision of the industrial commissioner. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.25]

85A.26 Insurance contracts. No policy of insurance in effect at the time of the enactment of this chapter covering the liability of an employer under the workers' compensation law, shall be construed to cover the liability of such employer under this chapter for any occupational disease unless such liability is expressly accepted by the insurance carrier

issuing such policy and is indorsed thereon. The insurance or security in force to cover compensation liability under this chapter shall be separate and distinct from the insurance or security under the workers' compensation law and any insurance contract covering liability under either this chapter or the workers' compensation law need not cover any liability under the other. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.26; 66GA, ch 1084,§43]

85A.27 Administration. The industrial commissioner shall have jurisdiction over the operation and administration of the compensation provisions of this chapter and said commissioner shall perform all of the duties imposed upon him by this chapter and such further duties as may hereafter be imposed by law. [C50, 54, 58, 62, 66, 71, 73, 75,§85A.27]

Constitutionality, 52GA, ch 71,§29

CHAPTER 86

INDUSTRIAL COMMISSIONER

Referred to in §§8.6, 8.13, 85.3, 85.31, 85.35, 85.61, 87.1, 87.2, 87.13, 87.14, 87.21, 87.24

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86.30 and 86.31 Repealed by 65GA, ch 1090,§211.
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86.33 Repealed by 65GA, ch 1090,§211.
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86.35 Notice of review.
86.36 Notice and service—resident and nonresident employers.
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86.38 Examination by physician—fee.
86.39 Fees—approval—lien.
86.40 Costs.
86.41 Witness fees.
86.42 Judgment by district court on award.
86.43 Judgment—modification of.

86.1 Industrial commissioner—term. The governor shall appoint, with the approval of the senate, an industrial commissioner whose term of office shall be six years from July 1 of the year of appointment. He shall maintain his office at the seat of government. An appointment to fill a vacancy may be made when the senate is not in session, but shall be acted upon at the next session thereof. Any such appointee must be a lawyer admitted to practice in this state. [S13,§2477-m22; C24, 27, 31, 35, 39, §1423; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.1]

Confirmation procedure, §2.32

86.2 Appointment of deputies. The commissioner may appoint four deputy industrial commissioners for whose acts he shall be responsible and who shall serve during the pleasure of the commissioner, and all such deputies must be lawyers admitted to practice in this state. [C24, 27, 31, 35, 39,§1424; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.2]

86.3 Duties of deputies. In the absence or disability of the industrial commissioner, or when acting under the directions of the commissioner, the deputies shall have all of the powers and perform all of the duties of the industrial commissioner pertaining to his office. [C24, 27, 31, 35, 39,§1425; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.3]

86.4 Political activity and contributions. It shall be unlawful for the commissioner, or any appointee of the commissioner while in office, to espouse the election or appointment of any candidate to any political office, contribute to the campaign fund of any political party, or to the campaign fund of any person who is a candidate for election or appointment to any political office, and any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined one hundred dollars, and it shall be sufficient cause for removal from office. [S13,§§2477-m23,-m37; C24, 27, 31, 35, 39,§1427; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.4]

86.5 Political promises. Any person who is a candidate for appointment as commissioner who makes any promise to another, express or implied, in consideration of any assistance or

influence given or recommendation made that the candidate will, if appointed as a commissioner, appoint such person or one whom he may recommend to any office within the power of the commissioner to appoint, shall be fined one hundred dollars. [S13,§2477-m38; C24, 27, 31, 35, 39,§**1428**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §86.5]

86.6 Recommendations of commissioner. All recommendations to the governor of any person asking the appointment of another as commissioner shall be reduced to writing, signed by the person presenting the same, which shall be filed by the governor in his office and open at all reasonable times for public inspection, and all recommendations made by any person to the commissioner for the appointment of another within the power of the commissioner to appoint, shall be reduced to writing, signed by the person presenting the same, and filed by the commissioner and open for public inspection at all reasonable times. If any person recommending the appointment of another within the contemplation of this section refuses to reduce the same to writing, it shall be the duty of the person to whom the recommendation is made, to make a memorandum thereof, stating the name of the person recommended and the name of the person who made the same, which shall be filed in the office of the governor or the commissioner as the case may be. [S13,§2477-m39; C24, 27, 31, 35, 39,§**1429**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §86.6]

86.7 Interest in affected business. It shall be unlawful for the commissioner to be financially interested in any business enterprise coming under or affected by this chapter during his term of office, and if he violates this statute, it shall be sufficient grounds for his removal from office, and in such case the governor shall at once declare the office vacant and appoint another to fill the vacancy. [S13, §2477-m39; C24, 27, 31, 35, 39,§**1430**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.7]

Similar provisions, §§18.5, 68B.3, 252.29, 262.10, 314.2, 347.15, 362.5, 403.16, 403A.22, 741.11

86.8 Duties. It shall be the duty of the commissioner:

1. To establish and enforce all necessary rules not in conflict with the provisions of this chapter and chapters 85, 85A and 87 for carrying out the purposes thereof.

2. To prepare and distribute the necessary blanks relating to computation, adjustment, and settlement of compensation arising thereunder.

3. To prepare and publish statistical reports and analyses regarding the cost, occurrence and sources of employment injuries.

4. To keep records of all proceedings and decisions of such boards, issue subpoenas for witnesses, issue subpoenas duces tecum, administer oaths, examine books and records of parties subject to such provisions.

5. In general to do all things not inconsistent with law in carrying out said provisions according to their true intent and purpose.

6. To provide a seal for the authentication of orders and records and for such other purposes as required.

In carrying out the duties and responsibilities under this chapter, the industrial commissioner may enter into contracts with any state agency, with or without reimbursement, for the purpose of obtaining the services, facilities, and personnel of such agency and with the consent of any state agency or any political subdivision of the state, accept and use the services, facilities, and personnel of any agency of the state or political subdivision, and employ experts and consultants or organizations in order to expeditiously, efficiently, and economically effectuate the purposes of this chapter. The provisions of this paragraph are subject to approval by the executive council where required by law. [S13,§2477-m24; C24, 27, 31, 35, 39,§**1431**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.8; 66GA, ch 1084,§20, ch 1085,§1]

Vocational education, §§259.4, 259.5

86.9 Biennial reports. The commissioner shall, at the time provided by law, make a biennial report to the governor setting forth in appropriate form the business and expense of the office for the two preceding years, the number of arbitrations and the results thereof, and such other matters pertaining to his office as may be of public interest, together with any recommendations for change or amendment of the laws as found in this chapter and chapters 85 and 87, and such recommendations, if any, shall be transmitted by the governor to the first general assembly in session thereafter. [S13,§2477-m24; C24, 27, 31, 35, 39,§**1432**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.9]

Time of making report, §17.3

86.10 Records of employer—right to inspect. All books, records, and payrolls of the employers, showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the industrial commissioner or any of the commissioner's representatives presenting a certificate of authority from said commissioner for the purpose of ascertaining the correctness of the wage expenditure, the number of persons employed, and such other information as may be necessary for the uses and purposes of the commissioner in the administration of the law.

Information so obtained shall be used for no other purpose than to advise the commissioner or insurance association with reference to such matters.

Upon a refusal on the part of the employer to submit his books, records, or payrolls for the inspection of the commissioner or his authorized representatives presenting written authority from the commissioner, the commissioner may enter an order requiring the em-

ployer to do so. [S13,§2477-m36; C24, 27, 31, 35, 39,§**1433**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §86.10; 66GA, ch 1084,§21]

Referred to in §86.12

86.11 Reports of injuries. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, alleged by an employee to have been sustained in the course of his or her employment and resulting in incapacity for a longer period than one day. If the injury results only in temporary disability, causing incapacity for a longer period than three days except as provided in section 86.36* then within four days thereafter, not counting Sundays and legal holidays, the employer or insurance carrier having had notice or knowledge of the occurrence of such injury and resulting disability, shall file a written report with the industrial commissioner on forms to be procured from the commissioner for that purpose. If such injury to the employee results in permanent total disability, permanent partial disability or death, then the employer or insurance carrier upon notice or knowledge of the occurrence of the employment injury, shall file a report with the industrial commissioner, within four days after having notice or knowledge of the permanent injury to the employee or his death. The report to the industrial commissioner of injury shall be without prejudice to the employer or insurance carrier and shall not be admitted in evidence or used in any trial or hearing before any court, the industrial commissioner or his deputy except as to the notice under section 85.23. [S13,§2477-m36; C24, 27, 31, 35, 39, §**1434**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.11; 66GA, ch 1084,§22]

Referred to in §§86.12, 86.20

*Change in incapacity period effective July 1, 1977, 66GA, ch 1084,§42

86.12 Failure to report. The industrial commissioner may require any employer to supply the information required by section 86.10 or to file a report required by section 86.11, by written demand sent to the employer's last known address. Upon failure to supply such information or file such report within twenty days, the employer may be ordered to appear and show cause why he should not be subject to civil penalty of one hundred dollars for each occurrence. Upon such hearing, the industrial commissioner shall enter a finding of fact and may enter an order requiring such penalty to be paid into the second injury fund created by sections 85.63 to 85.69. In the event the civil penalty assessed is not voluntarily paid the industrial commissioner may file a certified copy of such finding and order with the clerk of the court for the district in which the employer maintains a place of business. If the employer maintains no place of business in this state service shall be made as provided in chapter 85 for nonresident employers. In such case the finding and order may be filed in any court of competent jurisdiction within this state.

The industrial commissioner may thereafter petition the court for entry of judgment upon such order, serving notice of such petition on the employer and any other person in default. If the court finds the order valid, the court shall enter judgment against the person or persons in default for the amount due under the order. No fees shall be required for the filing of the order or for the petition for judgment, or for the entry of judgment or for any enforcement procedure thereupon. No supersedeas shall be granted by any court to a judgment entered under this section.

When a report is required under section 86.11 and that report has been submitted to the employer's insurance carrier and no report of injury has been filed with the industrial commissioner, the insurance carrier shall be responsible for filing the report of injury in the same manner and to the same extent as an employer under this section. [S13,§2477-m36; C24, 27, 31, 35, 39,§**1435**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.12; 66GA, ch 1084,§23]

86.13 Compensation agreements. If the employer and the employee reach an agreement in regard to the compensation, a memorandum thereof shall be filed with the industrial commissioner by the employer or the insurance carrier, and unless the commissioner shall, within twenty days, notify the employer or the insurance carrier and employee of his disapproval of the agreement by certified mail sent to their addresses as given on the memorandum filed, the agreement shall stand approved and be enforceable for all purposes, except as otherwise provided in this and chapters 85 and 87.

Such agreement shall be approved by said commissioner only when the terms conform to the provisions of this and chapter 85.

Any failure on the part of the employer or insurance carrier to file such memorandum of agreement with the industrial commissioner within thirty days after the payment of weekly compensation is begun shall stop the running of section 85.26 as of the date of the first such payment. [S13,§2477-m25; C24, 27, 31, 35, 39,§**1436**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.13; 66GA, ch 1084,§24]

Referred to in §86.20

86.14 Failure to reach agreement. If the employer and injured employee or his representatives or dependents fail to reach an agreement in regard to compensation, either party may file with the industrial commissioner a petition for arbitration together with two copies thereof, stating therein his or her claims in general terms. Thereupon the commissioner or one of the deputies shall in writing notify the parties that the opposing party is given twenty days in which to appear or plead. A defense other than a general denial of the alleged facts must be pleaded as a special defense. [S13,§§2477-m26,-m28; C24, 27, 31, 35, 39,§§**1437, 1438**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.14; 66GA, ch 1084,§25]

86.15 and 86.16 Repealed by 66GA, ch 1084, §26.

86.17 Arbitration hearings. Petitions for arbitration shall be heard before a deputy industrial commissioner. Such hearings shall be conducted pursuant to the provisions of chapter 17A for contested cases. The deputy industrial commissioner shall make such inquiries and investigations as it shall deem necessary. The hearings of the deputy industrial commissioner shall be in a county in the judicial district where the injury occurred, but by written stipulation of the parties filed in the case it may be held at any other place in the state. If the injury occurred outside this state the hearings shall be held in a county in the judicial district of this state which is nearest to the place where the injury occurred unless the parties and the industrial commissioner or one of his deputies agree by written stipulation that the same may be held at some other place. [S13, §2477-m29; C24, 27, 31, 35, 39,§§**1437, 1440**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§86.15, 86.17; 66GA, ch 1084,§27]

Referred to in §86.26

86.18 Liberal rules of evidence. When conducting a hearing on review, or in making any investigation or inquiry, the commissioner or his deputies shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure; but they shall hold such arbitrations, or conduct such hearings and make such investigations and inquiries in such manner as is best suited to ascertain and conserve the substantial rights of all parties thereto. Process and procedure under this chapter shall be as summary as reasonably may be. [C24, 27, 31, 35, 39,§**1441**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.18; 66GA, ch 1084,§28]

Referred to in §87.25

86.19 Appointment of reporter. The industrial commissioner, or one of his deputies, may appoint a shorthand reporter to report the proceedings of any hearing before the commissioner, or one of his deputies, and fix the reasonable amount of compensation for such service, which amount shall be taxed as other costs. Any such reporter shall faithfully and accurately report any proceeding for which he or she shall be employed. [C24, 27, 31, 35, 39,§**1442**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.19; 66GA, ch 1084,§29]

Taxation of costs, §86.40

86.20 Payment prior to determination of liability. To encourage payments to employees or dependents during the investigation of a claim for benefits nothing in this chapter shall prevent the employer or the insurance carrier from making voluntary payments prior to a determination as to liability under chapter 85 or 85A in an amount considered to be equal to the weekly compensation benefits to which the employee or his dependents would be entitled in the event the employer were determined to be liable under chapter 85 or 85A. Such payments shall not be construed as an agreement for the payment of weekly compensation; payment of weekly compensation; payment in lieu of compensation; or an admission of liability.

When voluntary payments are made they shall commence within fifteen days from the date the report of injury is filed pursuant to section 86.11. Within thirty days after voluntary payments are begun, the employer or insurance carrier shall file a notice with the industrial commissioner on forms prescribed by the commissioner of the commencement, amount and duration of payments. The filing of notice shall be required for the payments to be deemed made pursuant to this section. Payments shall continue for ninety days or until the period of disability shall cease whichever shall occur first, unless prior to that time a memorandum of agreement or denial of liability is filed with the industrial commissioner. Upon application and for good cause shown, the period during which voluntary payments are made may be extended for an additional ninety days.

Within thirty days from the date of the last payment made under this section the employer or insurance carrier shall file with the industrial commissioner either a memorandum of agreement or a denial of liability stating the reasons therefor and a copy of the denial shall be mailed to the employee or his dependents by certified mail with return receipt requested at the last known address.

Any failure on the part of the employer or insurance carrier to file a memorandum of agreement or denial of liability with the industrial commissioner within thirty days after the last payment made under this section shall stop the running of time allowed under section 85.26 as of the date of the last payment. When payments are made under this section and a denial of liability is filed, the time within which original proceedings for compensation must be maintained shall be two years from the date of the last payment.

If a memorandum of agreement is filed and approved pursuant to section 86.13 or an award for payments is granted pursuant to section 86.23 the employer or insurance carrier shall be entitled to credit for amounts paid under this section. [66GA, ch 1084,§40]

86.21 Depositions. The deposition of any witness may be taken and used as evidence in any hearing pending before the industrial commissioner or one of his deputies in compensation proceedings.

Either party upon written notice, may elect to take the deposition of a witness, who may live within one hundred miles of the place of hearing, if the testimony of such witness is desired to show the physical condition of the injured party or testimony relating to the cause of injury.

Application for a commission to take depositions in such case shall be filed in the office of the industrial commissioner. [C24, 27, 31, 35, 39,§1444; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.21; 66GA, ch 1084,§30]

Depositions, R.C.P. 153 et seq.

86.22 Witnesses—books and records. The district court is hereby empowered to enforce by proper proceedings the provisions of this chapter relating to the attendance and testimony of witnesses and the examination of books and records. [S13,§2477-m24; C24, 27, 31, 35, 39,§1445; C46, 50, 54, 58, 62, 66, 71, 73, 75, §86.22]

Contempts, ch 665

86.23 Findings of deputy commissioner filed. The decision of a deputy industrial commissioner together with a statement or certificate of evidence submitted at the hearing, the findings of fact, rulings of law, and any other matters pertinent to questions arising at such hearing, shall be filed in the office of the industrial commissioner. [S13, §2477-m29; C24, 27, 31, 35, 39,§1446; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.23; 66GA, ch 1084, §31]

Referred to in §86.20

86.24 Review. Any party aggrieved by the decision or findings of a deputy industrial commissioner may, within twenty days after such decision is filed with the industrial commissioner, file in the office of the commissioner a petition for review, and the commissioner shall thereupon fix a time for the hearing on such petition and notify the parties.

At such hearing, the commissioner shall hear the parties, consider all evidence taken before the deputy industrial commissioner, and may hear any additional evidence, and he may affirm, modify, or reverse the decision of the deputy [or] may remand it to the deputy for further findings of facts. The transcript of the arbitration proceedings shall be provided by the party requesting review at his cost and shall be filed with the industrial commissioner within thirty days of the filing of the petition for review.

Evidence other than that presented and admitted in arbitration proceedings shall not be introduced by either party unless such party gives the opposite party, or his attorney, five days' notice in writing, stating the particular phase of the controverted claim to which such additional evidence will apply. [S13,§§2477-m29,-m32; C24, 27, 31, 35, 39,§1447; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.24; 66GA, ch 1084,§32]

86.25 Decision and findings of fact. The decision of the industrial commissioner in any case on review before him shall be in writing, filed in his office, and shall set forth his findings of fact and conclusions of law. [S13,§2477-m32; C24, 27, 31, 35, 39,§1448; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.25]

86.26 Judicial review. Judicial review of decisions or orders of the industrial commissioner in a proceeding on review of an arbitration decision may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the hearing under section 86.17 was held. Such a review proceeding shall be accorded priority over other matters pending before the district court. [S13, §2477-m33; C24, 27, 31, 35, 39,§§1449, 1451; C46, 50, 54, 58, 62, 66, 71, 73,§§86.26, 86.28; C75,§86.26]

Referred to in §85.70

86.27 Settlement of controversy. Notwithstanding the terms of the Iowa administrative procedure Act, no party to a contested case under any provision of the "Workers' Compensation Act" may settle a controversy without the approval of the industrial commissioner. [C75,§86.27; 66GA, ch 1084,§43]

86.28 Assessment of recording charges. In all contested cases under the "Workers' Compensation Act", the industrial commissioner may assess reasonable charges for the presence of mechanical means or a certified shorthand reporter to record the proceedings. [C75,§86.28; 66GA, ch 1084,§43]

See §86.26

86.29 The judicial review petition. Notwithstanding the terms of the Iowa administrative procedure Act, in a petition for judicial review of a final decision in a contested case under any provision of the "Workers' Compensation Act", the name of the opposing party shall precede the name of the agency as respondent. [C75,§86.29; 66GA, ch 1084,§43]

86.30 and 86.31 Repealed by 65GA, ch 1090, §211.

86.32 Costs on appeal. In proceedings for judicial review of compensation cases the clerk shall charge no fee for any service rendered except the filing fee and transcript fees when the transcript of a judgment is required. The taxation of costs in such appeals shall be in the discretion of the court. [C24, 27, 31, 35, 39,§1455; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.32]

86.33 Repealed by 65GA, ch 1090,§211.

86.34 Review of award or settlement. Any award for payments or agreement for settlement made under this chapter where the amount has not been commuted, may be reviewed by the industrial commissioner or a deputy commissioner at the request of the employer or of the employee at any time within three years from the date of the last payment of compensation made under such award or agreement, and if on such review the commissioner finds the condition of the employee warrants such action, he may end, diminish, or increase the compensation so

awarded or agreed upon. Once an award for payments or agreement for settlement under this chapter has been made where the amount has not been commuted, the commissioner may at any time upon proper application make a determination and appropriate order concerning the entitlement of an employee to benefits provided for in section 85.27. Judicial review of action of the industrial commissioner or a deputy commissioner on a review of award or settlement as provided in this section may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the injury occurred. [S13, §2477-m34; C24, 27, 31, 35, 39,§**1457**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.34]

Referred to in §86.35

86.35 Notice of review. When any interested party desires a review of payments or settlement as provided in section 86.34, he shall file a petition for review with the industrial commissioner setting forth the grounds upon which the right of review is claimed. The commissioner shall give the parties in interest notice of the time fixed for such hearing, which shall not be less than five days from the date of filing such petition. [S13,§2477-m34; C24, 27, 31, 35, 39,§**1458**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.35]

86.36 Notice and service—resident and nonresident employers.

1. Any notice to be given by the commissioner or court provided for in this chapter shall be in writing, but service thereof shall be sufficient if mailed by certified mail, addressed to the last known address of the parties, unless otherwise provided in this chapter.

2. Whenever service of any notice is made on a nonresident employer under the provisions of section 85.3, subsection 2, the same shall be done in the following manner:

a. By filing a copy of said notice with the secretary of state.

b. By mailing to such employer within ten days after said filing with the secretary of state, by certified mail with return receipt requested addressed to the nonresident employer at his last known residence or place of abode, a copy of said notice on which shall be noted the date of filing of the copy with the secretary of state.

3. In lieu of mailing said copy of notice to the nonresident employer in a foreign state, plaintiff may cause the same to be personally served in the foreign state on such employer by any adult person not a party to the proceedings, by delivering said copy of notice to the nonresident employer or by offering to make such delivery in case he refused to accept delivery.

4. Proof of the filing of a copy of said notice with the secretary of state and proof of the mailing or personal delivery of the copy to said nonresident employer shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the original of the papers to which they relate and all such proofs of service, including the certified mail return receipt shall be forthwith filed with the original of the papers.

5. The secretary of state shall keep a record of all notices filed with him pursuant to section 85.3 and this section and shall not permit said filed notices to be taken from his office except on an order of court but shall, on request and without fee, furnish any nonresident employer or his insurer with a certified copy of any notice in which he is named.

6. The term nonresident employer as used in section 85.3 and this section shall not be construed to mean foreign corporations lawfully qualified to transact business within the state of Iowa under chapter 494 or chapter 496A. [S13,§2477-m34; C24, 27, 31, 35, 39,§**1459**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.36; 66GA, ch 1084,§§33, 34, ch 1086,§1]

Referred to in §§85.46, 86.11

86.37 Place of hearing. All petitions for review of the decision and findings of a deputy industrial commissioner shall be held at the seat of the government, or such other location as the industrial commissioner shall designate, and all petitions for review of an award for payments or an agreement for settlements shall be heard in the judicial district where the injury occurred, provided, however, with the approval of the industrial commissioner the parties may agree upon another place of hearing. [C24, 27, 31, 35, 39,§**1460**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.37; 66GA, ch 1084, §35]

86.38 Examination by physician—fee. The industrial commissioner may appoint a duly qualified, impartial physician to examine the injured employee and make report. The fee for this service shall be five dollars, to be paid by the industrial commissioner, together with traveling expenses, but the commissioner may allow additional reasonable amounts in extraordinary cases. Any physician so examining any injured employee shall not be prohibited from testifying before the industrial commissioner, or any other person, commission, or court, as to the results of his examination or the condition of the injured employee. [S13, §2477-m30; C24, 27, 31, 35, 39,§**1461**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.38; 66GA, ch 1084,§36]

Referred to in §85.27

86.39 Fees — approval — lien. All fees or claims for legal, medical, hospital, and burial services rendered under this chapter and chapters 85 and 87 shall be subject to the approval of the industrial commissioner, and no lien for such service shall be enforceable without the approval of the amount thereof by the industrial commissioner. For services rendered in

the district court and appellate courts, the attorney's fee shall be subject to the approval of a judge of the district court. [S13,§§2477-m20,-m35; C24, 27, 31, 35, 39,§1462; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.39; 66GA, ch 1241,§43]

Referred to in §85.27

86.40 Costs. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner. [S13, §2477-m31; C24, 27, 31, 35, 39,§1463; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.40; 66GA, ch 1084, §37]

86.41 Witness fees. Witness fees and mileage on hearings before the industrial commissioner shall be the same as in the district court. [S13,§2477-m24; C24, 27, 31, 35, 39,§1464; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.41; 66GA, ch 1084,§38]

Witness fees and mileage, §622.69 et seq.

86.42 Judgment by district court on award. Any party in interest may present a certified copy of an order or decision of the commissioner, from which no petition for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the commissioner, and all papers in connection therewith, to the district court of the county in which the injury occurred, whereupon said court shall render a decree or judgment in accordance therewith and cause the clerk to notify the parties. Such decree or judgment, in the absence of a petition for judicial review of the decision of the industrial commissioner, shall have the same effect and in all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court. [S13, §2477-m33; C24, 27, 31, 35, 39,§1465; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.42; 66GA, ch 1084, §39]

86.43 Judgment—modification of. Upon the presentation to the court of a certified copy of a decision of the industrial commissioner, ending, diminishing, or increasing the compensation under the provisions of this chapter, the court shall revoke or modify the decree or judgment to conform to such decision. [S13, §2477-m33; C24, 27, 31, 35, 39,§1466; C46, 50, 54, 58, 62, 66, 71, 73, 75,§86.43]

CHAPTER 87

COMPENSATION LIABILITY INSURANCE

Referred to in §§85.3, 85.31, 85.35, 85.61, 86.8, 86.9, 86.13, 86.39, 87.13, 87.14, 87.24

87.1 Insurance of liability required.
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87.4 Mutual companies.
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87.7 Termination of plan—appeal.
87.8 Insolvency clause prohibited.
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87.10 Other policy requirements.
87.11 Relief from insurance.
87.12 Mines—conclusive presumption.
87.13 Interpretative clause.
87.14 Mines—insurance required.
87.15 Injunctions.
87.16 Bond in lieu of insurance.
87.17 Notice to be posted.
87.18 Repealed by 65GA, ch 139,§31.
87.19 Failure to comply—proceedings.
87.20 Revocation of release from insurance.
87.21 Employer failing to insure.
87.22 and 87.23 Repealed by 63GA, ch 1051,§26.
87.24 Trial by jury.
87.25 Evidence—instructions.
87.26 Waiver of jury.
87.27 Appeal.

87.1 Insurance of liability required. Every employer subject to the provisions of this and chapters 85 and 86, unless relieved therefrom as hereinafter provided, shall insure his liability thereunder in some corporation, association, or organization approved by the commissioner of insurance.

Every such employer shall exhibit, on demand of the industrial commissioner, evidence of his compliance with this section; and if such employer refuses, or neglects to comply with this section, he shall be liable in case of injury to any worker in his employ under the common law as modified by statute. [S13,§2477-m41; C24, 27, 31, 35, 39,§1467; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.1; 66GA, ch 1084,§43]

87.2 Notice of failure to insure. Any employer who fails to insure his liability as required herein shall keep posted a sign of sufficient size and so placed as to be easily seen by his employees in the immediate vicinity where working, which sign shall read as follows:

"NOTICE TO EMPLOYEES

You are hereby notified that the undersigned employer has failed to insure his liability to pay compensation as required by law, and that because of such failure he is liable to his employees in damages for personal injuries sustained by his employees in the same manner and to the same extent as though he had legally exercised his right to reject the provisions relating to compensation.

(Signed) ....."

Any employer coming under the provisions of this and chapters 85 and 86 who fails to comply with this section or to post and keep the above notice in the manner and form herein required, shall be guilty of a misdemeanor. [C24, 27, 31, 35, 39,§**1468**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.2]

Punishment, §687.7

87.3 Maximum commission for renewal. No insurer of any obligation under this chapter shall either by himself or through another, either directly or indirectly, charge or accept as a commission or compensation for placing or renewing any insurance under this chapter, more than fifteen percent of the premium charged. [S13,§2477-m46; C24, 27, 31, 35, 39, §**1469**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.3]

87.4 Mutual companies. For the purpose of complying with this chapter, groups of employers by themselves or in an association with any or all of their workers, may form insurance associations as hereafter provided, subject to such reasonable conditions and restrictions as may be fixed by the insurance commissioner; and membership in such mutual insurance organization as approved, together with evidence of the payment of premiums due, shall be evidence of compliance with this chapter. [S13,§2477-m42; C24, 27, 31, 35, 39, §**1470**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.4; 66GA, ch 1084,§43]

87.5 Benefit insurance. Subject to the approval of the industrial commissioner, any employer or group of employers may enter into or continue an agreement with his or their workers to provide a scheme of compensation, benefit, or insurance in lieu of compensation and insurance; but such scheme shall in no instance provide less than the benefits provided and secured, nor vary the period of compensation provided for disability or for death, or the provisions of law with respect to periodic payments, or the percentage that such payments shall bear to weekly wages, except that the sums required may be increased; and the approval of the industrial commissioner shall be granted, if the scheme provides for contribution by workers, only when it confers benefits, in addition to those required by law, commensurate with such contributions. [S13,§2477-m43; C24, 27, 31, 35, 39,§**1471**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.5; 66GA, ch 1084,§43]

87.6 Certificate of approval. When such scheme or plan is approved by the industrial commissioner, he shall issue a certificate to that effect, whereupon it shall be legal for such employer, or group of employers, to contract with any or all of his or their workers to substitute such scheme or plan for the provisions relating to compensation and insurance during a period of time fixed by said department. [S13,§2477-m44; C24, 27, 31, 35, 39,§**1472**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.6; 66GA, ch 1084, §43]

87.7 Termination of plan — appeal. Such scheme or plan may be terminated by the industrial commissioner on reasonable notice to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this chapter; but from any such order of said industrial commissioner judicial review may be sought in accordance with the terms of the Iowa administrative procedure Act, upon the giving of proper bond to protect the interests involved. [S13,§2477-m45; C24, 27, 31, 35, 39,§**1473**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.7]

87.8 Insolvency clause prohibited. No policy of insurance issued under this chapter shall contain any provision relieving the insurer from payment if the insured becomes insolvent or discharged in bankruptcy during the period that the policy is in operation, or the compensation, or any part of it, is unpaid. [S13,§2477-m48; C24, 27, 31, 35, 39,§**1474**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.8]

87.9 Policy clauses required. Every policy shall provide that the worker shall have a first lien upon any amount becoming due on account of such policy to the insured from the insurer, and that in case of the legal incapacity, inability, or disability of the insured to receive the amount due and pay it over to the insured worker, or his dependents, said insurer shall pay the same directly to such worker, his agent, or to a trustee for him or his dependents, to the extent of any obligation of the insured to said worker or his dependents. [S13,§2477-m48; C24, 27, 31, 35, 39,§**1475**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.9; 66GA, ch 1084,§43]

87.10 Other policy requirements. Every policy issued by an insurance corporation, association, or organization to insure the payment of compensation shall contain a clause providing that between any employer and the insurer, notice to and knowledge of the occurrence of injury or death on the part of the insured shall be notice and knowledge on the part of the insurer; and jurisdiction of the insured shall be jurisdiction of the insurer, and the insurer shall be bound by every agreement, adjudication, award or judgment rendered against the insured. [S13,§2477-m47; C24, 27, 31, 35, 39,§**1476**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.10]

87.11 Relief from insurance. When an employer coming under this chapter furnishes satisfactory proofs to the insurance commissioner of such employer's solvency and financial ability to pay the compensation and benefits as by law provided and to make such payments to the parties when entitled thereto, or when such employer deposits with such commissioner security satisfactory to him and the industrial commissioner as guaranty for the payment of such compensation, such employer

shall be relieved of the provisions of this chapter requiring insurance; but such employer shall, from time to time, furnish such additional proof of solvency and financial ability to pay as may be required by such insurance commissioner or industrial commissioner. [S13,§2477-m49; C24, 27, 31, 35, 39,§1477; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.11]

Referred to in §87.21

87.12 Mines — conclusive presumption. It shall be conclusively presumed that the work and operation of any and all coal mines, or production of coal, under whatever system of operation is an extra hazardous business, enterprise and occupation. [C35,§1477-g1; C39, §1477.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.12]

87.13 Interpretative clause. The law as the same appears in section 85.4* and other sections of chapters 85, 86, and 87, including the words "except as provided in this chapter" as the same appear in section 85.3 all insofar as it relates to the right to reject the terms, provisions and conditions of the compensation law, shall not apply to any employer or employee engaged in the operation of coal mines, or production of coal, under any system of removing coal for sale, but all provisions of the law in chapters 85, 86, and 87 relating to compensation for injuries sustained arising out of and in the course of such employment shall be exclusive, compulsory and obligatory upon the employer and employee in such employment. [C35,§1477-g2; C39,§1477.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.13]

*Repealed by 63GA, ch 1051,§3

87.14 Mines—insurance required. It shall be unlawful for any person, firm, association, corporation or partnership to engage in the business of operating a mine under any system of removing coal for sale, or any work in connection therewith, or incident thereto, without first obtaining insurance covering compensation payments or obtaining relief therefrom as provided in chapters 85, 86, and 87, as herein amended. Any violation of this section shall be deemed a misdemeanor and upon conviction of such offense the offender shall be punished by a fine of not less than ten dollars nor more than one hundred dollars. Each day such offense is committed shall be regarded as a separate, wrongful act and may be prosecuted in one proceeding, but in separate counts, at the election of the prosecuting attorney. [C35, §1477-g3; C39,§1477.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.14]

87.15 Injunctions. It shall be the duty of the attorney general of the state and/or the county attorney of the county where such offense has been committed, or when he has reason to believe such offense is about to be committed to bring an action in equity in the name of the state to enjoin such offenders from continuing such wrongful acts, and the court or judge before whom such action is brought shall, if the facts warrant, issue a temporary or permanent writ of injunction without bond. [C35,§1477-g4; C39,§1477.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.15]

87.16 Bond in lieu of insurance. Any employer who has more than five persons engaged in hazardous employment, except the employments recited in section 85.1, and who has failed, omitted, and neglected to secure the payment of compensation by carrying insurance or is not relieved therefrom as by the statutes in such cases provided, shall furnish a bond approved by the industrial commissioner, as to form and security, conditioned to secure and pay workers' compensation in accordance with the law; such bond shall be in such amount as may be fixed by the industrial commissioner having due regard for the number of employees and considering the industrial experience in such industry as a class. [C31, 35,§1477-c1; C39,§1477.5; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.16; 66GA, ch 1084,§43]

Referred to in §87.19

87.17 Notice to be posted. Such employer shall post and keep posted in some conspicuous place upon the premises where the business is conducted, a notice in form approved by the industrial commissioner, stating the nature of the security furnished by such employer to secure the compensation payments contemplated by the law. [C31, 35,§1477-c2; C39, §1477.6; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.17]

Referred to in §87.19

87.18 Repealed by 65GA, ch 139,§31.

87.19 Failure to comply—proceedings. Upon the receipt of information by the industrial commissioner of any employer failing to comply with sections 87.16 and 87.17, he shall at once notify such employer by certified mail; that unless such employer comply with the requirements of law, legal proceedings will be instituted to enforce such compliance.

Unless such employer comply with the provisions of the law within fifteen days after the giving of such notice, the industrial commissioner shall report such failure to the attorney general, whose duty it shall be to bring an action in a court of equity to enjoin the further violation. Upon decree being entered for a temporary or permanent injunction, a violation shall be a contempt of court and punished as provided for contempt of court in other cases. [C31, 35,§1477-c4; C39,§1477.8; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.19]

Contempts, generally, ch 665

87.20 Revocation of release from insurance. The insurance commissioner with the concurrence of the industrial commissioner may, at any time, upon reasonable notice to such employer and upon hearing, revoke for cause any order theretofore made relieving any employer from carrying insurance as provided by this chapter. [S13,§2477-m49; C24, 27, 31, 35, 39, §1478; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.20]

87.21 Employer failing to insure. Any employer, except an employer exempt as provided in section 85.1, who has failed to insure the employer's liability in one of the ways provided in this chapter, unless relieved from carrying such insurance as provided in section 87.11, shall be liable to an employee for a personal injury in the course of and arising out of such employment, and the employee may enforce such liability by an action at law for damages, or may collect compensation as provided in chapters 85 and 86. In actions by the employee for damages under the terms of this section, the following rules shall apply:

1. It shall be presumed:

a. That the injury to the employee was the direct result and growing out of the negligence of the employer.

b. That such negligence was the proximate cause of the injury.

2. The burden of proof shall rest upon the employer to rebut the presumption of negligence, and the employer shall not be permitted to plead or rely upon any defense of the common law, including the defenses of contributory negligence, assumption of risk and the fellow servant rule. [C24, 27, 31, 35, 39, §1479; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.21]

Referred to in §§87.24, 87.26

87.22 and 87.23 Repealed by 63GA, ch 1051, §26.

87.24 Trial by jury. When an injured employee exercises a right to enforce a compensation claim, based upon the provisions of section 87.21, and judicial review is sought of a decision or award as made by the industrial commissioner, the employer or the insurance carrier, on the hearing in such a judicial review proceeding in the district court, shall, notwithstanding the terms of the Iowa administrative procedure Act have the right of trial by jury upon the issues of fact tendered and allowable within the terms of chapters 85, 86, and 87, and made of record in arbitration proceedings or upon hearing before the industrial commissioner. But the right of a trial by jury shall only apply to compensation cases within the purview of section 87.21. [C35,§1481-e1; C39,§1481.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §87.24]

87.25 Evidence — instructions. Notwithstanding the terms of the Iowa administrative procedure Act, on the trial of the case in the district court with a jury, the record of the case in the agency, when certified by the industrial commissioner or his deputy shall be the only competent, relevant and material evidence in the case which shall be read from the record thus certified, subject to the rulings of the trial judge upon objections made in the commissioner's court and urged in the district court. But the law of procedure and evidence, as provided in section 86.18, shall apply and govern insofar as reasonably applicable. The trial judge shall give the jury written instruction on the law of the case, but the jury shall determine the facts upon the issues submitted. [C35,§1481-e2; C39,§1481.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.25]

87.26 Waiver of jury. With respect to questions of law raised in the district court, the judicial review proceeding in such cases shall be considered as based upon one or more of the grounds for such review as provided in section 17A.19, subsection 8. If demand in writing for a jury trial has not been made and filed with the clerk of the court to which the petition for judicial review is taken, within five days before the case is assigned for hearing, it shall be conclusively presumed that the party entitled thereto has waived a jury trial, and in such case the hearing of the case and appeals to the supreme court of Iowa shall, in all respects, be governed by the rules of law and procedure applicable to workers' compensation cases to which section 87.21 does not apply. [C35, §1481-e3; C39,§1481.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.26; 66GA, ch 1084,§43]

87.27 Appeal. When the case is tried with a jury, an appeal may be taken to the supreme court of Iowa on alleged errors of law upon the same grounds and governed by the law and procedure as provided for civil cases triable with a jury. [C35,§1481-e4; C39,§1481.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§87.27]

CHAPTER 88

OCCUPATIONAL SAFETY AND HEALTH

Referred to in §§104.2, 104.10, 147.152, 455B.14

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88.1 Public policy. It is the policy of this state to assure so far as possible every working man and woman in the state safe and healthful working conditions and to preserve human resources by:

1. Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and perfect existing programs for providing safe and healthful working conditions.

2. Providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions.

3. Authorizing the labor commissioner to set mandatory occupational safety and health standards applicable to businesses, and by creating an occupational safety and health review commission for carrying out adjudicatory functions under the chapter.

4. Building upon advances already made through employer and employee initiative for providing safe and healthful working conditions.

5. Providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

6. Exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety.

7. Providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity or life expectancy as a result of his work experience.

8. Providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health.

9. Providing for the development and promulgation of occupational safety and health standards.

10. Providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for an individual violating this prohibition.

11. Providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this chapter and accurately describe the nature of the occupational safety and health problem.

12. Encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

13. Devoting adequate funds to the administration and enforcement of occupational safety and health standards and rules promulgated by the labor commissioner. [C66, 71,§88A.1; C73, 75,§88.1]

88.2 General.

1. The bureau of labor, established in chapter 91, is designated to administer this chapter.

2. The necessary legal authority and qualified personnel shall be provided for the administration and enforcement of this chapter and such standards adopted pursuant to this chapter.

3. Personnel administering the chapter shall be employed pursuant to chapter 19A.

4. In carrying out his responsibilities under this chapter, the commissioner is authorized to enter into contracts with any state agency, with or without reimbursement, for the purpose of obtaining the services, facilities, and personnel of such agency and with the consent of any state agency or any political subdivision of the state, accept and use the services, facilities, and personnel of any agency of the state or political subdivision, and employ experts and consultants or organizations, in order to expeditiously, efficiently and economically effectuate the purposes of this chapter. The provisions of this subsection are subject to approval of the executive council where required by law.

5. The commissioner, the governor, and the state comptroller are hereby authorized to obtain and accept federal grants to the state to be used in connection with the funds appropriated for the administration of this chapter and federal funds in addition thereto. [SS15,§4999-a5; C24, 27, 31, 35, 39,§1482; C46, 50, 54, 58, 62, 66, 71,§88.1; C73, 75,§88.2]

88.3 Definitions. Wherever used in this chapter, unless the context clearly requires a different meaning:

1. *"Commissioner"* means the labor commissioner of the state of Iowa.

2. *"Commission"* means the occupational safety and health review commission established under this chapter.

3. *"Person"* means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

4. *"Employer"* means a person engaged in a business who has one or more employees and also includes the state of Iowa, its various departments and agencies, and any political subdivision of the state.

5. *"Employee"* means an employee of an employer who is employed in a business of his employer.

6. *"Emergency temporary standards"* means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the commissioner that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, and was formulated in a manner which afforded an opportunity for diverse views to be considered or is an emergency temporary standard provided by the secretary pursuant to and in conformance with the provisions of the federal law.

7. *"Occupational safety and health standard"* means a standard which requires conditions or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safety or healthful employment and places of employment.

8. *"Imminent danger"* means a condition or practice in any place of employment which is such that a danger exists which will reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures of this chapter, exclusive of the procedures set forth in section 88.11.

9. *"Secretary"* means the secretary of labor of the United States.

10. *"Federal law"* means the Act of Congress approved December 29, 1970, 84 Stat. 1590, officially cited as the "Occupational Safety and Health Act of 1970 (29 USC 651–678)." [C66, 71, §88A.2; C73, 75,§88.3]

88.4 Duties. Each employer shall furnish to each of his employees employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees and comply with occupational safety and health standards promulgated under this chapter.

Each employee shall comply with occupational safety and health standards and all rules and orders issued pursuant to this chapter which are applicable to his own actions and conduct. [C66, 71,§88A.1; C73. 75,§88.4]

Referred to in §§88.7, 88.14

88.5 Occupational safety and health standards.

1. *Promulgation of rules.*

a. As soon as practicable following July 1, 1972, the commissioner shall by rule, adopt and promulgate those occupational safety and health standards, which would result in improved safety or health for employees; provided, that the commissioner shall adopt no such standard unless the same has been adopted and promulgated as a permanent standard by the secretary in accordance with the procedures set forth in the federal law. In the event that any such federal standard is subsequently amended, modified, repealed, or substituted by a new standard, the commissioner shall, within ninety days, review such amendment, modification, repeal or substitution, and take such action with respect to the state standards, including the repeal or substitution of the same, as will conform the state standards to those federal standards then in effect.

b. Before promulgating, modifying, or revoking any standard pursuant to this section, the commissioner shall hold a public hearing on the subject matter of the proposed promulgation, modification, or revocation. Any interested person may appear and be heard at such hearing, in person or by agent or counsel. The commissioner shall maintain a mailing list for hearings, and at least thirty days before the hearing the commissioner shall mail a notice of the hearing by ordinary mail to each person on the mailing list. Such notice shall include a copy of the proposed promulgation, modification, or revocation. When the commissioner receives a written request from any person to be placed on the mailing list for hearings, the commissioner shall add such person to the mailing list. At the end of each calendar year, the commissioner may remove any person from the mailing list if the commissioner has not received from such person during the last three months of such calendar year a written request to be placed on the mailing list for the following year. The commissioner shall cause to be published a notice of each hearing in one or more newspapers in the state having a statewide circulation. The provisions of this section are in addition to the requirements of chapter 17A.

c. Notwithstanding other provisions of this section, upon or following July 1, 1972, the commissioner may adopt as interim standards those standards adopted by the secretary in conformance with section 6(a) of the federal law, provided that any such standard so adopted shall cease to be effective on April 28, 1973, unless the commissioner shall have initiated the procedures for adopting a permanent standard in conformance with and following the procedures set forth in this section, in which case the interim standard shall remain in effect pending the adoption of the permanent standard. In the event that any such federal interim standard is subsequently amended, modified, repealed, or substituted by a new interim standard, the commissioner shall, within thirty days, review such amendment, modification, repeal or substitution, and take such action with respect to the state interim stand-

ards, including the repeal or substitution of the same, as will conform the state interim standards to those federal interim standards then in effect.

2. *Toxic materials and other harmful physical agents.* The commissioner, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate, but in any event shall conform with the provisions of subsection 1 of this section. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, a standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

3. *Temporary variances.*

a. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of paragraph "*b*" of this subsection and establishes that he is unable to comply with the standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standards or because necessary construction or operation of the facilities cannot be completed by the effective date, that he is taking all available steps to safeguard his employees against the hazards that are covered by the standard, and that he has an effective program for coming into compliance with this standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing, provided that the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter except that such an order may be renewed not more than twice so long as the requirements of this paragraph are met and an application for renewal is filed at least ninety days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than one hundred and eighty days.

b. An application for a temporary order under this subsection shall contain:

(1) A specification of the standard or portion thereof from which the employer seeks a variance.

(2) A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the fact represented, that he is unable to comply with the standard or portion thereof and a detailed statement of those reasons therefor.

(3) A statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard.

(4) A statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard.

(5) A certification that he has informed his employees of any application by giving a copy thereof to their authorized employee representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other reasonably appropriate means as may be directed by the commissioner.

(6) A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the commissioner for a hearing.

4. *Labels, warnings, protective equipment.* Any standard promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are appraised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazard in order to most effectively determine whether the health of such employee is adversely affected by such exposure. The results of such examinations or tests shall be furnished to the commissioner,

and if released by the employee, shall be furnished to the employee's physician and the employer's physician.

5. *Emergency temporary standards.* The commissioner shall provide for an emergency temporary standard to take immediate effect if he determines that employees are exposed to grave danger from exposure from substances or agents determined to be toxic or physically harmful or from new hazards and if such emergency temporary standard is necessary to protect the employees from such danger. Such emergency standard shall cease to be effective and shall no longer be applicable after the lapse of six months following the effective date thereof unless the commissioner has initiated the procedures provided for under this chapter, for the purpose of promulgating a permanent standard as provided in subsection 1 of this section in which case the emergency temporary standard will remain in effect until the permanent standard is adopted and becomes effective. Abandonment of the procedure for such promulgation by the commissioner shall terminate the effectiveness and applicability of the emergency temporary standard.

6. *Permanent variance.* Any affected employer may apply to the commissioner for a rule or order for a permanent variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The commissioner shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent that they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the commissioner on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

7. *Special variance.* Where there are conflicts with standards, rules promulgated by any federal agency other than the United States department of labor, special variances from standards, rules promulgated under this chapter may be granted to avoid such regulatory conflicts. Such variances shall take into consideration the safety of the employees involved. Notwithstanding any other provision of this chapter, and with respect to this paragraph, any employer seeking relief under this provision must file an application therefor with the commissioner and the commissioner shall forthwith hold a hearing at which employees or other interested persons, including representatives of the federal regulatory agencies involved, may appear and upon the showing that such a conflict indeed exists the commissioner may issue a special variance until the conflict is resolved.

8. *Priority for setting standards.* In determining the priorities for establishing standards under this section, the commissioner shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments.

9. *Product safety.* Standards promulgated under this chapter shall not be different from federal standards applying to products distributed or used in interstate commerce unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision does not apply to customized products or parts not normally available on the open market, or to optional parts or additions to products which are ordinarily available with such optional parts or additions.

10. *Judicial review before enforcement.* The provisions of the Iowa administrative procedure Act shall apply to judicial review of standards issued under this section. Notwithstanding any provision of the Iowa administrative procedure Act to the contrary, a person who is aggrieved or adversely affected by a standard issued under this section must seek judicial review of such standard prior to the sixtieth day after such standard becomes effective. All determinations of the commissioner shall be conclusive if supported by substantial evidence in the record as a whole. [C66, 71,§§88A.11–88A.13; C73, 75,§88.5; 66GA, ch 88,§§1, 2]

Referred to in §§88.6, 88.7, 88.14

88.6 Inspections, investigations, and recordkeeping.

1. *Entrance and inspections.* In order to carry out the purposes of this chapter, the commissioner or his representative, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized:

a. To enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer.

b. To inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and within a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

2. *Subpoena of witness and evidence.* In making his inspections and investigations under this chapter, the commissioner may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the district courts of this state. In case of contumacy, failure, or refusal of any person to obey such an order, any appropriate district court within the jurisdiction of which such person is found, or resides, or transacts business, upon the application by the commissioner, shall have jurisdiction to issue to such person an order requiring such person to appear, to produce evidence, if, as, and when so ordered and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

3. *Accident and illness records.*

a. Each employer shall make, keep and preserve, and make available to the commissioner such records regarding his activities relating to this chapter as the commissioner may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The commissioner shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protection and obligations under this chapter, including the provisions of applicable standards.

b. The commissioner shall prescribe regulations requiring an employer to maintain accurate records of, and to make periodic reports on, work related deaths, injuries, and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

c. The commissioner shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 88.5, subsection 2. Such regulations shall provide employees or their authorized employee representative with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records that will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 88.5, subsection 2, and shall inform any employee who is being thus exposed of the corrective action being taken.

d. All employers in the state of Iowa are required to make all reports to the secretary required by federal law as if this chapter were not in effect.

e. The commissioner will make such reports to the secretary in such form and containing such information, as the secretary shall from time to time require pursuant to federal law.

f. The regulations referred to in this subsection shall not prescribe requirements different from those provided by the federal law and regulations.

4. *Representatives of employers and employees.* Subject to regulations issued by the commissioner, a representative of the employer and an authorized employee representative shall be given an opportunity to accompany the commissioner or his authorized representative during the physical inspection of any workplace under subsection 1 of this section, for the purpose of aiding such inspection. Where there is no authorized employee representative, the commissioner or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

5. *Special inspections.* Any employees or authorized employee representative who believes that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the commissioner or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or authorized employee representative, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that upon the request of the person giving such notice his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to this section. If, upon receipt of such notification, the commissioner determines that there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the commissioner determines that there is no reasonable grounds to believe that a violation or danger exists, he shall notify the employees or authorized employee representative in writing of such determination.

6. *Notice of violations.* During any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the commissioner or any

representative of the commissioner responsible for conducting the inspection, in writing, of any violation of this chapter which they have reason to believe exists in such workplace. The commissioner shall, by regulation, establish procedures for an informal review of any refusal by a representative of the commissioner to issue a citation with respect to any such alleged violation and shall furnish the employees or authorized employee representative requesting such review a written statement of the reason for the commissioner's final disposition of the case.

7. *General.* Any information obtained by the commissioner under this chapter shall be obtained with a minimum burden upon employers. Except for the purpose of administration of this chapter, no information received by the commissioner or his representative from an employer, in compliance with and pursuant to this chapter, shall be admissible in any action brought by or for the benefit of any person. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible. [C66,71,§§88.11, 88.12, 88A.10, 88A.14; C73, 75,§88.6]

88.7 Citations.

1. *Issuance by commissioner.*

a. If, upon inspection or investigation, the commissioner or his authorized representative believes that an employer has violated the requirements of section 88.4, of any standard, rule or rules promulgated pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the chapter, standard, rules or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The commissioner shall prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimus violations which have no direct or immediate relationship to safety and health.

b. If, upon inspection or investigation, the commissioner or his authorized representative believes that an employee, under his own volition, has violated the requirements of section 88.4 of any standard, rule or rules promulgated pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, he shall with reasonable promptness issue a citation to the employee. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the chapter, standard, rules, regulations or order alleged to have been violated. The commissioner shall prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimus violations which have no direct or immediate relationship to safety and health.

2. *Posting of citation.* Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the commissioner, at or near each place a violation referred to in the citation occurred.

3. *Statute of limitations.* No citation may be issued under this section after the expiration of six months following the occurrence of any violation. [C66, 71,§88A.15; C73, 75,§88.7]

Referred to in §§88.8, 88.14, 88.15

88.8 Procedure for enforcement.

1. *Postinspection penalty notice.* If, after an inspection or an investigation, the commissioner issues a citation under section 88.7, he shall within a reasonable time after the termination of such inspection or investigation notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 88.14 and that the employer has fifteen working days within which to notify the commissioner that he wishes to contest the citation or proposed assessment of penalties. If, within fifteen working days from the receipt of the notice issued by the commissioner, the employer fails to notify the commissioner that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employees or authorized employee representative under subsection 3 of this section within such time, the citation and the assessment, as proposed, shall be deemed a final order of the commission and not subject to review by any court or agency.

2. *Noncompliance notice.* If the commissioner has reason to believe that an employer has failed to correct the violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the commissioner shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 88.14 by reason of such failure, and that the employer has fifteen working days within which to notify the commissioner that he wishes to contest the commissioner's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the commissioner, the employer fails to notify the commissioner that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed the final order of the commission and not subject to review by any court or agency.

3. *Contested notice.* If an employer notifies the commissioner that he intends to contest a citation issued under section 88.7 or notification issued under subsection 1 or 2 of this section or if, within fifteen working days of the issuance of a citation under section 88.7, any

employee or authorized employee representative files a notice with the commissioner alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the commissioner shall immediately advise the commission of such notification, and the commission shall afford an opportunity for a hearing. The commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the commissioner's citation or proposed penalty or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the commissioner, after an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection, and shall conform to rules of procedure promulgated and adopted under the federal law by federal authorities insofar as the same do not conflict with state law. [C66, 71,§§88A.15, 88A.16; C73, 75,§88.8]

Referred to in §§88.9, 88.14

88.9 Judicial review.

1. *Aggrieved persons.* Judicial review of any order of the commission issued under section 88.8, subsection 3, may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the violation is alleged to have occurred or where the employer has its principal office and may be filed within sixty days following the issuance of such order. The commission's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the commission's orders.

2. *Uncontested commission orders.* The commissioner may also obtain review or enforcement of any final order of the commission by filing a petition for such relief in the district court of the county in which the alleged violation occurred or in which the employer has its principal office and the judicial review provisions of the Iowa administrative procedure Act shall govern such proceedings to the extent applicable. If no petition for judicial review is filed within sixty days after service of the commission's order, the commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the commissioner after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the commissioner which has become a final order of the commission under section 88.8, subsection 1 or 2, the clerk of court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the commission and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a district court entered pursuant to this subsection or subsection 1 of this section, the district court may assess the penalties provided in section 88.14 in addition to invoking any other available remedies.

3. *Discrimination and discharge.* No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter. Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the commissioner alleging such discrimination. Upon receipt of such complaint, the commissioner shall cause such investigation to be made as he deems appropriate. If upon such investigation, the commissioner determines that the provisions of this subsection have been violated, he shall bring an action in the appropriate district court against such person. In any such action, that district court shall have jurisdiction, for cause shown to restrain violations of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay. Within ninety days of the receipt of a complaint filed under this subsection the commissioner shall notify the complainant of his determination under this subsection. [C66, 71,§88A.16; C73, 75,§88.9]

88.10 Occupational safety and health review commission.

1. *The occupational safety and health review commission is hereby established.* The commission shall be composed of three members who shall be appointed by the governor with the approval of two-thirds of the members of the senate, which shall include among its members one member qualified by experience and affiliation to represent the employers, one member similarly qualified to represent labor, and one representative who shall be impartial and represent the public. The governor shall designate one of the members of the commission to serve as chairman.

2. *Terms of office.* The terms of members of the commission shall be six years, except that the members of the commission first taking office shall serve, as designated by the governor at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years. A vacancy caused by the death, resignation, or re-

moval of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the commission may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office.

3. *Principal office.* The commission shall have an office at the seat of government. The executive council shall provide suitable office space, necessary furniture, equipment, and supplies. The commission is authorized to employ necessary personnel for the carrying out of its functions and duties as provided under this chapter. The commission may hold meetings and hearings anywhere in the state.

4. *Compensation.* Members of the commission shall be compensated at the rate of forty dollars per diem and shall be paid their actual and necessary expenses.

5. *Quorum requirements.* For the purpose of carrying out its functions under this chapter, two members of the commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

6. *Public hearings.* Every official act of the commission shall be entered of record, and its hearings and records shall be open to the public. The commission is authorized to make such rules as are necessary for the orderly transaction of its proceedings. Unless the commission has adopted a different rule, its proceedings shall be in accordance with the Iowa rules of civil procedure.

7. *Depositions and testimony.* The commission may order testimony to be taken by deposition in any proceedings pending before it at any state of such proceeding. Any person may be compelled to appear and depose and to produce books, papers or documents in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before district courts of any county. Witnesses whose depositions are taken under this subsection, the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the district courts of any county.

8. *Appeals heard expeditiously.* Appeals to the commission shall be heard expeditiously. [C66, 71,§§88A.3-88A.9; C73, 75,§88.10]

88.11 Procedures to counteract imminent dangers.

1. *Imminent danger orders.* The district court of the county in which the imminent danger is alleged to exist shall have jurisdiction, upon petition of the commissioner, to restrain any conditions or practices in any place of employment which are such that a danger exists which will reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. In the event the appropriate trial judge is not available, any judge of the judicial district in which such county is located shall have authority to issue orders under this section. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

2. *Imminent danger proceedings.* Upon the filing of any such petition the said district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this chapter. The proceedings shall be as provided by the Iowa rules of civil procedure. No temporary restraining order issued without notice shall be effective for a period longer than five days.

3. *Notification.* Whenever and as soon as an inspector concludes that the conditions or practices described in subsection 1 of this section exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the commissioner that relief be sought. The commissioner shall adopt rules prescribing the procedures in enforcing imminent danger orders which procedures shall reasonably conform to those promulgated under the federal law insofar as the same do not conflict with state law.

4. *Employee's rights.* If the commissioner arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the authorized employee representative, may bring an action against the said commissioner in the district court of the county in which the imminent danger is alleged to exist or the employer has his principal office, for a writ of mandamus to compel the commissioner to seek such an order and for such further relief as may be appropriate. [C66, 71,§88A.17; C73, 75,§88.11]

Referred to in §88.3

88.12 Confidentiality of trade secrets. Notwithstanding any provisions of this chapter, all information reported to or otherwise obtained by the commissioner or his representative in connection with any inspection or proceeding under this chapter which contains or might reveal a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant to any proceeding under this chapter. In any such proceeding the commissioner, the commission, or the court shall issue such

orders as may be appropriate to protect the confidentiality of trade secrets. [C73, 75,§88.12]
Referred to in §88.14

88.13 Variations, tolerances and exemptions. When the secretary grants variations, tolerances, and exemptions to avoid serious impairment of the national defense as provided under authority of section 16 of the federal law, the commissioner shall grant the same variations, tolerances, and exemptions in the Iowa law, rules and standards to be effective immediately. [C73, 75,§88.13]

88.14 Penalties.

1. *Willful violations.* Any employer who willfully or repeatedly violates the requirements of section 88.4, any standard, rule, or order promulgated pursuant to section 88.5, or regulations prescribed pursuant to this chapter, may be assessed a civil penalty of not more than ten thousand dollars for each violation.

2. *Serious violations.* Any employer who has received a citation for a serious violation of the requirements of section 88.4, of any standard, rule, or order promulgated pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, shall be assessed a civil penalty of up to one thousand dollars for each such violation.

3. *Nonserious violations.* Any employer who has received a citation for a violation of the requirements of section 88.4, of any standard, rule or order promulgated pursuant to section 88.5 or of rules prescribed pursuant to this chapter and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to one thousand dollars for each such violation.

4. *Failure to correct.* Any employer who fails to correct a violation for which a citation has been issued under section 88.7, subsection 1, within the period permitted for its correction (which period shall not begin to run until the date of the final order of the commission in the case of any review proceeding under section 88.8 initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than one thousand dollars for each day during which such failure or violation continues.

5. *Willful violations causing death.* Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than six months or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than twenty thousand dollars or by imprisonment of not more than one year, or by both such fine and imprisonment.

6. *Advance notice of inspections.* Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the commissioner or his designees, shall, upon conviction, be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment.

7. *Filing false documents.* Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment of not more than six months, or by both such fine and imprisonment.

8. *Disclosure of confidential information.* Whoever violates the provisions of section 88.12 shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both such fine and imprisonment; and shall be removed from office or employment.

9. *Violation of posting requirements.* Any employer who violates any of the posting, reporting or record keeping requirements as prescribed under the provisions of this chapter, shall be assessed a civil penalty of up to one thousand dollars for each violation.

10. *Assessment of penalties.* The commission shall have the authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

11. *Definition of serious violation.* For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

12. *Collection of penalties.* Civil penalties owed under this chapter shall be paid to the commissioner for deposit with the treasurer of state and shall accrue to the state and may be recovered in a civil action in the name of the state brought in the district court of the county where the violation is alleged to have occurred or where the employer has its principal office. [C73,§4064; C97,§§4999, 5025, 5026; S13,§§2477-1a, 4999-a1,-a2; SS15,§4999-a5; C24, 27, 31, 35, 39,§**1494**; C46, 50, 54, 58, 62,§88.13; C66, 71,§§88.13, 88A.15, 88A.17; C73, 75,§88.14; 66GA, ch 88,§3]
Referred to in §§88.8, 88.9

88.15 Appeal procedures for employees. In the event an employee is issued a citation as provided in section 88.7, the procedures for appeal as provided for employers in this chapter shall apply. [73, 75,§88.15]

88.16 Training and employee and employer education.

1. The commissioner shall conduct directly or by contract, educational programs to provide an adequate supply of qualified personnel to administer this chapter and informational programs on the importance of and proper use of adequate safety and health equipment.

2. The commissioner is authorized to conduct directly or by grants or contracts, short term training of personnel engaged in work related to his responsibilities under this chapter.

3. The commissioner shall provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this chapter, and consult with and advise employers, employees, and organizations representing employers and employees, as to effective means of preventing occupational injuries and illnesses. [C73, 75,§88.16]

88.17 Representation in civil litigation. The attorney general of the state shall upon request by the commissioner represent the commissioner in any civil litigation brought under this chapter. [C73, 75,§88.17]

88.18 Statistics. In order to further the purposes of this chapter, the commissioner shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this chapter. The commissioner shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job. [C73, 75,§88.18]

88.19 Annual report. Within one hundred twenty days following the convening of each session of each general assembly, the commissioner shall prepare and submit to the governor for transmittal to the general assembly a report upon the subject matter of this chapter, the progress toward achievement of the purpose of this chapter, the needs and requirements in the field of occupational safety and health, and any other relevant information. Such reports may include information regarding occupational safety and health standards, and criteria for such standards, developed during the preceding year; evaluation of standards and criteria previously developed under this chapter, defining areas of emphasis for new criteria and standards; an evaluation of the degree of observance of applicable occupational safety and health standards, and a summary of inspection and enforcement activity undertaken; analysis and evaluation of research activities for which results have been obtained under governmental and nongovernmental sponsorship; an analysis of major occupational diseases; evaluation of available control and measurement technology for hazards for which standards or criteria have been developed during the preceding year; description of co-operative efforts undertaken between government agencies and other interested parties in the implementation of this chapter during the preceding year; a progress report on the development of an adequate supply of trained manpower in the field of occupational safety and health, including estimates of future needs and the efforts being made by government and others to meet those needs; listing of all toxic substances in industrial usage for which labeling requirements, criteria, or standards have not yet been established; and such recommendations for additional legislation as are deemed necessary to protect the safety and health of the worker and improve the administration of this chapter. [C73, 75,§88.19]

88.20 Effect of chapter. Nothing in this chapter shall be construed to supersede or in any manner affect any workers' compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment. [C73, 75,§88.20; 66GA, ch 1084,§43]

88.21 Conflicts resolved. The provisions of this chapter will prevail wherever the same conflicts with any other chapter of the Code. [C73, 75,§88.21]

CHAPTER 88A

SAFETY INSPECTION OF AMUSEMENT RIDES

88A.1 Definitions.
88A.2 Permit required.
88A.3 Rules adopted.
88A.4 Permit and inspection fees.
88A.5 Fees to general fund.
88A.6 Personnel.
88A.7 Cessation order.
88A.8 Judicial review.
88A.9 Insurance.
88A.10 Penalties.

88A.11 Exemptions.
88A.12 Local regulation.
88A.13 Waiver of inspection.

88A.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Commissioner"* means the labor commissioner or his designee.

2. *"Bureau"* means bureau of labor.

3. *"Amusement device"* means any equipment or piece of equipment, appliance or combination thereof designed or intended to entertain or amuse a person.

4. *"Amusement ride"* means any mechanized device or combination of devices which carries passengers along, around, or over a fixed or restricted course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement.

5. *"Carnival"* means an enterprise offering amusement or entertainment to the public in, upon, or by means of amusement devices or rides or concession booths.

6. *"Fair"* means an enterprise principally devoted to the exhibition of products of agriculture or industry in connection with the operation of amusement rides or devices or concession booths.

7. *"Concession booth"* means a structure, or enclosure, located at a fair or carnival from which amusements are offered to the public.

8. *"Related electrical equipment"* means any electrical apparatus or wiring used at a carnival or fair.

9. *"Operator"* means a person, or the agent of a person, who owns or controls or has the duty to control the operation of an amusement device or ride, a concession booth, or related electrical equipment at a carnival or fair. "Operator" includes an agency of the state or any of its political subdivisions. [C73, 75,§88A.1]

88A.2 Permit required. No amusement device or ride, concession booth, or any related electrical equipment shall be operated at a carnival or fair in this state without a permit having been issued by the commissioner to an operator of such equipment. On or before the first of May of each year, any person required to obtain a permit by this chapter shall apply to the bureau for a permit on a form furnished by the commissioner which form shall contain such information as the commissioner may require. The commissioner may waive the requirement that an application for a permit must be filed on or before the first of May of each year if the applicant gives satisfactory proof to the commissioner that he could not reasonably comply with the date requirement and if the applicant immediately applies for a permit after the need for a permit is first determined. For the purpose of determining if an amusement ride, amusement device, concession booth, or any related electrical equipment is in safe operating condition and will provide protection to the public using such ride, device, booth, or related electrical equipment, each amusement ride, amusement device, concession booth, or related electrical equipment shall be inspected by the commissioner before it is initially placed in operation in this state, and shall thereafter be inspected at least once each year.

If, after inspection, an amusement device or ride, concession booth, or related electrical equipment is found to comply with the rules adopted under this chapter, the commissioner shall, upon payment of the permit fee and the inspection fee, permit the operation of the amusement device or ride or concession booth or to use any related electrical equipment.

If, after inspection, additions or alterations are contemplated which change a structure, mechanism, classification or capacity, the operator shall notify the commissioner of his intentions in writing and provide any plans or diagrams requested by the commissioner. [C73, 75,§88A.2]

88A.3 Rules adopted. The commissioner shall adopt and issue rules for the safe installation, repair, maintenance, use, operation, and inspection of amusement devices, amusement rides, concession booths, and related electrical equipment at carnivals and fairs to the extent necessary for the protection of the public. The rules shall be based upon generally accepted engineering standards and shall be concerned with, but not necessarily limited to, engineering force stresses, safety devices, and preventive maintenance. Whenever such standards are available in suitable form they may be incorporated by reference. The rules shall provide for the reporting of accidents and injuries incurred from the operation of amusement devices or rides, concession booths, or related electrical equipment.

The commissioner may modify or repeal any rule adopted under the provisions of this chapter.

Before adopting, modifying or amending any rule consistent with and necessary for the enforcement of this chapter, the commissioner shall hold a public hearing on the proposed rule, modification or amendment to a rule. Any interested person may appear and be heard at the hearing, in person or by agent or counsel. The commissioner shall give the news media notice of each hearing at least thirty days in advance of the hearing date and shall make available a copy of the proposed rule, or modification or amendment to a rule to any person requesting same. The provisions of this section are in addition to the requirements of chapter 17A. [C73, 75,§88A.3]

88A.4 Permit and inspection fees. Annual inspection fees under this chapter shall be as follows:

1. Permit fees, ten dollars per year.

2. Mechanical and electrical inspection fees for amusement rides and devices, forty dollars for each inspection.

3. Electrical inspection of concessions, booths, and amusement devices fees, fifteen dollars each.

4. Special inspectors authorization fee, two dollars each. The special inspectors authorization shall allow a person to perform inspections only on rides, devices, and concession booths of an operator who makes the request for the special inspectors authorization. [C73, 75,§88A.4; 66GA, ch 8,§2]

88A.5 Fees to general fund. All fees collected by the bureau under the provisions of this chapter shall be transmitted to the treasurer of state and credited by him to the general fund of the state. [C73, 75,§88.5]

88A.6 Personnel. The commissioner may employ inspectors and any other personnel deemed necessary to carry out the provisions of this chapter, subject to the provisions of chapter 19A. [C73, 75,§88A.6]

88A.7 Cessation order. The commissioner may order, in writing, a temporary cessation of operation of any amusement device or ride, concession booth, or related electrical equipment if it has been determined after inspection to be hazardous or unsafe. Operation of the amusement device or ride, concession booth or related electrical equipment shall not resume until the unsafe or hazardous condition is corrected to the satisfaction of the commissioner. [C73, 75,§88A.7]

88A.8 Judicial review. Judicial review of action of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act. [C73, 75,§88A.8]

88A.9 Insurance. No person shall be issued a permit under this chapter unless he first obtains an insurance policy in an amount of not less than one hundred thousand dollars for bodily injury to or death of one person in any one accident, and, subject to the limit for one person, in an amount of not less than three hundred thousand dollars for bodily injury to or death of two or more persons in any one accident, and in an amount of not less than five thousand dollars for injury to or destruction of property of others in any one accident, insuring the operator against liability for injury or death suffered by a person attending a fair or carnival. [C73, 75,§88A.9]

88A.10 Penalties.

1. Any person who operates an amusement device or ride, concession booth or related electrical equipment at a carnival or fair without having obtained a permit from the commissioner or who violates any order or rule issued by the commissioner under this chapter is guilty of a misdemeanor and, upon conviction, shall be subject to imprisonment in the county jail for not more than one year, or be subject to a fine not to exceed ten thousand dollars, or be subject to both such imprisonment and fine.

2. Any person who interferes with, impedes, or obstructs in any manner the commissioner or any authorized representative of the bureau in the performance of his duties under this chapter is guilty of a misdemeanor. Any person who bribes or attempts to bribe the commissioner or his designee shall be subject to section 739.1. [C73, 75,§88A.10]

88A.11 Exemptions. The following amusement devices or rides or concession booths are exempt from the provisions of this chapter:

1. Nonmechanized playground equipment including, but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, swinging gates and physical fitness devices except where an admission fee is charged for usage or an admission fee is charged to areas where such equipment is located.

2. A concession booth, amusement device or ride which is owned and operated by a nonprofit religious, educational or charitable institution or association if such booth, device or ride is located within a building subject to inspection by the state fire marshal or by any political subdivisions of the state under its building, fire, electrical, and related public safety ordinances.

3. The commissioner may exempt amusement devices from the provisions of this chapter that have self-contained wiring installed by the manufacturer, that are operated manually by the use of hands or feet, that operate on less than one hundred twenty volts of electrical power, and that are fixtures within or part of a structure subject to the building code of this state or any political subdivision of this state.

4. The commissioner may exempt playground equipment owned, maintained, and operated by any political subdivision of this state. [C73, 75,§88A.11]

88A.12 Local regulation. Nothing contained in this chapter shall prevent any political subdivision of this state from licensing or regulating any amusement ride or device, concession booth, electrical equipment, carnival, or circus as otherwise provided by law. [C73, 75,§88A.12]

88A.13 Waiver of inspection. The commissioner may waive the requirement that an amusement device or ride or any part thereof be inspected before being operated in this state if an operator gives satisfactory proof to the commissioner that the amusement device or ride or any part thereof has passed an inspection conducted by a public or private agency whose inspection standards and re-

quirements are at least equal to those requirements and standards established by the commissioner under the provisions of this chapter. The annual permit and inspection fees shall be paid before the commissioner may waive this requirement. [C73, 75,§88A.13]

CHAPTER 89

BOILER INSPECTION

89.1 Inspectors—bonds—qualifications.
89.2 Inspection made—certificate.
89.3 Boilers exempt.
89.4 Rules—records.
89.5 New boilers—notice to commissioner.
89.6 Insured boilers—certificate of inspection.
89.7 Fees for inspection.
89.8 Disposal of fees.
89.9 Penalty.
89.10 Injunction.
89.11 Hearing—notice—decree.
89.12 Fired and unfired vessels.

89.1 Inspectors—bonds—qualifications. The commissioner of labor shall, on the first day of July every two years, appoint a state boiler inspector who shall work under the direct supervision of the commissioner of labor and who shall devote his full time to the duties of his office. Before entering upon the duties of his office, the state boiler inspector shall give a bond in the sum of twenty-five hundred dollars for the faithful performance of his duties, the same to be approved by the secretary of state and deposited in his office. The commissioner of labor may appoint deputy inspectors possessing the same qualifications as the state boiler inspector, whenever necessary to carry out the provisions of this chapter. Deputy inspectors shall be subject to and governed by the same rules applicable to and governing the acts and conduct of the state boiler inspector. The person so appointed shall be a practical boilermaker or a licensed engineer and shall be qualified by not less than five years' experience in the construction, installation, repair and inspection of boilers, steam generators and superheaters, with knowledge of their operation and use for the generating of steam for power, heating or other purposes, and shall neither directly nor indirectly be interested in the manufacture, ownership or agency of the same. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§89.1]

89.2 Inspection made—certificate.

1. It shall be the duty of the state boiler inspector, to inspect or cause to be inspected internally and externally, at least once every twelve months, except as otherwise provided in this section, in order to determine whether all such equipment is in a safe and satisfactory condition, and properly constructed and maintained for the purpose for which the same is used, all steam boilers, tanks, jacket kettles, generators, all steam boilers used for heating purposes carrying a pressure of not more than fifteen pounds per square inch gauge and located in places of public assembly, all hot water heating boilers carrying a pressure of not more than thirty pounds per square inch gauge located in places of public assembly and other appurtenances used in this state for generating or transmitting steam for power, or for using steam under pressure for heating or steaming purposes, in order to determine whether said equipment is in a safe and satisfactory condition, and properly constructed and maintained for the purpose for which the same is used.

2. The labor commissioner and the boiler inspectors shall have the right and power to enter any building or structure, public or private, for the purpose of inspecting any equipment covered by this chapter or gathering information with reference thereto.

3. Upon making an inspection of any equipment covered by this chapter, the inspector shall give to the owner or user thereof a certificate of inspection, upon forms prescribed by the labor commissioner, which certificate shall be posted in a place near the location of said equipment.

4. The owner or user of any equipment covered in this chapter, or persons in charge of same, shall not allow or permit a greater pressure in any unit than is stated in the certificate of inspection issued by the inspector.

5. The boiler inspector is hereby empowered to inspect boilers and tanks for other than steam pressure, manufactured in Iowa, when requested by the manufacturer.

6. Each fired steam boiler of one hundred thousand pounds per hour or more capacity, used or proposed to be used within this state, which has internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water where the said water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which boiler the state boiler inspector has determined that the owner or user has complied with the record keeping requirements hereafter prescribed, shall be inspected at least once every two years internally and externally while not under pressure, by the state boiler inspector or by one of the deputy inspectors as to its construction, installation, condition and operation. If at any time

a hydrostatic test shall be deemed necessary to determine the safety of a boiler, the same shall be made, under the supervision of the inspector, by the owner or user thereof.

Not more than twenty-four months shall elapse between internal inspections, and external inspections while under pressure shall also be made at no greater intervals.

The owner or user of such boiler shall keep available for examination by the state boiler inspector or by any of the deputy inspectors accurate records showing the date and actual time such boiler is out of service and the reason or reasons therefor, and such chemical physical laboratory analyses of samples of the boiler water taken at regular intervals of not more than forty-eight hours of operation as will adequately show the condition of such water and any elements or characteristics thereof which are capable of producing corrosion or other deterioration of the boiler or its parts. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §89.2]

Referred to in §§89.3, 89.6

89.3 Boilers exempt. The provisions of this chapter shall not apply to boilers of railway locomotives subject to federal inspection, boilers operated and regularly inspected by railway companies operating in interstate commerce, boilers under the jurisdiction and subject to inspection by the United States government, boilers used exclusively for agricultural purposes, heating boilers in residences, buildings, except buildings of public assembly as defined in section 89.12 and apartment houses using a pressure of less than fifteen pounds per square inch or having a safety valve set at not higher than fifteen pounds pressure per square inch, and fire engine boilers brought into the state for temporary use in times of emergency.

All high pressure boilers that are converted to low pressure boilers shall have a fifteen pound safety valve installed and be approved by a commissioned inspector from the bureau of labor not later than thirty days after the expiration date of the certificate for said boiler.

Unfired steam pressure vessels not exceeding the following limitations are not required to be reported to the bureau of labor:

1. A vessel not greater than five cubic feet in volume and not having a pressure greater than two hundred fifty pounds per square inch.

2. A vessel not greater than one and one-half cubic feet in volume with no limit on pressure.

Internal inspection shall not be required on unfired steam pressure vessels where they have been manufactured without inspection plate and where it would be necessary for them to be drilled in order to be inspected as required in section 89.2. The above-mentioned unfired pressure vessels must be reported to the bureau of labor and certified by the inspector that in his judgment they are safe and in satisfactory condition for the purpose for which they are used. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§89.3]

89.4 Rules—records.

1. The commissioner of labor is hereby authorized and empowered to prescribe rules within the provisions of this chapter, for the purpose of carrying the same into effect including rules for the methods of testing equipment and construction and installation of new equipment covered by this chapter, and said rules shall, as nearly as possible, conform to the rules formulated by the boiler code committee of the American society of mechanical engineers and known as the American society of mechanical engineers boiler code of 1937 as amended.

2. The state boiler inspector shall investigate and report to the commissioner the cause of any boiler explosion that may occur in the state, the loss of life, injuries sustained, and estimated loss of property, if any; and such other data as may be of benefit in preventing a recurrence of similar explosions.

3. He shall keep in the office of the commissioner a complete and accurate record of the name of the owner or user of each steam boiler or other equipment subject to this chapter, giving a full description of said equipment, including the type, dimensions, age, condition, the amount of pressure allowed, and the date when last inspected. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§89.4]

89.5 New boilers—notice to commissioner. Before any equipment included under the provisions of this chapter is installed by any owner, user or lessee thereof, a ten days' written notice of intention to install same shall be given to the commissioner of labor. The notice shall designate the proposed place of installation, the type and capacity of such equipment, the use to be made thereof, the name of company which manufactured same, and whether said equipment is new or used. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§89.5]

89.6 Insured boilers—certificate of inspection.

1. The inspection required by this chapter shall not be made by the state boiler inspector where any owner or user of any equipment specified by this chapter obtains an inspection by a representative of reputable insurance company and obtains a policy of insurance from said company upon said equipment.

The insurance company shall file a certificate of inspection on forms approved by the commissioner of labor stating that such equipment is insured and that inspection shall be made in accordance with section 89.2. Upon such showing and the payment of a fee of five dollars the commissioner of labor shall issue a certificate of inspection by the bureau of labor which shall be valid only for the period specified in section 89.2.

Upon such showing and the payment of a fee of five dollars for each one-year inspection and ten dollars for each two-year inspection, the commissioner of labor shall issue a certificate of inspection by the bureau of labor, which shall be valid only for the period specified in section 89.2.

2. The state boiler inspector shall notify the user of any equipment or appurtenance found to be unsafe or unfit for operation in writing, setting forth the nature and extent of such defects and condition. Said notice shall indicate whether or not said equipment shall be used without making repair or replacement of defective parts, or whether or how said equipment may be used in a limited capacity before repairs or replacements are made, and the state boiler inspector may permit the user a reasonable time to make such repairs or replacements. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§89.6; 66GA, ch 8,§3]

89.7 Fees for inspection. An inspection fee of each boiler or pressure unit inspected by the boiler inspector according to the terms of this chapter shall be paid by the owner or user as follows:

1. Boilers having a working pressure to seventy pounds per square inch, ten dollars for one boiler and eight dollars for each additional boiler of like size when set in batteries.

2. Boilers having a working pressure of seventy-one pounds to and including one hundred fifty pounds per square inch, twelve dollars for one boiler and ten dollars for each additional boiler of like size when set in batteries.

3. Boilers having a working pressure of one hundred fifty-one pounds to four hundred fifty pounds per square inch, fourteen dollars for one boiler and twelve dollars for each additional boiler of like size when set in batteries.

4. Boilers having a working pressure of four hundred fifty-one pounds and excess per square inch, eighteen dollars for one boiler and twelve dollars for each additional boiler of like size when set in batteries.

5. Steam stills, tanks, jacket kettles, sterilizers and all other reservoirs fired or unfired having a working pressure in excess of fifteen pounds per square inch, shall be charged for the first piece of equipment as follows: Fifteen pounds to seventy pounds per square inch, ten dollars; seventy-one pounds to one hundred fifty pounds per square inch, twelve dollars; one hundred fifty-one pounds to four hundred fifty pounds per square inch, fourteen dollars. Additional equipment shall be charged for at the same rate as boilers.

6. If at any time the owner, user or agent of the owner of a steam boiler or equipment within the state shall desire a special inspection of any boiler or equipment, it shall be made by the boiler inspection department after due request therefor, and the inspector making the inspection shall collect a fee of twenty dollars for each boiler, together with his expenses in connection therewith.

7. Inspections made at the request of a boiler or tank manufacturer by the chief inspector or any deputy inspector, shall be charged for at the rate currently charged by the various insurance companies for performing a similar service. This charge shall not void the regular fee for inspection or certificate when the boiler or tank is installed. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§89.7; 66GA, ch 8,§4]

89.8 Disposal of fees. All fees provided for in this chapter shall be collected by the commissioner of labor and remitted to the state treasurer, together with an itemized statement showing the source of collection. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§89.8]

89.9 Penalty. Any person or persons, corporations and directors, managers and superintendents, and officers thereof, violating any of the provisions of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in a sum not more than one hundred dollars. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§89.9]

89.10 Injunction. In addition to any and all other remedies, if any owner, user, or person in charge of any equipment covered by this chapter, shall continue to use any equipment covered by this chapter, after receiving a notice of defect as provided by this chapter, without first correcting said defects or making replacements, the commissioner of labor may apply to the district court or any judge thereof by petition in equity, in an action brought in the name of the state, for a writ of injunction to restrain the use of said alleged defective equipment. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §89.10]

89.11 Hearing—notice—decree. The commissioner shall notify in writing the owner or user of said equipment of the time and place of hearing of said petition as fixed by the court or judge, and shall serve said notice on the defendant at least five days prior to said hearing in the same manner as original notices are served. The general provisions relating to civil practice and procedure as may be applicable, shall govern the proceedings, except as herein modified. In event the defendant does not appear or plead to said action, default shall be entered against the defendant. The action shall be tried in equity, and the court or judge shall make such order or decree as the evidence warrants. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§89.11]

Constitutionality, 49GA, ch 97,§12

89.12 Fired and unfired vessels.

1. A pressure vessel in which steam is generated by the application of heat resulting from the combustion of solid, liquid or gaseous fuel shall be classed as a fired steam boiler.

2. Any steam boiler or steam vessel in which steam may be generated or transferred,

but one in which the heat resulting from combustion of solid, liquid or gaseous fuel is not applied directly to the boiler or vessel shall be classified as an unfired steam vessel.

3. *Low-pressure heating boiler.* The term "low-pressure heating boiler" shall mean a steam boiler operated at pressures not exceeding fifteen p.s.i.g., or a hot water heating boiler not exceeding thirty pounds per square inch gauge.

4. *Place of public assembly.* "Place of public assembly" shall mean any building or portion thereof designed, intended and used for occupation by persons for purposes of entertainment, instruction or amusement and shall be construed to include theatres, motion picture theatres, hospitals, places of worship, schools, colleges and institutions. [C62, 66, 71, 73, 75, §89.12]

Referred to in §89.3

CHAPTER 90

BOARDS OF ARBITRATION

90.1 Petition for appointment.
90.2 Notification by governor.
90.3 Governor to appoint for parties.
90.4 Third appointee.
90.5 Agreement to be bound by decision.
90.6 Oath—organization.
90.7 Compensation and expenses.
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90.9 Oath—rule of evidence.
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90.11 Investigation — report filed — public inspection.
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90.13 Decision—report to governor.
90.14 Decision filed and published.

FIRE DEPARTMENT DISPUTES IN CERTAIN CITIES

90.15 Board of arbitration.
90.16 Recommendations for appointees.
90.17 Failure to act.
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90.19 Organization of board.
90.20 Costs.
90.21 Powers of board.
90.22 Witnesses.
90.23 Findings and report.
90.24 Time limit.
90.25 Decision.
90.26 Filing.
90.27 Nature of decision.

90.1 Petition for appointment. When any dispute arises between any person, firm, corporation, or association of employers and their employees or association of employees, of this state, except employers or employees having trade relations directly or indirectly based upon interstate trade relations operating through or by state or international boards of conciliation, which has or is likely to cause a strike or lockout, involving ten or more wage earners, and which does or is likely to interfere with the due and ordinary course of business, or which menaces the public peace, or which jeopardizes the welfare of the community, and the parties thereto are unable to adjust the same, either or both parties to the dispute, or the mayor of the city, or the chairman of the board of supervisors of the county in which said employment is carried on, or on petition of any twenty-five citizens thereof over the age of eighteen years, or the labor commissioner, after investigation, may make written application to the governor for the appointment of a board of arbitration and conciliation, to which board such dispute may be referred under the provisions of this chapter; and the manager of the business of any person, firm, corporation, or association of such employers, or any organization representing such employees, or if such employees are not members of any organization, then a majority of such employees affected may make the application as provided in this chapter, but in no case shall more than twenty employees be required to join in such application. [S13, §2477-n; C24, 27, 31, 35, 39,§1496; C46, 50, 54, 58, 62, 66, 71, 73, 75,§90.1]

Referred to in §90.2

90.2 Notification by governor. The governor shall at once upon application made to him as herein provided, and upon his being satisfied that the dispute comes within the provisions of section 90.1, notify the parties to the dispute of the application for the appointment of a board of arbitration and conciliation and make request upon each party to the dispute that each of them recommend within three days from the date of notice, the names of five persons who have no direct interest in such dispute and are willing and ready to act as members of the board, and the governor shall appoint from each list submitted one of such persons recommended. [S13,§2477-n1: C24, 27, 31, 35, 39,§1497; C46, 50, 54, 58, 62, 66, 71, 73, 75, §90.2]

40GA, ch 230,§2, editorially divided

90.3 Governor to appoint for parties. Should either of the parties fail or neglect to make any recommendation within the said period, the governor shall, as soon thereafter as possible, appoint a fit person who shall be deemed to be appointed on the recommendation of the parties in default. [S13,§2477-n1; C24, 27, 31, 35, 39,§1498; C46, 50, 54, 58, 62, 66, 71, 73, 75, §90.3]

90.4 Third appointee. The members of the board so appointed shall within five days of their appointment recommend to the governor the name of one person who is ready and willing to act as a third member of the board, and upon failure or neglect upon their part to make such recommendation within the said period, or upon the failure or refusal of the person so recommended to act, the governor shall as soon thereafter as possible appoint some person to act as the third member of the board. [S13,§2477-n1; C24, 27, 31, 35, 39,§1499; C46, 50, 54, 58, 62, 66, 71, 73, 75,§90.4]

90.5 Agreement to be bound by decision. In all cases when the application is made by both parties to the dispute, they shall set forth in the application whether or not they agree to be bound by the decision of the board of arbitration and conciliation; and if both parties agree to be so bound by such decision, then the same shall be binding and enforceable as set out in section 90.12. [S13,§2477-n2; C24, 27, 31, 35, 39,§1500; C46, 50, 54, 58, 62, 66, 71, 73, 75, §90.5]

90.6 Oath—organization. Each member of the board shall, before entering upon the duties of his office, be sworn to a faithful and impartial discharge thereof; they shall organize at once by the choice of one of their number as chairman, and one of their number as secretary, and shall have power to employ all necessary clerks and stenographers to properly carry out the duties of their appointment. [S13,§2477-n3; C24, 27, 31, 35, 39,§1501; C46, 50, 54, 58, 62, 66, 71, 73, 75,§90.6]

S13,§2477-n3, editorially divided

90.7 Compensation and expenses. The members of the board shall be paid a forty-dollar per diem and shall be reimbursed for actual and necessary expenses, these moneys to be payable out of the state treasury upon warrants drawn by the state comptroller. [S13, §2477-n3; C24, 27, 31, 35, 39,§1502; C46, 50, 54, 58, 62, 66, 71, 73, 75,§90.7]

90.8 Evidence—witnesses. For the purpose of this inquiry the board shall have all the powers of summoning before it and enforcing the attendance of witnesses, of administering oaths, and of requiring witnesses to give evidence, to produce books, papers, and other documents or things as the board may deem requisite to the full investigation of the matters into which it is inquiring, as are vested in the district court in civil cases. [S13,§2477-n4; C24, 27, 31, 35, 39,§1503; C46, 50, 54, 58, 62, 66, 71, 73, 75,§90.8]

40GA, ch 230,§3, editorially divided

90.9 Oath—rule of evidence. Any member of the board may administer an oath, and the board may accept, admit, and call for such evidence as in equity and good conscience it thinks material and proper, whether strictly legal evidence or not. [S13,§2477-n4; C24, 27, 31, 35, 39,§1504; C46, 50, 54, 58, 62, 66, 71, 73, 75,§90.9]

90.10 Subpoenas—by whom served—fees. A subpoena or any notice may be delivered or sent to any sheriff, constable, or any police officer who shall forthwith serve the same, and make due return thereof, according to directions. Witnesses in attendance and officers serving subpoenas or notices shall receive the same fees as are allowed in the district court, payable from the state treasury, upon the certificate of the board that such fees are due and correct. The board shall have the same power and authority to maintain and enforce order at the hearings and obedience to its writs of subpoena as is by law conferred upon the district court for like purposes. [S13, §2477-n4; C24, 27, 31, 35, 39,§1505; C46, 50, 54, 58, 62, 66, 71, 73, 75,§90.10]

Contempts, ch 665
Officers' fees, §337.11
Witness fees, §622.69 et seq.

90.11 Investigation—report filed—public inspection. The board shall as soon as practical visit the place where the controversy exists and make careful inquiry into the cause, and the said board may, with the consent of the governor, conduct such inquiry beyond the limits of the state. The board shall hear all persons interested who come before it, advise the respective parties what ought to be done or submitted to by either or both of the parties to the dispute to adjust said controversy, and make a written decision thereof, which shall at once be made public and open to public inspection and shall be recorded by the secretary of the board, and a copy of such report shall be filed in the office of the clerk of the city in which the controversy arose and shall be open for public inspection. [S13,§2477-n5; C24, 27, 31, 35, 39,§1506; C46, 50, 54, 58, 62, 66, 71, 73, 75,§90.11]

90.12 Investigation—decision. The board of arbitration and conciliation shall within ten days from the date of their appointment, unless such time shall be extended by the governor, complete the investigation of any controversy submitted to them, and during the pendency of such period neither party shall engage in any strike or lockout. Any decision made by the board shall date from the date of the appointment of the board and shall be binding upon the parties who join in the application as herein provided for a period of one year. [S13,§2477-n6; C24, 27, 31, 35, 39,§1507; C46, 50, 54, 58, 62, 66, 71, 73, 75,§90.12]

Referred to in §90.5

90.13 Decision—report to governor. Within five days after the completion of the investigation, unless the time is extended by the governor for good cause shown, the board or a majority thereof shall render a decision, stating such details as will clearly show the nature of the controversy and the point disposed of by them, and make a written report to the governor of their findings of fact and of their

recommendation to each party to the controversy. [S13,§2477-n7; C24, 27, 31, 35, 39,§1508; C46, 50, 54, 58, 62, 66, 71, 73, 75,§90.13]

90.14 Decision filed and published. Every decision and report shall be filed in the office of the governor, and a copy served upon each party to the controversy, and a copy furnished to the labor commissioner for publication in the report of the commissioner, who shall cause such decision and report to be published at a rate of not to exceed thirty-three and one-third cents per ten lines of brevier type or its equivalent in two newspapers of general circulation in the county in which the business is located upon which the dispute arose.

All evidence taken and exhibits and documents offered shall be carefully preserved and at the close of the investigation shall be filed in the office of the governor of the state and shall only be subject to inspection upon his order. [S13,§2477-n7; C24, 27, 31, 35, 39,§1509; C46, 50, 54, 58, 62, 66, 71, 73, 75,§90.14]

FIRE DEPARTMENT DISPUTES IN CERTAIN CITIES

90.15 Board of arbitration. When any dispute arises between a city having a population of ten thousand or more, or a city under civil service of whatever population, and any city-recognized association of employees of the paid fire department of such city, and the parties are unable to adjust the dispute, either or both parties may make written application to a judge of the district court of the county in which the dispute arises for the appointment of a board of arbitration and conciliation, to which board such dispute may be referred under the provisions of this chapter. [C62, 66, 71, 73, 75,§90.15]

90.16 Recommendations for appointees. The judge shall, within ten days after application is made to him as provided, notify the parties to the dispute of the application for the appointment of a board of arbitration and conciliation, and shall request each party to recommend within ten days from the date of receipt of notice, the name of a person who has no direct interest in the dispute and is willing and ready to act as a member of the board. [C62, 66, 71, 73, 75,§90.16]

Referred to in §§90.17, 90.18

90.17 Failure to act. Should either of the parties fail or neglect to make any recommendation within the ten-day period, or if the person recommended fails or refuses to act, the judge shall, as soon thereafter as possible, appoint a person who meets the qualifications provided in section 90.16. Such person shall be deemed to be appointed on the recommendation of the party in default. [C62, 66, 71, 73, 75,§90.17]

90.18 Third member of board. The parties to the dispute and the members of the board so appointed shall, within five days of the appointment, recommend to the judge the name of an additional person who is willing and ready to act as the third member of the board. The person recommended shall meet the qualifications provided in section 90.16. If the recommendation is not made within the period, or if the person recommended refuses or fails to act, the judge shall as soon thereafter as possible appoint a qualified person to act as the third member of the board. [C62, 66, 71, 73, 75,§90.18]

90.19 Organization of board. Each member of the board shall, before entering upon the duties of his office, be sworn to a faithful and impartial discharge thereof. The board shall organize at once by the choice of one of their number as chairman, and one of their number as secretary, and shall have the power to employ all clerks and stenographers necessary to properly carry out the duties of their appointment. [C62, 66, 71, 73, 75,§90.19]

90.20 Costs. Each party to the dispute shall assume its own costs of the arbitration proceedings and shall share equally the costs of the third member as well as the general expenses of the board of arbitration and conciliation. [C62, 66, 71, 73, 75,§90.20]

90.21 Powers of board. For the purpose of this inquiry the board shall have all the powers vested in the district court in civil cases which the board deems necessary to a full investigation of the dispute, including but not limited to the power to summon and enforce the attendance of witnesses, to administer oaths and to require witnesses to give evidence and produce books and papers. Any member of the board may administer oaths. [C62, 66, 71, 73, 75,§90.21]

90.22 Witnesses. A subpoena or any notice may be delivered or sent to any sheriff, or any police officer who shall forthwith serve it and make due return thereof according to direction. Every person who is summoned by an arbitration board and who duly attends as a witness, except witnesses summoned at the request of a party, shall be entitled to an allowance for expenses determined in accordance with the scale in effect at the time with respect to witnesses in the district court in civil cases, and the allowance paid shall be a part of the general expenses of the arbitration board. The board shall have the same power and authority to maintain and enforce order at the hearings and obedience to its writs of subpoena as is by law conferred upon the district court for like purposes. [C62, 66, 71, 73, 75,§90.22]

90.23 Findings and report. The board shall as soon as practical visit the place where the dispute exists and make careful inquiry into its cause. The board shall hear all interested persons who come before it and advise the respective parties concerning courses of action to adjust the dispute, and shall put in writing its findings and recommendations. A copy of such report shall be filed by the board secretary in the office of the clerk of the city in which the dispute arose and shall be open for

public inspection. All hearings shall be open to the public and press. [C62, 66, 71, 73, 75, §90.23]

90.24 Time limit. The board of arbitration and conciliation shall within twenty days from the date of their appointment, unless such time shall be extended by the judge, complete the investigation of any dispute submitted to them. [C62, 66, 71, 73, 75,§90.24]

90.25 Decision. Within five days after the completion of the investigation, unless the time is extended by the judge for good cause shown, the board or a majority thereof shall render a decision, stating such details as will clearly show the nature of the controversy and the point disposed of by them, and make a written report to the judge of their findings of fact and of their recommendation to each party to the controversy. [C62, 66, 71, 73, 75, §90.25]

90.26 Filing. Every decision and report shall be filed in the office of the clerk of the district court of the county in which the dispute arose, and a copy served upon each party to the controversy, and a copy furnished to the labor commissioner for publication in the report of the commissioner, who shall cause such decision and report to be published in at least one newspaper in the city in which the dispute arose. All evidence taken and exhibits and documents offered shall be carefully preserved and at the close of the investigation shall be filed in the office of the clerk of the district court. [C62, 66, 71, 73, 75,§90.26]

90.27 Nature of decision. A decision or report shall be advisory only and shall not be binding on either party. [C62, 66, 71, 73, 75, §90.27]

CHAPTER 91

BUREAU OF LABOR

Referred to in §§88.2, 455B.14

91.1 Labor commissioner.
91.2 Appointment.
91.3 Vacancies.
91.4 Industrial statistics and information.
91.5 Other duties—jurisdiction in general.
91.6 and 91.7 Repealed by 64GA, ch 84,§99.
91.8 Traveling expenses—limitation.
91.9 Right to enter premises.
91.10 Power to secure evidence.
91.11 Prosecutions for violations.
91.12 Reports to bureau.
91.13 Repealed by 62GA, ch 106,§9.
91.14 Reports and records preserved — when destroyed.
91.15 Definition of terms.
91.16 Violations—penalties.
91.17 Acceptance of federal Act.
91.18 State agency.

91.1 Labor commissioner. The bureau of labor shall be under the control of a labor commissioner, who shall have his office at the seat of government and shall devote his entire time to the duties of his office. [C97,§2469; S13,§2469; C24, 27, 31, 35, 39,§**1510**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§91.1]

91.2 Appointment. The governor shall, within sixty days after the organization of the regular session of the general assembly in 1925, and each two years thereafter, appoint, with the approval of two-thirds of the members of the senate, a labor commissioner who shall serve for a period of two years from July 1 of the year of appointment. [C97,§2469; S13, §2469; C24, 27, 31, 35, 39,§**1511**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§91.2]

Confirmation procedure, §2.32

91.3 Vacancies. A vacancy in said position which may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the time the general assembly next convenes in regular session. Prior to the expiration of said thirty days the governor shall transmit to the senate for its confirmation an appointment for the unexpired portion of the regular term.

Vacancies occurring during a session of the general assembly shall be filled as regular appointments are filled and before the end of said session and for the unexpired portion of the regular term. [C97,§2469; S13,§2469; C24, 27, 31, 35, 39,§**1512**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§91.3]

91.4 Industrial statistics and information. The duties of said commissioner shall be:

1. To safely keep all records, papers, documents, correspondence, and other property pertaining to or coming into his hands by virtue of his office, and deliver the same to his successor, except as otherwise provided.

2. To collect, assort, and systematize statistical details relating to all departments of labor in the state.

3. To issue from time to time bulletins containing information of importance to the industries of the state and to the safety of wage earners.

4. To conduct and to co-operate with other interested persons and organizations in con-

ducting educational programs and projects on employment safety.

5. Report to the governor biennially on all matters pertaining to the bureau of labor.

The bureau of labor may sell documents printed by the bureau of labor at cost according to rules established by the bureau, which rules shall be subject to chapter 17A. Receipts from such sale shall be deposited to the credit of the bureau of labor and may be used by the bureau for administrative expenses. [C97,§§2469, 2470; S13,§§2469, 2470; C24, 27, 31, 35, 39,§1513; C46, 50, 54, 58, 62, 66, 71, 73, 75, §91.4]

Destruction of records, §91.14
Time of making biennial report, §17.3

91.5 Other duties—jurisdiction in general. The commissioner shall have jurisdiction and it shall be his duty to supervise the enforcement of:

1. All laws relating to safety appliances and inspection thereof and health conditions in manufacturing and mercantile establishments, workshops, machine shops, other industrial concerns within his jurisdiction and sanitation and shelter for railway employees.

2. All laws of the state relating to child labor.

3. All laws relating to the state free employment bureau* and employment agencies.

4. Such other provisions of law as are now or shall hereafter be within his jurisdiction. [S13,§2477-f; SS15,§§2477-g1, 4999-a5,-a10; C24, 27, 31, 35, 39,§1514; C46, 50, 54, 58, 62, 66, 71, 73, 75,§91.5]

*See §96.12
Employment agencies, §91.18
Vocational education, §§258.2, 259.4, 259.5

91.6 and 91.7 Repealed by 64GA, ch 84,§99.

91.8 Traveling expenses — limitation. The commissioner, inspectors and other employees of the office shall be allowed their necessary traveling expenses while in the discharge of their duties. Such expense in the aggregate, exclusive of salaries, shall not exceed the sum of four thousand dollars per annum. [C97, §2477; S13,§2477; C24, 27, 31, 35, 39,§1517; C46, 50, 54, 58, 62, 66, 71, 73, 75,§91.8]

91.9 Right to enter premises. The labor commissioner and the inspectors shall have the power to enter any factory or mill, workshop, mine, store, railway facility, including locomotive or caboose, business house, public or private work, when the same is open or in operation, for the purpose of gathering facts and statistics such as are contemplated by this chapter, and to examine into the methods of protection from danger to employees, and the sanitary conditions in and around such buildings and places, and make a record thereof. [C97,§2472; S13,§2472; C24, 27, 31, 35, 39,§1518; C46, 50, 54, 58, 62, 66, 71, 73, 75,§91.9]

91.10 Power to secure evidence. The labor commissioner and his deputy shall have the power to issue subpoenas, administer oaths, and take testimony in all matters relating to the duties required of them. No witness shall be compelled by such subpoena to attend at a greater distance than that provided for in section 622.68. Witnesses subpoenaed and testifying before the commissioner or his deputy shall be paid the same fees as witnesses under section 622.69, such payment to be made out of the funds appropriated to the bureau of labor. [C97,§2471; S13,§2471; C24, 27, 31, 35, 39,§1519; C46, 50, 54, 58, 62, 66, 71, 73, 75,§91.10; 66GA, ch 89,§1]

91.11 Prosecutions for violations. If the commissioner or an inspector shall learn of any violation of, or neglect to comply with the law in respect to the employment of children, or in respect to fire escapes, or the safety of employees, or for the preservation of health, such officer may give the county attorney of the county in which such factory or building is situated, written notice of the facts, whereupon that officer shall institute the proper proceedings against the person guilty of such offense or neglect.

If the commissioner or inspector is of the opinion that such violation or neglect is not willful, or is an oversight or of a trivial nature, he may in his discretion fix a time within which the defect or evil may be corrected and notify the owner, operator, superintendent, or person in charge, and if corrected within the time fixed, then the commissioner or inspector shall not cause prosecution to be begun. [C97,§2472; S13,§2472; C24, 27, 31, 35, 39,§1520; C46, 50, 54, 58, 62, 66, 71, 73, 75,§91.11]

91.12 Reports to bureau. It shall be the duty of every owner, operator, or manager of every factory, mill, workshop, mine, store, railway, business house, public or private work, or any other establishment where labor is employed, as herein provided, to make to the bureau, upon blanks furnished by the commissioner, such reports and returns as he may require for the purpose of compiling such labor statistics as are contemplated in this chapter; and the owner, operator, or business manager shall make such reports or returns within sixty days from the receipt of blanks furnished by the commissioner, and shall certify under oath to the correctness of the same. [C97,§2474; S13, §2474; C24, 27, 31, 35, 39,§1521; C46, 50, 54, 58, 62, 66, 71, 73, 75,§91.12]

91.13 Repealed by 62GA, ch 106,§9.

91.14 Reports and records preserved—when destroyed. No report or return made to the bureau in accordance with the provisions of this chapter, and no schedule, record, or document gathered or returned by its officers or employees, shall be destroyed within two years after the collection or receipt thereof. At the expiration of two years all records, schedules, or papers accumulating in the bureau and considered of no value by the commissioner

may be destroyed. [C97,§2476; C24, 27, 31, 35, 39,§1523; C46, 50, 54, 58, 62, 66, 71, 73, 75,§91.14]

91.15 Definition of terms. The expressions "factory", "mill", "workshop", "mine", "store", "railway", "business house", and "public or private work", as used in this chapter, shall be construed to mean any factory, mill, workshop, mine, store, railway, business house, public or private work, where wage earners are employed for a compensation. [C97,§2473; SS15, §2473; C24, 27, 31, 35, 39,§1524; C46, 50, 54, 58, 62, 66, 71, 73, 75,§91.15]

91.16 Violations—penalties. Persons violating any of the provisions of this chapter shall be punished as in this section provided, respectively:

1. Any owner, superintendent, manager, or person in charge of any factory, mill, workshop, store, mine, hotel, restaurant, cafe, railway, business house, public or private work, who shall refuse to allow the commissioner of labor or any inspector or employee of the bureau of labor to enter the same, or who shall hinder or deter him in collecting information which it is his duty to collect shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days.

2. Any person duly subpoenaed to attend a hearing before the commissioner or deputy or a court in any proceeding provided by this chapter who shall willfully neglect or refuse to attend or testify at the time and place named in the subpoena shall be fined not exceeding fifty dollars or imprisoned in the county jail not exceeding thirty days.

3. Any officer or employee of the bureau of labor, or any person making unlawful use of names or information obtained by virtue of his office, shall be fined not exceeding five hundred dollars or imprisoned in the county jail not exceeding one year.

4. Any owner, operator, or manager of a factory, mill, workshop, mine, store, railway, business house, public or private work, who shall neglect or refuse for thirty days after receipt of notice from the commissioner to furnish any reports or returns he may require to enable him to discharge his duties shall be fined not to exceed one hundred dollars or imprisoned in the county jail not to exceed thirty days. [C97,§§2471, 2472, 2474, 2475; S13,§§2471, 2472, 2474; C24, 27, 31, 35, 39,§1525; C46, 50, 54, 58, 62, 66, 71, 73, 75,§91.16]

91.17 Acceptance of federal Act. The state of Iowa hereby accepts the provisions of the Act of Congress approved June 6, 1933, [29 USC, §49 et seq.] entitled, "An Act to provide for the establishment of a national employment system and for co-operation with the states in the promotion of such system, and for other purposes." [C35,§1525-f1; C39,§1525.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§91.17]

91.18 State agency. The state bureau of labor is hereby designated and constituted the agency of the state for the purposes of such Act [29 USC,§49 et seq.] with full power to co-operate with all authorities of the United States having powers or duties under such Act and to do and perform all things necessary to secure to the state the benefits of such Act in the promotion and maintenance of a system of public employment offices. [C35, §1525-f2; C39,§1525.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§91.18]

This section suspended; see §96.12
State employment agencies, §94.1 et seq.

CHAPTER 91A

WAGE PAYMENT COLLECTION

Referred to in §79.1

91A.1 Short title.
91A.2 Definitions.
91A.3 Mode of payment.
91A.4 Employment suspension or termination—how wages are paid.
91A.5 Deductions from wages.
91A.6 Notice and record-keeping requirements.
91A.7 Wage disputes.
91A.8 Damages recoverable by an employee.
91A.9 General powers and duties of the commissioner.
91A.10 Settlement of claims and suits for wages.
91A.11 Wage claims brought under reciprocity.
91A.12 Civil penalties.
91A.13 Assignments prohibited.

91A.1 Short title. This chapter shall be known and may be referred to as the "Iowa Wage Payment Collection Law." [66GA, ch 90,§1]

91A.2 Definitions. As used in this chapter:

1. *"Commissioner"* means the labor commissioner or a designee.

2. *"Employer"* means any person, as defined in chapter 4, who in this state employs for wages a natural person.

3. *"Employee"* means a natural person who is employed in this state for wages by an employer. Employee does not mean a licensed person employed on a contractual basis for

professional services. For the purposes of this chapter, the following persons engaged in agriculture shall not be deemed employees:

a. The spouse of the employer and relatives of either the employer or spouse residing on the premises of the employer, and

b. Any person engaged in agriculture as an owner-operator or tenant-operator and the spouse or relatives of either who reside on the premises while exchanging labor with the operator or for other mutual benefit of any and all such persons.

4. *"Wages"* means compensation owed by an employer for:

a. Labor or services rendered by an employee, whether determined on a time, task, piece, commission, or other basis of calculation.

b. Vacation, holiday, sick leave, and severance payments which are due an employee under an agreement with the employer or under a policy of the employer.

c. Any payments to the employee or to a fund for the benefit of the employee, including but not limited to payments for medical, health, hospital, welfare, pension, or profit-sharing, which are due an employee under an agreement with the employer or under a policy of the employer. The assets of an employee in a fund for the benefit of the employee, whether such assets were originally paid into the fund by an employer or employee, are not wages.

5. *"Days"* means calendar days.

6. *"Liquidated damages"* means the sum of five percent multiplied by the amount of any wages that were not paid or of any authorized expenses that were not reimbursed on a regular payday or on another day pursuant to section 91A.3 multiplied by the total number of days, excluding Sundays, legal holidays, and the first seven days after the regular payday on which wages were not paid or expenses were not reimbursed. However, such sum shall not exceed the amount of the unpaid wages and shall not accumulate when an employer is subject to a petition filed in bankruptcy. [66GA, ch 90,§2]

91A.3 Mode of payment.

1. An employer shall pay all wages due its employees, less any lawful deductions specified in section 91A.5, at least in monthly, semimonthly, or biweekly installments on regular paydays which are at consistent intervals from each other and which are designated in advance by the employer. However, if any of these wages due its employees are determined on a commission basis, the employer may, upon agreement with the employee, pay only a credit against such wages. If such credit is paid, the employer shall, at regular intervals, pay any difference between a credit paid against wages determined on a commission basis and such wages actually earned on a commission basis. These regular intervals shall not be separated by more than twelve months. A regular payday shall not be more than twelve days, excluding Sundays and legal holidays, after the end of the period in which the wages were earned. An employer and employee may, upon written agreement which shall be maintained as a record, vary the provisions of this subsection.

2. The wages paid under subsection 1 shall be paid in United States currency or by written instrument issued by the employer and negotiable on demand at full face value for such currency, unless the employee has agreed in writing to receive a part of or all wages in kind or in other form.

3. The wages paid under subsection 1 shall be sent to the employee by mail or be paid at the employee's normal place of employment during normal employment hours or at a place and hour mutually agreed upon by the employer and employee.

4. The wages paid under subsection 1 may be delivered to a designee of the employee who is so designated in writing or may be sent to the employee by any reasonable means requested by the employee in writing. A designee under this subsection shall not also be an assignee or buyer of wages under section 539.4 nor a garnisher of the employee under chapter 642, unless the designee complies with the provisions of section 539.4 and chapter 642.

5. If an employee is absent from the normal place of employment on the regular payday, the employer shall, upon demand of the employee made within the first seven days following the regular payday, pay the wages, less any lawful deductions specified in section 91A.5, which were due on that regular payday. However, if demand is not made within this seven-day period, the employer shall, upon demand of the employee, pay the wages which were due on a regular payday within the first seven days following the day on which demand is made.

6. Expenses by the employee which are authorized by the employer and incurred by the employee shall either be reimbursed in advance of expenditure or be reimbursed not later than thirty days after the employee's submission of an expense claim. If the employer refuses to pay all or part of each claim, the employer shall submit to the employee a written justification of such refusal within the same time period in which expense claims are paid under this subsection. [66GA, ch 90,§3]

Referred to in §§91A.2, 91A.4, 91A.7, 91A.8

91A.4 Employment suspension or termination—how wages are paid. When the employment of an employee is suspended or terminated, the employer shall pay all wages earned, less any lawful deductions specified in section 91A.5 by the employee up to the time of the suspension or termination not later than the next regular payday as provided in section 91A.3. However, if any of these wages are the difference between a credit paid against wages determined on a

commission basis and such wages actually earned on a commission basis, the employer shall pay such difference not more than thirty days after the date of suspension or termination. If vacations are due an employee under an agreement with the employer or a policy of the employer establishing prorata vacation accrued, the increment shall be in proportion to the fraction of the year which the employee was actually employed. [66GA, ch 90,§4]

91A.5 Deductions from wages.

1. An employer shall not withhold or divert any portion of an employee's wages unless:

a. The employer is required or permitted to do so by state or federal law or by order of a court of competent jurisdiction; or

b. The employer has written authorization from the employee to so deduct for any lawful purpose accruing to the benefit of the employee.

2. The following shall not be deducted from an employee's wages:

a. Cash shortage in a common money till, cash box, or register operated by two or more employees or by an employee and an employer. However, the employer and a full-time employee who is the manager of an establishment may agree in writing signed by both parties that the employee will be responsible for a cash shortage that occurs within forty-five days prior to the most recent regular payday. Not more than one such agreement shall be in effect per establishment.

b. Losses due to acceptance by an employee on behalf of the employer of checks which are subsequently dishonored if the employee has been given the discretion to accept or reject such checks and the employee does not abuse the discretion given.

c. Loses due to breakage, lost or stolen property, unless such tools and equipment are specifically assigned to and their receipt acknowledged in writing by the employee from whom the deduction is made, damage to property, default of customer credit, or nonpayment for goods or services rendered so long as such losses are not attributable to the employee's willful or intentional disregard of the employer's interests.

d. Gratuities received by an employee from customers of the employer. [66GA, ch 90,§5]

Referred to in §§91A.3, 91A.4, 91A.7

91A.6 Notice and record-keeping requirements.

1. An employer shall after being notified by the commissioner pursuant to subsection 2:

a. Notify its employees in writing at the time of hiring what wages and regular paydays are designated by the employer.

b. Notify, at least one pay period prior to the initiation of any changes, its employees of any changes in the arrangements specified in subsection 1 that reduce wages or alter the regular paydays. The notice shall either be in writing or posted at a place where employee notices are routinely posted.

c. Make available to its employees upon written request, a written statement enumerating employment agreements and policies with regard to vacation pay, sick leave, reimbursement for expenses, retirement benefits, severance pay, or other comparable matters with respect to wages. Notice of such availability shall be given to each employee in writing or by a notice posted at a place where employee notices are routinely posted.

d. Establish, maintain, and preserve for three calendar years the payroll records showing the hours worked, wages earned, and deductions made for each employee and any employment agreements entered into between an employer and employee.

2. The commissioner shall notify an employer to comply with subsection 1 if the employer has paid a claim for unpaid wages or nonreimbursed authorized expenses and liquidated damages under section 91A.10 or if the employer has been assessed a civil money penalty under section 91A.12. However, a court may, when rendering a judgment for wages or nonreimbursed authorized expenses and liquidated damages or upholding a civil money penalty assessment, order that an employer shall not be required to comply with the provisions of subsection 1 or that an employer shall be required to comply with the provisions of subsection 1 for a particular period of time.

3. Within ten working days of a request by an employee, an employer shall furnish to the employee a written, itemized statement listing the earnings and deductions made from the wages for each pay period in which the deductions were made together with an explanation of how the wages and deductions were computed. An employer need honor only one such request in any calendar year unless the rate of earnings, hours or deductions are changed during the calendar year. Each change shall entitle an employee to a further request for an itemized statement. [66GA, ch 90,§6]

91A.7 Wage disputes. If there is a dispute between an employer and employee concerning the amount of wages or expense reimbursement due, the employer shall, without condition and pursuant to section 91A.3, pay all wages conceded to be due and reimburse all expenses conceded to be due, less any lawful deductions specified in section 91A.5. Payment of wages or reimbursement of expenses under this section shall not relieve the employer of any liability for the balance of wages or expenses claimed by the employee. [66GA, ch 90,§7]

91A.8 Damages recoverable by an employee. When it has been shown that an employer has intentionally failed to pay an employee wages or reimburse expenses pursuant to section 91A.3, whether as the result of a wage dispute or otherwise, the employer shall be liable to the employee for any wages or expenses that are so intentionally failed to be

paid or reimbursed, plus liquidated damages, court costs and any attorney's fees incurred in recovering the unpaid wages and determined to have been usual and necessary. In other instances the employer shall be liable only for unpaid wages or expenses, court costs and usual and necessary attorney's fees incurred in recovering the unpaid wages or expenses. [66GA, ch 90,§8]

Referred to in §91A.10

91A.9 General powers and duties of the commissioner.

1. The commissioner shall administer and enforce the provisions of this chapter. The commissioner may hold hearings and investigate charges of violations of this chapter.

2. The commissioner may, consistent with due process of law, enter any place of employment to inspect records concerning wages and payrolls, to question the employer and employees, and to investigate such facts, conditions or matters as are deemed appropriate in determining whether any person has violated the provisions of this chapter. However, such entry by the commissioner shall only be in response to a written complaint.

3. The commissioner may employ such qualified personnel as are necessary for the enforcement of this chapter. Such personnel shall be employed pursuant to chapter 19A.

4. The commissioner shall promulgate, pursuant to chapter 17A, any rules necessary to carry out the provisions of this chapter. [66GA, ch 90,§9]

91A.10 Settlement of claims and suits for wages.

1. Upon the written complaint of the employee involved, the commissioner may determine whether wages have not been paid and may constitute an enforceable claim. If for any reason the commissioner decides not to make such determination, the commissioner shall so notify the complaining employee within fourteen days of receipt of the complaint. The commissioner shall otherwise notify the employee of such determination within a reasonable time and if it is determined that there is an enforceable claim, the commissioner shall, with the consent of the complaining employee, take an assignment in trust for the wages and for any claim for liquidated damages without being bound by any of the technical rules respecting the validity of the assignment. However, the commissioner shall not accept any complaint for unpaid wages and liquidated damages after one year from the date the wages became due and payable.

2. The commissioner with the assistance of the office of the attorney general if the commissioner requests such assistance, shall, unless a settlement is reached under this subsection, commence a civil action in any court of competent jurisdiction to recover for the benefit of any employee any wage and liquidated damages' claims that have been assigned to the commissioner for recovery. With the consent of the assigning employee, the commissioner may also settle a claim on behalf of the assigning employee. Proceedings under this subsection and subsection 1 that precede commencement of a civil action shall be conducted informally without any party having a right to be heard before the commissioner. The commissioner may join various assignments in one claim for the purpose of settling or litigating their claims.

3. The provisions of subsection 1 and 2 shall not be construed to prevent an employee from settling or bringing an action for damages under section 91A.8 if the employee has not assigned the claim under subsection 1.

4. Any recovery of attorney's fees, in the case of actions brought under this section by the commissioner, shall be remitted by the commissioner to the treasurer of state for deposit in the general fund of the state. Also, the commissioner shall not be required to pay any filing fee or other court costs.

5. An employer shall not discharge or in any other manner discriminate against any employee because such employee has filed a complaint, assigned a claim, or brought an action under this section or has co-operated in bringing any action against an employer. [66GA, ch 90,§10]

Referred to in §91A.6

91A.11 Wage claims brought under reciprocity.

1. The commissioner may enter into reciprocal agreements with the labor department or corresponding agency of any other state or its representatives for the collection in such other states of claims or judgments for wages and other demands based upon claims assigned to the commissioner.

2. The commissioner may, to the extent provided for by any reciprocal agreement entered into by law or with an agency of another state as provided in this section, maintain actions in the courts of such other state to the extent permitted by the laws of that state for the collection of claims for wages, judgments and other demands and may assign such claims, judgments and demands to the labor department or agency of such other state for collection to the extent that such an assignment may be permitted or provided for by the laws of such state or by reciprocal agreement.

3. The commissioner may, upon the written consent of the labor department or other corresponding agency of any other state or its representatives, maintain actions in the courts of this state upon assigned claims for wages, judgments and demands arising in such other state in the same manner and to the same extent that such actions by the commissioner are authorized when arising in this state. However, such actions may be maintained only in cases in which such other state by law or reciprocal agreement extends a like

comity to cases arising in this state. [66GA, ch 90,§11]

91A.12 Civil penalties.

1. Any employer who violates the provisions of this chapter or the rules promulgated under it shall be subject to a civil money penalty of not more than one hundred dollars for each violation. The commissioner may recover such civil money penalty according to the provisions of subsections 2 to 5. Any civil money penalty recovered shall be deposited in the general fund of the state.

2. The commissioner may propose that an employer be assessed a civil money penalty by serving the employer with notice of such proposal in the same manner as an original notice is served under the rules of civil procedure. Upon service of such notice, the proposed assessment shall be treated as a contested case under chapter 17A. However, an employer must request a hearing within thirty days of being served.

3. If an employer does not request a hearing pursuant to subsection 2 or if the commissioner determines, after an appropriate hearing, that an employer is in violation of this chapter, the commissioner shall assess a civil money penalty which is consistent with the provisions of subsection 1 and which is rendered with due consideration for the penalty amount in terms of the size of the employer's business, the gravity of the violation, the good faith of the employer, and the history of previous violations.

4. An employer may seek judicial review of any assessment rendered under subsection 3 by instituting proceedings for judicial review pursuant to chapter 17A. However, such proceedings must be instituted in the district court of the county in which the violation or one of the violations occurred and within thirty days of the day on which the employer was notified that an assessment has been rendered. Also, an employer may be required, at the discretion of the district court and upon instituting such proceedings, to deposit the amount assessed with the clerk of the district court. Any moneys so deposited shall either be returned to the employer or be forwarded to the commissioner for deposit in the general fund of the state, depending on the outcome of the judicial review, including any appeal to the supreme court.

5. After the time for seeking judicial review has expired or after all judicial review has been exhausted and the commissioner's assessment has been upheld, the commissioner shall request the attorney general to recover the assessed penalties in a civil action. [66GA, ch 90,§12]

Referred to in §91A.6

91A.13 Assignments prohibited.

1. This chapter shall not authorize the commissioner or any other person to take any assignment of wages or commence any action that is based on an act committed prior to July 1, 1975. [66GA, ch 90,§13]

CHAPTER 92

CHILD LABOR

92.1 Street occupations—migratory labor.
92.2 Over ten and under sixteen years of age.
92.3 Under fourteen—permitted occupations.
92.4 Under sixteen—permitted occupations.
92.5 Fourteen and fifteen—permitted occupations.
92.6 Fourteen and fifteen—occupations not permitted.
92.7 Under sixteen—hours permitted.
92.8 Under eighteen—prohibited occupations.
92.9 School training permitted.
92.10 Permit on file.
92.11 Issuance of work permits.
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92.13 Optional refusal of permit.
92.14 Contents of work permit.
92.15 Duplicate to labor commissioner.
92.16 Forms for permits furnished.
92.17 Exceptions.
92.18 Migratory labor—defined.
92.19 Violations by parent or guardian.
92.20 Penalty.
92.21 Committee on child labor.
92.22 Labor commissioner to enforce.
92.23 Group insurance.

92.1 Street occupations — migratory labor.

1. No person under ten years of age shall be employed or permitted to work with or without compensation at any time within this state in street occupations of peddling, bootblacking, the distribution or sale of newspapers, magazines, periodicals or circulars, nor in any other occupations in any street or public place. The labor commissioner shall, when ordered by a judge of the juvenile court, issue a work permit as provided in this chapter to a person under ten years of age.

2. No person under twelve years of age shall be employed or permitted to work with or without compensation at any time within this state in connection with migratory labor, except that the labor commissioner may upon sufficient showing by a judge of the juvenile court, issue a work permit as provided in this chapter to a person under twelve years of age.

[SS15,§2477-a1; C24, 27, 31, 35, 39,§1537; C46, 50, 54, 58, 62, 66,§92.12; C71, 73, 75,§92.1]
Referred to in §§92.2, 92.3

92.2 Over ten and under sixteen years of age. No person between ten and sixteen years of age shall be employed or permitted to work with or without compensation in connection with any of the occupations mentioned in section 92.1 unless the worker complies with all the requirements for the issuance of work permits. Upon compliance with the requirements of this chapter, such person shall be entitled to receive from the officer authorized to issue work permits, a work permit which shall authorize such person to engage in the occupations set forth in section 92.1, at such time or times specified in the work permit, between five o'clock a.m. and seven-thirty o'clock p.m., except nine o'clock p.m. June 1 through Labor Day; provided that nothing in this chapter shall be construed to prohibit or restrict such persons being employed or permitted to work without such work permit in or in connection with the street occupations in cities of less than ten thousand population and in areas outside the corporate limits of any city; in any city of ten thousand or more inhabitants such persons shall comply with the requirements for the issuance of work permits as described in this chapter except the filing of an employer's agreement, but the school record so required shall certify only that the person is regularly attending school and that the work in which he wishes to engage will not interfere with his progress at school. Upon compliance with these requirements such person shall be entitled to receive from the officer authorized to issue work permits a street-occupation permit or badge which shall authorize such person to engage in the street occupations at such time or times specified in the work permit between four o'clock a.m. and seven-thirty o'clock p.m. each day the public schools of the city or district where such person resides are not in session, except that during the summer school vacation, such person may engage in such occupation until the hour of eight-thirty o'clock p.m.

All such permits or badges issued in the same calendar year shall be of the same color, which color shall be changed each year, and shall become void upon the first of January following their issuance. The requirements for keeping a file of permits and list of names provided for in section 92.10 shall not apply to work in the street occupations as defined in subsection 1 of section 92.1. [SS15,§2477-a1,-c,-d; C24, 27, 31, 35, 39,§ 15 7, 1530, 1537, 1538; C46, 50, 54, 58, 62, 66,§§92.2, 92.5, 92.12, 92.13; C71, 73, 75,§92.2]

92.3 Under fourteen — permitted occupations. No person under fourteen years of age shall be employed or permitted to work with or without compensation in any occupation, except in the street trade occupations or migratory labor occupations specified in section 92.1. Any migratory laborer twelve to fourteen years of age may not work prior to or during the regular school hours of any day of any private or public school which teaches general education subjects and which is available to such child. [SS15,§2477-a; C24, 27, 31, 35, 39, §1526; C46, 50, 54, 58, 62, 66,§92.1; C71, 73, 75,§92.3]
Referred to in §92.7

92.4 Under sixteen—permitted occupations. No person under sixteen years of age shall be employed or permitted to work with or without compensation in any occupation during regular school hours, except:

1. Those persons legally out of school, and such status is verified by the submission of written proof to the labor commissioner.

2. Those persons working in a supervised school-work program.

3. Those persons between the ages of fourteen and sixteen enrolled in school on a part-time basis and who are required to work as a part of their school training.

4. Fourteen- and fifteen-year old migrant laborers during any hours when summer school is in session. [C71, 73, 75,§92.4]

92.5 Fourteen and fifteen—permitted occupations. Persons fourteen and fifteen years of age may be employed or permitted to work in the following occupations:

1. Retail, food service, and gasoline service establishments.

2. Office and clerical work, including operation of office machines.

3. Cashiering, selling, modeling, art work, work in advertising departments, window trimming and comparative shopping.

4. Price marking and tagging by hand or by machine, assembling orders, packing and shelving.

5. Bagging and carrying out customers' orders.

6. Errand and delivery work by foot, bicycle, and public transportation.

7. Clean-up work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds.

8. Kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, including but not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders.

9. Work in connection with motor vehicles and trucks if confined to the following:

a. Dispensing gasoline and oil.

b. Courtesy service.

c. Car cleaning, washing and polishing.

Nothing in this subsection shall be construed to include work involving the use of pits, racks or lifting apparatus or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.

10. Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing and stocking goods when performed in areas physically separate from areas where meat is prepared, for sale and outside freezers or meat coolers.

11. Such other work as may be approved by the committee on child labor established by section 92.21. [SS15,§2477-a; C24, 27, 31, 35, 39, §1529; C46, 50, 54, 58, 62, 66,§92.4; C71, 73, 75, §92.5]

Referred to in §92.6

92.6 Fourteen and fifteen—occupations not permitted. Persons fourteen and fifteen years of age may not be employed in:

1. Any manufacturing occupation.

2. Any mining occupation.

3. Processing occupations, except in a retail, food service, or gasoline service establishment in those specific occupations expressly permitted under the provisions of section 92.5.

4. Occupations requiring the performance of any duties in workrooms or work places where goods are manufactured, mined, or otherwise processed, except to the extent expressly permitted in retail, food service, or gasoline service establishments under the provisions of section 92.5.

5. Public messenger service.

6. Operation or tending of hoisting apparatus or of any power-driven machinery, other than office machines and machines in retail, food service, and gasoline service establishments which are specified in section 92.5 as machines which such minors may operate in such establishments.

7. Any occupations found and declared to be hazardous by the committee on child labor.

8. Occupations in connection with the following, except office or sales work in connection with these occupations, not performed on transportation media or at the actual construction site:

a. Transportation of persons or property by rail, highway, air, on water, pipe line, or other means.

b. Warehousing and storage.

c. Communications and public utilities.

d. Construction, including repair.

9. Any of the following occupations in a retail, food service, or gasoline service establishment:

a. Work performed in or about boiler or engine rooms.

b. Work in connection with maintenance or repair of the establishment, machines or equipment.

c. Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds or their substitutes.

d. Cooking, except at soda fountains, lunch counters, snack bars, or cafeteria serving counters, and baking.

e. Occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers and cutters, and bakery-type mixers.

f. Work in freezers and meat coolers and all work in preparation of meats for sale, except wrapping, sealing, labeling, weighing, pricing and stocking when performed in other areas.

g. Loading and unloading goods to and from trucks, railroad cars or conveyors.

h. All occupations in warehouses except office and clerical work.

Nothing in this section shall be construed as prohibiting office, errand or packaging work when done away from moving machinery. [SS15,§2477-a,-b,-c; C24, 27, 31, 35, 39,§§1526, 1529, 1536, 1539; C46, 50, 54, 58, 62, 66,§§92.1, 92.4, 92.11, 92.14; C71, 73, 75,§92.6]

92.7 Under sixteen—hours permitted. No person under sixteen years of age shall be employed with or without compensation except as provided in section 92.3 before the hour of seven o'clock a.m. or after seven o'clock p.m., except during the period from June 1 through Labor Day when the hours may be extended to nine o'clock p.m. If such person is employed for a period of five hours or more each day, an intermission of not less than thirty minutes shall be given. No such person shall be employed for more than eight hours in one day, exclusive of intermission, nor shall such person be employed for more than forty hours in one week. The hours of work of persons under sixteen years of age employed outside school hours shall not exceed four in one day or twenty-eight in one week while school is in session. [SS15,§2477-a1,-c; C24, 27, 31, 35, 39,§§1527, 1528, 1538; C46, 50, 54, 58, 62, 66,§§92.2, 92.3, 92.13; C71, 73, 75,§92.7]

92.8 Under eighteen — prohibited occupations. No person under eighteen years of age shall be employed or permitted to work with or without compensation at any of the following occupations or business establishments:

1. Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components.

2. Occupations of motor vehicle driver and helper.

3. Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill.

4. Occupations involved in the operation of power-driven woodworking machines.

5. Occupations involving exposure to radioactive substances and to ionizing radiations.

6. Occupations involved in the operation of elevators and other power-driven hoisting apparatus.

7. Occupations involved in the operation of power-driven metal forming, punching, and shearing machines.

8. Occupations in connection with mining.

9. Occupations in or about slaughtering and meat packing establishments and rendering plants.

10. Occupations involved in the operation of certain power-driven bakery machines.

11. Occupations involved in the operation of certain power-driven paper products machines.

12. Occupations involved in the manufacture of brick, tile and related products.

13. Occupations involved in the operation of circular saws, band saws and guillotine shears.

14. Occupations involved in wrecking, demolition and shipbreaking operations.

15. Occupations involved in roofing operations.

16. Excavation occupations.

17. In or about foundries; provided that office, shipping, and assembly area employment shall not be prohibited by this chapter.

18. Occupations involving the operation of laundry, dry cleaning, or dyeing machinery.

19. Occupations involving exposure to lead fumes or its compounds, or to dangerous or poisonous dyes or chemicals.

20. Occupations involving the transmission, distribution, or delivery of goods or messages between the hours of ten o'clock p.m. and five o'clock a.m.

21. Occupations deemed by the committee on child labor to be hazardous to life or limb. [SS15,§2744-a,-b,-c; C24, 27, 31, 35, 39,§§**1526, 1529, 1536, 1539**; C46, 50, 54, 58, 62, 66,§§92.1, 92.4, 92.11, 92.14; C71, 73, 75,§92.8]

Referred to in §92.9

92.9 School training permitted. The provisions of sections 92.8 and 92.10 shall not apply to pupils working under an instructor in a manual training department in the public schools of the state or under an instructor in a school shop, or industrial plant, or in a course of vocational education approved by the board for vocational education, or to apprentices provided they are employed under all of the following conditions:

1. The apprentice is employed in a craft recognized as an apprenticeable trade.

2. The work of the apprentice in the occupations declared particularly hazardous is incidental to his training.

3. Such work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training.

4. The apprentice is registered by the bureau of apprenticeship and training of the United States department of labor as employed in accordance with the standards established by that department. [C71, 73, 75,§92.9]

92.10 Permit on file. No person under sixteen years of age shall be employed or permitted to work with or without compensation unless the person, firm, or corporation employing such persons receives and keeps on file accessible to any officer charged with the enforcement of this chapter, a work permit issued as hereinafter provided, and keeps a complete list of the names and ages of all such persons under sixteen years of age employed.

Certificates of age shall be issued for persons sixteen and seventeen years of age and for all other persons eighteen and over upon request of the person's prospective employer. [SS15,§2477-d; C24, 27, 31, 35, 39,§**1530**; C46, 50, 54, 58, 62, 66,§92.5; C71, 73, 75,§92.10]

Referred to in §§92.2, 92.9

92.11 Issuance of work permits. A work permit, except for migrant laborers, shall be issued only by the superintendent of schools or Iowa state employment service division, or by a person authorized by said superintendent in writing, or, where there is no superintendent of schools, by a person authorized in writing by the local school board where such child resides, upon the application of the parent, guardian, or custodian of the child desiring such permit. The person authorized to issue work permits shall not issue any such permit unless he has received, examined, approved, and filed:

1. A written agreement from the person, firm, or corporation into whose service the child under sixteen years of age is about to enter, promising to give such child employment, describing the industry and the work to be performed.

2. Evidence of age showing that the child is fourteen years old, or more, which shall consist of one of the following proofs required in the order herein designated:

a. A certified copy of the birth certificate filed according to law with a registrar of vital statistics or other officer charged with the duty of recording births.

b. A passport or a certified copy of a certificate of baptism showing the date and place of birth and the place of baptism of such child.

c. A school census record.

d. In cases where none of the above-named proofs are obtainable, a certificate, signed by the local medical inspector of schools, or if there be no such inspector, then by a physician appointed by the local board of education, certifying that in his opinion the applicant for the work permit is fourteen years of age or more. [SS15,§2477-d; C24, 27, 31, 35, 39,§**1531**; C46, 50, 54, 58, 62, 66,§92.6; C71, 73, 75,§92.11]

92.12 Migrant labor permits. Every person, firm, or corporation employing migrant laborers shall obtain and keep on file, accessible to any officer charged with the enforcement of this chapter, a special work permit, prior to the employment of such migratory laborer. Special work permits for migrant workers shall be issued by the superintendent of schools, or his designee, nearest the temporary living quarters of the family, or by the county di-

rector of social welfare or by the Iowa state employment service division, upon application of the parent or head of the migrant family. The person authorized to issue such permits for migratory workers shall not issue such permit until he has received, examined, and approved one of the following as evidence of age: A birth certificate, passport, baptism certificate, or school record. Applicants under fourteen years of age must obtain a certificate from a registered nurse or physician stating that the applicant for the work permit has reached the normal development of a child of his age and is in sufficiently sound health and physically able to perform the work for which the permit is sought. One copy of the permit issued shall be given to the employer to be kept on file for the length of employment and upon termination of employment shall be returned to the labor commissioner. One copy of the permit shall be kept by the issuing officer, and one copy forwarded to the commissioner, along with the certificate of fitness of the persons under fourteen years of age. The blank forms for the work permit for migratory workers shall be formulated by the commissioner and furnished by him to the issuing officer. [SS15,§2477-d; C24, 27, 31, 35, 39,§§**1530, 1531**; C46, 50, 54, 58, 62, 66,§§92.5, 92.6; C71, 73, 75,§92.12]

92.13 Optional refusal of permit. The labor commissioner or the issuing officer may refuse to grant a permit if, in his judgment, the best interests of the minor would be served by such refusal and he shall keep a record of such refusals, and the reasons therefor. [C71, 73, 75, §92.13]

92.14 Contents of work permit. Every work permit shall state the date of issuance, name, sex, the date and place of birth, the residence of the child in whose name it is issued, the color of hair and eyes, the height and weight, the proof of age, the school grade completed, the name and location of the establishment where the child is to be employed, the industry, specified occupation, a brief description of duties for which the permit is issued, that the papers required for its issuance have been duly examined, approved, and filed, and that the person named therein has personally appeared before the officer issuing the permit and has been examined. [SS15,§2477-d; C24, 27, 31, 35, 39,§**1532**; C46, 50, 54, 58, 62, 66,§92.7; C71, 73, 75, §92.14]

92.15 Duplicate to labor commissioner. A duplicate of every such work permit issued shall be filled out and forwarded to the office of the labor commissioner within one week after it is issued. [SS15,§2477-d; C24, 27, 31, 35, 39,§**1533**; C46, 50, 54, 58, 62, 66,§92.8; C71, 73, 75, §92.15]

92.16 Forms for permits furnished. The proper forms for the work permit, the employer's agreement, the school record, certificate of age, and the physician's certificate shall be formulated by the committee on child labor and shall be furnished by the labor commissioner to the issuing authorities. [SS15,§2477-d; C24, 27, 31, 35, 39,§**1534**; C46, 50, 54, 58, 62, 66,§92.9; C71, 73, 75,§92.16]

92.17 Exceptions. Nothing in this chapter shall be construed to prohibit:

1. Any part-time, occasional, or volunteer work for nonprofit organizations generally recognized as educational, charitable, religious, or community service in nature.

2. A child from working in or around any home before or after school hours or during vacation periods, provided such work is not related to or part of the business, trade, or profession of the employer.

3. Work in the production of seed, limited to removal of off-type plants, corn tassels and hand-pollinating during the months of June, July and August by persons fourteen years of age or over, and part-time work in agriculture, not including migratory labor.

4. A child from working in any occupation or business operated by his parents. [SS15, §2477-a; C24, 27, 31, 35, 39,§**1526**; C46, 50, 54, 58, 62, 66,§92.1; C71, 73, 75,§92.17]

92.18 Migratory labor—defined. As used in this chapter, the term "migratory labor" shall include any person who customarily and repeatedly travels from state to state for the purpose of obtaining seasonable employment. [C71, 73, 75,§92.18]

92.19 Violations by parent or guardian. No parent, guardian, or other person, having under his control any person under eighteen years of age, shall willfully permit said person to work or be employed in violation of the provisions of this chapter.

No person shall willfully make, certify to, or cause to be made or certified any statement, certificate, or other paper for the purpose of procuring the employment of any person in violation of this chapter.

No person shall make, file, execute, or deliver any statement, certificate, or other paper containing false statements for the purpose of procuring employment of any person in violation of this chapter.

No person, firm, or corporation, or any agent thereof shall willfully conceal or permit a person to be employed in violation of this chapter.

No person, firm, or corporation shall refuse to allow any authorized persons to inspect the place of business or provide information necessary to the enforcement of this chapter. [S13,§2477-e; SS15,§2477-a1; C24, 27, 31, 35, 39, §**1540**; C46, 50, 54, 58, 62, 66,§92.15; C71, 73, 75, §92.19]

92.20 Penalty. The parent, guardian, or person in charge of any migratory worker or of any child who shall engage in any street occupation in violation of any of the provisions of this chapter shall be punished by a fine of

not less than twenty dollars nor more than fifty dollars.

Any person who furnishes or sells to any minor child any article of any description when he knows or should have known that said minor intends to sell in violation of the provisions of this chapter, shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars.

Any other violation of this chapter for which a penalty is not specifically provided, shall be punishable by a fine of not less than twenty dollars nor more than one hundred dollars. Every day during which any violation of this chapter continues shall constitute a separate and distinct offense, and the employment of any person in violation of this chapter shall, with respect to each person so employed, constitute a separate and distinct offense. [S13, §2477-e; SS15,§2477-a1; C24, 27, 31, 35, 39,§**1540**; C46, 50, 54, 58, 62, 66,§92.15; C71, 73, 75,§92.20]

92.21 Committee on child labor. There is hereby established a committee on child labor. The committee shall consist of the labor commissioner who shall act as chairperson, the superintendent of public instruction or a designee, director of the Iowa department of job service or a designee, and two persons representing the public and interested in child labor, to be appointed by the governor, without regard to political affiliation. The public representatives shall serve for a term of four years from July 1, 1970, and until their successors are appointed and qualify. The governor shall fill any public member's vacancy for any unexpired term. Public members shall receive a per diem of thirty dollars and actual and necessary expenses incurred in the performance of their official duties.

The committee shall adopt rules of procedure for its meetings and activities.

It shall be the duty of the committee to hold public hearings, to formulate rules more specifically defining the occupations and equipment permitted or prohibited herein, to determine occupations for which work permits shall be required, and to issue general and special orders prohibiting or allowing the employment of persons under eighteen years of age in any place of employment hazardous to the health, safety, and welfare of such persons as defined in this chapter. [C71, 73, 75, §92.21; 66GA, ch 1068,§2]

Referred to in §92.5(11)

92.22 Labor commissioner to enforce. It shall be the duty of the labor commissioner, his deputies, inspectors, and assistants, to enforce the provisions of this chapter. It shall also be the duty of all mayors and police officers, city marshals, sheriffs and their deputies, school superintendents, school truant and attendance officers, within their several jurisdictions, to co-operate in the enforcement of such provisions and furnish the commissioner, his deputies and assistants all information coming to their knowledge regarding any violations of such provisions. All such officers and any person authorized in writing by any court of record shall have authority to enter for purpose of investigation any of the establishments and places mentioned in this chapter and to freely question any person therein as to any violations of such provisions.

It shall be the duty of county attorneys to investigate all complaints made to them of violations of any such provisions, and to prosecute all such cases of violation within their respective counties. [S13,§2477-f; SS15,§2477-a1, -d; C24, 27, 31, 35, 39,§§**1535, 1541**; C46, 50, 54, 58, 62, 66,§§92.10, 92.16; C71, 73, 75,§92.22]

92.23 Group insurance. Anyone under the age of eighteen and subject to this chapter employed in the street trades who sells or delivers the product or service of another and who is designated in such capacity as an independent contractor shall be provided participation, if he desires it at group rate cost, in group insurance for medical, hospital, nursing and doctor expenses incurred as a result of injuries sustained arising out of and in the course of selling or delivering such product or service by the person, firm or corporation whose product or service is so delivered. [C71, 73, 75,§92.23]

CHAPTER 93

ENERGY POLICY COUNCIL

This chapter is repealed effective June 30, 1979, see 65GA, ch 1113,§22, 66GA, ch 1088,§5

93.1 Definitions.
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93.14 Energy research and development fund.
93.15 Additional funds.
93.16 Review.

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

1. "Council" means the energy policy council established in section 93.2.

2. "Energy" or "energy sources" means gasoline, fuel oil, natural gas, propane, coal, special fuels and electricity.

3. "Supplier" means any person engaged in the business of selling, importing, storing or generating energy sources in Iowa.

4. "Director" means the director of energy policy. [C75,§93.1]

93.2 Establishment. There is established an energy policy council which shall consist of seventeen members. Two members shall be appointed by the president of the senate from the membership of the senate with no more than one member being appointed from the same political party. Two members shall be appointed by the speaker of the house of representatives from the members of the house with no more than one member being appointed from the same political party. The governor shall appoint seven members who shall be reasonably knowledgeable in the field of energy. Not more than four of the governor's appointees shall be of the same political party. They shall be subject to confirmation by two-thirds of the membership of the senate. The state geologist, the secretary of agriculture, the chairman of the Iowa state commerce commission, the administrative officer of the state soil conservation committee, the director of transportation, the executive director of environmental quality and legislative members shall serve as ex officio nonvoting members of the council. If a nonlegislative ex officio nonvoting member is unable to attend a meeting of the council, the member shall designate a replacement who shall be authorized to represent the member at the meeting. [C75,§93.2; 66GA, ch 91,§1, ch 1088, §1]

Referred to in §93.1

93.3 Personnel. The governor shall appoint a director of energy policy who shall carry out duties assigned to him by the council or duties assigned to him by the governor pursuant to a proclamation of emergency issued under the provisions of section 93.8. The appointment of the director shall be subject to confirmation by two-thirds of the members of the senate. The director shall be paid an annual salary in an amount not to exceed twenty-two thousand dollars. Other personnel utilized by the council shall be employed through a program of interchange of personnel between the council and other governmental agencies pursuant to chapter 28D. [C75,§93.3]

93.4 Meetings. The council shall organize within ten days following June 13, 1974, by electing one of its members to serve as chairman and one to serve as vice chairman. The council shall establish procedures and requirements with respect to quorum, place and conduct of meetings and may provide for the establishment of an executive committee selected from among the voting members of the council to supervise the administrative duties assigned to the director. [C75,§93.4]

93.5 Compensation and expenses. Council members who are not employees of the state shall receive a per diem at the rate of forty dollars for each day devoted to council business and all nonlegislative members shall be reimbursed for actual expenses incurred in carrying out their duties as members of the council. Legislative members shall receive payment pursuant to section 2.10 and section 2.12. [C75,§93.5; 66GA, ch 1052,§8]

93.6 Vacancies. Vacancies in the membership of the council shall be filled in the manner of original appointment. A vacancy shall occur when a legislative member ceases to be a member of the general assembly. [C75, §93.6]

93.7 Duties of the council. The council shall:

1. Annually recommend a state policy for the development, utilization, and conservation of all energy sources in the state and submit a report of such policy recommendations to the governor and the general assembly by January 15 of each year. The report shall evaluate the future energy needs of Iowa. The report shall include, but is not limited to:

a. The historical use and distribution of energy in Iowa,

b. The growth rate of energy consumption in Iowa,

c. A projection of Iowa's energy needs at least ten years in the future,

d. The impact of meeting these needs on the economy of the state,

e. The impact of meeting these needs on the environment of the state,

f. An evaluation of alternative sources and uses of energy,

g. An evaluation of the feasibility of coal gasification for the purpose of producing combustible gas,

h. A comprehensive state energy conservation plan for implementing the energy conservation policy recommended by the council, and

i. Legislation necessary to implement the state policy for the development and utilization of energy sources and the comprehensive conservation plan. The council shall serve as policy advisor to the governor on all energy matters.

2. The council shall exchange information with other states on energy and especially on the allocation of fuel and shall request all information necessary to determine the reasonableness of any reduction of Iowa's fuel allocation.

3. Establish a central depository within the state for energy data. The council may require a supplier to provide information pertaining to the supply, storage, distribution and

sale of energy sources in this state. The information shall be furnished on a periodic basis, shall be of a nature which directly relates to the supply, storage, distribution and sale of energy sources, and shall not include any records, documents, books or other data which relate to the financial position of the supplier. Provided the council, prior to requiring any supplier to furnish it with such information, shall make every reasonable effort to determine if the same is available from any other governmental source. If it finds such information is available, the council shall not require submission of the same from a supplier. Notwithstanding the provisions of chapter 68A, information and reports obtained under this section shall be confidential except when used for statistical purposes without identifying a specific supplier and when release of the information will not give an advantage to competitors and serves a public purpose.

The council may subpoena witnesses, administer oaths and require the production of records, books, and documents for examination in order to obtain information required to be submitted under this section. In case of failure or refusal on the part of any person to comply with a subpoena issued by the council, or in case of the refusal of any witness to testify as to any matter regarding which he may be interrogated under this chapter, the district court, upon the application of the council, may order the person to show cause why the person should not be held in contempt for failure to testify or comply with a subpoena, and may order the person to produce the records, books, and documents for examination, and to give his testimony. The courts may punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify.

4. On at least a quarterly basis submit to the governor and the general assembly, and to each member of the senate and the house of representatives and the legislative council when the general assembly is not in session, a report identifying trends relating to energy supply, demand, and conservation and making recommendations to the governor and the general assembly for additional action in accordance with the report. The council shall include in its report the amount, price, and disposition of the fuel contracted for each month pursuant to subsection 9 and the name of the supplier of the fuel.

5. Review, propose and recommend legislation relating to the development and use of energy in this state.

6. Develop and recommend public education and communication programs in energy conservation.

7. When necessary to carry out its duties under this chapter, enter into contracts with state agencies and other qualified contractors.

8. Receive and accept grants made available for programs relating to duties of the council under this chapter.

9. Allocate state-owned or operated energy supplies to those determined to be in need. In the performance of this duty the director may, with the approval of the council, contract with fuel suppliers for the purpose of establishing a state-owned emergency fuel reserve and may co-operate with the federal government in implementing federally-mandated allocation and rationing programs for refined petroleum products.

10. Promulgate rules necessary to carry out the provisions of this chapter, subject to review in accordance with chapter 17A. Before a proposed rule is submitted to the administrative rules review committee, a public hearing shall be held in regard to the rule, and members of the administrative rules review committee shall be notified of the hearing as required in section 17A.4, subsection 1. Rules promulgated by the governor pursuant to a proclamation issued under the provisions of section 93.8 shall not be subject to review or a public hearing as required in this subsection.

11. Publicize and promote activities which offer members of the general assembly the opportunity to exchange ideas and gain information on other state, regional and national energy developments.

12. Examine and determine whether additional state regulatory authority is necessary to protect the public interest and to promote the effective development, utilization and conservation of energy resources. If the council finds that additional regulatory authority is necessary, the council shall submit recommendations to the general assembly concerning the nature and extent of such regulatory authority and which state agency should be assigned such regulatory responsibilities.

13. Co-ordinate policies and programs between the council and the department of environmental quality and submit to the general assembly proposed legislation to effect such co-ordination when legislation is deemed necessary.

14. Develop and assist in the implementation of public education and communications programs in energy development, use and conservation, in co-operation with the department of public instruction, the state university extension services and other public or private agencies and organizations as deemed appropriate by the council. [C75,§93.7; 66GA, ch 67,§9, ch 1088,§§2, 3]

93.8 Emergency powers. If the council by resolution determines the health, safety, or welfare of the people of this state is threatened by an actual or impending acute shortage of usable energy, it shall transmit the resolution to the governor together with its recommendation on the declaration of an emergency by the governor and recommended actions, if any, to be undertaken. Within thirty days of the date

of the resolution, the governor may issue a proclamation of emergency which shall be filed with the secretary of state. The proclamation shall state the facts relied upon and the reasons for the proclamation.

Pursuant to the proclamation of an emergency, the governor by executive order may:

1. Regulate the operating hours of energy consuming instrumentalities of state government, political subdivisions, private institutions and business facilities to the extent the regulation is not hazardous or detrimental to the health, safety, or welfare of the people of this state. However, the governor shall have no authority to suspend, amend or nullify any service being provided by a public utility pursuant to an order or rule of a federal agency which has jurisdiction over the public utility.

2. Establish a system for the distribution and supply of energy. The system shall not include a coupon rationing program, unless the program is federally mandated.

3. Curtail public and private transportation utilizing energy sources. Curtailment may include measures designed to promote the use of car pools and mass transit systems.

4. Delegate any administrative authority vested in him to the council or the director.

5. Provide for the temporary transfer of directors, personnel, or functions of state departments and agencies, for the purpose of performing or facilitating emergency measures pursuant to subsections 1 and 2.

If the general assembly is in session, it may revoke by concurrent resolution any proclamation of emergency issued by the governor. If the general assembly is not in session, the proclamation of emergency by the governor may be revoked by a majority vote of the standing membership of the legislative council. Such revocation shall be effective upon receipt of notice of the revocation by the secretary of state and any functions being performed pursuant to the governor's proclamation shall cease immediately. [C75,§93.8]

Referred to in §§93.3, 93.7

93.9 to 93.13 Repealed by 66GA, ch 1088,§6.

93.14 Energy research and development fund. There is created within the council an energy research and development fund. Moneys deposited in the fund shall be used for the research and development of projects designated to improve Iowa's energy situation by developing improved methods of energy conservation, by enabling Iowans to better manage available energy resources, or through the increased development and use of Iowa's renewable or nonrenewable energy resources. Said projects will be selected by the council with the advice of knowledgeable persons appointed by the council to provide assistance. [66GA, ch 56,§1]

93.15 Additional funds. The council may accept funds from state and local sources and shall take steps necessary to obtain federal funds allotted and appropriated for the purpose of the above described energy-related programs. Such funds shall be deposited in the energy research and development fund. Federal funds received under the provisions of this section are appropriated for the purposes set forth in the federal grants. [66GA, ch 56,§1]

93.16 Review. The second session of the Sixty-seventh General Assembly meeting in the year 1978 shall review the activities and performance of the council and shall not later than July 1, 1978 make a determination concerning the status and duties of the council. [66GA, ch 1088,§5]

[Chapter 93 is repealed effective June 30, 1979.]

CHAPTER 93A

GOVERNOR'S COMMITTEE ON EMPLOYMENT OF HANDICAPPED

This chapter transferred to chapter 601F

CHAPTER 93B

RIGHTS OF BLIND, PARTIALLY BLIND AND PHYSICALLY DISABLED

This chapter transferred to chapter 601D

CHAPTER 93C

OPERATION OF FOOD SERVICE IN PUBLIC BUILDINGS

This chapter transferred to chapter 601C

CHAPTER 94

STATE EMPLOYMENT BUREAU AND EMPLOYMENT AGENCIES

See §96.12 for transfer of duties to department of job service

94.1 Repealed by 66GA, ch 1068,§41.
94.2 Duty as to free employment services.
94.3 Repealed by 66GA, ch 1068,§41.
94.4 Service free.
94.5 Failure to procure employment.
94.6 Limitation of fee.
94.7 Unlawful practices—civil liability.
94.8 Copy of application or agreement.
94.9 Division of fees prohibited.
94.10 Records required.
94.11 Investigation by labor commissioner.
94.12 Violations.

94.1 Repealed by 66GA, ch 1068,§41.

94.2 Duty as to free employment services. It shall be the duty of the director of the department of job service through the free employment service to:

1. Adopt all means at his command to bring together those desiring to employ labor and those desiring employment.

2. Supply information as to opportunities for securing employment and the character and conditions of work to be performed in the various industries of the state including agricultural pursuits.

3. Adopt all available means for steadying employment and avoiding unemployment. [SS15,§2477-g2; C24, 27, 31, 35, 39,§**1543**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§94.2; 66GA, ch 1068,§3]

94.3 Repealed by 66GA, ch 1068,§41.

94.4 Service free. No fee or compensation shall be received, either directly or indirectly, from persons applying to the bureau for employment or help. [SS15,§2477-g2; C24, 27, 31, 35, 39,§**1545**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §94.4]

94.5 Failure to procure employment. Every person, firm, or corporation who shall agree or promise, or who shall advertise through the public press, or by letter, to furnish employment or situations to any person or persons, and in pursuance of such advertisement, agreement, or promise, shall receive any money, personal property, or other valuable thing whatsoever, and who shall fail to procure for such person or persons acceptable situations or employment as agreed upon, within the time stated or agreed upon, or if no time be specified then within a reasonable time, shall upon demand return all such money, personal property, or valuable consideration of whatever character. The provisions of this section, however, shall not apply to registration fees of one dollar or less. [S13,§2477-h; C24, 27, 31, 35, 39,§**1546**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §94.5]

94.6 Limitation of fee. No such person, firm, or corporation shall charge a fee for the furnishing or procurement of any situation or employment paying less than two hundred fifty dollars per month which shall exceed twenty-five percent of the wages paid for the first month of any such employment or situation furnished or procured, but in no event shall the charge for the furnishing or procurement of any situation or employment be in excess of eight percent of the annual gross earnings. The provisions of this section shall not apply to the furnishing or procurement of vaudeville acts, circus acts, theatrical, stage or platform attractions or amusement enterprises or to fees charged solely to employers where no fee is charged to the employee. [C27, 31, 35,§1546-a1; C39,§**1546.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§94.6]

94.7 Unlawful practices—civil liability. No person, firm, or corporation shall send an application for employment to an employer who has not applied to such person, firm, or corporation for help or labor. Nor shall any person, firm, or corporation engaged in the business of operating an employment agency or bureau, fraudulently promise or deceive either through a false notice or advertisement or other means, any applicant for help or employment with regard to the service to be rendered by such person, firm, corporation, agency, or bureau. Any person who violates any of the provisions of this section shall be liable in a civil suit for damages to any person who is damaged or injured thereby and shall also be guilty of a misdemeanor, and upon conviction, shall be punished as provided in section 94.12. [C27, 31, 35,§1546-a2; C39,§**1546.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§94.7]

94.8 Copy of application or agreement. It shall be unlawful for any person, firm, or corporation to receive any application for employment from, or enter into any agreement with, any person to furnish or procure for said person any employment unless there is delivered to such person making such application or contract, at the time of the making thereof, a true and full copy of such application or agreement, which application or agreement shall specify the fee or consideration to be paid by the applicant. [S13,§2477-i; C24, 27, 31, 35, 39,§**1547**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§94.8]

94.9 Division of fees prohibited. It shall be unlawful for any person, firm, or corporation, or any person employed or authorized by such person, firm, or corporation, to receive any part of any fee or any percentage of wages or any compensation of any kind whatever, that

is agreed upon to be paid by any such employee to any employment bureau or agency for services rendered to any such employee in procuring for him employment with such person, firm, or corporation. [S13,§2477-j; C24, 27, 31, 35, 39,§1548; C46, 50, 54, 58, 62, 66, 71, 73, 75, §94.9]

94.10 Records required. Every person, firm, or corporation operating an employment agency or engaged in the business of finding employment for others, for which any fee is charged, shall keep a record of the applications received and what, if any, employment was found or furnished to the applicant, giving the name of each applicant and the name and address of his employer, if employment is found, and the fee charged each applicant. [C24, 27, 31, 35, 39,§1549; C46, 50, 54, 58, 62, 66, 71, 73, 75,§94.10]

94.11 Investigation by labor commissioner. The labor commissioner, his deputy or inspectors, and the chief clerk of the bureau shall have authority to examine at any time the records, books, and any papers relating in any way to the conduct of any employment agency or bureau within the state, and must investigate any complaint made against any such employment agency or bureau, and if any violations of law are found he shall at once file or cause to be filed, an information against any person, firm, or corporation guilty of such violation of law. [S13,§2477-k; C24, 27, 31, 35, 39,§1550; C46, 50, 54, 58, 62, 66, 71, 73, 75,§94.11]

94.12 Violations. Any person, firm, or corporation violating any of the provisions of this chapter, or who shall refuse access to records, books, or other papers relative to the conduct of such agency or bureau, to any person having authority to examine same, shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not to exceed thirty days. [S13,§2477-l; C24, 27, 31, 35, 39,§1551; C46, 50, 54, 58, 62, 66, 71, 73, 75,§94.12]

Referred to in §94.7

CHAPTER 95

LICENSE FOR EMPLOYMENT AGENCIES

95.1 License.
95.2 Application.
95.3 Issuance or refusal.
95.4 Fee.
95.5 Revocation of license.
95.6 Violations.

95.1 License. Every person, firm, or corporation who shall keep or carry on an employment agency for the purpose of procuring or offering to procure help or employment, or the giving of information as to where help or employment may be procured either directly or through some other person or agency, and where a fee, privilege, or other thing of value is exacted, charged or received either directly or indirectly, for procuring, or assisting or promising to procure employment, work, engagement or situation of any kind, or for procuring or providing help or promising to provide help for any person, whether such fee, privilege, or other thing of value is collected from the applicant for employment or the applicant for help, shall before transacting any such business whatsoever procure a license from a commission, consisting of the secretary of state, the industrial commissioner, and the labor commissioner, all of whom shall serve without compensation. [C31, 35,§1551-c1; C39, §1551.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§95.1]

Referred to in §§95.2, 95.3, 95.6

95.2 Application. Application for such license shall be made in writing to the commission provided in section 95.1. It shall contain the name of the applicant, and if applicant be a firm, the names of the members, and if it be a corporation, the names of the officers thereof; and the name, number and address of the building and place where the employment agency is to be conducted. It shall be accompanied by the affidavits of at least two reputable citizens of the state in no way connected with applicant, certifying to the good moral character and reliability of the applicant, or, if a firm or corporation, of each of the members or officers thereof, and that the applicant is a citizen of the United States, if a natural person; also a surety company bond in the sum of two thousand dollars to be approved by the labor commissioner and conditioned to pay any damages that may accrue to any person or persons because of any wrongful act, or violation of law, on the part of applicant in the conduct of said business. There shall also be filed with the application a schedule of fees to be charged for services rendered to patrons, which schedule shall not be changed during the term of license without consent being first given by the commission.

Any person, firm, or corporation applying for a license, as provided in this chapter, to operate an employment agency for furnishing or procuring of employment shall furnish the commission with its contract form, which form shall distinctly provide that no fee or other thing of value in excess of one dollar shall be collected in advance of the procuring of employment and no license shall be issued unless such contract form contains such provision. Thereafter, any person, firm, or corporation to whom a license has been issued that violates

this provision of its contract shall have his license canceled. [C31, 35,§1551-c2; C39,**§1551.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§95.2]

95.3 Issuance or refusal. The commission shall fully investigate all applicants for the license required by section 95.1, and shall not issue any license earlier than one week after the application therefor is filed, provided, however, that the commission shall either grant or refuse such license within thirty days from the date of the filing of the application. All licenses issued under the provisions of this chapter shall expire on June 30 next succeeding their issuance. [C31, 35,§1551-c3; C39, §**1551.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§95.3]

95.4 Fee. The annual license fee shall be fifty dollars. [C31, 35,§1551-c4; C39,**§1551.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§95.4]

95.5 Revocation of license. The commission may revoke at any time any such a license issued by it upon good cause shown and when there has been a substantial violation of any of the provisions of law regulatory of such business. [C31, 35,§1551-c5; C39,**§1551.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§95.5]

95.6 Violations. Any person in any manner undertaking to do any of the things described in section 95.1, without first securing a license as herein provided, shall be guilty of a misdemeanor. [C31, 35,§1551-c6; C39,**§1551.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§95.6]

Punishment, §687.7

CHAPTER 96

EMPLOYMENT SECURITY

Referred to in §601H.4
See references in §§97.52, 97C.19

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SHORT TITLE

96.1 Name. This chapter shall be known and may be cited as the "Iowa Employment Security Law." [C39,**§1551.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.1]

DECLARATION OF STATE PUBLIC POLICY

96.2 Guide for interpretation. As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crush-

ing force upon the unemployed worker and his or her family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. [C39,§**1551.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.2; 66GA, ch 92,§35]

BENEFITS

96.3 How paid and amounts.

1. *Payment.* Twenty-four months after the date when contributions first accrue under this chapter, benefits shall become payable from the fund; provided, that wages earned for services defined in section 96.19, subsection 7, paragraph "*g*" (3), irrespective of when performed, shall not be included for purposes of determining eligibility, under section 96.4 or full-time weekly wages, under subsection 4 of this section, for the purposes of any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable under subsection 5 of this section on the basis of such wages. All benefits shall be paid through employment offices in accordance with such regulations as the department of job service may prescribe.

2. *Total unemployment.* Each eligible individual who is totally unemployed in any week shall be paid with respect to such week benefits in an amount which shall be equal to his or her weekly benefit amount.

3. *Partial unemployment.* Each individual who is partially unemployed in any week as defined in section 96.19, subsection 10, paragraph "*b*", and who meets the conditions of eligibility for benefits shall be paid with respect to such week an amount equal to that individual's weekly benefit amount less fifty percent of that part of wages payable to him or her with respect to such week in excess of fifteen dollars. Such benefits shall be rounded to the higher multiple of one dollar.

4. *Determination of benefits.* With respect to benefit years beginning on or after July 1, 1975, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to one-twentieth of his or her total wages in insured work paid during that quarter of his or her base period in which such total wages were highest, subject to the following limitation: The director shall determine annually a maximum weekly benefit amount by computing sixty-six and two-thirds percent of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July. Such maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the higher multiple of one dollar.

For the purposes of this subsection statewide average weekly wage means the amount computed by the director at least once a year on the basis of the aggregate amount of wages reported by employers in each preceding twelve-month period ending on December 31 and divided by the figure that results from fifty-two times the average of mid-month employment reported by employers for the same period. In determining the aggregate amount of wages paid statewide, the director shall disregard any limitation on the amount of wages subject to contributions under state law.

5. *Duration of benefits.* The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed the total of the wage credits accrued to his or her account during his or her base period, or twenty-six times his or her weekly benefit amount, whichever is the lesser. The director shall maintain a separate account for each individual who earns wages in insured work. The director shall compute wage credits for each individual by crediting his or her account with one-half of the wages for insured work paid him or her during his or her base period. Benefits paid to an eligible individual shall be charged against the base period wage credits in his or her account which have not been previously charged hereunder, in the inverse chronological order as the wages on which such wage credits are based were paid. However if the state and national "off indicators" are in effect the maximum benefits payable shall be extended to thirty-nine times his or her weekly benefit amount, but not to exceed the total of the wage credits accrued to his or her account.

Referred to in §96.20 (2)

6. *Part-time workers.*

a. As used in this subsection the term "part-time worker" means an individual whose normal work is in an occupation in which his or her services are not required for the customary scheduled full-time hours prevailing in the establishment in which he or she is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which he or she is employed.

b. The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits. [C39,§**1551.09**; C46, 50, 54,

58, 62, 66, 71, 73, 75,§96.3; 66GA, ch 92,§§1–3, 35, ch 1068,§§4, 39]

Referred to in §§85.31, 85.34(2,3), 85.36, 85.37, 96.19(13), 96.20(2)

BENEFIT ELIGIBILITY CONDITIONS

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

1. He or she has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the department may prescribe. The provisions of this subsection shall be waived if the individual is deemed temporarily unemployed as defined in section 96.19, subsection 10, pargaraph *"c"*.

2. He or she has made a claim for benefits in accordance with the provisions of section 96.6, subsection 1.

3. He or she is able to work, is available for work, and is earnestly and actively seeking work. The provision of this subsection shall be waived if he or she is deemed temporarily unemployed as defined in section 96.19, subsection 10, paragraph *"c"*.

4. He or she has been paid wages for insured work of not less than four hundred dollars in that calendar quarter in his or her base period in which his or her wages were the highest, and also he or she has been paid wages for insured work of not less than two hundred dollars in a calendar quarter in his or her base period other than the calendar quarter in which his or her wages were the highest; and provided further if he or she has drawn benefits in any benefit year, he or she must during or subsequent to that year, be paid wages in insured work totaling two hundred dollars as a condition to receive benefits in the next benefit year.

5. Benefits based on service in employment, defined in section 96.19, subsection 7, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

6. Notwithstanding any other provisions in this subsection, no otherwise eligible individual shall be denied benefits for any week because he or she is in training with the approval of the director, nor shall such individual be denied benefits with respect to any week in which he or she is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However no employer's account shall be charged with benefits so paid. [C39,§**1551.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §96.4; 66GA, ch 67,§10, ch 92,§§4, 35, ch 1068, §§5, 6, 39, 40]

Referred to in §§96.3, 96.19(13), 96.20(2), 239.2

DISQUALIFICATION FOR BENEFITS

96.5 Causes. An individual shall be disqualified for benefits:

1. *Voluntary quitting.* If he or she has left his or her work voluntarily without good cause attributable to his or her employer, if so found by the department. But he or she shall not be disqualified if the department finds that:

a. He or she left his or her employment in good faith for the sole purpose of accepting other employment, which he or she did accept, and that he or she remained continuously in said new employment for not less than six weeks. Wages earned with the employer that he or she has left shall, for the purpose of computing and charging benefits, be deemed wages earned from the employer with whom the individual accepted other employment and benefits shall be charged to the employer with whom he or she accepted other employment. The department shall advise the chargeable employer of the name and address of the former employer, the period covered, and the extent of benefits which may be charged to the account of the chargeable employer. In those cases where the new employment is in another state, no employer's account shall be charged with benefits so paid except that employers who are required by law or by their election to reimburse the fund for benefits paid shall be charged with benefits under this paragraph. In those cases where he or she left his or her employment in good faith for the sole purpose of accepting better employment, which he or she did accept and such employment is terminated by the employer, or he or she is laid off after one week but prior to the expiration of six weeks, the claimant, provided he or she is otherwise eligible under this chapter, shall be eligible for benefits and such benefits shall not be charged to any employer's account.

b. He or she has been laid off from his or her regular employment and has sought temporary employment, and has notified his or her temporary employer that he or she expected to return to his or her regular job when it became available, and the temporary employer employed him or her under these conditions, and the worker did return to his or her regular employment with his or her regular employer as soon as it was available.

c. He or she left his or her employment for the necessary and sole purpose of taking care of a member of his or her immediate family who was then injured or ill, and if after said member of his or her family sufficiently recovered, he or she immediately returned to and offered his or her services to his or her employer, provided, however, that during such period he or she did not accept any other employment.

d. He or she left his or her employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for such absence immediately notified his or her employer, or his or her employer consented to such absence, and after recovering from such illness, injury or pregnancy when recovery is certified by a licensed and practicing physician, he or she returned to his or her employer and offered his or her service and his or her regular work or comparable suitable work was not available, if so found by the commission, provided he or she is otherwise eligible.

e. He or she left his or her employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of his or her family to a place having a different climate, during which time he or she shall be deemed unavailable for work, and notwithstanding during such absence he or she secures temporary employment, and returned to his or her regular employer and offered his or her services and his or her regular work or comparable work was not available, provided he or she is otherwise eligible.

f. He or she is the principal support of his or her family, or is a widow, widower, legally separated from his or her spouse, or a single person, and he or she left his or her employing unit for not to exceed ten working days, or such additional time as may be allowed by his or her employer, for compelling personal reasons (if so found by the department), and prior to such leaving had informed his or her employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist he or she returned to his or her employer and offered his or her services and his or her regular or comparable work was not available, provided he or she is otherwise eligible; except that during the time he or she is away from his or her work because of the continuance of such compelling personal reasons, he or she shall not be eligible for benefits.

g. In the case where he or she left his or her work voluntarily without good cause attributable to his or her employer under circumstances which did or would disqualify him or her for benefits, except as provided in subsection 1, paragraph "*a*", under this subsection he or she, subsequent to such leaving, worked in and was paid wages for insured work for not less than six consecutive weeks, provided he or she is otherwise eligible.

"Principal support" shall mean exclusive of the earnings of any child of the wage earner.

Referred to in §§96.7(3a), 96.22

2. *Discharge for misconduct.* If the department finds that he or she has been discharged for misconduct in connection with his or her employment:

a. He or she shall forfeit one to nine weeks benefits.

b. Provided further, if gross misconduct is established, he or she shall forfeit from ten weeks benefits to the maximum amount payable in his or her current benefit period.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with his or her employment, provided the claimant is duly convicted thereof or has signed a statement admitting that he or she has committed such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

3. *Failure to accept work.* If the department finds that he or she has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commission or to accept suitable work when offered him or her, or to return to his or her customary self-employment, if any.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to his or her health, safety, and morals, his or her physical fitness and prior training, his or her experience and prior earnings, his or her length of unemployment and prospects for securing local work in his or her customary occupation, and the distance of the available work from his or her residence, and any other factor which it finds bears a reasonable relation to the purposes of this subsection.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a com-

pany union or to resign from or refrain from joining any bona fide labor organization.

4. *Labor disputes.* For any week with respect to which the department finds that his or her total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he or she is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

a. He or she is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

b. He or she does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

5. *Other compensation.* For any week with respect to which he or she is receiving or has received payment in the form of:

a. Wages in lieu of notice;

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States;

c. Old-age benefits under title II of the Social Security Act (42 USC, chapter 7), as amended, or similar retirement payments under any Act of Congress; however only fifty percent of the old-age benefits under title II of the Social Security Act shall be deducted from his or her weekly benefits;

d. Benefits paid as retirement pay or as private pension.

Provided, that if such remuneration is less than the benefits which would otherwise be due under this chapter, he or she shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraphs *"a"*, *"b"*, *"c"*, *or "d"*, of this subsection were paid on a retroactive basis for the same period, or any part thereof, the department shall recover any such excess amount of benefits paid by the department for such period, and no employer's account shall be charged with benefits so paid, provided further, however, that retirement pay or compensation for service-connected disabilities or pensions and compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, shall in no way disqualify any individual, otherwise qualified, from any of the benefits contemplated herein.

6. *Benefits from other state.* For any week with respect to which or a part of which he or she has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States, provided that if the appropriate agency of such other state or of the United States finally determines that he or she is not entitled to such unemployment benefits, this disqualification shall not apply.

7. *Vacation pay.*

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed "wages" as defined in section 96.19, subsection 13, and shall be applied as provided in paragraph *"c"* hereof.

b. Whenever, in connection with any separation or layoff of an individual, his or her employer makes a payment or payments to him or her, or becomes obligated to make such payment to him or her as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within seven calendar days after notification of the filing of his or her claim, designates by notice in writing to the department the period to which such payment shall be allocated; provided, that if such designated period is extended by the employer, he or she may again similarly designate an extended period, by giving notice thereof in writing to the commission not later than the beginning of the extension of such period, with the same effect as if such period of extension were included in the original designation. The amount of any such payment or obligation to make payment, shall be deemed "wages" as defined in section 96.19, subsection 13, and shall be applied as provided in paragraph "*c*" of this subsection 7.

c. Of the wages described in paragraph "*a*" (whether or not the employer has designated the period therein described), or of the wages described in paragraph "*b*", if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to him or her with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed his or her weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual,

his or her benefits shall be reduced by such amount.

d. Notwithstanding the provisions of paragraphs "*a*", "*b*" and "*c*" of this subsection, if an individual is separated from employment and is scheduled to receive vacation payments during the period of unemployment attributable to the employer and if the individual is not scheduled to return to work within a period of four consecutive weeks or less then payments made by an employer to an individual or an obligation to make a payment by an employer to an individual for vacation pay, vacation pay allowance or pay in lieu of vacation for any period in excess of one week shall not be deemed wages as defined in section 96.19, subsection 13, and such payments in excess of that amount received for one week or the value of such obligations for one week shall not be deducted from the unemployment benefits an employee is otherwise entitled to receive under this chapter.

8. *Administrative penalty.* If the department finds that, with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter. [C39,§**1551.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §96.5; 66GA, ch 92,§§5–11, 35, ch 1068,§§7, 8, 9, 40, ch 1084,§43]

Referred to in §§96.4, 96.7(3a), 96.19(9), 96.22

CLAIMS FOR BENEFITS

96.6 Filing—determination—appeal.

1. *Filing.* Claims for benefits shall be made in accordance with such regulations as the department may prescribe.

Referred to in §§96.4(2), 96.19(16)

2. *Initial determination.* A representative designated by the director shall promptly notify all interested parties to the claim of the filing thereof, and said parties shall have seven days from the date of mailing the notice of the filing of said claim by ordinary mail to the last known address to protest payment of benefits to said claimant. The representative shall promptly examine the claim and any protest thereto and, on the basis of the facts found by the representative, shall determine whether or not such claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, and whether any disqualification shall be imposed. Unless the claimant or other interested party, after notification or within ten calendar days after such notification was mailed to the claimant's last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If a hearing officer affirms a decision of the representative, or the appeal board affirms a decision of the hearing officer, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

Referred to in §96.7(3)

3. *Appeals.* Unless such appeal is withdrawn, a hearing officer, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. The parties shall be duly notified of the hearing officer's decision, together with the hearing officer's reasons therefor, which shall be deemed to be the final decision of the department, unless within fifteen days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection 5 of this section.

4. *Appeal board.* To hear and decide disputed claims, there is established an appeal board. The appeal board shall consist of three members appointed by the governor with the approval of two-thirds of the members of the senate. One member shall be a representative of employers, one member shall be a representative of employees, and one member who shall be impartial and shall represent the general public. The members shall serve six-year terms beginning on July 1. For the initial board, the member representing employers shall serve a two-year term, the member representing employees shall serve a four-year term, and the member representing the general public shall serve a term of six years. No more than two members of the appeal board shall be members of the same political party. Any vacancy in the membership occurring during a session of the general assembly shall be filled in the same manner as the original appointment. Any vacancy in the membership occurring while the general assembly is not in session shall be filled by appointment by the governor which appointment shall expire thirty days after the general assembly next convenes. Within the thirty-day period, the governor shall transmit an appointment to the senate.

The members of the appeal board shall select a chairperson and vice chairperson from their membership.

The appeal board shall meet as often as deemed necessary, but not less than one time per month. Meetings shall be set by a ma-

jority of the appeal board or upon the call of the chairperson and vice chairperson.

Members of the appeal board shall each be paid twenty-one thousand seven hundred fifty dollars annually until July 1, 1978 and shall receive actual and necessary expenses. Thereafter each member shall be paid forty dollars per day for each day of official business of the appeal board and shall receive actual and necessary expenses, including travel, from funds appropriated to the department.

5. *Appeal board review.* The appeal board may on its own motion affirm, modify, or set aside any decision of a hearing officer on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of a hearing officer and by the representative whose decision has been overruled or modified by the hearing officer. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

6. *Procedure.* The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the department under chapter 17A. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. The record shall be retained for sixty days following the final date for appeal of a disputed claim and may be destroyed thereafter.

7. *Witness fees.* Witnesses subpoenaed pursuant to this section shall be allowed fees and necessary traveling expenses at a rate fixed by the director, which fees shall be charged to the unemployment compensation administration fund of the department.

8. *Judicial review.* A decision of the appeal board shall become final ten days after the date of notification or mailing thereof. Judicial review of any decision of the appeal board may be sought in accordance with the terms of the Iowa administrative procedure Act. The department may be represented in any such judicial review proceeding by any qualified attorney who is a regular salaried employee of the department or who has been designated by the department for that purpose, or at the department's request, by the attorney general. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the claimant was last employed or resides, provided that if the claimant does not reside in the state of Iowa the action shall be brought in the district court of Polk county, Iowa, and any other party to the proceeding before the appeal board shall be named in the petition. The department may also certify to such courts, questions of law involved in any decision by it. Petitions for judicial review and the questions so certified shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state. No bond shall be required for entering an appeal from any final order, judgment or decree of the district court to the supreme court. [C39, §1551.12; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.6; 66GA, ch 92,§§12, 35, ch 1068,§§10, 11, 12, 40, ch 1084,§43]

Referred to in §§96.4, 96.7(3), 96.19(16), 97B.27
See ch 94

CONTRIBUTIONS

96.7 Payment—rates.

1. *Payment.*

a. On and after July 1, 1936, contributions shall accrue on all taxable wages paid by an employer for insured work.

b. Such contributions shall become due and be paid to the department for the fund at such times and in such manner as the director by regulation prescribes.

c. In the payment of any contribution the fractional part of a cent shall be disregarded unless it amounts to one-half cent or more in which case it shall be increased to one cent.

d. Contributions required from an employer shall not be deducted in whole or in part from the wages paid to individuals in his employ.
Referred to in §96.19(21)

2. *Rate of contribution by employers.* Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

a. One and eight-tenths percent with respect to employment for the six months' period beginning July 1, 1936, provided that if the total of such contributions at such one and eight-tenths percent rate equals less than nine-tenths of one percent of the annual payroll of any employer for the calendar year 1936, such employer shall pay, at such time as the department shall prescribe, an additional lump-sum contribution with respect to employment for such six months' period beginning July 1, 1936, equal to the difference between nine-tenths of one percent of his or her annual payroll for the calendar year 1936 and the total of his or her contributions at such one and eight-tenths percent rate for such six months' period beginning July 1, 1936, and provided further that in no event shall employers' contributions at such one and eight-tenths percent rate exceed nine-tenths of one percent of his annual payroll for the calendar year 1936;

b. One and eight-tenths percent with respect to employment in the calendar year 1937;

c. Two and seven-tenths percent with respect to employment during the calendar years 1938, 1939, 1940; and

d. Two and seven-tenths percent of wages paid by him or her during the calendar year 1941, and during each calendar year thereafter, with respect to employment occurring after December 31, 1940, except as may be otherwise prescribed in subsection 3 of this section.

Referred to in §96.19(21)

3. *Future rates based on benefit experience.*

a. (1) The department shall maintain a separate account for each employer and shall credit his or her account with all contributions which he or she has paid or which have been paid on his or her behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits, as determined under section 96.29, paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of such individual occurred. Provided, that in any case in which a claimant to whom such benefits are paid is in the employ of a base period employer at the time he or she is receiving such benefits, and he or she is receiving the same employment from such employer that he or she received during his or her base period, then no charge of benefits paid to such claimant shall be made against the account of such employer. No employer's account shall be charged with benefit payments made to any individual who quit such employment, but shall be charged to the account of the next succeeding employer with whom the individual requalified for benefits as determined under section 96.5, subsection 1, paragraph *"g"*.

(3) The amount of regular benefits so charged in any calendar quarter against the account of any employer shall not exceed the amount of such individual's wage credits based on employment with such employer during such quarter. The amount of extended benefits so charged in any calendar quarter against the account of any employer shall not exceed an additional fifty percent of the amount of such individual's wage credits based on employment with such employer during such quarter.

(4) The director shall by general rule prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment during the same calendar quarter.

(5) Nothing in this chapter shall be construed to grant any employer or the individuals in his or her service prior claims or rights to the amounts paid by him or her into the fund either on his or her own behalf or on behalf of such individuals.

(6) As soon as practicable after the close of each calendar quarter, and in any event within forty days after the close of such quarter, the department shall notify each employer of the amount that has been charged to the employer's account for benefits paid during such quarter. This statement to the employer shall show the name of each claimant to whom such benefit payments were made, the claimant's social security number, and the amount of benefits paid to such claimant. Any employer who has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to such claimants may within thirty days after the receipt of such statement appeal to the director for a hearing to determine the eligibility of the claimant to receive such benefits. The director shall refer the same to a hearing officer for hearing and both the employer and the claimant shall receive notice of the time and place of such hearing.

(7) Any employer may at any time make voluntary payments to his or her account in excess of the other requirements of this chapter, and all such payments shall be considered on any computation date as contributions required under the provisions of this chapter if they are paid by the employer not later than the next March 15 after such computation date.

b. In any case in which the enterprise or business for which contributions have been paid has been sold or otherwise transferred to a subsequent employing unit, or in any case in which one or more employing units have been reorganized or merged into a single employing unit and the successor employer continues to operate such enterprise, such successor employer shall assume the position of the predecessor employer or employers with respect to such predecessors' payrolls, contributions, accounts and contribution rates to the same extent as if there had been no change in the ownership or control of such enterprise or business.

In any case in which a clearly segregable and identifiable part of an enterprise or business for which contributions have been paid has been sold or otherwise transferred to a subsequent employing unit, and such successor employing unit having qualified as an "employer" as defined under section 96.19, subsection 6, paragraph *"b"*, continues to operate such enterprise or business, such successor shall assume the position of the predecessor employer with respect to such predecessor's payrolls, contributions, accounts and contribution rates which are attributable to the part of the enterprise or business transferred to the same extent as if there has been no change in the ownership or control of such enterprise or business.

The contribution rate to be assigned to the acquiring employer for the period beginning not earlier than the date of the transfer and ending not later than the next following effective date of contribution rates, shall be the contribution rate applicable to the transferring employer with respect to the period immediately preceding the date of the transfer, provided that the acquiring employer was not, prior to the transfer, a subject employer, and only one transferring employer, or only transferring employers having identical rates, are

involved; or a newly computed rate based on the experience of the transferring employer attributable to the part of the business transferred to the acquiring employer combined with the experience of the acquiring employer as of the last computation date.

The contribution rate to be assigned to the acquiring employer for the next following regular rate year, is a contribution rate based on the experience of the acquiring employer and only so much of the experience of the transferring employer as is attributable to the part of the business transferred.

Provided, however, that application for such transfer of partial record is made within sixty days from the date of transfer and meets the approval of the predecessor and the director, and provided further that such partial record shall include sufficient information for the proper administration of this chapter with respect to payment of unemployment benefits and computation of future rates based on benefit experience.

In determining each employer's rate of contribution for the calendar year 1945, and for each year thereafter, such employer shall be given full credit for the payrolls, contributions, accounts and contribution rates of his or her predecessor employer or employers to the same extent as if there had been no change in the organization or the ownership of the business. Provided, that in any case in which such sale, transfer, merger or reorganization has taken place in any year after the predecessor employer's rate of contribution (hereafter called rate) has been determined for such year the employer's rate for the remainder of such year, shall, upon his or her application to the department be determined in the following manner:

(1) If the successor employer has no rate or if he or she has a rate and it is the same rate as that of his or her predecessor employer or employers, their rates being the same rate, his or her rate shall be that of the predecessor employer or employers.

(2) If the rate or rates of the predecessor employers are not the same rate, and that of the successor employer if he or she has a rate is not the same rate as that of the predecessor employer then the rate of the successor employer shall be redetermined under the combined experience of the predecessor employer or employers and the successor employers.

Referred to in §96.8(4)

c. Each contributing employer's rate of contribution shall be two and seven-tenths percent except as otherwise provided in this chapter. No reduced rate of contribution shall be granted to a contributing employer until there shall have been twelve consecutive calendar quarters immediately preceding the first computation date throughout which his or her account has been chargeable with benefit payments. Provided, that with respect to the calendar year commencing January 1, 1972, and each calendar year thereafter, except as provided in paragraphs *"d"* and *"e"* of this subsection, a contributing employer who has not been subject to this chapter for a sufficient period of time to meet the twelve-quarter requirement shall qualify for a computed rate of contribution if there shall have been a lesser period throughout which his or her account has been chargeable, but in no event less than eight consecutive calendar quarters immediately preceding the computation date; provided further, that with respect to the calendar year commencing January 1, 1972, and each calendar year thereafter, except as provided in paragraphs *"d"* and *"e"* of this subsection, each contributing employer newly subject to this chapter shall pay contributions at the rate of one and five-tenths percent until the end of the calendar year in which the employer shall have had eight consecutive calendar quarters immediately preceding the computation date throughout which his or her account has been chargeable with benefit payments, thereafter his or her contribution rate shall be determined in accordance with paragraphs *"d"* and *"e"* of this subsection.

d. The department shall determine the rate table to be in effect for the calendar year following the rate computation date for such year, by determining the ratio of the current reserve fund ratio to the minimum adequate reserve fund ratio as of the rate computation date.

(1) The current reserve fund ratio shall be computed by dividing the total trust funds available for payment of benefits, on the computation date, by the total wages paid in covered employment during the four calendar quarters ending the June 30 immediately preceding the computation date.

(2) The minimum adequate reserve fund ratio shall be computed by multiplying the highest benefit cost rate by one point five.

(3) The highest benefit cost rate shall be the highest of the resulting ratios computed by dividing the total benefit payments during each consecutive twelve-month period, during the fifteen-year period ending on the computation date, by the total wages paid in the four calendar quarters ending nearest and prior to the last day of such twelve-month period.

If the current reserve fund ratio, divided by the minimum adequate reserve fund ratio:

Equals or exceeds	But is less than	The table in effect shall be
...	1.5	1
1.5	2.0	2
2.0	2.5	3
2.5	3.0	4
3.0	...	5

Each employer's rate for each calendar year after December 31, 1971, shall be determined on the basis of his or her record and the record of the predecessor owner of such enterprise, if any, up to the computation date for such year. If, on the computation date, the total of all contributions paid to an employer's account

for all past periods to and including those for the quarter ending September 30 immediately preceding the computation date exceeds the total benefits charged to such account for all past periods to and including those for the quarter ending September 30 immediately preceding the computation date, such employer's contribution rate subject to the adjustment hereinafter provided, shall be fixed in accordance with the following effective table. Percentage of excess in said table means the percentage resulting from dividing the excess of contributions paid over benefits charged by the employer's average annual payroll.

Contribution Rates Shall Be %	If the percentage of excess is: Table 1	Table 2	Table 3	Table 4	Table 5
2.7	0.0—2.2	0.0—1.9	0.0—1.6	0.0—1.3	0.0—1.0
2.5	2.2—2.4	1.9—2.1	1.6—1.7	1.3—1.4	1.0—1.1
2.3	2.4—2.6	2.1—2.3	1.7—1.8	1.4—1.5	1.1—1.2
2.1	2.6—2.8	2.3—2.5	1.8—1.9	1.5—1.6	1.2—1.3
1.9	2.8—3.0	2.5—2.7	1.9—2.0	1.6—1.7	1.3—1.4
1.7	3.0—3.2	2.7—2.9	2.0—2.2	1.7—1.8	1.4—1.5
1.5	3.2—3.4	2.9—3.1	2.2—2.4	1.8—1.9	1.5—1.6
1.3	3.4—3.6	3.1—3.3	2.4—2.6	1.9—2.0	1.6—1.7
1.1	3.6—3.9	3.3—3.5	2.6—2.8	2.0—2.2	1.7—1.8
0.9	3.9—4.3	3.5—3.7	2.8—3.1	2.2—2.4	1.8—1.9
0.7	4.3—4.8	3.7—4.1	3.1—3.6	2.4—2.7	1.9—2.0
0.5	4.8—5.5	4.1—4.7	3.6—4.4	2.7—3.2	2.0—2.2
0.3	5.5—6.4	4.7—5.7	4.4—5.5	3.2—4.7	2.2—2.5
0.2					2.5—2.9
0.1	6.4—7.5	5.7—7.2	5.5—7.0	4.7—6.7	2.9—3.4
0.075					3.4—4.1
0.050					4.1—5.1
0.025					5.1—6.5
0.0	7.5 & over	7.2 & over	7.0 & over	6.7 & over	6.5 & over

If, on the computation date, the total of all benefits paid from an employer's account for all past periods to and including those for the quarter ending September 30 immediately preceding the computation date, exceeds the total contributions paid to such account for all past periods to and including those for the quarter ending September 30 immediately preceding the computation date, such employer's contribution rate shall be:

Contribution Rate	Percentage of Excess Is
4.0%	0.5% or more
3.5%	0.1% but less than 0.5%
3.0%	0.0% but less than 0.1%

Provided, that the maximum contribution rate of any employer for the calendar year 1966 shall not be more than three percent, and for the calendar year 1967 shall not be more than three and five-tenths percent. Provided, however, that notwithstanding any other provision of this chapter, any employer which employs individuals in the construction, erection, demolition, alteration or repair of roads and highways, or of bridges, buildings, factories, residences, earthwork, grading, river work, or any other construction project, and who has not qualified for an experience rating shall pay three percent in the calendar year 1966, three and five-tenths percent in the calendar year 1967, and four point zero percent in the calendar year 1968 and every calendar year thereafter until such time as he has qualified for an experience rating entitling said employer to a lesser rate of contribution. Except that such employer shall not qualify for a lesser rate of contribution until there shall have been twelve consecutive calendar quarters immediately preceding the computation date throughout which his or her account has been chargeable with benefit payments. Provided further, that in no event shall any employer's contribution rate be more than two and seven-tenths percent of the first ten thousand dollars of wages for insured work paid during any calendar quarter.

On or before the fifth day of December of each calendar year, beginning in 1971, the commission shall make available to employers the table which will apply to the contribution rates in the following calendar year.

e. Notwithstanding any other provisions of this chapter, on and after January 1, 1978 no employer's rate shall be less than two point seven percent with respect to any calendar quarter unless the total assets of the fund, excluding contributions not yet paid, as of the first day of such calendar quarter exceed the total benefits paid from the fund within the first four of the last five complete calendar quarters immediately preceding the first day of such calendar quarter; and no employer's rate shall be less than one point eight percent with respect to any calendar quarter unless the total assets of the fund, excluding contributions not yet paid, as of the first day of such calendar quarter exceeds an amount equal to twice the amount of total benefits

paid from the fund within the first four of the last five complete calendar quarters immediately preceding the first day of such calendar quarter.

f. Based upon the formula above provided in this section the department shall fix the rate of contribution for each employer. The department shall notify the employer of the rate so fixed. An employer may appeal to the department for a revision of the rate of contribution so fixed within thirty days from the date of the notice to such employer. The department after such hearing may set aside its former determination or modify it and may grant the employer a new rate of contribution. The department shall notify the employer of this determination by certified mail. Judicial review of action of the department may be sought in accordance with the terms of the Iowa administrative procedure Act.

Referred to in §96.9(5)

4. *Determination and assessment of contributions.*

a. As soon as practicable and in any event within two years after an employer has filed reports, as required by the department pursuant to section 96.11, subsection 7, the department shall examine such reports and determine the correct amount of contributions due, and the amount so determined by the department shall be the contributions payable. If the contributions found due shall be greater than the amount theretofore paid, the notice with respect to the additional contributions, together with any interest and penalty, shall be sent by certified mail. A lien shall attach as provided in section 96.14, subsection 16, if the assessment is not paid or appealed within thirty days of the date of the notice of assessment.

b. If the department discovers from the examination of the reports or otherwise that wages payable for employment, or any part thereof, have not been listed in the reports, or that no reports were filed when due, or that reports have been filed showing contributions due but no contributions in fact have been paid, it may at any time within five years after the time such reports were due, determine the correct amount of contributions payable, together with interest as provided in this chapter. The amount so determined shall be assessed and a lien shall attach as provided in paragraph *"a"* of this subsection.

c. The certificate of the department to the effect that contributions have not been paid, that reports have not been filed, or that information has not been furnished, as required under the provisions of this chapter shall be prima-facie evidence thereof.

Referred to in §96.14(3)

5. *Revision of contributions.* An employer may appeal to the department for revision of the contributions and interest assessed against such employer at any time within thirty days from the date of the notice of the assessment of such contributions and interest. The department shall grant a hearing thereon and if, upon such hearing, it shall determine that the amount of contributions payable with interest thereon is incorrect, it shall revise the same according to the law and the facts and adjust the computation of the contributions and interest accordingly. The department shall notify the employer by certified mail of its findings.

6. *Judicial review.* Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which such employer resides, or in which such employer's principal place of business is located, or in the case of a nonresident not maintaining a place of business in this state either in any county in which the wages payable for employment were earned or paid or in Polk county, within thirty days after the date of the notice to such employer notifying such employer of his or her rate of contribution, or of the department's determination as provided for in subsection 3 of this section or subsection 5 of this section.

The petitioner shall file with the clerk of said court a bond for the use of the respondent, with sureties approved by the clerk, in penalty to be fixed and approved by the clerk of said court. In no case shall the bond be less than fifty dollars conditioned that the petitioner shall perform the orders of the court. In all other respects, the judicial review shall be in accordance with the terms of the Iowa administrative procedure Act.

An appeal may be taken by the employer or the department to the supreme court of this state, irrespective of the amount involved.

7. *Jeopardy assessments.* If the department believes that the assessment or collection of contributions payable or benefits reimbursable will be jeopardized by delay, the department may immediately make an assessment of the estimated amount of contributions due or benefits reimbursable, together with all interest and penalty thereon as provided by this chapter, and demand payment thereof from the employer. If such payment is not made, a distress warrant may be issued or a lien filed against such employer immediately.

The department shall be permitted to accept a bond from the employer to satisfy collection until the amount of contributions legally due shall be determined. Such bond to be in an amount deemed necessary, but not more than double the amount of the contributions involved, and with securities satisfactory to the department.

8. *Financing benefits paid to state employees and to employees of the state's political subdivisions.*

a. Any state agency, board, commission, department, or instrumentality thereof, other than state-owned hospitals and institutions of higher education, which, pursuant to section 96.19, subsection 6, paragraph *"h"*, is, or becomes, subject to this chapter on or after January 1, 1972, shall pay to the department for the

unemployment fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such state agency, board, commission, department, or instrumentality thereof. Such payments shall be made in accordance with the provisions of subsection 9, paragraph *"b"* hereof.

b. State agencies, boards, commissions, and departments, except board of regents institutions and the state fair board, shall, after approving the billing provided for in subsection 9, paragraph *"b"*, submit the billing to the state comptroller to be paid out of any moneys in the state treasury not otherwise appropriated. The state comptroller shall be reimbursed for payments made on behalf of agencies, boards, commissions, or departments which have revolving, special, trust or federal funds from which the payments can be made.

c. The amount of payment required from each political subdivision of the state shall be ascertained by the department and shall be paid from the general funds of such local governmental employers at such time and in such manner as may be prescribed by the department and approved by the comptrollers and auditors of the respective local governmental employers, except that to the extent that benefits are paid on the basis of wages paid by local governmental employers from special administrative funds, the payment into the unemployment compensation fund shall be made from such special funds.

9. *Financing benefits paid to employees of nonprofit organizations.* Benefits paid to employees of nonprofit organizations or of any state-owned hospital or institution of higher education shall be financed in accordance with the provisions of this subsection. For the purpose of this subsection and section 96.19, a nonprofit organization is an organization described in the U. S. Internal Revenue Code, 26 U.S.C. 501 (c) (3), which is exempt from income tax under 26 U.S.C. 501 (a) of such Code.

a. Any state-owned hospital or institution of higher education, which, pursuant to section 96.19, subsection 6, paragraph *"h"*, or any nonprofit organization which, pursuant to section 96.19, subsection 6, paragraph *"i"*, is, or becomes, subject to this chapter on or after January 1, 1972, shall pay contributions under the provisions of subsections 1, 2, and 3 of this section, unless it elects, in accordance with this paragraph, to pay to the department for the unemployment fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(1) Any nonprofit organization or any state-owned hospital or institution of higher education which is, or becomes, subject to this chapter on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years commencing January 1, 1972, provided it files with the department a written notice of its election within the thirty-day period immediately following such date or within a like period immediately following the effective date of this Act*, whichever occurs later.

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(2) Any nonprofit organization or any state-owned hospital or institution of higher education, which becomes subject to this chapter after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years following the date on which such subjectivity begins by filing a written notice of its election with the department not later than thirty days immediately following the date of the determination of such subjectivity.

(3) Any nonprofit organization or any state-owned hospital or institution of higher education, which makes an election in accordance with subparagraphs (1) or (2) of this paragraph shall continue to be liable for payments in lieu of contributions until it files with the department a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(4) Any nonprofit organization or any state-owned hospital or institution of higher education, which has been paying contributions under this chapter for a period on or after January 1, 1972, may change to a reimbursable basis by filing with the department not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(5) The department may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(6) The department, in accordance with such regulations as it may prescribe, shall notify each nonprofit organization of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of subsections 5 and 6 of this section.

b. Payments in lieu of contributions shall be made in accordance with the following:

(1) At the end of each calendar quarter, or at the end of any other period as determined by the department, the department shall bill each nonprofit organization which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of ex-

tended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(2) Payment of any bill rendered shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subparagraph (4) of this paragraph.

(3) Payments made by any nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(4) The amount due specified in any bill from the department shall be conclusive on the organization unless, not later than fifteen days following the date the bill was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination by the department setting forth the grounds for such application. The department shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless, not later than sixty days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the district court pursuant to subsection 6 of this section.

(5) The provisions for collection of contributions under section 96.14 shall be applicable to payments in lieu of contributions.

10. *Provision of bond or other security.* Any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election to execute and file with the department a surety bond approved by the department or it may elect instead to deposit with the department money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this subsection.

a. The amount of the bond or deposit required by this subsection shall be equal to two and seven-tenths percent of the organization's total taxable wages paid for employment for the four calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money or securities, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be as determined by the department.

b. Any bond deposited under this subsection shall be in force for a period of not less than two taxable years and shall be renewed with the approval of the department, at such times as the department may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of contributions. The department shall require adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided for in section 96.14 shall render the surety liable on said bond to the extent of the bond, as though the surety was such organization.

c. Any deposit of money or securities in accordance with this subsection shall be retained by the department in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The department may deduct from the money deposited under this paragraph by a nonprofit organization or sell the securities it has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in section 96.14. The department shall require the organization within thirty days following any deduction from a money deposit or sale of deposited securities under the provisions of this paragraph to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The department may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, it determines that an adjustment is necessary, it shall require the organization to make additional deposit within thirty days of written notice of its determination or shall return to it such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the Code.

11. *Authority to terminate elections.* If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, the department may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which such termination becomes effective; provided, that the department may extend for good cause the applicable filing, deposit, or

adjustment period by not more than thirty days.

12. *Allocation of benefit cost.* Each employer that is liable for payments in lieu of contributions shall pay to the department for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid during each quarter that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payment shall be payable each quarter by the base period employers in inverse chronological order in which the employment of such individual occurred. Provided, that the amount of any such employer's liability in any calendar quarter shall not exceed the amount of such individual's wage credits plus one-half the amount of extended benefits based on employment with such employer during such quarter of the base period.

13. *Group accounts.* Two or more employers that have become liable for payments in lieu of contributions, in accordance with the provisions of subsection 9, paragraph *"a"*, of this section may file a joint application to the department for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection. Upon its approval of the application, the department shall establish a group account for such employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than one year and thereafter until terminated at the discretion of the department or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The department shall prescribe such regulations as it deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this subsection, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this subsection by members of the group and the time and manner of such payments.

14. *Nonprofit organization election.* Notwithstanding any provisions in subsection 9 of this section, any nonprofit organization that prior to January 1, 1969, paid contributions required by this section and, pursuant to subsection 9 of this section, elects, within thirty days after the effective date of this Act* to make payments in lieu of contributions, shall not be required to make any such payment on account of any regular or extended benefits paid, on the basis of wages paid by such organization to individuals for weeks of unemployment which begin on or after the effective date of such election until the total amount of such benefits equals the amount of the positive balance in the experience rating account of such organization.

15. *Temporary emergency tax.* The department shall with respect to the calendar year 1976, levy a temporary emergency tax on all contributing employers by increasing by seven-tenths of one percent the contribution rate provided by this section.

16. *Additional tax.* The department shall, with respect to the calendar year beginning January 1, 1977, add to the contribution rate assigned each employer based upon the effective table a percentage equal to nine-tenths of one percent. The department shall monitor the total trust funds available for payment of benefits. If this total available becomes less than twenty percent of the total benefit payments paid in the previous calendar year recording the highest benefit payments, for a period longer than two weeks, an additional tax equal to twenty-five hundredths of one percent shall be added to the rate of each employer assigned a contribution rate under the effective rate table. The twenty-five hundredths of one percent add-on tax shall be collected on all taxable wages paid by an employer during the calendar year beginning January 1, 1977. The add-on tax shall be paid on all taxable wages paid by the employer prior to the effective date of the tax with the quarterly contributions following the effective date of the tax, and on all taxable wages for the remainder of calendar year 1977. Following assignment of the additional tax notice of a rate increase shall be enclosed in the quarterly reports sent by the department to each employer. [C39,§**1551.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §96.7; 66GA, ch 67,§11, ch 92,§§13–17, 35, ch 93, §§1, 2, ch 1056,§8, ch 1068,§13–16, 39, 40]

Referred to in §§96.8(4), 96.9(5), 96.14(3), 96.19(1, 21), 96.20(2)

*64GA, ch 113

PERIOD, ELECTION, AND TERMINATION OF EMPLOYER'S COVERAGE

96.8 Conditions and requirements.

1. *Period of coverage.* Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year.

2. *Voluntary termination.* Except as otherwise provided in subsection 3 of this section,

an employing unit shall cease to be an employer subject to this chapter, as of the first day of January of any calendar year, if it files with the department, prior to the fifteenth day of February of such year, a written application for termination of coverage, and the department finds that such employing unit did not meet any of the qualifying liability requirements as provided under section 96.19, subsection 6, paragraphs *"a," "b," "c," "d," "e," "f,"* or *"g,"* and section 96.19, subsection 6, paragraphs *"h"* or *"i"* in the preceding calendar year.

3. *Election by employer.*

a. An employing unit, not otherwise subject to this chapter, which files with the department its written election to become an employer subject hereto for not less than two calendar years, shall with the written approval of such election by the department, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if prior to the fifteenth day of February of such year, it has filed with the department a written notice to that effect.

b. Any employing unit for which services that do not constitute employment as defined in this chapter are performed, may file with the department a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the department, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if prior to the fifteenth day of February of such year such employing unit has filed with the department a written notice to that effect.

4. *Transfer or discontinuance of business.*

a. In any case in which the enterprise or business of a subject employer has been sold or otherwise transferred to a subsequent employing unit or reorganized or merged into a single employing unit under the provisions of section 96.7, subsection 3, paragraph *"b"*, the account of the transferring employer shall terminate as of the date on which such transfer, reorganization or merger was completed.

b. In any case in which the enterprise or business of a subject employer has been discontinued otherwise than by sale or transfer to a subsequent employing unit and such employer has had no employment for a period of one year, the department may, on its own motion, terminate said account. [C39,§1551.14; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.8; 66GA, ch 92,§§18, 19, ch 1068,§40].

Referred to in §96.19(5, 6, 7)

UNEMPLOYMENT COMPENSATION FUND

96.9 Control, management, and use.

1. *Establishment and control.* There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the department exclusively for the purposes of this chapter. This fund shall consist of:

a. All contributions collected under this chapter,

b. Interest earned upon any moneys in the fund,

c. Any property or securities acquired through the use of moneys belonging to the fund,

d. All earnings of such property or securities, and

e. All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act [42USC §§501 to 503, 1103 to 1105, 1321 to 1324]. All moneys in the unemployment compensation fund shall be mingled and undivided.

2. *Accounts and deposits.* The state treasurer shall be ex officio treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the department. The state comptroller shall issue warrants upon the fund pursuant to the order of the department and such warrants shall be paid from the fund by the treasurer. The treasurer shall maintain within the fund three separate accounts:

a. A clearing account.

b. An unemployment trust fund account.

c. A benefit account. All moneys payable to the unemployment compensation fund and all interest and penalties on delinquent contributions and reports shall, upon receipt thereof by the department, be forwarded to the treasurer who shall immediately deposit them in the clearing account, but the interest and penalties on delinquent contributions and reports shall not be deemed to be a part of the fund. Refunds of contributions payable pursuant to section 96.14 shall be paid by the treasurer from the clearing account upon warrants issued by the comptroller under the direction of the department. After clearance thereof, all other moneys in the clearing account, except interest and penalties on delinquent contributions and reports, shall be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act as amended, any provisions of law in this state relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding.

Interest and penalties on delinquent contributions and reports collected from employers shall be transferred from the clearing account to the special employment security contingency fund. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund for the payment of benefits. Except as herein otherwise provided moneys in the clearing and benefit account may be deposited by the treasurer, under the direction of the department, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his or her duties as custodian of the fund in an amount fixed by the governor and in form and manner prescribed by law. Premiums for said bond shall be paid from the administration fund.

Interest paid upon the trust fund deposited with the secretary of the treasury of the United States under the provisions of this subsection 2 of this section for any calendar year shall be allocated and credited to and become a part of each employer's reserve account, said allocation to be made in the following manner: For the calendar year 1950 and each calendar year thereafter, the department shall add and credit to each employer's reserve account, the percentage of the total interest paid upon the aggregate of the reserve accounts of all of the employers in the state in said year that each such employer's individual reserve account bears to said aggregate reserve account. Said interest shall be credited and applied in the same manner as a voluntary contribution made by each such employer.

3. *Withdrawals.* Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that money credited to this state's account pursuant to section 903 of the Social Security Act may, subject to the conditions prescribed in subsection 4 of this section, be used for the payment of expenses incurred for the administration of this chapter. The department shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to the account of this state therein, as the department deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account, and shall disburse such moneys upon warrants drawn by the comptroller pursuant to the order of the department for the payment of benefits solely from such benefit account. Expenditures of such moneys from the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the comptroller for the payment of benefits and refunds shall bear the signature of the comptroller. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the department, shall be redeposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment trust fund, as provided in subsection 2 of this section.

4. *Money credited under section 903 of the Social Security Act.*

a. Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Such money may be requisitioned pursuant to subsection 3 of this section for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this chapter but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which (1) specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (2) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (3) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (*i*) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act during the same twelve-month period and the twenty-four preceding twelve-month periods, exceeds (*ii*) the aggregate of the amounts obligated for administration and paid out for benefits and charged against the amounts credited to the account of this state during such twenty-five twelve-month periods.

b. Amounts credited to this state's account in the unemployment trust fund under section 903 of the Social Security Act which are obligated for administration or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during a twelve-month period specified herein may be charged against any amount credited during such a twelve-month period earlier than the twenty-fourth preceding such period.

c. Money requisitioned as provided herein for the payment of expenses of administration

shall be deposited in the employment security administration fund, but, until expended, shall remain a part of the unemployment compensation fund. The treasurer of state shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund.

Referred to in §96.13(1)

5. *Administration expenses excluded.* Any amount credited to this state's account in the unemployment trust fund under section 903 of the Social Security Act which has been appropriated for expenses of administration pursuant to subsection 4 of this section, whether or not withdrawn from such account, shall not be deemed assets of the unemployment compensation fund for the purpose of computing contribution rates under section 96.7, subsection 3, of this chapter.

6. *Management of funds in the event of discontinuance of unemployment trust fund.* The provisions of subsections 1, 2, and 3 to the extent that they relate to the unemployment trust fund shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the director, treasurer of state and governor, in accordance with the provisions of this chapter: Provided, that such moneys shall be invested in the following readily marketable classes of securities; such securities as are authorized by the laws of the state of Iowa for the investment of trust funds. The treasurer shall dispose of securities and other properties belonging to the unemployment compensation fund only under the direction of the director, treasurer of state and governor.

7. *Transfer to railroad account.* Notwithstanding any requirements of the foregoing subsections of this section, the commission shall, prior to July 1, 1939, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act as amended, to the railroad unemployment insurance account, established and maintained pursuant to section 10 of the Railroad Unemployment Insurance Act*, an amount hereinafter referred to as the preliminary amount; and shall, prior to January 1, 1940, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in said unemployment trust fund to said railroad unemployment insurance account an additional amount, hereinafter referred to as the liquidating amount. The social security board shall determine both such amounts after consultation with the commission and the railroad retirement board. The preliminary amount shall consist of that proportion of the balance in the unemployment compensation fund as of June 30, 1939, as the total amount of contributions collected from "employers" as the term "employer" is defined in section 1 "*a*" of the Railroad Unemployment Insurance Act, and credited to the unemployment compensation fund bears to all contributions theretofore collected under this chapter and credited to the unemployment compensation fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" as the term "employer" is defined in section 1 "*a*" of the Railroad Unemployment Insurance Act pursuant to the provisions of this chapter during the period July 1, 1939, to December 31, 1939.

8. *Cancellation of warrants.* The state comptroller, as of January 1, April 1, July 1, and October 1 of each year, shall stop payment on all warrants for the payment of benefits which have been outstanding and unredeemed by the state treasurer for six months or longer. Should the original warrants subsequently be presented for payment, warrants in lieu thereof shall be issued by the state comptroller at the discretion of and certification by the department. [C39,§**1551.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.9; 66GA, ch 92,§35, ch 1068,§§17, 40]

Referred to in §§96.13(1, 3), 96.20(2)
Omnibus repeal, 50GA, ch 75,§2
*See 45 USC, ch 11

EMPLOYMENT SECURITY DEPARTMENT

96.10 Department of employment security. There is established an Iowa department of job service. The chief executive officer of the department is the director of job service who shall be appointed by the governor with the approval of two-thirds of the members of the senate and shall serve at the pleasure of the governor. The director shall be selected solely on the ability to administer the duties and functions granted to the department and shall devote full time to the duties of director. If the office of director becomes vacant during a session of the general assembly, the vacancy shall be filled in the same manner as the original appointment. Any vacancy in the office of director occurring while the general assembly is not in session shall be filled by appointment by the governor which appoint-

ment shall expire thirty days after the general assembly next convenes. Within the thirty-day period, the governor shall transmit an appointment to the senate.

The salary of the director shall be set by the general assembly.

The director of the department may establish, consolidate, and abolish divisions of the department when necessary for the efficient performance of the various functions and duties of the department of employment security. [C39,§**1551.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.10; 66GA, ch 1068,§18]

ADMINISTRATION

96.11 Powers, rules and personnel.

1. *Duties and powers of director.* It shall be the duty of the director to administer this chapter; and the director shall have power and authority to adopt, amend, or rescind pursuant to chapter 17A such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as the director deems necessary or suitable to that end. Not later than the fifteenth day of December of each year, the director shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the director deems proper. Such report shall include a balance sheet of the moneys in the fund. Whenever the director believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, the director shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

2. *General and special rules.* Each employer shall post and maintain printed statements of all rules of the department in places readily accessible to individuals in the employer's service, and shall make available to each such individual at the time the individual becomes unemployed a printed statement of such rules relating to the filing of claims for benefits. Such printed statements shall be supplied by the department to each employer without cost to him.

Referred to in §96.19 [7, *g* (3)]

3. *Publication.* The director shall cause to be printed for distribution to the public the text of this chapter, the department's general rules, its annual reports to the governor, and any other material the director deems relevant and suitable and shall furnish the same to any person upon application therefor.

4. *Personnel.* The director shall provide for the employment of such personnel as are necessary to carry out the functions of the department. Personnel shall be employed under the provisions of chapter 19A. The director, a deputy director, a confidential secretary, the members of the appeal board, and a secretary for each member if deemed necessary, shall be exempt from the merit system under the provisions of section 19A.3.

The director may bond any employee handling moneys or signing checks.

5. *Advisory council.*

a. There is established a job service advisory council composed of nine members appointed by the governor and approved by two-thirds of the members of the senate. Three members shall be appointed to represent employees; three members shall be appointed to represent employers; and three members shall be appointed to represent the general public. Not more than five members of the advisory council shall be members of the same political party. The term of office shall be six years beginning on the first day of July following their appointment, except that for the initial board three members representing all three categories shall be appointed for two-year terms; three members representing all three categories shall be appointed for four-year terms; and three members representing all three categories shall be appointed for six-year terms. Members shall serve without compensation, but shall be reimbursed for actual and necessary expenses, including travel, incurred for official meetings of the advisory council from funds appropriated to the department.

Vacancies shall be filled for the unexpired term in the same manner as the original appointment.

b. The advisory council shall meet with the director at least quarterly to discuss problems relating to the administration of this chapter and may meet more often upon the call of the director.

The advisory council annually shall elect a chairperson.

6. *Employment stabilization.* The director with the advice and aid of the advisory council, and through the appropriate divisions of the department, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

7. *Records and reports.* Each employing unit shall keep true and accurate work records, containing such information as the department may prescribe. Such records shall be open to inspection and be subject to being copied by the department or its authorized representatives at any reasonable time and as often as may be necessary. The director

may require from any employing unit any sworn or unsworn reports, with respect to persons employed by the department, which the director deems necessary for the effective administration of this chapter. Information thus obtained shall not be published or be open to public inspection, other than to public employees in the performance of their public duties or to an agent of the department designated as such in writing for the purpose of accomplishing certain functions of the department, in any manner revealing the employing unit's identity, but any claimant at a hearing before a hearing officer or the appeal board shall be supplied with information from such records to the extent necessary for the proper presentation of the claim. Any employee of the department or member of the appeal board who violates any provision of this section shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned for not longer than ninety days, or both.

Referred to in §96.7(4)

8. *Oaths and witnesses.* In the discharge of the duties imposed by this chapter, the chairman of the appeal board and any duly authorized representative of the department shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

9. *Subpoenas.* In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the appeal board, or any member or duly authorized representative thereof, shall have jurisdiction to issue to such person an order requiring such person to appear before the appeal board, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his or her power to do so, in obedience to a subpoena, shall be punished by a fine of not more than two hundred dollars or by imprisonment, for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

10. *Protection against self-incrimination.* No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department, or the appeal board, or in obedience to a subpoena in any cause or proceeding provided for in this chapter, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty for forfeiture; but no individual shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after having claimed privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

11. *State-federal co-operation.* In the administration of this chapter, the department shall co-operate with the United States department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relates to unemployment compensation, the federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970.

In the administration of the provisions of section 96.29 which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the department shall take such action as may be necessary to insure that the provisions are so interpreted and applied as to meet the requirements of such federal Act as interpreted by the United States department of labor, and to secure to this state the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the federal Act.

The department shall make such reports, in such form and containing such information as the United States department of labor may from time to time require, and shall comply with such provisions as the United States department of labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the United States department of labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in administration of this chapter.

The department may make its records relating to the administration of this chapter available to the railroad retirement board, and may furnish the railroad retirement board such copies thereof as the railroad retirement board deems necessary for its purposes. The department may afford reasonable co-operation with every agency of the United States charged with the administration of any unemployment insurance law. The railroad retirement board

or any other agency requiring such services and reports from the department shall pay the department such compensation therefor as the department determines to be fair and reasonable.

12. *Destruction of records.* The Iowa department of job service may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the department and are deemed by the director and the state records commission to be no longer necessary to the proper administration of this chapter. Wage records of the individual worker or transcripts therefrom may be destroyed or disposed of, if approved by the state records commission, two years after the expiration of the period covered by such wage records or upon proof of the death of the worker. Such destruction or disposition shall be made only by order of the director in consultation with the state records commission. Any moneys received from the disposition of such records shall be deposited to the credit of the employment security administration fund, subject to rules promulgated by the department.

13. *Purging uncollectible overpayments.* Notwithstanding any other provision of this chapter, the department shall review all outstanding overpayments of benefit payments annually. The department may determine as uncollectible and purge from its records any remaining unpaid balances of outstanding overpayments which are ten years or older from the date of the overpayment decision. [C39,§**1551.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 96.11; 66GA, ch 92,§§20, 21, 35, ch 1068,§§19–21, 40]

Referred to in §§96.7(4), 96.19[7, *g*,(3)]

EMPLOYMENT SERVICE

96.12 State employment service.

1. *Duties of department.* The department shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are within the purview of the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for co-operation with the states in the promotion of such system, and for other purposes", approved June 6, 1933, as amended, and known as the Wagner-Peyser Act [48 Stat. L. 113;29 USC §49]. All duties and powers conferred upon any other department, agency, or officer of this state relating to the establishment, maintenance, and operation of free employment offices shall be vested in the department. The provisions of the said Act of Congress, as amended, are hereby accepted by this state, in conformity with section 4 of said Act, and this state will observe and comply with the requirements thereof. The department is designated and constituted the agency of this state for the purpose of said Wagner-Peyser Act. The department may co-operate with the railroad retirement board with respect to the establishment, maintenance, and use of employment service facilities. The railroad retirement board shall compensate the department for such services or facilities in the amount determined by the department to be fair and reasonable.

2. *Financing.* For the purpose of establishing and maintaining free public employment offices, the department is authorized to enter into agreements with the railroad retirement board, or any other agency of the United States charged with the administration of an employment security law, with any political subdivision of this state, or with any private, nonprofit organization, and as a part of any such agreement the department may accept moneys, services, or quarters as a contribution to the employment security administration fund. [C39,§**1551.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.12; 66GA, ch 1068,§§22, 40]

Referred to in §§96.13(1), 239.2

EMPLOYMENT SECURITY ADMINISTRATION FUND

96.13 Control and use.

1. *Special fund.* There is hereby created in the state treasury a special fund to be known as the "Employment Security Administration Fund". All moneys which are deposited or paid into this fund are hereby appropriated and made available to the department. All moneys in this fund, except money received pursuant to section 96.9, subsection 4, which are received from the federal government or any agency thereof or which are appropriated by the state for the purposes described in section 96.12 shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter. This fund shall consist of all moneys appropriated by this state, and all moneys received from the United States, or any agency thereof, including the department of labor, the railroad retirement board, the United States employment service, established under the Wagner-Peyser Act, or from any other source for such purpose. Moneys received from the railroad retirement board, or any other agency, as compensation for services or facilities supplied to said board or agency shall be paid to the department, and the department shall allocate said moneys to the employment security administration fund. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for special funds in the state treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the department for expenditure consistent with this chapter. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his or her duties in connection with the employment security administraton fund in an amount and with such sureties as shall be fixed

and approved by the governor. The premiums for such bond and the premiums for the bond given by the treasurer of the unemployment compensation fund under section 96.9, shall be paid from the moneys in the employment security administration fund. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to section 96.9, subsection 4, paragraph "c", shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in section 96.9, subsection 4.

2. *Replenishment of lost funds.* If any moneys received after June 30, 1941, from the social security board under Title III of the Social Security Act, or any unencumbered balances in the unemployment compensation administration fund as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, are found by the social security board, because of any action or contingency, to have been lost or been expended for purposes other than or in amounts in excess of, those found necessary by the social security board for the proper administration of this chapter, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the unemployment compensation administration fund for expenditure as provided in subsection 1 of this section. Upon receipt of notice of such a finding by the social security board, the department shall promptly report the amount required for such replacement to the governor and the governor shall at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

3. *Special employment security contingency fund.* There is hereby created in the state treasury a special fund to be known as the special employment security contingency fund. All interest, fines, and penalties, regardless of when the same become payable, collected from employers under the provisions of section 96.14 subsequent to July 1, 1970, shall be paid into this fund. Said moneys shall not be expended or available for expenditure in any manner which would permit their substitution for federal funds which would in the absence of said moneys be available to finance expenditures for the administration of the employment security law. Nothing in this section shall prevent said moneys from being used as a revolving fund to cover expenditures for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. Said fund may be used for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds, received for or in the employment security administration fund. The moneys in this fund are hereby specifically made available to replace, within a reasonable time, any moneys received by this state in the form of grants from the federal government for administrative expenses which because of any action or contingency have been expended for purposes other than, or in excess of, those necessary for the proper administration of the employment security law. All moneys in the special employment security contingency fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the state treasury.

The treasurer of state shall be the custodian of said funds and shall give a separate and additional bond conditioned upon the faithful performance of his or her duties in connection with the special employment security contingency fund in an amount and with such sureties as shall be fixed and approved by the governor. The premiums for such bonds shall be paid from the moneys in the special employment security contingency fund. All sums recovered on such bond for losses sustained by the special employment security contingency fund shall be deposited in the fund. Refunds of interest and penalties collected on or after July 1, 1970, pursuant to this chapter shall be paid only from this fund.

Balances to the credit of the special employment security contingency fund shall not lapse at any time but shall continuously be available to the department for expenditures consistent herewith. However, if on July 1 of any year the balance in the special employment security contingency fund exceeds fifty thousand dollars by ten thousand dollars or more, the treasurer of state shall promptly transfer the entire amount over fifty thousand dollars to the unemployment compensation fund established in section 96.9 unless the department determines that such transfer should not be made because of immediate obligations to be met from the fund. [C39,§**1551.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.13; 66GA, ch 92,§35, ch 1068,§40]

Referred to in §96.17

COLLECTION OF CONTRIBUTIONS

96.14 Priority—refunds.

1. *Interest.* Any employer who shall fail to pay any contribution and at the time required by this chapter and the rules of the department shall pay to the department in addition to such contribution, interest thereon at the rate of one percent per month and one-thirtieth of one percent for each day or fraction thereof computed from the date upon which said contribution should have been paid.

2. *Penalties.* Any employer who shall fail to file a report of wages paid to each of his or her employees for any period in the manner and within the time required by this chapter and the rules of the department or any employer who the commission finds has filed an insufficient report and fails to file a sufficient report within thirty days after a written request from the department to do so shall pay a penalty to the department.

The penalty shall become effective with the first day the report is delinquent or, where a report is insufficient, with the thirty-first day following the written request for a sufficient report.

Penalty for failing to file a sufficient report shall be in addition to any penalty incurred for a delinquent report where the delinquent report is also insufficient.

The amount of the penalty for delinquent and insufficient reports shall be computed based on total wages in the period for which the report was due and shall be computed as follows:

Days Delinquent or Insufficient	Penalty Rate
1—60	0.1%
61—120	0.2%
121—180	0.3%
181—240	0.4%
241 or over	0.5%

No penalty shall be less than ten dollars for each delinquent report or each insufficient report not made sufficient within thirty days as a request to do so. Interest, penalties, and costs shall be collected by the department in the same manner as provided by this chapter for contributions.

If the department finds that any employer has willfully failed to pay any contribution or part thereof when required by this chapter and the rules of the department, with intent to defraud the department, then such employer shall in addition to such contribution or part thereof, pay a contribution equal to fifty percent of the amount of such contribution or part thereof, as the case may be.

The department may cancel any interest or penalties if it is shown to the satisfaction of the department that the failure to pay a required contribution or to file a required report was not the result of negligence, fraud, or intentional disregard of the law or the rules of the department.

3. *Lien of contributions—collection.* Whenever any employer liable to pay contributions refuses or neglects to pay the same, the amount, including any interest, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said employer. An assessment of the unpaid contributions, interest and penalty shall be applied as provided in section 96.7, subsection 4, paragraphs *"a"* and *"b"* and the lien shall attach as of the date the assessment is mailed or personally served upon the employer. However, the department may release any lien, when after diligent investigation and effort it determines that the amount due is not collectible.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the department shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in his or her office a book to be known as "index of unemployment contribution liens", so ruled as to show in appropriate columns the following data, under the names of employers, arranged alphabetically:

a. The name of the employer.
b. The name "State of Iowa" as claimant.
c. Time notice of lien was received.
d. Date of notice.
e. Amount of lien then due.
f. When satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and shall forthwith index said notice in said index book and shall forthwith record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof.

The department shall pay a recording fee as provided in section 335.14, for the recording of such lien, or for the satisfaction thereof.

Upon the payment of contributions as to which the department has filed notice with a county recorder, the department shall forthwith file with said recorder a satisfaction of said contributions and the recorder shall enter said satisfaction on the notice on file in his or her office and indicate said fact on the index aforesaid.

The department shall, substantially as provided in sections 445.6 and 445.7, proceed to collect all contributions as soon as practicable after the same become delinquent, except that no property of the employer shall be exempt from the payment of said contributions.

If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the department and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the department shall be construed to be an election on the part of the state or any of its officers to pursue any

remedy hereunder to the exclusion of any other remedy provided by law.

The courts of this state shall recognize and enforce liabilities for unemployment contributions, penalties, interest and benefit overpayments imposed by other states which extend a like comity to this state. The department may sue in the courts of any other jurisdiction which extends such comity to collect unemployment contributions, penalties, interest and benefit overpayments due this state. The officials of other states which, by statute or otherwise, extend a like comity to this state may sue in the district court to collect for such contributions, penalties, interest and benefit overpayments. In any such case the director of the department of this state, as agent for and on behalf of any other state, may institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties, interest and benefit overpayments due under this chapter. A certificate by the secretary of any such state attesting the authority of such official to collect the contributions, penalties, interest and benefit overpayments, is conclusive evidence of such authority. The requesting state shall pay the court costs.

Referred to in §96.16(4)

4. *Priorities under legal dissolutions or distributions.* In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages preferred as provided by statute. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64 "*a*" of that Act [11 U.S.C., §104 "*b*", as amended].

5. *Refunds, compromises and settlements.* In any case in which the department finds that an employer has paid contributions or interest thereon, which have been erroneously paid, and who has filed an application for adjustment thereof, the department shall make such adjustment, compromise, settlement, and make such refund of erroneous payments as it finds just and equitable in the premises. Refunds so made shall be charged to the fund to which the erroneous collections have been credited, and shall be paid to the claimant without interest. Any claim for such refund shall be made within three years from the date of payment. For like cause, adjustments, compromises or refunds may be made by the department on its own initiative. In any case in which the department finds that the contribution that has been assessed against an employer is of doubtful collectibility or may not be collected in full, the department may institute a proceeding in the district court in the county in which the enterprise against which such tax is levied is located, requesting authority to compromise such contribution. Notice of the filing of such application shall be given to the interested parties as the court may prescribe. The court upon such hearing shall have power to authorize the department to compromise and settle its claim for such contribution and shall fix the amount to be received by the department in full settlement of such claim and shall authorize the release of the department's lien for such contribution.

Referred to in §96.19(7)

6. *Nonresident employing units.* Any employing unit which is a nonresident of the state of Iowa and for which services are performed in insured work within the state of Iowa and any resident employer for which such services are performed and who thereafter removes himself or herself from the state of Iowa by having such services performed within the state of Iowa shall be deemed:

a. To agree that such employing unit shall be subject to the jurisdiction of the district court of the state of Iowa over all civil actions and proceedings against such employing unit for all purposes of this chapter, and

b. To appoint the secretary of state of this state as its lawful attorney upon whom may be served all original notices of suit and other legal processes pertaining to such actions and proceedings, and

c. To agree that any original notice of suit or any other legal process so served upon such nonresident employing unit shall be of the same legal force and validity as if personally served on it in this state.

7. *Original notice—form.* The original notice of suit filed with the secretary of state shall be in form and substance the same as now provided in suits against residents of this state, except that that part of said notice pertaining to the return day shall be in substantially the following form, to wit:

"And unless you appear thereto and defend in the district court of Iowa in and for ..... county at the courthouse in ....., Iowa before noon of the sixtieth day following the filing of this notice with the secretary of state of this state, you will be adjudged in default, your default entered of record, and judgment rendered against you for the relief prayed in plaintiff's petition."

8. *Manner of service.* Plaintiff in any such action shall cause the original notice of suit to be served as follows:

a. By filing a copy of said original notice of suit with said secretary of state, together with a fee of two dollars, and

b. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the secretary of

state, by restricted certified mail addressed to the defendant at his or her last known residence or place of abode, a notification of the said filing with the secretary of state.

9. *Notification to nonresident—form.* The notification, provided for in subsection 7, shall be in substantially the following form, to wit:

"To ..... (Here insert the name of each defendant and his or her residence or last known place of abode as definitely as known.)

"You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the .....day of ....., 19...., with the secretary of state of the state of Iowa.

"Dated at ....., Iowa, this ..... day of ....., 19.....

.....
Plaintiff.

By.....
Attorney for Plaintiff."

10. *Optional notification.* In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery.

11. *Proof of service.* Proof of the filing of a copy of said original notice of suit with the secretary of state, and proof of the mailing or personal delivery of said notification to said nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court.

12. *Actual service within this state.* The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form, and under the conditions provided for service on residents.

13. *Venue of actions.* Actions against nonresidents as contemplated by this law may be brought in Polk county, or in the county in which such services were performed.

14. *Continuances.* The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford him reasonable opportunity to defend said action.

15. *Duty of secretary of state.* The secretary of state shall keep a record of all notices of suit filed with him or her, shall not permit said filed notices to be taken from his or her office except on an order of court, and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which he or she is defendant.

16. *Injunction upon nonpayment.* Any employer or employing unit refusing or failing to make and file required reports or to pay any contributions, interest or penalty under the provisions of this chapter, after ten-day written notice sent by the department to the employer's or employing unit's last known address by certified mail, may be enjoined from operating any business in the state while in violation of this chapter upon the complaint of the Iowa employment security commission in the district court of a county in which the employer or employing unit has or had a place of business within the state, and any temporary injunction enjoining the continuance of such business may be granted without notice and without a bond being required from the Iowa employment security commission. Such injunction may enjoin any employer or employing unit from operating his or her or its business unit until the delinquent contributions, interest or penalties shall have been made and filed or paid; or the employer shall have furnished a good and sufficient bond conditioned upon the payment of such delinquencies in such an amount and containing such terms as may be determined by the court; or the employer has entered into a plan for the liquidation of such delinquencies as the court may approve, provided that such injunction may be reinstated upon the employer's failure to comply with the terms of said plan. [C39,§**1551.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.14; 66GA, ch 92,§§22–25, 35, ch 1068,§§23, 40, ch 1084,§43]

Referred to in §§96.7(4a, 9, 10), 96.9(2), 96.13(3), 96.16(4), 96.19[7, g,(2)]

PROTECTION OF RIGHTS AND BENEFITS

96.15 Waiver—fees—assignments.

1. *Waiver of rights void.* Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him or her, or require or accept any waiver of any right hereunder by any individual in his or her employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned for not more than six months, or both.

2. *Limitation of fees.* No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the department or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the department, or an appeal tribunal or a court may be represented by counsel or other duly authorized agent; but no such counsel or agent

shall either charge or receive for such services more than an amount approved by the department. Any person who violates any provisions of this subsection shall, for each such offense, be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned for not more than six months, or both.

3. *No assignment of benefits—exemptions.* Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void, and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts. Any waiver of any exemption provided for in this subsection shall be void. [C39,§**1551.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.15; 66GA, ch 92,§35, ch 1068,§40]

96.16 Offenses.

1. *Penalties.* Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter, either for himself or herself or for any other person, shall be punished by a fine of not less than twenty dollars nor more than fifty dollars or by imprisonment for not longer than thirty days. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

2. *False statement.* Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto, or to avoid or reduce any contribution or other payment required from an employing unit under this chapter, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal, shall constitute a separate offense.

3. *Unlawful acts.* Any person who shall willfully violate any provisions of this chapter or any rule thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

4. *Misrepresentation.* Any person who, by reason of any error, or by reason of the nondisclosure or misrepresentation by him or her or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his or her case, or while he or she was disqualified from receiving benefits, shall, in the discretion of the department, either be liable to have such sum deducted from any future benefits payable to him or her under this chapter or shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by him or her, and such sum shall be collectible in the manner provided in section 96.14, subsection 3, for the collection of past-due contributions. [C39,§**1551.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.16; 66GA, ch 92,§35, ch 1068, §40]

REPRESENTATION IN COURT

96.17 Counsel.

1. *Legal services.* In any civil action to enforce the provisions of this chapter, the department and the state may be represented by any qualified attorney who is a regular salaried employee of the department and is designated by it for this purpose or, at the department's request, by the attorney general. In case the governor designates special counsel to defend on behalf of the state, the validity of this chapter, the expenses and compensation of such special counsel employed by the department in connection with such proceeding may be charged to the unemployment compensation administration fund.

2. *County attorney.* All criminal actions for violations of any provision of this chapter, or of any rules issued by the department pursuant thereto, shall be prosecuted by the prosecuting attorney of any county in which the employer has a place of business or the violator resides, or, at the request of the department, shall be prosecuted by the attorney general.

3. *Indemnification.* Any member of the department or any employee of the department shall be indemnified for any damages and legal expenses incurred as a result of the good faith performance of their official duties, for any claim for civil damages not specifically covered by the Iowa Tort Claims Act.* Any payment described herein shall be paid from the special employment security contingency fund in section 96.13, subsection 3. [C39, §**1551.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.17; 66GA, ch 92,§26, ch 1068,§40]

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96.18 Nonliability of state. Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the department shall be liable for any amount in excess of such sums. [C39, §1551.24; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.18; 66GA, ch 1068,§40]

DEFINITIONS

96.19 Scope. As used in this chapter, unless the context clearly requires otherwise:

1. *"Annual payroll."* The term "annual payroll" as used in subsection 3 *"d"* of section 96.7 means the total amount of taxable wages paid by an employer for insured work during the period of four consecutive calendar quarters ending on September 30 of each year, and the term "average annual payroll" as used in said subsection means the average of the "annual payrolls" of an employer for the last three periods of four consecutive calendar quarters immediately preceding the computation date. Except that for an employer who qualifies on any computation date for a computed rate on the basis of less than twelve consecutive calendar quarters of chargeability immediately preceding the computation date, the term average annual payroll shall be the average of the annual payrolls for the last two periods of four consecutive calendar quarters immediately preceding the computation date.

2. *"Benefits"* means the money payments payable to an individual, as provided in this chapter, with respect to his or her unemployment.

3. *"Commission"* means the employment security commission established by this chapter.

4. *"Contributions"* means the money payments to the state unemployment compensation fund required by this chapter.

5. *"Employing unit"* means any individual or type of organization, including this state and its political subdivisions, state agencies, boards, commissions, and instrumentalities thereof, any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection 6 or section 96.8, subsection 3, the employing unit shall for all the purposes of this chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such work; except that each such contractor or subcontractor who is an employer by reason of subsection 6 or section 96.8, subsection 3, shall alone be liable for the contributions measured by wages payable to individuals in his or her employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection 6 or section 96.8, subsection 3, may recover the same from such contractor or subcontractor, except as any contractor or subcontractor who would in the absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions under an agreement with such employer made pursuant to general rules of the commission. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work, and provided, further, that such employment was for a total of not less than eight hours in any one calendar week.

6. *"Employer"* means:

a. For purposes of this chapter the term "employer" means with respect to any calendar year after December 31, 1971, any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages as defined in subsection 13 of one thousand five hundred dollars or more, or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment at least one individual (irrespective of whether the same individual was in employment in each such day).

b. Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade, or business, or substantially all of the assets thereof, of another employing unit which at the time of such acquisition was an employer subject to this chapter, or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to this chapter. Provided, that such other employing unit would have been an employer under paragraph *"a"* of this subsection, if such

part had constituted its entire organization, trade, or business.

c. Any employing unit which acquired the organization, trade, or business, or substantially all the assets of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph *"a"* of this subsection.

d. Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit, would be an employer under paragraph *"a"* of this subsection.

e. Any employing unit which, having become an employer under paragraph *"a"*, *"b"*, *"c"*, *"d"*, *"f"*, *"g"*, *"h"* or *"i"* has not, under section 96.8, ceased to be an employer subject to this chapter.

f. For the effective period of its election pursuant to section 96.8, subsection 3, any other employing unit which has elected to become fully subject to this chapter.

g. Any employing unit not an employer by reason of any other paragraph of this subsection for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or which, as a condition for approval of this chapter for full tax credit against the tax imposed by the federal Unemployment Tax Act (26 U.S.C. 3301-3308), is required, pursuant to such Act, to be an "employer" under this chapter. Provided, however, that if an employer subject to contributions solely because of the terms of this subsection shall establish proper proof to the satisfaction of the department that his or her employees have been and will be duly covered and insured under the unemployment compensation law of another jurisdiction such employer shall not be deemed an employer and such services shall not be deemed employment under this chapter.

h. Any employing unit for which service in employment as defined in subsection 7, paragraph "a", subparagraph (4), is performed after December 31, 1971.

i. Any employing unit for which service in employment, as defined in subsection 7, paragraph "a", subparagraph (5), is performed after December 31, 1971.

j. For purposes of paragraphs *"a"* and *"i"*, employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into in accordance with subsection 7, paragraph *"d"*, by the department and an agency charged with the administration of any other state or federal unemployment compensation law.

k. For purposes of paragraphs *"a"* and *"i"*, if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week.

Referred to in §§96.7(3, 8, 9), 96.8(2)

7. *"Employment".*

a. Except as otherwise provided in this section "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Employment also means any service performed prior to January 1, 1972, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1971, by:

(1) Any officer of a corporation, or

(2) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee, or

(3) Any individual other than an individual who is an employee under subparagraphs (1) or (2) who performs services for remuneration for any person as an agent driver or commission driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry cleaning services for his or her principal; as a traveling or city salesman, other than as an agent driver or commission driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

Provided, that for purposes of paragraph *"a"*, subparagraph (3), the term "employment" shall include services performed after December 31, 1971, only if:

(a) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(b) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(c) The services are not in the nature of single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(4) Service performed after December 31, 1971, by an individual in the employ of this state or any of its wholly owned instrumentalities.

(5) Service performed after December 31, 1971, by an individual in the employ of a re-

ligious, charitable, educational or other organization, but only if the service is excluded from "employment" as defined in the federal Unemployment Tax Act (26 U.S.C. 3301-3308) solely by reason of section 3306 (c) (8) of that Act.

(6) For the purposes of subparagraphs (4) and (5), the term "employment" does not apply to service performed:

(a) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

(c) In the employ of a nonpublic school which is not an institution of higher education.

(d) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work.

(e) As part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(f) For a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution.

(7) (a) Service performed in the employ of any political subdivision of the state or any instrumentality thereof, effective on the day immediately following termination of eligibility to file a claim for assistance under The Special Unemployment Assistance Act of 1974 (Public Law 93567) and extensions thereof, if any; provided that, the effective date of coverage provided herein shall not be deemed to apply to service performed for a hospital or institution of higher education operated by a political subdivision which has elected coverage with such services pursuant to paragraph *"c"** of section 96.8, subsection 3; provided further, that, there shall not be restrictions until the effective date of the coverage year herein provided upon the right of any political subdivision to elect coverage solely for its institutions of higher education and hospitals as provided in paragraph *"c"** of section 96.8, subsection 3.

*Repealed by 66GA, ch 92,§§18, 19

(b) For the purpose of subparagraph (7a) of this paragraph the term "employment" does not apply to service performed by individuals granted temporary appointment of less than eighty working days' duration, casual or day workers, and workers who perform service for less than twenty hours per week.

(c) Upon the effective date of the coverage of service as "employment" provided by this subparagraph (7), individuals who performed the covered services shall be credited with wage credits retroactively limited to the base period as defined in subsection 17 of this section, applicable to such effective date, in accordance with their wages as defined in subsection 13 of this section. Such wage credits shall be available for use solely with respect to claims for benefits under this chapter filed on and after the effective date of coverage herein provided.

(d) Benefits based on services in employment as provided in this subparagraph (7) shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service in this chapter, except that benefits based on service in a school operated by a political subdivision or an instrumentality thereof shall not be paid to an individual for any week of unemployment which begins during the period between two successive years or during similar periods between two regular terms whether or not successive, or during the period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in this capacity for any school or schools for both such academic years or for both such terms. For the purpose of this provision "school" means an educational institution operated by a political subdivision or an instrumentality thereof which is not an institution of higher education as defined in subsection 24 of this section.

b. The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(1) The service is localized in this state, or

(2) The service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state, or

(3) The service is performed outside the United States (except in Canada or the Virgin Islands) after December 31, 1971, by a citizen of the United States in the employ of an American employer (other than service which is deemed "employment" under the provisions of subparagraphs (1) and (2) or the parallel provisions of another state law), if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States but the employer is an individual who is a resident of this state, or the employer is a corporation which is organized under the laws of this state, or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subdivisions (a) and (b) of this subparagraph is met, but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(d) An "American employer", for purposes of this subparagraph, means a person who is an individual who is a resident of the United States or a partnership if two-thirds or more of the partners are residents of the United States, or a trust, if all of the trustees are residents of the United States, or a corporation organized under the laws of the United States or of any state.

(4) Notwithstanding the provisions of subparagraphs (1), (2), and (3), all service performed after December 31, 1971, by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable waters within and without the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state, and

(5) Notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which, as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act (26 U.S.C. 3301-3308), is required to be covered under this chapter.

c. Services performed within this state but not covered under paragraph "*b*" of this subsection shall be deemed to be employment subject to this chapter if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

d. Services not covered under paragraph "*b*" of this subsection, and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

e. Service shall be deemed to be localized within a state if:

(1) The service is performed entirely within such state, or

(2) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

f. Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact.

g. The term "employment" shall not include:

(1) Service performed in the employ of this state by an elected official.

(2) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States; provided, however, that the general language just used shall not include any such instrumentality of the United States after Congress has, by appropriate legal action, expressly permitted the several states to require such instrumentalities to make payments into an employment fund under a state unemployment compensation law; and all such instrumentalities so released from the constitutional immunity to make the contributions, imposed by this chapter shall, thereafter, become subject to all the provisions of said chapter, and such provisions shall then be applicable to such instrumentalities and to all services performed for such instrumentalities in the same manner, to the same extent and on the same terms as are applicable to all other employers, employing units, individuals and services. Should the social security board, acting under section 1603 of the federal internal revenue code, fail to certify the state of Iowa for any particular calendar year, then the payments required of such instrumentalities with respect to such year shall be refunded by the department from the fund in the same manner and within the same period as is provided for in section 96.14, subsection 5, which section provides for the refunding of contributions erroneously collected.

(3) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; provided, that the department is hereby authorized and directed to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 96.11, subsection 2 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such Act of

Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this chapter.

Referred to in §§96.3(1), 96.4(5)

(4) *Agricultural labor.* For purposes of this chapter, the term "agricultural labor" means any service performed prior to January 1, 1972, which was agricultural labor as defined in this subparagraph prior to such date, and remunerated service performed after December 31, 1971:

(a) On a farm in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended [46 Stat. 1550, Sec. 3, 12 U.S.C. 1141j], or in connection with ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one half of the commodity with respect to which such service is performed;

(ii) In the employ of a group of operators of farms (or a co-operative organization of which such operators are members) in the performance of service described in (i) of subdivision (d) of this subparagraph, but only if such operators produced more than one half of the commodity with respect to which such service is performed;

(iii) The provisions of (i) and (ii) of subdivision (d) of this subparagraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(f) The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(5) Domestic service in a private home.

(6) Service performed by an individual in the employ of his or her son, daughter, or spouse, and service performed by a child under the age of eighteen in the employ of his or her father or mother.

(7) Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university or by the spouse of such student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

Service performed by an individual under the age of twenty-two years who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

Service performed in the employ of a hospital if such service is performed by a patient of the hospital.

8. *"Employment office"* means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

9. *"Fund"* means the unemployment compensation fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

10. *"Total and partial unemployment".*

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to him or her and during which he or she performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at his or her then regular job, he or she works less than the regular full-time week and in which he or she earns less than his or her weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which he or she, having been separated from his or her regular

job, earns at odd jobs less than his or her weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the commission, not to exceed four consecutive weeks, he or she is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from his or her regular job or trade in which he or she worked full-time and in which he or she will again work full-time, if his or her employment, although temporarily suspended, has not been terminated.

Referred to in §§96.3(3), 96.4(1, 3)

11. *"State"* includes, in addition to the states of the United States, the District of Columbia, Canada, Puerto Rico, and the Virgin Islands.

12. *"Unemployment compensation administration fund"* means the unemployment compensation administration fund established by this chapter, from which administration expenses under this chapter shall be paid.

13. *"Wages"* means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the department. Wages payable to an individual for insured work performed prior to January 1, 1941, shall, for the purposes of sections 96.3, 96.4, and this section, be deemed to be wages paid within the calendar quarter with respect to which such wages were payable.

The term wages shall not include:

a. The amount of any payment, including any amount paid by an employer for insurance or annuities or into a fund to provide for such payment, made to or on behalf of an employee or any of his or her dependents under a plan or system established by an employer which makes provisions for his or her employees generally, or for his or her employees generally and their dependents, or for a class, or classes of his or her employees, or for a class or classes of his or her employees and their dependents, on account of retirement, sickness, accident disability, medical or hospitalization expense in connection with sickness or accident disability, or death.

b. Any payment paid to an employee, including any amount paid by any employer for insurance or annuities or into a fund to provide for any such payment, on account of retirement.

c. Any payment on account of sickness or accident disability, or medical or hospitalization expense in connection with sickness or accident disability made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer.

Referred to in §96.5 (7)

14. *"Week"* means such period or periods of seven consecutive calendar days ending at midnight, or as the department may by regulations prescribe.

15. *"Weekly benefit amount"*. An individual's "weekly benefit amount" means the amount of benefits he or she would be entitled to receive for one week of total unemployment. An individual's weekly benefit amount, as determined for the first week of his or her benefit year, shall constitute his or her weekly benefit amount throughout such benefit year.

16. *"Benefit year"*. The term "benefit year" means a period of one year beginning with the day with respect to which an individual filed a valid claim for benefits. Any claim for benefits made in accordance with section 96.6, subsection 1, shall be deemed to be a valid claim for the purposes of this subsection if the individual has been paid wages for insured work required under the provisions of this chapter.

Referred to in §96.22

17. *"Base period"* means the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which he or she filed a valid claim.

Referred to in §96.23

18. *"Calendar quarter"* means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the department may by regulation prescribe.

19. *"Customary self-employment"*. An employee shall be deemed to be engaged in "his or her customary self-employment", as said words are used in section 96.5, during the periods in which he or she customarily devotes the major portion of his or her working time and efforts: *(a)* To his or her individual enterprises and interests; or *(b)* to her duties as housewife; or *(c)* to attending classes and preparing his or her studies for any school or college.

20. *"Insured work"* means employment for employers.

21. *"Taxable wages"*. For the purposes of section 96.7, subsections 1 and 2 and subsequent to December 31, 1971, taxable wages shall not include that part of remuneration which, after remuneration equal to four thousand two hundred dollars has been paid in a calendar year to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state

unemployment fund, except that for the calendar years 1976 and 1977 the remuneration figure shall be six thousand dollars.

For the purposes of this subsection, the term "employment" includes service constituting employment under any unemployment compensation law of another state provided such other state will consider service performed in Iowa in determining the contribution base.

22. *"Computation date"*. The computation date for contribution rates shall be October 1 of that calendar year preceding the calendar year with respect to which such rates are to be effective.

23. *"Hospital"* means an institution which has been licensed, certified, or approved by the Iowa department of health as a hospital.

24. *"Institution of higher education"* means an educational institution which admits as regular students individuals having a certificate of graduation from a high school, or the recognized equivalent of such certificate; is legally authorized in this state primarily to provide a program of education beyond high school; provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and is a public or other nonprofit institution.

25. *"United States"* for the purposes of this section includes the states, the District of Columbia, and the Commonwealth of Puerto Rico.

26. *"Extended benefit period"* means a period which:

a. Begins with the third week after whichever of the following weeks occurs first:

(1) A week for which there is a national "on" indicator, or

(2) A week for which there is a state "on" indicator, and

b. Ends with either of the following weeks, whichever occurs later:

(1) The third week after the first week for which there is both a national "off" indicator and a state "off" indicator, or

(2) The thirteenth consecutive week of such period.

Provided that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state, and

Provided further that no extended benefit period may become effective in this state prior to January 1, 1972.

27. *"National 'on' indicator"* means for any week that the United States secretary of labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equalled or exceeded four and one-half percent.

28. *"National 'off' indicator"* means for any week that the United States secretary of labor determines that for each of the three most recent completed calendar months ending before such week the rate of insured unemployment (seasonally adjusted) for all states was less than four and one-half percent.

29. *"State 'on' indicator"* means for any week that the department determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks the rate of insured unemployment (not seasonally adjusted) under this chapter equalled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equalled or exceeded four percent.

30. *"State 'off' indicator"* means for any week that the department determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks the rate of insured unemployment (not seasonally adjusted) under this chapter was less than one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years or was less than four percent.

31. *"Rate of insured unemployment"*, for purposes of determining state "on" indicator and state "off" indicator, means the percentage derived by dividing the average weekly number of individuals filing claims in Iowa for weeks of unemployment with respect to the most recent thirteen consecutive week period, as determined by the department on the basis of its reports to the United States secretary of labor, by the average monthly insured employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

32. *"Regular benefits"* means benefits payable to an individual under this or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen or women pursuant to 5 U.S.C., chapter 85) other than extended benefits.

33. *"Extended benefits"* means benefits (including benefits payable to federal civilian employees and to ex-servicemen or women pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his or her eilgibility period.

34. *"Eligibility period"* of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period and, if his or her bene-

fit year ends within such extended benefit period, any weeks thereafter which begin in such period.

35. *"Exhaustee"* means an individual who, with respect to any week of unemployment in his or her eligibility period has received, prior to such week, all of the regular benefits that were available to him or her under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen or women under 5 U.S.C., Chapter 85) in his or her current benefit year that includes such weeks. Provided that for the purposes of this subsection an individual shall be deemed to have received all of the regular benefits that were available to him or her, although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his or her benefit year he or she may subsequently be determined to be entitled to add regular benefits, or:

a. His or her benefit year having expired prior to such week, has no, or insufficient, wages and on the basis of which he or she could establish a new benefit year that would include such week, and

b. He or she has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the United States secretary of labor, and he or she has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada, but if he or she is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under such law he or she is considered an exhaustee.

36. *"State law"* means the unemployment insurance law of any state, approved by the United States secretary of labor under 26 U.S.C. 3304. [C39,§**1551.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.19; 66GA, ch 92,§§27–35, ch 93,§3, ch 1068, §§24–26, 40, 45]

Referred to in §§96.3(1), 96.3(3), 96.4(1, 3, 5), 96.5(7), 96.7(3, 8, 9), 96.8(2), 96.22, 96.23

Amendment by 66GA, ch 1068,§24, effective March 31, 1977

RECIPROCITY

96.20 Reciprocal benefit arrangements.

1. The department is hereby authorized to enter into arrangements with the appropriate agencies of other states, or a contiguous country with which the United States has an agreement with respect to unemployment compensation or the federal government whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

2. The department may enter into arrangements with the appropriate agencies of other states, or a contiguous country with which the United States has an agreement with respect to unemployment compensation or of the federal government (*a*) whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government, shall be deemed to be wages for employment by employers for the purposes of section 96.3 and section 96.4, subsection 5; provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the department finds will be fair and reasonable as to all affected interests, and (*b*) whereby the department will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers, as the department finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of section 96.3, subsection 5, and section 96.9, but no reimbursement so payable shall be charged against any employer's account for the purposes of section 96.7, unless wages so transferred are sufficient to establish a valid claim in Iowa, and that such charges shall not exceed the amount that would have been charged on the basis of a valid claim. The department is hereby authorized to make to other state or federal agencies and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section. The department shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this Act with his or her wages and employment covered under the unemployment compensation laws of other states which are approved by the United States secretary of labor and consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for: Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws, and avoiding the duplication use of wages and employment by reason of such combining.

3. The department is hereby authorized to enter into agreements with the appropriate agencies of other states, or a contiguous country with which the United States has an agreement with respect to unemployment compensation or the federal government administering unemployment compensation laws

to provide that contributions on wages for services performed by an individual in more than one state for the same employer may be paid to the appropriate agency of one state. [C39,§1551.26; C46, 50, 54, 58, 62, 66, 71, 73, 75, §96.20; 66GA, ch 92,§35, ch 1068,§40]

Constitutionality, 46ExGA, ch 4,§§22, 23; 47GA, ch 102, §§22, 23; 50GA, ch 77,§3; 51GA, ch 88,§4

Omnibus repeal, 48GA, ch 64,§3
Omnibus repeal, 48GA, ch 65,§6
Omnibus repeal, 48GA, ch 67,§7
Omnibus repeal, 48GA, ch 68,§9
Omnibus repeal, 48GA, ch 69,§8
Omnibus repeal, 49GA, ch 98,§8
Omnibus repeal, 49GA, ch 99,§2
Omnibus repeal, 49GA, ch 100,§2
Omnibus repeal, 49GA, ch 101,§12
Omnibus repeal, 49GA, ch 103,§3
Omnibus repeal, 49GA, ch 104,§2
Omnibus repeal, 49GA, ch 105,§2
Omnibus repeal, 50GA, ch 70,§2
Omnibus repeal, 50GA, ch 75,§2
Omnibus repeal, 50GA, ch 77,§2
Omnibus repeal, 50GA, ch 78,§2
Omnibus repeal, 51GA, ch 88,§5
Omnibus repeal, 51GA, ch 90,§3
Omnibus repeal, 52GA, ch 74,§9
Omnibus repeal, 53GA, ch 68,§2

Saving clause, 46ExGA, ch 4,§21; 47GA, ch 102,§21; 49GA, ch 104,§3

96.21 Termination. If at any time Title IX of the Social Security Act, as amended, shall be amended or repealed by Congress or held unconstitutional by the supreme court of the United States, with the result that no portion of the contributions required under this chapter may be credited against the tax imposed by said Title IX, in any such event the operation of the provisions of this chapter requiring the payment of contributions and benefits shall immediately cease, the department shall thereupon requisition from the unemployment trust fund all moneys therein standing to its credit, and such moneys, together with any other moneys in the unemployment compensation fund shall be refunded, without interest and under regulations prescribed by the department, to each employer by whom contributions have been paid, proportionately to his or her pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the department to pay for the costs of making such refunds. When the department shall have executed the duties prescribed in this section and performed such other acts as are incidental to the termination of its duties under this chapter, the provisions of this chapter, in their entirety, shall cease to be operative. [C39,§1551.27; C46, 50, 54, 58, 62, 66, 71, 73, 75,§96.21; 66GA, ch 1068,§40]

Omnibus repeal, 47GA, ch 102,§25

ARMED FORCES

96.22 Servicemen or women not disqualified. Notwithstanding any other provision of this chapter to the contrary, any individual in good faith leaving his employment after July 1, 1951, and prior to July 1, 1955, to join the armed forces of the United States, and who does so join, or who attempting to so join is rejected, shall not be disqualified under the provisions of subsection 1 of section 96.5 for voluntarily leaving his or her employment.

Any benefit year as defined in subsection 16 of section 96.19 of any individual shall be extended by any time spent after June 30, 1951, and prior to July 1, 1955, by such individual after the beginning of such benefit year in the armed forces of the United States. [C54, 58, 62, 66, 71, 73, 75,§96.22; 66GA, ch 92,§35]

96.23 Base period exclusion. Any calendar quarter commencing after June 30, 1951, and ending prior to July 1, 1955, the greater portion of which is spent by such individual in the armed forces of the United States, shall not be considered as any portion of the base period provided for in subsection 17 of section 96.19. [C54, 58, 62, 66, 71, 73, 75,§96.23]

96.24 Employer to be notified. Whenever an employee is separated from his or her employment for the purpose of joining the armed forces of the United States, the employee shall notify the employer in writing of his or her acceptance and date of reporting for service and the employer shall, within fifteen days after said notice from the employee, notify the Iowa employment security commission of such separation and date of termination of wages on a form furnished by the department. [C54, 58, 62, 66, 71, 73, 75,§96.24; 66GA, ch 92,§35, ch 1068,§40]

JOB SERVICE BUILDING

96.25 Office building. The department of job service may, subject to the approval of the executive council of the state, acquire for and in the name of the state of Iowa by purchase, or by rental purchase agreement, such lands and buildings upon such terms and conditions as may entitle this state to grants or credits of funds under the Social Security Act or the Wagner-Peyser Act to be applied against the cost of such property, for the purpose of providing office space for the department of job service at such places as the commission finds necessary and suitable. [C62, 66, 71, 73, 75,§96.25; 66GA, ch 1068,§38]

Referred to in §§96.26–96.28

96.26 Moneys received. The department of job service is authorized to accept, receive, and receipt for all moneys received from the United States for the payments authorized by sections 96.25 to 96.28 for lands and buildings and to comply with any rules made under the Social Security Act or the Wagner-Peyser Act. [C62, 66, 71, 73, 75,§96.26; 66GA, ch 1068, §38]

Referred to in §96.28

96.27 Approval of attorney general. An agreement made for the purchase or other acquisition of the premises mentioned in section 96.25 of this section with funds granted or credited to this state for such purpose under the Social Security Act or the Wagner-Peyser Act shall be subject to the approval of the attorney general of the state of Iowa as to form and as to title thereto. [C62, 66, 71, 73, 75,§96.27]

Referred to in §§96.26, 96.28

96.28 Deposit of funds. All moneys received from the United States for the payments authorized by sections 96.25 to 96.27 for lands and buildings shall be deposited in the employment security administration fund in the state treasury and are appropriated therefrom for the purposes of this chapter. [C62, 66, 71, 73, 75,§96.28]

Referred to in §96.26

EXTENDED BENEFITS

96.29 Extended benefits. Except when the result would be inconsistent with the other provisions of this chapter, as provided in regulations of the department, the provisions of the law which apply to claims for or the payment of regular benefits shall apply to claims for, and the payment of, extended benefits.

1. *Eligibility requirements for extended benefits.* An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period only if the department finds that with respect to such week:

a. He or she is an "exhaustee" as defined in this chapter.

b. He or she has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

2. *Weekly extended benefit amount.* The weekly extended benefit amount payable to an individual for a week of total unemployment in his or her eligibility period shall be an amount equal to the weekly benefit amount payable to him or her during his or her applicable benefit year.

3. *Total extended benefit amount.* The total extended benefit amount payable to any eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts.

a. Fifty percent of the total amount of regular benefits which were payable to him or her under this chapter in his or her applicable benefit year.

b. Thirteen times his or her weekly benefit amount which was payable to him or her under this chapter for a week of total unemployment in the applicable benefit year.

4. *Beginning and termination of extended benefit period.* Whenever an extended benefit period is to become effective in Iowa, or in all states, as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in Iowa as a result of state and national "off" indicators, the department shall make an appropriate public announcement. Computations required by the provisions of this subsection shall be made by the department in accordance with regulations prescribed by the United States secretary of labor. [C73, 75,§96.29; 66GA, ch 92,§35, ch 1068,§40]

Referred to in §§96.7(3), 96.11(11)

CHAPTER 97

OLD-AGE AND SURVIVORS' INSURANCE SYSTEM

97.50 Repeal of prior law—rights preserved.
97.51 Special fund created—refunds.
97.52 Administration agreements.
97.53 Rule of construction.

97.50 Repeal of prior law—rights preserved. Chapter 97, Code 1950, as amended by the Fifty-fourth General Assembly, is hereby repealed, subject to the provisions which follow:

1. Any person being paid any benefits under the provisions of sections 97.13 to 97.18, Code 1950, as amended, as of June 30, 1953, shall continue to receive such benefits as though that chapter had not been repealed.

2. Any person who became entitled to any benefits under the provisions of sections 97.13 to 97.19, Code 1950, as amended, through the retirement or death of any person prior to June 30, 1953, shall be paid the same benefits upon proper application, subsequent to June 30, 1953, as though that chapter had not been repealed.

3. Any individual who was, as of June 30, 1953, a fully insured individual as defined in section 97.45, subsection 6, Code 1950, as amended, and who would be a fully insured individual at age sixty-five, on the basis of service prior to June 30, 1953 (but who is not under public employment as of such date), shall be entitled to receive, in the event of his reaching sixty-five years of age after June 30, 1953, not less than the same individual primary benefit he would have received under the provisions of section 97.13, Code 1950, as amended, had he been eligible for retirement as of that date as though chapter 97, Code 1950, as amended, had not been repealed. Any individual who was as of June 30, 1953, a fully insured individual as defined in section 97.45, subsection 6, Code 1950, as amended, and who would be fully insured at age of sixty-five, on the basis of service prior to June 30, 1953, and who is as of June 30, 1953, under public employment, and also under coverage of a federal civil service retirement plan, shall be entitled to receive after reaching sixty-five years of age, provided he is no longer in public employment, not less than the same individual primary benefit he would have received under the provisions of section 97.13, Code

1950, as amended, had he been eligible for retirement as of that date, as though chapter 97, Code 1950, as amended, had not been repealed; and any wife, widow, child or other dependent of such individual would become entitled to any benefits as provided by chapter 97, Code 1950, as amended, after June 30, 1953, shall be entitled to receive benefits as provided by chapter 97, Code 1950, as though that chapter had not been repealed.

4. Any wife, widow, child, or other dependent of any fully insured individual who left employment or died prior to June 30, 1953, who would become entitled to any benefit as provided by chapter 97, Code 1950, as amended, after June 30, 1953, shall be entitled to receive benefits as provided by chapter 97, Code 1950, as amended, as though that chapter had not been repealed.

5. Any currently insured individual under the terms of subsection 7 of section 97.45, Code 1950, as amended, who is not in Iowa public employment as of June 30, 1953, shall continue to be a currently insured individual against death for the period designated in said subsection and the provisions of coverage for benefit purposes under said subsection shall apply to such individuals as they would have applied as though chapter 97, Code 1950, as amended, had not been repealed. [C46, 50, §§97.13–97.19; C54, 58, 62, 66, 71, 73, 75,§97.50]

Referred to in §§97.52, 97.53, 97B.41, 97B.42, 97B.43, 97B.56

97.51 Special fund created—refunds. There is hereby created as a special fund, separate and apart from all other public moneys or funds of this state, the "Iowa Old-Age and Survivors' Insurance Liquidation Fund", this fund to consist of all unexpended moneys collected under the provisions of chapter 97, Code 1950, as amended, together with all interest thereon, and also to include all securities and other assets acquired by and through the use of the moneys belonging to the Iowa old-age and survivors' insurance trust fund, and any other moneys that may be paid into this fund. There is hereby transferred to the Iowa old-age and survivors' insurance liquidation fund all funds and assets of the old-age and survivors' insurance trust fund created by the provisions of section 97.5, Code 1950. There shall also be deposited in the Iowa old-age and survivors' insurance liquidation fund all receipts after June 30, 1953, as a result of the collection of taxes or other moneys, as provided by section 97.8, Code 1950.

1. The treasurer of state is hereby made the custodian and trustee of this fund and shall administer the same in accordance with the directions of the Iowa department of job service. It shall be the duty of the trustee:

a. To hold said trust funds.

b. Under the direction of the department and as designated by the department, invest such portion of said trust funds as are not needed for current payment of benefits, in interest-bearing securities issued by the United States, or interest-bearing bonds issued by the state of Iowa, or bonds issued by counties, school districts or general obligations or limited levy bonds issued by municipal corporations in this state as authorized by law; also to sell and dispose of same when needed for the payment of benefits.

c. Disburse such trust funds upon warrants drawn by the comptroller pursuant to the order of the department of job service.

2. All moneys which are paid or deposited into this fund are hereby appropriated and made available to the department to be used only for the purposes herein provided:

a. To be used by the department for the payment of claims for benefits.

b. To be used by the department for the payment in accordance with any agreement with the federal social security administration of amounts required to obtain retroactive federal social security coverage of Iowa public employees, dating from January 1, 1951, and for the payment of refunds which were authorized by the provisions of section 97.7, Code 1950, and for the payment of such other refunds to employees as may be authorized by the general assembly, and such other purposes as may be authorized by the general assembly.

Referred to in §97C.14

3. The Iowa department of job service shall be vested with authority to administer the Iowa old-age and survivors' insurance liquidation fund and shall also administer all other provisions of this chapter.

4. Any public employee subject to coverage under the provisions of chapter 97, Code 1950, as amended, in public service as of June 30, 1953, and who has not applied for and qualified for benefit payments under the provisions of chapter 97, Code 1950, as amended, who had contributed to the Iowa old-age and survivors' insurance fund prior to the repeal of said chapter 97, as amended, shall be entitled to a refund of contributions paid into the Iowa old-age and survivors' insurance fund by such employee without interest, but there shall be deducted from the amount of any such refund any amount which has been or will be paid in his behalf as his contribution as an employee to obtain retroactive federal social security coverage. Any former public employee not in public service as of June 30, 1953, who has contributed to the Iowa old-age and survivors' insurance fund, his beneficiaries or estate, when no benefit has been paid under chapter 97, Code 1950, based upon such employee's prior record, shall be entitled to a refund of seventy-five percent of all contributions paid by him into said fund, without interest. The department shall prescribe rules in regard to the granting of such refunds. In the event of such refund any individual receiving the same shall be deemed to have waived any and all rights in behalf of himself or any beneficiary or his estate to further benefits under the provisions of chapter 97, Code 1950, as amended.

5. Any employee in public service as of June 30, 1953, may, in lieu of receiving the cash refund of his contributions, elect to come under the coverage of any new retirement system which may be created by the general assembly, to which he is eligible, with credits toward future benefits in consideration of his prior contributions and length of service, and may direct the transfer of the amount payable to him to the assets of such new retirement system.

6. In the payment of any benefits in the future, as a result of the provisions of chapter 97, Code 1950, as amended, the department shall follow the same procedure as provided by said chapter 97, as amended, as though said chapter had not been repealed, except the requirements of section 97.21, subsection 4, paragraph *"a"*, and 97.21, subsection 5, shall not be applicable, but no primary benefit, based upon employment prior to June 30, 1953, shall be paid to any individual for any month during which he receives compensation for work in any position which would have been subject to coverage under the provisions of said chapter 97, as amended, if his earnings for such month exceed one hundred dollars, nor shall any benefit be paid to a wife or dependent of such employee for such months, except that after a retired member reaches the age of seventy-two years, the member, his wife and dependents shall be entitled to the benefits of this chapter regardless of the amount earned.

7. Beginning July 1, 1975 any person receiving benefits under the provisions of chapter 97, Code 1950, as amended, shall receive a monthly increase in benefits equal to one hundred percent of the monthly benefits received for June, 1975 or for which the person was eligible to receive for June, 1975. Any person who becomes eligible for benefits under chapter 97, Code 1950, on or after July 1, 1975 shall receive the same percentage increase.

There is appropriated from the general fund of the state to the Iowa old-age and survivors' insurance liquidation fund from funds not otherwise appropriated an amount sufficient to finance the provisions of this subsection. [C46, 50,§§97.5, 97.7–97.9, 97.12, 97.23, 97.35; C54, 58, 62, 66, 71, 73, 75,§97.51; 66GA, ch 50,§2, ch 1068,§§27, 38, 40]

Referred to in §§97.52, 97.53, 97B.41–97B.43, 97B.56, 97C.14

97.52 Administration agreements. The Iowa department of job service is authorized to enter into arrangements with the appropriate federal agency whereby services performed by the department and its employees both under sections 97.50 to 97.53 and under the Iowa employment security chapter shall be equitably apportioned between the funds provided for the administration of said chapters. The money spent for rentals, supplies, and equipment used by the department in administering both chapters shall be equitably apportioned and charged against said funds. [C46, 50, §§97.3–97.5, 97.23, 97.48; C54, 58, 62, 66, 71, 73, 75,§97.52; 66GA, ch 1068,§28]

Referred to in §§97.53, 97B.41, 97B.42, 97B.43, 97B.56

97.53 Rule of construction. As used in sections 97.50 to 97.52, unless clearly indicated by the context to the contrary, all references to employment or service refer to employment or service in Iowa public employment. [C46, 50,§§97.1, 97.2; C54, 58, 62, 66, 71, 73, 75,§97.53]

Referred to in §97.52, 97B.41, 97B.42, 97B.43, 97B.56

Sections 97.50 to 97.53 effective June 30, 1953, 55GA, ch 71,§5

CHAPTER 97A

PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT AND DISABILITY SYSTEM

Referred to in §§20.9, 80.30, 411.18, 749A.1

97A.1 Definitions of words and phrases.
97A.2 Creation of system—purpose—name.
97A.3 Membership in system.
97A.4 Service creditable.
97A.5 Administration.
97A.6 Benefits.
97A.7 Management of funds.
97A.8 Method of financing.
97A.9 Military service exceptions.
97A.10 Creation of fund to pay contributions of absent members.
97A.11 Contributions by the state.
97A.12 Exemption from taxation and execution.
97A.13 Protection against fraud.
97A.14 Hospitalization and medical attention.

97A.1 Definitions of words and phrases. The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. *"System"* shall mean the Iowa department of public safety peace officers' retirement, accident and disability system as defined in section 97A.2.

2. *"Peace officer"* or *"peace officers"* shall mean all members of the divisions of highway safety and uniformed force and criminal in-

vestigation and bureau of identification in the department of public safety, except clerical workers, who have passed a satisfactory physical and mental examination and have been duly appointed as members of the state department of public safety in accordance with the provisions of section 80.15 and the division of drug law enforcement in the department of public safety except clerical workers, and the division of beer and liquor law enforcement of the department of public safety, except clerical workers.

3. *"Member"* or *"member of system"* shall mean a member of the Iowa department of public safety peace officers' retirement, accident and disability system as defined by section 97A.3.

4. *"Board of trustees"* shall mean the board provided for in section 97A.5 to administer the Iowa department of public safety peace officers' retirement, accident and disability system.

5. *"Medical board"* shall mean the board of physicians provided for in section 97A.5.

6. *"Membership service"* shall mean service as a peace officer in the division of highway safety and uniformed forces or the division of criminal investigation and bureau of identification or division of drug law enforcement in the department of public safety rendered since last becoming a member, or, where membership is regained as provided in this chapter, all of such service.

7. *"Beneficiary"* shall mean any person receiving a pension, an annuity, a retirement allowance or other benefit as provided by this chapter.

8. *"Surviving spouse"* shall mean only such surviving spouse of a marriage consummated prior to retirement of a deceased member from active service.

9. *"Child"* or *"children"* shall mean only the surviving issue of a deceased active or retired member, or the child or children legally adopted by a deceased member prior to his retirement.

10. *"Regular interest"* shall mean interest at the rate of four percent per annum, compounded annually and credited to the member's account as of the date of the member's retirement or termination from employment.

11. *"Accumulated contributions"* shall mean the sum of all amounts deducted from the compensation of a member and credited to the member's individual account in the annuity savings fund together with regular interest thereon as provided in section 97A.8. Accumulated contributions do not include any amount deducted from the compensation of a member and credited to the pension accumulation fund.

12. *"Earnable compensation"* or *"compensation earnable"* shall mean the regular compensation which a member would earn during one year on the basis of the stated compensation for his rank or position excluding any amount received for overtime compensation, meal and travel expenses, and uniform allowances and excluding any amount received upon termination or retirement in payment for accumulated sick leave.

13. *"Amount earned"* shall mean the amount of money actually earned by a beneficiary in some definite period of time.

14. *"Average final compensation"* shall mean the average earnable compensation of the member during the member's highest five years of service as a member of the state department of public safety, or if the member has had less than five years of such service, then the average earnable compensation of the member's entire period of service.

15. *"Annuity"* shall mean annual payments for life derived from the accumulated contributions of a member. All annuities shall be payable in monthly installments.

16. *"Pensions"* shall mean annual payments for life derived from the appropriations provided by the state of Iowa and from contributions of the members which are deposited in the pension accumulation fund. All pensions shall be paid in equal monthly installments.

17. *"Retirement allowance"* shall mean the sum of the annuity and the pension, or any benefits in lieu thereof granted to a member upon retirement.

18. *"Annuity reserve"* shall mean the present value of all payments to be made on account of an annuity, or benefit in lieu of an annuity, granted under the provisions of this chapter, upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.

19. *"Pension reserve"* shall mean the present value of all payments to be made on account of any pension, or benefit in lieu of a pension, granted under the provisions of this chapter, upon the basis of such mortality tables as shall be adopted by the board of trustees and regular interest.

20. *"Actuarial equivalent"* shall mean a benefit of equal value, when computed upon the basis of mortality tables adopted by the board of trustees, and regular interest.

21. *"Department"* means the department of public safety of this state.

22. *"Commissioner"* means the commissioner of public safety of this state.

23. *"Pension compensation"* shall mean the member's average final compensation adjusted in the ratio of the earnable compensation payable on each July 1 to an active member having the same or equivalent rank or position as was held by the retired or deceased member at the time of retirement or death to the earnable compensation of such member at his retirement or death. [C50, 54, 58, 62, 66, 71, 73 ,75,§97A.1; 66GA, ch 1089,§§1, 2]

Referred to in §19A.9

97A.2 Creation of system—purpose—name. There is hereby created and established a retirement or pension system to be known as the Iowa department of public safety peace officers' retirement, accident and disability system. It is the intent and purpose of this chapter to provide certain retirement and other benefits for the peace officers of the Iowa department of public safety herein named, or benefits to their dependents in amounts and under terms and conditions hereinafter set forth. Such system shall be under the management of the board of trustees hereinafter described, and shall transact all of its business, invest all of its funds, and hold all of its cash and security and other property in the name of the Iowa department of public safety peace officers' retirement, accident and disability system. The retirement system so created shall begin operation on the effective date* of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§97A.2]

Referred to in §97A.1
*Effective date, July 4, 1949

97A.3 Membership in system.

1. All members of the division of highway safety and uniformed force and the division of criminal investigation and bureau of identification in the department of public safety, excepting the members of the clerical force, who are employed by the state of Iowa when this chapter becomes effective, and all persons thereafter employed as members of such divisions in the department of public safety or division of drug law enforcement or qualified members of the division of beer and liquor law enforcement in said department except the members of the clerical force, shall be members of this system. Such members shall not be required to make contributions under any other pension or retirement system of the state of Iowa, anything to the contrary notwithstanding.

2. Should any member in any period of five consecutive years after last becoming a member, be absent from service for more than four years, or should he withdraw his accumulated contributions or should he become a beneficiary or die, he shall thereupon cease to be a member of this system. [C50, 54, 58, 62, 66, 71, 73, 75,§97A.3]

Referred to in §97A.1

97A.4 Service creditable. The board of trustees shall fix and determine by proper rules how much service in any year shall be equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year, nor shall the board of trustees allow credit as service for any period of more than one month duration during which the member was absent without pay.

Any member of the system who has been employed continuously prior to the passage of this chapter in the division of highway safety and uniformed force or the division of criminal investigation and bureau of identification in the department of public safety, or as a member of the Iowa highway safety patrol, or as a peace officer or a member of the uniformed force in any department or division whose functions were transferred to, merged, or consolidated in the department of public safety at the time such department was created, shall receive credit for such service in determining retirement and disability benefits provided for in this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§97A.4]

97A.5 Administration.

1. *Board of trustees.* The general administration and the responsibility for the proper operation of the system and for making effective the provisions of this chapter are hereby vested in a board of trustees to administer the system. Such board of trustees shall be constituted as follows: The commissioner of public safety, who shall be chairman of said board, the state treasurer, and a member of the system, to be chosen by secret ballot by the members thereof for a term of two years.

2. *Voting.* Each trustee shall be entitled to one vote on said board and two concurring votes shall be necessary for a decision by the trustees on any question at any meeting of said board.

3. *Compensation.* The trustees shall serve as such without compensation, but they shall be reimbursed from the expense fund for all necessary expenses which they may incur through service on the board.

4. *Rules.* The board of trustees shall, from time to time, establish such rules not inconsistent with this chapter, for the administration of funds created by this chapter and as may be necessary or appropriate for the transaction of its business.

5. *Employees.* The board of trustees shall appoint a secretary who may, but need not be, one of its members. It shall engage such stenographic, clerical and other services as shall be required to transact the business of the system. The compensation of all persons engaged by the board of trustees, and all other expenses of said board necessary for the operation of the retirement system, shall be paid at such rates and in such amounts as said board of trustees shall approve.

6. *Data—records—reports.* The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the system and for checking the expense of the system. The secretary of the board shall keep a record of all the acts and proceedings taken by said board, which records shall be open to public inspection, and he shall keep a complete record of the names of all of the members, their ages and length of service, the salary of each member, together with such other facts as may be necessary in the administration of the provisions of this chapter, and for the purpose of obtaining such facts, he shall have access to the records of the various departments of the state.

The board of trustees shall biennially make a report to the state legislature showing the fiscal transactions of the system for the preceding biennium, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the system.

7. *Legal advisor.* The attorney general of the state of Iowa shall be the legal advisor for the board of trustees.

8. *Medical board.* The board of trustees shall designate a medical board to be composed of three physicians who shall arrange for and pass upon the medical examinations required under the provisions of this chapter and shall report in writing to the board of trustees, its conclusions and recommendations upon all matters duly referred to it.

9. *Duties of commissioner of insurance.* The state commissioner of insurance shall be the technical advisor of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

10. *Tables — rates.* Immediately after the establishment of this system, the state commissioner of insurance shall make such investigation of anticipated interest earnings and of the mortality, service and compensation experience of the members of the system as the actuary shall recommend and the board of trustees shall authorize, and on the basis of such investigation the actuary shall recommend for adoption by the board of trustees such tables and such rates as are required in subsection 11 of this section. The board of trustees shall adopt the rate of interest and tables, and certify rates of contributions to be used by the system.

11. *Actuarial investigation.* In the year 1952, and at least once in each two-year period thereafter, the state commissioner of insurance shall make an actuarial investigation in the mortality, service and compensation experience of the members and beneficiaries of the system, and the interest and other earnings on the moneys and other assets of the system, and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the results of such investigation and valuation, the board of trustees shall:

a. Adopt for the system such interest rate, mortality and other tables as shall be deemed necessary;

b. Certify the rates of contribution payable by the state of Iowa in accordance with section 97A.8.

12. *Valuation.* On the basis of such rate of interest and such tables as the board of trustees shall adopt, the state commissioner of insurance shall make an annual valuation of the assets and liabilities of the funds of the system created by this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§97A.5; 66GA, ch 1089,§§3, 4]

Referred to in §97A.1

97A.6 Benefits.

1. *Service retirement benefit.* Retirement of a member on a service retirement allowance shall be made by the board of trustees as follows:

a. Any member in service may retire upon his written application to the board of trustees, setting forth at what time, not less than thirty nor more than ninety days subsequent to the execution and filing therefor, he desires to be retired, provided, that the said member at the time so specified for his retirement shall have attained the age of fifty-five and shall have completed twenty-two years or more of creditable service, and notwithstanding that, during such period of notification, he may have separated from the service.

b. Any member in service who has attained the age of sixty-five years, shall be retired forthwith, provided, that upon the request of the commissioner of public safety, the board of trustees may permit such member to remain in service for periods not to exceed one year from the date of the last request from the commissioner of public safety.

c. Any member in service who has been a member of the retirement system fifteen or more years and whose employment is terminated prior to the member's retirement, other than by death or disability, shall upon attaining retirement age, receive a service retirement allowance of fifteen twenty-seconds of the retirement allowance the member would receive at retirement if the member's employment had not been terminated, and an additional one twenty-second of such retirement allowance for each additional year of service not exceeding twenty-two years of service. The amount of the retirement allowance shall be based on the average final compensation at the time of termination of employment. The allowance shall not be available to a member who has chosen to withdraw the member's accumulated contributions as provided in subsection 10 of this section.

2. *Allowance on service retirement.* Upon retirement from service, a member shall receive a service retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

b. A pension given by the state which shall equal one-half of the member's average final compensation.

3. *Ordinary disability retirement benefit.* Upon the application of a member in service or of the commissioner of public safety, any member shall be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on an ordinary disability retirement allowance, provided, that the medical board after a medical examination of such member shall certify that said member is mentally or physically incapacitated for fur-

ther performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

4. *Allowance on ordinary disability retirement.* Upon retirement for ordinary disability a member shall receive a service retirement allowance if he has attained the age of fifty-five, otherwise he shall receive an ordinary disability retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and

b. A pension which together with the member's annuity shall make a total retirement allowance equal to ninety percent of one-seventieth of the member's average final compensation multiplied by the number of years of membership service, if such retirement allowance exceeds one-half of the member's average final compensation, otherwise a pension which together with the member's annuity shall provide a total retirement allowance equal to one-half of the member's average final compensation except if the member has not had five or more years of membership service, the member shall receive a pension which together with the member's annuity shall provide a total retirement allowance equal to one-fourth of the member's average final compensation.

5. *Accidental disability benefit.* Upon application of a member in service or of the commissioner of public safety, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury, disease or exposure occurring or aggravated while in the actual performance of duty at some definite time and place shall be retired by the board of trustees, provided, that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired. Should a member in service become incapacitated for duty as a natural and proximate result of an injury, disease, or exposure incurred or aggravated while in the actual performance of duty at some definite time or place, he shall, upon being found to be temporarily incapacitated following an examination by the board of trustees, be entitled to receive his fixed pay and allowances until re-examined by the board and found to be fully recovered or permanently disabled. Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain, exposure, or the inhalation of noxious fumes, poison, or gases.

6. *Retirement after accident.* Upon retirement for accidental disability a member shall receive a service retirement allowance if he has attained the age of fifty-five, otherwise he shall receive an accidental disability retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

b. A pension, in addition to the annuity, of sixty-six and two-thirds percent of his average final compensation.

7. *Re-examination of beneficiaries retired on account of disability.* Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained age fifty-five to undergo a medical examination at a place designated by the medical board. Such examination shall be made by the medical board or in special cases, by an additional physician or physicians designated by such board. Should any disability beneficiary who has not attained the age of fifty-five refuse to submit to such medical examination, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all rights in and to his pension may be revoked by the board of trustees.

a. Should any beneficiary for either ordinary or accidental disability be engaged in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation, then the amount of his pension shall be reduced to an amount which together with his annuity and the amount earned by him shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified, provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earned by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired at age fifty-five or greater, shall not again become a member of the retirement system and shall have his retirement allowance suspended while in active service.

b. Should a disability beneficiary under age fifty-five be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member and he shall contribute thereafter at the same rate he paid prior to disability, and any former service on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect and upon his subsequent retirement he shall be credited with all his service as a member, and also with the period of disability retirement, provided that during such period of disability he has not engaged in a gainful occupation from which his net earnings exceeded the difference between his disability retirement allow-

ance and the amount he would have received for said period if his compensation at the time of disability had continued.

c. The commissioner of public safety may, subject to approval of the medical board, assign any former member of the division of highway safety and uniformed force or the division of criminal investigation and bureau of identification who is retired and drawing a pension for disability under the provisions of this chapter, to the performance of light duties in such division.

8. *Ordinary death benefit.* Upon the receipt of proper proofs of the death of a member in service, or a member not in service who has completed fifteen or more years of service as provided in subsection 1, paragraph *"c"*, of this section, there shall be paid to such person having an insurable interest in the member's life as the member shall have nominated by written designation duly executed and filed with the board of trustees:

a. The member's accumulated contributions and, if the member has had one or more years of membership service and no pension is payable under the provisions of subsection 9 of this section, in addition thereto—

b. An amount equal to fifty percent of the compensation earned by the member during the year immediately preceding the member's death if the member is in service or an amount equal to fifty percent of the compensation earned by the member during the member's last year of service if the member is not in service; or

If there be no such nomination of beneficiary, the benefits provided in paragraphs *"a"* and *"b"* of this subsection 8 shall be paid to the member's estate; or in lieu thereof, at the option of the following beneficiaries, respectively, even though nominated as such, for a member in service there shall be paid a pension which, together with the actuarial equivalent of the member's accumulated contributions, shall be equal to one-fourth of the average final compensation of such member, but in no instance less than fifty dollars per month or for a member not in service the pension shall be reduced as provided in subsection 1, paragraph *"c"*, of this section and shall be paid commencing when the member would have attained the age of fifty-five except if there is a child of the member under the age of eighteen, or under the age of twenty-two who is a full-time student, or who is disabled, under the definitions used in section 402 of the Social Security Act as amended to July 1, 1976 (42 U.S.C. 402) the pension shall be paid commencing with the member's death until the children reach the age of eighteen, or twenty-two if applicable, and shall resume commencing when the member would have attained the age of fifty-five;

c. To the surviving spouse to continue so long as said partner remains unmarried; or

d. If there be no surviving spouse, or if the spouse dies or remarries before any child of such deceased member shall have attained the age of eighteen years, then to the guardian of the member's child or children under said age, divided in such manner as the board of trustees in its discretion shall determine, to continue as a joint and survivor pension until every such child dies or attains the age of eighteen; or

e. If there be no surviving spouse or child under age eighteen, then to the member's dependent father or mother, as the board of trustees in its discretion shall determine, to continue until remarriage or death.

f. In addition to the benefits herein enumerated, there shall also be paid for each child of a member under the age of eighteen years the sum of twenty dollars per month.

9. *Accidental death benefit.* If, upon the receipt of evidence and proof that the death of a member was the natural and proximate result of an accident or exposure occurring at some definite time and place while the member was in the actual performance of duty, the board of trustees shall decide that death was so caused in the performance of duty there shall be paid, in lieu of the ordinary death benefit provided in subsection 8 of this section, to his estate or to such person having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the board of trustees:

a. His accumulated contributions; and in addition thereto—

b. A pension equal to one-half of the average final compensation of such member shall be paid to the surviving spouse, children or dependent parents as provided in paragraphs *"c"*, *"d"*, and *"e"* of subsection 8 of this section.

c. If there be no surviving spouse, children under the age of eighteen years or dependent parent surviving such deceased member, the death shall be treated as an ordinary death case and the benefit payable in accordance with the provisions of subsection 8, paragraph *"b"* of this section, in lieu of the pension provided in paragraph *"b"* of this subsection 9, shall be paid to the member's estate.

d. In addition to the benefits for the surviving spouse herein enumerated, there shall also be paid for each dependent child of a member under the age of eighteen years the sum of twenty dollars per month.

10. *Return of accumulated contributions.* Should a member cease to be a peace officer in the division of highway safety and uniformed force or the division of criminal investigation and bureau of identification in the department of public safety except by death or retirement, he shall be paid on demand the amount of his accumulated contributions standing to the credit of his individual account in the annuity savings fund.

11. *Optional allowance.* With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, in which event such a beneficiary shall be considered as an active member at

the time of death, until the first payment on account of any benefit becomes normally due, any beneficiary may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent at that time of his retirement allowance in a lesser retirement allowance payable throughout life with the provision that an amount in money not exceeding the amount of his accumulated contributions shall be immediately paid in cash to such member or some other benefit or benefits shall be paid either to the member or to such person or persons as he shall nominate, provided such cash payment or other benefit or benefits, together with the lesser retirement allowance, shall be certified by the state commissioner of insurance to be of equivalent actuarial value to his retirement allowance and shall be approved by the board of trustees; provided, that a cash payment to such member or beneficiary at the time of retirement of an amount not exceeding fifty percent of his accumulated contributions shall be made by the board of trustees upon said member's or beneficiary's election.

12. *Pensions offset by compensation benefits.* Any amounts which may be paid or payable by the state under the provisions of any workers' compensation or similar law to a member or to the dependents of a member on account of any disability or death, shall be offset against and payable in lieu of any benefits payable out of funds provided by the state under the provisions of this chapter on account of the same disability or death. In case the present value of the total commuted benefits under said workers' compensation or similar law is less than the pension reserve on the benefits otherwise payable from funds provided by the state under this chapter, then the present value of the commuted payments shall be deducted from the pension reserve and such benefits as may be provided by the pension reserve so reduced shall be payable under the provisions of this chapter.

13. *Pension to surviving spouse and children of deceased pensioned members.* In the event of the death of any member receiving a retirement allowance under the provisions of subsections 2, 4 or 6 of this section there shall be paid a pension:

a. To the member's surviving spouse to continue so long as said party remains unmarried, equal to one-half the amount received by such deceased beneficiary, but in no instance less than fifty dollars per month, and in addition thereto the sum of twenty dollars per month for each child under eighteen years of age; or

b. In the event of the death of the spouse either prior or subsequent to the death of the member, to the guardian of each surviving child under eighteen years of age, in the sum of twenty dollars per month for the support of such child.

14. ***Judicial review of action of the board of trustees.*** Judicial review of any action of the board of trustees may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, the petition for judicial review must be filed within thirty days after the member receives written notice of the trustees' action. The board of trustees shall be represented by the attorney general. An appeal may be taken by the petitioner or the board of trustees to the supreme court of this state irrespective of the amount involved.

15. Pensions payable under this section shall be adjusted as follows:

a. As of the first of July of each year, the monthly pensions authorized in this section payable to each retired member and to each beneficiary, except children, of a deceased member shall be recomputed. The formula authorized in this section which was used to compute the retired member's or beneficiary's pension at the time of retirement or death shall be used in the recomputation, except the pension compensation shall be used in lieu of the average final compensation which the retired or deceased member was receiving at the time of retirement or death. The adjusted monthly pension shall be the amount payable at the member's retirement or death adjusted by fifty percent of the difference between the recomputed pension and the amount payable at the member's retirement or death. At no time shall the monthly pension or payment to the beneficiary be less than the amount which was paid at the time of the member's retirement or death.

b. As of the first of July of each year, the monthly pension payable to each surviving child in accordance with subsections 8, 9, and 13 of this section shall be adjusted to equal six percent of the monthly salary payable on such July 1 to an active member having the rank of senior patrolman of the Iowa highway safety patrol. If the monthly pension so computed is less than the amounts provided in subsections 8, 9, and 13 of this section, the amounts provided for in said subsection shall be payable.

c. All monthly pensions adjusted as provided in this subsection shall be payable beginning on July 1 of the year in which the adjustment is made and shall continue in effect until the next following July 1 at which time the monthly pensions shall again be recomputed and all monthly pensions adjusted in accordance with the recomputations.

d. The adjustment of pensions required by this subsection shall recognize the retired or deceased member's position on the salary scale within his rank at the time of his retirement or death. In the event that the rank or position held by the retired or deceased member at the time of retirement or death is subsequently abolished, adjustments in the pensions of the member or of the member's spouse or children shall be computed by the board of trustees as though such rank or position had not been abolished and salary increases had

been granted to such rank or position on the same basis as increases granted to other ranks and positions in the department.

e. A retired member who became eligible for benefits under the provisions of subsection 1 but who did not serve twenty-two years and did not attain the age of fifty-five years prior to the member's termination of employment shall not be eligible for the annual readjustment of pensions provided for by this subsection. [C50, 54, 58, 62, 66, 71, 73, 75,§97A.6; 66GA, ch 1084§43, ch 1089,§§5–12]

97A.7 Management of funds.

1. The board of trustees shall be the trustees of the several funds created by this chapter as provided in section 97A.8 and shall have full power to invest and reinvest such funds subject to the terms, conditions, limitations and restrictions imposed by subsection 2 of this section, and subject to like terms, conditions, limitations, and restrictions said trustees shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as of the proceeds of said investments and any moneys belonging to said funds. The board of trustees may authorize the treasurer of state to exercise any of the duties of this section. When so authorized the treasurer of state shall report any transactions to the board of trustees at its next monthly meeting.

2. The several funds created by this chapter may be invested in:

a. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality thereof.

b. In savings accounts or time deposits in Iowa banks approved as depositories by the executive council.

c. In any investments authorized for the Iowa public employees' retirement system in section 97B.7, subsection 2, paragraph "*b*".

3. The board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the pension accumulation fund and the expense fund. The amount so allowed shall be due and payable to said funds and shall be annually credited thereto by the board of trustees from interest and other earnings on the moneys and other assets of the system. Any additional amount required to meet the interest on the funds of the system shall be paid by the state of Iowa and any excess of earnings over such amount required shall be deductible from the amounts to be contributed by the state of Iowa.

4. The treasurer of the state shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the board of trustees. A duly attested copy of the resolution of the board of trustees designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer of state as his authority for making payments on such vouchers. No voucher shall be drawn unless it shall previously have been allowed by resolution of the board of trustees.

5. No trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board of trustees. No trustee shall receive any pay or emolument for his services except as secretary. No trustee or employee of the board of trustees shall directly or indirectly for himself or as agent in any manner use the assets of the system except to make such current and necessary payments as are authorized by the board of trustees, nor shall any trustee or employee of the board become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the board of trustees.

6. The board of trustees may invest funds of fire and police retirement systems created under the provisions of chapter 411 in the manner prescribed in this section. [C50, 54, 58, 62, 66, 71, 73, 75,§97A.7; 66GA, ch 1089,§§13, 14]

97A.8 Method of financing. All the assets of the system created and established by this chapter shall be credited according to the purpose for which they are held to one of five funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, the pension reserve fund, and the expense fund.

1. *Annuity savings fund.*

a. The annuity savings fund shall be the fund in which shall be accumulated contributions from the compensation of the members to provide for their annuities. The rates of contributions payable by members according to their ages when becoming members shall be as follows:

Age when becoming a member	Rate of contribution
20	4.91%
21	4.97%
22	5.04%
23	5.11%
24	5.18%
25	5.26%
26	5.33%
27	5.41%
28	5.48%
29	5.56%
30	5.64%
31	5.72%
32	5.80%
33	5.88%
34	5.97%
35	6.05%
36	6.14%
37	6.22%
38	6.31%
39	6.40%
40	6.50%

b. The proportions so computed for a person at age forty shall be applied to a member who attains a greater age before he becomes a member. The board of trustees shall certify to the state comptroller and the state comptroller shall cause to be deducted from the salary of each member on each and every payroll for each and every pay period, the proportion of the compensation of each member so computed.

c. The deductions provided for herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be reduced thereby. Every member shall be deemed to consent to the deductions made and provided for herein, and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered during the period covered by the payment except as to benefits provided by this chapter. The state comptroller shall certify to the board of trustees on each and every payroll, or in such other manner as the board of trustees shall prescribe, the amount deducted from each member's salary, and such amounts shall be paid into the respective annuity savings fund and shall be credited together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

d. All taxes or contributions heretofore paid into the old-age and survivors' insurance trust fund by a member of the system, together with all taxes or contributions heretofore paid by the member's employers into said fund because of such member's employment in public service, are hereby transferred therefrom and shall be paid into the annuity savings fund and shall be credited to the individual account of such member therein. The state treasurer shall ascertain the amount heretofore paid by such member and employers as aforesaid and transfer the amount so paid to the annuity savings fund created by this chapter.

e. The accumulated contributions of a member withdrawn by him or paid to his estate or designated beneficiary in the event of his death shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

2. *Annuity reserve fund.* The annuity reserve fund shall be the fund from which shall be paid all annuities and all benefits in lieu of annuities payable as provided in this chapter. Should a beneficiary retired on account of disability be restored to active service and again become a member of the system, his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

3. *Pension accumulation fund.* The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by the state and from which shall be paid the lump-sum death benefits for all members payable from the said contributions. Contributions to and payments from the pension accumulation fund shall be as follows:

a. On account of each member there shall be paid annually into the pension accumulation fund by the state of Iowa an amount equal to a certain percentage of the earnable compensation of the member to be known as the "normal contribution". The rate percent of such contribution shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuations. Until the first valuation the normal contribution shall be eight percent.

b. On the basis of the rate of interest and of such mortality, interest, and other tables as shall be adopted by the board of trustees, the state commissioner of insurance shall make each valuation required by this chapter and shall immediately after making such valuation, determine the uniform and constant percentage of the earnable compensation of the average new entrant, which, if contributed throughout his entire period of active service, would be sufficient to provide for the payment of any death benefit or pension payable on this account. The rate percent so determined shall be known as the "normal contribution rate". The normal contribution rate shall be the rate percent of the earnable compensation of all members obtained by deducting from the total liabilities of the fund the amount of the funds in hand to the credit of the fund and dividing the remainder by one percent of the present value of the prospective future compensation of all members as computed on the basis of the rate of interest and of mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contribution shall be determined by the state commissioner of insurance after each valuation.

c. The total amount payable in each year to the pension accumulation fund shall not be less than the rate percent known as the normal contribution rate of the total compensation earnable by all members during the year, provided, however, that the aggregate payment by the state shall be sufficient when combined with the amount in the fund to provide the pensions and other benefits payable out of the fund during the then current year.

d. All lump-sum death benefits on account of death in active service payable from contributions of the state shall be paid from the pension accumulation fund.

e. Upon the retirement or death of a member an amount equal to the pension reserve on any pension payable to him or on account of his death shall be transferred from the pension accumulation fund to the pension reserve fund.

f. An amount equal to one and twenty-one hundredths percent of each member's compensation from the compensation of the member shall be paid to the pension accumulation fund. The provisions of this section, subsection 1, paragraphs *"b"* and *"c"*, of the Code relating to the contributions of members shall be applicable to this paragraph.

4. *Pension reserve fund.* The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members or to their beneficiaries and from which such pensions and benefits in lieu thereof shall be paid. Should a beneficiary retired on account of disability be restored to active service and again become a member of the system, his pension reserve shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of a disability beneficiary be reduced as a result of an increase in his amount earned, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

5. *Expense fund.* The expense fund shall be the fund to which shall be credited all money provided by the state of Iowa to pay the administration expenses of the system and from which shall be paid all the expenses necessary in connection with the administration and operation of the system. Biennially the board of trustees shall estimate the amount of money necessary to be paid into the expense fund during the ensuing biennium to provide for the expense of operation of the system. [C50, 54, 58, 62, 66, 71, 73, 75,§97A.8; 66GA, ch 1089, §§15, 16]

Referred to in §§97A.1, 97A.5(11), 97A.7(1), 97A.9

97A.9 Military service exceptions. Any member who is absent from duty as a peace officer while serving in the armed services of the United States or its allies and is discharged or separated therefrom under honorable conditions shall have any such period or periods of absence while serving in such armed services on other than a voluntary basis and one such period of absence, not in excess of four years, while serving in such armed forces on a voluntary basis included as part of his period of service in the department. Such member shall not be required to continue the contributions required of him under section 97A.8, during such period of military service, provided that he shall, within six months after he has been discharged or separated under honorable conditions from such military service return and resume his duties in the department, and provided further, that such member shall be declared physically capable of resuming such duties upon examination by the medical board. [C50, 54, 58, 62, 66, 71, 73, 75,§97A.9]

Referred to in §97A.10

97A.10 Creation of fund to pay contributions of absent members. The state shall create a fund for the purpose of paying the contributions to this system of those members who voluntarily or by induction enter the military service or who are serving in the armed forces. Such funds shall be used for the purpose of paying the contributions which are required of the members, but which under the provisions of section 97A.9 are waived during periods of military service as defined by section 97A.9 and six months thereafter following discharge or separation under honorable conditions. Should any member fail to return to service with his division within six months after his honorable discharge from the military service, the amount credited to his account in this fund by the state shall revert back to the state and such member or his representative shall not be entitled to claim any interest in the contribution so made by the state. [C50, 54, 58, 62, 66, 71, 73, 75,§97A.10]

97A.11 Contributions by the state. On or before the first day of November in each year, the board of trustees shall certify to the state comptroller the amounts which will become due and payable during the year next following to the pension accumulation fund and the expense fund. The amounts so certified shall be paid by the state comptroller out of the funds appropriated for the Iowa department of public safety, to the treasurer of state, the same to be credited to the system for the ensuing year. [C50, 54, 58, 62, 66, 71, 73, 75, §97A.11]

97A.12 Exemption from taxation and execution. The right of any person to a pension, annuity, or retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the various funds created under this chapter, are hereby exempt from any tax of the state and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this chapter specifically provided. [C50, 54, 58, 62, 66, 71, 73, 75,§97A.12]

97A.13 Protection against fraud. Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of the system in any attempt to defraud the system as a result of such act, shall be guilty of a misdemeanor and shall be punishable therefor under the laws of this state. Should any change or error in records result in any member or beneficiary receiving from the system more or less than he would have been entitled to receive had the records been correct, the board of trustees shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary

was correctly entitled, shall be paid. [C50, 54, 58, 62, 66, 71, 73, 75,§97A.13]

Constitutionality, 53GA, ch 70,§14
Omnibus repeal, 53GA, ch 70,§15

97A.14 Hospitalization and medical attention. The board of trustees shall provide hospital, nursing, and medical attention for the members in service when injured while in the performance of their duties. The cost of hospital, nursing, and medical attention shall be paid out of the expense fund. However, any amounts received by the injured person under the workers' compensation law of the state, or from any other source for such specific purposes, shall be deducted from the amount paid by the board of trustees provisions of this section. [C73, 75,§97A.14; 66GA, ch 1084,§43]

CHAPTER 97B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Referred to in §§20.9, 97B.7, 601H.4
Chapter 97, Code 1950, repealed by chapter 71, Acts 55GA, with certain rights preserved
See Sections 97.50 to 97.53, inclusive

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97B.69 Judges in judicial retirement system—mandatory termination.
97B.70 Interest and dividends to members.
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97B.1 System created. A public employees' retirement system is hereby created and established to become effective as of July 4, 1953, and to be known as the "Iowa Public Employees' Retirement System" hereinafter called the "system". [C46, 50,§97.1; C54, 58, 62, 66, 71, 73, 75,§97B.1]

97B.2 Purpose of chapter. The purpose of this chapter is to promote economy and effi-

ciency in the public service by providing an orderly means whereby employees who become superannuated may, without hardship or prejudice, be replaced by more capable employees, and to that end providing a retirement system which will provide for the payment of annuities to public employees, thereby enabling the employees to care for themselves in retirement, and which by its provisions will improve public employment within the state, reduce excessive personnel turnover and offer suitable attraction to high-grade men and women to enter public service in the state. [C46, 50,§97.2; C54, 58, 62, 66, 71, 73, 75,§97B.2]

97B.3 Administration. The Iowa department of job service shall be vested with authority to administer the Iowa public employees' retirement system. [C46, 50,§97.3; C54, 58, 62, 66, 71, 73, 75,§97B.3; 66GA, ch 1068,§29]

97B.4 Powers and duties. It shall be the duty of the department to administer this chapter; and it shall have power and authority to adopt, amend, or rescind such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules shall be effective upon complying with chapter 17A. Not later than the fifteenth day of December of each year, the department shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the department deems proper. Such report shall include a balance sheet of the moneys in the Iowa public employees' retirement fund. [C46, 50,§§97.4, 97.23; C54, 58, 62, 66, 71, 73, 75,§97B.4; 66GA, ch 1068, §40]

See chapter 17A for rules
See §§96.4-96.11

97B.5 Officers and employees. Subject to other provisions of this chapter, the department is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, actuaries, and other persons as may be necessary in the performance of its duties. The department shall classify its positions and shall establish salary schedules and minimum personnel standards for the positions so classified. All positions shall be filled by persons selected and appointed on the basis of competency and fitness for the position to be filled. The department shall not appoint or employ any person who is an officer or committee member of any political party organization or who holds or is a candidate for any elective public office. The department shall establish and enforce fair and reasonable regulations based upon ratings of efficiency and fitness and for terminations for cause. The department may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this chapter, and may in its discretion bond any person handling moneys or signing checks hereunder. The department is authorized to enter into arrangements with the federal bureau of employment security whereby services performed by the department and its employees both under this chapter and under the Iowa employment security chapter shall be equitably apportioned between the funds provided for the administration of said chapters. That money spent for rentals, supplies and equipment used by both agencies shall be equitably apportioned and charged against said funds. [C46, 50,§97.38; C54, 58, 62, 66, 71, 73, 75,§97B.5; 66GA, ch 1068, §40]

97B.6 Old records. The department may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the department and are deemed by the director and state records commission to be no longer necessary to the proper administration of this chapter. Such destruction or disposition shall be made only by order of the director. Any moneys received from the disposition of such records shall be deposited to the credit of the public employees' retirement fund subject to rules promulgated by the department. [C46, 50,§§97.25, 97.26; C54, 58, 62, 66, 71, 73, 75,§97B.6; 66GA, ch 1068,§30]

97B.7 Fund created—trustee's duties.

1. There is hereby created as a special fund, separate and apart from all other public moneys or funds of this state, the "Iowa Public Employees' Retirement Fund", hereafter called the "retirement fund". This fund shall consist of all moneys collected under this chapter, together with all interest, dividends and rents thereon, and shall also include all securities or investment income and other assets acquired by and through the use of the moneys belonging to this fund and any other moneys that have been paid into this fund.

2. The treasurer of the state of Iowa is hereby made the custodian and trustee of this fund and shall administer the same in accordance with the directions of the department. It shall be the duty of the trustee:

a. To hold said trust funds.

b. Invest such portion of said trust funds as in the judgment of the department are not needed for current payment of benefits under this chapter in interest-bearing securities issued by the United States, or interest-bearing bonds issued by the state of Iowa, or bonds issued by counties, school districts or general obligations or limited levy bonds issued by municipal corporations in this state as authorized by law, or other investments authorized for life insurance companies in this state including common stocks issued or guaranteed by a corporation created or existing under the laws of the United States or any state, district, or territory thereof subject to the following restrictions:

(1) That for a period of five fiscal years for which the necessary statistical data are available next preceding the date of investment, the corporation had an average annual net income plus fixed charges, or in the case of consolidated earnings statements of parent and subsidiary corporations such corporations had an average annual net income plus fixed charges and the preferred dividend requirement, if any, of the subsidiaries, at least equal to one and one-half times the sum of the corporation's average annual dividend requirement for preferred stock and the average annual fixed charges for the same period; provided, during neither of the last two years of such period shall the sum of the corporation's annual net income and annual fixed charges have been less than one and one-half times the sum of the corporation's dividend requirements for preferred stock and fixed charges for the same period. Fixed charges mean interest on funded or unfunded debt, contingent interest charges, amortization of debt discount, and expenses and rentals for leased property.

(2) That the corporation has no arrears of dividends on preferred stock.

(3) That the common stock is registered on a national securities exchange as provided in the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 77"b", as amended through December 31, 1966, but such registration shall not be required of the common stock of a bank which is a member of the federal deposit insurance corporation and has capital funds, represented by capital, surplus, and undivided profits, of at least twenty million dollars, the common stock of a life insurance company which has capital funds, represented by capital, special surplus funds and unassigned surplus, of at least fifty million dollars, or the common stock of a fire or casualty insurance company, or a combination thereof, which has capital funds represented by capital, net surplus, and voluntary reserves, of at least fifty million dollars.

(4) That the corporation, having no preferred stock outstanding, had earnings for the five fiscal years next preceding the date of investment of at least twice the interest on all mortgages, bonds, debentures, and funded debts, if any, after deduction of the proper charges for replacements, depreciation, and obsolescence.

(5) That the corporation paid a cash dividend on issued common stock in each year of the ten-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period were at least equal to the amount of dividends paid.

(6) That in applying the earnings test under this division to any issuing, assuming, or guaranteeing corporation, where such corporation acquired all or any substantial part of the property held by the corporation within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or acquired the assets of any unincorporated business enterprise by purchase or otherwise, net income, fixed charges, and preferred dividends of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not compliance has been made with the applicable requirements of this section.

(7) The total cost price of common stocks held by the retirement fund shall not exceed twenty-five percent of the total value of the retirement fund. The cost price of stock investments in any one corporation shall not exceed five percent of the maximum amount which may be invested in stocks. Not more than five percent of the issued stock of any one corporation may be owned by the fund. For purposes of this chapter value consists of cash, the par value or unpaid balance of all unmatured or unpaid investments requiring the payment of a fixed amount at payment date, and the cost price of all other investments. The total cost of common stocks purchased during any year shall not exceed twenty-five percent of all moneys collected under chapter 97B together with investment income received by the system during that year.

In the event of loss on the redemption or sale of securities, where invested as prescribed by law, neither the treasurer nor the department shall be personally liable, but such loss shall be charged against the retirement fund and there is hereby appropriated from such fund an amount as may be so required. Expenses incurred in the sale and purchase of securities belonging to the retirement fund shall be charged to the retirement fund and there is hereby appropriated from such fund an amount as may be so required and investment management expenses shall be charged to the investment income of the retirement fund and such expense shall otherwise be budgeted and appropriated in the same manner as administrative expenses for the rest of the system.

Referred to in §302.20

c. Disburse such trust funds upon warrants drawn by the comptroller pursuant to the order of the department.

d. To sell any securities or other property in the trust fund and reinvest the proceeds in accordance with the direction of the department when such action may be deemed advisable by the department for the protection of the trust fund or the preservation of the value of the investment. Such sale of securities or other property of the trust fund shall only be made after advice from the advisory board in the manner and to the extent pro-

vided in this chapter in regard to the purchase of investments.

e. To subscribe, in accordance with the direction of the department, for the purchase of securities for future delivery in anticipation of future income. Such securities shall be paid for by such anticipated income or from funds from the sale of securities or other property held by the fund.

f. To pay for securities directed to be purchased by the department on the receipt of the purchasing bank's paid statement or paid confirmation of purchase.

3. All moneys which are paid or deposited into this fund are hereby appropriated and made available to the department to be used only for the purposes herein provided:

a. To be used by the department for the payment of retirement claims for benefits under this chapter, or such other purposes as may be authorized by the general assembly.

b. To be used by the department to pay refunds provided for in this chapter. [C46, 50, §§97.5, 97.7; C54, 58, 62, 66, 71, 73, 75,§97B.7; 66GA, ch 1068,§40]

Referred to in §§35.3, 97A.7(2), 302.20, 452.10, 453.5, 453.9, 453.10, 454.5, 605A.11

97B.8 Advisory investment board. A board shall be established to be known as the "Advisory Investment Board of the Iowa Public Employees' Retirement System", hereinafter called the "board", whose duties shall be to advise and confer with the department in matters relating to the investment of the trust funds of the Iowa public employees' retirement system. The powers of the board shall be purely advisory and the department shall not be bound in the making of any investment by the recommendations of the board. The board shall consist of seven members. Five of the members shall be appointed by the governor, one of whom shall be an executive of a domestic life insurance company, one an executive of a state or national bank operating within the state of Iowa, the third shall be an executive of a major industrial corporation located within the state of Iowa, and two shall be active members of the system, one of whom shall be an employee of a school district, county school system, joint county system or merged area and one of whom shall not be an employee of a school district, county school system, joint county system or merged area. The president of the senate shall appoint one member from the membership of the senate and the speaker of the house of representatives shall appoint one member from the membership of the house. The two members appointed by the president of the senate and the speaker of the house of representatives and the two active members of the system appointed by the governor shall be ex officio members of the board. The members who are executives of a domestic life insurance company, a state or national bank and a major industrial corporation shall be paid their actual expenses incurred in performance of their duties and shall receive in addition thereto the sum of forty dollars for each day of service not exceeding forty days per year. Legislative members shall receive the sum of forty dollars for each day of service and their actual expenses incurred in the performance of their duties. The per diem and expenses of the legislative members shall be paid from funds appropriated under section 2.12. The members who are active members of the system shall be paid their actual expenses incurred in the performance of their duties as members of the board and performance of their duties as members of the board shall not affect their salaries, vacation or leaves of absence for sickness or injury. The appointive terms of the members appointed by the governor shall be for a period of six years dating from July 1 of the year in which they are appointed. In the event of vacancy, through resignation or any other cause, in the membership of the board, the governor shall have the power of appointment. Appointees to this board shall be subject to confirmation by a two-thirds vote of the senate, but in the event of interim appointments, such confirmation shall be necessary at the next session of the senate. [C46, 50,§97.5; C54, 58, 62, 66, 71, 73, 75,§97B.8; 66GA, ch 1068,§40]

97B.9 Contributions—payment and interest. Contributions unpaid on the date on which they are due and payable as prescribed by the department, shall bear interest at the rate of one-half of one per centum per month from and after such date until payment plus accrued interest is received by the department, provided that the department may prescribe fair and reasonable regulations pursuant to which such interest shall not accrue with respect to contributions required. Interest collected pursuant to this section shall be paid into the Iowa public employees' retirement fund.

1. If within thirty days after due notice the employer defaults in payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the department, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions.

2. The employer shall pay its contribution from funds available and is directed to pay same from tax money or from any other income of the political subdivision; provided, however, the contributions shall be paid from the same fund as the employee salary.

3. Every political subdivision is hereby authorized and directed to levy a tax sufficient to meet its obligations under the provisions of this chapter if any tax is needed. [C46, 50, §§97.6, 97.8, 97.9, 97.12; C54, 58, 62, 66, 71, 73, 75, §97B.9; 66GA, ch 1068,§40]

97B.10 Refunds. In any case in which the department finds the employer has paid contributions thereon which have been erroneously paid, and has filed application for an adjustment thereof, the department shall make such adjustment, compromise or settlement and make such refund of such payments as it finds just and equitable in the premises. Refunds so made shall be charged to the fund to which the erroneous collections have been credited and shall be paid to the claimant without interest. Any claim for such refund shall be made within three years of date of payment and not thereafter. [C46, 50,§97.7; C54, 58, 62, 66, 71, 73, 75,§97B.11; 66GA, ch 50,§3, ch 1001,§17]

97B.11 Contributions by employer and employee. Each employer shall deduct from the wages of each member of the system a contribution in the amount of three and six-tenths percent of the covered wages paid by the employer until the first of the month after the member's seventieth birthday or the member's termination or retirement from employment, whichever is earlier. The contributions of the employer shall be in the amount of three and one-half percent of the covered wages of the member for service through December 31, 1975, and in the amount of five and twenty-five hundredths percent of the covered wages of the member for service commencing July 1, 1977. [C46, 50,§§97.8, 97.12; C54, 58, 62, 66, 71, 73, 75,§97B.11; 66GA, ch 50,§3, 41; ch 1001, §17]

Referred to in §§97B.41, 97B.45, 97B.46, 97B.67, 97B.69(2)
Amendments effective January 1, 1976; 66GA, ch 50,§41, and July 1, 1977; 66GA, ch 1001,§18
Contribution limited to first $20,000 wages, §97B.41

97B.12 Statement to employee. The employer shall furnish to all employees a written statement in a form prescribed by the commission suitable for retention by the employee, showing the wages paid to the employee for each year after July 1, 1953. Each statement shall cover a calendar year, or one, two or three quarters, whether or not within the same calendar year, and shall show the name of the employee, the period covered by the statement, the total amount of wages paid within such period, and the amount of contribution required by this chapter with respect to such wages. Each statement shall be furnished to the employee not later than thirty days following the period covered by the statement, except that if the employee leaves the employ of the employer, this final statement shall be furnished within thirty days after the last payment of wages is made to the employee. The employer may, at its option, furnish such a statement to any employee at the time of each payment of wages to the employee during any calendar quarter, in lieu of a statement covering each quarter, and, in such case, the statement may show the date of payment of wages in lieu of the period covered by the statement. [C46, 50,§97.11; C54, 58, 62, 66, 71, 73, 75, §97B.12]

97B.13 No income tax deduction. For the purposes of the state income tax, the contribution required by this chapter shall not be allowed as a deduction to the taxpayer in computing his net income for any year in which such tax is deducted from his wages. [C46, 50, §97.10; C54, 58, 62, 66, 71, 73, 75,§97B.13]

97B.14 Contributions forwarded. Contributions deducted from the wages of the member and the employer's contribution shall be forwarded to the department for recording and deposited with the treasurer of the state to the credit of the Iowa public employees' retirement fund. Contributions shall be remitted monthly, if total contributions by both employee and employer amount to one hundred dollars or more each month, and shall be otherwise paid in such manner, at such times and under such conditions, either by copies of payrolls or other methods necessary or helpful in securing proper identification of the member, as may be prescribed by the department. [C46, 50,§97.12; C54, 58, 62, 66, 71, 73, 75,§97B.14; 66GA, ch 1068,§40]

97B.15 Rules. The department shall have full power and authority to make rules and to establish procedures, not inconsistent with the provisions of this chapter, which are necessary or appropriate to carry out such provisions and shall adopt reasonable and proper rules to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder. [C46, 50,§97.23; C54, 58, 62, 66, 71, 73, 75,§97B.15; 66GA, ch 1068,§40]

97B.16 Hearings. The department is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this chapter. Whenever requested by any such individual or by any other person who makes a showing in writing that his or her rights may be prejudiced by any decision the commission has rendered, it shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse its findings of fact and such decision. The department is further authorized, on its own motion, to hold such hearings and to conduct such investigations and other proceedings as it may deem necessary or proper for the administration of this chapter. In the course of any hearing, investigation, or other proceedings, it may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the department even though inadmissible under rules of evidence applicable to court procedure. [C46, 50,§97.24; C54, 58, 62, 66, 71, 73, 75,§97B.16; 66GA, ch 1068,§40]

97B.17 Records maintained. The department shall establish and maintain records of the amount of wages of each member, the contribution of each member with interest, and

interest dividends credited thereon, and such records shall be the basis for the compilation of the retirement benefits provided under this chapter. Such records shall be evidence for the purpose of proceedings before the department or any court of the amounts of such wages and the periods in which they were paid, and the absence of an entry as to an individual's wages in such records for any period shall be evidence that no wages were paid such individual in such period. [C46, 50, §§97.25–97.27; C54, 58, 62, 66, 71, 73, 75,§97B.17; 66GA, ch 1068,§40]

97B.18 Statement of accumulated credit. After the expiration of each calendar year and prior to July 1 of the succeeding year, the department shall furnish each member with a statement of his accumulated contributions and benefit credits accrued under this chapter up to the end of such calendar year and may furnish an estimate of such credits as of the projected normal retirement date of the member under section 97B.45. The department shall mail such statement to each employer not later than June 30 of the succeeding calendar year. The employer shall distribute such statements to its employees, and the records of the department as shown by said statement as to the wages of such individual for such year and the periods of payment shall be conclusive for the purpose of this chapter, except as hereinafter provided. [C46, 50,§§97.11, 97.25; C54, 58, 62, 66, 71, 73, 75,§97B.18; 66GA, ch 1068,§40]

Referred to in §97B.19

97B.19 Revision for error. If, prior to the expiration of six months following the delivery of such statement, it is brought to the attention of the department that any entry of such wages in such records is erroneous, or that any item of such wages has been omitted from the records, the department may correct such entry or include such omitted item in its records, as the case may be. Written notice of any revision of any such entry which is adverse to the interest of any individual shall be given to such individual in any case where such individual has previously been notified by the department of the amount of wages and of the period of payments shown by such entry. Upon request in writing made prior to the expiration of six months immediately following the giving of the statement provided for in section 97B.18, the department shall afford any individual, or after his death shall afford his beneficiary or any other person so entitled in the judgment of the department, reasonable notice and opportunity for hearing with respect to any entry or alleged omission of wages of such individual in such record, or any revision of any such entry. If a hearing is held, the department shall make findings of fact and a decision based upon the evidence adduced at such hearing and shall revise its records accordingly. Judicial review of action of the department under this section and section 97B.20 may be sought in accordance with the terms of the Iowa administrative procedure Act and section 97B.29. [C46, 50,§§97.22, 97.26, 97.28; C54, 58, 62, 66, 71, 73, 75,§97B.19; 66GA, ch 1068,§40]

Referred to in §97B.20

97B.20 Appeal—hearing. After the expiration of six months, as provided for in section 97B.19, and no appeal has been taken, the department shall revise any entry or include in its records any omitted item of wages to conform its records with tax or wage reports or portions of tax reports. Notice shall be given of such conditions and to such individuals as is provided for revisions under section 97B.19. Upon request, notice and opportunity for hearing with respect to any such entry, omission or revision shall be afforded under such conditions and to such individuals as is provided for in section 97B.19, but no evidence shall be introduced at any such hearing except with respect to conformity of such records with such tax reports. [C46, 50,§§97.22, 97.26; C54, 58, 62, 66, 71, 73, 75,§97B.20; 66GA, ch 1068,§40]

Referred to in §97B.19

97B.21 Repealed by 65GA, ch 1090,§211.

97B.22 Witnesses and evidence. For the purpose of any hearing, investigation or other proceeding authorized or directed under this chapter, or relative to any other matter within its jurisdiction hereunder, the department or appeal referee shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the commission. Such attendance of witnesses and production of evidence at the designated place of such hearing, investigation, or other proceedings may be required from any political subdivision in the state. Subpoenas of the department shall be served by anyone authorized by it (1) by delivering a copy thereof to the individual named therein, or (2) by certified mail addressed to such individual at his last dwelling place or principal place of business. A verified return by the individual so serving the subpoena setting forth the manner of service, or, in the case of service by certified mail, the return post-office receipt therefor signed by the individual so served, shall be proof of service. Witnesses so subpoenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the state of Iowa. In the discharge of the duties imposed by this chapter, the chairman or an appeal referee and any duly authorized representative or member of the department shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the administration of this chapter. [C46, 50,§§97.30, 97.32; C54, 58, 62, 66, 71, 73, 75,§97B.22; 66GA, ch 1068,§40]

Witness fees, §622.69

97B.23 Penalty for contumacy. In case of contumacy by, or refusal to obey a subpoena duly served upon any person, any district court of the state of Iowa for the district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the department, shall have jurisdiction to issue an order requiring such person to appear and give testimony, or to appear and produce evidence, or both. Any failure to obey such order of the court may be punished by said court as contempt thereof. [C46, 50,§§97.31, 97.32; C54, 58, 62, 66, 71, 73, 75,§97B.23; 66GA, ch 1068,§40]

Contempts, chapter 665

97B.24 Production of books and papers. No person so subpoenaed or ordered shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [C46, 50,§97.32; C54, 58, 62, 66, 71, 73, 75,§97B.24]

Perjury, chapter 721

97B.25 Applications for benefits. A representative designated by the director and hereinafter referred to as a deputy, shall promptly examine applications for retirement benefits and on the basis of facts found by him shall either determine whether or not such claim is valid and if valid, the month with respect to which benefits shall commence, the monthly benefit amount payable, and the maximum duration thereof. The deputy shall promptly notify the applicant and any other interested party of the decision and the reasons therefor. Unless the applicant or other interested party, within thirty calendar days after such notification was mailed to his last known address, files an appeal from such decision, to a hearing officer as provided in section 97B.26, such decision shall be final and benefits shall be paid or denied in accord therewith. [C46, 50,§§97.33, 97.39, 97.41; C54, 58, 62, 66, 71, 73, 75,§97B.25; 66GA, ch 1068,§31]

97B.26 Hearing officer. Unless such appeal is withdrawn, a hearing officer to be designated by the department for this purpose, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. At said hearing all of the evidence taken and the proceedings had shall be taken and fully reported by a certified shorthand reporter. Said reporter shall promptly transcribe said evidence and proceedings and certify to same. The said transcript shall then be made available for use by the appeal board and by the courts at subsequent judicial review proceedings under the Iowa administrative procedure Act, if any. The parties shall be duly notified of the hearing officer's decision, together with his reasons therefor, which shall be deemed to be the final decision of the department unless, within thirty days after the date of notification or mailing of such decision, further appeal is initiated pursuant to section 97B.27. [C46, 50,§§97.24, 97.33; C54, 58, 62, 66, 71, 73, 75, §97B.26; 66GA, ch 1068,§32]

Referred to in §97B.25

97B.27 Review of decision. Anyone aggrieved by the decision of the hearing officer may, at any time before the hearing officer's decision becomes final, petition the department for review before the appeal board established in section 96.6 of the hearing officer's decision. The appeal board shall review the record made before the hearing officer, but no additional evidence shall be heard. On the basis of such record the appeal board shall either affirm, modify, or reverse the decision of the hearing officer and shall determine the rights of the appellant on the basis of such record. It shall promptly notify the appellant and any other interested party by written decision. [C46, 50,§97.33; C54, 58, 62, 66, 71, 73, 75, §97B.27; 66GA, ch 1068,§33]

Referred to in §97B.26

97B.28 Department deemed party to action. The department shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the department or who has been designated by the department for that purpose or, at the department's request, by the attorney general. [C46, 50,§97.34; C54, 58, 62, 66, 71, 73, 75,§97B.28; 66GA, ch 1068, §40]

97B.29 Judicial review. Judicial review of action of the department may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the claimant was last employed or resides, provided that if the claimant does not reside in the state of Iowa the action shall be brought in the district court of Polk county, Iowa, against the department for the review of this decision, in which action any other parties to the proceeding before the department shall be named in the petition. The department may also, in its discretion, certify to such courts, questions of law involving any decision by it. Such petitions for judicial review and the questions so certified shall be given precedence over all other civil cases except cases arising under the workers' compensation law and the employment security law of this state.

[C46, 50,§97.33; C54, 58, 62, 66, 71, 73, 75,§97B.29; 66GA, ch 1068,§40, ch 1084,§43]
Referred to in §97B.19

97B.30 and 97B.31 Repealed by 65GA, ch 1090,§211.

97B.32 Appeal to supreme court. No bond shall be required for entering an appeal from any final order, judgment or decree of the district court in a proceeding for judicial review to the supreme court. [C46, 50,§97.33; C54, 58, 62, 66, 71, 73, 75,§97B.32]

97B.33 Certification to comptroller. Upon final decision of the department, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this chapter, the department shall certify to the state comptroller the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the department, through the state comptroller, shall make payment in accordance with the certification of the department provided, that where judicial review of the department decision is or may be sought in accordance with the terms of the Iowa administrative procedure Act, certification of payment may be withheld pending such review. The state comptroller shall not be held personally liable for any payment or payments made in accordance with a certification by the department. [C46, 50,§97.35; C54, 58, 62, 66, 71, 73, 75,§97B.33; 66GA, ch 1068,§40]

97B.34 Payment to incompetents. When it appears to the department that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person. [C46, 50,§97.36; C54, 58, 62, 66, 71, 73, 75,§97B.34; 66GA, ch 1068, §40]
Referred to in §97B.35

97B.35 Finality of such payments. Any payment made after June 30, 1953, under the conditions set forth in section 97B.34, shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment. [C46, 50,§97.37; C54, 58, 62, 66, 71, 73, 75, §97B.35]

97B.36 Representatives of department. The department is authorized to delegate to any member, officer, or employee of the department designated by it any of the powers conferred upon it by this chapter and is authorized to be represented by its own attorneys in any court in any case or proceeding arising under the provisions of said chapter. [C46, 50, §97.38; C54, 58, 62, 66, 71, 73, 75,§97B.36; 66GA, ch 1068,§40]

97B.37 Recognition of agents. The department may prescribe rules governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the department, and may require of such agents or other persons, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the district or supreme court of the state, shall be entitled to represent claimants before the department upon filing with the department a certificate of his right to so practice from the presiding judge or clerk of any such court. [C46, 50,§97.38; C54, 58, 62, 66, 71, 73, 75, §97B.37; 66GA, ch 1068,§40]

97B.38 Fees for services. The department may, by rule, prescribe the maximum fees which may be charged for services performed in connection with any claim before the department under this chapter, and any agreement in violation of such rules shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this chapter by word, circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the department, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or both. [C46, 50,§97.42; C54, 58, 62, 66, 71, 73, 75,§97B.38; 66GA, ch 1068,§40]

97B.39 Rights not transferable. The right of any person to any future payment under this chapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. These moneys shall also be exempt from taxation, either as income or as personal property. [C46, 50,§97.43; C54, 58, 62, 66, 71, 73, 75,§97B.39]

97B.40 Fraud. Whoever, for the purpose of causing an increase in any payment authorized to be made under this chapter, or for the purpose of causing any payment to be made where no payment is authorized under this chapter, shall willfully make or cause to be made any false statement or representation as to the amount of any wages paid or received for the period during which earned or unpaid,

knowing it to be false or whoever makes or causes to be made any false statement of a material fact knowing it to be false in any application for any payment under this chapter, or whoever willfully makes or causes to be made any false statement, representation, affidavit, or document in connection with such an application knowing them to be false, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both. [C46, 50,§97.44; C54, 58, 62, 66, 71, 73, 75,§97B.40]

97B.41 Definitions. When used in this chapter:

1. *a. "Wages"* means all remuneration for employment, including the cash value of remuneration paid in any medium other than cash, but not including the cash value of remuneration paid in any medium other than cash necessitated by the convenience of the employer, such amount as agreed upon by the employer and employee and reported to the department by the employer shall be conclusive of the value of remuneration in a medium other than cash; except that remuneration which does not equal or exceed the sum of three hundred dollars in any calendar quarter shall be excluded, provided, however, that the membership of such employee shall not be considered terminated as long as the employer-employee relationship exists. Wages for an elected official means the salary received by an elected official, exclusive of expense and travel allowances.

b. "Covered wages" means wages of a member during the periods of membership service as follows:

(1) For the period from July 4, 1953, through December 31, 1953, and each calendar year from January 1, 1954, through December 31, 1963, wages not in excess of four thousand dollars.

(2) For each calendar year from January 1, 1964, through December 31, 1967, wages not in excess of four thousand eight hundred dollars.

(3) For each calendar year from January 1, 1968, through December 31, 1970, wages not in excess of seven thousand dollars, for each calendar year from January 1, 1971 through December 31, 1972, wages not in excess of seven thousand eight hundred dollars, and for each calendar year from January 1, 1973 through December 31, 1975, wages not in excess of ten thousand eight hundred dollars.

(4) For each calendar year from January 1, 1976, and thereafter, wages not in excess of twenty thousand dollars.

(5) Effective July 1, 1973, covered wages shall not include wages to a member after the first of the month coinciding with or next following his seventieth birthday, or after the effective date of his retirement unless he is re-employed, as provided under section 97B.48, subsection 3.

(6) If a member is employed by more than one employer during a calendar year, the total amount of wages paid to him by his several employers shall be included in determining the limitation on covered wages as provided by paragraph *"b"*, subparagraph (3), of this section. If the amount of wages paid to a member by his several employers during a calendar year exceeds the covered wage limit, the amount of such excess shall not be subject to the contributions required by section 97B.11.

2. *"Employment"* means any service performed under an employer-employee relationship under the provisions of this chapter. For the purposes of this chapter, elected officials, excluding members of the general assembly, are deemed to be in employment.

3. *a. "Employer"* means the state of Iowa, the counties, municipalities, and public school districts therein and all of the political subdivisions thereof and all of their departments and instrumentalities, including joint planning commissions created under the provisions of chapter 473A, all hereinafter called political subdivisions, as of July 4, 1953.

b. "Employee" means any individual who is in employment defined in this chapter, except:

(1) Members of the general assembly, elective officials in positions for which the compensation is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions, graduate medical students while serving as interns or resident doctors in training at any hospital, or county medical examiners and deputy county medical examiners under chapter 339.

(2) Temporary employees of the general assembly of Iowa unless such employees shall make an application to the department to be covered under the provisions of this chapter.

(3) Employees of drainage and levee districts not vested, unless such drainage and levee districts shall make an application to the department to be covered under the provisions of this chapter. However, any drainage or levee district which has made contributions against which no application for benefits has been made shall be entitled to withdraw all such contributions by making application to the department prior to December 31, 1969. Each drainage or levee district which withdraws its contributions shall refund to its employees contributions deducted from their wages.

(4) Employees hired for temporary employment of six months or less duration.

4. The masculine form of expression shall be deemed to include the feminine.

5. *"System"* means the retirement plan as contained herein or as duly amended.

6. *"Abolished system"* means the Iowa old-age and survivors' insurance system repealed by sections 97.50 to 97.53.

7. *"Contributions"* means the payments to the fund required herein, by the employer and

by the members, to provide the benefits of the system.

8. *"Member"* means an employee or a former employee required to become a member of the system by sections 97B.42 and 97B.43.

9. *"Active member"* with respect to service after July 4, 1953, at the end of a year means a member who made contributions to the system at any time during the year and who, as of December 31 of the current year,

a. had not received or applied for a refund of his accumulated contributions for withdrawal or death,

b. had not terminated employment and applied for a deferred vested retirement allowance, and

c. had not retired and commenced receiving a retirement allowance.

10. *"Inactive member"* with respect to future service means a member who at the end of a year had not made any contributions during the current year and who has not received a refund of his accumulated contributions.

11. *"Vested member"* means a member who had terminated employment

a. Prior to July 1, 1973, after having completed at least eight years of service,

b. On or after July 1, 1973, after having completed at least four years of service, or

c. After having attained the age of fifty-five.

12. *"Retired member"* means a member who had applied for and commenced receiving his retirement allowance.

13. *"Accumulated contributions"* means the total obtained as of any date, by accumulating each individual contribution by the member at two percent interest plus interest dividends for all completed calendar years and for any completed calendar year for which the interest dividend has not been declared and for completed months of partially completed calendar years at two percent interest plus the interest dividend rate calculated for the previous year, compounded annually, from the end of the calendar year in which such contribution was made to the first day of the month of such date.

Referred to in §§97B.68(2,*a*), 97B.69(3)

14. *"Service"* means uninterrupted service under this chapter by an employee, except an elected official, from the date he last entered employment of the employer until the date his employment shall be terminated by death, retirement, resignation or discharge; provided, however, the service of any employee shall not be deemed to be interrupted by:

a. Service in the armed forces of the United States during a period of war or national emergency, provided the employee was employed by the employer immediately prior to entry into such armed forces, and further provided the employee was released from such service and returns to employment with the employer within ninety days of the date on which he shall have the right of release from such service or within such longer period as may be provided by the laws of the United States applicable thereto.

b. Leave of absence or vacation authorized by the employer for a period not exceeding twelve months.

c. The termination at the end of the school year of the contract of employment of an employee who is a teacher in the public schools of the state of Iowa, provided the employee enters into a further contract of employment as a teacher in the public schools of the state of Iowa for the next succeeding school year.

Referred to in §97B.43

d. Temporary or seasonal interruptions in service such as service of school bus drivers, schoolteachers under regular contract, interim teachers or substitute teachers, instructors at Iowa State University of science and technology, the state University of Iowa, or University of Northern Iowa, employees in state schools or hospital dormitories, other positions when the temporary suspension of service does not terminate the period of employment of the employee, or temporary employees of the general assembly.

Referred to in §97B.43

15. *"Prior service"* means any service by an employee rendered at any time prior to July 4, 1953.

16. *"Years of prior service"* means the total of all periods of prior service of a member. In the determination of such total years of prior service any fraction of the total in excess of an integral number of years which is at least six months shall be deemed to be a complete year and any smaller fraction shall be disregarded.

17. *"Beneficiary"* means the person or persons entitled to receive any benefits at the death of a member payable under this chapter who has or have been designated in writing by the member and filed with the department, or if no such designation is in effect at the time of death of the member or if no person so designated is living at that time, then the beneficiary shall be the estate of the member.

18. *"Membership service"* means service rendered by a member after July 4, 1953, and prior to the first of the month coinciding with or next following his seventieth birthday. Years of membership service shall be counted to the complete quarter calendar year.

19. *"Actuarial equivalent"* means a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the department.

20. *"Final five-year average covered wage"* means a member's covered wages averaged for five consecutive years of the member's last ten consecutive years which will produce the highest average. If the member has not completed ten consecutive years then the actual years as a member shall be considered, and if the member has less than five consecu-

tive years then the average over the actual number of years as a member shall be used. For the purposes of this chapter the word "consecutive" means in sequence with respect to the years of service rendered as a member and not necessarily in sequence with respect to actual periods of time measured by the calendar.

21. "*Service*" for an elected official means the period of membership service for which contributions are made beginning on the date an elected official assumes office and ending on the expiration date of the last term the elected official serves, excluding all the intervening periods during which the elected official is not an elected official. [C46, 50,§§97.1–97.5, 97.7–97.9, 97.12, 97.14, 97.18, 97.23, 97.45, 97.48; C54, 58, 62, 66, 71, 73, 75,§97B.41; 66GA, ch 50,§§4–13, ch 1068,§40, ch 1087,§§1, 2]

Referred to in §§97B.43, 97B.68, 97B.69

Amendments effective January 1, 1976; 66GA, ch 50,§41, ch 1087,§3

97B.42 Mandatory membership. Each employee whose employment commences after July 4, 1953, or who has not qualified for credit for prior service rendered prior to July 4, 1953, or any publicly elected official of the state or any of its political subdivisions, other than individuals who are students and who devote their time and efforts chiefly to their studies, rather than to incidental employment, shall become a member upon the first day in which such employee is employed. He shall continue to be a member so long as he continues in public employment except that he shall cease to be a member if after making said election he joins another retirement system in the state which is maintained in whole or in part by public contributions or payments which has been in operation prior to July 4, 1953, and was subsequently liquidated and may have thereafter been re-established. However, the participation in such other retirement system shall be voluntary and shall not be a condition for continuance of employment.

Nothing in this chapter shall be deemed to exclude from coverage, under the provisions of this chapter, any public employee who was not on or as of July 4, 1953, a member of another retirement system supported by public funds. All such employees and their employers shall be required to make contributions as specified as to other public employees and employers. Nothing in this chapter shall be deemed to prohibit the re-establishment of a retirement system supported by public funds which had been in operation prior to July 4, 1953, and was subsequently liquidated.

Persons who are members of any other retirement system* in the state which is maintained in whole or in part by public contributions other than persons who are covered under the provisions of chapter 97, Code 1950, as amended by the Fifty-fourth General Assembly on the date of the repeal of said chapter, under the provisions of sections 97.50 through 97.53 shall not become members.

Nothing herein contained shall be construed to permit any person in public employment to be an active member of the Iowa public employees' retirement system and of any other retirement system in the state which is supported in whole or in part by public contributions or payments except as heretofore provided. [C46, 50,§§97.2, 97.6, 97.45; C54, 58, 62, 66,§§97B.42, 97B.63; C71, 73, 75,§97B.42]

Referred to in §97B.41(8)

*Such as Teachers Insurance Annuity Association

97B.43 Prior service credit. Each member in service on July 4, 1953, who made contributions under the abolished system, and who has not applied for and qualified for benefit payments under the abolished system, shall receive credit for years of prior service in the determination of retirement allowance payments under any of the provisions of this chapter, provided (1) such member elects to become a member on or before October 1, 1953, (2) such member has not made application for a refund of such part of his contributions under the abolished system as is payable under the provisions of sections 97.50 to 97.53, and (3) such member gives written authorization prior to October 1, 1953, to the commission to credit to the retirement fund the amount of his contribution which would be subject to claim for refund. The amount so credited shall, after such transfer, be considered as a contribution to the system made as of July 4, 1953, by the member and shall be included as such in the determination of the amount of any accumulated contributions payable under this chapter in the event of the death prior to retirement or termination of employment of the member, but shall not be included in the accumulated contributions of the member in the determination of the amount of any retirement allowance payable under this chapter. Provided, however, an employee who was under a contract of employment as a teacher in the public schools of the state of Iowa at the end of the school year 1952-1953, or any person covered by the provisions of "*c*" or "*d*" of subsection 14, of section 97B.41, shall be considered as in service as of July 4, 1953, if they were members of the abolished system.

Any person with a record of thirty years as a public employee in the state of Iowa prior to July 1, 1947, and who is not eligible for prior service credit under other provisions of this section, shall be entitled to a credit for years of prior service in the determination of the retirement allowance payment under any of the provisions of this chapter, provided such public employee makes application to the department of job service for such credit for prior public service, accompanied by such verification of the person's claim as the department may require. The person's allowance for prior service credits shall be computed in the same manner as otherwise provided in this section, but shall not exceed the sum of four hundred fifty dollars nor be less than three hundred dollars per annum. Any

such person shall be entitled to receive retirement allowances computed as provided by this chapter, effective from the date of application to the department, provided such application is approved. Beginning July 1, 1975 the amount of such person's retirement allowance payment received during June, 1975, as computed under this section shall be increased by two hundred percent and the allowance for prior service credits shall not exceed one thousand three hundred fifty dollars nor be less than nine hundred dollars per annum. There is appropriated from the general fund of the state to the Iowa department of job service from funds not otherwise appropriated an amount sufficient to fund the provisions of this paragraph.

Each individual who as of July 1, 1973, was an active, vested, or retired member and who (1) made application for and received a refund of contributions made under the abolished system or (2) has on deposit with the retirement fund his contributions made under the abolished system shall be entitled to credit for years of prior service in the determination of retirement allowance payments by filing a written election with the department between July 1, 1973, and July 1, 1974, and by redepositing any withdrawn contributions under the abolished system together with interest as stated in this paragraph. Any individual who as of July 1, 1973, is a retired member and who made application for and received a refund of contributions made under the abolished system, may, by filing a written election with the department between July 1, 1973, and July 1, 1974, have the department retain fifty percent of the monthly increase in retiree benefits that will accrue to the individual because of prior service. If the monthly increase in retirement benefits is less than ten dollars, the department shall retain five dollars of the scheduled increase, and if the monthly increase is less than five dollars, the provisions of this paragraph shall not apply. The department shall continue to retain such funds until the withdrawn contributions, together with interest accrued to July 1, 1973, have been repaid. Due notice of this provision shall be sent to all retired members as of July 1, 1973. However, this paragraph shall not apply to any person who received a refund of any membership service contributions. The interest to be paid into the fund shall be compounded at the rates credited to member accounts from the date of payment of the refund of contributions under the abolished system to the date the member redeposits the refunded amount. The provisions of the first paragraph of this section relating to the consideration given to credited amounts shall apply to the redeposited amounts or to amounts left on deposit. Effective January 1, 1976, the provisions of this paragraph shall apply to each individual who as of January 1, 1976, was an active, vested, or retired member, but who was not in service on July 4, 1953. The period for filing the written election with the department and redepositing any withdrawn contributions together with interest accrued to January 1, 1976 shall be between January 1, 1976 and January 1, 1977. A member who is a retired member as of January 1, 1976 may file written election with the department between January 1, 1976 and January 1, 1977 to have the department retain fifty percent of the monthly increase as provided in this paragraph. [C46, 50,§§97.13, 97.45; C54, 58, 62, 66, 71, 73, 75, §97B.43; 66GA, ch 50,§14, ch 1068,§§34, 40]

Referred to in §§97B.41(8), 97B.49(3), 97B.53(4), 97B.54, 97B.68[2(b)] 97B.69(3)

97B.44 Beneficiary. Each member shall designate on a form to be furnished by the commission a beneficiary for any death benefits payable hereunder on the death of such member. Such designation may be changed from time to time by the member by filing a new designation with the commission. [C46, 50, §§97.14–97.18; C54, 58, 62, 66, 71, 73, 75,§97B.44]

97B.45 Retirement age at sixty-five. A member's normal retirement date shall be the first of the month coinciding with or next following his sixty-fifth birthday. A member may retire after his sixty-fifth birthday except as otherwise provided in section 97B.46. A member retiring on or after his normal retirement date, as provided in section 97B.46, shall submit a written notice to the department setting forth the date the retirement is to become effective, provided that such date shall be after his last day of service and not before the first day of the sixth calendar month preceding the month in which the notice is filed, except that credit for service shall cease when contributions cease as provided in section 97B.11.

Notwithstanding the provisions of this section and section 97B.46, an employer may adopt policies which prescribe retirement at an age not less than sixty-five years.*

The provisions of this section shall not be construed to render invalid any provisions of a policy established by an employer which prescribes retirement at an age not less than sixty-five years. [C46, 50,§§97.13 97.39; C54, 58, 62, 66, 71, 73, 75,§97B.45; 66GA, ch 50,§15, ch 1068,§40]

Referred to in §§97B.18, 97B.48
Amendment effective January 1, 1976, 66GA, ch 50,§41

97B.46 Service after age sixty-five. A member may, on the request of the employer, remain in the active employ of the employer beyond the date he attains the age of sixty-five for such period or periods as the employer from time to time shall approve, provided, however, that credit for such service shall cease when contributions cease as provided in section 97B.11. The member shall retire from the employment of the employer at the end of the last approved period, on the first day of the month next following or coinciding with such date. A member remaining in service past his

seventieth birthday shall be entitled to receive a retirement allowance under section 97B.49 as applicable commencing with payment for the calendar month within which the written notice is submitted to the department, except that if he fails to submit the notice on a timely basis, retroactive payments shall be made for no more than six months immediately preceding the month in which the written notice is submitted. [C54, 58, 62, 66, 71, 73, 75,§97B.46; 66GA, ch 50,§16, ch 1068, §40]

Referred to in §§97B.45, 97B.48
Amendment effective January 1, 1976, 66GA, ch 50,§41

97B.47 Retirement date. A member's early retirement date shall be the first of any month coinciding with or following his fifty-fifth birthday and prior to his normal retirement date, provided such date shall be after the last day of service. A member may retire on his early retirement date by submitting written notice to the department setting forth the early retirement date which shall not be before the first day of the sixth calendar month preceding the month in which such notice is filed. [C54, 58, 62, 66, 71, 73, 75,§97B.47; 66GA, ch 1068,§40]

Referred to in §§97B.48, 97B.53(2)

97B.48 Payment of allowances—re-employment.

1. Retirement allowances shall be paid monthly, except that an allowance of less than one hundred twenty dollars a year shall be paid as a lump sum in an actuarial equivalent amount. Receipt of the lump sum payment by a member shall terminate any and all entitlement for the period of service covered of the said member under this chapter.

2. The first monthly payment of a normal retirement allowance shall be paid as of the normal retirement effective date, which date shall be the later of the normal retirement date or the first day of the sixth calendar month preceding the month in which written notice of normal retirement is submitted to the department. Payment of an early retirement allowance or an allowance for retirement after the normal retirement date shall be paid as of the effective date of retirement subject to the provisions of sections 97B.45, 97B.46 or 97B.47. The payments shall be continued thereafter for the lifetime of the retired member except as provided in subsection 3.

3. If at any time after the first day of the month coinciding with or next following his fifty-fifth birthday and until his sixty-fifth birthday, a member who is retired under this chapter is in regular full-time employment, his retirement allowance shall be suspended for as long as he remains in employment. However, employment shall not be regarded as full-time employment until he receives remuneration in an amount in excess of two thousand one hundred dollars for any calendar year. Effective the first of the month coinciding with or next following his sixty-fifth birthday, a retired member shall be entitled to receive a retirement allowance after return to covered employment regardless of the amount of remuneration received. As of the first of the month coinciding with or next following the member's seventieth birthday, he shall be entitled to receive a retirement allowance determined under section 97B.49, regardless of the amount of remuneration received. Upon any retirement after re-employment, a retired member shall be entitled to have his retirement allowance redetermined under this section or sections 97B.49 or 97B.50, whichever is applicable, based upon the employee's and his employer's additional contributions, and any membership service of the employee after his re-employment. [C54, 58, 62, 66, 71, 73, 75,§97B.48; 66GA, ch 50,§17, ch 1068, §40]

Referred to in §97B.41
Amendment effective January 1, 1976, 66GA, ch 50,§41

97B.49 Monthly payments of allowance. Each member shall, upon retirement on or after his normal retirement date, be entitled to receive a monthly retirement allowance determined under this section.

1. For each active member employed before January 1, 1976, and retiring on or after January 1, 1976, and for each member who became vested before January 1, 1976, with four or more complete years of service, a formula benefit shall be determined equal to the larger of the benefit determined under this subsection and subsection 3 of this section as applicable, or the benefit determined under subsection 5 of this section. The amount of the monthly formula benefit for each such active member who retired on or after January 1, 1976, shall be equal to one-twelfth of one and fifty-seven hundredths percent per year of membership service multiplied by his average annual covered wages; but in no case shall the amount of monthly formula benefit accrued for membership service prior to July 1, 1967, be less than the monthly annuity at the normal retirement date determined by applying the sum of the member's accumulated contributions, his employer's matching accumulated contributions on or before June 30, 1967, and any retirement dividends standing to his credit on or before December 31, 1966, to the annuity tables in use by the department with due regard to the benefits payable from such accumulated contributions under sections 97B.52 and 97B.53.

2. For each active and vested member retiring with less than four complete years of service and who therefore cannot have a benefit determined under the formula benefit of subsection 1 or subsection 5 of this section a monthly annuity for membership service shall be determined by applying the member's accumulated contributions and the employer's matching accumulated contributions as of the effective retirement date and any retirement dividends standing to the member's credit on or before December 31,

1966, to the annuity tables in use by the department according to his age.

3. For each member employed before January 1, 1976, who has qualified for prior service credit in accordance with the first paragraph of section 97B.43, there shall be determined a benefit of eight-tenths of one percent per year of prior service credit multiplied by the monthly rate of the member's total remuneration not in excess of three thousand dollars annually during the twelve consecutive months of his prior service for which such total remuneration was the highest. An additional three-tenths of one percent of such remuneration not in excess of three thousand dollars annually shall be payable for prior service during each year in which the accrued liability for benefit payments created by the abolished system is funded by appropriation from the general fund of the state of Iowa as provided under section 97B.56.

4. For each active member retiring on or after June 30, 1973, and who has completed ten or more years of membership service, the total amount of monthly benefit payable at the normal retirement date for prior service and membership service shall not be less than fifty dollars per month. If benefits commence on an early retirement date, the amount of benefit shall be reduced in accordance with section 97B.50. If an optional allowance is selected under section 97B.51, the amount payable shall be the actuarial equivalent of the minimum benefit. An employee who is in employment on a school year or academic year basis, will be considered to be an active member as of June 30, 1973, if he completes the 1972-1973 school year or academic year.

5. For each active member retiring on or after January 1, 1976, with four or more complete years of service a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to forty percent of the final five-year average covered wage multiplied by a fraction of years of service. For the purposes of this subsection, "fraction of years of service" means a number, not to exceed one, equal to the sum of the years of membership service and the number of years of prior service divided by thirty years.

If benefits under this subsection commence on an early retirement date, the amount of benefit shall be reduced in accordance with section 97B.50.

6. On January 1, 1976, for each member who retired before January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for December, 1975 is increased by ten percent for the first calendar year or portion of a calendar year the member was retired, and by an additional five percent for each calendar year after the first calendar year the member was retired through the calendar year beginning January 1, 1975. The total increase shall not exceed one hundred percent. There is appropriated from the general fund of the state to the employment security commission from funds not otherwise appropriated an amount sufficient to fund the provisions of this subsection.

The benefit increases granted to members retired under the system on January 1, 1976 shall be granted only on January 1, 1976 and shall not be further increased for any year in which the member was retired after the calendar year beginning January 1, 1975.

7. Notwithstanding the provisions of this chapter, a member who is employed as a conservation peace officer under the provisions of section 107.13 and who retires on or after January 1, 1976, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a conservation peace officer, may elect to receive a monthly retirement allowance equal to one-twelfth of forty percent of the member's final five-year average covered wage, with benefits payable during the member's lifetime. There is appropriated from the general fund of the state to the department of job service from funds not otherwise appropriated an amount sufficient to pay the additional costs above the employee and employer contributions to pay for increased benefits to conservation peace officers under this subsection. The provisions of this subsection shall be effective July 1, 1976. [C46, 50,§§97.5, 97.45; C54, 58, 62, 66, 71, 73, 75,§97B.49; 66GA, ch 50,§18, ch 1001,§20, ch 1068,§40]

Referred to in §§97B.46, 97B.48, 97B.50, 97B.53(2), 97B.67
Amendments effective and retroactive to January 1 1976, 66GA, ch 50,§41, ch 1001,§21

97B.50 Early retirement. A member shall upon retirement on his early retirement date be entitled to receive a monthly retirement allowance determined in the same manner as provided for normal retirement in subsections 1, 4 and 5 of section 97B.49 reduced by five-tenths of one percent per month for each month that the early retirement date precedes the normal retirement date. [C46, 50,§§97.13, 97.45; C54, 58, 62, 66, 71, 73, 75,§97B.50; 66GA, ch 50,§19]

Referred to in §§97B.48(3), 97B.49, 97B.53(2)
Amendment effective January 1, 1976, 66GA, ch 50,§41

97B.51 Optional allowance. Each member shall have the right at any time prior to his retirement date to elect to have his retirement allowance payable under one of the options hereinafter set forth in this section in lieu of the retirement allowance otherwise payable to him upon retirement under any of the provisions of the retirement system. The amount of any optional retirement allowance shall be the actuarial equivalent of the amount of such retirement allowance otherwise payable to him. The member shall make such an election by written request to the department and such an election will be subject to the approval of the department.

1. A member may elect to receive a decreased retirement allowance during his lifetime and have such decreased retirement allowance (or a designated fraction thereof) continued after his death to another person, called a contingent annuitant, during the lifetime of the contingent annuitant. In case of such an election, no death benefits, as might otherwise be provided by this chapter, will be payable upon the death of either the member or the contingent annuitant after the member's retirement.

2. The election by a member or the contingent annuitant of the option stated under subsection 1 of this section shall be null and void if the member dies prior to retirement.

3. A member who had elected to take the option stated in subsection 1 of this section may, at any time prior to his retirement, revoke such an election by written notice to the commission.

4. A member may elect to receive an increased retirement allowance during his lifetime with no death benefit after his retirement date.

5. A member may elect to receive a decreased retirement allowance during his lifetime with a death benefit after his retirement date equal to the excess, if any, of the accumulated contributions by the member and employer as of said date, over the total monthly retirement allowances received by him under the retirement system. Such death benefit shall be paid to his beneficiary.

6. A member may elect to receive a decreased retirement allowance during his lifetime with provision that in event of his death during the first one hundred twenty months of his retirement, monthly payments of his decreased retirement allowance shall be made to his beneficiary until a combined total of one hundred twenty monthly payments have been made to him and his beneficiary. [C54, 58, 62, 66, 71, 73, 75,§97B.51; 66GA, ch 1068,§40]

Referred to in §§97B.49, 97B.52

97B.52 Payment to beneficiary.

1. If a member dies prior to the date his first retirement allowance is payable under the retirement system, the accumulated contributions by the member and employer at date of death shall be payable to his beneficiary in one of the following forms:

a. A lump sum.

b. A monthly life annuity, commencing on the first day of the month following the member's date of death and continuing for the beneficiary's lifetime thereafter, equal to the actuarial equivalent of the lump-sum amount otherwise payable in accordance with paragraph "*a*" of this subsection.

c. A monthly life annuity, commencing on the first day of the month following the member's date of death and continuing for the beneficiary's lifetime thereafter, with provision that in event of the beneficiary's death before receiving one hundred twenty monthly payments, the monthly payment shall be continued until a total of one hundred twenty monthly annuity payments have been made to the person or persons designated by the beneficiary or to his estate if no person was designated or no designated person survives until a total of one hundred twenty monthly annuity payments have been made. The monthly annuity payable under this paragraph shall be the actuarial equivalent of the lump-sum amount otherwise payable in accordance with paragraph "*a*" of this subsection.

The member may, by election in writing to the department prior to his death, specify which of the three forms of payment authorized under this subsection is to be made to his designated beneficiary upon his death prior to retirement. Such election shall become irrevocable upon death of the member. If the member does not make such election, his beneficiary may elect any one of the three payment forms authorized under this subsection. If the beneficiary does not make such election within one hundred eighty days of the member's date of death, the payment form prescribed in paragraph "*a*" shall apply.

If either of the payment forms prescribed in paragraphs "*b*" and "*c*" is elected by the member or his beneficiary and the monthly annuity payment thereunder would be less than ten dollars, the department may require application of the payment form prescribed in paragraph "*a*" in lieu of either of the elected payment forms.

Referred to in §97B.53(4)

2. If a member dies after the date his first retirement allowance is payable under the retirement system, the excess, if any, of the accumulated contributions by the member as of said date, over the total monthly retirement allowances received by him under the retirement system will be paid to his beneficiary unless the retirement allowance is then being paid in accordance with subsections 1, 4, 5 or 6 of section 97B.51.

3. Other than as provided above in subsections 1 and 2 of this section, or section 97B.51, all rights to any benefits under the retirement system will cease upon the death of a member.

4. If the department cannot locate the beneficiary within eighteen months following the member's death and receipt of verification that a certified letter with return receipt requested, addressee only, has been delivered to the beneficiary, the department shall pay to the estate of the deceased member the amount otherwise designated to be received by the beneficiary. If a beneficiary is known to exist but cannot be notified, the department shall not pay the death benefits to the estate. [C46, 50,§§97.14–97.18, 97.39; C54, 58, 62, 66, 71, 73, 75,§97B.52; 66GA, ch 50,§20, ch 1068,§40]

Referred to in §§97B.49(1), 97B.53(4)
Amendment effective January 1, 1976, 66GA, ch 50,§41

97B.53 Termination of employment. All rights to all benefits under the retirement

system will cease upon a member's termination of employment with the employer prior to his retirement, other than by death, except as provided hereafter:

1. Upon the termination of employment with the employer prior to retirement other than by death of a member, the accumulated contributions by the member at the date of such termination will be paid to such member, except as may be provided in subsection 2, subsection 5 and subsection 6 of this section.

2. If the employment with the employer of a member is terminated prior to his retirement, other than by death, but after he has either

a. Completed at least four years of service, or

b. Has attained the age of fifty-five, he shall receive a monthly retirement allowance commencing on the first day of the month next following or coinciding with the date he attains the age of sixty-five, if he is then alive, or, if the member so elects in accordance with section 97B.47, commencing on the first day of any month coinciding or next following the date he attains the age of fifty-five and prior to the date he attains the age of sixty-five, and continuing on the first day of each month thereafter during his lifetime, provided the member does not receive prior to the date his retirement allowance is to commence a refund of accumulated contributions under any of the provisions of this chapter. The amount of each such monthly retirement allowance shall be determined as provided in either section 97B.49 or in section 97B.50, whichever is applicable.

3. The accumulated contributions of a terminated member who is entitled to the benefits of subsection 2 of this section shall be credited with interest, including interest dividends.

4. A member who is entitled to the benefits of subsection 2 of this section shall have the right, prior to the commencement of his retirement allowance, to receive a refund of his accumulated contributions, and in the event of the death of the member prior to the commencement of his retirement allowance and prior to the receipt of any such refund the benefits of subsection 1 of section 97B.52 shall be paid. No member shall be entitled to any refund based upon any credit for prior service as determined under the provisions of section 97B.43 or for any portion of any contribution made by an employer unless otherwise provided by this chapter.

5. A member shall not be considered as having terminated his employment if he accepts other employment in the state of Iowa under which he is eligible to membership in the Iowa public employees' retirement system, within three months after he has left public employment.

Any member who does not withdraw his accumulated contributions upon termination of employment may at any time request the return of his accumulated contributions, but if he receives such return of contributions he shall be deemed to have waived all claims for any other benefits from the fund.

6. Any member who terminates employment before he is entitled to the benefits of subsection 2 of this section and who does not claim and receive a refund of his accumulated contributions within five years of his date of termination shall, in event he makes claim for such refund more than five years after his date of termination, be required to submit proof satisfactory to the department of his entitlement to such refund, but in no case shall interest be allowed upon his accumulated contributions for any period he is not an employee. The department shall be under no obligation to maintain the accumulated contribution accounts of such former members for more than five years after their dates of termination.

Any person who made contributions to the abolished system who is entitled to a refund in accordance with the provisions of this chapter and who has not claimed and received such refund prior to January 1, 1964, shall, in event he makes a claim for such refund after January 1, 1964, be required to submit proof satisfactory to the department of his entitlement to such refund. The department shall be under no obligation to maintain the contribution accounts of such persons after January 1, 1964.

7. Any member whose employment is terminated after one year of employment but before he has accumulated four or more years of employment, either under the provisions of this chapter or as a result of prior service credits, may elect to leave his accumulated contributions in the retirement fund. In the event he returns to public employment at any time within four years after this termination of employment, he shall be entitled to resume membership in the system with the same credits for prior service and accumulated contributions that he had earned when his original employment was terminated. No interest shall be credited on his accumulated contributions nor on his employer's accumulated contributions during the period from the time of his termination of employment to his resumption of employment.

Any member who has resumed employment under the provisions of this subsection shall not be eligible for any second period of absence from membership as a result of termination of service.

8. If an employee hired to fill a permanent position terminates his employment within six months from the date of employment, the employer may file a claim with the department for a refund of the funds contributed to the department by the employer for the employee. [C46, 50,§§97.6, 97.13, 97.45; C54, 58, 62, 66, 71, 73, 75,§97B.53; 66GA, ch 50,§21, ch 1068,§40]

Referred to in §97B.49(1)
Amendment effective January 1, 1976, 66GA, ch 50,§41

97B.54 Accrued liability contribution. The accrued liability contribution shall be that annual amount required to provide for the liquidation, prior to July 1, 1998, of the liability for retirement allowances payable under this chapter arising from the prior service of members under sections 97B.43 and 97B.56. The unfunded accrued liability at any particular time shall be the excess, if any, of the present value of retirement allowances due to prior service, over the sum of (1) the net total accumulated accrued liability contributions (after adjustment for retirement allowance payments due to prior service) and (2) any assets transferred to the retirement fund in accordance with section 97B.56, with interest on such sum at the rates of interest earned each year on the retirement fund. Accrued liability contributions shall be determined on actuarial bases adopted by the department. Such contributions shall be determined by the department after each valuation of the assets and liabilities of the system, and shall continue in force until a new valuation is made. [C46, 50,§97.13; C54, 58, 62, 66, 71, 73, 75,§97B.54; 66GA, ch 1068,§40]

Referred to in §§97B.56, 97B.61

97B.55 Employees of Mississippi riverway commission. The department may enter into an agreement with the upper Mississippi riverway commission whereby the retirement system shall be extended to employees of the riverway commission. [C71, 73, 75,§97B.55; 66GA, ch 1068,§40]

97B.56 Abolished system—liquidation fund. The assets of the old-age and survivors' liquidation fund, established by sections 97.50 to 97.53 and any future payments or assets payable to the old-age and survivors' liquidation fund, are hereby transferred to the retirement fund and all payments hereafter due in accordance with the provisions of said sections shall be paid from the retirement fund, and the liability for such payments shall be considered as allowances arising from prior service as provided in section 97B.54.

Commencing July 1, 1967, and each year thereafter, the contributions required to fund the actuarial liabilities from the abolished system shall be determined in accordance with section 97B.54. There is hereby appropriated from the general fund of the state of Iowa the amount of contribution required under said section but not to exceed one million dollars per biennium. The amount of such contribution shall be deposited in the retirement fund in two annual installments not later than June 30 of each fiscal year. [C54, 58, 62, 66, 71, 73, 75,§97B.56]

Referred to in §§97B.49(2), 97B.54
See §§97.50–97.53

97B.57 Distribution of information. The department shall prepare and distribute to the employees, at the expense of the retirement fund and in such a manner as it shall deem appropriate, information concerning the retirement system. [C54, 58, 62, 66, 71, 73, 75,§97B.57; 66GA, ch 1068,§40]

97B.58 Information furnished by employer. To enable the department to perform its functions, the employer shall upon the request of the department supply full and timely information to the department of all matters relating to the pay of all members, date of birth, their retirement, death or other cause for termination of employment, and such other pertinent facts as the department may require. [C46, 50,§§97.23–97.25; C54, 58, 62, 66, 71, 73, 75,§97B.58; 66GA, ch 1068,§40]

97B.59 Actuary employed. The department shall employ an actuary as its technical advisor. The compensation of the actuary and of other employees shall be fixed by the department within the appropriations made therefor. [C54, 58, 62, 66, 71, 73, 75,§97B.59; 66GA, ch 1068,§40]

97B.60 Actuarial investigation. At least once in each two-year period, the department shall cause an actuarial investigation to be made of all experience under the retirement system. Pursuant to such an investigation, the department shall, from time to time, determine upon an actuarial basis the condition of the system and shall report to the general assembly its findings and recommendations. The department shall adopt from time to time mortality tables and all other necessary factors for use in all actuarial calculations required in connection with the retirement system. [C54, 58, 62, 66, 71, 73, 75,§97B.60; 66GA, ch 1068,§40]

97B.61 Annual valuation of assets. The department shall cause an annual actuarial valuation to be made of the assets and liabilities of the retirement system and shall prepare an annual statement of the amounts to be contributed by the employer under this chapter, and shall publish annually such valuation of the assets and liabilities and the statement of receipts and disbursements of the retirement system.

After accepting the actuarial methods and assumptions of the valuation, the department shall certify to the governor the contribution rates determined thereby as the rates necessary and sufficient for members and employers to fully fund the benefits and retirement allowances being credited for membership service and to make the accrued liability contributions in level installments required for prior service under section 97B.54. [C54, 58, 62, 66, 71, 73, 75,§97B.61; 66GA, ch 50,§22, ch 1068,§40]

Amendment effective January 1, 1976, 66GA, ch 50,§41

97B.62 Accepting employment deemed consent. Every employee accepting employment or continuing in employment shall as long as he continues to be a member and has not become a member of another retirement system in the state which is maintained in whole or in part by public contributions or payments

be deemed to consent and agree to any deductions from his compensation required by this chapter and to all other provisions thereof. [C46, 50,§§97.2, 97.9; C54, 58, 62, 66, 71, 73, 75,§97B.62]

97B.63 Repealed by 62GA, ch 121,§24.

97B.64 Insurance laws not applicable. None of the laws of this state regulating insurance or insurance companies shall apply to the department or to the Iowa public employees' retirement system or any of its funds. [C46, 50,§97.47; C54, 58, 62, 66, 71, 73, 75,§97B.64; 66GA, ch 1068,§40]

97B.65 Revision rights reserved — increase of benefits—rates of contribution. The right is reserved to the general assembly to alter, amend, or repeal any provision of this chapter or any application thereof to any person, provided, however, that to the extent of the funds in the retirement system the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to any member of the system shall not be repudiated, provided further however, that the amount of benefits accrued on account of prior service shall be adjusted to the extent of any unfunded accrued liability then outstanding. Any increase enacted in benefits or retirement allowance under this chapter shall be accompanied by a change in the employer and employee contribution rates necessary to support such increase, all determined in accordance with sound actuarial principles and methods. [C46, 50,§§97.11, 97.13; C54, 58, 62, 66, 71, 73, 75,§97B.65; 66GA, ch 50,§23]

Amendment effective January 1, 1976, 66GA, ch 50,§41

97B.66 Repealed by 66GA, ch 1068,§41.

97B.67 Intent of the general assembly.

1. It is the intent of the general assembly that the contribution rates specified in section 97B.11 be reviewed annually by the general assembly and that the contribution rates will be increased by action of the general assembly by an amount equal to one-tenth of one percent of the covered wages of each member of the system and by an amount equal to five-tenths of one percent of the covered wages of each member of the system paid by the employer for each year in which the growth of state general fund revenues for the fiscal year ending the preceding June 30, adjusted for rate or basis, exceeds five and one-half percent until the contribution rate is equal to four percent of the covered wages of each member of the system and seven and twenty-five hundredths percent of the covered wages of each member of the system paid by the employer.

It is also the intent of the general assembly that the monthly benefit specified in section 97B.49, subsection 5 be reviewed annually by the general assembly and that the general assembly will consult with the Iowa public employees' retirement system division of the employment security commission and the consulting actuaries relating to the actuarial soundness of the system in order that the percent of the final five-year average covered wage used in determining monthly benefits will be increased by action of the general assembly as the contribution rates increase until the percent of the final five-year average covered wage used in determining monthly benefits equals fifty.

2. After review of the general assembly under the provisions of subsection 1 it is the intent of the general assembly that the percent of the final five-year average covered wage used in determining monthly benefits be increased by the Sixty-seventh General Assembly, 1977 Session, in accordance with the increase in employer and employee contribution rates under section 97B.11 and maintaining the actuarial soundness of the system.

It is the intent of the general assembly that any amounts required to fund employer contributions to the system under section 97B.11 for members who are employees of political subdivisions of the state will not be appropriated by the general assembly, but will be included in the budgets of the political subdivisions and paid from funds available to the political subdivisions. [66GA, ch 50,§24, ch 1001,§19]

Subsection 1 effective January 1, 1976; 66GA, ch 50,§41

97B.68 Employees under federal civil service—mandatory termination.

1. From and after July 4, 1959, any person who is a member of the federal civil service retirement program shall not be eligible for membership in the Iowa public employees' retirement system, and the provisions of this chapter shall not apply to such employee. Any employee whose membership in the federal civil service retirement program is subsequently terminated shall immediately notify his or her employer and the Iowa department of job service of such fact, and the employee shall become subject to the provisions of this chapter on the date the notification is received by the department.

2. Upon termination of membership in the Iowa public employees' retirement system under the provisions of this section, the employee shall be paid from the Iowa public employees' retirement fund within six months of the termination a lump sum cash amount equal to the sum of:

a. Such member's accumulated contributions as defined in subsection 13 of section 97B.41, computed as of July 4, 1959, plus

b. The total amount contributed to the Iowa old-age and survivors' insurance fund prior to July 1, 1953, by such member which was transferred to the retirement fund as of July 1, 1953, and would have been refundable to him had he not elected to receive prior service credit in accordance with section 97B.43, with interest on such amount at two percent per annum

compounded annually from July 1, 1953, to July 4, 1959. [C62, 66, 71, 73, 75,§97B.68; 66GA, ch 1068,§35]

97B.69 Judges in judicial retirement system —mandatory termination.

1. Every person who is a member of the judicial retirement system on July 4, 1959, or who thereafter becomes a member shall have his membership terminated in the Iowa public employees' retirement system.

2. The tax on wages of each employee and his employer, as required by section 97B.11, shall cease on the effective date of such employee's membership in the judicial retirement system.

3. Each member whose membership is terminated in the Iowa public employees' retirement system shall be paid from the Iowa public employees' retirement fund within the six-month period immediately following the date of termination of his membership a lump-sum cash amount equal to the sum of such member's accumulated contributions as defined in subsection 13 of section 97B.41, computed as of the date his membership in the system is terminated; plus the total amount contributed to the Iowa old-age and survivors' insurance fund prior to July 1, 1953, by such member which was transferred to the Iowa public employees' retirement fund as of July 1, 1953, and would have been refundable to him had he not elected to receive prior service credit in accordance with section 97B.43, with interest on such amount at two percent per annum compounded annually from July 1, 1953, to the date his membership in the system was terminated.

4. Any employee whose membership in the judicial retirement fund is subsequently terminated shall be entitled to resume membership in the Iowa public employees' retirement system. [C62, 66, 71, 73, 75,§97B.69]

97B.70 Interest and dividends to members. Interest at two percent per annum and interest dividends declared by the department shall be credited to the member's contributions and the employer's matching contributions to become part of the accumulated contributions thereby.

1. The average rate of interest earned shall be determined upon the following basis:

a. Investment income shall include interest and cash dividends on stock.

b. Investment income shall be accounted for on an accrual basis.

c. Capital gains and losses, realized or unrealized, shall not be included in investment income.

d. Mean assets shall include fixed income investments valued at cost or on an amortized basis, and common stocks at market values or cost, whichever is lower.

e. The average rate of earned interest shall be the quotient of the investment income and the mean assets of the retirement fund.

2. The interest dividend shall be determined within sixty days after the end of each calendar year as follows:

The dividend rate for a calendar year shall be the excess of the average rate of interest earned for the year over the statutory two percent rate plus twenty-five hundredths of one percent. The average rate of interest earned and the interest dividend rate in percent shall be calculated to the nearest one hundredth; i.e., to two decimal places.

3. Interest and interest dividends shall be credited to the contributions of active members and inactive vested members until the first of the month coinciding with or next following the member's retirement date. [C66, 71, 73, 75, §97B.70; 66GA, ch 1068,§40]

97B.71 Refund of excess tax. A claim may be filed by an employee for repayment of contributions withheld in excess of the amount of covered wages in any one year, by one or more employers. The department shall, if a claim is allowed to the employee, also mail a refund check for the contributions paid by the employer for the employee on which the employee is allowed a refund. The department shall have the power and authority to require the filing of a proper application by the employee before the claim shall be allowed. Any claim for such refund shall be made within three years of the date of payment and not thereafter. [C66, 71, 73, 75,§97B.71; 66GA, ch 1068, §40]

CHAPTER 97C

FEDERAL SOCIAL SECURITY ENABLING ACT

Referred to in §294.12

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97C.14 Elected officials—retroactive payments.
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97C.1 Declaration of policy. In order to extend to employees of the state and its political subdivisions and to the dependents and survivors of such employees, the basic protection accorded to others by the old-age and survivors' insurance system embodied in the Social Security Act, Title II of the federal Social Security Act, it is hereby declared to be the policy of the general assembly, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act, Title II. [C54, 58, 62, 66, 71, 73, 75,§97C.1]

97C.2 Definitions. For the purposes of this chapter:

1. The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the federal Insurance Contribution Act, would not constitute "wages" within the meaning of that Act.

2. The term "employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except (1) service which in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act; or (2) service which under the Social Security Act may not be included in an agreement between the state and the federal security administrator entered into under this chapter.

3. The term "employee" includes elective and appointive officials of the state or any political subdivision thereof, except members of the general assembly, elective officials in positions, the compensation for which is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions; provided that no member of a county board of supervisors shall be deemed to be an elective official in a part-time position, but every member of a county board of supervisors shall be deemed to be an employee within the purview of this chapter and shall be eligible to receive all of the benefits provided by this chapter to which he may be entitled as an employee.

4. The term "employer" means the state of Iowa and all of its political subdivisions which employ persons eligible to coverage under an agreement entered into by this state and the federal security administrator under the provisions of the Social Security Act, Title II, of the Congress of the United States as amended.

Referred to in §97C.10

5. The term "state agency" means the Iowa department of job service.

6. The term "political subdivision" includes an instrumentality (*a*) of the state of Iowa, (*b*) of one or more of its political subdivisions or (*c*) of the state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivisions.

Referred to in §473A.1

7. The term "Social Security Act" means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," Title II, (including regulations and requirements issued pursuant thereto) as such Act has been and may from time to time be amended.

8. The term "Federal Insurance Contributions Act" means subchapter "A" of chapter 9 of the federal internal revenue code as such code has been and may from time to time be amended.

9. The term "Federal Security Administrator" means the administrator of the federal security agency (or his successor in function), and includes any individual to whom the federal security administrator has delegated any of his functions under the Social Security Act, Title II, with respect to coverage under such Act of employees of states and their political subdivisions. [C46, 50,§97.45; C54, 58, 62, 66, 71, 73, 75,§97C.2; 66GA, ch 1068,§38]

Referred to in §§97C.3, 97C.10, 473A.1

97C.3 Federal-state agreement. The state agency, with the approval of the governor and the attorney general, is hereby authorized to enter on behalf of the state into an agreement with the federal security administrator, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors' insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute "employment" as defined in section 97C.2 of this chapter. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and federal security administrator shall agree upon, but, except as may be otherwise required by or under the Social Security Act, Title II, as to the services to be covered, such agreement shall provide in effect that:

1. Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of said Social Security Act.

2. The state will pay to the secretary of the treasury, at such time or times as may be prescribed under the Social Security Act, Title II, contributions with respect to wages (as defined in section 97C.2 of this chapter), equal to the sum of taxes which would be imposed

by sections 1400 and 1410 of the federal Insurance Contributions Act, if the services covered by the agreement constituted employment within the meaning of that Act.

3. Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein, but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services is entered into, provided that in the case of an agreement or modification made after the effective date of this chapter [May 3, 1953] and prior to January 1, 1954, such agreement or modification of the agreement shall be made effective with respect to any such services performed on or after January 1, 1951.

4. All services which constitute employment as defined in section 97C.2, and are performed in the employ of the state, or any political subdivision, by employees of the state, or of any political subdivision, shall be covered by the agreement. [C46, 50,§97.45; C54, 58, 62, 66, 71, 73, 75,§97C.3]

Referred to in §§97C.4, 97C.5, 97C.13, 97C.14, 97C.15, 97C.17

97C.4 Other states—joint agreements. Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (1) to enter into an agreement with the federal security administrator whereby the benefits of the federal old-age and survivors' insurance system shall be extended to employees of such instrumentality, (2) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under section 97C.5 if they were covered by an agreement made pursuant to section 97C.3, and (3) to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of section 97C.3 and other provisions of this chapter. [C54, 58, 62, 66, 71, 73, 75,§97C.4]

97C.5 Tax on employees. Every employee whose services are covered by an agreement entered into under section 97C.3 shall be required to pay for the period of such coverage into the contribution fund established by section 97C.12, a tax which is hereby imposed with respect to wages received during the calendar year of 1953, equal to such per centum of the wages received by the employee as imposed by Social Security Act, Title II, as such Act has been and may from time to time be amended. Such payment shall be considered a condition of employment as a public employee. Taxes deducted from the wages of the employee by the employer and taxes imposed upon the employer shall be forwarded to the state agency for recording and shall be deposited with the treasurer of state to the credit of the contribution fund established by section 97C.12 of this chapter. [C46, 50,§97.9; C54, 58, 62, 66, 71, 73, 75,§97C.5]

Referred to in §§97C.4, 97C.6, 97C.9, 97C.12

97C.6 Collection of tax. The tax imposed by sections 97C.5 and 97C.14 shall be collected by each employer from the employee by deducting the amount of the tax from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such taxes. [C46, 50,§§97.7, 97.9, 97.45; C54, 58, 62, 66, 71, 73, 75,§97C.6]

97C.7 Repealed by 58GA, ch 118,§1.

97C.8 Statement to employees. The employer shall furnish to all employees a written statement in a form prescribed by the state agency suitable for retention by the employees, showing the wages paid to the employee after January 1, 1953. Each statement shall cover a calendar year, or one, two or three quarters, whether or not within the same calendar year, and shall show the name of the employee, the period covered by the statement, the total amount of wages paid within such period, and the amount of tax imposed by this chapter with respect to such wages. Each statement shall be furnished to the employee not later than thirty days following the period covered by the statement, except that, if the employee leaves the employ of the employer, this final statement shall be furnished within thirty days after the last payment of wages is made to the employee. The employer may, at its option, furnish such a statement to any employee at the time of each payment of wages to the employee during any calendar quarter, in lieu of a statement covering such quarter, and, in such case, the statement may show the date of payment of wages in lieu of the period covered by the statement. [C46, 50,§97.11; C54, 58, 62, 66, 71, 73, 75,§97C.8]

97C.9 Adjustments or refund. If more or less than the correct amount of the tax imposed by section 97C.5 is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made in such manner and at such times as the state agency shall prescribe. [C54, 58, 62, 66, 71, 73, 75,§97C.9]

97C.10 Tax on employer. In addition to all other taxes there is hereby imposed upon each employer as defined in section 97C.2, subsection 4, a tax equal to such per centum of the wages paid by the employer to each employee as imposed by the Social Security Act, Title II, as such Act has been and may from time to time be amended. The employer shall pay its tax or contribution from funds available and is directed to pay same from

tax money or from any other income available. The political subdivision is hereby authorized and directed to levy in addition to all other taxes a property tax sufficient to meet its obligations under the provisions of this chapter, if such tax levy is necessary because other funds are not available. [C46, 50,§97.12; C54, 58, 62, 66, 71, 73, 75,§97C.10]

Referred to in §97C.12

97C.11 Payment — adjustment or refund. Such taxes as deducted by the employer from the earnings of employees or upon the employers shall be paid in such manner, at such times and under such conditions as may be prescribed by the state agency. If more or less than the correct amount of the tax imposed upon the employer is paid or deducted, proper adjustments or refund, if adjustment is impracticable, shall be made in such manner and at such times as the state agency shall prescribe. [C46, 50,§97.7; C54, 58, 62, 66, 71, 73, 75,§97C.11]

Referred to in §97C.12

97C.12 Contribution fund. There is hereby established in the office of the treasurer of state a special fund to be known as the contribution fund. Such fund shall consist of, and there shall be deposited in such fund: (1) all taxes, interest, and penalties collected under sections 97C.5, 97C.10, and 97C.11; (2) all moneys appropriated thereto under this chapter; (3) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (4) interest earned upon any moneys in the fund, and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. Subject to the provisions of this chapter, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this chapter. All moneys in this fund shall be mingled and undivided. [C54, 58, 62, 66, 71, 73, 75,§97C.12]

Referred to in §§97C.5, 97C.14

97C.13 Fund kept separate. The contribution fund shall be established and held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purpose of this chapter. Withdrawals from such fund shall be made for, and solely for, payment of amounts required to be paid to the secretary of the treasury pursuant to an agreement entered into under section 97C.3, or the payment of refunds provided for in this chapter. [C54, 58, 62, 66, 71, 73, 75,§97C.13]

97C.14 Elected officials — retroactive payments. Any elective official of the state of Iowa, or any of its political subdivisions, who becomes subject to federal social security coverage under the provisions of the agreement referred to in section 97C.3 shall, not later than October 1, 1953, pay into the contribution fund established by section 97C.12 a tax sufficient to pay in the elected official's behalf an amount equal to three per cent of his or her compensation received as a public official for each year or portion thereof that the public elected official has served as a public elective official since January 1, 1951, not to exceed thirty-six hundred dollars for any year of service. The state agency shall collect the tax hereby imposed and the proceeds from such tax shall be used for the purpose of obtaining retroactive federal social security coverage for elective officials, for the period beginning January 1, 1951, in the same manner as is provided in the case of other public employees by the provisions in subsection 2 of section 97.51 in order to obtain retroactive federal social security coverage during this period of time, such contribution to be collected and guaranteed by the employer. The state agency will pay any such amount contributed to provide for retroactive federal social security coverage for the individual in question in the same manner as other payments are made for retroactive coverage of public employees. Provided that no member of a county board of supervisors shall be deemed to be an elective official in a part-time position, but every member of a county board of supervisors shall be deemed to be an employee within the purview of this chapter and shall be eligible to receive all of the benefits provided by this chapter to which the member may be entitled as an employee. [C46, 50,§§97.7, 97.45; C54, 58, 62, 66, 71, 73, 75,§97C.14; 66GA, ch 1068,§36]

Referred to in §97C.6

97C.15 Payments to secretary of treasury. From the contribution fund the custodian of the fund shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 97C.3 and the Social Security Act, Title II. [C54, 58, 62, 66, 71, 73, 75,§97C.15]

97C.16 Custodian of fund. The treasurer of state shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this chapter and the directions of the state agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto. [C54, 58, 62, 66, 71, 73, 75,§97C.16]

97C.17 Standing appropriation. There is hereby authorized to be appropriated annually from the general fund of the state of Iowa to the contribution fund, in addition to the taxes collected and paid into the contribution fund,

such additional sums as are found to be necessary in order to make payments to the secretary of the treasury of the United States which the state is obliged to make pursuant to any agreement entered into under section 97C.3. [C54, 58, 62, 66, 71, 73, 75,§97C.17]

97C.18 Rules. The state agency shall make and publish such rules, not inconsistent with the provisions of this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter, and the state agency shall comply with regulations relating to payments and reports as may be prescribed by the federal security administrator. [C54, 58, 62, 66, 71, 73, 75,§97C.18]

97C.19 Apportionment of expense. The Iowa employment security commission is authorized to enter into arrangements with the federal bureau of employment security whereby services performed by the commission and its employees both under this chapter and under the Iowa employment security chapter shall be equitably apportioned between the funds provided for the administration of said chapters. The money spent for rentals, supplies, and equipment used by the commission in administering both chapters shall be equitably apportioned and charged against said funds. [C46, 50,§97.48; C54, 58, 62, 66, 71, 73, 75,§97C.19]

Iowa employment security, chapter 96

97C.20 Referenda by governor. With respect to employees of the state the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision he shall authorize a referendum upon request of the governing body of such subdivision; and in either case the referendum shall be conducted, and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218 "d" (3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. The notice of referendum required by section 218 "d" (3) (C) of the Social Security Act to be given to employees shall contain or shall be accomplished by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in section 218 "d" (3) of the Social Security Act have been met, the governor shall so certify to the secretary of health, education, and welfare. [C58, 62, 66, 71, 73, 75,§97C.20]

CHAPTER 98

CIGARETTES AND TOBACCO

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DIVISION I
CIGARETTES
Referred to in §98.44(4, 5)

98.1 Definition of words, terms and phrases. The following words, terms, and phrases, when used in this chapter, shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. *"Cigarette"* means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and irrespective of tobacco or any substitute for tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. Provided the definition herein shall not be construed to include cigars.

Referred to in §98.42

2. *"Individual packages of cigarettes"* shall mean and include every package of cigarettes ordinarily sold at retail.

3. *"Person"* shall mean and include every individual, firm, association, joint stock company, syndicate, copartnership, corporation, trustee, agency or receiver, or respective legal representative.

4. *"Place of business"* is construed to mean and include any place where cigarettes are sold or where cigarettes are stored within or without the state of Iowa by the holder of an Iowa permit or kept for the purpose of sale or consumption; or if sold from any vehicle or train, the vehicle or train on which or from which such cigarettes are sold shall constitute a place of business.

5. *"Stamps"* shall mean the stamp or stamps printed, manufactured or made by authority of the director, as hereinafter provided, and issued, sold or circulated by the department and by the use of which the tax levied hereunder is paid. It shall also mean any impression, indicium, or character fixed upon packages of cigarettes, cigarette papers, or tubes by metered stamping machine or device which may be authorized by the director to the holder of state or manufacturers' permits and by the use of which the tax levied hereunder is paid.

6. *"Counterfeit stamp"* shall mean any stamp, label, print, indicium, or character which evidences, or purports to evidence the payment of any tax levied by this chapter, and which stamp, label, print, indicium, or character has not been printed, manufactured or made by authority of the director as hereinafter provided, and issued, sold or circulated by the department.

7. *"Previously used stamp"* shall mean and include any stamp which is used, sold, or possessed for the purpose of sale or use, to evidence the payment of the tax herein imposed on an individual package of cigarettes after said stamp has, anterior to such use, sale, or possession, been used on a previous or separate individual package of cigarettes to evidence the payment of tax as aforesaid.

8. *"First sale"* shall mean and include the first sale or distribution of cigarettes in intrastate commerce, or the first use or consumption of cigarettes within this state.

9. *"Drop shipment"* shall mean and include any delivery of cigarettes received by any person within this state when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee.

10. *"Director"* shall mean the director of revenue or his duly authorized assistants and employees.

11. *"Attorney general"* shall mean the attorney general of the state or his duly authorized assistants and employees.

12. *"Distributor"* shall mean and include every person in this state who manufactures or produces cigarettes or who ships, transports, or imports into this state or in any manner acquires or possesses cigarettes without stamps affixed for the purpose of making a "first sale" of the same within the state.

13. *"Wholesaler"* shall mean and include every person other than a distributor or distributing agent who engages in the business of selling or distributing cigarettes within the state, for the purpose of resale.

14. *"Retailer"* shall mean and include every person in this state who shall sell, distribute, or offer for sale for consumption or possess for the purpose of sale for consumption, cigarettes irrespective of quantity or amount or the number of sales.

15. *"Distributing agent"* shall mean and include every person in this state who acts as an agent of any manufacturer outside of the state by storing cigarettes received in interstate commerce from such manufacturer subject to distribution or delivery to distributors upon orders received by said manufacturer in interstate commerce and transmitted to such distributing agent for fulfillment from such place of storage.

16. *"Manufacturer"* shall mean and include every person who ships cigarettes into this state from outside the state.

17. *"State permit"* shall mean and include permits issued by the department to distributors, wholesalers, and retailers.

18. *"Retail permit"* shall mean and include permits issued to retailers.

19. *"Manufacturer's permit"* shall mean and include permits issued by the department to a manufacturer.

20. *"Distributing agent's permit"* shall mean and include permits issued by the department to distributing agents.

21. *"Cigarette vending machine"* means any self-service device offered for public use which, upon insertion of a coin, coins, paper currency, or by other means, dispenses cigarettes without the necessity of replenishing the device between each vending operation.

22. *"Cigarette vendor"* means any person who by contract, agreement, or ownership takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more cigarette vending machines for the purpose of selling cigarettes at retail.

23. *"Department"* means the department of revenue. [C24, 27, 31, 35, 39,**§1552**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.1; 66GA, ch 95,§1, ch 96, §1]

Referred to in §98.42(1, 16)

98.2 Sale or gift to certain minors prohibited. No person shall furnish to any minor under eighteen years of age by gift, sale, or otherwise, any cigarette or cigarette paper, or any paper or other substance made or prepared for the purpose of use in making of cigarettes. No person shall directly or indirectly by himself or agent sell, barter, or give to any minor under eighteen years of age any tobacco in any other form whatever except upon the written order of his parent or guardian or the person in whose custody he is. [C97, §§5005, 5006; C24, 27, 31, 35, 39,**§1553**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.2]

Referred to in §§98.3, 98.5, 98.22(1, 2)

98.3 Violation. Any person who shall violate any of the provisions of section 98.2 shall for the first offense be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days. For a second or any subsequent violation such person shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than one month nor more than six months or by both such fine and imprisonment. [C97,§§5005, 5006; C24, 27, 31, 35, 39,**§1554**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.3]

98.4 Minors required to give information. Any minor under eighteen years of age in any place other than at the home of his parent or parents, being in the possession of a cigarette or cigarette papers, shall be required at the request of any peace officer, juvenile court officer, truant officer, or teacher in any school to give information as to where he or she obtained such article. [S13,§§5007-c,-d; C24, 27, 31, 35, 39,**§1555**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §98.4]

Referred to in §98.5

98.5 Violation. Any minor under eighteen years of age refusing to give information as required by section 98.4 shall be guilty of a misdemeanor. Said minor shall be certified by the magistrate before whom the case is tried, to the juvenile court of the county for such action as said court shall deem proper.

If any minor having been convicted of violating section 98.4 shall give information which shall lead to the arrest of the person or persons having violated any of the provisions of section 98.2 and shall give evidence as a witness in any proceedings that may be prosecuted against said person or persons, the court in its discretion may suspend sentence against the offending minor. [S13,§§5007-c,-d; C24, 27, 31, 35, 39,**§1556**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §98.5]

98.6 Tax imposed.

1. There is hereby levied, assessed, and imposed, and shall be collected and paid to the department, the following taxes on all cigarettes used or otherwise disposed of in this state for any purpose whatsoever:

Class A. On cigarettes weighing not more than three pounds per thousand, six and one-half mills on each such cigarette.

Class B. On cigarettes weighing more than three pounds per thousand, seven and one-half mills on each such cigarette.

2. The said tax shall be paid only once by the person making the "first sale" in this state, and shall become due and payable as soon as such cigarettes are subject to a "first sale" in Iowa, it being intended to impose the tax as soon as such cigarettes are received by any person in Iowa for the purpose of making a "first sale" of same. If the person making the "first sale" did not pay such tax, it shall be paid by any person into whose possession such cigarettes come until said tax has been paid in full. No person, however, shall be required to pay a tax on cigarettes brought into this state on or about his person in quantities of forty cigarettes or less, when such cigarettes have had the individual packages or seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

3. Payment of such tax shall be evidenced by stamps purchased from the department and securely affixed to each individual package of cigarettes in amounts equal to the tax thereon as imposed by this chapter, or by the impress-

ing of an indicium upon individual packages of cigarettes, under regulations prescribed by the director.

4. The tax imposed shall be in lieu of any other occupation or excise tax on cigarettes imposed by any political subdivision of the state. [C24, 27, 31, 35,§1570; C39,**§1556.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.6]

Referred to in §98.43

98.7 Printing and custody of stamps. The director of the department of general services shall have printed or manufactured, cigarette and little cigar tax stamps of such design, size, denomination, and type and in such quantities as may be determined by the director of revenue. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes and little cigars or cigarette papers. The cigarette and little cigar tax stamps shall be in the possession of and under the control of the director of revenue and the director shall keep accurate records of all cigarette and little cigar tax stamps.

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated sufficient funds to carry out the provisions of this section. [C24, 27, 31, 35,§1574; C39,**§1556.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §98.7; 66GA, ch 97,§1]

98.8 Sale and exchange of stamps.

1. Stamps shall be sold by and purchased from the department only. The department shall sell stamps to the holder of a state distributor's permit which has not been revoked and to no other person. Stamps shall be sold to such permit holders at a discount of not to exceed five percent from the face value. Stamps shall be sold in unbroken books of one thousand stamps, unbroken rolls of thirty thousand stamps, or unbroken lots of any other form authorized by the director.

2. Orders for cigarette tax stamps, including the payment for such stamps, shall be sent direct to the department on a form to be prescribed by the director.

3. The department may make refunds on unused stamps to the person who purchased said stamps at a price equal to the amount paid for such stamps when proof satisfactory to the department is furnished that any stamps upon which a refund is requested were properly purchased from the department and paid for by the person requesting such refund. In making such refund, the department shall prepare a voucher showing the amount of refund due and to whom payable and the comptroller shall then issue a warrant upon order of the director to pay such refund out of any funds in the state treasury not otherwise appropriated.

The director may promulgate rules providing for refunds of the face value of stamps, less any discount, affixed to any cigarettes which have become unfit for use and consumption, unsalable, or for any other legitimate loss which may occur, upon proof of such loss. Refund shall be made in the same manner as provided for unused stamps.

4. The department may in the enforcement of this chapter recall any stamps which have been sold by the department and which have not been used, and the department shall, upon receipt of such recalled stamps, issue a refund for tax stamps surrendered for the face value of the stamps less the amount of the discount. The purchaser of any stamps shall be required to surrender any unused stamps for refund upon demand of the department.

5. The department shall keep a record of all stamps sold by the department and of all refunds made by the department. [C24,§§1574, 1575; C27, 31, 35,§§1574, 1574-a1, 1575; C39, §**1556.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.8; 66GA, ch 95,§2]

98.9 Change of design. The design of the stamps used may be changed as often as the director may deem necessary for the best enforcement of the provisions of this chapter. [C39,§**1556.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §98.9]

98.10 Affixing of stamps by distributors. Except as provided in section 98.17, every distributor holding an Iowa permit shall cause to be affixed, within or without the state of Iowa, upon every individual package of cigarettes received by him in this state or for distribution in this state, upon which no sufficient tax stamp is already affixed, a stamp or stamps of an amount equal to the tax due thereon. Such stamps shall be affixed within forty-eight hours, exclusive of Sundays and legal holidays, from the hour the cigarettes were received, and shall be affixed before such distributor sells, offers for sale, consumes, or otherwise distributes or transports the same. It shall be unlawful for any person, other than a distributing agent or distributor, bonded pursuant to section 98.14, or common carrier to receive or accept delivery of any cigarettes without stamps affixed to evidence the payment of the tax, or without having in his possession the requisite amount or number of stamps necessary to stamp such cigarettes, and the possession of any unstamped cigarettes, without the possession of the requisite amount or number of stamps, shall be prima-facie evidence of the violation of this provision. [C24, 27, 31, 35,§1571; C39,**§1556.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.10; 66GA, ch 96,§2]

98.11 Cancellation of stamps. No stamps affixed to a package of cigarettes shall be canceled by any letter, numeral, or other mark of identification or otherwise mutilated in any manner that will prevent or hinder the department in making an examination as to the genuineness of said stamp; provided, however, that the director may require such cancellation of the tax stamps affixed to packages of cigarettes or cigarette papers which is necessary and essential to carry out properly the pro-

visions of this chapter. [C39,§1556.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.11]

98.12 Use of stamping machines. The department may purchase and supply suitable machines or devices to the holders of a state or manufacturer's permit, or authorize the leasing by the permit holder of such machines or the metering device or both, and provide under proper regulation and direction for the impression of a distinctive imprint, indicium or character upon individual packages of cigarettes, cigarette papers and tubes as evidence of the payment of the tax imposed by this chapter, in lieu of the purchase and affixation of stamps as provided herein.

In the event the director decides to purchase such machines they shall be paid for upon order of the director out of any funds in the state treasury not otherwise appropriated.

The machines or devices shall be so constructed as to record or meter the number of impressions or indicia made and shall at all times be open for inspection by the department.

All of the provisions of this chapter relating to the collection of the tax by means of the sale and affixation of stamps shall apply in the use of the stamping machines or devices, including the right of refund as provided herein. [C39,§1556.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.12]

98.13 Distributor's, wholesaler's, and retailer's permits.

1. *Permits required.* Every distributor, wholesaler, cigarette vendor, and retailer, now engaged or who desires to become engaged in the sale or use of cigarettes, upon which a tax is required to be paid, shall obtain a state or retail cigarette permit as a distributor, wholesaler, cigarette vendor, or retailer, as the case may be.

2. *Issuance.* The department shall issue state permits to distributors, wholesalers, cigarette vendors, and retailers subject to the conditions hereinafter provided. Cities may issue retail permits to dealers within their respective limits. County boards of supervisors may issue retail permits to dealers in their respective counties, outside of the corporate limits of cities. Upon issuance of a retail permit by a city council or board of supervisors, such council or board shall forthwith certify to the department the action so taken.

3. *Fees—expiration.* All permits provided for in this chapter shall expire on June 30 of each year. No permit shall be granted or issued until the applicant shall have paid for the period ending June 30 next, to the department or the city or county granting such permit, the fees provided for in this chapter. The annual state permit fee for a distributor, cigarette vendor, and wholesaler shall be one hundred dollars when the permit is granted during the months of July, August, or September, provided that whenever a state permit holder shall operate more than one place of business, a duplicate state permit shall be issued for each additional place of business on payment of five dollars for each such duplicate state permit, but refunds as provided in this chapter shall not apply to any duplicate permit issued.

The fee for retail permits to be issued under the provisions of this chapter shall be as follows when the permit is granted during the months of July, August, or September:

a. In places outside any city, fifty dollars.

b. In cities of less than fifteen thousand population, seventy-five dollars.

c. In cities of fifteen thousand or more population, one hundred dollars.

If any permit is granted during the months of October, November, or December, the said fee shall be three-fourths of the above maximum schedule; if granted during the months of January, February, or March, one-half of said maximum schedule, and if granted during the months of April, May, or June, one-fourth of the said maximum schedule.

4. *Refunds.*

a. An unrevoked permit for which the holder has paid the full annual fee may be surrendered during the first nine months of said year to the officer issuing it, and the department, or the city or county granting the permit shall make refunds to the said holder as follows:

Three-fourths of the annual fee if the surrender is made during July, August, or September.

One-half of the annual fee if the surrender is made during October, November, or December.

One-fourth of the annual fee if the surrender is made during January, February, or March.

b. An unrevoked permit for which the holder has paid three-fourths of a full annual fee may be so surrendered during the first six months of the period covered by said payment and the said department, city or county shall make refunds to the holder as follows:

A sum equal to one-half of an annual fee if the surrender is made during October, November or December.

A sum equal to one-fourth of an annual fee if the surrender is made during January, February or March.

c. An unrevoked permit for which the holder has paid one-half of a full annual fee may be so surrendered during the first three months of the period covered by said payment, and the department, city or county, shall refund to the holder a sum equal to one-fourth of an annual fee.

5. *Application—bond.* Said permits shall be issued only upon applications accompanied by the fee indicated above, and by an adequate bond as provided in section 98.14, and upon forms furnished by the department upon writ-

ten request. The failure to furnish such forms shall be no excuse for the failure to file the same unless absolute refusal is shown. Said forms shall set forth:

a. The manner under which such distributor, wholesaler, or retailer, transacts or intends to transact such business as distributor, wholesaler, or retailer.

b. The principal office, residence, and place of business, for which the permit is to apply.

c. If the applicant is not an individual, the principal officers or members thereof, not to exceed three, and their addresses.

d. Such other information as the director shall by rules prescribe.

6. *No sales without permit.* No distributor, wholesaler, cigarette vendor, or retailer shall sell any cigarettes until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained and only while such permit is unrevoked and unexpired.

7. *Number of permits—trucks.* An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesaler, or retailer, excepting that no permit need be obtained for a delivery or sales truck of a distributor or wholesaler holding a permit, provided that the director may by regulation require that said truck bear the distributor's or wholesaler's name, and that the permit number of the place of business for and from which it operates be conspicuously displayed on the outside of the body of the truck, immediately under the name.

8. *Group business.* Any person who operates both as a distributor and wholesaler in the same place of business shall only be required to obtain a state permit for the particular place of business where such operation of said business is conducted. A separate retail permit, however, shall be required if any distributor or wholesaler sells cigarettes at both retail and wholesale.

9. *Permit—form and contents.* Each permit issued shall describe clearly the place of business for which it is issued, shall be nonassignable, consecutively numbered, designating the kind of permit, and shall authorize the sale of cigarettes in this state subject to the limitations and restrictions herein contained. The retail permits shall be upon forms furnished by the department.

10. *Permit displayed.* The permit shall, at all times, be publicly displayed by the distributor, wholesaler, or retailer, at his place of business, so as to be easily seen by the public and the persons authorized to inspect the same. The proprietor or keeper of any building or place wherein cigarettes shall be kept for sale, or with intent to sell, shall upon request of any agent of the department or any peace officer exhibit his permit to so keep and sell. His refusal or failure to so exhibit such permit shall be prima-facie evidence that such cigarettes are kept for sale or with intent to sell in violation of the provisions of this chapter. [S13,§5007-a; C24, 27,§§1557, 1558, 1560, 1563, 1564, 1584; C31, 35,§§1557, 1558, 1560, 1563, 1563-d1, 1564, 1584; C39,§**1556.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §98.13; 66GA, ch 96,§§3, 4]

Referred to in §98.36(6)

98.14 Bonds.

1. No state or manufacturer's permit shall be issued until the applicant therefor shall file a bond, with good and sufficient surety, to be approved by the director, which bond shall be in favor of the state and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the permit holder for violation of any of the provisions of this chapter.

Said bonds shall be on forms prescribed by the director and in the following amounts:

a. State permit, not less than five hundred dollars.

b. Manufacturer's permit, not less than five thousand dollars.

2. No distributor or person shall engage in interstate business unless he files a bond, with good and sufficient surety in an amount of not less than one thousand dollars. The amount of the bond required of such distributor or other person shall be fixed by the director, subject to the minimum limitation herein provided. Said bond shall be approved by the director and payable to the state in Des Moines, Polk county, and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the permit holder for violation of any of the requirements of this chapter affecting said distributor or other person, on a form prescribed by the director.

3. An additional bond or a new bond may be required by the director at any time an existing bond becomes insufficient or the surety thereon becomes unsatisfactory, which additional bond, or new bond, shall be supplied within ten days after demand. On failure to supply a new bond or additional bond within ten days after demand, the director may cancel any existing bond made and secured by and for said distributor or other person. In the event said bond is canceled, said distributor or other person shall within forty-eight hours after receiving cigarettes or forty-eight hours after said cancellation, excluding Sundays and legal holidays, cause any cigarettes in his possession to have the requisite amount of stamps affixed to represent the tax as herein provided. [C24, 27, 31, 35,§§1561, 1562; C39, §**1556.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.14]

Referred to in §§98.10, 98.13(5), 98.15(5), 98.17(1)

98.15 Records and reports of permit holders.

1. The director is authorized to prescribe such forms as may be necessary for the efficient administration of this chapter and is authorized to require such uniform books and records to be used and kept by each permit

holder as deemed necessary. The director may also require each permit holder to keep and retain in his possession evidence on prescribed forms of all transactions involving the purchase and sale of cigarettes or the purchase and use of stamps as herein provided. All of such evidence shall be kept for a period of two years from the date of each transaction, for the inspection at all times by the department.

2. Where a state permit holder sells cigarettes at retail, he shall be required to issue an invoice to his retail department for cigarettes to be sold at retail and such cigarette invoices shall be kept separate and apart.

3. The director may by regulation require every holder of a manufacturer's or state permit to make and deliver to the department on or before the tenth day of each month a report or reports for the preceding calendar month, upon a form or forms prescribed by the director, and may require that such reports shall be properly sworn to and executed by the permit holder or his duly authorized representative.

4. Every permit holder shall, when requested by the department, make such additional reports as the department deems necessary and proper and shall at the request of the department furnish full and complete information pertaining to any transaction of the permit holder involving the purchase or sale or use of cigarettes or purchase of cigarette stamps.

5. Every person engaged in the business of selling cigarettes in interstate commerce only, who has, by furnishing the bond required in section 98.14, been permitted to set aside or store cigarettes in this state for the conduct of such interstate business without the stamps affixed thereto, shall be required to keep such records and make such reports to the department as are required by the department.

6. If any distributor or other person fails or refuses to pay any tax, penalties, or cost of audit hereinafter provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claims, in any judicial proceedings, any report filed in the office of the director by such distributor or other person, or his representative, or a copy thereof, certified to by the director, showing the number of cigarettes sold by such distributor or his representative, upon which such tax, penalty or cost of audit has not been paid, or any audit made by the department from the books or records of said distributor or other person when signed and sworn to by the agent of the department making the audit as being made from the records of said distributor or person from or to whom such distributor or other person has bought, received, or delivered cigarettes, whether from a transportation company or otherwise, such report or audit shall be admissible in evidence in such proceedings and shall be prima-facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown. [C27, 31, 35,§§1570-b1, -b2; C39,§**1556.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.15]

98.16 Manufacturer's permit. The department may, upon application of any manufacturer, issue without charge to such manufacturer a manufacturer's permit. Such application shall contain such information as the director shall prescribe. The holder of such manufacturer's permit shall be authorized to purchase stamps from the department, and to affix such stamps to individual packages of cigarettes outside of this state, prior to their shipment into the state. [C39,§**1556.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.16]

98.17 Distributing agent's permit.

1. Every distributing agent in the state, now engaged, or who desires to become engaged, in the business of storing unstamped cigarettes which are received in interstate commerce for distribution or delivery only upon order received from without the state or to be sold outside the state, shall file with the department, an application for a distributing agent's permit, on a form prescribed by the director, to be furnished upon written request. The failure to furnish shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributing agent transacts or intends to transact such business as a distributing agent, the principal office and place of business in Iowa to which the permit is to apply, and if other than an individual, the principal officers or members thereof and their addresses. The director may require any other information in said application. No distributing agent shall engage in such business until such application has been filed and fee in the sum of one hundred dollars paid for the permit and until the permit has been obtained. Such permit shall expire on June 30 following the date of issuance. All of the provisions of the last two paragraphs of section 98.14, relative to bonds, are incorporated herein and by this reference made applicable to distributing agents. Upon failure to furnish adequate bond as required, the permit shall be revoked without hearing. An application shall be filed and a permit obtained for each place of business owned or operated by a distributing agent.

2. Upon receipt of the application and bond and the permit fee herein provided for, the department may issue to every distributing agent for the place of business designated a nonassignable consecutively numbered permit, authorizing the storing, and distribution of unstamped cigarettes within this state when such distribution is made upon interstate orders only. A distributing agent may also transport unstamped cigarettes in his own conveyances to the state boundary for distribution outside the state, and any nonresident customer of

such distributor may purchase and convey unstamped cigarettes to the state line for distribution outside the state. Such nonresident purchaser shall be required to have in his possession an invoice evidencing the purchase of such unstamped cigarettes, which must be exhibited upon request to any peace officer or agent charged with the enforcement of this chapter.

3. Cigarettes set aside for interstate business must be kept separate from intrastate stock and those not so kept shall be considered as intrastate stock and subject to the same requirements as cigarettes possessed for the purpose of a "first sale".

4. It shall be unlawful for any distributing agent to sell at retail cigarettes, cigarette papers or tubes from automobiles, trucks, or any similar conveyances. [C39,§**1556.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.17]

Referred to in §98.10

98.18 Forms for records and reports. The department shall furnish, without charge, to holders of the various permits, such forms in sufficient quantities as will enable such permit holders to make the reports required to be made under this chapter. The permit holders shall furnish at their own expense such books, records, and invoices, as are required to be used and kept, but such books, records, and invoices shall be in exact conformity to the forms prescribed for that purpose by the director, and shall be kept and used in the manner prescribed by the director; provided that the director may, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those so prescribed. Such authorization may be revoked at any time. [C39,§**1556.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §98.18]

98.19 Examination of records and premises.

1. For the purpose of enabling the department to determine the tax liability of permit holders or any other person dealing in cigarettes or to determine whether a tax liability has been incurred, the department shall have the right to inspect any premises of the holder of an Iowa permit located within or without the state of Iowa where cigarettes are manufactured, produced, made, stored, transported, sold, or offered for sale or exchange, and to examine all of the records required to be kept or any other records that may be kept incident to the conduct of the cigarette business of said permit holder or any other person dealing in cigarettes.

2. The said authorized officers shall also have the right as an incident to determining the said tax liability, or whether a tax liability has been incurred, to examine all stocks of cigarettes and cigarette stamps and for the foregoing purpose said authorized officers shall also have the right to remain upon said premises for such length of time as may be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

3. It shall be unlawful for any of the foregoing permit holders to fail to produce upon demand of the department any records required herein to be kept or to hinder or prevent in any manner the inspection of said records or the examination of said premises.

4. In the case of any departmental inspection conducted under this section requiring department personnel to travel outside the state of Iowa, any additional costs incurred by the department for out-of-state travel expenses shall be borne by the permittee. These additional costs shall be those costs in excess of the costs of a similar inspection conducted at the geographical point located within the state of Iowa nearest to the out-of-state inspection point. In lieu of conducting an on premises out-of-state inspection, the department shall have the authority to direct the permittee to assemble and transport all records described in subsection 1, to the nearest practical and convenient geographical location in Iowa for inspection by the department. [C39,§**1556.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.19; 66GA, ch 96,§§5, 6]

98.20 Subpoena for witnesses and papers. For the purpose of enforcing the provisions of this chapter and of detecting violations thereof, the director shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses and the production of all relevant books, papers, and records. Such attendance and production may be required at the statehouse at Des Moines, or at any place convenient for such investigation. In case any person fails or refuses to obey a subpoena so issued, the director may procure an order from the district court in the county where such person resides, or where such person is found, requiring such person to appear for examination and/or to produce such books, papers, and records as are required in the subpoena. Failure to obey such order shall be punished by such court as contempt thereof. [C39,§**1556.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.20]

98.21 Cigarettes retailer may not sell. Unless a retail permit holder shall also hold a state permit, it shall be unlawful for a retailer to sell or have in his possession cigarettes upon which the stamp tax has not been affixed. [C39,§**1556.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.21]

98.22 Revocation of permit.

1. If any person holding a permit issued by the department under the provisions of this chapter, including a retailer permit for railway car, has willfully violated the provisions of section 98.2, the department shall revoke the permit issued such person upon such notice and hearing as is hereinafter provided. If such person violates any other provision of this chapter, or any rule promulgated hereunder,

the department may revoke the permit issued to said person, after giving such permit holder an opportunity to be heard upon five days' written notice stating the reason for such contemplated revocation and the time and place at which he may appear and be heard. The said hearing shall be held in the county of the permit holder's place of business, or in a county in or through which it transacts business. Such notice shall be given by mailing a copy thereof by certified mail to the permit holder's place of business as the same appears on his application for a permit. If, upon such hearing, the department shall find that such violation has occurred, the department may revoke the permit or permits.

Referred to in §98.23(4)

2. If any retailer has violated any of the provisions of section 98.2, the board of supervisors or the city council which issued the permit shall revoke his permit or permits and if any such retailer violates any other provisions of this chapter, the board of supervisors or the city council which issued the permit may revoke his permit or permits upon the same hearing and notice as is prescribed in the preceding paragraph.

3. If a permit is revoked no new permit shall be issued to the permit holder for any place of business, or to any other person for the place of business at which such violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the issuing authority. [C24, 27, 31, 35,§1559; C39,**§1556.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.22]

Referred to in §98.23(4)

98.23 Retailer's permit for railway car.

1. Subject to the provisions of this chapter, a retailer's permit may be issued by the department to any dining car company, sleeping car company, railroad or railway company. Such permit shall authorize the holder thereof to keep for sale, and sell, cigarettes at retail on any dining car, sleeping car, or passenger car operated by such applicant in, through, or across the state of Iowa, subject to all of the restrictions imposed upon retailers under this chapter. The application for such permit shall be in such form and contain such information as may be required by the director. Each such permit shall be good throughout the state. Only one such permit shall be required for all cars operated in this state by such applicant, but a duplicate of such permit issued as herein provided shall be posted in each car in which such cigarettes are sold and no further permit shall be required or tax levied for the privilege of selling cigarettes in such cars. No cigarettes shall be sold in such cars without having affixed thereto stamps evidencing the payment of the tax as provided in this chapter.

2. As a condition precedent to the issuing of a retailer's permit for railway car, the applicant shall file with the department a bond in favor of the state for the benefit of all parties interested in the amount of five hundred dollars conditioned upon the payment of all taxes, fines and penalties and costs in this chapter provided.

3. The annual fee for a retailer's permit for railway cars shall be twenty-five dollars and two dollars for each duplicate thereof, which fee shall be paid to the department. The department shall issue duplicates of such permits from time to time as applied for by such companies.

4. The provisions of subsections 1 and 3 of section 98.22 shall apply to the revocation of such permit and the issuance of a new one. [C39,**§1556.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.23]

98.24 Carrier to permit access to records. Every common carrier in this state having custody of books or records showing the transportation of cigarettes both interstate and intrastate shall give and allow the department free access to such books and records. [C39, **§1556.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.24]

98.25 Administration.

1. The director shall administer the provisions of this chapter, and shall collect, supervise, and enforce the collection of all taxes and penalties that may be due under the provisions of this chapter.

2. The director may make and publish rules, not inconsistent with this chapter, necessary and advisable for its detailed administration, enforce the provisions thereof, and collect the taxes and fees herein imposed. The director may promulgate rules hereunder providing for the refund on stamps which by reason of damage become unfit for sale or use.

3. The director is hereby authorized to appoint an assistant, whose sole duty it shall be to administer and enforce the provisions of this chapter, including the collection of all taxes provided for herein. In such enforcement the director may request aid from the attorney general, the special agents of the state, any county attorney or any peace officer. The director is authorized to appoint such clerks and additional help as may be needed to carry out the provisions of this chapter. [C24, 27, 31, 35,§1576; C39,**§1556.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.25]

98.26 Liens and actions. All of the provisions for the lien of the tax, its collection, and all actions as provided in the sales tax Act shall apply to the tax imposed by this chapter, except that where the sales tax and the cigarette tax may become conflicting liens, they shall be of equal priority. [C24, 27, 31, 35, §1565; C39,**§1556.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.26]

Sales tax Act, ch 422

98.27 Venue of actions to collect. Venue of any civil proceedings filed under the provisions of this chapter to collect the taxes, fees,

and penalties levied herein shall be in a court of competent jurisdiction in Polk county, or in any court having jurisdiction. [C39,§1556.22; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.27]

98.28 Assessment of tax by department. If after any audit, examination of records, or other investigation the department finds that any person has sold cigarettes, without stamps affixed thereto as required by this chapter or that any person has failed to pay any tax herein imposed upon such person, the department shall fix and determine the amount of tax due, and shall assess such tax against such person, together with a penalty, which is hereby imposed, equal to the amount of said tax. If any person fails to furnish evidence satisfactory to the director showing purchases of sufficient stamps to stamp unstamped cigarettes purchased by him, the presumption shall be that such cigarettes were sold without the proper stamps affixed thereto. [C24, 27, 31, 35,§1568; C39,§1556.23; C46, 50, 54, 58, 62, 66, 71, 73, 75, §98.28]

Referred to in §98.29

98.29 Notice and appeal. The department shall notify any person assessed pursuant to section 98.28 by sending a written notice of such determination and assessment by certified mail to the principal place of business of such person as shown on his application for permit, if any, and in case no such application was filed by such person, to his last known address. Judicial review of action of the department may be sought in accordance with the terms of the Iowa administrative procedure Act and section 422.29. [C39,§1556.24; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.29]

98.30 Assessment of cost of audit. The department may employ auditors or other persons to audit and examine the books and records of any permit holder or other person dealing in cigarettes to ascertain whether such permit holder or other person has paid the amount of the taxes required to be paid by him under the provisions of this chapter. If such taxes have not been paid, as required, the department shall assess against such permit holder or other person, as additional penalty, the reasonable expenses and costs of such investigation and audit. [C39,§1556.25; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.30]

98.31 Civil penalty for certain violations. If a permit holder shall (1) fail to keep any of the records required to be kept by the provisions of this chapter, or (2) if a permit holder shall sell any cigarettes upon which a tax is required to be paid by this chapter without at the time having a valid permit, or (3) if any distributor, wholesaler, or distributing agent shall fail to make any reports to the department required herein to be made, or (4) make a false or incomplete report to the department, or (5) if any distributing agent shall store any unstamped cigarettes in the state or distribute or deliver any unstamped cigarettes within this state without at the time of said storage or delivery having a valid permit, or (6) if any person affected by this chapter shall fail or refuse to abide by the provisions hereof or the rules promulgated hereunder, or violate the same, he shall be civilly liable to the state as a penalty in the sum of fifty dollars for each offense. Each violation shall constitute a separate offense, and the same violation shall constitute a separate offense for each day it continues. [C24, 27, 31, 35,§1572; C39,§1556.26; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.31]

98.32 Seizure and forfeiture—procedure.

1. All cigarettes on which taxes are imposed by this chapter, which shall be found in the possession or custody, or within the control of any person, for the purpose of being sold or removed by him in violation of this chapter, and all cigarettes which are removed or are deposited or concealed in any place with intent to avoid payment of taxes levied thereon, and any automobile, truck, boat, conveyance, or other vehicle whatsoever, used in the removal or transportation of such cigarettes for such purpose, and all equipment of other tangible personal property incident to and used for such purpose, found in the place, building, or vehicle where such cigarettes are found, may be seized by the department, with or without process and the same shall be from the time of such seizure forfeited to the state of Iowa, and a proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such cigarettes, vehicles, and property so seized as aforesaid, remaining in the possession or custody of the department, sheriff or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable.

2. The department, when taking the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisement thereof at the reasonable value of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the director and shall be open to public inspection.

3. The county attorney of the county of seizure, shall, at the request of the director, file in the county and court aforesaid forfeiture proceeding in the name of the state as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the clerk of said court shall issue notice to the owner or person

in possession of such property to appear before such court upon the date named therein, which shall not be less than two days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceeding is a nonresident of the state or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the director to this effect, notice shall be given as ordered by the court.

4. In the event final judgment is rendered in the forfeiture proceedings aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the court shall order and decree the sale thereof to the highest bidder, by the sheriff at public auction in the county of seizure after notice is given in the manner provided in the case of the sale of personal property under execution, and the proceeds of such sale, less expense of seizure and court costs, shall be paid into the state treasury.

5. In the event the cigarettes seized hereunder and sought to be sold upon forfeiture shall be unstamped, the cigarettes shall be sold by the director or his designee to the highest bidder among the licensed distributors in this state after written notice has been mailed to all such distributors. If there is no bidder or in the opinion of the director the quantity of cigarettes to be sold is insufficient or for any other reason such disposition of the cigarettes is impractical, the cigarettes shall be destroyed or disposed of in a manner as determined by the director. The proceeds of such sales shall be paid into the state treasury. [C39,§1556.27; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.32; 66GA, ch 98,§1]

98.33 Seizure not to affect criminal prosecution. The seizure, forfeiture, and sale of cigarettes and other property under the terms and conditions hereinabove set out, shall not constitute any defense to the person owning or having control or possession of such property from criminal prosecution for any act or omission made or offense committed under this chapter or from liability to pay penalties provided by this chapter. [C39,§1556.28; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.33]

98.34 Restrictions on injunction. Any person who shall invoke the power and remedies of injunction against the department to restrain or enjoin the department from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued shall file such proceedings in a court of competent jurisdiction in Polk county, and venue for such injunction is hereby declared to be in Polk county. [C39,§1556.29; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.34]

98.35 Tax and fees paid to general fund. The proceeds derived from the sale of stamps and the payment of taxes, fees and penalties provided for under this chapter, and the permit fees received from all permits issued by the department, shall be credited to the general fund of the state. All permit fees provided for in this chapter and collected by cities in the issuance of permits granted by the cities shall be paid to the treasurer of the city wherein the permit is effective, or to another city officer as designated by the council, and credited to the general fund of said city. Permit fees so collected by counties shall be paid to the county treasurer and credited to the general fund of such county. [C24, 27, 31, 35,§1569; C39,§1556.30; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.35]

98.36 Certain unlawful acts enumerated.

1. Except as otherwise provided in this chapter, it shall be unlawful for any person to have in his possession for sale, distribution, or use, or for any other purpose, in excess of forty cigarettes, or to sell, distribute, use, or present as a gift or prize cigarettes upon which a tax is required to be paid by this chapter, without having affixed to each individual package of cigarettes or cigarette papers, the proper stamp evidencing the payment of such tax and the absence of said stamp on said individual package of cigarettes shall be notice to all persons that the tax has not been paid and shall be prima-facie evidence of the nonpayment of said tax.

2. No person, other than a common carrier and a distributor's truck bearing the distributor's name and permit number in plain view on the outside of such truck, shall transport within this state cigarettes upon which a tax is required to be paid, without having stamps affixed to each individual package of said cigarettes; and no person shall fail or refuse, upon demand of agent of the department, or any peace officer to stop any vehicle transporting cigarettes for a full and complete inspection of the cargo carried.

3. No person shall use, sell, offer for sale, or possess for the purpose of use or sale, within this state, any previously used stamp or stamps, or attach any such previously used stamps to an individual package of cigarettes, nor shall any person purchase stamps from any person other than the department or sell stamps purchased from the department.

4. No person shall knowingly use, consume, or smoke, within this state, cigarettes upon which a tax is required to be paid, without said tax having been paid.

5. No person, unless he be the holder of a permit, or his representative, shall solicit the sale of cigarettes, provided that this section shall not prevent solicitation by a nonpermit-holder for the sale of cigarettes to any state permit holder.

6. Any sales of cigarettes made through a cigarette vending machine shall be subject to rules and penalties relative to retail sales of cigarettes provided for in this chapter. No

cigarettes shall be sold through any cigarette vending machine unless such cigarettes shall have been properly stamped or metered as provided by this chapter, and in case of violation of this provision, the permit of the dealer authorizing retail sales of cigarettes shall be canceled. Payment of the license fee as provided in section 98.13 shall authorize a cigarette vendor to sell cigarettes through a vending machine or vending machines, provided that the machine or machines are located in a place or places where the machine or machines are under the supervision of a responsible person of legal age who will be responsible for prevention of purchase by minors from such machine or machines and the location where the machine or machines are placed is covered by a local retail permit. Nothing herein shall require a retail licensee to buy a cigarette vendor's permit if the retail licensee is in fact the owner of the cigarette vending machine or machines and the machine or machines are operated in the location described in the retail permit.

7. It shall be unlawful for a person other than a holder of a retail permit to sell cigarettes at retail. No state permit holder shall sell or distribute cigarettes at wholesale to any person in the state of Iowa who does not hold a permit authorizing the retail sale of cigarettes or who does not hold a state permit as a manufacturer, distributing agent, wholesaler, or distributor.

Violation of this section by the holder of a distributor's, wholesaler's or manufacturer's permit shall be grounds for the revocation of such permit. [C24,§1573; C27, 31, 35,§§1573, 1575-a2; C39,§**1556.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.36]

98.37 Certain offenses and penalties provided. Whoever shall violate any provision of this chapter for which a fine or imprisonment is not elsewhere specifically provided, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment for not to exceed thirty days. [C39,§**1556.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.37]

98.38 Counterfeiting and previously used stamps. Any person who shall print, engrave, make, issue, sell, or circulate, or shall possess or have in his possession with intent to use, sell, circulate, or pass, any counterfeit stamp or previously used stamp, or who shall use, or consent to the use of, any counterfeit stamp or previously used stamp in connection with the sale, or offering for sale, of any cigarettes, or who shall place, or cause to be placed, on any individual package of cigarettes, any counterfeit stamp or previously used stamp, shall be guilty of a felony and upon conviction shall be fined not less than one hundred dollars nor more than one thousand dollars or by imprisonment not more than one year or both such fine and imprisonment. [C24, 27, 31, 35,§1573; C39,§**1556.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §98.38]

98.39 Manufacturer's samples. The director may authorize a manufacturer to distribute in the state through his factory representative, free sample packages of cigarettes or little cigars containing four cigarettes or little cigars or less. Such packages of cigarettes or little cigars shall be shipped to a distributor that has a permit to stamp cigarettes or little cigars with Iowa tax. The manufacturer shipping cigarettes or little cigars under this section shall send an affidavit to the director stating the quantity and to whom the cigarettes or little cigars were shipped. The distributor receiving the shipment shall send an affidavit to the director stating the quantity and from whom the cigarettes or little cigars were shipped. These affidavits shall be duly notarized and submitted to the director at time of shipment and receipt of cigarettes or little cigars. The distributor shall pay the tax on sample cigarettes or little cigars by separate remittance along with the affidavit. An acknowledgment in a form prescribed by the director that the tax has been paid shall be placed by the distributor on each carton of sample cigarettes or little cigars before distribution of sample cigarettes or little cigars. Such packages shall bear the word "Sample" in letters easily read. Authority granted under this section for disbursement and payment of sample packages may be withdrawn at any time in the discretion of the director. [C39,§**1556.34**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§98.39]

Constitutionality, 48GA, ch 72,§39

98.40 Advertisement near public schools. No bills, pictures, posters, placards, or other matter used to advertise the sale of tobacco in any form shall be distributed, posted, painted, or maintained within four hundred feet of premises occupied by a public school or used for school purposes. This provision shall not apply to advertisement in newspapers regularly published and distributed to subscribers and purchasers as such. [S13,§5028-s; C24, 27, 31, 35, 39,§**1585**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §98.40]

Referred to in §98.41

98.41 Penalty. Any person violating any of the provisions of section 98.40 shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding thirty days. [S13,§5028-t; C24, 27, 31, 35, 39,§**1586**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §98.41]

DIVISION II

CIGARS AND OTHER TOBACCOS

98.42 Definitions. When used in this division, unless the context clearly indicates otherwise, the following terms shall have the meanings, respectively, ascribed to them in this section:

1. *"Tobacco products"* means cigars; little cigars as defined herein; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff;

snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings to tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but shall not include cigarettes as defined in section 98.1, subsection 1.

2. *"Person"* means any individual, firm, association, partnership, joint stock company, joint adventure, corporation, trustee, agency, or receiver, or any legal representative of any of the foregoing.

3. *"Manufacturer"* means a person who manufactures and sells tobacco products.

4. *"Distributor"* means any and each of the following:

a. Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;

b. Any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state;

c. Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers.

5. *"Subjobber"* means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.

6. *"Retailer"* means any person engaged in the business of selling tobacco products to ultimate consumers.

7. *"Sale"* means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this division, or for any other purposes whatsoever.

8. *"Wholesale sales price"* means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any discount or other reduction.

9. *"Business"* means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

10. *"Place of business"* means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

11. *"Retail outlet"* means each place of business from which tobacco products are sold to consumers.

12. *"Director"* means the state tax commission or the director of the department of revenue.

13. *"Consumer"* means any person who has title to or possession of tobacco products in storage, for use or other consumption in this state.

14. *"Storage"* means any keeping or retention of tobacco products for use or consumption in this state.

15. *"Use"* means the exercise of any right or power incidental to the ownership of tobacco products.

16. *"Little cigar"* means any roll for smoking which:

a. Is made wholly or in part of tobacco, irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient;

b. Is not a cigarette as defined in section 98.1, subsection 1; and

c. Either weighs not more than three pounds per thousand, irrespective of retail price, or weighs more than three pounds per thousand and has a retail price of not more than two and one-half cents per little cigar. For purposes of this subsection, the retail price is the ordinary retail price in this state, not including retail sales tax, use tax, or the tax on little cigars imposed by section 98.43. [C71, 73, 75, §98.42]

Referred to in §98.43

98.43 Tax on tobacco products.

1. A tax is hereby imposed upon all tobacco products in this state and upon any person engaged in business as a distributor thereof, at the rate of ten percent of the wholesale sales price of such tobacco products, except little cigars as defined in section 98.42. Little cigars shall be subject to the same rate of tax imposed upon cigarettes in section 98.6, payable at the time and in the manner provided in section 98.6; and stamps shall be affixed as provided in division I of this chapter. The tax on tobacco products, excluding little cigars, shall be imposed at the time the distributor

a. Brings, or causes to be brought, into this state from without the state tobacco products for sale;

b. Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

c. Ships or transports tobacco products to retailers in this state, to be sold by those retailers.

2. A tax is hereby imposed upon the use or storage by consumers of tobacco products in this state, and upon such consumers, at the rate of ten percent of the cost of such tobacco products.

The tax imposed by this subsection shall not apply if the tax imposed by subsection 1 on such tobacco products has been paid.

This tax shall not apply to the use or storage of tobacco products in quantities of:

a. Less than 25 cigars;

b. Less than 10 oz. snuff or snuff powder;

c. Less than 1 lb. smoking or chewing tobacco or other tobacco products not specifically mentioned herein, in the possession of any one consumer.

3. Any tobacco product with respect to which a tax has once been imposed under this division shall not again be subject to tax under said division.

4. The tax imposed by this section shall not apply with respect to any tobacco product which under the Constitution and laws of the United States may not be made the subject of taxation by this state.

5. The tax imposed by this section shall be in addition to all other occupation or privilege taxes or license fees now or hereafter imposed by any city or county. [C71, 73, 75,§98.43]

Referred to in §§98.42, 98.46–98.48

98.44 Licenses—distributors, subjobbers.

1. No person shall engage in the business of a distributor or subjobber of tobacco products at any place of business without first having received a license from the director to engage in that business at that place of business.

2. Every application for such a license shall be made on a form prescribed by the director and shall state the name and address of the applicant; if the applicant is a firm, partnership, or association, the name and address of each of its members; if the applicant is a corporation, the name and address of each of its officers; the address of its principal place of business; the place where the business to be licensed is to be conducted; and such other information as the director may require for the purpose of the administration of this division.

3. A person without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, may make application for license as a distributor, be granted such a license by the director, and thereafter be subject to all the provisions of this division and entitled to act as a licensed distributor, provided he files proof with his application that he has appointed the secretary of state for the service of process relating to any matter or issue arising under this division. A foreign corporation applying for a distributor's license need not qualify as such if it files the proof of appointment of the secretary of state for service of process as provided in this subdivision.

4. Each application for a distributor's license shall be accompanied by a fee of twenty-five dollars, except that no applicant holding a permit pursuant to division I of this chapter shall be required to pay an additional fee. The application shall also be accompanied by a corporate surety bond issued by a surety licensed to do business in this state, in the sum of one thousand dollars, conditioned upon the true and faithful compliance by the distributor with all the provisions of this division and the payment when due of all taxes, penalties and accrued interest arising in the ordinary course of business or by reason of any delinquent money which may be due the state of Iowa. This bond shall be in a form to be fixed by the director and approved by the attorney general. Whenever it is the opinion of the director that the bond given by a licensee is inadequate in amount to fully protect the state, he shall require either an increase in the amount of said bond or additional bond, in such amount as he deems sufficient. Any bond required by this subdivision, or a reissue thereof, or a substitute therefor, shall be kept in full force and effect during the entire period covered by the license.

A separate application for license shall be made for each place of business at which a distributor proposes to engage in business as such under this division.

5. Each application for a subjobber's license shall be accompanied by a fee of ten dollars, except that no applicant holding a permit pursuant to division I of this chapter shall be required to pay an additional fee.

6. A distributor or subjobber applying for a license between January 1 and June 30 of any year shall be required to pay only one-half of the license fee provided for herein.

7. The director, upon receipt of the application (and bond, in the case of the distributor) in proper form, and payment of the license fee required by subsection 4 or subsection 5, shall unless otherwise provided by this division, issue the applicant a license in form as prescribed by him, which license shall permit the applicant to whom it is issued to engage in business as a distributor or subjobber at the place of business shown in his application. The director shall assign a permit number to each person licensed as a distributor at the time of issuance of his first license, which shall be inscribed upon all licenses issued to that distributor.

8. Each license shall expire on June 30 following its date of issue unless sooner revoked by the director or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the director.

9. Each license shall be prominently displayed on the premises covered by the license.

10. No license shall be transferable to any other person.

11. The director may revoke, cancel, or suspend the license or licenses of any distributor or subjobber for violation of any of the provisions of this division, or any other act applicable to the sale of tobacco products, or any rule or regulations promulgated by the director in furtherance of this division. No license shall be revoked, canceled, or suspended except after notice and a hearing by the director as provided in section 98.48.

12. No license shall be issued under this division to any person within one year of the date

of final determination of a revocation of any previous license held by him.

13. When the surety upon any bond issued pursuant to the provisions of this division shall have fulfilled the conditions of such bond and compensated the state for any loss occasioned by any act or omission of the person bonded under this division, such surety shall be subrogated to all the rights of the state in connection with the transaction wherein such loss occurred. [C71, 73, 75,§98.44]

Referred to in §§98.45, 98.50

98.45 Licensees, duties.

1. Every distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers and documents required by this subdivision to be kept shall be preserved for a period of at least one year after the date of the documents, as aforesaid, or the date of the entries thereof appearing in the records, unless the director, in writing, authorized their destruction or disposal at an earlier date. At any time during usual business hours, the director, or his duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this subdivision, and the tobacco products contained therein, to determine whether or not all the provisions of this division are being fully complied with. If the director, or any such agent or employee, is denied free access or is hindered or interfered with in making such examination, the license of the distributor at such premises shall be subject to revocation by the director.

2. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. He shall preserve legible copies of all such invoices for one year from the date of sale.

3. Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each such invoice for one year from the date of purchase. Invoices shall be available for inspection by the director or his authorized agents or employees at the retailer's or subjobber's place of business.

4. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state which is subject to the provisions of and licensed under chapter 554 shall be kept by the warehouse and be available to the director for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the commissioner may require. These records shall be preserved for one year from the date of delivery of the tobacco products.

5. The transportation of tobacco products into this state by means other than common carrier must be reported to the director within thirty days with the following exceptions:

a. The transportation of not more than fifty cigars, not more than ten ounces of snuff or snuff powder, or not more than one pound of smoking or chewing tobacco or other tobacco products not specifically mentioned herein;

b. Transportation by a person with a place of business outside the state, who is licensed as a distributor under section 98.44, or tobacco products sold by such person to a retailer in this state.

Such report shall be made on forms provided by the director.

Common carriers transporting tobacco products into this state shall file with the director reports of all such shipments other than those which are delivered to public warehouses of first destination in this state which are licensed under the provisions of chapter 554. Such reports shall be filed on or before the tenth day of each month and shall show with respect to deliveries made in the preceding month; the date, point of origin, point of delivery, name of consignee, description and quantity of tobacco products delivered, and such information as the director may otherwise require.

Any person who fails or refuses to transmit to the director the required reports or whoever refuses to permit the examination of the records by the director shall be guilty of a misdemeanor. [C71, 73, 75,§98.45]

98.46 Distributors, monthly returns.

1. On or before the twentieth day of each calendar month every distributor with a place of business in this state shall file a return with the director showing the quantity and wholesale sales price of each tobacco product (*a*) brought, or caused to be brought, into this state for sale; and (*b*) made, manufactured or fabricated in this state for sale in this state, during the preceding calendar month. Every licensed distributor outside this state shall in like manner file a return showing the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers, during the preceding calendar month. Returns shall be made upon forms furnished and prescribed

by the director and shall contain such other information as the director may require. Each return shall be accompanied by a remittance for the full tax liability shown therein, less a discount as fixed by the director not to exceed five percent of the tax.

2. As soon as practicable after any return is filed, the director shall examine each return and correct it, if necessary, according to his best judgment and information. If the director finds that any amount of tax is due from the taxpayer and unpaid, he shall notify the taxpayer of the deficiency, stating that he proposes to assess the amount due together with interest and penalties as hereinafter provided. If a deficiency disclosed by the director's examination cannot be allocated by him to a particular month or months, he shall notify the taxpayer of the deficiency, stating his intention to assess the amount due for a given period without allocating it to any particular month or months. If any taxpayer making any return shall die or shall become incompetent at any time before the director issues his notice that he proposes to assess an amount due, that notice shall be issued to the administrator, executor, or other legal representative, as such, of that taxpayer.

3. If, within twenty days after mailing of notice of the proposed assessment, the taxpayer or his legal representative shall file a protest to said proposed assessment and request a hearing thereon, the director shall give notice to that taxpayer or legal representative of the time and place fixed for the hearing, shall hold a hearing on such protest, and shall issue a final assessment to the taxpayer or legal representative for the amount found to be due as a result of the hearing. This hearing shall be held within forty-five days after filing of the protest. If a protest is not filed within the time herein prescribed, the director shall issue a final assessment to the taxpayer or legal representative, as such. Any such assessment made by the director shall be prima-facie correct and valid, and the taxpayer shall have the burden of establishing its incorrectness or invalidity in any action or proceedings in respect thereto.

4. If any taxpayer required by this division to file any return shall fail to do so within the time prescribed by this division, he shall, on the written demand of the director, file such return within twenty days after the mailing of such written demand and at the same time pay the tax due on the basis thereof. If such taxpayer shall fail within that time to file such return, the director shall make for him a return, from his own knowledge and from such information as he can obtain through testimony, or otherwise, and assess a tax on the basis thereof, which tax shall be paid within ten days after the director has mailed to such taxpayer a written notice of the amount thereof and demand for its payment. Any such return or assessment made by the director on account of the failure of the taxpayer to make a return shall be prima-facie correct and valid, and the taxpayer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

5. All taxes shall be due and payable not later than the twentieth day of the month following the calendar month in which they were incurred, and thereafter shall bear interest at the rate of one percent per month.

Where, under the provisions of subsections 2 and 3 of this section, the amount of tax due for a given period is assessed without allocating it to any particular month or months, the interest shall commence to run from the date of such assessment.

The director shall have power to reduce or abate interest when in his opinion the facts warrant such reduction or abatement. The exercise of this power shall be subject to the approval of the attorney general.

6. The director in issuing his final assessment pursuant to subsection 3 shall add to the amount of tax found due and unpaid a penalty of ten percent thereof, except that, if he finds that the taxpayer has made a false and fraudulent return with intent to evade the tax imposed by this division, the penalty shall be twenty-five percent of the entire tax as shown by the return as corrected. The director in assessing a tax on the basis of a return made pursuant to subsection 4 shall add to the amount of tax found due and unpaid a penalty of twenty-five percent thereof.

The director shall have power to abate penalties, when in his opinion their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the attorney general.

7. The director may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action. The collection of such a tax, interest, or penalty shall not be a bar to any prosecution under this division.

8. On or before the twentieth day of each calendar month, every consumer who, during the preceding calendar month, has acquired title to or possession of tobacco products for use or storage in this state, upon which tobacco products the tax imposed by section 98.43 has not been paid, shall file a return with the director showing the quantity of tobacco products so acquired. The return shall be made upon a form furnished and prescribed by the director, and shall contain such other information as the director may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it. [C71, 73, 75,§98.46]

98.47 Refunds, credits. Where tobacco products upon which the tax imposed by this division has been reported and paid, are shipped or transported by the distributor to consumers, to be consumed without the state, or to retailers or subjobbers without the state, to be sold by those retailers, or subjobbers without the state, or are returned to the manufac-

turer by the distributor or destroyed by the distributor, refund of such tax or credit may be made to the distributor in accordance with regulations prescribed by the director. Any overpayment of the tax imposed under section 98.43 may be made to the taxpayer in accordance with regulations prescribed by the director. The director shall cause any such refund of tax to be paid out of the general revenue fund, and so much of said fund as may be necessary is hereby appropriated for that purpose. [C71, 73, 75,§98.47]

98.48 Investigations and hearings, testimonial powers.

1. The director, or his duly authorized agents, may conduct investigations, inquiries, and hearings for the purpose of enforcing the provisions of this division, and, in connection with such investigations, inquiries, and hearings, he and his duly authorized agents shall have all the powers conferred upon him and his examiners by Iowa statutes, and the provisions of such shall apply to all such investigations, inquiries and hearings.

2. Every hearing conducted under this division shall be preceded by ten days' notice in writing of the subject of the hearing, including, in the case of suspension or revocation, of a license, a statement of the nature of the charges against the licensee. The notice shall be sent by registered mail to the last known address of the licensee or other person involved in the hearing, and the service shall be complete upon mailing. After every hearing the director shall make his findings and his order in writing. The findings and order shall be filed in the office of the director, and a copy sent by mail or otherwise to the person to whom the notice was directed.

3. The director may exchange information with the officers and agencies of other states administering laws relating to the taxation of tobacco products.

4. No person shall be excused from testifying or from producing, pursuant to a subpoena, any books, papers, records or memoranda in any investigation or upon any hearing, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to a criminal penalty, but no person shall be prosecuted or subjected to any criminal penalty for or on account of any transaction made or thing concerning which he may testify or produce evidence, documentary or otherwise, before the director or an employee or agent thereof; provided that such immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, pursuant to a subpoena. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

5. Any person aggrieved by an order of the director fixing a tax, penalty or interest under section 98.43 may, within thirty days from the date of notice of the order, appeal to the board of review in the manner provided by law. Judicial review of any other action of the director may be sought in accordance with the terms of the Iowa administrative procedure Act. [C71, 73, 75,§98.48]

Referred to in §98.44

98.49 Enforcement. The director shall enforce the provisions of this division. He may prescribe rules not inconsistent with the provisions of this division for its detailed and efficient administration. In the enforcement of this division the director may call upon any county attorney or the attorney general for assistance. The director may bring injunction proceedings to restrain any person from acting as a distributor or subjobber without complying with the provisions of this division. [C71, 73, 75,§98.49]

98.50 Violations, penalties.

1. Any person who in any manner knowingly attempts to evade the tax imposed by this division or who knowingly aids or abets in the evasion or attempted evasion of the tax or who knowingly violates the provisions of section 98.44, subsection 1, of this division, shall be imprisoned in the county jail for a term of not more than one year or fined not to exceed one thousand dollars, or both.

2. Any person who otherwise violates any provisions of this division shall be guilty of a misdemeanor. [C71, 73, 75,§98.50]

CHAPTER 99

HOUSES USED FOR PROSTITUTION, GAMBLING OR POOL SELLING

99.1 Houses of prostitution or other nuisances.
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99.1 Houses of prostitution or other nuisances. Whoever shall erect, establish, continue, maintain, use, own, or lease any building, erection, or place used for the purpose of lewdness, assignation, prostitution or gambling, or pool selling as defined by section 726.6 is guilty of a nuisance, and the building, erection, or place, or the ground itself, in or upon which such lewdness, assignation, prostitution, or gambling, or pool selling as defined by section 726.6 is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments, and movable property used in conducting or maintaining such nuisance, are also declared a nuisance and shall be enjoined and abated as hereinafter provided.

The provisions of this section shall not apply to games of skill, games of chance, or raffles conducted pursuant to chapter 99B or to devices lawful under section 99B.10 or to games lawful under section 726.12*. [SS15, §4944-h1; C24, 27, 31, 35, 39,§**1587**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.1]

*Repealed by 66GA, ch 99,§25

99.2 Injunction—procedure. When a nuisance is kept, maintained, or exists, as defined in this chapter, the county attorney, or any citizen of the county, or any society, association, or body incorporated under the laws of this state, may maintain an action in equity in the name of the state of Iowa, upon the relation of such county attorney, citizen, or corporation to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same from further conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists, from further permitting such building or ground or both to be so used. [SS15,§4944-h2; C24, 27, 31, 35, 39,§**1588**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.2]

99.3 Notice—temporary writ—without bond. The defendants shall be served with notice as in other actions and in such action the court, or judge in vacation, shall upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction without bond, if the existence of such nuisance shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony, or otherwise as the complainant may elect, unless the court or judge by previous order, shall have directed the form and manner in which such evidence shall be presented. [SS15,§4944-h2; C24, 27, 31, 35, 39,§**1589**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §99.3]

Time and manner of service, R.C.P. 53 et seq.

99.4 "Owners" defined—notice. The person in whose name the real estate affected by the action stands on the books of the county auditor, for the purposes of taxation, shall be presumed to be the owner thereof, and in case of unknown persons having or claiming any ownership, right, title, or interest in property affected by the action, such may be made parties to the action by designating them in the notice and petition as "all other persons unknown claiming any ownership, right, title, or interest in the property affected by the action" and service thereon may be had by publishing such notice in the manner prescribed for the publication of original notices in ordinary actions. [SS15,§4944-h9; C24, 27, 31, 35, 39,§**1590**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.4]

40ExGA, HF 52,§4, editorially divided
Service by publication, R.C.P. 60 et seq.

99.5 Trial. Any person having or claiming such ownership, right, title, or interest, and any owner or agent in behalf of himself and such owner may make, serve, and file his answer therein within twenty days after such service, and have trial of his rights in the premises by the court; and if said cause has already proceeded to trial or to findings and judgment, the court shall by order fix the time and place of such trial and shall modify, add to, or confirm such findings and judgment as the case may require. Other parties to said action shall not be affected thereby. [SS15, §4944-h9; C24, 27, 31, 35, 39,§**1591**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.5]

99.6 Temporary restraining order. Where a temporary injunction is prayed for, the court, on the application of plaintiff, may issue an ex parte restraining order, restraining the defendants and all other persons from removing or in any manner interfering with the furniture, fixtures, musical instruments, and movable property used in conducting the alleged nuisance, until the decision of the court granting or refusing such temporary injunction and until the further order of the court thereon. [SS15,§4944-h2; C24, 27, 31, 35, 39, §**1592**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.6]

99.7 Writ—how served. The restraining order may be served by handing to and leav-

ing a copy of said order with any person in charge of said property or residing in the premises or apartment wherein the same is situated, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such premises or apartment where such nuisance is alleged to be maintained, or by both such delivery and posting. [SS15,§4944-h2; C24, 27, 31, 35, 39,§**1593**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §99.7]

40ExGA, HF 52,§6, editorially divided

99.8 Inventory. The officer serving such restraining order shall forthwith make and return into court an inventory of the personal property situated in and used in conducting or maintaining such nuisance. [SS15,§4944-h2; C24, 27, 31, 35, 39,§**1594**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.8]

99.9 Mutilation or removal of notice. Where such order is so posted, mutilation or removal thereof, while the same remains in force, shall be a contempt of court, provided such posted order contains thereon or therein a notice to that effect. [SS15,§4944-h2; C24, 27, 31, 35, 39, §**1595**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.9]

99.10 Notice. Three days' notice in writing shall be given the defendants of the hearing of the application for temporary injunction, and if then continued at the instance of defendant, the temporary writ as prayed shall be granted as a matter of course. [SS15,§4944-h2; C24, 27, 31, 35, 39,§**1596**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.10]

40ExGA, HF 52,§7, editorially divided

99.11 Answer. Each defendant so notified shall serve upon the complainant or his attorney a verified answer on or before the date fixed in said notice for said hearing, and such answer shall be filed with the clerk of the district court of the county wherein such cause is triable, but the court may allow additional time for so answering, provided such extension of time shall not prevent the issuing of said temporary writ as prayed for. The allegations of the answer shall be deemed to be traversed without further pleading. [SS15, §4944-h2; C24, 27, 31, 35, 39,§**1597**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.11]

99.12 Scope of injunction. When an injunction has been granted, it shall be binding on the defendant throughout the judicial district in which it was issued, and any violation of the provisions of the injunction or temporary restraining order herein provided, shall be a contempt and punished as hereinafter provided. [SS15,§4944-h2; C24, 27, 31, 35, 39,§**1598**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.12]

Punishment, §99.20

99.13 Repealed by 62GA, ch 400,§19.

99.14 Evidence. In such action evidence of the general reputation of the place shall be competent for the purpose of proving the existence of said nuisance and shall be prima-facie evidence of such nuisance and of knowledge thereof and of acquiescence and participation therein on the part of the owners, lessors, lessees, users, and all those in possession of or having charge of, as agent or otherwise, or having any interest in any form of property used in conducting or maintaining said nuisance. [SS15,§4944-h3; C24, 27, 31, 35, 39,§**1600**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.14]

99.15 Dismissal. If the complaint is filed by a citizen or a corporation, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed and the dismissal approved by the county attorney in writing or in open court. [SS15,§4944-h3; C24, 27, 31, 35, 39, §**1601**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.15]

40ExGA, HF 52,§9, editorially divided

99.16 Delay in trial. If the court is of the opinion that the action ought not to be dismissed, he may direct the county attorney to prosecute said action to judgment at the expense of the county, and if the action is continued beyond the first trial calendar to which assigned, any citizen of the county or the county attorney may be substituted for the complaining party and prosecute said action to judgment. [SS15,§4944-h3; C24, 27, 31, 35, 39,§**1602**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.16]

99.17 Costs. If the action is brought by a citizen or a corporation and the court finds there were no reasonable grounds or cause for said action, the costs may be taxed to such citizen or corporation. [SS15,§4944-h3; C24, 27, 31, 35, 39,§**1603**; C46, 50, 54, 58, 62, 66, **71, 73,** 75,§99.17]

99.18 Violation of injunction. In case of the violation of any injunction granted under the provisions of this chapter, or of a restraining order or the commission of any contempt of court in proceedings under this chapter, the court may summarily try and punish the offender. [SS15,§4944-h4; C24, 27, 31, 35, 39,§**1604**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.18]

SS15,§4944-h4, editorially divided

99.19 Procedure. The proceedings shall be commenced by filing with the clerk of the court a complaint under oath, setting out and alleging facts constituting such violation, upon which the court shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. [SS15, §4944-h4; C24, 27, 31, 35, 39,§**1605**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.19]

99.20 Penalty. A party found guilty of contempt under the provisions of this chapter shall be punished by a fine of not less than two hundred nor more than one thousand dollars or by imprisonment in the county jail not less than three nor more than six months

or by both fine and imprisonment. [SS15,§4944-h4; C24, 27, 31, 35, 39,§1606; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.20]

99.21 Abatement—sale of property. If the existence of the nuisance be admitted or established in an action as provided in this chapter, or in a criminal proceeding in the district court, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale of such in the manner provided for the sale of chattels under execution, and shall direct the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released as hereinafter provided. [SS15,§4944-h5; C24, 27, 31, 35, 39,§1607; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.21]

40ExGA, HF 52,§10, editorially divided
Referred to in §99.25
Sale of chattels, §626.74 et seq.

99.22 Fees. For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property, on execution, and for closing the premises and keeping them closed a reasonable sum shall be allowed by the court. [SS15,§4944-h5; C24, 27, 31, 35, 39,§1608; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.22]

Fees, §337.11

99.23 Breaking closed building — punishment. If any person shall break and enter or use a building, erection, or place so directed to be closed, he shall be punished as for contempt as provided in this chapter. [SS15,§4944-h5; C24, 27, 31, 35, 39,§1609; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.23]

Punishment, §99.20

99.24 Duty of county attorney. In case the existence of such nuisance is established in a criminal proceeding in a court not having equitable jurisdiction, it shall be the duty of the county attorney to proceed promptly under this chapter to enforce the provisions and penalties thereof; and the finding of the defendant guilty in such criminal proceedings, unless reversed or set aside, shall be conclusive as against such defendant as to the existence of the nuisance. [SS15,§4944-h6; C24, 27, 31, 35, 39,§1610; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.24]

SS15,§4944-h6, editorially divided

99.25 Proceeds. All moneys collected under this chapter shall be paid to the county treasurer. The proceeds of the sale of the personal property as provided in section 99.21 shall be applied in payment of the costs of the action and abatement or so much of such proceeds as may be necessary, except as hereinafter provided. [SS15,§4944-h6; C24, 27, 31, 35, 39,§1611; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.25]

99.26 Release of property. If the owner of the premises in which said nuisance has been maintained appears and pays all costs of the proceeding, and files a bond with sureties to be approved by the court in the full value of the property, to be ascertained by the court, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, if satisfied of his good faith, may order the premises, closed or sought to be closed under the order of abatement, delivered to said owner, and said order of abatement canceled so far as the same may relate to said real property. The release of the property under the provisions of this section shall not release it from the injunction herein provided against the property nor any of the defendants nor from any judgment, lien, penalty, or liability to which it may be subject by law. [SS15,§4944-h7; C24, 27, 31, 35, 39,§1612; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.26]

99.27 Mulct tax. When a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purpose prohibited by this chapter, there shall be imposed upon said building and the ground upon which the same is located and against the person or persons maintaining said nuisance and the owner or agent of said premises, a tax of three hundred dollars. The imposing of said tax shall be made by the court as a part of the proceeding. [SS15,§4944-h8; C24, 27, 31, 35, 39,§1613; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.27]

40ExGA, HF 52,§12, editorially divided
Nuisance defined, §99.1

99.28 Certification and payment of tax. The clerk of said court shall make and certify a return of the imposition of said tax forthwith to the county auditor, who shall enter the same as a tax upon the property, and against the persons upon which or whom the lien was imposed, as and when the other taxes are entered, and the same shall be and remain a lien on the land upon which such lien was imposed until fully paid. Any such lien imposed while the tax books are in the hands of the auditor shall be immediately entered therein. The payment of said tax shall not relieve the persons or property from any other penalties provided by law. [SS15,§4944-h8; C24, 27, 31, 35, 39,§1614; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.28]

99.29 Collection of tax. The provisions of the law relating to the collection of taxes in this state, the delinquency thereof, and sale of property for taxes shall govern in the collection of the tax herein prescribed insofar as the same are applicable. [SS15,§4944-h8; C24, 27, 31, 35, 39,§1615; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.29]

40ExGA, HF 52,§13, editorially divided
Collection of taxes, ch 445 et seq.

99.30 Application of tax. The said tax collected shall be applied in payment of any defi-

ciency in the costs of the action and abatement on behalf of the state to the extent of such deficiency after the application thereto of the proceeds of the sale of personal property as hereinbefore provided, and the remainder of said tax together with the unexpended portion of the proceeds of the sale of personal property shall be distributed to the temporary school fund of the county, except that ten percent of the amount of the whole tax collected and of the whole proceeds of the sale of said personal property, as provided in this chapter, shall be paid by the treasurer to the attorney representing the state in the injunction action, at the time of final judgment. [SS15,§4944-h8; C24, 27, 31, 35, 39,§**1616**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.30]

99.31 Tax assessed. When such nuisance has been found to exist under any proceeding in the district court or as in this chapter provided, and the owner or agent of such building or ground whereon the same has been found to exist was not a party to such proceeding, nor appeared therein, the said tax of three hundred dollars shall, nevertheless, be imposed against the persons served or appearing and against the property as in this chapter set forth. [SS15,§4944-h9; C24, 27, 31, 35, 39,§**1617**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§99.31]

Constitutionality, 36GA, ch 71,§10

CHAPTER 99A

POSSESSION OF GAMBLING DEVICES—LICENSES REVOKED

99A.1 Definitions.
99A.2 Intentional possession.
99A.3 Proceedings to revoke.
99A.4 Duties of peace officers.
99A.5 Order to show cause.
99A.6 Licenses revoked—appeal.
99A.7 County attorney—duty.
99A.8 Witnesses.
99A.9 Owner of premises—when penalized.

99A.1 Definitions. For the purpose of this chapter, the words, terms, and phrases defined in this section shall have the meanings given them.

1. *"Gambling devices"* means gambling devices as defined in section 726.5.

2. *"Person"* means an individual, a copartnership, an association, corporation, or any other entity or organization.

3. *"Municipality"* means any county, city, village or township.

4. *"License"* includes permits of every kind, nature and description issued pursuant to any statute or ordinance for the carrying on, or used in the carrying on, of any business, trade, vocation, commercial enterprise or undertaking.

5. *"Licensee"* means any person to whom a license of any kind is issued.

6. *"Licensed business"* means any business, trade, vocation, commercial enterprise, or undertaking for which any license is issued.

7. *"Licensed premises"* means the place or building, or the room in a building of the licensed business, and all land adjacent thereto and used in connection with and in the operation of a licensed business, and all adjacent or contiguous rooms or buildings operated or used in connection with the buildings of the licensed business.

8. *"Issuing authority"* and "authority issuing the license" mean and include the officer, board, bureau, department, commission, or agency of the state, or of any of its municipalities, by whom any license is issued and include the councils and governing bodies of all municipalities. [C54, 58, 62, 66, 71, 73, 75,§99A.1; 66GA, ch 99,§1]

99A.2 Intentional possession. The intentional possession or willful keeping of a gambling device upon any licensed premises is cause for the revocation of any license upon the premises where the gambling device is found. Possession by an employee of the licensee on the premises of the licensee shall give rise to the presumption of intentional possession by the licensee.

All licenses of any licensed business shall be revoked if the intentional possession or willful keeping of any such gambling device upon the licensed premises is established, notwithstanding that it may not be made to appear that such devices have actually been used or operated for the purpose of gambling. [C54, 58, 62, 66, 71, 73, 75,§99A.2]

99A.3 Proceedings to revoke. The proceedings for revocation shall be had before the issuing authority, which shall have power to revoke the license or licenses involved, as hereinafter provided. [C54, 58, 62, 66, 71, 73, 75, §99A.3]

99A.4 Duties of peace officers. Every sheriff, deputy sheriff, constable, marshal, policeman, police officer, and peace officer shall observe and inspect licensed premises and ascertain whether gambling devices are present

thereon and immediately report the finding thereof to the authority or authorities issuing the license or licenses applicable to the premises in question. [C54, 58, 62, 66, 71, 73, 75, §99A.4]

Referred to in §99A.5

99A.5 Order to show cause. Upon the receipt of such information from any of the peace officers referred to in section 99A.4, if any issuing authority is of the opinion that cause exists for the revocation of any such license, then that authority shall issue an order to show cause directed to the licensee of the premises, stating the ground upon which the proceeding is based and requiring him to appear and show cause at a time and place within the county in which the licensed premises are located, not less than ten days after the date of the order, why his license should not be revoked. The order to show cause shall be served upon the licensee as an original notice, or by certified mail, not less than eight days before the date fixed for the hearing thereof. A copy of the order shall forthwith be mailed to the owner of the premises, as shown by the records in the office of the county recorder at his last known post-office address. A copy of the order shall at the same time be mailed to any other issuing authority, of which the authority issuing the order to show cause has knowledge, by which other licenses to that licensee may have been issued, and any such other authority may participate in the revocation proceedings after notifying the licensee and the officer or authority holding the hearing of its intention so to do on or before the date of hearing, and after the hearing take such action as it could have taken had it instituted the revocation proceedings in the first instance. [C54, 58, 62, 66, 71, 73, 75,§99A.5]

99A.6 Licenses revoked—appeal. If, upon the hearing of the order to show cause, the issuing authority finds that the licensee intentionally possessed or willfully kept upon his licensed premises any gambling device, then the license or licenses under which the licensed business is operated, or used in the operation of such business on the licensed premises, shall be revoked.

Judicial review of actions of the issuing authorities may be sought in accordance with the terms of the Iowa administrative procedure Act. Municipalities acting as issuing authorities shall be deemed state agencies solely for the purposes of bringing their actions under this chapter within the terms of section 17A.19. If the licensee has not filed a petition for judicial review in district court, revocation shall date from the thirty-first day following the date of the order of the issuing authority. If the licensee has filed a petition for judicial review, revocation shall date from the thirty-first day following entry of the order of the district court, if action by the district court is adverse to the licensee.

No new license or licenses shall be granted the licensee, nor for the same business if it is established that the owner had actual knowledge of the existence of the gambling devices resulting in the license revocation, upon the same premises, for the period of one year following the date of revocation. [C54, 58, 62, 66, 71, 73, 75,§99A.6]

Referred to in §§99A.7, 99A.9

99A.7 County attorney—duty. The county attorney for the county in which the hearing is held shall, and the attorney general may, attend the hearing, interrogate the witnesses, and advise the issuing authority. The county attorney shall, and the attorney general may, also appear for the issuing authority in any certiorari proceeding taken pursuant to the provisions of section 99A.6. [C54, 58, 62, 66, 71, 73, 75,§99A.7]

99A.8 Witnesses. The issuing authority may issue subpoenas and compel the attendance of witnesses at any hearing. Witnesses duly subpoenaed and attending any such hearing shall be paid fees and mileage by the issuing authority equal to the fees and mileage paid witnesses in the district court. [C54, 58, 62, 66, 71, 73, 75,§99A.8]

99A.9 Owner of premises—when penalized. When the license is revoked under the provisions of this chapter, subject to the provisions of section 99A.6, the owner of the premises upon which any licensed business has been operated shall not be penalized by reason thereof unless it is established that he had knowledge of the existence of the gambling devices resulting in the license revocation. [C54, 58, 62, 66, 71, 73, 75,§99A.9]

CHAPTER 99B

GAMES OF SKILL, CHANCE AND RAFFLES

Referred to in §§99.1, 123.49, 422.43, 422.45, 537A.4, 713.32, 726.11, 726.14, 726.15

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DIVISION I
GENERAL PROVISIONS

99B.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Game of skill"* means a game whereby the result is determined by the player directing or throwing objects to designated areas or targets, or by maneuvering water or an object into a designated area, or by maneuvering a dragline device to pick up particular items, or by shooting a gun or rifle.

2. *"Game of chance"* means a game whereby the result is determined by chance and the player in order to win aligns objects or balls in a prescribed pattern or order or makes certain color patterns appear and specifically includes but is not limited to the game defined as bingo. Game of chance does not include a slot machine.

3. *"Raffle"* means a lottery in which each participant buys a ticket for a chance at a prize with the winner determined by a random method. "Raffle" does not include a slot machine.

4. *"Bingo"* means a game, whether known as bingo or any other name, in which each participant uses one or more cards each of which is marked off into spaces arranged in horizontal and vertical rows of spaces, with each space being designated by number, letter, or combination of numbers and letters, no two cards being identical, with the players covering spaces as the operator of such game announces the number, letter, or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically, from a receptacle in which have been placed objects bearing numbers, letters, or combinations of numbers and letters corresponding to the system used for designating the spaces, with the winner of each game being the player or players first properly covering a predetermined and announced pattern of spaces on a card being used by him or them.

5. *"Gross receipts"* means the total revenue received from the sale of rights to participate in a game of skill, game of chance, or raffle and admission fees or charges.

6. *"Net receipts"* means gross receipts less reasonable expenses, charges, fees and deductions allowed by the department of revenue.

7. *"Net rent"* means the total rental charge minus reasonable expenses, charges, fees and deductions allowed by the department of revenue.

8. *"Fair"* means an annual fair and exposition held by the Iowa state fair board and any fair held by a county or district fair or agricultural society under the provisions of chapter 174.

9. *"Authorized"* means approved as a concession by the Iowa state fair board or a county or district fair or agricultural society holding a fair.

10. *"Qualified organization"* means any licensed person who dedicates the net receipts of a game of skill, game of chance or raffle as provided in section 99B.7.

11. *"Posted"* means that the person conducting a game has caused to be placed near the front or playing area of the game a sign at least thirty inches by thirty inches, with permanent material and lettering, stating at the top in letters at least three inches high: "Rules of the Game". Thereunder there shall be set forth in large, easily readable print, the name of the game, the price to play the game, the complete rules for the game and the name and permanent mailing address of the owner of the game.

12. *"Social games"* means and includes only the activities permitted by section 99B.12, subsection 2.

13. A person *"conducts"* a specified activity if that person owns, promotes, sponsors, or operates a game or activity. A natural person does not "conduct" a game or activity if the person is merely a participant in a game or activity which complies with section 99B.12.

14. *"Amusement concession"* means any place where a single game of skill or game of chance is conducted by a person for profit, and includes the area within which are confined the equipment, playing area and other personal property necessary for the conduct of the game.

15. *"Amusement device"* means an electrical or mechanical device possessed and used in accordance with section 99B.10. When possessed and used in accordance with that section, an amusement device is not a game of skill or game of chance, and is not a gambling device.

16. *"Department"* means the department of revenue.

17. *"Bookmaking"* as used herein means the taking or receiving of any bet or wager upon the result of any trial or contest of skill, speed, power or endurance of man, beast, fowl or motor vehicle, which is not a wager or bet pursuant to section 99B.12, subsection 2, paragraph *"c"*, or which is laid off, placed, given, received or taken, by an individual who was not present when the wager or bet was undertaken, or by any publicly or privately owned enterprise where such wagers or bets may be undertaken.

18. *"Bona fide social relationship"* as used herein means a real, genuine, unfeigned social relationship between two or more persons wherein each person has an established knowledge of the other, which has not arisen for the purpose of gambling. [C75,§99B.1; 66GA, ch 99,§§2, 3]

99B.2 Licensing—records requried.

1. The department shall be the agency responsible for issuing any license required by this chapter. A license shall not be issued, except upon submission to the department of an application on forms furnished by the department, and upon submission of the required license fee. Except as otherwise provided in this chapter, a license shall be valid for a period of one year from the date of issue. The license fee or any part thereof shall not be refundable, but shall be returned to the applicant in the event an application is not approved.

2. A licensee other than one issued a license pursuant to section 99B.6 or section 99B.9 shall maintain proper books of account and records showing in addition to any other information required by the department, gross receipts and the amount of the gross receipts taxes collected or accrued with respect to gambling activities, all expenses, charges, fees and other deductions, and the cash amounts, or the cost to the licensee of goods or other non-cash valuables, distributed to participants in the licensed activity. If the licensee is a qualified organization, the amounts dedicated and the date and name and address of each person to whom distributed also shall be kept in the books and records. The books of account and records shall be made available to the department or a law enforcement agency for inspection at reasonable times, with or without notice. A failure to permit inspection is a misdemeanor.

3. Each licensee required by subsection 2 to maintain records shall submit quarterly reports to the department on forms furnished by the department. The reports shall contain a compilation of the information required to be recorded by subsection 2, and shall include all of the transactions occurring during the three-month period for which the report is submitted. Failure to submit the quarterly reports shall constitute grounds for revocation of the license. Willful failure to submit quarterly reports is a misdemeanor. [C75,§99B.2; 66GA, ch 99,§4]

Referred to in §99B.16

DIVISION II
GAMES OR LOCATIONS FOR WHICH A LICENSE IS REQUIRED

99B.3 Amusement concessions.

1. A game of skill or game of chance is lawful when conducted by a person at an amusement concession, but only if all of the following are complied with:

a. The location where the game is conducted by the person has been authorized as provided in section 99B.4.

b. The person conducting the game has submitted a license application and a fee of fifteen dollars for each game, and has been issued a license for the game, and prominently displays the license at the playing area of the game.

c. Gambling other than the licensed game is not conducted or engaged in at the amusement concession.

d. The game is posted and the cost to play the game does not exceed one dollar.

e. A prize is not displayed which cannot be won.

f. Cash prizes are not awarded and merchandise prizes are not repurchased.

g. The game is not operated on a build-up or pyramid basis.

h. The actual retail value of any prize does not exceed twenty-five dollars. If a prize consists of more than one item, unit or part, the aggregate retail value of all items, units or parts shall not exceed twenty-five dollars.

i. Concealed numbers or conversion charts are not used to play the game and the game is not designed or adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object target, block or object of the game must be attainable and possible

to perform under the rules stated from the playing position of the player.

j. The game is conducted in a fair and honest manner.

2. It is lawful for an individual other than a person conducting the game to participate in a game of skill or game of chance conducted at an amusement concession, whether or not the amusement concession is conducted in compliance with subsection 1. [C75,§§99B.2, 99B.3; 66GA, ch 99,§5]

Referred to in §§99B.4, 99B.6, 99B.9, 99B.12

99B.4 Permitted locations of amusement concessions. A game of skill or game of chance lawfully may be conducted by a person at an amusement concession, but only if the person has been authorized to conduct the game at a specific location as follows:

1. At a fair, by written permission given to the person by the sponsor of the fair.

2. At an amusement park so designated by resolution of the city council of a city or the board of supervisors of a county, by written permission given to the person by the respective city or county.

3. At a carnival, bazaar, centennial, or celebration sponsored by a bona fide civic group, service club, or merchants group when that event has been authorized by resolution of the city council of a city or the board of supervisors of a county, by written permission given to the person by the authorizing city or county. Section 99B.3, subsection 1, paragraph "*b*", notwithstanding, a license may be issued for an event held pursuant to this paragraph at a fee of twenty-five dollars, which shall enable the sponsor of the event to conduct all games and raffles permitted under section 99B.3 for a specified period of fourteen consecutive calendar days. [C75,§§99B.3, 99B.5, 99B.6; 66GA, ch 99,§6]

Referred to in §§99B.3, 99B.6

99B.5 Raffles conducted by a fair.

1. Raffles lawfully may be conducted at a fair, but only if all of the following are complied with:

a. The raffle is conducted by the sponsor of the fair.

b. The sponsor of the fair has submitted a license application and a fee of fifteen dollars for each raffle, and has been issued a license, and prominently displays the license at the drawing area of the raffle.

c. The raffle is posted.

d. Except as provided in paragraph "*g*", of this subsection, the cost of each chance in or ticket to the raffle does not exceed one dollar.

e. Cash prizes are not awarded and merchandise prizes are not repurchased.

f. The raffle is not operated on a pyramid or build-up basis.

g. The actual retail value of any prize does not exceed twenty-five dollars. If a prize consists of more than one item, unit or part, the aggregate retail value of all items, units or parts shall not exceed twenty-five dollars. However, a fair may hold not more than one raffle per year at which a merchandise prize may be awarded if of a value not greater than five thousand dollars as determined by the purchase price paid by the fair, and the cost of each chance in or ticket to that raffle may not exceed five dollars.

h. The raffle is conducted in a fair and honest manner.

2. It is lawful for an individual other than a person conducting the raffle to participate in a raffle conducted at a fair, whether or not conducted in compliance with subsection 1. [C75,§99B.4; 66GA, ch 99,§7]

Referred to in §§99B.6, 99B.8, 99B.9, 99B.12

99B.6 Games where liquor or beer is sold.

1. Gambling is unlawful on premises for which a class "A", class "B", class "C" or class "D" liquor control license, or class "B" beer permit has been issued pursuant to chapter 123 unless all of the following are complied with:

a. The holder of the liquor control license or beer permit has submitted an application for a license and an application fee of twenty-five dollars, and has been issued a license, and prominently displays the license on the premises.

b. The holder of the liquor control license or beer permit or any agent or employee of the license or permit holder does not participate in, sponsor, conduct or promote, or act as cashier or banker for any gambling activities, except as a participant while playing on the same basis as every other participant.

c. Gambling other than social games is not engaged in on the premises covered by the license or permit.

d. Concealed numbers or conversion charts are not used to play any game, and a game is not adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game is attainable and possible to perform under the rules stated from the playing position of the player.

e. The game must be conducted in a fair and honest manner.

f. No person receives or has any fixed or contingent right to receive, directly or indirectly, any amount wagered or bet or any portion of amounts wagered or bet, except an amount which the person wins as a participant while playing on the same basis as every other participant.

g. No cover charge, participation charge or other charge is imposed upon a person for the privilege of participating in or observing gambling, and no rebate, discount, credit, or other method is used to discriminate between the charge for the sale of goods or services to participants in gambling and the charge for the sale of goods or services to nonparticipants. Satisfaction of an obligation into which a member of an organization enters to

pay at regular periodic intervals a sum fixed by that organization for the maintenance of that organization is not a charge which is prohibited by this paragraph.

h. No participant wins or loses more than a total of fifty dollars or more consideration equivalent thereto in one or more games or activities permitted by this section at any time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

i. No participant is participating as an agent of another person.

j. A representative of the department of revenue or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

k. No person under the age of eighteen years may participate in the gambling except pursuant to sections 99B.3, 99B.4, 99B.5 and 99B.7. Any licensee knowingly allowing a person under the age of eighteen to participate in the gambling prohibited by this paragraph or any person knowingly participating in such gambling with a person under the age of eighteen, shall be guilty of a misdemeanor and, upon conviction, be punished by imprisonment in the county jail for not more than thirty days and a fine of not more than one hundred dollars or both.

2. The holder of a license issued pursuant to this section shall be strictly accountable for maintaining compliance with subsection 1. Proof of any acts constituting a violation shall be grounds for revocation of the license issued pursuant to this section if the holder of the license permitted the violation to occur when the licensee knew or had reasonable cause to know of the acts constituting the violation. The holder of a license issued pursuant to this section which has its license revoked shall not be issued another license within six months of the date of revocation.

3. A participant in a social game which is not in compliance with this section shall be liable for a criminal penalty only if that participant has knowledge of or reason to know the facts constituting the violation.

4. The holder of a license issued pursuant to this section and every agent of that licensee who is required by the licensee to exercise control over the use of the premises who knowingly permits or engages in acts or omissions which constitute a violation of subsection 1 commits a misdemeanor. A licensee has knowledge of acts or omissions if any agent of the licensee has knowledge of those acts or omissions. [66GA, ch 99,§8, ch 1090,§1]

Referred to in §§99B.2, 99B.8, 99B.9, 99B.12

99B.7 Games conducted by qualified organizations.

1. Except as otherwise provided in section 99B.8, games of skill, games of chance and raffles lawfully may be conducted at a location specified in subsection 2 of this section, but only if all of the following are complied with:

a. The person conducting the game or raffle has been issued a license pursuant to subsection 3 of this section and prominently displays that license in the playing area of the games.

b. No person receives or has any fixed or contingent right to receive, directly or indirectly, any profit, remuneration, or compensation from or related to a game of skill, game of chance, or raffle, except any amount which the person may win as a participant on the same basis as the other participants. A person conducting a game or raffle shall not be a participant in the game or raffle.

c. Cash prizes may be awarded in the game of bingo and shall not exceed one hundred dollars. Merchandise prizes may be awarded in the game of bingo; however, the actual retail value of the prize, or if the prize consists of more than one item, unit or part, the aggregate retail value of all items, units or parts, shall not exceed one hundred dollars. A jackpot bingo game may be conducted once during any twenty-four hour period in which the prize doubles if not won at one game: However, the cost of play shall not be increased and the jackpot shall not amount to more than five hundred dollars in cash or actual retail value of merchandise prizes. A jackpot bingo game shall not be deemed prohibited by paragraph *"h"* of this subsection.

d. Cash prizes shall not be awarded in games other than bingo. The actual retail value of any merchandise prizes shall not exceed twenty-five dollars and may not be repurchased. However, a raffle may be conducted not more than one time in a twelve-month period at which a merchandise prize may be awarded of a value not greater than five thousand dollars as determined by purchase price paid by the organization or donor and for which the cost to a participant of a chance in or ticket to the raffle does not exceed five dollars.

e. Except as provided in paragraph *"d"* of this subsection with respect to an annual raffle, the cost to a participant for each game shall not exceed one dollar.

f. No prize is displayed which cannot be won.

g. Merchandise prizes are not repurchased.

h. A game or raffle shall not be operated on a build-up or pyramid basis.

i. Concealed numbers or conversion charts shall not be used to play any game and a game or raffle shall not be adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game must be attainable and possible to perform under the rules stated from the playing position of the player.

j. The game must be conducted in a fair and honest manner.

k. Each game or raffle shall be posted.

l. During the entire time that games permitted by this section are being engaged in, no other gambling is engaged in at the same location.

2. Games of skill, games of chance, and raffles may be conducted on premises owned or leased by the licensee, but shall not be conducted on rented premises unless the premises are rented from a person licensed under this section, and unless the net rent received is dedicated to one or more of the uses permitted under subsection 3 for dedication of net receipts. This subsection shall not apply where the rented premises are those upon which a qualified organization usually carries out a lawful business other than operating games of skill, games of chance or raffles. However, a qualified organization may rent premises other than from a licensed qualified organization to be used for the conduct of games of skill, games of chance and raffles, and the person from whom the premises are rented may impose and collect rent for such use of those premises, but only if all of the following are complied with:

a. The rent imposed and collected shall not be a percentage of or otherwise related to the amount of the receipts of the game or raffle.

b. The qualified organization shall have the right to terminate any rental agreement at any time without penalty and without forfeiture of any sum.

c. The person from whom the premises are rented shall not be a liquor control licensee or beer permittee with respect to those premises or with respect to adjacent premises.

The board of directors of a school district may authorize that public schools within that district, and the policy-making body of a nonpublic school, may authorize that games of skill, games of chance, bingo and raffles may be held at bona fide school functions, such as carnivals, fall festivals, bazaars and similar events. Each school shall obtain a license pursuant to this section prior to permitting such games or activities on the premises.

3. *a.* A person wishing to conduct games and raffles pursuant to this section as a qualified organization shall submit an application and a license fee of twenty-five dollars. However, upon submission of an application accompanied by a license fee of fifteen dollars, a person may be issued a limited license which shall authorize the person to conduct all games and raffles pursuant to this section at a specified location and during a specified period of fourteen consecutive calendar days. A limited license shall not be issued more than once during any twelve-month period to the same person, or for the same location.

b. A person or the agent of a person submitting application to conduct games pursuant to this section as a qualified organization shall certify as a part of that application that the net receipts of all games either shall be distributed as prizes to participants or shall be dedicated and distributed to educational, civic, public, charitable, patriotic or religious uses in this state. "Educational, civic, public, charitable, patriotic, or religious uses" means uses benefiting a society for the prevention of cruelty to animals or animal rescue league or uses benefiting an indefinite number of persons either by bringing them under the influence of education or religion or relieving them from disease, suffering, or constraint, or by erecting or maintaining public buildings or works, or otherwise lessening the burden of government but do not include the erection, acquisition, improvement, maintenance, or repair of real, personal or mixed property unless it is used exclusively for one or more of the uses stated. "Pubilc uses" specifically includes dedication of net receipts to political parties as defined in section 43.2. "Charitable uses" includes uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the loss is uncompensated by insurance, and uses benefiting a definite number of persons suffering from a seriously disabling disease or injury, causing severe loss of income or incurring extraordinary medical expense, which is uncompensated by insurance.

c. A qualified organization shall distribute amounts awarded as prizes on the day the prizes are won. A qualified organization shall dedicate and distribute the balance of the net receipts not later than one hundred eighty days from the date received. A person desiring to hold the net receipts for a period longer than one hundred eighty days must apply to the department for special permission and upon good cause shown the department may grant the request.

4. It is lawful for an individual other than a person conducting games or raffles to participate in games or raffles conducted by a qualified organization, whether or not there is compliance with subsections 2 and 3: However, it is unlawful for the individual to participate where the individual has knowledge of or reason to know facts which constitute a failure to comply with subsection 1. [C75, §99B.7; 66GA, ch 99,§9]

Referred to in §§99B.1, 99B.6, 99B.8, 99B.9, 99B.12

99B.8 Annual game night.

1. Games of skill, games of chance, card games and raffles lawfully may be conducted during a period of twelve consecutive hours once each year at any location, or by any person, except one for which a license is required pursuant to section 99B.3 or section 99B.5, or except a location covered by a class "C", or class "D" liquor control license, or any beer permit unless such location has been licensed pursuant to section 99B.6 as premises upon which gambling is allowed, but only if all of the following are complied with:

a. The sponsor of the event has been issued a license pursuant to subsection 3 and prominently displays that license on the premises covered by the license.

b. A bona fide social or employment relationship exists between the sponsor and all of the participants.

c. No participant pays any consideration of any nature, either directly or indirectly, to participate in the games or raffles.

d. All money or other items wagered are provided to the participant free by the sponsor.

e. The person conducting the game or raffle receives no consideration, either directly or indirectly, other than good will.

f. During the entire time activities permitted by this section are being engaged in, no other gambling is engaged in at the same location.

2. The other provisions of this section notwithstanding, if the games or raffles are conducted by a qualified organization also licensed under section 99B.7, the sponsor may charge an entrance fee or a fee to participate in the games or raffles, and participants may wager their own funds and pay an entrance or other fee for participation, provided that a participant may not expend more than a total of fifty dollars for all fees and wagers. The provisions of section 99B.7, subsection 3, paragraphs *"b"* and *"c"*, shall apply to games and raffles conducted by a qualified organization pursuant of this section.

3. The department may issue a license pursuant to this section only once during a calendar year to any one person or for any one location. The license may be issued only upon submission to the department of an application and a license fee of twenty-five dollars. [66GA, ch 99,§10]

Referred to in §§99B.7, 99B.9, 99B.12

99B.9 Gambling in public places.

1. Except as otherwise permitted by sections 99B.3, 99B.5, 99B.6, 99B.7, 99B.8, or 99B.11, it is unlawful to permit gambling on any premises owned, leased, rented, or otherwise occupied by a person other than a government, governmental agency or subdivision, unless all of the following are complied with:

a. The person occupying the premises as an owner or tenant has submitted an application for a license and an application fee of twenty-five dollars, and has been issued a license for those premises, and prominently displays the license on the premises.

b. The holder of the license or any agent or employee of the license holder does not participate in, sponsor, conduct, or promote, or act as cashier or banker for any gambling activities.

c. Gambling other than social games is not engaged in on the premises covered by the license or permit.

d. Concealed numbers or conversion charts are not used to play any game, and a game is not adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game is attainable and possible to perform under the rules stated from the playing position of the player.

e. The game must be conducted in a fair and honest manner.

f. No person receives or has any fixed or contingent right to receive, directly or indirectly any amount wagered or bet or any portion of amounts wagered or bet, except an amount which the person wins as a participant while playing on the same basis as every other participant.

g. No cover charge, participation charge or other charge is imposed upon a person for the privilege of participating in or observing gambling, and no rebate, discount, credit, or other method is used to discriminate between the charge for the sale of goods or services to participants in gambling and the charge for the sale of goods or services to nonparticipants. Satisfaction of an obligation into which a member of an organization enters to pay at regular periodic intervals a sum fixed by that organization for the maintenance of that organization is not a charge which is prohibited by this paragraph.

h. No participant wins or loses more than a total of fifty dollars or other consideration equivalent thereto in all games and activities at any one time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph, a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

i. No participant is participating as an agent of another person.

j. A representative of the department of revenue or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

2. The holder of a license issued pursuant to this section shall be strictly accountable for maintaining compliance with subsection 1, and proof of any violation shall constitute grounds for revocation of the license issued pursuant to this section, whether or not the holder of the license had knowledge of the facts constituting the violation.

3. A participant in a social game which is not in compliance with this section shall be liable for a criminal penalty only if that participant has knowledge of or reason to know the facts constituting the violation.

4. The holder of a license issued pursuant to this section and every agent of that licensee who is required by the licensee to exercise control over the use of the premises who knowingly permits acts or omissions which constitute a violation of subsection 1 commits a misdemeanor. A licensee has knowledge of acts or omissions if any agent of

the licensee has knowledge of those acts or omissions.

5. This section shall not apply to premises or portions of premises constituting the living quarters of the actual residence of an individual if that individual is a participant in the activities permitted by this section. [66GA, ch 99,§11, ch 1090,§2]

Referred to in §§99B.2, 99B.12

DIVISION III

GAMES FOR WHICH A LICENSE IS NOT REQUIRED

99B.10 Mechanical and electronic amusement devices. It is lawful to own, possess, and offer for use by any person at any location an electrical or mechanical amusement device, but only if all of the following are complied with:

1. A prize of cash or merchandise shall not be awarded for use of the device. However, a mechanical or amusement device may be designed or adapted to award one or more free games or portions of games without payment of additional consideration by the participant.

2. An amusement device shall not be designed or adapted to cause or to enable a person to cause the release of free games or portions of games when designated as a potential award for use of the device, and shall not contain any meter or other measurement device for recording the number of free games or portions of games which are awarded.

3. An amusement device shall not be designed or adapted to enable a person using the device to increase the chances of winning free games or portions of games by paying more than is ordinarily required to play the game.

It is lawful for an individual other than an owner or promoter of an amusement device to operate an amusement device, whether or or offered for use in compliance with this not the amusement device is owned, possessed section.

The use of an amusement device which complies with this section shall not be deemed gambling. [C75,§99B.10; 66GA, ch 99,§12]

Referred to in §§99.1, 99B.1, 713.32

99B.11 Bona fide contests.

1. It is lawful for a person to conduct any of the contests specified in subsection 2, and to offer and pay awards to persons winning in those contests whether or not entry fees, participation fees, or other charges are assessed against or collected from the participants, but only if all of the following are complied with:

a. The contest is not held at an amusement concession.

b. No gambling device is used in conjunction with, or incident to the contest.

c. The contest is not conducted in whole or in part on or in any property subject to chapter 297, relating to schoolhouses and schoolhouse sites, unless the contest and the person conducting the contest has the express written approval of the governing body of that school district.

d. The contest is conducted in a fair and honest manner. A contest shall not be designed or adapted to permit the operator of the contest to prevent a participant from winning or to predetermine who the winner will be, and the object of the contest must be attainable and possible to perform under the rules stated.

2. A contest is not lawful unless it is one of the following contests:

a. Athletic or sporting contests, leagues or tournaments, rodeos, horse shows, golf, bowling, trap or skeet shoots, fly casting, tractor pulling, rifle, pistol, musket, muzzle-loader, archery and horseshoe contests, leagues or tournaments.

b. Horse races, harness racing, ski, airplane, snowmobile, raft, boat, bicycle and motor vehicle races.

c. Contests or exhibitions of cooking, horticulture, livestock, poultry, fish or other animals, artwork, hobbywork or craftwork, except those prohibited by section 726.7. [C75, §§99B.11, 726.13; 66GA, ch 99,§13]

Referred to in §§99B.9, 99B.12, 99B.17

99B.12 Games between individuals.

1. Except in instances where because of the location of the game or the circumstances of the game section 99B.3, section 99B.5, section 99B.6, section 99B.7, section 99B.8, or section 99B.9 is applicable, individuals may participate in gambling specified in subsection 2, but only if all of the following are complied with:

a. The gambling is incidental to a bona fide social relationship between all participants.

b. The gambling is not participated in, either wholly or in part, on or in any property subject to chapter 297, relating to schoolhouses and schoolhouse sites.

c. All participants in the gambling are individuals, and no participant may participate as the agent of another person.

d. The gambling shall be fair and honest, and shall not be designed, devised or adapted to permit predetermination of the winner, or to prevent a participant from winning, and no concealed numbers or conversion charts may be used to determine the winner of any game.

e. No person receives or has any fixed or contingent right to receive, directly or indirectly, any profit, remuneration, or compensation from or as a result of the gambling, except any amount which the person may win as a participant on the same basis as the other participants.

f. No person may participate in any wager, bet or pool which relates to an athletic event or contest and which is authorized or sponsored by one or more schools, educational institutions, or interscholastic athletic organizations if the person is a coach, official, player or contestant in the athletic event or contest.

g. No participant wins or loses more than a total of fifty dollars or other consideration equivalent thereto in one or more games or

activities permitted by this section at any time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

h. No participant pays an entrance fee, cover charge, or other charge for the privilege of participating in gambling, or for the privilege of gaining access to the location in which gambling occurs.

i. In any game requiring a dealer or operator, the participants must have the option to take their turn at dealing or operating the game in a regular order according to the standard rules of the game.

2. Games which are permitted by this section are limited to the following:

a. Card and parlor games, including but not limited to poker, pinochle, pitch, gin rummy, bridge, euchre, hearts, cribbage, dominoes, checkers, chess, backgammon and darts. However, it shall be unlawful gambling for any person to engage in bookmaking, or to play any punchboard, pushcard, pull-tab or slot machine, or to play craps, chuck-a-luck, roulette, klondike, blackjack, chemin de fer, baccarat, faro, equality, three-card monte or any other game, except poker, which is customarily played in gambling casinos and in which the house customarily provides a banker, dealer or croupier to operate the game, or a specially designed table upon which to play same.

b. Games of skill and games of chance, except those prohibited by paragraph *"a"* of this subsection.

c. Wagers or bets between two or more individuals who are physically in the presence of each other with respect to a contest specified in section 99B.11, subsection 2, except as provided in subsection 1, pargraph *"g"*, or with respect to any other event or outcome which does not depend upon gambling or the use of a gambling device unlawful in this state.

3. An individual may not be convicted of a violation of this section unless the individual had knowledge of or reason to know the facts constituting the violation. [C75,§726.12; 66GA, ch 99,§14]

Referred to in §99B.1

DIVISION IV
RULES—LICENSE PROCEEDINGS—PENALTIES

99B.13 Administrative rules. The department may adopt, amend and repeal rules pursuant to chapter 17A to carry out the provisions of this chapter. Rules adopted by the director may include but are not limited to the following:

1. Descriptions of books, records and accounting required.

2. Requirements for qualified organizations.

3. Methods of displaying costs and explanations of games and rules.

4. Defining unfair or dishonest games, acts or practices. [66GA, ch 99,§15]

99B.14 Revocation of license. The department shall revoke a license issued pursuant to this chapter if the licensee or any agent of the licensee violates or permits a violation of any of the provisions of this chapter, or if any cause exists for which the director would have been justified in refusing to issue a license, or upon the conviction of any person of a violation of this chapter which occurred on the licensed premises.

Revocation proceedings shall be held only after giving notice and an opportunity for hearing to the licensee. Notice shall be given at least ten days in advance of the date set for hearing. If the department finds cause for revocation, the license shall be revoked and thereafter no license may be issued to the person, or to the agent of the person found to be in violation of this chapter. [66GA, ch 99,§15]

99B.15 Applicability of chapter. It is the intent and purpose of this chapter to authorize gambling in this state only to the extent specifically permitted by a section of this chapter. Except as otherwise provided in this chapter, the knowing failure of any person to comply with the limitations imposed by this chapter constitutes unlawful gambling, a misdemeanor, which is punishable as provided in chapter 726. [66GA, ch 99,§15]

99B.16 Failure to maintain or submit records. A licensee who willfully fails to maintain the records when required by section 99B.2, or who willfully fails to submit records when required by that section commits a misdemeanor punishable by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both imprisonment and fine. [66GA, ch 99,§15]

99B.17 Gambling on credit unlawful. A person who tenders and a person who receives any promise, agreement, note, bill, bond, contract, mortgage or other security, or any negotiable instrument, as consideration for any wager or bet, whether or not lawfully conducted or engaged in pursuant to this chapter, commits a misdemeanor. This section shall not prohibit the payment by check of any entry or participation fee assessed by the sponsor of a contest lawful under section 99B.11. [66GA, ch 99,§15]

99B.18 Company games. Games of skill, games of chance, card games and raffles may be conducted on premises either licensed or unlicensed and no license fee shall be required therefor provided a bona fide social, employment, trade or professional association relationship exists between the sponsors and the participants and the participants pay no consideration of any nature, either directly or indirectly, to participate in the games or raffles, and only play money or other items of no intrinsic value which may be wagered are

provided to the participant free, and the sponsor conducting the game or raffle receives no consideration, either directly or indirectly, other than goodwill.

Any gambling device intended for use or used as herein provided shall be exempt from the provisions of section 726.5. [C75,§99B.8; 66GA ch 99,§15]

CHAPTER 100

STATE FIRE MARSHAL

Enforcement of compressed gas system law, ch 101

Rules for hotels, restaurants and food establishments, §170.38

See also §135C.9, for health care facilities

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100.36 Toxic extinguishers prohibited—exception.
100.37 Setting fire to public building.
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100.39 Fire extinguishers in high-rise buildings.

100.1 Fire marshal. The chief officer of the division of fire protection in the department of public safety shall be known as the state fire marshal.

His duties shall be as follows:

1. To enforce all laws of the state relating to the suppression of arson, and to apprehend those persons suspected of arson;

2. To investigate into the cause, origin and circumstances of fires;

3. To promote fire safety and reduction of loss by fire through educational methods;

4. To enforce all laws, and the rules and regulations of the Iowa department of public safety, concerned with:

a. The prevention of fires;

b. The storage, transportation, handling and use of inflammable liquids, combustibles, and explosives;

c. The storage, transportation, handling and use of liquid petroleum gas;

d. The electric wiring and heating, and adequate means of exit in case of fire, from churches, schools, hotels, theaters, amphitheaters, asylums, hospitals, health care facilities as defined in section 135C.1, college buildings, lodge halls, public meeting places, and all other structures in which persons congregate from time to time, whether publicly or privately owned;

5. To promulgate fire safety regulations. The state fire marshal shall have exclusive right to promulgate fire safety rules as they apply to enforcement or inspection requirements by the state fire marshal, but such regulations shall be promulgated only after public hearing. Wherever by any statute the fire marshal or the department of public safety is authorized or required to promulgate, proclaim, or amend rules and minimum standards regarding fire hazards or fire safety or protection in any establishment, building or structure, such rules and standards shall promote and enforce fire safety, fire protection and the elimination of fire hazards as the same may relate to the use, occupancy and construction of such buildings, establishments or structures. The word "construction" shall include, but is not limited to, electrical wiring, plumbing, heating, lighting, ventilation, construction materials, entrances and exits, and all other physical conditions of the building which may affect fire hazards, safety or protection. Such rules and minimum standards shall be in substantial compliance with the standards of the

National Fire Protection Association relating to fire safety as published in the national fire codes. [S13,§§2468-a,-m; C24, 27, 31, 35, 39,§**1619**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.1]

100.2 Duties of city and township officers. The chief of the fire department of every city in which a fire department is established, the mayor or chief executive officer of every city in which no fire department exists, the chief of the fire department responding to every township fire where there is a contract for fire protection in effect, or the township clerk of every township outside the limits of any city not having a contract for fire protection shall investigate into the cause, origin and circumstances of every fire occurring in such city, village, or township by which property has been destroyed or damaged or which results in bodily injury to any person, and determine whether such fire was the result of natural causes, negligence or design. The state fire marshal may assist in such investigation or may superintend and direct the investigation if he deems it necessary. [S13,§§2468-d,-e; C24, 27, 31, 35, 39,§**1624**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.2]

Referred to in §100.3

100.3 Time of investigation—report. Whenever the investigation of a fire indicates that bodily injury, or property damage to the extent of fifty dollars or more, was caused by such fire, or where arson is suspected, the official required by section 100.2 to make such investigation shall, within one week of the occurrence of the fire, report in writing to the state fire marshal stating all facts relating to the cause and origin of the fire and such other information as may be called for by the report forms provided by the state fire marshal. Furthermore, when the investigating officer believes the fire was by design, or whenever death occurs as the result of a fire such officer shall immediately notify the state fire marshal. [S13,§2468-e; C24, 27, 31, 35, 39,§**1625**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.3]

Referred to in §100.34

100.4 Refusal of officer to investigate. Any chief of a fire department, mayor, or township clerk who fails or refuses to make the investigation and report required of him, shall be fined in a sum not less than five dollars nor more than one hundred dollars. [S13,§2468-e; C24, 27, 31, 35, 39,§**1626**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.4]

100.5 Record of fires. The fire marshal shall keep in his office a record of all fires occurring in the state, showing the name of the owners, name or names of occupants of the property at the time of the fire, the sound value of the property, the amount of insurance thereon, the total amount of insurance collected, the total amount of loss to the property owner, together with all the facts, statistics, and circumstances, including the origin of the fire, which may be determined by the investigation. Such record shall at all times be open to public inspection. [S13,§2468-f; C24, 27, 31, 35, 39,§**1627**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.5]

100.6 Testimony under oath. The fire marshal or his designated subordinate shall, when in their opinion further investigation is necessary, take or cause to be taken the testimony under oath of all persons supposed to have knowledge of any facts, or to have means of knowledge in relation to the matter in which an examination is herein required to be made, and shall cause the same to be reduced to writing. [S13,§2468-g; C24, 27, 31, 35, 39,§**1628**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.6]

100.7 Oaths—attendance of witnesses. The fire marshal and his designated subordinates shall each have power in any county in the state to administer an oath and compel the attendance of witnesses before them, or either of them, to testify in relation to any matter which is by the provisions of this chapter a subject of inquiry and investigation, and may require the production of any books, papers, or documents necessary for such investigation. [S13,§2468-h; C24, 27, 31, 35, 39,§**1629**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.7]

100.8 Refusal to testify or produce books. Any witness who refuses to be sworn, or refuses to testify, except as otherwise provided by law, or who disobeys any lawful order of said fire marshal, or his designated subordinates, or who fails to produce any books, papers, or documents touching any matter under examination, shall be guilty of a misdemeanor, and shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days. [S13,§2468-h; C24, 27, 31, 35, 39,§**1630**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.8]

100.9 Crimes in connection with fires. If the fire marshal shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, or with attempt to commit the crime of arson, or of conspiracy to defraud, or criminal conduct in connection with such fire, he shall cause such person to be arrested and charged with the offense, or either of them, and shall furnish to the proper county attorney all such evidence, together with the names of witnesses and all of the information obtained, including a copy of all matter and testimony taken in the case. [S13,§2468-g; C24, 27, 31, 35, 39,§**1631**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.9]

100.10 Authority to enter and inspect. The state fire marshal, and his designated subordinates, in the performance of their duties, shall have authority to enter any building or premises and to examine the same and the contents thereof. [S13,§2468-i; C24, 27, 31, 35, 39,§**1632**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.10]

100.11 Fire escapes. It shall be the duty of the fire marshal to enforce all laws relating

to fire escapes. [C39,§1632.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.11]

Similar provision, §103.10

100.12 Additional authority. In order to effect the purposes of this chapter, the chief of the fire department aforesaid shall have authority to enter any building or premises and to examine the same and the contents thereof, and orally or in writing, to order the correction of any condition contemplated by section 100.13. Should said order be not complied with the officer making the inspection shall report such inspection and the facts thereof to the state fire marshal who shall proceed as though the inspection had been made by himself. [C31, 35,§1632-c1; C39,§1632.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.12]

100.13 Removal or repair. When the fire marshal acting in person or through his designated subordinate shall find any building or structure, which for want of proper repair or by reason of age and dilapidated condition, is especially liable to fire, and is so situated as to endanger other buildings or property therein, or when any such official shall find in any building or upon any premises combustible or explosive matter or inflammable materials dangerous to the safety of any buildings or premises, he shall in writing order the same to be removed or remedied, or he may order the owner or occupant to follow safe-storage procedures for explosives as set forth by the fire prevention code of the National Fire Protection Association. Any such order shall be complied with by the owner or occupant of said building or premises, within such reasonable time as the fire marshal shall specify. [S13,§2468-j; C24, 27, 31, 35, 39,§1633; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.13]

Referred to in §100.12

100.14 Review of order. Any owner, lessee, or occupant of a building may, within five days after an order is issued for the removal, destruction, or repair thereof, or the removal of the contents thereof or the change of any other conditions, file with the fire marshal a petition for a review of such order. Thereupon the marshal shall fix a place which shall be within the county where the property is situated, and a time, for such review, which shall be not less than three nor more than ten days after the filing of such petition, and notify the petitioner thereof. [C24, 27, 31, 35, 39,§1634; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.14]

100.15 Hearing on review. The marshal shall hear the evidence both for and against said order and may affirm, modify, or revoke such order according to the facts presented at such hearing, and make record of his findings and final order. [C24, 27, 31, 35, 39,§1635; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.15]

100.16 Judicial review. Judicial review of actions of the fire marshal may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county where such building is located. [S13,§2468-j; C24, 27, 31, 35, 39,§1636; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.16]

100.17 Bond—suspension of order. Such petition for judicial review shall be accompanied by a bond in the penal sum of one hundred dollars with sureties approved by the clerk of said court, conditioned to pay all costs that shall be adjudged against petitioner and abide the decree, judgment, and order of the court. Notwithstanding the provisions of the Iowa administrative procedure Act, any order of the fire marshal which is the subject of a judicial review proceeding shall be suspended during such proceeding. [C24, 27, 31, 35, 39,§§1637, 1642; C46, 50, 54, 58, 62, 66, 71, 73,§§100.17, 100.22; C75,§100.17]

100.18 and 100.19 Repealed by 65GA, ch 1090,§211.

100.20 County attorney. The county attorney shall represent the state and the fire marshal, but not to the exclusion of any other attorney who may be engaged in said cause. [C24, 27, 31, 35, 39,§1640; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.20]

100.21 and 100.22 Repealed by 65GA, ch 1090, §211.

100.23 Costs. If the appellant fails in the judicial review proceeding the costs shall be taxed against him, but if the order is revoked or annulled the costs shall be taxed to the state. If the order shall be modified, the court may in its discretion apportion the costs. [C24, 27, 31, 35, 39,§1643; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.23]

100.24 and 100.25 Repealed by 65GA, ch 1090, §211.

100.26 Time for compliance with order. When no petition of review has been filed or when the fire marshal on review or the court on review has affirmed or modified an order for the removal, destruction, or repair of a building, or the removal of any of its contents, or the change of any of its conditions, the owner, lessee, or occupant shall comply with such order within thirty days after the delivery of the same or a copy thereof to him, either personally or by certified letter to his last known address, or by service upon his duly appointed agent. If such owner, lessee, or occupant shall fail to comply with such order he shall be subject to a penalty of ten dollars for each day of failure or neglect after the expiration of said period, which shall be recovered in the name of the state and paid into the treasury of the county where collected. [S13,§2468-j; C24, 27, 31, 35, 39,§1646; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.26]

100.27 Refusal to obey orders. If any person fails to comply with a final order of the

marshal or of a court on review and within the time fixed, then such officers are empowered and authorized to cause such building or premises to be repaired, torn down, demolished, materials and all dangerous conditions removed, as the case may be, and at the expense of such person, and if such person within thirty days thereafter fails, neglects, or refuses to repay said officers the expense thereby incurred by them, such officers shall certify said expenses, together with twenty-five percent penalty thereon, to the auditor of the county in which said property is situated. [C24, 27, 31, 35, 39,§**1647**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §100.27]

40ExGA, HF 53,§27, editorially divided

100.28 Notice. Notice of the reasonableness and amount of assessment shall be given in a manner as provided for giving notice in ordinary actions by the marshal or his designated subordinate to the property owner, also notifying the property owner that a hearing thereon shall be had before the auditor of said county on a day not less than ten nor more than fifteen days from the date of completed service of notice upon the property owner and if no petition for judicial review is filed in accordance with the terms of the Iowa administrative procedure Act at the time fixed in said notice the auditor shall hear and determine the matter. Judicial review of the order and determination of the auditor may be sought in accordance with the terms of the Iowa administrative procedure Act. For the purpose of coming within the judicial review provisions of the Iowa administrative procedure Act only, the auditor's order and determination under this section shall be deemed the action of the state fire marshal. [C24, 27, 31, 35, 39, §**1648**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.28]

Service of notice, R.C.P. 56(a)

100.29 Entry of tax. Said auditor shall enter said expense on the tax records of said county as a special charge against the real estate on which said building is or was situated, if in the name of such person, otherwise as a personal tax against such person, and the same shall be collected as other taxes and, when collected, shall, together with the penalty thereon, be refunded to the fire marshal, and by him paid into the state treasury where it shall be credited to the appropriation for expenses of the fire marshal's office. [C24, 27, 31, 35, 39,§**1649**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §100.29]

Collection of taxes, ch 445

100.30 Investigation may be private. Investigation by or under the direction of the state fire marshal or his designated subordinates may in their discretion be private. They may exclude from the place where such investigation is held all persons other than those required to be present, and witnesses may be kept separate from each other and not allowed to communicate with each other until they have been examined. [C24, 27, 31, 35, 39,§**1650**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.30]

100.31 Fire and tornado drills in public schools. It shall be the duty of the state fire marshal and his designated subordinates to require all private and public school officials and teachers to conduct not less than four fire drills and not less than four tornado drills in all school buildings during each school year when school is in session; and to require the officials and teachers of all schools to keep all doors and exits of their respective rooms and buildings unlocked when occupied during school hours or when such areas are being used by the public at other times. Not less than two drills of each type shall be conducted between July 1 and December 31 of each year and not less than two drills of each type shall be conducted between January 1 and June 30 of each year.

Every school building with two or more classrooms shall have a warning system for fires of a type approved by the Underwriters' Laboratories and by the state fire marshal. Said warning system shall be used only for fire drills or as a warning for emergency. Schools may modify the fire warning system for use as a tornado warning system or shall install a separate tornado warning system. Every school building shall also be equipped with first-aid fire extinguishers, with the type, size and number in accordance with National Fire Protection Association standards and approved by the state fire marshal.

The state fire marshal or his deputies shall cause each public or private school, college or university to be inspected at least once every two years to determine whether each school meets the fire safety standards of this Code and is free from other fire hazards. Provided, however, that cities which employ fire department inspectors shall cause such inspections to be made. [S13,§2468-k; C24, 27, 31, 35, 39,§**1651**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.31; 66GA, ch 1092,§1]

100.32 Bulletin. The state fire marshal may co-operate with any recognized agency in the education of the public in fire safety, but no money shall be expended for such purpose except it be specifically appropriated by the legislature for that purpose. Any such agency receiving appropriations of state money for fire safety purposes shall annually file with the auditor of the state an itemized statement of all its receipts and expenditures.

The state fire marshal may cause fire-safety information and educational material to be printed and distributed to schools, fire departments, or other interested persons or organizations. [S13,§2468-k; C24, 27, 31, 35, 39,§**1652**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.32]

100.33 Annual report. The state fire marshal shall file with the governor annually, at the time provided by law, a detailed report of his official acts and of the affairs of his office which report shall be published and distrib-

uted as the reports of other state officers. [S13,§2468-n; C24, 27, 31, 35, 39,§**1653**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§100.33]

Time of filing report, §17.4

100.34 Fee for fires reported. Every official reporting a fire to the state fire marshal as required by section 100.3 shall be paid the sum of one dollar for each fire so reported to the satisfaction of the state fire marshal and mileage expenses for each mile traveled to and from the place of fire when the vehicle used is not owned by a governmental unit. Said allowances shall be paid by the state fire marshal out of any funds appropriated for the use of the office of said state fire marshal, provided that such fees shall not be paid to any full-time salaried public official who is paid for full time at such duties. [S13,§2468-o; C24, 27, 31, 35, 39,§**1654**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §100.34]

Rate, see §79.9

100.35 Rules of marshal. The fire marshal shall adopt, amend, promulgate and enforce rules and standards relating to fire protection, fire safety and the elimination of fire hazards in churches, schools, hotels, theaters, amphitheaters, hospitals, health care facilities as defined in section 135C.1, boarding homes or housing, rest homes, dormitories, college buildings, lodge halls, club rooms, public meeting places, places of amusement, and all other buildings or structures in which persons congregate from time to time, whether publicly or privately owned. Any person, firm or corporation violating any of such rules of the fire marshal shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. Each day of the continuing violation of such rules after conviction shall be considered a separate offense. Appeals may be taken from such convictions as in other criminal cases. [C58, 62, 66, 71, 73, 75,§100.35]

Referred to in §§100.36, 100.37

100.36 Toxic extinguishers prohibited—exception. Toxic halogenated hydrocarbon and other fire extinguishers toxic in nature shall be prohibited for use in all those public buildings referred to in section 100.35 except, with approval of the state fire marshal, halogenated extinguishing systems may be used in extinguishing fires when an electrically nonconductive medium is essential or desirable, when cleanup of other media or technical equipment presents a problem, or when weight compared to extinguishing potential is a factor. [C66, 71, 73, 75,§100.36; 66GA, ch 1093,§1]

100.37 Setting fire to public building. Any person who shall, in a negligent manner, set fire to any part of a public building, as defined in section 100.35, or any contents thereof, as a result of which human life or property in such building is endangered, shall, upon conviction, be punished as provided in section 100.35.

In each public building, as defined in section 100.35, a plainly printed notice shall be kept posted in a conspicuous place advising the public of the provisions of this section. [C62, §100.36; C66, 71, 73, 75,§100.37]

See also §707.2

100.38 Conflicting statutes. Provisions of this chapter in conflict with the state building code shall not apply where the state building code has been adopted or when the state building code applies throughout the state. [C73, 75,§100.38]

100.39 Fire extinguishers in high-rise buildings. All buildings that are approved for construction, after August 15, 1975, that exceed four stories in height, or sixty-five feet above grade, shall require the installation of an approved automatic fire extinguishing system designed and installed in conformity with rules promulgated by the state fire marshal pursuant to this chapter.

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

1. Any noncombustible elevator storage structure or any noncombustible plant building with noncombustible contents.

2. Any combustible elevator storage structure that is equipped with an approved dry-pipe, nonautomatic sprinkler and automatic alarm system.

3. Buildings in existence or under construction on August 15, 1975. However, if subsequent to that date any building is enlarged or altered beyond the height limitations applicable to new buildings, such building in its entirety shall be subject to all the provisions of this section.

Plans and installation of systems shall be approved by the state fire marshal, a designee of the state fire marshal, or local authorities having jurisdiction. Except where local fire protection regulations are more stringent, the provisions of this section shall be applicable to all buildings, whether privately or publicly owned. The definition of terms shall be in conformity, insofar as possible, with definitions found in the state building code.

Any person violating the provisions of this section is guilty of a misdemeanor and shall, upon conviction, be subject to a fine not to exceed one hundred dollars or by imprisonment in the county jail for not more than thirty days, or be subject to both such fine and imprisonment. [66GA, ch 100,§1]

Indictable misdemeanor, §687.7
See also §100.8
State building code, §103A.7

CHAPTER 101

FLAMMABLE LIQUIDS AND LIQUEFIED PETROLEUM GASES

101.1 Rules by fire marshal.
101.2 Scope of rules.
101.3 Separate rules for liquids and gas.
101.4 Nonconforming use.
101.5 Publication of rules.
101.6 Ordinances by municipalities.
101.7 Penalty.
101.8 Assistance by local officials.

101.1 Rules by fire marshal. The state fire marshal is hereby empowered and directed to formulate and adopt and from time to time amend or revise and to promulgate, in conformity with and subject to the conditions set forth in this chapter, reasonable rules for the safe transportation, storage, handling and use of flammable liquids and liquefied petroleum gases. For purpose of this chapter: "Flammable liquid" means a liquid having a flash point below 200° F. and a Reid vapor pressure not exceeding forty p.s.i. absolute. "Liquefied petroleum gas" means material composed predominantly of any of the following hydrocarbons, or mixtures of the same: Propane, propylene, butanes (normal butane or isobutane) and butylenes. [C35,§§1655-g1, -g2,-g4; C39,§§**1655.1, 1655.2, 1655.4**; C46, 50, 54, §§101.1, 101.2; C58, 62, 66, 71, 73, 75,§101.1]

101.2 Scope of rules. The rules shall be in keeping with the latest generally recognized safety criteria for the materials covered of which the applicable criteria recommended and published from time to time by the National Fire Protection Association shall be prima-facie evidence. [C35,§1655-g2; C39,§**1655.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§101.2]

101.3 Separate rules for liquids and gas. The rules covering flammable liquids and those covering liquefied petroleum gas shall be separately formulated and separately promulgated. [C58, 62, 66, 71, 73, 75,§101.3; 66GA, ch 1094,§1]

101.4 Nonconforming use. The rules shall make reasonable provision under which facilities in service prior to the effective date of the regulations and not in strict conformity therewith may be continued in service unless the nonconformity is such as to constitute a distinct hazard to life or adjoining property; and for guidance in enforcement may delineate these types of nonconformity that should be considered distinctly hazardous, those that should not be considered distinctly hazardous and those the need for elimination of which should be evaluated in the light of local factors. As to any rule the need for compliance with which is conditioned on local factors, the rules shall provide, as a condition precedent to evaluation or issuance of a compliance order, for reasonable notice to the proprietor of the facility affected of intention to evaluate the need and of the time and place at which he may appear and offer evidence thereon. [C35,§1655-g3; C39,§**1655.3**; C46, 50, 54,§101.3; C58, 62, 66, 71, 73, 75,§101.4]

101.5 Publication of rules. The rules shall be promulgated pursuant to chapter 17A, only after a public hearing at least twenty days' notice of the time and place of which is given by publication in a newspaper of general circulation throughout the state and by mail to any person who has filed his name and address with the state fire marshal for the purpose of receiving the notice. [C58, 62, 66, 71, 73, 75,§101.5]

101.6 Ordinances by municipalities. Rules promulgated pursuant to this chapter shall have uniform force and effect throughout the state and no municipality or political subdivision shall enact or enforce any ordinance or regulation inconsistent or not in keeping with the state-wide rules. Provided that nothing in this chapter shall in any way impair the power of any municipality when authorized by other law to regulate the use of land by comprehensive zoning or to control the construction of buildings and structures under building codes or restricted fire district regulations. Provided, further, that the size, weight and cargo carried by vehicles used in the transportation or delivery of flammable liquids or liquefied petroleum gas shall be governed by the uniform provisions of the motor vehicle and highway traffic laws of this state and local ordinances therein authorized. [C58, 62, 66, 71, 73, 75,§101.6]

101.7 Penalty. Any person, firm or corporation violating any of the rules promulgated under this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. Each day of the continuing violation of such rules after conviction shall be considered a separate offense. Appeals may be taken from such convictions as in other criminal cases. [C35,§§1655-g3,-g4; C39,§§**1655.3, 1655.4**; C46, 50, 54,§§101.2, 101.4; C58, 62, 66, 71, 73, 75,§101.7]

101.8 Assistance by local officials. The chief fire prevention officer of every city or village having an established fire prevention department, the chief of the fire department of every other city or village in which a fire department is established, the mayor of every city in which no fire department exists, the township clerk of every township outside the limits of any city or village and all other local officials upon whom fire prevention duties are imposed by law shall assist the state fire marshal in the enforcement of the rules. [C58, 62, 66, 71, 73, 75,§101.8]

CHAPTER 101A

EXPLOSIVE MATERIALS

101A.1 Definitions.
101A.2 Commercial license—how issued—violation.
101A.3 User's permit—how issued—violation.
101A.4 Refusal to grant license or permit—appeal.
101A.5 Rules.
101A.6 Notice of storage required.
101A.7 Inspection of storage facility.
101A.8 Report of theft or loss required.
101A.9 Disposal regulated.
101A.10 Persons and agencies exempt.
101A.11 Explosive materials exempt.
101A.12 Use of fees.
101A.13 Local ordinances.
101A.14 Criminal penalties.

101A.1 Definitions. As used in this chapter:

1. "Explosive" or "explosives" means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion, i.e., with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified by the United States department of transportation. The term "explosives" includes all material which is classified as class A, class B, and class C explosives by the United States department of transportation, and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse lighters, fuse igniters, squibs, cordeau detonative fuse, instantaneous fuse, igniter cord, igniters, smokeless propellant, cartridges for propellant-actuated power devices and cartridges for industrial guns, but shall not include "fireworks" as defined and regulated pursuant to sections 732.17 through 732.19 nor ammunition or small arms primers manufactured for use in shotguns, rifles, and pistols. Commercial explosives are those explosives which are intended to be used in commercial or industrial operations.

2. "Blasting agent" means any material or mixture consisting of a fuel and oxidizer, intended for blasting but not otherwise classified as an explosive, in which none of the finished products as mixed and packaged for use or shipment can be detonated by means of a number eight test blasting cap when unconfined.

3. "Commercial license" or "license" means a license issued by the commissioner of public safety pursuant to this chapter.

4. "Licensee" means a person holding a commercial license issued by the commissioner of public safety pursuant to this chapter.

5. "User's permit" or "permit" means a permit issued by a county sheriff or chief of police of a city of ten thousand or more population, pursuant to this chapter.

6. "Permittee" means a person holding a user's permit issued pursuant to this chapter.

7. "Import" and "importation" means transfer into the state of Iowa.

8. "Explosive materials" means explosives or blasting agents.

9. "Magazine" means any building or structure, other than an explosives manufacturing building, approved by the commissioner of public safety or his designated agent for the storage of explosive materials.

10. "Person" means any individual, corporation, partnership, or association. [C73, 75, §101A.1]

101A.2 Commercial license — how issued — violation.

1. The commissioner of public safety shall issue commercial licenses for the manufacture, importation, distribution, sale, and commercial use of explosives to persons who, in the commissioner's discretion are of good character and sound judgment, and have sufficient knowledge of the use, handling, and storage of explosive materials to protect the public safety. Licenses shall be issued for a period of one year, but may be issued for shorter periods, and may be revoked or suspended by the commissioner of public safety for any of the following reasons:

a. Falsification of information submitted in the application for a license.

b. Proof that the licensee has violated any provisions of this chapter or any rules prescribed by the commissioner of public safety pursuant to the provisions of this chapter.

2. Licenses shall be issued by the commissioner of public safety upon payment to him of a fee of sixty dollars, valid for a period of one calendar year, commencing on January 1 and terminating on December 31; however, an initial license may be issued during any calendar year for the number of months remaining in such calendar year, computed to the first day of the month when the application for the license is approved. The license fee shall be charged on a pro rata basis for the number of months remaining in the year of issue. Applications for renewal of licenses shall be submitted within thirty days prior to the license expiration date and shall be accompanied by payment of the prescribed annual fee.

3. Except as permitted in section 101A.3 and sections 101A.9 to 101A.11, it shall be unlawful for any person to willfully manufacture, import, store, detonate, sell, or otherwise transfer any explosive materials unless such person

is the holder of a valid license issued pursuant to this section.

4. Commercial dealers having a federal firearms license shall be exempt from the requirement or the commercial license requirement of this chapter for importation, distribution, sale, transportation, storage and possession of smokeless powder propellants or black sporting powder propellants provided that such dealer must conform and comply to rules, or ordinances of federal, state or city authorities having jurisdiction of such powder. [C73, 75,§101A.2]

Referred to in §§101A.3(3), 101A.12, 101A.14

101A.3 User's permit — how issued — violation.

1. User's permits to purchase, possess, transport, store, and detonate explosive materials shall be issued by the sheriff of the county or the chief of police of a city of ten thousand population or more where the possession and detonation will occur. If the possession and detonation are to occur in more than one county or city, then such permits must be issued by the sheriff or chief of police of each of such counties or cities, except in counties and cities in which the explosives are possessed for the sole purpose of transporting them through such counties and cities. A permit shall not be issued unless the sheriff or chief of police having jurisdiction is satisfied that possession and detonation of explosive materials is necessary to the applicant's business or to improve his property. Permits shall be issued only to persons who, in the discretion of the sheriff or chief of police, are of good character and sound judgment, and have sufficient knowledge of the use and handling of explosive materials to protect the public safety. The commissioner of public safety shall prescribe, have printed, and distribute permit application forms to all local permit issuing authorities.

2. The user's permit shall state the quantity of explosive materials which the permittee may purchase, the amount he may have in his possession at any one time, the amount he may detonate at any one time, and the period of time during which the purchase, possession, and detonation of explosive materials is authorized. The permit shall also specify the place where detonation may occur, the location and description of the place where the explosive materials will be stored, if such be the case, and shall contain such other information as may be required under the rules and regulations of the commissioner of public safety. The permit shall not authorize purchase, possession, and detonation of a quantity of explosive materials in excess of that which is necessary in the pursuit of the applicant's business or the improvement of his property, nor shall such purchase, possession, and detonation be authorized for a period longer than is necessary for the specified purpose. In no event shall the permit be valid for more than thirty days from date of issuance but it may be renewed upon proper showing of necessity.

3. The user's permit may be revoked for any of the reasons specified in section 101A.2, subsection 1, for suspension or revocation of a commercial license.

4. It shall be unlawful for a person to willfully purchase, possess, transport, store, or detonate explosive materials unless such person is the holder of a valid permit issued pursuant to this section or a valid license issued pursuant to section 101A.2.

5. The sheriff or the chief of police shall charge a fee of three dollars for each permit issued. The money collected from permit fees shall be deposited in the general fund of the county or the city. [C73, 75,§101A.3; 66GA, ch 101,§1]

Referred to in §§101A.2, 101A.14

101A.4 Refusal to grant license or permit— appeal.

1. Judicial review of the action of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act.

2. A person who is refused issuance of a user's permit by a local permit issuing authority may appeal the authority's decision to the county board of supervisors or the city council of the county or city where the permit is sought, and de novo to the district court. [C73, 75,§101A.4]

101A.5 Rules. The commissioner of public safety shall prepare, adopt, and distribute to permit issuing authorities and other interested persons, without cost, rules in accordance with provisions of chapter 17A, pertaining to the manufacture, transportation, storage, possession, and use of explosive materials. Rules adopted by the commissioner of public safety shall be compatible with, but not limited to the National Fire Protection Association's pamphlet number 495 and federal rules pertaining to commerce, possession, storage, and use of explosive materials. Such rules shall:

1. Prescribe reasonable standards for the safe transportation and handling of explosive materials so as to prevent accidental fires and explosions and prevent theft and unlawful or unauthorized possession of explosive materials.

2. Prescribe procedures and methods of inventory so as to assure accurate records of all explosive materials manufactured or imported into the state and records of the disposition of such explosive materials, including records of the identity of persons to whom sales and transfers are made, and the time and place of any loss or destruction of explosive materials which might occur.

3. Prescribe reasonable standards for the safe storage of explosive materials as may be necessary to prevent accidental fires and explosions and prevent thefts and unlawful or unauthorized possession of explosive materials.

4. Require such reports from licensees, permittees, sheriffs, and chiefs of police as may be necessary for the commissioner of public

safety to discharge his duties pursuant to this chapter.

5. Prescribe the form and content of license and permit applications.

6. Conduct such inspections of licensees and permittees as may be necessary to enforce the provisions of this chapter. [C73, 75,§101A.5]

101A.6 Notice of storage required. A licensee shall notify the sheriff of the county and the local police authority of any city in which explosive materials will be stored, and shall also notify such authorities when the storage is terminated. [C73, 75,§101A.6]

Referred to in §101A.14

101A.7 Inspection of storage facility. The licensee's or permittee's explosive storage facility shall be inspected at least once every six months by either the sheriff of the county where the facility is located or by the local police authority if the facility is located within a city of over ten thousand population. The facility may be examined at other times by the sheriff if he considers it necessary.

If the sheriff or local police authority find the facility to be improperly secured, the licensee or permittee shall immediately correct the improper security and, if not so corrected, the sheriff or local police authority shall immediately confiscate the stored explosives. If the explosives are confiscated by the local police authority, they shall be delivered to the sheriff. The sheriff shall hold confiscated explosives for a period of thirty days under proper security unless the period of holding is shortened pursuant to this section.

If the licensee or permittee corrects the improper security within such thirty-day period, the explosives shall be returned to the licensee or permittee after he has made such correction and after he has paid into the county fund an amount equal to the expense incurred by the county in storing the explosives during the period of confiscation. The amount of such expense shall be determined by the sheriff.

If the improper security is not corrected during the thirty-day period, the sheriff shall deliver the explosives to the fire marshal for disposal and the license or permit shall be canceled. Such canceled license or permit shall not be reissued for a period of two years from the date of cancellation.

The licensee or permittee may obtain possession of the explosives from the sheriff during the thirty-day period for the purpose of disposing of them. The disposal procedure shall conform to the provisions of section 101A.9. The licensee or permittee shall first pay into the county fund an amount equal to the expense incurred by the county in storing the explosives during the period of confiscation. The amount of the expense shall be determined by the sheriff. [C73, 75,§101A.7]

101A.8 Report of theft or loss required. Any theft or loss of explosive materials, whether from a storage magazine, a vehicle in which they are being transported, or from a site on which they are being used, or from any other location, shall immediately be reported by the person authorized to possess such explosives to the local police or county sheriff. The local police or county sheriff shall immediately transmit a report of such theft or loss of explosive materials to the commissioner of public safety. [C73, 75,§101A.8]

Referred to in §101A.14

101A.9 Disposal regulated. No person shall abandon or otherwise dispose of any explosives in any manner which might, as the result of such abandonment or disposal, create any danger or threat of danger to life or property. Any person in possession or control of explosives shall, when the need for such explosives no longer exists, dispose of them in accordance with rules prescribed by the commissioner of public safety. [C73, 75,§101A.9]

Referred to in §§101A.2, 101A.7, 101A.14

101A.10 Persons and agencies exempt. This chapter shall not apply to the transportation and use of explosive materials by the regular military or naval forces of the United States, the duly organized militia of this state, representatives of the state fire marshal, the Iowa highway safety patrol, division of criminal investigation and bureau of identification, local police departments, sheriffs departments, and fire departments acting in their official capacity; nor shall this chapter apply to the transportation and use of explosive materials by any peace officer to enforce provisions of this chapter when he is acting pursuant to such authority, however, other agencies of the state or any of its political subdivisions desiring to purchase, possess, transport, or use explosive materials for construction or other purposes shall be required to obtain user's permits. [C73, 75,§101A.10]

Referred to in §101A.2

101A.11 Explosive materials exempt. This chapter shall not apply to the possession or use of twenty-five pounds or less of smokeless powder, or five pounds or less of black sporting powder, provided that:

1. Smokeless powder is intended for handloading or reloading of ammunition for small arms with bores equivalent to ten gauge or less.

2. Black sporting powder is intended for handloading or reloading ammunition for small arms with bores equivalent to ten gauge or less, loading black ammunition, loading cap and ball revolvers, loading muzzle loading arms, or loading muzzle loading cannon.

3. All such powder is for private use and not for commercial resale, and in the case of black sporting powder or smokeless powder the sharing with or disposition to another person is permitted if otherwise lawful.

4. The storage, use, and handling of smokeless and black powder conforms to rules or ordinances of authorities having jurisdiction for fire prevention and suppression purposes in the area of such storage, use, and handling. [C73, 75,§101A.11]

Referred to in §101A.2

101A.12 Use of fees. The fees collected by the commissioner of public safety in issuing licenses shall be deposited in a special fund in the state treasury to be used by the commissioner in administering and enforcing the provisions of this chapter. However, one-sixth of the commercial license fee established under section 101A.2 shall be paid by the treasurer of state to the general fund of the county or city for each storage facility inspected by the sheriff or the police authority of such city. [C73, 75,§101A.12; 66GA, ch 101, §2]

101A.13 Local ordinances. Nothing in this chapter shall limit the authority of cities to impose additional regulations governing the storage, handling, use, and transportation of explosive materials within their respective corporate limits, however, such regulations shall be at least as stringent as and not inconsistent with the provisions of this chapter and the rules promulgated pursuant to this chapter. [C73, 75,§101A.13]

101A.14 Criminal penalties.

1. Any person who violates the provisions of section 101A.2, subsection 3, or section 101A.3, subsection 4, commits a public offense and, upon conviction, shall be punished by imprisonment in the penitentiary for a term not to exceed fifteen years, or fined not to exceed five thousand dollars, or by both such imprisonment and fine.

2. Any person who violates the provisions of sections 101A.6, 101A.8 or 101A.9 or any of the rules adopted by the commissioner of public safety pursuant to the provisions of this chapter, commits a public offense and, upon conviction, shall be punished by imprisonment in the county jail not to exceed thirty days, or fined not to exceed one hundred dollars. [C73, 75,§101A.14]

CHAPTER 102

FIRE COMPANIES

102.1 Exemptions of members.
102.2 Certificate of service—evidence.
102.3 Repealed by 65GA, ch 136,§401.
102.4 False claim to exemption.

102.1 Exemptions of members. Any person while an active member of any fire engine, hook and ladder, hose, or any other company for the extinguishment of fire, or the protection of property at fires, under the control of the corporate authorities of any city, shall be exempt from serving as a juror. Any person who has been an active member of such company in any city as aforesaid, and has faithfully discharged his duties as such for the term of ten years, shall thereafter be exempt from serving as a juror. [R60,§1763; C73,§1560; C97,§2462; C24, 27, 31, 35, 39,§1656; C46, 50, 54, 58, 62, 66, 71, 73, 75,§102.1]

102.2 Certificate of service—evidence. Any person who has thus served in any company for the term of ten years shall receive from the foreman of the company of which he shall have been a member a certificate to that effect, and on its presentation to the clerk he shall file the same in his office and give his certificate, under the corporate seal, to such person, setting forth the name of the company of which such person was a member and the duration of such membership, which certificate shall be received in all courts as evidence that the person legally holding the same is entitled to such exemption. [R60,§1764; C73,§1561; C97, §2463; C24, 27, 31, 35, 39,§1657; C46, 50, 54, 58, 62, 66, 71, 73, 75,§102.2]

102.3 Repealed by 65GA, ch 136,§401.

102.4 False claim to exemption. Any person who shall by misrepresentation, or by the use of a false certificate or the certificate of any other person, endeavor to avail himself of the benefits of this chapter, upon conviction thereof, shall be imprisoned in the county jail for a period of not more than six nor less than one month, and pay a fine of not less than ten nor more than one hundred dollars. [R60, §1765; C73,§1563; C97,§2465; C24, 27, 31, 35, 39, §1659; C46, 50, 54, 58, 62, 66, 71, 73, 75,§102.4]

CHAPTER 103

FIRE ESCAPES AND OTHER MEANS OF ESCAPE FROM FIRE

103.1 Fire escapes.
103.2 Terms defined.
103.3 Fire escapes required.
103.4 Location of fire escapes and exits.
103.5 How constructed.
103.6 Construction and arrangement.
103.7 Class of escapes—stairways.
103.8 Doors to open outward.
103.9 Number and size of exits.
103.10 Supervision of fire escapes.
103.11 Standard specifications.
103.12 Rules.
103.13 Building inspectors.
103.14 Powers and duties.
103.15 Notice to owner.
103.16 Appeal.
103.17 Violations.
103.18 Conflicting statutes.

103.1 Fire escapes. Every church, school, hotel, theater, amphitheater, asylum, hospital, health care facility as defined in section 135C.1, college or university building, lodge hall, club room, public meeting place, and all other structures in which persons congregate from time to time, whether publicly or privately owned, shall have at least two means of exit from each story. All such buildings shall be equipped with such protection from fire, and means of escape therefrom, as in this chapter provided.

After the thirty-first day of December, 1957, every such new or remodeled building, except private one- or two-family dwellings and farm buildings, shall have at least two means of exit from each story and shall be equipped with such protection from fire, and means of escape therefrom, as in this chapter provided. [SS15,§4999-a6; C24, 27, 31, 35, 39,§**1660**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§103.1]

Referred to in §103.3

103.2 Terms defined. The word "building" as used in this chapter shall include all structures or enclosures of each of the classes mentioned or referred to herein. The word "story" shall include a basement story when such basement story is on the average five feet or more above the ground. The word "exit" shall mean a doorway or doorways or windows, or such doorways together with connecting hallways or stairways, either interior or exterior, or fire escapes, by means of which occupants may proceed safely from a room or space to a street or to a space which provides safe access to a street. Two or more separate exit ways may use the same corridor or hallway. [SS15,§4999-a6; C24, 27, 31, 35, 39,§**1661**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§103.2]

103.3 Fire escapes required. In addition to the requirements of section 103.1, every building coming under the provisions of this chapter shall have at least the number of exits of the kind prescribed by law and as determined by the following formula:

Number of exits shall equal C times P.

P equals the average maximum number of persons on the story with the highest number above the first story.

C is a coefficient and is fixed, and shall be taken for the various classes of buildings as follows:

1. Buildings having wooden or combustible walls, C equals .020.

2. Buildings having brick or combustible walls with combustible interior, C equals .014.

3. Buildings having brick or incombustible walls and incombustible roof and slow-burning construction, C equals .012.

4. Buildings of fireproof construction throughout, C equals .007.

5. Buildings of wooden or combustible walls equipped with efficient water sprinkler system, C equals .014.

6. Buildings having brick or incombustible walls with combustible interior equipped with efficient water sprinkler system, C equals .008.

7. Buildings having brick or incombustible walls and incombustible roof and slow-burning construction equipped with efficient water sprinkler system, C equals .006.

8. Fireproof buildings equipped with efficient water sprinkler system, C equals .003.

Nothing in this chapter shall be construed to permit less than two exits from each story of every building except private one- or two-family dwellings and farm buildings. When the result of said formula is two or less than two, the number of exits shall be two. The number of additional exits required shall include any fraction as a unit, except when such fraction shall be thirty-three hundredths or less, in which case the fraction may be dropped if permitted by the inspector. [SS15,§4999-a7; C24, 27, 31, 35, 39,§**1662**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§103.3]

103.4 Location of fire escapes and exits. The following regulations as to location of fire escapes and exits are hereby established:

1. The second exit required by law shall be placed as far as possible from the existing inside stairway or passage to the lower floors of the building, taking into account the hazard and the path or route of access to the escape from such stairway.

2. The distance to the nearest fire escape from any inside stairway or passage to the lower floor shall not exceed two hundred feet

by way of the path or route of access to such fire escape from such stairway or passage.

3. Additional fire escapes to those otherwise provided by law shall be provided wherever it is necessary to pass within twenty feet of any stairway or elevator shaft from any portion of the building more than twenty feet from such stairway or shaft to reach the fire escape required by the provisions of law and where there are peculiar, unusual, or extreme hazards, additional fire escapes may be required by those authorized by law to regulate and fix the number and requirements of fire escapes.

4. When the inspector shall deem it necessary on account of the height of any building or on account of the number of persons ordinarily occupying said building, either permanently or temporarily in the course of business, such building shall be equipped with a sufficient number of fire escapes to permit the exit of all occupants within the following periods of time:

a. Buildings with wooden or combustible walls, two minutes.

b. Buildings having brick or incombustible walls with combustible interior, three minutes.

c. Buildings having brick or incombustible walls and incombustible roof and slow-burning interior construction, four minutes.

d. Buildings of fireproof construction throughout, fifteen minutes; or a less period of time if hazard of merchantable contents of such building may so require.

In estimating the period of time required the rate of descent on the fire escapes shall not be taken in excess of one and five-tenths feet of vertical distance, or height, per second, when said fire escapes are fully loaded, which rate of descent shall be estimated to permit the exit of not to exceed one person per second; but the time of complete exit as herein provided may be increased where efficient sprinkler systems are installed, such increase of time to be determined by the character and efficiency of the sprinkling system unless peculiar or unusual hazards exist. [SS15,§4999-a7; C24, 27, 31, 35, 39,§**1663**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§103.4]

103.5 How constructed. All fire escapes shall be constructed as described in the following classifications:

Class A. Fire escapes of this class shall consist of those more safe and efficient than outside ladders and stairways and which shall have been approved as such by the state fire marshal, and may include inside stairways and means of escape in fireproof buildings when approved by said fire marshal.

Class B. Fire escapes of this class shall consist of a suitable outside stairway of not less than twenty-two inches clear width of steel or wrought iron constructed with platform and with stationary stairway carried down to within six and one-half feet of the ground, or with a drop or counterbalanced stairway from the second story platform or balcony to the ground.

Class C. Fire escapes of this class shall consist of at least one ladder, not less than eighteen inches in width, of steel or wrought iron construction, of sufficient size and strength for safety, attached to the outside walls of the building and provided with platforms of steel or wrought iron enclosed by suitable railings and of such dimensions and in such proximity to the windows of each story above the first as to render access to the ladder from each story easy and safe, the said ladder to extend to within six and one-half feet of the ground or to be provided with a drop ladder hung at the second story in such a manner that it can be easily lowered for use. [SS15,§4999-a8; C24, 27, 31, 35, 39,§**1664**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §103.5]

103.6 Construction and arrangement.

1. All of the above classes of fire escapes shall be of suitable material, construction, arrangement, and location to make the same safe and efficient and no fire escape of a higher class shall be less safe and efficient than one of a lower class and the provisions of each lower class with respect to platform, access to windows and openings, and sufficiency of strength shall apply to the upper class except where allowed to be modified by those having authority.

2. All fire escapes reaching the top floor shall have suitable extensions reaching from the upper platform to safe landing on the roof of the building; but the state fire marshal may waive this provision when on examination he finds that such ladder would be an element of danger.

3. All fire escapes of any of the foregoing classes shall have such windows or openings leading to the platform or balconies of the same as shall be necessary to make the same safe and efficient, and all routes or paths of access to said fire escapes shall be safe and sufficient, with all doors of rooms leading to fire escapes one-half glass and equipped with mortise latches or equivalent so that the same may be easily and quickly opened by breaking the glass and turning the latches from the inside of the doors, all so as to render access to the fire escape from each floor above the first easy and safe. No window or door leading to the platform of a fire escape shall be fastened against exit.

4. The attachment of all fire escapes shall be made in a thorough and substantial manner and sufficient to carry the full load that may be placed on said fire escapes when the same are crowded, with a factor of safety of not less than four.

5. Suitable signs indicating the location of fire escapes shall be posted at all entrances to elevators, stairways, landings, and in all rooms.

6. In all buildings which are used for lodging or sleeping purposes, and in opera houses,

theaters, and public assembly halls, and other buildings occupied or used at night where, in the judgment of the state fire marshal, this provision should apply, red lights shall be maintained at night or when the buildings are darkened, to indicate the place or opening through which access to the fire escape is obtained. Red lights shall not be used for lighting purposes in such buildings at locations where they may be mistaken for an exit light. [SS15,§4999-a8; C24, 27, 31, 35, 39,§**1665**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§103.6]

103.7 Class of escapes—stairways.

1. Hotels, lodging houses, tenements, apartment buildings, schools, retail or department stores, seminaries, college buildings, office buildings, hospitals, asylums, opera houses, theaters, assembly halls, and factories required by law to be equipped with fire escapes shall be equipped with those of class "A" or class "B". All other buildings and structures required to be equipped with fire escapes shall be equipped with those of class "A", "B" or "C", or with a combination of such classes.

2. Class "C" shall not be used on any building over three stories in height in which more than five persons are at any one time allowed upon any one of the floors above said third story nor where any of the persons allowed upon any floor above the third story are minors; but the state fire marshal may under peculiar conditions and where the hazards are not great:

a. Permit fire escapes of class "C" to be used on buildings of more than three stories, but when ladder fire escapes are permitted on buildings more than three stories in height the ladders thereof must offset at the platforms and must not continue in the same line for more than one story.

b. Permit fire escapes of class "C" or other approved means of escape to be used on an ordinary dwelling of not more than three stories in height and temporarily used in part for lodging purposes when not more than five persons, none of whom are under sixteen years of age, occupy the third floor.

3. Where stairways not less than forty-four inches in clear width are provided they shall be taken as the equivalent of two or more single stairways in proportion to their width, provided the means of escape and efficiency and safety of said escapes are not thereby diminished. [SS15,§4999-a9; C24, 27, 31, 35, 39, §**1666**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§103.7]

103.8 Doors to open outward. The entrance and exit doors of all hotels, churches, lodge halls, courthouses, assembly halls, theaters, opera houses, colleges, public schoolhouses, and other structures where the hazard is deemed sufficient by the inspector, and the entrance doors to all class and assembly rooms in public school buildings, shall open outward and shall not be fastened against exit or so the same cannot be easily opened from within. [SS15,§4999-a9a; C24, 27, 31, 35, 39,§**1667**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§103.8]

103.9 Number and size of exits. Inspectors shall, subject to the final decision of the state fire marshal, have power to determine the number and size of exits from all theaters, opera houses, and assembly halls, and from other buildings having one or more balconies, the location of such exits with reference to fire escapes, and shall require that no exit shall be fastened so as to prevent free passage from the building. [SS15,§4999-a10; C24, 27, 31, 35, 39,§**1668**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§103.9]

103.10 Supervision of fire escapes. The state fire marshal, except when otherwise specially provided by law, shall have general charge and supervision of the inspection and regulation of fire escapes and means of escape and of the enforcement of the law relating thereto, and for this purpose the inspectors named herein, and others upon whom there is imposed by law or ordinance any duty with reference to fire escapes, shall be subject to his direction and to the rules adopted by such state fire marshal. [SS15,§4999-a10; C24, 27, 31, 35, 39,§**1669**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §103.10]

Fire escapes, §§100.11, 170.38, 413.36

103.11 Standard specifications. The said state fire marshal shall adopt standard uniform specifications for the various classes of fire escapes provided by law and shall furnish such specifications to all persons who are by law made inspectors of fire escapes and means of escape from fire, and such persons shall keep the same on file in their respective offices. [SS15,§4999-a10; C24, 27, 31, 35, 39,§**1670**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§103.11]

103.12 Rules. The state fire marshal shall make all necessary rules to carry out the purpose of this law and have the same printed in pamphlet form for distribution; and he shall have the power to approve any and all plans relating to fire escapes of the various classes, and it shall be his duty to see that the same conform to the law, and to make rulings and orders relative thereto, and where any dispute or disagreement arises with respect to the plans and specifications for any fire escape or means of escape from fire, the state fire marshal shall have the power and authority to determine and pass upon the same and make orders relative thereto. [SS15,§4999-a10; C24, 27, 31, 35, 39,§**1671**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§103.12]

103.13 Building inspectors. The building inspector or other officer performing like duties in cities having such officer, and if there be no such officer, then the chief of the fire department, and if there be no chief of a paid fire department, the mayor of such city, or if the building is not within the corporate limits of any city, then the chairman of the board of supervisors, shall inspect all fire

escapes within their respective jurisdictions, except buildings otherwise required by law to be inspected. [SS15,§4999-a10; C24, 27, 31, 35, 39,§1672; C46, 50, 54, 58, 62, 66, 71, 73, 75, §103.13]

103.14 Powers and duties. Such inspection officers shall as often as necessary, and whenever complaint is made, carefully inspect and examine such fire escapes, and such inspection shall include all paths or routes between any interior passage to a lower floor and the opening and means of access to the said fire escapes, and the signs, lights, exits, and means of escape of all buildings required to be equipped with fire escapes and required to have certain exits and means of escape; and upon the complaint of any person that any fire escape, exit, or means of escape from fire is being maintained contrary to law, or any rule or regulation relative thereto or relative to protection against fire is being violated, such inspector shall examine into the conditions complained of and determine what, if any, requirements should be made in relation thereto, and shall have power to make all reasonable requirements and regulations in conformity with the law and to determine all matters with respect to fire escapes, protection from fire, and means of escape from buildings. [SS15,§4999-a10; C24, 27, 31, 35, 39,§1673; C46, 50, 54, 58, 62, 66, 71, 73, 75,§103.14]

103.15 Notice to owner. It shall be the duty of any inspector required by law to inspect fire escapes or means of escape from fire to serve or cause to be served a written notice in behalf of the state of Iowa upon the owner, if he be a resident of the county in which the buildings are situated, or if he be a nonresident of such county, then upon his agent or lessee, that the buildings are not provided with fire escapes in accordance with the provisions of this chapter, or that the fire escapes or means of escape from fire are defective, unsafe, or dangerous, notifying such owner of such lack of fire escapes, condition of the building, defective, dangerous, or unsafe means of escape from fire or any matter relating thereto, and notifying him to comply with the law and requirements of the state fire marshal within sixty days after the service of such notice; but the time of such notice may be extended by the state fire marshal if necessary. [SS15,§4999-a10; C24, 27, 31, 35, 39,§1675; C46, 50, 54, 58, 62, 66, 71, 73, 75,§103.15]

103.16 Appeal. The owner, by himself, his agent, or lessee, may appeal from the action or requirement of any inspector at any time within sixty days after the service of such notice by a written communication addressed to said state fire marshal, setting forth such objections as he may have to the complaint, requirement, or regulations of such inspector; and it shall be the duty of the state fire marshal to pass upon and determine all matters of disagreement relating to fire escapes and the means of escape from fire in buildings, and all rules, regulations, findings, and orders made by the state fire marshal in his discretion, shall be reasonable and not unduly burdensome. [SS15,§4999-a10; C24, 27, 31, 35, 39,§1676; C46, 50, 54, 58, 62, 66, 71, 73, 75,§103.16]

103.17 Violations. Any person who shall violate any of the provisions of law relating to fire escapes, or means of escape from fire, or any owner, agent, or trustee having the full care and control of any building and who has been served with notice as provided herein and who shall, within sixty days of the service of the notice, or within the time as extended by the state fire marshal, fail and neglect to comply with the requirements of law, or of the state fire marshal, or who shall fail, refuse, or neglect to perform any order or requirement fixed by law, or by the state fire marshal, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. Each additional week of neglect to comply with such notice, order, or requirement shall constitute a separate offense. [SS15,§4999-a11; C24, 27, 31, 35, 39,§1677; C46, 50, 54, 58, 62, 66, 71, 73, 75,§103.17]

103.18 Conflicting statutes. Provisions of this chapter in conflict with the state building code shall not apply where the state building code has been adopted or when the state building code applies throughout the state. [C73, 75,§103.18]

CHAPTER 103A

STATE BUILDING CODE

Referred to in §601E.6

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103A.1 Establishment. This chapter shall be known as the "State Building Code Act". [C73, 75,§103A.1]

103A.2 Statement of policy. It is found and declared that some governmental subdivisions do not have building codes and that the building codes which do exist in the governmental subdivisions of this state, as enacted and applied, are not uniform and impede the utilization of new and improved technology, techniques, methods, and materials in the manufacture and construction of buildings and structures.

Therefore, it is the policy of the state of Iowa to insure the health, safety, and welfare of its citizens through the promulgation and enforcement of a state building code. [C73, 75, §103A.2]

103A.3 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Commissioner"* means the state building code commissioner created by this chapter.

2. *"Council"* means the state building code advisory council created by this chapter.

3. *"Board of review"* or *"board"* means the state building code board of review created by this chapter.

4. *"Governmental subdivision"* means any city, county, or combination thereof.

5. *"Building regulations"* means any law, by-law, rule, resolution, regulation, ordinance, or code or compilation enacted or adopted, by the state or any governmental subdivision, including departments, boards, bureaus, commissions or other agencies, relating to the construction, reconstruction, alteration, conversion, repair or use of buildings and installation of equipment therein. The term shall not include zoning ordinances or subdivision regulations.

6. *"Local building regulations"* means building regulations adopted by a governmental subdivision.

7. *"Local building department"* means an agency of any governmental subdivision charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates and similar documents, prescribed or required by state or local building regulations.

8. *"State agency"* means a state department, board, bureau, commission, or agency of the state of Iowa.

9. *"Building"* means a combination of any materials, whether portable or fixed, to form a structure affording facilities or shelter for persons, animals or property. The word "building" includes any part of a building unless the context clearly requires a different meaning.

10. *"Structure"* means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner except transmission and distribution structures of public utilities. The word "structure" includes any part of a structure unless the context clearly requires a different meaning.

11. *"Equipment"* means plumbing, heating, electrical, ventilating, conditioning, refrigerating equipment, elevators, dumb waiters, escalators, and other mechanical facilities or installations.

12. *"Factory-built structure"* means any structure which is, wholly or in substantial part, made, fabricated, formed, or assembled in manufacturing facilities for installation or assembly and installation, on a building site.

13. *"Manufacture"* is the process of making, fabricating, constructing, forming, or assembling a product from raw, unfinished, or semi-finished materials.

14. *"Installation"* means the assembly of factory-built structures on site and the process of affixing factory-built structures to land, a foundation, footings, or an existing building.

15. *"Construction"* means the construction, erection, reconstruction, alteration, conversion, repair, equipping of buildings, structures or facilities, and requirements or standards relating to or affecting materials used in connection therewith, including provisions for safety and sanitary conditions.

16. *"Owner"* means the owner of the premises, a mortgagee or vendee in possession, an assignee of rents, or a receiver, executor, trustee, lessee or other person in control of a building or structure.

17. *"State building code"* or "code" means the state building code provided for in section 103A.7.

18. *"Performance objective"* establishes design and engineering criteria without reference to specific methods of construction. [C73, 75,§103A.3]

103A.4 Commissioner. The director of the division of municipal affairs, in the office for planning and programming shall, in addition to his other duties, serve as the state building code commissioner, or may designate a building code commissioner. [C73, 75,§103A.4]

103A.5 Commissioner—duties. The commissioner shall:

1. Employ the necessary staff and assistants, within the limit of available funds, to assist in carrying out the provisions of this chapter.

2. Appoint necessary consultants and advisors to assist the commissioner in carrying out the provisions of this chapter.

3. Study the operation of the state building code, local building regulations, and other laws relating to the construction of buildings or structures to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health, safety, and welfare.

4. Do all things necessary or desirable to further and effectuate the general purposes and specific objectives of this chapter.

5. Administer and enforce the provisions of chapter 104A. [C73, 75,§103A.5]

103A.6 Merit system. Employees of the commissioner shall, where required by federal statutes, be covered by the provisions of chapter 19A. [C73, 75,§103A.6]

103A.7 State building code. The state building code commissioner with the approval of the advisory council is hereby empowered and directed to formulate and adopt and from time to time amend or revise and to promulgate, in conformity with and subject to the conditions set forth in this chapter, reasonable rules designed to establish minimum safeguards in the erection and construction of buildings and structures, to protect the human beings who live and work in them from fire and other hazards, and to establish regulations to further protect the health, safety and welfare of the public.

The rules shall include reasonable provisions for the following:

1. The installation of equipment.

2. The standards or requirements for materials to be used in construction.

3. The manufacture and installation of factory-built structures.

4. Protection of the health, safety, and welfare of occupants and users.

5. The accessibility and use by physically handicapped and elderly persons, of buildings, structures and facilities which are constructed and intended for use by the general public.

These rules shall comprise and be known as the state building code. [C73, 75,§103A.7]

Referred to in §§103A.3(17), 103A.14, 104A.6

103A.8 Standards. The state building code shall as far as practical:

1. Provide uniform standards and requirements for construction, construction materials, and equipment through the adoption by reference of applicable national codes where appropriate and providing exceptions when necessary. The rules adopted shall include provisions imposing requirements reasonably consistent with or identical to recognized and accepted standards contained in performance criteria as developed by nationally recognized model codes such as the model codes prepared by the Building Officials Conference of America, the International Conference of Building Officials, the Southern Building Codes Congress, the National Fire Protection Association, the American National Standards Institute, the American Insurance Association, the United States Department of Housing and Urban Development, the American Standards Association, and the International Association of Plumbing and Mechanical Officials.

2. Establish such standards and requirements in terms of performance objectives.

3. Establish as the test of acceptability, adequate performance for the intended use.

4. Permit the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction without substantially affecting reasonable requirements for the health, safety, and welfare of the occupants or users of buildings and structures.

5. Encourage the standardization of construction practices, methods, equipment, material, and techniques.

6. Eliminate restrictive, obsolete, conflicting, and unnecessary regulations and requirements which tend to unnecessarily increase construction costs or retard unnecessarily the use of new materials, or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction. [C73, 75,§103A.8]

103A.9 Factory-built structures. The state building code shall contain provisions relating to the manufacture and installation of factory-built structures.

1. Factory-built structures manufactured in Iowa, after the effective date of the code, shall be manufactured in accordance with the code, unless the commissioner determines the structure is manufactured for installation outside the state.

2. Factory-built structures manufactured outside the state of Iowa, after the effective date of the code, and brought into Iowa for installation must, prior to installation, comply with the code.

3. Factory-built structures manufactured prior to the effective date of the code, which prior to that date have never been installed, must comply with the code prior to installation.

4. All factory-built structures, without regard to manufacture date, shall be installed in accordance with the code in the governmental subdivisions which have adopted the state building code or any other building code.

5. Factory-built structures required to comply with the code provisions on manufacture, shall not be modified in any way prior to or during installation, unless prior approval is obtained from the commissioner.

6. The commissioner shall establish an insignia of approval and provide that factory-built structures required to comply with code provisions on manufacture bear an insignia of approval prior to installation. The insignia may be issued for other factory-built structures which meet code standards and which

were manufactured prior to the effective date of the state building code.

7. The commissioner may contract with local government agencies for enforcement of the code relating to manufacture of factory-built structures. Code provisions relating to installation of factory-built structures shall be enforced by the local building departments only in those governmental subdivisions which have adopted the state building code or any other building code. [C73, 75,§103A.9]

103A.10 Effect and application.

1. The state building code shall, for the buildings and structures to which it is applicable, constitute a lawful local building code.

2. The state building code shall be applicable:

a. To all buildings and structures owned by the state or an agency of the state.

b. In each governmental subdivision where the governing body has adopted a resolution accepting the application of the code.

3. Provisions of the state building code relating to the manufacture and installation of factory-built structures shall apply throughout the state. Factory-built structures approved by the commissioner shall be deemed to comply with all building regulations applicable to its manufacture and installation and shall be exempt from any local building regulations. [C73, 75,§103A.10]

103A.11 Rules—public hearing.

1. After the formulation of any proposed rule, including any modification of an existing rule, the commissioner shall hold public hearings within the state and at reasonable hours. Notice of the hearings, together with a brief general description of the proposed rules shall be provided by publication in at least five newspapers of general circulation within separate geographic areas of this state and by any other means the commissioner determines will afford adequate public notice. Public notice shall be given at least seven days prior to the hearings.

2. The text of any proposed rule shall be made available for inspection at the office of the commissioner and shall be distributed to the governmental subdivisions which have adopted the state building code, and to any other person who requests a copy.

3. Every rule adopted by the commissioner shall state the date on which it takes effect.

4. Every rule shall, immediately after adoption, be certified by the commissioner and transmitted to the secretary of state for filing in his office and shall then become a part of the state building code. Copies shall be sent by the commissioner to all governmental subdivisions which have adopted the state building code.

5. The provisions of this section shall not apply to any rule relating solely to the internal operations of the office of the commissioner and council. [C73, 75,§103A.11]

103A.12 Adoption and withdrawal—procedure. The state building code shall be applicable in each governmental subdivision of the state in which the governing body has adopted or enacted a resolution or ordinance accepting the applicability of the code and shall have filed a certified copy of the resolution or ordinance in the office of the commissioner and in the office of the secretary of state. The state building code shall become effective in the governmental subdivision upon the date fixed by the governmental subdivision resolution or ordinance, if the date is not more than six months after the date of adoption of the resolution or ordinance.

A governmental subdivision in which the state building code is applicable may by resolution or ordinance, at any time after one year has elapsed since the code became applicable, withdraw from the application of the code, if before the resolution or ordinance shall be voted upon, the local governing body shall hold a public hearing after giving not less than twenty nor more than thirty days' public notice, together with written notice to the commissioner of the time, place, and purpose of the hearing. A certified copy of the vote of the local governing body shall be transmitted within ten days after the vote is taken to the commissioner and to the secretary of state for filing. The resolution or ordinance shall become effective at a time to be specified therein, which shall be not less than one hundred eighty days after the date of adoption. Upon the effective date of the resolution or ordinance, the state building code shall cease to apply to the governmental subdivision except that construction of any building or structure pursuant to a permit previously issued shall not be affected by the withdrawal.

A governmental subdivision which has withdrawn from the application of the state building code may, at any time thereafter, restore the application of the code in the same manner as specified in this section. [C73, 75,§103A.12]

103A.13 Alternate materials and methods of construction. The provisions of the state building code shall not prevent the use of any material or method of construction not specifically prescribed therein, provided any such alternate has been approved by the building code commissioner.

The commissioner may approve any alternate if he finds that the proper design is satisfactory and that the material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in the state building code in quality, strength, effectiveness, fire resistance, durability, and safety.

The commissioner shall require that sufficient evidence or proof be submitted to substantiate any claim that may be made regarding alternate use. [C73, 75,§103A.13]

Referred to in §103A.14

103A.14 Advisory council. There is hereby established a seven member council to be

known as the state building code advisory council. The council shall elect from its membership a chairman. The members of the council shall be appointed by the governor and shall hold office commencing July 1, 1972, for four years and until their successors are appointed, except that three initial appointees shall be appointed for two-year terms and four initial appointees shall be appointed for four-year terms. The members of the council shall be persons who are qualified by experience or training to provide a broad or specialized expertise on matters pertaining to building construction. At least one of the members shall be a journeyman member of the building trades. Vacancies shall be filled in the same manner as the original appointments.

1. The council shall advise and confer with the commissioner in matters relating to the state building code.

2. The council members shall, at the request of the commissioner, hold public hearings and perform such other functions as the commissioner requests.

3. The council shall approve or disapprove the rules and regulations referred to in section 103A.7 and shall approve or disapprove any alternate materials or methods of construction approved by the commissioner as provided in section 103A.13. A majority vote of the council membership shall be required for these functions.

4. Any member of the council may be removed by the governor for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon.

5. Each member of the council shall receive per diem compensation at the rate of forty dollars per day for each day spent in the performance of his duties, but not to exceed twenty-five hundred dollars per year. All members of the council shall receive necessary expenses incurred in the performance of their duties.

6. Four members of the council shall constitute a quorum. For the purpose of conducting business a majority vote of the council shall be required.

7. Meetings of the council may be called by the commissioner. [C73, 75,§103A.14]

103A.15 Board of review. The commissioner shall establish a state building code board of review.

1. The board shall be composed of three members of the council.

2. Members of the board of review shall serve at the pleasure of the commissioner.

3. No member of the board shall pass upon any question in which he or any corporation in which he is a stockholder is interested.

4. The commissioner may appoint alternate board members from the membership of the advisory council. [C73, 75,§103A.15]

103A.16 Board of review—appeal. Any aggrieved person may appeal to the board for:

1. A reversal, modification, or annulment of any ruling, direction, determination, or order of any state agency or local building department affecting or relating to the construction of any building or structure, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code.

2. Review of the disapproval or failure to approve within sixty days after submission of:

a. An application for permission to construct pursuant to the code, or

b. Plans or specifications for construction pursuant to the code. [C73, 75,§103A.16]

Referred to in §103A.19

103A.17 Board of review—procedure. The board shall establish procedures pursuant to which an aggrieved person may appeal to the board.

1. The board shall fix a reasonable time and place for a hearing and shall give due notice of a hearing to:

a. The applicant.

b. The state agency or local building department involved.

c. Any other person at the board's discretion.

2. Notice shall be by registered mail and shall:

a. Name the applicant.

b. State the time and place of the hearing.

c. State the general nature of the appeal.

3. The following may appear and be heard at an appeal hearing:

a. The applicant, or his agent.

b. The state agency or local building department involved.

c. Any other person at the board's discretion.

4. The board, in hearings conducted under this section, shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure.

5. Applications shall be decided promptly. In every case the board shall state generally the reason for its decision.

6. The decision of the board shall state the date on which it takes effect, which shall be no earlier than five days subsequent to issuance of such decision, and a copy of the decision, duly certified by the chairman of the board, shall be filed in the office of the commissioner, and a copy shall be sent to the parties and any state agency or local building department affected.

7. The decision of the board of review may be appealed to the advisory council by any

party by filing a petition with the advisory council at any time prior to the effective date of such decision. The advisory council shall consider all questions of fact and law involved and issue its decision pertaining to the same not later than ten days after receipt of the appeal.

8. A record of all decisions of the board and advisory council shall be properly indexed and filed in the office of the commissioner, and shall be public records as defined in chapter 68A.

9. The board may subpoena all of the papers and documents constituting the record upon which the application for the use of alternate materials or methods of construction, modification, reversal, annulment, or review is based, and the state, county, or municipal officer in charge thereof shall, upon receipt of the subpoena, transmit the papers and documents to the board.

10. All decisions of the board shall require the concurrence of at least two of its members. [C73, 75,§103A.17]

103A.18 Court proceedings. Judicial review of action of the commissioner, board of review, or council may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act:

1. Filing of a petition for judicial review shall stay all proceedings on the matter with respect to which review is sought unless there is a showing by the state agency or a local building department that a stay would involve imminent peril to life or property.

2. No court shall entertain an action based on the state building code unless all administrative remedies have been exhausted, except:

a. When the action is instituted by the state or a governmental subdivision; or

b. When there is good cause for the failure to exhaust administrative remedies.

3. Subject to subsection 1 of this section, where the construction of a building or structure or use of a building is in violation of any code provision or lawful order of a local building department, the district court may on petition order removal of the building, abatement as a public nuisance, or enjoin further construction.

4. Petitions for judicial review may be filed in the county where the cause of action or some part thereof arose. [C73, 75,§103A.18]

103A.19 Administration and enforcement. The examination and approval or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings or structures, and the administration and enforcement of building regulations shall be the responsibility of the governmental subdivisions of the state and shall be administered and enforced in the manner prescribed by local law or ordinance. All provisions of law relating to the administration and enforcement of local building regulations in any governmental subdivision shall be applicable to the administration and enforcement of the state building code in the governmental subdivision. An application made to a local building department or to a state agency for permission to construct a building or structure pursuant to the provisions of the state building code shall, in addition to any other requirement, be signed by the owner or his authorized agent, and shall contain the address of the owner, and a statement that the application is made for permission to construct in accordance with the provisions of the code.

In aid of administration and enforcement of the state building code, and in addition to and not in limitation of powers vested in them by law, each governmental subdivision of the state may:

1. Examine and approve or disapprove plans and specifications for the construction of any building or structure, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code, and to direct the inspection of buildings or structures during the course of construction.

2. Require that the construction of any building or structure shall be in accordance with the applicable provisions of the state building code, subject, however, to the powers granted to the board of review in section 103A.16.

3. Order in writing any person to remedy any condition found to exist in, or about any building or structure in violation of the state building code. Orders may be served upon the owner or his authorized agent personally or by certified mail at the address set forth in the application for permission to construct a building or structure. Any local building department may grant in writing such time as may be reasonably necessary for achieving compliance with an order.

4. Issue certificates of occupancy or use, permits, licenses, and other documents in connection with the construction of buildings or structures as may be required by ordinance.

A certificate of occupancy or use for a building or structure constructed in accordance with the provisions of the state building code shall certify that the building or structure conforms to the requirements of the code. The certificate shall be in the form the governing body of the governmental subdivision prescribes.

Every certificate of occupancy or use shall, until set aside or vacated by the board of review, director, or a court of competent jurisdiction, be binding and conclusive upon all state and local agencies, as to all matters set forth and no order, direction, or requirement at variance therewith shall be made or issued by any other state or local agency.

5. Make, amend, and repeal rules for the administration and enforcement of the pro-

visions of this section, and for the collection of reasonable fees in connection therewith.

6. Prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state building code. [C73, 75, §103A.19]

Referred to in §103A.21

103A.20 Permits—duty to issue.

1. If the plans and specifications accompanying an application for permission to construct a building or structure fail to comply with the provisions of building regulations applicable to the governmental subdivision where the construction is planned, the state or governmental subdivision official charged with the duty shall nevertheless issue a permit, certificate, authorization, or other required document, as the case may be, for the construction, if the plans and specifications comply with the applicable provisions set forth in the state building code, whenever such code is operative in such governmental subdivision.

2. Any building or structure constructed in conformance with the provisions of the state building code, shall be deemed to comply with all state, county, and municipal building regulations, and the owner, builder, architect, lessee, tenant, or their agents, or other interested person shall be entitled, upon a showing of compliance with the code, to demand and obtain, upon proper payment being made in appropriate cases, any permit, certificate, authorization, or other required document, the issuance of which is authorized pursuant to any state or local buildings or structure regulation, and it shall be the duty of the appropriate state or local officer having jurisdiction over the issuance to issue the permit, certificate, authorization, or other required document, as provided herein, whenever the code is operative in the governmental subdivision. [C73, 75,§103A.20]

103A.21 Penalty.

1. Any person served with an order pursuant to the provisions of section 103A.19, subsection 3, who fails to comply with the order within thirty days after service or within the time fixed by the local building department for compliance, whichever is longer, and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or any other person taking part or assisting in the construction or use of any building or structure who shall knowingly violate any of the applicable provisions of the state building code or any lawful order of a local building department made thereunder, shall be punishable by a fine of not more than one hundred dollars, or thirty days in jail, or by both* fine and imprisonment.

2. Violation of this chapter shall not impose any disability upon or affect or impair the credibility as a witness, or otherwise, of any person.

Violations of this section shall be misdemeanors, and municipal, police, or mayors' courts shall have exclusive jurisdiction to originally hear and determine charges of violations.

3. As an alternative to filing criminal charges as provided in this section, the commissioner may file a petition in the district court and obtain injunctive relief for any violation of this chapter. [C73, 75,§103A.21]

*Indictment, ch 773

103A.22 Construction of statute.

1. Nothing in this chapter shall be construed as prohibiting any governmental subdivision from adopting or enacting any building regulations relating to any building or structure within its limits, but a governmental subdivision in which the state building code has been accepted and is applicable shall not have the power to supersede, void, or repeal or make more restrictive any of the provisions of this chapter or of the rules adopted by the commissioner.

2. Nothing in this chapter shall be construed as abrogating or impairing the power of any governmental subdivision or local building department to enforce the provisions of any building regulations, or the applicable provisions of the state building code, or to prevent violations or punish violators except as otherwise expressly provided in this chapter.

3. The powers enumerated in this chapter shall be interpreted liberally to effectuate the purposes thereof and shall not be construed as a limitation of powers. [C73, 75,§103A.22]

103A.23 Fees. For the purpose of obtaining revenue to defray the costs of administering the provisions of this chapter, the commissioner shall establish by rule a schedule of fees based upon the costs of administration which fees shall be collected from persons whose manufacture, installation or construction is subject to the provisions of the state building code.

All fees collected by the commissioner shall be deposited in the state treasury to the credit of the general fund.

All federal grants to and federal receipts of the office of state building code commissioner are appropriated for the purpose set forth in the federal grants or receipts. [C73, 75, §103A.23]

CHAPTER 104

STATE ELEVATOR CODE

104.1 Definitions.
104.2 Scope of chapter.
104.3 Promulgation of rules.
104.4 Commissioner's duties and personnel.
104.5 Registration of facilities.
104.6 Inspection of facilities.
104.7 Alteration permits.
104.8 New installation permits.
104.9 Operating permits.
104.10 Enforcement orders by commissioner.
104.11 Nonconforming facilities.
104.12 Access to facilities.
104.13 Fees.
104.14 Continuing duty of owner.
104.15 Inspections by local authorities.
104.16 Prosecution of offenses.
104.17 Penalties.
104.18 Short title.

104.1 Definitions. As used in this chapter, except as otherwise expressly provided:

1. *"Facility"* means any elevator, dumbwaiter, escalator, moving walk, or manlift subject to regulation under the provisions of this chapter, and includes hoistways, rails, guides and all other related mechanical and electrical equipment.

2. *"Alteration"* means any change made to an existing facility, other than the repair or replacement of damaged, worn, or broken parts necessary for normal maintenance.

3. *"Division"* means the elevator safety division created by this chapter as a part of the bureau of labor.

4. *"Commissioner"* means the labor commissioner or his designee.

5. *"Elevator"* means a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction, and which serves two or more floors of a building or structure. The term elevator does not include a dumbwaiter, endless belt, conveyor, chain or bucket hoist, construction hoist, or other device used for the primary purpose of elevating or lowering building or other materials and not used as a means of conveyance for individuals, nor shall it include tiering, piling, feeding, or other machines or devices giving service within only one story.

6. *"Dumbwaiter"* means a hoisting and lowering mechanism equipped with a car which moves in guides in a substantially vertical direction, when the floor area does not exceed nine square feet, the total compartment height does not exceed four feet, the capacity does not exceed five hundred pounds, and which is used exclusively for carrying materials.

7. *"Escalator"* means a power-driven, inclined, continuous stairway used for raising or lowering passengers.

8. *"Moving walk"* means a type of passenger-carrying device on which passengers stand or walk, and in which the passenger carrying surface remains parallel to its direction in motion and is uninterrupted.

9. *"Manlift"* means a device consisting of a power-driven endless belt, provided with steps or platforms and handholds attached to it for the transportation of persons from floor to floor.

10. *"Passenger elevator"* means an elevator that is used to carry persons other than the operator and person necessary for loading and unloading.

11. *"Freight elevator"* means an elevator used for carrying freight and on which only the operator and persons necessary for unloading and loading the freight are permitted to ride.

12. *"Dormant facility"* means an elevator or dumbwaiter whose cables have been removed, whose car and counterweight rest at the bottom of the shaftway and whose shaftway doors are permanently boarded up or barricaded such that entry into the shaft through each door or other entryway is substantially precluded, or an escalator, moving walk, or manlift, the main power feed lines of which have been disconnected, and the top and bottom entrances of which have been permanently boarded up or barricaded.

13. *"New installation"* means a facility the construction or relocation of which is begun, or for which an application for a new installation permit is filed, on or after the effective date of rules relating to those permits adopted by the commissioner under authority of this chapter. All other installations are existing installations.

14. *"Inspector"* means an inspector employed by the bureau of labor for the purpose of administering this chapter.

15. *"Special inspector"* means an inspector licensed by the labor commissioner, and not employed by the bureau of labor.

16. *"Provisions of this chapter"* includes rules adopted by the commissioner pursuant to this chapter. [C75,§104.1]

104.2 Scope of chapter. The provisions of this chapter shall not apply to any facility installed in any single private dwelling residence, to facilities subject to regulation under I.D.R. [1973 and supplements], chapter 26 of the bureau of labor rules (regulation 29 C.F.R. 1926.552), to manlifts subject to regulation under chapter 88 or to facilities over which an

agency of the federal government is asserting similar enforcement jurisdiction. Provisions of this chapter supersede similar provisions contained in building codes of this state or any subdivision thereof. [C75,§104.2]

104.3 Promulgation of rules.

1. The commissioner may adopt rules governing maintenance, construction, alteration, and installation of facilities, and the inspection and testing of new and existing installations as necessary to provide for the public safety, and to protect the public welfare.

The commissioner shall adopt, amend, or repeal rules pursuant to chapter 17A as he deems necessary for the execution of his duties under this chapter, which shall include, but not be limited to, rules providing for:

a. Classifications of types of facilities.

b. Maintenance, inspection, testing, and operation of the various classes of facilities.

c. Construction of new facilities.

d. Alteration of existing facilities.

e. Minimum safety requirements for all existing facilities.

f. Control or prevention of access to facilities or dormant facilities.

g. The reporting of accidents and injuries arising from the use of facilities.

h. The specification of hearing and appeal procedures used by the commissioner.

i. Qualifications for obtaining an inspector's license.

j. The adoption of procedures for the issuance of variances.

k. The amount of fees charged and collected for inspection, permits, and licenses.

2. Insofar as applicable, rules adopted for facilities installed after January 1, 1975, shall be based on the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, and supplements thereto, A.17.1. The commissioner shall adopt rules for facilities installed prior to January 1, 1975, according to the applicable provisions of such American National Standard Safety Code as he deems necessary. In adopting rules the commissioner may adopt the American National Standard Safety Code, or any part thereof, by reference. Before adopting, amending, or repealing any rule, the commissioner shall hold a public hearing on the proposed rule, amendment or repeal. The commissioner shall notify in writing each permit holder and any other person requesting notification of each hearing at least thirty days in advance of the hearing date. Any interested person may appear and be heard at the hearing in person or by agent or counsel. The commissioner shall give the news media notice of each hearing at least thirty days in advance of the hearing date and shall make available a copy of the proposed rule or amendment to a rule to any person requesting same.

3. The commissioner shall furnish copies of the rules adopted by the commissioner to any person who requests them, without charge, or upon payment of a charge not to exceed the actual cost of printing of the rules. [C24, 27, 31, 35, 39,§1678; C46, 50, 54, 58, 62, 66, 71, 73, §104.1; C75,§104.3]

104.4 Commissioner's duties and personnel. The commissioner shall enforce the provisions of this chapter. The commissioner shall employ personnel for the administration of this chapter pursuant to chapter 19A. [C75,§104.4]

104.5 Registration of facilities. Within three months after the date of adoption of rules under this chapter relating to registration of facilities, the owner of every existing facility, whether or not dormant, shall register each such facility with the commissioner, giving type, contract load and speed, name of manufacturer, its location and the purpose for which it is used, and such other information as the commissioner may require. Registration shall be made on a form to be furnished by the division upon request. Facilities the construction of which is commenced subsequent to the date of adoption of those rules shall be registered in the manner prescribed by the commissioner. [C75,§104.5]

104.6 Inspection of facilities. All new and existing facilities, except dormant facilities, shall be tested and inspected in accordance with the following schedule:

1. Every new or altered facility shall be inspected and tested before the operating permit is issued.

2. Every existing facility registered with the commissioner shall be inspected within one year after the effective date of the registration, except that the commissioner may, at his discretion, extend by rule the time specified for making inspections.

3. Every facility shall be inspected not less frequently than annually.

4. The inspections required by subsections 1 to 3 shall be made only by inspectors or special inspectors. An inspection by a special inspector may be accepted by the commissioner in lieu of a required inspection by an inspector.

5. A report of every inspection shall be filed with the commissioner by the inspector or special inspector, on a form approved by and containing all information required by the commissioner, after the inspection has been completed and within the time provided by rule, but not to exceed thirty days. The report shall include all information required by the commissioner to determine whether the owner of the facility has complied with applicable rules. For the inspection required by subsection 1, the report shall indicate whether the facility has been installed in accordance with the detailed plans and specifications approved by the commissioner, and meets the requirements of the applicable rules.

6. In addition to the inspections required by subsections 1 to 3, the commissioner may

provide by rule for additional inspections as he deems necessary to enforce the provisions of this chapter. [C75,§104.6]

Referred to in §§104.9, 104.15

104.7 Alteration permits. On and after the effective date of rules relating to alterations, detailed plans of each facility to be altered shall be submitted to the commissioner, together with an application for an alteration permit, on forms to be furnished or approved by the commissioner. Repairs or replacements necessary for normal maintenance are not alterations, and may be made on existing installations with parts equivalent in material, strength and design to those replaced and no plans or specifications or application need be filed for such repairs or replacements. However, nothing in this section shall authorize the use of any facility contrary to an order issued pursuant to section 104.10, subsections 2 and 3. [C75,§104.7]

104.8 New installation permits. A permit shall be issued by the commissioner before construction on a new installation is begun. The division shall issue a permit for relocation or installation, as applicable, if the plans and specifications indicate compliance with applicable rules.

If such plans and specifications indicate a failure of compliance with applicable rules, the division shall give notice of necessary changes to the person filing the application. After such changes have been made and approved, the division shall issue a permit.

Plans shall be submitted in triplicate and shall be accompanied by an application for the permit on a form to be furnished by the commissioner. The plans shall include:

1. Sectional plan of car and hoistway.
2. Sectional plan of machine room.
3. Sectional elevation of hoistway and machine room, including the pit, bottom and top clearance of car, and counterweight.
4. Size and weight of guide rails, and guide rail bracket spacing.
5. Other information which the division may require. [C75,§104.8]

104.9 Operating permits. Operating permits shall be issued by the commissioner to the owner of every facility when the inspection report indicates compliance with the applicable provisions of this chapter. However, no permits shall be issued if the fees required by section 104.14 have not been paid. Permits shall be issued within thirty days after filing of the inspection report required by section 104.6, unless the time is extended for cause by the division. No facility shall be operated after the thirty days or after any extension granted by the commissioner has expired, unless an operating permit has been issued.

The operating permit shall indicate the type of equipment for which it is issued, and in the case of elevators shall state whether passenger or freight, and also shall state the contract load and speed for each facility. The permit shall be posted conspicuously in the car of an elevator, or on or near a dumbwaiter, escalator, moving walk or manlift. [C75,§104.9]

104.10 Enforcement orders by commissioner.

1. If an inspection report indicates a failure to comply with applicable rules, or with the detailed plans and specifications approved by the commissioner, the commissioner may, upon giving notice, order the owner thereof to make the changes necessary for compliance.

2. If the owner does not make the changes necessary for compliance as required in subsection 1 within the period specified by the commissioner, the commissioner, upon notice and hearing, may suspend or revoke the operating permit, or may refuse to issue the operating permit for the facility. The commissioner shall notify the owner of any action to suspend, revoke or refuse to issue an operating permit and the reason therefor by certified mail. Any owner who, after hearing before the commissioner, is aggrieved by a suspension, revocation or refusal to issue an operating permit may appeal to the occupational safety and health review commission established under chapter 88. Notice of appeal shall be filed with the occupational safety and health review commission within thirty calendar days from receipt of the notice of the commissioner's action. Any party adversely affected or aggrieved by an order of the occupational safety and health review commission issued under this subsection may obtain a review of such order in the district court of the county in which the facility is located by filing in such court within sixty days following the issuance of such order a written petition that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the occupational safety and health review commission and to all other parties, and thereupon the occupational safety and health review commission shall promptly file in the court the transcript of record in the proceedings. Upon filing of the petition, the court shall have jurisdiction of the proceedings and of the questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony and proceedings set forth in such record a decree affirming, modifying or setting aside in whole or in part, the order of the occupational safety and health review commission and enforcing the same to the extent that such order is affirmed, modified or denied. No proceedings before the commissioner or his agents, the occupational safety and health review commission or any district court of this state shall be deemed to deny any owner his operating permit until there is a final adjudication of the matter. No objection which has not been

urged before the occupational safety and health review commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the occupational safety and health review commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The occupational safety and health review commission's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the occupational safety and health review commission's orders. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Iowa supreme court.

3. If the commissioner has reason to believe that the continued operation of a facility constitutes an imminent danger which could reasonably be expected to seriously injure or cause death to members of the public, the commissioner may apply to the district court in the county in which such imminently dangerous condition exists for a temporary order for the purpose of enjoining such imminently dangerous facility. Upon hearing, if deemed appropriate by the court, a permanent injunction may be issued to insure that such imminently dangerous facility be prevented or controlled. Upon the elimination or rectification of such imminently dangerous condition the temporary or permanent injunction shall be vacated. [C75,§104.10]

Referred to in §§104.7, 104.11

104.11 Nonconforming facilities. The commissioner, pursuant to rule, may grant exceptions and variances from the requirements of rules adopted for any facility existing on January 1, 1975. Exceptions or variations shall be reasonably related to the age of the facility, and may be conditioned upon a repair or modification of the facility deemed necessary by the commissioner to assure reasonable safety. However, no exception or variance may be granted except to prevent undue hardship, and no exception or variation shall be granted for a period extending beyond five years from the effective date of applicable rules. Such facilities shall be subject to orders issued pursuant to section 104.10. [C75,§104.11]

104.12 Access to facilities. Every owner of a facility subject to regulation by this chapter shall grant access to that facility to the commissioner and bureau of labor personnel administering the provisions of this chapter. Inspections shall be permitted at reasonable times, with or without prior notice. [C75, §104.12]

104.13 Fees. The commissioner, pursuant to chapter 17A, shall adopt rules to charge and collect fees for inspection, permits and licenses. Fees may be set by rule not more than once each year, and shall be effective from the first day of January next following the date of adoption of the rule. Fees established by the commissioner shall be based upon the costs of administering the provisions of this chapter, and shall give due regard to the time spent by bureau of labor personnel in performing duties, and to any travel expenses incurred. Before adopting any rule to establish or increase any fees for inspection, permits or licenses, the commissioner shall hold a public hearing on the proposed rule or amendment. The commissioner shall notify in writing each permit holder and any other person requesting notification of each hearing at least thirty days in advance of the hearing date. Any interested person may appear and be heard at the hearing in person or by agent or counsel. [C75, §104.13]

104.14 Continuing duty of owner. Every facility shall be maintained by the owner in a safe operating condition and in conformity with the rules adopted by the commissioner. [C75,§104.14]

Referred to in §104.9

104.15 Inspections by local authorities. No city or other governmental subdivision shall make or maintain any ordinance, bylaw or resolution providing for the licensing of special inspectors. An ordinance or resolution relating to the inspection, construction, installation, alteration, maintenance or operation of facilities within the limits of the city or governmental subdivision, which conflicts with this chapter or with rules adopted by the commissioner is void. The commissioner, in his discretion, may accept inspections by local authorities in lieu of inspections required by section 104.6, but only upon a showing by the local authority that applicable laws and rules will be consistently and literally enforced, and that inspections will be performed by special inspectors. [C75,§104.15]

104.16 Prosecution of offenses. The division shall cause prosecution for the violation of the provisions of this chapter to be instituted by the attorney general in the county in which the violation occurred. [C75,§104.16]

104.17 Penalties.

1. Any owner who violates any of the provisions of this chapter shall be punished for each offense by a fine of not more than one hundred dollars, or by imprisonment for not more than thirty days in the county jail, unless otherwise specifically provided in this chapter.

2. Any person who bribes or attempts to bribe an inspector shall be subject to criminal proceedings under section 739.1. [C75,§104.17]

104.18 Short title. This chapter shall be known as the "Iowa State Elevator Code". [C75,§104.18]

CHAPTER 104A

BUILDING ENTRANCE FOR HANDICAPPED PERSONS

Referred to in §§103A.5, 601E.6

104A.1 Intent of chapter.
104A.2 Applicability.
104A.3 Requirements.
104A.4 Ramps.
104A.5 Buildings in process of construction.
104A.6 Conforming standards.

104A.1 Intent of chapter. It is the intent of this chapter that standards and specifications are followed in the construction of public and private buildings and facilities which are intended for use by the general public to ensure that these buildings and facilities are accessible to and functional for the physically handicapped. [C66, 71, 73, 75,§104A.1]

104A.2 Applicability. The standards and specifications set forth in this chapter shall apply to all public and private buildings and facilities, temporary and permanent, used by the general public. The specific occupancies and extent of accessibility shall be in accordance with the conforming standards set forth in section 104A.6. Notwithstanding the standards set forth in section 104A.6, in every multiple-dwelling-unit building containing five or more individual dwelling units the requirements of this chapter which apply to apartments shall be met by at least one dwelling unit or by at least ten percent of the dwelling units, whichever is the greater number, on the ground floor level and on each of the other floor levels in the building which are accessible to the physically handicapped. [C66, 71, 73, 75,§104A.2]

Referred to in §§104A.3, 104A.6

104A.3 Requirements. Whenever any building or facility as described in section 104A.2 is constructed, provision shall be made in the construction that:

1. The site on which the facility is constructed shall be graded so that the ground shall attain a level with at least one normal entrance which shall make the facility accessible to individuals with handicaps.

2. At least one public walk to the primary entrance at grade level as described in subsection 1 of this section shall be accessible for individuals with physical handicaps. Such walk shall be at least forty-eight inches wide, shall have a gradient not greater than five percent, shall be of a continuing common surface, and shall not be interrupted by steps or abrupt changes in level.

3. The primary entrance or entrances at grade level to each facility shall be usable by individuals in wheel chairs and other physically handicapped persons. Such entrance or entrances shall be on a level that shall make the elevators, if any, accessible from that level.

4. Doors at the primary entrance or entrances at grade level shall have a clear opening of no less than thirty-two inches when open and shall be operable by a single effort. The floor on the inside and outside of each doorway shall be level for a distance of five feet from the door in the direction the door swings and shall extend one foot beyond each side of the door. Sharp inclines and abrupt changes in level shall be avoided at doorsills. Thresholds shall be flush with the floor to such an extent as is practicable.

5. Floors shall, wherever practicable, have a nonslip surface. Floors on the same story shall be of a common level throughout or be connected by a ramp.

6. Elevators, when provided in planning, shall be accessible to and usable by the physically handicapped at all levels normally used by the general public. Elevators shall have control buttons with identifying features for the benefit of the blind and shall allow for wheel chair traffic.

7. At each floor level which is accessible to the physically handicapped there shall be available to persons of each sex at least one public toilet or bathroom which is equipped with a door at least thirty-two inches wide that swings outward. There shall be within each such public toilet or bathroom at least one water closet in front of which there is a clear space not less than thirty-two inches wide by thirty-two inches deep, and unobstructed by door swing, grab bars or other projections. Grab bars shall be provided within easy reach (within approximately eighteen inches) of such water closet at the side and back, or on each side of the compartment.

8. At levels which are accessible to the physically handicapped where there are drinking fountains and public telephones, at least one drinking fountain and one public telephone shall be supplied at such height to be accessible to the handicapped. [C62,§19.32; C66, 71, 73, 75,§104A.3]

Referred to in §104A.6

104A.4 Ramps. Any ramp where gradients are necessary at any entrance to a building or facility shall be constructed so that such ramp shall:

1. Have a slope not greater than one foot rise in twelve feet or eight point thirty-three percent or four degrees fifty minutes.

2. Have smooth handrails on at least one side and preferably two sides, thirty-two inches in height measured from the surface

of the ramp, extending one foot beyond the top and bottom of the ramp.

3. Have a surface that is nonslip.

4. Have a level platform at the top which is at least five feet by five feet, if a door swings out onto the platform or toward the ramp. [C66, 71, 73, 75,§104A.4]

Referred to in §104A.6

104A.5 Buildings in process of construction. The standards and specifications set forth in this chapter shall be adhered to in those buildings and facilities under construction on July 4, 1965, unless the authority responsible for the construction shall determine the construction has reached a state where compliance will result in a substantial increase in cost or delay in construction. [C66, 71, 73, 75,§104A.5]

104A.6 Conforming standards. In addition to complying with the standards and specifications set forth in sections 104A.3 and 104A.4, the authority responsible for the construction of any building or facility covered by section 104A.2 shall conform with rules promulgated by the state building code commissioner as provided in secton 103A.7. [C66, 71, 73, 75, §104A.6]

Referred to in §104A.2

CHAPTER 105

LIABILITY OF HOTEL KEEPERS AND STEAMBOAT OWNERS

105.1 Liability for precious articles — safe deposit.
105.2 Exception.
105.3 Nature of liability.
105.4 Limitation on liability.
105.5 Leaving baggage after registering off.
105.6 Forwarding baggage.
105.7 Nonliability—conveyance.
105.8 Liability—conveyance.
105.9 Liability during transit.

105.1 Liability for precious articles — safe deposit. No keeper of any hotel, inn, or eating house, nor the owner of any steamboat, shall be liable to any guest for more than one hundred dollars for the loss of or injury to any money, jewelry, articles of gold or silver manufacture, precious stones, personal ornaments, documents of any kind, or other similar property, if such keeper or owner at all times provides:

1. A metal safe or vault, in good order and fit for the safekeeping of such property.

2. Locks or bolts on the door and proper fastenings on the transoms and windows of the sleeping quarters used by guests.

3. Printed notices posted up in a conspicuous place in the office or other public room and in the quarters occupied by guests, stating that such places for safe deposit are provided for the use and accommodation of guests and patrons. [C97,§3138; S13,§3138; C24, 27, 31, 35, 39, §1685; C46, 50, 54, 58, 62, 66, 71, 73, 75,§105.1]

Referred to in §§105.2, 105.3

105.2 Exception. The limited liability provided in section 105.1 shall not apply where:

1. A guest has offered to deliver such valuables to said keeper or owner for custody in such metal safe or vault, and

2. Said keeper or owner has omitted or refused to receive and deposit the same in such safe or vault and give such guest a receipt therefor.

But such keeper or owner shall not be required to receive from any one guest for deposit in such safe or vault, property having a market value of more than five hundred dollars. [C97,§3138; S13,§3138; C24, 27, 31, 35, 39, §1686; C46, 50, 54, 58, 62, 66, 71, 73, 75,§105.2]

Referred to in §105.3

105.3 Nature of liability. The liability of such keeper or owner for loss of or injury to personal property placed by any guest in his care, other than that described in sections 105.1 and 105.2, shall be that of a depository for hire. [C24, 27, 31, 35, 39,§1687; C46, 50, 54, 58, 62, 66, 71, 73, 75,§105.3]

105.4 Limitation on liability. In no event shall the liability of such keeper or owner exceed the following amounts:

1. For each trunk and its contents, two hundred fifty dollars.

2. For each valise and its contents, one hundred fifty dollars.

3. For each box, bundle, or package and its contents, fifty dollars.

4. For any and all other miscellaneous effects of each guest, not exceeding one hundred dollars. [C24, 27, 31, 35, 39,§1688; C46, 50, 54, 58, 62, 66, 71, 73, 75,§105.4]

105.5 Leaving baggage after registering off. In case baggage or other personal property of a guest has remained in any hotel, inn, eating house, or steamboat forty-eight hours after the guest has paid his bill and registered off and the relation of keeper and guest has ceased, such keeper or owner may hold such baggage or property at the risk of the owner. [C24, 27, 31, 35, 39,§1689; C46, 50, 54, 58, 62, 66, 71, 73, 75,§105.5]

105.6 Forwarding baggage. In case baggage or other property has been forwarded to any hotel, inn, eating house, or steamboat, and the owner of such baggage or property does not within forty-eight hours become a guest, such keeper or owner may hold such baggage or property at the risk of the owner. [C24, 27, 31, 35, 39,§1690; C46, 50, 54, 58, 62, 66, 71, 73, 75,§105.6]

105.7 Nonliability—conveyance. No keeper or owner of any hotel, inn or eating house shall be liable by reason of his innkeeper's liability or his responsibility as innkeeper to any guest for the loss of or damage to the automobile or other conveyance of such guest left in any garage not personally owned and operated by such hotel, inn or eating house or the owner or keeper thereof. [C31, 35, §1690-c1; C39,§1690.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§105.7]

105.8 Liability—conveyance. The liability of the keeper or owner of any hotel, inn or eating house, for the loss of or damage to the conveyance of any guest or the personal property of such guest left in such conveyance, where said hotel, inn or eating house keeper, is the owner and operator of such garage, shall be that of a bailee for hire, except that such hotel, inn, rooming house or eating house keeper or owner shall not be liable to the guest in an amount in excess of fifty dollars for loss or damage to personal property left in the conveyance unless said guest shall have listed with said hotel, inn, rooming house or eating house, the personal property contained in said automobile or conveyance, at the time the same is left in said garage so owned by and operated by the said hotel, inn, rooming house or eating house. [C31, 35,§1690-c2; C39, §1690.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§105.8]

Referred to in §105.9

105.9 Liability during transit. Except as provided in section 105.8 no keeper or owner of any hotel, inn, rooming house or eating house shall be liable for the loss of or damage to the personal property kept therein of any guest, while the said conveyance is in transit between the said hotel, inn, rooming house or eating house and any garage in which the same is temporarily stored, nor for any damage done by said conveyance while in transit, unless in said transit the same is being driven or operated by an employee or agent of the said hotel, inn, rooming house or eating house. [C31, 35,§1690-c3; C39,§1690.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§105.9]

CHAPTER 105A

CIVIL RIGHTS COMMISSION

This chapter transferred to chapter 601A

CHAPTER 106

WATER NAVIGATION REGULATIONS

Referred to in §109.1

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VESSEL REGISTRATION REGULATIONS

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106.1 Declaration of policy. It is the policy of this state to promote safety for persons and property in and connected with the use, operation and equipment of vessels and to promote uniformity of laws relating thereto. [C97,§2511; C24, 27, 31,§1691; C35,§1703-e1; C39,§**1703.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§106.1]

106.2 Definitions. As used in this chapter, unless the context clearly requires a different meaning:

1. *"Vessel"* means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

2. *"Motorboat"* means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, or vessel propelled attached to another craft which is propelled by machinery.

3. *"Owner"* means a person, other than a lienholder, having the property right in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a vessel or motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

4. *"Waters of this state under the jurisdiction of the state conservation commission"* means any navigable waters within the territorial limits of this state, and the marginal river areas adjacent to this state, exempting only farm ponds, privately owned lakes and waters specifically delegated to local authorities.

5. *"Farm pond"* means a body of water wholly on the lands of a single owner, or a group of joint owners, which does not have any connection with any public waters and which is less than ten surface acres.

6 *"Person"* means an individual, partnership, firm, corporation or association.

7. *"Operate"* means to navigate or otherwise use a vessel or motorboat.

8. *"Wake"* means any movement of water created by a vessel which adversely affects the activities of another person who is involved in activities approved for that area or which may adversely affect the natural features of the shoreline.

9. *"Navigable waters"* means all lakes, rivers and streams, which can support a vessel capable of carrying one or more persons during a total of six months period in one out of every ten years.

10. *"Watercraft"* means any vessel which through the buoyance force of water floats upon the water and is capable of carrying one or more persons.

11. *"Undocumented vessel"* means any vessel which is not required to have, and does not have, a valid marine document issued by the bureau of customs or a foreign government.

12. *"Commission"* means state conservation commission.

13. *"Privately owned lakes"* means any lake, located within the boundaries of this state and not subject to federal control covering navigation owned by an individual, group of individuals or a nonprofit corporation and which is not open to the use of the general public but is used exclusively by the owners and their personal guests.

14. *"Authorized emergency vessel"* means any vessel which is designated or authorized by the state conservation commission for use in law enforcement, search and rescue, and disaster work.

15. *"Nonresident"* means every person who is not a resident of this state.

16. *"Dealer"* means every person engaged in the business of buying, selling, or exchanging boats of a type required to be registered hereunder and who has an established place of business for such purpose in this state.

17. *"Manufacturer"* means every person engaged in the business of constructing or assembling boats of a type required to be registered hereunder and who has an established place of business for such purpose in this state.

18. *"Established place of business"* means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where his books and records are kept and a large share of his business is transacted.

19. *"Writing fee"* means the amount paid by the boat owner to the county recorder for handling the transaction. [C97,§2511; C24, 27,

31,§1691; C35,§1703-e1; C39,§§**1703.01, 1703.09, 1703.10**; C46, 50, 54, 58,§§106.1, 106.9, 106.10; C62, 66, 71, 73, 75,§106.2]

106.3 Powers and duties of state conservation commission. The state conservation commission is hereby vested with the power and is charged with the duty of observing, administering and enforcing the provisions of this chapter.

The state conservation commission is hereby authorized to adopt, promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of this chapter. [C97,§§2511, 2512; S13,§2512; C24, 27, 31,§§1691, 1692, 1694; C35,§§1703-e1–1703-e3; C39, §§**1703.01–1703.03, 1703.26**; C46, 50, 54, 58, §§106.1–106.3, 106.26; C62, 66, 71, 73, 75,§106.3]

106.4 Operation of unnumbered vessels prohibited. Every undocumented vessel except as provided in section 106.6 on the waters of this state under the jurisdiction of the state conservation commission and waters specifically delegated to local authorities shall be numbered. No person shall operate, maintain or give permission for the operation or maintenance of any such vessel on such waters unless the vessel is numbered in accordance with this chapter or in accordance with applicable federal laws or in accordance with a federally approved numbering system of another state and unless the certificate of number awarded to such vessel is in full force and effect and the identifying number set forth in the certificate of number is displayed on each side of the bow of such vessel. [C97,§2512; S13,§2512; C24, 27, 31,§1692; C35,§§1703-e2, 1703-e7; C39, §§**1703.02, 1703.07**; C46, 50, 54, 58,§§106.2, 106.7; C62, 66, 71, 73, 75,§106.4; 66GA, ch 102,§1]

106.5 Registration and identification number.

1. The owner of each vessel required to be numbered by this state shall register it every two years with the county recorder of the county in which the owner resides, or, if the owner is a nonresident, he shall register it in the county in which such vessel is principally used. The commission shall have supervisory responsibility over the registration of all vessels and shall provide each county recorder with registration forms and certificates and shall allocate identification numbers to each county.

The owner of such vessel shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed and signed by the owner of the vessel and shall be accompanied by a fee of eight dollars for each motorboat or sailboat, four dollars for any other vessel without sail or motor, and a writing fee of fifty cents. Upon applying for registration the owner shall surrender the certificate of origin to the county recorder. Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter the same upon the records of his office and shall issue to the applicant a pocket-size registration certificate. The certificate shall be executed in triplicate, one copy to be delivered to the owner, one copy to the commission, and one copy to be retained on file by the county recorder. The registration certificate shall bear thereon the number awarded to such vessel, the passenger capacity of such vessel and the name and address of the owner. In the use of all vessels except nonpowered sailboats, nonpowered canoes and commercial vessels the registration certificate shall be carried either in the vessel or on the person of the operator of such vessel when in use. In the use of nonpowered sailboats, nonpowered canoes or commercial vessels, the registration certificate may be kept on shore in accordance with rules promulgated by the commission where it is accessible upon request of any officer or other public official.

On all vessels except nonpowered sailboats the owner shall cause the identification number to be painted on or attached to each side of the bow of the vessel in such size and manner as may be prescribed by the rules of the commission. On nonpowered boats the number may be placed at alternate locations as prescribed by the rules of the commission. All numbers shall be maintained in a legible condition at all times.

No number, other than the number awarded to a vessel under the provisions of this chapter or granted reciprocity pursuant to this chapter, shall be painted, attached or otherwise displayed on either side of the bow of such vessel.

The owner of each vessel must display and maintain, in a legible manner and in a prominent spot on the exterior of such vessel, other than the bow, the passenger capacity of the vessel which must conform with the passenger capacity designated on the registration certificate.

2. When an agency of the United States government shall have in force an overall system of identification numbering for vessels, the numbering system prescribed by the commission pursuant to this chapter, shall be in conformity therewith.

3. Every registration certificate and number issued hereunder shall become delinquent at midnight April 30, 1975, and every two years thereafter unless sooner terminated or discontinued in accordance with the provisions of this chapter. After the first day of January in odd-numbered years any unregistered vessels and renewals of registrations may be so registered for the subsequent biennium beginning May 1. After the first day of January in even-numbered years any unregistered motorboat or sailboat may be registered at the rate of four dollars and any other unregistered vessel without sail or motor may be registered at the rate of two dollars for the remainder of

the current biennium, plus a writing fee of fifty cents for each registration. All registrations shall become delinquent as hereinabove stated. Registration certificates and numbers may be renewed upon application of the owner in the same manner as provided for in securing the original registration.

If a timely application for renewal is made, the applicant shall receive the same registration number allocated to him for the previous registration period. If the application for registration for the biennium is not made before May 1 of each odd-numbered year, the applicant shall be charged a penalty of one dollar for each six months, or any portion thereof, he is delinquent. Provided, however, that if the registration is not renewed for two consecutive registration periods, the number of said delinquent registration may be assigned to another applicant, and upon application for registration by said delinquent registrant, he shall be assigned a new registration number and shall not be charged any penalties.

4. Whenever any person, after registering a vessel, moves from the address shown on the registration certificate, he shall, within ten days, notify the county recorder in writing of his old and new address. If appropriate, the county recorder shall forward all past records of such vessel to the recorder of the county in which the owner resides.

Whenever the name of any person, who has registered a vessel, is thereafter changed, he shall, within ten days, notify the county recorder of such former and new name.

No fee shall be paid to the county recorder for making the aforementioned changes, unless the owner requests a new registration certificate showing the change, in which case a fee of one dollar plus a twenty-five-cent writing fee shall be paid to the recorder.

If a registration certificate is lost, mutilated or becomes illegible, the owner shall immediately make application for and obtain a duplicate registration certificate by furnishing information satisfactory to the county recorder.

A fee of one dollar plus a twenty-five-cent writing fee shall be paid to the county recorder for a duplicate registration certificate.

If a vessel, registered under the provisions of this chapter, is destroyed or abandoned, such destruction or abandonment shall be reported to the county recorder and the registration certificate shall be forwarded to the office of the county recorder within ten days after such destruction or abandonment.

5. All records of the commission and the county recorder, other than those declared by law to be confidential for the use of the commission and the county recorder, shall be open to public inspection during office hours.

6. The owner of each vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto shall register it every two years with the county recorder in the same manner prescribed for undocumented vessels and shall cause the registration validation decal to be placed on the vessel in the manner prescribed by the rules of the commission. When such vessel bears the identification required in the documentation, it shall be exempt from the placement of the identification numbers as required on undocumented vessels. The fee for such registration shall be twenty-five dollars plus the usual writing fee.

7. If the owner of a registered vessel places such vessel in storage, he shall return the registration certificate to the county recorder with an affidavit stating that the vessel is placed in storage and the effective date of such storage. The county recorder shall notify the commission of each registered vessel placed in storage. When the owner of a stored vessel desires to renew the vessel's registration, he shall make application to the county recorder and pay the registration fees as provided in subsections 1 and 3 without penalty. No refund of registration fees shall be allowed for a stored vessel. [C97,§2512; S13,§2512; C24, 27, 31,§1694; C35,§§1703-e3, 1703-e7; C39, **1703.03, 1703.07, 1703.08**; C46, 50, 54, 58,§§106.3, 106.7, 106.8; C62, 66, 71, 73, 75,§106.5; 66GA, ch 102,§§2, 3]

106.6 Exemption from registration provisions of this chapter. A vessel shall not be required to be registered if it is:

1. Covered by a number in full force and effect which has been awarded to it pursuant to a federally-approved numbering system of another state if such vessel shall not have been within this state for a period in excess of sixty days within one calendar year.

2. Foreign vessels temporarily using the navigable waters of the United States and of this state.

3. A public vessel of the United States, a state or subdivision thereof which is used for enforcement, search and rescue or official research and studies, but not including vessels used for recreation or commercial purposes.

4. A vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.

5. A ship's lifeboat.

6. A type of vessel which has been exempted from registration by the commission after said commission has found that the registration or numbering of such vessel will not materially aid in their identification and such vessel would be exempt from numbering if it were subject to federal law.

7. An air mattress, inner tube, or other toy or beach type item which is being used in a recognized swimming area. In the case of a natural lake or reservoir these beach or swim-

ming areas may be less, but in no case shall exceed three hundred feet from shore.

8. The following nonpower or nonsail vessels:

a. Inflatable vessels, seven feet or less in length.

b. Conventional design canoes and kayak type vessels, thirteen feet or less in length. [C39,§§1703.16, 1703.22; C46, 50, 54, 58,§§106.16, 106.22; C62, 66, 71, 73, 75,§106.6; 66GA, ch 102, §§4, 5]

Referred to in §106.4

106.7 Collisions, accidents and casualties.

1. The operator of a vessel involved in a collision, accident or other casualty shall, so far as possible without serious danger to his own vessel, crew or passengers, render to other persons affected by the collision, accident or casualty, such assistance as may be practicable and necessary to save them from or minimize any danger caused by the collision, accident or other casualty. He shall also give his name, address and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

2. Whenever any vessel is involved in a collision, accident or casualty, except one which results only in property damage not exceeding one hundred dollars, a report thereof shall be filed with the commission. The report shall be filed by the operator of the vessel and shall contain such information as the commission may, by rule, require. Said report shall be submitted without delay in death or disappearance cases and within five days in all other cases.

3. Every law enforcement officer who, in the regular course of duty, investigates an occurrence which is required to be reported by this section, shall, after completing such investigation, forward a report of such occurrence to the commission.

4. All reports shall be in writing, and the written report shall be without prejudice to the individual so reporting and shall be for the confidential use of the commission. Provided however, upon the request of any person involved in an occurrence covered under the provisions of this section, or the attorney for such person, the commission shall disclose the identity of the person involved in the occurrence and his address. A written report filed with the commission shall not be admissible in or used in evidence in any civil action arising out of the facts on which the report is based.

5. Failure of the operator of any vessel involved in a collision, reportable accident, or other casualty, to offer assistance and aid to other persons affected by such collision, accident, or casualty, as set forth in this chapter, shall be punishable by a fine of not more than one thousand dollars, or imprisonment in the county jail for not more than one year, or both. [C39,§§1703.21, 1703.23; C46, 50, 54, 58,§§106.21, 106.23; C62, 66, 71, 73, 75,§106.7]

106.8 Transmittal of information. When any request is duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the commission under this chapter, such information shall be transmitted to said official or agency. [C62, 66, 71, 73, 75,§106.8]

106.9 Classification and required equipment.

1. Vessels subject to the provisions of this chapter shall be divided into four classes as follows:

Class I. Less than sixteen feet in length.

Class II. Sixteen feet or over and less than twenty-six feet in length.

Class III. Twenty-six feet or over and less than forty feet in length.

Class IV. Forty feet or over.

2. Every vessel, in all weathers, from sunset to sunrise, shall carry and exhibit the following lights when under way, and during such time shall exhibit no other lights which may be mistaken for those required.

a. Every motorboat of classes I and II shall carry the following lights:

(1) A bright white light aft to show all around the horizon.

(2) A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

b. Every motorboat of classes III and IV shall carry the following lights:

(1) A bright white light in the fore part of the vessel as near the bow as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel; namely, from right ahead to two points abaft the beam on either side.

(2) A bright white light aft to show all around the horizon and higher than the white light forward.

(3) A green light on the starboard side so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. A red light on the port side, so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

c. Vessels of classes I and II, when propelled by sail alone, shall carry the combined lantern, but not the white light aft prescribed by this section. Vessels of classes III and IV when so propelled, shall carry the colored side lights, suitably screened, but not the white lights required by this section.

d. Vessels of all classes, other than motorboats and sailboats, shall carry ready at hand a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

e. Every white light required by this section shall be of such character as to be visible at a distance of at least two miles. Every colored light required by this section shall be of such character as to be visible at a distance of at least one mile. The term "visible" in this section, when applied to lights, shall mean visible on a dark night with clear atmosphere.

f. When propelled by sail and machinery, such motorboat shall carry the lights required by this section for a motorboat propelled by machinery only.

3. Every vessel shall carry and exhibit such other lights required by the rules and regulations of the commission.

4. Every motorboat of class II, III or IV shall be provided with an efficient whistle or other sound producing appliance.

5. Every motorboat of class III or IV shall be provided with an efficient bell.

6. Every vessel shall carry at least one life preserver, life belt, ring buoy or other device, of the sort prescribed by the regulations of the commission, for each person on board, so placed as to be readily accessible.

7. Every motorboat shall be provided with such number, size and type of fire extinguishers capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the commission. Such fire extinguishers shall, at all times, be kept in condition for immediate and effective use and shall be so placed as to be readily accessible. Vessels powered by outboard motors of ten horsepower or less, need not carry the extinguishers as provided herein.

8. The provisions of subsections 4, 5 and 7 of this section shall not apply to motorboats while competing in any race conducted pursuant to section 106.16 or, if such boats are designed and used solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

The operator of a motorboat, while engaged in such race, must wear a crash helmet and life preserver.

9. Every motorboat shall have the carburetor or carburetors of every engine therein, except outboard motors, using a liquid of a volatile nature as fuel, equipped with such efficient flame arrestor, backfire trap or other similar device as may be prescribed by the rules and regulations of the commission.

10. Every motorboat, except open boats, using any liquid of a volatile nature as fuel, shall be provided with such means as may be prescribed by the rules and regulations of the commission for properly and efficiently ventilating the bilges of the engines and fuel tank compartments so as to remove any explosive or inflammable gases.

11. The commission is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary for the safety of operators and passengers.

12. The commission is hereby authorized to establish such pilot rules as may be necessary for the safe operation of vessels on the waters of this state under the jurisdiction of the commission.

13. No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof. [S13,§2514-a; C24, 27, 31,§1697; C39,§§**1703.10–1703.13**; C46, 50, 54, 58,§§106.10–106.13; C62, 66, 71, 73, 75,§106.9]

106.10 Boat liveries.

1. The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is designed or permitted by him to be operated for hire, the identification number thereof, the departure date and time and the expected time of return. The records shall be preserved for six months.

2. The owner of a boat livery shall not permit any of his vessels, operated for hire, to depart from his premises unless it shall have been provided, either by the owner or renter, with the equipment required by the commission. [C97,§2512; S13,§2512; C24, 27, 31,§1692; C35,§1703-e2; C39,§§**1703.02, 1703.11, 1703.24**; C46, 50, 54, 58,§§106.2, 106.11, 106.24; C62, 66, **71, 73,** 75,§106.10]

106.11 Muffling devices. The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. The use of cut-outs is prohibited, except for motorboats competing in a regatta or boat race approved as provided in section 106.16 and for such motorboats while on trial run during a period not to exceed forty-eight hours immediately preceding such regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed forty-eight hours immediately following such regatta or race. [C39,§§**1703.11, 1703.17**; C46, 50, 54, 58,§§106.11, 106.17; C62, 66, 71, 73, 75,§106.11]

106.12 Prohibited operation.

1. No person shall operate any vessel, or manipulate any water skis, surfboard or similar device in a careless, reckless or negligent manner so as to endanger the life, limb or property of any person.

2. No person shall operate any vessel, or manipulate any water skis, surfboard or similar device while intoxicated or under the influence of any narcotic drug, barbiturate or **marijuana.**

3. No person shall place, cause to be placed, throw or deposit onto or in any of the public waters, ice or land of this state any cans, bottles, garbage, rubbish, and other debris.

4. No person shall operate on the waters of this state under the jurisdiction of the conservation commission any vessel displaying or reflecting a blue light or flashing blue light unless such vessel is an authorized emergency vessel.

5. No person shall operate a vessel and enter into areas in which search and rescue operations are being conducted or an area affected by a natural disaster unless authorized by the officer in charge of the search and rescue or disaster operation. Any person authorized in an area of operation shall operate his vessel at a no wake speed and shall keep clear of all other vessels engaged in the search and rescue or disaster operation. A person who must operate a vessel in a disaster area to gain access or egress from the person's home shall be considered an authorized person by the officer in charge.

6. No owner or operator of any vessel propelled by a motor of more than six horsepower shall permit any person under twelve years of age to operate such vessel except when accompanied by a responsible person of at least eighteen years of age who is experienced in motorboat operation. [C39,§§**1703.17, 1703.21**; C46, 50, 54, 58,§§106.17, 106.21, 106.28; C62, 66, 71, 73, 75,§106.12; 66GA, ch 102,§6]

106.13 Penalty. Any person violating any of the provisions of this chapter, for which another penalty is not otherwise specifically provided, shall, upon conviction or a plea of guilty, be fined not to exceed one hundred dollars or be imprisoned in the county jail not to exceed thirty days.

Chapter 232 shall have no application in the prosecution of offenses committed in violation of this chapter or rules and regulations which are adopted under the authority of this chapter which are punishable by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days. [C97,§§2313, 2315; S13,§§2313, 2315; C24, 27, 31,§1695; C35, §§1703-e5, 1703-e6; C39,§§**1703.05, 1703.06**; C46, 50, 54, 58,§§106.5, 106.6; C62, 66, 71, 73, 75, §106.13]

106.14 Operating vessel while intoxicated or under influence of drugs. Whoever, while in an intoxicated condition or under influence of narcotic drugs, operates a vessel or manipulates any water skis, surfboard or similar device upon the public waters of this state, shall, upon conviction or a plea of guilty be punished, for the first offense by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not to exceed one year, or by both such fine and imprisonment; for the second offense by a fine of not less than five hundred dollars, nor more than one thousand dollars, or by imprisonment in the penitentiary for a period of not to exceed one year, or by both such fine and imprisonment; and for a third offense and each offense thereafter, by imprisonment in the penitentiary for a period not to exceed three years.

The court shall also, in pronouncing sentence, provide for the revocation of the pilot's and engineer's license of the defendant, if any.

The court, in pronouncing sentence, may provide as to the period during which a pilot's and engineer's license shall not be issued or reissued to the defendant, provided said period shall be not less than sixty days nor more than one year from the date of sentence or revocation. If the court does not so provide, the commission may issue or reissue such license only upon application by the defendant after the expiration of a sixty day period following the date of sentencing. [C97,§2513; S13,§2513; C24, 27, 31,§1695; C35,§1703-e5; C39,**§1703.05**; C46, 50, 54, 58,§§106.5, 106.28; C62, 66, 71, 73, 75, §106.14]

106.15 Water skis and surfboards.

1. No person shall operate a vessel on any waters of this state under the jurisdiction of the commission for towing a person or persons on water skis, surfboard or similar device unless there is in such vessel a responsible person, in addition to the operator, in a position to observe the progress of the person or persons being towed.

2. No person shall operate a vessel on any waters of this state under the jurisdiction of the commission, towing a person or persons on water skis, surfboard or similar device, nor shall any person engage in water skiing, surfboarding or similar activity at any time between the hours from one hour after sunset to one hour before sunrise.

3. The provisions of subsections 1 and 2 of this section do not apply to a performer engaged in a professional exhibition or a person or persons engaged in a professional exhibition or a person or persons engaged in an activity authorized under section 106.16. [C39, §**1703.17**; C46, 50, 54, 58,§106.17; C62, 66, 71, 73, 75,§106.15]

106.16 Regattas, races, marine parades, tournaments or exhibitions.

1. The commission may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments or exhibitions on any waters of this state under the jurisdiction of the commission. The commission shall adopt and may, from time to time, amend regulations concerning the safety of vessels and persons, either observers or participants. If a regatta, motorboat or other boat race, marine parade, tournament or exhibition is proposed to be held, the person in charge thereof shall file an application with the commission for permission to hold such regatta, motorboat or other boat race, marine parade, tournament or exhibition. The application shall

set forth the date, time and location where it is proposed to hold such regatta, motorboat or other boat race, marine parade, tournament or exhibition and it shall not be conducted without written authorization of the commission.

2. The provisions of this section shall not exempt any person from compliance with applicable federal law or regulation, but nothing contained herein shall be construed to require the securing of a state permit under this section if a permit therefor has been obtained from an authorized agency having jurisdiction of the waters where such regatta, race, marine parade, tournament or exhibition is being conducted. [C39,§**1703.17**; C46, 50, 54, 58,§§106.17, 106.28; C62, 66, **71, 73,** 75,§106.16]

Referred to in §§106.9, 106.11, 106.15

106.17 Local regulations restricted.

1. The provisions of this chapter and other applicable laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto of any vessel whenever such vessel is operated or maintained on the waters of this state under the jurisdiction of the commission, but nothing in this chapter shall be construed to prevent the adoption of any ordinance or local law relating to the operation of equipment of vessels. Such ordinances or local law shall be operative only so long as they are not inconsistent with the provisions of this chapter or the rules and regulations adopted by the commission.

2. Any subdivision of this state may, but only after public notice thereof by publication in a newspaper having a general circulation in such subdivision, make formal application to the commission for special rules and regulations concerning the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

3. The commission is hereby authorized upon application of local authorities to make special rules and regulations, in conformity with this chapter, concerning the operation of vessels on any waters of this state under the jurisdiction of the commission within the territorial limits of any subdivision of this state. [C39,§**1703.17**; C46, 50, 54, 58, **62, 66, 71, 73,** 75,§106.17]

106.18 Owner's civil liability. The owner and operator of any undocumented vessel shall be liable for any injury or damage occasioned by the negligent operation of such vessel. [C39,§**1703.21**; C46, 50, 54, 58,§106.21; C62, 66, 71, 73, 75,§106.18]

106.19 Repealed by 64GA, ch 1026,§4.

106.20 Boat inspection. Any person having, upon any waters of this state under the jurisdiction of the commission, any vessel, either for hire or offered for hire, must have such vessel and all its appurtenances annually inspected.

Every such owner shall file in the office of the commission, an application for inspection of such vessels on a blank furnished by the commission for that purpose.

Officers appointed by the commission shall have the power and authority to determine whether such vessel is safe for the transportation of passengers or cargo and upon what waters it may be used. They may determine and designate the number of passengers or cargo, including crew, that may be carried and determine whether the machinery, equipment and all appurtenances are such as to make said vessels seaworthy, where used, and such other matters as are pertinent.

After such vessels have been inspected as provided herein, a current inspection seal or tag shall be issued by the commission and shall be kept posted in a conspicuous place upon or in such vessel. Any inspection seal or tag shall be in effect only for the calendar year for which the inspection seal or tag is issued.

Private vessels may also be inspected to determine their seaworthiness at any time by representatives of the commission. [C97, §§2511, 2512, 2513; S13,§§2512, 2513; C24, 27, 31, §§1691, 1692, 1694; C35,§§1703-e1–e3, 1703-e5; C39,§§**1703.01–1703.03, 1703.05**; C46, 50, 54, 58, §§106.1–106.3, 106.5; C62, 66, 71,§§106.19, 106.20; C73, 75,§106.20]

106.21 Fees. The annual fee for the inspection of vessels operated for hire shall be based upon the passenger-carrying capacity, including crew, for which such vessel is registered.

Such fee shall be computed at the rate of fifty cents per person capacity, except rowboats, but shall be not less than one dollar and shall not exceed the maximum of twenty dollars. The fee for inspecting rowboats shall be one dollar per boat.

The annual fee for pilot's license is one dollar.

The annual fee for engineer's license is two dollars.

The provisions of this section shall be applicable to all vessels which are rented to the public for hire, including vessels furnished with leased cottages. If such vessels are found to be in satisfactory condition, the inspecting officer shall attach thereto a small plate or inspection seal, indicating the date of inspection and the passenger-carrying capacity. The owner of such vessel shall not offer it for hire or allow it to be so used until such inspection has been made and the vessel found to be in satisfactory condition.

There shall be no fee charged for the inspection of private vessels not used for hire.

The inspecting officer shall collect all inspection fees and forward them to the commission.

All fees collected shall be forwarded by the commission to the treasurer of the state, who shall place such money in a conservation fund. The money so collected shall be appropriated by the legislature to the commission solely for the administration and enforcement of naviga-

tion laws and water safety. [C97,§2512; S13, §2512; C24, 27, 31,§1694; C35,§§1703-e4, 1703-e7; C39,§§**1703.04, 1703.08**; C46, 50, 54, 58,§§106.4, 106.8; C62, 66, 71, 73, 75,§106.21]

106.22 Engineer or pilot license. No vessel shall be operated for hire by a pilot or engineer upon the waters of this state under the jurisdiction of the commission unless he first obtains an engineer's or pilot's license. A pilot's license is required for any person who has charge of the steering or directing of the vessel's course or who does the steering or directs the vessel's course. An engineer's license is required for all operators who have charge of or operate the equipment by which the boat is propelled. If one person acts in a dual or alternate capacity, he shall first obtain both an engineer's and pilot's license.

Any person desiring a pilot's or engineer's license shall file an application with the commission upon forms prepared and furnished by the commission. Such license may be issued by the commission only upon recommendation of an officer duly authorized by the commission. Before the officer recommends such a license, he shall investigate the competency of the applicant, his acquaintance with and experience in boat work, his habits as to sobriety, his mental and physical qualifications for the work, his acquaintance with the waters for which application to operate upon is made, his familiarity with the laws and regulations pertaining to the vessel operation and all other pertinent matters. Such license shall not be issued to anyone under eighteen years of age.

Engineer's and pilot's licenses shall be in effect only for the calendar year in which such license is issued. [C97,§2512; S13,§2512; C24, 27, 31,§1694; C35,§1703-e3; C39,§**1703.03**; C46, 50, 54, 58,§106.3; C62, 66, 71, 73, 75,§106.22]

106.23 Suspension or revocation.

1. Any officer appointed by the commission may, for cause, temporarily suspend the registration certificate of any vessel and the license of a pilot or engineer, that has been issued under this chapter, and the commission, after a due hearing on the matter at its next session, shall make final determination in the matter.

2. The commission shall forthwith revoke the registration certificate of any vessel and the pilot's or engineer's license of the operator of such vessel upon receiving a record of such owner or operator's conviction of any of the following offenses, when such conviction has become final:

a. Manslaughter resulting from the operation of a vessel.

b. Operating a vessel or manipulating water skis, surfboard or similar device while in an intoxicated condition or under influence of a narcotic drug.

c. Failure to stop and render aid as required by this chapter when a collision, accident or other casualty results in the death or personal injury of another.

d. Perjury or the making of a false affidavit or statement under oath to the commission under this chapter relating to the ownership or operation of a vessel.

3. The commission is hereby authorized to suspend the registration certificate of any vessel and the pilot's or engineer's license of an operator upon a showing by its records that the owner or operator:

a. Has committed an offense for which mandatory revocation of registration certificate or pilot's or engineer's license is required upon conviction.

b. Is a habitual reckless or negligent operator of a vessel.

c. Is incompetent to operate a vessel.

d. Has permitted an unlawful or fraudulent use of such registration certificate or pilot's or engineer's license.

4. The commission is hereby authorized to suspend or revoke the certificate of registration of a vessel registered under the provisions of this chapter when:

a. It is satisfied that such registration certificate was fraudulently or erroneously obtained.

b. It determines that a registered vessel is unsafe to be operated on waters of the state under the jurisdiction of the commission.

c. A registered vessel has been abandoned or wrecked.

d. Identification numbers are knowingly displayed on a vessel other than the one to which assigned.

5. Upon revocation of any registration certificate, the commission shall notify the county recorder who issued the same, who shall immediately enter the revocation upon his records.

6. The commission is hereby authorized to suspend or revoke the special certificate of any manufacturer or dealer when it is satisfied that:

a. Such special certificate was fraudulently or erroneously obtained.

b. Such special certificate is being used in violation of the provisions of this chapter or the rules and regulations of the commission.

c. Such manufacturer or dealer is violating any of the provisions of this chapter or the rules and regulations of the commission. [C97, S13,§2513; C24, 27, 31,§1695; C35,§1703-e5; C39, §**1703.05**; C46, 50, 54, 58,§106.5; C62, 66, 71, 73, 75,§106.23]

106.24 Overloading of vessels. No person owning or operating a vessel shall permit said vessel to be occupied by more passengers and crew than the registration capacity permits. [C39,§§**1703.16, 1703.24**; C46, 50, 54, 58,§§106.16, 106.24; C62, 66, 71, 73, 75,§106.24]

106.25 Penalty. If any owner, agent or master of any vessel, plying the waters of this

state, shall hire or offer for hire, such vessel for the carrying of a person or persons thereon, without first obtaining annually, a permit as in this chapter required, and before operating such vessel in such service; or if the owner, agent or master, having obtained such permit, receives for carriage or permits carriage on such vessel a greater number of persons than authorized therein, or if any person acts as pilot or engineer on any vessel, for which inspection and registration are required, without first obtaining a permit therefor; or if such pilot or engineer continues to follow such avocation after the same has been revoked or expired, he shall be fined in a sum not to exceed one thousand dollars or imprisoned in the county jail not to exceed one year or punished by both such fine and imprisonment. The provisions of this section shall not apply to vessels registered or numbered by authority of the United States. [C97,§2513; S13,§§2513, 2514-d; C24, 27, 31,§§1695, 1700; C35,§§1703-e6, 1703-e10; C39,§§**1703.06, 1703.22, 1703.27**; C46, 50, 54, 58,§§106.6, 106.22, 106.27; C62, 66, 71, 73, 75, §106.25]

106.26 Right of way rules. Vessel traffic shall be governed by the following rules:

1. Passing from rear—keep to the operator's left.

2. Passing head on—keep to the operator's right.

3. Passing at right angles—vessel at the right has the right of way.

4. Manually propelled vessels have the right of way over all other vessels.

5. Sailboats have the right of way over all motor driven vessels. Motorboats, when meeting or overtaking sailboats, shall always pass on the leeward side.

6. Any vessel backing from a landing has the right of way over incoming vessels.

7. The commission is authorized to promulgate further rules and regulations governing vessel traffic.

8. Except as provided in special rules promulgated under the authority of this chapter, the following speed and distance regulations shall apply:

a. On all waters under the jurisdiction of the state conservation commission:

(1) No motorboat shall be operated at speeds greater than five miles per hour when within two hundred fifty feet of another craft traveling at five miles per hour or less or any sailboat at any time.

(2) Motorboats shall maintain a minimum passing or meeting distance of fifty feet when both boats are traveling at speeds greater than five miles per hour.

b. On all lakes and federal impoundments under the jurisdiction of the state conservation commission:

(1) No motorboat shall be operated at a speed exceeding five miles per hour unless vision is unobstructed at three hundred feet ahead.

(2) No motorboat shall be operated within three hundred feet of shore at a speed greater than ten miles per hour. [C39,§**1703.14**; C46, 50, 54, 58,§106.14; C62, 66, 71, 73, 75,§106.26]

106.27 Removal of nonpermanent structures. Every vessel or structure, not considered a permanent structure by the commission or excepted by the regulations of the commission, shall be removed from the waters, ice, or land of this state under the jurisdiction of the commission on or before December 15 of each year. Failure to comply with this section shall cause said vessel or structure to be declared a public nuisance and disposition shall be in accordance with sections 110.19 through 110.22. Provided, however, that structures used for seasonal or year-round habitation purposes shall not be removed. [C39,§§**1703.16, 1703.25**; C46, 50, 54, 58,§§106.16, 106.25; C62, 66, 71, 73, 75,§106.27]

106.28 Unworthy vessels drydocked. No person shall place or allow to remain in the waters of this state under the jurisdiction of the commission, any vessel which has failed to pass inspection. [C39,§**1703.25**; C46, 50, 54, 58, §106.25; C62, 66, 71, 73, 75,§106.28]

106.29 Official duty exempted. Members of the commission, its deputies, agents and employees shall not be deemed violating the provisions of this chapter while on emergency duty and acting within the scope of their employment. [C39,§**1703.26**; C46, 50, 54, 58,§106.26; C62, 66, 71, 73, 75,§106.29]

106.30 Aircraft restriction. It shall be unlawful for any aircraft to make use of the inland lakes of the state, except in the transportation of persons or property between points separated by a distance of thirty miles or more. Nothing herein shall prohibit the use of such waters by any aircraft in danger or distress or the use of such waters by the operators of private aircraft, not operated for hire. The foregoing provisions notwithstanding, the commission may, on the recommendation of the Iowa aeronautics commission, designate certain areas on inland lakes of the state where seaplane flight instruction may be conducted under such conditions as may be adopted by the commission and the Iowa aeronautics commission. [C39,§**1703.15**; C46, 50, 54, 58,§106.15; C62, 66, 71, 73, 75,§106.30]

106.31 Artificial lakes.

1. No motorboats shall be permitted on any artificial lake under the jurisdiction of the conservation commission except the following:

a. Boats equipped with one outboard battery operated electric trolling motor of not more than one and one-half horsepower.

b. Boats equipped with outboard motors of not more than six horsepower on all artificial lakes of more than one hundred acres in size.

2. No person shall operate any sailboat on any artificial lake under the jurisdiction of the commission except those lakes specifically designated by the commission. All sailboats, so operated, must be of a type and size approved by the commission.

3. All privately owned boats on artificial lakes under the jurisdiction of the commission shall be kept at locations designated by the commission.

4. All privately owned rowboats, used on or kept at the artificial lakes under the jurisdiction of the commission, shall be seaworthy for the waters where they are kept and used. All such boats shall be removed from state property whenever ordered by the commission, and, in any event, shall be removed from such property not later than December 15 of each year.

5. Upon construction of an artificial lake by any political subdivision of this state, such subdivision may, after publication in a newspaper of general circulation in the subdivision, make formal application to the commission for special rules relating to the operation of watercraft on such lake, and shall set forth therein the reasons which make such special rules necessary or appropriate. The commission shall promulgate such special rules as provided in this chapter, concerning the operation of watercraft on a lake constructed and maintained by a subdivision of this state. Such special rules may include the following:

a. Zoning by area and time to regulate navigation and other types of activity.

b. Regulating the horsepower, size and type of watercraft.

6. The commission may promulgate special rules concerning all activities on impoundments constructed by or in co-operation with the federal government. Such rules may include the following:

a. Zoning by area and time to regulate navigation and other types of activity.

b. Regulating the horsepower, size and type of watercraft. [C39,**§1703.16**; C46, 50, 54, 58, §106.16; C62, 66, 71, 73, 75,§106.31]

See special Act relating to the operation of watercraft on Green Valley Lake in Union county, 63GA, ch 1060,§§1,2

106.32 Rules for buoys.

1. No private buoy shall be maintained in the waters of this state under the jurisdiction of the commission except as specified by the rules of the commission.

2. No other obstruction of any kind shall be maintained in the waters of this state under the jurisdiction of the commission without first receiving permission from the commission to maintain such obstruction.

3. It shall be unlawful to tamper with, move or attempt to move any state-owned buoy.

4. No boat shall be anchored away from the shore and left unguarded unless it is attached to a legal buoy. [C39,**§1703.18**; C46, 50, 54, 58, §106.18; C62, 66, 71, 73, 75,§106.32]

106.33 Driving over ice. No craft or vehicle operating on the surface of ice on the inland lakes and streams of this state and propelled by machinery in whole or in part, except ice-cutting machinery, automobiles, motorcycles and trucks when such are used without endangering public safety, shall be operated without a permit issued, by the commission, for such operation. Any such permit issued may be revoked by the commission if such craft or vehicle is operated in a careless manner as endangers others. [C39,**§1703.20**; C46, 50, 54, 58,§106.20; C62, 66, 71, 73, 75,§106.33]

Constitutionality, 59GA, ch 87,§9

106.34 Authorized emergency vessels. Upon approach of an authorized emergency vessel displaying a blue light or flashing blue light, the operator of every other vessel shall stop and yield the right of way until the authorized vessel has passed. The provisions of this section shall not relieve the operator of an authorized emergency vessel from the duty to operate his vessel with due regard for the safety of all persons using the waters of this state, nor shall the provisions relieve the operator of any such vessel from liability from his negligence. [C71, 73, 75,§106.34]

VESSEL REGISTRATION REGULATIONS

106.35 Special certificate for manufacturer or dealer. A manufacturer or dealer owning any vessel required to be registered under the provisions of this chapter may operate the same for purposes of transporting, testing, demonstrating, or selling the same without registering each such vessel, provided that any such vessel displays thereon a special certificate issued to such owner as provided in this chapter. This special certificate may not be used for any vessel offered for hire or for any work or service vessels owned by a manufacturer or dealer. [C71, 73, 75,§106.35]

106.36 Fee for certificate. Any manufacturer or dealer may, upon payment of a fee of fifteen dollars, make application to the commission, upon such forms as the commission prescribes, for a special certificate containing a general distinguishing number and for one or more duplicate special certificates. The applicant shall submit such reasonable proof of his status as a bona fide manufacturer or dealer as the commission may require. [C71, 73, 75,§106.36]

106.37 Number assigned—special signs. The commission, upon granting any such application, shall issue to the applicant a special certificate containing the applicant's name and address, the general distinguishing number assigned to the applicant, the word "manufacturer" or "dealer", and such other information as the commission may prescribe. The manufacturer or dealer shall have the number so awarded printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the vessel

being used, and the display must meet the requirements of this chapter and the rules and regulations of the commission. [C71, 73, 75, §106.37]

106.38 Duplicates. The commission shall also issue duplicate special certificates as applied for which shall have displayed thereon the general distinguishing number assigned to the applicant. Each duplicate special certificate so issued shall contain a number or symbol identifying the same from every other duplicate special certificate bearing the same general distinguishing number. The fee for each additional duplicate special certificate shall be two dollars. [C71, 73, 75,§106.38]

106.39 Expiration date. Each special certificate issued hereunder shall expire at midnight on April 30 of each odd-numbered year, and a new special certificate for the ensuing biennium may be obtained upon application to the commission and payment of the fee provided by law. [C71, 73, 75,§106.39]

106.40 Record of use. Every manufacturer or dealer shall keep a written record of the vessels upon which such special certificates are used, which record shall be open to inspection by any law enforcement officer or any officer or employee of the commission. [C71, 73, 75,§106.40]

106.41 Separate certificate for each city. If a manufacturer or dealer has an established place of business in more than one city, he shall secure a separate and distinct special certificate and general distinguishing number for each such place of business. [C71, 73, 75, §106.41]

106.42 List of used boats on hand furnished. Dealers using special certificates under the provisions of this chapter shall, before May 5 of each year, furnish the commission with a list of all used vessels held by them for sale or trade, and upon which the registration fee for the current year has not been paid, giving the previous registration number, name of previous owner at the time such vessel was transferred to the dealer, and such other information as the commission may require. [C71, 73, 75,§106.42]

106.43 Transfer of ownership. Upon the transfer of ownership of any vessel, the owner, except as otherwise provided by this chapter, shall complete the form on the back of the registration certificate and shall deliver it to the purchaser or transferee at the time of delivering the vessel. All registrations must be valid for the current registration period prior to the transfer of any registration, including assignment to a dealer. [C71, 73, 75, §106.43; 66GA, ch 102,§7]

106.44 Application for transfer. The purchaser or transferee shall, except as otherwise provided by this chapter, within five days file a new application form with the county recorder with a fee of one dollar and the appropriate writing fee, and a transfer of number shall be awarded in the same manner as provided for in an original registration. [C71, 73, 75,§106.44]

106.45 Transfer by dealer. When the purchaser or transferee of a vessel is a dealer who holds the same for resale and operates the vessel only for purposes incident to a resale and displays thereon his special dealers' certificate, or does not operate such vessel or permit it to be operated, such transferee shall not be required to obtain a new registration certificate but upon transferring his title or interest to another person he shall sign the reverse side of the registration certificate of such vessel indicating the name and address of the new purchaser. [C71, 73, 75,§106.45]

106.46 Purchase of registered vessel by dealer. Whenever a dealer purchases or otherwise acquires a vessel registered in this state, he shall issue a signed receipt to the previous owner, indicating the date of purchase or acquisition, the name and address of such previous owner, and the registration number of the vessel purchased or acquired. The original receipt shall be delivered to the previous owner and one copy shall be mailed or delivered by the dealer to the county recorder of the county in which the vessel is registered, and one copy shall be delivered to the commission within forty-eight hours. [C71, 73, 75,§106.46]

106.47 Transfer to dealer. Nothing in this section shall prohibit a dealer from obtaining a new registration and transfer of registration in the same manner as other purchasers. [C71, 73, 75,§106.47]

106.48 Sales by dealer. Upon the sale of a vessel by a manufacturer or dealer, the purchaser shall within five days make application for registration and he may operate the vessel without its individual identification number thereon for a period of not more than ten days after the purchase date, provided that during such period the vessel shall have attached thereto, in accordance with the provisions of this chapter, a pasteboard card bearing the words "registration applied for" and the special certificate number of the dealer from whom the vessel was purchased together with the date of purchase plainly stamped or stenciled thereon. [C71, 73, 75, §106.48]

106.49 Prohibited use of "applied for" card. No manufacturer or dealer shall permit the use of such card unless an application for a registration certificate has been made. [C71, 73, 75,§106.49]

106.50 Official cards only to be used. The commission shall, upon the application of any manufacturer or dealer, furnish "registration applied for" cards free of charge. No cards

shall be used except those furnished by the commission. [C71, 73, 75,§106.50]

106.51 County recorder—duties. The county recorder shall be responsible for all fees and penalties for the issuance of vessel registrations. All unused registration certificates shall be surrendered to the commission upon demand. [C71, 73, 75,§106.51]

106.52 Fees remitted to commission. Within ten days after the end of each month, each county recorder shall remit to the commission all fees collected by him during the previous month. Before May 10 in odd-numbered years, each county recorder shall remit to the commission all unused license blanks for the previous biennium. Before May 10 of each year, each county recorder shall make a final accounting for all registration fees and penalties received during the previous year. All fees collected for the registration of vessels shall be forwarded by the commission to the treasurer of the state, who shall place such money in a special conservation fund. The money so collected is hereby appropriated to the commission solely for the administration and enforcement of navigation laws and water safety. [C71, 73, 75,§106.52]

106.53 Amount of writing fees collected. In addition to the other fees provided by this chapter, the county recorder shall collect from the boat owner, at the time of the transaction, the following writing fees:

1. For a new registration, fifty cents.
2. For renewal of a registration, fifty cents.
3. For a duplicate registration, twenty-five cents.
4. For a new registration upon a change of address or a change of name, but only if the owner requests a new registration be issued to him, twenty-five cents. [C71, 73, 75,§106.53]

106.54 Disposal of writing fees. The writing fees collected by the county recorder shall be paid to the county treasurer by the county recorder as other such fees are paid to the county treasurer by him. [C71, 73, 75,§106.54]

106.55 Sales or use tax to be paid before registration. No vessel shall be registered by the county recorder until there has been presented to the recorder receipts, bills of sale, or other satisfactory evidence that the sales or use tax has been paid for the purchase of the vessel. If the owner of the vessel is unable to present satisfactory evidence that the sales or use tax has been paid, the county recorder shall collect the tax. On or before the tenth day of each month, the county recorder shall remit to the department of revenue the amount of the taxes so collected during the preceding month, together with an itemized statement on forms furnished by the department of revenue showing the name of each taxpayer, the make and purchase price of each vessel and motor, the amount of tax paid, and such other information as the department of revenue shall require. [C71, 73, 75,§106.55]

106.56 Certificate of origin.

1. A manufacturer, importer, dealer or other person shall not sell or otherwise dispose of a new vessel subject to registration under the provisions of this chapter to a dealer to be used by such dealer for purposes of display and lease or resale without delivering to such dealer a manufacturer's or importer's certificate of origin duly executed and with such information thereon as may be required by the rules of the commission. The dealer of vessels subject to registration under the provisions of this chapter shall upon the vessel's disposal or sale to any person surrender the certificate of origin to that person at the time possession of the vessel is taken by such person.

2. Any person other than a manufacturer who constructs a vessel or uses an unconventional device as a vessel for navigation shall submit detailed specifications of such vessel or device to the commission. The commission shall assign a hull identification number to the vessel or device. The applicant shall cause the number to be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outermost starboard side at the end of the hull that bears the rudder or other steering mechanism, above the waterline of the vessel or device in such a way that alteration, removal, or replacement would be obvious and evident.

The builder or owner of such vessel or device shall execute a certificate of origin in the same manner as is required of a manufacturer, and in the registration or sale of such vessel or device the certificate of origin shall be required and surrendered in the same manner as for manufactured or imported vessels. [66GA, ch 102,§8]

CHAPTER 106A

USE OF STATE WATERS BY NONRESIDENTS

Referred to in §109.1

See §321.498 et seq. for similar provisions

106A.1 Legal effect of use and operation.
106A.2 "Person" defined.
106A.3 Original notice—form.
106A.4 Manner of service.

106A.5 Notification to nonresident—form.
106A.6 Optional notification.
106A.7 Proof of service.
106A.8 Actual service within this state.
106A.9 Venue of actions.
106A.10 Continuances.
106A.11 Duty of secretary of state.
106A.12 Expenses and attorney fees.
106A.13 Dismissal—effect.
106A.14 Action against insurance.

106A.1 Legal effect of use and operation. The use, operation or maintenance by any nonresident of watercraft in the waters of this state, shall be deemed an appointment by such nonresident of the secretary of state as his true and lawful attorney upon whom may be served all original notices of suit growing out of such use, operation or maintenance or resulting in damage or loss to person or property and said use, operation or maintenance shall be deemed an agreement by such nonresident that any original notice of suit so served shall be of the same legal force and validity as if personally served on him in this state. [C62, 66, 71, 73, 75,§106A.1]

106A.2 "Person" defined. The term "person" as used in this chapter means:

1. The owner of watercraft whether it is being used and operated personally by said owner or by his agent.

2. An agent using and operating the watercraft for his principal.

3. Any person who is in charge of the watercraft and of the use and operation thereof with the express or implied consent of the owner. [C62, 66, 71, 73, 75,§106A.2]

106A.3 Original notice—form. The original notice of suit filed with the secretary of state shall be in form and substance the same as now provided in suits against residents of this state, except that the part of said notice pertaining to the return day shall be in substantially the following form, to wit:

"and unless you appear thereto and defend in the district court of Iowa in and for ..... county at the courthouse in ....., Iowa before noon of the sixtieth day following the filing of this notice with the secretary of state, default will be entered and judgment rendered against you." [C62, 66, 71, 73, 75,§106A.3]

106A.4 Manner of service. Plaintiff in any such action shall cause the original notice of suit to be served as follows:

1. By filing a copy of said original notice of suit with said secretary of state, together with a fee of two dollars, and

2. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the secretary of state, by restricted certified mail addressed to the defendant at his last known residence or place of abode, a notification of the said filing with the secretary of state. [C62, 66, 71, 73, 75, §106A.4]

106A.5 Notification to nonresident—form. The notification, provided for by this chapter, shall be substantially in the following form, to wit:

"To ..... (Here insert the name of each defendant and his residence or last known place of abode.)

You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the ..... day of ...., 19...., with the secretary of state.

Dated at ....., Iowa, this .... day of ....., 19.....

.....
Plaintiff

By .....
Attorney for Plaintiff"

[C62, 66, 71, 73, 75,§106A.5]

106A.6 Optional notification. In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery. [C62, 66, 71, 73, 75,§106A.6]

106A.7 Proof of service. Proof of the filing of a copy of said original notice of suit with the secretary of state, and proof of the mailing or personal delivery of said notification to said nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court. [C62, 66, 71, 73, 75,§106A.7]

106A.8 Actual service within this state. The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form and under the conditions provided for service on residents. [C62, 66, 71, 73, 75,§106A.8]

106A.9 Venue of actions. Actions against nonresidents as contemplated by this chapter may be brought in the county of which plaintiff is a resident, or in the county in which the injury was received or damage done. [C62, 66, 71, 73, 75,§106A.9]

106A.10 Continuances. The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford him reasonable oppor-

tunity to defend said action. [C62, 66, 71, 73, 75,§106A.10]

106A.11 Duty of secretary of state. The secretary of state shall keep a record of all notices of suit filed with him, shall not permit said filed notices to be taken from his office except on an order of court and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which he is defendant. [C62, 66, 71, 73, 75,§106A.11]

106A.12 Expenses and attorney fees. If judgment is rendered against the plaintiff upon the trial of said action, said judgment shall include the reasonable expenses incurred by the defendant and his attorney in appearing to and defending against said action, provided that in the judgment of the trial court said action was commenced maliciously or without probable cause. [C62, 66, 71, 73, 75, §106A.12]

106A.13 Dismissal—effect. The dismissal of an action after the nonresident has entered a general appearance under the substituted service herein authorized shall bar the recommencement of the same action against the same defendant unless said recommenced action is accompanied by actual personal service of the original notice of suit on said defendant in this state. [C62, 66, 71, 73, 75,§106A.13]

106A.14 Action against insurance. Any contract insuring the liability of a nonresident operator of a motorboat in Iowa shall, in case of the death of said nonresident, be considered an asset of his estate having a situs in Iowa in any civil action arising out of an accident in which said nonresident may be liable. [C62, 66, 71, 73, 75,§106A.14]

CHAPTER 107

STATE CONSERVATION COMMISSION

Referred to in §109.1

Identification and use of publicly owned automobiles, etc., §740.20 et seq.

Fine arts expenditures, 66GA, ch 62,§13

107.1 Creation of commission—membership.
107.2 Appointment.
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107.4 Vacancies.
107.5 Compensation and expenses.
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107.7 Bonds—surety.
107.8 Premium.
107.9 Repealed by 64GA, ch 84,§99.
107.10 Organization and meetings.
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107.26 Interpretation and limitations.
107.27 Federal wildlife Act—assent.
107.28 Fish restoration projects.
107.29 Outdoor recreational and watershed projects.
107.30 Federal assistance for outdoor recreation.
107.31 Comprehensive plan.
107.32 Application for aid.
107.33 Watershed projects.
107.34 Limit on state's commitment.

107.1 Creation of commission—membership. There is hereby created a state conservation commission which shall consist of seven citizens of the state who are interested in and have substantial knowledge of the subjects embraced in this chapter and the executive director of the department of environmental quality or his designee who shall be a nonvoting member. Not more than four of the seven citizen members shall, when appointed, belong to the same political party. No person appointed to said commission shall during his term hold any other state or federal office. [S13,§1400-p; C24, 27,§§1795, 2604; C31,§§1703-d2, -d3, 1795, 2604; C35,§1703-g1; C39,§**1703.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.1]

107.2 Appointment. Said members shall be appointed by the governor with the approval of two-thirds of the members of the senate. [C24, 27,§1795; C31,§§1703-d2, 1795; C35,§1703-g2; C39,§**1703.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §107.2]

107.3 Full-time appointments. During the session of the general assembly in 1937 and at a corresponding time each two years thereafter, the governor shall appoint two or three members, as the case may be, for a full term of six years. [C24, 27,§1796; C31,§§1703-d3, 1796;

C35,§1703-g3; C39,§**1703.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.3]

107.4 Vacancies. In case of vacancies, the governor shall appoint for the unexpired portion of the term, and if the general assembly be not then in session the governor shall, upon the convening of the general assembly, promptly report said appointment to the senate for its approval. [C31,§1703-d5; C35,§1703-g4; C39,§**1703.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.4]

107.5 Compensation and expenses. The members of the commission shall be paid a forty-dollar per diem and be reimbursed for actual and necessary expenses for each day employed in the discharge of official duties; however, the per diem shall not exceed one thousand six hundred dollars for each fiscal year. All per diem moneys paid to members shall be paid from funds appropriated to the commission. [C31,§1703-d6; C35,§1703-g5; C39, §**1703.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.5]

107.6 Expenses generally. The members and employees of the commission, the conservation director and officers shall be reimbursed for all actual and necessary expenses incurred by them in the discharge of their official duties when absent from their usual place of abode, unless said appointees or employees are serving under a contract which requires them to defray their own expenses. [C31,§1703-d6; C35, §1703-g6; C39,§**1703.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.6]

107.7 Bonds — surety. The conservation commission may obtain an adequate public employees honesty blanket position bond covering all or part of the officers or employees accountable for property or funds of the state of Iowa in which case the officers or employees so covered shall not be required to furnish individual bonds. All bonds insuring the fidelity of the commissioners, and of the appointees and employees of the commission shall be signed by a surety authorized by law to execute such bonds. [C31,§1703-d7; C35, §1703-g7; C39,§**1703.34**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.7]

107.8 Premium. The premium on the aforesaid fidelity bond shall be paid from the administration fund of the commission. [C31, §1703-d7; C35,§1703-g8; C39,§**1703.35**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.8]

107.9 Repealed by 64GA, ch 84,§99.

107.10 Organization and meetings. Said commission shall organize annually by the election of a chairman. The commission shall meet annually at the seat of government on the first Tuesday of January, April, July, and October and at such other times and places as it may deem necessary. Meetings may be called by the chairman, and shall be called by the chairman on the request of two members of the commission. [C31,§§1703-d8,-d9; C35, §1703-g10; C39,§**1703.37**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.10]

107.11 Conservation director. The commission shall employ an administrative head who shall be known as state conservation director and be responsible to the commission for the execution of its policies. He shall be a person of executive ability and possess special knowledge relative to the duties herein imposed on the commission. [C31,§§1703-d16,-d19; C35,§1703-g11; C39,§**1703.38**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.11]

107.12 Term and salary. Said director shall serve during the pleasure of the commission and shall receive an annual salary as fixed by the general assembly. [C31,§1703-d17; C35, §1703-g12; C39,§**1703.39**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.12]

107.13 Officers and employees. The director shall, with the consent of the commission, employ the number of assistants, including a professionally trained state forester, that are necessary to carry out the duties imposed on the commission; and, under the same conditions, the director shall appoint the number of officers and supervisory personnel that are necessary to enforce the laws and rules and regulations, the enforcement of which are imposed on the commission. The officers and supervisory personnel shall have the same powers that are conferred by law on peace officers in the enforcement of the laws of the state of Iowa and the apprehension of violators. Any person appointed as a full-time officer shall be at least twenty-two years of age, but not more than thirty-one years of age, on the date of his appointment. Officer means any person appointed by the state conservation commission to enforce the laws of this state under the jurisdiction of the commission. [C73,§4052; C97, §2540; SS15,§§2539, 2540; C24, 27,§1715; C31, §§1703-d20,-d22, 1715; C35,§§1703-g13,-g15; C39, §§**1703.40, 1703.42**; C46, 50, 54, 58, 62, 66, **71**, §§107.13, 107.15; C73, 75,§107.13]

Referred to in §97B.49

107.14 Temporary appointments. The commission may appoint temporary officers for a period not to exceed six months. The commission may adopt minimum physical, educational, mental, and moral requirements for the temporary officers. The provisions of chapter 80B shall not apply to the temporary officers. [C35,§1703-g14; C39,§**1703.41**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.14]

107.15 Repealed by 64GA, ch 1026,§12.

107.16 Removal. The appointees and employees aforesaid may be removed by the said director at any time subject to the approval of the commission. [C31,§1703-d20; C35,§1703-g16; C39,§**1703.43**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §107.16]

107.17 Funds. The financial resources of said commission shall consist of three funds:

1. A state fish and game protection fund,
2. A state conservation fund, and
3. An administration fund.

The state fish and game protection fund, except as otherwise provided, shall consist of all moneys accruing from license fees and all other sources of revenue arising under the division of fish and game.

The conservation fund, except as otherwise provided, shall consist of all other funds accruing to the conservation commission.

The administration fund shall consist of an equitable portion of the gross amount of the two aforesaid funds, to be determined by the commission, sufficient to pay the expense of administration entailed by this chapter.

All receipts and refunds and reimbursements related to activities funded by the administration fund are appropriated to the administration fund. All refunds and reimbursements relating to activities of the state fish and game protection fund shall be credited to the state fish and game protection fund. [C31, §§1703-d23, 1820; C35,§1703-g17; C39,**§1703.44**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.17; 66GA, ch 17,§3]

Referred to in §§107.27, 107.28, 110B.4

107.18 Report of funds. The conservation director shall, at least monthly, make return and pay to the treasurer of state all moneys then in his hands belonging to the aforesaid funds. [C31,§§1703-d23, 1820; C35,§1703-g18; C39, **§1703.45**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.18]

107.19 Expenditures. All funds accruing to the fish and game protection fund, except the said equitable portion, shall be expended solely in carrying on the activities embraced in the division of fish and game. Expenditures incurred by the state conservation commission in carrying on such activities shall be only on authorization by the general assembly.

The state conservation commission shall biennially on or before September 1 of each even-numbered year submit to the comptroller for transmission to the general assembly a detailed estimate of the amount required by the commission during the succeeding biennium for the carrying on of the activities embraced in the fish and game division. Such estimate shall be in the same general form and detail as may be required by law in estimates submitted by other state departments.

Any unexpended balance at the end of the biennium shall revert to the fish and game protection fund.

All administrative expense shall be paid from the administration fund.

All other expenditures shall be paid from the conservation fund.

All expenditures under this Act* shall be subject to approval by the state comptroller. [C35,§1703-g19; C39,**§1703.46**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.19]

Referred to in §§107.24, 107.27, 107.28
***46GA, ch 13**

107.20 Limitation to state lands—exception. Any and all funds appropriated to the state conservation commission which are used in growing or handling nursery stock shall be used for growing or handling of such stock for distribution only on state-owned lands. Provided, however, that the commission may continue to produce and sell at private sale game cover packets and trees for erosion control such as are now offered for sale by it, and may continue to produce trees for a demonstration windbreak in each township in the state, and may dispose of trees now growing under their present plan of distribution. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.20]

107.21 Divisions of department. The department of conservation, herein created, shall consist of the following divisions:

1. A division of fish and game which shall include matters relating to fish and fisheries, waterfowl, game, fur-bearing and other animals, birds and other wildlife resources and enforcement.

2. A division of lands and waters which shall include matters relating to state waters, state parks, forests and forestry, and lakes and streams, including matters relating to scenic, scientific, historical, archaeological and recreational matters and enforcement.

3. A division of administration which shall include matters relating to accounts, records, technical service, and public relations. [C35, §1703-g20; C39,**§1703.47**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.21]

107.22 Political activity. No member, officer, or employee of the commission shall, directly or indirectly, exert his influence to induce any other officers or employees of the state to adopt his political views, or to favor any particular candidate for office, nor shall such member, officer, or employee contribute in any manner, directly or indirectly, any money or other things of value to any person, organization, or committee for political campaign or election purposes. Any person violating this section shall be removed from his office or position. [C35,§1703-g22; C39,**§1703.48**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.22]

Constitutionality, §1703-g23, Code 1935; 46GA, ch 13,§37

107.23 General duties. It shall be the duty of the commission to protect, propagate, increase and preserve the fish, game, fur-bearing animals and protected birds of the state and to enforce by proper actions and proceedings the laws, rules and regulations relating thereto. The commission shall collect, classify, and preserve all statistics, data, and information as in its opinion shall tend to promote the objects of this chapter; shall conduct research in improved conservation methods and disseminate information to residents and nonresidents of Iowa in conservation matters.

Upon the issuance of such data and information in printed form to private individuals, groups or clubs, the commission shall be en-

titled to charge therefor the actual cost of printing and publication as determined by the state printer. [C31, 35,§1703-d11; C39,§**1703.49**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.23]

44GA, ch 26,§7, editorially divided

107.24 Specific powers. The commission is hereby authorized and empowered to:

1. Expend, as authorized by the general assembly under section 107.19, any and all moneys accruing to the fish and game protection fund from any and all sources in carrying out the purposes of this chapter; any Act, or Acts, not consistent with this provision are hereby repealed so far as they may apply to the fish and game protection fund.

2. Acquire by purchase, condemnation, lease, agreement, gift and devise lands or waters suitable for the purposes hereinafter enumerated, and rights of way thereto, and to maintain the same for the following purposes, to wit:

a. Public hunting, fishing, and trapping grounds and waters to provide areas in which any person may hunt, fish, or trap in accordance with the provisions of the law and the regulations of the commission;

b. Fish hatcheries, fish nurseries, game farms and fish, game, fur-bearing animal and protected bird refuges.

3. Extend and consolidate lands or waters suitable for the above purposes by exchange for other lands or waters and to purchase, erect and maintain buildings necessary to the work of the commission.

4. Capture, propagate, buy, sell, or exchange any species of fish, game, fur-bearing animals and protected birds needed for stocking the lands or waters of the state, and to feed, provide and care for such fish, animals and birds.

5. The commission is hereby authorized to adopt and enforce such departmental rules governing procedure as may be necessary to carry out the provisions of this chapter; also to carry out any other laws the enforcement of which is vested in the commission.

6. The commission is hereby further authorized to adopt, publish and enforce such administrative orders as are authorized in section 109.38.

7. Pay the salaries, wages, compensation, traveling and other necessary expenses of the state conservation commissioners, state conservation director, officers and other employees of the commission, and to expend money for necessary supplies and equipment, and to make such other expenditures as may be necessary for the carrying into effect the purposes of this chapter.

8. Control by shooting or trapping any fish, game, fur-bearing animals and protected birds for the purpose of preventing the destruction of or damage to private or public property, but shall not go upon private property for such purpose without the consent of the owner or occupant thereof.

9. Provide for the protection against fire and other destructive agencies on state and privately owned forest and wildlife areas, and to co-operate with federal and other state agencies in protection programs approved by the conservation commission, and with the consent of the owner on privately owned areas.

10. Provide conservation employees, when on duty, suitable uniforms, equipment, arms, and supplies. [C31, 35,§1703-d12; C39,§**1703.50**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.24; 66GA, ch 1176,§5]

Referred to in §§109.17, 109.48, 109.67
Land affected by federal projects, see §332.3(17)

107.25 Orders. Administrative orders shall be made only after an investigation of the matter concerned. [C31,§1703-d13; C35,§1703-e12; C39,§**1703.51**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §107.25]

107.26 Interpretation and limitations. The foregoing sections shall not be construed as authorizing the commission to change any penalty for violating any game law or regulation, or change the amount of any license established by the legislature, or to promulgate any open season on any fish, animal or bird contrary to the laws of the state of Iowa, or to extend except as provided in this chapter any open season or bag limit on any kind of fish, game, fur-bearing animals or of any birds prescribed by the laws of the state of Iowa or by federal laws or regulations, or to contract any indebtedness or obligation beyond the funds to which they are lawfully entitled. [C31, 35,§1703-d15; C39,§**1703.52**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.26]

107.27 Federal wildlife Act—assent. The state of Iowa hereby assents to the provisions of the Act of Congress entitled "An Act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes," approved September 2, 1937 [50 Stat. L. 917], and the state conservation commission is hereby authorized and empowered to perform such acts as may be necessary to the conduct and establishment of co-operative wildlife restoration projects, as defined in said Act of Congress, in compliance with said Act and with rules and regulations promulgated by the secretary of agriculture thereunder; and no funds accruing to the state of Iowa from license fees paid by hunters shall be diverted for any other purpose than as set out in sections 107.17 and 107.19. [C39,§**1703.53**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§107.27]

107.28 Fish restoration projects. The state of Iowa hereby assents to the provisions of the Act of Congress entitled "An Act to provide that the United States shall aid the states in fish restoration projects, and for other purposes", approved August 9, 1950, Public Law 681, and the state conservation commission is hereby authorized and empowered to perform such acts as may be necessary to the conduct and establishment of co-operative fish restora-

tion projects, as defined in said Act of Congress, in compliance with said Act and with rules and regulations promulgated by the secretary of the interior thereunder; and no funds accruing to the state of Iowa from license fees paid by fishermen shall be diverted for any other purposes than as set out in sections 107.17 and 107.19. [C54, 58, 62, 66, 71, 73, 75, §107.28]

107.29 Outdoor recreational and watershed projects. The state conservation commission is hereby authorized and empowered to perform such acts as may be necessary to the conduct and establishment of co-operative outdoor recreational and watershed projects as may be defined by the Congress of the United States and by rules and regulations of the appropriate federal agency and may accept federal funds and assistance for the purpose of planning, acquisition and development of outdoor recreational and watershed projects. [C66, 71, 73, 75, §107.29]

107.30 Federal assistance for outdoor recreation. The legislature finds that the state of Iowa and its subdivisions should enjoy the benefits of federal assistance programs for the planning and development of the outdoor recreation resources of the state, including the acquisition of lands and waters and interests therein. It is the purpose of this section and sections 107.31 through 107.34 to provide authority to enable the state of Iowa and its subdivisions to participate in the benefits of such programs. [C66, 71, 73, 75,§107.30]

Referred to in §107.34

107.31 Comprehensive plan. The state conservation commission is authorized to prepare, maintain, and keep up-to-date a comprehensive plan for the development of the outdoor recreation resources of the state; and to acquire lands, waters, and interests in lands and waters for such areas and facilities. [C66, 71, 73, 75,§107.31]

Referred to in §§107.30, 107.34

107.32 Application for aid. The state conservation commission may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program respecting outdoor recreation. It may enter into contracts and agreements with the U.S. or any appropriate agency thereof and, for the purposes for the preparation, maintenance and keeping up-to-date of said comprehensive plan, may from time to time engage and contract for the services and advice of any professional planner or planners of outdoor recreation plans and facilities and hire such employees for such purposes as deemed necessary. In connection with obtaining the benefits of any such program, the state conservation commission shall co-ordinate its activities with and represent the interests of all agencies and subdivisions of the state having interests in the planning, development, and maintenance of outdoor recreation resources and facilities. [C66, 71, 73, 75, §107.32]

Referred to in §§107.30, 107.34

107.33 Watershed projects. The state conservation commission is hereby authorized and empowered to perform such acts as may be necessary to conduct an establishment of co-operative outdoor recreational and watershed projects as may be defined by the Congress of the United States and by rules of the appropriate federal agency and may accept federal funds and assistance for the purpose of planning, acquisition and development of outdoor recreational and watershed projects. [C66, 71, 73, 75,§107.33]

Referred to in §§107.30, 107.34

107.34 Limit on state's commitment. The state conservation commission shall make no commitment or enter into any agreement pursuant to an exercise of authority under sections 107.30 through 107.33 until it has determined that sufficient funds are available to it for meeting the state's share, if any, of project costs. It is the legislative intent that, to such extent as may be necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to any program participated in by this state under authority of these sections, such areas and facilities shall be publicly maintained for outdoor recreation purposes. The state conservation commission may enter into and administer agreements with the United States or any appropriate agency thereof for planning, acquisition, and development projects involving participating federal aid funds on behalf of any subdivision or subdivisions of this state; provided that such subdivision or subdivisions give necessary assurances to the state conservation commission that they have available sufficient funds to meet their shares, if any, of the cost of the project and that the acquired or developed areas will be operated and maintained at the expense of such subdivision or subdivisions for public outdoor recreation use. [C66, 71, 73, 75,§107.34]

Referred to in §107.30

CHAPTER 108

ACQUISITION OF LANDS BY CONSERVATION COMMISSION

Referred to in §109.1

108.1 to 108.6 Repealed by 57GA, ch 80,§1.
108.7 Stream control on private lands.
108.8 Jurisdiction—public access.
108.9 Accreted land.
108.10 Artificial lakes—soil conservation.

108.1 to 108.6 Repealed by 57GA, ch 80,§1.

108.7 Stream control on private lands. Upon receiving consent in writing from the owner thereof, the state conservation commission may enter upon private lands containing waters and streams draining into state-owned lakes and streams, for any or all of the following purposes:

1. Deepening.
2. Filling.
3. Widening.
4. Contracting.
5. Improving and protecting banks.
6. Constructing spillways and discharge structures.
7. Controlling erosion on land tributary thereto.
8. Providing structures or other works conducive to the regulation of stream flow.

Any action taken by the commission under the provisions of this section shall be subject to the approval of the Iowa natural resources council. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§108.7]

Referred to in §108.8

108.8 Jurisdiction—public access. Any such agreement with any landowner shall give the commission jurisdiction of such land, waters, and streams to accomplish the purposes set out in said agreement and in case any improvement contemplated by section 108.7 is for the sole purpose of improving any stream and not mainly for the purpose of preventing silting in a state-owned lake, then said agreement with the landowner shall include an easement of public access to said stream where improved and along the banks thereof. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§108.8]

108.9 Accreted land. Any land created, by any such improvement, in areas now under the jurisdiction of the state will remain under such jurisdiction until otherwise disposed of. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§108.9]

108.10 Artificial lakes — soil conservation. In the construction of artificial lakes on intermittent streams, for which funds may hereafter be appropriated by the general assembly, the state conservation commission shall not proceed with actual construction work unless and until soil conservation practices are in effect on at least seventy-five per centum of the land comprising the watershed of the proposed impoundment, or a willingness to carry on such practices shall have been shown by the owners or operators of seventy-five per centum of said land by signing of a soil conservation farm plan and co-operative agreements with the local soil conservation district governing body. [C35,§1703-g28; C39,§1703.58; C46, 50, 54,§108.5; C58, 62, 66, 71, 73, 75,§108.10]

CHAPTER 108A

SCENIC RIVERS SYSTEM

Referred to in §109.1

108A.1 Definitions.
108A.2 Areas designated.
108A.3 Values cited.
108A.4 Public hearings.
108A.5 Plan prepared and maintained.
108A.6 Zoning adjacent lands.
108A.7 Part of a national system.

108A.1 Definitions. As used in this chapter:

1. *"Commission"* means the state conservation commission.

2. *"River"* means a flowing body of water or a section, portion or tributary thereof, including streams, creeks, branches or small lakes.

3. *"Natural river"* shall mean a river which has been designated by the commission for inclusion in the scenic rivers system. [C71, 73, 75,§108A.1]

108A.2 Areas designated. The commission may designate as a natural river area a part or parts of any river in this state which possesses outstanding water conservation, scenic, fish, wildlife, historic, or recreational values which should be preserved. The area shall include lands adjacent to the river necessary to preserve, protect, and manage the natural character of the river. [C71, 73, 75, §108A.2]

Referred to in §108A.3

108A.3 Values cited. Rivers qualifying for designation as natural rivers shall possess one or more of the values cited in section 108A.2 and shall be permanently managed for the preservation or enhancement of such values. Categories of natural rivers shall be defined and established by the commission. [C71, 73, 75,§108A.3]

108A.4 Public hearings. Prior to designating a river as a natural river, the commission shall conduct public hearings in the county seat of any county in which the natural river flows. Notice of such hearing shall be published at least twice, not less than seven days prior to such hearing, in a newspaper having general circulation in each county in which the river flows. [C71, 73, 75,§108A.4]

108A.5 Plan prepared and maintained. The commission shall prepare and maintain a plan for the establishment, development, management, use, and administration of natural river areas as a part of the comprehensive state plans for water management and outdoor recreation. The commission may co-operate with federal agencies administering any federal program concerning natural river areas. [C71, 73, 75,§108A.5]

108A.6 Zoning adjacent lands. The political subdivisions of this state may zone or otherwise establish controls on lands adjacent to designated natural rivers, where such lands are not already under public ownership or control, to afford protection adequate to realize the purposes for which the river is designated. The commission shall recommend guidelines and standards for local zoning ordinances which will carry out the purposes of this chapter. Upon adoption of a zoning ordinance which adequately protects the values of the river, such political subdivision may request the assistance of the commission in obtaining compliance with the ordinance. [C71, 73, 75, §108A.6]

108A.7 Part of a national system. This chapter shall not preclude a component of the system from becoming a part of the national wild and scenic rivers system under the federal Wild and Scenic Rivers Act, 16 United States Code, sections 1271 through 1287, inclusive. The commission may enter into written co-operative agreements for joint federal-state administration of rivers which may be designated under said federal Act. [C71, 73, 75, §108A.7]

CHAPTER 109

FISH AND GAME CONSERVATION

Referred to in §§109.1, 110.14

109.1 Definitions.
109.2 State ownership and title—exceptions.
109.3 Conclusive presumption.
109.4 Fish hatcheries—game farms.
109.5 State game refuges.
109.6 Game management area.
109.7 Hunting on game refuges.
109.8 Notice of establishment.
109.9 Spawning grounds.
109.10 Reports and accounting.
109.11 Confiscated or accidentally killed game.
109.12 Seizure of unlawful game.
109.13 Search warrants.
109.14 Dams—fishways.
109.15 Injury to dam.
109.16 Taking by director for stocking and exchange.
109.17 Undesirable fish.
109.18 Repealed by 66GA, ch 104,§1.
109.19 Reciprocity of states.
109.20 Parrots and canaries.
109.21 Birds as targets.
109.22 Field and retriever meets—permit required.
109.23 Transportation for sale prohibited.
109.24 and 109.25 Repealed by 65GA, ch 1122, §5.
109.26 Unlawful transportation.
109.27 and 109.28 Repealed by 65GA, ch 1122, §5.
109.29 Commercial shipments.
109.30 Entire shipment contraband.
109.31 Game brought into the state.
109.32 Violation.
109.33 Violations relating to dams.
109.34 Violations by common carrier.
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109.1 Definitions. Words and phrases as used in chapters 106 to 112 and such other chapters as relate to the subject matter of these chapters shall be construed as follows:

1. *"Closed season"* is that period of time during which hunting, fishing, trapping or taking is prohibited.

2. *"Open season"* is that period of time during which hunting, fishing, trapping or taking is permitted.

3. *"Measurement of fish"* is the length from end of nose to longest tip of tail.

4. *"Person"* shall mean any person, firm, partnership or corporation.

5. *"Sell"* or *"sale"* is selling, bartering, exchanging, offering or exposing for sale.

6. *"Possession"* is both active and constructive possession and any control of things referred to.

7. *"Transport"* or *"transportation"* is all carrying or moving or causing to be carried or moved.

8. *"Take"* or *"taking"* or *"attempting to take"* or *"hunt"* is any pursuing, or any hunting, fishing, killing, trapping, snaring, netting, searching for or shooting at, stalking or lying in wait for any game, animal, bird or fish protected by the state laws or regulations adopted by the commission whether or not such game be then subsequently captured, killed or injured.

9. *"Bag limit"* or *"possession limit"* is the number of any kind of game, fish, bird or animal or other wildlife form permitted to be taken or held in a specified time.

10. *"Contraband"* as used in the laws pertaining to the work of the commission shall mean anything, the possession of which was illegally procured, or the possession of which is unlawful.

11. *"Alien"* shall not be construed to mean any person who has applied for naturalization papers.

12. *"Director"* shall mean the regularly appointed director of the state conservation commission and wherever such director is authorized or required to do an act, unless otherwise provided, it shall be construed as authorizing performance by a regular assistant or duly authorized agent of such director.

13. *"Commission"* means the state conservation commission. [C39,§**1703.60**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.1]

109.2 State ownership and title—exceptions. The title and ownership of all fish, mussels, clams, and frogs in any of the public waters of the state, and in all ponds, sloughs, bayous, or other land and waters adjacent to any public waters stocked with fish by overflow of public waters, and of all wild game, animals, and birds, including their nests and eggs, and all other wildlife, found in the state, whether game or nongame, native or migratory, except deer in parks and in public and private preserves, the ownership of which was acquired prior to April 19, 1911, are hereby declared to be in the state, except as otherwise in this chapter provided. [S13,§§2562-c, 2563-j; SS15,§2562-b; C24, 27, 31, 35, 39,§**1704**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.2]

Referred to in §1.9

109.3 Conclusive presumption. Any person catching, taking, killing, or having in possession any of such fish, mussels, clams, frogs, game, animals, or birds, their nests or eggs, or other wildlife in violation of the provisions of this chapter, shall be held to consent that the title to the same shall be and remain in the state for the purpose of regulating and controlling the catching, taking, or having in possession the same, and disposing thereof after such catching, taking, or killing. [S13, §2562-c; SS15,§2562-b; C24, 27, 31, 35, 39,§**1705**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.3]

109.4 Fish hatcheries — game farms. The commission may establish and control the state hatcheries and game farms, which shall be used for the purpose of stocking the waters of the state with fish and the natural covers with game birds to the extent of the means provided for that purpose; and impartially and equitably distribute all birds, eggs, and fry raised by or furnished to the state, or for it through other sources, in the streams, lakes, and natural covers of the state. [C97,§2539; SS15,§2539; C24, 27, 31, 35, 39,§**1709**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.4]

109.5 State game refuges.

1. The commission may establish state game refuges or sanctuaries on any land owned by the state of Iowa suitable for this purpose when necessary for the preservation of biological balance pursuant to the provisions of section 109.39, for the protection of public parks, for the protection of the public health, safety and welfare, or to effect sound wildlife management.

2. In emergency situations when the maintenance of the biological balance as provided in section 109.39 is threatened, the director may establish temporary state game refuges in conformity with sound wildlife management. The establishment of a temporary refuge shall be accomplished by posting notices in conspicuous places around the refuge. The establishment of a temporary refuge by the director shall be effective until five days after the next meeting of the commission or for such longer time as the commission may determine is necessary to maintain a biological balance as provided in section 109.39 and to effect sound wildlife management. [C27, 31, 35,§1709-a1; C39, §**1709.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.5]

41GA, ch 32,§1, editorially divided

109.6 Game management area. The commission may establish a game management area upon any public lands or waters, or with the consent of the owner thereof upon any private lands or waters, when necessary to maintain a biological balance as provided in section 109.39 or to provide for public hunting, fishing, or trapping in conformity with sound wildlife management; and when a game management area is established, the commission shall with the consent of such owner, if any, have the right to post and prohibit, and to regulate or limit such lands or waters against trespassing, hunting, fishing, or trapping, and any violation thereof shall be unlawful and punishable as provided in section 109.32. [C35,§1709-e1; C39, §**1709.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.6]

109.7 Hunting on game refuges. It shall be unlawful to hunt, pursue, kill, trap or take any wild animal, bird, or game on any state game refuge so established at any time of the year, and no one shall carry firearms thereon, providing, however, that predatory birds and animals may be killed or trapped under the authority and direction of the state conservation director.

The commission may specify the distance from a state game refuge where shooting is prohibited, and shall have notice of same posted at such distance in conspicuous places around the refuge, provided, however, this prohibition shall not apply to owners or tenants hunting on their own land outside of a state game refuge. The commission may prohibit shooting at any reasonable distance from a state game refuge deemed necessary to accomplish the purposes for which the refuge is established. [C27, 31, 35,§1709-a2; C39,§**1709.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.7]

109.8 Notice of establishment. When any such refuge or preserve is established by the commission, it shall post notices of such establishment in conspicuous places around the refuge. [C27, 31, 35,§1709-a3; C39,§**1709.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.8]

109.9 Spawning grounds. To effect sound wildlife management and maintain biological balance as provided in section 109.39, the commission may set aside certain portions of any state waters for spawning grounds where the same are suitable for this purpose for such length of time as it may deem advisable by the posting of notices in conspicuous places around such area, and it shall be unlawful for any person to fish or to in any manner interfere with the spawning of fish in this area. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and punished as provided in section 109.32. [C31, 35,§1709-c1; C39,§**1709.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.9]

109.10 Reports and accounting. At the time provided by law, the director shall make a report to the governor of his doings for the preceding biennial period, including therein an itemized statement of all receipts and disbursements; also all contracts for the taking of soft fish from the waters of this state, with the profits accruing from such contracts; also such other information upon the subject of the culture of fish and the protection of game as may be of value. All funds derived under said contracts shall be paid into the state fish and game protection fund. [C97,§2539; SS15, §2539; C24, 27, 31, 35, 39,§**1710**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.10]

Time of report, §17.3

109.11 Confiscated or accidentally killed game. Except as provided in section 109.13, any game or fish seized by the commission under section 109.12 or any game accidentally killed by a motor vehicle on a public highway shall, when salvageable, be disposed of as determined by the commission or its designee. [66GA, ch 103,§1]

109.12 Seizure of unlawful game. It shall be the duty of the director or any peace officer to seize with or without warrant and take possession of any fish, furs, birds, or animals, or mussels, clams, and frogs, except for bait which have been caught, taken, or killed at a time, in a manner, or for a purpose, or had in possession or under control, or offered for shipment, or illegally transported in the state or to a point beyond the borders thereof, contrary to the provisions of this chapter. [SS15, §2539; C24, 27, 31, 35, 39,§**1714**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.12]

Referred to in §109.11

109.13 Search warrants. Any court having jurisdiction of the offense, upon receiving proof of probable cause for believing that any **fish, mussels, clams, frogs, birds, furs, or animals** caught, taken, killed, had in possession, under control, or shipped, contrary to any of the provisions of this chapter, or hidden or concealed in any place, shall issue a search warrant and cause a search to be made in any place therefor. The property so seized under such warrant shall be safely kept under the direction of the court so long as necessary for the purpose of being used as evidence in any trial, and if such trial results in a conviction the property seized shall be confiscated by the director or his officers. [SS15,§2539; C24, 27, 31, 35, 39,§**1716**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.13]

Referred to in §109.11
Search warrant proceedings, ch 751

109.14 Dams—fishways. It shall be unlawful for any person, firm, or corporation to place, erect, or cause to be placed or erected, any dam or other device or contrivance in such manner as to hinder or obstruct the free passage of fish up, down, or through such waters, except as otherwise provided in this chapter. Dams for manufacturing or other lawful purposes may be erected across the waters of the state. No permanent dam or obstruction across such waters shall be erected or maintained which is not provided with a fishway, except by written approval of the state conservation director, nor shall any pumping station or plant except sand pumping and dredging machines, in or connected with such waters be constructed or operated except by written approval of the state conservation director, which is not provided with screens to prevent fish from entering the pumping station or plant. Such fishways and screens shall be constructed and used according to the plans and specifications prepared and furnished by the director. Any dam, obstruction, or pumping plant which is not so constructed is a public nuisance and may be abated accordingly. [C97,§§2540, 2547, 2548; S13,§2547; SS15,§§2540, 2548; C24, 27, 31, 35, 39,§**1741**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.14]

109.15 Injury to dam. It shall be unlawful for any owner or his agent to remove or destroy any existing dam, or alter it in a way so as to lower the water level, without having received written approval from the Iowa natural resources council. [C24, 27, 31, 35, 39, §**1742**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.15]

109.16 Taking by director for stocking and exchange. The director may take from any of the public waters of the state, at any time and in any manner, any fish for the purpose of propagating or restocking other waters, or exchanging with fish commissioners or wardens of other states or the federal government. [C97,§2546; S13,§2546; C24, 27, 31, 35, 39,§**1744**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.16]

109.17 Undesirable fish. It shall be the duty of the director, so far as is possible, to remove from the inland waters of the state at any time and in any manner, provided that he shall do so with minimum injury to the lake or stream or the other fish, any undesirable or injurious fish. All such fish removed shall be destroyed or disposed of so as to eliminate them, so far as possible, from the inland waters of the state. The proceeds, if any, from the sale of these fish shall be credited to the state fish and game protection fund. Undesirable or injurious fish shall mean any species that in the judgment of the commission exist in improper proportions to other aquatic life.

The commission may issue to any person a permit authorizing him to remove undesirable or injurious fish from the inland waters of the state. The person receiving such a permit shall comply with the provisions enumerated in chapter 110 and section 109.115 and all fishing equipment shall be properly licensed and tagged as specified by the commission.

The commission shall determine the season, territorial limitations, method of take, and size limits for the removal of undesirable or injurious fish in accordance with the provisions of section 107.24. [C97,§2546; S13,§2546;

C24, 27, 31, 35, 39,§1745; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.17]

109.18 Repealed by 66GA, ch 104,§1.

109.19 Reciprocity of states. Any person licensed by the authorities of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, and South Dakota to take fish, game, mussels, or fur-bearing animals from or in the waters forming the boundary between such states and Iowa, may take them from that portion of said waters lying within the territorial jurisdiction of this state, without having procured a license therefor from the state conservation director of this state, in the same manner that persons holding Iowa licenses may do, if the laws of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota, respectively, extend a similar privilege to persons so licensed under the laws of Iowa. [C24, 27, 31, 35, 39,§1762; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.19]

109.20 Parrots and canaries. This chapter shall not be construed to forbid the selling or shipping of parrots, canaries, or any other cage birds which are imported from other countries or not native to any part of the United States. [S13,§2563-r; C24, 27, 31, 35, 39, §1777; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.20]

109.21 Birds as targets. No person shall keep or use any live pigeon or other bird as a target, to be shot at for amusement or as a test of skill in marksmanship, or shoot at a bird kept or used for such purpose, or be a party to such shooting, or lease any building, room, field, or premises, or knowingly permit the use thereof, for the purpose of such shooting. Nothing in this section shall prevent any person from shooting at live pigeons, sparrows, crows and starlings when used in the training of hunting dogs. [S13,§2563-l; C24, 27, 31, 35, 39,§1778; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.21]

Referred to in §109.22

109.22 Field and retriever meets—permit required. All officially sanctioned field meets or trials and retriever meets or trials where the skill of dogs is demonstrated in pointing, retrieving, trailing, or chasing any game bird, game animal, or fur-bearing animal shall require a field trial permit. Except as otherwise provided by law, it shall be unlawful to kill any wildlife in such events. Notwithstanding the provisions of section 109.21 it shall be lawful to hold field meets or trials and retriever meets or trials where dogs are permitted to work in exhibition or contest whereby the skill of dogs is demonstrated by retrieving dead or wounded game birds which have been propagated by licensed game breeders within the state or secured from lawful sources outside the state and lawfully brought into the state. All such birds must be released on the day of trials on premises where the trials are held.

Such birds released may be shot by official guns after having secured a permit as herein provided.

Such permits may be issued by the director of the state conservation commission upon proper application and the payment of a fee of two dollars for each trial held. A representative of the commission shall attend all such trials and enforce the laws and regulations governing same.

The person or persons designated by the committee in charge to do the shooting for such trials shall be known as the official guns, and no other person shall be permitted to kill or attempt to kill any of the birds released for such trials.

Before any birds are released under this section, they must each have attached a tag provided by the conservation commission and attached by a representative of the conservation commission at a cost of not more than ten cents for each tag. All tags are to remain attached to birds until prepared for consumption.

It is unlawful for any person to hold, conduct, or to participate in a field or retriever trial before the permit required by this section has been secured or for any person to possess or remove from the trial grounds any birds which have not been tagged as herein required.

Any person who shall violate any provision of this section, shall upon conviction be punished as provided in section 109.32. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.22]

109.23 Transportation for sale prohibited. It shall be unlawful for any person, firm, or corporation, except as otherwise provided, to offer for transportation or to transport by common carrier or vehicle of any kind, to any place within or without the state, for the purposes of sale, any of the fish, game, animals, or birds taken, caught, or killed within the state, or to peddle any of such fish, game, animals, or birds. [C97,§2555; SS15,§§2540, 2555; C24, 27, 31, 35, 39,§1780; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.23]

Analogous provision, §109.38

109.24 and 109.25 Repealed by 65GA, ch 1122,§5.

109.26 Unlawful transportation. No person, except as otherwise provided, shall ship, carry or transport in any one day, game, fish, birds, or animals, except fur-bearing animals in excess of the number legally permitted to be in possession of such a person. [C97,§2555; SS15, §2555; C24, 27, 31,§1783; C35,§1782-e1; C39, §1782.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.26]

109.27 and 109.28 Repealed by 65GA, ch 1122,§5.

109.29 Commercial shipments. It shall be unlawful for any person, firm or corporation to ship any fish taken with licensed nets or seines unless there is attached to each con-

tainer a tag stating the name and address of the consignor and the consignee, the amount of each kind contained therein, the waters from which taken, and that same were taken with licensed nets or seines. [C24, 27, 31, 35, 39, §1786; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.29]

109.30 Entire shipment contraband. In the shipping of fish, game, animals, birds, or furs, whenever a container includes one or more fish, game, animals, birds or furs that are contraband, the entire contents of the container shall be deemed contraband, and shall be seized by the director or his officers. [C24, 27, 31, 35, 39,§1787; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.30]

109.31 Game brought into the state. It shall be lawful for any person, firm, or corporation to have in possession any fish or game lawfully taken outside the state and lawfully brought into the state, but the burden of proof shall be upon the person in such possession to show that such fish or game was lawfully killed and lawfully brought into the state. [SS15,§2555; C24, 27, 31, 35, 39,§1788; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.31]

109.32 Violation. Whoever shall take, catch, kill, injure, destroy, have in possession, buy, sell, ship, or transport any frogs, fish, mussels, birds, their nests, eggs, or plumage, fowls, game, or animals in violation of the provisions of this chapter or of administrative rules of the commission or whoever shall use any device, equipment, seine, trap, net, tackle, firearm, drug, poison, explosive, or other substance or means, the use of which is prohibited by this chapter, or use the same at a time, place or in a manner or for a purpose prohibited, or do any other act in violation of the provisions of this chapter or of administrative rules of the commission for which no other punishment is provided, shall be fined not less than ten dollars nor more than one hundred dollars or be imprisoned in the county jail not more than thirty days.

Each fish, fowl, bird, bird's nest, egg, or plumage, and animal unlawfully caught, taken, killed, injured, destroyed, possessed, bought, sold, or shipped shall be a separate offense. [R60,§§4381–4383; C73,§§4048, 4053, 4063; C97, §§2543, 2544, 2551, 2552, 2556, 2558, 2561; S13, §§2547-e, 2551-b, 2561, 2563-a8,-i,-o,-s,-v; SS15, §§2540-a, 2544, 2551, 2552, 2556; C24, 27, 31, 35, 39,§1789; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.32]

Referred to in §§109.6, 109.9, 109.22, 109.59, 109.61, 109.87

109.33 Violations relating to dams. Whoever shall erect any dam or other obstruction prohibited by this chapter or at a place or in a manner prohibited, or shall injure or destroy any dam lawfully erected, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not more than one hundred days. [C97,§§2548, 2550; SS15,§2548; C24, 27, 31, 35, 39, §1790; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.33]

109.34 Violations by common carrier. Any common carrier which shall violate any of the provisions of this chapter relating to receiving, having in possession, shipping or delivering any fish, fowls, birds, birds' nests, eggs, or plumage, game or animals, in violation of the provisions of this chapter or contrary to the regulations and restrictions therein provided, and any agent, employee, or servant of such corporation violating such provisions, shall be fined not less than one hundred dollars nor more than three hundred dollars, and any such agent, employee, or servant may be imprisoned not exceeding thirty days. [C73,§4049; C97, §2557; C24, 27, 31, 35, 39,§1791; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.34]

109.35 Attorney general and county attorneys. It shall be the duty of the attorney general, when requested by the director, to give his opinion in writing upon any question of law arising under this chapter; and it shall be the duty of all county attorneys in this state when requested by the director or any officer appointed by the commission, to prosecute all criminal actions brought in their respective counties for violations of the provisions of this chapter. Nothing in this chapter shall be construed as prohibiting any person from instituting legal proceedings for the enforcement of any of the provisions thereof. [R60,§4385; C73, §4051; C97,§2559; SS15,§2559; C24, 27, 31, 35, 39,§1792; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.35]

109.36 Information—venue. In all prosecutions under this chapter, any number of violations may be charged in one information, but each charge shall be set out in a separate count if more than one charge is included in one information.

Prosecutions for violations may be brought in the county in which any fish, fowl, bird, bird's nest, eggs, or plumage, or animals protected by this chapter were unlawfully caught, taken, killed, trapped, ensnared, bought, sold, or shipped unlawfully, or in any county into or through which they were received, transported, or found in possession of any person. [R60,§4385; C73,§4051; C97,§2559; SS15, §2559; C24, 27, 31, 35, 39,§1793; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.36]

109.37 Presumptive evidence. It shall be presumptive evidence of a violation of the provisions of this chapter for any person to:

1. Fail to have a license upon his person at any time required by law, or then refuse to exhibit the same on request of any person desiring to examine it.

2. Have in his possession any fish, game, furs, birds, birds' nests, eggs or plumage, or animals, which have been unlawfully caught, taken, or killed.

3. Be in possession of such fish, game, furs, birds, or animals at a time when or place where it shall be unlawful to take, catch, or kill the same, except game, birds or animals, during the first ten days of the closed season.

4. Have in his possession any implements, devices, equipment or means whatever of taking fish, birds, or animals protected by this chapter at any place where the possession or use thereof is prohibited. [C97,§2554; S13, §2563-a10; SS15,§§2554, 2555; C24, 27, 31, 35, 39, §1794; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.37]

Analogous provision, §110.12

PROPAGATION AND PROTECTION OF FISH, GAME, WILD BIRDS AND ANIMALS

109.38 Prohibited acts—deer, raccoon and rough fish rules. It shall be unlawful for any person to take, pursue, kill, trap or ensnare, buy, sell, possess, transport, or attempt to so take, pursue, kill, trap or ensnare, buy, sell, possess, or transport any game, protected nongame birds, fur-bearing animals or fur or skin of such animals, mussels, frogs, spawn or fish or any part thereof, except upon the terms, conditions, limitations and restrictions set forth herein, and administrative orders necessary to carry out the purposes set out in section 109.39, or as provided by the Code.

1. The commission may upon its own motion and after an investigation, alter, limit, or restrict the methods or means employed and the instruments or equipment used in taking deer, raccoon, wild turkey, trout or rough fish, if the investigation reveals that such action would be desirable or beneficial in promoting the interests of conservation, or the commission may, after an investigation when it is found there is imminent danger of loss of fish through natural causes, authorize the taking of fish by such means as they may deem advisable to salvage such imperiled fish populations.

2. If following an investigation the commission finds that the number of hunters licensed to take deer or wild turkey should be limited or further regulated, the commission shall conduct a drawing to determine which applicants shall receive a license. Applications for licenses shall be received and accepted during a fifteen-day period established by the commission. At the end of such period the drawing shall be conducted. If the quota has not been filled, licenses shall then be issued in the order in which such applications are received and shall continue to be issued until such quota has been met or until a date fifteen days prior to the opening day of the season, whichever first occurs. If an applicant fails to receive a deer license by either of the methods provided herein, such applicant shall receive a certificate at the time his application and monetary remittance is returned to him which shall entitle him to a license the following year before the drawing is conducted by the commission. This subsection shall not apply to the hunting of wild turkey on game breeding and shooting preserves licensed under chapter 110A. [R60,§4381; C73,§4048; C97,§§2551, 2555; S13,§§2562-c, 2563-j,-k,-m,-n; SS15,§§2540, 2551, 2555, 2562-b,-c, 2563-a1,-a2,-u; C24, 27, 31,§§1718, 1719, 1755, 1767, 1774; C35,§1718-c1; C39, §1794.001; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.38]

Referred to in §§107.24, 109.48, 109.67
Analogous provision, §109.23
Hunting from airplane or snowmobiles prohibited, §109.120

109.39 Biological balance maintained. The open seasons, closed seasons, bag limits, size limits, catch limits, possession limits and territorial limitations set forth herein pertaining to fish, game and various species of wildlife are based upon a proper biological balance as hereinafter defined being maintained for each species or kind. The seasons, catch limits, bag limits, size limits, possession limits and territorial limitations set forth herein shall prevail and be in force and effect for each and every species of wildlife to which they pertain as long as the biological balance for each species or kind remain such as to assure the maintenance of an adequate supply of such species. The commission is designated the sole agency to determine the facts as to whether such biological balance does or does not exist. If the commission, after investigation finds that the number or the number and sex of each or any species or kind of wildlife is at variance to aforesaid condition, the commission shall, by administrative rule, extend, shorten, open or close seasons and set, increase or reduce catch limits, bag limits, size limits, possession limits, or territorial limitations in accordance with said findings. For the purpose of this section biological balance is defined as that condition when all losses to population are compensated by natural reproductive activity or artificial replenishment, replacement or stocking.

If the commission finds that the biological balance of deer cannot be maintained on land owned by the federal government because of hunting prohibitions on weekdays, the commission may extend the open season for deer hunting within such areas for one or more weekends beyond the regular season as established by the commission. The total number of days of deer hunting permitted in areas owned by the federal government shall not exceed the total number of days authorized for deer hunting in the state, or that part of the state in which the federal-owned land is located, as established by the commission. [C39, §1794.002; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.39]

Referred to in §§109.5, 109.6, 109.9, 109.38, 109.48, 109.67, 109.97

DEFINITIONS

109.40 Fur-bearing animals. The following are hereby declared to be fur-bearing animals for the purpose of regulation and protection under this chapter: Beaver, badger, mink, otter, muskrat, raccoon, skunk, opossum, spotted skunk or civet cat, weasel, coyote, wolf, ground hog, red fox, and gray fox. Nothing in this chapter shall apply to domesticated fur-bearing animals. [C97,§2553; SS15,§2553;

C24, 27, 31,§1766; C39,§1794.003; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.40]

Referred to in §109.87

109.41 Game. For the purposes of this chapter the term "game" shall be construed to mean all of the wild animals and wild birds specified in this section except those designated as not protected, and shall include the heads, skins, and any part of same, and the nests and eggs of birds and their plumage.

1. The Anatidae: Such as swans, geese, brant, and ducks.

2. The Rallidae: Such as rails, coots, mudhens, and gallinules.

3. The Limicolae: Such as shore birds, plovers, surf birds, snipe, woodcock, sandpipers, tattlers, gotwits, and curlews.

4. The Gallinae: Such as wild turkeys, grouse, pheasants, partridges, and quail.

5. The Columbidae: Mourning doves and wild rock doves only.

6. The Sciuridae: Such as gray squirrels, fox squirrels, and flying squirrels.

7. The Leporidae: Cottontail rabbits and jack rabbits only.

8. The Cervidae: Such as deer and elk. [S13, §§2563-k,-m,-n; C24, 27, 31,§1774; C39,§1794.004; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.41]

Referred to in §110A.3

109.42 Nongame birds protected. Protected nongame birds shall include any wild bird other than game, either resident or migratory, including the plumage, skins, body, or any part thereof, and their nests and eggs, except that the following are not protected by this chapter: European starling, English or house sparrow, blackbird and crow. [S13,§2563-q; C24, 27, 31,§1776; C39,§1794.005; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.42]

109.43 Mussels. As used in this chapter, the word "mussels" shall mean and embrace the pearly, fresh water mussels or clams or naiad, and the shells thereof. [C24, 27, 31, §1763; C39,§1794.006; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.43]

109.44 Fish. The term "fish" as used in this chapter shall mean any fish of the class Pisces. [C39,§1794.007; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.44]

109.45 Frogs. The term "frog" as used in this chapter shall mean any frog of the family Ranidae. [C39,§1794.008; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.45]

109.46 Spawn. The term "spawn" as used in this chapter shall mean any of the eggs of any fish, frog, or mussel. [C39,§1794.009; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.46]

109.47 Importing fish and game—permits. It shall be unlawful except as otherwise provided for any person, firm or corporation, to bring into the state of Iowa for the purpose of propagating or introducing, or to place or introduce into any of the inland or boundary waters of the state, any fish or spawn thereof that are not native to such waters, or introduce or stock any bird or animal unless application is first made in writing to the commission for a permit therefor and such permit granted. Such permit shall be granted only after the commission has made such investigation or inspection of the fish, birds or animals as it may deem necessary to determine whether or not such fish, birds or animals are free from disease and whether or not such introduction will be beneficial or detrimental to the native wildlife and the people of the state, and may or may not approve such planting, releasing or introduction according to its findings. Nothing in the above shall prohibit licensed game breeders from securing native or exotic birds or animals from outside the state and bringing them into the state and they shall not be required to have a permit as provided above when such birds or animals are not released to the wild but are held on the game breeder's premises as breeding stock. [C39,§1794.010; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.47]

TERRITORIES, OPEN SEASONS, BAG AND POSSESSION LIMITS FOR GAME

109.48 Restrictions—possession of falcons. No person, except as otherwise provided by law, shall willfully disturb, pursue, shoot, kill, take or attempt to take or have in possession any of the following game birds or animals except within the open season established by the commission: Gray or fox squirrel, bobwhite quail, cottontail or jack rabbit, duck, snipe, pheasant, goose, woodcock, partridge, coot, rail, ruffed grouse, wild turkey, or deer. The seasons, bag limits, possession limits and locality shall be established by the commission under the authority of sections 107.24, 109.38, and 109.39.

Subject to annual approval of the commission by departmental rule, no person shall take, possess, transport or use migratory game birds except during the periods of time and in the manner and numbers established under the provisions of the federal "Migratory Bird Treaty Act" and the "Migratory Bird Stamp Hunting Act".

The commission may by rule permit the taking and possession of designated raptors during the time and in the manner permitted under the federal "Migratory Bird Treaty Act". [R60,§4381; C73,§4048; C97,§§2551, 2552; S13,§2563-q; SS15,§2551, 2552, 2563-u; C24,§1767, 1768, 1776; C27, 31,§§1767, 1767-a1, 1768, 1776; C39,§1794.011; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.48; 66GA, ch 1095,§1]

109.49 Special permit to kill. The owner or operator of any fish hatchery may kill or take any pied-billed grebe, gull or tern, American bittern, black-crowned night heron, merganser, great blue heron, also known as blue crane, poorjoe or cranky, or kingfisher, within the bounds of such hatchery after having been issued a permit by the commission. Each such

permittee shall file with the commission an itemized report showing the species and number of birds killed during the period covered by the permit. Report shall be filed on or before January 1 each year. Failure to file such report shall be grounds for refusal to issue subsequent permits. [S13,§2563-q; C24, 27, 31,§1776; C39,§**1794.012**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.49]

109.50 Selling birds. No part of the plumage, skin or body of any bird protected by this chapter shall be sold or had in possession for sale, irrespective of whether said bird was captured or killed within or without the state, except as otherwise provided. [C39,§**1794.013**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.50]

109.51 Hunting license not trapping license. A hunting license shall not permit the holder to trap any fur-bearing animal as defined in this chapter. [SS15,§2563-a1; C24, 27,§1718; C31, §1718-c1; C39,§**1794.014**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.51]

109.52 Exhibiting catch to officer. Any person who shall have in his possession any game bird or game animal, fish or fur or part thereof shall upon request of the director or any officer appointed by the commission exhibit the same to him, and a refusal to do so shall constitute a violation of this chapter. [C31, §1768-c1; C39,§**1794.015**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.52]

109.53 Chasing from dens. It shall be unlawful to have in possession while hunting or to use while hunting any ferret or mechanical device or any substance to be used for chasing animals from their dens. [C31,§1767-c1; C39,§**1794.016**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.53]

109.54 Shooting rifle over water or highway. No person shall at any time shoot any rifle on or over any of the public waters or public highways of the state or any railroad right of way. [C31,§1772-c2; C39,§**1794.017**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.54]

109.55 Selling game. Except as otherwise provided, it shall be unlawful for any person to buy or sell, dead or alive, any bird or animal or any part thereof which is protected by this chapter but nothing in this section shall apply to fur-bearing animals, rabbits, and the skins and plumage of legally taken game. Deer hides shall be plainly labeled with the owner's name and address and license number prior to the sale. This name and address and license number must remain attached to the hide while such hide is within the boundaries of this state. No person shall purchase, sell, barter or offer to purchase, sell or barter for millinery or ornamental use the feathers of migratory game birds; and no person shall purchase, sell, barter, or offer to purchase, sell or barter mounted specimens of migratory game birds. [C97, §2554; SS15,§2554; C24, 27, 31,§1769; C39, §**1794.018**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.55]

109.56 Training dogs.

1. Except during the open gun season for hunting deer at which time no training of dogs shall be allowed, any person having a valid hunting license may train any bird dog, coon hound, fox hound, or trailing dog on any game birds or fur-bearing animals at any time of the year including during the closed season on such birds or animals, provided the animals when pursued to a tree or den shall not be further chased or removed in any manner from said tree or den.

Only a pistol, revolver, or other gun shooting blank cartridges shall be used while training dogs during closed season except as provided in subsection 2 of this section.

2. Any pen-raised game bird may be used and may be shot in the training of bird dogs. Before any bird is released or used in the training of dogs, the bird shall have attached a band procured from the state conservation commission. The commission may charge a fee for such bands but the fee shall not exceed ten cents for each band.

3. A call back pen or live trap may be used for the purpose of retrieving banded birds when released in the wild for training purposes. Any bird not so banded when taken in a call back pen or trap shall be immediately returned unbanded to the wild. All call back pens or live traps when in use shall have attached a metal tag plainly labeled with the owner's name and address. Conservation officers shall have authority to confiscate such traps when found in use and not properly labeled.

4. The commission shall have the power to adopt rules prohibiting the training of any hunting dog on any game bird, game animal, or fur-bearing animal in the wild at any time when it has been determined that such training might have an adverse effect on the populations of these species. [C39,§**1794.019**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.56]

Hunting on land of another, §714.25

109.57 Possession and storage. Any person having lawful possession of game may hold same for not to exceed ten days after the close of the open season for such game. A permit to hold such game for a longer period may be granted by the commission. [C39,§**1794.020**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.57]

109.58 Trapping birds or poisoning animals. No person except those acting under the authority of the state conservation director shall capture or take or attempt to capture or take, with any trap, snare or net, any game bird, nor shall any person use any poison or any medicated or poisoned food or any other substance for the killing, capturing or taking of any game bird or animal. [R60,§4381; C73, §4048; C97,§2551; SS15,§§2539, 2551; C24, 27, 31,

§1773; C39,§**1794.021**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.58]

109.59 Pigeons—interference prohibited. It shall be unlawful for any person or persons, except the owner or his representatives, to shoot, kill, maim, injure, steal, capture, detain, or to interfere with any homing pigeon, commonly called "carrier pigeon", which shall at the time, have the name, initials, or other identification of its owner, stamped, marked, or attached thereon; or to remove any mark, band, or other means of identification from such pigeon which has the name, initials, or emblem of the owner stamped or marked upon it.

Whoever shall violate the provisions of this section shall be punished as is provided in section 109.32. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.59]

GAME BREEDERS

109.60 Raising game. It shall be unlawful for any person to raise or sell game of the kinds protected by this chapter without first procuring a game breeder's license as provided by law. [C39,§**1794.022**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.60]

109.61 License to possess. A licensed game breeder may hold in possession at any time any game bird, game animal or fur-bearing animal raised by him or obtained from without the state or from a licensed game breeder within the state. Such licensee may buy, sell, or otherwise dispose of such game birds, game animals, fur-bearing animals, or any part thereof. Possession and use of such game birds, game animals or fur-bearing animals obtained from a licensed game breeder shall be deemed lawful, provided that no game birds or game animals so obtained may be sold for food, except under the following conditions: Upon filing with the state conservation commission a facsimile of a stamp of similar type to that used by the United States department of agriculture in grading meat, licensed game breeders may sell dressed game birds or game animals to markets for resale providing each game bird or game animal has affixed in a conspicuous and legible manner the imprint of such stamp. Such stamps shall bear the name and license number of the game breeder in letters of at least twelve-point type size.

Markets selling such stamped game shall maintain the stamp on each game bird or game animal until finally sold or disposed of. All markets selling such stamped game birds or game animals shall keep a record showing the total number of game birds or game animals sold together with the name and address of the game breeder from whom purchased and the number of game birds and game animals in each such purchase. Markets retailing such stamped game, together with their records, shall be subject to inspection by any authorized representative of the state conservation commission at any reasonable hour.

Violation of the provisions of this section shall constitute a misdemeanor and punishment shall be as provided for in section 109.32. [C39,§**1794.023**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.61; 66GA, ch 105,§1]

109.62 Records—report. Any holder of a game breeder's license shall keep a record of all purchases and all sales of stock showing the kinds and numbers of each, dates of transactions, and from whom purchased, and to whom sold. Such record shall be open for inspection by the commission at any time. Each licensee shall on or before May 1 of each year file a report with the commission setting out the information mentioned above on forms supplied by the commission. [C39,§**1794.024**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.62]

BAIT DEALERS

109.63 Sale of bait—license. Any person may be authorized to sell minnows, frogs, and clams for fish bait upon the payment of a license fee to the commission. Minnow and bait boxes and tanks shall be open to inspection by the director and conservation officers at all times. They shall have tanks and bait boxes of sufficient size, with proper aeration to keep the bait alive and prevent heavy loss.

Such license shall authorize the licensee to take from the lakes and streams in the state that are not closed to the taking of minnows, frogs and clams, sufficient minnows, frogs and clams to carry on and supply his customers with bait for hook and line fishing.

Such licensees shall comply with all state laws pertaining to possession, taking, selling of bait handled by them and any licensee upon conviction for violating any state conservation laws, shall forfeit his license if demanded by the director.

Holders of a bait dealer's license, when obtaining bait from lakes and streams, shall take only such sized bait as can be used and shall return all small minnows and frogs to the water immediately with as little loss as possible. [C39,§**1794.025**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.63]

PRIVATE FISH HATCHERY

109.64 License—regulations. It shall be unlawful for any person to operate a private fish hatchery or engage in the business of propagating fish native to the state of Iowa in private waters until such person has applied for and has been issued a private fish hatchery license as provided by state law. Such license shall be renewed each year.

The term "private fish hatchery" covering private fish hatcheries shall include all private ponds, with or without buildings, used for the purpose of propagating or holding fish for commercial purposes.

No license shall be issued to operate private fish hatcheries on privately owned or nonmeandered lakes and streams or ponds that may become stocked with fish from public waters by overflow or natural migration.

Holders of private fish hatchery licenses may, in said hatchery, possess, propagate, buy, sell, deal in and transport the fish produced from breeding stock lawfully acquired, but all fish sold for food purposes must comply with the state law regarding size limits.

They may sell fish for stocking purposes within or without the state, but no fish shall be sold for stocking purposes within the state that are not native to the state and to the waters where stocked.

Each operator of a private fish hatchery shall make an annual report of the number, kinds and sizes of the fish propagated and to whom sold during the license year on forms supplied by the commission. Failure to make such report shall be grounds for refusal to renew the license under which the hatchery operates.

Operators of private fish hatcheries shall secure their breeding stock from licensed private fish hatcheries in the state or from lawful sources outside the state and it shall be unlawful for such hatcheries to secure stock in any other way.

Private fish hatchery operators who hold and feed carp, buffalo and other fish lawfully taken by commercial fishermen, may hold, feed and sell such fish under private fish hatchery licenses. [C73,§4054; C97,§2545; C24, 27, 31,§1707; C39,**§1794.026**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.64]

SCIENTIFIC COLLECTING

109.65 License. The commission may, after investigation, issue to any person a scientific collector's license under which license such person may be permitted to collect for scientific purposes only, any birds, nests, eggs, or wild animals or fish. No person to whom such license is issued shall dispose of any such collection or part thereof except upon written permission of the commission. The application for such license shall be made upon blanks to be furnished by the commission. Each holder of such license shall, within thirty days after the expiration of such, file with the commission a report showing all specimens by him collected. Such license may be revoked at any time for cause. [S13,§§2563-o,-p; C24, 27, 31,§1779; C39,**§1794.027**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.65]

109.66 Banding or marking. It shall be unlawful for any person to capture birds or animals for banding purposes except that the commission may, after investigation, issue a permit to any person permitting him to capture birds or animals for the purpose of banding or marking same for scientific study, but no such birds or animals may be killed or injured or retained in possession, but must be liberated safely and promptly. Such permit may be revoked at any time for cause. Each holder of such permit shall report to the commission once each month the number, kind of birds or animals banded, and the band numbers. [C39,**§1794.028**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.66]

ANGLING LAWS

109.67 Seasons and limits. It is unlawful for any person, except as otherwise expressly provided, to take, capture, or kill fish or frogs except during the open season established by the state conservation commission. It is unlawful during open season to take in any one day an amount in excess of the daily catch limit designated for each variety or each locality, or have in possession any variety of fish or frog in excess of the possession limit, or have in possession any frog or fish at any time under the minimum length or weight. The open season, possession limit, daily catch limit, and the minimum length or weight for each variety of fish or frog shall be established by rule of the commission under the authority of sections 107.24, 109.38 and 109.39. [C97,§2540; SS15,§2540; C24, 27, 31,§§1731, 1732, 1733; C39, **§1794.029**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.67]

109.68 and 109.69 Repealed by 58GA, ch 125, §1.

109.70 Repealed by 66GA, ch 106,§1.

109.71 Releasing unlawful catch. Any fish caught that is less than lawful minimum length or weight shall be handled with wet hands and released under water immediately with as little injury as possible. [C39,**§1794.033**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.71]

109.72 Hooks. No person shall at any time take from the waters of the state any fish, except as otherwise provided in this chapter, except with hook, line and bait, nor shall any person use more than two lines nor more than two hooks on each line in still fishing or trolling, and in fly fishing not more than two flies may be used on one line, and in trolling and bait casting not more than two trolling spoons or artificial bait may be used on one line. No person shall leave such fish line or lines and hooks in the water unattended or take or attempt to take any fish by snagging or to purposely hook them in any other part than in the mouth. One hook shall mean a single, double, or treble pointed hook, and all hooks attached as a part of an artificial bait or lure shall be counted as one hook. [C73, §4052; C97,§§2540, 2542; SS15,§2540; C24, 27, 31,§1734; C39,**§1794.034**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.72]

109.73 Trotlines. It shall be unlawful for any person to use in the waters of the state open to the use of trotlines or throw lines, more than five trotlines or throw lines. Such trotlines or throw lines shall not have in the aggregate more than fifteen hooks. Each separate line when in use shall have attached a tag plainly labeled with the owner's name and address, shall be checked at least once each twenty-four hours, and no person shall use such throw lines or trotlines in any stocked

lake or within three hundred feet of any dam or spillway or in any stream or portion of stream, closed or posted against the use of such tackle. One end of such throw lines or trotlines shall be set from the shore and be visible above the shore water line, but no such throw line or trotline shall be set entirely across a stream or body of water. Any untagged lines when found in use shall be confiscated by any officer appointed by the commission. [C73,§4052; C97,§§2540, 2542; SS15, §2540; C24, 27, 31,§1734; C39,§§**1794.035, 1794.037**; C46, 50, 54, 58, 62, 66, 71, 73,§§109.73, 109.75; C75,§109.73]

109.74 Where permitted. It shall be unlawful to use trotlines or throw lines in the rivers and streams of the state, except in the Mississippi river, Missouri river, Big Sioux river, and all rivers and streams south of United States highway 30 as it is now located. [C73,§4052; C97,§§2540, 2542; C24, 27, 31,§1734; **C39,§1794.036**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.74]

109.75 Repealed by 65GA, ch 1124,§2.

109.76 Unlawful means—exception. It shall be unlawful, except as otherwise provided, to use on or in the waters of the state any grabhook, snaghook, artificial light, any kind of a net, seine, trap, firearm, dynamite, or other explosives, or poisonous or stupefying substances, lime, ashes or electricity in the taking or attempting to take any fish, except that gaffhooks or landing nets may be used to assist in landing fish. No person shall take or kill, or attempt to take or kill any fish by hand fishing. However, carp, buffalo, quillback, gar, sheepshead, dogfish, and other rough fish designated by the commission may be taken by hand fishing, by snagging, by spear, by bow and arrow, day or night, and with artificial light. The snagging of paddlefish may be permitted at such times and at such places as may be determined by rule of the commission. [C97,§2540; SS15,§2540; C24, 27, 31,§1735; C39, §**1794.038**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.76; 66GA, ch 1096,§1]

109.77 Repealed by 54GA, ch 68,§1.

109.78 Stocking private water. No private water may be stocked by the commission unless the owner agrees that such waters shall be open to the public for fishing, except that the commission may, after investigation to determine their suitability as to size, depth, living conditions for fish, and management, provide a breeding stock of fish for privately owned farm ponds on request of the owner. [C39,§**1794.040**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.78]

109.79 Repealed by 64GA, ch 121,§1.

109.80 Minnows—nets—violations. For the purpose of taking minnows only, it shall be lawful for any person to use a minnow dip net not to exceed four feet in diameter or a minnow seine not to exceed fifteen feet in length and having a mesh not smaller than one-fourth inch bar measure or larger than one-half inch bar measure and on issuance of permit by the commission, licensed bait dealers may use minnow seines not exceeding fifty feet in length.

"Minnows" shall be defined as chubs, shiners, suckers, dace, stonerollers, mud-minnows, redhorse, blunt-nose, fat-head, or other small fish commonly used for fish bait that have only one dorsal fin. Green sunfish and orange-spotted sunfish may also be taken as bait.

"Commercial purposes" shall be construed to mean selling, giving, or furnishing to others.

It shall be unlawful for any person:

1. To take or attempt to take minnows for commercial purposes from any of the waters of the state, or transport the same without first procuring a bait dealer's license therefor as provided by state law; provided, however, that no license other than a license to fish in the waters of this state shall be required of persons taking minnows for their individual use for bait.

2. To seine, take, attempt to take, transport or carry away any minnows from the waters of any stream inhabited or stocked with trout except that chubs, suckers and redhorse may be taken from trout streams with pole and line during open trout season.

3. To transport in any manner or for any purpose outside this state any minnows, dead or alive, taken in the state except that the director may transport for the purposes set out by state law.

4. To use minnows except for bait in hook and line fishing.

The commission shall have the power to designate the lakes and streams and parts of same from which minnows shall not be taken when investigation shows that the minnow population should be protected for the best management of the lake or stream and if such investigation shows that lakes or streams or any portion of them should be closed to taking minnows for such length of time as deemed advisable by the commission. Then in that case the director is hereby authorized to post such lakes and streams or portions of them with notices or signs which clearly state that the lake or stream or portion so posted is closed to the taking of minnows and it shall be unlawful for any person to take in any manner, minnows from such posted stream.

Minnow traps not exceeding thirty-six inches in length may be used wherever the taking of minnows is allowed. Each trap, when in use, shall have a metal tag attached plainly labeled with the owner's name and address. [C73,§4052; C97,§2541; C24, 27, 31,§1736; C39, §**1794.042**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.80]

109.81 Selling minnows outside state. Except as otherwise provided no person shall carry, transport or ship or cause to be carried,

transported or shipped any minnows for the purpose of sale beyond the boundaries of the state. [C39,§**1794.043**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.81]

109.82 Prohibited bait. It shall be unlawful to transport or to use or to sell or offer for bait or to place into any inland waters of the state or into any waters from which waters of the state may become stocked any fish of carp, quillback, gar, or dogfish, and any minnows or fish of any of these species taken shall not be returned to any such waters, but shall be destroyed. [C39,§**1794.044**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.82]

109.83 Repealed by 65GA, ch 1122,§5.

109.84 Frogs—catching—selling. Frogs may be taken by holders of a fishing license only and they may be used for bait or food purposes, but no person shall take more than four dozen frogs in any one day or have in possession at any one time more than eight dozen frogs. Licensed bait dealers authorized by law to sell bait may have in their possession to supply the bait needs of their customers, not more than twenty dozen frogs.

No person shall use any device, net, barrier or fence of any kind which prevents frogs from having free access to and egress from the water.

Transportation out of the state in any manner or for any purposes, of frogs taken in Iowa, is prohibited.

Nothing in this chapter shall be construed to prevent the purchase, sale or possession of frogs or any portion of the carcasses of frogs that have been legally taken and shipped in from without the state.

Nothing herein shall prevent any person from catching frogs on his own premises for his private use. [C39,§**1794.046**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.84]

See §109.67

109.85 Prohibited areas. It shall be unlawful for any person at any time, except as otherwise provided, to take any fish, minnows, frogs, or other aquatic, biological life from any state fish hatchery, nursery or other area under the jurisdiction of the commission operated for fish production purposes. [C39, §**1794.047**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.85]

109.86 Federal employees excepted. Authorized employees of the United States bureau of sport fisheries and wildlife are hereby authorized to conduct fish culture operations, rescue work on the boundary waters of the state, and other operations necessary for rescue and hatchery work. [C39,§**1794.048**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.86]

TRAPPING OR HUNTING OF FUR-BEARING ANIMALS

109.87 Open seasons. Except as otherwise provided, no person shall take, capture, kill, or have in possession any fur-bearing animal or any part thereof at any time except during the open season as set by the commission under authority of section 109.39 except where such killing, trapping, or ensnaring may be for the protection of public or private property. Provided, it shall be lawful for any person to have in his possession, sell, transport, or otherwise dispose of during such open season as herein provided, and for ten days thereafter, the carcass of, hide or skin of any animal named in section 109.40.

Taking or attempting to take beaver on private lands or waters without permission of the owner or tenant shall constitute a misdemeanor punishable as provided in section 109.32. [C97,§2553; SS15,§2553; C24,§1766; C27, 31,§§1766, 1766-a1; C39,§**1794.049**; C46,§§109.87, 109.93; C50, 54, 58, 62, 66, 71, 73, 75,§109.87]

109.88 Selling furs outside state. It shall be unlawful for any person except a licensed fur dealer to ship, transport, or sell any skin or hide of any fur-bearing animal defined in this chapter to dealers or buyers outside of this state unless he first obtains from the commission a special permit tag authorizing such shipment. [C27, 31,§1766-a2; C39,§**1794.050**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.88]

109.89 Permit to hold hides. Upon application, which shall be filed with the commission within ten days after the close of the open season, any person may be permitted to hold hides or skins of fur-bearing animals lawfully taken for a longer time than specified above. Such application shall be verified and shall show the number and varieties of the skins or hides to be held by the applicant. The commission shall thereupon issue a permit to such applicant to hold such skins or hides, which permit shall authorize the holder to sell or otherwise dispose of such skins or hides. [C31, §1766-c4; C39,§**1794.051**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.89]

109.90 Disturbing dens. It shall be unlawful for any person to molest or disturb, in any manner, any muskrat house, beaver dam, skunk, mink, or raccoon den except by permission of any officer appointed by the commission.

Provided however, that nothing in this section shall prohibit the owner thereof to destroy any such den to protect his own property. [C39,§**1794.052**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.90]

109.91 Shooting or spearing. No person shall kill with shotgun, or spear any beaver, mink, otter, or muskrat, or have in possession any of said animals or the carcasses, skins or parts thereof that have been killed with shotgun or spear. [C31,§1767-c2; C39,§**1794.053**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.91]

109.92 Box traps—disturbing dens—tags for traps. Except as otherwise provided in this chapter no person shall at any time, use or attempt to use any colony or box trap including figure four box traps, in taking, capturing,

trapping or killing any game bird or animal or fur-bearing animals, except cottontail rabbits and squirrels. Box traps capable of capturing more than one rabbit or one squirrel at each setting are prohibited. A valid hunting license is required for box trapping except as otherwise provided. All box traps shall have a metal tag attached plainly labeled with the owner's name and address. Any officers appointed by the commission shall have authority to confiscate such traps when found in use that are not properly labeled.

It shall be unlawful for any person, except as otherwise provided, to use any chemicals, explosives, smoking devices, mechanical ferrets, wire, tool, instrument, or water to remove fur-bearing animals from their dens.

All licensed traps shall have a metal tag attached plainly labeled with the owner's name and address. Any officers appointed by the commission shall have authority to confiscate such traps when found in use that are not properly labeled. [R60,§4381; C73,§4048; C97, §§2551, 2558; SS15,§§2539, 2551; C24, 27, 31, §§1771, 1773; C39,**§1794.054**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.92]

109.93 Hunting by artificial light. It shall be unlawful to throw or cast the rays of a spotlight, headlight or other artificial light on any highway, or in any field, woodland or forest for the purpose of spotting, locating or taking or attempting to take or hunt any animal, except raccoons or other fur-bearing animals when treed with the aid of dogs, while having in possession or control, either singly or as one of a group of persons, any firearm, bow or other implement whereby game could be killed.

Any person violating this section shall be punished by a fine of not more than three hundred dollars or imprisonment in the county jail for a period not to exceed thirty days. [C62, 66, 71, 73, 75,§109.93]

FUR DEALERS

109.94 Definition. The term "fur dealer" as used in this chapter shall mean any person, firm, partnership, or corporation engaged in the business of buying, bartering, trading or otherwise obtaining raw hides or skins of fur-bearing animals. [C39,**§1794.055**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.94]

109.95 License. A license shall be required of each such fur dealer. The commission shall, upon application and the payment of the required license fee, furnish proper certificates to dealers. [C31,§1766-c3; C35,§1794-e1; C39, **§1794.056**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.95]

109.96 Possession by dealer. A licensed fur dealer may have in his possession at any time skins or hides of animals which have been lawfully taken. [C31,§1766-c4; C39,**§1794.058**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.96]

109.97 Report. Fur dealers shall, within fifteen days after the close of the open season in which fur-bearing animals may be lawfully taken, prepare and file with the commission a verified inventory. Such inventory shall show the number and kind of hides and skins which have been purchased. [C31,§1766-c1; C39, **§1794.059**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.97]

109.98 Reporting violations. It shall be the duty of each fur dealer to report to the commission, the name of any person if known to such dealer, who attempts to sell any skins or hides which appear to have been unlawfully possessed by said person. [C31,§1766-c2; C39, **§1794.060**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.98]

MUSSELS

109.99 License. It shall be unlawful for any person to take, catch or kill mussels for commercial purposes without first having procured a mussel license as provided by law. [C24, 27, 31,§1755; C39,**§1794.061**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.99]

109.100 Where and when taken. The state waters of Iowa shall be open to the taking of mussels under the conditions set forth in this chapter, and it shall be unlawful for any person, firm or corporation to take, catch, kill or have in possession mussels, except at such times and under such terms, conditions and limitations as set forth herein.

The territorial limitations and method of taking shall be as established by the state conservation commission.

Except where the conservation commission shall act in emergency, notice of the change in territorial limitations shall be published at least six months before the open season of each year. [C39,**§1794.062**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.100]

109.101 Exceptions—use. Manufacturers of pearl buttons or of fish bait may at any time possess mussels which have been lawfully taken. Nothing in this or preceding sections shall be construed to prohibit a licensed fisherman from taking mussels to be used by him for food or bait. [C39,**§1794.063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.101]

109.102 to 109.104 Repealed by 62GA, ch 136,§2.

109.105 Report. On or before April 1, each year, the holder of a mussel license shall make a written report to the commission on blanks furnished by the commission stating the total weight of mussels taken, caught or killed under such license, the names and location of waters from which the mussels were taken and the amount received for the shells or viscera sold or processed and sold. Failure to make such report shall authorize the commission to refuse the issuance of another license until the report is filed. [C24, 27, 31,§1757; C39,

§1794.067; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.105]

COMMERCIAL FISHING

109.106 Nets, basket traps or seines. It shall be unlawful except as otherwise provided for any person to use any trotline, basket trap, net or any seine in taking fish other than in the lawful taking of minnows. Each basket trap used in taking fish under this chapter shall be constructed only of those materials approved by rule of the commission. [C39,§1794.068; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.106]

109.107 Seining—closed waters. It shall be lawful to use seines, dip nets, trammel nets, gill nets, basket traps, hoop nets, wing nets, pound, fyke and trap nets and trotlines in the Missouri river or Mississippi river, except as hereinafter provided in this section but only when such nets, seines, traps or trotlines have been properly licensed, and properly tagged, in accordance with the provisions of chapter 110, and of this section, and only when such nets, seines, traps or trotlines comply with the provisions of law and at such times and in such manner and for the taking of such species of fish as are permitted by law.

It shall be unlawful for any person to place any net or seine, trap or trotline of any kind within one hundred yards of the mouth of any tributary stream emptying into the Mississippi river or Missouri river or within three hundred yards from the farthest projection of any dam in the Mississippi river and Missouri river.

All licensed nets, seines, basket traps or trotlines shall have attached a metal tag identifying the equipment and license for its use. Tags must at all times be attached to commercial fishing gear and officers appointed by the commission shall have authority to confiscate any such commercial fishing gear when found in use without such tags attached. Identification tags shall be furnished by the commission and a charge of ten cents shall be made for each tag and such tags shall be renewed annually.

It shall be unlawful for fish peddlers, wholesale fish markets, jobbing houses or other places for the wholesale or retail marketing of fish to have in possession catfish under the legal thirteen inch commercial size limit provided in Iowa laws. [SS15,§2547-a; C24, 27, 31, §§1747, 1750; C39,§1794.069; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.107]

Referred to in §109.110

109.108 Mesh size and hook limit. It shall be unlawful for any person to fish with or to use any trammel net having a mesh of less than two inches square or bar measure, or to fish with or use a gill net having a mesh of less than three and three-quarters inches square or bar measure, or to use in the Mississippi or Missouri rivers, basket traps, with the end opposite the throat having a hole of less than one and one-half inches in diameter or trotlines with more than one hundred hooks. Such measurements shall apply to meshes when in use and no allowance shall be made for shrinkage due to any cause. Any commercial fishing equipment in use shall be subject to inspection by the commission or its authorized agents at any time. [S13,§2547-c; SS15,§2547-a; C24, 27, 31,§§1747, 1751; C39, §§1794.070, 1794.071; C46, 50, 54, 58, 62, 66, 71, §§109.108, 109.109; C73, 75,§109.108]

109.109 Repealed by 64GA, ch 122,§2.

109.110 Traps and trotlines on border rivers. It shall be lawful to operate in the Mississippi and Missouri rivers, one basket trap and one trotline provided the operator has purchased a regular fishing license that is required in section 110.1, and pays the regular fee of one dollar for each basket trap or trotline. Each trap and trotline must have attached thereto an identification tag as required in section 109.107. [C39,§1794.072; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.110]

109.111 Permissive catch. It shall be lawful to take from the waters of the Mississippi river and Missouri river with licensed commercial fishing gear the following species of fish: Carp, buffalo, gar, suckers, quillback, sheepshead, bullheads, dogfish, sand sturgeon, catfish or paddlefish, subject to minimum weight or length of requirements provided by law. [S13,§2547-c; C24, 27, 31,§1751; C39, §1794.073; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.111]

109.112 Restriction on nonresidents. No licenses or tags for commercial fishing gear, or no commercial fishing gear operators' certificates, or no bait dealers' licenses may be issued to residents of states who do not sell similar licenses, tags, or certificates to residents of Iowa, except nothing herein shall prevent the licensing of out-of-state bait dealers who sell at wholesale to licensed dealers in Iowa for resale. [S13,§2547-c; C24, 27, 31,§1751; C39,§1794.074; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.112]

109.113 Size limits. It shall be lawful for any person to take or catch, with commercial fishing gear, any catfish not less than thirteen inches long. [S13,§2547-c; C24, 27, 31,§1751; C39, §1794.075; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.113]

109.114 Gar destroyed. It shall be unlawful for any person to place any gar pike in any waters of the state and such fish when taken shall be destroyed. [C39,§1794.076; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.114]

109.115 Sale of fish. It shall be lawful for the holder of a commercial license to possess and sell such species and sizes of fish as are lawfully taken and such fish may be delivered to original buyers and/or may be sold by such licensee at a place on the bank to which they are brought, but any such sales shall be made

by the licensee or his agent. Any other sale of fish taken under this section shall require a wholesale fish market or fish peddler's license. [SS15,§2547-a; C24, 27, 31,§1752; C39, §1794.077; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.115]

Referred to in §109.17

109.116 Report of licensee. Each holder of a commercial license shall make a report to the commission annually showing the amounts, kinds and value of fish caught during the period of the license, where fish were caught and kind of tackle used. Failure or refusal to make said report shall be cause for the commission to refuse issuance of license or renewal until such report is made. [C24, 27, 31, §1749; C39,§1794.078; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.116]

109.117 Wholesale license. It shall be unlawful for any person, firm or corporation to peddle fish or to operate a wholesale fish market, jobbing house, or other place for the wholesale marketing of fish, or distribution of fish, without first procuring a license. The commission shall upon application and the payment of the required fee furnish a license to wholesale fish markets or fish peddlers. The commission may upon application and the payment of the required fee issue a certificate to each person who as a representative of a wholesale fish market is engaged in peddling fish. [SS15,§2547-a; C24, 27, 31,§1752; C39, §1794.079; C46, 50, 54, 58, 62, 66, 71, 73, 75, §109.117]

109.118 Records and report. Each holder of a wholesale fish-market or fish-peddler's license shall keep an accurate record of the species and quantities of all fish taken from Iowa waters acquired or handled by such licensee during the licensed year. Such records shall be open at all reasonable times to inspection by the commission. Such licensee shall within thirty days after the expiration of the license make a report upon blanks furnished by the commission of all fish acquired or handled by such licensee. Failure to make such report shall be cause to refuse to issue a new license. [C24, 27, 31,§1753; C39,§1794.080; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.118]

109.119 Penalty. Any person violating any provision of this chapter for which another penalty is not specifically provided shall, upon conviction or a plea of guilty, be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail not more than thirty days. [C39,§1794.081; C46, 50, 54, 58, 62, 66, 71, 73, 75,§109.119]

Constitutionality, 47GA, ch 99,§136

PROHIBITED ACTS

109.120 Hunting from aircraft or snowmobiles prohibited. It shall be unlawful for any person to intentionally kill or wound, attempt to kill or wound, or pursue any animal, fowl or fish from or with an aircraft in flight or from or with any self-propelled vehicles designed for travel on snow or ice which utilize sled type runners, or skis, or an endless belt tread or any combination thereof and which are commonly known as snowmobiles. Any person who violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one hundred dollars, or by a term not to exceed thirty days in the county jail. [C50, 54, 58, 62, 66, 71, 73, 75,§109.120]

109.121 Turtles and crayfish—taking by nonresidents or aliens. It shall be unlawful for any nonresident or alien to take turtles or crayfish in Iowa, by any means or method, except from the Missouri and Mississippi rivers and the Big Sioux river. [C62, 66, 71, 73, 75, §109.121]

109.122 Deer hunters' orange apparel. It shall be unlawful for any person to hunt deer with firearms unless the person is at the time wearing one or more of the following articles of visible apparel: Vest, coat, jacket, hat, or cap, the color of which shall be orange and shall provide an iridescent effect. [C71, 73, 75, §109.122]

109.123 Prohibited hunting near buildings. A person shall not hunt any game within one hundred yards of any building unless the owner or tenant has given consent. [66GA, ch 107,§1]

109.124 to 109.129 Reserved.

CIVIL DAMAGES

109.130 Damages in addition to penalty. In addition to the penalties for violations of this chapter, any person convicted of unlawfully taking, catching, killing, injuring, destroying, or having in possession any game or fur-bearing animal, shall reimburse the state for the value of such as follows:

1. For each deer, elk, antelope, buffalo or moose, three hundred dollars.

2. For each wild turkey, one hundred dollars.

3. For each game bird, fur-bearing animal or game animal or the raw pelt or plumage of such game for which damages are not otherwise prescribed, twenty-five dollars. [C75, §109.130; 66GA, ch 108,§1, ch 1097,§1]

Referred to in §§109.131, 109.132

109.131 Judgment—execution. In each case of conviction of unlawfully taking, catching, killing, injuring, destroying or having in possession any game, the court shall enter a judgment in favor of the state of Iowa for liquidated damages in an amount as provided in section 109.130, and it shall be the duty of the state conservation commission and the prosecuting attorney or attorney general, to collect the liquidated damages by execution or otherwise. If two or more persons who have acted together are convicted of the unlawful taking, catching, killing, injuring, destroying or hav-

ing possession of any game or fur-bearing animal, the judgment shall be entered against them jointly. Any liquidated damages received under this section and section 109.130 shall be remitted to the treasurer of state who shall credit such damages to the state fish and game protection fund.

The return of any uninjured game which has been unlawfully taken, caught, or possessed, to the place where taken or caught or to any other place approved by the state conservation commission, shall constitute the discharge of any liquidated damages provided under section 109.130.

Civil suits for the collection of judgments may be prosecuted by the attorney general or by county attorneys. [C75,§109.131; 66GA, ch 1097,§2]

109.132 Service of process or arrest—pendency of damage claim. Service of process upon or arrest of any person charged with provisions of this chapter for which damages may be assessed pursuant to section 109.130, shall serve as notice of the pendency of the liquidated damage claim. Trial on the criminal charge may be separated from the determination of the liquidated damage claim in the discretion of the court or by the request of the defendant, but upon conviction of the defendant in the criminal case, the only issue to be determined by the court on the liquidated damage claim is the fact of such conviction. [66GA, ch 1097,§3]

CHAPTER 109A

MANAGEMENT AND PROTECTION OF ENDANGERED PLANTS AND WILDLIFE

Referred to in §109.1

109A.1 Definitions.
109A.2 Co-operation with federal government.
109A.3 Investigations.
109A.4 Programs.
109A.5 Prohibitions.
109A.6 Species not on list.
109A.7 Special care to ensure survival.
109A.8 Damage to property or human life.
109A.9 Exemptions.
109A.10 Penalties.

109A.1 Definitions. As used in this chapter:

1. *"Commission"* means the state conservation commission.

2. *"Director"* means the director of the state conservation commission.

3. *"Endangered species"* means any species of fish, plant life, or wildlife which is in danger of extinction throughout all or a significant part of its range. "Endangered species" does not include a species of insecta determined by the commission or the secretary of the United States department of interior to constitute a pest whose protection under this Act would present an overwhelming and overriding risk to man.

4. *"Fish"* or *"wildlife"* means any member of the animal kingdom, including any mammal, fish, amphibian, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring, or the dead body of parts thereof. Fish or wildlife includes migratory birds, nonmigratory birds, or endangered birds for which protection is afforded by treaty or other international agreement.

5. *"Import"* means to bring into, or introduce into, or attempt to bring into, or attempt to introduce into, any place subject to the jurisdiction of this state.

6. *"Person"* means person as defined in section 4.1, subsection 13.

7. *"Plant"* or *"plant life"* means any member of the plant kingdom, including seeds, roots, and other parts thereof.

8. *"Species"* includes any subspecies of fish, plant life, or wildlife and any other group of fish, plants, or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed or cross-pollinate when mature.

9. *"Take"*, in reference to fish and wildlife, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect and it includes an attempt to engage in any such conduct.

10. *"Take"*, in reference to plants, means to collect, pick, cut, dig up or destroy in any manner.

11. *"Threatened species"* means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. [66GA, ch 109,§1]

109A.2 Co-operation with federal government. The commission shall perform those acts necessary for the conservation, protection, restoration, and propagation of endangered and threatened species in co-operation with

the federal government, pursuant to Public Law 93–205, and pursuant to rules promulgated by the secretary of the interior. [66GA, ch 109,§2]

109A.3 Investigations. The director shall conduct investigations on fish, plants, and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of these determinations and other available scientific and commercial data, which may include consultation with scientists and others who may have specialized knowledge, learning, or experience, the commission shall pursuant to chapter 17A promulgate a rule listing those species of fish, plants, and wildlife which are determined to be endangered or threatened within the state.

The commission shall review the state list of endangered and threatened species at least every two years and may amend the list. [66GA, ch 109,§3]

Referred to in §§109A.4, 109A.5, 109A.6

109A.4 Programs. The director shall establish programs, including acquisition of land or aquatic habitat, necessary for the mangement of endangered or threatened species.

In carrying out the programs authorized by this section, the commission may enter into co-operative agreements with federal and state agencies, political subdivisions of the state, or with private persons for the administration and management of any area or program established under this section or for investigation as outlined in section 109A.3. [66GA, ch 109,§4]

109A.5 Prohibitions. Except as otherwise provided in this chapter, a person shall not take, possess, transport, import, export, process, sell or offer for sale, buy or offer to buy, nor shall a common or contract carrier transport or receive for shipment, any species of fish, plants, or wildlife appearing on the following lists:

1. The list of fish, plants, and wildlife indigenous to the state determined to be endangered or threatened within the state pursuant to section 109A.3.

2. The United States list of endangered or threatened native fish and wildlife as contained in the code of federal regulations, Title 50, part 17 as amended to December 30, 1974.

3. The United States list of endangered or threatened plants as contained in the code of federal regulations, Title 50, part 17 as amended to December 30, 1974.

4. The United States list of endangered or threatened foreign fish and wildlife as contained in the code of federal regulations, Title 50, part 17 as amended to December 30, 1974.

5. A species of fish, plant, or wildlife appearing on any of the lists which enters the state from another state or from a point outside the territorial limits of the United States may enter, be transported, possessed and sold in accordance with the terms of a federal permit issued pursuant to Public Law 93–205 or an applicable permit issued under the laws of another state. [66GA, ch 109,§5]

109A.6 Species not on list. The commission may, by rule, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 109A.3 if it finds that the species so closely resembles in appearance a species which is listed pursuant to section 109A.3 and that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species, and the effect of this substantial difficulty is an additional threat to an endangered or threatened species, or finds that the treatment of an unlisted species will substantially facilitate the enforcement and further the intent of this chapter. [66GA, ch 109,§6]

109A.7 Special care to ensure survival. The director may permit the taking, possession, purchase, sale, transportation, importation, exportation, or shipment of endangered or threatened species which appear on the state list for scientific, zoological, or educational purposes, for propagation in captivity of such fish, plants, or wildlife, to ensure their survival. [66GA, ch 109,§7]

109A.8 Damage to property or human life. Upon good cause shown and where necessary to reduce damage to property or to protect human health, endangered or threatened species found on the state list may be removed, captured, or destroyed, but only pursuant to a permit issued by the director. [66GA, ch 109,§8]

109A.9 Exemptions. This chapter shall not prohibit:

1. The importation of a trophy under a permit issued pursuant to Public Law 93–205 which is not for resale and which was lawfully taken in a manner permitted by the laws of the state, territory, or country where the trophy was caught, taken, or killed.

2. The taking of a threatened species when the commission has determined that its abundance in the state justifies a controlled harvest not in violation of federal laws or regulations. [66GA, ch 109,§9]

109A.10 Penalties. Whoever violates any of the provisions of this chapter shall be fined not less than ten dollars nor more than one hundred dollars or be imprisoned in the county jail not more than thirty days. [66GA, ch 109,§10]

CHAPTER 110

FISH AND GAME LICENSES AND CONTRABAND ARTICLES AND GUNS

Referred to in §§109.1, 109.17, 109.107, 110B.2

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110.1 Licenses. Except as otherwise provided in this chapter, no person shall fish, trap, hunt, pursue, catch, kill or take in any manner, or use or have possession of, or sell or transport all or any portion of any wild animal, bird, game or fish, the protection and regulation of which is desirable for the conservation of the resources of the state, without first procuring a license or certificate so to do and the payment of a fee as follows:

Fishing licenses:

All persons legal residents of the state, except as otherwise provided	$ 4.00
All persons legal residents of the state and sixty-five years of age or older, except as otherwise provided	1.25

No person, resident or nonresident, required to have a fishing license, shall have in his possession, trout, unless at the time of such possession he has on his person an unexpired special trout license stamp validated by his signature written across the face of the stamp in ink or a receipt or other evidence showing that such trout was acquired lawfully. A person who has not reached his sixteenth birthday is not required to have a trout license stamp.

Special trout license stamp	5.00

The proceeds from the sale of this stamp shall be used exclusively to restock the "trout waters" designated by the state conservation commission.

Hunting licenses:

All persons legal residents of the state except as otherwise provided	5.00
All persons legal residents of the state, and sixty-five years of age or older, except as otherwise provided	1.25

Hunting and fishing combined licenses:

All persons legal residents of the state, except as otherwise provided	8.00
All persons legal residents of the state, and sixty-five years of age or older, except as otherwise provided	2.50

Lifetime licenses for legal residents of the state sixty-five years of age or older:

Fishing	6.00
Hunting	6.00
Hunting and fishing combined licenses	8.00
Hunting license for nonresident or alien	25.00
Special deer hunting license:	
All persons legal residents of the state	10.00
Special wild turkey license:	
All persons legal residents of the state.	10.00
Fishing license (resident and nonresident):	
One-day license for resident, nonresident, or alien	1.00
Fishing license (nonresident):	
Six-day license for nonresident or alien	5.00
Fishing license for longer than six days (nonresident):	
Fishing license for nonresident or alien	10.00
Game breeder's license	10.00
Trapping license for legal resident of state under sixteen years of age	1.00
Trapping license for legal resident of state sixteen years of age and older	5.00
Trapping license for nonresident or alien	100.00

Nonresident or alien licenses may be issued only to residents of states which sell similar licenses to residents of Iowa.

Fur dealer's license	25.00
Nonresident fur dealer's license	150.00
Net, seine, trap, trotline licenses for residents of state:	
Seine:	
For the first 500 lineal feet or fraction thereof $15.00 and for each additional 500 lineal feet or fraction thereof	15.00
Trammel net:	
For the first 300 lineal feet or fraction thereof $10.00 and for each additional 300 lineal feet or fraction thereof	10.00

Gill net:
For each 100 lineal feet or fraction thereof 2.00
All nets not otherwise provided for, each net—
Legal residents 1.00
Basket trap:
For each trap 1.00
Trotline:
For each trotline 1.00
Owner's certificate for commercial fishing gear 15.00
Operator's certificate for each person operating commercial fishing gear .. 1.00
Net, seine, trap, trotline licenses for nonresident or alien who is eligible to purchase such licenses:
Seine:
For the first 500 lineal feet or fraction thereof $20.00 and for each additional 500 lineal feet or fraction thereof 20.00
Trammel net:
For the first 300 lineal feet or fraction thereof $20.00 and for each additional 300 lineal feet or fraction thereof 20.00
Gill net:
For the first 300 lineal feet or fraction thereof $20.00 and for each additional 300 lineal feet or fraction thereof 20.00
All nets not otherwise provided for, each net 3.00
Basket traps:
For each trap 3.00
Trotline:
For each trotline 4.00
Mussel licenses:
Legal residents 10.00
Nonresidents or aliens 25.00
Wholesale fish-market or fish-peddler's licenses:
Legal residents 10.00
Wholesale fish-market license:
Nonresident or alien 25.00
Wholesale fish-peddler's license:
Nonresident or alien 10.00
Peddlers, employed by wholesale fish market, certificate 1.00
Scientific collector's license 2.00
Private fish hatcheries 10.00
Bait dealer's licenses:
Legal residents 25.00
Nonresidents or aliens 50.00

[S13,§§2563-a2,-o,-p; SS15,§§2547-a, 2562-b, 2563-a1; C24,§§1706, 1718, 1719, 1748, 1752, 1756, 1779; C27,§§1706, 1718, 1719, 1719-a1, 1748, 1752, 1756, 1779; C31,§§1706, 1718, 1718-c1, 1719, 1719-a1, 1748, 1752, 1756, 1766-c3, 1779; C35,§1794-e1; C39, §**1794.082**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §110.1; 66GA, ch 111,§1, ch 112,§§1, 2, 3]

Referred to in §§109.110, 324.17(14), 422.86

110.2 Blanks. The state conservation director shall provide blanks for, and determine in addition to the following requirements, the method of issuing licenses. [S13,§2563-a3; C24, 27, 31,§1722; C35,§1794-e2; C39,§**1794.083**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.2]

110.3 Issuance of license. All licenses other than hunting, fishing, and trapping licenses, shall be issued by the director upon application to the departmental office at Des Moines. Hunting, fishing, and trapping licenses shall be issued by the recorder of each county. [SS15,§2563-a4; C24, 27, 31,§1724; C35,§1794-e3; C39,§**1794.084**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §110.3]

See §110.1 for restriction on nonresident or alien trapping licenses.

See 66GA, ch 111,§1 for cancellation of nonresident and alien 1975 trapping licenses.

110.4 Depositaries — bond. The county recorder may designate various depositaries for the sale of such licenses other than the office of the county recorder. The director may designate depositaries other than those designated by the recorders of the various counties but in so doing the interest of the state shall be fully protected either by a sufficient cash deposit or a satisfactory bond. Depositaries designated by the county recorder or the director may have the privilege of charging an additional five percent of the cost of each license to be retained for the service rendered in issuing the license. [C31,§1724-c1; C35,§1794-e4; C39,§**1794.085**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.4]

110.5 Fees. The county recorder shall be responsible for all fees for the issuance of hunting and fishing licenses sold through his office, or issued through his office and sold by others. All unused license blanks shall be surrendered to the county recorder upon his demand. [C31,§1724-c1; C35,§1794-e5; C39,§**1794.086**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.5]

110.6 Lost or destroyed blanks. When license blanks in the possession of the county recorder or depositaries are accidentally destroyed, either by fire or theft, the holder of such blanks shall only be relieved from accountability upon the presentation of satisfactory proof and the filing of a bond to the director that such blanks have actually been so destroyed. [C35,§1794-e6; C39,§**1794.087**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.6]

110.7 Duplicate licenses and permits. Whenever any license, certificate or permit, for which a fee has been set, has been lost, destroyed or stolen, the director or the county recorder where the license was issued in the first instance, may issue a certificate to replace said license, if written evidence is filed with either director or recorder, in affidavit form, by the person to whom the original was issued, setting forth the circumstances and accompanied by a fee of one dollar, said fee to be kept by the county recorder for the use of the county, if issued by him, and placed in the fish and game protection fund if issued by the director. If, on examination of the evidence,

the director or the recorder, as the case may be, is satisfied that said license has been lost, destroyed or stolen, he shall issue a duplicate license which shall be plainly marked "duplicate" and said duplicate shall serve in lieu of the original license and it shall contain the same information and signature as the original. [C39,§1794.088; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.7]

110.8 Accounting. Within five days after the end of each month, each county recorder shall remit to the director, all duplicate licenses and all fees for licenses issued during the previous month. On or before the thirty-first of January each year, each county recorder shall remit to the director all unused license blanks for the previous year, and he shall make a final accounting for all license fees received for that period. [SS15,§2563-a4; C24, 27, 31,§1725; C35,§1794-e7; C39,§1794.089; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.8]

110.9 Duplicate issuance—old records destroyed. All licenses shall be issued in duplicate, one copy of which shall be given to the applicant, one shall be forwarded to the director, and the license stub shall be retained in the office of the county recorder.

The board of supervisors may order the county recorder to destroy all triplicate copies of hunting, fishing and trapping licenses which have been on file in the recorder's office for five years or more. [C35,§1794-e8; C39,§1794.090; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.9]

110.10 Tenure of license. Every license, except lifetime hunting and fishing licenses, shall expire on December 31 following its issuance. [S13,§2563-a8; C24, 27, 31,§1727; C35, §1794-e9; C39,§1794.091; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.10; 66GA, ch 112,§4]

110.11 Form of license. All hunting, fishing, and trapping licenses shall contain a general description. Such licenses shall be upon such forms as the commission shall adopt. The occupation, address, and the signature of the applicant and all signatures and other writing shall be in ink. All licenses shall bear a facsimile signature of the director and the signature of the recorder by whom it is issued. All licenses shall clearly indicate the nature of the privilege granted. [S13,§§2563-a3,-a8; C24, 27, 31,§§1722, 1727; C35,§1794-e10; C39,§1794.092; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.11]

110.12 Showing license to officer. Every person shall, while fishing, hunting or trapping, show his license, certificate or permit, to any peace officer or the owner or person in lawful control of the land or water upon which licensee may be hunting, fishing or trapping when requested by said persons to do so. Any failure to so carry or refusal to show or so exhibit his license, certificate or permit, shall be a violation of this chapter. [C39,§1794.093; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.12]

Analogous provision, §109.37

110.13 Unlawful use—effect. The use of a license by a person other than that to whom issued shall nullify said license and such use shall constitute a misdemeanor. [S13,§2563-a9; C24, 27, 31,§1729; C35,§1794-e11; C39,§1794.094; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.13]

110.14 Revocation or suspension. Upon the conviction of a licensee of any violation of chapter 109 of the Code, or of this Act,* or of any administrative order adopted and published by the state conservation commission, the magistrate may, as a part of the judgment, revoke the license of said licensee, or suspend the same for any definite period. [S13,§2563-a9; C24, 27, 31,§1729; C35,§1794-e12; C39,§1794.095; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.14]

*45GA, ch 30

110.15 Record of revocation. Whenever a license is revoked the date and cause of such revocation shall be noted on the stub retained by the county recorder and upon the duplicate on file in the office of the commission. The commission may refuse the issuance of a new license to any person whose license has theretofore been revoked. [S13,§2563-a7; C24, 27, 31, §1726; C35,§1794-e13; C39,§1794.096; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.15]

110.16 Game birds or animals as pets. Any person may possess not more than two game birds or fur-bearing animals confined as pets without being required to purchase a license as a game breeder, but he shall not be allowed to increase his stock beyond the original number nor shall he be allowed to kill or sell such stock. Game birds or animals confined as authorized in this section must be obtained from a licensed game breeder or a legal source outside of this state. [C24, 27, 31,§1720; C35,§1794-e14; C39,§1794.097; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.16]

45GA, ch 30,§23, editorially divided

110.17 License not required. Owners or tenants of land, and their children, may hunt, fish or trap upon such lands and may shoot ground squirrels, gophers or woodchucks upon adjacent roads without securing a license so to do; except, special licenses to hunt deer and wild turkey shall be required by owners and tenants but they shall not be required to have a special wild turkey license to hunt wild turkey on a game breeding and shooting preserve licensed under chapter 110A.

Upon written application to the state conservation commission, one of the following persons shall be issued a deer hunting license:

1. The owner of a farm unit; or

2. One member of the family of the farm owner; or

3. The tenant residing on the farm unit; or

4. One member of the family of the tenant, who resides on the farm unit.

The deer hunting permit shall be valid only for hunting on the farm unit upon which the licensee to whom it is issued resides.

The application required herein shall be on forms furnished by the conservation commission and shall be without fee.

Deer hunting licenses issued under this section shall be subject to all other provisions of the laws and regulations pertaining to the taking of deer.

No resident of the state under sixteen years of age or a nonresident of the state under fourteen years of age shall be required to have a license to fish in the waters of the state.

No license shall be required of minor pupils of the state school for the blind, state school for the deaf, nor of minor inmates of other state institutions under the control of a director of a division of the department of social services, except that this provision shall not apply to the inmates of the men's penitentiary at Fort Madison, the men's reformatory at Anamosa, and the women's reformatory at Rockwell City, nor shall any person who is on active duty with the Armed Forces of the United States, on authorized leave, and a legal resident of the state of Iowa, be required to have a license to hunt or fish in this state. No license shall be required of inmates of county care facilities or any person who is receiving old-age assistance under chapter 249.

No resident of the state under sixteen years of age shall be required to have a license to hunt game if accompanied by his or her parent or guardian or in company with any other competent adult with the consent of the said parent or guardian, if the said person accompanying said minor shall possess a valid hunting license, providing, however, that there is one licensed adult accompanying each person under sixteen years of age.

No person having a dog entered in a licensed field trial shall be required to have a hunting license to participate in the event or to exercise his dog on the area on which the field trial is to be held during the twenty-four hour period immediately preceding the trial.

The commission shall issue without charge a special fishing license to residents of Iowa sixteen years or more of age who the commission finds are mentally or physically severely handicapped. Such special license shall be valid only when the holder is fishing under supervision. The commission is hereby authorized to prepare an application to be used by the person requesting handicapped status, which would require that his attending physician sign the form declaring the person handicapped and eligible for exempt status.

No person shall be required to have a special wild turkey license to hunt wild turkey on a game breeding and shooting preserve licensed under chapter 110A. [S13,§2563-a3; C24, 27, 31,§§1720, 1723; C35,§1794-e15; C39, §**1794.098**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§110.17; 66GA, ch 67,§71; ch 1098,§1]

Hunting on land of another, §714.25

110.18 Courtesy nonresident licenses. The commission is hereby authorized to issue a courtesy nonresident license for the taking of any fish or game, except deer. Such licenses may be issued by the director of the commission, without charge, to dignitaries and officials of other states, countries, or the United States who are in the state as guests of the governor or the commission. Such licenses shall be issued for a specific number of days. The number of licenses to be issued for any one season or species of fish or game shall not exceed one hundred. [C71, 73, 75,§110.18]

CONTRABAND ARTICLES

110.19 Public nuisance. Any device, contrivance or material used to violate any regulation adopted by the commission, or any other provision of this chapter, is hereby declared to be a public nuisance, and it shall be the duty of the state conservation director and his officers, or any peace officer, to seize such devices, contrivances, or materials so used, without warrant or process, and to deliver them to some magistrate having jurisdiction. Provided, however, no gun, fishing rod, fishing tackle, or automobile shall be construed to be a public nuisance under this section. [C73,§4052; C97, §2540; SS15,§§2539, 2540; C24, 27, 31,§1715; C35, §1794-e16; C39,§**1794.099**; C46, 50, 54, 58, 62, 66, §110.18; C71, 73, 75,§**110.19**]

Referred to in §106.27

110.20 Confiscation. Said magistrate, upon said delivery being made to him, shall docket the proceeding and fix a day and hour for hearing thereon which shall not be more than ten nor less than three days after said delivery. Written notice of the time and place of said hearing shall be personally served upon the person from whom the aforesaid articles or things were taken if such person is found in the county, otherwise, said notice shall be served by posting the same in some conspicuous place as near as reasonably possible to the place where the seizure was made. Said notice shall be so served at least two full days prior to said hearing. [C35,§1794-e17; C39, §**1794.100**; C46, 50, 54, 58, 62, 66,§110.19; C71, 73, 75,§110.20]

Referred to in §106.27

110.21 Trial. Trial of said cause shall be, so far as practicable, by the same procedure as is provided in chapter 751, so far as the same is applicable, and except as hereinafter provided. [C35,§1794-e18; C39,§**1794.101**; C46, 50, 54, 58, 62, 66,§110.20; C71, 73, 75,§110.21]

Referred to in §106.27

110.22 Order. On said hearing, said magistrate may order such devices, contrivances or materials confiscated and destroyed, or placed at the disposal of the director who may either use or sell the same, depositing the proceeds of such sale in the fish and game protection fund. [C35,§1794-e19; C39,§**1794.102**; C46, 50, 54, 58, 62, 66,§110.21; C71, 73, 75,§110.22]

Referred to in §106.27

GUNS

110.23 "Gun" defined. The word "gun" as used in this chapter shall include every kind

of a gun or rifle, except a revolver or pistol, and shall include those provided with pistol mountings which are designed to shoot shot cartridges. [C31,§1772-c1; C35,§1794-e20; C39, §**1794.103**; C46, 50, 54, 58, 62, 66,§110.22; C71, 73, 75,§110.23]

45GA, ch 30,§24, editorially divided

110.24 Manner of conveyance. No person, except as permitted by law, shall have or carry any gun in or on any vehicle on any public highway, unless such gun be taken down or contained in a case, and the barrels and magazines thereof be unloaded. [C24, 27, 31,§1772; C35,§1794-e21; C39,§**1794.104**; C46, 50, 54, 58, 62, 66,§110.23; C71, 73, 75,§110.24]

110.25 Prohibited guns. No person shall use a swivel gun, nor any other firearm, except such as is commonly shot from the shoulder or hand in the hunting, killing or pursuit of game, and no such gun shall be larger than number 10 gauge. [C97,§2558; C24, 27, 31,§1771; C35,§1794-e22; C39,§**1794.105**; C46, 50, 54, 58, 62, 66,§110.24; C71, 73, 75,§110.25]

PENAL PROVISION

110.26 Penalties. Whoever shall violate any of the provisions of this chapter shall be fined not less than ten dollars nor more than one hundred dollars or be imprisoned in the county jail not more than thirty days. [C46, 50, 54, 58, 62, 66,§110.25; C71, 73, 75,§110.26]

CHAPTER 110A

GAME BREEDING AND SHOOTING PRESERVES

Referred to in §§109.1, 109.38, 110.17

110A.1 License requirements.
110A.2 Boundaries posted.
110A.3 What birds released.
110A.4 Manner of release—records.
110A.5 Tags and other markings.
110A.6 Seasons—hunting license.
110A.7 Special wardens.
110A.8 License refusal.
110A.9 Violations—penalty.

110A.1 License requirements. Any person owning, holding or controlling by lease or otherwise, which possession must be for a term of five or more years, any contiguous tract of land having an area of not less than three hundred twenty acres, and not more than twelve hundred eighty acres, and providing that there shall be no more than one such area in any township and that not more than three percent of the land area of any county shall be so licensed, who desires to establish a game breeding and shooting preserve area, to propagate, preserve and shoot game birds thereon under the regulations as hereinafter provided, shall make application to the state conservation commission for a license as herein provided. Such application shall be made under oath of the applicant or under oath of one of its principal officers if the applicant is an association, club or corporation. The application shall be accompanied by a license fee of fifty dollars. Upon receipt of such application, the state conservation commission shall inspect the proposed licensed area described in such application and the premises and facilities where game birds are to be propagated, raised or liberated and the cover for game birds in such area and the ability of the applicant to operate a property of this character. If the commission finds that the area contains not less than three hundred twenty acres and not more than twelve hundred eighty acres, is contiguous, there is no other licensed area in the township and that the licensing of the proposed area will not exceed the three percent county limitation, and has the proper requirements for the operation of such a property; that the game birds propagated or released thereon are not likely to be a menace to other game; that the proposed area will not interfere with the normal activities of migratory birds; that the operation of such property will not work a fraud upon persons who may be permitted to hunt thereon; and that the issuing of the license will otherwise be in the public interest; the commission shall approve such application and issue a game breeding and shooting preserve area license for the operation of such property on the tract described in such application with the rights and subject to the limitations in this chapter prescribed. All game breeding and shooting preserve area licenses expire on March 31 of each year. [C58, 62, 66, 71, 73, 75, §110A.1]

110A.2 Boundaries posted. Upon receipt of such license, the licensee shall promptly post such licensed areas at intervals of not more than five hundred feet with signs to be prescribed by the commission. The boundaries of such licensed game breeding and shooting preserve areas shall also be clearly defined by natural or artificial boundaries or by signs. [C58, 62, 66, 71, 73, 75,§110A.2]

110A.3 What birds released. The licensee of any licensed game breeding and shooting preserve area may take, or authorize to be taken within the season hereinafter fixed and desig-

nated, and in such numbers as herein provided:

Pen-reared game birds, as defined in section 109.41, released on licensed area may be taken during the shooting season provided in this chapter but not to exceed eighty percent of the total number of the species of said game birds released. Pen-reared waterfowl, two generations removed from the wild and chukar partridge may be released at any time of year for shooting purposes and one hundred percent may be harvested by shooting. The word waterfowl shall be defined as those birds constituting the Anatidae as listed in section 109.41. All birds so released shall be at least twelve weeks of age before liberation date. A minimum of one hundred pen-reared birds of each species to be shot shall be released during the open season. Experimental releases of less than one hundred birds of each species shall require a special permit from the conservation commission. [C58, 62, 66, 71, 73, 75,§110A.3]

110A.4 Manner of release—records. For the purpose of this chapter, game birds shall be released upon licensed game breeding and shooting preserve areas in a manner satisfactory to the commission. The licensee shall keep a register which shall clearly show the number and kind of game birds released and propagated each year, the date of release, and also the number and kind of game birds taken, the date when taken and the disposition made of such game birds, and shall make such reports under oath as to game birds released, propagated and taken, at such times and in such manner as may be required by the commission. The commission shall keep an adequate record of the number of birds released and propagated on each licensed game breeding and shooting preserve area in each year and of the birds taken. [C58, 62, 66, 71, 73, 75, §110A.4]

110A.5 Tags and other markings. The commission shall prepare special tags suitable for use upon legs of game birds, which tags shall be of a type not removable without breaking and mutilating the tag, such tags, to be used to designate birds taken upon a licensed game breeding and shooting preserve area. Upon application and payment of a fee of five cents for each such tag, the commission shall furnish licensees with such tags; provided that the commission shall not in any year furnish any licensee a number of tags in excess of the number of game birds which may lawfully be taken from such licensed area as hereinbefore provided. One of such tags shall be securely affixed to one of the legs of each game bird taken before removing same from such licensed area, and such tag shall remain upon the leg of such game bird until such bird is finally prepared for consumption.

All waterfowl released for shooting purposes shall be marked in a manner prescribed by the state conservation commission so as to provide for permanent identification. [C58, 62, 66, 71, 73, 75,§110A.5]

110A.6 Seasons—hunting license. No person shall take any game bird upon a game breeding and shooting preserve area, by shooting in any manner, except between September 1, and March 31, of each year, both dates inclusive.

Waterfowl may not be shot over any water area wherein pen-reared birds might serve as live decoys for wild waterfowl.

Every person taking game birds upon such licensed game breeding and shooting preserve area shall secure a hunting license so to do in accordance with the provisions of the game laws of Iowa, with the exception that a nonresident may secure a hunting license restricted to shooting preserve areas for a license fee of five dollars per year. [C58, 62, 66, 71, 73, 75,§110A.6]

110A.7 Special wardens. The commission may designate any operator of a licensed game breeding and shooting preserve area or any of his or its agents or employees as a special representative of the commission with power to enforce the game laws and to prevent trespassing upon such property and to hunt and trap rodents and other mammals or birds which are destroying or likely to destroy the game birds raised or liberated on such area. Such special representative shall be subject to rules and regulations to be prescribed by the commission and shall serve without compensation from the commission. [C58, 62, 66, 71, 73, 75,§110A.7]

110A.8 License refusal. The commission may either refuse to issue or refuse to renew or may suspend or may revoke any game breeding and shooting preserve area license if the commission finds that such licensed area or the operator thereof is not complying or does not comply with the provisions of this chapter, or that such property, or area is operated in violation of other provisions of this chapter, or in an unlawful or illegal manner. [C58, 62, 66, 71, 73, 75,§110A.8]

110A.9 Violations — penalty. Any licensee or any other person, who willfully and intentionally transfers or permits the transfer of the tags issued to the operator of one licensed game breeding and shooting preserve area to the operator of another licensed game breeding and shooting preserve area, or to any other person, or who affixes such tags to game birds not taken from a licensed game breeding and shooting preserve area or to game birds taken from any area other than the area for which such tags were issued, is guilty of a misdemeanor. [C58, 62, 66, 71, 73, 75,§110A.9]

Punishment, §687.7

CHAPTER 110B

MIGRATORY WATERFOWL

Referred to in §109.1

110B.1 Definitions.
110B.2 Stamp required.
110B.3 Fee.
110B.4 Use of revenue.
110B.5 Projects approved.
110B.6 Penalty.

110B.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Migratory waterfowl"* means any wild goose, brant, or wild duck.

2. *"Commission"* means state conservation commission.

3. *"Stamp"* means the state migratory waterfowl stamp furnished by the commission. [C73, 75,§110B.1; 66GA, ch 113,§1]

110B.2 Stamp required. No person shall hunt or take any migratory waterfowl within this state without first procuring a state migratory waterfowl stamp and having such stamp in his possession while hunting or taking any migratory waterfowl. Each stamp shall be validated by the signature of the licensee written across the face of such stamp. The commission shall determine the form of the stamp and shall furnish the stamps to the county recorders and their designated depositaries for issuance or sale in the same manner as hunting licenses are issued or sold under chapter 110. [C73, 75,§110B.2; 66GA, ch 113,§2]

110B.3 Fee. The fee for each stamp issued under this chapter shall be one dollar. Each stamp shall expire on the last day of February following its issuance. [C73, 75,§110B.3; 66GA, ch 113,§3, ch 1056,§9]

110B.4 Use of revenue. All revenue shall be used for projects approved by the commission for the purpose of protecting and propagating migratory waterfowl and for the development, restoration, maintenance or preservation of wetlands, except for that part which is specified by the commission for use in paying administrative expenses as provided in section 107.17.

The commission may enter into contracts with nonprofit organizations for the use of one-half of such funds outside the United States if the commission finds that such contracts are necessary for carrying out the purposes of this chapter. [C73, 75,§110B.4]

110B.5 Projects approved. Before approving and allocating funds for a proposed project to be undertaken outside this state or outside the United States, the commission shall obtain evidence that the project is acceptable to the government agency having jurisdiction over the lands and waters affected by the project. [C73, 75,§110B.5]

110B.6 Penalty. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars nor more than one hundred dollars or imprisoned in the county jail for not more than thirty days. [66GA, ch 113,§4]

CHAPTER 111

CONSERVATION AND PUBLIC PARKS

Referred to in §109.1

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111.1 Secretary. The secretary of the executive council shall, without additional compensation, act as secretary of the state conservation commission. [C24, 27, 31, 35, 39, §1797; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.1]

See §19.2

111.2 Duties in general. The commission shall investigate places in Iowa rich in natural history, forest reserves, archaeological specimens, and geological deposits; and the means of promoting forestry and maintaining and preserving animal and bird life and the conservation of the natural resources of the state. [C24, 27, 31, 35, 39,§1798; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.2]

111.3 Duties as to parks. It shall be the duty of the commission to establish, maintain, improve, and beautify public parks and preserves upon the shores of lakes, streams, or other waters, or at other places within the state which have become historical or which are of scientific interest, or which by reason of their natural scenic beauty or location are adapted therefor. The commission shall have the power to maintain, improve or beautify state-owned bodies of water, and to provide proper public access thereto. The commission shall have the power to provide and operate facilities for the proper public use of the areas above described. [C24, 27, 31, 35, 39,§1799; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.3]

111.4 Construction permit — regulations — commercial concessions. No person, association or corporation shall build or erect any pier, wharf, sluice, piling, wall, fence, obstruction, building or erection of any kind upon or over any state-owned land or water under the jurisdiction of the commission, without first obtaining from such commission a written permit, provided, however, that this provision shall not apply to dams constructed and operated under the authority of chapter 469. No such permit, in matters relating to or in any manner affecting flood control, shall be issued without approval of the Iowa natural resources council. No person shall maintain or erect any structure beyond the line of private ownership along or upon the shores of state-owned waters in such a manner as to obstruct the passage of pedestrians along the shore between the ordinary high-water mark and the water's edge, except by permission of the commission.

It shall be the duty of the commission to adopt and enforce rules and regulations governing and regulating the building or erection of any such pier, wharf, sluice, piling, wall, fence, obstruction, building or erection of any kind, and said commission may prohibit, restrict or order the removal thereof, when in the judgment of said commission it will be for the best interest of the public.

Any person, firm, association, or corporation violating any of the provisions of this section or any rule or regulation adopted by the commission under the authority of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not

to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days.

No person, association or corporation shall operate any commercial concession on any state-owned lands or waters without first obtaining from the conservation commission a permit therefor. The commission may issue and revoke such permits for the protection of the public health, safety, morals or welfare. [C27, 31, 35,§1799-b2; C39,§§**1703.19, 1799.1**; C46, 50, 54, 58,§§106.19, 111.4; C62, 66, 71, 73, 75, §111.4]

111.5 Obstruction removed. The commission shall have full power and authority to order the removal of any pier, wharf, sluice, piling, wall, fence, obstruction, erection or building of any kind upon or over any state-owned lands or waters under their supervision and direction, when in their judgment it would be for the best interests of the public, the same to be removed within thirty days after written notice thereof by the commission. Should any person, firm, association or corporation fail to comply with said order of the commission within the time provided, the commission shall then have full power and authority to remove the same. [C27, 31, 35,§1799-b3; C39, §**1799.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.5]

111.6 Costs—lien. The cost of such removal shall be paid by the owner of said pier, wharf, sluice, piling, wall, fence, obstruction, erection or building, and the state shall have a lien upon the property removed for such costs. Said costs shall be payable at the time of removal and such lien may be enforced and foreclosed, as provided for the foreclosure of security interests in Uniform Commercial Code, chapter 554, article 9, part 5. [C31, 35, §1799-d1; C39,§**1799.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.6]

111.7 Eminent domain. The executive council may, upon the recommendation of the commission, purchase or condemn lands for public parks. No contract for the purchase of such public parks shall be made to an amount in excess of funds appropriated therefor by the general assembly. [C24, 27, 31, 35, 39,§**1800**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.7]

111.8 Highways. The executive council may, upon the recommendation of the commission, purchase or condemn highways connecting such parks with the public highways. When such highways have been purchased or condemned the same shall be public highways of this state and shall be maintained as other public highways of the county. [C24, 27, 31, 35, 39,§**1801**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.8]

111.9 Condemnation statutes. All the provisions of the law relating to the condemnation of lands for public state purposes shall apply to the provisions hereof in and so far as applicable. [C24, 27, 31, 35, 39,§**1802**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.9]

Eminent domain, ch 471 et seq.

111.10 Title to lands. The title to all lands purchased, condemned, or donated, hereunder, for park or highway purposes, shall be taken in the name of the state and if thereafter it shall be deemed advisable to sell any portion of the land so purchased or condemned, the proceeds of such sale shall be placed to the credit of the said public state parks fund to be used for such park purposes. [C24, 27, 31, 35, 39,§**1803**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.10]

111.11 Gifts. The commission with the written consent of the executive council, may accept gifts of land or other property, or the use of lands or other property for a term of years, and improve and use the same as public state parks. [C24, 27, 31, 35, 39,§**1804**; C46, 50, 54, 58 62, 66, 71, 73, 75,§111.11]

111.12 Conditions—lands. The conditions attached to a gift shall be entered in writing as part of the record of the title by which the state takes the lands, and shall be inscribed upon any chart, map, or description of said park if the conditions are made by the grantor in lieu of money as a consideration paid by the state. [C24, 27, 31, 35, 39,§**1805**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.12]

40ExGA, SF 55,§3, editorially divided

111.13 Conditions—personalty. If the donation be other than real estate and a particular specification for its use be made by the donor, no part of such donation shall be used or expended for any other purpose. [C24, 27, 31, 35, 39,§**1806**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.13]

111.14 Reversion of gift. If the lands transferred to the state as a gift, or if lands purchased in whole or in part by the state from moneys given for that purpose, shall be abandoned or sold and not used for state park purposes, the donor shall reclaim the land or funds donated by filing his request in writing with the executive council within six months of the time of the abandonment or sale by the state of such lands, but no interest or other charge shall be demanded of or paid by the state. Any unclaimed funds shall be used for park purposes. [C24, 27, 31, 35, 39,§**1807**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.14]

111.15 Use of private funds. The commission may permit the improvement of parks, when established, or the improvement of bodies of water, upon the border of which such parks may be established, by the expenditure of private funds, such improvement to be done, however, under the direction of the commission, by and with the consent of the executive council. [C24, 27, 31, 35, 39,§**1808**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.15]

111.16 Landscape architect. The commission may call upon the Iowa State University of science and technology for the services of at

least one competent landscape architect, engineer, or gardener, who shall, under the direction of the commission, proceed to work with it in the improvement of the state property under the control of said commission. The president of said university shall, when called upon, designate the landscape architect, engineer, or gardener, as the case may be, who shall work with said commission. [C24, 27, 31, 35, 39,§1809; C46, 50, 54, 58, 62, 66, 71, 73, 75, §111.16]

40ExGA, SF 55,§6, editorially divided
Referred to in §111.17

111.17 Expense and compensation. All necessary expenses incurred by such landscape architect, engineer, or gardener, under the provisions of section 111.16, shall be paid in the same manner as are other expenditures by the commission, but no compensation shall be paid for such services. [C24, 27, 31, 35, 39, §1811; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.17]

111.18 Jurisdiction. Jurisdiction over all meandered streams and lakes of this state and of state lands bordering thereon, not now used by some other state body for state purposes, is conferred upon the commission. The exercise of this jurisdiction shall be subject to the approval of the Iowa natural resources council in matters relating to or in any manner affecting flood control. The commission, with the approval of the executive council, may establish parts of such property into state parks, and when so established all of the provisions of this chapter relative to public parks shall apply thereto. [C24, 27, 31, 35, 39, §1812; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.18]

40GA, ch 33,§9, editorially divided

111.19 Boundaries. The commission shall at once proceed to establish the boundary lines between the state-owned property under its jurisdiction and privately owned property when said commission deems it feasible and necessary, and shall where deemed advisable mark the same so that the boundaries of such state-owned property may be easily ascertainable to the public. [C24, 27, 31, 35, 39,§1813; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.19]

111.20 State department of transportation—duties. The commission may call upon the state department of transportation for the services of at least one competent engineer, who shall, under the direction of the conservation commission, proceed to work in conjunction with it in carrying out the true spirit and purpose of this chapter. [C24, 27, 31, 35, 39,§1814; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.20]

40GA, ch 33,§10, editorially divided

111.21 County engineer—duties. The commission may call upon the county engineer of any county to advise relative to the true boundary between the state-owned property and private property in the county, and to furnish plats and surveys showing such true boundary lines, and when directed by the commission, shall mark such boundary lines as herein provided. [C24, 27, 31, 35, 39,§1815; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.21]

111.22 Surveys and plats. All surveys and plats shall be filed with the secretary of the commission, and shall become public records of this state. [C24, 27, 31, 35, 39,§1816; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.22]

111.23 Compensation. The compensation and expenses of the highway engineer shall be paid as a part of the maintenance of the state department of transportation, and of the county engineer by the county, as the case may be. [C24, 27, 31, 35, 39,§1817; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.23]

111.24 Boundaries—adjustment. Whenever a controversy shall arise as to the true boundary line between state-owned property and private property, the commission may, with the approval of the executive council, adjust said boundary line or take such other action in the premises, all with the approval of the executive council, as in its judgment may seem right. When such disputed boundary line is fixed it shall be surveyed and marked as herein provided. [C24, 27, 31, 35, 39,§1818; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.24]

111.25 Leases. The commission may recommend that the executive council lease property under the commission's jurisdiction. All leases shall reserve to the public of the state the right to enter upon the property leased for any lawful purpose. The council may, if it approves the recommendation and the lease to be entered into is for five years or less, execute the lease in behalf of the state and commission. If the recommendation is for a lease in excess of five years, with the exception of agricultural lands specifically dealt with in Article I, section 24 of the Constitution of Iowa, the council shall advertise for bids therefor as provided in section 19.20.* If a bid is accepted, the lease shall be let or executed by the council as provided in section 19.21*, except that the lease shall be let or executed in accordance with the most desirable bid. The lease shall not be executed for a term longer than fifty years. Any such leasehold interest, including any improvements placed thereon, shall be listed on the tax rolls as provided in chapters 428 and 443; assessed and valued as provided in chapter 441; taxes levied thereon as provided in chapter 444; collected as provided in chapter 445; and subject to tax sale, redemption, and apportionment of taxes as provided in chapters 446, 447 and 448. It shall be the duty of the lessee to discharge and pay all such taxes. [C24, 27, 31, 35, 39,§1819; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.25]

*Repealed by 64GA, ch 84,§99, see §18.6

111.26 Special police. The commission in carrying out its duties may appoint the state conservation director, chief of division of lands and waters, chief of division of fish and game, and such other supervisory personnel of the

commission as necessary to act as special police to carry out the law enforcement program of the conservation commission. Such officers are hereby vested with the powers and charged with the duties of peace officers while in the performance of their official duties. [C35,§1821-e1; C39,§**1821.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.26]

111.27 Management by municipalities. The commission may enter into an agreement or arrangement with the board of supervisors of any county or the council of any city whereby such county or city shall undertake the care and maintenance of any lands under the jurisdiction of the commission. Counties and cities are authorized to maintain such lands and to pay the expense thereof from the general fund of such county or city as the case may be. [C24, 27, 31, 35, 39,§**1822**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.27]

111.28 Expenditure by cities. Any one or more cities may through action of its city council expend money to aid in the purchase of land within the county for state parks which, when purchased, shall be the property of the state of Iowa, to be cared for as state parks. [C27, 31, 35,§1822-a1; C39,§**1822.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.28]

41GA, ch 121,§1, editorially divided
Referred to in §111.30

111.29 Limitation on expenditures. The amount to be paid by such city or cities shall in no event exceed one-half of the total purchase price of the land involved in any single purchase, and in no event shall the total amount paid by such city or cities in any single purchase exceed the sum of fifty thousand dollars. [C27, 31, 35,§1822-a2; C39,§**1822.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.29]

Referred to in §111.30

111.30 City funds available. Any such city or cities aiding in the purchase of land for state parks, as provided for in sections 111.28 and 111.29 may pay for the same out of the general fund, or may issue bonds for the payment of the same and levy a tax for the payment of such bonds and the interest thereon, in accordance with the provisions of law relating to general corporate purpose bonds of a city. [C27, 31, 35,§1822-a3; C39,§**1822.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.30]

111.31 Sale of islands. No islands in any of the meandered streams and lakes of this state or in any of the waters bordering upon this state shall hereafter be sold, except with the majority vote of the executive council upon the majority recommendation of the commission, and in the event any of such islands are sold as herein provided the proceeds thereof shall become a part of the funds to be expended under the terms and provisions of this chapter. [C24, 27, 31, 35, 39,§**1823**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.31]

111.32 Sale of park lands—conveyances to cities or counties. The executive council may, upon a majority recommendation of the commission, sell or exchange such parts of public lands under the jurisdiction of the commission as in its judgment may be undesirable for conservation purposes, excepting state-owned meandered lands already surveyed and platted at state expense as a conservation plan and project tentatively adopted and now in the process of rehabilitation and development authorized by a special legislative Act. Such sale or exchange shall be made upon such terms, conditions or considerations as the commission may recommend and that may be approved by the executive council, whereupon the secretary of state shall issue a patent therefor in the manner provided by law in other cases. The proceeds of any such sale or exchange shall become a part of the funds to be expended under the provisions of this chapter.

Upon request by resolution of any city or county or any legal agency thereof, the executive council may, upon majority recommendation of the state conservation commission, convey without consideration to such city or county or legal agency thereof, such public lands under the jurisdiction of the commission as in its judgment may be desirable for city or county parks. Conveyance shall be in the name of the state, with the great seal of the state attached and shall contain a provision that when such lands cease to be used as public park by said city or county such lands revert to the state, and such park shall, within one year after such land has reverted to the state, be restored, as nearly as possible, to the condition it was in when acquired by such city, county or legal agency thereof at the expense of such city, county or legal agency.

The state may require that the city, county or legal agency thereof file a notice of intention every three years. [C24, 27, 31, 35, 39,§**1824**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §111.32]

111.33 Form of conveyance. Conveyances shall be in the name of the state, signed by the governor and secretary of state, with the great seal of the state attached. [C24, 27, 31, 35, 39, §**1825**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.33]

111.34 Powers in municipalities. Municipalities, or individuals, or corporations organized for that purpose only, acting separately or in conjunction with each other, may establish like parks outside the limits of cities, and when established without the support of the public state parks fund, the municipalities, corporations, or persons establishing the same, as the case may be, shall have control thereof independently of the executive council; but none of the said municipalities, individuals, or corporations, acting under the provisions of this section shall establish, maintain or oper-

ate any such park as herein contemplated for pecuniary profit. [C24, 27, 31, 35, 39,§1827; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.34]

111.35 Prohibited destructive acts. It shall be unlawful for any person to use, enjoy the privileges of, destroy, injure or deface plant life, trees, buildings, or other natural or material property, or to construct or operate for private or commercial purposes any structure, or to remove any plant life, trees, buildings, sand, gravel, ice, earth, stone, wood or other natural material, or to operate vehicles, within the boundaries of any state park, preserve, or stream or any other lands or waters under the jurisdiction of the conservation commission for any purpose whatsoever, except upon the terms, conditions, limitations and restrictions as set forth by the conservation commission. [C39,§1828.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.35]

Referred to in §§111.57, 111A.10

111.36 Speed limit. The maximum speed limit of all vehicles on state park and preserve drives, roads and highways shall be thirty-five miles per hour. All driving shall be confined to designated roadways. Whenever the state conservation commission shall determine that the speed limit hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist at any place of congestion or upon any part of the park roads, drives or highways, said commission shall determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such places of congestion or other parts of the park roads, drives or highways. [C39,§1828.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.36]

Referred to in §§111.57, 111A.10

111.37 Excessive loads. Excessively loaded vehicles shall not operate over state park or preserve drives, roads or highways. The determination as to whether the load is excessive will be made by the state conservation director or his representative and will depend upon the load and the road conditions. [C39,§1828.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.37]

Referred to in §§111.57, 111A.10

111.38 Parking. All vehicles shall be parked in designated parking areas, and no vehicle shall be left unattended on any state park or preserve drive, road or highway, except in the case of an emergency. [C39,§1828.04; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.38]

Referred to in §§111.57, 111A.10

111.39 Hitching to trees. No horse or other animal shall be hitched or tied to any tree or shrub, or in such a manner as to result in injury to state property. [C39,§1828.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.39]

Referred to in §§111.57, 111A.10

111.40 Fires. No fires shall be built, except in a place provided therefor, and such fire shall be extinguished when site is vacated unless it is immediately used by some other party. [C39,§1828.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, §111.40]

Referred to in §§111.57, 111A.10

111.41 Removing plants, flowers or fruit. No person shall, in any manner, remove, destroy, injure or deface any tree, shrub, plant, or flower, or the fruit thereof, or disturb or injure any structure or natural attraction, except that upon written permission of the commission certain specimens may be removed for scientific purposes.

This section shall not apply to activities of the state conservation commission or its officers, or employees when caring for and managing state-owned land and waters under the jurisdiction of the commission. This section shall not apply to the gathering or removal of any tree, shrub, plant, flower, fruits, structures or natural attractions under terms, conditions, limitations and restrictions adopted by the conservation commission as rules under chapter 17A. [C39,§1828.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.41; 66GA, ch 114,§1]

Referred to in §§111.57, 111A.10

111.42 Use of firearms prohibited—exceptions. The use by the public of firearms, fireworks, explosives, and weapons of all kinds is prohibited in all state parks and preserves, except preserves or portions of preserves designated as hunting areas by the state advisory board on preserves upon the request of the state conservation commission. However, any person may use a bow and arrow with attached bow fishing reel and ninety-pound minimum line attached to the arrow to take rough fish under rules and regulations prescribed by the state conservation commission. [C39,§1828.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.42]

Referred to in §§111.57, 111A.10
See also §§368.11, 695.27, 732.17–732.19

111.43 Littering grounds. No person shall place any waste, refuse, litter or foreign substance in any area or receptacle except those provided for that purpose. [C39,§1828.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.43]

Referred to in §§111.57, 111A.10

111.44 Prohibited areas. No person shall enter upon portions of any state park or preserve in disregard of official signs forbidding same, except by permission of the state conservation director or his representative. [C39, §1828.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.44]

Referred to in §§111.57, 111A.10

111.45 Animals on leash. No privately owned animal shall be allowed to run at large in any state park or preserve or upon lands or in waters owned by or under the jurisdiction of the commission except by permission of the commission. Every such animal shall be deemed as running at large unless the owner carries such animal or leads it by a leash or

chain not exceeding six feet in length, or keeps it confined in or attached to a vehicle. [C39, §1828.11; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.45]
Referred to in §§111.57, 111A.10

111.46 Closing time. Except by arrangement or permission granted by the director or his authorized representative, all persons shall vacate state parks and preserves before ten-thirty o'clock p.m. Areas may be closed at an earlier or later hour, of which notice shall be given by proper signs or instructions. The provisions of this section shall not apply to authorized camping in areas provided for that purpose. [C39,§1828.12; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.46]
Referred to in §§111.57, 111A.10

111.47 Camping. The commission is hereby authorized to fix fees for camping and other special privileges which shall be in such amounts as may be determined by the commission upon a basis of the cost of providing and reasonable value of such privileges. [C39, §1828.13; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.47]
Referred to in §§111.57, 111A.10

111.48 Camping areas. No person shall camp in any portion of a state park or preserve except in portions prescribed or designated by the commission. [C39,§1828.14; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.48]
Referred to in §§111.57, 111A.10

111.49 Time limit. No camping unit shall be permitted to camp for a period longer than that designated by the commission for the specific state park or preserve, and in no event longer than for a period of two weeks. [C39, §1828.15; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.49]
Referred to in §§111.57, 111A.10

111.50 Registering—vacating. Any person who camps in any state park or preserve shall register his or her name and address with the park custodian and advise the custodian when the camp is vacated. [C39,§1828.16; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.50]
Referred to in §§111.57, 111A.10

111.51 Camping refused. Custodians are given authority to refuse camping privileges and to rescind any and all camping permits for cause. [C39,§1828.17; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.51]
Referred to in §§111.57, 111A.10

ICE, SAND AND GRAVEL REMOVAL

111.52 Agreement with commission. No person shall remove any ice, sand, gravel, stone, wood, or other natural material from any lands or waters under the jurisdiction of the commission without first entering into an agreement with the commission. [C39,§1828.18; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.52]
Referred to in §§111.57, 111A.10

111.53 Permits. The commission may enter into agreements for the removal of ice, sand, gravel, stone, wood, or other natural material from lands or waters under the jurisdiction of the commission if, after investigation, it is determined that such removal will not be detrimental to the state's interest. The commission may specify the terms and consideration under which such removal is permitted and issue written permits for such removal. [C39,§1828.19; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.53]
Referred to in §§111.57, 111A.10

111.54 Barriers on ice field. Any person removing ice under a permit shall erect barriers on any part of an ice field where ice is cut, where said field crosses or traverses any part of a stream or lake that is used as a way of passage. [C39,§1828.20; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.54]
Referred to in §§111.57, 111A.10

111.55 Dredging. In removing sand, gravel, or other material from state-owned waters by dredging, the operator shall so arrange his equipment that other users of the lake or stream shall not be endangered by cables, anchors, or any concealed equipment. No waste material shall be left in the water in such manner as to endanger other craft or to change the course of any stream. [C39,§1828.21; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.55]
Referred to in §§111.57, 111A.10

111.56 Disturbing natural bank. Where operations are entirely on private property adjacent to a public lake or stream the natural bank between the state and privately owned areas shall not be removed except by permission of the commission. [C39,§1828.22; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.56]
Referred to in §§111.57, 111A.10

111.57 Penalties. Any person violating any of the provisions of the foregoing sections numbered 111.35 to 111.56, inclusive, shall, upon conviction, be fined not to exceed one hundred dollars or be imprisoned in the county jail not to exceed thirty days. [C39,§1828.23; C46, 50, 54, 58, 62, 66, 71, 73, 75,§111.57]
Referred to in §111A.10

MAINTENANCE EQUIPMENT

111.58 Use by cities, counties and state department of transportation. The council within the limits of the municipal corporation, the board of supervisors within the limits of the county and the state department of transportation, are hereby given authority to permit use of maintenance equipment under their control in state parks and other lands of the conservation commission, notwithstanding any other provisions of the Code to the contrary [C58, 62, 66, 71, 73, 75,§111.58]

WATER RECREATIONAL AREAS

111.59 Powers in municipalities. Municipalities or corporations organized for that purpose only, acting separately or in conjunction with each other in counties not having a county conservation board, may establish water recreational areas and when established without the support of public funds of the

state of Iowa, the municipalities or corporations establishing the same, as the case may be, shall have control thereof independently of the executive council. [C66, 71, 73, 75, §111.59]

111.60 Application for permit. Any municipality or corporation seeking to establish a water recreational area without public funds of the state of Iowa shall file with the state conservation commission a verified petition asking for a permit to establish a water recreational area. [C66, 71, 73, 75,§111.60]

111.61 Petition. Said petition shall state:

1. The name of the municipality or corporation.

2. The applicant's principal office and place of business.

3. A legal description of the lands to be included within said water recreational area, a showing that seventy-five percent of the area is either owned or under option for purchase by the applicant, together with a map thereof.

4. A general description of the public and private highways, grounds and real estate, streams and private lands of any kind within said area.

5. The tentative locations, types of dams to be constructed for any artificial lakes to be established, the proposed area to be inundated by the waters to be impounded by said dams, and a map showing the location of said dams and areas to be inundated.

6. A map showing the location of proposed roads, fixtures, utilities and other facilities necessary in the operation of said water recreational area.

7. The proposed plan of operation and regulations for the use of said facilities by the public. [C66, 71, 73, 75,§111.61]

111.62 Copy to resources council. A copy of the petition and such applications, plans, and specifications as are required under the provisions of chapter 455A shall be filed with the Iowa natural resources council and any approval or permit required thereunder shall be obtained prior to the establishment of said water recreational area or the granting of a permit therefor by the state conservation commission. [C66, 71, 73, 75,§111.62]

111.63 Hearing—notice. On the filing of said petition the state conservation commission shall fix a date for hearing thereon and shall cause notice thereof to be published in some newspaper of general circulation in each county in which said proposed water recreational area will be established, said notice to be published for two consecutive weeks. [C66, 71, 73, 75,§111.63]

Referred to in §111.76

111.64 Time and place. Said hearing shall not be less than ten days nor more than thirty days from the date of the last publication and shall be held in the office of the state conservation commission or such place as the commission shall decide. [C66, 71, 73, 75,§111.64]

111.65 Objections. Any person, corporation, company, levee or drainage district or city whose rights or interests may be affected by said proposed water recreational area may file written objections to said proposed water recreational area or to the granting of said permit. [C66, 71, 73, 75,§111.65]

111.66 Filing. All such objections shall be on file in the office of said state conservation commission not less than five days before the date of hearing on said application but said state conservation commission may permit the filing of said objections later than five days before said hearing in which event the applicant must be granted a reasonable time to meet said objections. [C66, 71, 73, 75,§111.66]

111.67 Examination—testimony. The state conservation commission may examine the proposed water recreational area or may cause such examination to be made by an engineer or such other persons as it desires to be selected by it, who shall report the results of said examination to the commission. At said hearing the state conservation commission shall consider the petition and any objections filed thereto and may at its discretion hear such testimony as may aid it in determining the propriety of granting such permit. [C66, 71, 73, 75,§111.67]

111.68 Final order—condition. It may grant such permit in whole or in part upon such terms, conditions and restrictions as may be determined by it to be just and proper and in the public interest, provided that before any permit shall be granted to any such municipality or corporation the commission shall, after public hearing as provided hereby, determine whether the water recreational area will be in the interests of the public health and welfare and an affirmative finding to such effect shall be a condition precedent to the granting of such permit. [C66, 71, 73, 75, §111.68]

111.69 Costs and fees. Applicant shall pay all costs and expenses of the hearing and necessary preliminary investigation in connection therewith, including the cost of publishing notice of hearing. [C66, 71, 73, 75, §111.69]

111.70 Permit. The state conservation commission shall cause to be prepared a uniform blank form of permit which shall provide a space for a general description of the area authorized to be included in any water recreational area to be established hereunder, the name and address of the municipality or corporation to whom said permit is granted and the terms and conditions upon which it is granted. Said permit shall be signed by the

chairman and all other members of the state conservation commission and the official seal of said commission shall be attached thereto. [C66, 71, 73, 75,§111.70]

Referred to in §§111.71, 111.75

111.71 Public access and use. Any lake in the water recreational area, together with at least twenty-five percent of the water frontage of the water recreational area and all land which adjoins and lies within one hundred yards from any point of such twenty-five percent of the water frontage, shall be permanently subject to and available for free public access and use. The municipality or corporation shall grant to the state of Iowa a perpetual easement for such public access and use, and such easement shall not be impaired or destroyed in whole or in part by nonuse. Before a permit is granted as provided in section 111.70, the state conservation commission and the municipality or corporation shall agree on the location and description of such water frontage and land to be permanently subject to and available for free public access and use, and such location and description shall be stated in the permit. However, in lieu of the foregoing procedure, the state conservation commission and the municipality or corporation may agree that the state conservation commission may select such water frontage and land after the permit is granted, and the permit shall so state. At any time the state conservation commission, with the written consent of the municipality or corporation, may designate any additional land within the water recreational area to be permanently subject to and available for free public access and use; and the municipality or corporation shall grant to the state of Iowa a perpetual easement for such public access and use, which easement shall not be impaired or destroyed in whole or in part by nonuse. However, the state conservation commission may enter into agreements from time to time with one or more municipalities or corporations for the management, development, improvement, care and maintenance of such lake, water frontage and land. [C66, 71, 73, 75,§111.71]

Referred to in §111.75

111.72 Sale of permit. No permit shall be sold until the sale is approved by the commission. [C66, 71, 73, 75,§111.72]

111.73 Records. The state conservation commission shall keep a record of all permits granted and issued by it showing when and to whom issued and the location of the area of the proposed water recreational area covered thereby. [C66, 71, 73, 75,§111.73]

111.74 Extension of permit. Any municipality or corporation owning a permit granted hereby desiring to acquire an extension of said permit may petition the commission in the same manner provided for the granting of such permit and the same proceeding shall be had as on an original application. [C66, 71, 73, 75,§111.74]

111.75 Condemnation of land. Whenever a permit has been granted as provided in section 111.70 and the state conservation commission finds that the municipality or corporation owning such permit cannot acquire at a reasonable cost any necessary land or interest therein, the state conservation commission, with the approval of the executive council, may condemn such land or interest therein as provided in chapter 472. However, such condemnation shall be limited to land and interests therein which will be permanently subject to and available for free public access and use, as provided in section 111.71, or which will be required for a dam or other facilities necessary for the water recreational area. All costs of such condemnation, including all costs occasioned by appeal as set out in section 472.33, and including the award and compensation for such land or interest therein, shall be paid by such municipality or corporation. The state conservation commission may permit such municipality or corporation to use such land or interest therein for the purposes of this division, upon such terms, conditions and restrictions as the state conservation commission shall determine to be just and proper and for free public access and use. Title to such land or interest therein shall remain in the state of Iowa. [C66, 71, 73, 75,§111.75]

111.76 Contracts with local authorities. Anything in chapter 455 to the contrary, county boards of supervisors and trustees having control of any levee or drainage district established thereunder, including joint levee or drainage districts, may enter into contracts and agreements with municipalities or corporations authorized to establish water recreational areas under the provisions of this division. Such contracts or agreements shall be in writing and may be made prior to or after the establishment of a water recreational area. If made prior to the establishment of a water recreational area they may be made conditional upon the final establishment of such area and if conditional upon such final establishment may be entered into prior to the hearing provided for in section 111.63.

Such contracts or agreements may embrace any of the following subjects:

1. For the impoundment of drainage waters to create artificial lakes or ponds.

2. For compensation to drainage districts for drainage improvements destroyed or rendered useless by the establishment of water recreational areas and the structures, waters or works thereof.

3. For the diversion of waters from established drainage ditches or tile drains to other channels.

4. For sanitary measures and precautions.

5. For the control of water levels in lakes, ponds or impoundments of water to avoid damage to or malfunction of drainage facilities.

6. For the construction of additional drainage facilities promoting the interests of either or both of the contracting parties.

7. For the granting of easements or licenses by one party to the other.

8. For the payment of money by one contracting party to the other in consideration of acts or performance of the other party required by such contract or agreement.

When any expenditure of levee or drainage district funds is proposed by the authority contained in this section and where the estimated expenditure will exceed fifty percent of the original total cost of the district and subsequent improvements therein as defined by section 455.135, the same procedure respecting notice and hearing shall be followed as is provided in said section 455.135, for repair proposals where the estimated cost of the repair exceeds fifty percent of the original total cost of the district and subsequent improvements therein. [C66, 71, 73, 75,§111.76]

111.77 Prohibited near borders of state. In order to reduce the possibility of affecting conservation measures to flood control projects which may be in progress in other states, water recreational areas shall not be established hereunder within seventy miles of the border of any other state. [C66, 71, 73, 75,§111.77]

111.78 Method not exclusive. This division shall not be the exclusive method for establishing a water recreational area. [C66, 71, 73, 75,§111.78]

Constitutionality, 60GA, ch 106,§21

CHAPTER 111A

COUNTY CONSERVATION BOARD

Referred to in §§109.1, 332.3(24)

111A.1 Purposes.
111A.2 Petition—board membership.
111A.3 Meetings—annual report.
111A.4 Powers and duties.
111A.5 Rules and regulations—officers.
111A.6 Funds — tax levy—gifts—anticipatory bonds.
111A.7 Joint operations.
111A.8 School property used.
111A.9 Advice and assistance.
111A.10 Statutes applicable.

111A.1 Purposes. The purposes of this chapter are to create a county conservation board and to authorize counties to acquire, develop, maintain, and make available to the inhabitants of the county, public museums, parks, preserves, parkways, playgrounds, recreational centers, county forests, wildlife and other conservation areas, and to promote and preserve the health and general welfare of the people, to encourage the orderly development and conservation of natural resources, and to cultivate good citizenship by providing adequate programs of public recreation. [C58, 62, 66, 71, 73, 75,§111A.1]

111A.2 Petition—board membership. Upon petition of two hundred voters in any county to the board of supervisors thereof, said board shall submit to the people of the county at the next primary or general election the question whether a county conservation board shall be created as provided for in this chapter. If at said election the majority of votes polled for the creation of a county conservation board, the board of supervisors shall within sixty days after said election, create a county conservation board to consist of five bona fide residents of such county. The members first appointed shall hold office for the term of one, two, three, four and five years respectively, as indicated and fixed by the county board of supervisors. Thereafter, succeeding members shall be appointed for a term of five years, except that vacancies occurring otherwise than by expiration of term shall be filled by appointment for the unexpired term. When any member of the board, during the term of office, shall cease to be a bona fide resident of the county, he or she shall thereby be disqualified as a member of said board and his or her office shall thereupon be declared vacant. Members of the board shall be selected and appointed on the basis of their demonstrated interest in conservation matters, and shall serve without compensation, but may be paid their actual and necessary expenses incurred in the performance of their official duties. Members of the county conservation board may be removed for cause by the body making such appointment, if such cause be malfeasance, nonfeasance or disability or failure to participate in board activities as set forth by the rules of said conservation board, but every such removal shall be by written order, which shall be filed with the county auditor. [C58, 62, 66, 71, 73, 75,§111A.2]

111A.3 Meetings — annual report. Within thirty days after their appointment, the board shall organize by selecting from its members a president and secretary and such other officers as are deemed necessary, who shall hold

office for the calendar year in which elected and until their successors are selected and qualify. Three members of the board shall constitute a quorum for the transaction of business. The board shall hold regular monthly meetings. Special meetings may be called by the president, and shall be called on the request of a majority of members, as the necessity may require. The county conservation board shall have power to adopt bylaws, to adopt and use a common seal, and to enter into contracts. The county board of supervisors shall provide suitable offices for the meetings of the county conservation board and for the safekeeping of its records. Such records shall be subject to public inspection at all reasonable hours and under such regulations as the county conservation board may prescribe. Said board shall annually make a full and complete report to the county board of supervisors of its transactions and operations for the preceding year. Such report shall contain a full statement of its receipts, disbursements, and the program of work for the period covered, and may include such recommendations as may be deemed advisable. A copy of this report shall be filed with the state conservation commission. [C58, 62, 66, 71, 73, 75,§111A.3]

111A.4 Powers and duties. The county conservation board shall have the custody, control and management of all real and personal property heretofore or hereafter acquired by the county for public museums, parks, preserves, parkways, playgrounds, recreation centers, county forests, county wildlife areas, and other county conservation and recreation purposes and is authorized and empowered:

1. To study and ascertain the county's museum, park, preserve, parkway, and recreation and other conservation facilities, the need for such facilities, and the extent to which such needs are being currently met, and to prepare and adopt a co-ordinated plan of areas and facilities to meet such needs.

2. To acquire in the name of the county by gift, purchase, lease, agreement or otherwise, in fee or with conditions, suitable real estate within or without the territorial limits of the county areas of land and water for public museums, parks, preserves, parkways, playgrounds, recreation centers, forests, wildlife and other conservation purposes and for participation in watershed, drainage and flood control programs for the purpose of increasing the recreational resources of the county. The state conservation commission, the county board of supervisors, or the governing body of any city or village may, upon request of the county conservation board, designate, set apart and transfer to the county conservation board for use as museums, parks, preserves, parkways, playgrounds, recreation centers, play fields, tennis courts, skating rinks, swimming pools, gymnasiums, rooms for arts and crafts, camps and meeting places, community forests, wildlife areas and other recreational purposes, any land and buildings owned or controlled by the state conservation commission or such county or municipality and not devoted or dedicated to any other inconsistent public use. In acquiring or accepting land, due consideration shall be given to its scenic, historic, archaeologic, recreational or other special features, and no land shall be acquired or accepted which in the opinion of the board and the state conservation commission is of low value from the standpoint of its proposed use.

3. The county conservation board shall file with and obtain approval of the state conservation commission on all proposals for acquisition of land, and all general development plans and programs for the improvement and maintenance thereof before any such program is executed. Approval of the state conservation commission shall not be necessary unless the cost of the proposed acquisition or development program exceeds twenty-five hundred dollars.

4. To plan, develop, preserve, administer and maintain all such areas, places and facilities, and construct, reconstruct, alter and renew buildings and other structures, and equip and maintain the same.

5. To accept in the name of the county gifts, bequests, contributions and appropriations of money and other personal property for conservation purposes.

6. To employ and fix the compensation of an executive officer who shall be responsible to the county conservation board for the carrying out of its policies. The said executive officer shall have the power, subject to the approval of said board, to employ and fix the compensation of such assistants and employees as may be deemed necessary for carrying out the purposes and provisions of this chapter, but not in excess of those paid state conservation officers and employees for like services.

7. To charge and collect reasonable fees for the use of such facilities, privileges and conveniences as may be provided and for admission to amateur athletic contests, demonstrations and exhibits and other noncommercial events.

8. To operate concessions or to lease concessions and to let out and rent privileges in or upon any property under its control upon such terms and conditions as are deemed by it to be in the public interest.

9. To participate in watershed projects of soil conservation districts and the federal government and in projects of drainage districts organized under the provisions of chapters 455, 457, 461, 466 and 467C for the purpose of increasing the recreational resources of the county.

Any agreement for such participation by or with a board of supervisors or trustees concerning drainage districts shall be in writing,

shall be duly adopted by a resolution of the board of supervisors or trustees and shall be spread in its entirety upon the permanent records of the drainage district or districts affected.

10. To furnish suitable uniforms for the executive officer and such employees as he may designate to wear, when on official duty. The cost of said uniforms shall not exceed three hundred dollars per person in any given year. The uniforms shall at all times remain the property of the county.

11. To appropriate from the county conservation fund created pursuant to section 111A.6 an amount, not to exceed two thousand dollars per annum, for the use of a local, nonprofit historical society, organized pursuant to chapter 504 or 504A, for the purpose of collecting and preserving historical materials of the area, maintaining a historical library and collections, conducting historical studies and researches, issuing publications, providing public lectures of historical interest, and otherwise disseminating a knowledge of the history of the area to the general public. If such appropriation is made, the historical society shall present to the county conservation board an annual report describing in detail its use of the funds appropriated. [C58, 62, 66, 71, 73, 75,§111A.4]

Referred to in §471.4(1)

111A.5 Rules and regulations—officers. The county conservation board may make, alter, amend or repeal rules and regulations for the protection, regulation and control of all museums, parks, preserves, parkways, playgrounds, recreation centers, and other property under its control. No rules and regulations adopted shall be contrary to, or inconsistent with, the laws of the state of Iowa. Such rules and regulations shall not take effect until ten days after their adoption by said board and after their publication once a week for two weeks in at least one paper circulating in the county and after a copy thereof has been posted near each gate or principal entrance to the public ground to which they apply. After such publication and posting, any person violating any provision of such rules and regulations which are then in effect shall, upon conviction, be fined not more than one hundred dollars or be imprisoned in the county jail not more than thirty days. The board may designate the executive officer and such employees as he may designate as police officers who shall have all the powers conferred by law on police officers, peace officers, or sheriffs in the enforcement of the laws of the state of Iowa and the apprehension of violators thereof. [C58, 62, 66, 71, 73, 75,§111A.5]

Referred to in §111A.10

111A.6 Funds — tax levy — gifts — anticipatory bonds. Upon the adoption of any county of the provisions of this chapter, the county board of supervisors of such county may by resolution appropriate an amount of money from the general fund of the county for the payment of expenses incurred by the county conservation board in carrying out its powers and duties, and it may levy or cause to be levied an annual tax, in addition to all other taxes, of not more than twenty-seven cents per thousand dollars of the assessed value of all real and personal property subject to taxation within such county, upon proper certification by said county conservation board made pursuant to and in compliance with all of the provisions of chapter 24, which tax shall be collected by the county treasurer as other taxes are collected, and shall be paid into a separate and distinct fund to be known as the county conservation fund, to be paid out upon the warrants drawn by the county auditor upon requisition of the county conservation board for the payment of expenses incurred in carrying out the powers and duties of said conservation board. The county conservation board shall have no power or authority to contract any debt or obligation in any year in excess of the moneys in the hands of the county treasurer immediately available for such purposes, except the board of supervisors may authorize deferred payments for land acquisition purchases not to exceed one-fourth of the annual conservation fund levy nor to extend over a period of ten years. Any single expenditure of, or contract to expend, a sum of five thousand dollars shall be subject to the provisions of chapter 23. Gifts, contributions and bequests of money and all rent, licenses, fees and charges and other revenue or money received or collected by the board shall be deposited in the county conservation fund to be used for the purchase of land, property and equipment and the payment of expenses incurred in carrying out the activities of the board, except that moneys given, bequeathed, or contributed upon specified trusts shall be held and applied in accordance with the trust specified.

In order to make immediately available to the county conservation board the proceeds of the annual tax hereinbefore authorized to be levied for recreation and conservation purposes, bonds of any county may be issued in anticipation of the collection of such tax in the manner hereinafter provided. Upon the filing of a petition by the conservation board with the county board of supervisors asking that bonds be issued in a specified amount for the purpose of paying the cost of acquiring land and developing the same for public museum, park, parkway, preserve, playground, or other recreation or conservation purposes within the county, then the board of supervisors may call a special election to be held in the county to vote on the proposition of issuing such bonds. Notice of such election shall be published once each week for at least four consecutive weeks in one of the official county newspapers, and the election shall be held on a day not less than five nor more than twenty days after the last publication of such notice. Voting machines may be used for the purpose of voting on said proposition or, in the discretion of the board of supervisors, the prop-

osition may be submitted to the voters on paper ballots. The proposition shall be submitted in substantially the following form:

"Shall ..... County, Iowa, issue its bonds in the amount of $..... for the purpose of .....?"

The expenses incurred in connection with the conduct of such election shall be paid by the conservation board from the county conservation fund. If the vote in favor of issuing the bonds is equal to at least sixty percent of the total votes cast for and against the proposition, the board of supervisors shall issue the bonds in the amount voted, and shall provide for the levy of an annual tax, within the limits of the special tax hereinbefore authorized, sufficient to pay said bonds and the interest thereon as the same respectively become due. Said bonds shall mature in not more than twenty years, shall bear interest at a rate or rates not exceeding seven percent per annum, shall be in such form as the board of supervisors shall by resolution provide, and shall be payable as to both principal and interest from the proceeds of the annual levy of the tax hereinbefore authorized to be levied for recreation and conservation purposes, or so much thereof as will be sufficient to pay the principal thereof and interest thereon, and prior to the authorization and issuance of such bonds the board of supervisors may, with or without notice, negotiate and enter into an agreement or agreements with any bank, investment banker, trust company or insurance company or group thereof whereunder the marketing of such bonds may be assured and consummated. The proceeds of such bonds shall be deposited in a special fund, to be kept separate and apart from all other funds of the county, and shall be paid out upon warrants drawn by the county auditor upon requisition of the conservation board to pay the cost of acquiring land and developing the same for recreation and conservation purposes as specified in the election proposition.

Nothing herein contained shall be construed to limit the authority of the board of supervisors to levy the full recreation and conservation tax, but if and to whatever extent said tax is levied in any year in excess of the amount of the principal and interest falling due in such year on said bonds, the first available proceeds thereof, to an amount sufficient to meet maturing installments of principal and interest on such bonds, shall be paid into the sinking fund for such bonds before any of such taxes are deposited in the county conservation fund or are otherwise made available to the county conservation board, and the amount required to be annually set aside to pay the principal of and interest on the bonds shall constitute a first charge upon all of the proceeds of such annual special tax, which tax shall be pledged to pay said bonds and the interest thereon.

This law shall be construed as supplemental and in addition to existing statutory authority and as providing an independent method of financing the cost of acquiring land and developing the same for public museum, park, parkway, preserve, playground, or other recreation or conservation purposes, and for the issuance and sale of bonds in connection therewith, and shall not be construed as subject to the provisions of any other law. The aggregate amount of bonds issued and outstanding at any time hereunder shall not exceed one million dollars in any single county. The fact that a county may have bonds previously issued and outstanding under authority of this law shall not prevent such county from issuing additional bonds hereunder, provided that the aggregate amount of such bonds does not exceed the maximum hereinbefore established. All acts and proceedings heretofore taken by any county conservation board or board of supervisors for the exercise of any of the powers herein granted are hereby legalized and validated in all respects. [C58, 62, 66, 71, 73, 75, §111A.6]

Referred to in §24.37, 111A.4(11)
See 63GA, ch 87,§60

111A.7 Joint operations. Any county conservation board may co-operate with the federal government or the state government or any department or agency thereof to carry out the purposes and provisions of this chapter. Any county conservation board may join with any other county board or county boards to carry out the provisions of this chapter, and to that end may enter into agreement with each other and may do any and all things necessary or convenient to aid and to co-operate in carrying out the provisions of the chapter. Any city, village or school district may aid and co-operate with any county conservation board or any combination thereof in equipping, operating and maintaining any museums, parks, preserves, parkways, playgrounds, recreation centers, and conservation areas, and for providing, conducting and supervising programs of activities, and may appropriate money for such purposes. The state conservation commission, county engineer, county agricultural agent, and other county officials shall render such assistance as shall not interfere with their regular employment. The board of supervisors is authorized to make available to the use of the county conservation board, county-owned equipment and operators and any county-owned materials or real estate it deems advisable and may be reimbursed to the credit of the proper fund from county conservation funds for actual expense of operation, supplies, and materials or for the reasonable value for the use of real estate. [C58, 62, 66, 71, 73, 75,§111A.7]

111A.8 School property used. The governing body of any school district may grant the use of any buildings, grounds, or equipment of the district to any county conservation board for the purpose of carrying out the provisions of this chapter whenever such use of the school buildings, grounds or equipment for such purposes will not interfere with the

use of the buildings, grounds, and equipment for any purpose of the public school system. C58, 62, 66, 71, 73, 75,§111A.8]

See §297.9

111A.9 Advice and assistance. The state conservation commission and the state department of public instruction shall advise with and may assist any county or counties in carrying out the purposes of this chapter. C58, 62, 66, 71, 73, 75,§111A.9

Constitutionality, 56GA, ch 12,§13

111A.10 Statutes applicable. The provisions of sections 111.35 through 111.57, inclusive, shall apply to all lands and waters under the control of any county conservation board, in the same manner as if such lands and waters were state parks, lands, or waters. Wherever used in said sections, the words "state conservation commission", "conservation commission", and "commission" shall include a county conservation board, and the words "state conservation director" shall include a county conservation board or its executive officer, with respect to any lands or waters under the control of a county conservation board. However, the provisions of said sections may be modified or superseded by rules and regulations adopted as provided in section 111A.5. [C71, 73, 75,§111A.10]

CHAPTER 111B

STATE PRESERVES

Referred to in §109.1

111B.1 Definitions.
111B.2 Advisory board.
111B.3 Membership.
111B.4 Expenses.
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111B.6 Advisors.
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111B.8 Powers and duties.
111B.9 Articles of dedication.
111B.10 When dedicated as a preserve.
111B.11 Area held in trust.
111B.12 Agencies urged to dedicate preserves.
111B.13 Other purposes not affected.

111B.1 Definitions. As used in this chapter:

"Area" means an area of land or water or both land and water.

"Preserve" means an area of land or water formally dedicated under the provisions of this chapter for maintenance as nearly as possible in its natural condition though it need not be completely primeval in character at the time of dedication or an area which has unusual flora, fauna, geological, archaeological, scenic or historical features of scientific or educational value.

"Dedication" means the allocation of an area as a preserve by a public administrative agency or by a private owner by written stipulation in a form approved by the state advisory board for preserves.

"Board" means the state advisory board for preserves established by this chapter. [C66, 71, 73, 75,§111B.1]

111B.2 Advisory board. There is hereby created a state system of preserves and a state advisory board for preserves. [C66, 71, 73, 75, §111B.2]

111B.3 Membership. The board shall be composed of seven members, six of which shall be appointed by the governor. The state conservation commission, the conservation committee of the Iowa academy of science, and the state historical society shall submit to the governor a list of possible appointments. Members shall be selected from persons with a demonstrated interest in the preservation of natural lands and waters, and historic sites. The director of the state conservation commission shall serve as one member of the board. Any vacancies on the board shall be filled, for the remainder of the term vacated, by appointment by the governor provided by this chapter.

The first members appointed after the effective date of this chapter shall serve as follows: Two members to serve until July 1, 1968; two members to serve until July 1, 1969; two members to serve until July 1, 1970, and the director of the state conservation commission shall serve as long as he is director of the conservation commission. Members shall serve until their successors are appointed and qualified. As terms of members so appointed expire, their successors shall be appointed for terms to expire three years thereafter. Any member who has served two consecutive full terms will not be eligible for reappointment for a period of one year following the expiration of his second term. [C66, 71, 73, 75,§111B.3]

111B.4 Expenses. The members of the board shall serve without compensation but may be reimbursed for necessary expenses in connection with performance of their duties. [C66, 71, 73, 75,§111B.4]

111B.5 Organization. The board shall organize annually by the election of a chairman. The board shall meet annually and at such other times as it deems necessary. Meetings

may be called by the chairman, and shall be called by the chairman on the request of three members of the board. [C66, 71, 73, 75,§111B.5]

111B.6 Advisors. Representatives of such agencies, institutions, and organizations as the board may determine may serve as advisors to the board. Such advisors shall receive no compensation for this function but at the discretion of the board may be reimbursed for necessary expenses in connection with the performance of their duties. [C66, 71, 73, 75,§111B.6]

111B.7 Ecologist. The conservation commission shall employ, upon recommendation by the board, at salaries fixed by the board, a trained ecologist and such other personnel as may be necessary to carry out the duties of the board. [C66, 71, 73, 75,§111B.7]

111B.8 Powers and duties. The board shall have the following powers and duties:

1. To approve an area as a preserve.

2. To make and publish all rules necessary to carrying out the purposes of this chapter.

3. To recommend dedication as preserves, areas owned by the state under the jurisdiction of the conservation commission.

4. To recommend acquisition of areas for dedication as preserves by the state conservation commission.

5. To recommend dedication as preserves, areas owned by other public agencies, private groups, and individuals.

6. To make surveys and maintain registries and records of preserves and other areas of educational or scientific value and of habitats for rare and endangered species of plants and animals in the state.

7. To promote research and investigations, carry on interpretive programs and publish and disseminate information pertaining to preserves and related areas of educational or scientific value.

8. To promote the establishment and protection of, and advise in the management of, wild parks and other areas of educational or scientific value and otherwise foster and aid in the preservation of natural conditions elsewhere than in preserves.

9. To authorize payment of travel and other necessary expenses of the members of the board and advisors to the board, and salaries, wages, compensations, travel, supplies, and equipment necessary to carry out the duties of the board, and to authorize any other expenditures as may be necessary to carry into effect the purposes of this chapter.

10. To design and control the use of official state preserve signs and recommend to the state department of transportation locations for state preserve signs.

11. To submit to the governor and the legislature a report before January 15, 1967, and every two years thereafter which shall account for each preserve in the system and make such other reports and recommendations as it may deem necessary.

12. To prepare and recommend a budget, for inclusion as a line item money request in the state conservation commission budget, for appropriation from the state general fund. [C66, 71, 73, 75,§111B.8]

111B.9 Articles of dedication. The public administrative agency or private owner shall complete articles of dedication on forms approved by the board. When the articles of dedication have been approved by the governor the board shall record them with the county recorder for the county or counties in which the area is located.

The articles of dedication may contain restrictions on development, sale, transfer, method of management, public access, and commercial or other use, and may contain such other provisions as may be necessary to further the purposes of this chapter. They may define the respective jurisdictions of the owner or operating agency and the board. They may provide procedures to be applied in case of violation of the dedication. They may recognize reversionary rights. They may vary in provisions from one preserve to another in accordance with differences in relative conditions. [C66, 71, 73, 75,§111B.9]

111B.10 When dedicated as a preserve. An area shall become a preserve when it has been approved by the board for dedication as a preserve, whether in public or private ownership, formally dedicated as a preserve within the system by a public administrative agency or private owner and designated by the governor as a preserve. [C66, 71, 73, 75, §111B.10]

111B.11 Area held in trust. An area designated as a preserve within the system is hereby declared put to its highest, best, and most important use for public benefit. It shall be held in trust and shall not be alienated except to another public use upon a finding by the board of imperative and unavoidable public necessity and with the approval of the state conservation commission, the general assembly by concurrent resolution, and the governor. The board's interest or interests in any area designated as a preserve shall not be taken under the condemnation statutes of this state without such a finding of imperative and unavoidable public necessity by the board, and with the consent of the state conservation commission, the general assembly by concurrent resolution, and the governor.

The board, with the approval of the governor, may enter into amendments to any articles of dedication upon its finding that such amendment will not permit an impairment, disturbance, or development of the area inconsistent with the purposes of this chapter.

Before the board shall make a finding of imperative and unavoidable public necessity, or shall enter into any amendment to articles of dedication, it shall provide notice of such

proposal and opportunity for any person to be heard. Such notice shall be published at least once in a newspaper with a general circulation in the county or counties wherein the area directly affected is situated, and mailed within ten days of such published notice to all persons who have requested notice of all such proposed actions. Each notice shall set forth the substance of the proposed action and describe, with or without legal description, the area affected, and shall set forth a place and time not less than sixty days thence for all persons desiring to be heard to have reasonable opportunity to be heard prior to the finding of the board. [C66, 71, 73, 75, §111B.11; 66GA, ch 1099,§1]

111B.12 Agencies urged to dedicate preserves. All departments, agencies, and instrumentalities of the state, including counties, municipalities, public corporations, boards, commissions, and universities shall be urged to dedicate as nature preserves within the system under the procedures outlined in this chapter, suitable areas or portions of areas within their jurisdiction. [C66, 71, 73, 75, §111B.12]

111B.13 Other purposes not affected. Nothing contained in this chapter shall be construed as interfering with the purposes stated in the establishment of or pertaining to any state or local park, preserve, wildlife refuge, or other area or the proper management and development thereof except that any agency administering any area designated as a nature preserve under the system shall be responsible for preserving the natural character of the area in accordance with the articles of dedication.

Designation of an area as a preserve within the system shall not void or replace any protected status under law which the area would have were it not so designated. [C66, 71, 73, 75, §111B.13]

CHAPTER 111C

PUBLIC USE OF PRIVATE LANDS AND WATERS

Referred to in §109.1

111C.1 Purpose.
111C.2 Definitions.
111C.3 Liability of owner limited.
111C.4 Users not invitees or licensees.
111C.5 Duties and liabilities of owner of leased land.
111C.6 When liability lies against owner.
111C.7 Construction of law.

111C.1 Purpose. The purpose of this chapter is to encourage private owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes. [C71, 73, 75,§111C.1]

111C.2 Definitions. As used in this chapter, unless the context otherwise requires:

1. "Land" means land used for agricultural purposes, including marshlands, timber, grasslands and the privately owned roads, water, water courses, caves, private ways and buildings, structures and machinery or equipment appurtenant thereto.

2. "Holder" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises; provided, however, holder shall not mean the state of Iowa, its political subdivisions, or any public body or any agencies, departments, boards or commissions thereof.

3. "Recreational purpose" means the following or any combination thereof: Hunting, horseback riding, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycling, nature study, water skiing, snowmobiling, other summer and winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites while going to and from or actually engaged therein.

4. "Charge" means any consideration, the admission price or fee asked in return for invitation or permission to enter or go upon the land. [C71, 73, 75,§111C.2; 66GA, ch 115,§1]

111C.3 Liability of owner limited. Except as specifically recognized by or provided in section 111C.6, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes. [C71, 73, 75,§111C.3]

Referred to in §111C.5

111C.4 Users not invitees or licensees. Except as specifically recognized by or provided in section 111C.6, a holder of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

1. Extend any assurance that the premises are safe for any purpose.

2. Confer upon such person the legal status of an invitee or licensee to whom the duty of care is owed.

3. Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons. [C71, 73, 75,§111C.4]

Referred to in §111C.5

111C.5 Duties and liabilities of owner of leased land. Unless otherwise agreed in writing, the provisions of sections 111C.3 and 111C.4 shall be deemed applicable to the duties and liability of an owner of land leased, or any interest or right therein transferred to, or the subject of any agreement with, the United States or any agency thereof, or the state or any agency or subdivision thereof, for recreational purposes. [C71, 73, 75,§111C.5]

111C.6 When liability lies against owner. Nothing in this chapter limits in any way any liability which otherwise exists:

1. For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

2. For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land or any interest or right therein, leased or transferred to, or the subject of any agreement with, the United States or any agency thereof or the state or any agency thereof or subdivision thereof, any consideration received by the holder for such lease, interest, right or agreement, shall not be deemed a charge within the meaning of this section. [C71, 73, 75,§111C.6]

Referred to in §§111C.3, 111C.4

111C.7 Construction of law. Nothing in this chapter shall be construed to:

1. Create a duty of care or ground of liability for injury to persons or property.

2. Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this chapter to exercise care in the use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.

3. Amend, repeal or modify the common law doctrine of attractive nuisance. [C71, 73, 75, §111C.7]

CHAPTER 111D

CONSERVATION EASEMENTS

Referred to in §109.1

111D.1 Acquisition by other than condemnation.
111D.2 Definition.
111D.3 Recording.
111D.4 Statement of extent.
111D.5 Rule of construction.

111D.1 Acquisition by other than condemnation. The state conservation commission, the Iowa natural resources council, any county conservation board, and any city or agency thereof may acquire by purchase, gift, contract, or other voluntary means, but not by eminent domain, conservation easements in land to preserve scenic beauty, wildlife habitat, riparian lands, wet lands, or forests, promote outdoor recreation, or otherwise conserve for the benefit of the public the natural beauty, natural resources, and public recreation facilities of the state. [C71, 73, 75,§111D.1]

Referred to in §§111D.2, 111D.5

111D.2 Definition. "Conservation easement" means an easement in, servitude upon, restriction upon the use of, or other interest in land owned by another, created for any of the purposes set forth in section 111D.1. A conservation easement shall be transferable to any other public body authorized to acquire conservation easements. A conservation easement shall be perpetual unless expressly limited to a lesser term, or unless released by the holder thereof, or unless change of circumstances shall render such easement no longer beneficial to the public. No comparative economic test shall be used to determine whether a conservation easement is beneficial to the public. [C71, 73, 75,§111D.2]

111D.3 Recording. Conservation easements shall be recorded as other instruments affecting real estate are recorded, and each public body acquiring one or more conservation easements shall maintain a current inventory thereof. Unrecorded and uninventoried conservation easements shall be deemed abandoned. [C71, 73, 75,§111D.3]

111D.4 Statement of extent. A conservation easement shall clearly state its extent and purpose. [C71, 73, 75,§111D.4]

111D.5 Rule of construction. The powers accorded by this chapter shall be in addition to, and not in derogation of, all powers provided by law with respect to the public bodies named in section 111D.1. [C71, 73, 75,§111D.5]

CHAPTER 112

DAMS AND SPILLWAYS

Referred to in §109.1

112.1 Resolution of necessity.
112.2 Expert plan.
112.3 Hearing—damages.
112.4 Adoption of plan.
112.5 Appraisal of damages.
112.6 Filing appraisement.
112.7 Damages determined.
112.8 Judicial review—bond.
112.9 Final determination and costs.
112.10 Tentative plan.

112.1 Resolution of necessity. Whenever, in the opinion of the state conservation commission, it is necessary and desirable for it to erect a dam or spillway across a stream or at the outlet of a lake, or to alter or reconstruct an existing dam or spillway, so as to increase or decrease its permanent height, or to permanently affect the water level above the structure, it shall proceed with said project by first adopting a resolution of necessity to be placed upon its records, in which it shall describe in a general way the work contemplated. [C24, 27, 31,§1826; C35,§1828-e1; C39,§**1828.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§112.1]

112.2 Expert plan. The commission, upon receipt of a report and plan prepared by a competent civil engineer, showing the work contemplated, the effect on the water level, and probable cost and such other facts and recommendations as may be deemed material, may approve said plan which shall be considered a tentative plan only, for the project. [C24, 27, 31,§1826; C35,§1828-e2; C39,§**1828.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§112.2]

112.3 Hearing — damages. After said approval the commission, if it wishes to proceed further with the project, shall, with the consent of the Iowa natural resources council, fix a date of hearing not less than two weeks from date of approval of the plan. Notice of the day, hour and place of hearing, relative to proposed work, shall be provided by publication at least once a week for two consecutive weeks in some newspaper of general circulation published in the county where the project is located, or in the county or counties where the water elevations are affected, under the tentative plan approved. The last of such publication or publications shall not be less than five days prior to the day set for hearing. Any claim by any persons whomsoever, for damages which may be caused by said project shall be filed with the commission at or prior to the time of the hearing provided herein. [C24, 27, 31,§1826; C35,§1828-e3; C39,§**1828.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§112.3]

112.4 Adoption of plan. If, at the time of the hearing, the commission shall find that the improvement would be conducive to the public convenience, welfare, benefit or utility, and the cost thereof is not excessive, and no claim shall have been filed for damages, it may adopt the tentative plan as final or may modify the plan, provided said modification will not, to any greater extent than the tentative plan, materially and adversely affect the interests of littoral or riparian owners. [C24, 27, 31,§1826; C35,§1828-e4; C39,§**1828.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§112.4]

112.5 Appraisal of damages. If, at the time of the hearing, the claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date and place of which shall be fixed at the time of adjournment and of which all interested parties shall take notice, and the commission shall have the damages appraised by three appraisers to be appointed by the chief justice of the supreme court. One of these appraisers shall be a registered civil engineer resident of the state and two shall be freeholders of the state, who shall not be interested in nor related to any person affected by the proposed project. [C24, 27, 31,§1826; C35,§1828-e5; C39,§**1828.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§112.5]

112.6 Filing appraisement. The appraisers appointed to determine the damages caused by the proposed project shall view the premises and determine and fix the amount of damages to which each claimant is entitled and shall, at least three days before the date fixed by the commission to hear and determine the same, file with the secretary of the commission reports in writing showing the amount of damages sustained by each claimant. Should good cause for delay exist, the commission may postpone the time of final action on the project. [C24, 27, 31,§1826; C35,§1828-e6; C39, §**1828.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§112.6]

112.7 Damages determined. At the time fixed for hearing and after receipt of the report of the appraisers, the commission shall examine said report, both for and against each claim for damages and compensation and shall determine the amount of damages and compensation due each claimant and may affirm, increase or diminish the amount awarded by the appraisers. After such action, the commission may thereupon adopt a final plan for the project, and proceed with its construction, or it may dismiss the entire proceedings. [C24, 27, 31,§1826; C35,§1828-e7; C39,§**1828.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§112.7]

112.8 Judicial review — bond. Judicial review of the orders or actions of the commission fixing the amount of compensation awarded or damages sustained by any claimant may be sought in accordance with the terms of the Iowa administrative procedure Act. The petition for review shall be accompanied by an appeal bond with sufficient sureties to be approved by the clerk of the district court conditioned to pay all costs adjudged against the petitioner. [C24, 27, 31,§1826; C35,§1828-e8; C39, §1828.31; C46, 50, 54, 58, 62, 66, 71, 73, 75,§112.8]

112.9 Final determination and costs. The amount of damages or compensation found by the court shall be entered of record. Unless the result of the judicial review proceeding is more favorable to the petitioner than the action of the commission, all costs of the judicial review proceeding shall be taxed to the petitioner, but if more favorable, the cost shall be taxed to the respondents. All damages assessed and all costs occasioned under this chapter shall be paid from the funds of the commission. [C24, 27, 31,§1826; C35,§1828-e9; C39,§1828.32; C46, 50, 54, 58, 62, 66, 71, 73, 75, §112.9]

112.10 Tentative plan. If, at the time of hearing on the tentative plan, no objectors appear and no claim for damages or compensation shall have been filed, or if proper waivers giving consent to the construction of the proposed improvement have been obtained from all parties affected then the commission may adopt the tentative plan as final and proceed with the work proposed. [C24, 27, 31,§1826; C35,§1828-e10; C39,§1828.33; C46, 50, 54, 58, 62, 66, 71, 73, 75,§112.10]

CHAPTER 113

FENCES

113.1 Partition fences.
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113.21 Duty to keep fence tight.
113.22 Controversies.
113.23 Appeal.
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113.25 Record kept—fees of clerk.

113.1 Partition fences. The respective owners of adjoining tracts of land shall upon written request of either owner be compelled to erect and maintain partition fences, or contribute thereto, and keep the same in good repair throughout the year. [C51,§§895, 900, 901; R60, §§1526, 1531, 1532; C73,§§1489, 1494, 1495; C97, §2355; C24, 27, 31, 35, 39,§1829; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.1]

39GA, ch 76,§1, editorially divided

113.2 Trimming and cutting back. If said fence be hedge, the owner thereof shall trim or cut it back twice during each calendar year, the first time during the month of June and the last time during the month of September, to within five feet from the ground, unless such owners otherwise agree in writing to be filed with and recorded by the township clerk. [C51,§900; R60,§1531; C73,§1494; C97,§2355; C24, 27, 31, 35, 39,§1830; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.2]

113.3 Powers of fence viewers. The fence viewers shall have power to determine any controversy arising under this chapter, upon giving five days' notice in writing to the opposite party or parties, prescribing the time and place of meeting to hear and determine the matter named in said notice. Upon request of any landowner, the fence viewers shall give such notice to all adjoining landowners liable for the erection, maintenance, rebuilding, trimming, or cutting back, or repairing of a partition fence, or to pay for an existing hedge or fence. [C51,§§896, 898, 902, 909; R60,§§1527, 1529, 1533, 1540; C73,§§1490, 1492, 1496, 1503; C97,§2356; C24, 27, 31, 35, 39,§1831; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.3]

Referred to in §113.5
C97,§2356, editorially divided
Trustees as fence viewers, §359.17

113.4 Decision—deposit. At said time and place the fence viewers shall meet and determine by written order the obligations, rights, and duties of the respective parties in such matter, and assign to each owner the part which he shall erect, maintain, rebuild, trim or cut back, or pay for, and fix the value thereof, and prescribe the time within which

the same shall be completed or paid for, and, in case of repair, may specify the kind of repairs to be made. If the fence is not erected, rebuilt, or repaired within the time prescribed in the order, the fence viewers shall require the complaining landowner to deposit with the fence viewers a sum of money sufficient to pay for the erecting, rebuilding, trimming, cutting back or repairing such fence together with the fees of the fence viewers and costs. Such complaining landowner shall be reimbursed as soon as the taxes are collected as provided in section 113.6. [C51,§§896, 898, 902, 909; R60, §§1527, 1529, 1533, 1540; C73,§§1490, 1492, 1496, 1503; C97,§2356; C24, 27, 31, 35, 39,§**1832**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.4]

Referred to in §113.5

113.5 Contribution postponed. In case a landowner desires to erect a partition hedge or fence when the owner of the adjoining land is not liable to contribute thereto, the fence viewers may assign to each owner the part which he shall erect, maintain, rebuild, and repair, trim or cut back, by pursuing the method provided in sections 113.3 and 113.4; but the adjoining owner shall not be required to contribute thereto until he becomes liable so to do, as elsewhere in this chapter provided. [C51,§901; R60,§1532; C73,§1495; C97,§2357; C24, 27, 31, 35, 39,§**1833**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.5]

113.6 Default—costs and fees collected as taxes. If the erecting, rebuilding, or repairing of such fence be not completed within thirty days from and after the time fixed therefor in such order, the board of township trustees acting as fence viewers shall cause the fence to be erected, rebuilt and repaired, and the value thereof may be fixed by the fence viewers, and unless the sum so fixed, together with all fees of the fence viewers caused by such default, as taxed by them, is paid to the county treasurer, within ten days after the same is so ascertained; or when ordered to pay for an existing fence, and the value thereof is fixed by the fence viewers, and said sum, together with the fees of the fence viewers, as taxed by them, remains unpaid by the party in default for ten days, the fence viewers shall certify to the county auditor the full amount due from the party or parties in default, including all fees and costs taxed, together with a description of the real estate owned by the party or parties in default along or upon which the said fence exists, and the county auditor shall enter the same upon the tax list and the amount shall be collected as other taxes. [C51,§§897, 899, 902; R60,§§1528, 1530, 1533; C73,§§1491, 1493, 1496; C97,§2358; S13, §2358; C24, 27, 31, 35, 39,§**1834**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.6]

Referred to in §113.4
Collection of taxes, ch 445 et seq.
Fees of fence viewers, §359.46

113.7 Service of notice on nonresidents. The notice by the fence viewers provided for in this chapter may be served upon any owner nonresident of the county where his land is situated, by publication thereof, once each week, for two consecutive weeks in a newspaper printed in the county in which the land is situated, proof of which shall be made as in case of an original notice and filed with the fence viewers, and a copy delivered to the occupant of said land, or to any agent of the owner in charge of the same. [C97,§2359; S13, §2359; C24, 27, 31, 35, 39,§**1835**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.7]

Proof of service, R.C.P. 63

113.8 Orders. All orders and decisions made by the fence viewers shall be in writing, signed by at least two of them, and filed with the township clerk. [C97,§2360; C24, 27, 31, 35, 39, §**1836**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.8]

C97,§2360, editorially divided

113.9 Notice. All notices in this chapter required to be given shall be in writing, and return of service thereof made in the same manner as notices in actions before a judicial magistrate. [C97,§2360; C24, 27, 31, 35, 39,§**1837**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.9]

Service and return, R.C.P. 56(a)

113.10 Entry and record of orders. Such orders, decisions, notices, and returns shall be entered of record at length by the township clerk, and a copy thereof certified by the township clerk to the county recorder, who shall record the same in his office in a book kept for that purpose, and index such record in the name of each adjoining owner as grantor to the other. [C97,§2360; C24, 27, 31, 35, 39,§**1838**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.10]

113.11 Record conclusive. The record in the recorder's office, unless modified, by appeal as hereinafter provided, shall be conclusive evidence of the matters therein stated, and such record or a certified copy thereof shall be competent evidence in all courts. [C97,§2360; C24, 27, 31, 35, 39,§**1839**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.11]

Appeal, §113.23

113.12 Division by agreement—record. The several owners may, in writing, agree upon the portion of partition fences between their lands which shall be erected and maintained by each, which writing shall describe the lands and the parts of the fences so assigned, be signed and acknowledged by them, and filed and recorded in the office of the recorder of deeds of the county or counties in which they are situated. [C51,§905; R60,§1536; C73,§1499; C97,§2361; C24, 27, 31, 35, 39,§**1840**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.12]

113.13 Orders and agreements—effect. Any order made by the fence viewers, or any agreement in writing between adjoining landowners, when recorded in the office of the recorder of deeds, as in this chapter provided, shall bind the makers, their heirs, and subsequent grantees. [C51,§905; R60,§1536; C73,§1499; C97,§2362;

C24, 27, 31, 35, 39,§1841; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.13]

113.14 Lands in different townships. When the adjoining lands are situated in different townships in the same or different counties, the clerk of the township of the owner making the application shall select two trustees of his township as fence viewers, and the clerk of the other township one from his township, who shall possess, in such case, all the powers given to fence viewers in this chapter, but all orders, notices, and valuations and taxation of costs made by them must be recorded in both townships and in the office of the recorder of deeds of each county. [C51,§906; R60,§1537; C73,§1500; C97,§2363; C24, 27, 31, 35, 39,§1842; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.14]

113.15 Fence on another's land. When a person has made a fence or other improvement on an enclosure, which is found to be on land of another, such person may enter upon the land of the other and remove his fence or other improvement and material, upon his first paying, or offering to pay, the other party for any damage to the soil which may be occasioned thereby, and the value of any timber used in said improvement taken from the land of such other party, if any; and if the parties cannot agree as to the damages, the fence viewers may determine them as in other cases; such removal shall be made as soon as practicable, but not so as to expose the crops of the other party. [C51,§§907, 908; R60,§§1538, 1539; C73, §§1501, 1502; C97,§2364; C24, 27, 31, 35, 39,§1843; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.15]

113.16 Right to build fence on line. A person building a fence may lay the same upon the line between him and the adjacent owners, so that it may be partly on one side and partly on the other, and the owner shall have the same right to remove it as if it were wholly on his own land. [C51,§910; R60,§1541; C73, §1504; C97,§2365; C24, 27, 31, 35, 39,§1844; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.16]

113.17 Fence on one side of line. The provisions concerning partition fences shall apply to a fence standing wholly upon one side of the division line. [C51,§911; R60,§1542; C73, §1505; C97,§2366; C24, 27, 31, 35, 39,§1845; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.17]

113.18 "Lawful fence" defined. A lawful fence shall consist of:

1. Three rails of good substantial material fastened in or to good substantial posts not more than ten feet apart.

2. Three boards not less than six inches wide and three-quarters of an inch thick, fastened in or to good substantial posts not more than eight feet apart.

3. Three wires, barbed with not less than thirty-six iron barbs of two points each, or twenty-six iron barbs of four points each, on each rod of wire, or of four wires, two thus barbed and two smooth, the wires to be firmly fastened to posts not more than two rods apart, with not less than two stays between posts, or with posts not more than one rod apart without such stays, the top wire to be not more than fifty-four nor less than forty-eight inches in height.

4. Wire either wholly or in part, substantially built and kept in good repair, the lowest or bottom rail, wire, or board not more than twenty nor less than sixteen inches from the ground, the top rail, wire, or board to be between forty-eight and fifty-four inches in height and the middle rail, wire, or board not less than twelve nor more than eighteen inches above the bottom rail, wire, or board.

5. Any other kind of fence which, in the opinion of the fence viewers, shall be equivalent thereto. [R60,§§1544, 1545; C73,§1507; C97, §2367; S13,§2367; C24, 27, 31, 35, 39,§1846; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.18]

Referred to in §113.22
Schoolyard fences, §297.14

113.19 Duty to maintain tight fences. All partition fences may be made tight by the party desiring it, and when his portion is so completed, and securely fastened to good substantial posts, set firmly in the ground, not more than twenty feet apart, the adjoining property owner shall construct his portion of the adjoining fence, in a lawful tight manner, same to be securely fastened to good substantial posts, set firmly in the ground, not more than twenty feet apart. [R60,§1545; C73,§1507; C97,§2367; S13,§2367; C24, 27, 31, 35, 39,§1847; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.19]

Referred to in §113.22

113.20 "Tight fence" defined. All tight partition fences shall consist of:

1. Not less than twenty-six inches of substantial woven wire on the bottom, with three strands of barbed wire with not less than thirty-six barbs of at least two points to the rod, on top, the top wire to be not less than forty-eight inches, nor more than fifty-four inches high.

2. Good substantial woven wire not less than forty-eight inches nor more than fifty-four inches high with one barbed wire of not less than thirty-six barbs of two points to the rod, not more than four inches above said woven wire.

3. Any other kind of a tight partition fence which, in the opinion of the fence viewers, is equivalent thereto. [C97,§2367; S13,§2367; C24, 27, 31, 35, 39,§1848; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.20]

Referred to in §113.22

113.21 Duty to keep fence tight. In case adjoining owners or occupants of land shall use the same for pasturing sheep or swine, each shall keep his share of the partition fence in such condition as shall restrain such sheep or swine. [C73,§1507; C97,§2367; S13,§2367; C24, 27, 31, 35, 39,§1849; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.21]

Referred to in §113.22

113.22 Controversies. Upon the application of either owner, after notice is given as prescribed in this chapter, the fence viewers shall determine all controversies arising under sections 113.18 to 113.21, inclusive, including the partition fences made sheep and swine tight. [C97,§2367; S13,§2367; C24, 27, 31, 35, 39,§1850; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.22]

Notice, §§113.3, 113.7, 113.9

113.23 Appeal. Any person affected by an order or decision of the fence viewers may appeal to the district court by filing with the clerk of said court a notice of appeal within twenty days after the rendition of the order or decision appealed from and filing an appeal bond in an amount approved by the township clerk. The township clerk, after recording the original papers, shall thereupon file them in the office of the clerk of the district court, certifying them to be such, and the clerk shall docket them, entitling the applicant or petitioner as plaintiff, and it shall stand for trial as other cases. [C97,§2369; C24, 27, 31, 35, 39, §1851; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.23]

Manner of taking appeal, R.C.P. 358
Presumption of approval, §682.10

113.24 Certification of decree. Upon the final determination of said appeal the clerk of the district court shall certify to the recorder of deeds the fact that a judgment has been entered upon such appeal, with the book and page of such judgment, and the recorder shall thereupon enter on his record a notation that a judgment on appeal has been entered and that the same may be found in the office of the clerk of the district court, in the book and page designated in said certificate. [C24, 27, 31, 35, 39,§1852; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.24]

113.25 Record kept — fees of clerk. The township clerk shall enter all matters herein required to be made of record in his record book, and shall receive ten cents for each one hundred words in entering of record and making certified copies of the matters herein provided for, and twenty-five cents additional for his certificate thereto when required, and shall also receive the costs of recording in the office of the recorder of deeds of any instrument required to be so recorded. [C97,§2370; C24, 27, 31, 35, 39,§1853; C46, 50, 54, 58, 62, 66, 71, 73, 75,§113.25]

CHAPTER 114

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Referred to in §§118.17(1, 2), 118.21(2), 355.1, 409.1, 455.4

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114.1 Registered engineers and surveyors. No person shall practice professional engineering or land surveying in the state unless he be a registered professional engineer or a registered land surveyor as provided in this chapter, except as permitted by section 114.26. [C24, 27, 31, 35, 39,§1854; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.1]

114.2 Terms defined. The "board" means the state board of engineering examiners provided by this chapter.

The term "professional engineer" as used in this chapter shall mean a person, who, by reason of his knowledge of mathematics, the physical sciences, and the principles of engineering, acquired by professional education or practical experience, is qualified to engage in engineering practice as hereinafter defined.

The practice of "professional engineering" within the meaning and intent of this chapter includes any professional service, such as consultation, investigation, evaluation, planning, designing, or responsible supervision of con-

struction in connection with structures, buildings, equipment, processes, works, or projects, wherein the public welfare, or the safeguarding of life, health or property is or may be concerned or involved, when such professional service requires the application of engineering principles and data.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be active practice in engineering work.

The term "land surveyor" as used in this chapter shall mean a person who engages in the practice of land surveying as hereinafter defined.

The practice of "land surveying" within the meaning and intent of this chapter includes surveying of areas for their correct determination and description and for conveyancing, or for the establishment or re-establishment of land boundaries and the platting of lands and subdivisions thereof.

The term "engineer-in-training" as used in this chapter shall mean a person who passes an examination in the fundamental engineering subjects, but shall not entitle the person to hold himself out as a professional engineer.

The term "in responsible charge" as used in this chapter means having direct control of and personal supervision over any professional engineering work or land surveying work. One or more persons, jointly or severally, may be in responsible charge.

The term "engineering documents" as used in this chapter includes all plans, specifications, drawings, and reports, if the preparation thereof constitutes or requires the practice of professional engineering.

The term "land surveying documents" as used in this chapter includes all plats, maps, surveys, and reports, if the preparation thereof constitutes or requires the practice of land surveying. [C24, 27, 31, 35, 39,§**1855**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.2]

114.3 Establishment of board. There is established a board of engineering examiners which shall consist of five members who are registered professional engineers and two members who are not registered professional engineers and who shall represent the general public. Members shall be appointed by the governor subject to the approval of two-thirds of the members of the senate. A registered member shall be actively engaged in the practice of engineering and shall have been so engaged for five years preceding his appointment, the last two of which shall have been in Iowa. No two registered members of the board shall be from the same branch of the profession of engineering. Professional associations or societies composed of registered engineers may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of professional engineers. [C24, 27, 31, 35, 39,§**1856**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.3]

Terms of members, see 65GA, ch 1086,§200

114.4 Terms of office. Appointments shall be for three-year terms and shall commence on July first of the year in which the appointment is made. Vacancies shall be filled for the unexpired term by appointment of the governor and shall be subject to senate confirmation. Members shall serve no more than three terms or nine years, whichever is least. [C24, 27, 31, 35, 39,§§**1857, 1858**; C46, 50, 54, 58, 62, 66, 71, 73, §§114.4, 114.5; C75,§114.4]

114.5 Repealed by 65GA, ch 1086,§198.

114.6 Official seal—bylaws. The board shall adopt and have an official seal which shall be affixed to all certificates of registration granted and may make all bylaws and rules, not inconsistent with law, necessary for the proper performance of its duty. [C24, 27, 31, 35, 39, §**1859**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.6]

114.7 Attorney general to assist—general powers. Such board, or any committee thereof, shall be entitled to the counsel and to the services of the attorney general, and shall have power to compel the attendance of witnesses, pay witness fees and mileage, and may take testimony and proofs and may administer oaths concerning any matter within its jurisdiction. [C24, 27, 31, 35, 39,§**1860**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.7]

Administration of oaths, §78.2
Attendance of witnesses, ch 781

114.8 Compensation and expenses. Members of the board shall set their own per diem compensation at a rate not exceeding forty dollars per day for the time actually spent in traveling to and from, and in attending duly authorized functions of the board and its committees, and shall receive all necessary traveling and incidental expenses incurred in the discharge of their duties within the limits of funds appropriated to the board. [C24, 27, 31, 35, 39,§**1861**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §114.8]

114.9 Organization of the board—meetings —quorum. The board shall elect annually from its members a chairman and a vice-chairman. The board shall employ a secretary whose salary shall be established by the governor with the approval of the executive council pursuant to section 19A.9, subsection 2, under the pay plan for exempt positions in the executive branch of government. The board shall hold at least one meeting at the seat of government, and meetings shall be called at other times by the secretary at the request of the chairman or four members of the board. At any meeting of the board, a majority of members shall constitute a quorum. The board shall have power to employ

such legal, technical and clerical assistants and incur such expense as may be necessary to properly carry out the provisions of this chapter within the limits of funds appropriated to the board. [C24, 27, 31, 35, 39,§1862; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.9; 66GA, ch 20,§6]

See §114.11

114.10 Annual report. At the time provided by law, the board shall submit to the governor a written report of its transactions for the preceding year, and shall file with the secretary of state a copy thereof, together with a complete statement of the receipts and expenditures of the board, attested by the affidavits of the chairman and the secretary, and a complete list of those registered under this chapter with their addresses and the dates of their certificates of registration. Said report shall be printed by the state and a copy mailed to, and placed on file in the office of the clerk of each incorporated city in the state and in the office of the auditor of each county therein. [C24, 27, 31, 35, 39,§1863; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.10]

Annual report, §17.4

114.11 Secretary—duties of. The secretary shall keep on file a record of all certificates of registration granted and shall make annually such revisions of said record as may be necessary. In revising said record the secretary shall communicate annually by mail with every professional engineer and surveyor registered hereunder, as provided in section 114.18. [C24, 27, 31, 35, 39,§1864; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.11]

See §114.9

114.12 Disposition of fees. The secretary shall collect and account for all fees provided for by this chapter and pay the same to the treasurer of state who shall deposit the fees in the general fund of the state. [C24, 27, 31, 35, 39,§1865; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.12]

Transfer to general fund June 30, 1975, 65GA, ch 1086, §199

114.13 Applications and examination fees. Applications for registration shall be on forms prescribed and furnished by the board, shall contain statements made under oath, showing the applicant's education and detail summary of his technical work and the board shall not require that a recent photograph of the applicant be attached to the application form. An applicant shall not be ineligible for registration because of age, citizenship, sex, race, religion, marital status or national origin, although the application form may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of engineering or land surveying. The board may require that an applicant submit character references, but an applicant for examination in fundamentals or for examination in land surveying shall not submit a character reference from a registered professional engineer. Applications for examination in fundamentals in professional engineering and land surveying shall be accompanied by application fees in amounts determined by the board. The board shall determine the annual cost of administering the examinations and shall set the fees accordingly. [C24, 27, 31, 35, 39,§1866; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.13]

114.14 General requirements for registration. Each applicant for registration as a professional engineer or land surveyor shall have all of the following requirements, respectively, to wit:

1. As a professional engineer:

a. Graduation from a course in engineering of four years or more in a school or college which, in the opinion of the board, will properly prepare the applicant for the examination in fundamental engineering subjects. In lieu of graduation from a school or college, eight years' practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the examination in fundamental engineering subjects.

b. Successfully passing a written, oral, or written and oral examination in fundamental engineering subjects which is designed to show the knowledge of general engineering principles. A person passing the examination in fundamental engineering subjects will be entitled to a certificate as an engineer-in-training.

c. In addition to any other requirement, a specific record of four years or more of practical experience in engineering work which is of a character satisfactory to the board.

d. Successfully passing a written, oral, or written and oral examination designed to determine the proficiency and qualifications to engage in the practice of professional engineering. No applicant shall be entitled to take this examination until the applicant shows the necessary practical experience in engineering work.

2. As a land surveyor:

a. Graduation from a course in engineering of four years or more in a school or college which, in the opinion of the board, will properly prepare the applicant for the examination in fundamental land surveying subjects. In lieu of graduation from a school or college, eight years' practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the examination in fundamental land surveying subjects.

b. Successfully passing a written, oral, or written and oral examination in fundamental land surveying subjects which is designed to show the knowledge of general land surveying principles.

c. In addition to any other requirement, a specific record of four years or more of practical experience in land surveying work which is of a character satisfactory to the board.

d. Successfully passing a written, oral, or written and oral examination designed to determine the proficiency and qualifications to engage in the practice of land surveying. No applicant shall be entitled to take this examination until the applicant shows the necessary practical experience in land surveying work. [C39,§**1866.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §114.14]

114.15 Examinations—report required. Examinations for registration shall be given as often as deemed necessary by the board, but no less than one time per year. The scope of the examinations and the methods of procedure shall be prescribed by the board. Any written examination may be given by representatives of the board. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible. As soon as practicable after the close of each examination, a report shall be filed in the office of the secretary of the board by the board. The report shall show the action of the board upon each application and the secretary of the board shall notify each applicant of the result of his examination. Applicants who fail the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the board concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board. [C24, 27, 31, 35, 39,§**1867**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.15]

114.16 Seal—certificate of responsibility—reproductions. Each registrant, upon registration, may obtain a seal. If he obtains or uses a seal, it shall be of a design approved by the board, bearing the registrant's name, Iowa registration number, and the words "professional engineer" or "land surveyor" or both, as the case may be. A legible rubber stamp or other facsimile of the seal may be used and shall have the same effect as the use of the actual seal.

All engineering documents and land surveying documents shall be dated and shall contain the following: (1) The signature of the registrant in responsible charge; (2) a certificate that the work was done by such registrant or under his direct personal supervision; and (3) the Iowa registration number or legible seal of such registrant.

If engineering documents or land surveying documents comply with this section, reproductions thereof also comply with this section if the date, signature, certificate, and registration number thereon are legibly reproduced.

No agency of this state and no subdivision or municipal corporation of this state, nor any officer thereof, shall file for record or approve any engineering document or land surveying document which does not comply with this section.

No registrant shall place his signature or seal on any engineering document or land surveying document unless he was in responsible charge of the work, except that he may do so if he contributed to the work and the registrant in responsible charge has signed and certified the work.

Violation of this section by a registrant shall be deemed fraud and deceit in his practice. [C24, 27, 31, 35, 39,§**1868**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.16]

114.17 Certificate. To any applicant who shall have passed the examination as a professional engineer and who shall have paid an additional fee, the board shall issue a certificate of registration as a professional engineer signed by the chairman and secretary of the board under the seal of such board, which certificate shall authorize the applicant to practice professional engineering as defined in this chapter. The amount of the fee shall be determined by the board pursuant to sections 114.30 to 114.32. Such certificate shall not carry with it the right to practice land surveying, unless specifically so stated in said certificate, which permission shall be granted by the board without additional fee in cases where the applicant duly qualifies as a land surveyor as prescribed by the rules of said board. [C24, 27, 31, 35, 39, §**1869**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.17]

114.18 Expirations and renewals. Certificates of registration shall expire annually as determined by the board. It shall be the duty of the secretary of the board to notify every person registered under this chapter, of the date of expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected by the payment of a fee the amount of which shall be determined by the board. The failure on the part of any registrant to renew his certificate annually in the month of expiration as required above shall not deprive such a person of the right of renewal. A person who fails to renew his certificate by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. For the duration of any war in which the United States is engaged the board may, in its discretion, defer the collection of renewal fees without penalty, which have or may become due from registered professional

engineers who are employed in the war effort, and residing outside the state, or who are members of the armed forces of the United States, and may renew the engineering certificates of said registered professional engineers. [C27, 31, 35,§1869-b1; C39,§**1869.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.18]

Referred to in §114.11

114.19 Land surveyor's certificate. To any applicant who shall have passed the examination as a land surveyor and who shall have paid an additional fee as set by the board, the board shall issue a certificate of registration signed by its chairman and secretary under the seal of the board, which certificate shall authorize the applicant to practice land surveying as defined in this chapter and to administer oaths to his assistants and to witnesses produced for examination, with reference to facts connected with land surveys being made by such land surveyor. [C24, 27, 31, 35, 39, §**1870**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.19]

Administration of oaths, ch 78; also §355.9

114.20 Foreign registrants. A person holding a certificate of registration as a professional engineer or land surveyor issued to him by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of any foreign country, based on requirements and qualifications, in the opinion of the board equal to or higher than the requirements of this chapter, may be registered without further examination.

A temporary permit to practice engineering or land surveying may be granted to a person registered in another state, as prescribed by the rules of the board, provided that before practicing within this state he shall have applied for registration and shall have paid the fee prescribed by the board.

The application for registration shall be accompanied by a fee as determined by the board. After the board determines the applicant qualified under this section, a certificate of registration shall be issued upon receipt of an additional fee as determined by the board. All fees collected shall be transmitted to the treasurer of state and deposited in the general fund of the state. [C24, 27, 31, 35, 39,§**1871**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.20]

Pending litigation, see 59GA, ch 102,§5

114.21 Suspension or revocation of certificate. The board shall have the power by a five-sevenths vote of the entire board to suspend for a period not exceeding two years, or to revoke the certificate of registration of, or to reprimand any registrant who is found guilty of any fraud or deceit in obtaining a registration, any fraud or deceit in his practice, or any gross negligence, incompetence, or misconduct in his practice, or who is found to have been convicted of any felony that would affect his ability to practice professional engineering or land surveying. [C24, 27, 31, 35, 39,§**1872**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.21]

Referred to in §114.22

114.22 Procedure. Proceedings for any action under section 114.21 shall be begun by filing with the secretary of the board written charges against the accused. The board shall designate a time and place for a hearing, and shall notify the accused of this action and furnish him a copy of all charges at least thirty days prior to the date of the hearing. The accused shall have the right to appear personally or by counsel, to cross-examine witnesses or to produce witnesses in his defense. [C24, 27, 31, 35, 39,§**1873**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.22]

114.23 Expenditures. Warrants for the payment of expenses and compensations provided by this chapter shall be issued by the state comptroller drawn upon funds appropriated to the board upon presentation of vouchers drawn by the chairman and secretary of the board, authorized by the board, and approved by said comptroller. [C24, 27, 31, 35, 39,§**1874**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.23]

114.24 Injunction. Any person who is not legally authorized to practice in this state according to the provisions of this chapter, and shall practice, or shall in connection with his name use any designation tending to imply or designate him as a professional engineer or land surveyor, may be restrained by permanent injunction. [C24, 27, 31, 35, 39,§**1875**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.24]

114.25 Violations. Any person who violates such permanent injunction or presents or attempts to file as his own the certificate of registration of another, or who shall give false or forged evidence of any kind to the board, or to any member thereof, in obtaining a certificate of registration, or who shall falsely impersonate another practitioner of like or different name, or who shall use or attempt to use a revoked certificate of registration, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for three months, or by both such fine and imprisonment. [C24, 27, 31, 35,§1875; C39,§**1875.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.25]

114.26 Applicability of chapter. This chapter shall not apply to any full-time employee of any corporation while doing work for that corporation, except in the case of corporations offering their services to the public as professional engineers or land surveyors.

Corporations engaged in designing buildings or works for public or private interests not their own shall be deemed to practice professional engineering within the meaning of this chapter. With respect to such corporations all principal designing or constructing engineers shall hold certificates of registration hereunder. This chapter shall not apply to corporations engaged solely in constructing buildings and works.

This chapter shall not apply to any professional engineer or land surveyor working for the United States government, nor to any professional engineer or land surveyor employed as an assistant to a professional engineer or land surveyor registered under this chapter if such assistant is not placed in responsible charge of any professional engineering or land surveying work, nor to the operation and/or maintenance of power and mechanical plants or systems. [C24, 27, 31, 35, 39,§**1876**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§114.26]

Referred to in §114.1

114.27 to 114.29 Reserved.

114.30 Fees. The board shall set the fees for application, registration, and renewal of registration based upon the administrative costs of sustaining the board. The fees shall include, but shall not be limited to, the costs for:

1. Per diem, expenses and travel for board members.
2. Office facilities, supplies, and equipment.
3. Legal, technical and clerical assistance. [C75,§114.30]

Referred to in §114.17

114.31 Public members. The public members of the board shall not participate in administering or grading any portion of an examination. [C75,§114.31]

Referred to in §114.17

114.32 Disclosure of confidential information. A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C75,§114.32]

Referred to in §114.17

CHAPTER 115

CERTIFIED SHORTHAND REPORTERS

115.1 Establishment of board.
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115.17 Examination.
115.18 Expenditures.
115.19 Public members.
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115.1 Establishment of board. There is established a board of examiners of shorthand reporters which shall consist of three certified shorthand reporters and two persons who are not certified shorthand reporters and who shall represent the general public. Members shall be appointed by the supreme court. A certified member shall be actively engaged in the practice of certified shorthand reporting and shall have been so engaged for five years preceding his appointment, the last two of which shall have been in Iowa. Professional associations or societies composed of certified shorthand reporters may recommend the names of potential board members to the supreme court, but the supreme court shall not be bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of certified shorthand reporters. [C24, 27, 31, 35, 39,§**1877**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§115.1; 66GA, ch 4,§3]

115.2 Terms of office. Appointments shall be for three-year terms and shall commence on July 1 of the year in which the appointment is made. Vacancies shall be filled for the unexpired term by appointment by the supreme court. Members shall serve a maximum of three terms or nine years, whichever is less. [C24, 27, 31, 35, 39,§**1878**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§115.2; 66GA, ch 4,§4]

Initial appointments by court—terms, see 66GA, ch 4,§4

115.3 Meetings and board expenses. The board of examiners shall fix stated times for the examination of the candidates and shall hold at least one meeting each year at the seat of government. A majority of the members of the board shall constitute a quorum. The supreme court shall set the board members'

per diem compensation at a rate not exceeding forty dollars per day for each day actually engaged in the discharge of their duties, and their necessary expenses, such per diem and expenses to be paid from funds appropriated to the board. [C24, 27, 31, 35, 39,§1879; C46, 50, 54, 58, 62, 66, 71, 73, 75,§115.3; 66GA, ch 4,§5]

115.4 Who eligible. No person shall be appointed to the position of shorthand reporter of any district court in this state, unless he be a certified shorthand reporter who has been found competent to report court proceedings, references, or proceedings of like character, by the board of examiners provided for in this chapter. [C24, 27, 31, 35, 39,§1880; C46, 50, 54, 58, 62, 66, 71, 73, 75,§115.4]

115.5 Temporary substitutes appointed. If the regularly appointed shorthand reporter should be disabled from performing his duty, the judge of such court may appoint a substitute whom he deems competent to act during the disability of the regular reporter, or until his successor is appointed but in no event may the substitute act for a period longer than one year, unless the substitute becomes a certified shorthand reporter of the state of Iowa within that one year, nor may the substitute be reappointed at the end of the one-year period, unless he or she becomes a certified shorthand reporter of the state of Iowa within that one year. [C24, 27, 31, 35, 39,§1881; C46, 50, 54, 58, 62, 66, 71, 73, 75,§115.5; 66GA, ch 1100,§1]

115.6 Unlawful use of title. Any citizen of the state of Iowa who shall have received from the board of examiners a certificate of his qualifications as a shorthand reporter, as herein provided, shall be styled and known as a certified shorthand reporter, and no other person shall assume such title or use the abbreviation C.S.R., or any words, letters, or figures to indicate that the person using the same is a certified shorthand reporter. [C24, 27, 31, 35, 39,§1882; C46, 50, 54, 58, 62, 66, 71, 73, 75,§115.6]

115.7 Court administrator to act as secretary—collection of fees. The supreme court may designate the court administrator to act as secretary for the board and in such case no compensation in addition to the court administrator's regular salary shall be paid. The secretary shall collect and account for all fees and pay them to the treasurer of state who shall deposit the fees in the general fund of the state. The board of examiners of shorthand reporters shall set the fees for examination and for certification. The fees for examination shall be based on the annual cost of administering the examinations. The fees for certification shall be based upon the administrative costs of sustaining the board which shall include but shall not be limited to the cost for per diem, expenses and travel for board members, and office facilities, supplies and equipment. [C24, 27, 31, 35, 39,§1883; C46, 50, 54, 58, 62, 66, 71, 73, 75,§115.7; 66GA, ch 4,§6]

115.8 Revocation of certificates. The board of examiners may revoke any such certificate for sufficient cause, after written notice to the holder thereof and hearing thereon. Any member of the board of examiners may, upon being duly designated by said board or a majority thereof, administer oaths or take testimony concerning any matter within the jurisdiction of said board. [C24, 27, 31, 35, 39,§1884; C46, 50, 54, 58, 62, 66, 71, 73, 75,§115.8]

115.9 Violations punished. Any violation of the provisions of this chapter shall be punished by a fine not exceeding one hundred dollars. [C24, 27, 31, 35, 39,§1885; C46, 50, 54, 58, 62, 66, 71, 73, 75,§115.9]

115.10 to 115.14 Reserved.

115.15 Applications. Applications for certification shall be on forms prescribed and furnished by the board and the board shall not require that the application contain a recent photograph of the applicant. An applicant shall not be ineligible for certification because of age, citizenship, sex, race, religion, marital status, or national origin although the application may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of certified shorthand reporting. Character references may be required, but shall not be obtained from certified shorthand reporters. [C75,§115.15]

115.16 Repealed by 66GA, ch 4,§8.

115.17 Examination. The board may administer as many examinations per year as are necessary, but shall administer at least one examination per year. The scope of the examinations and the methods of procedure shall be prescribed by the board. Any written examination may be conducted by representatives of the board. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible. Applicants who fail the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the board concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board. [C75,§115.17]

115.18 Expenditures. Warrants for the payment of expenses and compensations provided by this chapter shall be issued by the state comptroller drawn upon funds appropriated to the board upon presentation of vouchers drawn by the chairman of the board and authorized by the members of the board. [C75, §115.18]

115.19 Public members. The public members of the board shall not participate in administering or grading any portion of an examination. [C75,§115.19]

115.20 Disclosure of confidential information. A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.

2. Information relating to the contents of the examination.

3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C75, §115.20]

CHAPTER 116

PUBLIC ACCOUNTANTS

116.1 Title.
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116.3 Board of accountancy members—funds—reports—rules.
116.4 Applications.
116.5 Granting the certificate.
116.6 Public accountants.
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116.21 Causes for revocation, suspension, or refusal to renew.
116.22 Revocation, suspension, and refusal to renew registration and permit of partnership or corporation.
116.23 Notice and hearing.
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116.26 Employees of accountants.
116.27 Temporary residence.
116.28 Violation of use of title.
116.29 Penalty.
116.30 Competent evidence.
116.31 Ownership or transfer of records.

116.1 Title. This chapter may be cited as the "Public Accountancy Act of 1974", [C75, §116.1]

116.2 Definitions. As used in this chapter unless the context otherwise requires: *"Accounting practitioner"* means a person licensed by the board as provided in this chapter, who does not hold a certificate as a certified public accountant or public accountant under this chapter, and who offers to perform or performs for the public, and for compensation, any of the following services:

1. The recording of financial transactions in books of record.

2. The making of adjustments of such transactions in books of record.

3. The making of trial balances from books of record.

4. Internal verification and analysis of books or accounts of original entry.

5. The preparation of financial statements, schedules, or reports.

6. The devising and installing of systems or methods of bookkeeping, internal controls of financial data, or the recording of financial data.

Nothing contained in this definition or elsewhere in this chapter shall be construed to permit an accounting practitioner to give an opinion attesting to the reliability of any representation embracing financial information as defined in section 116.25, subsections 8 and 9. Any transmittal letters and titles to financial statements included in reports prepared by accounting practitioners shall be labeled as unaudited. [C75,§116.2]

116.3 Board of accountancy members—funds—reports—rules.

1. There is established a board of accountancy. The board of accountancy shall consist of seven members, five of whom shall be certified public accountants and two members who shall not be certified public accountants and who shall represent the general public. A certified member shall be actively engaged in practice as a certified public accountant and shall have been so engaged for five years preceding his appointment, the last two of which shall have been in Iowa. Professional associations or societies composed of certified public accountants may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of certified public accountants. Members shall be appointed by the governor, subject to the approval of two-thirds of the members of the senate. The term "board" as used in this chapter means the board of accountancy established by this section. Within sixty days after July 1, 1975, the governor shall appoint the certified public accountant members of the board for terms as follows: Two members for a term ending June 30, 1976, and two members for a term ending June 30, 1977, one member for a term ending June 30, 1978. Within sixty days after July 1, 1975, the governor shall appoint the members representing the general public, one member for a term ending June 30, 1976 and one member for a term ending June 30, 1978. Upon the expiration of each of the terms and of each succeeding term, a successor shall be appointed for a term of three years. Members shall serve a maximum of three terms or nine years, whichever is less. Vacancies occurring in the membership of the board for any cause shall be filled in the same manner by the governor for the unexpired term and shall be subject to senate confirmation. The public members of the board of accountancy shall not participate in devising, administering or grading of examinations referred to in section 116.5.

A member of the board whose term has expired shall continue to serve until his successor is appointed and qualified.

The governor shall remove from the board any member whose certificate as a certified public accountant has been revoked or suspended.

2. The board shall elect annually a chairman, a secretary, and a treasurer from its members.

The board shall meet as often as deemed necessary, but shall hold at least one meeting per year at the seat of government.

The board may adopt regulations for the orderly conduct of its affairs and for the administration of this chapter.

A majority of the members of the board shall constitute a quorum for the transaction of business.

The board shall keep records of its proceedings, and in any proceeding in court arising out of or founded upon any provision of this chapter, copies of its records certified as correct shall be admissible in evidence to prove the contents of the records.

The board shall have printed and published for public distribution, in October of each year, an annual register which shall contain the names, arranged alphabetically by classifications, of all persons, partnerships, and corporations registered or licensed under this chapter; the names of the members of the board; and such other matters as may be deemed proper by the board. Copies of the registers shall be mailed to each person, partnership and corporation named.

The board may employ such personnel and arrange for such assistance as it may require for the performance of its duties. The board may employ a secretary whose salary shall be established by the governor with the approval of the executive council pursuant to section 19A.9, subsection 2, under the pay plan for exempt positions in the executive branch of government.

Each member of the board shall be paid a per diem set by the board in an amount not to exceed forty dollars per day for each day the member is performing official duties and shall be reimbursed for his actual and necessary expenses, including travel, incurred in the discharge of his official duties.

3. All fees and other moneys received by the board, pursuant to the provisions of this chapter, shall be paid monthly to the treasurer of state.

Warrants for the payment of the expenses of the board or its members provided by this chapter shall be issued by the state comptroller drawn upon funds appropriated to the board upon presentation of vouchers drawn by the secretary or treasurer of the board.

The board shall make a biennial report to the governor of its proceedings, with an account of all moneys received and disbursed, a list of the names of certified public accountants, public accountants, and accounting practitioners whose certificates, permits to practice, or licenses have been revoked or suspended, and such other information as it may deem proper or the governor requests.

4. The board may promulgate rules of professional conduct appropriate to establishing and maintaining high standards of integrity and dignity in the practice as a certified public accountant, public accountant, or accounting practitioner. Rules shall be adopted relating to the following matters:

a. Rules relating to the propriety of opinions on financial statements by a certified public accountant or public accountant who is not independent.

b. Actions discreditable to the practice as a certified public accountant, public accountant, or accounting practitioner.

c. Rules relating to the professional confidences between a certified public accountant, public accountant, or accounting practitioner and his client.

d. Contingent fees.

e. Rules relating to technical competence and the expression of opinions on financial statements.

f. Rules relating to the failure to disclose a material fact known to the certified public accountant or public accountant, or accounting practitioner.

g. Rules relating to material misstatement known to the certified public accountant, public accountant, or accounting practitioner.

h. Rules relating to negligent conduct in an examination or in making a report on an examination.

i. Rules relating to the failure to direct attention to any material departure from generally accepted accounting principles.

5. A certified public accountant, public accountant, or accounting practitioner shall not commit and shall not permit persons associated with him or who are under his supervision to commit any of the following acts:

a. Pay a commission, brokerage, or other participation in the fees or profits of professional work directly or indirectly to the laity.

b. Directly or indirectly accept commission, brokerage, or other participation in the fees, charges or profits of work recommended or turned over to the laity as incident to services for clients.

c. Permit others to carry out on his behalf, either with or without compensation, acts which, if carried out by him, would place him in violation of rules of the board adopted pursuant to this chapter.

6. The board shall establish rules relative to the conduct of practice as a certified public accountant, public accountant, and accounting practitioner in respect to the enumerated items in subsections 4 and 5, but such direction shall not be construed as a limitation upon the rights of the board to make and adopt any rules and regulations relating to the rules of conduct of certified public accountants, public accountants, or accounting practitioners, which are not specifically enumerated in this chapter.

7. The board may issue further rules and regulations, including but not limited to rules of professional conduct, pertaining to corporations practicing public accounting, which it deems consistent with or required by the public welfare. The board may prescribe rules governing the style, name, and title of corporations and governing the affiliation of corporations with other organizations.

Regulations adopted by the board shall not be in conflict with the Iowa Professional Corporation Act, provided in chapter 496C. [SS15,§§2620-b,-c,-d,-g,-h; C24, 27,§§1886, 1888, 1889, 1895, 1899, 1900, 1902; C31, 35,§§1905-c1, -c2,-c3,-c4,-c5; C39,§§**1905.01–1905.05**; C46, 50, 54, 58, 62, 66, 71, 73,§§116.1–116.5; C75,§116.3; 66GA, ch 20,§7, ch 116,§1]

Referred to in §116.21
Biennial report, §17.3
Terms of former board continued, 65GA, ch 1129,§3(1)

116.4 Applications. Applications for certification as a certified public accountant shall be on forms prescribed and furnished by the board and the board may require that the application contain a recent photograph of the applicant. An applicant shall not be ineligible for certification because of age, citizenship, sex, race, religion, marital status or national origin although the application may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of accountancy. Character references may be required, but shall not be obtained from certified public accountants. [C75,§116.4]

116.5 Granting the certificate. The certificate of "certified public accountant" shall be granted by the board to any person who meets all of the following requirements:

1. Is a resident of this state or has a place of business in this state, or, as an employee, is regularly employed in this state.

2. Has a baccalaureate degree conferred by a college or university recognized by the board, with a concentration in accounting, or what the board determines to be substantially the equivalent of those requirements; or with a nonaccounting concentration, supplemented by what the board determines to be substantially the equivalent of an accounting concentration, including related courses in other areas of business administration; or is a graduate of a high school having at least a four-year course of study or its equivalent as determined by the board of accountancy and has had three years' continuous experience under the direct supervision of a certified public accountant holding a current permit to practice, which experience shall include a significant amount of accounting work involving third-party reliance on financial statements.

3. Has passed a written examination in accounting and auditing, and such related subjects as the board determines to be appropriate.

None of the education or experience requirements in subsection 2 shall apply to a candidate who within four years after July 1, 1975, fulfills the education and experience requirements provided for by law prior to the effective date of this chapter and passes the examination required in subsection 3.

The examination described in subsection 3 shall be conducted by the certified public accountant members of the board and shall take place as often as the board shall determine to be desirable, but shall be held at least once each year. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers

have been graded. Applicants who fail the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the board concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

The board shall make such use of all or any part of the uniform certified public accountants' examination or advisory grading service, or both, as it deems appropriate to assist it in performing its duties under this chapter.

The board may admit to the examination described in subsection 3 any candidate who will complete the educational requirements for a baccalaureate degree within one hundred twenty days immediately following the date of the examination. However, the board shall not report the results of the examination until the candidate has met the educational requirements.

A candidate for the certificate of certified public accountant who has successfully completed the examination under subsection 3 and the educational requirements under subsection 2 shall receive a certificate as a certified public accountant.

The board may by rule provide for granting a credit to a candidate for satisfactory completion of a written examination in one or more of the subjects prescribed by the board in this state, but conducted by the licensing authority in another state, if when the candidate took the examination in another state, he was not a resident of this state, had no place of business in this state, and, as an employee, was not employed regularly in this state.

Such rules shall include such requirements as the board determines to be appropriate in order that any examination approved as a basis for any such credit shall, in the judgment of the board, be at least as thorough as that included in the most recent examination given by the board at the time of the granting of such credit.

The board may by rule prescribe the terms and conditions under which a candidate who passes one or more subjects of the examination prescribed by the board may be re-examined in only the remaining subjects, with credit for the subjects previously passed.

It may also provide by rule for a reasonable waiting period for a candidate's re-examination in a subject he has failed.

The board shall charge each candidate an examination fee, to be determined by the board which shall be based upon the annual cost of administering the examination. Fees for re-examination or partial examination under subsection 3 shall also be charged by the board in amounts determined by it. The applicable fee shall be paid by the candidate at the time he applies for examination or re-examination.

Any person who has received from the board a certificate as a certified public accountant and who is currently registered under section 116.20, shall be styled and known as a "certified public accountant", and may also use the abbreviation "CPA".

Persons who, on July 1, 1975, hold certified public accountant certificates issued under the laws of this state shall not be required to obtain additional certificates under this chapter, but shall otherwise be subject to all provisions of this chapter; and such certificates shall, for all purposes, be considered certificates issued under this chapter, and subject to the provisions of this chapter.

The board may, in its discretion, waive the examinations under subsection 3 and may issue a certificate as certified public accountant to any person possessing what the board determines to be substantially equivalent of the applicable qualifications under subsection 2 and who is the holder of a certificate as a certified public accountant, then in full force and effect, issued under the laws of another state, or is the holder of a certificate, license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a certified public accountant of this state, which is then in full force and effect; or who, as a holder of such certificate, license, or degree shall have been in continuous practice thereunder for at least seven years. [SS15,§§2620-a, -d, -f; C24, 27, §§1890–1892, 1895, 1896; C31, 35,§§1905-c7, -c8, -c9, -c12; C39,§§**1905.07–1905.10**; C46, 50, 54, 58, 62, 66, 71, 73,§§116.7–116.10; C75,§116.5]

Referred to in §§116.3, 116.19, 116.20, 116.21, 116.25

116.6 Public accountants. Any person, partnership, or corporation who is registered as a public accountant by the state of Iowa on July 1, 1975, may continue to register with the board as a public accountant within one hundred eighty days after July 1, 1975. [SS15, §2620-a; C24, 27,§1890; C31, 35,§1905-c7; C39, **§1905.07**; C46, 50, 54, 58, 62, 66, 71, 73,§116.7(2); C75,§116.6]

Referred to in §§116.20, 116.21, 116.25

116.7 Accounting practitioner. The license of "accounting practitioner" shall be granted by the board to any person who meets all of the following requirements:

1. Is a resident of this state, or has a place of business in this state, or, as an employee, is regularly employed in this state.

2. Meets the following experience requirements and applies for a license by July 1, 1976.

a. Was engaged as an accounting practitioner, as defined in this chapter, as a principal and (1) has qualified for limited practice without enrollment before the United States internal revenue service under revenue procedure 68–20 and becomes enrolled by July 1, 1976, as an agent entitled to practice before the United States internal revenue service as provided in the United States treasury department circular number 230 revised, or (2) is an enrolled agent entitled to practice before the United States internal revenue service as provided in the United States treasury department circular number 230 revised on July 1, 1975; and

b. Was engaged as an accounting practitioner for at least three years prior to July 1, 1975. The applicant shall submit and establish to the satisfaction of the board copies of contracts or agreements, or affidavits of clients, which verify that the applicant has performed services as an accounting practitioner for compensation. Any evidence which indicates that the applicant has only performed bookkeeping services or prepared tax returns shall not be deemed sufficient for the purposes of meeting the experience requirements. [C75,§116.7; 66GA, ch 116,§2]

Referred to in §§116.8, 116.9, 116.19, 116.20, 116.21, 116.25

116.8 Examination required. An applicant not qualified under section 116.7 shall be granted a license if the applicant passes a written examination prescribed by the board, and:

1. If the applicant has had two or more years actual experience in practice as an accounting practitioner as an employee of a certified public accountant, a public accountant, or an accounting practitioner, or

2. If the applicant was employed for at least twenty-four months prior to July 1, 1975 by the United States government, by this state, or by a political subdivision of this state in an accounting or auditing position for which an examination in accounting knowledge or qualifying education or experience in practice as an accounting practitioner was required. The applicant shall submit to the board an official copy of the job description and educational or experience qualifications required, or an affidavit of the immediate superior of the applicant attesting to his accounting or auditing duties. Any evidence which indicates that the applicant has performed only clerical or bookkeeping work shall not be deemed sufficient for the purposes of this subsection, or

3. If the applicant submits evidence satisfactory to the board that applicant is a graduate of a four-year college or university accredited by the north central accreditation association or other regional accreditation association having equivalent standards, with a major in accounting, or that he is a graduate in accountancy from a business or correspondence school accredited by the accrediting commission for business schools or the accrediting commission of the national home study council. [C75,§116.8]

Referred to in §§116.13, 116.19, 116.20, 116.21, 116.25
Examinations, §116.11

116.9 Advisory committee. There is established an accounting practitioner advisory committee with whom the board shall consult on matters relating to the qualifications, examination, licensing, and practice of accounting practitioners. The advisory committee shall consist of three members appointed by the governor who shall be licensed accounting practitioners. A member shall be actively engaged in the practice of accounting and shall have been so engaged for five years preceding his appointment, the last two of which shall have been in Iowa. Professional associations or societies composed of accounting practitioners may recommend the names of potential committee members to the governor, but the governor shall not be bound by the recommendations. A committee member shall not be required to be a member of any professional association or society composed of accounting practitioners. The initial appointees shall possess the basic qualifications set forth in section 116.7 and shall be eligible for licensure. For the initial committee, one member shall serve a term of one year, one member shall serve a term of two years, and one member shall serve a term of three years. Thereafter, members shall serve three-year terms. Members shall serve a maximum of three terms or nine years, whichever is less. Any vacancy occurring during a term shall be filled by the governor for the remainder of the unexpired term. Upon completion of his term, a member shall continue to serve until his successor is appointed and qualified. The governor shall remove from office any member whose license to practice has become void, or has been suspended or revoked, and may, after a hearing, remove any member from office for neglect of duty or other just cause.

A majority of the members of the advisory committee shall constitute a quorum.

Members of the advisory committee shall set their own per diem compensation not exceeding forty dollars per day for each day spent in the discharge of their official duties, and shall be reimbursed for actual and necessary expenses. [C75,§116.9]

116.10 Applications. Applications for licensure as accounting practitioners shall be on forms prescribed by the board. The board may require that the application contain a recent photograph of the applicant. An applicant shall not be ineligible for licensure because of age, citizenship, sex, race, religion, marital status or national origin although the application may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to practice as an accounting

practitioner. Character references may be required, but shall not be obtained from licensed accounting practitioners. [C75,§116.10]

116.11 Examinations. Each applicant for a license to practice as an accounting practitioner shall pay to the board an examination fee before being examined. The amount of the fee shall be set by the board based upon the annual cost of administering the examination.

Examinations shall be conducted by the board as often as deemed necessary, but not less than one time per year.

Each examination shall be designed and given in a manner as to fairly test the applicant's knowledge of accounting theory and accounting practice as prescribed by the board. The examination shall not include questions relating to the subject of auditing.

The board shall make use of all or any part of standard or uniform examinations and advisory grading services which are provided or furnished by national accounting organizations or societies as the board deems appropriate to assist it in performing its duties as provided in this chapter. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded.

If an applicant has partially passed an examination given in another state, under requirements which the board finds to be substantially equivalent to those required in examinations given in this state, the results of the other state examination shall be accepted as though given in this state.

Every applicant successfully passing all subjects in which examined shall be granted and issued a license as an accounting practitioner by the board. The cost of the license shall be based upon the administrative costs of the board and advisory committee and the costs of issuing the license.

An applicant who fails the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who passes a portion of the examination shall have the right to be re-examined in the remaining subjects at a future examination, and if he passes in the remaining subjects, he shall be considered to have passed the entire examination. An applicant who has failed the examination may request in writing information from the board concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board. [C75,§116.11]

Examination required, §116.8

116.12 Renewals. Licenses as accounting practitioners shall expire annually as determined by the board. The board shall notify every person licensed under this chapter of the date of expiration of his license and the amount of the fee required for its renewal for one year. The notice shall be mailed at least one month in advance of the expiration date. A person who fails to renew his license to practice as an accounting practitioner by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. [C75, §116.12]

116.13 Reciprocity. In its discretion, the board may waive an examination and issue a license as an accounting practitioner to any applicant who:

1. Holds, or is eligible to hold, an accounting practitioner license issued, after examination, by a state which extends by reciprocity similar privileges to an accounting practitioner of this state, and who, as of the time of issuance of the license, possessed the basic qualifications set forth in section 116.8; or

2. Has passed the examination required under the laws of another state and who possesses the basic qualifications set forth in section 116.8 at the time he applied for a license in this state.

Every person applying for a license to be issued pursuant to the provisions of this section shall pay a fee as determined by the board based upon the costs of issuing the license. [C75,§116.13]

116.14 Actions not prohibited. Nothing in this chapter shall be construed to prohibit any officer of a corporation or any employee of a corporation or other business entity from signing or affixing his name to any report or financial statement of a corporation or other business entity and designating the office, title, or position he holds in or with the same, nor to prohibit any act of a public official or public employee done in the performance of his duties as such. [C75,§116.14]

116.15 Secretary to collect fees—deposit. A secretary may be employed to collect and account for all fees and pay them to the treasurer of state for deposit in the general fund of the state. The board shall set the fees for examination as a certified public accountant, and for examination as an accounting practitioner, based upon the annual cost of administering the examinations. The fees for registration and renewal of a certificate and permit as a certified public accountant, registration as a public accountant, registration of a foreign public accountant, and licensure and renewal as an accounting practitioner, shall be based upon the administrative costs of sustaining the board which shall include, but shall not be limited to, the costs for:

1. Per diem, expenses and travel for board members.

2. Office supplies and equipment.

3. Clerical assistance.

[SS15,§2620-d; C24, 27, §§1894, 1897; C31, 35, §§1905-c14, -c15; C39,§§**1905.12, 1905.13**; C46, 50, 54, 58, 62, 66, 71, 73,§§116.12, 116.13; C75, §116.15]

116.16 Disclosure of confidential information. A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.

2. Information relating to the contents of the examination.

3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C75,§116.16]

116.17 Foreign licensees. The board may, in its discretion, permit the registration of any person of good moral character who is a holder in good standing of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country. A person so registered shall use only the title under which he is generally known in his own country, followed by the license, or degree. The board shall charge a fee for registration under this chapter, based upon the costs of registration. [C75,§116.17]

Referred to in §§116.19, 116.20, 116.25, 116.26

116.18 Partnerships and corporations. A partnership engaged in this state in the practice of public accounting shall register with the board as a partnership of certified public accountants or accounting practitioners and shall meet the following requirements:

1. At least one general partner shall be a certified public accountant or accounting practitioner in good standing of this state and have a permit to practice.

2. Each partner shall be a certified public accountant or accounting practitioner, or similar title, in good standing of some state.

3. Each resident manager in charge of an office of a firm in this state, and each partner personally engaged within this state in the practice of public accounting as a member of the partnership, shall be a certified public accountant or accounting practitioner in good standing of this state and have a permit to practice.

A corporation organized for the practice of public accounting shall register with the board as a corporation of certified public accountants or accounting practitioners.

Application for registration as a partnership or corporation shall be made upon the affidavit of a general partner of the partnership or officer of the corporation who is a certified public accountant or accounting practitioner of this state having a current permit to practice.

The board shall in each case determine whether the applicant is eligible for registration.

A partnership or corporation which is so registered, and which holds a permit issued under section 116.20, may use the words "certified public accountant" or the abbreviation "CPA" or "accounting practitioner" or the abbreviation "AP" in connection with its partnership or corporation name.

Notification shall be given the board, within ninety days after the admission or withdrawal of a partner who holds a permit to practice under section 116.20, from any partnership so registered. [C75,§116.18]

Referred to in §§116.20, 116.25

116.19 Registration of office. Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant, or partnership or corporation of certified public accountants, or by a public accountant or a partnership of public accountants, or by an accounting practitioner or partnership of accounting practitioners, or by a person registered under section 116.17, shall be registered annually under this chapter with the board, but no fee shall be charged for such registration.

Each such office shall be under the direct supervision of a resident manager who may be either a principal, shareholder, or a staff employee holding a current permit under section 116.20. The title or designation "certified public accountant" or the abbreviation "CPA" or "accounting practitioner" or the abbreviation "AP" shall not be used in connection with an office unless the resident manager is the holder of a certificate as a certified public accountant under section 116.5, or a license as an accounting practitioner issued under section 116.7 or 116.8, and a permit issued under section 116.20, both of which are in full force and effect.

A resident manager may serve at one office only.

The board shall by regulation prescribe the procedure to be followed in effecting such registration. [C75,§116.19; 66GA, ch 116,§3]

Referred to in §§116.20, 116.25

116.20 Permit to practice.

1. The certificate of certified public accountant granted by the board under section 116.5 and the registration with the board as a public accountant under section 116.6, and the license to practice as an accounting practitioner under section 116.7 or 116.8 shall be renewed annually as determined by the board. There shall be

an annual renewal fee, in the amount to be determined from time to time by the board, not to exceed fifty dollars.

2. In addition to the certificates and licenses, permits to engage in the practice of public accounting in this state shall be issued by the board to holders of the certificate of certified public accountant and to holders of a license to practice as an accounting practitioner in force and effect as specified in subsection 1, upon payment of the fees, as follows:

a. Persons holding the certificate of certified public accountant on July 1, 1975 and who have had three years' continuous practical accounting experience as a public accountant or a staff accountant, or three years' continuous employment as a field examiner under a revenue agent-in-charge of the income tax bureau of the treasury department of the United States, or as a field examiner in the office of the auditor of state, office of the state comptroller, department of revenue, or the insurance department, of this state, or a bank examiner employed by the department of banking of this state pursuant to section 524.208 shall be issued permits by the board.

b. Persons holding the certificate of certified public accountant under the provisions of section 116.5 who are high school graduates and who have had three years' continuous experience under the direct supervision of a certified public accountant holding a current permit to practice, which experience must include a significant amount of accounting work involving third-party reliance on the financial statements, shall be issued permits by the board. The experience required in section 116.5, subsection 2, shall be counted as the experience required in this paragraph.

c. Persons holding the certificate of certified public accountant under the provisions of section 116.5 who have a baccalaureate degree conferred by a college or university recognized by the board with a concentration in accounting, or what the board determines to be substantially the equivalent of an accounting concentration including related courses in other areas of business administration, and who have had at least two years of experience in the practice of public accounting, such experience being acceptable to the board, shall be issued permits by the board.

d. Persons holding the certificate of certified public accountant under the provisions of section 116.5 who have a baccalaureate degree conferred by a college or university recognized by the board and not less than thirty semester credit hours additional study, the total educational program to include an accounting concentration or its equivalent and such related subjects as the board determines to be appropriate, and who have had at least one year of experience in the practice of public accounting such experience being acceptable to the board, shall be issued permits by the board.

e. All offices of a holder of a certificate of certified public accountant shall be maintained and registered as required under section 116.19.

3. Permits to engage in the practice of public accounting in this state shall also be issued by the board to persons, partnerships, and corporations registered under sections 116.6, 116.17 and 116.18 if all offices of the registrant are maintained and registered as required under section 116.19.

4. There shall be an annual permit fee in an amount to be determined, from time to time, by the board, payable by certified public accountants, public accountants, and accounting practitioners engaged in practice in this state. No fee shall be charged for the renewal of a partnership or corporation permit to practice. All permits shall expire annually as determined by the board.

5. No person, firm or corporation shall practice as a certified public accountant, public accountant, or accounting practitioner without a permit.

6. The board shall prescribe continuing education requirements for all certified public accountants and accounting practitioners holding permits and all other certified public accountants and accounting practitioners working under permits to engage in the practice of public accounting in this state and compliance by certified public accountants and accounting practitioners shall be a condition precedent to the renewal of a permit to practice under this section.

7. A person who fails to renew his permit to practice as a certified public accountant by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. [SS15,§2620-i; C24, 27,§1904; C31, 35, §§1905-c15, -c19; C39,§§**1905.13, 1905.17**; C46, 50, 54, 58, 62, 66, 71, 73,§§116.13, 116.17; C75,§116.20; 66GA, ch 116,§§4–6]

Referred to in §§116.5, 116.18, 116.19, 116.21, 116.25, 116.26, 116.30

116.21 Causes for revocation, suspension, or refusal to renew. After notice and hearing as provided in section 116.23, the board may revoke or may suspend for a period not to exceed two years, any certificate issued under section 116.5, or any registration granted under section 116.6, or any license issued under section 116.7 or 116.8, or may revoke, suspend, or refuse to renew any permit issued under section 116.20, or may censure the holder of any such permit, for any one or any combination of the following causes:

1. The certificate, permit, or license shall be permanently revoked if fraud or deceit was used in obtaining a certificate as a certified public accountant, registration as a public accountant, or a license as an accounting practitioner, or in obtaining a permit to practice public accounting under this chapter.

2. Dishonesty, fraud, or gross negligence in the practice of public accounting.

3. Violation of any of the provisions of section 116.25.

4. Violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter.

5. Conviction of a felony under the laws of any state or of the United States.

6. Engaging in any activity prohibited under section 116.3 or permitting persons associated with him who are under his supervision to do so.

7. Conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States.

8. Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant, a public accountant, or an accounting practitioner by any other state, for any cause other than failure to pay appropriate fees in the other state.

9. Suspension or revocation of the right to practice before any state or federal agency.

10. Failure of a certificate holder, registrant, or licensee to obtain a renewal of his certificate, registration, or license under section 116.20, subsection 1.

11. Conduct discreditable to the public accounting profession. [SS15,§2620-g; C24, 27, §1899; C31, 35,§1905-c16; C39,§**1905.14**; C46, 50, 54, 58, 62, 66, 71, 73,§116.14; C75,§116.21]

116.22 Revocation, suspension, and refusal to renew registration and permit of partnership or corporation. After notice and hearing as provided in section 116.23, the board shall revoke the registration and permit to practice of a partnership or corporation if at any time it does not possess the qualifications prescribed by the section of this chapter under which it qualified for registration.

After notice and hearing as provided in section 116.23, the board may revoke or suspend the registration of a partnership or corporation, or may revoke, suspend, or refuse to renew its permit to practice or may censure the holder of any such permit for any of the following additional causes:

1. The revocation or suspension of the certificate, registration, or license or the revocation or suspension or refusal to renew the permit to practice of any partner, officer, or shareholder.

2. The cancellation, revocation, suspension, or refusal to renew the authority of the partnership or corporation, or any partner, officer, or shareholder thereof to practice public accounting in any other state for any cause other than failure to pay appropriate fees in such other state. [C75,§116.22]

116.23 Notice and hearing.

1. The board may initiate proceedings under this chapter either on its own motion or on the complaint of any person.

2. A written notice stating the nature of the charge or charges against the accused and the time and place of the hearing before the board on such charges shall be served on the accused not less than thirty days prior to the date of hearing either personally or by mailing a copy by registered mail to the last known address of the accused.

3. If, after having been served with the notice of hearing, the accused fails to appear at the hearing and defend himself, the board may proceed to hear evidence against him and may enter such order as is justified by the evidence, which order shall be final unless the accused petitions for its review as provided in this section. However, within thirty days from the date of any order, upon a showing of good cause for failing to appear and defend, the board may reopen the proceedings and may permit the accused to submit evidence in his defense.

4. At any hearing the accused may appear in person and by counsel, produce evidence and witnesses on his own behalf, cross-examine witnesses, and examine evidence which is produced against him. A corporation may be represented before the board by counsel, or by shareholder who is a certified public accountant, public accountant, or accounting practitioner of this state in good standing. The accused shall be entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses on his behalf.

5. Any member of the board may issue subpoenas to compel the attendance of witnesses and the production of documents, and may administer oaths, take testimony, hear proofs and receive exhibits in evidence in connection with or upon hearing under this chapter.

In case of disobedience to a subpoena the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

6. The board shall not be bound by technical rules of evidence.

7. A stenographic record of the hearings shall be kept and a transcript thereof filed with the board.

8. At all hearings, the attorney general of this state, or one of his assistants designated by him, or such other legal counsel as may be employed, shall appear and represent the board.

9. The decision of the board shall be by majority vote of its members.

10. Anyone adversely affected by an order of the board may obtain a review of that order by filing a written petition for review with the district court within thirty days after the entry of the order. The petition shall state the grounds upon which the review is asked and shall pray that the order of the board be modified or set aside in whole or in part. A copy of the petition shall be immediately served

upon any member of the board and the board shall then certify and file in the court a transcript of the record upon which the order complained of was entered.

The case shall then be tried de novo on the record made before the board without the introduction of new or additional evidence but the parties shall be permitted to file briefs as in an ordinary case at law.

The court may affirm, modify or set aside the board's order in whole or in part, or may remand the case to the board for further evidence, and may, in its discretion, stay the effect of the board's order pending its determination of the case.

The court's decision shall have the force and effect of a decree in equity. [SS15,§2620-g; C24, 27,§1899; C31, 35,§1905-c16; C39,§1905.14; C46, 50, 54, 58, 62, 66, 71, 73,§116.14; C75, §116.23]

Referred to in §§116.21, 116.22

116.24 Issuance of new certificate or permit. Upon application in writing and after hearing pursuant to notice, the board may issue a new certificate to a certified public accountant whose certificate has been revoked, or may permit the reregistration of anyone whose registration has been revoked, or may issue a new license to an accounting practitioner whose license has been revoked, or may reissue or modify the suspension of any permit to practice public accounting which has been revoked or suspended. [C75,§116.24]

116.25 Use of title.

1. No person shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant, unless the person has received and holds a valid certificate as a certified public accountant under section 116.5. However, a foreign accountant who has registered under the provisions of section 116.17 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

2. No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the partnership or corporation is composed of certified public accountants unless the partnership or corporation is registered as a partnership of certified public accountants under section 116.18, holds a current permit issued under section 116.20, and all offices of such partnership or corporation in this state for the practice of public accounting are maintained and are registered as required under section 116.19.

3. No person shall assume or use the title or designation "public accountant" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such person is a public accountant, unless such person is registered as a public accountant under section 116.6, or unless such person has received a certificate as a certified public accountant under section 116.5.

4. No partnership or corporation shall assume or use the title or designation "public accountant" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such partnership or corporation is composed of public accountants, unless such partnership or corporation is registered as a partnership or corporation of public accountants under section 116.6, or as a partnership or corporation of certified public accountants under section 116.18.

5. No person shall assume or use the title or designation "accounting practitioner" or the abbreviation "AP" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a licensed accounting practitioner, unless the person has received and holds a license as an accounting practitioner issued under either section 116.7 or 116.8.

6. No partnership or corporation shall assume or use the title or designation "accounting practitioner" or the abbreviation "AP" or any other title, designation, words, letters, abbreviation, sign, card, or device, tending to indicate that the partnership or corporation is composed of licensed accounting practitioners unless the partnership or corporation under section 116.18 holds a permit issued under section 116.20, and all offices of the partnership or corporation in this state are maintained and are registered as required under section 116.19.

7. No person, partnership, or corporation shall assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant" or "public accountant" or any of the abbreviations "CA", "PA", "EA", "RA", or "LA", or similar abbreviations, likely to be confused with "CPA". However, a foreign accountant registered under section 116.17 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree. Nothing in this subsection shall prohibit the use of the title or designation "accountant" by persons other than those holding a current permit issued under section 116.20.

8. No person shall sign or affix his name or any trade or assumed name used by him in his profession or business, to any opinion attesting to the reliability of any representation in regard to any person or organization embracing either financial information or facts re-

specting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans and appropriations, unless he holds a current permit issued under section 116.20, and all of his offices in this state for the practice of public accounting are maintained and registered under section 116.19. However, the provisions of this subsection shall not prohibit any officer, employee, partner or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of said organization with any wording designating the position, title, or office which he holds in the organization, nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties.

9. No person shall sign or affix a partnership or corporation name to any opinion attesting to the reliability of any representation in regard to any person or organization embracing financial information or facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans and appropriations, unless the partnership or corporation holds a current permit issued under section 116.20 and all of its offices in this state for the practice of certified public accounting are maintained and registered as required under section 116.19.

10. No person shall assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and company", and "and co." or a similar designation, if in any such case, there is in fact no bona fide partnership or corporation registered under section 116.6 or 116.18; however, a sole proprietor or partnership lawfully using such title or designation on July 1, 1975, may continue to do so if he otherwise complies with the provisions of this chapter. [C75,§116.25]

Referred to in §§116.2, 116.21, 116.28, 116.29

116.26 Employees of accountants. Nothing contained in this chapter shall prohibit any person not a certified public accountant, public accountant, or accounting practitioner from serving as an employee of, or an assistant to, a certified public accountant, public accountant, or accounting practitioner, or partnership or corporation composed of certified public accountants, public accountants, or accounting practitioners, holding a permit to practice issued under section 116.20 or a foreign accountant registered under section 116.17; however, such employee or assistant shall not issue any accounting or financial statement over his name. [C31, 35,§1905-c21; C39,§**1905.19**; C46, 50, 54, 58, 62, 66, 71, 73,§116.19(2); C75, §116.26]

116.27 Temporary residence. Nothing contained in this chapter shall prohibit a certified public accountant of another state, or accounting practitioner, or similar title, or any accountant who holds a certificate, degree, or license in a foreign country, constituting a recognized qualification for the practice of public accounting in such country, from temporarily and periodically practicing in this state, if he is conducting a regular practice in such other state or foreign country; however, such temporary practice shall be conducted in conformity with the requirements of this chapter and the rules promulgated by the board. [C31, 35,§1905-c21; C39,§**1905.19**; C46, 50, 54, 58, 62, 66, 71, 73,§116.19(1); C75,§116.27]

116.28 Violation of use of title. Whenever in the judgment of the board any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute a violation of section 116.25, the board may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the board that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by the court without bond. [C75,§116.28]

Referred to in §116.30

116.29 Penalty. Any person who violates any provisions of section 116.25 shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not more than five hundred dollars, or to imprisonment for not more than one year, or to both such fine and imprisonment.

Whenever the board has reason to believe that any person is liable to punishment under this section, it may certify the facts to the attorney general of this state, or to the county attorney of the county where the person maintains a business office, who may, in his discretion, cause appropriate charges to be filed. [SS15,§§2620-i,-j; C24, 27,§§1904, 1905; C31, 35, §1905-c20; C39,§**1905.18**; C46, 50, 54, 58, 62, 66, 71, 73,§116.18; C75,§116.29]

Referred to in §116.30

116.30 Competent evidence. The display or uttering by a person of a card, sign, advertisement, or other printed, engraved, or written, instrument or device, bearing a person's name in conjunction with the words "certified public accountant", "public accountant", or "accounting practitioner", or any abbreviation thereof shall be competent evidence in any action brought before sections 116.28 or 116.29 that the person whose name is displayed, caused or procured the display or uttering of such card, sign, advertisement, or other printed, engraved, or written instrument or device, and that such person is holding himself out to be a certified public accountant, a public accountant, or an accounting practitioner registered under section 116.20.

In any such action evidence of the commission of a single act prohibited by this chapter shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct. [C75,§116.30]

116.31 Ownership or transfer of records. All statements, records, schedules, working papers, and memoranda made by a certified public accountant, public accountant, or accounting practitioner incident to or in the course of professional service to clients by such accountant, except reports submitted by a certified public accountant, public accountant, or accounting practitioner to a client, shall be and remain the property of such accountant in the absence of an express agreement between such accountant and the client to the contrary.

No such statement, record, schedule, working paper, or memoranda, shall be sold, transferred or bequeathed, without the consent of the client or his personal representative or assignee, to anyone other than one or more surviving partners or new partners of the accountant or to his corporation. [C31, 35, §1905-c17; C39,§1905.15; C46, 50, 54, 58, 62, 66, 71, 73,§116.15; C75,§116.31]

CHAPTER 117

REAL ESTATE BROKERS AND SALESMEN

Referred to in §§117A.1, 117A.5, 117A.6, 562.9
See also ch 568

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117.1 License mandatory. No person shall act as a real estate broker, real estate salesperson or real estate apprentice salesperson without first obtaining a license as provided in this chapter. The word "person" as provided in said chapter shall mean and include an individual, partnership, association, or corporation. [C31, 35,§1905-c23; C39,§1905.20; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.1; 66GA, ch 1101,§§1, 21]

Referred to in §§117.43, 117.44

117.2 Individual licenses necessary. No copartnership, association, or corporation shall be granted a license, unless every member or officer of the copartnership, association, or corporation, who actively participates in the brokerage business of the copartnership, association, or corporation, shall hold a license as a real estate broker, salesperson or apprentice salesperson, and unless every employee who acts as a salesperson for the copartnership, association, or corporation shall hold a license as a real estate broker, salesperson or apprentice salesperson. At least one member or officer of each copartnership, association, or corporation shall be a real estate broker. [C31, 35,§1905-c24; C39,§1905.21; C46,

50, 54, 58, 62, 66, 71, 73, 75,§117.2; 66GA, ch 1101,§§2, 21]

Referred to in §117.43

117.3 "Broker" defined. The term *"real estate broker"* within the meaning of this chapter shall include any person, other than a salesman and except as herein provided, who engages for all or part of his time in the following:

1. The business of selling, exchanging, purchasing, or renting of real estate for another for a fee, commission, or other consideration.

2. Listing real estate of others for sale, exchange, or rental for a fee, commission, or other consideration or advertises or holds himself out as a real estate broker. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.3]

Referred to in §§117.6, 117.43

117.4 "Real estate" defined. *"Real estate"* as used in this chapter shall mean real property wherever situated, and shall include any and all estate therein. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.4]

Referred to in §117.43

117.5 "Salesperson" and "apprentice salesperson" defined. As used in this chapter:

1. *"Real estate salesperson"* means a person employed by or otherwise associated with a real estate broker, as a selling, renting, or listing agent or representative of the broker.

2. *"Real estate apprentice salesperson"* means a person employed by or otherwise associated with a real estate broker, as a selling, renting, or listing agent or representative of the broker and who is subject to the educational requirements provided in section 117.15. [C31, 35,§1905-c25; C39,§1905.22; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.5; 66GA, ch 1101,§§3, 21]

Referred to in §117.43

117.6 Acts constituting dealing in real estate. Any person, partnership, association, or corporation, who, for another, in consideration of compensation, by fee, commission, salary, or otherwise, or with the intention or in the expectation or upon the promise of receiving or collecting a fee, does, offers or attempts or agrees to do, engages in or offers or attempts or agrees to engage in, either directly or indirectly, any single act or transaction contained in the definition of a real estate broker as set out in section 117.3, whether said act be an incidental part of a transaction, or the entire transaction, shall constitute such person, partnership, association, or corporation a real estate broker, real estate salesperson or real estate apprentice salesperson within the meaning of this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.6; 66GA, ch 1101,§§4, 21]

Referred to in §§117.43, 117.46

117.7 Acts excluded from provisions. The provisions of this chapter shall not apply to the sale, exchange, purchase, rental, or advertising of any real estate in any of the following cases:

1. Owners or lessors, or to the regular employees thereof, with respect to the property owned and leased where such acts are performed in the regular course of or incident to the management of property owned and the investment therein.

2. By any person acting as attorney in fact under a duly executed and acknowledged power of attorney from the owner, authorizing the final consummation and execution of any contract for the sale, leasing, or exchange of real estate.

3. Nor shall the provisions of this chapter apply to an attorney admitted to practice in Iowa.

4. The acts of one while acting as a receiver, trustee in bankruptcy, administrator, executor, guardian, or under court order or while acting under authority of a deed of trust, trust agreement, or will.

5. The acts of an auctioneer in conducting a public sale or auction.

6. An isolated real estate rental transaction by an owner's representative on behalf of said owner; such transaction not being made in the course of repeated and successive transactions of a like character. [C31, 35,§1905-c26; C39, §1905.23; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.7]

Referred to in §§117.43, 117A.6

117.8 Commission established. There is established the Iowa real estate commission which shall consist of three members licensed under this chapter and two members not licensed under this chapter and who shall represent the general public. At least one of the licensed members shall be a licensed real estate salesperson, except that if the licensed real estate salesperson becomes a licensed real estate broker during his term of office, he shall be allowed to complete his term, but shall not be eligible for reappointment on the commission as a licensed real estate salesperson. A licensed member shall be actively engaged in the real estate business and shall have been so engaged for five years preceding his appointment, the last two of which shall have been in Iowa. Professional associations or societies of real estate brokers, real estate salespersons or real estate apprentice salespersons may recommend the names of potential commission members to the governor, but the governor shall not be bound by their recommendations. A commission member shall not be required to be a member of any professional association or society composed of real estate brokers or salespersons. Commissioners shall be appointed by the governor subject to the approval of two-thirds of the members of the senate. Appointments shall be for three-year terms and shall commence on July 1 of the year in which the appointment is made. A commissioner shall serve no more than three terms or nine years, whichever is less. No more than one commis-

sioner shall be appointed from a county. A commissioner shall not hold any other elective or appointive state or federal office. Vacancies shall be filled for the unexpired term by appointment of the governor and shall be subject to senate confirmation. A majority of the commissioners shall constitute a quorum. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.8; 66GA, ch 1101,§§5, 21]

Referred to in §117.43

117.9 Rules. The commission is empowered to promulgate rules to carry out and administer the provisions of this chapter consistent therewith. Said commission may carry on a program of education of real estate practices and matters relating thereto. [C31, 35,§1905-c33; C39,§**1905.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.9]

Referred to in §117.43

117.10 Repealed by 64GA, ch 84,§99.

117.11 Director. The commission shall employ a director at a salary as fixed by the general assembly and such clerks and assistants as shall be necessary to discharge the duties imposed by the provisions of this chapter and to effect the purposes of this chapter, and the commission shall determine the duties of such director, clerks and assistants. [C31, 35,§1905-c27; C39,§**1905.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.11]

Referred to in §117.43

117.12 Compensation of commissioners. Members of the commission shall set their own per diem compensation at a rate not exceeding forty dollars per day for each day actually engaged in the discharge of their duties and their actual and necessary expenses in the performance of duties pertaining to their office within the limits of the funds appropriated to the commission. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.12]

Referred to in §117.43

117.13 Seal—records. The commission shall adopt a seal with such design as the commission may prescribe engraved thereon, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of said commission, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commission under authority of this chapter shall be open to public inspection under such reasonable rules and regulations as shall be prescribed by the commission. [C31, 35,§1905-c28; C39,§**1905.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.13]

Referred to in §117.43

117.14 Fees and expenses. All fees and charges collected by the commission under the provisions of this chapter shall be paid into the general fund in the state treasury. All expenses incurred by the commission under the provisions of this chapter, including compensation to the director, clerks and assistants shall be paid out of the general fund in the state treasury. [C31, 35,§1905-c29; C39,§**1905.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.14]

Referred to in §117.43

117.15 Qualifications. Except as provided in section 117.20 an applicant for a real estate broker, salesperson's or apprentice salesperson's license must be a person whose application has not been rejected for licensure in this or any other state within six months prior to the date of application, or whose real estate license has not been revoked in this or any other state within two years prior to date of application.

Every applicant for a license as a real estate broker, salesperson or apprentice salesperson shall be of the age of eighteen years or over. Provided, however, an applicant shall not be ineligible because of citizenship, sex, race, religion, marital status or national origin, although the application form may require citizenship information. The commission may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of real estate selling. Character references may be required but shall not be obtained from licensed real estate brokers, salespersons or apprentice salespersons.

Every applicant for a license as a real estate broker shall have been a licensed real estate salesperson for a period of at least twelve months preceding the date of application; or he shall have had experience substantially equal to that which a licensed real estate salesperson would ordinarily receive during a period of twelve months, whether as a former broker or salesperson, a manager of real estate, or otherwise. Notwithstanding the foregoing provisions, if the commission shall find that any applicant could not acquire employment as a licensed real estate salesperson because of conditions existing in the area where he resides, then, the foregoing provisions shall be waived by the commission.

A qualified applicant for a license as a real estate apprentice salesperson who successfully passes the required written examination shall be issued a real estate apprentice salesperson's license which shall expire on the last day of the twelfth calendar month following the month in which the license is issued. Each real estate apprentice salesperson who has completed or shall have successfully completed a commission approved short course in real estate education of not less than thirty hours at a facility approved by the commission shall be issued a real estate salesperson's license for the remainder of the year on payment of the appropriate fee and return of his unexpired real estate apprentice salesperson's license. If a qualified applicant successfully completes a commission approved short course in real estate education of not less than thirty hours at a facility approved by the commission and subsequently success-

fully passes the required examination, the completion of the short course shall be credited toward completion of requirements of a real estate apprentice salesperson to become a real estate salesperson. In the event that a real estate apprentice salesperson should not successfully complete the thirty-hour course within the twelve-month period of licensure as a real estate apprentice salesperson, he shall not be eligible to reapply for a real estate apprentice salesperson's license until six months have elapsed, except that the commission may waive the time requirement for reapplication if the real estate apprentice salesperson shows just cause to the commission why the thirty-hour course was not completed. [C31, 35,§1905-c30; C39,§**1905.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.15; 66GA, ch 1101,§§6, 21]

Referred to in §§117.5, 117.28, 117.43

117.16 Application forms. Every applicant for a real estate broker's license shall apply in writing upon blanks prepared or furnished by the real estate commission. The real estate commission shall not require that a recent photograph of the applicant be attached to the application.

Every applicant for a license shall furnish information setting forth his present address, both of business and residence, a complete list of all former places where he may have been engaged in business for a period of sixty days or more, during the last five years, accounting for such entire period.

The commission shall prepare and furnish written application blanks for salesperson's license and for apprentice salesperson's license, to contain request for such information as the commission may require. The commission shall not require that a recent photograph of the applicant be attached to the application. The application for both the salesperson's license and for the apprentice salesperson's license shall be accompanied by a written statement by the broker in whose service he is about to enter recommending that the license be granted to the applicant. [C31, 35, §1905-c31; C39,§**1905.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.16; 66GA, ch 1101,§§7, 21]

Referred to in §117.43

117.17 Repealed by 65GA, ch 1086,§198.

117.18 Enforcement of rules. The commission is expressly vested with the power and authority to make and enforce any and all such reasonable rules connected with the application for any license as shall be deemed necessary to administer and enforce the provisions of this chapter. [C31, 35,§1905-c33; C39, §**1905.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §117.18]

Referred to in §117.43

117.19 License denied—hearing. If the commission, after an application in proper form has been filed with it, accompanied by the proper fee, shall deny a license to the applicant, upon his application in writing, and within a period of thirty days of such denial, he shall be entitled to a hearing as provided in section 117.35. [C31, 35,§1905-c34; C39, §**1905.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.19]

Referred to in §§117.35, 117.43

117.20 Written examination. Examinations for registration shall be given as often as deemed necessary by the board, but no less than one time per year. Each applicant for a license must pass a written examination authorized by the commission and administered by the commission or persons designated by the commission. The examination shall be of scope and wording sufficient in the judgment of the commission to establish the competency of the applicant to act as a real estate broker, salesperson or apprentice salesperson in such manner as to protect the interests of the public. An examination for a real estate broker shall be of a more exacting nature than that for a real estate apprentice salesperson and require higher standards of knowledge of real estate. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible. A person who fails to pass either written examination once may take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the commission. An applicant who has failed either examination may request in writing information from the commission concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the commission administers a uniform, standardized examination, the commission shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the commission. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.20; 66GA, ch 1101,§§8, 21]

Referred to in §§117.15, 117.43
See 51GA, ch 96,§20

117.21 Nonresident license. A nonresident of this state may be licensed as a real estate broker, a real estate salesperson, or a real estate apprentice salesperson, upon complying with all requirements of law and with all the provisions and conditions of this chapter relative to resident brokers, salespersons and apprentice salespersons, and the filing by the applicant with the commission of a certification from the state of original licensure signed by the duly qualified and authorized official or officials of such state that the applicant is there currently licensed, that no charges against the applicant are there pending, and that applicant's record in such state justifies the issuance of a license to such applicant in Iowa. The commission

may waive the requirement of an examination in the case of a nonresident broker who is licensed under the laws of a state having similar requirements and where similar recognition and courtesies may be extended to licensed real estate brokers, salespersons and apprentice salespersons of this state. [C31, 35, §1905-c57; C39,§**1905.54**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.21; 66GA, ch 1101,§§9, 21]

Referred to in §117.43

117.22 Nonresident's place of business. A nonresident to whom a license is issued upon compliance with all the other requirements of law and provisions of this chapter, shall not be required to maintain a definite place of business within this state. Provided, that such nonresident, if a broker, shall maintain an active place of business within the state of his domicile, and provided further, that the privilege of so submitting a certification of licensure certified to by the qualified and authorized official or officials of the state of original licensure, in lieu of the recommendations and statements otherwise required, shall only apply to licensed real estate brokers, real estate salespersons and real estate apprentice salespersons of those states under the laws of which similar recogntion and courtesies are extended to licensed real estate brokers, real estate salespersons and real estate apprentice salespersons of this state. [C31, 35,§1905-c57; C39,§**1905.54**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.22; 66GA, ch 1101,§§10, 21]

Referred to in §§117.31, 117.43

117.23 Actions against nonresidents. Every nonresident applicant, before the issuance of a license, shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of this state in which a cause of action may arise, by the service of any process or pleadings authorized by the laws of this state on the chairman of the commission, said consent stipulating and agreeing that such service of such process or pleadings on the commission shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant within the state of Iowa. Said instrument containing such consent shall be authenticated by the seal thereof, if a corporation, or by the acknowledged signature of a member or officer thereof, if otherwise. All such applications, except from individuals, shall be accompanied by a duly certified copy of the resolutions of the proper officers, or managing board, authorizing the proper officer to execute the same. In case any process or pleadings mentioned in the case are served upon the commission it shall be by duplicate copies, one of which shall be filed in the office of the commission, and the other immediately forwarded by certified mail to the main office of the applicant against whom or which said process or pleadings are directed. [C31, 35,§1905-c57; C39, §**1905.54**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.23]

Referred to in §117.43

117.24 Custody of salesperson's or apprentice's license. The license of such real estate salesperson or real estate apprentice salesperson shall be delivered or mailed to the real estate broker by whom such real estate salesperson or real estate apprentice salesperson is employed and shall be kept in the custody and control of such broker. [C31, 35,§1905-c36; C39,§**1905.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §117.24; 66GA, ch 1101,§§11, 21]

Referred to in §117.43

117.25 Display of license. It shall be the duty of every real estate broker to conspicuously display in his place of business the current license issued to him and the licenses issued to his employees. [C31, 35,§1905-c37; C39,§**1905.34**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §117.25]

Referred to in §117.43

117.26 Pocket cards. The commission shall prepare and deliver to each licensee a pocket card, which card among other things shall contain an imprint of the seal of the commission and shall certify that the person whose name appears thereon is a licensed real estate broker, real estate salesperson or real estate apprentice salesperson, as the case may be, and if it is a real estate salesperson's, or real estate apprentice salesperson's, card it shall also contain the name and address of his employer. The matter to be printed on such pocket card, except as above set forth, shall be prescribed by the commission. [C31, 35,§1905-c38; C39,§**1905.35**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.26; 66GA, ch 1101,§§12, 21]

Referred to in §117.43

117.27 Fees. The commission shall set annual fees, except renewal fees which need not be annual, for examination and licensing of real estate brokers, real estate salespersons and real estate apprentice salespersons. The commission shall determine the annual cost of administering the examination and shall set the examination fee accordingly. The commission shall set the fees for the real estate broker's licenses, for real estate salesperson's licenses and for real estate apprentice salesperson's licenses based upon the administrative costs of sustaining the commission. The fees shall include, but shall not be limited to, the costs for:

1. Per diem, expenses, and travel for commission members.

2. Office facilities, supplies, and equipment.

3. Director, assistants, and clerical assistance. [C31, 35,§1905-c40; C39,§**1905.37**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.27; 66GA, ch 1101, §§13, 21]

Referred to in §117.43

117.28 Expiration of license. Every license, except a license as a real estate apprentice salesperson which shall expire as provided in section 117.15, shall expire as determined by the commission. A person who fails to renew his real estate broker's or real estate sales-

person's license by the expiration date shall be allowed to do so within thirty days following its expiration, but the commission may assess a reasonable penalty. The commission shall upon the written request of the applicant on forms prescribed by the commission, and payment of the fee therefor as herein required, issue a new license for each ensuing year except as provided in section 117.15, in the absence of any reason or condition which might warrant the revocation of a license after a hearing as provided in sections 117.34 and 117.35. [C31, 35,§1905-c42; C39,§**1905.39**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.28; 66GA, ch 1101, §§14, 21]

Referred to in §§117.43, 117.53

117.29 Revocation of license. The revocation of a broker's license shall automatically suspend every real estate salesperson's license and every real estate apprentice salesperson's license granted to any person by virtue of his employment by the broker whose license has been revoked, pending a change of employer and the issuance of a new license. Such new license shall be issued upon payment of a fee in an amount determined by the commission based upon the administrative costs involved, if granted during the same year in which the original license was granted. [C31, 35,§1905-c43; C39,§**1905.40**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.29; 66GA, ch 1101,§§15, 21]

Referred to in §117.43

117.30 Actions—license as prerequisite. No person, copartnership, association, or corporation engaged in the business or acting in the capacity of a real estate broker, a real estate salesperson or real estate apprentice salesperson within this state shall bring or maintain any action in the courts of this state for the collection of compensation for any services performed as a real estate broker or salesperson without alleging and proving that such person, copartnership, association, or corporation was a duly licensed real estate broker, real estate salesperson or real estate apprentice salesperson at the time the alleged cause of action arose. [C31, 35,§1905-c44; C39,§**1905.41**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.30; 66GA, ch 1101,§§16, 21]

Referred to in §117.43

117.31 Place of business. Every real estate broker, except as provided in section 117.22, shall maintain a place of business in this state. If the real estate broker maintains more than one place of business within the state, a duplicate license shall be issued to such broker for each branch office maintained. Provided, that if such broker be a copartnership, association, or corporation, a duplicate shall be issued to the members or officers thereof, and a fee determined by the commission in each case shall be paid for each duplicate license. [C31, 35,§1905-c45; C39,§**1905.42**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.31]

Referred to in §117.43

117.32 Change of location. Notice in writing shall be given to the commission by each licensee of any change of principal business location, whereupon the commission shall issue a new license for the unexpired period upon the payment of a fee of one dollar. [C31, 35,§1905-c46; C39,§**1905.43**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.32]

Referred to in §117.43

117.33 Salespersons or apprentices—change of employment. When any real estate salesperson or real estate apprentice salesperson shall be discharged or shall terminate his employment with the real estate broker by whom he is employed, it shall be the duty of such real estate broker to immediately deliver or mail by certified mail to the commission such real estate salesperson's or real estate apprentice salesperson's license on the reverse side of which the employing broker shall set out the date and cause of termination of employment. The real estate broker shall at the time of mailing such real estate salesperson's or real estate apprentice salesperson's license to the commission address a communication to the last known residence address of such real estate salesperson or real estate apprentice salesperson stating that his license has been delivered or mailed to the commission. A copy of such communication to the real estate salesperson or real estate apprentice salesperson shall accompany the license when mailed or delivered to the commission. It shall be unlawful for any real estate sales person or real estate apprentice salesperson to perform any of the acts contemplated by this chapter either directly or indirectly under authority of said license from and after the date of receipt of said license by the commission; provided, that another license shall not be issued to such real estate salesperson or real estate apprentice salesperson until he shall return his former pocket card to the commission or shall satisfactorily account to them for the same. The commission shall upon presentation of evidence by the salesperson or apprentice salesperson that he has been employed by another broker issue another license and pocket card for the balance of the current year showing each change of employment. A fee as determined by the commission will be charged for the issuance of such a license. Not more than one license shall be issued to any real estate salesperson or real estate apprentice salesperson for the same period of time. [C31, 35, §1905-c47; C39,§**1905.44**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.33; 66GA, ch 1101,§§17, 21]

Referred to in §117.43

117.34 Investigations by commission. The commission may upon its own motion and shall upon the verified complaint in writing of any person, provided such complaint together with evidence, documentary or otherwise presented in connection therewith, makes out a prima-facie case, investigate the actions of any real estate broker, real estate salesperson,

real estate apprentice salesperson, or any person who shall assume to act in either such capacity within this state and shall have the power to suspend or to revoke any license issued under the provisions of this chapter, at any time where the licensee has by false or fraudulent representation obtained a license, or where the licensee in performing or attempting to perform any of the acts mentioned herein is found to be guilty of:

1. Making any substantial misrepresentation.

2. Making any false promise of a character likely to influence, persuade or induce.

3. Pursuing a continued and flagrant course of misrepresentation, or making of false promises through agents or salespersons or advertising or otherwise.

4. Acting for more than one party in a transaction without the knowledge of all parties for whom he acts.

5. Accepting a commission or valuable consideration as a real estate salesperson or real estate apprentice salesperson for the performance of any of the acts specified in this chapter, from any person, except his employer, who must be a licensed real estate broker.

6. Representing or attempting to represent a real estate broker other than his employer, without the express knowledge and consent of the employer.

7. Failing, within a reasonable time, to account for or to remit any moneys coming into his possession which belong to others.

8. Being unworthy or incompetent to act as a real estate broker, salesperson or apprentice salesperson in such manner as to safeguard the interests of the public.

9. Paying a commission or any part thereof for performing any of the acts specified in this chapter to any person who is not a licensed broker, salesperson or apprentice salesperson under the provisions of this chapter or who is not engaged in the real estate business in another state.

10. Failing, within a reasonable time, to provide information requested by the commission as the result of a formal or informal complaint to the commission which would indicate a violation of this chapter.

11. Any other conduct, whether of the same or different character from that hereinbefore specified, or demonstrates such bad faith, improper, fraudulent, or dishonest dealings as would have disqualified him from securing a license under this chapter.

Any unlawful act or violation of any of the provisions of this chapter by any real estate salesperson, real estate apprentice salesperson, employee, or partnership or associate of a licensed real estate broker, shall not be cause for the revocation of the license of any real estate broker, partial or otherwise, unless the commission finds that said employer, partner, or associate had guilty knowledge thereof. [C31, 35,§1905-c48; C39,§**1905.45**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.34; 66GA, ch 1101,§§18, 21]

Referred to in §§117.28, 117.43

117.35 Hearing on charges. The commission shall, upon request of the applicant as provided in section 117.19, or before revoking any license, set the matter down for a hearing and at least twenty days prior to the date set for the hearing it shall notify the applicant or licensee in writing, which said notice shall contain an exact statement of the charges made and the date and place of the hearing. The applicant or licensee at all such hearings shall have the opportunity to be heard in person and by counsel in reference thereto. Such written notice of hearing may be served by delivery personally to the applicant or licensee or by mailing the same by certified mail to the last known business address of such applicant or licensee. If such applicant or licensee be a salesman, the commission shall also notify the broker employing him or into whose employ he is about to enter by mailing such notice by certified mail to the broker's last known business address. The hearing on such charges shall be at such time and place as the commission shall prescribe. [C31, 35,§1905-c49; C39,§**1905.46**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §117.35]

Referred to in §§117.19, 117.28, 117.43

117.36 Attendance of witnesses. In the preparation and conducting of such hearings, the director shall have power to execute and sign subpoenas to require the attendance and testimony of any witnesses and the producing of any papers or books. He may administer oaths, examine witnesses, and take any evidence he deems pertinent to the determination of the charges. Any such hearing may be held before two or more members of the commission as may be directed by the commission. [C31, 35,§1905-c50; C39,§**1905.47**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.36]

Referred to in §117.43

117.37 Fees and mileage. Any witnesses so subpoenaed shall be entitled to the same fees and mileage as is prescribed by law in judicial proceedings in the courts of this state in civil cases. [C31, 35,§1905-c51; C39,§**1905.48**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.37]

Referred to in §117.43

117.38 Request for witnesses. Any party to any hearing before the commission shall have the right to the attendance of witnesses in his behalf at such a hearing upon making a request thereof to the commission and designating the person or persons sought to be subpoenaed. [C31, 35,§1905-c52; C39,§**1905.49**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.38]

Referred to in §117.43

117.39 Disobedience to subpoena. In case of a disobedience to a subpoena the commission may invoke the aid of any court of competent jurisdiction or judge thereof in requiring the attendance and testimony of witnesses

and the production of papers; and such court may issue an order requiring the persons to appear before the commission and give evidence or to produce papers as the case may be; and any failure to obey such order may be punished as a contempt. [C31, 35,§1905-c53; C39,§**1905.50**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §117.39]

Referred to in §117.43

117.40 Depositions. The testimony may be taken by deposition as in civil cases, and any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as hereinbefore provided. [C31, 35,§1905-c54; C39,§**1905.51**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.40]

Referred to in §117.43

117.41 Findings of fact. If the majority of the commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to such applicant, and if the commission shall determine that any licensee is guilty of a violation of any of the provisions of this chapter, the license may be suspended or revoked. The commission, upon request of the applicant or licensee, shall furnish said applicant or licensee with a definite statement of its findings of fact and its reason or reasons for refusing to grant the license or for suspension of the rights of the licensee or for the revocation of the license, as the case may be. Judicial review of action of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act. [C31, 35,§1905-c56; C39,§**1905.53**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.41]

Referred to in §117.43

117.42 List of licensees. The commission shall at least annually prepare a list of the names and addresses of all licensees licensed by it under the provisions of this chapter, and of all persons whose licenses have been suspended or revoked within one year; together with such other information relative to the enforcement of the provisions of this chapter as it may deem of interest to the public. One of such lists shall be mailed to the clerk of the district court in each county of the state and shall be held by said clerk of the district court as a public record. Such lists shall also be mailed by the commission to any person in this state upon request. [C31, 35,§1905-c58; C39,§**1905.55**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §117.42]

Referred to in §117.43

117.43 Penalties. Any person found guilty of violating a provision of sections 117.1 to 117.42, inclusive, in a first offense shall be punished by a fine of not to exceed one hundred dollars or by imprisonment for a term of not to exceed thirty days in jail. [C31, 35,§1905-c59; C39,§**1905.56**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.43]

117.44 Complaints referred to court. The commission may refer a complaint for violation of section 117.1 before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal officers of this state to enforce the provisions hereof and collect the penalties herein provided. [C31, 35,§1905-c60; C39,§**1905.57**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§117.44]

117.45 Dual contracts for sale of real property prohibited. It shall be unlawful for any person to knowingly make, issue, deliver, or receive dual contracts for the purpose of sale of real property. Dual contracts, either written or oral, shall mean two contracts concerning the same parcel of real property, one of which states the true and actual purchase price and one of which states a purchase price in excess of the true and actual purchase price and is used as an inducement for mortgage investors to make a loan commitment on such real property in reliance upon the stated inflated value.

Any person who shall violate the provisions of this section shall be imprisoned in the penitentiary not exceeding two years, or may be fined in the discretion of the court, not exceeding five thousand dollars, or imprisoned in the county jail not more than one year. [C71, 73, 75,§117.45]

See §117.43

117.46 Trust accounts.

1. Each broker shall maintain a common trust account in a bank or a savings and loan association for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or his salespersons or apprentice salespersons on behalf of his principal, except that a broker acting as a salesperson shall deposit these funds in the common trust account of the broker for whom he acts as salesperson.

2. Each broker shall notify the commission of the name of each bank or savings and loan association in which a trust account is maintained and also the name of the account on forms provided therefor.

3. Each broker shall authorize the commission to examine each trust account and shall obtain the certification of the bank or savings and loan association attesting to each trust account and consenting to the examination and audit of each account by a duly authorized representative of the commission. Said certification and consent shall be furnished on forms prescribed by the commission.

4. Each broker shall only deposit trust funds received on real estate or business opportunity transactions as defined in section 117.6 in said common trust account and shall not commingle his personal funds or other funds in said trust account with the exception that a broker may deposit and keep a sum not to exceed one hundred dollars in said account from his personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to said trust account.

5. A broker may maintain more than one trust account provided the commission is advised of said account as specified in subsections 2 and 3 above. [C71, 73, 75,§117.46; 66GA, ch 1101,§§19, 21, ch 1102,§1]

117.47 to 117.49 Reserved.

117.50 Meetings. The commission shall hold at least one meeting per year at the seat of government and shall elect a chairman annually. A majority of the members of the commission shall constitute a quorum. [C75, §117.50]

117.51 Public members. The public members of the commission shall not participate in administering or grading any portion of an examination. [C75,§117.51]

117.52 Disclosure of confidential information. A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C75,§117.52]

117.53 Application of chapter. The provisions of this chapter which require successful completion of a real estate education course before being licensed as a real estate salesperson shall not apply to persons who hold real estate salesperson's licenses on July 1, 1976 or to the issuance of new licenses to these persons under the provisions of section 117.28.

The provisions of this chapter which require successful completion of a real estate education course before being licensed as a real estate apprentice salesperson shall not apply within six months of July 1, 1976 to persons who have taken an examination within one year prior to July 1, 1976 who have not successfully passed the required examination. [66GA, ch 1101,§§20, 21]

CHAPTER 117A

SALES OF SUBDIVIDED LAND OUTSIDE OF IOWA

117A.1 Definitions.
117A.2 Provisions governing sale or lease of subdivided lands.
117A.3 Offering statement—contents—prohibitions.
117A.4 Inspection power of commission and attorney general—unlawful practices—penalties.
117A.5 Penalties.
117A.6 Sales by brokers.
117A.7 Prosecution.
117A.8 Filing fees.

117A.1 Definitions. As used in this chapter, unless the context otherwise indicates:

1. *"Subdivided land"* means any improved or unimproved land divided or proposed to be divided for the purpose of sale or lease into five or more lots or parcels, or additions thereto, or parts thereof; however, subdivided land does not apply to a subdivision subject to section 306.21 or chapter 409 nor to the leasing of apartments, offices, stores, or similar space within an apartment building, industrial building, or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in said structure. Subdivided land shall not include any subdivisions of land located within the state of Iowa.

2. *"Subdivider"* means any person, firm, partnership, company, corporation, or association engaging directly or through an agent in the business of selling or leasing subdivided land, or of offering such land for sale or lease, to the public in this state.

3. *"Commission"* means the Iowa real estate commission as established by chapter 117.

4. *"Advertisement"* means the attempt by, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in land offered for sale or lease, to the public in this state.

5. *"Sale"* means any sale, offer for sale, or attempt to sell or lease any land, to the public in this state, for cash or on credit. [C75, §117A.1]

117A.2 Provisions governing sale or lease of subdivided lands. No subdivider shall sell or lease subdivided land, or offer such land for sale or lease, or advertise such land for sale or lease to the public within this state unless he has filed with the commission an applica-

tion which shall include an offering statement. No subdivider shall engage in business in this state until the application and the offering statement have been accepted and he has been registered as a subdivider with the commission. The application shall contain the following:

1. The name of the owner and of the subdivider.

2. The address of the principal office of the owner and of the subdivider, wherever situated, and the addresses of the principal office and all branch offices of the owner and of the subdivider within this state.

3. The name of the person, firm, partnership, company, corporation, or association holding legal or equitable title to the land for sale or lease for the purpose of offering such land or part thereof to the general public.

4. A statement as to whether the owner or the subdivider, or if such owner or subdivider be other than an individual, the name of any partner, principal, officer, director, or branch manager thereof or any owner of more than a five percent interest in the business, who has been convicted of any criminal offense in connection with any transaction involving the sale or lease, or offer for sale or lease, of subdivided land, or who has been enjoined or restrained by order of any court from selling or leasing, or offering for sale or lease, any subdivided land in any state or county, or who has been enjoined or restrained by any court from continuing any practices in connection therewith.

5. The complete description of the land offered for subdivision by lots, plots, blocks, or sales, with or without streets, together with plats certified to by a duly registered land surveyor accompanied by a certificate attached thereto showing the date of the completion of the survey and of the making of the plat and the name of the subdivision for the purpose of identification of the subdivided land or any part thereof.

6. Copies of plats of all of the land being filed by the subdivider which plats must have already been recorded by the proper recording office in the state in which the land is located.

7. An opinion of an attorney admitted to practice law in this state, a policy of title insurance issued by a title insurer licensed to do business in the state where the subdivided land is located, or an opinion of an attorney admitted or licensed to practice law in the state wherein the lands are situated, reciting in detail all of the liens, encumbrances, and clouds upon the title to such land, and any other defects of title, which may render the title to such land unmarketable.

8. The provisions, covenants, terms, and conditions upon which it is the intention of the owner and the subdivider to sell or lease such subdivided land, accompanied by proposed forms of contracts contemplated for execution and delivery upon the consummation of sales or leases.

9. If the subdivided land sought to be filed comes within the purview of the interstate land sales full disclosure Act (Title 15, United States Code section 1701 et seq.) the subdivider must furnish a copy of the accepted report filed with the department of housing and urban development. If the subdivision comes under the regulation of the real estate laws of the state where the land is located and that state requires a state offering statement or public report, the subdivider must also include a copy of said state report.

10. The subdivider, if a corporation, must register to do business in the state of Iowa as a foreign corporation with the secretary of state and furnish a copy of the certificate of authority to do business in the state of Iowa. If not a corporation, the subdivider must comply with the provisions of chapter 547, by filing a proper trade name with the Polk county recorder. The provisions of this subsection shall also apply to any person, partnership, firm, company, corporation, or association, other than the subdivider, which is engaged by or through the subdivider for the purpose of advertising or selling the land involved in the filing.

11. Such other information as the commission may require, which shall be filed pursuant to the provisions of this chapter.

12. The offering statement must contain all of the following:

a. The names, addresses, and business background of the subdivider as required in subsections 1 to 4. If such subdivider is a partnership or corporation, the names, addresses, and business background of each of the partners, officers, and principal stockholders, the nature of their fiduciary relationship and their past, present, or anticipated financial relationship to the subdivider.

b. A complete description of the land and copies of the plat in which the land is located as required in subsections 5 and 6 and a certified financial statement by a certified public accountant of the assets and liabilities of the subdivider as of a date not more than six months prior to the date of the filing, in such detail as the commission may require.

c. Information concerning public improvements, including without limitation, streets, storm sewers, street lighting, water supply, and sewage treatment and disposal facilities in existence or planned on the subdivision, and the estimated cost, date of completion, and responsibility for construction of improvements to be made which are referred to in connection with the sale or lease, or offering for sale or lease, of the subdivision or any unit or lot thereon.

d. Each of the terms and conditions under which each such unit or lot is offered for sale

and such opinion or certificates as required in subsections 7 and 8.

e. A statement as to the exact terms of any guaranties or promises of refund or exchange which are to be used by the subdivider. The guaranty or promise of refund or exchange, if any, must be contained in the body of any contracts used by the subdivider and cannot be in any separate document. Said guaranty or promise of refund or exchange must appear in bold-faced type in the contract.

f. If the refund privilege, pursuant to paragraph "*e*" of this subsection, is predicated in any way upon the requiring by the subdivider of an inspection by the purchaser prior to requesting a refund or exchange pursuant to the guaranty provisions, the offering statement and the sale contract itself must set out in detail all pertinent information in regard to the inspection trip and in regard to claiming a refund or exchange pursuant to the guaranty after the inspection trip.

g. Such additional information as the commission may require as being necessary or appropriate in the public interest or for the protection of purchasers or lessees.

h. A vicinity sketch of sufficient scale to show the entire tract of land, surrounding property ownership, and road access. [C75, §117A.2]

Referred to in §§117A.3, 117A.4, 117A.8

117A.3 Offering statement—contents—prohibitions.

1. There may be omitted from the offering statement any of the information required under section 117A.2, subsections 6, 9 and 10 which the commission may by a properly promulgated rule designate as being unnecessary or inappropriate for the protection of the public interest or a purchaser.

2. No offer to sell or lease subdivided land by any means of advertisement shall be made unless a copy of such advertisement has first been filed with the commission. All such advertisements shall state that an offering statement has been filed with the commission and that a copy of such statement is available from the subdivider upon request.

3. Except as provided in subsection 1, no offer to sell or lease subdivided land shall be made unless such offer is accompanied by a copy of the current offering statement filed pursuant to this chapter.

4. The first page of the offering statement employed in the sale or lease, or offer for sale or lease, of subdivided land shall contain a legible statement printed in at least sixteen point bold type which shall be at least four point type larger than the body of the document that the filing of the verified statement and offering statement with the commission does not constitute approval of the sale or lease, or offer for sale or lease, by the state, commission or any officer thereof, or that the state, commission or any officer thereof, has in any way passed upon the merits of such offering.

5. No sale or lease of subdivided land shall be made unless accompanied or preceded by the delivery to the prospective purchaser of an offering statement complying with the provisions of this section.

6. No offering statement shall be changed or amended unless a copy of such change or amendment has first been filed with the commission.

7. The subdivider shall, within thirty days after the first day of July of each year, file with the commission a current offering statement setting forth all changes which have taken place during the preceding year with respect to any information required to be set forth in such offering statement. Only a current offering statement shall be used to sell or lease, or offer to sell or lease, any subdivided land.

8. A fee of one hundred dollars shall be paid, plus ten dollars for each one hundred lots, units, parcels, portions, or interest included in the current offering statement. [C75,§117A.3]

Referred to in §117A.8

117A.4 Inspection power of commission and attorney general—unlawful practices—penalties.

1. The commission or the attorney general at the request of the commission may cause an investigation and inspection to be made of any subdivided land proposed to be offered for sale or lease in this state pursuant to this chapter and may make a report of the findings thereon.

2. Where an inspection is to be made of subdivided land situated outside of this state and offered for sale in this state, said inspection as authorized by subsection 1 shall be made at the expense of the subdivider. After the application required by section 117A.2 is filed and after the filing fee required by section 117A.8 is received the commission may decide whether or not an inspection pursuant to this subsection is to be made. If the commission requires an inspection, the commission, or the attorney general at the request of the commission shall so notify the subdivider and the subdivider shall remit to the commission an amount equivalent to the round trip cost of travel from this state to the location of the project, as estimated by the commission or the attorney general and a further amount estimated to be necessary to cover the additional expenses of such inspection but not to exceed fifty dollars a day for each day incurred in the examination of the project. The costs of any subsequent inspections deemed necessary shall be paid for by the subdivider. At the completion of any inspection trip the commission or the attorney general shall furnish the subdivider a statement as to the costs of the inspection trip and should said costs be less than the amount advanced by the subdivider to the

commission or the attorney general the remaining balance will be refunded to the subdivider.

3. It shall be unlawful for the subdivider to change the financial structure of any offering after the submission thereof to the commission without first notifying the commission in writing of such intention.

4. Where improvements are to be made in connection with the sale or lease, or offering for sale or lease, of the subdivision or any unit, parcel, or lot thereon, the owner or subdivider shall either furnish to the commission a performance bond executed by a surety company authorized to do business in the state and which has given consent to be sued in this state with sufficient surety for the benefit and protection of purchasers of units, parcels, or lots, in such amount and subject to such terms as the commission deems necessary for the protection of such purchasers with respect to construction of such improvements, or place in an escrow account in a depository acceptable to the commission, that portion of the sums paid or advanced by purchasers which the commission deems necessary for the protection of such purchasers with respect to construction of such improvements.

5. Where the land to be subdivided is subject to a mortgage, lien, or encumbrance securing or evidencing the payment of money, other than taxes levied or assessments made, or where the interest of the owner, the subdivider or an agent is held under option or contract of purchase or in trust, it shall be unlawful to sell any land in such subdivision unless a provision in such mortgage, lien, encumbrance, option, contract, or trust agreement, or a provision in an agreement supplementary thereto, enables the vendor to convey valid title to each parcel so sold or leased free of such mortgage, lien, encumbrance, option, contract, or trust agreement upon completion of all payments and the performance of all the terms and conditions required to be made and performed by the vendee under the agreement of sale.

Where the consideration price for a lot sold has been amortized to an extent that the balance due and owing thereunder equals an amount required to release such lot or lots from any existing mortgage, lien, encumbrance, tax, assessment, option, contract, or trust agreement, and the initial cost for said land has not been paid for by the owner or subdivider, all moneys thereafter received by the owner or subdivider shall be segregated and kept in a separate account as a trust which shall be applied toward the clearance of title of the land intended to be conveyed to the purchaser. Certified or verified copies of documents containing such provisions shall be filed with the commission prior to the sale or lease, or offer of sale or lease, or advertisement for sale or lease, of any part of the subdivision. [C75,§117A.4]

117A.5 Penalties.

1. Any person, firm, partnership, corporation, company, or association representing in any manner that the state, the commission or any officer thereof has recommended or acquiesced in the recommendation of the purchase of any subdivided land offered for sale or lease, in advertising or offering such subdivided land for sale or lease, shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year or by both such fine and imprisonment.

2. Any person, officer, director, agent, or employee of a person, company, firm, partnership, association, or corporation offering to sell or lease, or selling or leasing, subdivided land prior to the filing of the offering statement and the application required by this chapter shall be guilty of a misdemeanor and punished by a fine not to exceed two thousand dollars or by imprisonment in the county jail for a term not to exceed one year, or by both such fine and imprisonment.

3. Except as provided in subsection 2, every person, officer, director, agent, or employee of a person, company, firm, partnership, corporation, or association who authorizes, directs, or aids in the publication, advertisement, distribution, or circulation of any device, scheme, or artifice for obtaining money or property by means of any false pretense, representation, or promise concerning any subdivided land offered for sale or lease, and every person, officer, director, agent, or employee of a company, firm, partnership, corporation, or association who makes or attempts to make fictitious or pretended purchases or sales of subdivided lands in this state, or in any other respect willfully violates or fails to comply with any of the provisions of this chapter, or omits or neglects to obey, observe, or comply with any order, permit, decision, demand, or requirement of the commission under the provisions of this chapter, is guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand dollars or by imprisonment in the county jail for a term not to exceed one year or by both such fine and imprisonment, and if such person is a licensee under chapter 117, the commission also may revoke or suspend his license in the manner provided in such chapter. [C75,§117A.5]

117A.6 Sales by brokers. It shall be unlawful for any subdivider to sell or lease, or offer for sale or lease, any subdivided land located without this state except through a real estate broker or salesman duly licensed in this state. The provision of section 117.7, subsection 1, exempting regular employees of the owner of real estate from the licensing requirements of chapter 117, shall not in any way apply to the sale of any subdivided land regulated by this chapter and subdividers covered by this chapter may not avail themselves of the provisions

of section 117.7, subsection 1, but must pursuant to this subsection sell only through licensed Iowa brokers and licensed salesmen. [C75,§117A.6]

117A.7 Prosecution.

1. The attorney general shall prosecute all violations of this chapter. Prosecutions shall be instituted by the attorney general upon the written request of the commission. In all criminal proceedings the attorney general may appear before any court or any grand jury and exercise all the powers and perform all the duties in respect to such actions or proceedings which the county attorney would otherwise be authorized or required to exercise or perform. In lieu thereof the attorney general may transmit evidence, proof, and information pertaining to such offense to the county attorney of the county in which the alleged violation occurred, and such county attorney shall prosecute for such violation. In any such proceeding in which the attorney general has appeared, the county attorney shall only exercise such powers and perform such duties as are required of him by the attorney general. The attorney general shall, within ten days after a conviction for a violation of any provision of this chapter, file with the commission a detailed report showing the date of the conviction, name of the person convicted, and the specific nature of the charge.

2. Whenever it appears to the commission that any person, officer, director, agent, or employee of a company, firm, partnership, association, or corporation offering to sell or lease, or selling or leasing, subdivided land, has committed or is about to commit a violation of this chapter or any rule or order issued by the commission hereunder, the commission may apply to the district court of the county in which the principal office of the subdivider is located or if such subdivider has no such office in this state then to the district court of Polk county for an order enjoining such subdivider or such officer, director, agent, or employee thereof from violating or continuing to violate this chapter or any such rule or order, and for such other equitable relief as the nature of the case and the interests of the public may require.

3. Any false statement contained in any statement filed with the commission pursuant to the requirements of this chapter, or in any affidavit attached thereto, shall constitute a violation of this chapter.

4. In any action brought under the provisions of this chapter, the attorney general is entitled to recover costs for the use of this state. [C75,§117A.7]

117A.8 Filing fees. Each initial filing made pursuant to section 117A.2 shall be accompanied by a basic filing fee of one hundred dollars, plus twenty-five dollars for every one hundred lots, units, parcels, portions, or interests included in the offering. A registration fee shall be paid with the filing of an application for registration consolidating additional lots with a prior registration and shall be set by rule which shall provide a basic fee of fifty dollars, plus an additional fee of twenty-five dollars for every one hundred lots, units, parcels, portions, or interests included in the offering. A fee shall not be charged for amendments to the property report as a result of amendments to the initial filing, unless the department determines the amendments are made for the purpose of avoiding the payment of a fee, in which event the amendment may be treated as an application for registration consolidating additional lots with a prior registration. The filing fee to be paid with each annual current offering statement is as established by section 117A.3, subsection 8.

All fees collected under this chapter shall be deposited with the treasurer of state and credited to the general fund. [C75,§117A.8]

Referred to in §117A.4

CHAPTER 118

REGISTERED ARCHITECTS

118.1 Appointment of board.
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118.3 Records—roster.
118.4 Report.
118.5 Duties.
118.6 and 118.7 Repealed by 61GA, ch 138, §§5, 6.
118.8 Examination.
118.9 Registration.
118.10 Renewals.
118.11 Fees.
118.12 Payment of expenses.
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118.14 Repealed by 61GA, ch 138,§7.
118.15 Unlawful practice.
118.16 Definition.
118.17 When not applicable.
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118.19 Violations—punishment.
118.20 Injunction.
118.21 Practice by corporations.
118.22 to 118.24 Reserved.
118.25 Applicant—civil rights.
118.26 Public members.
118.27 Disclosure of confidential information.

118.1 Appointment of board. There is established the board of architectural examiners which shall consist of five members who possess a certificate of registration issued under section 118.9 and who have been in active practice of architecture for not less than five years, the last two of which shall have been in Iowa, and two members who do not possess a certificate of registration issued under section 118.9 and who shall represent the general public. Members shall be appointed by the governor subject to the approval of two-thirds of the members of the senate.

Professional associations or societies composed of registered architects may recommend the names of potential board members to the governor but the governor shall not be bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of registered architects. Appointments shall be for three-year terms and shall commence on July 1 of the year in which the appointment is made. Vacancies shall be filled for the unexpired term by appointment of the governor and shall require senate confirmation. Members shall serve no more than three terms or nine years, whichever is less. [C27, 31, 35, §1905-b1; C39,§**1905.58**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§118.1]

General removal provisions, §§66.1, 66.26

118.2 Officers. During the month of July of each year the board shall elect from its members a president and vice president. The duties of the officers shall be such as are usually performed by such officers. At least one meeting of the board, except as provided in section 118.13, shall be held at the seat of government. The board may employ a secretary whose salary shall be established by the governor with the approval of the executive council pursuant to section 19A.9, subsection 2, under the pay plan for exempt positions in the executive branch of government. [C27, 31, 35,§1905-b2; C39,§**1905.59**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§118.2; 66GA, ch 20,§8]

118.3 Records — roster. The board shall keep a record, open to public inspection at all reasonable times, of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration. This record shall also contain a roster showing the name, place of business and residence, and the date and number of the certificate of registration of every registered architect entitled to practice his profession in the state of Iowa. [C27, 31, 35,§1905-b3; C39,§**1905.60**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§118.3]

118.4 Report. On or before the thirtieth day of June of each year the board shall submit to the governor a report of its transactions for the preceding year, together with a complete statement of the receipts and expenditures of the board. This report shall include a roster of the name, place of business and number of certificate of registration of every registered architect entitled to practice his profession in the state of Iowa. A copy of this report shall be filed with the secretary of state. [C27, 31, 35,§1905-b4; C39,§**1905.61**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§118.4]

Annual report, §17.4

118.5 Duties. The board shall enforce the provisions of this chapter and may incur such expense as shall be necessary within the limit of funds appropriated to the board, and shall make rules for the examination of applicants for the certificate of registration provided by this chapter, and shall, after due public notice, hold meetings each year for the purpose of examining applicants for registration and the transaction of business pertaining to the affairs of the board. Examinations shall be given as often as deemed necessary, but not less than one time per year. No action at any meeting can be taken without the affirmative votes of a majority of the members of the board. [C27, 31, 35,§1905-b5; C39,§**1905.62**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§118.5]

118.6 and 118.7 Repealed by 61GA, ch 138, §§5, 6.

118.8 Examination. Any person may apply for a certificate of registration or may apply to take an examination for such certification under this chapter. The board shall not require that the application contain a recent photograph of the applicant.

Upon complying with the above requirements, the applicant shall satisfactorily pass an examination in such technical and professional subjects as shall be prescribed by the board. The examination may be conducted by representatives of the board. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible. If the applicant fails to pass the examination once, he may retake the examination at the next scheduled time. Thereafter the applicant may take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the board concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board. In lieu of examination, the board may accept satisfactory evidence of the applicant's knowledge of architectural practice and of any one of the qualifications set forth under subsections 1, 2, and 3 of this section.

1. A diploma of graduation or satisfactory certificate from an architectural college or school that he has completed a technical course approved by the board of architectural examiners, and subsequent thereto, of at least three years' experience under the direction of a registered architect.

2. Registration or certification during the current year as an architect in another state or country, where the qualifications prescribed at the time of such registration or certification were equal to those prescribed in this state at date of application.

3. An architect who has practiced architecture for a period of more than ten years outside of this state shall, except as otherwise provided in subsection 2, be required to take only a practical examination, the nature of which shall be prescribed by the board. [C27, 31, 35,§1905-b8; C39,§**1905.65**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§118.8]

Referred to in §118.9

118.9 Registration. When the applicant has complied with the requirements as set forth in section 118.8, to the satisfaction of at least four members of the board, and has paid the fees prescribed by the board, the secretary shall enroll the applicant's name and address in the roster of registered architects and issue to him a certificate of registration, signed by the officers of the board, which certificate shall entitle him to practice as an architect in the state of Iowa. [C27, 31, 35, §1905-b9; C39,§**1905.66**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§118.9]

Referred to in §118.1

118.10 Renewals. Certificates of registration shall expire annually as determined by the board. Registered architects shall renew their certificates of registration and pay a renewal fee in the manner prescribed by the board. A person who fails to renew his certificate of registration by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. [C27, 31, 35,§1905-b10; C39, §**1905.67**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §118.10]

118.11 Fees. The board shall set the fees for examination, for a certificate of registration as a registered architect, and for renewal of a certificate. The fee for examination shall be based on the annual cost of administering the examinations. The fee for a certificate of registration and for renewal of a certificate shall be based upon the administrative costs of sustaining the board which shall include, but shall not be limited to, the costs for:

1. Per diem, expenses and travel for board members.

2. Office facilities, supplies and equipment.

3. Clerical assistance.

All fees shall be paid to the treasurer of state and deposited in the general fund of the state. [C27, 31, 35,§1905-b11; C39,§**1905.68**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§118.11]

118.12 Payment of expenses. The members of the board shall set their own per diem compensation at a rate not exceeding forty dollars per day for each day actually engaged in the discharge of their duties, and shall be reimbursed for the actual expenses incurred in attending the meetings of the board and for office supplies, printing, and clerical hire, and other necessary expenses incurred in carrying out the provisions of this chapter, within the limits of the funds appropriated to the board. Warrants for payments of expenses of the board shall be issued by the state comptroller and paid by the treasurer of state upon presentation of vouchers regularly drawn by the president and secretary of the board and authorized by the board. [C27, 31, 35,§1905-b12; C39,§**1905.69**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §118.12]

118.13 Revocation. The board may revoke any certificate after thirty days' notice with grant of hearing to the holder thereof, if proof satisfactory to the board be presented in the following manner:

1. In case it is shown that the certificate was obtained through fraud or misrepresentation.

2. In case the holder of the certificate has been found guilty by such board or by a court of justice of any fraud or deceit in his professional practice, or has been convicted of a felony by a court of justice.

3. In case the holder of the certificate has been found guilty by such board of incompetency or of gross negligence in the planning or construction of buildings.

4. In case it is proved to the satisfaction of such board that the holder of the certificate is an habitual drunkard, or is habitually addicted to the use of narcotic drugs.

Proceedings for the revocation of a certificate shall be begun by filing written charges against the accused with the board. A time and place for the hearing of the charges shall be fixed by the board. Where personal service or services through counsel cannot be effected, services may be had by publication. At the hearing, the accused shall have the right to be represented by counsel, to introduce evidence and to examine and cross-examine witnesses. The board shall have the power to subpoena witnesses, to administer oaths to such witnesses, and to employ counsel. The board shall make a written report of its findings, which report shall be filed with the secretary of state, and which shall be conclusive. [C27, 31, 35,§1905-b13; C39,§**1905.70**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§118.13]

Referred to in §118.2

118.14 Repealed by 61GA, ch 138,§7.

118.15 Unlawful practice. It shall be unlawful for any person to practice or to offer

to practice architecture in this state or use in connection with his name, or to otherwise assume, use or advertise any title or description tending to convey the impression that he is an architect unless such person is qualified by registration as herein provided. [C66, 71, 73, 75,§118.15]

118.16 Definition. The practice of architecture includes any professional service, such as consultation, investigation, evaluation, planning, and design, or responsible supervision of construction, in connection with the construction of buildings, or related structures and projects, or the addition to or alteration thereof, wherein the safeguarding of life, health, or property is concerned or involved. [C66, 71, 73, 75,§118.16]

118.17 When not applicable. The provisions of this chapter shall not apply to:

1. Professional engineers registered under chapter 114.

2. Persons acting under the instruction, control or supervision of, and those executing the plans of, a registered architect or a professional engineer registered under chapter 114, provided that such unregistered persons shall not be placed in responsible charge of architectural or professional engineering work.

3. Superintendents, inspectors, foremen and building trades craftsmen while performing their customary duties. [C66, 71, 73, 75,§118.17]

118.18 Exceptions. Nothing contained in this chapter shall prevent persons from performing those services enumerated herein in connection with any of the following:

1. Residential buildings not more than three stories and outbuildings in connection therewith;

2. Buildings used primarily for agricultural purposes including grain elevators and feed mills;

3. Nonstructural alterations to existing buildings not otherwise excluded;

4. Warehouses, light industrial and commercial buildings not more than two stories in height;

5. Churches or church properties. [C66, 71, 73, 75,§118.18]

118.19 Violations—punishment. Any person who practices or offers to practice architecture or who uses the word architect or any word or any letters or figures indicating or tending to imply that the person using the same is an architect, without first having complied with the provisions of this chapter, shall be deemed guilty of a misdemeanor and shall be punished with a fine of not more than two hundred dollars or imprisonment for not more than one year, or both such fine and imprisonment. [C27, 31, 35,§1905-b14; C39,§**1905.71**; C46, 50, 54, 58, 62,§118.14; C66, 71, 73, 75,§118.19]

118.20 Injunction. In addition to any other remedies, and on the petition of the board or any person, any violators of this chapter may be restrained and permanently enjoined. [C66, 71, 73, 75,§118.20]

118.21 Practice by corporations. Corporations may be formed under the provisions of the Iowa Business Corporation Act* for the purpose of practicing architecture as herein defined. No corporation shall be eligible for registration under this chapter. A domestic or foreign corporation may practice architecture in this state, but only if all of the following requirements are met:

1. The entire practice of architecture by the corporation in this state and in connection with buildings, structures, and projects located in this state shall be done by or under the responsible supervision of an architect or architects qualified by registration as provided in this chapter.

2. All directors of the corporation and the president and all vice-presidents of the corporation shall be qualified by registration as provided in this chapter or chapter 114 or qualified by registration under similar laws of another state of the United States.

The practice of architecture by or through a corporation shall not relieve any person of any liability for professional errors or omissions which would exist if he were practicing as an individual, including but not limited to any liability arising out of negligent supervision of the work of subordinates. [C66, 71, 73, 75,§118.21]

*Chapter 496A
Constitutionality, 61GA, ch 138,§8

118.22 to 118.24 Reserved.

118.25 Applicant—civil rights. An applicant shall not be ineligible for registration because of age, citizenship, sex, race, religion, marital status or national origin, although the application form may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of architecture. Character references may be required but shall not be obtained from registered architects. [C75,§118.25]

118.26 Public members. The public members of the board shall not participate in administering or grading any portion of an examination. [C75,§118.26]

118.27 Disclosure of confidential information. A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.

2. Information relating to the contents of the examination.

3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C75, §118.27]

CHAPTER 118A

LANDSCAPE ARCHITECTS

118A.1 Definitions.
118A.2 Registration required.
118A.3 Establishment of board.
118A.4 Organization of the board—meetings—quorum.
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118A.20 Scope of chapter.
118A.21 Examination not required.

118A.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the Iowa board of landscape architectural examiners established pursuant to section 118A.3.

2. *"Landscape architect"* means a person who engages in the practice of landscape architecture as defined in this section.

3. The *"practice of landscape architecture"* means the performance of professional services such as consultations, investigations, reconnaissance, research, planning, design, or responsible supervision in connection with projects involving the arranging of land and the elements thereon for public and private use and enjoyment, including the alignment of roadways and the location of buildings, service areas, parking areas, walkways, steps, ramps, pools and other structures, and the grading of the land, surface and subsoil drainage, erosion control, planting, reforestation, and the preservation of the natural landscape and aesthetic values, in accordance with accepted professional standards of public health, welfare, and safety. This practice shall include the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this chapter but shall not include the design of structures or facilities with separate and self-contained purposes for habitation or industry, or the design of public streets and highways, utilities, storm and sanitary sewers, and sewage treatment facilities, such as are ordinarily included in the practice of engineering or architecture; and shall not include the making of land surveys or final land plats for official approval or recording. Nothing contained in this chapter shall preclude a licensed landscape architect from performing any of the services described in this section in connection with the settings, approaches or environment for buildings, structures or facilities. Nothing contained in this chapter shall be construed as authorizing a landscape architect to engage in the practice of architecture, engineering, or land surveying. [C75,§118A.1]

Referred to in §§118A.5, 118A.19
The word "Act" as used in this enactment referred to the entire chapter of 65GA, ch 1086

118A.2 Registration required. A person shall not use the title of landscape architect or any title or device indicating or representing in any manner that such person is a landscape architect or is practicing landscape architecture unless such person is a registered landscape architect as provided in section 118A.11. Every holder of a registration certificate as a registered landscape architect shall display it in a conspicuous place in his principal office. [C75,§118A.2]

Referred to in §§118A.5, 118A.19

118A.3 Establishment of board. There is established a board of landscape architectural examiners which shall consist of five members who are registered landscape architects and two members who are not registered landscape architects and who shall represent the general public. Members shall be appointed by the governor, subject to the approval of two-thirds of the members of the senate. A registered member shall be actively engaged in the practice of landscape architecture or the teaching of landscape architecture in an accredited college or university, and shall have been so engaged for five years preceding his

appointment, the last two of which shall have been in Iowa. Professional associations or societies composed of registered landscape architects may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of professional landscape architects.

Appointments shall be for three-year terms and shall commence on July 1 of the year in which the appointment is made. Vacancies shall be filled for the unexpired term by appointment of the governor and shall be subject to senate confirmation. Members shall serve no more than three terms or nine years, whichever is less.

The initial five members of the board appointed by the governor as registered landscape architects shall meet the qualifications prescribed in this chapter and shall become registered as landscape architects immediately upon confirmation of their respective appointments without examination. [C75,§118A.3]

Referred to in §§118A.1, 118A.5, 118A.19

118A.4 Organization of the board—meetings —quorum. The board shall elect annually from its members a chairman and vice chairman. The duties of the officers shall be such as are usually performed by such officers. The board shall hold at least one meeting each year at the seat of government, and meetings shall be called at other times by the secretary at the request of the chairman or four members of the board. A majority of the members shall constitute a quorum. No action at any meeting can be taken without the affirmative votes of a majority of the members of the board. [C75,§118A.4; 66GA, ch 20,§9]

Referred to in §§118A.5, 118A.19

118A.5 Duties. The board shall enforce the provisions of sections 118A.1 to 118A.21 and may employ technical and clerical assistants and incur such expense as may be necessary within the limits of funds appropriated to the board. The board may employ a secretary whose salary shall be established by the governor with the approval of the executive council pursuant to section 19A.9, subsection 2, under the pay plan for exempt positions in the executive branch of government. The board shall make rules for the examination of applicants for the certificate of registration, and shall, after public notice conduct examinations of applicants for registration. The board shall keep a record of its proceedings. The board shall adopt and have an official seal which shall be affixed to all certificates of registration granted and the board may make such other rules, not inconsistent with law, necessary for the proper performance of its duty. The board shall maintain a roster showing the name, place of business and residence, and the date and number of the certificate of registration of every registered landscape architect in this state. [C75,§118A.5; 66GA, ch 20,§10]

Referred to in §118A.19

118A.6 Annual report. Before the first day of July of each year the board shall submit to the governor a report of its transactions for the preceding year, together with a complete statement of the receipts and expenditures of the board. This report shall include the roster of registered landscape architects. A copy of this report shall be filed with the secretary of state. [C75,§118A.6]

Referred to in §§118A.5, 118A.19

118A.7 Compensation and expenses. Members of the board shall set their own per diem compensation at a rate not exceeding forty dollars per day for the time actually spent in traveling to and from, and in attending meetings of the board and its committees, and shall receive all necessary traveling and incidental expenses incurred in the discharge of their duties within the limits of funds appropriated to the board. Warrants for payments of expenses of the board shall be issued by the state comptroller and paid by the treasurer of state upon presentation of vouchers signed by the chairman or vice chairman and secretary and authorized by the board. [C75,§118A.7]

Referred to in §§118A.5, 118A.19

118A.8 Examination. The board shall conduct examinations of applicants for certificates of registration as landscape architects at least once each year, or, if there are sufficient applications, at such additional times as the board may deem necessary. The examination shall determine the ability of the applicant to use and understand the theory and practice of landscape architecture and may be divided into such subjects as the board deems necessary. The board shall determine the annual cost of administering the examinations and shall set the fees accordingly. The public members of the board shall not participate in administering or grading any portion of the examination.

An applicant who has failed the examination may request in writing information from the board concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board. [C75,§118A.8]

Referred to in §§118A.5, 118A.19

118A.9 Applications. Any person may apply for a certificate of registration or may apply to take an examination for such certification. Applications for registration shall be on forms prescribed and furnished by the board, shall contain statements made under oath, showing the applicant's education and detail

summary of his pertinent practical landscape architectural work and experience. The board shall not require that a recent photograph of the applicant be attached to the application form. An applicant shall not be ineligible for registration because of age, citizenship, sex, race, religion, marital status or national origin. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of landscape architecture. Character references may be required but shall not be obtained from landscape architects. An application for examination shall be accompanied by an examination fee in the amount determined by the board. Each applicant for registration as a landscape architect shall meet one of the following requirements:

1. Graduation from a course in landscape architecture in a school, college or university offering an accredited minimum four-year curriculum in landscape architecture, and a minimum of three years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character, at least one year of which must be under the supervision of a registered landscape architect or a person who becomes a registered landscape architect within one year after July 1, 1975.

2. Graduation from a nonaccredited course of landscape architecture of a minimum of four years in a school, college or university and a minimum of four years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character, at least one year of which must be under the supervision of a registered landscape architect or a person who becomes a registered landscape architect within one year after July 1, 1975.

3. A minimum of ten years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character to properly prepare the applicant for the examination.

A satisfactorily completed year of study in an accredited course of landscape architecture in an accredited school, college or university may be accepted in lieu of one year of practical experience.

A master's degree from an accredited school, college, or university may be accepted in lieu of one year of practical experience.

Any four-year college or university degree may be accepted in lieu of two years of practical experience. [C75,§118A.9]

Referred to in §§118A.5, 118A.19, 118A.21

118A.10 Foreign registrants. Any applicant who holds a license or certificate to practice landscape architecture issued to him upon examination by a board of examiners in any other state, territory, or possession of the United States, the District of Columbia, or of any foreign country, if the requirements for such license or certificate were, at the time it was issued, in the opinion of the board, equal to or higher than the requirements of this state, may be registered without further examination. [C75,§118A.10]

Referred to in §§118A.5, 118A.19

118A.11 Registration. When an applicant has complied with the application requirements of this chapter and has passed the examination to the satisfaction of a majority of the registered members of the board, or is a foreign registrant and has qualified for registration under this chapter, and has paid the required registration fee, the secretary shall enroll the applicant's name and address in the roster of registered landscape architects and issue to him a certificate of registration, signed by the officers of the board. [C75,§118A.11]

Referred to in §§118A.2, 118A.5, 118A.19, 118A.20

118A.12 Seal. Every registered landscape architect shall have a seal, approved by the board, which shall contain the name of the landscape architect and the words "Registered Landscape Architect, State of Iowa", and such other words or figures as the board may deem necessary. All landscape architectural plans and specifications, prepared by such landscape architect or under the supervision of such landscape architect, shall be dated and bear the legible seal of such registered landscape architect. Nothing contained in this section shall be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer or land surveyor whenever the seal of an architect, engineer or land surveyor is required under the laws of this state. [C75, §118A.12]

Referred to in §§118A.5, 118A.19

118A.13 Renewals. Certificates of registration shall expire annually as determined by the board. Registered landscape architects shall renew their certificates of registration and pay a renewal fee in the manner and amount prescribed by the board. A person who fails to renew his certificate by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. [C75,§118A.13]

Referred to in §§118A.5, 118A.19

118A.14 Fees. The board shall set the fees for a certificate of registration as a registered landscape architect, and for renewal of a certificate. The fee for a certificate of registration and for renewal of a certificate shall be based upon the administrative costs of sustaining the board which shall include, but shall not be limited to, the costs for:

1. Per diem, expenses, and travel for board members.
2. Office facilities, supplies and equipment.
3. Clerical assistance.

All fees shall be collected by the secretary, paid to the treasurer of state and deposited in the general fund of the state. [C75,§118A.14]

Referred to in §§118A.5, 118A.19

118A.15 Suspension or revocation of certificate. The board may, by a five-sevenths vote of the entire board, suspend for a period not exceeding two years, or revoke the certificate of registration of, or reprimand any registrant who is found guilty of:

1. Any fraud or deceit in obtaining a registration;
2. Any fraud or deceit in his practice;
3. Any gross negligence, incompetence or misconduct in his practice; or
4. Who is found to have been convicted of any felony that would affect his ability to practice landscape architecture. [C75,§118A.15]

Referred to in §§118A.5, 118A.19

118A.16 Procedure. Any person may file charges with the board against a landscape architect or the board may initiate charges. Such charges shall be in writing, sworn to if by a complainant other than the board, and filed with the board. Unless the charges are dismissed by the board as unfounded or trivial, the board shall hold a hearing within sixty days after the date on which they are filed. The board shall fix the time and place for such hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing, to be served on the accused at least thirty days before the date fixed for the hearing. Where personal service cannot be effected, service may be effected by publication. At such hearing, the accused shall have the right to appear personally or by counsel, to cross-examine witnesses against him, and to produce evidence and witnesses in his defense. After the hearing, the board may suspend or revoke the certificate of registration. The board may restore the certificate of registration to any person whose certificate of registration has been revoked. Application for the restoration of a certificate of registration shall be made in such manner, form and content as the board may prescribe. [C75, §118A.16]

Referred to in §§118A.5, 118A.19

118A.17 Attorney general to assist and witnesses. The board is entitled to the counsel and services of the attorney general or such assistance as he may so designate. The board may compel the attendance of witnesses, pay witness fees and mileage, and take testimony and affidavits and administer oaths concerning any matter within its jurisdiction. [C75, §118A.17]

Referred to in §§118A.5, 118A.19

118A.18 Unlawful practice. Any person who uses the words landscape architect or any word or any letters or figures indicating or tending to imply that the person using the same is a landscape architect, without having a valid certificate of registration as a landscape architect issued pursuant to this chapter, is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine of not more than five hundred dollars or be imprisoned for not more than three months, or be subject to both such fine and imprisonment. [C75,§118A.18]

Referred to in §§118A.5, 118A.19

118A.19 Injunction.. In addition to any other remedies, and on the petition of the board or any person, any person violating any of the provisions of sections 118A.1 to 118A.21 may be restrained and permanently enjoined from committing or continuing the violations. [C75,§118A.19]

Referred to in §118A.5

118A.20 Scope of chapter. Nothing contained in this chapter shall be construed:

1. To apply to a professional engineer duly registered under the laws of this state.
2. To apply to an architect registered under the laws of this state.
3. To prevent a registered architect or professional engineer from doing landscape planning and designing.
4. To affect or prevent the practice of land surveying by a land surveyor registered under the laws of this state.
5. To apply to the business conducted in this state by any planner, agriculturist, soil conservationist, horticulturist, tree expert, arborist, forester, nurseryman or landscape nurseryman, gardener, landscape gardener, landscape contractor, garden or lawn caretaker, tiling contractor, grader or cultivator of land, golf course designer or contractor, or similar business. However, such person shall not use the designation landscape architect or any title or device indicating or representing that such person is a landscape architect or is practicing landscape architecture unless such person is registered under the provisions of section 118A.11. [C75,§118A.20]

Referred to in §§118A.5, 118A.19

118A.21 Examination not required. Any person who within one year after the effective date of this chapter meets the application requirements of section 118A.9 shall upon application receive a certificate of registration without examination upon payment of the registration fee, provided that the practical experience in landscape architectural work need not have been under the supervision of a registered landscape architect but shall be of such a nature as in the opinion of the board to satisfactorily qualify the applicant. [C75,§118A.21]

Referred to in §§118A.5, 118A.19

CHAPTER 119

GOLD AND SILVER ALLOY

119.1 Fraudulent marking.
119.2 Tests.
119.3 "Sterling silver."
119.4 "Coin silver."
119.5 Other articles of silver.
119.6 Tests for articles.
119.7 Gold-plated or gold-filled articles.
119.8 Silver-plated articles.
119.9 Violation.
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119.1 Fraudulent marking. Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made, in whole or in part, of gold or any alloy of gold, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, any mark indicating or designed to indicate that the gold or alloy in such article is of a greater degree of fineness than the actual fineness or quality thereof, unless the actual fineness thereof, in the case of flatware or watchcases, be not less by more than three one-thousandths parts, and in case of all other articles be not less by more than one-half carat than the fineness indicated by the marks stamped, branded, engraved, or imprinted upon any part of such article, or upon any tag, card, or label attached thereto, or upon any container in which such article is enclosed according to the standards and subject to the qualifications hereinafter set forth, is guilty of a misdemeanor. [S13,§5077-b; C24, 27, 31, 35, 39, §1906; C46, 50, 54, 58, 62, 66, 71, 73, 75,§119.1]

Referred to in §119.2

119.2 Tests. In any test for the ascertainment of the fineness of the gold or alloy in any such article, according to the foregoing standards, the part of the gold or alloy taken for the test shall be such portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of said article; and in addition to the foregoing tests and standards, the actual fineness of the entire quantity of gold and its alloys contained in any article mentioned in this and section 119.1, except watchcases and flatware, including all solder or alloy of inferior metal used for brazing or uniting the parts of the article, all such gold, alloys, and solder being assayed as one piece, shall not be less than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed. [S13,§5077-b; C24, 27, 31, 35, 39,§1907; C46, 50, 54, 58, 62, 66, 71, 73, 75,§119.2]

119.3 "Sterling silver." Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having marked, stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, the words "sterling silver" or "sterling" or any colorable imitation thereof, unless nine hundred twenty-five one-thousandths of the component parts of the metal purporting to be silver of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor, but in the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standard. [S13,§5077-b1; C24, 27, 31, 35, 39,§1908; C46, 50, 54, 58, 62, 66, 71, 73, 75,§119.3]

Referred to in §119.6

119.4 "Coin silver." Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having marked, stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is enclosed, the words "coin" or "coin silver", or any colorable imitation thereof, unless nine hundred one-thousandths of the component parts of the metal appearing or purporting to be silver of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor; but in case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standards. [S13,§5077-b1; C24, 27, 31, 35, 39,§1909; C46, 50, 54, 58, 62, 66, 71. 73, 75, §119.4]

Referred to in §119.6

119.5 Other articles of silver. Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, any mark or word, other than the word "sterling" or the word "coin", indicating, or designed to indicate that the silver or alloy of silver in said article is of a greater degree of fineness than the actual fineness or quality,

unless the actual fineness of the silver or alloy of silver of which said article is composed be not less by more than four one-thousandths parts than the actual fineness indicated by the said mark or word, other than the word "sterling" or "coin", stamped, branded, engraved, or imprinted upon any part of said article, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor. [S13,§5077-b1; C24, 27, 31, 35, 39,§1910; C46, 50, 54, 58, 62, 66, 71, 73, 75,§119.5]

Referred to in §119.6
Punishment, §119.9

119.6 Tests for articles. In any test for the ascertainment of the fineness of any such article mentioned in this and sections 119.3 to 119.5, inclusive, according to the foregoing standards, the part of the article taken for the test shall be such portion as does not contain or have attached thereto any solder or alloy of inferior metal used for brazing or uniting the parts of such article, and provided further and in addition to the foregoing test and standards, that the actual fineness of the entire quantity of metal purporting to be silver contained in any article mentioned in sections 119.3 to 119.5, inclusive, including all solder or alloy of inferior fineness used for brazing or uniting the parts of any such article, all such silver, alloy, or solder being assayed as one piece, shall not be less by more than ten one-thousandths parts than the fineness indicated according to the foregoing standards, by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed. [S13,§5077-b1; C24, 27, 31, 35, 39,§1911; C46, 50, 54, 58, 62, 66, 71, 73, 75,§119.6]

119.7 Gold-plated or gold-filled articles. Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal having deposited or plated thereon, or brazed or otherwise affixed thereto, a plate, plating, covering, or sheet of gold or of any alloy of gold and which article is known in the market as "rolled gold-plate", "gold-plate", "gold-filled", or "gold-electroplate", or by any similar designation, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, any word or mark usually employed to indicate the fineness of gold, unless said word be accompanied by other words plainly indicating that such article or part thereof is made of rolled gold-plate, or gold-plate, or gold-electroplate, or is gold-filled, as the case may be, is guilty of a misdemeanor. [S13, §5077-b2; C24, 27, 31, 35, 39,§1912; C46, 50, 54, 58, 62, 66, 71, 73, 75,§119.7]

119.8 Silver-plated articles. Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal having deposited or plated thereon, or brazed or otherwise affixed thereto, a plate, plating, covering, or sheet of silver or of any alloy of silver, and which article is known in the market as "silver-plate" or "silver-electroplate", or by any similar designation, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is encased or enclosed, the word "sterling" or the word "coin" either alone or in conjunction with any other words or marks, is guilty of a misdemeanor. [S13, §5077-b3; C24, 27, 31, 35, 39,§1913; C46, 50, 54, 58, 62, 66, 71, 73, 75,§119.8]

119.9 Violation. Every person guilty of a violation of the provisions of this chapter, and every officer, manager, director, or agent of any such person directly participating in such violation or consenting thereto, shall be punished by a fine of not more than five hundred dollars or imprisonment for not more than three months, or both, at the discretion of the court; but nothing in this chapter shall apply to articles manufactured prior to June 13, 1907. [S13,§5077-b4; C24, 27, 31, 35, 39,§1914; C46, 50, 54, 58, 62, 66, 71, 73, 75,§119.9]

119.10 "Person" defined. The term "person" as used in this chapter shall embrace persons, firms, partnerships, companies, corporations, and associations. [C24, 27, 31, 35, 39,§1915; C46, 50, 54, 58, 62, 66, 71, 73, 75,§119.10]

CHAPTER 120

WATCHMAKERS AND REPAIRMEN

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120.3 Board of watchmaking examiners.
120.4 Seal.
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120.6 Applications.
120.7 Examination.
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120.13 Penalty.
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120.16 Public members.
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120.1 Certificate required. It shall be unlawful for any person, copartnership, association or corporation to engage in watchmaking as defined in this chapter without first obtaining a certificate of registration as herein provided. The certificate shall at all times be conspicuously displayed in the place of business or employment of the holder thereof. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§120.1]

120.2 Definition. The term "watchmaking", for the purposes of this chapter, includes and means the repairing, replacing, rebuilding, reconditioning, cleaning, adjusting, or regulating of the mechanical parts of watches, clocks, or time-recording instruments and estimating the cost of the repairs thereof, and the manufacturing and fitting of parts designed for use or used in watches. Such term shall not include or mean the manufacturing or repairing of watchcases, nor shall it include or mean the repairing of electric clocks where the repair is necessary or incidental to the electric mechanism contained in such clocks, but shall include the repairing of all winding mechanisms for time-keeping instruments whether they are parts of such cases or not. The term "board" as used in this chapter shall mean the Iowa board of examiners in watchmaking. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§120.2]

120.3 Board of watchmaking examiners.

1. There is established a board of watchmaking examiners which shall consist of five members who possess certificates of registration as watchmakers and two members who do not possess certificates of registration as watchmakers and who shall represent the general public. Members shall be appointed by the governor, subject to the approval of two-thirds of the members of the senate. A registered member shall be actively engaged in the practice of watchmaking and shall have been so engaged for five years preceding his appointment, the last two of which shall have been in Iowa. Professional associations or societies composed of registered watchmakers may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of professional watchmakers.

Appointments shall be for three-year terms and shall commence on July 1 of the year in which the appointment is made. Vacancies shall be filled for the unexpired term by appointment of the governor and shall be subject to senate confirmation. Members shall serve a maximum of three terms or nine years, whichever is less.

2. The board shall choose, annually, one of its members as chairman who shall have power to administer oaths and take affidavits, certifying thereto under the seal of the board. The board shall meet as often as deemed necessary by the chairman or a majority of the board and shall meet at least one time per year at the seat of government. A majority of the board shall constitute a quorum. The board may employ a secretary whose salary shall be established by the governor with the approval of the executive council pursuant to section 19A.9, subsection 2, under the pay plan for exempt positions in the executive branch of government. The secretary shall give bond in the sum of five thousand dollars. The secretary shall keep a full record of the proceedings of the board which shall be open for inspection at all reasonable times. Members of the board shall set their own per diem compensation at a rate not exceeding forty dollars per day for each day actually engaged in the discharge of their duties, and they shall be paid their actual traveling expenses within the limits of funds appropriated to the board.

3. The board shall have power to adopt rules to carry out the intent of this chapter. The secretary shall collect the fees and shall pay the same to the treasurer of the state to be deposited in the general fund of the state and funds shall be appropriated to the board to administer the provisions of this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§120.3; 66GA, ch 20,§11]

Terms of members, see 65GA, ch 1086,§200

120.4 Seal. The board shall adopt a seal which shall be used to authenticate all of its proceedings and records and licenses to be issued which seal shall be under the control of the secretary. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§120.4]

120.5 Repealed by 65GA, ch 1086,§198.

120.6 Applications. Applications for certification shall be on forms prescribed and furnished by the board and the board shall not require that the application contain a recent photograph of the applicant. An applicant shall not be ineligible for certification because of age, citizenship, sex, race, religion, marital status or national origin, although the application may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of watchmaking or watch repairing. Character references may be required, but shall not be obtained from registered watchmakers. Applications for examination shall be filed with the board at least ten days before the time set for the examination and shall be accompanied by the prescribed fees.

The applicant shall meet at least one of the following criteria:

1. Completion of at least three years' previous experience at the bench under the supervision of a watchmaker, holding a certificate under the provisions of this chapter;

2. Completion of at least one year's schooling in a recognized watchmaker's school, together with one year's experience at the bench under the provisions of this chapter;

3. Completion of at least two years' schooling in a recognized watchmaker's school; or

4. Completion in another state of three or more years' employment as a watchmaker whether or not the other state requires a watchmaker's certificate or license. The showing of service in another state shall be accompanied by proper affidavits from responsible persons in the other state. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§120.6]

120.7 Examination. An applicant to be entitled to a certificate otherwise provided in this chapter shall pass an examination before the board, which examination shall be confined to such knowledge, practical ability, and skill as is essential in the proper repairing of watches, clocks, and time-recording instruments, and shall include an examination of theoretical knowledge of watch construction and repair, and also a practical demonstration of the applicant's skill in the manipulation of watchmaker's tools. The board shall make rules for conducting examinations, and shall define the standards of workmanship and skill. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible.

The board may administer as many examinations per year as are necessary, but shall administer at least one examination per year. Any written examination may be conducted by representatives of the board. Applicants who fail the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the board concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§120.7]

120.8 Certificates of registration.

1. If the applicant successfully passes the examination, the secretary of the board shall register such fact and shall issue to him a certificate of registration.

2. A watchmaker who is not a resident of the state may, in the discretion of the board, be issued a certificate without the examination upon the payment of a fee in an amount determined by the board based upon the cost of issuing the certificate and upon filing a written application with the board, together with evidence of five years' practice as a watchmaker in some other state immediately previous to the time of the application by furnishing such evidence in connection with his skill as a watchmaker as the board may require. The board, upon presentation by an applicant of a license or certificate to practice watchmaking issued to the applicant upon examination by the duly constituted authority of another state which by its laws licenses or regulates watchmakers, and which by its laws would grant a certificate of license under similar circumstances and conditions, may in its discretion, issue a certificate of registration to said applicant without examination, upon payment of a fee in an amount determined by the board based upon the cost of issuing the certificate.

3. Persons actually engaged in watchmaking within this state prior to the effective date of this chapter shall be exempt from taking the examination herein provided, upon making application for a certificate of registration within six months after said date, accompanied by an application fee of ten dollars and the affidavit of the applicant setting forth the fact of his having actually engaged in watchmaking, together with the affidavits of two freeholders in this state setting forth that they know that the applicant has been so engaged in watchmaking and if the board shall be satisfied that such applicant is entitled thereto, it shall cause its secretary to so register such applicant and issue to such person a certificate of registration on a form to be designed by the board.

4. Every certificate of registration shall expire annually, and shall be renewed annually as determined by the board upon application by the holder thereof, without examination. Application for such renewal shall be made in writing to the department, accompanied by a renewal fee in an amount determined by the board based upon the cost of renewing the certificate, at least thirty days prior to the expiration of such certificate. Every renewal shall be displayed in connection with the original certificate. The board shall notify each certificate holder by mail of the expiration of his certificate. A person who fails to renew his certificate by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§120.8]

120.9 Apprentice watchmakers. Any person sixteen years of age or over, apprenticed to a registered watchmaker, may pursue the trade of watchmaking upon obtaining from the board a certificate of registration as an apprenticed watchmaker, which certificate shall be conspicuously displayed at all times in the place of employment of such apprentice. No apprentice certificate shall be renewed unless the application therefor shall be accompanied by a sworn statement of the employer or employers as to the length of time the applicant has

been actually employed under his certificate in the pursuit of the watchmaking trade. Apprentice watchmakers shall pay a fee in an amount determined by the board for the certificate which shall expire annually and shall pay a renewal fee annually in an amount determined by the board. A person who fails to renew his certificate by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. Any applicant for a certificate of registration as a watchmaker who fails to pass the examination provided for herein may in the discretion of the board be issued a certificate as an apprentice watchmaker. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §120.9]

120.10 Revocation. The board may revoke a certificate of registration obtained through error of the board or fraud of the applicant, or if the holder is grossly incompetent, guilty of immoral or unethical conduct, or obtained or sought anything of value by fraudulent representation in the practice of watchmaking. The holder of such certificate shall be given thirty days' notice in writing enumerating the charges and fixing a date for the hearing thereon. Such notice shall be given to the certificate holder by certified mail addressed to him at his last known address as shown by the secretary. At the hearing he shall have the opportunity to defend himself against the charges and to introduce evidence tending to disprove the charges. Judicial review of any action of the board may be sought in accordance with the terms of the Iowa administrative procedure Act. Upon the expiration of one year, and after satisfactory proof that the cause of revocation no longer exists, a person whose certificate has been revoked may be issued a certificate of registration at the discretion of the board, upon payment of the fee herein provided. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §120.10]

120.11 Duplicates. A duplicate of any certificate provided by this chapter shall be issued upon filing with the secretary a sworn statement that the original certificate has been lost or destroyed, and upon payment of a fee in an amount determined by the board for the issuance of the same. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§120.11]

120.12 Conflicting statutes. No provisions of law in conflict with the provisions of this chapter shall have any effect thereon or upon the rights of any person licensed hereunder. C46, 50, 54, 58, 62, 66, 71, 73, 75,§120.12]

120.13 Penalty. Anyone not having a certificate of registration who shall hold himself out as a watchmaker or as one qualified to do watchmaking or anyone who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than thirty days or by both such fine and imprisonment. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§120.13]

120.14 and 120.15 Reserved.

120.16 Public members. The public members of the board shall not participate in administering or grading any portion of an examination. [C75,§120.16]

120.17 Disclosure of confidential information. A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C75,§120.17]

120.18 Fees. The secretary shall collect and account for all fees and pay them to the treasurer of state who shall deposit the fees in the general fund of the state. The board shall set the fees for examination and for certification and renewal of certification. The fees for examination shall be based upon the annual cost of administering the examinations. The fees for certification and renewal shall be based upon the administrative costs of sustaining the board which shall include, but shall not be limited to, the costs for:

1. Per diem, expenses and travel for board members.
2. Office facilities, supplies and equipment.
3. Clerical assistance. [C46, 50, 54, 58, 62, 66, 71, 73,§120.5; C75,§120.18]

CHAPTER 121

SECONDHAND WATCHES

Repealed by 66GA, ch 1056§45

CHAPTER 122

ORGANIZATIONS SOLICITING PUBLIC DONATIONS

122.1 Conditions.
122.2 Fees.
122.3 Revocation of permit.
122.4 Exceptions.
122.5 Enforcement.
122.6 Violations.

122.1 Conditions. No organization, institution, or charitable association, either directly or through agents or representatives, shall solicit public donations in this state, unless it be a corporation duly incorporated under the laws of this state or authorized to do business in this state; has first obtained a permit therefor from the secretary of state; and has filed with the secretary of state a surety company bond in the sum of one thousand dollars, running to the state and conditioned that the applicant will devote all donations directly to the purpose stated and for which the donations were given, and will otherwise comply with the laws of this state and the requirements of the secretary of state in regard thereto. The secretary of state shall have full discretion as to whom he will issue permits, and shall satisfy himself before issuing any such permit that the applicant is reputable and that the purposes for which donations from the public are to be solicited are legitimate and worthy. [S13,§5077-c; C24,§1916; C27, 31, 35,§1921-b1; C39, §**1915.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§122.1]

122.2 Fees. The secretary of state shall collect a fee of one dollar for each such permit issued. Such a permit will authorize the applicant therefor, either directly or through its agents or representatives, to solicit public donations in any county, city, or township in this state, subject, however, to such restrictions as the secretary of state may prescribe. [S13, §5077-c; C24,§1917; C27, 31, 35,§1921-b2; C39, §**1915.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§122.2]

122.3 Revocation of permit. Said permit shall expire annually on the thirty-first day of December following the date of issuance, or it may be suspended or revoked at any time at the discretion of the secretary of state when in his judgment the authority vested therein is abused or the transactions consummated thereunder are not in conformity with the intent and purpose of this chapter. [C24,§1918; C27, 31, 35,§1921-b3; C39,§**1915.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§122.3]

122.4 Exceptions. Nothing in this chapter, however, shall be construed to prohibit any person as representative or agent of any local organization, church, school, or any recognized society or branch of any church or school, from publicly soliciting funds or donations from within the county in which such person resides, or such church, school, institution, organization, or charitable association is located, or within an adjoining county if such residence or location is within six miles of such adjoining county. Any such organized institution or charitable association having a permit under the provisions of this chapter shall file an annual report with the secretary of state during the month of December of each year, which report shall contain the following information:

1. The names and post-office addresses of its officers, and whether any change has been made during the year previous to making such report.

2. A detailed statement of all moneys received during the year previous to making said report.

3. A detailed statement of moneys disbursed during the year previous to making said report, and for what purpose.

At the time of filing this annual report said organization, institution, or charitable association shall pay to the secretary of state a filing fee in the sum of two dollars. [S13,§5077-c; C24, §§1919, 1920; C27, 31, 35,§1921-b4; C39,§**1915.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§122.4]

122.5 Enforcement. The secretary of state shall enforce the provisions of this chapter and may call to his aid the attorney general, the county attorney of any county, and any peace officer in the state, for the purpose of investigation and prosecution. He may call upon the extension division of the state University of Iowa and the commissioner of the department of social services for assistance. [C27, 31, 35,§1921-b5; C39,§**1915.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§122.5]

122.6 Violations. Any person who shall violate the provisions of this chapter or who shall solicit funds without a permit, or if under a permit thereafter divert the same to purposes other than for which said donations were contributed, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not to exceed thirty days. [S13, §5077-d; C24,§1921; C27, 31, 35,§**1921-b6**; C39, §**1915.6**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§122.6]

CHAPTER 122A

IOWA STANDARD TIME

122A.1 Daylight saving time.
122A.2 Effect of time change.

122A.1 Daylight saving time. The standard time in this state shall be the solar time of the ninetieth meridian of longitude west of Greenwich, commonly known as central standard time, except from two o'clock ante meridiem of Memorial Day in every year and until two o'clock ante meridiem of the day following Labor Day in the same year, standard time shall be advanced one hour. The period of time so advanced shall be known as "daylight saving time."

In the event Memorial Day should fall on a Sunday, the effective time of the one hour advance will be at two o'clock ante meridiem the preceding day. [C66, 71, 73, 75,§122A.1]

Referred to in §122A.2
Federal law provides dates for daylight saving time
See §33.1 and federal statutes

122A.2 Effect of time change. In all laws, statutes, orders, decrees, rules, and regulations relating to the time of performance of any act by any officer or department of this state, including the legislative, executive, and judicial branches of the state government, or any county, city or district thereof, relating to the time in which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of this state and in all the public schools and institutions of this state, or of any county, city or district thereof, and in all contracts and choses in action made or to be performed in this state, the time shall be the time established in section 122A.1. [C66, 71, 73, 75,§122A.2]

TITLE VI

ALCOHOLIC BEVERAGES

Referred to in §§123.37, 724.5

CHAPTER 123

IOWA BEER AND LIQUOR CONTROL ACT

Referred to in §§99B.6, 170.1, 713.24(2,e)

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DIVISION I
GENERAL PROVISIONS RELATING TO ALCOHOLIC LIQUOR AND BEER

123.1 Public policy declared. This chapter shall be cited as the "Iowa Beer and Liquor Control Act", and shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose, and it is declared to be public policy that the traffic in alcoholic liquors is so affected with a public interest that it should be regulated to the extent of prohibiting all traffic in them, except as provided in this chapter. [C35,§1921-f1; C39, §1921.001; C46, 50, 54, 58, 62, 66, 71, 73, 75,§123.1]

123.2 General prohibition. It shall be unlawful to manufacture for sale, sell, offer or keep for sale, possess, or transport alcoholic liquor or beer except upon the terms, conditions, limitations, and restrictions enumerated in this chapter. [C35,§1921-f3; C39,§1921.003; C46, 50, 54, 58, 62, 66, 71,§123.3; C73, 75,§123.2]

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

1. *"Council"* means the Iowa beer and liquor control council established by this chapter.

2. *"Department"* means the Iowa beer and liquor control department established by this chapter, or any division of such department.

3. *"Director"* means the director of the Iowa beer and liquor control department, appointed pursuant to the provisions of this chapter, or his designee.

4. *"Local authority"* means the city council of any incorporated city in this state, or the county board of supervisors of any county in this state, which is empowered by this chapter to approve or deny applications for retail beer permits and liquor control licenses; to recommend that such permits or licenses be granted and issued by the department; and to take such other actions as are reserved to them by this chapter.

5. *"Alcohol"* means the product of distillation of any fermented liquor rectified one or more times, whatever may be the origin thereof, and includes synthetic ethyl alcohol.

6. *"Spirits"* means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, but not limited to, brandy, rum, whisky, and gin.

7. *"Wine"* means any beverage containing alcohol obtained by the fermentation of the natural sugar contents of fruits or other agricultural products.

8. *"Alcoholic liquor"*, *"alcoholic beverage"* or *"intoxicating liquor"* includes the three varieties of liquor defined in subsections 5, 6, and 7, except beer as defined in subsection 9 but including all beverages made as described in

such subsection which contain more than four percent of alcohol by weight, and every liquid or solid, patented or not, containing alcohol, spirits, or wine, and susceptible of being consumed by a human being, for beverage purposes.

9. *"Beer"* means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt and hops, with or without unmalted grains or decorticated and degerminated grains containing not more than four percent of alcohol by weight.

10. *"Person"* means any individual, association, partnership, corporation, club, hotel or motel, or municipal corporation owning or operating a bona fide airport, marina, park, coliseum, auditorium, or recreational facility in or at which the sale of alcoholic liquor or beer is only an incidental part of such ownership or operation.

11. *"Person of good moral character"* means any person who meets all of the following requirements:

a. He has such financial standing and good reputation as will satisfy the director that he will comply with this chapter and all laws, ordinances, and regulations applicable to his operations under this chapter.

b. He does not possess a federal gambling stamp.

c. He is not prohibited by the provisions of section 123.40 from obtaining a liquor control license or beer permit.

d. Is a citizen of the United States and a resident of this state, or licensed to do business in this state in the case of a corporation.

e. He has not been convicted of a felony. However, if his conviction of a felony occurred more than five years before the date of the application for a license or permit, and if his rights of citizenship have been restored by the governor, the director may determine that he is a person of good moral character notwithstanding such conviction.

f. If such person is a corporation, partnership, association, club, or hotel or motel the requirements of this subsection shall apply to each of the officers, directors, and partners of such person, and to any person who directly or indirectly owns or controls ten percent or more of any class of stock of such person or has an interest of ten percent or more in the ownership or profits of such person. For the purposes of this provision, an individual and his spouse shall be regarded as one person.

12. *"Residence"* means the place where a person resides, permanently or temporarily.

13. *"Permit"* or *"license"* means an express written authorization issued by the department for the manufacture or sale, or both, of alcoholic liquor or beer.

14. *"Application"* means a formal written request for the issuance of a permit or license supported by a verified statement of facts.

15. *"Manufacture"* means to distill, rectify, ferment, brew, make, mix, concoct, or process any substance capable of producing a beverage containing more than one-half of one percent of alcohol by volume and includes blending, bottling, or the preparation for sale.

16. *"Package"* means any container or receptacle used for holding alcoholic liquor.

17. *"Distillery"*, *"winery"*, and *"brewery"* means not only the premises wherein alcohol or spirits is distilled, or rectified wine is fermented, or beer is brewed, but in addition a person owning, representing, or in charge of such premises and the operations conducted thereon, including the blending and bottling or other handling and preparation of alcoholic liquor or beer in any form.

18. *"Brewer"* means any person who manufactures beer for the purpose of sale, barter, exchange, or transportation.

19. *"Importer"* means the person transporting or ordering, authorizing, or arranging the transportation of alcoholic liquor or beer into this state whether such person is a resident of this state or not.

20. *"Import"* means the transporting or ordering or arranging the transportation of alcoholic liquor or beer into this state whether by a resident of this state or not.

21. *"State liquor store"* means a store established by the department under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

22. *"Warehouse"* means any premises or place primarily constructed or used or provided with facilities for the storage in transit or other temporary storage of perishable goods or for the conduct of normal warehousing business.

23. *"Public place"* means any place, building, or conveyance to which the public has or is permitted access.

24. The terms "in accordance with the provisions of this chapter", "pursuant to the provisions of this title", or similar terms shall include all rules and regulations of the department adopted to aid in the administration or enforcement of those provisions.

25. The prohibited *"sale"* of alcoholic liquor or beer under this chapter includes soliciting for sales, taking orders for sales, keeping or exposing for sale, delivery or other trafficking for a valuable consideration promised or obtained, and procuring or allowing procurement for any other person.

26. *"Wholesaler"* means any person, other than a brewer or bottler of beer, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in alcoholic liquor or beer. No wholesaler shall be permitted to sell for consumption upon the premises.

27. *"Retailer"* means any person who shall sell, barter, exchange, offer for sale, or have in possession with intent to sell any alcoholic

liquor for consumption on the premises where sold, or beer for consumption either on or off the premises where sold.

28. *"Air common carrier"* means a person engaged in transporting passengers for hire in interstate or foreign commerce by aircraft and operating regularly scheduled flights under a certificate of public convenience issued by the civil aeronautics board.

29. *"Club"* means any nonprofit corporation or association of individuals, which is the owner, lessee, or occupant of a permanent building or part thereof, membership in which entails the prepayment of regular dues and is not operated for a profit other than such profits as would accrue to the entire membership.

30. *"Commercial establishment"* means a place of business which is at all times equipped with sufficient tables and seats to accommodate twenty-five persons at one time, and the licensed premises of which conform to the standards and specifications of the department.

31. *"Licensed premises"* or *"premises"* means all rooms or enclosures where alcoholic beverages or beer are sold or consumed under authority of a liquor control license or beer permit.

32. *"Hotel"* or *"motel"* means a premise licensed by the state department of agriculture and regularly or seasonally kept open in a bona fide manner for the lodging of transient guests, and with twenty or more sleeping rooms.

33. *"Legal age"* means eighteen years of age or more.

34. *"Retail beer permit"* means a class "B" or class "C" beer permit issued under the provisions of this chapter. [C35,§§1921-f5, 1921-f97; C39,§§**1921.005, 1921.096**; C46, 50, 54, 58, 62, 66, 71,§§123.5, 124.2; C73, 75,§123.3]

123.4 Department created—place of business. There is hereby created an Iowa beer and liquor control department to administer and enforce the laws of this state concerning beer and alcoholic liquor. The principal place of business of the department shall be in the city of Des Moines, and suitable quarters or offices shall be provided the department in such city by the authority designated by law to provide such quarters or offices to state departments or agencies. [C35,§1921-f15; C39, §**1921.015**; C46, 50, 54, 58, 62, 66, 71,§**123.15**; C73, 75,§123.4]

123.5 Council created. There is hereby created within the department an Iowa beer and liquor control council, composed of five members, not more than three of whom shall belong to the same political party. The council shall be held strictly accountable for the enforcement of the provisions of this chapter. [C35,§1921-f6; C39,§**1921.006**; C46, 50, 54, 58, 62, 66, 71,§123.6; C73, 75,§123.5]

123.6 Appointment—term—qualifications — compensation. Appointments shall be for five years and shall be made by the governor, subject to confirmation by two-thirds of the senate, within sixty days after the convening of the general assembly each year for the member whose term is to expire on the following July 1. Members of the council shall be chosen on the basis of managerial ability and experience as business executives. Members may be reappointed for one additional term. Each member appointed shall receive full compensation for their services of two thousand five hundred dollars per annum in addition to reasonable and necessary expenses while attending meetings. [C35,§§1921-f7, 1921-f10; C39,§§**1921.007, 1921.010**; C46, 50, 54, 58, 62, 66, 71,§§132.7, 123.10; C73, 75,§123.6]

Initial terms see 64GA, ch 1039,§2

123.7 Vacancies. Any vacancy on said council which may occur when the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days following the organization of the next session of the general assembly. Prior to the expiration of said period of thirty days, the governor shall transmit to the senate for its approval an appointment for the unexpired portion of the regular term. Any vacancy occurring when the general assembly is in session shall be filled in the same manner as regular appointments are made, and before the end of such session, and for the unexpired portion of the regular term. [C35,§1921-f8; C39,§**1921.008**; C46, 50, 54, 58, 62, 66, 71,§123.8; C73, 75,§123.7]

123.8 Bonds. Each council member shall post a bond, at the expense of the state, in such amount and with such sureties as the executive council shall approve to guarantee to the state the proper handling and accounting of such moneys and merchandise and other properties as may be required in the administration of this chapter. It shall be the duty of the director to secure from all employees of the department holding positions of trust a bond with such sureties as the beer and liquor control council shall approve adequate to guarantee to the state the proper handling and accounting of all moneys, merchandise, and other properties. [C35,§1921-f9; C39,§**1921.009**; C46, 50, 54, 58, 62, 66, 71,§123.9; C73, 75,§123.8]

123.9 Council meetings. The council shall meet on July 1 of each year for the purpose of selecting one of its members as chairman, which member shall serve in such capacity for the succeeding year. The council shall otherwise meet at the call of the chairman or when any three members file with the chairman a written request for a meeting. Written notice of the time and place of each meeting shall be given to each member of the council. All council meetings shall be held within the state. A majority of the council members shall constitute a quorum. [C35,§1921-f10; C39, §**1921.010**; C46, 50, 54, 58, 62, 66, 71,§123.10; C73, 75,§123.9]

123.10 Director appointed. The council shall appoint, with the approval of two-thirds of the senate, a director of beer and liquor control, who shall in no event be a member of the council, at a salary of not more than twenty-five thousand dollars per annum. Subsequent changes in such salary may be made by the general asembly. The director shall be qualified to perform his duties by managerial ability and experience as a business executive; shall post a bond paid from the general fund of the state in an amount to be determined by the council to insure proper discharge of his duties; and shall act in the name of and serve at the pleasure of the council.

The director shall devote full time to the discharge of his duties. He shall not hold any other elective or appointive office under the laws of this state, the United States, or any other state or territory. He shall not accept or solicit, directly or indirectly, contributions or anything of value in behalf of himself, any political party, or any person seeking an elective or appointive office nor use his official position to advance the candidacy of anyone seeking an elective or appointive office. The director, his spouse, and immediate family shall not have any interest in any distillery, winery, brewery, importer, permittee or licensee or any business which is subject to license or regulation pursuant to this chapter. [C73, 75,§123.10]

123.11 Expenses. Members of the council, the director, and other employees of the department shall be allowed their actual and necessary expenses while traveling on business of the department outside of their place of residence, however, an itemized account of such expenses shall be verified by the claimant and approved by the director. If such account is paid, the same shall be filed with the department and be and remain a part of its permanent records. All expenses and salaries of council members, the director, and other employees shall be paid from appropriations for such purposes and the department shall be subject to the budget requirements of chapter 8. [C35,§1921-f11; C39,**§1921.011**; C46, 50, 64, 58, 62, 66, 71, 73, 75,§123.11]

123.12 Removal. Any council member shall be removed for any of the causes and in the manner provided by chapter 66 relating to removal from office; such removal shall not be in lieu of any other punishment that may be prescribed by the laws of this state. [C35, §1921-f12; C39,**§1921.012**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§123.12]

123.13 Exemption from suit. No council member or officer or employee of the department shall be personally liable for damages sustained by any person due to the act of such member, officer, or employee performed in the reasonable discharge of his duties as enumerated in this chapter. [C35,§1921-f13; C39,**§1921.013**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§123.13]

123.14 Beer and liquor law enforcement.

1. The division of beer and liquor law enforcement of the department of public safety, created pursuant to section 80.25, shall be the primary beer and liquor law enforcement authority for this state.

2. The other law enforcement divisions of the department of public safety, the county attorney, the county sheriff and his deputies, and the police department of every city, including the day and night marshal of any city, shall be supplementary aids to the division of beer and liquor law enforcement. Any neglect, misfeasance, or malfeasance shown by any peace officer included in this section shall be sufficient cause for his removal as provided by law. Nothing in this section shall be construed to affect the duties and responsibilities of any county attorney or peace officer with respect to law enforcement.

3. The division of beer and liquor law enforcement shall be allowed full access to all records, reports, audits, tax reports and all other documents and papers in the department pertaining to liquor licensees and beer permittees and their business. [C35,§1921-f94; C39, **§1921.093**; C46, 50, 54, 58, 62, 66, 71,§123.93; C73, 75,§123.14]

123.15 Hearing board established. There is hereby created a three-member hearing board for the purpose of conducting departmental hearings relating to controversies concerning the issuance, suspension, or revocation of special liquor permits, liquor control licenses, and beer permits authorized under this chapter. One member shall be appointed by the council from its membership, which member may be periodically replaced by appointment of another council member; one member shall be the attorney general or his designee; and one member shall be the commissioner of public safety or his designee. The hearing board shall establish and adopt rules and procedures for conducting departmental hearings under this chapter. [C73, 75,§123.15]

Referred to in §123.32

123.16 Functions of council and director.

1. The council shall, in addition to the duties specifically enumerated in this chapter, act as a department policy-making body and serve in an advisory capacity to the director. The director shall be responsible for supervising the daily operations of the department and shall execute the policies of the department as determined by the council.

2. The council may review and affirm, reverse, or amend all actions of the director, including but not limited to the following instances:

a. Purchases of alcoholic liquor for resale by the department.

b. The granting or refusing of liquor licenses and permits, and beer permits, and the suspension or revocation of such licenses and permits.

c. The establishment of retail prices of alcoholic liquor.

d. The establishment or discontinuance of state liquor stores. [C73, 75,§123.16]

123.17 Prohibition on council members and employees. Council members, officers, and employees of the department shall not, while holding such office or position, hold any other office or position under the laws of this state, or any other state or territory or of the United States; nor engage in any occupation, business, endeavor, or activity which would or does conflict with his duties under this chapter; nor, directly or indirectly, use his office or employment to influence, persuade, or induce any other officer, employee, or person to adopt his political views or to favor any particular candidate for an elective or appointive public office; nor, directly or indirectly, solicit or accept, in any manner or way, any money or other thing of value for any person seeking an elective or appointive public office, or to any political party or any group of persons seeking to become a political party. Any officer or employee violating this section or any other provisions of this chapter shall, in addition to any other penalties provided by law, be subject to suspension or discharge from his employment. Any council member shall, in addition to any other penalties provided by law, be subject to removal from office as provided by law. [C35, §1921-f14; C39,§1921.014; C46, 50, 54, 58, 62, 66, 71,§123.14; C73, 75,§123.17]

123.18 Favors from licensee or permittee. No person responsible for the administration or enforcement of this chapter shall accept or solicit donations, gratuities, political advertising, gifts, or other favors, directly or indirectly, from any liquor control licensee or beer permittee. A violation of this section shall subject the violator to the general penalties provided by this chapter. [C35,§1921-f27; C39, §1921.027; C46, 50, 54, 58, 62, 66, 71,§123.27; C73, 75,§123.18]

123.19 Distiller's certificate of compliance.

1. Any manufacturer, distiller, vintner, or importer of alcoholic beverages shipping, selling, or having alcoholic beverages brought into this state for resale by the state shall, as a condition precedent to the privilege of so trafficking in alcoholic liquors in this state, annually make application for and shall hold a distiller's certificate of compliance which shall be issued by the director for such purpose. No brand of alcoholic liquor shall be sold by the department in this state unless the manufacturer, distiller, vintner, importer, and all other persons participating in the distribution of such brand in this state have obtained such certificate. Such certificate of compliance shall expire at the end of one year from the date of issuance and shall be renewed for a like period upon application to the director unless otherwise suspended or revoked for cause. Each application for a certificate of compliance or renewal thereof shall be made in such manner and upon such forms as shall be prescribed by the director and shall be accompanied by a fee of fifty dollars payable to the department. However, the provisions of this subsection need not apply to a manufacturer, distiller, vintner, or importer who ships or sells in this state no more than eleven gallons or its case equivalent during any fiscal year as a result of "special orders" which might be placed, as defined and allowed by departmental rules adopted under this chapter.

2. At the time of applying for a certificate of compliance, each applicant shall file with the department the name and address of its authorized agent for service of process which shall remain effective until changed for another and a list of names and addresses of all representatives, employees, or attorneys whom they may have appointed in the state of Iowa to represent them for any purpose. The listing of such representatives, employees, or attorneys shall be amended from time to time by the certificate holder as necessary to keep such listing current with the department.

3. The director and the attorney general are authorized to require any certificate holder or person listed as his representative, employee, or attorney to disclose such financial and other records and transactions as may be considered relevant in discovering violations of this chapter or of rules and regulations of the department or of any other provision of law by any person.

4. Any violation of the requirements of this section, except subsection 3, shall subject the violator to the general penalties provided in this chapter and in addition thereto shall be grounds for suspension or revocation of the certificate of compliance, after notice and hearing before the department hearing board. Willful failure to comply with requirements which may be imposed under subsection 3 shall be grounds for suspension or revocation of the certificate of compliance only. Decisions of the hearing board concerning such suspension or revocation shall be binding upon all parties.

5. This section shall not require the listing of those persons who are employed on premises where alcoholic beverages are manufactured, processed, bottled or packaged in Iowa or to persons who are thereafter engaged in the transporting of such alcoholic beverages to the department.

6. The attorney general may also proceed pursuant to the provisions of section 713.24 in order to gain compliance with subsection 3 of this section and may obtain an injunction prohibiting any further violations of this chapter or other provisions of law. Any violation of that injunction shall be punished as contempt of court pursuant to chapter 665 except that the maximum fine that may be imposed shall not exceed fifty thousand dollars. [C73, 75, §123.19]

123.20 Powers. The director, in executing departmental functions, shall have the following duties and powers:

1. To purchase alcoholic liquors for resale by the department in the manner set forth in this chapter.

2. To establish, maintain, or discontinue state liquor stores and to determine the cities in which such stores shall be located. However, no liquor store shall be established within three hundred feet of any public or private educational institution, except that local authorities may by ordinance reduce such minimum distance.

3. To rent, lease, or equip any building or any land necessary to carry out the provisions of this chapter.

4. To lease all plants and lease or buy equipment necessary to carry out the provisions of this chapter.

5. To appoint vendors, clerks, agents, or other employees required for carrying out the provisions of this chapter; to dismiss such employees for cause; to assign such employees to such divisions as may be created by the director within the department; and to designate their title, duties, and powers. All employees of the department, except occasional or part-time employees and the director, shall be subject to the provisions of chapter 19A.

6. To grant and issue beer permits, special permits, liquor control licenses, and other licenses; and to suspend or revoke all such permits and licenses for cause under this chapter.

7. To license, inspect, and control the manufacture of beer and alcoholic liquors and regulate the entire beer and liquor industry in the state.

8. To accept intoxicating liquors ordered delivered to the Iowa beer and liquor control department pursuant to section 751.31, subsections 1 and 2, and offer such intoxicating liquors for sale through the state liquor stores, unless the director determines that such intoxicating liquors may be adulterated or contaminated. If the director determines that such intoxicating liquors may be adulterated or contaminated he shall order their destruction. [C35,§1921-f16; C39,§**1921.016**; C46, 50, 54, 58, 62, 66, 71,§123.16; C73, 75,§123.20]

123.21 Rules. The director may, with the approval of the council and subject to the provisions of chapter 17A, make such rules as are necessary to carry out the provisions of this chapter. Such authority shall extend to but not be limited to the following:

1. Prescribing the duties of officers, vendors, clerks, agents, or other employees of the department and regulating their conduct while in the discharge of their duties.

2. Regulating the management, equipment, and merchandise of state liquor stores and warehouses in and from which alcoholic liquors are transported, kept, or sold and prescribing the books and records to be kept therein.

3. Regulating the purchase of alcoholic liquor generally and the furnishing of such liquor to state liquor stores established under this chapter, determining the classes, varieties, and brands of alcoholic liquors to be kept in state warehouses or for sale at any state liquor store.

4. Prescribing forms or information blanks to be used for the purposes of this chapter. The department shall prepare, print, and furnish all forms and information blanks required under this chapter.

5. Prescribing the nature and character of evidence which shall be required to establish legal age.

6. Providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each brand, class, or variety of liquor kept for sale under this chapter. Provide for the filing or posting of prices between class "A" beer permit holders and retailers as provided in this chapter, and establish or control such prices as may be based on minimum standards of fill, quantity, or alcoholic content for each individual sale of intoxicating liquor or beer as deemed necessary for retail or consumer protection.

7. Prescribing the official seals, labels, or other markings which shall be attached to or stamped on packages of alcoholic liquor sold under this chapter.

8. Prescribing, subject to this chapter, the days and hours during which state liquor stores shall be kept open for the purpose of the sale of alcoholic liquors.

9. Prescribing the place and the manner in which alcoholic liquor may be lawfully kept or stored by the licensed manufacturer under this chapter.

10. Prescribing the time, manner, means, and method by which distillers, vintners, vendors, or others authorized under this chapter may deliver or transport alcoholic liquors and prescribing the time, manner, means, and methods by which alcoholic liquor may be lawfully conveyed, carried, or transported.

11. Prescribing, subject to the provisions of this chapter, the conditions and qualifications necessary for the obtaining of licenses and permits and the books and records to be kept and the remittances to be made by those holding licenses and permits and providing for the inspection of the records of all such licensees and permittees. [C35,§1921-f17; C39,§**1921.017**; C46, 50, 54, 58, 62, 66, 71,§123.17; C73, 75,§123.21]

123.22 State monopoly. The department shall have the sole and exclusive right of importation, into the state, of all forms of alcoholic liquor, except as otherwise provided in this chapter, and no person shall so import any such alcoholic liquor, except that an individual of legal age may import and have in his

possession an amount of alcoholic liquor not exceeding one quart or, in the case of alcoholic liquor personally obtained outside the United States, one gallon for personal consumption only in a private home or other private accommodation. No distillery shall sell any alcoholic liquor within the state to any person but only to the department, except as otherwise provided in this chapter. It is the intent of this section to vest in the department exclusive control within the state both as purchaser and vendor of all alcoholic liquor sold by distilleries within the state or imported therein, except beer, and except as otherwise provided in this chapter.

No person, by himself or through another acting for him shall directly or indirectly, or upon any pretense, or by any device, manufacture, sell, exchange, barter, dispense, give in consideration of the purchase of any property or of any services or in evasion of this chapter, or keep for sale, or have possession of any intoxicating liquor, except as provided in this chapter; or own, keep, or be in any way concerned, engaged, or employed in owning or keeping, any intoxicating liquor with intent to violate any provision of this chapter, or authorize or permit the same to be done; or manufacture, own, sell, or have possession of any manufactured or compounded article, mixture or substance, not in a liquid form, and containing alcohol which may be converted into a beverage by a process of pressing or straining the alcohol therefrom, or any instrument intended for use and capable of being used in the manufacture of intoxicating liquor; or own or have possession of any material used exclusively in the manufacture of intoxicating liquor; or use or have possession of any material with intent to use it in the manufacture of intoxicating liquors; however, alcohol may be manufactured for industrial and nonbeverage purposes by persons who have qualified for that purpose as provided by the laws of the United States and the laws of this state. Such alcohol, so manufactured, may be denatured, transported, used, possessed, sold, and bartered and dispensed, subject to the limitations, prohibitions and restrictions imposed by the laws of the United States and this state. Any person may manufacture, sell, or transport ingredients and devices other than alcohol for the making of home-made wine. [C51, §§924–928; R60,§§1559, 1563, 1583, 1587; C73, §§1523, 1540–1542, 1555; C97,§2382; SS15,§2382; C24, 27, 31,§1924; C35,§§1921-f54, 1924; C39, §§**1921.054**, 1924; C46, 50, 54, 58, 62, 66, 71, §§123.54, 125.3; C73, 75,§123.22]

Referred to in §§123.26, 123.28

123.23 State liquor stores. The department shall establish and maintain in any city which the director may deem advisable, a state liquor store or stores for storage and sale of alcoholic liquor in accordance with the provisions of this chapter. The department may, from time to time, as determined by the director, fix the prices of the different classes, varieties, or brands of alcoholic liquor to be sold. [C35, §1921-f18; C39,§**1921.018**; C46, 50, 54, 58, 62, 66, 71,§123.18; C73, 75,§123.23]

123.24 Vendors—cash sales. In the conduct and management of state liquor stores the director is empowered to employ a person who shall be known as a "vendor" who shall, subject to the directions of the director, observe all provisions of this chapter and the rules and regulations of the department. No vendor of any state liquor store shall sell alcoholic liquor to any person except for cash. [C35,§§1921-f20, 1921-f41; C39,§§**1921.020, 1921.041**; C46, 50, 54, 58, 62, 66, 71,§§123.20, 123.41; C73, 75,§123.24]

123.25 Consumption on premises. No vendor, officer, clerk, agent, or employee of the department employed in any state liquor store or state-owned warehouse shall allow any alcoholic liquor to be consumed on such premises, nor shall any person consume any liquor on such premises. [C35,§1921-f23; C39,§**1921.023**; C46, 50, 54, 58, 62, 66, 71,§123.23; C73, 75,§123.25]

123.26 Restrictions on sales—seals—labeling. No alcoholic liquor shall be sold by the department to any purchaser except in a sealed container with such identifying markers as shall be prescribed by the director and affixed on the premises of a state warehouse or store and no such container shall be opened upon the premises of any state warehouse or store. Possession of alcoholic liquors which do not carry the prescribed identifying markers shall be a violation of this chapter except as provided in section 123.22. [C35,§1921-f24; C39, §**1921.024**; C46, 50, 54, 58, 62, 66, 71,§123.24; C73, 75,§123.26]

Referred to in §123.28

123.27 Sales prohibited. It shall be unlawful to transact the sale or delivery of any liquor in, on, or from the premises of any state liquor store or warehouse:

1. After the closing hour as established by the director.
2. On any legal holiday.
3. On any Sunday.
4. During such other periods or days as may be designated by the director. [C35,§1921-f25; C39,§**1921.025**; C46, 50, 54, 58, 62, 66, 71,§123.25; C73, 75,§123.27]

123.28 Transportation permitted. It shall be lawful to transport, carry, or convey alcoholic liquors from the place of purchase by the department to any state warehouse, store, or depot established by the department or from one such place to another and, when so permitted by this chapter, it shall be lawful for any common carrier or other person to transport, carry, or convey alcoholic liquor sold by a vendor from a state warehouse, store, depot or point of purchase by the state to any place to which such liquor may be lawfully delivered under this chapter. No common carrier or other person shall break or open or allow to

be broken or opened any container or package containing alcoholic liquor or use or drink or allow to be used or drunk any alcoholic liquor while it is being transported or conveyed, but this section shall not prohibit a private person from transporting individual bottles or containers of alcoholic liquor exempted pursuant to section 123.22 and individual bottles or containers bearing the identifying mark prescribed in section 123.26 which have been opened previous to the commencement of such transportation. Nothing in this section shall affect the right of any special permit or liquor control license holder to purchase, possess, or transport alcoholic liquors subject to the provisions of this chapter. [C35,§1921-f26; C39, §1921.026; C46, 50, 54, 58, 62, 66, 71,§123.26; C73, 75,§123.28]

123.29 Special permits. A special permit for the purchase, possession, or transportation of alcoholic liquors for the purposes specified in those permits may be issued by the director upon application being made to the department in the form and manner prescribed by the director, accompanied by payment of the prescribed fee, and upon the director being satisfied that the applicant has complied with departmental rules established for the issuance of such permit. Such special permits may be issued to the following persons and for the following purposes:

1. To a physician, pharmacist, dentist, or veterinarian, entitling the holder to purchase and import alcohol from distillers and wholesalers or from the state liquor stores for use medicinally and in compounding prescriptions and to sell the same for use medicinally in the compounded prescription only upon the prescription of a licensed physician or surgeon, or to use such alcohol in manufacturing or compounding lotions, compounds, and like commodities not susceptible for beverage purposes, and to sell the same for public use.

2. To a veterans home, sanitarium, hospital, college, or home for the aged which will entitle the holder to purchase and import alcohol from distillers and wholesalers or from the state liquor stores for use for medicinal, laboratory, and scientific purposes only.

3. To any minister, priest, or rabbi of any church or denomination which uses vinous liquor in its sacramental ceremonies. The holder of such a permit may purchase, have shipped by interstate or intrastate common carrier, and possess vinous liquor for sacramental purposes.

4. To manufacturers of patent and proprietary medicines, tinctures, food products, extracts, toilet articles and perfumes, and like commodities, none of which are susceptible of use as a beverage, but which contain alcoholic liquor as one of their ingredients. Any individual, or member of a firm, or officer of a corporation, desiring such permit shall file an affidavit with the department stating the following facts:

a. The name, place of business, and postoffice address of the person desiring such permit.

b. The business in which said person is engaged and the articles manufactured in such business which require in their manufacture the use of alcoholic liquors.

c. That neither the applicant, if he is an individual, nor any members of the firm or officers of the corporation, if the applicant is not an individual, has been convicted of any violation of the laws of this state with reference to the sale of alcoholic liquors or beer within the three years preceding the date of the affidavit.

If the director is satisfied that the facts stated in such affidavit are true and that the applicant is a person fit and proper to be entrusted with the permit applied for, it shall be issued upon the filing by the applicant of a bond in the penal sum of two thousand dollars, with approved sureties, conditioned that the applicant will faithfully observe the provisions of this chapter.

Such special permit shall entitle the holder to import into the state, or purchase from licensed distillers within the state or from the department, alcoholic liquors for use in manufacture in accordance with the terms of said permit, and to sell the product of such manufacture.

It shall be the duty of every manufacturer holding a special permit under the provisions of this subsection, whenever such manufacturer purchases alcoholic liquor from any source other than the department, to immediately file with the department a report of the receipt of such liquor in accordance with rules adopted by the director.

Every person holding a special liquor permit under this chapter shall fill out in duplicate, on forms furnished by the department, the amount and kinds of liquors purchased, and shall retain one copy in his establishment for a period of two years. The vendor of the state liquor store at which the purchase was made shall monthly forward the other copy to the department.

Nothing in this section shall prohibit the legitimate sale of patent and proprietary medicines, tinctures, food products, extracts, toilet articles and perfumes, and like commodities, none of which are susceptible of use as a beverage but which contain alcoholic liquor as one of their ingredients, through the ordinary retail or wholesale channels. [C24, 27, 31,§2171; C35,§§1921-f27, 2171; C39,§§1921.027, 2171; C46, 50, 54, 58, 62, 66, 71,§§123.27, 134.1; C73, 75, §123.29; 66GA, ch 137,§5]

Referred to in §123.36

123.30 Liquor control licenses.

1. Upon posting bond in the penal sum of five thousand dollars with surety and conditions prescribed by the director, which bond shall be conditioned upon the payment of all taxes payable to the state under the provisions of this chapter and compliance with all

provisions of this chapter, a liquor control license may be issued to any person who, or whose officers, in the case of a club or corporation, or whose partners, in the case of a partnership, is of good moral character as defined by this chapter.

As a further condition for issuance of a liquor control license, the applicant must give consent to members of the fire, police and health departments and the building inspector of cities; the county sheriff, deputy sheriff, and state agents, and any official county health officer to enter upon the premises without a warrant to inspect for violations of the provisions of this chapter or ordinances and regulations that cities and boards of supervisors may adopt.

2. No liquor control license shall be issued for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations. Nor shall any licensee have or maintain any interior access to residential or sleeping quarters unless permission is granted by the director in the form of a living quarters permit.

3. Liquor control licenses issued under this chapter shall be of the following classes:

a. Class "A". A class "A" liquor control license may be issued to a club and shall authorize the holder to purchase alcoholic liquors from the department only, and to sell such liquors, and beer, to bona fide members and their guests by the individual drink for consumption on the premises only.

b. Class "B". A class "B" liquor control license may be issued to a hotel or motel and shall authorize the holder to purchase alcoholic liquors from the department only, and to sell such liquors, and beer, to patrons by the individual drink for consumption on the premises only, however, beer may also be sold for consumption off the premises. Each such license shall be effective throughout the premises described in the application.

c. Class "C". A class "C" liquor control license may be issued to a commercial establishment but must be issued in the name of the individual or individuals who actually own the entire business and shall authorize the holder or holders to purchase alcoholic liquors from the department only, and to sell such liquors, and beer, to patrons by the individual drink for consumption on the premises only, however, beer may also be sold for consumption off the premises.

d. Class "D". A class "D" liquor control license may be issued to a railway corporation, to an air common carrier, and to passenger-carrying boats or ships for hire with a capacity of twenty-five persons or more operating in inland or boundary waters, and shall authorize the holder to sell or furnish alcoholic beverages and beer to passengers for consumption only on trains, watercraft as described herein, or aircraft, respectively. Each such license shall be valid throughout the state as a state license. Only one such license shall be required for all trains, watercraft, or aircraft operated in the state by the licensee. [C35, §1921-f27; C39,§1921.027; C46, 50, 54, 58, 62, 66, 71,§123.27; C73, 75,§123.30]

Referred to in §123.36

123.31 Application contents. Verified applications for the original issuance or the renewal of liquor control licenses shall be filed at such time and in such number of copies as the director shall prescribe, on forms prescribed by the director, and, except as provided in section 123.35, shall set forth under oath the following information:

a. The name and address of the applicant.

b. The precise location of the premises for which a license is sought.

c. The names and addresses of all persons, in the case of a corporation, the officers, directors, and persons owning or controlling ten percent or more of the capital stock thereof, having a financial interest, by way of loan, ownership, or otherwise, in the business.

d. When required by the director, a sketch or drawing of the premises proposed to be licensed, in such form and containing such information as the director may require.

e. A statement whether any person specified in paragraph *"c"* of this subsection has ever been convicted of any offense against the laws of the United States, or any state or territory thereof, or any political subdivision of any such state or territory.

f. A statement whether the applicant or any person specified in paragraph *"c"* of this subsection possesses a federal gambling stamp.

g. Such other information as the director shall require. [C35,§1921-f27; C39,§1921.027; C46, 50, 54, 58, 62, 66, 71,§123.27; C73, 75,§123.31]

123.32 Action by authorities on applications for liquor control licenses and beer permits.

1. *Filing of application.* An application for a class "A", class "B", or class "C" liquor control license, and for a retail beer permit as provided in sections 123.128 and 123.129, accompanied by the required fee and bond, shall be filed with the appropriate city council if the premises for which the license or permit is sought are located within the corporate limits of a city, or with the board of supervisors if the premises for which the license or permit is sought are located outside the corporate limits of a city. An application for a class "D" liquor control license and for a class "A" beer permit, accompanied by the required fee and bond, shall be filed with the department, which shall proceed in the same manner as in the case of an application approved by local authorities.

2. *Action by local authorities.* The local authority shall either approve or disapprove the issuance of a liquor control license or retail beer permit, and shall endorse such approval or disapproval on the application and forward same along with the required fee and bond to the department. Upon the initial issuance of a liquor control license or retail beer permit, the fact that the local authority determines that no liquor control license or retail beer permit shall be issued shall not be held to be arbi-

trary, capricious, or without reasonable cause. There shall be no limit upon the number of liquor control licenses or retail beer permits which may be approved for issuance by local authorities.

3. *Action by director.* Upon receipt of an application having been disapproved by the local authority, the director shall disapprove the application, so notify the applicant by registered mail, and return the fee and bond to the applicant. Upon receipt of an application having been approved by the local authority, the director shall make such investigation as he deems necessary and may require the applicant to appear before him and be examined under oath regarding any matters pertinent to the application, in which case a record shall be made of all testimony or evidence and the same shall become a part of the application. If the application is approved by the director, the license or permit applied for shall be issued. If the application is disapproved by the director, the applicant and the appropriate local authority shall be so notified by restricted certified mail, and the fee and bond returned to the applicant.

4. *Appeal to hearing board.* Any applicant for a liquor control license or beer permit may appeal to the department hearing board, established pursuant to section 123.15, from the director's disapproval of an application for a license or permit. If, upon such appeal the hearing board shall determine that the local authority acted arbitrarily, capriciously, or without reasonable cause in disapproving the application, or that, where the local authority approved the application, the director's own disapproval should be reversed, it shall order issuance of a license or permit. The same right of appeal to the hearing board shall be afforded a liquor control licensee or beer permittee whose license or permit has been suspended or revoked under this chapter, and the hearing board shall reduce the period of suspension or order reinstatement of such license or permit for good cause shown.

5. *Judicial review.* Judicial review of the action of the department hearing board may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county wherein the premises covered by the application are situated.

Where the hearing board on an appeal by an applicant finds that the local authority acted arbitrarily, capriciously, or without reasonable cause in disapproving an application and the director issues a license or permit, the local authority may seek judicial review of such decision according to the terms of the Iowa administrative procedure Act within thirty days. [C35,§1921-f27; C39,§1921.027; C46, 50, 54, 58, 62, 66, 71,§123.27; C73, 75,§123.32]

123.33 Records. Every holder of a liquor control license shall keep a daily record of the gross receipts of his business. Each bottle emptied, except beer bottles, shall be broken immediately by the licensee or his agent into a container provided for that purpose. The records herein required and the premises of the licensee shall be open to agents of the division of beer and liquor law enforcement of the department of public safety during normal business hours of the licensee. [C35,§1921-f22; C39,§1921.022; C46, 50, 54, 58, 62, 66, 71,§123.22; C73, 75,§123.33]

123.34 Expiration—seasonal license or permit. All liquor control licenses and beer permits, unless sooner suspended or revoked, shall expire one year from date of issuance. The director shall cause sixty days' notice of such expiration to be given to each licensee or permittee in writing. However, the director may issue six-month or eight-month seasonal licenses or class "B" beer permits for a proportionate part of the license or permit fee. No refund shall be made for seasonal licenses or permits. No seasonal license or permit shall be renewed except after a period of two months. [C35,§§1921-f27, 1921-f100; C39, §§1921.027, 1921.100; C46, 50, 54, 58, 62, 66, 71, §§123.27, 124.6; C73, 75,§123.34]

Referred to in §123.36

123.35 Simplified renewal procedure. The director shall prescribe simplified application forms for the renewal of liquor control licenses and beer permits issued under the provisions of this chapter, which may be filed by licensees and permittees in lieu of a detailed renewal application form when qualifications and qualification information have not changed since the original issuance of the license or permit. Such simplified form shall require the licensee or permittee to verify under oath that the information contained in the original application remains current, and that no reason exists for the department's refusal to renew the license or permit as originally issued.

Such application, accompanied by the required fee and bond, shall be filed in the same manner as is provided for filing the initial application. [C73, 75,§123.35]

Referred to in §123.31

123.36 Liquor fees—Sunday sales—local option. The following fees shall be paid to the department annually for special liquor permits and liquor control licenses issued under sections 123.29 and 123.30 respectively:

1. Special liquor permits, the sum of five dollars.

2. Class "A" liquor control licenses, the sum of six hundred dollars, except that for class "A" licenses in cities of less than two thousand population, and for clubs of less than two hundred fifty members, the license fee shall be four hundred dollars; however, the fee shall be two hundred dollars for any club which is a post, branch, or chapter of a veterans organization chartered by the Congress of the United States, if such club does not sell or permit the consumption of alcoholic beverages or beer on

the premises more than one day in any week, and if the application for a license states that such club does not and will not sell or permit the consumption of alcoholic beverages or beer on the premises more than one day in any week.

3. Class "B" liquor control licenses, the sum as follows:

a. Hotels or motels located within the corporate limits of cities of ten thousand population and over, one thousand three hundred dollars.

b. Hotels and motels located within the corporate limits of cities of over three thousand and less than ten thousand population, one thousand fifty dollars.

c. Hotels and motels located within the corporate limits of cities of three thousand population and less, eight hundred dollars.

d. Hotels and motels located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits is the nearest, the license fee which is the largest shall prevail.

4. Class "C" liquor control licenses, the sum as follows:

a. Commercial establishments located within the corporate limits of cities of ten thousand population and over, one thousand three hundred dollars.

b. Commercial establishments located within the corporate limits of cities of over fifteen hundred and less than ten thousand population, nine hundred fifty dollars.

c. Commercial establishments located within the corporate limits of cities of fifteen hundred population or less, six hundred dollars.

d. Commercial establishments located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits are the nearest, the license fee which is the larger shall prevail.

5. Class "D" liquor control licenses, the following sums:

a. For watercraft, one hundred fifty dollars.

b. For trains, five hundred dollars.

c. For air common carriers, each company shall pay a base annual fee of five hundred dollars and, in addition, shall quarterly remit to the department an amount equal to seven dollars for each gallon of alcoholic liquor sold, given away, or dispensed in or over this state during the preceding calendar quarter. The class "D" license fee and tax for air common carriers shall be in lieu of any other fee or tax collected from such carriers in this state for the possession and sale of alcoholic liquor and beer.

6. Any club, hotel, motel, or commercial establishment holding a liquor control license for whom the sale of goods and services other than alcoholic liquor or beer constitutes fifty percent or more of the gross receipts from the licensed premises, subject to the provisions of section 123.49, subsection 2, paragraph "*b*", may sell and dispense alcoholic liquor and beer to patrons on Sunday for consumption on the premises only. For this privilege the liquor control license fee of the applicant shall be increased by twenty percent of the regular fee prescribed for the license pursuant to this section, and the privilege shall be noted on the liquor control license. The department shall prescribe the nature and the character of the evidence which shall be required of the applicant under this subsection.

7. Holders of liquor control licenses and beer permits may sell alcoholic beverages or beer on Sunday pursuant to this section, section 123.134 and section 123.49, except subsection 4, only if the governing body of the city in which the premises covered by the license or permit are located, or the board of supervisors if the premises so covered are not located in a city, specifically approves authority to sell on Sunday in the area subject to its jurisdiction.

The governing body or board of supervisors at any time may repeal the authorization to sell on Sunday. Any license or permit for which the increased fee for Sunday sales has been paid and which is in effect at the time of such repeal shall remain effective until its date of expiration under section 123.34 unless sooner suspended or revoked.

The department shall credit all fees to the beer and liquor control fund and shall remit to the appropriate local authority, a sum equal to sixty-five percent of the fees collected for each class "A", class "B", or class "C" license covering premises located within their respective jurisdictions. However, that amount remitted to the appropriate local authority out of the fee collected for the privilege authorized under subsection 6 shall be deposited in the county mental health and institutions fund to be used only for the care and treatment of persons admitted or committed to the alcoholic treatment center at Oakdale or any facilities as provided in chapter 125. [C35,§1921-f28; C39,§**1921.028**; C46, 50, 54, 58, 62, 66, 71, §123.38; C73, 75,§123.36]

Referred to in §123.49

123.37 Power to license and levy taxes. The power to establish licenses and permits and levy taxes as imposed in title VI of the Code is vested exclusively with the state. Unless specifically provided, no local authority shall levy a local tax on the sale of alcoholic beverages or beer, require the obtaining of a special license or permit for such sale on any establishment, or require the obtaining of a license by any person as a condition precedent to his employment in the sale, serving, or handling of alco-

holic beverages or beer within an establishment operating under a license or permit. [C73, 75,§123.37]

123.38 Nature of permit or license. A special liquor permit, liquor control license, or beer permit shall be a purely personal privilege and be revocable for cause. It shall not constitute property nor be subject to attachment and execution nor be alienable nor assignable, and in any case it shall cease upon the death of the permittee or licensee. However, the director may in his discretion allow the executor or administrator of a permittee or licensee to operate the business of the decedent for a reasonable time not to exceed the expiration date of the permit or license. Every permit or license shall be issued in the name of the applicant and no person holding a permit or license shall allow any other person to use same.

Any such licensee or permittee, or his executor, administrator, or any person duly appointed by the court to take charge of and administer the property or assets of the licensee or permittee for the benefit of his creditors, may voluntarily surrender such license or permit to the department and when so surrendered the department shall notify the local authority, and the department and such local authority, or the local authority by itself in the case of a retail beer permit, shall refund to the person so surrendering the license or permit a proportionate amount of the fee paid for such license or permit as follows: If surrendered during the first three months of the period for which said license or permit was issued the refund shall be three-fourths of the amount of the fee; if surrendered more than three months but not more than six months after issuance the refund shall be one-half of the amount of the fee; if surrendered more than six months but not more than nine months after issuance the refund shall be one-fourth of the amount of the fee. No refund shall be made, however, for any special liquor permit, nor for a liquor control license or beer permit surrendered more than nine months after issuance. No refund shall be made to any licensee or permittee, upon the surrender of his license or permit, if there is at the time of said surrender a complaint filed with the department or local authority, charging him with a violation of the provisions of this chapter. If upon hearing on any such complaint the license or permit is not revoked or suspended, then the licensee or permittee shall be eligible, upon surrender of his license or permit, to receive a refund as herein provided. But if his license or permit is revoked or suspended upon such hearing he shall not be eligible for the refund of any portion of his license or permit fee.

The local authority may in its discretion authorize a licensee or permittee to transfer the license or permit from one location to another within the same incorporated city, or within a county outside the corporate limits of a city, provided that the premises to which the transfer is to be made would have been eligible for a license or permit in the first instance and such transfer will not result in the violation of any law. All transfers authorized, and the particulars of same, shall be reported to the director by the local authority. The director may by rule establish a uniform transfer fee to be assessed by all local authorities upon licensees or permittees to cover the administrative costs of such transfers, such fee to be retained by the local authority involved. [C35,§§1921-f29,-f100; C39,§§**1921.029, 1921.100**; C46, 50, 54, 58, 62, 66, 71,§§123.29, 124.6; C73, 75,§123.38]

123.39 Suspension or revocation of liquor license or beer permit. Any liquor control license or beer permit issued under this chapter may, after notice in writing to the license or permit holder and reasonable opportunity for hearing, and subject to section 123.50 where applicable, be suspended for a period not to exceed one year or revoked by the local authority or the director for any of the following causes:

1. Misrepresentation of any material fact in the application for such license or permit.

2. Violation of any of the provisions of this chapter.

3. Any change in the ownership or interest in the business operated under a class "A", class "B", or class "C" liquor control license, or any beer permit which change was not previously reported to and approved by the local authority and the department.

4. An event which would have resulted in disqualification from receiving such license or permit when originally issued.

5. Any sale, hypothecation, or transfer of such license or permit.

6. The failure or refusal on the part of any licensee or permittee to render any report or remit any taxes to the department under this chapter when due.

Local authorities shall have the power to suspend any retail beer permit or liquor control license for a violation of any ordinance or regulation adopted by such local authority. Local authorities are empowered to adopt ordinances or regulations for the location of the premises of retail beer and liquor control licensed establishments and are empowered to adopt ordinances, not in conflict with the provisions of this chapter and that do not diminish the hours during which beer or alcoholic beverages may be sold or consumed at retail, governing any other activities or matters which may affect the retail sale and consumption of beer and alcoholic liquor and the health, welfare and morals of the community involved. [C35,§§1921-f32, 1921-f126; C39,§§**1921.032, 1921.129**; C46, 50, 54, 58, 62,§§123.32, 124.34; C66, 71,§§123.32, 123.102, 124.34; C73, 75,§123.39]

123.40 Effect of revocation. Any liquor control licensee or beer permittee whose license or permit is revoked under this chapter shall not thereafter be permitted to hold a liquor

control license or beer permit in the state of Iowa for a period of two years from the date of such revocation. The spouse and business associates holding ten percent or more of the capital stock or ownership interest in the business of a person whose license or permit has been revoked shall not be issued a liquor control license or beer permit, and no liquor control license or beer permit shall be issued which covers any business in which such person has a financial interest for a period of two years from the date of such revocation. In the event a license or permit is revoked the premises which had been covered by such license or permit shall not be relicensed for one year. [C35,§§1921-f32, 1921-f123; C39,§§1921.032, 1921.125; C46, 50, 54, 58, 62, 66, 71,§§123.32, 124.30; C73, 75,§123.40]

Referred to in §123.3(11)

123.41 Manufacturer's license. Upon application in the prescribed form and accompanied by a fee of three hundred fifty dollars, the director may in accordance with this chapter grant and issue a license, valid for a one-year period after date of issuance, to a manufacturer which shall allow the manufacture, storage, and wholesale disposition and sale of alcoholic liquors to the department and to customers outside of the state. [C35,§1921-f36; C39, §1921.036; C46, 50, 54, 58, 62, 66, 71,§123.36; C73, 75,§123.41]

123.42 Wholesaler's license. Upon application in the prescribed form and accompanied by a fee of two hundred fifty dollars and subject to the provisions of this chapter, the director may grant a license, valid for a one-year period after date of issuance, to a wholesaler which shall allow the wholesaler to purchase alcoholic liquor from manufacturers either within or without the state for the purpose of selling to the department and customers of such wholesaler engaged in the sale of alcoholic liquor at retail outside of the state. [C35,§1921-f37; C39,§1921.037; C46, 50, 54, 58, 62, 66, 71,§123.37; C73, 75,§123.42]

123.43 Conditions—bond. As a condition precedent to the approval and granting of any license to a manufacturer or wholesaler, there shall be filed with the department a statement under oath that the applicant is a bona fide manufacturer or wholesaler of alcoholic liquors, and that the applicant will faithfully observe and comply with all rules and regulations of the department and that he will in all respects comply with the provisions of this chapter, together with a bond in the penal sum of five thousand dollars for a manufacturer and one thousand dollars for a wholesaler with a surety to be approved by the director; said bond to be in favor of the state of Iowa for the benefit of the state in case of any violation of this chapter. [C35,§1921-f38; C39, §1921.038; C46, 50, 54, 58, 62, 66, 71,§123.38; C73, 75,§123.43]

123.44 Gift of liquors prohibited. No manufacturer or wholesaler shall give away any alcoholic liquor of any kind or description at any time in connection with his business except for testing or sampling purposes only. No manufacturer, vintner, wholesaler, or importer, organized as a corporation pursuant to the laws of this state or any other state, and who deals in alcoholic liquor or beer subject to this chapter shall offer or give any thing of value to any council member, official or employee of the department or directly or indirectly contribute in any manner any money or thing of value to any person seeking a public or appointive office or any recognized political party or a group of persons seeking to become a recognized political party. [C35,§1921-f39; C39,§1921.039; C46, 50, 54, 58, 62, 66, 71,§123.39; C73, 75,§123.44]

123.45 Interest in liquor business. No council member or department employee shall, directly or indirectly, individually, or as a member of a partnership or shareholder in a corporation, have any interest in dealing in or in the manufacture of alcoholic liquor or beer nor receive any kind of profit nor have any interest in the purchase or sale of alcoholic liquor or beer by persons so authorized under this chapter except that this provision shall not prevent any such member or employee from lawfully purchasing and keeping alcoholic liquor or beer in his possession for personal use.

No person engaged in the business of manufacturing, bottling, or wholesaling alcoholic beverages or beer, nor any jobber or agent of such person, shall directly or indirectly supply, furnish, give, or pay for any furnishings, fixtures, or equipment used in the storage, handling, serving, or dispensing of alcoholic beverages, beer, or food within the place of business of a licensee or permittee authorized under the provisions of this chapter, to sell at retail; nor shall he directly or indirectly extend any credit for alcoholic beverages or beer or pay for any such license or permit, nor directly or indirectly be interested in the ownership, conduct, or operation of the business of another licensee or permittee authorized under the provisions of this chapter to sell at retail. Any licensee or permittee who shall permit or assent or be a party in any way to any such violation or infringement of the provisions of this chapter shall be deemed guilty of a violation of the provisions of this chapter. [C35,§§1921-f40, 1921-f115; C39, §§1921.040, 1921.117; C46, 50, 54, 58, 62, 66, 71, §§123.40, 124.22; C73, 75,§123.45]

123.46 Consumption in public places—intoxication. It is unlawful for any person to use or consume alcoholic liquors or beer upon the public streets or highways, or alcoholic liquors in any public place, except premises covered by a liquor control license, or to possess or consume alcoholic liquors or beer on any public school property or while attending

any public or private school related functions, and no person shall be intoxicated nor simulate intoxication in a public place. As used in this section "school" means a school or that portion thereof, which provides teaching for any grade from kindergarten through grade twelve. Any person violating any provisions of this section shall be fined not to exceed one hundred dollars or sentenced not to exceed thirty days in the county jail. [C35,§§1921-f42, 1921-f127; C39,§§**1921.042, 1921.132**; C46, 50, 54, 58, 62, 66, 71,§§123.42, 124.37; C73, 75,§123.46]

123.47 Persons under legal age. No person shall sell, give, or otherwise supply alcoholic liquor or beer to any person knowing or having reasonable cause to believe him to be under legal age, and no person or persons under legal age shall individually or jointly have alcoholic liquor or beer in his or their possession or control; except in the case of liquor or beer given or dispensed to a person under legal age within a private home and with the knowledge and consent of the parent or guardian for beverage or medicinal purposes or as administered to him by either a physician or dentist for medicinal purposes and except to the extent that a person under legal age may handle alcoholic beverages and beer during the regular course of his or her employment by a liquor control licensee or beer permittee under this chapter. [C35,§1921-f43; C39,§**1921.043**; C46, 50, 54, 58, 62,§123.43; C66, 71,§§123.43, 125.33; C73, 75,§123.47]

123.48 Evidence of legal age demanded.

1. Upon attempt to purchase alcoholic liquor in any state liquor store by any person who appears to the vendor to be under legal age, such vendor shall demand and the prospective purchaser upon such demand shall display satisfactory evidence that he is of legal age.

2. Any person under legal age who presents to any vendor falsified evidence of age as provided in subsection 1 of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C66, 71,§123.45; C73, 75,§123.48]

123.49 Miscellaneous prohibitions.

1. No person shall sell, dispense, or give to any intoxicated person, or one simulating intoxication, any alcoholic liquor or beer.

2. No person or club holding a liquor control license or retail beer permit under this chapter, nor his agents or employees, shall do any of the following:

a. Knowingly permit any gambling, except in accordance with chapter 99B, or knowingly permit solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or permit.

b. Sell or dispense any alcoholic beverage or beer on the premises covered by the license or permit, or permit the consumption thereon between the hours of two a.m. and six a.m. on any weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a liquor control license or class "B" beer permit granted the privilege of selling alcoholic liquor or beer on Sunday may sell or dispense such liquor or beer between the hours of noon and ten p.m. on Sunday.

c. Sell alcoholic beverages or beer to any person on credit, except with a bona fide credit card. This provision shall not apply to sales by a club to its members nor to sales by a hotel or motel to bona fide registered guests.

d. Keep on any premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the department, except still wines placed in dispensing or serving containers for temporary storage, and except mixed drinks or cocktails mixed on the premises for immediate consumption. This prohibition shall not apply to common carriers holding a class "D" liquor control license.

e. Reuse for packaging alcoholic liquor any container or receptacle used originally for packaging alcoholic liquor; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of alcoholic liquor; or knowingly possess any original package which has been so reused or adulterated.

f. Any person under legal age shall not be employed in the sale or serving of alcoholic liquor or beer for consumption on the premises where sold.

g. Allow any person other than the licensee, permittee, or employees of such licensee or permittee, to use or keep on the licensed premises any alcoholic liquor in any bottle or other container which is designed for the transporting of such beverages, except as permitted in section 123.95. This paragraph shall not apply to the lodging quarters of a class "B" liquor control licensee or beer permittee, or to common carriers holding a class "D" liquor control license.

h. Sell, give, or otherwise supply any alcoholic beverage or beer to any person knowing or having reasonable cause to believe him to be under legal age, or permit any person knowing or having reasonable cause to believe him to be under legal age, to consume any alcoholic beverage or beer.

i. In the case of a retail beer permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer or any other beverage in or about his place of business.

3. No person under legal age shall misrepresent his or her age for the purpose of purchasing or attempting to purchase any alcoholic beverage or beer from any licensee or permittee. If any person under legal age shall misrepresent his or her age, and the licensee or permittee establishes that he made reasonable

inquiry to determine whether such prospective purchaser was over legal age, such licensee or permittee shall not be guilty of selling alcoholic liquor or beer to minors.

4. No privilege of selling alcoholic liquor or beer on Sunday as provided in sections 123.36, subsection 6, and 123.134, subsection 5, shall be granted to a club or other organization which places restrictions on admission or membership in the club or organization on the basis of sex, race, religion, or national origin. However, the privilege may be granted to a club or organization which places restrictions on membership on the basis of sex, if the club or organization has an auxiliary organization open to persons of the other sex. [C35,§§1921-f46, 1921-f114, 1921-g3; C39, §§**1921.046, 1921.115, 1921.116**; C46, 50, 54, 58, 62, 66, 71,§§123.46, 124.20, 124.21; C73, 75, 123.49; 66GA, ch 67,§12, ch 99,§16]

Referred to in §§123.36, 123.50, 123.134

123.50 Penalties.

1. Any person who violates any of the provisions of section 123.49 shall be subject to a fine of not to exceed one hundred dollars or to imprisonment for not more than thirty days in the county jail.

2. The conviction of any liquor control licensee or beer permittee for a violation of any of the provisions of section 123.49 shall, subject to subsection 3 of this section, be grounds for the suspension or revocation of the license or permit by the department or the local authority. However, if any liquor control licensee is convicted of any violation of subsection 2, paragraphs "*a*", "*d*" or "*e*", of such section, or any beer permittee is convicted of a violation of paragraph "*a*", the liquor control license or beer permit shall be revoked and shall immediately be surrendered by the holder, and the bond of the license or permit holder shall be forfeited to the department.

3. If any licensee, beer permittee, or employee of such licensee or permittee shall be convicted of a violation of section 123.49, subsection 2, paragraph "*h*", or a retail beer permittee shall be convicted of a violation of paragraph "*i*" of such subsection, the director or local authority shall, in addition to the other penalties fixed for such violations by this section, assess a penalty as follows:

a. Upon a first conviction, the violator's liquor control license or beer permit shall be suspended for a period of fourteen days.

b. Upon a second conviction within a period of two years, the violator's liquor control license or beer permit shall be suspended for a period of thirty days.

c. Upon a third conviction within a period of five years, the violator's liquor control license or beer permit shall be suspended for a period of sixty days.

d. Upon a fourth conviction within a period of five years, the violator's liquor control license or beer permit shall be revoked. [C35, §§1921-f46, 1921-f127; C39,§§**1921.046, 1921.132**; C46, 50, 54, 58, 62, 66, 71,§§123.46, 124.37; C73, 75,§123.50]

Referred to in §§123.39, 123.141

123.51 Advertisements for alcoholic liquor or beer.

1. Except as permitted by federal statute and regulations, there shall be no public advertisement or advertising of alcoholic liquors in any manner or form within the state.

2. No person shall publish, exhibit, or display or permit to be displayed any other advertisement or form of advertisement, or announcement, publication, or price list of, or concerning any alcoholic liquors, or where, or from whom the same may be purchased or obtained, unless permitted so to do by the regulations adopted by the department and then only in strict accordance with such regulations. This subsection shall not apply, however:

a. To the department.

b. To the correspondence, or telegrams, or general communications of the department, or its agents, servants, and employees.

c. To the receipt or transmission of a telegram or telegraphic copy in the ordinary course of the business of agents, servants, or employees of any telegraph company.

3. No signs or other matter advertising any brand of beer shall be erected or placed upon the outside of any premises occupied by a licensee or permittee authorized to sell beer at retail. This subsection shall not prohibit the use of signs or other matter inside a fence or similar enclosure which wholly or partially surrounds the licensed premises.

4. Violation of this section shall be a misdemeanor punishable by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding thirty days. [C35, §1921-f47; C39,§**1921.047**; C46, 50, 54, 58, 62, 66, 71,§123.47; C73, 75,§123.51; 66GA, ch 117,§1]

Signs removed by July 1, 1974

123.52 Prohibited sale. No person not expressly authorized by this chapter to deal in alcoholic liquors shall within the state keep for sale or offer for sale anything which is capable of being mistaken for a package containing alcoholic liquor and is either labeled or branded with the name of any kind of alcoholic liquor, whether the same contains any alcoholic liquor or not. [C35,§1921-f48; C39, §**1921.048**; C46, 50, 54, 58, 62, 66, 71,§123.48; C73, 75,§123.52]

123.53 Liquor control fund.

1. There shall be established within the office of the treasurer of state a fund to be known as the beer and liquor control fund. The fund shall consist of any moneys appropriated by the general assembly for deposit in the fund and moneys received from the sale of alcoholic liquors, from the issuance of permits and licenses, and of moneys and re-

ceipts received by the department from any other source.

2. The state comptroller shall periodically transfer from the beer and liquor control fund to the general fund of the state those revenues of the department which are not necessary for the purchase of liquor for resale by the department, or for remittances to local authorities or other sources as required by this chapter, or for other obligations and expenses of the department which are paid from such fund.

3. The treasurer of state shall semiannually distribute a sum of money equal to ten percent of the gross sales made by the state liquor stores to the cities of the state. Such amount shall be distributed to the cities of the state in proportion to the population that each incorporated city bears to the total population of all incorporated cities of the state as computed by the latest federal census. A city may have one special federal census taken each decade, and the population figure thus obtained shall be used in apportioning amounts under this subsection beginning the calendar year following the year in which the special census is certified by the secretary of state. Such apportionment shall be made semiannually as of July 1 and January 1 of each year. Warrants for the same shall be issued by the state comptroller upon certification of the treasurer of state and mailed to the city clerk of each incorporated city of the state and shall be made payable to such incorporated city and shall be subject to expenditure under the direction of the city council or other governing bodies of such incorporated city for any lawful municipal purpose. It shall be a lawful municipal purpose for cities to allocate a portion of the above funds for the purpose of financing the activities of a city commission or committee on alcoholism, such commission or committee to be appointed by the mayor or by the council or both. The commission or committee may use any funds so allocated for the treatment, rehabilitation, and education of alcoholics in Iowa.

4. In any case where a city has been incorporated since the last federal census, the mayor and council shall certify to the treasurer of state the actual population of such incorporated city as of date of incorporation and its apportionment of funds under this section shall be based upon such certification until the next federal census enumeration. Any community which has dissolved its corporation shall not receive any apportionment of funds under this section for any period after said corporation has been dissolved.

5. In any case where a city has annexed any territory since the last available federal census or special federal census, the mayor and council shall certify to the treasurer of state the actual population of such annexed territory as determined by the last certified federal census of said territory and the apportionment of funds under this section shall be based upon the population of said city as modified by the certification of the population of the annexed territory until the next federal or special federal census enumeration.

6. In any case where two or more cities have consolidated, the apportionment of funds under this section shall be based upon the population of the city resulting from said consolidation and shall be determined by combining the population of all cities involved in the consolidation as determined by the last available federal or special federal census enumeration for said consolidating city.

7. The treasurer of state shall credit to the military service tax fund described in chapter 426A, a sum of money equal to five percent of the gross amount of sales made by the state liquor stores in the cities of the state. Any amount thus credited shall be allocated to the various taxing districts of the state as reimbursement for losses of revenue due to exemption or remission of property taxes which would be imposed upon property upon which soldiers' exemptions or soldiers' tax credits are provided under such terms as the general assembly may provide. [C35,§1921-f50; C39,§1921.050; C46, 50, 54, 58, 62, 66, 71, §123.50; C73, 75,§123.53]

Referred to in §§24.14, 426A.1
See §24.14

123.54 Drawing appropriation. Department appropriations shall be paid by the treasurer of state upon the orders of the director, in such amounts and at such times as the director deems necessary to carry on operations in accordance with the terms of this chapter. [C35,§1921-f52; C39,§1921.052; C46, 50, 54, 58, 62, 66, 71,§123.52; C73, 75,§123.54]

123.55 Annual report. The council shall cause to be prepared an annual report to the governor of the state, ending with June 30 of each year, showing fully the results of the operations of the department covering the period since the last previous report. Such report shall show:

1. Amount of profit or loss from state liquor store operations.

2. Number of state liquor stores opened, the number closed, and the number operating on last day included in report.

3. Amount of fees received from such stores, separately and in gross.

4. The current balance of the beer and liquor control fund, and the amount transferred from such fund to the treasurer of state during the period covered by the report.

5. All other funds on hand and the source from which derived.

6. The total quantity and particular kind of alcoholic liquor sold.

7. The increase or decrease of liquor sales from the previous reporting period.

8. The number of liquor control licenses and beer permits issued, by class, the number in effect on the last day included in the report, and the number which have been suspended or revoked during the period covered by the report.

9. Amount of fees paid to the department from liquor control licenses and beer permits, in gross, and the amount of liquor control license fees returned to local subdivisions of government as provided under this chapter. [C35,§1921-f53; C39,**§1921.053**; C46, 50, 54, 58, 62, 66, 71,§123.53; C73, 75,§123.55]

Annual report §17.4

123.56 Native wines. Notwithstanding any other provision of this chapter, but subject to rules of the department, manufacturers of native wines from grapes, cherries, other fruit juices, or honey may sell, keep, or offer for sale and deliver the same in such quantities as may be permitted by the director for consumption off the premises.

A manufacturer of native wines shall not sell such wines otherwise than as permitted by this section or allow any wine so sold, or any part thereof, to be drunk upon the premises of such manufacturer. Any person may manufacture native wine for consumption on his own premises.

For the purposes of this section "manufacturer" includes only those persons who process the fruit or honey, ferment, and bottle native wines in Iowa. [C35,§1921-f56; C39, **§1921.056**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §123.56]

123.57 Examination of accounts. The financial condition and transactions of all offices, departments, stores, warehouses, and depots of the department shall be examined at least once each year by the state auditor and at shorter periods if requested by the director, governor, or executive council. [C35,§1921-f57; C39,**§1921.057**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §123.57]

123.58 Auditing. All provisions of sections 11.6, 11.7, 11.10, 11.11, 11.14, 11.18, 11.21, and 11.23, relating to auditing of financial records of governmental subdivisions which are not inconsistent herewith are hereby made applicable to the department and its offices, stores, warehouses, and depots. [C35,§1921-f58; C39,**§1921.058**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §123.58]

123.59 Bootlegging. Any person who, by himself, or through another acting for him, shall keep or carry on his person, or in a vehicle, or leave in a place for another to secure, any alcoholic liquor or beer with intent to sell or dispense of such liquor or beer by gift or otherwise in violation of law, or who shall, within this state, in any manner, directly or indirectly, solicit, take, or accept any order for the purchase, sale, shipment, or delivery of such alcoholic liquor or beer in violation of law, or aid in the delivery and distribution of any alcoholic liquor or beer so ordered or shipped, or who shall in any manner procure for, sell, or give any alcoholic liquor or beer to any person under legal age, for any purpose except as authorized and permitted in this chapter, shall be a bootlegger and be subject to the general penalties provided by this chapter. [C51,§§924–928; R60,§§1559, 1562, 1563, 1583, 1587; C73,§§1523, 1540–1542, 1555; C97, §2382; SS15,§§2382, 2461-a; C24, 27, 31,§1927; C35, §§1921-f59, 1927; C39,§§**1921.059, 1927**; C46, 50, 54, 58, 62, 66, 71,§§123.59, 125.7; C73, 75,§123.59]

123.60 Nuisances. The premises where the unlawful manufacture or sale, or keeping with intent to sell, use or give away, of alcoholic liquors or beer is carried on, and any vehicle or other means of conveyance used in transporting such liquor or beer in violation of law, and the furniture, fixtures, vessels and contents, kept or used in connection with such activities are nuisances and shall be abated as provided in this chapter. [C51,§935; R60,§1564; C73,§1543; C97,§2384; C24, 27, 31, §1929; C35,§§1921-f60, 1929; C39,§§**1921.060, 1929**; C46, 50, 54, 58, 62, 66, 71,§§123.60,125.9; C73, 75, §123.60]

Referred to in §123.61

123.61 Penalty. Any person who erects, establishes, or uses any premises for any of the purposes prohibited in section 123.60, is guilty of nuisance and shall be subject to the general penalties provided by this chapter. [C51,§935; R60,§1564; C73,§1543; C97,§2384; C24, 27, 31,§1930; C35,§§1921-f61, 1930; C39,§§**1921.061, 1930**; C46, 50, 54, 58, 62, 66, 71,§§123.61, 125.10; C73, 75,§123.61]

123.62 Injunction. Actions to enjoin nuisances shall be brought in equity in the name of the state by the county attorney who shall prosecute the same to judgment. [R60,§1564; C73,§1543; C97,§§2405, 2406; S13,§2406; SS15, §2405; C24, 27, 31,§2017; C35,§§1921-f62, 2017; C39,§§**1921.062, 2017**; C46, 50, 54, 58, 62, 66, 71, §§123.62, 128.1; C73, 75,§123.62]

123.63 Temporary writ. In such action, the court shall, upon the presentation of a petition therefor, allow a temporary writ of injunction without bond, if it shall be made to appear to the satisfaction of the court by evidence in the form of affidavits, depositions, oral testimony or otherwise, that the nuisance complained of exists. [R60,§1564; C73,§1543; C97,§2405; SS15,§2405; C24, 27, 31,§2018; C35, §§1921-f63, 2018; C39,§§**1921.063, 2018**; C46, 50, 54, 58, 62, 66, 71,§§123.63, 128.2; C73, 75,§123.63]

123.64 Notice. Three days' notice in writing shall be given the defendant of the hearing of the application, and if then continued at his instance the writ as prayed shall be granted as a matter of course. [C97,§2405; SS15,§2405; C24, 27, 31,§2019; C35,§§1921-f64, 2019; C39,§§**1921.064, 2019**; C46, 50, 54, 58, 62, 66, 71,§§123.64, 128.3; C73, 75,§123.64]

123.65 Scope of injunction. When an injunction has been granted, it shall be binding upon the defendant throughout the state and any violation of the provisions of this chapter anywhere within the state shall be punished as a contempt as herein provided. [C97,§2405; SS15,§2405; C24, 27, 31,§2020; C35,§§1921-f65, 2020; C39,§§1921.065, 2020; C46, 50, 54, 58, 62, 66, 71, §§123.65, 128.4; C73, 75,§123.65]

123.66 Trial of action. Any action brought hereunder shall be accorded priority over other business pending before the district court. [C97, §2406; S13,§2406; C24, 27, 31,§2021; C35,§§1921-f66, 2021; C39,§§1921.066, 2021; C46, 50, 54, 58, 62, 66, 71,§§123.66, 128.5; C73, 75,§123.66]

123.67 General reputation. In all actions to enjoin a nuisance or to establish a violation of the injunction, evidence of the general reputation of the premises described in the petition or information shall be admissible for the purpose of proving the existence of the nuisance or the violation of the injunction. [C97,§2406; S13,§2406; C24, 27, 31,§2022; C35, §§1921-f67, 2022; C39,§§1921.067, 2022; C46, 50, 54, 58, 62, 66, 71,§§123.67, 128.6; C73, 75,§123.67]

123.68 Contempt. In the case of a violation of any injunction granted under the provisions of this chapter, the court may summarily try and punish the defendant pursuant to the general penalties provided by this chapter. The proceedings shall be commenced by filing with the clerk of the court an information under oath setting out the alleged facts constituting such violation, upon which the court shall cause a warrant to issue under which the defendant shall be arrested. [C97,§2407; SS15,§2407; C24, 27, 31, §2027; C35,§§1921-f68, 2027; C39,§§1921.068, 2027; C46, 50, 54, 58, 62, 66, 71,§§123.68, 128.13; C73, 75, §123.68]

123.69 Trial of contempt action. The trial shall be as in equity and may be had upon depositions, or either party may demand the production and oral examination of the witnesses. [C97, SS15,§2407; C24, 27, 31,§2028; C35,§§1921-f69, 2028; C39,§§1921.069, 2028; C46, 50, 54, 58, 62, 66, 71,§§123.69, 128.14; C73, 75, §123.69]

123.70 Injunction against bootlegger. A bootlegger as defined in this chapter may be restrained by injunction from doing or continuing to do any of the acts prohibited herein, and all the proceedings for injunctions, temporary and permanent, and for punishments for violation of the same as prescribed herein, shall be applicable to such person, and the fact that an offender has no known or permanent place of business, or base of supplies, or quits the business after the commencement of an action, shall not prevent a temporary or permanent injunction, as the case may be, from issuing. [S13,§2461-b; C24, 27, 31,§2031; C35,§§1921-f71, 2031; C39,§§1921.071, 2031; C46, 50, 54, 58, 62, 66, 71,§§123.71, 128.17; C73, 75,§123.70]

123.71 Conditions. In no case shall a bootlegger injunction proceeding, as provided in this chapter, be maintained unless it be shown to the court that efforts in good faith have been made to discover the base of supplies or place where the defendant charged as a bootlegger conducts his unlawful business or receives or manufactures the alcoholic liquor or beer, of which he is charged with bootlegging. [C27, 31,§2031-a1; C35,§§1921-f72, 2031-a1; C39, §§1921.072, 2031.1; C46, 50, 54, 58, 62, 66, 71, §§123.72, 128.18; C73, 75,§123.71]

123.72 Order of abatement. If the existence of a nuisance is established in a civil or criminal action, an order of abatement shall be entered as a part of the judgment in the case. Such order shall direct the confiscation of all alcoholic liquor or beer by the state; the removal from the premises involved of all fixtures, furniture, vessels, or movable property used in any way in conducting the unlawful business; the sale of all such removed property as well as any vehicle or other means of conveyance which has been abated, such sale to be conducted in the manner provided for the sale of chattels under execution; and the effective closing of the premises against use for the purpose of manufacture, sale, or consumption of alcoholic liquor or beer for a period of one year, unless sooner released by the court. [C51,§935; R60,§1559; C73,§§1523, 1543; C97,§2408; C24, 27, 31,§2032; C35,§§1921-f73, 2032; C39,§§1921.073, 2032; C46, 50, 54, 58, 62, 66, 71,§§123.73, 128.19; C73, 75,§123.72]

123.73 Use of abated premises. If any person uses a premises closed pursuant to an abatement order in violation of such order he shall be punished for contempt as provided in this chapter. [C97,§2408; C24, 27, 31,§2033; C35, §§1921-f74, 2033; C39,§§1921.074, 2033; C46, 50, 54, 58, 62, 66, 71,§§123.74, 128.20; C73, 75,§123.73]

123.74 Fees. For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution; and for closing the premises and keeping them closed a reasonable sum shall be allowed by the court. [C97,§2408; C24, 27, 31,§2034; C35,§§1921-f75, 2034; C39, §§1921.075, 2034; C46, 50, 54, 58, 62, 66, 71, §§123.75, 128.21; C73, 75,§123.74]

123.75 Proceeds of sale. The proceeds of the sale of personal property in abatement proceedings shall be applied first in payment of the costs of the action and abatement, and second to the satisfaction of any fine and costs adjudged against the proprietor of the premises and keeper of said nuisance, and the balance, if any, shall be paid to the defendant. [C97,§2409; C24, 27, 31,§2035; C35,§§1921-f76, 2035; C39,§§1921.076, 2035; C46, 50, 54, 58, 62, 66, 71,§§123.76, 128.22; C73, 75,§123.75]

123.76 Abatement of nuisance. If the owner of the abated premises appears and pays all costs of the proceeding and files a bond with

sureties to be approved by the clerk in the full value of the property, to be ascertained by the court, conditioned that he will immediately abate the nuisance and prevent the same from being established or kept on such premises within a period of one year thereafter, the court may order such premises to be delivered to the owner and cancel the order of abatement so far as it may relate to the property. [C97,§2410; S13,§2410; C24, 27, 31, §2036; C35,§§1921-f77, 2036; C39,§§**1921.077, 2036**; C46, 50, 54, 58, 62, 66, 71,§§123.77, 128.23; C73, 75, §123.76]

Referred to in §123.78

123.77 Abatement before judgment. If the action is in equity and the owner of the premises pays the costs of the action and files the bond prior to the entry of judgment and the abatement order, such action shall be abated as to the premises only. [C97,§2410; S13,§2410; C24, 27, 31,§2037; C35,§§1921-f78, 2037; C39, §§**1921.078, 2037**; C46, 50, 54, 58, 62, 66, 71,§§123.78, 128.24; C73, 75,§123.77]

Referred to in §123.78

123.78 Existing liens. The release of the property under the provisions of either section 123.76 or 123.77 shall not release it from any judgment lien, penalty, or liability, to which it may be subject by law. [C97,§2410; S13,§2410; C24, 27, 31,§2038; C35,§§1921-f79, 2038; C39,§§**1921.079, 2038**; C46, 50, 54, 58, 62, 66, 71,§§123.79, 128.25; C73, 75,§123.78]

123.79 Abatement bond a lien. Undertakings of bonds for abatement shall immediately after filing by the clerk of the district court be docketed and entered upon the lien index as required for judgments in civil cases, and from the time of such entries shall be liens upon real estate of the persons executing the same, with like effect as judgments in civil actions. [C24, 27, 31,§2039; C35,§§1921-f80, 2039; C39,§§**1921.080, 2039**; C46, 50, 54, 58, 62, 66, 71, §§123.80, 128.26; C73, 75,§123.79]

Referred to in §123.84

123.80 Attested copies filed. Attested copies of such undertakings may be filed in the office of the clerk of the district court of the county in which the real estate is situated in the same manner and with like effect as attested copies of judgments, and shall be immediately docketed and indexed in the same manner. [C24, 27, 31,§2040; C35,§§1921-f81, 2040; C39,§§**1921.081, 2040**; C46, 50, 54, 58, 62, 66, 71,§§123.81, 128.27; C73, 75,§123.80]

123.81 Forfeiture of bond. If the owner of a property who has filed an abatement bond as provided in this chapter fails to abate the liquor or beer nuisance on the premises covered by the bond, or fails to prevent the maintenance of any liquor or beer nuisance on said premises at any time within a period of one year after entry of the abatement order, the court shall, after a hearing in which such fact is established, direct an entry of such violation of the terms of the owner's bond, to be made on the record and the undertaking of his bond thereupon forfeited. [C24, 27, 31,§2041; C35, §§1921-f82, 2041; C39,§§**1921.082, 2041**; C46, 50, 54, 58, 62, 66, 71,§§123.82, 128.28; C73, 75,§123.81]

123.82 Procedure. A proceeding to forfeit an abatement bond shall be commenced by filing with the clerk of the court, by the county attorney of the county where the bond is filed, an application under oath to forfeit such bond, setting out the alleged facts constituting the violation of the terms of the bond, upon which the court shall direct by order attached to such application that a notice be issued by the clerk of the district court directed to the principal and sureties on the bond to appear at a certain date fixed to show cause why such bond should not be forfeited and judgment entered for the penalty fixed therein. [C24, 27, 31,§2042; C35, §§1921-f83, 2042; C39,§§**1921.083, 2042**; C46, 50, 54, 58, 62, 66, 71,§§123.83, 128.29; C73, 75,§123.82]

123.83 Method of trial. The trial shall be to the court and as in equity, and be governed by the same rules of evidence as contempt proceedings. [C24, 27, 31,§2043; C35,§§1921-f84, 2043; C39,§§**1921.084, 2043**; C46, 50, 54, 58, 62, 66, 71,§§123.84, 128.30; C73, 75,§123.83]

123.84 Judgment. If the court after hearing finds a liquor or beer nuisance has been maintained on the premises covered by the abatement bond and that liquor or beer has been sold or kept for sale on the premises contrary to law within one year from the date of the giving of such bond, then the court shall order the forfeiture of the bond and enter judgment for the full amount of such bond against the principal and sureties thereof, and the lien on the real estate created pursuant to section 123.79 shall be decreed foreclosed and the court shall provide for a special and general execution for the enforcement of such decree and judgment. [C24, 27, 31,§2044; C35,§§1921-f85, 2044; C39,§§**1921.085, 2044**; C46, 50, 54, 58, 62, 66, 71,§§123.85, 128.31; C73, 75,§123.84]

123.85 Appeal. Appeal may be taken as in equity cases and the cause be triable de novo except that if the state appeals it need not file an appeal or supersedeas bond. [C24, 27, 31, §2045; C35,§§1921-f86, 2045; C39,§§**1921.086, 2045**; C46, 50, 54, 58, 62, 66, 71,§§123.86, 128.32; C73, 75,§123.85]

123.86 County attorney to prosecute. It shall be the duty of the county attorney to prosecute in the name of the state all forfeitures of abatement bonds and the foreclosures of same. [C24, 27, 31,§2047; C35,§§1921-f87, 2047; C39,§§**1921.087, 2047**; C46, 50, 54, 58, 62, 66, 71, §§123.87, 128.34; C73, 75,§123.86]

123.87 Prompt service. It shall be a misdemeanor for any peace officer to delay service of original notices, writs of injunction, writs of abatement, or warrants for contempt in any equity case filed for injunction or abatement by the state. [C24, 27, 31,§2049; C35,§§1921-f88,

2049; C39,§§**1921.088, 2049**; C46, 50, 54, 58, 62, 66, 71,§§123.88, 128.36; C73, 75,§123.87]

123.88 Evidence. On the issue whether a party knew or ought to have known of such nuisance, evidence of the general reputation of the place shall be admissible. [C24, 27, 31, §2053; C35,§§1921-f89, 2053; C39,§§**1921.089, 2053**; C46, 50, 54, 58, 62, 66, 71,§§123.89, 128.40; C73, 75,§123.88]

123.89 Counts. Informations or indictments under this chapter may allege any number of violations of its provisions by the same party, but the several charges must be set out in separate counts, and the accused may be convicted and punished upon each one as on separate informations or indictments, and a separate judgment shall be rendered on each count under which there is a finding of guilty. [C51, §931; R60,§1562; C73,§1540; C97,§2425; C24, 27, 31,§1953; C35, §§1921-f90, 1953; C39,§§**1921.090, 1953**; C46, 50, 54, 58, 62, 66, 71,§§123.90, 126.8; C73, 75,§123.89]

123.90 Penalties generally. Unless other penalties are herein provided, any person, except a person under legal age, who violates any of the provisions of this chapter, or who makes a false statement concerning any material fact in submitting an application for a permit or license, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Any person under legal age who violates any of the provisions of this chapter shall upon conviction be punished by a fine not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days. [C35, §§1921-f91, 1921-f127; C39, §§**1921.091, 1921.132**; C46, 50, 54, 58, 62, 66, 71, §§123.91, 124.37; C73, 75,§123.90]

123.91 Second and subsequent conviction. Any person who has been convicted, in a criminal action, in any court of record, of a violation of any of the following:

1. Any provision of this chapter.

2. Any provision of the prior laws of this state relating to intoxicating liquors or beer which were in force prior to the enactment of this chapter.

3. Any provision of the laws of the United States or of any other state relating to intoxicating liquors or beer, and who is thereafter convicted of a subsequent criminal offense against any provision of this chapter shall be punished as follows:

a. For his second conviction, by a fine of not less than five hundred dollars nor more than one thousand dollars, and by imprisonment in the county jail or the state penitentiary for not less than six months nor more than one year.

b. For his third and each subsequent conviction, by a fine of not less than one thousand dollars nor more than three thousand dollars and imprisonment in the state penitentiary for not more than three years. [R60,§§1561, 1563, 1577; C73,§§1525, 1538, 1540, 1542, 1559; SS15, §2461-m; C24, 27, 31, 35, 39,§**1964**; C46, 50, 54, 58, 62, 66, 71,§126.19; C73, 75,§123.91]

123.92 Civil liability applicable to sale or gift of beer or intoxicants by licensees. Every husband, wife, child, parent, guardian, employer or other person who shall be injured in person or property or means of support by any intoxicated person or resulting from the intoxication of any such person, shall have a right of action, severally or jointly against any licensee or permittee who shall sell or give any beer or intoxicating liquor to any such person while he is intoxicated, or serve any such person to a point where such person is intoxicated for all damages actually sustained.

Every liquor control licensee and class "B" beer permittee shall furnish proof of financial responsibility either by the existence of a liability insurance policy or by posting bond in such amount as determined by the department. [C73,§1557; C97,§2418; C24, 27, 31, 35, 39,§**2055**; C46, 50, 54, 58, 62,§129.2; C66, 71,§§123.95, 129.2; C73, 75,§123.92]

123.93 Limitation of action. Within six months of the occurrence of an injury, the injured person shall give written notice to the licensee or permittee or such licensee's or permittee's insurance carrier of his intention to bring an action under this section, indicating the time, place and circumstances causing the injury. Such six months' period shall be extended if the injured party is incapacitated at the expiration thereof or unable, through reasonable diligence, to discover the name of the licensee, permittee, or person causing the injury or until such time as such incapacity is removed or such person has had a reasonable time to discover the name of the licensee, permittee or person causing the injury. [C73, 75, §123.93]

123.94 Inurement of action prohibited. No right of action for contribution or indemnity shall accrue to any insurer, guarantor or indemnitor of any intoxicated person for any act of such intoxicated person against any licensee or permittee as defined in this chapter. [C73, 75,§123.94]

123.95 Premises must be licensed—exception as to conventions and social gatherings. It is unlawful for any person to allow the dispensing or consumption of intoxicating liquor, except sacramental wines and beer, in any establishment unless such establishment is licensed under this chapter.

However, bona fide conventions or meetings may bring their own legal liquor onto the licensed premises if the liquor is served to delegates or guests without cost. All other provisions of this chapter shall be applicable to such premises. The provisions of this section shall have no application to private social gather-

ings of friends or relatives in a private home or a private place which is not of a commercial nature nor where goods or services may be purchased or sold nor any charge or rent or other thing of value is exchanged for the use of such premises for any purpose other than for sleeping quarters. [C66, 71,§123.96; C73, 75, §123.95]

Referred to in §§123.49(2,g), 123.96

123.96 Tax on beverages sold for consumption on the premises.

1. There is imposed on every person licensed to sell alcoholic beverages for consumption on the premises where sold, a special tax equivalent to fifteen percent of the price established by the department on all alcoholic beverages for general sale to the public. Such tax shall be paid by all licensees at the point of purchase from the state on all alcoholic beverages intended or used for resale for consumption on the premises of retail establishments. Such tax shall be in lieu of any other sales tax applied at the state store and shall be shown as a separate item on special sales slips provided by the department for purchases by licensees.

2. Except as allowed under section 123.95 no licensee shall knowingly keep on the licensed premises nor use for resale purposes any alcoholic liquor on which the special tax has not been paid to the state. The conviction of a violation of this section shall cause the license held to automatically be revoked and the license shall immediately be surrendered by the holder, and the bond of the license holder shall be forfeited to the department.

3. Each bottle of alcoholic liquor purchased by a licensee shall bear an identification marker applied at the place of purchase. [C66, §§123.97—123.99; C71,§123.100; C73, 75,§123.96]

123.97 Covered into general fund. All revenues, except the portion of license fees remitted to the local authorities, arising under the operation of the provisions of this chapter shall become part of the state general fund. [C66, 71,§123.101; C73, 75,§123.97]

123.98 Labeling shipments. It shall be unlawful for any common carrier or for any person to transport or convey by any means, whether for compensation or not, within this state, any intoxicating liquors, unless the vessel or other package containing such liquors shall be plainly and correctly identified, showing the quantity and kind of liquors contained therein, the name of the party to whom they are to be delivered, and the name of the shipper, or unless such information is shown on a bill of lading or other document accompanying the shipment. No person shall be authorized to receive or keep such liquors unless the same be marked or labeled as required by this section. The violation of any provision of this section by any common carrier, or any agent or employee of any carrier, or by any person, shall be punished under the provisions of this chapter.

Liquors conveyed, carried, transported, or delivered in violation of this section, whether in the hands of the carrier or someone to whom they shall have been delivered, shall be subject to seizure and condemnation, as liquors kept for illegal sale. [C97,§2421; C24, 27, 31, 35, 39,§§1936, 1938; C46, 50, 54, 58, 62, 66, 71,§§125.16, 125.18; C73, 75,§123.98]

123.99 False statements. If any person, for the purpose of procuring the shipment, transportation, or conveyance of any intoxicating liquors within this state, shall make to any person, company, corporation, or common carrier, or to any agent thereof, any false statements as to the character or contents of any box, barrel, or other vessel or package containing such liquors; or shall refuse to give correct and truthful information as to the contents of any such box, barrel, or other vessel or package so sought to be transported or conveyed; or shall falsely mark, brand, or label such box, barrel, or other vessel or package in order to conceal the fact that the same contains intoxicating liquors; or shall by any device or concealment procure or attempt to procure the conveyance or transportation of such liquors as herein prohibited, he shall be fined for each offense one hundred dollars and costs of prosecution, and be committed to the county jail until such fine and costs are paid. [C97,§2420; C24, 27, 31, 35, 39,§1934; C46, 50, 54, 58, 62, 66, 71,§125.14; C73, 75,§123.99]

123.100 Packages in transit. Any peace officer of the county under process or warrant to him directed shall have the right to open any box, barrel, or other vessel or package for examination, if he has reasonable ground for believing that it contains intoxicating liquors, either before or while the same is being so transported or conveyed. [C97,§2420; C24, 27, 31, 35, 39,§1935; C46, 50, 54, 58, 62, 66, 71,§125.15; C73, 75,§123.100]

123.101 Record of shipments. It shall be the duty of all common carriers, or corporations, or persons who shall for hire carry any intoxicating liquors into the state, or from one point to another within the state, for the purpose of delivery, and who shall deliver such intoxicating liquor to any person, company, or corporation, to keep, at each station or office where it employs an agent or other person to make delivery of freight and keep records relative thereto, a record book, wherein such carrier shall, promptly upon receipt and prior to delivery, enter in ink, in legible writing, in full, the name of the consignor of each shipment of intoxicating liquor to be delivered from or through such station, from where shipped, the date of arrival, the quantity and kind of liquor, so far as disclosed by lettering on the package or by the carrier's records, and to whom and where consigned, and the date delivered. [SS15,§2421-b; C24, 27, 31, 35, 39, §1940; C46, 50, 54, 58, 62, 66, 71,§125.20; C73, 75, §123.101]

Referred to in §123.102

123.102 Inspection of shipping records. The record book required by section 123.101 shall, during business hours, be open to inspection by any peace or law enforcing officer. It shall be a misdemeanor to refuse such inspection. [SS15,§§2421-c,-d; C24, 27, 31, 35, 39,§**1941**; C46, 50, 54, 58, 62, 66, 71,§125.21; C73, 75,§123.102]

123.103 Record receipt upon delivery. No shipment billed in whole or in part as intoxicating liquor shall be delivered to the consignee until such consignee upon such record book enters in ink, in legible writing, his full name and residence or place of business, giving the name of the city, and the street name and number if any, and certifies that such liquor is for his own lawful purposes. [SS15, §2421-b; C24, 27, 31, 35, 39,§**1942**; C46, 50, 54, 58, 62, 66, 71,§125.22; C73, 75,§123.103]

Referred to in §123.104

123.104 Unlawful delivery. It shall be a misdemeanor for any corporation, common carrier, person, or any agent or employee thereof:

1. To deliver any intoxicating liquors to any person other than to the consignee.

2. To deliver any intoxicating liquors without having the same receipted for as provided in section 123.103.

3. To deliver any intoxicating liquors where there is reasonable ground to believe that such liquor is intended for unlawful use. [SS15, §2421-c1; C24, 27, 31, 35, 39,§**1943**; C46, 50, 54, 58, 62, 66, 71,§125.23; C73, 75,§123.104]

123.105 Immunity from damage. In no case shall any corporation, common carrier, person, or the agent thereof, be liable in damages for complying with any requirements of this chapter. [SS15,§2421-c; C24, 27, 31, 35, 39,§**1944**; C46, 50, 54, 58, 62, 66, 71,§125.24; C73, 75,§123.105]

123.106 Federal statutes. The requirements of this chapter relative to the shipment and delivery of intoxicating liquors and the records to be kept thereof shall be construed in harmony with federal statutes relating to interstate commerce in such liquors. [SS15,§2421-e; C24, 27, 31, 35, 39,§**1945**; C46, 50, 54, 58, 62, 66, 71,§125.25; C73, 75,§123.106]

123.107 Unnecessary allegations. In any indictment or information under this chapter, it shall not be necessary:

1. To set out exactly the kind or quantity of intoxicating liquors manufactured, sold, given in evasion of the statute, or kept for sale.

2. To set out the exact time of manufacture, sale, gift, or keeping for sale.

3. To negative any exceptions contained in the statute creating or defining the offense, which may be proper ground of defense.

But proof of the violation by the accused of any provision of this chapter, the substance of which violation is briefly set forth, within the time mentioned in said indictment or information, shall be sufficient to convict such person. [R60,§1569; C73,§1549; C97,§2424; C24, 27, 31, 35, 39,§**1952**; C46, 50, 54, 58, 62, 66, 71,§126.7; C73, 75,§123.107]

123.108 Second conviction defined. The second or subsequent convictions provided for in this chapter shall be convictions on separate informations or indictments, and, unless shown in the information or indictment, the charge shall be held to be for a first offense. [R60, §1562; C73,§1540; C97,§2425; C24, 27, 31, 35, 39, §**1955**; C46, 50, 54, 58, 62, 66, 71,§126.10; C73, 75,§123.108]

123.109 Record of conviction. On the trial of any cause in which the accused is charged with a second or subsequent offense, a duly authenticated copy of the former judgment in any court in which such conviction was had shall be competent evidence of such former conviction. [SS15,§2461-n; C24, 27, 31, 35, 39, §**1956**; C46, 50, 54, 58, 62, 66, 71,§126.11; C73, 75,§123.109]

123.110 Proof of sale. It shall not be necessary in every case to prove payment in order to prove a sale within the meaning and intent of this chapter. [R60,§1569; C73,§1549; C97,§2424; C24, 27, 31, 35, 39,§**1957**; C46, 50, 54, 58, 62, 66, 71,§126.12; C73, 75,§123.110]

123.111 Purchaser as witness. The person purchasing any intoxicating liquor sold in violation of this chapter shall in all cases be a competent witness to prove such sale. [R60, §1569; C73,§1549; C97,§2424; C24, 27, 31, 35, 39, §**1958**; C46, 50, 54, 58, 62, 66, 71,§126.13; C73, 75,§123.111]

123.112 Peace officer as witness. Every peace officer shall give evidence, when called upon, of any facts within his knowledge tending to prove a violation of the provisions of this chapter. [R60,§1578; C73,§1551; C97,§2428; S13,§2428; C24, 27, 31, 35, 39,§**1959**; C46, 50, 54, 58, 62, 66, 71,§126.14; C73, 75,§123.112]

123.113 Judgment lien. For all fines and costs assessed or judgments rendered of any kind against any person for a violation of any provision of this chapter, or costs paid by the county on account of such violation, the personal and real property of the violator, whether exempt or not, except the homestead, as well as the premises and property, personal and real, occupied and used for the unlawful purpose, with the knowledge of the owner or his agent, by the violator, shall be liable, and the same shall be a lien on such real estate until paid. [R60,§1579; C73,§§1552, 1558; C97,§2422; C24, 27, 31, 35, 39,§**1960**; C46, 50, 54, 58, 62, 66, 71,§126.15; C73, 75,§123.113]

123.114 Enforcement of lien. Costs paid by the county for the prosecution of actions or proceedings, civil or criminal, under this chapter, as well as the fines inflicted or judgments rendered, may be enforced against the property upon which the lien attaches by execution, or by action against the owner of the property

to subject it to the payment thereof. [C73, §1558; C97,§2422; C24, 27, 31, 35, 39,§**1961**; C46, 50, 54, 58, 62, 66, 71,§126.16; C73, 75,§123.114]

123.115 Defense. In any prosecution under this chapter for the unlawful transportation of intoxicating liquors it shall be a defense that the character and contents of the shipment or thing transported were not known to the accused or to his agent or employee. [C97,§2419; C24,§2059; C27, 31, 35,§1945-a2; C39,§**1945.3**; C46, 50, 54, 58, 62, 66, 71,§125.28; C73, 75,§123.115]

123.116 Right to receive liquors. The consignee of intoxicating liquors shall, on demand of the carrier transporting such liquors, furnish the carrier, at the place of delivery, with legal proof of the consignee's legal right to receive such liquors at the time of delivery, and until such proof is furnished the carrier shall be under no legal obligation to make delivery nor be liable for failure to deliver. [C24, §2061; C27, 31, 35,§1945-a4; C39,§**1945.5**; C46, 50, 54, 58, 62, 66, 71,§125.30; C73, 75,§123.116]

123.117 Delivery to sheriff. If such proof is not furnished the carrier within ten days after demand, the carrier may deliver such liquors to the sheriff of the county embracing the place of delivery, and such delivery shall absolve the carrier from all liability pertaining to such liquors. [C24,§2062; C27, 31, 35,§1945-a5; C39, §**1945.6**; C46, 50, 54, 58, 62, 66, 71,§125.31; C73, 75, §123.117]

123.118 Destruction. The sheriff shall, on receipt of such liquors from the carrier, report the receipt to the district court of his county, and the court shall proceed to summarily enter an order for the destruction or forfeiture to the state of such liquors. [C24,§2063; C27, 31, 35,§1945-a6; C39,§**1945.7**; C46, 50, 54, 58, 62, 66, 71,§125.32; C73, 75,§123.118]

123.119 Evidence. In all actions, civil or criminal, under the provisions of this chapter, the finding of intoxicating liquors or of instruments or utensils used in the manufacture of intoxicating liquors, or materials which are being used, or are intended to be used in the manufacture of intoxicating liquors, in the possession of or under the control of any person, under and by authority of a search warrant or other process of law, and which shall have been finally adjudicated and declared forfeited by the court, shall be competent evidence of maintaining a nuisance or bootlegging, or of illegal transportation of intoxicating liquors, as the case may be, by such person. [C27, 31, 35,§1966-a1; C39,§**1966.1**; C46, 50, 54, 58, 62, 66, 71,§126.23; C73, 75,§123.119]

123.120 Attempt to destroy. The destruction of or attempt to destroy any liquid by any person while in the presence of peace officers or while a property is being searched by a peace officer, shall be competent evidence that such liquid is intoxicating liquor and intended for unlawful purposes. [C27, 31, 35,§1966-a3; C39,§**1966.3**; C46, 50, 54, 58, 62, 66, 71,§126.25; C73, 75,§123.120]

123.121 Venue. In any prosecution under this chapter for the unlawful sale of alcoholic liquor or beer a sale of alcoholic liquor or beer which requires a shipment or delivery of such liquor or beer shall be deemed to be made in the county in which such delivery is made by the carrier to the consignee, his agent, or employee.

In any prosecution under this chapter for the unlawful transportation of intoxicating liquor, the offense shall be held to have been committed in any county in which such liquor is received for transportation, through which it is transported, or in which it is delivered. [C97, §2419; C24,§§1928, 2060; C27, 31, 35,§§1928, 1945-a3; C39,§§**1928, 1945.4**; C46, 50, 54, 58, 62, 66, 71, §§125.8, 125.29; C73, 75,§123.121]

DIVISION II
BEER PROVISIONS

123.122 Permit or license required. No person shall manufacture for sale or sell beer at wholesale or retail unless a permit is first obtained as provided in this division or, a liquor control license authorizing the retail sale of beer is first obtained as provided in division I of this chapter. No liquor control license holder shall be required to hold a separate class "B" beer permit or to post a separate bond. [C35, §1921-f96; C39,§**1921.095**; C46, 50, 54, 58, 62, 66, 71,§124.1; C73, 75,§123.122]

123.123 Effect on liquor control licensees. All applicable provisions of this division relating to class "B" beer permits shall apply to liquor control licensees in the purchasing, storage, handling, serving, and sale of beer. [C73, 75,§123.123]

123.124 Permits—classes. Permits for the manufacture and sale, or sale of beer shall be divided into three classes, and shall be known as either class "A", "B", or "C" permits. A class "A" permit shall allow the holder to manufacture and sell beer at wholesale. The holder of a class "A" permit may manufacture beer of more than four percent of alcohol by weight for shipment outside this state only. A class "B" permit shall allow the holder to sell beer at retail for consumption on or off the premises. A class "C" permit shall allow the holder to sell beer at retail for consumption off the premises. [C35,§1921-f98; C39,§**1921.097**; C46, 50, 54, 58, 62, 66, 71,§124.3; C73, 75,§123.124]

123.125 Issuance of permits. The director shall issue class "A", "B", and "C" beer permits and may suspend or revoke such permits for cause as provided in this chapter. [C35, §1921-f98; C39,§**1921.097**; C46, 50, 54, 58, 62, 66, 71, §124.3; C73, 75,§123.125]

123.126 Prohibited interest. It shall be unlawful for any person or persons to be either directly or indirectly interested in more than

one class of beer permit. [C35,§1921-f101; C39, §1921.102; C46, 50, 54, 58, 62, 66, 71,§124.7; C73, 75,§123.126]

123.127 Class "A" application. A class "A" permit shall be issued by the director to any person who:

1. Submits a written application for such permit, which application shall state under oath:

a. The name and place of residence of the applicant and the length of time he has lived at such place of residence.

b. That he is a citizen of the state of Iowa.

c. The place of birth of the applicant, and if the applicant is a naturalized citizen, the time and place of such naturalization.

d. The location of the premises where the applicant intends to operate.

e. The name of the owner of the premises and if such owner is not the applicant, that such applicant is the actual lessee of the premises.

2. Establishes:

a. That he is a person of good moral character as defined by this chapter.

b. That the premises where he intends to operate conform to all laws and health and fire regulations applicable thereto.

3. Furnishes a bond in the form prescribed and to be furnished by the department, with good and sufficient sureties to be approved by the director conditioned upon the faithful observance of this chapter, in the penal sum of five thousand dollars, payable to the state.

4. Gives consent to members of the fire, police and health departments and the building inspector of cities; the county sheriff, deputy sheriff, and state agents, and any official county health officer to enter upon the premises without a warrant to inspect for violations of the provisions of this chapter or ordinances and regulations that local authorities may adopt. [C35,§1921-f102; C39,§1921.103; C46, 50, 54, 58, 62, 66,§124.8; C71,§§124.8, 124.41; C73, 75,§123.127]

Referred to in §§123.128, 123.129

123.128 Class "B" application. A class "B" permit shall be issued by the director to any person who:

1. Submits a written application for such permit, which application shall state under oath:

a. All the information required of a class "A" applicant by section 123.127, subsection 1.

b. That the premises for which the permit is sought is and will continue to be equipped with sufficient tables and seats to accommodate twenty-five persons at one time, and in areas where such business is permitted by any valid zoning ordinance or will be so permitted on the effective date of the permit.

2. Fulfills the requirements of section 123.127, subsection 2, relating to class "A" applicants.

3. Furnishes a bond in the same form and manner as prescribed for a class "A" applicant by section 123.127, subsection 3, except that the amount of the bond shall be five hundred dollars. Such bond shall be further conditioned that the permittee and his surety, as part of the class "B" permit, shall consent to forfeiture of the principal sum of said bond in event of suspension or revocation of the permit as a result of charges filed and hearing held as provided by this chapter.

4. Consents to inspection as required in section 123.127, subsection 4. [C35,§1921-f103; C39, §1921.104; C46, 50, 54, 58, 62, 66, 71,§124.9; C73, 75,§123.128]

Referred to in §123.32

123.129 Class "C" application. No class "C" permit shall be issued to any person except the owner or proprietor of a grocery store or pharmacy.

"Grocery store" means any retail establishment, the business of which consists of the sale of food, food products or beverages for consumption off the premises.

"Pharmacy" means a drug store in which drugs and medicines are exposed for sale and sold at retail, or in which prescriptions of licensed physicians and surgeons, dentists or veterinarians are compounded and sold by a registered pharmacist.

A class "C" permit shall be issued by the director to any person who is the owner or proprietor of a grocery store or pharmacy, who:

1. Submits a written application for such permit, which application shall state under oath all the information required of a class "A" applicant by section 123.127, subsection 1.

2. Establishes that he is a person of good moral character as defined by this chapter.

3. Furnishes a bond in the same form and manner as prescribed for a class "A" applicant by section 123.127, subsection 3, except that the amount of the bond shall be five hundred dollars.

4. Consents to inspection as required in section 123.127, subsection 4.

5. States the number of square feet of interior floor space which comprises the retail sales area of the premises for which the permit is sought. [C35,§1921-f104; C39,§1921.105; C46, 50, 54, 58, 62, 66, 71,§124.10; C73. 75,§123.129]

Referred to in §123.32

123.130 Authority under class "A" permit. Any person holding a class "A" permit issued by the department shall be authorized to manufacture and sell, or sell at wholesale, beer for consumption off the premises, such sales within the state to be made only to persons holding subsisting class "A", "B" or "C" permits, or liquor control licenses issued in accordance with the provisions of this chapter. [C35,§1921-f105; C39,§1921.106; C46, 50, 54, 58, 62, 66, 71, §124.11; C73, 75,§123.130]

123.131 Authority under class "B" permit. Subject to the provisions of this chapter, any

person holding a class "B" permit shall be authorized to sell beer for consumption on or off the premises. However, unless otherwise provided in this chapter, no sale of beer shall be made for consumption on the premises unless the place where such service is made is equipped with tables and seats sufficient to accommodate not less than twenty-five persons at one time. [C35,§1921-f106; C39,**§1921.107**; C46, 50, 54, 58, 62, 66, 71,§124.12; C73, 75,§123.131]

123.132 Authority under class "C" permit. Any person holding a class "C" permit shall be allowed to sell beer for consumption off the premises. Such sales shall be in original containers only. [C35,§1921-f107; C39, **§1921.108**; C46, 50, 54, 58, 62, 66, 71,§124.13; C73, 75, §123.132]

123.133 Sale on trains—bond. Subject to the provisions of this chapter, any dining car company, sleeping car company, railroad company, or railway company may make application to the director for special class "B" permit, and the director may issue a permit to any such company which shall authorize the holder to keep for sale and sell beer on any dining car, sleeping car, buffet car, or observation car operated by such applicant in, through, or across the state. The application for such permit shall be in such form and contain such information as may be required by the director. Each such permit shall be good throughout the state as a state permit. Only one such permit shall be required for all cars operated in this state by such applicant, but a duplicate of such permit shall be posted in each car in which such beverages are sold; and no further permit shall be required or tax levied for the privilege of selling beer for consumption in such cars. As a condition precedent to the issuing of any such permit, the applicant shall give bond to the department, with good and sufficient sureties thereon to be approved by the director, conditioned upon faithful compliance with the provisions of this chapter in the penal sum of one thousand dollars. [C35,§1921-f108; C39, **§1921.109**; C46, 50, 54, 58, 62, 66, 71,§124.14; C73, 75,§123.133]

Referred to in §§123.134, 123.142

123.134 Beer fees—Sunday sales.

1. The annual permit fee for a class "A" permit shall be two hundred fifty dollars.

2. The annual permit fee for a class "B" permit shall be graduated according to population as follows:

a. For premises located within the corporate limits of cities with a population of ten thousand and over, three hundred dollars.

b. For premises located within the corporate limits of cities with a population of at least fifteen hundred but less than ten thousand, two hundred dollars.

c. For premises located within the corporate limits of cities with a population of under fifteen hundred, one hundred dollars.

d. For premises located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be operated under the permit, and in case there is doubt as to which of two or more differing corporate limits are the nearest, the permit fee which is the largest shall prevail.

3. The annual permit fee for a class "C" permit shall be graduated on the basis of the amount of interior floor space which comprises the retail sales area of the premises covered by the permit, as follows:

a. Up to one thousand five hundred square feet, the sum of seventy-five dollars.

b. Over one thousand five hundred square feet and up to two thousand square feet. the sum of one hundred dollars.

c. Over two thousand and up to five thousand square feet, the sum of two hundred dollars.

d. Over five thousand square feet, the sum of three hundred dollars.

4. The annual permit fee for a special class "B" permit, issued under section 123.133, shall be one hundred dollars, and three dollars for each duplicate permit, which fees shall be paid to the department. The department shall issue duplicates of such permits from time to time as applied for by each such company.

5. Any club, hotel, motel, or commercial establishment holding a class "B" beer permit for whom the sale of goods and services other than beer constitutes fifty percent or more of the gross receipts from the licensed premises, subject to the provisions of section 123.49, subsection 2, paragraph "*b*", may sell and dispense beer to patrons on Sunday for consumption on the premises only. For this privilege the class "B" beer permit fees of the applicant shall be increased by twenty percent of the regular fees prescribed for the permit pursuant to this section and the privilege shall be noted on the beer permit. The department shall prescribe the nature and character of the evidence which shall be required of the applicant under this subsection. [C35,§1921-f117; C39,**§1921.119**; C46, 50, 54, 58, 62, 66, 71,§124.24; C73, 75,§123.134]

Referred to in §§123.36, 123.49, 123.143
Local option, §123.36(7)

123.135 Brewer's certificate of compliance.

1. Any manufacturer, brewer, bottler, importer, or vendor of beer or any agent thereof desiring to ship, sell, or have beer brought into this state for resale by a class "A" permittee shall first make application for and shall be issued a brewer's certificate of compliance by the director for such purpose. Such certificate of compliance shall expire at the end of one year from the date of issuance and shall be renewed for a like period upon application to the director unless otherwise revoked for cause. Each application for a certificate of compliance or renewal thereof shall be accompanied by a fee of one hundred

dollars payable to the department. Each holder of a certificate of compliance shall furnish such information and in such form as the director may require. Any brewer whose plant is located in Iowa and who otherwise holds a class "A" beer permit to sell beer at wholesale shall be exempt from the fee, but not of the terms and conditions, as herein provided.

2. At the time of applying for a certificate of compliance, each applicant shall file with the department a list of all class "A" permittees with whom it intends to do business and shall designate the geographic area in which its products are to be distributed by such permittee. The listing of class "A" permittees and geographic area as filed with the department may be amended from time to time by the holder of a certificate of compliance.

3. All class "A" permit holders shall sell only those brands of beer which are manufactured, brewed, bottled, shipped, or imported by a person holding a current certificate of compliance. Any employee or agent working for or representing the holder of a certificate of compliance within this state shall register his name and address with the department, which names and addresses shall be filed with the department's copy of the certificate of compliance issued.

4. It shall be unlawful for any holder of a certificate of compliance or his agent, or any class "A" permit holder or his agent, to grant to any retail beer permit holder, directly or indirectly, any rebates, free goods, or quantity discounts on beer which are not uniformly offered to all retail permittees.

5. Notwithstanding any other penalties provided by this chapter, any holder of a certificate of compliance or any class "A" permit holder who shall violate any of the provisions of this section shall be subject to a fine not to exceed one thousand dollars or suspension of his certificate or permit for a period not to exceed one year or both such fine and suspension. [C73, 75,§123.135]

123.136 Barrel tax. In addition to the annual permit fee to be paid by all class "A" permittees under the provisions of this chapter there shall be levied and collected from such permittees on all beer manufactured for sale or sold in this state at wholesale and on all beer imported into this state for sale at wholesale and sold in this state at wholesale, a tax of four and thirty-four hundredths dollars for every barrel containing thirty-one gallons, and at a like rate for any other quantity or for the fractional part of a barrel. However, no tax shall be levied or collected on beer shipped outside this state by a class "A" permittee or sold by one class "A" permittee to another class "A" permittee.

All revenue derived from the barrel tax shall accrue to the state general fund.

All of the provisions of this chapter relating to the administration of the barrel tax on beer shall apply to this section. [C35,§1921-f118; C39,§**1921.120**; C46, 50, 54, 58, 62, 66, 71,§124.25; C73, 75,§123.136]

Referred to in §§123.137, 123.142

123.137 Report of barrel sales — penalty. Every person holding a class "A" permit shall on or before the tenth day of each calendar month commencing on the tenth day of the calendar month following the month in which such person is issued a permit, make a report under oath to the department upon forms to be furnished by the department for such purpose showing the exact number of barrels of beer, or fractional parts thereof, sold by such permit holder during the preceding calendar month. Such report shall also state such information as the director may require, and such permit holders shall at the time of filing said report pay to the department the amount of tax due at the rate fixed in section 123.136.

A penalty of ten percent of the amount of the tax shall be added thereto if the report is not filed and the tax paid within the time required by this section. [C35,§1921-f119; C39, §**1921.121**; C46, 50, 54, 58, 62, 66, 71,§124.26; C73, 75,§123.137]

123.138 Books of account required. Each class "A" permittee shall keep proper books of account and records showing the amount of beer sold by him, which books of account shall be at all times open to inspection by the director. Each class "B" and class "C" permittee shall keep proper books of account and records showing each purchase of beer made by him, and the date and the amount of each purchase and the name of the person from whom each purchase was made, which books of account and records shall be open to inspection by the director and agents of the division of beer and liquor law enforcement of the department of public safety during normal business hours of the permittee. [C35,§1921-f120; C39,§**1921.122**; C46, 50, 54, 58, 62, 66, 71,§124.27; C73, 75,§123.138]

123.139 Separate locations—class "A". Every class "A" permittee having more than one place of business shall be required to have a separate permit for each separate place of business maintained by such permittee wherein such beer is stored, warehoused, or sold. [C35,§1921-f121; C39,§**1921.123**; C46, 50, 54, 58, 62, 66, 71,§124.28; C73, 75,§123.139]

123.140 Separate locations—class "B" or "C". Every person holding a class "B" or class "C" permit having more than one place of business where such beer is sold shall be required to have a separate license for each separate place of business, except as otherwise provided by this chapter. [C35,§1921-f122; C39,§**1921.124**; C46, 50, 54, 58, 62, 66, 71,§124.29; C73, 75,§123.140]

123.141 Keeping liquor where beer is sold. No alcoholic liquor for beverage purposes shall be used, or kept for any purpose in the place

of business of class "B" permittees, or on the premises of such class "B" permittees, at any time. A violation of any provision of this section shall be grounds for suspension or revocation of the permit pursuant to section 123.50, subsection 3. This section shall not apply in any manner or in any way, to any railway car of any dining car company, sleeping car company, railroad company or railway company, having a special class "B" permit; to the premises of any hotel or motel for which a class "B" permit has been issued, other than that part of such premises regularly used by the hotel or motel for the principal purpose of selling beer or food to the general public; or to drug stores regularly and continuously employing a registered pharmacist, from having alcohol in stock for medicinal and compounding purposes. [C35,§1921-g4; C39, §**1921.126**; C46, 50, 54, 58, 62, 66, 71,§124.31; C73, 75,§124.141]

123.142 Purchase from nonpermit holder. It shall be unlawful for the holder of any class "B" or class "C" permit issued under the provisions of this chapter to sell beer, except beer purchased from a person holding a subsisting class "A" permit issued in accordance with the provisions of this chapter, and on which the tax provided in section 123.136 has been paid. However, the provisions of this section shall not apply to the holders of special class "B" permits issued under section 123.133 for sales in cars engaged in interstate commerce nor to class "D" liquor control licensees as provided in this chapter.

It shall be unlawful for any person not holding a class "A" permit to import beer into this state for the purpose of sale or resale. [C35,§1921-f124; C39,§**1921.127**; C46, 50, 54, 58, 62, 66, 71,§124.32; C73, 75,§123.142]

123.143 Distribution of funds. The revenues obtained from permit fees and the barrel tax collected under the provisions of this chapter shall be distributed as follows:

1. All retail beer permit fees collected by any local authority at the time application for the permit is made shall be retained by the local authority. A certified copy of the receipt for the permit fee shall be submitted to the department with the application and the local authority shall be notified at the time the permit is issued. Those amounts retained by the appropriate local authority out of the fee collected for the privilege authorized under section 123.134, subsection 5, shall be deposited in the county mental health and institutions fund to be used only for the care and treatment of persons admitted or committed to the alcoholic treatment center at Oakdale or any facilities as provided in chapter 125.

2. All permit fees and taxes collected by the department under this division shall accrue to the state general fund, except as otherwise provided. [C35,§1921-f125; C39,§**1921.128**; C46, 50, 54, 58, 62, 66, 71,§124.33; C73, 75,§123.143]

123.144 Bottling beer. No person shall bottle beer within the state of Iowa for purposes other than for individual consumption in a private home, except class "A" permittees who have complete equipment for bottling beer and who have received the approval of the local board of health as to sanitation, and it shall be the duty of local boards of health to inspect the premises and equipment of class "A" permittees who desire to bottle beer. [C35, §1921-g6; C39,§**1921.131**; C46, 50, 54, 58, 62, 66, 71,§124.36; C73, 75,§123.144]

123.145 Labels on bottles, barrels, etc.—conclusive evidence. The label on any bottle, keg, barrel, or other container in which beer is offered for sale in this state, representing the alcoholic content of such beer as being in excess of four per centum by weight shall be conclusive evidence as to the alcoholic content of the beer contained therein. [C35,§1921-f128; C39,§**1921.133**; C46, 50, 54, 58, 62, 66, 71,§124.38; C73, 75,§123.145]

Saving clause 64GA, ch 131,§146; see also §4.1

123.146 Barrel tax rebate.

1. Any class "A" permittee which owns and operates a brewery located in Iowa and which manufactures less than fifty thousand barrels annually is entitled to and may apply for the barrel tax rebate provided in subsection 2. Any person who, together with all other persons controlling, controlled by, or under common control with such person, manufactures a total of fifty thousand or more barrels annually, at one or more locations within or without Iowa, shall not be eligible for this rebate.

2. Upon application a class "A" permittee qualified under subsection 1 shall receive a rebate of fifty percent of the barrel tax paid by the permittee pursuant to this chapter for each barrel manufactured in this state. The rebate shall not apply to any penalty paid.

3. The rebate provided in subsection 2 shall be payable after the tenth day of January of the year in which application is received and the amount paid shall consist of the rebate due for manufacture during the preceding calendar year. The rebate provided by this section shall apply only to barrel tax paid for beer manufactured after June 30, 1974. [C75, §123.146]

Appropriation for rebate, 65GA, ch 1130,§2

CHAPTER 123A

ALCOHOLISM STUDY COMMISSION

Repealed by 65GA, ch 1131,§51

CHAPTER 123B

TREATMENT OF ALCOHOLISM

The sections in this chapter either repealed or transferred to chapter 125

CHAPTER 123C

LIQUOR SALES DISCLOSURE

Repealed by 64GA, ch 131,§152
See ch 123

CHAPTER 124

BEER AND MALT LIQUORS

Repealed by 64GA, ch 131, §152
See ch 123

CHAPTER 125

ALCOHOLISM AND INTOXICATION TREATMENT

Referred to in §§123.36, 123.143, 125.42, 230A.2, 444.12

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125.1 Declaration of policy. It is the policy of this state that alcoholics and intoxicated persons be directed into and afforded the opportunity to receive treatment which will help them lead normal lives as productive members of society and that criminal prosecution for the consumption of alcoholic beverages be kept at a minimum and that treatment for the protection of intoxicated and other persons be emphasized and increased. [C71, 73,§123B.2; C75, §125.1]

Referred to in §§125.3, 125.7, 321.283(8)

125.2 Definitions. For purposes of this chapter, unless the context clearly indicates otherwise:

1. *"Alcoholic"* means a person who habitually lacks self-control as to the use of alcoholic beverages or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or that his social or economic function is substantially disrupted.

2. *"Facility"* means a hospital, institution, detoxification center, or installation providing care, maintenance and treatment for alcoholics and approved by the director under section 125.13.

3. *"Commissioner"* means the commissioner of public health.

4. *"Department"* means the state department of health.

5. *"Division"* means the division on alcoholism established in section 125.3.

6. *"Director"* means the director of the Iowa division on alcoholism.

7. *"Commission"* means the Iowa commission on alcoholism within the division.

8. *"Incapacitated by alcohol"* means that a person, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

9. *"Incompetent person"* means a person who has been adjudged incompetent by a court of law.

10. *"Intoxicated person"* means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

11. *"Treatment"* means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, nursing, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons.

12. *"Residence"* means the place where a person resides. For the purpose of determining which Iowa county, if any, is liable pursuant to this chapter for payments of costs attributable to its residents, the following rules shall apply:

a. If a person claims an Iowa homestead, then the person's residence shall be in the county where that homestead is claimed, irrespective of any other factors.

b. If paragraph *"a"* does not apply, and the person continuously has been provided or has maintained living quarters within any county of this state for a period of not less than one year, whether or not at the same location within that county, then the person's residence shall be in that county, irrespective of other factors. However, this paragraph shall not apply to unemancipated persons under eighteen years of age who are wards of this state.

c. If paragraphs *"a"* and *"b"* do not apply, or, if the person is under eighteen years of age, is unemancipated, and is a ward of this state, then the person shall be unclassified with respect to county of residence, and payment of all costs shall be made by the division as provided in this chapter.

d. An unemancipated person under eighteen years of age who is not a ward of the state shall be deemed to reside where the parent having legal custody, or the legal guardian, or legal custodian of that person has residence as determined according to this subsection.

e. The provisions of this subsection shall not be used in any case to which section 125.26 is applicable. [C62, 66,§123A.1; C71, 73, §§123A.1, 123B.1; C75,§125.2; 66GA, ch 1103, §§1, 2]

Referred to in §§125.3, 125.7, 125.27, 321.283(3)

125.3 Established. There is established within the state department of health a division on alcoholism which shall develop, implement and administer a comprehensive alcoholism program pursuant to sections 125.1 to 125.26. There is established within the division a commission on alcoholism to establish policies governing the performance of the division in the discharge of duties imposed on it by this chapter. The commission shall consist of nine members appointed by the governor. Appointments shall be made on the basis of interest in and knowledge of alcoholism. All members shall be electors of the state of Iowa and no more than five members shall belong to the same political party. No member shall be a director of a local or regional alcoholism center. [C62, 66, 71, 73,§123A.2; C75,§125.3]

Referred to in §§125.2, 125.7, 321.283(3)

125.4 Terms of office. Commission members shall be appointed to terms of four years, except that initial appointments to the membership of the commission shall be staggered so that four members shall be appointed to terms of two years and five members shall be appointed to terms of four years. Terms of office shall commence on the first day of July of the year of appointment. Vacancies occurring during a term of office shall be filled for the balance of the unexpired term in the manner of original appointment. No member shall be appointed to serve more than two consecutive four-year terms. [C62, 66, 71, 73,§123A.3; C75,§125.4]

Referred to in §§125.3, 125.7, 321.283(3)

125.5 Meetings. The commission shall organize annually and shall select from its membership a chairman and a vice chairman. The commission shall meet at least six times a year. Other meetings shall be called by the chairman or upon written request of a majority of the members of the commission. The chairman shall preside at all meetings or in his absence the vice chairman shall preside. Five members of the commission shall constitute a quorum but the concurrence of a majority of the commission shall be required to determine

any matter relating to its duties. [C62, 66, 71, 73,§123A.4; C75,§125.5]

Referred to in §§125.3, 125.7, 321.283(3)

125.6 Compensation. Each member of the Iowa commission on alcoholism shall receive forty dollars per day for each day spent in performance of the duties of the commission. Each member shall also receive his actual necessary expenses incurred in the performance of his duties. [C62, 66, 71, 73,§123A.4; C75,§125.6]

Referred to in §§125.3, 125.7, 321.283(3)

125.7 Duties of the commission. The commission shall:

1. Act as the sole agency to allocate state, federal, and private funds which are appropriated or granted to, or solicited by the division.

2. Approve the comprehensive alcoholism program, and the funding therefor, developed by the division pursuant to sections 125.1 to 125.26.

3. Establish policies governing the performance of the division in the discharge of any duties imposed on it by law.

4. Establish policies governing the performance of the director in the discharge of his duties.

5. Advise or make recommendations to the governor and the general assembly relative to alcoholism treatment programs in this state.

6. Promulgate rules necessary to carry out the provisions of this chapter, subject to review in accordance with the provisions of chapter 17A.

7. Investigate the work of the division, and for this purpose it shall have access at any time to all books, papers, documents and records of the division.

8. Submit to the governor an annual report covering the activities of the division. [C71, 73,§123B.3; C75,§125.7; 66GA, ch 1103,§3]

Referred to in §§125.3, 321.283(3)

125.8 Director—appointment. A director shall be appointed by the commission with the approval of the commissioner. Notwithstanding the provisions of section 19A.3, the director of the division shall be subject to the state merit system. The director shall be a qualified person who has training or experience in handling alcohol problems and the ability to organize and otherwise supervise delivery systems providing treatment services to persons suffering from alcoholism problems. The director shall represent the department at meetings of the commission and shall serve as secretary to the commission. [C75,§125.8]

Referred to in §§125.3, 125.7, 321.283(3)

125.9 Powers of director. The director may:

1. Plan, establish and maintain treatment programs as necessary or desirable in accordance with the comprehensive alcoholism program.

2. Make contracts necessary or incidental to the performance of his duties and the execution of his powers, including contracts with public and private agencies, organizations and individuals to pay them for services rendered or furnished to alcoholics or intoxicated persons.

3. Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies and the commission in making an application for any grant.

4. Co-ordinate the activities of the division and co-operate with alcoholism programs in this and other states, and make contracts and other joint or co-operative arrangements with state, local or private agencies in this and other states for the treatment of alcoholics and intoxicated persons and for the common advancement of alcoholism programs.

5. Keep records and engage in research and the gathering of relevant statistics.

6. Employ staff necessary to carry out the duties assigned to him.

7. Do other acts and things necessary or convenient to execute the authority expressly granted to him. [C62, 66,§§123A.5, 123A.7, 123A.8; C71, 73,§§123A.7, 123A.8, 123B.17; C75, §125.9; 66GA, ch 1103,§4]

Referred to in §§125.3, 125.7, 321.283(3)

125.10 Duties of director. The director shall:

1. Prepare and submit a state plan subject to approval by the commission and in accordance with the provisions of title XLII, United States Code, section 4573. The state plan shall designate the division as the sole agency for supervising the administration of the plan and may provide for the appointment of a citizens advisory council on alcoholism.

2. Develop, encourage, and foster state-wide, regional and local plans and programs for the prevention of alcoholism and the treatment of alcoholics and intoxicated persons in co-operation with public and private agencies, organizations and individuals, and provide technical assistance and consultation services for these purposes.

3. Co-ordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in the prevention of alcoholism and the treatment of alcoholics and intoxicated persons.

4. Co-operate with the department of social services in establishing and conducting programs to provide treatment for alcoholics and intoxicated persons.

5. Co-operate with the department of public instruction, boards of education, schools, police departments, courts and other public and

private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and the treatment of alcoholics and intoxicated persons, and in preparing curriculum materials thereon for use at all levels of school education.

6. Prepare, publish, evaluate and disseminate educational material dealing with the nature and effects of alcohol.

7. Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol.

8. Organize and implement, in co-operation with local treatment programs, training programs for all persons engaged in treatment of alcoholics and intoxicated persons.

9. Sponsor and implement, in co-operation with local treatment programs, research into the causes and nature of alcoholism and treatment of alcoholics and intoxicated persons, and serve as a clearing house for information relating to alcoholism.

10. Specify uniform methods for keeping statistical information by public and private agencies, organizations and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment.

11. Develop and implement, with the counsel and approval of the commission, a comprehensive plan for treatment of alcoholics and intoxicated persons, said plan to be coordinated with health systems agencies.

12. Assist in the development of, and cooperate with, alcohol education and treatment programs for employees of state and local governments and businesses and industries in the state.

13. Utilize the support and assistance of interested persons in the community, particularly recovered alcoholics, to encourage alcoholics to voluntarily undergo treatment.

14. Co-operate with the commissioner of public safety in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated.

15. Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and intoxicated persons and to provide them with adequate and appropriate treatment, and may negotiate and implement contracts with hospitals and other appropriate health facilities with adequate detoxification facilities.

16. Encourage all health and disability insurance programs to include alcoholism as a covered illness.

17. Review all state health, welfare and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to alcoholism and intoxicated persons. [C62, 66,§123A.5; C71, 73,§123B.17; C75,§125.10; 66GA, ch 1103,§§5, 6]

Referred to in §§125.3, 125.7, 125.11, 321.283(3)

125.11 Citizens advisory council on alcoholism. If the state plan submitted pursuant to section 125.10, subsection 1, provides for a citizens advisory council on alcoholism, the council shall be composed of fifteen members appointed by the governor. Members shall serve for overlapping terms of three years each; one third of the members first appointed shall be appointed for one, two, and three-year terms respectively. Members shall have professional, research or personal interest in alcoholism problems. Upon appointment, the council shall meet at least once every three months and report on its activities and make recommendations to the commission at least once a year.

The council shall advise the commission on broad policies, goals, and operation of the alcoholism program and on other matters the commission refers to it, and shall encourage public understanding and support of the alcoholism program.

Members of the council shall serve without compensation but shall receive reimbursement for travel and other necessary expenses actually incurred in the performance of their duties. [C75,§125.11]

Referred to in §§125.3, 125.7, 321.283(3)

125.12 Comprehensive program for treatment—regional facilities.

1. The commission shall establish a comprehensive and co-ordinated program for the treatment of alcoholics and intoxicated persons. Subject to the approval of the commissioner, the director shall divide the state into appropriate regions for the conduct of the program and establish standards for the development of the program on the regional level. In establishing the regions, consideration shall be given to city and county lines, population concentrations and existing alcoholism treatment services. In determining the regions, the director shall not be required to follow the regional map as prepared by the office for planning and programming.

2. The program of the commission shall include:

a. Emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital.

b. Inpatient treatment.

c. Intermediate treatment.

d. Outpatient and follow-up treatment.

e. Prevention.

3. The director shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under sections 125.16 to 125.19. Treatment shall not be pro-

vided at a correctional institution except for inmates.

4. The director shall maintain, supervise and control all facilities operated by him pursuant to this chapter. The administrator of each facility shall make an annual report of the activities of the facility to the director in the form and manner the director specifies.

5. All appropriate public and private resources shall be co-ordinated with and utilized in the program if possible.

6. The director shall prepare, publish and distribute annually a list of all facilities.

7. The director may contract for the use of a facility if the director, subject to the policies of the commission and pursuant to section 125.27, considers this to be an effective and economical course to follow. [C75,§125.12]

Referred to in §§125.3, 125.7, 321.283(3)

125.13 Approval of facilities—enforcement procedures—penalties.

1. The commission shall establish standards for treatment programs and facilities. The standards may concern only the health standards to be met and minimum standards of treatment to be afforded patients. A person shall not operate a public or private alcoholism treatment facility or program until it is approved by the commission, except as provided in section 125.14.

2. The director periodically shall inspect facilities and shall fix the fees to be charged for the inspection.

3. The director shall maintain a list of approved facilities.

4. Each facility shall file with the director on request, data, statistics, schedules and information the commission reasonably requires. A facility that without good cause fails to furnish any data, statistics, schedules or information as requested, or files fraudulent returns thereof, shall be removed from the list of approved facilities.

5. The director may grant or, after holding a hearing, may suspend, revoke, limit or restrict an approval, or refuse to grant an approval, for failure to meet the standards of the commission.

6. A district court judge may restrain any violation of this section, review any denial, restriction or revocation of approval, and grant other relief required to enforce its provisions.

7. Upon petition of the director and after a hearing held upon reasonable notice to the facility, the district court may issue an order to an officer or employee of the division authorizing him to enter and inspect at reasonable times, and examine the books and accounts of, a facility refusing to consent to inspection or examination by the director or which the director has reasonable cause to believe is operating in violation of this chapter.

8. The commission shall establish rules pursuant to chapter 17A requiring facilities to use reasonable accounting and reimbursement systems which recognize relevant cost-related factors for alcoholism patients. No facility shall be approved nor shall any payment be made under this chapter to a facility which fails to comply with those rules or which does not permit inspection by the division, and an examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the division deems relevant to the establishment of such a system. However, rules issued pursuant to this paragraph shall not apply to any facility referred to in sections 125.14 or 125.26. [C75, §125.13; 66GA, ch 1103,§7]

Referred to in §§125.2, 125.3, 125.7, 125.22, 125.27, 321.283(3)

125.14 Exceptions. Approval of the director is not required for the operation of the following:

1. A hospital or alcoholic treatment facility under the control of the veterans administration or other federal agency.

2. The private practice of medicine and surgery or osteopathic medicine and surgery. However, no program shall be exempted from approval by the director by virtue of its utilization of the services of a medical practitioner or a practitioner of osteopathic medicine or surgery.

3. A private institution conducted by and for persons who adhere to a religious faith or belief for the purpose of providing nonmedical services to alcoholics, and who rely primarily on prayer or other spiritual means for healing in the practice of their religion.

4. An agency, institution or program which, in the judgment of the director, provides services which are only informational or educational in nature. [C75,§125.14]

Referred to in §§125.3, 125.7, 125.13, 321.283(3)

125.15 Acceptance for treatment—rules. The commission shall adopt and may amend and repeal rules for acceptance of persons into the treatment program, subject to the provisions of chapter 17A, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics and intoxicated persons. In establishing the rules the commission shall be guided by the following standards:

1. If possible a patient shall be treated on a voluntary rather than an involuntary basis.

2. A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless he is found to require inpatient treatment.

3. A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

4. An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

5. Provision shall be made for a continuum of co-ordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and may utilize other appropriate treatment. [C75,§125.15]

Referred to in §§125.3, 125.7, 321.283(3)

125.16 Voluntary treatment of alcoholics.

1. An alcoholic may apply for voluntary treatment directly to a facility. If the proposed patient is a minor or an incompetent person, he, a parent, a legal guardian or other legal representative may make the application.

2. Subject to rules adopted by the commission, the administrator in charge of a facility may determine who shall be admitted for treatment. If a person is refused admission, the administrator, subject to rules adopted by the commission, shall refer the person to another facility for treatment if possible and appropriate.

3. If a patient receiving inpatient care leaves a facility, he shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator in charge of the facility that the patient is an alcoholic who requires help, the director may arrange for assistance in obtaining supportive services and residential facilities.

4. If a patient leaves a facility, with or against the advice of the administrator in charge of the facility, the director may make reasonable provisions for his transportation to another facility or to his home. If he has no home he shall be assisted in obtaining shelter. If he is a minor or an incompetent person the request for discharge from an inpatient facility shall be made by a parent, legal guardian or other legal representative or by the minor or incompetent if he was the original applicant. [C75,§125.16]

Referred to in §§125.3, 125.7, 125.12, 321.283(3)

125.17 Treatment and services for intoxicated persons and persons incapacitated by alcohol.

1. An intoxicated person may come voluntarily to a facility for emergency treatment. A person who appears to be intoxicated or incapacitated by alcohol in a public place and in need of help may be taken to a facility by a peace officer. If the person refuses the proffered help, he may be arrested and charged with intoxication.

2. If no facility is readily available the person may be taken to an emergency medical service customarily used for incapacitated persons. The peace officer in detaining the person and in taking him to a facility, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. A taking into protective custody under this section is not an arrest and no entry or other record shall be made to indicate that the person who is taken into protective custody has been arrested or charged with a crime.

3. A person who comes voluntarily or is brought to a facility shall be examined by a licensed physician as soon as possible, but not later than twelve hours after the person comes voluntarily or is brought to the facility. He may then be admitted as a patient or referred to another health facility. The referring facility shall arrange for his transportation.

4. A person who by medical examination is found to be intoxicated or incapacitated by alcohol at the time of his admission or is found to have become incapacitated at any time after his admission, shall be required to remain at the facility until he is no longer intoxicated or incapacitated by alcohol, but no longer than three days from the time of his admission as a patient unless he is committed under section 125.18. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

5. If a patient is admitted to a facility, his family or next of kin shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, his request shall be respected.

6. A peace officer who acts in compliance with this section is acting in the course of his official duty and is not criminally or civilly liable therefor, unless such acts constitute willful malice or abuse.

7. If the physician in charge of the facility determines it is for the patient's benefit, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment. [C75,§125.17; 66GA, ch 1103,§8]

Referred to in §§125.3, 125.7, 125.12, 321.283(3)

125.18 Emergency commitment.

1. An intoxicated person who has threatened, attempted, or inflicted physical harm on himself or another and is likely to inflict physical harm on himself or another unless committed, or who is incapacitated by alcohol, may be committed to a facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

2. The certifying physician, spouse, guardian or relative of the person to be committed, or any other responsible person, may make a written application for commitment under this section, directed to the administrator of the facility. The application shall state facts to support the grounds for commitment established in subsection 1.

3. Upon approval of the application by the administrator in charge of the facility, the person shall be brought to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse, the patient's guardian or any other interested person. The

person shall be retained at the facility to which he was admitted, or transferred to another facility, until discharged under subsection 5.

4. The administrator in charge of a facility shall refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment.

5. When on the advice of the medical staff the administrator determines that the grounds for commitment no longer exist, he shall discharge a person committed under this section. No person committed under this section may be detained in any treatment facility for more than five days. If a petition for involuntary commitment under section 125.19 has been filed within the five days and the administrator in charge of a facility finds that grounds for emergency commitment still exist, he may detain the person until the petition has been heard and determined, but no longer than ten days after filing the petition.

6. A copy of the written application for commitment and a written explanation of the person's right to counsel, shall be given to the person within twenty-four hours after commitment by the administrator, who shall provide a reasonable opportunity for the person to consult counsel. [C75,§125.18; 66GA, ch 1103, §9]

Referred to in §§125.3, 125.7, 125.12, 125.17, 125.28, 321.283(3)

125.19 Involuntary commitment of alcoholics.

1. A person may be committed to the custody of the division by the district court upon the petition of his spouse or guardian, a relative, the certifying physician, or the administrator in charge of a facility. The petition shall allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages, and *(a)* that he has threatened, attempted or inflicted physical harm on another and that he is likely to inflict physical harm on himself or another unless committed; or *(b)* that he is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination or was unavailable for examination, in which case the fact of refusal or unavailability shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the division is not eligible to be the certifying physician.

2. Upon the filing of the petition, the court shall fix a date for a hearing no later than ten days after the date the petition was filed. A copy of the petition and the notice of hearing shall be served in the manner of an original notice on the person whose commitment is sought and upon a parent or legal guardian if the person is a minor. A copy of the petition and the notice of hearing shall be mailed or delivered in the manner provided for motions in civil cases to the petitioner, the next of kin of the person other than the petitioner, the administrator of the facility to which the person has been committed for emergency care, and any other person the court believes should receive copies. A petition shall have attached a copy of the certificate specified in this section.

3. At the hearing the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall be present unless the court believes that his presence is likely to be injurious to him; in this event the court shall appoint a guardian ad litem to represent him throughout the proceeding. The court shall examine the person in open court, or if advisable, shall examine the person out of court. If the person has refused to be examined by a licensed physician, he shall be given an opportunity to be examined by a court-appointed licensed physician. If he refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him to the division for a period of not more than five days for purposes of a diagnostic examination.

4. If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that the allegations of the petition have been established by clear and convincing proof, it shall make an order of commitment to the division. It may not order commitment of a person unless it determines that the division is able to provide adequate and appropriate treatment for him and the treatment is likely to be beneficial.

5. A person committed under this section shall remain in the custody of the division for treatment for a period of thirty days unless sooner discharged. This section shall not be construed to require the division to pay the cost of any medication or procedure provided the person during that period which is not necessary or appropriate to the specific objectives of detoxification and treatment of alcoholism. At the end of the thirty-day period, he shall be discharged automatically unless the director before expiration of the period petitions the court for an order for his recommitment upon the grounds set forth in subsection 1 for a further period not to exceed ninety days.

6. A person recommitted under subsection 5 who has not been discharged by the division before the end of the ninety-day period shall be discharged at the expiration of that period

unless the director, before expiration of the period, obtains a court order on the grounds set forth in subsection 1 for recommitment for a further period not to exceed ninety days.

7. Upon the filing of a petition for recommitment under subsections 5 or 6, the court shall fix a date for hearing no later than ten days after the date the petition was filed. A copy of the petition and the notice of hearing shall be served in the manner of an original notice on the person whose commitment is sought, and upon a parent or legal guardian if the person is a minor. A copy of the petition and the notice of hearing shall be mailed or delivered in the manner provided for motions in civil cases to the petitioner, the next of kin of the person other than the petitioner, the administrator of the facility to which the person has been committed for emergency care, and any other person the court believes should receive copies. A petition shall have attached a copy of the certificate specified in this section. At the hearing the court shall proceed as provided in subsection 3.

8. The director shall provide for adequate and appropriate treatment of a person committed to the custody of the division. The director may transfer any person committed to the custody of the division from one facility to another if transfer is medically advisable, and if notice is provided to the court of commitment, the counselor advocate, and the spouse or next of kin of the person.

9. A person committed to the custody of the commission for treatment shall be discharged at any time before the end of the period for which he has been committed if either of the following conditions is met:

a. In case of an alcoholic committed under subsection 1, paragraph *"a"*, that he is no longer an alcoholic or the likelihood no longer exists.

b. In case of an alcoholic committed under subsection 1, paragraph *"b"*, that the incapacity no longer exists, that further treatment will not be likely to bring about significant improvement in the person's condition, or that treatment is no longer adequate or appropriate.

10. The court shall inform the person whose commitment or recommitment is sought of his right to contest the application, to be represented by council at every stage of any proceedings relating to his commitment and recommitment, and to have counsel appointed by the court or provided by the court, if he wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him regardless of his wishes. The person whose commitment or recommitment is sought shall be informed of his right to be examined by a licensed physician of his choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

11. If the administrator of a private treatment facility consents to the request of a competent patient or his parent, sibling, adult child, or guardian to accept the patient for treatment, the administrator of the public treatment facility may transfer him to the private treatment facility.

12. A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus.

13. The venue for proceedings under this section is the place in which a person to be committed resides or is present. [C75,§125.19; 66GA, ch 1103,§10]

Referred to in §§125.3, 125.7, 125.12, 125.18, 125.28, 321.283(3)

125.20 Records of alcoholics and intoxicated persons.

1. The registration and other records of facilities shall remain confidential and are privileged to the patient.

2. Notwithstanding subsection 1, the director may make available information from patients' records for purposes of research into the causes and treatment of alcoholism. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information. [C75,§125.20]

Referred to in §§125.3, 125.7, 321.283(3)

125.21 Rights and privileges of patients.

1. Subject to reasonable rules regarding hours of visitation which the commission may adopt, a patient in a facility shall be granted an opportunity for adequate consultation with counsel, and for continuing contact with family and friends consistent with an effective treatment program.

2. Neither mail nor other communication to or from a patient in a facility may be intercepted, read or censored, except that the commission may adopt reasonable rules regarding the use of telephones by patients in facilities and the delivery of controlled substances and other intoxicants.

3. The patient shall be provided an opportunity to receive prompt evaluation, emergency services and care as indicated by sound medical practice and treatment which, in the judgment of the chief medical officer of a facility, is most likely to result in the individual's recovery or in the mitigation of his condition to an extent sufficient to permit his discharge from the facility. [C75,§125.21]

Referred to in §§125.3, 125.7, 321.283(3)

125.22 Composition of facilities boards—treatment plans furnished.

1. In addition to other requirements established by this chapter, no facility shall be approved pursuant to section 125.13 unless it is either a licensed hospital or a community mental health center operating under chapter

230A, or it is organized under the Iowa nonprofit corporation Act appearing as chapter 504A. In the latter case, one-third of the membership of the board of directors shall be representatives of such government units providing funds to the facility for treatment of alcoholism.

2. A local governmental unit which is providing funds to a facility for treatment of alcoholism may request from the facility a treatment program plan prior to authorizing payment of any claims filed by the facility. The governing body of the local governmental unit may review the plan, but shall not impose on the facility any requirement conflicting with the comprehensive treatment program requirements of section 125.28. [66GA, ch 1103,§11]

Section 125.22, Code 1975, repealed by 66GA, 1103,§11 and 21

125.23 Criminal laws limitations.

1. No county or city may adopt or enforce a local law, ordinance, resolution or rule having the force of law in contravention of the provisions of this chapter.

2. No county or city may interpret or apply any law of general application to circumvent the provision of subsection 1.

3. Nothing in this chapter affects any law, ordinance, resolution or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery or other equipment, or regarding the sale, purchase, dispensing, possessing or use of alcoholic beverages or beer at stated times and places or by a particular class of persons. [C75,§125.23]

Referred to in §§125.3, 125.7, 321.283(3)

125.24 Judicial review. Judicial review of the orders or actions of the director may be sought in accordance with the provisions of the Iowa administrative procedure Act. [C75, §125.24]

Referred to in §§125.3, 125.7, 321.283(3)

125.25 Appeals. An aggrieved party may obtain a review of any final judgment of the court by appeal to the supreme court. The appeal shall be taken as in other civil cases. [C75,§125.25]

Referred to in §§125.3, 125.7, 321.283(3)

125.26 Funding at mental health institutes. Chapter 230 shall govern the determination of the costs and payment for treatment provided to alcoholics in a mental health institute under the department of social services, except that the charges shall not constitute a lien on any real estate owned by persons legally liable for support of the alcoholic and the daily per diem shall be billed at twenty-five percent. Beginning July 1, 1976, the superintendent of a state hospital shall total only those expenditures which can be attributed to the cost of providing inpatient treatment to alcoholics and intoxicated persons for purposes of determining the daily per diem. The provisions of section 125.31 shall govern the determination of who is legally liable for the cost of care, maintenance, and treatment of an alcoholic and of the amount for which the person is liable. [C75,§125.26]

Referred to in §§125.2, 125.3, 125.7, 125.13, 125.28, 321.283(3)

125.27 Contract for care — rules adopted. The director may, consistent with the comprehensive alcoholism program, enter into written agreements with a facility as defined in section 125.2 to pay for seventy-five percent of the cost of the care, maintenance and treatment of an alcoholic. Such contracts shall be for a period of no more than one year. The commission shall review and evaluate at least once each year all such agreements and determine whether or not they shall be continued.

The contract may be in such form and contain provisions as agreed upon by the parties. Such contract shall provide that the facility shall admit and treat alcoholics regardless of where they have residence. If one payment for care, maintenance, and treatment is not made by the patient or those legally liable therefor within thirty days after discharge the payment shall be made by the division directly to the facility. Payments shall be made each month and shall be based upon the facility's average daily per patient charge. Provisions of this section shall not pertain to patients treated at the mental health institutes.

If the appropriation to the commission is insufficient to meet the requirements of this section, the commission shall request a transfer of funds and section 8.39 shall apply.

Contracting facilities shall deliver to each patient upon discharge a statement of the costs of the care, maintenance and treatment for which that patient is liable, and shall retain a carbon copy or other similar copy of that statement for a period of not less than one year after the date of discharge of the patient to whom the statement refers. Every payment received by a contracting facility from or on behalf of a patient, whether received before or after costs have been billed to the division or to a county, shall be identified by the facility as to patient and invoice or statement, and shall be reported to the division. A contracting facility shall allow as a credit against a future billing to the division or to a county, payments received during each month from or on behalf of a patient whose care, maintenance and treatment theretofore has been billed to and paid by the division or a county. Failure by a contracting facility to comply with this paragraph, or with rules promulgated pursuant to section 125.13, subsection 4, shall constitute grounds for nonrenewal of the contract. [C71, 73,§123B.4; C75, §125.27; 66GA, ch 1103,§§12, 13]

Referred to in §125.12

125.28 Counties to share cost.

1. Except as provided in section 125.26, each county shall pay for the remaining twenty-five percent of the cost of the care, maintenance, and treatment under this chapter of residents of that county from the county mental health and institutions fund as provided in section 444.12. The commission shall establish guidelines for use by the counties in estimating the amount of expense which the county will incur each year. The facility shall certify to the county of residence once each month twenty-five percent of the unpaid cost of the care, maintenance, and treatment of an alcoholic. Such county shall pay the cost so certified to the facility from its county mental health and institutions fund. However, the approval of the board of supervisors shall be required before payment is made by a county for costs incurred which exceed a total of five hunded dollars for one year for treatment provided to any one alcoholic or intoxicated person, except that such approval is not required for the cost of treatment provided to an alcoholic or intoxicated person who is committed pursuant to section 125.18 and 125.19. A facility may, upon approval of the board of supervisors, submit to a county a billing for the aggregate amount of all care, maintenance, and treatment of alcoholics who are residents of that county for each month. The board of supervisors may demand an itemization of such billings at any time or may audit the same.

2. The board of supervisors shall upon receipt of the list of persons treated at any facility make a determination whether each such person or the persons legally liable for his or her support are able to pay the charges for the care and treatment at the facility. If the board finds such a person or the persons legally liable for his or her support are presently unable to pay for the treatment, it shall direct the auditor not to index the name of that person, as would otherwise be required by section 125.33. However, the board may review its finding with respect to any person at any subsequent time at which another similar list is certified upon which that person's name appears. If the board finds upon review that that person or those legally liable for his or her support are presently able to pay for the treatment, that finding shall apply only to charges stated upon the list then before the board and any subsequent charges similarly certified, unless and until the board again changes its findings. [C71, 73,§123B.5; C75,§125.28; 66GA, ch 10,§4, ch 1103,§14, ch 1104,§1]

Referred to in §§125.22, 125.32, 125.33, 125.36

125.29 County of residence determined. The facility shall, when an alcoholic is admitted, or as soon thereafter as it receives the proper information, determine and enter upon its records the Iowa county of residence of such alcoholic, or that the person resides in some other state or country, or that the person is unclassified with respect to residence. [C71, 73, §123B.6; C75,§125.29; 66GA, ch 1103,§15]

125.30 Disputes over payment. In the event any county to which certification of the cost of care, maintenance, and treatment of an alcoholic is made, disputes that such alcoholic has his residence in that county, it shall immediately notify the facility that such dispute exists. The director shall immediately investigate the facts and determine in which county the patient has residence. The director shall certify his determination to the county, if any, wherein it is found the patient has residence and to the facility. A county certified by the director to be the county of residence shall reimburse the facility as provided in this chapter. If the director finds that the residence of an alcoholic at the time of admission was in another state or country or that the person is unclassified with respect to residence, then the division shall pay for that portion of his care, maintenance, and treatment that his county of residence would have been liable to pay. For purposes of this section, a "facility" does not include a mental health institute under the control of the department of social services. [C71, 73,§123B.7; C75,§125.30; 66GA, ch 1103,§16]

125.31 Legal liability for care. The alcoholic and any person, firm, corporation, or insurance company bound by contract to provide support, hospitalization, or medical services for the alcoholic shall be legally liable to the county of the alcoholic's residence for twenty-five percent of the total amount and to the division for seventy-five percent of the total amount of the cost of providing care, maintenance, and treatment for the alcoholic while a voluntary or committed patient in a facility, except when the state pays the total cost of care in which case liability of one hundred percent shall be to the state. Nothing in this section shall prohibit any individual from paying any portion of the cost of treatment.

The estate of each nonresident person provided care, maintenance or treatment while a voluntary or committed patient in a facility, and all persons legally bound for the support of such a person, shall be legally liable to the state for reasonable costs paid by the division under this chapter for the care, maintenance and treatment of the person in a facility. The certificate of the director of the division showing the amounts paid or due to be paid by the division for such care, maintenance and treatment shall be presumptive evidence of the reasonableness of the costs of the care, maintenance and treatment provided. [C71, 73,§123B.8; C75,§125.31; 66GA, ch 1103,§17]

Referred to in §125.26

125.32 Transfer from institutional fund. The county auditor upon receipt of certification by the facility as required by section 125.28 shall enter the same to the credit of

the facility and issue a notice authorizing the county treasurer to transfer the amount from the county mental health and institutions fund to the credit of the facility, which notice shall be filed by the treasurer as authority for making such transfer, and the amount transferred shall be included in the auditor's next remittance to the facility. [C71, 73,§123B.9; C75, §125.32; 66GA, ch 1104,§2]

125.33 County auditor to keep accounts. The auditor of each county shall keep an accurate account of the total cost to the county of the care, maintenance, and treatment of any alcoholic and shall keep an index of the names of the alcoholics for whose benefit county funds are expended pursuant to section 125.28 for those services. [C71, 73, §123B.11; C75,§125.33; 66GA, ch 1103,§18, ch 1104,§3]

Referred to in §125.28

125.34 Collection of claims by board of supervisors. The board of supervisors shall collect the total amount of all such liabilities as they become due, from those persons whom the board has found, under section 125.28, subsection 2, are able to pay. The board shall direct the county attorney to proceed with the collection of such liabilities as a part of the duties of that office. The county shall be entitled to keep the total amount of all such liabilities collected. The county attorney, with the consent of the board of supervisors, may execute an agreement providing for the acceptance of a lesser amount owed by an alcoholic, his or her spouse, or estate to the county. The execution of such agreement may provide that the same is in satisfaction of all moneys owed the county. [C71, 73,§123B.12; C75,§125.34; 66GA, ch 1104, §4]

125.35 Presumption certificate is correct. In any action to enforce the liability imposed by this chapter, the certificate from the facility to the county auditor stating the sums charged in such cases shall be presumed correct. [C71, 73,§123B.13; C75,§125.35]

125.36 Claim against estate. On the death of the person who receives assistance under the provisions of this chapter and whom the board has previously found, under section 125.28, subsection 2, is able to pay, there shall be allowed against the estate of such person a claim of the sixth class for that portion of the total amount paid for that person's care, maintenance and treatment which exceeds the total amount of all claims of the first through the fifth classes, inclusive, as defined in section 633.425, which are allowed against that estate. [C71, 73,§123B.16; C75, §125.36; 66GA, ch 1104,§5]

Unsatisfied claims prior to July 1, 1976, see 66GA, ch 1104,§16

125.37 Short title. This chapter may be cited as the "Alcoholism and Intoxication Treatment Act." [C75,§125.37]

125.38 Units merged. Effective July 1, 1977 the division of alcoholism, now a part of the department of health, and the Iowa drug abuse authority shall be merged into a single state division of the department of health having responsibility for education about, prevention efforts directed against, and treatment programs to aid victims of the abuse of chemical substances. The official title of the merged division and the provisions for its administration, powers, duties and limitations shall be as may be prescribed by the general assembly. Initial proposals relative to these matters shall be delivered to the general assembly by the governor on or before January 17, 1977.

If the governor determines that merger effective July 1, 1977 would not be in the best interest of the state of Iowa, the governor may by executive order delay the merger to a date not later than January 1, 1978. [66GA, ch 1105, §3]

Referred to in §§125.39, 125.40, 125.42

125.39 Priorities of the merger. The general assembly declares that priorities of the merger to be effected pursuant to section 125.38 are:

1. Improved assistance to residents of Iowa who are abusing or seeking to recover from the effects of abuse of chemical substances; and

2. Reduced administrative costs and greater program efficiency, relative to the quantity and quality of services being offered. [66GA, ch 1105,§4]

Referred to in §125.40

125.40 Proposals to general assembly. In preparing proposals to be submitted to the general assembly as required by section 125.38, the governor shall be guided by the priorities established in section 125.39. The proposals submitted by the governor shall include, but need not be limited to, the following:

1. Administrative structure of the new division of the department of health, including any limitations on the authority of the commissioner of public health over the head of the new division, and whether or not an advisory council should be established for the new division and if so its composition, manner of selection and responsibilities.

2. Continuation of strong local community and local treatment program input into a state plan.

3. Annual development of a state plan, with comment and review by local agencies and groups.

4. Specific recommendations for funding mechanisms and criteria, with additional recommendations for the related roles of counties and local communities.

5. Specific designation of education, treatment and prevention programs, outlining the state's role and the related responsibilities of counties and communities.

6. Proposed relationship to other state agencies.

7. Common (so far as feasible) licensing and certification standards and procedures.

8. Monitoring and evaluation mechanisms.

9. A goal of statewide availability of acute care for chemical substance abusers. [66GA, ch 1105,§5]

Referred to in §125.41

125.41 Public hearings. It is the intent of the general assembly in adopting this Act* that the proposals developed in response to section 125.40 be based on the needs of clients, and of the community in general, as determined from public hearings held widely throughout the state. [66GA, ch 1105,§6]

*Chapter 1105, Acts 66GA

125.42 Transition provisions. Chapters 125 and 224B, Code 1975, are repealed effective July 1, 1977. However, if the merger of the division of alcoholism and the Iowa drug abuse authority is delayed pursuant to section 125.38, the two agencies shall continue to be governed by the provisions of those chapters as if they were in full force and effect until the merger takes effect. [66GA, ch 1105,§7]

CHAPTER 126

INDICTMENT, EVIDENCE, AND PRACTICE

Repealed by 64GA, ch 131, §152

See ch 123

CHAPTER 127

SEIZURE AND SALE OF CONVEYANCES

Referred to in §204.505(8)

127.1 "Conveyance" defined.
127.2 Seizure under transportation.
127.3 Replevin not available.
127.4 Custody.
127.5 Release.
127.6 Information.
127.7 Forfeiture.
127.8 Optional procedure.
127.9 Procedure as to conveyance.
127.10 Information.
127.11 Procedure.
127.12 Duty of director.
127.13 Orders as to claims.
127.14 Notice.
127.15 Requisition by department.
127.16 Order for delivery.
127.17 Costs.
127.18 Repealed by 64GA, ch 84,§99.
127.19 Requisition by county or city.
127.20 Proceeds.
127.21 School fund.
127.22 Duplicate receipts.
127.23 Other state departments.

127.1 "Conveyance" defined. The term "conveyance" as used in this chapter shall embrace wagons, buggies, teams, automobiles, motor vehicles, water and aircraft, and all other forms of conveyances except railway, street, and interurban cars. [C24, 27, 31, 35, 39,§2000; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.1]

127.2 Seizure under transportation. A peace officer who discovers that intoxicating liquor has been or is being transported in violation of law, shall summarily arrest the offender and likewise seize said liquor and the conveyance used to effect said transportation. [C24, 27, 31, 35, 39,§2001; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.2]

Referred to in §127.3

127.3 Replevin not available. A conveyance seized under section 127.2 shall not be subject to replevin. [C24, 27, 31, 35, 39,§2002; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.3]

127.4 Custody. Said conveyance shall be turned over to the sheriff of the county in which the seizure was made, and shall be retained in his custody until disposed of as hereinafter provided. [C24, 27, 31, 35, 39,§2003; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.4]

127.5 Release. Said conveyance shall be returned to the owner upon execution by him of a good and valid bond with sufficient sureties in a sum double the value of the property, which said bond shall be approved by the sheriff of the county and shall be conditioned to pay the value of said conveyance, when seized, to said sheriff in case a judgment of forfeiture be entered against said conveyance. [C24, 27, 31, 35, 39,§2004; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.5]

127.6 Information. The officer shall at once file an information against the accused before some court of the county other than the dis-

trict court. In addition to the information, the officer shall also file with the said court a written return or statement setting forth a brief description of the conveyance, liquors, and vessels seized. [C24, 27, 31, 35, 39,§2005; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.6]

127.7 Forfeiture. The court, upon conviction of a person so arrested, shall enter an order of forfeiture of the liquors, vessels, and conveyance seized and forthwith file with the clerk of the district court a certified transcript of such order. The district court shall, on such notice as the court may prescribe, proceed to adjudicate the legality and priority of all claims to and liens on said conveyance, and shall proceed against said liquors and vessels as in case of transcripts filed in search warrant proceedings. [C24, 27, 31, 35, 39, §2006; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.7]

Referred to in §§127.8, 127.9
Procedure under search warrants, ch 751

127.8 Optional procedure. In lieu of declaring a forfeiture, under section 127.7, of said liquors and vessels, the said court may, in any case, proceed against the said liquors and vessels, in the manner in which it would proceed had said liquors been seized on a duly issued search warrant. [C24, 27, 31, 35, 39, §2007; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.8]

Procedure under search warrants, ch 751

127.9 Procedure as to conveyance. In lieu of declaring a forfeiture, under section 127.7, of said conveyance, the said court may, in any case, proceed as provided in section 127.10. [C24, 27, 31, 35, 39,§2008; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.9]

127.10 Information. An information, under oath, and in substantially the following form, shall be filed in the district court against a conveyance promptly upon the seizure thereof, to wit:

"State of Iowa
vs.
One certain automobile (or other conveyance as the case may be)
.....being duly sworn do say on oath that (here describe the conveyance with reasonable certainty) was, on the ..... day of....., 19...., in the county of ....., in the state of Iowa, employed in the transportation of intoxicating liquors in violation of law, and, because of such unlawful use, was at said time and place seized and is now in the custody of the sheriff of said county; that to the best knowledge and belief of this affiant said conveyance belongs to .....
Wherefore it is asked that said conveyance be dealt with as provided by law." [C24, 27, 31, 35, 39,§2009; C46, 50, 54, 58, 62, 66, 71, 73, 75, §127.10]

Referred to in §127.9

127.11 Procedure. Upon the filing of said information, the procedure for the forfeiture of said conveyance shall be the same as is provided for the forfeiture of intoxicating liquors seized under search warrant, except in the following particulars:

1. *Service of notice.* The notice of hearing of forfeiture shall, in addition to the service provided in chapter 751, be published once a week for two weeks in some newspaper published in the city or county in which said conveyance was seized, and if the conveyance be a motor vehicle a copy of the aforesaid notice shall forthwith be mailed to the director of transportation.

2. *Hearing.* Said notice shall fix the day of hearing at a time not less than thirty days after the notice is fully served.

3. *Right to contest.* The written claim of the owner or other claimant shall allege, under oath, that said conveyance was not being employed, when seized, in the unlawful transportation of intoxicating liquors, or that if it was being so employed such use was without the knowledge or consent, directly or indirectly, of said claimant.

4. *Presumption.* If it be made to appear that any intoxicating liquors were found in or on said conveyance when it was seized, it shall be presumed that the conveyance was, when seized, employed with the knowledge and consent of all claimants, in the unlawful transportation of such liquors.

5. *Trial.* The trial shall be by the court.

6. *Judgment.* A judgment of forfeiture shall direct that said conveyance be sold by the sheriff as chattels under execution, and a certified copy of such order shall constitute an execution. [C24, 27, 31, 35, 39,§2010; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.11; 66GA, ch 1056, §10]

127.12 Duty of director. The director of transportation, upon receipt of the notice aforesaid, shall, if the owner appears of record in the office of the state department of transportation, notify such owner of the fact of seizure, and if not of record, the director shall mail such description to the county treasurer of each county. [C24, 27, 31, 35, 39,§2011; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.12; 66GA, ch 67, §§13, 65; ch 1056,§11]

127.13 Orders as to claims. On the hearing the court shall determine whether any claim or lien shall be allowed. If allowed, he shall enter an order fixing therein the amount and priority of all such claims or liens allowed, and shall enter such further order for the protection of the claimants or lienholders as the evidence may warrant. [C24, 27, 31, 35, 39, §2012; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.13]

127.14 Notice. Whenever a judgment of forfeiture has been entered by any court, directing the sale of a conveyance under the provisions of this chapter, the clerk of the district court shall immediately notify the state bureau of investigation of such order, together with a full description of the conveyance, and if it be a motor vehicle, the name

of the manufacturer thereof, the model, serial number, and description of the condition of said motor vehicle, before said conveyance shall be advertised for sale. [C24, 27, 31, 35, 39, §2013; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.14]

43GA, ch 60,§1, editorially divided

127.15 Requisition by department. The state department of justice may, if the conveyance is such a one as may be used by said department in connection with its duties and the enforcement of the law, requisition said conveyance for said department and said requisition shall be delivered to the clerk of the district court of the county having jurisdiction of such conveyance, within ten days after the notice of judgment of forfeiture has been received by the bureau of investigation. If said conveyance is not so requisitioned within ten days after the clerk of the district court has notified the department of justice of the judgment of forfeiture, then the conveyance shall be sold by the sheriff as provided in this chapter. [C31, 35,§2013-c1; C39,§2013.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.15]

Referred to in §127.19

127.16 Order for delivery. When any such conveyance is requisitioned by the department of justice, the clerk of the district court shall immediately issue to the sheriff of the county or other officer having possession of said conveyance, an order directing that said conveyance be turned over to the state department of justice, or any of its duly commissioned agents directed by the attorney general to receive it. [C31, 35,§2013-c2; C39,§2013.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.16]

Referred to in §127.19

127.17 Costs. When any such conveyance is requisitioned by the state department of justice, said department shall pay to the clerk of the district court, the court costs and the expense incurred by the county or the sheriff in keeping said conveyance. [C31, 35,§2013-c3; C39,§2013.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, §127.17]

Referred to in §127.19

127.18 Repealed by 64GA, ch 84,§99.

127.19 Requisition by county or city. The board of supervisors of a county or the council of any city in such county may apply to the department of justice that any motor vehicle seized in such county and requisitioned under sections 127.15 to 127.17, inclusive, be delivered to such board or council for use in performing official duties by officials and officers of the county or city. No officer of any county or city shall be allowed mileage for the performance of any official duty wherein he uses a publicly owned car. The department of justice may allow such application whereupon the automobile shall be delivered to the board of supervisors or to the council for use in accord with such application. Should the county and city both make application for the same vehicle and the applications be granted, the vehicle shall be delivered to the public body whose officers first seized the vehicle. [C31, 35,§2013-c5; C39, §2013.5; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.19]

127.20 Proceeds. The sheriff shall apply the proceeds of a sale, or of the forfeited bond, in the following order:

1. Expense of keeping the conveyance.
2. Court costs.
3. Liens in the order established by the court. [C24, 27, 31, 35, 39,§2014; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.20]

127.21 School fund. Any balance of said proceeds shall be paid by the sheriff to the county treasurer who shall credit the same to the county school fund. [C24, 27, 31, 35, 39,§2015; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.21]

Temporary school fund, §302.3

127.22 Duplicate receipts. The sheriff, in paying a balance to the county treasurer, shall take duplicate receipts therefor and file one of said receipts with the county auditor. [C24, 27, 31, 35, 39,§2016; C46, 50, 54, 58, 62, 66, 71, 73, 75,§127.22]

127.23 Other state departments. Any department of the state government needing a motor vehicle for official use may make written application therefor to the director of the department of general services. The director shall, if he determines that the department should have a motor vehicle, by written application request the department of justice to requisition a suitable motor vehicle for the applicant department whenever one is available, in the manner provided in this chapter. Whenever any department receives a motor vehicle under the provisions of this section, the department shall cause the court costs and all other costs incurred in connection with the confiscation and forfeiture of the motor vehicle to be paid to the clerk of the court or the sheriff of the proper county. [C75,§127.23]

CHAPTER 128

INJUNCTION AND ABATEMENT

Repealed by 64GA, ch 131,§152
See ch 123

CHAPTER 129
CIVIL ACTIONS AND LIABILITY

Repealed by 64GA, ch 131,§152
See ch 123

CHAPTER 130
PERMITS TO LICENSED PHARMACISTS

Repealed by 64GA, ch 131,§152
See ch 123

CHAPTER 131
PERMITS TO WHOLESALE DRUGGISTS

Repealed by 64GA, ch 131,§152
See ch 123

CHAPTER 132
REPORTS BY PERMIT HOLDERS

Repealed by 64GA, ch 131,§152
See ch 123

CHAPTER 133
PERMITS TO MANUFACTURERS

Repealed by 64GA, ch 131,§152
See ch 123

CHAPTER 134
PERMITS TO CLERGYMEN

Repealed by 64GA, ch 131,§152
See ch 123

TITLE VII

PUBLIC HEALTH

CHAPTER 135

STATE DEPARTMENT OF HEALTH

Identification and use of publicly owned automobiles, etc., §740.20 et seq.
Well-elderly clinic—one-year program, 66GA, ch 110,§12

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GENERAL PROVISIONS

135.1 Definitions. For the purposes of this title, unless otherwise defined:

1. *"Commissioner"* shall mean the commissioner of public health.

2. *"State department"* or *"department"* shall mean the state department of health.

3. *"Health officer"* shall mean the physician who is the health officer of the local board of health.

4. *"Local board"* shall mean the local board of health.

5. *"Physician"* shall mean a person licensed to practice medicine and surgery, osteopathy and surgery, osteopathy, or chiropractic under the laws of this state; but a person licensed as a physician and surgeon shall be designated as a "physician" or "surgeon", a person licensed as an osteopath and surgeon shall be designated as an "osteopathic physician" or "osteopathic surgeon", a person licensed as an osteopath shall be designated as an "osteopathic physician", and a person licensed as a chiropractor shall be designated as a "chiropractor".

6. *"Rules"* shall include regulations and orders.

7. *"Sanitation officer"* shall mean the policeman who is the permanent sanitation and quarantine officer and who is subject to the direction of the local board of health in the execution of health and quarantine regulations. [S13,§2583-b; C24, 27, 31, 35, 39,§2181; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.1]

Referred to in §135C.1

135.2 Appointment. The governor shall, within sixty days after the convening of the general assembly in 1925, and every four years thereafter, appoint, with the approval of two-thirds of the members of the senate, a commissioner of public health who shall be qualified in the general field of health administra-

tion. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39, §2182; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.2]

Referred to in §135C.1(9)
Confirmation procedure, §2.32

135.3 Disqualifications. The commissioner shall not hold any other lucrative office of this state, elective or appointive, during his term; provided, however, that the commissioner may serve without compensation as an officer or member of the instructional staff of any of the state educational institutions if any such additional duties and responsibilities do not prohibit him from performing the duties of the office of commissioner. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39, §2183; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.3]

135.4 Term of office. The term of office of the commissioner shall be four years, commencing on July 1 of the year of appointment. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39,§2184; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.4]

135.5 Vacancies. All vacancies in the office of the commissioner of public health that may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the date on which the general assembly next convenes. Prior to the expiration of said thirty days the governor shall transmit to the senate for its approval an appointment for the unexpired portion of the regular term. Vacancies occurring during a session of the general assembly shall be filled as regular appointments before the end of said session and for the unexpired portion of the regular term. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39,§2185; C46, 50, 54, 58, 62, 66, 71, 73, 75, §135.5]

135.6 Assistants and employees. The commissioner shall employ such assistants and employees as may be authorized by law, and the persons thus appointed shall perform such duties as may be assigned to them by the commissioner, but the head of the division of examinations and licenses shall not be a person who has been licensed to practice any of the professions for which a license must be obtained from the department to practice the same in this state. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39,§2186; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.6]

135.7 Bonds. The commissioner shall require every employee who collects fees or handles funds belonging to the state to give an official bond, properly conditioned and signed by sufficient sureties, in a sum to be fixed by the commissioner which bond shall be approved by him and filed in the office of the secretary of state. [C24, 27, 31, 35, 39,§2187; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.7]

135.8 Seal. The state department of health shall have an official seal and every commission, license, order, or other paper executed by the department may be attested with its seal. [C24, 27, 31, 35, 39,§2188; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.8]

135.9 Expenses. The commissioner, field and office assistants, inspectors, and employees shall, in addition to salary, receive their necessary traveling expenses by the nearest traveled and practicable route and their necessary and incidental expenses when engaged in the performance of official business. [C97,§2574; S13, §§2564, 2574; C24, 27, 31, 35, 39,§2189; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.9]

135.10 Office. The state department of health shall be located at the seat of government. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39, §2190; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.10]

135.11 Powers and duties. The commissioner of public health shall be the head of the "State Department of Health", which shall:

1. Exercise general supervision over the public health, promote public hygiene and sanitation, and unless otherwise provided, enforce the laws relating to the same.

2. Conduct campaigns for the education of the people in hygiene and sanitation.

3. Issue monthly health bulletins containing fundamental health principles and other health data deemed of public interest.

4. Make investigations and surveys in respect to the causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health. For this purpose the department may use the services of the experts connected with the state hygienic laboratory at the state University of Iowa.

Laboratory tests, §§263.7, 263.8

5. Make inspections of the sanitary conditions in the educational, charitable, correctional, and penal institutions in the state.

6. Make inspections of the sanitary conditions in any locality of the state upon written petition of five or more citizens from said locality, and issue directions for the improvement of the same, which shall be executed by the local board.

7. Establish, publish, and enforce a code of rules governing the installation of plumbing in cities and amend the same when deemed necessary in the manner prescribed in section 135.12.

Referred to in §135.12
See also §358A.25
See also IAC, health department

8. Exercise general supervision over the administration of the housing law and give aid to the local authorities in the enforcement of the same, and it shall institute in the name of the state such legal proceedings as may be necessary in the enforcement of said law.

9. Establish stations throughout the state for the distribution of antitoxins and vaccines to physicians, druggists, and other persons, at cost. All antitoxin and vaccine thus distrib-

uted shall be labeled "Iowa State Department of Health."

10. Exercise general supervision over the administration and enforcement of the venereal disease law, chapter 140.

11. Exercise sole jurisdiction over the disposal and transportation of the dead bodies of human beings and prescribe the methods to be used in preparing such bodies for disposal and transportation.

12. Exercise general supervision over the administration and enforcement of the vital statistics law, chapter 144.

13. Enforce the law relative to the "Practice of Certain Professions Affecting the Public Health," Title VIII.

14. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it, including a division of contagious and infectious diseases, a division of venereal diseases, a division of housing, a division of sanitary engineering, a division of vital statistics, and a division of examinations and licenses; but the various services of the department shall be so consolidated as to eliminate unnecessary personnel and make possible the carrying on of the functions of the department under the most economical methods.

15. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of this title and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

16. Establish standards for, issue permits, and exercise control over the distribution of venereal disease prophylactics distributed by methods not under the direct supervision of a physician licensed under chapter 148, 150 or 150A, or a pharmacist licensed under chapter 147. Any person selling, offering for sale, or giving away any venereal disease prophylactics in violation of the standards established by the department shall be fined not exceeding five hundred dollars, and the department shall revoke their permit.

1. [C97,§2565; C24, 27, 31, 35, 39,§**2191**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.11(1)]

2, 3. [C24, 27, 31, 35, 39,§**2191**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.11(2, 3)]

4. [C97,§2565; C24, 27, 31, 35, 39,§**2191**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.11(4); 66GA, ch 118,§1]

5. [C24, 27, 31, 35, 39,§**2191**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.11(5)]

6. [S13,§2569-a; C24, 27, 31, 35, 39,§**2191**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.11(6)]

7, 8. [C24, 27, 31, 35, 39,§**2191**; C46, 50, 54, 58, 62, 66, 71,§135.11(8, 9); C73, 75,§135.11(7,8)]

9. S13,§§2572-a,-b,-c; C24, 27, 31, 35, 39,§**2191**; C46, 50, 54, 58, 62, 66, 71,§135.11(11); C73,§135.11 (10); C75,§135.11(9)]

10. [C24, 27, 31, 35, 39,§**2191**; C46, 50, 54, 58, 62, 66, 71,§135.11(12); C73,§135.11(11); C75, §135.11(10)]

11. [S13,§2575-a42; C24, 27, 31, 35, 39,§**2191**; C46, 50, 54, 58, 62, 66, 71,§135.11(13); C73, §135.11(12); C75,§135.11(11)]

12. [C97,§2565; C24, 27, 31, 35, 39,§**2191**; C46, 50, 54, 58, 62, 66, 71,§135.11(14); C73,§135.11(13); C75,§135.11(12)]

13, 14. [C24, 27, 31, 35, 39,§**2191**; C46, 50, 54, 58, 62, 66, 71,§135.11(15, 16); C73,§135.11(14, 15); C75,§135.11(13, 14)]

15. [C97,§2565; C24, 27, 31, 35, 39,§**2191**; C46, 50, 54, 58, 62, 66, 71,§135.11(17); C73,§135.11(16); C75,§135.11(15)]

16. [C75,§135.11(16)]

Referred to in §135.12

135.12 Plumbing code committee. The code of rules governing the installation of plumbing provided for in section 135.11, subsection 7, may be amended biennially as conditions may require. The necessary amendments shall be determined by a plumbing code committee which shall be appointed by the commissioner of public health on or before July 1, 1925, and every four years thereafter. Such committee shall consist of the engineer who is head of the division of sanitary engineering, the commissioner of health, the housing commissioner, one master plumber, and one journeyman plumber. The engineer member shall be chairman of the committee. [C24, 27, 31, 35, 39,§**2192**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.12]

Referred to in §135.11(7)

135.13 Powers of committee. The committee shall meet at the call of the chairman, which shall be issued during the month of December of each even-numbered year. It shall continue in session until it has agreed upon the amendments deemed necessary to the existing code governing the installation of plumbing. [C24, 27, 31, 35, 39,§**2193**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.13]

Referred to in §135.14

135.14 Compensation and expenses. The master plumber and journeyman plumber member of the committee shall be paid a forty-dollar per diem and shall be reimbursed for actual and necessary expenses in discharging the duties prescribed in section 135.13. [C24, 27, 31, 35, 39,§**2194**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.14]

Referred to in §135.15

135.15 Plumbing code fund. Cities licensing plumbers shall pay to the treasurer of state one dollar for each license issued and twenty-five cents for each renewal thereof. The fee so received shall be kept by the treasurer of the state in a separate fund to be known as the plumbing code fund. Such fund shall be used in paying the claims arising under section 135.14 and in paying the cost of print-

ing the code of rules governing the installation of plumbing, plumbers' license and application blanks. [C24, 27, 31, 35, 39,§2195; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.15]

135.16 Mining camps. When the health conditions in any mining camp become a menace to the health of the inhabitants thereof, the department shall require compliance with the provisions of the housing law insofar as the same may be reasonably applicable in such camp. [C24, 27, 31, 35, 39,§2196; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.16]

Housing law, ch 413

135.17 Permits for construction of new mining camps. No new mining camp shall be constructed of more than five houses until a written permit is secured from the department. Application for said permit shall be made in writing, accompanied by a plat of the proposed camp showing in detail the location, topography, character of the houses to be built, and the provisions to be made for drainage, sewage, outside toilets, and water supply. Within three weeks from the receipt of such application the department shall inspect the proposed camp and, if satisfied that the same will comply with the general provisions of the housing law as far as reasonably applicable, shall issue the permit requested. [C24, 27, 31, 35, 39,§2197; C46, 50, 54, 58, 62, 66, 71, 73, 75, §135.17]

Housing law, ch 413

135.18 Conflicting statutes. Provisions of this chapter in conflict with the state building code shall not apply where the state building code has been adopted or when the state building code applies throughout the state. [C73, 75,§135.18]

135.19 Prophylactics samples gathered. The department of agriculture and the board of pharmacy examiners shall, when requested by the department of health, obtain samples of venereal disease prophylactics in the course of their regular inspections or duties and shall deliver the samples to the department of health. [C75,§135.19]

135.20 Water well pipe. Any pipe sold or offered for sale in this state for use in the construction, reconstruction, or modification of a water well shall be clearly marked to indicate whether the pipe is new or used. If the manufacturer or any person who sells or offers for sale any pipe for use in the construction, reconstruction, or modification of a water well classifies such pipe by grade or quality, a written statement describing the grade or quality classification system shall be filed with the commissioner of public health by the manufacturer or other person and the grade or quality of each pipe shall also be clearly marked on it.

Any person who sells or offers to sell any pipe for use in the construction, reconstruction, or modification of a water well which is not clearly marked as provided in this section or who willfully alters any markings on such pipe in violation of this section, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than one hundred dollars or be imprisoned in the county jail not more than thirty days. Each violation shall constitute a separate offense. [C75,§135.20]

135.21 to 135.29 Repealed by 61GA, ch 375, §29.

MISCELLANEOUS PROVISIONS

135.30 Protective eyeglasses—safety provisions. No person shall fabricate, distribute, sell, exchange or deliver, or have in his possession with the intent to distribute, sell, exchange or deliver, any eyeglasses or sunglasses unless they are fitted with plastic lenses or laminated lenses or heat-treated glass lenses, or glass lenses made impact resistant by other methods except in those cases where a duly-licensed physician or optometrist, having found that such lenses will not fulfill the visual requirements of a particular patient, directs in writing the use of other lenses, and gives written notification thereof to the patient. Before they are mounted in frames, all plastic and heat-treated glass lenses shall be capable of withstanding an impact test of a five-eighths inch steel ball dropped fifty inches. This test to be conducted at room temperature, with the lens supported by a plastic tube one inch inside diameter, one and one-fourth inch outside diameter, with a one-eighth inch by one-eighth inch neoprene gasket on top edge.

The state department of health shall adopt standards and rules which specify impact resistance for lenses and which provide the method of testing lenses to determine if the lenses comply with such standards and rules.

No person shall fabricate, distribute, sell, exchange or deliver, or have in his possession with intent to distribute, sell, exchange or deliver any eyeglass frame or sunglass frame containing any form of cellulose nitrate or other highly flammable materials.

Any person violating either provision of this law shall upon conviction be punished by a fine of not less than five hundred dollars for each violation. [C73, 75,§135.30]

135.31 Test for phenylketonuria. It is hereby declared to be the policy of this state that every infant born within the borders of Iowa shall, insofar as practicable, be tested for the presence of the disease known as phenylketonuria within a reasonable period following birth. It shall be the responsibility of the state department of health to implement this policy at such time and with such rules as the commissioner of public health deems advisable. All state, district, county, and city health or welfare agencies shall co-operate and participate in the implementation of this section and such rules and regulations, when requested by the commissioner of public health. [C66, 71, 73, 75,§135.31]

135.32 Publication and distribution. The department shall publish from time to time a sufficient number of its rules to supply the needs of the several counties. The county auditor shall annually forward to the department a certified list of the names and addresses of the clerks of all the local boards of health in his county. Upon receipt of said list the department shall forward to the local boards sufficient copies for distribution in each county; and the clerk of the local board shall upon request furnish a copy of said rules to any resident, physician, or citizen. [S13,§2571-b; C24, 27, 31, 35, 39,§**2211**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.32]

135.33 Refusal of board to enforce rules. If any local board shall fail to enforce the rules of the state department or carry out its lawful directions, the department may enforce the same within the territorial jurisdiction of such local board, and for that purpose it may exercise all of the powers given by statute to the local board, and may employ the necessary assistants to carry out its lawful directions. [C97, §2572; S13,§§2569-a, 2572; C24, 27, 31, 35, 39,§**2212**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.33]

Powers of local board, ch 137

135.34 Expenses for enforcing rules. All expenses incurred by the state department in determining whether its rules are enforced by a local board, and in enforcing the same when a local board has failed to do so, shall be paid in the same manner as the expenses of enforcing such rules when enforced by the local board. [S13,§2572; C24, 27, 31, 35, 39,§**2213**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.34]

135.35 Duty of peace officers. All peace officers of the state when called upon by the department shall enforce its rules and execute the lawful orders of the department within their respective jurisdictions. [C97,§2572; S13, §2572; C24, 27, 31, 35, 39,§**2214**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.35]

135.36 Interference with health officer. Any person resisting or interfering with the department, its employees, or authorized agents, in the discharge of any duty imposed by law shall be guilty of a misdemeanor. [C24, 27, 31, 35, 39, §**2215**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.36]

Punishment, §687.7

135.37 Biennial report. The department shall make a report to the governor in each even-numbered year, at the time provided by law, which shall include all receipts and disbursements for the year, such information and statistics concerning the public health and enforcement of the several laws administered by it, and such instruction upon the subject of hygiene and sanitation as may be thought useful for dissemination among the people, with such suggestions as to legislation as may be deemed advisable. [C97,§2565; C24, 27, 31, 35, 39,§**2216**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §135.37]

See §136.10
Time of making report, §17.3

135.38 Penalty. Any person who knowingly violates any provision of this chapter, or of the rules of the department, or any lawful order, written or oral, of the department or of its officers, or authorized agents, shall be guilty of a misdemeanor. If said rules relate to the practice of cosmetology or barbering said misdemeanors shall be punished by a fine of not to exceed one hundred dollars or by imprisonment not to exceed thirty days. [C73,§419; C97, §2573; S13,§2575-a6; C24, 27, 31, 35, 39,§**2217**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.38]

Punishment, §687.7

135.39 Federal aid. The state department of health is hereby authorized to accept financial aid from the government of the United States for the purpose of assisting in carrying on public health work in the state of Iowa. [C31, 35,§2217-c1; C39,§**2217.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§135.39]

MORBIDITY AND MORTALITY STUDY

135.40 Collection and distribution of information. Any person, hospital, sanatorium, nursing or rest home or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to the state department of health, the Iowa medical society or any of its allied medical societies or the Iowa society of osteopathic physicians and surgeons or any in-hospital staff committee, to be used in the course of any study for the purpose of reducing morbidity or mortality, and no liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided such information or material, or by reason of having released or published the findings and conclusions of such groups to advance medical research and medical education, or by reason of having released or published generally a summary of such studies. [C66, 71, 73, 75,§135.40]

135.41 Publication. The state department of health, the Iowa medical society or any of its allied medical societies or the Iowa society of osteopathic physicians and surgeons or any in-hospital staff committee shall use or publish said material only for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of such studies may be released by any such group for general publication. In all events the identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances. A violation of this section shall constitute a misdemeanor and be punishable as such. [C66, 71, 73, 75,§135.41]

135.42 Unlawful use. All information, interviews, reports, statements, memoranda, or other data furnished in accordance with this division and any findings or conclusions resulting from such studies shall not be used or offered or received in evidence in any legal proceedings of any kind or character, but nothing contained herein shall be construed as affecting the admissibility as evidence of the primary medical or hospital records pertaining to the patient or of any other writing, record or reproduction thereof not contemplated by this division. [C66, 71, 73, 75,§135.42]

MENTAL RETARDATION FACILITIES AND COMMUNITY MENTAL HEALTH CENTERS

135.43 Mental health centers—state agency. The state department of public health is hereby authorized and empowered to act as the sole agency of the state to establish and administer a state-wide plan for the construction, equipment, maintenance or operation of any facilities for the provision of care, treatment, diagnosis, rehabilitation, training or related services, which plan is now, or may hereafter be required as a condition to the eligibility for benefits under the provisions of Public Law 88-164 [42 USC §§291k, 291k note, 295 et seq., 2661 et seq.] or any amendments thereto. The state department of public health is also authorized to receive, administer and expend any funds that may be available under Public Law 88-164 or any amendments thereto, or from any other source, public or private, for such purposes. [C66, 71, 73, 75,§135.43]

Referred to in §135.44

135.44 Federal funds—authority. The state department of health is authorized and empowered to comply with or do any and all other acts or things necessary or required to be done as a condition to receiving federal aid or grants with respect to the establishment, construction, maintenance, equipment or operation for all the people of this state of adequate facilities and services as specified in section 135.43 including the authority:

1. To designate or establish a state advisory council or councils which shall include representatives of nongovernment organizations or groups and of state agencies concerned with the planning, construction, operation, or utilization of such facilities, including representatives of the consumers of such facilities and selected from among persons familiar with the need for such services throughout the state, to consult with the state department of health in carrying out the purposes of this division;

See §135A.5

2. To provide for an inventory of existing facilities or a particular category or categories thereof, and to survey the need for additional facilities;

3. To develop and administer a construction program or programs which, in conjunction with existing facilities will afford adequate facilities to serve the people of this state;

4. To provide methods of administration on a merit basis, and to require reports, make investigations and prescribe regulations;

5. To provide for priority of projects or facilities;

6. To provide to applicants an opportunity for a hearing before the state department of health;

7. To prescribe and require compliance with such standards of maintenance and operation applicable to such facilities as are reasonably related to health, welfare, and safety;

8. To review from time to time, but not less often than annually, its state plan and submit to the secretary of health, education, and welfare any modifications which said state department of health considers necessary. [C66, 71, 73, 75,§135.44]

RENAL DISEASES

135.45 Program established. The commissioner or his designee shall establish within the department a program for the care and treatment of persons suffering from chronic renal diseases. This program shall assist persons suffering from chronic renal diseases who require lifesaving care and treatment for such renal disease, but who are unable to pay for such service on a continuing basis. [C73, 75,§135.45]

135.46 Renal disease advisory committee. The commissioner or his designee shall appoint a renal disease advisory committee to consult with the commissioner in the administration of this division. The committee shall be composed of eleven persons selected as follows:

1. Three members from a list submitted by the Kidney Foundation of Iowa, Inc.

2. One member from a list submitted by the Iowa regional medical program, but not a member of the nominating groups named in subsections 1, 3, 4, or 6 of this section.

3. One member from a list submitted by the Iowa Nurses' Association.

4. One member from a list submitted by the Iowa Hospital Association.

5. Three members representing the at-large consumers of health care in Iowa.

6. Two members representing the Iowa medical profession involved in renal dialysis and transplantation.

Each member shall hold office for a term of four years or until his successor is appointed and qualifies. Any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of the term. The committee shall meet as frequently as the commissioner deems necessary, but not less than once each year. The committee members shall receive no compensation but shall be reimbursed for actual expenses incurred in carrying out their duties as members of this committee. [C73, 75,§135.46]

135.47 Program implemented. The commissioner, in consultation with the renal disease advisory committee, shall:

1. Establish financial criteria for participation in this program based on the resources of the individual patient with due regard to all sources of funds, including, but not limited to, insurance policies, private foundations, medicare, welfare, veterans' benefits, and vocational rehabilitation programs.

2. Establish fees charged to the state for services rendered under approved programs.

3. Extend financial assistance to provide medical, nursing, pharmaceutical, and technical services to persons suffering from chronic renal failure and requiring dialysis treatment or a kidney transplant as determined by qualified physicians.

4. Lease dialysis machines to the patient or to the existing approved dialysis treatment center. No patient residing in Iowa and able to participate in a home dialysis program shall cease to be gainfully employed nor forced to become an indigent or a transient due to insufficient funds for the continuance of dialysis treatment within the patient's home.

5. Institute within existing approved dialysis treatment centers a training program for home dialysis patients and for technical assistants, and investigate the availability of funds through regional medical funding and other sources in order to carry out the provisions of this subsection.

6. Adopt necessary rules and regulations regarding the residency requirements for dialysis patients and, in consultation with the department of social services, determine policies affecting indigent patients who are not residents of the state of Iowa. [C73, 75,§135.47]

CHAPTER 135A

HOSPITAL AND HEALTH FACILITY SURVEY

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135A.11 Priority of projects.
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135A.15 Hospital and health facilities construction fund.

135A.1 Title. This chapter may be cited as the "Iowa Hospital Survey and Construction Act". Nothing in this chapter shall be construed as adding to or deleting from the professional practice Acts, Title VIII of the Code, or the hospital licensure law, chapter 135B. [C50, 54, 58, 62, 66, 71, 73, 75,§135A.1]

135A.2 Definitions. Definitions as used in this chapter:

1. "Commissioner" means the commissioner of public health.

2. "The federal Act" means Title VI of the public health service Act and any amendments thereto (42USC,§§291 to 291o).

3. "The surgeon general" means the surgeon general of the public health service of the United States.

4. "Hospital" includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, out-patient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care.

5. "Public health center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

6. "Nonprofit hospital" or "other nonprofit health facility" means any hospital or other health facility owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, directly or indirectly, to the benefit of any private shareholder or individual.

7. "Other health facilities" means diagnostic or treatment centers, rehabilitation facilities, and nursing homes as those terms are defined in the federal Act. [C50, 54, 58, 62, 66, 71, 73, 75,§135A.2]

135A.3 Administration — division of hospital survey and construction. There is hereby

established in the state department of health a division of hospital survey and construction which shall be administered by a full-time salaried director under the supervision and direction of the commissioner. The state department of health through such division, shall constitute the sole agency of the state for the purpose of:

1. Making an inventory of existing hospitals and other health facilities, surveying the need for construction of hospitals and other health facilities, and developing a program of hospital construction as provided in this chapter, and

2. Developing and administering a state plan for the construction of public and other nonprofit hospitals and other health facilities as provided in this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§135A.3]

135A.4 General powers and duties. In carrying out the purposes of the chapter, the commissioner is authorized and directed:

1. To require such reports, make such inspections and investigations, and, with the advice of the hospital advisory council, prescribe such regulations as he deems necessary. No reports shall be required, inspections and investigations made, or regulations adopted which would have the effect of discriminating against a hospital or other institution or facilities contemplated hereunder, solely by reason of the school or system of practice employed or permitted to be employed by physicians therein; provided that such school or system of practice is recognized by the laws of this state.

2. To provide such methods of administration, appoint a director and other personnel of the division and take such other action as may be necessary to comply with the requirements of the federal Act and the regulations thereunder.

3. To procure in his discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties.

4. To the extent that he considers desirable to effectuate the purposes of this chapter, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions, public or private.

5. To accept on behalf of the state and to deposit with the state treasurer any grant, gift or contribution, subject to the approval by the executive council, made to assist in meeting the cost of carrying out the purposes of this chapter, and to expend the same for such purposes.

6. On November 1 of each year, to make an annual report to the governor on activities and expenditures pursuant to this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§135A.4]

135A.5 Hospital and other health facilities advisory council. The governor shall appoint a hospital and other health facilities advisory council, hereinafter referred to as the "council", to advise and consult with the state department of health in carrying out the administration of this chapter. The advisory council shall consist of the commissioner who shall serve as chairman ex officio and twenty-six members to include representatives of nongovernmental organizations or groups, and of public agencies, concerned with the operation, construction, or utilization of hospital or other facilities for diagnosis, prevention, or treatment of illness or disease, or for provision of rehabilitation services as follows: Five individuals of recognized ability in the field of hospital administration (four from a list submitted by the Iowa Hospital Association and one from a list submitted by the Iowa Osteopathic Hospital Association); five individual doctors (four from a list submitted by the Iowa State Medical Society and one from a list submitted by the Iowa Society of Osteopathic Physicians and Surgeons); one member representing nongovernmental organizations or groups, or state agencies, concerned with rehabilitation; one individual dentist (from a list submitted by the Iowa State Dental Society); one individual nurse (from a list submitted by the Iowa State Nurses Association); and thirteen representatives of consumers familiar with the need for the services provided by such facilities. The governor shall appoint six members for terms of one year, six members for terms of two years, seven members for terms of three years, and seven members for terms of four years. Their successors shall be appointed for terms of four years, except when appointed to complete an unexpired term. Members whose terms expire shall hold office until appointment of their successors. Members of the council shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of their official duties. The council shall meet quarterly each year, and additional meetings shall be held at the call of the chairman or the request of any four of its members. [C50, 54, 58, 62, 66, 71, 73, 75,§135A.5]

135A.6 Survey and planning activities. The commissioner is authorized and directed to make an inventory of existing hospitals and other health facilities, including public, nonprofit and proprietary hospitals and other health facilities, to survey the need for construction of hospitals and other health facilities, and, on the basis of such inventory and survey, to develop a program for the construction of such public and other nonprofit hospitals and other health facilities, as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital and other health facility, and similar services to all the people of the state. In making the inventory and survey and developing a construction program with

respect to diagnostic or treatment centers the commissioner shall, in the first instance, advise and consult with a subcommittee of the council, which subcommittee shall consist of the five individual doctors and the individual dentist then serving as members of the council. [C50, 54, 58, 62, 66, 71, 73, 75,§135A.6]

135A.7 Construction program. The construction program shall provide in accordance with regulations prescribed under the federal Act, for adequate hospital and other health facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and other health facility service reasonably accessible to all persons in the state. [C50, 54, 58, 62, 66, 71, 73, 75,§135A.7]

135A.8 Application for federal funds for survey and planning—expenditure. The commissioner is authorized to make application to the surgeon general for federal funds to assist in carrying out the survey and planning activities herein provided. Such funds shall be deposited in the state treasury and shall be available to the commissioner for expenditure for carrying out the purposes of this chapter, in accordance with the provisions of Title VI of the public health service Act, any amendments thereto, and the statutes of the state of Iowa. [C50, 54, 58, 62, 66, 71, 73, 75,§135A.8]

135A.9 State plan. The commissioner shall, with the advice of the council, prepare and submit to the surgeon general a state plan which shall include the hospital and other health facilities construction program developed under this chapter and which shall provide for the establishment, administration and operation of hospital and other health facilities construction activities in accordance with the requirements of the federal Act and regulations thereunder. The commissioner shall, prior to the submission of such plan to the surgeon general, give adequate publicity to a general description to all the provisions proposed to be included therein, and hold a public hearing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the surgeon general, the commissioner shall make the plan or a copy thereof available upon request to all interested persons or organizations. The commissioner shall from time to time review the hospital and other health facilities construction program and submit to the surgeon general any modifications thereof which he may find necessary and may submit to the surgeon general such modifications of the state plan, not inconsistent with the requirements of the federal Act, as he may deem advisable. [C50, 54, 58, 62, 66, 71, 73, 75,§135A.9]

135A.10 Minimum standards for hospital maintenance and operation. The commissioner shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and other health facilities which receive federal aid for construction under the state plan. [C50, 54, 58, 62, 66, 71, 73, 75, §135A.10]

135A.11 Priority of projects. The state plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed pursuant to the federal Act, and provide for the construction, insofar as financial resources are available therefor and also for maintenance and operations in the order of such relative need. [C50, 54, 58, 62, 66, 71, 73, 75,§135A.11]

135A.12 Construction projects—applications. Applications for hospital and other health facilities construction projects for which federal funds are requested shall be submitted to the commissioner and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital or a health facility, provided that no application for a diagnostic or treatment center shall be approved unless the applicant is (1) the state, a political subdivision, or a public agency, or (2) a corporation or association which owns and operates a nonprofit hospital. Each application for a construction project shall conform to federal and state requirements. [C50, 54, 58, 62, 66, 71, 73, 75,§135A.12]

135A.13 Consideration and forwarding of applications. The commissioner shall afford to every applicant for a construction project an opportunity for a fair hearing. If the commissioner, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of this chapter and is otherwise in conformity with the state plan, he shall approve such application and shall recommend and forward it to the surgeon general. [C50, 54, 58, 62, 66, 71, 73, 75,§135A.13]

135A.14 Inspection of projects. From time to time the commissioner shall cause to be inspected each construction project approved by the surgeon general, and, if the inspection so warrants, the commissioner shall certify to the surgeon general that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant. [C50, 54, 58, 62, 66, 71, 73, 75, §135A.14]

135A.15 Hospital and health facilities construction fund. The commissioner is hereby authorized to receive federal funds in behalf of, and transmit them to, such applicants. There is hereby established, separate and apart from all public moneys and funds of this state, a hospital and other health facilities construction

fund. Money received from the federal government for a construction project approved by the surgeon general shall be deposited to the credit of this fund and shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects. Warrants for all payments from the hospital and other health facilities construction fund shall bear the signature of the commissioner or his duly authorized agent for such purpose. [C50, 54, 58, 62, 66, 71, 73, 75, §135A.15]

Constitutionality, 52GA, ch 90,§16
Omnibus repeal, 52GA, ch 90,§17

CHAPTER 135B

LICENSURE AND REGULATION OF HOSPITALS

Referred to in §§135A.1, 147.138, 155.3(8), 519.1, 519A.2, 614.1
Abortion liability exculpation, ch 146

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PATHOLOGY AND RADIOLOGY SERVICES IN HOSPITALS

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135B.1 Definitions. As used in this chapter:

1. "Hospital" means a place which is devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care over a period exceeding twenty-four hours of two or more nonrelated individuals suffering from illness, injury, or deformity, or a place which is devoted primarily to the rendering over a period exceeding twenty-four hours of obstetrical or other medical or nursing care for two or more nonrelated individuals, or any institution, place, building or agency in which any accommodation is primarily maintained, furnished or offered for the care over a period exceeding twenty-four hours of two or more nonrelated aged or infirm persons requiring or receiving chronic or convalescent care; and shall include sanatoriums or other related institutions within the meaning of this chapter. Provided, however, nothing in this chapter shall apply to hotels or other similar places that furnish only food and lodging, or either, to their guests. "Hospital" shall include, in any event, any facilities wholly or partially constructed or to be constructed with federal financial assistance, pursuant to Public Law 725, 79th Congress, approved August 13, 1946.*

2. "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee or other similar representative thereof.

3. "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.1]

*60 Stat. L. 1040

135B.2 Purpose. The purpose of this chapter is to provide for the development, establishment and enforcement of basic standards (1) for the care and treatment of individuals in hospitals and (2) for the construction, maintenance and operation of such hospitals, which, in the light of existing knowledge, will promote safe and adequate treatment of such individuals in hospitals, in the interest of the health, welfare and safety of the public. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.2]

135B.3 Licensure. No person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a hospital in

this state without a license. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.3]

See §135B.18

135B.4 Application for license. Licenses shall be obtained from the state department of health. Applications shall be upon such forms and shall contain such information as the said department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules as may be lawfully prescribed hereunder. Each application for license shall be accompanied by the license fee, which shall be refunded to the applicant if the license is denied and which shall be paid over into the state treasury credited to the general fund if the license is issued. In case of death of any person holding such license or the sale of any hospital licensed hereunder within the first year of the tenure of such license the department shall certify to the state comptroller a claim on behalf of the licensee for refund of a proportionate share of the license fee. Said refund shall be based on one-twelfth the amount thereof multiplied by the remaining months in the year. The comptroller shall thereupon draw a warrant against the general fund payable to the order of the licensee. Hospitals having fifty beds or less shall pay an initial license fee of fifteen dollars; hospitals of more than fifty beds and not more than one hundred beds shall pay an initial license fee of twenty-five dollars; all other hospitals shall pay an initial license fee of fifty dollars. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.4]

135B.5 Issuance and renewal of license. Upon receipt of an application for license and the license fee, the state department of health shall issue a license if the applicant and hospital facilities comply with the provisions of this chapter and the regulations of the said department. Each such license, unless sooner suspended or revoked, shall be renewable annually upon payment of ten dollars and upon filing by the licensee, and approval by the department, of an annual report upon such uniform dates and containing such information in such form as the state department of health, with the advice of the hospital licensing board, shall prescribe by regulation. Licenses issued hereunder shall be either general or restricted in form. In those instances where an applicant for hospital license was licensed as a hospital on December 31, 1960, or had an application for hospital license pending on April 1, 1961, and the facilities of such applicant are suitable or adequate for only certain types of hospital care or treatment, the specific types of care or treatment for which such hospital is properly equipped shall be set forth on the face of the license and the lawful operation of the hospital shall be thereby restricted to the types of care and treatment so specified. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the state department of health. Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by regulation of the said department.

Provided, however, that the provisions of this section shall not in any way affect, change, deny or nullify any rights set forth in, or arising from the provisions of this chapter and particularly section 135B.7, arising before or after December 31, 1960. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.5]

135B.6 Denial or revocation of license—hearings and review. The state department of health shall have the authority to deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with the provisions of this chapter or the rules or minimum standards promulgated under this chapter.

Such denial, suspension, or revocation shall be effected by mailing to the applicant or licensee by certified mail, or by personal service of, a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or licensee, within such thirty-day period shall give written notice to the department requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the department. At any time at or prior to hearing, the department may rescind the notice of denial, suspension or revocation upon being satisfied that the reasons for the denial, suspension or revocation have been or will be removed. On the basis of any such hearing, or upon default of the applicant or licensee the determination involved in the notice may be affirmed, modified, or set aside, by the department. A copy of such decision, setting forth the finding of facts and the particular reasons for the decision shall be sent by certified mail, or served personally upon, the applicant or licensee.

The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by said department with the advice of the hospital licensing board. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless judicial review is sought pursuant to section 135B.14. A copy or copies of the transcript may be obtained by an interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the aforesaid rules. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.6]

135B.7 Rules and enforcement. The state department of health with the advice of the hospital licensing board, shall adopt, amend,

promulgate and enforce such rules and standards with respect to the different types of hospitals to be licensed hereunder as may be designed to further the accomplishment of the purposes of the chapter. Rules and standards may be adopted imposing requirements in excess of those provided in chapter 413, but no rule or standard shall be adopted imposing requirements less than those provided by said chapter. No rules or standards shall be adopted or enforced which would have the effect of denying a license to a hospital or other institution required to be licensed hereunder, solely by reason of the school or system of practice employed or permitted to be employed by physicians therein; provided that such school or system of practice is recognized by the laws of this state. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.7]

Referred to in §§135B.5, 135B.17

135B.8 Effective date of rules. Any hospital which is in operation at the time of promulgation of any applicable rules or minimum standards under this chapter shall be given a reasonable time, not to exceed one year from the date of such promulgation, within which to comply with such rules and minimum standards. [C50, 54, 58, 62, 66, 71, 73, 75, §135B.8]

135B.9 Inspections and consultations. The state department of health shall make or cause to be made such inspections as it may deem necessary. The state department of health shall, with the advice of the hospital licensing board, prescribe by regulations that any licensee or applicant for license desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall before commencing such alteration, addition or new construction, submit plans and specifications therefor to the state department of health for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.9]

135B.10 Hospital licensing board. The five individuals appointed by the governor to the hospital advisory council as individuals of recognized ability in the field of hospital administration, shall function as and be the hospital licensing board. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.10]

135B.11 Functions of hospital licensing board—compensation and expenses. The hospital licensing board shall have the following responsibilities and duties:

1. To consult and advise with the department of health in matters of policy affecting administration of this chapter, and in the development of rules, regulations and standards provided for hereunder.

2. To review and approve such rules and standards authorized hereunder prior to their promulgation by the department of health as specified herein.

The members of the board shall be paid a forty-dollar per diem and shall be reimbursed for actual and necessary expenses incurred as members. All per diem moneys paid to the members shall be paid from funds appropriated to the state department of health. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.11]

135B.12 Information confidential. Information received by the state department of health through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure or the denial, suspension or revocation of a license. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.12]

135B.13 Annual report of department. The state department of health shall prepare and publish an annual report of its activities and operations under this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.13]

135B.14 Judicial review. Judicial review of the action of the commissioner of public health may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the hospital is located or to be located, and the status quo of the petitioner or licensee shall be preserved pending final disposition of the matter in the courts. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.14]

Referred to in §135B.6

135B.15 Penalties. Any person establishing, conducting, managing, or operating any hospital without a license shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars or more than five hundred dollars, and each day of continuing violation after conviction shall be considered a separate offense. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.15]

135B.16 Injunction. Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.16]

135B.17 Construction. This chapter shall not be construed as affecting, modifying or repealing any provision of chapter 413, except as provided in section 135B.7, and provided further that this chapter shall be construed as being in addition to and not in conflict with chapters 235 and 236.*

Provisions of this chapter in conflict with the state building code shall not apply where the state building code has been adopted or when

the state building code applies throughout the state. [C50, 54, 58, 62, 66, 71, 73, 75,§135B.17]

*Repealed by 66GA, ch 1056,§45
Constitutionality, 52GA, ch 91,§18
Omnibus repeal, ch 91,§19

135B.18 County care facilities exempted. The provisions of this chapter shall not apply to county care facilities established pursuant to chapter 253 and managed by the county board of supervisors. [C54, 58, 62, 66, 71, 73, 75, §135B.18; 66GA, ch 67,§71]

PATHOLOGY AND RADIOLOGY SERVICES IN HOSPITALS

135B.19 Title of division. This law may be cited as the "Pathology and Radiology Services in Hospitals Law." [C58, 62, 66, 71, 73, 75, §135B.19]

135B.20 Definitions. Definitions as used in this division:

1. "Hospital" shall mean all hospitals licensed under this chapter.

2. "Doctor" shall mean any person licensed to practice medicine and surgery or osteopathy or osteopathy and surgery in this state.

3. "Technician" shall mean technologist as well.

4. "Joint conference committee" shall mean the joint conference committee as required by the joint commission on accreditation of hospitals or, in a hospital having no such committee, a similar committee, an equal number of which shall be members of the medical staff selected by the staff and an equal number of which shall be selected by the governing board of the hospital.

5. "Employees" as used in section 135B.24, and "employment" as used in section 135B.25, shall include and pertain to members of the religious order operating the hospital even though the relationship of employer and employee does not exist between such members and the hospital. [C58, 62, 66, 71, 73, 75, §135B.20]

135B.21 Functions of hospital. The ownership and maintenance of the laboratory and X-ray facilities and the operation of same under this division are proper functions of a hospital. [C58, 62, 66, 71, 73, 75,§135B.21]

135B.22 Character of services. Pathology and radiology services performed in hospitals are the product of the joint contribution of hospitals, doctors and technicians but these services constitute medical services which must be performed by or under the direction and supervision of a doctor, and no hospital shall have the right, directly or indirectly, to direct, control or interfere with the professional medical acts and duties of the doctor in charge of the pathology or radiology facilities or of the technicians under his supervision. Nothing herein contained shall affect the rights of third parties as a result of negligence in the operation or maintenance of the aforesaid pathology and radiology facilities. [C58, 62, 66, 71, 73, 75,§135B.22]

135B.23 Agreement with doctor. Each hospital shall arrange for such services and for the direction and supervision of its pathology or radiology department by entering into either an oral or written agreement with a doctor who is a member of or acceptable to the hospital medical staff. Such doctor may or may not be a specialist. The department may be supervised and directed by a qualified member of the staff and specific services may be referred to a specialist, or the specialist may also direct and supervise the department as may be desired. Any contract so entered into shall be in accordance with the provisions of this division. [C58, 62, 66, 71, 73, 75,§135B.23]

135B.24 Employees. Unless the department is leased or unless the hospital and doctor mutually agree otherwise, technicians and other personnel, not including doctors, shall be employees of the hospital, subject to the rules of the hospital applicable to employees generally, but under the direction and supervision of the doctor in charge of the department as set forth elsewhere in this division. [C58, 62, 66, 71, 73, 75,§135B.24]

Referred to in §135B.20(5)

135B.25 Hiring and dismissal of technicians. The doctor and hospital shall mutually agree upon the employment of any technicians necessary for the proper operation of said department and no technicians shall be dismissed from said employment without the mutual consent of the parties, provided, however, that in the event the hospital and doctor are unable mutually to agree upon the hiring or discharge or disciplining of any employee of said department, the matter shall be promptly submitted to the joint conference committee for final determination. [C58, 62, 66, 71, 73, 75,§135B.25]

Referred to in §135B.20(5)

135B.26 Compensation. The contract between the hospital and doctor in charge of the laboratory or X-ray facilities may contain any provision for compensation of each upon which they mutually agree, provided, however, that no contract shall be entered into which in any way creates the relationship of employer and employee between the hospital and the doctor, and a percentage arrangement is not and shall not be construed to be unprofessional conduct on the part of the doctor or in violation of the statutes of this state upon the part of the hospital. [C58, 62, 66, 71, 73, 75,§135B.26]

Referred to in §514B.32

135B.27 Admission agreement. The hospital admission agreement signed by the patient or his legal representative shall contain the following statement:

"Pathology and radiology services are medical services performed or supervised by doctors, and the personnel and facilities are or may be furnished by the hospital for said

services. Charges for such services are or may be collected, however, by the hospital on behalf of said doctors pursuant to an agreement between said doctors and the hospital, and from said charges I consent that an agreed sum will be retained by the hospital in accordance with an existing agreement between the doctor and the hospital." [C58, 62, 66, 71, 73, 75,§135B.27]

135B.28 Hospital bill. The hospital bill shall properly include the charges for pathology and radiology services as long as the name of the doctor is stated and it fairly appears that the charge is for medical services. The said hospital bill shall also contain a statement substantially in the following form:

"The pathology and radiology charges are for medical services rendered by or under the direction of the doctor listed above and are collected by the hospital on behalf of the doctor, from which charges an agreed sum will be retained by the hospital in accordance with an existing agreement to which retention you consented at the time of your admission to the hospital." [C58, 62, 66, 71, 73, 75,§135B.28]

135B.29 Fees. All fees to be charged by the doctors for pathology and radiology services shall be mutually agreed upon by the hospital and the doctor. In the event dispute shall arise between the parties the matter shall be submitted to the joint conference committee for final determination. [C58, 62, 66, 71, 73, 75, §135B.29]

135B.30 Radiology and pathology fees. Fees for radiology and pathology services must be paid for as medical and not hospital services. In all cases where payment is to be made by a corporation organized pursuant to chapter 514, payment for radiology and pathology services shall be made by a medical service corporation and not by a hospital service corporation. [C58, 62, 66, 71, 73, 75,§135B.30]

135B.31 Exceptions. Nothing in this division is intended or should affect in any way that obligation of public hospitals under chapter 347 or municipal hospitals, as well as the state hospital at Iowa City, to provide medical treatment for indigent persons or tuberculosis patients as provided in chapters 254* and 255, wherein medical treatment is provided by hospitals of that category to patients of certain entitlement, nor to the operation by the state of mental or other hospitals authorized by law. Nothing herein shall in any way affect or limit the practice of dentistry or the practice of oral surgery by a dentist. [C58, 62, 66, 71, 73, 75, §135B.31]

*Repealed by 66GA, ch 1056,§45

135B.32 Construction. Nothing herein shall deprive any hospital of its tax exempt or nonprofit status. [C58, 62, 66, 71, 73, 75,§135B.32]

CHAPTER 135C
HEALTH CARE FACILITIES

Referred to in §§170.38, 222.59, 229.43, 230.32, 249.3, 249A.9, 249A.12
Cost-related systems, §249.12
Extent of prior licenses, 63GA, ch 1079,§28

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135C.1 Definitions.

1. *"Residential care facility"* means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, personal assistance and other essential daily living activities to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves but who do not require the services of a registered or licensed practical nurse except on an emergency basis.

2. *"Intermediate care facility"* means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, and nursing services, the need for which is certified by a physician, to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of illness, disease, or physical or mental infirmity require nursing services which can be provided only under the direction of a registered nurse or a licensed practical nurse.

3. *"Skilled nursing facility"* means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, and nursing services, the need for which is certified by a physician, to three or more individuals not related to the administrator or owner thereof within the third degree of consanguinity who by reason of illness, disease, or physical or mental infirmity require continuous nursing care services and related medical services, but do not require hospital care. The nursing care services provided must be under the direction of a registered nurse on a twenty-four-hours-per-day basis.

4. *"Health care facility"* or *"facility"* means any residential care facility, intermediate care facility, or skilled nursing facility.

Referred to in §204.501

5. *"Licensee"* means the holder of a license issued for the operation of a facility, pursuant to this chapter.

6. *"Resident"* means an individual admitted to a health care facility in the manner prescribed by section 135C.23.

7. *"Physician"* has the meaning assigned that term by section 135.1, subsection 5.

8. *"House physician"* means a physician who has entered into a two-party contract with a health care facility to provide services in that facility.

9. *"Commissioner"* means the commissioner of public health appointed pursuant to section 135.2, or his designee.

10. *"Department"* means the state department of health.

11. *"Person"* means any individual, firm, partnership, corporation, company, association or joint stock association; and includes trustee, receiver, assignee or other similar representative thereof.

12. *"Governmental unit"* means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.

13. *"Direction"* means authoritative policy or procedural guidance for the accomplishment of a function or activity.

14. *"Supervision"* means direct oversight and inspection of the act of accomplishing a function or activity.

15. *"Nursing care"* means those services which can be provided only under the direction of a registered nurse or a licensed practical nurse.

16. *"Social services"* means services relating to the psychological and social needs of the individual in adjusting to living in a health care facility, and minimizing stress arising from that circumstance.

17. *"Rehabilitative services"* means services to encourage and assist restoration of optimum mental and physical capabilities of the individual resident of a health care facility. [C50, 54, 58, 62, 66, 71, 73, 75,§135C.1; 66GA, ch 119,§1, ch 120,§1]

Referred to in §§80.27, 100.1(4), 100.35, 103.1, 135C.6, 148A.3, 152.1, 204.501, 235A.3, 249.3, 249A.3, 347.14, 347.26, 419.1, 427.9, 444.12

135C.2 Purpose.

1. The purpose of this chapter is to promote and encourage adequate and safe care and housing for individuals who are aged or who, regardless of age, are infirm, convalescent, or mentally or physically dependent, by both public and private agencies by providing for the adoption and enforcement of rules and standards:

a. For the housing, care and treatment of individuals in health care facilities, and

b. For the location, construction, maintenance, renovation, and sanitary operation of such health care facilities which will promote safe and adequate care of individuals in such homes so as to further the health, welfare and safety of such individuals.

2. Rules and standards prescribed, promulgated and enforced under this chapter shall not be arbitrary, unreasonable or confiscatory and the department or agency prescribing, promulgating or enforcing such rules or standards shall have the burden of proof to establish that such rules or standards meet such requirements and are consistent with the economic problems and conditions involved in the care and housing of persons in health care facilities.

3. The department shall establish by administrative rule, within the intermediate care facility category, a special classification for facilities intended to serve mentally retarded individuals. The department may also establish by administrative rule other classifications within that category, or special classifications within the residential care facility or skilled nursing facility categories, for facilites intended to serve individuals who have special health care problems or conditions in common.

Rules establishing a special classification shall define the problem or condition to which the classification is relevant and establish requirements for an approved program of care commensurate with such problem or condition, and may grant special variances or considerations to facilities licensed within the classification so established. [C50, 54,§135C.5; C58, 62, 66, 71, 73, 75,§135C.2; 66GA, ch 119,§§2, 3]

135C.3 Nature of care. Each facility licensed as a skilled nursing facility or an intermediate care facility shall provide an organized continuing twenty-four hour program of nursing services commensurate with the needs of its residents and under the immediate direction of a licensed physician, licensed registered nurse or licensed practical nurse licensed by the state of Iowa, whose combined training and supervised experience is such as to assure adequate and competent nursing direction. Medical and nursing services shall be under the direction of either a "house physician" or individually selected physicians, but surgery or obstetrical care shall not be provided within the facility. All admissions to skilled nursing facilities or intermediate care facilities shall be based on an order written by a physician certifying that the individual being admitted requires no greater degree of nursing care than the facility to which the admission is made is licensed to provide and is capable of providing. [C58, 62, 66, 71, 73, 75, §135C.3; 66GA, ch 119,§4]

Referred to in §253.6

135C.4 Residential care facilities. Each facility licensed as a residential care facility shall provide an organized continuous twenty-four hour program of care commensurate with the needs of the residents of the home and under the immediate direction of a person approved and certified by the department whose combined training and supervised experience is such as to ensure adequate and competent care. All admissions to residential care facilities shall be based on an order written by a physician certifying that the individual being admitted does not require nursing services. [C50, 54,§135C.9; C58, 62, 66, 71, 73, 75,§135C.4; 66GA, ch 119,§5, ch 120,§2]

Referred to in §253.6
Persons not admitted to nursing homes, see §135C.3

135C.5 Health care facilities, etc. No other business or activity shall be carried on in a health care facility, nor in the same physical structure with a health care facility except as hereinafter provided, unless such business or activity is under the control of and is directly related to and incidental to the operation of the health care facility. No business or activity which is operated within the limitations of this section shall interfere in any manner with the use of the facility by the residents, nor be disturbing to them. [C58, 62, 66, 71, 73, 75, §135C.5; 66GA, ch 119,§6]

135C.6 License required.

1. No person or governmental unit acting severally or jointly with any other person or governmental unit shall establish or operate a health care facility in this state without a license for such facility.

2. A health care facility suitable for separation and operation with distinct parts may, where otherwise qualified in all respects, be issued multiple licenses authorizing various parts of such facilities to be operated as health care facilities of different license categories.

3. No change in a health care facility, its operation, program, or services, of a degree or character affecting continuing licensability shall be made without prior approval thereof by the department. The department may by rule specify the types of changes which shall not be made without its prior approval.

4. No department, agency, or officer of this state or of any of its political subdivisions shall pay or approve for payment from public funds any amount or amounts to a health care facility under any program of state aid in connection with services provided or to be provided an actual or prospective resident in a health care facility, unless the facility has a current license issued by the department and meets such other requirements as may be in effect pursuant to law.

5. No health care facility established and operated in compliance with law prior to January 1, 1976, shall be required to change its corporate or business name by reason of the definitions prescribed in section 135C.1, provided that no health care facility shall at any time represent or hold out to the public or to any individual that it is licensed as, or provides the services of, a health care facility of a type offering a higher grade of care than such health care facility is licensed to provide. Any health care facility which, by virtue of this section, operates under a name not accurately descriptive of the type of license which it holds shall clearly indicate in any printed advertisement, letterhead, or similar material, the type of license or licenses which it has in fact been issued. No health care facility established or renamed after January 1, 1976, shall use any name indicating that it holds a different type of license than it has been issued. [C50, 54,§135C.2; C58, 62, 66, 71, 73, 75,§135C.6; 66GA, ch 119,§7]

135C.7 Application—fees. Licenses shall be obtained from the department. Applications shall be upon such forms and shall include such information as the department may reasonably require, which may include affirmative evidence of compliance with such other statutes and local ordinances as may be applicable. Each application for license shall be accompanied by the annual license fee prescribed by this section, subject to refund to the applicant if the license is denied, which fee

shall be paid over into the state treasury and credited to the general fund if the license is issued. There shall be an annual license fee based upon the bed capacity of the health care facility, as follows:

1. Ten beds or less, twenty dollars.
2. More than ten and not more than twenty-five beds, forty dollars.
3. More than twenty-five and not more than seventy-five beds, sixty dollars.
4. More than seventy-five and not more than one hundred fifty beds, eighty dollars.
5. More than one hundred fifty beds, one hundred dollars. [C50, 54,§§135C.3, 135C.4; C58, 62, 66, 71, 73, 75,§135C.7; 66GA, ch 119,§8, ch 120,§§3, 4]

Referred to in §135C.8

135C.8 Scope of license. Licenses for health care facilities shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the department, obtained prior to the purchase of the facility involved. Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by regulation of the department. Such licenses, unless sooner suspended or revoked, shall expire one year after the date of issuance and shall be renewed annually upon an application by the licensee. Applications for such renewal shall be made in writing to the department, accompanied by the required fee, at least thirty days prior to the expiration of such license in accordance with regulations promulgated by the department. Health care facilities which have allowed their licenses to lapse through failure to make timely application for renewal of their licenses shall pay an additional fee of twenty-five percent of the annual license fee prescribed in section 135C.7. [C50, 54, §135C.5; C58, 62, 66, 71, 73, 75,§135C.8]

135C.9 Inspection before issuance.

1. The department shall not issue a health care facility license to any applicant until:

a. The department has ascertained that the staff and equipment of the facility is adequate to provide the care and services required of a health care facility of the category for which the license is sought. Prior to the review and approval of plans and specifications for any new facility and the initial licensing under a new licensee, a resume of the programs and services to be furnished and of the means available to the applicant for providing the same and for meeting requirements for staffing, equipment, and operation of the health care facility, with particular reference to the professional requirements for services to be rendered, shall be submitted in writing to the department for review and approval. The resume shall be reviewed by the department within ten working days and returned to the applicant. The resume shall, upon the department's request, be revised as appropriate by the facility from time to time after issuance of a license.

b. The facility has been inspected by the state fire marshal or a deputy appointed by him for that purpose, who may be a member of a municipal fire department, and the department has received either a certificate of compliance or a provisional certificate of compliance by the facility with the fire-hazard and fire-safety rules and standards of the department as promulgated by the fire marshal and, where applicable, the fire-safety standards required for participation in programs authorized by either Title XVIII or Title XIX of the United States Social Security Act (Title XLII, United States Code, sections 1395 to 139511 and 1396 to 1396"g"). The certificate or provisional certificate shall be signed by the fire marshal or his deputy who made the inspection.

2. The rules and standards promulgated by the fire marshal pursuant to subsection 1, paragraph *"b"* of this section shall be substantially in keeping with the latest generally recognized safety criteria for the facilities covered, of which the applicable criteria recommended and published from time to time by the national fire protection association shall be prima-facie evidence.

3. The state fire marshal or his deputy may issue successive provisional certificates of compliance for periods of one year each to a facility which is in substantial compliance with the applicable fire-hazard and fire-safety rules and standards, upon satisfactory evidence of an intent, in good faith, by the owner or operator of the facility to correct the deficiencies noted upon inspection within a reasonable period of time as determined by the state fire marshal or his deputy. Renewal of a provisional certificate shall be based on a showing of substantial progress in eliminating deficiencies noted upon the last previous inspection of the facility without the appearance of additional deficiencies other than those arising from changes in the fire-hazard and fire-safety rules, regulations and standards which have occurred since the last previous inspection, except that substantial progress toward achievement of a good-faith intent by the owner or operator to replace the entire facility within a reasonable period of time, as determined by the state fire marshal or his deputy, may be accepted as a showing of substantial progress in eliminating deficiencies, for the purposes of this section. [C50, 54, §135C.6; C58, 62, 66, 71, 73, 75,§135C.9; 66GA, ch 119,§9]

Referred to in §135C.16

135C.10 Denial, suspension or revocation. The department shall have the authority to deny, suspend, or revoke a license in any case where the department finds that there has been repeated failure on the part of the facility to comply with the provisions of this chapter or the rules or minimum standards promulgated hereunder, or for any of the following reasons:

1. Cruelty or indifference to health care facility residents.
2. Appropriation or conversion of the property of a health care facility resident without his written consent or the written consent of his legal guardian.
3. Permitting, aiding, or abetting the commission of any illegal act in the health care facility.
4. Inability or failure to operate and conduct the health care facility in accordance with the requirements of this chapter and the minimum standards and rules issued pursuant thereto.
5. Obtaining or attempting to obtain or retain a license by fraudulent means, misrepresentation, or by submitting false information.
6. Habitual intoxication or addiction to the use of drugs by the applicant, manager or supervisor of the health care facility.
7. Securing the devise or bequest of the property of a resident of a health care facility by undue influence.
8. Willful failure or neglect to maintain a continuing in-service education and training program for all personnel employed in the facility.
9. In the case of an application by an existing licensee for a new or newly acquired facility, continuing or repeated failure of the licensee to operate any previously licensed facility or facilities in compliance with the provisions of this Act or of the rules adopted pursuant to it. [C50, 54,§135C.6; C58, 62, 66, 71, 73, 75,§135C.10; 66GA, ch 119,§10]

135C.11 Notice—hearings.

1. The denial, suspension, or revocation of a license shall be effected by delivering to the applicant or licensee by certified mail or by personal service of a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or licensee, within such thirty-day period, shall give written notice to the department requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the department. At any time at or prior to the hearing the department may rescind the notice of the denial, suspension or revocation upon being satisfied that the reasons for the denial, suspension or revocation have been or will be removed. On the basis of any such hearing, or upon default of the applicant or licensee, the determination involved in the notice may be affirmed, modified, or set aside by the department. A copy of such decision shall be sent by certified mail, or served personally upon the applicant or licensee. The applicant or licensee may seek judicial review pursuant to section 135C.13.

2. The procedure governing hearings authorized by this section shall be in accordance with the rules promulgated by the department. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless judicial review is sought pursuant to section 135C.13. A copy or copies of the transcript may be obtained by an interested party upon payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the aforesaid rules. The commissioner may, with the advice and consent of the care review committee established pursuant to section 135C.25, remove all residents and suspend the license or licenses of any health care facility, prior to a hearing, when he finds that the health or safety of residents of the health care facility requires such action on an emergency basis. The fact that no care review committee has been appointed for a particular facility shall not bar the commissioner from exercising the emergency powers granted by this subsection with respect to that facility. [C50, 54,§135C.6; C58, 62, 66, 71, 73, 75,§135C.11; 66GA, ch 119,§11]

Referred to in §135C.19

135C.12 Conditional operation. In any case where the department shall have the authority to deny, suspend or revoke a license, the department shall have the authority to conditionally issue or continue a license dependent upon the performance by the licensee of such reasonable conditions within such reasonable period of time as may be set by the department so as to permit the licensee to commence or continue the operation of the health care facility pending his full compliance with this chapter or any regulations issued hereunder. In such case, if the licensee does not make diligent efforts to comply with such conditions as prescribed, the department may, under the proceedings hereinbefore prescribed, suspend or revoke the license. No health care facility shall be operated on a conditional license for more than one year. The department, in evaluating corrections of deficiencies in a facility, may determine what is satisfactory compliance, provided that in so doing it shall employ established criteria which shall be uniformly applied to all facilities of the same license category. [C58, 62, 66, 71, 73, 75,§135C.12]

135C.13 Judicial review. Judicial review of any action of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county where the facility or proposed facility is located, and pending final disposition of the matter the status quo of the applicant or licensee shall be preserved except when the commissioner, with the advice and consent of the care review committee established pursuant to section 135C.25, determines that the health, safety or welfare of the residents of the facility are in immediate danger, in which

case he may order the immediate removal of such residents. The fact that no care review committee has been appointed for a particular facility shall not bar the commissioner from exercising the emergency powers granted by this subsection with respect to that facility. [C58, 62, 66, 71, 73, 75,§135C.13; 66GA, ch 119,§12]

Referred to in §135C.11

135C.14 Rules. The department shall, in accordance with chapter 17A, adopt and enforce rules setting minimum standards for health care facilities. In so doing, the department may adopt by reference, with or without amendment, nationally recognized standards and rules, which shall be specified by title and edition, date of publication, or similar information. The rules and standards required by this section shall be formulated in consultation with the commissioner of social services or his or her designee and with industry, professional and consumer groups affected thereby, and shall be designed to further the accomplishment of the purposes of this chapter and shall relate to:

1. Location and construction of the facility, including plumbing, heating, lighting, ventilation, and other housing conditions, which shall ensure the health, safety and comfort of residents and protection from fire hazards. Such rules and standards regarding location and construction of the home may impose requirements in excess of those provided in chapter 413 but shall not impose requirements less than those provided by such chapter. The rules of the department relating to protection from fire hazards and fire safety shall be promulgated by the state fire marshal, and shall be in keeping with the latest generally recognized safety criteria for the facilities covered of which the applicable criteria recommended and published from time to time by the national fire protection association shall be prima-facie evidence.

2. Number and qualifications of all personnel, including management and nursing personnel, having responsibility for any part of the care provided to residents.

3. All sanitary conditions within the facility and its surroundings including water supply, sewage disposal, food handling, and general hygiene, which shall ensure the health and comfort of residents.

4. Diet related to the needs of each resident and based on good nutritional practice and on recommendations which may be made by the physician attending the resident.

5. Equipment essential to the health and welfare of the resident.

6. Requirements that a minimum number of registered or licensed practical nurses and nurses' aides, relative to the number of residents admitted, be employed by each licensed facility. Staff-to-resident ratios established under this subsection need not be the same for facilities holding different types of licenses, nor for facilities holding the same type of license if there are significant differences in the needs of residents which the respective facilities are serving or intend to serve.

7. Social services and rehabilitative services provided for the residents. [C50, 54,§135C.5; C58, 62, 66, 71, 73, 75,§135C.14; 66GA, ch 119,§13]

135C.15 Time to comply.

1. Any health care facility which is in operation at the time of adoption or promulgation of any applicable rules or minimum standards under this chapter shall be given reasonable time from the date of such promulgation to comply with such rules and minimum standards as provided for by the department. The commissioner may grant successive thirty-day extensions of the time for compliance where evidence of a good faith attempt to achieve compliance is furnished, if the extensions will not place in undue jeopardy the residents of the facility to which the extensions are granted.

2. Renovation of an existing health care facility, not already in compliance with all applicable standards, shall be permitted only if the fixtures and equipment to be installed and the services to be provided in the renovated portion of the facility will conform substantially to current operational standards. Construction of an addition to an existing health care facility shall be permitted only if the design of the structure, the fixtures and equipment to be installed, and the services to be provided in the addition will conform substantially to current construction and operational standards. [C58, 62, 66, 71, 73, 75,§135C.15; 66GA, ch 119,§14]

135C.16 Inspections.

1. In addition to the inspections required by sections 135C.9 and 135C.38 the department shall make or cause to be made such further unannounced inspections as it may deem necessary to adequately enforce this chapter, including at least one general inspection in each calendar year of every licensed health care facility in the state made without providing advance notice of any kind to the facility being inspected. The inspector shall identify himself or herself to the person in charge of the facility and state that an inspection is to be made before beginning the inspection. Any employee of the department who gives unauthorized advance notice of an inspection made or planned to be made under this subsection or section 135C.38 shall be disciplined as determined by the commissioner, except that if the employee is employed pursuant to chapter 19A the discipline shall not exceed that authorized pursuant to that chapter.

2. The department shall prescribe by rule that any licensee or applicant for license desiring to make specific types of physical or functional alterations or additions to its facility or to construct new facilities shall, before commencing such alteration or additions

or new construction, submit plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to the compliance with the rules and standards herein authorized. When plans and specifications submitted as required by this subsection have been properly approved by the department or other appropriate state agency, the facility or the portion of the facility constructed or altered in accord with the plans so approved shall not for a period of at least five years from completion of the construction or alteration be considered deficient or ineligible for licensing by reason of failure to meet any rule or standard established subsequent to approval of the plans and specifications, unless a clear and present danger exists that would adversely affect the residents of the facility.

3. An inspector of the department may enter any licensed health care facility without a warrant, and may examine all records pertaining to the care provided residents of the facility. An inspector of the department of social services shall have the same right with respect to any facility where one or more residents are cared for entirely or partially at public expense and the state fire marshal or a deputy appointed pursuant to section 135C.9, subsection 1, paragraph "*b*" shall have the same right of entry into any facility and the right to inspect any records pertinent to fire safety practices and conditions within that facility. If any such inspector has probable cause to believe that any institution, place, building, or agency not licensed as a health care facility is in fact a health care facility as defined by this chapter, and upon properly identifying himself he is denied entry thereto for the purpose of making an inspection, he may, with the assistance of the county attorney of the county in which the purported health care facility is located, apply to the district court for an order requiring the owner or occupant to permit entry and inspection of the premises to determine whether there have been any violations of this chapter. [C58, 62, 66, 71, 73, 75,§135C.16; 66GA, ch 119,§15]

135C.17 Duties of other departments. It shall be the duty of the department of social services, state fire marshal, and the officers and agents of other state and local governmental units to assist the department in carrying out the provisions of this chapter, insofar as the functions of these respective offices and departments are concerned with the health, welfare, and safety of any resident of any health care facility. [C58, 62, 66, 71, 73, 75,§135C.17; 66GA, ch 119,§16]

Referred to in §135C.21

135C.18 Employees. The department may employ, pursuant to chapter 19A, such assistants and inspectors as may be necessary to administer and enforce the provisions of this chapter. [C58, 62, 66, 71, 73, 75,§135C.18]

135C.19 Public disclosure of inspection findings—posting of citations.

1. Following any inspection of a health care facility by the department, the findings of the inspection with respect to compliance by the facility with requirements for licensing under this chapter shall be made public in a readily available form and place forty-five days after the findings are made available to the applicant or licensee. However, if the applicant or licensee requests a hearing pursuant to section 135C.11, the findings of the inspection shall not be made public until the hearing has been completed. When the findings are made public, they shall include no reference to any cited violation which has been corrected to the department's satisfaction unless the same reference also clearly notes that the violation has been corrected. Other information relating to any health care facility, obtained by the department through reports, investigations, complaints, or as otherwise authorized by this chapter, which is not a part of the department's findings from an inspection of the facility, shall not be disclosed publicly except in proceedings involving the citation of a facility for a violation, in the manner provided by section 135C.40, or the denial, suspension or revocation of a license under this chapter.

2. Each citation for a class I or class II violation which is issued to a health care facility and which has become final, or a copy or copies thereof, shall be prominently posted as prescribed in rules to be adopted by the department, until the violation is corrected to the department's satisfaction. The citation or copy shall be posted in a place or places in plain view of the residents of the facility cited, persons visiting the residents, and persons inquiring about placement in the facility.

3. A copy of each citation required to be posted by this subsection shall be sent by the department to the department of social services.

If the facility cited subsequently advises the department of social services that the violation has been corrected to the satisfaction of the department of health, the department of social services must maintain this advisory in the same file with the copy of the citation. The department of social services shall not disseminate to the public any information regarding citations issued by the department of health, but shall forward or refer such inquiries to the department of health. [C58, 62, 66, 71, 73, 75,§135C.19; 66GA, ch 119,§17]

Referred to in §135C.40

135C.20 Information distributed. The department shall prepare, publish and send to licensed health care facilities an annual report of its activities and operations under this chapter and such other bulletins containing fundamental health principles and data as may be deemed essential to assure proper operation of health care facilities, and publish for public distribution copies of the laws, standards and

rules pertaining to their operation. [C58, 62, 66, 71, 73, 75,§135C.20]

135C.21 Penalties.

1. Any person establishing, conducting, managing, or operating any health care facility without a license shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned in the county jail for not more than six months, or both. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense or chargeable offense. Any such person establishing, conducting, managing or operating any health care facility without a license may be by any court of competent jurisdiction temporarily or permanently restrained therefrom in any action brought by the state.

2. Any person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department or of any of the agencies referred to in section 135C.17 in the lawful enforcement of this chapter or of the rules adopted pursuant to it is guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than fifty nor more than five hundred dollars or imprisonment in the county jail for not more than ninety days or both. As used in this subsection, lawful enforcement includes but is not limited to:

a. Contacting or interviewing any resident of a health care facility in private at any reasonable hour and without advance notice.

b. Examining any relevant books or records of a health care facility.

c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to it. [C50, 54,§135C.7; C58, 62, 66, 71, 73, 75, §135C.21; 66GA, ch 119,§18]

Constitutionality, 57GA, ch 93,§22
Prior licenses, see 57GA, ch 93,§23

135C.22 Applicable to governmental units. The provisions of this chapter shall be applicable to institutions operated by or under the control of the department of social services, the state board of regents, or any other governmental unit. [C50, 54,§135C.8; C58, 62, 66, 71, 73, 75,§135C.22]

135C.23 Express requirements for admission or residence. No individual shall be admitted to or permitted to remain in a health care facility as a resident, except in accordance with the requirements of this section.

1. Each resident shall be covered by a contract executed at the time of admission or prior thereto by the resident, or his legal representative, and the health care facility, except as otherwise provided by subsection 5 with respect to residents admitted at public expense to a county care facility operated under chapter 253. Each party to the contract shall be entitled to a duplicate original thereof, and the health care facility shall keep on file all contracts which it has with residents and shall not destroy or otherwise dispose of any such contract for at least one year after its expiration. Each such contract shall expressly set forth:

a. The terms of the contract.

b. The services and accommodations to be provided by the health care facility and the rates or charges therefor.

c. Specific descriptions of any duties and obligations of the parties in addition to those required by operation of law.

d. Any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter, nor contain any disclaimer of responsibility for injury to the resident, or to relatives or other persons visiting the resident, which occurs on the premises of the facility or, with respect to injury to the resident, which occurs while the resident is under the supervision of any employee of the facility whether on or off the premises of the facility.

2. No health care facility shall knowingly admit or retain any resident:

a. Who is dangerous to himself or other residents.

b. Who is in an active or acute stage of alcoholism, drug addiction, mental illness, or communicable disease.

c. Whose condition or conduct is such that he would be unduly disturbing to other residents.

d. Who is in need of medical procedures, as determined by a physician, or services which cannot be or are not being carried out in the facility.

3. Except in emergencies, a resident who is not essentially capable of managing his own affairs shall not be transferred out of a health care facility or discharged for any reason without prior notification to the next of kin, legal representative, or agency acting on the resident's behalf. When such next of kin, legal representative, or agency cannot be reached or refuses to co-operate, proper arrangements shall be made by the facility for the welfare of the resident before his transfer or discharge.

4. No owner, administrator, employee, or representative of a health care facility shall pay any commission, bonus, or gratuity in any form whatsoever, directly or indirectly, to any person for residents referred to such facility, nor accept any commission, bonus, or gratuity in any form whatsoever, directly or indirectly, for professional or other services or supplies purchased by the facility or by any resident, or by any third party on behalf of any resident, of the facility.

5. Each county which maintains a county care facility under chapter 253 shall develop a statement in lieu of, and setting forth substantially the same items as, the contracts

required of other health care facilities by subsection 1. The statement must be approved by the county board of supervisors and by the department. When so approved, the statement shall be considered in force with respect to each resident of the county care facility. [C71, 73, 75,§135C.23; 66GA, ch 119,§19]

Referred to in §135C.1(6)

135C.24 Personal property or affairs of patients or residents. The admission of a resident to a health care facility and his presence therein shall not in and of itself confer on such facility, its owner, administrator, employees, or representatives any authority to manage, use, or dispose of any property of the resident, nor any authority or responsibility for the personal affairs of the resident, except as may be necessary for the safety and orderly management of the facility and as required by this section.

1. No health care facility, and no owner, administrator, employee or representative thereof shall act as guardian, trustee or conservator for any resident of such facility, or any of such resident's property, unless such resident is related to the person acting as guardian within the third degree of consanguinity.

2. A health care facility shall provide for the safekeeping of personal effects, funds and other property of its residents, provided that whenever necessary for the protection of valuables or in order to avoid unreasonable responsibility therefor, the facility may require that they be excluded or removed from the premises of the facility and kept at some place not subject to the control of the facility.

3. A health care facility shall keep complete and accurate records of all funds and other effects and property of its residents received by it for safekeeping.

4. Any funds or other property belonging to or due a resident, or expendable for his account, which are received by a health care facility shall be trust funds, shall be kept separate from the funds and property of the facility and of its other residents, or specifically credited to such resident, and shall be used or otherwise expended only for the account of the resident. Upon request the facility shall furnish the resident, the guardian, trustee or conservator, if any, for any resident, or any governmental unit or private charitable agency contributing funds or other property on account of any resident, a complete and certified statement of all funds or other property to which this subsection applies detailing the amounts and items received, together with their sources and disposition.

5. The provisions of this section notwithstanding, upon the verified petition of the county board of supervisors the district court may appoint the administrator of a county care facility as conservator or guardian, or both, of a resident of such county care facility, in accordance with the provisions of chapter 633. Such administrator shall serve as conservator or guardian, or both, without fee. The county attorney shall serve as attorney for the administrator in such conservatorship or guardianship, or both, without fee. The administrator may establish either separate or common bank accounts for cash funds of such resident wards. [C71, 73, 75,§135C.24; 66 GA, ch 119,§20]

135C.25 Care review committee — appointment—duties.

1. Each health care facility shall have a care review committee whose members shall be appointed as follows:

a. By the areawide health planning council recognized as such by this state acting through the office for comprehensive health planning in the office for planning and programming; or

b. If the appropriate areawide health planning council has failed to make any appointment necessary under this subsection within thirty days after being notified of a vacancy by the administrator of the facility involved, by the commissioner; or

c. If the commissioner has failed to act within thirty days after being notified by the administrator of the facility involved of a vacancy which has not been filled by the appropriate areawide health planning council within the time prescribed by this subsection, the appointment may be made by the administrator.

2. The care review committee shall periodically review the needs of each individual resident of the facility, and shall perform the functions delegated to it by section 135C.38. The responsibilities of the care review committee shall be in accordance with rules of the department, which shall in formulating such rules give consideration to the needs of residents of each license category of health care facility and the services facilities of each category are authorized to render. [C71, 73, 75,§135C.25; 66GA, ch 119,§21]

Referred to in §§135C.11, 135C.13

135C.26 Commissioner notified of casualties. The commissioner shall be notified within twenty-four hours, by the most expeditious means available, of any accident causing major injury or death, and any fire or natural or other disaster occurring in a health care facility. [C71, 73, 75,§135C.26]

135C.27 Federal funds to implement program. If the department's services are necessary in order to assist another governmental unit to implement a federal program, the department may accept in compensation for such services federal funds initially available from the federal government to such other governmental unit for such purpose. Any governmental unit is authorized to transfer to the department for such services any federal funds available to such governmental unit, in accordance with applicable federal laws and regulations. [C71, 73, 75,§135C.27]

135C.28 Conflicting statutes. Provisions of this chapter in conflict with the state building code shall not apply where the state building code has been adopted or when the state building code applies throughout the state. [C73, 75,§135C.28]

135C.29 License list to county commissioner of elections. To facilitate the implementation of section 53.8, subsection 3 and section 53.22, the commissioner shall provide to each county commissioner of elections at least annually a list of each licensed health care facility in that county. The list shall include the street address or location, and the mailing address if it is other than the street address or location, of each facility. [66GA, ch 81,§124]

Referred to in §53.8

135C.30 to 135C.35 Reserved.

VIOLATIONS

135C.36 Violations classified. Every violation by a health care facility of any provision of this chapter or of the rules adopted pursuant to it shall be classified by the department in accordance with this section. The department shall adopt and may from time to time modify, in accordance with chapter 17A rules setting forth so far as feasible the specific violations included in each classification and stating criteria for the classification of any violation not so listed.

1. A Class I violation is one which presents an imminent danger or a substantial probability of resultant death or physical harm to the residents of the facility in which the violation occurs. A physical condition or one or more practices in a facility may constitute a Class I violation. A Class I violation shall be abated or eliminated immediately unless the department determines that a stated period of time, specified in the citation issued under section 135C.40, is required to correct the violation. A licensee shall be subject to a penalty of not less than five hundred nor more than five thousand dollars for each Class I violation for which the licensee's facility is cited.

2. A Class II violation is one which has a direct or immediate relationship to the health, safety or security of residents of a health care facility, but which presents no imminent danger nor substantial probability of death or physical harm to them. A physical condition or one or more practices within a facility, including either physical abuse of any resident or failure to treat any resident with consideration, respect and full recognition of the resident's dignity and individuality, in violation of a specific rule adopted by the department, may constitute a Class II violation. A Class II violation shall be corrected within a stated period of time determined by the department and specified in the citation issued under section 135C.40. The stated period of time specified in the citation may subsequently be modified by the department for good cause shown. A licensee shall be subject to a penalty of not less than one hundred nor more than five hundred dollars for each Class II violation for which the licensee's facility is cited, however the commissioner may waive the penalty if the violation is corrected within the time specified in the citation.

3. A Class III violation is any violation of this chapter or of the rules adopted pursuant to it which violation is not classified in the department's rules nor classifiable under the criteria stated in those rules as a Class I or a Class II violation. A licensee shall not be subject to a penalty for a Class III violation, except as provided by section 135C.40, subsection 1 for failure to correct the violation within a reasonable time specified by the department in the notice of the violation. [66GA, ch 119,§§22, 23]

Referred to in §§135C.40, 135C.41, 135C.44

135C.37 Complaints alleging violations. Any person may request an inspection of any health care facility by filing with the department or care review committee of the facility a complaint of an alleged violation of applicable requirements of this chapter or the rules adopted pursuant to it. The complaint shall state in a reasonably specific manner the basis of the complaint, and a copy thereof shall be forwarded to the facility involved within twenty-four hours of receipt of the complaint by the department or the committee. [66GA, ch 119,§§22, 24]

Referred to in §§135C.38, 135C.40, 135C.46, 135C.48

135C.38 Inspections upon complaints.

1. Upon receipt of a complaint made in accordance with section 135C.37, the department or care review committee shall make a preliminary review of the complaint. Unless the department or committee concludes that the complaint is intended to harass a facility or a licensee or is without reasonable basis, it shall within twenty working days of receipt of the complaint make or cause to be made an on-site inspection of the health care facility which is the subject of the complaint. The department may refer to the care review committee of a facility any complaint received by the department regarding that facility, for initial evaluation and appropriate action by the committee. In any case, the complainant shall be promptly informed of the result of any action taken by the department or committee in the matter.

2. An inspection made pursuant to a complaint filed under section 135C.37 shall be limited to the matter or matters complained of, and shall not be a general inspection. Upon arrival at the facility to be inspected, the inspector shall identify himself or herself to an employee of the facility and state that an inspection is to be made, before beginning the inspection. Upon request of either the complainant or the department or committee, the complainant or his or her representative or both may be allowed the privilege of accompanying the inspector during any on-site inspection made pursuant to this section. The inspector may cancel the privilege at any

time if the inspector determines that the privacy of any resident of the facility to be inspected would otherwise be violated. The dignity of the resident shall be given first priority by the inspector and others.

3. If upon an inspection of a facility by its care review committee, pursuant to this section, the committee advises the department of any circumstance believed to constitute a violation of this chapter or of any rule adopted pursuant to it, the committee shall similarly advise the facility at the same time. If the facility's licensee or administrator disagrees with the conclusion of the committee regarding the supposed violation, an informal conference may be requested and if requested shall be arranged by the department as provided in section 135C.42 before a citation is issued. If the department thereafter issues a citation pursuant to the committee's finding, the facility shall not be entitled to a second informal conference on the same violation and the citation shall be considered affirmed. The facility cited may proceed under section 135C.43 if it so desires. [66GA, ch 119,§§22, 25]

Referred to in §§135C.16, 135C.25, 135C.39

135C.39 No advance notice of inspection—exception. No advance notice of an on-site inspection made pursant to section 135C.38 shall be given the health care facility or the licensee thereof unless previously and specifically authorized in writing by the commissioner or required by federal law. The person in charge of the facility shall be informed of the substance of the complaint at the commencement of the on-site inspection. [66GA, ch 119,§§22, 26]

Referred to in §53.8

135C.40 Citations when violations found—exception.

1. When any inspection or investigation of a health care facility made pursuant to this chapter finds the facility in violation of any applicable requirement of this chapter or the rules adopted pursuant to it, the commissioner shall within five working days after a finding of a Class I violation is made, and within ten working days after a finding of a Class II or Class III violation is made, issue a written citation to the facility. The citation shall be served upon the facility personally or by certified mail, except that a citation for a Class III violation may be sent by ordinary mail. Each citation shall specifically describe the nature of the violation, identifying the Code section or subsection or the rule or standard violated, and the classification of the violation under section 135C.36. Where appropriate, the citation shall also state the period of time allowed for correction of the violation, which shall in each case be the shortest period of time the department deems feasible. Failure to correct a violation within the time specified, unless the licensee shows that the failure was due to circumstances beyond the licensee's control, shall subject the facility to a further penalty of fifty dollars for each day that the violation continues after the time specified for correction.

2. When a citation is served upon or mailed to a health care facility under subsection 1 and the licensee of the facility is not actually involved in the daily operation of the facility, a copy of the citation shall be mailed to the licensee. If the licensee is a corporation, a copy of the citation shall be sent to the corporation's office of record. If the citation was issued pursant to an inspection resulting from a complaint filed under section 135C.37, a copy of the citation shall be sent to the complainant at the earliest time permitted by section 135C.19, subsection 1.

3. No health care facility shall be cited for any violation caused by any practitioner licensed pursuant to chapters 148, 150 or 150A if that practitioner is not the licensee of and is not otherwise financially interested in the facility, and the licensee or the facility presents evidence that reasonable care and diligence have been exercised in notifying the practitioner of his duty to the patients in the facility. [66GA, ch 119,§§22, 27]

Referred to in §§135C.19, 135C.36, 135C.41, 135C.46

135C.41 Licensee's response to citation. Within twenty business days after service of a citation under section 135C.40, a facility shall either:

1. If it does not desire to contest the citation:

a. Remit to the department the amount specified by the department pursuant to section 135C.36 as a penalty for each Class I violation cited, and for each Class II violation unless the citation specifically waives the penalty, which funds shall be paid by the department into the state treasury and credited to the general fund; or

b. In the case of a Class II violation for which the penalty has been waived in accordance with the standards prescribed in section 135C.36, subsection 2, or a Class III violation, send to the department a written response acknowledging that the citation has been received and stating that the violation will be corrected within the specific period of time allowed by the citation; or

2. Notify the commissioner that the facility desires to contest the citation and, in the case of citations for Class II or Class III violations, request an informal conference with a representative of the department. [66GA, ch 119, §§22, 28]

Referred to in §§135.42, 135C.46

135C.42 Informal conference on contested citation. The commissioner shall assign a representative of the department, other than the inspector upon whose inspection the contested citation is based, to hold an informal conference with the facility within ten working days after receipt of a request made under section 135C.41, subsection 2. At the conclusion of the conference the representative may

affirm or may modify or dismiss the citation. In the latter case, the representative shall state in writing the specific reasons for the modification or dismissal and immediately transmit copies of the statement to the commissioner, and to the facility. If the facility does not desire to further contest an affirmed or modified citation, it shall within five working days after the informal conference, or after receipt of the written explanation of the representative, as the case may be, comply with section 135C.41, subsection 1. [66GA, ch 119,§§22, 29]

Referred to in §§135C.38, 135C.46

135C.43 Formal contest—judicial review.

1. A facility which desires to contest a citation for a Class I violation, or to further contest an affirmed or modified citation for a Class II or Class III violation, may do so in the manner provided by chapter 17A for contested cases. Notice of intent to formally contest a citation shall be given the department in writing within five days after service of a citation for a Class I violation, or within five days after the informal conference or after receipt of the written explanation of the representative delegated to hold the informal conference, whichever is applicable, in the case of an affirmed or modified citation for a Class II or Class III violation. A facility which has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by chapter 17A.

2. Hearings on petitions for judicial review brought under this section shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. The times for pleadings and for hearings in such actions shall be set by the judge of the court with the object of securing a decision in the matter at the earliest possible time. [66GA, ch 119,§§22, 30]

Referred to in §§135C.38, 135C.46

135C.44 Treble fines for repeated violations. The penalties authorized by section 135C.36 shall be trebled for a second or subsequent Class I or Class II violation occurring within any twelve-month period if a citation was issued for the same Class I or Class II violation occurring within that period and a penalty was assessed therefor. [66GA, ch 119,§§22, 31]

135C.45 Refund of penalty. If at any time a contest or appeal of any citation issued a health care facility under this chapter results in an order or determination that a penalty previously paid to or collected by the department must be refunded to the facility, the refund shall be made from any money in the state general fund not otherwise appropriated. [66GA, ch 119,§§22, 32]

135C.46 Retaliation by facility prohibited.

1. A facility shall not discriminate or retaliate in any way against a resident or an employee of the facility who has initiated or participated in any proceeding authorized by this chapter. A facility which violates this section is subject to a penalty of not less than two hundred fifty nor more than five thousand dollars, to be assessed and collected by the commissioner in substantially the manner prescribed by sections 135C.40 to 135C.43 and paid into the state treasury to be credited to the general fund, or to immediate revocation of the facility's license.

2. Any attempt to expel from a health care facility a resident by whom or upon whose behalf a complaint has been submitted to the department under section 135C.37, within ninety days after the filing of the complaint or the conclusion of any proceeding resulting from the complaint, shall raise a rebuttable presumption that the action was taken by the licensee in retaliation for the filing of the complaint. [66GA, ch 119,§§22, 33]

135C.47 Report listing licensees and citations. The state department shall annually prepare and make available in its office at the seat of government a report listing all licensees by name and address, indicating:

1. The number of citations and the nature of each citation issued to each licensee during the previous twelve-month period and the status of any action taken pursuant to each citation, including penalties assessed; and

2. The nature and status of action taken with respect to each uncorrected violation for which a citation is outstanding. [66GA, ch 119, §§22, 34]

135C.48 Information about complaint procedure. The state department shall make a continuing effort to inform the general public of the appropriate procedure to be followed by any person who believes that a complaint against a health care facility is justified and should be made under section 135C.37. [66GA, ch 119,§§22, 35]

Existing facilities on January 1, 1976 granted time for compliance, 66GA, ch 119,§36
Rules to be completed, 66GA, ch 119,§37
Report to general assembly in 1978, 66GA, ch 119,§38

CHAPTER 135D

MOBILE HOMES AND PARKS

Referred to in §§321.123(8), 427A.1

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135D.23 Exemptions prorating tax.
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135D.25 Apportionment of taxes.
135D.26 Conversion to real property.
135D.27 Treasurer of county notified of sale.
135D.28 Repealed by 66GA, ch 1106,§11.
135D.29 to 135D.32 Repealed by 66GA, ch 1108, §1.
135D.33 Rent reimbursement.

135D.1 Definitions. The following definitions shall apply to this chapter:

1. *"Mobile home"* means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons; but shall also include any such vehicle with motive power not registered as a motor vehicle in Iowa.

2. *"Mobile home park"* shall mean any site, lot, field or tract of land upon which two or more occupied mobile homes are harbored, either free of charge or for revenue purposes, and shall include any building, structure, tent, vehicle or enclosure used or intended for use as part of the equipment of such mobile home park.

The term "mobile home park" shall not be construed to include mobile homes, buildings, tents or other structures temporarily maintained by any individual, educational institution, or company on their own premises and used exclusively to house their own labor or students. [C54, 58, 62, 66, 71, 73, 75,§135D.1]

135D.2 Annual license for park. No person, firm or corporation shall establish, maintain, conduct or operate a mobile home park within this state without first obtaining an annual license therefor from the state department of health. Such annual license shall be issued for the calendar year applied for and shall expire at midnight on December 31 of such year. Any mobile home park located in more than one municipality shall be dealt with as two separate mobile home parks. [C54, 58, 62, 66, 71, 73, 75,§135D.2]

135D.3 Application for annual license. The application for annual license to operate and maintain a mobile home park shall be made to the state department of health, at such office and in such manner as may be prescribed by regulations of that department; provided that when such mobile home park is located within a municipality, the application shall be filed with the local board of health who shall forward the same to the state department of health. [C54, 58, 62, 66, 71, 73, 75,§135D.3]

135D.4 Form of application for annual license. The application for such annual license shall be in writing and upon such form as the state department of health may by regulation provide, and shall include the following information:

1. The full name and address of the applicant or applicants or names and addresses of the partners if the applicant is a partnership, or the names and addresses of the officers if the applicant is a corporation, and present or last occupation of the applicant at the time of the filing of the application.

2. A legal description of the site, lot, field or tract of land upon which it is proposed to operate and maintain a mobile home park.

3. The proposed and existing facilities on and about such site, lot, field or tract of land for the proposed construction or alteration and maintaining of a sanitary community building for toilets, urinals, sinks, wash basins, slop sinks and showers, drains, laundry facilities, source of water supply; sewage, garbage and waste disposal.

4. The proposed method of lighting the structures and site, lot, field or tract of land upon which said mobile home park is to be located.

5. Designate the calendar months of the year in which applicant will operate said mobile home park.

6. Plans and drawings for new construction, including buildings, wells, and sewage disposal systems, not in existence at the time of the application. [C54, 58, 62, 66, 71, 73, 75,§135D.4]

Referred to in §135D.5

135D.5 Primary and annual license fees. The application for the first annual primary license shall be submitted with all plans and specifications enumerated in section 135D.4, and payment of twenty-five dollars for each mobile home park with facilities for twenty or fewer mobile homes, or fifty dollars for

each mobile home park with facilities for more than twenty mobile homes, and shall be accompanied by an approved permit from the municipality whereon the park is to be located, or a statement that the municipality does not require an approved permit. In the event a mobile park has facilities for three or less mobile homes, the annual license fee shall not exceed ten dollars.

Each year thereafter, the license fee shall be twenty-five dollars. All annual license fees collected by the department of health shall be deposited with the state treasurer.

When the application is received by the state department of health, it shall promptly cause the mobile home park and appurtenances thereto to be inspected. When such inspection and report has been made and the state department of health finds that all requirements of this chapter and such conditions of health and safety as the state department of health may require have been met by the applicant, the state department of health shall forthwith issue such annual primary license in the name or the state. [C54, 58, 62, 66, 71, 73, 75,§135D.5]

135D.6 Sanitary and safety facilities reported. During the pendency of the application for such annual primary license, any change in the sanitary or safety facilities of the intended mobile home park shall be immediately reported in writing to the state department of health to the office to which the application was made. If no objection is made by the state department of health to such a change in such sanitary or safety facilities within sixty days of the date such change is reported, it shall be deemed to have the approval of the state department of health. [C54, 58, 62, 66, 71, 73, 75,§135D.6]

135D.7 Permit from department of health—construction or remodeling. No person, firm or corporation shall construct, expand, remodel or make alterations to the sanitary facilities in a mobile home park within this state without first obtaining a permit therefor from the state department of health. The application for such permit shall be made to the state department of health in such manner as may be prescribed by regulations of said department; provided, that when such mobile home park is located within a municipality, the application and any information to accompany the same, shall be filed with the local board of health, which shall forward the same to the state department of health. When the application has been approved, the state department of health shall issue a permit to the applicant to construct or make alterations pertaining to water and sewage disposal upon a mobile home park and the appurtenances thereto according to the plans and specifications presented with the approved application.

No approval of plans and specifications and issuance of a permit to construct or make alterations upon a mobile home park and the appurtenances by the state department of health shall be construed as having been approved for other than sanitation.

Such a permit does not relieve the applicant from securing building permits in municipalities having a building code; or from complying with any other municipal ordinance or ordinances, applicable thereto, and not in conflict with this statute. [C54, 58, 62, 66, 71, 73, 75, §135D.7]

135D.8 Denial of permit or license. If the application for a permit to construct or make alterations upon a mobile home park and the appurtenances thereto, or a primary license to operate the same, is denied by the state department of health, it shall so state in writing, giving the reasons for denying the application. If the objection can be corrected, the applicant may amend his application and resubmit it for approval. Judicial review of the action of the state board of health may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which said mobile home park is located. [C54, 58, 62, 66, 71, 73, 75,§135D.8]

135D.9 and 135D.10 Repealed by 60GA, ch 118.

135D.11 Distribution of copies of permit. When the state department of health has approved an application for permit to construct or make alterations upon a mobile home park or the appurtenances thereto or a license to operate and maintain the same, it shall retain the original and keep a file thereof. One copy shall be returned to the applicant or his agent, one copy to the local board of health, if the mobile home park is located within the limits of a municipality. [C54, 58, 62, 66, 71, 73, 75,§135D.11]

135D.12 Forms furnished by department. The state department of health shall furnish all necessary forms to be executed in making application for all licenses under this chapter. [C54, 58, 62, 66, 71, 73, 75,§135D.12]

135D.13 Notice to municipal treasurer or clerk. It shall be the duty of the state department of health to notify, or cause to be notified, the treasurer or clerk of each municipality of the issuance of each mobile home park license issued within the jurisdiction of such municipality. [C54, 58, 62, 66, 71, 73, 75, §135D.13]

135D.14 Parks owned by public. Any mobile home park owned and operated by any municipality shall meet all provisions of this chapter. Any mobile home park owned or operated by any agency or department of the state, county, city or any nonprofit corporation within which the length of stay is limited to not more than fourteen consecutive days shall not be affected by any provision

of this chapter except that such parks shall be subject to routine inspection by the state health department or a designee thereof. Upon routine inspections by the state health department or its designee, the inspecting officer shall make a report of his findings and recommendations in writing and submit such report to the agency or department of the state responsible for operation of the park. [C54, 58, 62, 66, 71, 73, 75,§135D.14]

135D.15 Seasonal operation. If any applicant for a mobile home park license desires to operate such mobile home park only during the months from May 1 to October 1, they should pay only one-half of the above-mentioned annual license fee, but should pay the full monthly fees hereinbefore required for each month of operation. If in the opinion of the state department of health the sanitary and facility requirements herein contained are too rigid for the mobile home park, it may in writing or by regulation modify such requirements as circumstances may permit and require. [C54, 58, 62, 66, 71, 73, 75,§135D.15]

135D.16 Rules. The department shall have full authority to prescribe reasonable rules for the administration and enforcement of this chapter, in addition hereto and not inconsistent herewith. All rules shall be filed and entered by the department in its office in an index, permanent book or record, with the effective date thereof suitably indicated, and such book or record shall be a public document. Whenever a new ruling is adopted by the department, a copy of the same shall be mailed by it to each licensee hereunder. All rules issued shall be in conformity with the provisions of chapter 17A. [C54, 58, 62, 66, 71, 73, 75,§135D.16]

135D.17 Revocation and suspension of license. Any license granted hereunder shall be subject to revocation or suspension by a court of proper authority and jurisdiction, and the state department of health shall first serve or cause to be served a written notice specifying a way or ways in which said licensee has failed to comply with the chapter, or any special rules promulgated by the state department of health pertaining thereto. Said notice shall direct the licensee to remove or abate such nuisance, unsanitary or objectionable condition specified in said notice within five days, or within such reasonable period of time or extended period of time as may be reasonably allowed by the complaining officer. If the licensee fails to comply with the terms and conditions of said notices, within the time specified or such extended period or a period of time, the complaining officer may require the county attorney of the county in which such violation occurred to start a civil action to remove or abate such nuisance, unsanitary, unhealthful, or objectionable condition as complained of in the court of proper authority and jurisdiction of the city or county in the name of the state of Iowa, and if found guilty a decision may be entered by the court to revoke or suspend such license. [C54, 58, 62, 66, 71, 73, 75, §135D.17]

135D.18 Penalty. Any person violating any provision of this chapter shall be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned in the county jail for not more than six months or by both such fine and imprisonment. [C54, 58, 62, 66, 71, 73, 75,§135D.18]

Referred to in §135D.24

135D.19 Construction of statute. The licenses and fees provided for in this chapter shall be in addition to any licenses and fees provided for in chapter 321. [C54, 58, 62, 66, 71, 73, 75,§135D.19]

135D.20 Powers delegated to local boards. The state department of health shall have the power to delegate to a local health officer or other city officer or to local boards of health the duties of inspection and regulation of mobile home parks located within the jurisdiction of such local board of health or other officer, where, in the opinion of the state department of health, such delegation can best effectuate the policies of this chapter. When said duties are so delegated, fifty percent of the annual license fee collected therefrom shall be turned over to the treasurer or clerk of the jurisdiction involved, and there is hereby appropriated from the general fund of the state an amount sufficient to pay the proportionate fees allowable to the jurisdiction involved, as provided in this section. [C54, 58, 62, 66, 71, 73, 75,§135D.20]

135D.21 Repealed by 60GA, ch 118.

135D.22 Semiannual tax. The owner of each mobile home shall pay to the county treasurer a semiannual tax as herein provided. However, when the owner is any educational institution and the mobile home is used solely for student housing or when the owner is the state of Iowa or a subdivision thereof, the owner shall be exempt from the tax provided herein. The semiannual tax shall be computed as follows:

1. Multiply the number of square feet of floor space each mobile home contains when parked and in use by ten cents. In computing floor space, the exterior measurements of the mobile home shall be used as shown on the certificate of registration and title, but not including any area occupied by a hitching device.

2. If the owner of the mobile home is totally disabled as defined in section 425.17, subsection 7, is a surviving spouse having attained the age of fifty-five years not later than December 31 of the base year, or was sixty-five years of age or older not later than December 31 of the base year and his income when included with that of his spouse is less than one thousand

dollars per year, no semiannual tax shall be imposed on the mobile home. If such income is one thousand dollars or more but less than two thousand dollars, the semiannual tax shall be computed at the rate of one-half of one cent per square foot, if such income is two thousand dollars or more but less than three thousand dollars, the semiannual tax shall be computed at the rate of one and one-half cents per square foot, if such income is three thousand dollars or more but less than four thousand dollars, the semiannual tax shall be computed at the rate of three cents per square foot, if such income is four thousand dollars or more but less than five thoucand dollars, the semiannual tax shall be computed at the rate of four and one-half cents per square foot, if such income is five thousand dollars or more but less than six thousand dollars, the semiannual tax shall be computed at the rate of five and one-half cents per square foot, if such income is six thousand dollars or more but less than seven thousand dollars, the semiannual tax shall be computed at the rate of six and one-half cents per square foot, if such income is seven thousand dollars or more but less than eight thousand dollars, the semiannual tax shall be computed at the rate of seven cents per square foot, and if such income is eight thousand dollars or more but less than nine thousand dollars, the semiannual tax shall be computed at the rate of seven and one-half cents per square foot. For purposes of this subsection, "income" means income as defined in section 425.17, subsection 1 and "base year" means the calendar year preceding the year in which a claim for a reduced rate of tax is filed.

3. The amount thus computed shall be the semiannual tax for all mobile homes for the first five years after the year of manufacture.

4. For the sixth through ninth years after the year of manufacture the semiannual tax shall be ninety percent of the tax computed according to subsection 1 of this section.

5. For all mobile homes ten or more years after the year of manufacture the semiannual tax shall be eighty percent of the tax computed according to subsection 1 of this section.

6. The semiannual tax shall be figured to the nearest whole dollar.

7. On or before February 1 of each year, each mobile home owner eligible for a reduced tax rate shall file a claim for such tax rate with the county treasurer. The forms for filing the claim shall be provided by the department of revenue. The forms shall require such information as is determined by the director of revenue. The reduced tax rate shall be applicable to both semiannual tax payments due in the calendar year in which the claim is filed. If an eligible mobile home owner fails to file a claim by February 1, no reduced tax rate shall be granted for the semiannual tax payment due by February 1, of that year. Claims filed with the county treasurer after February 1, but before August 1, shall be applicable to the semiannual tax payment due by August 1, only.

On or before March 15, 1977, and each year thereafter, the county treasurer of each county shall prepare a statement listing for each taxing district in the county the total amount of taxes which will not be collected for the calendar year 1977, and each year thereafter, by reason of the reduced tax rate granted under subsection 2. The county treasurer shall certify and forward such statement to the director of revenue not later than March 15 of each year.

The director of revenue shall certify to the state comptroller the amount due to each county, which amount shall be the dollar amount which will not be collected due to the granting of the reduced tax rate under this subsection.

The amounts due each county shall be paid in two equal payments by the state comptroller on April 15 and October 15 of each year, drawn upon warrants payable to the respective county treasurers. The county treasurer in each county shall apportion such payment in accordance with section 135D.25.

There is appropriated annually from the general fund of the state to the department of revenue an amount sufficient to carry out the provisions of this section. [C66,§135D.22; C71, 73, 75,§§135D.22, 135D.28; 66GA, ch 1106, §§1, 2, 4]

Referred to in §135D.33
Amendment effective January 1, 1977

135D.23 Exemptions prorating tax. There shall be exempted from the semiannual tax the manufacturer's and dealer's inventory of mobile homes not in use as a place of human habitation. All travel trailers shall be exempt from this tax. Mobile homes and travel trailers in the inventory of manufacturers and dealers shall be exempt from personal property tax. Mobile homes coming into Iowa from out of state shall be liable for the tax computed pro rata to the nearest whole month, for the time such mobile home is actually situated in Iowa. [C66, 71, 73, 75,§135D.23]

135D.24 Collection of tax. The semiannual tax provided herein shall be due and payable to the county treasurer semiannually on or before January 1 and July 1 in each year; and shall be delinquent February 1 and August 1 in each year, after which a penalty of one percent shall be added each month until paid. The semiannual payment of taxes and license may be paid at one time if so desired. A mobile home parked and put to use at any time after January 1 or July 1 shall be immediately subject to the said taxes prorated for the remaining months or days of the tax period. Said tax shall be due and payable immediately, and delinquent thirty days after said parking and subject to the same penalties herein set out. Not more than thirty days nor less than ten days prior to the date that the tax becomes delinquent, the county treasurer shall cause

to be published in a newspaper of general circulation in the county, a notice to mobile homeowners. The notification shall include the date the tax becomes delinquent, and the penalty which will apply when delinquent.

Mobile homeowners shall register the address, township, and school district, of the location where the mobile home is parked with the county treasurer's office. Failure to comply shall be punishable as set out in section 135D.18.

Each mobile home park licensee is hereby required to keep an accurate and complete record of the number of units of mobile homes harbored in his park, listing the owner's name, year and make of the unit and whether there is a current registration plate, and to report such information on or before the tenth day of January and July with supplemental monthly reports listing arrivals, departures, and unlicensed mobile homes to the county treasurer. The records of such licensee shall be open to inspection by a duly authorized representative of any law enforcement agency. Any property owner, manager or tenant shall report to the assessor any and all mobile homes parked upon any property owned, managed, or rented by him.

The county treasurer shall report the name of any owner of a mobile home and the year, make, and serial number of each unit on which there is no current registration plate to the county sheriff, who shall be the enforcement agency for enforcement of the tax provisions imposed by this chapter.

The tax and registration fee shall be a lien on the vehicle senior to any other lien there may be upon it. The mobile home and automobile bearing current registration plates issued by any other state than the state of Iowa and remaining within this state for an accumulated period not to exceed ninety days in any twelve-month period shall not be subject to Iowa tax. However, when one or more persons occupying a mobile home bearing a foreign registration are employed, there shall be no exemption from Iowa registration and tax herein provided. This tax shall be in lieu of all other taxes general or local. [C66, 71, 73, 75,§135D.24]

Referred to in §135D.25

135D.25 Apportionment of taxes. The tax and penalties collected under the provisions of section 135D.24, shall be apportioned in the same manner as though they were the proceeds of taxes levied on real property at the same location as such mobile home. [C66, 71, 73, 75,§135D.25]

Referred to in §135D.22

135D.26 Conversion to real property. No mobile home shall be assessed for property tax nor be eligible for homestead tax credit or military service tax credit unless:

1. The mobile home owner intends to convert his mobile home to real estate and does so by:

a. Attaching his mobile home to a permanent foundation.

b. Destruction or modification of the vehicular frame rendering it impossible to reconvert the real property thus created to a mobile home.

c. If a security interest is noted on the certificate of title, tendering to the secured party a mortgage on the real estate upon which the mobile home is to be located in the unpaid amount of the secured debt, and with the same priority as or a higher priority than the secured party's security interest, or obtaining written consent of the secured party to the conversion.

2. After complying with the provisions of subsection 1, the owner shall notify the assessor who shall inspect the new premises for compliance. If a security interest is noted on the certificate of title, the assessor shall require an affidavit, as defined in section 622.85, from the mobile home owner, declaring that the owner has complied with subsection 1, paragraph "*c*", and shall send notice of the proposed conversion to the secured party by regular mail not less than ten days before the conversion becomes effective. When the mobile home is properly converted, the assessor shall then collect the mobile home vehicle title, registration, and license plates from the owner and enter the property upon the tax rolls. [C66, 71, 73, 75; 66GA, ch 1107,§1]

See §554.11101

135D.27 Treasurer of county notified of sale. Mobile home manufacturers and dealers shall, within ten days after any retail sale and delivery of a mobile home, notify the county treasurer of the county in which the point of delivery is located of the sale, the name of the purchaser, the point at which delivery to the purchaser was made, and the serial number and exterior measurements of the mobile home. [C71, 73, 75,§135D.27]

135D.28 Repealed by 66GA, ch 1106,§11.

135D.29 to 135D.32 Repealed by 66GA, ch 1108,§1.

135D.33 Rent reimbursement. A mobile home owner who qualifies for a reduced tax rate provided in section 135D.22 and who rents a space upon which to set the mobile home shall be entitled to the protections provided in sections 425.33 to 425.36 and if the mobile home owner who qualifies for a reduced tax rate believes that a landlord has increased the mobile home owner's rent because the mobile home owner is eligible for a reduced tax rate, the provisions of sections 425.33 and 425.36 shall be applicable. [66GA, ch 1106,§3]

Amendment effective January 1, 1977

CHAPTER 135E

NURSING HOME ADMINISTRATORS

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135E.16 Public members.
135E.17 Disclosure of confidential information.

135E.1 Definitions. For the purposes of this division, and as used herein:

1. "*Board*" means the Iowa state board of examiners for nursing home administrators hereinafter created.

2. "*Nursing home administrator*" means a person who administers, manages, supervises, or is in general administrative charge of a nursing home whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more individuals. A member of a board of directors, unless also serving in a supervisory or managerial capacity, shall not be considered a nursing home administrator.

3. "*Nursing home*" means any institution or facility, or part thereof, defined as such for licensing purposes under state law or pursuant to the rules and regulations for nursing homes established by the state department of public health, whether proprietary or nonprofit, including but not limited to, nursing homes owned or administered by the federal or state government or an agency or political subdivisions thereof. [C71, 73, 75,§147.118]

135E.2 Composition of board. There is established a state board of examiners for nursing home administrators which shall consist of nine members appointed by the governor subject to the approval of two-thirds of the members of the senate as follows:

1. Four members shall be licensed nursing home administrators, one of whom shall be an administrator of a nonproprietary nursing home.

2. Three members shall be persons who are licensed members of any of the professions concerned with the care and treatment of chronically ill or elderly patients, who are not nursing home administrators or nursing home owners.

3. Two members who are not licensed nursing home administrators or are not licensed persons under chapter 147 and who shall represent the general public. The members shall be interested in the problems of elderly patients and nursing home care, but shall have no financial interest in any nursing home.

The board shall be within the department of health for administrative purposes. The department shall furnish the board with the necessary facilities and employees to perform the duties required by this division, but shall be reimbursed for all costs incurred from funds appropriated to the board.

A licensed member shall be actively engaged in the practice of his profession and shall have been so engaged for five years preceding his appointment, the last two of which shall have been in Iowa. Professional societies composed of licensed members may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations.

A board member shall not be required to be a member of any professional association or society composed of nursing home administrators or any licensed profession.

Appointments shall be for three-year terms and shall commence on July 1 of the year in which the appointment is made. Vacancies shall be filled for the unexpired term by appointment of the governor and shall be subject to senate confirmation. Members shall serve no more than three terms or nine years, whichever is least. [C71, 73, 75,§147.119]

Terms of members, see 65GA, ch 1086,§200

135E.3 Qualifications for licensure. The board shall have authority to issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for such nursing home administrators. No license shall be issued to a person as a nursing home administrator unless:

1. The applicant is of sound mental health and physically able to perform the duties.

2. He has satisfactorily completed a course of instruction and training prescribed by the board, which course shall be so designed as to content and so administered as to present sufficient knowledge of the needs properly to be served by nursing homes; knowledge of the laws governing the operation of nursing homes and the protection of the interests of patients therein; and knowledge of the elements of good nursing home administration; or have presented evidence satisfactory to the board of sufficient education, training, or experience in

the foregoing fields to administer, supervise, and manage a nursing home.

3. He has passed an examination administered by the board and designed to test for competence in the subject matter referred to in subsection 2 of this section. [C71, 73, 75, §147.120]

135E.4 Licensing function. The board shall license nursing home administrators in accordance with rules issued, and from time to time revised, by it. A nursing home administrator's license shall not be transferable and shall be valid until surrendered for cancellation or suspended or revoked for violation of this division or any other laws or regulations relating to the proper administration and management of a nursing home. Any denial of issuance or renewal, suspension, or revocation under any section of this division shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. [C71, 73, 75,§147.121]

135E.5 License fees. Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount to be fixed by the board. Said license shall expire annually and shall be renewable annually and upon payment of the license fee. A person who fails to renew his license by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. [C71, 73, 75,§147.122]

135E.6 Fund created. All fees collected under the provisions of this division shall be paid to the treasurer of state who shall deposit the fees in the general fund of the state. Funds shall be appropriated to the board to be used and expended by the board to pay the compensation and travel expenses of members and employees of the board, and other expenses necessary for the board to administer and carry out the provisions of this division. [C71, 73, 75,§147.123]

135E.7 Organization of board. The board shall elect from its membership a chairman, vice chairman, and secretary-treasurer, and shall adopt rules to govern its proceedings. Members of the board shall set their own per diem compensation at a rate not exceeding forty dollars per day for each day actually engaged in the discharge of their duties. The board shall hold at least one meeting per year at the seat of government. All members shall be allowed necessary travel expenses, as may be approved by the board, which shall be payable in the same manner as travel expenses of other state officials. [C71, 73, 75,§147.124]

135E.8 Exclusive jurisdiction of board. The board shall have authority to determine the qualifications, skill, and fitness of any person to serve as an administrator of a nursing home under the provisions of this division, and the holder of a license under the provisions of this division shall be deemed qualified to serve as the administrator of a nursing home. [C71, 73, 75,§147.125]

135E.9 Duties of the board. The board shall have the duty and responsibility to:

1. Develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators.

2. Develop and apply appropriate techniques, including examination and investigations, for determining whether an individual meets such standards. The board may administer as many examinations per year as are necessary, but shall administer at least one examination per year. Any written examination may be given by representatives of the board. Applicants who fail the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the board concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

3. Issue licenses to individuals who, after application of such techniques, are found to have met such standards; and for cause and after due notice and hearing, revoke or suspend licenses previously issued by such board in any case where the individual holding such license is found to have failed substantially to conform to the requirements of such standards.

The board may also accept the voluntary surrender of such license without necessity of a hearing. In the event of the inability of the regular administrator of a nursing home to perform his duties or through death or other cause the nursing home is without a licensed administrator, a provisional administrator may be appointed on a temporary basis by the nursing home owner or owners, to perform such duties for a period not to exceed six months.

4. Establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards.

5. Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards. Such appropriate

action may include revocation of a license, if necessary, or placing the licensee on probation for a period not exceeding six months, and shall be taken only for cause after due notice and a hearing on the charge or complaint.

6. Conduct a continuing study and investigation of nursing homes, and administrators of nursing homes, in this state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.

7. Conduct, or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this division, and make provisions for such courses and their accessibility to residents of this state unless it finds that there are, and approves, a sufficient number of courses, which courses are conducted by others within this state. In lieu thereof the board may approve courses conducted within and without this state as sufficient to meet the education and training requirements of this division. [C71, 73, 75, §147.126]

135E.10 Renewal of license. Every holder of a nursing home administrator's license shall renew it annually by making application to the board, except that biennially the individual requesting renewal shall submit evidence satisfactory to the board of continued education in this field. Such renewals shall be granted as a matter of course unless the board finds, after due notice and hearing, that the applicant has acted or failed to act in accordance with the rules or in such a manner or under such circumstances as would constitute grounds for suspension or revocation of a license. [C71, 73, 75,§147.127]

135E.11 Reciprocity with other states. The board may issue a nursing home administrator's license, without examination, to any person who holds a current license as a nursing home administrator from another jurisdiction if reciprocal agreements are entered into with another jurisdiction under sections 147.45 through 147.54. [C71, 73, 75,§147.128]

135E.12 Conflict with federal law—effect. If any provision of this division is in conflict with the requirements of section 1908 of the United States Social Security Act (42 United States Code, section 1396g), relative to a state program for licensing of administrators of nursing homes, and except for such conflict the state would be entitled to receive contributions from the United States for payment of assistance under the program established pursuant to Title XIX of the United States Social Security Act (42 United States Code, sections 1396–1396g, inclusive), such provision of this division so in conflict with said statute of the United States shall be considered as suspended and of no effect until sixty days after the convening of the next regular session of the general assembly after such conflict is discovered. [C71, 73, 75,§147.129]

135E.13 Misdemeanor. It shall be a misdemeanor for any person to act or serve in the capacity of a nursing home administrator unless he is the holder of a license as a nursing home administrator issued in accordance with the provisions of this division. [C71, 73, 75, §147.130]

135E.14 Applications. Applications for licensure shall be on forms prescribed and furnished by the board and shall not contain a recent photograph of the applicant. An applicant shall not be ineligible for licensure because of age, citizenship, sex, race, religion, marital status or national origin although the application may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of nursing home administration. Character references may be required, but shall not be obtained from licensed nursing home administrators. [C75,§147.131]

See also §§147.3, 147.29

135E.15 Fees. The board shall set the fees for examination, licensure and renewal of licensure. The fees for examination shall be based upon the annual cost of administering the examinations. The fees for licensure and renewal of licensure shall be based on the administrative costs of sustaining the board which shall include, but shall not be limited to, the following:

1. Per diem, expenses and travel for board members.
2. Office facilities, supplies and equipment.
3. Clerical assistance.

[C75,§147.132]

See also §147.80

135E.16 Public members. The public members of the board shall not participate in administering or grading any portion of an examination. [C75,§147.133]

See also §147.21

135E.17 Disclosure of confidential information. A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully

requests, obtains or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C75,§147.134]

See also §147.21

CHAPTER 136

STATE BOARD OF HEALTH

136.1 Composition of board.
136.2 Appointment.
136.3 Duties.
136.4 Questions submitted.
136.5 Meetings.
136.6 Repealed by 64GA, ch 84,§99.
136.7 Officer.
136.8 Supplies.
136.9 Compensation and expenses.
136.10 Publication of proceedings.

136.1 Composition of board. The state board of health shall consist of the following members: Nine members learned in health-related disciplines.

The commissioner of public health shall serve as secretary of the board. [S13,§2564-a; C24, 27, 31, 35, 39,§2218; C46, 50, 54, 58, 62, 66, 71, 73, 75,§136.1]

136.2 Appointment. All members of the state board of health shall be appointed by the governor and shall serve for a period of three years except the terms of the nine initial appointees shall be as follows:

1. Three members shall serve from July 4, 1965 to June 30, 1966.

2. Three members shall serve from July 4, 1965 to June 30, 1967.

3. Three members shall serve from July 4, 1965 to June 30, 1968.

The governor shall appoint annually successors to the three board members whose terms expire on June 30 of that year. Any vacancy occurring on the board shall be filled by the governor for the unexpired term of the vacancy. [C24, 27, 31, 35, 39,§2219; C46, 50, 54, 58, 62, 66, 71, 73, 75,§136.2]

136.3 Duties. The state board of health shall be the policy making body for the state department of health and shall have the following powers and duties to:

1. Consider and study the entire field of legislation and administration concerning public health, hygiene and sanitation.

2. Advise the department relative to:

a. The causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health.

b. The sanitary conditions in the educational, charitable, correctional, and penal institutions in the state.

c. Communicable and infectious diseases including zoonotic diseases, quarantine and isolation, venereal diseases, antitoxins and vaccines, housing, and vital statistics.

3. Establish policies governing the performance of the department in the discharge of any duties imposed on it by law.

4. Establish policies for the guidance of the commissioner in the discharge of his duties.

5. Investigate the conduct of the work of the department, and for this purpose it shall have access at any time to all books, papers, documents, and records of the department.

6. Advise or make recommendations to the governor and general assembly relative to public health, hygiene, and sanitation.

7. Adopt, promulgate, amend, and repeal rules and regulations consistent with law for the protection of the public health, and for the guidance of the department. All rules which have been or are hereafter adopted by the department shall be subject to approval by the board.

8. Act by committee, or by a majority of the board.

9. Keep minutes of the transactions of each session, regular or special, which shall be public records and filed with the department. [C97,§2565; C24, 27, 31, 35, 39,§2220; C46, 50, 54, 58, 62, 66, 71, 73, 75,§136.3]

136.4 Questions submitted. The department may lay before the board, or any committee thereof, at any regular or special meeting, any matter upon which it desires the advice or opinion of such body or committee. [C24, 27, 31, 35, 39,§2221; C46, 50, 54, 58, 62, 66, 71, 73, 75,§136.4]

136.5 Meetings. The board shall meet on the second Wednesday in July and on the second Wednesday of every second month thereafter and at such other times as may be deemed necessary by the president of the board. The president shall give each board member adequate notice of all special meetings. A majority of the members of the board shall constitute a quorum. [C97,§2564; S13,§2564; C24, 27, 31, 35, 39,§2222; C46, 50, 54, 58, 62, 66, 71, 73, 75,§136.5]

136.6 Repealed by 64GA, ch 84,§99.

136.7 Officer. At the meeting held in July of each year a president shall be elected from the board, who shall serve for a period of one year. At the request of the board the department shall furnish an executive clerk from the regular employees of the department to record the minutes of the meetings of the board. [C97, §2564; S13,§2564; C24, 27, 31, 35, 39,§2224; C46, 50, 54, 58, 62, 66, 71, 73, 75,§136.7]

136.8 Supplies. The department shall furnish the board of health with all articles and supplies required for the public use and necessary to enable the board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained and the same shall be considered and accounted for as if obtained for the use of the department. [S13,§2564; C24, 27, 31, 35, 39,§2225; C46, 50, 54, 58, 62, 66, 71, 73, 75,§136.8]

136.9 Compensation and expenses. The members of the board shall be paid a forty-dollar per diem and shall be reimbursed for actual and necessary expenses for each day employed in the discharge of their duties. All per diem and expense moneys paid to the members shall be paid from funds appropriated to the state department of health. [C97,§2574; S13,§§2564, 2574; C24, 27, 31, 35, 39, §2226; C46, 50, 54, 58, 62, 66, 71, 73, 75,§136.9]

136.10 Publication of proceedings. Upon request of the board the department shall incorporate the proceedings of the board, or any part thereof, in its biennial report to the governor, and the same shall be published as a part of the official report of the department. [C24, 27, 31, 35, 39,§2227; C46, 50, 54, 58, 62, 66, 71, 73, 75,§136.10]

Biennial report, §§17.3, 135.37

CHAPTER 136A
BIRTH DEFECTS INSTITUTE

136A.1 Purpose.
136A.2 Establishment of birth defects institute.
136A.3 Activities of the institute.

136A.1 Purpose. In order to provide for the protection and promotion of the health of the inhabitants of the state, the state department of health shall have the responsibility for the development and administration of the state's policy with respect to the conduct of scientific investigations and research concerning the causes, prevention, treatment and cure of birth defects. [66GA, ch 1109,§1]

136A.2 Establishment of birth defects institute. There is established within the state department of health a birth defects institute for the purposes of initiating and conducting investigations of the causes, mortality, methods of treatment, prevention and cure of birth defects and related diseases. [66GA, ch 1109,§2]

136A.3 Activities of the institute. The birth defects institute may:

1. Conduct scientific investigations and surveys of the causes, mortality, methods of treatment, prevention and cure of birth defects.

2. Publish the results of such investigations and surveys for the benefit of the public health and collate such publications for distribution to scientific organizations and qualified scientists and physicians.

3. Implement programs of professional education and training of medical students, physicians, nurses, scientists and technicians in the causes, methods of treatment, prevention and cure of birth defects.

4. Conduct and support clinical counseling services in medical facilities. [66GA, ch 1109, §3]

CHAPTER 136B
RADIOACTIVE MATERIAL—INTERAGENCY COUNCIL

136B.1 Definitions.
136B.2 Council created.
136B.3 Meetings—officers.
136B.4 Duties.
136B.5 Advisory committees.
136B.6 Staff assistance.

136B.1 Definitions. For purposes of this chapter, unless the context otherwise requires, "council" means the interagency co-ordinating council on radiation safety created in section 136B.2. [66GA, ch 1110,§1]

136B.2 Council created. There is created an interagency co-ordinating council on radiation safety which shall be composed of the chief executive or a designee of each of the following state agencies:

1. Department of environmental quality.
2. State department of health.
3. State department of transportation.
4. Department of agriculture.
5. Department of public defense.
6. Department of public safety.
7. State conservation commission.
8. Bureau of labor.

Each member of the council shall be entitled to one vote. The Iowa representative to the midwest nuclear compact shall be an ex officio, nonvoting member of the council. [66GA, ch 1110,§2]

Referred to in §136B.1

136B.3 Meetings — officers. The council shall convene annually in July to elect from among its membership a chairperson and a vice chairperson and carry out any other business, and shall meet at least quarterly thereafter. [66GA, ch 1110,§3]

136B.4 Duties. The council shall.

1. Develop a state radiation safety program plan which shall be updated annually and submitted to the general assembly by February 1 of each year.

2. Evaluate and co-ordinate radiation related activities of each member agency.

3. Review radiation safety rules proposed or promulgated by member agencies.

4. Collect and compile member agency's budget totals for radiation related activities for inclusion in the state radiation safety program plan. [66GA, ch 1110,§4]

136B.5 Advisory committees. The council shall establish a standing advisory committee composed of users and manufacturers of radioactive material or radiation producing equipment, representatives of the general public and such other persons or group representatives as the council deems appropriate. The council may establish other ad hoc advisory committees to provide assistance in the development of a state plan and on other issues where extra-governmental technical expertise is required. The chairperson may appoint such subcommittees of council members as are deemed necessary to accomplish the purposes of this chapter. [66GA, ch 1110,§4]

136B.6 Staff assistance. The state hygienic laboratory shall co-operate with the council in providing program co-ordination and staff support pursuant to the provisions of chapter 28D. The council may request staff assistance from other state agencies and institutions pursuant to chapter 28D. [66GA, ch 1110,§5]

CHAPTER 137

LOCAL BOARDS OF HEALTH

137.1 Title.
137.2 Definitions.
137.3 County board.
137.4 Appointment—vacancies.
137.5 Jurisdiction of county and city boards.
137.6 Powers of local boards.
137.7 Additional powers of local boards.
137.8 District health department plan.
137.9 Rules for standards.
137.10 District board of health approval requested.
137.11 Requests reviewed by state department.
137.12 Appointment.
137.13 Disbandment of local boards.
137.14 Adding to district.
137.15 Withdrawal from district.
137.16 Local health fund.
137.17 Local fund for district.
137.18 Deposit of moneys in fund.
137.19 Emergency request for funds.
137.20 Appropriation from general fund of county.
137.21 Penalties.
137.22 Individual choice of treatment.

137.1 Title. This chapter may be cited as the "Local Health Act." [C71, 73, 75,§137.1]

137.2 Definitions. As used in this chapter unless the context otherwise requires:

1. *"County board"* means a county board of health.
2. *"City board"* means a city board of health.
3. *"District board"* means a district board of health formed with approval by the state board of health.
4. *"District health department"* refers to the personnel and property under the jurisdiction of a district board of health.
5. *"Local board of health"* means a county, city, or district board of health.
6. *"State department"* means the state department of health.
7. *"State board"* means the state board of health.

8. *"Commissioner"* means the commissioner of public health. [C71, 73, 75,§137.2]

137.3 County board. The county board of health in each county shall consist of five members, at least one of whom shall be licensed in Iowa as a doctor of medicine and surgery or as an osteopathic physician and surgeon, as defined by law. [C73,§§393, 415; C97,§§574, 2568; C24, 27, 31, 35,§2246-c2; C39, §§**2228, 2246.2**; C46, 50, 54, 58, 62, 66,§§137.1, 138.2; C71, 73, 75,§137.3]

Referred to in §137.5

137.4 Appointment—vacancies. All members of the county board shall be appointed by the county board of supervisors and shall serve for a period of three years.

Vacancies due to death, resignation, or other cause shall be filled as soon as possible after the vacancy exists by appointment of the board of supervisors for the unexpired term of the original appointment. [C62, 66,§137.20; C71, 73, 75,§137.4]

Referred to in §137.5

137.5 Jurisdiction of county and city boards. The county board shall have jurisdiction over public health matters within the county, except as set forth herein and in section 137.13. The council of any city having a population of twenty-five thousand or more, according to the latest federal census, may appoint a city board of health in the manner specified in sections 137.3 and 137.4 or the council may appoint itself to act as the city board of health. The city board shall have jurisdiction within the municipal limits. [C31, 35,§2246-c1; C39,§**2246.1**; C46, 50, 54, 58, 62, 66,§138.1; C71, 73, 75,§137.5]

137.6 Powers of local boards. Local boards shall have the following powers:

1. Enforce state health laws and the rules and lawful orders of the state department.

2. Make and enforce such reasonable rules and regulations not inconsistent with law or with the rules of the state board as may be necessary for the protection and improvement of the public health.

a. Rules of a county board shall become effective upon approval by the county board of supervisors and publication in a newspaper having general circulation in the county.

b. Rules of a city board shall become effective upon approval by the city council and publication in a newspaper having general circulation in the city.

c. Rules of a district board shall become effective upon approval by the district board and publication in a newspaper having general circulation in the district.

d. However, before approving any rule or regulation the local board of health shall hold a public hearing on the proposed rule. Any citizen may appear and be heard at the public hearing. A notice of the public hearing, stating the time and place and the general nature of the proposed rule or regulation, shall be published at least ten days before the hearing in a newspaper of general circulation in the area served by the board.

The board shall also make a reasonable effort to give notice of the hearing to the communications media located within said area.

3. May by agreement with the council of any city within its jurisdiction enforce appropriate ordinances of said city.

4. Employ such employees as are necessary for the efficient discharge of its duties. Employment practices shall meet the requirements of the Iowa merit system council or any civil service provision adopted under chapter 400.

5. Provide reports of its operations and activities to the state department as may be required by the commissioner. [C73,§§415, 417, 418; C97,§§2568, 2571, 2572; S13,§§2571-b, 2572; C24, 27, 31, 35, 39,§§**2234, 2235**; C46, 50, 54, 58, 62, 66,§§137.7, 137.8; C71, 73, 75,§137.6]

Referred to in §137.13

137.7 Additional powers of local boards. Local boards shall have the following powers and duties to the extent they do not unreasonably interfere with existing patterns of private professional practice of licensed practitioners of the healing arts. Local boards:

1. May provide such personal and environmental health services as may be deemed necessary for the protection and improvement of the public health.

2. May engage in joint operations and contract with colleges and universities, the state department, other public and private agencies, and individuals for public health activities or projects.

3. May charge reasonable fees for personal health services. No person shall be denied necessary services within the limits of available personnel because of inability to pay the cost of such services.

4. May issue licenses and permits and charge reasonable fees therefor in relation to the collection or disposal of solid waste and the construction or operation of private water supplies or sewage disposal facilities. [C24, 27, 31, 35, 39,§§**2236, 2237**; C46, 50, 54, 58, 62, 66,§§137.9, 137.10; C71, 73, 75,§137.7]

Referred to in §137.13

137.8 District health department plan. The state department shall, after consultation with existing county and city boards, develop and may amend from time to time as necessary a district health department plan. The plan shall set forth recommended areas for the development of district health departments. [C31, 35, §2246-c3; C39,§**2246.4**; C46, 50, 54, 58, 62, 66, §138.4; C71, 73, 75,§137.8]

137.9 Rules for standards. The state board shall adopt rules setting minimum standards and procedures for the formation and approval of district health departments. [C71, 73, 75, §137.9]

137.10 District board of health approval requested. The county and city boards in any area designated by the district health department plan may at any time submit to the state department a request for approval as a district health department. The request shall include:

1. A plan for appointment of a district board of health, the membership of which shall not exceed eleven members who shall be reasonably representative of all existing health jurisdictions in the area. At least one and not more than three of the members shall be licensed in Iowa as doctors of medicine and surgery or osteopathic physicians and surgeons, as defined by law. The plan shall specify the terms of office of the members, by whom appointments to the board are to be made, and methods for filling vacancies.

2. Evidence that the proposed district health department is consistent with the state district health department plan and will meet the requirements of rules of the state board. [C31, 35,§§2246-c1,-c2,-c3; C39,§§2246.1, 2246.2, 2246.3; C46, 50, 54, 58, 62, 66,§§137.20, 138.1, 138.2, 138.3; C71, 73, 75,§137.10]

Referred to in §§137.11, 137.14

137.11 Requests reviewed by state department. The state department shall review requests submitted under section 137.10. The state department, upon finding that all necessary conditions are met, shall approve the formation of a district health department and shall so notify the local boards from whom the request was received. [C71, 73, 75,§137.11]

Referred to in §137.14

137.12 Appointment. On receipt of notice of approval as a district health department, a district board shall be appointed as specified in the plan. Board members shall serve without compensation, but shall be reimbursed from the local health fund, established under section 137.17, for necessary expenses in accordance with rules established by the state board. [C62, 66,§137.21; C71, 73, 75,§137.12]

Referred to in §137.14

137.13 Disbandment of local boards. On appointment of a district board, the county and city boards involved shall be disbanded and their powers and duties specified in sections 137.6 and 137.7 transferred to the district board. [C71, 73, 75,§137.13]

Referred to in §§137.5, 137.14

137.14 Adding to district. A city or county may be added to an existing district health department by submission and approval of a request, as specified in sections 137.10 to 137.13, and upon approval of the request by both the district board and the state board. [C71, 73, 75,§137.14]

137.15 Withdrawal from district. A city or county may withdraw from an existing district health department upon submission of a request for withdrawal and approval of the request by both the district board and the state board. [C71, 73, 75,§137.15]

137.16 Local health fund. The treasurer of each county shall establish a "local health fund". [C71, 73, 75,§137.16]

137.17 Local fund for district. On establishment of a district health department, the district board shall designate the treasurer of a city or county within its jurisdiction to establish a "local health fund" for the district. Upon establishment of the fund, moneys in previously existing local health funds in the district shall be transferred to the fund. [C71, 73, 75,§137.17]

Referred to in §137.12

137.18 Deposit of moneys in fund. All moneys received by a county or district for local health purposes from federal appropriations, from local taxation, from licenses, from fees for personal services, or from gifts, grants, bequests, or other sources shall be deposited in the local health fund. Expenditures shall be made from the fund on order of the local board for the purpose of carrying out its duties. [C97,§2568; C24, 27, 31, 35, 39,§2234; C46, 50, 54, 58, 62, 66,§137.7(6); C71, 73, 75,§137.18]

Referred to in §137.20

137.19 Emergency request for funds. A local board may, in emergency situations, request additional appropriations, which may, upon approval of the commissioner, be allotted from the funds reserved for that purpose. On termination of the emergency situation, the local board shall report its expenditures of emergency funds, to the commissioner and return any unexpended funds. [C71, 73, 75, §137.19]

137.20 Appropriation from general fund of county. The board of supervisors of any county may appropriate from the county general fund for the purpose of providing local health services. A county appropriation shall not exceed the statutory limitation found in chapter 444. Moneys appropriated for this purpose shall be deposited in the local health fund as specified in section 137.18. [C71, 73, 75, 137.20]

137.21 Penalties. Any person who violates any provision of this chapter or the rules of a local board or any lawful order of said board, its officers, or authorized agents shall be guilty of a misdemeanor and shall be punished by a fine not to exceed one hundred dollars or by imprisonment in the county jail for not more than thirty days. Each additional day of neglect or failure to comply with such provision, rule or lawful order after notice of violation by the local board shall constitute a separate offense. [C73,§419; C97,§2573; S13, §2575-a6; C24, 27, 31, 35, 39,§2246; C46, 50, 54, 58, 62, 66,§137.19; C71, 73, 75,§137.21]

137.22 Individual choice of treatment. Nothing in this chapter shall be construed to impede, limit, or restrict the right of free choice by an individual to the health care or treatment that he may select. [C71, 73, 75,§137.22]

CHAPTER 138

MIGRATORY LABOR CAMPS

138.1 Definitions.
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138.14 Communicable diseases reported.
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138.16 Cleanliness and repair required.
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138.18 Rules promulgated.
138.19 Penalties.

138.1 Definitions. When used in this chapter unless the context otherwise requires:

1. *"Migrant labor camp"* means one or more buildings, structures, shelters, tents, trailers, or vehicles or any other structure or a combination thereof together with the land appertaining thereto, established, operated, or maintained as living quarters for seven or more migrants or two or more shelters. A camp shall include such land or quarters separate from one another if the migrants housed therein work at any time for the same person and the total number of migrants in all such camps is seven or more. Such separate camps shall constitute a portion of a migrant labor camp.

2. *"Camp operator"* means the person who has been granted a permit, in accordance with the provisions of this chapter, to operate a migrant labor camp, or portion thereof.

3. *"Chemical toilet"* means a nonwater carriage toilet facility where human waste is collected in a container charged with a chemical solution for the purpose of disinfecting and deodorizing such waste.

4. *"Communicable disease"* means any of those diseases regulated by state or local communicable disease laws, ordinances, or regulations.

5. *"Garbage"* means all putrescible animal or vegetable wastes resulting from the handling, preparation, cooking, or consumption of food at a migrant labor camp.

6. *"Person"* means an individual, group of individuals, firm, association, partnership, or corporation.

7. *"Privy"* means a portable or fixed sanitary facility used for excretion in a shelter separate and apart from any building and without water-borne disposal.

8. *"Refuse"* means all putrescible and nonputrescible solid waste except human body wastes, including garbage, rubbish, and ashes.

9. *"Service building"* means any building provided for the common use, welfare, and comfort of persons occupying or using the migrant labor camp.

10. *"Shelter"* means any conventional or unconventional building of one or more rooms, or any tent, trailer, railroad car, or any other enclosure or structure used for sleeping or living purposes.

11. *"Toilet room"* means an enclosure containing one or more toilet facilities or water closet facilities.

12. *"Urinal"* means a sanitary fixture or structure installed for the purpose of urination.

13. *"Water closet"* means a sanitary fixture, within a toilet room, used for excretion and equipped with a bowl and device for flushing the bowl contents into a disposal system.

14. *"Department"* means the state department of health.

15. *"Commissioner"* means the commissioner of public health or his designee.

16. *"Migrant"* means any individual who customarily and repeatedly travels from state to state for the purpose of obtaining seasonal employment in agriculture, including the spouse and children of such individuals, whether or not authorized by law to engage in such employment. [C71, 73, 75,§138.1]

138.2 Permit required. No person shall establish, maintain, or operate a migrant labor camp, or portion thereof, directly or indirectly, until he has obtained a permit to operate such camp from the department and unless the permit is in full force and effect and is posted and remains posted in the camp, or portion thereof, to which it applies at all times during the maintenance and operation of such camp. [C71, 73, 75,§138.2]

138.3 Written application. Written application to operate a migrant labor camp, or por-

tion thereof, shall be made to the department upon forms approved by the department at least sixty days prior to the first day of the intended operation of such camp. The application shall state the name and address of the person requesting a permit; and name and address of the owner of the camp, or portion thereof; approximate number of persons to be lodged in such camp; approximate period during which the migrant labor camp, or portion thereof, is to be operated; the location of such camp, or portion thereof; and any other information required by the department. A separate application shall be submitted for each camp, or portion thereof, and a separate permit shall be issued annually for each such camp, or portion thereof. [C71, 73, 75,§138.3]

138.4 Permit not assignable. If the department finds, after investigation, that the migrant labor camp, or portion thereof, conforms to the minimum standards required by this chapter, it shall issue a permit for operation of such camp, or portion thereof. A permit shall not be assignable or transferable. It shall expire one year after the date of issuance, or upon a change of operator of the camp or upon revocation. [C71, 73, 75,§138.4]

138.5 Revocation or suspension of permit. If the holder of any permit under the provisions of this chapter fails to maintain and operate a migrant labor camp in accordance with the provisions of this chapter and the rules of the department relating thereto, the commissioner shall revoke or suspend the permit for the operation and maintenance of such camp. [C71, 73, 75,§138.5]

138.6 Notice of intention. The commissioner shall serve written notice upon the holder of the permit, by restricted certified mail, return receipt requested, specifying the manner in which the holder of the permit has failed to comply with the provisions of this chapter or any rules of the department and shall fix a reasonable time within which the objectionable condition or conditions must be removed or corrected. If the holder of the permit fails to remove or correct such objectionable condition or conditions within the time fixed by the commissioner, the commissioner shall revoke or suspend such permit. However, if the objectionable condition or conditions endanger the health, safety, or welfare of any inhabitants of a migrant labor camp, the commissioner shall immediately suspend or revoke such permit. [C71, 73, 75,§138.6]

138.7 Appeal to commissioner. When any person applying for a permit to operate a migrant labor camp is denied a permit, or when a permit is suspended or revoked, such person may appeal such denial, suspension, or revocation to the commissioner. The commissioner, after reasonable notice to all interested parties, shall hold a hearing upon such denial, suspension, or revocation. At the hearing all parties involved shall be entitled to be present and represented by counsel and to present such evidence as they desire as to why a permit should, or should not, be issued, suspended, or revoked. The commissioner shall render a decision within thirty days after the termination of the hearing, and a copy of the decision shall be sent by restricted certified mail, return receipt requested, to all parties given notice of the appeal and hearing. Notice of appeal shall be sent in writing to the department by restricted certified mail, return receipt requested, by the aggrieved party. In the event such appeal is taken from a notice of suspension or revocation, such appeal shall be made prior to the date set for such suspension or revocation. [C71, 73, 75,§138.7]

138.8 Place—evidence—record. The hearing shall be conducted at the office of the department or at such other place convenient for the aggrieved party or for the attendance of witnesses and receipt of evidence. The commissioner, when requested in writing by any party to the appeal, shall compel by subpoena the attendance and testimony of witnesses and the production of books, papers, and documents. All testimony and evidence shall be received under oath administered by the commissioner. In the event any party fails to attend who has been properly served with a subpoena, application shall be made to the district court in the county where such hearing is to be held, to enforce the subpoena issued by the commissioner. The commissioner shall cause a record of the proceedings at the hearing to be kept and shall provide any interested party to the hearing a transcript of the evidence presented, upon payment of the cost thereof. The hearing may be continued from time to time at the discretion of the commissioner. [C71, 73, 75,§138.8]

138.9 Liberal rules to prevail. Technical errors in the proceeding or failure to observe the technical rules of evidence shall not constitute grounds for reversal of any decision unless it shall appear to the reviewing court that such error or failure materially affects the rights of any party and results in substantial injustice to any interested party. [C71, 73, 75,§138.9]

138.10 Judicial review. Judicial review of actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county wherein the license was to be issued or wherein such license is to be revoked or suspended, and such a petition for judicial review shall not operate to stay any order or final determination of the commissioner unless the district court finds upon hearing after reasonable notice to all interested parties, that substantial damage would result to the appealing party unless such order or final determination was stayed and such a stay would not endanger the health, safety, or welfare of any

inhabitants of a migrant labor camp. [C71, 73, 75,§138.10]

138.11 Access to camp for inspection. The commissioner may enter and inspect migrant labor camps at any reasonable time and may question persons, and investigate facts, conditions, practices, or any other matters as are necessary or appropriate to determine compliance with the provisions of this chapter and any rules made pursuant to this chapter, or in the formulation of any additional rules. The commissioner may, to the extent appropriate, utilize the services of any other state department or agency or any local agency for assistance in inspections and investigations. [C71, 73, 75,§138.11]

138.12 Variations permitted. The commissioner may grant written permission to individual camp operators to vary from the provisions of this chapter or the rules and regulations of the department when the extent of the variation is clearly specified and it is demonstrated to the commissioner's satisfaction that:

1. Such variation is necessary to obtain a beneficial use of an existing facility.

2. The variation is necessary to prevent a substantial difficulty or unnecessary hardship.

3. Appropriate alternative measures have been taken to protect the health, safety, and welfare of any inhabitants of a migrant labor camp and assure that the purpose of the provisions for which variation is sought will be observed.

Written application for such variations shall be filed with the commissioner and local board of health serving the area in which the migrant labor camp is situated. No such variation shall be effective until granted in writing by the commissioner. [C71, 73, 75,§138.12]

138.13 Conditions for permit. To be eligible for a permit, a migrant labor camp, or portion thereof, shall meet each and all of the following requirements:

1. *Site.*

a. Sites for migrant labor camps shall be adequately drained. Such sites shall not be subject to periodic flooding, nor located within two hundred feet of swamps, pools, sinkholes, or other quiescent surface collections of water unless the water surfaces can be subjected to mosquito and pest control measures. Sites shall be located so that drainage from and through the camp will not endanger any domestic or public water supply. Sites shall be graded, ditched, and rendered free from depressions in which water may collect and become a nuisance.

b. Sites shall be adequate in size to prevent overcrowding of necessary structures and to minimize the hazards of fire. Housing shall not be subject to, or in proximity to, conditions that create or are likely to create offensive odors, flies, noise, traffic, or attract rats or other rodents, or any other similar conditions.

c. The grounds and open areas surrounding the shelters, buildings, or structures, shall be maintained in a clean and sanitary condition free from rubbish, debris, wastepaper, garbage, and other refuse.

d. All camps shall provide space for recreation, commensurate with size of the camp and type of occupancy.

e. Whenever a camp is permanently closed or closed for the season, all garbage, manure, and other refuse shall be collected and disposed of to prevent a nuisance. All abandoned privy pits shall be filled with earth and the grounds and buildings left in a clean and sanitary condition. If privy buildings remain, then such buildings shall be locked or otherwise secured to prevent entrance.

2. *Shelter.*

a. Shelters shall be structurally sound and shall provide protection to the occupants.

b. At least one-half of the floor area in each living unit shall have a minimum ceiling height of seven feet. No floor space shall be counted toward minimum requirements where the ceiling height is less than five feet.

c. Sleeping facilities shall be provided for each person. Such facilities shall consist of comfortable beds, cots, or bunks, provided with clean mattresses.

d. Any bedding provided by the camp operator shall be clean and sanitary.

e. Triple deck bunks shall not be allowed.

f. The clear space above the top of the lower mattress of a double deck bunk and the bottom of the upper bunk shall be a minimum of twenty-seven inches. The distance from the top of the upper mattress to the ceiling shall be a minimum of thirty-six inches.

g. Beds used for double occupancy may be provided only in family accommodations.

h. Floors of buildings used as living quarters or shelters shall be constructed of wood, asphalt, concrete, or other comparable material. Wooden floors shall be of smooth and tight construction and shall be elevated not less than one foot above the ground level at all points to prevent dampness and to permit free circulation of air beneath. Floors shall be kept in good repair.

i. Nothing in this chapter shall prohibit banking with earth or other suitable material around the outside walls of shelters and other structures in areas subject to extremely low temperatures.

j. Living quarters of shelters shall be provided with windows and doors which shall be in total area not less than one-tenth of the floor area. At least one-half of each window shall be constructed so that it can be opened for purposes of ventilation.

k. Exterior openings shall be effectively screened with sixteen mesh material. Screen doors shall be equipped with self-closing devices.

l. In a room where people cook, live, and sleep, a minimum of sixty square feet per occupant shall be provided. Sanitary facilities shall be provided for storing and preparing food.

m. When a camp is operated during a season requiring artificial heating, living quarters with a minimum of one hundred square feet per occupant shall be provided and such living quarters or shelters shall, also, be provided with properly installed heating equipment of adequate capacity to maintain a room temperature of at least 70°F. A stove or other source of heat shall be installed and vented in a manner to avoid both a fire hazard and a concentration of fumes or gas within such living quarters and shelters. In a room with wooden or combustible flooring, there shall be a concrete slab, metal sheet, or other fire-resistant material, on the floor under each stove, extending at least eighteen inches beyond the perimeter of the base of the stove. Any wall or ceiling not having a fire-resistant surface, within twenty-four inches of a stove or stovepipe, shall be protected by a metal sheet or other fire-resistant material. Heating appliances, other than electrical, shall be provided with a stovepipe or vent connected to the appliance and discharging to the outside air or chimney. The vent or chimney shall extend above the peak of the roof. Stovepipes shall be insulated with fire-resistant material where they pass through walls, ceilings, or floors.

3. *Water supply.*

a. An adequate and convenient water supply, approved by the department, shall be provided in each camp for drinking, cooking, bathing, and laundry purposes.

b. Each water supply shall be inspected at the time of occupancy of the camp and as frequently thereafter as is necessary to insure its continued suitability.

c. Distribution lines shall be capable of supplying water at normal operating pressures to all fixtures for simultaneous operation. Water outlets shall be distributed throughout the camp in such a manner that no shelter or living quarter is more than one hundred feet from a yard hydrant if water is not piped to the shelters.

d. A cold water tap shall be available within one hundred feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities shall be provided for overflow and spillage.

e. Common drinking cups shall not be allowed or permitted.

f. Wells or springs used as sources of water supply shall have tight covers and be constructed and located to preclude pollution by seepage from cesspools, privies, sewers, sewage treatment works, stables or manure piles, or surface drainage. The water from such sources shall be obtained by free gravity flow or by an approved metal pump securely mounted on a concrete slab covering the well or spring. If the pump is adjacent to the well or spring, it shall be located and connected to prevent any pollution of such water supply.

4. *Toilet facilities.*

a. Approved toilet facilities adequate for the capacity of the camp shall be provided.

b. Each toilet facility shall be located so as to be accessible to the inhabitants of the camp without any individual passing through any sleeping room. Toilet rooms shall have a window not less than six square feet in area opening directly to the outside or shall otherwise be satisfactorily ventilated. All outside openings shall be screened with sixteen mesh material. No water closet, chemical toilet, or urinal shall be located in a room used for other than toilet purposes.

c. A toilet room shall be located within two hundred feet of each sleeping room. No privy existing on May 23, 1969, shall be nearer than fifty feet from any sleeping room, dining room, lunch area, or kitchen. No privy constructed after May 23, 1969, shall be nearer than one hundred feet from any sleeping room, dining room, lunch area, or kitchen.

d. Separate facilities shall be provided for men and women and such facilities shall be clearly marked by signs printed in English and in the native language of the persons occupying the camp, or marked with easily understood pictures or symbols, when men and women, not members of the same immediate family, are housed in the same camp.

e. Where toilet facilities are shared, the number of water closets or privy seats provided for each sex shall be based on the maximum number of persons of that sex which the camp is designed to house at any one time, in the ratio of one unit for each fifteen persons, with a minimum of two units for any shared facility.

f. Urinals, constructed of nonabsorbent materials, may be substituted for men's toilet seats on the basis of one urinal or twenty-four inches of trough-type urinal for one toilet seat up to a maximum of one-third of the required toilet seats.

g. Each toilet room or facility shall be lighted naturally, or artificially, by a safe type of lighting at all hours of the day and night.

h. An adequate supply of toilet paper shall be provided in each privy, water closet, or chemical toilet compartment.

i. Toilet seats, privies, and toilet rooms or facilities shall be kept in a sanitary condition and cleaned daily.

j. Each privy shall have a pit initially at least five feet deep.

k. Privy pits shall be constructed and maintained so that flies cannot gain access to the human waste.

l. A privy pit shall not be filled with human waste to a point nearer than one foot from the surface of the ground; the human waste in the pit shall then be covered with earth, ashes, lime, or other similar material.

m. Seat openings in privies shall be covered with tight-fitting, hinged lids.

5. *Sewage disposal facilities.*

a. In camps where public sewers are available, all sewer lines and floor drains from buildings and shelters shall be connected to the sewers.

b. All human waste, sewage, or liquid waste from camps not discharged into public sewers shall be disposed of in accordance with the provisions of this chapter or the rules of the department.

6. *Laundry, handwashing, and bathing facilities.*

a. Laundry, handwashing, and bathing facilities shall be provided as follows:

(1) One handwash basin for each immediate family shelter or dwelling for every fifteen individuals or fraction thereof in shared facilities.

(2) One shower head for every fifteen or fraction thereof individuals. Separate facilities for men and women shall be provided in shared facilities.

(3) One laundry tray or tub for every twenty-five persons or fraction thereof.

(4) One slop sink in each building used for laundry, handwashing, or bathing.

b. Floors shall be of smooth finish but not of slippery materials and they shall be impervious to moisture. Floor drains shall be provided in all shower baths, shower rooms, or laundry rooms to remove waste water and facilitate cleaning. Junctions of the curbing and the floor shall be covered. Walls and partitions of shower rooms shall be smooth and impervious to moisture to the height of splash.

c. A supply of hot and cold running water conforming to the provisions of this chapter or the rules and regulations of the department shall be provided for bathing and laundry purposes.

d. Every service building used during periods requiring artificial heating shall be provided with equipment capable of maintaining a room temperature of at least 70°F.

e. Facilities for drying clothes shall be provided.

f. Service buildings shall be kept clean.

g. Waste water shall be disposed of so as not to form pools on the ground nor create a nuisance, nor pollute any drinking water supply. Toilet drainage shall be carried through a covered drain into a covered septic tank that conforms to standards established by the department.

7. *Lighting.*

a. All housing sites, quarters, and shelters shall be provided with electric service.

b. Each habitable room and common use rooms, and areas including, but not limited to, laundry rooms, toilets, privies, hallways, and stairways shall contain adequate ceiling or wall-type light fixtures. At least one wall-type electrical convenience outlet shall be provided in each individual living room.

c. Adequate lighting shall be provided for the yard area and pathways to common use facilities.

d. All wiring and lighting fixtures shall be installed and maintained in a safe condition.

e. Where electric service is not available, gas lighting will be acceptable. Hallways and stairways to upper floors shall be lighted at night. Electric lighting shall be provided in all camps or additions to camps constructed after May 23, 1969.

8. *Refuse disposal.*

a. Durable, fly-tight, clean containers in good condition of a minimum capacity of twenty gallons, shall be provided adjacent to each housing unit or shelter for the storage of garbage and other refuse. Such containers shall be provided in a minimum ratio of one per fifteen persons or fraction thereof.

b. Provisions shall be made for collection of refuse at least twice a week, or more often if necessary.

c. The disposal of refuse shall be in accordance with state and local laws.

9. *Construction and operation of kitchens, dining halls, and feeding facilities.*

a. Every camp shall be provided with adequate gas stoves or electrical stoves for cooking.

b. Utensils in which food is prepared or kept, or from which food is to be eaten, and implements used in the preparation and eating of food shall be kept in a clean, unbroken, and sanitary condition.

c. Adequate refrigeration for perishable foods, cooked or raw, shall be provided in every kitchen or wherever food is prepared. Tables, benches, or chairs shall be provided.

d. Cooking of meals by an immediate family unit within its assigned living quarters may be permitted, provided that safe and adequate areas are available, but a separate kitchen in each shelter is desirable.

e. In camps where cooking facilities are used in common, stoves, in ratio of one stove to ten persons or one stove to two immediate families or fraction thereof, shall be provided in a central kitchen room or building separate and distinct from sleeping quarters and toilet facilities. Floors, walls, ceilings, tables and shelves of kitchens, dining rooms, refrigerators and food storage rooms shall be constructed so that they can always be maintained in a clean and sanitary condition. Exterior wall openings of all rooms shall be screened and rendered fly-tight at all times during the period that the camp is in operation. Screen doors shall be self-closing and installed to open outward from the area to be protected.

f. In camps where meals are furnished by the operator, manager, or concessionaire, the requirements of the department shall be met.

g. No person with any communicable or venereal disease shall be employed or permitted to work at preparation, cooking, serving, or other handling of food, foodstuffs, or other materials, in any kitchen or dining room operated in connection with a camp or regularly used by persons living in a camp.

10. *Insect and rodent control.*

a. Effective measures shall be taken to control rats, mice, flies, mosquitoes; bedbugs, and all other insects, rodents, and parasites within the camp premises.

b. Pesticides and pest control equipment shall be stored and used in a safe manner.

11. *Safety and fire prevention.*

a. No flammable or volatile liquids or materials shall be stored in or adjacent to rooms used for living purposes, except for those needed for current household use.

b. First aid facilities shall be provided and readily accessible for use at all times. Such facilities shall be equivalent to the sixteen unit first aid kit recommended by the American Red Cross, and provided in a ratio of one per fifty persons or fraction thereof.

c. Buildings and structures of a camp shall be maintained and used in accordance with state and local law relative to fire prevention.

d. Units of approved fire-extinguisher equipment shall be located so that a person will not have to travel more than one hundred feet from any point to reach the nearest unit, and at least one unit shall be provided for each one thousand square feet of floor space or fraction thereof.

e. Appliances of the type, number, and size indicated below shall constitute one unit of fire-extinguisher equipment:

(1) *Soda and acid.* One appliance of two and one-half gallon capacity, or two appliances of one and one-half gallon capacity in each appliance.

(2) *Foam.* One appliance of two and one-half gallon capacity, or two appliances of one and one-half gallon capacity in each appliance.

(3) *Water type.* One stored pressure appliance of two and one-half gallon capacity, or two pump-type appliances of five gallon capacity.

f. Fire fighting equipment shall be maintained in good operating condition so that it may be used instantly when the need arises.

g. Adult occupants shall be properly instructed in fire prevention and in the proper use of equipment.

h. Agricultural pesticides and toxic chemicals shall not be stored in the housing area. [C71, 73, 75,§138.13]

138.14 Communicable diseases reported. The camp operator shall report immediately to the local board of health the name and address of any individual in the camp known to have or suspected of having a communicable disease. Whenever there shall occur in any camp, or portion thereof, a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom, the camp operator shall report immediately the existence of the condition to the local board of health and the commissioner. [C71, 73, 75,§138.14]

138.15 Notice of intent to construct or alter a camp. Any person who is planning to construct, reconstruct, or enlarge a camp or any portion thereof, or facility of a camp, or to convert a property for use or occupancy as a camp, shall give notice in writing of his intent to do so to the commissioner at least fifteen days prior to the date of the commencement of any major construction, reconstruction, enlargement, or conversion. The notice shall give the name of the city, village, and county in which the property is located; the location of the property within that area; a brief description of the proposed major construction, reconstruction, enlargement, or conversion; the name and mailing address of the person giving such notice; and his telephone number. The commissioner, upon receipt of such notice, shall promptly send to such person by ordinary mail a copy of this chapter and all rules of the department applicable to migrant labor camps. [C71, 73, 75,§138.15]

138.16 Cleanliness and repair required. Every migrant or inhabitant of a migrant labor camp shall use the sanitary and other facilities provided and shall keep that part of the living quarters or shelter which he or his immediate family occupies and controls as well as the premises immediately adjacent thereto in a clean condition comparable to normal domestic standards. Every camp operator or permit holder shall be responsible for the providing of and proper maintenance and repair of the premises, all shelters, structures, facilities, and service buildings of the camp, or portion thereof, for which he was issued a permit as well as proper garbage and refuse collection, privy openings and closings, maintenance of water supply, pest and rodent control, toilet facilities, sewage disposal, laundry, handwashing and bathing facilities, lighting, operation of common kitchens, dining halls, and feeding facilities, and safety and fire prevention. [C71, 73, 75,§138.16]

138.17 Rental charges or wage deductions. A rental charge or deduction from any wages due a migrant shall not be made by any camp operator or person for providing any of the facilities required by this chapter unless such migrant is fully informed of all such rental charges or deductions to be made prior to the time he contracts for employment as an agricultural or migrant worker. [C71, 73, 75, §138.17]

138.18 Rules promulgated. The commissioner shall make such rules necessary for carrying out the purposes and provisions of

this chapter, subject to the requirements of chapter 17A. [C71, 73, 75,§138.18]

138.19 Penalties. Any person failing to comply with any provision of this chapter, or with any rule or order issued pursuant to the provisions of this chapter, or interfering with, impeding, or obstructing in any manner, the commissioner, department, or any of its employees in the performance of official duties pursuant to this chapter, shall be guilty of a misdemeanor and fined in an amount of not less than fifty dollars nor more than one hundred dollars for each such offense. If any person further fails to comply with any provisions of this chapter, or with any rule or order issued pursuant to the provisions of this chapter, the commissioner shall enforce such provision, rule, or order by filing an action for injunction against such person in the district court in the county wherein such violation or violations occur. [C71, 73, 75,§138.19]

CHAPTER 139

CONTAGIOUS AND INFECTIOUS DISEASES

Referred to in §§155.17(4), 170.26

139.1 Definitions.
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139.12 Forcible removal.
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139.26 Supplies and services.
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139.31 Exposing to contagious disease.
139.32 Penalty.

139.1 Definitions. For the purposes of this chapter:

1. *"Communicable disease"* shall mean any infectious or contagious disease spread from man to man or animal to man.

2. *"Placard"* shall mean a warning sign to be erected and displayed on the periphery of a quarantine area, which sign will forbid entry to or exit from the area.

3. *"Reportable disease"* shall mean any disease designated by rule adopted by the state department of health requiring the occurrence to be reported to an appropriate authority.

4. *"Quarantine"* shall mean the limitation of freedom of movement of persons or animals that have been exposed to a communicable disease within specified limits marked by placards for a period of time equal to the longest usual incubation period of the disease in such manner as to prevent the spread of a communicable disease which affects man.

5. *"Isolation"* shall mean the separation of persons or animals presumably or actually affected with a communicable disease or who are disease carriers for the usual period of communicability of that disease in such places, marked by placards if necessary, and under such conditions as will prevent the direct or indirect conveyance of the infectious agent to susceptible persons.

6. *"Quarantinable disease"* shall mean any communicable disease designated by rule adopted by the state department of health as requiring quarantine or isolation to prevent its spread. [S13,§2571-a; SS15,§2571-1a; C24, 27, 31, 35, 39,§**2247**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §139.1]

139.2 Report to department of health. The physician or other health practitioner attending any person infected with a reportable disease shall immediately report the same to the state department of health, except, when a case occurs within the jurisdiction of a local health department such report shall be made directly to the local health department and to the state department of health. The state department of health shall publish and distribute instructions concerning method of reporting. Such reports shall be made in accordance with rules adopted by the state department of health. Any person in good faith making a report of a disease shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed. [SS15,§2571-1a; C24, 27, 31, 35, 39,§**2249**; C46, 50, 54 58, 62, 66,§139.3; C71, 73, 75,§139.2]

139.3 Type and length of isolation—disinfection. The type and length of isolation or quarantine to be imposed for a specific communicable disease shall be in accordance with rules adopted by the state department of health. The state department of health and the local board of health have authority to impose and enforce isolation and quarantine restrictions. The state department of health

shall adopt rules governing disinfection. [C73, §§415, 418; C97,§2568; S13,§2571-a; C24, 27, 31, 35, 39,§§**2252, 2266, 2268**; C46, 50, 54, 58, 62, 66, §§139.6, 139.20–139.22; C71, 73, 75,§139.3]

139.4 Quarantine signs erected. When a quarantine is established, appropriate placards prescribed by the state department of health shall be erected to mark the boundaries of the place of quarantine. [SS15,§§2571-2a,-3a; C24, 27, 31, 35, 39,§**2253**; C46, 50, 54, 58, 62, 66,§139.7; C71, 73, 75,§139.4]

139.5 Communicable diseases. In case any person shall be infected with any communicable disease, dangerous to the public health, whether a resident or otherwise, the local board shall make such orders in regard to the care of said person as are necessary to protect the public health, and said orders shall be executed by the mayor, township clerk, health officer, or sanitation officer as the local board may direct or provide by its rules. [S13,§2571-a; C24, 27, 31, 35, 39,§**2251**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§139.5]

139.6 Diseased persons moving—record forwarded. If a person known to be suffering from a communicable disease dangerous to the public health moves from the jurisdiction of a local board of health into the jurisdiction of another local board of health, the board of health from whose jurisdiction the person is moving will make notification of such move to the board of health into whose jurisdiction the person is moving. [S13,§2575-a3; C24, 27, 31, 35, 39,§**2260**; C46, 50, 54, 58, 62, 66,§139.14; C71, 73, 75,§139.6]

139.7 to 139.11 Repealed by 63GA, ch 135,§6.

139.12 Forcible removal. The forcible removal and isolation of any infected person shall be accomplished according to the rules and regulations of the local board of health or the rules of the state board of health. [S13, §2571-a; C24, 27, 31, 35, 39,§**2258**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§139.12]

139.13 Fees for removing. The officers designated by the magistrate shall be entitled to receive for their services such reasonable compensation as shall be determined by the local board. The amount so determined shall be certified and paid in the same manner as other expenses incurred under the provisions of this chapter. [S13,§2571-a; C24, 27, 31, 35, 39,§**2259**; C46, 50, 54, 58, 62; 66, 71, 73, 75,§139.13]

Payment of expense, §139.27 et seq.

139.14 to 139.20 Repealed by 63GA, ch 135, §6.

139.21 and 139.22 Repealed by 63GA, ch 135, §6, see §139.3.

139.23 Medical attendance and supplies. In case any person under quarantine or the persons liable for the support of such person shall, in the opinion of the local board, be financially unable to secure the proper care, provisions, or medical attendance, the local board shall furnish such supplies and services during the period of quarantine and may delegate such duty by its rules to one of its officers or to the health officer. [S13,§2571-a; C24, 27, 31, 35, 39, §**2270**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§139.23]

139.24 County liability for supplies. The local board shall provide the proper care, provisions and medical attendance for every person removed and isolated in a separate house or hospital for detention and treatment, and the same shall be paid for by the county in which the infected person has a legal settlement if patient or legal guardian is unable to pay same. [S13,§2571-a; C24, 27, 31, 35, 39,§**2271**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§139.24]

139.25 Rights of isolated persons. Any person removed and isolated in a separate house or hospital may employ, at his own expense, the physician or nurse of his choice, and may provide such supplies and commodities as he may require. [S13,§2571-a; C24, 27, 31, 35, 39, §**2272**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§139.25]

139.26 Supplies and services. All services and supplies furnished to individuals or families under the provisions of this chapter must be authorized by the local board or by one of its officers acting under the rules of said board, and a written order therefor designating the person or persons employed to furnish such services or supplies, issued before said services or supplies were actually furnished, shall be attached to the bill when the same is presented for audit and payment. [S13,§2571-a; C24, 27, 31, 35, 39,§**2273**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §139.26]

139.27 Filing of bills. All bills incurred in carrying out the provisions of this chapter in establishing, maintaining, and terminating quarantine and isolation, in providing a necessary house or hospital for isolation, and in making disinfections, shall be filed with the local board. Said board at its next regular meeting or special meeting called for the purpose shall examine and audit the same and, if found correct, approve and certify the same to the county board of supervisors for payment. [S13,§2571-a; C24, 27, 31, 35, 39,§**2274**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§139.27]

139.28 Allowing claims. All bills for supplies furnished and services rendered for persons removed and isolated in a separate house or hospital, or for persons financially unable to provide their own sustenance and care during quarantine, shall be allowed and paid for only on a basis of the local market price for such provisions, services, and supplies in the locality in which the same shall have been furnished. No bill for disinfecting premises or effects shall be allowed unless it shall be found that the infected person or those liable for his support are financially unable to pay the same. [S13.§2571-a; C24, 27, 31, 35, 39,§**2275**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§139.28]

139.29 Approval and payment of claims. The board of supervisors shall not be bound by the action of the local board in approving such bills, but shall allow the same from the poor fund for a reasonable amount and within a reasonable time. [S13,§2571-a; C24, 27, 31, 35, 39,§2276; C46, 50, 54, 58, 62, 66, 71, 73, 75,§139.29]

139.30 Reimbursement from county. If any person receives services or supplies under this chapter who does not have a legal settlement in the county in which such bills were incurred and paid, the amount so paid shall be certified to the board of supervisors of the county in which said person claims settlement or owns property and the board of supervisors of such county shall reimburse the county from which such claim is certified, in the full amount originally paid by it. [S13,§2571-a; C24, 27, 31, 35, 39. §2277; C46, 50, 54, 58, 62, 66, 71, 73, 75,§139.30]

Referred to in §252.24

139.31 Exposing to contagious disease. Any person who knowingly exposes another to infection from any communicable disease, or knowingly subjects another to the danger of contracting such disease from a child or other irresponsible person, shall be liable for all damages resulting therefrom, and be punished as provided in this chapter. [C73,§419; C97, §2573; C24, 27, 31, 35, 39,§2278; C46, 50, 54, 58, 62, 66, 71, 73, 75,§139.31]

139.32 Penalty. Any person who knowingly violates any provision of this chapter, or of the rules of the state department or the local board, or any lawful order, written or oral, of said department or board, or of their officers or authorized agents, shall be guilty of a misdemeanor. [C73,§419; C97,§2573; S13,§2575-a6; C24, 27, 31, 35, 39,§2279; C46, 50, 54, 58, 62, 66, 71, 73, 75,§139.32]

Punishment, §687.7

CHAPTER 140

VENEREAL DISEASE CONTROL

Referred to in §135.11(10)

140.1 Title.
140.2 Definition.
140.3 Confidential reports.
140.4 Report to state department.
140.5 Examination results.
140.6 Failure to report.
140.7 Determination of source.
140.8 Examination of persons suspected.
140.9 Minors.
140.10 Certificate not to be issued.
140.11 Pregnant women.
140.12 Blood tests in pregnancy cases.
140.13 Medical treatment of newly born.
140.14 Religious exceptions.
140.15 Penalty.
140.16 to 140.41 Repealed by 63GA, ch 136,§1.

140.1 Title. This chapter shall be known as the "Venereal Disease Control Act". [C71, 73, 75,§140.1]

140.2 Definition. For the purposes of this chapter venereal disease shall mean syphilis, gonorrhea, chancroid, granuloma inguinale, and lymphogranuloma venereum. [C24, 27, 31, 39,§2280; C46, 50, 54, 58, 62, 66,§140.1; C71, 73, 75,§140.2]

140.3 Confidential reports. Reports to the state department of health which include the identity of persons infected with venereal disease shall be kept secret, and all such information, records, and reports concerning the same shall be confidential and shall not be accessible to the public. However, such reports, information, and records shall be secret and confidential only to the extent which is necessary to prevent identification of persons named therein; and the other parts of such reports, information, and records shall be public records. The preceding sentence shall prevail over any inconsistent provision of this chapter. [C24, 27, 31, 35, 39,§2305; C46, 50, 54, 58, 62, 66,§140.28; C71, 73, 75,§140.3]

140.4 Report to state department. Immediately after the first examination or treatment of any person infected with any venereal disease, the physician performing the same shall transmit to the state department of health a report stating the name, age, sex, marital status, occupation of patient, name of the disease, probable source of infection, and duration of the disease; except, when a case occurs within the jurisdiction of a local health department, such a report shall be made directly to the local health department which shall immediately forward the same information to the state department of health. Such reports shall be made in accordance with rules adopted by the state department of health. Such reports shall be confidential. Any person in good faith making a report of a venereal disease shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of such report. [C24, 27, 31, 35, 39,§2281; C46, 50, 54, 58, 62, 66,§140.2; C71, 73, 75,§140.4]

140.5 Examination results. Any person who is in charge of a public, private, or hospital clinical laboratory shall report to the state

department of health, on forms prescribed by the department, results obtained in the examination of all specimens which yield evidence of or are reactive for syphilis, gonorrhea, chancroid, granuloma inguinale, or lymphogranuloma venereum. The report shall state the name of the person from whom the specimen was obtained, the name and address of the physician or other person submitting the specimen, the laboratory results, the test employed, and the date of the laboratory examination. [C71, 73, 75,§140.5]

140.6 Failure to report. Any physician or other person who fails to make or falsely makes any of the reports required by this chapter concerning persons infected with any venereal disease, or who discloses the identity of such person, except as herein provided, shall be punished as provided in this chapter. Failure to report any venereal disease as specified in this chapter shall be cause for the refusal of a renewal of license as required in section 147.10. [C24, 27, 31, 35, 39,§§2284, 2309; C46, 50, 54, 58, 62, 66,§§140.7, 140.32; C71, 73, 75,§140.6]

140.7 Determination of source. The local or the state department of health shall use every available means to determine the source and spread of any infectious case of venereal disease which is reported. [C24, 27, 31, 35, 39, §2310; C46, 50, 54, 58, 62, 66,§140.33; C71, 73, 75,§140.7]

140.8 Examination of persons suspected. The local board of health shall cause an examination to be made of every person reasonably suspected, on the basis of epidemiological investigation, of having any venereal disease in the infectious stages to ascertain if such person is so infected, and if so infected, to cause such person to be treated. No person shall be subjected to such examination who is under the care and treatment of a physician for the suspected condition. If a person suspected of having venereal disease should refuse to submit to an examination voluntarily, application may be made by the local board of health to the district court for an order compelling such person to submit to examination and if infected, to treatment. Such person shall be treated until certified to the local board of health or, if none, to the state department of health as no longer infectious. In every case of treatment ordered by the district court the attending physician shall so certify that the person is no longer infectious. [C24, 27, 31, 35, 39,§§2287, 2311; C46, 50, 54, 58, 62, 66,§§140.10, 140.34; C71, 73, 75,§140.8]

140.9 Minors. A minor who seeks diagnosis or treatment for a venereal disease shall have the legal capacity to act and give consent to medical care and service for venereal disease by public and private hospitals or public and private clinics or physicians. Such medical diagnosis and treatment is to be provided by a physician licensed to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery. Such consent shall not be subject to later disaffirmance by reason of such minority. The consent of no other person or persons, including but not limited to spouse, parent, custodian, or guardian, shall be necessary. [C71, 73, 75,§140.9]

140.10 Certificate not to be issued. No certificate of freedom from any venereal disease shall be issued to any person by any official health agency except as provided by chapter 596. [C71, 73, 75,§140.10]

140.11 Pregnant women. Each physician attending a pregnant woman in this state shall take or cause to be taken a sample of blood of each such woman within fourteen days of the first examination, and shall submit such sample for standard serological tests for syphilis to the state hygienic laboratory of the state university at Iowa City or some other laboratory approved by the state department of health. Every other person attending a pregnant woman in this state, but not permitted by law to take blood tests, shall cause a sample of blood of each such woman to be taken by a duly licensed physician, who shall submit such sample for standard serological tests for syphilis to the state hygienic laboratory of the state university at Iowa City or such other laboratories co-operating with and approved by the state department of health. If the blood of the pregnant woman reacts positively to such test, then, if she is married, the husband and other children by the same mother shall be subjected to the same blood tests as herein provided. If the pregnant woman is single, then the person responsible for the pregnancy and other children by the same mother shall be subjected to the same blood tests as herein provided. [C39,§2281.1; C46, 50, 54, 58, 62, 66, §140.3; C71, 73, 75,§140.11]

140.12 Blood tests in pregnancy cases. Physicians and others attending pregnancy cases and required to report births and stillbirths shall state on the appropriate birth or stillbirth certificate whether a blood test for syphilis was made during such pregnancy upon a specimen of blood taken from the mother of the subject child and if made, the date when such test was made, and if not made, the reason why such test was not made. In no event shall the birth certificate state the result of the test. [C39,§2281.2; C46, 50, 54, 58, 62, 66,§140.4; C71, 73, 75,§140.12]

140.13 Medical treatment of newly born. Each physician attending the birth of a child, shall cause to be instilled into the eyes of the newly born infant a prophylactic solution approved by the state department of health. This section shall not be construed to require medical treatment of the child of any person who is a member of a church or religious denomination and whose religious convictions, in accordance with the tenants or principles of his church or religious denomination, are against medical prophylaxis or treatment for disease.

[C24, 27, 31, 35, 39,§§**2313, 2315**; C46, 50, 54, 58, 62, 66,§§140.36, 140.38; C71, 73, 75,§140.13]
Referred to in §140.14

140.14 Religious exceptions. No provision of this chapter shall be construed to require or compel any person, whose religious convictions are as described in section 140.13, to take or follow a course of medical treatment prescribed by law or a physician. However, such person while in an infectious stage of disease shall be subject to isolation and such other measures appropriate for the prevention of the spread of the disease to other persons. [C39,§**2315.1**; C46, 50, 54, 58, 62, 66,§140.39; C71, 73, 75,§140.14]

140.15 Penalty. Any person violating any of the provisions of this chapter shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period not to exceed thirty days, or by both such fine and imprisonment. [C24, 27, 31, 35, 39,§§**2316, 2316.1**; C46, 50, 54, 58, 62, 66, §§140.40, 140.41; C71, 73, 75,§140.15]

140.16 to 140.41 Repealed by 63GA, ch 136,§1.

CHAPTER 141

TESTING FOR SICKLE CELL ANEMIA

Testing program appropriation, 66GA, ch 7

141.1 Definitions.
141.2 Blood test available.
141.3 School programs.
141.4 Premarital test.
141.5 Confidential information.
141.6 Penalty.

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

1. *"Commissioner"* means the commissioner of public health.
2. *"Sickle cell anemia"* means the disease commonly referred to by that name.
3. *"Sickle cell trait"* means the presence in an individual of the recessive gene which creates the possibility that the children of the individual, if the other parent also has sickle cell trait, may be afflicted with sickle cell anemia. [C75,§141.1]

141.2 Blood test available. The commissioner shall provide for a program that gives every child who is determined to be susceptible to sickle cell anemia or sickle cell trait an opportunity to be tested for the disease. The commissioner shall determine by rule those children who are susceptible to sickle cell anemia or sickle cell trait for the purposes of this chapter. All state, district, county and city health agencies shall co-operate and participate in the implementation of this section, and the commissioner shall promulgate rules providing for education, testing and counseling with regard to sickle cell anemia and sickle cell trait. No individual shall be discriminated against in any way because of either taking or refusing to take a test under this section. [C75, §141.2]

141.3 School programs. The board of directors of a school corporation in this state shall make available on a voluntary basis sickle cell trait and sickle cell anemia education and counseling for all elementary and secondary students. This program shall also be made available, as far as practicable, to the general public. The cost of providing this service shall not be the responsibility of the school corporation except insofar as the services are provided by school corporation employees in the course of their usual duties. [C75,§141.3]

141.4 Premarital test. Each applicant for a marriage license who has been determined to be susceptible to sickle cell trait shall have an opportunity to have their blood test, taken under section 596.1, analyzed for the purpose of ascertaining the existence of the trait. The commissioner shall promulgate rules to provide a method of implementing this section. No applicant shall in any way be denied a marriage license or discriminated against in any way because of either the results of the test done under this section or the refusal to take the test. [C75,§141.4]

141.5 Confidential information. All information obtained through the administration of this chapter, including all test results, medical records and other information regarding screening, counseling or treatment of any person treated, shall be held in strict confidentiality, except for (1) such information as the patient or his guardian consents to be released, or in the case of a minor, the parent or guardian, or (2) such statistical data compiled without reference to the identity of any patient. [C75,§141.5]

141.6 Penalty. A person who violates the confidentiality provision of this chapter shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not more than one hundred dollars. [C75,§141.6]

CHAPTER 142

DEAD BODIES FOR SCIENTIFIC PURPOSES

Referred to in §339.12

142.1 Delivery of bodies.
142.2 Furnished to physicians.
142.3 Notification of state department.
142.4 Surrender to relatives.
142.5 Disposition after dissection.
142.6 Record of receipt.
142.7 Record and bodies.
142.8 Purpose for which body used.
142.9 Failure to deliver dead body.
142.10 Use without proper record.
142.11 Penalties.
142.12 Repealed by 63GA, ch 137,§11.
142.13 Burial in private cemetery lot.

142.1 Delivery of bodies. The body of every person dying in a public asylum, hospital, county care facility, penitentiary, or reformatory in this state, or found dead within the state, or which is to be buried at public expense in this state, except those buried under the provisions of chapter 249, and which is suitable for scientific purposes, shall be delivered to the medical college of the state university, or some osteopathic or chiropractic college or school located in this state, which has been approved under the law regulating the practice of osteopathy or chiropractic; but no such body shall be delivered to any such college or school if the deceased person expressed a desire during his last illness that his body should be buried or cremated, nor if such is the desire of his relatives. Such bodies shall be equitably distributed among said colleges and schools according to their needs for teaching anatomy in accordance with such rules as may be adopted by the state department of health. The expense of transporting said bodies to such college or school shall be paid by the college or school receiving the same. In the event the deceased person has not expressed a desire during his last illness that his body should be buried or cremated and should have no relatives that request his body for burial or cremation, if a friend objects to the use of the deceased person's body for scientific purposes, said deceased person's body shall be forthwith delivered to such friend for burial or cremation at no expense to the state or county. Unless such friend provides for burial and burial expenses within five days, the body shall be used for scientific purposes under this chapter. [C73,§4018; C97,§4946; S13,§4946-b; C24, 27, 31, 35, 39,§**2351**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §142.1; 66GA, ch 67,§71]

Referred to in §§142.2, 142.3, 156.2(3), 252.27
Approval of osteopathic and chiropractic colleges, §§150A.4, 151.4

142.2 Furnished to physicians. When there are more dead bodies available for use under section 142.1 than are desired by said colleges or schools, the same may be delivered to physicians in the state for scientific study under such rules as may be adopted by the state department. [S13,§4946-b; C24, 27, 31, 35, 39,§**2352**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§142.2]

Referred to in §§142.3, 156.2(3), 156.5

142.3 Notification of state department. Every county medical examiner, funeral director or embalmer, and the managing officer of every public asylum, hospital, county care facility, penitentiary, or reformatory, as soon as any dead body shall come into his custody which may be used for scientific purposes as provided in sections 142.1 and 142.2, shall at once notify the nearest relative or friend of the deceased, if known, and the state department by telegram, and hold such body unburied for forty-eight hours. Upon receipt of such telegram the department shall telegraph instructions relative to the disposition to be made of said body. Complete jurisdiction over said bodies is vested exclusively in the state department of health. No autopsy or postmortem, except as are legally ordered by county medical examiners, shall be performed on any of said bodies prior to their delivery to the medical schools. [S13,§4946-c; C24, 27, 31, 35, 39,§**2353**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §142.3; 66GA, ch 67,§71]

142.4 Surrender to relatives. When any dead body which has been delivered under this chapter for scientific purposes is subsequently claimed by any relative, it shall be at once surrendered to such relative for burial without public expense; and all bodies received under this chapter shall be held for a period of thirty days before being used. Unless such person claiming the body for burial pays the costs that have been incurred in the care and transportation of the body within thirty days after claiming it, all rights thereto shall cease and the body may then be used as if no claim had been made.

This section shall not apply to bodies given under authority of the Uniform Anatomical Gift Act [ch 142A]. [C73,§4018; C97,§4946; S13, §§4946-c,-d; C24, 27, 31, 35, 39,§**2354**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§142.4]

142.5 Disposition after dissection. The remains of every body received for scientific purposes under this chapter shall be decently buried or cremated after it has been used for said purposes, and a failure to do so shall be a misdemeanor. [C73,§4019; C97,§4947; C24, 27, 31, 35, 39,§**2355**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§142.5]

Referred to in §156.2(3)
Punishment, §687.7

142.6 Record of receipt. Any college, school, or physician receiving the dead body of any human being for scientific purposes shall keep a record showing:

1. The name of the person from whom, and the time and place, such body was received.

2. The description of the receptacle in which the body was received, including the shipping direction attached to the same.

3. The description of the body, including the length, weight, and sex, apparent age at time of death, color of hair and beard, if any, and all marks or scars which might be used to identify the same.

4. The condition of the body and whether mutilated so as to prevent identification. [C97, §4948; C24, 27, 31, 35, 39,§2356; C46, 50, 54, 58, 62, 66, 71, 73, 75,§142.6]

Referred to in §§142.7, 142.10

142.7 Record and bodies. The record required by section 142.6 and the dead body of every human being received under this chapter shall be subject to inspection by any peace officer, or relative of the deceased. [C97,§§4948, 4949; C24, 27, 31, 35, 39,§2357; C46, 50, 54, 58, 62, 66, 71, 73, 75,§142.7]

142.8 Purpose for which body used. The dead bodies delivered under this chapter shall be used only within the limits of this state for the purpose of scientific, medical, and surgical study, and no person shall remove the same beyond the limits of this state or in any manner traffic therein. Any person who shall violate this section shall be punished by imprisonment for a term not exceeding one year in the county jail.

This section shall not apply to bodies given under authority of the Uniform Anatomical Gift Act.* [C73,§4020; C97,§4950; C24, 27, 31, 35, 39,§2358; C46, 50, 54, 58, 62, 66, 71, 73, 75,§142.8]

*Chapter 142A

142.9 Failure to deliver dead body. Any person having the custody of the dead body of any human being which is required to be delivered for scientific purposes by this chapter, who shall fail to notify the state department of the existence of such body, or fail to deliver the same in accordance with the instructions of the department, shall be punished by a fine not exceeding five hundred dollars. [S13, §4946-e; C24, 27, 31, 35, 39,§2359; C46, 50, 54, 58, 62, 66, 71, 73, 75,§142.9]

142.10 Use without proper record. Any physician or member of the instructional staff of any college or school who uses, or permits others under his charge to use the dead body of a human being for the purpose of medical or surgical study without the record required in section 142.6 having been made, or who shall refuse to allow any peace officer or relative of the deceased to inspect said record or body, shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [C97,§4949; C24, 27, 31, 35, 39,§2360; C46, 50, 54, 58, 62, 66, 71, 73, 75,§142.10]

142.11 Penalties. Any person who shall receive or deliver any dead body of a human being knowing that any of the provisions of this chapter have been violated, shall be imprisoned in the penitentiary not more than two years, or fined not exceeding twenty-five hundred dollars, or both. [S13,§4946-e; C24, 27, 31, 35, 39,§2361; C46, 50, 54, 58, 62, 66, 71, 73, 75,§142.11]

142.12 Repealed by 63GA, ch 137,§11, see ch 142A.

142.13 Burial in private cemetery lot. In the event such deceased person, whose body has been used for scientific purposes as provided herein, shall own or have the right of burial in a private or family cemetery lot in the state of Iowa, that such deceased person's body shall be buried in such lot. [C58, 62, 66, 71, 73, 75,§142.13]

CHAPTER 142A

UNIFORM ANATOMICAL GIFT LAW

Referred to in §§142.4, 142.8

142A.1 Definitions.
142A.2 Persons who may execute an anatomical gift.
142A.3 Persons who may become donees, and purposes for which anatomical gifts may be made.
142A.4 Manner of executing anatomical gifts.
142A.5 Delivery of document of gift.
142A.6 Amendment or revocation of the gift.
142A.7 Rights and duties at death.
142A.8 Service but not a sale.
142A.9 Uniformity of interpretation.
142A.10 Short title.

142A.1 Definitions.

1. *"Bank or storage facility"* means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof.

2. *"Decedent"* means a deceased individual and includes a stillborn infant or fetus.

3. *"Donor"* means an individual who makes a gift of all or part of his body.

4. *"Hospital"* means a hospital licensed under the laws of this state, or licensed, accredited, or approved under the laws of any other state and includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

5. *"Part"* includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body, and "part" includes "parts".

6. *"Person"* means an individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

7. *"Physician"* or *"surgeon"* means a physician, surgeon, or osteopathic physician and surgeon, licensed or authorized to practice under the laws of any state.

8. *"State"* includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America. [C71, 73, 75,§142A.1]

142A.2 Persons who may execute an anatomical gift.

1. Any individual of sound mind and eighteen years of age or more may give all or any part of his body for any purposes specified in section 142A.3, the gift to take effect upon death.

2. Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent, or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purposes specified in section 142A.3:

a. The spouse.
b. An adult son or daughter.
c. Either parent.
d. An adult brother or sister.
e. A guardian of the person of the decedent at the time of his death.
f. Any other person authorized or under obligation to dispose of the body.

The persons authorized by this subsection may make the gift after death or immediately before death.

3. If the donee has actual notice of contrary indications by the decedent, or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift.

4. A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

5. The rights of the donee created by the gift are paramount to the rights of others except as provided by section 142A.7, subsection 4. [C58, 62, 66,§142.12; C71, 73, 75,§142A.2]

Referred to in §142A.4

142A.3 Persons who may become donees, and purposes for which anatomical gifts may be made. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

1. Any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation.

2. Any accredited medical or dental school, college, or university, for education, research, advancement of medical or dental science, or therapy.

3. Any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation.

4. Any specified individual for therapy or transplantation needed by him. [C58, 62, 66, §142.12; C71, 73, 75,§142A.3]

Referred to in §142A.2

142A.4 Manner of executing anatomical gifts.

1. A gift of all or part of the body under section 142A.2, subsection 1 may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

2. A gift of all or part of the body under section 142A.2, subsection 1, may also be made by a document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor, in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence, and in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

3. The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part, except as provided in section 142A.7, subsection 2.

4. Notwithstanding section 142A.7, subsection 2, the donor may designate in his will, card or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation, or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

5. Any gift by a person designated in section 142A.2, subsection 2 shall be made by a document signed by him, or made by his telegraphic, recorded telephonic or other recorded message. [C71, 73, 75,§142A.4]

142A.5 Delivery of document of gift. If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank, or storage facility, or registry office that accepts documents for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination. [C71, 73, 75,§142A.5]

142A.6 Amendment or revocation of the gift.

1. If the will, card, or other document, or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

a. The execution and delivery to the donee of a signed statement.

b. An oral statement made in the presence of two persons and communicated to the donee.

c. A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee.

d. A signed card or document found on his person or in his effects.

2. Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection 1, or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

3. Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection 1. [C71, 73, 75,§142A.6]

142A.7 Rights and duties at death.

1. The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

2. The time of death shall be determined by a physician who attends the donor at his death, or, if none, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part, the enucleation of eyes being the exception. A licensed funeral director or embalmer, as defined in chapter 156, upon successfully completing a course in eye enucleation and receiving a certificate of competence from the department of ophthalmology, college of medicine, of the University of Iowa, may enucleate the eyes of a donor.

3. A person who acts in good faith in accordance with the terms of this chapter, or under the anatomical gift laws of another state, is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

4. The provisions of this chapter are subject to the laws of this state prescribing powers and duties with respect to autopsies. [C71, 73, 75,§142A.7]

Referred to in §§142A.2, 142A.4

142A.8 Service but not a sale. The procurement, processing, distribution or use of whole blood, plasma, blood products, blood derivatives and other human tissues such as corneas, bones or organs for the purpose of injecting, transfusing or transplanting any of them into the human body is declared to be, for all purposes, the rendition of a service by every person participating therein and, whether or not any remuneration is paid therefor, is declared not to be a sale of such whole blood, plasma, blood products, blood derivatives or other tissues, for any purpose, subsequent to July 1, 1969. However, any person or entity that renders such service warrants only under this section that due care has been exercised and that acceptable professional standards of care in providing such service according to the current state of the medical arts have been followed. Strict liability, in tort, shall not be applicable to the rendition of such service. [C71, 73, 75,§142A.8]

142A.9 Uniformity of interpretation. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [C71, 73, 75, §142A.9]

142A.10 Short title. This chapter may be cited as the "Uniform Anatomical Gift Act". [C71, 73, 75,§142A.10]

CHAPTER 143

PUBLIC HEALTH NURSES

143.1 Authority to employ.
143.2 Co-operation.
143.3 Duties.

143.1 Authority to employ. Any local board of health, area education agency board or the school board of any school district may employ public health nurses at such periods each year and in such numbers as may be deemed advisable. The board of supervisors of any county, the council of any city, or the school board of any school district, or any of them acting in co-operation, may contract with any nonprofit nurses' association for public health nursing service. The compensation and expenses thereof shall be paid out of the general fund of the political subdivision employing said nurses. [C24, 27, 31, 35, 39,§2362; C46, 50, 54, 58, 62, 66, 71, 73, 75,§143.1]

143.2 Co-operation. The said boards may co-operate in the employment of public health nurses and may apportion the expenses therefor to the various political subdivisions represented by said authorities. [C24, 27, 31, 35, 39, §2363; C46, 50, 54, 58, 62, 66, 71, 73, 75,§143.2]

143.3 Duties. The authorities employing any public health nurses shall prescribe their duties which in a general way shall be for the promotion and conservation of the public health. [C24, 27, 31, 35, 39,§2364; C46, 50, 54, 58, 62, 66, 71, 73, 75,§143.3]

CHAPTER 144

VITAL STATISTICS

Referred to in §§135.11(12), 339,13, 339.14

144.1 Definitions.
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144.52 Unlawful acts—punishment.
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144.54 Report to county attorney.
144.55 Attorney general to assist in enforcement.
144.56 Autopsy.
144.57 Vietnamese refugee children.

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

1. *"Board"* means the state board of health.
2. *"Department"* means the state department of health.
3. *"Division"* means a division, within the department, for records and statistics.
4. *"State registrar"* means the state registrar of vital statistics.
5. *"Institution"* means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial, or domiciliary care to two or more unrelated individuals, or to which persons are committed by law.
6. *"Vital statistics"* means records of births, deaths, fetal deaths, adoptions, marriages, divorces, annulments, and data related thereto.
7. *"System of vital statistics"* includes the registration, collection, preservation, amendment, and certification of vital statistics records, and activities and records related thereto including the data processing, analysis, and publication of statistical data derived from such records.
8. *"Filing"* means the presentation of a certificate, report, or other record, provided for in this chapter, of a birth, death, fetal death, adoption, marriage, divorce*, or annulment for registration by the division.
9. *"Registration"* means the acceptance by the division and the incorporation in its official records of certificates, reports, or other records, provided for in this chapter, of births, deaths, fetal deaths, adoptions, marriages, divorces, or annulments.
10. *"Live birth"* means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.
11. *"Fetal death"* means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy. Death is indicated by the fact that after expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.
12. *"Dead body"* means a lifeless human body or parts or bones of a body, if, from the state of the body, parts, or bones, it may reasonably be concluded that death recently occurred.
13. *"Final disposition"* means the burial, interment, cremation, removal from the state, or other disposition of a dead body or fetus. [C24, 27, 31, 35, 39,§§2317, 2384; C46, 50, 54, 58, 62, 66,§§141.1, 144.1; C71, 73, 75,§144.1]

*See chapter 598

144.2 Division of records and statistics. There is hereby established in the department a division for records and statistics which shall install, maintain, and operate the system of vital statistics throughout the state. No system for the registration of births, deaths, fetal deaths, adoptions, marriages, divorces*, and annulments, shall be maintained in the state or any of its political subdivisions other than the one provided for in this chapter. Suitable quarters shall be provided for the division by the executive council at the seat of government. The quarters shall be properly equipped for the permanent and safe preservation of all official records made and returned under this chapter. [C24, 27, 31, 35, 39,§§2388, 2432; C46, 50, 54, 58, 62, 66,§§144.3, 144.49; C71, 73, 75, §144.2]

*See chapter 598

144.3 Rules adopted. The department may adopt, amend, and repeal rules for the purpose of carrying out the provisions of this chapter, in accordance with chapter 17A. [C71, 73, 75,§144.3]

144.4 Registrar. The commissioner of public health shall be the state registrar of vital statistics and shall carry out the provisions of this chapter. [C24, 27, 31, 35, 39,§2387; C46, 50, 54, 58, 62, 66,§144.2; C71, 73, 75,§144.4]

144.5 Duties of registrar. The state registrar shall:

1. Administer and enforce this chapter and the rules issued hereunder, and issue instructions for the efficient administration of the state-wide system of vital statistics and the division for records and statistics.
2. Direct and supervise the state-wide system of vital statistics and the division for records and statistics and be custodian of its records.
3. Direct, supervise, and control the activities of local registrars and deputy local registrars, and the activities of clerks of the district court related to the operation of the vital statistics system and provide registrars with necessary postage.
4. Prescribe, print, and distribute the forms required by this chapter.
5. Prepare and publish annual reports of vital statistics of this state and other reports as may be required.
6. Delegate functions and duties vested in him to officers, employees of the department, and to the local registrars as he deems necessary or expedient.
7. Provide, by rules, for appropriate morbidity reporting. [C24, 27, 31, 35, 39,§2393; C46, 50, 54, 58, 62, 66,§144.8; C71, 73, 75,§144.5]

144.6 Registration districts. The state registrar shall from time to time establish registration districts throughout the state and may consolidate or subdivide districts to facilitate registration, provided that no district shall contain less than one county. [C71, 73, 75, §144.6]

144.7 Local registrars. The county registrar, with the approval of the state registrar, shall appoint a local registrar and one or more deputy local registrars of vital statistics for each registration district. Any local and deputy local registrar appointed may be removed by the state registrar for reasonable cause. [C24, 27, 31, 35, 39,§§2389, 2392; C46, 50, 54, 58, 62, 66,§§144.6, 144.7; C71, 73, 75,§144.7]

144.8 Duties. The local registrar, with respect to his registration district shall:

1. Administer and enforce the provisions of this chapter and instructions and rules issued by the department.

2. Require that certificates be completed and filed with the county registrar.

3. Transmit the certificates, reports, or other returns filed with him to the county registrar at least weekly, or more frequently when directed by the county registrar.

4. Maintain records, make reports, and perform other duties required by the state registrar.

The deputy local registrar shall perform the duties of the local registrar in the absence or incapacity of the local registrar and such other duties as may be prescribed. [C24, 27, 31, 35, 39,§2394; C46, 50, 54, 58, 62, 66,§144.9; C71, 73, 75,§144.8]

144.9 Clerk of court as registrar. The clerk of the district court shall be the county registrar and with respect to his registration district shall:

1. Administer and enforce the provisions of this chapter and the rules issued by the department, and exercise general supervision over the local and deputy local registrars in his district.

2. Record and transmit the certificates, reports, or other returns filed with him to the state registrar at least semimonthly, or more frequently when directed by the state registrar. [C46, 50, 54, 58, 62, 66,§§144.4, 144.10; C71, 73, 75,§144.9]

144.10 Fees. Each local registrar shall be paid fifty cents for each certificate of birth, death, or fetal death registered by him and transmitted to the county or state registrar. If no birth, death, or fetal death is registered by him during any calendar month, the local registrar shall report such fact to the county registrar. No compensation shall be paid under this section to any full-time employee of a state or local unit of government. [C24, 27, 31, 35, 39,§§2417, 2418; C46, 50, 54, 58, 62, 66,§§144.32, 144.33; C71, 73, 75,§144.10]

144.11 Fees paid by county auditor. The state registrar shall certify to the auditor of the county, monthly, quarterly, semiannually or annually the number of birth, death, and fetal death certificates registered by each local registrar with the names of the local registrars and the amount due. Upon such certification the fees due the local registrars shall be paid by the auditor of the county out of the general fund of the county. [C24, 27, 31, 35, 39,§2420; C46, 50, 54, 58, 62, 66,§144.35; C71, 73, 75,§144.11]

144.12 Forms uniform. In order to promote and maintain uniformity in the system of vital statistics, the forms of certificates, reports, and other returns, shall include as a minimum the items recommended by the federal agency responsible for national vital statistics subject to approval and modification by the department. Forms shall be furnished by the department. The forms or other recording methods used by county and local registrars to record copies of records made under this chapter shall be prescribed by the department. [C71, 73, 75,§144.12]

Referred to in §595.15

144.13 Birth certificates. Certificates of births shall be filed as follows:

1. A certificate of birth for each live birth which occurs in this state shall be filed with the local registrar of the district in which the birth occurs within five days after the birth and shall be registered by the registrar if it has been completed and filed in accordance with this chapter; provided that when a birth occurs in a moving conveyance, a birth certificate shall be filed in the district in which the child was first removed from the conveyance.

2. When a birth occurs in an institution, the person in charge of the institution or his designated representative shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file the certificate with the local registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required by the certificate within three days after the birth.

3. When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

a. The physician in attendance at or immediately after the birth.

b. Any other person in attendance at or immediately after the birth.

c. The father or the mother.

d. The person in charge of the premises where the birth occurred.

4. In the case of a child born out of wedlock, the certificate shall be filed directly with the state registrar.

If the mother was married either at the time of conception or birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.

If the mother was not married either at the time of conception or birth, the name of the father shall not be entered on the cer-

tificate of birth without the written consent of the mother and the person to be named as the father, unless a determination of paternity has been made by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered. [C24, 27, 31, 35, 39,§§2397, 2398, 2399, 2400, 2401; C46, 50, 54, 58, 62, 66,§§144.12–144.16; C71, 73, 75,§144.13]

144.14 Foundlings. Whoever assumes the custody of a living infant of unknown parentage shall report on a form and in the manner prescribed by the state registrar within five days to the local registrar of the district in which the child was found, the following information:

1. The date and place of finding.
2. The sex, color or race, and approximate age of child.
3. The name and address of the person or institution which has assumed custody of the child.
4. The name given to the child by the custodian.
5. Other data required by the state registrar.

The place where the child was found shall be entered as the place of birth and the date of birth shall be determined by approximation. A report registered under this section shall constitute the certificate of birth for the infant.

If the child is identified and a certificate of birth is found or obtained, any report registered under this section shall be sealed and filed and may be opened only by order of a court of competent jurisdiction or as provided by regulation. [C71, 73, 75,§144.14]

144.15 Delayed registrations of birth. When the birth of a person born in this state has not been registered, a certificate may be filed in accordance with regulations. The certificate shall be registered subject to evidentiary requirements prescribed to substantiate the alleged facts of birth. Certificates of birth registered one year or more after the date of occurrence shall be marked "delayed" and shall show on their face the date of the delayed registration. A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate.

When an applicant does not submit the substantiating evidence required for delayed registration or when the state registrar finds reason to question the validity or adequacy of the evidence, the state registrar shall not register the delayed certificate and shall advise the applicant of the reasons for this action. The registration official shall advise the applicant of his right of appeal to the district court pursuant to sections 144.17 and 144.18, which sections shall be applicable to such appeal notwithstanding the terms of the Iowa administrative procedure Act.

The department may by regulation provide for the dismissal of an application which is not actively prosecuted. [C71, 73, 75,§144.15]

Referred to in §§144.17, 144.25

144.16 Delayed registration of death or marriage. When a death or marriage occurring in this state has not been registered, a certificate may be filed in accordance with regulations. Such certificate shall be registered subject to evidentiary requirements prescribed to substantiate the alleged facts of death or marriage. Certificates of death and marriage registered one year or more after the date of occurrence shall be marked "delayed" and shall show on their face the date of the delayed registration. [C71, 73, 75,§144.16]

144.17 Petition to establish certificate. If a delayed certificate of birth is rejected under the provisions of section 144.15, a petition may be filed with the district court for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered. The petition shall be made on a form prescribed and furnished by the state registrar and shall allege:

1. That the person for whom a delayed certificate of birth is sought was born in this state.
2. That no record of birth of such person can be found in the office of the state or local custodian of birth records.
3. That diligent efforts by the petitioner have failed to obtain the evidence required in accordance with section 144.15.
4. That the state registrar has refused to register a delayed certificate of birth.
5. Such other allegations as may be required.

The petition shall be accompanied by a statement of the registration official made in accordance with section 144.15 and all documentary evidence which was submitted to the registration official in support of such registration. The petition shall be verified by the petitioner. [C71, 73, 75,§144.17]

Referred to in §§144.15, 144.25

144.18 Court hearing. The court shall fix a time and place for hearing the petition and shall give the registration official who refused to register the petitioner's delayed certificate of birth at least ten days' notice of such hearing. If both persons to be named as parents are not a party to the petition, such person or persons, if living, shall also be given at least ten days' notice of the hearing. The court shall prescribe the manner of such notice. Such official, or his authorized representative, may appear and testify in the proceeding.

If the court from the evidence presented finds that the person for whom a delayed certificate of birth is sought was born in this state, it shall make findings as the case may require and shall issue an order on a form prescribed and furnished by the state registrar to establish a record of birth. The order shall

include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

The clerks of the district court shall forward each order to the state registrar not later than the tenth day of the calendar month following the month in which it was entered. The order shall be registered by the state registrar and shall constitute the record of birth, from which copies may be issued in accordance with sections 144.42 to 144.46, inclusive. [C71, 73, 75,§144.18]

Referred to in §§144.15, 144.25

144.19 Adoption certificate. For each adoption decreed by any court in this state, the court shall require the preparation of a certificate of adoption on a form prescribed and furnished by the state registrar. The certificate shall include a report of such facts as are necessary to locate and identify the certificate of birth of the person adopted, provide information necessary to establish a new certificate of birth of the person adopted, and shall identify the order of adoption and be certified by the clerk of the court. [C46, 50, 54, 58, 62, 66,§144.44; C71, 73, 75,§144.19]

Referred to in §§144.23, 600.13

144.20 Information. Information in the possession of the petitioner necessary to prepare the adoption report shall be furnished with the petition for adoption by each petitioner for adoption or his attorney. The social agency, welfare agency, or other person concerned shall supply the court with such additional information in their possession as necessary to complete the certificate. The provision of such information shall be submitted to the court prior to the issuance of a final decree in the matter by the court, unless found by the court to be unavailable after diligent inquiry. [C71, 73, 75, §144.20]

144.21 Amended record. Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a certificate, which shall include facts necessary to identify the original adoption report, and facts in the adoption decree necessary to properly amend the birth record. [C46, 50, 54, 58, 62, 66,§144.44; C71, 73, 75,§144.21]

144.22 Clerk to report to state registrar. Not later than the tenth day of each calendar month, the clerk of the court shall forward to the state registrar certificates of adoption, or amendment or annulment of adoption, entered in the preceding month, together with such related reports as the state registrar requires. The state registrar, upon receipt from a court of a certificate of adoption, or amendment or annulment of adoption, for a person born outside this state shall forward the certificate to the appropriate registration authority in the state of birth. [C46, 50, 54, 58, 62, 66,§144.44; C71, 73, 75,§144.22]

144.23 State registrar to issue new certificate. The state registrar shall establish a new certificate of birth for a person born in this state, when he receives the following:

1. An adoption certificate as provided in section 144.19, or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person.

2. A request that a new certificate be established and evidence proving that the person for whom the new certificate is requested has been legitimated, or that a court of competent jurisdiction has determined the paternity of the person.

3. A notarized affidavit by a licensed physician and surgeon or osteopathic physician and surgeon stating that by reason of surgery or other treatment by the licensee, the sex designation of the person has been changed. The state registrar may make a further investigation or require further information necessary to determine whether a sex change has occurred. [C24, 27, 31, 35, 39,§**2406**; C46, 50, 54, 58, 62, 66,§§144.21, 144.44; C71, 73, 75,§144.23; 66GA, ch 1111,§1]

Referred to in §600.13

144.24 Substituting for original. When a new certificate of birth is established, the actual place and date of birth shall be shown. The certificate shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity, legitimation or sex change shall not be subject to inspection except under order of a court of competent jurisdiction or as provided by regulation for statistical or administrative purposes, only. Upon receipt of notice of annulment of adoption, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of the district court. [C24, 27, 31, 35, 39,§**2406**; C46, 50, 54, 58, 62, 66, §§144.21, 144.44; C71, 73, 75,§144.24; 66GA, ch 1111,§2]

144.25 No previous certificate—procedure. If no certificate of birth is on file for the person for whom a new certificate is to be established, a delayed certificate of birth shall be filed with the state registrar as provided in section 144.15, or sections 144.17 and 144.18, before a new certificate of birth is established, except that when the date and place of birth and parentage have been established in the adoption proceedings, a delayed certificate shall not be required.

When a new certificate of birth is established by the state registrar, all copies of the original certificate of birth in the custody of any custodian of permanent local records in this state shall be sealed from inspection or forwarded to the state registrar of vital statistics, as he shall direct. [C71, 73, 75,§144.25]

144.26 Death certificate. A death certificate for each death which occurs in this state shall

be filed with the local registrar of the district in which the death occurred within three days after the death and prior to final disposition, and shall be registered by the registrar if it has been completed and filed in accordance with this chapter. All information including the certifying physician's name shall be typewritten.

If the place of death is unknown, a death certificate shall be filed in the registration district in which a dead body is found within three days after the body is found. If death occurs in a moving conveyance, a death certificate shall be filed in the registration district in which the dead body was first removed from the conveyance. [SS15,§587-b; C24, 27, 31, 35, 39, §2319; C46, 50, 54, 58, 62, 66,§141.3; C71, 73, 75,§144.26]

Referred to in §§144.32, 144.35

144.27 Funeral director's duty. The funeral director who first assumes custody of a dead body shall file the death certificate. He shall obtain the personal data from the next of kin or the best qualified person or source available and shall obtain the medical certification of cause of death from the person responsible for issuing and signing the certification. When a person other than a funeral director assumes custody of a dead body, the person shall be responsible for carrying out the provisions of this section. [C24, 27, 31, 35, 39,§2321; C46, 50, 54, 58, 62, 66,§141.5; C71, 73, 75,§144.27]

Referred to in §144.32

144.28 Medical certificate. The medical certification shall be completed and signed within twenty-four hours after death by the physician in charge of the patient's care for the illness or condition which resulted in death except when inquiry is required by the county medical examiner. When inquiry is required by the county medical examiner, the medical examiner shall investigate the cause of death and shall complete and sign the medical certification within twenty-four hours after taking charge of the case. [C24, 27, 31, 35, 39,§2320; C46, 50, 54, 58, 62, 66,§141.4(18); C71, 73, 75, §144.28]

Referred to in §§144.32, 144.35

144.29 Fetal deaths. A fetal death certificate for each fetal death which occurs in this state after a gestation period of twenty completed weeks or more shall be filed with the local registrar of the district in which the delivery of the dead fetus occurred within three days after delivery and prior to final disposition of the fetus and shall be registered if it has been completed and filed in accordance with this chapter.

If the place of delivery of a dead fetus is unknown, a fetal death certificate shall be filed in the registration district in which a dead fetus was found within three days after the fetus is found. If a fetal death occurs in a moving conveyance, a fetal death certificate shall be filed in the registration district in which the fetus was first removed from the conveyance. [C24, 27, 31, 35, 39,§2405; C46, 50, 54, 58, 62, 66,§144.20; C71, 73, 75,§144.29]

Referred to in §§144.32, 144.35

144.30 Funeral director's duty. The funeral director who first assumes custody of a fetus shall file the fetal death certificate. In the absence of such a person, the physician or other person in attendance at or after the delivery shall file the certificate of fetal death. The person filing the certificate shall obtain the personal data from the next of kin or the best qualified person or source available and shall obtain the medical certification of cause of death from the person responsible for issuing and signing the certification. When a person other than a funeral director assumes custody of a fetus, the person shall be responsible for carrying out the provisions of this section. [C71, 73, 75,§144.30]

Referred to in §144.32

144.31 Medical certificate. The medical certification shall be completed and signed within twenty-four hours after delivery by the physician in attendance at or after delivery except when inquiry is required by the county medical examiner.

When a fetal death occurs without medical attendance upon the mother at or after delivery or when inquiry is required by the county medical examiner, the medical examiner shall investigate the cause of fetal death and shall complete and sign the medical certification within twenty-four hours after taking charge of the case. [C24, 27, 31, 35, 39,§§2322, 2323, 2405; C46, 50, 54, 58, 62, 66,§§141.6, 141.7, 144.20; C71, 73, 75,§144.31]

Referred to in §§144.32, 144.35

144.32 Burial-transit permit. The funeral director who first assumes custody of a dead body or fetus shall obtain a burial-transit permit prior to final disposition of the body or fetus and within seventy-two hours after death. When a person other than a funeral director assumes custody of a dead body or fetus, the person shall be responsible for securing the permit required in this section. A burial-transit permit shall be issued by the local registrar of the district where the certificate of death or fetal death was filed in accordance with the requirements of sections 144.26 to 144.31. [SS13,§§2575-a39,-a43; C24, 27, 31, 35, 39,§§2328, 2333; C46, 50, 54, 58, 62, 66,§§141.12, 141.17; C71, 73, 75,§144.32]

Referred to in §144.35

144.33 Bodies brought into state. A burial-transit permit issued under the law of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state. [C24, 27, 31, 35, 39,§2324; C46, 50, 54, 58, 62, 66,§141.18; C71, 73, 75,§144.33]

144.34 Disinterment—permit. Disinterment of a dead body or fetus shall be allowed for the purpose of autopsy or reburial only, and then

only if accomplished by a licensed funeral director or embalmer. A permit for such disinterment and, thereafter, reinterment shall be issued by the state registrar according to rules adopted pursuant to chapter 17A or when ordered by the district court of the county in which such body is buried. The state registrar, without a court order, shall not issue a permit without the consent of the surviving spouse or in case of such spouse's absence, death, or incapacity, the next of kin. Disinterment for the purpose of reburial may be allowed by court order only upon a showing of substantial benefit to the public. Disinterment for the purpose of autopsy or reburial by court order shall be allowed only when reasonable cause is shown that someone is criminally or civilly responsible for such death, after hearing, upon reasonable notice prescribed by the court to the surviving spouse or in his or her absence, death, or incapacity, the next of kin. Due consideration shall be given to the public health, the dead, and the feelings of relatives. [C24, 27, 31, 35, 39,§§2337, 2338; C46, 50, 54, 58, 62, 66,§§141.21, 141.22; C71, 73, 75,§144.34]

Referred to in §144.52

144.35 Extensions of time by rules. The department may, by regulation and upon such conditions as it may prescribe to assure compliance with the purposes of this chapter, provide for extension of the periods prescribed in sections 144.26, 144.28, 144.29, 144.31, and 144.32 for filing of death certificates, fetal death certificates, medical certifications of cause of death and for the obtaining of burial-transit permits in cases in which compliance with the applicable prescribed period would result in undue hardship.

Regulation of the department may provide for the issuance of a burial-transit permit under section 144.32 prior to the filing of a complete certificate of death or fetal death upon conditions designed to assure compliance with the purposes of this chapter in cases in which compliance with the requirement that the complete certificate be filed prior to the issuance of the permit would result in undue hardship. [C24, 27, 31, 35, 39,§2318; C46, 50, 54, 58, 62, 66,§141.2(2); C71, 73, 75,§144.35]

144.36 Marriage certificate filed—prohibited information.

1. A certificate recording each marriage performed in this state shall be filed with the state registrar. The clerk of the district court shall prepare the certificate on the form furnished by the state registrar upon the basis of information obtained from the parties to be married, who shall attest to the information by their signatures. The clerk of the district court in each county shall keep a record book for marriages. The form of marriage record books shall be uniform throughout the state and shall be prescribed by the state department. Marriage record books shall be provided at county expense. A properly indexed permanent record of marriage certificates upon microfilm, electronic computer, or data processing equipment may be kept instead of marriage record books.

2. Every person who performs a marriage shall certify the fact of marriage and return the certificate to the clerk of the district court within fifteen days after the ceremony. The certificate shall be signed by the witnesses to the ceremony and the person performing the ceremony.

3. The certificate of marriage shall not contain information concerning the race of the married persons, previous marriages of the married persons, or the educational level of the married persons.

4. The clerk of the district court shall record and forward to the state registrar on or before the tenth day of each calendar month the original certificates of marriages filed with him during the preceding calendar month. [C24, 27, 31, 35, 39,§§2421, 2422, 2425; C46, 50, 54, 58, 62, 66,§§144.36, 144.37, 144.40; C71, 73, 75, §144.36; 66GA, ch 1112,§1]

See also §595.13 for certificate

144.37 Divorce or annulment. For each divorce* or annulment of marriage granted by any court in this state, a record shall be prepared by the clerk of court or by the petitioner or his legal representative if directed by the clerk and filed by the clerk of court with the state registrar. The information necessary to prepare the report shall be furnished with the petition, to the clerk of court by the petitioner or his legal representative, on forms supplied by the state registrar.

The clerk of the district court in each county shall keep a record book for divorces. The form of divorce record books shall be uniform throughout the state and shall be prescribed by the state department. Divorce record books shall be provided at county expense. A properly indexed record of divorces upon microfilm, electronic computer, or data processing equipment may be kept instead of divorce record books.

On or before the tenth day of each calendar month, the clerk of court shall forward to the state registrar the record of each divorce and annulment granted during the preceding calendar month and such related reports as may be required by regulations issued under this chapter. [C24, 27, 31, 35, 39,§§2421, 2423, 2425; C46, 50, 54, 58, 62, 66,§§144.36, 144.38, 144.40; C71, 73, 75,§144.37]

*See chapter 598

144.38 Amendment of official record. To protect the integrity and accuracy of vital statistics records, a certificate or record registered under this chapter may be amended only in accordance with this chapter and regulations adopted hereunder. A certificate that is amended under this section shall be marked "amended" except as provided in section 144.40. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The depart-

ment shall prescribe by regulation the conditions under which additions or minor corrections shall be made to birth certificates within one year after the date of birth without the certificate being marked "amended." [C24, 27, 31, 35, 39,§§2402, 2404; C46, 50, 54, 58, 62, 66, §§144.17, 144.19, 144.44, 144.45; C71, 73, 75, §144.38]

Referred to in §144.41

144.39 Change of name. Upon receipt of a certified copy of a court order from a court of competent jurisdiction or certificate of the clerk of court pursuant to chapter 674 changing the name of a person born in this state and upon request of such person or his parent, guardian, or legal representative, the state registrar shall amend the certificate of birth to reflect the new name. [C71, 73, 75,§144.39]

Referred to in §144.41

144.40 Paternity of children out of wedlock. Upon request and receipt of a sworn acknowledgment of paternity of a child born out of wedlock signed by both parents, the state registrar shall amend a certificate of birth to show paternity if paternity is not shown on the birth certificate. Upon written request of the parents, the surname of the child may be changed on the certificate to that of the father. Such certificate shall not be marked "amended". [C24, 27, 31, 35, 39,§2406; C46, 50, 54, 58, 62, 66,§144.21; C71, 73, 75,§144.40]

Referred to in §§144.38, 144.41

144.41 Amending local records. When a certificate is amended under sections 144.38 to 144.40 the state registrar shall report the amendment to the custodian of any permanent local records and such records shall be amended accordingly. [C71, 73, 75,§144.41]

144.42 Reproduction of original records. To preserve original documents, the state registrar may prepare typewritten, photographic, or other reproductions of original records and files in his office. Such reproductions when certified by him shall be accepted as the original record. [C71, 73, 75,§144.42]

Referred to in §144.18

144.43 Vital records closed to inspection—exceptions. To protect the integrity of vital statistics records, to insure their proper use, and to insure the efficient and proper administration of the vital statistics system kept by the state registrar, access to vital statistics records kept by the state registrar shall be limited to the state registrar and his employees, and then only for administrative purposes. It shall be unlawful for the state registrar to permit inspection of, or to disclose information contained in vital statistics records, or to copy or permit to be copied all or part of any such record except as authorized by regulation.

The provisions of this section shall not apply to the following vital statistics if they are sixty-five years old or older:

1. A record of birth if that birth did not occur out of wedlock.

2. A record of marriage.

3. A record of divorce, dissolution of marriage, or annulment of marriage.

4. A record of death if that death was not a fetal death.

However, a vital statistic, as described in this paragraph, shall be inspected and copied, as of right under chapter 68A, only when they are in the custody of a county or of a local registrar. [C46, 50, 54, 58, 62, 66,§144.45; C71, 73, 75,§144.43]

Referred to in §144.18

144.44 Permits for research. The department may permit access to vital statistics by professional genealogists and historians, and may authorize the disclosure of data contained in vital statistics records when deemed essential for bona fide research purposes which are not for private gain. Information in vital statistics records indicating that a birth occurred out of wedlock shall not be disclosed except as provided by regulation or upon order of a district court. [C24, 27, 31, 35, 39, §§2406, 2415; C46, 50, 54. 58, 62, 66,§§144.21, 144.30; C71, 73, 75,§144.44]

Referred to in §144.18

144.45 Certified copies. The state registrar and the clerk of the district court shall, upon written request from any applicant entitled to such record, issue a certified copy of any certificate or record in his custody or of a part thereof. Each copy issued shall show the date of registration; and copies issued from records marked "delayed", "amended", or "court order" shall be similarly marked and show the effective date.

A certified copy of a certificate, or any part thereof, shall be considered for all purposes the same as the original and shall be prima-facie evidence of the facts therein stated, provided that the evidentiary value of a certificate or record filed more than one year after the event, or a record which has been amended, shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

The national division of vital statistics may be furnished copies or data which it requires for national statistics, provided that the state be reimbursed for the cost of furnishing data, and provided further that data shall not be used for other than statistical purposes by the national division of vital statistics unless so authorized by the state registrar.

Federal, state, local, and other public or private agencies may, upon written request, be furnished copies or data for statistical purposes upon terms or conditions prescribed by the department.

No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a certificate of birth, death, fetal death, or marriage except as authorized in this chapter. [S13,§2575-a45; C24,

27, 31, 35, 39,§§**2349, 2416, 2426, 2429, 2431**; C46, 50, 54, 58, 62, 66,§§**141.33**, 144.31, 144.41, 144.46, 144.48; C71, 73, 75,§144.45]

Referred to in §144.18

144.46 Fee for copy of record. A fee of two dollars per copy shall be collected for each certified copy or short form certification of certificates or records, or for a search of the files or records when no copy is made, or when no record is found on file. Fees collected under this section shall be deposited in the general fund. [C24, 27, 31, 35, 39,§§**2417, 2418, 2427**; C46, 50, 54, 58, 62, 66,§§144.32, 144.33, 144.42; C71, 73, 75,§144.46]

Referred to in §§144.18, 600.13

144.47 Persons confined in institutions. Every person in charge of an institution shall keep a record of personal particulars and data concerning each person admitted or confined to the institution. This record shall include information required by the standard certificate of birth, death, and fetal death forms issued under the provisions of this chapter. The record shall be made at the time of admission from information provided by such person, but when it cannot be so obtained, the same shall be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information shall be a part of the record. [C24, 27, 31, 35, 39,§§**2407, 2408, 2409**; C46, 50, 54, 58, 62, 66,§§144.22, 144.23, 144.24; C71, 73, 75, §144.47]

Referred to in §144.50

144.48 Institutional dead persons. When a dead human body is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the deceased, date of death, name and address of the person to whom the body is released, date of removal from the institution, or if finally disposed of by the institution, the date, place, and manner of disposition shall be recorded. [C24, 27, 31, 35, 39,§**2407**; C46, 50, 54, 58, 62, 66,§144.22; C71, 73, 75,§144.48]

Referred to in §144.50

144.49 Additional record by funeral director. A funeral director, embalmer, or other person who removes from the place of death or transports or finally disposes of a dead body or fetus, in addition to filing any certificate or other form required by this chapter, shall keep a record which shall identify the body, and information pertaining to his receipt, removal, and delivery of the body as prescribed by the department. [C24, 27, 31, 35, 39,§**2414**; C46, 50, 54, 58, 62, 66,§144.29; C71, 73, 75,§144.49]

Referred to in §144.50

144.50 Length of time records to be kept. Records maintained under sections 144.47 to 144.49 shall be retained for a period of not less than ten years and shall be made available for inspection by the state registrar or his representative upon demand. [C71, 73, 75,§144.50]

144.51 Information by others furnished on demand. Any person having knowledge of the facts shall furnish information he may possess regarding any birth, death, fetal death, adoption, marriage, divorce,* or annulment, upon demand of the state registrar or his representative. [C24, 27, 31, 35, 39,§§**2403, 2414**; C46, 50, 54, 58, 62, 66,§§144.18, 144.29; C71, 73, 75,§144.51]

*See chapter 598

144.52 Unlawful acts—punishment. Upon conviction of the following, punishment by a fine of not more than one thousand dollars, or imprisonment for not more than one year, or both such fine and imprisonment shall be inflicted upon any person who:

1. Willfully and knowingly makes any false statement in a report, record, or certificate required to be filed under this chapter, or in an application for an amendment thereof, or willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment thereof.

2. Without lawful authority and with the intent to deceive, makes, alters, amends, or mutilates any report, record, or certificate required to be filed under this chapter or a certified copy of such report, record, or certificate.

3. Willfully and knowingly uses or attempts to use or furnish to another for use for any purpose of deception, any certificate, record, report, or certified copy thereof so made, altered, amended, or mutilated.

4. Willfully, with the intent to deceive, uses or attempts to use any certificate of birth or certified copy of a record of birth knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person.

5. Willfully and knowingly furnishes a certificate of birth or certified copy of a record of birth with the intention that it be used by a person other than the person whose birth the record relates.

6. Disinterring a body in violation of section 144.34. [C24, 27, 31, 35, 39,§§**2349, 2350, 2436**; C46, 50, 54, 58, 62, 66,§§141.33, 141.34, 144.53, 144.54; C71, 73, 75,§144.52]

144.53 Misdemeanors. Upon conviction of the following, punishment by a fine of not less than twenty-five dollars nor more than one hundred dollars, or imprisonment in the county jail for not more than thirty days shall be inflicted upon any person who:

1. Knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided in this chapter.

2. Refuses to provide information required by this chapter.

3. Willfully violates any of the provisions of this chapter or refuses to perform any of the duties imposed upon him by this chapter. [C24, 27, 31, 35, 39,§§2350, 2436; C46, 50, 54, 58, 62, 66,§§141.34, 144.53; C71, 73, 75,§144.53]

144.54 Report to county attorney. The department shall report cases of alleged violations to the proper county attorney, with a statement of the facts and circumstances, for such action as is appropriate. [C27, 31, 35, 39, §2434; C46, 50, 54, 58, 62, 66,§144.51; C71, 73, 75,§144.54]

144.55 Attorney general to assist in enforcement. Upon request of the department, the attorney general shall assist in the enforcement of the provisions of this chapter. [C24, 27, 31, 35, 39,§2435; C46, 50, 54, 58, 62, 66,§144.52; C71, 73, 75,§144.55]

144.56 Autopsy. An autopsy or post-mortem examination may be performed upon the body of a deceased person by a physician whenever the written consent to the examination or autopsy has been obtained by any of the following persons, in order of priority stated when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or prior class:

1. The spouse.
2. An adult son or daughter.
3. Either parent.
4. An adult brother or sister.
5. A guardian of the person of the decedent at the time of his death.
6. Any other person authorized or under obligation to dispose of the body.

The provisions of this section shall not apply to any death investigated under the authority of sections 339.6 to 339.12. [C75,§144.56]

144.57 Vietnamese refugee children. Notwithstanding the provisions of this chapter, the state registrar of vital statistics shall issue a birth certificate for any child adopted pursuant to section 600.17 upon receipt of a certificate of adoption. Such birth certificate shall include any available information which is normally included on a birth certificate. [66GA, ch 145,§3]

CHAPTER 145

STATE BOARD OF EUGENICS

145.1 State board.
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145.21 Selection of physician.
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145.1 State board. A state board of eugenics is hereby created. Said board shall consist of the medical director of the state psychopathic hospital connected with the college of medicine of the state university at Iowa City, of the commissioner of public health, and of the superintendents of the following state institutions, to wit:

1. Mental health institute, Cherokee, Iowa.
2. Mental health institute, Clarinda, Iowa.
3. Mental health institute, Independence, Iowa.
4. Mental health institute, Mount Pleasant, Iowa.
5. Glenwood state hospital-school.
6. Woodward state hospital-school.
7. The women's reformatory at Rockwell City. [C31, 35,§2437-c1; C39,§2437.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.1]

See §§218.1, 226.1

145.2 Quarterly reports of defective. Each member of said board and the warden of the penitentiary and the warden of the men's reformatory, shall, annually, on the first day of January, April, July and October, report to the state board of eugenics the names of all persons, male or female, living in this state, of whom he or she may have knowledge, who are mentally ill or retarded, syphilitic, habitual criminals, moral degenerates, or sexual perverts and who are a menace to society. [C31, 35,§2437-c2; C39,§2437.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.2]

Referred to in §§145.3, 145.4

145.3 Notice. Any person reported to the state board of eugenics, under the provisions of section 145.2, must be served with a notice in writing of such report and fixing a time and place not less than ten days subsequent to such report for the time and place of examina-

tion and hearing before said board. Said notice shall be served as provided in section 145.11. [C31, 35,§2437-c3; C39,§2437.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.3]

145.4 Hearing. Any person reported to the state board of eugenics, as provided in section 145.2, and who has been notified thereof, shall have the right to appear personally before said board and to be represented by counsel at such hearing. He shall have the right to have witnesses subpoenaed and to introduce such evidence in regard to the matter at issue as the board shall deem relevant, material and proper. [C31, 35,§2437-c4; C39,§2437.04; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.4]

145.5 Examination and hearing. It shall be the duty of said board at the time and place named in the notice to the person reported upon, with such reasonable continuances from time to time and from place to place as the board may determine, to proceed to hear and consider the evidence offered and to examine into the innate traits, the mental and physical conditions, the personal records and family traits and history of the person reported upon and notified as in this chapter provided, insofar as the same can be ascertained. If the person reported upon is an inmate of any institution, the said board shall see to it that the inmate shall have opportunity and leave to attend the said examination and hearing in person, if desired by him or if requested by his guardian or person served with the notice as aforesaid. [C31, 35,§2437-c5; C39,§2437.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.5]

145.6 Witnesses. To enable the board to discharge said duty, said board, or the chairman thereof, on the order of the board, shall have power and authority to issue subpoenas and to cause the same to be served. [C31, 35, §2437-c6; C39,§2437.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.6]

145.7 Contempt. Should a witness be duly served with a subpoena and refuse to appear, or should a witness refuse to answer, the board shall report such refusal to the district court or judge thereof, of the county in which the refusal occurs, and the court, or judge thereof, shall proceed as though such refusal had occurred in a proceeding before said court or judge. [C31, 35,§2437-c7; C39,§2437.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.7]

145.8 Oaths. Any member of said board shall have power to administer an oath to witnesses before it. [C31, 35,§2437-c8; C39, §2437.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.8]

145.9 Order for sterilization. If in the judgment of a majority of said board procreation by such persons would produce a child or children having an inherited tendency to mental retardedness, syphilis, mental illness, epilepsy, criminality, or degeneracy, or who would probably become a social menace or ward of the state, and there is no probability that the condition of such person so investigated and examined will improve to such an extent as to avoid such consequences, then it shall be the duty of such board to make an order embodying its conclusions with reference to such person in said respects and specifying such a type of sterilization as may be deemed by said board best suited to the condition of said person and most likely to produce the beneficial results in the respects specified in this section, but nothing contained in this chapter shall be construed to authorize castration nor removal of sound organs from the body. [SS15,§§2600-s2,-s3; C24, 27,§§3361, 3362; C31, 35,§2437-c9; C39,§2437.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.9]

145.10 Findings. After fully inquiring into the condition of each of such persons, said board shall make separate written findings and conclusions for each of the persons into whose condition it has examined, including its findings, conclusions, and order thereon as herein provided, and the same shall be preserved in the records of said board and a copy thereof shall be furnished to the official who reported the case. [SS15,§2600-s4; C24, 27,§3365; C31, 35,§2437-c10; C39,§2437.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.10]

145.11 Service of order. If an operation is deemed necessary by said board for such person so investigated, then a copy of the order of said board recommending such operation shall be served forthwith on said person, or, in the case of a mentally ill or retarded person, upon his legal guardian, and if such person has no legal guardian, then upon his nearest known kin, or personal friend, within the state, and if such person has no known kin or personal friend within the state, then the board shall cause application to be made to the district court of the county in which such person resided or may be found for the appointment of some suitable person to act as guardian of the person reported upon during and for the purposes of the proceedings under this chapter, to defend the rights and interests of the said person, and the court shall, by proper order, appoint some suitable person to act as guardian for said purposes who shall be paid from any funds in the state treasury not otherwise appropriated, a fee, but not exceeding twenty-five dollars, as may be determined by the judge of said court, for his services under said appointment. Such guardian may be removed or discharged at any time by said court, or the judge thereof in vacation, and a new guardian appointed and substituted in his place. [C31, 35,§2437-c11; C39,§2437.11; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.11]

Referred to in §145.3

145.12 Purpose and objects sought. Said investigation, findings, and orders of said board shall be made with the purpose in view of securing a betterment of the physical, mental, neural or psychical condition of the person, to protect society from the acts of such person,

or from the menace of procreation by such person, and not in any manner as a punitive measure. [C31, 35,§2437-c12; C39,§**2437.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.12]

145.13 Consent to operation. If any person whose condition has been examined and reported upon by said board, as hereinbefore provided, shall consent in writing to have the operation specified in the order of said board performed, such operation shall thereupon be performed upon said person by or under the direction of the superintendent of the institution in which he is confined, if such person be an inmate of any of the state institutions herein mentioned, or if he is not an inmate of any of said institutions, such operation shall be performed by or under the direction of the state board of eugenics. All such operations shall be performed with due regard for the physical condition of the person upon whom it is performed and in a safe and humane manner. [SS15,§2600-s2; C24, 27,§3361; C31, 35, §2437-c13; C39,§**2437.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.13]

Referred to in §145.14

145.14 "Consent" defined. In case the person to be operated upon is mentally ill or retarded, the consent hereinbefore mentioned in section 145.13 shall be construed to mean the written consent of such person's legal guardian, or if such person has no legal guardian, then the written consent of such person's nearest known kin or personal friend within the state of Iowa, or if such person is mentally ill or retarded, and has neither legal guardian nor known kin or personal friend within the state of Iowa, then the written consent of the guardian appointed by the court for such person as provided in this chapter. [C31, 35,§2437-c14; C39,§**2437.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.14]

145.15 Absence of consent. If any such person shall not consent, within twenty days from the service of such order upon him, to the performance of such operation, said board of eugenics, through its secretary, or other officer having charge of its records and files, within fifteen days thereafter, or such further time as the court or judge thereof may allow, shall file a transcript of its proceedings and of its said findings, conclusions, and order with reference to said person with the clerk of the district court of the county in which such person resides or may be found. [C31, 35, §2437-c15; C39,§**2437.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.15]

145.16 Appearance. Upon the filing of such findings, conclusions, and order, the clerk of the district court shall issue a summons directed to such person and deliver the same to the sheriff, together with a copy of such order prepared and certified by him and it shall be the duty of said sheriff to forthwith serve said summons and copy of order upon said person therein named, who shall be required, within twenty days after such service upon him, to enter his appearance in writing with the clerk of the district court in such case or by appearing in person before said clerk, who shall thereupon enter the appearance of such person in such proceeding. If he is a mentally ill or retarded person such appearance may be made by his guardian, if he has one; if not, then by his nearest of kin or near friend. If he is confined in an institution, facility shall be furnished him for making such appearance. [C31, 35,§2437-c16; C39,§**2437.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.16]

145.17 Court procedure. This section shall be applicable notwithstanding the terms of the Iowa administrative procedure Act. The issue thereby raised shall be whether the findings and conclusions of said board shall be affirmed by the court, and shall be tried in the district court of such county, as a special proceeding, in the same manner as a civil action at law in which the state shall be the plaintiff and the person so summoned shall be the defendant. Each party shall have the same rights as to production of evidence and the case shall be tried in the same manner as any other civil action. In all such cases the county attorney of the county where such proceedings are tried shall appear and prosecute such action on behalf of the state. If the defendant has no attorney and he is unable to secure one, the court shall appoint an attorney from the membership of the bar of said county to conduct his defense, and appeal, if any be taken as hereinafter provided, and such attorney shall be compensated by the state, upon order of the court. Upon the request of either party to such proceeding all questions of fact shall be tried by a jury and the court in every instance shall have the testimony fully reported at the expense of the state. [C31, 35, §2437-c17; C39,§**2437.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.17]

Referred to in §336B.2

145.18 Judgment. If the findings and conclusions of the state board of eugenics shall be affirmed by the court, the defendant shall be immediately placed in custody by the sheriff of said county, and may be admitted to bail by the court, who shall fix the amount of such bail, and if not so admitted to bail, shall be held until the operation provided in such findings be performed. [C31, 35,§2437-c18; C39, §**2437.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.18]

145.19 Appeal. Either party to said proceedings may take an appeal from the district court to the supreme court in the same manner and within the same time and with like effect as other ordinary civil actions. If the defendant be represented by an attorney appointed by the court, and, in the opinion of the court, is financially unable to meet the expense of an appeal, the defendant's actual and necessary expense of appeal shall be paid by the state upon order of the district court out of the general funds of the state not otherwise appropriated. [C31, 35,§2437-c19;

C39,§**2437.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §145.19; 66GA, ch 1241,§44]
Referred to in §336B.2

145.20 Expenses. The state shall be liable under this chapter, except as hereinabove provided for, only for the actual traveling expenses of the members of the board incurred in the performance of their duties, and the actual and necessary expense incident to the investigations of said board either on original case or an appeal therefrom. [C31, 35,§2437-c20; C39,§**2437.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §145.20]

145.21 Selection of physician. Nothing in this chapter shall be construed to empower or authorize the state board of eugenics or its representatives, or the state health officer, or his representatives, or the superintendent of any of the institutions mentioned, or his representatives, to interfere in any manner with the individual's right to select the physician of his choice; provided, that such physician is in the judgment of the state board of eugenics competent to perform such operation; nor to interfere with the practice of any person whose religion treats or administers to the sick or suffering by purely spiritual means; provided that such practice, treatment or administration shall not in any way interfere with the operation of this chapter, and the carrying out of its purposes. [SS15,§2600-s2; C24, 27,§3363; C31, 35,§2437-c21; C39,§**2437.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.21]

145.22 Fee. A physician or surgeon, who is not in the employ of the state, shall receive a reasonable compensation for an operation performed hereunder, which compensation shall be paid from any funds in the state treasury not otherwise appropriated. [C31, 35,§2437-c22; C39,§**2437.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§145.22]

CHAPTER 145A

AREA HOSPITALS

Referred to in §347.25

145A.1 Consolidation for purpose.
145A.2 Definitions.
145A.3 Official planning—maximum levy.
145A.4 Plans.
145A.5 Order of approval.
145A.6 Petition of protest.
145A.7 Special election.
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145A.11 Terms of members.
145A.12 Operation and management.
145A.13 Political status.
145A.14 Budget for operation.
145A.15 Treasurer of hospital.
145A.16 Funds to aid hospital.
145A.17 Indebtedness and bonds.
145A.18 Taxes.
145A.19 Special tax.
145A.20 Revenue bonds.

145A.1 Consolidation for purpose. Any of the political subdivisions of this state may consolidate to acquire and operate an area hospital for the purpose of providing hospital service for all residents of such area. [C71, 73, 75, §145A.1]

145A.2 Definitions. As used in this chapter:

1. *"Political subdivision"* means any county, township, school district or city.

2. *"Officials"* means the respective governing bodies of political subdivisions.

3. *"Merged area"* means two or more political subdivisions which have merged resources to establish and operate an area hospital.

4. *"Area hospital"* means a hospital established and operated by a merged area.

5. *"Board"* means the board of trustees of an area hospital. [C71, 73, 75,§145A.2]

145A.3 Official planning — maximum levy. The officials of any political subdivision are hereby authorized to plan for the merger of an area to establish and operate an area hospital; and in planning for such hospitals, a county board of supervisors may exclude any township of the county which the board of supervisors determines would not sufficiently benefit by the merger. Plans for an area hospital shall include the maximum amount to be levied in each political subdivision taking part in the merger, and the maximum tax rates for the various political subdivisions may vary as the officials determine, such variance to be based upon the need for hospital service of the residents of each political subdivision, the proximity of such residents to the proposed location of the hospital, the property values within said subdivision, and the expected service benefits to the residents of each subdivision by the proposed area hospital. [C71, 73, 75,§145A.3]

145A.4 Plans. Officials of the various subdivisions may expend public funds for the purpose of formulating plans and in carrying out plans for a merged area and may arrive at an equitable distribution of costs to be paid by each participating political subdivision. [C71, 73, 75,§145A.4]

145A.5 Order of approval. When a plan is approved, the officials approving such plan shall jointly issue an order of approval. Such order shall specify the area to be merged, the maximum levy in each political subdivision, the proposed location of the hospital building, the estimated cost of the establishment of the hospital and any other details concerning the establishment and operation of the hospital they deem pertinent. The order shall then be published in one or more newspapers which have general circulation within the merged area for once each week for three consecutive weeks, but the newspapers selected need not be published in the merged area. Such published order shall also contain a notice to the residents of each subdivision of the proposed merged area that if they fail to protest as provided herein, that the order shall be deemed approved upon the expiration of a sixty-day period following the last published notice. [C71, 73, 75,§145A.5]

145A.6 Petition of protest. The plans formulated for the area hospital shall be deemed approved unless, within sixty days after the third and final publication of the order, a petition protesting the proposed plan containing the signatures of at least five percent of the qualified voters of any political subdivision within the proposed merged area is filed with the respective officials of the protesting petitioners. [C71, 73, 75,§145A.6]

145A.7 Special election. When a protesting petition is received, the officials receiving the petition shall call a special election of all qualified voters of that political subdivision for the purpose of approving or rejecting the order setting out the proposed merger plan. The vote will be taken by ballot in the form provided by sections 49.43 to 49.47, and the election shall be initiated and held as provided in chapter 49. A majority vote of those qualified voters voting at said special election shall be sufficient to approve the order and thus include the political subdivision within the merged area. [C71, 73, 75,§145A.7]

145A.8 Effect on other subdivisions. A protest petition filed in one political subdivision shall have no effect upon the other political subdivisions of the proposed merged area; and in the portion of the proposed area where no protest petition is filed within sixty days after the last published notice, the residents of that portion of the area shall be deemed to have approved the proposed plan, and shall not take part in any special election. [C71, 73, 75, §145A.8]

145A.9 Continuance or abandonment. If the voters at the special election approve by a majority vote the proposed plan, then the plan may be carried out as originally proposed. However, if the voters of any political subdivision within the proposed area reject the plan as set out in the original order, then said original order shall be wholly nullified. [C71, 73, 75,§145A.9]

145A.10 Board of hospital trustees. Upon acceptance of a plan, the officials of the merged area acting as a committee of the whole shall appoint a board of hospital trustees. The board of trustees shall then meet, elect a chairman and adopt such rules for the organization of the board as may be necessary. The number and composition of the board shall be determined by the committee appointing the board; but as a matter of public policy the committee is directed to apportion the board into area districts in such a way that the residents of all of the merged area will be represented as nearly equally as possible on the board. [C71, 73, 75,§145A.10]

145A.11 Terms of members. The terms of members of the board shall be four years, except that members of the initial board shall determine their respective terms by lot so that the terms of one-half of the members, as nearly as may be, shall expire at the next general election. The remaining initial terms shall expire at the following general election. The successors of the initial board shall be chosen from area districts at regular elections, and shall be nominated and elected in the same manner as county hospital trustees as provided in section 347.25, except that nomination papers on behalf of a candidate shall be signed by not less than twenty-five eligible electors from the area district. [C71, 73, 75, §145A.11; 66GA, ch 81,§125]

145A.12 Operation and management. The board shall govern the operation and management of the area hospital and is hereby empowered to do all things necessary to establish and operate said hospital and shall have all the general powers, duties, and responsibilities of the trustees of county public hospitals as set out in sections 347.13 and 347.14. [C71, 73, 75,§145A.12]

145A.13 Political status. A hospital area formed under the provisions of this chapter shall be a body politic for the purpose of exercising powers granted under this chapter, and as such may sue and be sued, purchase and sell property, and exercise all the powers granted by law and such other powers as are incident to public corporations of like character and not inconsistent with the laws of this state. [C71, 73, 75,§145A.13]

145A.14 Budget for operation. The board shall prepare an annual budget designating the proposed expenditures for operation of the area hospital, and the amount to be raised by taxation, following the requirements of chapter 24. The board shall prorate the amount to be raised by local taxation among the respective political subdivisions forming a part of the merged area in the proportion that the value of taxable property in each political subdivision bears to the total value of

taxable property in the area, but not in an amount which would exceed the maximum levy set out in the published order of merger. The board of hospital trustees shall certify the amount so determined to the respective officials of the merged area, and said officials shall levy a tax sufficient to raise the annual budget. Taxes collected pursuant to such levy shall be paid by the respective officials to the treasurer of the merged area hospital in the same manner that school taxes are paid to local school districts. [C71, 73, 75,§145A.14]

145A.15 Treasurer of hospital. If the area hospital is located within the corporate limits of any city, the city treasurer shall act as treasurer of the area hospital; and if the area hospital is located outside the limits of any city, the county treasurer shall act as the treasurer of the area hospital; provided, however, the board may appoint some other person to serve as treasurer. The board may require that the treasurer furnish appropriate bond for faithful performance of his duties. [C71, 73, 75,§145A.15]

145A.16 Funds to aid hospital. In addition to revenue derived by tax levy, the board of hospital trustees of a merged area shall be authorized to receive and expend:

1. Federal funds which may be available by federal laws, rules and regulations.

2. State aid which may be available by state laws and rules.

3. Fees and expenses charged to persons using the facilities of the hospital.

4. Donations and gifts which may be accepted by the hospital trustees and expended in accordance with the terms of the gift without compliance with the local budget law. [C71, 73, 75,§145A.16]

145A.17 Indebtedness and bonds. Boards of hospital trustees may acquire sites and erect and equip buildings for use by area hospitals and may contract indebtedness and issue bonds bearing interest at a rate not exceeding seven percent per annum to raise funds for such purposes in accordance with chapter 75. [C71, 73, 75,§145A.17]

Referred to in §145A.18
See 63GA, ch 87,§60

145A.18 Taxes. Taxes for the payment of bonds issued under section 145A.17 shall be levied in accordance with chapter 76, provided, however, that the total tax levy for the annual budget and for bonds issued under this chapter, shall not exceed the maximum for each political subdivision as provided in the published order of merger. Any indebtedness incurred shall not be considered an indebtedness incurred for general and ordinary purposes. [C71, 73, 75,§145A.18]

145A.19 Special tax. In addition to the tax authorized in connection with the annual budget and with the issuance of bonds, the voters in any merged area may at any regular election vote a special tax for a period not to exceed five years for the purchase of grounds, purchase or construction of buildings, purchase of equipment, and for the purpose of maintaining, remodeling, improving, or expanding the hospital area. Such a tax shall not exceed one-fourth of the maximum levy of each political subdivision as set out in the published order of merger, but the total tax levy for annual budget, bonds, and special purposes shall not exceed the maximum levy as proposed in the published order of merger. [C71, 73, 75,§145A.19]

145A.20 Revenue bonds. In addition to any other provisions of this chapter and for the purpose of acquiring, constructing, equipping, enlarging or improving a hospital building or any part thereof, merged areas may issue revenue bonds as provided in section 347A.2. [C71, 73, 75,§145A.20]

TITLE VIII

THE PRACTICE OF CERTAIN PROFESSIONS AFFECTING THE PUBLIC HEALTH

Referred to in §§135.11(18), 135A.1, 153.33(3), 153.34(9)

CHAPTER 146

ABORTION LIABILITY EXCULPATION

146.1 Liability of persons relating to performance of abortions.

146.2 Liability of hospitals refusing to perform abortions.

146.1 Liability of persons relating to performance of abortions. An individual who may lawfully perform, assist, or participate in medical procedures which will result in an abortion shall not be required against that individual's religious beliefs or moral convictions to perform, assist, or participate in such procedures. A person shall not discriminate against any individual in any way, including but not limited to employment, promotion, advancement, transfer, licensing, education, training or the granting of hospital privileges or staff appointments, because of the individual's participation in or refusal to participate in recommending, performing or assisting in an abortion procedure. For the purposes of this chapter, "abortion" means the termination of a human pregnancy with the intent other than to produce a live birth or to remove a dead fetus. Abortion does not include medical care which has as its primary purpose the treatment of a serious physical condition requiring emergency medical treatment necessary to save the life of a mother. [66GA, ch 1113,§1]

146.2 Liability of hospitals refusing to perform abortions. A hospital, which is not controlled, maintained and supported by a public authority, shall not be required to permit the performance of an abortion. The refusal to permit such procedures shall not be grounds for civil liability to any person nor a basis for any disciplinary or other recriminatory action against the hospital. [66GA, ch 1113,§2]

CHAPTER 147

GENERAL PROVISIONS REGULATING PRACTICE PROFESSIONS

Referred to in §§135.11(16), 135E.2, 148B.10, 150.11, 152.1, 152.4, 153.23, 154B.6, 155.3(3), 155.13(2), 203A.2(1), 519A.2, 614.1

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147.1 Definitions. For the purpose of this and the following chapters of this title:

1. *"Examining board"* shall mean one of the boards appointed by the governor to give examinations to applicants for licenses.

2. *"Licensed"* or *"certified"* when applied to a physician and surgeon, podiatrist, osteopath, osteopathic physician and surgeon, psychologist or associate psychologist, chiropractor, nurse, dentist, dental hygienist, optometrist,

speech pathologist, audiologist, pharmacist, physical therapist, practitioner of cosmetology, practitioner of barbering, funeral director or embalmer shall mean a person licensed under this title.

3. *"Profession"* shall mean medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, cosmetology, barbering, funeral directing or embalming.

4. *"Department"* shall mean the state department of health.

5. *"Peer review"* means evaluation of professional services rendered by a person licensed to practice a profession.

6. *"Peer review committee"* means one or more persons acting in a peer review capacity who also serve as an officer, director, trustee, agent, or member of any of the following:

a. A state or local professional society of a profession for which there is peer review.

b. Any organization approved to conduct peer review by a society as designated in paragraph *"a"* of this subsection.

c. The medical staff of any licensed hospital.

d. An examining board. [C24, 27, 31, 35, 39, §2438; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.1; 66GA, ch 239,§14, ch 1114,§7]

LICENSES

147.2 License required. No person shall engage in the practice of medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, chiropractic, physical therapy, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, cosmetology, barbering, funeral directing or embalming as defined in the following chapters of this title, unless he shall have obtained from the state department of health a license for that purpose. [C97, §§2582, 2588; S13,§§2575-a28,-a31,-a36, 2582, 2583-a,-d,-r, 2600-o4; SS15,§2588; C24, 27, 31, 35, 39,§2439; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.2; 66GA, ch 1114,§8]

Speech pathology and audiology amendment effective January 1, 1977

147.3 Qualifications. An applicant for a license to practice a profession under this title shall not be ineligible because of age, citizenship, sex, race, religion, marital status or national origin, although the application form may require citizenship information. Any board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of medicine, podiatry, osteopathy, osteopathy and surgery, chiropractic, nursing, psychology, optometry, speech pathology, audiology, pharmacy, physical therapy, cosmetology, barbering or funeral directing or embalming for which the applicant requests to be licensed. Character references may be required, but shall not be obtained from licensed members of the profession. [S13,§§2575-a29,-a37, 2583-a,-1, 2600-d; C24, 27, 31, 35, 39,§§2440, 2567; C46, 50, 54, 58, 62, 66,§§147.3, 153.3; C71, 73,§§147.3, 153.5; C75, §147.3; 66GA, ch 1114,§9]

See also §135E.14
Referred to in §152.7

147.4 Grounds for refusing. The department may refuse to grant a license to practice a profession to any person otherwise qualified upon any of the grounds for which a license may be revoked by the district court. [C97,§2578; S13, §§2575-a33,-a41, 2578, 2583-c; C24, 27, 31, 35, 39, §2441; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.4]

Grounds for revocation, §§147.55 et seq., 154.4

147.5 Form. Every license to practice a profession shall be in the form of a certificate under the seal of the department, signed by the commissioner of public health. Such license shall be issued in the name of the examining board which conducts examinations for that particular profession. The number of the book and page containing the entry of said license in the office of the department shall be noted on the face of the license. [C97, §§2576, 2577, 2591; S13,§§2575-a30,-a38, 2576, 2583-k, 2600-d; C24, 27, 31, 35, 39,§2442; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.5]

147.6 Certificate presumptive evidence. Every license issued under this title shall be presumptive evidence of the right of the holder to practice in this state the profession therein specified. [C97,§2576; S13,§§2575-a30,-a38, 2576, 2583-k, 2600-d; C24, 27, 31, 35, 39,§2443; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.6]

147.7 Display of license. Every person licensed under this title to practice a profession shall keep his license publicly displayed in the place in which he practices. [C97,§2591; S13,§2600-o1; C24, 27, 31, 35, 39,§2444; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.7]

147.8 Record of licenses. The name, location, number of years of practice of the person to whom a license is issued to practice a profession, the number of the certificate, and the date of registration thereof shall be entered in a book kept in the office of the department to be known as the registry book, and the same shall be open to public inspection. [C97,§2591; S13,§§2575-a40, 2583-a,-k, 2600-d; C24, 27, 31, 35, 39,§2445; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.8]

147.9 Change of residence. When any person licensed to practice a profession under this title changes his residence he shall notify the department. [C97,§2591; C24, 27, 31, 35, 39,§2446; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.9]

147.10 Renewal. Every license to practice a profession shall expire annually as determined by the board and shall be renewed annually upon application by the licensee, without examination. Application for such renewal shall be made in writing to the department accompanied by the required fee at least thirty days prior to the expiration of such license. Every renewal shall be displayed in connection with the original license. Every year the de-

partment shall notify each licensee by mail of the expiration of his license. Failure to renew the license within a reasonable time after the expiration shall not invalidate the license, but a reasonable penalty may be assessed by the board. [C97,§2590; S13,§§2575-a39, 2589-d; C24, 27, 31,§2447; C35,§§2447, 2573-g2–2573-g4; C39, §§2447, 2573.02–2573.04; C46, 50, 54, 58, 62, 66, §§147.10, 153.11–153.12; C71, 73,§§147.10, 153.9, 153.10; C75,§147.10]

Referred to in §§140.6, 147.11, 148.6

147.11 Reinstatement. Any licensee who allows his license to lapse by failing to renew the same, as provided in section 147.10, may be reinstated without examination upon recommendation of the examining board for his profession and upon payment of the renewal fees then due. [C24, 27, 31, 35, 39,§2448; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.11]

EXAMINING BOARDS

147.12 Examining boards. For the purpose of giving examinations to applicants for licenses to practice the professions for which a license is required by this title, the governor shall appoint, subject to the approval of two-thirds of the members of the senate, a board of examiners for each of the professions. The board members shall not be required to be members of professional societies or associations composed of members of their professions. [C97,§§2576, 2584; S13,§§2575-a29,-a37, 2576, 2583-a,-h, 2600-b; SS15,§2584; C24, 27, 31, 35, 39,§2449; C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.12]

Referred to in §147.13

147.13 Designation of boards. The examining boards provided in section 147.12 shall be designated as follows: For medicine and surgery, and osteopathy, and osteopathic medicine and surgery, medical examiners; for psychology, psychology examiners; for podiatry, podiatry examiners; for chiropractic, chiropractic examiners; for physical therapists, physical therapy examiners; for nursing, board of nursing; for dentistry and dental hygiene, dental examiners; for optometry, optometry examiners; for speech pathology and audiology, speech pathology and audiology examiners; for cosmetology, cosmetology examiners; for barbering, barber examiners; for pharmacy, pharmacy examiners; for funeral directing and embalming, funeral director and embalmer examiners. [C24, 27, 31, 35, 39,§2450; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.13; 66GA, ch 1114,§10]

147.14 Composition of boards. The boards of examiners shall consist of the following:

1. For podiatry, physical therapy, cosmetology, barbering, and funeral directing and embalming, three members each, licensed to practice the profession for which the board conducts examinations, and two members who are not licensed to practice the profession for which the board conducts examinations and who shall represent the general public. A quorum shall consist of a majority of the members of the board.

2. For medical examiners, five members licensed to practice medicine and surgery, two members licensed to practice osteopathic medicine and surgery, and two members not licensed to practice either medicine and surgery or osteopathic medicine and surgery, and who shall represent the general public. A majority of members of the board shall constitute a quorum.

3. For nursing examiners, one registered nurse representing the colleges and universities, one registered nurse representing the hospital conducted schools of nursing, one registered nurse representing the area community and vocational technical nursing department, one registered nurse practitioner, one licensed practical nurse practitioner, and two members not registered nurses or licensed practical nurses and who shall represent the general public. The representatives of the general public shall not be members of health care delivery systems. A majority of the members of the board shall constitute a quorum.

4. For dental examiners, five members shall be licensed to practice dentistry, two members shall be licensed to practice dental hygiene and two members not licensed to practice dentistry or dental hygiene and who shall represent the general public. A majority of the members of the board shall constitute a quorum. No member of the dental faculty of the school of dentistry at the state University of Iowa shall be eligible to be appointed.

5. For pharmacy examiners, five members licensed to practice pharmacy and two members who are not licensed to practice pharmacy and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

6. For optometry examiners, five members licensed to practice optometry and two members who are not licensed to practice optometry and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

7. Five members who are licensed to practice psychology and two members not licensed to practice psychology and who shall represent the general public. Of the five members who are licensed to practice psychology, one member shall be primarily engaged in graduate teaching in psychology, two members who render services in psychology, one member representing areas of applied psychology who may be affiliated with training institutions and who devote a major part of their time in rendering service in psychology, and one member primarily engaged in research psychology. A majority of the members of the board shall constitute a quorum.

Initial board members, see 65GA, ch 1086,§73(7)

8. For chiropractic examiners, five members licensed to practice chiropractic and two members who are not licensed to practice chiro-

practic and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

9. For speech pathology and audiology examiners, five members licensed to practice speech pathology or audiology at least two of which shall be licensed to practice speech pathology and at least two of which shall be licensed to practice audiology, and two members who are not licensed to practice speech pathology or audiology and who shall represent the general public. A majority of the members of the board shall constitute a quorum. [C97,§§2564, 2576, 2584; S13,§§2564, 2575-a29,-a30,-a37,-a38, 2576, 2583-a,-h,-i, 2600-b,-c; SS15,§2584; C24, 27, 31, 35, 39,§§**2451, 2452, 2475**; C46, 50, 54, 58, 62, 66,§§147.14, 147.15, 147.38; C71, 73,§§147.14, 147.15, 147.38, 153.1; C75,§147.14; 66GA, ch 1114,§11]

Referred to in §147.151
Terms of members, see 65GA, ch 1086,§200
Initial speech pathology and audiology board—appointment, qualification and terms, see 66GA, ch 1114,§13

147.15 Repealed by 65GA, ch 1086,§198.

147.16 Examiners. Each licensed examiner shall be actively engaged in the practice of his profession and shall have been so engaged for a period of five years just preceding his appointment, the last two of which shall be in this state. [C97,§2584; S13,§§2583-a,-h, 2600-b; SS15,§2584; C24, 27, 31, 35, 39,§**2453**; C46, 50, 54, 58, 62, 66,§147.16; C71, 73,§§147.16, 153.1; C75, §147.16]

147.17 Repealed by 65GA, ch 1086,§198.

147.18 Disqualifications. No examiner shall be an officer or member of the instructional staff of any school in which any profession regulated by this title is taught, or be connected therewith in any manner, except nurse examiners and psychology examiners. No examiner shall be connected in any manner with any wholesale or jobbing house dealing in supplies. [C97,§2564; S13,§§2564, 2583-a,-j, 2600-k; C24, 27, 31, 35, 39,§**2455**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.18; 66GA, ch 122,§1]

147.19 Terms of office. The board members shall serve three-year terms, which shall commence on July 1 of the year in which the appointment is made. Any vacancy in the membership of an examining board shall be filled by appointment of the governor and shall be subject to senate confirmation. A member shall serve no more than three terms or nine years. [C97,§§2564, 2576, 2584; S13,§§2564, 2575-a29,-a37, 2576, 2583-a,-h, 2600-b; SS15,§2584; C24, 27, 31, 35, 39,§§**2456, 2458**; C46, 50, 54, 58, 62, 66, §§147.19, 147.21; C71, 73,§§147.19, 147.21, 153.1; C75,§147.19]

147.20 Nomination of examiners. The regular state association or society for each profession may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommedations. [S13,§§2583-a,-h, 2600-b; C24, 27, 31, 35, 39,§**2457**; C46, 50, 54, 58, 62, 66,§147.20; C71, 73, §§147.20, 153.1; C75,§147.20]

147.21 Examination information. The public members of the board shall not participate in administering or grading any portion of an examination.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.

2. Information relating to the contents of the examination.

3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C75,§147.21]

See also §§135E.16, 135E.17

147.22 Officers. Each examining board shall organize annually and shall select a chairman and a secretary from its own membership. [C97,§§2576, 2585; S13,§§2576, 2583-i, 2585, 2600-c; C24, 27, 31, 35, 39,§**2459**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.22]

Referred to in §147.98

147.23 Transaction of business by mail. Each examining board shall, as far as practicable, provide by rule for the conducting of its business by mail, but all examinations shall be conducted in person by the board or by some representative of the board as provided in section 147.39. Any official action or vote taken by mail shall be preserved by the secretary in the same manner as the minutes of regular meetings. [C24, 27, 31, 35, 39,§**2460**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.23]

147.24 Compensation. Members of an examining board shall, in addition to necessary traveling and expenses, set their own per diem compensation at a rate not exceeding forty dollars per day for each day actually engaged in the discharge of their duties and for a reasonable number of days for the preparation of examination questions and the reading of papers, appropriated to the department and allocated to each examining board or funds appropriated to an examining board within the limits of funds. [C97,§2574; S13, §§2574, 2575-a34,-a44, 2583-a,-p, 2600-g; C24, 27, 31, 35, 39,§**2461**; C46, 50, 54, 58, 62, 66,§147.24; C71, 73,§§147.24, 153.3; C75,§147.24]

Referred to in §148B.5

147.25 System of health manpower statistics. The division for records and statistics within the state department of health shall establish and maintain a system of health man-

power statistics which shall include the collection, preservation, revision and dissemination of statistical data to enable the department or other agencies concerned with delivery of health care services in this state to determine the total number, employment status, location of practice or place of employment, areas of professional specialization and ages of licensed health care practitioners and other pertinent information bearing on the availability of trained and licensed personnel in health care fields to provide services in this state. The statistical data shall be computed and available upon request at least biannually in the form of a report to agencies, both public and private, which are concerned with the delivery of health care in this state.

The department shall enter into co-operative arrangements with and seek the technical expertise of agencies collecting and producing health manpower statistics in order to eliminate duplication in the collection of health manpower information and to assist in the standardization and co-ordination of procedures relating to the collection of health manpower statistics.

Examining boards collecting information necessary for the division for records and statistics to carry out the provisions of this section shall provide the department with the information which may be gathered by means including, but not limited to, questionnaires forwarded to applicants for a license or renewal of a license.

In addition to any other fee provided by law, a fee may be set by the respective examining boards for each license and renewal of a license to practice medicine, surgery, podiatry, osteopathy, osteopathic medicine and surgery, chiropractic, nursing, dentistry, dental hygiene, optometry, pharmacy, physical therapy, and veterinary medicine, which fee shall be based on the annual cost of collecting information for use by the department of health in the administration of the system of health manpower statistics established by this section. The fee shall be collected, transmitted to the treasurer of state and deposited in the general fund of the state in the manner in which license and renewal fees of the respective professions are collected, transmitted, and deposited in the general fund. [C75,§147.25]

147.26 Supplies and examination quarters. The department shall furnish each examining board with all articles and supplies required for the public use and necessary to enable said board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained and the cost shall be assessed to the examining board. The director of the department of general services shall furnish each examining board with suitable quarters in which to conduct the examination and the cost of the quarters shall be assessed to the examining board. [C97,§2583; S13,§§2575-a34,-a44, 2583, 2583-a,-p, 2600-g; C24, 27, 31, 35, 39,§§**2463, 2464**; C46, 50, 54, 58, 62, 66, 71, 73, §§147.26, 147.27; C75,§147.26]

147.27 Repealed by 65GA, ch 1086,§198.

147.28 National organization. Each examining board may maintain a membership in the national organization of the state examining boards of its profession to be paid from funds appropriated to the board. [C27, 31, 35, §2465-b1; C39,§**2465.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.28]

EXAMINATIONS

147.29 Applications. Any person desiring to take the examination for a license to practice a profession shall make application to the state department of health at least fifteen days before the examination, on a form provided by the board. Such application shall be accompanied by the examination fee and such documents and affidavits as are necessary to show the eligibility of the candidate to take such examination. All applications shall be in accordance with the rules of the department and shall be signed by the applicant. The board shall not require that a recent photograph of the applicant be attached to the application. [S13,§§2575-a37, 2600-d; C24, 27, 31, 35, 39,§§**2466, 2567, 2572, 2573**; C46, 50, 54, 58, 62, 66, §§147.29, 153.3, 153.8, 153.9; C71, 73,§§147.29, 153.6, 153.8; C75,§147.29]

Exceptions, §147.94, et seq.
See also §135E.14

147.30 Time and place of examinations. The department shall give public notice of the time and place of all examinations to be held under this title. Such notice shall be given in such manner as the department may deem expedient and in ample time to allow all candidates to comply with the provisions of this title. [S13,§2576; C24, 27, 31, 35, 39,§**2467**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.30]

147.31 Repealed by 65GA, ch 1086,§198.

147.32 Accredited colleges. The state department of health shall prepare and keep up to date a list of accredited colleges in which are taught the professions which are regulated by this title. The examining board for each profession shall make recommendations relative thereto and shall approve the list for the profession for which it gives license examinations. No such school shall be accredited by the department unless it has been so recommended and approved by the proper examining board together with the commissioner of health. Such recommendations and approval shall be made at some regular session of the board held for the purpose of giving an examination. [C24, 27, 31, 35, 39,§**2469**; C46, 50, 54, 58, 62, 66,§147.32; C71, 73,§§147.32, 153.5; C75,§147.32]

147.33 Professional schools. As a basis for such action on the part of the examining

board, the registrar of the state University of Iowa and the dean of the professional school of said institution which teaches the profession for which said board gives license examinations, shall supply such data relative to any such professional school as said board may request. [C24, 27, 31, 35, 39,§**2470**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.33]

147.34 Examinations. Examinations for each profession licensed under this title shall be conducted at least one time per year at such time as the department may fix in co-operation with each examining board. Examinations may be given at the state University of Iowa at the close of each school year for professions regulated by this title and examinations may be given at other schools located in the state at which any of the professions regulated by this title are taught. At least one session of each examining board shall be held annually at the seat of government and the locations of other sessions shall be determined by the examining board, unless otherwise ordered by the department. Applicants who fail to pass the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, applicants shall be allowed to take the examination at the discretion of the board. Examinations may be given by an examining board which are prepared and scored by persons outside the state, and examining boards may contract for such services. An examining board may make an agreement with examining boards in other states for administering a uniform examination. An applicant who has failed an examination may request in writing information from the examining board concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the examining board administers a uniform, standardized examination, the examining board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the examining board. [C97,§§2576, 2582, 2589, 2597; S13,§§2575-a29,-a37, 2576, 2582, 2583-a,-i,-k, 2589-a, 2600-c,-d; SS15,§2589-a; C24, 27, 31, 35, 39,§§**2471, 2567, 2572, 2573**; C46, 50, 54, 58, 62, 66,§§147.34, 153.3, 153.8, 153.9; C71, 73, §§147.34, 153.2, 153.6, 153.8; C75,§147.34]

147.35 Names of eligible candidates. Prior to each examination the department shall transmit to each examining board the list of candidates who are eligible to take the examination given by such board. In making up such list the department may call upon any examining board, or any member thereof, for information relative to the eligiblity of any applicant. [C24, 27, 31, 35, 39,§**2472**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.35]

147.36 Rules. Each examining board shall establish rules for:

1. The conducting of examinations.

2. The grading of examinations and passing upon the technical qualifications of applicants, as shown by such examinations. [C97,§2584; S13,§§2575-a38, 2583-a,-i, 2600-e; SS15,§2584; C24, 27, 31, 35, 39,§**2473**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.36]

147.37 Identity of candidate concealed. All examinations in theory shall be in writing, and the identity of the person taking the same shall not be disclosed upon the examination papers in such a way as to enable the members of the examining board to know by whom written until after the papers have been passed upon. In examinations in practice the identity of the candidate shall also be concealed as far as possible. [C97,§2576; S13, §§2576, 2583-a; C24, 27, 31, 35, 39,§**2474**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.37]

147.38 Repealed by 65GA, ch 1086,§198.

147.39 Clerk. Upon the request of any examining board, the department shall detail some employee to act as clerk of any examination given by said examining board. Such clerk shall have charge of the candidates during the examination and perform such other duties as the examining board may direct. If the duties of such clerk are performed away from the seat of government, he shall receive his necessary travel and expenses, which shall be paid from the appropriations to the examining board in the same manner in which other similar expenses are paid. The department shall be reimbursed by the examining board for costs incurred. [C24, 27, 31, 35, 39, §**2476**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.39]

Referred to in §147.23

147.40 Certification of applicants. Every examination shall be passed upon in accordance with the established rules of the examining board and shall be satisfactory to at least a majority of the professional members of the board. In the case of the board of dental examiners, only licensed dentist members of the board shall determine whether an applicant has passed the examination to practice as a licensed dentist. After each examination, the examining board shall certify the names of the successful applicants to the state department of health in the manner prescribed by it. The department shall then issue the proper license and make the required entry in the registry book. [C97,§2576; S13,§§2575-a30,-a38, 2576, 2583-i, 2600-c; C24, 27, 31, 35, 39,§**2477**; C46, 50, 54, 58, 62, 66,§147.40; C71, 73,§§147.40, 153.2; C75, §147.40]

147.41 Partial examinations. Any examining board may provide for a partial examination for a license to practice a profession to any applicant who has completed a portion of his professional course. For such purpose said board shall establish by rule:

1. The portion of such course which shall be completed prior to such examination.

2. The subjects to be covered by such examination and the subjects to be covered by the

final examination to be taken by such applicant after the completion of his professional course and prior to the issuance of his license, but the subjects covered in the partial and final examinations shall be the same as those specified in this title for the regular examination. [C24, 27, 31, 35, 39,§**2478**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.41]

Referred to in §147.42

147.42 Rules relative to partial examinations. In case any examining board shall provide for partial examinations under section 147.41, the department shall adopt rules establishing:

1. The portion of the license fee fixed in this chapter which shall be paid for a partial examination.
2. The credentials which shall be presented to the department by an applicant showing his qualifications to take such examination.
3. The method of certifying the list of the eligible applicants for such examination to the proper examining board.
4. The method of certifying back to the department the list of applicants who successfully pass such examination.
5. The method of keeping the records of such applicants for use at the time of completing the examination for a license.
6. The credentials which shall be presented to the department by such an applicant upon the completion of his professional course.
7. The method of certifying such applicant to the proper examining board for the remainder of his examination.
8. Such other matters of procedure as are necessary to carry into effect section 147.41. [C24, 27, 31, 35, 39,§**2479**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.42]

147.43 Preservation of records. All matters connected with each examination for a license shall be filed with the state department of health and preserved for such period of time as specified by the state records commission as a part of the records of the department. The records shall be open to public inspection. [C97,§2576; S13,§§2576, 2578-a, 2583-a; C24, 27, 31, 35, 39,§**2480**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.43]

RECIPROCAL LICENSES

147.44 Agreements. For the purpose of recognizing licenses which have been issued in other states to practice any profession for which a license is required by this title, the department shall enter into a reciprocal agreement with every state which is certified to it by the proper examining board under the provisions of section 147.45 and with which this state does not have an existing agreement at the time of such certification. [C97,§2582; S13, §2582; C24, 27, 31, 35, 39,§**2481**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.44]

Referred to in §§152.8, 153.36, 158.3

147.45 States entitled to reciprocal relations. The department shall at least once each year lay before the proper examining board the requirements of the several states for a license to practice the profession for which such examining board conducts examinations for licenses in this state. Said examining board shall immediately examine such requirements and after making such other inquiries as it deems necessary, shall certify to the department the states having substantially equivalent requirements to those existing in this state for that particular profession and with which said examining board desires this state to enter into reciprocal relations. [S13,§§2575-a30,-a39, 2589-b, 2600-m; C24, 27, 31, 35, 39,§**2482**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.45]

Referred to in §§135E.11, 147.44, 152.8, 153.36, 158.3

147.46 Reciprocal agreements. In negotiating any reciprocal agreement, the department shall be governed by the following regulations:

1. *Protection to licensees of this state.* When the laws of any state or the rules of the authorities of said state place any requirement or disability upon any person licensed in this state to practice any profession regulated by this title which affects the right of said person to be licensed or to practice his profession in said state, then the same requirement or disability shall be placed upon any person licensed in said state when applying for a license to practice in this state.

2. *Special conditions.* When any examining board has established by rule any special condition upon which reciprocal agreements shall be entered into, as provided in section 147.47, such condition shall be incorporated into the reciprocal agreements negotiated with reference to licenses to practice the professions for which such examining board conducts examinations. [S13,§§2575-a30,-a39, 2582-a, 2589-b, 2600-m; C24, 27, 31, 35, 39,§**2483**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.46]

Referred to in §§135E.11, 152.8, 153.36, 158.3

147.47 Special conditions. An examining board shall have power to provide by rule that no reciprocal relation shall be entered into by the department with any state with reference to licenses to practice the profession for which such examining board conducts examinations, unless every person licensed in another state when applying for a license to practice in this state shall comply with one or both of the following conditions:

1. Furnish satisfactory proof to the department that he has been actively engaged in the practice of his profession for a certain period of years to be fixed by such examining board.
2. Pass a practical examination in the practice of his particular profession as prescribed by such examining board. [S13,§2600-m; C24, 27, 31, 35, 39,§**2484**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.47]

Referred to in §§135E.11, 147.46, 152.8, 153.36, 158.3

147.48 Termination of agreements. When the requirements for a license in any state with which this state has a reciprocal agreement are changed by any law or rule of the

authorities therein so that such requirements are no longer substantially as high as those existing in this state, then such agreement shall be deemed terminated and licenses issued in such state shall not be recognized as a basis of granting a license in this state until a new agreement has been negotiated. The fact of such change shall be determined by the proper examining board and certified to the department for its guidance in enforcing the provisions of this section. [C24, 27, 31, 35, 39, §2485; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.48]

Referred to in §§135E.11, 152.8, 153.36, 158.3

147.49 License of another state. The department shall, upon presentation of a license to practice a profession issued by the duly constituted authority of another state, with which this state has established reciprocal relations, and subject to the rules of the examining board for such profession, license said applicant to practice in this state, unless under the rules of said examining board a practical examination is required in such cases. The department of health may, upon the recommendation of the medical examiners, accept in lieu of the examination prescribed in section 148.3 or section 150A.3 a license to practice medicine and surgery or osteopathic medicine and surgery, issued by the duly constituted authority of another state, territory or foreign country. Endorsement may be accepted by the department of health in lieu of further written examination without regard to the existence or nonexistence of a reciprocal agreement, but shall not be in lieu of the standards and qualifications prescribed by section 148.3 or section 150A.3. [C97,§2582; S13,§§2575-a30,-a39, 2582, 2583-l; 2589-b, 2600-m; C24, 27, 31, 35, 39, §2486; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.49]

Referred to in §§135E.11, 152.8, 153.36, 158.3

147.50 Practical examinations. If the rules of any examining board require an applicant for a license under a reciprocal agreement to pass a practical examination in the practice of his profession, then such applicant shall make application therefor to the department upon a form provided by it. [C24, 27, 31, 35, 39,§2487; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.50]

Referred to in §§135E.11, 152.8, 153.36

147.51 Applicability of other provisions. All the provisions of this chapter relative to applications, transmittal of the names of eligible candidates, certification of successful applicants, and issuance of licenses thereto, in the case of regular examinations, shall apply as far as applicable to applicants for practical examinations. [C24, 27, 31, 35, 39,§2488; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.51]

Referred to in §§135E.11, 152.8, 153.36

147.52 Reciprocity. When the laws of any state or the rules of the authorities of said state place any requirement or disability upon any person holding a diploma or certificate from any college in this state in which one of the professions regulated by this title is taught, which affects the right of said person to be licensed in said state, the same requirement or disability shall be placed upon any person holding a diploma from a similar college situated therein, when applying for a license to practice in this state. [S13,§2582-a; C24, 27, 31, 35, 39,§2489; C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.52]

Referred to in §§135E.11, 152.8, 153.36

147.53 Power to adopt rules. The department and each examining board shall have power to establish the necessary rules, not inconsistent with law, for carrying out the reciprocal relations with other states which are authorized by this chapter. [C24, 27, 31, 35, 39, §2490; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.53]

Referred to in §§135E.11, 152.8, 153.36

147.54 Change of residence. Any licensee who is desirous of changing his residence to that of another state or territory shall upon application to the department, and payment of the legal fee, receive a certified statement that he is a duly licensed practitioner in this state. [S13,§2600-n; C24, 27, 31, 35, 39,§2491; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.54]

Referred to in §§135E.11, 152.8, 153.36

REVOCATION OF LICENSES

147.55 Grounds. A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses:

1. Fraud in procuring his license.

2. Incompetency in the practice of his profession.

3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of his profession or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

4. Habitual intoxication or addiction to the use of drugs.

5. Conviction of a felony. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

6. Fraud in representations as to skill or ability.

7. Use of untruthful or improbable statements in advertisements. This shall not be construed as permitting dentists or dental hygienists to advertise their services or products, contrary to the other provisions of this title relative thereto.

8. Distribution of intoxicating liquors or drugs for any other than lawful purposes.

9. Willful or repeated violations of this title, the title on "Public Health", or the rules of the state department of health.

10. Continued practice while knowingly having an infectious or contagious disease.

1. [C97,§2578; S13,§§2575-a33,-a41, 2578, 2583-c, 2600-o5; C24, 27, 31, 35, 39,§2492; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.55]

2. [C97,§2578; S13,§§2578, 2583-c,-m; C24, 27, 31, 35, 39,§**2492**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.55]

3. [C97,§2578; S13,§§2575-a33,-a41, 2578, 2583-m, 2600-o5; C24, 27, 31, 35, 39,§**2492**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.55]

4. [C97,§2578; S13,§§2575-a41, 2578, 2583-c,-m, 2600-o5; C24, 27, 31, 35, 39,§**2492**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.55]

5. [C97,§2578; S13,§§2578, 2583-c, 2600-o5; C24, 27, 31, 35, 39,§**2492**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.55]

6. [C97,§2578; S13,§§2578, 2583-c; C24, 27, 31, 35, 39,§**2492**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.55]

7. [C97,§2578; S13,§§2578, 2583-c, 2600-o5; C24, 27, 31, 35, 39,§**2492**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.55]

8. [C73,§1535; C97,§§2386, 2400; S13,§§2386, 2400; C24, 27, 31, 35, 39,§**2492**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.55]

9. [C97,§2596; S13,§§2575-a33,-a41; C24, 27, 31, 35, 39,§**2492**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.55]

10. [S13,§2583-c; C24, 27, 31, 35, 39,§**2492**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.55]

Referred to in §§148.6, 148.7(7), 152.10, 153.36, 154.4, 156.9
Public health, Title VII
See also §§144.54, 147.4

147.56 Repealed by 65GA, ch 1086,§198.

147.57 Dental hygienist and dentist. The practice of dentistry by a dental hygienist shall also be grounds for the revocation of her license, and the permitting of such practice by the dentist under whose supervision said dental hygienist is operating shall be grounds for revoking the license of said dentist. [S13, §2600-o5; C24, 27, 31, 35, 39,§**2494**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.57]

Referred to in §153.36

147.58 Jurisdiction of revocation. The district court of the county in which a licensee resides shall have jurisdiction of the proceeding to revoke or suspend his license. [C24, 27, 31, 35, 39,§**2495**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.58]

Referred to in §§148.6, 152.10, 153.36

147.59 Petition for revocation. The petition for the revocation or suspension of a license may be filed by the attorney general in all cases. Said petition shall be filed in the office of the clerk of the district court having jurisdiction. [C24, 27, 31, 35, 39,§**2496**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.59]

Referred to in §§148.6, 152.10, 153.36

147.60 Duty of department. The state department of health shall direct the attorney general to file such petition against any licensee upon its own motion, or it may give such direction upon the sworn information of some person who resides in the county wherein the licensee practices. [C97,§§2578, 2596; S13, §§2575-a33,-a41, 2578-a, 2583-c,-m, 2600-o5; C24, 27, 31, 35, 39,§**2497**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.60]

Referred to in §§148.6, 152.10, 153.36

147.61 Attorney general and county attorney. The attorney general shall comply with such direction of the department and prosecute such action on behalf of the state, but the county attorney, at the request of the attorney general, shall appear and prosecute such action when brought in his county. [C24, 27, 31, 35, 39,§**2498**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.61]

Referred to in §§148.6, 152.10, 153.36

147.62 Rules governing petition. The following rules shall govern the petition in such cases:

1. The state shall be named as plaintiff and the licensee as defendant.

2. The charges against the licensee shall be stated in full.

3. Amendments may be made as in ordinary actions.

4. All allegations shall be deemed denied but the licensee may plead thereto if he desires. [C24, 27, 31, 35, 39,§**2499**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.62]

Referred to in §§148.6, 152.10, 153.36
Amendments allowed, R.C.P. 88 and 249

147.63 Trial. Upon the presentation of the petition, or a copy thereof, to the court he shall make an order fixing the time and place for the hearing, which shall be not less than ten nor more than twenty days thereafter. [S13,§§2575-a33,-a41, 2578-a, 2583-c,-m, 2600-o5; C24, 27, 31, 35, 39,§**2500**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.63]

Referred to in §§148.6, 152.10, 153.36

147.64 Notice. Notice of the filing of such petition and of the time and place of hearing shall be served upon the licensee at least ten days before said hearing in the manner required for the service of notice of the commencement of an ordinary action. [S13,§§2575-a33,-a41, 2578-a, 2583-c,-m, 2600-o5; C24, 27, 31, 35, 39,§**2501**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.64]

Referred to in §§148.6, 152.10, 153.36
Manner of service, R.C.P. 56.1 and 56.2

147.65 Nature of action. The proceeding shall be summary in its nature and triable as an equitable action. [S13,§§2575-a33,-a41, 2578-a, 2583-c,-m, 2600-o5; C24, 27, 31, 35, 39,§**2502**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.65]

Referred to in §§148.6, 152.10, 153.36
How issues tried, R.C.P. 177

147.66 Judgment. Judgment of revocation or suspension of the license shall be entered of record and the licensee shall not engage in the practice of his profession after his license is revoked or during the time for which it is suspended. The clerk of the court shall, upon the entry of such judgment, forthwith furnish the state department of health with a certified

copy thereof. [C73,§1535; C97,§§2386, 2400; S13, §§2386, 2400, 2575-a33,-a41, 2578-a; C24, 27, 31, 35, 39,§2503; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.66]

Referred to in §§148.6, 152.10, 153.36

147.67 Default. In case the licensee fails to appear, either in person or by counsel at the time and place designated in said notice, the court, after receiving satisfactory evidence of the truth of the charges, shall order the license revoked or suspended. [S13,§§2575-a33,-a41, 2578-a; C24, 27, 31, 35, 39,§2504; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.67]

Referred to in §§148.6, 152.10, 153.36

147.68 Costs. If the judgment is adverse to the licensee the costs shall be taxed to him as in ordinary civil actions, but if the state is the unsuccessful party the costs shall be paid out of any money in the state treasury not otherwise appropriated. [C24, 27, 31, 35, 39,§2505; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.68]

Referred to in §§148.6, 152.10, 153.36
Costs, ch 625

147.69 Unpaid costs. All costs accrued at the instance of the state, when the successful party, which the attorney general certifies cannot be collected from the defendant, shall be paid out of any money in the state treasury not otherwise appropriated. [C24, 27, 31, 35, 39, §2506; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.69]

Referred to in §§148.6, 152.10, 153.36

147.70 Hearing on appeal. Both parties shall have the right of appeal. The cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the appeal is taken. [S13,§§2578-b, 2600-o5; C24, 27, 31, 35, 39, §2507; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.70; 66GA, ch 1241,§45]

Referred to in §§148.6, 152.10, 153.36

147.71 Effect of appeal. The taking of an appeal by the defendant and the filing of a supersedeas bond shall not operate to stay the proceedings of the district court, or restore the right of said defendant to practice his profession pending such appeal. [C24, 27, 31, 35, 39,§2508; C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.71]

Referred to in §§148.6, 152.10, 153.36
Supersedeas bond, R.C.P. 337(*a*)

USE OF TITLES AND DEGREES

147.72 Professional titles and abbreviations. Any person licensed to practice a profession under this title may append to his name any recognized title or abbreviation, which he is entitled to use, to designate his particular profession, but no other person shall assume or use such title or abbreviation, and no licensee shall advertise himself in such a manner as to lead the public to believe that he is engaged in the practice of any other profession than the one which he is licensed to practice. [S13,§§2575-a28,-a31, 2583-q; C24, 27, 31, 35, 39,§2509; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.72]

Referred to in §147.73

147.73 Titles used by holder of degree. Nothing in section 147.72 shall be construed:

1. As authorizing any person licensed to practice a profession under this title to use or assume any degree or abbreviation of the same unless such degree has been conferred upon said person by an institution of learning accredited by the appropriate board herein created, together with the commissioner of health, or by some recognized state or national accredited agency.

2. As prohibiting any holder of a degree conferred by an institution of learning accredited by the appropriate board herein created, together with the commissioner of health, or by some recognized state or national accrediting agency, from using the title which such degree authorizes him to use, but he shall not use such degree or abbreviation in any manner which might mislead the public as to his qualifications to treat human ailments. [C24, 27, 31, 35, 39,§2510; C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.73]

147.74 False representation. Any person who falsely holds himself out by the use of any professional title or abbreviation, either in writing, cards, signs, circulars, or advertisements, to be a practitioner of a system of the healing arts other than the one under which he holds a license or who fails to use the following designations shall be guilty of a misdemeanor and shall be fined not less than twenty-five dollars, nor more than one hundred dollars, or be sentenced to thirty days in jail.

A physician or surgeon may precede his name with the title "Doctor", and shall add after his name the letters, "M. D."

An osteopath or osteopathic physician and surgeon may use the prefix "Doctor", but shall add after his name the letters, "D. O." or "O. S." as the case may be, or the words, "Osteopath" or "Osteopathic Physician and Surgeon".

A chiropractor may use the prefix "Doctor", but shall add after his name the letters, "D. C." or the word, "Chiropractor".

A dentist may use the prefix "Doctor", but shall add after his name the letters "D. D. S." or the word "Dentist" or "Dental Surgeon".

A podiatrist may use the prefix "Dr." but shall add after his name the word "Podiatrist".

Any graduate of a school accredited on the board of optometric examiners may use the prefix "Doctor", but shall add after his name the letters "Opt." or "Optometrist".

A physical therapist shall be entitled to use the words "licensed physical therapist" after his name or to signify the same by the use of the letters "L. P. T." after his name.

A psychologist who possesses a doctoral degree and who represents himself as a certified practicing psychologist may use the prefix "doctor" but shall add after his name the word "psychologist".

No other practitioner licensed to practice his profession under any of the provisions of this title shall be entitled to use the prefix "Dr." or

"Doctor". [C31, 35,§2510-d1; C39,§2510.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.74]

147.75 Itinerants. Any person holding an itinerant practitioner's license on July 4, 1963, is hereby granted continuation of the rights and privileges granted under such license for as long as his regular license is maintained. [C97,§2581; S13,§§2581, 2583-e; C24, 27, 31, 35, 39, §2512; C46, 50, 54, 58, 62,§147.76; C66, 71, 73, 75, §147.75]

147.76 Rules promulgated. The examining boards for the various professions shall promulgate all necessary and proper rules to implement and interpret the provisions of this chapter and chapters 148, 148A, 148B, 149, 150, 150A, 151, 152, 153, 154, 154A, 154B, 155 and 156. [66GA, ch 1063,§7]

147.77 to 147.79 Repealed by 60GA, ch 123, §1.

FEES

147.80 License—examination—renewal fees. An examining board shall set the fees for the examination of applicants, which fees shall be based upon the annual cost of administering the examinations. An examining board shall set the annual fees required for any of the following based upon the cost of sustaining the board and the actual costs of licensing:

1. License to practice dentistry issued upon the basis of an examination given by the board of dental examiners, license to practice dentistry issued under a reciprocal agreement, resident dentist's license, renewal of a license to practice dentistry.

2. License to practice pharmacy issued upon the basis of an examination given by the board of pharmacy examiners, license to practice pharmacy issued under a reciprocal agreement, renewal of a license to practice pharmacy.

3. License to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of an examination given by the board of medical examiners, license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy issued by endorsement or under a reciprocal agreement, renewal of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

See 65GA, ch 1141,§1

4. Certificate to practice psychology or associate psychology issued on the basis of an examination given by the board of psychology examiners, or certificate to practice psychology or associate psychology issued under a reciprocity agreement or by endorsement, renewal of a certificate to practice psychology or associate psychology.

5. License to practice chiropractic issued on the basis of an examination given by the board of chiropractic examiners. License to practice chiropractic issued by endorsement or under a reciprocal agreement, renewal of a license to practice chiropractic.

6. License to practice podiatry issued upon the basis of an examination given by the board of podiatry examiners, license to practice podiatry issued under a reciprocal agreement, renewal of a license to practice podiatry.

7. License to practice physical therapy issued upon the basis of an examination given by the board of physical therapy examiners, license to practice physical therapy issued under a reciprocal agreement, renewal of a license to practice physical therapy.

8. For a license to practice optometry issued upon the basis of an examination given by the board of optometry examiners, license to practice optometry issued under a reciprocal agreement, renewal of a license to practice optometry.

9. License to practice dental hygiene issued upon the basis of an examination given by the board of dental examiners, license to practice dental hygiene issued under a reciprocal agreement, renewal of a license to practice dental hygiene.

10. License to practice funeral directing and embalming issued upon the basis of an examination given by the board of funeral directing and embalming examiners, license to practice funeral directing and embalming issued under a reciprocal agreement, renewal of a license to practice funeral directing, renewal of a license to practice embalming.

11. License to practice nursing issued upon the basis of an examination given by the board of nurse examiners, license to practice nursing based on an endorsement from another state, territory or foreign country, renewal of a license to practice nursing.

12. A nurse who does not engage in nursing during the year succeeding the annual expiration of the license shall notify the board to place the nurse upon the inactive list and the nurse shall not be required to pay the renewal fee so long as he remains inactive and so notifies the board. To resume nursing, the nurse shall notify the board and remit the renewal fee for the current annual period.

13. License to practice cosmetology issued upon the basis of an examination given by the board of cosmetology examiners, license to practice cosmetology under a reciprocal agreement, renewal of a license to practice cosmetology, temporary permit to practice as a cosmetology trainee, original license to conduct a school of cosmetology, renewal of license to conduct a school of cosmetology, original license to operate a beauty salon, renewal of a license to operate a beauty salon, original license and examination to practice electrolysis, renewal of a license to practice electrolysis, annual inspection of a school of cosmetology, annual inspection of a beauty salon, original cosmetology school instructor's

license, renewal of cosmetology school instructor's license.

14. License to practice barbering on the basis of an examination given by the board of barber examiners, license to practice barbering under a reciprocal agreement, renewal of a license to practice barbering, annual inspection by the state department of health of barber school and annual inspection of barbershop, an original barber school license, renewal of a barber school license, transfer of license upon change of ownership of a barber shop or barber school, inspection by the department and an original barber shop license, renewal of a barber shop license, original barber school instructor's license, renewal of a barber school instructor's license, original barber assistant's license, renewal of a barber assistant's license.

15. License to practice speech pathology or audiology issued on the basis of an examination given by the board of speech pathology and audiology, or license to practice speech pathology or audiology issued under a reciprocity agreement, renewal of a license to practice speech pathology or audiology.

16. For a certified statement that a licensee is licensed in this state.

17. Duplicate license, which shall be so designated on its face, upon satisfactory proof the original license issued by the department has been destroyed or lost.

1. [C97,§2597; S13,§2600-d,-m; C24, 27, 31, 35, 39,§**2516**; C46, 50, 54, 58, 62,§147.80(1, 2, 7); C66, 71, 73,§147.80(1, 7); C75,§147.80(1)]

2. [C97,§2590; S13,§§2589-b,-d; C24, 27, 31, 35, 39,§**2516**; C46, 50, 54, 58, 62,§147.80(5–7); C66, 71, 73,§147.80(1, 7); C75,§147.80(2)]

3. [C97,§2576; S13,§§2576, 2582, 2583-a; C24, 27, 31, 35, 39,§**2516**; C46, 50, 54, 58, 62,§147.80(1–4); C66, 71, 73,§147.80(2, 7); C75,§147.80(3)]

4. [C75,§147.80(4)]

5. [C24, 27, 31, 35, 39,§**2516**; C46, 50, 54, 58, 62, 66, 71, 73,§147.80(3, 4, 7); C75,§147.80(5)]

6. [C24, 27, 31, 35, 39,§**2516**; C46, 50, 54, 58, 62, 66, 71, 73,§147.80(3, 4, 7); C75,§147.80(6)]

7. [C66, 71, 73,§147.80(3, 4, 7); C75,§147.80(7)

8. [S13,§2583-l,-n; C24, 27, 31, 35, 39,§**2516**; C46, 50, 54, 58, 62, 66, 71, 73,§147.80(3, 4, 7); C75,§147.80(8)]

9. [C24, 27, 31, 35, 39,§**2516**; C46, 50, 54, 58, 62, 66, 71, 73,§147.80(5–7); C75,§147.80(9)]

10. [S13,§2575-a38, -a39; C24, 27, 31, 35, 39, §**2516**; C46, 50, 54, 58, 62, 66, 71, 73,§147.80(5–7); C75,§147.80(10)]

11. [S13,§2575-a30; C24, 27, 31, 35, 39,§**2516**; C46, 50, 54, 58, 62,§147.80(5–7); C66,§147.80(6, 7, 16, 17); C71, 73,§147.80(6, 7, 19, 20); C75, §147.80(11)]

12. [C66,§147.80(19); C71, 73,§147.80(22); C75, §147.80(12)]

13. [C27,§2516(5–7); C31, 35, 39,§**2516(5–7, 11, 13)**; C46, 50, 54, 58, 62,§§147.80(5–7, 11, 13); C66, 71, 73,§147.80(5–7, 10, 11); C75,§147.80(13); 66GA, ch 1118,§34]

14. [C27, 31, 35, 39,§**2516**; C46, 50, 54,§147.80 (5–7, 12, 13); C58, 62, 66,§147.80(5–7, 12–14); C71, 73,§147.80(5–7, 12–17); C75,§147.80(14); 66GA, ch 1118,§34]

15. [66GA, ch 1114,§12]

16. [S13,§2600,-n; C24, 27, 31, 35, 39,§**2516**; C46, 50, 54, 58, 62, 66, 71, 73,§147.80(8); C75, §147.80(15)]

17. [C66, 71, 73,§147.80(18); C75,§147.80(16)]

Referred to in §§157.4, 157.5, 157.8, 157.11, 158.3, 158.4, 158.7, 158.9, 158.11
Exemption to members of armed forces, 51GA, ch 99,§1
See also §135E.15

147.81 Second examination. Any applicant for a license who fails in his examination shall be entitled to a second examination without further fee at any time within a period of fourteen months after the first examination. [C97, §§2576, 2590; S13,§§2576, 2583-n, 2589-d; C24, 27, 31, 35, 39,§**2517**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.81]

147.82 Fees. All fees shall be collected by the department of health and shall be paid to the treasurer of state and deposited in the general fund of the state, except as provided in sections 147.94 and 147.102. [C97,§2583; S13, §§2575-a44, 2583-a,-s; C24, 27, 31, 35, 39,§**2518**; C46, 50, 54, 58, 62, 66,§147.82; C71, 73,§§147.82, 153.4; C75,§147.82]

Referred to in §152.3
Exception, §147.94 et seq.
Paying fees into state treasury, §12.10

VIOLATIONS—CRIMES—PUNISHMENT

147.83 Injunction. Any person engaging in any business or in the practice of any profession for which a license is required by this title without such license may be restrained by permanent injunction. [C24, 27, 31, 35, 39,§**2519**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.83]

Injunctions, ch 664

147.84 Forgeries. Any person who shall file or attempt to file with the state department of health any false or forged diploma, or certificate or affidavit of identification or qualification, shall be guilty of forgery and punished accordingly. [C97,§§2580, 2595; S13,§2583-d; C24, 27, 31, 35, 39,§**2520**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.84]

Forgery, ch 718

147.85 Fraud. Any person who shall present to the department a diploma or certificate of which he is not the rightful owner, for the purpose of procuring a license, or who shall falsely personate anyone to whom a license has been issued by said department shall be punished as provided in section 147.86. [C97, §§2580, 2581, 2595; S13,§§2575-a45, 2581, 2583-c,-d; C24, 27, 31, 35, 39,§**2521**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.85]

147.86 Penalties. Any person violating any provision of this or the following chapters of this title, except insofar as said provisions apply or relate to or affect the practice of pharmacy shall be fined not less than one hundred dollars nor more than one thousand dollars

or be imprisoned in the county jail for not more than six months or by both such fine and imprisonment. [C97,§§2580, 2581, 2588, 2590, 2591, 2595; S13,§§2575-a35,-a45, 2581, 2583-d, -r, 2589-d, 2600-o4; SS15,§2588; C24, 27, 31, 35, 39, §2522; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.86; 66GA, ch 1118,§35]

Referred to in §147.85

ENFORCEMENT PROVISIONS

147.87 Enforcement. The state department of health shall enforce the provisions of this and the following chapters of this title and for that purpose shall make necessary investigations relative thereto. Every licensee and member of an examining board shall furnish the department such evidence as he may have relative to any alleged violation which is being investigated. [C24, 27, 31, 35, 39,§2523; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.87]

Referred to in §§147.95, 152.10, 153.36

147.88 Department inspector and assistant. There is hereby created the position of health department inspector and assistant who shall be attached to the state department of health and who shall be appointed by the commissioner of health of the state of Iowa. The health department inspector's duties shall consist of investigating all violations of this title, securing all available evidence and reporting to the department of health. [C31, 35,§2523-c1; C39,§2523.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.88]

Referred to in §§147.95, 152.10, 153.36

147.89 Report of violators. Every licensee and member of an examining board shall report, also, to the department the name of every person, without a license, that he has reason to believe is engaged in:

1. Practicing any profession for which a license is required.

2. Operating as an itinerant practitioner of such profession. [C24, 27, 31, 35, 39,§2524; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.89]

Referred to in §§147.95, 152.10, 153.36

147.90 Rules and forms. The state department of health shall establish the necessary rules and forms for carrying out the duties imposed upon it by the provisions of this and the following chapters of this title. [C24, 27, 31, 35, 39,§2525; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.90]

Referred to in §153.36

147.91 Publications. The department shall have printed in pamphlet form for each profession the following matter which is pertinent to the particular profession for which such pamphlet is published:

1. The law regulating the practice of the profession.

2. The rules of the department relative to licenses.

3. The rules of the examining board relative to examinations.

Such pamphlet shall be supplied to any person applying for the same. [C24, 27, 31, 35, 39, §2526; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.91]

Referred to in §153.36

147.92 Attorney general and county attorney. Upon request of the state department of health the attorney general shall institute in the name of the state the proper proceedings against any person charged by the department with violating any provision of this or the following chapters of this title and the county attorney, at the request of the attorney general, shall appear and prosecute such action when brought in his county. [S13,§2600-o7; C24, 27, 31, 35, 39,§2527; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.92]

Referred to in §153.36

147.93 Prima-facie evidence. The opening of an office or place of business for the practice of any profession for which a license is required by this title, the announcing to the public in any way the intention to practice any such profession, the use of any professional degree or designation, or of any sign, card, circular, device, or advertisement, as a practitioner of any such profession, or as a person skilled in the same, shall be prima-facie evidence of engaging in the practice of such profession. [S13,§§2575-a28,-a31, 2600-o; C24, 27, 31, 35, 39,§2528; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.93]

EXCEPTIONS

147.94 Pharmacists. The provisions of this chapter relative to the making of application for a license, the issuance of a license, the negotiation of reciprocal agreements for recognition of foreign licenses, the collection of license and renewal fees, and the preservation of records shall not apply to the licensing of persons to practice pharmacy, but such licensing shall be governed by the following regulations:

1. Every application for a license to practice pharmacy shall be made direct to the secretary of the pharmacy examiners.

2. Such license and all renewals thereof shall be issued by said examiners.

3. Every reciprocal agreement for the recognition of any such license issued in another state shall be negotiated by said examiners.

4. All license and renewal fees exacted from persons licensed to practice pharmacy shall be paid to and collected by the secretary of the pharmacy examiners.

5. All records in connection with the licensing of pharmacists shall be kept by said secretary.

1. [C97,§2589; S13,§2589-b; SS15,§2589-a; C24, 27, 31, 35, 39,§2529; C46, 50, 54, 58, 62, 66, 71, §147.94]

2. [C97,§2590; S13,§2589-d; C24, 27, 31, 35, 39, §2529; C46, 50, 54, 58, 62, 66, 71,§147.94]

3. [S13,§2589-b; C24, 27, 31, 35, 39,§2529; C46, 50, 54, 58, 62, 66, 71,§147.94]

4. [C97,§2590; S13,§2589-d; C24, 27, 31, 35, 39, §2529; C46, 50, 54, 58, 62, 66, 71,§147.94]

5. [C97,§§2586, 2595; C24, 27, 31, 35, 39,§2529; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.94]

Referred to in §§147.82, 147.96

147.95 Enforcement—agents as peace officers. The provisions of this title insofar as they affect the practice of pharmacy shall be enforced by the pharmacy examiners and the provisions of sections 147.87, 147.88, and 147.89 shall not apply to said profession. Officers, agents, inspectors, and representatives of the board of pharmacy examiners shall have the powers and status of peace officers when enforcing the provisions of this title. [C97,§2584; S13,§2596-c; SS15,§2584; C24, 27, 31, 35, 39,§2530; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.95]

Referred to in §147.96

147.96 Pharmacy examiners. In discharging the duties and exercising the powers provided for in sections 147.94 and 147.95, the pharmacy examiners and their secretary shall be governed by all the provisions of this chapter which govern the department of health when discharging a similar duty or exercising a similar power with reference to any of the professions regulated by this title. [C24, 27, 31, 35, 39,§2531; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.96]

147.97 Repealed by 57GA, ch 96,§3.

147.98 Secretary of pharmacy examiners. The pharmacy examiners shall have the right to employ a full-time secretary, who shall not be a member of the examining board, at such compensation as may be fixed pursuant to chapter 19A but the provisions of section 147.22 providing for a secretary for each examining board shall not apply to the pharmacy examiners. [C97,§2585; S13,§2585; C24, 27, 31, 35, 39, §2532; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.98]

147.99 Duties of secretary. The secretary of the pharmacy examiners shall, upon the direction of said examiners, make inspections of alleged violations of the provisions of this title relative to the practice of pharmacy and of chapters 203, 204, and 205. Said secretary shall be allowed his necessary traveling and hotel expenses in making such inspections. [C97, §2585; S13,§2585; C24, 27, 31, 35, 39,§2533; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.99]

Inspectors to gather samples of prophylactics; see §135.19

147.100 Expirations and renewals. Licenses shall expire annually as determined by the examining board. A person who fails to renew his license by the expiration date shall be allowed to do so within thirty days following its expiration, but the examining board may assess a reasonable penalty. [C75,§147.100]

147.101 Repealed by 65GA, ch 1086,§198.

147.102 Physicians and surgeons, psychologists, chiropractors and osteopaths. Notwithstanding the provisions of this title, every application for a license to practice medicine and surgery, psychology, chiropractic, osteopathy, or osteopathic medicine and surgery, shall be made directly to the secretary of the examining board of such profession, and every reciprocal agreement for the recognition of any such license issued in another state shall be negotiated by the examining board for such profession, and all examination, license, and renewal fees received from such persons licensed to practice any of such professions shall be paid to and collected by the secretary of the examining board of such profession, who shall transmit the fees to the treasurer of state who shall deposit the fees in the general fund of the state. The salary of the secretary shall be established by the governor with the approval of the executive council pursuant to section 19A.9, subsection 2, under the pay plan for exempt positions in the executive branch of government. [S13, §2583-a; C24, 27, 31, 35, 39,§2535; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.102; 66GA, ch 3,§6]

Referred to in §147.82

147.103 Inspector. The medical examiners may appoint an inspector, who shall not be a member of the examining board, to administer and aid in the enforcement of the provisions of the law relating to those licensed to practice medicine and surgery, osteopathic medicine and surgery, and osteopathy. The amount of compensation for the inspector shall be determined pursuant to chapter 19A. [C54, 58, 62, 66, 71, 73, 75,§147.103]

147.104 Records. The secretary of each of said boards shall keep a correct record of the proceedings of said board, and upon the granting of any license to practice any of said professions the board shall, at the time of granting said license, certify to the department of health the application upon which such license was issued, together with the questions submitted in the examination of such applicant and the answers thereto, and such secretary shall deposit with the department of health all records not needed for the current use of his examining board. [S13,§2583-a; C24, 27, 31, 35, 39,§2537; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.104]

147.105 to 147.110 Repealed by 66GA, ch 1115,§11.

WOUNDS BY CRIMINAL VIOLENCE

147.111 Report of treatment of wounds. Any person licensed under the provisions of this title, who shall administer any treatment to any person suffering an injury of violence, which appears to have been received in connection with the commission of a criminal offense, or to whom an application is made for treatment of any nature because of any such injury of violence, shall at once but not later than twelve hours thereafter, report said fact to the sheriff of the county in which said treatment was administered or an application there-

for was made, stating therein the name of such person, his residence if ascertainable, and giving a brief description of the injury. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as the provisions hereof are concerned. [C31, 35,§2537-d1; C39,§2537.7; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.111]

Referred to in §147.112

147.112 Report by sheriff. The sheriff of any county who has received any report required by this chapter and who has any reason to believe that the person injured was involved in the commission of any crime, either as perpetrator or victim, shall at once report said fact, giving all the details relative thereto to the chief of the bureau of investigation. No sheriff shall divulge any information received under the provisions of this section and section 147.111 to any person other than a law enforcing officer, and then only in connection with the investigation of the alleged commission of a crime. [C31, 35,§2537-d2; C39,§2537.8; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.112]

147.113 Violations. Any person failing to make the report required herein shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed one hundred dollars. [C31, 35,§2537-d3; C39,§2537.9; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.113]

INSPECTOR FOR DENTAL EXAMINERS

147.114 Inspector. An inspector may be appointed by the board of dental examiners pursuant to the provisions of chapter 19A. [C62, 66, 71, 73, 75,§147.114]

147.115 Repealed by 65GA, ch 1086,§198.

INSPECTOR FOR OPTOMETRY EXAMINERS

147.116 Inspector. An inspector may be appointed by the board of optometry examiners pursuant to the provisions of chapter 19A. [C66, 71, 73, 75,§147.116]

147.117 Repealed by 65GA, ch 1086,§198.

NURSING HOME ADMINISTRATORS

Sections 147.118 to 147.134 transferred to sections 135E.1 to 135E.17

MALPRACTICE

See chapter 519A relating to insurance

147.135 Exemption of peer review committee. A person shall not be civilly liable as a result of acts, omissions, or decisions made in connection with the person's service on a peer review committee. However, such immunity from civil liability shall not apply if an act, omission, or decision is made with malice. [66GA, ch 239,§15]

147.136 Scope of recovery. In an action for damages for personal injury against a physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatrist, optometrist, pharmacist, chiropractor, or nurse licensed to practice that profession in this state, or against a hospital licensed for operation in this state, based on the alleged negligence of the practitioner in the practice of the profession or occupation, or upon the alleged negligence of the hospital in patient care, in which liability is admitted or established, the damages awarded shall not include actual economic losses incurred or to be incurred in the future by the claimant by reason of the personal injury, including but not limited to, the cost of reasonable and necessary medical care, rehabilitation services, and custodial care, and the loss of services and loss of earned income, to the extent that those losses are replaced or are indemnified by insurance, or by governmental, employment, or service benefit programs or from any other source except the assets of the claimant or of the members of the claimant's immediate family. [66GA, ch 239,§16]

147.137 Consent in writing. A consent in writing to any medical or surgical procedure or course of procedures in patient care which meets the requirements of this section shall create a presumption that informed consent was given. A consent in writing meets the requirements of this section if it:

1. Sets forth in general terms the nature and purpose of the procedure or procedures, together with the known risks, if any, of death, brain damage, quadriplegia, paraplegia, the loss or loss of function of any organ or limb, or disfiguring scars associated with such procedure or procedures, with the probability of each such risk if reasonably determinable.

2. Acknowledges that the disclosure of that information has been made and that all questions asked about the procedure or procedures have been answered in a satisfactory manner.

3. Is signed by the patient for whom the procedure is to be performed, or if the patient for any reason lacks legal capacity to consent, is signed by a person who has legal authority to consent on behalf of that patient in those circumstances. [66GA, ch 239,§17]

147.138 Contingent fee of attorney reviewed by court. In any action for personal injury or wrongful death against any physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatrist, optometrist, pharmacist, chiropractor or nurse licensed under this chapter or against any hospital licensed under chapter 135B, based upon the alleged negligence of the licensee in the practice of that profession or occupation, or upon the alleged negligence of the hospital in patient care, the court shall determine the reasonableness of any contingent fee arrangement between the plaintiff and the plaintiff's attorney. [66GA, ch 239,§25]

147.139 to 147.150 Reserved.

SPEECH PATHOLOGISTS AND AUDIOLOGISTS

147.151 Definitions. As used in this division, unless the context otherwise requires:

1. *"Board"* means the Iowa board of speech pathology and audiology examiners established pursuant to section 147.14, subsection 9.

2. *"Speech pathologist"* means a person who engages in the practice of speech pathology as defined in this section.

3. *"Audiologist"* means a person who engages in the practice of audiology as defined in this section.

4. The *"practice of speech pathology"* means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, rehabilitation, or remediation related to the development and disorders of speech, fluency, voice, or language for the purposes of nonmedically evaluating, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals.

5. The *"practice of audiology"* means the application of principles, methods, and procedures for measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, rehabilitation, or remediation related to hearing and disorders of hearing and associated communication disorders for the purpose of nonmedically evaluating, identifying, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals, including the determination and use of appropriate amplification. [66GA, ch 1114,§1]

147.152 Applicability. Nothing contained in this division shall be construed to apply to:

1. Licensed physicians and surgeons, licensed osteopathic physicians and surgeons, approved physician's assistants and registered nurses acting under the supervision of a physician, persons conducting hearing tests under the direct supervision of a licensed physician and surgeon or licensed osteopathic physician and surgeon, or students of medicine or surgery or osteopathic medicine and surgery pursuing a course of study in a medical school or college of osteopathic medicine and surgery approved by the medical examiners while performing functions incidental to their course of study.

2. Hearing aid fitting, the dispensing or sale of hearing aids and the providing of hearing aid service and maintenance by a hearing aid dealer or holder of a temporary permit as defined and licensed under chapter 154A.

3. Students enrolled in an accredited college or university pursuing a course of study leading to a degree in speech pathology or audiology while receiving clinical training as a part of the course of study and acting under the supervision of a licensed speech pathologist or audiologist provided they use the title "trainee" or similar title clearly indicating training status.

4. Nonprofessional aides who perform their services under the supervision of a speech pathologist or audiologist as appropriate and who meet such qualifications as may be established by the board for aides if they use the title "aide", "assistant", "technician", or other similar title clearly indicating their status.

5. Audiometric tests administered pursuant to the United States Occupational Safety and Health Act of 1970 or chapter 88, and in accordance with regulations issued thereunder, by employees of a person engaged in business, including the state of Iowa, its various departments, agencies, and political subdivisions, solely to employees of such employer, while acting within the scope of their employment.

6. Persons certified by the department of public instruction as speech clinicians or hearing clinicians and employed by a school district or area education agency while acting within the scope of their employment.

A person exempted from the provisions of this division by this section shall not use the title speech pathologist or audiologist or any title or device indicating or representing in any manner that the person is a speech pathologist or is an audiologist; provided, a hearing aid dealer licensed under chapter 154A may use the title "certified hearing aid audiologist" when granted by the national hearing aid society; and provided, persons who meet the requirements of section 147.153, subsection 1, who are certified by the department of public instruction as speech clinicians may use the title speech pathologist and persons who meet the requirements of section 147.153, subsection 2, who are certified by the department of public instruction as hearing clinicians may use the title audiologist, while acting within the scope of their employment. [66GA, ch 1114,§2]

147.153 Requirements for license. Each applicant for a license as a speech pathologist or audiologist shall meet all of the following requirements:

1. For a license as a speech pathologist:

a. Possess a masters degree or its equivalent from an accredited school, college or university with a major in speech pathology.

b. Show evidence of completion of not less than two hundred seventy-five hours of supervised clinical training in speech pathology as a student in an accredited school, college or university.

c. Show evidence of completion of not less than nine months clinical experience under the supervision of a licensed speech pathologist following the receipt of the masters degree.

2. For a license as an audiologist:

a. Possess a masters degree or its equivalent from an accredited school, college or university with a major in audiology.

b. Show evidence of completion of not less than two hundred seventy-five hours of supervised clinical training in audiology as a student in an accredited school, college or university.

c. Show evidence of completion of not less than nine months clinical experience under the supervision of a licensed audiologist following the receipt of the masters degree.

3. Pass an examination administered by the board to assure the applicant's professional competence in speech pathology or audiology. [66GA, ch 1114,§3]

Referred to in §§147.152, 147.154, 147.155

147.154 Examination. The examinations required in section 147.153, subsection 3, may, at the discretion of the board, be waived for any of the following persons:

1. For holders by examination of licenses or certificates from states whose requirements are substantially equivalent to those of this division.

2. For holders on July 1, 1976 of certificates of clinical competence from the American speech and hearing association.

3. For holders on July 1, 1976 of statements of professional recognition as speech clinicians or hearing clinicians from the department of public instruction.

4. For holders on July 1, 1976 of certificates with endorsement as a speech clinician or a hearing clinician from the department of public instruction.

Any person who within one year after July 1, 1976 meets the requirements specified in section 147.153 for licensure except subsection 3 of said section shall be licensed without having passed the examination required in subsection 3 of said section.

The requirements of section 147.153, subsections 1 and 2, may, at the discretion of the board, be waived for any person who has completed five years of experience in the profession of speech pathology or audiology on July 1, 1976 which in the opinion of the board is sufficient to qualify the person and the person may be licensed hereunder upon examination as provided in section 147.153, subsection 3. [66GA, ch 1114,§4]

147.155 Temporary clinical license. Any person who has fulfilled all of the requirements for licensure under this division, except for having completed the nine months clinical experience requirement as provided in section 147.153, subsection 1 or 2, may apply to the board for a temporary clinical license. The license shall be designated "temporary clinical license in speech pathology" or "temporary clinical license in audiology" and shall authorize the licensee to practice speech pathology or audiology under the supervision of a licensed speech pathologist or licensed audiologist, as appropriate. The license shall be valid for one year and may be renewed once at the discretion of the board. The fee for a temporary clinical license shall be set by the board to cover the administrative costs of issuing the license, and if renewed, a renewal fee as set by the board shall be required. A temporary clinical license shall be issued only upon evidence satisfactory to the board that the applicant will be supervised by a person licensed as a speech pathologist or audiologist, as appropriate. The board shall revoke any temporary clinical license at any time it shall determine either that the work done by the temporary clinical licensee or the supervision being given the temporary clinical licensee does not conform to reasonable standards established by the board. [66GA, ch 1114, §5]

147.156 Temporary permit. The board may, at its discretion, issue a temporary permit to nonresidents authorizing the permittee to practice speech pathology or audiology in this state for a period of not to exceed three months whenever, in the opinion of the board, a need exists and the permittee, in the opinion of the board, possesses the necessary qualifications which shall be substantially equivalent to those required for licensure by this division. [66GA, ch 1114,§6]

CHAPTER 148

PRACTICE OF MEDICINE AND SURGERY

Referred to in §§135.11(16), 135C.40, 147.76, 148.10, 150.1(2), 152.1, 154B.2, 155.3(8), 229.1, 422.45, 514.17
Enforcement, §§147.87, 147.90, 147.92
Penalty, §147.86

148.1 Persons engaged in practice.
148.2 Persons not required to qualify.
148.3 Requirements for license.
148.4 Certificates of national board.
148.5 Resident physician's license.
148.6 Revocation.
148.7 Proceedings.
148.8 Voluntary surrender of license.
148.9 Reinstatement.
148.10 Temporary certificate.
148.11 Special license to practice medicine and surgery.

148.1 Persons engaged in practice. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of medicine and surgery:

1. Persons who publicly profess to be physicians or surgeons or who publicly profess to assume the duties incident to the practice of medicine or surgery.

2. Persons who prescribe, or prescribe and furnish medicine for human ailments or treat the same by surgery.

3. Persons who act as representatives of any person in doing any of the things mentioned in this section. [C97,§2579; C24, 27, 31, 35, 39, §2538; C46, 50, 54, 58, 62, 66, 71, 73, 75,§148.1]

Referred to in §148.2

148.2 Persons not required to qualify. Section 148.1 shall not be construed to include the following classes of persons:

1. Persons who advertise or sell patent or proprietary medicines.

2. Persons who advertise, sell, or prescribe natural mineral waters flowing from wells or springs.

3. Students of medicine or surgery who have completed at least two years' study in a medical school, approved by the medical examiners, and who prescribe medicine under the supervision of a licensed physician and surgeon, or who render gratuitous service to persons in case of emergency.

4. Licensed podiatrists, osteopaths, osteopathic physicians and surgeons, chiropractors, physical therapists, nurses, dentists, optometrists, and pharmacists who are exclusively engaged in the practice of their respective professions.

5. Physicians and surgeons of the United States army, navy, or public health service when acting in the line of duty in this state, or physicians and surgeons licensed in another state, when incidentally called into this state in consultation with a physician and surgeon licensed in this state.

6. A graduate of a medical school who is continuing his training and performing the duties of an intern, or who is engaged in postgraduate training deemed the equivalent of an internship in a hospital approved for training by the medical examiners. [C97, §§2579, 2581; S13,§2581; C24, 27, 31, 35, 39,§2539; C46, 50, 54, 58, 62, 66, 71, 73, 75,§148.2]

148.3 Requirements for license. Each applicant for a license to practice medicine shall:

1. Present a diploma issued by a medical college approved by the medical examiners, or present other evidence of equivalent medical education approved by the medical examiners. The medical examiners may accept, in lieu of a diploma from a medical college approved by them, all of the following:

a. A diploma issued by a medical college which has been neither approved nor disapproved by the medical examiners; and

b. The completion of one year of training as a resident physician, which training has been approved by or is acceptable to the medical examiners; and

c. The recommendation of the educational council for foreign medical graduates, incorporated or similar accrediting agency.

2. Pass an examination prescribed by the medical examiners which shall include subjects which determine the applicant's qualifications to practice medicine and surgery and which shall be given according to the methods deemed by the medical examiners to be the most appropriate and practicable. However, the federation licensing examination (FLEX) or any other national standardized examination which the medical examiner shall approve may be administered to any or all applicants in lieu of or in conjunction with other examinations which the medical examiners shall prescribe. The medical examiners may establish necessary achievement levels on all examinations for a passing grade and promulgate rules relating to examinations.

3. Present to the state department of health satisfactory evidence that the applicant has completed one year of internship or resident training in a hospital approved for such training by the medical examiners.

1. [C97,§2582; S13,§2582; C24, 27, 31, 35, 39, §2540; C46, 50, 54, 58, 62, 66, 71, 73, 75,§148.3]

2. [C97,§2576; S13,§2576; C24, 27, 31, 35, 39, §2540; C46, 50, 54, 58, 62, 66, 71, 73, 75,§148.3]

3. [C27, 31, 35, 39,§2540; C46, 50, 54, 58, 62, 66, 71, 73, 75,§148.3]

Referred to in §§147.49, 148.4
Approved colleges, §147.32

148.4 Certificates of national board. The state department of health may, with the approval of the medical examiners, accept in lieu of the examination prescribed in section 148.3 a certificate of examination issued by the national board of medical examiners of the United States of America, but every applicant for a license upon the basis of such certificate shall be required to pay the fee prescribed by the board for licenses issued under reciprocal agreements. [S13,§2582; C24, 27, 31, 35, 39, §2541; C46, 50, 54, 58, 62, 66, 71, 73, 75,§148.4]

148.5 Resident physician's license. Any physician, who is a graduate of a medical school and is serving only as a resident physician and who is not licensed to practice medicine and surgery in this state, shall be required to obtain from the medical examiners a temporary or special license to practice as a resident physician. The license shall be designated "Resident Physician License" and shall authorize the licensee to serve as a resident physician only, under the supervision of a licensed practitioner of medicine and surgery, in an institution approved for this purpose by the medical examiners. Such license shall be valid for one year and may be annually renewed at the discretion of the medical examiners. The fee for this license shall be set by the board to

cover the administrative costs of issuing the license, and if extended beyond one year, an annual renewal fee as set by the board shall be required. The medical examiners shall determine in each instance those eligible for this license, whether or not examinations shall be given, and the type of examinations. No requirements of the law pertaining to regular permanent licensure shall be mandatory for this resident licensure except as specifically designated by the medical examiners. The granting of a resident physician's license does not in any way indicate that the person so licensed is necessarily eligible for regular licensure, nor are the medical examiners in any way obligated to so license such individual. The medical examiners shall revoke the license at any time they shall determine either that the caliber of work done by a licensee or the type of supervision being given such licensee does not conform to reasonable standards established by the medical examiners. [C54, 58, 62, 66, 71, 73, 75,§148.5]

148.6 Revocation.

1. In addition to the provisions of sections 147.58 to 147.71, the medical examiners after due notice and hearing may direct the commissioner of health to issue an order to revoke or suspend a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, or to discipline a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy for any of the grounds set forth in section 147.55 or if, after a hearing, the medical examiners determine that a physician licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy is guilty of any of the following acts or offenses:

a. Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of his profession.

b. Being convicted of a felony in the courts of this state or another state, territory, or country. Conviction as used in this paragraph shall include a conviction of an offense which if committed in this state would be deemed a felony without regard to its designation elsewhere, or a criminal proceeding in which a finding or verdict of guilt is made or returned, but the adjudication of guilt is either withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state shall be conclusive evidence.

c. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of medicine.

d. Having his license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

e. Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice medicine and surgery, osteopathic medicine and surgery or osteopathy.

f. Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

g. Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in which proceeding actual injury to a patient need not be established; or the committing by a physician of an act contrary to honesty, justice, or good morals, whether the same is committed in the course of his practice or otherwise, and whether committed within or without this state.

h. Inability to practice medicine and surgery, osteopathic medicine and surgery or osteopathy with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition. The medical examiners shall, upon probable cause, have authority to compel a physician to submit to a mental or physical examination by designated physicians. Failure of a physician to submit to an examination shall constitute admission to the allegations made against him and the finding of fact and decision of the medical examiners may be entered without the taking of testimony or presentation of evidence. At reasonable intervals, a physician shall be afforded an opportunity to demonstrate that he can resume the competent practice of medicine with reasonable skill and safety to patients.

A person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy who makes application for the renewal of his license, as required by section 147.10, gives his consent to submit to a mental or physical examination as provided by this paragraph when directed in writing by the medical examiners. All objections shall be waived as to the admissibility of the examining physicians' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against a physician in another proceeding and shall be confidential, except for other actions filed against a physician to revoke or suspend his license.

i. Willful or repeated violation of lawful rule or regulation promulgated by the board or violating a lawful order of the board, previously entered by the board in a disciplin-

ary hearing. [C58, 62, 66, 71, 73, 75,§148.6; 66GA, ch 67,§15]

Referred to in §§148.7, 150.1(2)

148.7 Proceedings. A proceeding for the revocation or suspension of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy or to discipline a person licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy shall be substantially in accord with the following procedure:

1. The medical examiners may, upon their own motion or upon verified complaint in writing, and shall, if such complaint is filed by the commissioner of public health, issue an order fixing the time and place for hearing thereon. A written notice of the time and place of the hearing together with a statement of the charges shall be served upon the licensee at least ten days before said hearing in the manner required for the service of notice of the commencement of an ordinary action.

2. If the licensee has absented or removed himself from the state, the notice and statement of the charges shall be so served at least twenty days before the date of the hearing, wherever he may be found. If the whereabouts of the licensee is unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by said rules. In case the licensee fails to appear, either in person or by counsel at the time and place designated in said notice, the medical examiners shall proceed with the hearing as hereinafter provided.

Service of notice, R.C.P. 56 et seq.

3. The hearing shall be before a member or members designated by the board or before a hearing officer appointed by the board. The presiding board member or hearing officer is empowered to issue subpoenas, administer oaths and take or cause depositions to be taken in connection with the hearing. He shall issue subpoenas at the request and on behalf of the licensee. The hearing shall be open to the public.

The compensation of the hearing officer shall be fixed by the medical examiners. The hearing officer shall be an attorney vested with full authority of the board to schedule and conduct hearings. The hearing officer shall prepare and file with the medical examiners his findings of fact and conclusions of law, together with a complete written transcript of all testimony and evidence introduced at the hearing and all exhibits, pleas, motions, objections and rulings of the hearing officer.

4. A stenographic record of the proceedings shall be kept. The licensee shall have the opportunity to appear personally and by his attorney, with the right to produce evidence in his own behalf, to examine and cross-examine witnesses and to examine documentary evidence produced against him.

5. If a person refuses to obey a subpoena issued by the presiding member or hearing officer or to answer a proper question put to him during the hearing, the presiding member or hearing officer may invoke the aid of a court of competent jurisdiction or judge of this court in requiring the attendance and testimony of such person and the production of papers. A failure to obey such order of the court may be punished by the court as a civil contempt may be punished.

6. Unless the hearing is before the entire board, a transcript of the proceeding, together with exhibits presented, shall be considered by the entire board at the earliest practicable time. The licensee and his attorney shall have the opportunity to appear personally to present the licensee's position and arguments to the board. The board shall determine the charge or charges upon the merits on the basis of the evidence in the record before it.

7. If a majority of the members of the board vote in favor of finding the licensee guilty of an act or offense specified in section 147.55 or 148.6, the board shall prepare written findings of fact and its decision imposing one or more of the following disciplinary measures:

a. Suspend his license to practice his profession for a period to be determined by the board.

b. Revoke his license to practice his profession.

c. Suspend imposition of judgment and penalty or impose the judgment and penalty, but suspend enforcement and place the physician on probation. The probation ordered may be vacated upon noncompliance. The board of medical examiners may direct the commissioner of health to restore and reissue a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, but may impose a disciplinary or corrective measure which it might originally have imposed. Such findings of fact and decision shall be filed with the commissioner of public health who shall within ten days from such filing enter an order revoking or suspending the license issued to a physician licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, or discipline such physician as directed by the board in its decision. A copy of the commissioner's order shall immediately be sent by registered mail to the licensee's last known post-office address accompanied by a copy of the board's findings of fact and decision.

8. Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act.

9. The commissioner's order revoking or suspending a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy or to discipline a licensee shall remain in force and effect until the appeal is finally determined and disposed of upon its

merit. [C58, 62, 66, 71, 73, 75,§148.7; 66GA, ch 67, §16]

Referred to in §§150.1(2), 151.7

148.8 Voluntary surrender of license. The commissioner of public health is hereby authorized to accept the voluntary surrender of a license if accompanied by a written statement of intention. Such voluntary surrender, when so accepted, shall have the same force and effect as an order of revocation. [C58, 62, 66, 71, 73, 75,§148.8]

Referred to in §150.1(2)

148.9 Reinstatement. Any person whose license has been suspended, revoked or placed on probation may apply to the board of medical examiners for reinstatement at any time and the board may hold hearings on any such petition and may order reinstatement and impose terms and conditions thereof and issue a certificate of reinstatement to the commissioner of public health who shall thereupon issue a license as directed by the board. [C58, 62, 66, 71, 73, 75,§148.9]

Referred to in §150.1(2)

148.10 Temporary certificate. The medical examiners may, in their discretion, issue a temporary certificate authorizing the licensee to practice medicine and surgery or osteopathic medicine and surgery whenever, in the opinion of the medical examiners, a need exists therefor and the person possesses the qualifications prescribed by the medical examiners for such license, which shall be substantially equivalent to those required for licensure under chapter 148 or chapter 150A, as the case may be. The medical examiners shall determine in each instance those eligible for this license, whether or not examinations shall be given, and the type of examinations. No requirements of the law pertaining to regular permanent licensure shall be mandatory for this temporary license except as specifically designated by the medical examiners. The granting of a temporary license does not in any way indicate that the person so licensed is necessarily eligible for regular licensure, nor are the medical examiners in any way obligated to so license such person.

The temporary certificate shall be issued for one year and, at the discretion of the medical examiners may be renewed, but no person shall be entitled to practice medicine and surgery or osteopathic medicine and surgery in excess of three years while holding a temporary certificate. The fee for this license shall be set by the medical examiners and if extended beyond one year an annual renewal fee per year shall be set by the medical examiners. The fees shall be based on the administrative costs of issuing and renewing the licenses. The medical examiners may cancel a temporary certificate at any time, without a hearing, for reasons deemed sufficient to the medical examiners.

When the medical examiners cancel a temporary certificate they shall promptly notify the licensee by registered United States mail, at his last-named address, as reflected by the files of the medical examiners, and the temporary certificate shall become terminated and of no further force and effect three days after the giving of said notice to the licensee. [C66, 71, 73, 75,§148.10]

148.11 Special license to practice medicine and surgery.

1. Whenever the need exists, the board of medical examiners may issue a special license. The special license shall authorize the licensee to practice medicine and surgery under the policies and standards applicable to the health care services of a medical school academic staff member or as otherwise specified in the special license.

2. A person applying for a special license shall:

a. Be a physician in a professional specialty.

b. Present a diploma issued by a medical college.

c. Present evidence of an unrestricted license to practice medicine and surgery which has been issued by a foreign state or territory or an alien country.

d. Present a letter of recommendation from the dean of a medical school in this state indicating that the applicant has been invited to serve on the academic staff of the medical school.

e. Present letters of recommendation from universities, other educational institutions, or research facilities that indicate the noteworthy professional attainment by the applicant.

f. Present biographical background information concerning the applicant's education and qualifications.

3. The fee for initial issuance of a special license shall be established in an amount sufficient to cover the costs of issuing the special license. If the special license is extended beyond one year, an annual renewal fee shall be established in an amount sufficient to cover the costs of renewing the special license.

4. Notwithstanding the provisions of chapter 17A, the board may cancel a special license at any time without hearing. However, when such license is proposed to be canceled, the board shall promptly notify the licensee by certified mail sent to the last known address of the licensee. Thirty days after the service of such notice, the special license shall be canceled.

5. A special license issued under this section shall automatically expire upon the special licensee discontinuing service on the academic staff of a medical school in this state. An expired special license shall not be renewed. However, a former special licensee may reapply for a special license. [66GA, ch 123,§1]

CHAPTER 148A

PHYSICAL THERAPISTS

Referred to in §147.76

148A.1 Definition.
148A.2 Who engaged in practice.
148A.3 Persons not included.
148A.4 Requirements to practice.
148A.5 Prior therapists.

148A.1 Definition. For the purposes of this chapter, physical therapy is defined as that branch of science that deals with the treatment of disease or injury by the application of the modalities and rehabilitation procedures incident to the practice of physical therapy for the alleviation of human ailments and the maintenance or restoration of health as prescribed by a physician licensed as such in Iowa. [C66, 71, 73, 75,§148A.1]

Referred to in §148A.3

148A.2 Who engaged in practice. For the purpose of this chapter the following classes of persons shall be deemed to be engaged in the practice of physical therapy:

1. Persons who treat human ailments by physical therapy as defined in this chapter.

2. Persons who publicly profess to be physical therapists or who publicly profess to perform the functions incident to the practice of physical therapy. [C66, 71, 73, 75,§148A.2]

148A.3 Persons not included. Section 148A.1 shall not be construed to include the following classes of persons:

1. Licensed physicians and surgeons, osteopaths, osteopathic physicians and surgeons, podiatrists, chiropractors, nurses, dentists, cosmetologists, and barbers, who are engaged in the practice of their respective professions.

2. Students of physical therapy who practice physical therapy under the supervision of a licensed physical therapist in connection with the regular course of instruction at a school of physical therapy.

3. Physical therapists of the United States army, navy, or public health service, or physical therapists licensed in another state, when incidentally called into this state in consultation with a physician and surgeon or physical therapists licensed in this state.

4. Nonprofessional workers in hospitals, clinics, offices, sanatoriums or health care facilities as defined in section 135C.1 who perform their services under the supervision of a physician or physical therapist licensed as such in Iowa and provided that such worker does not hold himself out as or accept employment as a licensed physical therapist.

5. Massage therapists, massage technicians, masseurs and masseuses who administer body massage by Swedish or other massage technique, including modalities, in a massage establishment, health club, athletic club or school athletic department, but in no instance shall they designate themselves as physical therapists. [C66, 71, 73, 75,§148A.3]

148A.4 Requirements to practice. Each applicant for a license to practice physical therapy shall:

1. Be a graduate of an accredited high school and have completed a course of study in, and hold a diploma or certificate issued by a school of physical therapy approved by the board of physical therapy examiners.

2. Have passed an examination administered by the board of physical therapy examiners. [C66, 71, 73, 75,§148A.4]

148A.5 Prior therapists. A person, who is or has been engaged in the practice of physical therapy on or before July 4, 1965, may be issued a license as a physical therapist upon submitting to the physical therapy examiners satisfactory evidence:

1. That, under the direction of a licensed physician or surgeon or osteopathic physician or surgeon, he has practiced physical therapy either in a hospital, sanatorium, clinic, office or nursing home for not less than three years within a five-year period immediately before application;

2. That he has taught physical therapy in a school approved by the physical therapy examiners for not less than one year within a five-year period immediately before application or has been a student in a school of physical therapy approved by the board of physical therapy examiners prior to January 1, 1966; or

3. That on or before July 4, 1965, he has graduated from a school or course of physical therapy approved by the board of physical therapy examiners. The application under this title shall be filed with the physical therapy examiners and accompanied by a fee of twenty dollars, and submitted within ninety days after said date. [C66, 71, 73, 75,§148A.5]

CHAPTER 148B

PHYSICIANS' ASSISTANTS

Referred to in §147.76

148B.1 Definitions.
148B.2 Approved programs.
148B.3 Application.
148B.4 Services performed by assistants.
148B.5 Advisory committee created.
148B.6 Fees.
148B.7 Regulations.
148B.8 Right to delegate.
148B.9 Eye examination restricted.
148B.10 Applicability of other provisions of law.

148B.1 Definitions. For the purposes of this chapter:

1. *"Board"* means the board of medical examiners of the state of Iowa.

2. *"Department"* means the state department of health.

3. *"Approved program"* means a program for the education of physician's assistants which has been formally approved by the board.

4. *"Trainee"* means a person who is currently enrolled in an approved program.

5. *"Physician"* means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

6. *"Physician's assistant"* means a person who has successfully completed an approved program or is otherwise found to be qualified as a physician's assistant and is approved by the board to perform medical services under the supervision of one or more physicians approved by the board to supervise such assistant. The term "supervision" shall not be construed as requiring the personal presence of a supervising physician at the place where such services are rendered except insofar as the personal presence is required by the rules and regulations adopted pursuant to this chapter or as is expressly required in this chapter. [C73, 75,§148B.1]

148B.2 Approved programs. The department shall issue certificates of approval for programs for the education and training of physician's assistants which meet board standards. In developing criteria for program approval, the board shall give consideration to and encourage the utilization of equivalency and proficiency testing and other mechanisms whereby full credit is given to trainees for past education and experience in health fields. The board shall adopt and publish standards to insure that such programs operate in a manner which does not endanger the health and welfare of patients who receive services within the scope of the program. The board shall review the quality of curriculum, faculty, and the facilities of such programs and shall issue certificates of approval. The board may adopt such regulations as are reasonably necessary to carry out the purposes of this chapter.

If the board determines that a person has sufficient knowledge and experience to qualify as a physician's assistant, the board may approve an application to supervise such person as a physician's assistant without requiring the completion of an approved program. [C73, 75,§148B.2]

148B.3 Application. The board shall formulate guidelines for the consideration of applications by a licensed physician to supervise physician's assistants. Each application made by a physician to the board shall include all of the following:

1. The qualifications, including related experience, possessed by the proposed physician's assistant.

2. The professional background and specialty of the physician.

3. A description by the physician of his practice, and the way in which the assistant is to be utilized.

The board shall not approve an application by any one physician to supervise more than two physician's assistants at any one time.

The board shall approve an application by a licensed physician to supervise a physician's assistant when the board finds that the proposed assistant is a graduate of an approved program, and is fully qualified by reason of experience or education to perform medical services under the supervision of a licensed physician.

The board may modify the proposed utilization of a physician's assistant as detailed in any application and then approve the application as modified. A physician's assistant shall perform only those services for which he is qualified by training, and shall not perform any service that is not permitted to be performed by the board. Approval of an application to supervise a physician's assistant may be revoked or suspended at any time upon such grounds and pursuant to such procedure as the board shall establish by regulation. [C73, 75,§148B.3]

148B.4 Services performed by assistants. A physician's assistant may perform medical service when such services are rendered under the supervision of a licensed physician or physicians approved by the board. A trainee may perform medical services when such services are rendered within the scope of an approved program. [C73, 75,§148B.4]

148B.5 Advisory committee created. There is established an advisory committee on physi-

cians' assistant programs which shall be advisory to the board on matters pertaining to the education of physicians' assistants and approval of applicants to supervise a physician's assistant. The committee shall consist of eight members appointed by the governor. The members of the committee shall include one representative of the medical board who shall be chairman of the committee, a representative of an Iowa medical school, an educator with experience in the development of health manpower programming, one physician, and one registered nurse. Each member of the committee shall receive a per diem and expenses within the limits prescribed by section 147.24. Per diem and expense payments shall be made from the state board of medical examiners fund. [C73, 75,§148B.5]

148B.6 Fees. A fee of ten dollars shall be charged for each application to the board by a physician to supervise each physician's assistant. A fee of fifty dollars shall be charged for each approval initially granted by the board. Approval shall be limited to one year. The board may renew an application, and a fee of twenty-five dollars shall be paid for such renewal. A fee of fifty dollars shall be charged to each applicant seeking program approval by the board.

Fees required by this section shall be remitted by one department in the name of the board to the treasurer of state and deposited by him in a special fund within the state treasury, hereby created, to be known as the physicians' assistants fund. Such fees shall be used to finance the provisions of this chapter. Funds deposited in the physicians' assistants fund shall be subject to appropriation by the general assembly. [C73, 75,§148B.6]

148B.7 Regulations. Regulations adopted by the board to implement the provisions of this chapter shall be designed to encourage the utilization of physicians' assistants in a manner that is consistent with the provision of quality health care and medical services for the citizens of Iowa through better utilization of available physicians and the development of sound programs for the education and training of skilled physicians' assistants well qualified to assist physicians in providing health care and medical services. [C73, 75,§148B.7]

148B.8 Right to delegate. Nothing in this chapter shall affect or limit a physician's existing right to delegate various medical tasks to aides, assistants or others acting under his supervision or direction. Aides, assistants or others who perform only those tasks which can be so delegated shall not be required to qualify as physicians' assistants hereunder. [C73, 75,§148B.8]

148B.9 Eye examination restricted. No physician's assistant shall be permitted to prescribe lenses, prisms or contact lenses for the aid, relief or correction of human vision. No physician's assistant shall be permitted to measure the visual power and visual efficiency of the human eye, as distinguished from routine visual screening, except in the personal presence of a supervising physician at the place where such services are rendered. [C73, 75,§148B.9]

148B.10 Applicability of other provisions of law. The provisions of chapter 147, not otherwise inconsistent with the provisions of this chapter, shall apply to the provisions of this chapter. [C73, 75,§148B.10]

CHAPTER 148C

TRAINING RESIDENT PHYSICIANS

148C.1 Definitions.
148C.2 Establishment.
148C.3 Advisory board.
148C.4 Terms.
148C.5 Duties of the advisory board.
148C.6 Use of funds.

148C.1 Definitions. As used in this chapter unless the context otherwise requires:

1. "*College of medicine*" means the college of medicine at the state University of Iowa.

2. "*Residency program*" means a community based family practice residency education program presently in existence or established under this chapter.

3. "*Affiliated*" means established or developed by the college of medicine.

4. "*Family practice unit*" means the community facility or classroom for the teaching of ambulatory health care skills within a residency program.

5. "*Advisory board*" means the family practice education advisory board created by this chapter.

6. The "*medical profession*" means medical and osteopathic physicians. [C75,§148C.1]

148C.2 Establishment. There is established a state-wide medical education system for the purpose of training resident physicians in family practice. The dean of the college of medicine shall be responsible for implementing the development and expansion of residency programs in co-operation with the medical profession, hospitals, and clinics located throughout the state. The head of the department of fam-

ily practice in the college of medicine, with the consent of the advisory board, shall determine where affiliated residency programs shall be established, giving consideration to communities in the state where the population, hospital facilities, number of physicians and interest in medical education indicate the potential success of the residency programs. The medical education systems shall provide financial support for residents in training in accredited affiliated residency programs and shall establish positions for a director, assistant director, and other faculty in the programs. To assure continued growth, development, and academic essentials in ongoing programs, nonaffiliated residency programs which are or hereafter become accredited by a recognized national accrediting organization, shall be funded under this chapter at a level commensurate with the support of the affiliated residency programs having a comparable number of residents in training or, if there be no affiliated residency program having a comparable number of residents in training, then a nonaffiliated program shall be funded in an amount determined on a pro rata capitation basis for each resident in training, equivalent to the per capita funding for each resident in training in an affiliated program having the nearest number of residents in training. As used in the preceding sentence, "support" shall mean both cash grants and the value of service directly provided to affiliated residency programs by the college of medicine. [C75,§148C.2]

148C.3 Advisory board. There is created an advisory board which shall consist of ten members and the dean of the college of medicine, who shall be an ex officio member. The head of the department of family practice in the college of medicine, two public members appointed by the governor, and seven members appointed by the members of the organizations they represent shall comprise the advisory board. The seven members shall represent:

1. The Iowa medical society.

2. The Iowa academy of family physicians.

3. The Iowa society of osteopathic physicians and surgeons.

4. Hospital administrators from Iowa hospitals with residency programs.

5. Directors of Iowa hospital-based residency programs.

6. Residents in training in a residency program.

7. A physician from the staff of the college of osteopathic medicine and surgery.

The residency programs from which three of the members are appointed shall not be located in the same hospital program, shall be representative of geographic areas of the state, and at least one of the board members shall represent the nonaffiliated residency programs. [C75,§148C.3]

148C.4 Terms. Terms of appointed members of the advisory board shall be four years, except that the resident in training shall serve a term of one year only. Terms of the public members and the organizational representatives shall be staggered by lot so that initially two shall serve a term of one year, two shall serve a term of two years, two shall serve a term of three years, and two shall serve a term of four years. Vacancies shall be filled for the unexpired term in the manner of the original appointment. [C75,§148C.4]

148C.5 Duties of the advisory board. The advisory board shall advise the dean of the college of medicine in the implementation of the educational programs provided for in this chapter including, but not limited to, the selection of areas in Iowa where residency programs are to be established, the allocation of funds appropriated under this chapter, the procedures for review and evaluation of the residency programs, and the appointment of directors and professors on the community level. On or before January 15 of each year the advisory board shall provide the governor and the general assembly with a report on the status of the state-wide medical education system for training resident physicians in family practice in Iowa for the previous calendar year. [C75,§148C.5]

148C.6 Use of funds.

1. Moneys appropriated for the residency program shall be in addition to all the income of the state University of Iowa, and shall not be used to supplant funds for other programs under the administration of the college of medicine.

2. The allocation of state funds for a residency program shall not exceed fifty percent of the total cost of the program and shall be used for:

a. The salaries of the director, assistant director and other faculty and auxiliary personnel on the community level.

b. The stipends for the residents in training.

c. The initial construction or remodeling of a facility which serves as a family practice unit within a residency program.

d. The purchase of equipment for use in the family practice unit.

e. Travel expenses for consultative visits by faculty.

3. No more than twenty percent of the appropriation for each fiscal year for affiliated programs shall be authorized for expenditures made in support of the faculty and staff of the college of medicine who are associated with the affiliated residency program.

4. No funds appropriated under this chapter shall be used to subsidize the cost of care incurred by patients.

5. Allocations for the renovation or construction of a family practice unit shall not exceed thirty-five thousand dollars per program. [C75,§148C.6]

CHAPTER 149

PRACTICE OF PODIATRY

Referred to in §§147.76, 422.45, 514.17, 514.18
Enforcement, §§147.87, 147.90, 147.92
Penalty, §147.86

149.1 Persons engaged in practice.
149.2 Persons not required to qualify.
149.3 License.
149.4 Approved school.
149.5 Amputations—general anesthetics.
149.6 Title or abbreviation.

149.1 Persons engaged in practice. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of podiatry:

1. Persons who publicly profess to be podiatrists or who publicly profess to assume the duties incident to the practice of podiatry.

2. A podiatrist is one who examines or diagnoses or treats ailments of the human foot, medically or surgically. [C24, 27, 31, 35, 39, §2542; C46, 50, 54, 58, 62, 66, 71, 73, 75,§149.1]

Referred to in §149.5

149.2 Persons not required to qualify. This chapter shall not apply to the following:

1. Physicians and surgeons, or osteopaths, or osteopathic surgeons authorized to practice in this state.

2. Podiatrists licensed to practice in the state prior to July 4, 1937.

3. Nothing herein shall affect or alter the existing right now held by retailers, manufacturers or others to sell corrective shoes, arch supports, drugs or medicines for use on feet. [C24, 27, 31, 35, 39,§2543; C46, 50, 54, 58, 62, 66, 71, 73, 75,§149.2]

149.3 License. Every applicant for a license to practice podiatry shall:

1. Be a graduate of an accredited high school.

2. Present a diploma issued by a school of podiatry approved by the board of podiatry examiners.

3. Pass an examination in the subjects of anatomy, chemistry, dermatology, diagnosis, pharmacy and materia medica, pathology, physiology, histology, bacteriology, neurology, practical and clinical podiatry, foot orthopedics, and others, as prescribed by the board of podiatry examiners, and must obtain a general average of at least seventy-five percent and not less than seventy percent in any one subject. [C24, 27, 31, 35, 39,§2544; C46, 50, 54, 58, 62, 66, 71, 73, 75,§149.3]

149.4 Approved school. No school of podiatry shall be approved by the board of podiatry examiners as a school of recognized standing unless said school:

1. Requires for graduation or the receipt of any podiatric degree the completion of a course of study covering a period of at least eight months in each of four calendar years.

2. After January 1, 1962, no school of podiatry shall be approved by the board of podiatry examiners which does not have as an additional entrance requirement two years study in a recognized college, junior college, university or academy. [C24, 27, 31, 35, 39, §2545; C46, 50, 54, 58, 62, 66, 71, 73, 75,§149.4]

Approved schools, §147.32

149.5 Amputations—general anesthetics. A license to practice podiatry shall not authorize the licensee to amputate the human foot or perform any surgery on the human body at or above the ankle, or use any anesthetics other than local.

A registered podiatrist may prescribe and administer drugs for the treatment of human foot ailments as provided in section 149.1. [C24, 27, 31, 35, 39,§2546; C46, 50, 54, 58, 62, 66, 71, 73, 75,§149.5]

149.6 Title or abbreviation. Every licensee shall be designated as a registered podiatrist and shall not use any title or abbreviation without the designation "practice limited to the foot," nor mislead the public in any way as to the limited field or practice. [C24, 27, 31, 35, 39,§2547; C46, 50, 54, 58, 62, 66, 71, 73, 75,§149.6]

Titles and degrees, §§147.72, 147.73

CHAPTER 150

PRACTICE OF OSTEOPATHY

Referred to in §§135.11(16), 135C.40, 147.76, 150A.8, 152.1, 154B.2, 155.3(8), 422.45, 514.17
Enforcement, §§147.87, 147.90, 147.92
Penalty, §147.86

150.1 Definitions.
150.2 Persons engaged in practice.
150.3 Persons not required to qualify.
150.4 to 150.6 Repealed by 60GA, ch 122,§25.
150.7 Scope of practice.
150.8 Practice of surgery banned.
150.9 County physician.
150.10 State patients.
150.11 Osteopathy discontinued.

150.1 Definitions. For the purpose of this Code, the following definitions are enacted:

1. Osteopathy is that school of healing art which teaches and practices scientific methods and modalities used in the prevention and treatment of human diseases, but whose basic concept, in contrast with all other schools, places paramount emphasis upon the normality of blood circulation and all other body functions as a necessary prerequisite to health and holds that such normality is more certain of achievement by and through manual stimulation or inhibition of the nerve mechanism controlling such functions, or by the correction of anatomical maladjustments.

2. Osteopathic practice is that method of rehabilitating, restoring and maintaining body functions by and through manual stimulation or inhibition of nerve mechanism controlling such body functions, or by the correction of anatomical maladjustment, or by other therapeutic agents, methods and modalities used supplementary thereto; but such supplementary agents, methods or modalities shall be used only preliminary to, preparatory to or in conjunction with such manual treatment. Such osteopathic practice is hereby declared not to be the practice of medicine within the meaning of chapter 148, nor the practice of osteopathic medicine and surgery within the meaning of chapter 150A, and is not subject to the provisions of chapter 148 or chapter 150A, except sections 148.6 to 148.9, inclusive. [C35, §2554-g1; C39,§**2554.01**; C46, 50, 54, 58, 62. 66. 71, 73, 75,§150.1]

Referred to in §150.7

150.2 Persons engaged in practice. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of osteopathy:

1. Persons publicly professing to be osteopathic physicians or publicly professing to assume the duties incident to such practice of osteopathy.

2. Persons who treat human ailments by that school of healing art hereinbefore defined as osteopathy. [C24, 27, 31,§2548; C35,§2554-g2; C39,§**2554.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §150.2]

Referred to in §150.3

150.3 Persons not required to qualify. Section 150.2 shall not be so construed as to include the following classes of persons:

1. Licensed practitioners of medicine and surgery, osteopathic medicine and surgery, podiatrists, chiropractors, physical therapists, nurses, and dentists, who are exclusively engaged in the practice of their respective professions.

2. Practitioners of medicine and surgery of the United States army, navy, or public health service when acting in the line of duty in this state, or osteopathic physicians, licensed in another state, when incidentally called into this state in consultation with an osteopathic physician licensed in this state. [C24, 27, 31, §2549; C35,§2554-g3; C39,§**2554.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§150.3]

150.4 to 150.6 Repealed by 60GA, ch 122,§25.

150.7 Scope of practice. One licensed as an osteopathic physician may practice osteopathy as defined in section 150.1, including obstetrics and minor surgery. [C35,§2554-g7; C39,§**2554.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §150.7]

150.8 Practice of surgery banned. A license to practice osteopathy shall not authorize the licensee to engage in major operative surgery, but shall authorize the licensee to prescribe or give drugs and medicines whether or not prescribed or given preliminary to, preparatory to or in connection with manual treatment. [S13,§2583-b; C24, 27, 31,§2554; C35,§2554-g8; C39, §**2554.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§150.8]

150.9 County physician. The board of supervisors of any county may enter into contract with one licensed hereunder for the care and treatment of its indigent sick. [C35,§2554-g9; C39,§**2554.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §150.9]

See also §252.39

150.10 State patients. One licensed hereunder shall have the right to examine applicants, recommend admissions and make reports in connection with the admission of patients to all state-owned institutions. [C35, §2554-g10; C39,§**2554.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§150.10]

150.11 Osteopathy discontinued. After May 10, 1963, no license to practice osteopathy shall be issued, provided that the department of health shall issue renewal licenses to practice osteopathy as provided in chapter 147 and the department, upon recommendation of the medical examiners, may grant a license to practice osteopathy by reciprocity or endorsement if the applicant holds a valid license to practice osteopathy or osteopathic medicine and surgery issued by another state prior to May 10, 1963. [C66, 71, 73, 75,§150.11]

CHAPTER 150A

PRACTICE OF OSTEOPATHIC MEDICINE AND SURGERY

Referred to in §§135.11(16), 135C.40, 147.76, 148.10, 150.1(2), 152.1, 154B.2, 422.45

150A.1 Definitions.
150A.2 Persons not engaged in practice.
150A.3 Requirements to practice.
150A.4 Approved colleges.
150A.5 Indigent contracts.
150A.6 Examination of state patients.

150A.7 National board certificate.
150A.8 Extension of licenses.
150A.9 Resident license.

150A.1 Definitions. For the purpose of this title, the following classes of persons shall be deemed to be engaged in the practice of osteopathic medicine and surgery:

1. Persons who publicly profess to be osteopathic physicians and surgeons, or who publicly profess to assume the duties incident to the practice of osteopathic medicine and surgery.

2. Persons who prescribe, or prescribe and furnish medicine for human ailments or treat the same by surgery.

3. Persons who act as representatives of any person in doing any of the things mentioned in this section. [C66, 71, 73, 75,§150A.1]

Referred to in §150A.2

150A.2 Persons not engaged in practice. Section 150A.1 shall not be construed to include the following classes of persons:

1. Persons who advertise or sell patent or proprietary medicines.

2. Persons who advertise, sell, or prescribe natural mineral waters flowing from wells or springs.

3. Students of medicine or surgery or osteopathic medicine and surgery, who have completed at least two years study in a medical school or college of osteopathic medicine and surgery approved by the medical examiners, and who prescribe medicine under the supervision of a licensed physician and surgeon or osteopathic physician and surgeon, or who render gratuitous service to persons in case of emergency.

4. Licensed physicians and surgeons, podiatrists, osteopaths, chiropractors, nurses, dentists, optometrists and pharmacists who are exclusively engaged in the practice of their respective professions.

5. Physicians and surgeons of the United States army, navy or public health service when acting in the line of duty in this state, or physicians and surgeons, or osteopathic physicians and surgeons, licensed in another state, when incidentally called into this state in consultation with a physician or surgeon, or osteopathic physician and surgeon, licensed in this state. [C66, 71, 73, 75,§150A.2]

150A.3 Requirements to practice. Each applicant for a license to practice osteopathic medicine and surgery shall:

1. Either comply with all of the following:

a. Present a diploma issued, after May 10, 1963, by a college of osteopathic medicine and surgery approved by the medical examiners or present other evidence of equivalent medical education approved by the medical examiners.

b. Pass an examination prescribed by the medical examiners in subjects including anatomy, chemistry, physiology, materia medica and therapeutics, obstetrics, pathology, medicine, public health and hygiene and surgery. The board of medical examiners may require written, oral and practical examinations of the applicant.

c. Present to the state department of health satisfactory evidence that the applicant has completed one year of internship or resident training in a hospital approved for such training by the medical examiners.

2. Or comply with the following:

a. Present a valid license to practice osteopathy in this state together with satisfactory evidence that he has completed either: (1) a two-year postgraduate course, of nine months each, in an accredited college of osteopathy, osteopathic medicine and surgery or medicine approved by the board of medical examiners of Iowa, involving a thorough and intensive study of the subject of surgery as prescribed by such medical examiners, or (2) a one-year postgraduate course of nine months in such accredited college, and in addition thereto, has completed a one-year course of training as a surgical assistant in a hospital having at least twenty-five beds for patients and equipped for doing surgical work.

b. Pass an examination as prescribed by the medical examiners in the subject of surgery, which shall be of such character as to thoroughly test the qualifications of the applicant as a practitioner of major surgery. [C66, 71, 73, 75,§150A.3]

Referred to in §§147.49, 150A.7

150A.4 Approved colleges. Any college of osteopathic medicine and surgery which does not permit the medical examiners to make such reasonable annual inspection as they desire shall not be approved by the medical examiners. Until July 1, 1968, any college of osteopathic medicine and surgery which is accredited by the American Osteopathic Association shall, by virtue thereof, stand as provisionally approved by the medical examiners unless the medical examiners, by majority action including the osteopathic physician and surgeon member, shall disapprove. [C66, 71, 73, 75,§150A.4]

Accredited colleges, §147.32

150A.5 Indigent contracts. The board of supervisors of any county may enter into contract with one licensed hereunder for the care and treatment of its indigent sick. [C66, 71, 73, 75,§150A.5]

150A.6 Examination of state patients. One licensed hereunder shall have the right to examine applicants, recommend admissions and make reports in connection with the admission of patients to all state-owned institutions. [C66, 71, 73, 75,§150A.6]

150A.7 National board certificate. The state department of health may, with the approval

of the medical examiners, accept in lieu of the examination prescribed in section 150A.3 a certificate of examination issued by the National Board of Osteopathic Examiners of the United States of America, but every applicant for a license upon the basis of such certificate shall be required to pay the fee prescribed for license issued under reciprocal agreements. [C66, 71, 73, 75,§150A.7]

150A.8 Extension of licenses. On May 10, 1963, all persons licensed under the provisions of chapter 150 to practice osteopathy and surgery, shall be deemed to be licensed as osteopathic physicians and surgeons under this chapter. [C66, 71, 73, 75,§150A.8]

150A.9 Resident license. Any osteopathic physician and surgeon who is a graduate of a college of osteopathic medicine and surgery approved by the medical examiners and is serving only as a resident osteopathic physician and surgeon and who is not licensed to practice osteopathic medicine and surgery in this state, shall be required to obtain from the medical examiners a temporary or special license to practice as a resident osteopathic physician and surgeon. The license shall be designated "Resident Osteopathic Physician and Surgeon License", and shall authorize the licensee to serve as a resident only, under the supervision of a licensed practitioner of osteopathic medicine and surgery, in an institution approved for this purpose by the medical examiners. Such license shall be valid for one year and may be annually renewed at the discretion of the medical examiners. The fee for this license shall be set by the board and based on the cost of issuing the license, and if extended beyond one year, an annual renewal fee shall be required. The medical examiners shall determine in each instance those eligible for this license, whether or not examinations shall be given, and the type of examinations. No requirements of the law pertaining to regular permanent licensure shall be mandatory for this resident licensure except as specifically designated by the medical examiners. The granting of a resident osteopathic physician and surgeon's license does not in any way indicate that the person so licensed is necessarily eligible for regular licensure, nor are the medical examiners in any way obligated to so license such individual. The medical examiners shall revoke said license at any time they shall determine either that the caliber of work done by the licensee or the type of supervision being given such licensee does not conform to reasonable standards established by the medical examiners. [C66, 71, 73, 75,§150A.9]

CHAPTER 151

PRACTICE OF CHIROPRACTIC

Referred to in §147.76
Enforcement, §§147.87, 147.90, 147.92
Penalty, §147.86

151.1 "Chiropractic" defined.
151.2 Persons not engaged in.
151.3 License.
151.4 Approved college.
151.5 Operative surgery—drugs.
151.6 Display of word "Chiropractor".
151.7 Probation—advertising restrictions.
151.8 Training in procedures used in practice.

151.1 "Chiropractic" defined. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of chiropractic:

1. Persons publicly professing to be chiropractors or publicly professing to assume the duties incident to the practice of chiropractic.

2. Persons who treat human ailments by the adjustment of the musculoskeletal structures, primarily spinal adjustments by hand, or by other procedures incidental to said adjustments limited to heat, cold, exercise and supports, the principles of which chiropractors are subject to examination under the provisions of section 151.3, but not as independent therapeutic means. [C24, 27, 31, 35, 39,§2555; C46, 50, 54, 58, 62, 66, 71, 73, 75,§151.1]

Referred to in §151.2

151.2 Persons not engaged in. Section 151.1 shall not be construed to include the following classes of persons:

1. Licensed physicians and surgeons, licensed osteopaths, and licensed osteopaths and surgeons, and physical therapists who are exclusively engaged in the practice of their respective professions.

2. Physicians and surgeons of the United States army, navy, or public health service when acting in the line of duty in this state, or to chiropractors licensed in another state, when incidentally called into this state in consultation with a chiropractor licensed in this state.

3. Students of chiropractic who have entered upon a regular course of study in a chiropractic college approved by the chiropractic examiners, who practice chiropractic under the

direction of a licensed chiropractor and in accordance with the rules of said examiners. [C24, 27, 31, 35, 39,§2556; C46, 50, 54, 58, 62, 66, 71, 73, 75,§151.2]

151.3 License. Every applicant for a license to practice chiropractic shall:

1. Present satisfactory evidence that he possesses a preliminary education equal to the requirements for graduation from an accredited high school or other secondary school.

2. Present a diploma issued by a college of chiropractic approved by the chiropractic examiners.

3. Pass an examination prescribed by the chiropractic examiners in the subjects of anatomy, physiology, symptomatology and diagnosis, hygiene and sanitation, chemistry, histology, pathology, and principles and practice of chiropractic, including a clinical demonstration of vertebral palpation, nerve tracing and adjusting. [C24, 27, 31, 35, 39,§2557; C46, 50, 54, 58, 62, 66, 71, 73, 75,§151.3]

Referred to in §§151.1, 151.4

151.4 Approved college. No college of chiropractic shall be approved by the chiropractic examiners as a college of recognized standing unless said college:

1. Requires for graduation or for the receipt of any chiropractic degree the completion of a course of study covering a period of four academic years totaling not less than four thousand sixty-minute hours in actual resident attendance.

2. Gives an adequate course of study in the subjects enumerated in subsection 3 of section 151.3 and including practical clinical instruction.

3. Publishes in a regularly issued catalogue the requirements for graduation and degrees as herein specified. [C24, 27, 31, 35, 39,§2558; C46, 50, 54, 58, 62, 66, 71, 73, 75,§151.4]

Approved colleges, §147.32

151.5 Operative surgery—drugs. A license to practice chiropractic shall not authorize the licensee to practice operative surgery, osteopathy, nor administer or prescribe any drug or medicine included in materia medica. [C24, 27, 31, 35, 39,§2559; C46, 50, 54, 58, 62, 66, 71, 73, 75,§151.5]

151.6 Display of word "chiropractor". Every licensee shall place upon all signs used by him, and display prominently in his office the word "chiropractor". [C24, 27, 31, 35, 39,§2560; C46, 50, 54, 58, 62, 66, 71, 73, 75,§151.6]

Titles and degrees, §§147.72, 147.73

151.7 Probation — advertising restrictions. The license of a chiropractor shall be placed on probation upon a showing at a hearing conducted by the board of chiropractic examiners that such licensee is guilty of advertising. For purposes of this section "advertising" is defined as a chiropractor publicizing himself, his partner, or associate as a chiropractor through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity, or authorizing or permitting others to do so on his behalf. "Advertising" does not include a simple boldface listing in a phone directory, professional cards, letterheads, or professionally discreet lettering identifying premises where chiropractic is practiced. Any proceeding for the probation of a chiropractic license shall be conducted by the board of chiropractic examiners in a manner substantially in accord with the provisions of section 148.7. [C73, 75,§151.7]

151.8 Training in procedures used in practice. A chiropractor shall not use in his practice the procedures otherwise authorized by law unless he has received training in their use by a college of chiropractic offering courses of instructions approved by the board of chiropractic examiners.

Any chiropractor licensed as of July 1, 1974, may use the procedures authorized by law if he files with the board of chiropractic examiners an affidavit that he has completed the necessary training and is fully qualified in these procedures and possesses that degree of proficiency and will exercise that care which is common to physicians in this state. [C75, §151.8]

CHAPTER 152

PRACTICE OF NURSING

Referred to in §147.76, 229.1

Chapter 152, Code 1975, repealed by 66GA, ch 1115,§11

152.1 Definitions.
152.2 Executive director-assistants.
152.3 Director's duties.
152.4 Appropriations.
152.5 Education programs.
152.6 Licenses—professional abbreviations.
152.7 Applicant qualifications.
152.8 License endorsement.
152.9 Temporary license.
152.10 License revocation or suspension.

152.1 Definitions. As used in this chapter:

1. The *"practice of nursing"* means the practice of a registered nurse or a licensed practical nurse. It does not mean any of the following:

a. The practice of medicine and surgery, as defined in chapter 148, the osteopathic practice, as defined in chapter 150, the practice of osteopathic medicine and surgery, as defined in chapter 150A, or the practice of pharmacy as defined in chapter 155, except practices which are recognized by the medical and nursing professions and approved by the board as proper to be performed by a registered nurse.

b. The performance of nursing services by a student enrolled in an approved program of nursing if the performance is incidental to a course of study under this program.

c. The performance of services by employed workers in offices, hospitals, or health care facilities, as defined in section 135C.1, under the supervision of a physician or a nurse licensed under this chapter, or employed in the office of a psychologist, podiatrist, optometrist, chiropractor, speech pathologist, audiologist, or physical therapist licensed to practice in this state, and when acting while within the scope of the employer's license.

d. The practice of a nurse licensed in another state and employed in this state by the federal government if the practice is in discharge of official employment duties.

e. The care of the sick rendered in connection with the practice of the religious tenets of any church or order by the adherents thereof which is not performed for hire, or if performed for hire by those who depend upon prayer or spiritual means for healing in the practice of the religion of their church or denomination, so long as they do not otherwise engage in the practice of nursing as practical nurses.

2. The *"practice of the profession of a registered nurse"* means the practice of a natural person who is licensed by the board to do all of the following:

a. Formulate nursing diagnosis and conduct nursing treatment of human responses to actual or potential health problems through services, such as case finding, referral, health teaching, health counseling, and care provision which is supportive to or restorative of life and well-being.

b. Execute regimen prescribed by a physician.

c. Supervise and teach other personnel in the performance of activities relating to nursing care.

d. Perform additional acts or nursing specialties which require education and training under emergency or other conditions which are recognized by the medical and nursing professions and are approved by the board as being proper to be performed by a registered nurse.

e. Apply to the abilities enumerated in paragraph *"a"* through *"d"* of this subsection scientific principles, including the principles of nursing skills and of biological, physical, and psychosocial sciences.

3. The *"practice of a licensed practical nurse"* means the practice of a natural person who is licensed by the board to do all of the following:

a. Perform services in the provision of supportive or restorative care under the supervision of a registered nurse or a physician.

b. Perform additional acts under emergency or other conditions which require education and training and which are recognized by the medical and nursing professions and are approved by the board, as being proper to be performed by a licensed practical nurse.

4. As used in this section, *"nursing diagnosis"* means to identify and use discriminatory judgment concerning physical and psychosocial signs and symptoms essential to determining effective nursing intervention.

5. *"Board"* means the board of nursing, created under chapter 147.

6. *"Physician"* means a person licensed in this state to practice medicine and surgery, osteopathy and surgery, or osteopathy, or a person licensed in this state to practice dentistry or podiatry when acting within the scope of the license. [S13,§§2575-a28, -a31, -a32; C24, 27, 31, 35, 39,§§**2561, 2562**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§152.1, 152.2; 66GA, ch 1115,§1]

152.2 Executive director — assistants. The board shall appoint a full-time executive director. The executive director shall be a registered nurse and shall not be a member of the board. The governor, with the approval of the executive council pursuant to section 19A.9, subsection 2, under the pay plan for exempt positions in the executive branch of government, shall set the salary of the executive director. [C35,§2537-g1; C39,§**2537.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.105; 66GA, ch 1115,§2]

152.3 Director's duties. The duties of the executive director shall be as follows:

1. To receive all applications to be licensed for the practice of nursing.

2. Notwithstanding section 147.82, to collect and receive all fees.

3. To deposit all fees collected in the general fund of the state and, at the same time, to render to the state comptroller an itemized and verified report which indicates the source of the collected fees.

4. To keep all records pertaining to the licensing of nurses, including a record of all board proceedings.

5. To perform such other duties as may be prescribed by the board.

6. To appoint such assistants to the director and persons as may be necessary to administer the provisions of this Act. Any appointments

shall be merit appointments made pursuant to chapter 19. [C35,§§2537-g2,-g3; C39,§§**2537.2, 2537.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§147.106, 147.107; 66GA, ch 1115,§3]

152.4 Appropriations. The board may apply appropriated funds to:

1. The administration and enforcement of the provisions of this chapter and of chapter 147.

2. The elevation of the standards of the schools of nursing.

3. The promotion of educational and professional standards of nurses in this state. [C35, §2537-g3; C39,§**2537.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§147.107; 66GA, ch 1115,§4]

152.5 Education programs.

1. All programs preparing a person to be a registered nurse or a licensed practical nurse shall be approved by the board. The board shall not recognize a program unless it:

a. Is of recognized standing.

b. Has provisions for adequate physical and clinical facilities and other resources with which to conduct a sound education program.

c. Requires, for graduation of a registered nurse applicant, the completion of at least a two academic year course of study or its equivalent which is integrated in theory and practice as prescribed by the board.

d. Requires, for graduation of a licensed practical nurse applicant, the completion of at least an academic year course of study or its equivalent in theory and practice as prescribed by the board.

2. All advanced formal academic nursing education programs shall also be approved by the board. [S13,§2575-a29; C24, 27, 31, 35, 39, §**2564**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§152.4; 66GA, ch 1115,§5]

Referred to in §152.7

152.6 Licenses—professional abbreviations. The board may license a natural person to practice as a registered nurse or as a licensed practical nurse. However, only a person currently licensed as a registered nurse in this state may use that title and the abbreviation "RN" after the person's name and only a person currently licensed as a licensed practical nurse in this state may use that title and the abbreviation "LPN" after the person's name. [C50, 54, 58, 62, 66, 71, 73, 75,§152.5; 66GA, ch 1115,§6]

152.7 Applicant qualifications. In addition to the provisions of section 147.3, an applicant to be licensed for the practice of nursing shall have the following qualifications:

1. Be a graduate of an accredited high school or the equivalent.

2. Pass an examination as prescribed by the board.

3. If to practice as a registered nurse, holds a diploma or degree resulting from the completion of a course of study in a program approved pursuant to section 152.5, subsection 1, paragraph *"c"*.

4. If to practice as a licensed practical nurse, holds a diploma resulting from the completion of a course of study in a program approved pursuant to section 152.5, subsection 1, paragraph *"d"* or has successfully completed at least one academic year of a course of study in a program approved pursuant to section 152.5, subsection 1, paragraph *"c"* and has successfully completed all theoretical and clinical training as is required for a licensed practical nurse. [S13,§§2575-a29,-a30; C24, 27, 31, 35, 39,§**2563**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§152.3; 66GA, ch 1115,§7]

Referred to in §152.8

152.8 License endorsement. Notwithstanding the provisions of sections 147.44 to 147.54, the board shall decide whether to recognize a foreign license to practice nursing under conditions specified which indicate that the licensee meets all the qualifications required under section 152.7. If a foreign license is recognized the board may issue a license by endorsement without an examination being required. Recognition shall be based on whether the foreign licensee is qualified to practice nursing. [C35,§2537-g3; C39,§**2537.3**; C46, 50, 54, 58, 62,§147.107; C66, 71, 73, 75, §§147.107, 152.7; 66GA, ch 1115,§8]

152.9 Temporary license. The board may issue a temporary license to a natural person who has completed the requirements of and applied for licensure, either by examination or endorsement. A temporary license shall not remain effective longer than the time between application and the next issuance of licenses. A temporary license issued to a person not holding a foreign license to practice nursing shall be valid only when the temporary licensee is under the supervision of a registered nurse. [66GA, ch 1115,§9]

152.10 License revocation or suspension.

1. Notwithstanding sections 147.87 to 147.89 and in addition to the provisions of sections 147.58 to 147.71, the board may restrict, suspend, or revoke a license to practice nursing or place the licensee on probation. The board may also prescribe by rule conditions of license reinstatement. The board shall prescribe rules of procedure by which to restrict, suspend, or revoke a license. These procedures shall conform to the provisions of chapter 17A.

2. In addition to the grounds stated in section 147.55, the following are grounds for suspension or revocation under subsection 1 of this section:

a. Willful violation of the rules of the board.

b. Continued practice while knowingly having an infectious or contagious disease which could be harmful to a patient's welfare.

c. Conviction for a felony in the courts of this state or another state, territory, or country if the felony relates to the practice of nursing. Conviction shall include only a conviction for an offense which if committed in this state would be deemed a felony without regard to its designation elsewhere. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another jurisdiction shall be conclusive evidence of conviction.

d. Having a license to practice nursing as a registered nurse or licensed practical nurse revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is prima facie evidence of such fact.

e. Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice nursing.

f. Being adjudicated mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license, unless the board orders otherwise.

g. Being guilty of willful or repeated departure from or the failure to conform to the minimum standard of acceptable and prevailing practice of nursing; however, actual injury to a patient need not be established.

h. (1) Inability to practice nursing with reasonable skill and safety by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

(2) The board may, upon probable cause, request a licensee to submit to an appropriate medical examination by a designated physician. If requested by the licensee, the licensee may also designate a physician for an independent medical examination. The reasonable costs of such examinations and medical reports to the board shall be paid by the board. Refusal or failure of a licensee to complete such examinations shall constitute an admission of any allegations relating to such condition. All objections shall be waived as to the admissibility of the examining physicians' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against a registered nurse or licensed practical nurse in another proceeding and shall be confidential. At reasonable intervals, a registered nurse or licensed practical nurse shall be afforded an opportunity to demonstrate that the registered nurse or licensed practical nurse can resume the competent practice of nursing with reasonable skill and safety to patients. [66GA, ch 1115,§10]

CHAPTER 153

PRACTICE OF DENTISTRY

Referred to in §§147.76, 155.3(8), 422.45, 514.17
Enforcement, §§147.87, 147.90, 147.92
Penalty, §147.86

153.1 to 153.12 Repealed by 65GA, ch 1086, §198.
153.13 "Practice of dentistry" defined.
153.14 Persons not included.
153.15 Dental hygienists—scope of term.
153.16 Dental office where dentist is employed.
153.17 Unlawful practice.
153.18 Employment of unlicensed dentist.
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153.1 to 153.12 Repealed by 65GA, ch 1086, §198.

153.13 "Practice of dentistry" defined. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of dentistry:

1. Persons publicly professing to be dentists, dental surgeons, or skilled in the science of dentistry, or publicly professing to assume the duties incident to the practice of dentistry.

2. Persons who treat, or attempt to correct by any medicine, appliance, or method, any disorder, lesion, injury, deformity, or defect

of the oral cavity, teeth, gums, or maxillary bones of the human being, or give prophylactic treatment to any of said organs. [S13,§2600-o; C24, 27, 31, 35, 39,§2565; C46, 50, 54, 58, 62, 66, §153.1; C71, 73, 75,§153.13]

Referred to in §153.14

153.14 Persons not included. Section 153.13 shall not be construed to include the following classes:

1. Students of dentistry who practice dentistry upon patients at clinics in connection with their regular course of instruction at the state dental college.

2. Licensed "physicans and surgeons" or licensed "osteopaths and surgeons" who extract teeth or treat diseases of the oral cavity, gums, teeth, or maxillary bones as an incident to the general practice of their profession.

3. Persons licensed to practice dental hygiene who are exclusively engaged in the practice of said profession.

1, 2. [S13,§2600-l,-o; C24, 27, 31, 35, 39,§2566; C46, 50, 54, 58, 62, 66,§153.2; C71, 73,§153.14]

3. [C24, 27, 31, 35, 39,§2566; C46, 50, 54, 58, 62, 66,§153.2; C71, 73, 75,§153.14]

153.15 Dental hygienists—scope of term. A licensed dental hygienist may perform those services which are educational, therapeutic, and preventive in nature which attain or maintain optimal oral health as determined by the board of dentistry and may include but are not necessarily limited to complete oral prophylaxis, application of preventive agents to oral structures, exposure and processing of radiographs, administration of medicaments prescribed by a licensed dentist, obtaining and preparing nonsurgical, clinical and oral diagnostic tests for interpretation by the dentist, preparation of preliminary written records of oral conditions for interpretation by the dentist. Such services shall be performed under supervision of a licensed dentist and in a dental office, a public or private school, public health agencies, hospitals, and the armed forces, but nothing herein shall be construed to authorize a dental hygienist to practice dentistry. [C24, 27, 31, 35, 39,§2571; C46, 50, 54, 58, 62, 66,§153.7; C71, 73, 75,§153.15]

153.16 Dental office where dentist is employed. Every person who owns, operates, or controls a dental office in which anyone other than himself is practicing dentistry shall display the name of such person in a conspicuous manner at the public entrance to said office. [S13,§2600-o1; C24, 27, 31, 35, 39,§2568; C46, 50, 54, 58, 62, 66,§153.4; C71, 73, 75,§153.16]

153.17 Unlawful practice. Except as herein otherwise provided, it shall be unlawful for any person to practice dentistry or dental surgery or dental hygiene in this state, other than:

1. Those who are now duly licensed dentists, under the laws of this state in force at the time of their licensure; and

2. Those who are now duly licensed dental hygienists under the laws of this state in force at the time of their licensure; and

3. Those who may hereafter be duly licensed as dentists or dental hygienists pursuant to the provisions of this chapter. [C71, 73, 75, §153.17]

153.18 Employment of unlicensed dentist. No person owning or conducting any place where dental work of any kind is done or contracted for, shall employ or permit any unlicensed dentist to practice dentistry in said place. [S13,§2600-o2; C24, 27, 31, 35, 39,§2569; C46, 50, 54, 58, 62, 66,§153.5; C71, 73, 75,§153.18]

153.19 Practice under own name. No person shall operate any place in which dentistry is practiced under any other name than the person's own, or display, in connection with the dentist's practice, on any advertising matter any other than the dentist's own name; but two or more licensed dentists who are associated in the practice shall use all of their names, and a spouse, heir, or any legal representative of a deceased dentist, may operate such office for a reasonable time for the purpose of disposing of the same. [C24, 27, 31, 35, 39,§2570; C46, 50, 54, 58, 62, 66,§153.6; C71, 73, 75,§153.19]

153.20 Drugs, medicine and surgery. A dentist shall have the right to prescribe and administer drugs or medicine, perform such surgical operations, administer general or local anesthetics and use such appliances as may be necessary to the proper practice of dentistry. [C71, 73, 75,§153.20]

153.21 Reciprocity license. The board may issue a license without examination to an applicant who furnishes satisfactory proof that he is a graduate from an accredited dental school or college of a state, territory or district of the United States, who holds a license from a similar dental board under equal or substantially equal requirements to those of this state, and who for five consecutive years immediately prior to the filing of his application in this state has been in a legal and reputable practice of dentistry in such other state, territory or district of the United States, and who furnishes such other evidence as to his qualifications and lawful practice as the board may deem necessary to require. No license shall be issued under this section unless the state, territory or district from which the applicant comes shall accord equal rights to dentists of Iowa holding a license from the state board of dentistry. [C71, 73, 75,§153.21]

153.22 Resident dentist license. Any dentist, who is a graduate of an accredited dental school and is serving only as a resident, intern or graduate student dentist and who is not licensed to practice dentistry in this state, shall be required to obtain from the board of dentistry a temporary or special license to practice as a resident, intern or graduate den-

tist. The license shall be designated "Resident Dentist License" and shall authorize the licensee to serve as a resident, intern or graduate student only, under the supervision of a licensed practitioner of dentistry, in an institution approved for this purpose by the board. Such license shall be valid for one year and may be annually renewed at the discretion of the board for a period not to exceed three additional years. The fee for this license and the annual renewal fee shall be set by the board based upon the cost of issuance of the license. The board shall determine in each instance those eligible for this license, whether or not examinations shall be given, and the type of examination. No requirements of the law pertaining to regular permanent licensure shall be mandatory for this resident licensure except as specifically designated by the board. The granting of a resident dentist's license does not in any way indicate that the person so licensed is necessarily eligible for regular licensure, nor is the board in any way obligated to so license such individual. The board may revoke said license at any time it shall determine either that the caliber of work done by a licensee or the type of supervision being given such licensee does not conform to reasonable standards established by the board. [C71, 73, 75,§153.22]

153.23 Notice of intention not to renew license. If, prior to the renewal of any license to practice dentistry or dental hygiene, the board is informed upon oath or affirmation lawfully administered, that any such applicant has during the term of his last license or the last renewal thereof violated any of the provisions of this chapter or chapter 147 or committed any of the acts of unprofessional conduct as defined in this chapter, or if any member of the board certifies in writing that he is credibly informed that such violation of law or act of unprofessional conduct has been so committed by such applicant, then the board shall notify such applicant, by certified letter, with postage prepaid, mailed to his address as shown by the records of said board that such information or certificate has come to the attention of the board, and that on a day and hour specified the applicant may appear before the board at such place stated in such notice and show cause why said license should be renewed. In such event the renewal of such license shall not be made prior to the date so fixed and the making of such a showing by the applicant. [C35,§2573-g5; C39,§2573.05; C46, 50, 54, 58, 62, 66,§153.14; C71, 73, 75,§153.23]

153.24 Time and place of hearing. The time and place of such hearing before the board shall be open to public inspection at all reasonable hours. [C35,§2573-g6; C39,§2573.06; C46, 50, 54, 58, 62, 66,§153.15; C71, 73, 75,§153.24]

153.25 Hearing confidential. At such hearing, which shall be confidential unless the applicant requests it be a public one, any person having knowledge of the facts pertaining to the propriety of the renewal of such license may testify thereto, and the chairman of the board is hereby empowered to and shall administer oaths to all such persons offering testimony. [C71, 73, 75,§153.25]

153.26 Rejection of renewal. If at said hearing, or upon appeal if taken as hereinafter provided, it shall be established that the applicant has theretofore failed to comply with all of the provisions of this chapter or has during the term of his license or the last renewal thereof committed any of the acts of unprofessional conduct as defined in this chapter, then the board shall reject such application and said license shall not be renewed except as hereinafter provided. [C35,§2573-g9; C39, §2573.09; C46, 50, 54, 58, 62, 66,§153.18; C71, 73, 75,§153.26]

153.27 Minutes of evidence. The minutes of all evidence heard by the said board or exhibits introduced at said hearing for or against the granting of said application for license, together with the order of the board granting or rejecting such application for renewal of license, which shall be in writing, shall be and become a part of the records of said board and shall be open to public inspection at all reasonable hours. Written notice of said order shall forthwith be mailed to the applicant by the board. [C35,§2573-g10; C39,§2573.10; C46, 50, 54, 58, 62, 66,§153.19; C71, 73, 75,§153.27]

153.28 Judicial review. Judicial review of actions of the board may be sought in accordance with the terms of the Iowa administrative procedure Act. [C35,§2573-g11; C39, §2573.11; C46, 50, 54, 58, 62, 66,§152.20; C71, 73, 75,§153.28]

153.29 Order stands during review. Notwithstanding the terms of the Iowa administrative procedure Act, the order of the board rejecting such application, and refusing to renew such license, shall remain in force and effect until such petition for judicial review is finally determined and disposed of upon the merits and no new or temporary license shall be issued to the applicant pending such disposition. [C35,§2573-g12; C39,§2573.12; C46, 50, 54, 58, 62, 66,§153.21; C71, 73, 75,§153.29]

153.30 Reinstatement — examination. Any former licensee whose application for renewal of license has been rejected by the board and who has not successfully prosecuted a proceeding for judicial review therefrom as herein provided shall not thereafter receive such license or renewal thereof unless same shall be granted by the board and upon payment of the renewal fees then due. Said board may require examination of the former licensee, in which case he shall pay the examination fees provided by law. [C35,§2573-g13; C39,§2573.13; C46, 50, 54, 58, 62, 66,§153.22; C71, 73, 75,§153.30]

153.31 Falsification in application for renewal. A license to practice either dentistry

or dental hygiene shall be revoked or suspended in the manner and upon the grounds elsewhere provided in this chapter, and also when the certificate accompanying the application of such licensee for renewal of license filed with the board is not in all material respects true. [C35,§2573-g15; C39,§**2573.15**; C46, 50, 54, 58, 62, 66,§153.24; C71, 73, 75,§153.31]

153.32 Unprofessional conduct. As to dentists and dental hygienists "unprofessional conduct" shall consist of any of the acts denominated as such elsewhere in this chapter, and also any other of the following acts:

1. All advertising of any kind or character other than the carrying or publishing of a professional card or the display of a window sign at the licensee's place of business; which professional card or window sign shall display only the name, address, profession, office hours and telephone connections of the licensee.

2. Exploiting or advertising through the press, on the radio, on television, or by the use of handbills, circulars or periodicals, other than professional cards stating only the name, address, profession, office hours, and telephone connections of the licensee.

3. Employing or making use of advertising solicitors or publicity agents or soliciting employment personally or by representative.

4. Employing any person to obtain, contract for, sell or solicit patronage, or make use of free publicity press agents.

5. Receiving any rebate, or other thing of value, directly or indirectly from any dental laboratory or dental technician.

6. Solicitation of professional patronage by agents or persons popularly known as "cappers" or "steerers", or profiting by the acts of those representing themselves to be agents of the licensee.

7. Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured.

8. Division of fees or agreeing to split or divide the fees received for professional services with any person for bringing or referring a patient or assisting in the care or treatment of a patient without the consent of said patient or his legal representative.

9. Willful neglect of a patient in a critical condition. [C35,§2573-g16; C39,§**2573.16**; C46, 50, 54, 58, 62, 66,§153.25; C71, 73, 75,§153.32]

153.33 Powers of board. Subject to the provisions of this chapter, any provision of Title VIII of the Code to the contrary notwithstanding, the board shall exercise the following powers:

1. To initiate investigations of and conduct hearings on all matters or complaints relating to the practice of dentistry or dental hygiene or pertaining to the enforcement of any provision of this chapter, to revoke or suspend licenses or the renewal thereof issued under this or any prior chapter, and to otherwise discipline licensees.

2. All employees needed to administer this chapter shall be appointed pursuant to the merit system.

3. To initiate in its own name or cause to be initiated in a proper court appropriate civil proceedings against any person to enforce the provisions of this chapter or Title VIII of the Code relating to the practice of dentistry, and the board may have the benefit of counsel in connection therewith. Any such judicial proceeding as may be initiated by the board shall be commenced and prosecuted in the same manner as any other civil action and injunctive relief may be granted therein without proof of actual damage sustained by any person but such injunctive relief shall not relieve the person so enjoined from criminal prosecution by the attorney general or county attorney for violation of any provision of this chapter or Title VIII of the Code relating to the practice of dentistry.

4. In any investigation made or hearing conducted by the board on its own motion, or upon written complaint filed with the board by any person, pertaining to any alleged violation of this chapter or the accusation against any licensee, the following procedure and rules so far as material to such investigation or hearing shall obtain:

a. The accusation of such person against any licensee shall be reduced to writing, verified by some person familiar with the facts therein stated, and three copies thereof filed with the board.

b. If the board shall deem the charges sufficient, if true, to warrant suspension or revocation of license, it shall make an order fixing the time and place for hearing thereon and requiring the licensee to appear and answer thereto, such order, together with a copy of the charges so made to be served upon the accused at least twenty days before the date fixed for hearing, either personally or by certified or registered mail, sent to his last known post-office address as shown by the records of the board.

c. At the time and place fixed in said notice for said hearing, or at any time and place to which the said hearing shall be adjourned, the board shall hear the matter and may take evidence, administer oaths, take the deposition of witnesses, including the person accused, in the manner provided by law in civil cases, compel the appearance of witnesses before it in person the same as in civil cases by subpoena issued over the signature of the chairman of the board and in the name of the state of Iowa, require answers to interrogatories and compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation or relating to the hearing.

d. In all such investigations and hearings pertaining to the suspension or revocation of licenses, the board and any person affected thereby may have the benefit of counsel, and upon the request of the licensee or his counsel

the board shall issue subpoenas for the attendance of such witnesses in behalf of the licensee, which subpoenas when issued shall be delivered to the licensee or his counsel. Such subpoenas for the attendance of witnesses shall be effective if served upon the person named therein anywhere within this state, provided, that at the time of such service the fees now or hereafter provided by law for witnesses in civil cases in district court shall be paid or tendered to such person.

e. In case of disobedience of a subpoena lawfully served hereunder, the board or any party to such hearing aggrieved thereby may invoke the aid of the district court in the county where such hearing is being conducted to require the attendance and testimony of such witnesses. Such district court of the county within which the hearing is being conducted may, in case of contumacy or refusal to obey such subpoena, issue an order requiring such person to appear before said board, and if so ordered give evidence touching the matter involved in the hearing. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

f. If the licensee pleads guilty, or after hearing he shall be found guilty by the board of any of the charges made, it may suspend for a limited period or revoke the license and the last renewal thereof, and shall enter the order on its records and notify the accused of the revocation or suspension of his license, as the case may be, who shall thereupon forthwith surrender his license to the board. Any such person whose license has been so revoked or suspended shall not thereafter and while such revocation or suspension is in force and effect practice dentistry or dental hygiene within this state.

g. The findings of fact made by the board acting within its power shall, in the absence of fraud, be conclusive, but the district court shall have power to review questions of law involved in any final decision or determination of the board; provided, that application is made by the aggrieved party within thirty days after such determination by certiorari, mandamus or such other method of review or appeal permitted under the laws of this state, and to make such further orders in respect thereto as justice may require.

h. Pending the review and final disposition thereof by the district court, the action of the board suspending or revoking such license shall not be stayed. [C71, 73, 75,§153.33]

153.34 Suspension or revocation of license. The board shall suspend for a limited period or revoke the license and the last renewal thereof of any licensed dentist or any licensed dental hygienist for any of the following reasons:

1. For fraud or deceit in procuring his license or the renewal thereof to practice dentistry or dental hygiene.

2. The conviction of a felony, if the felony conviction relates directly to the practice of dentistry or dental hygiene, in which case a certified copy of the court record where such conviction appears shall be conclusive evidence, upon receipt of which the board shall revoke or suspend the license of the person so convicted.

3. For habitually using drugs or intoxicants to the extent of rendering him unfit for the practice of dentistry or dental hygiene, or for gross immorality.

4. For being guilty of willful and gross malpractice or willful and gross neglect in the practice of dentistry or dental hygiene.

5. For conducting the practice of dentistry so as to permit directly or indirectly an unlicensed person to perform work which under this chapter can legally be done only by persons licensed to practice dentistry or dental hygiene in this state.

6. For employing solicitors or cappers for the purpose of procuring patients for dental work to be done.

7. For fraud in representation as to skill or ability.

8. For distribution of intoxicating liquors or drugs for any other than lawful purposes.

9. For willful or repeated violations of this chapter, Title VIII of the Code, or the rules of the state board of dentistry.

10. For continuing practice while knowingly having an infectious or contagious disease.

11. For obtaining any fee by fraud or misrepresentation.

12. For having failed to pay license fees as provided herein.

13. For being guilty of dishonorable or unprofessional conduct in the practice of dentistry or dental hygiene.

14. For the use of the name "clinic", "institute", or other title of similar import that may suggest a public or semipublic activity to designate what is in fact an individual or group private practice.

15. For failure to maintain a reasonably satisfactory standard of competency in the practice of dentistry or dental hygiene.

16. For a violation of any provision of this chapter, or for being a party to or assisting in any violation of any provision of this chapter. [C71, 73, 75,§153.34]

153.35 Construction rule. This chapter shall be deemed to be passed in the interest of the public health, safety and welfare of the people of this state, and its provisions shall be liberally construed to carry out its object and purposes. [C71, 73, 75,§153.35]

153.36 Statutes not applicable to dentistry. Sections 147.44 to 147.71, except 147.57 and sections 147.87 to 147.92, shall not apply to the practice of dentistry. [C71, 73, 75,§153.36]

Constitutionality, 62GA, ch 166,§37

CHAPTER 154

PRACTICE OF OPTOMETRY

Enforcement, §§147.87, 147.90, 147.92
Penalty, §147.86
Referred to in §147.76

154.1 "Optometry" defined.
154.2 Persons not engaged in.
154.3 License.
154.4 Revocation.
154.5 Approved school.
154.6 Expiration and renewal of licenses.
154.7 Notice of expiration.
154.8 Postgraduate study as requisite.
154.9 Ophthalmic lenses—sale.

154.1 "Optometry" defined. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of optometry:

1. Persons employing any means other than the use of drugs, medicine or surgery for the measurement of the visual power and visual efficiency of the human eye; the prescribing and adapting of lenses, prisms and contact lenses, and the using or employing of visual training or ocular exercise, for the aid, relief or correction of vision.

2. Persons who allow the public to use any mechanical device for such purpose.

3. Persons who publicly profess to be optometrists and to assume the duties incident to said profession. [S13,§2583-g; C24, 27, 31, 35, 39,§2574; C46, 50, 54, 58, 62, 66, 71, 73, 75,§154.1]

154.2 Persons not engaged in. This chapter shall not be construed to include the following classes:

1. Merchants or dealers who sell glasses as merchandise in an established place of business and who do not profess to be optometrists or practice optometry as herein defined.

2. Licensed physicians and surgeons. [S13, §2583-q; C24, 27, 31, 35, 39,§2575; C46, 50, 54, 58, 62, 66, 71, 73, 75,§154.2]

154.3 License. Every applicant for a license to practice optometry shall:

1. Present satisfactory evidence of a preliminary education equivalent to at least four years study in an accredited high school or other secondary school.

2. Present a diploma from an accredited school of optometry.

3. Pass an examination prescribed by the optometry examiners in the subjects of physiology of the eye, optical physics, anatomy of the eye, ophthalmology, and practical optometry. [S13,§2583-l; C24, 27, 31, 35, 39,§2576; C46, 50, 54, 58, 62, 66, 71, 73, 75,§154.3]

Referred to in §154.5(2)

154.4 Revocation. In addition to the grounds for revocation of license set forth in section 147.55, any licensed optometrist who shall practice or advertise as practicing his profession, under a false or assumed name or shall by such advertisement mislead the public to believe that he is practicing for or on behalf of an unlicensed person, shall have his license revoked. [C35,§2576-e1; C39,§2576.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§154.4]

154.5 Approved school. No school of optometry shall be approved by the optometry examiners as a school of recognized standing unless said school:

1. Requires for graduation or any degree the completion of a course of study covering a period of at least four school years of nine months each year of actual continuous attendance.

2. Gives an adequate course of study in which at least one hundred fifty hours of the instruction are devoted to each of the subjects enumerated in subsection 3 of section 154.3.

3. Publishes in a regularly issued catalogue the requirements for graduation and degrees as herein specified. [S13,§2583-l; C24, 27, 31, 35, 39,§2577; C46, 50, 54, 58, 62, 66, 71, 73, 75,§154.5]

Approved schools, §147.32

154.6 Expiration and renewal of licenses. Every license to practice optometry shall expire annually. Application for renewal of such license shall be made in writing to the department of health at least thirty days prior to the annual expiration date, accompanied by the required renewal fee and the affidavit of the licensee or other proof satisfactory to the department and to the Iowa state board of optometry examiners, that said applicant has attended, since the issuance of the last license to said applicant, an educational program or clinic as conducted by the Iowa optometric association, or its equivalent, for a period of at least two days. The attendance requirement at said educational program or clinic shall not be conditioned upon membership in said Iowa optometric association. Nonmembers shall be admitted to said annual educational program or clinic upon payment of their pro rata share of the cost. In lieu of attendance at the said annual educational program or clinic, it shall be the duty of the board of optometry examiners to recognize and approve attendance at local optometric study group meetings as shall, in the judgment of said board, constitute an equivalent to attendance at the annual educational program of said association. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§154.6]

154.7 Notice of expiration. Notice of expiration of the annual license to practice optometry shall be given by the state department of health to all certificate holders by mailing said notice to the last known address of such licensee at least seventy-five days prior to the expiration date, and said notice shall contain a statement of the educational program attendance requirement and the amount of legal fee required as a condition to the renewal of the license for the coming year. Subject to the provisions of this chapter, said license shall be renewed without examination. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§154.7]

154.8 Postgraduate study as requisite. The filing of proof of attendance at an educational program or clinic as provided in this chapter shall be a condition precedent to the issuance of a renewal license, provided, however, that the Iowa state board of optometry examiners may reinstate such licensee to practice optometry upon presentation of satisfactory proof of postgraduate study of a standard approved by said examiners, and payment of all fees due. Licensees residing and practicing in other states are not required to comply with the postgraduate requirement. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§154.8]

154.9 Ophthalmic lenses—sale. It shall be unlawful for any person to dispense and adapt contact lenses or any other ophthalmic lens or lenses, without first having obtained a written prescription or order therefor from a duly licensed practitioner referred to in this chapter, or other practitioner authorized to write said prescriptions or orders. Each such practitioner shall furnish his patient without charge a copy of his patient's prescription. For the purpose of this section, an ophthalmic lens shall mean one which has been ground to fill the requirements of a particular prescription. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§154.9]

Constitutionality, 49GA, ch 118,§6

CHAPTER 154A

HEARING AID DEALERS

Referred to in §§147.76, 147.152

154A.1 Definitions.
154A.2 Establishment of board.
154A.3 Term of office.
154A.4 Duties of the board.
154A.5 Public members.
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154A.7 Meetings and expenses.
154A.8 Duties of department.
154A.9 Applications.
154A.10 Issuance of licenses.
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154A.12 Scope of examination.
154A.13 Temporary permit.
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154A.17 Fees.
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154A.20 Rights of purchaser.
154A.21 Notice of address.
154A.22 Deposit of fees.
154A.23 Complaints.
154A.24 Suspension or revocation.
154A.25 Prohibitions.
154A.26 Consumer protection.
154A.27 Penalties.

154A.1 Definitions. As used in this chapter, unless the context requires otherwise:

1. *"Department"* means the state department of health.

2. *"Board"* means the board of examiners for the licensing and regulation of hearing aid dealers.

3. *"Hearing aid"* means a wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing, and any parts, attachments, or accessories, including earmold, but excluding batteries and cords.

4. *"Hearing aid dealer"* means any person engaged in the fitting, dispensing and the sale of hearing aids and providing hearing aid services or maintenance, by means of procedures stipulated by this chapter or the board.

5. *"Hearing aid fitting"* means the measurement of human hearing by any means for the purpose of selections, adaptations, and sales of hearing aids, and the instruction and counseling pertaining thereto, and demonstration of techniques in the use of hearing aids, and the making of earmold impressions as part of the fitting of hearing aids.

6. *"Dispense"* or *"sell"* means a transfer of title or of the right to use by lease, bailment, or any other means, but excludes a wholesale transaction with a distributor or dealer, and excludes the temporary, charitable loan or educational loan of a hearing aid without remuneration.

7. *"Person"* means a natural person.

8. *"Temporary permit"* means a permit issued while the applicant is in training to become a licensed hearing aid dealer.

9. *"License"* means a license issued by the state under this chapter to hearing aid dealers. [C75,§154A.1]

154A.2 Establishment of board. A board for the licensing and regulation of hearing aid dealers is established. The board shall consist of three licensed hearing aid dealers and two members who are not licensed hearing aid dealers who shall represent the general public. Members, who shall be residents of the state of Iowa, shall be appointed by the governor, subject to the approval of two-thirds of the members of the senate. A licensed member shall be actively employed as a hearing aid dealer and shall have been so engaged for five years preceding his appointment, the last two of which shall have been in Iowa. However, hearing aid dealers appointed to the initial board shall have not less than five years experience and shall fulfill the qualifications relating to experience for licensure as provided in this chapter.

No more than two members of the board shall be employees of, or dealers principally, for the same hearing aid manufacturer.

Professional associations or societies composed of licensed hearing aid dealers may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of licensed hearing aid dealers. [C75,§154A.2]

154A.3 Term of office. Appointments shall be for three-year terms and shall commence on July 1 of the year in which the appointment is made. Vacancies shall be filled for the unexpired term by appointment of the governor and shall be subject to senate confirmation. Members shall serve a maximum of three terms or nine years, whichever is least. For members appointed to the initial board, the governor shall appoint one hearing aid dealer for a one-year term, one hearing aid dealer for a two-year term, and one hearing aid dealer for a three-year term; one member representing the general public for a one-year term and one member representing the general public for a three-year term. [C75, §154A.3]

154A.4 Duties of the board. Members of the board shall annually elect a chairman and a secretary-treasurer from their membership. The board shall prepare examinations drawn from comparable examinations given in other states which license hearing aid dealers, direct the department in administering the provisions of this chapter, determine who is eligible for licensure, suspend or revoke licenses or temporary permits for cause, and promulgate rules for the administration of the provisions of this chapter pursuant to chapter 17A within the limits of funds appropriated to the board. [C75,§154A.4]

154A.5 Public members. The public members of the board shall not participate in administering or grading any portion of an examination, except that for the initial examination the public members may participate in administering and grading the examination. [C75, §154A.5]

154A.6 Disclosure of confidential information. A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.

2. Information relating to the contents of the examination.

3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C75, §154A.6]

154A.7 Meetings and expenses. The members of the board shall set their own per diem compensation at a rate not exceeding forty dollars per day for the time actually spent in traveling to and from, and attending duly authorized functions of the board and its committees, and shall receive all necessary traveling and incidental expenses incurred in the discharge of their duties within the limits of funds appropriated to the board. The board shall meet at least one time per year at the seat of government and may hold additional meetings as deemed necessary. Additional meetings shall be held at the call of the chairman or a majority of the members of the board. At any meeting of the board, a majority of the members shall constitute a quorum. [C75,§154A.7]

154A.8 Duties of department. The department, with the advice and assistance of the board shall:

1. Employ personnel, and authorize disbursements necessary to carry out the provisions of this chapter.

2. Register and issue licenses to persons whom the board deems qualified to engage in the fitting or selection and sale of hearing aids.

3. Purchase, maintain, or rent equipment and other facilities necessary to carry out the examination of applicants.

4. Designate the time and place for examining applicants, and conduct and supervise the examinations as directed by the board. [C75, §154A.8]

154A.9 Applications. Applications for licensure or for a temporary permit shall be on forms prescribed and furnished by the board and shall not require that a recent photograph

of the applicant be attached to the application form. An applicant shall not be ineligible for certification because of age, citizenship, sex, race, religion, marital status or national origin although the application may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of fitting or selection and sale of hearing aids. Character references may be required, but shall not be obtained from licensed hearing aid dealers. [C75,§154A.9]

154A.10 Issuance of licenses. After January 1, 1975, an applicant may obtain a license, if the applicant:

1. Successfully passes the qualifying examination prescribed in section 154A.12.

2. Is free of contagious or infectious disease.

3. Pays the necessary fees set by the board pursuant to section 154A.17. [C75,§154A.10]

154A.11 Examinations. Examinations for licensing shall be given as often as deemed necessary by the board, but no less than one time per year. The scope of the examination and methods of procedure shall be prescribed by the board. Any written examination may be given by representatives of the board.

All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible.

As soon as practicable after the close of each examination, a report shall be filed by the board. The report shall show the action of the board upon each application, and the department shall notify each applicant of the result of his examination. Applicants who fail the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board.

An applicant who has failed the examination may request in writing information from the board concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board. [C75, §154A.11]

154A.12 Scope of examination. The examination required by this chapter shall be designed to demonstrate the applicant's adequate technical qualifications including, but not limited to, the following:

1. Written tests of knowledge in areas such as physics of sound, anatomy and physiology of hearing, and the function of hearing aids, as these areas pertain to the fitting or selection and sale of hearing aids.

2. Practical tests of proficiency in hearing testing techniques as these techniques pertain to the fitting or selection and sale of hearing aids.

3. Evidence of knowledge of the medical and rehabilitation facilities that are available in the area served, for children and adults who have hearing problems.

4. Evidence of knowledge of situations in which it is commonly believed that a hearing aid is inappropriate.

5. The procedures and use of equipment established by the board for the fitting or selection and sale of hearing aids.

6. Practical tests of proficiency in the taking of earmold impressions.

The board shall not require the applicant to possess the degree of professional competence normally expected of physicians. [C75, §154A.12]

Referred to in §154A.10

154A.13 Temporary permit. A person who has not been employed as a hearing aid dealer prior to January 1, 1975, may obtain a temporary permit from the department upon completion of the application accompanied by the written verification of employment from a licensed hearing aid dealer. The department shall issue a temporary permit for one year which shall not be renewed or reissued. The fee for issuance of the temporary permit shall be set by the board pursuant to section 154A.17. The temporary permit entitles an applicant to engage in the fitting or selection and sale of hearing aids under the supervision of a person holding a valid license. [C75,§154A.13]

154A.14 Reciprocity. If the board determines that another state or jurisdiction has requirements equivalent to or higher than those provided in this chapter, the department may issue a license by reciprocity to applicants who hold valid certificates or licenses to deal in and fit hearing aids in the other state or jurisdiction. An applicant for a license by reciprocity is not required to take a qualifying examination, but is required to pay the license fee as provided in section 154A.17. The holder of a license of reciprocity is registered in the same manner as the holder of a regular license. Fees, grounds for renewal, and procedures for the suspension and revocation of license by reciprocity are the same as for a regular license. [C75,§154A.14]

154A.15 License renewal. Licenses shall be renewed annually in a manner determined by the board. The renewal fee shall be determined by the board pursuant to section 154A.17. The department shall notify every person licensed under this chapter of the date of expiration of his license and the amount of fee required for its renewal for one year. The notice shall be mailed at least one month in

advance of the expiration date. A person who fails to renew his license by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. [C75, §154A.15]

154A.16 Continuing education. Beginning January 1, 1976, in addition to payment of the annual renewal fee, each hearing aid dealer applying for the renewal of his license shall furnish to the department satisfactory evidence that he has completed at least two days of education programs during the year preceding the date of his application for renewal selected from the following:

1. Education programs conducted by the board;
2. Training school conducted by one of the various hearing aid manufacturers for their representatives, which is approved by the board;
3. Periodic training sessions conducted by the national hearing aid society which is approved by the board; or
4. Other educational means approved by the board.

The department shall send a written notice to this effect to every person holding a valid license at least thirty days prior to the license renewal date each year, directed to the last known address of such licensee.

In the event that any licensee shall fail to meet the annual educational requirement, his license shall be suspended or withheld by the board. The board shall reinstate the licensee upon the presentation of satisfactory evidence of educational study of a standard approved by the board, and upon the payment of all fees due. [C75,§154A.16]

154A.17 Fees. The fees for the examination shall be set by the board on the basis of the annual cost of administration. The fees for the temporary permit, license, renewal of a license, and issuance of a duplicate license, shall be set by the board on the basis of the cost of sustaining the board and the administrative costs of the department. The fees for licensure and permit shall be based upon, but not limited to:

1. Per diem, expenses, and travel of members of the board.
2. Supplies and other expenses.
3. Costs submitted by the department. [C75,§154A.17]

Referred to in §§154A.10, 154A.13, 154A.14, 154A.15

154A.18 Display of license. A person shall not engage in business as a hearing aid dealer, or display a sign, or in any other way advertise or represent himself as a hearing aid dealer after January 1, 1975, unless he holds a valid license issued by the department as provided in this chapter. The license shall be conspicuously posted in his office or place of business. The department shall issue duplicate licenses to valid license holders operating more than one office. A license confers upon the holder the right to operate a business as a hearing aid dealer. [C75,§154A.18]

154A.19 Exceptions. This chapter shall not prohibit a corporation, partnership, trust, association or other organization maintaining an established business address, from engaging in the business of selling or offering for sale hearing aids at retail without a license, if it employs only licensed hearing aid dealers in the direct fitting or selection and sale of hearing aids. Such an organization shall file annually with the board a list of all licensed hearing aid dealers and persons holding temporary permits directly or indirectly employed by it. Such an organization shall also file with the board a statement on a form approved by the board that the organization submits itself to the rules and regulations of the board and the provisions of this chapter which the department deems applicable.

This chapter shall not apply to a person who engages in the practices covered by this chapter if this activity is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public or charitable institution, or nonprofit organization, unless the institution or organization also dispenses or sells hearing aids.

This chapter shall not prevent any person from engaging in practices covered by this chapter, provided the person, or organization employing the person, does not dispense or sell hearing aids. [C75,§154A.19]

154A.20 Rights of purchaser. A hearing aid dealer shall deliver, to each person supplied with a hearing aid, a receipt which contains the licensee's signature and shows his business address and the number of his license, together with specifications as to the make, model and serial number of the hearing aid furnished, and full terms of sale clearly stated, including the date of consummation of the sale of the hearing aid. If a hearing aid is sold which is not new, the receipt and the container must be clearly marked "used" or "reconditioned", with the terms of guarantee, if any.

The receipt shall bear the following statement in type no smaller than the largest used in the body copy portion of the receipt:

"The purchaser has been advised that any examination or representation made by a licensed hearing aid dealer in connection with the fitting or selection and selling of this hearing aid is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore, must not be regarded as medical opinion or advice."

Whenever any of the following conditions are found to exist either from observations by the licensed hearing aid dealer or person holding a temporary permit or on the basis of information furnished by a prospective hearing aid user, the hearing aid dealer or person

holding a temporary permit shall, prior to fitting and selling a hearing aid to any individual, suggest to that individual in writing that his best interests would be served if he would consult a licensed physician specializing in diseases of the ear, or if no such licensed physician is available in the community, then to a duly licensed physician:

1. Visible congenital or traumatic deformity of the ear.

2. History of, or active drainage from the ear within the previous ninety days.

3. History of sudden or rapidly progressive hearing loss within the previous ninety days.

4. Acute or chronic dizziness.

5. Unilateral hearing loss of sudden or recent onset within the previous ninety days.

6. Significant air-bone gap (greater than or equal to 15dB ANSI 500, 1000 and 2000 Hz. average).

7. Obstruction of the ear canal, either by structures of undetermined origin, such as foreign bodies, impacted cerumen, redness, swelling or tenderness from localized infections of the otherwise normal ear canal.

A copy of the written recommendation shall be retained by the licensed hearing aid dealer for the period of seven years. A person receiving the written recommendation who elects to purchase a hearing aid shall sign a receipt for the same, and the receipt shall be kept with the other papers retained by the licensed hearing aid dealer for the period of seven years. Nothing in this section required to be performed by a licensed hearing aid dealer shall mean that the hearing aid dealer is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited by this chapter.

No hearing aid shall be sold by any individual licensed under this bill to a person twelve years of age or younger, unless within the preceding six months a recommendation for a hearing aid has been made by a physician specializing in otolaryngology. A replacement of an identical hearing aid within one year shall be an exception to this requirement.

A licensed hearing aid dealer shall, upon the consummation of a sale of a hearing aid, keep and maintain records in his office or place of business at all times and each such record shall be kept and maintained for a seven-year period. These records shall include:

1. Results of test techniques as they pertain to fitting of the hearing aids.

2. A copy of the written receipt and the written recommendation. [C75,§154A.20]

154A.21 Notice of address. A licensee or person holding a temporary permit shall notify the department in writing of the address of the place where he engages or intends to engage in business as a hearing aid dealer. The department shall keep a record of the place of business of licensees and persons holding temporary permits.

Any notice required to be given by the department to a licensee shall be adequately served if sent by certified mail to the address of the last place of business recorded. [C75, §154A.21]

Referred to in §154A.23

154A.22 Deposit of fees. The department shall deposit all fees collected under the provisions of this chapter in the general fund of the state. Compensation and travel expenses of members and employees of the board, and other expenses necessary for the board to administer and carry out the provisions of this chapter shall be paid from funds appropriated from the general fund of the state. [C75, §154A.22]

Appropriation, 65GA, ch 1145,§22

154A.23 Complaints. Any person wishing to make a complaint against a licensee or holder of a temporary permit shall file a written statement with the board within twelve months from the date of the action upon which the complaint is based. If the board determines that the complaint alleges facts which, if proven, would be cause for the suspension or revocation of the license of the licensee or holder of a temporary permit, it shall make an order fixing a time and place for a hearing and requiring the licensee or holder of a temporary permit complained against to appear and defend. The order shall contain a copy of the complaint, and the order and copy of the complaint shall be served upon the licensee or holder of a temporary permit at least twenty days before the date set for hearing, either personally or as provided in section 154A.21. Continuance or adjournment of a hearing date may be made for good cause. At the hearing the licensee or holder of a temporary permit may be represented by counsel. The licensee or holder of a temporary permit and the board may take depositions in advance of hearing and after service of the complaint, and either may compel the attendance of witnesses by subpoenas issued by the board. The board shall issue such subpoenas at the request of a licensee or holder of a temporary permit. Either party taking depositions shall give at least five days written notice to the other party of the time and place of such depositions, and the other party may attend, with counsel, if desired, and cross-examine.

If the board determines from the evidence and proofs submitted that the licensee or holder of a temporary permit is guilty of violating any of the provisions of this chapter, or any of the regulations promulgated by the board pursuant to this chapter, the department shall, within thirty days after the hearing, issue an order refusing to issue or renew, or revoking or suspending, as the case may be, the hearing aid dealer's license or temporary permit. The order shall include the findings of fact and the conclusions of law made by the board and counsel. A copy of the order shall

be sent to the licensee or holder of a temporary permit by registered mail. The records of the department shall reflect the action taken by the board on the charges, and the department shall preserve a record of the proceedings in a manner similar to that used by courts of record in this state.

The final order of the board in the proceedings may be appealed to the district court of the county where the licensee or holder of a temporary permit resides, or in which the licensed hearing aid dealer's principal place of business is located.

The department shall send a copy of the complaint and a copy of the board's final order to the attorney general for purposes of information in the event the licensee or holder of a temporary permit pursues a court appeal and for consideration as to whether the violations are flagrant enough to justify prosecution. The attorney general and all county attorneys shall assist the department in the enforcement of the provisions of this chapter. [C75,§154A.23]

154A.24 Suspension or revocation. The board may revoke or suspend a license or temporary permit permanently or for a fixed period for any of the following causes:

1. Conviction of a felony. The record of conviction, or a certified copy, shall be conclusive evidence of conviction.

2. Procuring a license or temporary permit by fraud or deceit.

3. Unethical conduct in any of the following forms:

a. Obtaining a fee or making a sale by fraud or misrepresentation.

b. Knowingly employing, directly or indirectly, any suspended or unregistered person to perform any work covered by this chapter.

c. Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, however disseminated or published, which is misleading, deceptive or untruthful.

d. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, if it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.

e. Representing that the service or advice of a person licensed to practice medicine, or one who is certificated as a clinical audiologist by the board of examiners of speech pathology and audiology or its equivalent, will be used or made available in the fitting or selection, adjustment, maintenance, or repair of hearing aids when that is not true, or using the words "doctor", "clinic", "clinical audiologist", "state approved", or similar words, abbreviations or symbols which tend to connote the medical or other professions, except where the title "certified hearing aid audiologist" has been granted by the national hearing aid society, or that the hearing aid dealer has been recommended by this state or the board when such is not accurate.

f. Habitual intemperance.

g. Permitting another person to use his license or temporary permit.

h. Advertising a manufacturer's product or using a manufacturer's name or trademark to imply a relationship with the manufacturer that does not exist.

i. Directly or indirectly giving or offering to give, or permitting or causing to be given money or anything of value to a person who advises another in a professional capacity, as an inducement to influence the person or cause him to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dealer, or to influence others to refrain from dealing in the products of competitors.

j. Conducting business while suffering from a contagious or infectious disease.

k. Engaging in the fitting or selection and sale of hearing aids under a false name or alias, with fraudulent intent.

l. Selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting or selection of hearing aids, except in cases of selling replacement hearing aids of the same make or model within one year of the original sale.

m. Gross incompetence or negligence in fitting or selection and selling of hearing aids.

n. Using an advertisement or other representation which has the effect of misleading or deceiving purchasers or prospective purchasers into the belief that any hearing aid or device, or part or accessory thereof, is a new invention or involves a new mechanical or scientific principle when such is not the fact.

o. Representing, directly or by implication, that a hearing aid utilizing bone conduction has certain specified features, such as the absence of anything in the ear or leading to the ear, or the like, without disclosing clearly and conspicuously that the instrument operates on the bone conduction principle, and that in many cases of hearing loss, this type of instrument may not be suitable.

p. Stating or implying that the use of a hearing aid will restore normal hearing or preserve hearing or prevent or retard progressions of hearing impairment or any other false or misleading claim regarding the use or benefit of a hearing aid.

q. Representing or implying that a hearing aid is or will be "custom-made", "made to order", "prescription made", or in any other sense especially fabricated for an individual person when such is not the case.

r. Violating any of the provisions of section 713.24.

s. Such other acts or omissions as the board may determine to be unethical conduct. [C75, §154A.24]

154A.25 Prohibitions. A person shall not:

1. Sell, barter, or offer to sell or barter a license or temporary permit.

2. Purchase or procure by barter a license or temporary permit with intent to use it as evidence of the holder's qualifications to engage in business as a hearing aid dealer.

3. Alter a license or temporary permit with fraudulent intent.

4. Use or attempt to use as a valid license a license or temporary permit which has been purchased, fraudulently obtained, counterfeited, or materially altered.

5. Willfully make a false statement in an application for a license or temporary permit or for renewal of a license or temporary permit. [C75,§154A.25]

154A.26 Consumer protection. Nothing in this chapter shall be construed to limit the right of a person who desires to file a complaint against a licensee or holder of a temporary permit from filing a complaint with the attorney general pursuant to the provisions of section 713.24. [C75,§154A.26]

154A.27 Penalties. A violation of any provisions of this chapter is punishable, upon conviction, by a fine of not more than five hundred dollars or by imprisonment for not more than ninety days in the county jail, or by both such fine and imprisonment. [C75,§154A.27]

CHAPTER 154B

PRACTICE OF PSYCHOLOGY

Effective July 1, 1975

Referred to in §§147.76, 229.1

154B.1 Definition.
154B.2 Practice not authorized.
154B.3 Persons not required to qualify.
154B.4 Acts prohibited.
154B.5 Scope of chapter.
154B.6 Requirements for certification.
154B.7 Voluntary surrender of certification.

154B.1 Definition. "*Practice of psychology*" means the application of established principles of learning, motivation, perception, thinking, and emotional relations to problems of behavior adjustment, group relations, and behavior modification, by persons trained in psychology for compensation or other personal gain. The application of principles includes, but is not limited to: Counseling and the use of psychological remedial measures with persons, in groups or individually, with adjustment or emotional problems in the areas of work, family, school and personal relationships; measuring and testing personality, intelligence, aptitudes, public opinion, attitudes, and skills; and the teaching of such subject matter, and the conducting of research on the problems relating to human behavior. [C75,§154B.1]

154B.2 Practice not authorized. This chapter shall not authorize the practice of medicine and surgery by any person not licensed pursuant to chapter 148, the practice of osteopathy by any person not licensed pursuant to chapter 150, or the practice of osteopathic medicine and surgery by any person not licensed pursuant to chapter 150A. [C75,§154B.2]

154B.3 Persons not required to qualify. The provisions of this chapter shall not apply to the following persons:

1. School psychologists certified by the department of public instruction practicing and functioning within the scope of their employment in either a public or private school or performing as certified school psychologists at any time in either private practice or the public sector, provided they use the title "certified school psychologist".

2. An employee of an accredited academic institution while performing his teaching, training, and research duties.

3. An employee of a federal, state, county or local governmental institution or agency or nonprofit institution or agency, or a research facility, while performing duties of his office or position with such institution, agency, or facility.

4. A student of psychology, psychological intern or person preparing for the practice of psychology in a training institution or facility approved by the board, provided he is designated by the title "psychological trainee" or any similar title, clearly indicating training status.

5. A practicing psychologist for a period not to exceed ten consecutive business days or fifteen business days in any ninety-day period, if his residence and his major practice are outside the state, and he gives the board a summary of his intention to practice in the state of Iowa, if he is certified or licensed in the state in which he resides under requirements the board considers to be equivalent of requirements for licensing under this chapter, or

he resides in a state which does not certify or license psychologists and the board considers his professional qualifications to be the equivalent of requirements for licensing under this chapter. [C75,§154B.3]

154B.4 Acts prohibited. Commencing July 1, 1974, a person who is not certified under this chapter shall not represent himself as a certified practicing psychologist, use a title or description, including the term "psychology" or any of its derivatives, such as "psychologist" or "psychological" or modifiers such as "practicing" or "certified" in a manner which implies that he is certified under this chapter, or offer to practice or practice psychology, except as otherwise permitted in this chapter. The use by a person who is not certified under this chapter of such terms is not prohibited by this chapter, except when such terms are used in connection with an offer to practice or the practice of psychology. [C75,§154B.4]

154B.5 Scope of chapter. Nothing in this chapter shall be construed to prevent qualified members of other professional groups such as physicians, osteopaths, optometrists, chiropractors, members of the clergy, authorized christian science practitioners, attorneys at law, social workers or guidance counselors from performing functions of a psychological nature consistent with the accepted standards of their respective professions, if they do not use any title or description stating or implying that they are psychologists or are certified to practice psychology. [C75,§154B.5]

154B.6 Requirements for certification. Except as provided in this section, an applicant for certification as a psychologist or as an associate psychologist shall meet the following requirements in addition to those specified in chapter 147:

1. A certified psychologist shall possess a doctoral degree in psychology or its equivalent from an institution approved by the board and shall have completed at least one year of supervised professional experience following the granting of the doctoral degree, or predoctoral experience, as may be acceptable to the board; or shall possess a masters degree in psychology or its equivalent from an institution approved by the board and have completed at least five years of professional experience, at least two of which shall have been under the supervision of a licensed psychologist, as may be acceptable to the board.

2. A certified associate psychologist shall possess a masters degree in psychology or its equivalent from an institution approved by the board.

3. Have passed an examination administered by the board to assure his professional competence.

4. Have not failed the examination required in subsection 3 within the six months next preceding the date of the examination.

The examinations required in this section may, at the discretion of the board, be waived for holders by examination of licenses or certificates from states whose requirements are substantially equivalent to those of this chapter, and for holders by examination of specialty diplomas from the American board of professional psychology.

Any person who within one year after July 1, 1974, meets the requirements specified in subsections 1 and 2 shall receive certification without having passed the examination required in subsection 3. Any person holding a certificate from the board of examiners of the Iowa psychological association on July 1, 1974, who applies for certification before July 1, 1975, shall receive certification. [C75,§154B.6]

154B.7 Voluntary surrender of certification. The commissioner of public health may accept the voluntary surrender of certification if accompanied by a written statement of intention. The voluntary surrender, when accepted, shall have the same force and effect as an order of revocation. [C75,§154B.7]

CHAPTER 155

PHARMACISTS AND WHOLESALE DRUGGISTS

Referred to in §§147.76, 152.1, 166.3, 422.45, 514.5
Enforcement, §§147.87, 147.90, 147.92, 147.99

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DIVISION I
LICENSE TO PRACTICE PHARMACY

155.1 Persons engaged in. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of pharmacy:

1. Persons who engage in the business of selling, or offering or exposing for sale, drugs and medicines.

2. Persons who compound or dispense drugs and medicines or fill the prescriptions of licensed physicians and surgeons, dentists, podiatrists or veterinarians. [C97,§2588; SS15, §2588; C24, 27, 31, 35, 39,§2578; C46, 50, 54, 58, 62, 66, 71, 73, 75,§155.1]

Referred to in §155.2

155.2 Persons not engaged in. Neither section 155.1 nor section 155.6 shall be construed to include the following classes:

1. Persons who sell, offer or expose for sale, completely denatured alcohol or concentrated lye, insecticides or fungicides in original packages or biological products as defined in chapter 166 or commercial feeds as defined in section 198.3, or stock tonic as defined in this section. For purposes of this section, stock tonic shall mean commercial feed for livestock and poultry such as remedies for the cure and mitigation of diseases and other nonnutritional conditions. It shall include only those articles and products for oral administration and shall not include medicated livestock and poultry feeds.

Referred to in §155.3(8)

2. Persons licensed to practice medicine, dentistry, podiatry or veterinary medicine who dispense drugs and medicines as an incident to the practice of their professions.

Referred to in §155.3(8)

3. Persons who sell, offer or expose for sale proprietary medicines or domestic remedies which are not in themselves poisonous or in violation of the law relative to intoxicating liquors. [C97,§2588; SS15,§2588; C24, 27, 31, 35, 39,§2579; C46, 50, 54, 58, 62, 66, 71, 73, 75,§155.2]

Referred to in §155.3(8)
Intoxicating liquors, ch 123 et seq.

155.3 Definitions. For the purposes of this chapter:

1. *"Drugs and medicines"* shall include all medicinal substances and preparations for internal or external use recognized in the United States Pharmacopoeia or National Formulary, and any substance or mixture of substances intended to be used for the diagnosis, cure, mitigation, or prevention of disease of either man or animals.

2. *"Pharmacy"* means every store or other place of business where prescription drugs are compounded, dispensed, or sold by a pharmacist and where prescription orders for prescription drugs are received or processed in accordance with the pharmacy laws.

3. The term *"board"* shall mean the board of pharmacy examiners established by chapter 147.

4. The term *"person"* means any individual, firm, partnership, corporation or association.

5. The term *"wholesaler"* shall mean any person operating or maintaining, either within or outside this state, a manufacturing plant, wholesale distribution center, wholesale business or any other business in which prescription drugs, medicinal chemicals, medicines or poisons, are sold, manufactured, compounded, dispensed, stocked, exposed or offered for sale at wholesale in this state. The term "wholesaler" shall not include those wholesalers who sell only the products defined in subsection 7. Nothing contained in this subsection shall in any way affect the exemptions provided in section 155.25.

6. The term *"wholesale salesman"* includes any individual who takes a purchase order for any prescription drug, medicinal chemical, medicines or poisons. The term "wholesale salesman" shall not apply to those salesmen who sell only the products defined in subsection 7. Nothing contained in this subsection shall in any way affect the exemptions provided in section 155.25.

7. For the purpose of this chapter, the term *"proprietary medicines"* or *"domestic remedies"* means and includes completely compounded packaged drugs, medicines and nonbulk chemicals which are not in themselves poisonous or in violation of the law relative to intoxicating liquors which are sold, offered, promoted and advertised by the manufacturer or primary distributor directly to the general public under a trade-mark, trade name, or

other trade symbol privately owned, whether or not registered in the United States Patent Office, and the labeling of which bears *(a)* a statement specifying affections, symptoms or purposes for which the product is recommended, *(b)* adequate directions for use and such cautions as may be necessary for the protection of users, *(c)* an accurate statement of the quantity of the contents in terms of weight, measure or numerical count, *(d)* a statement of the active ingredients, and *(e)* the name and address of the manufacturer or primary distributor: Provided, however, this definition shall not apply to the sale, or offering for sale, of any drug for use by man which is only advertised or promoted professionally to licensed physicians, dentists or veterinarians by the manufacturer or primary distributor, or to any prescription drug.

8. The provisions of this chapter shall not apply to persons selling, offering or exposing for sale, the preparations referred to in subsections 1, 2 and 3 of section 155.2 or persons licensed to practice veterinary medicine under the provisions of chapter 169 who dispense or sell veterinary drugs, or medicines for animal use only, or the holder of an itinerant vendor's license as defined in chapter 203 which persons shall not be required to have a license under this chapter while operating under the provisions of subsections 1, 2 or 3 of section 155.2 or licensed under the provisions of chapters 169 or 203 or to hospitals licensed under chapter 135B or to persons licensed under chapters 148, 150 or 153.

9. *"Prescription"* means a written order, or an oral order later reduced to writing, of a medical practitioner for a prescription drug or medicine.

Referred to in §204.308

10. *"Prescription drug"* means (*a*) any drug or medicine the label of which is required by federal law to bear the statement: "Caution: federal law prohibits dispensing without a prescription", *(b)* any drug or medicine which, because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to prescribe, administer, or dispense such drug or medicine, or *(c)* a new drug or medicine which is limited under state law to use under the professional supervision of a practitioner licensed by law to prescribe, administer, or dispense such drug or medicine.

Referred to in §204.308

11. *"Medical practitioner"* means a physician, dentist, podiatrist, veterinarian or any other person authorized by law to treat sick and injured humans or animals and to use prescription drugs in such treatment.

12. *"Demonstrated bioavailability"* is a term used to refer to the rate and extent of absorption of a drug or drug ingredient from a specified dosage form, as reflected by the time-concentration curve of the drug or drug ingredient in the systemic circulation.

13. *"Manufacturer"* means a person who prepares, compounds, processes or fabricates any prescription drug.

14. *"Packer"* or *"distributor"* means a person who repackages or otherwise changes the container, wrapper or labeling of any prescription drug in furtherance of the distribution of the drug, but does not include a retailer who repackages a prescription drug at the time of sale to its ultimate consumer.

15. *"Brand name"* or *"trade name"* means the registered trademark name given to a drug product or ingredient by its manufacturer, labeler or distributor.

16. *"Generic name"* means the official title of a drug or drug ingredient published in an official compendium as defined in section 203A.2, subsection 6.

17. The *"finished dosage form"* of a prescription drug is that form of the drug which is or is intended to be dispensed or administered to the patient, and which requires no further manufacturing or processing other than packaging, reconstituting and labeling. [C24, 27, 31, 35, 39,§**2580**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§155.3; 66GA, ch 1116,§1, ch 1117, §1]

Referred to in §§204.308, 203A.19, 422.45
See 250 Iowa 721

155.4 License. Every applicant for a license to practice pharmacy shall:

1. Present satisfactory evidence of possessing the qualifications enumerated in one of the following paragraphs:

a. The completion of two years work in an accredited college of pharmacy and at least two years of practical experience as a clerk under the supervision of a licensed pharmacist in a pharmacy.

b. The completion of three years work in an accredited college of pharmacy and at least one year of practical experience as specified in the preceding paragraph.

2. Pass an examination prescribed by the pharmacy examiners in the science and practice of pharmacy. This section shall apply to all persons who prior to July 4, 1936, were actually in attendance in any recognized college of pharmacy, irrespective of the time when such persons apply for said license. [S13,§2589-b; C24, 27, 31, 35, 39,§**2581**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§155.4]

Referred to in §155.5

155.5 Applicants for license—requirements. On and after July 4, 1936, every applicant for a license to practice pharmacy, except for those embraced in section 155.4, shall:

1. Be a graduate of a school or college of pharmacy, or of a department of pharmacy of a university, recognized and approved by the board of pharmacy examiners.

2. File proof, satisfactory to the board, of practical experience in a pharmacy for a period of time not exceeding one year as fixed by the board of pharmacy examiners, substantiated by proper affidavits; said experience to be under the supervision of a licensed pharmacist.

3. Pass an examination prescribed by the board of pharmacy examiners in the science and practice of pharmacy. [C35,§2581-g1; C39, §**2581.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§155.5]

155.6 Sales by unlicensed person. No unlicensed person or licensed pharmacist shall allow anyone who is not a licensed pharmacist to fill the prescriptions of licensed physicians, dentists, podiatrists or veterinarians, except a person who is registered with the board of pharmacy examiners pursuant to the practical experience requirements of this chapter and unless the same be done under the immediate personal supervision of a licensed pharmacist. All drugs and medicines requiring a prescription which are sold, exposed or offered for sale shall be under the immediate personal supervision of a licensed pharmacist at all times except for temporary absences. However, during a period of temporary absence of a licensed pharmacist, no drugs or medicines requiring a prescription shall be sold or offered for sale in the pharmacy except proprietary medicines or domestic remedies. [C97,§2588; SS15,§2588; C24, 27, 31, 35, 39,§**2582**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§155.6]

44GA, ch 54,§3, editorially divided
Referred to in §155.2

155.7 Display of certificate. No person shall allow or permit the certificate of a licensed pharmacist to remain in or on display in his place of business, unless the licensed pharmacist owning said certificate is employed therein.

No licensed pharmacist shall allow or permit his certificate, as a licensed pharmacist, to remain in or on display at any place of business unless legally employed therein. [C31, 35, §2582-d1; C39,§**2582.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§155.7]

155.8 Use of terms. No person shall use the word or words: "Drug", "druggist", "drug store", "pharmacy", "pharmacist", or "apothecary", on any sign, card, circular, device, or advertisement, unless his place of business is operated as a pharmacy or licensed drug wholesaler as defined in this chapter. [C97,§2588; SS15,§2588; C31, 35,§2582-d2; C39,§**2582.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§155.8]

155.9 Approved colleges. No college of pharmacy shall be approved by the pharmacy examiners unless the college is accredited by the American council on pharmaceutical education. [S13,§2589-b; C24, 27, 31, 35, 39,§**2583**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§155.9]

Approved colleges, §147.32

DIVISION II
PHARMACY BUSINESS LICENSES

155.10 Pharmacy license. No person shall establish, conduct or maintain a pharmacy in this state without a license. This license shall be identified as a pharmacy license. [C58, 62, 66, 71, 73, 75,§155.10]

155.11 Wholesale drug license. No person shall establish, conduct or maintain a wholesale business as defined in this chapter without a license. This license shall be identified as a wholesale drug license. [C58, 62, 66, 71, 73, 75, §155.11]

155.12 Application. Licenses shall be obtained from the board for each and every place of business. Applications shall be upon such forms and shall contain such information as the board may reasonably require. Each application for license shall be made by the pharmacist-owner to the secretary of the board, accompanied by the license fee, which shall be paid over into the state treasury and credited to the general fund if the license is issued. The license fee for a pharmacy license or a wholesale drug license shall be set by the board and based upon the administrative costs of issuing the licenses. These licenses shall be due annually on the first day of each January. The board shall issue a license upon receipt of an application accompanied by the license fee and after approval thereof by the board.

Each license shall be issued only for the premises and to the persons named in the application and shall not be transferred or assigned. If a corporation or other business entity licensee elects to change or replace the pharmacist-manager within an annual registration period, a new license shall be obtained from the board.

1. The application for a pharmacy license shall contain the following:

a. The name of the pharmacist-owner.

b. The name of each pharmacist employed at the pharmacy at the time the application is made.

c. The trade or corporate name of the pharmacy.

2. Every pharmacist shall immediately notify the board of any change of his address or employment.

3. As used in this section, "pharmacist-owner" means:

a. The pharmacist-owner if the pharmacy is a single proprietorship.

b. The pharmacist-owners if a pharmacy is a partnership.

c. The pharmacist-manager, if the pharmacy is a corporate entity or any other business entity not owned by a pharmacist, and shall include an enumeration of the names of all corporate officers and members of the board of directors. [C58, 62, 66, 71, 73, 75,§155.12; 66GA, ch 1117,§2]

155.13 Renewal—denial, suspension or revocation. Each license issued under this chapter unless sooner suspended or revoked, shall be renewable annually upon payment of the annual license fee. The board shall have the authority to deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with the provisions of this chapter or the regulations promulgated hereunder, or the violation thereof, and in addition the board shall have the power to deny, suspend or revoke a license, when the applicant or licensee, or any employee, providing the offense is committed on licensed premises or is in the conduct of the business licensed, is guilty of any of the following facts or offenses:

1. Fraud in procuring a license.

2. Conviction of an offense, or where a penalty or fine has been invoked, for violation of chapter 147, chapter 203, chapter 203A, chapter 204, or the federal food, drug and cosmetic Act. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction within the meaning of this section.

3. Distributing on the premises of intoxicating liquors or drugs for any other than lawful purposes.

4. Willful or repeated violations of the title on "Public Health" of the Code or the rules of the department of health.

5. Use of untrue or misleading statements, or untrue or misleading advertising, pertaining to the products which they are licensed to sell, or pertaining to the type of license they hold.

6. Substitution of a drug or substance other than the drug or substance ordered in the prescription of a physician, dentist, podiatrist or veterinarian licensed by law.

7. Conviction of a crime involving turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction within the meaning of this section.

8. Violations of the provisions of this chapter. [C58, 62, 66, 71, 73, 75,§155.13; 66GA, ch 1116,§2]

57GA, ch 96,§2(3), editorially divided

155.14 Notice—hearing. Such denial, suspension or revocation shall be effected by mailing to the applicant or licensee by registered mail, or by personal service of, a notice setting forth the particular reasons for such action. Such denial, suspension or revocation shall become effective thirty days after the mailing or service thereof, unless the applicant or licensee, within such thirty-day period shall give written notice to the board requesting a hearing in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the board. At any time at or prior to the hearing the board may rescind the notice of denial, suspension or revocation upon being satisfied that the reasons for denial, suspension or revocation have been or will be removed. On the basis of any such hearing, or upon default of the applicant or licensee, the determination involved in the notice may be affirmed, modified or set aside by the board. A copy of such decisions, setting forth the findings of facts and the particular reasons for the decision shall be sent by registered mail, or served. [C58, 62, 66, 71, 73, 75,§155.14]

57GA, ch 96,§2(3), editorially divided
Referred to in §155.15

155.15 Procedure at hearing. The procedure governing hearings authorized by section 155.14 shall be in accordance with rules promulgated by said board. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless judicial review is sought. A copy or copies of the transcript may be obtained by the party or parties involved in the controversy on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party and shall be allowed fees as prescribed by law in courts of record in criminal cases. [C58, 62, 66, 71, 73, 75,§155.15]

57GA, ch 96,§2(3), editorially divided

155.16 Judicial review. Judicial review of actions or decisions of the board may be sought in accordance with the terms of the Iowa administrative procedure Act. [C58, 62, 66, 71, 73, 75,§155.16]

155.17 Sanitary requirements. The following sanitary regulations shall be complied with in every pharmacy licensed under this chapter:

1. The floors, walls, ceilings, woodwork, windows, utensils, machinery and other equipment shall be kept in a thoroughly clean condition.

2. All parts of the interior of the premises shall be at all times adequately protected from dirt and contamination from any source.

3. Dirt, refuse and waste products subject to decomposition or fermentation shall be removed daily.

4. Clothing of all persons shall be kept clean. No person infected with any communicable disease as defined in chapter 139 shall work in any establishment.

5. All apparatus and equipment shall be kept in a thoroughly clean condition. [C58, 62, 66, 71, 73, 75,§155.17]

155.18 Prescription department. The prescription department of a pharmacy shall contain the following:

1. The latest or current edition of the United States Pharmacopoeia and National Formulary and any supplement thereto.

2. A prescription balance sensitive to ten milligrams.

3. The necessary instruments and apparatus to properly compound and dispense drugs and medicines. [C58, 62, 66, 71, 73, 75,§155.18]

155.19 Rules. The board shall adopt, amend, promulgate and enforce such reasonable rules, regulations and standards as may be designed to accomplish the purposes of this chapter, and as may be necessary for the provisions set forth herein. [C58, 62, 66, 71, 73, 75,§155.19]

155.20 Restricted prescription drugs. No prescription drug may be sold at wholesale or brokerage for resale to other than licensed pharmacies nor shall any person licensed under this chapter sell or dispense any prescription drug to any person other than a licensed pharmacy or a physician without prescription. [C58, 62, 66, 71, 73, 75,§155.20]

Referred to in §155.22

155.21 Wholesalers restricted. No wholesaler shall sell or distribute, nor shall any wholesale salesman take orders for or deliver any prescription drug to any pharmacy in this state unless such pharmacy is licensed under this chapter. [C58, 62, 66, 71, 73, 75, §155.21]

Referred to in §155.22

155.22 Exceptions. Sections 155.20 and 155.21 do not apply to sales by wholesalers of drugs and medicines to licensed physicians, dentists, podiatrists or veterinarians. [C58, 62, 66, 71, 73, 75,§155.22]

155.23 Exceptions. Nothing contained in this chapter shall be construed to prevent the sale of drugs, medicines, medicinal chemicals, poisons, proprietary medicines or domestic remedies at wholesale to a licensed wholesaler, or to the state department of health, or to the board of pharmacy examiners. [C58, 62, 66, 71, 73, 75,§155.23]

See 250 Iowa 721

155.24 Inspections. The board shall make or cause to be made such inspections of pharmacies and wholesalers as may be reasonably necessary to accomplish the purposes of this chapter. [C58, 62, 66, 71, 73, 75,§155.24]

See 250 Iowa 721

155.25 Sales exempted. Anything in this chapter to the contrary notwithstanding, persons or places of business, including but not limited to manufacturers, wholesalers and retailers who sell, offer or expose for sale, drugs, medicines, medicinal chemicals, nonbulk chemicals, paints or lacquer products or both, mixtures of substances, biologics, commercial feeds, stock tonics or any other substance or substances or proprietary medicines of any kind to be used for the cure, mitigation or prevention of disease of animals or fowl and so labeled or who sell, offer or expose for sale any preparation of any nature for any agricultural use and so labeled, including but not limited to, insecticides, fungicides, herbicides, rodenticides, pesticides, chemicals and poisons, shall be exempt from both the provisions of this chapter. [C58, 62, 66, 71, 73, 75,§155.25]

Referred to in §155.3
See 250 Iowa 721

155.26 Possession of prescription drugs. Any person found in possession of a drug or medicine limited by law to dispensation by a prescription, unless such drug or medicine was so lawfully dispensed, shall be deemed guilty of violating the provisions of this section, and upon conviction thereof, shall be fined not more than one thousand dollars or be imprisoned in the county jail for not more than one year, or both. This section shall not apply to a licensed pharmacy, licensed wholesaler, physician, veterinarian, dentist, podiatrist or nurse acting under the direction of a physician or the board of pharmacy examiners, its officers, agents, inspectors, and representatives, nor to a common carrier or messenger when transporting such drug or medicine in the same unbroken package in which the drug or medicine was delivered to him for transportation. [C58, 62, 66, 71, 73, 75,§155.26]

155.27 Penalty. Any person violating any of the provisions of this chapter or any chapter pertaining to or affecting the practice of pharmacy for which a specific penalty is not otherwise provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five hundred dollars or shall be imprisoned in the county jail for not more than six months, or both. [C58, 62, 66, 71, 73, 75,§155.27]

155.28 Injunction. Notwithstanding the existence or pursuit of any other remedy, the board may, in the manner provided by law maintain an action in the name of the state for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of a pharmacy or wholesaler, without license, or to prevent the violation of the provisions of this chapter. Upon request of the board, the attorney general shall institute the proper proceedings and the county attorney, at the request of the attorney general, shall appear and prosecute such action when brought in his county. [C58, 62, 66, 71, 73, 75,§155.28]

Constitutionality, 57GA, ch 96,§2(17)

155.29 Prohibited acts. No person shall:

1. Obtain or attempt to obtain a prescription drug or procure or attempt to procure the administration of a prescription drug by:

a. Fraud, deceit, misrepresentation, or subterfuge.

b. Forgery or alteration of a prescription or of any written order.

c. Concealment of a material fact.

d. Use of a false name or the giving of a false address.

2. Willfully make a false statement in any prescription, report, or record required by this chapter.

3. For the purpose of obtaining a prescription drug, falsely assume the title of or represent himself to be a manufacturer, wholesaler, pharmacist, pharmacy owner, physician, dentist, podiatrist, veterinarian, or other authorized person.

4. Make or utter any false or forged prescription or written order.

5. Affix any false or forged label to a package or receptacle containing prescription drugs.

Information communicated to a physician in an unlawful effort to procure a prescription drug or to procure the administration of any such drug shall not be deemed a privileged communication. [C66, 71, 73, 75,§155.29]

Referred to in §155.30

155.30 Penalties. Any person who sells or offers for sale, gives away, or administers to another person any prescription drug shall be deemed guilty of violating the provisions of this section or who violates any provisions of section 155.29 is guilty of a public offense.

If the prescription drug is a controlled substance as defined in section 204.101, subsection 6, the person shall be punished pursuant to section 204.401, subsection 1, and section 204.411. If the prescription drug is not a controlled substance, the person shall upon conviction of a first offense be fined not more than one thousand dollars or be imprisoned in the county jail for not more than one year, or both. For a second offense, or if in case of a first conviction of violation of any provision of section 155.29 or of violation of any provision of this section, the offender shall previously have been convicted of any violation of the laws of the United States or of any state, territory, or district thereof relating to prescription drugs, the offender upon conviction shall be fined not more than two thousand dollars and be imprisoned in the state penitentiary not less than two or more than five years. For a third or subsequent offense in violation of this section or in violation of section 155.29, or if the offender shall previously have been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district thereof relating to prescription drugs, the offender upon conviction shall be fined not more than five thousand dollars and be imprisoned in the state penitentiary not less than five or more than ten years.

Any person violating any provision of this chapter by selling, giving away, or administering any prescription drug to a minor shall upon conviction thereof be punished by imprisonment in the state penitentiary for not less than five or more than twenty years.

Nothing in this section shall be construed to prevent a licensed practitioner of medicine, dentistry, podiatry, nursing, veterinary medicine, or pharmacy from such acts necessary in the ethical and legal performance of his profession. [C66, 71, 73, 75,§155.30]

155.31 Burden of proof. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provisions of this chapter, it shall not be necessary to negative any exception, excuse, proviso, or exemption contained in this chapter, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant. [C66, 71, 73, 75,§155.31]

155.32 Enforcement—agents as peace officers. It is hereby made the duty of the board of pharmacy examiners, its officers, agents, inspectors, and representatives, and of all peace officers within the state, and of all county attorneys to enforce all provisions of this chapter, except those specifically delegated, and to co-operate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to prescription drugs. Officers, agents, inspectors, and representatives of the board of pharmacy examiners shall have the powers and status of peace officers when enforcing the provisions of this chapter. [C66, 71, 73, 75,§155.32]

155.33 Requirements for prescriptions.

Each prescription issued or filled in this state:

1. If written, shall contain:

a. The date of issue.

b. The name and address of the patient for whom, or the owner of the animal for which, the drug is dispensed.

c. The name and quantity of the drug or medicine prescribed.

d. The directions for use of the drug or medicine.

e. The name, address, and signature of the medical practitioner issuing the prescription.

2. If oral, the medical practitioner issuing the prescription shall furnish the same information required for a written prescription, except for the written signature of the medical practitioner. Upon receipt of an oral prescription, the pharmacist shall promptly reduce the oral prescription to writing by recording the information required in a written prescription. [C71, 73, 75,§155.33]

Referred to in §155.37

155.34 Refills limited. No prescription for any prescription drug which is not a controlled substance as defined in section 204.101, subsection 6, shall be filled or refilled more than one year after the date on which the prescription was issued, and no prescription which is authorized to be refilled shall be refilled more than eleven times; provided however, no medical practitioner shall be prohibited from issuing a new prescription for the same drug either in writing or orally. [C71, 73, 75,§155.34]

155.35 Name and strength of drug on prescription label. Unless the prescription indicates to the contrary, the label of any drug sold and dispensed on the prescription of a

licensed physician, dentist or podiatrist shall include the name and strength of the drug. [C71, 73, 75,§155.35]

155.36 Nonequivalent drug or drug product list. The board shall be responsible for designating drugs or drug products which, because of the lack of demonstrated bioavailability, would pose an actual threat to the health, safety, and welfare of the people of Iowa if such drugs or drug products were subject to dispensing under the provision of section 155.37. Within one hundred eighty days after July 1, 1976, the board shall cause to be issued a list of those drugs or drug products which have been demonstrated as being nonequivalent and are not interchangeable as determined by the federal food and drug administration. The board shall mail a copy of the nonequivalent drug or drug product list to each pharmacy registered with it and each physician, dentist, podiatrist and veterinarian licensed to practice in this state. Thereafter, the board shall from time to time make additions to or deletions from the nonequivalent drug or drug product list as determined by the federal food and drug administration. Notification of such additions or deletions shall be made promptly to each pharmacist registered with the board and each physician, dentist, podiatrist and veterinarian licensed to practice in this state. [66GA, ch 1116,§3]

155.37 Product selection by pharmacist—restrictions.

1. *a.* If a physician, dentist, podiatrist or veterinarian prescribes, either in writing or orally, a drug by its brand or trade name and does not specifically state that only that designated brand or trade name drug product is to be dispensed, and if the pharmacy to which the prescription is presented or communicated has in stock one or more other drug products with the same generic name and demonstrated bioavailability as the one prescribed, the pharmacist may exercise his or her professional judgment in the economic interest of the patient or the patient's adult representative who is purchasing the prescription by selecting a drug product generically equivalent to but of lesser cost than the one prescribed for dispensing and sale to the patient. If the pharmacist does so, he or she shall inform the patient or the patient's adult representative of the savings which the patient will obtain as a result of substitution and pass on to the patient or the patient's representative the full difference in actual acquisition costs between the drug prescribed and the drug substituted.

b. If the cost of the prescription or any part thereof shall be paid by expenditure of public funds authorized under chapters 239, 249, 249A, 252, 253, 254,* or 255, the pharmacist shall exercise his or her professional judgment by selecting a drug product of the same generic name and demonstrated bioavailability but of a lesser cost than the one prescribed for dispensing and sale to the person unless the physician, dentist, or podiatrist specifically states that only that designated brand or trade name drug product is to be dispensed. Under no circumstances shall a pharmacy to which the prescription is presented or communicated be required to substitute a drug of the same generic name and demonstrated bioavailability but of lesser cost unless the pharmacy has in stock one or more other such drug products.

2. The pharmacist shall not dispense a generically equivalent drug product under this section if:

a. The prescriber indicates that no drug product selection shall be made; or

b. The person presenting the prescription indicates that only the specific drug product prescribed is to be dispensed, unless the substitution is one required by subsection 1, paragraph *"b"*; or

c. The drug product to be dispensed is listed in the nonequivalent drug product list.

3. If substitution of a generically equivalent drug product for the designated brand or trade name drug product prescribed is made under this section, the pharmacist making the substitution shall note that fact and the name of the manufacturer of the selected drug on the prescription presented by the patient or the patient's representative, or the substitution shall be reduced to writing by the pharmacist pursuant to section 155.33, subsection 2. [66GA, ch 1116,§4]

Referred to in §155.36
*Repealed by 66GA, Ch 1056, §45

CHAPTER 156

PRACTICE OF FUNERAL DIRECTING AND EMBALMING

Referred to in §§142A.7, 147.76

Enforcement, §§142A.7, 147.87, 147.90, 147.92

Penalty, §147.86

156.1 Definitions.
156.2 Persons excluded.
156.3 Eligibility requirements.
156.4 Funeral directors.
156.5 Embalmers.
156.6 Concurrent study and studentship.
156.7 Renewal of licenses.
156.8 Studentship.

156.9 Revocation of license.
156.10 Inspection.
156.11 After death of licensee.
156.12 Funeral directors and embalmers — solicitation of business—penalty.
156.13 Certificate of national board in lieu of examination.

156.1 Definitions.

1. *"Board"* shall mean board of funeral directors and embalmer examiners.

2. A *"funeral director"* is a person engaged in or conducting, or holding himself out, in whole or in part, as being engaged in:

a. Preparing, other than embalming, for the burial or disposal, or directing and supervising the burial or disposal of dead human bodies.

b. Furnishing, in connection with the disposition or sale of any casket, vault or other burial receptacle, any funeral services, or embalming, directly or indirectly, by himself, or in conjunction with another.

c. Who shall, in connection with his name or funeral establishment, use the words, "funeral director", "mortician" or any other title implying that he is engaged as a funeral director as defined in this subsection.

3. An *"embalmer"* is a person engaged in, or holding himself out as engaged in, the practice of disinfecting or preserving dead human bodies, entire or in part, by the use of chemical substances, fluids or gases in the body, or by the introduction of same into the body by vascular or hypodermic injections, or by direct application into the organs or cavities for the purpose of preservation or disinfection.

Nothing contained in this chapter shall be construed as prohibiting the operation of any funeral home or funeral establishment by any person, fiduciary, firm, co-operative burial association or corporation; provided that each such person, firm, co-operative burial association or corporation shall at all times employ an embalmer and funeral director licensed under the provisions of this chapter, and shall keep the state department of health advised of the name of the licensee or licensees so employed. [S13, §2575-a36; C24, 27,§2584; C31, 35,§2585-c1; C39, §2585.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§156.1]

Referred to in §156.2

156.2 Persons excluded. Section 156.1 shall not be construed to include the following classes of persons:

1. Manufacturers, wholesalers, and jobbers of caskets, vaults, or other burial receptacles not engaged in the other functions of furnishing of funeral services or embalming as above defined.

2. Those who distribute or sell caskets, vaults, or any other burial receptacles and who do not furnish any funeral service or embalming, directly or indirectly, by himself or in conjunction with another, except a registered student under the personal direction of a licensed funeral director or embalmer.

3. Those who use bodies for scientific purposes as defined in sections 142.1, 142.2, and 142.5; or those who make scientific examinations of dead bodies, or perform autopsies.

4. Physicians or institutions who preserve parts of human bodies either for scientific purposes or for use as evidence in prospective legal cases.

5. Persons burying their own dead under burial permit from the registrar of vital statistics. [C31, 35,§2585-c2; C39,§2585.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§156.2]

156.3 Eligibility requirements.

1. To be eligible to take the examination for funeral director's or embalmer's license, a person must:

a. After April 3, 1953, have completed one academic year of instruction in a recognized college, junior college, or university in a course of study approved by the board or have equivalent education as defined by the board and have satisfactorily completed a course of instruction in mortuary science in an accredited school approved by the board.

b. After September 1, 1955, have completed two academic years of instruction in a recognized college, junior college or university in a course of study approved by the board or have equivalent education as defined by the board and have satisfactorily completed a course of instruction in mortuary science in an accredited school approved by the board.

2. The eligibility requirements set forth in subsection 1 shall not apply to any student to whom a certificate of studentship was issued before April 3, 1953, and who satisfies the legal requirements in effect at the time of his legal registration. [S13,§§2575-a37,-a38; C24, 27,§2585; C31, 35,§§2585-c3,-c4,-c9; C39,§§2585.03, 2585.04, 2585.09; C46, 50,§§156.3, 156.4, 156.9; C54, 58, 62, 66, 71, 73, 75,§156.3]

156.4 Funeral directors.

1. The practice of a funeral director must be conducted from a funeral establishment equipped for the care and preparation for burial or transportation of dead human bodies.

2. No person shall engage in, or hold himself out as engaged in, the practice of a funeral director unless licensed.

3. Applications for the examination for a funeral director's license shall be in writing and verified on a blank to be prescribed and furnished by the board.

4. Written and oral examinations for funeral director's license shall be held at least once a year at a time and place to be designated by the board. The examination shall include the

subjects of funeral directing, burial or other disposition of dead human bodies, sanitary science, public health, transportation, business ethics, and such other subjects as the board may designate and the laws of the state of Iowa and rules relating to communicable diseases, quarantine and causes of death.

5. After the applicant shall have completed satisfactorily the course of instruction in mortuary science in an accredited school approved by the board, the applicant must pass the examination prescribed at one of the regular examinations held by the board during the first year after his graduation. The applicant may then receive a class "A" certificate of studentship and shall then complete a minimum of one additional year of studentship. The applicant shall during this studentship direct or assist in the direction of not less than twenty-five funerals under the direct supervision of a licensed funeral director in good standing in this state. [C24, 27,§2585; C31, 35, §§2585-c3,-c4; C39,§§**2585.03, 2585.04**; C46, 50, §§156.3, 156.4; C54, 58, 62, 66, 71, 73, 75,§156.4]

Referred to in §§156.6, 156.13

156.5 Embalmers.

1. No person shall engage in, or hold himself out as engaged in, the practice of an embalmer unless licensed.

2. Applications for the examination for an embalmer's license shall be in writing and verified on a blank to be prescribed and furnished by the board.

3. Written and oral examinations for an embalmer's license shall be held at least once a year at a time and place to be designated by the board. The examination shall include the subjects of anatomy, practical embalming, restorative art, sanitation, public health, business ethics, and such other subjects as the board may designate and the laws of the state of Iowa and rules relating to communicable diseases, quarantine and causes of death.

4. After the applicant shall have completed satisfactorily the course of instruction in mortuary science in an accredited school approved by the board, the applicant must pass the examination prescribed at one of the regular examinations held by the board during the first year after his graduation. The applicant may then receive a class "A" certificate of studentship and shall then complete a minimum of one additional year of studentship. The applicant shall during this studentship arterially embalm not less than twenty-five human bodies under the direct supervision of a licensed embalmer in good standing in this state. The applicant shall demonstrate his proficiency as an embalmer, as directed by the board of funeral director and embalmer examiners by operation on a dead human body, which body shall be furnished by the state department of health, under the provisions of section 142.2. This particular requirement shall apply to all applicants for a license as an embalmer by reciprocity, as well as by examination. [S13,§§2575-a37,-a38; C24, 27,§2585; C31, 35,§§2583-c3,-c4; C39,§§**2585.03, 2585.04**; C46, 50, §§156.3, 156.4; C54, 58, 62, 66, 71, 73, 75,§156.5]

Referred to in §§156.6, 156.13

156.6 Concurrent study and studentship. The course of instruction and studentships required under the provisions of section 156.4 for funeral directors and under section 156.5 for embalmers may be taken concurrently. [C54, 58, 62, 66, 71, 73, 75,§156.6]

156.7 Renewal of licenses. The department of health shall issue separate renewal licenses to funeral directors and to embalmers. [C54, 58, 62, 66, 71, 73, 75,§156.7]

156.8 Studentship. The board of funeral director and embalmer examiners shall, by rule approved by the state department of health, provide for studentships in funeral directing and embalming, and shall regulate the registration and training thereof; and no applicant shall be eligible to take the funeral directors' or embalmers' examinations who has not first been legally registered as a student. For such registration a fee set by the board to cover registration costs shall be collected from the applicant for each license. [C31, 35,§2585-c4; C39,§**2585.04**; C46, 50,§156.4; C54, 58, 62, 66, 71, 73, 75,§156.8]

156.9 Revocation of license. For the purpose of revoking a license under the provisions of section 147.55, "unprofessional conduct" on the part of a funeral director or embalmer shall in addition to the provisions of said section consist of any one of the following acts:

1. Knowingly misrepresenting any material matter to a prospective purchaser of funeral merchandise, furnishings, or services.

2. Executing a death certificate or shipping paper for use of anyone except a licensed funeral director or licensed embalmer or a registered student who is working under the immediate personal supervision of a licensed funeral director or licensed embalmer.

3. Recommending to the board of funeral director and embalmer examiners an applicant for a license who has not, to his personal knowledge, complied with the requirements of the law and the rules of the board of funeral director and embalmer examiners.

4. If the licensee shall engage generally in the business of selling or issuing burial contracts or burial certificates in anticipation of the death of a person, or if he shall enter into any contract with another whereby he agrees or undertakes to furnish funeral supplies or funeral service to persons who have been solicited by such other or who have agreed with such other to purchase the same; provided, this subsection shall not apply to contracts with the United States or any department of the federal government, including army and veterans' hospitals, or to any contract made in conjunction with the sale of any life insurance policy issued by a life insurance company

licensed to transact business in Iowa. [C31, 35,§2585-c5; C39,§2585.05; C46, 50,§156.5; C54, 58, 62, 66, 71, 73, 75,§156.9]

156.10 Inspection. The commissioner of public health shall inspect all places where dead human bodies are prepared or held for burial, or entombment; and to prescribe and enforce such rules and regulations in connection therewith as shall be necessary for the preservation of the public health.

An inspection fee for each place where dead human bodies are prepared for burial shall be fifteen dollars per year, which shall be collected by the commissioner of public health. The inspection fees collected under this section shall be paid to the treasurer of state who shall maintain a trust fund to be used only for paying the cost of inspection of such places. [C31, 35,§2585-c7; C39,§2585.06; C46, 50, §156.6; C54, 58, 62, 66, 71, 73, 75,§156.10]

156.11 After death of licensee. Any heir or legal representative of a licensed funeral director or licensed embalmer may maintain a funeral home after the death of such licensed funeral director or licensed embalmer, provided that a licensed funeral director and licensed embalmer shall be employed to operate such funeral home and the state department of health shall be notified of such employment by the licensee or licensees. [C39,§2585.08; C46, 50,§156.8; C54, 58, 62, 66, 71, 73, 75,§156.11]

156.12 Funeral directors and embalmers—solicitation of business—penalty. Every funeral director or embalmer, or any person acting for him, who pays or causes to be paid, directly or indirectly, any money or other thing of value as a commission or gratuity for the securing of business for such funeral director or embalmer, and every person who accepts or offers to accept any money or other thing of value as a commission or gratuity from a funeral director or embalmer in order to secure business for him shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars or shall be imprisoned in the county jail for not less than thirty days, or both; provided that nothing herein contained shall be construed as prohibiting any person, firm, co-operative burial association or corporation, subject to the provisions of this chapter, from using legitimate and honest advertising. [C54, 58, 62, 66, 71, 73, 75,§156.12]

156.13 Certificate of national board in lieu of examination. The state department of health may, with the approval of the board of funeral director and embalmer examiners, accept in lieu of the examination prescribed in section 156.4 and section 156.5, a certificate of examination issued by the national board of funeral director and embalmer examiners of the United States of America, but every applicant for a license upon the basis of such certificate shall be required to pay the fee prescribed for licenses issued under reciprocal agreements. [C62, 66, 71, 73, 75,§156.13]

CHAPTER 157

COSMETOLOGY

Referred to in §158.12

157.1 Definitions.
157.2 Prohibition—exceptions.
157.3 License requirements.
157.4 Temporary permits.
157.5 License to practice electrolysis.
157.6 Sanitary rules—practice in the home.
157.7 Inspectors.
157.8 Licensing of schools of cosmetology and instructors.
157.9 License suspension and revocation.
157.10 Course of study.
157.11 Salon licenses.
157.12 Supervisors of cosmetologists.
157.13 Violations.
157.14 Rules.
157.15 Penalty.

157.1 Definitions. For the purpose of this chapter:

1. *"Cosmetology"* means practices performed with or without compensation by cosmetologists which include but are not limited to the practices listed in this subsection:

a. Arranging, dressing, curling, waving, shampooing, cutting, singeing, bleaching, coloring, or similar works, upon the hair of any person; or upon a wig or hairpiece when done in conjunction with haircutting or hairstyling by any means.

b. Massaging, cleansing, stimulating, exercising, beautifying, or similar techniques upon the scalp, face, neck, arms, hands, or upper part of the body of any person with the hands or mechanical or electrical apparatus or appliances or with the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or other preparations.

c. Manicuring the nails of any person.

Cosmetologists shall not represent themselves to the public as being primarily in the practice of haircutting unless that function is, in fact their primary specialty.

2. *"Cosmetologist"* means a person who performs practices of cosmetology or otherwise by the person's occupation holds himself or herself out as having knowledge or skill peculiar to the practice of cosmetology.

3. *"Beauty salon"* means a fixed establishment or place where one or more persons engage in the practice of cosmetology.

4. *"Cosmetology school"* means an establishment operated by a person for the purpose of teaching cosmetology.

5. *"Board"* means the board of cosmetology examiners.

6. *"Department"* means the state department of health. [C27, 31, 35,§2585-b1; C39,§**2585.10**; C46, 50, 54, 58, 62, 66, 71, 73,§157.1; 66GA, ch 1118,§1]

Referred to in §§157.2, 157.7, 157.10, 158.2

157.2 Prohibition—exceptions. It is unlawful for a person to practice cosmetology with or without compensation unless the person possesses a license issued under the provision of section 157.3. However practices listed in 157.1 when performed by the following persons are not defined as the practice of cosmetology:

1. Licensed physicians and surgeons, osteopaths, osteopathic physicians and surgeons, nurses, dentists, podiatrists, optometrists, chiropractors, and physical therapists, when exclusively engaged in the practice of their respective professions.

2. Licensed barbers who practice barbering as defined in section 158.1.

3. Students enrolled in licensed schools of cosmetology or barber schools who are practicing under the instruction or immediate supervision of an instructor.

4. Persons who perform without compensation any of the practices listed in section 157.1 on an emergency basis or on a casual basis.

5. Employees and residents of hospitals, health care facilities, orphans' homes, juvenile homes, and other similar facilities who shampoo, arrange, dress, or curl the hair of any resident without receiving direct compensation from the person receiving the service.

6. Persons who perform any of the practices listed in section 157.1 on themselves or on a member of the person's immediate famliy. [C27, 31, 35,§2585-b2; C39,§**2585.11**; C46, 50, 54, 58, 62, 66, 71, 73,§157.2; 66GA, ch 1118,§2]

Referred to in §157.7

157.3 License requirements.

1. An applicant shall be issued a license to practice cosmetology by the department when the applicant satisfies all of the following:

a. Presents to the department the certificate of a licensed physician and surgeon, osteopath, or osteopathic physician and surgeon that the applicant is free from any infectious or contageous disease.

b. Presents to the department a diploma, or similar evidence, issued by a licensed school of cosmotology indicating that the applicant has completed the course of study prescribed by the board.

c. Completes the application form prescribed by the board.

d. Passes an examination prescribed by the board. The examination shall include both practical demonstrations and written or oral tests and shall not be confined to any specific system or method.

2. Notwithstanding the provisions of subsection 1, any person who completes the application form prescribed by the board who submits satisfactory proof of having been a licensed cosmetologist in another state for at least twelve months in the twenty-four month period preceding the submission of the application shall be allowed to take the examination for a license to practice cosmetology. However, the examination requirement shall be waived for those persons who submit evidence of licensure in another state which has a reciprocal agreement with the state of Iowa under the provisions of sections 147.44 to 147.49. [C27, 31, 35,§§2585-b3,-b4; C39,§§**2585.12, 2585.13**; C46, 50, 54, 58, 62, 66, 71, 73,§§157.3, 157.4; 66GA, ch 1118,§3]

Referred to in §§157.2, 157.4, 157.7, 158.8

157.4 Temporary permits. Any person who completes the requirements for licensure as a cosmetologist listed in section 157.3, except for the examination, shall be known as a trainee and shall be issued a temporary permit by the department which allows the applicant to practice cosmetology from the date of graduation from the licensed school of cosmetology to the date on which the results of the next succeeding examination for cosmetologists are available. Only one permit shall be issued to a person. The fee for the temporary permit shall be established by the board as provided in section 147.80. [C31, 35,§2585-c10; C39,§**2585.20**; C46, 50, 54, 58, 62, 66, 71, 73, §157.11; 66GA, ch 1118,§4]

Referred to in §157.7

157.5 License to practice electrolysis. An applicant for a license to practice cosmetology may obtain a license from the department for authority to remove superfluous hair by the use of the electric needle or electronic process by presenting to the board a diploma, or similar evidence, from a licensed school of cosmetology, or from any school in another state which is recognized by the board, which teaches a special course in the practice of the use of the electric needle or electronic process indicating that the applicant has successfully completed the special course, and by passing

an examination prescribed by the board. The applicant shall pay a license fee as determined by the board under section 147.80. [C27, 31, 35, §2585-b5; C39,§**2585.14**; C46, 50, 54, 58, 62, 66, 71, 73,§157.5; 66GA, ch 1118,§5]

Referred to in §157.7

157.6 Sanitary rules—practice in the home. The department shall prescribe sanitary rules for beauty salons and schools of cosmetology which shall include the sanitary conditions necessary for the practice of cosmetology and for the prevention of infectious and contagious diseases. Subject to local zoning ordinances, a beauty salon may be established in a residence if a room other than the living quarters is equipped for that purpose. The department shall enforce the provisions of this section and make necessary inspections for enforcement. [C27, 31, 35,§2585-b6; C39, §**2585.15**; C46, 50, 54, 58, 62, 66, 71, 73,§157.6; 66GA, ch 1118,§6]

Referred to in §§157.7, 157.8, 157.13

157.7 Inspectors. Inspectors and clerical assistants shall be employed by the department under the provisions of chapter 19A to administer and enforce the provisions of this chapter. The costs and expenses of inspectors and clerical assistants shall be paid from funds appropriated to the board. [C27, 31, 35, §2585-b9; C39,§**2585.17**; C46, 50, 54, 58, 62, 66, 71, 73,§157.8; 66GA, ch 1118,§7]

157.8 Licensing of schools of cosmetology and instructors. It is unlawful for a school of cosmetology to operate unless the owner has obtained a license issued by the department. The owner shall file a verified application with the department on forms prescribed by the board. Any person employed as a cosmetology instructor in a licensed school of cosmetology shall be a licensed cosmetologist and shall possess a separate instructor's license which shall be renewed annually. An instructor shall file an application with the department on forms prescribed by the board. The school of cosmetology must pass a sanitary inspection under the provisions of section 157.6, and the course of study of the school must be approved by the board under the provisions of section 157.10. An annual inspection of each school of cosmetology, including the educational activities of each school, shall be conducted and completed by the board prior to renewal of the license.

The application for a license for a school shall be accompanied by the annual license fee determined pursuant to section 147.80 and shall state the name and location of the school and such other additional information as the board may require. The license is valid for one year and may be renewed. A license for a school of cosmetology shall not be issued for any space in any location where the same space is also licensed as a barber school.

The application for an instructor's license shall be accompanied by the annual license fee determined pursuant to section 147.80. [C31, 35,§2585-c9; C39,§**2585.18**; C46, 50, 54, 58, 62, 66, 71, 73,§157.9; 66GA, ch 1118,§8]

Referred to in §157.7

157.9 License suspension and revocation. Any license issued by the department under the provisions of this chapter may be suspended, revoked, or renewal denied by the board for violation of any provision of this chapter or chapter 158 or rules promulgated by the board under the provisions of chapter 17A. [66GA, ch 1118,§9]

Referred to in §157.7

157.10 Course of study. The course of study of a school of cosmetology shall consist of at least two thousand one hundred hours of instruction as prescribed by the board and shall include instruction in all phases of the practice of cosmetology as defined in section 157.1, subsection 1. The course shall require at least ten months of instruction for completion. The course shall include not less than five hundred hours of demonstrations and lectures in the following areas: Sanitation and sterilization, hygiene and grooming, professional ethics, anatomy, dermatology, trichology, nails, chemistry and chemical hair straightening, safety precautions, and state law and rules. It shall include not less than one thousand two hundred hours of supervised practical instruction in the following areas: Sanitation and sterilization, shampoos and rinses, scalp and hair treatments, hairshaping, hairstyling, wiggery, manicuring, permanent waving, haircoloring and lightening, facial treatment and makeup, and safety precautions.

The barber licensed under chapter 158 who enrolls in a school of cosmetology shall be granted five hundred twenty-five hours credit toward the two thousand one hundred hour requirement, and the ten-month period shall not apply. [66GA, ch 1118,§10]

Referred to in §§157.7, 157.8

157.11 Salon licenses. Commencing January 1, 1977, it is unlawful for a beauty salon to operate unless the owner has obtained a license issued by the department. The owner shall apply to the department on forms prescribed by the board. The beauty salon must pass a sanitary inspection before licensing and at least annually thereafter.

The application shall be accompanied by the annual license fee determined pursuant to section 147.80. The license is valid for one year and may be renewed.

A licensed school of cosmetology at which students practice cosmetology is exempt from licensing as a beauty salon. [66GA, ch 1118, 11]

Referred to in §157.7

157.12 Supervisors of cosmetologists. Persons who directly supervise the work of cosmotologists shall be licensed cosmetologists. [C31, 35,§2585-c11; C39,§2585.21; C46, 50, 54, 58, 62, 66, 71, 73,§157.12; 66GA, ch 1118,§12]

Referred to in §157.7

157.13 Violations.

1. It is unlawful for any person to employ an individual to practice cosmetology unless that individual is a licensed cosmetologist or has obtained a temporary permit. It is unlawful for a licensed cosmetologist to practice cosmetology with or without conpensation in any place other than a licensed beauty salon or licensed school of cosmetology, except that a licensed cosmetologist may practice cosmetology at a location which is not a licensed beauty salon or school of cosmetology under extenuating circumstances arising from physical or mental disability or death of a customer. It is unlawful for a licensed cosmetologist to represent himself or herself as a licensed barber.

2. If the owner or manager of a beauty salon does not comply with the sanitary rules adopted under the provisions of section 157.6 or fails to maintain the beauty salon as prescribed by rules of the state department of health, the department may notify the owner or manager in writing of the failure to comply. If the rules are not complied with within five days after receipt of the written notice by the owner or manager, the department shall in writing order the beauty salon closed until the rules are complied with. It is unlawful for a person to practice cosmetology in a salon which has been closed under the provisions of this section. The county attorney in each county shall assist the department in enforcing the provisions of this section. [C31, 35,§2585-c12; C39,§2585.22; C46, 50, 54, 58, 62, 66, 71, 73,§157.13; 66GA, ch 1118,§13]

Referred to in §157.7

157.14 Rules. The board shall promulgate rules under the provisions of chapter 17A to administer the provisions of this chapter. However, any rules adopted by the board shall first be submitted to the department of health for approval. [66GA, ch 1118,§14]

Referred to in §157.7

157.15 Penalty. A person convicted of violating any of the provisions of sections of this chapter shall be fined not to exceed one hundred dollars. [C35,§2522; C39,§2585.24; C46, 50, 54, 58, 62, 66, 71, 73,§157.15; 66GA, ch 1118, §18]

Referred to in §157.7
License extension, see 66GA, ch 1118,§16

CHAPTER 158

BARBERING

Referred to in §§157.9, 158.12

158.1 Definitions
158.2 Prohibition—exception
158.3 License requirements
158.4 Temporary permits
158.5 Sanitary rules
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158.7 Licensing barber schools
158.8 Course of study
158.9 Barbershop licenses
158.10 Supervisors of barbers
158.11 Barber assistants
158.12 License suspension and revocation
158.13 Violations
158.14 Manicurists
158.15 Rules
158.16 Penalty

158.1 Definitions. For the purpose of this chapter:

1. *"Barbering"* means practices listed in this subsection performed with or without compensation. The practices include but are not limited to the following practices performed upon the upper part of the human body of any person for cosmetic purposes and not for the treatment of disease or physical or mental ailments:

a. Shaving or trimming the beard or cutting the hair.

b. Giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand, or by electrical or mechanical appliances.

c. Singeing, shampooing, hair body processing, arranging, dressing, curling, blow waving, hair relaxing, bleaching or coloring the hair, or applying hair tonics.

d. Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck.

e. Styling, cutting or shampooing hairpieces or wigs when done in conjunction with haircutting or hairstyling.

Barbers shall not represent themselves to the public as being primarily engaged in practices other than haircutting unless the functions are in fact their primary function or specialty.

2. *"Barber"* means a person who performs practices of barbering or otherwise by the per-

son's occupation holds himself or herself out as having knowledge or skill peculiar to the practice of barbering.

3. *"Barbershop"* means an establishment in a fixed location where one or more persons engage in the practice of barbering.

4. *"Barber school"* means an establishment operated by a person for the purpose of teaching barbering.

5. *"Board"* means the board of barber examiners.

6. *"Department"* means the state department of health. [C27, 31, 35,§2585-b11; C39,§**2585.25**; C46, 50, 54, 58, 62, 66, 71, 73,§§158.1, 158.11(1, 2); 66GA, ch 1118,§17]

Referred to in §§157.2, 158.2, 158.5

158.2 Prohibition—exceptions. It is unlawful for a person to practice barbering with or without compensation unless the person possesses a license issued under the provisions of section 158.3. Practices listed in section 158.1 when performed by the following persons are not defined as practicing barbering:

1. Licensed physicians and surgeons, osteopaths, osteopathic physicians and surgeons, nurses, dentists, podiatrists, optometrists, chiropractors, and physical therapists, when exclusively engaged in the practice of their respective professions.

2. Licensed cosmetologists who practice cosmetology as defined in section 157.1.

3. Students enrolled in licensed barber schools or schools of cosmetology who are practicing under the instruction or immediate supervision of an instructor.

4. Persons who, without compensation, perform any of the practices on an emergency basis or on a casual basis.

5. Employees and residents of hospitals, health care facilities, orphans' homes, juvenile homes, and other similar facilities who shampoo, arrange, dress, or curl the hair of any resident, or who shave or trim the beard of any resident, without receiving direct compensation from the person receiving the service.

6. Persons who perform any of the practices listed in section 158.1 on themselves or on a member of the person's immediate family. [C27, 31, 35,§2585-b12; C39,§**2585.26**; C46, 50, 54, 58, 62, 66, 71, 73,§158.2; 66GA, ch 1118,§18]

158.3 License requirements.

1. An applicant shall be issued a license to practice barbering by the department when the applicant satisfies all of the following:

a. Presents to the department the certificate of a licensed physician and surgeon, osteopath, or osteopathic physician and surgeon that the applicant is free from any infectious or contagious disease.

b. Presents to the department a diploma, or other like evidence, issued by a licensed barber school indicating that the applicant has completed the course of study prescribed by the board.

c. Completes the application form prescribed by the board.

d. Passes an examination prescribed by the board. The examination shall include both practical demonstrations and written or oral tests and shall not be confined to any specific system or method.

e. Presents a certificate, or satisfactory evidence, to the department that the applicant has successfully completed tenth grade, or the equivalent. The provisions of this subsection shall not apply to students enrolled in a barber school maintained at an institution under the control of a director of a division of the department of social services.

2. Notwithstanding the provisions of subsection 1, any person who completes the application form prescribed by the board and who submits satisfactory proof of having been a licensed barber in another state for at least twelve months in the twenty-four month period preceding the submission of the application shall be allowed to take the examination for a license to practice barbering. However, the examination requirement shall be waived for those persons who submit evidence of licensure in another state which has a reciprocal agreement with the state of Iowa under the provisions of sections 147.44 to 147.49.

3. Notwithstanding the provisions of subsection 1, any person who is registered as a barber's apprentice on the effective date of this chapter may apply to the department prior to October 1, 1976 and shall be issued a license to practice barbering upon payment of the fee prescribed under the provisions of section 147.80. [C27, 31, 35,§§2585-b13,-b14; C39, §§**2585.27, 2585.28**; C46, 50, 54, 58, 62, 66, 71, 73,§§158.3, 158.4; 66GA, ch 1118,§19]

Referred to in §§158.2, 158.4

158.4 Temporary permits. Any person who completes the requirements for licensure as a barber listed in section 158.3, except for the examination, shall be known as a trainee and shall be issued a temporary permit by the department. The temporary permit allows the applicant to practice barbering from the date of graduation from the licensed barber school to the date on which the results of the next succeeding examination for barbers are available. Only one permit shall be issued to a person. The fee for the temporary permit shall be established by the board as provided in section 147.80. [66GA, ch 1118,§20]

158.5 Sanitary rules. The department shall prescribe sanitary rules for barbershops and barber schools which shall include the sanitary conditions necessary for the practice of barbering and for the prevention of infectious and contagious diseases. Subject to local zoning ordinances, a barbershop may be established in a residence if a room other than the living quarters is equipped for that purpose. The department shall enforce the provisions of this

section and make necessary inspections for enforcement. [C27, 31, 35,§2585-b15; C39,§2585.3; C46, 50, 54, 58, 62, 66, 71, 73,§158.7; 66GA, ch 1118,§21]

Referred to in §158.13

158.6 Inspectors. Inspectors and clerical assistants shall be employed by the department under the provisions of chapter 19A to administer and enforce the provisions of this chapter. The costs and expenses of inspectors and clerical assistants shall be paid from funds appropriated to the board. [C27, 31, 35,§2585-b18; C39,§2585.33; C46, 50, 54, 58, 62, 66, 71, 73, §158.9; 66GA, ch 1118,§22]

158.7 Licensing barber schools. It is unlawful for a barber school to operate unless the owner has obtained a license issued by the department. The owner shall file a verified application with the department on forms prescribed by the board. Any person employed as a barbering instructor in a licensed barber school shall be a licensed barber and shall possess a separate instructor's license which shall be renewed annually. An instructor shall file an application with the department on forms prescribed by the board. The barber school must pass a sanitary inspection, and the course of study of the school must be approved by the board under the provisions of section 158.8.

An annual inspection of each barber school, including the educational activities of each school, shall be conducted and completed by the board prior to renewal of the license.

The application shall be accompanied by the annual license fee determined under the provisions of section 147.80 and shall state the name and location of the school, name of the owner, name of the manager, and such other additional information as the board may require. The license is valid for one year and may be renewed.

A license for a barber school shall not be issued for any space in any location where the same space is licensed as a school of cosmetology. [C46, 50, 54, 58, 62, 66, 71, 73, §158.11; 66GA, ch 1118,§23]

158.8 Course of study. The course of study of a barber school shall consist of at least two thousand one hundred hours of instruction as prescribed by the board and shall include instruction in all phases of the practice of barbering as defined in section 158.1, subsection 1. The course shall require at least ten months of instruction for completion. The course shall include not less than three hundred hours of demonstrations and lectures in the following areas: Law; ethics; equipment; shop management; history of barbering; sanitation; sterilization; personal hygiene; first aid; bacteriology; anatomy; scalp, skin, hair and their common disorders; electricity as applied to barbering; chemistry and pharmacology; scalp care; hair body processing; hairpieces; honing and stropping; shaving; facials, massage and packs; haircutting; hair tonics; dyeing and bleaching; instruments; soaps; and shampoos, creams, lotions, and tonics. It shall include not less than one thousand four hundred hours of supervised practical instruction in the following areas: Scalp care and shampooing, honing and stropping, shaving, haircutting, hairstyling and blow waving, dyeing and bleaching, hair body processing, facials, massage and packs, beard and mustache trimming, and hairpieces.

A cosmetologist licensed under section 157.3 who enrolls in a barber school shall be granted five hundred twenty-five hours credit toward the two thousand one hundred hour requirement, and the ten-month period shall not apply. [66GA, ch 1118,§24]

Referred to in §158.7

158.9 Barbershop licenses. It is unlawful for a barbershop to operate unless the owner has obtained a license issued by the department. The owner shall apply to the department on forms prescribed by the board. The barbershop must pass a sanitary inspection before obtaining a license and at least annually thereafter.

The application shall be accompanied by the annual license fee determined pursuant to section 147.80. The license is valid for one year and may be renewed.

A licensed barber shop shall not employ more than one licensed barber assistant for each five licensed barbers.

A licensed barber school at which students practice barbering is exempt from licensing as a barbershop. C46, 50, 54, 58, 62, 66, 71, 73, §158.11; 66GA, ch 1118,§25]

158.10 Supervisors of barbers. Persons who directly supervise the work of barbers shall be licensed barbers. [66GA, ch 1118,§26]

158.11 Barber assistants. The department shall issue a license to practice as a barber assistant to any person who submits proof of completion of a course of not less than one hundred sixty hours in a licensed barber school or licensed school of cosmetology. The board shall adopt rules defining the course of study of a barber assistant and the practices which a barber assistant may perform. The course of study shall include but not be limited to demonstrations, lectures, and supervised practical instruction in scalp care, rinses, hair treatments, anatomy of scalp and hair and their common disorders, and sanitation and sterilization. A barber assistant shall work under the direct supervision of a licensed barber. The fee for the license shall be established by the board as provided in section 147.80. [66GA, ch 1118,§27]

158.12 License suspension and revocation. Any license issued by the department under the provisions of this chapter may be suspended, revoked, or renewal denied by the board for violation of any provision of chapter 157 or this chapter or rules promulgated by the

board under the provisions of chapter 17A. [C46, 50, 54, 58, 62, 66, 71, 73,§158.11; 66GA, ch 1118,§28]

158.13 Violations.

1. It is unlawful for any person to employ an individual to practice barbering unless that individual is a licensed barber or has obtained a temporary permit. It is unlawful for a licensed barber to practice barbering with or without compensation in any place other than a licensed barbershop or barber school, except that a licensed barber may practice barbering at a location which is not a licensed barbershop or barber school under extenuating circumstances arising from physical or mental disability or death of a customer. It is unlawful for a licensed barber to represent himself or herself as a licensed cosmetologist.

2. If the owner or manager of a barbershop does not comply with the sanitary rules adopted under the provisions of section 158.5 or fails to maintain the barbershop as prescribed by rules of the state department of health, the department may notify the owner or manager in writing of the failure to comply. If the rules are not complied with within five days after receipt of the written notice by the owner or manager, the department shall in writing order the shop closed until the rules are complied with. It is unlawful for a person to practice barbering in a shop which has been closed under the provisions of this section. The county attorney in each county shall assist the department in enforcing the provisions of this section. [C27, 31, 35,§2585-b12,-c14; C39,§§**2585.26, 2585.30**; C46, 50, 54, 58, 62, 66, 71, 73,§§158.1, 158.6; 66GA, ch 1118,§29]

158.14 Manicurists. A licensed barbershop may employ a person who is not a licensed cosmetologist to manicure the fingernails of any person. [66GA, ch 1118,§30]

158.15 Rules. The board shall promulgate rules under the provisions of chapter 17A to administer the provisions of this chapter. However, any rules adopted by the board shall first be submitted to the department of health for approval. [66GA, ch 1118,§31]

158.16 Penalty. A person convicted of violating any of the provisions of this chapter shall be fined not to exceed one hundred dollars. [C35,§2522; C39,§**2585.24**; C46,§157.15; C50, 54, 58, 62, 66, 71, 73,§158.12; 66GA, ch 1118,§32]

License extension, see 66GA, ch 1118,§33

TITLE IX

AGRICULTURE, HORTICULTURE AND ANIMAL INDUSTRY

CHAPTER 159

DEPARTMENT OF AGRICULTURE

Identification and use of publicly owned automobiles, etc., §§740.20–740.22

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AGRICULTURAL MARKETING DIVISION
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159.1 Definitions. For the purposes of this title, unless otherwise provided:

1. *"Secretary"* shall mean the secretary of agriculture.

2. *"Department"* shall mean the Iowa department of agriculture and wherever such department is required or authorized to do an act, unless otherwise provided, it shall be construed as authorizing performance by an officer, regular assistant, or duly authorized agent of such department.

3. *"Person"* shall include an individual, a corporation, company, firm, society, or association; and the act, omission, or conduct of any officer, agent, or other person acting in a representative capacity shall be imputed to the organization or person represented, and the person acting in such capacity shall also be liable for violation of this title. [S13,§1657-b; C24, 27, 31, 35, 39,§2586; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.1]

159.2 Object of department. The object of the department of agriculture shall be:

1. To encourage, promote, and advance the interests of agriculture, including horticulture, livestock industry, dairying, cheese making, poultry raising, beekeeping, production of wool, production of domesticated fur-bearing animals, and other kindred and allied industries.

2. To promote and devise methods of conducting said industries with the view of increasing production and facilitating an adequate distribution of the same at the least cost to the producer.

3. To administer efficiently and impartially the inspection service of the state as is now or may hereafter be placed under its supervision. [S13,§§1657-b,-g; C24, 27, 31, 35, 39,§2587; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.2]

159.3 Co-operation. The department of agriculture and the Iowa State University of science and technology shall co-operate in all ways that may be beneficial to the agricultural interests of the state, but without duplicating research or educational work conducted by said university. Nothing herein contained shall be construed to subordinate either the department or the university in their several spheres of action.

The department of agriculture is hereby authorized to co-operate with the United States department of agriculture as the Iowa department may deem wise and just. [C97,§1677; S13, §1657-g; C24, 27, 31, 35, 39,§2588; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.3]

159.4 Location. The department of agriculture shall be located at the seat of government. [C97,§1678; SS15,§2507; C24, 27, 31, 35, 39,§2589; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.4]

159.5 Powers and duties. The secretary of agriculture shall be the head of the department of agriculture which shall:

1. Carry out the objects for which the department is created and maintained.

2. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it.

3. Consolidate the inspection service of the state in respect to the laws administered by the department so as to eliminate duplication of inspection insofar as practicable.

4. Maintain a weather division which shall, in co-operation with the United States weather bureau, collect and disseminate weather and phenological statistics and meteorological data, and promote knowledge of meteorology, phenology and climatology of the state. Said division shall be in charge of a director who shall be appointed by the secretary of agriculture, and shall be an officer of the United States weather bureau, if one be detailed for that purpose by the federal government.

5. Establish volunteer weather stations in one or more places in each county, appoint observers thereat, supervise such stations, receive reports of meteorological events and tabulate the same for permanent record.

6. Issue weekly weather and crop bulletins from April 1 to October 1 of each year, and edit and cause to be published monthly weather reports, containing meteorological matter in its relationship to agriculture, transportation, commerce and the general public.

7. Maintain a division of agricultural statistics, which shall, in co-operation with the United States bureau of agricultural economics, gather, compile, and publish statistical information concerning the condition and progress of crops, the production of crops, livestock, livestock products, poultry, and other such related agricultural statistics, as will generally promote knowledge of the agricultural industry in the state of Iowa. Such statistics, when published, shall constitute official agricultural statistics for the state of Iowa. Said division shall be in charge of a director who shall be appointed by the secretary of agriculture and who shall be an officer of the United States bureau of agricultural economics, if one be detailed for that purpose by the federal government.

8. Establish and maintain a marketing news service division in the department of agriculture which shall, in co-operation with the federal market news and grading division of the United States department of agriculture, collect and disseminate data and information relative to the market prices and conditions of agricultural products raised, produced and handled in the state. Said division shall be in charge of a director who shall be appointed by the secretary of agriculture and shall be an officer of the federal market news and grading division of the United States department of agriculture, if one be detailed for that purpose by the federal government. There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of twenty thousand dollars annually, or so much thereof as may be necessary to pay the annual expense of operating the marketing news service division authorized by this subsection. Said funds to be drawn and expended upon the order of the director with the approval of the secretary of agriculture.

9. Inspect and supervise all cold storage plants and food producing or distributing establishments including the furniture, fixtures, utensils, machinery, and other equipment so as to prevent the production, preparation, packing, storage, or transportation of food in a manner detrimental to its character or quality.

10. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of this title and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

11. Establish and maintain a sheep promotion division in the department of agriculture which shall promote the consumption of lamb, mutton and the use of wool, aid in the orderly marketing of sheep and wool, and conduct other activities which are beneficial to the sheep industry in Iowa. Said division shall be in charge of a director who shall be appointed by the secretary of agriculture. Funds appropriated for the department of agriculture for state aid to the Iowa sheep association are hereby authorized to be used together with other funds available for sheep promotion in establishing and maintaining the sheep promotion division, and said funds may be drawn and expended upon the order of the director with the approval of the secretary of agriculture.

12. Establish a swine tuberculosis eradication program including, but not limited to:

a. The inspection of swine herds in this state when the department finds that an animal from a swine herd has, or is believed to have, tuberculosis;

b. Ear tagging or otherwise physically marking all swine reacting positively to tests for tuberculosis;

c. Condemning any swine which has tuberculosis;

d. Depopulating any swine herd where tuberculosis is found to be generally present; and

e. Certify indemnity claims to the boards of supervisors to compensate the owners of condemned swine from funds provided under section 165.18, following the general procedures for filing claims and paying indemnities as provided in chapter 165.

If the department finds that the source of the tuberculosis in a swine herd is from another species of animal, except bovine, located on or near the premises on which the affected swine herd is located, the department may destroy those animals and indemnify the owners of the condemned animals as provided in chapter 163.

1. [C24, 27, 31, 35, 39,§**2590**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.5]

2. [S13,§1657-g; C24, 27, 31, 35, 39,§**2590**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.5]

3. [C24, 27, 31, 35, 39,§**2590**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.5]

4. [C97,§§1677, 1678; C24, 27, 31, 35, 39,§**2590**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.5]

5. [C97,§§1679, 1680; S13,§1679; C24, 27, 31, 35, 39,§**2590**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.5]

6. [C97,§1679; S13,§1679; C24, 27, 31, 35, 39, §**2590**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.5]

7. [C97,§1680; S13,§1363; C24, 27, 31, 35, 39, §**2590**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.5]

8. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.5]

9. [S13,§§2527-d5, 4527-m; C24, 27, 31, 35, 39, §**2590**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.5]

10. [S13,§2528-d10; C24, 27, 31, 35, 39,§**2590**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.5]

11. [C46, 50, 54, 58, 62, 66,§185.2; C71, 73, 75,§159.5]

12. [C75,§159.5]

Referred to in §§159.6, 165.18
Prophylactics samples gathered; see §135.19

159.6 Additional duties. In addition to the duties imposed by section 159.5 the department shall enforce the law relative to:

1. Forest and fruit-tree reservations, chapter 161.

2. Infectious and contagious diseases among animals, chapter 163.

3. Eradication of bovine tuberculosis, chapter 165.

4. Hog-cholera virus and serum, chapter 166.

5. Use and disposal of dead animals, chapter 167.

6. Practice of veterinary medicine and surgery, chapter 169.

7. Hotels, restaurants, and food establishments, chapter 170.

8. Cold storage, chapter 171.

9. Regulation and inspection of foods, drugs, and other articles, Title X, but chapters 203, 204 and 205 of said title shall be enforced as therein provided.

10. State aid received by certain associations as provided in chapters 175* to 184, inclusive, and 186. [C24, 27, 31, 35, 39,§**2591**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.6]

*Repealed by 66GA, ch 1056,§45

New chapters added within this title: 160, state apiarist; 162, care of animals; 163A, brucellosis in swine; 164, eradication of bovine brucellosis; 166A, scabies control in sheep; 166B, eradication of hog cholera; 168, baby chicks; 179, dairy industry; 185, soybean promotion board; 185A, Iowa soybean association; 186A, arbor week; and 187, marking and branding of livestock.

State aid, see appropriation Act

159.7 and 159.8 Repealed by 60GA, ch 66,§25.

159.9 Publication and distribution of rules. A sufficient number of pamphlets setting forth the statutes and rules of the department shall be published from time to time to supply the various needs for the same and shall be furnished to any resident of the state upon request. [C24, 27, 31, 35, 39,§**2594**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.9]

159.10 Iowa book of agriculture. The Iowa book of agriculture shall contain such information and data as in the discretion of the secretary concern the agricultural interests of the state, including data relative to or the reports of:

1. The state fair board, the county and district fair societies, the farmers institutes and short courses, and the farm aid associations.

2. The state horticultural society, the state dairy association, the beef cattle producers association, the crop improvement association, and the poultry associations.

3. Other agricultural, horticultural, and livestock associations in the state organized for the promotion of agriculture.

Any section of such book may, on the order of the secretary, be published in pamphlet or book form for separate distribution. [R60, §1703; C73,§1107; C97,§1656; S13,§1657-k; C24, 27, 31, 35, 39,§**2595**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.10]

159.11 Assessor. Agricultural statistics shall be collected each year by the assessors under the supervision of the department, which shall design and distribute blank forms and instructions therefor. [C97,§1363; S13,§1363; C24, 27, 31, 35, 39,§**2596**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.11]

159.12 Returns by assessor. The assessor shall require each person whose property is listed, to make answers to such inquiries as may be necessary to enable him to return the foregoing statistics, carefully footed and summarized, to the department on or before the fifteenth day of April of each year. [C97,§1363; S13,§1363; C24, 27, 31, 35, 39,§**2597**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.12]

159.13 Seal. The department shall have an official seal, and every commission, license, order, or other paper executed by or under the authority of the department may be attested with such seal. [S13,§4999-a31b; C24, 27, 31, 35, 39,§**2598**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.13]

159.14 Bonds. The secretary shall require every inspector or employee who collects fees or handles funds belonging to the state to give an official bond, properly conditioned and signed by sufficient sureties, in a sum to be fixed by the secretary, which bond shall be approved by him and filed in the office of the secretary of state. This section shall not apply to the deputy secretary of agriculture. The state shall pay the reasonable cost of the bonds required by this section. [C97,§2503; SS15, §§2503, 2514-p; C24, 27, 31, 35, 39,§**2599**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.14]

Bond of deputy, §§27.1, 64.15

159.15 Biennial report. The secretary shall make a report to the governor in each even-

numbered year, at the time provided by law, which shall include all receipts and disbursements for the year, and such information and statistics concerning the enforcement of the several laws administered by the department as may be thought useful, not otherwise available in printed form, with such suggestions as to legislation as may be deemed advisable. [C97,§§1680, 2515; S13,§1657-g; SS15,§§2509-a, 2515; C24, 27, 31, 35, 39,§2600; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.15]

Time of making report, §17.3

159.16 Duty of peace officers. All peace officers of the state when called upon by the secretary or any officer or authorized agent of the department shall enforce its rules and execute its lawful orders within their respective jurisdictions, and upon the request of the secretary such officers shall make such inspections as directed by the secretary and report the results thereof to him. [C24, 27, 31, 35, 39, §2601; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.16]

159.17 Interference with department. Any person resisting or interfering with the department, its employees or authorized agents, in the discharge of any duty imposed by law shall be guilty of a misdemeanor. [C97,§2526; S13, §§2528-c,-f3, 4999-a25,-a39, 5077-a23; SS15,§3009-r; C24, 27, 31, 35, 39,§2602; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.17]

Punishment, §687.7

159.18 State farmers institute. In connection with the annual convention to elect members of the state fair board, either preceding or following the day on which the officers are elected, the secretary may hold a state farmers institute, for the discussion of practical and scientific topics relating to the various branches of agriculture, the substance of which may be published in the Iowa year book of agriculture. [S13,§1657-f; C24, 27, 31, 35, 39,§2603; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.18]

159.19 Salary. The salary of the secretary of agriculture shall be as fixed by the general assembly. [C31, 35,§2603-c1; C39,§2603.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§159.19]

See salary Act

AGRICULTURAL MARKETING DIVISION

159.20 Division's powers. A marketing division, hereinafter referred to as the division, is hereby created within the Iowa department of agriculture. It shall be the duty of the division to do or cause to be done those things designed to lead to more advantageous marketing of Iowa agricultural products. To implement this purpose the division may be, among other things, authorized by this division of this chapter: (1) To investigate the subject of marketing farm products; (2) to promote their sales, distribution and merchandising; (3) to furnish information and assistance concerning the same to the public; (4) to study and recommend efficient and economical methods of marketing; (5) to co-operate with the division of agriculture of the Iowa State University of science and technology in its farm marketing education and research and all unnecessary duplications should be avoided; and (6) to gather and diffuse useful information concerning all phases of the marketing of Iowa farm products in co-operation with other public or private agencies. The division shall have a director appointed by the secretary of agriculture. [C62, 66, 71, 73, 75,§159.20]

159.21 Director's powers. The director, under the general supervision and direction of the secretary of agriculture, is empowered and directed:

1. To appoint such competent and experienced persons to assist him in the performance of his duties and powers as may be necessary to effectuate the purposes of this section, and to delegate to any employee of such division any of the powers and duties conferred upon the director;

2. To investigate into methods and practices in connection with the processing, handling, standardizing, grading, classifying, sorting, weighing, packing, transportation, storage, inspection and merchandising of farm and food products within the state and all matters relevant thereto;

3. To co-operate with the Iowa State University of science and technology extension service in disseminating information relative to such matters described in subsection 2;

4. To ascertain sources of supply of Iowa farm and food products, and prepare and publish from time to time lists of names and addresses of producers and consignors thereof and furnish the same to persons applying therefor;

5. To perform the acts of inspection and grading, or both, of any farm product where requested by any person, group of persons, partnership, firm, company, corporation, co-operative, or association engaged in the production, marketing, or processing of such farm products, providing such person or persons, partnership, firm, company, corporation, co-operative, or association is willing to pay for such services under such rules as he may prescribe, including payment of such fees as he may deem reasonable, for the services rendered or performed by employees of the division of marketing. Such standards, grades, or classification shall not be lower in their requirements than the minimum requirements of the official standards for corresponding standards, grades and classifications commonly known as United States grades promulgated from time to time by the secretary of agriculture of the United States;

6. To advise, consult, and co-operate with the Iowa development commission in the development and implementation of programs for the promotion of Iowa agricultural products;

7. To make rules necessary to carry out the provisions of this section. [C62, 66, 71, 73, 75,§159.21]

159.22 Grants and gifts of funds. The division may with the approval of the secretary of agriculture accept grants and allotments of funds from the federal government and enter into co-operative agreements with the secretary of agriculture of the United States for projects to effectuate any of the purposes of this division as described herein; and to accept grants, gifts or allotments of funds from any person, firm, co-operative, corporation, or association for the purpose of carrying out the provisions of this chapter for which an itemized accounting must be made by the director to the Iowa secretary of agriculture at the end of each fiscal year. [C62, 66, 71, 73, 75,§159.22]

159.23 Special fund. All fees collected as a result of the inspection and grading provisions set out herein shall be paid into the state treasury, there to be set aside in a separate fund which is hereby appropriated for the use of the division except as indicated. Withdrawals therefrom shall be by warrant of the state comptroller upon requisition by the director approved by the secretary of agriculture. Such fund shall be continued from year to year, provided, however, that if there be any balance remaining at the end of the biennium which, in the opinion of the governor, state comptroller and secretary of agriculture, is greater than necessary for the proper administration of the inspection and grading program referred to herein, the treasurer of state is hereby authorized on the recommendation and with the approval of the governor, state comptroller and secretary of agriculture, to transfer to the general fund of the state that portion of such account as they shall deem advisable. [C62, 66, 71, 73, 75,§159.23]

159.24 Grades or classifications of farm products. A certificate of the grade, or other classification, of any farm products issued under this division of this chapter shall be accepted in any court of this state as prima-facie evidence of the true grade or classification of such farm products as the same existed at the time of their classification. [C62, 66, 71, 73, 75,§159.24]

159.25 Marketing board. There is hereby established an agriculture marketing board, to be thus known and designated.

The agriculture marketing board shall be composed of the secretary of agriculture, the director of the Iowa development commission or his designee and the dean of agriculture at Iowa State University of science and technology each of whom shall serve as a member of the advisory board without vote, and a producer member from each of the following statutory associations: Iowa swine producers association, Iowa turkey federation, Iowa beef cattle producers association, Iowa state sheep association, Iowa poultry association, incorporated, Iowa state dairy association, Iowa crop improvement association, Iowa soybean association, Iowa corn growers association and state horticulture society. The names of three persons shall be certified to the secretary of agriculture by the presidents of the Iowa swine producers association, Iowa turkey federation, Iowa beef cattle producers association, Iowa poultry association, incorporated, and state horticulture society by June 1 of each odd-numbered year. The secretary of agriculture shall appoint by July 1 one of these three from each organization to the agriculture marketing board. Such an appointee shall serve for a period of two years beginning on July 1 of the year of his appointment and until his successor is appointed or qualified. Three names shall be submitted and appointments made in the same manner in even-numbered years for representation from the Iowa state dairy association, Iowa soybean association, Iowa corn growers association, Iowa state sheep association, and Iowa crop improvement association. Any vacancy occurring in the agriculture marketing board shall be filled within two months of the vacancy in the manner provided in this section.

Appointive members of the board shall receive forty dollars per diem, actual necessary expenses and mileage expenses incurred while engaged in the business of the agriculture marketing board. [C62, 66, 71, 73, 75,§159.25; 66GA, ch 124,§1]

Referred to in §§185.4, 185C.4
Rate, see §79.9

159.26 Duties of board. The duties of the agriculture marketing board shall include the following: (1) To elect a chairman, a secretary, and from time to time such other officers as it may deem advisable; (2) to keep accurate books, records, and accounts of all its dealings, which books, records and accounts shall be audited annually by the auditor of state. [C62, 66, 71, 73, 75,§159.26]

159.27 Legislative influence prohibited. The marketing division, the agriculture marketing board or an employee or representative of either said division or board shall not engage in legislative programs nor attempt in any manner by the adoption of rules, resolutions or otherwise, to influence legislation affecting any matters pertaining to the activities of this marketing division. [C62, 66, 71, 73, 75,§159.27]

CHAPTER 160

STATE APIARIST

160.1 Appointment by secretary of agriculture.
160.2 Duties.
160.3 Right to enter premises.

160.4 Repealed by 61GA, ch 170,§2.
106.5 Instructions—hives—imported bees.
160.6 Notice to disinfect or destroy.
160.7 Apiarist to disinfect or destroy—costs.
160.8 Costs certified—collected as tax.
160.9 Rules authorized.
160.10 Prohibitory orders.
160.11 Effect of regulations and orders.
160.12 Repealed by 61GA, ch 170,§5.
160.13 Annual report.
160.14 Sale or disposition of diseased bees.
160.15 Appropriation by county.
160.16 Importing bees from another state—fee.

160.1 Appointment by secretary of agriculture. There is hereby created and established within the department of agriculture the office of state apiarist. The state apiarist shall be appointed by and be responsible to and under the authority of the secretary of agriculture in the issuance of all rules, the establishment of quarantines and other official acts. [C24, 27, 31, 35, 39,§**4036**; C46, 50, 54, 58,§§266.8, 266.9; C62, 66, 71, 73, 75,§160.1]

160.2 Duties. It shall be the duty of the said apiarist to give lectures and demonstrations in the state on the production of honey, the care of the apiary, the marketing of honey, and upon other kindred subjects relative to the care of bees and the profitable production of honey, to examine the bees, combs, and beekeeping appliances in any locality which he may suspect of being affected with foulbrood or any other contagious or infectious disease common to bees, and to inspect bees before removal from the state. [C24, 27, 31, 35, 39,§**4037**; C46, 50, 54, 58,§266.10; C62, 66, 71, 73, 75, §160.2]

37GA, ch 289,§2, editorially divided

160.3 Right to enter premises. In the performance of his duties, the state apiarist or his assistants shall have the right to enter any premises, enclosure, or buildings containing bees or bee supplies. [C27, 31, 35,§4037-a1; C39, §**4037.1**; C46, 50, 54, 58,§266.11; C62, 66, 71, 73, 75,§160.3]

160.4 Repealed by 61GA, ch 170,§2.

160.5 Instructions — hives — imported bees. If upon examination the said apiarist finds said bees to be diseased, he shall furnish the owner or person in charge of said apiary with full written instructions as to the nature of the disease and the best methods of treating same, which information shall be furnished without cost to the owner.

It shall be unlawful to keep bees in any containers except hives with movable frames permitting ready examination in those counties where area clean-up inspection is in progress as may be proclaimed in official regulation.

All bees and combs, used hives or other used apiary appliances brought into this state from any other state must be accompanied by a valid certificate of inspection of the state of origin or a permit issued by the state apiarist of Iowa. [C24, 27, 31, 35, 39,§**4039**; C46, 50, 54, 58,§266.13; C62, 66, 71, 73, 75,§160.5]

Misdemeanor, punishment, §687.7

160.6 Notice to disinfect or destroy. A notice shall be issued by the state apiarist in writing to any owner of bees or bee supplies to complete disinfection or destruction within ten days with immediate action in emergency cases. [C27, 31, 35,§4039-a1; C39,§**4039.1**; C46, 50, 54, 58,§266.14; C62, 66, 71, 73, 75,§160.6]

41GA, ch 63,§2, editorially divided

160.7 Apiarist to disinfect or destroy—costs. If the owner fails to comply with said notice, the state apiarist or his assistants shall carry out such disinfection or destruction, and shall keep an account of the cost thereof. [C27, 31, 35,§4039-a2; C39,§**4039.2**; C46, 50, 54, 58,§266.15; C62, 66, 71, 73, 75,§160.7]

160.8 Costs certified—collected as tax. He shall certify the amount of such cost to the owner and if the same is not paid to him within sixty days, the amount shall be certified to the county auditor of the county in which the premises are located, who shall spread the same upon the tax books which shall be a lien upon the property of the bee owner and be collected as other taxes are collected. [C27, 31, 35,§4039-a3; C39,§**4039.3**; C46, 50, 54, 58, §266.16; C62, 66, 71, 73, 75,§160.8]

Collection of taxes, ch 445

160.9 Rules authorized. The state apiarist shall issue rules prohibiting the transportation without his permit of any bees, combs, or used beekeeping appliances, into any area in which clean-up work is being conducted or which has been declared free of any diseases of bees. [C27, 31, 35,§4039-a4; C39, §**4039.4**; C46, 50, 54, 58,§266.17; C62, 66, 71, 73, 75,§160.9]

160.10 Prohibitory orders. When any area is found to be infected with diseases of bees, he shall issue an order prohibiting the movement of bees and used beekeeping appliances out of such area, but shall except from the order bees shipped without honey or feed containing honey and honey sold in tight containers for commercial purposes other than with bees or as food for bees. [C27, 31, 35, §4039-a5; C39,§**4039.5**; C46, 50, 54, 58,§266.18; C62, 66, 71, 73, 75,§160.10]

160.11 Effect of regulations and orders. Said regulations and orders shall have the full effect of law. [C27, 31, 35,§4039-a6; C39, §**4039.6**; C46, 50, 54, 58,§266.19; C62, 66, 71, 73, 75,§160.11]

160.12 Repealed by 61GA, ch 170,§5.

160.13 Annual report. Said apiarist shall also make an annual report to the secretary of agriculture, stating the number of apiaries visited, number of demonstrations held, number of lectures given, the number of examinations and inspections made, together with such other matters of general interest concerning the business of beekeeping as in his judgment shall be of value to the public. [C24, 27, 31, 35, 39,§**4040**; C46, 50, 54, 58,§266.21; C62, 66, 71, 73, 75,§160.13]

Time for filing report, §17.4

160.14 Sale or disposition of diseased bees. Anyone who knowingly sells, barters, or gives away, moves or allows to be moved, a diseased colony or colonies of bees, without the consent of the state apiarist, or exposes any infected honey or infected appliances to the bees, or who willfully fails or neglects to give proper treatment to diseased colonies, or who interferes with the state apiarist or his assistants in the performance of their duties or who refuses to permit the examination of bees or their destruction as provided in this Act* or violates any other provision of the Act shall be deemed guilty of a misdemeanor, and upon conviction thereof before any judicial magistrate of the county shall be fined not exceeding the sum of fifty dollars or imprisoned in the county jail not exceeding thirty days. C24, 27, 31, 35, 39,§**4041**; C46, 50, 54, 58,§266.22; C62, 66, 71, 73, 75,§160.14]

*41GA, ch 63

160.15 Appropriation by county. All expenses, except salaries, incurred by the state apiarist or his assistants in the performance of their duties within a county shall be paid not to exceed two hundred dollars per annum from the general fund of such county for the purpose of eradication of diseases among bees. Such work of eradication shall be done in such county under the supervision of the state apiarist. [C31, 35,§4041-c1; C39,§**4041.1**; C46, 50, 54, 58,§266.23; C62, 66, 71, 73, 75,§160.15]

160.16 Importing bees from another state—fee. Each colony of bees moved into Iowa from another state by nonresidents of Iowa shall be assessed a fifty cents entry fee. The fee, together with the certificate of inspection from the state of origin, shall be collected by the state apiarist who shall forward such fees to the auditor of the county where the bees are to be located. Only nonresidents of Iowa shall be subject to such entry fee. [C66, 71, 73, 75,§160.16]

CHAPTER 161

FRUIT-TREE AND FOREST RESERVATIONS

Referred to in §159.6(1)

161.1 Tax exemption.
161.2 Reservations.
161.3 Forest reservation.
161.4 Removal of trees.
161.5 Forest trees.
161.6 Groves.
161.7 Fruit-tree reservation.
161.8 Fruit trees.
161.9 Replacing trees.
161.10 Restraint of livestock.
161.11 Penalty.
161.12 Assessor.
161.13 County auditor.

161.1 Tax exemption. Any person who establishes a forest or fruit-tree reservation as provided in this chapter shall be entitled to the tax exemption provided by law. [C24, 27, 31, 35, 39,§**2605**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§161.1]

Referred to in §441.22

161.2 Reservations. On any tract of land in the state of Iowa, the owner or owners may select a permanent forest reservation or reservations, each not less than two acres in continuous area, or a fruit-tree reservation or reservations, not less than one nor more than ten acres in total area, or both, and upon compliance with the provisions of this chapter, such owner or owners shall be entitled to the benefits provided by law. [S13,§1400-c; C24, 27, 31, 35, 39,§**2606**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§161.2]

Referred to in §441.22

161.3 Forest reservation. A forest reservation shall contain not less than two hundred growing forest trees on each acre. If the area selected is a forest containing the required number of growing forest trees, it shall be accepted as a forest reservation under the provisions of this chapter. If the area selected is a forest containing less than two hundred forest trees to the acre, or if it is a grove or an area to be planted to trees, the owner or owners thereof shall have planted, cultivated, and otherwise properly cared for the number of forest trees necessary to bring the total number of growing trees to not less than two hundred on each acre, during a period of not more than two years, after it has been accepted as a forest reservation within the meaning of this chapter. Any ground upon which any buildings stand or are erected or other improvements are made, excluding fences, shall not be recognized as part of any forest reser-

vation under this section or a fruit-tree reservation under secton 161.7. [S13,§1400-d; C24, 27, 31, 35, 39,§2607; C46, 50, 54, 58, 62, 66, 71, 73, 75,§161.3; 66GA, ch 125,§1]
Referred to in §441.22

161.4 Removal of trees. Not more than one-fifth of the total number of trees in any forest reservation may be removed in any one year, excepting in cases where the trees die naturally. [S13,§1400-e; C24, 27, 31, 35, 39,§2608; C46, 50, 54, 58, 62, 66, 71, 73, 75,§161.4]
Referred to in §441.22

161.5 Forest trees. The ash, black cherry, black walnut, butternut, catalpa, coffee tree, the elms, hackberry, the hickories, honey locust, Norway and Carolina poplars, mulberry, the oaks, sugar maple, cottonwood, soft maple, osage orange, basswood, black locust, European larch and other coniferous trees, and all other forest trees introduced into the state for experimental purposes, shall be considered forest trees within the meaning of this chapter. In forest reservations which are artificial groves, the willows, box elder, and other poplars shall be included among forest trees for the purposes of this chapter when they are used as protecting borders not exceeding two rows in width around a forest reservation, or when they are used as nurse trees for forest trees in such forest reservation, the number of such nurse trees not to exceed one hundred on each acre; provided that only box elder shall be used as nurse trees. [S13,§1400-f; C24, 27, 31, 35, 39,§2609; C46, 50, 54, 58, 62, 66, 71, 73, 75, §161.5]
Referred to in §441.22

161.6 Groves. The trees of a forest reservation shall be in groves not less than four rods wide except when the trees are growing or are planted in or along a gully or ditch to control erosion in which case any width will qualify provided the area meets the size requirement of two acres. [S13,§1400-g; C24, 27, 31, 35, 39, §2610; C46, 50, 54, 58, 62, 66, 71, 73, 75,§161.6]
Referred to in §441.22

161.7 Fruit-tree reservation. A fruit-tree reservation shall contain on each acre, at least forty apple trees, or seventy other fruit trees, growing under proper care and annually pruned and sprayed. Such reservation may be claimed as such, under this chapter, for a period of eight years after planting. [S13, §1400-h; C24, 27, 31, 35, 39,§2611; C46, 50, 54, 58, 62, 66, 71, 73, 75,§161.7]
Referred to in §§161.3, 441.22

161.8 Fruit trees. The cultivated varieties of apples, crabs, plums, cherries, peaches, and pears shall be considered fruit trees within the meaning of this chapter. [S13,§1400-i; C24, 27, 31, 35, 39,§2612; C46, 50, 54, 58, 62, 66, 71, 73, 75,§161.8]
Referred to in §441.22

161.9 Replacing trees. When any tree or trees on a fruit-tree or forest reservation shall be removed or die, the owner or owners of such reservation shall, within one year, plant and care for other fruit or forest trees, in order that the number of such trees may not fall below that required by this chapter. [S13, §1400-j; C24, 27, 31, 35, 39,§2613; C46, 50, 54, 58, 62, 66, 71, 73, 75,§161.9]
Referred to in §441.22

161.10 Restraint of livestock. Cattle, horses, mules, sheep, goats, and hogs shall not be permitted upon a fruit-tree or forest reservation. [S13,§1400-k; C24, 27, 31, 35, 39,§2614; C46, 50, 54, 58, 62, 66, 71, 73, 75,§161.10]
Referred to in §441.22

161.11 Penalty. If the owner or owners of a fruit-tree or forest reservation violate any provision of this chapter within the two years preceding the making of an assessment, the assessor shall not list any tract belonging to such owner or owners, as a reservation within the meaning of this chapter, for the ensuing two years. [S13,§1400-m; C24, 27, 31, 35, 39, §2615; C46, 50, 54, 58, 62, 66, 71, 73, 75,§161.11]
Referred to in §441.22

161.12 Assessor. It shall be the duty of the assessor to secure the facts relative to fruit-tree and forest reservations by taking the sworn statement, or affirmation, of the owner or owners making application under this chapter; and to make special report to the county auditor of all reservations made in the county under the provisions of this chapter. [S13, §1400-n; C24, 27, 31, 35, 39,§2616; C46, 50, 54, 58, 62, 66, 71, 73, 75,§161.12]
Referred to in §441.22

161.13 County auditor. It shall be the duty of the county auditor in every county to keep a record of all forest and fruit-tree reservations within his county; and to make a report of the same to the state conservation commission on or before June 15 of each year. [S13,§1400-o; C24, 27, 31, 35, 39,§2617; C46, 50, 54, 58, 62, 66, 71, 73, 75,§161.13]
Referred to in §441.22

CHAPTER 162

CARE OF ANIMALS IN COMMERCIAL ESTABLISHMENTS

162.1 Policy.
162.2 Definitions.
162.3 Certificate of registration for pound.
162.4 Certificate of registration for animal shelter.
162.5 Pet shop license.

162.6 Commercial kennel or public auction license.
162.7 Dealer license.
162.8 Commercial breeder's license.
162.9 Boarding kennel operator's license.
162.10 Hobby kennel owner's license.
162.11 Exceptions.
162.12 Denial or revocation of license or registration.
162.13 Penalties.
162.14 Custody by animal warden.
162.15 Violation by animal warden.
162.16 Rules.
162.17 Exceptions.
162.18 Fees.
162.19 Abandoned animals destroyed.

162.1 Policy. The purpose of this chapter is:

1. To insure that all dogs and cats handled by boarding kennels, commercial kennels, hobby kennels, commercial breeders, dealers and public auctions are provided with humane care and treatment by regulating the transportation, sale, purchase, housing, care, handling and treatment of such animals by persons or organizations engaged in transporting, buying or selling them and to provide that all vertebrate animals consigned to pet shops are provided humane care and treatment by regulating the transportation, sale, purchase, housing, care, handling and treatment of such animals by pet shops.

2. To authorize the sale, trade or adoption of only those animals which appear to be free of infectious or communicable disease.

3. To protect the public from zoonotic disease. [C75,§162.1]

162.2 Definitions. As used in this chapter, except as otherwise expressly provided:

1. *"Pound"* or *"dog pound"* means a facility for the prevention of cruelty to animals operated by the state, a municipal corporation, or other political subdivision of the state for the purpose of impounding or harboring seized stray, homeless, abandoned or unwanted dogs, cats or other animals; or a facility operated for such a purpose under a contract with any municipal corporation or incorporated society.

2. *"Person"* means person as defined in chapter 4.

3. *"Animal shelter"* means a facility which is used to house or contain dogs or cats, or both, and which is owned, operated, or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of such animals.

4. *"Pet shop"* means an establishment where any dog, cat, rabbit, rodent, nonhuman primate, bird or other vertebrate animal is bought, sold, exchanged or offered for sale to the general public.

5. *"Boarding kennel"* means a place or establishment other than a pound or animal shelter where dogs or cats not owned by the proprietor are sheltered, fed and watered in return for a consideration.

6. *"Commercial kennel"* means a kennel which performs grooming or training services for dogs or cats, or both, and may or may not render boarding services in return for a consideration.

7. *"Hobby kennel"* means a noncommercial kennel at, in or adjoining a private residence where dogs or cats, or both, are kept for the hobby of the householder, in using them for hunting or practice training or for exhibiting them in shows or field or obedience trials, or for guarding or protecting the householder's property and from which offspring with a total value in excess of one hundred dollars are sold, traded, or exchanged during a calendar year. The keeper of a hobby kennel may keep or maintain up to ten dogs or cats, or both, of either sex per year and may raise or sell not more than fifteen offspring of either dogs or cats, or both, during any calendar year without changing the status of the kennel. If the keeper of a hobby kennel sells, trades or transfers more than fifteen offspring during any calendar year, he shall be subject to licensing as a commercial breeder.

8. *"Commercial breeder"* means a person engaged in the business of breeding dogs or cats, or both, for sale, whether or not such animals are raised, trained, groomed or boarded by such breeder.

9. *"Public auction"* means any place or location where dogs or cats, or both, are sold at auction to the highest bidder regardless of whether the dogs or cats are offered as individuals, as a group, or by weight.

10. *"Secretary"* means the secretary of agriculture of the state of Iowa.

11. *"Dealer"* means any person who is engaged in the business of buying for resale or selling or exchanging dogs or cats, or both, as a principal or agent, or who holds himself out to be so engaged.

12. *"Research facility"* means any school or college of medicine, veterinary medicine, pharmacy, dentistry, or osteopathy, or hospital, diagnostic or research laboratories, or other educational or scientific establishment situated in this state concerned with the investigation of, or instruction concerning the structure or function of living organisms, the cause, prevention, control or cure of diseases or abnormal conditions of human beings or animals.

13. *"Primary enclosure"* means any structure used to immediately restrict an animal

to a limited amount of space, such as a room, pen, cage or compartment.

14. *"Housing facilities"* means any room, building or area used to contain a primary enclosure or enclosures.

15. *"Euthanasia"* means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent which causes painless loss of consciousness, and death during the loss of consciousness.

16. *"Adequate feed"* means the provision at suitable intervals of not more than twenty-four hours or longer if the dietary requirements of the species so require, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. The foodstuff shall be served in a clean receptacle, dish or container.

17. *"Adequate water"* means reasonable access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed twenty-four hours at any interval.

18. *"Animal warden"* means any person employed, contracted, or appointed by the state, municipal corporation, or any political subdivision of the state, for the purpose of aiding in the enforcement of the provisions of this chapter or any other law or ordinance relating to the licensing of animals, control of animals or seizure and impoundment of animals and includes any peace officer, animal control officer, or other employee whose duties in whole or in part include assignments which involve the seizure or taking into custody of any animal. [C75,§162.2]

Referred to in §§162.6, 162.13

162.3 Certificate of registration for pound. No pound shall be operated unless a certificate of registration for the pound is granted by the secretary. Application for the certificate shall be made in the manner approved by the secretary. No fee shall be required for the application or certificate. Certificates of registration shall expire annually on March 1 unless revoked and may be renewed upon application in the manner provided by the secretary. A registered pound may engage in the sale of dogs or cats, or both, under its control, if it obtains a license for such activity, but no fee shall be charged therefor unless the registered pound is privately owned. [C75,§162.3]

162.4 Certificate of registration for animal shelter. No person shall operate an animal shelter unless a certificate of registration for the animal shelter is granted by the secretary. Application for the certificate shall be made in the manner provided by the secretary. No fee shall be required for the application or certificate. Certificates of registration shall expire annually on March 1 unless revoked and may be renewed in the manner provided by the secretary. A registered animal shelter may engage in the sale of dogs or cats, or both, under its control, if it obtains a license for such activity, but no fee shall be charged therefor. [C75,§162.4]

162.5 Pet shop license. No person shall operate a pet shop unless he has obtained a license to operate a pet shop issued by the secretary. Application for the license shall be made in the manner provided by the secretary. The license shall expire annually on March 1 of each year unless revoked and may be renewed in the manner provided by the secretary. The license fee shall be forty dollars per year or ten dollars for each quarter or portion of a quarter of a year. The license may be renewed if the licensee has conformed to all statutory and regulatory requirements. [C75, §162.5]

162.6 Commercial kennel or public auction license. No person shall operate a commercial kennel or public auction, as defined in section 162.2, unless he has obtained a license to operate a commercial kennel or a public auction issued by the secretary or unless he has obtained a certificate of registration issued by the secretary if his kennel is federally licensed. Application for the license or the certificate shall be made in the manner provided by the secretary. The license and the certificate shall expire annually on March 1 unless revoked. The license fee shall be twenty-five dollars per year or seven dollars for each quarter or portion of a quarter of a year and the certification fee shall be five dollars annually. If the person has obtained a federal license, he need only obtain a certificate. The license may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary provided the licensee has conformed to all statutory and regulatory requirements. The certificate may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary. [C75,§162.6]

162.7 Dealer license. No person shall operate as a dealer unless he has obtained a license issued by the secretary or unless he has obtained a certificate of registration issued by the secretary if his kennel is federally licensed. Application for the license or the certificate shall be made in the manner provided by the secretary. The license and certificate shall expire annually on March 1 unless revoked. The license fee shall be fifty dollars per year or fifteen dollars for each quarter or portion of a quarter of a year, and the certification fee shall be five dollars per year. The license may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary, provided the licensee has conformed to all statutory and regulatory requirements. The certificate may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary. [C75,§162.7]

162.8 Commercial breeder's license. No person shall operate as a commercial breeder unless he has obtained a license issued by the secretary or unless he has obtained a certificate of registration issued by the secretary if his kennel is federally licensed. Application for the license or the certificate shall be made in the manner provided by the secretary. The annual license or the certification period shall commence March 1 of each year. The license fee shall be twenty-five dollars per year or seven dollars for each quarter or portion of a quarter of a year and the certificate fee shall be five dollars per year. The license may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary provided the licensee has conformed to all statutory and regulatory requirements. The certificate may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary. [C75, §162.8]

162.9 Boarding kennel operator's license. No person shall operate a boarding kennel unless he has obtained a license to operate a boarding kennel issued by the secretary. Application for the license shall be made in the manner provided by the secretary. The annual license period shall commence March 1 of each year. The license fee shall be fifteen dollars per year or four dollars for each quarter or portion of a quarter of a year. The license may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary provided the licensee has conformed to all statutory and regulatory requirements. [C75,§162.9]

162.10 Hobby kennel owner's license. No person shall operate a hobby kennel unless he obtains a license issued by the secretary. Application for the license shall be in the manner provided by the secretary. The annual license period shall commence March 1. The license fee shall be two dollars per year. The license may be renewed upon application in the manner prescribed by the secretary, provided the licensee has conformed to all statutory and regulatory requirements. [C75,§162.10]

162.11 Exceptions.

1. Any dealer or commercial breeder and any person who operates a commercial kennel or public auction who has obtained and is operating his business under a current and valid federal license shall, upon payment of the prescribed fee, be forwarded a certificate of registration by the secretary.

2. The certificate of registration may be denied or revoked if the person no longer possesses a current and valid federal license. Other than obtaining the certificate of registration from the secretary, any dealer or commercial breeder and any person who operates a commercial kennel or public auction shall not be subject to further regulation under the provisions of this chapter.

3. Any person who possesses a current and valid federal license may, in lieu of obtaining a certificate of registration, make application for a state license as provided in this chapter. If properly qualified, and upon payment of the prescribed fee, a license shall be issued under the provisions of this chapter. [C75,§162.11]

162.12 Denial or revocation of license or registration. A certificate of registration may be denied to any pound or animal shelter and a license may be denied to any public auction, boarding kennel, commercial kennel, hobby kennel, pet shop, commercial breeder, or dealer or, if granted such certificate or license, may be revoked by the secretary if, after public hearing, it is determined that the housing facilities or primary enclosures are inadequate under the provisions of this chapter or if the feeding, watering, cleaning and housing practices at the pound, animal shelter, public auction, pet shop, boarding kennel, commercial kennel, hobby kennel, or those practices by the commercial breeder or dealer, are not in compliance with the provisions of this chapter or with the rules which shall be promulgated pursuant to the authority of this chapter. The premises of each licensee or certificate holder shall be open for inspection during normal business hours. [C75,§162.12]

162.13 Penalties. Operation of a pound, animal shelter, pet shop, boarding kennel, commercial kennel, hobby kennel or public auction, as defined in section 162.2, or dealing in dogs or cats, or both, either as a dealer or a commercial breeder, without a currently valid license or a certificate of registration shall constitute a misdemeanor and each day of such operation shall constitute a separate offense. Upon conviction, a violator shall be fined not more than one hundred dollars or imprisoned in the county jail not more than thirty days.

Failure of any person licensed or registered to adequately house, feed or water dogs or cats, or both, in his possession or custody or failure of any operator of a licensed pet shop to adequately house, feed, or water any vertebrate animal shall constitute a misdemeanor. Upon conviction, a violator shall be fined not more than one hundred dollars or imprisoned in the county jail not more than thirty days. Such animals shall be subject to seizure and impoundment and may be sold or destroyed by euthanasia at the discretion of the secretary and such failure shall also constitute grounds for revocation of license after public hearing. The commission of an act declared to be an unlawful practice under section 713.24, by any person licensed under this chapter shall constitute grounds for revocation of license.

It shall be unlawful for a dealer, as defined in section 162.2, subsection 11, to knowingly ship a diseased animal. A dealer violating the provisions of this paragraph shall be subject to a fine not exceeding one hundred dollars. Each diseased animal shipped in violation of

this paragraph shall constitute a separate offense. [C75,§162.13]

162.14 Custody by animal warden. An animal warden, upon taking custody of any animal in the course of his official duties, shall immediately make a record of the matter in the manner prescribed by the secretary and the record shall include a complete description of the animal, reason for seizure, location of seizure, the owner's name and address if known, and all license or other identification numbers, if any. Complete information relating to the disposition of the animal shall be added in the manner provided by the secretary immediately after disposition. [C75,§162.14]

162.15 Violation by animal warden. Violation of any provision of this chapter which relates to the seizing, impoundment, and custody of an animal by an animal warden shall constitute a misdemeanor and each animal handled in violation shall constitute a separate offense. Upon conviction, a violator shall be fined not more than one hundred dollars or imprisoned in the county jail not more than thirty days. [C75,§162.15]

162.16 Rules. The secretary shall promulgate rules consistent with the objectives and intent of this chapter, for the purpose of carrying out such objectives and intent, within ninety days after July 1, 1974, subject to chapter 17A. However, rules adopted by the secretary shall not exceed any federal standards or rules except as specifically provided for in this chapter. [C75,§162.16]

162.17 Exceptions. This chapter shall not apply to a place or establishment which operates under the immediate supervision of a duly licensed veterinarian as a hospital where animals are harbored, hospitalized, and cared for incidental to the treatment, prevention or alleviation of disease processes during the routine practice of the profession of veterinary medicine, except that, if animals are accepted by such place, establishment or hospital for boarding for consideration, the place, establishment or hospital shall be subject to the provisions hereof applicable to a boarding kennel and the rules relating thereto which shall be promulgated by the secretary. [C75, §162.17]

162.18 Fees. All fees collected by the secretary from licenses and certificates issued under this chapter shall be paid to the treasurer of state. [C75,§162.18]

162.19 Abandoned animals destroyed. Whenever any animal is left with a veterinarian, boarding kennel or commercial kennel pursuant to a written agreement and the owner does not claim the animal by the agreed date, the animal shall be deemed abandoned, and a notice of abandonment and its consequences shall be sent within seven days by certified mail to the last known address of the owner. For fourteen days after mailing of the notice the owner shall have the right to reclaim the animal upon payment of all reasonable charges, and after the fourteen days the owner shall be deemed to have waived all rights to the abandoned animal. If despite diligent effort an owner cannot be found for the abandoned animal within another seven days, the veterinarian, boarding kennel, or commercial kennel may humanely destroy the abandoned animal.

Each veterinarian, boarding kennel or commercial kennel shall warn its patrons of the provisions of this secton by a conspicuously posted notice or by conspicuous type in a written receipt. [66GA, ch 126,§1]

CHAPTER 163

INFECTIOUS AND CONTAGIOUS DISEASES AMONG ANIMALS

Referred to in §§159.5, 159.6(2)

163.1 Powers of department.
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163.4 Powers of assistants.
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FEEDING GARBAGE TO ANIMALS

163.26 Definitions.
163.27 Boiling garbage.
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163.30 Swine imported or native—pig dealers.
163.31 to 163.33 Repealed by 64GA, ch 1046,§4.

163.1 Powers of department. In the enforcement of this chapter the department of agriculture shall have power to:

1. Make all necessary rules for the suppression and prevention of infectious and contagious diseases among animals within the state.

2. Provide for quarantining animals affected with infectious or contagious diseases, or that have been exposed to such diseases, whether within or without the state.

3. Determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of contagious or infectious diseases among animals.

4. Establish, maintain, enforce, and regulate quarantine and other measures relating to the movements and care of diseased animals.

5. Provide for the disinfection of suspected yards, buildings, and articles, and the destruction of such animals as may be deemed necessary.

6. Enter any place where any animal is at the time located, or where it has been kept, or where the carcass of such animal may be, for the purpose of examining it in any way that may be necessary to determine whether it was or is infected with any contagious or infectious disease.

7. Regulate or prohibit the arrival in, departure from, and passage through the state, of animals infected with or exposed to any contagious disease; and in case of violation of any such regulation or prohibition, to detain any animal at the owner's cost.

8. Regulate or prohibit the bringing of animals into the state, which, in its opinion, for any reason, may be detrimental to the health of animals in the state.

9. Co-operate with and arrange for assistance from the United States department of agriculture in performing its duties under this chapter. [S13,§2538-s; C24, 27, 31, 35, 39,§**2643**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.1]

163.2 Infectious and contagious diseases. For the purpose of this chapter, infectious and contagious diseases shall be deemed to embrace glanders, farcy, maladie du coit (dourine), anthrax, foot and mouth disease, scabies, hog cholera, infectious enteritis, tuberculosis, Bang's disease,* swine erysipelas, vesicular exanthema, scrapie, rinderpest, ovine foot rot, or any other communicable disease so designated by the department. [C24, 27, 31, 35, 39, §**2644**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.2]

Referred to in §163.15

*See chapter 164 for bovine brucellosis

163.3 Veterinary assistants. The department may appoint one or more licensed veterinarians in each county as assistant veterinarians. It may also appoint such special assistants as may be necessary in cases of emergency. [C24, 27, 31, 35, 39,§**2645**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.3]

163.4 Powers of assistants. Such assistant veterinarians shall have power, under the direction of the department, to perform all acts necessary to carry out the provisions of law relating to infectious and contagious diseases among animals, and shall be furnished by the department with the necessary supplies and materials which shall be paid for out of the appropriation for the eradication of infectious and contagious diseases among animals. [C24, 27, 31, 35, 39,§**2646**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.4]

163.5 Oaths. Such assistant veterinarians shall have power to administer oaths and affirmations to appraisers acting under this and the following chapters of this title. [C24, 27, 31, 35, 39,§**2647**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.5]

Analogous provisions, §78.2

Chapters 163A, 164, 166A, 166B, 168, 172B, 172C, 172D, 179, 185A, 186A, 187 were enacted later than this section.

163.6 Repealed by 60GA, ch 66,§26.

163.7 State and federal rules. The rules adopted by the department regarding interstate shipments of animals shall not be in conflict with the rules of the federal department of agriculture, unless there is an outbreak of a malignant contagious disease in any locality, state, or territory, in which event the department shall have the right to place an embargo on such locality, state, or territory. [C24, 27, 31, 35, 39,§**2649**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.7]

163.8 Enforcement of rules. The assistant veterinarians appointed under this chapter shall enforce all rules of the department, and in so doing may call to their assistance any peace officer. [S13,§2538-s; C24, 27, 31, 35, 39, §**2650**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.8]

163.9 College at Ames to assist. The dean of the veterinary college of the Iowa State University of science and technology is authorized to use the equipment and facilities of the college in assisting the department in carrying out the provisions of this chapter. [C24, 27, 31, 35, 39,§**2651**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §163.9]

163.10 Quarantining or killing animals. The department may quarantine or condemn any animal which is infected with any contagious or infectious disease, but no cattle infected with tuberculosis shall be killed without the owner's consent, unless there shall be sufficient funds to pay for such cattle, in the allotment made for that purpose from the appropriation for the eradication of infectious and contagious diseases among animals as provided in this chapter. [C24, 27, 31, 35, 39,§**2652**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.10]

Allotment, §§163.22, 165.30

163.11 Imported animals. No person shall bring into this state, except to public livestock markets where federal inspection of livestock is maintained, any animal for work, breeding,

or dairy purposes, unless such animal has been examined and found free from all contagious or infectious diseases.

No person shall bring in any manner into this state any cattle for dairy or breeding purposes unless such cattle have been tested within thirty days prior to date of importation by the agglutination test for contagious abortion or abortion disease, and shown to be free from such disease.

Animals for feeding purposes, however, may be brought into the state without inspection, under such regulations as the department may prescribe except that this sentence shall not apply to swine. [C24, 27, 31, 35, 39,§**2653**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.11]

Referred to in §163.12
Additional provision, §165.36

163.12 Freedom from disease. Freedom from disease as specified in section 163.11 shall be established by a certificate of health signed by a veterinarian acting under either the authority of the federal department of agriculture, or of the state department of agriculture. [C24, 27, 31, 35, 39,§**2654**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.12]

163.13 Certificate attached to bill of lading. A copy of such certificate shall be attached to the waybill accompanying the shipment, and a copy thereof shall be mailed to the department. [C24, 27, 31, 35, 39,§**2655**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.13]

163.14 Intrastate shipments. All animals, except those intended for immediate slaughter, shall be inspected when required by the department, and accompanied by the aforesaid certificate when shipped from a public stockyard in this state to another point within the state where federal inspection is not maintained. [C24, 27, 31, 35, 39,§**2656**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.14]

163.15 Indemnifying owner. Whenever any animal is found to be infected with one of the contagious diseases enumerated in section 163.2 or one which has been designated by the department thereunder, if there be no other provisions for indemnifying the owner in case the same be condemned and ordered by the department to be killed, and the secretary of agriculture determines that the existence of said communicable disease constitutes a threat to the general welfare or the public health of the inhabitants of the state, he shall formulate a program of eradication including therein the condemnation and killing of the infected animals; provided however, that said program shall not be put into effect as hereinafter provided until the same has been approved by the executive council.

Any animal killed under such a program shall be appraised by three competent and disinterested persons, one to be appointed by the state department of agriculture, one by the owner, and the third by the other two, and it shall be their duty to appraise and report their appraisal under oath to the department of agriculture, and they shall receive such compensation and expenses as shall be provided for in the program. Any claim for indemnity filed by the owner of such animal or animals so appraised shall not exceed the amount agreed upon by the majority of the appraisers based on current market prices except in the case of registered purebred stock, then the amount payable for indemnity may exceed market prices by not more than fifty percent less any indemnity which he might be allowed from the United States department of agriculture. No indemnity shall be allowed for infected animals if it is determined by the department of agriculture that such animals have been fed raw garbage. Claims for indemnity and those filed by the appraisers for compensation and expenses shall be filed with the secretary of agriculture and submitted by him to the executive council for its approval or disapproval. There is appropriated from any funds in the state treasury not otherwise appropriated sufficient funds to carry out the provisions of this section. [SS15, §§2538-1a–8a; C24, 27, 31, 35, 39,§**2657**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.15]

Referred to in §163.16

163.16 Limitation on right to receive pay. Unless an animal was examined at the time of importation into the state and found free from contagious or infectious diseases as provided in this chapter, no person importing the same and no transferee who receives such animal knowing that the provisions of this chapter have been violated shall receive any compensation under section 163.15 for the destruction of such animal by the department. [C24, 27, 31, 35, 39,§**2658**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §163.16]

Inspection of imported animals, §163.11

163.17 Local boards of health. All local boards of health shall assist the department in the prevention, suppression, control, and eradication of contagious and infectious diseases among animals, whenever requested to do so. [C24, 27, 31, 35, 39,§**2659**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.17]

Local boards of health, ch 137

163.18 False representation. Any person who knowingly makes any false representation as to the purpose for which a shipment of animals is being or will be made, with intent to avoid or prevent an inspection of such animals for the purpose of determining whether the animals are free from disease, shall be guilty of a misdemeanor and punished as provided in this chapter. [C24, 27, 31, 35, 39,§**2660**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.18]

163.19 Sale or exposure of infected animals. No owner or person having charge of any animal, knowing the same to have any infectious or contagious disease, shall sell or barter the same for breeding, dairy, work, or feeding purposes, or permit such animal to run at

large or come in contact with any other animal. [C97,§5018; C24, 27, 31, 35, 39,§2661; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.19]

163.20 Glanders. No owner or person having charge of any animal, knowing the same to be affected with glanders, shall permit such animal to be driven upon any highway, and no keeper of a public barn shall knowingly permit any animal having such disease to be stabled in such barn. [C24, 27, 31, 35, 39,§2662; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.20]

163.21 Penalties. Any person who shall violate any provision of this chapter or any rule adopted thereunder by the department shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year. [C24, 27, 31, 35, 39, §2663; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.21]

163.22 Annual estimate. The department of agriculture shall each year make an estimate of expenditures to be made from the annual appropriation for the eradication of contagious and infectious diseases among animals. Such estimate shall set aside:

1. A sufficient sum for the general administration of this chapter.

2. A sufficient sum for the inspection of herds for tuberculosis under chapter 165, except herds in counties which have been enrolled under the county area plan of eradication.

3. The remainder of said appropriation for allotment among the counties in accordance with the number of breeding cattle owned therein for the eradication of bovine tuberculosis in such counties. [C24, 27, 31, 35, 39,§2664; C46, 50, 54, 58, 62, 66, 71, 73, 75,§163.22]

163.23 False certificates of health—penalty. Any veterinarian issuing a certificate of health for an animal knowing that the animal described therein was not the animal from which the tests were made as a basis for the certificate or who otherwise falsifies any such certificate shall be guilty of a misdemeanor and punished as provided in this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§163.23]

163.24 Using false certificate. Any person, firm, or corporation importing, exporting, or transporting within this state or selling or offering for sale any animal for which a certificate of health has been issued and who uses such certificate in connection with any of said transactions knowing that the animal described in said certificate was not the animal from which the tests were made as a basis for the certificate or who knowingly uses any altered or otherwise false certificate in connection with any of said transactions shall be guilty of a misdemeanor and punished as provided in this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§163.24]

163.25 Altering certificate. Any person, firm, or corporation removing or altering on any animal, tested or being tested for disease, any tag or mark of identification authorized by the department or inserted by any qualified veterinarian or altering any certificate of vaccination by one authorized to vaccinate animals shall be guilty of a misdemeanor and punished as provided in this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§163.25]

FEEDING GARBAGE TO ANIMALS

163.26 Definitions. For the purposes of this division, the following words shall have the meaning ascribed to them in this section:

1. *"Department"* shall mean the department of agriculture, and wherever said department is required or authorized to do an act, it shall be construed as authorizing performance by a regular assistant or a duly authorized agent of said department.

2. *"Secretary"* shall mean the secretary of agriculture.

3. *"Garbage"* means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of foods, including animal carcasses or parts thereof, and shall include all waste material, by-products of a kitchen, restaurant, hotel, or slaughterhouse, every refuse accumulation of animal, fruit, or vegetable matter, liquids or otherwise, except grain not consumed, that is collected from hog sales pen floors in public stockyards and fed under the control of the department of agriculture. Animals or parts of animals, which are processed by slaughterhouses or rendering establishments, and which as part of such processing are heated to not less than 212° F. for thirty minutes, shall not be deemed garbage for purposes of this chapter. [C54, 58, 62, 66, 71, 73, 75,§163.26]

163.27 Boiling garbage. It shall be unlawful for any person, firm, partnership, or corporation to feed garbage to animals unless such garbage has been heated to a temperature of 212° F. for thirty minutes, or other acceptable method, as provided by rules promulgated by the department, provided this requirement shall not apply to an individual who feeds to his own animals only the garbage obtained from his own household. It shall be unlawful for any person, firm, partnership, or corporation to feed any public or commercial garbage to swine after September 1, 1970. [C54, 58, 62, 66, 71, 73, 75,§163.27]

Referred to in §§163.28, 163.29

163.28 Licenses. Before any person shall process any public or commercial garbage for swine, application for a license shall be made to the department setting forth the name and address of the applicant's proposed place of business, and the method used to process such garbage as outlined in section 163.27.

On receipt of such application, the secretary or his authorized agent shall at once inspect the premises on which the applicant proposes

to conduct such business. If the inspector finds that said building complies with the requirements of this chapter, and with the rules of the department, and that the applicant is a responsible and suitable person, he shall so certify in writing to the department.

On receipt of such certificate, the department shall issue a license to said applicant to conduct such business at the place specified until the first day of September following date of issue.

The license fee for each processing plant shall be fifty dollars, except that the first license fee may be prorated on a monthly basis as prescribed by the department. The secretary shall not issue a license which would permit the processing of any garbage for swine feeding after September 1, 1970. [C54, 58, 62, 66, 71, 73, 75,§163.28]

163.29 Penalty. Any person, firm, partnership or corporation violating the provisions of this division shall, upon conviction thereof, be fined not less than one hundred dollars and not to exceed five hundred dollars. Each day the provisions of section 163.27, or any rule made pursuant thereto, is violated shall be a separate offense. [C54, 58, 62, 66, 71, 73, 75, §163.29]

163.30 Swine imported or native—pig dealers.

1. This section shall apply to all swine moved interstate and intrastate, except swine moved directly to slaughter or to a livestock market for sale directly to a slaughtering establishment for immediate slaughter.

2. When used in this chapter:

a. "Dealer" means any person who is engaged in the business of buying for resale, or selling, or exchanging swine as a principal or agent or who holds himself out as so engaged, but does not include the owner or operator of a farm who does not hold himself out as so engaged, and who sells or exchanges only those swine which have been kept by him solely for feeding or breeding purposes.

b. "Separate and apart" means a manner of holding swine so as not to have physical contact with other swine on the premises.

c. "Swine moved" means any physical relocation of swine to different premises, except that it does not include movement of swine when their ownership does not change, and both their prior and new locations, and the movement between such locations, are within the state of Iowa.

3. No person shall act as a dealer without first securing a dealer's license from the department. The fee for a dealer's license shall be five dollars per annum and all licenses shall expire on the first day of July following date of issue. Licenses shall be numbered and the dealer shall retain his number from year to year. To secure a license, the applicant must file with the department a bond in the sum of ten thousand dollars with the secretary named as trustee, for the use and benefit of anyone damaged by a violation of this section, except that the bond shall not be required for dealers who are bonded in the same or a greater amount than required pursuant to the federal Packers and Stockyards Act.

Each employee or agent doing business by buying for resale, selling or exchanging feeder swine in the name of a licensed dealer, shall be required to secure a permit and identification card issued by the department showing he is employed by or represents a licensed dealer. All such permits and identification cards shall be issued upon application forms furnished by the department at a cost of three dollars per annum, and shall expire on the first day of July following the date of issue.

No permittee shall represent more than one dealer. Failure of any such licensee or permittee to comply with the provisions of this chapter or any rule made pursuant to this chapter is cause for revocation by the secretary of the permit or license after notice to the alleged offender and the holding of a hearing thereon by the secretary. Such rules and regulations shall be made in accordance with chapter 17A. Any rule, the violation of which is made the basis for revocation, except temporary emergency rules, shall first have been approved after public hearing as provided in section 17A.16 after giving twenty days' notice of such hearing as follows:

By mailing notice, by ordinary mail, to every person filing a request for notice accompanied by an addressed envelope with prepaid postage. Any person may file such a request to be listed with any agency for notice for the time and place for all hearings on proposed rules, which request shall be accompanied by a remittance of five dollars. Such fee shall be added to the operating fund of the department. The listing shall expire semiannually on January 1 and July 1.

4. All swine moved shall be individually identified with a distinctive and easily discernable ear tag affixed in either ear of the animal or other identification acceptable to the department, which has been specified by rule promulgated under the department's rulemaking authority. The department shall make ear tags available at convenient locations within each county and shall sell such tags at a price not exceeding the cost to producers and others to comply with this section.

Every seller, dealer and market operator shall keep a record of the ear tag numbers, or other approved identification, and the farm of origin of swine moved by or through him, which records shall be made available by him to any appropriate representative of the department or the United States department of agriculture.

5. All swine moved shall be accompanied by an official health certificate or veterinarian inspection certificate issued by the state of origin and prepared and signed by a veterinarian. The health certificate or veterinarian inspection certificate shall show the point of

origin, the point of destination, individual identification, immunization status, and, when required, any movement permit number assigned to the shipment by the department. All such movement of swine shall be completed within seventy-two hours unless an extension of time for movement is granted by the department.

However, swine may be moved intrastate directly to an approved state, federal or auction market without such identification or certification, there to be identified and certificated.

However, registered swine for exhibition or breeding purposes which can be individually identified by an ear notch or tattoo or other method approved by the department are excepted from this identification requirement. In addition, native Iowa swine moved from farm to farm may be excepted from the identification requirement if the seller and purchaser sign a statement providing that feeder pigs will not be commingled for a period of thirty days and such fact is stated on the health certificate.

6. The department may require issuance of movement permits on certain categories of swine moved, prior to their movement, pursuant to departmental rule. The rule shall be promulgated when in the judgment of the secretary, such movements would otherwise threaten or imperil the eradication of hog cholera in Iowa.

7. All swine moved shall be quarantined separate and apart from other swine located at the Iowa farm of destination for thirty days beginning with their arrival at such premises, or if such incoming swine are not held separate and apart, all swine on such premises shall be thus quarantined, except animals moving from such premises directly to slaughter.

There can only be one transfer by a dealer, involving not more than two markets, prior to quarantine.

8. The use of anti-hog-cholera serum or antibody concentrate shall be in accordance with rules issued by the department.

9. All swine found by a registered veterinarian to have any infectious, contagious, or communicable swine disease after delivery to any livestock sale barn or auction market for resale other than for slaughter, shall be immediately returned to the consignor's premises to be quarantined separate and apart for fifteen days. Such swine may not be moved from such premises for any purpose unless an official health certificate or veterinarian inspection certificate accompanies the movement or unless they are sent to slaughter. This subsection shall in no way supersede the requirements of sections 163A.2 and 163A.3. [C62, 66, §163.30; C71,§§163.30–163.33; C73, 75,§163.30]

163.31 to 163.33 Repealed by 64GA, ch 1046, §4.

CHAPTER 163A

BRUCELLOSIS CONTROL IN SWINE

Referred to in §§164.23, 164.24, 164.28

163A.1 Definitions.
163A.2 Test report required.
163A.3 Test within sixty days.
163A.4 Intrastate movement.
163A.5 Interstate shipments.
163A.6 Exhibition swine.
163A.7 Reactor tag.
163A.8 Swine for slaughter.
163A.9 Rules.
163A.10 Penalty.
163A.11 Educational program herds.
163A.12 Owner requesting test.

163A.1 Definitions. As used in this chapter:

1. *"Departments"* or *"department of agriculture"*, unless otherwise indicated, means the department of agriculture of the state of Iowa.

2. *"Brucellosis"* means the disease wherein an animal of the porcine species is infected with brucella microorganisms irrespective of the occurrence or absence of clinical symptoms of infectious abortion.

3. *"Brucellosis test"* means the test for brucellosis which is approved by the department and administered in accordance with the techniques approved by the department.

4. *"Infected animal"* or *"reactor"* means an animal which has given a positive reaction as determined by departmental standards to the brucellosis test.

5. *"Negative animal"* means an animal which does not give a positive reaction to the brucellosis test.

6. *"Accredited veterinarian"* means a veterinarian who is licensed by the state in which he practices, is approved by the department of agriculture or the livestock sanitary authority of that state, and is accredited by the United States department of agriculture.

7. *"Licensed veterinarian"* means a veterinarian licensed to practice in Iowa.

8. *"Official brucellosis test report"* means a legible record made on an official form prescribed by the department.

9. *"Health certificate"* or *"certificate of health"* or *"interstate health certificate"* means a legible record, made on an official form of the state of origin or the animal disease eradication branch of the United States department of agriculture or any successor agency thereto, and issued by an accredited veterinarian of the state of origin or a veterinarian in the employ of the animal disease eradication branch of the United States department of agriculture or any successor agency thereto, which shows that the animals listed thereon meet the health requirements of the state of destination.

10. *"Validated brucellosis-free herd"* means a herd which has had a minimum of two brucellosis tests made on all boars, sows and gilts over six months of age, between thirty and ninety days apart with no positive reactions. The validation shall be in force and effect for one year from the date of the last test and shall be renewable on an annual basis by the completion of a single test on boars, sows and gilts over six months of age with no reactions positive. [C62, 66, 71, 73, 75,§163A.1]

163A.2 Test report required. No person or partnership shall sell, offer for service, or transfer ownership of any breeding swine, as provided in section 163A.3, unless it is accompanied by a negative brucellosis test report. [C62, 66, 71, 73, 75,§163A.2]

Referred to in §163.30(9)

163A.3 Test within sixty days. No person or partnership shall sell or offer for service any breeding swine for breeding purposes unless such breeding swine is accompanied by an official brucellosis test report showing that the breeding swine has been tested by a licensed veterinarian within sixty days of sale or service and found to be negative to the brucellosis test. Such test shall be recognized for one change of ownership or service only within the sixty-day period. Thereafter, a negative test shall be required for each subsequent change of ownership or service.

If an animal is added to a validated brucellosis-free herd, it must be a negative animal that either comes from another validated brucellosis-free herd or has been negative to at least one brucellosis test, or if required by rules of the department, to two brucellosis tests conducted not less than thirty days nor more than sixty days apart, the last test being within thirty days prior to the introduction of the animal into the herd. [C62, 66, 71, 73, 75,§163A.3]

Referred to in §§163.30(9), 163A.2

163A.4 Intrastate movement. The brucellosis test for the intrastate movement of breeding swine shall be conducted by a licensed veterinarian who has been approved by the department of agriculture to operate a laboratory for making tests for brucellosis, or any official state or federal laboratory. [C62, 66, 71, 73, 75,§163A.4]

163A.5 Interstate shipments. All breeding swine four months of age and over, entering Iowa for breeding or exhibition purposes, shall be accompanied by an official interstate health certificate issued by an accredited veterinarian of the state of origin, showing that such swine meet the Iowa entry requirements and are negative to the test for brucellosis conducted by an official laboratory of the state of origin within thirty days of entry; provided, that swine from validated brucellosis-free herds may enter the state or be exhibited without a test for brucellosis when accompanied by a certificate of health issued by an accredited veterinarian of the state of origin or a veterinarian employed by the animal disease eradication branch of the United States department of agriculture or any successor agency thereto, showing such swine to have originated from brucellosis-free herds and giving the certificate herd number and showing that the herd has been tested within the past twelve months. [C62, 66, 71, 73, 75,§163A.5]

163A.6 Exhibition swine. All Iowa breeding swine four months of age and over for exhibition within the state of Iowa shall meet all requirements for exhibition purposes and shall also be accompanied by an official brucellosis test report showing the swine to have been negative to the brucellosis test conducted within sixty days of date of exhibition unless such swine are from validated brucellosis-free herds. [C62, 66, 71, 73, 75,§163A.6]

163A.7 Reactor tag. All swine showing a positive reaction to the brucellosis test shall be tagged in the left ear with a reactor identification tag and moved to slaughter on such form as shall be designated by the department within a thirty-day period from the date of test. The herd of origin shall be placed under immediate quarantine to be retested no sooner than thirty days or later than sixty days from the date of the test showing the positive reaction. Such quarantine shall remain in effect until a complete negative herd test is conducted on all swine intended or used for breeding purposes. [C62, 66, 71, 73, 75,§163A.7]

163A.8 Swine for slaughter. Swine from herds under quarantine may be moved to slaughter on a form designated for this purpose and issued by the department or an accredited veterinarian. [C62, 66, 71, 73, 75, §163A.8]

163A.9 Rules. The department may make and adopt reasonable rules for the administration and enforcement of the provisions of this chapter. [C62, 66, 71, 73, 75,§163A.9]

Referred to in §163A.12

163A.10 Penalty. Any person who shall violate any provision of this chapter or any rule adopted thereunder by the department of agriculture shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in

the county jail for not more than one year. [C62, 66, 71, 73, 75,§163A.10]

163A.11 Educational program herds. Any group of swine that is kept isolated from the parent herd and is known as a 4-H project or educational program of the farmer's sons or daughters shall be considered a separate and distinct herd. [C62, 66, 71, 73, 75,§163A.11]

163A.12 Owner requesting test. If the owner requests the department to inspect and test his breeding swine for brucellosis, and agrees to comply with the rules made by the department under section 163A.9, the department may designate a veterinarian to make an inspection and test, with the expense to be paid as provided in section 164.6 for cattle brucellosis testing, but only to the extent the funds provided in that section are not required for the cattle testing program. The board of supervisors shall reimburse the department for the expense of the inspection and testing program for swine brucellosis, from the "County Brucellosis Eradication Fund" established in section 164.24, but only to the extent that the moneys in the fund are not required for expenses incurred under chapter 164. [C73, 75, §163A.12]

CHAPTER 164

ERADICATION OF BOVINE BRUCELLOSIS

Referred to in §163A.12

See §§159.6, 163.2, 163A.12

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164.1 Definitions. As used in this chapter:

1. *"Department"* means the department of agriculture of the state of Iowa.

2. *"Condemned"* or *"reactor"* applies to cattle reacting to a test applied for brucellosis.

3. *"Quarantine"* means the entire herd must be confined to the premise if any reactor is disclosed.

4. *"Official test"* for brucellosis includes all tests under the supervision of, or the authorization from, the department.

5. *"Owner"* includes any person, persons, firm copartnership, association or corporation owning or leasing livestock from another owner.

6. *"Registered purebred"* shall include cattle with a certificate from herdbooks where registered.

7. *"Official calfhood vaccination"* shall mean the vaccination of any female calf of a dairy breed between the ages of two months and six months or any female calf of a beef breed between the ages of two months and ten months with brucella vaccine approved by U.S. department of agriculture, which calf shall have been vaccinated by a licensed accredited veterinarian according to the rules established by the department. The officially vaccinated animal shall be identified by a vaccination tattoo mark, and ear tag or owner's purebred identification. Such tattoo mark, ear tag or owner's purebred identification shall be described in a certificate furnished by the attending veterinarian.

Within thirty days following such vaccination, the attending veterinarian shall supply the owner with a certificate of vaccination. The veterinarian shall retain a copy of same and forward a copy to the local office of the U.S. department of agriculture or a copy to the Iowa department of agriculture.

8. *"Modified certified brucellosis area"* means an area of less than one percent brucellosis infection, as determined by official test, in all breeding cattle over eight months of age, and official vaccinates over thirty months of age, and all infected cattle are restricted to not more than five percent of the herds in the area.

9. *"State-approved premises"* means feedlot or grazing areas established at the discretion of the department for the feeding, fattening or growing of imported untested heifers over eight months of age but under twenty-four months of age, or native untested female cattle. Rules governing the operation of such premises shall be made at the discretion of the department and subject to the provisions of chapter 17A. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§164.1; 66GA, ch 127,§1]

164.2 Eradication area. The state of Iowa is hereby declared to be an eradication area. It shall be compulsory that every owner of dairy or breeding cattle within the area shall permit his cattle to be tested when so ordered by the department or a representative of the department. The owner shall confine and restrain his cattle in a suitable place so that a test can be applied. If he refuses to confine and restrain his cattle, after reasonable time the department may employ sufficient help to properly confine and restrain them and the expense of such help shall be paid by the owner. [C66, 71, 73, 75,§164.2]

164.3 Female calves vaccinated. All native female cattle of a dairy breed between the ages of two and six months and all native female cattle of a beef breed between the ages of two months and ten months may be officially vaccinated for brucellosis according to the method approved by the United States department of agriculture. The expense of such vaccination shall be borne in the same manner as set forth in section 164.6. [C54,§164.11; C58, 62, §164.28; C66, 71, 73, 75,§164.3; 66GA, ch 127,§2]

164.4 Rules. The department may adopt rules respecting the official testing of cattle, the disposal by segregation and quarantine or slaughter of condemned livestock, the disinfection of the premises, the introduction into the herd of other cattle, the control and eradication of brucellosis, the prevention of the spread thereof to the cattle of this state, and the proper enforcement of this chapter. [C46, 50, 54, 58, 62,§164.2; C66, 71, 73, 75,§164.4]

Referred to in §164.6

164.5 Request for test. Whenever the owner of cattle shall request the department to make an inspection of his cattle for brucellosis, the department may designate a veterinarian to make an inspection and, if authorized by the department, conduct a plate or tube agglutination test by the method or methods adopted and approved by the department. [C46, 50, 54, 58, 62,§164.3; C66, 71, 73, 75,§164.5]

164.6 Expense of test. If the owner shall agree to comply with and carry out the rules made by the department under section 164.4, the expense of such inspection and test shall be borne by the United States department of agriculture, or by the department, or county brucellosis eradication fund or any combination thereof. [C46, 50, 54, 58, 62,§164.4; C66, 71, 73, 75,§164.6]

Referred to in §§163A.12, 164.3

164.7 Certificate issued. Whenever an official test of any cattle is made by an accredited veterinarian authorized by the department, and such cattle are found to be free from brucellosis, a certificate, setting forth this fact, shall be issued by said veterinarian or the department, providing all rules under the plan adopted by the department for the control and eradication of brucellosis in cattle have been complied with. [C46, 50, 54, 58, 62, §§164.5, 164.6; C66, 71, 73, 75,§164.7]

164.8 Test at auction premises. Cattle purchased at an auction market regardless of breed or classification may be tested for brucellosis on the auction market premises, in the new owner's name at owner's request. This test must be made within twenty-four hours from the time of sale. If such test discloses reactors, the herd of origin shall be placed under quarantine. [C66, 71, 73, 75, §164.8]

164.9 Retest ordered. The department may order a retest of any breeding cattle at any time, when in their opinion, it is necessary. In case of reactors, one retest shall be granted the owner of the cattle by the department upon the request of the owner or owner's veterinarian, such retest of reactors shall be at the owner's expense. [C46, 50, 54, 58, 62, §164.7; C66, 71, 73, 75,§164.9]

164.10 Report of tests. A report of such tests shall be made in writing to the chief of the division of animal industry within seven days immediately following the completion of the tests, upon blanks furnished by the department and signed by the director of the laboratory or the person making the test. [C46, 50, 54, 58, 62,§164.8; C66, 71, 73, 75,§164.10]

164.11 Identification mark. All cattle subjected to an official test under the department shall be plainly and permanently marked for identification in a manner authorized by the department. All native grade cattle carrying the calfhood vaccination and all calves vaccinated after importation from other states shall be tattooed in the ear. All purebred registered cattle must be tattooed in the ear either with a vaccination tattoo or the purebred identification tattoo and the same shall be evidenced on the official certificate of vaccination. [C46, 50, 54, 58, 62,§164.9; C66, 71, 73, 75,§164.11]

164.12 Condemned marking. All cattle condemned as a result of a test for brucellosis shall be plainly and permanently marked for identification by any qualified veterinarian making test in a manner authorized by the department. [C46, 50, 54, 58, 62,§164.10; C66, 71, 73, 75,§164.12]

164.13 Unlawful acts. It shall be unlawful for any owner to sell or transfer ownership of

any bovine animal or allow commingling of cattle belonging to two or more owners, or the commingling of dairy or breeding cattle with cattle under feeder quarantine as feeding or grazing animals, unless they are accompanied by a negative brucellosis test report issued by an accredited veterinarian, conducted within thirty days. The provisions of this section do not apply to the following:

1. Calves under ten months of age, spayed heifers, and steers.

2. Official vaccinates under thirty months of age if accompanied by official calfhood vaccination certificates.

3. Animals consigned directly to slaughter.

4. Animals moved for exhibition purposes:

a. When under thirty months of age and accompanied by an official vaccination certificate,

b. Animals of any age when accompanied by a report of a negative brucellosis test conducted within seventy-five days.

5. Animals from a herd certified to be free of brucellosis or animals from a certified brucellosis area.

6. Cattle moved to a state-approved premises as provided by the department. [C54, 58, 62,§164.11; C66, 71, 73, 75,§164.13; 66GA, ch 127, §3]

164.14 Imported cattle.

1. Female cattle over ten months of age, and under twenty-four months not visibly pregnant, may enter the state for feeding purposes to be consigned to a state-approved premises under quarantine. Such cattle as well as native female animals over twenty-four months of age that have been consigned to the lot may be released from the premises if they meet one of the following requirements:

a. Consignment to slaughter.

b. Consignment to a federally approved market.

c. Consigned to another quarantined premises.

d. Tested negative to brucellosis at owner's expense. The test shall be made not less than thirty days after consignment to the premises.

2. Female cattle over twenty-four months of age may enter the state if they meet one of the following requirements:

a. Consigned to a federally approved market.

b. Consigned to a slaughter plant for immediate slaughter.

c. Accompanied by an official health certificate showing a record of a negative brucellosis test accomplished within thirty days of importation. [C54, 58, 62,§164.11(7a); C66, 71, 73, 75,§164.14; 66GA, ch 127,§4]

164.15 Quarantined cattle. No cattle shall be brought in contact with any condemned cattle held in quarantine. If any cattle are added to the quarantined lot, said cattle shall become a part of the lot and held subject to the same rules. [C46, 50, 54, 58, 62,§164.12; C66, 71, 73, 75,§164.15]

164.16 Movement or slaughter permit. No condemned cattle shall be slaughtered, have their location changed, or be moved from quarantine except by official written permit by the department or by a licensed veterinarian authorized by the department. [C46, 50, 54, 58, 62,§164.13; C66, 71, 73, 75,§164.16]

164.17 Condemned for slaughter permit. When a written order has been issued by the department or its authorized representative for the removal of condemned cattle to slaughter, all the cattle shall be tagged and handled within fifteen days after the date of testing; such cattle within thirty days shall be moved and slaughtered under the direct supervision of a duly authorized agent or representative of the United States department of agriculture at a time and place designated by the department. Any animal condemned because of brucellosis shall be disposed of by its owner within a period not to exceed forty-five days from the date on which blood samples were drawn disclosing it as a reactor. [C46, 50, 54, 58, 62,§164.14; C66, 71, 73, 75,§164.17]

164.18 Unlawful sale. No person shall sell, offer for sale, or purchase any cattle condemned as a result of an official test, except under regulations issued by the department. [C46, 50, 54, 58, 62,§164.15; C66, 71, 73, 75, §164.18]

164.19 Quarantine. The department may issue any quarantine orders deemed necessary for the control and eradication of brucellosis and the proper enforcement of this chapter. Any lot or group of cattle in which reactors have been disclosed shall be under quarantine along with any cattle from which the lot or group originated or commingled. Such cattle may be sold for slaughter under permit, or returned to their place of origin. In hardship cases the department may upon investigation of the case alter any quarantine orders deemed necessary to alleviate the hardship and protect the industry and prospective purchasers. The department shall promulgate rules subject to provisions of chapter 17A. [C46, 50, 54, 58, 62, §164.16; C66, 71, 73, 75,§164.19]

164.20 Appraisal of value. Before being slaughtered, condemned cattle shall be appraised at their cash value for dairy and breeding purposes by the owner and a representative of the state department of agriculture, or a representative of the United States department of agriculture, or by the owner and both of such representatives. If these parties cannot agree as to the amount of the appraisal, there shall be appointed three competent and disinterested persons, one by the state department of agriculture, one by the owner, and one by the first two appointed, to appraise such animals, which appraisal shall be final. [C46, 50, 54, 58, 62,§164.18; C66, 71, 73, 75,§164.20]

164.21 Amount of indemnity. The department shall certify the claim of the owner for

each animal slaughtered in accordance with this chapter. An infected herd may be completely depopulated and indemnity paid on individual animals when, in the opinion of the officials of the department and officials of the animal research service of the United States department of agriculture, the disease cannot be adequately controlled by routine testing.

Indemnity can only be paid if money is available in the county of origin and if indemnity payment is also made by the United States department of agriculture.

In the case of individual payment, all animals shall be individually appraised and the amount of indemnity shall be equal to the difference between the slaughter value and the appraisal price, less the amount of indemnity paid by the United States department of agriculture. The total amount of indemnity paid by the county of origin for a grade animal or a purebred animal shall not exceed two hundred dollars. However, if a purebred animal is purchased and owned for at least one year before testing and the owner can verify the actual cost, the board of supervisors of the county of origin may, by resolution award the payment of an additional indemnification not to exceed five hundred fifty dollars or the actual cost of the animal when purchased, whichever is less. [C46, 50, 54, 58, 62,§164.19; C66, 71, 73, 75,§164.21; 66GA, ch 127,§5]

Referred to in §164.23

164.22 Funds administered. All funds appropriated by the state for carrying out the provisions of this chapter shall be administered by the department for the payment of indemnity, salaries, and other necessary expenses. [C46, 50, 54, 58, 62,§164.20; C66, 71, 73, 75,§164.22]

164.23 Tax levy. In each county in the state, the board of supervisors shall each year, when it makes the levy for taxes, levy a tax sufficient to provide a fund to pay the indemnity, as set out in section 164.21, and other expenses provided in this chapter, and expenses of the inspection and testing program provided in chapter 163A, and such levy shall not exceed in any year thirteen and one-half cents per thousand dollars of assessed value of the taxable value of all the property in the county. [C46, 50, 54, 58, 62,§164.21; C66, 71, 73, 75,§164.23]

Referred to in §24.37

164.24 Collection of tax — transfer. Such levy shall be placed upon the tax list by the county auditor and collected by the county treasurer in the same manner and at the same time as other taxes of the county. The money derived from such levy shall be placed in a fund to be known as the "County Brucellosis Eradication Fund", and shall be used only for the payment of claims as provided in this chapter, and for payment of the expenses of the inspection and testing program provided in chapter 163A. However, the board of supervisors may transfer any unexpended funds from the county brucellosis eradication fund to the county tuberculosis eradication fund to meet any unpaid obligations of the county tuberculosis eradication fund. [C46, 50, 54, 58, 62,§164.22; C66, 71, 73, 75,§164.24; 66GA, ch 127, §6]

Referred to in §163A.12

164.25 Annual report. The county auditor of each county shall, not later than July 15 of each year, certify to the secretary of agriculture a report showing the amount in the brucellosis eradication fund on July 1 of each year. [C46, 50, 54, 58, 62,§164.23; C66, 71, 73, 75, §164.25]

164.26 Need for levy determined. Should it appear to the secretary of agriculture that the balance in such fund is sufficient, with the county's allotment of state and federal funds available, to carry on the work in such county for the ensuing year, he shall so certify to the county auditor, and, when such certification has been made, the board of supervisors shall make no levy for such brucellosis eradication fund for such year. [C46, 50, 54, 58, 62,§164.24; C66, 71, 73, 75,§164.26]

164.27 Limit on claims. Whenever the balance of such fund becomes less than twenty-five hundred dollars, the county auditor shall notify the department in writing of such fact, and no expense shall be incurred on such account in excess of the cash available in such fund. [C46, 50, 54, 58, 62,§164.25; C66, 71, 73, 75, §164.27]

164.28 Certification of claims. All claims presented under authority of this chapter and chapter 163A shall be certified by the department and filed with the county auditor, who shall present them to the board of supervisors, and such board shall allow and pay the same as other claims against the county. [C46, 50, 54, 58, 62,§164.26; C66, 71, 73, 75, §164.28]

164.29 Reciprocal agreements. The secretary of agriculture of the state of Iowa is hereby authorized and directed to enter into reciprocal agreements with other states to the end that cattle which are covered by certificates of vaccination in the state of Iowa and other states may be transported and sold in interstate commerce between the state of Iowa and such other states which enter into reciprocal agreements. [C50, 54, 58, 62,§164.27; C66, 71, 73, 75,§164.29]

164.30 Back tagging cattle received for sale or slaughter. All bovine animals two years of age and older received for sale or shipment to a slaughtering establishment shall be identified with a back tag issued by the department. The back tag shall be affixed to the animal as directed by the department. It shall be the duty of every livestock trucker when delivering to out-of-state markets, and every livestock dealer, livestock market operator,

stockyards operator, and slaughtering establishment to identify all such bovine animals not bearing a back tag at the time of taking possession or control of such animals. A livestock trucker may be exempted from this requirement if the animals are identified as to the farm of origin when delivered to a livestock market, stockyards, or slaughtering establishment which agrees to accept responsibility for back-tag identification. Every person required to identify animals in accordance with this section shall file reports of such identification on forms as specified by the department, including thereon the back-tag number and date of application; the name, address and county of residence of the person who owned or controlled the herd from which such animals originated; and whether the animal was of the beef or dairy type. Each such report should cover all animals identified during the preceding week. The removal of back tags shall be restricted to personnel specifically authorized by, and according to, instructions and policies issued by the department. The removal of back tags by unauthorized personnel shall be considered a violation of this section and subject to the penalties as provided in section 164.31. [C71, 73, 75,§164.30]

164.31 Penalties. Any person found guilty of violating the 'provisions of this chapter shall be deemed guilty of a misdemeanor and punished by a fine not to exceed one hundred dollars on first offense, two hundred dollars on second offense, and three hundred dollars on the third and all subsequent offenses. [C66, §164.30; C71, 73, 75,§164.31]

Referred to in §164.30

CHAPTER 165

ERADICATION OF BOVINE TUBERCULOSIS

Referred to in §§159.5, 159.6(3), 163.22

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165.1 Co-operation. The state department of agriculture is hereby authorized to co-operate with the federal department of agriculture for the purpose of eradicating tuberculosis from the dairy and beef breeds of cattle in the state. [C24, 27, 31, 35, 39,§2665; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.1]

165.2 State as accredited area. The state of Iowa is hereby declared to be and is hereby established as an accredited area for the eradication of bovine tuberculosis from the dairy and breeding cattle of the state. It shall be the duty of the department of agriculture to eradicate bovine tuberculosis in all of the counties of the state in the manner provided by law as it appears in this chapter. Said department shall proceed with the examination, including the tuberculin test, of all such cattle as rapidly as practicable and as is consistent with efficient work, and as funds are available for paying the indemnities as provided by law.

It shall be the duty of each and every owner of dairy or breeding cattle in the state to conform to and abide by the rules laid down by the state and federal departments of agriculture and follow their instructions designed to suppress the disease, prevent its spread, and avoid reinfection of the herd. [C24, 27, 31, 35, 39,§2666; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.2]

165.3 Appraisal. Before being tested, such animals shall be appraised at their cash value for breeding, dairy, or beef purposes by the owner and a representative of the state department of agriculture, or a representative of the federal department of agriculture, or by the owner and both of such representatives. If these parties cannot agree as to the amount of the appraisal, there shall be appointed three

competent and disinterested persons, one by the state department of agriculture, one by the owner, and the third by the first two appointed, to appraise such animals, which appraisal shall be final. Every appraisal shall be under oath or affirmation and the expense of the same shall be paid by the state, except as provided in this chapter. [C24, 27, 31, 35, 39,§2668; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.3]

165.4 Presence of tuberculosis. If, after such examination, tubercular animals are found, the department shall have authority to order such disposition of them as it considers most desirable and economical. If the department deems that a due regard for the public health warrants it, it may enter into a written agreement with the owner, subject to such conditions as it may prescribe, for the separation and quarantine of such diseased animals. Subject to such conditions, the diseased animals may continue to be used for breeding purposes. [C24, 27, 31, 35, 39,§2669; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.4]

Referred to in §165.5

165.5 Nonright to receive compensation. Any animal retained, under section 165.4, by the owner for ninety days after it has been adjudged infected with tuberculosis shall not be made the basis of any claim for compensation against the state. [C24, 27, 31, 35, 39,§2670; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.5]

165.6 Amount of indemnity. When breeding animals are slaughtered following any test, there shall be deducted from their appraised value the proceeds from the sale of salvage. The owner shall be paid by the state one-third of the sum remaining after the above deduction is made, but the state shall in no case pay to such owner a sum in excess of seventy-five dollars for any registered purebred animal or fifty dollars for any grade animal. [C24, 27, 31, 35, 39,§2671; C46, 50, 54, 58, 62, 66, 71, 73, 75, §165.6]

165.7 Pedigree. The pedigree of purebred cattle shall be proved by certificate of registry from the herdbooks where registered. [C24, 27, 31, 35, 39,§2672; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.7]

165.8 Right to receive pay. No compensation shall be paid to any person for an animal condemned for tuberculosis unless said animal, if produced in, or imported into, the state has been owned by such owner for at least six months prior to condemnation or was raised by such person. [C24, 27, 31, 35, 39,§2673; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.8]

165.9 Preference in examinations. The department in making examinations of cattle shall give priority to applications by owners for the testing of dairy cattle from which are sold, or are offered for sale, in cities milk or milk products in liquid or condensed form. [C24, 27, 31, 35, 39,§2674; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.9]

165.10 Examination by department. The department may at any time, on its own motion, make an examination of any herd, and in case animals are destroyed, the appraisement and payment shall be made as provided in this chapter. [C24, 27, 31, 35, 39,§2675; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.10]

165.11 Records public. All records pertaining to animals infected with tuberculosis shall be open for public inspection and the department shall furnish such information relative thereto as may be requested. [C24, 27, 31, 35, 39,§2676; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.11]

165.12 Tuberculosis-free herds. The department shall establish rules for determining when a herd of cattle, tested and maintained under the provisions of this chapter, the laws of the United States, and the rules of the state and federal departments of agriculture, shall be considered as tuberculosis-free. When any herd meets such requirements the owner shall be entitled to a certificate from the department showing that the herd is a tuberculosis-free accredited herd. Such certificate shall be revoked whenever the herd no longer meets the necessary requirements for an accredited herd, but the herd may be reinstated as an accredited herd upon subsequent compliance with such requirements. [C24, 27, 31, 35, 39,§2677; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.12]

165.13 Tuberculin. The department shall have control of the sale, distribution, and use of all tuberculin in the state, and shall formulate rules for its distribution and use. Only a licensed veterinarian shall apply a tuberculin test to cattle within this state. [C24, 27, 31, 35, 39,§2678; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.13]

165.14 Inspectors and assistants. The department may appoint one or more accredited veterinarians as inspectors for each county and one or more persons as assistants to such inspectors. Such inspectors, with the assistance of such person or persons, shall test the breeding cattle subject to test, as provided in this chapter, and shall be subject to the direction of the department in making such tests. [C24, 27, 31, 35, 39,§2679; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.14]

165.15 Accredited veterinarian. An accredited veterinarian is one who has successfully passed an examination set by the state and federal departments of agriculture and is authorized to make tuberculin tests of accredited herds of cattle under the uniform methods and rules governing accredited herd work which are approved by the United States department of agriculture. [C24, 27, 31, 35, 39,§2680; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.15]

165.16 Equipment for inspector. The department may furnish each inspector with the necessary tuberculin and other material, not including instruments and utensils, necessary to make the tests provided for in this chapter.

[C24, 27, 31, 35, 39,§2681; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.16]

165.17 Compensation. An inspector shall receive compensation for such testing as determined by the department. [C24, 27, 31, 35, 39,§2682; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.17]

See §79.9 et seq.

165.18 Eradication fund. In each county in the state, the board of supervisors shall each year when it makes the levy for taxes, levy a tax sufficient to provide a fund to pay the indemnity and other expenses provided in this chapter and section 159.5, subsection 12, except as provided herein, but such levy shall not exceed twenty and one-fourth cents per thousand dollars in any year upon the taxable value of all the property in the county. However, moneys shall be paid on expenses arising under section 159.5, subsection 12, only to the extent that such moneys are not required to pay expenses for bovine tuberculosis under this chapter. [C24, 27, 31, 35, 39,§2686; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.18]

40 ExGA, HF 68,§68, editorially divided
Referred to in §§24.37, 159.5
Time of levy, §444.9

165.19 Collection—transfer. Such levy shall be placed upon the tax list by the county auditor and collected by the county treasurer in the same manner and at the same time as other taxes of the county. The money derived from such levy shall be placed in a fund to be known as the county tuberculosis eradication fund, and the same shall only be used for the payment of claims as provided in this chapter and for payment of the expenses of the inspection, testing and indemnification program provided for the eradication of tuberculosis in swine. However, the board of supervisors may transfer any unexpended funds from the county tuberculosis eradication fund to the county brucellosis eradication fund to meet any unpaid obligations of the county brucellosis eradication fund. [C24, 27, 31, 35, 39,§2687; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.19; 66GA, ch 127,§7]

Collection of taxes, ch 445 et seq.

165.20 Report by auditor. The county auditor of each county shall, not later than July 15 of each year, certify to the secretary of agriculture a report showing the amount in the tuberculosis eradication fund on July 1 of each year. [C24, 27, 31, 35, 39,§2688; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.20]

165.21 Levy omitted. Should it appear to the secretary of agriculture that the balance in such fund is sufficient, with the county's allotment of state and federal funds available, to carry on the work in such county for the ensuing year, he shall so certify to the county auditor and when such certification has been made the board shall make no levy for such tuberculosis eradication fund for such year. [C24, 27, 31, 35, 39,§2689;C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.21]

165.22 Availability of county fund. After the amount allotted in any year by the department to any county has been expended or contracted in said county, or at any time that there ceases to be available for such county any federal funds for the eradication of bovine tuberculosis, the county eradication fund provided in this chapter shall become available as a substitute for either or both such funds for the payment of materials, indemnities, inspectors, and assistants as herein provided. [C24, 27, 31, 35, 39,§2690; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.22]

40ExGA, HF 68,§70, editorially divided
Referred to in §165.25

165.23 Exhaustion of state allotment. As soon as the allotment to the county has been spent or contracted, the department shall certify such fact to the county auditor, which certificate shall be full authority for the board of supervisors to pay claims as presented to the board by the department of agriculture out of the county eradication fund. [C24, 27, 31, 35, 39,§2691; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.23]

165.24 Exhaustion of county fund. Whenever the balance in such fund becomes less than twenty-five hundred dollars the county auditor shall notify the department in writing of such fact and no expense shall be incurred on such account in excess of the cash available in such fund. [C24, 27, 31, 35, 39,§2692; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.24]

165.25 Certification of claims. All claims presented under section 165.22 shall be certified by the department and filed with the county auditor who shall present them to the board of supervisors and such board shall allow and pay the same as other claims against the county. [C24, 27, 31, 35, 39,§2693; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.25]

Payment in general, §331.20

165.26 Permitting test. Every owner of dairy or breeding cattle in the state shall permit his cattle to be tested for tuberculosis as provided in this chapter, and shall confine his cattle in a proper place so that the examination and test can be applied. If he refuses to so confine his cattle the department may employ sufficient help to properly confine them and the expense of such help shall be paid by the owner or deducted from the indemnity if any is paid. Such owner shall comply with all the requirements for the establishment and maintenance of a tuberculosis-free accredited herd. [C24, 27, 31, 35, 39,§2699; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.26]

165.27 Penalty. Any owner of dairy or breeding cattle in the state who prevents, hinders, obstructs, or refuses to allow a veterinarian authorized by the department of agriculture to conduct such tests for tuberculosis on his cattle, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not

more than one hundred dollars, nor less than twenty-five dollars. [S13,§2538-s; C24, 27, 31, 35, 39,§2700; C46, 50, 54, 58, 62, 66, 71, 73, 75, §165.27]

Referred to in §165.29

165.28 Preventing test. The cattle owned by any owner who violates the provisions of this chapter, or which have reacted to the tuberculin test, shall be quarantined by the department until the law is complied with. When such quarantine is established no beef or dairy products shall be sold from cattle under quarantine until the test has been applied or the quarantine released.

The accredited veterinarians appointed under this chapter shall enforce this quarantine and all of the rules of the department of agriculture of the state of Iowa and of the provisions of this chapter, and in so doing may call to their assistance any peace officer of the state. [C24, 27, 31, 35, 39,§2701; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.28]

165.29 Notice. Before any action is commenced under section 165.27, upon request of the secretary of agriculture, the board of supervisors of any county shall cause such owner to be served with a written notice of the provisions of this chapter, at least fifteen days before the commencement of the action. [C24, 27, 31, 35, 39,§2702; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.29]

165.30 Allotment of funds. The department shall allot, on or before November 1 of each year, among the counties of the state in proportion to the number of breeding cattle owned in each county as shown by the last assessor's books, the amount of the state funds estimated to be available for the testing of cattle for tuberculosis. The department shall also attempt to secure a similar allotment each year of the available federal funds by the federal department of agriculture. [C24, 27, 31, 35, 39, §2703; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.30]

165.31 Transfer of funds. The amount of state funds allotted to each county shall be expended therein, but the department, whenever such moneys are not needed in any county, may transfer the same to any other county. [C24, 27, 31, 35, 39,§2704; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.31]

165.32 Retest. The secretary of agriculture may order a retest of any dairy or breeding cattle at any time when, in his opinion, it is necessary to do so, and shall, once in three years, order the tuberculin testing of any cattle to conform to and comply with the regulations of the federal bureau of animal industry in any county where the percentage of bovine tuberculosis has been reduced to one-half of one percent or less, subject to the provisions of this chapter with reference to the disposition or slaughtering of animals found to be reactors when given a tuberculin test. Such county shall be a modified accredited county, and it shall be unlawful for any person to transport any dairy or breeding cattle into such county unless they have been examined for tuberculosis as provided in this chapter. [C27, 31, 35,§2704-b1; C39,§2704.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.32]

Referred to in §165.33

165.33 Penalty. Any person found guilty of violating the provisions of section 165.32 shall be deemed guilty of a misdemeanor and punished by a fine of not to exceed one hundred dollars nor less than twenty-five dollars. [C31, 35,§2704-c1; C39,§2704.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.33]

165.34 Duty to levy tax. The board of supervisors shall use whatever tuberculosis eradication funds may be on hand in said county, and shall levy the tax provided in this chapter, each year for the purpose of paying the expenses of such testing and the indemnities provided for herein if the state and federal funds are not sufficient to pay the cost thereof and the indemnities for such animals. [C27, 31, 35, §2704-b2; C39,§2704.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.34]

43GA, ch 75,§11, editorially divided

165.35 Township animal board of health. The township trustees in such county are hereby constituted the animal board of health in their respective townships and they shall by April 1 of each year and at such other times as they shall deem advisable, make a survey and report to the state department of agriculture all breeding cattle brought into their respective townships from outside of the county. [C27, 31, 35,§2704-b3; C39,§2704.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.35]

165.36 Importation of cattle. No dairy or breeding cattle shall be shipped, driven on foot, or transported, into the state of Iowa, except upon one of the following conditions:

1. That such cattle come from a herd which has been officially accredited as a tuberculosis-free accredited herd by the state from which such cattle come or by the department of agriculture of the United States; or

2. That such cattle come from an area officially declared as a modified accredited area by such state or the department of agriculture of the United States, and the herd from which they originate, if previously infected, has passed two tests free from tuberculosis; or

3. That such cattle are brought into the state of Iowa under quarantine to be tuberculin tested for tuberculosis and fully examined in not less than sixty days nor more than ninety days, such test to be applied by a veterinarian accredited by the department of agriculture of the state of Iowa and at the expense of the owners. Such cattle brought in under quarantine shall be accompanied by an official certificate issued by a veterinarian accredited by the state from which the cattle come or by the

department of agriculture of the United States showing them to be free from tuberculosis. The quarantine thus provided for shall be established by the department of agriculture of the state of Iowa and shall not be released until the examination has been made and such cattle found free from tuberculosis. [C31, 35, §2704-c2; C39,§2704.5; C46, 50, 54, 58, 62, 66, 71, 73, 75,§165.36]

Additional provision, §163.11

CHAPTER 166

HOG-CHOLERA VIRUS AND SERUM

Referred to in §§155.2(1), 159.6(4)

See §266.24 et seq. re serum laboratory

166.1 Definitions.
166.2 Rules.
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166.9 Liability of manufacturer.
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166.16 Sales—limitation.
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166.29 Reports by manufacturers and dealers.
166.30 and 166.31 Repealed by 61GA, ch 177,§2.
166.32 Repealed by 63GA, ch 142,§9.
166.33 Repealed by 61GA, ch 177,§2.
166.34 Seizure of samples.
166.35 Condemnation and destruction.
166.36 Defacing labels.
166.37 Price of virus.
166.38 Compensation.
166.39 Violations.
166.40 Repealed by 61GA, ch 177,§2.
166.41 Hog-cholera vaccine prohibited—emergency.
166.42 Biological products reserve—use.

166.1 Definitions. When used in this chapter:

1. The words *"biological products"* shall include and be deemed to embrace only anti-hog-cholera serum and viruses which are either virulent or nonvirulent, alive or dead.

2. *"Manufacturer"* includes every person engaged in the preparation, at any stage of the process, of biological products, except those engaged in such preparation in the biological laboratory in the Iowa State University of science and technology, or in any other state or governmental institution.

3. *"Dealer"* includes every person who, for profit, sells, dispenses, or distributes, or offers to do so, either as principal or agent, biological products, except:

a. A manufacturer selling direct to any person licensed under this chapter to sell, dispense, or distribute such biological products.

b. A regularly licensed veterinarian who uses such biological products in his professional practice and does not use it for sale or distribution to any other person.

4. *"Place of business"* is construed to mean each place or premises where biological products are sold, or where biological products are stored or kept for the purpose of sale, dispensation or distribution, or where biological products are offered for sale, dispensation or distribution. [SS15,§2538-w12; C24, 27, 31, 35, 39,§2705; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.1]

166.2 Rules. The department shall have power to make such rules governing the manufacture, sale, and distribution of biological products as it deems necessary to maintain their potency and purity. [SS15,§2538-w3; C24, 27, 31, 35, 39,§2706; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.2]

166.3 Permit to manufacture or sell. Every person, before engaging as a manufacturer of, or dealer in, biological products shall obtain from the department of agriculture a permit for that purpose and shall be required to have a separate permit for each place of business. No pharmacy licensed under chapter 155 shall be required to obtain a dealer's permit to deal in biological products. [SS15,§2538-w3; C24, 27, 31, 35, 39,§2707; C46, 50, 54, 58, 62, 66, 71, 73, 75, §166.3]

166.4 Application for permit. Every application for such a permit shall be made on a form provided by the department, which form shall call for such information as the department shall deem necessary, including the name and place of business of the applicant. [SS15,§2538-w3; C24, 27, 31, 35, 39,§2708; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.4]

166.5 Manufacturer's permit. An application for a permit to manufacture biological products shall be accompanied by evidence satisfactory to the department that the applicant is the holder of a valid, unrevoked, United States department of agriculture license for

the manufacture and sale of such biological products. [C24, 27, 31, 35, 39,§2709; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.5]

166.6 Dealer's permit. An application for a permit to deal in biological products shall be accompanied by a separate bond for each place of business, with sureties to be approved by the department, in the sum of one thousand dollars for each place of business, which bond shall be conditioned:

1. To faithfully comply with all laws governing the warehousing, sale, and distribution of biological products, and with all the rules of the department relating to such biological products.

2. To indemnify any person who uses any such biological products sold by the principal and is damaged by the negligence of the principal, or any of his agents, in the warehousing, handling, sale, or distribution of such biological products.

3. To pay to the state all penalties which may be adjudged against the principal. [SS15, §2538-w3; C24, 27, 31, 35, 39,§2710; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.6]

See §166.13

166.7 Liability on bond. The principal on such bond shall be liable to every person for any damage caused by the negligence of the principal or of his agents, notwithstanding the execution of the bond. [C24, 27, 31, 35, 39,§2711; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.7]

166.8 New or additional bond. When judgment is rendered on such bond, the principal shall immediately execute and file with the department a new or additional bond, conditioned as the original bond, and in an amount to be fixed by the department, which will furnish the same amount of security that was furnished before the original bond was impaired. [C24, 27, 31, 35, 39,§2712; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.8]

166.9 Liability of manufacturer. A manufacturer shall be liable to an injured person for all damages which occur:

1. By reason of the negligence of the manufacturer or his employees in the manufacture, warehousing, handling, or distribution of biological products.

2. By reason of the failure of the manufacturer, or his employees, to discharge any duty imposed by law, or by the rules of the department. [C24, 27, 31, 35, 39,§2713; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.9]

166.10 Fees. Fees for permits shall be paid by the manufacturer or dealer to the department when the application for such permit is made and shall be:

1. In case of a manufacturer, twenty-five dollars for each plant at which it is proposed to manufacture biological products.

2. In case of a dealer, five dollars for each place of business, warehouse or distributing agency of the dealer. [SS15,§2538-w3; C24, 27, 31, 35, 39,§2714; C46, 50, 54, 58, 62, 66, 71, 73, 75, §166.10]

166.11 Inspection of premises. The premises upon which the business authorized by such permit is carried on shall be subject at all times to inspection by the department. Before issuing an original permit, the department may cause the proposed premises to be inspected, and shall make such requirements regarding the physical conditions and sanitation of said premises as it may deem necessary to secure and maintain the potency and purity of the biological products. If such requirements are not complied with and maintained, the permit shall be refused or revoked as the case may be. [SS15,§2538-w3; C24, 27, 31, 35, 39, §2715; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.11]

166.12 Manufacturer's or dealer's permit. Every permit issued to a manufacturer or dealer shall expire on the first day of July following the date of issuance. A renewal of the same shall be subject to all the conditions, including fees, that are required in the case of an original permit. [SS15,§2538-w3; C24, 27, 31, 35, 39,§2716; C46, 50, 54, 58, 62, 66, 71, 73, 75, §166.12]

166.13 Revocation of permit. Such a permit shall be automatically revoked:

1. In case of a dealer, by his failure to execute and file with the department a new and approved bond when required by law, or by his failure to obtain a separate permit and to file a separate bond in the amount of five thousand dollars for each place of business.

2. In case of a manufacturer, by his ceasing to be the holder of a United States department of agriculture license for the manufacture and sale of biological products.

3. In case of either a manufacturer or dealer, for discrimination in the price at which such biological products are sold, and such permit shall not in such case be renewed for one year. [SS15,§2538-w3; C24, 27, 31, 35, 39,§2717; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.13]

See §166.6

166.14 Revocation by department. Such a permit may also be revoked by the department at any time after a reasonable notice and hearing:

1. For violation of the terms, conditions, and requirements on which it was issued.

2. For violation of any law, or of any rule of the department, relating to the business authorized by such permit.

3. In case of a dealer's permit, when a judgment has been rendered on the bond, or when the security of such bond has become impaired in any other way and no new bond is given as required by the department. [SS15,§2538-w3; C24, 27, 31, 35, 39,§2718; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.14]

166.15 Prohibited sales. No biological products shall be sold, offered for sale, distributed, or used, unless produced at a plant which, at the time of producing, held a United States department of agriculture license for the manufacture of such biological products. [SS15, §2538-w3; C24, 27, 31, 35, 39,§**2719**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.15]

166.16 Sales—limitation. No person shall sell, distribute, use, or offer to sell, distribute, or use virulent blood or virus from cholera-infected hogs except for one or more of the following purposes:

1. For the purpose of interstate or foreign shipment of such blood or virus.

2. For the purpose of research at any biological laboratory or by any manufacturer of biological products.

3. For the purpose of testing biological products by any governmental authority or by any manufacturer of biological products.

4. For the purpose of manufacturing any biological products or for the purpose of producing immune hogs to be used in the production of hog-cholera serum. [SS15,§2538-w5; C24, 27, 31, 35, 39,§**2720**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.16]

Referred to in §166.41

166.17 to 166.28 Repealed by 61GA, ch 177,§2.

166.29 Reports by manufacturers and dealers. A person holding a permit as manufacturer or dealer shall make such written reports to the department relative to biological products as it may from time to time require. [SS15,§2538-w5; C24, 27, 31, 35, 39,§**2733**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.29]

166.30 and 166.31 Repealed by 61GA, ch 177, §2.

166.32 Repealed by 63GA, ch 142,§9.

166.33 Repealed by 61GA, ch 177,§2.

166.34 Seizure of samples. The department may seize, at any time or place, for examination, samples of biological products manufactured or kept for use or sale within the state. [S13,§2538-w6; C24, 27, 31, 35, 39,§**2738**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.34]

166.35 Condemnation and destruction. The department shall have power to condemn and destroy any biological products which it deems unsafe. [S13,§2538-w6; C24, 27, 31, 35, 39,§**2739**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.35]

166.36 Defacing labels. No person shall remove or deface any label upon the bottles or packages containing any biological products or change the contents from the original container except for immediate use. [SS15,§2538-w8; C24, 27, 31, 35, 39,§**2740**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.36]

166.37 Price of virus. Persons holding permits, either as manufacturers or dealers, shall sell all biological products at a uniform price to all persons to whom sales are made. No rebate on said price shall be given, either directly or indirectly, in any manner whatsoever. [C24, 27, 31, 35, 39,§**2741**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.37]

166.38 Compensation. No licensed veterinarian shall receive, directly or indirectly, any compensation of any kind for the handling, sale, or use of any biological products, other than his charges for administering the same, unless he makes known in writing the amount of such compensation, if requested to do so by the person using biological products. Any veterinarian violating this section shall forfeit his license to practice and the same shall not be renewed for a period of one year. [C24, 27, 31, 35, 39,§**2742**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §166.38]

Revocation of license, §169.36

166.39 Violations. Any person who violates any provision of this chapter, or any rule of the department, or who shall hinder or attempt to hinder the department or any duly authorized agent or official thereof in the discharge of his duty, shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars. [S13,§2538-w7; C24, 27, 31, 35, 39,§**2743**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§166.39]

166.40 Repealed by 61GA, ch 177,§2.

166.41 Hog-cholera vaccine prohibited — emergency. The sale or use of hog-cholera vaccine, except as provided in section 166.16 is prohibited and it shall be unlawful to use such products in the state of Iowa, except that in case of emergency as defined in section 166.42, a special permit for the use of vaccines may be issued by the secretary. [C66, 71, 73, 75,§166.41]

166.42 Biological products reserve—use. The secretary may establish a reserve supply of biological products of approved modified live virus hog-cholera vaccine and of anti-hog-cholera serum or its equivalent in antibody concentrate to be used as directed by the secretary in the event of an emergency resulting from a hog-cholera outbreak. Vaccine and serum or antibody concentrate from the reserve supply, if used for such an emergency, shall be made available to swine producers at a price which will not result in a profit. Payment shall be made by the producer to the department and such vaccine shall be administered by a licensed practicing veterinarian. The secretary may co-operate with other states in the accumulation, maintenance and disbursement of such reserve supply of biological products. The secretary, with the advice and written consent of the chief of the division of animal industry of the state, and the advice and written consent of the veterinarian-in-charge in Iowa, animal health division, United States department of agriculture, shall determine when an emergency resulting from a hog-cholera outbreak exists.

The secretary is authorized to sell or otherwise dispose of such vaccine and serum at such time as the state is declared a hog-cholera-free state by the United States department of agriculture, or if the potency of such vaccine and serum is in doubt. Money received under provisions of this section shall be paid into the state treasury. [C71, 73, 75,§166.42]

Referred to in §166.41

CHAPTER 166A

SCABIES CONTROL IN SHEEP

166A.1 Definitions.
166A.2 Sheep dealer's license.
166A.3 Injunction.
166A.4 Dipping.
166A.5 Certificate.
166A.6 Records kept.
166A.7 Slaughter without dipping.
166A.8 Quarantine of infected sheep.
166A.9 Scabies-free areas.
166A.10 Restraint of movement.
166A.11 Sheep entering state.
166A.12 Shearers' reports.
166A.13 Rules.
166A.14 Penalty.

166A.1 Definitions.

1. *"Department"* means the department of agriculture of the state of Iowa.

2. *"Division"* means the animal disease eradication division of the agricultural research service of the United States department of agriculture.

3. *"Scabies"* means a communicable skin disease caused by infestation with mites of the species psoroptes, sarcoptes, chorioptes or psorergates.

4. *"Infected animal"* means an animal of the ovine species which shows clinical evidence of scabies or in which the presence of the scabies mite is demonstrated.

5. *"Approved stockyard or livestock market"* means any place where sheep are assembled for public auction, private sale, or on a commission basis which is under state or federal supervision.

6. *"Dealer"* means any person who is engaged in the business of buying for resale, selling, or exchanging sheep as a principal or agent or who holds himself out as so engaged but does not include employees of a dealer doing business in the name of such dealer or the owner or operator of a farm who exchanges only sheep which have been kept by him solely for feeding or breeding purposes and does not hold himself out as so engaged, or as a livestock auction market acting strictly on a consignment basis.

7. *"Accredited veterinarian"* means a veterinarian who is licensed by the state in which he practices, is approved by the department of agriculture or the livestock sanitary authority of that state, and is accredited by the United States department of agriculture.

8. *"Official health certificate"* means a legal record covering the requirement of the state of Iowa and approved by the proper livestock sanitary official of the state of origin and issued by an accredited veterinarian.

9. *"Certified scabies-free area"* means an area in which all sheep have been inspected by a representative of the Iowa department of agriculture or of the animal disease eradication division of the United States department of agriculture and are found to be free of any evidence of scabies and such fact is certified to by both agencies.

10. *"Area"* means one or more counties or portions thereof. [C66, 71, 73, 75,§166A.1]

166A.2 Sheep dealer's license. Any person engaged as a dealer shall be required to obtain a license from the department. The fee for such license shall be five dollars per year and all licenses shall expire on the first day of July following date of issue. Licenses shall be numbered and the dealer shall retain his number from year to year.

Applications for licenses shall be made upon blanks furnished by the department.

For good and sufficient grounds the department may refuse to grant a license to any applicant, and it may also revoke a license to any applicant for a violation of any provision of this chapter, or for the refusal or failure of any licensee to obey the lawful directions of the department.

Any person who is licensed as a sheep dealer under chapter 172A shall be exempt from this section. [C66, 71, 73, 75,§166A.2]

166A.3 Injunction. Any person engaging in, or holding himself out to be in, the business of a dealer without obtaining a license may be restrained by injunction, and shall pay all costs made necessary by such procedure. [C66, 71, 73, 75,§166A.3]

166A.4 Dipping. All breeding and feeding sheep offered for sale or exchange or otherwise moved or released from any premises, vehicle or conveyance, shall, within ten days prior to exchange, release, or movement, be dipped in an approved dip under the supervision of the Iowa department of agriculture

or of the animal disease eradication division of the United States department of agriculture; provided, that when sheep are moved within or from a certified scabies-free area in the state accompanied by an official health certificate, dipping shall not be required prior to such movement; and provided further, that sheep may be moved from premises to an approved facility for the purpose of dipping under such conditions as may be required by the rules of the department, and also sheep moved to a livestock auction market need not be dipped until after sale, nor if consigned directly for slaughter. [C66, 71, 73, 75, §166A.4]

166A.5 Certificate. All sheep so dipped shall be accompanied by a certificate showing that the sheep were dipped under supervision. [C66, 71, 73, 75,§166A.5]

166A.6 Records kept. Market operators and dealers in sheep shall use satisfactory dipping facilities approved by the department and shall maintain records which show the true origin of the sheep including name and address of the seller or consignor, number, date of receipt, date of dipping, and including all certificates, permits, waybills, bills of lading for each consignment of sheep consigned to and leaving the market or dealer's premises. All records shall be retained for a period of one year and made available upon demand by a representative of the department. [C66, 71, 73, 75,§166A.6]

166A.7 Slaughter without dipping. Animals may be sold for slaughter without dipping. Sheep when inspected at the market or dealer's premises and found free of scabies or no known exposure thereto, may be sold for slaughter purposes without dipping if consigned directly and immediately on a slaughter affidavit to a slaughtering establishment operating under federal, state or municipal meat inspection service. Such sheep shall be identified with the letter "K" in red branding paint at least four inches high on their back except those consigned to such slaughtering establishment by the original owner. [C66, 71, 73, 75, §166A.7]

166A.8 Quarantine of infected sheep. Sheep found to be infected with or exposed to scabies shall be immediately dipped, as directed by and under the supervision of the department, at owner's expense. Such sheep shall remain under quarantine until released by the department, except that sheep infected with or exposed to scabies may be moved, without dipping, directly to a slaughter establishment under federal inspection, under permit from the department. No sheep shall be moved into or within the state of Iowa for any purpose except as provided in this chapter and the regulations of the department, provided sheep may be moved without dipping between properties owned or rented by the owner of said sheep, if not moved from a noncertified scabies-free area to a certified scabies-free area.

Any person may sell or exchange sheep on the farm between November 1 and April 1 without dipping if accompanied by a certificate from a licensed veterinarian that they are free from scabies issued within ten days prior to such sale or exchange until such time as the county is declared a scabies-free area. [C66, 71, 73, 75,§166A.8]

166A.9 Scabies-free areas. When all flocks of sheep within a county have been inspected by a representative of the department and are found to be free of scabies, the department may certify the county as a "scabies-free area." [C66, 71, 73, 75,§166A.9]

166A.10 Restraint of movement. Sheep from noncertified scabies-free areas within Iowa shall not enter certified scabies-free areas unless they have been dipped in an approved dip under supervision within ten days preceding movement and satisfactory evidence of dipping accompanies the shipment, except such sheep may move into certified scabies-free areas if consigned directly to a stockyard market, auction market or slaughter establishment, under federal inspection, provided the sheep are accompanied by a certificate stating number, description, consignor and consignee. [C66, 71, 73, 75,§166A.10]

166A.11 Sheep entering state. All sheep entering the state for breeding or feeding purposes shall be accompanied by a permit and by a health certificate stating the sheep are from a certified scabies-free area or if not from a certified scabies-free area that they have been dipped in an approved dip within ten days prior to movement. All livestock markets, dealers and individuals shall retain all incoming waybills, permits and health certificates for a period of one year, same to be made available upon demand by the department. [C66, 71, 73, 75,§166A.11]

166A.12 Shearers' reports. All persons engaged in the shearing of sheep shall immediately report any suspicion of or evidence of scabies to the department. [C66, 71, 73, 75, §166A.12]

166A.13 Rules. The department is empowered to make and promulgate rules necessary for carrying out the provisions of this chapter. [C66, 71, 73, 75,§166A.13]

166A.14 Penalty. Any person, firm or partnership or corporation violating the provisions of this chapter shall upon conviction thereof be fined not less than one hundred dollars and not to exceed five hundred dollars. [C66, 71, 73, 75,§166A.14]

CHAPTER 166B

ERADICATION OF HOG CHOLERA

166B.1 Definitions.
166B.2 General authority.
166B.3 Appraisal and indemnification.
166B.4 Institution of indemnification.
166B.5 Co-operation with United States.
166B.6 Rules.
166B.7 Judicial review.

166B.1 Definitions. As used in this chapter:

1. "*Hog cholera*" means the contagious, infectious, and communicable disease of swine commonly known as hog cholera.

2. "*Destroy*" means condemn under state authority and slaughter or otherwise kill as a result of or pursuant to such condemnation.

3. "*Department of agriculture*" means the department of agriculture of the state of Iowa.

4. "*Exposed*" means all swine in physical contact with a known infected herd or tended by a person having direct contact with an infected herd. [C66, 71, 73, 75,§166B.1]

166B.2 General authority. The department of agriculture may destroy or require the destruction of any swine which the state veterinarian knows to be, or suspects is, affected with or exposed to hog cholera, whenever the department of agriculture finds such destruction to be necessary to prevent or reduce the danger of the spread of hog cholera. Disposal of condemned swine shall be under the supervision of a regulatory employee. Salvage of apparently healthy marketable swine is permissible as a minimum provision and may be discontinued in favor of total herd disposition with indemnification as necessary and without such salvage in any case or at any time when it is determined by the department of agriculture and the United States department of agriculture that the procedure would constitute an undue threat to the eradication program. Before being condemned and ordered to be destroyed, a positive diagnosis of hog cholera affecting the herd must be confirmed by a state or federal laboratory or personnel approved by the department of agriculture and the United States department of agriculture. [C66, 71, 73, 75,§166B.2]

166B.3 Appraisal and indemnification. The department of agriculture shall appraise any swine destroyed or ordered destroyed pursuant to this chapter at not to exceed current market value and shall indemnify the owner of such swine in an amount not to exceed two hundred dollars for purebred, inbred or hybrid or breeding swine; and not to exceed one hundred dollars for all other swine, provided that fifty percent or more of all such indemnities are paid by the United States department of agriculture. [C66, 71, 73, 75,§166B.3]

166B.4 Institution of indemnification. It is hereby recognized and declared that indemnification for destruction of swine infected with or exposed to hog cholera is an expression of the public policy of this state but employed only in the final stages of eradication of the disease, or as a means of preventing or minimizing its recurrence. The department of agriculture shall not therefore institute an initial program of indemnification pursuant to the chapter until it is mutually agreed between the state department of agriculture and the United States department of agriculture that such action is necessary in order to carry out the hog-cholera eradication program. [C66, 71, 73, 75,§166B.4]

166B.5 Co-operation with United States. The department of agriculture may co-operate with the United States, or any department, agency or officer thereof, in the control and eradication of hog cholera, including the sharing in payment of indemnities for swine destroyed. [C66, 71, 73, 75,§166B.5]

166B.6 Rules. The department of agriculture may make, promulgate, amend, repeal, and enforce necessary rules for implementing this chapter. [C66, 71, 73, 75,§166B.6]

166B.7 Judicial review. Judicial review of department of agriculture action under this chapter may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county, wherein the hogs are situated. [C66, 71, 73, 75,§166B.7]

Temporary provisions, see 63GA, ch 142,§14

CHAPTER 167

USE AND DISPOSAL OF DEAD ANIMALS

Referred to in §159.6(5)

167.1 Scope.
167.2 Disposal of dead animals.
167.3 "Disposing" defined.
167.4 Application for license.

167.5 Inspection of place.
167.6 License.
167.7 Record of licenses.
167.8 Inspection revealing unsuitable place.
167.9 Return of fee.
167.10 Renewal of license.
167.11 Disposal plants—specifications.
167.12 Disposing of bodies.
167.13 Rules.
167.14 Annual inspection.
167.15 Transportation of dead animals.
167.16 Driving upon premises of another.
167.17 Disinfecting outfit.
167.18 Duty to dispose of dead bodies.
167.19 Penalty.
167.20 Appropriation.
167.21 Reciprocal agreements with other states.

167.1 Scope. This chapter shall not apply to licensed slaughterhouses, or to the disposal, by licensed slaughterhouses, of the bodies of animals, or any part thereof, slaughtered for human food. [C24, 27, 31, 35, 39,§**2744**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.1]

167.2 Disposal of dead animals. No person shall engage in the business of disposing of the bodies of dead animals without first obtaining a license for that purpose from the department of agriculture. [C24, 27, 31, 35, 39,§**2745**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.2]

167.3 "Disposing" defined. Any person who shall receive from any other person the body of any dead animal for the purpose of obtaining the hide, skin, or grease from such animal, in any way whatsoever, or any part thereof, shall be deemed to be engaged in the business of disposing of the bodies of dead animals, and must be the operator or employee of a licensed disposal plant. [C24, 27, 31, 35, 39,§**2746**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.3]

167.4 Application for license. Application for such license shall be made to the department on forms provided by it, which application shall set forth the name and residence of the applicant, his proposed place of business, and the particular method which he intends to employ in disposing of such dead bodies, and such other information as the department may require. Said application shall be accompanied by a fee of one hundred dollars. [C24, 27, 31, 35, 39,§**2747**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §167.4]

167.5 Inspection of place. On receipt of such application, the secretary of agriculture or some person appointed by him, shall at once inspect the building in which the applicant proposes to conduct such business. If the inspector finds that said building complies with the requirements of this chapter, and with the rules of the department, and that the applicant is a responsible and suitable person, he shall so certify in writing to such specific findings, and forward the same to the department. [C24, 27, 31, 35, 39,§**2748**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.5]

167.6 License. On the receipt of the foregoing certificate, and the additional payment of one hundred dollars, the department shall issue a license to the applicant to conduct such business, at the place specified in the application, for one calendar year, but the department shall not issue license for disposal plant not located within the boundaries of the state of Iowa. [C24, 27, 31, 35, 39,§**2749**; **C46**, 50, 54, 58, 62, 66, 71, 73, 75,§167.6]

167.7 Record of licenses. The department shall keep a record of all licenses applied for or issued, which shall show the date of application and by whom made, the cause of all rejections, the date of issue, to whom issued, the date of expiration, and the location of the licensed business. [C24, 27, 31, 35, 39,§**2750**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.7]

167.8 Inspection revealing unsuitable place. If the inspector finds that said building does not comply with the requirements of this chapter or with the rules of the department, he shall notify the applicant wherein the same fails to so comply. If within a reasonable time thereafter, to be fixed by the inspector, the specified defects are remedied, the department shall make a second inspection, and proceed therewith as in case of an original inspection. Not more than two inspections need be made under one application. [C24, 27, 31, 35, 39, §**2751**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.8]

167.9 Return of fee. In case such applicant is refused a license, no part of the fees paid by him shall be refunded. [C24, 27, 31, 35, 39, §**2752**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.9]

167.10 Renewal of license. An original license shall be renewed for each subsequent calendar year on the payment of one hundred dollars, provided the holder, in the opinion of the department, remains responsible and suitable to carry on said business, and the place of business continues to comply with this chapter and the rules of the department, as they then exist. [C24, 27, 31, 35, 39,§**2753**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.10]

167.11 Disposal plants—specifications. Each place for the carrying on of said business shall, to the satisfaction of the department, be provided with floors constructed of concrete, or some other nonabsorbent material, adequate drainage, be thoroughly sanitary, and adapted to carrying on the business.

This section shall not apply where the state building code has been adopted or when the state building code applies throughout the state. [C24, 27, 31, 35, 39,§**2754**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.11]

167.12 Disposing of bodies. The following requirements shall be observed in the disposal of such bodies:

1. Cooking vats or tanks shall be airtight, except proper escapes for live steam.
2. Steam shall be so disposed of as not to cause unnecessary annoyance or create a nuisance.
3. The skinning and dismembering of bodies shall be done within said building.
4. The building shall be so situated and arranged, and the business therein so conducted, as not to interfere with the comfortable enjoyment of life and property.
5. Such portions of bodies as are not entirely consumed by cooking or burning shall be disposed of by burying as hereafter provided, or in such manner as the department may direct.
6. In case of disposal by burying, the burial shall be to such depth that no part of such body shall be nearer than four feet to the natural surface of the ground, and every part of such body shall be covered with quicklime, and by at least four feet of earth.
7. All bodies shall be disposed of within twenty-four hours after death. [C24, 27, 31, 35, 39,§**2755**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.12]

167.13 Rules. The department shall make such reasonable rules for the carrying on and conducting of such business as it may deem advisable, and all persons engaging in such business shall comply therewith. [C24, 27, 31, 35, 39,§**2756**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §167.13]

167.14 Annual inspection. The department shall inspect each place licensed under this chapter at least once each year, and as often as it deems necessary, and shall see that the licensee conducts the business in conformity to this chapter and the rules made by the department. For a failure or refusal by any licensee to obey the provisions of this chapter or said rules, the department shall suspend or revoke the license held by such licensee. [C24, 27, 31, 35, 39,§**2757**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.14]

167.15 Transportation of dead animals. Any person holding a license under the provisions of this chapter may haul and transport the carcasses of animals that have died from disease, except those prohibited by the department, in a covered conveyance, the bed, box, tank or other type of container of which must be covered and watertight, and is so constructed that no drippings or seepings from such carcasses can escape from such bed, box, tank or other type of container, and said carcasses shall not be moved from said bed, box, tank or other type of container except at the place of final disposal or at a place maintained for the purpose of transferring said carcasses from one conveyance to another, such transfer place being subject to all provisions of this chapter relative to licensing, inspection, and sanitation of disposal places. The department may prescribe additional requirements governing the construction and operation of such vehicles, transfer places and such transportation not inconsistent with the above. [C24, 27, 31, 35, 39,§**2758**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §167.15]

167.16 Driving upon premises of another. Vehicles when loaded with the carcass of an animal which has died of disease shall be driven directly to the place of disposal or transfer, except that the driver in so driving may stop on the highway for other like carcasses, but he shall not drive into the yard or upon the premises of any person unless he first obtains the permission of the person to do so. [C24, 27, 31, 35, 39,§**2759**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.16]

167.17 Disinfecting outfit. The driver or owner of a vehicle used in conveying animals which said driver or owner has reason to believe died of disease, shall, immediately after unloading said animals, cause the bed, box, tank or other container of such vehicle, the wheels thereof, all canvas and covers, the feet of the animals drawing said conveyance, and the outer clothing of all persons who have handled said carcasses to be disinfected with a solution of at least one part of cresol dip to four parts of water, or with some other equally effective disinfectant. [C24, 27, 31, 35, 39,§**2760**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.17]

167.18 Duty to dispose of dead bodies. No person caring for or owning any animal that has died shall allow the carcass to lie about his premises. Such carcass shall be disposed of within twenty-four hours after death by cooking, burying, or burning, as provided in this chapter, or by disposing of it, within said time, to a person licensed to so dispose of it, but the carcass of an animal which has not died of a contagious disease may be fed to hogs. [C24, 27, 31, 35, 39,§**2761**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.18]

167.19 Penalty. The violation of any of the provisions of this chapter or any rule adopted thereunder by the department shall be punishable by a fine of not less than five dollars nor more than one hundred dollars or by imprisonment in the county jail not more than thirty days. [C97,§5019; C24, 27, 31, 35, 39,§**2762**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.19]

167.20 Appropriation. The expense attending the inspection provided for in this chapter shall be paid from any unappropriated funds in the state treasury. [C24, 27, 31, 35, 39,§**2763**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§167.20]

167.21 Reciprocal agreements with other states. The department is authorized to enter into reciprocal agreements in behalf of this state with any one or more of the states adjacent to this state, providing for permits to be issued to rendering plants located in either state to transport carcasses to their plants over public highways of this state and the reciprocating state. [C62, 66, 71, 73, 75, §167.21]

CHAPTER 168

BABY CHICKS

Referred to in §196A.1

See §§159.6, 168.5

168.1 Definitions.
168.2 License of dealers.
168.3 Term and fee.
168.4 Disposal of fees.
168.5 Requirements of dealers.
168.6 Inspection.
168.7 Administration of chapter.
168.8 Punishment.

168.1 Definitions. For the purpose of this chapter:

1. *"Baby chicks"* shall mean all domestic fowls six weeks of age or under.

2. *"Department"* or *"department of agriculture"* shall mean Iowa department of agriculture.

3. *"Person"* shall include an individual, partnership, a corporation, company, firm, society, association, community sales, public sale pavilions, or other holders of public auctions any place in the state, operating in the state, but the term "person" shall not be construed to include any person who hatches for sale one thousand chicks per year or less; and the act, omission, or conduct of any officer, agent or other person acting in a representative capacity may be imputed to the organization or person represented, and the person acting in such capacity shall also be liable for violation of this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §168.1]

168.2 License of dealers. Every person engaged in the business of custom hatching, producing baby chicks for sale in this state, or of selling or offering for sale baby chicks from any place located in this state shall obtain a license from the department for each establishment at which said business is conducted. Applications for such licenses shall be made upon blanks furnished by the department and shall conform to the prescribed rules of the department. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §168.2]

168.3 Term and fee. The license fee shall be ten dollars per annum, and each license shall expire on July 1 after date of issue. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§168.3]

168.4 Disposal of fees. All fees collected under the provisions of this chapter shall be paid into the state treasury. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§168.4]

168.5 Requirements of dealers. All establishments licensed under this chapter shall:

1. Before baby chicks are delivered for sale, determine that the same are in a healthy condition.

2. Provide ample facilities for the proper care and handling of baby chicks on the premises.

3. Maintain sanitary measures such as will properly suppress and prevent the spread of contagious and infectious diseases of baby chicks.

4. When selling or delivering baby chicks to a purchaser in the state, place the same in a box, crate, coop, or other sanitary container for delivery. Each such box, crate, coop, or other container shall be plainly labeled with the name of seller and description of contents. Such description of contents shall include name of breed and variety, percent of guarantee if chicks are sold as sexed chicks, date of hatch, number of chicks, and any tests made on parent stock. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§168.5]

Referred to in §168.6

168.6 Inspection. All establishments licensed under this chapter shall be subject to inspection by the department to determine that the requirements of section 168.5 are fully met. The failure to comply with section 168.5 or any of the provisions thereof shall constitute a violation of this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§168.6]

168.7 Administration of chapter. The secretary of agriculture shall be charged with administration and enforcement of this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§168.7]

168.8 Punishment. Any person, partnership, corporation, company, firm, society, or association who violates any provision of this chapter shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§168.8]

CHAPTER 169

VETERINARY MEDICINE AND SURGERY

Referred to in §§155.3(8), 159.6(6), 581.1

169.1 Persons engaged in practice.
169.2 Persons not engaged in practice.
169.3 License—lay assistants.
169.4 Form.
169.5 Display.
169.6 Renewal.
169.7 Undergraduate certificate.
169.8 Prima-facie evidence.
169.9 Unlawful use of degree.
169.10 Requirement for license.
169.11 Fees.
169.12 Re-examinations.
169.13 Record of licenses.
169.14 Change of residence.
169.15 Examining board.
169.16 Term.
169.17 Vacancies.
169.18 Compensation.
169.19 Supplies.
169.20 Repealed by 64GA, ch 84,§99.
169.21 Meetings.
169.22 Representation at national meetings.
169.23 Applications.
169.24 and 169.25 Repealed by 65GA, ch 1086, §198.
169.26 Eligible candidates.
169.27 Rules relative to examinations.
169.28 Identity of candidate concealed.
169.29 Successful applicants.
169.30 Records.
169.31 Reciprocal agreements.
169.32 Reciprocal disabilities.
169.33 Foreign licenses.
169.34 Termination of reciprocal agreements.
169.35 Change of residence.
169.36 Revocation of license.
169.37 Proceeding by attorney general.
169.38 Petition.
169.39 Hearing on order.
169.40 Notice.
169.41 Power of secretary.
169.42 Fees and costs.
169.43 Forgeries.
169.44 Fraud.
169.45 Penalty.
169.46 Enforcement.
169.47 Duty of county attorney.
169.48 Practice without license—injunction.
169.49 Inspector.
169.50 to 169.54 Reserved.
169.55 Public members.
169.56 Disclosure of confidential information.

169.1 Persons engaged in practice. For the purpose of this chapter the following classes of persons shall be deemed to be engaged in the practice of veterinary medicine:

1. Persons practicing veterinary medicine, surgery, or dentistry, or any of the branches thereof.

2. Persons who profess to be veterinarians, or who profess to assume the duties incident to the practice of veterinary medicine.

3. Persons who make a practice of prescribing or who do prescribe and furnish medicine for the ailments of animals.

4. Persons who act as representatives of licensed veterinarians in doing any of the things mentioned in this section. [C24, 27, 31, 35, 39,§2764; C46, 50, 54, 58, 62, 66, 71, 73, 75, §169.1]

Referred to in §169.2

169.2 Persons not engaged in practice. Section 169.1 shall not be construed to include the following classes of persons:

1. Veterinarians of the United States army, navy, or in the service of the federal department of agriculture, not engaged in private practice.

2. Persons who dehorn cattle or castrate animals.

3. Persons who treat diseased or injured animals gratuitously.

4. Persons who advertise or sell patent or proprietary medicines. [S13,§2538-m; C24, 27, 31, 35, 39,§2765; C46, 50, 54, 58, 62, 66, 71, 73, 75, §169.2]

169.3 License—lay assistants. No person shall engage in the practice of veterinary medicine unless he shall have obtained from the department of agriculture a license for that purpose.

This section shall not prohibit a person who has been issued a certificate from the secretary of agriculture which authorizes him to perform the duties of a veterinarian under the direction of an instructor of veterinary medicine or under the direct supervision of a licensed veterinarian from performing such duties.

Veterinary lay assistants may be issued a certificate by the secretary of agriculture after proper showing of competency to perform such duties as they shall be assigned, but veterinary lay assistants can only perform duties under the direct supervision of an employer who is a duly licensed veterinarian. [S13,§2538-a; C24, 27, 31, 35, 39,§2766; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.3; 66GA, ch 128,§1]

169.4 Form. Every license to practice veterinary medicine shall be in the form of a certificate under the seal of the department, and signed by the secretary. The number of the book and page containing the entry of the license in the office of the department shall be noted on the face of the license. [S13,§2538-i; C24, 27, 31, 35, 39,§2767; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.4]

169.5 Display. Every person licensed under this chapter shall keep his license displayed in the place in which he maintains an office. [C24, 27, 31, 35, 39,§**2768**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.5]

169.6 Renewal. Every license issued under this chapter shall expire annually, and shall be renewed annually upon application by the licensee. A person who fails to renew his license by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. Application for such renewal shall be made in writing to the department of agriculture, accompanied by the required fee, at least thirty days prior to the expiration of such license. The department shall notify each licensee by mail of the expiration of his license. Every renewal shall be displayed in connection with the original license. A licensed veterinarian of the state of Iowa who is called into military duty for the United States government is exempt from paying the renewal fee for such license but said license must be renewed within one year from date of discharge or the license shall be revoked. [S13, §2538-j; C24, 27, 31, 35, 39,§§**2769, 2769.1**; C46, 50, 54,§§169.6, 169.7; C58, 62, 66, 71, 73, 75,§169.6]

169.7 Undergraduate certificate. The secretary of agriculture shall issue to any person, who attends an accredited veterinary medicine college or school and who has been certified as being competent by an instructor of such college or school to perform veterinary duties under the direction of an instructor of veterinary medicine or under the direct supervision of a licensed veterinarian, a certificate authorizing him to perform such functions. [C75,§169.7]

169.8 Prima-facie evidence. The opening of an office or place of business for the practice of veterinary medicine, the use of a sign, card, device, or advertisement as a practitioner of veterinary medicine or as a person skilled in such practice, shall be prima-facie evidence of engaging in the practice of veterinary medicine. [C24, 27, 31, 35, 39,§**2770**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.8]

169.9 Unlawful use of degree. No person shall use any veterinary degree or abbreviation for the same unless such degree has been conferred upon him by an institution of learning recognized by the state board of education. [S13,§2538-n; C24, 27, 31, 35, 39,§**2771**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.9]

169.10 Requirement for license. Each applicant for a license to practice veterinary medicine, surgery, and dentistry shall:

1. Present a diploma showing that he is a graduate of a recognized school of veterinary medicine.

2. Pass satisfactorily an examination in veterinary medicine, surgery, and dentistry. The veterinary medical examiners may accept in lieu of the requirements in this subsection of this section, certificate of satisfactory examination issued by the national board of veterinary medical examiners of the United States of America, but every applicant for a license upon the basis of such certificate shall be required to pay the prescribed fee for a license issued in another state. The veterinary medical examiners may also require applicants to take and pass the examination issued by the national board of veterinary medical examiners of the United States of America, and such applicants shall pay the fee required for such national board examination in addition to the fees required by the board. The board may administer as many examinations per year as are deemed necessary, but shall administer at least one examination per year. Any written examination may be conducted by representatives of the board. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible. [S13, §2538-i; C24, 27, 31, 35, 39,§**2772**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.10]

169.11 Fees. The board of veterinary medical examiners shall set the fee for examination of applicants, which fee shall be based upon the annual cost of administering the examination.

The board shall set the fees for a license to practice veterinary medicine issued upon the basis of the examination, a license to practice veterinary medicine issued upon the basis of a license issued in another state, renewal of a license to practice veterinary medicine, certified statement that a licensee is licensed to practice in this state, issuance of a duplicate license when the original is lost or destroyed. The fees shall be based upon the administrative costs of sustaining the board and shall include, but shall not be limited to, the following:

1. Per diem, expenses, and travel of board members.

2. Costs to the department of agriculture for administration of the chapter. [S13,§§2538-h,-i,-j; C24, 27, 31, 35, 39,§**2773**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.11]

169.12 Re-examinations. An applicant who fails the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the board concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available

to the board. [S13,§2538-o; C24, 27, 31, 35, 39, §2774; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.12]

169.13 Record of licenses. The name, age, nativity, location, number of years of practice of the person to whom a license is issued, the number of the certificate, and the date of registration thereof shall be entered in a book kept in the office of the department of agriculture, to be known as the registry book, and the same shall be open to public inspection. [S13,§§2538-i,-j; C24, 27, 31, 35, 39,§2775; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.13]

169.14 Change of residence. When any person licensed to practice under this chapter changes his residence, he shall notify the department of agriculture and such change shall be noted in the registry book. [C24, 27, 31, 35, 39,§2776; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.14]

169.15 Examining board. For the purpose of administering examinations to applicants for license to practice veterinary medicine, the governor shall appoint, subject to the approval of two-thirds of the members of the senate, a board of five examiners, three who shall be licensed veterinarians and two who shall not be licensed veterinarians and who shall represent the general public. Such board shall be known as the board of veterinary medical examiners. Each licensed examiner shall be actively engaged in veterinary medicine and shall have been so engaged for a period of five years just preceding his appointment, the last two of which shall have been in Iowa. No member of the board shall be employed by any wholesale or jobbing house dealing in supplies, equipment or instruments used or useful in the practice of veterinary medicine. The chief of the division of animal industry of the department shall serve as secretary to the board of veterinary medical examiners.

Professional associations or societies composed of licensed veterinarians may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations. [S13,§2538-t; C24, 27, 31, 35, 39,§2777; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.15]

Referred to in §§169.36, 169.37

169.16 Term. The members of the examining board shall be appointed for a term of three years. The term of each examiner shall commence on July 1 in the year of appointment and the terms of the members of the board shall be rotated in such a manner that one examiner shall retire each year and a successor be appointed to take his place. Members shall serve no more than three terms or nine years, whichever is less. [C24, 27, 31, 35, 39,§2778; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.16]

169.17 Vacancies. Any vacancy in the membership of the examining board caused by death, resignation, removal, or otherwise, shall be filled for the period of the unexpired term in the same manner as original appointments. [C24, 27, 31, 35, 39,§2779; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.17]

169.18 Compensation. Members of the examining board shall, in addition to necessary traveling and other expenses, set their own per diem compensation at a rate not exceeding forty dollars per day for each day actually engaged in the discharge of their duties including compensation for the time spent traveling to and from the place of conducting the examination and for a reasonable number of days for the preparation of examination and the reading of papers, in addition to the time actually spent in conducting examinations within the limits of funds appropriated to the board. [C24, 27, 31, 35, 39,§2780; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.18]

169.19 Supplies. The department of agriculture shall furnish the examining board with all articles and supplies required for the public use and necessary to enable said board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained, and the department shall assess the costs to the examining board for the costs of such articles and supplies. The board shall also reimburse the department for administrative costs incurred in issuing and renewing the licenses. [C24, 27, 31, 35, 39,§2782; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.19]

169.20 Repealed by 64GA, ch 84,§99.

169.21 Meetings. The board shall meet at least once a year at the seat of government and shall hold additional meetings for the purpose of administering examinations. A majority shall constitute a quorum. [S13,§2538-f; C24, 27, 31, 35, 39,§2784; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.21]

169.22 Representation at national meetings. The department may designate members of the examining board to attend either:

1. The annual meeting of the regular national association or society of the veterinary profession, or

2. The annual meeting of the national organization of state examining boards for such profession. [C24, 27, 31, 35, 39,§2785; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.22]

169.23 Applications. Any person desiring to take the examination for a license to practice veterinary medicine shall make application to the department of agriculture, on a form provided by the department, at least fifteen days before the examination. Such application shall be accompanied by the license fee set by the board and such documents and affidavits as are necessary to show the eligibility of the candidate to take such examination. The board shall not require that a recent photograph of the applicant be attached to the appli-

cation form. All applications shall be in accordance with the rules of the examining board and shall be signed by the applicant.

An applicant shall not be ineligible for licensure because of age, citizenship, sex, race, religion, marital status, or national origin although the application form may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of veterinary medicine. Character references may be required, but shall not be obtained from licensed veterinarians. [S13, §2538-e; C24, 27, 31, 35, 39,§**2786**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.23]

169.24 and 169.25 Repealed by 65GA, ch 1086,§198.

169.26 Eligible candidates. Prior to each examination the department of agriculture shall transmit to the examining board the list of candidates who are eligible to take such examination. In making up such list, the department may call upon the examining board, or any member thereof, for information relative to the eligibility of any applicant. [C24, 27, 31, 35, 39,§**2789**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.26]

169.27 Rules relative to examinations. The examining board shall establish rules for:

1. The conducting of examinations.

2. The grading of examinations and passing upon the technical qualifications of applicants, as shown by such examinations. [S13,§2538-e; C24, 27, 31, 35, 39,§**2790**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.27]

169.28 Identity of candidate concealed. All examinations shall be in writing, and the identity of the person taking the same shall not be disclosed upon the examination papers in such a way as to enable the members of the examining board to know by whom written until after the papers have been passed upon. [C24, 27, 31, 35, 39,§**2791**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.28]

169.29 Successful applicants. Every examination shall be passed upon in accordance with the established rules of the examining board and shall be satisfactory to at least a majority of the members of said board. After each examination, the examining board shall certify the names of the successful applicants to the department of agriculture, in the manner prescribed by said department, which shall issue the proper license and make the required entry in the registry book. [S13,§2538-f; C24, 27, 31, 35, 39,§**2792**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §169.29]

169.30 Records. All matters connected with each examination for license shall be filed with the department of agriculture and preserved for such period of time as specified by the state records commission as a part of the records of the department. The records shall be open to public inspection. [C24, 27, 31, 35, 39, §**2793**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.30]

169.31 Reciprocal agreements. For the purpose of recognizing licenses to practice veterinary medicine which have been issued in other states, the department of agriculture, upon recommendation of the examining board, is authorized to establish reciprocal relations with the duly constituted and proper authorities of such other states. [S13,§2538-i; C24, 27, 31, 35, 39,§**2794**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §169.31]

169.32 Reciprocal disabilities. When the laws of such other states or the rules of such authorities place any requirement or disability upon a person licensed under this chapter or on any person holding a diploma from the division of veterinary medicine of the university of science and technology of this state which affects the rights of said persons to be licensed or to practice in said other states, then the same requirement or disability shall be placed upon any person licensed in said state or holding a diploma from any veterinary college situated therein, when applying for a license to practice in this state. [S13, §2538-i1; C24, 27, 31, 35, 39,§**2795**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.32]

169.33 Foreign licenses. After reciprocal relations are entered into, the department may, in lieu of the examination herein provided for, issue a license to practice veterinary medicine, on the basis of a certificate of registration or license issued by the duly constituted and proper authorities of another state with which such reciprocal relations exist, provided such certificate of registration or license has been issued by such other state on requirements substantially equivalent to those required in this state at the time of the issuance of such certificate of registration or license. [S13, §2538-i; C24, 27, 31, 35, 39,§**2796**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.33]

169.34 Termination of reciprocal agreements. When the requirements for a license in any state with which this state has a reciprocal agreement are changed by any law or rule of the authorities therein so that such requirements are no longer substantially as high as those existing in this state, then such agreement shall be deemed terminated and licenses issued in such state shall not be recognized as a basis for granting a license in this state until a new agreement has been negotiated. The fact of such change shall be determined by the examining board and certified to the department of agriculture for its guidance in enforcing the provisions of this section. [C24, 27, 31, 35, 39,§**2797**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §169.34]

169.35 Change of residence. Any licensee who is desirous of changing his residence to another state or territory shall, upon application to the department of agriculture and payment of the legal fee, receive a certified

statement that he is a duly licensed practitioner in this state. [C24, 27, 31, 35, 39,§2798; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.35]

169.36 Revocation of license. A license to practice under this chapter shall be revoked or suspended by the secretary of agriculture of the state of Iowa and the examining board provided for in section 169.15, when the licensee is found guilty of any of the following acts or offenses:

1. Fraud in procuring the license.
2. Incompetency in the practice of the profession.
3. Immoral, unprofessional, or dishonorable conduct.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements, publicity material, or interviews having a tendency to deceive and defraud the public.
8. Distribution of alcohol or drugs or controlled substances, as defined in section 204.101, subsection 6, for any other than legitimate purposes.
9. Willful or repeated violations of this title, the title on "Public Health", or the rules of the department of agriculture.
10. Employing directly or indirectly a capper, solicitor, or drummer to secure patients, or obtaining a fee for the assurance that an incurable disease can be cured.
11. Having professional connections or lending one's name to any illegal practitioner of veterinary medicine or the various branches thereof.
12. Any division of fees or charges or any agreement or arrangement to share fees or charges.
13. The revocation by a sister state or territory of a license or certificate by virtue of which one is licensed to practice veterinary medicine in that state or territory.
14. Fraud or dishonesty in applying, treating or reporting on biologics, tuberculin or serological tests.
15. Failing to report, as required by law, or making false report of any contagious or infectious disease.
16. Issuing a certificate of health for an animal knowing that the animal described therein was not the animal from which the tests were made as a basis for the certificate, or otherwise falsifying any such certificate. [S13,§2538-e; C24, 27, 31, 35, 39,§2799; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.36]

Distribution of drugs, ch 204
Public health, ch 135 et seq.

169.37 Proceeding by attorney general. The attorney general may, on his own motion, or when directed by the department of agriculture shall, file in the office of the department of agriculture a petition against any licensee to whom has been granted a license to practice veterinary medicine. The attorney general shall, on behalf of the state, prosecute said action before the secretary of agriculture and the examining board provided for in section 169.15. At said hearing the secretary of agriculture shall act as chairman. [C31, 35,§2799-d1; C39,§2799.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §169.37]

169.38 Petition. The following rules shall govern the petition in such cases:

1. The state shall be named as plaintiff and the licensee as defendant.
2. Charges against licensee shall be stated in full.
3. Amendments may be filed with the consent of the secretary of agriculture.
4. All allegations shall be deemed denied, but the licensee may plead thereto if he desires. [C31, 35,§2799-d2; C39,§2799.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.38]

169.39 Hearing on order. Upon the presentation of the petition, the secretary of agriculture shall make an order fixing the time and place of hearing which shall not be less than ten nor more than ninety days thereafter. Said hearing shall be held at the office of the secretary of agriculture, but the secretary of agriculture may, if he deems best, hold said hearing at some suitable place in the county of the residence of the licensee. [C31, 35,§2799-d3; C39,§2799.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, §169.39]

169.40 Notice. Notice of the filing of such petition and of the time and place of hearing shall be served upon the licensee at least ten days before said hearing, in the manner required for the service of notice of the commencement of an ordinary action. [C31, 35, §2799-d4; C39,§2799.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.40]

Manner of service, R.C.P. 56(a)

169.41 Power of secretary. The secretary of agriculture shall have power to subpoena witnesses, administer oaths to such witnesses, and compel witnesses to produce books, letters, documents, papers, and all other articles essential to the hearing. [C31, 35,§2799-d5; C39, §2799.5; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.41]

44GA, ch 56,§7, editorially divided

169.42 Fees and costs. Witnesses attending said hearing shall receive the same fees and mileage as are allowed witnesses in the district court. Members of the examining board shall each receive ten dollars per day for each day actively engaged in said hearing. If the license is suspended or revoked, the cost of said hearing shall be paid by the licensee. If the license is not suspended or revoked, the cost of said hearing shall be paid by the state. [C31, 35,§2799-d6; C39,§2799.6; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.42]

Witness fees, §622.69

169.43 Forgeries. Any person who shall file or attempt to file with the department of agriculture any false or forged diploma, or certificate or affidavit of identification or qualification, shall be guilty of forgery and punished accordingly. [C24, 27, 31, 35, 39,§2803; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.43]

Forgery, §718.1

169.44 Fraud. Any person who shall present to the department of agriculture a diploma or certificate of which he is not the rightful owner, for the purpose of procuring a license, or who shall falsely personate anyone to whom a license has been granted by said department, shall be punished as provided in section 169.45. [C24, 27, 31, 35, 39,§2804; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.44]

169.45 Penalty. Any person who violates any provision of this chapter shall be guilty of a misdemeanor. [S13,§2538-1; C24, 27, 31, 35, 39, §2805; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.45]

Referred to in §169.44
Punishment, §687.7

169.46 Enforcement. The department of agriculture shall enforce the provisions of this chapter and for that purpose shall make necessary investigations relative thereto. Every licensee and member of the examining board shall furnish said department such evidence as he may have relative to any alleged violation which is being investigated. [C24, 27, 31, 35, 39, §2806; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.46]

169.47 Duty of county attorney. The county attorney of the county in which any violation of this chapter occurs shall conduct the necessary prosecution for such violation. [S13, §2538-1; C24, 27, 31, 35, 39,§2807; C46, 50, 54, 58, 62, 66, 71, 73, 75,§169.47]

169.48 Practice without license—injunction. Any person engaging in the practice of veterinary medicine as defined in this chapter without possessing a license therefor may be restrained by permanent injunction in an action to be instituted in the name of the state of Iowa on the information of the secretary of agriculture. [C58, 62, 66, 71, 73, 75,§169.48]

169.49 Inspector. The examining board is authorized to employ an inspector, who shall not be a member of the examining board, at such per diem compensation as shall be fixed by the executive council and payable from funds appropriated to the examining board.

Funds shall be appropriated for the payment of all salaries, per diem expense and other expenses necessary to administer and aid in the enforcement of the provisions of law relating to the practice of veterinary medicine. [C66, 71, 73, 75,§169.49]

169.50 to 169.54 Reserved.

169.55 Public members. The public members of the board shall not participate in administering or grading any portion of an examination. [C75,§169.55]

169.56 Disclosure of confidential information. A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.

2. Information relating to the contents of the examination.

3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C75,§169.56]

CHAPTER 170

HOTELS, RESTAURANTS AND FOOD ESTABLISHMENTS

Referred to in §§159.6(7), 172A.6, 192.14

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170.1 Definitions. For the purpose of this chapter:

1. *"Hotel"* shall mean any building or structure, equipped, used, advertised as, or held out to the public to be an inn, hotel, motel, motor inn, or public lodging house or place where sleeping accommodations are furnished transient guests for hire, whether with or without meals.

2. *"Guest room"* shall mean office, parlor, dining room, kitchen, and sleeping apartment of a hotel, whether for transient or permanent guests.

3. *"Sleeping apartment"* shall mean bedroom or other sleeping quarters in a hotel.

4. *"Restaurant"* shall mean any building or structure equipped, used, advertised as, or held out to the public to be a restaurant, cafe, cafeteria, dining hall, lunch counter, tavern, cocktail lounge, lunch wagon, or other like place where food is prepared or served for pay or profit for on the premise consumption, except such places as are used by churches, fraternal societies, and civic organizations which engage in the serving of food less frequently than once a week.

5. *"Food"* shall include any article used by man for food, drink, confectionery, or condiment, or which enters into the composition of the same, whether simple, blended, mixed, or compound.

6. *"Food establishment"* shall include any building, room, basement, or other place, used as a bakery, confectionery, cannery, packing house, slaughterhouse, dairy, creamery, cheese factory, retail grocery, meat market, or other place in which food is kept, produced, prepared, or distributed for commercial purposes for off the premise consumption, except those premises covered by a current class "A" beer permit as provided in chapter 123.

7. *"Slaughterhouse"* shall mean a food establishment in which animals or poultry are killed or dressed for food.

1. [S13,§2514-h; C24, 27, 31, 35, 39,§**2808**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.1]

2, 3, 4. [C24, 27, 31, 35, 39,§**2808**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.1]

5, 6. [S13,§2527-a; C24, 27, 31, 35, 39,§**2808**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.1; 66GA, ch 67,§17, ch 129,§1]

7. [S13,§2527-i; C24, 27, 31, 35, 39,§**2808**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.1]

LICENSES

170.2 License required. No person shall maintain a food establishment, tavern, motor inn, hotel, or restaurant until he has obtained a license from the department of agriculture. However, cigar stores, drug stores, egg, cream, or poultry buying stations, or any other establishment selling or offering for sale only candy or gum, schools selling or offering for sale refreshments at athletic contests, band festivals, or similar events, and children selling or offering for sale lemonade or other soft drinks and candy or gum on lawns, curbings, sidewalks, or any other property shall not be required to obtain a license. Each license shall expire September 1 following the date of issue except a hotel license which shall expire on the last day of December following the date of issue and a restaurant license which shall expire one year from date of issue. This section shall not be construed to require the licensing of establishments or persons involved in a hot-lunch program in any public or parochial school of the state of Iowa or to those persons or establishments exclusively engaged in the processing of meat and poultry licensed as required under section 189A.3. [S13,§2527-l; C24, 27, 31, 35, 39,§**2809**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §170.2]

Referred to in §191A.11

170.3 Application for license. Every application for a license under this chapter shall be made upon a blank furnished by the department and shall contain the items required by it as to ownership, management, location, buildings, equipment, rates, and other data concerning the business for which a license is desired. An application for a license to operate an existing business shall be made at least thirty days before the expiration of the existing license. [S13,§2527-l; C24, 27, 31, 35, 39, §**2810**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.3]

170.4 Operation without inspection or license. No person shall open or operate a

hotel, motor inn, tavern, restaurant, or food establishment until inspection has been made by the department of agriculture or proper application for license has been made at least fourteen days in advance of opening. [C24, 27, 31, 35, 39,§2811; C46, 50, 54, 58, 62, 66, 71, 73, 75, §170.4]

170.5 License fees. The department shall collect the following fees for licenses:

1. For a hotel containing fifteen guest rooms or less, six dollars.
2. For a hotel containing more than fifteen or less than thirty-one guest rooms, nine dollars.
3. For a hotel containing more than thirty and less than seventy-six guest rooms, twelve dollars.
4. For a hotel containing more than seventy-five and less than one hundred fifty guest rooms, fifteen dollars.
5. For a hotel containing one hundred fifty or more guest rooms, twenty-two dollars fifty cents.
6. For a food establishment, five dollars.
7. For each vehicle from which food is sold directly to the public, five dollars per year.
8. For transient or movable lunch stands to be operated only at fairs, street fairs, and carnivals, five dollars for each location for fourteen days or eighteen dollars per year, at the option of the applicant.
9. For each restaurant, tavern, motor inn, or hotel kitchen, eighteen dollars.

All licenses issued under this chapter that are not renewed by the licensee on or before the expiration date shall be subject to a penalty of ten percent of license fee per month. [S13,§2527-l; C24, 27, 31, 35, 39,§2812; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.5]

Referred to in §191A.4

170.6 Repealed by 61GA, ch 181,§5.

170.7 Hotel and restaurant fund. All restaurant, hotel, motor inn, and tavern license fees shall upon receipt thereof by the department be paid to and receipted for by the treasurer of state and shall be kept by him in a separate fund to be known as the "hotel and restaurant fund". Such hotel and restaurant fund shall be continued from year to year and the treasurer shall keep a separate account thereof showing receipts and disbursements as authorized by law. No part of such fund shall be used for any other purpose than the administration and enforcement of the laws relating to hotels, restaurants, vending machines and commissaries and for conducting educational programs and sanitary training courses and for providing literature and suitable promotional work for the industries licensed under this chapter. If on July 1 of any year there is a balance remaining in said hotel and restaurant fund which, in the opinion of the secretary of agriculture, is greater than is necessary for the proper administration of such laws and for conducting and providing the services authorized under this section, the treasurer of state is hereby authorized, on the recommendation and with the approval of the secretary of agriculture, to transfer to the general fund of the state such portion of said hotel and restaurant fund as the secretary of agriculture shall deem advisable to so transfer. [C35,§2812-f2; C39,§2812.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.7]

Referred to in §191A.5

170.8 Revocation. Any license issued under this chapter may be revoked by the department for violation by the licensee of any provision of this chapter or any rules of the department. [S13,§§2514-w, 2527-l; C24, 27, 31, 35, 39,§2813; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.8]

SANITARY CONSTRUCTION

170.9 Plumbing in buildings. Every hotel, restaurant, or food establishment located in a city having a sewerage system shall be constructed and drained according to an approved sanitary system and maintained in a sanitary condition free from any gas or offensive odors arising from any sewer, drain, privy, or other source within the control of the owner or person in charge. [S13,§§2514-m, 2527-a; C24, 27, 31, 35, 39,§2814; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.9]

Referred to in §170.11

170.10 Buildings not connected with sewers. Every hotel, restaurant, or food establishment located in a city not having a sewerage system shall be constructed and drained in the same manner and the drain shall be connected with an approved cesspool. Such cesspools shall be cleaned and disinfected as often as necessary to maintain them in an approved sanitary condition. [S13,§§2514-m, 2527-a; C24, 27, 31, 35, 39,§2815; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.10]

Referred to in §170.11

170.11 Restaurants exempted. Sections 170.9 and 170.10 shall not apply to restaurants temporary in character and location. [C24, 27, 31, 35, 39,§2816; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.11]

170.12 Floors. The floors in every food establishment shall be made of some suitable nonabsorbent and impermeable material, approved by the department, which can be flushed and washed clean with water. All new slaughterhouses shall be constructed with cement, vitrified brick, tile, or other impervious material floors and killing beds. [S13, §§2527-c,-i; C24, 27, 31, 35, 39,§2817; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.12]

170.13 Interior finish. The side walls and ceilings of every bakery, confectionery, creamery, cheese factory, slaughterhouse, and restaurant or hotel kitchen, shall be made of some suitable material approved by the department, and shall be either oil painted so that they can be washed clean, or they shall be kept well limewashed. [S13,§§2527-c,-i; C24, 27, 31, 35, 39, §2818; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.13]

170.14 Self-closing doors and screens. The doors, windows, and other openings of every hotel, motor inn, restaurant, tavern, and food establishment, during summer season shall be fitted with self-closing doors and window screens, if not otherwise protected. [S13, §§2527-d,-i; C24, 27, 31, 35, 39,§2819; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.14]
Referred to in §170.15

170.15 Places exempted. Section 170.14 shall not apply to sheds used for husking corn, nor to warehouses or storerooms used for the storage or handling of the finished product when sealed in original packages. [S13,§2527-d; C24, 27, 31, 35, 39,§2820; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.15]

170.16 Toilet rooms. Hotels, motor inns, taverns, cocktail lounges, restaurants, cafeterias, and food establishments shall provide toilet rooms. All toilet rooms shall be completely enclosed, have tight fitting, self-closing doors, and shall be vented to the outside of the building. Toilet fixtures shall be of a sanitary design, readily cleanable, and shall be kept in a clean condition and in good repair. The floors of such rooms shall be of suitable, nonabsorbent, impermeable material and the walls and ceilings shall be of material that can be easily cleaned and kept in a sanitary condition. All places serving beer, cocktails, or alcoholic beverages shall provide separate toilet rooms for men and women. [S13,§2527-e; C24, 27, 31, 35, 39,§2821; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.16]

170.17 Lavatories. The lavatories in hotels, motor inns, restaurants, taverns, and food establishments shall be in or adjacent to toilet rooms and shall be supplied with soap, running water, and clean towels or air driers and shall be maintained in a sanitary condition. [S13,§2527-e; C24, 27, 31, 35, 39,§2822; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.17]

SANITATION IN CONDUCTING BUSINESS

170.18 Lighting and ventilation. Every hotel, motor inn, restaurant, tavern, and food establishment shall be properly lighted, ventilated, and conducted with strict regard to the influence of such conditions upon the food handled therein. [S13,§2527-a; C24, 27, 31, 35, 39,§2823; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.18]

170.19 Sanitary regulations. The following sanitary regulations shall be complied with in every hotel, restaurant, and food establishment:

1. The floors, walls, ceilings, woodwork, utensils, machinery, and other equipment, and all vehicles and equipment used in the transportation of food shall be kept in a thoroughly clean condition.

2. Food shall be at all times adequately protected from flies, dirt, and contamination from any source.

3. Dirt, refuse, and waste products subject to decomposition or fermentation shall be removed daily.

4. The clothing of all persons employed shall be kept clean, and those who handle food shall keep themselves clean, keep their fingernails well trimmed, and wash their hands and arms before beginning work and after visiting the toilet.

5. Smoking by proprietors, cooks, and help shall be strictly forbidden while preparing or serving food. Proprietors shall be held responsible when employees violate this rule.

6. While preparing food, employees shall use effective hair restraints to prevent the contamination of food.

7. No dogs or pets shall be allowed in any food establishment, restaurant, cafeteria, cocktail lounge, or tavern, except as provided in section 601D.5. [S13,§§2527-b,-c,-e,-i,-k; C24, 27, 31, 35, 39,§2824; C46, 50, 54, 58, 62, 66, 71, 73, 75, §170.19; 66GA, ch 129,§2]

170.20 Repealed by 62GA, ch 173,§1.

170.21 Towels. No roller or common towel shall be kept or used in the toilet room or washroom of any hotel, restaurant, or food establishment, but individual sanitary paper towels may be provided for use in said places. [C24, 27, 31, 35, 39,§2826; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.21]

170.22 Drinking cups—glasses sterilized. No common drinking cup shall be kept or used in any place or room in any hotel, restaurant, or food establishment. In all food establishments where beverages are dispensed, all glasses and drinking utensils intended for repeated use in dispensing beverages shall be sterilized before each use by the use of a chemical sterilizer or other methods approved by the secretary of agriculture. Any person who desires to use a method which has not been approved by the secretary of agriculture shall apply to the secretary of agriculture who upon application being made shall approve any method proven to be an effective bactericidal process. [C24, 27, 31, 35, 39,§2827; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.22]

170.23 Tableware. All plates, cups, saucers, dishes, and silverware shall be washed and sanitized by methods approved by the department of agriculture and no soiled or unsanitary table cloths, napkins, or other table linen shall be used in any hotel, motor inn, restaurant, or tavern. [C24, 27, 31, 35, 39,§2828; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.23]

170.24 Expectorating. No person shall expectorate within any food establishment, restaurant, hotel, motor inn, cocktail lounge, or tavern. [S13,§2527-f; C24, 27, 31, 35, 39,§2829; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.24]

170.25 Use as living room. No person shall be allowed to use as a dwelling, or sleep in, any workroom of any bakeshop, kitchen, or dining room where food is prepared for commercial purposes, confectionery, creamery, ice cream factory, cheese factory, cream station, meat

market, or any other place where, in the opinion of the department, food will be contaminated thereby. [S13,§2527-g; C24, 27, 31, 35, 39, §2830; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.25]

170.26 Employment of diseased persons. No person infected with any communicable disease as defined in chapter 139 shall work in any hotel, motor inn, restaurant, tavern, cocktail lounge, or food establishment nor shall any employer permit any such person to work at any such establishment. [S13,§2527-h; C24, 27, 31, 35, 39,§2831; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.26]

170.27 Street display of food. No person shall make any sidewalk or street display of any meat products; but other food products may be so displayed if they are enclosed in a showcase or similar device which shall protect the same from flies, dust, or other contamination, and in such display the bottom of the display case shall be at least two feet above the surface of the sidewalk. [S13,§§2527-j,-k; C24, 27, 31, 35, 39,§2832; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.27]

170.28 Polishing fruit. No person shall polish fruit or any other food product by any insanitary or unclean process. [S13,§2527-j; C24, 27, 31, 35, 39,§2833; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.28]

SPECIAL SANITATION AND FIRE PROVISIONS IN RE HOTELS, ETC.

170.29 Bedding. Every bed, bunk, cot or other sleeping place in a hotel, motel or motor inn shall be supplied with under sheets, top sheets, and pillow slips. The sheets shall be of sufficient width and length to completely cover the mattress. The pillow slips and sheets after being used by any guest shall be washed and sanitized, or disposed of, and a clean set furnished each succeeding guest. The other bedding shall be thoroughly aired and kept clean at all times. All mattresses, quilts, blankets, pillows, sheets, comforters and other bedding which have become worn or unsanitary so as to be unfit for use as bedding shall be condemned by an inspector and shall not be used again. [S13,§2514-m; C24, 27, 31, 35, 39,§2834; C46, 50, 54, 58, 62, 66, 71, 73, 75, §170.29; 66GA, ch 1119,§1]

170.30 Vermin. Every room or article in any hotel which has become infested with bedbugs or other vermin shall be renovated until the same are exterminated. [S13,§2514-m; C24, 27, 31, 35, 39,§2835; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.30]

170.31 Towels. Individual towels shall be provided for the use of each guest in a hotel, so that two or more guests will not be required to use the same towel. [C24, 27, 31, 35, 39, §2836; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.31]

170.32 Ventilation. Every hotel shall be properly ventilated and each sleeping apartment shall be provided with at least one window or ventilating skylight equal in area to at least one-eighth of the floor space of the room, and the same shall open onto the outside of the building or court. No room the floor of which is three feet below the average level of the ground shall be used as a sleeping apartment. Where storm windows are used the same shall be constructed so that proper ventilation may be had by the guest and hung in such a manner that they may be readily opened to insure safe exit in case of fire. [C24, 27, 31, 35, 39, §2837; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.32]

Referred to in §170.33

170.33 Sleeping apartments in new hotels. Every hotel hereafter constructed and every building remodeled for the purpose of use as a hotel, in addition to the requirements of section 170.32 shall have sufficient ventilation in the door or doorway of each sleeping apartment, or some equivalent improvement. [C24, 27, 31, 35, 39,§2838; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.33]

170.34 Repealed by 66GA, ch 1242,§2, See §732.25.

170.35 Outside water closets. Outside water closets for guests of a hotel shall be properly screened from flies and separated for the use of males and females and shall be cleaned and disinfected as often as necessary to maintain them in an approved sanitary condition. [S13, §2514-m; C24, 27, 31, 35, 39,§2840; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.35]

170.36 List of rooms and rates to be posted. A complete list of rooms by number, together with the number of the floor and the rate per diem per person for each room, shall be kept continuously and conspicuously posted on the wall near the office in the lobby of every hotel in such a way as to be accessible to the public without request to the management. The rate per diem per person for each room shall also be posted in the same manner in the respective rooms. No greater charge than the one thus posted shall be made. [C24, 27, 31, 35, 39,§2841; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.36]

Referred to in §170.37

170.37 Increase of rates. The rate posted under section 170.36 shall not be increased until sixty days' notice of the proposed increase has been given to the department. [C24, 27, 31, 35, 39,§2842; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.37]

170.38 Fire protection regulations. The state fire marshal shall adopt, amend, promulgate, and enforce such rules and standards relating to fire protection and fire safety in hotels, restaurants and food establishments, but such rules shall be promulgated only after public hearing. Any person, firm or corporation violating any of said rules of said fire marshal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars,

and each day of a continuing violation after conviction shall be considered a separate offense.

All rules and standards adopted for nursing homes and custodial homes shall be subject to regulations of chapter 135C. [S13,§§2514-j,-k,-l; SS15,§§2514-i,-n,-o; C24, 27, 31, 35, 39,§§**2843–2850**; C46, 50, 54, 58,§§170.38–170.45; C62, 66, 71, 73, 75,§170.38]

170.39 to 170.45 Repealed by 57GA, ch 75,§13.

INSPECTION

170.46 Annual inspection. The department shall cause to be inspected at least once each calendar year, every hotel, restaurant, and food establishment in the state, and any inspector of said department may enter any such place at any reasonable hour to make such inspection. The management shall afford free access to every part of the premises and render all aid and assistance necessary to enable the inspector to make a thorough and complete examination. [S13,§§2514-q, 2527-m, 2528-d5; C24, 27, 31, 35, 39,§**2851**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.46]

Referred to in §191A.9
Prophylactics samples gathered; see §135.19

170.47 Inspection upon complaint. Upon receipt of a verified complaint, signed by any patron of any hotel, restaurant, or food establishment, stating facts showing such place to be in an insanitary condition, the department shall cause an examination to be made. If the complaint is found to be justifiable, the actual expenses necessarily incurred in making such inspection shall be charged and collected from the person conducting such place; but if such complaint is found to be without reasonable grounds, the actual expense necessarily incurred in making such inspection shall be collected from the person or persons making the complaint. [SS15,§2514-s; C24, 27, 31, 35, 39, §**2852**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.47]

Referred to in §191A.8

170.48 Repealed by 57GA, ch 75,§13.

ENFORCEMENT

170.49 Penalty. Any person who shall violate any provision of this chapter shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days. [C97,§2527; S13,§§2514-w, 2527-m,-n; C24, 27, 31, 35, 39,§**2854**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.49]

170.50 Injunction. Any person conducting a hotel, restaurant, or food establishment, in violation of any provision of this chapter, may be restrained by injunction from operating such place of business. No injunction shall issue until after the defendant has had at least five days' notice of the application therefor, and the time fixed for hearing thereon. [S13, §2514-x; C24, 27, 31, 35, 39,§**2855**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.50]

Referred to in §191A.9
Injunctions, ch 664

170.51 Duty of county attorney. The county attorney in each county shall assist in the enforcement of the provisions of this chapter. [S13,§2514-x; C24, 27, 31, 35, 39,§**2856**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§170.51]

Referred to in §191A.9

170.52 Conflicting statutes. Provisions of this chapter in conflict with the state building code shall not apply where the state building code has been adopted or when the state building code applies throughout the state. [C73, 75,§170.52]

CHAPTER 171

COLD STORAGE

Referred to in §§159.6(8), 172.5, 172A.6

171.1 Definitions.
171.2 License.
171.3 Examination of plant.
171.4 License fee.
171.5 Receipt and withdrawal of food.
171.6 Reports by licensee.
171.7 Storing of impure food.
171.8 Revocation of license.
171.9 Food not intended for human consumption.
171.10 Date of deposit and withdrawal.
171.11 Period for storage.
171.12 Application for extension of period.
171.13 Report of extensions of storage period.
171.14 Notice of sale of cold storage goods.
171.15 Return of goods to cold storage.
171.16 Penalties.

171.1 Definitions. For the purposes of this chapter:

1. *"Food"* shall include any article used by man for food, drink, confectionery, or condiment, or which enters into the composition of the same whether simple, blended, mixed, or compounded.

2. *"Cold storage plant"* shall mean a place artificially cooled to a temperature of 40° F. or below, in which food is kept, but it shall not include a like place in a private home, hotel, or restaurant, or a refrigerator car.

3. *"Cold-stored"* shall mean the keeping of articles of food in a cold storage plant or

plants for a period exceeding thirty days, and food which has been so kept shall be deemed to be cold storage food, but this subsection shall not be construed as applying to meat or meat products in the process of manufacture. [S13,§2528-d; C24, 27, 31, 35, 39,§**2857**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§171.1]

171.2 License. Every person engaged in the business of operating a cold storage plant and who charges a fee for the service rendered shall obtain a license from the department for each establishment at which said business is conducted. Applications for such licenses shall be made upon blanks furnished by the department and shall conform to the prescribed rules of the department. [S13,§2528-d1; C24, 27, 31, 35, 39,§**2858**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §171.2]

License applicable to locker plants, §172.5

171.3 Examination of plant. Before issuing a license to operate a cold storage plant the department shall make an examination of the proposed plant to ascertain if the proper sanitary conditions and equipment have been provided. [S13,§2528-d1; C24, 27, 31, 35, 39,§**2859**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§171.3]

171.4 License fee. The license fee shall be twenty-five dollars per annum, and all licenses shall expire on December 31 following the date of issue. [S13,§2528-d1; C24, 27, 31, 35, 39,§**2860**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§171.4]

171.5 Receipt and withdrawal of food. Every licensee shall keep an accurate record of the receipt and the withdrawal of all food which is cold-stored, and said record shall be open to inspection by the department at all reasonable times. [S13,§2528-d3; C24, 27, 31, 35, 39,§**2861**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§171.5]

171.6 Reports by licensee. Every licensee shall quarterly, or at such times as may be required by the department, report upon blanks furnished by the department in itemized particulars the quantity of food which is being cold-stored in his plant. Quarterly reports shall be filed not later than the sixth day of January, April, July, and October of each year, and the reports so rendered shall show the conditions existing on the first day of the month in which the report is filed. [S13,§2528-d3; C24, 27, 31, 35, 39,§**2862**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§171.6]

171.7 Storing of impure food. No article of food shall be cold-stored unless it is in a proper condition for storage and meets all the requirements of the pure food and food sanitation laws and such rules as may be established by the department for the sanitary preparation of food products which are to be cold-stored. [S13,§2528-d4; C24, 27, 31, 35, 39,§**2863**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§171.7]

Pure food, chs 190, 191; food sanitation, ch 170

171.8 Revocation of license. Every cold storage plant shall be maintained in a sanitary condition and conducted with strict regard to the influence of such condition upon the food handled therein. If any licensee under this chapter fails to comply with this section the department shall revoke his license. [S13,§2528-d2; C24, 27, 31, 35, 39,§**2864**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§171.8]

171.9 Food not intended for human consumption. Every article of food not intended for human consumption, before being placed in a cold storage plant shall be so marked by the owner in accordance with the rules established by the department. [S13,§2528-d4; C24, 27, 31, 35, 39,§**2865**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §171.9]

171.10 Date of deposit and withdrawal. Each article of food when deposited in a cold storage plant shall have marked upon the package, container, or article the date of deposit, and when removed said article shall be marked in like manner with the date of removal. Said markings shall be in accordance with the rules established by the department. [S13,§2528-d6; C24, 27, 31, 35, 39,§**2866**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§171.10]

171.11 Period for storage. No person shall keep in a cold storage plant any article of food for a longer period than twelve calendar months, except with the consent of the department. [S13,§2528-d7; C24, 27, 31, 35, 39,§**2867**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§171.11]

171.12 Application for extension of period. Upon application the department shall grant permission to extend the period of storage beyond twelve months for a particular consignment of goods, if the goods in question are found upon examination to be in proper condition for further storage at the end of twelve months. The length of time for which further storage is allowed shall be specified in the order granting such permission. [S13,§2528-d7; C24, 27, 31, 35, 39,§**2868**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§171.12]

171.13 Report of extensions of storage period. A report on each case in which such extension of storage is permitted, including the reason for such action, the kind and the amount of goods for which the storage period was extended, and the length of time for which the continuance was granted, shall be included in the annual report of the department. [S13, §2528-d7; C24, 27, 31, 35, 39,§**2869**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§171.13]

171.14 Notice of sale of cold storage goods. No person shall represent or advertise as fresh goods articles of food which have been cold-stored, and every person who sells or offers or exposes for sale, uncooked articles of cold storage food shall display at all times in a conspicuous place a placard with only the words "Cold Storage Goods Sold Here" printed in black roman letters not less than three inches high and two inches wide upon a white card fifteen by twenty-five inches in dimensions. [S13,§2528-d8; C24, 27, 31, 35, 39,§**2870**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§171.14]

171.15 Return of goods to cold storage. No article of food which has once been cold-stored and placed on the market for sale to consumers shall again be placed in a cold storage plant, but transfers of goods from one cold storage plant to another may be made if not for the purpose of evading the provisions of this chapter. The operator of a cold storage plant shall label all goods with the date when stored, which date shall not be removed when goods are removed, and in determining whether goods are "cold-stored" the time same have been stored in different plants shall be added together and the aggregate shall be the time stored and shall be so marked when sold. [S13,§2528-d9; C24, 27, 31, 35, 39,§2871; C46, 50, 54, 58, 62, 66, 71, 73, 75,§171.15]

171.16 Penalties. Any person violating any of the provisions of this chapter shall be punished for the first offense by a fine of not less than twenty-five dollars nor more than one hundred dollars, and for the second offense by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment. [S13,§2528-d11; C24, 27, 31, 35, 39,§2872; C46, 50, 54, 58, 62, 66, 71, 73, 75,§171.16]

CHAPTER 172

FROZEN FOOD LOCKER PLANTS

Lien, see ch 578
Referred to in §172A.6

172.1 Definitions.
172.2 License.
172.3 Examination of plant.
172.4 License fee.
172.5 Other license coverage.
172.6 Storing of impure food.
172.7 Revocation of license.
172.8 Goods not intended for human consumption.
172.9 Food must be sharp frozen before storage.
172.10 Operators or owners not warehousemen.
172.11 Penalties.

172.1 Definitions. For the purpose of this chapter:

1. *"Food"* shall include any article used by man for food, drink, confectionery or condiment, or which enters into the composition of the same whether simple, blended, mixed or compounded.

2. *"Frozen food locker plant"* shall mean a location or establishment in which space in individual lockers is rented to persons for storage of frozen food and is equipped with a chill room, sharp freezing facilities and facilities for cutting, preparing, wrapping and packaging meats and meat products, fruits and vegetables.

"Branch frozen food locker plant" shall mean a location or establishment in which space in individual lockers is rented to persons for storage of frozen food after preparation for storage at a frozen food locker plant.

3. *"Sharp frozen"* shall mean the freezing of food in a room in which the temperature is zero or below.

4. *"Department"* shall mean the department of agriculture. [C39,§2872.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§172.1]

172.2 License. No person shall engage in the operation of a frozen food locker plant or a branch frozen food locker plant until he has obtained a separate license from the department for each such location or establishment. Application for such license or licenses shall be made upon forms furnished by the department and shall contain the items required by it as to ownership, management, location, equipment, and other data concerning the business for which each license is desired. [C39,§2872.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§172.2]

172.3 Examination of plant. Upon receipt of an application for a license for a new plant accompanied by the required fee, the department shall inspect within thirty days the plant or branch plant, its equipment, facilities, surrounding premises, and if its operations comply with provisions of law and the authorized rules and regulations of the department applicable to such plants, the department shall issue such license. [C39,§2872.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§172.3]

172.4 License fee. The license fee for each such plant or branch plant shall be ten dollars for two hundred or less individual lockers with an additional two dollars for each additional one hundred individual lockers or major fraction thereof in either a frozen food locker plant or branch frozen food locker plant. Each such license shall expire on December 31 of each year following the date of issue and no such license shall be transferable. [C39, §2872.04; C46, 50, 54, 58, 62, 66, 71, 73, 75,§172.4]

172.5 Other license coverage. Individuals or corporations licensed exclusively under the provisions of chapter 171 shall not be required

to pay the license fee provided herein. [C39, §2872.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§172.5]

172.6 Storing of impure food. No article of food shall be stored in any frozen food locker plant unless it is in a proper condition for storage and meets all the requirements of the pure food and food sanitation laws and such rules as may be established by the department for the sanitary preparation of food products which are to be stored. [C39,§2872.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§172.6]

172.7 Revocation of license. Every frozen food locker plant shall be maintained in a sanitary condition and conducted with strict regard to the influence of such conditions upon the food handled therein and any licensee under this chapter who fails to comply with any provision of this chapter shall suffer a revocation of his license. [C39,§2872.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§172.7]

172.8 Goods not intended for human consumption. Goods not intended for human consumption shall not be stored in a frozen food locker plant except such items of animal or vegetable matter which may have been inspected and approved by the United States government. [C39,§2872.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§172.8]

172.9 Food must be sharp frozen before storage. All food must be sharp frozen before it shall be placed in a frozen food locker, and shall be kept at a temperature of 10° F. or lower during the period it is kept therein. [C39, §2872.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§172.9]

172.10 Operators or owners not warehousemen. Persons who own or operate frozen food locker plants or branch plants shall not be construed to be warehousemen, nor shall receipts or other instruments issued by such persons in the ordinary conduct of their business be construed to be negotiable warehouse receipts. [C39,§2872.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§172.10]

Lien, see ch 578

172.11 Penalties. Any person who shall violate any provision of this chapter shall be fined not less than twenty-five dollars nor more than one hundred dollars or be imprisoned in the county jail not exceeding thirty days. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§172.11]

CHAPTER 172A

BONDING OF OPERATORS OF SLAUGHTERHOUSES

Referred to in §166A.2

172A.1 Definitions.
172A.2 License required.
172A.3 Application for license.
172A.4 Proof of financial responsibility required.
172A.5 Bonded packers registration.
172A.6 Low volume dealers exempt from license and bond.
172A.7 Access to records.
172A.8 Reciprocal agreements.
172A.9 Payment for livestock.
172A.10 Injunctions—criminal penalties.
172A.11 Suspension of license.
172A.12 Revocation of license.
172A.13 Rules.
172A.14 Reserved.

IDENTIFICATION OF SWINE CONSIGNED FOR SLAUGHTER

172A.15 Purpose.
172A.16 Definitions.
172A.17 Identification required.
172A.18 Form of identification required

172A.1 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Animals"* or *"livestock"* includes cattle, calves, swine, or sheep.

2. *"Person"* means an individual, partnership, association or corporation, or any other business unit.

3. *"Dealer"* or *"broker"* means any person, other than an agent, who is engaged in this state in the business of slaughtering live animals or receiving, buying or soliciting live animals for slaughter, the meat products of which are directly or indirectly to be offered for resale or for public consumption.

4. *"Agent"* means a person engaged in the buying or soliciting in this state of livestock for slaughter exclusively on behalf of a dealer or broker.

5. *"Department"* means the department of agriculture of this state.

6. *"Secretary"* means the secretary of agriculture or the secretary's designee. [C73, 75, §172A.1; 66GA, ch 131,§§1, 2, 3]

172A.2 License required. No person shall act as a dealer or broker without first being licensed. No person shall act for any dealer or broker as an agent unless such dealer or broker is licensed, has designated such agent to act in the dealer's or broker's behalf, and has notified the secretary of the designation in the dealer's or broker's application for license or has given official notice in writing

of the appointment of the agent and the secretary has issued to the agent an agent's license. A dealer or broker shall be accountable and responsible for contracts made by an agent in the course of the agent's employment. The license of an agent whose employment by the dealer or broker is terminated shall be void on the date written notice of termination is received by the secretary. The license of a dealer, broker, or agent, unless revoked, shall expire on the last day of June following the date of issue. The annual fee for the license of a dealer or broker is fifty dollars. The annual fee for an agent's license is ten dollars.

No person may be issued a license if that person previously has had a license revoked, or previously was issued a license and the secretary suspended that license, unless the order of suspension or revocation is thereafter terminated by the secretary. [C73, 75, §172A.2; 66GA, ch 131,§4]

172A.3 Application for license. Application for a license as a dealer or broker or as an agent shall be made in writing to the department. The application shall state the nature of the business, the municipal corporation, township and county, the post-office address at which the business is to be conducted, and such additional information as the department may prescribe.

The applicant upon satisfying the department of his character and good faith in seeking to engage in such business and upon complying with such other requirements specified in this chapter, shall be issued by the department a license to conduct the business of a dealer, broker, or agent at the place named in the application. [C73, 75,§172A.3]

172A.4 Proof of financial responsibility required. No license shall be issued by the secretary to a dealer or broker until the applicant has furnished proof of financial responsibility as provided in this section. The proof may be in the following forms:

1. A bond of a surety company authorized to do business in the state of Iowa in the form prescribed by and to the satisfaction of the secretary, conditioned for the payment of a judgment against the applicant furnishing the bond because of nonpayment of obligations in connection with the purchase of animals.

a. The amount of bond for an established dealer or broker who does not maintain a business location in this state shall be not less than the nearest multiple of five thousand dollars above twice the average daily value of purchases of livestock originating in this state, handled by such applicant during the preceding twelve months or such parts thereof as the applicant was purchasing livestock. The bond of a person who does not maintain a business location in this state shall be conditioned for the payment only of those claims which arise from purchases of livestock originating in this state.

b. The amount of bond for an established dealer or broker who maintains one or more business locations in this state shall be not less than the nearest multiple of five thousand dollars above twice the average daily value of purchases of livestock originating in this state handled by the applicant during the preceding twelve months or such parts thereof as the applicant was purchasing livestock. The bond of a person who maintains one or more business locations in this state shall be conditioned for the payment only of those claims which arise from purchases of livestock originating in this state.

c. If a new dealer or broker not previously covered by this chapter applies for a license, the amount of bond shall be based on twice the estimated average daily value of purchases of livestock originating in this state.

d. For the purpose of computing average daily value, two hundred sixty is deemed the number of business days in a year.

e. Whenever a dealer or broker's weekly purchases exceed one hundred fifty percent of his average weekly volume, the department shall require additional bond in an amount determined by the department.

f. The licensee and surety of the bond shall be held and firmly bound unto the secretary as trustee for all persons who may be damaged because of nonpayment of obligations in connection with the purchase of animals originating in this state. Any person damaged because of such nonpayment may maintain suit in the person's own behalf to recover on the bond, even though not named as a party to the bond.

g. For purposes of subsection 1, "purchases of livestock originating in this state" shall not include purchases by dealers or brokers from their subsidiaries.

2. A bond equivalent may be filed in lieu of a bond. The bond equivalent shall be in the form of a trust agreement and the fund of the trust shall be in the form of fully negotiable obligations of the United States or certificates of deposit insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

The trust agreement shall be in the form prescribed by the secretary and executed to the satisfaction of the secretary. The trustee of the trust agreement shall be an institution located in this state in which the funds are invested or deposited.

The trust agreement shall provide as beneficiary, the secretary for the benefit of those persons damaged because of nonpayment of obligations in connection with the purchase of animals originating in this state. The fund in trust shall be an amount calculated in the exact manner as provided in subsection 1. The fund in trust shall not be subject to attach-

ment for any other claim, or to levy of execution upon a judgment based on any other claim.

3. Any person damaged by nonpayment of obligations or by any misrepresentation or fraud on the part of a broker or dealer may maintain an action against the broker or dealer, and the sureties on the bonds or the trustee of a trust fund. The aggregate liability of the sureties or the trust for all such damage shall not exceed the amount of the bond or trust. In the event that the aggregate claims exceed the total amount of the bond or trust, the amount payable on account of any claim shall be in the same proportion to the amount of the bond or trust as the individual claim bears to the aggregate claims.

Unless the person damaged files claim with the dealer or broker, and with the sureties or trustee, and with the department within ninety days after the date of the transaction on which the claim is based, the claimant shall be barred from maintaining an action on the bond or trust and from receiving any proceeds from the bond or trust.

4. Whenever the secretary determines that the business volume of the applicant or licensee is such as to render the bond or trust inadequate, the amount of the bond or trust shall be, upon notice, adjusted.

5. All bonds and trust agreements shall contain a provision requiring that at least thirty days' prior notice in writing be given to the secretary by the party terminating the bond or trust agreement as a condition precedent to termination.

Whenever a bond or a trust agreement is to be terminated by a cancellation by the surety or trustee, the secretary shall cause to be published notices of the proposed cancellation not less than ten days prior to the date the cancellation is effective. The notices shall be published as follows:

a. In the Iowa administrative code.

b. In a newspaper of general circulation in the county in which the licensee maintains a business location, or if the licensee maintains no business location in this state, then in the county where the licensee transacts a substantial part of the licensee's business.

c. By general news release to all news media. Failure by the secretary to cause the publication of notice as required by this paragraph shall not be deemed to prevent or delay the cancellation.

The termination of a bond or a trust agreement shall not release the parties from any liability arising out of the facts or transactions occurring prior to the termiation date.

Trust funds shall not be withdrawn from trust by a licensee until the expiration of ninety days after the date of termination of the trust, and then only if no claims secured by the agreement have been filed with the secretary. If any claims have been filed with the secretary, the withdrawal of funds by the licensee shall not be permitted until the claims have been satisfied or released and evidence of the satisfaction or release filed with the secretary.

6. A person who is not a resident of this state and who either maintains no business location in this state or maintains one or more business locations in this state, and a person who is a resident of this state and who maintains more than one business location in this state, may submit a consolidated proof of financial responsibility. The consolidated proof of financial responsibility shall consist of a bond or a trust agreement meeting all of the requirements of this section, except that the calculation of the amount of the bond or the amount of the trust fund shall be based on the average daily value of all purchases of livestock originating in this state. A person who submits consolidated proof of financial responsibility shall maintain separate records for each business location, and shall maintain such other records respecting purchases of livestock as the secretary by rule shall prescribe. [C73, 75,§172A.4; 66GA, ch 131,§5]

172A.5 Bonded packers registration. A dealer or broker who has a bond required by the United States department of agriculture under the Packers and Stockyards Act of 1921 as amended, Title VII, sections 181 through 231, United States Code, shall be exempt from the provisions of this chapter upon registration with the secretary. Registration shall be effective upon filing with the secretary a certified copy of the bond filed with the United States department of agriculture, and shall continue in effect until that bond is terminated. [C73, 75,172A.5; 66GA, ch 131,§6]

172A.6 Low volume dealers exempt from license and bond. The license and financial responsibility provisions of this chapter shall not apply to any person who is licensed by the secretary as provided in chapters 170, 171 or 172 and who purchases livestock for slaughter valued at less than an average daily value of two thousand five hundred dollars during the preceding twelve months or such part thereof as the person was purchasing livestock. Said licensees are made subject to this chapter as to the regulatory and penal provisions hereof. All other provisions of this chapter shall apply to said dealers or brokers.

The provisions of this chapter shall not apply to any other person who purchases livestock for slaughter valued at less than an average daily value of two thousand five hundred dollars based upon the preceding twelve months or such part thereof as the person was purchasing livestock. [C73, 75, §172A.6; 66GA, ch 131,§6]

172A.7 Access to records. Every dealer or broker shall during all reasonable times permit an authorized representative of the department to examine all records relating to his business

necessary in the enforcement of this chapter. [C73, 75,§172A.7]

172A.8 Reciprocal agreements. The department shall have the power and authority to enter into reciprocal agreements with the authorized representatives of other federal or state jurisdictions for the exchange of information and audit reports on a co-operative basis which may assist the department in the proper administration of this chapter. [C73, 75,§172A.8]

172A.9 Payment for livestock.

1. Each dealer, or broker purchasing livestock, before the close of the next business day following either the purchase of livestock or the determination of the amount of the purchase price, whichever is later, shall transmit or deliver to the seller or the seller's duly authorized agent the full amount of the purchase price. If livestock is bought on a yield or grade and yield basis, a dealer or broker shall upon the express request in writing of the seller, transmit or deliver to the seller or the seller's duly authorized agent before the close of the next business day following such purchase or delivery, whichever is later, up to eighty percent of the estimated purchase price, and pay the remaining balance on the next business day following the determination of the purchase price.

2. Payment to the seller shall be made by cash, check, or wire transfer of funds. If payment to the seller is by check, the check shall be drawn on a bank located in this state or on a bank located in an adjacent state and in the nearest city to Iowa in which a check processing center of a federal reserve bank district is located. For the purpose of this subsection, "wire transfer" means any telephonic, telegraphic, electronic, or similar communication between the bank of the purchaser and the bank of the seller which results in the transfer of funds or credits of the purchaser to an account of the seller.

3. Provisions of this section may be modified by an agreement signed by both the buyer and the seller or their duly authorized agents at the time of the sale. However, such an agreement shall not be a condition of sale unless expressly requested by the seller.

4. Failure to comply with this section shall be a violation of this chapter. [66GA , ch 131, §8]

Referred to in §172A.11
Section 172A.9, Code 1975, repealed; see 66GA, ch 131,§8 and §172A.10

172A.10 Injunctions — criminal penalties. If any person who is required by this chapter to be licensed fails to obtain the required license, or if any person who is required by this chapter to maintain proof of financial responsibility, or if any licensee fails to discontinue engaging in licensed activities when that person's license has been suspended, such failure shall be deemed a nuisance and the secretary may bring an action on behalf of the state to enjoin such nuisance. Such actions may be heard on not less than five days notice to the person whose activities are sought to be enjoined. The failure to obtain a license when required, or the failure to maintain proof of financial responsibility shall constitute a violation of this chapter.

Any person convicted of violating any provision of this chapter shall be punished by a fine of not less than five hundred dollars nor more than two thousand five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both fine and imprisonment.* [C73, 75,§172A.9; 66GA, ch 131,§9]

*See §172A.9

172A.11 Suspension of license.

1. The secretary shall have the authority to suspend the license of any dealer or broker or agent if upon hearing it is found that the dealer or broker or agent has committed any of the following acts or omissions:

a. Failure to submit a larger bond amount or trust fund when ordered by the secretary.

b. Failure to pay for purchases of livestock in the manner required by section 172A.9.

An order of suspension issued by the secretary shall be effective for an indefinite period, unless and until the person establishes to the satisfaction of the secretary that the person has taken reasonable precautions to prevent a recurrence of the act or omission in the future.

2. The secretary shall have the authority temporarily to suspend without hearing the license of any licensee in any of the following circumstances:

a. The licensee fails to maintain proof of financial responsibility, or the surety on the licensee's bond loses its authorization to issue bonds in this state, or the trustee of a trust fund loses its authorization to engage in the business of a fiduciary.

b. Claims are filed with the secretary against the bond or trust in an aggregate amount equal to ten percent or more of the amount of the bond.

A temporary suspension shall be effective on the date of issuance of the order of suspension, and until a revocation hearing has been held and the secretary either has entered an order of revocation of the license, or has terminated the order of suspension. [66GA, ch 131,§10]

172A.12 Revocation of license.

1. The secretary shall have the authority to revoke the license of a dealer or broker or agent upon notice and hearing if any of the following conditions exist:

a. Grounds exist for the temporary suspension of the license without hearing, and it is established that the person is or will be unable to meet obligations to producers of livestock when due.

b. The person has refused access to the secretary to the books and records of the person as required by this chapter.

c. Any other conditions exist which in the opinion of the secretary reasonably establish that it would be financially detrimental to livestock producers of this state to permit the person to engage in licensed activities in this state.

An order of revocation shall be effective upon the issuance of the order of revocation, and until the order is rescinded by the secretary, or until the decision of the secretary is reversed by a final order of a court of this state. [66GA, ch 131,§11]

172A.13 Rules. The secretary is authorized to adopt rules pursuant to chapter 17A which are reasonable and necessary for the enforcement of this chapter. [66GA, ch 131,§12]

Prior licenses, see 66GA, ch 131,§13

172A.14 Reserved.

IDENTIFICATION OF SWINE CONSIGNED FOR SLAUGHTER

172A.15 Purpose. The purpose of this division is to establish a positive means of identifying all boars, sows and stags purchased for slaughter on their arrival at the first point of concentration after such sale. The purpose of such swine identification program is to facilitate eradication of swine diseases. [66GA, ch 130,§1]

172A.16 Definitions.

1. *"Person"* means a person as defined in section 4.1, subsection 13.

2. *"Department"* means the department of agriculture of this state.

3. *"Slaughtering establishment"* means any person engaged in the business of slaughtering live animals or receiving or buying live animals for slaughter.

4. *"Stag"* means a male swine that has formerly been used for breeding purposes but that has subsequently been castrated.

5. *"Livestock dealer, livestock market operator,* or *stockyard operator"* means any person engaged in the business of buying for resale, or selling, or exchanging swine as a principal or agent, or one who holds himself or herself out as so engaged, but does not include the owner or operator of a farm who does not hold himself or herself out as so engaged, and who sells or exchanges only those swine which have been kept by him or her solely for feeding or breeding purposes. [66GA, ch 130,§2]

172A.17 Identification required.

1. All boars, sows and stags received for sale or shipment to slaughter by a livestock dealer, livestock market operator or stockyard operator shall be identified at the first point of concentration by such dealer or operator by application of a slap tattoo or other identification approved by the department.

2. All boars, sows and stags consigned directly from a farm to a slaughtering establishment shall be identified at the first point of concentration by the consignee. [66GA, ch 130,§3]

Referred to in §172A.18

172A.18 Form of identification required.

1. The slap tattoo or other means of identification required by section 172A.17 shall be in accordance with regulations of the department.

2. Each person required by section 172A.17 to identify animals shall record such identification on forms specified and furnished by the department. The identification shall include the tattoo specifications, the date of application, and the name, address and county of residence of the person who owned or controlled the herd from which the animals originated.

3. Such records shall be maintained for a length of time as required by and pursuant to chapter 304 and at the point of concentration and shall be made available for inspection by the department at reasonable times. [66GA, ch 130,§4]

CHAPTER 172B

TRANSPORTATION OF LIVESTOCK

172B.1 Definitions.
172B.2 Transportation certificate exhibited—public offense.
172B.3 Form of certificate—substitutes.
172B.4 Execution and retention of records.
172B.5 Authority of law enforcement officers.
172B.6 Offenses and penalties.

172B.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Livestock"* means and includes live cattle, swine, sheep or horses, and the carcasses of such animals whether in whole or in part.

2. *"Law enforcement officer"* means a state highway safety patrolman, a sheriff, or other peace officer so designated by this state or by a county or municipality.

3. *"Owner"* means a person having legal title to livestock.

4. *"Secretary"* means the secretary of agriculture or his designee.

5. *"Transporting livestock"* means being in custody of or operating a vehicle in this state, whether or not on a highway, in which are confined one or more head of livestock. Vehicle includes a truck, trailer, and other device used for the purpose of conveying objects, whether or not the device has motive power or is attached to a vehicle with motive power at the time the livestock are confined.

6. *"Transportation certificate"* means the document specified in section 172B.3 and includes either the standard form prescribed by the secretary, or a substitute document the use of which has been authorized by the secretary. [66GA, ch 132,§1]

172B.2 Transportation certificate exhibited —public offense. A person transporting livestock shall execute in the presence of a law enforcement officer, at the request of the officer, a transportation certificate. A person who fails to comply with this section commits a public offense punishable as provided in section 172B.6. A person who fails to execute a transportation certificate upon the request of the officer fails to comply with this section even though the person possesses a transportation certificate. [66GA, ch 132,§2]

Referred to in §§172B.5, 172B.6

172B.3 Form of certificate—substitutes.

1. *Duties of secretary.* The secretary, pursuant to chapter 17A, shall prescribe a standard form of the transportation certificate required by this chapter. Where the laws of this state or of the United States require the possession of another shipping document by a person transporting livestock, or where the industry practice of carriers requires the possession of a shipping document by a person transporting livestock, and where such a document contains all of the information other than signatures which is prescribed in subsection 2, upon application of a carrier the secretary by rule shall authorize the use of a specific document in lieu of the standard form prescribed by the secretary, but subject to any conditions the secretary may impose. A person who is in possession of a shipping document approved by the secretary shall not be required to possess the standard form transportation certificate prescribed by the secretary, but the person may be required by a law enforcement officer to execute the standard form transportation certificate.

The form prescribed or authorized by the secretary shall be executed in triplicate, and shall be retained as provided in section 172B.4.

The secretary shall distribute, upon request, copies of the prescribed standard form to veterinarians, marketing agencies, carriers, law enforcement officers, and other persons, and may collect a fee from the recipient totaling not more than the cost of printing and postage. Nothing in this chapter shall be construed to prohibit a person from causing the reproduction of the standard form, and an accurate reproduction of a standard current form may be used as a transportation certificate for all purposes.

2. *Contents.* The transportation certificate shall contain the following information:

a. The date of execution of the certificate.

b. The name and address of the owner of the livestock.

c. The name and address of the shipper if other than the owner.

d. The address of the loading point of the livestock, or the nearest post office and county.

e. The date of loading of the livestock.

f. The name and address of the purchaser, consignee, or other person receiving shipment.

g. The address of the destination of the livestock, or the nearest post office and county.

h. The name and address of the carrier or person transporting livestock.

i. The motor vehicle operator's license number of the person transporting livestock.

j. The vehicle license number and the state of issuance.

k. The vehicle seal number, if any.

l. The form number and state of issuance of any health certificate accompanying the livestock.

m. A description of the livestock including number, breed, sex, age, and brands, if any.

n. The signature of the owner or shipper, or the signature of the person transporting livestock, or the signatures of either the owner or shipper and the person transporting livestock. [66GA, ch 132,§3]

Referred to in §§172B.1, 172B.5

172B.4 Execution and retention of records.

1. *Shipper.* A person who causes the transporting of livestock shall cause to be executed and to be delivered to the person transporting livestock, at the request of that person, duplicate copies of a transportation certificate.

2. *Transporter.* A person transporting livestock who has been given a receipt by a law enforcement officer shall retain that receipt until the person relinquishes custody of the livestock.

3. *Law enforcement officer.* A law enforcement officer, upon requesting and receiving a transportation certificate, shall retain a copy of the certificate and shall submit the certificate to the law enforcement agency by which he is employed. The officer shall give to the person transporting livestock, in a form prescribed by the commissioner of public safety or his designee, a receipt for the certificate given to the officer. However, a law enforcement officer shall not retain a copy of the certificate if the person transporting livestock has a receipt issued by another law enforcement officer.

The commissioner of public safety may authorize the use of any method of giving receipt, including endorsement by the officer on the certificate retained by the person trans-

porting livestock. The receipt shall make the law enforcement officer issuing the receipt identifiable by other law enforcement officers. [66GA, ch 132,§4]

Referred to in §§172B.3, 172B.5, 172B.6

172B.5 Authority of law enforcement officers.

1. *Investigation.* A law enforcement officer may stop and detain a person, whether on or off a highway, who is transporting livestock for the purpose of obtaining compliance with section 172B.2, and the officer may request the presentation or execution of a transportation certificate. The officer may examine the livestock for identification, the vehicle for the purpose of obtaining the vehicle registration number, and the registration of the vehicle and the operator's license of the driver or person detained: However, nothing in this chapter shall be construed to authorize any law enforcement officer to open or require the opening of the cargo compartment of any vehicle manufactured for use in carrying refrigerated cargo when both the cargo is actually under refrigeration at the time the vehicle is detained by the law enforcement officer, and the person operating the vehicle has in possession when stopped a valid transportation certificate or approved shipping document which was executed by the shipper and when* identifies the cargo as processed livestock and otherwise complies with section 172B.3, subsection 2.

2. *Execution of certificate.* If the person transporting livestock does not possess a completed transportation certificate, or if in the opinion of the officer the form possessed is improper, the officer may provide the person with a blank standard form, and may request that the person execute the form, including the person's signature. The person shall be permitted to view any documents in his possession for the purpose of completing the form. Except as provided in section 172B.4, the officer shall retain a copy of the certificate and shall give the person a receipt for that certificate.

3. *Detention.* A law enforcement officer may detain a person transporting livestock for a reasonable period of time not to exceed thirty minutes for the purpose of verifying any information obtained by the officer.

4. *Arrest.* A detention for the purposes of subsections 1, 2 and 3 shall not constitute an arrest. If the law enforcement officer has probable cause to believe that the person transporting livestock has committed a public offense, the officer may place the person under arrest. The officer may require the person to move the vehicle to a place determined by the officer, or the officer may make other provisions for the vehicle and the livestock, as the officer shall determine. If the owner of the livestock is not available, the officer is authorized to incur reasonable expense for the care of the livestock which expense shall be charged to and paid by the owner of the livestock. [66GA, ch 132,§5]

*According to enrolled Act

172B.6 Offenses and penalties.

1. A person who is convicted of violating section 172B.2 may be sentenced to a fine not to exceed one hundred dollars, or to imprisonment in the county jail for a period not to exceed thirty days, or both* the fine and imprisonment.

2. A person who makes or utters a transportation certificate with knowledge that some or all of the information contained in the certificate is false, or a person who alters, forges, or counterfeits a transportation certificate, or the receipt prescribed in section 172B.4, commits a public offense and upon conviction may be sentenced to a term in the state penitentiary not to exceed ten years, to a fine not to exceed five thousand dollars, or to both* the fine and imprisonment. [66GA, ch 132,§6]

Referred to in §172B.2
*Indictable misdemeanor, §687.7

CHAPTER 172C

CORPORATE OR PARTNERSHIP FARMING

172C.1 Definitions.
172C.2 Prohibited operations.
172C.3 Penalties for prohibited operation—injunctive relief.
172C.4 Temporary restriction on increase of holdings.
172C.5 Reports by corporations.
172C.6 Reporting by limited partnerships.
172C.7 Reports by fiduciaries.
172C.8 Reports by beneficiaries.
172C.9 Report by processors.
172C.10 Signing reports.
172C.11 Penalties—reports.
172C.12 County assessor's report.
172C.13 County recorder's report.
172C.14 Duties of secretary of state—legislative use.
172C.15 Additional information.

172C.1 Definitions. For the purposes of this chapter:

1. *"Corporation"* means a domestic or foreign corporation as defined in chapters 491,

496A, 497, 498, 499, 504 and 504A which owns or leases agricultural land or is engaged in farming.

2. *"Limited partnership"* means a partnership as defined in chapter 545 which owns or leases agricultural land or is engaged in farming.

3. *"Processor"* means a person, firm, corporation, or limited partnership, which alone or in conjunction with others, directly or indirectly controls the manufacturing, processing or preparation for sale of beef or pork products having a total annual wholesale value of ten million dollars or more. Any person, firm, corporation or limited partner with a ten percent or greater interest in another person, firm, corporation, or limited partnership involved in the manufacturing, processing or preparation for sale of beef or pork products having a total annual wholesale value of ten million dollars or more shall also be considered a processor.

4. *"Feedlot"* means a lot, yard, corral or other area in which hogs or cattle fed for slaughter are confined. The term includes areas which are used for the raising of crops or other vegetation and upon which hogs or cattle fed for slaughter are allowed to graze or feed.

5. *"Agricultural land"* means land suitable for use in farming.

6. *"Farming"* means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming shall not include the production of timber, forest products, nursery products, or sod and farming shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

7. *"Fiduciary capacity"* means an undertaking to act alone or jointly as trustee, executor, administrator, personal representative, agent, guardian, conservator, receiver, escrow agent, attorney-in-fact and any other similar capacity.

8. *"Family farm corporation"* means a corporation:

a. Founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related;

b. All of its stockholders are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons; and

c. Sixty percent of the gross revenues of the corporation over the last consecutive three-year period comes from farming.

9. *"Authorized farm corporation"* means a corporation other than a family farm corporation founded for the purpose of farming and the ownership of agricultural land in which:

a. The stockholders do not exceed twenty-five in number; and

b. The stockholders are all natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations. [66GA, ch 133,§1]

Referred to in §172C.5

172C.2 Prohibited operations. In order to preserve free and private enterprise, prevent monopoly, and protect consumers, it is unlawful for any processor of beef or pork or limited partnership in which a processor holds partnership shares as a general partner or partnership shares as a limited partner, to own, control or operate a feedlot in Iowa in which hogs or cattle are fed for slaughter. However, this section shall not preclude a processor or limited partnership from contracting for the purchase or feeding of hogs or cattle, provided that where the contract sets a date for delivery which is more than twenty days after the making of the contract it shall:

1. Specify a calendar day for delivery of the livestock; or

2. Specify the month for the delivery, and shall allow the farmer to set the week for the delivery within such month and the processor or limited partnership to set the date for delivery within such week. This section shall not prevent processors or educational institutions from carrying on legitimate research, educational, or demonstration activities, nor shall it prevent processors from owning and operating facilities to provide normal care and feeding of animals for a period not to exceed ten days immediately prior to slaughter, or for a longer period in an emergency. Any processor or limited partnership which owns, controls, or operates a feedlot on August 15, 1975 shall have until July 1, 1985 to dispose of the property. [66GA, ch 133,§2]

Referred to in §172C.3

172C.3 Penalties for prohibited operation—injunctive relief. Any processor violating the provisions of section 172C.2 shall, upon conviction, be punished by a fine of not more than fifty thousand dollars. The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter. [66GA, ch 133,§3]

172C.4 Temporary restriction on increase of holdings. For a period of three years from August 15, 1975 no corporation, other than a family farm corporation or an authorized farm corporation shall, either directly or indirectly, acquire or otherwise obtain or lease any additional agricultural land in this state. However,

the restrictions provided in this section shall not apply to the following:

1. A bona fide encumbrance taken for purposes of security.

2. Agricultural land acquired by a corporation for research or experimental purposes, if the commercial sales from such agricultural land are incidental to the research or experimental objectives of the corporation, and agricultural land acquired for the purpose of testing, developing or producing seeds, animals, or plants for sale or resale to farmers or for purposes incidental to those purposes.

3. Agricultural land acquired by a nonprofit corporation organized under the provisions of chapters 504 and 504A.

4. Agricultural land acquired by a corporation for immediate or potential use in nonfarming purposes.

5. Agricultural land acquired by a corporation by process of law in the collection of debts, or pursuant to a contract for deed executed prior to August 15, 1975, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.

6. A municipal corporation.

7. Agricultural land which is acquired by a trust company or bank in a fiduciary capacity for the benefit of natural persons or nonprofit corporations.

8. A corporation or its subsidiary organized under chapter 491 and to which section 312.8 is applicable. [66GA, ch 133,§4, ch 1120,§1]

172C.5 Reports by corporations. All corporations, except where the corporation is acting in a fiduciary capacity, which own or lease agricultural land in the state of Iowa, or which own or lease any land on which poultry or livestock are confined for feeding or other purposes for ten days or more, or which contract for keeping and feeding poultry or livestock, or which contract for the growing of agricultural crops, fruits or other horticultural products in the state of Iowa, shall file with their annual report, on forms approved pursuant to the provisions of chapter 17A and supplied by the secretary of state, the following additional information, unless otherwise provided:

1. Declaration of the type of agricultural activity engaged in by the reporting corporation.

2. The acreage and location listed by township and county, or legally described urban plat of each lot or parcel of agricultural land in this state owned or leased by the corporation at the end of the preceding fiscal or calendar year.

3. The approximate number and kind of poultry or livestock owned, contracted for, fed or kept by the corporation during the preceding calendar or fiscal year.

4. The approximate number of acres used for each agricultural crop, fruit or other horticultural product grown or contracted for during the preceding calendar or fiscal year.

5. The number of acres owned and operated by the corporation, the number of acres leased by the corporation, and the number of acres leased to the corporation. If a livestock or crop-share lease, the corporation shall disclose the share of the livestock or the crop to which the corporation is entitled under the lease.

6. In the case of a corporation holding agricultural land for immediate or potential use in nonfarming purposes, a statement specifying for what purpose such land is being held.

7. The names and addresses of, and the number of shares of stock by class held by, all shareholders owning ten percent or more of any class of stock of the corporation.

8. The name, address, residence, citizenship of and number of shares of each class held by any nonresident alien shareholder holding five percent or more of any class of stock of the corporation.

9. Whether the corporation is a family farm corporation as defined in section 172C.1. If a family farm corporation, the number of shares held by persons residing on or actively engaged in farming.

10. Whether the corporation is an authorized farm corporation as defined in section 172C.1. If an authorized farm corporation, the number of shares held by persons residing on or actively engaged in farming.

This section shall not apply to land held for the purpose of railroad or highway rights of way, nor shall it apply to lots within city limits which are smaller than twenty acres.

The annual report from any corporation owning agricultural land in Iowa used for research, testing or experimental purposes or held for the potential expansion of its physical facilities shall include only the information required by subsections 1 to 6.

Corporations organized under chapter 504, shall file only the additional report required by this section. [66GA, ch 133,§5]

Referred to in §172C.8

172C.6 Reporting by limited partnerships. Each limited partnership owning or leasing agricultural land or engaged in farming shall file with the secretary of state on or before March 31 of each year on forms approved pursuant to the provisions of chapter 17A and supplied by the secretary of state an annual report setting forth the following:

1. The name of the limited partnership, and the term for which the partnership is to exist.

2. Declaration of the type of agricultural activity engaged in by the reporting limited partnership.

3. The acreage and location listed by township and county, or legally described urban plat, of each lot or parcel of agricultural land in this state owned or leased by the limited

partnership at the end of the preceding calendar or fiscal year.

4. The approximate number and kind of poultry or livestock owned, contracted for, fed or kept by the limited partnership during the preceding calendar or fiscal year.

5. The approximate number of acres used for each agricultural crop, fruit or other horticultural product grown or contracted for during the preceding calendar or fiscal year.

6. The number of acres owned and operated by the limited partnership, the number of acres leased by the limited partnership, and the number of acres leased to the limited partnership. If a livestock or crop-share lease, the limited partnership shall disclose the share of the livestock or the crop to which the limited partnership is entitled under the lease.

7. The name and place of residence and principal occupation of each member of the limited partnership, general and limited partners being respectively designated and, if a nonresident alien partner, his or her citizenship.

8. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner.

9. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of the limited partner's contribution.

10. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner during the preceeding fiscal or calendar year. [66GA, ch 133,§6]

Referred to in §172C.8

172C.7 Reports by fiduciaries. Every person acting in a fiduciary capacity on behalf of any corporation, limited partnership or nonresident alien individual, who holds agricultural land in this state outside the corporate limits of any city, shall file with the secretary of state on or before January 31 of each year a report as follows:

1. If acting in a fiduciary capacity for a corporation:

a. The name and address of the corporation.

b. The name and address of the corporation's registered agent or agents, if any, in this state.

c. The acreage and location of the land owned in such fiduciary capacity listed by township and county on December 31 of the year reported.

2. If acting in a fiduciary capacity for a limited partnership:

a. The name and address of the partnership.

b. The name and place of residence of each member, general and limited partners being respectively designated.

c. The acreage and location of the land owned in such fiduciary capacity listed by township and county on December 31 of the year reported.

3. If acting in a fiduciary capacity for a nonresident alien:

a. The name, address, residence and citizenship of the nonresident alien.

b. The acreage and location of the land owned in such fiduciary capacity listed by township and county on December 31 of the year reported. [66GA, ch 133,§8]

Referred to in §172C.8

172C.8 Reports by beneficiaries.

1. Any corporation identified as a beneficiary in a report filed with the secretary of state pursuant to section 172C.7, subsection 1, shall file with the secretary of state on or before March 31 of each year, on forms supplied by the secretary of state, a report containing the information set forth in section 172C.5, with respect to land owned by a fiduciary on behalf of the corporation.

2. Any limited partnership identified as a beneficiary in a report filed with the secretary of state pursuant to section 172C.7, subsection 2, shall file with the secretary of state on or before March 31 of each year, on forms supplied by the secretary of state, a report containing the information set forth in section 172C.6, with respect to land owned by a fiduciary on behalf of the limited partnership.

3. Any nonresident alien identified as a beneficiary in a report filed with the secretary of state pursuant to section 172C.7, subsection 3, shall file with the secretary of state on or before March 31 of each year on forms supplied by the secretary of state, a report containing the information set forth in section 567.9, with respect to land owned by a fiduciary on behalf of the nonresident alien. [66GA, ch 133,§9]

172C.9 Report by processors. Any processor of beef or pork in this state shall file with the secretary of state on or before March 31 of each year, a report setting forth:

1. The number of hogs and the number of cattle owned and fed more than thirty days by the processor in Iowa during the preceding calendar or fiscal year.

2. The total number of hogs and the total number of cattle owned and fed more than thirty days by the processor during the preceding calendar year.

3. The number of hogs and the number of cattle slaughtered in Iowa by the processor during the preceding calendar or fiscal year.

4. The total number of hogs and the total number of cattle slaughtered by the processor during the preceding calendar or fiscal year. [66GA, ch 133,§10]

172C.10 Signing reports. Reports by corporations shall be signed by the president or other officer or authorized representative. Reports by limited partnerships shall be signed by the president or other authorized representative of the partnership. Reports by indi-

viduals shall be signed by the individual or an authorized representative. [66GA, ch 133, §11]

172C.11 Penalties—reports. Willful failure to file a required report, or the willful filing of false information, is a public offense. A person found guilty of violating this section shall be subject to a fine not to exceed one thousand dollars. [66GA, ch 133,§12]

172C.12 County assessor's report. The county assessor shall forward to the secretary of state, by October 1 of each year, the name and address of every corporation, nonresident alien, trust or other business entity owning agricultural land in the county as shown by the assessment rolls of the county. [66GA, ch 133,§13]

172C.13 County recorder's report. The county recorder shall forward to the secretary of state, by December 1 of each year, the names and addresses of each limited partnership owning agricultural land or engaged in farming in the county as shown by county records. [66GA, ch 133,§14]

172C.14 Duties of secretary of state—legislative use. The secretary of state shall do all things necessary to implement this chapter. It is the intent of this section that information shall be made available to members of the general assembly and appropriate committees of the general assembly in order to determine the extent of farming being carried out in this state by corporations and other business entities and the effect of such farming practices upon the economy of this state. The secretary of state shall assist any committee of the general assembly existing or established for the purposes of studying the effects of this chapter and the practices this chapter seeks to study and regulate. [66GA, ch 133,§15]

172C.15 Additional information. The secretary of state shall request additional information as may be necessary or appropriate to enable the secretary of state to administer this chapter. [66GA, ch 133,§16]

CHAPTER 172D

LIVESTOCK FEEDLOTS

Referred to in §657.8
Effective November 1, 1976

172D.1 Definitions.
172D.2 Compliance—a defense to nuisance actions.
172D.3 Compliance with rules of the department.
172D.4 Compliance with zoning requirements.

172D.1 Definitions. As used in this Act, unless the context otherwise requires:

1. *"City"* means a municipal corporation*, but not including a county, township, school district, or any special-purpose district or authority.

2. *"Department"* means the department of environmental quality and includes any officer or agency within that department.

3. *"Established date of operation"* means the date on which a feedlot commenced operating with not more livestock than reasonably could be maintained by the physical facilities existing as of that date. If the physical facilities of the feedlot are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent "established date of operation" established as of this date of commencement of the expanded operations, and the commencement of expanded operations shall not divest the feedlot of a previously established date of operation.

4. *"Established date of ownership"* means the date of the recording of an appropriate muniment of title establishing the ownership of realty.

5. *"Rule of the department"* means a rule as defined in section 17A.2 which materially affects the operation of a feedlot and which has been adopted by the department. The term includes a rule which was in effect prior to July 1, 1975. Except as specifically provided in section 172D.3, subsection 2, paragraph *"b"*, subparagraph (5) and paragraph *"c"*, subparagraph (5) nothing in this chapter shall be deemed to empower the department to make any rule.

6. *"Feedlot"* means a lot, yard, corral, or other area in which livestock are confined, primarily for the purposes of feeding and growth prior to slaughter. The term does not include areas which are used for the raising of crops or other vegetation and upon which livestock are allowed to graze or feed.

7. *"Livestock"* means cattle, sheep, swine, poultry, and other animals or fowl, which are being produced primarily for use as food or food products for human consumption.

8. *"Materially affects"* means prohibits or regulates with respect to the location, or the emission of noise, effluent, odors, sewage, waste, or similar products resulting from the operation or the location or use of buildings,

machinery, vehicles, equipment, or other real or personal property used in the operation, of a livestock feedlot.

9. *"Nuisance"* means and includes public or private nuisance as defined either by statute or by the common law.

10. *"Nuisance action or proceeding"* means and includes every action, claim or proceeding, whether brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

11. *"Owner"* shall mean the person holding record title to real estate to include both legal and equitable interests under recorded real estate contracts.

12. *"Zoning requirement"* means a regulation or ordinance, which has been adopted by a city, county, township, school district, or any special-purpose district or authority, and which materially affects the operation of a feedlot. Nothing in this chapter shall be deemed to empower any agency described in this subsection to make any regulation or ordinance.

13. A rule pertaining to *"feedlot management standards"* means a rule, the implementation of which, or the compliance with which, requires the expenditure of funds not in excess of two percent of the establishment cost of the feedlot.

14. A rule pertaining to *"feedlot design standards"* means a rule, the implementation of which, or the compliance with which, requires the expenditure of funds in excess of two percent of the establishment cost of the feedlot.

15. *"Establishment cost of a feedlot"* means the cost or value of the feedlot on its established date of operation and includes the cost or value of the building, machinery, vehicles, equipment or other real or personal property used in the operation of the feedlot. [66GA, ch 1121,§1]

* Including a "town," see 65GA, ch 1087,§32

172D.2 Compliance—a defense to nuisance actions. In any nuisance action or proceeding against a feedlot brought by or on behalf of a person whose date of ownership of realty is subsequent to the established date of operation of that feedlot, proof of compliance with sections 172D.3 and 172D.4 shall be an absolute defense, provided that the conditions or circumstances alleged to constitute a nuisance are subject to regulatory jurisdiction in accordance with either section 172D.3 or 172D.4. [66GA, ch 1121,§2]

172D.3 Compliance with rules of the department.

1. *Requirement.* A person who operates a feedlot shall comply with applicable rules of the department. The applicability of a rule of the department shall be as provided in subsection 2. A person complies with this section as a matter of law where no rule of the department exists.

2. *Applicability of rules.*

a. Exclusion for federally mandated requirements. This section shall apply to the department's rules except for rules required for delegation of the national pollutant discharge elimination system permit program pursuant to the Federal Water Pollution Control Act, Title 33, United States Code, chapter 126, as amended, and 40 Code of Federal Regulations, Part 124.

b. Applicability of rules of the department other than those issued by the air quality commission.

(1) A rule of the department in effect on November 1, 1976 shall apply to a feedlot with an established date of operation prior to November 1, 1976.

(2) A rule of the department shall apply to a feedlot with an established date of operation subsequent to the effective date of the rule.

(3) A rule of the department adopted after November 1, 1976 shall not apply to a feedlot holding any DEQ permit and having an established date of operation prior to the effective date of the rule until either the expiration of the term of the permit in effect on the effective date of the rule, or ten years from the established date of operation of the feedlot, whichever time period is greater.

(4) A rule of the department adopted after November 1, 1976 shall not apply to a feedlot not previously required to hold a DEQ permit and having an established date of operation prior to the effective date of the rule for either a period of ten years from the established date of operation of the feedlot or five years from the effective date of the rule, whichever time period is greater.

(5) To achieve compliance with applicable rules the department shall issue an appropriate compliance schedule.

c. Applicability of rules of the air quality commission.

(1) A rule of the air quality commission in effect on November 1, 1976 shall apply to a feedlot with an established date of operation prior to November 1, 1976.

(2) A rule of the air quality commission shall apply to a feedlot with an established date of operation subsequent to the effective date of the rule.

(3) A rule of the air quality commission pertaining to feedlot management standards adopted after November 1, 1976 shall not apply to any feedlot having an established date of operation prior to the effective date of the rule until one year after the effective date of the rule.

(4) A rule of the air quality commission pertaining to feedlot design standards adopted after November 1, 1976 shall not apply to any feedlot having an established date of operation prior to the effective date of the rule for either a period of ten years from the established date of operation of the feedlot or two years from the effective date of the rule, whichever time period is greater. However, any design

standard rule pertaining to the siting of any feedlot shall apply only to a feedlot with an established date of operation subsequent to the effective date of the rule.

(5) To achieve compliance with applicable rules the department shall issue an appropriate compliance schedule. [66GA, ch 1121,§3]

Referred to in §§172D.1, 172D.2

172D.4 Compliance with zoning requirements.

1. *Requirement.* A person who operates a feedlot shall comply with applicable zoning requirements. The applicability of a zoning requirement shall be as provided in subsection 2 of this section. A person complies with this section as a matter of law where no zoning requirement exists.

2. *Applicability.*

a. A zoning requirement shall apply to a feedlot with an established date of operation subsequent to the effective date of the zoning requirement.

b. A zoning requirement, other than one adopted by a city, shall not apply to a feedlot with an established date of operation prior to the effective date of the zoning requirement for a period of ten years from the effective date of that zoning requirement.

c. A zoning requirement which is in effect on November 1, 1976, shall apply to a feedlot with an established date of operation prior to November 1, 1976.

d. A zoning requirement adopted by a city shall apply to a feedlot located within an incorporated or unincorporated area which is subject to regulation by that city as of November 1, 1976, regardless of the established date of operation of the feedlot.

e. A zoning requirement adopted by a city shall not apply to a feedlot which becomes located within an incorporated or unincorporated area subject to regulation by that city by virtue of an incorporation or annexation which takes effect after November 1, 1976 for a period of ten years from the effective date of the incorporation or annexation. [66GA, ch 1121,§4]

Referred to in §172D.2

CHAPTER 173

STATE FAIR AND EXPOSITION

Referred to in §8.32
Fine arts expenditures, 66GA, ch 62§13

173.1 State fair board.
173.2 Convention.
173.3 Certification of state aid associations.
173.4 Voting power.
173.5 Elections to be made.
173.6 Terms of office.
173.7 Vacancies.
173.8 Compensation and expenses.
173.9 Secretary.
173.10 Salary of secretary.
173.11 Treasurer.
173.12 Salary of treasurer.
173.13 Executive committee—meetings.
173.14 Powers and duties of board.
173.15 Management of state fair.
173.16 Maintenance of state fair.
173.17 Claims.
173.18 Warrants.
173.19 Auditing of accounts.
173.20 Report.
173.21 Annual report to governor.

173.1 State fair board. The Iowa state fair board shall consist of:

1. The governor of the state, the state secretary of agriculture, and the president of the Iowa State University of science and technology.

2. One director from each congressional district and three directors at large, to be elected at a convention as hereinafter provided.

3. A president and vice-president to be elected by the state fair board from the nine elected directors.

4. A secretary and a treasurer to be elected by the state fair board who shall be nonvoting members. [S13,§1657-c; C24, 27, 31, 35, 39, §2873; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.1; 66GA, ch 1081,§3]

173.2 Convention. A convention shall be held at the capitol, on the second Wednesday of December of each year, to elect members of the state fair board. The convention shall be composed of:

1. The members of the state fair board as then organized.

2. The president or secretary of each county or district agricultural society entitled to receive aid from the state, or a regularly elected delegate therefrom accredited in writing, who shall be a resident of the county.

3. One delegate, a resident of the county, to be appointed by the board of supervisors in each county where there is no such society, or when such society fails to report to the state fair board in the manner provided by law as a basis for state aid. The board shall promptly report such failure to the county auditor.

4. The president, or an accredited representative, of each farmers institute organized under chapter 175* which is entitled to receive aid from the state.

5. The president, or an accredited representative, of the Iowa state horticultural society.

6. The president, or an accredited representative, of the Iowa state dairy association.

7. The president, or an accredited representative, of the Iowa beef cattle producers association.

8. The president, or an accredited representative, of the Iowa crop improvement association.

9. The president, or an accredited representative, of the Iowa swine producers association.

10. The president, or an accredited representative, of the Iowa horse and mule breeders association.

11. The president, or an accredited representative, of the Iowa sheep association. [R60, §§1701, 1704; C73,§§1103, 1112; C97,§§1653, 1661; S13,§1657-d; SS15,§1661-a; C24, 27, 31, 35, 39, §2874; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.2]

Referred to in §173.3
*Repealed by 66GA, ch 1056,§45

173.3 Certification of state aid associations. On or before November 15 of each year the secretary of agriculture shall certify to the secretary of the state fair board the names of the various associations and societies which have qualified for state aid under the provisions of chapters 175* to 178, 180 to 184, inclusive, and 186, and which are entitled to representation in the convention as provided in section 173.2. [C24, 27, 31, 35, 39,§2875; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.3]

State aid, see appropriation Act
*Repealed by 66GA, ch 1056,§45

173.4 Voting power. On all questions arising for determination by the convention, each member present shall be entitled to but one vote, and no proxies shall be recognized by the convention. However, a member who is also a board director at large or a board congressional director shall not be entitled to vote for a successor to each of the three directors at large or a successor to each congressional director on the board. [S13,§1657-d; C24, 27, 31, 35, 39,§2876; C46, 50, 54, 58, 62, 66, 71, 73, 75, §173.4; 66GA, ch 1081,§4]

173.5 Elections to be made. The convention shall elect:

1. A successor to each of the three directors at large whose term expires at noon on the day following the adjournment of the convention. No two directors at large shall be elected from the same congressional district.

2. A successor to each congressional district director on the board whose term expires at noon on the day following the adjournment of the convention. [R60,§1700; C73,§1104; C97, §1654; S13,§1657-e; C24, 27, 31, 35, 39,§2877; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.5]

173.6 Terms of office. The term of the president and vice-president of the board shall be one year and that of a director two years. No person shall hold the office of president for more than three consecutive years, plus any portion of a year in which he was first elected by the board to fill a vacancy. The term of a director shall begin at noon on the day following the adjournment of the convention at which the director was elected and shall continue until a successor is elected and qualified as provided in this chapter. [R60, §1700; C73,§1104; C97,§1654; S13,§1657-e; C24, 27, 31, 35, 39,§2878; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.6]

173.7 Vacancies. If, after the adjournment of the convention, a vacancy occurs in the office of any member of the board elected by the convention the board shall fill the same, and the member so elected shall qualify at once and serve until noon of the day following the adjournment of the next convention. If, by that time, the member elected by the board will not have completed the full term for which his predecessor was elected, said convention shall elect a member to serve out the unexpired portion of such term. The member so elected shall qualify at the same time as other members elected by the convention. [S13,§1657-e; C24, 27, 31, 35, 39,§2879; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.7]

173.8 Compensation and expenses. A member of the board elected at the annual convention shall be paid a forty dollar per diem and shall be reimbursed for actual and necessary expenses incurred while engaged in official duties. All per diem and expense moneys paid to a member shall be paid from funds of the state fair board. [S13,§1657-p; C24, 27, 31, 35, 39,§2880; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.8]

173.9 Secretary. The board shall elect a secretary who shall hold office for one year, and he shall:

1. Keep a complete record of the annual convention and of all meetings of the board.

2. Draw all warrants on the treasurer of the board and keep a correct account thereof.

3. Perform such other duties as the board may direct. [R60,§§1700, 1703; C73,§§1104, 1107; C97,§§1654, 1656; S13,§1657-k; C24, 27, 31, 35, 39, §2881; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.9]

173.10 Salary of secretary. The secretary shall receive such salary as fixed by the general assembly. [S13,§1657-n; C24, 27, 31, 35, 39, §2882; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.10]

173.11 Treasurer. The board shall elect a treasurer who shall hold office for one year, and he shall:

1. Keep a correct account of the receipts and disbursements of all moneys belonging to the board.

2. Make payments on all warrants signed by the president and secretary from any funds available for such purpose.

3. Execute and file with the secretary of the board a bond, to be approved by the board, for the faithful performance of his duties. [R60, §1700; C73,§1104; C97,§1654; S13,§1657-o; C24, 27, 31, 35, 39,§2883; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.11]

Power of auditor of state, §§11.5, 173.19

173.12 Salary of treasurer. The treasurer shall receive such compensation for his services as the board may fix, not to exceed five hundred dollars a year, and shall be paid a forty-dollar per diem and shall be reimbursed for actual and necessary expenses incurred while engaged in official duties. [S13,§1657-o; C24, 27, 31, 35, 39,§2884; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.12; 66GA, ch 1122,§2]

173.13 Executive committee—meetings. The president, vice president, and secretary shall constitute an executive committee, which shall transact such business as may be delegated to it by the board. The president may call meetings of the board or executive committee when the interests of the work require it. [R60,§1104; C73,§1700; C97,§1654; S13,§1657-h; C24, 27, 31, 35, 39,§2885; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.13]

173.14 Powers and duties of board. The state fair board shall have the custody and control of the state fairgrounds, including the buildings and equipment thereon belonging to the state, and shall have power to:

1. Erect and repair buildings on said grounds and make other necessary improvements thereon.

2. Regulate the construction of street railways within said grounds and determine the motive power by which the same shall be propelled.

3. Hold an annual fair and exposition on said grounds.

4. Prepare premium lists and establish rules of exhibition for such fair which shall be published by the board not later than the first day of June in each year.

5. Take and hold property by gift, devise, or bequest for fair purposes, and the president, secretary, and treasurer of the board shall have charge and control of the same, subject to the action of the board. Such officers shall give bonds as required in the case of executors, to be approved by the board and filed with the secretary of state.

6. The state fair board may grant a written permit to such persons as it deems proper to sell fruit, provisions, and other articles not prohibited by law, under such regulations as the board may prescribe.

7. The president of the state fair board may appoint such number of special police as he may deem necessary and such officers are hereby vested with the powers and charged with the duties of peace officers.

8. Adopt all necessary rules in the discharge of its duties and in the exercise of the powers herein conferred. [R60,§1702; C73,§1106; C97, §1655; S13,§§1657-i,-j,-r; C24, 27, 31, 35, 39,§2886; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.14]

173.15 Management of state fair. The board may delegate the management of the state fair to the executive committee and two or more additional members of the board; and in carrying on such fair it may employ such assistance as may be deemed necessary. [S13,§1657-i; C24, 27, 31, 35, 39,§2887; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.15]

173.16 Maintenance of state fair. All expenses incurred in maintaining the state fairgrounds and in conducting the annual fair thereon, including the compensation and expenses of the officers, members, and employees of the board, shall be recorded by the secretary and paid from the state fair receipts, unless a specific appropriation has been provided for such purpose. An individual member of the state fair board shall not be personally liable because of any act performed or debt created by action of the board in carrying out the purposes and provisions of this chapter. [S13,§§1657-i,-t; C24, 27, 31, 35, 39,§2888; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.16]

173.17 Claims. The board shall prescribe rules for the presentation and payment of claims out of the state fair receipts and other funds of the board and no claim shall be allowed which does not comply therewith. [C24, 27, 31, 35, 39,§2889; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.17]

173.18 Warrants. No claim shall be paid by the treasurer except upon a warrant signed by the president and secretary of the board, but this section shall not apply to the payment of state fair premiums. [S13,§1657-o; C24, 27, 31, 35, 39,§2890; C46, 50, 54, 58, 62, 66, 71, 73, 75, §173.18]

173.19 Auditing of accounts. Prior to the annual convention, the auditor of state shall examine and report to the executive council upon all financial affairs of the board. [S13, §1657-q; C24, 27, 31, 35, 39,§2891; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.19]

173.20 Report. The board shall file each year with the department of agriculture, at such time as the department may specify, a report containing such information relative to the state fair and exposition and the district and county fairs as the department may require. [C24, 27, 31, 35, 39,§2892; C46, 50, 54, 58, 62, 66, 71, 73, 75,§173.20]

173.21 Annual report to governor. The state fair board shall each year at the time provided by law make a report to the governor containing:

1. A complete account of the annual state fair and exposition.

2. The proceedings of the annual state agricultural convention.

3. The proceedings of the annual county and district fair managers convention. [R60,§1703; C73,§1107; C97,§1656; S13,§1657-k; C24, 27, 31, 35, 39,§2893; C46, 50, 54, 58, 62, 66, 71, 73, 75, §173.21]

Time of report, §17.4

CHAPTER 174

COUNTY AND DISTRICT FAIRS

Referred to in §§99B.1, 491.1, 496A.142(1), 504A.100(1)

174.1 Terms defined.
174.2 Powers of society.
174.3 Control of grounds.
174.4 Permits to sell articles.
174.5 Appointment of police.
174.6 Removal of obstructions.
174.7 Refusal to remove obstructions.
174.8 Publication of financial statement.
174.9 State aid.
174.10 Appropriation—availability.
174.11 Amount allowed as state aid.
174.12 Payment of state aid.
174.13 County aid.
174.14 Additional county aid.
174.15 Purchase and management.
174.16 Termination of rights of society.
174.17 Tax aid.
174.18 Expenditure of fund.
174.19 Report to supervisors.
174.20 Fraudulent entries of horses.
174.21 Violations—penalty.
174.22 Entry under changed name.
174.23 Class determined.
174.24 Title in county to fairgrounds.
174.25 Selling fairgrounds.
174.26 Liability for costs.
174.27 County equipment for maintenance.

174.1 Terms defined. For the purposes of this chapter:

1. *"Fair"* shall mean a bona fide exhibition of agricultural, dairy, and kindred products, livestock, and farm implements.

2. *"Society"* shall mean a county or district fair or agricultural society incorporated under the laws of this state for the purpose of holding such fair, and which owns or leases at least ten acres of ground and owns buildings and improvements situated on said ground of a value of at least eight thousand dollars, or any incorporated farm organization authorized to hold an agricultural fair which owns or leases buildings and grounds especially constructed for fair purposes of the value of one hundred and fifty thousand dollars in a county where no other agricultural fair receiving state aid is held.

3. *"Management"* shall mean president, vice-president, secretary, or treasurer of the society. [C24, 27, 31, 35, 39,§2894; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.1]

Referred to in §174.10

174.2 Powers of society. Each society may hold annually a fair to further interest in agriculture and to encourage the improvement of agricultural products, livestock, articles of domestic industry, implements, and other mechanical devices. It may offer and award such premiums as will induce general competition.

In addition to the powers granted herein the society shall possess the powers of a corporation not for pecuniary profit under the laws of this state and those powers enumerated in its articles of incorporation, such powers to be exercised before and after the holding of such fairs.

No salary or compensation of any kind shall be paid to the president, vice-president, treasurer, or to any director of the association for such duties. [R60,§1697; C73,§1109; C97, §1658; S13,§1658; C24, 27, 31, 35, 39,§2895; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.2]

174.3 Control of grounds. During the time a fair is being held, no ordinance or resolution of any city shall in any way impair the authority of the society, but it shall have sole and exclusive control over and management of such fair. [C73,§1116; C97,§1664; C24, 27, 31, 35, 39,§2896; C46, 50, 54, 58, 62, 66, 71, 73, 75, §174.3]

174.4 Permits to sell articles. The management of any society may grant a written permit to such persons as it thinks proper, to sell fruit, provisions, and other articles not prohibited by law, under such regulations as the board of directors may prescribe. [C73,§1115; C97,§1663; C24, 27, 31, 35, 39,§2897; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.4]

174.5 Appointment of police. The management of any society may appoint such number of special police as it may deem necessary. Such officers are hereby vested with the powers and charged with the duties of peace officers. [C97,§1664; C24, 27, 31, 35, 39,§2898; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.5]

174.6 Removal of obstructions. All shows, swings, booths, tents, vehicles, or any other thing that may obstruct the grounds of any society or the driveways thereof may be re-

moved from the grounds on the order of the management. [C73,§1116; C97,§1664; C24, 27, 31, 35, 39,§2899; C46, 50, 54, 58, 62, 66, 71, 73, 75, §174.6]

174.7 Refusal to remove obstructions. Any person owning, occupying, or using any such obstruction who shall refuse or fail to remove the same when ordered to do so by the management shall be liable to a fine of not less than five dollars nor more than one hundred dollars for each such offense. [C73,§1116; C97, §1664; C24, 27, 31, 35, 39,§2900; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.7]

174.8 Publication of financial statement. Each society shall annually publish in one newspaper of the county a financial statement of receipts and disbursements for the current year. [R60,§1698; C73,§1110; C97,§1659; S13, §1659; C24, 27, 31, 35, 39,§2901; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.8]

174.9 State aid. Each society shall be entitled to receive aid from the state if it files with the state fair board on or before November 1 of each year, a sworn statement which shall show:

1. The actual amount paid by it in cash premiums at its fair for the current year, which statement must correspond with its published offer of premiums.

2. That no part of said amount was paid for speed events, or to secure games or amusements.

3. A full and accurate statement of the receipts and expenditures of the society for the current year and other statistical data relative to exhibits and attendance for the year.

4. A copy of the published financial statement published as required by law, together with proof of such publication and a certified statement showing an itemized list of premiums awarded, and such other information as the state fair board may require. [R60, §§1698, 1704; C73,§§1110, 1112; C97,§§1659, 1661; S13,§1659; SS15,§1661-a; C24, 27, 31, 35, 39,§2902; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.9]

174.10 Appropriation—availability. The appropriation which is made biennially for state aid to the foregoing societies shall be available and applicable to incorporated societies of a purely agricultural nature which were entitled to draw eight hundred fifty dollars or more state aid in 1926, or societies located in counties that have no other fair or agricultural society, and which were in existence and drew state aid in 1926, except that in a county where there are two definitely separate county extension offices, two agricultural societies may receive state aid. The provisions of section 174.1 as to ownership of property shall not apply to societies under this section. [R60, §§1698, 1704; C73,§§1110, 1112; C97,§1661; S13, §1659; SS15,§1661-a; C24, 27,§2902; C31, 35,§2902-d1; C39,§2902.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.10]

174.11 Amount allowed as state aid. The amount allowed to any society as state aid shall be a sum equal to eighty percent of the first one thousand dollars, seventy percent of the second one thousand dollars, and sixty percent of the third one thousand dollars paid in cash by the society for premiums at its annual fair for the current year, but the total aid shall not in any one year exceed two thousand dollars to any one agricultural society. Provided, however, in counties having more than one fair entitled to state aid, except in counties where there are two definitely separate county extension offices, the state aid available for the county shall be prorated to said fairs, which have been in existence for ten years or more, on the basis of cash premiums paid by said fairs. [R60,§1704; C73,§1112; C97,§1661; SS15,§1661-a; C24, 27, 31, 35, 39,§2903; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.11]

174.12 Payment of state aid. The state comptroller shall issue his warrant to any society for the amount due as state aid, less one hundred dollars, provided the secretary of the state fair board certifies to the comptroller that such society has complied with the law relative thereto and that a named amount is due the society. The comptroller shall issue a like warrant for one hundred dollars provided the secretary of the state fair board certifies that such society had an accredited delegate in attendance at the annual convention for the election of members of the state fair board. [R60,§1698; C73,§1110; C97, §1659; S13,§1659; C24, 27, 31, 35, 39,§2904; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.12]

174.13 County aid. The board of supervisors of the county in which any such society is located may levy a tax of not to exceed six and three-fourths cents per thousand dollars of assessed value of the taxable property of the county, the funds realized therefrom to be known as the fairground fund, and to be used for the purpose of fitting up or purchasing fairgrounds for the society, or for the purpose of aiding boys and girls 4-H club work and payment of agricultural and livestock premiums in connection with said fair, provided such society shall be the owner in fee simple, or the lessee of at least ten acres of land for fairground purposes, and shall own or lease buildings and improvements thereon of at least eight thousand dollars in value. [C73, §1111; C97,§1660; SS15,§1660; C24, 27, 31, 35, 39. §2905; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.13]

Referred to in §24.37

174.14 Additional county aid. The board of supervisors may upon a petition signed by twenty-five percent of the qualified voters of the county as shown by the election register used for the last preceding general election, submit to the voters of the county, at a general election, the proposition to purchase or accept as a gift, for county or district fair purposes, real estate exceeding one thousand dollars in value. Notice of such election shall

be published in the official newspapers of the county for four weeks previous to such election. [SS15,§1660; C24, 27, 31, 35, 39,§2906; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.14]

174.15 Purchase and management. If a majority of the votes cast are in favor of such proposition, the board shall make the authorized purchase and pay for the same out of the general fund, or accept as a gift from the owner a county or district fairground already in existence. Title shall be taken in the name of the county, but the board of supervisors shall place such real estate under the control and management of an incorporated county or district fair society. Such society is authorized to act as agent for said county in the erection of buildings, maintenance of grounds and buildings or any improvements constructed on such grounds. Title to new buildings or improvements shall be taken in the name of the county but the county shall not be liable for such improvements or expenditures therefor. [SS15,§1660; C24, 27, 31, 35, 39, §2907; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.15]

174.16 Termination of rights of society. The right of such society to the control and management of said real estate may be terminated by the board of supervisors whenever well conducted agricultural fairs are not annually held thereon by such society. [SS15,§1660; C24, 27, 31, 35, 39,§2908; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.16]

174.17 Tax aid. The board of supervisors of any county which has acquired real estate for county or district fair purposes and which has a society using said real estate, may levy a tax of not to exceed six and three-fourths cents per thousand dollars of assessed value of the taxable property of the county, the funds realized therefrom to be known as the fairground fund. [C24, 27, 31, 35, 39,§2909; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.17]

Referred to in §24.37

174.18 Expenditure of fund. The fairground fund shall be expended only for the erection and repair of buildings or other permanent improvements on said real estate, or for the payment of debts contracted in such erection or repair and payment of agricultural and livestock premiums. [SS15,§1660; C24, 27, 31, 35, 39,§2910; C46, 50, 54, 58, 62, 66, 71, 73, 75, §174.18]

174.19 Report to supervisors. Each society receiving an appropriation from the county shall, through its secretary, make to the board of supervisors a detailed statement, accompanied with vouchers, showing the legal disbursement of all moneys so received. [C73, §1113; C97,§1662; C24, 27, 31, 35, 39,§2911; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.19]

174.20 Fraudulent entries of horses. No person, partnership, company, or corporation shall knowingly enter or cause to be entered any horse of any age or sex under an assumed name, or out of its proper class, to compete for any purse, prize, premium, stake, or sweepstake offered or given by any agricultural or other society, association, person, or persons in the state, or drive any such horse under an assumed name, or out of its proper class, where such prize, purse, premium, stake, or sweepstake is to be decided by a contest of speed. [C97,§1665; C24, 27, 31, 35, 39,§2912; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.20]

Referred to in §174.21

174.21 Violations—penalty. Any person convicted of a violation of section 174.20 shall be imprisoned in the penitentiary for a period of not more than three years, or in the county jail for not more than one year, and be fined in a sum not exceeding one thousand dollars. [C97,§1666; C24, 27, 31, 35, 39,§2913; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.21]

174.22 Entry under changed name. The name of any horse for the purpose of entry for competition in any contest of speed shall not be changed after having once contested for a prize, purse, premium, stake, or sweepstake, except as provided by the code of printed rules of the society or association under which the contest is advertised to be conducted, unless the former name is given. [C97,§1667; C24, 27, 31, 35, 39,§2914; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.22]

174.23 Class determined. The class to which a horse belongs for the purpose of an entry in any contest of speed, as provided by the printed rules of the society or association under which such contest is to be made, shall be determined by the public record of said horse in any such former contest. [C97,§1668; C24, 27, 31, 35, 39,§2915; C46, 50, 54, 58, 62, 66, 71, 73, 75,§174.23]

174.24 Title in county to fairgrounds. The board of supervisors of any county may accept legal title to land in the name of the county, free and clear of all liens and encumbrances, to be used for fair purposes. [C54, 58, 62, 66, 71, 73, 75,§174.24]

174.25 Selling fairgrounds. In the event that a new fairgrounds site is acquired by any county, the board of supervisors of such county may sell any existing fairground site to which the county has title and such board may sell any structure located on the old fairground site, that it is not practicable to move or transfer to the new fairground site, at public or private sale for the best price obtainable. The net proceeds from the sale of fairground sites and structures on such sites shall be placed in the "fairground fund" to be expended for the erection of permanent buildings on the new fairground site, or for the payment of debts contracted in the removal, transporting, erection or repair of structures moved from the old fairground site to the new fairground site. [C54, 58, 62, 66, 71, 73, 75, §174.25]

174.26 Liability for costs. The board of supervisors is hereby authorized and empowered to take such action as may be necessary to carry out and perform the authority hereinbefore provided, but the said county shall not be liable for any costs or expenses in carrying out and performing the authority hereinbefore provided. [C54, 58, 62, 66, 71, 73, 75,§174.26]

174.27 County equipment for maintenance. The board of supervisors may permit the use of maintenance equipment under their control for care and maintenance of the county fairgrounds. [C66, 71, 73, 75,§174.27]

CHAPTER 175

FARMERS INSTITUTES AND SHORT COURSES

Repealed by 66GA, ch 1056,§45

CHAPTER 176

FARM AID ASSOCIATIONS

Referred to in §§159.6(10), 173.3, 491.1, 496A.142(1), 504A.100(1)

176.1 Incorporation authorized.
176.2 Method of incorporation.
176.3 Articles of incorporation.
176.4 Amendments to articles.
176.5 Additional provisions.
176.6 Private property exempt from debts—seal.
176.7 Powers of association.
176.8 to 176.12 Repealed by 56GA, ch 107,§21.
176.13 Compensation.
176.14 Dividends—diversion of funds.
176.15 and 176.16 Repealed by 56GA, ch 107,§21.

176.1 Incorporation authorized. For the purpose of improving and advancing agriculture, domestic science, animal husbandry, and horticulture, a body corporate may be organized in each county of the state. [SS15,§1683-a; C24, 27, 31, 35, 39,§2924; C46, 50, 54, 58, 62, 66, 71, 73, 75,§176.1]

176.2 Method of incorporation. Such body corporate may be formed by the acknowledging and filing articles of incorporation with the county recorder, signed by at least ten farmers, landowners, or other persons engaged in business of the county. [S13,§1683-b; C24, 27, 31, 35, 39,§2925; C46, 50, 54, 58, 62, 66, 71, 73, 75,§176.2]

176.3 Articles of incorporation. Such articles of incorporation shall be substantially as follows:

We, the undersigned farmers, landowners, and persons engaged in business of ..... county, Iowa, do hereby adopt the following articles of incorporation:

Article 1. The objects of this corporation shall be to advance and improve, in..... county, Iowa, agriculture, domestic science, horticulture, animal husbandry, and the marketing of farm products.

Article 2. The name of this corporation shall be .....

.....

(the name of the county of which the incorporators are residents shall appear as part of the name of the corporation)

Article 3. The affairs of this corporation shall be conducted by a president, a vice-president, a secretary, and a treasurer, who shall perform the duties usually pertaining to such positions, and by a board of not less than nine directors, which shall include the president, vice-president, secretary, and treasurer as members thereof.

Such officers and directors shall be elected by the members of the corporation at an annual meeting held at such time and place in the county each year, as the board of directors shall by resolution fix and determine and provided further that the members shall be given not less than ten days' notice of such meeting by mailing notice thereof to the members, at their last known address, as shown by the records of the association.

Article 4. This corporation shall endure until terminated by operation of law. [SS15, §1683-c; C24, 27, 31, 35, 39,§2926; C46, 50, 54, 58, 62, 66, 71, 73, 75,§176.3]

176.4 Amendments to articles. The articles of incorporation of such farm aid associations may be amended to conform to the provisions of this Act* at any regular annual meeting, or at any special meeting of the members of such corporation called for that purpose. Notice of such meeting shall be sufficient if published in at least two regular issues of a daily or weekly newspaper of general circulation published in the county in which the

meeting is to be held, or by notice mailed to each member at his last known address, at least five days prior to such meeting. [C27, 31, 35,§2926-b1; C39,§**2926.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§176.4]

*43GA, ch 80

176.5 Additional provisions. Such articles may include other provisions which are not inconsistent with the provisions of this chapter and shall be recorded by the county recorder without fee. [S13,§1683-f; C24, 27, 31, 35, 39, §2927; C46, 50, 54, 58, 62, 66, 71, 73, 75,§176.5]

176.6 Private property exempt from debts—seal. Such association may sue and be sued, but the private property of the members shall be exempt from corporate debts. It may have a seal which it may alter at pleasure. [S13, §1683-d; C24, 27, 31, 35, 39,§**2928**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§176.6]

176.7 Powers of association. Such association shall have power to:

1. Adopt bylaws.

2. Take by gift, purchase, devise, or bequest, real or personal property.

3. Do all things necessary, appropriate, and convenient for the successful carrying out of the objects of the association. [SS15,§1683-e; C24, 27, 31, 35, 39,§**2929**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§176.7]

176.8 to 176.12 Repealed by 56GA, ch 107,§21.

176.13 Compensation. No salary or compensation of any kind shall be paid to the president, vice president, treasurer, or to any director of the association. [S13,§1683-g; C24, 27, 31, 35, 39,§**2935**; C46, 50, 54, 58, 62, 66, **71, 73,** 75,§176.13]

176.14 Dividends—diversion of funds. No dividend shall ever be declared by the association and any diversion of the funds or property of such organization to any other purpose than that for which such organization was incorporated shall constitute larceny and be punished accordingly. [S13,§§1683-h,-o; C24, 27, 31, 35, 39,§**2936**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §176.14]

Punishment, §709.2

176.15 and 176.16 Repealed by 56GA, ch 107, §21.

CHAPTER 176A

COUNTY AGRICULTURAL EXTENSION LAW

Referred to in §§159.6(10), 173.3

176A.1 Short title.
176A.2 Declaration of policy.
176A.3 Definition of terms.
176A.4 Establishment—body corporate—county agricultural extension districts.
176A.5 County agricultural extension council.
176A.6 Annual elections.
176A.7 County agricultural extension council—meetings.
176A.8 Powers and duties of county agricultural extension council.
176A.9 Limitation on powers and activities of extension council.
176A.10 County agricultural extension education tax.
176A.11 Annual levy by board of supervisors.
176A.12 County agricultural extension education fund.
176A.13 Co-operation extension council—extension service.
176A.14 Extension council officers—duties.
176A.15 Consolidation of extension districts.
176A.16 General election law not applicable.

176A.1 Short title. This chapter may be known and cited as the "County Agricultural Extension Law." [C58, 62, 66, 71, 73, 75, §176A.1]

176A.2 Declaration of policy. It is hereby declared to be the policy of the legislature to provide for aid in disseminating among the people of Iowa useful and practical information on subjects relating to agriculture, home economics and rural and community life, and to encourage the application of the same in the several counties of the state through extension work to be carried on in co-operation with Iowa State University of science and technology and the United States department of agriculture as provided in the Act of Congress May 8, 1914, as amended by Public Law 83 of the Eighty-third Congress. [C58, 62, 66, 71, 73, 75,§176A.2]

176A.3 Definition of terms. Whenever used or referred to in this chapter unless a different meaning clearly appears from the context (1) "county agricultural extension district" hereinafter referred to as "extension district" means a governmental subdivision of this state, and a public body corporate organized in accordance with the provisions of this chapter for the purposes, with the powers, and subject to the restrictions hereinafter set forth; (2) "county agricultural extension council" hereinafter referred to as "extension council" means the agency created and constituted

as provided in section 176A.5; (3) "Iowa State University" means the "Iowa State University of science and technology," and shall hereinafter be referred to as "Iowa State University"; (4) "extension service" means the "co-operative extension service in agriculture and home economics of Iowa State University," and shall hereinafter be referred to as "extension service"; (5) "director of extension" means the "director of Iowa State University of science and technology extension service," and shall hereinafter be referred to as "director of extension." [C58, 62, 66, 71, 73, 75,§176A.3]

176A.4 Establishment — body corporate — county agricultural extension districts. Each county, except Pottawattamie, is constituted and established as a "county agricultural extension district" and shall be a public body corporate organized in accordance with the provisions of this chapter for the purposes, with the powers and subject to the restrictions hereinafter set forth. Pottawattamie county shall be divided into and constitute two districts with one district to be known as "East Pottawattamie" which shall include the following townships: Pleasant, Layton, Knox, James, Valley, Lincoln, Washington, Belknap, Center, Wright, Carson, Macedonia, Grove, Waveland; and the other "West Pottawattamie" which shall include the following townships: Rockford, Boomer, Neola, Minden, Hazel Dell, York, Crescent, Norwalk, Lake, Garner, Hardin, Kane, Lewis, Keg Creek, Silver Creek. [C24, 27, 31, 35, 39,§2930; C46, 50, 54,§176.8; C58, 62, 66, 71, 73, 75,§176A.4]

176A.5 County agricultural extension council. There shall be elected in each extension district an "extension council" consisting of one elected resident member from each of the townships. The members of the extension council shall be qualified by being a resident qualified voter of the township. The resident qualified voters in each of the townships of a district shall meet annually during the period November 1 to December 31, upon a date and at a time and place determined and fixed by the extension council, except as herein otherwise provided. [C58, 62, 66, 71, 73, 75,§176A.5]

Referred to in §§176A.3, 176A.16

176A.6 Annual elections. In the year in each of the townships of each of the extension districts in which the term of office of the member of the extension council elected from the township expires as of December 31 in said year there shall be held an annual township election meeting during the period November 1 to December 31 for the election of a member of the extension council for a term of two years. No member of the extension council who has been elected to serve for a two-year term shall be eligible for election for more than one successive two-year term. [C58, 62, 66, 71, 73, 75,§176A.6]

Referred to in §176A.16

176A.7 County agricultural extension council—meetings. The members of each of the extension councils elected from the several townships of each of the extension districts, as herein provided, shall constitute the extension council of each extension district and their term of office shall commence January 1 following the date of their election, and they shall meet annually in each of the extension districts on such date and at such time and place during the months of January and July each year, and at such other times during the year as shall be determined and fixed by the extension council. [C58, 62, 66, 71, 73, 75, §176A.7]

176A.8 Powers and duties of county agricultural extension council. The extension councils of each extension district of the state shall have, exercise, and perform the following powers and duties:

1. To elect from their own number annually in January a chairman, vice-chairman, secretary and a treasurer who shall serve and be the officers of the extension council for a term expiring December 31 each year, and perform the functions and duties as herein in this chapter provided.

2. To and shall each year at the meeting at which the date, time, and place of the holding of township election meetings is fixed and determined, appoint from their own number one member whose term does not expire as of December 31 following said meeting to act as temporary chairman of the first meeting of the extension council to be held in January following his appointment, and one to act as temporary secretary of said extension council meeting.

3. To serve as an agency of the state and to manage and transact all of the business and affairs of its district and have control of all of the property acquired by it and necessary for the conduct of the business of the district for the purposes of this chapter.

4. To and shall fix the date, time and place in each of the townships of the extension district for the holding of township election meetings during the period provided for the holding of them for the election of members of the extension council, and call the township election meetings in each of the townships of the extension district for the election of the members of the extension council and cause notice of said election to be published once at least one week but not more than three weeks prior to the date fixed for the holding of such meetings in a newspaper having general circulation in each extension district, and the cost of publishing said notice shall be paid by the extension council. The township election meeting to elect a member of the extension council from the township may, by designation of the extension council, be held in another township of that county, provided that the extension council may not designate that over four such township elections may be combined into one election. All the provisions of this chapter referring to township election meetings in the townships

shall apply equally to the election meetings held at such other place in the county.

5. To and shall prior to the date of the holding of a township election meeting, designate two resident qualified voters in each of the several townships in which an election meeting is to be held, one to act as chairman, one to act as secretary of said meeting, which said meeting shall be conducted in accordance with Robert's Rules of Order. The minutes of each township election meeting shall be recorded by the secretary, signed and certified by the chairman and secretary and delivered by the secretary to the office of the extension council of the several extension districts on or before the date fixed for the next meeting of the extension council.

6. To and shall prior to the date fixed for the holding of the election meetings in the several townships of the district, appoint in each of the townships in which a township election meeting is to be held a nominating committee consisting of three members and designate the chairman thereof, which nominating committee shall nominate at least two resident qualified voters as candidates for election to membership in the extension council, which committee shall certify the names of the nominees and deliver said certificate to the person designated as chairman of the township election meeting on or before the date fixed for the holding thereof.

7. To enter into a Memorandum of Understanding with the extension service setting forth the co-operative relationship between the extension service and the extension district.

8. To employ all necessary extension professional personnel from qualified nominees furnished to it and recommended by the director of extension and not to terminate the employment of any such without first conferring with the director of extension, and to employ such other personnel as it shall determine necessary for the conduct of the business of the extension district, and to fix the compensation for all such personnel in co-operation with the extension service and in accordance with the Memorandum of Understanding entered into with such extension service.

9. To prepare annually on or before January 31 a budget for the fiscal year beginning July 1 and ending the following June 30, in accordance with the provisions of chapter 24 and certify the same to the board of supervisors of the county of their extension district as required by law.

10. To and shall be responsible for the preparation and adoption of the educational program on extension work in agriculture, home economics and 4-H club work, and periodically review said program and for the carrying out of the same in co-operation with the extension service in accordance with the Memorandum of Understanding with said extension service.

11. To make and adopt such rules not inconsistent with the law as it may deem necessary for its own government and the transaction of the business of the extension district.

12. To fill all vacancies in its membership to serve for the unexpired term of the member creating such vacancy by electing a resident qualified voter from the township of the residence of the member creating such vacancy. If for any reason a township election meeting is not held pursuant to call and published notice and no one is elected from said township as a member of the extension council of the district, there shall be a vacancy in such membership on the extension council.

13. To and shall, as soon as possible following the meeting at which the officers are elected, file in the office of the board of supervisors and of the county treasurer a certificate signed by its chairman and secretary certifying the names, addresses and terms of office of each member, and the names and addresses of the officers of the extension council with the signatures of the officers affixed thereto, and said certificate shall be conclusive as to the organization of the extension district, its extension council, and as to its members and its officers.

14. To and shall deposit all funds received from the "county agricultural extension education fund" in a bank or banks approved by it in the name of the extension district. These receipts shall constitute a fund known as the "county agricultural extension education fund" which shall be disbursed by the treasurer of the extension council on vouchers signed by its chairman and secretary and approved by the extension council and recorded in its minutes.

15. To expend the "county agricultural extension education fund" for salaries and travel, expense of personnel, rental, office supplies, equipment, communications, office facilities and services, and in payment of such other items as shall be necessary to carry out the extension district program; provided, however, it shall be unlawful for the county agricultural extension council to lease any office space which is occupied or used by any other farm organization or farm co-operative, and provided further, that it shall be lawful for the county agricultural extension council to lease space in a building owned or occupied by a farm organization or farm co-operative.

16. To carry over unexpended county agricultural extension education funds into the next year so that funds will be available to carry on the program until such time as moneys received from taxes are collected by the county treasurer, provided, however, that the unencumbered funds in the county agricultural extension education fund in excess of one-half the amount expended from said fund in the previous year shall be paid over to the county treasurer who shall transfer such funds to the general fund of the county. The

treasurer of the extension council with the approval of the council may invest agricultural extension education funds retained by the council and not needed for current expenses in the manner authorized for treasurers of political subdivisions under section 453.1.

17. To file with the county auditor and to publish in two newspapers of general circulation in the district before August 1 full and detailed reports under oath of all receipts, from whatever source derived, and expenditures of such county agricultural extension education fund showing from whom received, to whom paid and for what purpose for the last fiscal year. [S13,§1683-j,-m; C24, 27, 31, 35, 39,§§**2930, 2933, 2938**; C46, 50, 54,§§176.8, 176.11, 176.16; C58, 62, 66, 71, 73, 75,§176A.8]

Referred to in §176A.16

176A.9 Limitation on powers and activities of extension council.

1. The extension council shall have for its sole purpose the dissemination of information, the giving of instruction and practical demonstrations on subjects relating to agriculture, home economics, rural and community life and the encouragement of the application of the same to and by all persons in the extension district, and the imparting to such persons of information on said subjects through field demonstrations, publications, or other media.

2. The extension district, its council, or a member or an employee as a representative of either one or the other shall not engage in commercial or other private enterprises, legislative programs, nor attempt in any manner by the adoption of resolutions or otherwise to influence legislation, either state or national or other activities not authorized by this chapter.

3. The extension council or a member or employee thereof as a representative of either the extension district or the extension council shall not give preferred services to any individual, group or organization or sponsor the programs of any group, organization or private agency other than as herein provided by this chapter.

4. The extension council may collect reasonable fees for specific services which require special equipment or personnel, such as soil testing services, seed testing services, or other educational services, but it shall not collect dues for or pay dues to any state or national organization or agency, nor shall it accept contributions or gifts for the extension district, or the extension council.

5. The extension council and its employed personnel may co-operate with, give information and advice to organized and unorganized groups, but shall not promote, sponsor or engage in the organization of any group for any purpose except the promoting, organization and the development of the programs of 4-H clubs. Nothing in this chapter shall prevent the county extension council or extension agents employed by it from using or seeking opportunities to reach an audience of persons interested in agricultural extension work through the help of interested farm organizations, civic organizations or any other group: Provided, that in using or seeking such opportunities, the county extension council or agents employed by it shall make available to all groups and organizations in the county equal opportunity to co-operate in the educational extension program.

6. No member of the extension council shall be paid any compensation or be reimbursed for expenses incurred in connection with or for services rendered as a member of the extension council or as an employee of the extension district or extension council. [SS15, §1683-e; C24, 27, 31, 35, 39,§**2929, 2931**; C46, 50, 54,§§176.7, 176.9; C58, 62, 66, 71, 73, 75,§176A.9]

176A.10 County agricultural extension education tax. The extension council of each extension district shall, at a regular or special meeting held in January in each year, estimate the amount of money required to be raised by taxation for financing the county agricultural extension education program authorized in this chapter. The annual tax levy and the amount of money to be raised from such levy for the county agricultural extension education fund shall not exceed the following:

1. For an extension district having a population of less than thirty thousand, an annual levy not to exceed twenty and one-fourth cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of fifty thousand dollars per annum.

2. For an extension district having a population of thirty thousand or more but less than fifty thousand population, an annual levy not to exceed twenty and one-fourth cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of sixty thousand dollars per annum.

3. For an extension district having a population of fifty thousand or more but less than one hundred thousand population, an annual levy not to exceed thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of seventy-five thousand dollars per annum.

4. For an extension district having a population of one hundred thousand or more, an annual levy not to exceed thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred thousand dollars per annum.

The extension council in each extension district shall comply with the provisions of

chapter 24. [C24, 27, 31, 35, 39,§2930; C46, 50, 54, §176.8; C58, 62, 66, 71, 73, 75,§176A.10; 66GA, ch 1123,§1]

Referred to in §24.38

The provisions of this section shall be governed by budget limitations contained in chapter 1067, passed by the Sixty-sixth General Assembly, 1976 Session; 66GA, ch 1123,§2.

176A.11 Annual levy by board of supervisors. The board of supervisors of each county shall annually, at the time of levying taxes for county purposes, levy the taxes necessary to raise the county agricultural extension education fund and certified to it by the extension council as provided in this chapter, but if the amount certified for such fund is in excess of the amount authorized by this chapter it shall levy only so much thereof as is authorized by this chapter. [C24, 27, 31, 35, 39,§2930; C46, 50, 54,§176.8; C58, 62, 66, 71, 73, 75,§176A.11]

176A.12 County agricultural extension education fund. There shall be established in each county a "county agricultural extension education fund" and the county treasurer of each county shall keep the amount of tax levied for such fund, as herein in this chapter authorized, in said fund. Before the fifteenth day of each month in each year the county treasurer of each county shall give notice to the chairman of the extension council of his county of the amount collected for the "county agricultural extension education fund" to the first day of such month, and the chairman of the extension council shall draw his draft therefor, countersigned by the secretary upon the county treasurer who shall pay such taxes to the treasurer of the extension council only on such draft. [SS15,§1683-e; C24, 27, 31, 35, 39, §2929; C46, 50, 54,,§176.7; C58, 62, 66, 71, 73, 75,§176A.12]

176A.13 Co-operation extension council — extension service. The extension council is specifically authorized to co-operate with the extension service and the United States department of agriculture in the accomplishment of the county agricultural extension education program contemplated by this chapter, to the end that the federal funds allocated to the extension service and the county agricultural extension education fund of each district may be more efficiently used by the extension service and the extension council. The director of extension shall co-ordinate the county agricultural extension education program in the several extension districts. [S13,§1683-p; C24, 27, 31, 35, 39,§§2931, 2932; C46, 50, 54,§176.9, 176.10; C58, 62, 66, 71, 73, 75,§176A.13]

176A.14 Extension council officers—duties.

1. The chairman of the extension council shall preside at all meetings of the extension council, have authority to call special meetings of said council upon such notice as shall be fixed and determined by the extension council, and shall call special meetings of the extension council upon the written request of a majority of the members of said council, and in addition to the duties imposed upon him in this chapter perform and exercise the usual duties performed and exercised by a chairman or president of a board of directors of a corporation.

2. The vice-chairman, in the absence or disability of the chairman, or his refusal to act, shall perform the duties imposed upon the chairman and act in his stead.

3. The secretary shall perform the duties usually incident to this office. He shall keep the minutes of all meetings of the extension council. He shall sign such instruments and papers as are required to be signed by him as such in this chapter, and by the extension council from time to time.

4. The treasurer shall receive, deposit and have charge of all of the funds of the extension council and pay and disburse the same as in this chapter required, and as may be from time to time required by the extension council. He shall keep an accurate record of receipts and disbursements and submit a report thereof at such times as may be required by the extension council.

Each of the officers of the extension council shall perform and carry out the duties herein in this section imposed upon them and perform and carry out such other duties as shall be imposed upon them in the rules adopted by the extension council from time to time as in this chapter authorized. The members of the extension council, within fifteen days after their election as such, shall take and sign the usual oath of public officers and the same shall be filed in the office of the county auditor of the county of the extension district. The treasurer of the extension council, within ten days after his election as treasurer and before entering upon the duties of his office as treasurer, shall execute to the extension council a corporate surety bond of one hundred twenty-five percent of the amount, as near as can be ascertained, that shall be in his hands as treasurer at any one time. All such bonds shall be continued to the faithful discharge of the duties of the office of treasurer. The amount and sufficiency of all bonds shall be determined by the county treasurer of the county of the extension district and upon his approval endorsed on the bond shall be filed with the county auditor of the county of the extension district who shall notify the chairman of the extension council of the approval by the county treasurer and of the filing thereof in his office. The cost of any corporate surety bond so furnished by a treasurer shall be paid for by the extension council. [S13, §§1683-i,-j,-m; C24, 27, 31, 35, 39,§§2933, 2934, 2938; C46, 50, 54,§§176.11 176.12, 176.16; C58, 62, 66, 71, 73, 75,§176A.14]

Constitutionality, 56GA, ch 107,§22

176A.15 Consolidation of extension districts. Any two or more extension districts may be consolidated to form a single extension district, by resolution duly adopted by the extension council of each such extension district. Upon adoption of such resolutions providing for such consolidation, the extension councils

shall do all things which may be necessary or convenient to carry into effect such consolidation. The initial extension council for such new extension district shall consist of the members of the extension councils of the consolidated extension districts. The extension council of such new extension district shall promptly elect officers as provided in this chapter, and upon such election the terms of the officers of the extension councils of the consolidated extension districts shall terminate. The extension council of the new extension district shall select a name for such district and shall file the name, together with copies of the resolution providing for such consolidation, with the recorder of each county affected thereby. The new extension district shall be regarded for all purposes as an extension district, the same as if such extension district consisted of a single county, and its extension council and officers thereof shall have all the powers and duties which now or hereafter may pertain. to extension councils and officers thereof. All assets and liabilities of the consolidated extension districts shall become the assets and liabilities of the new extension district. The tax rate for the "county agricultural extension education fund" shall be the same in each county included in an extension district formed by consolidation. For the purposes of any law requiring extension districts to file any document with or certify any information to any county officer or board, an extension district formed by consolidation shall file or certify the same with or to the appropriate officer or board of each county included in the extension district. An extension district formed by consolidation may be dissolved and the original extension districts as they existed prior to such consolidation may be re-established, by resolution duly adopted by the extension council of such extension district; and upon adoption of such resolution, the extension council shall do all things which may be necessary or convenient to carry into effect such dissolution and the re-establishment of the original extension districts. [C62, 66, 71, 73, 75,§176A.15]

Referred to in §176A.16

176A.16 General election law not applicable. The provisions of chapter 49 shall not be applicable to the elections held pursuant to sections 176A.5, 176A.6, 176A.8 and 176A.15, and the county commissioner of elections shall have no responsibility for the conducting of those elections. [C75,§176A.16]

CHAPTER 177

CROP IMPROVEMENT ASSOCIATION

Referred to in §§159.6(10), 173.3

177.1 Recognition of organization.
177.2 Duties and objects of association.
177.3 Board of directors.
177.4 Employees of committee.
177.5 Expenses of officers.

177.1 Recognition of organization. The organization now existing in and incorporated under the laws of this state and known as the Iowa crop improvement association, shall be entitled to the benefits of this chapter by filing each year with the department of agriculture verified proofs of its organization and of the names of its president, vice-president, secretary, and treasurer, and that five hundred persons are bona fide members of the association, together with such other information as the department of agriculture may require. [C24, 27, 31, 35, 39,§2939; C46, 50, 54, 58, 62, 66, 71, 73, 75,§177.1]

State aid, see appropriation Act

177.2 Duties and objects of association. The purposes and objectives of the Iowa crop improvement association shall be:

1. To encourage the use of good agricultural practices in crop production and to conserve, maintain and improve soil productivity.

2. To encourage the production of high quality pure seed of varieties having proved adaptation and performance as determined by experimental trials.

3. To encourage the more widespread use of superior seeds by such means as may be designated by its members or board of directors.

4. To co-operate with the agricultural experiment station of the Iowa State University of science and technology in conducting tests to determine the adaptation and performance of crop hybrids, crop varieties, and new crops of potential value in Iowa.

5. Promote in such other ways as the association may deem advisable the objects as set out in this section.

6. Hold an annual meeting.

7. Submit an annual report of the proceedings, receipts and expenditures to the Iowa state secretary of agriculture. [C24, 27, 31, 35, 39,§2940; C46, 50, 54, 58, 62, 66, 71, 73, 75,§177.2]

177.3 Board of directors. The business of the association shall be transacted by a board of directors which shall consist of:

1. The director of the agricultural experiment station of the Iowa State University of science and technology.
2. The head of farm crops in the Iowa agricultural experiment station.
3. The secretary of the state department of agriculture.
4. Six persons who shall be elected from its membership. [C24, 27, 31, 35, 39,§**2941**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§177.3]

177.4 Employees of committee. The directors may employ one or more competent persons who shall devote their entire time, while employed by the association, to carrying out the provisions of this chapter. Such persons shall receive such compensation as the directors may fix and their necessary expenses incurred while engaged in such work. [C24, 27, 31, 35, 39,§**2942**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§177.4]

177.5 Expenses of officers. The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association. [C24, 27, 31, 35, 39,§**2943**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§177.5]

CHAPTER 177A

IOWA CROP PEST ACT

Referred to in §§159.6(10), 173.3

177A.1 Short title.
177A.2 Definitions.
177A.3 State entomologist.
177A.4 Employees—expenses.
177A.5 Duties—public nuisances.
177A.6 Rules.
177A.7 Infection—eradication—notice.
177A.8 Importation—regulations.
177A.9 Inspection—certificate—fees.
177A.10 Report of violations.
177A.11 Quarantine—general powers.
177A.12 Federal quarantine—seizures.
177A.13 Quarantines—seizure and destruction.
177A.14 Right of access.
177A.15 Right to hearing.
177A.16 Violations.
177A.17 Duty of owner—assessment of costs.
177A.18 Violations.
177A.19 Harmful barberry.
177A.20 Liability of principal.
177A.21 Party plaintiff.
177A.22 Construction.

177A.1 Short title. This chapter shall be known by the short title of "The Iowa Crop Pest Act." [C27, 31, 35,§4062-b1; C39.§**4062.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§267.1; C75, §177A.1]

177A.2 Definitions. For the purposes of this chapter, the following terms shall be construed, respectively, to mean:

"Insect pests and diseases." Insect pests and diseases injurious to plants and plant products, including any of the stages of development of such insect pests and diseases.

"Plants and plant products." Trees, shrubs, vines, berry plants, greenhouse plants and all other nursery plants; forage and cereal plants, and all other parts of plants; cuttings, grafts, scions, buds, and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all other plant products.

"Places." Vessels, cars, boats, trucks, automobiles, aircraft, wagons and other vehicles or carriers, whether air, land or water, buildings, docks, nurseries, greenhouses, orchards, fields, gardens, and other premises or any container where plants and plant products are grown, kept or handled. [C27, 31, 35,§4062-b2; C39, §**4062.02**; C46, 50, 54, 58, 62, 66, 71, 73,§267.2; C75,§177A.2]

177A.3 State entomologist. There is hereby created and established within the department of agriculture the office of state entomologist. The entomologist of the Iowa agricultural experiment station is hereby constituted the state entomologist who is the executive officer of this chapter. The state entomologist shall be responsible to and under the authority of the secretary of agriculture in the issuance of all rules, regulations, the establishment of quarantines and other official acts. He shall be provided with suitable office space. [S13,§2575-a47; C24,§4045; C27, 31, 35,§4062-b3; C39,§**4062.03**; C46, 50, 54, 58, 62, 66, 71, 73,§267.3; C75,§177A.3]

177A.4 Employees—expenses. For the purpose of carrying out the provisions of this chapter, the state entomologist with the approval of the secretary of agriculture shall employ, prescribe the duties of, and fix the compensation of, such inspectors, and other employees as needed and incur such expenses as may be necessary, within the limits of appropriations made by law. He shall co-operate with other departments, boards and officers of the state and of the United States as far as practicable. [S13,§2575-a47; C24,§4046; C27, 31, 35,§4062-b4; C39,§**4062.04**; C46, 50, 54, 58, 62, 66, 71, 73,§267.4; C75,§177A.4]

177A.5 Duties—public nuisances. The state entomologist shall keep himself informed as to known species and varieties of insect pests

and diseases, the origin, locality, nature and appearance thereof, the manner in which they are disseminated, and approved methods of treatment and eradication. In the rules made pursuant to this chapter the state entomologist shall list the dangerously injurious insect pests and diseases which he shall find should be prevented from being introduced into, or disseminated within, this state in order to safeguard the plants and plant products likely to become infested or infected with such insect pests and diseases. Every such insect pest and disease listed, and every plant product infested or infected therewith, is hereby declared to be a public nuisance. Every person who has knowledge of the presence in or upon any place of any insect pest or disease so listed, shall immediately report the fact and location to the state entomologist, or the assistant state entomologist, giving such detailed information relative thereto as he may have. Every person who deals in or engages in the sale of plants and plant products shall furnish to the state entomologist or his inspectors, when requested, a statement of the names and addresses of the persons from whom and the localities where he purchased or obtained such plants and plant products. [S13,§2575-a47; C24,§4047; C27, 31, 35, §4062-b5; C39,§**4062.05**; C46, 50, 54, 58, 62, 66, 71, 73,§267.5; C75,§177A.5]

Referred to in §177A.19(4)

177A.6 Rules. The state entomologist shall, from time to time, make rules for carrying out the provisions and requirements of this chapter, including rules under which the inspectors and other employees shall:

1. Inspect places, plants and plant products, and things and substances used or connected therewith,

2. Investigate, control, eradicate and prevent the dissemination of insect pests and diseases, and

3. Supervise or cause the treatment, cutting and destruction of plants and plant products infested or infected therewith.

The state entomologist, his inspectors, employees, or other authorized agents shall have authority to enforce these rules which shall be published in the same manner as are the other rules of the department of agriculture.

No nursery stock dealer shall sell, offer for sale, or distribute nursery products by any method, or under any circumstances or condition, which have the capacity and tendency or effect of deceiving purchasers or prospective customers as to quantity, size, grade, kind, species, age, maturity, viability condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect.

When under the provisions of this section it becomes necessary for the state entomologist to verify sizes and grades of nursery stock, or either of them, he shall use as his guide the "American Standard for Nursery Stock" as revised and approved by the American Standards Association, Inc. [S13,§2575-a48; C24, §§4050, 4051, 4054; C27, 31, 35,§4062-b6; C39, §**4062.06**; C46, 50, 54, 58, 62, 66, 71, 73,§267.6; C75, §177A.6]

Referred to in §177A.19(4)

177A.7 Infection — eradication — notice. Whenever inspection discloses that any places, or plants or plant products, or things and substances used or connected therewith, are infested or infected with any dangerously injurious insect pest or disease listed as a public nuisance, written notice thereof shall be given the owner or person in possession or control of the place where found, who shall proceed to control, eradicate or prevent the dissemination of such insect pest or disease, and to remove, cut or destroy infested and infected plants and plant products, or things and substances used or connected therewith, as prescribed in the notice or the rules. Whenever such owner or person in possession cannot be found, or shall fail, neglect or refuse to obey the requirements of the notice and the rules, such requirements shall be carried out by the state entomologist, as required by section 177A.17. [S13,§2575-a48; C24,§§4050, 4052, 4053, 4055; C27, 31, 35,§4062-b7; C39,§**4062.07**; C46, 50, 54, 58, 62, 66, 71, 73,§267.7; C75,§177A.7]

Referred to in §177A.19(4)

177A.8 Importation—regulations. It shall be unlawful for any person to bring or cause to be brought into this state any plant or plant product listed in the rules, unless there be plainly and legibly marked thereon or affixed thereto, or on or to the carrier, or the bundle, package, or container, in a conspicuous place, a statement or tag or device showing the names and addresses of the consignors or shippers and the consignees or persons to whom shipped, the general nature and quantity of the contents, and the name of the locality where grown, together with a certificate of inspection of the proper official of the state, territory, district, or country from which it was brought or shipped, showing that such plant or plant product was found or believed to be free from dangerously injurious insect pests and diseases, and giving any other information required by the state entomologist. [S13,§2575-a50; C24,§4058; C27, 31, 35,§4062-b8; C39,§**4062.08**; C46, 50, 54, 58, 62, 66, 71, 73,§267.8; C75,§177A.8]

Referred to in §§177A.9, 177A.10, 177A.19(4)

177A.9 Inspection—certificate—fees. It shall be unlawful for any person to sell, give away, carry, ship, or deliver for carriage or shipment, within this state, any plants or plant products listed in the rules unless such plants or plant products have been officially inspected and a certificate issued by an inspector of the state entomologist's office stating that such

plants or plant products have been inspected and found to be apparently free from dangerously injurious insect pests and diseases, and giving any other facts provided for in the rules. For the issuance of such certificate, the state entomologist may require the payment of a reasonable fee to cover the expense of such inspection and certification. Provided, that if such plants or plant products were brought into this state in compliance with section 177A.8, the certificate required by that section may be accepted in lieu of the inspection and certificate required by this section, in such cases as shall be provided for in the rules. If it shall be found at any time that a certificate of inspection, issued or accepted under the provisions of this section, is being used in connection with plants and plant products which are infested or infected with dangerously injurious insect pests or diseases or in connection with uninspected plants, its further use may be prohibited, subject to such inspection and disposition of the plants and plant products involved as may be provided for by the state entomologist. All moneys collected under the provisions of this chapter shall be turned over to the secretary who shall deposit them in the state treasury.

A fee of not less than five dollars nor more than sixty-five dollars per annum, according to the amount of stock inspected, shall be paid at the time of inspection or before a certificate is granted. Such certificate shall be valid for one year from date of issue, unless sooner revoked by the state entomologist. The inspection of nurseries shall take place between May 1 and October 30 of each year and at such other times as may be necessary to make effective the provisions of this chapter and the rules made pursuant thereto. [S13,§§2575-a47, -a49; C24,§§4047, 4048, 4057; C27, 31, 35,§4062-b9; C39,§**4062.09**; C46, 50, 54, 58, 62, 66, 71, 73,§267.9; C75,§177A.9]

Referred to in §§177A.10, 177A.19(4)

177A.10 Report of violations. Any person who receives from without the state any plant or plant product without section 177A.8 having been complied with, or who receives any plant or plant product sold, given away, carried, shipped or delivered for carriage or shipment within this state without section 177A.9 having been complied with, shall immediately inform the state entomologist or one of his inspectors of such facts and isolate and hold the plant or plant product unopened or unused, subject to such inspection and disposition as may be provided for by the state entomologist. [S13, §2575-a49; C24,§4057; C27, 31, 35,§4062-b10; C39, §**4062.10**; C46, 50, 54, 58, 62, 66, 71, 73,§267.10; C75,§177A.10]

Referred to in §177A.19(4)

177A.11 Quarantine — general powers. Whenever the state entomologist shall find that there exists outside of this state any insect pest or disease, and that its introduction into this state should be prevented in order to safeguard plants and plant products in this state, the state entomologist is authorized to quarantine and promulgate quarantine restrictions covering areas within the states affected by the pest and may adopt, issue, and enforce rules supplemental to such quarantines for the control of the pest. Under such quarantines, the state entomologist or his authorized agents may prohibit and prevent the movement within the state without inspection, or the shipment or transportation within the state, of any agricultural or horticultural product, or any other material of any character whatsoever, capable of carrying any dangerously injurious insect pest or disease in any living state of its development; and, in the enforcement of such quarantine, may intercept, stop, and detain for official inspection any person, car, vessel, boat, truck, automobile, aircraft, wagon, vehicles or carriers or any container, material, or substance believed or known to be carrying the insect pest or plant disease in any living state of its development in violation of said quarantines or of the rules issued supplemental thereto, and may seize, possess, and destroy any agricultural or horticultural product or other material of any character whatsoever, moved, shipped, or transported in violation of such quarantines or the rules. [S13,§2575-a48; C24,§4049; C27, 31, 35,§4062-b11; C39,§**4062.11**; C46, 50, 54, 58, 62, 66, 71, 73,§267.11; C75,§177A.11]

Referred to in §177A.19(4)

177A.12 Federal quarantine—seizures.

1. Until the secretary of agriculture of the United States shall have made a determination that a federal quarantine is necessary, and has duly established the same with reference to any dangerous plant disease or insect infestation, the state entomologist of this state is authorized to promulgate and enforce quarantine regulations prohibiting or restricting the transportation of any class of plant material or product or article into this state from any state, territory or district of the United States, when he shall have information that a dangerous plant disease or insect infestation exists in such state, territory, district, or portion thereof.

2. The state entomologist, his inspectors or duly authorized agents are authorized to seize, destroy, or return to the point of origin any material received in this state in violation of any state quarantine established under the authority of subsection 1 hereof, or in violation of any federal quarantine established under the authority of the Act of August 20, 1912, [37 Stat. L. ch 308] or any amendment thereto. [C27, 31, 35,§4062-b12; C39,§**4062.12**; C46, 50, 54, 58, 62, 66, 71, 73,§267.12; C75,§177A.12]

Referred to in §177A.19(4)

177A.13 Quarantines—seizure and destruction. Whenever the state entomologist shall find that there exists in this state, or any part thereof, any dangerously injurious insect pest or plant disease, and that its dissemination

should be controlled or prevented, he may institute quarantines and promulgate quarantine restrictions covering areas within the state affected by such pest or disease, and may adopt, issue and enforce rules supplemental to such quarantines for the control of this pest. Under such quarantines, the state entomologist, his inspectors or authorized agents may prohibit and prevent the movement within the state without inspection or the shipment or transportation within this state, of any agricultural or horticultural product, or any other material of any character whatsoever, capable of carrying any dangerously injurious insect pest or disease in any living state of its development; and, in the enforcement of such quarantine, may intercept, stop, and detain for official inspection any person, car, vessel, boat, truck, automobile, aircraft, wagon, or other vehicles or carriers of any kind or character, whether air, land, or water, or any container or material believed or known to be carrying such insect pest or plant disease in any living state of its development or any such material, in violation of said quarantine or of the rules issued supplemental thereto, and may seize, possess, and destroy any agricultural or horticultural product or other material of any character whatsoever, moved, shipped, or transported in violation of such quarantines or the said rules.

The state entomologist shall give public notice of such quarantines, specifying the plants and plant products infested or infected, or likely to become infested or infected; and the movement, planting or other use of any such plant or plant product, or other thing or substance specified in such notice as likely to carry and disseminate such insect pest or disease, except under such conditions as shall be prescribed as to inspection, treatment and disposition, shall be prohibited within such area as he may designate. When the state entomologist shall find that the danger of the dissemination of such insect pest or disease has ceased to exist, he shall give public notice that the quarantine is raised. [S13,§2575-a48; C24, §4049; C27, 31, 35,§4062-b13; C39,§**4062.13**; C46, 50, 54, 58, 62, 66, 71, 73,§267.13; C75,§177A.13]

Referred to in §177A.19(4)

177A.14 Right of access. The state entomologist and his authorized inspectors, employees, and agents shall have free access within reasonable hours to any farm, field, orchard, nursery, greenhouse, garden, elevator, seedhouse, warehouse, building, cellar, freight or express office or car, freight yard, truck, automobile, aircraft, wagon, vehicle, carrier, vessel, boat, container or any place which it may be necessary or desirable for such authorized agents to enter in carrying out the provisions of this chapter. It shall be unlawful to deny such access to such authorized agents or to hinder, thwart, or defeat such inspection or entrance by misrepresentation or concealment of facts or conditions, or otherwise. [S13,§2575-a48; C24,§4049; C27, 31, 35,§4062-b14; C39,§**4062.14**; C46, 50, 54, 58, 62, 66, 71, 73,§267.14; C75, §177A.14]

Referred to in §177A.19(4)

177A.15 Right to hearing. Any person affected by any rule made or notice given may have a review thereof by the secretary of agriculture for the purpose of having such rule or notice modified, suspended or withdrawn. [C27, 31, 35,§4062-b15; C39,§**4062.15**; C46, 50, 54, 58, 62, 66, 71, 73,§267.15; C75,§177A.15]

Referred to in §177A.19(4)

177A.16 Violations. Any person, copartnership, association or corporation, or any combination of individuals, violating any provision of a quarantine promulgated under the authority of this chapter, or of any rules issued supplemental thereto, shall be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment in the county jail not exceeding thirty days or by a fine of not less than twenty-five dollars nor more than one hundred dollars for each offense. [S13, §2575-a50; C24,§4059; C27, 31, 35,§4062-b16; C39, §**4062.16**; C46, 50, 54, 58, 62, 66, 71, 73,§267.16; C75,§177A.16]

Referred to in §177A.19(4)

177A.17 Duty of owner — assessment of costs. Whenever treatment or destruction of any agricultural or horticultural plant or product, in field, feedlot, place of assemblage or storage, or elsewhere, or whenever any special type of plowing or any other agricultural or horticultural operation is required under the rules, the owner or person having charge of such plants, plant products or places, upon due notice from the state entomologist or his authorized agents, shall take the action required within the time and in the manner designated by such notice. In case the owner or person in charge shall refuse or neglect to obey the notice, the secretary of agriculture, or his authorized agents, may do what is required, and the expense thereof the secretary shall assess to the owner after giving him legal notice and a hearing. Provided that no expense other than such as is incidental to normal and usual farm operations shall be so assessed. If the assessment is not paid, the secretary shall certify it to the treasurer of the proper county who shall enter it on the tax books and collect it as ordinary taxes are collected and remit it to the secretary.

The said secretary is hereby authorized to refund to the federal department of agriculture all moneys so assessed and collected which represent expenditures made on such premises by the United States in accordance with the provisions of the Act of Congress enacted by the sixty-ninth Congress, approved February 23, 1927, and entitled, "An Act to provide for the eradication or control of the European corn borer." [S13,§2575-a48; C24,

§§4055, 4056; C27, 31, 35,§4062-b17; C39,§**4062.17**; C46, 50, 54, 58, 62, 66, 71, 73,§267.17; C75, §177A.17]

Referred to in §§177A.7, 177A.19(4)

177A.18 Violations. Any person who shall violate any provision or requirement of this chapter, or of the rules made or of any notice given pursuant thereto, or who shall forge, counterfeit, deface, destroy, or wrongfully use, any certificate provided for in this chapter, or in the rules and regulations made pursuant thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars, nor more than one hundred dollars or by imprisonment for not more than thirty days. [S13,§2575-a50; C24,§4059; C27, 31, 35, §4062-b18; C39,§**4062.18**; C46, 50, 54, 58, 62, 66, 71, 73,§267.18; C75,§177A.18]

Referred to in §177A.19(4)

177A.19 Harmful barberry.

1. No person, firm, or corporation shall receive, ship, accept for shipment, transport, sell, offer for sale, give away, deliver, plant, or permit to exist on his or its premises any plant of the harmful barberry, or any plant of a species that shall be designated by the state entomologist in published regulations to be a host or carrier of a dangerous plant disease or insect pest.

2. The state entomologist and his inspectors, and his authorized agents, are hereby empowered to eradicate any such plant found growing in the state. If the owner shall refuse or neglect to eradicate such plants within ten days after receiving a written notice, the expense of such eradication shall be assessed, collected, and enforced against the premises upon which such expense was incurred as taxes are assessed, collected and enforced.

3. The term "harmful barberry" shall be interpreted to consist of any species of Berberis or Mahonia susceptible to infection by Puccinia graminis, commonly called black stem rust of grain, but not including Japanese barberry (B. thunbergii), which does not propagate the rust.

4. The penalties provided in section 177A.17 and all other applicable provisions of sections 177A.5 to 177A.18 shall govern and apply to the enforcement of this section. [C24,§4053; C27, 31, 35,§4062-b19; C39,§**4062.19**; C46, 50, 54, 58, 62, 66, 71, 73,§267.19; C75,§177A.19]

177A.20 Liability of principal. In construing and enforcing the provisions of this chapter, the act, omission, or failure of any official, agent, or other person acting for or employed by an association, partnership or corporation within the scope of his authority shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation as well as that of the person. [C27, 31, 35,§4062-b20; C39,§**4062.20**; C46, 50, 54, 58, 62, 66, 71, 73,§267.20; C75,§177A.20]

177A.21 Party plaintiff. The secretary of agriculture, the state entomologist, or any of their inspectors or authorized agents shall be a proper party plaintiff in any action in any court of equity brought for the purpose of carrying out any of the provisions of this chapter. [C27, 31, 35,§4062-b21; C39,§**4062.21**; C46, 50, 54, 58, 62, 66, 71, 73,§267.21; C75,§177A.21]

177A.22 Construction. This chapter shall not be so construed or enforced as to conflict in any way with any Act of Congress regulating the movement of plants and plant products in interstate or foreign commerce. [C27, 31, 35, §4062-b22; C39,§**4062.22**; C46, 50, 54, 58, 62, 66, 71, 73,§267.22; C75,§177A.22]

Constitutionality, 42GA, ch 68,§23
Omnibus repeal, 42GA, ch 68,§24

CHAPTER 178

STATE DAIRY ASSOCIATION

Referred to in §§159.6(10), 173.3

178.1 Recognition of organization.
178.2 Duties and objects of association.
178.3 Executive committee.
178.4 Employees of committee.
178.5 Expenses of officers.

178.1 Recognition of organization. The organization known as the Iowa state dairy association shall be entitled to the benefits of this chapter by filing each year with the department of agriculture verified proofs of its organization, the names of its president, vice-president, secretary, and treasurer, and that five hundred persons are bona fide members of said association, together with such other information as the department of agriculture may require. [C24, 27, 31, 35, 39,§**2944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§178.1]

State aid, see appropriation Act

178.2 Duties and objects of association. The Iowa state dairy association shall:

1. Promote dairy test associations, shows, and sales.

2. Publish a breeders directory.

3. Furnish such general instruction and assistance, either by institutes or otherwise, as

it may deem proper, to advance the general interests of the dairy industry.

4. Make an annual report of the proceedings and expenditures to the secretary of agriculture. [C24, 27, 31, 35, 39,§**2945**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§178.2]

178.3 Executive committee. The association shall conduct its business through an executive committee which shall consist of:

1. The president and the secretary of the association.

2. The dean of the college of agriculture of the Iowa State University of science and technology.

3. A member of the faculty of said university engaged in the teaching of dairying to be designated by said dean.

4. The secretary of agriculture. [C24, 27, 31, 35, 39,§**2946**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §178.3]

178.4 Employees of committee. The executive committee may employ two or more competent persons who shall devote their entire time, under the direction of the executive committee, in carrying out the provisions of this chapter. The salary of such persons so employed shall be set by the executive committee subject to the approval of the secretary of agriculture, and such persons shall hold office at the pleasure of the executive committee. [C24, 27, 31, 35, 39,§**2947**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§178.4]

178.5 Expenses of officers. The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association. [C24, 27, 31, 35, 39,§**2948**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§178.5]

CHAPTER 179

DAIRY INDUSTRY COMMISSION

See §159.6(10)

179.1 Definitions.
179.2 Commission created.
179.3 Powers and duties.
179.4 Advertising campaign.
179.5 Excise tax.
179.6 Producers' records.
179.7 Returns filed with commission.
179.8 Payment of expenses.
179.9 Investigations by commission.
179.10 Report.
179.11 Penalties.
179.12 Repealed by 65GA, ch 1153,§8.
179.13 Referendum on petition.
179.14 Influencing legislation.

179.1 Definitions. As used in this chapter:

1. The term *"commission"* shall mean the Iowa dairy industry commission.

2. The term *"person"* shall mean individuals, corporations, partnerships, trusts, associations, co-operatives, and any and all other business **units.**

3. The term *"producer"* shall mean and include every person who produces milk or cream from cows and thereafter sells the same as milk, cream, or other dairy products.

4. The term *"dealer"* shall mean and include any person who buys, sells, manufactures, processes or ships dairy products, or who acts as sales or purchasing agent, broker or factor of dairy products.

5. *"Collection period"* means a calendar month. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§179.1]

179.2 Commission created. There is created an Iowa dairy industry commission, referred to in this chapter as the commission. The commission shall be composed of the head of the dairy science department and the head of the food technology department of Iowa State University of science and technology, the secretary of agriculture or his designee, and nine members appointed by the secretary of agriculture as provided in this section.

For purposes of this chapter, the board of directors of the Iowa state dairy association shall divide the state, by counties, into nine districts, each having approximately an equal number of cows kept for milking purposes, based on the latest available United States census. The districts shall be numbered consecutively by the board.

On or before May 15 each year,* the board of directors of the Iowa state dairy association shall nominate for the offices of appointive commissioners, three resident producers from each of the nine representative districts. The list of nominees shall be certified to the secretary of agriculture by the president and secretary of the Iowa state dairy association. On or before June 10, 1975, the secretary of agriculture shall appoint one of the nominees so certified from each of the districts as a commissioner of the Iowa dairy industry commission. Commissioners selected from districts one, four, and seven shall be appointed for one-year terms; commissioners appointed from districts two, five, and eight shall be

appointed for two-year terms; and commissioners appointed from districts three, six, and nine shall be appointed for three-year terms. Thereafter, commissioners shall be appointed for three-year terms in the manner provided in this section.

Commissioners shall serve until their successors are duly appointed and qualify. Vacancies occurring in the membership of the commission resulting from removal from the district, death, inability or refusal to serve, or failure to meet the definition of a producer, shall be filled within three months of the time the vacancy occurs in the manner provided in this section. Vacancy appointments shall be only for the remainder of the unexpired term. A commissioner shall not serve more than two consecutive full terms.

Appointive members of the commission shall receive forty dollars for each day spent on official business of the commission, not to exceed six hundred dollars per annum, and their actual necessary expenses, while engaged in commission activity. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§179.2]

Rate, see §79.9
*Beginning in 1975

179.3 Powers and duties. The powers and duties of the commission shall include the following:

1. To elect a chairman, a secretary, and from time to time such other officers as it may deem advisable, and from time to time to adopt, rescind, modify and amend all proper and necessary rules, regulations and orders for the exercise of its power and the performance of its duties, which rules and orders shall have the force and effect of law when not inconsistent with existing laws.

2. To administer and enforce this chapter, and do and perform all acts and exercise all powers reasonably necessary to effectuate the purpose of this chapter.

3. To employ at its pleasure and discharge at its pleasure such attorneys, advertising counsel, advertising agencies, clerks and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation.

4. To establish offices and incur any and all expense, and to enter into any and all contracts and agreements for the proper administration and enforcement of this chapter.

5. To report alleged violations of this chapter to the attorney general of the state of Iowa.

6. To conduct scientific research for the purpose of developing and discovering the health, food, therapeutic, dietetic, and industrial uses for products of milk or its derivatives.

7. To make in the name of the commission such advertising contracts and other agreements as it deems necessary to promote the sale and consumption of dairy products on either a state or national basis.

8. To keep accurate books, records, and accounts of all its dealings, which books, records, and accounts shall be open to inspection and audit by the board of directors of the Iowa state dairy association or its representatives, and shall be audited annually by the auditor of state.

9. To receive, administer, disburse and account for, in addition to the funds received from the excise tax hereinafter imposed by section 179.5, all such other funds as may be voluntarily contributed to said commission for the purpose of promoting dairy products. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§179.3]

179.4 Advertising campaign. The commission shall plan and conduct a campaign for commodity advertising, publicity and sales promotion, research and educational campaigns to increase the consumption of dairy products, and may contract for any advertising, publicity, and sales promotion, research and educational service. To accomplish such purpose the commission shall have power and it shall be the duty of the commission to disseminate information as follows:

1. Relating to dairy products and the importance thereof in preserving the public health, the economy thereof in the diet of the people, and the importance thereof in the nutrition of children.

2. Relating to the manner, method, and means used and employed in the production, processing, and marketing of dairy products in order to comply with the laws of the state and nation regulating and safeguarding such production and marketing to insure a pure and wholesome product.

3. Relating to the method of the producer and dealer in producing and handling dairy products in order to meet the standards imposed by the state and federal government to insure a pure and nutritious product.

4. Relating to the harmful effect on the public health that would result from a breakdown of the dairy industry.

5. Relating to the reasons why producers should receive a reasonable return on their labor investment.

6. Relating to the problem of furnishing the consumer at all times with an abundant supply of high quality dairy products at reasonable prices.

7. Relating to the factors of instability peculiar to the dairy industry, such as unbalanced production, influence of consumer purchasing power, and price relative to the cost of other items of food in the normal diet of people, all to the end that an intelligent and increasing consumer demand may be stimulated.

8. Relating to the possibilities of increasing consumption of dairy products.

9. Relating to such other, further and additional information as shall tend to promote increased consumption of dairy products, and as may foster a better understanding and more

efficient co-operation between producers and the consuming public. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§179.4]

179.5 Excise tax.

1. Except as otherwise provided in section 179.13, there is hereby levied and imposed an excise tax of one cent per pound or fraction thereof upon all butterfat in cream and four cents per hundredweight or fraction thereof in milk produced in the state during the period beginning May 1 and terminating June 30, annually; provided, however, that the provisions of this section shall not apply to butterfat in milk and cream produced outside the state.

Referred to in §179.7

2. All taxes levied and imposed under this chapter shall be deducted from the price charged by the producer and shall be collected by the first dealer; provided, however, that:

a. Where the producer produces milk or cream from cows and thereafter sells the same as milk, cream, or other dairy products, directly to the consumer the taxes aforesaid shall be remitted by such producer.

b. Where the producer sells milk, cream or other dairy products to any dealer outside the state the taxes aforesaid shall be due and payable by such producer before the shipment is made, except that the commission may make such agreements with extra state dealers for the keeping of records and the collection of the taxes aforesaid as are necessary to secure the payment of the said taxes within the time fixed by this chapter.

All taxes levied and imposed under this chapter and any voluntary contributions made to the dairy industry commission, shall be paid to and collected by the secretary of the commission who shall remit to the treasurer of the state, quarterly, and at the same time render to the state comptroller an itemized and verified report showing the source from which said taxes and voluntary contributions were obtained. All such taxes and voluntary contributions received, collected and remitted shall be placed in a special fund by the treasurer of state, and the state comptroller, to be known as the "Dairy Industry Fund" to be used by the Iowa dairy industry commission for the purposes set out in this chapter and to administer and enforce the laws relative thereto.

Any person from whom the excise tax provided in this chapter is collected may, by application filed with this commission within thirty days after the collection from him of said tax, have said tax remitted to him by the commission. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §179.5]

Referred to in §§179.8(9), 179.7, 179.18

Appropriation to pay refunds, 66GA, ch 19,§1(2)

The dairy industry fund is appropriated to be used to pay refunds as provided by chapter 179 and to pay promotional and research expenses deemed appropriate by the dairy industry commission. [66GA, ch 1122,§3]

179.6 Producers' records. Every producer shipping milk, cream or other dairy products to any dealer outside of Iowa who is not by agreement with the commission collecting the tax imposed by this chapter, and every first dealer within the state and every producer distributing milk, cream, or other dairy products directly to the consumer, shall keep a complete and accurate record of all butterfat taxed by this chapter in milk or cream produced, bottled, processed or distributed by him during any period for which an excise tax levy is imposed under the provisions of this chapter. Such records shall be in such form and contain such information as the commission shall by rule prescribe and shall be preserved by the person charged with their making for a period of two years and shall be offered or submitted for inspection at any time upon written or oral request by the commission or its duly authorized agent or employee. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §179.6]

179.7 Returns filed with commission. Every person charged by this chapter or by agreement with the commission with the keeping of records provided for in this chapter shall at such times as the commission may by rule require, file with the commission a return on forms to be prescribed and furnished by the commission stating the quantity of dairy products produced, bottled, processed, or distributed, and butterfat content of all milk or cream produced by, delivered to or purchased by such person from the various producers of dairy products or their agents in the state during the collection period prescribed in section 179.5, subsection 1, and as a result of any referendum. Such return shall contain such other information as the commission may require, and shall be made in triplicate, one copy of which shall be for the files of the person making the return, and one copy available at the office of such person, for the use of his patrons, and the original filed with the commission. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§179.7]

179.8 Payment of expenses. No part of the expense incurred by the commission shall be paid out of any funds in the state treasury except said dairy industry fund which shall be subject at all times to the warrant of the state comptroller, drawn upon written requisition of the chairman of the commission and attested by the secretary for the payment of all salaries, and other expenses necessary, to carry out the provisions of this chapter, but in no event shall the total expenses therefor exceed the total taxes collected and deposited to the credit of said fund. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§179.8]

179.9 Investigations by commission. The commission shall have the power to cause its authorized agents to enter upon the premises of any person charged by this chapter or by agreement with the commission with the collection of the excise tax imposed by this chapter, and to cause to be examined by any such

agent any books, records, documents, or other instruments bearing upon the amount of such tax collected or to be collected by such person; provided that the commission has reasonable ground to believe that all the tax herein levied has not been collected, or if it has not been fully accounted for as herein provided. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§179.9]

179.10 Report. The commission shall on or before the first day of March of each year make a full and complete report of its doings for the previous calendar year to the board of directors of the Iowa state dairy association, which report shall show the amount of money received and the expenditures thereof, and shall be printed in the annual agricultural year book issued by the secretary of agriculture of the state. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §179.10]

179.11 Penalties. Any person who shall violate or aid in the violation of any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed one hundred dollars, or by imprisonment in the county jail not to exceed thirty days. All prosecutions for alleged violations of the provisions of this chapter shall be by the county attorney of the county in which such alleged violation occurred and shall be instituted and conducted under the direction and authority of the attorney general of the state. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§179.11]

179.12 Repealed by 65GA, ch 1153,§8.

179.13 Referendum on petition. Under such administrative procedures as the department of agriculture may prescribe for conduct of referendums hereinafter provided for, the department shall, upon petition by one thousand five hundred or more producers, conduct an initial referendum within sixty days after receipt thereof on the proposition of whether or not an excise tax of up to five cents per hundredweight on all milk sold in this state separate from and in addition to that provided for in section 179.5, shall be levied and assessed.

Notice of any referendum hereunder to levy such additional excise tax in the first instance, or any extension thereof, including the date of the referendum and voting places, shall be given by the department by publication for a period of not less than five days in a newspaper of general circulation in the state and in such other newspapers as the department may prescribe. Referendum voting shall be conducted no sooner than ten days after the last date of publication of such notice.

Each producer, upon signing a statement certifying to the department that he is a bona fide producer as defined in this chapter, shall be entitled to one vote in each referendum. At the close of any referendum, the department shall within thirty days thereafter count and tabulate the ballots filed during such referendum. If from the tabulation the department determines that a majority of the total number of producers voting in the referendum favor the proposal, the excise tax provided for in this section shall be imposed in the manner provided in section 179.5, subsection 2, on the sixtieth day after the date of determination by the department that the referendum has passed. The ballots thus cast shall constitute complete and conclusive evidence for use in determinations made by the department under the provisions of this chapter.

If the referendum vote favors imposition of the additional excise tax provided for in this section, the commission shall not more frequently than once per calendar year, set the initial and subsequent assessment rates as follows:

1. For the months of May and June an amount which when added to the excise tax provided for in section 179.5 equates to a total of five cents or less per hundredweight on taxable milk sold during those months.

2. For all other calendar months five cents or less per hundredweight of taxable milk sold during those months.

However, during the first year of the excise tax period created by the first favorable referendum vote pursuant to the provisions of this section, the assessment rate set by the commission for May and June shall not exceed that established by section 179.5, and the assessment rate set by the commission for all other calendar months of such year shall not exceed three cents per hundredweight.

The commission shall give notice of all rates thus established by publication for a period of not less than three consecutive days in a newspaper of general circulation in the state at least thirty days in advance of the effective date thereof.

Any excise tax adopted under this section pursuant to the initial referendum shall become of no force or effect five years after its commencement unless it is extended for subsequent five-year periods by additional referendums. Ninety days prior to termination of the initial assessment period, or any extension period, the secretary shall cause notice to be published in accordance with the notice required in this section for the initial referendum, and a referendum on the question of whether the excise tax as provided for in this section should be extended for an additional five-year period shall be conducted. If the department determines that a majority of the total number of producers voting in the referendum favor the assessment, the excise tax provided for herein shall continue to be levied for an additional five years from the ending date of the preceding five-year period.

All excise taxes due pursuant to this section shall be collected in accordance with the provisions of this chapter relating to the collection of the excise tax provided for in section 179.5, as nearly as may be, and deposited in the dairy industry fund. Such funds may only

be expended by the commission pursuant to the provisions of this chapter.

If the department determines that any referendum has failed, no subsequent referendum shall be conducted sooner than one hundred eighty days after such determination. Pursuant to petition or motion as hereinabove provided filed within one year after its most recent determination, the department shall then conduct a subsequent referendum in accordance with the provisions of this section.

In the event of failure to make such petition within said period, or, the second consecutive failure of any referendum to pass, no further referendums shall be conducted and the levy and assessment created in this section shall terminate and be of no further force or effect. [C75,§179.13]

Referred to in §179.5

179.14 Influencing legislation. Neither commissioners, nor employees of the commission, shall attempt in any manner to influence legislation affecting any matters pertaining to the activities of the commission. No portion of the dairy industry fund shall be used in any manner to influence legislation or support any political candidate for public office, either directly or indirectly, or to support any political party. [C75,§179.14]

CHAPTER 180

DAIRY CALF CLUB EXPOSITION

Referred to in §§159.6(10), 173.3

180.1 4-H dairy calf club exposition.
180.2 "Exposition" defined.
180.3 Statement of expenditures.
180.4 Certification by department.
180.5 Payment of state aid.

180.1 4-H dairy calf club exposition. The Iowa state dairy association is hereby empowered, authorized and directed to hold annually at such time and place in Iowa as said association may select an exposition of 4-H dairy calves and contests. [C35,§2948-g1; C39,§2948.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§180.1]

180.2 "Exposition" defined. For the purpose of this chapter, 4-H dairy calf club exposition is interpreted to include the exhibits of dairy club heifers and the holding of judging contests, demonstration contests, record-book contests, and production contests for 4-H dairy club members. [C35,§2948-g2; C39,§2948.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§180.2]

180.3 Statement of expenditures. After each exposition the president and secretary of said association shall file with the state secretary of agriculture a sworn statement of the actual amount of cash premiums paid at such exposition for the current season which must correspond with the published offer of premiums by said association. [C35,§2948-g3; C39, §2948.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§180.3]

Referred to in §180.4

180.4 Certification by department. The department of agriculture on receipt of such statement shall, if it complies with section 180.3, certify to the state comptroller that a named amount is due said association as state aid. [C35,§2948-g4; C39,§2948.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§180.4]

State aid, see appropriation Act

180.5 Payment of state aid. The state comptroller on receipt of such certificate shall draw a warrant in favor of the secretary or treasurer of said association for a sum equal to eighty percent of the amount paid in premiums by it, but in no case shall the amount exceed two thousand dollars in any one year. [C35,§2948-g5; C39,§2948.5; C46, 50, 54, 58, 62, 66, 71, 73, 75,§180.5]

CHAPTER 181

BEEF CATTLE PRODUCERS ASSOCIATION

Referred to in §§159.6(10), 173.3

181.1 Recognition of organization.
181.2 Duties and objects of association.
181.3 Executive committee.
181.4 Employees of committee.
181.5 Expenses of officers.
181.6 Definitions.
181.7 Research and educational programs.
181.8 Examining books and papers.
181.9 Referendum.
181.10 Effective period.

181.11 Excise tax.
181.12 Remission of tax on application.
181.13 Fund.
181.14 Notice of extension.
181.15 Imposition for additional period.
181.16 Moneys remaining in fund.
181.17 Producers not members.
181.18 Rules.
181.19 Additional referendum.
181.20 Misdemeanors.

181.1 Recognition of organization. The Iowa beef cattle producers association now existing in and incorporated under the laws of this state shall be entitled to the benefits of this chapter by filing, each year, with the department of agriculture, verified proof of the names of its president, vice-president, secretary, and treasurer, and that five hundred persons are bona fide members of said association, together with such other information as the department of agriculture may require. [C24, 27, 31, 35, 39,§**2949**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§181.1]

Referred to in §181.17
State aid, see appropriation Act

181.2 Duties and objects of association. The Iowa beef cattle producers association shall:

1. Aid in the promotion of the beef cattle industry of the state.

2. Provide for practical and scientific instruction in the breeding and raising of beef cattle.

3. Provide for the inspection of herds, premises, appliances, methods, and feedstuffs used in the raising of beef cattle.

4. Make demonstrations in the feeding of beef cattle and publish suggestions beneficial to such business.

5. Aid and promote beef cattle feeding contests, shows, and sales.

6. Publish a breeders directory.

7. Make an annual report of the proceedings and expenditures to the secretary of agriculture. [C24, 27, 31, 35, 39,§**2950**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§181.2]

181.3 Executive committee. The association shall act through an executive committee which shall consist of:

1. The president and the secretary of the association.

2. The dean of the college of agriculture of the Iowa State University of science and technology.

3. A member of the faculty of said university engaged in the teaching of animal husbandry to be designated by said dean.

4. The secretary of agriculture. [C24, 27, 31, 35, 39,§**2951**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §181.3]

181.4 Employees of committee. The executive committee may employ two or more competent persons who shall devote their entire time, under the direction of the committee, in carrying out the provisions of this chapter. The salary of such persons so employed shall be set by the executive committee subject to the approval of the secretary of agriculture, and such persons shall hold office at the pleasure of the executive committee. [C24, 27, 31, 35, 39,§**2952**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §181.4]

181.5 Expenses of officers. The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association. [C24, 27, 31, 35, 39,§**2953**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§181.5]

Referred to in §181.13

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

1. "First purchaser" means any person who buys cattle or veal calves for slaughter, in the first instance.

2. "Producer" means every person who raises cattle or veal calves for slaughter or who feeds cattle or veal calves for slaughter or both.

3. For the purposes of this chapter, "executive committee" means two members appointed by the Iowa beef cattle producers association, two members appointed by the Iowa livestock feeders association, one member appointed by the Iowa livestock auction market association, the secretary of agriculture, the dean of the college of agriculture of the Iowa State University of science and technology, and a member of the faculty of Iowa State University of science and technology engaged in the teaching of animal husbandry designated by the dean of the college of agriculture. [C71, 73, 75,§181.6]

181.7 Research and educational programs. The executive committee shall engage in research and education programs directed toward better and more efficient production, marketing, and utilization of cattle and veal calves and products made therefrom; provide methods and means including, but not limited to, public relations and other promotion techniques for the maintenance of present markets; make donations to nonprofit organizations working toward the purposes of this section; assist in development of new or larger markets both domestic and foreign for cattle and veal calves and products made therefrom. [C71, 73, 75,§181.7]

Referred to in §181.13

181.8 Examining books and papers. The executive committee shall have power to authorize its agents to enter at a reasonable time

upon the premises of any purchaser charged by this chapter with remitting to the committee the excise tax, and to cause to be examined by such agent or agents, all books, records, documents, and other instruments bearing upon the amount of such excise tax; provided, however, that the executive committee must first have reasonable grounds to believe that all such excise taxes have not been remitted or fully accounted for, as herein provided.

The executive committee is authorized to enter into arrangements with persons purchasing cattle and veal calves for slaughter outside of Iowa on the basis provided in section 181.9, for remitting the excise tax by such buyers. [C71, 73, 75,§181.8]

181.9 Referendum. No excise tax shall be assessed or collected under the provisions of this chapter until the secretary of agriculture finds that the assessment has been assented to by referendum vote. The secretary, upon the request of any fifty beef producers, shall conduct an initial referendum by written ballot to determine such assent, after giving due notice of intention to conduct the referendum.

Notice of any referendum on the question of whether to initiate or extend an excise tax shall be given by publication for a period of not less than five days in a newspaper of general circulation in the state and in such other newspapers as the secretary may prescribe. No referendum shall be commenced prior to five days after the last day of the period of publication. The notice of referendum shall set forth the period and voting places for the referendum, and the amount of the excise tax to be collected if the referendum is favorable. [C71, 73, 75,§181.9]

Referred to in §§181.8, 181.10, 181.15, 181.19

181.10 Effective period. Each producer, upon signing a statement certifying that he is a bona fide producer, as defined in this chapter, shall be entitled to one vote. At the close of the referendum period, the secretary of agriculture shall count and tabulate the ballots filed during the referendum period. If the secretary finds that a majority of the total number of producers voting favor the assessment, the excise tax provided in this chapter shall be assessed and levied within ninety days.

The ballots shall constitute complete and conclusive evidence for use in any finding made by the secretary under the provisions of this chapter. The secretary may prescribe additional procedures as necessary to conduct a referendum.

Any assessment adopted following the initial referendum shall become of no force or effect four years after its adoption, unless it is extended for additional periods of four years by another referendum. Ninety days prior to termination of the initial assessment period or any extension period, the secretary shall cause notice to be published in accordance with section 181.9, and a referendum on the question of whether the excise tax should be extended for an additional four-year period shall be conducted. If the secretary finds that a majority of the total number of producers voting favor the assessment, the excise tax shall continue to be levied for an additional four years from the ending date of the preceding four-year period.

In the event of the failure of the initial referendum, a second initial referendum may be called by producers within one hundred eighty days after the secretary's determination on the first referendum. In the event of failure of the second initial referendum to pass, no further referendums shall be conducted. [C71, 73, 75,§181.10]

Referred to in §181.19

181.11 Excise tax. Upon determination by the secretary of agriculture that assent to assessment has been given, there shall be assessed and levied an excise tax of ten cents per head on all beef cattle and five cents per head on all veal calves sold for slaughter. The tax shall be due at or before the time animals are first sold for purposes of slaughter, and shall be paid at a time the council may, by rule or regulation, prescribe, but not later than the last day of the month following the end of the prior reporting period in which animals are sold.

The tax shall be assessed and levied on any person selling beef cattle or veal calves for slaughter, at the time of delivery of the animals for sale, and shall be deducted by the first purchaser from the price paid to the seller. The first purchaser, at the time of sale, shall make and deliver to the producer separate invoices for each purchase, showing the name and address of the producer and the first purchaser, the number and kind of animals sold, and the date of sale. [C71, 73, 75,§181.11]

Referred to in §§181.14, 181.19

181.12 Remission of tax on application. Any person from whom the excise tax herein is collected may, by written application filed with the executive committee within sixty days after its collection from him, have said amount remitted to him by the executive committee. The executive committee shall furnish uniform application for refund forms and envelopes properly addressed to the executive committee to each purchaser charged by this chapter with remitting the excise tax in sufficient number to make said refund forms and envelopes readily available to all producers. A purchaser charged by this chapter with remitting the excise tax shall display said application for refund forms and envelopes in a prominent position in its place of business and make the same readily available to all producers. [C71, 73, 75,§181.12]

Referred to in §181.19

181.13 Fund. All excise taxes imposed and levied under this chapter shall be paid to and

collected by the executive committee and deposited with the treasurer of state in a separate cattle and veal calf fund which is hereby created. From the moneys collected in accordance with the provisions of this chapter, the executive committee shall first pay the costs of referendums held pursuant hereto; the costs of collection of such excise tax, the expenses of its agents and expenses of officers provided for in section 181.5. Except as otherwise provided in section 181.19, at least thirty percent of the funds remaining thereafter shall be remitted to the national livestock and meat board and the beef industry council thereof, and at least ten percent of the remaining funds shall be remitted to the Iowa beef cattle producers association in such proportions as the committee may determine, for use by them in a manner not inconsistent with section 181.7. The remaining moneys received, with approval of a majority of the executive committee, shall be expended as found necessary to carry out the provisions and purposes of this chapter. The cattle and veal calf fund shall be subject at all times to warrants by the state comptroller, drawn upon the written requisition of the chairman of the executive committee and attested to by its secretary, for the payment of all expenditures of the committee, which shall, at no time, exceed the amount deposited to the credit of such fund. [C71, 73, 75,§181.13]

Referred to in §181.19

181.14 Notice of extension. Ninety days prior to the termination of the initial assessment period provided for herein, or any extension thereof, the secretary of agriculture shall cause notice to be published in accordance herewith of a referendum to be conducted on the question of whether the excise tax provided for herein should be extended for an additional four-year period.

Notice of any such referendum shall be given by the secretary by publishing the same for a period of not less than five days in a newspaper of general circulation in the state and in such other newspapers as the secretary may prescribe. The notice of referendum shall set forth the period for voting and the voting places for the referendum and the amount of the deduction pursuant to section 181.11. No referendum shall be commenced prior to five days after the last day of such period of publication. [C71, 73, 75,§181.14]

Referred to in §181.19

181.15 Imposition for additional period. Each producer upon signing a statement certifying that he is a bona fide producer, as defined in this chapter, shall be entitled to one vote. At the close of the referendum period, the secretary shall count and tabulate the ballots filed during the referendum period. If from such tabulation the secretary finds that a majority of the total number of producers voting favor the assessment, the excise tax provided for in section 181.9 shall be levied and imposed for an additional four years from the end of the previous taxing period.

The ballots thus cast shall constitute complete and conclusive evidence for use in any finding made by the secretary under the provisions of this chapter. The secretary may prescribe such additional procedures as may be necessary to conduct a referendum.

No assessment levied pursuant to this chapter shall continue after forty-eight months from its initiation, unless it is extended for additional periods of four years by referendum.

In the event of the failure of any referendum provided for herein to pass, a subsequent referendum may be called by the secretary upon petition to him therefor by at least one hundred producers within one hundred eighty days after the secretary's determination that the prior referendum has failed. In the event of failure to make such petition within said period, or, the second consecutive failure of a referendum to pass, no further referendum shall be conducted and the levy and assessment herein created shall terminate and be of no further force or effect. [C71, 73, 75, §181.15]

Referred to in §181.19

181.16 Moneys remaining in fund. If any extension referendum fails to carry, moneys remaining in the cattle and veal calf fund shall continue to be expended in accordance with the provisions of this chapter until exhausted. [C71, 73, 75,§181.16]

Referred to in §181.19

181.17 Producers not members. Every producer, even though not a member thereof, shall be entitled to vote in elections of persons to be directors of the Iowa beef cattle producers association in the same manner as if he were a member. Directors thus elected, shall elect from their number the officers referred to in section 181.1. [C71, 73, 75,§181.17]

181.18 Rules. All rules of the executive committee heretofore or hereinafter promulgated shall be subject to the provisions of chapter 17A. [C71, 73, 75,§181.18]

181.19 Additional referendum. The secretary shall, upon the petition of five hundred producers, conduct an initial referendum to determine whether an excise tax of twenty-five cents per head on all beef cattle and five cents per head on all veal calves sold for slaughter, and ten cents per head on all sales of beef cattle for any other purpose, shall be collected.

The initial referendum and subsequent referendums for extension of such excise tax shall be conducted under the provisions of sections 181.9 and 181.10, as nearly as may be. Upon determination by the secretary that assent to the assessment has been given, there shall be assessed and levied an excise tax on each sale in the amount provided in this section. The tax shall be due at or before the time the animals are sold and shall be paid at a time prescribed by the council, but not later than the

last day of the month following the end of the prior reporting period in which the animals are sold.

The tax shall be assessed and levied on any person selling beef cattle or veal calves and shall be deducted by the purchaser from the price paid to the seller. The purchaser, at the time of the sale, shall make and deliver to the seller separate invoices for each sale showing the names and addresses of the seller and the purchaser, the number and kinds of animals sold, whether sold for slaughter or feeding, and the date of sale.

On the date of the effective period for the collection of the excise tax provided for in this section, any excise tax being assessed and levied under section 181.11 shall terminate during any period for which any excise tax provided for in this section shall be in effect. The provisions of sections 181.12, 181.13, 181.14, 181.15 and 181.16 shall also be applicable to the tax provided for in this section, as nearly as may be. Notwithstanding the provisions in section 181.13 to the contrary, at least fifteen percent of the funds collected from an excise tax assessed and levied under the provisions of this section shall be remitted to the national livestock and meat board and the beef industry council thereof, after first paying the costs and expenses referred to in section 181.13. [C75,§181.19]

Referred to in §181.13

181.20 Misdemeanors. Any person who shall violate or assist in the violation of any of the provisions of this chapter shall be deemed guilty of a misdemeanor. [C71, 73, §181.19; C75,§181.20]

Punishment, §687.7

CHAPTER 182

IOWA HORSE AND MULE BREEDERS ASSOCIATION

Referred to in §§159.6(10), 173.3

182.1 Recognition of organization.
182.2 Duties and objects of the association.
182.3 Executive committee.
182.4 Expenses of officers.

182.1 Recognition of organization. The organization known as the Iowa horse and mule breeders association shall be entitled to the benefits of this chapter by filing each year with the department of agriculture verified proofs of its organization, the names of its president, vice president, secretary, and treasurer, containing five hundred bona fide members, together with such other information as the department of agriculture may require. [C27, 31, 35,§2953-b1; C39,§2953.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§182.1]

182.2 Duties and objects of the association. The Iowa horse and mule breeders association shall:

1. Aid in the promotion of the horse and mule industry of the state.
2. Provide for practical and scientific instruction in breeding, growing, and feeding of horses and mules.
3. Make demonstrations in the feeding and care of horses and mules and publish suggestions beneficial to such industry.
4. Aid and promote horse and mule contests and shows.
5. Publish a breeders directory.
6. Make an annual report of the proceedings and expenditures to the secretary of agriculture. [C27, 31, 35,§2953-b2; C39,§2953.2; C46. 50, 54, 58, 62, 66, 71, 73, 75,§182.2]

182.3 Executive committee. The association shall act by and through an executive committee consisting of:

1. The president and the secretary of the association.
2. The dean of the college of agriculture of the Iowa State University of science and technology and the head of the department of animal husbandry.
3. The secretary of agriculture. [C27, 31, 35, §2953-b3; C39,§2953.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§182.3]

182.4 Expenses of officers. The officers of the association shall serve without compensation but shall receive their necessary expenses while transacting the business of the association. [C27, 31, 35,§2953-b4; C39,§2953.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§182.4]

CHAPTER 183

SWINE PRODUCERS ASSOCIATION

Referred to in §§159.6(10), 173.3

183.1 Recognition of association.
183.2 Duties and objects of association.
183.3 Executive committee.
183.4 Employees of committee.
183.5 Expenses of officers.

183.1 Recognition of association. The organization known as the Iowa swine producers association shall be entitled to the benefits of this chapter by filing each year with the department of agriculture verified proof of its organization, the names of its president, vice-president, secretary, and treasurer and that five hundred persons are bona fide members, together with such other information as the department of agriculture may require. [C39, §2953.5; C46, 50, 54, 58, 62, 66, 71, 73, 75,§183.1]

State aid, see appropriation Act

183.2 Duties and objects of association. The duties and objects of the Iowa swine producers association shall be:

1. To promote the welfare of the swine industry in Iowa.
2. To aid in the orderly marketing of swine.
3. To carry on educational work to increase consumption and improve the processing of pork and its products.
4. To make an annual report of the proceedings and expenditures to the secretary of agriculture. [C39,§2953.6; C46, 50, 54, 58, 62, 66, 71, 73, 75,§183.2]

183.3 Executive committee. The association shall act by and through an executive committee which shall consist of:

1. The president, the secretary, and the treasurer of the association.
2. The dean of the college of agriculture of the Iowa State University of science and technology, or a member of the faculty of said university engaged in the teaching of swine husbandry to be designated by said dean.
3. The secretary of agriculture of the state of Iowa. [C39,§2953.7; C46, 50, 54, 58, 62, 66, 71, 73, 75,§183.3]

183.4 Employees of committee. The executive committee may employ one or more competent persons who shall devote their entire time, under the direction of the committee, in carrying out the provisions of this chapter. Such persons shall hold office at the pleasure of the committee. [C39,§2953.8; C46, 50, 54, 58, 62, 66, 71, 73, 75,§183.4]

183.5 Expenses of officers. The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association. [C39,§2953.9; C46, 50, 54, 58, 62, 66, 71, 73, 75,§183.5]

CHAPTER 184

POULTRY ASSOCIATIONS

Referred to in §§159.6(10), 173.3

COUNTY SHOW
184.1 State aid.
184.2 Certification by department.
184.3 Payment of state aid.
184.4 Division of state aid.
STATE SHOW
184.5 State-wide show—management.
184.6 Location of state-wide poultry show.
184.7 Statement of expenditures.
184.8 Required income, etc.
184.9 Certification by department.
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DISTRICT SHOW
184.11 Affiliated county associations.
184.12 District show management.
184.13 Showing required.
184.14 State aid.

COUNTY SHOW

184.1 State aid. Every poultry association which complies with the following conditions shall be entitled to the aid herein provided:

1. The association shall be composed of at least fifteen bona fide poultry raisers or dealers in poultry, residing in any one county.
2. The membership of the association must be open to all persons on an equal basis, with a minimum membership fee of twenty-five cents, or a maximum fee not exceeding one dollar.
3. The association shall have a president, vice-president, secretary, treasurer, and a board of directors of at least three persons other than said officers.
4. The annual income in cash of the association, exclusive of state aid, shall be at least one hundred dollars, and the total expenditures in cash shall be one hundred dollars, in addition to the state aid.
5. The association shall hold a bona fide poultry show, each year, of not less than two working days.
6. The association shall notify the department on or before October 1 of its intention of holding a poultry show.
7. The association shall, on or before June 1 of each year, file with the department of agriculture a sworn statement showing compliance with the foregoing conditions, and, in detail, the manner in which its funds for the

preceding twelve months have been expended, together with such other information as the department may require. [C24, 27, 31, 35, 39, §2954; C46, 50, 54, 58, 62, 66, 71, 73, 75,§184.1]

Referred to in §184.2
State aid, see appropriation Act

184.2 Certification by department. The department of agriculture shall on receipt of such statement, if it complies with section 184.1, and the expenditures listed therein appear to be bona fide, certify to the state comptroller after the time for filing such statement has expired, that the association has complied with all conditions imposed by this chapter and is entitled to the state aid herein provided. [C24, 27, 31, 35, 39,§2955; C46, 50, 54, 58, 62, 66, 71, 73, 75,§184.2]

184.3 Payment of state aid. The comptroller, on receipt of such statement, shall issue his warrant to the treasurer of such association for one hundred dollars. [C24, 27, 31, 35, 39,§2956; C46, 50, 54, 58, 62, 66, 71, 73, 75, §184.3]

184.4 Division of state aid. If more than one such association from the same county is entitled to state aid, the one hundred dollars shall be equally divided among such associations and the comptroller shall draw the warrants accordingly. [C24, 27, 31, 35, 39,§2957; C46, 50, 54, 58, 62, 66, 71, 73, 75,§184.4]

STATE SHOW

184.5 State-wide show — management. An annual state-wide poultry show is hereby authorized. Such show shall be conducted or managed by the officers of the local poultry association of the place at which such show is held. [C24, 27, 31, 35, 39,§2958; C46, 50, 54, 58, 62, 66, 71, 73, 75,§184.5]

184.6 Location of state-wide poultry show. At each state poultry show, a convention shall be held to determine the place of holding the next state show. Each association that has complied with the provisions of this chapter, for state aid, shall be entitled to send one delegate, who shall have one vote on all questions that arise. The officers of the local association conducting the show shall officiate at the convention. [C24, 27, 31, 35. 39,§2959; C46, 50, 54, 58, 62, 66, 71, 73, 75,§184.6]

184.7 Statement of expenditures. Such local poultry association, through its treasurer, shall, upon the adjournment of the state-wide poultry show, file with the department of agriculture a sworn statement which shall show the time and place of holding such show and an itemized statement of all expenditures on account thereof, and the specific purposes for which the same were expended, together with such other information as the department may require. [C24, 27, 31, 35, 39,§2960; C46, 50, 54, 58, 62, 66, 71, 73, 75,§184.7]

184.8 Required income, etc. The annual income in cash, exclusive of state aid, shall be five hundred dollars, and the total expenditures in cash shall be five hundred dollars, in addition to the state aid. [C27, 31, 35,§2960-a1; C39,§2960.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §184.8]

184.9 Certification by department. The department of agriculture, on receipt of such statement, if the same is, in its judgment, sufficient, and the expenditures bona fide, shall certify to the state comptroller that such state-wide poultry show has been held under the management of such local association. Said certificate shall show the amount of the bona fide expenditures on account of such convention. [C24, 27, 31, 35, 39,§2961; C46, 50, 54, 58, 62, 66, 71, 73, 75,§184.9]

184.10 Payment of state aid. The comptroller, on receipt of such certificate, shall issue his warrant to the treasurer of such association for the amount of said expenditures, but in no case shall such warrant exceed five hundred dollars in any one year. [C24, 27, 31, 35, 39,§2962; C46, 50, 54, 58, 62, 66, 71, 73, 75, 184.10]

DISTRICT SHOW

184.11 Affiliated county associations. Poultry associations in counties where no local poultry show is held, may affiliate with associations in adjacent counties and hold a district poultry show at some location that is mutually satisfactory. [C31, 35,§2962-d1; C39, §2962.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§184.11]

44GA, ch 61,§2, editorially divided

184.12 District show management. Each county poultry association affiliating with a district show shall form a county association as set forth in this chapter, and notify the department, on or before October 1, of its intentions of affiliating with other counties in the holding of a district poultry show. The president, vice-president, secretary and treasurer of such affiliating county poultry associations shall meet and elect officers who shall manage and conduct the district poultry show. [C31, 35,§2962-d2; C39,§2962.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§184.12]

184.13 Showing required. The officers of a district poultry show shall, on or before June 1 of each year, file with the department of agriculture a sworn statement showing compliance with all of the foregoing conditions and in detail the manner in which its funds have been expended, together with such other information as the department may require. The annual income in cash, exclusive of state aid, shall be at least one hundred dollars per county that is affiliated with a district organization, and the total expenditures in cash shall be one hundred dollars per county affiliated, in addition to the state aid. The total amount of state aid which will be available for such district show shall be the amount that would otherwise be available to the re-

spective county poultry associations. [C31, 35,§2962-d3; C39,§**2962.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§184.13]

184.14 State aid. Said state aid shall be payable to the treasurer of said district poultry show under substantially the same procedure as governs the payment of such aid in case of a state-wide poultry show. [C31, 35, §2962-d4; C39,§**2962.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§184.14]

CHAPTER 184A

EXCISE TAX ON TURKEYS

184A.1 Definitions.
184A.2 Fee imposed—rate.
184A.3 Invoices.
184A.4 Deposit of fee.
184A.5 Monthly remittal.
184A.6 Use of funds.
184A.7 Warrants by comptroller.
184A.8 Refund.
184A.9 Audit.
184A.10 Referendum.
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184A.12 Additional referendums.
184A.13 Bonds.
184A.14 Examination of books.
184A.15 Misdemeanor.
184A.16 Agreement with processors.
184A.17 Report required.
184A.18 Not a state agency.
184A.19 Deficit spending not authorized.

184A.1 Definitions. As used in this chapter, unless the context indicates otherwise:

1. *"Producer"* means any person doing business within this state who grows more than two hundred turkeys for slaughter each year. The word "producer" may include where applicable, an integrator, who is a person who both produces and processes turkeys.

2. *"Processor"* means any person who purchases more than one thousand turkeys for slaughter each year. The word "processor" may include where applicable, an integrator, who is a person who both produces and processes turkeys.

3. *"Turkeys"* means turkeys raised for slaughter.

4. *"Treasurer"* means the person appointed as treasurer by the Iowa turkey marketing council from the membership of the council.

5. *"Secretary"* means a person employed by the Iowa turkey marketing council to perform duties specified by this chapter or the council.

6. *"Market development"* means research and education programs directed toward better and more efficient production, marketing and utilization of turkey and turkey products produced for resale, and methods and means, including, but not limited to, public relations and other promotion techniques, for the maintenance of present markets, for the development of new or larger domestic or foreign markets, for the sale of turkeys, and for prevention, modification, or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market. Market development includes providing promotion and research funds for Iowa's participation in activities such as the national turkey federation, the "eat more turkey" campaign, the national turkey federation research fund and other activities as may be authorized by the council.

7. *"Iowa turkey marketing council"* or *"council"* means the council administrating promotion and research funds. The council shall consist of the following seven members:

a. The Iowa secretary of agriculture or his representative.

b. The chairman of the poultry science department of the Iowa State University of science and technology.

c. The president of the Iowa turkey federation.

d. Four representatives selected from a list of eight names submitted by the Iowa turkey federation by the secretary of agriculture who shall represent the Iowa turkey industry. [C73, 75,§184A.1]

184A.2 Fee imposed—rate. If approved by a majority of the voters at a referendum as provided in section 184A.10, there is hereby imposed a fee upon each turkey delivered for processing in the state of Iowa. The rate of the fee imposed shall be one-half cent for each turkey weighing less than ten pounds live weight and one cent for each turkey weighing ten or more pounds live weight.

The fee shall be imposed on the producer and collected at the time of delivery of a turkey to the processing plant and shall be deducted by the processor at the time of delivery from the price paid to the producer at the time of the sale to the processor. [C73, 75, 184A.2]

Referred to in §184A.10

184A.3 Invoices. At the time of delivery to the processing plant, the processor shall sign and deliver to the producer separate invoices for each purchase or such other records

which will expedite collection of the fee. The invoices shall show:

1. The name and address of the producer and the seller, if different from the producer.
2. The name and address of the processor.
3. The quantity of turkeys sold.
4. The date of the delivery.

Invoices shall be legibly written and shall not be altered. [C73, 75,§184A.3]

184A.4 Deposit of fee. The fee imposed by this chapter shall be paid by the processor to the Iowa turkey marketing council. Amounts collected from the fees shall be deposited with the treasurer of state in a separate special fund to be known as the "Iowa turkey account." [C73, 75,§184A.4]

184A.5 Monthly remittal. The fee imposed by this chapter shall be remitted by a processor to the treasurer monthly. [C73, 75,§184A.5]

184A.6 Use of funds. After payment of expenses, in accordance with section 184A.9 all moneys in the Iowa turkey account may be used by the Iowa turkey marketing council for payment of claims based upon obligations incurred in market development on behalf of the turkey industry and such moneys are hereby appropriated for such purposes. [C73, 75, §184A.6]

184A.7 Warrants by comptroller. The Iowa turkey account shall be subject at all times to warrant by the state comptroller, upon the written requisition of the chairman of the Iowa turkey marketing council, attested to by the secretary. [C73, 75,§184A.7]

184A.8 Refund. Any producer who makes written application to the council, on forms provided by it, within sixty days after the date of delivery of turkeys to a processor, shall receive a refund of the amount of fee which was deducted. [C73, 75,§184A.8]

184A.9 Audit. Moneys collected under authority of this chapter shall be subject to audit by the auditor of state and shall be used by the council first for the payment of collection expenses and for payment of the costs and expenses arising in connection with conducting any required referendums, and secondly by the turkey marketing council for market development. [C73, 75,§184A.9]

Referred to in §184A.6

184A.10 Referendum. Upon receipt of a petition signed by at least twenty-five producers requesting an initial referendum election to determine whether to impose the fee as provided in section 184A.2 the secretary shall call and conduct an initial referendum. [C73, 75,§184A.10]

Referred to in §184A.2

184A.11 Notice. Notice of a referendum on the question of whether to impose the fee shall be given by the secretary by publishing the notice for a period of not less than five days in a newspaper of general circulation in the state, and for a similar period in such other newspapers as the secretary prescribes. No referendum shall be commenced prior to five days after the last day of the period of publication. The notice of referendum shall set forth the period and voting places for the referendum, and the amount of the fee. Each producer, upon signing a statement certifying that he is a bona fide producer, as defined in this chapter, shall be entitled to one vote. [C73, 75,§184A.11]

184A.12 Additional referendums. At the close of the referendum period, the secretary shall count and tabulate the ballots cast during the period. If the secretary finds that the majority of voters favor imposing the fee, the fee shall be imposed within ninety days following the referendum and shall continue for a period of five years unless extended. If the majority of voters do not favor imposing the fee, the fee will not be imposed until another referendum is held and a majority of voters favor imposing the fee.

If the majority of voters do not favor imposing the fee, a second referendum may be called by the secretary if petitioned by twenty-five producers and conducted within one hundred eighty days after the referendum. If a majority of voters do not favor imposition of the fee at the second referendum, an initial referendum shall not be conducted within a period of two years.

Subsequent referendums to extend the imposition of the fee shall be held at least thirty days prior to the termination of the period for which the fee is imposed. If the majority of voters do not favor extending the imposition of the fee, the moneys remaining in the Iowa turkey account shall continue to be expended in accordance with the provisions of this chapter until exhausted. [C73, 75,§184A.12]

184A.13 Bonds. Every administrator, employee, or other person occupying a position of trust under this chapter shall give bond in the amount required by the secretary, and the premiums for bonds shall be part of the costs of collecting the fee. [C73, 75,§184A.13]

184A.14 Examination of books. Any person subject to the provisions of this chapter shall furnish, on forms provided by the council, any information needed to enable the council and secretary to effectuate the policies of this chapter. For the purpose of ascertaining the correctness of any report made to the council or secretary under the provisions of this chapter, the secretary may examine books, papers, records, copies of tax returns, accounts, correspondence, contracts, or other documents and memoranda it deems relevant which are in the control of any person and which are not otherwise confidential as provided by law. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses,

and issue subpoenas duces tecum in connection with the administration of this chapter. [C73, 75,§184A.14]

184A.15 Misdemeanor. It is a misdemeanor for any person to willfully violate any provision of this chapter, or for any person to willfully render or furnish a false or fraudulent report, statement, or record required by the council or secretary. [C73, 75,§184A.15]

184A.16 Agreement with processors. The secretary may enter into agreements with processors from outside Iowa for payment of the fee. [C73, 75,§184A.16]

184A.17 Report required. During the period of imposition of the fee, the secretary, in cooperation with the auditor of state, shall make an annual report, on or before March 1 of each year, showing all income, expenses, and other relevant information. Such reports shall be available to the public. [C73, 75, §184A.17]

184A.18 Not a state agency. The Iowa turkey marketing council shall not be a state agency. [C73, 75,§184A.18]

184A.19 Deficit spending not authorized. This chapter shall not be construed to authorize the Iowa turkey marketing council to operate with a deficit or use deficit financing for administration of this chapter. [C73, 75, §184A.19]

CHAPTER 185

SOYBEAN PROMOTION BOARD

185.1 Definitions.
185.2 Petition for election.
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185.4 Initial board.
185.5 Election for directors.
185.6 Who elected.
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185.9 Vacancies.
185.10 Ex officio members.
185.11 Purpose of board.
185.12 Officers.
185.13 Powers and duties.
185.14 Per diem and expenses.
185.15 Initial meeting.
185.16 Notice of referendum.
185.17 Contents of notice.
185.18 Counting.
185.19 Effect.
185.20 Producers only to vote.
185.21 Assessment.
185.22 Promotional order.
185.23 Deduction of assessment.
185.24 Cancellation of order.
185.25 Assessment nullified.
185.26 Deposit of funds.
185.27 Refund of assessment.
185.28 Appropriation.
185.29 Remission of excess funds.
185.30 Bond.
185.31 Penalty.
185.32 First purchaser information.
185.33 Annual report.
185.34 Not a state agency.

185.1 Definitions. As used in this chapter:

1. *"Secretary"* means the secretary of agriculture.

2. *"Board"* means the Iowa soybean promotion board established by this chapter.

3. *"Promotional order"* means an order administered pursuant to this chapter which establishes a program for the promotion, research and market development of soybeans and provides for an assessment to finance the program.

4. *"Market development"* means to engage in research and educational programs directed toward better and more efficient utilization of soybeans; to provide methods and means, including but not limited to, public relations and other promotion techniques for the maintenance of present markets; to provide for the development of new or larger domestic and foreign markets; and to provide for the prevention, modification, or elimination of trade barriers which obstruct the free flow of soybeans.

5. *"Producer"* means any individual, firm, corporation, partnership, or association engaged in this state in the business of producing and marketing in their name at least two hundred fifty bushels of soybeans in the previous marketing year.

6. *"First purchaser"* means any person, corporation, association, co-operative, partnership, commercial buyer, dealer, or processor who resells soybeans purchased from a producer or offers for sale any product produced from such soybeans for any purpose.

7. *"Marketing year"* means the twelve-month period beginning the first day of September and ending on the following thirty-first day of August.

8. *"District"* means an official crop reporting district formed by the United States department of agriculture and set out in the annual farm census published by the Iowa department of agriculture.

9. *"Soybeans"* means and includes all kinds of varieties of soybeans grown in this state and marketed or sold as soybeans by the producer.

10. *"Bushel"* means sixty pounds of soybeans by weight.

11. *"Assessment"* means an excise tax on each bushel of soybeans raised and sold in this state as provided in this chapter. [C73, 75,§185.1]

185.2 Petition for election. Upon receipt of a petition signed by at least five hundred producers requesting an initial referendum election to determine whether a promotional order shall be placed in effect, the secretary shall call an initial referendum election to be conducted within sixty days following receipt of the petition. Producers shall vote by written ballot in the manner provided by this chapter for referendum elections. [C73, 75,§185.2]

185.3 Board established. If a majority of the producers voting in the referendum election approve the passage of the promotional order, an Iowa soybean promotion board shall be established. The board shall consist of one director elected from each district in the state, except that a district producing more than an average of twenty-five million bushels of soybeans in the three previous marketing years is entitled to two directors. [C73, 75,§185.3]

185.4 Initial board. For the initial board, the secretary shall notify the Iowa soybean association, mentioned in section 159.25, immediately after approval of a promotional order at the referendum election and the association shall nominate two candidates for each position as director. Candidates shall be resident producers of the district from which they are nominated. The secretary shall receive the nominations, and shall call an election for members of the initial board within thirty days following passage of the promotional order. [C73, 75,§185.4]

185.5 Election for directors. Notice of the initial election for directors of the board shall be given by the secretary by publication in a newspaper of general circulation in the state at least five days prior to the date of the election and in any other reasonable manner as may be determined by the secretary. The notice shall set forth the period of time for voting, voting places, and such other information as the secretary may deem necessary.

Notice of subsequent elections for directors of the board in a district shall be given by the board by publication in a newspaper of general circulation in the district and in any other reasonable manner as may be determined by the board and shall set forth the period of time for voting, voting places, and such other information as the board may deem necessary. [C73, 75,§185.5]

185.6 Who elected. In districts electing one director, the candidate receiving the highest number of votes shall be elected. In districts electing two directors, producers shall vote for two directors, and the two candidates receiving the highest number of votes shall be elected. [C73, 75,§185.6]

185.7 Terms. Director terms shall be for three years and no director of the board shall serve for more than three complete consecutive terms.

The terms of office for the initial board shall be determined by lot. As nearly as possible one-third of the directors shall serve for one year, one-third of the directors shall serve for two years, and one-third of the directors shall serve for three years. The initial board shall not contain two directors from the same district serving the same term. [C73, 75,§185.7]

185.8 Future elections. After election of the initial board, the board shall administer subsequent elections for directors of the board with the assistance of the secretary. Prior to the expiration of a director's term of office, the board shall appoint a nominating committee for the district represented by such director. The nominating committee shall consist of five producers who are residents of the district from which a director must be elected. The nominating committee shall nominate two resident producers as candidates for each director position for which an election is to be held. Additional candidates may be nominated by a written petition of one hundred producers. Procedures governing the time and place of filing shall be promulgated and publicized by the board. [C73, 75,§185.8]

185.9 Vacancies. The board shall by appointment fill an unexpired term if a vacancy occurs in the board. [C73, 75,§185.9]

185.10 Ex officio members. The secretary, the dean of the college of agriculture of Iowa State University of science and technology, and the director of the Iowa development commission, or their designees, and two representatives of first purchaser organizations shall serve on the board as ex officio members. One each of the two first purchaser representatives shall be appointed by, and serve at the pleasure of, the Iowa grain and feed association and the farmers grain dealers association of Iowa. [C73, 75,§185.10]

185.11 Purpose of board. The purposes of the board shall be to:

1. Enter into contracts or agreements with recognized and qualified agencies or organizations for the development and carrying out of research and education programs directed toward better and more efficient production, marketing, and utilization of soybeans and soybean products.

2. Provide methods and means, including, but not limited to, public relations and other promotion techniques for the maintenance of present markets.

3. Assist in development of new or larger markets, both domestic and foreign, for soybeans and soybean products.

4. Work for prevention, modification, or elimination of trade barriers which obstruct the free flow of soybeans and soybean products to market. [C73, 75,§185.11]

185.12 Officers. The board shall:

1. Elect a chairman and other officers as advisable.

2. Administer this chapter, and perform all acts reasonably necessary to effectuate the purposes of this chapter. [C73, 75,§185.12]

185.13 Powers and duties. The board may:

1. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers, and fix their compensation.

2. Establish offices, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.

3. Adopt, rescind, and amend all proper and necessary rules for the exercise of its powers and duties.

4. Enter into arrangements for collection of the assessment on Iowa grown soybeans from persons purchasing soybeans outside of Iowa. [C73, 75,§185.13]

185.14 Per diem and expenses. Each member of the board shall receive thirty dollars per day and actual expenses in performing official board functions not to exceed forty days per year. No member of the board shall be a salaried employee of the board or any organization or agency which is receiving funds from the board. The board shall meet at least once every three months, and at such other times as deemed necessary by the board. [C73, 75,§185.14]

185.15 Initial meeting. The initial board shall meet and organize following the members' election, and the promotional order, including the assessment, shall become effective sixty days following the date of the election of the board. A promotional order shall be effective for four years from its effective date. [C73, 75,§185.15]

185.16 Notice of referendum. Notice of a referendum election to initiate or extend a promotional order shall be given by publication in a newspaper of general circulation in this state at least ten days prior to the date of the referendum and in any other reasonable manner as may be determined by the secretary for the initial referendum and by the board for extension of the promotional order. [C73, 75,§185.16]

Referred to in §185.25

185.17 Contents of notice. The notice of referendum shall set forth the period of time for voting, voting places and such other information as the secretary may deem necessary in an initial referendum. The board shall make such determinations in any subsequent referendum. [C73, 75,§185.17]

185.18 Counting. At the close of a referendum voting period, the secretary shall count and tabulate the ballots cast during the referendum period. [C73, 75,§185.18]

185.19 Effect. The ballots shall constitute conclusive evidence as to the validity of the promotional order. [C73, 75,§185.19]

185.20 Producers only to vote. Only producers are eligible to vote in an election for directors or a referendum election and only in the district in which they reside. A producer shall sign an affidavit furnished by the secretary at the time of voting certifying his eligibility to vote. Each qualified producer shall be entitled to one vote. [C73, 75,§185.20]

185.21 Assessment. The board shall set the assessment rate. Assessments pursuant to the promotional order shall be paid into the soybean promotion fund established in section 185.26. An assessment shall not exceed one-half cent per bushel upon soybeans produced in this state and sold to a first purchaser. The rate of assessment shall be determined by the board but shall not be changed, once established, during a marketing year. [C73, 75, §185.21]

185.22 Promotional order. After a promotional order has been issued, the first purchaser at the time of payment for soybeans shall show the total amount of assessment deducted from the sale on the purchase invoice. [C73, 75,§185.22]

185.23 Deduction of assessment. The assessment shall be deducted from the purchase price of soybeans at the time of sale, and forwarded to the secretary by the first purchaser in the manner and at intervals determined by the board. [C73, 75,§185.23]

185.24 Cancellation of order. If a promotional order has been canceled by a referendum, and all funds expended, the board shall cease to function. Any funds remaining one year following the termination of a promotional order shall be disbursed by the board to the Iowa soybean association, American soybean association, or the American soybean institute for market development activities. However, if a future referendum passes, the board shall be reorganized by the secretary and members shall serve out their terms as though there had been no lapse of time between effective orders. [C73, 75,§185.24]

185.25 Assessment nullified. An assessment adopted upon the initiation of a promotional order shall be of no force or effect upon termination of the promotional order. At least sixty days but not more than one hundred eighty days prior to the termination date of a promotional order, the secretary shall cause notice to be published in accordance with section 185.16, and a referendum on the question of whether a promotional order shall be ex-

tended for an additional four-year period shall be conducted. If the secretary finds that a majority of the total number of producers voting favor the promotional order, then the order shall continue to be in effect for an additional four-year period. If a referendum should fail, another referendum shall not be held within one hundred eighty days. A succeeding referendum shall be called by the secretary upon petition of at least one hundred producers requesting a referendum. [C73, 75,§185.25]

185.26 Deposit of funds. Assessments collected by the secretary from a sale of soybeans shall be deposited in the office of the treasurer of state together with any gifts, or any federal or state grant as may be received by the board, and placed in a special fund to be known as the soybean promotion fund. Moneys collected shall be subject to audit by the auditor of state. From moneys collected, the board shall first pay the costs of referendums, elections and other expenses incurred in the administration of this chapter, and thereafter moneys may be expended for the purpose of market development. The fund shall be subject at all times to warrants by the state comptroller, drawn upon the written requisition of the chairman of the board and attested to by the secretary of the board. [C73, 75,§185.26]

Referred to in §185.21

185.27 Refund of assessment. A producer who has sold soybeans and had an assessment deducted from the sale price may, by application in writing to the secretary, secure a refund in the amount deducted. The refund shall be payable only when the application shall have been made to the secretary within sixty days after the deduction. Application forms shall be given by the board to each first purchaser when requested and the first purchaser shall make the applications available to any producer. Each application for refund by a producer shall have attached thereto proof of assessment deducted. The proof of assessment may be in the form of a duplicate or certified copy of the purchase invoice by the first purchaser. The secretary shall have thirty days from the date the application for refund is received to remit the refund to the producer. [C73, 75,§185.27]

185.28 Appropriation. All moneys deposited in the soybean promotion fund are appropriated for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions set forth in this chapter. [C73, 75,§185.28]

185.29 Remission of excess funds. After the costs of elections, referendum, necessary board expenses and administrative costs have been paid, at least seventy-five percent of the remaining funds in the soybean promotion fund shall be remitted to such organizations as the Iowa soybean association, American soybean association and the American soybean institute for market development activities to include developing and expanding new markets for soybeans and soybean products worldwide. The funds can only be used for research, promotion, and education in cooperation with agencies who are equipped to do this kind of work. [C73, 75,§185.29]

185.30 Bond. Every person occupying a position of trust under any provisions of this chapter shall give bond in such amount as may be required by the board, the premium for which shall be paid out of the soybean promotion fund. [C73, 75,§185.30]

185.31 Penalty. It is a misdemeanor for any person to willfully violate any provision of this chapter or for any person to willfully render or furnish a false or fraudulent report, statement, or record required by the secretary. [C73, 75,§185.31]

185.32 First purchaser information. Every first purchaser shall upon request furnish the secretary with such information as is necessary to enable the secretary to carry out the provisions of this chapter. Such information shall be provided as prescribed by the secretary. The secretary may examine any records relating to the purchase, sale, storage, processing, handling, or assessment of soybeans by any first purchaser. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas as may be necessary to carry out the provisions of this chapter. [C73, 75,§185.32]

185.33 Annual report. The secretary shall make an annual report on or before November 1 of each year, showing all income and expenses and other relevant information concerning assessments collected and expended under the provisions of this chapter. [C73, 75, §185.33]

185.34 Not a state agency. The Iowa soybean promotion board shall not be a state agency. [C73, 75,§185.34]

CHAPTER 185A

IOWA SOYBEAN ASSOCIATION

185A.1 Recognition of association.
185A.2 Duties and objects of association.

185A.1 Recognition of association. The corporation known as the Iowa soybean association incorporated under the laws of this state shall be entitled to the benefits of this chapter by filing each year with the department of agriculture verified proofs of its organization, names of its officers, and five hundred persons who are bona fide members thereof together with such other information as the department may require. [C66, 71, 73, 75,§185A.1]

185A.2 Duties and objects of association. The Iowa soybean association shall:

1. Aid in the promotion of the soybean industry of Iowa through education, research, marketing, transportation study, and public relations programs, and to foster research designed to develop new, additional and improved uses for soybean products and determine better methods of converting them to various industrial and human uses.

2. Make an annual report of the proceedings to the secretary of agriculture. [C66, 71, 73, 75, §185A.2]

CHAPTER 185B

CORN GROWERS ASSOCIATION

185B.1 Recognition of organization.
185B.2 Duties and objects of association.

185B.1 Recognition of organization. The corporation known as the Iowa corn growers association incorporated under the laws of this state shall be entitled to the benefits of this chapter by filing each year with the department of agriculture verified proofs of its organization, names of its officers, and five hundred persons who are bona fide members thereof together with such other information as the department may require. [C71, 73, 75, §185B.1]

185B.2 Duties and objects of association. The Iowa corn growers association shall:

1. Aid the promotion of corn growers and the corn industry of Iowa through education, research, marketing, transportation study, and public relations programs, and to foster research designed to develop new additional and improved uses for corn products and determine better methods of converting them to various industrial and human uses.

2. Make an annual report of the proceedings to the secretary of agriculture. [C71, 73, 75, §185B.2]

CHAPTER 185C

CORN PROMOTION BOARD

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185C.33 Annual report.
185C.34 Not a state agency.

185C.1 Definitions. As used in this chapter:

1. *"Secretary"* means the secretary of agriculture.

2. *"Board"* means the Iowa corn promotion board established by this chapter.

3. "*Promotional order*" means an order administered pursuant to this chapter which establishes a program for the promotion, research and market development of corn and provides for an assessment to finance the program.

4. "*Market development*" means to engage in research and educational programs directed toward better and more efficient utilization of corn; to provide methods and means, including but not limited to, public relations and other promotion techniques for the maintenance of present markets; to provide for the development of new or larger domestic and foreign markets; and to provide for the prevention, modification, or elimination of trade barriers which obstruct the free flow of corn.

5. "*Producer*" means any individual, firm, corporation, partnership, or association engaged in this state in the business of producing and marketing in their name at least two hundred fifty bushels of corn in the previous marketing year.

6. "*First purchaser*" means any person, corporation, association, co-operative, partnership, commercial buyer, dealer, or processor who resells corn purchased from a producer or offers for sale any product produced from such corn for any purpose.

7. "*Marketing year*" means the twelve-month period beginning the first day of September and ending on the following thirty-first day of August.

8. "*District*" means an official crop reporting district formed by the United States department of agriculture and set out in the annual farm census published by the Iowa department of agriculture.

9. "*Corn*" means and includes all kinds of varieties of corn grown in this state and marketed or sold as corn by the producer but shall not include sweet corn, popcorn or seed corn.

10. "*Bushel*" means fifty-six pounds of corn by weight.

11. "*Assessment*" means an excise tax on each bushel of corn raised and sold in this state as provided in this chapter. [66GA, ch 1124,§1]

185C.2 Petition for election. Upon receipt of a petition signed by at least five hundred producers requesting an initial referendum election to determine whether a promotional order shall be placed in effect, the secretary shall call an initial referendum election to be conducted within sixty days following receipt of the petition. Producers shall vote by written ballot in the manner provided by this chapter for referendum elections. [66GA, ch 1124,§2]

185C.3 Establishment of corn promotion board. If a majority of the producers voting in the referendum election approve the passage of the promotional order, an Iowa corn promotion board shall be established. The board shall consist of one director elected from each district in the state, except that a district producing more than an average of one hundred million bushels of corn in the three previous marketing years is entitled to two directors. [66GA, ch 1124,§3]

185C.4 Initial board. For the initial board, the secretary shall notify the Iowa corn growers association, mentioned in section 159.25, immediately after approval of a promotional order at the referendum election and the association shall nominate two candidates for each position as director. Additional candidates may be nominated by written petition of twenty-five producers. Procedures governing the time and place of filing petitions shall be established and publicized by the secretary. Candidates shall be resident producers of the district from which they are nominated. The secretary shall receive the nominations, and shall call an election for members of the initial board within thirty days following passage of the promotional order. [66GA, ch 1124,§4]

185C.5 Notice of election. Notice of the initial election for directors of the board shall be given by the secretary by publication in a newspaper of general circulation in the state at least five days prior to the date of the election and in any other reasonable manner as may be determined by the secretary. The notice shall set forth the period of time for voting, voting places, and such other information as the secretary may deem necessary.

Notice of subsequent elections for directors of the board in a district shall be given by the board by publication in a newspaper of general circulation in the district and in any other reasonable manner as may be determined by the board and shall set forth the period of time for voting, voting places, and such other information as the board may deem necessary. [66GA, ch 1124,§5]

185C.6 Election of directors. In districts electing one director, the candidate receiving the highest number of votes shall be elected. In districts electing two directors, producers shall vote for two directors, and the two candidates receiving the highest number of votes shall be elected. [66GA, ch 1124,§6]

185C.7 Terms of directors. Director terms shall be for three years and no director of the board shall serve for more than three complete consecutive terms.

The terms of office for the initial board shall be determined by lot. As nearly as possible one-third of the directors shall serve for one year, one-third of the directors shall serve for two years, and one-third of the directors shall serve for three years. The initial board shall not contain two directors from the same district serving the same term. [66GA, ch 1124,§7]

185C.8 Future elections. After election of the initial board, the board shall administer subsequent elections for directors of the board

with the assistance of the secretary. Prior to the expiration of a director's term of office, the board shall appoint a nominating committee for the district represented by such director. The nominating committee shall consist of five producers who are residents of the district from which a director must be elected. The nominating committee shall nominate two resident producers as candidates for each director position for which an election is to be held. Additional candidates may be nominated by a written petition of twenty-five producers. Procedures governing the time and place of filing shall be promulgated and publicized by the board. [66GA, ch 1124,§8]

185C.9 Vacancies. The board shall by appointment fill an unexpired term if a vacancy occurs in the board. [66GA, ch 1124,§9]

185C.10 Ex officio members. The secretary, the dean of the college of agriculture of Iowa State University of science and technology, and the director of the Iowa development commission, or their designees, and two representatives of first purchaser organizations shall serve on the board as ex officio members. One each of the two first purchaser representatives shall be appointed by, and serve at the pleasure of, the Iowa grain and feed association and the farmers grain dealers association of Iowa. [66GA, ch 1124,§10]

185C.11 Purpose of the board. The purposes of the board shall be to:

1. Enter into contracts or agreements with recognized and qualified agencies or organizations for the development and carrying out of research and education programs directed toward better and more efficient production, marketing, and utilization of corn and corn products.

2. Provide methods and means, including, but not limited to, public relations and other promotion techniques for the maintenance of present markets.

3. Assist in development of new or larger markets, both domestic and foreign, for corn and corn products.

4. Work for prevention, modification, or elimination of trade barriers which obstruct the free flow of corn and corn products to market. [66GA, ch 1124,§11]

185C.12 Officers. The board shall:

1. Elect a chairman and other officers as advisable.

2. Administer this chapter, and perform all acts reasonably necessary to effectuate the purposes of this chapter. [66GA, ch 1124,§12]

185C.13 Powers and duties. The board may:

1. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers, and fix their compensation.

2. Establish offices, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.

3. Adopt, rescind, and amend all proper and necessary rules for the exercise of its powers and duties.

4. Enter into arrangements for collection of the assessment on Iowa grown corn from persons purchasing corn outside of Iowa. [66GA, ch 1124,§13]

185C.14 Per diem and expenses. Each member of the board shall receive thirty dollars per day and actual expenses in performing official board functions not to exceed forty days per year. No member of the board shall be a salaried employee of the board or any organization or agency which is receiving funds from the board. The board shall meet at least once every three months, and at such other times as deemed necessary by the board. [66GA, ch 1124,§14]

185C.15 Initial meeting. The initial board shall meet and organize following the members' election, and the promotional order, including the assessment, shall become effective sixty days following the date of the election of the board. A promotional order shall be effective for four years from its effective date. [66GA, ch 1124,§15]

185C.16 Notice of referendum. Notice of a referendum election to initiate or extend a promotional order shall be given by publication in a newspaper of general circulation in this state at least ten days prior to the date of the referendum and in any other reasonable manner as may be determined by the secretary for the initial referendum and by the board for extension of the promotional order. [66GA, ch 1124,§16]

Referred to in §185C.25

185C.17 Contents of notice. The notice of referendum shall set forth the period of time for voting, voting places and such other information as the secretary may deem necessary in an initial referendum. The board shall make such determinations in any subsequent referendum. [66GA, ch 1124,§17]

185C.18 Counting. At the close of a referendum voting period, the secretary shall count and tabulate the ballots cast during the referendum period. [66GA, ch 1124,§18]

185C.19 Effect. The ballots shall constitute conclusive evidence as to the validity of the promotional order. [66GA, ch 1124,§19]

185C.20 Producers only to vote. Only producers are eligible to vote in an election for directors or a referendum election and only in the district in which they reside. A producer shall sign an affidavit furnished by the secretary at the time of voting certifying his eligibility to vote. Each qualified producer shall be entitled to one vote. [66GA, ch 1124,§20]

185C.21 Assessment. The board shall set the assessment rate. Assessments pursuant to the promotional order shall be paid into the corn promotion fund established in section 185C.26. An assessment shall not exceed one-tenth of one cent per bushel upon corn produced in this state and sold to a first purchaser. The rate of assessment shall be determined by the board but shall not be changed, once established, during a marketing year. [66GA, ch 1124,§21]

185C.22 Promotional order. After a promotional order has been issued, the first purchaser at the time of payment for corn shall show the total amount of assessment deducted from the sale on the purchase invoice. [66GA, ch 1124,§22]

185C.23 Deduction of assessment. The assessment shall be deducted from the purchase price of corn at the time of sale, and forwarded to the secretary by the first purchaser in the manner and at intervals determined by the board. [66GA, ch 1124,§23]

185C.24 Cancellation of order. If a promotional order has been canceled by a referendum, and all funds expended, the board shall cease to function. Any funds remaining one year following the termination of a promotional order shall be disbursed by the secretary for corn market development. However if a future referendum passes, the board shall be reorganized by the secretary and members shall serve out their terms as though there had been no lapse of time between effective orders. [66GA, ch 1124,§24]

185C.25 Assessment nullified. An assessment adopted upon the initiation of a promotional order shall be of no force or effect upon termination of the promotional order. At least sixty days but not more than one hundred eighty days prior to the termination date of a promotional order, the secretary shall cause notice to be published in accordance with section 185C.16, and a referendum on the question of whether a promotional order shall be extended for an additional four-year period shall be conducted. If the secretary finds that a majority of the total number of producers voting favor the promotional order, then the order shall continue to be in effect for an additional four-year period. If a referendum should fail, another referendum shall not be held within one hundred eighty days. A succeeding referendum shall be called by the secretary upon petition of at least five hundred producers requesting a referendum. [66GA, ch 1124,§25]

185C.26 Deposit of funds. Assessments collected by the secretary from a sale of corn shall be deposited in the office of the treasurer of state together with any gifts, or any federal or state grant as may be received by the board, and placed in a special fund to be known as the corn promotion fund. Moneys collected shall be subject to audit by the auditor of state. From moneys collected, the board shall first pay all the direct and indirect costs incurred by the secretary and the costs of referendums, elections and other expenses incurred in the administration of this chapter, and thereafter moneys may be expended for the purpose of market development. The fund shall be subject at all times to warrants by the state comptroller, drawn upon the written requisition of the chairman of the board and attested to by the secretary of the board. [66GA, ch 1124,§26]

Referred to in §185C.21

185C.27 Refund of assessment. A producer who has sold corn and had an assessment deducted from the sale price may, by application in writing to the secretary, secure a refund in the amount deducted. The refund shall be payable only when the application shall have been made to the secretary within sixty days after the deduction. Application forms shall be given by the board to each first purchaser when requested and the first purchaser shall make the applications available to any producer. Each application for refund by a producer shall have attached thereto proof of assessment deducted. The proof of assessment may be in the form of a duplicate or certified copy of the purchase invoice by the first purchaser. The secretary shall have thirty days from the date the application for refund is received to remit the refund to the producer. [66GA, ch 1124,§27]

185C.28 Appropriation. All moneys deposited in the corn promotion fund are appropriated for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions set forth in this chapter. [66GA, ch 1124,§28]

185C.29 Remission of excess funds. After the costs of elections, referendum, necessary board expenses and administrative costs have been paid, at least seventy-five percent of the remaining funds in the corn promotion fund shall be allocated to organizations selected by the corn promotion board on the basis of their ability to carry out the purposes of this chapter. The funds can only be used for research, promotion, and education in co-operation with agencies who are equipped to do this kind of work.

The Iowa corn promotion board shall not engage in any political activity, and it shall be a condition of any allocation of funds that any organization receiving funds shall not engage in political activity or attempt to influence legislation except legislation or rules which would restrict corn markets. [66GA, ch 1124,§29]

185C.30 Bond. Every person occupying a position of trust under any provisions of this chapter shall give bond in such amount as may be required by the board, the premium

for which shall be paid out of the corn promotion fund. [66GA, ch 1124,§30]

185C.31 Penalty. It is a misdemeanor for any person to willfully violate any provision of this chapter or for any person to willfully render or furnish a false or fraudulent report, statement, or record required by the secretary. [66GA, ch 1124,§31]

Punishment, §687.7

185C.32 First purchaser information. Every first purchaser shall upon request furnish the secretary with such information as is necessary to enable the secretary to carry out the provisions of this chapter. Such information shall be provided as prescribed by the secretary. The secretary may examine any records relating to the purchase or assessment of corn by any first purchaser. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas as may be necessary to carry out the provisions of this chapter. [66GA, ch 1124,§32]

185C.33 Annual report. The secretary shall make an annual report on or before December 1 of each year, showing all income and expenses and other relevant information concerning assessments collected and expended under the provisions of this chapter. [66GA, ch 1124,§33]

185C.34 Not a state agency. The Iowa corn promotion board is not a state agency. [66GA, ch 1124,§34]

CHAPTER 186

STATE HORTICULTURAL SOCIETY

Referred to in §§159.6(10), 173.3

186.1 Meetings and organization of society.
186.2 Horticultural exposition.
186.3 Affiliation with allied societies.
186.4 Annual report.
186.5 Appropriations.

186.1 Meetings and organization of society. The state horticultural society shall hold meetings each year, at such times as it may fix, for the transaction of business. The officers and board of directors of the society shall be chosen as provided for in the constitution of the society, for the period and in the manner prescribed therein, but the secretary of agriculture shall be a member of the board of directors and of the executive committee. Any vacancy in the offices filled by the society may be filled by the executive committee for the unexpired portion of the term. [C73,§1117; C97,§1669; C24, 27, 31, 35, 39,§2963; C46, 50, 54, 58, 62, 66, 71, 73, 75,§186.1]

186.2 Horticultural exposition. The society is authorized to hold, at such time and in such place in Iowa as it may select, a horticultural exposition, including honey products and manufactured plant products, with practical and scientific demonstrations of approved methods of crop production, grading, packing, marketing, and establishment of standard market grades pertaining to horticulture. It may delegate to its executive committee the duty and power to make and execute all plans for the holding of such an exposition. [C24, 27, 31, 35, 39,§2964; C46, 50, 54, 58, 62, 66, 71, 73, 75, §186.2]

186.3 Affiliation with allied societies. The society shall encourage the affiliation with itself of societies organized for the purpose of furthering the horticultural, honey bee, or forestry interests of the state. [C73,§1118; C97, §1670; C24, 27, 31, 35, 39,§2965; C46, 50, 54, 58, 62, 66, 71, 73, 75,§186.3]

186.4 Annual report. The secretary shall make an annual report to the department of agriculture at such time as the department may require. Such report shall contain the proceedings of the society, an account of the exposition, a summarized statement of the expenditures for the year, the general condition of horticultural, honey bee, and forestry interests throughout the state, together with such additional information as the department may require. [C73,§1119; C97,§1671; C24, 27, 31, 35, 39,§2966; C46, 50, 54, 58, 62, 66, 71, 73, 75, §186.4]

186.5 Appropriations. All money appropriated by the state for the use of the state horticultural society shall be paid on the warrant of the state comptroller, upon the order of the president and secretary of said society, in such sums and at such times as may be for the interests of said society. All expenditures from state funds for the use of the state horticultural society are to be approved by the secretary of the state department of agriculture. [C27, 31, 35,§2966-a1; C39,§2966.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§186.5]

State aid, see appropriation Act

CHAPTER 186A

ARBOR WEEK

See §159.6

186A.1 Arbor day and week.

186A.1 Arbor day and week. The last Friday in April in each year shall be observed in Iowa as arbor day and the week in which this Friday falls shall be observed as arbor week. This day and week shall be designated annually by the governor with suitable proclamation urging that schools, civic organizations, governmental departments and all citizens and groups give serious thought to and appreciation of the contribution of trees to the beauty and economic welfare of Iowa. [C62, 66, 71, 73, 75,§186A.1]

CHAPTER 187

MARKING AND BRANDING OF LIVESTOCK

See §159.6

187.1 Definitions.
187.2 Adoption of brand.
187.3 Must be recorded.
187.4 Recording—fee.
187.5 Effect of record.
187.6 Certified copies furnished.
187.7 Unlawful use of brand.
187.8 Sale or assignment of brand.
187.9 Certified copy to new owner.
187.10 Evidence of ownership.
187.11 Publication of brands list.
187.12 Fees to general fund.
187.13 Fee each fifth year.
187.14 Tampering with brand.
187.15 Effect of prior brands.
187.16 Branding committee.

187.1 Definitions. When used in this chapter:

1. *"Secretary"* means the secretary of agriculture.

2. *"Person"* means an individual, firm, association, partnership, or corporation; the singular shall also mean the plural where applicable.

3. *"Brand"* means an identification mark that is burned into the hide of a live animal by a hot iron or another method approved by the secretary.

4. *"Cryo-branding"* means a brand produced by application of extreme cold temperature. [C66, 71, 73, 75,§187.1]

187.2 Adoption of brand. Any person having cattle, sheep, horses, mules, or asses shall have the right to adopt a brand for the use of which he shall have the exclusive right in this state, after recording such brand as provided in sections 187.4 and 187.6 or 187.9. [C66, 71, 73, 75,§187.2]

187.3 Must be recorded. No evidence of ownership by brand shall be permitted in any court in this state unless the brand shall be recorded as provided in sections 187.4 and 187.6 or 187.9. In no case shall cryo-brands be accepted as evidence of ownership. [C66, 71, 73, 75,§187.3]

187.4 Recording—fee. Any person desiring to adopt a brand shall forward to the secretary proper brand application forms of such desired brand, together with a recording fee in an amount established by rule of the secretary pursuant to chapter 17A, which amount shall be based upon the administrative costs of maintaining the brand program provided for by this chapter. Upon receipt of such application and fee, the secretary shall file the same and unless such brand is of record as that of some other person or conflicts with or closely resembles the brand of another person, the secretary shall record the same. If the secretary determines that such brand is of record or conflicts with or closely resembles the brand of another person he shall not record it but shall return such facsimile and fee to the forwarding person. The power of examination, approval, acceptance, or rejection shall be vested in the secretary. It shall be the duty of the secretary to file all brands offered for record pending the examination provided for in this section. The secretary shall make such examination as promptly as possible. If the brand is accepted, the ownership thereof shall vest in the person recording it from the date of filing. [C51, §§921–923; R60,§§1556–1558; C73,§§1480, 1481, 3809; C97,§§2335, 2336; C24, 27, 31, 35, 39,§§2977, 2978; C46, 50, 54, 58, 62,§§187.2, 187.3; C66, 71, 73, 75,§187.4; 66GA, ch 34,§3]

Referred to in §§187.2, 187.3, 187.5, 187.8, 187.12, 187.15

187.5 Effect of record. The recording provided for in sections 187.4 and 187.6 or 187.9 shall secure the brand to the person and shall

be considered personal property of said owner. [C66, 71, 75,§187.5]

187.6 Certified copies furnished. As soon as the brand is recorded by the secretary, he shall furnish the owner thereof with two certified copies of the record of such brand. [C66, 71, 73, 75,§187.6]

Referred to in §§187.2, 187.3, 187.5, 187.10, 187.12

187.7 Unlawful use of brand. It shall be unlawful to use any brand for branding any horses, cattle, sheep, mules, or asses unless the brand has been recorded as provided by this chapter. Hot brands and cryo-brands, consisting of Arabic numerals only, may be used in conjunction with recorded brands for within the herd identification and as such shall not be recorded; and when so used shall not be evidence of ownership. Anyone convicted of violating this section shall be fined a sum not to exceed one hundred dollars or imprisoned in the county jail not to exceed thirty days. [C66, 71, 73, 75,§187.7]

187.8 Sale or assignment of brand. Any brand recorded as provided in section 187.4 shall be the property of the person causing such record to be made and shall be subject to sale, assignment, transfer, devise, and descent as personal property. Instruments of writing, evidencing the sale, assignment, or transfer of such brand shall be recorded by the secretary and the fee for recording such sale, assignment, or transfer shall be in an amount established by rule of the secretary pursuant to chapter 17A, which amount shall be based upon the administrative costs of maintaining the brand program provided for by this chapter. [C66, 71, 73, 75,§187.8; 66GA, ch 34,§4]

Referred to in §187.12

187.9 Certified copy to new owner. As soon as instruments of writing evidencing the sale, assignment, or transfer of a brand have been recorded by the secretary, he shall furnish such new owner one certified copy of such sale, assignment, or transfer. [C66, 71, 73, 75,§187.9]

Referred to in §§187.2, 187.3, 187.5, 187.10

187.10 Evidence of ownership. In all suits at law or equity or in any criminal proceedings in which the title to animals is an issue, the certified copies recorded as provided for in section 187.6 or 187.9 shall be prima-facie evidence of the ownership of such animal by the person in whose name the brand is recorded. Disputes in custody or ownership of branded animals shall be investigated, on request, by the sheriff of the county where the animals are located and he may call upon the services of an authorized person, approved by the secretary of agriculture, in reading the brands on animals. The cost of such services shall be borne by the person requesting the investigation. The results of the sheriff's investigation shall be a public record and be admissible in evidence. [C66, 71, 73, 75,§187.10]

187.11 Publication of brands list. It shall be the duty of the secretary from time to time to cause to be published in book form a list of all brands on record at the time of such publication. Such lists may be supplemented from time to time. The publication shall contain a facsimile of all brands recorded and the owner's name and post-office address. The records shall be arranged in convenient form for reference. It shall be the duty of the secretary to send one copy of the brand book and supplements to the county recorder of each county. Such books and supplements shall be without cost to the county and shall be kept as a matter of public record. The books and supplements may be sold to the general public at the cost of printing and mailing each book. [C66, 71, 73, 75, §187.11]

187.12 Fees to general fund. All fees and money, collected under the provisions of sections 187.4, 187.6, 187.8, and 187.13 by the secretary shall be placed in the general fund. [C66, 71, 73, 75,§187.12]

187.13 Fee each fifth year. Each owner of a brand of record beginning on January 1, 1970, shall pay to the secretary a fee of five dollars and a renewal fee on January 1 of each fifth year after the payment of the five dollar fee, or on January 1 of each fifth year following the original recording of a brand recorded after June 30, 1975. The amount of the renewal fee required for January 1, 1976 and each year thereafter shall be established by rule of the secretary pursuant to chapter 17A. Such amount shall be based upon the administrative costs of maintaining the brand program provided for in this chapter. It shall be the duty of the secretary to notify every owner of a brand of record at least thirty days prior to the date of the renewal period. The secretary shall give a receipt for all such payments made and if any owner of a brand of record shall fail, refuse, or neglect to pay such fee by July 1 of each year in which it is due, such brand shall become forfeited and no longer carried in the record. Any such forfeited brand shall not be issued to any other person within a period of less than five years following date of forfeiture. [C66, 71, 73, 75, §187.13; 66GA, ch 34,§5]

Referred to in §187.12

187.14 Tampering with brand. Any person who shall brand, attempt to brand, or cause to be branded the animals of another, or who shall efface, deface, or obliterate or attempt to efface, deface, or obliterate any brand upon any animal or animals of another, or who shall brand, attempt to brand, or cause to be branded the recorded brand of another on any animal shall be imprisoned in the penitentiary not to exceed two years or fined not to exceed one thousand dollars, or both. [C66, 71, 73, 75,§187.14]

187.15 Effect of prior brands. Any person having duly recorded a brand or mark used

on live animals in the office of any county recorder of any county in Iowa before July 4, 1965, shall be presumed to be the owner of such brand or mark and shall be protected in the use of such brand or mark for a period of ninety days from July 4, 1965. In the event any two or more persons present for recording the same or similar brand, the one whose brand was recorded first with any county recorder shall be the one entitled to record, use, and own such brand pursuant to this chapter. If such presumed owner fails to file application, facsimile, and recording fee as provided for in section 187.4 within the ninety-day period, title to such brand or mark which may have been acquired by such recording shall terminate as of midnight of the last day of the ninety-day period. If such presumed owner files an application, facsimile, and recording fee as provided for in section 187.4 it shall be the duty of the secretary to give priority to examination of such application. [C66, 71, 73, 75,§187.15]

187.16 Branding committee. The secretary may appoint a state branding committee to help initiate this program. [C66, 71, 73, 75, §187.16]

CHAPTER 188

ESTRAYS AND TRESPASSING ANIMALS

188.1 Definition of terms.
188.2 Restraint of animals.
188.3 Trespass on lawfully fenced land.
188.4 Neglect to maintain partition fence.
188.5 Trespass on unfenced land.
188.6 Trespass on highway.
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188.23 Appeal by owner—effect.
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188.26 Taking up estray.
188.27 Procedure on taking up estray.
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188.29 Repealed by 64GA, ch 1124,§282.
188.30 Record and posting by county auditor.
188.31 Publication.
188.32 Fees and expenses.
188.33 Two or more estrays—procedure.
188.34 Property vests when.
188.35 Recovery by owner.
188.36 Former owner—rights after vesting of title.
188.37 Lawful use of estray.
188.38 Unlawful use of estray.
188.39 Nonliability of taker-up.
188.40 Penalty against finder.
188.41 Transfer of estrays.
188.42 Sale of estrays.
188.43 Notice.
188.44 Assessment of damages and costs.
188.45 Owner discovered.
188.46 Penalty.
188.47 Bond to release.
188.48 Compensation and fees.
188.49 Neglected animals.
188.50 Disabled animals killed.

188.1 Definition of terms. As used in this chapter:

1. *"Owner"* when used with reference to animals, means any person in possession or entitled to the present possession thereof, or having care or charge of them, or holding the legal title to them.

2. *"Owner"* when used with reference to lands, means the person having title thereto, or the lessee or occupant thereof.

3. *"Animal"* or *"animals"* when used in this chapter shall include and embrace horses, cattle, swine, sheep, goats, mules, and asses.

4. *"Estray"* shall mean any animal unlawfully running at large the ownership of which cannot, with reasonable inquiry in the neighborhood, be ascertained, or any animal which has been abandoned by its owner.

5. *"Trespassing animals"* means those unlawfully upon land, or running at large contrary to law or police regulations. [C97,§2311; C24, 27, 31, 35, 39,§2979; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.1]

188.2 Restraint of animals. All animals shall be restrained by the owners thereof from running at large. [C51,§114; R60,§§250, 287, 1522; C73,§§309, 1446, 1447, 1457, 1461–1463; C97, §§444, 445, 2312, 2314; C24, 27, 31, 35, 39,§2980; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.2]

188.3 Trespass on lawfully fenced land. Any animal trespassing upon land, fenced as provided by law, may be distrained by the owner

of such land, and held for all damages done thereon by it, unless it escaped from adjoining land in consequence of the neglect of such landowner to maintain his part of a lawful partition fence. [C51,§§913, 914; R60,§§1548, 1549; C73,§§1448, 1449; C97,§2313; C24, 27, 31, 35, 39, §2981; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.3]

Fences, ch 113

188.4 Neglect to maintain partition fence. The owner of the land from which such animal escaped shall also be liable for such damages if it escaped therefrom in consequence of his neglect to maintain his part of a lawful partition fence, or if the trespassing animal was not lawfully upon his land, and he had knowledge thereof. [C51,§§913, 914; R60,§§1548, 1549; C73,§§1446, 1448, 1449, 1452; C97,§§2313, 2314; C24, 27, 31, 35, 39,§2982; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.4]

Fences, ch 113

188.5 Trespass on unfenced land. If there be no lawful partition fence, and the line thereof has not been assigned either by the fence viewers or by agreement of the parties, any animal trespassing across such partition line shall not be distrained, nor shall there be any liability therefor. [C97,§2313; C24, 27, 31, 35, 39,§2983; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.5]

188.6 Trespass on highway. Animals which are unlawfully running at large on the highway may be distrained by the owner of the adjoining land and held for damages done by them and for the costs provided in this chapter. [R60,§287; C73,§§1446, 1448, 1452; C97,§2314; C24, 27, 31, 35, 39,§2984; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.6]

188.7 Animals under control. An animal shall not be considered as running at large so long as it is under the reasonable care and control of the owner upon the public road for driving or travel thereon. [C97,§2314; C24, 27, 31, 35, 39,§2985; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.7]

188.8 Action in lieu of distraint. Instead of distraining trespassing animals, the injured person may recover all damages caused thereby in an action against the owner thereof, and may join therein the owner of the land from which it escaped, if he is liable therefor, and all or any of the different owners of the animals who have not paid their proportion of the damages or costs. [C97,§§2315, 2316; C24, 27, 31, 35, 39,§2986; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.8]

188.9 Action when stock is released or has escaped. If distrained animals escape or are released without the consent of the distraining party, he may recover his damages as above provided, with costs, and the costs of distraint made prior to such escape or release. [C97, §2315; C24, 27, 31, 35, 39,§2987; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.9]

188.10 Release on payment of ratable share. If there is more than one owner of distrained animals, each may pay his ratable share of the damages and costs, and release his animals. [C73,§1447; C97,§§2312, 2316; C24, 27, 31, 35, 39, §2988; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.10]

188.11 Procedure on distraint. The person distraining animals shall, within twenty-four hours after such distraint, Sunday not included, notify the owner of the animals of such distraint and of the actual amount of damages and costs caused by such animals. If the said owner fails to satisfy such damages and costs within twenty-four hours after such notification, the person distraining shall immediately notify the township trustees and demand that they appear upon the premises where the damages occurred and assess the damages. The trustees shall immediately fix a time for the assessment of such damages and notify the owner of the animal accordingly. [C51,§919; R60,§§1552, 1554; C73,§§1447, 1454; C97,§§2312, 2317; C24, 27, 31, 35, 39,§2989; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.11]

188.12 Appointee in lieu of trustee. If for any reason one or more trustees shall be unable to act, the trustees present shall appoint one or more disinterested citizens in place of such trustees. [C51,§916; R60,§1551; C73,§1454; C97,§2317; C24, 27, 31, 35, 39,§2990; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.12]

188.13 Tender. The owner of the animals may tender to the person suffering damage an amount less than that demanded by claimant, as damages and costs, and if such tender be refused, and the final assessment of damages be no more than such tender, then all costs, and compensation for keeping the animals accruing after such tender, shall be paid by the person distraining the animals. [C24, 27, 31, 35, 39,§2991; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.13]

Tender in general, ch 538

188.14 Assessment of damages. The trustees, or a majority thereof, shall meet on the premises where the damages occurred at the time fixed and assess the damages and costs and file their written report with the township clerk, who shall record the same. Said assessment shall be final unless appealed from. [C73, §§1454, 1455; C97,§2317–2319; C24, 27, 31, 35, 39, §2992; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.14]

188.15 Failure to pay damages. If the owner of the distrained animals neglects for two days after such assessment to pay the amount thereof, the township clerk shall at once post up in three conspicuous places in the township a notice of the time and place at which he will sell said animals, describing them. The place of sale shall be at the place of distraint. The sale shall be between the hours of one and three o'clock p.m. and on a day not less than five nor more than ten days after the posting. [C73,§1454; C97,§2317; C24, 27, 31, 35, 39,§2993; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.15]

188.16 Escape or release. If any distrained animal escapes, or is unlawfully released, the injured person may recapture the same. If the recapture is effected before the day of sale as already fixed in the notice, the sale shall proceed under such notice. If the recapture is effected after the day of sale has passed, the township clerk shall issue new notices of sale and proceed anew. [C97,§2319; C24, 27, 31, 35, 39,§2994; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.16]

188.17 Sale. The clerk shall, at the time and place named in said notice, sell the animals at public sale to the highest bidder for cash, but only such number of animals shall be sold as is necessary to satisfy the damages and costs. Animals unsold shall be at once returned to the owner, and also the surplus remaining, if any, out of any sold. [C51,§918; R60,§1553; C73, §§1447, 1454; C97,§§2312, 2317; C24, 27, 31, 35, 39,§2995; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.17]

40ExGA, HF 71,§18, editorially divided

188.18 Unknown owner. Should the owner of the surplus be unknown the same shall be paid to the county treasurer, who shall give duplicate receipts therefor, one of which shall be filed with the county auditor. The owner of said animal, on filing a claim therefor within twelve months after payment to the treasurer, shall be entitled to receive said surplus from the county. [C51,§918; R60,§1553; C73,§§1447, 1454; C97,§§2312, 2317; C24, 27, 31, 35, 39,§2996; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.18]

188.19 Appeal—time. Any person aggrieved by the assessment made by the trustees may appeal to the district court by filing with the township clerk, within four days after the report of the trustees is filed with such clerk an appeal bond with sureties to be approved by said clerk and conditioned to pay all damages and costs. [C73,§1455; C97,§2318; C24, 27, 31, 35, 39,§2997; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.19]

Presumption of approval of bond, §682.10

188.20 Appeal bonds — amount. Appeal bonds shall be in the following amounts:

1. When the appeal is taken by the person distraining the animals, twice the value of the animals, as fixed by the clerk.

2. When the appeal is taken by the owner of the distrained animals, twice the value of the animals, so fixed, or twice the amount of damages and costs in those cases where the value of the animals exceeds the amount of the damages claimed. [C73,§1455; C97,§2318; C24, 27, 31, 35, 39,§2998; C46, 50, 54, 58, 62, 66, 71, 73, 75, §188.20]

188.21 Appeal by claimant—effect. When an appeal is thus taken by the person distraining such animals the animals shall be held for the satisfaction of such judgment as may be rendered on appeal, except as provided in section 188.22. [C97,§2318; C24, 27, 31, 35, 39,§2999; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.21]

188.22 Release pending appeal. The owner of said animals may secure the release of the same at any time before judgment by filing with the township clerk before the appeal is certified, or with the clerk of the district court thereafter, a bond with sufficient sureties to be approved by the clerk with whom filed, conditioned to pay all damages and costs recovered in said cause on appeal. The clerk receiving such bond shall file the same, and forthwith certify the fact to the person having charge of the distrained animals, who shall thereupon release the same to the owner. [C97,§2318; C24, 27, 31, 35, 39,§3000; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.22]

Referred to in §188.21

188.23 Appeal by owner—effect. Where the owner appeals and files a bond, as herein provided, it shall operate as a supersedeas, and the distrained animals shall be released to him. [C73,§1455; C97,§2318; C24, 27, 31, 35, 39, §3001; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.23]

188.24 Transcript—clerk to file. Within five days after the taking of the appeal, the township clerk shall make out a certified transcript of the record of the finding of the trustees, and file the same, together with the notice of appeal, if in writing, and the bond, with the clerk of the district court. [C97,§2318; C24, 27, 31, 35, 39,§3002; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.24]

188.25 Unlawful release. Any person who releases any animal, distrained as provided in this chapter, without the consent of the person distraining the same, shall be guilty of a misdemeanor. [C97,§2320; C24, 27, 31, 35, 39,§3003; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.25]

Punishment, §687.7

188.26 Taking up estray. Any resident of a county may take up an estray when the same is on his premises. He may also take up an estray which is upon the premises of any other person when such other person had knowledge that such estray was on his premises and fails for five days to take up such estray. [R60, §§1511–1513; C73,§§1464, 1465; C97,§§2321, 2322; C24, 27, 31, 35, 39,§3004; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.26]

188.27 Procedure on taking up estray. A person taking up an estray shall, within five days thereafter, post up, for ten days, a written notice in three of the most public places in the township, which notice shall be signed by him and shall embrace:

1. A full description of said animal.

2. The time and place of taking up such estray. [R60,§§1511–1513; C73,§1466; C97,§2323; C24, 27, 31, 35, 39,§3005; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.27]

188.28 Proof of service. Immediately after the expiration of said ten days of posting, the person taking up the estray shall, unless such estray has been previously claimed by the owner, file with the county auditor his affidavit which shall show:

1. The time and place of taking up such estray.

2. The time and places of posting said notice, together with a copy of said notice.

3. That said animal remains unclaimed.

4. Whether the marks or brands of said animal have been altered to his knowledge, either before or after the same was taken up. [R60, §§1511–1513; C73,§§1465, 1466; C97,§§2322, 2323; C24, 27, 31, 35, 39,§**3006**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.28]

188.29 Repealed by 64GA, ch 1124,§282.

188.30 Record and posting by county auditor. The county auditor shall record the affidavit in the estray book in his office and cause a copy thereof to be posted at the door of the courthouse. [R60,§§1511–1513; C73,§§1465, 1466; C97,§2323; C24, 27, 31, 35, 39,§**3008**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.30]

188.31 Publication. The auditor shall cause the affidavit to be published once each week for three weeks in some newspaper in the county. [R60,§§1511–1513; C73,§1468; C97,§2324; C24, 27, 31, 35, 39,§**3009**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.31]

188.32 Fees and expenses. The person taking up an estray shall pay the legal fees due to the county auditor for entering said affidavit in the estray book, and posting and publishing the same, which amounts, together with the compensation provided by law, shall be refunded to the person taking up such estray by the owner thereof in case the animal is restored to the owner. [R60,§1520; C73, §§3822, 3823; C97,§2325; C24, 27, 31, 35, 39,§**3010**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.32]

188.33 Two or more estrays—procedure. If two or more estrays are taken up at the same time by the same person, they shall be included in one notice and affidavit and but one fee shall be paid therefor, and if fewer than the whole number of animals thus included are restored to the owner, a proportionate amount of such fees and expenses shall be refunded. [R60,§1520; C73,§§3822, 3823; C97,§2325; C24, 27, 31, 35, 39,§**3011**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.33]

188.34 Property vests when. If the estray be not claimed by the owner within six months from the time it is taken up, the property therein shall vest in the taker-up, if he has complied with the provisions of this chapter. [R60,§1515; C73,§§1471, 1472; C97,§2326; C24, 27, 31, 35, 39,§**3012**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.34]

188.35 Recovery by owner. At any time before the property in the estray vests in the person who has taken it up, the owner shall be entitled to recover possession of it on paying to the person who has taken it up:

1. The compensation to which he is entitled by law.

2. The fees and expenses which the taker-up has paid in advance.

3. Any reward which has been offered by the owner.

4. A reasonable allowance for the expenses of keeping such estray, taking into account the use which the person taking up has had of it, which latter allowance shall be made by the court before whom a proceeding to recover the animal shall be brought in the event the owner and the taker-up cannot agree with reference thereto. [C73,§1474; C97,§2327; C24, 27, 31, 35, 39,§**3013**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.35]

Referred to in §188.36

188.36 Former owner—rights after vesting of title. At any time within six months after the property in an estray has vested in the taker-up, the former owner shall be entitled to receive from the taker-up, on demand, the value of the estray, not including any increased value which has accrued since it was taken up, after deducting therefrom the compensation, reward, fees, and expenses referred to in section 188.35, or the taker-up may, at his option, elect to surrender the estray, if still in his possession, in which case the owner must pay such compensation, reward, fees, and expenses. [C73,§1475; C97,§2328; C24, 27, 31, 35, 39,§**3014**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.36]

188.37 Lawful use of estray. Any person legally taking up an estray may use or work it, if he does so with care and moderation, and does not abuse or injure it. Estrays adapted thereto may be milked by the taker-up. [C73, §1473; C97,§2329; C24, 27, 31, 35, 39,§**3015**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.37]

188.38 Unlawful use of estray. Any person who unlawfully takes up any estray, or takes up any estray and fails to comply with any of the provisions of this chapter, or uses or works it in any manner contrary to this chapter, or works it before having it appraised, or keeps it out of the county for more than five days at any one time before he acquires a title to it, shall be liable to the owner of the estray for double the amount of any injury to the estray. [C73,§1473; C97,§2329; C24, 27, 31, 35, 39,§**3016**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.38]

188.39 Nonliability of taker-up. If any estray, legally taken up, escape from the finder or die without any fault on his part, he shall not be liable for the loss. [C73,§1476; C97,§2330; C24, 27, 31, 35, 39,§**3017**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.39]

188.40 Penalty against finder. If any person shall sell, trade, or take out of the state any estray before the legal title shall have vested in him, he shall forfeit to the owner double its value, and shall also be guilty of a misdemeanor. [C73,§1477; C97,§2331; C24, 27, 31, 35, 39,§**3018**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.40]

Punishment, §687.7

188.41 Transfer of estrays. The personal representatives of a taker-up shall succeed to all the rights of such taker-up. The county auditor may authorize the taker-up or his personal representative to transfer an estray to another person who shall take the place of his predecessor. [C97,§2331; C24, 27, 31, 35, 39, §**3019**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.41]

188.42 Sale of estrays. When an estray has damaged property and is taken up by the owner of such property, such owner, instead of proceeding against said animal as an estray as hereinbefore provided, may proceed against it as provided for the distraint and sale of animals, the ownership of which is known. [C24, 27, 31, 35, 39,§**3020**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.42]

Referred to in §188.43

188.43 Notice. In cases contemplated by section 188.42, a notice of the taking up and the amount of the claim for damages shall be served on the unknown owner by two publications of a notice in at least two of the official newspapers of the county, which notice shall:

1. Be signed by the taker-up, with his post-office address.
2. Be addressed to the unknown owner.
3. Contain a full description of the animal, including all marks or brands thereon.
4. Specify the time and place of the taking up, and the amount of damages and costs claimed.
5. Notify the unknown owner that unless he appears within six months and pays said damages and all legal costs, said taker-up will apply to the township clerk for an assessment of damages caused by said animal and costs, and will take proceedings for the sale of such animal for the payment thereof. [C24, 27, 31, 35, 39,§**3021**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §188.43]

188.44 Assessment of damages and costs. At any time after six months from the date of the last publication, or at any time after the owner appears and fails to pay said damages and costs, the taker-up may apply to the township clerk for an assessment of his damages and costs, and all subsequent proceedings shall be as provided in case of distraint of animals, the ownership of which is known. The legal fees for publishing said notice shall be included in the assessment of costs. [C24, 27, 31, 35, 39, §**3022**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.44]

Referred to in §188.45
Fees for publication, §618.11

188.45 Owner discovered. Should the taker-up mentioned in section 188.44 discover the owner of said animal prior to the expiration of said six months, he shall immediately serve written notice upon such owner of the taking up of said animal and of the amount of his said claim, and unless the owner discharges said claim within twenty-four hours such taker-up shall proceed in the same manner as provided in case of the distraint of animals the ownership of which is known. [C24, 27, 31, 35, 39, §**3023**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.45]

188.46 Penalty. Any officer who fails to perform the duties enjoined upon him in this chapter in relation to estrays, shall be fined not less than five dollars nor more than fifty dollars. [C73,§1478; C97,§2332; C24, 27, 31, 35, 39,§**3024**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.46]

188.47 Bond to release. Before any property held under this chapter is sold under distraint, or before the title to an estray vests in the taker-up, it may be released at once upon the owner giving to the distrainor or taker-up a bond, with sureties, to be approved by the township clerk or county auditor, before whom the matter is then pending, conditioned to pay to the holder of the property, within twenty days after such approval, all costs, damages, and compensation to which he is entitled. In case the obligee in said bond is compelled to begin action on such bond, the court may tax a reasonable attorney's fee in favor of such obligee. [C73,§1486; C97,§2333; C24, 27, 31, 35, 39,§**3025**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.47]

188.48 Compensation and fees. The compensation for services under this chapter shall be as follows:

1. For distraining all animals except as otherwise provided, fifty cents for each head not exceeding two, and twenty-five cents for each additional head taken on one distraint.
2. For distraining each stallion, jack, bull, boar, or buck, one dollar.
3. For keeping horses, cattle, mules, and asses, fifty cents a day, from the time the same is taken up.
4. For keeping any other animals, twenty-five cents a day from the time the same is taken up.
5. For posting notices and selling animals, the same fees as are allowed constables for like services upon execution.
6. For taking up as an estray one head, fifty cents, and twenty-five cents for each additional head at one time.
7. To the county auditor, for all services in each case of estrays, including posting and publishing notice, but not including the fee of the printer, fifty cents.
8. To the township clerk, for posting notices, twenty-five cents, and services not otherwise provided for, the same fees as are allowed in assessing damages done by trespassing animals, with ten cents mileage each way.
9. To the township clerk, ten cents per each hundred words entered of record, the same fees for a copy thereof, and in addition twenty-five cents for his certificate thereto, and fifty cents for filing and approving any bond. [C51,§893; R60,§1520; C73,§§3821, 3822; C97,§2349; C24, 27, 31, 35, 39,§**3026**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.48]

188.49 Neglected animals. Any person may take charge of any animal when the owner fails to properly take care and provide for it, and may furnish the same with proper care, either on his own premises or on the premises of the owner, and shall have a lien on the animal for the same, and the reasonable value of such care may be collected by him from the said owner. [C73,§§1482, 1483; C97,§§2337, 2338; C24, 27, 31, 35, 39,§**3027**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.49]

188.50 Disabled animals killed. The sheriff, constable, peace officer, officer of any society for the prevention of cruelty to animals, or any magistrate, shall destroy any estray animal disabled and unfit for further use. [C73, §1484; C97,§2339; C24, 27, 31, 35, 39,§**3028**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§188.50]

TITLE X

REGULATION AND INSPECTION OF FOODS, DRUGS AND OTHER ARTICLES

Referred to in §§159.6(9), 208A.11

CHAPTER 189

GENERAL PROVISIONS

Referred to in §§205.10, 205.11, 205.13, 214.5, 214.8, 215.6, 215.7
General penalty, §189.21

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189.2 Duties.

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189.28 Goods for sale in other states.
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189.1 Definitions. For the purpose of this title:

1. *"Article"* shall include food, commercial feed, agricultural seed, commercial fertilizer, drug, insecticide, fungicide, paint, linseed oil, turpentine, and illuminating oil, in the sense in which they are defined in the various provisions of this title.

2. *"Department"* shall mean the department of agriculture, and, wherever said department is required or authorized to do an act, it shall be construed as authorizing performance by a regular assistant or a duly authorized agent of said department.

3. *"Secretary"* shall mean the secretary of agriculture.

4. *"Package"* or *"container"*, unless otherwise defined, shall include wrapper, box, carton, case, basket, hamper, can, bottle, jar, tube, cask, vessel, tub, firkin, keg, jug, barrel, tank, tank car, and other receptacles of a like nature; and wherever the expression "offered or exposed for sale or sold in package or wrapped form" is used it shall mean the offering or exposing for sale, or selling of an article which is contained in a package or container as herein defined.

5. *"Person"* shall include a corporation, company, firm, society, or association; and the act omission, or conduct of any officer, agent, or other person acting in a representative capacity shall be imputed to the organization or person represented, and the person acting in said capacity shall also be liable for violations of this title.

6. *"Rules"* shall include regulations and orders by the department of agriculture.

7. *"United States Pharmacopoeia"* or *"National Formulary"* shall mean the latest revision of said publications official at the time of any transaction which may be in question. [S13,§§2510-o, 3009-a; SS15, §4999-a31c; C24, 27, 31, 35, 39,§3029; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.1]

Referred to in §196.1

189.2 Duties. The department of agriculture shall:

1. Execute and enforce the provisions of this title, except chapters* 203, 203A, 204 and 205.

2. Make and publish all necessary rules, not inconsistent with law, for enforcing the provisions of this title.

3. Provide such educational measures and exhibits, and conduct such educational campaigns as are deemed advisable in fostering and promoting the production and sale of the articles dealt with in this title in accordance with the regulations herein prescribed.

4. Issue from time to time, bulletins showing the results of inspections, analyses, and prosecutions under this title. These bulletins shall be printed in such numbers as may be approved by the state printing board and shall be distributed to the newspapers of the state and to all interested persons.

1. [C97,§2515; S13,§§2510-g,-t,-v4, 2528-f2, 3009-a, 4999-a31b, 5077-a22; SS15,§2515; C24, 27, 31, 35, 39,§**3030**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.2]

2. [S13,§§4999-a18, 5077-a22; C24, 27, 31, 35, 39,§**3030**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.2]

3. [C97,§2515; SS15,§2515; C24, 27, 31, 35, 39, §**3030**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.2]

4. [S13,§§2510-g,-t,-v4, 2528-f2, 3009-s, 4999-a26, -a37, 5077-a11; C24, 27, 31, 35, 39,§**3030**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.2]

*Chapters 203A and 204A added after the enactment of this section

Additional duties, chs 189A, 192A, 193, 194, 195, 196, 197, 201, 211

DIVISION I
INSPECTION—SAMPLES

189.3 Procuring samples. The department shall, for the purpose of examination or analysis, procure from time to time, or whenever said department has occasion to believe any of the provisions of this title are being violated, samples of the articles dealt with in this title which have been shipped into this state, offered or exposed for sale, or sold in the state. [C97,§§2521, 2524; S13,§§2528-f2, 4999-a18, 5077-a11,-a22; C24, 27, 31, 35, 39,§**3031**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.3]

189.4 Access to factories and buildings. The department shall have full access to all places, factories, buildings, stands, or premises, and to all wagons, auto trucks, vehicles, or cars used in the preparation, production, distribution, transportation, offering or exposing for sale, or sale of any article dealt with in this title. [C97,§2505; S13,§§2528-a, 5077-a22; SS15, §§2505, 2510-4a, 3009-n; C24, 27, 31, 35, 39,§**3032**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.4]

189.5 Dealer to furnish samples. Upon request and tender of the selling price by the department any person who prepares, manufactures, offers or exposes for sale, or delivers to a purchaser any article dealt with in this title shall furnish, within business hours, a sample of the same, sufficient in quantity for a proper analysis or examination as shall be provided by the rules of the department. [S13, §§4999-a24, 5077-a11; C24, 27, 31, 35, 39,§**3033**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.5]

189.6 Taking of samples. The department may, without the consent of the owner, examine or open any package containing, or believed to contain, any article or product which it suspects may be prepared, manufactured, offered, or exposed for sale, sold, or held in possession in violation of the provisions of this title, in order to secure a sample for analysis or examination, and said sample and damage to container shall be paid for at the current market price out of the contingent fund of the department. [C97,§§2521, 2526; S13, §§2528-b,-f2, 5077-a11,-a22; C24, 27, 31, 35, 39, §**3034**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.6]

189.7 Preservation of sample. After the sample is taken it shall be carefully sealed with the seal of the department and labeled with the name or brand of the article, the name of the party from whose stock it was taken, and the date and place of taking such sample. Upon request a duplicate sample, sealed and labeled in the same manner, shall be delivered to the person from whose stock the sample was taken. The label and duplicate shall be signed by the person taking the same. The method of taking samples of particular articles may be prescribed by the rules of the department. [C97,§2521; S13,§§4999-a24, 5077-a11,-a22; C24, 27, 31, 35, 39,§**3035**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.7]

189.8 Witnesses. In the enforcement of the provisions of this title the department shall have power to issue subpoenas for witnesses, enforce their attendance, and examine them under oath. Such witnesses shall be allowed the same fees as witnesses in district court. Said fees shall be paid out of the contingent fund of the department. [C97,§2515; SS15,§2515; C24, 27, 31, 35, 39,§**3036**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.8]

Contempts, ch 665
Witness fees, §622.69 et seq.

DIVISION II
LABELING—ADULTERATIONS

189.9 Labeling. All articles in package or wrapped form which are required by this title to be labeled, unless otherwise provided, shall be conspicuously marked in the English language in legible letters of not less than eight-point heavy gothic caps on the principal label with the following items:

1. The true name, brand, or trade-mark of the article.

2. The quantity of the contents in terms of weight, measure, or numerical count. Under this requirement reasonable variations shall be permitted, and small packages shall be excepted in accordance with the rules of the department.

3. The name and place of business of the manufacturer, packer, importer, dispenser, distributor, or dealer.

The above items shall be printed in such a way that there shall be a distinct contrast between the color of the letters and the background upon which printed. [C73,§4042; C97, §§2517. 4989–4991, 5070; S13,§§2510-d,-q,-r,-v1, -v2, 2515-b–d, 2528-f, 4999-a35, 5070-a, 5077-a6; SS15,§4999-a31c; C24, 27, 31, 35, 39,§**3037**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.9]

Referred to in §§189.10, 189.11, 191.1, 191.2, 196.10, 203.3, 207.2, 207.3, 207.4, 210.12, 210.18
Agricultural seeds, §§199.3, 199.5–199.8
Bread, §210.20
Commercial feeds, §§198.3(10), 198.5(1), 198.6
Commercial fertilizer, §§200.5(1), 200.6
Drugs, §§203.3–203.5
Foods, §§191.1, 191.2
Ice milk, §190.1(35)
Insecticides and fungicides, §§206.2(13–16, inc.), 206.3, 206.4
Meat and poultry, §§189A.2(19), 189A.4(2), 189A.16
Oils, §§207.3, 207.4
Oleomargarine, §191.2(2)
Paints, §207.2
Petroleum products, §208.2 et seq.

189.10 Packages excepted. In case the size of the package or container will not permit the use of the type specified in section 189.9, the same may be reduced in size proportionately in accordance with the rules of the department. [S13,§4999-a35; C24, 27, 31, 35, 39, §**3038**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.10]

Referred to in §§191.1, 191.2, 203.3, 207.2, 207.4, 210.18

189.11 Labeling of mixtures — federal requirements. In addition to the requirements of section 189.9, unless otherwise provided, articles which are mixtures, compounds, combinations, blends, or imitations shall be marked as such and immediately followed, without any intervening matter and in the same size and style of type, by the names of all the ingredients contained therein, beginning with the one present in the largest proportion.

Notwithstanding any other requirements of this chapter or of chapter 190, foods and food products labeled in conformance with the labeling requirements of the government of the United States shall be deemed to be labeled in conformance with the laws of the state of Iowa. [S13,§§2510-d,-r,-v2, 5077-a7; SS15,§4999-a31c; C24, 27, 31, 35, 39,§**3039**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.11]

Referred to in §§189.12, 191.1, 191.2, 207.2, 207.4, 210.18
Agricultural lime, §201.5
Agricultural seed, §§199.3, 199.5–199.8
Bread, §210.20
Commercial feeds, §§198.3, 198.5, 198.6
Commercial fertilizer, §§200.4(2), 200.5, 200.6
Drugs, §§203.3–203.5
Foods, §§191.1, 191.2
Ice milk, §190.1(35)
Insecticides and fungicides, §§206.2(13–16), 206.3, 206.4
Oils, §§207.3, 207.4
Oleomargarine, §191.2(2)
Paints, §207.2

189.12 Trade formulas. Nothing in section 189.11 shall be construed as requiring the printing of a patented or proprietary trade formula on a label. [S13,§5077-a7; SS15,§4999-a31c; C24, 27, 31, 35, 39,§**3040**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.12]

Referred to in §§191.1, 191.2, 196.10, 207.2, 207.4, 210.18

189.13 False labels — defacement. No person shall use any label required by this title which bears any representations of any kind which are deceptive as to the true character of the article or the place of its production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by this title. [C73,§4042; C97,§§2517, 4989–4991; S13,§§2510-s,-v3, 2515-b–d, 4999-a35, 5077-a7; SS15,§4999-a31c; C24, 27, 31, 35, 39,§**3041**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §189.13]

Referred to in §210.18

189.14 Mislabeled articles.

1. No person shall knowingly introduce into this state, solicit orders for, deliver, transport, or have in his possession with intent to sell, any article which is labeled in any other manner than that prescribed by this title for the label of said article when offered or exposed for sale, or sold in package or wrapped form in this state.

2. No person shall package any liquid or semisolid product or label any such product as honey, imitation honey or honey blend, or use the word "honey" in any prominent location on the label of such product or sell or offer for sale any such product which is labeled as honey, imitation honey or honey blend or which contains a label with the word "honey" prominently displayed thereon, unless the entire product is honey as defined in section 190.1, subsection 67. [C73,§4042; C97,§§2516, 2517, 2519, 4989–4991, 5070; S13,§§2510-b,-q,-r,-v1, -v2, 2515-b–d, 2528-f, 4999-a20, 5070-a; SS15,§4999-a32; C24, 27, 31, 35, 39,§**3042**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.14]

Referred to in §210.18

189.15 Adulterated articles. No person shall knowingly manufacture, introduce into the state, solicit orders for, sell, deliver, transport, have in his possession with the intent to sell, or offer or expose for sale, any article which is adulterated according to the provisions of this title. [C73,§§3901, 4042; C97,§§2508, 2516, 4989–4991; S13,§§2508, 2510-q,-r,-v1,-v2, 2515-b–d, 4999-a20; SS15,§4999-a32; C24, 27, 31, 35, 39, §**3043**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.15]

Referred to in §210.18

189.16 Possession. Any person having in his possession or under his control any article which is adulterated or which is improperly labeled according to the provisions of this title shall be presumed to know its true character and name, and such possession shall be prima-facie evidence of having the same in possession with intent to violate the provisions of this title. [C97,§§2519, 2521; S13, §§4999-a24,-a40; C24, 27, 31, 35, 39,§**3044**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§189.16]

Referred to in §210.18

189.17 Confiscation or condemnation. Unless a procedure or method of seizure and confiscation or condemnation is otherwise provided, the secretary is hereby authorized to prohibit the entrance into channels of commerce or possession of any article found to be

adulterated or improperly labeled according to the provisions of this division or rules established hereunder. Any articles found in channels of commerce or in possession by an inspector which are not in compliance with the adulteration or labeling provisions of this division shall be subject to immediate seizure by the department. Seized articles shall be condemned unless of such character that the articles can be made to conform with the provisions of this division by methods approved by the secretary. Condemned articles shall be effectively destroyed for the purpose for which they were intended by the owner of the article, or the owner's agent, under the supervision of an inspector in such manner as the secretary may prescribe. [C71, 73, 75,§189.17]

189.18 Wrongful condemnation—restitution. A party whose article, item, commodity or product is wrongfully condemned or seized shall be entitled to maintain a cause of action against the state of Iowa, for the damage proximately caused by the wrongful condemnation or seizure. Such cause of action shall be a claim as defined in chapter 25A and shall be subject to the provisions of said chapter, notwithstanding the provisions of section 25A.14. [C71, 73, 75,§189.18]

DIVISION III
LICENSES

189.19 Licenses. The following regulations shall apply to all licenses issued or authorized under this title:

1. *Applications.* Applications for licenses shall be made upon blanks furnished by the department and shall conform to the prescribed rules of the department.

2. *Refusal and revocation.* For good and sufficient grounds the department may refuse to grant a license to any applicant; and it may revoke a license for a violation of any provision of this title, or for the refusal or failure of any licensee to obey the lawful directions of the department.

3. *Expiration.* Unless otherwise provided all licenses shall expire one year from the date of issue. [C97,§2525; S13,§2515-a; SS15,§§2515-f, 3009-m; C24, 27, 31, 35, 39,§**3045**; C46, 50, 54, 58, 62, 66,§189.17; C71, 73, 75,§189.19]

189.20 Injunction. Any person engaging in any business for which a license is required by this title, without obtaining such license, may be restrained by injunction, and shall pay all costs made necessary by such procedure. [C24, 27, 31, 35, 39,§**3046**; C46, 50, 54, 58, 62, 66,§189.18; C71, 73, 75,§189.20]

Injunctions, ch 664

DIVISION IV
OFFENSES—PENALTIES

189.21 Penalty. Unless otherwise provided, any person violating any provision of this title, or any rule made by the department and promulgated under the authority of said department, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not to exceed thirty days, and on a third conviction for the same offense may be restrained by injunction from operating such place of business. [C73,§§2068, 3901; C97, §§2508, 2527, 2592, 2594, 3029, 5070; S13,§§2508, 2510-2a,-h,-j,-u,-v5, 2515-g, 2522, 2528-c,-f3, 2596-b, 4989-b, 4999-a25,-a39, 5070-a, 5077-a23; SS15, §§2505, 2506, 3009-j,-r; C24, 27, 31, 35, 39,§**3047**; C46, 50, 54, 58, 62, 66,§189.19; C71, 73, 75,§189.21]

Agricultural lime, §201.6
Bread, §210.21
Bulk tanks on farms for milk, §192.66(8)
Butter, §193.6
Commercial feed, §198.13
Cream grading, §195.27
Drugs, §203A.5
Eggs, §§196.14, 196A.23
Fertilizers and soil conditioners, §200.18
Grades of milk, §194.20
Livestock, §211.2
Marketing dairy products, §§192A.19–192A.24
Motor vehicle antifreeze, §208A.11
Oleomargarine, §191.3
Pesticides, §206.9
Poultry and domestic fowls, §§189A.17, 197.6
Prison-made goods, §216.2
Public scales and gasoline pumps, §214.8
Seeds, §199.13
Standard weights and measures, §210.21

189.22 May charge more than one offense. In any criminal proceeding brought for violation of this title an information or indictment may charge as many offenses as it appears have been committed and the defendant may be convicted of any or all of said offenses. [C24, 27, 31, 35, 39,§**3048**; C46, 50, 54, 58, 62, 66, §189.20; C71, 73, 75,§189.22]

189.23 Common carrier. None of the penalties provided in this title shall be imposed upon any common carrier for introducing into the state, or having in its possession, any article which is adulterated or improperly labeled according to the provisions of this title when the same was received by said carrier for transportation in the ordinary course of its business and without actual knowledge of its true character. [C97,§2516; S13,§4999-a20; SS15, §4999-a32; C24, 27, 31, 35, 39,§**3049**; C46, 50, 54, 58, 62, 66,§189.21; C71, 73, 75,§189.23]

DIVISION V
ENFORCEMENT

189.24 Report of violations. When it shall appear that any of the provisions of this title have been violated, the department shall at once certify the facts to the proper county attorney, with a copy of the results of any analysis, examination, or inspection said department may have made, duly authenticated by the proper person under oath, and with any additional evidence which may be in possession of said department. [C97,§4998; S13, §4999-a19; C24, 27, 31, 35, 39,§**3050**; C46, 50, 54, 58, 62, 66,§189.22; C71, 73, 75,§189.24]

189.25 County attorney. The county attorney may at once institute the proper proceedings for the enforcement of the penalties provided in this title for such violations. [C97, §4998; S13,§§2596-c, 4999-a19; C24, 27, 31, 35, 39,

§3051; C46, 50, 54, 58, 62, 66,§189.23; C71, 73, 75,§189.25]

189.26 Refusal to act. If the county attorney refuses to act, the governor may, in his discretion, appoint an attorney to represent the state. [S13,§4999-a19; C24, 27, 31, 35, 39, §3052; C46, 50, 54, 58, 62, 66,§189.24; C71, 73, 75,§189.26]

189.27 Institution of proceedings. In any case when it appears that any of the provisions of this title have been violated, the inspector having the investigation in charge shall, when instructed by the department, file an information against the suspected party. [C24, 27, 31, 35, 39,§3053; C46, 50, 54, 58, 62, 66,§189.25; C71, 73, 75,§189.27]

DIVISION VI
MISCELLANEOUS

189.28 Goods for sale in other states. Any person may keep articles specifically set apart in his stock for sale in other states which do not comply with the provisions of this title as to standards, purity, or labeling. [S13,§§4999-a20,-a40; C24, 27, 31, 35, 39,§3054; C46, 50, 54, 58, 62, 66,§189.26; C71, 73, 75,§189.28]

Referred to in §§194.19, 196.11

189.29 Reports by dealers. Every person who deals in or manufactures any of the articles dealt with in this title shall make upon blanks furnished by the department such reports and furnish such statistics as may be required by said department and certify to the correctness of the same. [C97,§2522; S13,§2522; C24, 27, 31, 35, 39,§3055; C46, 50, 54, 58, 62, 66, §189.27; C71, 73, 75,§189.29]

189.30 Contracts invalid. No action shall be maintained in any of the courts of the state upon any contract or sale made in violation of or with the intent to violate any provision of this title by one who was knowingly a party thereto. [C97,§2520; C24, 27, 31, 35, 39,§3056; C46, 50, 54, 58, 62, 66,§189.28; C71, 73, 75,§189.30]

189.31 Fees paid into state treasury. All fees collected under the provisions of this title shall be paid into the state treasury. [C97, §2507; SS15,§§2507, 2515-f, 3009-m; C24, 27, 31, 35, 39,§3057; C46, 50, 54, 58, 62, 66,§189.29; C71, 73, 75,§189.31]

See also §200.9
Time of payment, §12.10

CHAPTER 189A

MEAT AND POULTRY INSPECTION

Poultry and domestic fowls, ch 197
General penalty, §189.21

189A.1 Title.
189A.2 Definitions.
189A.3 License—fee.
189A.4 Exemptions.
189A.5 Veterinarians and inspectors.
189A.6 Health examination of employees.
189A.7 Powers of secretary of agriculture.
189A.8 Prohibited acts.
189A.9 Hours of operation.
189A.10 Compliance required.
189A.11 Access by inspectors — acceptance by state agencies.
189A.12 Seizure, detention and determination.
189A.13 Rules.
189A.14 Judicial review—enforcement.
189A.15 Co-operation with other agencies.
189A.16 Forgery or counterfeiting.
189A.17 Penalties.
189A.18 Humane slaughter practices.
189A.19 Bribery.
189A.20 Assault, resistance or intimidation.
189A.21 Appropriation authorized.
189A.22 Federal grants.

189A.1 Title. This chapter shall be known as the "Meat and Poultry Inspection Act". [C66, 71, 73, 75,§189A.1]

189A.2 Definitions. As used in this chapter except as otherwise specified:

1. *"Department"* means the Iowa department of agriculture.

2. *"Secretary"* means the Iowa secretary of agriculture or his delegate.

3. *"Person"* includes any individual, partnership, corporation, association, or other business unit, and any officer, agent, or employee thereof.

4. *"Broker"* means any person engaged in the business of buying or selling livestock products or poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person.

5. *"Renderer"* means any person engaged in the business of rendering livestock or poultry carcasses, or parts or products of such carcasses, except rendering conducted under inspection or exemption under this chapter.

6. *"Animal food manufacturer"* means any person engaged in the business of preparing animal food, including poultry, derived wholly

or in part from livestock or poultry carcasses or parts or products of such carcasses.

7. *"Intrastate commerce"* means commerce within this state.

8. *"Livestock"* means any cattle, sheep, swine, goats, horses, mules or other equines, whether live or dead.

9. *"Livestock product"* means any carcass, part thereof, meat, or meat food product of any livestock.

10. *"Meat food product"* means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the secretary under such conditions as he may prescribe to assure that the meat or other portions of such carcass contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

11. *"Poultry"* means any domesticated bird, whether live or dead.

12. *"Poultry product"* means any poultry carcass or part thereof, or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the secretary from definition as a poultry product under such conditions as he may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

13. *"Capable of use as human food"* shall apply to any livestock or poultry carcass, or part or product of any such carcass, unless it is denatured or otherwise identified as required by regulations prescribed by the secretary to deter its use as human food, or it is naturally inedible by humans.

14. *"Prepared"* means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

15. *"Adulterated"* shall apply to any livestock product or poultry product under any one or more of the following circumstances:

a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health.

b. (1) If it bears or contains, by reason of administration of any substance to the livestock or poultry or otherwise, any added poisonous or deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive, which may, in the judgment of the secretary, make such article unfit for human food.

(2) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the federal Food, Drug, and Cosmetic Act.

(3) If it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal Food, Drug, and Cosmetic Act.

(4) If it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal Food, Drug, and Cosmetic Act; however, an article which is not otherwise deemed adulterated under subparagraphs 2, 3, or 4 of this paragraph shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the secretary in official establishments.

c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food.

d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

e. If it is, in whole or in part, the product of an animal, including poultry, which has died otherwise than by slaughter.

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the federal Food, Drug, and Cosmetic Act.

h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

Referred to in §189A.17(1)

i. If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.

16. *"Misbranded"* shall apply to any livestock product or poultry product under any one or more of the following circumstances:

a. If its labeling is false or misleading in any particular.

b. If it is offered for sale under the name of another food.

c. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation", and immediately thereafter the name of the food imitated.

d. If its container is so made, formed, or filled as to be misleading.

e. Unless it bears a label showing both:

(1) The name and place of business of the manufacturer, packer, or distributor.

(2) An accurate statement of the quantity of the product in terms of weight, measure, or numerical count; however, under this paragraph, exemptions as to livestock products not in containers may be established by regulations prescribed by the secretary, and under this subparagraph reasonable variations may be permitted, and exemptions as to small packages may be established for livestock products or poultry products by regulations prescribed by the secretary.

f. If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by the regulations of the secretary under section 189A.7, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the secretary under section 189A.7, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

i. If it is not subject to the provisions of paragraph *"g"* of this subsection, unless its label bears both:

(1) The common or usual name of the food, if any.

(2) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the secretary, be designated as spices, flavorings, and colorings without naming each; however, to the extent that compliance with the requirements of this subparagraph is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the secretary.

j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the secretary, after consultation with the secretary of agriculture of the United States, determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for such uses.

k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; however, to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the secretary.

l. If it fails to bear, directly thereon and on its containers, as the secretary may by regulations prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and, unrestricted by any of the foregoing, such other information as the secretary may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

Referred to in §189A.5(4)

17. *"Label"* means a display of written, printed, or graphic matter upon any article or the immediate container, not including package liners, of any article.

18. *"Labeling"* means all labels and other written, printed, or graphic matter either upon any article or any of its containers or wrappers, or accompanying such article.

19. *"Container"* or *"package"* means any box, can, tin, cloth, plastic or other receptacle, wrapper, or cover.

20. *"Shipping container"* means any container used or intended for use in packaging the product packed in an immediate container.

21. *"Immediate container"* means any consumer package; or any other container in which livestock products or poultry products, not consumer packaged, are packed.

22. *"Federal Meat Inspection Act"* means the Act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584); "federal Poultry Products Inspection Act" means the Act so entitled approved August 28, 1957 (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791); and "federal Acts" means these two federal laws.

23. *"Federal Food, Drug, and Cosmetic Act"* means the Act so entitled, approved June 25, 1938 (52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.

24. *"Pesticide chemical"*, *"food additive"*, *"color additive"*, and *"raw agricultural commodity"* shall have the same meanings for purposes of this chapter as under the federal Food, Drug, and Cosmetic Act.

25. *"Official mark"* means the official inspection legend or any other symbol prescribed by regulations of the secretary to identify the status of any article or livestock or poultry under this chapter.

26. *"Official inspection legend"* means any symbol prescribed by regulations of the secretary showing that an article was inspected and passed in accordance with this chapter.

27. *"Official certificate"* means any certificate prescribed by regulations of the secretary for issuance by an inspector or other person performing official functions under this chapter.

28. *"Official device"* means any device prescribed or authorized by the secretary for use in applying any official mark.

29. *"Official establishment"* means any establishment as determined by the secretary at which inspection of the slaughter of livestock or poultry or the preparation of livestock products or poultry products is maintained under the authority of this chapter.

30. *"Inspector"* means an employee or official of the Iowa department of agriculture authorized by the secretary or any employee or official of the government of any county or other governmental subdivision of this state, authorized by the secretary to perform any inspection functions under this chapter under an agreement between the secretary and such governmental subdivision.

31. *"Veterinary inspector"* meaning a graduate veterinarian with appropriate training to perform the inspection functions under the provisions of this chapter.

32. *"Establishment"* means all premises where animals or poultry are slaughtered or otherwise prepared, either for custom, resale, or retail, for food purposes, meat or poultry canneries, sausage factories, smoking or curing operations, restaurants, grocery stores, brokerages, cold storage plants, and similar places.

33. *"Reinspection"* includes inspection of the preparation of livestock products and poultry products, as well as re-examination of articles previously inspected. [C66, 71, 73, 75,§189A.2]

Referred to in §§189A.5, 189A.17

189A.3 License—fee. No person shall operate an establishment without first obtaining a license from the department. The license fee for each establishment, excluding restaurants and grocery stores, per year or any part of a year shall be:

1. For all meat and poultry slaughtered or otherwise prepared not exceeding twenty thousand pounds per year for sale, resale, or custom, twenty-five dollars.

2. For all meat and poultry slaughtered or otherwise prepared in excess of twenty thousand pounds per year for sale or resale, fifty dollars.

The license fee for each restaurant selling twenty pounds or more of meat or meat products annually and each grocery store per year or any part of a year shall be five dollars.

The funds shall be deposited with the department of agriculture. The license year shall be from July 1 to June 30. Applications for licenses shall be in writing on forms prescribed by the department.

It is the objective of this chapter to provide for meat and poultry products inspection programs that will impose and enforce requirements with respect to intrastate operations and commerce that are at least equal to those imposed and enforced under the federal Meat Inspection Act and the federal Poultry Products Inspection Act with respect to operations and transactions in interstate commerce; and the secretary is directed to administer this chapter so as to accomplish this purpose. A director of the meat and poultry inspection service shall be designated as his delegate to be the appropriate state official to co-operate with the secretary of agriculture of the United States in administration of this chapter. [C66, 71, 73, 75,§189A.3]

Referred to in §§170.2, 189A.5, 189A.7

189A.4 Exemptions. In order to accomplish the objectives of this chapter, the secretary may exempt the following types of operations from inspection:

1. Slaughtering and preparation by any person of livestock and poultry of his own raising exclusively for use by him and members of his household, and his nonpaying guests and employees.

2. Any other operations which the secretary may determine would best be exempted to further the purposes of this chapter, to the extent such exemptions conform to the federal Meat Inspection Act and the federal Poultry Products Inspection Act and the regulations thereunder. [C66, 71, 73, 75,§189A.4]

Referred to in §189A.5

189A.5 Veterinarians and inspectors. The secretary shall administer this chapter and shall employ veterinarians to administer this chapter and veterinarians licensed in the state of Iowa as veterinary inspectors. The secretary is also authorized to employ as meat inspectors other persons who have qualified and are skilled in the inspection of meat and poultry products and any other additional employees he deems necessary to carry out the provisions of this chapter. The meat inspectors shall be under the supervision of a veterinary inspector. The secretary may also enter into contracts with qualified individuals

to perform inspection services as he may designate for a fee per head or per unit volume to be determined by the secretary provided such persons are not employed in the establishment in which the inspection takes place. The secretary may utilize any employee, agent, or equipment of the department in the enforcement of this chapter, and may assign to inspectors other duties related to the acceptance of meat and poultry products.

In order to accomplish the objectives stated in section 189A.3 the secretary shall:

1. By regulations require antemortem and postmortem inspections, quarantine, segregation, and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock products and poultry products at all establishments in this state, except those exempted by section 189A.4, at which livestock or poultry are slaughtered or livestock or poultry products are prepared for human food solely for distribution in intrastate commerce.

2. By regulations require the identification of livestock and poultry for inspection purposes and the marking and labeling of livestock products or poultry products or their containers, or both, as "Iowa Inspected and Passed" if the products are found upon inspection to be not adulterated, and as "Iowa Inspected and Condemned" if they are found upon inspection to be adulterated; and the destruction for food purposes of all such condemned products under the supervision of an inspector.

Referred to in §189A.7(1)

3. Prohibit the entry into official establishments of livestock products and poultry products not prepared under federal inspection or inspection pursuant to this chapter and further limit the entry of such articles and other materials into such establishments under such conditions as he deems necessary to effectuate the purposes of this chapter.

4. By regulations require that when livestock products and poultry products leave official establishments they shall bear directly thereon or on their containers, or both, all information required by subsection 16 of section 189A.2; and require approval of all labeling and containers to be used for such products when sold or transported in intrastate commerce to assure that they comply with the requirements of this chapter.

5. Investigate the sanitary conditions of each establishment within subsection 1 of this section and withdraw or otherwise refuse to provide inspection service at any such establishment where the sanitary conditions are such as to render adulterated any livestock products or poultry products prepared or handled thereat.

Referred to in §189A.7(8)

6. Prescribe regulations relating to sanitation for all establishments required to have inspection under subsection 1 of this section.

7. By regulations require that both of the following classes of persons shall keep such records and for such periods as are specified in the regulations to fully and correctly disclose all transactions involved in their business, and to afford the secretary and his representatives, including representatives of other governmental agencies designated by him, access to such places of business, and opportunity at all reasonable times to examine the facilities, inventory, and records thereof, to copy the records, and to take reasonable samples of the inventory upon payment of the fair market value therefor:

a. Any person that engages in or for intrastate commerce in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling, as a broker, wholesaler, or otherwise, transporting, or storing any livestock products or poultry products for human or animal food.

b. Any person that engages in or for intrastate commerce in business as a renderer or in the business of buying, selling, or transporting any dead, dying, disabled, or diseased livestock or poultry or parts of the carcasses of any such animals, including poultry, that died otherwise than by slaughter. [C66, §§170.20, 189A.5, 189A.7, 189A.8, 189A.10; C71, 73, 75,§189A.5]

Referred to in §§189A.7, 189A.10

189A.6 Health examination of employees. The operator of any establishment shall require all employees of such establishment to have a health examination by a physician and a certified health certificate for each employee shall be kept on file by the operator. The secretary may at any time require an employee of an establishment to submit to a health examination by a physician. No person suffering from any communicable disease, including any communicable skin disease, and no person with infected wounds, and no person who is a "carrier" of a communicable disease shall be employed in any capacity in an establishment. No person shall work or be employed in or about any establishment during the time in which a communicable disease exists in the home in which such person resides unless such person has obtained a certificate from a physician to the effect that no danger of public contagion or infection will result from the employment of such person in such establishment. Every person employed by an establishment and engaged in direct physical contact with meat or poultry products during its preparation, processing, or storage, shall be clean in person, wear clean washable outer garments and a suitable cap or other head covering used exclusively in such work. Only persons specifically designated by the operator of an establishment shall be permitted to touch meat or poultry products with their hands, and the persons so designated shall keep their hands scrupulously clean. [C66, 71, 73, 75,§189A.6]

189A.7 Powers of secretary of agriculture. In order to accomplish the objective stated in section 189A.3 the secretary may:

1. Remove inspectors from any establishment that fails to destroy condemned products as required under section 189A.5, subsection 2.

2. Refuse to provide inspection service under this chapter with respect to any establishment for causes specified in section 401 of the federal Meat Inspection Act or section 18 of the federal Poultry Products Inspection Act.

3. Order labeling and containers to be withheld from use if he determines that the labeling is false or misleading or the containers are of a misleading size or form.

4. By regulations prescribe the sizes and style of type to be used for labeling information required under this chapter, and definitions and standards of identity or composition or standards of fill of container, consistent with federal standards, when he deems such action appropriate for the protection of the public and after consultation with the secretary of agriculture of the United States.

5. By regulations prescribe conditions of storage and handling of livestock products and poultry products by persons engaged in the business of buying, selling, freezing, storing, or transporting such articles in or for intrastate commerce to assure that such articles will not be adulterated or misbranded when delivered to the consumer.

6. Require that equines be slaughtered and prepared in establishments separate from establishments where other livestock are slaughtered or their products are prepared.

7. By regulations require that every person engaged in business in or for intrastate commerce as a broker, renderer, animal food manufacturer, or wholesaler or public warehouseman of livestock or poultry products, or engaged in the business of buying, selling, or transporting in intrastate commerce any dead, dying, disabled, or diseased livestock or poultry or parts of the carcasses of any such animals, including poultry, that died otherwise than by slaughter shall register with the secretary his name and the address of each place of business at which and all trade names under which he conducts such business.

8. Adopt by reference or otherwise such provisions of the rules and regulations under the federal Acts, with such changes therein as he deems appropriate to make them applicable to operations and transactions subject to this chapter, which shall have the same force and effect as if promulgated under this chapter, and promulgate such other rules and regulations as he deems necessary for the efficient execution of the provisions of this chapter, including rules of practice providing opportunity for hearing in connection with issuance of orders under section 189A.5, subsection 5, and subsections 1, 2, or 3 of this section and prescribing procedures for proceedings in such cases; however, this shall not preclude a requirement that a label or container be withheld from use, or a refusal of inspection pursuant to the sections cited herein pending issuance of a final order in any such proceeding.

9. Appoint and prescribe the duties of such inspectors and other personnel as he deems necessary for the efficient execution of the provisions of this chapter.

10. Co-operate with the secretary of agriculture of the United States in administration of this chapter to effectuate the purposes stated in section 189A.3; accept federal assistance for that purpose and spend public funds of this state appropriated for administration of this chapter to pay the state's proportionate share of the estimated total cost of the co-operative program.

11. Recommend to the secretary of agriculture of the United States for appointment to the advisory committees provided for in the federal acts, such officials or employees of the Iowa meat and poultry inspection service as the secretary shall designate.

12. Serve as a representative of the governor for consultation with said secretary under paragraph "c" of section 301 of the federal Meat Inspection Act and paragraph "c" of section 5 of the federal Poultry Products Inspection Act unless the governor selects another representative. [C71, 73, 75,§189A.7]

Referred to in §§189A.2(16 *g*, *h*), 189A.10

189A.8 Prohibited acts.

1. No person shall sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the secretary to show the kinds of animals from which they were derived.

2. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any livestock products or poultry products which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the secretary or are naturally inedible by humans.

3. No person engaged in the business of buying, selling, or transporting in intrastate commerce, dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation in such commerce, any dead, dying, disabled, or diseased livestock or poultry or the products of any such animals that died otherwise than by slaughter, unless such transaction or transportation is made in accordance with such regulations as the secretary may prescribe to assure that such animals, or the unwholesome parts or products thereof, will be prevented

from being used for human food purposes. [C71, 73, 75,§189A.8]

189A.9 Hours of operation. The secretary may require operations at licensed establishments to be conducted during reasonable hours. The owner or operator of each licensed establishment shall keep the secretary informed in advance of intended hours of operation.

A charge shall be made for overtime inspection in excess of eight hours per day or outside assigned work schedules and also on state legal holidays. [C66, 71, 73, 75,§189A.9]

189A.10 Compliance required.

1. No person shall, with respect to any livestock or poultry or any livestock products or poultry products, do any of the following:

a. Slaughter any such animals or prepare any such articles which are capable of use as human food, at any establishment preparing such articles solely for intrastate commerce, except in compliance with the requirements of this chapter.

b. Sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce, any such articles which are both:

(1) Capable of use as human food.

(2) Adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or any articles required to be inspected under this chapter unless they have been so inspected and passed.

c. With respect to any such articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded.

2. No person shall sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce, or from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by the secretary except as may be authorized by such regulations.

3. No person shall violate any provision of the regulations or orders of the secretary under section 189A.5, subsection 7, or section 189A.7. [C71, 73, 75,§189A.10]

189A.11 Access by inspectors — acceptance by state agencies. No person shall deny access to any authorized inspectors upon the presentation of proper identification at any reasonable time to establishments and to all parts of such premises for the purposes of making inspections under this chapter.

When meat has been inspected and approved by the department, such inspection will be equal to federal inspection and therefore may be accepted by state agencies and political subdivisions of the state and no other inspection can be required.

1. No inspection of products placed in any container at any official establishment shall be deemed to be complete until the products are sealed or enclosed therein under the supervision of an inspector.

2. For purposes of any inspection of products required by this chapter, inspectors authorized by the secretary shall have access at all times by day or night to every part of every establishment required to have inspection under this chapter, whether the establishment is operated or not. [C66, 71, 73, 75, §189A.11]

189A.12 Seizure, detention and determination. Whenever any livestock or poultry product or any product exempted from the definition of a livestock or poultry product, or any dead, dying, disabled, or diseased livestock or poultry is found by any authorized representative of the secretary upon any premises where it is held for purposes of, or during or after distribution in, intrastate commerce or is otherwise subject to this chapter, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected in violation of the provisions of this chapter, the federal Meat Inspection Act, the federal Poultry Products Inspection Act, or the federal Food, Drug, and Cosmetic Act, or that such article or animal has been or is intended to be distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed twenty days, pending action under this section or notification of any federal authorities having jurisdiction over such article or animal, and shall not be moved by any person from the place at which it is located when so detained until released by such representative. All official marks may be required by such representative to be removed from such article or animal before it is released unless it appears to the satisfaction of the secretary that the article or animal is eligible to retain such marks.

1. Any livestock or poultry product, or any dead, dying, disabled, or diseased livestock or poultry which is being transported in intrastate commerce, or is otherwise subject to this chapter, or is held for sale in this state after such transportation, and which is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter; or is capable of use as human food and is adulterated or misbranded; or is in any other way in violation of this chapter shall be liable to be proceeded against and seized and condemned at any time on a complaint filed in the district court of the particular county within the jurisdiction of which such article or animal is found. If such article or animal is condemned it shall, after entry of the decree, be

disposed of by destruction or sale as the court may direct and any proceeds, less the court costs and fees, storage fees, and other proper expenses, shall be paid into the treasury of this state, but the article or animal shall not be sold contrary to the provisions of this chapter, the federal Meat Inspection Act, the federal Poultry Products Inspection Act, or the federal Food, Drug, and Cosmetic Act; however, upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this chapter or the laws of the United States, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by authorized representatives of the secretary as is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered against the article or animal and it is released under bond or destroyed, court costs and fees, storage fees, and other proper expenses shall be awarded against any person intervening as claimant of the article or animal. The proceedings in such cases shall be held without a jury, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of this state.

2. The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this chapter or other applicable laws. [C66, 71, 73, 75,§189A.12]

189A.13 Rules. The secretary shall promulgate such rules as may be necessary for the effective administration of this chapter. [C66, 71, 73, 75,§189A.13]

189A.14 Judicial review—enforcement.

1. Judicial review of the action of the secretary may be sought in accordance with the terms of the Iowa administrative procedure Act.

2. The district court is hereby vested with jurisdiction to enforce this chapter, to prevent and restrain violations herein. [C66, 71, 73, 75,§189A.14]

189A.15 Co-operation with other agencies. The secretary is hereby authorized to co-operate with all other agencies, federal and state, in order to carry out the effective administration of this chapter. [C66, 71, 73, 75,§189A.15]

189A.16 Forgery or counterfeiting.

1. No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the secretary.

2. No person shall do any of the following:

a. Forge any official device, mark, or certificate.

b. Without authorization from the secretary, use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate.

c. Contrary to the regulations prescribed by the secretary, fail to use, or to detach, deface, or destroy any official device, mark, or certificate.

d. Knowingly possess, without promptly notifying the secretary or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, including poultry, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark.

e. Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the secretary.

f. Knowingly represent that any article has been inspected and passed, or exempted, under this chapter when it has not been so inspected and passed, or exempted. [C71, 73, 75,§189A.16]

189A.17 Penalties.

1. Any person who violates any provisions of this chapter for which no other criminal penalty is provided shall upon conviction be subject to imprisonment in the county jail for not more than one year, or a fine of not more than one thousand dollars, or both such imprisonment and fine; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated, except as defined in section 189A.2, subsection 15, paragraph "*h*" such person shall be subject to imprisonment in the penitentiary for not more than three years or a fine of not more than ten thousand dollars or both.

2. Nothing in this chapter shall be construed as requiring the secretary to report, for the institution of legal proceedings, minor violations of this chapter whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

3. The secretary shall also have power:

a. To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person engaged in intrastate commerce, and the relation thereof to other persons.

b. To require persons engaged in intrastate commerce to file with the secretary in such form as the secretary may prescribe, annual or special reports or answers in writing to specific questions, furnishing to the secretary such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons of the person filing such reports or answers. Such reports and answers shall be made under oath, or otherwise as the secretary may prescribe, and shall be filed with the secretary

within such reasonable period as the secretary may prescribe, unless additional time be granted in any case by the secretary.

4. *a.* For the purpose of this chapter the secretary may, at all reasonable times, examine and copy any documentary evidence of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The secretary may sign subpoenas and administer oaths and affirmations, examine witnesses, and receive evidence.

b. Such attendance of witnesses, and the production of such documentary evidence may be required at any designated place of hearing. In case of disobedience to a subpoena the secretary may invoke the aid of the district court having jurisdiction over the matter in requiring the attendance and testimony of witnesses and the production of documentary evidence.

c. The district court may, in case of failure or refusal to obey a subpoena issued herein to any person, enter an order requiring such person to appear before the secretary or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey such order of the court may be punished by such court as contempt.

d. Upon the application of the attorney general of this state at the request of the secretary, the court shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter or any order of the secretary pursuant thereto.

e. The secretary may order testimony to be taken by deposition in any proceeding or investigation pending under this chapter at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the secretary and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the secretary as herein provided.

f. Witnesses summoned before the secretary shall be paid the same fees and mileage that are paid witnesses in the district court, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such district court.

g. No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the secretary or in obedience to the subpoena of the secretary, whether such subpoena be signed or issued by him or his delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this chapter for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

5. *a.* Any person who neglects or refuses to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if it is in his power to do so, in obedience to the subpoena or lawful requirement of the secretary shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

b. Any person who willfully makes, or causes to be made, any false entry or statement of fact in any report required to be made under this chapter, or who willfully makes, or causes to be made, any false entry in any account, record, or memorandum kept by any person subject to this chapter, or who willfully neglects or fails to make or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions pertaining to the business of such person, or who willfully removes himself from the jurisdiction of this state, or willfully mutilates, alters, or by any other means falsifies any documentary evidence of any person subject to this chapter or who willfully refuses to submit to the secretary or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any person subject to this chapter in his possession or within his control, shall be deemed guilty of an offense and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or to imprisonment in the county jail or the penitentiary for a term of not more than three years, or to both such fine and imprisonment.

c. If any person required by this chapter to file any annual or special report shall fail so to do within the time fixed by the secretary for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to this state the sum of one hundred dollars for each and every day of the continuance of such failure,

which forfeiture shall be payable into the treasury of this state, and shall be recoverable in a civil suit in the name of the state brought in the district court of the county where the person has his principal office or in the district court of any county in which he does business. It shall be the duty of the various county attorneys of this state to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the court expense fund of the county.

d. Any officer or employee of this state who makes public any information obtained by the secretary, without his authority, unless directed by a court, or uses any such information to his advantage, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

The requirements of this chapter shall apply to persons, establishments, animals, and articles regulated under the federal Meat Inspection Act or the federal Poultry Products Inspection Act to the extent provided for in said federal Acts and also to the extent provided in this chapter and in regulations the secretary may prescribe to promulgate this chapter. [C66, 71, 73, 75,§189A.17]

189A.18 Humane slaughter practices. Every establishment subject to the provisions of this chapter engaged in the slaughter of bovine, porcine, or ovine animals shall slaughter all such animals in an approved humane slaughtering method. For purposes of this section an approved humane slaughtering method shall include and be limited to slaughter by shooting, electrical shock, captive bolt, or use of carbon dioxide gas prior to the animal being shackle hoisted, thrown, cast or cut; however, the slaughtering, handling or other preparation of livestock in accordance with the ritual requirements of the Jewish or any other faith that prescribes and requires a method whereby slaughter becomes effected by severance of the carotid arteries with a sharp instrument is hereby designated and approved as a humane method of slaughter under the law. [C66, 71, 73, 75,§189A.18]

Constitutionality, 61GA, ch 186,§20

189A.19 Bribery. Any person who gives, pays, or offers, directly or indirectly, to any officer or employee of this state authorized to perform any of the duties prescribed by this chapter or by the regulations of the secretary, any money or other thing of value, with intent to influence said officer or employee in the discharge of any such duty, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not less than five thousand dollars nor more than ten thousand dollars and by imprisonment in the penitentiary not less than one year nor more than three years; and any officer or employee of this state authorized to perform any of the duties prescribed by this chapter who accepts any money, gift, or other thing of value from any person, given with intent to influence his official action, or who receives or accepts from any person engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than one thousand dollars nor more than ten thousand dollars and by imprisonment in the penitentiary not less than one year nor more than three years. [C71, 73, 75,§189A.19]

189A.20 Assault, resistance or intimidation. Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this chapter shall be fined not more than five thousand dollars or imprisoned in the penitentiary not more than three years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than ten thousand dollars or imprisoned in the penitentiary not more than ten years, or both.

Inspection shall not be provided under this chapter at any establishment for the slaughter of livestock or poultry or the preparation of any livestock products or poultry products which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the secretary to deter their use for human food. [C71, 73, 75,§189A.20]

189A.21 Appropriation authorized. There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter. [C71, 73, 75, §189A.21]

189A.22 Federal grants. All federal grants to and the federal receipts of this department are hereby appropriated for the purpose set forth in such federal grants or receipts. [C71, 73, 75,§189A.22]

CHAPTER 190

ADULTERATION OF FOODS

Referred to in §§189.11, 191.2 (5, 9), 191.4, 192.5, 192.11, 192.12, 192.14, 192.26, 192.30, 192.32, 194.3

General penalty, §189.21

190.1 Definitions and standards.
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190.11 Artificial sweetening—labeling.
190.12 Standards for frozen desserts.
190.13 Frozen desserts—edible containers.

190.1 Definitions and standards. For the purpose of this title the following definitions and standards of food are established:

1. *Butter.* Butter is the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, with or without the addition of salt, or harmless coloring matter, and containing at least eighty percent, by weight, of milk fat.

2. *Oleomargarine.* Oleo, oleomargarine or margarine includes all substances, mixtures and compounds known as oleo, oleomargarine or margarine, or all substances, mixtures and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.

Referred to in §191.6

3. *Renovated butter.* Renovated butter is butter produced by taking original packing stock butter, or other butter, or both, and melting the same so that the milk fat can be extracted, then by mixing the said milk fat with skimmed milk, milk, cream, or some milk product, and rechurning or reworking the said mixture; or butter made by any method which produces a product commonly known as boiled, processed, or renovated butter.

4. *Cheeses and cheese products.* The specifications and standards for cheeses and cheese products shall be as provided by the definitions and standards contained in federal food and drug standards under the federal Food, Drug, and Cosmetic Act, Part 19 of Title 21, as amended to December 31, 1972.

5. *Imitation cheese.* Imitation cheese is a product containing any substance other than that produced from milk or cream, as provided in subsection 4 above, and made in the appearance of or designed to be used for any of the purposes for which cheese produced from milk or cream is used.

6. *Cream.*

a. Cream is the sweet, fatty liquid separated from milk, with or without the addition of milk or skim milk, which contains not less than eighteen percent milk fat.

b. Light cream, coffee cream, or table cream is cream which contains not less than eighteen percent but less than thirty percent milk fat.

c. Whipping cream is cream which contains not less than thirty percent milk fat.

d. Light whipping cream is cream that contains not less than thirty percent but less than thirty-six percent milk fat.

e. Heavy cream or heavy whipping cream is cream which contains not less than thirty-six percent milk fat.

f. Whipped cream is whipping cream into which air or gas has been incorporated.

g. Whipped light cream, coffee cream, or table cream is light cream, coffee cream, or table cream into which air or gas has been incorporated.

h. Sour cream or cultured sour cream is a fluid or semifluid cream resulting from the souring, by lactic acid producing bacteria or similar culture, of pasteurized cream, which contains not less than one-fifth of one percent acidity expressed as lactic acid.

Referred to in §191.2(5)

7. *Flavoring extract.* A flavoring extract is a solution in ethyl alcohol or other suitable medium of the sapid and odorous principles derived from an aromatic plant, or parts of the plant, with or without its coloring matter, and conforms in name to the plant used in its preparation.

8. *Almond extract.* Almond extract is the flavoring extract prepared from oil of bitter almonds, free from hydrocyanic acid, and contains not less than one percent by volume of oil of bitter almonds.

9. *Anise extract.* Anise extract is the flavoring extract prepared from oil of anise, and contains not less than three percent by volume of oil of anise.

10. *Cassia extract.* Cassia extract is the flavoring extract prepared from oil of cassia, and contains not less than two percent by volume of oil of cassia.

11. *Celery seed extract.* Celery seed extract is the flavoring extract prepared from celery seed or the oil of celery seed, or both, and contains not less than three-tenths percent by volume of oil of celery seed.

12. *Cinnamon extract.* Cinnamon extract is the flavoring extract prepared from oil of cin-

namon, and contains not less than two percent by volume of oil of cinnamon.

13. *Clove extract.* Clove extract is the flavoring extract prepared from oil of cloves, and contains not less than two percent by volume of oil of cloves.

14. *Ginger extract.* Ginger extract is the flavoring extract prepared from ginger, and contains in each one hundred cubic centimeters the alcohol-soluble matters from not less than twenty grams of ginger.

15. *Lemon extract.* Lemon extract is the flavoring extract prepared from oil of lemon, or from lemon peel, or both, and contains not less than five percent by volume of oil of lemon.

16. *Terpeneless extract of lemon.* Terpeneless extract of lemon is the flavoring extract prepared by shaking oil of lemon with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of lemon in such medium, and contains not less than two-tenths percent by weight of citral derived from oil of lemon.

17. *Nutmeg extract.* Nutmeg extract is the flavoring extract prepared from oil of nutmeg, and contains not less than two percent by volume of oil of nutmeg.

18. *Orange extract.* Orange extract is the flavoring extract prepared from oil of orange, or from orange peel, or both, and contains not less than five percent by volume of oil of orange.

19. *Terpeneless extract of orange.* Terpeneless extract of orange is the flavoring extract prepared by shaking oil of orange with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of orange in such medium, and corresponds in flavoring strength to orange extract.

20. *Peppermint extract.* Peppermint extract is the flavoring extract prepared from oil of peppermint, or from peppermint, or both, and contains not less than three percent by volume of oil of peppermint.

21. *Rose extract.* Rose extract is the flavoring extract prepared from attar of roses, with or without red rose petals, and contains not less than four-tenths percent by volume of attar of roses.

22. *Savory extract.* Savory extract is the flavoring extract prepared from oil of savory, or from savory, or both, and contains not less than thirty-five hundredths percent by volume of oil of savory.

23. *Spearmint extract.* Spearmint extract is the flavoring extract prepared from oil of spearmint, or from spearmint, or both, and contains not less than three percent by volume of oil of spearmint.

24. *Star anise extract.* Star anise extract is the flavoring extract prepared from oil of star anise, and contains not less than three percent by volume of oil of star anise.

25. *Sweet basil extract.* Sweet basil extract is the flavoring extract prepared from oil of sweet basil, or from sweet basil, or both, and contains not less than one-tenth percent by volume of oil of sweet basil.

26. *Sweet marjoram extract.* Sweet marjoram extract is the flavoring extract prepared from the oil of marjoram, or from marjoram, or both, and contains not less than one percent by volume of oil of marjoram.

27. *Thyme extract.* Thyme extract is the flavoring extract prepared from oil of thyme, or from thyme, or both, and contains not less than two-tenths percent by volume of oil of thyme.

28. *Tonka extract.* Tonka extract is the flavoring extract prepared from tonka bean, with or without sugar or glycerin, and contains not less than one-tenth percent by weight of coumarin extracted from the tonka bean, together with a corresponding proportion of the other soluble matters thereof.

29. *Vanilla extract.* Vanilla extract is the flavoring extract prepared from vanilla bean, with or without sugar or glycerin, and contains in one hundred cubic centimeters the soluble matters from not less than ten grams of the vanilla bean, and contains not less than thirty percent by volume of absolute ethyl alcohol, or other suitable medium.

30. *Wintergreen extract.* Wintergreen extract is the flavoring extract prepared from oil of wintergreen, and contains not less than three percent by volume of oil of wintergreen.

31. *Food.* Food shall include any article used by man or domestic animals for food, drink, confectionery, or condiment, or which enters into the composition of the same, whether simple, blended, mixed, or compound. The term "blended" shall be construed to mean a mixture of like substances.

32. *Ice cream mix.* Ice cream mix is a pure clean product made from a combination of milk products and one or more of the following: Sugar, dextrose and glucose; and may contain one or more of the following ingredients: Eggs, egg products, harmless coloring, salt and wholesome stabilizer.

It may not contain more than one-half of one percent by weight of stabilizer. It may contain not less than ten percent by weight of milk fat nor less than twenty percent by weight of total milk solids. The acidity and the salt balance of the ice cream may be standardized by the use of a harmless alkali, an amount not to exceed one-half of one percent calculated as lactic acid. In no case shall the bacteria count of ice cream mix exceed one hundred thousand to the cubic centimeter.

33. *Ice cream.* Ice cream is a pure clean frozen product made from ice cream mix and a harmless flavoring. It shall contain not less than ten percent by weight of milk fat and not less than twenty percent by weight of total milk solids, except where fruit, fruit juice, or both fruit and fruit juice, nuts, cocoa or choc-

olate, or cocoa and chocolate syrup, maple syrup, cakes or confections are used for the purpose of flavoring; then it shall contain not less than eight percent by weight of milk fat and not less than sixteen percent by weight of total milk solids.

In no case shall any ice cream contain less than one and six-tenths pounds of total food solids per gallon nor shall the bacteria count exceed fifty thousand to the cubic centimeter.

A quart of ice cream in factory filled packages shall weigh not less than eighteen ounces.

34. *Flavored ice cream.*

a. Fruit ice cream is ice cream flavored exclusively with fruit and shall be labeled "Fruit Ice Cream" preceded by the name of the fruit.

b. Fruit flavored ice cream is ice cream flavored with fruit and fruit juice, or with fruit juice, and shall be labeled "Ice Cream" preceded by the name of the fruit.

c. Nut ice cream is ice cream flavored exclusively with nut meats and shall be labeled "Nut Ice Cream" preceded by the name of the nut used.

d. Nut flavored ice cream is ice cream flavored with a combination of nut meats and one or both of the following: Juice of nut meats or true nut extract and shall be labeled "Ice Cream" preceded by the name of the nut.

e. Any ice cream bearing the name of a fruit or nut flavor but flavored with artificial flavor shall be labeled "Ice Cream" preceded by the name of the fruit or nut and followed by the words "artificially flavored," in the same size type. Such ice cream shall contain not less than ten percent by weight of total milk fat and not less than twenty percent by weight of total milk solids.

f. Any ice cream flavored with confections, cakes, bread or pastry products, cereals or vegetables, the ice cream shall be labeled "Ice Cream" preceded by the name of the product imparting the flavor.

g. Frozen custard, French ice cream, French custard ice cream is a frozen product which shall contain not less than five dozen clean wholesome egg yolks, or one and five-tenths pounds of wholesome dry egg yolks or three pounds wholesome frozen egg yolks for each ninety pounds of the product and shall conform in all other respects to the definition and standard of identity of ice cream prescribed previously.

35. *a. Ice milk.* Ice milk is a pure, clean frozen or semifrozen product made from a combination of milk products and one or more of the following ingredients: Sugar, dextrose, glucose, corn syrup in liquid or dry form, with harmless flavoring or coloring or both, either natural or artificial, and with or without wholesome stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one percent by weight of wholesome stabilizer, and shall contain not less than two percent and not more than seven percent by weight of milk fat; and not less than eleven percent by weight of total milk solids. In no case shall any ice milk contain less than one and three-tenths pounds of total food solids per gallon or weigh less than four and five-tenths pounds per gallon. It shall not contain fats other than milk fat. Every particle of mix shall be pasteurized at temperature of not less than 155° F. for not less than thirty minutes or to a temperature of not less than 175° F. for not less than twenty-five seconds in approved and properly operated equipment. Provided, that nothing contained in this definition shall be construed as barring any other process which has been demonstrated to be equally efficient and is approved by the state department of agriculture. It shall contain not more than fifty thousand bacteria per cubic centimeter in the manufacturer's package.

Ice milk sold at retail in the manufacturer's package or wrapper shall be labeled on a contrasting background in plain legible eight-point type with the words, "Ice Milk", provided that: When flavored exclusively with fruit it shall be labeled, "Fruit Ice Milk", preceded by the name of the fruit. When flavored with fruit and fruit juice, or with fruit juice, it shall be labeled, "Ice Milk", preceded by the name of the fruit. When bearing the name of a fruit or nut flavor but flavored with artificial flavor, it shall be labeled, "Ice Milk", preceded by the name of the nut or fruit and followed by the words "artificially flavored" in the same size type. When flavored with cocoa or chocolate, or cocoa and chocolate syrup, maple syrup, or confections, it shall be labeled, "Ice Milk", preceded by the name of the product imparting the flavor.

A sign shall be posted in every retail establishment where ice milk is sold, on a white card not less than twelve by twenty-two inches in dimensions with letters not less than three inches in height and two inches in width containing the words, "Ice Milk Sold Here"; such a sign shall at all times be within plain view of, and at an easily readable distance from the customer.

36. *Milk sherbet.*

a. Milk sherbet is the pure clean frozen product made from a combination of milk products and one or more of the following ingredients: Sugar, sucrose, dextrose, harmless coloring and stabilizer composed of wholesome edible material, flavoring derived from fruit, fruit juice and lactic, citric, or tartaric acid and with not less than thirty-five hundredths of one percent of acid as determined by titrating with standard alkali and expressed as lactic acid.

It shall contain not less than two percent and not more than five percent by weight of milk solids and the milk fat content thereof shall be not less than one percent and not more than two percent. It shall be identified by its common or usual flavor name.

b. Ices or fruit ices shall conform in all respects to the definition and standard of identity for milk sherbet, except that it shall contain no milk solids.

37. *Frozen malted milk.* "Frozen malted milk" means the pure, clean, frozen or semi-frozen product made from the combination of milk products, malted milk and one or more of the following ingredients: Eggs, sugar, dextrose, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one percent by weight of edible gelatin or vegetable stabilizer, not less than seven percent by weight of milk fat, not less than fourteen percent by weight of total milk solids, and not less than three percent by weight of malted milk. In no case shall frozen malted milk contain less than one and three-tenths pounds of total food solids per gallon or weigh less than four and one-half pounds per gallon.

Provided, however, products complying with the above definition except that they contain less than seven percent by weight of milk fat, shall be sold only in the manufacturer's original package or wrapper and must be labeled in plain legible eight-point type with the words "Imitation Frozen Malted Milk."

38. *Milk.* Milk is hereby defined to be the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, which contains not less than eight and one-fourth percent milk solids-not-fat and not less than three and one-fourth percent milk fat. (Milk fat or butterfat is the fat of milk.)

Referred to in §191.2(5)

39. *Skim milk or skimmed milk.* Skim milk or skimmed milk is milk from which sufficient milk fat has been removed to reduce its milk fat content to less than one-half of one percent.

Referred to in §§190.3, 191.2(5)

40. *Goat milk.* Goat milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of healthy goats. The word "milk" shall be interpreted to include goat milk.

Referred to in §191.2(5)

41. *Half-and-half.* Half-and-half is a product consisting of a mixture of milk and cream which contains not less than ten and one-half percent milk fat.

Referred to in §191.2(5)

42. *Cultured half-and-half.* Sour half-and-half or cultured half-and-half is fluid or semi-fluid half-and-half derived from the souring, by lactic acid producing bacteria or similar culture, of pasteurized half-and-half, which contains not less than one-fifth of one percent acidity expressed as lactic acid.

Referred to in §191.2(5)

43. *Reconstituted milk.* Reconstituted or recombined milk or milk products shall mean milk or milk products defined in this section which result from the recombining of milk constituents with potable water.

Referred to in §191.2(5)

44. *Concentrated milk.* Concentrated milk is a fluid product, unsterilized and unsweetened, resulting from the removal of a considerable portion of the water from milk, which, when combined with potable water, results in a product conforming with the standards for milk fat and solids-not-fat of milk.

Referred to in §191.2(5)

45. *Concentrated milk products.* Concentrated milk products shall mean and include homogenized concentrated milk, vitamin "D" concentrated milk, concentrated skim milk, fortified concentrated skim milk, concentrated low fat milk, fortified concentrated low fat milk, concentrated flavored milk, concentrated flavored milk products, and similar concentrated products made from concentrated milk or concentrated skim milk, and which, when combined with potable water in accordance with instructions printed on the container, conform with the definitions of the corresponding milk products in this chapter and chapters 191 and 192.

Referred to in §191.2(5)

46. *Low fat milk.* Low fat milk is milk from which a sufficient portion of milk fat has been removed to reduce its milk fat content to not less than one-half of one percent and not more than two percent.

Referred to in §191.2(5)

47. *Vitamin "D" milk.* Vitamin "D" milk and milk products are milk and milk products, the vitamin "D" content of which has been increased by an approved method to at least four hundred U.S.P. units per quart.

Referred to in §191.2(5)

48. *Fortified milk.* Fortified milk and milk products are milk and milk products other than vitamin "D" milk and milk products, the vitamin or mineral content of which have been increased by a method and in an amount approved by the secretary.

Referred to in §191.2(5)

49. *Homogenized milk.* Homogenized milk is milk which has been treated to insure break-up of the fat globules to such an extent that, after forty-eight hours of quiescent storage at 45° F., no visible cream separation occurs on the milk, and the fat percentage of the top one hundred milliliters of milk in a quart, or of proportionate volumes in containers of other sizes, does not differ by more than ten percent from the fat percentage of the remaining milk as determined after thorough mixing. The word "milk" shall be interpreted to include homogenized milk.

Referred to in §191.2(5)

50. *Flavored milk.* Flavored milk or milk products shall mean milk and milk products as defined in this chapter and chapters 191 and 192 to which has been added a flavor or sweetener or both.

Referred to in §191.2(5)

51. *Buttermilk.* Buttermilk is a fluid product containing not less than eight and one-fourth percent of milk solids-not-fat and result-

ing from the manufacture of butter from milk or cream.

Referred to in §191.2(5)

52. *Cultured buttermilk.* Cultured buttermilk is a fluid product resulting from the souring, by lactic acid producing bacteria or similar culture, of pasteurized skim milk or pasteurized low fat milk.

Referred to in §191.2(5)

53. *Cultured milk.* Cultured milk or cultured whole milk buttermilk is a fluid product resulting from the souring, by lactic acid producing bacteria or similar culture, of pasteurized milk.

Referred to in §191.2(5)

54. *Acidified milk.* Acidified milk and milk products are milk and milk products obtained by the addition of food grade acids to pasteurized cream, half-and-half, milk, low fat milk, or skim milk, resulting in a product acidity of not less than one-fifth of one percent expressed as lactic acid.

Referred to in §191.2(5)

55. *Milk products.* Milk products include cream, light cream, coffee cream, table cream, whipping cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, whipped coffee cream, whipped table cream, sour cream, cultured sour cream, half-and-half, sour half-and-half, cultured half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, skim milk, skimmed milk, low fat milk, fortified milk and milk products, vitamin "D" milk and milk products, homogenized milk, flavored milk or milk products, buttermilk, cultured buttermilk, cultured milk, cultured whole milk buttermilk, and acidified milk and milk products.

This definition is not intended to include such products as sterilized milk and milk products hermetically sealed in a container and so processed, either before or after sealing, as to prevent microbial spoilage, or evaporated milk, condensed milk, ice cream and other frozen desserts, butter, dry milk products, except as defined herein, or cheese except when they are combined with other substances to produce any pasteurized milk or milk product defined herein.

Referred to in §191.2(5)

56. *Grade "A" dry milk.* Grade "A" dry milk products are milk products which have been produced for use in grade "A" pasteurized milk products and which have been manufactured under the provisions of Grade "A" Dry Milk Products—Recommended Sanitation Ordinance and Code for Dry Milk Products Used in Grade "A" Pasteurized Milk Products (1959) of the United States Public Health Service.

Referred to in §191.2(5)

57. *Optional ingredients.* Optional ingredients shall mean and include grade "A" dry milk products, concentrated milk, concentrated milk products, flavors, sweeteners, stabilizers, emulsifiers, acidifiers, vitamins, minerals, and similar ingredients.

Referred to in §191.2(5)

58. *Oysters.* Oysters shall not contain ice, nor more than sixteen and two-thirds percent by weight of free liquid.

59. *Vinegar.* Vinegar is the product made by the alcoholic and subsequent fermentation of fruits, grain, vegetables, sugar, or syrups without the addition of any other substance and containing an acidity of not less than four percent by weight of absolute acetic acid. The product may be distilled, but when not distilled it shall not carry in solution any other substance except the extractive matter derived from the substances from which it was made.

60. *Cider or apple vinegar.* Cider or apple vinegar is a similar product made by the same process solely from the juice of apples. Such vinegar which during the course of manufacture has developed in excess of four percent acetic acid may be reduced to said strength.

61. *Corn sugar vinegar.* Corn sugar vinegar is a similar product made by the same process solely from solutions of starch sugar.

62. *Malt vinegar.* Malt vinegar is a similar product made by the same process solely from barley malt or cereals whose starch has been converted by malt.

63. *Sugar vinegar.* Sugar vinegar is a similar product made by the same process solely from sucrose.

64. *Lard.* Lard is the fat rendered from fresh, clean, sound, fatty tissues from hogs in good health at the time of slaughter, with or without lard stearin or a hardened lard. The tissues do not include bones, detached skin, head fat, ears, tails, organs, windpipes, large blood vessels, scrap fat, skimmings, settlings, pressings and the like and are reasonably free from muscle tissue and blood.

65. *Rendered pork fat.* Rendered pork fat is the fat other than lard, rendered from clean, sound carcasses, parts of carcasses, or edible organs from hogs in good health at the time of slaughter, except that stomachs, tails, bones from the head and bones from cured or cooked pork are not included. The tissues rendered are usually fresh, but may be cured, cooked, or otherwise prepared and may contain some meat food products. Rendered pork fat may be hardened by the use of lard stearin or hardened lard or rendered pork fat stearin or hardened rendered pork fat or any combination.

66. *Substitute for sugar.* Where sugar is given as one of the ingredients in a food product when the definition is established by law or by regulation, the following products may be used as optional ingredients: Dextrose (corn sugar) or corn syrup.

67. *Honey.* Honey is the secretion of floral nectar collected by the honeybee and stored in wax combs constructed by the honeybee, or the liquid derived therefrom. [C73,§4042;

C97,§§2516, 2518, 4989–4991; S13,§§2515-b,-d; SS15,§§4999-a31,-a31c; C24, 27, 31, 35, 39,§3058; C46, 50, 54, 58, 62, 66, 71, 73, 75,§190.1]

Referred to in §§189.14, 190.3, 191.2(5), 191.6

190.2 Additional standards. The department* may establish and publish standards for foods when such standards are not fixed by law, but the same shall conform with those proclaimed by the secretary of agriculture of the United States. [S13,§4999-a18; C24, 27, 31, 35, 39,§3059; C46, 50, 54, 58, 62, 66, 71, 73, 75, §190.2]

*See §189.1

190.3 Food adulterations. For the purposes of this chapter any food shall be deemed to be adulterated:

1. If any substance has been mixed or packed with it so as to reduce or injuriously affect its quality.

2. If any substance has been substituted to any extent.

3. If any valuable constituent has been removed to any extent.

4. If it has been mixed, colored, powdered, coated, or stained whereby damage or inferiority is concealed.

5. If it contains formaldehyde, sulphites or boron compound, or any poisonous or other ingredients injurious to health.

6. If it consists to any extent of a diseased, filthy, or decomposed animal or vegetable substance, whether manufactured or otherwise.

7. If it consists to any extent of an animal that has died otherwise than by slaughter.

8. If it is the product of or obtained from a diseased or infected animal.

9. If it has been damaged by freezing.

10. If it does not conform to the standards established by law or by the department.

The provisions of subsections 2 and 3 of this section shall not apply to the addition of vitamins approved by the United States Pharmacopoeia or the removal of milk fat from milk as defined in section 190.1, subsection 39. [C73,§4042; C97,§§4989, 4990; S13,§§2515-b,-d; SS15,§4999-a31e; C24, 27, 31, 35, 39,§3060; C46, 50, 54, 58, 62, 66, 71, 73, 75,§190.3]

Referred to in §§190.4, 190.9

190.4 Adulterations of dairy products. In addition to the adulterations enumerated in section 190.3, milk, cream, or skimmed milk shall be deemed to be adulterated:

1. If it contains visible dirt or is kept or placed at any time in an unclean container.

2. If obtained from a cow within fifteen days before or five days after calving.

3. If obtained from a cow stabled in an unhealthful place, or fed upon any substance in a state of putrefaction or of unhealthful nature.

4. If obtained from a cow which has consumed chemical, medicinal, or radioactive agents capable of being secreted in milk.

5. If obtained from a cow in a mastitic condition. [C97,§§4989, 4990; S13,§§2515-b,-d; C24, 27, 31, 35, 39,§3061; C46, 50, 54, 58, 62, 66, 71, 73, 75,§190.4]

190.5 Adulterated milk or milk products. Any milk or milk product shall further be deemed to be adulterated:

1. If it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health.

2. If it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal regulation, or in excess of such tolerance if one has been established.

3. If it consists, in whole or in part, of any substance unfit for human consumption.

4. If it has been produced, processed, prepared, packed, or held under insanitary conditions.

5. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

6. If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is. [C71, 73, 75,§190.5]

Referred to in §192.14

190.6 Adulteration with fats and oils. No milk, cream, skimmed milk, buttermilk, condensed or evaporated milk, powdered or desiccated milk, condensed skimmed milk, ice cream, or any fluid derivatives of any of them shall be made from or have added thereto any fat or oil other than milk fat, and no product so made or prepared shall be sold, offered or exposed for sale, or possessed with the intent to sell, under any trade name or other designation of any kind. Provided however, that it shall be lawful to produce and sell a condensed or evaporated milk product in which the milk fat has been replaced by an edible vegetable fat made from soybean oil. Such a product shall be given a distinctive name to distinguish it from natural, condensed, or evaporated milk, which name shall not include the words "milk" or "milk products" or any derivative thereof, and the label under which such a product is sold at retail shall clearly state the vegetable fat content of the product. [C24, 27, 31, 35, 39,§3062; C46, 50, 54, 58, 62, 66,§190.5; C71, 73, 75,§190.6]

190.7 Coloring imitation cheese. No imitation cheese shall be colored with any substance and no such imitation cheese shall be made by mixing animal fats, vegetable oils, or other substances for the purpose or with the effect of imparting to the mixture the color of yellow cheese. [C97,§2518; C24, 27, 31, 35, 39,§3063; C46, 50, 54, 58, 62, 66,§190.6; C71, 73, 75,§190.7]

190.8 Coloring vinegar. Vinegar shall not be colored with coloring matter and distilled vinegar shall not have a brown color in imita-

tion of cider vinegar. [SS15,§4999-a31; C24, 27, 31, 35, 39,§3064; C46, 50, 54, 58, 62, 66,§190.7; C71, 73, 75,§190.8]

190.9 Adulteration of candies. In addition to the adulterations enumerated in section 190.3, candy shall be deemed to be adulterated if it contains terra alba, barytes, talc, paraffin, chrome yellow, or other mineral substance. [SS15,§4999-a31e; C24, 27, 31, 35, 39,§3065; C46, 50, 54, 58, 62, 66,§190.8; C71, 73, 75,§190.9]

190.10 Sale by false name. No person shall offer or expose for sale, sell, or deliver any article of food which is defined in this chapter under any other name than the one herein specified or offer or expose for sale, sell, or deliver any article of food which is not defined in this chapter under any other name than its true name, trade name, or trade-mark name. [C24, 27, 31, 35, 39,§3066; C46, 50, 54, 58, 62, 66, §190.9; C71, 73, 75,§190.10]

"Person" defined, §191.4

190.11 Artificial sweetening — labeling. Where any approved artificial sweetening product such as saccharine or sulfamate is used by any person in the manufacture or sale of any article of food intended for human consumption, the container in which any such food or beverage is sold or offered for sale to the public shall be clearly, legibly and noticeably labeled with the name of the sweetening product used. The portion of the store, display counter, shelving, or other place where such food or beverage is displayed or offered for sale, shall be clearly and plainly identified by an appropriate sign reading "FOR DIETARY PURPOSES." [C54, 58, 62, 66,§190.10; C71, 73, 75, §190.11]

190.12 Standards for frozen desserts. Frozen desserts and the pasteurized dairy ingredients used in the manufacture thereof, shall comply with the following standards:

Milk, cream, and fluid dairy ingredient	Temperature Bacterial limit Coliform limit	Storage at 45° F. 50,000 per milliliter 10 per milliliter
Frozen dessert mixes, frozen desserts (plain)	Temperature Bacterial limit Coliform limit	Storage at 45° F. 50,000 per gram 10 per gram
Dry dairy ingredient	Extra grade or better as defined by U.S. Standards for grades for the particular product.	
Dry powder mix	Bacterial limit Coliform limit	50,000 per gram 10 per gram

The bacteria count and coliform determination shall not exceed this standard in three out of the last five consecutive samples taken by the regulatory agency.

This section shall not preclude holding mix at a higher temperature for a short period of time immediately prior to freezing where applicable to the particular manufacturing or processing practices.

This section shall not apply to sterilized mix in hermetically sealed containers.

The coliform determination for bulky flavored frozen desserts shall not be more than twenty per gram. [C71, 73, 75,§190.12]

Referred to in §190A.8

190.13 Frozen desserts—edible containers. Notwithstanding any other labeling provision of the Code, frozen dessert of any kind or flavor may be dispensed and sold at retail in edible containers or as a part of any food preparation intended for consumption without further preparation, including but not limited to the preparations commonly termed milk shakes, malted milks, sundaes, and floats. [C71, 73, 75,§190.13]

CHAPTER 190A

FROZEN DESSERTS

190A.1 Definitions.
190A.2 Minimum requirements.
190A.3 Fruit flavoring.
190A.4 Rules adopted.
190A.5 Labeling requirements.
190A.6 False advertising.
190A.7 Signs posted.
190A.8 Violations.
190A.9 Administration by secretary.
190A.10 Dry powder mix.

190A.1 Definitions. For the purpose of this chapter:

1. *"Vegetable fat frozen dessert"* means the food prepared by freezing, while stirring, a pasteurized mix composed of one or more edible natural vegetable fats or oils derived from vegetable sources, solids-not-fat, sugar or other sweeteners, one or more flavoring in-

gredients, and one or more stabilizers or emulsifiers or both. It may also contain one or more egg ingredients, and one or more caseinates.

2. *"Mellorine"* means the food prepared by freezing, while stirring, a pasteurized mix composed of a blend of one or more edible natural food fats or oils derived from vegetable sources with one or more natural food fats or oils derived from animal sources, other than milk fat, or consists entirely of one or more animal fats or oils, solids-not-fat, sugar or other sweeteners, one or more flavoring ingredients, and one or more stabilizers or emulsifiers or both. It may also contain one or more egg ingredients, and one or more caseinates.

3. *"Imitation frozen dessert"* means any frozen sweetened product regardless of the name under which it is manufactured, sold or offered for sale, and which is manufactured in a manner similar to the process used in manufacturing ice cream, French ice cream, ice milk, fruit sherbet, water ices, vegetable fat frozen dessert or mellorine, quiescently frozen confection, and quiescently frozen dairy confection, but which does not conform to the definition and standard of identity established for any of the products defined in this or any other statute or regulation promulgated under any other statute of this state.

4. *"Frozen dessert mix"* means the pasteurized unfrozen liquid or fluid combination of two or more ingredients permitted in a frozen dessert with or without fruit, fruit juices, candy, baked goods and confections, nut meats, or other harmless flavor or color or both.

5. *"Dry powder mix"* is the unfrozen combination of two or more ingredients, which shall have been properly pasteurized if they are derivatives of milk, dairy products, or eggs, which are permitted in a frozen dessert before liquefying into a mix or the addition of fruit, fruit juices, candy, baked goods and confections, nut meats, or other harmless flavor or color or both.

6. *"Frozen desserts"* means ice cream, frozen custard, French ice cream, French custard ice cream, artificially sweetened ice cream, ice milk, fruit sherbet, water ice, quiescently frozen confection, quiescently frozen dairy confection, vegetable fat frozen dessert, frozen confection, mellorine frozen dessert, imitation frozen desserts together with any liquid or dry mix used in such frozen desserts, and any products which are similar in appearance, odor or taste to such products, or are prepared or frozen as frozen desserts are customarily prepared or frozen, whether made with dairy products or nondairy products.

7. *"Food fats or oils"* means edible natural fats derived from vegetable sources, and includes milk fat, meat fat, and fat derived from marine animals or fish. It is not necessary that such food fats be hydrogenated. Harmless optional ingredients may be used in an amount not exceeding one-half of one percent of the weight of the finished food, to prevent fat oxidation.

8. *"Solids-not-fat"* means:

a. Skim milk.
b. Concentrated skim milk.
c. Evaporated skim milk.
d. Condensed skim milk.
e. Super-heated condensed skim milk.
f. Sweetened condensed skim milk.
g. Nonfat dry milk.
h. Dry whey.
i. Concentrated whey.
j. Sweet cream buttermilk (whether fluid, condensed or dried).

Any of the foregoing products from which all or a portion of the lactose has been removed after crystallization or the lactose has been converted to simple sugars by hydrolysis.

9. *"Sweetening ingredients"* means:

a. Sugar (sucrose) or sugar syrup.
b. Dextrose.
c. Invert sugar (in paste or syrup form).
d. Corn syrup, dried corn syrup, glucose syrup, dried glucose syrup.
e. Maple syrup, maple sugar.
f. Honey.
g. Brown sugar.
h. Malt syrup, maltose syrup, malt extract.
i. Dried malt syrup, dried maltose syrup, dried malt extract.
j. Refiner's syrup.
k. Molasses (other than blackstrap).
l. Lactose.
m. Fructose.

10. *"Flavoring ingredients"* means:

a. Ground spice, ground vanilla beans, infusion of coffee or tea, or any natural food flavoring.

b. Any artificial food flavoring.

c. Chocolate or cocoa, which may be added as such or as a suspension in syrup, and which may contain disodium phosphate or sodium citrate in such quantity that the finished vegetable fat frozen dessert or mellorine contains not more than zero point two percent by weight of disodium phosphate or sodium citrate.

d. Mature fruit or the juice of mature fruit, either of which may be fresh, frozen, canned, concentrated, or partially or wholly dried.

e. Nut meats, which may be roasted, cooked in an edible fat or oil, or preserved in syrup, and which may be salted.

f. Malted milk.

g. Confectionery. For the purposes of this paragraph, the term "confectionery" means candy, cakes, cookies, glacèed fruits, and variegating flavors.

h. Properly prepared and cooked cereal.

11. "Egg ingredients" means:

a. Liquid eggs.
b. Frozen eggs.
c. Dried eggs.

d. Egg yolks.

e. Frozen egg yolks.

f. Dried egg yolks. Any egg ingredient used shall be added to the mix before it is pasteurized.

12. *"Caseinates"* means casein prepared by precipitation with gums, ammonium caseinate, calcium caseinate, potassium caseinate, and sodium caseinate. Caseinates in liquid or dry form, but free of excess alkali may be added to a mix containing not less than eight percent by weight of food fats, and not less than two point fifty-six percent of protein.

13. *"Stabilizers and emulsifiers"* mean:

a. Agar-agar, algin (sodium alginate), calcium sulfate, gelatin, gum acacia, guar seed gum, gum karaya, locust bean gum, oat gum, gum tragacanth, carrageenan, lecithin, psyllium seed husk, cellulose gum and propylene glycol alginate. The total weight of the solids of any such ingredient used singly or of any combination of two or more such ingredients used (including any such ingredient and pectin added separately to the fruit ingredient) is not more than zero point five percent of the weight of the finished vegetable frozen fat dessert or mellorine. Such ingredients may be added in admixture with dextrin, propylene glycol or glycerin. Salts of carrageenan, furcelleran, salts of furcelleran, and sodium carboxymethylcellulose.

b. Monoglycerides or diglycerides or both of fat-forming fatty acids. The total weight of such ingredients shall not be more than zero point two percent of the weight of the finished mellorine. When a preparation having over ninety percent of monoglycerides is used, it may be preblended with edible fat in an amount not exceeding twenty percent by weight of such blend and the total amount of such blend used shall not exceed zero point two percent of the weight of the finished vegetable fat frozen dessert of mellorine.

c. Polyoxyethylene-twenty sorbitan tristearate or polyoxyethylene-twenty sorbitan monooleate or both, in an amount not exceeding zero point one percent of the weight of the finished vegetable fat frozen dessert or mellorine, and microcrystalline cellulose in a quantity not to exceed one point five percent by weight of the finished vegetable fat frozen dessert or mellorine. [C71, 73, 75,§190A.1]

Referred to in §190A.3

190A.2 Minimum requirements. Vegetable fat frozen dessert or mellorine shall contain not less than eight percent by weight of food fats and not less than two point fifty-six percent of protein derived from solids-not-fat, except when it contains one or more of the optional flavoring ingredients as defined in this chapter in which case it shall contain at least six point four percent of food fats and at least two point zero five percent of protein derived from solids-not-fat. Vegetable fat frozen dessert or mellorine shall contain not less than one point six pounds of total food solids per gallon and shall weigh not less than four point five pounds per gallon. Coloring and water may be added and the mix may be seasoned with salt and be homogenized. [C71, 73, 75, §190A.2]

190A.3 Fruit flavoring. Fruit used for flavoring may be whole, shredded, or comminuted; it may be sweetened, thickened with pectin or with one or more of the stabilizers or emulsifiers named in section 190A.1, subject to the restriction on the total quantity of such substances in vegetable fat frozen dessert or mellorine prescribed in that section, and it may be acidulated with citric, ascorbic or phosphoric acid. The fruit is prepared by the removal of pits, seeds, skins, and cores, where such removal is usual in preparing that kind of fruit for consumption as fresh fruits. In the case of fruit or fruit juice from which part of the water is removed, the substances contributing flavor volatilized during water removal may be condensed and reincorporated in the concentrated fruit or fruit juice. In the case of the citrus fruits the whole fruit, including the peel but excluding the seeds, may be used, and in the case of citrus juice or concentrated citrus juice, cold-pressed citrus oil may be added in an amount not exceeding that which would have been obtained if the peel from the whole fruit had been used. For the purposes of this section, the flesh of the coconut shall be considered a fruit. [C71, 73, 75,§190A.3]

190A.4 Rules adopted. The secretary of agriculture may promulgate regulations specifying the manner by which the characterizing flavor of the frozen dessert shall be declared. The terms of such regulation shall conform to those which are required in the case of the characterizing flavor declaration by statutes or regulations for ice cream. [C71, 73, 75, §190A.4]

190A.5 Labeling requirements. The name vegetable fat frozen dessert, mellorine, or imitation frozen dessert shall appear on any label required by law or departmental rules on packages or containers of such products, in such type size and with such prominence as may be readily seen and understood under normal conditions of purchase. Vegetable fat frozen dessert, mellorine, or imitation frozen dessert may not be designated by the use of the word "cream" or its phonetic equivalent. Products made in accordance with this chapter shall be labeled "vegetable fat frozen dessert" when the food fat portion thereof contains only vegetable fats or oils, and shall be labeled "mellorine" when vegetable fats or oils are blended and in combination with animal fats or oils (other than milk fat) or when the food portion contains an animal fat or oil or a blend of animal fats or oils. The container or wrapper shall bear labeling declaring all the ingredients therein in the order of their decreasing predominance; whether any fat or oil ingredient is hydrogenated or hardened, and

the number of United States Pharmacopoeia units of vitamin A added if any is present. [C71, 73, 75,§190A.5]

190A.6 False advertising. The false and misleading advertising of vegetable fat frozen dessert, mellorine, or imitation frozen dessert is prohibited. An advertisement of these foods shall be deemed to be false and misleading if in such advertisement representations are made or suggested by statement, word, grade, designation, design, device, symbol, sound, or any combination thereof, that such food is a dairy product, except that nothing contained herein shall prevent a truthful, accurate, and full statement in any such advertisement of all the ingredients in such foods. [C71, 73, 75, §190A.6]

190A.7 Signs posted. Any imitation frozen dessert manufactured, sold, or offered for sale in such manner that a label is required by law or departmental rule shall be designated on such label as imitation frozen dessert, however, any special frozen dietary dessert manufactured and sold under the provisions of any law or regulation of this state, shall not be considered an imitation frozen dessert for the purposes of this section. A sign shall be posted in every retail establishment where "vegetable fat frozen dessert", "mellorine" or "imitation frozen dessert" is sold in other than factory-filled packages. This sign shall state in letters of such size as to be visible and easily read by the purchaser at the point of sale: (*Name of product*) SOLD HERE. Failure to comply with any of the provisions of this section shall constitute misbranding and is hereby prohibited. [C71, 73, 75,§190A.7]

190A.8 Violations. The preparation, storage, packaging, labeling, sale, offering for sale, serving, or dispensing of vegetable fat frozen dessert or mellorine, in violation of this chapter is hereby prohibited. The false and misleading advertising of vegetable fat frozen dessert or mellorine, in violation of this chapter, is hereby prohibited. Preparation of vegetable fat frozen dessert or mellorine in violation of section 190.12 is hereby prohibited. [C71, 73, 75,§190A.8]

190A.9 Administration by secretary. The secretary of agriculture shall administer and supervise the enforcement of this chapter, prescribe rules and regulations to carry out its purposes, provide for periodic inspections and investigations as deemed necessary, receive and provide for the investigation of complaint, and provide for the institution and prosecution of civil or criminal actions or both. The provisions of this chapter and the rules and regulations issued thereunder may be enforced by injunction in any court having jurisdiction to grant injunctive relief, and adulterated or misbranded articles illegally held or otherwise involved in a violation of this chapter or of rules and regulations shall be subject to seizure and disposition in accordance with an order of court. [C71, 73, 75,§190A.9]

190A.10 Dry powder mix. No dry powder mix, as defined by this chapter, shall be required to be repasteurized after being liquefied. [C71, 73, 75,§190A.10]

CHAPTER 191

LABELING FOODS

Referred to in §§190.1(45, 50), 191.2(9), 191.4, 192.5, 192.11, 192.12, 192.13, 192.14, 192.26, 192.30, 192.32

See also reference in §210.12
General penalty, §189.21

191.1 Label requirements.
191.2 Dairy products and imitations.
191.3 Sale of imitation products — notice to public—penalties.
191.4 "Person" defined.
191.5 Advertising oleomargarine—restrictions.
191.6 Standards for oleomargarine.
191.7 Enforcement of oleomargarine law.
191.8 Baking powder and vinegar.
191.9 Repealed by 64GA, ch 146,§1.

191.1 Label requirements. All food offered or exposed for sale, or sold in package or wrapped form, shall be labeled on the package or container as prescribed in sections 189.9 to 189.12, inclusive, unless otherwise provided in this chapter. [C97,§§2517, 2519, 4989; S13, §§2515-b,-c; SS15,§4999-a31c; C24, 27, 31, 35, 39, §3067; C46, 50, 54, 58, 62, 66, 71, 73, 75,§191.1]

191.2 Dairy products and imitations. The products enumerated below shall be labeled on the side or top of the container or package in which placed, kept, offered or exposed for sale, or sold as prescribed in sections 189.9 to 189.12, inclusive, except that the label shall be printed in letters not less than three-quarters inch in height and one-half inch in width and subject to the following regulations:

1. *Renovated butter.* Renovated butter shall be labeled with the words "Renovated Butter", and if offered or exposed for sale or sold in prints or rolls the wrapper of each and the con-

tainer as required above shall be so labeled. If such butter is offered or exposed for sale uncovered and not in a container or package, a placard containing the required label shall be attached to the mass so as to be easily seen by the purchaser.

2. *Oleomargarine.* No person shall sell or offer for sale, colored oleo, oleomargarine or margarine unless—such oleo, oleomargarine or margarine is packaged; the net weight of the contents of any package sold in a retail establishment is one pound or less; there appears on the label of the package the word "oleo", "oleomargarine" or "margarine" in type or lettering at least as large as any other type or lettering on such label, and a full and accurate statement of all the ingredients contained in such oleo, oleomargarine or margarine; and each part of the contents of the package is contained in a wrapper which bears the word "oleo", "oleomargarine" or "margarine" in type or lettering not smaller than twenty-point type.

For the purposes of this chapter the term "oleo", "oleomargarine" or "margarine" includes all substances, mixtures and compounds known as oleo, oleomargarine or margarine, and all substances, mixtures and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter. For the purposes of this chapter colored oleo, oleomargarine or margarine is oleo, oleomargarine or margarine to which any color has been added.

Whenever coloring of any kind has been added it shall be clearly stated on both inside wrapper and the outside package. The ingredients of oleo, oleomargarine or margarine shall be listed on both the inside wrapper and outside package in the order of the amounts of ingredients in the package.

Such oleo, oleomargarine or margarine shall contain vitamin A in such quantity that the finished oleo, oleomargarine or margarine contains not less than fifteen thousand United States Pharmacopoeia units of vitamin "A" per pound, as determined by the method prescribed in the Pharmacopoeia of the United States for the total biological vitamin "A" activity.

3. *Imitation cheese.* Imitation cheese shall be labeled with the words "Imitation Cheese" on the cheese and on the package.

4. *Nonfat dry milk.* For the purposes of this chapter the product resulting from the removal of fat and water from milk and containing the lactose, milk proteins, and milk minerals in the same relative proportions as in the fresh milk from which it was made may be labeled and sold as "nonfat dry milk". It shall contain not over five percent by weight of moisture and the fat content shall not be over one and one-half percent by weight unless otherwise indicated.

5. All bottles, containers, and packages enclosing milk or milk products as defined in section 190.1, subsections 6 and 38 to 57, shall be conspicuously labeled or marked with:

a. The name of the contents as given in the definitions of this chapter and chapters 190 and 192.

b. The word "reconstituted" or "recombined" if the product is made by reconstitution or recombination.

c. The grade of the contents.

d. The word "pasteurized" if the contents are pasteurized and the identity of the plant where pasteurized.

e. The word "raw" if the contents are raw and the name or other identity of the producer.

f. The designation vitamin "D" and the number of U.S.P. units per quart in the case of vitamin "D" milk or milk products.

g. The volume or proportion of water to be added for recombining in the case of concentrated milk or milk products.

h. The words "nonfat milk solids added" and the percentage added if such solids have been added, except that this requirement shall not apply to reconstituted or recombined milk and milk products.

i. The words "artificially sweetened" in the name if nonnutritive or artificial sweeteners or both are used.

j. The common name of stabilizers, distillates, and ingredients, provided that:

(1) Only the identity of the milk producer shall be required on cans delivered to a milk plant which receives only grade "A" raw milk for pasteurization, and which immediately dumps, washes, and returns the cans to the milk producer.

(2) The identity of both milk producer and the grade shall be required on cans delivered to a milk plant which receives both grade "A" raw milk for pasteurization and ungraded raw milk and which immediately dumps, washes, and returns the cans to the milk producer.

(3) In the case of concentrated milk products, the specific name of the product shall be substituted for the generic term "concentrated milk products", e.g., "homogenized concentrated milk", "concentrated skim milk", "concentrated chocolate milk", "concentrated chocolate flavored low fat milk".

(4) In the case of flavored milk or flavored reconstituted milk, the name of the principal flavor shall be substituted for the word "flavored".

(5) In the case of cultured milk and milk products, the special type culture used may be substituted for the word "cultured", e.g., "acidophilus buttermilk", "Bulgarian buttermilk", and "yogurt".

Referred to in §192.14

6. All vehicles and transport tanks containing milk or milk products shall be legibly

marked with the name and address of the milk plant or hauler in possession of the contents.

Referred to in §192.14

7. Tanks transporting raw milk and milk products to a milk plant from sources of supply not under the supervision of the secretary or authorized municipal corporation are required to be marked with the name and address of the milk plant or hauler and shall be sealed; in addition, for each such shipment, a shipping statement shall be prepared containing at least the following information:

a. Shipper's name, address, and permit number.

b. Permit number of hauler, if not employee of shipper.

c. Point of origin of shipment.

d. Tanker identity number.

e. Name of product.

f. Weight of product.

g. Grade of product.

h. Temperature of product.

i. Date of shipment.

j. Name of supervising health authority at the point of origin.

k. Whether the contents are raw, pasteurized, or otherwise heat treated.

Such statement shall be prepared in triplicate and shall be kept on file by the shipper, the consignee, and the carrier for a period of six months for the information of the secretary.

Referred to in §192.14

8. The labeling information which is required on all bottles, containers, or packages of milk or milk products shall be in letters of an acceptable size, kind, and color satisfactory to the secretary and shall contain no marks or words which are misleading.

Referred to in §192.14

9. Milk and milk products are misbranded:

a. When their container bears or accompanies any false or misleading written, printed, or graphic matter.

b. When such milk and milk products do not conform to their definitions as contained in chapters 190, 191 and 192.

c. When such products are not labeled in accordance with this section. [C97,§§2517, 4989; S13,§§2515-b,-c; C24, 27, 31, 35, 39,§3068; C46, 50, 54, 58, 62, 66, 71, 73, 75,§191.2]

Referred to in §192.14

191.3 Sale of imitation products—notice to public—penalties. Every person owning or in charge of any place where food or drink is sold who uses or serves therein imitation cheese, as in this title defined, shall display at all times opposite each table or place of service a placard for such imitation, with the words "Imitation ..... served here", without other matter, printed in black roman letters not less than three inches in height and two inches in width, on a white card twelve by twenty-two inches in dimensions.

No person shall possess in a form ready for serving colored oleo, oleomargarine or margarine at a public eating place unless a notice that oleo, oleomargarine or margarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the ordinary individual being served in such eating place or is printed or is otherwise set forth on the menu in type or lettering not smaller than that normally used to designate the serving of other food items. No person shall serve colored oleo, oleomargarine or margarine at a public eating place, whether or not any charge is made therefor, unless each separate serving bears or is accompanied by labeling identifying it as oleo, oleomargarine or margarine, or each separate serving thereof is triangular in shape.

Any person violating any provision of this section shall upon conviction or plea of guilty be punished, for the first offense by a fine of one hundred dollars; for the second offense by a fine of three hundred dollars; for the third offense by a fine of five hundred dollars and the suspension for one year of all licenses issued by the state of Iowa for the public eating place in which said violation occurred. [C97,§2517; C24, 27, 31, 35, 39,§3069; C46, 50, 54, 58, 62, 66, 71, 73, 75,§191.3]

191.4 "Person" defined. "Person" as used in chapters 190, 191, and 192 means any individual, plant operator, partnership, corporation, company, firm, trustee, or association. [C54, 58, 62, 66, 71, 73, 75,§191.4]

191.5 Advertising oleomargarine — restrictions. No person, by himself, or agent, shall, by any means whatever, directly or indirectly, advertise or represent by statement, printing, writing, circular, poster, design, device, grade designation, advertisement, symbol, sound, or any combination thereof, that oleo, oleomargarine or margarine, or any brand of oleo, oleomargarine or margarine, is a dairy product for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase for consumption of oleo, oleomargarine or margarine, or any brand thereof. Whoever shall violate this provision shall be deemed guilty of a misdemeanor. [C54, 58, 62, 66, 71, 73, 75,§191.5]

191.6 Standards for oleomargarine. The department of agriculture may prescribe and establish standards for oleo, oleomargarine or margarine manufactured or sold in this state and may adopt the standards set up by now existing regulations of the federal security administration or agency as found in 1949, Code of Federal Regulations, Title 21, Part 45, section 45.0, or any amendments thereto. Any standards so established shall not be contrary to or inconsistent with the provisions of section 190.1, subsection 2 entitled "Oleo, oleomargarine or margarine." [C54, 58, 62, 66, 71, 73, 75,§191.6]

191.7 Enforcement of oleomargarine law. It shall be the duty of the secretary of agriculture and his agents to enforce this chapter and of the county attorneys and of the attorney general of the state to co-operate with him in the enforcement of this chapter. [C54, 58, 62, 66, 71, 73, 75,§191.7]

Oleomargarine provisions made a part of title X, 55GA, ch 97,§9

191.8 Baking powder and vinegar. Baking powder and distilled vinegar shall show on the label the name of each ingredient from which made. Distilled vinegar shall be marked as such; and cider vinegar which, having been in excess of the standard of acidity, has been reduced to the standard, shall have that fact indicated on the label. [SS15,§§4999-a31,-a31c; C24, 27, 31, 35, 39,§3070; C46, 50,§191.4; C54, 58, 62, 66, 71, 73, 75,§191.8]

Constitutionality, 55GA, ch 97,§11

191.9 Repealed by 64GA, ch 146,§1.

CHAPTER 191A

FOOD AND BEVERAGE VENDING MACHINES

191A.1 Definitions.
191A.2 License to operate.
191A.3 Application.
191A.4 Fees.
191A.5 Application of moneys.
191A.6 Identification tag.
191A.7 Disciplinary action.
191A.8 Inspection.
191A.9 Applicable provisions.
191A.10 Rules.
191A.11 Exceptions to license.
191A.12 Penalty.

191A.1 Definitions. For the purpose of this chapter:

1. *"Commissary"* or *"vending machine commissary"* means a catering establishment or restaurant or any other place in which food, food containers, or food supplies are kept, handled, prepared, packaged, or stored, and any place directly from which vending machines are serviced, but shall not mean a place of temporary storage at a vending machine location.

2. *"Food"* means any articles used by man or domestic animals for food, drink confectionery, or condiment, or which enters into composition of the same, whether simple, blended, mixed, or compound.

3. *"Machine location"* means the room, enclosure, space, or area where one or more vending machines are installed and operated.

4. *"Operator"* means any person who by contract, agreement, or ownership takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more vending machines.

5. *"Potentially hazardous food"* means any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

6. *"Vending machine"* means any self-service device which, upon insertion of a coin or token, or by other similar means, dispenses unit servings of food, either in bulk or in packages without the necessity of replenishing the device between each vending operation.

7. *"Perishable food"* means any food of a type or in a condition which may spoil.

8. *"Department"* means the state department of agriculture of Iowa.

9. *"Secretary"* means the secretary of agriculture of the state of Iowa. [C73, 75,§191A.1]

191A.2 License to operate. No person shall operate one or more vending machines until he has obtained a vending machine operator's license from the department of agriculture. The license shall expire one year from the date of original issuance and be renewed annually. Vending machines dispensing only ball gum, or similar nonperishable snacks as prescribed and defined by regulation of the secretary, or bottled or canned soft drinks shall not require a license or be subject to the fee schedule provided in this chapter, but may be inspected pursuant to section 191A.8. [C73, 75,§191A.2]

191A.3 Application. Every application for a vending machine operator's license shall be made upon a form furnished by the department. The application form shall provide for obtaining information relating to ownership of commissaries, location of commissaries, location of shops and other servicing centers, and the total number of licensable vending machines by general product type owned and operated by the applicant and such other information required by the secretary. The operator shall agree in the application to maintain within the jurisdiction of the department a complete list of all vending machines and machine locations operated by the applicant and to make the list available to the department at the time of inspection or auditing. [C73, 75,§191A.3]

191A.4 Fees. The department shall collect the following fees for a vending machine operator's license:

Number of Machines Operated	Fee Required
1—3	$ 5.00
4—10	25.00
11—25	35.00
26—50	50.00
51—100	100.00
101—200	150.00
201—300	200.00
301—400	250.00
401—500	300.00
501 and over	400.00

Fees for a vending machine commissary shall be the same as those for a restaurant or food establishment, whichever is applicable, as set forth in section 170.5.

The vending machine operator's license shall not be transferable from one person to another, but shall require an immediate application and the payment of a new fee. [C73, 75,§191A.4]

191A.5 Application of moneys. All fees collected by the department under the requirements of this chapter shall be paid into the hotel and restaurant fund established in section 170.7, and shall be expended as authorized in such section. [C73, 75,§191A.5]

191A.6 Identification tag. Each vending machine licensed under the provisions of this chapter shall bear a readily visible identification tag or decal provided by the licensee, containing his business address and phone number, and a company permit number assigned by the department. [C73, 75,§191A.6]

191A.7 Disciplinary action. Any license issued under this chapter may be revoked by the department for violation by the licensee of any provision of this chapter or any applicable rules or regulations of the department. In lieu of license revocation, the department may require the immediate discontinuance of operation of any vending machine or commissary whenever the department finds unsanitary conditions or any other conditions which constitute a substantial hazard to the public health. The order shall apply only to the vending machines, commissary, or product involved. Any person whose license is revoked, or who is ordered to discontinue the operation of any vending machine or commissary, may appeal such decision to the secretary. The secretary or his designee shall schedule and hold a hearing upon the appeal not later than thirty days from the time of revocation or the order of discontinuance, and shall issue his decision immediately following the hearing. Judicial review may be sought in accordance with the terms of the Iowa administrative procedure Act. [C73, 75,§191A.7]

191A.8 Inspection. The department shall inspect all vending machine commissaries at least once each calendar year, and shall inspect representative vending machines and vehicles as often as deemed necessary to determine compliance with this chapter and applicable rules of the department. Section 170.47 shall be applicable to the operation of vending machines. [C73, 75,§191A.8]

Referred to in §191A.2

191A.9 Applicable provisions. The provisions of sections 170.46, 170.50, and 170.51 shall apply in the enforcement of this chapter. [C73, 75,§191A.9]

191A.10 Rules. The department shall promulgate rules governing requirements for sanitation of vended foods and beverages not inconsistent with the terms of this chapter nor federal standards governing the requirements for sanitation of vended foods and beverages. Such rules shall set forth:

1. Materials and type of interior and exterior construction of commissaries and vending machines.
2. Machine location and operation.
3. Water supply.
4. Waste disposal.
5. Other factors affecting the purity of food or beverage processed or dispensed. [C73, 75, §191A.10]

191A.11 Exceptions to license.

1. Vending machines licensed under this chapter dispensing only packaged milk or cream, shall not be required to be licensed with a retail milk dealer license under section 192.1.

2. The food establishment license or the restaurant license required by section 170.2 shall not be required for the area where vending machines licensed under this chapter are located. [C73, 75,§191A.11]

191A.12 Penalty. Any person who violates any provision of this chapter shall, upon conviction, be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days. [C73, 75,§191A.12]

CHAPTER 192

PRODUCTION AND SALE OF DAIRY PRODUCTS

Referred to in §§190.1 (45, 50), 191.2(5, 9), 191.4, 192.12, 192.32

General penalty, §189.21

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192.66 Bulk tanks on farms for milk.

192.1 Milk license. Every person engaging in the sale of milk or cream at retail, in any city, shall obtain a milk dealer's license from the department.* [C97,§2525; S13,§2515-a; C24, 27, 31, 35, 39,§**3071**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§192.1]

Referred to in §§191A.11, 192.2, 192A.23
"Person" defined, §191.4
*See §189.1

192.2 Exemptions. Section 192.1 shall not apply:

1. To persons who supply milk or cream to establishments engaged in the manufacture of dairy products.

2. To persons who sell milk or cream from a vehicle. [S13,§2515-a; C24, 27, 31, 35, 39,§**3072**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§192.2]

192.3 Fee. The fee for said license shall be three dollars for each place from which sales are made. The license shall expire on July 4 after the date of issue and shall not be transferable. [C97,§2525; S13,§2515-a; C24, 27, 31, 35, 39,§**3073**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§192.3]

192.4 Contents of license. Such license shall be issued only to the person owning or leasing the place from which sales are to be made; and each license shall contain the name, residence, and place of business of the licensee. [C97, §2525; S13,§2515-a; C24, 27, 31, 35, 39,§**3074**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§192.4]

192.5 Milk or milk products permit. It shall be unlawful for any person who does not possess a permit from the secretary or authorized municipal corporation to bring into, send into, or receive into the state for sale, or to sell, or offer for sale therein, or to have in storage any milk or milk products defined in this chapter and chapters 190 and 191; provided that, grocery stores, restaurants, soda fountains, and similar establishments where milk or milk products or both are served or sold at retail, but not processed, may be exempt from the requirements of this section.

Only a person who complies with the requirements of this chapter and chapters 190 and 191 shall be entitled to receive and retain such a permit from the department or authorized municipal corporation. Permits shall not be transferable with respect to persons or locations.

The secretary or authorized municipal corporation shall suspend such permit whenever there is reason to believe that a public health hazard exists, or whenever the permit holder has violated any of the requirements of said chapters or whenever the permit holder has interfered with the secretary or authorized municipal corporation in the performance of their duties: Except, where the milk or milk product involved creates, or appears to create, an imminent hazard to the public health; or in any case of a willful refusal to permit authorized inspection, the secretary or authorized municipal corporation shall serve upon the holder a written notice of intent to suspend the permit. The notice shall specify with par-

ticularity the violations in question and afford the holder such reasonable opportunity to correct such violations as may be agreed to by the parties, or in the absence of agreement, fixed by the secretary or authorized municipal corporation before making any order of suspension effective. A suspension of permit shall remain in effect until the violation has been corrected to the satisfaction of the secretary or authorized municipal corporation.

Upon written application of any person whose permit has been suspended, or upon application within forty-eight hours of any person who has been served with a notice of intention to suspend, and in the latter case before suspension, the secretary or authorized municipal corporation shall within seventy-two hours proceed to a hearing to ascertain the facts of such violation or interference and upon evidence presented at such hearing shall affirm, modify, or rescind the suspension or intention to suspend.

Upon repeated violation, the secretary or authorized municipal corporation may revoke such permit following reasonable notice to the permit holder and an opportunity for a hearing. This section is not intended to preclude the institution of court action as provided in sections 192.11 and 192.16.

The provisions of this section are intended for the regulation of the production, processing, labeling, and distribution of grade "A" milk and grade "A" milk products under sanitary requirements which are uniform throughout the state. [C71, 73, 75,§192.5]

Referred to in §§192.11, 192.14, 192.16, 192.31, 192.33

192.6 Repealed by 64GA, ch 1048,§7.

192.7 Pasteurization. Every owner, manager, or operator, of a creamery or ice cream factory shall before delivering to any person any skimmed milk, ice cream or buttermilk, cause such skimmed milk and the cream or milk from which such ice cream or buttermilk is derived to be pasteurized and in addition cream or milk used shall be procured from cows that have been tuberculin tested at least once a year and found free from tuberculosis and the production of which milk and cream has been supervised and certified to by the Iowa department of agriculture as having been produced and handled under proper sanitary conditions. [S13,§4989-a; C24, 27, 31, 35, 39, §3076; C46, 50, 54, 58, 62, 66,§192.6; C71, 73, 75,§192.7]

41GA, ch 60,§1, and 42GA, ch 257,§1, editorially divided
Referred to in §192.10

192.8 Definitions. For the purpose of this title, unless the context otherwise requires:

1. *"Pasteurization", "pasteurized"*, and similar terms mean the process of heating every particle of milk or milk product to at least 145°F., and holding it continuously at or above this temperature for at least thirty minutes, or to at least 161° F., and holding it continuously at or above this temperature for at least fifteen seconds, in equipment which is properly operated and approved by the secretary or authorized municipal corporation; except, that milk products which have a higher milk fat content than milk or contain added sweeteners or both shall be heated to at least 150° F., and held continuously at or above that temperature for at least thirty minutes, or to at least 166°F., and held continuously at or above that temperature for at least fifteen seconds. Nothing in this definition shall be construed as barring any other pasteurization process which has been recognized by the United States public health service to be equally efficient and which is approved by the department of agriculture.

Referred to in §192.21(16)

2. *"Sanitation"* is the application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable. Such treatment shall not adversely affect the equipment, the milk or milk product or the health of consumers, and shall be acceptable to the secretary or authorized municipal corporation.

3. A *"milk producer"* is any person who operates a dairy farm and provides, sells, or offers milk for sale to a milk plant, receiving station, or transfer station.

4. A *"milk hauler"* is any person who transports raw milk or raw milk products or both to or from a milk plant or a receiving or transfer station.

5. A *"milk distributor"* is any person who offers for sale or sells to another any milk or milk products.

6. A *"dairy farm"* is any place or location where one or more cows or goats are kept, and from which a part or all of any milk or milk product is provided, sold, or offered for sale to a milk plant, transfer station, or receiving station.

7. A *"milk plant"* or *"receiving station"* is any place, location, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution.

8. A *"transfer station"* is any place, location, or establishment where milk or milk products are transferred directly from one transport tank to another.

9. An *"official laboratory"* is a biological, chemical, or physical laboratory which is under the direct supervision of the department or authorized municipal corporation.

10. An *"officially designated laboratory"* is a commercial laboratory authorized to do official work by the department or authorized municipal corporation, or a milk industry laboratory officially designated by the department or authorized municipal corporation for the examination of producer samples of grade "A" raw milk for pasteurization.

11. *"Municipal corporation"* means any political subdivision of this state. [S13,§§4989-a; C24,

§3076; C27, 31, 35,§3076-b1; C39,§3076.1; C46, 50, 54, 58, 62, 66,§192.7; C71, 73, 75,§192.8]

Referred to in §§192.10, 192.21(16)

192.9 Record. Every owner, manager or operator of a milk plant, creamery, or ice cream factory, shall equip each vat or pasteurizer used in pasteurizing milk, cream or dairy products with an accurate recording thermometer and an accurate indication thermometer. Each temperature chart from such recording thermometer shall be identified with the date, the identification of material pasteurized and be initialed by the person responsible for the pasteurization and be kept on file for six months for the inspection of the department. [C27, 31, 35,§3076-b2; C39,§3076.2; C46, 50, 54, 58, 62, 66,§192.8; C71, 73, 75,§192.9]

Referred to in §192.10

192.10 Injunction. Any owner, manager, or operator of a creamery, or ice cream factory, violating any of the provisions of sections 192.7 to 192.9, inclusive, may be restrained by injunction from operating any such business. No injunction shall issue until after the defendant has had at least five days' notice of the application therefor and the time fixed for hearing thereon. [C27, 31, 35,§3076-b3; C39, §3076.3; C46, 50, 54, 58, 62, 66,§192.9; C71, 73, 75,§192.10]

Injunction, ch 664

192.11 Grade "A" exclusively to be sold. Only grade "A" pasteurized milk and milk products shall be sold to the final consumer, or to restaurants, soda fountains, grocery stores, or similar establishments; except in an emergency, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the secretary, in which case, such products shall be labeled "ungraded".

No person shall within the state produce, provide, sell, offer, or expose for sale, or have in possession with intent to sell, any milk or milk product which is adulterated or misbranded; except, in an emergency, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the secretary, in which case such products shall be labeled "ungraded".

Any adulterated or misbranded milk or milk product may be impounded by the secretary or authorized municipal corporation and disposed of in accordance with applicable laws or regulations.

Each dairy farm, milk plant, receiving station, and transfer station whose milk or milk products are intended for consumption as grade "A" pasteurized milk and milk products shall be inspected by the secretary prior to the issuance of the permit provided for in section 192.5. However, if any municipal corporation makes application to the secretary for authority to conduct such inspections, the secretary, upon finding that such municipal corporation has qualified personnel to perform the same, shall enter into agreements with the municipal corporation providing for such inspection. Inspection by either the secretary or approved municipal corporation shall be acceptable for issuance of such permit by the secretary or municipal corporation.

When inspections are conducted and permits are issued by a municipal corporation under this chapter, in a manner which the secretary deems consistent with the provisions of this chapter and chapters 190 and 191, as evidenced by the annual survey by the state department of health provided for in section 192.31, the secretary shall accept such procedures in lieu of administration of the provisions of said chapters by the state, within the jurisdiction involved. In the event the survey required in section 192.31 indicates that a municipal corporation is acting in a manner which is inconsistent with the provisions of said chapters, the secretary may revoke the agreement with the municipal corporation after notice and hearing, in the manner described for permit revocation in section 192.5 and perform such acts as are necessary to regulate grade "A" milk and milk products in such jurisdiction in conformity herewith.

Following the issuance of such permit, each dairy farm and transfer station shall be inspected at least once every six months and each milk plant and receiving station shall be inspected at least once every three months. Should the violation of any requirement set forth in sections 192.19 through 192.25 be found to exist, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before three days from the previous inspection. The reinspection shall be used to determine compliance with the requirements of said sections. Any violation of the same requirement of said sections on such reinspection shall call for permit suspension in accordance with section 192.5 or court action or both.

One copy of the inspection report shall be handed to the operator, or other responsible person, or be posted in a conspicuous place on an inside wall of the establishment. The inspection report shall not be defaced and shall be made available to the secretary upon request. An identical copy of the inspection report shall be filed with the records of the secretary or authorized municipal corporation. [C24, 27, 31, 35, 39,§3077; C46, 50, 54, 58, 62, 66,§192.10; C71, 73, 75,§192.11]

Referred to in §§192.5, 192.14, 192.30

192.12 Access to premises. Every milk producer, hauler, distributor, or plant operator shall, upon request of the secretary or authorized municipal corporation, permit access of officially designated persons to all parts of his establishment or facilities to determine compliance with the provisions of chapters 190, 191 and 192. A distributor or plant operator shall furnish the secretary or authorized municipal corporation, upon request, for official use only, a true statement of the actual quantities of

milk and milk products of each grade purchased and sold, and a list of all sources of such milk and milk products, records of inspections, tests, and pasteurization time and temperature records. [C71, 73, 75,§192.12]

192.13 Trade secrets protected. It shall be unlawful for any person who in an official capacity obtains any information under the provisions of this chapter or chapter 191 which is entitled to protection as a trade secret, including information as to quantity, quality, source or disposition of milk or milk products, or results of inspections or tests thereof, to use such information to his own advantage or to reveal it to any unauthorized person. [C71, 73, 75,§192.13]

192.14 Samples to be taken periodically. During any consecutive six months, at least four samples of raw milk for pasteurization shall be taken from each producer having a permit as defined in section 192.5 and four samples of raw milk for pasteurization shall be taken from each milk plant having such a permit after receipt of the milk by the milk plant and prior to pasteurization. In addition, during any consecutive six months, at least four samples of pasteurized milk and at least four samples of each milk product defined in this chapter and chapters 190 and 191 shall be taken from every such milk plant. Such samples of milk and milk products shall be taken while in possession of the producer or distributor at any time prior to final delivery. Samples of milk and milk products from dairy retail stores, restaurants and food establishments as defined in chapter 170, grocery stores, vending machines, and other places where milk and milk products are sold shall be examined periodically as determined by the secretary or authorized municipal corporation and the results of such examination shall be used to determine compliance with sections 190.5, 191.2, subsections 5 to 9, inclusive, 192.11, 192.23, 192.24 and 192.25. Proprietors of such establishments shall furnish the secretary or authorized municipal corporation, upon their request, with the names of all the distributors from whom milk or milk products are obtained. [C24, 27, 31, 35, 39,§3077; C46, 50, 54, 58, 62, 66,§192.10; C71, 73, 75,§192.14]

192.15 Bacterial counts taken. Required bacterial counts and cooling temperature checks shall be performed on grade "A" raw milk for pasteurization. In addition, antibiotic tests on each producer's milk or on commingled raw milk shall be conducted at least four times during any consecutive six months. When commingled milk is tested, all producers shall be represented in the sample. All individual sources of milk shall be tested when test results on the commingled milk are positive. Required bacterial counts, coliform determinations, phosphatase, and cooling temperatures checks shall be performed on pasteurized milk and milk products. [C71, 73, 75, §192.15]

192.16 Notice of excessive counts. Whenever two of the last four consecutive bacteria counts, coliform determinations, or cooling temperatures, taken on separate days exceed the limit of the standard for the milk or milk products or both, the secretary or authorized municipal corporation shall send a written notice thereof to the person concerned. The notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard. An additional sample shall be taken within fourteen days of the sending of such notice, but not before the lapse of three days from the previous sampling. Immediate suspension of permit in accordance with section 192.5 or court action or both shall be instituted whenever the standard is violated by three of the last five bacteria counts, coliform determinations, or cooling temperatures. [C71, 73, 75,§192.16]

Referred to in §192.5

192.17 Positive phosphatase test. Whenever a phosphatase test is positive, the cause shall be determined. Where the cause is improper pasteurization, the cause shall be corrected and any milk or milk product involved shall not be offered for sale. [C71, 73, 75,§192.17]

192.18 Analytical laboratory. Samples shall be analyzed at an official or appropriate officially designated laboratory. All sampling procedures and required laboratory examinations shall be in substantial compliance with the Standard Methods for the Examination of Dairy Products, Eleventh Edition 1960, of the American Public Health Association, and the Official Methods of Analyses of the Association of Official Agricultural Chemists, Tenth Edition 1965. Such procedures and examinations shall be evaluated in accordance with the methods of evaluating milk laboratories recommended by the United States public health service. Examinations and tests shall be conducted to detect adulterants, including pesticides, as the secretary shall require. Assays of vitamin "D" milk or milk products or fortified milk and milk products or both shall be made at least annually in a laboratory acceptable to the secretary. [C71, 73, 75,§192.18]

192.19 Table of standards. All grade "A" raw milk for pasteurization and all grade "A" pasteurized milk and milk products shall be produced, processed, and pasteurized to conform with the following chemical, bacteriological, and temperature standards, and the sanitation requirements of this chapter.

No process or manipulation other than pasteurization, processing methods integral therewith, and appropriate refrigeration shall be applied to milk and milk products for the purpose of removing or deactivating microorganisms.

Chemical, Bacteriological and Temperature Standards for Grade "A" Milk and Milk Products.

Grade "A" raw milk for pasteurization.	Temperature	Cooled to 50° F. or less and maintained thereat until processed.
	Bacterial limits	Individual producer milk not to exceed 100,000 per milliliter prior to commingling with other producer milk. Not exceeding 300,000 per milliliter as commingled milk prior to pasteurization.
	Antibiotics	No detectible antibiotic residues.
Grade "A" pasteurized milk and milk products (except cultured products).	Temperature	Cooled to 45° F. or less and maintained thereat, except when on delivery vehicles.
	Bacterial limits	Milk and milk products—20,000 per milliliter.
	Coliform limit	Not exceeding 10 per milliliter.
	Phosphatase	Less than 1 microgram per milliliter, by Scharer Rapid Method (or equivalent by other means).
Grade "A" pasteurized cultured products.	Temperature	Cooled to 45° F. or less and maintained thereat, except when on delivery vehicles.
	Coliform limit	Not exceeding 10 per milliliter.
	Phosphatase	Less than 1 microgram per milliliter, by Scharer Rapid Method (or equivalent by other means).
	Bacterial limits	Exempt.

[C71, 73, 75,§192.19]
Referred to in §192.11

192.20 Sanitation requirements for grade "A" raw milk for pasteurization.

1. Cows which show evidence of the secretion of abnormal milk in one or more quarters based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment, and the milk shall be discarded. Cows treated with, or cows which have consumed chemical, medicinal or radioactive agents which are capable of being secreted in the milk and which, in the judgment of the health authority, may be deleterious to human health, shall be milked last or with separate equipment, and the milk disposed of as the health authority may direct.

2. A milking barn, stable, or parlor shall be provided on all dairy farms in which the milking herd shall be housed during milking time operations. The areas used for milking purposes shall:

a. Have floors constructed of concrete or equally impervious material.

b. Have walls and ceilings which are smooth, painted or finished in an approved manner and are in good repair and ceilings shall be dust tight.

c. Have separate stalls or pens for horses, calves, and bulls.

d. Be provided with natural or artificial light, or both, well distributed for day milking or night milking, or both.

e. Provide sufficient airspace and air circulation to prevent condensation and excessive odors.

f. Not be overcrowded.

g. Have dust-tight covered boxes or bins or separate storage facilities for ground, chopped, or concentrated feed.

The interior of such places shall be kept clean. Floors, walls, windows, pipe lines, and equipment shall be free of filth and litter and shall be clean. Swine and fowl shall be kept out of the milking barn.

3. Cow yards shall be graded and drained and shall have no standing pools of water or accumulations of organic wastes. In loafing or cattle-housing areas, cow droppings and soiled bedding shall be removed or clean bedding added at sufficiently frequent intervals to prevent the soiling of the cow's udder and flanks. Waste feed shall not be allowed to accumulate. Manure packs shall be properly drained and shall provide a reasonably firm footing. Swine shall be kept out of the cow yard.

4. A milk house or room of sufficient size shall be provided in which the cooling, handling, and storing of milk and the washing, sanitizing, and storing of milk containers and utensils shall be conducted.

The milk house shall be provided with a smooth floor constructed of concrete or equally impervious material graded to drain and maintained in good repair. Liquid waste shall be disposed of in a sanitary manner. All floor drains shall be accessible and shall be trapped if connected to a sanitary sewer system.

The walls and ceilings shall be constructed of smooth material, shall be in good repair,

and shall be well painted or finished in an equally suitable manner.

The milk house shall have adequate natural or artificial light or both and be well ventilated.

The milk house shall be used for no other purpose than milk house operations. There shall be no direct opening into any barn, stable, or into a room used for domestic purposes; except, a direct opening between the milk house and milking barn, stable, or parlor shall be permitted when one or more tight-fitting, self-closing solid doors hinged to be single or double acting is provided.

Water under pressure shall be piped into the milk house.

The milk house shall be equipped with a two-compartment wash vat and adequate hot water heating facilities.

5. When a transportation tank is used for the cooling and storage of milk on the dairy farm, such tank shall be provided with a suitable shelter for the receipt of milk. Such shelter shall be adjacent to, but not a part of, the milk room and shall comply with the requirements of the milk room with respect to construction, light, drainage, insect and rodent control, and general maintenance.

6. The floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, nonproduct contact surfaces of milk containers, utensils, and equipment, and other milk room equipment shall be clean. Only articles directly related to milk room activities shall be permitted in the milk room. The milk room shall be free of trash, animals, and fowl.

7. Every dairy farm shall be provided with one or more toilets, conveniently located and properly constructed, operated, and maintained in a sanitary manner. The waste shall be inaccessible to flies and shall not pollute the soil surface or contaminate any water supply.

8. Water for milk house and milking operations shall be from a supply properly located, protected, and operated, and shall be easily accessible, adequate, and of a safe, sanitary quality.

9. All multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be made of smooth, nonabsorbent, corrosion-resistant, nontoxic materials, and shall be so constructed as to be easily cleaned. All containers, utensils, and equipment shall be in good repair. All milk pails used for hand milking and stripping shall be seamless and of the hooded type. Multiple-use woven material shall not be used for straining milk. All single-service articles shall have been manufactured, packaged, transported, stored, and handled in a sanitary manner and shall comply with the applicable requirements of this chapter. Articles intended for single-service use shall not be reused.

10. Farm holding or cooling tanks, welded sanitary piping, and transportation tanks shall comply with the applicable requirements of this chapter.

11. The product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be cleaned after each usage.

The product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be sanitized before each usage.

All containers, utensils, and equipment used in the handling, storage, or transportation of milk, unless stored in sanitizing solutions, shall be stored to assure complete drainage and shall be protected from contamination prior to use.

After sanitization, all containers, utensils, and equipment shall be handled in such manner as to prevent contamination of any product-contact surface.

12. Milking shall be done in the milking barn, stable, or parlor. The flanks, udders, bellies, and tails of all milking cows shall be free from visible dirt. All brushing shall be completed prior to milking. The udders and teats of all milking cows shall be cleaned and treated with a sanitizing solution just prior to the time of milking and shall be relatively dry before milking. Wet hand milking is prohibited.

13. Surcingles, milk stools, and antikickers shall be kept clean and stored above the floor.

14. Each pail or container of milk shall be transferred immediately from the milking barn, stable, or parlor to the milk house. No milk shall be strained, poured, transferred, or stored unless it is properly protected from contamination.

15. There shall be provided adequate handwashing facilities, including running water, soap or detergent, and individual sanitary towels, in the milk house and in the milking barn, stable, or parlor, or convenient thereto.

16. Hands shall be washed clean and dried with an individual sanitary towel immediately before milking, before performing any milk house function, and immediately after the interruption of any of these activities. Milkers and milk haulers shall wear clean outer garments while milking or handling milk, milk containers, utensils, or equipment.

17. Raw milk for pasteurization shall be cooled to 50° F. or less within two hours after milking and shall be maintained at that temperature until delivered.

18. Vehicles used to transport milk in cans from the dairy farms to the milk plant or receiving station shall be constructed and operated to protect their contents from sun, freezing, and contamination. Such vehicles shall be kept clean inside and out, and no substance capable of contaminating milk shall be transported with milk.

19. Effective measures shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects and rodents

and by chemicals used to control such vermin. Milk rooms shall be free of insects and rodents. Surroundings shall be kept neat, clean, and free of conditions which might harbor or be conducive to the breeding of insects and rodents. [C24, 27, 31, 35, 39,§3077; C46, 50, 54, 58, 62, 66,§192.10(1); C71, 73, 75,§192.20]

Referred to in §192.11

192.21 Sanitation requirements for grade "A" pasteurized milk and milk products. A receiving station shall comply with subsections 1 through 15, 17, 20 and 22 of this section; except, that the partitioning requirement of subsection 5 of this section shall not apply.

A transfer station shall comply with subsections 1, 4, 6 through 12, 14, 15, 20, and 22 of this section, and the applicable provisions of subsections 2 and 3 of this section as climatic and operating conditions require; except, in every case, overhead protection shall be provided.

Facilities for the cleaning and sanitizing of bulk transport tanks shall comply with subsections 1, 4, 6 through 12, 14, 15, 20, and 22 of this section, and the applicable provisions of subsections 2 and 3 of this section as climatic and operating conditions require; except, in every case, overhead protection shall be provided.

1. The floors of all rooms in which milk or milk products are processed, handled, or stored, or in which milk containers, equipment and utensils are washed, shall be constructed of concrete or other equally impervious and easily cleaned material and shall be smooth, properly sloped, provided with trapped drains kept in good repair; except, that cold-storage rooms used for storing milk and milk products need not be provided with floor drains when the floors are sloped to drain to one or more exits and storage rooms for storing dry ingredients or packaging materials or both need not be provided with drains and the floors may be constructed of tightly joined wood.

2. Walls and ceilings of rooms in which milk or milk products are handled, processed, or stored, or in which milk containers, utensils, and equipment are washed, shall have a smooth, washable, light-colored surface in good repair.

3. Effective means shall be provided to prevent the access of flies and rodents. All openings to the outside shall have solid doors or glazed windows which shall be closed during dusty weather.

4. All rooms in which milk and milk products are handled, processed, or stored or in which milk containers, equipment, and utensils are washed or both shall be well lighted and well ventilated.

5. There shall be separate rooms for:

a. Pasteurizing, processing, cooling, and packaging.

b. Cleaning of milk cans and bottles.

In addition, plants receiving milk in bulk transport tanks shall provide for cleaning and sanitizing facilities.

Unless all milk and milk products are received in bulk transport tanks, a receiving room, separate from rooms "*a*" and "*b*" of this subsection, shall be required. Rooms in which milk or milk products are handled, processed, or stored, or in which milk containers, utensils, and equipment are washed or stored, shall not open directly into any stable or any room used for domestic purposes.

6. Every milk plant shall be provided with toilet facilities conforming with the statutes of the state of Iowa. Toilet rooms shall not open directly into any room in which milk or milk products or both are processed. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing doors. Dressing rooms, toilet rooms, and fixtures shall be kept in a clean condition and good repair and shall be well-ventilated and well-lighted. Sewage and other liquid wastes shall be disposed of in a sanitary manner.

7. Water for milk plant purposes shall be from a supply properly located, protected, and operated and shall be easily accessible, adequate, and of a safe, sanitary quality.

8. Convenient hand-washing facilities shall be provided, including hot and cold or warm running water or both, soap, and individual sanitary towels or other approved hand-drying devices. Hand-washing facilities shall be kept in a clean condition and in good repair.

9. All rooms in which milk and milk products are handled, processed, or stored, or in which containers, utensils, or equipment are washed or stored, or both, shall be kept clean, neat, and free of evidence of insects and rodents. Pesticides shall be safely used. Only equipment directly related to processing operations or to the handling of containers, utensils, and equipment shall be permitted in the pasteurizing, processing, cooling, packaging, and bulk milk storage rooms.

10. All sanitary piping, fittings, and connections exposed to milk and milk products or from which liquids may drip, drain, or be drawn into milk or milk products shall consist of smooth, impervious, corrosion-resistant, nontoxic, easily cleanable material. All piping shall be in good repair. Pasteurized milk and milk products shall be conducted from one piece of equipment to another only through sanitary piping.

11. All multiuse containers and equipment with which milk or milk products come into contact shall be of smooth, impervious, corrosion-resistant, nontoxic material, shall be constructed for ease of cleaning, and shall be kept in good repair. All single-service containers, closures, gaskets, and other articles with which milk or milk products come in contact shall be nontoxic, and shall have been manufactured, packaged, transported, and handled in a sanitary manner. Articles intended for single-service use shall not be reused.

12. The product-contact surfaces of all multiuse containers, utensils, and equipment used in the transportation, processing, handling, and storage of milk and milk products shall be effectively cleaned and shall be sanitized before each use.

13. After cleaning, all multiuse milk or milk product containers, utensils, and equipment shall be transported and stored to assure complete drainage, and shall be protected from contamination before use.

14. Single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk and milk products shall be purchased and stored in sanitary tubes, wrappings, or cartons, shall be kept therein in a clean, dry place until used, and shall be handled in a sanitary manner.

15. Milk plant operations, equipment, and facilities shall be located and conducted to prevent any contamination of milk or milk products, ingredients, equipment, containers, and utensils. All milk or milk products or ingredients which have been spilled, overflowed, or leaked shall be discarded. The processing or handling of products other than milk and milk products in the pasteurization plant shall be performed to preclude the contamination of such milk and milk products.

16. Pasteurization shall be performed as defined in section 192.8, subsection 1.

17. All raw milk and milk products shall be maintained at 50° F. or less until processed. All pasteurized milk and milk products, except those to be cultured, shall be cooled immediately prior to filling or packaging in approved equipment to a temperature of 45° F. or less. All pasteurized milk and milk products shall be stored at a temperature of 45° F. or less. On delivery vehicles, the temperature of milk and milk products shall not exceed 50° F. Every room or tank in which milk or milk products are stored shall be equipped with an accurate thermometer.

Referred to in §192.25

18. Bottling and packaging of milk and milk products shall be done at the place of pasteurization in approved mechanical equipment.

19. Capping or closing of milk and milk product containers shall be done in a sanitary manner by approved mechanical capping or closing equipment, or both. The cap or closure shall protect the pouring lip to at least its largest diameter.

20. Hands shall be thoroughly washed before commencing plant functions and as often as may be required to remove soil and contamination. No employee shall resume work after visiting the toilet room without thoroughly washing his hands. All persons engaged in the processing, pasteurization, handling, storage, or transportation of milk, milk products, containers, equipment, and utensils shall wear clean outer garments. The use of tobacco by any person while engaged in the processing of milk or milk products is prohibited.

21. All vehicles used for transportation of pasteurized milk and milk products shall be constructed and operated so that the milk and milk products are protected from sun, from freezing, and from contamination.

22. Milk plant surroundings shall be kept neat, clean, and free from conditions which might attract or harbor flies, other insects, or rodents, or which otherwise constitute a nuisance. [C24, 27, 31, 35, 39,§3077; C46, 50, 54, 58, 62, 66,§192.10(2); C71, 73, 75,§192.21]

Referred to in §§192.11, 192.25

192.22 Milk for pasteurization from accredited area. All milk for pasteurization shall be from herds which are located in a modified accredited tuberculosis area as determined by the United States department of agriculture; except, that herds located in an area that fails to maintain such accredited status shall have been accredited by the department as tuberculosis free or shall have passed an annual tuberculosis test.

All milk for pasteurization shall be from herds under a brucellosis eradication program which meets one of the following conditions:

a. Is located in a certified brucellosis-free area as defined by the United States department of agriculture and enrolled in the testing program for such areas.

b. Is located in a modified certified brucellosis area as defined by the United States department of agriculture and enrolled in the testing program for such areas.

c. Meets United States department of agriculture requirements for an individually certified herd.

d. Is participating in a milk ring testing program which is conducted on a continuing basis at intervals of not less than every three months or more than every six months with individual blood tests on all animals in herds showing suspicious reactions to the milk ring test.

e. Is having an individual blood agglutination test annually with an allowable maximum grace period not exceeding two months.

For diseases other than brucellosis and tuberculosis, the secretary shall require such physical, chemical, or bacteriological tests as he deems necessary. The diagnosis of other diseases in dairy cattle shall be based upon the findings of a licensed veterinarian or a veterinarian in the employ of an official agency. Any diseased animal disclosed by such test shall be disposed of as the secretary directs. [C71, 73, 75,§192.22]

Referred to in §192.11

192.23 Transferring milk. Except as permitted in this chapter, no milk producer or distributor shall transfer milk or milk products from one container or tank truck to another on the street, in any vehicle, store, or in any place except a milk plant, receiving station, transfer station, or milk house especially used for that

purpose. The dipping or ladling of milk or fluid milk products is prohibited. [C71, 73, 75,§192.23]

Referred to in §§192.11, 192.14, 548.13(5)

192.24 Milk served in container. It shall be unlawful to sell or serve any milk or fluid milk product except in the individual, original container received from the distributor or from an approved bulk dispenser; except, this prohibition shall not apply to milk for mixed drinks requiring less than one-half pint of milk, or to cream, whipped cream, or half-and-half which is consumed on the premises and which may be served from the original container of not more than one-half gallon capacity, or from a bulk dispenser approved for such service by the secretary or authorized municipal corporation. [C71, 73, 75,§192.24]

Referred to in §§192.11, 192.14, 548.13(5)

192.25 Temperature to be maintained. It shall be unlawful to sell or serve any pasteurized milk or milk product which has not been maintained at a temperature of 45° F. or less except as authorized in section 192.21, subsection 17. If containers of pasteurized milk or milk products are stored in ice, the storage container shall be properly drained. [C71, 73, 75,§192.25]

Referred to in §§192.11, 192.14, 548.13(5)

192.26 Foreign milk sold in Iowa. Milk and milk products from points beyond the limits of the state of Iowa may be sold in Iowa provided they are produced and pasteurized under regulations which are substantially equivalent to this chapter and chapters 190 and 191 and have been awarded an acceptable milk sanitation compliance and enforcement rating made by a state milk sanitation rating officer certified by the United States public health service. [C71, 73, 75,§192.26]

Referred to in §548.13(5)

192.27 Building plans submitted to secretary. Properly prepared plans for all milk houses, milking barns, stables, parlors, transfer stations, receiving stations, and milk plants regulated under this chapter which are hereafter constructed, reconstructed, or extensively altered, shall be submitted to the secretary or authorized municipal corporation for written approval before work is begun. [C71, 73, 75,§192.27]

Referred to in §548.13(5)

192.28 Diseased persons excluded. No person affected with any disease in a communicable form or while a carrier of such disease shall work at any dairy farm or milk plant in any capacity which brings him into contact with the production, handling, storage, or transportation of milk, milk products, containers, equipment, and utensils. No dairy farm or milk plant operator shall employ in any such capacity any such person, or any person suspected of having any disease in a communicable form, or of being a carrier of such disease. Any producer or distributor of milk or milk products, upon whose dairy farm, or in whose milk plant any communicable disease occurs, or who suspects that any employee has contracted any disease in a communicable form, or has become a carrier of such disease shall immediately notify the secretary or authorized municipal corporation. [C71, 73, 75,§192.28]

Referred to in §548.13(5)

192.29 Infection from milk handler. When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk or milk products, or both, the secretary or authorized municipal corporation may require any and all of the following measures:

1. The immediate exclusion of that person from milk handling.
2. The immediate exclusion of the milk supply concerned from distribution and use.
3. Adequate medical and bacteriological examination of the person, of his associates, and of his and their body discharges. [C71, 73, 75,§192.29]

Referred to in §548.13(5)

192.30 Law to be enforced by secretary of agriculture or municipalities. This chapter and chapters 190 and 191 shall be enforced by the secretary or municipal corporations, which have entered into agreements with him under section 192.11, both of whom shall make regulations which shall conform to the Grade "A" Pasteurized Milk Ordinance with Administrative Procedures — 1965 Recommendations of the United States Public Health Service, a certified copy of which shall be on file at the secretary's office or the office of the clerk of an authorized municipal corporation. Where the mandatory compliance with provisions of the appendixes therein is specified, such provisions shall be deemed a requirement of said chapters. [C71, 73, 75,§192.30]

Referred to in §548.13(5)

192.31 Certification of grade "A" label. The state department of health shall annually survey and certify all milk labeled grade "A" pasteurized and grade "A" raw milk for pasteurization, and, in the event a survey shows the requirements for production, processing, and distribution for such grade are not being complied with, the fact thereof shall be certified by the state department of health to the secretary of agriculture who shall proceed with the provisions of section 192.5 for suspending the permit of the violator or who, if he did not issue such permit, shall withdraw the grade "A" declared on the label. [C71, 73, 75,§192.31]

Referred to in §§192.11, 548.13(5)

192.32 Injunction for violations. Any person who shall violate any of the provisions of chapters 190, 191 and 192 may be enjoined from continuing such violations. Each day upon which such a violation occurs shall constitute a separate violation. [C71, 73, 75,§192.32]

Referred to in §548.13(5)

192.33 Rating required to retain permit. A pasteurized milk and milk products sanitation compliance rating of ninety percent or more calculated according to the rating system as contained in Public Health Service Publication No. 678, "Method of Making Sanitation Ratings of Milk Sheds", shall be necessary to receive or retain a permit under section 192.5. Said publication is hereby incorporated into this section by this reference and made a part hereof insofar as applicable, a copy of which shall be on file in the office of the secretary or the office of the clerk of an authorized municipal corporation at all times. [C71, 73, 75,§192.33]

Referred to in §548.13(5)

192.34 Sanitary regulations. Every person who deals in or manufactures dairy products or imitations thereof shall maintain his premises, utensils, wagons, and equipment in a clean and hygienic condition. [C97,§2522; S13, §2522; C24, 27, 31, 35, 39,§3078; C46, 50, 54, 58, 62, 66,§192.11; C71, 73, 75,§192.34]

Referred to in §548.13(5)

192.35 Bacteriologists. The state department of agriculture may employ dairy specialists or bacteriologists who shall devote their full time to the improvement of sanitation in the production, processing and marketing of dairy products. Said dairy specialists and bacteriologists shall have qualifications as to education and experience and such other requirements as the secretary may require. [C46, 50, 54, 58, 62, 66,§192.12; C71, 73, 75,§192.35]

Referred to in §548.13(5)

192.36 Duties. Said dairy specialists and bacteriologists employed by the department shall co-operate with the dairy and food inspectors of the department and with the health departments of cities for sanitary control of the production, processing, and marketing of dairy products. The department shall provide adequate laboratory facilities for the efficient performance of their duties. [C46, 50, 54, 58, 62, 66,§192.13; C71, 73, 75,§192.36]

Referred to in §548.13(5)

192.37 Testing milk or cream. Every person testing cream or milk to determine the percent of milk fat as a basis for fixing the purchase price shall secure a milk tester's license from the department and shall make tests only by such process as has been approved by said department. Each composite sample taken shall cover a period of not more than sixteen days and all such composite samples shall cover the same period of time. [SS15,§2515-f; C24, 27, 31, 35, 39,§3079; C46, 50, 54, 58, 62, 66,§192.14; C71, 73, 75,§192.37]

Referred to in §548.13(5)

192.38 Examination. Each applicant for such a license shall be required to submit to examination and by actual demonstration show that he is competent to test cream and milk according to an approved process. [SS15,§2515-f; C24, 27, 31, 35, 39,§3080; C46, 50, 54, 58, 62, 66, §192.15; C71, 73, 75,§192.38]

Referred to in §548.13(5)

192.39 Supplying standard measures. The department shall furnish each licensee one standard test bottle and one standard pipette adapted to the use of the testing machine approved for the licensee. Said bottle and pipette shall be certified to by the department as standard and shall bear the official stamp of the department. Any person not a licensee may secure test bottles and pipettes from the department at the legal price. [C97,§2515; SS15,§2515; C24, 27, 31, 35, 39,§3081; C46, 50, 54, 58, 62, 66,§192.16; C71, 73, 75,§192.39]

Referred to in §548.13(5)

192.40 Fees. The fee for each license shall be three dollars, and standard test bottles and pipettes shall be furnished at actual cost. [C97,§2515; SS15,§2515-f; C24, 27, 31, 35, 39, §3082; C46, 50, 54, 58, 62, 66,§192.17; C71, 73, 75,§192.40]

192.41 Bottles and pipettes. The standard bottle and pipette received from the department shall be used by the licensee in verifying test tubes and pipettes used by him in making tests; and the same shall be subject to inspection by the owner or vendor of the cream or milk which is the subject of the tests. [C97, §2523; C24, 27, 31, 35, 39,§3083; C46, 50, 54, 58, 62, 66,§192.18; C71, 73, 75,§192.41]

192.42 Substitute tester. With the approval of the department any licensee may for valid reasons appoint a person to act for him, not to exceed a period of fourteen days. [SS15,§2515-f; C24, 27, 31, 35, 39,§3084; C46, 50, 54, 58, 62, 66, §192.19; C71, 73, 75,§192.42]

192.43 False tests. No person shall falsely manipulate or misread the Babcock test or any other milk or cream testing apparatus. The writing of a check or payment of money for cream or milk at any given test shall constitute prima-facie evidence that such test was made. [S13,§2515-e; C24, 27, 31, 35, 39,§3085; C46, 50, 54, 58, 62, 66,§192.20; C71, 73, 75,§192.43]

192.44 Tests by unlicensed person. The testing of each lot of milk or cream by an unlicensed person shall constitute a separate offense. [SS15,§2515-f; C24, 27, 31, 35, 39,§3086; C46, 50, 54, 58, 62, 66,§192.21; C71, 73, 75,§192.44]

192.45 Actions for purchase price—proof. In an action by the vendor for the purchase price of cream or milk, sold on test to be made by the vendee, the burden of establishing the proper use of an approved test shall be upon the vendee. [C97,§2523; C24, 27, 31, 35, 39,§3087; C46, 50, 54, 58, 62, 66,§192.22; C71, 73, 75,§192.45]

192.46 Milk plant fees. A municipal corporation shall not charge a milk plant or receiving station any fee for inspection of a milk plant or receiving station for milk or milk products unless the municipal corporation has entered into agreement with the secretary of agriculture to conduct inspections pursuant to this chapter.

Nothing in this section shall prohibit a municipal corporation having an agreement with the secretary of agriculture to continue agreements with other municipal corporations for inspection of their milk plants, receiving stations, and for milk and milk products, and allowing municipal corporations to charge a fee for that inspection provided the service is rendered. [66GA, ch 1125,§1]

192.47 to 192.53 Repealed by 65GA, ch 171, §3.

192.54 Imitation butter. Imitation butter shall be sold only under the name of oleomargarine, and no person shall use in any way, in connection or association with the sale or exposure for sale or advertisement of any such product, the word "butter", "creamery", or "dairy", or the name or representation of any breed of dairy cattle, or any combination of such word or words and representation, or any other words or symbols or combination thereof commonly used in the sale of butter. [C97, §2517; C24, 27, 31, 35, 39,§3093; C46, 50, 54, 58, 62, 66,§192.31; C71, 73, 75,§192.54]

192.55 Butter score required. All butter carrying "AA", "AB" and "C" grades shall score in conformity with U. S. D. A. standards. [C58, 62, 66,§192.32; C71, 73, 75,§192.55]

192.56 Container. The term "container" used in the following sections of this chapter shall mean cans, bottles, paper cartons or other nonrigid containers, casks, kegs, barrels, and other receptacles of like nature. [C24, 27, 31, 35, 39,§3094; C46, 50, 54, 58, 62, 66,§192.33; C71, 73, 75,§192.56]

192.57 Milk bottles to be marked. Bottles or jars used for the sale of milk shall have clearly blown or permanently marked in the side of the bottle, the capacity of the bottle, and on the bottom of the bottle the name, initials, or certification mark of the manufacturer. The designating number shall be furnished by the department on request. [S13,§3009-k; C24, 27, 31, 35, 39,§3095; C46, 50, 54, 58, 62, 66,§192.34; C71, 73, 75,§192.57]

192.58 Adoption of brand. With the approval of the department any person who deals in or transports milk, cream, skimmed milk, buttermilk, or ice cream may adopt a distinctive mark or brand to be placed upon any container owned or used by him, and the same may be registered with the department. [C24, 27, 31, 35, 39,§3096; C46, 50, 54, 58, 62, 66,§192.35; C71, 73, 75,§192.58]

192.59 Retention of marked container. No person shall, without the consent of the owner, retain for a longer period than three days a container bearing a registered mark, and any person receiving such a container shall immediately return it to the owner by a common carrier. A receipt from a common carrier shall be prima-facie evidence that such container was returned. [C24, 27, 31, 35, 39,§3097; C46, 50, 54, 58, 62, 66,§192.36; C71, 73, 75,§192.59]

192.60 Return of bottles. Milk and cream bottles bearing registered marks shall be returned by delivering them to the owner or his agent in person or by leaving them where they may be picked up by the owner. [C24, 27, 31, 35, 39,§3098; C46, 50, 54, 58, 62, 66,§192.37; C71, 73, 75,§192.60]

192.61 Stray containers. When any person comes into possession of a container bearing a registered mark which belongs to another whose name and address he does not know, he shall immediately notify the department in writing, giving the size, shape, and mark of the container. Upon receipt of shipping directions from the department he shall at once forward the container by a common carrier, collect, to the address furnished him. Milk or cream bottles need not be returned when the cost of return is greater than the market value of the bottles. [C24, 27, 31, 35, 39,§3099; C46, 50, 54, 58, 62, 66,§192.38; C71, 73, 75,§192.61]

192.62 Registered mark. No person shall for any purpose use any registered mark or any container bearing such mark, or remove or alter any such mark placed upon a container without the consent of the owner. [C24, 27, 31, 35, 39,§3100; C46, 50, 54, 58, 62, 66,§192.39; C71, 73, 75,§192.62]

192.63 Certified laboratories. To insure uniformity in the tests and reporting, an employee certified by the United States public health service of the bacteriological laboratory of the department shall annually certify all laboratories doing work in the sanitary quality of milk and dairy products for public report. Such approval by the department shall be based on the evaluation of these laboratories as to personnel training, laboratory methods used, and reporting. The results on tests made by approved laboratories shall be reported to the department on request, on forms prescribed by the secretary of agriculture, and such reports may be used by the department.

The department shall annually certify every laboratory in the state doing work in the sanitary quality of milk and dairy products for public report. The certifying officer may enter any such place at any reasonable hour to make such survey. The management of the laboratory shall afford free access to every part of the premises and render all aid and assistance necessary to enable the certifying officer to make a thorough and complete examination. C54, 58, 62, 66,§192.40; C71, 73, 75,§192.63]

192.64 Coloring rejected milk. It shall be the duty of the milk or cream grader to thoroughly mix with all rejected milk or cream, a harmless coloring matter as will prevent all such rejected milk from being offered for sale. [C54, 58, 62, 66,§192.41; C71, 73, 75, §192.64]

192.65 Transportation. Every vehicle used to transport milk from producers to any dairy plant shall be in a sanitary condition. Every vehicle so used shall be enclosed to protect the milk from extreme heat or cold and from dust or other contamination; provided, however, that this provision shall not be applied to producers delivering their own milk when such milk is otherwise protected from extreme heat or cold and from dust or other contamination. [C54, 58, 62, 66,§192.42; C71, 73, 75, §192.65]

192.66 Bulk tanks on farms for milk. Any producer using a bulk tank for cooling and storage of milk to be used for manufacturing purposes shall have an enclosed milk room which shall conform to the standards provided by this section. The floor shall be constructed of concrete or other impervious material, maintained in good repair, and graded to provide proper drainage. The walls and ceilings of the room shall be sealed and constructed of smooth easily cleaned material. All windows shall be screened and doors shall be self-closing. It shall be well ventilated and must meet the following requirements:

1. The bulk tank shall not be located over a drain or under a ventilator.

2. The hose port shall be located in an exterior wall and fitted with a tight self-closing door.

3. A two-hundred-twenty-volt lock type electrical connection with ground and weatherproof type receptacle and switchbox shall be provided near the hose port.

4. Each milk room shall have an adequate supply of water readily accessible with facilities for heating the water, to insure the cleaning and sanitizing of the bulk tank, utensils and equipment and the keeping of the milk room clean.

5. No lights shall be placed directly over the bulk tank.

6. The bulk tank shall be properly located in the milk room for easy access to all areas for cleaning and servicing.

7. The enforcement of this section shall be administered by the Iowa department of agriculture.

8. Any person violating any provisions of this section shall be punished by a fine of not more than fifty dollars. [C66,§192.43; C71, 73, 75,§192.66]

CHAPTER 192A

MARKETING OF DAIRY PRODUCTS

General penalty, §189.21

192A.1 Definitions.
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192A.1 Definitions. For the purpose of this chapter:

1. *"Dairy product"* means milk, skim milk, cream, sour cream, ice cream, ice cream mix, ice milk except that sold in semifrozen form, ice milk mix, cottage cheese, frozen desserts, reconstituted milk, minimal milk fat products, and any additive variant of any dairy product.

2. *"Department"* means state department of agriculture.

3. *"Secretary"* means the secretary of agriculture of the state of Iowa.

4. *"Person"* means any individual, corporation, co-operative, association, partnership, or other business unit.

5. *"Processor"* means any person engaged in the business of manufacturing, processing, or packaging dairy products.

6. *"Distributor"* means any person engaged in the business of selling any dairy product

at wholesale and any person engaged in the business of selling any dairy product at retail on home delivery routes.

7. *"Retailer"* means any person within this state engaged in the business of operating any retail establishment or institution, including but not limited to hotels, restaurants, grocery stores, drug stores, and automatic vending machines where dairy products are consumed or sold to customers. This subsection shall not apply to schools, churches or other charitable institutions not operated for profit.

8. *"Broker"* means any person engaged in negotiating sales or purchases of selected dairy products for or on behalf of a processor, distributor, or retailer.

9. *"Sale"* or *"sell"* means and includes any commercial transfer for consideration, exchange, barter, gift, or offer for sale and distribution in any manner or by any means.

10. Any subsidiary or affiliate corporation, co-operative, officer, director, or partner of a corporation, co-operative, or partnership which is a processor or distributor of dairy products is deemed to be a processor or distributor of dairy products. [C66, 71, 73, 75,§192A.1]

Referred to in §192A.30

192A.2 Division of dairy trade practices. The secretary of agriculture is hereby entrusted with the administration and enforcement of this chapter. There is hereby created in the department of agriculture a division to be known as the "Division of Dairy Trade Practices". The head of the division shall be the "Chief of the Division of Dairy Trade Practices". All powers of the secretary under this chapter may be exercised by and through the chief of the division of dairy trade practices. The secretary shall employ such professional and other personnel as, in his judgment, shall be necessary to the proper performance of his duties hereunder. [C66, 71, 73, 75,§192A.2]

192A.3 Unlawful discrimination. It shall be unlawful for any person engaged in business within the state of Iowa, either directly or indirectly, to discriminate in price between different purchasers of dairy products of like grade and quality where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either the grantor or receiver. Nothing herein shall prevent:

1. Differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which dairy products are sold or delivered to purchasers or differentials otherwise permitted in this chapter.

2. Persons engaged in selling dairy products from selecting their own customers in bona fide transactions are not in restraint of trade.

3. Price changes from time to time in response to changing conditions affecting the market for or the marketability of dairy products such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in dairy products.

4. Price differentials made in good faith to meet an equally low price of a competitor, whether the price of the competitor is in compliance with or in violation of this chapter. [C66, 71, 73, 75,§192A.3]

192A.4 Unlawful price differentials. It shall be unlawful for any person to discriminate in price by selling or offering to sell any dairy product to any purchaser in the state of Iowa at prices lower than those exacted by such persons elsewhere in the state for the purpose or with the effect of injuring competition or tending to create a monopoly; provided however, that nothing herein contained shall prevent price differentials which make only due allowance for differences in the cost of sale or transportation resulting from differing methods or quantities in which such dairy products are sold or transported to such purchasers; and provided further, that nothing herein contained shall prevent sales made in good faith to meet an equally low price of a competitor, whether the price of the competitor is in compliance with or in violation of this chapter. [C66, 71, 73, 75,§192A.4]

192A.5 Minimum price agreements unlawful. It shall be unlawful for any processor, distributor, or retailer to engage in the following practice:

To enter into any agreement or contract with any other person for the establishment or maintenance of minimum prices of dairy products in restraint of trade and for the purpose of eliminating free and open competition in the sale of dairy products. [C66, 71, 73, 75,§192A.5]

192A.6 Discounts or rebates. No processor or distributor shall give or extend discounts or rebates, directly or indirectly, to retailers or other processors or distributors on dairy products or give or extend to such purchasers any services connected with the delivery, handling or stocking of such products except as provided in this chapter. A processor or distributor may provide services to a particular processor, distributor, or retailer or may sell dairy products at a price necessary to meet a bona fide offer by a competitor. The service or discount shall not be given until the processor or distributor first files with the department a written record of the date and terms of the competitive offer, the name of the processor, distributor, or retailer to whom the offer was made, and the name of the competitor who made the offer. Any

such record filed with the department shall be used only for determining or verifying proof of violations of this chapter. [C66, 71, 73, 75, §192A.6]

192A.7 Price list to be filed. All distributors offering dairy products for sale within the state shall file with the department on a form provided by said department a complete price list showing the invoice price of such distributor of all items of dairy products sold or offered for sale by them. Distributors who offer dairy products for sale both at their respective places of business and deliver to retailer or retail outlets, shall include on such price lists filed with the department the different prices established for dairy products offered for sale at their respective places of business and for dairy products delivered to the retailer or retail outlet. Distributors who offer dairy products for sale to consumers on home delivery routes shall include on such price lists filed with the department, the different prices established for dairy products offered for sale to such consumers. Within thirty days after July 4, 1965, every distributor shall file with the department its initial price schedules and schedules of discounts and rebates and thereafter, every distributor shall charge its prices in accordance with its schedule on file with the department until such price schedule is changed as hereinafter provided. Before any distributor may make any change in its price schedule and prices charged, it shall give notice by certified mail to the department setting forth its new schedule of prices or new schedule of discounts and rebates prior to the effective date of any change in such schedule on file with the department (except that where prices are changed in good faith to meet an equally low price of a competitor, notice to the department of the new schedule of prices shall be given within two business days after such change). The initial filing of schedules or any new schedules shall be filed with the department either in person or by certified mail. Price lists filed with the department shall be used only for determining and proving violations of this chapter. Failure or refusal to file current price lists with the department shall be a violation of this chapter. [C66, 71, 73, 75,§192A.7]

192A.8 Gift of signs to retailer prohibited. No processor or distributor shall furnish, give, lend, sell, or rent any advertising signs of a permanent nature except signs advertising the processor's or distributor's own products. Not more than one-third of the space or cost of advertising signs permitted under this section may be used to identify the retailer. [C66, 71, 73, 75,§192A.8]

192A.9 Payments for rent prohibited. No processor or distributor shall make payments of money, credit, gifts, or loans to retailers as rental for the storage or display of dairy products on the premises where offered for sale by the retailer. [C66, 71, 73, 75,§192A.9]

192A.10 Loans to retailers prohibited—exception. No processor or distributor shall make or underwrite loans to a retailer or become bound in any manner for the financial obligation of any retailer except that a processor or distributor may lend money to a retailer for the purchase of equipment for the storage, transportation, and display of dairy products. Such loans may be made to the retailer provided the loan is for not more than ninety percent of the purchase price with at least six percent annual interest on the principal amount and on the unconditional written promise of the retailer that the loan shall be paid within a period not to exceed thirty-six months. [C66, 71, 73, 75, §192A.10]

192A.11 Equipment restrictions. No processor or distributor shall furnish, sell, give, lend, or rent any equipment to a retailer except:

1. Processors and distributors, under a bill of sale or conditional sales contract describing the property sold and specifying the price and terms of sale, may sell equipment for the storage, transportation, and display of dairy products to the retailer. The selling price of such equipment shall be not less than the cost to the wholesaler less ten percent per year depreciation plus transportation and installation costs plus at least six percent, but in no event shall the price be less than ten dollars per unit. If the processor or distributor makes the sale under a security agreement or conditional sales contract, the terms of sale shall be no more favorable to the retailer than those provided in this section.

2. Processors and distributors may provide without restriction coin-vending machines from which the product vended is intended by such processor or distributor to be consumed on the premises.

3. Processors and distributors may furnish equipment for the storage, transportation, or display of dairy products for one period of not longer than ten consecutive days a year to any one retailer for use at a fair, exhibition, exposition, or other promotional event for agricultural, industrial, charitable, educational, religious or recreational purposes. [C66, 71, 73, 75,§192A.11]

192A.12 Repair of other equipment limited. No processor or distributor shall maintain or make repairs of any equipment owned by a retailer except equipment used exclusively for dairy products. On such maintenance or repairs, the processor or distributor shall make charges for the service and parts at the same prices as are charged by third persons rendering such service in the community where the retailer is located. In no event shall the

charges be less than the cost to the processor or distributor plus a reasonable margin of profit. [C66, 71, 73, 75,§192A.12]

Referred to in §192A.29

192A.13 Gifts to retailers prohibited. No processor or distributor shall give, offer to give, furnish, finance, or otherwise make available any free goods to any person, directly or indirectly, in connection with the sale of dairy products or to any other person doing business with such person, or give, offer to give, furnish, finance, or otherwise make available any payments, gifts, or grants of anything of value to any retailer. Nothing in this section shall prevent transactions with retailers of any of the following:

1. The furnishing of point of sale advertising material made of paper, cardboard, or other material not of a permanent nature for the use in the promotion of the products of such processor or distributor which remain inside retailer locations.

2. The furnishing of hostesses or demonstrators at any retailer's location to promote the products of the processor or distributor.

3. The advertising by a processor or distributor of products through any advertising media the processor or distributor selects which does not involve allowances, payments, or the furnishing of other property to persons purchasing such products in a manner prohibited by this section.

4. Advertising allowances which do no more than reimburse a retailer for costs in advertising dairy products of the processor or distributor. [C66, 71, 73, 75,§192A.13]

192A.14 Processors or distributors may have own outlets. No processor or distributor shall be prohibited from operating a retail outlet for retail sales or prohibited from using in the retail outlet any equipment or advertising or miscellaneous matter owned by the processor or distributor provided the retail outlet is under direct control and management of the processor or distributor. [C66, 71, 73, 75, §192A.14]

192A.15 Gifts of products on premises. No processor or distributor shall be prohibited from giving away dairy products to be consumed on the sale premises. [C66, 71, 73, 75, §192A.15]

192A.16 Unlawful for retailer to receive proscribed items. It shall be unlawful for any retailer to receive, directly or indirectly, from or through a processor, distributor, or broker, any discount, rebate, allowance, service, price discrimination, advertising material, loan, equipment, payment, or any other thing of value all as prohibited by this chapter. [C66, 71, 73, 75,§192A.16]

192A.17 Brokers acts limited. It shall be unlawful for a broker or any officer or agent of any brokerage firm to participate, directly or indirectly, in any practice prohibited by this chapter. It shall be unlawful for any processor, distributor, or retailer to engage or offer to engage, directly or indirectly, through a broker in any practice prohibited by this chapter. [C66, 71, 73, 75,§192A.17]

192A.18 Grievances reported to department. Any person claiming to be injured by another person through the violation of any of the provisions of this chapter may file in writing a statement of such violation with the department. Upon receipt of the written statement, the department shall immediately cause an investigation to be made of the alleged violation. Whenever it shall appear that any person is violating or threatening to violate any of the provisions of this chapter or the regulations or orders of the secretary, then the department may call upon the county attorney of any county in which such violation occurred to bring suit against such person in the district court to restrain such person from continuing or from carrying out the acts or practices alleged. In such suit he may obtain such injunction prohibitory and mandatory including temporary restraining orders and temporary injunctions as the facts may warrant without being required to prove that an adequate remedy at law does not exist and without being required to give bond. [C66, 71, 73, 75, §192A.18]

192A.19 Reports and answers to department. Whenever the department has reason to believe that any distributor or retailer or processor may be in possession of information relevant to an investigation by it of suspected violations of the provisions of this chapter, the secretary may require such person to file with him in such form as he may prescribe special reports or answers in writing to specific questions furnishing such information. Such reports and answers shall be made under oath or otherwise as the secretary may prescribe and shall be filed with him within such reasonable period as he may prescribe. Any person who fails without lawful cause to file such reports or answers in writing within the period prescribed or shall willfully make or cause to be made any false statements in any such report or answer in writing shall be guilty of a misdemeanor and upon conviction thereof fined not less than five hundred dollars nor more than one thousand dollars. [C66, 71, 73, 75,§192A.19]

Referred to in §192A.21

192A.20 Order to appear—judicial review. Whenever the secretary has reason to believe that any person has violated any of the provisions of this chapter or any rules or regulations adopted thereunder, he may enter an order requiring such person to appear before him and show cause why an order should not be entered requiring such person to cease and desist from the violations charged. Such order shall set forth the alleged violations, fix the time and place of the hearing, and provide for notice thereof which shall be given not less

than twenty days before the date of such hearing. After hearing by the secretary, or if the person charged with such violation fails to appear at the time of said hearing, if he finds such person to be in violation he shall enter an order requiring such person to cease and desist from the specific acts, practices, or omissions so found to be in violation and from related acts, practices or omissions.

Any order entered by the secretary or other action of the secretary may be judicially reviewed in accordance with the terms of the Iowa administrative procedure Act.

Any person violating any order of the secretary under the first paragraph of this section after the period for seeking judicial review thereof has elapsed without the filing of a petition for such review, or on the termination of any review proceedings shall be subject to a civil penalty to be levied by the district court in a proceeding instituted for that purpose in an amount of not less than five hundred dollars and not more than ten thousand dollars provided that in the case of continuing violations the minimum amount of such penalty shall be either five hundred dollars or twenty-five dollars for each day of violation whichever is the larger. [C66, 71, 73, 75,§192A.20]

192A.21 Oaths and subpoenas. The department is authorized and empowered to administer oaths and to issue subpoenas for persons and pertinent operating records in making investigations provided in section 192A.19. If a person fails or refuses to obey a subpoena issued under this chapter, the department may apply to the district court to issue an order requiring the person to appear before the department to produce evidence or to give testimony concerning the matter under investigation. The application for the order shall be filed with the district court within the county in which the investigation is conducted or in which the person guilty of failure or refusal to obey is found or resides or transacts business or has his principal place of business. Any person willfully failing to obey an order of the court is guilty of contempt of court and shall be proceeded against as provided by law. [C66, 71, 73, 75,§192A.21]

192A.22 Intervention — punitive damages. Any person who is injured in business or property by reason of another person's violation of any provisions of this chapter may intervene in the suit for injunction instituted against the other person. The injured party may bring a separate action and recover three times the actual damages sustained as a result of the violation together with the costs of the suit or may sue to enjoin the violation of any provision of this chapter. [C66, 71, 73, 75, §192A.22]

192A.23 Suspension or revocation of license. Whenever the department has reason to believe that any processor or distributor required to obtain a license under section 192.1 has willfully violated any cease and desist order issued under the provisions of this chapter after the same has become final and continued in such violation after the expiration of a ten-day notice from the department of intention to commence proceedings for the denial, suspension or revocation of such license, and it appears to the department that a proceeding should be had to determine whether his license should be denied, suspended, or revoked, the department shall serve notice on such person in writing by certified mail of the charges and grounds upon which a license is sought to be denied, suspended, or revoked. The notice shall include the time and place, not less than ten days after the mailing of the notice, at which a hearing shall be held to determine whether to deny, suspend, or revoke the license. [C66, 71, 73, 75,§192A.23]

192A.24 Investigation and hearing. Any person whose license is sought to be denied, suspended, or revoked shall have full rights to counsel and to produce witnesses in his behalf at the hearing. After full investigation and hearing, the department may deny, suspend, or revoke the license of any person who is found to have willfully violated any provision of this chapter. When the department finds that a violation warrants the suspension of the license, no license shall be suspended for a period to exceed thirty days upon proof of a first violation or for a period to exceed six months upon proof of a second violation. Upon proof of a third and subsequent violations, the license shall be suspended for a period of one year where the department finds that such violation warrants a suspension. [C66, 71, 73, 75,§192A.24]

192A.25 Procedure — judicial review. The department shall by certified mail or by personal service notify the person whose license has been denied, suspended, or revoked setting forth the reasons for the decision. The denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notification. Judicial review may be sought of any such action in accordance with the terms of the Iowa administrative procedure Act. [C66, 71, 73, 75,§192A.25]

192A.26 Repealed by 65GA, ch 1090,§211.

192A.27 Limitation of action. Any action arising under this chapter, whether in law or equity, shall be commenced within two years after the right of action first accrues or is forever barred. [C66, 71, 73, 75,§192A.27]

192A.28 Rules. The department is authorized and directed to promulgate rules to carry out the purposes of this chapter. [C66, 71, 73, 75,§192A.28]

192A.29 Storage cabinets formerly installed. Storage cabinets prohibited under section 192A.12 supplied by processors and distributors to retailers prior to July 4, 1965, shall be

removed from the retailer's premises or sold as provided in this chapter prior to June 30, 1966. [C66, 71, 73, 75,§192A.29]

192A.30 Permit fees. For the purpose of administering and enforcing the provisions of this chapter, each processor shall pay to the secretary permit fees in an amount, as from time to time set by the secretary, not to exceed five mills per hundredweight on milk processed into dairy products as defined in section 192A.1, and sold within the state of Iowa, except ice cream and its additive variants and nonmilk fat imitations which amount shall not be in excess of three mills per gallon thereof. Products upon which fees have been paid shall be exempt from further fees in successive transactions. The fees for each month thus computed shall be paid by the dealer to the secretary on or before the twenty-fifth day of the following month. [C66, 71, 73, 75,§192A.30]

CHAPTER 193

OVERRUN IN MANUFACTURE OF BUTTER

General penalty, §189.21

193.1 Defined.
193.2 Limit.
193.3 Records.
193.4 Records not open to public inspection.
193.5 Reports as evidence.
193.6 Penalty.

193.1 Defined. For the purpose of this chapter "overrun" is the difference between the weight of any given amount of pure butterfat and the weight of the butter manufactured therefrom, and this difference, ascertained in any case, divided by the given amount of pure butterfat in such case and multiplied by one hundred, is the "percentage of overrun", in the manufacture of butter. [C31, 35,§3100-c1; C39,§**3100.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §193.1]

193.2 Limit. It shall be and hereby is declared to be unlawful for any person to have or permit a percentage of overrun in excess of twenty-four and one-half percent in butter manufactured by him. [C31, 35,§3100-c2; C39, §**3100.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§193.2]

193.3 Records. Every person engaged in the purchase, manufacture, or sale of dairy products, and all owners of skimming stations or other places engaged in the business of purchasing milk or cream, and operators of condenseries, creameries, milk factories, and cheese factories, shall keep in proper books true and full records of all milk, cream, butterfat, and other dairy products purchased, received, shipped, stored, or handled by them, the amount of salted butter and unsalted butter manufactured therefrom, and the amounts of butterfat used in the form of cream, ice cream, milk, or any other products. [C31, 35, §3100-c3; C39,§**3100.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§193.3]

Referred to in §193.4

193.4 Records not open to public inspection. The books and records, or a certified copy of same, of all persons, owners, and operators coming within the provisions of section 193.3 shall be kept within this state and shall be open for the inspection of the secretary of agriculture and his deputies or employees at all times, who shall make such examination thereof as is desired or deemed necessary by the secretary of agriculture. Any statement, report, or information required by this chapter to be made or furnished by any person, corporation, or association, shall be for the information of the secretary of agriculture, the attorney general, or any public official who may be interested in an official way in receiving such statement, report, or information, but such statement, report, or information shall not be open to public inspection, nor shall it be published or used for private purposes, but may be used in an official, legitimate way in the enforcement of this chapter. [C31, 35, §3100-c4; C39,§**3100.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§193.4]

193.5 Reports as evidence. The reports required by law to be made and which are made to the secretary of agriculture by persons engaged in the manufacture of butter shall be competent evidence in any prosecution under this chapter against the person making the same, whenever such reports, received in evidence upon the trial, show that during a period of one month or more the person on trial and charged with a violation of this chapter, alleged to have been committed on a certain date within said period, has had or permitted an average percentage of overrun in excess of twenty-four and one-half percent in the salted butter manufactured by him during said period, such showing shall be a violation of this chapter by the person so charged, committed as to the date alleged. [C31, 35,§3100-c5; C39, §**3100.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§193.5]

193.6 Penalty. Any person violating any provision of this chapter shall be deemed guilty

of a misdemeanor and shall be punished by fine of not less than twenty-five dollars nor more than one hundred dollars or imprisonment in the county jail not to exceed thirty days, and on third violation of the same may be restrained by injunction from operating such a business. [C31, 35,§3100-c6; C39,§3100.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§193.6]

CHAPTER 194

GRADES OF MILK

General penalty, §189.21

194.1 Citation of chapter.
194.2 Enforcement.
194.3 Definitions.
194.4 Physical characteristics.
194.5 Frequency of tests.
194.6 Bacterial test.
194.7 Acceptable milk.
194.8 Unacceptable milk.
194.9 Unlawful milk.
194.10 Milk purchased on basis of grade.
194.11 Price differential.
194.12 Milk grader.
194.13 License.
194.14 Fee.
194.15 Grader's duty.
194.16 Revocation or suspension.
194.17 Records.
194.18 Coloring unlawful milk.
194.19 Vehicles used for transportation and licenses for persons.
194.20 Penalty.

194.1 Citation of chapter. This chapter may be cited as the "Iowa grading law for milk used for manufacturing purposes." [C62, 66, 71, 73, 75,§194.1]

194.2 Enforcement. The secretary of agriculture shall enforce the provisions hereof, and to this end may adopt such rules and regulations as may appear necessary, but not inconsistent herewith. [C62, 66, 71, 73, 75, §194.2]

194.3 Definitions. For the purpose of this chapter:

1. "Secretary" means the secretary of agriculture.

2. "Person" includes individuals, partnerships, corporations, and associations.

3. "Milk processing plant" means an establishment to which milk of diverse producers is delivered where said products are manufactured into butter, cheese, dry milk or other dairy products for commercial purposes.

4. "Organoleptic examination or grading of milk" means examination by the senses of sight, smell and taste.

5. "Milk used for manufacturing purposes" means milk or milk products manufactured into butter, cheese, ungraded dry milk or other dairy products except milk and milk products as defined in chapter 190. [C62, 66, 71, 73, 75, §194.3]

194.4 Physical characteristics. All milk received at a creamery, cheese factory, or milk-processing plant shall be examined for physical characteristics, off-flavors and off-odors, including those associated with developed acidity. The condition of the raw milk shall be wholesome and characteristic of normal milk. The flavor and odor of the raw milk shall be fresh and sweet; however, slight feed flavors may be present.

Any raw milk that shows an abnormal condition including, but not limited to, curdled, ropy, clotted and bloody, or that contains extraneous matter or which shows significant bacterial deterioration, or which contains matter evidencing production from a mastitic cow; or which contains chemicals, medicines, or radioactive agents deleterious to health is unlawful milk and shall be rejected to the producer, seller, or shipper and shall not be used in the processing or manufacturing of dairy products for human consumption.

At least four times in every six-month period a test shall be made of each producer's milk to determine the existence of evidence of production from mastitic cows. The secretary shall determine and promulgate the standards and methods of testing the milk for this purpose being guided by recommendations or regulations established by federal agencies regulating in this field. [C62, 66, 71, 73, 75,§194.4]

194.5 Frequency of tests. A test shall be made on the first purchase of milk from a new producer and at least once within each fifteen-day interval thereafter. One lot of milk from each producer shall be selected at random and tested for extraneous matter by an appropriate method. The secretary shall determine and promulgate the standards and methods of testing the milk for extraneous matter. The method and standards shall be no less strict than those recommended by the agricultural marketing service, U. S. department of agriculture. [C62, 66, 71, 73, 75,§194.5]

194.6 Bacterial test. At least once every thirty days an estimate of the bacterial quality shall be made of each producer's milk by use of a standard plate count or an equivalent plate

counting procedure in an officially designated laboratory.

For the purpose of quality improvement and payment, the following classifications of milk for bacterial estimate shall be applicable:

Bacterial Estimate Classification	Standard Plate Count or Equivalent
Class 1	Not over 500,000 per Milliliter
Class 2	Not over 3,000,000 per Milliliter
Undergrade	Over 3,000,000 per Milliliter

[C62, 66, 71, 73, 75,§194.6]

Referred to in §194.8

194.7 Acceptable milk. Milk acceptable from the standpoint of organoleptic examination, containing no excessive extraneous matter and complying with class 1 or 2 for bacterial estimate shall be acceptable for use in the processing and manufacturing of dairy products for human consumption. [C62, 66, 71, 73, 75,§194.7]

194.8 Unacceptable milk. Milk acceptable from the standpoint of organoleptic examination, as specified in section 194.6, containing no excessive extraneous matter and classified in excess of three million for bacterial estimate, may be used in the processing and manufacturing of dairy products for human consumption for a period of seven consecutive days.

After a week another quality test must be run on this producer's milk, and if the milk has not improved to class 2 or better, similar tests must be made at least one day per week for three successive weeks. If after the fourth weekly test the milk from the producer has not improved to class 2 or better, no plant shall accept milk from this producer for the manufacture of dairy products for human consumption until the secretary has authorized his reinstatement. Any further acceptance of milk from this producer shall be on the basis of testing the first shipment for extraneous matter and bacterial estimate to determine if the milk is class 2 or better. [C62, 66, 71, 73, 75,§194.8]

194.9 Unlawful milk. Milk, which from the standpoint of organoleptic examination is not acceptable, or which contains excessive extraneous matter or which by four weekly bacterial estimate tests in excess of three million, or which contains material evidencing production from a mastitic cow; or which contains chemicals, medicines, or radioactive agents deleterious to health, shall be deemed unlawful for the manufacture of dairy products for human consumption. [C62, 66, 71, 73, 75,§194.9]

194.10 Milk purchased on basis of grade. All purchases and deliveries of milk and cream for the manufacture of dairy products shall be made on the basis of grades and definitions set forth in this chapter. [C62, 66, 71, 73, 75, §194.10]

194.11 Price differential. All purchasers and receivers of milk for the manufacture of dairy products for human consumption shall maintain a reasonable price differential between the grades of milk as defined by the bacterial estimate tests. This price differential shall not be less than five percent of the price for grade one milk. [C62, 66, 71, 73, 75,§194.11]

194.12 Milk grader. Every creamery, cheese factory and milk processing plant must employ at least one person who is duly licensed as a grader of milk. [C62, 66, 71, 73, 75,§194.12]

194.13 License. Milk grader's licenses shall be issued by the secretary to persons who shall have passed a satisfactory examination as to their qualifications to grade milk or cream. Said license shall not be transferable. [C62, 66, 71, 73, 75,§194.13]

194.14 Fee. Each license shall, unless sooner revoked, be valid until July 1 after date of issuance. The fee therefor shall be three dollars, which shall be paid before the license is issued. [C62, 66, 71, 73, 75,§194.14]

194.15 Grader's duty. It shall be the duty of each licensed grader to comply with or to cause the plants which he owns, operates or in which he is employed, to comply with the provisions of this chapter. [C62, 66, 71, 73, 75, §194.15]

194.16 Revocation or suspension. Any license issued under this chapter may be revoked by the secretary for any violation of this chapter or for violation of any standard of sanitation prescribed by any other statute applicable to the holder of such license, but only after the holder of the license has been given reasonable notice of the intention to revoke the license and reasonable opportunity to be heard, provided, however, that when a licensee is convicted of a willful violation of any requirement of this chapter, the secretary shall summarily suspend said license for a period of thirty days and provided that upon a second such conviction the secretary shall summarily and permanently revoke such license. [C62, 66, 71, 73, 75,§194.16]

194.17 Records. Each creamery, cheese factory or milk processing plant shall maintain records of all purchases and receipts of milk from individual producers. These records must show:

1. Name of producer.
2. Date of delivery.
3. Quantity delivered.
4. Grade assigned.

[C62, 66, 71, 73, 75,§194.17]

194.18 Coloring unlawful milk. It shall be the duty of each licensed grader of milk to mix with any unlawful milk, whenever ob-

served by him, a harmless coloring matter that will prevent the unlawful milk to be processed and used in any form for human consumption. [C62, 66, 71, 73, 75,§194.18]

194.19 Vehicles used for transportation and licenses for persons. Every vehicle used for the collection of milk for manufacture of dairy products, and persons purchasing milk for manufacture of dairy products, shall first be licensed by the secretary of agriculture according to chapter 195. This shall not apply to individuals transporting their own dairy products.

By applying for said license, the applicant consents to abide by all laws set forth in this chapter and the rules and regulations which may be promulgated to implement these laws in the case of all milk obtained from Iowa producers for manufacture of dairy products.

The provisions of section 189.28 shall not apply to milk for manufacture of dairy products. [C62, 66, 71, 73, 75,§194.19]

194.20 Penalty. Any person who, by himself or by his agent or employee, willfully violates any requirement of this chapter shall be fined not less than fifty dollars nor more than one hundred dollars. [C62, 66, 71, 73, 75, §194.20]

CHAPTER 195

CREAM GRADING LAW

Referred to in §194.19

General penalty, §189.21

195.1 Title.
195.2 Enforcement.
195.3 Definitions.
195.4 Basis of purchase.
195.5 Price differential.
195.6 Repealed by 56GA, ch 113,§2.
195.7 Licensed graders.
195.8 License granted.
195.9 Tenure—fee.
195.10 Duty of grader.
195.11 Treatment of graded cream.
195.12 Treatment of unlawful milk or cream.
195.13 Extraneous matter test.
195.14 Details of test.
195.15 Operating license.
195.16 Issuance of license.
195.17 Tenure—fees.
195.18 Posting.
195.19 Revocation of license.
195.20 Sanitation.
195.21 Separate rooms.
195.22 Transportation.
195.23 Empty cans.
195.24 Inspection.
195.25 Samples.
195.26 Prohibited acts.
195.27 Penalties.

195.1 Title. This chapter may be cited as "The Cream Grading Law" and is an amendment to this title. [C35,§3100-g1; C39,§3100.20; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.1]

195.2 Enforcement. The secretary of agriculture shall enforce the provisions hereof, and to this end may adopt such rules and regulations, not inconsistent herewith, as may appear necessary. [C35,§3100-g2; C39,§3100.21; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.2]

195.3 Definitions. For the purposes of this chapter:

1. *"Secretary"* means the secretary of the department of agriculture.

2. *"Person"* includes individuals, partnerships, corporations, and associations.

3. *"Creamery"* means an establishment to which milk or cream of divers producers is delivered and where said products are manufactured into butter or cheese for commercial purposes.

4. *"Cream station"* means a place, other than a creamery, where deliveries of cream are weighed, sampled, graded or tested for purchase on a butterfat basis.

5. *"Cream route"* means any method used in gathering or transporting cream for hire from two or more producers to a cream station or creamery, except common carriers.

6. *"Sweet cream"* shall be cream which after proper manufacturing will yield butter meeting at least the requirements of United States department of agriculture grade "A" or United States department of agriculture ninety-two score. It shall be fresh and clean to the taste and its acidity shall at no time exceed two-tenths of one percent calculated as lactic acid. It may have a slight feed flavor. It shall be free from extraneous matter.

7. *"Grade one cream"* shall be cream which after proper manufacturing will yield butter meeting at least the requirements of United States department of agriculture grade "B" or United States department of agriculture ninety score. It shall be free from flavors resulting from decomposition or age. It may have smothered, slight utensil, or feed flavors and

its acidity shall at no time exceed six-tenths of one percent calculated as lactic acid. It shall be free from extraneous matter.

8. *"Grade two cream"* shall be cream which after proper manufacturing will yield butter meeting at least the requirements of United States department of agriculture grade "C" or United States department of agriculture eighty-nine score. It shall be free from flavors resulting from decomposition or age. It may have off-flavors to a limited degree and its acidity may exceed six-tenths of one percent calculated as lactic acid. It shall be free from extraneous matter.

9. *"Unlawful cream"* shall be cream which has such flavors as stale, rancid, cheesy, yeasty, metallic, oily, putrid, or other objectionable flavors or which shows evidence of decomposition and age. Unlawful cream shall also be cream containing excessive extraneous matter as set forth in section 195.14, regardless of other quality characteristics. [C35,§3100-g3; C39,§**3100.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §195.3]

195.4 Basis of purchase. All purchases of cream shall be made on the basis of sweet cream, first grade cream and second grade cream. [C35,§3100-g4; C39,§**3100.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.4]

195.5 Price differential. Every person owning or operating a creamery, or cream station, or cream vehicle route and engaged in the business of buying two or more grades of cream shall maintain a price differential between said grades of not less than one cent per pound of butterfat. [C35,§3100-g5; C39, §**3100.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.5]

195.6 Repealed by 56GA, ch 113,§2.

195.7 Licensed graders. A grader of milk or cream, duly licensed as herein provided, shall be maintained in every creamery and cream station; also in every vehicle when cream or milk is not gathered in individual containers. [C35,§3100-g7; C39,§**3100.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.7]

195.8 License granted. Such license shall be issued by the secretary to persons who shall have passed a satisfactory examination as to their qualifications to grade cream or milk and who confirm their qualifications by an actual demonstration. Said license shall not be transferable. [C35,§3100-g8; C39,§**3100.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.8]

195.9 Tenure—fee. Each license shall, unless sooner revoked, be valid until July 1 after date of issuance. The fee therefor shall be three dollars which shall be paid before the license is issued. [C35,§3100-g9; C39,§**3100.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.9]

195.10 Duty of grader. Each licensed grader of milk or cream shall immediately grade each lot of milk or cream delivered to or received by him. Wherever a particular lot of milk or cream is graded whether at the creamery, at the cream station, or at the vehicle used for transportation, the grader shall forthwith make and preserve a true record of said particular lot, which record shall show:

1. Name of the producer or owner.
2. Date of delivery.
3. Quantity delivered.
4. Grade or grades assigned.
5. Price paid.

[C35,§3100-g10; C39,§**3100.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.10]

195.11 Treatment of graded cream. As soon as cream is graded, it shall be placed forthwith in a clean container. Each container containing graded cream shall have a label or tag firmly attached thereto showing in a legible and conspicuous manner the grade of the cream therein and the date when said cream was graded. The grader of said cream shall see that this section is complied with. [C35, §3100-g11; C39,§**3100.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.11]

195.12 Treatment of unlawful milk or cream. It is hereby made the duty of each licensed grader of milk or cream to thoroughly mix with any unlawful milk or cream whenever and wherever discovered by him such harmless coloring matter as will prevent such unlawful milk or cream from being used for human consumption. [C35,§3100-g12; C39, §**3100.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.12]

195.13 Extraneous matter test. A test for the purpose of determining the amount and nature of extraneous matter in milk or cream shall always be made by the grader on the first purchase of milk or cream from a customer. At least two tests for extraneous matter shall be made each month on the milk or cream sold by each customer. But the grader shall make such test whenever he has reason to believe that such test is advisable. [C35, §§3100-g6,-g13; C39,§§**3100.25, 3100.32**; C46, 50, 54, 58, 62,§§195.6, 195.13; C66, 71, 73, 75,§195.13]

195.14 Details of test. The secretary of agriculture shall determine and promulgate the standards and methods of testing milk or cream for extraneous matter. These standards and methods shall be no less than the minimum requirements of the United States public health service standards. [C35,§3100-g14; C39, §**3100.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.14]

Referred to in §195.3(9)

195.15 Operating license. No creamery or cheese factory or cream station or vehicle for the collection of cream or milk for manufacture of dairy products shall be operated unless the owner or operator shall have first obtained from the secretary a license for each creamery, each cheese factory, each cream station, and each vehicle so owned or operated. [C35, §3100-g15; C39,§**3100.34**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.15]

195.16 Issuance of license. The license to operate as aforesaid shall be issued by the secretary and shall specify the particular creamery or cream station, the operation of which is authorized; also, in a general way, the route over which the vehicle is authorized to operate. [C35,§3100-g16; C39,§**3100.35**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.16]

195.17 Tenure—fees. Such license, unless sooner revoked, shall expire December 31 after the date of issuance. The fee therefor, payable to the secretary before its issuance, shall be:

1. For each creamery, five dollars.
2. For each cream station, three dollars.
3. For each vehicle, three dollars.
4. For each cheese factory, five dollars.

[C35,§3100-g17; C39,§**3100.36**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.17]

195.18 Posting. The holder of said license shall keep said license continuously posted in some conspicuous place inside said creamery, or cream station, or inside the driver's compartment of the said vehicle, as the case may be. [C35,§3100-g18; C39,§**3100.37**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.18]

195.19 Revocation of license. Any license issued under this chapter may be revoked by the secretary for any violation of this chapter or for violation of any standard of sanitation prescribed by any other statute applicable to the holder of such license, but only after the holder of the license has been given reasonable notice of the intention to revoke the license and reasonable opportunity to be heard, provided that when a licensee is convicted of a willful violation of any requirement of this chapter, the secretary shall summarily suspend said license for a period of thirty days and provided that upon a second such conviction the secretary shall summarily and permanently revoke said license. [C35,§3100-g19; C39, §**3100.38**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.19]

195.20 Sanitation. No creamery or cream station or vehicle used on a route for the collection of cream shall be operated or permitted to be operated in an unclean or insanitary condition. [C35,§3100-g20; C39,§**3100.39**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.20]

195.21 Separate rooms. The owner or operator of a creamery or cream station shall maintain a separate room or rooms for the handling and sorting of cream and dairy products, which room or rooms shall be constructed and maintained in the same sanitary condition now required by statute for the construction and maintenance of creameries generally, be well lighted and ventilated, and be provided with proper cooling facilities and an adequate supply of hot and cold water. [C35,§3100-g21; C39, §**3100.40**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.21]

195.22 Transportation. Every vehicle used to transport milk or cream from producers to any dairy plant shall be maintained in a sanitary condition. Every vehicle so used shall be enclosed to protect the milk or cream from extreme heat or cold and from dust or other contamination; provided, however, that this provision shall not be applied to producers delivering their own milk or cream when such milk or cream is otherwise protected from extreme heat or cold and from dust or other contamination. [C35,§§3100-g6,-g22; C39,§§**3100.25, 3100.41**; C46, 50, 54, 58,§§195.6, 195.22; C62, 66, 71, 73, 75,§195.22]

195.23 Empty cans. Empty cream cans shall be thoroughly washed and kept in a sanitary condition, stored, and protected from the weather. [C35,§3100-g23; C39,§**3100.42**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.23]

195.24 Inspection. The secretary and all his authorized agents shall have access, at all reasonable times, to all creameries and cream stations and other places, including vehicles for transportation, where milk or cream is produced, received, tested, purchased, transported, or used for the manufacture of butter. [C35,§3100-g24; C39,§**3100.43**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.24]

195.25 Samples. The secretary, and all such authorized agents on showing their authority and upon paying or offering to pay the value thereof, may take from any producer, handler, receiver, or seller of milk or cream, or from any manufacturer of butter, whether principal, agent or employee, samples of milk, cream or butter for purposes of inspection and analysis. [C35,§3100-g25; C39,§**3100.44**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.25]

195.26 Prohibited acts. The following acts or omissions are prohibited:

1. The purchase or receipt of cream except on the basis of grades as herein provided.
2. The failure to provide a price differential as herein provided.
3. The grading by an unlicensed grader of any lot of cream.
4. The improper or incorrect grading by a licensed grader of any lot of cream.
5. Knowingly offering or exposing for sale of unlawful cream for any human consumption.
6. The purchase, possession or acceptance of unlawful cream for human consumption.
7. The failure of a licensed grader of cream to make and keep such records as are herein required of him.
8. The possession by the owner or operator of a creamery or of a cream station, or of a cream route vehicle of any graded cream which is unlabeled or falsely labeled.
9. The maintenance of a creamery or cream station or cream route vehicle in an insanitary condition.
10. The conducting or maintaining of a creamery, or cream station, or cream route

vehicle in such a manner that cream may be contaminated.

11. The act of obstructing or hindering any official inspection by the secretary or by any of his authorized agents.

12. The removal or defacement of any tag or tags as herein required which have been attached to a receptacle containing cream.

13. The handling or transportation of cream contrary to the provisions of this chapter.

14. The operation of a creamery, or cream station, or cream route vehicle without obtaining a license as herein provided.

This enumeration of prohibited acts shall not be construed to exempt the violator of any other provision of this chapter from criminal responsibility. [C35,§3100-g26; C39,§3100.45; C46, 50, 54, 58, 62, 66, 71, 73, 75,§195.26]

195.27 Penalties. Any person who, by himself or by his agent or employee, willfully violates any requirement of this chapter shall be fined not less than twenty-five dollars nor more than one hundred dollars. [C35,§3100-g27; C39,§3100.46; C46, 50, 54, 58, 62, 66, 71, 73, 75, §195.27]

Constitutionality, 46GA, ch 29,§28

CHAPTER 196

EGG HANDLERS

Chapter 196, Code 1975, repealed by 66GA, ch 1126,§15
Penalty, §196.14

196.1 Definitions.
196.2 Enforcement.
196.3 Egg handler's license and fee.
196.4 Producers and hatcheries exempt.
196.5 Candling and grading license.
196.6 Candling and grading room.
196.7 Candling and grading prior to sale.
196.8 Quality.
196.9 Eggs unfit as human food.
196.10 Labeling.
196.11 Storage.
196.12 Transportation.
196.13 Records.
196.14 Penalty.

196.1 Definitions. Unless the context otherwise requires:

1. *"Retailer"* means a person who sells eggs directly to consumers except a producer who sells eggs under the provisions of section 196.4.

2. *"Egg handler"* means a person who buys or sells eggs, or uses eggs in the preparation of human food. "Egg handler" does not include a retailer, a consumer, an institution, or a producer who sells eggs as provided in section 196.4.

3. *"Nest run eggs"* means eggs which have not been denatured, candled, graded, processed or labeled.

4. *"Producer"* means a person who owns layer type chickens.

5. *"Establishment"* means any place in which eggs are offered or sold as human food for consumption by its patrons, customers, residents, inmates or patients or as an ingredient in food offered or sold in a form ready for immediate consumption.

6. *"Candling"* means the careful examination of each shell egg and the elimination of those eggs determined unfit for human consumption.

7. *"Grading"* means classifying each shell egg by weight and grading in accordance with egg grading standards approved by the United States government as of July 1, 1976.

8. *"Secretary"*, *"department"*, and *"package"* have the meanings ascribed to them in section 189.1. [C24, 27, 31, 35, 39,§3107; C46, 50, 54,§196.7; C58, 62, 66, 71, 73, 75,§§196.3, 196.11; 66GA, ch 1126,§1]

196.2 Enforcement. The secretary shall enforce the provisions of this chapter, and may make rules pursuant to chapter 17A and consistent with regulations of the United States government as they exist on July 1, 1976. [C24, 27, 31, 35, 39,§3111; C46, 50, 54, §196.11; C58, 62, 66, 71, 73, 75,§196.2; 66GA, ch 1126,§2]

196.3 Egg handler's license and fee. Every egg handler shall obtain an annual license from the department. The fee for the license shall be determined on the basis of the total number of eggs purchased and handled during the preceding month of April in each calendar year as follows:

1. Less than one hundred twenty-five cases $12.50

2. One hundred twenty-five cases or more but less than two hundred fifty cases $25.00

3. Two hundred fifty cases or more but less than one thousand cases $37.50

4. One thousand cases or more $50.00

The license shall expire one year after its date of issue. For the purpose of determining fees, a case shall be thirty dozen eggs. All fees collected shall be remitted to the treasurer of state for deposit in the general fund of the state.

If an egg handler is not operating during the month of April, the department shall estimate the volume of eggs purchased or handled, or both, and may revise the fee based on three months of operation. [C24, 27, 31, 35, 39,§§**3101, 3103**; C46, 50, 54,§§196.1, 196.3; C58, 62, 66, 71, 73, 75,§§196.4, 196.6; 66GA, ch 1126,§3]

Referred to in §196.4

196.4 Producers and hatcheries exempt. Producers who sell eggs produced exclusively by their own flocks directly to handlers, or to consumers, shall not be required to obtain a candler's and grader's license.

A hatchery shall obtain an egg handler's license pursuant to section 196.3 if it purchases eggs which are not used for hatching purposes. [C24, 27, 31, 35, 39,§**3102**; C46, 50, 54,§196.2; C58, 62, 66, 71, 73, 75,§196.5; 66GA, ch 1126,§4]

Referred to in §196.1

196.5 Candling and grading license. A person who candles and grades eggs shall obtain a candler and grader license from the department. The license fee shall be three dollars per year for such person. Before a license is issued, each person who is engaged in candling and grading shall demonstrate to the satisfaction of the department capability to perform candling and grading.

With the approval of the secretary, persons candling and grading eggs may be appointed for a period of not more than fourteen days pending licensing by the department, if during this period the employer of the temporary candler and grader will be responsible for his or her work while acting in the capacity of candler or grader. [C24, 27, 31, 35, 39,§**3109**; C46, 50, 54,§196.9; C58, 62, 66, 71, 73, 75,§§196.7, 196.8; 66GA, ch 1126,§5]

196.6 Candling and grading room. An egg handler's license shall be obtained from the department for each location at which eggs will be candled and graded. Before a license is issued for each location candling eggs, the department shall make a careful survey of the premises and determine that the premises contain proper facilities for candling and grading. [C24, 27, 31, 35, 39,§**3109**; C46, 50, 54, §§196.6, 196.9; C58, 62, 66, 71, 73, 75,§196.13; 66GA, ch 1126,§6]

196.7 Candling and grading prior to sale. All eggs offered for sale by an egg handler to a retailer, an establishment or a consumer, shall be candled and graded. [C24,§3108; C27, 31, 35,§§3108, 3112-b1; C39,§**3112.1**; C46, 50, 54, §§196.8, 196.13; C58, 62, 66, 71, 73, 75,§§196.12, 196.14; 66GA, ch 1126,§7]

196.8 Quality. All eggs offered for sale to an establishment must be no lower than United States department of agriculture consumer grade "B". [C27, 31, 35,§3112-b1; C39, §**3112.1**; C46, 50, 54,§196.13; C58, 62, 66, 71, 73, 75,§196.14; 66GA, ch 1126,§8]

196.9 Eggs unfit as human food. Eggs determined to be unfit for human food under title 21, section 1031 of the United States Code as amended to July 1, 1976 shall not be bought or sold or offered for purchase or sale by any person unless the eggs are denatured so that they cannot be used for human food. [C24, 27, 31, 35, 39,§§**3104, 3105, 3108**; C46, 50, 54,§§196.4, 196.5, 196.8; C58, 62, 66, 71, 73, 75, §196.10; 66GA, ch 1126,§9]

196.10 Labeling. Sections 189.9 to 189.12 shall apply to the labeling of packaged eggs which have been candled and graded if not inconsistent with the provisions of this chapter. All cases of loose packed eggs sold in this state shall identify the egg handler's name or license number or United States department of agriculture plant number, and, the grade of the eggs contained in the case. Each carton containing eggs for retail sale in Iowa which have been candled and graded shall be marked with the grade and size of the eggs contained, the date they were packed, and the name and address of the distributor or packer. [C24, 27, 31, 35, 39,§**3110**; C46, 50, 54, §196.10; C58, 62, 66, 71, 73, 75,§196.16; 66GA, ch 1126,§10]

196.11 Storage. The provisions of section 189.28 shall not apply to eggs. [C58, 62, 66, 71, 73, 75,§196.19; 66GA, ch 1126,§11]

196.12 Transportation. Vehicles used to transport eggs from the point of production to an egg handler or between handlers shall be kept in sanitary condition and shall be enclosed. However, this section shall not apply to producers transporting their own eggs to a handler. [C58, 62, 66, 71, 73, 75,§196.20; 66GA, ch 1126,§12]

196.13 Records. Handlers shall keep a record for three years of each of their purchases and sales of eggs, including the date of the transaction, the names of the parties, the grade, or nest run, and the quantity of eggs being purchased or sold. [66GA, ch 1126,§13]

196.14 Penalty. Any person found guilty of any violation of this chapter shall upon conviction for the first offense, be fined twenty-five dollars; for the second offense, one hundred dollars; and for the third and subsequent offenses, two hundred dollars. In addition to such fines, if the offender is a handler or a retailer, the court for the third offense shall suspend his or her license for thirty days; and for the fourth and any subsequent offense, such license shall be revoked for a period of one year. [C58, 62, 66, 71, 73, 75,§196.18; 66GA, ch 1126,§14]

CHAPTER 196A

EXCISE TAX ON EGG SALES

196A.1 Definitions.
196A.2 Petition for election.
196A.3 Notice of referendum.
196A.4 Establishment of egg council and tax.
196A.5 Composition of council.
196A.6 Initial appointments.
196A.7 Notice of subsequent elections.
196A.8 Terms.
196A.9 Subsequent membership.
196A.10 Vacancies.
196A.11 Duties of council.
196A.12 Powers.
196A.13 Prohibited actions.
196A.14 Compensation.
196A.15 Tax.
196A.16 Invoice required.
196A.17 Egg fund.
196A.18 Refunds.
196A.19 Use of egg fund.
196A.20 Warrants by comptroller.
196A.21 Bond required.
196A.22 Examination of records.
196A.23 Penalty.
196A.24 Purchasers outside Iowa.
196A.25 Report.

196A.1 Definitions. As used in this chapter, unless the context indicates otherwise:

1. *"Producer"* means any person who owns, or contracts for the care of, five hundred or more layer-type chickens, the eggs of which are sold in this state through commercial channels, including, but not limited to, eggs for hatching, which have been produced by the producer's own flock.

2. *"Hatchery man"* means any person who operates a hatchery licensed under chapter 168 and who is actively engaged in the business of hatching and selling chickens for commercial purposes.

3. *"Processor"* means the first purchaser of eggs from a producer, or a person who both produces and processes eggs.

4. *"Purchaser"* means a person who resells eggs purchased from a producer or offers for sale a product produced from such eggs for any purpose.

5. *"Poultry and poultry products"* means layer-type chicken hens and eggs, including hatching eggs, and their products.

6. *"Market development"* means research and educational programs which are directed toward:

a. Better and more efficient production, marketing, and utilization of poultry and poultry products produced for resale.

b. Better methods, including, but not limited to, public relations and other promotion techniques for the maintenance of present markets and for the development of new or larger domestic or foreign markets and for the sale of poultry and poultry products.

c. Prevention, modification or elimination of trade barriers which obstruct the free flow of poultry and poultry products to market.

7. *"Secretary"* means the secretary of agriculture or his appointee.

8. *"District"* means a producer district established by the Iowa poultry association, incorporated. The Iowa poultry association, incorporated shall establish four districts in this state from which egg producers shall be appointed to serve on the Iowa egg council pursuant to this chapter.

9. *"Council"* means the Iowa egg council. [C75,§196A.1]

196A.2 Petition for election. Upon receipt of a petition signed by at least fifty producers requesting a referendum election to determine whether to establish an Iowa egg council and to impose an excise tax not to exceed five cents on every thirty dozen eggs sold, the secretary shall call a referendum to be conducted within sixty days following receipt of the petition. The petitioners shall guarantee payment of the cost of a referendum held under this chapter. [C75,§196A.2]

196A.3 Notice of referendum. The secretary shall give notice of the referendum on the question whether to establish an Iowa egg council and to impose the tax by publishing the notice for a period of not less than five days in at least one newspaper of general circulation in the state. The notice shall state the voting places, period of time for voting, and other information deemed necessary by the secretary.

A referendum shall not be commenced until five days after the last date of publication. [C75,§196A.3]

196A.4 Establishment of egg council and tax. Each producer who signs a statement certifying that he is a bona fide producer shall be entitled to one vote. At the close of the referendum, the secretary shall count and tabulate the ballots cast. If a majority of voters favor establishing an Iowa egg council and imposing a tax, an Iowa egg council shall be established, and the tax shall be imposed commencing not more than sixty days following the referendum as determined by the Iowa egg council and shall continue for a period of five years unless extended as provided under this chapter. If a majority of the voters do not favor establishing an Iowa egg council and imposing the tax, the tax will not be imposed nor will the council be established until another refer-

endum is held under this chapter and a majority of the voters favor establishing a council and imposing the tax. If a referendum should fail, another referendum shall not be held within one hundred eighty days.

Subsequent referendums to extend the imposition of the tax shall be held every five years in the year prior to the expiration of the tax in force; however, upon receipt of a petition signed by at least fifty producers requesting a referendum election to determine whether to terminate the establishment of the Iowa egg council and to terminate the imposition of the excise tax as provided herein, the secretary shall call a referendum to be conducted within sixty days following the receipt of the petition. The petitioners shall guarantee the payment of the costs of such referendum. If the majority of the voters of any subsequent referendum do not favor an extension, an additional referendum may be held when the secretary receives a petition signed by at least fifty producers. However, the subsequent referendum shall not be held within one hundred eighty days. [C75,§196A.4]

196A.5 Composition of council. The Iowa egg council established under this chapter shall be composed of four egg producers, one from each district; two egg processors; and one hatchery man who shall be appointed pursuant to this chapter. The secretary or his representative, the director of the Iowa development commission, and the chairman of the poultry science section of the department of animal science at Iowa State University of science and technology or his representative shall serve as ex officio nonvoting members of the council. The council shall annually elect a chairman from its membership. [C75, §196A.5]

196A.6 Initial appointments. For the initial council the secretary shall notify the Iowa poultry association, incorporated, immediately after passage of the question at the referendum election and the association shall nominate two producers from each district, four processors from the state, and two hatchery men from the state to serve on the Iowa egg council. The secretary shall receive the nominations and shall appoint from these nominations members of the initial council within thirty days following passage of the question at the referendum election. [C75,§196A.6]

196A.7 Notice of subsequent elections. Notice of subsequent elections for members of the council shall be given by the council by publication in a newspaper of general circulation in the state and in any other reasonable manner as may be determined by the council and shall set forth the period of time for voting, voting places, and other information as the council deems necessary. [C75,§196A.7]

196A.8 Terms. The term of office for members of the council shall be four years and no member shall serve more than three consecutive terms. The producers on the initial council shall determine their terms by lot, so that two producers shall serve a two-year term and two producers shall serve a four-year term. The two processors on the initial council shall determine their terms by lot so that one processor shall serve a two-year term and one shall serve a four-year term. The hatchery man on the initial council shall serve a two-year term. [C75,§196A.8]

196A.9 Subsequent membership. After the appointment of the initial council, the council shall administer subsequent elections for members of the council with the assistance of the secretary. Before the expiration of a producer's term of office, the council shall appoint a nominating committee for the district represented by the producer. The nominating committee shall consist of five producers who are residents of the district from which a member must be elected. The nominating committee shall nominate two resident producers as candidates for the membership position for which an election is to be held. Additional candidates may be nominated by a written petition of fifty producers. Procedures governing the time and place of filing the nominations shall be promulgated by rule and publicized by the council.

In addition the council shall appoint a nominating committee composed of five processors and five hatchery men in the state. The nominating committee shall nominate two processors as candidates for each processor position and two hatchery men as candidates for the hatchery man position on the council. [C75, §196A.9]

196A.10 Vacancies. The council shall by appointment fill an unexpired term if a vacancy occurs on the council. [C75,§196A.10]

196A.11 Duties of council. The Iowa egg council shall:

1. Provide methods, including, but not limited to public relations and other promotion techniques, for the maintenance of present markets. However, the council shall not impose any marketing order or similar restriction.

2. Assist in other market development.

3. Perform all acts necessary to effectuate the provisions of this chapter. [C75,§196A.11]

196A.12 Powers. The Iowa egg council may:

1. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers and fix their compensation.

2. Establish offices, incur expenses and enter into any contracts or agreements necessary to carry out the purposes of this chapter.

3. Adopt, rescind and amend all proper and necessary rules for the exercise of its powers and duties.

4. Enter into arrangements for collection of the tax on eggs. [C75,§196A.12]

196A.13 Prohibited actions. The council shall not:

1. Become a dues-paying member of any other firm, association, organization or corporation, public or private.

2. Furnish, directly or indirectly, any financial support to or for any other person, firm, association, organization or corporation, public or private, except for contracts for services rendered or to be rendered for research and promotional and public relations programs and for administrative expenses of the Iowa egg council.

3. Act, directly or indirectly, in any capacity in marketing or making contracts for the marketing of eggs or poultry.

4. Act, directly or indirectly, in any capacity in selling or contracting for the selling of egg-producing or poultry-producing equipment.

5. Make any contribution out of the funds of the council, either directly or indirectly, to any political party or organization or in support of any political candidate for public office or payments to a political candidate or member of Congress or the Iowa legislature for honorariums, speeches or for any other purposes above actual and necessary expenses. [C75,§196A.13]

196A.14 Compensation. Members of the council may receive payment for their actual expenses and travel in performing official council functions. Payment shall be made from amounts collected from the tax. No member of the council shall be a salaried employee of the council or any organization or agency receiving funds from the council. The council shall meet at least once every three months, and at other times it deems necessary. [C75, §196A.14]

196A.15 Tax. If approved by a majority of voters at a referendum, a tax to be set by the council at not more than five cents for each thirty dozen eggs sold by a producer will be imposed on the producer at the time of delivery to a purchaser who will deduct the tax from the price paid to the producer at the time of sale. If the producer sells eggs to a purchaser outside the state of Iowa, the producer shall deduct the tax from the amount received from the sale and shall forward the amount deducted to the council within thirty days following each calendar quarter. If the producer and processor are the same person, then he shall pay the tax to the council within thirty days following each calendar quarter. [C75,§196A.15]

Referred to in §196A.17

196A.16 Invoice required. At the time of sale, the purchaser shall sign and deliver to the producer separate invoices for each purchase. The invoices shall show:

1. The name and address of the producer and the seller, if different from the producer.

2. The name and address of the purchaser.

3. The quantity of eggs sold.

4. The date of the purchase.

5. The rate of withholding and the total amount of tax withheld.

Invoices shall be legibly written and shall not be altered. [C75,§196A.16]

196A.17 Egg fund. Subject to the provisions of section 196A.15, the tax imposed by this chapter shall be remitted by the purchaser to the Iowa egg council not later than thirty days following each calendar quarter following collection of the tax. Amounts collected from the tax shall be deposited in the office of the treasurer of state in a separate fund to be known as the Iowa egg fund. [C75, §196A.17]

196A.18 Refunds. A producer who has paid the tax may, by application in writing to the council, secure a refund in the amount paid. The refund shall be payable only when the application shall have been made to the council within sixty days after payment of the tax. Each application for refund by a producer shall have attached thereto proof of tax paid. The proof of tax paid may be in the form of a duplicate or certified copy of the purchase invoice by the purchaser. [C75,§196A.18]

196A.19 Use of egg fund. Moneys collected under the authority of this chapter shall be subject to audit by the auditor of state and shall be used by the Iowa egg council first for the payment of collection and refund expenses, second for payment of the costs and expenses arising in connection with conducting referendums, and third for market development. Any moneys remaining in the Iowa egg fund after a referendum is held when a majority of the voters do not favor extending the tax shall continue to be expended in accordance with the provisions of this chapter until exhausted. [C75,196A.19]

196A.20 Warrants by comptroller. The Iowa egg fund shall be subject at all times to warrant by the state comptroller, upon written requisition of the chairman of the council, attested to by the council secretary. [C75, §196A.20]

196A.21 Bond required. All persons holding positions of trust under this chapter shall give bond in the amount required by the council. The premiums for bond costs shall be paid from the Iowa egg fund. [C75,§196A.21]

196A.22 Examination of records. Persons subject to the provisions of this chapter shall furnish on forms provided by the council any information needed to enable the council to effectuate the policies of this chapter. For the purpose of ascertaining the correctness of any report made to the council under the provi-

sions of this chapter, the secretary may examine books, papers, records, copies of tax returns not confidential by law, and accounts, which are in the control of any person. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas in connection with the administration of this chapter. [C75,§196A.22]

196A.23 Penalty. Any person who willfully violates any provision of this chapter, willfully gives a false report, statement, or record required by the council, or willfully fails to furnish or render any report, statement or record required by the secretary shall be guilty of a misdemeanor. [C75,§196A.23]

196A.24 Purchasers outside Iowa. The secretary may enter into arrangements with purchasers from outside Iowa for payment of the tax. [C75,§196A.24]

196A.25 Report. During the period of collection of the tax, the council in co-operation with the auditor of state shall make an annual report which shall show all income, expenses and other relevant information. [C75,§196A.25]

CHAPTER 197

POULTRY AND DOMESTIC FOWLS

General penalty, §189.21
Meat and poultry inspection, ch 189A

197.1 License.
197.2 Fee.
197.3 Record.
197.4 Inspection of.
197.5 Enforcement.
197.6 Violations.

197.1 License. Every person, partnership, or corporation engaged in the business of buying for the market, poultry or domestic fowls from the producer thereof, shall obtain a license from the department of agriculture for each establishment at which said business is conducted.

The word *"producer"* as herein used shall include anyone not a licensed dealer who has acquired such poultry or domestic fowls other than through a licensed dealer. [C27, 31, 35, §3112-b2; C39,§**3112.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§197.1]

197.2 Fee. The license fee shall be three dollars per annum, and each license shall expire on March 1 after the date of issue. [C27, 31, 35,§3112-b3; C39,§**3112.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§197.2]

197.3 Record. Each licensee shall keep such records as the department of agriculture shall require, as to date of purchase, name and residence of seller and number and description of such poultry or domestic fowls purchased from the producer. [C27, 31, 35,§3112-b4; C39, §**3112.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§197.3]

197.4 Inspection of. Such records as are required by the department of agriculture to be kept by such licensee shall be open to inspection by any peace officer at any reasonable time. [C27, 31, 35,§3112-b5; C39,§**3112.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§197.4]

197.5 Enforcement. The department of agriculture shall be charged with the duty of the enforcement of this chapter. [C27, 31, 35,§3112-b6; C39,§**3112.6**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §197.5]

197.6 Violations. Any person who shall violate the provisions of this chapter shall, for each offense, be deemed guilty of a misdemeanor and punishable as such. [C27, 31, 35, §3112-b7; C39,§**3112.7**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§197.6]
Punishment, §687.7

CHAPTER 198

COMMERCIAL FEED

Chapter 198, Code 1973, repealed by 65GA, ch 1156,§19
Penalties, §198.13

198.1 Short title.
198.2 Enforcing official.
198.3 Definitions.
198.4 Registration.
198.5 Labeling.
198.6 Misbranding.
198.7 Adulteration.
198.8 Prohibited acts.

198.9 Inspection fees and reports.
198.10 Rules.
198.11 Inspection, sampling and analysis.
198.12 Detained commercial feeds.
198.13 Penalties.
198.14 Co-operation with other entities.
198.15 Publication.

198.1 Short title. This chapter shall be known as the "Iowa Commercial Feed Law of 1974." [C66, 71, 73, 75,§198.1]

198.2 Enforcing official. This chapter shall be administered by the secretary of agriculture. [C66, 71, 73, 75,§198.2]

198.3 Definitions. For the purposes of this chapter:

1. *"Secretary"* means the secretary of agriculture.

2. *"Distribute"* means to offer for sale, sell, exchange or barter, commercial feed or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

3. *"Distributor"* means any person who distributes.

4. *"Commercial feed"* means all materials except whole seeds unmixed or physically altered entire unmixed seeds, when not adulterated within the meaning of section 198.7, subsection 1, which are distributed for use as feed or for mixing in feed. The secretary by rule may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances when such commodities, compounds or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 198.7, subsection 1.

5. *"Feed ingredient"* means each of the constituent materials making up a commercial feed.

6. *"Mineral feed"* means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

7. *"Drug"* means any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

8. *"Customer-formula feed"* means commercial feed which consists of a mixture of commercial feeds or feed ingredients, or both, each batch of which is manufactured according to the specific instructions of the final purchaser.

9. *"Manufacture"* means to grind, mix or blend or further process a commercial feed for distribution.

10. *"Brand name"* means any word, name, symbol, or device or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

11. *"Product name"* means the name of the commercial feed which identifies it as to kind, class, or specific use.

12. *"Label"* means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

13. *"Labeling"* means all labels and other written, printed or graphic matter upon a commercial feed or any of its containers or wrappers or, accompanying such commercial feed.

14. *"Ton"* means a net weight of two thousand pounds avoirdupois.

15. *"Percent"* or *"percentages"* means percentages by weight.

16. *"Official sample"* means a sample of feed taken by the secretary or his agent in accordance with the provisions of section 198.11, subsection 3, 5 or 6.

17. *"Contract feeder"* means a person who as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits or amount or quality of product.

18. *"Pet food"* means any commercial feed prepared and distributed for consumption by pets.

19. *"Pet"* means any domesticated animal normally maintained in or near the household of the owner thereof.

20. *"Specialty pet food"* means any commercial feed prepared and distributed for consumption by specialty pets.

21. *"Specialty pet"* means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles. [S13,§5077-a8; C24, 27, 31, 35, 39,§3113; C46, 50, 54, 58, 62,§198.1; C66, 71, 73, 75,§198.3]

Referred to in §§155.2, 198.11, 203.8, 205.8

198.4 Registration.

1. No person shall manufacture a commercial feed in this state, unless he has filed with the secretary on forms provided by the secretary, his name, place of business and location of each manufacturing facility in this state.

2. No person shall distribute in this state a commercial feed, except a customer-formula feed, which has not been registered pursuant to the provisions of this section. The applica-

tion for registration shall be submitted in the manner prescribed by the secretary. Upon approval by the secretary the registration shall be issued to the applicant. A registration shall continue in effect unless it is canceled by the registrant or unless it is canceled by the secretary pursuant to subsection 3.

3. The secretary may refuse registration of any commercial feed not in compliance with the provisions of this chapter and may cancel any registration found not to be in compliance with any provisions of this chapter, provided, that no registration shall be refused or canceled unless the registrant shall have been given an opportunity to be heard before the secretary and to amend his application in order to comply with the requirements of this chapter. [S13,§5077-a9; C24, 27, 31, 35, 39,§3117; C46, 50, 54, 58, 62,§198.7; C66, 71, 73,§§198.4, 198.5; C75,§198.4]

Referred to in §198.8

198.5 Labeling. A commercial feed shall be labeled as follows:

1. In case of a commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following information:

a. The net weight.

b. The product name and the brand name, if any, under which the commercial feed is distributed.

c. The guaranteed analysis stated in such terms as the secretary by rule determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the association of official analytical chemists.

d. The common or usual name of each ingredient used in the manufacture of the commercial feed, provided, that the secretary by rule may permit the use of a collective term for a group of ingredients which perform a similar function, or he may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if he finds that such statement is not required in the interest of consumers.

e. The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

f. Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the secretary may require by rule as necessary for their safe and effective use.

g. Such precautionary statements as the secretary by rule determines are necessary for the safe and effective use of the commercial feed.

2. In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip or other shipping document, bearing the following information:

a. Name and address of the manufacturer.

b. Name and address of the purchaser.

c. Date of delivery.

d. The product name and brand name, if any, and the net weight of each registered commercial feed used in the mixture, and the net weight of each other ingredient used.

e. Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the secretary may require by rule as necessary for their safe and effective use.

f. Such precautionary statements as the secretary by rule determines are necessary for the safe and effective use of the customer-formula feed. [S13,§5077-a6,-a7; SS15,§§5077-a6,-a7; C24, 27, 31, 35, 39,§§3114–3116; C46, 50, 54, 58, 62,§§198.2, 198.5, 198.6; C66, 71, 73,§198.6; C75, §198.5]

Referred to in §198.6

198.6 Misbranding. A commercial feed shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

2. If it is distributed under the name of another commercial feed.

3. If it is not labeled as required in section 198.5.

4. If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by rule by the secretary.

5. If any word, statement, or other information required by this chapter to appear on the label is not prominently and conspicuously placed thereon and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [C66, 71, 73,§198.9; C75,§198.6]

198.7 Adulteration. A commercial feed shall be deemed to be adulterated:

1. *a.* If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health.

b. If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the federal Food, Drug, and Cosmetic Act, other than one which is a pesticide chemical in or on a raw agricultural commodity or a food additive.

c. If it is, or it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal Food, Drug, and Cosmetic Act.

d. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408, subparagraph *"a"* of the federal Food, Drug, and Cosmetic Act, provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agriculture commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408, subparagraph *"a"* of the federal Food, Drug, and Cosmetic Act.

e. If it is, or it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal Food, Drug, and Cosmetic Act.

2. If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

3. If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

4. If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules promulgated by the secretary to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such rules, the secretary shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under authority of the federal Food, Drug, and Cosmetic Act, unless he determines that they are not appropriate to the conditions which exist in this state.

5. If it contains viable weed seeds in amounts exceeding the limits which the secretary shall establish by rule. [S13,§5077-a13; C24, 27, 31, 35,§§3114-d2, 3126; C39,§**3114.2**; C46, 50, 54, 58, 62,§§198.4, 198.13; C66, 71, 73,§198.8; C75,§198.7]

Referred to in §§198.3, 198.8, 198.11

198.8 Prohibited acts. It shall be unlawful for any person to:

1. Manufacture or distribute any commercial feed that is adulterated or misbranded.

2. Adulterate or misbrand any commercial feed.

3. Distribute agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks and hulls, which are adulterated within the meaning of section 198.7, subsection 1.

4. Remove or dispose of a commercial feed in violation of an order under section 198.12.

5. Fail or refuse to register in accordance with section 198.4.

6. Violate section 198.13, subsection 6.

7. Fail to pay inspection fees and file reports as required by section 198.9. [C75,§198.8]

198.9 Inspection fees and reports.

1. An inspection fee to be fixed annually by the secretary, at the rate of no more than ten cents per ton shall be paid on commercial feeds distributed in this state, by the person who distributes the commercial feed to the consumer, subject to the following:

a. A fee shall not be paid on a commercial feed if the payment has been made by a previous distributor.

b. A fee shall not be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as ingredients therein.

c. A fee shall not be paid on commercial feeds which are used as ingredients for the manufacture of commercial feeds which are registered. If the fee has already been paid, credit shall be given for such payment.

d. In the case of a commercial feed which is distributed in the state only in packages of ten pounds or less, an annual fee of twenty-five dollars, shall be paid in lieu of the inspection fee specified above.

e. The minimum inspection fee shall be a semiannual fee of ten dollars.

f. In the case of specialty pet food, which is distributed in the state in packages of one pound or less, an annual fee of twenty-five dollars shall be paid in lieu of an inspection fee.

2. Each person who is liable for the payment of such fee shall:

a. File, not later than the last day of January and July of each year a semiannual statement, setting forth the number of net tons of commercial feeds distributed in this state during the preceding six months and upon filing such statement shall pay the inspection fee at the rate stated in subsection 1. Inspection fees which are due and owing and have not been remitted to the secretary within fifteen days following the due date shall have a delinquency fee of ten percent or five dollars, whichever is greater, added to the amount due when payment is finally made. The assessment of this delinquency fee shall not prevent the department from taking other actions as provided in this chapter.

b. Keep such records as may be necessary or required by the secretary to indicate accurately the tonnage of commercial feed dis-

tributed in this state, and the secretary shall have the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of all registrations on file for the distributor.

3. Fees collected shall constitute a fund for the payment of the costs of inspection, sampling, analysis, supportive research and other expenses necessary for the administration of this chapter. [S13,§5077-a10; C24, 27, 31, 35, 39, §§3118–3121; C46, 50, 54, 58, 62,§§198.8–198.12; C66, 71, 73,§198.7; C75,§198.9]

Referred to in §198.8

198.10 Rules.

1. The secretary may promulgate such rules for commercial feeds and pet foods as are specifically authorized in this chapter and such other reasonable rules as may be necessary for the efficient enforcement of this chapter. In the interest of uniformity the secretary shall by rule adopt, unless he determines that they are inconsistent with the provisions of this chapter or are not appropriate to conditions which exist in this state, the following:

a. The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication* of that organization, and

b. Any rule promulgated pursuant to the authority of the federal Food, Drug, and Cosmetic Act, U.S.C. section 301, et seq., provided, that the secretary would have the authority under this chapter to promulgate such rules.

*Act effective July 1, 1974

2. Before the issuance, amendment or repeal of any rule authorized by this chapter, the secretary shall publish the proposed rule, amendment, or notice to repeal an existing rule in a manner reasonably calculated to give interested parties, including all current registrants, adequate notice and shall afford all interested persons an opportunity to be heard, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the secretary shall take appropriate action to issue the proposed rule or to amend or repeal an existing rule. The provisions of this subsection notwithstanding, if the secretary, pursuant to the authority of this chapter, adopts the official definitions of feed ingredients or official feed terms as adopted by the Association of American Feed Control Officials, or rules promulgated pursuant to the authority of the federal Food, Drug, and Cosmetic Act, any amendment or modification adopted by said association or by the secretary of health, education and welfare in the case of regulations promulgated pursuant to the federal Food, Drug and Cosmetic Act, shall be adopted automatically* under this chapter without regard to publication of the notice required by this subsection, unless the secretary, by order specifically determines that said amendment or modification shall not be adopted. [C66, 71, 73,§198.11; C75,§198.10]

*Act effective July 1, 1974

198.11 Inspection, sampling and analysis.

1. For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the secretary, upon presenting appropriate credentials, and a written notice to the owner, operator or agent in charge, are authorized:

a. To enter, during normal business hours, any factory, warehouse or establishment within the state in which commercial feeds are manufactured, processed, packed or held for distribution, or to enter any vehicle being used to transport or hold such feed.

b. To inspect at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling therein. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice regulations established under section 198.7, subsection 4.

2. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

3. If the officer or employee making such inspection of a factory, warehouse or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the samples obtained.

4. If the owner of any factory, warehouse, or establishment described in subsection 1, or his agent, refuses to admit the secretary or his agent to inspect in accordance with subsections 1 and 2, the secretary may obtain from any state court a warrant directing such owner or his agent to submit the premises described in such warrant to inspection.

5. For the purpose of the enforcement of this chapter, the secretary or his duly designated agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

6. Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists, or in accordance with other generally recognized methods.

7. The results of all analyses of official samples shall be forwarded by the secretary to the person named on the label. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty days following receipt of the analysis the secretary shall furnish to the registrant a portion of the sample concerned.

8. The secretary, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in section 198.3, subsection 16, and obtained and analyzed as provided for in subsections 3, 5 and 6. [C66, 71, 73,§198.10; C75,§198.11]

Referred to in §198.3

198.12 Detained commercial feeds.

1. When the secretary or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or of any of the prescribed rules under this chapter, he may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the secretary or the court. The secretary shall release the lot of commercial feed so withdrawn when said provisions and rules have been complied with. If compliance is not obtained within thirty days, the secretary may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

2. Any lot of commercial feed not in compliance with said provisions and rules shall be subject to seizure on complaint of the secretary to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this chapter and order the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state, provided, that in no instance shall the dispositon of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this chapter. [C66, 71, 73, 75,§198.12]

Referred to in §198.8

198.13 Penalties.

1. Any person convicted of violating any of the provisions of this chapter or who shall impede, hinder or otherwise prevent, or attempt to prevent, said secretary or his authorized agent in performance of his duty in connection with the provisions of this chapter, shall be guilty of a misdemeanor and shall be fined not less than twenty-five dollars or more than one hundred dollars for the first violation, and not less than fifty dollars or more than three hundred dollars for a subsequent violation.

2. Nothing in this chapter shall be construed as requiring the secretary or his representative to:

a. Report for prosecution.

b. Institute seizure proceedings.

c. Issue a withdrawal from distribution order, as a result of minor violations of the chapter, or when he believes the public interest will best be served by suitable notice of warning in writing.

3. It shall be the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the secretary reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the secretary.

4. The secretary may apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

5. Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this chapter may within forty-five days thereafter bring action in the district court for judicial review of such actions. The form of the proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies, or in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs or prohibitory or mandatory injunctions.

6. Any person who uses to his own advantage, or reveals to other than the secretary, or officers of the department or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this chapter, concerning any method, records, formulations or processes which as a trade secret is entitled to protection, is guilty of a misdemeanor and shall on conviction thereof be fined not less than one hundred dollars or imprisoned for not less than six months, or both, provided that this prohibition shall not be deemed as prohibiting the secretary, or his duly authorized agent, from exchanging information of a regulatory nature with appointed officials of the United States government, or of other states, who are similarly prohibited by law from revealing this information. [C66, 71, 73, 75,§198.13]

Referred to in §198.8

198.14 Co-operation with other entities. The secretary may co-operate with and enter into

agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this chapter. [C75,§198.14]

198.15 Publication. The secretary shall publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed in the registration and on the label. Provided, that the information concerning production and use of commercial feed shall not disclose the operations of any person. [C66, 71, 73,§198.14; C75,§198.15]

CHAPTER 199

AGRICULTURAL SEEDS

General penalty, §189.21

199.1 Definitions.
199.2 Botanist as advisor.
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199.12 Seizure of unlawful seed.
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199.1 Definitions. For the purpose of this chapter:

1. The term "*person*" includes an individual, a partnership, corporation, company, society, or association.

2. The term "*agricultural seeds*" shall mean the seeds of grass, forage, cereal and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds, lawn seeds and mixtures of such seeds, and may include any additional seeds the secretary of agriculture may list in the rules and regulations provided for in this chapter.

3. The term "*weed seed*" shall mean seeds of all noxious weeds listed herein and other plants commonly designated as weeds in this state.

4. Noxious weed seeds shall be divided into two classes, "primary noxious weed seeds" and "secondary noxious weed seeds" which are defined in "*a*" and "*b*" of this subsection; provided that the secretary of agriculture, upon recommendation of the state botanist, may add to or subtract from the list of seeds included under either definition whenever he finds, after public hearing, that such additions or subtractions are within the respective definitions.

a. Primary noxious weed seeds are the seeds of perennial weeds such as those that not only reproduce by seed but also by underground roots or stems and which when established are highly destructive and difficult to control in this state by ordinary good cultural practices. Primary noxious weeds in this state are the seeds of:

(1) Quack grass—Agropyron repens
(2) Canada thistle—Cirsium arvense
(3) Perennial sow thistle—Sonchus arvensis
(4) Perennial pepper grass—Lepidium draba
(5) European morning glory (field bindweed)—Convolvulus arvensis
(6) Horse nettle—Solanum carolinense
(7) Leafy spurge—Euphorbia esula
(8) Russian knapweed—Centaurea repens

b. Secondary noxious weed seeds are the seeds of such weeds as are very objectionable in fields, lawns, or gardens in this state but can be controlled by good cultural practices. The secondary noxious weed seeds in this state are the seeds of:

(1) Wild carrot—Daucus carota
(2) Sour dock—Rumex crispus
(3) Smooth dock—Rumex altissimus
(4) Sheep sorrel—Rumex acetosella
(5) Butterprint—Abutilon theophrasti
(6) Mustards—Brassica juncea, B. kaber and B. nigra
(7) Cocklebur—Xanthium commune
(8) Buckhorn—Plantago lanceolata
(9) Dodders—Custcuta species

See Iowa Administrative Code, July 1, 1975, chapter 5, rule 5.4(10), for additional noxious weeds

5. "*Purity*" shall mean the pure seed percentage by weight, exclusive of inert matter and of other agricultural or weed seeds which are distinguishable by their appearance from the crop seed in question.

6. "*Tolerance*" means the allowable deviation from any figure used on a label to desig-

nate the percentage of any fraction in the lot in question. It is based on the law of normal variation from a mean. The secretary of agriculture shall prepare tables of maximum tolerances allowable in the enforcement of this chapter and may be guided in such preparation by the rules and regulations under the federal Seed Act.

7. *"Treated seed"* shall mean agricultural seed to which a fungicide has been added or applied for the purpose of controlling pathogens that cause crop diseases.

8. *"Inoculant for leguminous plants"* shall mean any bacterial culture, or material containing bacteria, that is represented as causing the formation of nodules and aiding the growth of leguminous plants by the fixation of nitrogen.

9. The term *"labeling"* includes all labels, and other written, printed, or graphic representations, in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices.

10. The term *"advertisement"* means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this chapter.

11. The term *"guidance test"* shall mean any seed test not conducted in accordance with the procedures outlined in the federal Seed Act rules or the Association of Official Seed Analysts' rules for seed testing. Guidance tests are intended for a grower who plans to use the seed for planting on his own farm. The results shall not be employed for labeling seed exposed for sale.

12. A *"permit holder"* is a person who has obtained a permit number from the Iowa department of agriculture as required under sections 199.15 and 199.16.

13. A *"registered seed technologist"* is a seed technologist who has attained registered membership in the Society of Commercial Seed Technologists through qualifying tests and experience as required by this society.

14. The *"state botanist"* is the head of the botany and plant pathology section of the Iowa agricultural experiment station. [S13, §§5077-a14–a17; C24, 27, 31, 35, 39,§§**3127, 3128**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§199.1]

Referred to in §424.3(3)
Weeds, ch 317

199.2 Botanist as advisor. The state botanist shall be the technical advisor to the secretary in the administration of this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§199.2]

199.3 Labeling of seeds. All agricultural seeds for sale in Iowa shall be labeled according to the following schedule:

1. Each container of agricultural seed which is sold, offered for sale, or exposed for sale, within this state for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information:

a. Commonly accepted name of (1) kind, or (2) kind and variety or (3) kind and type of each agricultural seed component in excess of five percent of the whole and the percentage by weight of each in the order of its preponderance.

b. Lot number or other lot identification.

c. Origin, if known, of alfalfa, red clover. If the origin is unknown, that fact shall be stated.

d. Percentage by weight of all weed seeds.

e. The name and approximate number of each kind of secondary noxious weed seed, per ounce in groups (1), (2), and (3), and per pound in group (4), when present singly or collectively in excess of:

(1) Five seeds or bulblets per ounce of Agrostis species, Poa species, Bermuda grass, timothy, orchard grass, fescues (except meadow fescue), alsike and white clover, reed canary grass, and other agricultural seeds of similar size and weight, or mixtures within this group;

(2) Three seeds or bulblets per ounce of rye grass, meadow fescue, foxtail millet, alfalfa, red clover, sweet clover, lespedeza, smooth brome, crimson clover, Brassica species, flax, Agropyron species, and other agricultural seeds of similar size and weight, or mixtures within this group or of this group with (1);

(3) One seed or bulblet per ounce of proso, Sudan grass and other agricultural seeds of similar size and weight, or mixtures not specified in (1), (2), or (4);

(4) Five seeds or bulblets per pound of wheat, oats, rye, barley, buckwheat, sorghum (except Sudan grass), vetches, soybeans, and other agricultural seeds of a size and weight similar to or greater than those within this group.

All determinations of noxious weed seeds are subject to tolerances and methods of determination prescribed in the rules and regulations under this chapter.

f. Percentage by weight of agricultural seeds other than those required to be named on the label.

g. Percentage by weight of inert matter.

h. For each named agricultural seed (1) percentage of germination exclusive of hard seed, (2) percentage of hard seed, if present, and (3) the calendar month and year the test was completed to determine such percentages. Following (1) and (2) the additional statement "total germination and hard seed" may be stated as such, if desired.

i. Warning as to danger from poisoning in the case of treated seed if compound is used which is poisonous to man or farm animals.

j. Name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state.

Referred to in §§199.4, 199.9

2. The label for seed mixtures for lawn or turf purposes or both shall bear thereon:

a. The word "mixed" or "mixture".

b. The headings "Fine-textured Grasses" and "Coarse Kinds" in eight-point or larger type on a contrasting background. Thereunder in tabular form in uniform-size type no larger than the heading nor smaller than eight point:

(1) The commonly accepted name, in order of its predominance, of the kind or kind and variety of each agricultural seed present in excess of five percent of the whole and determined to be "Fine-textured Grass" or a "Coarse Kind" in accordance with the rules and regulations provided for in this chapter.

(2) The word "None" shall be printed under the appropriate heading, "Fine-textured Grasses" or "Coarse Kinds" when no kind or kind and variety is listed under either of these headings.

(3) For each agricultural seed named: The percentage by weight of pure seed; the percentage of germination, exclusive of hard seed; the percentage of hard seed, if present; and the calendar month and year the germination test was completed to determine such percentage. One date of test may be given to represent all kinds or kinds and varieties, provided, all kinds or kinds and varieties were tested on or after the date given. Such information shall clearly indicate that it is applicable to all of the kinds or kinds and varieties listed.

c. The heading "Other Ingredients" and thereunder in conspicuous type no larger than the heading:

(1) The percentage by weight of all weed seeds.

(2) The percentage by weight of all agricultural seed other than those listed on the label as "Fine-textured Grasses" or "Coarse Kinds".

(3) The percentage by weight of inert matter.

d. The lot number or other identification.

e. The name and rate of occurrence per ounce or per pound of each kind of secondary noxious weed seed present.

f. The name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within the state.

3. Seeds sold on or from the farm, which are exempt from the permit requirement by section 199.15, shall be labeled on the basis of tests performed by the Iowa State University seed laboratory, Iowa department of agriculture seed laboratory, or a commercial seed laboratory personally supervised by a registered seed technologist. Tests for labeling shall be as provided in section 199.10. [S13,§§5077-a6,-a18,-a19,-a21; C24, 27, 31, 35, 39, §§3129, 3130, 3131, 3132; C46, 50, 54, 58, 62, 66, 71, 73, 75,§199.3]

Referred to in §§199.4, 199.8(1,*a*), 199.9(1)

199.4 Sales from bulk. In case agricultural seed is offered or exposed for sale in bulk or sold from bulk, the information required under section 199.3, subsection 1, may be supplied by (1) a placard conspicuously displayed with the several required items thereon or (2) a printed or written statement to be furnished to any purchaser of said seed. [S13,§5077-a6; C24, 27, 31, 35, 39,§3133; C46, 50, 54, 58, 62, 66, 71, 73, 75, §199.4]

199.5 Hybrid corn. It shall be unlawful for any person to sell, offer or expose for sale, or falsely mark or tag, within the state any seed corn as hybrid unless it represents the first generation of a cross between strains of different parentage and involving inbred lines of corn and (or) their combinations. Any corn sold as "hybrid" shall have plainly printed or marked on the label or container in which such corn is sold the identifying symbols or numbers, clearly indicating the specific combination. The cross mentioned above shall be produced by cross-fertilization, controlled either by hand or detasseling at the proper time. [C35,§3137-e1; C39,§3137.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§199.5]

199.6 Inoculant for legumes. The container of any inoculant for leguminous plants which is sold, offered for sale, or exposed for sale within the state shall bear a label giving in the English language in legible letters the following information:

1. The kind or kinds of leguminous plants for which the contents are to be used.

2. The quantity of seed to which the contents are to be applied.

3. An expiry date after which the inoculant might be ineffective.

4. The name and place of business of the manufacturer or laboratory of origin, or alternately of the vendor only, if he accepts responsibility for the accuracy of the declarations made in subsections 1, 2, and 3 of this section. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§199.6]

199.7 Certified seed. The classes of certified seed shall be foundation, registered, and certified and shall be recognized by the certifying agency.

It shall be unlawful for any person to sell, offer for sale, or expose for sale in the state:

1. Any agricultural seed, including seed potatoes, as a recognized class of certified seed unless:

a. Such seed has been certified by a duly constituted state authority or state association recognized by the Iowa secretary of agriculture.

b. Each container bears an official label approved by the certifying agency stating that the seed has met the certification requirements established by the certifying agency.

c. Each container of the certified class of certified seed bears a label blue in color with the word "certified" thereon.

d. Each container of the foundation and registered classes of certified seed bears a label with a color or colors approved by the certifying agency.

2. Any agricultural seed, including seed potatoes, with a blue label unless such seed is a class of certified seed. [C35,§§3137-g1,-g2; C39, §§**3137.3, 3137.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §199.7]

Referred to in §199.9

199.8 Prohibited acts. It shall be unlawful for any person to sell, offer for sale, or expose for sale within this state:

1. Any agricultural seed—

a. Unless the test to determine the percentage of germination required by section 199.3 shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation.

b. Not labeled in accordance with the provisions of this chapter, or having a false or misleading labeling.

c. Pertaining to which there has been a false or misleading advertisement.

d. Containing any primary noxious weed seeds. In the enforcement of this subsection, the department shall employ accepted tolerances adopted by the federal Seed Act.

Determination of freedom from primary noxious weed seeds shall be based on an examination of not less than the amounts specified in the rules and regulations provided for in this chapter.

Referred to in §199.12

e. Containing more than one and one-half percent of weed seeds by weight subject to tolerances prescribed in the rules and regulations.

Referred to in §199.12

f. Labeled on the basis of guidance test.

2. Screenings of any agricultural seed subject to this chapter, unless it is stated on the label, if in containers, or on the invoice, if in bulk, that they are not intended for seeding purposes. For the purpose of this subsection "screenings" shall include chaff, empty florets, immature seed, weed seed, inert matter, and other materials removed in any way from any agricultural seeds subject to the provisions of this chapter, in any kind of cleaning or processing, and which contain less than twenty-five percent of viable agricultural seeds.

It shall further be unlawful for any person within this state:

a. To detach, alter, deface, or destroy any label provided for in this chapter or the rules and regulations made and promulgated thereunder, or to alter or substitute seed, in a manner that may defeat the purposes of this chapter.

b. To disseminate any false or misleading advertisement concerning agricultural seed in any manner or by any means.

c. To hinder or obstruct in any way any authorized person in the performance of his duties under this chapter.

d. To fail to comply with a "stop sale" order. [S13,§5077-a15; C24, 27, 31, 35, 39,§**3137**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§199.8]

Referred to in §§199.9(1), 199.12

199.9 Exemptions.

1. The provisions of sections 199.3 and 199.8 do not apply—

a. To seed or grain not intended for sowing purposes.

b. To seed in storage in, or consigned to, or for sale to, a seed cleaning or processing establishment for cleaning or processing; provided that any labeling or other representation which may be made with respect to the unclean seed shall be subject to this chapter.

2. No person shall be subject to the penalties of this chapter, for having sold, offered or exposed for sale in this state any agricultural seeds, which were incorrectly labeled or represented as to kind, variety, type, or origin which seeds cannot be identified by examination thereof, unless he has failed to obtain an invoice or grower's declaration giving kind, or kind and variety, or kind and type, and origin, if required and to take such other precautions as shown by the records of purchase. The provisions of section 199.7 shall not be interpreted to restrict the color of the container. [S13,§5077-a20; C24, 27, 31, 35, 39,§**3136**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§199.9]

199.10 Testing methods—co-operation of facilities.

1. *Testing methods when seed is for sale.* Seed lots of all kinds of agricultural seed, except seed corn, intended for sale in this state shall be tested in accordance with the Association of Official Seed Analysts rules for testing seed or the rules and regulations under the federal Seed Act. The tests required shall be:

a. Purity analysis.

b. Noxious weed examination.

c. Germination.

2. *Testing methods when seed is not for sale.*

a. Guidance tests employing nonofficial testing methods may be used.

b. All individuals or organizations making guidance tests shall:

(1) Issue special report forms for guidance tests. These forms shall carry a statement in bold-face type at the top of the report: "This report not valid for the sale of seed."

(2) Report the name and address of the seed sender and submit copies of all guidance tests reports to the Iowa department of agriculture.

3. *Charges for testing.* Charges for seed testing by the Iowa State University or department of agriculture seed laboratory shall be determined by the Iowa State University laboratory. Separate fee schedules shall be published for:

a. Guidance tests for farmers who do not plan to sell seed.

b. Tests for seedsmen, permit holders and farmers who plan to sell seed.

c. Tests for out-of-state persons.

4. Co-operation between the Iowa State University and the state department of agriculture. To furnish farmers and seedsmen with information as to seed quality and guide them in the proper labeling of seed for sale, these organizations shall:

a. Integrate seed testing so as to avoid unnecessary duplication of personnel and equipment. The state department of agriculture seed laboratory shall be primarily concerned with seed testing for seed law enforcement purposes. The Iowa State University seed laboratory shall promote seed education and research and shall conduct service testing for farmers and seedsmen.

b. Exchange information which will be mutually beneficial to both agencies in matters pertaining to agricultural seed.

c. Guide seed testing by all individuals, organizations or seedsmen so as to promote uniformity of seed testing in Iowa. [S13,§5077-a12; C24, 27, 31, 35, 39,§**3135**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§199.10]

Referred to in §199.3(3)

199.11 Authority of secretary of agriculture. 1. For the purpose of carrying out the provisions of this chapter, the state secretary of agriculture who may act through his authorized agents is hereby authorized and directed:

a. To sample, inspect, make analysis of, and test agricultural seeds transported, sold, offered or exposed for sale within this state for sowing purposes, at such time and place and to such extent as he may deem necessary to determine whether said agricultural seeds are in compliance with the provisions of this chapter, and to notify promptly the person who transported, sold, offered or exposed the seed for sale, of any violation.

b. To prescribe and, after public hearing following due public notice, to adopt rules and regulations governing the methods of sampling, inspecting, analysis, tests, and examination of agricultural seed, and the tolerances to be followed in the administration of this chapter, which shall be in general accord with officially prescribed practice in interstate commerce under the federal seed Act and such other rules and regulations as may be necessary to secure the efficient enforcement of this chapter.

2. Further, for the purpose of carrying out the provisions of this chapter, the state secretary of agriculture, individually or through his authorized agents, is authorized and directed:

a. To enter upon any public or private premises during regular business hours in order to have access to seeds subject to this chapter and the rules and regulations thereunder.

b. To issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of agricultural seed which the state secretary of agriculture or his authorized agents believe is in violation of any of the provisions of this chapter which shall prohibit further sale of such seed until such officer has evidence that the law has been complied with; provided, that the owner or custodian of such seed shall be permitted to remove said seed from a salesroom open to the public; provided further, that in respect to seeds which have been denied sale as provided in this subsection, judicial review may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court; and provided further, that the provisions of this subsection shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this chapter.

c. To establish and maintain or make provision for seed testing facilities essential to the enforcement of this chapter, to employ qualified persons, and to incur such expenses as may be necessary to comply with these provisions.

d. To co-operate with the United States department of agriculture in seed law enforcement. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§199.11]

199.12 Seizure of unlawful seed. Upon the recommendation of the state secretary of agriculture or his duly authorized agents, the court of competent jurisdiction in the area in which the seed is located shall cause the seizure and subsequent denaturing, processing, or destruction to prevent the use for sowing purposes of any lot of agricultural seed found to be prohibited from sale as set forth in section 199.8, subsection 1, paragraphs "*d*" and "*e*", and subsection 2; provided, that in no instance shall the denaturing, processing, or destruction be ordered without first having given the claimant of said seed an opportunity to apply to said court for the release of said seed. [C35,§3137-g3; C39,§**3137.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §199.12]

199.13 Penalty. Every violation of the provisions of this chapter shall be deemed a misdemeanor, punishable by a fine of not more than two hundred fifty dollars. The department of agriculture through its duly authorized agent or agents, may institute proceedings in a court of competent jurisdiction to enforce the provisions of this chapter. [C35,§3137-e2; C39,§**3137.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §199.13]

199.14 Enforcement. It shall be the duty of the secretary of agriculture, and his agents, to enforce this chapter and of the county attorneys and of the attorney general of the state to co-operate with him in the enforcement of

this chapter. [C35,§3137-g4; C39,§3137.6; C46, 50, 54, 58, 62, 66, 71, 73, 75,§199.14]

Constitutionality, 49GA, ch 130,§15

199.15 Permit number—fee—fraud. No person shall sell, distribute, solicit orders for, offer or expose for sale, any agricultural seed without first obtaining from the department a permit number to engage in such business. No permit number shall be required of persons selling seeds, including seed corn, which has been packed and distributed by a seedsman holding and having in force a permit number as herein provided. No permit number shall be required of persons selling, offering or exposing for sale seed of their own production, provided that such seed is stored or delivered to purchaser only on or from the farm or premises where grown. The fee for each permit number shall be five dollars per annum, and all permit numbers shall expire on the first day of July following date of issue. After due notice given at least ten days prior to a date of hearing fixed by the secretary of agriculture, the department may revoke or refuse to renew any permit issued under the authority of this section, if intent to defraud is established. The failure to fulfill any contract to repurchase the seed crop produced from any agricultural seed, other than hybrid seed corn, if the same meets the requirements set forth in the contract and the standards specified in this chapter, shall be prima-facie evidence of intent to defraud the purchaser at the time of entering into the contract. [C54, 58, 62, 66, 71, 73, 75,§199.15]

Referred to in §§199.1(12), 199.3(3)

199.16 Permit holder's bond. It shall be unlawful for the holder of any permit to enter into a contract with a purchaser of any agricultural seed other than hybrid seed corn, whereby the permit holder agrees to repurchase the seed crop produced therefrom at a price in excess of the current market price at time of delivery, unless the permit holder shall have on file with the department of agriculture a bond, in a penal sum of ten thousand dollars running to the state of Iowa, with sureties approved by the secretary of agriculture, for the use and benefit of any purchaser of seed holding such a contract who might have a cause of action of any nature arising from or out of such purchase or agreement, provided, however, that the aggregate liability of the surety to all such purchasers shall, in no event, exceed the sum of such bond; and provided, further, however, that any permit holder may, upon the filing of a notarized and detailed financial statement, request that such showing be accepted in lieu of the bond and ask to be exonerated from the filing of the bond herein required. If, after considering the financial statement and any other evidence submitted, the secretary of agriculture finds that the applicant permit holder is accountable for the performance of such contract obligations the notarized financial statement shall be filed in lieu of the bond and applicant shall be so advised by registered mail. [C58, 62, 66, 71, 73, 75,§199.16]

Referred to in §199.1(12)

CHAPTER 200

FERTILIZERS AND SOIL CONDITIONERS

General penalty, §189.21

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200.19 Exchanges between manufacturers.
200.20 Phosphoric acid, nitrogen and potash requirements.

200.1 Title. This chapter shall be known and may be cited by the short title of "Iowa Fertilizer Law." [C46, 50, 54, 58, 62, 66, 71, 73, 75,§200.1]

200.2 Enforcing official. This chapter shall be administered by the secretary of agriculture, hereinafter referred to as the secretary. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§200.2]

200.3 Definitions of words and terms. When used in this chapter:

1. The term *"fertilizer"* means any substance containing one or more recognized plant nutrient which is used for its plant nutrient content and which is designed for use and claimed to have value in promoting plant growth except

unmanipulated animal and vegetable manures or calcium and magnesium carbonate materials used primarily for correcting soil acidity.

Referred to in §200.12

2. The term *"fertilizer material"* means any substance used as a fertilizer or for compounding a fertilizer containing one or more of the recognized plant nutrients which are used for promoting plant growth or altering plant composition.

3. The term *"unmanipulated manures"* means any substances composed primarily of excreta, plant remains, or mixtures of such substances which have not been processed in any manner.

4. The term *"commercial fertilizer"* includes fertilizer and fertilizer materials and fertilizer-pesticide mixtures.

5. A *"specialty fertilizer"* is a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries and may include commercial fertilizers used for research or experimental purposes.

Referred to in §200.4(1)

6. The term *"bulk fertilizer"* shall mean commercial fertilizer delivered to the purchaser in the solid, liquid, or gaseous state, in a nonpackaged form to which a label cannot be attached.

7. The term *"anhydrous ammonia"* means the compound formed by the combination of two gaseous elements, nitrogen and hydrogen, in the proportion of one part nitrogen to three parts hydrogen by volume.

8. The term *"pesticide"* as used in this chapter means insecticides, miticides, nemacides, fungicides, herbicides and any other substance used in pest control.

9. A *"soil conditioner"* is any substance which when added to the soil or applied to plants will produce a favorable growth, yield or quality of crop or soil flora or fauna or other soil characteristics, other than a fertilizer, recognized pesticide, unmanipulated animal and vegetable manures or calcium and magnesium carbonate materials used primarily for correcting soil acidity.

10. The term *"brand"* means a term, design, or trademark used in connection with one or several grades of commercial fertilizer.

11. The term *"grade"* means the percentages of total nitrogen, available phosphorus or P_2O_5 or both, and soluble potassium or K_2O or both stated in whole numbers in same terms, order and percentages as in the "guaranteed analysis".

12. *Guaranteed analysis:*

a. The term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed and reported as Total Nitrogen (N), Available Phosphorus (P) or P_2O_5 or both, Soluble Potassium (K) or K_2O or both and in the following form:

Total Nitrogen (N) ....._____percent
Available Phosphorus (P) or
P_2O_5 or both ....._____percent
Soluble Potassium (K) or
K_2O or both ....._____percent

Registration and guarantee of water soluble phosphorus (P) or (P_2O_5) shall be permitted.

b. The term "guaranteed analysis", in the form specified in paragraph *"a"*, includes:

(1) For unacidulated mineral phosphatic materials and basic slag, both total and available phosphorus or P_2O_5 or both and the degree of fineness. For bone tankage and other organic phosphatic materials, total phosphorus or P_2O_5 or both.

(2) When any additional plant nutrient elements contained in a substance as identified in subsection 1 of this section, are claimed in writing, they shall be identified in the guarantee, expressed as the element, and shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the Association of Official Agricultural Chemists.

Referred to in §200.5(4)

13. The term *"official sample"* means any sample of commercial fertilizer taken by the secretary or his agent.

Referred to in §200.10(3)

14. The term *"ton"* means a net weight of two thousand pounds avoirdupois.

15. The term *"percent or percentage"* means the percentage by weight.

16. The term *"person"* includes individual, partnership, association, firm and corporation.

17. The term *"distributor"* means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends commercial fertilizer, or who offers for sale, sells, barters, or otherwise distributes commercial fertilizer in this state.

18. The term *"sell"* or *"sale"* includes exchange.

19. Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§200.3]

Referred to in §§200.4(1), 200.5(4), 200.10(3), 200.12, 200.20

200.4 Licenses.

1. Any person who manufactures, mixes, blends, or mixes to customers order any fertilizer or soil conditioner offered for sale, sold, or distributed in Iowa must first obtain a license from the secretary of agriculture and shall pay a ten-dollar license fee for each plant or place of manufacture, from which fertilizer or soil conditioner products are sold or distributed in Iowa. Such license fee shall be paid annually on July 1 of each year and the manufacturer, blender or mixer shall at the same time, list the name and address of each such plant or place of manufacture, from which sale or distribution is made.

This subsection shall not apply to a manufacturer who manufactures "specialty fertilizer" only, as defined in section 200.3, subsection 5, in packages of twenty-five pounds or less.

2. Said licensee shall at all times produce an intimate and uniform mixture of fertilizers or soil conditioners. When two or more fertilizer materials are delivered in the same load, they shall be thoroughly and uniformly mixed unless they are in separate compartments. [C46, 50, 54,§§200.2, 200.4, 200.6; C58, 62, §200.6; C66, 71, 73, 75,§200.4]

Referred to in §§200.7, 200.9

200.5 Registration.

1. Each brand and grade of commercial fertilizer and each soil conditioner shall be registered before being offered for sale, sold or otherwise distributed in this state; except that a commercial fertilizer formulated according to special specifications furnished by a consumer to fill his order shall not be required to be registered, but shall be labeled as provided in subsection 3 of section 200.6. The application for registration shall be submitted to the secretary on forms furnished by the secretary and shall be accompanied by a label setting forth the guaranteed analysis which shall be the same as that appearing on the registered product.

2. All registration will be permanent, provided, however, that the secretary may request a listing of products to be currently manufactured. The application shall include the following information in the following order:

a. Net weight, if sold in packaged form.
b. Name and address of the registrant.
c. Name of product.
d. Brand.
e. Grade.
f. Guaranteed analysis.

Referred to in §200.6(1, 2)

3. In addition to the information required in subsection 2 of this section, applications for registration of soil conditioners must include the name or chemical designation and percentage of content of each of the active ingredients.

4. The secretary is authorized, after public hearing, following due notice, to adopt rules regulating the labeling and registration of specialty fertilizers and other fertilizer products, when necessary in his opinion. He may require any reasonable information in addition to subsection 12 of section 200.3, which is necessary and useful to the purchasers of specialty fertilizers of this state and to promote uniformity among states.

5. The secretary is authorized after public hearing, following due notice, to establish minimum acceptable levels of trace and secondary elements recognized as effective to aid crops produced in Iowa and to require such warning statements as may be deemed necessary to prevent injury to crops.

6. The secretary, whenever he deems it necessary in the administration of this chapter, may require the submission of additional data about any fertilizer or product to support the claims made for it. If it appears to the secretary that the composition of the article is such as to warrant the claims made for it, and if the article, its labeling and other material required to be submitted, comply with the requirements of this chapter, he shall register the product.

7. If it does not appear to the secretary that the article is such as to warrant the proposed claims for it, or if the article and its labeling and other material required to be submitted does not comply with the provision of this chapter, he shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fails to comply with this chapter so as to afford the registrant an opportunity to make the necessary corrections before resubmitting the label.

8. It shall be the responsibility of the registrant to submit satisfactory evidence of favorable effects and safety of the product.

9. A distributor shall not be required to register any brand and grade of commercial fertilizer which is already registered under this chapter by another person. [S13,§§2528-f,-f1; C24, 27, 31, 35, 39,§§3139–3141; C46, 50, 54, 58, 62, §200.4; C66, 71, 73, 75,§200.5]

Referred to in §§200.6(1, 2), 200.13

200.6 Labeling.

1. Any commercial fertilizer offered for sale or sold or distributed in this state in bags, or other containers, shall have placed on or affixed to the container in legibly written or printed form, the information required by subsection 2 of section 200.5; either on tags affixed to the end of the package or directly on the package.

2. If distributed in bulk, the shipment must be accompanied by a written or printed statement giving the purchaser's name and address in addition to the labeling requirement set forth in subsection 2 of section 200.5.

3. A commercial fertilizer formulated according to specifications which are furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis, and the name and address of the distributor and may show the net weight and guaranteed analysis of each of the fertilizer materials or soil conditioners used. It is the responsibility of the distributor to mix these materials uniformly and intimately so that when sampled in the prescribed manner the resulting analysis would meet the guarantee.

Referred to in §200.5(1)

4. All bulk bins or intermediate storage of bulk commercial fertilizer where being offered for sale or distributed direct to the consumer shall be labeled showing brand, name and grade of product.

5. All fertilizers distributed or stored in bulk, unless in the manufacturers authorized containers shall be labeled as the responsibility of the possessor.

6. Soil conditioners shall be labeled in accordance with subsection 1 of this section and in addition shall show the name or chemical designation and content or the active ingredients. [S13,§2528-f; C24, 27, 31, 35, 39,§**3142**; C46, 50, 54, 58, 62,§200.5; C66, 71, 73, 75,§200.6]

Referred to in §§200.5(1), 200.13

200.7 Fertilizer-pesticide mixture. Only those persons licensed under section 200.4 shall be permitted to add pesticides to commercial fertilizers. These persons shall at all times produce a uniform mixture of fertilizer and pesticide and shall register and label their product in compliance with both the Iowa Pesticide Act* and this chapter. [C58, 62, 66, 71, 73, 75, §200.7]

*Chapter 206

200.8 Inspection fees.

1. There shall be paid by the licensee to the secretary for all commercial fertilizers and soil conditioners sold, or distributed in this state, an inspection fee to be fixed annually by the secretary of agriculture at not more than twenty cents per ton: Except sales for manufacturing purposes only are hereby exempted from fees but must still be reported showing manufacturer who purchased same. Payment of said inspection fee by any licensee shall exempt all other persons, firms or corporations from the payment thereof.

On individual packages of specialty fertilizer containing twenty-five pounds or less, there shall be paid in lieu of the annual license fee and the semiannual inspection fee as set forth in this chapter, an annual registration and inspection fee of twenty-five dollars for each brand and grade sold or distributed in the state. In the event that any person sells specialty fertilizer in packages of twenty-five pounds or less and also in packages of more than twenty-five pounds, this annual registration and inspection fee shall apply only to that portion sold in packages of twenty-five pounds or less, and that portion sold in packages of more than twenty-five pounds shall be subject to the same inspection fee as fixed by the secretary of agriculture as provided in this chapter.

2. Every licensee and any person required to pay an annual registration and inspection fee under this chapter in this state shall:

a. File not later than the last day of January and July of each year, on forms furnished by secretary, a semiannual statement setting forth the number of net tons of commercial fertilizer or soil conditioners distributed in this state by grade for each county during the preceding six months' period; and upon filing such statement shall pay the inspection fee at the rate stated in subsection 1 of this section. However, in lieu of the semiannual statement by grade for each county, as hereinabove provided for, the registrant, on individual packages of commercial fertilizer containing twenty-five pounds or less, shall file not later than the last day of July of each year, on forms furnished by the secretary, an annual statement setting forth the number of net tons of commercial fertilizer distributed in this state by grade during the preceding twelve-month period, but no inspection fee shall be due thereon.

b. If the tonnage report is not filed or the payment of inspection fees, or both, is not made within ten days after the last day of January and July of each year as required in paragraph "*a*" of this subsection, a penalty amounting to ten percent of the amount due, if any, shall be assessed against the licensee. In any case, the penalty shall be no less than fifty dollars. The amount of fees due, if any, and penalty shall constitute a debt and become the basis of a judgment against the licensee. [C46, 50, 54, §200.15; C58, 62, 66, 71, 73, 75,§200.8]

Referred to in §200.9

200.9 Fertilizer fund. Fees collected for licenses and inspection fees under sections 200.4 and 200.8 shall be deposited in the treasury to the credit of the fertilizer fund to be used only by the department of agriculture for the purpose of inspection, sampling, analysis, preparation and publishing of reports and other expenses necessary for administration of this chapter. The secretary may assign moneys to the Iowa agricultural experiment station for research, work projects, investigations as may be needed for the specific purpose of improving the regulatory functions for enforcement of this chapter. [C46, 50, 54,§200.15; C58, 62, 66, 71, 73, 75,§200.9]

200.10 Inspection, sampling and analysis.

1. It shall be the duty of the secretary, who may act through his authorized agent, to sample, inspect, make analysis of, and test commercial fertilizers or soil conditioners distributed within this state at time and place and to such an extent as he may deem necessary, to determine whether such commercial fertilizers and soil conditioners are in compliance with the provisions of this chapter. In the performance of the foregoing duty, the secretary shall counsel with the director of the Iowa agricultural experimental station in respect to the time, place and extent of sampling. The secretary individually or through his agent is authorized to enter upon any public or private premises or conveyances during regular business hours in order to have access to commercial fertilizers or soil conditioners subject to the provisions of this chapter and the rules and regulations pertaining thereto. It shall be the duty of the secretary to maintain a laboratory with the necessary equipment and to employ such employees as may be necessary to aid in the administration and enforcement of this chapter.

2. The methods of sampling and analysis shall be the official methods of the association of official agricultural chemists in all cases where methods have been adopted by the association.

The findings of the state chemist or his deputy, as shown by the sworn statement of

the results of analysis of official samples of any brand and grade of commercial fertilizer, fertilizer material or soil conditioner, shall constitute prima-facie evidence of their correctness in the courts of this state, as to the particular lots sampled and analyzed.

3. The secretary, in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, or soil conditioner deficient in guaranteed active ingredients, shall be guided by the official sample as defined in subsection 13 of section 200.3, and obtained and analyzed as provided for in subsection 2 of this section.

4. The results of official analysis of any commercial fertilizer or soil conditioner which has been found to be in violation of any provision of this chapter, shall be forwarded by the secretary to the registrant. Upon request, the secretary shall furnish to the registrant a portion of any sample. [C46, 50, 54,§§200.7-200.9; C58, 62,§200.11; C66, 71, 73, 75,§200.10]

200.11 Filler material. It shall be unlawful for any person to manufacture, offer for sale or sell in this state, any commercial fertilizer, or soil conditioner containing any substance used as a filler that is injurious to crop growth or deleterious to the soil, or to use in such commercial fertilizer, or soil conditioner as a filler any substance that contains inert or useless plant food material for the purpose or with the effect of deceiving or defrauding the purchaser. [C46, 50, 54,§200.10; C58, 62,§200.12; C66, 71, 73, 75,§200.11]

200.12 False or misleading statements. A commercial fertilizer or soil conditioner is misbranded if it does not identify substances promoting plant growth as defined in subsection 1 of section 200.3, or if it carries any false or misleading statement upon or attached to the container or stated on the invoice or delivery ticket, or if the container or on the invoice or delivery ticket or in any advertising matter whatsoever connected with, accompanying or associated with the commercial fertilizer or soil conditioner. Further, the burden of proof of the desirable effect of the product on plant growth shall be the responsibility of the registrant. [C46, 50, 54,§200.11; C58, 62, §200.13; C66, 71, 73, 75,§200.12]

200.13 Reports and publications. The secretary shall publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial fertilizers, together with such data on their production and use as he may consider advisable. The secretary shall report semiannually the results of the analysis based on official samples taken of commercial fertilizers sold within the state as compared with the analyses guaranteed under section 200.5 and section 200.6, together with name and address of the manufacturer or distributor of such commercial fertilizer at the time the official sample was taken. A copy of this semiannual report will be mailed by the secretary to each corresponding county extension director in the state. [C46, 50, 54,§200.13; C58, 62,§200.14; C66, 71, 73, 75,§200.13]

200.14 Rules.

1. The secretary is authorized, after public hearing, following due notice, to adopt rules setting forth minimum general safety standards for the design, construction, location, installation and operation of equipment for storage, handling, transportation by tank truck or tank trailer, and utilization of anhydrous ammonia. The rules shall be such as are reasonably necessary for the protection and safety of the public and persons using anhydrous ammonia, and shall be in substantial conformity with the generally accepted standards of safety.

It is hereby declared that rules in substantial conformity with the published standards of the agricultural ammonia institute for the design, installation and construction of containers and pertinent equipment for the storage and handling of anhydrous ammonia, shall be deemed to be in substantial conformity with the generally accepted standards of safety.

All anhydrous ammonia equipment shall be installed and maintained in a safe operating condition and in conformity with the rules and regulations of the secretary of agriculture. No person, firm or corporation, other than the owner and those authorized by the owner to do so, shall sell, fill, refill, deliver or permit to be delivered, or use in any manner any anhydrous ammonia container or receptacle for any gas, compound for any other purpose whatsoever.

2. The secretary is hereby charged with the enforcement of this chapter, and after due publicity and due public hearing, is empowered to promulgate and adopt such reasonable rules as may be necessary in order to carry into effect the purpose and intent of this chapter or to secure the efficient administration thereof.

3. Nothing in this chapter shall prohibit the use of storage tanks smaller than transporting tanks nor the transfer of all kinds of fertilizer including anhydrous ammonia directly from transporting tanks to implements of husbandry, if proper safety precautions are observed. [C46, 50, 54,§200.13; C58, 62, §200.15; C66, 71, 73, 75,§200.14]

200.15 Refusal to register, or cancellation of registration and licenses. The secretary is authorized and empowered to cancel the registration of any product of commercial fertilizer or soil conditioner or license or to refuse to register any product of commercial fertilizer or soil conditioner or refuse to license any applicant as herein provided, upon satisfactory evidence that the registrant or licensee has used fraudulent or deceptive practices or who willfully violates any provisions of this chapter or any rules and regulations promulgated thereunder: Except no registration or license shall be revoked or refused until

the registrant or licensee shall have been given the opportunity to appear for a hearing by the secretary. [C46, 50, 54,§200.11; C58, 62, §200.16; C66, 71, 73, 75,§200.15]

200.16 "Stop sale" orders. The secretary may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of commercial fertilizer or soil conditioner, and to hold at a designated place when the secretary finds said commercial fertilizer or soil conditioner is being offered or exposed for sale in violation of any of the provisions of this chapter or any of the rules and regulations promulgated hereunder until the law has been complied with and said commercial fertilizer or soil conditioner is released in writing by the secretary or said violation has been otherwise legally disposed of by written authority, and all costs and expenses incurred in connection with the withdrawal have been paid. [C58, 62,§200.17; C66, 71, 73, 75,§200.16]

200.17 Seizure, condemnation and sale. Any lot of commercial fertilizer or soil conditioner not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the secretary to a court of competent jurisdiction in the county or adjoining county in which said commercial fertilizer or soil conditioner is located. In the event the court finds the said commercial fertilizer or soil conditioner to be in violation of this chapter and orders the condemnation of said commercial fertilizer or soil conditioner, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer or soil conditioner and the laws of the state: Except in no instance shall the disposition of said commercial fertilizer or soil conditioner be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or soil conditioner or for permission to reprocess or relabel said commercial fertilizer or soil conditioner to bring it into compliance with this chapter. [C58, 62,§200.18; C66, 71, 73, 75,§200.17]

200.18 Violations.

1. If it shall appear from the examination of any commercial fertilizer or soil conditioner or any anhydrous ammonia installation, equipment, or operation that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the secretary shall cause notice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken; any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the secretary. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and regulations issued thereunder have been violated, the secretary may certify the facts to the proper prosecuting attorney.

2. Any person convicted of violating any provision of this chapter or the rules and regulations issued thereunder shall be punished by a fine of not less than one hundred dollars nor more than two hundred fifty dollars.

3. Nothing in this chapter shall be construed as requiring the secretary or his representative to report for prosecution or for the institution of seizure proceedings minor violations of the chapter when he believes that the public interest will be best served by a suitable notice of warning in writing.

4. It shall be the duty of each county attorney to whom any violation is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

5. The secretary is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law, said injunction to be issued without bond. [C46, 50, 54,§§200.11, 200.14; C58, 62, §200.19; C66, 71, 73, 75,§200.18]

200.19 Exchanges between manufacturers. Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil conditioners to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer or soil conditioner to manufacturers or manipulators who have registered their brands as required by the provisions of this chapter. [C46, 50, 54, §§200.5, 200.12; C58, 62,§200.20; C66, 71, 73, 75, §200.19]

200.20 Phosphoric acid, nitrogen and potash requirements. No phosphatic fertilizer containing less than eighteen percent available phosphoric acid (P_2O_5), nor any nitrogen fertilizer containing less than fifteen percent total nitrogen (N), nor any potash fertilizer containing less than fifteen percent soluble potash (K_2O), nor any mixed fertilizer in which the sum of the guaranteed analysis of total nitrogen (N), available phosphoric acid (P_2O_5), and soluble potash (K_2O), totals less than twenty percent shall be offered for sale, sold, or distributed in this state. This section shall neither apply to specialty fertilizers as defined in section 200.3, subsection 5, nor to any fertilizer designed to be applied and ordinarily applied directly to growing plant foliage to stimulate further growth. [66GA, ch 1127,§1]

CHAPTER 201

AGRICULTURAL LIME

General penalty, §189.21

201.1 Definitions.
201.2 License to sell.
201.3 Fee.
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201.6 Samples—how obtained.
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201.8 Certification.
201.9 Certification by the ASCS.
201.10 Pounds of ECCE per ton.
201.11 Penalties.
201.12 Rules and regulations.
201.13 Fees to state treasury.
201.14 Misdemeanor.

201.1 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Agricultural lime", "limestone"* or *"aglime"* shall include all calcium and magnesium products sold for agricultural purposes in the oxide, hydrate, or carbonate form; such form being designated as quicklime, hydrated lime, carbonate of lime, and crushed or ground limestone.

2. *"ASCS"* shall mean Iowa agricultural stabilization and conservation service state office of the United States department of agriculture.

3. *"ECCE"* shall mean effective calcium carbonate equivalent.

4. *"Number four", "number eight"* and *"number sixty"* mesh sieve as used herein shall mean four, eight and sixty meshes respectively per linear inch, according to the specifications of the American society for testing materials.

5. *"Permanent fixed plants"* as used in this chapter shall mean stationary crushing and screening equipment which is immobile.

6. *"Portable plants"* as used in this chapter shall mean mobile crushing and screening equipment mounted on wheels.

7. *"Ton"* shall mean two thousand avoirdupois pounds. [C46, 50, 54, 58, 62, 66,§201.4; C71, 73, 75,§201.1]

201.2 License to sell. Before any person shall sell, offer for sale, or dispose of in this state any agricultural lime to be used for soil fertility or the correction of soil acidity, such person shall file with the secretary of agriculture an acceptable application for a license to sell, together with the license fee, on or before January 31 of each year. The application shall be sworn to before a notary public, or other proper official, stating the name of the manufacturer or shipper, the location of the principal office of the manufacturer or shipper, and the name, brand, or trademark under which the agricultural lime will be sold. [C46, 50, 54, 58, 62, 66,§201.1; C71, 73, 75,§201.2]

201.3 Fee. The annual license fee shall be twenty-five dollars. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§201.3]

201.4 Issuance of license. Upon the acceptance of the application and the proper fee, the secretary of agriculture shall issue a license for the current year. The payment of such license fee shall exempt any agent or dealer of a licensee from the licensing requirements of this chapter. All licenses shall expire on January 31 of each year. [C46, 50, 54, 58, 62, 66, §201.2; C71, 73, 75,§201.4]

201.5 Analyses. Agricultural lime, limestone or aglime sold, offered, or exposed for sale in this state shall be analyzed on the basis of the number of pounds of effective calcium carbonate equivalent per ton, using the method set forth in subsections 1, 2, and 3 of this section:

1. A fineness factor shall be determined as follows:

a. Multiply the percent of the total material passing the number four sieve by one-tenth.

b. Multiply the percent of the total material passing the number eight sieve by three-tenths.

c. Multiply the percent of the total material passing the number sixty sieve by six-tenths. Add the results obtained from paragraphs *"a"*, *"b"*, and *"c"* of this subsection to obtain the fineness factor.

2. Multiply the fineness factor obtained by using the method set forth in subsection 1 of this section by the percent of calcium carbonate equivalent in the agricultural lime, limestone, or aglime to obtain the percent of ECCE.

3. The number of pounds of ECCE per ton of agricultural lime, limestone, or aglime shall be determined by multiplying two thousand pounds by the percent of ECCE determined as provided in subsection 2 of this section. [C27, 31, 35,§3142-b1; C39,§3142.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§201.5]

Referred to in §§201.7, 201.8

201.6 Samples—how obtained. Samples of agricultural lime, limestone, or aglime within the meaning of this chapter for analyzing the number of pounds of ECCE shall be obtained by taking such sample from the manufacturer's or producer's production belt as the material is being produced. Sampling of stockpiles shall be made only when there is a stockpile having no certification of ECCE, as herein provided. Samples shall be taken at locations where there are permanent fixed plants once each calendar month during the months in which agricultural lime, limestone, or aglime is being manufactured or produced.

Samples shall be taken at locations where there is no permanent fixed plant once during the first week that a portable plant is at a location and manufacturing or producing agricultural lime, limestone, or aglime, and once each week thereafter during the period that the portable plant is at the location and manufacturing or producing agricultural lime, limestone, or aglime until a total of five representative samples have been accumulated and submitted for analysis, after which a sample shall be obtained and tested once each calendar month during the months in which agricultural lime, limestone, or aglime is being manufactured or produced. Samples from production belts shall be taken by the manufacturer or producer in the presence of a person or persons appointed by the secretary of agriculture. Samples from stockpiles, where stockpile sampling is authorized in this section, shall be taken by a person or persons appointed by the secretary of agriculture. The manufacturer or producer of agricultural lime, limestone or aglime shall notify the secretary of agriculture or person or persons appointed by him of the manufacture or production of agricultural lime, limestone, or aglime so that samples may be taken in compliance with this section. [C46, 50, 54, 58, 62, 66,§201.7; C71, 73, 75,§201.6]

Referred to in §§201.7, 201.11, 201.12

201.7 Submission to university. Samples of agricultural lime, limestone, or aglime taken as provided in section 201.6 may be submitted by the secretary of agriculture, or person or persons appointed by him, to the Iowa State University of science and technology for analyzing in accordance with the provisions of section 201.5. The results of the analysis of each sample shall be submitted to the secretary of agriculture. [C71, 73, 75,§201.7]

Referred to in §§201.8, 201.12

201.8 Certification. The secretary of agriculture shall, upon receipt of the analysis provided in section 201.7 certify the number of pounds of ECCE, using the method provided in section 201.5, to the manufacturer or producer from whom the sample was obtained by written notice and forwarded by United States mail. The effective date of the certification shall be on a Monday but not less than seven days from date of mailing and the date of mailing shall not be counted as one of the seven days.

Each certification of ECCE shall be based on the average of a maximum of five analyses obtained from five samples. Each new analysis received shall be added to the previous five analyses and the oldest analysis shall be omitted. Less than five analyses shall be averaged on the basis of the actual number of analyses. Nothing in this chapter shall preclude a manufacturer or producer from having a certification on separate stockpiles of agricultural lime, limestone or aglime, provided that such separate stockpiles shall be separated from any other stockpile and such separate stockpiles shall have been sampled as provided in this chapter. [C71, 73, 75,§201.8]

201.9 Certification by the ASCS. The secretary of agriculture may adopt the certification of pounds of ECCE issued by the ASCS and if adopted shall constitute compliance with this chapter. [C71, 73, 75,§201.9]

201.10 Pounds of ECCE per ton. All agricultural lime, limestone or aglime sold, offered, or exposed for sale shall be sold, offered, or exposed for sale by the pound of ECCE. Any person who shall sell, offer, or expose for sale or who shall ship, transport, or deliver agricultural lime, limestone, or aglime shall affix, or cause to be affixed, to every bill of lading, scale ticket, ticket, delivery receipt or other instrument of sale, shipping or delivery, plainly thereon in the English language, the certification of the secretary of agriculture of the number of pounds of ECCE per ton in the agricultural lime, limestone or aglime, and the name, brand, or trademark under which the agricultural lime, limestone or aglime is sold, the name of the manufacturer, producer or shipper, and the location of the principal office of the manufacturer, producer or shipper. The certification shall be in the following form:

"Iowa Secretary of Agriculture Certified ————pounds ECCE per ton."

The pounds of ECCE certified by the secretary of agriculture for the agricultural lime, limestone, or aglime shall be inserted in the space provided.

In case the secretary of agriculture shall adopt the certification of number of pounds of ECCE of the ASCS, the following form will effect full compliance with this section:

"ASCS certified——pounds ECCE per ton." [C71, 73, 75,§201.10]

201.11 Penalties. Whoever sells, offers for sale, or exposes for sale or distribution any bulk agricultural lime, limestone, or aglime without complying with the provisions of this chapter, or permits any certification to accompany or be printed or stamped on any bill of lading, scale ticket, ticket, or delivery receipt or other instrument of sale, shipping or delivery, stating that the agricultural lime, limestone, or aglime contains a different number of pounds of ECCE than certified as provided in this chapter, or who shall adulterate any agricultural lime, limestone, or aglime with foreign mineral matter or other foreign substances, or who shall adulterate the same with any substance injurious to the growth of plants, or make any false report, shall be deemed guilty of a misdemeanor. On conviction thereof, such person shall be fined not less than fifty dollars nor more than one hundred dollars. The secretary of agriculture may revoke the license of any person so convicted.

In all litigation arising from the purchase, sale, or disposal of any agricultural lime, limestone, or aglime, in which the composition of

the same may be involved, a certified copy of the official analysis shall be accepted as prima-facie evidence of the composition of such agricultural lime, limestone, or aglime. The possession of agricultural lime, limestone, or aglime, in any building, room, railroad equipment, store, storeroom, warehouse, truck, or other place within this state, except by a person who has the same for his private use, without complying with the provisions of this chapter relative to agricultural lime, shall be prima-facie evidence of keeping the same for the purpose of selling or disposal.

It shall be the duty of the secretary of agriculture or his deputized representative to bring prosecution for all violations under the provisions of this chapter. Action may be commenced by the attorney general when requested to do so by the secretary. A person authorized by law to prosecute a case under the provisions of this chapter shall not be required to advance or secure costs therein. If the defendant is acquitted or discharged from custody, or if he is convicted and committed in default of the payment of fine and costs, such costs shall be certified under oath by the court to the county auditor who shall, when verified, issue a warrant on the county treasurer payable to the person or persons entitled thereto. The secretary of agriculture shall rest his prosecution under this chapter on samples collected as provided in section 201.6. [C27, 31, 35,§3142-b8; C39,§**3142.08**; C46, 50, 54, 58, 62, 66,§201.6; C71, 73, 75,§201.11]

201.12 Rules and regulations. The secretary of agriculture is hereby empowered to prescribe and enforce such rules and regulations relating to agricultural lime, limestone, or aglime as may be deemed necessary to carry into effect the full intent and meaning of this chapter, including establishing and collecting a reasonable fee from the producers of agricultural lime to cover the cost of obtaining samples and analyzing same as prescribed in sections 201.6 and 201.7, and to refuse the registration of any agricultural lime, limestone, or aglime under a name or claim which would be misleading. [C46, 50, 54, 58, 62, 66,§201.10; C71, 73, 75,§201.12]

201.13 Fees to state treasury. The moneys received under the provisions of this chapter shall be paid into the state treasury. The secretary of agriculture shall issue a quarterly report showing a statement of moneys received from license fees for the sale of agricultural lime, limestone or aglime, and of fines collected from prosecutions in the enforcement of this chapter. The secretary shall also issue a quarterly report, which shall be available to the public, showing the certifications of ECCE for all agricultural lime, limestone, or aglime certified as provided in this chapter, which report shall be by manufacturer or producer and location or locations. The reports required by this section shall be issued not later than twenty days after March 31, June 30, September 30, and December 31. [C46, 50, 54, 58, 62, 66, §§201.11, 201.12; C71, 73, 75,§201.13]

201.14 Misdemeanor. Any person who shall obstruct the secretary of agriculture or his agents or representatives when in the discharge of any duty or duties prescribed by this chapter shall be deemed to be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars for the first offense, and for each subsequent offense by a fine of not less than fifty dollars nor more than thirty days in jail, or by both such fine and imprisonment. [C46, 50, 54, 58, 62, 66, §201.13; C71, 73, 75,§201.14]

CHAPTER 202

COUNTY LIMESTONE QUARRIES

202.1 Board may establish.
202.2 Equipment to operate.
202.3 Petition by farm owners.
202.4 Assessment lien.
202.5 Interest on installments.
202.6 Anticipatory warrants.
202.7 Contents of warrants.
202.8 Registration—call.
202.9 Price of lime.
202.10 Cost calculated.
202.11 Relief labor.

202.1 Board may establish. The board of supervisors of any county where there is no privately owned quarry, or when a privately owned quarry is unable to supply limestone in the same amount and at the same price and terms, shall have the jurisdiction, power and authority, at any regular, special or adjourned session to establish, locate, acquire by purchase or lease for the county use, any limestone quarry not at that time being operated by private individuals, corporations or associations, suitable for agricultural purposes. Such quarry shall not be so established, located, acquired, or leased unless and until the board has determined by actual investigation that the county can produce by such method lime at less cost than lime of the same quality may be purchased by the county and delivered in the county from other sources. [C39,§**3142.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§202.1]

202.2 Equipment to operate. The board of supervisors shall have the authority and power to acquire such equipment as it shall deem necessary for the operation of any limestone quarry acquired for the production of agricultural lime. [C39,§**3142.10**; C46, 50, **54**, 58, 62, 66, 71, 73, 75,§202.2]

202.3 Petition by farm owners. When a petition signed by fifty or more owners of farms within the county requesting the board of supervisors to sell lime to them under this chapter is filed with the board of supervisors, or when a petition signed by any number of owners of farms within the county requesting the board of supervisors to sell to them under this chapter an amount of lime aggregating not less than five thousand tons, is filed with the board of supervisors, said board may provide for and sell, under the provisions of this chapter, such lime as is requested to the said farm owners signing the petition and to any others requesting such sale of lime. [C39,§**3142.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§202.3]

202.4 Assessment lien. The board shall have full power and authority to quarry, pulverize and sell or to purchase and resell to said farm owners in their respective counties, limestone for their use on their farms and may either sell same for cash, or on application of any farm owner in the county, written notice having been first given to the mortgage or lien holder and consent of said lien holders having been obtained in writing, which consent shall be filed in the office of the county auditor, provide agricultural lime, and deliver same to farm of applicant, payment for same to be provided for by a special assessment tax levy against the real estate so benefited in the amount of the sales value and transportation of said agricultural lime, which assessment shall be payable at the option of the owner of the farm or his legal heirs or assignees in its entirety on or before December 1 following the receipt of said lime or may be paid in five equal annual installments payable on October 1 of each succeeding year with the ordinary taxes until said special assessment is fully paid. The special assessment shall, by consent, be a lien prior to any lien or liens upon said real estate. [C39,§**3142.12**; C46, 50, 54, 58, 62, 66, **71**, 73, 75,§202.4]

Referred to in §202.5

202.5 Interest on installments. All unpaid installments of the special assessment tax levied against the property described in section 202.4 shall bear interest at the rate of six percent and all delinquent installments shall be subject to the same penalties as are now applied to delinquent general taxes. [C39,§**3142.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§202.5]

202.6 Anticipatory warrants. The board shall have the authority for the purpose of financing and carrying out the provisions of this chapter to issue anticipatory warrants drawn on the county, in denominations of one hundred dollars, five hundred dollars and one thousand dollars, which anticipatory warrants shall draw interest at not more than three and one-half percent per annum; and shall not be a general obligation on the county and be secured only by the special assessment tax levy as herein provided. [C39,§**3142.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§202.6]

202.7 Contents of warrants. All such anticipatory warrants shall be signed by the chairman of the board of supervisors and attested by the county auditor with his official seal attached thereto, and dated as of the date of sale, and shall not be sold for less than par value. Said bonds may be drawn and sold from time to time as the need for funds to carry out the purpose of this chapter arises. [C39, §**3142.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§202.7]

202.8 Registration — call. All anticipatory warrants drawn under the provisions of this chapter, shall be numbered consecutively, and be registered in the office of the county treasurer and be subject to call in numerical order at any time when sufficient money derived from the sale of such limestone or the payment of a special assessment levied therefor, is in the hands of the county treasurer to retire any of said warrants together with accrued interest thereon. [C39,§**3142.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§202.8]

202.9 Price of lime. The cost price of this agricultural lime shall be fixed by the board of supervisors, at not less than the actual cost of production at the quarry with ten percent added to provide for the cost of and depreciation on the equipment used in the production of said agricultural lime, together with any cost in transportation of the lime from the quarry to the farm of applicant. [C39,§**3142.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§202.9]

Referred to in §202.10

202.10 Cost calculated. In calculating the cost price of the agricultural lime to the county as referred to in section 202.9, all elements of the cost of the operations, including the amortization of the purchase price of any quarries, lands, or equipment over the period during which any bonds, warrants or other obligations incurred by the county therefor shall mature, cost of all labor, proportionate and actual administrative overhead of county officials and other county executive employees in administering said chapter and conducting said business, repairs to plant machinery and equipment, wages of all employees and all other costs of production shall be kept in a separate system of accounts, and all books and records with respect to the cost of said agricultural limestone and the methods of bookkeeping and all records in connection with the production, disposal and sale of said agricultural limestone shall be open to the inspection of the public at all times. [C39,§**3142.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§202.10]

202.11 Relief labor. The board is specifically authorized to use relief labor in the production of agricultural lime as provided for in this chapter, but shall pay the prevailing labor scale for that type of work, customary in that vicinity. [C39,§**3142.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§202.11]

CHAPTER 203

ADULTERATION AND LABELING OF DRUGS

Referred to in §§147.99, 155.3(8), 155.13(2), 159.6(9), 189.2(1), 205.11, 205.12, 205.13
General penalty, §189.21

203.1 Defined.
203.2 "Adulteration" defined.
203.3 Labeling of drugs.
203.4 Curative or therapeutic mislabeling.
203.5 Certain drugs exempted.
203.6 "Itinerant vendor of drugs" defined.
203.7 License required of itinerant—fee.
203.8 Commercial feeds excepted.
203.9 Pharmacopoeia and National Formulary.

203.1 Defined. For the purposes of this chapter "drug" shall include all substances and preparations for internal or external use recognized in the United States Pharmacopoeia or National Formulary and any substances or mixture of substances intended to be used for the diagnosis, cure, mitigation, or prevention of diseases of either man or animal. [S13,§4999-a33; C24, 27, 31, 35, 39,§**3143**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§203.1]

Similar statute, §155.3

203.2 "Adulteration" defined. For the purposes of this chapter a drug shall be deemed to be adulterated.

1. If it is sold by a name recognized in the United States Pharmacopoeia or National Formulary and it differs from the standard of strength, quality, or purity as determined by the test laid down therein.

2. If its strength, quality or purity falls below the standard under which sold. [S13, §4999-a34; C24, 27, 31, 35, 39,§**3144**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§203.2]

203.3 Labeling of drugs. Every drug offered or exposed for sale, or sold in package or wrapped form, shall be labeled on the package or container as prescribed in sections 189.9 and 189.10, except that the quantity of the contents need not be stated; and in addition thereto shall have printed on the label the name and the exact quantity or proportion of any alcohol, morphine, opium, heroin, chloroform, cannabis, indica, chloral hydrate, acetanilide, or any derivative or preparation of any such substances contained in said drug. In case the principal package or container is enclosed in an outside wrapper or carton, the same label prescribed by this section for the package or container shall also be printed upon said wrapper or carton. [S13,§4999-a35; C24, 27, 31, 35, 39, §**3145**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§203.3]

Referred to in §§203.4, 203.5

203.4 Curative or therapeutic mislabeling. In addition to the requirements of section 203.3 a drug shall also be deemed to be improperly labeled if the package or container or printed matter accompanying it bears or contains any representation regarding the curative or therapeutic effect of such drug or any of the ingredients contained therein which is false and fraudulent. [S13,§4999-a35; C24, 27, 31, 35, 39, §**3146**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§203.4]

203.5 Certain drugs exempted. Nothing in section 203.3 shall be construed to apply:

1. To any drug specified in the United States Pharmacopoeia or National Formulary, which is in accordance therewith, and which is sold under the name given therein.

2. To the filling of prescriptions furnished by licensed physicians, dentists, or veterinarians, the originals of which are retained and filed by the pharmacist filling the same.

3. To any drug or medicine personally dispensed by any licensed physician, dentist, or veterinarian in the course of his practice. [S13, §4999-a35; C24, 27, 31, 35, 39,§**3147**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§203.5]

203.6 "Itinerant vendor of drugs" defined. "Itinerant vendor of drugs" shall mean any person who goes from place to place, or from house to house, and sells, offers or exposes for sale any drug as defined in this chapter. [C97, §2594; S13,§2594; C24, 27, 31, 35, 39,§**3148**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§203.6]

Referred to in §81.1(2,*c*)

203.7 License required of itinerant — fee. Every itinerant vendor of drugs or medicines shall procure an annual license from the pharmacy examiners. The fee for such license shall be fifty dollars; such license may be transferred by the licensee upon the payment of a fee of one dollar to the pharmacy examiners. No license fee shall be required from any person who exclusively takes bona fide orders for

transmission to the company and where such orders are shipped direct to the customer by or through a common carrier. [C97,§2594; S13, §2594; C24, 27, 31, 35, 39,§3149; C46, 50, 54, 58, 62, 66, 71, 73, 75,§203.7]

Referred to in §81.1(2,e)

203.8 Commercial feeds excepted. Nothing in this chapter shall be construed as applying to commercial feeds so defined in section 198.3. [C35,§3149-e1; C39,§3149.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§203.8]

203.9 Pharmacopoeia and National Formulary. There shall be kept in every place in which drugs or medicines are compounded, a copy of the latest revision of the United States Pharmacopoeia and the National Formulary, which books shall be subject at all times to the inspection of the pharmacy examiners. [C24, 27, 31, 35, 39,§3150; C46, 50, 54, 58, 62, 66, 71, 73, 75,§203.9]

CHAPTER 203A

IOWA DRUG AND COSMETIC ACT

Referred to in §§155.13(2), 189.2

203A.1 Intent of law.
203A.2 Definitions.
203A.3 Prohibited acts.
203A.4 Injunction.
203A.5 Penalties.
203A.6 Detained or embargoed articles.
203A.7 Prosecution.
203A.8 Minor violations.
203A.9 What deemed adulterated.
203A.10 What deemed misbranded.
203A.11 Application to sell new drugs.
203A.12 Adulterated cosmetics.
203A.13 Misbranded cosmetics.
203A.14 False advertising.
203A.15 Regulations by board.
203A.16 Authority of board.
203A.17 Dissemination of information.
203A.18 Analysis by state chemist.
203A.19 Information filed and placed on labels.
203A.20 Exception to chapter.

203A.1 Intent of law. This chapter may be cited as the "Iowa Drug and Cosmetic Act." The legislative intent is hereby declared to be the enactment of a law which, in its essential provisions, shall be uniform with the federal Drug and Cosmetic Act and the laws of those states which make similar enactments, and which, through the adoption of regulations conforming to those from time to time promulgated under the said federal Act, will maintain uniformity therewith and insure co-ordination of the enforcement hereof with that of the said federal Act. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.1]

203A.2 Definitions. For the purpose of this chapter:

1. The term *"board"* means the board of pharmacy examiners provided for in chapter 147.

2. The term *"person"* includes individual, partnership, corporation and association.

3. The term *"drug"* means (*a*) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (*b*) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man; and (*c*) articles (other than food) intended to affect the structure or any function of the body of man; and (*d*) articles intended for use as a component of any article specified in clause *"a"*, *"b"*, or *"c"*; but does not include devices or their components, parts or accessories.

4. The term *"devices"* (except when used in subsection 10 of this section and section 203A.3 subsection 7, and section 203A.10 subsection 2, and section 203A.13 subsection 3) means instruments, apparatus and contrivances, including their components, parts and accessories, intended (*a*) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man; or (*b*) to affect the structure or any function of the body of man.

5. The term *"cosmetic"* means (*a*) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (*b*) articles intended for use as a component of any such articles, except that such term shall not include soap.

6. The term *"official compendium"* means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

7. The term *"label"* means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such

word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such articles, or is easily legible through the outside container or wrapper.

8. The term *"immediate container"* does not include package liners.

9. The term *"labeling"* means all labels and other written, printed, or graphic matter (*a*) upon an article or any of its containers or wrappers, or (*b*) accompanying such article.

10. If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things), not only representations made or suggested by statement, words, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

11. The term *"advertisement"* means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs, devices, or cosmetics.

12. The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involved prolonged contact with the body.

13. The term *"new drug"* means (*a*) any drug the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (*b*) any drug the composition of which is such that such drugs, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

14. The term *"contaminated with filth"* applies to any drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

15. The provisions of this chapter regarding the selling of drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such articles in the conduct of any drug, or cosmetic establishment.

16. The term *"federal Act"* means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

17. *"Manufacturer"* means a person who prepares, compounds, processes or fabricates any prescription drug.

18. *"Packer"* or *"distributor"* means a person who repackages or otherwise changes the container, wrapper or labeling of any prescription drug in furtherance of the distribution of the drug or cosmetic, but does not include a retailer who repackages a drug or cosmetic at the time of sale to its ultimate consumer. [C50, 54, 58, 62, 66, 71, 73, 75,203A.2; 66GA, ch 1116,§5]

Referred to in §155.3(16)

203A.3 Prohibited acts. The following acts and the causing thereof within the state of Iowa are hereby prohibited:

1. The manufacture, sale, or delivery, holding or offering for sale of any drug, device, or cosmetic that is adulterated or misbranded.

2. The adulteration or misbranding of any drug, device, or cosmetic.

3. The receipt in commerce of any drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

4. The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of section 203A.11.

5. The dissemination of any false advertisement.

6. The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by section 203A.16.

7. The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the state of Iowa from whom he received in good faith the drug, device, or cosmetic.

Referred to in §203A.2(4)

8. The removal or disposal of a detained or embargoed article in violation of section 203A.6.

9. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling, of or the doing of any other act with respect to a drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

10. Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by

regulations promulgated under the provisions of this chapter.

11. The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under section 203A.11, or that such drug complies with the provisions of such section. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.3]

Referred to in §203A.2, subsection 4

203A.4 Injunction. In addition to the remedies hereinafter provided the board is hereby authorized to apply to the court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provisions of this chapter; irrespective of whether or not there exists an adequate remedy at law. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.4]

203A.5 Penalties.

1. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than six months in the county jail or a fine of not more than five hundred dollars, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than one year in the county jail, or a fine of not more than one thousand dollars, or both such imprisonment and fine.

2. No person shall be subject to the penalties of subsection 1 of this section, for having violated provisions of this chapter if he establishes a guaranty or undertaking signed by, and containing the name and address of the person residing in the state of Iowa from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

3. No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the board to furnish the board the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the state of Iowa, who cause him to disseminate such advertisement. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.5]

203A.6 Detained or embargoed articles.

1. Whenever a duly authorized agent of the board finds or has probable cause to believe, that any drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

2. When an article detained or embargoed under subsection 1 has been found by such agent to be adulterated or misbranded, he shall petition the judge of the district court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

3. If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided, that when the adulteration or misbranding can be corrected by proper labeling, or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the board. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the board that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.6]

Referred to in §203A.3(8)

203A.7 Prosecution. It shall be the duty of each attorney general, or county attorney to whom the board reports any violation of this chapter, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this chapter is reported to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the board, or its designated agent, either orally or in writing, in person, or by attorney, with regard to such contemplated proceeding. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.7]

203A.8 Minor violations. Nothing in this chapter shall be construed as requiring the board to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever the board believes that

the public interest will be adequately served in the circumstances by a suitable written notice or warning. [C50, 54, 58, 62, 66, 71, 73, 75, §203A.8]

203A.9 What deemed adulterated. A drug or device shall be deemed to be adulterated:

1. (*a*) If it consists in whole or in part of any filthy, putrid, or decomposed substance; or (*b*) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (*c*) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (*d*) if it is a drug and it bears or contains, for the purposes of coloring only, a coal-tar color other than one from a batch certified under the authority of the federal Act.

2. If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal Act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity thereof set forth in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it will be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

3. If it is not subject to the provisions of subsection 2 of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

4. If it is a drug and any substance has been (*a*) mixed or packed therewith so as to reduce its quality or strength; or (*b*) substituted wholly or in part therefor. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.9]

203A.10 What deemed misbranded. A drug or device shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

2. If in package form unless it bears a label containing (*a*) the name and place of business of the manufacturer and if different, the name and place of the packer or distributor; and (*b*) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause "*a*" of this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the board. Any drug subject to and in compliance with section 203A.19 shall be deemed in compliance with clause "*a*" of this subsection.

Referred to in §203A.2(4)

3. If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

4. If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative has been by the board after investigation, found to be, and by regulations under this chapter, designated as, habit forming, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

5. If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (*a*) the common or usual name of the drug, if such there be; and (*b*) in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis and digitalis glycosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided, that to the extent that compliance with the requirements of clause "*a*" of this subsection is impracticable, exemptions shall be established by regulations promulgated by the board.

6. Unless its labeling bears (*a*) adequate directions for use; and (*b*) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application in such manner and form, as are necessary for the protection of users; provided, that where any requirement of clause "*a*" of this subsection, applied to any drug or device, is not necessary for the protection of the public

health, the board shall promulgate regulations exempting such drug from such requirements.

7. If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided, that the method of packing may be modified with the consent of the board. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia.

8. If it is found by the board to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the board shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the board shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

9. (*a*) If it is a drug and its container is so made, formed, or filled as to be misleading; or (*b*) if it is an imitation of another drug; or (*c*) if it is offered for sale under the name of another drug.

10. If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

11. If (*a*) it is a drug sold at retail and contains any quantity of aminopyrine, barbituric acid, pituitary, thyroid, or their derivatives, or (*b*) it is a drug or device sold at retail and its label bears a statement that it is to be dispensed or sold only by or on the prescription of a doctor, dentist or veterinarian; unless it is sold on a written prescription signed by a doctor, dentist or veterinarian who is licensed by law to administer such drug or device, and its label bears the name and place of business of the seller, the serial number and date of such prescription, and the name of the doctor, dentist or veterinarian.

12. A drug sold on a written prescription signed by a doctor, dentist or veterinarian (except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail) shall be exempt from the requirements of this section if:

a. Such doctor, dentist or veterinarian is licensed by law to administer such drug, and

b. Such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of the doctor, dentist or veterinarian. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.10; 66GA, ch 1116,§6]

Referred to in §§203A.2(4), 203A.15(3)

203A.11 Application to sell new drugs.

1. No person shall sell, deliver, offer for sale, have for sale or give away any new drug unless (*a*) an application with respect thereto has become effective under section 505 of the federal Act, or (*b*) when not subject to the federal Act unless such drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the board an application setting forth (1) full reports of investigations which have been made to show whether or not such drug is safe for use; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; and (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug. The application shall be accompanied by such samples of such drug and of the articles used as components thereof as the board may require, specimens of the labeling proposed to be used for such drug, and a fee of fifty dollars.

2. An application provided for in subsection 1 part "*b*" shall become effective on the sixtieth day after the filing thereof, except that if the board finds after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, it shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

3. This section shall not apply:

a. To a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety in drugs, provided the drug is plainly labeled "For investigational use only"; or

b. To a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal Act; or

c. To any drug which is licensed under the virus, serum and toxin Act of July 1, 1902 (U.S.C. 1934 ed. title 42, Chap. 4).

4. An order refusing to permit an application under this section to become effective may be revoked by the board. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.11]

Referred to in §203A.3(4, 11)

203A.12 Adulterated cosmetics. A cosmetic shall be deemed to be adulterated:

1. If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are

customary or usual; provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph five the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

2. If it consists in whole or in part of any filthy, putrid, or decomposed substance.

3. If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

4. If its container is composed, in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health.

5. If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal Act. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.12]

203A.13 Misbranded cosmetics. A cosmetic shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

2. If in package form unless it bears a label containing *(a)* the name and place of business of the manufacturer, packer, or distributor; and *(b)* an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause "*b*" of this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the board.

3. If any word, statement or other information required by or under authority of this chapter, to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Referred to in §203A.2(4)

4. If its container is so made, formed, or filled as to be misleading.

5. If it contains any poisonous or deleterious substance and is intended to be used in liquid, powdered or paste form and the label or container does not warn that the contents are dangerous to human life if taken internally. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.13]

Referred to in §203A.2(4)

203A.14 False advertising.

1. An advertisement of a drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

2. For the purpose of this chapter the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis-media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease, shall also be deemed to be false, except that no advertisement not in violation of subsection 1 shall be deemed to be false under this subsection if it is disseminated only to doctors, dentists or veterinarians, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public-health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices; provided, that whenever the board determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the board may deem necessary in the interests of public health; provided, that this subsection shall not be construed as indicating that self-medication for disease other than those named herein is safe or efficacious. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.14]

Referred to in §203A.15

203A.15 Regulations by board.

1. The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the board. The board is hereby authorized to make the regulations promulgated under this chapter conform, insofar as practicable, with those promulgated under the federal Act.

2. Hearings authorized or required by this chapter shall be conducted by the board or such officer, agent or employee as the board may designate for the purpose.

3. Before promulgating any regulations contemplated by section 203A.10, subsections 2, 4, 5, 6, 7, 8 and 11, or section 203A.14, subsection 2, the board shall give appropriate notice of the proposal and of the time and place for a hearing. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.15; 66GA, ch 67,§18]

203A.16 Authority of board. The board or its duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment, in which drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into

commerce, or to enter any vehicle being used to transport or hold such drugs, devices, or cosmetics in commerce, for the purpose:

1. Of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter are being violated; and

2. To secure samples of any drug, device, or cosmetic after paying or offering to pay for such sample. It shall be the duty of the board to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this chapter is being violated. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.16]

Referred to in §203A.3(6)

203A.17 Dissemination of information.

1. The board may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

2. The board may also cause to be disseminated such information regarding drugs, devices, and cosmetics as the board deems necessary in the interest of the public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the board from collecting, reporting, and illustrating the results of the investigations of the board. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.17]

203A.18 Analysis by state chemist. Any analysis of drugs, devices, or cosmetics deemed necessary by the board in the enforcement of this chapter shall be made by the state chemist when requested by said board. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.18]

203A.19 Information filed and placed on labels. Any prescription drug, as defined in section 155.3, subsection 10, is misbranded unless:

1. The label sets forth:

a. The generic name of the drug, which shall be printed in a type size at least half as large as that used for the brand or trade name of the drug product; and

b. The name and place of business of the actual manufacturer of the finished dosage form of the drug and if different, the name and place of business of the packer or distributor of the drug.

2. There has been filed with the board by the manufacturer packer or distributor of the drug a statement which is accurate with respect to the drug setting forth the information required by subsection 1 together with all additional information relating to demonstrated bioavailability, side effects, contraindications and effectiveness as may be required by rules of the board. [66GA, ch 1116,§7]

Referred to in §203A.10

203A.20 Exception to chapter. The provisions of this chapter shall not apply to any person, firm or corporation subject to the federal Food, Drug and Cosmetics Act. [C50, 54, 58, 62, 66, 71, 73, 75,§203A.19]

Constitutionality, 53GA, ch 90,§20

CHAPTER 204

UNIFORM CONTROLLED SUBSTANCES (DRUGS)

Referred to in §§147.99, 155.13(2), 159.6(9), 189.2, 205.3, 205.11, 205.12, 205.13, 224.1, 321.19

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DIVISION I

204.101 Definitions. As used in this chapter:

1. *"Administer"* means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

a. A practitioner, or in his presence, by his authorized agent; or

b. The patient or research subject at the direction and in the presence of the practitioner.

Nothing contained in this chapter shall be construed to prevent a physician, dentist, podiatrist or veterinarian from delegating the administration of controlled substances under this chapter to a nurse or intern, or, as to veterinarians, to an orderly or assistant, under his direction and supervision; all pursuant to rules adopted by the board.

2. *"Agent"* means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

3. *"Bureau"* means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

4. *"Board"* means the state board of pharmacy examiners.

5. *"Department"* means the department of public safety of the state of Iowa.

6. *"Controlled substance"* means a drug, substance, or immediate precursor in schedules I through V of division II of this chapter.

Referred to in §§80.27, 155.30, 155.34, 169.36(8), 224A.1(8), 279.9, 657.2, 732.8

7. *"Counterfeit substance"* means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

Referred to in §80.27

8. *"Deliver"* or *"delivery"* means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

9. *"Dispense"* means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

10. *"Dispenser"* means a practitioner who dispenses.

11. *"Distribute"* means to deliver other than by administering or dispensing a controlled substance.

12. *"Distributor"* means a person who distributes.

13. *"Drug"* means:

a. Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

c. Substances, other than food, intended to affect the structure or any function of the body of man or animals; and

d. Substances intended for use as a component of any article specified in paragraphs *"a"*, *"b"*, or *"c"* of this subsection. It does not include devices or their components, parts, or accessories.

14. *"Immediate precursor"* means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily

for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

15. *"Manufacture"* means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use, or the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

b. By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

16. *"Marijuana"* means all parts of the plant Cannabis sativa L., whether growing or not, its seeds, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

17. *"Narcotic drug"* means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph *"a"*, but not including the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

18. *"Opiate"* means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 204.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextro-methorphan). It does include its racemic and levorotatory forms.

19. *"Opium poppy"* means the plant of the species Papaver somniferum L., except its seeds.

20. *"Person" means* individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

21. *"Poppy straw"* means all parts, except the seeds, of the opium poppy, after mowing.

22. *"Practitioner"* means either:

a. A physician, dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

23. *"Production"* includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

24. *"State,"* when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession, and any area subject to the legal authority of the United States of America.

25. *"Ultimate user"* means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household. [C51,§2728; R60,§4374; C73,§4038; C97, §2593; S13,§§2593, 2596-a; C24, 27, 31, 35,§3151; C39,§§**3169.01, 3169.07**; C46, 50, 54, 58, 62, 66, §§204.1, 204.7; C71,§§204.1, 204.7, 204A.1; C73, 75,§204.101]

Referred to in §§80.27, 155.30, 155.34, 169.36(8), 224A.1(3), 224B.1, 279.9, 321.555, 657.2, 732.8, 745.15

DIVISION II
STANDARDS AND SCHEDULES

204.201 Duty to recommend changes in schedules.

1. The board shall administer the regulatory provisions of this chapter. Annually, within thirty days after the convening of each regular session of the general assembly, the board shall recommend to the general assembly any deletions from, or revisions in the schedules of substances, enumerated in sections 204.204, 204.206, 204.208, 204.210 or 204.212, which it

deems necessary or advisable. In making a recommendation to the general assembly regarding a substance, the board shall consider the following:

a. The actual or relative potential for abuse;

b. The scientific evidence of its pharmacological effect, if known;

c. State of current scientific knowledge regarding the substance;

d. The history and current pattern of abuse;

e. The scope, duration, and significance of abuse;

f. The risk to the public health;

g. The potential of the substance to produce psychic or physiological dependence liability; and

h. Whether the substance is an immediate precursor of a substance already controlled under this division.

2. After considering the above factors, the board shall make a recommendation to the general assembly, specifying the change which should be made in existing schedules, if it finds that the potential for abuse or lack thereof of the substance is not properly reflected by the existing schedules.

3. If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor. Such designations shall be made pursuant to the procedures of chapter 17A.

4. If any new substance is designated as a controlled substance under federal law and notice of the designation is given to the board, the board shall similarly designate as controlled the new substance under this chapter after the expiration of thirty days from publication in the Federal Register of a final order designating a new substance as a controlled substance, unless within that thirty-day period the board objects to the new designation. In that case the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing the board shall announce its decision. Upon publication of objection to a new substance being designated as a controlled substance under this chapter by the board, control under this chapter is stayed until the board publishes its decision. If a substance is designated as controlled by the board under this paragraph the control shall be temporary and, if within sixty days after the next regular session of the general assembly convenes it has not made the corresponding changes in this chapter, the temporary designation of control of the substance by the board shall be nullified. [C73, 75,§204.201]

Referred to in §204.101(18)

204.202 Controlled substances — listed regardless of name. The controlled substances listed in the schedules in sections 204.204, 204.206, 204.208, 204.210 and 204.212 are included by whatever official name, common or usual name, chemical name, or trade name is designated. [C73, 75,§204.202]

204.203 Substances listed in schedule I—criteria. The board shall recommend to the general assembly that it place in schedule I any substance not already included therein if the board finds that the substance:

1. Has high potential for abuse; and

2. Has no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical supervision.

If the board finds that any substance included in schedule I does not meet these criteria, it shall recommend that the general assembly place the substance in a different schedule or remove it from the list of controlled substances, as appropriate. [C73, 75,§204.203]

204.204 Schedule I—substances included.

1. The controlled substances listed in this section are included in schedule I.

2. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

a. Acetylmethadol.
b. Allylprodine.
c. Alphacetylmethadol.
d. Alphameprodine.
e. Alphamethadol.
f. Benzethidine.
g. Betacetylmethadol.
h. Betameprodine.
i. Betamethadol.
j. Betaprodine.
k. Clonitazene.
l. Dextromoramide.
m. Dextrorphan.
n. Diampromide.
o. Diethylthiambutene.
p. Dimenoxadol.
q. Dimepheptanol.
r. Dimethylthiambutene.
s. Dioxaphetyl butyrate.
t. Dipipanone.
u. Ethylmethylthiambutene.
v. Etonitazene.
w. Etoxeridine.
x. Furethidine.
y. Hydroxypethidine.
z. Ketobemidone.
aa. Levomoramide.
ab. Levophenacylmorphan.
ac. Morpheridine.
ad. Noracymethadol.
ae. Norlevorphanol.
af. Normethadone.
ag. Norpipanone.
ah. Phenadoxone.
ai. Phenampromide.

aj. Phenomorphan.
ak. Phenoperidine.
al. Piritramide.
am. Proheptazine.
an. Properidine.
ao. Racemoramide.
ap. Trimeperidine.

3. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

a. Acetorphine.
b. Acetyldihydrocodeine.
c. Benzylmorphine.
d. Codeine methylbromide.
e. Codeine-N-Oxide.
f. Cyprenorphine.
g. Desomorphine.
h. Dihydromorphine.
i. Etorphine.
j. Heroin.
k. Hydromorphinol.
l. Methyldesorphine.
m. Methyldihydromorphine.
n. Morphine methylbromide.
o. Morphine methylsulfonate.
p. Morphine-N-Oxide.
q. Myrophine.
r. Nicocodeine.
s. Nicomorphine.
t. Normorphine.
u. Phoclodine.
v. Thebacon.

4. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. 3,4-methylenedioxy amphetamine.
b. 5-methoxy-3,4-methylenedioxy amphetamine.
c. 3, 4, 5-trimethoxy amphetamine.
d. Bufotenine.
e. Diethyltryptamine.
f. Dimethyltryptamine.
g. 4-methyl-2, 5-dimethoxyl amphetamine.*
h. Ibogaine.
i. Lysergic acid diethylamide.
j. Marijuana.
k. Mescaline.
l. Peyote, except as otherwise provided in subsection 5 of this section.
m. N-ethyl-3-piperidyl benzilate.
n. N-methyl-3-piperidyl benzilate.
o. Psilocybin.
p. Psilocyn.
q. Tetrahydrocannabinols.
r. Thio phencyclidine (1-(1-(2-thienyl)cyclohexyl) piperidine).
s. 2,5 — dimethoxyamphetamine.
t. 4 — Bromo — 2,5 dimethoxyamphetamine.
u. 4 — methoxyamphetamine.

5. Nothing in this chapter shall apply to peyote when used in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the church shall register, maintain appropriate records of receipts and disbursements of peyote, and otherwise comply with all applicable requirements of this chapter and rules adopted pursuant thereto. [C73, 75,§204.204; 66GA, ch 1129,§1]

Referred to in §§204.201(1), 204.202, 204.303
*According to enrolled Act

204.205 Substances listed in schedule II — criteria. The board shall recommend to the general assembly that it place in schedule II any substance not already included therein if the board finds that:

1. The substance has high potential for abuse;

2. The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

3. Abuse of the substance may lead to severe psychic or physical dependence.

If the board finds that any substance included in schedule II does not meet these criteria, it shall recommend that the general assembly place the substance in a different schedule or remove it from the list of controlled substances, as appropriate. [C73, 75,§204.205]

204.206 Schedule II — substances included.

1. The controlled substances listed in this section are included in schedule II.

2. Narcotic drugs as defined in this chapter, except those narcotic drugs listed in other schedules.

3. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

a. Alphaprodine.
b. Anileridine.
c. Bezitramide.
d. Dihydrocodeine.
e. Diphenoxylate.
f. Fentanyl.
g. Isomethadone.
h. Levomethorphan.
i. Levorphanol.
j. Metazocine.
k. Methadone.
l. Methadone - Intermediate, 4 - cyano - 2-dimethylamino-4, - 4-diphenyl butane.
m. Moramide - Intermediate, 2-methyl-3-morpholino-1,1-diphenyl-propane-carboxylic acid.
n. Pethidine.
o. Pethidine - Intermediate - A, 4-cyano-1-methyl-4-phenylpiperidine.
p. Pethidine - Intermediate - B, ethyl-4-phenylpiperidine-4-carboxylate.
q. Pethidine - Intermediate - C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.

r. Phenazocine.
s. Piminodine.
t. Racemethorphan.
u. Racemorphan.

4. Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

5. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
b. Methamphetamine, its salts, and salts of its isomers.
c. Phenmetrazine and its salts.
d. Methylphenidate.

6. Cocaine.

7. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Methaqualone.
b. Amobarbital.
c. Secobarbital.
d. Pentobarbital.

[C73, 75,§204.206; 66GA, ch 1129,§2]
Referred to in §§204.201(1), 204.202, 204.303

204.207 Substances listed in schedule III—criteria.

The board shall recommend to the general assembly that it place in schedule III any substance not already included therein if the board finds that:

1. The substance has a potential for abuse less than the substances listed in schedules I and II;

2. The substance has currently accepted medical use in treatment in the United States; and

3. Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

If the board finds that any substance included in schedule III does not meet these criteria, it shall recommend that the general assembly place the substance in a different schedule or remove it from the list of controlled substances, as appropriate. [C73, 75, §204.207]

204.208 Schedule III—substances included.

1. The controlled substances listed in this section are included in schedule III.

2. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

a. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules.
b. Chlorhexadol.
c. Glutethimide.
d. Lysergic acid.
e. Lysergic acid amide.
f. Methyprylon.
g. Phencyclidine.
h. Sulfondiethylmethane.
i. Sulfonethylmethane.
j. Sulfonmethane.

3. Nalorphine.

4. Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

a. Not more than one point eighty grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

b. Not more than one point eighty grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

c. Not more than three hundred milligrams of dihydrocodeinone, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

d. Not more than three hundred milligrams of dihydrocodeinone, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

e. Not more than one point eighty grams of dihydrocodeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

f. Not more than three hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts.

g. Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

h. Not more than fifty milligrams of morphine, or any of its salts, per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

5. The board by rule may except any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 2 and 3 of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

6. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Benzphetamine.
b. Chlorphentermine.
c. Mazindol.
d. Clortermine.
e. Phendimetrazine.

[C73, 75,§204.208; 66GA, ch 1129,§3]
Referred to in §§204.201(1), 204.202, 204.303

204.209 Substances listed in schedule IV—criteria. The board shall recommend to the general assembly that it place in schedule IV any substance not already included therein if the board finds that:

1. The substance has a low potential for abuse relative to the substances listed in schedule III;

2. The substance has currently accepted medical use in treatment in the United States; and

3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances listed in schedule III.

If the board finds that any substance included in schedule IV does not meet these criteria, it shall recommend that the general assembly place the substance in a different schedule or remove it from the list of controlled substances, as appropriate. [C73, 75, §204.209]

204.210 Schedule IV—substances included.

1. The controlled substances listed in this section are included in schedule IV.

2. Any compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

a. Barbital.
b. Chloral betaine
c. Chloral hydrate.
d. Ethchlorvynol.
e. Ethinamate.
f. Methohexital.
g. Meprobamate.
h. Methylphenobarbital.
i. Paraldehyde.
j. Petrichloral.
k. Phenobarbital.

3. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

a. Not more than one hundred milligrams of dihydrocodeine, or any of its salts, per one hundred milliliters or per one hundred grams;

b. Not more than one hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or per one hundred grams;

c. Not more than two point five milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit;

d. Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams.

4. The board by rule may except any compound, mixture, or preparation containing any depressant substance listed in subsection 2 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

5. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Chlordiazepoxide.
b. Clonazepam.
c. Clorazepate.
d. Diazepam.
e. Oxazepam.
f. Flurazepam.

6. Any material, compound, mixture or preparation which contains any quantity of the substance fenfluramine, including its salts, isomers (whether optical, position or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible.

7. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which con-

tains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Diethylpropion.

b. Phentermine.

[C73, 75,§204.210; 66GA, ch 1129,§4]

Referred to in §§204.201(1), 204.202, 204.303

204.211 Schedule V—criteria. The board shall recommend to the general assembly that it place in schedule V any substance not already included therein if the board finds that:

1. The substance has a low potential for abuse relative to the substances listed in schedule IV;

2. The substance has currently accepted medical use in treatment in the United States; and

3. The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV.

If the board finds that any substance included in schedule V does not meet these criteria, it shall recommend that the general assembly place the substance in a different schedule or remove it from the list of controlled substances, as appropriate. [C73, 75,§204.211]

204.212 Schedule V—substances included.

1. The controlled substances listed in this section are included in schedule V.

2. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone. Not more than two hundred milligrams of codeine, or any of its salts, per one hundred milliliters or per one hundred grams. [C73, 75,§204.212]

Referred to in §§204.201(1), 204.202, 204.303

DIVISION III

REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

204.301 Rules. The board may, subject to chapter 17A, promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state. [C73, 75,§204.301]

204.302 Registration requirements.

1. Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, shall obtain annually a registration issued by the board in accordance with its rules.

2. Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this division.

3. The following persons need not register and may lawfully possess controlled substances under this chapter:

a. An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment.

b. A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment.

c. An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in possession of a schedule V substance.

4. A separate registration is required for each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

5. The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's rules. [C24, 27, 31, 35,§3155; C39,§§3169.03, 3169.12; C46, 50, 54, 58, 62, 66, 71,§§204.03, 204.12; C73, 75,§204.302]

204.303 Registration.

1. The board shall register an applicant to manufacture or distribute controlled substances included in sections 204.204, 204.206, 204.208, 204.210 and 204.212 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider all of the following factors:

a. Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels.

b. Compliance with applicable state and local law.

c. Any convictions of the applicant under any federal and state laws relating to any controlled substance.

d. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion.

e. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter.

f. Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law.

g. Any other factors relevant to and consistent with the public health and safety.

2. Registration under subsection 1 of this section does not entitle a registrant to manufacture and distribute controlled substances in schedule I or II other than those specified in the registration.

3. Practitioners shall be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this division for practitioners engaging in research with nonnarcotic controlled substances in schedules II through V where the registrant is already registered under this division in another capacity. Practitioners registered under federal law to conduct research with schedule I substances may conduct research in schedule I substances within this state upon furnishing the board evidence of the federal registration.

4. Compliance by manufacturers and distributors with the provisions of the federal law respecting registration, excluding fees, entitles them to be registered under this chapter. [C73, 75,§204.303]

Referred to in §204.304

204.304 Revocation and suspension of registration.

1. A registration under section 204.303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the board upon a finding that the registrant:

a. Has furnished false or fraudulent material information in any application filed under this chapter;

b. Has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances; or

c. Has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this section only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even though the entry of the judgment or sentence has been withheld and the individual placed on probation.

2. The board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

3. If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances may be forfeited to the state.

4. The board shall promptly notify the bureau and the department of all orders suspending or revoking registration and all forfeitures of controlled substances. [C39,§**3169.04**; C46, 50, 54, 58, 62, 66, 71,§204.4; C73, 75,§204.304]

Referred to in §204.305

204.305 Order to show cause.

1. Before denying, suspending or revoking a registration, or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the board at a time and place not less than thirty days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

2. The board, without an order to show cause, may suspend any registration simultaneously with the institution of proceedings under section 204.304, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, under the provisions of the Iowa administrative procedure Act, unless sooner withdrawn by the board or dissolved by the order of the district court or an appellate court. [C73, 75,§204.305; 66GA, ch 1241,§46]

204.306 Records of registrants. Persons registered to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with such additional rules as may be issued by the board. A practitioner who engages in dispensing any controlled substance to his patients shall keep records of receipt and disbursements of such drugs, including dispensing or other disposition, and information as to controlled substances stolen, lost, or destroyed. In every such case the records of controlled substance received shall show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received. The record of all controlled substances dispensed or otherwise disposed of, shall show the date of dispensing, the name

and address of the person to whom or for whose use, or the owner and species of animal for which the drugs were dispensed and the kind and quantity of drugs dispensed.

Every such record shall be kept for a period of two years from the date of the transaction recorded. Records of controlled substances lost, destroyed or stolen, shall contain a detailed list of the kind and quantity of such drugs and the date of the discovery of such loss, destruction, or theft.

No person shall distribute complimentary packages of controlled substances, to a practitioner unless that person prepares and leaves with the practitioner a specific written list of the items so distributed. This list shall be prepared on a form prescribed by rules promulgated by the board, and the person who distributes the items listed shall send a copy of the list to the board as soon as practicable after distribution of the complimentary packages to the practitioner. [C39, §3169.09; C46, 50, 54, 58, 62, 66,§204.9; C71, §§204.9, 204A.4; C73, 75,§204.306; 66GA, ch 1117, §3]

Referred to in §204.308

204.307 Order forms. Controlled substances in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section. [C24, 27, 31, 35,§§3154, 3155; C39,§3169.05; C46, 50, 54, 58, 62, 66, 71,§204.5; C73, 75,§204.307]

Referred to in §204.403

204.308 Prescriptions.

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

2. In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 204.306. No prescription for a schedule II substance may be refilled.

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under section 155.3, subsections 9 and 10, shall not be dispensed without a written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

4. A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose. [C39,§3169.06; C46, 50, 54, 58, 62, 66,§204.6; C71,§§204.6, 204A.7; C73, 75,§204.308]

Referred to in §204.402

DIVISION IV
OFFENSES AND PENALTIES

204.401 Prohibited acts — manufacturers — possessors—counterfeit substances—penalties.

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

Any person who violates this subsection with respect to:

a. A substance classified in schedule I or II which is a narcotic drug, is guilty of a public offense and upon conviction shall be punished by imprisonment in the penitentiary for not to exceed ten years and by a fine of not more than two thousand dollars.

b. Any other controlled substance classified in schedules I, II, or III, is guilty of a public offense and upon conviction shall be punished by imprisonment in the penitentiary for not to exceed five years and by a fine of not more than one thousand dollars.

c. A substance classified in schedule IV, is guilty of a public offense and upon conviction shall be punished by imprisonment in the county jail for not to exceed one year or by a fine of not more than five hundred dollars, or by both such imprisonment and fine.

d. A substance classified in schedule V, is guilty of a public offense and upon conviction shall be punished by imprisonment in the county jail for not to exceed six months or by a fine of not more than two hundred fifty dollars, or both such imprisonment and fine.

2. Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a public offense and upon conviction shall be punished by imprisonment in the penitentiary for not to exceed ten years, and by a fine of not more than two thousand dollars.

b. Any other counterfeit substance classified in schedules I, II, or III, is guilty of a public offense and upon conviction shall be punished by imprisonment in the penitentiary for not to exceed five years and by a fine of not more than one thousand dollars.

c. A counterfeit substance classified in schedule IV, is guilty of a public offense and upon conviction shall be punished by imprisonment in the county jail for not to exceed one year or

by a fine of not more than five hundred dollars, or by both such imprisonment and fine.

d. A counterfeit substance classified in schedule V, is guilty of a public offense and upon conviction shall be punished by imprisonment in the county jail for not to exceed six months or by a fine of not more than two hundred fifty dollars, or by both such imprisonment and fine.

3. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the county jail for not to exceed one year, or by a fine of not more than one thousand dollars, or both such imprisonment and fine. If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. All or any part of a sentence imposed pursuant to this section may be suspended and the person placed upon probation upon such terms and conditions as the court may impose including the active participation by such person in a drug treatment, rehabilitation or education program approved by the court. [C51,§2728; R60,§4374; C73,§4038; C97,§§2593, 5003; S13, §§2593, 2596-a; C24, 27, 31, 35,§§3152, 3168, 3169; C39,§§**3169.02, 3169.21**; C46, 50, 54, 58, 62,§§204.2, 204.22; C66,§204.2, 204.20; C71,§§204.2, 204.20, 204A.3, 204A.10; C73, 75,§204.401]

Referred to in §§155.30, 204.406, 204.409, 204.410, 204.411, 789A.1

204.402 Prohibited acts—distributors—registrants—proprietors—penalties.

1. It is unlawful for any person:

a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 204.308;

b. Who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

c. To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter;

d. To refuse an entry into any premises during reasonable business hours for any inspection authorized by this chapter; or

e. Knowingly to keep or permit the keeping or to maintain any premises, store, shop, warehouse, dwelling, temporary, or permanent building, vehicle, boat, aircraft, or other temporary or permanent structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping, possessing or selling them in violation of this chapter.

2. Any person who violates subsection 1 of this section, or who acts with, enters into a common scheme or design with, or conspires with one or more other persons to violate subsection 1 of this section, is guilty of a public offense and upon conviction:

a. Of a violation of paragraphs "*a*", "*b*", "*d*", or "*e*" shall be punished by imprisonment in the penitentiary for not to exceed one year, or by a fine of not more than one thousand dollars, or both such imprisonment and fine.

b. Of a violation of paragraph "*c*" shall be punished by a fine of not more than five hundred dollars if the conviction is the defendant's first under this chapter or under any state or federal statute relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, and by imprisonment in the penitentiary for not to exceed one year, or by a fine of not more than one thousand dollars, or both such imprisonment and fine if the defendant has previously been so convicted. [C73, 75,§204.402]

204.403 Prohibited acts — controlled substances, distribution, use, possession—records and information—penalties.

1. It is unlawful for any person knowingly or intentionally:

a. To distribute as a registrant a controlled substance classified in schedules I or II, except pursuant to an order form as required by section 204.307;

b. To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

d. To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or

e. To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

2. Any person who violates this section, or who acts with, enters into a common scheme or design with, or conspires with one or more other persons to violate this section, is guilty of a public offense and upon conviction shall be punished by imprisonment in the penitentiary for not to exceed one year and by a fine of not more than one thousand dollars. [C39, §**3169.17**; C46, 50, 54, 58, 62,§204.18; C66,§204.17; C71,§§204.17, 204A.3; C73, 75,§204.403]

204.404 Penalties under other laws. Any penalty imposed for violation of this division shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law. [C73, 75, §204.404]

204.405 Bar to prosecution. If a violation of this chapter is a violation of a federal law or the law of another state, the conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state. [C39,§**3169.22**; C46, 50, 54, 58, 62, §204.23; C66, 71,§204.21; C73, 75,§204.405]

204.406 Distribution to persons under age eighteen. Any person who is eighteen years of age or over who violates section 204.401, subsection 1, by distributing a substance listed in schedule I or II, which is a narcotic drug, to a person under eighteen years of age, shall be punished by a fine and by a term of imprisonment not to exceed twice that authorized by section 204.401, subsection 1, paragraph "*a*". Any person who is eighteen years of age or over who violates section 204.401, subsection 1, by distributing any other controlled substance listed in schedules I, II, III, IV, or V to a person under eighteen years of age who is at least three years his junior shall be punished by a fine not to exceed that authorized by section 204.401, subsection 1, paragraph "*b*" or "*c*", or by a term of imprisonment not to exceed one and one-half times that authorized by section 204.401, subsection 1, paragraph "*b*" or "*c*", or by both such fine and imprisonment. [C97,§5003; C24, 27, 31, 35,§§3168, 3169; C39, §**3169.21**; C46, 50, 54, 58, 62,§204.22; C66,§204.20; C71,§§204.20, 204A.11; C73, 75,§204.406]

204.407 Gatherings where controlled substances unlawfully used—penalties. It is unlawful for any person to sponsor, promote, or aid, or assist in the sponsoring or promoting of a meeting, gathering, or assemblage with the knowledge or intent that a controlled substance be there distributed, used or possessed, in violation of this chapter.

Court appointed attorney fees incurred in the defense of any person charged with a felony under this section shall be taxed as part of the costs against the defendants who are found guilty. If the defendant does not discharge such costs within ninety days, the county paying such costs may seek indemnification therefor from the Iowa general assembly. A county may also seek indemnification from the general assembly of court appointed attorney fees incurred in the defense of any person charged with a felony under this section who was found not guilty.

Any person who violates this section and where the controlled substance is any one other than marijuana is guilty of a public offense and upon conviction shall be punished by imprisonment in the penitentiary for not to exceed five years or by a fine of not to exceed ten thousand dollars or by both such imprisonment and fine.

Any person who violates this section, and where the controlled substance is marijuana only, is guilty of a public offense and upon conviction shall be punished by imprisonment in the county jail for not to exceed one year or by a fine of not to exceed one thousand dollars or by both such fine and imprisonment.

The district court shall grant an injunction barring a meeting, gathering, or assemblage if upon hearing the court finds that the sponsors or promoters of the meeting, gathering, or assemblage have not taken reasonable means to prevent the unlawful distribution, use or possession of a controlled substance. Further injunctive relief may be granted against all persons furnishing goods or services to such meeting, gathering, or assemblage.

The district court may, upon application and a showing of one or more of the grounds provided in section 639.3, grant to the state or governmental subdivision thereof a writ of attachment, ex parte, without bond, in an amount necessary to secure the payment of any fine that may be imposed and the payment of costs. The reasonable expense to the state and governmental subdivisions thereof to provide the necessary law enforcement resulting from a meeting, gathering or assemblage held in violation of this section may be taxed as costs in the criminal action.

Court costs and court-appointed attorney fees incurred in the prosecution of any person charged with violation of this chapter shall be taxed against the defendants who are found guilty of violating this section. If no defendant is found guilty of violating this section, or if the court costs and court-appointed attorney fees are not satisfied by the defendants, the court costs and court-appointed attorney fees shall be paid by the state of Iowa. [C73, 75,§204.407]

204.408 Joint criminal trials. Information, indictments, trial, and sentencing for violations of this chapter may allege any number of violations of their provisions against one person and join one or more persons as defendants who it is alleged violated the same provisions in the same transaction or series of transactions and which involve common questions of law and fact. The several charges shall be set out in separate counts and each accused person shall be convicted or acquitted upon each count by separate verdict. Each accused person shall thereafter be sentenced upon each verdict of guilty. The court may consider such separate verdicts of guilty returned at the same time as one offense for the purpose of sentencing as provided in this chapter. The court may grant a severance and separate trial to any accused person jointly charged or indicted if it appears that substantial injustice would result to such accused person unless a separate trial was granted. [C73, 75,§204.408]

204.409 Conditional discharge, commitment for treatment, probation, parole.

1. Whenever any person who has not previously been convicted of any offense under this chapter or any offense under any state or federal statute relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under section 204.401, subsection 3, or is sentenced pursuant to section 204.410, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions as it requires. When a person is placed on probation under this subsection, his appearance bond may be discharged at the discretion of the court. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 204.410. Discharge and dismissal under this section may occur only once with respect to any person.

2. Whenever the court finds that a person who is charged with a violation of section 204.401 and who consents thereto, or who has entered a plea of guilty to or been found guilty of a violation of said section, and who is addicted to, dependent upon, or a chronic abuser of any controlled substance and that such person will be aided by proper medical treatment and rehabilitative services, it may order that he be committed as an in-patient or out-patient to a facility approved by the state department of health for such medical treatment and rehabilitative services. A person committed under this subsection who is not possessed of sufficient income or estate to enable him to make payment of the costs of such treatment in whole or in part shall be considered a state patient. The determination of ability to pay shall be made by the court. The court shall require the patient, or his parent, guardian, or custodian to complete under oath a detailed financial statement. The court may enter appropriate orders requiring the patient or those legally liable for his support to reimburse the state with the costs, or any part thereof. In order to obtain the most effective results from such medical treatment and rehabilitative services, the court may commit such person to the custody of a public or private agency or any other responsible person and impose such other conditions upon such commitment as is necessary to insure compliance with the court's order and to insure that such person will not, during such period of treatment and rehabilitation, again violate any provisions of this chapter. If it is established thereafter to the satisfaction of the court that the person has again violated any provision of this chapter, he may be returned to custody or sentenced upon his conviction as provided by law. The public or private agency or responsible person to whom the accused person was committed by the court shall immediately report to the court when the person has received maximum benefit from the program or has recovered from his addiction, dependency, or tendency to chronically abuse any controlled substance. The person shall then be returned to the court for disposition of his case. If the person has been charged or indicted, but not convicted, such charge shall proceed to trial or final disposition. If the person has been convicted or is thereafter convicted, the court shall sentence him as provided by law but may remit all or any part of such sentence and place the person on probation upon such terms and conditions as the court may prescribe. [C73, 75,§204.409]

Referred to in §789A.1

204.410 Accommodation offense. In a prosecution for unlawful delivery or possession with intent to deliver a controlled substance, if the prosecution proves that the defendant violated the provisions of section 204.401, subsection 1 but fails to prove that the defendant delivered or possessed with intent to deliver the controlled substance for the purpose of making a profit, the defendant shall be guilty of an accommodation offense and shall be sentenced as if he had been convicted of a violation of section 204.401, subsection 3. An accommodation offense may be proved as an included offense under a charge of delivering or possessing with the intent to deliver a controlled substance in violation of section 204.401, subsection 1. [C73, 75,§204.410; 66GA, ch 1245, ch 4,§231]

Referred to in §§204.409, 789A.1
Effective July 1, 1976

204.411 Second or subsequent offenses.

1. Any person convicted of a second or subsequent offense under this chapter, may be punished by imprisonment for a period not to exceed three times the term otherwise authorized, or fined not more than three times the amount otherwise authorized, or punished by both such imprisonment and fine.

2. For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his having been convicted of the offense, the offender has ever been convicted under this chapter or under any state or federal statute relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs.

3. This section does not apply to offenses under section 204.401, subsection 3. [C97,§5003; C24, 27, 31, 35,§§3168, 3169; C39,§3169.21; C46, 50, 54, 58, 62,§204.22; C66, 71,§204.20; C73, 75,§204.411]

Referred to in §155.30

204.412 Notice of conviction. Whenever any person enters a plea of guilty to, or forfeits bail or collateral deposited to secure his appearance in court, and such forfeiture is not vacated, or is found guilty upon an indictment or information alleging a violation of this chapter, a copy of the minutes attached to the indictment returned by the grand jury, or to the county attorney's information, a copy of the judgment and sentence, and a copy of the opinion of the judge if one is filed, shall be sent by the clerk of the court or the judge to any state board or officer by whom the convicted person has been licensed or registered to practice his profession or carry on his business. On the conviction of any such person, the court may, in its considered judgment, suspend or revoke the license or registration of the convicted defendant to practice his profession or carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, said board or officer may reinstate such license or registration. [C39,§**3169.15**; C46, 50, 54, 58, 62,§204.16; C66, 71,§204.15; C73, 75,§204.412]

DIVISION V
ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

204.501 Responsibility for enforcement. The department shall be primarily responsible for the enforcement of all provisions of this chapter, and all other laws and regulations of this state, relating to controlled or counterfeit substances, except that the board shall be primarily responsible for making accountability audits of the supply and inventory of controlled substances in the possession of pharmacists, doctors, hospitals, and health care facilities as defined in section 135C.1, subsection 8, as well as in the possession of any and all other individuals or institutions authorized to have possession of any controlled substances, and shall also be primarily responsible for such other duties in respect to controlled substances as shall be specifically delegated to the board by law. Any officer or employee of the board may, when so directed or authorized by the board:

1. Execute and serve search warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state.

2. Make seizures of property pursuant to the provisions of this chapter. [C39,§**3169.19**; C46, 50, 54, 58, 62,§§204.20, 204.26; C66, 71,§**204.19**; C73, 75,§204.501]

Referred to in §204.502

204.502 Administrative inspections and warrants.

1. Issuance and execution of administrative inspection warrants shall be as follows:

a. A district or municipal court judge, within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rule thereunder, and seizures of property appropriate to such inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of the chapter or rules promulgated thereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

b. A warrant shall issue only upon sworn testimony of an officer or employee of the board duly designated and having knowledge of the facts alleged, before the district or municipal court judge, establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any.

The warrant shall:

(1) State the grounds for its issuance and the name of each person whose testimony has been taken in support thereof.

(2) Be directed to a person authorized by section 204.501 to execute it.

(3) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified.

(4) Identify the item or types of property to be seized, if any.

(5) Direct that it be served during normal business hours, if appropriate, and designate the judge to whom it shall be returned.

c. A warrant issued pursuant to this section must be executed and returned within ten days after its date unless, upon a showing of a need for additional time, the court so instructs otherwise in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom the property is seized, or the person in charge of the premises from which the property is seized, a copy of the warrant and a receipt for the property seized or shall leave the copy and receipt at the place from which the property is seized. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property seized. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was seized, if they are present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was seized and to the applicant for the warrant.

d. The judge who has issued a warrant under this section shall require that there be attached to the warrant a copy of the return, and of all papers filed in connection with the return, and shall file them with the clerk of the district or municipal court for the district in which the inspection was made.

2. The department may make administrative inspections of controlled premises in accordance with the following provisions:

a. For purposes of this section only, "controlled premises" means:

(1) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(2) Places including factories, warehouse establishments, and conveyances where persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

b. Whenever authorized by an administrative inspection warrant issued pursuant to subsection 1 of this section an officer or employee of the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, has the right to enter controlled premises for the purpose of conducting an administrative inspection.

c. Whenever authorized by an administrative inspection warrant, an officer or employee of the board has the right:

(1) To inspect and copy records required by this chapter to be kept;

(2) To inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in paragraph "*e*" of this subsection, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(3) To inventory any stock of any controlled substance therein and obtain samples of any such substance.

d. This section shall not be construed to prevent the inspection without a warrant of books and records pursuant to a subpoena issued in accordance with section 622.65, nor shall this section be construed to prevent entries and administrative inspections, including seizures of property, without a warrant:

(1) With the consent of the owner, operator, or agent in charge of the controlled premises;

(2) In situations presenting imminent danger to health or safety;

(3) In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(4) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and

(5) In all other situations where a warrant is not constitutionally required.

e. Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to financial data; sales data, other than shipment data; or pricing data. [C73, 75,§204.502]

204.503 Injunctions.

1. The district court may exercise jurisdiction to enjoin violations of this chapter.

2. In case of an alleged violation of an injunction or restraining order issued under this section, upon demand of the defendant, trial shall be by a jury. [C73, 75,§204.503]

204.504 Co-operative arrangements and confidentiality.

1. The department and board, subject to approval and direction of the governor, shall co-operate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they may jointly:

a. Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances.

b. Co-ordinate and co-operate in training programs on controlled substance law enforcement at the local and state levels.

c. Co-operate with the bureau by establishing a centralized unit which will accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make such information available for federal, state and local law enforcement purposes; except that they shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection 3.

d. Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

2. Results, information, and evidence received from the bureau relating to the regulatory functions of this chapter, including results of inspections conducted by that agency may be relied upon and acted upon by the board or the department in the exercise of their regulatory functions under this chapter.

3. A practitioner engaged in medical practice or research or the Iowa drug abuse authority or any program which is licensed by the authority shall not be required to furnish the name or identity of a patient or research subject to the board or the department, nor shall the practitioner or the authority or any program which is licensed by the authority be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individ-

ual that the practitioner or the authority or any of its licensed programs is obligated to keep confidential. [C73, 75,§204.504]

204.505 Forfeitures.

1. The following are subject to forfeiture:

a. All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this chapter;

b. All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;

c. All property which is used, or intended for use, as a container for property described in paragraphs "*a*" or "*b*";

d. All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

e. All controlled substances in the possession of a practitioner which are material to a record-keeping violation.

2. Property subject to forfeiture under this chapter may be seized by the board or department when:

a. The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

b. The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

c. The department has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

d. The department has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

3. In the event of seizure pursuant to subsection 2, proceedings under subsection 4 shall be instituted promptly.

4. Property taken, detained, or forfeited under this chapter shall be disposed of in the manner provided in chapter 751 for property seized pursuant to a search warrant, except that controlled substances so taken, detained, or forfeited shall be disposed of as provided by section 204.506. Such property shall not be subject to replevin.

5. Controlled substances classified in schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and when seized shall be summarily forfeited to the state. Controlled substances listed in schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

6. Species of plants from which controlled substances classified in schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

7. The failure, upon demand by the board or department, or its duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture of the plants.

8. Chapter 127 shall be applicable to conveyances used to transport or hold any controlled substance listed in schedules I, II, III, or IV of this chapter. [C73, 75,§204.505; 66GA, ch 1117,§4]

204.506 Controlled substances—disposal. All controlled substances, the lawful possession of which is not established or the title to which cannot be ascertained, or excess or undesired controlled substances, which have come into the custody of the board, the department, or any peace officer, shall be disposed of as follows:

1. Except as otherwise provided in this section, the court having jurisdiction shall order such controlled substances forfeited and destroyed. A record of the place where the controlled substances were seized, of the kinds and quantities of controlled substances so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court and to the bureau by the officer who destroys them.

2. Upon written application by the board, the court by whom the forfeiture of controlled substances has been decreed may order the delivery of any of them, except controlled substances listed in schedule I, to the board for distribution or destruction, as provided by this section.

3. Upon application by any hospital within this state, not operated for private gain, the board may in its discretion deliver any controlled substances that have come into its custody by authority of this section to the applicant for medicinal use. The board may from time to time deliver excess stocks of controlled substances to the bureau for disposition, or may destroy the excess controlled substances.

4. The board shall keep a full and complete record of all controlled substances received and disposed of, showing the exact kinds, quantities, and forms of controlled substances, the persons from whom received and to whom delivered, by whose authority received, delivered, and destroyed and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state laws relating to any controlled substance. [C39,§3169.14; C46, 50, 54, 58, 62,§204.15; C66, 71,§204.14; C73, 75, 204.506]

Referred to in §204.505(4)

204.507 Burden of proof—liabilities.

1. It is not necessary for the state to negate any exemption or exception set forth in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this chapter. The proof of entitlement to any exemption or exception by the person claiming its benefit shall be a valid defense.

2. The absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter creates a rebuttable presumption that he is not the holder of such registration or form.

3. No liability shall be imposed by virtue of this chapter upon any authorized state, county or municipal officer, engaged in the lawful performance of his duties. [C24, 27, 31, 35,§3156; C39,§**3169.18**; C46, 50, 54, 58, 62,§204.19; C66, 71, §204.18; C73, 75,§204.507]

204.508 Judicial review. Judicial review of actions of board or department may be sought in accordance with the terms of the Iowa administrative procedure Act. [C73, 75,§204.508]

Effective July 1, 1975

204.509 Education and research.

1. The board and the department*, subject to approval and direction of the governor, shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. They shall consult with each other and co-ordinate their programs so as to avoid duplication of effort. In connection with these programs they may:

a. Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

b. Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

c. Consult with interested groups and organizations to aid them in solving administrative and organizational problems;

d. Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

e. Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and,

f. Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

2. The board and the department, subject to approval and direction of the governor, shall encourage research on misuse and abuse of controlled substances. In connection with such research, and in furtherance of the enforcement of this chapter, they may in such manner as will best insure co-ordination and avoid duplication of effort:

a. Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

b. Make studies and undertake programs of research to:

(1) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this chapter;

(2) Determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(3) Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and,

c. Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

3. The board or department, subject to approval and direction of the governor, may enter into contracts for educational and research activities without performance bonds.

4. The board and department, subject to approval and direction of the governor, may jointly authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization shall not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

5. The board and department, subject to approval and direction of the governor, may jointly authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization. [C73, 75,§204.509]

*See §204.101

204.510 Reports of arrests and analyses to department. Any peace officer who arrests for any crime, any known unlawful user of the drugs described in Schedule I, II, III or IV, or who arrests any person for a violation of this chapter, or charges any person with a violation of this chapter subsequent to the person's arrest, shall within five days after the arrest or the filing of the charge, whichever is later, report the arrest and the charge filed to the department. The peace officer or any other peace officer or law-enforcement agency which makes or obtains any quantitative or qualitative analysis of any substance seized in connection with the arrest of the person charged, shall report to the department the results of the analysis at the time the arrest is reported

or at such later time as the results of the analysis become available.

This information is for the exclusive use of the division of narcotic and drug enforcement, in the department of public safety, and shall not be a matter of public record. [C73, 75, §204.510]

DIVISION VI
MISCELLANEOUS

204.601 Uniformity of interpretation. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [C24, 27, 31, 35, §3167; C39,§**3169.23**; C46, 50, 54, 58, 62,§204.24; C66, 71,§204.22; C73, 75,§204.601]

204.602 Short title. This chapter may be cited as the "Uniform Controlled Substances Act." [C39,§**3169.24**; C46, 50, 54, 58, 62,§204.25; C66, 71,§204.23; C73, 75,§204.602]

CHAPTER 204A

DEPRESSANT, STIMULANT, COUNTERFEIT AND HALLUCINOGENIC DRUGS

Repealed by 64GA, ch 148,§605

CHAPTER 205

SALE AND DISTRIBUTION OF POISONS

Referred to in §§147.99, 159.6(9), 189.2
General penalty, §189.21

205.1 Sale of abortifacients.
205.2 Exception.
205.3 Prescriptions.
205.4 Wood or denatured alcohol.
205.5 Regulations as to sales of certain poisons.
205.6 Poison register.
205.7 Labeling poisons.
205.8 Certain sales excepted.
205.9 Prohibited sales.
205.10 False representations.
205.11 Enforcement.
205.12 Chemical analysis of drugs.
205.13 Applicability of other statutes.

205.1 Sale of abortifacients. No person shall sell, offer or expose for sale, deliver, give away, or have in his possession with intent to sell, except upon the original written prescription of a licensed physician, dentist, or veterinarian, any cotton root, ergot, oil of tansy, oil of savin, or derivatives of any of said drugs. [C51,§2728; R60,§4374; C73,§4038; C97,§2593; S13, §§2593, 2596-a; C24, 27, 31, 35, 39,§**3170**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§205.1]

Referred to in §205.2

205.2 Exception. The requirements of section 205.1 that certain drugs shall be furnished only upon written prescription, shall not apply to the sale of such drugs to persons who wholesale or retail the same, nor to any licensed physician, dentist, or veterinarian for use in the practice of his profession. [S13,§2596-a; C24, 27, 31, 35, 39,§**3171**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§205.2]

205.3 Prescriptions. No person shall fill any prescriptions calling for any of the drugs required by chapter 204 or this chapter to be furnished only upon written prescription unless the same be for medical, dental, or veterinary purposes only, and unless the physician, dentist, or veterinarian prescribing the same be personally known to such person, and no such prescription shall be refilled. [S13,§2596-a; C24, 27, 31, 35, 39,§**3172**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§205.3]

205.4 Wood or denatured alcohol. No person shall have in his possession or dispose of in any manner any article intended for use of man or domestic animals, for internal or external use, for cosmetic purposes, for inhalation, or for perfumes, which contains methyl (wood) alcohol, crude or refined, or completely denatured alcohol. Nothing in this section shall be construed to apply to specially denatured alcohols the formula of which has been approved and the manufacture and use regulated by the federal government. [S13, §4999-a36; C24, 27, 31, 35, 39,§**3173**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§205.4]

205.5 Regulations as to sales of certain poisons. It shall be unlawful for any person except a licensed pharmacist to sell at retail any of the poisons enumerated in this section: Ammoniated mercury, mercury bichloride, red

mercuric iodide, and other poisonous salts and compounds of mercury; salts and compounds of arsenic; salts of antimony; salts of barium except the sulphate; salts of thallium; hydrocyanic acid and its salts; chromic, glacial acetic, and picric acids; chloral hydrate, croton oil, cresol, chloroform, dinitrophenol, ether, oil of bitter almonds, phenol, phosphorus and sodium fluoride; aconitine, arecoline, atrophine, brucine, homatropine, hyoscyamine, nicotine, strychnine, and the salts of these alkaloids; aconite, belladonna, cantharides, digitalis, nux vomica, veratrum, and the preparations of these poisonous drugs. [C51,§2728; R60,§4374; C73,§4038; C97,§2593; S13,§2593; C24, 27, 31, 35, 39,§**3174**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§205.5]

Referred to in §§205.6-205.10

205.6 Poison register. It shall be unlawful for any pharmacist to sell at retail any of the poisons enumerated in section 205.5 unless he ascertains that the purchaser is aware of the character of the drug and the purchaser represents that it is to be used for a proper purpose and every sale of any poison enumerated in section 205.5 shall be entered in a book kept for that purpose, to be known as a "Poison Register" and the same shall show the date of the sale, the name and address of the purchaser, the name of the poison, the purpose for which it was represented to be purchased, and the name of the natural person making the sale, which book or books shall be open for inspection by the pharmacy examiners, or any magistrate or peace officer of this state, and preserved for at least five years after the date of the last sale therein recorded. [C97,§2593; S13, §2593; C24, 27, 31, 35, 39,§**3175**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§205.6]

Referred to in §§205.8, 205.9

205.7 Labeling poisons. Except as otherwise provided, it shall be unlawful to vend, sell, dispense, or give away any poison enumerated in section 205.5, or sodium chlorate or crude carbolic acid, or any other potent poisons, without affixing to the bottle, box, vessel, or package containing the same, a label containing the name of the poison either printed or plainly written, and the word "Poison" printed in red ink, and the name and place of business of the distributor, manufacturer, wholesaler or dealer; and every package or container which contains ammonia water, concentrated lye, denatured alcohol, formaldehyde, benzol, carbon tetrachloride, commercial hydrochloric, nitric, sulphuric or oxalic acids, shall be labeled with the name of the poison, which label shall bear the name and place of business of the distributor, manufacturer, wholesaler, or dealer, the most available antidote and the word "Poison" printed in red ink in a conspicuous place thereon. [C51,§2728; R60,§4374; C73,§4038; C97,§§2588, 2593, 4976; S13,§2593; SS15,§2588; C24, 27, 31, 35, 39,§**3176**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§205.7]

Referred to in §205.8

205.8 Certain sales excepted. Nothing in sections 205.5 to 205.7 shall apply:

1. To proprietary medicines, provided they are not in themselves poisonous and are sold in original unbroken packages.

2. To the filling of prescriptions from or the sale to licensed physicians, dentists, or veterinarians or sales to another pharmacist or to hospitals; or to drugs dispensed by licensed physicians, dentists, or veterinarians, as an incident to the practice of their professions.

3. To insecticides and fungicides as defined in chapter 206 and commercial feeds as defined in section 198.3, provided same be labeled in accordance with said section and sold in original unbroken packages, provided, however, that stock dips and fly sprays may be sold in bulk or otherwise and the vessel or container need not have printed on the label the most available antidote.

4. To any proprietary preparation intended for use in destroying mice, rats, gophers or other lower animals, provided same is sold in original unbroken packages and bears the word "Poison", the most available antidote, and the name of the manufacturer. [C97,§2593; S13,§2593; C24, 27, 31, 35, 39,§**3177**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§205.8]

205.9 Prohibited sales. It shall be unlawful for any person in this state to sell or deliver any poison to any person known to be of unsound mind or under the influence of intoxicants, and it shall likewise be unlawful for any person in this state to sell or deliver any poison enumerated in section 205.5 to any minor under sixteen years of age except upon a written order signed by some responsible person known to the person selling or delivering the same, which said written order shall contain all of the information required to be entered in the poison register under the provisions of section 205.6. [C27, 31, 35,§3177-b1; C39, §**3177.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§205.9]

205.10 False representations. Any person who obtains any poison enumerated in section 205.5 under a false name or statement shall be guilty of a misdemeanor and punished as provided in chapter 189. [C51,§2728; R60,§4374; C73,§4038; C97,§2593; S13,§2593; C24, 27, 31, 35, 39,§**3178**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§205.10]

General penalty, §189.21

205.11 Enforcement. The provisions of this chapter and chapters 203 and 204 shall be administered and enforced by the pharmacy examiners. In discharging any duty or exercising any power under said chapters, the pharmacy examiners shall be governed by all the provisions of chapter 189, which govern the department of agriculture when discharging a similar duty or exercising a similar power with reference to any of the articles dealt with in this title. [C24, 27, 31, 35, 39, §**3179**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§205.11]

205.12 Chemical analysis of drugs. Any chemical analysis deemed necessary by the pharmacy examiners in the enforcement of this chapter and chapters 203 and 204 shall be made by the department of agriculture when requested by said examiners. [C24, 27, 31, 35, 39,§3180; C46, 50, 54, 58, 62, 66, 71, 73, 75,§205.12]

205.13 Applicability of other statutes. Insofar as applicable the provisions of chapter 189, shall apply to the articles dealt with in this chapter and chapters 203 and 204. The powers vested in the department of agriculture by said chapter shall be deemed for the purpose of this chapter and chapters 203 and 204 to be vested in the pharmacy examiners. [C24, 27, 31, 35, 39,§3181; C46, 50, 54, 58, 62, 66, 71, 73, 75, §205.13]

CHAPTER 206

PESTICIDES

Referred to in §205.8(3)
General penalty, §189.21
See also reference in §200.7

206.1 Title of Act.
206.2 Definitions.
206.3 Examination and orders.
206.4 Classification of licenses.
206.5 Certification requirements.
206.6 License for commercial applicators.
206.7 Certified applicators.
206.8 Pesticide dealer license.
206.9 Co-operative agreements.
206.10 License renewals—delinquent fee.
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206.12 Registration.
206.13 Surety bond or insurance required of commercial applicator.
206.14 Reports of pesticide accidents, incidents or loss.
206.15 Licensee to keep records.
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206.17 Reciprocal agreement.
206.18 Exception to penalties.
206.19 Rules adopted.
206.20 Restricted use pesticides classified.
206.21 Secretary of agriculture—duties.
206.22 Penalties.

206.1 Title of Act. This chapter shall be known and may be cited as the "Pesticide Act of Iowa". [C66, 71, 73, 75,§206.1]

206.2 Definitions. When used in this chapter:

1. The term *"pesticide"* shall mean (*a*) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating directly or indirectly any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man, which the secretary shall declare to be a pest, and (*b*) any substances intended for use as a plant growth regulator, defoliant or desiccant.

2. The term *"device"* means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects, birds, or rodents or destroying, repelling, or mitigating fungi, nematodes, weeds or such other pests as may be designated by the secretary, but not including equipment used for the application of pesticides when sold separately therefrom.

3. The term *"plant growth regulator"* means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

4. The term *"ingredient statement"* means either:

a. A statement of the name and percentage by weight of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide.

b. When the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

5. The term *"active ingredient"* means:

a. In the case of a pesticide other than a plant growth regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests.

b. In the case of a plant growth regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof.

c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

6. The term *"inert ingredient"* means an ingredient which is not an active ingredient.

7. The term *"antidote"* means the most practical immediate treatment in case of poisoning and includes first aid treatment.

8. The term *"person"* means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

9. The term *"department"* shall mean the Iowa department of agriculture.

10. The term *"secretary"* means the secretary of the Iowa department of agriculture.

11. The term *"registrant"* means the person registering any pesticide or device or who has obtained a certificate of license from the department pursuant to the provisions of this chapter.

12. The term *"commercial applicator"* shall mean any person or corporation who enters into a contract or an agreement for the sake of monetary payment and agrees to perform a service by applying any pesticide or servicing any device but shall not include a farmer trading work with another.

13. The term *"label"* means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide or device.

14. The term *"labeling"* means all labels and other written, printed or graphic matter:

a. Upon the pesticide or device or any of its containers or wrappers.

b. Accompanying the pesticide or device at any time.

c. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States department of agriculture or interior, the United States public health service, the state agricultural experiment stations, the Iowa State University, the Iowa department of public health, the state conservation commission, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

15. The term *"adulterated"* shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

16. The term *"misbranded"* shall apply:

a. To any pesticide or device if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

b. To any pesticide:

(1) If it is an imitation of or is offered for sale under the name of another pesticide.

(2) If its labeling bears any reference to registration under this chapter, when not so registered.

(3) If the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public.

(4) If the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals.

(5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there is to be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase.

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or graphic matter in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such pesticide.

(8) If in the case of a plant growth regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant growth regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

17. *"Certified applicator"* means any individual who is certified under this chapter as authorized to use or supervise the use of any pesticide which is classified for restricted use.

18. *"Certified private applicator"* means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of

personal services between producers of agricultural commodities, on the property of another person.

19. *"Certified commercial applicator"* means a pesticide applicator or individual who applies or uses a restricted use pesticide or device for the purpose of producing any agricultural commodity or on any property of another for compensation.

20. *"Public applicator"* means an individual who applies pesticides as an employee of a state agency, county, municipal corporation, or other governmental agency. This term does not include employees who work only under the direct supervision of a public applicator.

21. The term *"distribute"* means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

22. The term *"hazard"* means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

23. The term *"permit"* means a written certificate, issued by the secretary or his authorized agent as authorized in rules adopted by the chemical technology commission authorizing the use of certain state restricted use pesticides.

24. The term *"pesticide dealer"* means any person who distributes any restricted use pesticides which, by regulation, are restricted to application only by certified applicators.

25. The term *"restricted use pesticide"* means any pesticide restricted as to use by rule of the secretary as adopted under section 206.20.

26. The term *"state restricted use pesticide"* means any pesticide which is restricted for sale, use, or distribution under the authority of section 455B.101.

27. The term *"under the direct supervision of"* means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator or a state licensed commercial applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

28. The term *"unreasonable adverse effects on the environment"* means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide. [C24, 27, 31, 35, 39,§3182; C46, 50, 54, 58, 62,§206.1; C66, 71, 73, 75,§206.2]

206.3 Examination and orders. The examination of pesticides and those products to which pesticides have been applied for the content of pesticide residues shall be made under the direction of the secretary, or his authorized representative, for the purpose of determining whether they comply with the requirements of this chapter and rules adopted under this chapter. If it shall appear from such examination that a pesticide fails to comply with the provisions of this chapter, and the secretary, or his authorized representative, contemplates instituting criminal proceedings against any person, he shall cause notice to be given to such person. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings and if thereafter in the opinion of the secretary, or his authorized representative, it shall appear that the provisions of the chapter have been violated by such person, then the secretary or his authorized representative may refer the facts to the county attorney for the county in which the violation shall have occurred with a copy of the results of the analysis or the examination of such article; provided, however, that nothing in this chapter shall be construed as requiring the secretary or his representative to report for prosecution or for the institution of proceedings in minor violations of the chapter whenever he believes that the public interests will be best served by a suitable notice of warning in writing. [C66, 71, 73,§206.7; C75,§206.3]

206.4 Classification of licenses.

1. The secretary may classify or subclassify certifications or licenses to be issued under this chapter. Each classification shall be subject to separate testing procedures and requirements. However, no person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for by the secretary under the authority of this section.

2. The secretary in promulgating rules under this chapter shall prescribe standards for the certification of applicators of pesticides. In determining these standards the secretary shall take into consideration standards of the United States environmental protection agency and is authorized to adopt by rule these standards. [C75,§206.4]

206.5 Certification requirements. No person shall apply any restricted use pesticide without first complying with the certification requirements of this chapter and such other restrictions as determined by the secretary or being under the direct supervision of a certified applicator.

The secretary shall adopt, by rule, requirements for the examination and certification of applicants and set a fee of not more than ten dollars for the certification program of commercial applicators and not more than five dollars for the certification program of private applicators.

The secretary may adopt rules for the training of applicators in co-operation with the co-operative extension service at Iowa State University of science and technology.

The secretary shall not require applicants for certification as private applicators to take

and pass a written test, if the applicant instead shows proof that he has attended an informational course of instruction approved by the secretary. The secretary shall provide for temporary certification for emergency purchases of restricted use products by requiring the purchaser to sign an affidavit, at the point of purchase, that he has read and understands the information on the label of the restricted use product being purchased. C75,§206.5; 66GA, ch 1128,§2]

206.6 License for commercial applicators.

1. *Commercial applicator.* No person shall engage in the business of applying pesticides to the lands or property of another at any time without being licensed by the secretary. The secretary shall require an annual license fee of not more than twenty-five dollars for each license. Application for a license shall be made in writing to the department on a designated form obtained from the department. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, license classification or classifications for which the applicant is applying.

A person who applies pesticides by use of any aircraft and who is licensed as an aerial commercial applicator in another state shall apply pesticides in Iowa under the direct supervision of a person holding a valid Iowa aerial commercial applicator's license. The supervising aerial commercial applicator shall be jointly liable with the person who is licensed as an aerial commercial applicator in another state for damages. The supervising applicator shall immediately notify the secretary of the commencement and of the termination of service provided by the supervised applicator. A person licensed in another state as an aerial commercial applicator may operate independently if he acquires an aerial commercial applicator license from the secretary and posts bond in amount to be determined by the secretary, and registers with the Iowa aeronautics commission. Such person shall be liable for damages.

2. *Nonresident applicator.* Any nonresident applying for a license under this chapter to operate in the state shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of this state over such nonresident applicants. A nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees as provided by law for designating resident agents. The secretary shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be certified by the secretary of state.

3. *Examination for commercial applicator license.* The secretary shall not issue a commercial applicator license until the individual engaged in or managing the pesticide application business is qualified by passing an examination to demonstrate to the secretary his knowledge of how to apply pesticides under the classifications he has applied for, and his knowledge of the nature and effect of pesticides he may apply under such classifications. The applicant successfully completing this examination requirement shall be a licensed commercial applicator.

4. *Renewal of applicant's license.* The secretary shall renew any applicant's license under the classifiications for which such applicant is licensed, provided that a program of training of all personnel who apply prestiicides has been established and maintained by the licensee. Such a program may include attending training sessions such as Co-operative Extension Short Courses or Industry trade association training seminars.

5. *Issue commercial applicator license.* If the secretary finds the applicant qualified to apply pesticides in the classifications for which he has applied and if the applicant files the bonds or insurance required under section 206.13, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the federal aviation administration, the Iowa aeronautics commission and any other applicable federal or state laws or regulations to operate the equipment described in the application, the secretary shall issue a commercial applicator license limited to the classifications for which he is qualified, which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior thereto by the secretary for cause. The secretary may limit the license of the applicant to the use of certain pesticides, or to certain areas, or to certain types of equipment if the applicant is only so qualified. If a license is not issued as applied for, the secretary shall inform the applicant in writing of the reasons therefor.

6. *Public applicator.*

a. All state agencies, counties, municipal corporations, and any other governmental agency shall be subject to the provisions of this chapter and rules adopted thereunder concerning the application of pesticides.

b. Public applicators for agencies listed in this subsection shall be subject to examinations as provided for in this section, however, the secretary shall issue a limited license without a fee to such public applicator who has qualified for such license. The public applicator license shall be valid only when such applicator is acting as an applicator applying or supervising the application of pesticides used by such entities. Government research personnel shall be exempt from this licensing re-

quirement when applying pesticides only to experimental plots. Individuals licensed pursuant to this section shall be licensed public applicators.

c. Such agencies and municipal corporations shall be subject to legal recourse by any person damaged by such application of any pesticide, and such action may be brought in the county where the damage or some part thereof occurred. [C66, 71, 73,§206.5; C75,§206.6; 66GA, ch 1128,§3]

Referred to in §§206.11, 206.13, 206.17, 206.18

206.7 Certified applicators.

1. *Requirement for certification.* No commercial or public applicator shall apply any restricted use pesticide without first complying with the certification standards or being under the direct supervision of a certified applicator.

2. *Certification standards.* Certification standards shall be adopted by the secretary to determine the individual's competence with respect to the application and handling of the restricted use pesticides. In determining these standards, the secretary shall take into consideration the standards of the United States environmental protection agency.

3. *Reasons for not qualifying.* If the secretary does not qualify the applicator under this section he shall inform the applicant in writing of the reasons therefor. [C75,§206.7]

Referred to in §206.17

206.8 Pesticide dealer license.

1. It shall be unlawful for any person to act in the capacity of a pesticide dealer, or advertise as, or assume to act as a pesticide dealer at any time without first having obtained a license from the secretary which shall expire at the end of the calendar year of issue. A license shall be required for each location or outlet located within this state from which such pesticides are distributed. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his principal out-of-state location or outlet.

2. Application for a license shall be accompanied by a twenty-five dollar annual license fee for the primary business location and an additional five dollar annual license fee for each other location or outlet within the state, and shall be on a form prescribed by the secretary and shall include the full name of the person applying for such license.

3. Provisions of this section shall not apply to a pesticide applicator who sells pesticides as an integral part of his pesticide application service, or any federal, state, county or municipal agency which provides pesticides only for its own programs. [C75,§206.8; 66GA, ch 1128,§4]

206.9 Co-operative agreements. The secretary may co-operate, receive grants-in-aid and enter into agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state, or trade associations to obtain assistance in the implementation of this chapter and to:

1. Secure uniformity of regulations;

2. Co-operate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities and to implement co-operative enforcement programs;

3. Develop and administer state programs for training and certification of certified applicators consistent with federal standards;

4. Contract for training with other agencies including federal agencies for the purpose of training certified applicators;

5. Contract for monitoring pesticides for the national plan;

6. Prepare and submit state plans to meet federal certification standards; and,

7. Regulate certified applicators. [C66, 71, 73,§206.11; C75,§206.9]

Constitutionality, 60GA, ch 139,§12

206.10 License renewals—delinquent fee. If the application for renewal of any license provided for in this chapter is not filed prior to the first of January in any year, a delinquent fee of twenty-five percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued. A delinquent fee shall not apply if the applicant furnishes an affidavit certifying that he has not applied pesticides after the expiration of his license. All licenses issued under this chapter shall expire December 31 each year. [C75,§206.10]

206.11 Distribution or sale of pesticides.

1. It shall be unlawful for any person to distribute, give, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

a. Any pesticide which has not been registered pursuant to the provisions of section 206.12.

b. Any pesticide, if any of the claims made for it, or if any of the directions for its use, differ in substance from the representations made in connection with its registration.

c. Any pesticide if the composition thereof differs from its composition as represented in connection with its registration, unless within the discretion of the secretary, or his authorized representative, a change in the labeling or formula of a pesticide within a registration period, has been authorized, without requiring a reregistration of the product.

d. Any pesticide, unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such

container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing the following:

(1) The name and address of the manufacturer, registrant, or person for whom manufactured.

(2) The name, brand, or trade-mark of said article.

(3) The net weight or measure of the contents subject, however, to such reasonable variations as the secretary may permit.

(4) An ingredient statement as required in section 206.12.

(5) The date of manufacture of products found by the chemical technology review board to be subject to deterioration because of age.

e. Any pesticide which contains any substance or substances in quantities highly toxic to man; determined as provided in section 206.6, unless the label shall bear, in addition to any other matter required by this chapter:

(1) The skull and cross-bones.

(2) The word "poison" prominently, in red, on a background of distinctly contrasting color.

(3) A statement of an antidote for the pesticide.

(4) Instructions for safe disposal of the container when the used container is found by the secretary after public hearing to be hazardous to man or other vertebrate animals.

f. Any standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate and barium fluosilicate unless such pesticides have been distinctly colored or discolored as provided by regulations issued in accordance with this chapter, or any other white powder which the secretary, or his authorized representatives, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the secretary, or his authorized representative, may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health or safety.

g. Any pesticide which is adulterated or misbranded.

2. It shall be unlawful:

a. For any person to detach, alter, deface, or destroy in whole or in part, any label or labeling provided for in this chapter or the rules promulgated hereunder, or to add any substance to, or take any substance from a pesticide in a manner that may defeat the purpose of this chapter.

b. For any person to use for his own advantage or to reveal, other than to the secretary, or officials or employees of the state or officials or employees of the United States department of agriculture, or other federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, in accordance with such directions as the secretary may prescribe, any information relative to formulae of products acquired by authority of section 206.12.

c. For any person to interfere in any way with the secretary or his duly authorized agents in carrying out the duties imposed by this chapter.

3. It shall be unlawful:

a. To distribute any restricted use pesticide to any person who is required by law or rules promulgated under such law to be certified to use or purchase such restricted pesticides unless such person or his agent, to whom distribution is made, is certified to use or purchase such restricted pesticide. Subject to conditions established by the secretary such certification may be obtained immediately prior to distribution from any person designated by the secretary.

b. For any person to use or cause to be used any pesticide contrary to its labeling or to rules of the state of Iowa if those rules differ from or further restrict the usage.

c. For any person to handle, transport, store, display, or distribute pesticides in such a manner as to endanger man and his environment or to endanger food, feed, or any other products that may be transported, stored, displayed or distributed with such pesticides.

d. For any person to dispose of, discard, or store any pesticides or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, polinating insects or to pollute any water supply or waterway.

4. The secretary may suspend an applicator's license pending inquiry, and, after opportunity for a hearing, to be held within ten days, may deny, suspend, revoke or modify any provision of any license, permit or certification issued under this chapter, if he finds that the applicant or the holder of a license, permit or certification has committed any of the following acts, each of which is declared to be a violation of this chapter. However, any licensed or unlicensed person shall be subject to the penalties provided for by section 206.22.

a. Made a pesticide recommendation or application inconsistent with the labeling.

b. Applied known ineffective or improper materials.

c. Operated faulty or unsafe equipment.

d. Operated in a faulty, careless or negligent manner.

e. Neglected or, after notice, refused to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the secretary.

f. Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required.

g. Made false or fraudulent records, invoice or reports.

h. Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit or certification.

i. Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, conspired with such a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license, permit or certification to be used by another person.

j. Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land.

k. Impersonated any federal, state, county or city inspector or official. [C97,§2588; SS15, §2588; C24, 27, 31, 35, 39,§§3183, 3184; C46, 50, 54, 58, 62,§§206.2, 206.3; C66, 71, 73,§206.3; C75, §206.11]

Referred to in §§206.18, 206.22

206.12 Registration.

1. Every pesticide which is distributed, sold or offered for sale within this state or delivered for transportation or transported in intrastate commerce between points within the state through any point outside this state shall be registered with the department of agriculture. All registration of products shall expire on the thirty-first day of December following date of issuance, unless such registration shall be renewed annually, in which event expiration date shall be extended for each year of renewal registration, or until otherwise terminated; provided that:

a. For the purpose of this chapter, fertilizers in mixed fertilizer-pesticide formulations shall be considered as inert ingredients.

b. Within the discretion of the secretary, or his authorized representative, a change in the labeling or formulae of a pesticide may be made within the current period of registration, without requiring a reregistration of the product, provided the name of the item is not changed.

2. The registrant shall file with the department a statement containing:

a. The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant.

b. The name of the pesticide.

c. An ingredient statement in which the accepted common name and percentage by weight of each active ingredient is listed as well as the percentage of inert ingredients in the pesticides.

d. A complete copy of the labeling accompanying the pesticide and a statement of all claims made and to be made for it including directions for use.

e. A full description of the tests made and results thereof upon which the claims are based, if requested by the secretary. In the case of renewal or reregistration, a statement may be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

3. The registrant, before selling or offering for sale any pesticide in this state, shall register each brand and grade of such pesticide with the secretary upon forms furnished by the secretary, and, for the purpose of defraying expenses connected with the enforcement of this chapter, the secretary shall set the registration fee annually at no more than twenty dollars for each and every brand and grade to be offered for sale in this state. The fees collected shall be deposited in the treasury to the credit of the pesticide fund to be used only for the purpose of enforcing the provisions of this chapter.

4. The secretary, whenever he deems it necessary in the administration of this chapter, may require the submission of the complete formula of any pesticide. If it appears to the secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of this chapter, he shall register the article.

5. If it does not appear to the secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this chapter, he shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with this chapter so as to afford the registrant an opportunity to make the necessary corrections.

6. Notwithstanding any other provisions of this chapter, registration is not required in the case of a pesticide shipped from one plant within this state to another plant within this state operated by the same person. [C66, 71, 73,§206.4; C75,§206.12]

Referred to in §§206.11, 206.16, 206.22

206.13 Surety bond or insurance required of commercial applicator. The secretary shall not issue a commercial applicator's license as required in section 206.6 until the applicant has furnished evidence of financial responsibility with the secretary consisting either of a surety bond or a liability insurance policy or certification thereof. Such surety bond or liability insurance policy shall provide coverage to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages as a result of the pesticide operations of the applicant. However, the surety bond or liability insurance

policy will not apply to damages or injury which are either expected or intended from the standpoint of the insured. Any such liability insurance policy shall be subject to the insurer's policy provisions filed with and approved by the commissioner of insurance. The surety bond or liability insurance policy submitted as evidence of financial responsibility need not apply to damages or injury to agricultural crops, plants, or land being worked upon by the applicant.

The amount of the surety bond or liability insurance as provided for in this section shall be not less than fifty thousand dollars for property damage and public liability insurance, each separately. Such surety bond or liability insurance shall be maintained at not less than that sum at all times during the licensed period. The secretary shall be notified ten days prior to any reduction at the request of the applicant or cancellation of such surety bond or liability insurance by the surety or insurer. The total and aggregate of the surety and insurer for all claims shall be limited to the face of the bond or liability insurance policy. [C75,§206.13; 66GA, ch 1130,§1]

Referred to in §206.6

206.14 Reports of pesticide accidents, incidents or loss.

1. The secretary may by rule require the reporting of significant pesticide accidents or incidents to a designated state agency.

2. Any person claiming damages from a pesticide application shall have filed with the secretary on a form prescribed by the secretary a written statement claiming that he has been damaged.

a. This report shall have been filed within sixty days after the alleged date that damages occurred. If a growing crop is alleged to have been damaged, the report must be filed prior to the time that twenty-five percent of the crop has been harvested. Such statement shall contain, but shall not be limited to the name of the person allegedly responsible for the application of said pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred, and the date on which the alleged damage occurred.

b. The secretary shall prepare a form to be furnished to persons to be used in such cases and such form shall contain such other requirements as the secretary may deem proper. The secretary shall, upon receipt of such statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility of the damages claimed, and furnish copies of such statements as may be requested. The secretary shall inspect damages whenever possible and when he determines that the complaint has sufficient merit he shall make such information available to the person claiming damage and to the person who is alleged to have caused the damage.

3. The filing of such a report or failure to give notice shall not preclude recovery in an action for damages and shall not affect the limitations of actions set forth in chapter 614. Nothing herein shall prohibit an action for damages for bodily injury or death to any person.

a. The filing of such report or the failure to file such a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by others, the secretary may, when in the public interest, refuse to hold a hearing for the denial, suspension or revocation of a license or permit issued under this chapter until such report is filed.

b. Where damage is alleged to have occurred, the claimant shall permit the secretary, the licensee and his representatives, such as bondsman or insurer, to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands shall automatically bar the claim against the licensee. [C73,§206.13; C75,§206.14]

206.15 Licensee to keep records. The secretary shall require commercial applicators and certified commercial applicators to maintain records with respect to application of pesticides. Such relevant information as the secretary may deem necessary may be specified by regulation. Such records shall be kept for a period of three years from the date of the application of the pesticide to which such records refer, and the secretary shall, upon request in writing, be furnished with a copy of such records forthwith. [C75,§206.15]

206.16 Confiscation.

1. Any pesticide or device that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be liable to be proceeded against in any district court in any county of the state where it may be found and seized for confiscation by condemnation.

a. In the case of a pesticide:

(1) If it is adulterated or misbranded.

(2) If it has not been registered under the provisions of section 206.12.

(3) If it fails to bear on its label the information required by this chapter.

(4) If it is a white powder pesticide and is not colored as required under this chapter.

b. In the case of a device, if it is misbranded.

2. If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the pro-

ceeds if such article is sold, less legal costs, shall be paid to the state treasurer; provided, that the article shall not be sold contrary to the provisions of this chapter; and, provided further, that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that said article be delivered to the owner thereof for relabeling or reprocessing as the case may be.

3. When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

4. When the secretary has reasonable cause to believe a pesticide or device is being distributed, stored, transported, or used in violation of any of the provisions of this chapter, or of any of the prescribed rules under this chapter, he may issue and serve a written "stop sale, use, or removal" order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order upon him, the secretary may attach the order to the pesticide or device and notify the registrant. The pesticide or device shall not be sold, used, or removed until the provisions of this chapter have been complied with and the pesticide or device has been released in writing under conditions specified by the secretary or the violation has been otherwise disposed of as provided in this chapter by a court of competent jurisdiction. [C66, 71, 73,§206.10; C75,§206.16]

206.17 Reciprocal agreement. The secretary may waive all or part of the examination requirements provided for in sections 206.6 and 206.7 on a reciprocal basis with any other state which has substantially the same standards. [C75,§206.17]

206.18 Exception to penalties.

1. The penalties provided for violations of section 206.11, subsection 1, shall not apply to:

a. Any carrier while lawfully engaged in transporting a pesticide within this state, if such carrier shall, upon request, permit the secretary or his designated agent to copy all records showing the transactions in and movement of the articles.

b. Public officials of this state and the federal government engaged in the performance of their official duties.

c. The manufacturer or shipper of a pesticide for experimental use only:

(1) By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides.

(2) By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "for experimental use only—not to be sold", together with the manufacturer's name and address; provided, however, that if a written permit has been obtained from the secretary, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.

2. No article shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply.

3. The provisions of section 206.6 relating to licenses and requirements for their issuance shall not apply to any farmer applying pesticides for himself or with ground equipment or manually for his farmer neighbors; provided, that:

a. He operates farm property and operates and maintains pesticide application equipment primarily for his own use;

b. He is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation and that he shall not publicly hold himself out as a pesticide applicator;

c. He operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his neighbors.

4. The licensing requirements of section 206.6 shall not apply to persons using hand-powered or self-propelled equipment not exceeding seven and one-half horsepower as determined by rules promulgated by the department to apply pesticides to lawns, or to ornamental shrubs and trees not in excess of twelve feet high, as an incidental part of taking care of household lawns and yards provided, that such persons shall not publicly hold themselves out as being in the business of applying pesticides, and that such persons do not apply restricted use pesticides or state restricted use pesticides, restricted to use only by certified applicators.

5. The provisions of section 206.6 relating to licenses and requirements for their issuance shall not apply to a doctor of veterinary medicine applying pesticides to animals during the normal course of his veterinary practice; provided that he is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation or does not publicly hold himself out as a pesticide applicator; and that he does not apply restricted use pesticides, or state restricted use pesticides, restricted to use by certified applicators only. [C66, 71, 73,§206.8; C75, §206.18; 66GA, ch 1128,§5]

206.19 Rules adopted. The rules promulgated under the provisions of this chapter shall not be effective until approved by the chemical technology commission of the department of environmental quality and submitted to the departmental rules review committee as provided in chapter 17A. [C71, 73, §206.12; C75,§206.19]

206.20 Restricted use pesticides classified. The secretary shall determine, by rule, the pesticides to be classified as restricted use pesticides. In determining these rules the secretary shall take into consideration the pesticides classified as restricted use by the United States environmental protection agency and is authorized to adopt by reference these classifications. [C75,§206.20]

Referred to in §206.2(25)

206.21 Secretary of agriculture—duties.

1. The secretary is authorized, after public hearing following due notice, to make appropriate rules for carrying out the provisions of this chapter, including rules providing for the collection and chemical examination of samples of pesticides or devices.

2. For the purpose of carrying out the provisions and the requirements of this chapter and the rules made and notices given pursuant thereto, the secretary or his authorized agents, inspectors, or employees may enter into or upon any place during reasonable business hours in order to take periodic random samples for chemical examinations of pesticides and devices and to open any bundle, package or other container containing or believed to contain a pesticide in order to determine whether the pesticide or device complies with the requirements of this chapter. Methods of analysis shall be those currently used by the Association of Official Agricultural Chemists. [C66, 71, 73,§206.6; C75,§206.21]

206.22 Penalties.

1. Any person violating section 206.11, subsection 1, paragraph "*a*", shall be guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars.

2. Any person violating any provision of this chapter other than section 206.11, subsection 1, paragraph "*a*", shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars for the first offense and upon conviction for a subsequent offense shall be fined not more than one thousand dollars; provided, that any offense committed more than five years after a previous conviction shall be considered a first offense; and provided, further, that in any case where a registrant was issued a warning by the secretary pursuant to the provisions of this chapter, such registrant shall upon conviction of a violation of any provision of this chapter other than section 206.11, subsection 1, paragraph "*a*", be fined not more than one thousand dollars, or imprisoned for not more than one year, or be subject to both such fine and imprisonment; and the registration of the article with reference to which the violation occurred shall terminate automatically. An article, the registration of which has been terminated, may not again be registered unless the article, its labeling, and other material required to be submitted appear to the secretary to comply with all the requirements of this chapter.

3. Notwithstanding any other provisions of the section, in case any person, with intent to defraud, uses or reveals information relative to formulae of products acquired under authority of section 206.12, he shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both. [C66, 71, 73,§206.9; C75,§206.22]

Referred to in §206.11

CHAPTER 206A

CHEMICAL TECHNOLOGY REVIEW BOARD

Repealed by 64GA, ch 1119,§112
See ch 455B

CHAPTER 207

PAINTS AND OILS

General penalty, §189.21

207.1 Definitions and standards.
207.2 Labeling paints.
207.3 Labeling oils.
207.4 Labeling substitutes.

207.1 Definitions and standards. For the purposes of this chapter:

1. *Raw linseed oil.* "Raw linseed oil" shall be obtained wholly from the seeds of the flax plant (linum usitatissimum) and shall comply with all the requirements of the United States Pharmacopoeia.

2. *Boiled linseed oil.* "Boiled linseed oil" or "boiled oil" shall be prepared by heating pure raw linseed oil to a temperature of at least

107°C., and if desired incorporating not to exceed three percent by weight of dryer, and it shall fulfill the following requirements:

a. Its specific gravity at 20/20 degrees centigrade must be not less than nine hundred thirty-five thousandths and not greater than nine hundred forty-five thousandths.

b. Its saponification number must not be less than one hundred eighty-six.

c. Its iodine absorption number must not be less than one hundred sixty.

d. Its acid value must not exceed ten.

e. The volatile matter expelled at 100° C. must not exceed one-half of one percent.

f. No mineral oil shall be present, and the amount of unsaponifiable matter as determined by standard methods, must not exceed two percent.

g. The film left after flowing the oil over glass and allowing it to drain in a vertical position, must dry free from tackiness in not to exceed twenty hours, at a temperature of about 20°C.

3. *Oil of turpentine.* "Oil of turpentine", "spirits of turpentine", "turpentine", or "turps" shall consist wholly of the volatile portion obtained by distillation of the oleoresinous exudation from various species of coniferous trees and shall fulfill the following requirements:

a. Its specific gravity at 20/20 degrees centigrade must be not less than eight hundred sixty thousandths and not greater than eight hundred seventy-five thousandths.

b. Its index of refraction at 20°C. must not be less than one and four hundred sixty-eight thousandths and not greater than one and four thousand seven hundred twenty-five ten thousandths.

c. Its iodine absorption number must not be less than three hundred forty.

d. The undissolved (unpolymerized) residue on treatment of ten cubic centimeters with forty cubic centimeters of a sulphuric acid containing twenty percent of the fuming acid must not exceed ten percent by volume of the sample.

e. The initial boiling point must not be lower than 150°C. under ordinary atmospheric pressure, and ninety-five percent by volume must distill below 166°C.

f. The residue left after evaporation over a steam bath must not exceed two percent.

g. Mineral oil must not be present.

4. *Paint.* "Paint" shall include white lead in oil or any compound intended for the same use, paste or semipaste, and liquid or mixed paint ready for use, or any compound intended for the same purpose. [S13,§§2510-c,-n,-p,-v; C24, 27, 31, 35, 39,§3187; C46, 50, 54, 58, 62, 66, 71, 73, 75,§207.1]

207.2 Labeling paints. All paint, including paint transported into and delivered in this state, offered or exposed for sale or sold in package or wrapped form shall be labeled on each package or container as provided in sections 189.9 to 189.12, except that in listing the ingredients and the percentage of each in the total contents of any paint, all substances other than coloring matter may be treated as one hundred percent in which case the description or trade name of such coloring matter, with its chemical analysis, shall appear on the label in the same manner as provided in said sections. [S13,§§2510-b,-d; C24, 27, 31, 35, 39,§3188; C46, 50, 54, 58, 62, 66, 71, 73, 75,§207.2]

207.3 Labeling oils. All linseed oil or oil of turpentine offered or exposed for sale or sold in package or wrapped form shall be labeled on each package or container as provided in section 189.9, except that the label shall be printed with ordinary bold-faced type in capital letters not less than five-line pica in size. [S13,§§2510-q,-v1; C24, 27, 31, 35, 39,§3189; C46, 50, 54, 58, 62, 66, 71, 73, 75,§207.3]

207.4 Labeling substitutes. Any compound or mixture consisting of linseed oil (raw or boiled) and any other product, or any compound or mixture consisting of oil of turpentine and any other product, or any product which is intended to be used as a substitute for linseed oil (raw or boiled) or for oil of turpentine, which is offered or exposed for sale or sold in package or wrapped form shall be labeled on each package or container as provided in sections 189.9 to 189.12, except that the label shall be printed with ordinary boldfaced type in capital letters not less than five-line pica in size and the words "substitute for linseed oil" or "substitute for oil of turpentine", as the case may be, shall also appear upon the label in the same manner prescribed for other items. Every storage receptacle containing any such product shall be labeled in the manner herein prescribed for the labeling of the package or container in which such product is offered or exposed for sale, or sold. [S13, §§2510-r,-v2; C24, 27, 31, 35, 39,§3190; C46, 50, 54, 58, 62, 66, 71, 73, 75,§207.4]

CHAPTER 208

PETROLEUM PRODUCTS

Repealed by 66GA, ch 135,§2

CHAPTER 208A

MOTOR VEHICLE ANTIFREEZE ACT

General penalty, §§189.21, 208A.11

208A.1 Definitions.
208A.2 What deemed adulterated.
208A.3 What deemed misbranded.
208A.4 Inspection by department.
208A.5 Samples—analysis.
208A.6 Rules.
208A.7 List of approved brands.
208A.8 Advertising restricted.
208A.9 Prosecution.
208A.10 Fees remitted.
208A.11 Penalty.
208A.12 Citation of chapter.

208A.1 Definitions. As used in this chapter, unless the context or subject matter otherwise requires: (1) "Antifreeze" shall include all substances and preparations intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid or to lower its freezing point; and (2) "person" shall include individuals, partnerships, corporations, companies and associations. [C50, 54, 58, 62, 66, 71, 73, 75, §208A.1]

208A.2 What deemed adulterated. An antifreeze shall be deemed to be adulterated: (1) If it consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine or will make the operation of the engine dangerous to the user; or (2) if its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold. [C50, 54, 58, 62, 66, 71, 73, 75,§208A.2]

208A.3 What deemed misbranded. An antifreeze shall be deemed to be misbranded: (1) If its labeling is false or misleading in any particular; or (2) if in package form it does not bear a label containing the name and place of business of the manufacturer, packer, seller or distributor and an accurate statement of the quantity of the contents in terms of weight or measure on the outside of the package. [C50, 54, 58, 62, 66, 71, 73, 75,§208A.3]

208A.4 Inspection by department. Before any antifreeze shall be sold, exposed for sale, or held with intent to sell within this state, a sample thereof must be inspected by the department of agriculture. Upon application of the manufacturer, packer, seller or distributor and the payment of a fee of twenty dollars for each brand of antifreeze submitted, the department shall inspect the antifreeze submitted. If the antifreeze is not adulterated or misbranded, if it meets the standards of the department, and is not in violation of this chapter, the department shall give the applicant a written permit authorizing the sale of such antifreeze in this state until the formula or labeling of the antifreeze is changed in any manner.

If the department shall at a later date find that the product to be sold, exposed for sale or held with intent to sell has been materially altered or adulterated, a change has been made in the name, brand or trade-mark under which the antifreeze is sold, or it violates the provisions of this chapter, the department shall notify the applicant and the permit shall be canceled forthwith. [C50, 54, 58, 62, 66, 71, 73, 75,§208A.4]

208A.5 Samples—analysis. The department of agriculture shall enforce the provisions of this chapter by inspections, chemical analysis, or any other appropriate methods. All samples for inspection or analysis shall be taken from stocks in the state or intended for sale in the state or the department through its agents may call upon the manufacturer or distributor applying for an inspection of an antifreeze to supply such samples thereof for analysis. The department, through its agents, shall have free access by legal means during business hours to all places of business, buildings, vehicles, cars and vessels used in the manufacture, transportation, sale or storage of any antifreeze, and it may open by legal means any box, carton, parcel, or package, containing or supposed to contain any antifreeze and may take therefrom samples for analysis. [C50, 54, 58, 62, 66, 71, 73, 75,§208A.5]

208A.6 Rules. The department of agriculture shall have authority to promulgate such rules as are necessary to promptly and effectively enforce the provisions of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§208A.6]

208A.7 List of approved brands. The department of agriculture may furnish upon request a list of the brands and trade-marks of antifreeze inspected by the department during the calendar year which have been found to be in accord with this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§208A.7]

208A.8 Advertising restricted. No advertising literature relating to any antifreeze sold or to be sold in this state shall contain any statement that the antifreeze advertised for sale has met the requirements of the department of agriculture until such antifreeze has been given the laboratory test and inspection of the department, and found to meet all the standard requirements and not to be in violation of this chapter. Then such statement may be contained in any advertising literature where such brand or trade-mark of antifreeze

is being advertised for sale, and such statement may be used on all regular containers of such antifreeze. [C50, 54, 58, 62, 66, 71, 73, 75, §208A.8]

208A.9 Prosecution. Whenever the department of agriculture shall discover any antifreeze is being sold or has been sold in violation of this chapter, the facts shall be furnished to the attorney general who shall institute proper proceedings. [C50, 54, 58, 62, 66, 71, 73, 75,§208A.9]

208A.10 Fees remitted. All fees provided for in this chapter shall be collected by the secretary of the department of agriculture and remitted to the state treasury. [C50, 54, 58, 62, 66, 71, 73, 75,§208A.10]

208A.11 Penalty. If any person, partnership, corporation, or association shall violate the provisions of this chapter, such person, partnership, corporation or association shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished according to the general provisions of title X and the department may after due hearing cancel registration. [C50, 54, 58, 62, 66, 71, 73, 75, §208A.11]

208A.12 Citation of chapter. This chapter may be cited as the "Iowa Antifreeze Act." [C50, 54, 58, 62, 66, 71, 73, 75,§208A.12]

CHAPTER 209

MATTRESSES AND COMFORTS

Referred to in §209.4

General penalty, §189.21

209.1 Definitions.
209.2 Materials used.
209.3 Labeling.
209.4 Form of label.
209.5 Registration of manufacturers.
209.6 Factory inspection—fees.
209.7 Prima-facie evidence.
209.8 Exceptions—remade mattresses.

209.1 Definitions. For the purpose of this chapter:

1. A mattress shall include what is commonly known as a bed mattress, and also any other article for use as a bed pad, consisting of an outer covering of cloth, ticking, or other fabric, and stuffed or filled with hair, wool, moss, cotton, excelsior, or any other material.

2. A comfort shall include what is commonly known as a bed comfort, and also any other article for use as a bed cover, consisting of an outer covering of cloth, or any other fabric, with wool, cotton, or other material between. [C24, 27, 31, 35, 39,§3219; C46, 50, 54, 58, 62, 66, 71, 73, 75,§209.1]

209.2 Materials used. No person shall knowingly manufacture, introduce into the state, solicit orders for, sell, deliver, transport, have in possession with the intent to sell, or offer or expose for sale any mattress or comfort which is made from any infectious, insanitary, or unhealthful material, or any material which has been previously used, except sterilized feathers. [C24, 27, 31, 35, 39,§3220; C46, 50, 54, 58, 62, 66, 71, 73, 75,§209.2]

209.3 Labeling. Every mattress and comfort offered or exposed for sale shall have attached upon the outside thereof, a cloth, or cloth-lined label, not less than two by three inches in size, upon which shall be legibly written or printed, in the English language, in letters not less that one-eighth of an inch in height, a description of the materials used in the filling, with the name and address of the maker of such mattress or comfort. The sewing of one edge of said label securely to said article shall be sufficient. [C24, 27, 31, 35, 39, §3221; C46, 50, 54, 58, 62, 66, 71, 73, 75,§209.3]

Referred to in §209.4

209.4 Form of label. The label provided in section 209.3 shall be in substantially the following form, but may contain thereon additional statements or information:

OFFICIAL STATEMENT

Manufactured of New Material.
(Here describe kind and character of filling.)
This article is made in compliance with chapter 209 of the Code of Iowa.
(Here state manufacturer's name and address)
Factory Number .....
[C24, 27, 31, 35, 39,§3222; C46, 50, 54, 58, 62, 66, 71, 73, 75,§209.4]

Referred to in §209.5

209.5 Registration of manufacturers. Every manufacturer of mattresses or comforts shall register with the department of agriculture and be assigned by it a factory number, which shall show on each label as required by section 209.4. [C24, 27, 31, 35, 39,§3223; C46, 50, 54, 58, 62, 66, 71, 73, 75,§209.5]

209.6 Factory inspection—fees. Each factory in the state, where mattresses or comforts are made, shall be inspected at least once

each year, for which inspection a fee of ten dollars shall be paid to the state by the owner of the factory inspected, but no owner shall be required to pay fees in excess of twenty dollars for any one calendar year. [C24, 27, 31, 35, 39,§3224; C46, 50, 54, 58, 62, 66, 71, 73, 75,§209.6]

209.7 Prima-facie evidence. The finding of any infectious, insanitary, unhealthful, or second-hand material in that part of any factory devoted to the manufacture of mattresses or comforts shall be prima-facie evidence that such material has been and is being used in violation of this chapter. [C24, 27, 31, 35, 39, §3225; C46, 50, 54, 58, 62, 66, 71, 73, 75,§209.7]

209.8 Exceptions—remade mattresses. This chapter shall not apply to any mattress or comfort made by any person for his individual or family use, nor to the remaking of any mattress or comfort not thereafter to be sold or offered for sale.

A remade mattress or comfort shall have attached thereto a label of the kind hereinbefore provided, except that such label shall bear the words "Remade from Used Material" in lieu of the words "Manufactured of New Material". [C24, 27, 31, 35, 39,§3226; C46, 50, 54, 58, 62, 66, 71, 73, 75,§209.8]

CHAPTER 210

STANDARD WEIGHTS AND MEASURES

General penalty, §189.21

210.1 Standard established.
210.2 Length and surface measure.
210.3 Land measure.
210.4 Weight.
210.5 Liquids.
210.6 Dry measure.
210.7 Bottomless measure.
210.8 Sales of dry commodities.
210.9 Drugs and section comb honey exempted.
210.10 Bushel measure.
210.11 Sale of fruits and vegetables by dry measure.
210.12 Sale of fruits and vegetables in baskets.
210.13 Berry boxes and climax baskets.
210.14 Hop boxes.
210.15 Milk bottles or containers.
210.16 Flour.
210.17 Mason work or stone.
210.18 Sales to be by standard weight or measure—labeling.
210.19 Standard weight of bread.
210.20 Wrapper.
210.21 Violations.
210.22 "Person" defined.
210.23 Exception.
210.24 Enforcement—rules and regulations.
210.25 Weighing bread.
210.26 Measuring saw logs.

210.1 Standard established. The weights and measures which have been presented by the department* to the federal bureau of standards and approved, standardized, and certified by said bureau in accordance with the laws of the Congress of the United States shall be the standard weights and measures throughout the state. [C51,§937; R60,§1775; C73,§2037; C97,§3009; S13,§3009-c; C24, 27, 31, 35, 39,§3227; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.1]

Referred to in §§210.2, 210.4, 210.5, 210.6
*See §189.1

210.2 Length and surface measure. The unit or standard measure of length and surface from which all other measures of extension shall be derived and ascertained, whether they be lineal, superficial, or solid, shall be the standard yard secured in accordance with the provisions of section 210.1. It shall be divided into three equal parts called feet, and each foot into twelve equal parts called inches, and for the measure of cloth and other commodities commonly sold by the yard it may be divided into halves, quarters, eighths, and sixteenths. The rod, pole, or perch shall contain five and one-half such yards, and the mile, one thousand seven hundred sixty such yards. [C51,§937; R60,§1775; C73,§§2038-2040; C97, §3010; S13,§3009-d; C24, 27, 31, 35, 39,§3228; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.2]

210.3 Land measure. The acre for land measure shall be measured horizontally and contain ten square chains and be equivalent in area to a rectangle sixteen rods in length and ten rods in breadth, six hundred and forty such acres being contained in a square mile. The chain for measuring land shall be twenty-two yards long, and be divided into one hundred equal parts, called links. [C73,§2041; C97, §3011; S13,§3009-d; C24, 27, 31, 35, 39,§3229; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.3]

210.4 Weight. The units or standards of weight from which all other weights shall be derived and ascertained shall be the standard avoirdupois and troy weights secured in accordance with the provisions of section 210.1. The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred sixty, shall be divided into sixteen equal parts called ounces; the hundred-weight shall consist of one hun-

dred avoirdupois pounds, and twenty hundredweight shall constitute a ton. The troy ounce shall be equal to the twelfth part of a troy pound. [C51,§938; R60,§1776; C73,§§2042, 2043; C97,§3012; S13,§3009-e; C24, 27, 31, 35, 39,§**3230**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.4]

210.5 Liquids. The unit or standard measure of capacity for liquids from which all other measures of liquids shall be derived and ascertained shall be the standard gallon secured in accordance with the provisions of section 210.1. The gallon shall be divided by continual division by the number two so as to make half-gallons, quarts, pints, half-pints, and gills. The barrel shall consist of thirty-one and one-half gallons, and two barrels shall constitute a hogshead. [C73,§§2044, 2045; C97,§3013; S13, §3009-g; C24, 27, 31, 35, 39,§**3231**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.5]

210.6 Dry measure. The unit or standard measure of capacity for substances not liquids from which all other measures of such substances shall be derived and ascertained shall be the standard half-bushel secured in accordance with the provisions of section 210.1. The peck, half-peck, quarter-peck, quart, pint, and half-pint measures for measuring commodities which are not liquids, shall be derived from the half-bushel by successively dividing the cubic inch capacity of that measure by two. [C73,§§2046, 2047; C97,§3014; S13,§3009-f; C24, 27, 31, 35, 39,§**3232**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.6]

210.7 Bottomless measure. Bottomless dry measures shall not be used unless they conform in shape to the United States standard dry measures. [SS15,§3009-j; C24, 27, 31, 35, 39, §**3233**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.7]

210.8 Sales of dry commodities. All dry commodities unless bought or sold in package or wrapped form shall be bought or sold only by the standard weight or measure herein established, or by numerical count, unless the parties otherwise agree in writing, except as provided in sections 210.9 to 210.12. [SS15, §3009-j; C24, 27, 31, 35, 39,§**3234**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.8]

Referred to in §210.9

210.9 Drugs and section comb honey exempted. The requirements of section 210.8 shall not apply to drugs or section comb honey. [SS15,§3009-j; C24, 27, 31, 35, 39,§**3235**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.9]

Referred to in §210.8

210.10 Bushel measure. When any of the commodities enumerated in this section shall be sold by the bushel or fractional part thereof, except when sold in a United States standard container or as provided in sections 210.11 and 210.12, the measure shall be determined by avoirdupois weight and shall be computed as follows:

Commodities	*Pounds*
Apples	48
Apples, dried	24
Alfalfa seed	60
Barley	48
Beans, green, unshelled	56
Beans, dried	60
Beans, lima	56
Beets	56
Blue grass seed	14
Bran	20
Bromus inermis	14
Broom corn seed	50
Buckwheat	48
Carrots	50
Castor beans, shelled	50
Charcoal	20
Cherries	40
Clover seed	60
Coal	80
Coke	40
Corn on the cob (field)	70
Corn in the ear, unhusked (field)	75
Corn, shelled (field)	56
Corn meal	48
Cucumbers	48
Emmer	40
Flaxseed	56
Grapefruit	48
Grapes, with stems	40
Hempseed	44
Hickory nuts, hulled	50
Hungarian grass seed	50
Kaffir corn	56
Lemons	48
Lime	80
Millet seed	50
Oats	32
Onions	52
Onion top sets	28
Onion bottom sets	32
Oranges	48
Orchard grass seed	14
Osage orange seed	32
Parsnips	45
Peaches	48
Peaches, dried	33
Peanuts	22
Pears	45
Peas, green, unshelled	50
Peas, dried	60
Plums	48
Popcorn, on the cob	70
Popcorn, shelled	56
Potatoes	60
Quinces	48
Rape seed	50
Redtop seed	14
Rutabagas	60
Rye	56
Salt	80
Sand	130
Shorts	20
Sorghum saccharatum seed	50
Soybeans	60
Spelt	40
Sweet corn	50

Commodities	*Pounds*
Sweet potatoes	50
Timothy seed	45
Tomatoes	50
Turnips	55
Walnuts, hulled	50
Wheat	60
All root crops not specified above	50

[C51,§940; R60,§§1778, 1781–1784; C73,§2049; C97, §3016; S13,§3009-h; C24, 27, 31, 35, 39,§3236; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.10]

Referred to in §210.8

210.11 Sale of fruits and vegetables by dry measure. Blackberries, blueberries, cranberries, currants, gooseberries, raspberries, cherries, strawberries, and similar berries, also onion sets in quantities of one peck or less, may be sold by the quart, pint, or half-pint, dry measure. [SS15,§3009-i; C24, 27, 31, 35, 39, §3237; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.11]

Referred to in §§210.8, 210.10

210.12 Sale of fruits and vegetables in baskets. Grapes, other fruits, and vegetables may be sold in climax baskets; but when said commodities are sold in such manner and the containers are labeled with the net weight of the contents in accordance with the provisions of section 189.9, all the provisions of the chapter* relative to labeling foods shall be deemed to have been complied with. [C24, 27, 31, 35, 39,§3238; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.12]

Referred to in §§210.8, 210.10
*See chapter 191

210.13 Berry boxes and climax baskets. Berry boxes sold, used, or offered or exposed for sale shall have an interior capacity of one quart, pint, or half-pint dry measure. Climax baskets sold, used, or offered or exposed for sale shall be of the standard size fixed below:

1. Two-quart basket: Length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length eleven inches, and width five inches, outside measurement; basket to have a cover five by eleven inches, when a cover is used.

2. Four-quart basket: Length of bottom piece, twelve inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length fourteen inches, width six and one-fourth inches, outside measurement; basket to have cover six and one-fourth inches by fourteen inches, when cover is used.

3. Twelve-quart basket: Length of bottom piece, sixteen inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch, outside measurement; top of basket, length nineteen inches, height of basket, seven and one-sixteenth inches, width nine inches, outside measurement; basket to have cover nine inches by nineteen inches, when cover is used. [SS15, §3009-i; C24, 27, 31, 35, 39,§3239; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.13]

210.14 Hop boxes. The standard box used in packing hops shall be thirty-six inches long, eighteen inches wide, and twenty-three and one-fourth inches deep, inside measurement. [C73,§2051; C97,§3018; C24, 27, 31, 35, 39,§3240; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.14]

210.15 Milk bottles or containers. The standard bottle or container used for the sale of milk and cream shall be of a capacity of one gallon, one-half gallon, three pints, one quart, one pint, one-half pint, one-third quart, one gill, filled full to the bottom of the lip. [S13, §3009-k; C24, 27, 31, 35, 39,§3241; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.15]

210.16 Flour. The standard weights of flour when sold in package form shall be as follows: Two, five, ten, twenty-five, fifty, or one hundred pounds. [C24, 27, 31, 35, 39,§3242; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.16]

210.17 Mason work or stone. The perch of mason work or stone shall consist of twenty-five feet, cubic measure. [C51,§939; R60,§1777; C73,§2050; C97,§3017; C24, 27, 31, 35, 39,§3243; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.17]

210.18 Sales to be by standard weight or measure—labeling. All commodities bought or sold by weight or measure shall be bought or sold only by the standards established by this chapter, unless the vendor and vendee otherwise agree. Sales by weight shall be by avoirdupois weight unless troy weight is agreed upon by the vendor and vendee.

All commodities bought or sold in package form shall be labeled in compliance with the general provisions for labeling provided for in sections 189.9 to 189.16, unless otherwise provided for in this chapter. [SS15,§3009-j; C24, 27, 31, 35, 39,§3244; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.18]

210.19 Standard weight of bread. The standard loaf of bread shall weigh one pound, avoirdupois weight. All bread manufactured, procured, made or kept for the purpose of sale, offered or exposed for sale, or sold in the form of loaves, shall be one of the following standard weights and no other, namely: Three-quarters pound, one pound, one and one-quarter pound, one and one-half pound, or multiples of one pound, avoirdupois weight; and provided further, that the provisions of this section shall not apply to biscuits, buns, crackers, rolls or to what is commonly known as "stale" bread and sold as such, in case the seller shall, at the time of sale, expressly state to the buyer that the bread so sold is "stale" bread. In case of twin or multiple loaves, the weight specified in this section shall apply to the combined weight of the two units. [C27, 31, 35,§3244-b1; C39,§3244.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.19]

Referred to in §§210.21, 210.23, 210.24

210.20 Wrapper. There shall be printed upon the wrapper of each loaf of bread in plain conspicuous type, the name and address of the manufacturer and the weight of the loaf in terms of one of the standard weights herein specified. [C27, 31, 35,§3244-b2; C39,§**3244.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.20]

Referred to in §§210.21, 210.23, 210.24

210.21 Violations. It shall be unlawful for any person to manufacture, procure, or keep for the purpose of sale, offer or expose for sale, or sell bread in the form of loaves which are not of one of the weights specified in section 210.19 or violate the rules of the secretary of agriculture pertaining thereto. Any person who, by himself or by his servant, or agent, or as the servant or agent of another, shall violate any of the provisions of sections 210.19 to 210.25, shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars upon conviction in any court of competent jurisdiction, or by imprisonment for not more than thirty days, in the discretion of the court. [C27, 31, 35,§3244-b3; C39,§**3244.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.21]

Referred to in §§210.22-210.24, inc.

210.22 "Person" defined. The word "person" as used in section 210.21 shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations. [C27, 31, 35,§3244-b4; C39,§**3244.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.22]

Referred to in §§210.21, 210.23, 210.24

210.23 Exception. Any person engaged in home baking is exempt from the provisions of sections 210.19 to 210.22. [C27, 31, 35,§3244-b5; C39,§**3244.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §210.23]

Referred to in §§210.21, 210.24

210.24 Enforcement—rules and regulations. The secretary of agriculture shall enforce the provisions of sections 210.19 to 210.25. He shall make rules for the enforcement of the provisions of said sections not inconsistent therewith, and such rules and regulations shall include reasonable variations and tolerances. [C27, 31, 35,§3244-b6; C39,§**3244.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.24]

Referred to in §210.21

210.25 Weighing bread. Bread when weighed for inspection shall be weighed in the manufacturer's plant when said bread is wrapped ready for delivery, and bread coming into the state from an adjoining state when weighed for inspection shall be weighed in the packages, containers, vehicles, or trucks of the manufacturer at the time when said bread crosses the state line, or at the first point of stop for sale or delivery of said bread after crossing the Iowa state line, and the weight shall be determined by averaging the weight of not less than fifteen loaves picked at random from any given lot. [C35,§3244-f1; C39, §**3244.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§210.25]

Referred to in §§210.21, 210.24

210.26 Measuring saw logs. The Scribner decimal "C" log rule is hereby adopted as the standard log rule for determining the board-foot content of saw logs; and all contracts hereafter entered into for the cutting, purchase and sale of saw logs shall be deemed to be made on the basis of such standard rule unless some other method is specifically agreed upon. [C62, 66, 71, 73, 75,§210.26]

CHAPTER 211

SALE OF LIVESTOCK

Repealed by 66GA, ch 1056,§45

CHAPTER 212

SALES OF CERTAIN COMMODITIES FROM BULK

General penalty, §189.21

212.1 Coal, charcoal, and coke.
212.2 Delivery tickets required.
212.3 Disposition of delivery tickets.
212.4 Sales without delivery.
212.5 Repealed by 62GA, ch 190,§1.
212.6 Inspection of vehicles.

212.1 Coal, charcoal, and coke. No person shall sell, offer or expose for sale any coal, charcoal, or coke in any other manner than by weight, or represent any of said commodities as being the product of any county, state, or territory, except that in which mined or produced, or represent that said commodities contain more British thermal units than are present therein. [S13,§3009-l; C24, 27, 31, 35, 39,§**3245**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§212.1]

212.2 Delivery tickets required. No person shall deliver any bulk commodities, other than liquids, by vehicle unless otherwise pro-

vided for without each such delivery being accompanied by duplicate delivery tickets, on each of which shall be written in ink or other indelible substance the actual weight distinctly expressed in pounds, the gross weight of the load, the tare of the delivery vehicle, and the net amount in weight of the commodity, with the names of the purchaser and the dealer from whom purchased. [S13,§3009-l; C24, 27, 31, 35, 39,§3246; C46, 50, 54, 58, 62, 66, 71, 73, 75,§212.2]

212.3 Disposition of delivery tickets. One of said duplicate tickets shall be delivered to the vendee and the other one shall be returned to the vendor. Upon demand of the department* the person in charge of the load shall surrender one of said duplicate tickets to the person making such demand. If said ticket is retained an official weight slip shall be delivered by said department to the vendee or his agent. [S13,§3009-l; C24, 27, 31, 35, 39,§3247; C46, 50, 54, 58, 62, 66, 71, 73, 75,§212.3]

*See §189.1

212.4 Sales without delivery. When the vendee carries away the commodity purchased, a delivery ticket, showing the actual number of pounds received by him, shall be issued to him by the vendor. [S13,§3009-l; C24, 27, 31, 35, 39,§3248; C46, 50, 54, 58, 62, 66, 71, 73, 75,§212.4]

212.5 Repealed by 62GA, ch 190,§1.

212.6 Inspection of vehicles. The department may stop any wagon, auto truck, or other vehicle loaded with any commodity being bought, offered or exposed for sale, or sold, and compel the person having charge of the same to bring the load to a scale designated by said department and weighed for the purpose of determining the true net weight of the commodity. [S13,§3009-l; SS15,§3009-n; C24, 27, 31, 35, 39,§3250; C46, 50, 54, 58, 62, 66, 71, 73, 75,§212.6]

CHAPTER 213

STATE AND CITY SEALERS

General penalty, §189.21

213.1 State sealer.
213.2 Preservation of standards.
213.3 Testing weights and measures.
213.4 Sealing milk bottles.
213.5 Sealer for cities.
213.6 Duties.
213.7 Expenses.

213.1 State sealer. The department* shall designate one of its assistants to act as state sealer of weights and measures. All weights and measures sealed by him shall be impressed with the word "Iowa." [C73,§§2053–2055; C97, §3020; S13,§3009-b; C24, 27, 31, 35, 39,§3251; C46, 50, 54, 58, 62, 66, 71, 73, 75,§213.1]

*See §189.1

213.2 Preservation of standards. The department shall maintain the state standards in good order, shall take all necessary precautions for their safekeeping, and shall submit them once in ten years to the national bureau of standards for certification. [C73,§§2053, 2054; C97,§3020; S13,§3009-b; C24, 27, 31, 35, 39,§3252; C46, 50, 54, 58, 62, 66, 71, 73, 75,§213.2]

213.3 Testing weights and measures. Upon written request of any citizen, firm, or corporation, city or county, or educational institution of the state made to the department, a test or calibration of any weights, measures, weighing or measuring devices, and instruments or apparatus to be used as standards shall be made. [S13,§3009-b; C24, 27, 31, 35, 39,§3253; C46, 50, 54, 58, 62, 66, 71, 73, 75,§213.3]

213.4 Sealing milk bottles. The state sealer shall not be required to seal bottles for milk or cream, but they shall be inspected from time to time in order to ascertain whether they are standard. [S13,§3009-k; C24, 27, 31, 35, 39,§3254; C46, 50, 54, 58, 62, 66, 71, 73, 75,§213.4]

213.5 Sealer for cities. A sealer of weights and measures may be appointed in any city by the council, who shall hold his office during its pleasure, and may obtain from the department such standard weights and measures as the council may deem necessary. [C73,§§2059, 2060; C97,§3023; C24, 27, 31, 35, 39,§3255; C46, 50, 54, 58, 62, 66, 71, 73, 75,§213.5]

213.6 Duties. Each sealer in cities shall take charge of and provide for the safekeeping of the city standards, and see that the weights, measures, and all apparatus used for determining the quantity of commodities used throughout the city, agree with the standards in his possession. [C73,§§2059, 2060; C97,§3023; C24, 27, 31, 35, 39,§3256; C46, 50, 54, 58, 62, 66, 71, 73, 75,§213.6]

213.7 Expenses. All expenses directly incurred in furnishing the several cities with standards, or in comparing those that may be in their possession, shall be borne by said cities. [C73,§2061; C97,§3024; C24, 27, 31, 35, 39, §3257; C46, 50, 54, 58, 62, 66, 71, 73, 75,§213.7]

CHAPTER 214

PUBLIC SCALES AND GASOLINE PUMPS

Referred to in §§323.1, 323.3
General penalty, §189.21

214.1 Definitions.
214.2 License.
214.3 Fee.
214.4 Form of license.
214.5 License to be displayed.
214.6 Oath of weighmasters.
214.7 Registers.
214.8 Penalty.

214.1 Definitions. For the purpose of this chapter:

1. *"Public scale"* shall mean any scale or weighing device for the use of which a charge is made or compensation is derived.

2. *"Gasoline pump"* shall mean any pump, meter, or similar measuring device used for measuring gasoline. [C73,§2065; C97,§3027; SS15,§3009-m; C24, 27, 31, 35, 39,§**3258**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§214.1]

214.2 License. Every person who shall use or display for use any public scale, pump or meter used in measuring the quantity of gasoline or fuel oil sold to consumer customers shall secure a license for said scale, pump or meter from the department. [SS15,§3009-m; C24, 27, 31, 35, 39,§**3259**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§214.2]

214.3 Fee. The license for a public scale shall expire on December 31 of each year, and for a gasoline pump or meter on June 30 of each year.

A fee for each said license shall be four dollars per annum provided, however, that the fee for gasoline pumps and meters shall be two dollars per annum if paid within one month from the date said license is due.

A license fee on every gasoline pump and meter is due the day any such pump or meter is placed in operation. [SS15,§3009-m; C24, 27, 31, 35, 39,§**3260**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§214.3]

214.4 Form of license. The license shall be in the form of a label bearing the words "Licensed by the State of Iowa, No. ....." Each label shall be numbered consecutively and bear the year for which the license is granted. [SS15,§3009-m; C24, 27, 31, 35, 39,§**3261**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§214.4]

214.5 License to be displayed. The license plate shall be displayed prominently on the front of the scale or pump, and the defacing or wrongful removal of such plate shall be punished as provided in chapter 189. Absence of license plate shall be prima-facie evidence that the weighing or measuring device is being operated contrary to law. [SS15,§3009-m; C24, 27, 31, 35, 39,§**3262**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§214.5]

214.6 Oath of weighmasters. All persons keeping public scales, before entering upon their duties as weighmasters, shall be sworn before some person having authority to administer oaths, to keep their scales correctly balanced, to make true weights, and to render a correct account to the person having weighing done. [C73,§2065; C97,§3027; C24, 27, 31, 35, 39,§**3263**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§214.6]

Referred to in §214.8

214.7 Registers. Weighmasters are required to make true weights and keep a correct register of all weighing done by them, giving the amount of each weight, date thereof, and the name of the person or persons for whom done, and give, upon demand, to any person having weighing done, a certificate showing the weight, date, and for whom weighed. [C73, §§2066, 2067; C97,§3028; C24, 27, 31, 35, 39,§**3264**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§214.7]

Referred to in §214.8

214.8 Penalty. Any weighmaster violating any of the provisions of sections 214.6 and 214.7, shall be guilty of a misdemeanor, and punished as provided in chapter 189 and be liable to the person injured for all damages sustained. [C73,§2068; C97,§3029; C24, 27, 31, 35, 39,§**3265**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§214.8]

CHAPTER 214A

MOTOR VEHICLE FUEL

214A.1 Definitions.
214A.2 Tests and standards.
214A.3 False representations.
214A.4 Interstate shipments.
214A.5 Sales slip on demand.
214A.6 Department tests—fee.
214A.7 Department inspection—samples tested.
214A.8 Prohibition.
214A.9 Poster showing analysis.
214A.10 Transfer pipes.
214A.11 Violations.
214A.12 Industrial petroleum—permits.
214A.13 Chemists—employment of.
214A.14 Appropriation.
214A.15 Gasoline receptacles.

214A.1 Definitions. The following definitions shall apply to the various terms used in this chapter:

1. *"Motor vehicle fuel"* shall mean and include any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and kept for sale or sold for that purpose. The products commonly known as kerosene and distillate or petroleum products of lower gravity (Baumé scale) when not used to propel a motor vehicle or for compounding or combining with any motor vehicle fuel, shall be exempt from the provisions of this chapter.

2. *"Department"* wherever used throughout this chapter shall be construed to mean the department of agriculture.

3. *"Retail dealer"* shall mean and include any person, firm, partnership, association, or corporation who operates, maintains, or conducts, either by himself or itself, or by any agent, employee, or servant, any place of business, filling station, pump station, or tank wagon, from which any motor vehicle fuel, as defined herein, is sold or offered for sale, at retail, or to the final or ultimate consumer.

4. *"Wholesale dealer"* shall mean and include any person, firm, partnership, association, or corporation, other than retail dealers as defined in subsection 3 of this section, who sells, keeps, or holds, for sale, or purchase for the purpose of sale within this state, any motor vehicle fuel. [C31, 35,§5093-d1; C39,**§5095.01**; C46, 50, 54, 58, 62, 66, 71,§323.1; C73, 75,§214A.1]

214A.2 Tests and standards. Any motor vehicle fuel known or sold as motor gasoline or sold or offered for sale as a substitute for or as having the properties of motor gasoline shall conform to the following tests and specifications:

Gasoline shall be free from water and suspended matter.

Corrosion test. A. S. T. M. D-130 latest revision. A clean, freshly polished copper strip shall not be darker than A. S. T. M. Standard 1 when submerged in the gasoline for three hours at 122° F.

Distillation range. A. S. T. M. D-86 latest revision. When ten percent is evaporated, the thermometer shall not read more than 167° F.

When fifty percent is evaporated the thermometer shall not read more than 284° F.

When ninety percent is evaporated the thermometer shall not read more than 392° F.

The end point shall not be more than 437° F.

Residue on distillation shall not be more than two percent.

Sulfur A. S. T. M. D-90 latest revision.

The sulfur shall not exceed zero point twenty-five percent.

Vapor pressure. The Reid vapor pressure shall conform to the American society for testing and materials specification A. S. T. M. D-439-74, for volatility as outlined in paragraph 6.1.3 and tables 1 and 2 of that specification.

Octane number A. S. T. M. D-908, Research Method, latest revision.

Octane number for regular grade gasoline shall follow the latest specifications of A. S. T. M. and not less than eighty-six.

Octane number for premium grade gasoline shall follow latest specification of A. S. T. M. and be not less than ninety-five.

"A. S. T. M." means the A. S. T. M. standards in effect on July 1, 1975. [C31, 35, §5093-d2; C39,§**5095.02**; C46, 50, 54, 58, 62, 66, 71,§323.2; C73, 75,§214A.2; 66GA, ch 134,§§1, 2]

Referred to in §§214A.4, 214A.6, 214A.7, 214A.9

214A.3 False representations. No person for purposes of selling shall falsely represent the quality or kind of any motor vehicle fuel or add coloring matter thereto for the purpose of misleading the public as to its quality. [C31, 35,§5093-d3; C39,**§5095.03**; C46, 50, 54, 58, 62, 66, 71,§323.3; C73, 75,§214A.3]

214A.4 Interstate shipments. No wholesale dealer or retail dealer shall receive or sell or hold for sale, within this state, any motor vehicle fuel for which specifications are prescribed in this chapter, unless be first secures from the refiner or producer of such motor vehicle fuel, a statement, verified by the oath of a competent chemist, employed by or representing such refiner or producer, showing the true standards and tests of such motor vehicle fuel, obtained by the methods referred to in section 214A.2 hereof. Such verified tests shall be required and must accompany the bill of lading or shipping documents representing the shipment of such motor vehicle fuel into this state before such shipment can be received and unloaded. [C31, 35,§5093-d4; C39,**§5095.04**; C46, 50, 54, 58, 62, 66, 71,§323.4; C73, 75,§214A.4]

214A.5 Sales slip on demand. Each wholesale dealer or retail dealer in this state shall, when making a sale of motor vehicle fuel, give to each purchaser upon demand a sales slip upon which must be printed the words "This motor vehicle fuel conforms to the standard of specifications required by the state of Iowa." [C31, 35,§5093-d5; C39,**§5095.05**; C46, 50, 54, 58, 62, 66, 71,§323.5; C73, 75,§214A.5]

214A.6 Department tests—fee. Any wholesale dealer or retail dealer may, at his option, forward to the department for testing a sample taken in the manner here prescribed. He shall draw from such original container, in the presence of some reputable person, into a clean receptacle, suitable for shipping, a sample of such motor vehicle fuel, not less than eight fluid ounces, and shall carefully seal such receptacle and affix thereto a written label showing the car number or other identifying marks upon such original container from which such sample was taken, all in the presence of such reputable person, and such wholesale dealer or retail dealer and such reputable person

shall make a statement, under oath, that such sample was taken in the manner provided for herein, referring to the identifying marks upon such label. At the same time such sworn statement, together with a fee of two dollars for the making of such test, shall be forwarded to the department. The department shall test such sample by the methods provided for in section 214A.2 and shall forward to such wholesale dealer or retail dealer a certified copy of the results of such test. [C31, 35,§5093-d6; C39, §**5095.06**; C46, 50, 54, 58, 62, 66, 71,§323.6; C73, 75,§214A.6]

214A.7 Department inspection — samples tested. The department of agriculture, its agents or employees, shall, from time to time, make or cause to be made tests of any motor vehicle fuel which is being sold, or held or offered for sale within this state, and for such purposes such inspectors shall have the right to enter upon the premises of any wholesale dealer or retail dealer in motor vehicle fuels within this state, and to take from any container a sample of such motor vehicle fuel, not to exceed eight fluid ounces, which sample shall be sealed and appropriately marked or labeled by such inspector and delivered to the department. The department shall make, or cause to be made, complete analyses or tests of such motor vehicle fuel by the methods specified in section 214A.2. [C31, 35,§5093-d7; C39,§**5095.07**; C46, 50, 54, 58, 62, 66, 71,§323.7; C73, 75,§214A.7]

214A.8 Prohibition. No retail or wholesale dealer defined in this chapter shall sell any motor vehicle fuel in the state that fails to meet the standards and specifications applicable thereto as set out in this chapter. [C31, 35, §5093-d8; C39,§**5095.08**; C46, 50, 54, 58, 62, 66, 71,§323.8; C73, 75,§214A.8]

214A.9 Poster showing analysis. Any retail dealer who sells or holds for sale motor vehicle fuel, as defined in section 214A.2 hereof, may post upon any container or pump from which such motor vehicle fuel is being sold, a statement or notice in form to be prescribed by the department, showing the results of the tests of such motor vehicle fuel then being sold from such pumps or other containers. [C31, 35,§5093-d9; C39,§**5095.09**; C46, 50, 54, 58, 62, 66, 71,§323.9; C73, 75,§214A.9]

214A.10 Transfer pipes. No wholesale dealer, retail dealer, or other person shall, within this state, use the same pipe line, for transferring gasoline and similar motor vehicle fuel from one container to another, as that used for transferring kerosene or other inflammable product used for open flame illuminating or heating purposes. [C31, 35,§5093-d10; C39, §**5095.10**; C46, 50, 54, 58, 62, 66, 71,§323.10; C73, 75,§214A.10]

214A.11 Violations. Any person violating the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars or imprisonment in the county jail for a period of not to exceed thirty days. [C31, 35,§5093-d11; C39,§**5095.11**; C46, 50, 54, 58, 62, 66, 71,§323.11; C73, 75,§214A.11]

214A.12 Industrial petroleum — permits. Any wholesale dealer as herein defined may apply to the department for a permit to make importations of petroleum products for industrial use only and not intended to be used for internal combustion engines, on a form to be supplied by the department, and upon receiving such permission may make importations of petroleum products for industrial use only, exempt from the specifications of this chapter. [C31, 35,§5093-d12; C39,§**5095.12**; C46, 50, 54, 58, 62, 66, 71,§323.12; C73, 75,§214A.12]

214A.13 Chemists—employment of. The secretary of agriculture shall employ one or more chemists and incur such other expense as shall be necessary for the purpose of carrying into effect the provisions of this chapter. [C31, 35,§5093-d13; C39,§**5095.13**; C46, 50, 54, 58, 62, 66, 71,§323.13; C73, 75,§214A.13]

214A.14 Appropriation. There is hereby appropriated out of any funds in the state treasury not otherwise appropriated funds sufficient to pay the expenses incurred as authorized by this chapter. [C31, 35,§5093-d14; C39,§**5095.14**; C46, 50, 54, 58, 62, 66, 71,§323.14; C73, 75, §214A.14]

214A.15 Gasoline receptacles. A person shall not place gasoline or any other petroleum product for public use having a flash point below 100° F. into any can, cask, barrel or other similar receptacle having a capacity in excess of one pint unless the same is painted bright red and is plainly marked with the word "gasoline" or with the warning "flammable—keep fire away" in contrasting letters of a height equal to at least one-tenth of the smallest dimension of such container. Gasoline or other petroleum products having a flash point below 100° F. shall not be placed in bottles and plastic containers except those bottles and plastic containers which are approved by the state fire marshal and which are conspicuously posted with such approval. This section shall not apply to vehicle cargo or supply tanks nor to underground storage nor to storage tanks from which such liquids are withdrawn for manufacturing or agricultural purposes, or are loaded into vehicle cargo tanks, but all outlet faucets or valves from such excepted containers shall be suitably tagged to indicate the nature of the product to be withdrawn from such containers. [C97,§2505; S13,§§2510-la, -2a,-j,-k; SS15,§2505; C24, 27, 31, 35, 39,§§**3194–3196**; C46,§§208.4–208.6; C50, 54, 58, 62, 66, 71, 73, 75,§208.6; 66GA, ch 135,§1]

See also rule 680-5.300(101), public safety administrative code

CHAPTER 215

INSPECTION OF WEIGHTS AND MEASURES

General penalty, §189.21

215.1 Duty to inspect.
215.2 Fees.
215.3 Payment by party complaining.
215.4 Limitation on inspections.
215.5 Confiscation of scales.
215.6 False weights or measures.
215.7 Transactions by false weights or measures.
215.8 Reasonable variations.
215.9 Power of cities limited.
215.10 Installation of new scales.
215.11 Dial visible to public.
215.12 Bond of scale repairers.
215.13 Graduations on beam.
215.14 Approval by department — electronic scales.
215.15 Scale pit.
215.16 Weighing beyond capacity.
215.17 Test weights to be used.
215.18 Specifications and tolerances.
215.19 Automatic recorders on scales.
215.20 Liquid petroleum gas meters—fee.

215.1 Duty to inspect. The department* shall make an inspection of all weights and measures wherever the same are kept for use in connection with the sale of any commodity sold by weight or measurement, or where the price to be paid for producing any commodity is based upon the weight or measurement thereof; and when complaint is made to the department that any false or incorrect weights or measures are being made under said conditions, said department shall have the same inspected. [S13,§3009-o; SS15, §3009-n; C24, 27, 31, 35, 39,§3266; C46, 50, 54, 58, 62, 66, 71, 73, 75,§215.1]

*See 189.1

215.2 Fees. An inspection fee shall be charged the person owning or operating the scale so inspected in accordance with the following schedule:

1. Railroad track scales, fifty dollars each.
2. Other scales,

a. 500 to 1,000 pounds capacity, five dollars each;

b. 1,001 to 30,000 pounds capacity, fifteen dollars each, except as provided in subsection 3;

c. 30,001 to 50,000 pounds capacity, thirty-five dollars each;

d. 50,001 pounds capacity or more, fifty dollars each.

3. A minimum fee of twenty-five dollars shall be charged for each vehicle and livestock scale. [SS15,§3009-n; C24, 27, 31, 35, 39, §3267; C46, 50, 54, 58, 62, 66, 71, 73, 75,§215.2; 66GA, ch 1131,§1]

215.3 Payment by party complaining. When such inspection shall be made upon the complaint of any person other than the owner of the scale, and upon examination the scale is found by the department to be accurate for weighing, the inspection fee for such inspection shall be paid by the person making complaint. [SS15,§3009-n; C24, 27, 31, 35, 39,§3268; C46, 50, 54, 58, 62, 66, 71, 73, 75,§215.3]

215.4 Limitation on inspections. A person shall not be required to pay more than two inspection fees for any one scale in any one year unless additional inspections are made at the request of the owner of said scale. If a scale is found to be inaccurate upon inspection by the department and notice is received by the department that the scale has been repaired and upon reinspection the scale is found to be accurate, a fee shall not be charged for the reinspection. A second inspection fee shall be charged if, upon reinspection, the scale is found to be inaccurate. [SS15,§3009-n; C24, 27, 31, 35, 39,§3269; C46, 50, 54, 58, 62, 66, 71, 73, 75,§215.4; 66GA, ch 1131,§2]

215.5 Confiscation of scales. The department may seize without warrant and confiscate any incorrect scales, weights, or measures, or any weighing apparatus or part thereof which do not conform to the state standards or upon which the license fee has not been paid. If any weighing or measuring apparatus or part thereof be found out of order the same may be tagged by the department "Condemned until repaired", which tag shall not be altered or removed until said apparatus is properly repaired. [S13,§3009-q; C24, 27, 31, 35, 39,§3270; C46, 50, 54, 58, 62, 66, 71, 73, 75,§215.5]

215.6 False weights or measures. If any person engaged in the purchase or sale of any commodity by weight or measurement, or in the employment of labor where the price thereof is to be determined by weight or measurement of the articles upon which such labor is bestowed, has in his possession any inaccurate scales, weights, or measures, or other apparatus for determining the quantity of any commodity, which do not conform to the standard weights and measures, he shall be punished as provided in chapter 189. [SS15, §3009-p; C24, 27, 31, 35, 39,§3271; C46, 50, 54, 58, 62, 66, 71, 73, 75,§215.6]

215.7 Transactions by false weights or measures. Any person shall be deemed to have violated the provisions of this chapter and shall be punished as provided in chapter 189:

1. If such person sell, trade, deliver, charge for or claim to have delivered to a purchaser

an amount of any commodity which is less in weight or measure than that which is asked for, agreed upon, claimed to have been delivered, or noted on the delivery ticket.

2. If such person make settlement for or enter credit, based upon any false weight or measurement, for any commodity purchased.

3. If such person make settlement for or enter credit, based upon any false weight or measurement, for any labor where the price of producing or mining is determined by weight or measure.

4. If such person record a false weight or measurement upon the weight ticket or book. [SS15,§3009-j; C24, 27, 31, 35, 39,§3272; C46, 50, 54, 58, 62, 66, 71, 73, 75,§215.7]

Referred to in §215.8

215.8 Reasonable variations. In enforcing the provisions of section 215.7 reasonable variations shall be permitted and exemptions as to small packages shall be established by rules of the department. [SS15,§3009-j; C24, 27, 31, 35, 39,§3273; C46, 50, 54, 58, 62, 66, 71, 73, 75,§215.8]

215.9 Power of cities limited. Commodities weighed upon any scale bearing the inspection card, issued by the department, shall not be required to be reweighed by any ordinance of any city, nor shall their sale, at the weights so ascertained, and because thereof, be, by such ordinance, prohibited or restricted. [SS15,§3009-m; C24, 27, 31, 35, 39, §3274; C46, 50, 54, 58, 62, 66, 71, 73, 75,§215.9]

215.10 Installation of new scales. It shall be unlawful to install a livestock or truck scale or a hopperscale, used for commercial purposes in this state, unless said scale is so installed that the same is easily accessible for inspection and testing by equipment of the state department of agriculture and with due regard to size and capacity thereof. Every scale manufacturer or dealer shall, upon selling a scale of the above types in Iowa, submit to the department of agriculture upon forms provided by said department, the make, capacity of the scale, the date of sale, and the date and location of its installation. [C50, 54, 58, 62, 66, 71, 73, 75,§215.10]

53GA, ch 93,§4, editorially divided

215.11 Dial visible to public. The weight indicating dial or beams on counter scales used to weigh articles sold at retail shall be so located that the reading dial indicating the weight shall at all times be visible to the public. [C50, 54, 58, 62, 66, 71, 73, 75,§215.11]

215.12 Bond of scale repairers. Any person, firm, or corporation engaging in any scale repair work for hire in this state shall first file with the department of agriculture a bond of the form required by chapter 64 in the sum of one thousand dollars conditioned to guarantee the workmanship and faithful performance of the assumed task and providing for liquidated damages for failure to perform such conditions. Such person, firm, or corporation, on depositing with the department of agriculture a bond in the amount of one thousand dollars shall be furnished a certificate authorizing them to do what is known as scale repair work, or installation of new scales in the state of Iowa. This certificate shall be valid until revoked by the secretary of agriculture. [C50, 54, 58, 62, 66, 71, 73, 75,§215.12]

215.13 Graduations on beam. All new weigh beams or dials on what is known as livestock scales used for determining the weight in buying or selling livestock shall be in not over five-pound graduations. [C50, 54, 58, 62, 66, 71, 73, 75,§215.13]

215.14 Approval by department—electronic scales. No scale known in the commercial field as a truck or livestock scale shall be installed in the state of Iowa without first being approved by the state department of agriculture. Said approval being based upon the recommendations of the U. S. bureau of standards. All motor truck scales, livestock scales, and grain dump scales, hereafter installed and regardless of capacity shall have a clearance of not less than four feet from the finished floor line of scale pit to the bottom of the "I" beam of the scale bridge, except an electronic scale may be installed in a building and said scale shall be placed on concrete footings with concrete floor. Said specifications for same to be furnished by the scale manufacturer after approval by the state department of agriculture. Said approval to be based upon the recommendation of the U. S. bureau of standards. [C50, 54, 58, 62, 66, 71, 73, 75,§215.14]

215.15 Scale pit. Scale pit shall have proper room for inspector or service person to repair or inspect scale. Scale pit shall remain dry at all times and adequate drainage shall be provided for the purpose of inspecting and cleaning. [C50, 54, 58, 62, 66, 71, 73, 75,§215.15]

215.16 Weighing beyond capacity. It shall be unlawful for any person, firm, or corporation to use such a scale for weighing commodities the gross weight of which is greater than the factory rated scale capacity. The capacity of the scale shall be stamped by the manufacturer on each weigh beam or dial. The capacity of the scale shall be posted so as to be visible to the public. [C50, 54, 58, 62, 66, 71, 73, 75,§215.16]

215.17 Test weights to be used. Any person, firm or corporation engaged in scale repair work for hire shall use only test weights sealed by the state department of agriculture in determining the effectiveness of his repair work and said test weights shall be sealed as to their accuracy once each year. Provided, however, that it shall be unlawful for such person to hold himself out as an official scale inspector or to use said test weights except to determine the accuracy of scale repair work done by him and he shall be entitled

to no fee for their use. A fee shall be charged and collected at time of inspection for the inspection of such weights as follows:

All weights up to and including 25 pounds	$ .75 each
All weights up to and including 50 pounds	1.50 each
Over 50 pounds capacity, up to and including 100 pounds	2.00 each
Over 100 pounds capacity, up to and including 500 pounds	3.00 each
Over 500 pounds capacity, up to and including 1,000 pounds	5.00 each

The fee for all tank calibrations shall be as follows:

100 gallons up to and including 300 gallons	$ 3.00
301 gallons up to and including 500 gallons	5.00
501 gallons up to and including 1,000 gallons	7.50
1,001 gallons up to and including 2,000 gallons	10.00
2,001 gallons up to and including 3,000 gallons	12.00
3,001 gallons up to and including 4,000 gallons	14.00
4,001 gallons up to and including 5,000 gallons	16.00
5,001 gallons up to and including 6,000 gallons	18.00
6,001 gallons up to and including 7,000 gallons	20.00
7,001 gallons and up	25.00

No calibration will be required of any tank which is not used for the purpose of measuring, or which is equipped with a meter, nor shall vehicle tanks loaded from meters and carrying a printed ticket showing gallonage be required to be calibrated. [C50, 54, 58, 62, 66, 71, 73, 75,§215.17]

215.18 Specifications and tolerances. The secretary of agriculture may after consultation and with the advice of U. S. bureau of standards establish specifications and tolerances for weights and measures and weighing and measuring devices, and said specifications and tolerances shall be legal specifications and tolerances in this state, and shall be observed in all inspections and tests. [C50, 54, 58, 62, 66, 71, 73, 75,§215.18]

Referred to in §215A.3

215.19 Automatic recorders on scales. All motor truck scales, livestock scales, grain dump scales, and combination truck and railroad track scales used for commercial purposes in the state of Iowa, except motor truck scales used solely in the weighing of construction aggregates and agricultural limestone, shall be equipped with either a type-registering weigh beam, a dial with a mechanical ticket printer, an automatic weight recorder, or some similar device which shall be used for printing or stamping the weight values on scale tickets. [C66, 71, 73, 75,§215.19]

215.20 Liquid petroleum gas meters — fee. The secretary of agriculture shall annually inspect and test all liquid meters used for the measurement and retail sale of liquefied petroleum gas and he shall condemn all meters which are found to be inaccurate. A reasonable tolerance within a maximum of two percent, plus or minus, shall be allowed. It is unlawful to use a meter for retail measurement and sale which has been condemned. All condemned meters shall be conspicuously marked "inaccurate", and the mark shall not be removed or defaced except upon authorization of the secretary of agriculture or his authorized representative. The secretary of agriculture shall charge an annual fee of ten dollars for each meter tested but the testing fee provided for by this section shall not be charged more than once in a calendar year to each meter tested. When liquefied petroleum gas is sold or delivered to a consumer as a liquid and by liquid measurement, the volume of liquid sold and delivered shall be corrected to a temperature of 60° F. through use of an approved volume correction factor table, or through use of an approved meter with sealed automatic compensation mechanism. All sale tickets shall show the delivered gallons, the temperature at the time of delivery and the corrected gallonage, or shall state that temperature correction was automatically made.

Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction shall be punished as provided by law. [C66, 71, 73, 75,§215.20]

CHAPTER 215A

MOISTURE-MEASURING DEVICES

215A.1 Definitions.
215A.2 Inspection by department.
215A.3 Rules adopted—hearing.
215A.4 Officer assigned to act.
215A.5 Marking with seal.
215A.6 Procedure when device rejected.
215A.7 Located where visible to public.
215A.8 Untested devices not to be used—exception.
215A.9 Inspection fee.
215A.10 Penalty.

215A.1 Definitions. As used in this chapter:

1. *"Secretary"* means the secretary of agriculture.

2. *"Department"* means the Iowa department of agriculture.

3. *"Moisture-measuring devices"* means any device or instrument used by any person in proving or ascertaining the moisture content of agricultural products.

4. *"Agricultural products"* means any product of agricultural activity which is tested for moisture content when offered for sale, processing, or storage.

5. *"Person"* means an individual, corporation, partnership, co-operative association, or two or more persons having a joint or common interest in the same venture and shall include the United States, the state, or any subdivision of either. [C71, 73, 75,§215A.1]

215A.2 Inspection by department. The department shall inspect or cause to be inspected at least annually every moisture-measuring device used in commerce in this state, except those belonging to the United States or the state, or any subdivision of either, except as herein provided. The department may inspect or cause to be inspected at the convenience of the department any moisture-measuring device upon a request in writing from the owner thereof. [C71, 73, 75,§215A.2]

215A.3 Rules adopted — hearing. The department is hereby charged with the enforcement of this chapter and, after due publicity and due public hearing, is empowered to establish rules, regulations, specifications, standards, and tests as may be necessary in order to secure the efficient administration of this chapter. Publicity concerning the public hearing shall be reasonably calculated to give interested parties adequate notice and adequate opportunity to be heard. In establishing such rules, regulations, specifications, standards, and tests the department may use such specifications and tolerances established in section 215.18, or those specifications and tolerances established by the United States department of agriculture, until established by the United States bureau of standards. The department may from time to time publish such data in connection with the administration of this chapter as may be of public interest. [C71, 73, 75,§215A.3]

215A.4 Officer assigned to act. The department may at its discretion designate an employee or officer of the department to act for the department in any details connected with the administration of this chapter. [C71, 73, 75,§215A.4]

215A.5 Marking with seal. If an inspection or comparative test reveals that the moisture-measuring device being inspected or tested conforms to the standards and specifications established by the department, the department shall cause the same to be marked with an appropriate seal. Any moisture-measuring device which upon inspection is found not to conform with the specifications and standards established by the department shall be marked with an appropriate seal showing such device to be defective, which seal shall not be altered or removed until said moisture-measuring device is properly repaired and reinspected. The owner or user of such device shall be notified of such defective condition by the department or its properly designated employees on an inspection form prepared by the department. [C71, 73, 75,§215A.5]

Referred to in §§215A.6, 215A.9

215A.6 Procedure when device rejected. Any defective moisture-measuring device, while so marked, sealed, or tagged, as provided in section 215A.5, may be used to ascertain the moisture content of agricultural products offered for sale, processing, or storage, only under the following conditions:

1. The person shall keep a record, open to inspection, of every commercial sample of agricultural products inspected by the tagged device, showing that an adjustment was made on all such agricultural products tested.

2. The device shall be repaired to comply with section 215A.5 within a period of thirty days, and the department thereupon notified.

If, upon reinspection, the device is again rejected under the provisions of section 215A.5, such device shall be sealed and shall not be used until repaired and reinspected. [C71, 73, 75,§215A.6]

215A.7 Located where visible to public. Every device used to ascertain the moisture content of agricultural products offered for sale, processing, or storage shall be used in a location visible to the general public and the detailed procedure for operating a moisture-measuring device shall be displayed in a conspicuous place close to the moisture-measuring device. [C71, 73, 75,§215A.7]

215A.8 Untested devices not to be used—exception. No person shall use or cause to be used any grain moisture-measuring device which has not been inspected and approved for use by the department; except, a newly purchased grain moisture-measuring device may be used prior to regular inspection and approval if the user of such device has given notice to the department of the purchase and before use of such new device. [C71, 73, 75,§215A.8]

215A.9 Inspection fee. The department shall charge, assess, and cause to be collected at the time of inspection an inspection fee of ten dollars for the first moisture-measuring device required to be inspected under this chapter, and for each additional moisture-measuring device inspected at the same time the fee shall be five dollars.

A fee of ten dollars shall be charged for each device subject to reinspection under sec-

tion 215A.5. All moneys received by the department under the provisions of this chapter shall be handled in the same manner as "repayment receipts" as defined in chapter 8, and shall be used for the administration and enforcement of the provisions of this chapter. [C71, 73, 75,§215A.9]

215A.10 Penalty. Every person who uses or causes to be used a moisture-measuring device in commerce with knowledge that such device has not been inspected and approved by the department in accordance with the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail for a period not to exceed thirty days or both such fine and imprisonment. [C71, 73, 75, §215A.10]

CHAPTER 216

PRISON-MADE GOODS

General penalty, §189.21

216.1 Branding, labeling and marking.
216.2 Penalty—effectiveness of Act.

216.1 Branding, labeling and marking. Beginning January 19, 1934, all goods, wares, and merchandise made by convict labor in any penitentiary, prison, reformatory or other establishment in which convict labor is employed in the state, and all such goods, wares, and merchandise so made by convict labor in any penitentiary, prison, reformatory or any institution outside the state of Iowa in which convict labor is so employed, and which is imported, brought or introduced into this state shall, before being exposed for sale, be branded, labeled or marked as herein provided, and shall not be exposed for sale in this state without such brand, label or mark. Such brand, label or mark shall contain at the head or top thereof the words, "prison-made" followed by the year and name of the penitentiary, prison, reformatory or other establishment in which it was made, in plain English lettering, of the style and size known as great primer roman condensed capitals. The brand or mark shall in all cases, where the nature of the article will permit, be placed upon the same, and only where such branding or marking is impossible shall a label be used, and where a label is used it shall be in the form of a paper tag, which shall be attached by wire to each article, where the nature of the article will permit, and placed securely upon the box, crate or other covering in which such goods, wares or merchandise may be packed, shipped or exposed for sale. Said brand, mark or label shall be placed upon the outside of and upon the most conspicuous part of the finished article and its box, crate or covering. [C35,§3274-e1; C39,§**3274.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§216.1]

216.2 Penalty—effectiveness of Act. A person knowingly having in his possession for the purpose of sale or offering for sale any prison-made goods, wares or merchandise manufactured in any state without the brand, mark or label required by law, or who removes or defaces such brand, mark or label shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. Provided, however, that the provision of this chapter shall not be effective unless and until the Hawes-Cooper Act* [49USC,§60] becomes effective. [C35, §3274-e2; C39,§**3274.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§216.2]

*Effective January 19, 1934

TITLE XI

SOCIAL WELFARE AND REHABILITATION

CHAPTER 217

DEPARTMENT OF SOCIAL SERVICES

Federal funds appropriated, 65GA, ch 109,§3, ch 112,§9, ch 114,§4, ch 115,§7, ch 116,§7, ch 117,§7
Legislative intent in re: Intermediate care facilities reimbursement 66GA, ch 9,§9,
medical assistance, 66GA, ch 9,§9
Field office intermittent employees, see 66GA, ch 1066,§2
Temporary advisory commission on corrections relief, see 66GA, ch 1043,§6

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CONTRACT LEGAL SERVICES

217.33 Legal services.

217.1 Programs of department. There is hereby established a department of social services to administer programs designed to improve the well-being and productivity of the people of the state of Iowa. The department shall concern itself with the problems of human behavior, adjustment and daily living through the administration of programs of family, child and adult welfare, economic assistance (including costs of medical care), rehabilitation toward self-care and support, delinquency prevention and control, treatment and rehabilitation of adult and juvenile offenders, care and treatment of the mentally ill and mentally retarded, and other related programs as provided by law. [C71, 73, 75, §217.1]

217.2 Council on social services. There is hereby created within the department of social services a council on social services which shall act in a policy-making and advisory capacity on matters within the jurisdiction of the department. The council shall consist of five members appointed by the governor with the consent of two-thirds of the senate. Appointments shall be made on the basis of interest in public affairs, good judgment, and knowledge and ability in the field of social services. Such appointments shall be made to provide a diversity of interest and point of view in the membership and without regard to religious opinions or affiliations. The term of each member of the council shall be for six years, except that those initially appointed shall serve as follows:

One member shall serve until June 30, 1969.
Two members shall serve until June 30, 1971.
Two members shall serve until June 30, 1973.

Each term shall commence on July 1 of the year of appointment.

All members of the council shall be electors of the state of Iowa. No more than three such members shall belong to the same political party and no two such members shall, at the time of appointment, reside in the same congressional district. Vacancies occurring during a term of office shall be filled in the same manner as the original appointment for the balance of the unexpired term subject to confirmation by two-thirds of the senate within sixty days of convening at its next regular session. [C71, 73, 75,§217.2]

217.3 Duties of council. The council of social services shall:

1. Organize annually and select a chairman and vice-chairman.

2. Adopt and establish policy for the operation and conduct of the department of social services, subject to any guidelines which may be adopted by the general assembly, and the implementation of all services and programs thereunder.

3. Report immediately to the governor any failure by the commissioner or any director of the department of social services to carry out any of the policy decisions or directives of the council.

4. Approve the budget of the department of social services prior to submission to the governor.

5. Insure that all programs administered or services rendered by the department directly to any citizen or through a local board of welfare to any citizen are co-ordinated and integrated so that any citizen does not receive a duplication of services from various departments or local agencies that could be rendered by one department or local agency. If the council finds that such is not the case, it shall hear and determine which department or local agency shall provide the needed service or services and enter an order of their determination by resolution of the council which must be concurred in by at least a majority of the members. Thereafter such order or resolution of the council shall be obeyed by all state departments and local agencies to which it is directed.

6. Adopt all necessary rules recommended by the commissioner or directors of divisions hereinafter established prior to their promulgation pursuant to chapter 17A.

7. Approve the establishment of any new division or reorganization, consolidation or abolition of any established division prior to the same becoming effective.

8. Recommend to the governor the names of individuals qualified for the position of commissioner of social services when a vacancy exists in the office. [C71, 73, 75,§217.3; 66GA, ch 1132,§6]

217.4 Meetings of council. The council shall meet at least monthly. Additional meetings shall be called by the chairperson or upon written request of any three members thereof as necessary to carry out the duties of the council. The chairperson shall preside at all meetings or in the absence of the chairperson the vice chairperson shall preside. The members of the council shall be paid a per diem of forty dollers per day and their reasonable and necessary expenses. [C71, 73, 75,§217.4; 66GA, ch 1132,§7]

Governor's executive order, 62GA, ch 209,§6
Rate, see §79.9

217.5 Commissioner of social services. There shall be a commissioner of social services who shall be the chief administrative officer for the department of social services. He shall be appointed by the governor with the approval and confirmation of two-thirds of the senate and shall serve at the pleasure of the governor. The governor shall fill a vacancy in this office in the same manner as the original appointment. If the vacancy occurs while the general assembly is not in session, such appointment shall be reported to the senate within thirty days of its convening at its next regular session for confirmation. Such commissioner shall be selected primarily for his administrative ability.

He shall not be selected on the basis of his political affiliation and shall not engage in political activity while he holds this position. [C71, 73, 75,§217.5]

217.6 Rules and regulations. The commissioner is hereby authorized to recommend to the council for adoption such rules and regulations as are necessary to carry into practice the programs of the various divisions and to establish such divisions and to assign or reassign duties, powers, and responsibilities within his department, all with the approval of the council of social services, within his department as he deems necessary and appropriate for the proper administration of the duties, functions and programs with which the department is charged. Any action taken, decision made, or administrative rule adopted by any director of a division may be reviewed by the commissioner. The commissioner, upon such review, may affirm, modify, or reverse any such action, decision, or rule. The commissioner shall organize the department of social services into divisions to carry out in efficient manner the intent of this chapter.

The department of social services may be initially divided into the following divisions of responsibility: The division of child and family services, the division of mental health, the division of administration, the division of corrections and the division of planning, research and statistics. [C71, 73, 75,§217.6]

217.7 Directors of divisions. The commissioner may appoint a director of each of the aforementioned divisions. Such directors shall be selected on the basis of their particular professional qualifications, education and background relative to the intended assigned responsibilities of their division. [C71, 73, 75, §217.7]

217.8 Division of child and family services. The director of the division of child and family services shall be qualified by training, experience and education in the field of welfare and social problems. He shall be entrusted with the administration of programs involving neglected, dependent and delinquent children, child welfare, aid to dependent children, aid to disabled persons and shall administer and be in control of the Iowa juvenile home, the state training schools for boys and for girls, the Iowa soldiers home and such other

related programs established for the general welfare of families, adults and children as directed by the commissioner. [C50, 54, 58, 62, 66,§218.79; C71, 73, 75,§217.8; 66GA, ch 67,§19]

217.9 Additional duties. The director of the division of child and family services may have the additional following duties, powers and responsibilities:

1. Develop a program of basic education, recreation, vocational training and guidance for social adjustment.

2. Administer programs and statutes involved with child placement, employment and supervision of state boards.

3. Prepare a budget and such report or reports as required by law or as directed by the commissioner.

4. Develop a program in corrective institutions for juveniles designed to rehabilitate the inmates and patients and institute a program of placement and parole supervision for all parolees of said corrective institutions for juveniles. [C50, 54, 58, 62, 66,§218.80; C71, 73, 75, §217.9]

217.10 Director must be psychiatrist. The director of the division of mental health shall be a qualified psychiatrist. He shall be admitted to the practice of medicine in this state and shall have at least five years of actual experience in the care and treatment of persons afflicted with mental disease and three years' actual experience in institutional administration. He shall hold a certificate of qualifications in psychiatry issued by the American Board of Psychiatry and Neurology. [C50, 54, 58, 62, 66,§218.75; C71, 73, 75,§217.10]

217.11 Institutions governed. The director of the division of mental health shall be responsible for and in control of the administration of institutions and programs regarding the care, treatment and supervision of the mentally ill and the mentally retarded and in particular shall be in control of and administer and supervise the following state institutions: The Mount Pleasant Mental Health Institute, the Independence Mental Health Institute, the Cherokee Mental Health Institute, the Clarinda Mental Health Institute and the Glenwood and Woodward State Schools and Hospitals. He shall also carry out such other functions and duties as may be delegated to him by the commissioner of social services. [C50, 54, 58, 62, 66,§218.76; C71, 73, 75,§217.11]

217.12 Additional powers of director. The director of the division of mental health may also have the following additional powers, duties and responsibilities:

1. Establish psychiatric services for all institutions under the control of the commissioner of the department of social services in order that patients in such institutions shall receive the psychiatric services that are necessary and proper.

2. Appoint professional consultants who shall furnish advice on all matters pertaining to mental health. Such consultants shall be paid as provided by an appropriation of the general assembly.

3. Act as compact administrator with power to effectuate the purposes of and make necessary rules to implement interstate compacts on mental health.

4. Examine or cause to be examined by an assistant all public and private institutions receiving and caring for the mentally ill, mentally retarded and epileptics to determine their efficiency for adequate care and treatment of their patients.

5. Insure that the purposes of mental hospitals are carried into effect and to that end shall have all necessary powers not inconsistent with law.

6. Establish and supervise suitable standards of treatment and care of patients in all state hospitals for the mentally ill, mentally retarded and epileptic.

7. Establish the qualifications of all officers, physicians, nurses, attendants and other employees responsible for the care and treatment of patients.

8. Prepare a budget and such report or reports as required by law or as directed by the commissioner. [C50, 54, 58, 62, 66,§218.76; C71, 73, 75,§217.12]

217.13 Director of division of corrections. The director of the division of corrections shall be qualified in reformatory and prison management with special training in sociology and psychology. He shall also have practical experience in the field of criminology and discipline and in the supervision of inmates in corrective penal institutions. [C50, 54, 58, 62, 66,§218.77; C71, 73, 75,§217.13]

217.14 Additional powers and duties. The director of the division of corrections may have the following powers, duties and responsibilities:

1. Administer and control the operation of the men's reformatory, women's reformatory and state penitentiary and the Iowa security medical facility.

2. Supervision and control over all state agents whose duties relate primarily to the division of corrections.

3. Establishment and maintenance of acceptable standards of treatment, training, education and rehabilitation in the various state penal and corrective institutions.

4. Examination of all state institutions which are penal, reformatory or corrective to determine their efficiency for adequate care, custody and training of their inmates and report his findings and conclusions to the commissioner of the department of social services. He shall inquire into and determine the qualifications of wardens, matrons, superintendents, officers, attendants, guards and other employees responsible for the care, custody, train-

ing, discipline and rehabilitation of inmates and make recommendations to the commissioner regarding same.

5. Preparation of a budget and such other reports as required by law or as directed by the commissioner.

6. Supervise all persons placed on parole by the parole board and develop and administer such additional programs of rehabilitation for persons on parole as will insure their adjustment to society.

7. Establish and operate a system of rehabilitation camps within the state. The department of social services may designate appropriate facilities of the department as a part of this camp system. Persons committed to institutions under the department may be transferred to the facilities of the camp system and upon transfer shall be subject to the same laws as pertain to the transferring institution.

The commissioner of social services may establish for any inmate sentenced pursuant to section 789.13 a furlough program under which inmates sentenced to and confined in an institution under the jurisdiction of the department of social services may be temporarily released. Furloughs for a period not to exceed fourteen days may be granted when an immediate member of the inmate's family is seriously ill or has died, when an inmate is to be interviewed by a prospective employer, or when an inmate is authorized to participate in a training program not available within the institution. Furloughs for a period not to exceed fourteen days may also be granted in order to allow the inmate to participate in programs or activities that serve rehabilitative objectives. The commissioner of social services shall promulgate rules and regulations to carry out the provisions of this paragraph. [C50, 54, 58, 62, 66,§218.78; C71, 73, 75,§217.14]

217.15 Director of division of administration. The director of the division of administration shall be qualified in the general field of governmental administration with special training and experience in the areas of competitive bidding, contract letting, accounting and budget preparation. [C71, 73, 75,§217.15]

217.16 Co-operation with other divisions. The director of the division of administration shall co-operate with the directors of the other divisions of the department of social services, assist them and the commissioner of the department in the preparation of their and his annual budgets and such other like reports as may be requested by the commissioner or required by law. [C71, 73, 75,§217.16]

217.17 Director of division of planning. The director of the division of planning, research and statistics shall be qualified in the general field of governmental planning with special training and experience in the areas of preparation and development of plans for future efficient reorganization and administration of government social functions. The director of the division of planning, research and statistics shall co-operate with the directors of the other divisions of the department of social services assisting them and the commissioner of the department in their planning, research and statistical problems. He shall assist the directors, commissioner and the council of social services by proposing administrative and organizational changes at both the state and local level to provide more efficient and integrated social services to the citizens of this state. The planning, research and statistical operations now forming an integral part of the present state functions assigned to the directors of this department along with their future needs in this regard are hereby all assigned to and shall be administered by the director of this division. [C71, 73, 75, §217.17]

217.18 Official seal. The department shall have an official seal with the words "Iowa Department of Social Services" and such other design as the department prescribes engraved thereon. Every commission, order or other paper of an official nature executed by the department may be attested with such seal. [S13,§2727-a1; SS15,§2727-a3; C24, 27, 31, 35, 39, §3281; C46, 50, 54, 58, 62, 66,§217.8; C71, 73, 75, §217.18]

217.19 Expenses. The commissioner of said department, his staff, assistants and employees shall, in addition to salary, receive their necessary traveling expenses by the nearest traveled and practicable route, when engaged in the performance of official business. [S13, §2727-a5; C24, 27, 31, 35, 39,§3282; C46, 50, 54, 58, 62, 66,§217.9; C71, 73, 75,§217.19]

217.20 Trips to other states. No authority shall be granted to any person to travel to another state except by approval of the commissioner and the executive council. [S13, §2727-a5; C24, 27, 31, 35, 39,§3284; C46, 50, 54, 58, 62, 66,§217.10; C71, 73, 75,§217.20]

Referred to in §8.13

217.21 Annual report. The department shall, annually, at the time provided by law make a report to the governor and general assembly, and cover therein the annual period ending with June 30 preceding, which report shall embrace:

1. An itemized statement of its expenditures concerning each program under its administration.

2. Adequate and complete statistical reports for the state as a whole concerning all payments made under its administration.

3. Such recommendations as to changes in laws under its administration as the commissioner may deem necessary.

4. The observations and recommendations of the commissioner and the council of social services relative to the programs of the department.

5. Such other information as the commissioner or council of social services may deem advisable, or which may be requested by the

governor or by the general assembly. [S13, §§2727-a9,-a12,-a16,-a34; SS15,§2727-a3; C24, 27, 31, 35, 39,§3285; C46, 50, 54, 58, 62, 66,§217.11; C71, 73, 75,§217.21]

217.22 Transfer hearing. An inmate who objects to confinement in a receiving state pursuant to the interstate corrections compact or transfer to the federal bureau of prisons may request a hearing before a board appointed by the governor and serving at his pleasure and composed of three members of the general public, one of whom shall be a former inmate. Members of the board shall be paid forty dollars per diem and actual and necessary expenses from appropriated funds.

The board shall bar the transfer of the inmate to a receiving state or the federal bureau of prisons when a majority of its members are of the opinion that the transfer does not serve to promote the treatment, rehabilitation, or best interests of the offender. The burden of proof shall lie with the department of social services and all decisions of the hearing board shall be final. [C75,§217.22; 66GA, ch 1140,§3]

Referred to in §§245.20, 246.11

217.23 Personnel — merit system — reimbursement for damaged property.

1. The commissioner of social services or his designee, shall employ such personnel as are necessary for the performance of the duties and responsibilities assigned to the department. All employees shall be selected on a basis of fitness for the work to be performed with due regard to training and experience and shall be subject to the provisions of chapter 19A.

2. The department is hereby authorized to expend moneys from the support allocation of the department as reimbursement for replacement or repair of personal items of the department's employees damaged or destroyed by clients of the department during the employee's tour of duty. However, the reimbursement shall not exceed seventy-five dollars for each item. The department shall establish rules in accordance with chapter 17A to carry out the purpose of this section. [C75, §217.23; 66GA, ch 136,§1]

COMMUNITY-BASED CORRECTIONAL PROGRAMS AND SERVICES

217.24 Definition. As used in this division, unless the context otherwise requires:

"Community-based correctional programs and services" means locally administered correctional programs and services designed to rehabilitate persons charged with or convicted of a felony or indictable misdemeanor and persons on parole or probation as a result of a sentence for or conviction of these offenses. [C75,§217.24]

Control and operation of residential halfway house, see 66GA, ch 1043,§3

217.25 Judicial districts. Community-based correctional programs and services may be established to serve the judicial districts of the state. [C75,§217.25]

217.26 Assistance by department. The department of social services shall provide assistance, support and guidelines for the establishment and operation of community-based correctional programs and services. [C75,§217.26]

217.27 State funds used. The department of social services shall provide for the allocation of any state funds appropriated for the establishment, operation, maintenance, support and evaluation of community-based correctional programs and services. State funds shall not be allocated unless the department has reviewed and approved the programs and services for compliance with state guidelines.

If community-based correctional programs and services are not established in a judicial district, or if established are designed to serve only part of the judicial district, the department of social services may provide community-based correctional programs and services for the judicial district or the parts of the judicial district not served by an established program. [C75,§217.27]

217.28 Guidelines. The guidelines established by the department of social services shall include, but not necessarily be limited to:

1. Providing for the utilization of existing facilities with a minimum of capital expenditures for acquisition, renovation and repair.

2. Providing for the maximum utilization of existing local rehabilitative resources, such as, but not limited to: Employment; job training; general, special and remedial education; psychiatric and marriage counseling; alcohol and drug abuse treatment.

3. Providing for pretrial release, presentence investigation, probation and parole services and residential treatment centers.

4. Providing for locating community-based correctional programs and services in or near municipalities providing a substantial number of rehabilitation resources.

5. Providing for practices and procedures which maximize the availability of federal funding.

6. Providing for gathering and evaluating performance data. [C75,§217.28]

217.29 Rules and guidelines—review. Rules and guidelines issued pursuant to the authority granted in this division shall be confined to programs and services authorized by this division and supported by state funds. [C75, §217.29]

RECORDS OF DEPARTMENT

217.30 Confidentiality of records—report of recipients.

1. The following information relative to individuals receiving services or assistance from the department shall be held confidential:

a. Names and addresses of individuals receiving services or assistance from the depart-

ment, and the types of services or amounts of assistance provided, except as otherwise provided in subsection 4.

b. Information concerning the social or economic conditions or circumstances of particular individuals who are receiving or have received services or assistance from the department.

c. Agency evaluations of information about a particular individual.

d. Medical or psychiatric data, including diagnosis and past history of disease or disability, concerning a particular individual.

2. Information described in subsection 1 shall not be disclosed to or used by any person or agency except for purposes of administration of the programs of services or assistance, and shall not in any case, except as otherwise provided in subsection 4, paragraph *"b"*, be disclosed to or used by persons or agencies outside the department unless they are subject to standards of confidentiality comparable to those imposed on the department by this division.

3. Nothing in this section shall restrict the disclosure or use of information regarding the cost, purpose, number of persons served or assisted by, and results of any program administered by the department, and other general and statistical information, so long as the information does not identify particular individuals served or assisted.

4. *a.* The general assembly finds and determines that the use and disclosure of information as provided in this subsection are for purposes directly connected with the administration of the programs of services and assistance referred to in this section and are essential for their proper administration.

b. Confidential information described in subsection 1, paragraphs *"a," "b"* and *"c"* shall be disclosed to public officials, for use in connection with their official duties relating to law enforcement, audits and other purposes directly connected with the administration of such programs, upon written application to and with approval of the commissioner or his designee.

c. The department shall prepare and file in its office on or before the thirtieth day of each January, April, July and October a report showing the names and last known addresses of all recipients of assistance under sections 249.2 to 249.4 or chapters 239 or 249A, together with the amount paid to or for each recipient during the preceding calendar quarter. The report shall contain a separate section for each county, including all such recipients whose last known addresses are in the county. The department shall prepare and file in the office of each county board of social welfare a copy of the county section of each report for that county, on or before the same day specified in this paragraph. Each report shall be securely fixed in a record book to be used only for such reports. Each record book shall be a public record, open to public inspection at all times during the regular office hours of the office where filed. Each person who examines the record shall first sign a written agreement that the signer will not use any information obtained from the record for commercial or political purposes.

d. It shall be unlawful for any person to solicit, disclose, receive, use, or to authorize or knowingly permit, participate in, or acquiesce in the use of any information obtained from any such report or record for commercial or political purposes.

5. If it is definitely established that any provision of this section would cause any of the programs of services or assistance referred to in this section to be ineligible for federal funds, such provision shall be limited or restricted to the extent which is essential to make such program eligible for federal funds. The department shall adopt, pursuant to chapter 17A, any rules necessary to implement this subsection.

6. The provisions of this section shall apply to recipients of assistance under chapter 252. The reports required to be prepared by the department under this section shall, with respect to such assistance or services, be prepared by the person or officer charged with the oversight of the poor.

7. Violation of this section shall constitute a misdemeanor punishable by a fine not to exceed two thousand dollars or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment. [C39, §3828.047; C46, 50, 54, 58,§§239.10, 241.25, 249.44; C62, 66,§§239.10, 241.25, 241A.16, 249.44, 249A.18; C71, 73,§§239.10, 241.25, 241A.16, 249.44, 249A.8; C75,§217.30]

Referred to in §217.31

217.31 Action for damages. Any person may institute a civil action for damages under chapter 25A or to restrain the dissemination of confidential records set out in subsection 1, paragraphs *"b," "c,"* or *"d"* of section 217.30, in violation of that section, and any person, agency or governmental body proven to have disseminated or to have requested and received confidential records in violation of subsection 1, paragraphs *"b," "c," or "d"* section 217.30, shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses, and reasonable attorneys' fees incurred by the party bringing the action. In no case shall the award for damages be less than one hundred dollars.

Any reasonable grounds that a public employee has violated any provision of this division shall be grounds for immediate removal from access of any kind to confidential records or suspension from duty without pay. [C75, §217.31]

217.32 Office space in county. Where the department of social services assigns personnel to an office located in a county for the purpose of performing in that county designated

duties and responsibilities assigned by law to the department, it shall be the responsibility of the county to provide and maintain the necessary office space and office supplies and equipment for the personnel so assigned in the same manner as if they were employees of the county. The department shall at least annually, or more frequently if the department so elects, reimburse the county for a portion, designated by law, of the cost of maintaining office space and providing supplies and equipment as required by this section, and also for a similar portion of the cost of providing the necessary office space if in order to do so it is necessary for the county to lease office space outside the courthouse or any other building owned by the county. The portion of the foregoing costs reimbursed to the county under this section shall be equivalent to the proportion of those costs which the federal government authorizes to be paid from available federal funds, unless the general assembly directs otherwise when appropriating funds for support of the department. [C75,§217.32]

CONTRACT LEGAL SERVICES

217.33 Legal services. The commissioner of social services pursuant to a state plan funded in part by the federal government may provide services for eligible persons by contract with nonprofit legal aid organizations. [66GA, ch 9,§5]

CHAPTER 218

GOVERNMENT OF INSTITUTIONS

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218.1 Institutions controlled. The commissioner of the state department of social services shall have the general and full authority given under statute to control, manage, direct and operate the following institutions under his jurisdiction, and may at his discretion execute the powers and authorities given him by statute to any one of his division directors or to any of the officers or employees of the divisions of the department of social services:

1. Soldiers Home.
2. Glenwood State Hospital-School.
3. Woodward State Hospital-School.
4. Mental Health Institute, Cherokee, Iowa.
5. Mental Health Institute, Clarinda, Iowa.
6. Mental Health Institute, Independence, Iowa.
7. Mental Health Institute, Mount Pleasant, Iowa.
8. Training School for Boys.
9. Training School for Girls.
10. Juvenile Home.
11. Women's Reformatory.
12. Men's Reformatory.
13. State Penitentiary.
14. Iowa Security Medical Facility.
15. Correctional Release Center.
16. Camps.
17. Other facilities not attached to the campus of the main institution as program developments require. [S13,§§2727-a8,-a77; SS15, §§2713-n2, 2727-a96; C24, 27, 31, 35, 39,§3287; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.1; 66GA, ch 1133,§1]

Referred to in §§218.2, 218.3, 218.4
See §§145.1, 226.1

218.2 Powers of governor—report of abuses. Nothing contained in section 218.1 shall limit the general supervisory or examining powers vested in the governor by the laws or Constitution of the state, or legally vested by him in any committee appointed by him.

The division director to whom primary responsibility of a particular institution has been assigned shall make such reports to the commissioner of the department of social services as are requested by him and the commissioner shall report, in writing, to the governor any abuses found to exist in any of the said institutions. [S13,§§2727-a9,-a18; C24, 27, 31, 35, 39,§§3288, 3289; C46, 50, 54, 58, 62, 66,§§218.2, 218.3; C71, 73, 75,§218.2]

218.3 Primary authority for management. The primary authority and responsibility to control, manage, direct and operate the institutions set forth in section 218.1 is hereby assigned to the directors of the various divisions of the state department of social services as follows:

1. The director of the division of child and family services of the department of social services shall have primary authority and responsibility relative to the following said institutions: Iowa veterans home, the training school for girls, the training school for boys and the Iowa juvenile home.

2. The director of the division of mental health of the department of social services shall have primary authority and responsibility relative to the following institutions: Glenwood State Hospital-School, Woodward State Hospital-School, Mental Health Institute, Cherokee, Iowa, Mental Health Institute, Clarinda, Iowa, Mental Health Institute, Independence, Iowa and Mental Health Institute, Mount Pleasant, Iowa.

3. The director of the division of corrections of the department of social services shall have primary authority and responsibility relative to the following institutions: Women's Reformatory, Men's Reformatory and State Penitentiary. [C71, 73, 75,§218.3; 66GA, ch 1133,§2]

218.4 Recommendation for rules. The directors of particular institutions shall recommend to the council on social services for adoption such rules not inconsistent with law as they may deem necessary for the discharge of their duties, the management of each of such institutions, the admission of inmates thereto and the treatment, care, custody, education and discharge of inmates. It is made the duty of the particular directors to establish rules by which danger to life and property from fire will be minimized. In the discharge of their duties and in the enforcement of their rules, they may require any of their appointees to perform duties in addition to those required by statute.

Such rules when prescribed or approved by the council shall be uniform and shall apply to all institutions under the particular director and to all other institutions under his jurisdiction and the primary rules of the director of the division of mental health for use in institutions where the mentally ill are kept shall, unless otherwise indicated, uniformly apply to county or private hospitals wherein the mentally ill are kept, but such

rules shall not interfere with proper medical treatment administered patients by competent physicians. Annually, signed copies of such rules shall be sent to the chief executive officer of each such institution or hospital under the control or supervision of a particular director and copies shall also be sent to the clerk of each district court, the chairman of the board of supervisors of each county and, as appropriate, to the officer in charge of institutions or hospitals caring for the mentally ill in each county who shall be responsible for seeing that the same is posted in each institution or hospital in a prominent place. Such rules shall be kept current to meet the public need and shall be revised and published annually.

The state fire marshal shall cause to be made an annual inspection of all the institutions listed in section 218.1 and shall make written report thereof to the particular director of the state department of social services in control of such institution. [S13,§§2727-a30,-a48, 5718-a3; SS15,§§2727-a50,-a96; C24, 27, 31, 35, 39,§3290; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.4]

218.5 Fire protection contracts. The directors of the divisions of the state department of social services shall have power to enter into contracts with the governing body of any city or other municipal corporation for the protection from fire of any property under such directors primary control, located in any such municipal corporation or in territory contiguous thereto, upon such terms as may be agreed upon. [C31, 35,§3290-d1; C39,§3290.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.5]

218.6 Business managers. The superintendent or executive officer of each of the institutions under the control of a particular director of the division of the department of social services shall appoint a business manager with the approval of the particular division director and such appointed person shall hold no other office and shall act in no other capacity at the institution to which he has been appointed, nor shall he be eligible to any other lucrative office, elective or appointive, in the state during his term of service but he shall devote his time entirely to his duties as business manager of the institution to which he is appointed. He shall receive such compensation as ordered by the division director in charge of his particular institution with the consent and approval of the commissioner of the department of social services and such employee shall hold office at the pleasure of the division director. [C39,§3291.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.6]

218.7 Accounting and reports. The business manager shall be responsible to the division director in control of his particular institution and shall file such accounting and other statistical reports and statements with the auditor of state, as the auditor may designate by written request to the particular division director, at such times and periods as the auditor might require. [C39,§3291.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.7]

218.8 Duties and prohibitions. Subject to the orders and directions of the division director in control of his particular institution and to the written request of the auditor of state made to such division director, such business manager shall have the following powers, duties and responsibilities:

1. He shall be the general business manager of the institution to which he has been appointed and shall have complete charge and supervision over all business matters and financial affairs relating to such institution, including the general institution, farms and gardens and all industries engaged in at such institution.

2. He shall replace the steward at the institution and shall have all the powers and be charged with all the duties and responsibilities vested in the steward as provided for in section 218.39.

3. Under the direction and supervision of the particular division director, he shall have complete charge of all of the accounting and all other statistical records and keep same in a manner and as directed by the particular division director which manner, method, system and form of accounting records shall be prescribed by the state comptroller.

4. He shall have complete control and be charged with the full accountability of all property and moneys of the institution to which he has been appointed.

5. He shall have complete charge and supervision over the condition and repair of all buildings, improvements, equipment and property of such institution to which he has been appointed, subject however, to the approval of the superintendent in instances where such equipment is used directly in the medical, mental, moral or therapeutic treatment or care of the patients or inmates.

6. He shall have charge and be accountable for all of the livestock at the institution to which he has been appointed, but he shall not be permitted to exhibit any such livestock at state and county fairs or livestock shows.

7. He shall have the power to appoint, direct and discharge all employees excepting doctors, nurses, ward attendants, laboratory technicians or assistants and all other personnel charged with the medical, mental or therapeutical treatment or care of any patient or inmate of said institution, which personnel shall be appointed, directed and discharged by the superintendent. However, he shall be charged with the keeping of all records relating to the entire personnel of the institution as provided for in section 218.10.

8. He shall exercise no control or direction whatsoever over the medical, mental, moral or therapeutical care or treatment of any patient or inmate of said institution, or over

the doctors, orderlies, nurses, ward attendants, laboratory technicians and all other personnel directly charged with the medical, mental or therapeutical care or treatment of any patient or inmate, employed by the superintendent, but will report all violations to the superintendent. Likewise, the control and direction of employees, by the superintendent, is hereby confined to the doctors, orderlies, nurses, ward attendants, laboratory and all other personnel directly charged with the medical, mental, moral or therapeutical care or treatment of any patient or inmates of said institution. [C39, §3291.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.8]

218.9 Appointment of superintendents. The director of the division of mental health of the department of social services, subject to the approval of the commissioner of such department, shall appoint the superintendents of the state hospital-schools for the mentally retarded and the mental health institutes.

The director of the division of corrections of the department of social services, subject to the approval of the commissioner of such department, shall appoint the wardens of the state penitentiary and the men's reformatory and the superintendents of the Iowa security medical facility and of the women's reformatory.

The director of the division of child and family services of the department of social services, subject to the approval of the commissioner of such department shall appoint the superintendents of the juvenile home, the training school for boys, the training school for girls and the commandant of the veterans home.

The superintendent, warden or other executive officer shall have the immediate custody and control, subject to the orders and policies of the director in charge of his institution, of all property used in connection with the institution except as provided in this chapter. The tenure of office of the officers shall be at the pleasure of the appointing authority but they may be removed for inability or refusal to properly perform the duties of the office. Such removal shall be had only after an opportunity is given the person to be heard before the director of the department of social services in charge of the particular institution involved and upon preferred written charges. The removal when made shall be final. [S13, §2727-a24; C24, 27, 31, 35, 39,§3292; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.9; 66GA, ch 137,§6]

Referred to in §223.2
See also §219.7

218.10 Subordinate officers and employees. The division director in charge of a particular institution; with the consent and approval of the commissioner of the department of social services, shall determine the number and compensation of subordinate officers and employees for each institution. Subject to the provisions of this chapter, such officers and employees shall be appointed and discharged by the chief executive officer or business manager. Such officer shall keep, in the record of each subordinate officer and employee, the date of employment, the compensation, and the date of each discharge, and the reasons therefor. All of these employees, except physicians and surgeons, shall be bona fide residents and citizens of the state of Iowa at the time of employment. An exception to this provision of residence may be granted by such division director for the sole purpose of securing professional and/or scientific services which are unavailable from among the citizens of the state of Iowa. [S13,§2727-a37; SS15, §§2713-n2, 2727-a96; C24, 27, 31, 35, 39,§3293; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.10]

Referred to in §218.8(7)

218.11 Interagency case information service. The department of social services shall provide for and be the administrative agency for the interagency case information service. The department shall perform such duties and responsibilities as required under the provisions of chapter 220A. [C71, 73, 75,§218.11]

218.12 Bonds. The state director in charge of any particular institution shall require each officer and any employee of such director and of every institution under his control who may be charged with the custody or control of any money or property belonging to the state to give an official bond, properly conditioned, and signed by sufficient sureties in a sum to be fixed by the director, which bond shall be approved by the director, and filed in the office of the secretary of state. [S13,§2727-a31; C24, 27, 31, 35, 39,§3295; C46, 50, 54, 58, 62, 66, 71, 73, 75, §218.12]

218.13 Salaries. The division director having control of any state institution shall annually, on each employee's employment anniversary date, review and fix the annual, monthly, or semimonthly salaries of said employees, except such salaries as are fixed by the general assembly. The division director shall classify the officers and employees into grades and the salary and wages to be paid in each grade shall be uniform in similar institutions. The authority given in this section is all subject to the consent and approval of the commissioner of the department of social services. [S13, §2727-a38; C24, 27, 31, 35, 39,§3296; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.13]

218.14 Dwelling house and provisions. The division director having control over any state institution shall furnish the executive head of each of said institutions, in addition to salary, with a dwelling house or with appropriate quarters in lieu thereof, and, from supplies purchased for the institution, the necessary household provisions for the executive head, spouse and minor children or the particular division director may compensate the executive head of each of said institutions in lieu of furnishing all of the above items. [S13, §2727-a38; SS15,§§2713-n2, 2727-a96; C24, 27, 31,

35, 39,§3297; C46, 50, 54, 58, 62, 66, 71, 73, 75, §218.14]

Referred to in §219.9

218.15 Salaries—how paid. The salaries and wages shall be included in the semimonthly payrolls and paid in the same manner as other expenses of the several institutions. [S13, §2727-a38; C24, 27, 31, 35, 39,§3298; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.15]

218.16 Annuity contracts for employees. At the request of an employee through contractual agreement, the department of social services or any institution under its jurisdiction may purchase an individual annuity contract for an employee, from such insurance organization authorized to do business in this state and through an Iowa-licensed insurance agent as the employee may select, for retirement or other purposes and may make payroll deductions in accordance with such arrangements for the purpose of paying the entire premium due and to become due under such contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits afforded under section 403(b) of the Internal Revenue Code of 1954 and amendments thereto. The employee's rights under such annuity contracts shall be nonforfeitable except for the failure to pay premiums. [C71, 73, 75,§218.16]

218.17 Authority for vacation. Vacations and sick leave with pay as authorized in section 79.1 shall only be taken at such times as the executive officer or the business manager in charge of said officer or employee, as the case may be, may direct, and only after written authorization by him, and for the number of days specified therein. A copy of such permit shall be attached to the institution's copy of the payroll of the institution, for audit purposes, for the period during which the vacation was taken, and the semimonthly payroll shall show the number of days the person was absent under the permit. [S13,§§2727-a74c, -a74d; C24, 27, 31, 35, 39,§3300; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.17]

218.18 Record of employees and inmates. The director of the department of social services in control of a particular state institution shall require the proper officer of each institution to keep a record prepared for the purpose, with entries to be made each day, of the number of hours of service of each employee. The semimonthly payroll shall be made from such record, and shall be in accord therewith. When an appropriation is based on the number of inmates in or persons at an institution the director shall require a daily record to be kept of the persons actually residing at and domiciled in such institution. [S13,§2727-a34; C24, 27, 31, 35, 39,§3301; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.18]

218.19 Districts. The director having control over any state institution shall, from time to time, divide the state into districts from which the several institutions may receive inmates. The particular division directors shall promptly notify the proper county or judicial officers of all changes in such districts. [S13, §2727-a21; C24, 27, 31, 35, 39,§3302; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.19]

218.20 Place of commitments — transfers. Commitments, unless otherwise permitted by the division director having control over any state institution, shall be to the institution located in the district embracing the county from which the commitment is issued. The particular division directors may, at the expense of the state, transfer an inmate of one institution to another like institution. [S13, §2727-a26; C24, 27, 31, 35, 39,§3303; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.20]

Power of the board to transfer inmates, §§222.6, 222.7, 224.5, 226.30, 227.6, 227.10, 227.11, 244.5, 245.10, 245.12, 246.12-246.14, 246.16

Transfers for medical treatment, §255.28

218.21 Record of inmates. The director of the department of social services in control of a state institution shall, as to every person committed to any of said institutions, keep the following record: Name, residence, sex, age, nativity, occupation, civil condition, date of entrance or commitment, date of discharge, whether a discharge was final, condition of the person when discharged, the name of the institutions from which and to which such person has been transferred, and, if dead, the date, and cause of death. [S13,§2727-a22; C24, 27, 31, 35, 39,§3304; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.21]

Referred to in §218.22

218.22 Record privileged. Except with the consent of the director in charge of an institution, or on an order of a court of record, the record provided in section 218.21 shall be accessible only to the director of the division of the department of social services in control of such institution, the commissioner of the department of social services and to assistants and proper clerks authorized by such director or his commissioner. The director of the division of such institution is authorized to permit the state libraries and historical department division of archives to copy or reproduce by any photographic, photostatic, microfilm, microcard or other process which accurately reproduces a durable medium for reproducing the original and to destroy in the manner described by law such records of inmates designated in section 218.21. [S13,§2727-a22; C24, 27, 31, 35, 39,§3305; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.22]

218.23 Reports to director. The managing officer of each institution shall, within ten days after the commitment or entrance of a person to the institution, cause a true copy of his entrance record to be made and forwarded to the director in control of such institution. When a patient or inmate leaves, or is discharged, or transferred, or dies in any institution, the superintendent or person in charge

shall within ten days thereafter send such information to the office of such director on forms which the director prescribes. [S13, §2727-a22; C24, 27, 31, 35, 39,§**3306**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.23]

218.24 Questionable commitment. The superintendent is required to immediately notify the director in control of his particular institution if there is any question as to the propriety of the commitment or detention of any person received at such institution, and said director, upon such notification, shall inquire into the matter presented, and take such action as may be deemed proper in the premises. [S13,§2727-a29; C24, 27, 31, 35, 39,§**3307**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.24]

218.25 Religious beliefs. The chief executive officer, receiving a person committed to any of said institutions, shall inquire of such person as to his religious preference and enter the same in the book kept for the purpose, and cause said person to sign the same. [S13, §5718-a1; C24, 27, 31, 35, 39,§**3308**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.25]

218.26 Religious worship. Any such inmate, during the time of his detention, shall be allowed, for at least one hour on each Sunday and in times of extreme sickness, and at such other suitable and reasonable times as is consistent with proper discipline in said institution, to receive spiritual advice, instruction, and ministration from any recognized clergyman of the church or denomination which represents his religious belief. [S13,§§5718-a1,-a2; C24, 27, 31, 35, 39,§**3309**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.26]

218.27 Religious belief of minors. In case such inmate is a minor and has formed no choice, his preference may, at any time, be expressed by himself with the approval of parents or guardian, if he has any such. [S13, §5718-a3; C24, 27, 31, 35, 39,§**3310**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.27]

218.28 Investigation. The director of the department of social services in control of a particular institution or his authorized officer or employee shall visit, and minutely examine, at least once in six months, and oftener if necessary or required by law, the institutions under such director's control, and the financial condition and management thereof. [S13, §§2727-a10,-a19; C24, 27, 31, 35, 39,§**3311**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.28]

218.29 Scope of investigation. The director of the department of social services in control of a particular institution or his authorized officer or employee shall, during such investigation and as far as possible, see every inmate of each institution, especially those admitted since the preceding visit, and shall give such inmates as may require it, suitable opportunity to converse with such director or his authorized officer or employee apart from the officers and attendants. [S13,§2727-a19; C24, 27, 31, 35, 39,§**3312**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.29]

218.30 Investigation of other institutions. The directors of the department of social services to whom control of state institutions has been delegated, or their authorized officers or employees, may investigate charges of abuse, neglect or mismanagement on the part of any officer or employee of any private institution which is subject to such director's particular supervision or control. The director of the division of mental health, or his authorized officer or employee, shall likewise investigate charges concerning county care facilities in which mentally ill persons are kept. [S13, §2727-a74b; C24, 27, 31, 35, 39,§**3313**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.30; 66GA, ch 67,§71]

218.31 Witnesses. In aid of any investigation the director shall have the power to summon and compel the attendance of witnesses; to examine the same under oath, which he shall have power to administer; to have access to all books, papers, and property material to such investigation, and to order the production of any other books or papers material thereto. Witnesses other than those in the employ of the state shall be entitled to the same fees as in civil cases in the district court. [S13,§2727-a10; C24, 27, 31, 35, 39,§**3314**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.31]

Referred to in §218.32
Witness fees, §622.69 et seq.

218.32 Contempt. Any person failing or refusing to obey the orders of the director issued under section 218.31, or to give or produce evidence when required, shall be reported by the director to the district court in the county where the offense occurs and shall be dealt with by the court as for contempt of court. [S13,§2727-a10; C24, 27, 31, 35, 39,§**3315**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.32]

Contempts, ch 665

218.33 Transcript of testimony. The particular director involved shall cause the testimony taken at such investigation to be transcribed and filed in his office at the seat of government within ten days after the same is taken, or as soon thereafter as practicable, and when so filed the same shall be open for the inspection of any person. [S13,§2727-a10; C24, 27, 31, 35, 39,§**3316**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.33]

218.34 State agents. A sufficient number of persons shall be appointed as state agents for the two training schools, the Iowa juvenile home, and the women's reformatory. [SS15, §2692-a; C24, 27, 31, 35, 39,§**3317**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.34; 66GA, ch 1133,§3]

218.35 Rooms and supplies. Such agents shall be furnished with such office rooms and all necessary supplies as are furnished other officers of the divisions of the department of social services involved. Such agents, while stopping at any of said institutions, may be furnished with rooms, board, and facilities therein, free of cost. [SS15,§2692-a; C24, 27, 31,

35, 39,§3318; C46, 50, 54, 58, 62, 66, 71, 73, 75, §218.35]

218.36 Duties of agents. Said agents shall:

1. Perform such duties as may be required by law or by said appointing director.

2. Find suitable homes and employment for inmates of said institutions who are to be or who have been released.

3. Inspect such homes.

4. Exercise supervision over such discharged or released persons and examine into their conduct and environment.

5. Return to the institution from which released, all inmates who have been conditionally released and whose conduct has been bad, or in violation of their release.

6. Obtain new homes or new employment for released inmates when their environment is bad.

7. Keep records of their acts as agents and make all reports called for by the appointing director. [S13,§2692-b; C24, 27, 31, 35, 39,§3319; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.36]

218.37 Advancing expense fund. The appointing director may cause to be advanced to each agent, from time to time, from the funds appropriated for such purpose, sums to be used in defraying the official expenses of such agent. The aggregate amount of money so advanced and not expended at any time shall not exceed the sum of two hundred fifty dollars. The agent shall give security, to be approved by the appointing director, for the proper use and accounting each month of all money so advanced. [SS15,§2692-c; C24, 27, 31, 35, 39, §3320; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.37]

218.38 Expenses. Said agents shall receive their actual and necessary expenses incurred in the discharge of their duties. [SS15,§2692-c; C24, 27, 31, 35, 39,§3321; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.38]

218.39 Receiving officers—duties. The stewards of the hospitals for the mentally ill, the clerks of the prisons, and the proper officers, who shall be designated by the director of a division of the department of social services in control of the particular institution, of the other institutions, shall each:

1. Have charge of and be accountable for all supplies and stores of such institution and be chargeable therewith, at their invoice value.

2. Issue stores and supplies upon requisition approved by the superintendent or other officer designated by the particular director in control, which requisition shall be his voucher therefor.

3. Present, monthly, to the particular director in control an abstract of all expenditures, together with the accounts and payrolls for the preceding month.

4. Examine and register all goods delivered, as to their amount and quality, and certify to the correctness of the bills therefor, if the goods correspond to the samples, are in good order, and correct in prices.

5. Maintain a perpetual inventory of the subsistence supplies and stock in his possession and control, and transmit, monthly, a report showing the condition of such inventory, duly verified by him, to the particular director in control.

6. Make to the particular director in control, at the close of each fiscal year period, a report of all purchases and transactions of his department.

7. Pay into the state treasury, from time to time, such amount as the particular director in control may determine is necessary to reimburse the state for his negligent loss of such stores or supplies, and shall so do within sixty days of such determination by the particular director in control. If default be made in such payment, he shall be discharged and suit shall be brought on his bond. [S13,§2727-a46; C24, 27, 31, 35, 39,§3322; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.39]

Referred to in §218.8(2)
Business manager as steward, §218.8

218.40 Services required. Inmates of said institutions subject to the provisions hereinafter provided, may be required to render any proper and reasonable service either in the institutions proper or in the industries established in connection therewith. [S13,§2727-a51; SS15,§5718-a11; C24, 27, 31, 35, 39,§3323; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.40]

218.41 Custody. When an inmate of an institution is so working outside the institution proper, he shall be deemed at all times in the actual custody of the head of the institution. [SS15,§5718-a11; C24, 27, 31, 35, 39,§3324; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.41]

218.42 Wages of inmates. When an inmate performs services for the state at an institution, the director in control of such institution may, when he deems such course practicable, pay such inmate such wage as he deems proper in view of the circumstances, and in view of the cost attending the maintenance of such inmate. In no case shall such wage exceed the amount paid to free labor for a like service or its equivalent. [SS15,§5718-a11a; C24, 27, 31, 35, 39,§3325; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.42]

218.43 Deduction to pay court costs. If such wage be paid, the director in control of such institution may deduct therefrom an amount sufficient to pay all or a part of the costs taxed to such inmate by reason of his commitment to said institution. In such case the amount so deducted shall be forwarded to the clerk of the district court or proper official. [SS15, §5718-a11a; C24, 27, 31, 35, 39,§3326; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.43]

218.44 Wages paid to dependent—deposits. If such wage be paid, the director in control of such institution may pay all or any part of

the same directly to any dependent of such inmate, or may deposit such wage to the account of such inmate, or may so deposit part thereof and allow the inmate a portion for his own personal use, or may pay to the county of commitment all or any part of his care, treatment or subsistence while at said institution from any credit balance accruing to the account of said inmate. [SS15,§5718-a11a; C24, 27, 31, 35, 39,§**3327**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.44]

218.45 Conferences. Quarterly conferences of the chief executive officers of said institutions shall be held with the director in control of such institution at Des Moines or at institutions under his jurisdiction, for the consideration of all matters relative to the management of said institutions. Full minutes of such meetings shall be preserved in the records of the director. The director in control may cause papers to be prepared and read, at such conferences, on appropriate subjects. [S13, §2727-a20; C24, 27, 31, 35, 39,§**3328**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.45]

218.46 Scientific investigation.

1. The directors of divisions of the department of social services who are in charge of institutions shall encourage the scientific investigation, on the part of the executive heads and medical staffs of the various institutions, as to the most successful methods of managing such institutions and treating the persons committed thereto, shall procure and furnish to such heads and staffs information relative to such management and treatment, and, from time to time, publish bulletins and reports of scientific and clinical work done in said institutions.

2. The directors of such state institutions are authorized to provide services and facilities for the scientific observation, rechecking and treatment of mentally ill persons within the state. Application by, or on behalf of, any person for such services and facilities shall be made to the director in charge of the particular institution involved and shall be made on forms furnished by such director. The time and place of admission of any person to outpatient or clinical services and facilities for scientific observation, rechecking and treatment and the use of such services and facilities for the benefit of persons who have already been hospitalized for psychiatric evaluation and appropriate treatment or involuntarily hospitalized as seriously mentally ill shall be in accordance with rules and regulations adopted by the director in control of the particular institution involved. [S13,§2727-a27; C24, 27, 31, 35, 39,§**3329**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.46; 66GA, ch 139,§35]

218.47 Monthly report. The chief executive officer of each institution, or business manager of institutions having the same, shall, on the first day of each month, account to the director in control of his particular institution for all state funds received during the preceding month, and, at said time, remit the same to the treasurer of state. [S13,§2727-a40; C24, 27, 31, 35, 39,§**3330**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §218.47]

218.48 Annual reports. The executive head or business manager of each institution shall make an annual report to the director in control of his particular institution and embrace therein a minute and accurate inventory of the stock and supplies on hand, and the amount and value thereof, under the following heads: Livestock, farm produce on hand, vehicles, agricultural implements, machinery, mechanical fixtures, real estate, furniture, and bedding in inmates' department, state property in superintendent's department, clothing, dry goods, provisions and groceries, drugs and medicine, fuel, library, and all other state property under appropriate heads to be determined by the particular director involved. [S13,§§2705-b, 2727-a32; C24, 27, 31, 35, 39,§**3331**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.48]

218.49 Contingent fund. The director in control of a state institution may permit the executive head, which shall include the business manager as provided in this chapter, of each institution to retain a stated amount of funds in his possession as a contingent fund for the payment of freight, postage, commodities purchased on authority of the particular director involved on a cash basis, salaries, and bills granting discount for cash. [SS15,§2727-a44; C24, 27, 31, 35, 39,§**3332**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.49]

218.50 Requisition for contingent fund. If necessary, the commissioner of the department of social services shall make proper requisition upon the state comptroller for a warrant on the state treasurer to secure the said contingent fund for each institution. [SS15,§2727-a44; C24, 27, 31, 35, 39,§**3333**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.50]

218.51 Monthly reports of contingent fund. A monthly report of the status of such contingent fund shall be submitted by the proper officer of said institution to the director in control of the institution involved and such rules as such director may establish. [SS15, §2727-a44; C24, 27, 31, 35, 39,§**3334**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.51]

218.52 Supplies—competition. The director in control of a state institution shall, in the purchase of supplies, afford all reasonable opportunity for competition, and shall give preference to local dealers and Iowa producers when such can be done without loss to the state. [S13,§2727-a46; SS15,§2727-a50; C24, 27, 31, 35, 39,§**3335**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §218.52]

Preference to Iowa products, §73.1 et seq.

218.53 Dealers may file addresses. Jobbers or others desirous of selling supplies shall, by

filing with the director in control of a state institution a memorandum showing their address and business, be afforded an opportunity to compete for the furnishing of supplies, under such rules as such director may prescribe. [SS15,§2727-a50; C24, 27, 31, 35, 39, §3336; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.53]

218.54 Samples preserved. When purchases are made by sample, the same shall be properly marked and retained until after an award or delivery of such items is made. [SS15, §2727-a50; C24, 27, 31, 35, 39,§3337; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.54]

218.55 Purchase from an institution. The director of a division of the department of social services may purchase supplies of any institution under his control, for use in any other such institution, and reasonable payment therefor shall be made as in case of other purchases. [S13,§2727-a47; C24, 27, 31, 35, 39, §3338; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.55]

218.56 Purchase of supplies. The directors shall, from time to time, adopt and make of record, rules and regulations governing the purchase of all articles and supplies needed at the various institutions under their control, and the form and verification of vouchers for such purchases. [S13,§§2727-a41,-a42,-a49; C24, 27, 31, 35, 39,§3339; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.56]

218.57 Combining appropriations. The state comptroller is authorized to combine the balances carried in all specific appropriations into a special account for each institution under the control of a particular director of a division of the department of social services, except that the support fund for each institution shall be carried as a separate account. [S13,§2727-a43; C24, 27, 31, 35, 39,§3344; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.57]

218.58 State architect. The commissioner of the department of social services may employ a competent architect, and such draftsmen as may be authorized by law. Said architect shall, in addition to salary, be reimbursed for his actual and necessary expenses within the state while engaged in official business. In cases of sufficient magnitude the commissioner may secure the advice of a consulting architect, or may secure plans and specifications from other architects, at a cost not exceeding one thousand five hundred dollars in any year, unless a larger amount is approved by the executive council. [S13,§2727-a23; C24, 27, 31, 35, 39,§3345; C46, 50, 54, 58, 62, 66, 71, 73, 75, §218.58; 66GA, ch 67,§20]

Referred to in §18A.1

218.59 Plans and specifications. Said commissioner shall cause plans and specifications to be prepared for all improvements authorized and costing over five thousand dollars. No appropriation for any improvement shall be expended until the adoption of suitable plans and specifications, prepared by a competent architect, and accompanied by a detailed statement of the amount, quality, and description of all material and labor required for the completion of such improvement.

No plans shall be adopted, and no improvement shall be constructed, which contemplates an expenditure of money in excess of the appropriation. [S13,§2727-a17; C24, 27, 31, 35, 39,§3346; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.59]

218.60 Letting of contracts—repairs or alterations. The commissioner shall, in writing, let all contracts for authorized improvements costing in excess of five thousand dollars to the lowest responsible bidder, after such advertisement for bids as the commissioner may deem proper in order to secure full competition. The commissioner may reject all bids and readvertise. Provided, however, if the improvement be the repair or alteration of any building or grounds and is not new construction and the estimated cost thereof does not exceed twenty-five thousand dollars, the commissioner with the approval of the budget and financial control committee may proceed with such repairs or alterations under a negotiated contract on such terms as the commissioner and the budget and financial control committee may determine to be for the best interests of the state. [S13,§2727-a51; C24, 27, 31, 35, 39, §3347; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.60]

218.61 Preliminary deposit. A preliminary deposit of money, or certified check upon a solvent bank in such amount as the commissioner of the department of social services may prescribe, shall be required as an evidence of good faith, upon all proposals for the construction of said improvements, which deposit or certified check shall be held under the direction of such commissioner. [S13,§2727-a51; C24, 27, 31, 35, 39,§3348; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.61]

218.62 Improvements by day labor. Upon prior authorization by the director in control of a particular institution, improvements costing five thousand dollars or less may be made by the executive head of any institution by day labor subject to the approval of such director. [S13,§2727-a51; C24, 27, 31, 35, 39,§3349; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.62]

218.63 Improvements at institutions. Contracts shall not be required as to improvements at any state institution where the labor of inmates may be utilized on the particular work to be done, to the advantage of the inmates or of the state. [S13,§2727-a51; C24, 27, 31, 35, 39,§3350; C46, 50, 54, 58, 62, 66, 71, 73, 75, §218.63]

218.64 Payment for improvements. No payment shall be authorized for construction purposes until satisfactory proof has been furnished to the commissioner of the department of social services, by the proper officer or supervising architect, that the contract has been complied with by the parties; and all pay-

ments shall be made in a manner similar to that in which the current expenses of the several institutions are paid. [S13,§2727-a51; C24, 27, 31, 35, 39,§3351; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.64]

218.65 Property of deceased inmate. The chief executive officer or business manager of each institution shall, upon the death of any inmate or patient, immediately take possession of all property of the deceased left at said institution, and deliver the same to the duly appointed and qualified representative of the deceased. [S13,§2727-a72; C24, 27, 31, 35, 39, §3352; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.65]

218.66 Property of small value. If administration be not granted within one year from the date of the death of the decedent, and the value of the estate of decedent is so small as to make the granting of administration inadvisable, then delivery of the money and other property left by the decedent may be made to the surviving spouse and heirs of the decedent. [S13,§2727-a72; C24, 27, 31, 35, 39,§3353; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.66]

218.67 When no administration granted. If administration be not granted within one year from the death of decedent, and no surviving spouse or heir is known, said executive officer may convert all said property into money and in so doing he shall have the powers possessed by a general administrator. [S13,§2727-a72; C24, 27, 31, 35,-39,§3354; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.67]

218.68 Money deposited with treasurer of state. Said money shall be transmitted to the treasurer of state as soon after one year after the death of the intestate as practicable, and be credited to the support fund of the institution of which the intestate was an inmate. [S13,§2727-a72; C24, 27, 31, 35, 39,§3355; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.68]

218.69 Permanent record. A complete permanent record of the money so sent, showing by whom and with whom it was left, its amount, the date of the death of the owner, his reputed place of residence before he became an inmate of the institution, the date on which it was sent to the state treasurer and any other facts which may tend to identify the intestate and explain the case, shall be kept by the chief executive officer of the institution or business manager, as the case may be, and a transcript thereof shall be sent to, and kept by, the treasurer of state. [S13,§2727-a72; C24, 27, 31, 35, 39,§3356; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.69]

218.70 Payment to party entitled. Said money shall be paid, at any time within ten years from the death of the intestate, to any person who is shown to be entitled thereto. Payment shall be made from the state treasury out of the support fund of such institution in the manner provided for the payment of other claims from that fund. [S13,§§2727-a73,-a74; C24, 27, 31, 35, 39,§3357; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.70]

218.71 Special policemen. The director of a division of the department of social services in control of a particular institution may, by order entered of record, commission one or more of the employees at each of said institutions as special police. Such police shall, on the premises of the institution of which they are employees, and in taking an inmate into custody, have and exercise the powers of regular peace officers. No additional salary shall be granted by reason of such appointment. [S13,§2727-a71; C24, 27, 31, 35, 39,§3358; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.71]

Powers, ch 754 et seq.

218.72 Temporary quarters in emergency. In case the buildings at any institution under the management of a director of the division of the department of social services are destroyed or rendered unfit for habitation by reason of fire, storms, or other like causes, to such an extent that the inmates cannot be there confined and cared for, said director shall make temporary provision for the confinement and care of the inmates at some other place in the state. Like provision may be made in case any pestilence breaks out among the inmates. The reasonable cost of the change, including transfer of inmates, shall be paid from any money in the state treasury not otherwise appropriated. [C51,§3143; R60,§5156; C73,§4795; C97,§5693; SS15,§2713-n18; C24, 27, 31, 35, 39, §3359; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.72]

218.73 Industries. The director of a division of the department of social services in control of a state institution may establish such industries as he may deem advisable at or in connection with any of said institutions under his control. [SS15,§5718-a11; C24, 27, 31, 35, 39, §3360; C46, 50, 54, 58, 62, 66, 71, 73, 75,§218.73]

218.74 Sale of agricultural products. The proceeds from the sale of any livestock or agricultural product by any institution under the control of the department of social services shall be deposited with the treasurer of state and credited to the account of the institution making the sale to be used for farm operating expenses and repairs. [C73, 75,§218.74]

218.75 to 218.77 Repealed by 62GA, ch 209, §95.

218.78 Institutional receipts deposited.

1. All institutional receipts of the department of social services shall be deposited in the general fund except rentals charged to employees or others for room, apartment, or house and meals, which shall be available to the institutions, and except for receipts from farm products which shall be used for necessary farm expenses and repair.

2. If approved by the commissioner of social services, the department may use appropriated funds for the granting of educational leave. [66GA, ch 9,§3]

218.79 to 218.82 Repealed by 62GA, ch 209, §95.

218.83 Co-operation. The commissioner of the department of social services and the directors of the divisions therein are directed to co-operate with any department or agency of the state government in any manner, including the exchange of employees, calculated to improve administration of the affairs of the institutions under the control of the department of social services. [C50, 54, 58, 62, 66, 71, 73, 75,§218.83]

Constitutionality, 52GA, ch 116,§10
Omnibus repeal, 52GA, ch 116,§11

218.84 Abstracting claims and keeping accounts. The commissioner of the department of social services shall have sole charge of abstracting and certifying claims for payment and the keeping of a central system of accounts in institutions under his control. [C50, 54, 58, 62, 66, 71, 73, 75,§218.84]

218.85 Uniform system of accounts. The commissioner of the department of social services through the directors of the divisions in control of state institutions shall install in all such state institutions under his control and supervision the most modern, complete, and uniform system of accounts, records, and reports possible, which system shall be prescribed by the state comptroller as authorized in section 8.6, subsection 4, and, among other matters, shall clearly show the detailed facts relative to the handling and uses of all purchases. [S13,§2727-a13; C24, 27, 31, 35, 39,§3286; C46,§217.12; C50, 54, 58, 62, 66, 71, 73, 75,§218.85]

Requirement of auditor of state, §11.5

218.86 Abstract of claims. When vouchers for expenditures other than salaries have been duly audited as provided for in section 8.6 said audited vouchers shall be submitted to the state comptroller who shall therefrom prepare in triplicate an abstract of claims submitted showing the name of the claimant, the institutions and fund thereof on account of which the payment is made. Said claims and abstracts of claims shall then be returned to such commissioner where the correctness of said abstracts shall then be certified by the commissioner. The original abstract shall then be delivered to the state comptroller, the duplicate to be retained in the office of such commissioner and the triplicate forwarded to the proper institution to be retained there as a record of claims paid. [C50, 54, 58, 62, 66, 71, 73, 75,§218.86]

Referred to in §218.100

218.87 Warrants issued by comptroller. Upon such certificate the state comptroller shall, if the institution named has sufficient funds, issue his warrants upon the state treasurer, for the amounts and to the claimants indicated thereon. The comptroller shall deliver the warrants thus issued to the commissioner, who will cause same to be transmitted to the payees thereof. [C50, 54, 58, 62, 66, 71, 73, 75, §218.87]

Referred to in §218.100

218.88 Institutional payrolls. At the close of each pay period, the chief executive officer of each institution or business manager of each institution having the same, shall prepare and forward to the commissioner of the department of social services a semimonthly payroll which shall show the name of each officer and employee, the semimonthly pay, time paid for, the amount of pay, and any deductions. In no event shall a substitute be permitted to receive compensation in the name of the employee for whom he is acting. [C50, 54, 58, 62, 66, 71, 73, 75,§218.88]

Referred to in §218.100

218.89 Abstracts of payrolls. After said payroll has been audited as provided for in section 8.6, audited payroll vouchers shall be submitted to the state comptroller who shall therefrom prepare in triplicate an abstract, and shall draw one warrant for the sum total of said payroll in favor of the institution having submitted said payroll voucher. [C50, 54, 58, 62, 66, 71, 73, 75,§218.89]

Referred to in §218.100

218.90 Transfer of prisoners. The director of the division of the department of social services which has jurisdiction of the adult correctional institutions of this state may transfer any prisoner from an adult correctional institution to any other institution under the department's jurisdiction, or to any other appropriate institution or place, when necessary in order that the prisoner may receive needed mental or physical examination or treatment. The director shall retain jurisdiction over a prisoner who is transferred under this section. [C58, 62, 66, 71, 73, 75, §218.90; 66GA, ch 1134,§1]

218.91 Boys transferred from training school to reformatory. The director of the division of child and family services with the consent and approval of the director of the division of corrections of the department of social services may order the transfer of inmates of the training school for boys to the men's reformatory for custodial care whenever it is determined that such action will be conducive to the welfare of the other inmates of the school. Such transfer shall be effected by application in writing to the district court, or any judge thereof, of the county in which the said training school is situated. Upon the granting of the order of transfer, the transfer shall take place. The county attorney of the said county shall appear in support of such application. The cost of the transfer shall be paid from the funds of the training school for boys. Subsequent to a transfer made under this section, the person transferred shall be subject to all the provisions of law and regulations of the institution to which he is transferred, and for the purposes of chapter 745 such person shall be regarded as having been committed to the institution. [C62, 66, 71, 73, 75,§218.91

218.92 Dangerous mental patients. Whenever a patient in any state hospital-school for the mentally retarded, any mental health institute, or any institution under the administration of the director of the division of mental health of the department of social services, has become so mentally disturbed as to constitute a danger to self, to other patients in the institution or to the public, and the institution involved cannot provide adequate security, the director of mental health with the consent of the director of corrections of the department of social services may order the patient to be transferred to the Iowa security medical facility, provided that the executive head of the institution from which the patient is to be transferred, with the support of a majority of his medical staff recommends the transfer in the interest of the patient, other patients or the public. If the patient transferred was hospitalized pursuant to sections 229.6 to 229.15, the transfer shall be promptly reported to the court which hospitalized the patient, as required by section 229.15, subsection 3. The Iowa security medical facility shall have the same rights, duties and responsibilities with respect to the patient as the institution from which the patient was transferred had while the patient was hospitalized there. The cost of the transfer shall be paid from the funds of the institution from which the transfer is made. [C62, 66, 71, 73, 75,§218.92; 66GA, ch 139,§36]

Referred to in §222.7
See also §226.30

218.93 Consultants for commissioner or directors. The commissioner of the department of social services or the directors of divisions in control of state institutions are authorized to secure the services of consultants to furnish advice on administrative, professional or technical problems to the commissioner or such directors, their employees or employees of institutions under their jurisdiction or to provide in-service training and instruction for such employees. The commissioner and directors are authorized to pay the consultants at a rate to be determined by them from funds appropriated to their division or to any institution under their jurisdiction as such commissioner or director may determine. [C62, 66, 71, 73, 75, §218.93]

218.94 Commissioner may buy and sell real estate—options. The commissioner of the department of social services shall have full power, subject to the approval of the executive council to secure options to purchase real estate and to acquire and sell real estate for the proper uses of said institutions. Real estate shall be acquired and sold upon such terms and conditions as the commissioner may recommend subject to the approval of the executive council. Upon sale of such real estate, the proceeds thereof shall be deposited with the treasurer of state and credited to the general fund of the state. There is hereby appropriated from the general fund of the state a sum equal to the proceeds so deposited and credited to the general fund of the state to the department of social services, which with the prior approval of the executive council may be used to purchase other real estate or for capital improvements upon property under such commissioner's control.

The costs incident to securing of options, acquisition and sale of real estate including, but not limited to, appraisals, invitations for offers, abstracts, and other necessary costs, may be paid from moneys appropriated for support and maintenance to the institution at which such real estate is located. Such fund shall be reimbursed from the proceeds of the sale. [C62, 66, 71, 73, 75,§218.94]

218.95 Synonymous terms. For purposes of construing the provisions of this title relating to the mentally ill and reconciling same with other former and present provisions of statute, the following terms shall be considered synonymous:

1. "Mentally ill" and "insane", except that the hospitalization or detention of any person for treatment of mental illness shall not constitute a finding or create a presumption that the individual is legally insane in the absence of a finding of incompetence made pursuant to section 229.27;
2. "Mental defectives" and "mentally retarded";
3. "Feeble-minded" and "mentally retarded";
4. "Defectiveness" and "retardation";
5. "Parole" and "convalescent leave";
6. "Inmate" and "patient";
7. "Escape" and "depart without proper authorization";
8. "Warrant" and "order of admission";
9. "Escapee" and "patient";
10. "Sane" and "in good mental health";
11. "Commissioners of insanity" and "commissioners of hospitalization";
12. "Idiot" and "mental retardate";
13. "Recapture" and "take into protective custody";
14. "Asylum" and "hospital";
15. "Commitment" and "admission".

It is hereby declared to be the policy of the general assembly that words which have come to have a degrading meaning shall not be employed in institutional records having reference to the mentally afflicted and that in all such records the less discriminatory of the foregoing synonyms shall be employed. [C62, 66, 71, 73, 75,§218.95; 66GA, ch 139,§37]

218.96 Gifts, grants and devises. The commissioner of the department of social services is authorized to accept gifts, grants, devises or bequests of real or personal property from the federal government or any source. The commissioner may exercise such powers with reference to the property so accepted as may be deemed essential to its preservation and the purposes for which given, devised or bequeathed. [C62, 66, 71, 73, 75,§218.96]

218.97 Diagnostic clinic—information furnished. The commissioner of the department

of social services and the directors of divisions directly involved are authorized to provide facilities and personnel for a diagnostic clinic. The work of the clinic shall include a scientific study of each prisoner, his career and life history, the causes of his criminal acts and recommendations for his custody, care, training, employment and counseling with a view to his rehabilitation and to the protection of society. To facilitate the work of the clinic and to aid in the rehabilitation of such prisoners, the trial judge and the prosecuting attorney shall, when requested by the commissioner or the directors of divisions directly involved, furnish the commissioner or such director with such information as is provided the state board of parole under section 247.15. [C62, 66, 71, 73, 75,§218.97]

218.98 Canteen maintained. The directors of divisions in the department of social services in control of state institutions may maintain a canteen at any institution under their jurisdiction and control for the sale to persons confined therein of toilet articles, candy, tobacco products, notions, and other sundries, and may provide the necessary facilities, equipment, personnel, and merchandise therefor. Such directors shall specify what commodities will be sold therein. The sale prices of the articles offered for sale shall be fixed by such directors at such amounts as will, as far as possible, render each such canteen self-supporting. The department may establish and maintain a permanent operating fund for each canteen. The fund shall consist of the receipts from the sale of commodities at the canteen. [C62, 66, 71, 73, 75,§218.98]

218.99 County auditors to be notified of patients' personal accounts. The director of a division of the department of social services in control of a state institution shall direct the business manager of each institution under his jurisdiction mentioned in section 444.12 to quarterly inform the auditor of the patient's or inmate's county of legal settlement of any patient or inmate who has an amount in excess of two hundred dollars to his account in the patients' personal deposit fund and the amount thereof. Such directors shall direct the business manager to further notify the auditor of such county at least fifteen days before the release of such funds in excess of two hundred dollars or upon the death of such patient or inmate. If any such patient or inmate shall have no county of legal settlement, notice as required by this section shall be made to the commissioner of the department of social services and the director of a division of such department in control of the particular institution involved. [C66, 71, 73, 75,§218.99]

218.100 Central warehouse and supply depot. The department of social services shall establish a fund for maintaining and operating a central warehouse as a supply depot and distribution facility for surplus government products, carload canned goods, paper products, other staples and such other items as determined by the department. The fund shall be permanent and shall be composed of the receipts from the sales of merchandise, recovery of handling, operating and delivery charges of such merchandise and from the funds contributed by the institutions now in a contingent fund being used for this purpose. All claims for purchases of merchandise, operating and salary expenses shall be subject to the provisions of sections 218.86 to 218.89. [C71, 73, 75, §218.100]

218.101 Institutional receipts deposited in general fund. Unless otherwise provided, all institutional receipts of the department of social services shall be deposited in the general fund except rentals charged to employees or others for room, apartment, or house and meals, which shall be available to the institutions, and except for receipts from farm products which shall be used for necessary farm expenses and repair. [66GA, ch 1132,§16]

CHAPTER 218A

INTERSTATE MENTAL HEALTH COMPACT

218A.1 Mental health compact enacted.
218A.2 Administrator.
218A.3 Supplementary agreements.
218A.4 Payments.
218A.5 Consultation.
218A.6 Distribution of compact.

218A.1 Mental health compact enacted. The interstate compact on mental health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made

available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

a. "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

b. "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

c. "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

d. "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

e. "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

f. "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

g. "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

h. "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

a. Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

b. The provisions of paragraph *"a"* of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

c. No state shall be obliged to receive any patient pursuant to the provisions of paragraph *"b"* of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

d. In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

e. Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

a. Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

b. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest

of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

c. In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Referred to in article IX(*a*)

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII

a. No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

b. The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

Referred to in article XIII(*b*)

c. No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

d. Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

e. Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

Referred to in §218A.3

ARTICLE VIII

a. Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

b. The term "guardian" as used in paragraph "*a*" of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

a. No provision of this compact except article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

b. To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

a. Each party state shall appoint a "compact administrator" who, on behalf of his state,

shall act as general co-ordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

b. The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or co-operative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Referred to in article XIII(*b*), §218A.3

ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

a. A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

b. Withdrawal from any agreement permitted by article VII "*b*" as to costs or from any supplementary agreement made pursuant to article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [C66, 71, 73, 75, §218A.1]

218A.2 Administrator. Pursuant to said compact, the director of the division of mental health of the department of social services shall be the compact administrator and who, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered and directed to co-operate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact of any supplementary agreement or agreements entered into by this state thereunder. [C66, 71, 73, 75,§218A.2]

218A.3 Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provisions of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. [C66, 71, 73, 75,§218A.3]

218A.4 Payments. The compact administrator, subject to the approval of the commissioner of the department of social services, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder. [C66, 71, 73, 75,§218A.4]

218A.5 Consultation. The compact administrator is hereby directed to consult with the immediate family of our proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to take no final action without approval of the district court of the county of admission or commitment. [C66, 71, 73, 75,§218A.5]

218A.6 Distribution of compact. Duly authorized copies of this chapter shall, upon its approval be transmitted by the secretary of state to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments. [C66, 71, 73, 75, §218A.6]

CHAPTER 218B

INTERSTATE CORRECTIONS COMPACT

218B.1 Citation.
218B.2 Corrections compact.
218B.3 Duty of commissioner.

218B.1 Citation. This chapter may be cited as the "Interstate Corrections Compact." [C75,§218B.1]

218B.2 Corrections compact. The interstate corrections compact is hereby enacted into law and entered into by this state with any other states legally joining therein in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

ARTICLE I—PURPOSE AND POLICY

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of co-operation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of co-operation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II—DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

1. *"State"* means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the commonwealth of Puerto Rico.

2. *"Sending state"* means a state party to this compact in which conviction or court commitment was had.

3. *"Receiving state"* means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

4. *"Inmate"* means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

5. *"Institution"* means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates may lawfully be confined.

ARTICLE III—CONTRACTS

Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV—PROCEDURES AND RIGHTS

Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other

party state, the receiving state to act in that regard solely as agent for the sending state.

The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of article III.

Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V—ACTS NOT REVIEWABLE IN RECEIVING STATE—EXTRADITION

Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI—FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII—ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

ARTICLE VIII—WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX—OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of co-operative institutional arrangements.

ARTICLE X—CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [C75,§218B.2]

218B.3 Duty of commissioner. The commissioner of social services is authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular and he may in his discretion delegate this authority to the director of the division of corrections. [C75,§218B.3]

CHAPTER 219

VETERANS HOME

219.1 For whom maintained.
219.2 Right to admission.
219.3 Eligibility — rules — general management.
219.4 Married couples.
219.5 Surviving spouses of veterans.
219.6 Certificate of eligibility.
219.7 Commandant.
219.8 Qualifications of commandant.
219.9 Salary.
219.10 Repealed by 59GA, ch 131,§1.
219.11 Employees' and officers' compensation.
219.12 Repealed by 59GA, ch 131,§3.
219.13 Mentally ill and intemperate persons.
219.14 Contributing to own support.
219.15 Payment to dependents.
219.16 Conditional admittance.
219.17 Remittance to treasurer.
219.18 Rules enforced—power to dismiss.
219.19 Dual conviction—probation.
219.20 Assignment of deposit.
219.21 Report by director.
219.22 Repealed by 63GA, ch 156,§1.
219.23 "Veteran" includes air force.
219.24 "Director" defined.

219.1 For whom maintained. The Iowa veterans home, located in Marshalltown, shall be maintained for honorably discharged veterans and for the dependent spouses and surviving spouses of such veterans. Eligibility requirements for admission to the Iowa

soldiers home shall coincide with the eligibility requirements for hospitalization in a United States veterans administration facility pursuant to title thirty-eight (38), United States Code, sections 210 and 610, and regulations promulgated under such provisions as amended to January 1, 1975. [C97,§§2601, 2602, 2606; S13,§§2601, 2602, 2606; SS15,§2606; C24, 27, 31, 35,§§3366, 3367; C39,**§3384.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.1; 66GA, ch 137,§1]

Referred to in §219.2
Utility easements, 64GA, ch 1135,§2

219.2 Right to admission. All persons named in section 219.1 who do not have sufficient means for their own support, or who are disabled by disease, wounds, old age or otherwise, or who are unable to earn a livelihood, and who have been residents and citizens of the state of Iowa for the three years immediately preceding the date of the application and who are residents of the state of Iowa at the time of the application, may be admitted to the home as members thereof under such rules and regulations as may be adopted by the director. [C97,§2602; S13,§§2602, 2606; SS15,§2606; C24, 27, 31, 35,§3366; C39, **§3384.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.2]

219.3 Eligibility — rules — general management. The director shall have power to determine the eligibility of applicants for admission to the home in accordance with the provisions of this chapter, and shall adopt all the necessary rules and regulations for the preservation of order and enforcement of discipline, the promotion of health and well-being of all the members and for the management and control of the home and the grounds thereof. [C97,§2602; C24, 27, 31, 35,§3367; C39, **§3384.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.3]

219.4 Married couples. When a married person is or becomes a member of the home, the spouse, if married to the person for one year and is otherwise eligible under this chapter, may be admitted as a member of the home subject to all rules of said home. Husband and wife may be permitted to occupy, together, cottages or other quarters on the grounds of the home. [C97,§2606; S13,§2606; SS15,§2606; C24, 27, 31, 35,§§3366, 3368; C39, **§3384.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.4]

219.5 Surviving spouses of veterans. If any deceased veteran, who would be entitled to admission to the home if the deceased veteran were living, has left a surviving spouse, such spouse shall be entitled to admission to the home with the same rights, privileges and benefits as though the veteran were living and a member of the home, provided, however, that such spouse has been married to said veteran for at least one year immediately prior to the veteran's death, and has reached the age of fifty years or is found by the commandant to be totally and permanently disabled and the spouse does not have sufficient means or does not possess sufficient funds for support and maintenance, and provided further that the surviving spouse has been for the three years preceding the date of application, a resident of the state of Iowa, and has not married at any time since the death of the veteran spouse except to a member of the home. [C97,§2606; S13,§2606; C24, 27, 31, 35, §3366; C39,**§3384.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.5; 66GA, ch 137,§2]

219.6 Certificate of eligibility. Before admission, each applicant shall file with the commandant an affidavit signed by two members of the commission of veteran affairs of the county in which such person resides, stating that such person to the best of their knowledge and belief is a resident of such county as required under this chapter and that such person is unable to earn a livelihood and his income is less than twelve hundred dollars per annum exclusive of pension, compensation, war risk insurance payments, or pensions or annuities under the social security Act and the railroad retirement Acts. Such affidavit shall be conclusive evidence of the residence of such persons and prima facie only in all other matters affecting the eligibility of the applicant and the liability of the county with respect to the expense of any such person for which the county may be liable. All records of admission shall show the residence of the applicant. [C97,§2602; S13,§2602; C24, 27, 31, 35,§3369; C39, **§3384.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §219.6]

219.7 Commandant. The director shall appoint a commandant who shall serve as the chief executive of the home and who shall have the immediate custody and control, subject to the orders of the director, of all property used in connection with the home. [C97, §2604; S13,§2604; SS15,§2604; C39,**§3384.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.7]

See also §218.9

219.8 Qualifications of commandant. The commandant shall be a resident of the state of Iowa who is an honorably discharged veteran and who has served in the military or naval forces of the United States in any war, including the Korean conflict at any time between June 27, 1950, and January 31, 1955, both dates inclusive, and including the Vietnam conflict at any time between August 5, 1964, and August 15, 1973, both dates inclusive. For purposes of this chapter, World War II shall be any time between December 7, 1941 and December 31, 1946, both dates inclusive. [C97,§2604; S13,§2604; SS15,§2604; C24, 27, 31, 35,§3374; C39,**§3384.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.8; 66GA, ch 137,§3]

219.9 Salary. The commandant shall receive such annual salary as the director may determine. In addition to said salary, the director shall furnish said commandant with a dwelling house or with appropriate quarters in lieu thereof and such additional allowances as are provided in section 218.14 for executive

heads of state institutions. [C97,§2604; S13, §2604; SS15,§2604; C24, 27, 31, 35,§3373; C39, §3384.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.9]

219.10 Repealed by 59GA, ch 131,§1. See §219.11.

219.11 Employees' and officers' compensation. The commandant, subject to the director's approval, shall appoint all subordinate officers. The employees shall be appointed by the commandant who shall keep in the record of each officer and employee, the date of employment, the compensation, and the date of discharge and the reasons therefor. The commandant shall have the power to discharge any officer or employee for insubordination or neglect of duty or other good cause and his acts and decisions shall be reviewable only by the director whose decision shall be final. [C97,§2604; S13,§2604; SS15,§2604; C24, 27, 31, 35,§3375; C39,§§3384.10, 3384.11; C46, 50, 54, 58,§§219.10, 219.11; C62, 66, 71, 73, 75,§219.11]

219.12 Repealed by 59GA, ch 131,§3.

219.13 Mentally ill and intemperate persons. No person shall be received or retained in the home who is mentally ill, is an inebriate, or is addicted to the use of drugs. When a member of the home is discharged therefrom, or voluntarily leaves the home, or is adjudged mentally ill after admittance, his or her residence shall be that of the county in which he or she was residing at the time of his or her admittance to the home. [C97,§2605; C24, 27, 31, 35,§3370; C39,§3384.13; C46, 50, 54, 58, 62, 66, 71, 73, 75, §219.13]

219.14 Contributing to own support. Every member of the home who receives a pension, compensation or gratuity from the United States government, or income from any source of more than twenty dollars per month, shall contribute to his or her own maintenance or support while a member of the home. The amount of the contribution and the method of collection shall be determined by the director, but the amount shall in no case exceed the actual cost of keeping and maintaining such a person in the home. The director may require any member of the home to render such assistance in the care of the home and its ground as his or her psychosocial and physical condition will permit, as a phase of that member's rehabilitation program. The director shall compensate each member who furnishes such assistance at rates established by the director in accordance with the provisions of section 17 of the United States fair labor standards Act (52 Stat 1068, 29 USC 214), as amended to January 1, 1976. [S13,§§2602-a, 2606-a; C24, 27, 31, 35,§3377; C39,§3384.14; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.14; 66GA, ch 1132,§8]

219.15 Payment to dependents. Each member of the home who receives a pension or compensation and who has a dependent spouse or child, as defined in section 234.1, shall deposit with the commandant forthwith on receipt of the member's pension or compensation check one-half of the amount thereof, which shall be sent at once to the spouse if the spouse is dependent upon employment or others for support, or, if there be no spouse, to the guardian of the child, as defined in section 234.1, if dependent upon others for support. The commandant, if satisfied that the spouse has deserted the member of the home, or is of bad character, or is not dependent upon others for support, may pay the money deposited as herein provided to the guardian of the dependent child, as defined in section 234.1. [S13,§2606-c; C24, 27, 31, 35,§§3379, 3384; C39, §3384.15; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.15]

Referred to in §219.20

219.16 Conditional admittance. The director may, if there is room for all dependent applicants and members, admit and allow to remain in the home, persons who have sufficient means for their own support, but are otherwise eligible to become members of the home, on payment of the cost of their support, which cost and method of collection shall be fixed from time to time by the director. [S13,§2606-a; C24, 27, 31, 35,§3371; C39,§3384.16; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.16]

219.17 Remittance to treasurer. All sums paid to and received by the business manager or the commandant, under this chapter, for the support of members in the home, shall be paid monthly by him to the treasurer of state and credited to the general fund of the state. [S13,§2602-a; C24, 27, 31, 35,§3372; C39,§3384.17; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.17]

219.18 Rules enforced—power to dismiss. The commandant shall administer and enforce all rules and regulations adopted by the director, including rules of discipline, and shall have power to dismiss any member from the home for infraction of such rules and regulations subject to the approval of the director. [C39,§3384.18; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.18]

219.19 Dual conviction — probation. Any person who, while a member of the home, is twice convicted of an offense against the statutes of the state, or twice found guilty by the commandant or a court martial of intoxication or other infraction of the rules of the home, shall be required to deposit all of his pension money with the commandant immediately upon receipt of his pension check or warrant. In lieu of trial by the commandant the member may demand a court martial. Such pension money shall be deposited by the commandant in a separate account for and in behalf of such pensioner and the commandant shall, under such rules as the director may provide, pay the same out with the consent of the pensioner in such manner and for such purposes as the director may approve. If, after a period of six months, the pensioner shall conduct himself in an orderly and sober manner,

said deposit shall be returned to him. If the pensioner be discharged from the home the balance of such deposit shall be paid to said pensioner within thirty days after his discharge. [S13,§2606-b; C24, 27, 31, 35,§§3378, 3380, 3381, 3382; C39,§3384.19; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.19]

Referred to in §219.20

219.20 Assignment of deposit. Pension money deposited with the commandant shall not be assignable for any purpose except as provided in sections 219.15 and 219.19. [S13, §2606-b; C24, 27, 31, 35,§3383; C39,§3384.20; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.20]

Assignments in general, ch 539
Exemption of pension money, §627.8

219.21 Report by director. The director shall, biennially, on or before October 1, prior to the meeting of the general assembly, make a full and detailed report to the governor showing the condition of the home, the number of members in the home, the order and discipline enforced, and the needs of the home financially and otherwise, together with an itemized statement of all receipts and disbursements and any and all other matters of importance in the management and control of the home. [C39, §3384.21; C46, 50, 54, 58, 62, 66, 71, 73, 75,§219.21]

Time for filing report, §17.3

219.22 Repealed by 63GA, ch 156,§1.

Constitutionality, 48GA, ch 94,§24
Vested rights not prejudiced, 63GA, ch 156,§2

219.23 "Veteran" includes air force. Wherever the word "veteran" appears in this chapter, it shall include, without limitation, the members of the United States air force. [C71, 73, 75,§219.23; 66GA, ch 137,§4]

219.24 "Director" defined. The term "director" or "state director" means the director of the division of child and family services of the department of social services. [C71, 73, 75, §219.24]

CHAPTER 220

IOWA HOUSING FINANCE AUTHORITY

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

1. *"Authority"* means the Iowa housing finance authority established in section 220.2.

2. *"Low or moderate income families"* means families who cannot afford to pay enough to cause private enterprise in their locality to build an adequate supply of decent, safe, and sanitary dwellings for their use, and includes, but is not limited to, elderly families, families in which one or more persons are handicapped or disabled, lower income families and very low income families.

3. *"Lower income families"* means families whose incomes do not exceed eighty percent of the median income for the area with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area, and includes, but is not limited to, very low income families.

4. *"Very low income families"* means families whose incomes do not exceed fifty percent of the median income for the area, with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area.

5. *"Elderly families"* means families of low or moderate income where the head of the household or his or her spouse is at least sixty-two years of age or older, or the surviving member of any such tenant family.

6. *a. "Families"* includes but is not limited to families consisting of a single person in the case of a person who is at least sixty-two years of age, is disabled, is handicapped, is displaced, or is the remaining member of a tenant family.

b. "Families" includes but is not limited to two or more persons living together who are at least sixty-two years of age, are disabled, or are handicapped, or one or more such individuals living with another person who is essential to such individual's care or well-being.

7. *"Disabled"* means unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment.

8. *"Handicapped"* means having a physical or mental impairment which is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of a nature that the ability to live independently could be improved by more suitable housing conditions.

9. *"Displaced"* means displaced by governmental action, or by having one's dwelling extensively damaged or destroyed as a result of a disaster.

10. *"Income"* means income from all sources of each member of the household, with appropriate exceptions and exemptions reasonably related to an equitable determination of the family's available income, as established by rule of the authority.

11. *a. "Housing"* means single family and multifamily dwellings, and facilities incidental or appurtenant to the dwellings, and includes noninstitutional residential care facilities.

b. "Adequate housing" means housing which meets minimum structural, heating, lighting, ventilation, sanitary, occupancy and maintenance standards compatible with applicable building and housing codes, as determined under rules of the authority.

12. *"Noninstitutional residential care facility"* means any facility providing for a period exceeding twenty-four consecutive hours accommodation, board, personal assistance and other essential daily living activities to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of age, illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves but who do not require the services of a registered or licensed practical nurse except on an emergency basis.

13. *"Mortgage"* means a mortgage, mortgage deed, deed of trust, or other instrument creating a first lien, subject only to title exceptions acceptable to the authority, on a fee interest in real property which includes completed housing located within this state, or on a leasehold on such a fee interest which has a remaining term at the time of computation that exceeds by not less than ten years the maturity date of the mortgage loan.

14. *"Mortgage lender"* means any bank, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any governmental agency, or any other financial institution authorized to make mortgage loans in this state.

15. *"Mortgage loan"* means a financial obligation secured by a mortgage.

16. *"Bond"* means a bond issued by the authority pursuant to sections 220.26 to 220.30.

17. *"Note"* means a bond anticipation note or a housing development fund note issued by the authority pursuant to this chapter.

18. *"State agency"* means any board, commission, department, public officer, or other agency of the state of Iowa.

19. *"Housing program"* means any work or undertaking of new construction or rehabilitation of one or more housing units, or the acquisition of existing residential structures, for the provision of housing, which is financed pursuant to the provisions of this chapter for the primary purpose of providing housing for low or moderate income families. A housing program may include housing for other economic groups as part of an overall plan to develop new or rehabilitated communities or neighborhoods, where housing low or moderate income families is a primary goal. A housing program may include any buildings, land, equipment, facilities, or other real or personal property which is necessary or convenient in connection with the provision of housing, including, but not limited to, streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities, such as administrative, community, health, recreational, educational, and commercial facilities, as the authority determines to be necessary or convenient in relation to the purposes of this chapter.

20. *"Housing sponsor"* means any individual, joint venture, partnership, limited partnership, trust, corporation, housing co-operative, local public entity, governmental unit, or other legal entity, or any combination thereof, approved by the authority or pursuant to standards adopted by the authority as qualified to either own, construct, acquire, rehabilitate, operate, manage or maintain a housing program, whether for profit, nonprofit or limited profit, subject to the regulatory powers of the authority and other terms and conditions set forth in this chapter. "Housing sponsor" does not include a low or moderate income family which is eligible to own or occupy a housing unit.

21. *"Dilapidated"* means decayed, deteriorated or fallen into partial disuse through neglect or misuse.

The authority shall establish by rule further definitions applicable to this chapter, and clarification of the definitions in this section, as necessary to assure eligibility for funds available under federal housing laws. [66 GA, ch 138,§1]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21

220.2 Establishment of authority.

1. The Iowa housing finance authority is established, and constituted a public instrumentality and agency of the state exercising public and essential governmental functions, established to undertake programs which assist in attainment of adequate housing for low or moderate income families, elderly families, families which include one or more persons who are handicapped or disabled, and the Iowa homesteading program. The powers of the authority shall be vested in and exercised by a board of nine members appointed by the governor with the approval of two-thirds of the members of the senate. No more than five members shall belong to the same political party. Any individual or organization may submit the names of nominees for membership to the governor in writing within thirty days of the effective date of this section, but the governor is not bound to select the members from the nominees submitted. As far as possible the governor shall include within the membership persons determined by him to represent the following interests:

a. Community and housing development industries.
b. Housing finance industries.
c. Real estate sales industry.
d. Elderly families.
e. Minorities.
f. Lower income families.
g. Very low income families.
h. Handicapped and disabled families.
i. Average taxpayer.

2. Members of the authority shall be appointed by the governor for a term of six years, except that, of the first appointments, three members shall be appointed for a term of two years, and three members shall be appointed for a term of four years. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the authority may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing.

3. Six members of the authority constitute a quorum and the affirmative vote of at least five members is necessary for any substantive action taken by the authority. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. Members of the authority are entitled to receive forty dollars per diem for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. Members of the authority and the executive director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairman or whenever two members so request.

7. Members shall elect a chairman and vice chairman annually, and other officers as they determine, but the executive director shall serve as secretary to the authority.

8. The net earnings of the authority, beyond that necessary for retirement of its notes, bonds or other obligations, or to implement the public purposes and programs herein authorized, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority, including any such net earnings of the authority, shall vest in the state. The state reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs or activities of the authority, including the power to terminate the authority, except that no law shall ever be passed impairing the obligation of any contract or contracts entered into by the authority to the extent that any such law would contravene article I, section 21 of the Constitution of the state of Iowa or article I, section 10 of the Constitution of the United States. [66GA, ch 138,§2, ch 1135,§1]

Referred to in §§220.1, 403A.3(10), 524.905, 533.16, 534.21

220.3 Legislative findings. The general assembly finds and declares as follows:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa, for the improvement of their health and welfare, and for the promotion of the economy, which are public purposes.

2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by this chapter.

3. There exists a serious shortage of safe and sanitary residential housing available to low or moderate income families.

4. This shortage is conducive to disease, crime, environmental decline and poverty and impairs the economic value of large areas, which are characterized by depreciated values, impaired investments, and reduced capacity to pay taxes and are a menace to the health, safety, morals and welfare of the citizens of the state.

5. These conditions result in a loss in population and further deterioration, accompanied by added costs to communities for creation of new public facilities and services elsewhere.

6. One major cause of this condition has been recurrent shortages of funds in private channels.

7. These shortages have contributed to reductions in construction of new residential units, and have made the sale and purchase of existing residential units a virtual impossibility in many parts of the state.

8. The ordinary operations of private enterprise have not in the past corrected these conditions.

9. A stable supply of adequate funds for residential financing is required to encourage new housing and the rehabilitation of existing housing in an orderly and sustained manner and to reduce the problems described in this section.

10. It is necessary to create a state housing finance authority to encourage the investment of private capital and stimulate the construction and rehabilitation of adequate housing through the use of public financing.

11. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned or granted. [66GA, ch 138, §3]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21

220.4 Guiding principles. In the performance of its duties and implementation of its powers, and in the selection of specific programs and projects to receive its assistance, the authority shall be guided by the following principles:

1. The authority shall not become an owner of real property, except on a temporary basis where necessary in order to implement its programs, protect its investments by means of foreclosure or other means, or to facilitate transfer of real property for the use of low or moderate income families.

2. The authority shall function in co-operation with local governmental units and local or regional housing agencies, and in fulfillment of local or regional housing plans, and to that end shall provide technical assistance to local governmental units and local or regional agencies in need of that assistance.

3. A local contributing effort shall be required of each project assisted by the authority. As used in this subsection, "project" includes one or more programs authorized under the provisions of this chapter. The local contribution may be provided by local governmental units or by local or regional agencies, public or private. Unless otherwise specified in this chapter, the percentage and type of local contribution shall be determined by the authority, and may include, but should not be limited to, cash match, land contribution, tax abatement, or ancillary facilities. The authority shall encourage ingenuity and creativity in local effort.

4. The authority shall encourage units of local government and local and regional housing agencies to use federal revenue-sharing funds for programs which increase or improve the supply of adequate housing for low or moderate income families.

5. The authority shall encourage co-operative housing efforts at the local level, both with respect to the co-operation of public bodies with private enterprise and civic groups, and with respect to the formation of regional or multi-city units engaged in housing.

6. Wherever practicable, the authority shall give preference to the following types of programs:

a. Those which treat housing problems in the context of the total needs of individuals and communities, recognizing that individuals may have other problems and needs closely related to their need for adequate housing, and that the development of isolated housing units without regard for neighborhood and community development tends to create undesirable consequences.

b. Those which promote home ownership by families of low or moderate income, recognizing the need for educational counseling programs in family financial management and home maintenance in order to achieve this goal.

c. Those which involve the rehabilitation and conservation of existing housing units, and the preservation of existing neighborhoods and communities.

d. Those designed to serve elderly families, families which include one or more persons who are handicapped or disabled, lower income families or very low income families.

7. The authority shall encourage the protection, restoration and rehabilitation of historic properties, and the preservation of other properties of special value for architectural or esthetic reasons. As used in this subsection, "historic properties" means landmarks, landmark sites, or districts which are significant in the history, architecture, archaeology or culture of this state, its communities, or the nation. [66GA, ch 138,§4]

Referred to in §§220.16, 403A.3(10), 524.905, 533.16, 534.21

220.5 General powers. The authority has all of the general powers needed to carry out its purposes and duties, and exercise its specific powers, including but not limited to the power to:

1. Issue its negotiable bonds and notes as provided in sections 220.26 to 220.30 in order to finance its programs.

2. Sue and be sued in its own name.

3. Have and alter a corporate seal.

4. Make and alter bylaws for its management consistent with the provisions of this chapter.

5. Make and execute agreements, contracts and other instruments, with any public or private entity. All political subdivisions, public housing agencies, other public agencies and state departments and agencies may enter into contracts and otherwise co-operate with the authority.

6. Acquire, hold, improve, mortgage, lease and dispose of real and personal property, including, but not limited to, the power to sell at public or private sale, with or without public bidding, any such property, mortgage loan, or other obligation held by it.

7. Procure insurance against any loss in connection with its operations and property interests.

8. Fix and collect fees and charges for its services.

9. Subject to any agreement with bondholders or noteholders, invest or deposit moneys of the authority in any manner determined by the authority, notwithstanding the provisions of chapters 452, 453 or 454.

10. Accept appropriations, gifts, grants, loans, or other aid from public or private entities. A record of all gifts or grants, stating the type, amount and donor, shall be clearly set out in the authority's annual report along with the record of other receipts.

11. Provide technical assistance and counseling related to the authority's purposes, to public and private entities.

12. In co-operation with other local, state or federal governmental agencies, conduct research studies, develop estimates of unmet housing needs, and gather and compile data useful to facilitate decision making.

13. Co-operate in development of, and initiate housing demonstration projects.

14. Contract with architects, engineers, attorneys, accountants, housing construction and finance experts, and other advisors. However, the authority may enter into contracts or agreements for such services with local, state or federal governmental agencies.

15. Make, alter and repeal rules consistent with the provisions of this chapter, and subject to chapter 17A. [66GA, ch 138,§5]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21

220.6 Staff.

1. The governor, with the approval of two-thirds of the members of the senate, shall appoint an executive director of the authority, who shall serve at the pleasure of the governor. The executive director shall be selected primarily for administrative ability and knowledge in the field, without regard to political affiliation. The executive director shall not, directly or indirectly, exert influence to induce any other officers or employees of the state to adopt a political view, or to favor a political candidate for office.

2. The executive director shall advise the authority on matters relating to housing and housing finance, carry out all directives from the authority, and hire and supervise the authority's staff pursuant to its directions and under the provisions of chapter 19A.

3. The executive director, as secretary of the authority, shall keep a record of the proceedings of the authority and shall be custodian of all books, documents and papers filed with the authority and of its minute book and seal. He shall have authority to cause to be made copies of all minutes and other records and documents of the authority and to give certificates under the seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely upon such certificates. [66GA, ch 138,§6]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21

220.7 Annual report.

1. The authority shall submit to the governor and to the general assembly, not later than January fifteenth each year, a complete report setting forth:

a. Its operations and accomplishments.

b. Its receipts and expenditures during the fiscal year, in accordance with the classifications it establishes for its operating and capital accounts.

c. Its assets and liabilities at the end of its fiscal year and the status of reserve, special and other funds.

d. A schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and issued during its fiscal year.

e. A statement of its proposed and projected activities.

f. Recommendations to the general assembly, as it deems necessary.

g. An analysis of current housing needs in the state.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress during the reporting period, in attaining the goals. Where possible, results shall be expressed in terms of housing units. [66GA, ch 138,§7]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21

220.8 Percentage requirement. The goal of the authority shall be to assure that fifty percent or more of the housing units provided directly or indirectly by the authority in each three-year period beginning July 1, 1975, but in no case less than thirty percent of such units, are units specially designed for and directed to elderly families, families which include one or more persons who are handicapped or disabled, or very low income families. Failure to meet this goal does not invalidate any bonds, notes or other obligations of the authority, but in case of noncompliance with this requirement, the authority shall make a special report to the governor and to the general assembly as to the reasons for noncompliance, and the authority shall not commit further funds for housing units which do not help meet this goal, until the goal is reached, other than to complete projects already started. [66GA, ch 138,§8]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21

220.9 Nondiscrimination and affirmative action.

1. Housing financed or otherwise assisted by the authority, directly or indirectly, shall be open to all persons regardless of race, creed, color, sex, national origin, age, physical or mental impairment, or religion except that preference may be given to elderly families, families which include one or more persons who are handicapped or disabled, lower income families or very low income families.

2. The authority shall promote marketing plans to make housing available to all persons without discrimination.

3. The authority shall require adoption and submission of an affirmative action program for employment by all contractors and subcontractors of housing financed or otherwise assisted by the authority.

4. The authority shall require all mortgage lenders who participate in programs financed or otherwise assisted by it to agree that they will not designate certain areas as unsuitable for the making of mortgage loans because of the prevailing income, racial, ethnic or other characteristics of the inhabitants of the area. This subsection is intended to prohibit all mortgage lenders who participate in authority programs from engaging in the practice commonly known as "redlining".

5. The authority may require mortgage lenders who participate in programs financed or otherwise assisted by the authority to take affirmative action to make mortgage loans in areas with a higher than average concentration of lower-income families or members of racial or ethnic minorities. [66GA, ch 138,§9]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21

220.10 Surplus moneys. All moneys declared by the authority to be surplus moneys which are not required to service bonds and notes issued by the authority, to pay administrative expenses of the authority, or to accumulate necessary operating or loss reserves, shall be used by the authority to provide grants, subsidies, and services to lower income families and very low income families through any of the programs authorized in this chapter. [66GA, ch 138,§10]

Referred to in §§220.18, 403A.3(10), 524.905, 533.16, 534.21

220.11 Combination programs. Any programs authorized in this chapter may be combined with any other programs authorized in this chapter in order to facilitate as far as practicable the provision of adequate housing to low and moderate income families. [66GA, ch 138,§11]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21

220.12 Mortgage loans.

1. The authority may make mortgage loans, including but not limited to mortgage loans insured, guaranteed, or otherwise secured by the federal government or by private mortgage insurers, to housing sponsors to provide long-term financing for the purchase, or rehabilitation of adequate housing for low or moderate income families, elderly families, families which include one or more persons who are handcapped or disabled, and noninstitutional residential care facilities.

2. A mortgage loan under this section may be made only when the authority determines that the housing sponsor is unable to obtain the necessary financing from other sources upon terms and conditions which the sponsor reasonably could be expected to fulfill.

3. The authority shall make and execute contracts with mortgage lenders for the servicing of mortgage loans made under this section. The authority may pay the reasonable value of services rendered pursuant to such contracts.

4. Mortgage loans shall contain terms and provisions including interest rates, and be in a form as established by rules of the authority. The authority shall require the housing sponsor to execute assurances and guarantees reasonably related to protecting the security of the mortgage loan, as the authority deems necessary.

5. In considering an application for a mortgage loan under this section, the authority shall determine that the housing will be adequate and provide for the special needs of families of low or moderate income, elderly families, or families which include one or more persons who are handicapped or disabled, or will meet state standards for noninstitutional residential care facilities, and shall also give consideration to:

a. The comparative need for housing or noninstitutional residential care facilities in the area.

b. The ability of the applicant to operate, manage and maintain the proposed housing.

6. Each mortgage loan shall be subject to an agreement between the authority and the housing sponsor which will subject the housing sponsor to limitations established by the authority as to rentals and other charges, builders' and developers' profits and fees, and dispositions of interests in the property mortgaged, including provisions to prohibit assumption of a mortgage without permission of the mortgagee.

7. As a condition of a mortgage loan, the authority may, upon reasonable notice, during construction or rehabilitation of the housing and during its operation:

a. Enter upon and inspect the physical condition of the premises, examine books and records of the housing sponsor, and impose fees to cover the cost of the inspections and examinations.

b. Require alterations or repairs as necessary to protect the security of its investment and the welfare of the occupants, and to insure that the housing is in conformity with applicable federal, state and local laws.

c. Require whatever action is necessary to comply with applicable federal, state and local laws, and file and prosecute a complaint or seek injunctive relief for a violation of applicable federal, state or local laws.

8. A mortgage loan may be prepaid to maturity after a period of years as determined by rule of the authority, if the authority determines that the prepayment will not result in a material escalation of rents or fees charged to the occupants. [66GA, ch 138,§12]

Referred to in §§220.36, 403A.3(10), 524.905, 533.16, 534.21

220.13 Lease-purchase agreements. By means of its other financing programs, the authority may encourage and assist in the provision of housing which will be transferred to low or moderate income families, elderly families, and families which include one or more persons who are handicapped or disabled, pursuant to lease-purchase agreements.

1. A lease-purchase agreement shall include, but not be limited to the following terms:

a. The original lease-purchase agreement shall be for a term of one year, with option by lessee to renew on the same terms. The lease may be terminated by the lessee, upon sixty days' written notice. The lease may be terminated by the lessor at any time for material breach of the agreement by the lessee, by service on the lessee of a notice to quit in conformance with state law.

The lease may otherwise be terminated by the lessor upon sixty days' written notice for only the following causes:

(1) In the event of sale of the property due to insolvency of the lessor, in which case the lessee will be given first option to purchase the property before the sale is made.

(2) For purposes of removing the buildings, or materially altering or improving them, to conform with local housing or building codes.

b. The rent shall not exceed twenty-five percent of the lessee's income, but the lessee shall have the option to pay additional amounts.

c. The lessee shall be responsible for routine maintenance of the property, and for its performance shall be credited with an amount equal to the budgeted amount for monthly routine maintenance in the monthly housing cost. This credit may be applied by the lessee to the purchase price in the event he exercises his option to purchase the property.

d. The premises or a portion of them shall be used by the lessee as a dwelling and no part may be assigned or subleased without the lessor's written approval.

e. The agreement shall be terminated if the property suffers susbstantial destruction or a substantial portion of the property is taken by condemnation.

f. Major repairs and remodeling or reconstruction shall be undertaken by the lessee only upon written approval by the lessor, and the costs of major repairs and remodeling or reconstruction may be paid by the lessor, or the lessee may deduct the cost including reasonable costs for the lessee's labor from the rent payments, and receive full credit.

g. The original lease-purchase agreement shall state a monthly housing cost for the unit, equal to the sum of the following:

(1) The monthly debt service on the property.

(2) One-twelfth of the annual real property taxes.

(3) One-twelfth of the annual premium for fire and extended coverage, and casualty insurance.

(4) The current monthly amount budgeted for routine maintenance and nonroutine maintenance reserves.

(5) Other monthly costs specified in the agreement.

2. At the time the original lease-purchase agreement is entered into, the lessee and lessor shall also enter into an option to purchase agreement, which shall include but not be limited to the following terms:

a. The purchase price of the property shall be the unamortized balance of debt on the property plus the lessor's original down payment.

b. The option to purchase shall state the market value of the property and the lessor's purchase cost of the property, and shall state the amount, term and interest rate of any mortgage loan on the property.

c. The lessee shall have the right to exercise his option to purchase the property when all of the following conditions have been met:

(1) The lessee has maintained a level of rent payments equal to the monthly housing cost of the property for a period of one year.

(2) The lessee has complied with the terms of the lease during the leasing period.

(3) The lessee is able to meet the established purchase price through a combination of earned credits toward down payment, down payment grant, assumption of the lessor's mortgage, refinancing with a new mortgage, or contract of sale from the lessor.

d. The payments required under the mortgage or contract of sale shall be sufficient to pay taxes, insurance, and the stated minimum interest, and to amortize the stated market value of the property within a period of not to exceed fifty years from the date of the original lease-purchase agreement.

e. All rent paid by the lessee, less the amount necessary to pay taxes, insurance, and interest, shall be applied to and considered as a part of the down payment against the stated market value of the property.

f. The authority may establish other criteria reasonably related to determining that a lessee is capable of handling the responsibilities of home ownership before a transfer of title is made or a contract of sale is entered into.

3. To the extent funds are available, the authority may provide down payment grants to very low income families and lower income families who have established home ownership capability by making regular payments under a lease from their own resources for a period of not less than one year and by meeting other criteria reasonably related to determining that a lessee is capable of handling the responsibilities of home ownership, as the authority establishes by rule. In addition, the authority may provide funds to private, nonprofit organizations for the purpose of making down-payment grants to very low income families and lower income families who are participating in lease-purchase programs administered by the organization which meet standards similar to the standards specified in this section, and which are acceptable to the authority.

4. The authority may combine the lease-purchase program with other programs provided or assisted by the authority, in order to encourage eventual home ownership by very

low-income families and lower income families who are able to establish home ownership capability by showing regularity of payment and property maintenance. [66GA, ch 138,§13]

Referred to in §§220.36, 403A.3(10), 524.905, 533.16, 534.21

220.14 Iowa homesteading program.

1. The Iowa homesteading program is established to be under the supervision of the authority. The purpose of the program is to alleviate problems of slums and blighted areas, to provide for rehabilitation of dilapidated and deteriorating housing, and to make existing housing available to families, all of which are declared to be public purposes. The authority may establish homesteading projects in any part of the state, subject to the approval of the local governing body and in cooperation with suitable local agencies, may provide financial and technical assistance to housing sponsors for the establishment of homesteading projects which meet the requirements of this chapter, and may co-ordinate and co-operate with similar local projects to provide housing.

2. When the authority implements its homesteading program, it shall:

a. Encourage private rehabilitation of abandoned or dilapidated housing through homesteading projects where normal private or governmental development or rehabilitation is economically unfeasible or has been neglected.

b. Locate and compile a catalog of all private, city, state and federally owned abandoned or dilapidated structures appropriate for inclusion in homesteading projects, utilizing the aid of other local, state and federal agencies.

c. Publicize the homesteading program and available properties.

d. Employ staff persons with knowledge and experience in residential housing finance, construction or rehabilitation, and in dealing with housing problems.

e. Establish a co-ordinated approach toward neighborhood improvement through the homesteading program and the upgrading of community services and facilities.

3. The authority may:

a. Recommend legislation to provide appropriate exemptions from real property tax laws for homesteading properties.

b. Recommend temporary suspension or temporary or permanent modification of building and housing code requirements to the extent necessary to permit safe and economical rehabilitation of housing.

4. The authority shall formulate and revise as necessary rules for approval of homesteading projects based upon the following requirements, and others as needed.

a. Homesteading projects shall provide for:

(1) Approval of homesteading applicants on a first in time is first in right basis, unless probability of success with a subsequent applicant is substantially higher. In cases of two or more applicants for a single property, priority may be given to a resident of the city or county where the property is located, or to the applicant with the lowest income who is otherwise qualified.

(2) Aid and assistance for applicants to apply for and receive financial and technical assistance and counseling from public or private sources.

(3) Announced quarterly inspections of homesteads during rehabilitation.

(4) Payment for the reasonable value of improvements on property returned for good faith failure to comply with the homesteading requirements, less a reasonable rental value.

(5) Repossession of property upon proper notice and hearing unless waived by the homestead applicant, for unreasonable failure to comply with homesteading requirements.

b. Applicants for a homesteading project shall:

(1) Have reached the age of majority.

(2) Be United States citizens or registered aliens.

(3) Agree to rehabilitate the property to meet applicable building or housing code standards within a two-year period after initial transfer of conditional title. However, the two-year period may be extended for reasonable cause.

(4) Agree to live in and occupy the housing for five continuous years.

c. The housing sponsor providing the homesteading property shall agree to:

(1) The conditional conveyance of unoccupied residential property to the applicant with or without any substantial consideration, which consideration may include the value of work performed by the applicant in rehabilitating the property during the period of the conditional conveyance.

(2) The revocation of the conveyance upon any material breach of the agreement.

(3) The conveyance from the agency of fee simple title to the property upon compliance with the agreement.

5. The authority may establish and maintain a "homesteading fund" to be administered as follows:

a. The fund shall be used exclusively for rehabilitation loans.

b. Rehabilitation loans shall be granted exclusively to those selected for homesteading.

c. No rehabilitation loans shall be made until a conditional conveyance has been issued.

d. The rehabilitation loans shall be for a maximum term of twenty years.

e. The interest rates for rehabilitation loans shall be established by rule of the authority and shall be as low as practicable considering current market conditions.

f. All funds received as payment on the rehabilitation loans shall be deposited in the homesteading fund.

g. The authority may require security for the rehabilitation loans. [66GA, ch 138,§14]

Referred to in §§220.36, 364.7, 403A.3(10), 446.39, 472.53, 524.905, 533.16, 534.21, 569.8

220.15 Housing assistance for very low income and lower income families.

1. The authority shall participate in the housing assistance payments program under section 8 of the United States Housing Act of 1937, section 1401 et seq., title 42, United States Code, as amended by section 201 of the Housing and Community Development Act of 1974 (Public Law 93-383). The purpose of participation is to enable the authority to obtain, on behalf of the state of Iowa, set-asides of contract authorization reserved by the United States secretary of housing and urban development for public housing agencies, to enter into annual contributions contracts, to otherwise expedite use of the program through the use of state housing finance funds, and to encourage new construction and substantial rehabilitation of housing suitable for assistance under the program. Assistance may be provided for existing housing units made available by owners for the program, as well as for newly constructed housing units. Maximum rents shall be established by the authority in conformity with federal law.

2. To establish maximum eligibility for set-asides the authority shall:

a. Develop and implement procedures which will to the fullest possible extent complement the allocation system of the United States department of housing and urban development.

b. Evaluate statewide and local housing needs and develop a program to provide housing in areas of most critical need, within its allocation of set-aside contract authority.

c. Comply with all documentation and application requirements of the federal law.

3. The authority shall co-operate to the fullest extent possible with local housing agencies for implementation of the housing assistance payments program. The agency may enter into agreements with local housing agencies, housing cooperatives, or other public or private entities for commitment of housing assistance upon completion of an approved proposal, and may subsequently execute with such entities housing assistance payments contracts.

4. Permanent financing for units to be subsidized under the housing assistance payments program may be provided by the authority, directly or indirectly, by the proceeds from the sale of bonds and notes as provided in this Act, or by other moneys available to the authority, by appropriations or otherwise.

5. The authority shall, when appropriate, take necessary steps to co-operate with the United States department of agriculture in implementation of sections 517 and 521 of the Housing Act of 1949, sections 1487 and 1490a, title 42, United States Code, as amended by section 514 of the Housing and Community Development Act of 1974 (Public Law 93-383). The purpose of such programs is to extend to rural areas the provisions of housing assistance payments programs.

6. The authority shall, when appropriate, take necessary steps to participate in the programs of federal assistance to state housing finance agencies for expanding the supply of housing available to low or moderate income families, as provided in section 802 of the Housing and Community Development Act of 1974 (Public Law 93-383).

7. The authority may participate in other programs under the Housing and Community Development Act of 1974 (Public Law 93-383), and in other federal programs designed to increase the supply of adequate housing for low or moderate income families and may recommend appropriate legislation to the general assembly where further legislation is needed to accomplish such participation. However, failure of the authority to participate in the federal programs set out in this section does not invalidate any bonds, notes or other obligations of the authority. [66GA, ch 138,§15]

Referred to in §§220.36, 403A.3(10), 524.905, 533.16, 534.21

220.16 Rent supplements.

1. The authority may establish and administer through local public or private agencies an eighteen month demonstration program of rent supplements designed for very low income and lower income families, to provide for payment of a maximum of the difference between twenty-five percent of an eligible family's income and the fair market rental of a unit of housing, as established by the authority. Eligibility of a housing unit for participation in the demonstration rent supplement program is subject to approval by the authority based on compliance with the definition of adequate housing in this chapter, and agreement by the owner to comply with authority rules pertaining to equal housing opportunity, maintenance, occupancy, and other authority policies. The authority shall, by rule, establish criteria for participation in the demonstration project, based upon the provisions of this section and section 220.4, including but not limited to the selection of target groups, determined by geographical location or special needs, to receive the benefits of the program under the demonstration project. It shall then receive applications for participation in the demonstration project from agencies or organizations described in subsection 2, prepare a detailed plan for the total demonstration project including a statement of funding needs, and submit the plan to the general assembly with its budget request.

2. A governing body of a city or county, a public housing agency, or a private, nonprofit organization which provides or wishes to provide housing to lower income families, is eligible to apply for participation in the rent supplement program. Funds available for the rent supplement program, whether from appropriations or from other sources, shall be made available by the authority to cities, counties, public housing agencies, or private, nonprofit organizations on a one-to-one match-

ing basis with funds supplied by the cities, counties, public housing agencies, or private, nonprofit organizations that participate. [66GA, ch 138,§16]

Referred to in §§220.17, 220.36, 403A.3(10), 524.905, 533.16, 534.21

220.17 Emergency housing fund. The authority may establish a fund to be known as the "emergency housing fund" to be administered by the authority separate and distinct from other moneys or funds administered by the authority.

The emergency housing fund may be comprised of the proceeds of appropriations, grants and other contributions and the authority is authorized to accept contributions to the fund from any source.

The emergency housing fund may be used to make grants and temporary loans at interest rates and terms as determined by the authority, for the following purposes:

1. To defray the local contribution requirement for housing sponsors who apply for rent supplement assistance as provided in section 220.16 and who, in the judgment of the authority, would not be able to provide the local contribution without undue hardship.

2. To defray temporary housing costs that result from displacement by natural or other disaster, if the disaster has been proclaimed by the governor.

3. To defray a portion of the expense required to develop and initiate housing which deals creatively with the housing problems of low or moderate income families, elderly families, and families which include one or more persons who are handicapped or disabled. [66GA, ch 138,§17]

Referred to in §403A.3(10), 524.905, 533.16, 534.21

220.18 Housing assistance fund. The authority may establish a revolving fund to be known as the "housing assistance fund", to be administered by the authority as a trust fund separate and distinct from other moneys or funds administered by the authority.

The housing assistance fund may be comprised of the proceeds of appropriations, grants and other contributions, earnings accruing to the authority, surplus moneys transferred as provided in section 220.10, and of fund notes issued by the authority as provided in section 220.19, and the authority is authorized to accept contributions to the fund from any source.

The housing assistance fund may be used to make temporary loans at interest rates and terms as determined by the authority, for the following purposes:

1. To defray development costs for housing for low or moderate income families provided by housing sponsors. A "development cost" loan shall be repaid in full by the borrower concurrent with obtaining a construction loan, unless the authority extends the period for repayment, but the period for repayment shall not be extended beyond the date of obtaining a mortgage loan on the housing. As used in this section, "development costs" means the costs approved by the authority as appropriate expenditures which may be incurred by builders and developers prior to commitment and initial advance of the proceeds of a construction loan or a mortgage loan, including but not limited to:

a. Payments for options to purchase properties on the proposed housing site, deposits on contracts of purchase, or, with approval of the authority, payments for the purchasing of such properties.

b. Legal and organizational expenses including payment of attorney fees, project manager, clerical and other staff salaries, office rent and other incidental expenses.

c. Payment of fees for preliminary feasibility studies and advances for planning, engineering and architectural work.

d. Expenses for tenant surveys and market analysis.

e. Necessary application and other fees.

2. To make or participate in the making of mortgage loans for rehabilitation or preservation of existing dwellings for the use of low or moderate income families, elderly families or families which include one or more persons who are handicapped or disabled. A rehabilitation or preservation loan may be for the estimated cost of the rehabilitation work to be done, for the purpose of refinancing an existing mortgage loan, for the purpose of doing the rehabilitation work, or for the purpose of acquiring housing in which rehabilitation work is to be done. The rehabilitation or preservation loan shall not exceed, with all other existing indebtedness of the property, the estimated market value of the property as determined by the authority, after the rehabilitation or preservation is completed, and the term of a loan shall not exceed the estimated useful life of the property as determined by the authority, after rehabilitation or preservation. The proposed rehabilitation or preservation shall assure that the property will not contain any substantial violation of applicable housing codes. A rehabilitation or preservation loan under this subsection may be made only when the authority determines that the proposed mortgagor is unable to obtain the necessary financing from other sources upon terms and conditions which the proposed mortgagor reasonably could be expected to fulfill. A rehabilitation or preservation loan under this subsection may be provided only within an area of a city for which an authorized city agency submits a satisfactory affirmative neighborhood preservation program, or in other areas within or outside of cities where the authority determines that rehabilitation or preservation is economically sound and a program of neighborhood preservation is inappropriate. The following criteria, along with others reasonably related to the purposes of this chapter, which may be determined by the authority, shall be considered in determining whether an affirmative neighborhood preservation program is satisfactory:

a. The degree of blight, decay or deterioration of housing or the imminent threat of blight, decay or deterioration of housing within the area.

b. The degree to which financing for repairs, remodeling or rehabilitation of housing within the area is available.

c. The proportion of residential structures within the area which are owner-occupied.

d. The degree to which the financial resources of proposed occupants of the housing, including resources available to them under this chapter or other federal, state, and local laws and programs, provide reasonable assurances of the economic feasibility of the financing of rehabilitation or preservation.

e. The expressed commitment of the city to provide a concentrated effort to enforce the applicable housing codes within the area.

f. The expressed commitment of the city to provide capital improvements and other city services so as to stabilize, improve and restore the neighborhood. [66GA, ch 138,§18]

Referred to in §§220.19, 220.36, 403A.3(10), 524.905, 533.16, 534.21

220.19 Housing assistance fund notes. The authority may issue housing assistance fund notes, the principal and interest of which shall be payable solely from the housing assistance fund established under section 220.18. The fund notes of each issue shall be dated, shall mature at such times not exceeding ten years from their dates, and may be made redeemable before maturity, at the option of the authority, at prices and under terms and conditions as determined by the authority. The authority shall determine the form and manner of execution of the fund notes, including any interest coupons to be attached thereto, and shall fix the denominations and the places of payment of principal and interest, which may be any financial institution within or without the state or any agent, including the lender. If any officer whose signature or a facsimile of whose signature appears on fund notes or coupons shall cease to be that officer before the delivery of the notes or coupons, the signature or facsimile shall be valid and sufficient for all purposes the same as if the officer had remained in office until delivery. The fund notes may be issued in coupon or in registered form, or both, as the authority determines, and provision may be made for the registration of coupon fund notes as to principal alone and also as to both principal and interest, and for the conversion into coupon fund notes of any fund notes registered as to both principal and interest, and for the interchange of registered and coupon fund notes. Fund notes shall bear interest at rates as determined by the authority and may be sold in a manner, either at public or private sale, and for a price as the authority determines to be best to effectuate the purposes of the housing assistance fund. The proceeds of fund notes shall be used solely for the purposes for which issued and shall be disbursed in a manner and under restrictions as provided in this section and in the resolution of the authority providing for their issuance. The authority may provide for the replacement of fund notes which become mutilated or are destroyed or lost. [66GA, ch 138,§19]

Referred to in §§220.18, 403A.3(10), 524.905, 533.16, 534.21

220.20 Loans to mortgage lenders.

1. The authority may make, and contract to make, loans to mortgage lenders on terms and conditions as it determines which are reasonably related to protecting the security of the authority's investment and to implementing the purposes of this chapter, and subject to this section, and all mortgage lenders are authorized to borrow from the authority in accordance with the provisions of this section and the rules of the authority.

2. The authority shall require as a condition of each loan to a mortgage lender that the mortgage lender, within a reasonable period after receipt of the loan proceeds as the authority prescribes by rule, shall have entered into written commitments to make, and, within a reasonable period thereafter as the authority prescribes by rule, shall have disbursed the loan proceeds in new mortgage loans to low or moderate income families in an aggregate principal amount equal to the amount of the loan. New mortgage loans shall have terms and conditions as the authority prescribes by rules which are reasonably related to implementing the purposes of this chapter.

3. The authority shall require the submission to it by each mortgage lender to which the authority has made a loan, of evidence satisfactory to the authority of the making of new mortgage loans to low or moderate income families as required by this section, and in that connection may, through its members, employees or agents, inspect the books and records of a mortgage lender.

4. Compliance by a mortgage lender with the terms of its agreement with the authority with respect to the making of new mortgage loans to low or moderate income families may be enforced by decree of any district court of this state. The authority may require as a condition of a loan to a national banking association or a federally chartered savings and loan association, the consent of the association to the jurisdiction of courts of this state over any such proceeding. The authority may also require, as a condition of a loan to a mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its agreement with the authority, and the penalties shall be recoverable at the suit of the authority.

5. The authority shall require that each mortgage lender receiving a loan pursuant to this section shall issue and deliver to the authority an evidence of its indebtedness to the authority which shall constitute a general obligation of the mortgage lender and shall bear a date, mature at a time, be subject to prepayment, and contain other provisions

consistent with this section and reasonably related to protecting the security of the authority's investment, as the authority determines.

6. Notwithstanding any other provision of this section to the contrary, the interest rate and other terms of loans to mortgage lenders made from the proceeds of an issue of bonds or notes of the authority shall be at least sufficient to assure the payment of the bonds or notes and the interest on them as they become due.

7. The authority shall require that loans to mortgage lenders are additionally secured as to payment of both principal and interest by a pledge of and lien upon collateral security by special escrow funds or other forms of guarantee and in such amounts and forms as the authority shall by resolution determine to be necessary to assure the payment of the loans and the interest thereon as they become due. Collateral security shall consist of direct obligations of, or obligations guaranteed by, the United States or one of its agencies, obligations satisfactory to the authority which are issued by other federal agencies, direct obligations of or obligations guaranteed by a state or a political subdivision of a state, or investment quality obligations approved by the authority.

8. The authority may require that collateral for loans be deposited with a bank, trust company or other financial institution acceptable to the authority located in this state and designated by the authority as custodian. In the absence of such a requirement, each mortgage lender shall enter into an agreement with the authority containing provisions as the authority deems necessary to adequately identify and maintain the collateral, service the collateral, and require the mortgage lender to hold the collateral as an agent for the authority and be accountable to the authority as the trustee of an express trust for the application and disposition of the collateral and the income from it. The authority may also establish additional requirements as it deems necessary with respect to the pledging, assigning, setting aside, or holding of collateral and the making of substitutions for it or additions to it and the disposition of income and receipts from it.

9. The authority may require as a condition of loans to mortgage lenders, any representations and warranties it determines are necessary to secure the loans and carry out the purposes of this section.

10. If a provision of this section is inconsistent with a provision of law of this state governing mortgage lenders, the provision of this section controls for the purposes of this section. [66GA, ch 138,§20]

Referred to in §§220.22, 220.36, 403A.3(10), 524.905, 533.16, 534.21

220.21 Purchase of mortgage loans.

1. The authority may purchase, and make advance commitments to purchase, mortgage loans from mortgage lenders at prices and upon terms and conditions as it determines subject to this section. However, the total purchase price for all mortgage loans which the authority commits to purchase from a mortgage lender at any one time shall not exceed the total of the unpaid principal balances of the mortgage loans purchased. Mortgage lenders are authorized to sell mortgage loans to the authority in accordance with the provisions of this section and the rules of the authority.

2. The authority shall require as a condition of purchase of mortgage loans from mortgage lenders that the mortgage lenders, within a reasonable period after receipt of the purchase price as the authority prescribes by rule, shall enter into written commitments to loan and, within a reasonable period thereafter as the authority prescribes by rule, shall loan an amount equal to the entire purchase price of the mortgage loans, on new mortgage loans to low or moderate income families or certify that mortgage loans purchased are mortgage loans made to low or moderate income families. New mortgage loans to be made by mortgage lenders shall have terms and conditions as the authority prescribes by rule. The authority may make a commitment to purchase mortgage loans from mortgage lenders in advance of the time such loans are made by mortgage lenders. The authority shall require as a condition of such commitment that mortgage lenders certify in writing that all mortgage loans represented by the commitment will be made to low or moderate income families, and that other authority specifications will be complied with.

3. The authority shall require the submission to it by each mortgage lender from which the authority has purchased mortgages, of evidence satisfactory to the authority of the making of new mortgage loans to low or moderate income families as required by this section and in that connection may, through its members, employees or agents, inspect the books and records of a mortgage lender.

4. Compliance by a mortgage lender with the terms of its agreement with the authority with respect to the making of new mortgage loans to low or moderate income families may be enforced by decree of any district court of this state. The authority may require as a condition of purchase of mortgage loans from any national banking association or federally chartered savings and loan association, the consent of the association to the jurisdiction of courts of this state over any such proceeding. The authority may also require as a condition of the authority's purchase of mortgage loans from a mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its agreement with the authority, and the penalties shall be recoverable at the suit of the authority.

5. The authority may require as a condition of purchase of a mortgage loan from a mortgage lender that the mortgage lender represent and warrant to the authority that:

a. The unpaid principal balance of the mortgage loan and the interest rate on it have been accurately stated to the authority.

b. The amount of the unpaid principal balance is justly due and owing.

c. The mortgage lender has no notice of the existence of any counterclaim, offset or defense asserted by the mortgagor or his successor in interest.

d. The mortgage loan is evidenced by a bond or promissory note and a mortgage which has been properly recorded with the appropriate public official.

e. The mortgage constitutes a valid first lien on the real property described to the authority subject only to real property taxes not yet due, installments of assessments not yet due, and easements and restrictions of record which do not adversely affect, to a material degree, the use or value of the real property or improvements on it.

f. The mortgagor is not now in default in the payment of any installment of principal or interest, escrow funds, real property taxes or otherwise in the performance of obligations under the mortgage documents and has not to the knowledge of the mortgage lender been in default in the performance of any obligation under the mortgage for a period of longer than sixty days during the life of the mortgage.

g. The improvements to the mortgaged real property are covered by a valid and subsisting policy of insurance issued by a company authorized to issue such policies in this state and providing fire and extended coverage in amounts as the authority prescribes by rule.

h. The mortgage loan meets the prevailing investment quality standards for mortgage loans in this state.

6. A mortgage lender is liable to the authority for damages suffered by the authority by reason of the untruth of a representation or the breach of a warranty and, in the event that a representation proves to be untrue when made or in the event of a breach of warranty, the mortgage lender shall, at the option of the authority, repurchase the mortgage loan for the original purchase price adjusted for amounts subsequently paid on it, as the authority determines.

7. The authority shall require the recording of an assignment of a mortgage loan purchased by it from a mortgage lender and shall not be required to notify the mortgagor of its purchase of the mortgage loan. The authority shall not be required to inspect or take possession of the mortgage documents if the mortgage lender from which the mortgage loan is purchased by the authority enters into a contract to service the mortgage loan and account to the authority for it.

8. The authority may not commit more than fifteen percent of its total bonding capacity as authorized by law to mortgage purchases under this section, except that this limit shall not apply to the purchase of mortgages on newly constructed single or multiple dwellings.

9. If a provision of this section is inconsistent with another provision of law of this state governing mortgage lenders, the provision of this section controls for the purposes of this section. [66GA, ch 138,§21]

Referred to in §§220.22, 220.36, 403A.3(10), 524.905, 533.16, 534.21

220.22 Rules—loans to mortgage lenders and purchase of mortgage loans. The rules of the authority relating to the making of loans to mortgage lenders or the purchase of mortgage loans shall provide at least for the following:

1. Procedures for the submission by mortgage lenders to the authority of request for loans and offers to sell mortgage loans.

2. Standards for allocating bond proceeds among mortgage lenders requesting loans from, or offering to sell mortgage loans to, the authority.

3. Standards for determining the principal amount to be loaned to each mortgage lender and the interest rate on each loan.

4. Standards for determining the aggregate principal amount of mortgage loans to be purchased from each mortgage lender and the purchase price.

5. Qualifications or characteristics of housing and the purchasers to be financed by new mortgage loans made in satisfaction of the requirements of section 220.20, subsection 2 or section 220.21, subsection 2.

6. Restrictions as to the interest rates to be allowed on new mortgage loans and the return to be realized by mortgage lenders.

7. Requirements as to commitments and disbursements by mortgage lenders with respect to new mortgage loans.

8. Schedules of fees and charges to be imposed by the authority.

9. Requirements for provisions that prohibit mortgage loans made under this program from being assumed without permission of the mortgagee. [66GA, ch 138,§22]

Referred to in §403A.3(10), 524.905, 533.16, 534.21

220.23 Powers relating to loans. Subject to any agreement with bondholders or noteholders, the authority may renegotiate a mortgage loan or a loan to a mortgage lender in default, waive a default or consent to the modification of the terms of a mortgage loan or a loan to a mortgage lender, forgive or forbear all or part of a mortgage loan or a loan to a mortgage lender, and commence, prosecute and enforce a judgment in any action, including but not limited to a foreclosure action, to protect or enforce any right conferred upon it by law, mortgage loan agreement, contract or other agreement, and in connection with any such action, bid for and purchase the property or acquire or take possession of it, complete, administer, pay the principal of and interest on any obligations incurred in connection with

the property and dispose of and otherwise deal with the property in a manner as the authority deems advisable to protect its interests. [66GA, ch 138,§23]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21

220.24 Certification of amortization periods. Before the authority provides money, either directly or indirectly, for any mortgage loan, it must obtain the certificate of a competent appraiser to the effect that the economic lifespan of the property on which the mortgage loan is to be made is in excess of the period of amortization of the mortgage loan. [66GA, ch 138,§24]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21

220.25 Planning, zoning and building laws. All housing provided or assisted by the authority is subject to any applicable master plan, official map, zoning regulation, building code, housing code and any other law or regulation governing land use, pollution control, environmental quality, planning or construction, for the area in which the housing is to be located. [66GA, ch 138,§25]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21

220.26 Bonds and notes.

1. The authority may issue its negotiable bonds and notes in principal amounts as, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds and notes, the establishment of reserves to secure its bonds and notes, and all other expenditures of the authority incident to and necessary or convenient to carry out its purposes and powers. However, the authority may not have a total principal amount of bonds and notes outstanding at any time in excess of one hundred million dollars. The bonds and notes shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code.

2. Bonds and notes issued by the authority are payable solely and only out of the moneys, assets, or revenues of the authority, and as provided in the agreement with bondholders or noteholders pledging any particular moneys, assets or revenues. Bonds or notes are not an obligation of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority payable solely and only from the sources provided in this chapter, and the authority may not pledge the credit or taxing power of this state or any political subdivision of this state other than the authority, or make its debts payable out of any moneys except those of the authority.

3. The maximum amount of bonds and notes issued by the authority which may be outstanding at any time shall be set by statute. Bonds and notes must be authorized by a resolution of the authority. However, a resolution authorizing the issuance of bonds or notes may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of the authorized officer.

4. Bonds shall:

a. State the date and series of the issue, be consecutively numbered, and state on their face that they are payable both as to principal and interest solely out of the assets of the authority and do not constitute an indebtedness of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limit.

b. Be either registered, registered as to principal only, or in coupon form, issued in denominations as the authority prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the chairman or vice chairman, attested by the manual or facsimile signature of the secretary, have impressed or imprinted thereon the seal of the authority or a facsimile of it, and the coupons attached shall be signed with the facsimile signature of the chairman or vice chairman, be payable as to interest at rates and at times as the authority determines, be payable as to principal at times over a period not to exceed fifty years from the date of issuance, at places, and with reserved rights of prior redemption, as the authority prescribes, be sold at prices, at public or private sale, and in a manner as the authority prescribes, and the authority may pay all expenses, premiums and commissions which it deems necessary or advantageous in connection with the issuance and sale, and be issued under and subject to the terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, interest and other terms, conditions, covenants and protective provisions safeguarding payment, not inconsistent with this chapter, as are found to be necessary by the authority for the most advantageous sale, which may include, but are not limited to, covenants with the holders of the bonds as to:

(1) Pledging or creating a lien, to the extent provided by the resolution, on moneys or property of the authority or moneys held in trust or otherwise by others to secure the payment of the bonds.

(2) Providing for the custody, collection, securing, investment and payment of any moneys of or due to the authority.

(3) The setting aside of reserves or sinking funds and the regulation or disposition of them.

(4) Limitations on the purpose to which the proceeds of sale of an issue of bonds then or thereafter to be issued may be applied.

(5) Limitations on the issuance of additional bonds and on the refunding of outstanding or other bonds.

(6) The procedure by which the terms of a contract with the holders of bonds may be amended or abrogated, the amount of bonds

the holders of which must consent thereto and the manner in which consent may be given.

(7) The creation of special funds into which moneys of the authority may be deposited.

(8) Vesting in a trustee properties, rights, powers and duties in trust as the authority determines, which may include the rights, powers and duties of the trustee appointed for the holders of any issue of bonds pursuant to section 220.28, in which event the provisions of that section authorizing appointment of a trustee by the holders of bonds shall not apply, or limiting or abrogating the right of the holders of bonds to appoint a trustee under that section, or limiting the rights, duties and powers of the trustee.

(9) Defining the acts or omissions which constitute a default in the obligations and duties of the authority and providing for the rights and remedies of the holders of bonds in the event of a default. However, rights and remedies shall be consistent with the laws of this state and other provisions of this chapter.

(10) Any other matters which affect the security and protection of the bonds and the rights of the holders.

5. The authority may issue its bonds for the purpose of refunding any bonds or notes of the authority then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this chapter. The interest, income and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the authority for use by it in any lawful manner. All refunding bonds shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other bonds issued pursuant to this chapter.

6. The authority may issue negotiable bond anticipation notes and may renew them from time to time but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable from any available moneys of the authority not otherwise pledged, or from the proceeds of the sale of bonds of the authority in anticipation of which the notes were issued. Notes may be issued for any corporate purpose of the authority. Notes shall be issued in the same manner as bonds, and notes and the resolution authorizing them may contain any provisions, conditions or limitations, not inconsistent with the provisions of this subsection, which the bonds or a bond resolution of the authority may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders shall have all the remedies provided in this chapter for bondholders. Notes shall be as fully negotiable as bonds of the authority.

7. A copy of each pledge agreement by or to the authority, including without limitation each bond resolution, indenture of trust or similar agreement, or any revisions or supplements to it shall be filed with the secretary of state and no further filing or other action under section 554.9101 to 554.9507, article 9 of the uniform commercial code, or any other law of the state shall be required to perfect the security interest in the collateral or any additions to it or substitutions for it, and the lien and trust so created shall be binding from and after the time made against all parties having claims of any kind in tort, contract, or otherwise against the pledgor.

8. Neither the members of the authority nor any person executing its bonds, notes or other obligations shall be liable personally on the bonds, notes, or other obligations or be subject to any personal liability or accountability by reason of the issuance of the authority's bonds or notes. [66GA, ch 138,§26]

Referred to in §§220.1, 220.5, 403A.3(10), 524.905, 533.16, 534.21

220.27 Reserve funds and appropriations.

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

2. Moneys in a bond reserve fund shall not be withdrawn from it at any time in an amount that will reduce the amount of the fund to less than the bond reserve fund requirement established for the fund, as provided in this section, except for the purpose of making, with respect to bonds secured in whole or in part by the fund, payment when due of principal, interest, redemption premiums and the sinking fund payments with respect to the bonds for the payment of which other moneys of the authority are not available. Any income or interest earned by, or incremental to, a

bond reserve fund due to the investment of it may be transferred by the authority to other funds or accounts of the authority to the extent the transfer does not reduce the amount of that bond reserve fund below the bond reserve fund requirement for it.

3. The authority shall not at any time issue bonds, secured in whole or in part by a bond reserve fund if, upon the issuance of the bonds, the amount in the bond reserve fund will be less than the bond reserve fund requirement for the fund, unless the authority at the time of issuance of the bonds deposits in the fund from the proceeds of the bonds issued or from other sources an amount which, together with the amount then in the fund will not be less than the bond reserve fund requirement for the fund. For the purposes of this section, the term "bond reserve fund requirement" means, as of any particular date of computation, an amount of money, as provided in the resolutions of the authority authorizing the bonds with respect to which the fund is established, equal to not more than ten percent of the outstanding principal amount of bonds of the authority secured in whole or in part by the fund.

4. To assure the continued operation and solvency of the authority for the carrrying out of its corporate purposes, provision is made in subsection 1 for the accumulation in each bond reserve fund of an amount equal to the bond reserve fund requirement for the fund. In order further to assure maintenance of the bond reserve funds, the charman of the authority shall, on or before July first of each calendar year, make and deliver to the governor his certificate stating the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor may submit to both houses printed copies of a budget including the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the authority pursuant to this section shall be deposited by the authority in the applicable bond reserve fund.

5. All amounts paid over to the authority by the state pursuant to the provisions of this section shall constitute and be accounted for as advances by the state to the authority and, subject to the rights of the holders of any bonds or notes of the authority theretofore or thereafter issued, shall be repaid to the state without interest from all available operating revenues of the authority in excess of amounts required for the payment of bonds, notes or obligations of the authority, the bond reserve fund and operating expenses. [66GA, ch 138, §27]

Referred to in §§220.1, 220.5, 403A.3(10), 524.905, 533.16, 534.21

220.28 Remedies of bondholders and noteholders.

1. If the authority defaults in the payment of principal or interest on an issue of bonds or notes after they become due, whether at maturity or upon call for redemption, and the default continues for a period of thirty days, or if the authority fails or refuses to comply with the provisions of this chapter, or defaults in an agreement made with the holders of an issue of bonds or notes, the holders of twenty-five percent in aggregate principal amount of bonds or notes of the issue then outstanding, by instrument filed in the office of the clerk of the county in which the principal office of the authority is located, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of the bonds or notes for the purposes provided in this section.

2. The authority or any trustee appointed under the indenture under which the bonds are issued may, and upon written request of the holders of twenty-five percent in aggregate principal amount of the issue of bonds or notes then outstanding shall:

a. Enforce all rights of the bondholders or noteholders, including the right to require the authority to carry out its agreements with the holders and to perform its duties under this chapter.

b. Bring suit upon the bonds or notes.

c. By action require the authority to account as if it were the trustee of an express trust for the holders.

d. By action enjoin any acts or things which are unlawful or in violation of the rights of the holders.

e. Declare all the bonds or notes due and payable and if all defaults are made good then with the consent of the holders of twenty-five percent of the aggregate principal amount of the issue of bonds or notes then outstanding, annul the declaration and its consequences.

3. The trustee shall also have and possess all powers necessary or appropriate for the exercise of functions specifically set forth or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

4. Before declaring the principal of bonds or notes due and payable, the trustee shall first give thirty days notice in writing to the governor, to the authority and to the attorney general of the state.

5. The district court has jurisdiction of any action by the trustee on behalf of bondholders or noteholders. The venue of the action shall be in the county in which the principal office of the authority is located. [66GA, ch 138,§28]

Referred to in §§220.1, 220.5, 220.26, 403A.3(10), 524.905, 533.16, 534.21

220.29 Reserved.

Section 29 of chapter 138, Acts 66GA, repealed by 66GA, ch 1135,§2.

220.30 Bonds and notes as legal investments. Bonds and notes of the authority are securities in which public officers, state de-

partments and agencies, political subdivisions, insurance companies, and other persons carrying on an insurance business, banks, trust companies, savings and loan associations, investment companies and other persons carrying on a banking business, administrators, executors, guardians, conservators, trustees and other fiduciaries, and other persons authorized to invest in bonds or other obligations of this state, may properly and legally invest funds including capital in their control or belonging to them. The bonds and notes are also securities which may be deposited with and may be received by public officers, state departments and agencies, and political subdivisions, for any purpose for which the deposit of bonds or other obligations of this state is authorized. [66GA, ch 138,§30]

Referred to in §§220.1, 220.5, 403A.3(10), 524.905, 533.16, 534.21

220.31 Moneys of the authority.

1. Moneys of the authority from whatever source derived, except as otherwise provided in this chapter, shall be paid to the authority and shall be deposited in a bank or other financial institution designated by the authority. The moneys shall be withdrawn on the order of the person authorized by the authority. Deposits shall, if required by the authority, be secured in the manner determined by the authority. The auditor of state and his legally authorized representatives may periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing, and the authority shall not be required to pay a fee for the examination.

2. The authority may contract with holders of its bonds or notes as to the custody, collection, security, investment, and payment of moneys of the authority, of moneys held in trust or otherwise for the payment of bonds or notes, and to carry out the contract. Moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and deposits of the moneys may be secured in the same manner as moneys of the authority, and banks and trust companies may give security for the deposits.

3. Subject to the provisions of any contract with bondholders or noteholders and to the approval of the state comptroller, the authority shall prescribe a system of accounts.

4. The authority shall submit to the governor, the auditor of state, and the state comptroller, within thirty days of its receipt by the authority, a copy of the report of every external examination of the books and accounts of the authority other than copies of the reports of examinations made by the auditor of state. [66GA, ch 138,§31]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21

220.32 Limitation of liability. Neither the members of the authority, nor persons acting in its behalf, while acting within the scope of their employment or agency, are subject to personal liability resulting from carrying out the powers and duties given in this chapter. [66GA, ch 138,§32]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21

220.33 Assistance by state officers, agencies and departments. State officers and state departments and agencies may render services to the authority within their respective functions as requested by the authority. [66GA, ch 138, §33]

Referred to in §§403A.3(10), 524.905, 534.21

220.34 Liberal interpretation. This chapter, being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes. [66GA, ch 138,§34]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21
Constitutionality, see 66GA, ch 1135,§3 and §4.12 of the Code.

220.35 Conflicts of interest.

1. If a member or employee other than the executive director of the authority has an interest, either direct or indirect, in a contract to which the authority is, or is to be, a party, or in a mortgage lender requesting a loan from, or offering to sell mortgage loans to, the authority, the interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority. The member or employee having the interest shall not participate in action by the authority with respect to that contract or mortgage lender.

2. Nothing in this section shall be deemed to limit the right of a member, officer or employee of the authority to acquire an interest in bonds or notes of the authority or to limit the right of a member or employee other than the executive director to have an interest in a bank or other financial institution in which the funds of the authority are, or are to be, deposited or which is, or is to be, acting as trustee or paying agent under a trust indenture to which the authority is a party.

3. The executive director shall not have an interest in a bank or other financial institution in which the funds of the authority are, or are to be, deposited or which is, or is to be, acting as trustee or paying agent under a trust indenture to which the authority is a party. The executive director shall not receive, in addition to fixed salary or compensation, any money or valuable thing, either directly or indirectly, or through any substantial interest in any other corporation or business unit, for negotiating, procuring, recommending or aiding in any purchase or sale of property, or loan, made by the authority, nor shall the executive director be pecuniarily interested, either as principal, coprincipal, agent or beneficiary, either directly or indirectly, or through any substantial interest in any other corporation or business unit, in any such purchase, sale or loan. [66GA, ch 138,§35]

Referred to in §§403A.3(10), 533.16, 534.21

220.36 Exemption from competitive bid laws. The authority and all contracts made by it in carrying out its public and essential

governmental functions under sections 220.12 to 220.16, 220.18, 220.20 and 220.21, shall be exempt from the provisions and requirements of all laws of the state which provide for competitive bids in connection with such contracts. [66GA, ch 138,§36]

Referred to in §§403A.3(10), 524.905, 533.16, 534.21

CHAPTER 220A

INTERAGENCY INFORMATION SERVICE ON MENTALLY HANDICAPPED

Referred to in §218.11

220A.1 Purpose.
220A.2 Definitions.
220A.3 Administrative agency.
220A.4 Agencies involved.
220A.5 Duties of department.
220A.6 Information to others.
220A.7 Restrictions not applicable.
220A.8 Statistical information.
220A.9 Statutory immunity.

220A.1 Purpose. The purpose of this chapter is to permit information concerning persons believed to be mentally handicapped to be efficiently used by and exchanged among the state and local governments, their departments and agencies, and with other public or private agencies, where the use or exchange of the information is for the purpose of assisting any of the agencies in providing care, evaluation, services, assistance, education, or habilitation to such persons. [C71, 73, 75,§220A.1]

220A.2 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Service"* means the interagency case information service.

2. *"Public agency"* means any agency, department, board, commission, or division of the state of Iowa or the United States, any political subdivision of or school board in the state of Iowa, any state of the United States, and the District of Columbia.

3. *"Private agency"* means any individual and any nonprofit or business organization authorized under the laws of Iowa.

4. *"Department"* means the department of social services. [C71, 73, 75,§220A.2]

220A.3 Administrative agency. The department of social services is hereby designated as the administrative agency to provide for a central data control and exchange agency known as the interagency case information service. [C71, 73, 75,§220A.3]

220A.4 Agencies involved. The service shall receive from and make available to the following state agencies case information on persons believed to be mentally handicapped: The state department of health, the state department of public instruction, the state board of regents, and the state department of social services. [C71, 73, 75,§220A.4]

Referred to in §220A.6

220A.5 Duties of department. The department shall:

1. Administer and enforce the provisions of this chapter.

2. Be the official agency to join or co-operate with the government of the United States or any state of the United States and the District of Columbia through their appropriate agencies or departments in carrying out the provisions of this chapter.

3. Apply for and receive funds, appropriations, moneys, grants, gifts, or services of any kind from the United States or any agency thereof, as well as this state and any person or private agency for the purpose of carrying out the provisions of this chapter and the services hereunder.

4. Make such reports and budget estimates to the governor and to the general assembly as are necessary to obtain the appropriation of state funds for the service.

5. Co-operate with the other state departments and public and private agencies as authorized by this chapter in obtaining, exchanging, and disseminating case information.

6. Employ personnel for the administration of the service and contract with other public or private agencies to carry out the services. [C71, 73, 75,§220A.5]

220A.6 Information to others. The state agencies designated in section 220A.4 may receive from and disseminate to other public agencies or private agencies such information as is necessary or proper for the purpose of providing evaluation services, treatment services, education, support or habilitation services to the mentally handicapped person. The enumerated state agencies or their designated staff shall be authorized to make determination of the proper receipt or dissemination of information to other public or private agencies. [C71, 73, 75,§220A.6]

220A.7 Restrictions not applicable. Any law or departmental rule of the state of Iowa which restricts or declares confidential information concerning persons believed to be mentally handicapped shall not apply to information exchanged through the service for the purposes of this chapter. Information supplied

under a restriction by the government of the United States, its departments or agencies, or by other state government, its departments and agencies, shall be processed in compliance with such restrictions. Any case information restricted by any order of court shall be processed in compliance with the order. [C71, 73, 75,§220A.7]

220A.8 Statistical information. For purposes of research, study, and public information, public or private agencies may receive from the service comprehensive statistical information which may be disseminated to the public. Such information shall not use names of individual persons nor be so specific as to make possible the identification of individual persons. [C71, 73, 75,§220A.8]

220A.9 Statutory immunity. Any person or any public or private agency or employee thereof who participates in good faith in the collection, exchange, or dissemination of case information for the purposes of this chapter shall have immunity from any liability, civil or criminal, which might be otherwise imposed. [C71, 73, 75,§220A.9]

CHAPTER 221

MENTAL RETARDATION COMPREHENSIVE PLAN

221.1 State agency.
221.2 Staff.
221.3 Aids and grants received.

221.1 State agency. The director of mental health of the state department of social services is hereby designated as the single state agency to act as the administrative agency to provide for the continuation of comprehensive planning to combat mental retardation. [C66, 71, 73, 75,§221.1]

221.2 Staff. The division of mental health of the state department of social services shall employ the staff necessary for the purposes of interpretation, evaluation, and dissemination of Iowa's Comprehensive Plan to Combat Mental Retardation and to carry on needed research. [C66, 71, 73, 75,§221.2]

221.3 Aids and grants received. The director of mental health of the state department of social services is authorized and empowered to apply for and receive federal aids, grants, and gifts for purposes relating to mental retardation. [C66, 71, 73, 75,§221.3]

CHAPTER 222

MENTALLY RETARDED PERSONS

Referred to in §444.12(1, *b*), (3, *a*, *b*)

222.1 Purpose of state schools.
222.2 Definitions.
222.3 Superintendents.
222.4 Duties.
222.5 Preadmission diagnostic evaluation.
222.6 State districts.
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222.8 Communications by patients.
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222.1 Purpose of state schools. The Glenwood state hospital-school and the Woodward state hospital-school shall be maintained for the purpose of providing treatment, training, instruction, care, habilitation, and support of mentally retarded persons in this state.

A special mental retardation unit may be maintained at one of the state mental health institutes for the purposes set forth in sections 222.88 through 222.91, inclusive. [S13,§§2727-a93,-a95; SS15,§§2727-a93,-a96; C24, 27, 31, 35, 39,§§**3465, 3468**; C46, 50, 54, 58, 62, §§223.1, 223.4; C66, 71, 73, 75,§222.1]

222.2 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Hospital-schools"* means the Glenwood state hospital-school and the Woodward state hospital-school.

2. *"Special unit"* means a special mental retardation unit established at a state mental health institute pursuant to sections 222.88 through 222.91, inclusive.

3. *"Director"* or *"state director"* means the director of the division of mental health of the department of social services.

4. *"Superintendents"* means the superintendents of the state hospital-schools.

5. *"Mental retardation"* or *"mentally retarded"* means a term or terms to describe children and adults who as a result of inadequately developed intelligence are significantly impaired in ability to learn or to adapt to the demands of society. [C97,§2699; C24, 27, 31, 35, 39,§**3411**; C46, 50, 54, 58, 62,§222.1; C66, 71, 73, 75,§222.2]

Referred to in §§226.8, 229.1

222.3 Superintendents. The state director shall appoint a qualified superintendent for each of the hospital-schools who shall receive such salary as the state director shall determine. [SS15,§2727-a96; C24, 27, 31, 35, 39,§**3466**; C46, 50, 54, 58, 62,§223.2; C66, 71, 73, 75,§222.3]

222.4 Duties. The superintendents shall:

1. Perform all duties required by law and by the state director not inconsistent with law.

2. Oversee and insure individual treatment and professional care of each patient in the hospital-schools.

3. Maintain a full and complete record of the condition of each patient in the hospital-schools.

4. Have custody, control, and management of all patients in such manner as deemed best subject to the regulations of the state director. [SS15,§2727-a96; C24, 27, 31, 35, 39,§**3467**; C46, 50, 54, 58, 62,§223.3; C66, 71, 73, 75,§222.4]

Referred to in §222.90

222.5 Preadmission diagnostic evaluation. No person shall be eligible for admission to a hospital-school or a special unit until a preadmission diagnostic evaluation has been made by a hospital-school or a special unit which confirms or establishes the need for admission. [C24, 27, 31, 35, 39,§**3444**; C46, 50, 54, 58, 62, §222.34; C66, 71, 73, 75,§222.5]

222.6 State districts. The state director shall divide the state into two districts in such manner that one of the hospital-schools shall be located within each of the districts. Such districts may from time to time be changed. After such districts have been established, the director shall notify all boards of supervisors, county auditors, and clerks of the district courts of the action. Thereafter, unless the state director otherwise orders, all admissions or commitments of mentally retarded persons from a district shall be to the

hospital-school located within such district. [C24, 27, 31, 35, 39,§3476; C46, 50, 54, 58, 62, §223.10; C66, 71, 73, 75,§222.6]

222.7 Transfers. The state director may transfer patients from one state hospital-school to the other and may at any time transfer any patient from the hospital-schools to the hospitals for the mentally ill, or transfer patients in the hospital-schools to a special unit or vice versa, or make such transfers as are permitted in section 218.92. The state director may also transfer patients from a hospital for the mentally ill to a hospital-school if:

1. In the case of a patient who entered the hospital for the mentally ill voluntarily, consent is given in advance by the patient or, if the patient is a minor or is incompetent, the person responsible for the patient.

2. In the case of a patient hospitalized pursuant to sections 229.6 to 229.15, the consent of the court which hospitalized the patient is obtained in advance, rather than afterward as otherwise permitted by section 229.15, subsection 3. [SS15,§2727-a96; C24, 27, 31, 35, 39, §§3456, 3472, 3477; C46, 50, 54, 58, 62,§§222.46, 223.8, 223.11; C66, 71, 73, 75,§222.7; 66GA, ch 139,§38]

Referred to in §226.8

222.8 Communications by patients. Persons admitted to the hospital-schools or a special unit shall have all reasonable opportunity and facility for communication with their friends. Such persons shall be permitted to write and send letters, provided the letters contain nothing of an offensive character. Letters written by any patient to the state director or to any state or county official shall be forwarded unopened. [C24, 27, 31, 35, 39,§3445; C46, 50, 54, 58, 62,§222.35; C66, 71, 73, 75,§222.8]

222.9 Unauthorized departures. If any mentally retarded person shall depart without proper authorization from a hospital-school or a special unit, it shall be the duty of the superintendent and his assistants and all peace officers of any county in which such patient may be found, to take and detain the patient without a warrant or order and to immediately report such detention to the superintendent who shall immediately provide for the return of such patient to the hospital-school or special unit. [C24, 27, 31, 35, 39,§3460; C46, 50, 54, 58, 62,§222.50; C66, 71, 73, 75,§222.9]

222.10 Duty of peace officer. When any mentally retarded person departs without proper authority from an institution in another state and is found in this state, any peace officer in any county in which such patient is found may take and detain the patient without warrant or order and shall report such detention to the state director. The state director shall provide for the return of the patient to the authorities in the state from which the unauthorized departure was made. Pending return, such patient may be detained temporarily at one of the institutions of this state governed by the state director or by the director of the division of child and family services of the department of social services. The provisions of this section relating to the state director shall also apply to the return of other nonresident mentally retarded persons having legal settlement outside the state of Iowa. [C58, 62,§222.55; C66, 71, 73, 75,§222.10]

222.11 Expense. All actual and necessary expenses incurred in the taking into protective custody, restraint, and transportation of such patients to the hospital-schools shall be paid on itemized vouchers, sworn to by the claimants, and approved by the superintendent and the state director from any money in the state treasury not otherwise appropriated. [C24, 27, 31, 35, 39,§3461; C46, 50, 54, 58, 62,§222.51; C66, 71, 73, 75,§222.11]

222.12 Deaths investigated. In the event of a sudden or mysterious death of a patient of a hospital-school or the special unit or any private institution for the mentally retarded, an investigation shall be held by the county medical examiner. The superintendent of a hospital-school or a special unit or chief administrative officer of any private institution may request an investigation of the death of any patient by the county medical examiner. Notice of the death of the patient, and the cause thereof, shall be sent to the county board of supervisors and to the judge of the court having had jurisdiction over a committed patient. The fact of death with the time, place, and alleged cause shall be entered upon the docket of the court. The parent, guardian, or other person responsible for the admission of a patient to such institutions may request an investigation by the county medical examiner in the event of the death of the patient. The person or persons making the request shall be liable for the expense of such investigation and payment therefor may be required in advance. The expense of a county medical examiner's investigation when requested by the superintendent of a state hospital-school or a special unit shall be paid from support funds of that institution. [C24, 27, 31, 35, 39,§3447; C46, 50, 54, 58, 62,§222.37; C66, 71, 73, 75,§222.12]

222.13 Voluntary admissions. The parent, guardian, or other person responsible for any person believed to be mentally retarded within the meaning of this chapter may on behalf of such person request the county board of supervisors or their designated agent to apply to the superintendent of any state hospital-school for the voluntary admission of such person either as an inpatient or an outpatient of the hospital-school. After determining the legal settlement of such person as provided by this chapter, the board of supervisors shall, on forms prescribed by the state director, apply to the superintendent of the hospital-school in the district for the admission of such person to the hospital-school. An application for admission to a special unit of any person believed to be in need of any of the services provided

by the special unit under section 222.88 may be made in the same manner, upon request of the parent, guardian, or other person responsible for the handicapped person. The superintendent shall accept the application providing a preadmission diagnostic evaluation confirms or establishes the need for admission, except that no application may be accepted if the institution does not have adequate facilities available or if the acceptance will result in an overcrowded condition.

If the hospital-school has no appropriate program for the treatment of such persons, the board of supervisors shall arrange for the placement of the persons in any public or private facility within or without the state, approved by the commissioner of the department of social services, which offers appropriate services for such persons.

Upon applying for admission of a person to a hospital-school, or a special unit, the board of supervisors shall make a full investigation into the financial circumstances of that person and those liable for his or her support under section 222.78, to determine whether or not any of them are able to pay the expenses arising out of the admission of the person to a hospital-school or special treatment unit. If the board finds that the person or those legally responsible for him or her are presently unable to pay such expenses, they shall direct that the expenses be paid by the county. The board may review its finding at any subsequent time while the person remains at the hospital-school, or is otherwise receiving care or treatment for which this chapter obligates the county to pay. If the board finds upon review that that person or those legally responsible for him or her are presently able to pay such expenses, that finding shall apply only to the charges so incurred during the period beginning on the date of the review and continuing thereafter, unless and until the board again changes its finding. If the board finds that the person or those legally responsible for him are able to pay the expenses, they shall direct that the charges be so paid to the extent required by section 222.78, and the county auditor shall be responsible for the collection thereof. [C24, 27, 31, 35, 39,§§**3464, 3477.2**; C46, 50, 54, 58, 62, §§222.54, 223.13; C66, 71, 73, 75,§222.13; 66GA, ch 1104,§6]

Referred to in §§222.14, 222.31

222.14 Care by county pending admission. If the institution is unable to receive a patient, the superintendent shall notify the county board of supervisors of the county from which the application in behalf of the prospective patient was made of the time when such person may be received. Until such time as the patient is able to be received by the institution, or when application has been made for admission to a public or private facility as provided in section 222.13 and the application is pending, the care of said person shall be provided as arranged by the county board of supervisors. [C24, 27, 31, 35, 39,§**3433**; C46, 50, 54, 58, 62,§222.23; C66, 71, 73, 75,§222.14]

222.15 Discharge of voluntary patients. The parent, guardian, or any other person responsible for the voluntary admission of any person to a hospital-school or a special unit may, upon ten days' notice, obtain the discharge of such person by giving to the superintendent of the institution and the county board of supervisors of the county from which such person was admitted written notice of the desire for such discharge. [SS15,§2727-a96; C24, 27, 31, 35, 39, §**3473**; C46, 50, 54, 58, 62,§223.9; C66, 71, 73, 75, §222.15]

Referred to in §222.59

222.16 Petition for adjudication of retardation. A petition for the adjudication of the mental retardation of a person within the meaning of this chapter may, with the permission of the court be filed without fee against such person with the clerk of the district court of the county or city in which such alleged mentally retarded person resides or is found. The petition may be filed by any relative of such person, by a guardian, or by any reputable citizen of the county of such residence or of such place of finding. [C24, 27, 31, 35, 39,§**3413**; C46, 50, 54, 58, 62,§222.3; C66, 71, 73, 75,§222.16]

222.17 Allegations verified. The petition shall be verified by affidavit, may be filed on information or belief, and shall:

1. Allege that such person is mentally retarded within the meaning of this chapter.

2. Allege that the filing of the petition is conducive to the welfare of such person and of the community.

3. List the name and residence of all known persons supervising, caring for, or supporting such person, or assuming, or under obligation to do so.

4. List the name and residence, if known, of the parents of such person and of all other persons legally chargeable with the supervision, care, or support of such person.

5. List the names of all obtainable witnesses known to the petitioner by which the allegations of the petition may be established.

6. State whether such person has been examined by a qualified physician with a view of determining his mental condition. [C24, 27, 31, 35, 39,§§**3414, 3415**; C46, 50, 54, 58, 62,§§222.4, 222.5; C66, 71, 73, 75,§222.17]

222.18 County attorney to appear. The county attorney shall, if requested, appear on behalf of any petitioner for the appointment of a guardian or commitment of a person alleged to be mentally retarded under this chapter, and on behalf of all public officials and superintendents in all matters pertaining to the duties imposed upon them by this chapter.

Upon the filing of the petition, the court shall enter an order directing the county attorney of the county in which the allegedly mentally retarded person resides to make a full investigation regarding the financial condition of that person and of those persons legally liable for his support under section 222.78. [C24, 27, 31, 35, 39,§3412; C46, 50, 54, 58, 62,§222.2; C66, 71, 73, 75,§222.18; 66GA, ch 1104,§7]

222.19 Party respondents. The following persons, in addition to the person alleged to be mentally retarded, shall be made party respondents if the persons reside in this state and their names and residences are known:

1. The parent or parents of said principal person.
2. The person with whom said principal person is living.
3. The person or persons assuming to give the principal respondent care and attention.
4. The guardian, if there be such, of the person or property of the principal respondent. [C24, 27, 31, 35, 39,§3416; C46, 50, 54, 58, 62,§222.6; C66, 71, 73, 75,§222.19]

222.20 Notice served. Notice of the pendency of said petition and of the time and place of hearing thereon shall be served upon all respondents who are residents of the county in which the petition is filed, in the manner in which the original notices are served. The court shall by written order direct the manner and time of service on all other parties. No notice need be served on those who are personally before the court. [C24, 27, 31, 35, 39,§3417; C46, 50, 54, 58, 62,§222.7; C66, 71, 73, 75,§222.20]

Manner of service, R.C.P. 56(a)

222.21 Order requiring attendance. If the person alleged to be mentally retarded is not before the court, the court may issue an order requiring the person, who has the care, custody, and control of the alleged mentally retarded person to bring said alleged mentally retarded person into court at the time and place stated in said order. [C24, 27, 31, 35, 39, §3417; C46, 50, 54, 58, 62,§222.7; C66, 71, 73, 75,§222.21]

222.22 Time of appearance. The time of appearance shall not be less than five days after completed service unless the court orders otherwise. Appearance on behalf of such alleged mentally retarded person may be made by any citizen of the county or by any relative. The district court shall assign counsel for the alleged mentally retarded person. Counsel shall prior to proceedings personally consult with such person unless the judge appointing such counsel certifies that in his opinion, such consultation shall serve no useful purpose. Such certification shall be made a part of the record. An attorney so assigned shall receive such compensation as the district court shall fix to be paid in the first instance by the county. [C24, 27, 31, 35, 39, §3418; C46, 50, 54, 58, 62,§222.8; C66, 71, 73, 75, §222.22]

Referred to in §336B.2

222.23 Persons to be present. At any hearing for commitment under this chapter, the person whose commitment is sought, his appointed counsel, his own attorney, if any, and any physician or psychologist whose testimony is to be made a part of the record shall be present unless the presiding judge shall determine that the presence will not be in the best interest of the person whose commitment is sought. Such determination shall be made a part of the record. [C66, 71, 73, 75,§222.23]

222.24 When held. The hearing may be heard in term time or in vacation. The petition shall be taken as confessed by all respondents, except the principal person, who are duly served and who do not appear at the time required by the notice. [C24, 27, 31, 35, 39,§3419; C46, 50, 54, 58, 62,§222.9; C66, 71, 73, 75, §222.24]

222.25 Custody pending hearing. Pending final hearing, the court may at any time after the filing of the petition and on satisfactory showing that it is in the best interest of the alleged mentally retarded person and of the community that such person be at once taken into custody, or that service of notice will be ineffectual if the person is not taken into custody, issue an order for the immediate production of such person before the court. In such case, the court may make any proper order for the custody or confinement of such person as will protect the person and the community and insure the presence of such person at the hearing. Such person shall not be confined with those accused or convicted of crime. [C24, 27, 31, 35, 39,§3420; C46, 50, 54, 58, 62,§222.10; C66, 71, 73, 75,§222.25]

222.26 Hearing in equity. The hearing on the allegations of the petition shall be as in equity proceedings. Answers to allegations shall not be required but may be filed. The court may require the petitioner to answer under oath such interrogatories as may be propounded by said court. [C24, 27, 31, 35, 39, §§3421, 3422; C46, 50, 54, 58, 62,§§222.11, 222.12; C66, 71, 73, 75,§222.26]

How issues tried, R.C.P. 177 et seq.

222.27 Hearing in public. Hearings shall be public, unless otherwise requested by the parent, guardian, or other person having the custody of the mentally retarded person, or if the judge considers, a closed hearing in the best interests of the mentally retarded person. [C24, 27, 31, 35, 39,§3423; C46, 50, 54, 58, 62, §222.13; C66, 71, 73, 75,§222.27]

222.28 Commission to examine. The court may, at or prior to the final hearing, appoint a commission of one qualified physician and one qualified psychologist who shall make a

personal examination of the person alleged to be mentally retarded for the purpose of determining the mental condition of the person. [C24, 27, 31, 35, 39,§3424; C46, 50, 54, 58, 62, §222.14; C66, 71, 73, 75,§222.28]

Referred to in §222.31

222.29 Report. Said commission shall report in writing to the court the facts attending the mental condition of said person, its conclusion based thereon, and its recommendations concerning such person. The commission shall also report to the court sworn answers to such questions as may be required by the court. Such reports shall be filed with the clerk of the court. [C24, 27, 31, 35, 39,§3425; C46, 50, 54, 58, 62,§222.15; C66, 71, 73, 75,§222.29]

222.30 Ruling on report. No objections or exceptions need be made to said report. The court may set the report aside, and may order a new examination by the same or by a new commission, or may make such findings of fact in lieu of said report as may be justified by the evidence before the court. [C24, 27, 31, 35, 39,§3426: C46, 50, 54, 58, 62,§222.16; C66, 71, 73, 75,§222.30]

222.31 Guardianship or commitment. If in the opinion of the court, or of a commission as authorized in section 222.28, the person is mentally retarded within the meaning of this chapter and the court determines that it will be conducive to the welfare of such person and of the community to place the person under guardianship, or to commit the person to some proper institution for treatment, training, instruction, care, habilitation, and support, the court shall by proper order:

1. Appoint a guardian of the person of such person, provided no such guardian has already been appointed.

2. Commit the person to any public or private facility within or without the state, approved by the commissioner of the department of social services. If the person has not been examined by a commission as appointed in section 222.28, the court shall, prior to issuing an order of commitment, appoint such a commission to examine the person for the purpose of determining the mental condition of the person. No order of commitment shall be issued unless the commission shall recommend that such order be issued and the private institution to which the person is to be committed shall advise the court that it is willing to receive the person.

3. Commit the person to the state hospital-school designated by the director to serve the county in which the hearing is being held, or to a special unit. The court shall prior to issuing an order of commitment request that a diagnostic evaluation of the person be made by the superintendent of the hospital-school or the special unit, or his qualified designee. The evaluation shall be conducted at such place as the superintendent may direct. The cost of the evaluation shall be defrayed by the county of legal settlement from its state institution fund unless otherwise ordered by the court. Such cost may be equal to but shall not exceed the actual cost of the evaluation. Persons referred by a court to a hospital-school or the special unit for diagnostic evaluation shall be considered as outpatients of such institution. No order of commitment shall be issued unless the superintendent of the institution shall recommend that such order be issued, and shall advise the court that adequate facilities for the care of such person are available.

4. The court shall examine the report of the county attorney filed pursuant to section 222.13, and if the report shows that neither the person nor those liable for his or her support under section 222.78 are presently able to pay the charges rising out of the person's care in the hospital-school, or special treatment unit, shall enter an order stating that finding and directing that the charges be paid by the person's county of residence. The court may, upon request of the board of supervisors, review its finding at any subsequent time while the person remains at the hospital-school, or is otherwise receiving care or treatment for which this chapter obligates the county to pay. If the court finds upon review that the person or those legally responsible for him or her are presently able to pay such expenses, that finding shall apply only to the charges incurred during the period beginning on the date of the board's request for the review and continuing thereafter, unless and until the court again changes its finding. When the court finds that the person, or those liable for his or her support, are able to pay the charges, the court shall enter an order directing that the charges be so paid to the extent required by section 222.78. [C24, 27, 31, 35, 39, §3428; C46, 50, 54, 58, 62,§222.18; C66, 71, 73, 75, §222.31; 66GA, ch 1104,§8]

Referred to in §§222.34, 222.36

222.32 Committed person under jurisdiction of court. Any person committed to any private institution shall remain under the jurisdiction of the court and the order of commitment may at any time be set aside or modified by changing the place of commitment or terminating the commitment and appointing a guardian in lieu thereof. [C24, 27, 31, 35, 39, §3429; C46, 50, 54, 58, 62,§222.19; C66, 71, 73, 75, §222.32]

222.33 Power of guardian. A guardian appointed under this chapter shall have the same power over the person as possessed by a parent over a minor child. The guardian shall be subordinate to any duly appointed guardian of the property of such person. [C24, 27, 31, 35, 39,§3430; C46, 50, 54, 58, 62,§222.20; C66, 71, 73, 75,§222.33]

Guardianship generally, §§633.552 to 633.560

222.34 Guardianship under jurisdiction of court. Guardianship proceedings shall remain under the jurisdiction of the court. The court may at any time on application of any reputable person terminate such guardianship, re-

move the guardian and appoint a new guardian, or order that such mentally retarded person be removed from the custody of the guardian and committed to an institution or hospital-school as permitted in section 222.31. [C24, 27, 31, 35, 39,§3431; C46, 50, 54, 58, 62, §222.21; C66, 71, 73, 75,§222.34]

222.35 No change without notice. No order shall be made discharging or varying a prior order placing the mentally retarded person under guardianship without giving one or more of the relatives or a friend of the mentally retarded person, his guardian, or the state director notice and an opportunity to be heard. [C24, 27, 31, 35, 39,§3432; C46, 50, 54, 58, 62, §222.22; C66, 71, 73, 75,§222.35]

222.36 Custody pending admission. If a hospital-school or a special unit is unable to immediately receive a person committed under section 222.31, subsection 3, the superintendent shall notify the court of the time when such person may be received. In the meantime, said person shall be cared for under such order as the court may enter. [C24, 27, 31, 35, 39,§3433; C46, 50, 54, 58, 62,§222.23; C66, 71, 73, 75,§222.36]

222.37 Order to deliver committed person. Upon the entry of an order of commitment, the clerk shall deliver to a suitable person designated by the court, an order of commitment and a duplicate thereof commanding such person to immediately deliver the committed person to the institution, hospital-school, or special unit, as designated by the court. [C24, 27, 31, 35, 39,§3434; C46, 50, 54, 58, 62,§222.24; C66, 71, 73, 75,§222.37]

222.38 Delivery of person to school or special unit. The court may for the purpose of committing said person direct the clerk to authorize the employment of one or more assistants. No mentally retarded female shall be taken to an institution, hospital-school, or special unit by any male person not her husband, father, brother, or son without the attendance of a woman of good character and mature age. [C24, 27, 31, 35, 39,§3435; C46, 50, 54, 58, 62,§222.25; C66, 71, 73, 75,§222.38]

222.39 Receipt acknowledged by superintendent. The superintendent of the institution, hospital-school, or special unit on the order of commitment shall acknowledge receipt for said person. The duplicate order shall be left with the superintendent and shall be sufficient authority to restrain and care for said committed person. [C24, 27, 31, 35, 39, §3436; C46, 50, 54, 58, 62,§222.26; C66, 71, 73, 75, §222.39]

222.40 Filing order with clerk. The person executing said order shall make due return thereon of his doings and forthwith file the same with the clerk. [C24, 27, 31, 35, 39,§3437; C46, 50, 54, 58, 62,§222.27; C66, 71, 73, 75,§222.40]

222.41 Exclusive method of discharge. No person committed under this chapter shall be discharged from the institution, hospital-school, or special unit except as provided in this chapter. Nothing in this chapter shall abridge the right of petition for a writ of habeas corpus. [C24, 27, 31, 35, 39,§3438; C46, 50, 54, 58, 62,§222.28; C66, 71, 73, 75,§222.41]

Constitutional provision, Art. I,§13
Habeas corpus, ch 663

222.42 Petition for discharge. A petition for the discharge of a person who has been committed to an institution, a hospital-school, or a special unit under this chapter or to vary such order of commitment may at any time after six months from the date of such commitment be filed by the person committed or by any reputable person. If the commitment be to a private institution, the petition shall be filed with the court ordering such commitment. If the commitment be to a hospital-school or a special unit, the petition shall be filed in the proper court of the county where the institution is situated. [C24, 27, 31, 35, 39, §3439; C46, 50, 54, 58, 62,§222.29; C66, 71, 73, 75, §222.42]

222.43 Grounds. Discharges and modifications of orders may be made on any of the following grounds:

1. That the person adjudged to be mentally retarded is not mentally retarded.

2. That the person adjudged to be mentally retarded has improved as to be capable of caring for himself.

3. That the relatives or friends of the mentally retarded person are able and willing to support and care for him and request his discharge, and in the judgment of the superintendent of the institution or hospital-school having charge of the person, no harmful consequences are likely to follow such discharge.

4. That, for any other cause, said discharge should be made or such modification should be entered.

Petitions for discharge or modification of an order of commitment to a special unit may be made upon any of the foregoing grounds, when applicable. [C24, 27, 31, 35, 39,§3440; C46, 50, 54, 58, 62,§222.30; C66, 71, 73, 75,§222.43]

Referred to in §222.59

222.44 Notice to superintendent. Notice of the hearing for discharge or modification of orders shall be served on the superintendent of the institution, hospital-school, or special unit, and on such parties as the court may find from the record are interested. [C24, 27, 31, 35, 39,§3441; C46, 50, 54, 58, 62,§222.31; C66, 71, 73, 75,§222.44]

222.45 Power of court. On the hearing, the court may discharge the mentally retarded person from all supervision, control, and care, or may place him under guardianship, or may transfer him from a public institution to a private institution, or vice versa, or transfer the person from a special unit to a hospital-school, or vice versa, as the court deems ap-

propriate under all the circumstances. [C24, 27, 31, 35, 39,§3442; C46, 50, 54, 58, 62,§222.32; C66, 71, 73, 75,§222.45]

222.46 No bar to future petitions. The denial of one petition for discharge or modification shall be no bar to another on the same or different grounds within a reasonable time thereafter, such reasonable time to be determined by the court. [C24, 27, 31, 35, 39,§3443; C46, 50, 54, 58, 62,§222.33; C66, 71, 73, 75,§222.46]

222.47 Penalty for false petition of commitment. Any person who shall maliciously seek to have any person adjudged mentally retarded, knowing that such person is not mentally retarded, shall be fined not exceeding one thousand dollars or imprisoned not exceeding one year in the county jail. [C24, 27, 31, 35, 39,§3448; C46, 50, 54, 58, 62,§222.38; C66, 71, 73, 75,§222.47]

222.48 Fees for witnesses. The fees for attendance of witnesses and execution of legal process shall be the same as are allowed by law for similar service in other cases. For service as commissioner, a reasonable sum as determined by the court and the actual and necessary traveling expenses shall be allowed. [C24, 27, 31, 35, 39,§3449; C46, 50, 54, 58, 62, §222.39; C66, 71, 73, 75,§222.48]

Fees, §§337.11, 622.69

222.49 Costs paid. The costs of proceedings shall be defrayed from the county treasury unless otherwise ordered by the court. When the person alleged to be mentally retarded is found not to be mentally retarded, the court shall render judgment for such costs against the person filing the petition except when the petition is filed by order of court. [C24, 27, 31, 35, 39,§3450; C46, 50, 54, 58, 62,§222.40; C66, 71, 73, 75,§222.49]

222.50 County of legal settlement to pay. When the proceedings are instituted in a county in which the alleged mentally retarded person was found but which is not the county of legal settlement of the person, and the costs are not taxed to the petitioner, the county which is the legal settlement of such person shall, on presentation of a properly itemized bill for such costs, repay the same to the former county. When the person's legal settlement is outside the state or is unknown, the costs shall be paid out of money in the state treasury not otherwise appropriated, itemized on vouchers executed by the auditor of the county which paid the costs, and approved by the state director. [C24, 27, 31, 35, 39,§3451; C46, 50, 54, 58, 62,§222.41; C66, 71, 73, 75,§222.50]

222.51 Costs collected. Costs incident to guardianship and to the hearings and commitment of a mentally retarded person to an institution, a hospital-school, or a special unit, may be collected from such mentally retarded person and from all persons legally chargeable with the support of such mentally retarded person. [C24, 27, 31, 35, 39,§3452; C46, 50, 54, 58, 62,§222.42; C66, 71, 73, 75,§222.51]

222.52 Proceedings against delinquent — hearing on retardation. When in proceedings against an alleged delinquent or dependent child, the court is satisfied from any evidence that such child is mentally retarded, the court may order a continuance of such proceeding, and may direct an officer of the court or some other proper person to file a petition against such child permitted under the provisions of this chapter. Pending hearing of the petition the court may by order provide proper custody for the child. [C24, 27, 31, 35, 39,§3453; C46, 50, 54, 58, 62,§222.43; C66, 71, 73, 75,§222.52]

Referred to in §§222.53, 222.54

222.53 Conviction—suspension. If on the conviction in the district court of any person for any crime or for any violation of any municipal ordinance, or if on the determination in said courts that a child is dependent, neglected, or delinquent and it appears from any evidence presented to the court before sentence, that such person is mentally retarded within the meaning of this chapter, the court may suspend sentence or order, and may order any officer of the court or some other proper person to file a petition permitted under the provisions of this chapter against said person. Pending hearing of the petition, the court shall provide for the custody of said person as directed in section 222.52. [C24, 27, 31, 35, 39,§3454; C46, 50, 54, 58, 62,§222.44; C66, 71, 73, 75,§222.53]

Referred to in §222.54

222.54 Procedure after hearing. Should it be found under sections 222.52 and 222.53 that said person is not mentally retarded, the court shall proceed with the original proceedings as though no petition had been filed. [C24, 27, 31, 35, 39,§3455; C46, 50, 54, 58, 62,§222.45; C66, 71, 73, 75,§222.54]

222.55 Procedure as mentally ill person. If it appears at any time that a person has under the provisions of this chapter been placed under guardianship or committed to a private institution and should be evaluated and treated in a hospital for the mentally ill, the person may be hospitalized under any of the provisions of sections 229.2 to 229.15. [C24, 27, 31, 35, 39,§3457; C46, 50, 54, 58, 62,§222.47; C66, 71, 73, 75,§222.55; 66GA, ch 139,§39]

Hospitalization of mentally ill, ch 229

222.56 Transfer to institution for mentally retarded. When the mental condition of a person in a private institution for the mentally ill is found to be such that such patient should be transferred to an institution for the mentally retarded or placed under guardianship, such person may be proceeded against under this chapter. [C24, 27, 31, 35, 39,§3458; C46, 50, 54, 58, 62,§222.48; C66, 71, 73, 75,§222.56]

222.57 Court records. Each court having jurisdiction under this chapter shall keep a separate docket of proceedings in which shall be made such entries as shall, together with the papers filed, preserve a complete and perfect record of each case. The original petitions, writs, and returns made thereto and the reports of commissions shall be filed with the clerk of the court. [C24, 27, 31, 35, 39,§3462; C46, 50, 54, 58, 62,§222.52; C66, 71, 73, 75,§222.57]

222.58 Director to keep record. The state director shall keep a record of all persons adjudged to be mentally retarded and of the orders respecting such persons by the courts throughout the state. Copies of such orders shall be furnished by the clerk of the court without the state director's application therefor. [C24, 27, 31, 35, 39,§3463; C46, 50, 54, 58, 62,§222.53; C66, 71, 73, 75,§222.58]

222.59 Superintendent may return patient.

1. The superintendent of a hospital-school or a special unit may, on application of the parent or guardian, return a patient to the parent or guardian. The superintendent in co-operation with other social agencies under the supervision of the Iowa department of social services may arrange for the patient to be placed at an appropriate health care facility licensed under chapter 135C or at some other appropriate facility, which may include a foster home or group home, either under an arrangement which involves full-time responsibility for the patient by such facility, or as part of an arrangement under which the patient is to participate in one or more educational, developmental or employment programs conducted by other responsible persons, agencies or facilities. Such return or placement may be made at any time, even though the patient was committed by a court, upon recommendation of the professional staff of the hospital-school or special unit that the patient is unlikely to benefit from further treatment, training, instruction, or care at the institution or is likely to improve his life status in an alternate facility.

2. In planning for the placement of a patient outside the hospital-school or special unit, it shall be the superintendent's responsibility to arrange for representation of the patient's interest by the patient's parent or legal guardian. If the patient has no living parent and no legal guardian other than the department or one of its officers or employees, the superintendent shall request some person who has demonstrated by prior activities an informed concern for the welfare and habilitation of the mentally retarded, and who is not an officer or employee of the department nor of any agency or facility which is a party to the arrangement for placement of the patient, to act as the patient's advocate. The superintendent may request some such person to serve as advocate for a patient who has no legal guardian if either or both of the patient's parents are living but are deemed unlikely to or have shown themselves unable to represent the patient's interest effectively due to physical or mental infirmity, residence outside the state at such a distance as to make their effective participation unfeasible, or lack of interest demonstrated by refusal to participate in planning for the patient's placement or by failure to respond within thirty days to a letter sent by restricted certified mail to the last known address of the parent or parents.

3. Each proposed placement shall be reported to the state director, who may approve, modify, alter, or rescind the action if deemed necessary. In so doing, the superintendent of the hospital-school or special unit involved shall certify in writing to the state director that there has been compliance with subsection 2 and that the patient's parent, guardian or advocate is or is not satisfied with the proposed placement, as the case may be. In the latter case, the state director shall afford the parent, guardian or advocate an opportunity to explain objections to the proposed placement and, if he decides to approve the proposed placement despite such objection, shall advise the parent, guardian or advocate of his right to appeal the decision pursuant to subsection 4.

4. If a proposed placement of a patient from a hospital-school or special unit which is not satisfactory to the patient's parent, guardian or advocate is approved by the state director; or a proposed placement which is satisfactory to the patient's parent, guardian or advocate is modified, altered or rescinded by the state director, the parent, guardian or advocate may appeal to the department of social services, within thirty days after notification to the parent, guardian or advocate of the proposed placement. The department shall give the appellant reasonable notice and opportunity for a fair hearing, conducted by the commissioner or his designee who shall act as an impartial arbiter of fact and law. In such hearing the parent, guardian or advocate shall have the opportunity to confront witnesses, to have access to hospital records, to present evidence and witnesses on their behalf and to be represented by counsel. The standard for such fair hearing shall be to provide "that placement which inures to the best interest of the patient." Judicial review of actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act. The department shall furnish the petitioner with a copy of any papers filed by him in support of his position, a transcript of any testimony taken, and a copy of the department's decision. In the district court hearings, the parent, guardian or advocate has the right to be represented by counsel. The court shall, in all cases where the interests of the patient conflict with that of parent, guardian or advocate, appoint counsel as guardian ad litem for the patient. Notwithstanding the terms of the Iowa administrative proce-

dure Act, where a petition is filed for judicial review of a proposed placement, the proposed placement shall be stayed pending the outcome of said review proceeding.

5. Placement of a patient outside of a hospital-school or special unit under this section shall not relieve the Iowa department of social services of continuing responsibility for the welfare of the patient, except in cases of discharge under section 222.15 or 222.43. Unless such a discharge has occurred, the department shall provide for review of each placement arrangement made under this section at least once each year, or not more often than once each six months upon the written request of the patient's parent, guardian or advocate, with a view to ascertaining whether such arrangements continue to satisfactorily meet the patient's current needs.

6. The proposed return or placement of a patient outside a hospital-school or special unit shall be reported to the board of supervisors of the patient's county of legal settlement. The county board may not change a placement or program arranged and approved under this section if state funds are being made available to the county which the county may by law use to pay a portion of the cost of care of the patient so placed, however the board may at any time propose an alternative placement or program to the state director. No such alternative placement or program shall be carried out without the prior written approval of the state director, which shall be granted only after evaluation in the same manner as provided by this section for initial placements from a hospital-school or special unit.

7. When a patient committed by a court is to be returned to the parent or guardian, or placed out from a hospital-school or a special unit as otherwise provided in this section, notice shall be sent to the clerk of the court which committed the patient, and to the board of supervisors of both the patient's county of legal settlement and the county to which the patient is to be released, thirty days prior to the time the patient leaves the hospital-school or special unit. [C97,§2698; C24, 27, 31, 35, 39, §§3405, 3446; C46,§221.4; C46, 50, 54, 58, 62, §§222.36, 223.19; C66, 71, 73, 75,§222.59]

222.60 Costs paid by county or state. All necessary and legal expenses for the cost of admission or commitment or for the treatment, training, instruction, care, habilitation, support and transportation of patients in a state hospital-school for the mentally retarded, or in a special unit, or any public or private facility within or without the state, approved by the commissioner of the department of social services, shall be paid by either:

1. The county in which such person has legal settlement as defined in section 252.16.

2. The state when such person has no legal settlement or when such settlement is unknown. [C39,§§3477.3, 3477.4, 3477.7; C46, 50, 54, 58, 62,§§223.14, 223.15, 223.18; C66, 71, 73, 75, §222.60]

Referred to in §§222.73, 222.76, 222.78

222.61 Legal settlement determined. When the board of supervisors of any county receives an application on behalf of any person for admission to a hospital-school or a special unit or when any court issues an order committing any person to a hospital-school or a special unit, the board of supervisors or the court shall determine and enter as a matter of record whether the legal settlement of the person is:

1. In the county in which the board of supervisors or court is located.

2. In some other county of the state.

3. In another state or in a foreign country.

4. Unknown. [C66, 71, 73, 75,§222.61]

222.62 Settlement in another county. Whenever the board of supervisors or the court determines that the legal settlement of the person is other than in the county in which the board or court is located, the board or court shall, as soon as determination is made, certify such finding to the superintendent of the hospital-school or the special unit where the person is a patient. The superintendent shall charge the expenses already incurred and unadjusted, and all future expenses of the patient, to the county so certified until said legal settlement shall be otherwise determined as provided by this chapter. [C66, 71, 73, 75. §222.62]

222.63 Finding of settlement — objection. Said finding of legal settlement shall also be certified by the board of supervisors or the court to the county auditor of the county of legal settlement. Such auditor shall lay such notification before the board of supervisors of his county whereupon it shall be conclusively presumed that the patient has a legal settlement in said county unless the county shall, within six months, in writing filed with the board of supervisors or the court giving such notice, dispute said legal settlement. [C66, 71, 73, 75,§222.63]

222.64 Foreign state or unknown. If the legal settlement of the person is found by the board of supervisors or the court to be in a foreign state or country or is found to be unknown, the board of supervisors or the court shall immediately notify the state director of such finding and shall furnish the state director with a copy of the evidence taken on the question of legal settlement. The care of said person shall be as arranged by the board of supervisors or by such order as the court may enter. Application for admission or order of commitment may be made pending investigation by the state director. [C66, 71, 73, 75, §222.64]

222.65 Investigation. The state director shall immediately investigate the legal settlement of the person and proceed as follows:

1. If the state director finds that the decision of the board of supervisors or the court as to legal settlement of the person is correct, the state director shall cause the person either to be transferred to a hospital-school or a special unit and there maintained at the expense of the state or to be transferred to the place of foreign settlement.

2. If the state director finds that the decision of the board of supervisors or the court is not correct, the state director shall order the person transferred to a state hospital-school or a special unit and there maintained at the expense of the county of legal settlement in this state. [C66, 71, 73, 75,§222.65]

222.66 Transfers—expenses. The transfer to a hospital-school or a special unit or to the place of legal settlement of a mentally retarded person who has no legal settlement in this state or whose legal settlement is unknown, shall be made in accordance with such directions as shall be prescribed by the state director and when practicable by employees of the state hospital-school or the special unit. The actual and necessary expenses of such transfers shall be paid on itemized vouchers sworn to by the claimants and approved by the state director from any funds in the state treasury not otherwise appropriated. [C66, 71, 73, 75, §222.66]

222.67 Charge on finding of settlement. Where a person has been received into a hospital-school or a special unit as a patient whose legal settlement is supposedly outside the state or is unknown and the state director finds that the legal settlement of the patient was at the time of admission or commitment in a county of this state, the state director shall charge all legal costs and expenses pertaining to the admission or commitment and support of the patient to the county of such legal settlement. The costs and expenses shall be collected as provided by law in other cases. [C66, 71, 73, 75, §222.67]

222.68 Costs paid in first instance. All necessary and legal expenses for the cost of admission or commitment of a person to a hospital-school or a special unit when the person's legal settlement is found to be in another county of this state shall in the first instance be paid by the county from which the person was admitted or committed. The county of legal settlement shall reimburse the county so paying for all such expenses. Where any county fails to make such reimbursement within sixty days following submission of a properly itemized bill to the county of legal settlement, a penalty of not greater than one percent per month on and after sixty days from submission of the bill may be added to the amount due. [C24, 27, 31, 35, 39,§3451; C46, 50, 54, 58, 62, §222.41; C66, 71, 73, 75,§222.68]

222.69 Payment by state. All necessary and legal expenses for the cost of admission or commitment of a person to a hospital-school or a special unit when the person's legal settlement is outside this state or is unknown shall be paid out of any money in the state treasury not otherwise appropriated. Such payments shall be made on itemized vouchers executed by the auditor of the county from which the expenses have been paid and approved by the state director. [C66, 71, 73, 75,§222.69]

222.70 Dispute between counties. When a dispute arises between counties or between the state director and a county as to the legal settlement of a person committed to a hospital-school or a special unit, the attorney general at the request of the state director shall without advancement of fees cause an action to be brought in the district court of any county where such dispute exists. The action shall be brought to determine such legal settlement, except that such action shall in no case be filed in a county in which the district court or a judge thereof originally made the disputed finding. Said action may be brought at any time when it appears that the dispute cannot be amicably settled. All counties which may be the county of such legal settlement, so far as known, shall be made defendants and the allegation of settlement may be in the alternative. Said action shall be tried as in equity. [C66, 71, 73, 75,§222.70]

222.71 Finding by court. The court shall determine whether the legal settlement of said mentally retarded person at the time of admission or commitment was in one of the defendant counties. If the court so finds, judgment shall be entered against the county of such settlement in favor of any other county for all necessary and legal expenses arising from said admission or commitment and paid by said other county. If any such costs have not been paid, judgment shall be rendered against the county of settlement in favor of the parties, including the state, to whom said costs or expenses may be due. [C66, 71, 73, 75,§222.71]

222.72 Finding settlement outside state. If the court finds that the legal settlement of said mentally retarded person, at the time of admission or commitment was outside the state or was unknown an order shall be entered that the mentally retarded person shall be maintained in the hospital-school or the special unit at the expense of the state. In such case, the state shall refund to any county all necessary and legal expenses for the cost of said admission or commitment paid by a county. A decision by the court shall be final. [C66, 71, 73, 75,§222.72]

222.73 Superintendent to prepare expense schedule. The superintendent of each hospital-school and special unit shall certify to the state comptroller on a schedule approved by the comptroller any amount not previously certi-

fied by the superintendent due the state for the expenses of patients in each hospital-school and special unit from the several counties responsible under section 222.60. The comptroller shall thereupon charge the amounts so certified to the proper counties. The amount certified by the superintendent to the comptroller to be charged against each county shall be the per-patient-per-day cost of the hospital-school or special unit, as the case may be, multiplied by the number of days each patient for which such county is liable to the state was carried on the rolls of the hospital-school or special unit as an inpatient, plus the amount due for the treatment of outpatients for which such county is liable to the state during the period for which expenses are being certified. The per-patient-per-day cost shall be determined by listing the number of days each inpatient was actually in the hospital-school or special unit during the period for which expenses are being certified and dividing the total of all such days into one hundred percent of the portion of the appropriation for the hospital-school or special unit expended during such period, unless otherwise specified in the biennial appropriations for support of such institutions. The amount charged for the treatment of outpatients shall be at a rate to be established by the state director on the basis of the actual cost of such treatment.

After computing the charge to the county on behalf of each patient, the hospital-school shall reduce the charge by the amount of any money which has been received for that patient's care from any source other than state appropriated funds and has not previously been credited against charges made to the patient's county of legal settlement. [SS15, §2727-a96; C24, 27, 31, 35, 39,§3469; C46, 50, 54, 58, 62,§223.5; C66, 71, 73, 75,§222.73; 66GA, ch 9,§6]

Referred to in §222.74

222.74 Duplicate to county. When certifying to the comptroller amounts to be charged against each county as provided in section 222.73, the superintendent shall send to the county auditor of each county against which he has so certified any amount, a duplicate of such certificate. The county auditor upon receipt of the duplicate certificate shall enter the same to the credit of the state in his ledger of state accounts, and shall immediately issue a notice to the county treasurer authorizing the treasurer to transfer the amount from the county mental health and institutions fund to the general state revenue. The treasurer shall file such notice as his authority for making such transfer and shall include the amount so transferred in his next remittance of state taxes to the treasurer of state, designating the fund to which the amount belongs. [C66, 71, 73, 75,§222.74]

222.75 Delinquent payments — penalty. Should any county fail to pay the bills within sixty days from the date of certificate from the superintendent, the state comptroller may charge the delinquent county a penalty of not greater than one percent per month on and after sixty days from date of certificate until paid. [C66, 71, 73, 75,§222.75]

222.76 Paid from institution funds. All expenses required to be paid by counties under section 222.60 shall be paid from the state institution fund of the county. The cost of care of patients discharged or removed from the hospital-schools or a special unit for placement within a county may be paid from the state institution fund or the county fund for mental health of the county of legal settlement. [C39,§3477.7; C46, 50, 54, 58, 62,§223.18; C66, 71, 73, 75,§222.76]

222.77 Patients on leave. The cost of support of patients placed on convalescent leave or removed as a habilitation measure from a hospital-school, or a special unit, except when living in the home of a person legally bound for the support of such patient, shall be paid from the state institution fund or the county mental health fund of the county of legal settlement. If the patient has no county of legal settlement, the cost shall be paid from the support fund of the hospital-school or special unit and charged on abstract in the same manner as other state inpatients until such time as the patient becomes self-supporting or qualifies for support under other existing statutes. [C66, 71, 73, 75,§222.77]

Referred to in §222.78

222.78 Parents and others liable for support. The father and mother of any person admitted or committed to a hospital-school or to a special unit, as either an inpatient or an outpatient, and any person, firm, or corporation bound by contract hereafter made for support of such person shall be and remain liable for the support of such person. Such person and those legally bound for the support of the person shall be liable to the county for all sums advanced by the county to the state under the provisions of sections 222.60 and 222.77. The liability of any person, other than the patient, who is legally bound for the support of any patient under eighteen years of age in a hospital-school or a special unit shall in no instance exceed the average minimum cost of the care of a normally intelligent, nonhandicapped minor of the same age and sex as such minor patient. The state director shall establish the scale for this purpose but the scale shall not exceed the standards for personal allowances established by the state division under the aid to dependent children program. Provided further that the father or mother of such person shall not be liable for the support of such person after such person attains the age of eighteen years and that the father or mother shall incur liability only during any period when the father or mother either individually or jointly receive a net income from whatever source, commensurate with that upon which they would be liable to make an income tax payment to this state.

Nothing in this section shall be construed to prevent a relative or other person from voluntarily paying the full actual cost as established by the state director for caring for such mentally retarded person. [C39,§3477.5; C46, 50, 54, 58, 62,§§223.16, 223.20; C66, 71, 73, 75,§222.78]

Referred to in §§222.13, 222.18, 222.79, 222.80, 222.81, 226.8, 228.31, 234.39

222.79 Statement presumed correct. In actions to enforce the liability imposed by section 222.78, the certificate from the superintendent to the county auditor stating the sums charged in such cases shall be presumptively correct. [C66, 71, 73, 75,§222.79]

222.80 Liability to county. Any person admitted or committed to a county institution or home or admitted or committed at county expense to any private hospital, sanitorium, or other facility for treatment, training, instruction, care, habilitation, and support as a mentally retarded patient thereof shall be liable to the county for the reasonable cost of such support as provided in section 222.78. [C66, 71, 73, 75,§222.80]

222.81 Claim against estate. The total amount of liability provided in section 222.78 shall be allowed as a claim of the sixth class against the estate of the person or against the estate of the father or mother of such person. [C66, 71, 73, 75,§222.81]

Unsatisfied prior to July 1, 1976, see 66GA, ch 1104,§16

222.82 Collection of liabilities and claims. The board of supervisors of each county may direct the county attorney to proceed with the collection of said liabilities and claims as a part of the duties of his office when the board of supervisors deems such action advisable. The board of supervisors may and is hereby empowered to compromise any and all liabilities to the county arising under this chapter when such compromise is deemed to be in the best interests of the county. Any collections and liens shall be limited in conformance to section 614.1 subsection 4. [C39,§3477.6; C46, 50, 54, 58, 62,§223.17; C66, 71, 73, 75,§222.82; 66GA, ch 1104,§9]

222.83 Nonresident patients. The estates of all nonresident patients who are provided treatment, training, instruction, care, habilitation, and support in or by a hospital-school or a special unit, and all persons legally bound for the support of such persons, shall be liable to the state for the reasonable value of such services. The certificate of the superintendent of the hospital-school or special unit in which any nonresident is or has been a patient, showing the amounts drawn from the state treasury or due therefrom as provided by law on account of such nonresident patient shall be presumptive evidence of the reasonable value of such services furnished such patient by the hospital-school or special unit. [C66, 71, 73, 75,§222.83]

222.84 Patients' personal deposit fund. There is hereby established at each hospital-school and special unit a fund which shall be known as the "patients' personal deposit fund"; provided that in the case of a special unit, the commissioner may direct that the patients' personal deposit fund be maintained and administered as a part of the fund established, pursuant to sections 226.43 through 226.46, inclusive, by the mental health institute where the special unit is located. [C66, 71, 73, 75,§222.84]

222.85 Deposit of moneys — exception to guardians. Any funds coming into the possession of the superintendent or any employee of a hospital-school or special unit belonging to any patient in that institution shall be deposited in the name of the patient in the patients' personal deposit fund, except that if a guardian of the property has been appointed for the person, the guardian shall have the right to demand and receive such funds. Funds belonging to a patient deposited in the patients' personal deposit fund may be used for the purchase of personal incidentals, desires, and comforts for the patient.

Money paid to a hospital-school from any source other than state appropriated funds and intended to pay all or a portion of the cost of care of a patient, which cost would otherwise be paid from state or county funds or from the patient's own funds, shall not be deemed money belonging to the patient for the purposes of this section. [C66, 71, 73, 75, §222.85; 66GA, ch 9,§7]

222.86 Payment for care from fund. Whenever the amount in the account of any patient in the patients' personal deposit fund exceeds the sum of two hundred dollars, the business manager of the hospital-school or special unit may apply any amount of the excess to reimburse the county of legal settlement for liability incurred by such county for the payment of care, support, and maintenance of the patient when billed therefor by the county of legal settlement. Money earned by a patient for work performed in or for a hospital-school or special unit shall not be subject to this section or to attachment. [C66, 71, 73, 75,§222.86]

222.87 Deposit in bank. The business manager shall deposit the patients' personal deposit fund in a commercial account of a bank of reputable standing. When deposits in the commercial account exceed average monthly withdrawals, the business manager may deposit the excess at interest. The savings account shall be in the name of the patients' personal deposit fund and interest paid thereon may be used for recreational purposes for the patients at the hospital-school or special unit. [C66, 71, 73, 75,§222.87]

222.88 Special mental retardation unit. The commissioner of social services may organize and establish a special mental retardation unit at an existing institution which may provide:

1. Psychiatric and related services to mentally retarded children and adults who are also emotionally disturbed or otherwise mentally ill.

2. Specific programs to meet the needs of such other special categories of mentally retarded persons as may be designated by the commissioner.

3. Appropriate diagnostic evaluation services. [C71, 73, 75,§222.88]

Referred to in §§222.1, 222.2(2), 222.13, 222.91

222.89 Location—staff and personnel. The commissioner may:

1. Designate a portion of the physical facilities of one of the mental health institutes to be occupied by the offices and facilities of the special unit.

2. Determine the extent to which the special unit may effectively utilize services of the mental health institute staff, and what staff personnel should be employed for and assigned specifically to the special unit. [C71, 73, 75, §222.89]

Referred to in §§222.1, 222.2(2)

222.90 Superintendent. The commissioner shall appoint a qualified superintendent of the special unit. The superintendent shall employ all staff personnel to be assigned specifically to the special unit, and shall have the same duties with respect to the special unit as are imposed upon superintendents of hospital-schools by section 222.4. [C71, 73, 75,§222.90]

Referred to in §§222.1, 222.2(2)

222.91 Direct referral to special unit. In addition to any other manner of referral, admission, or commitment to the special unit provided for by this chapter, persons may be referred directly to the special unit by courts, law enforcement agencies, or state penal or correctional institutions for services under subsection 2 of section 222.88; but persons so referred shall not be admitted or committed unless a preadmission diagnostic evaluation indicates that the person would benefit from such services, and the admission or commitment of the person to the special unit would not cause the special unit's patient load to exceed its capacity. [C71, 73, 75,§222.91]

Referred to in §§222.1, 222.2(2)

222.92 Revolving fund.

1. There is created a revolving fund within the state treasury to be known as the "hospital-schools revolving fund" which shall be used and administered as provided in this section. The hospital-schools revolving fund shall be used for capital projects at the Glenwood and Woodward hospital-schools, which capital projects will bring the hospital-schools into compliance with federal and state standards relating to physical facilities in order to have approved mental retardation-intermediate care facilities as authorized under title XIX of the United States Social Security Act.

2. The hospital-schools revolving fund shall be composed of moneys appropriated by the general assembly for capital expenditures at the hospital-schools and moneys which become available to the hospital-schools from the federal government pursuant to title XIX of the United States Social Security Act. Moneys in the revolving fund may be expended without regard to order of deposit or source of funds. [66GA, ch 62,§2, ch 1132,§15]

222.93 Medical assistance payments. Each hospital-school shall, upon receipt of any payment made under chapter 249A for the care of any patient, segregate in a special account an amount equal to that portion of the payment which is required by law to be made from nonfederal funds. The money segregated in the special account shall be deposited in the medical assistance fund of the department of social services at the end of each calendar quarter of the fiscal year. [66GA, ch 9,§4]

CHAPTER 223

IOWA SECURITY MEDICAL FACILITY

Referred to in §229.1

223.1 Institution established.
223.2 Superintendent.
223.3 Duties.
223.4 Sources of patients.
223.5 Admissions in writing only.
223.6 Final decision.
223.7 Return of patient.
223.8 Costs and charges.

223.1 Institution established. There is hereby established an institution for persons displaying evidence of mental illness or psychosocial disorders and requiring diagnostic services and treatment in a security setting. The institution shall be under the jurisdiction of the department of social services and shall be known as the Iowa security medical facility. [C71, 73, 75,§223.1]

223.2 Superintendent. A superintendent of the Iowa medical facility shall be appointed as designated in section 218.9. The superintendent shall be a reputable and qualified person experienced in the administration of programs for the care and treatment of persons afflicted with mental disorders and with such other qualifications as the department deems necessary. [C71, 73, 75,§223.2]

223.3 Duties. The superintendent shall:

1. Perform all duties required by law and by the state department of social services not inconsistent with this chapter.
2. Maintain cognizance of and secure the professional care and treatment of each patient.
3. Maintain a complete record on the condition of each patient.
4. Retain custody of all patients in such manner as deemed necessary and in the best interest of the patients subject to the regulations of the department of social services. [C71, 73, 75,§223.3]

223.4 Sources of patients. Patients admitted to the facility may originate from the following sources:

1. Residents of any institution under the jurisdiction of the department of social services.
2. Commitments by the courts as mentally incompetent to stand trial under chapter 783.
3. Referrals by the courts for psychosocial diagnosis and recommendations as part of the pretrial or presentence procedure or determination of mental competency to stand trial.
4. Mentally ill prisoners from county and city jails for diagnosis, evaluation, or treatment.

Patients from other sources may be admitted providing such admission is not inconsistent with the law and is within the capacity of the facilities and staff to accommodate same. [C71, 73, 75,§223.4]

223.5 Admissions in writing only. All admissions to the facility shall be by written application only. Application shall be made by the head of the state institution, agency, governmental body, or court requesting same to the superintendent of the facility. An application shall not be accepted by the superintendent if by so doing the admission will result in an overcrowded condition or if adequate staff or facilities are not available. [C71, 73, 75,§223.5]

223.6 Final decision. The final decision regarding admission and discharge of patients shall rest with the superintendent of the facility. [C71, 73, 75,§223.6]

223.7 Return of patient. When a patient transferred to the facility from any other state institution or admitted by request or order of any agency, governmental body, or court no longer requires special treatment in the security setting, the patient may be returned to the source from which received. The state institution, agency, governmental body, or court that referred the patient for hospitalization shall retain constructive jurisdiction over the patient. Patients without legal encumbrances may be discharged directly from the facility upon concurrence of the superintendent of the facility and the head of the referring institution, agency, governmental body, or court. The support, commitment, and release statutes applicable to a patient at the state institution from which transferred shall remain applicable while the person is a patient at the facility. [C71, 73, 75,§223.7]

223.8 Costs and charges. Chapter 230 shall govern the determination of the costs and charges for the care and treatment of mentally ill patients admitted to the Iowa security medical facility as direct civil commitments upon authorization of the district court or as persons having no legal settlement in this state. The charge for the cost of other admittees shall be as follows:

1. Transferees from mental health institutions under the jurisdiction of the department of social services shall be charged to the county or state at a cost not to exceed that being billed counties or the state for other patients at the transferring institution.
2. Referees by the courts for psychosocial diagnosis and recommendations as part of the pretrial or presentence procedure or determination of competency to stand trial shall be charged to the court referring such persons.
3. Mentally ill prisoners from county or city jails admitted for diagnosis shall be charged to the county or city government so referring.
4. Commitments by the courts as mentally incompetent to stand trial shall be charged to the court by which committed after twelve months of such commitment.
5. Commitments by the courts upon conviction in a county outside the county of legal residence of the convicted person shall be considered a responsibility of the state.
6. Commitments of persons from other sources where admission is not inconsistent with the law and is within the capacity of the facility and staff to accommodate such person shall be charged to the court, county, city, governmental body, or agency so referring.
7. Transferees from other institutions under the jurisdiction of the department of social services shall be considered a responsibility of the state. [C71, 73, 75,§223.8; 66GA, ch 139, §40]

CHAPTER 224

DRUG ADDICTS

Referred to in §224.21

224.1 Commitment.
224.2 Statutes applicable.
224.3 Term of commitment—leave.
224.4 Places of commitment.
224.5 Repealed by 66GA, ch 139,§82

224.1 Commitment. Persons addicted to the excessive use of any controlled substance contained in schedules I, II, III, or IV of chapter 204 may be committed by the district court of each county to such institutions as the commissioner of the state department of social services may designate, or to such private facilities as the Iowa drug abuse authority may designate; or to any hospital accredited to give psychiatric care, provided that, commitments to private facilities shall only be made upon approval of the board of supervisors or upon agreement by the patient or responsible relatives to pay the full costs of treatment and upon having made the necessary arrangements for admission and support. [S13,§§2310-a6–a8,-a10–a22,-a24,-a28–a36; SS15, §2310-a37; C24, 27, 31, 35, 39,§**3478**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§224.1; 66GA, ch 139,§41]

Referred to in §§224.2, 224.3, 224.4

224.2 Statutes applicable. All statutes governing the commitment, custody, treatment, and maintenance of the mentally ill shall, so far as applicable, govern the commitment, custody, treatment, and maintenance of those addicted to the excessive use of drugs as defined in section 224.1. [S13,§§2310-a6–a8,-a10–a22,-a24,-a28–a36; SS15,§2310-a37; C24, 27, 31, 35, 39,§**3479**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§224.2]

Referred to in §224.3
Hospitalization of mentally ill, ch 229 et seq.

224.3 Term of commitment—leave. Persons committed under sections 224.1 and 224.2 shall be retained in custody until cured, except that such patients may be placed on convalescent leave under such conditions as the commissioner of the state department of social services may prescribe. [S13,§§2310-a6–a8, -a10–a22, -a24, -a28–a36; SS15,§2310-a37; C24, 27, 31, 35, 39, §**3480**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§224.3]

224.4 Places of commitment. The commissioner of the state department of social services shall designate the state institutions to which commitments may be made under this chapter, and to that end may divide the state into districts, and shall promptly notify each clerk of the district court of such designation and all changes therein. The Iowa drug abuse authority shall designate the private facilities to which persons suffering from the effects of controlled substances enumerated in section 224.1 shall be committed. [S13,§§2310-a6–a8,-a10–a22,-a24,-a28–a36; SS15,§2310-a37; C24, 27, 31, 35, 39,§**3481**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§224.4]

224.5 Repealed by 66GA, ch 139,§82

CHAPTER 224A

TREATMENT OF DRUG ADDICTION OR DEPENDENCY

224A.1 Definitions.
224A.2 Request for treatment.
224A.3 Examination and evaluation.
224A.4 Medicine used.
224A.5 Statistical report quarterly.
224A.6 Penalties.

224A.1 Definitions. For the purposes of this chapter, unless the context clearly indicates a contrary intent:

1. *"Medical practitioner"* means a physician and surgeon or osteopathic physician and surgeon licensed to practice medicine in this state.

2. *"Hospital"* means a public or private hospital licensed pursuant to the laws of this state or any employee, agent, or representative thereof. "Hospital" includes a public agency or a nonprofit agency or corporation providing treatment or rehabilitation services and any employee, agent, or representative thereof, if the commissioner of public health has previously approved the program of treatment or rehabilitation services offered by such public agency, nonprofit agency or corporation.

3. *"Drug"* means a controlled substance as defined in section 204.101, subsection 6. For the purpose of this chapter the provisions hereof shall be applicable to the treatment and rehabilitation of those who are users of glue by means of inhalation, commonly known as "glue sniffing." [C71, 73, 75,§224A.1]

Referred to in §224A.2

224A.2 Request for treatment. A person may request treatment and rehabilitation for addiction or dependency to any drug as defined in section 224A.1 from a medical practitioner or a hospital and such medical practitioner or any employee or person acting under his direction or supervision, or any hospital shall not report or disclose the name of such person or the fact that treatment was requested or has been undertaken to any law enforcement officer or agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless authorized by the person seeking treatment. A medical practitioner or hospital may undertake the treatment and rehabilitation of such person or refer such person to another medical practitioner or hospital for such purpose. If the person seeking such treatment or rehabilitation is a minor, the fact that such minor sought treatment or rehabilitation for such drug addiction or dependency, or that he is receiving such treatment or rehabilitation service, shall not be reported or disclosed to the parents or legal guardian of such minor with-

out his consent, and such minor may give legal consent to receive such treatment and rehabilitation. [C71, 73, 75,§224A.2]

Referred to in §230.20

224A.3 Examination and evaluation. A person seeking treatment or rehabilitation for drug addiction or dependency shall first be examined and evaluated by a medical practitioner. Such medical practitioner shall prescribe a proper course of treatment and medication, if needed. The treating medical practitioner may further prescribe a course of treatment or rehabilitation and authorize another medical practitioner or hospital to provide the prescribed treatment or rehabilitation services. Treatment or rehabilitation services may be provided to a person individually or in a group. Any hospital providing or engaging in such treatment or rehabilitation shall not report or disclose to a law enforcement officer or agency the name of any person receiving or engaging in such treatment or rehabilitation; nor shall any person receiving or participating in such treatment or rehabilitation report or disclose the name of any other person engaged in or receiving such treatment or rehabilitation or that such program is in existence, to a law enforcement officer or agency. Such information shall not be admitted in evidence in any court, grand jury, or administrative proceeding. However, any person engaged in or receiving such treatment or rehabilitation may authorize the disclosure of his name and individual participation. [C71, 73, 75,§224A.3]

Referred to in §230.20

224A.4 Medicine used. A medical practitioner may use any drug or medicine which shall be authorized or released by a federal agency or authority with jurisdiction to so act, to treat a person addicted to or dependent on drugs as an inpatient or outpatient or to maintain such person for a reasonable period of time until proper treatment or rehabilitation for such addiction or dependency can be obtained. [C71, 73, 75,§224A.4]

224A.5 Statistical report quarterly. Every medical practitioner or hospital that provides treatment or rehabilitation services to a person addicted to or dependent upon drugs, shall each quarter of every year make a statistical report to the commissioner of public health in such form and manner as the commissioner shall prescribe for each such person treated or to whom rehabilitation services were provided during the preceding quarter. The form of the report prescribed shall be furnished by the commissioner of health and be so designated that a carbon copy will be available which shall be sent quarterly to the narcotics law enforcement division of the state, such report not to include doctor's signature. The name or address of any person treated or to whom rehabilitation services were provided shall not be reported. Such report shall include the number of persons treated or to whom rehabilitation services were provided; the county of such person's legal settlement; the age of such person; the medication prescribed, if any; number of such persons treated as inpatients and the number treated as outpatients; the number treated who had received previous treatment or rehabilitation services; the number of such persons who maintained their employment while receiving treatment or rehabilitation services; the number of such persons who themselves or their family received public assistance during such treatment or rehabilitation and the type of public assistance received; and any other data required by the commissioner. If treatment or rehabilitation services are provided to a person by a hospital, public agency, nonprofit agency or corporation, such hospital, agency or nonprofit corporation shall co-ordinate with the treating medical practitioner so that the statistical reports required in this section shall not duplicate one another. The commissioner shall cause all such reports to be compiled into quarterly reports which shall be a public record. The names and addresses of the reporting medical practitioners or hospitals shall not be a public record unless authorized by the person or entity filing the report. [C71, 73, 75,§224A.5]

224A.6 Penalties. Any person who violates any provision of this chapter shall, upon conviction, be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days. [C71, 73, 75,§224A.6]

CHAPTER 224B

DRUG ABUSE AUTHORITY

Referred to in §125.42
Abolished effective June 30, 1978, see §224B.24
See sections 125.38 to 125.42 relating to merger with alcoholism division on July 1, 1977

224B.1 Definitions.
224B.2 Authority established.
224B.3 Director appointed.
224B.4 Director to employ personnel.
224B.5 Powers and duties of authority.
224B.6 Powers of director.
224B.7 State advisory council.
224B.8 Advisory council membership.
224B.9 Frequency of meetings—expenses.
224B.10 District advisory councils.
224B.11 Co-ordination, consultation, review by authority.
224B.12 Programs licensed.
224B.13 Exceptions.

224B.14 Licensing board.
224B.15 License renewal—fees.
224B.16 Inspection of licensees.
224B.17 Transfer of license or change of location prohibited.
224B.18 License suspension or revocation.
224B.19 Hearing before licensing board.
224B.20 Reissuance or reinstatement.
224B.21 Chemical substitutes and antagonists programs.
224B.22 Rules to be established.
224B.23 Confidentiality of patient records.
224B.24 Termination of authority.

224B.1 Definitions. As used in this chapter:

1. *"Authority"* means the Iowa drug abuse authority.

2. *"Director"* means the director of the authority.

3. *"Advisory council"* means the state advisory council on drug abuse within the authority.

4. *"Drug abuse prevention function"* means any program or activity relating to drug abuse education, training, treatment, rehabilitation, or research, and includes any such function even when performed by an organization or agency whose primary mission is not in the field of drug abuse or drug traffic prevention, or is unrelated to drugs.

5. *"Drug program"* means any drug abuse prevention function or any program to assist persons who are or have been involved in abuse of any controlled substance.

6. *"Chemical substitutes and antagonists"* means any substance, including but not limited to methadone or any other similar substance, which is used to detoxify from or provide a substitute for addiction to narcotic substances, or any substance which opposes, resists, or neutralizes the effects of narcotic substances, as defined in section 204.101, subsection 17.

7. *"Controlled substances"* has the same meaning as is assigned that term by section 204.101, subsection 6. [C75,§224B.1]

224B.2 Authority established. There is established in the office of the governor the Iowa drug abuse authority, for the purpose of providing overall planning, policy-making, and implementation of objectives and priorities identified in the comprehensive state drug abuse plan. [C75,§224B.2]

224B.3 Director appointed. The chief administrative officer of the authority shall be the director, who shall be appointed by the governor with the approval and confirmation of two-thirds of the members of the senate, and who shall serve at the pleasure of the governor. An appointment made to fill a vacancy while the general assembly is not in session shall be reported to the senate for confirmation within thirty days of its convening at its next regular session. [C75,§224B.3]

224B.4 Director to employ personnel. The director shall arrange for the employment of personnel as are necessary to staff the authority. All personnel shall be employed through the state merit system, except those in positions exempt therefrom under section 19A.3.

The director may employ a deputy director, who shall be exempt from the merit system and shall serve at the pleasure of the director. [C75,§224B.4]

224B.5 Powers and duties of authority. The authority shall:

1. Be responsible for the development and implementation, with advice of the advisory council, of a comprehensive long-range state plan to identify resources and provide services to combat abuse of controlled substances and to assist persons who are or have been involved in abuse of any controlled substance; in furtherance of this responsibility the authority shall co-ordinate a network of drug abuse prevention services in the state.

2. Review existing state statutes and proposed legislation pertaining to treatment or assistance, vocational training, education, or other rehabilitation services to persons who are or have been involved in abuse of any controlled substance, in order to determine whether the statutes or proposed legislation are consistent with the comprehensive state plan to combat drug abuse.

3. Review existing and proposed regulations, policies, programs and procedures of those operating agencies of the state and its political subdivisions which provide services to persons who are or have been involved in abuse of any controlled substance, to determine whether the regulations, policies, programs, and procedures are consistent with the comprehensive state plan to combat drug abuse and, where they are found inconsistent, advise and assist those agencies in effecting appropriate changes.

4. Undertake to co-ordinate and to eliminate duplication in drug abuse prevention functions by all departments and agencies of the state and its political subdivisions, and by federal departments and agencies operating within the state of Iowa, by consulting and working in collaboration with the various planning bodies, local drug abuse programs and communities to encourage and promote effective use of facilities, resources, and funds in the development of integrated, comprehensive local programs for the prevention of drug abuse.

5. Provide technical assistance, guidance, consultation, information, and other relevant services to community groups, local govern-

ments, district or regional bodies, and state agencies, with respect to the creation and implementation of programs and procedures for effective drug abuse prevention.

6. Establish and apply criteria for evaluation of:

a. The effectiveness of drug abuse prevention functions conducted within the state.

b. The accuracy of information contained in and effectiveness of literature and audio-visual aids prepared to combat drug abuse.

7. Develop and maintain a centralized drug abuse data collection and dissemination system, consistent with the confidentiality safeguards of state and federal law, and shall maintain a continuously updated record of research relevant to drug abuse which is in progress or has been completed in the state.

8. Establish guidelines for the submission of grant applications and assist community groups, local governments, district or regional bodies and state agencies in the preparation and submission of grant applications, all with the objective of maximizing utilization of available funds to combat drug abuse.

9. Adopt rules to implement this chapter, in the manner prescribed by chapter 17A. [C75, §224B.5]

Referred to in §224B.22

224B.6 Powers of director. The director may:

1. Require that a written report, in reasonable detail, be submitted to him at any time by any agency of this state or of any of its political subdivisions in respect to any drug abuse prevention function, or program for the benefit of persons who are or have been involved in abuse of any controlled substance, which is being conducted by the agency.

2. Submit to the governor a written report of the pertinent facts at any time the director concludes that any agency of this state or of any of its political subdivisions is conducting any drug abuse prevention function, or program for the benefit of persons who are or have been involved in abuse of any controlled substance, in a manner not consistent with or which impairs achievement of the objectives of the state plan to combat drug abuse, and has failed to effect appropriate changes in the function or program.

3. In furtherance of the objectives of this chapter and of the comprehensive state plan to combat drug abuse:

a. Accept and employ voluntary and uncompensated services.

b. Accept and expend grants, gifts and legacies of money and with consent of the executive council pursuant to sections 565.3 to 565.5, grants, gifts and legacies of other property. [C75,§224B.6]

224B.7 State advisory council. There is established within the authority a state advisory council to advise the director in administering this chapter. The governor shall name the appointive members of the advisory council, who shall serve at his pleasure, and shall designate the chairman of the advisory council. The director or his designee shall serve as the advisory council's secretary. The advisory council shall be entirely advisory in character and may not exercise administrative authority. [C75,§224B.7]

224B.8 Advisory council membership. The advisory council shall consist of members as follows:

1. Not more than eleven voting members shall be appointed by the governor to represent:

a. Public and private groups and agencies concerned with drug abuse prevention and control, including not less than four representatives of agencies or programs licensed under section 224B.12.

b. Representatives of agencies or individuals whose work is not primarily concerned with drug abuse but does place them in frequent contact with persons who are or have been involved in abuse of controlled substances.

c. City and county government.

d. The criminal justice system, including corrections personnel.

e. The general public.

2. The following nonvoting members or their respective designees:

a. The commissioner of social services.

b. The superintendent of public instruction.

c. The commissioner of public safety.

d. The attorney general.

e. The director of office for planning and programming.

f. The executive director of the Iowa crime commission.

g. The commissioner of public health.

h. The secretary of the state board of pharmacy examiners.

i. The president of the Iowa medical society.

j. The president of the Iowa osteopathic society.

k. The president of the Iowa pharmaceutical association.

l. The president of the Iowa state education association.

m. The director of the Iowa mental health authority.

n. The associate superintendent of the vocational rehabilitation education and services branch of the department of public instruction.

o. The director of the Iowa commission on alcoholism. [C75,§224B.8]

224B.9 Frequency of meetings — expenses. The state advisory council shall meet at least quarterly, and may meet more often, upon the call of the chairman. Advisory council members shall serve without compensation, but

shall be reimbursed for actual and necessary expenses incurred by reason of their service upon the advisory council. [C75,§224B.9]

224B.10 District advisory councils. The director may, with advice of the advisory council, establish district drug abuse advisory councils to perform the same function, with respect to efforts within the designated district to achieve the objective of the comprehensive state plan to combat drug abuse, as is performed by the advisory council with respect to the authority and the programs to which the authority relates. [C75,§224B.10]

Referred to in §224B.14

224B.11 Co-ordination, consultation, review by authority.

1. Every department or agency of this state which operates, or administers or subvents state or federal funds for, any drug abuse prevention program shall annually, before the beginning of each fiscal year, establish objectives and allocate funds for the program in co-ordination and consultation with the authority.

2. Any department or agency of this state or of any of its political subdivisions, or any private agency, group or individual operating a drug abuse prevention program which proposes to submit to the federal government or to any department or agency of this state a request for a grant of federal or state funds or for other federal or state assistance or approval for any drug program, shall submit the request to the authority for review and comment prior to formal submission to the federal or state department or agency to which the request is directed. [C75,§224B.11]

224B.12 Programs licensed. Except as otherwise provided, no person or program may, without first having obtained a written license therefor from the authority, maintain or conduct any chemical substitutes or antagonists program, residential program or nonresidential outpatient program, the primary purpose of which is the treatment and rehabilitation of drug dependent individuals. [C75,§224B.12]

Referred to in §224B.8

224B.13 Exceptions. The licensing requirements of this chapter, except the requirements imposed by section 224B.21, shall not apply to any of the following:

1. Hospitals providing any service of care, treatment, counseling or rehabilitation to drug dependent persons required on August 15, 1973, by other provisions of law to be licensed.

2. Any practitioner of medicine and surgery or osteopathic medicine and surgery, in his private practice. However, no program shall be exempted from licensing by the authority by virtue of its utilization of the services of a medical practitioner in its operation.

3. Private institutions conducted by and for persons who adhere to the faith of any well recognized church or religious denomination for the purpose of providing care, treatment, counseling, or rehabilitation to drug dependent persons and who rely solely on prayer or other spiritual means for healing in the practice of religion of such church or denomination.

4. Facilities, institutions, or programs which, in the discretion of the authority, provide services which are only informational or educational in nature. [C75,§224B.13]

224B.14 Licensing board. There is created within the authority a drug treatment licensing board, of which the director shall be chairman. The drug treatment licensing board shall meet to consider all cases involving issuance, denial, suspension, or revocation of a license. Upon approval of an application for licensing from the drug treatment licensing board, a license shall be issued. The board members, in addition to the director, shall be:

1. A representative of the state pharmacy examiners, designated by the pharmacy examiners.

2. A representative of the department of health, designated by the commissioner of public health.

3. A representative of the department of social services, designated by the commissioner of social services.

4. A representative of the division of rehabilitation and education services, department of public instruction, designated by the director of the division.

5. A private physician, appointed by the governor.

6. Four representatives of community-based drug treatment programs, appointed by the governor from lists of nominees, numbering at least twice the number of positions to be filled, submitted by district advisory councils established pursuant to section 224B.10. [C75, §224B.14]

224B.15 License renewal — fees. Licenses shall expire one year from the date of issuance and shall be renewed upon timely application made in the same manner as for original issuance of a license unless notice of nonrenewal is given to the licensee at least thirty days prior to the expiration of the license. The authority shall charge a fee for licensing and renewal adequate to cover the cost of processing each application and conducting inspection and investigations as required or deemed necessary to properly enforce this chapter. Costs incurred by local agencies or bodies approved to assist the authority in administering this chapter as permitted by section 224B.21, subsection 3, may be reimbursed to the local agencies or bodies by the authority. [C75,§224B.15]

224B.16 Inspection of licensees. The authority shall at least annually inspect the facilities and review the procedures utilized by

each licensed program. The examination and review may include case record audits and interviews with staff and patients, consistent with the confidentiality safeguards of state and federal law. [C75,§224B.16]

224B.17 Transfer of license or change of location prohibited. No license issued under this chapter may be transferred, and the location of the physical facilities occupied or utilized by any program licensed under this chapter shall not be changed without the prior written consent of the authority. [C75, §224B.17]

224B.18 License suspension or revocation. Violation of any of the requirements or restrictions of this chapter or of any of the rules properly established pursuant to this chapter is cause for suspension, revocation or refusal to renew a license. The director shall at the earliest time feasible notify a licensee whose license the authority is considering suspending or revoking and shall inform the licensee what changes must be made in his operation to avoid such action. The licensee shall be given a reasonable time for compliance, as determined by the director, after receiving such notice or a notice that the authority does not intend to renew the license. When the licensee believes he has achieved compliance, or if he considers the proposed suspension, revocation or refusal to renew unjustified, he may submit pertinent information to the director who shall expeditiously make a decision in the matter and notify the licensee of the decision. [C75,§224B.18]

224B.19 Hearing before licensing board. If a licensee under this chapter makes a written request for a hearing within thirty days of suspension, revocation or refusal to renew his license, a hearing before the drug treatment licensing board shall be expeditiously arranged. If the role of a licensing board member is inconsistent with any member's job role or function, or if any member feels he is unable for any reason to disinterestedly weigh the merits of the case before him, a substitute representative from the agency that member represents on the board shall be appointed by the director for the hearing on that case. The board shall, within thirty days after conclusion of the hearing, issue a written statement of its findings upholding or reversing the proposed suspension, revocation or refusal to renew a license. No action involving suspension, revocation or refusal to renew a license shall be taken by the licensing board unless a quorum of six of the ten members are present at the meeting. A copy of the decision shall be promptly transmitted to the affected licensee who may, if he is aggrieved by the decision, request a second hearing before the board in the manner provided by this section. Judicial review of the actions of the board may be sought in accordance with the terms of the Iowa administrative procedure Act. [C75, §224B.19]

224B.20 Reissuance or reinstatement. After suspension, revocation or refusal to renew a license pursuant to this chapter, the affected licensee shall not have his license reissued or reinstated within one year of the effective date of the suspension, revocation or expiration upon refusal to renew, unless by order of the drug treatment licensing board. After that time, proof of compliance with the requirements and restrictions of this chapter and the rules established pursuant to this chapter must be presented to the director prior to reinstatement or reissuance of a license. [C75,§224B.20]

224B.21 Chemical substitutes and antagonists programs. The authority shall have exclusive power in this state to approve and license chemical substitutes and antagonists programs, and monitor chemical substitutes and antagonists programs in this state to insure that the programs are operating within the rules established pursuant to this chapter.

The authority may:

1. Continuously study and evaluate chemical substitutes and antagonists programs in this state and annually report to the governor and the general assembly on the effectiveness and needs of the programs.

2. Provide advice, consultation, and technical assistance to chemical substitutes and antagonists programs.

3. In its discretion, approve local agencies or bodies to assist it in carrying out the provisions of this chapter. [C75,§224B.21]

Referred to in §§224B.13, 224B.15

224B.22 Rules to be established. The rules established pursuant to section 224B.5, subsection 9, shall include rules for chemical substitutes and antagonists programs in the manner prescribed by chapter 17A. The rules shall have as their objective the assurance that these programs will provide a means by which the patient may be rehabilitated and eventually enabled to end his dependence on drugs, and during this process will be freed from the necessity to resort to illegal activities to support his dependence on drugs, and to this end the rules shall:

1. Establish guidelines for the eligibility of patients to be served by these programs.

2. Establish guidelines for operation of these programs which shall include permissible dosage levels, record keeping and reporting, urinalysis requirements and permissible take-home dosages of, and security against redistribution of, controlled substances used in these programs.

3. Require that these programs provide a full range of comprehensive services to patients which shall include individual and group therapy, counseling, vocational guidance and job education counseling.

4. Establish a state-wide identification system which shall be used by all these programs to prevent simultaneous registration of any

patient in more than one program and to insure the proper administration of medication while protecting the patients rights to confidentiality pursuant to section 224B23; the authority may also participate in a similar national or interstate identification system if one is developed by the federal government or otherwise.

5. Provide for due notice to operators of these programs who may be required by the rules to make changes in the manner of operation of the programs. [C75,§224B.22]

224B.23 Confidentiality of patient records. Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function licensed under this chapter shall be confidential and may be disclosed only for the purposes and under the circumstances expressly authorized by this section.

1. The content of the record shall be disclosed to the patient at his request.

2. If the patient, with respect to whom any given record referred to above is maintained, gives his specific written consent the content of the record may be disclosed:

a. To medical personnel for the purpose of diagnosis or treatment of the patient.

b. To governmental personnel for the purpose of obtaining benefits to which the patient is entitled.

3. If the patient does not give his written consent, the content of the record may be disclosed only as follows:

a. To medical personnel to the extent necessary to meet a bona fide medical emergency.

b. To qualified personnel for the purpose of conducting scientific research, management, financial audits or program evaluation, but records so disclosed shall not identify, directly or indirectly, any individual patient or otherwise disclose patient identity in any manner.

4. The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient. The arrest and conviction records and the records of any charges pending against any person seeking admission to a chemical substitutes or antagonists program or other drug program shall be furnished to program directors by courts and law enforcement agencies upon request in writing by the program director provided such request is accompanied by a signed release from the person whose records are being requested, and all aspects of patient record confidentiality are assured. [C75,§224B.23]

Referred to in §224B.22

224B.24 Termination of authority. Effective June 30, 1978, the authority and each of the positions in the authority shall be abolished and this chapter shall be repealed. Not later than June 30, 1977, the director shall submit to the governor and the general assembly a plan for the orderly assumption of the functions of the authority by existing state departments and agencies, or the assimilation of the authority into a single existing state agency or the continuation of the authority. [C75,§224B.24]

CHAPTER 225

PSYCHIATRIC HOSPITAL

Referred to in §229.1

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GENERAL PROVISIONS

225.1 Establishment. There shall be established a state psychiatric hospital, especially designed, kept, and administered for the care, observation, and treatment of those persons who are afflicted with abnormal mental conditions. [C24, 27, 31, 35,§3954; 39,§**3482.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.1; 66GA, ch 1136, §1]

225.2 Name—location. It shall be known as the state psychiatric hospital, and shall be located at Iowa City, and integrated with the college of medicine and hospital of the state University of Iowa. [C24, 27, 31, 35, §3955; C39,§**3482.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.2; 66GA, ch 1136,§2]

225.3 Under control state board of regents. The state board of regents shall have full power to manage, control, and govern the said hospital the same as other institutions already under its control. [C24, 27, 31, 35,§3957; C39, §**3482.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.3]

225.4 Repealed by 66GA, ch 1136,§26.

225.5 Co-operation of hospitals. The medical director of the state psychiatric hospital shall seek to bring about systematic co-operation between the several state hospitals for the mentally ill and the state psychiatric hospital. [C24, 27, 31, 35,§3959; C39,§**3482.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.5; 66GA, ch 1136, §3]

38GA, ch 235,§6, editorially divided

225.6 Repealed by 66GA, ch 1136,§26.

225.7 Classes of patients. Patients admitted to the said state psychiatric hospital shall be divided into four classes:

1. Voluntary private patients.
2. Committed private patients.
3. Voluntary public patients.
4. Committed public patients. [C24, 27, 31, 35,§3961; C39,§**3482.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.7; 66GA, ch 1136,§4]

38GA, ch 235,§7, editorially divided

225.8 Maintenance. All voluntary private patients and committed private patients shall be kept and maintained without expense to the state, and the voluntary public patients and committed public patients shall be kept and maintained by the state. [C24, 27, 31, 35, §3962; C39,§**3482.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.8]

225.9 Voluntary private patients. Voluntary private patients may be admitted in accordance with the regulations to be established by the state board of regents, and their care, nursing, observation, treatment, medicine, and maintenance shall be without expense to the state. However, the charge for such care, nursing, observation, treatment, medicine, and maintenance shall not exceed the cost of the same to the state. The physicians on the hospital staff may charge such patients for their medical services under such rules, regulations and plan therefor as approved by the state board of regents. [C24, 27, 31, 35,§3963; C39, §**3482.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.9]

225.10 Voluntary public patients. Persons suffering from mental diseases may be admitted as voluntary public patients as follows: Any physician authorized to practice medicine, osteopathy, or osteopathic medicine in the state of Iowa may file information with any district court of the state or with any judge thereof, stating that the physician has examined the person named therein and finds that the person is suffering from some abnormal mental condition that can probably be remedied by observation, treatment, and hospital care; that the physician believes it would be appropriate for the person to enter the state psychiatric hospital for that purpose and that the person is willing to do so; and that neither the person nor those legally responsible for the person are able to provide the means for such observation and hospital care. [C24, 27, 31, 35,§3964; C39,§**3482.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.10; 66GA, ch 139,§42, ch 1136,§5]

38GA, ch 235,§9, editorially divided
Referred to in §§225.16, 225.20, 225.30

225.11 Initiating commitment procedures. When a court finds upon completion of a hearing held pursuant to section 229.12 that the contention that a respondent is seriously mentally impaired has been sustained by clear and convincing evidence, and the application filed under section 229.6 also contends or the court otherwise concludes that it would be appropriate to refer the respondent to the state psychiatric hospital for a complete psychiatric evaluation and appropriate treatment pursuant to section 229.13, the judge may order that a financial investigation be made in the manner prescribed by section 225.13. [66GA, ch 139,§43, ch 1136,§6]

Referred to in §225.14
§225.11, Code 1975, repealed by 66GA, ch 139,§43

225.12 Voluntary public patient — physician's report. A physician filing an information under section 225.10 shall include a written report to the judge, giving such a history of the case as will be likely to aid in the observation, treatment, and hospital care of the person named in the information and describing the same in detail. [C24, 27, 31, 35,§3966; C39,§**3482.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §225.12; 66GA, ch 139,§44]

225.13 Financial condition. It shall be the duty of the judge to have a thorough investigation made by the county attorney of the county of residence of the person named in the information regarding the financial condition of that person and of those legally responsible for him. [C24, 27, 31, 35,§3967; C39, §**3482.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.13; 66GA, ch 139,§45]

Referred to in §225.11

225.14 Finding and order. Upon the filing of the report of a financial investigation made pursuant to an order issued under section 225.11, the judge of the district court as aforesaid shall review it and make a determination in the matter. If the judge finds that the respondent is an appropriate subject for referral to the state psychiatric hospital, and that the respondent and those legally responsible for him or her are unable to pay the expenses thereof, the judge shall enter an order directing that the respondent shall be sent to the state psychiatric hospital at the state University of Iowa for observation, treatment, and hospital care as a committed public patient. [C24, 27, 31, 35,§3968; C39,§3482.14; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.14; 66GA, ch 139,§46, ch 1136,§7]

Referred to in §225.17

225.15 Examination and treatment. When the respondent arrives at the state psychiatric hospital it shall be the duty of the admitting physician to examine the respondent and determine whether or not, in the physician's judgment, the patient is a fit subject for such observation, treatment and hospital care. If, upon examination, the physician decides that such patient should be admitted to the hospital, the patient shall be provided a proper bed in the hospital; and the physician who shall have charge of the patient shall proceed with such observation, medical treatment, and hospital care as in the physician's judgment are proper and necessary, in compliance with sections 229.13 to 229.16.

A proper and competent nurse shall also be assigned to look after and care for such patient during such observation, treatment, and care as aforesaid. [C24, 27, 31, 35,§3969; C39,§3482.15; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.15; 66GA, ch 139,§47, ch 1136,§8]

Referred to in §§225.16, 225.17

225.16 Voluntary public patients—admission. If the judge of the district court, or the clerk of the court, as aforesaid, finds from the physician's information which was filed under the provisions of section 225.10, that it would be appropriate for the person to enter the state psychiatric hospital, and the report of the county attorney shows that neither the person nor those legally responsible for him or her, are able to pay the expenses thereof, or able to pay only a part of the expenses, the judge or clerk shall enter an order directing that the said person shall be sent to the state psychiatric hospital at the state University of Iowa for observation, treatment, and hospital care as a voluntary public patient.

When the said patient arrives at the hospital, he or she shall receive the same treatment as is provided for committed public patients in section 225.15. [C24, 27, 31, 35,§3970; C39, §3482.16; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.16; 66GA, ch 139,§48, ch 1136,§9]

225.17 Committed private patient — treatment. If the judge of the district court, finds upon the review and determination made under the provisions of section 225.14 that the respondent is an appropriate subject for placement at the state psychiatric hospital, and that the respondent, or those legally responsible for him or her, are able to pay the expenses thereof, the judge shall enter an order directing that the respondent shall be sent to the state psychiatric hospital at the state University of Iowa for observation, treatment, and hospital care as a committed private patient.

When the respondent arrives at the said hospital, he or she shall receive the same treatment as is provided for committed public patients in section 225.15, in compliance with sections 229.13 to 229.16. [C24, 27, 31, 35,§3971; C39,§3482.17; C46, 50, 54, 58, 62, 66, 71, 73, 75, §225.17; 66GA, ch 139,§49, ch 1136,§10]

225.18 Attendants. The court or clerk may, in his or her discretion, appoint some person to accompany the committed public patient or the voluntary public patient or the committed private patient from the place where the patient may be to the state psychiatric hospital of the state University at Iowa City, or to accompany such patient from the said hospital to such place as may be designated by the court or clerk. If the patient be a female, the person appointed to accompany her must be a woman. [C24, 27, 31, 35,§3974; C39,§3482.18; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.18; 66GA, ch 1136,§11]

38GA, ch 235,§15, editorially divided

225.19 Compensation for attendant. Any person appointed by the court or judge or clerk to accompany said person to or from the hospital or to make an investigation and report on any question involved in the complaint, other than the physician making the examination, shall receive the sum of three dollars per day for the time actually spent in making such investigation (except in cases where the person appointed therefor receives a fixed salary or compensation) and his actual necessary expenses incurred in making such investigation or trip. [C24, 27, 31, 35,§3975; C39,§3482.19; C46, 50, 54, 58, 62, 66, 71, 73, 75, §225.19]

225.20 Compensation for physician. The physician making the examination on which is based any information filed under section 225.10 shall receive such sum as the court may direct for each and every examination information so made, and the actual necessary expenses incurred by the physician in making such examination, in conformity with the requirements of this chapter, if the person named in the information is referred to the state psychiatric hospital. [C24, 27, 31, 35, §3976; C39,§3482.20; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.20; 66GA, ch 139,§50, ch 1136,§12]

225.21 Vouchers. The person making claim to such compensation shall present to the court or judge an itemized sworn statement thereof,

and when such claim for compensation has been approved by the court or judge or clerk, the same shall be filed in the office of the county auditor and shall be allowed by the board of supervisors and paid from the state institution fund. [C24, 27, 31, 35,§3977; C39,§3482.21; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.21]

Referred to in §225.24

225.22 Liability of private patients — payment. Every committed private patient, if the patient has an estate sufficient for that purpose, or if those legally responsible for the patient's support are financially able, shall be liable to the county and state for all expenses paid by them in behalf of such patient. All bills for the care, nursing, observation, treatment, medicine, and maintenance of such patients shall be paid by the state comptroller in the same manner as those of committed and voluntary public patients as provided in this chapter, unless the patient or those legally responsible for the patient make such settlement with the state psychiatric hospital. [C24, 27, 31, 35,§3978; C39,§3482.22; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.22; 66GA, ch 1136,§13]

38GA, ch 235,§16, editorially divided

225.23 Collection for treatment. If the bills for such patient are paid by the state, it shall be the duty of the state psychiatric hospital to file a certified copy of the claim which has been so paid, with the auditor of the proper county, who shall proceed to collect the same by action, if necessary, in the name of the state psychiatric hospital, and when collected pay the same to the state comptroller. The hospital shall also, at the same time, forward a duplicate of the account to the state comptroller. [C24, 27, 31, 35,§3979; C39,§3482.23; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.23; 66GA, ch 1136,§14]

Referred to in §225.35

225.24 Collection of preliminary expense. Unless said committed private patient or those legally responsible for him offer to make such settlement, it shall also be the duty of the county auditor of the proper county as aforesaid to proceed to collect, by action if necessary, in the name of the said county, the amount of all claims for per diem and expenses that have been approved by the said court or judge and paid by the county treasurer of said county as provided for under the provisions of section 225.21, and when collected to pay the same into the county treasury. [C24, 27, 31, 35,§3980; C39,§3482.24; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.24]

Referred to in §225.35

225.25 Commitment of private patient as public. If any patient be admitted to the state psychiatric hospital and thereafter an order of commitment of the patient as a public patient be made by the court or judge or clerk having jurisdiction thereof, the expense of keeping and maintaining the patient from the date of the filing of the information upon which the order is made shall be paid by the state. [C24, 27, 31, 35,§3981; C39,§3482.25; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.25; 66GA, ch 1136,§15]

225.26 Private patients — disposition of funds. All moneys collected from private patients shall be used for the support of the said hospital. [C24, 27, 31, 35,§3982; C39,§3482.26; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.26]

225.27 Discharge — transfer. The state psychiatric hospital may, at any time, discharge any patient as recovered, as improved, or as not likely to be benefiited by further treatment. If the patient being so discharged was involuntarily hospitalized, the hospital shall notify the committing judge or court thereof as required by section 229.14, subsection 3 or section 229.16, whichever is applicable. The court or judge shall, if necessary, appoint some person to accompany the discharged patient from the state psychiatric hospital to such place as the hospital or the court may designate, or authorize the hospital to appoint such attendant. [C24, 27, 31, 35,§3983. C39,§3482.27; C46, 50, 54, 58, 62, 66, 71, 73, 75, §225.27; 66GA, ch 139,§51, ch 1136,§16]

225.28 Appropriation. The state shall pay to the state psychiatric hospital, out of any money in the state treasury not otherwise appropriated, all expenses for the administration of the hospital, and for the care, treatment, and maintenance of committed and voluntary public patients therein, including their clothing and all other expenses of the hospital for the public patients. The bills for the expenses shall be rendered monthly in accordance with rules agreed upon by the state comptroller and the state board of regents. [C24, 27, 31, 35,§3984; C39,§3482.28; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.28; 66GA, ch 1136,§17]

38GA, ch 235,§19, editorially divided

225.29 Repealed by 66GA, ch 1136,§26.

225.30 Blanks—audit. The medical faculty of the hospital of the college of medicine of the state University of Iowa shall prepare blanks containing such questions and requiring such information as may be necessary and proper to be obtained by the physician who examines a person or respondent whose referral to the state psychiatric hospital is contemplated. A judge may request that a physician who examines a respondent as required by section 229.10 complete such blanks in duplicate in the course of the examination. A physician who proposes to file an information under section 225.10 shall obtain and complete such blanks in duplicate and file them with the information. The blanks shall be printed by the state and a supply thereof shall be sent to the clerk of each district court of the state. The state comptroller shall audit, allow, and pay the cost of the blanks as other bills for public printing are allowed and paid. [C24, 27, 31, 35,§§3986, 3987; C39,§§3482.30, 3482.31; C46, 50, 54, 58, 62, 66, 71, 73,§225.30; C75,§§225.30, 225.31; 66GA, ch 139,§52, ch 1136,§18]

38GA, ch 235,§20, editorially divided

225.31 Repealed by 66GA, ch 139,§82.

225.32 Report and order to accompany patient. One of the duplicate reports shall be sent to the state psychiatric hospital with the patient, together with a certified copy of the order of the court. [C24, 27, 31, 35,§3988; C39,§3482.32; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.32; 66GA, ch 1136,§19]

225.33 Death of patient—disposal of body. In the event that a committed public patient or a voluntary public patient or a committed private patient should die while at the state psychiatric hospital or at the general hospital of the college of medicine of the state University of Iowa, the state psychiatric hospital shall have the body prepared for shipment in accordance with the rules prescribed by the state board of health for shipping such bodies; and it shall be the duty of the state board of regents to make arrangements for the embalming and such other preparation as may be necessary to comply with the rules and for the purchase of suitable caskets. [C24, 27, 31, 35, §3989; C39,§3482.33; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.33; 66GA, ch 1136,§20]

19GA, ch 245,§6, editorially divided

225.34 Appropriation. The state shall pay, to the state psychiatric hospital, out of any money in the state treasury not otherwise appropriated, the cost of the casket, the embalming, and all other expenses incurred in preparing the body for shipment, and, in addition thereto, the cost of transportation from Iowa City to the place where the patient lived at the time when the patient was committed or taken to the state psychiatric hospital. [C24, 27, 31, 35,§3990; C39,§3482.34; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.34; 66GA, ch 1136,§21]

225.35 Expense collected. In the event that the said person is a committed private patient, it shall be the duty of the county auditor of the proper county to proceed to collect all of such expenses, in accordance with the provisions of sections 225.23 and 225.24. [C24, 27, 31, 35,§3991; C39,§3482.35; C46, 50, 54, 58, 62, 66, 71, 73, 75,§225.35]

225.36 to 225.42 Repealed by 66GA, ch 139, §82.

225.43 Mental health research fund. There is created as a permanent fund in the office of the treasurer of state to be known as the mental health research fund, and for the purpose of establishing and maintaining the fund for each fiscal year there is appropriated thereto from funds in the general fund, not otherwise appropriated, the sum of seventy-five thousand dollars. Any balance in the fund on June 30 of each fiscal year shall revert to the general fund. [C58, 62, 66, 71, 73, 75,§225.43; 66GA, ch 1136,§22]

225.44 Purpose of fund. The purpose of the mental health research fund is to provide for improvement in the care, diagnosis and treatment of adults and children afflicted with mental or emotional illness or mental retardation, and for the prevention thereof, through research and study at the state psychiatric hospital, the mental health institutes, hospital for epileptics and schools for mentally retarded. [C58, 62, 66, 71, 73, 75,§225.44; 66GA, ch 1136,§23]

225.45 Approval of use by board of regents. Money from the mental health research fund shall be requisitioned for research projects by the state psychiatric hospital after consultation with the professional co-ordination board and any special research study committee that the hospital appoints or employs to evaluate any given research project or activity Such requisitions shall be filed with the state board of regents. Approval of such requisitions by the state board of regents shall be authority for the state comptroller to issue a warrant upon the mental health research fund payable to the agency or agencies conducting the research. [C58, 62, 66, 71, 73, 75,§225.45; 66GA, ch 1136,§24]

CHAPTER 225A

CRIMINAL SEXUAL PSYCHOPATHS

225A.1 Definition.
225A.2 Petition for commitment.
225A.3 Bail ordered.
225A.4 Notice of hearing.
225A.5 Counsel—evidence—appeal.
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225A.7 Report of examination.
225A.8 Dismissal or trial ordered.
225A.9 Trial.
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225A.11 Commitment.
225A.12 Application for release.
225A.13 Effect of finding.
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225A.15 Other laws applicable.

225A.1 Definition. All persons charged with a public offense, who are suffering from a mental disorder and are not a proper subject for the schools for the mentally retarded or for commitment as a mentally ill person, having criminal propensities toward the commission of sex offenses, and who may be considered dangerous to others, are hereby declared to be "criminal sexual psychopaths." [C58, 62, 66, 71, 73, 75,§225A.1]

225A.2 Petition for commitment. When any person is charged with a public offense and it shall appear to the county attorney of the county wherein such person is so charged that such person is a criminal sexual psychopath, or when any reputable person having knowledge that an individual who is charged with a public offense is a criminal sexual psychopath as defined in this chapter, or that any such individual has committed an act or acts which indicated that he may be a criminal sexual psychopath, and so informs the county attorney of the county where the act or acts charged were committed, and the county attorney is satisfied that the allegations have merit, are based on actual knowledge of the informant, and are capable of proof, he shall prepare a petition verified upon his information and belief, in sufficient detail so that the person complained against will be reasonably informed of the charges against him, which petition shall be filed with the clerk of the district court in the county wherein such persons stand charged with a public offense. [C58, 62, 66, 71, 73, 75,§225A.2]

225A.3 Bail ordered. Upon filing of such petition, the court in which the public offense is charged may order that the bail furnished be released and that additional bail be ordered. [C58, 62, 66, 71, 73, 75,§225A.3]

225A.4 Notice of hearing. After the petition charging criminal sexual psychopathy has been filed and docketed, notice in writing, including a copy of the petition shall be served on said named defendant in the manner prescribed for serving an original notice setting forth that a hearing thereon will be held by the court on a date and at a time specified in said notice, said date of hearing to be not less than five days later than the date of the service of said notice upon him. At said hearing the court shall determine whether he shall be medically examined, if so, by whom such examination shall be conducted, and the time and place thereof. [C58, 62, 66, 71, 73, 75,§225A.4]

225A.5 Counsel—evidence—appeal. The person charged shall have counsel at every stage of the proceedings and shall have the right to present evidence in his behalf and shall have full rights of appeal, and if the named defendant has not employed counsel, the court shall appoint a competent attorney to represent him and a reasonable attorney fee shall be charged as part of the costs in the proceedings. [C58, 62, 66, 71, 73, 75,§225A.5]

225A.6 Compensation of physicians. Upon application the court shall allow reasonable compensation to the examining physicians and shall order such allowances to be taxed as costs in the proceedings. [C58, 62, 66, 71, 73, 75,§225A.6]

225A.7 Report of examination. In the event a medical examination is ordered, the court shall continue the hearing until such time as the examination can be completed. Report of such examination shall be in writing and such report shall be filed in court as part of its record but shall not be open to public inspection. A copy thereof shall be furnished without cost by the clerk of the court to the person examined or his attorney of record, upon request. [C58, 62, 66, 71, 73, 75,§225A.7]

225A.8 Dismissal or trial ordered. After the filing of the report of the medical examination, if sufficient proof be not made to the court of the criminal propensities to the commission of sex offenses of the person charged with criminal sexual psychopathy, or if the report of the examining physician or physicians does not establish the fact of a mental disorder to which such propensities are attributable in the person examined, the court shall dismiss the petition. If sufficient proof be made to the court of the criminal propensities to the commission of sex offenses of the person so charged, and if the report of the examining physicians does establish the fact of a mental disorder to which such propensities are attributable in the person examined, the court shall order that a final hearing pursuant to the order of continuance be held on the petition setting the time and place of such hearing. [C58, 62, 66, 71, 73, 75,§225A.8]

225A.9 Trial. The action shall be tried as a special proceeding and the defendant shall be entitled to a jury trial. The judge may, at the request of the person charged in the petition, provide for the final determination of the issue of criminal sexual psychopathy by the court without jury. The court may order the public excluded from such proceedings. [C58, 62, 66, 71, 73, 75,§225A.9]

225A.10 Evidence admissible. At the final hearing, the examining physicians appointed or designated by the court may testify as to their examination or examinations of the person charged and the results thereof, but their report or reports filed in court as herein provided shall not be admissible in evidence against the person charged. Evidence of past acts of sexual deviation by the person charged shall be admissible at the hearing. [C58, 62, 66, 71, 73, 75,§225A.10]

225A.11 Commitment. If the person is found to be a criminal sexual psychopath the court may commit him to a state hospital for the mentally ill, where he shall be detained and treated until released in accordance with the provisions of this chapter or may order such person to be tried upon the criminal charges against him, as the interests of substantial justice may require. The hospital staff shall make periodic examinations of any such person committed, with the view of determining the progress of treatment, and shall report to the court not less than once a year. [C58, 62, 66, 71, 73, 75,§225A.11]

225A.12 Application for release. At any time after commitment, an application in writing may be filed with the committing court, setting forth facts showing that such criminal psychopath has, in the opinion of three qualified psychiatrists designated by the superintendent to examine said person, attained maximum hospital benefit and that in their opinion his release will not be incompatible with the welfare of society. Whereupon the court shall issue an order which will return the person to the jurisdiction of said court for a hearing. This hearing shall in all respects be like the original hearing to determine the mental condition of the defendant. Following such hearing, the court shall issue an order which shall cause the defendant either to be (1) placed on probation for a minimum of three years, or (2) returned to the hospital, provided that upon the expiration of said probationary period the said person may be discharged. [C58, 62, 66, 71, 73, 75,§225A.12]

225A.13 Effect of finding. Nothing in this chapter shall be construed as changing in meaning any portion of the criminal code, nor shall a finding of criminal sexual psychopathy, under the provisions of this chapter, constitute a defense in any criminal action. [C58, 62, 66, 71, 73, 75,§225A.13]

225A.14 Support and maintenance. Any person committed to the state hospital under the provisions of this chapter shall be supported and maintained at the expense of the state. [C58, 62, 66, 71, 73, 75,§225A.14]

Support of mentally ill, ch 230

225A.15 Other laws applicable. All laws now in force not in conflict with this chapter relating to the admission of mentally ill persons to state hospitals shall apply to criminal sexual psychopaths. [C58, 62, 66, 71, 73, 75,§225A.15]

Constitutionality, 56GA, ch 121,§16

CHAPTER 225B

IOWA MENTAL HEALTH AUTHORITY

225B.1 Authority named.
225B.2 Committee on mental hygiene.
225B.3 Meetings.
225B.4 Supervision.
225B.5 Office of administrator.
225B.6 Expenses of committee members.
225B.7 Policies and programs reviewed.

225B.1 Authority named. The "Iowa Mental Health Authority" for the purposes of directing the benefits of Public Law 487, 79th Congress of the United States and amendments thereto, [60 Stat. L. 538; 42 U.S.C., ch 6A] shall be named by the state board of regents with the advice of the dean of the college of medicine of the University of Iowa and the committee on mental hygiene hereinafter created. [C66, 71, 73, 75,§225B.1]

225B.2 Committee on mental hygiene. A committee on mental hygiene is hereby created to consist of the director of the psychopathic hospital at Iowa City, the commissioner of the state department of health, the dean of the college of medicine at the University of Iowa, a member of the state board of regents appointed by the board, the commissioner of the state department of social services and the director of mental health of the state department of social services, a member of the state board of public instruction appointed by the board, and eight members to be appointed by the governor. The appointive members by the governor shall be one from the membership of the subcommittee on nervous and mental disease of the Iowa medical society, one from the membership of the Iowa psychiatric society, two from the membership of the boards of directors of the Iowa community mental health centers, one from the membership of the Iowa association for mental health, one from the membership of the Iowa psychological association, one from the membership of the Iowa society of osteopathic physicians and surgeons and one from the membership of the Iowa association for retarded children. The appointive members, by the governor and the various boards shall serve for terms of three years beginning July 4 of the year of appointment; however, of the initial appointees by the governor, the terms shall be three for terms of three years, three for terms of two years, and two for terms of one year. Vacancies shall be filled for the unexpired term in the same manner as original appointment. [C66, 71, 73, 75,§225B.2]

225B.3 Meetings. The committee shall hold an organizational meeting on the first Monday in July each year at the psychopathic hospital in Iowa City at which meeting a chairman and other officers shall be chosen. Other meetings shall be determined by the committee but shall be at least once in each four-month period. The committee shall keep minutes of its meetings and both its meetings and its minutes shall be open to the public. [C66, 71, 73, 75,§225B.3]

225B.4 Supervision. All authorized funds of the mental health authority shall be disbursed under the supervision of the state board of regents and programs of the Iowa mental health authority shall be administered according to policies established by the committee on mental hygiene. [C66, 71, 73, 75, §225B.4]

225B.5 Office of administrator. The administrative office of the Iowa mental health authority shall be located at the college of medicine at the University of Iowa. A duplicate file of official correspondence, statistical information and minutes of the committee on mental hygiene shall be maintained in the office of the director of mental health of the state department of social services at the capitol. [C66, 71, 73, 75,§225B.5]

225B.6 Expenses of committee members. Members of the committee on mental hygiene shall serve without compensation but shall receive reimbursement for expenses to attend meetings of the mental hygiene committee from funds allocated under Public Law 487 [60 Stat. L. 538; 42 U.S.C., ch 6A]. [C66, 71, 73, 75,§225B.6]

225B.7 Policies and programs reviewed. When specifically requested to do so by persons legally responsible, the mental hygiene committee shall review policies and programs relating to mental health of the requesting governmental agency, and shall suggest ways of co-ordinating the programs with those of the mental health authority, relating to research, training, and the demonstration of new techniques. [C66, 71, 73, 75,§225B.7]

CHAPTER 226

STATE MENTAL HEALTH INSTITUTES

Referred to in §§229.1, 229.38

226.1 Official designation.
226.2 Qualifications of superintendent.
226.3 Assistant physicians.
226.4 Salary of superintendent.
226.5 Superintendent as witness.
226.6 Duties of superintendent.
226.7 Order of receiving patients.
226.8 Mental retardates not receivable — exception.
226.9 Custody of patient.
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226.12 Monthly visitation—inspectors.
226.13 Patients allowed to write.
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226.15 Letters to state director.
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226.18 Investigation as to mental health.
226.19 Discharge—certificate.
226.20 and 226.21 Repealed by 66GA, ch 139, §82.
226.22 Clothing furnished.
226.23 Convalescent leave of patients.
226.24 and 226.25 Repealed by 66GA, ch 139, §82.
226.26 Dangerous incurables.
226.27 Patient accused of crime.
226.28 Return by sheriff.
226.29 Discharge of mentally ill criminals.
226.30 Transfer of dangerous patients.
226.31 Examination by court—notice.
226.32 Overcrowded conditions.
226.33 Notice to court.
226.34 Investigation of death—notice.

REHABILITATION OF ALCOHOLICS

226.35 to 226.39 Repealed by 65GA, ch 1131, §51.
226.40 Emergency patients.
226.41 Charge permitted.
226.42 Emergency powers of superintendents.

MENTAL PATIENTS' PERSONAL FUNDS

226.43 Fund created.
226.44 Deposits.
226.45 Reimbursement to county.
226.46 Deposit of fund.
226.47 "Director" defined.

226.1 Official designation. The hospitals for the mentally ill shall be designated as follows:

1. Mental Health Institute, Mount Pleasant, Iowa.

2. Mental Health Institute, Independence, Iowa.

3. Mental Health Institute, Clarinda, Iowa.

4. Mental Health Institute, Cherokee, Iowa. [R60,§1471; C73,§1383; C97,§2253; S13,§2253-a; C24, 27, 31, 35, 39,§3483; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.1]

Referred to in §230.20
See §§145.1, 218.1

226.2 Qualifications of superintendent. The superintendent of each hospital shall be either a qualified hospital administrator or a physician of acknowledged skill and ability in his profession and authorized to practice medicine in this state. No physician may serve as both superintendent and business manager. When a hospital administrator is appointed superintendent he may also be designated to perform the duties of business manager, without additional compensation therefor, and a physician having the requisite qualifications for appointment as superintendent shall be designated clinical director and shall perform the duties imposed on the superintendent by section 226.6, subsection 1, and such other duties of the superintendent as must by their nature be performed by a physician. [R60,§§1430, 1474; C73,§§1386, 1391; C97,§§2255, 2258; C24, 27, 31, 35, 39,§3484; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.2]

226.3 Assistant physicians. The assistant physicians shall be of such character and qualifications as to be able to perform the ordinary duties of the superintendent during his absence or inability to act. [R60,§1432; C73,§1394; C97,§2260; C24, 27, 31, 35, 39,§3485; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.3]

226.4 Salary of superintendent. The salary of the superintendent of each hospital shall be determined by the state director. [R60, §§1469, 1496; C97,§2258; C24, 27, 31, 35, 39,§3486; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.4]

Director, §226.47

226.5 Superintendent as witness. The superintendents and assistant physicians of said hospitals, when called as witnesses in any court, shall be paid the same mileage which other witnesses are paid and in addition thereto shall be paid a fee of twenty-five dollars per day, said fee to revert to the support fund of the hospital he serves. [C73,§1429; C97,§2293; C24, 27, 31, 35, 39,§3487; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.5]

Mileage, §622.69

226.6 Duties of superintendent. The superintendent shall:

1. Have the control of the medical, mental, moral, and dietetic treatment of the patients in his custody subject to the approval of the state director.

2. Require all subordinate officers and employees to perform their respective duties.

3. Have an official seal with the name of the hospital and the word "Iowa" thereon and affix the same to all notices, orders of discharge, or other papers required to be given by him.

4. Keep proper books in which shall be entered all moneys and supplies received on account of any patient and a detailed account of the disposition of the same.

5. Report, in December of each year, to each county, the mental and physical condition of each patient from said county and the probable safety of removing any such patient to the county hospital. [R60,§§1430, 1431; C73, §§1391, 1393, 1430; C97,§§2258, 2294; C24, 27, 31, 35, 39,§3488; C46, 50, 54, 58, 62, 66, 71, 73, 75, §226.6]

Referred to in §226.2

226.7 Order of receiving patients. Preference in the reception of patients into said hospitals shall be exercised in the following order:

1. Cases of less duration than one year.

2. Chronic cases, where the disease is of more than one-year duration, presenting the most favorable prospect for recovery.

3. Those for whom application has been longest on file, other things being equal.

Where cases are equally meritorious in all other respects, the indigent shall have the preference. [R60,§1438; C73,§1422; C97,§2286; C24, 27, 31, 35, 39,§3489; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.7]

226.8 Mental retardates not receivable — exception. No person who is mentally retarded, as defined by section 222.2, shall be admitted, or transferred pursuant to section 222.7, to a state mental health institute unless a professional diagnostic evaluation indicates that such person will benefit from psychiatric treatment or from some other specific program available at the mental health institute to which it is proposed to admit or transfer the person. Charges for the care of any mentally retarded person admitted to a state mental health institute shall be made by the institute in the manner provided by chapter 230, but the liability of any other person to any county for the cost of care of such mentally retarded person shall be as prescribed by section 222.78. [R60,§§1468, 1491; C73,§1434; C97,§2298; C24, 27, 31, 35, 39,§3490; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.8]

226.9 Custody of patient. The superintendent, upon the receipt of a duly executed order of admission of a patient into the hospital for the mentally ill, pursuant to section 229.13, shall take such patient into custody and restrain him or her as provided by law and the rules of the state director, without liability on the part of such superintendent and all other officers of the hospital to prosecution of any kind on account thereof, but no person shall be detained in the hospital who is found by the superintendent to be in good mental health. [C73,§1411; C97,§2278; C24, 27, 31, 35, 39,§3491; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.9; 66GA, ch 139,§53]

226.10 Equal treatment. The several patients, according to their different conditions of mind and body, and their respective needs, shall be provided for and treated with equal care. [C73,§1420; C97,§2284; C24, 27, 31, 35, 39, §3492; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.10]

226.11 Special care permitted. Patients may have such special care as may be agreed upon with the superintendent, if the friends or relatives of the patient will pay the expense thereof. Charges for such special care and attendance shall be paid quarterly in advance. [C73,§§1420, 1421; C97,§§2284, 2285; C24, 27, 31, 35, 39,§3493; C46, 50, 54, 58, 62, 66, 71, 73, 75, §226.11]

226.12 Monthly visitation—inspectors. The state director shall make monthly and thorough examinations of each hospital. The director may appoint an inspector to make examinations of any hospital and to make written report thereof to the state director. [C73,§§1435, 1441; C97,§2299; SS15,§2727-a11; C24, 27, 31, 35, 39,§3494; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.12]

226.13 Patients allowed to write. The name and address of the state director shall be kept posted in every ward in each hospital. Every patient shall be allowed to write once a week what he pleases to said state director and to any other person. The superintendent may

send letters addressed to other parties to the state director for inspection before forwarding them to the individual addressed. [C73, §1436; C97,§2300; C24, 27, 31, 35, 39,§**3495**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.13]

226.14 Writing material. Every patient shall be furnished by the superintendent or party having charge of such person, at least once in each week, with suitable materials for writing, enclosing, sealing, and mailing letters, if he requests and uses the same. [C73,§1437; C97,§2301; C24, 27, 31, 35, 39,§**3496**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.14]

226.15 Letters to state director. The superintendent or other officer in charge of a patient shall, without reading the same, receive all letters addressed to the state director, if so requested, and shall properly mail the same, and deliver to such patient all letters or other writings addressed to him. Letters written to the person so confined may be examined by the superintendent, and if, in his opinion, the delivery of such letters would be injurious to the person so confined, he shall return the letters to the writer with his reasons for not delivering them. [C73,§1438; C97,§2302; C24, 27, 31, 35, 39,§**3497**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.15]

226.16 Unauthorized departure and retaking. It shall be the duty of the superintendent and of all other officers and employees of any of said hospitals, in case of the unauthorized departure of any involuntarily hospitalized patient, to exercise all due diligence to take into protective custody and return said patient to the hospital. A notification by the superintendent of such unauthorized departure to any peace officer of the state or to any private person shall be sufficient authority to such officer or person to take and return such patient to the hospital. [R60,§1445; C73,§1423; C97,§2287; S13,§2287; C24, 27, 31, 35, 39,§**3498**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.16; 66GA, ch 139,§54]

226.17 Expense attending retaking. All actual and necessary expenses incurred in the taking into protective custody, restraint, and return to the hospital of the patient shall be paid on itemized vouchers, sworn to by the claimants and approved by the business manager and the state director, from any money in the state treasury not otherwise appropriated. [R60,§1445; C73,§1423; C97,§2287; S13, §2287; C24, 27, 31, 35, 39,§**3499**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.17]

226.18 Investigation as to mental health. The state director may investigate the mental condition of any patient and shall discharge any person, if, in his opinion, such person is not mentally ill, or can be cared for after such discharge without danger to others, and with benefit to the patient; but in determining whether such patient shall be discharged, the recommendation of the superintendent shall be secured. If the state director orders the discharge of an involuntarily hospitalized patient, the discharge shall be by the procedure prescribed in section 229.16. The power to investigate the mental condition of a patient is merely permissive, and does not repeal or alter any statute respecting the discharge or commitment of patients of the state hospitals. [S13,§2727-a25; C24, 27, 31, 35, 39, §**3500**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.18; 66GA, ch 139,§55]

226.19 Discharge—certificate. All patients shall be discharged, by the procedure prescribed in section 229.3 or section 229.16, whichever is applicable, immediately on regaining their good mental health. [R60,§1485; C73,§1424; C97,§2288; C24, 27, 31, 35, 39,§**3501**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.19; 66GA, ch 139,§56]

226.20 and 226.21 Repealed by 66GA, ch 139, §82.

226.22 Clothing furnished. Upon such discharge the business manager shall furnish such person, unless otherwise supplied, with suitable clothing and a sum of money not exceeding twenty dollars, which shall be charged with the other expenses of such patient in the hospital. [R60,§1485; C73,§1424; C97,§2288; C24, 27, 31, 35, 39,§**3504**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.22]

226.23 Convalescent leave of patients. Upon the recommendation of the superintendent and the written consent of the district court which ordered hospitalization in the case of an involuntary patient, the state director may place on convalescent leave said patient for a period not to exceed one year, under such conditions as are prescribed by said state director. [C73,§1424; C97,§2288; C24, 27, 31, 35, 39,§**3505**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §226.23; 66GA, ch 139,§57]

226.24 and 226.25 Repealed by 66GA, ch, 139,§82.

226.26 Dangerous incurables. The state director, on the recommendation of the superintendent, and on the application of the relatives or friends of a patient who is not cured and who cannot be safely allowed to go at liberty, may release such patient when fully satisfied that such relatives or friends will provide and maintain all necessary supervision, care, and restraint over such patient. If the patient being so released was involuntarily hospitalized, the consent of the district court which ordered the patient's hospitalization shall be obtained in advance in substantially the manner prescribed by section 229.14, subsection 3. [R60,§1482; C73,§1408; C97, §2276; C24, 27, 31, 35, 39,§**3508**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.26; 66GA, ch 139,§58]

226.27 Patient accused of crime. When a patient of any state hospital who was committed to such hospital at a time when he was

formally accused of crime in any county of the state, regains his reason, the superintendent shall thereupon issue his warrant for the return of such person to the jail of the county in which such charge is pending and notify the sheriff of such county accordingly who shall proceed to such hospital and execute such warrant. [R60,§1460; C73,§1413; C97,§2280; C24, 27, 31, 35, 39,§**3509**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.27]

226.28 Return by sheriff. The sheriff shall in writing make his return of service on said warrant and deliver such warrant and return to the clerk of the district court of his county. Said clerk shall forthwith make a copy of the warrant and return and mail the same to the said superintendent who shall file and preserve it. [C97,§2280; C24, 27, 31, 35, 39,§**3510**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.28]

226.29 Discharge of mentally ill criminals. No patient who may be under criminal charge or conviction shall be discharged without the order of the district court or judge, and notice to the county attorney of the proper county. [R60,§1482; C73,§1408; C97,§2276; C24, 27, 31, 35, 39,§**3511**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.29]

226.30 Transfer of dangerous patients. When a patient of any hospital for the mentally ill becomes incorrigible, and unmanageable to such an extent that he is dangerous to the safety of others in the hospital, the state director may apply in writing to the district court or to any judge thereof, of the county in which such hospital is situated, for an order to transfer said patient to the Iowa security medical facility and if such order be granted such patient shall be so transferred. The county attorney of said county shall appear in support of such application on behalf of the state director. [C24, 27, 31, 35, 39,§**3512**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.30]

Referred to in §226.31
See also §218.92

226.31 Examination by court—notice. Before granting the order authorized in section 226.30 the court or judge shall investigate the allegations of the petition and before proceeding to a hearing thereon shall require notice to be served on the attorney who represented the patient in any prior proceedings under sections 229.6 to 229.15 or the advocate appointed under section 229.19, or in the case of a patient who entered the hospital voluntarily, on any relative, friend, or guardian of the person in question of the filing of said application. On such hearing the court or judge shall appoint a guardian ad litem for said person, if it deems such action necessary to protect the rights of such person. [C24, 27, 31, 35, 39, §**3513**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.31; 66GA, ch 139,§59]

226.32 Overcrowded conditions. The state director shall order the discharge or removal from the hospital of incurable and harmless patients whenever it is necessary to make room for recent cases. If a patient who is to be so discharged entered the hospital voluntarily, the state director shall notify the auditor of the county interested at least ten days in advance of the day of actual discharge. [R60, §1483; C73,§1425; C97,§2289; C24, 27, 31, 35, 39, §**3514**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.32; 66GA, ch 139,§60]

226.33 Notice to court. When a patient who was hospitalized involuntarily and who has not fully recovered is discharged from the hospital by the state director under section 226.32, notice of the order shall at once be sent to the court which ordered the patient's hospitalization, in the manner prescribed by section 229.14, subsection 4. [R60,§1484; C73, §1426; C97,§2290; C24, 27, 31, 35, 39,§**3515**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.33; 66GA, ch 139,§61]

226.34 Investigation of death—notice. An investigation by the county medical examiner shall be held in those cases where a death shall occur suddenly and without apparent cause, or a patient die and his relatives so request, but in the latter case the relatives making the request shall be liable for the expense of the same, and payment therefor may be required in advance. When a patient in any mental health institute shall die from any cause, the superintendent of said institute shall within three days of the date of death, send by certified mail a written notice of death to:

1. The decedent's nearest relative.

2. The clerk of the district court of the county from which the patient was committed, and

3. The sheriff of the county from which the patient was committed. [C73,§1439; C97,§2303; C24, 27, 31, 35, 39,§**3516**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§226.34]

REHABILITATION OF ALCOHOLICS

226.35 to 226.39 Repealed by 65GA, ch 1131, §51.

226.40 Emergency patients. In case of emergency disaster, with the infliction of numerous casualties among the civilian population, the mental health institutes are authorized to accept sick and wounded persons without commitment or any other formalities. [C62, 66, 71, 73, 75,§226.40]

226.41 Charge permitted. The hospital is authorized to make a charge for these patients, in the manner now provided by law and subject to the changes hereinafter provided. [C62, 66, 71, 73, 75,§226.41]

226.42 Emergency powers of superintendents. In case the mental health institutes lose contact with the statehouse, due to enemy action or otherwise, the superintendents of the institutes are hereby delegated the following powers and duties:

1. May collect moneys due the state treasury from the counties and from responsible persons or other relatives, these funds to be col-

lected monthly, instead of quarterly, and to be deposited for use in operating the institutes.

2. The superintendent shall have the power to requisition supplies, such as food, fuel, drugs and medical equipment, from any source available, in the name of the state, with the power to enter into contracts binding the state for payment at an indefinite future time.

3. The superintendent shall be authorized to employ personnel in all categories and for whatever remuneration he deems necessary, without regard to existing laws, rules or regulations, in order to permit the institute to continue its old functions, as well as meet its additional responsibilities. [C62, 66, 71, 73, 75, §226.42]

MENTAL PATIENTS' PERSONAL FUNDS

226.43 Fund created. There is hereby established at each hospital a fund known as the "patients' personal deposit fund". [C66, 71, 73, 75,§226.43]

Referred to in §222.84

226.44 Deposits. Any funds, including social security benefits, coming into the possession of the superintendent or any employee of the hospital belonging to any patient in that hospital, shall be deposited in the name of that patient in the patients' personal deposit fund, except that if a guardian of the property of that patient has been appointed, the guardian shall have the right to demand and receive such funds. Funds belonging to a patient deposited in the patients' personal deposit fund may be used for the purchase of personal incidentals, desires and comforts for the patient. [C66, 71, 73, 75,§226.44]

Referred to in §222.84

226.45 Reimbursement to county. Whenever the amount to the account of any patient in the patients' personal deposit fund exceeds the sum of two hundred dollars, the business manager of the hospital may apply any of the excess to reimburse the county of legal settlement for liability incurred by such county for the payment of care, support and maintenance of the patient, when billed therefor by the county of legal settlement. [C66, 71, 73, 75, §226.45]

Referred to in §222.84

226.46 Deposit of fund. The business manager shall deposit the patients' personal deposit fund in a commercial account of a bank of reputable standing. When deposits in the commercial account exceed average monthly withdrawals, the business manager may deposit the excess at interest. The savings account shall be in the name of the patients' personal deposit fund and interest paid thereon may be used for recreational purposes at the hospital. [C66, 71, 73, 75,§226.46]

Referred to in §222.84

226.47 "Director" defined. For the purpose of this chapter "director" or "state director" shall mean the director of the division of mental health of the department of social services. [C71, 73, 75,§226.47]

CHAPTER 227

COUNTY AND PRIVATE HOSPITALS FOR MENTALLY ILL

Referred to in §229.38

227.1 Supervision.
227.2 Inspection.
227.3 Patients to have hearing.
227.4 Repealed by 52GA, ch 126,§2.
227.5 Repealed by 52GA, ch 126,§3.
227.6 Removal of patients.
227.7 Cost—collection from county.
227.8 Notification to guardians.
227.9 Investigating mental health.
227.10 Transfers from county or private institutions.
227.11 Transfers from state hospitals.
227.12 Difference of opinion.
227.13 Discharge of transferred patient.
227.14 Caring for mentally ill of other counties.
227.15 Authority to confine in hospital.
227.16 State aid.
227.17 State mental aid fund.
227.18 Claims filed quarterly.
227.19 "Director" defined.

227.1 Supervision. All county and private institutions wherein mentally ill persons are kept shall be under the supervision of the state director. [S13,§2727-a58; C24, 27, 31, 35, 39,§3517; C46, 50, 54, 58, 62, 66, 71, 73, 75,§227.1]

227.2 Inspection. Said state director shall make, or cause to be made, at least two inspections each year of every private and county institution wherein mentally ill persons are kept. Such inspection shall be made by the state director or by some competent and disinterested person appointed by him. Inspectors shall be persons who are acquainted with and interested in the handling and care of mental patients and shall be required to consult and advise with the county authorities on plans and practices that will improve the care given patients and shall make such recommendations to the state director for co-ordinating and improving the relationships between the stewards of county care facilities, the state director, the superintendents of hospitals and other co-

operating agencies, as will make for improved and more satisfactory care of patients. Written report as to such inspections shall be filed with the state director and shall embrace:

1. The capacity of said institution for the care of patients.
2. The number and sex of the patients kept therein.
3. The arrangement, method of construction, and adaptability of buildings for the purposes intended.
4. The condition of buildings as to sewerage, ventilation, light, heat, cleanliness, means of water supply, fire escapes, and fire protection.
5. The care of patients, their food, clothing, medical treatment, and employment.
6. The number, kind, sex, duties, and salaries of all employees.
7. The cost to the state or county of maintaining mentally ill patients therein, separate from the cost of maintaining sane paupers.
8. The recommendations given to and received from county authorities on methods and practices that will improve the conditions under which the county care facility is operated.
9. Such other matters as the state director may require.

In addition to the aforesaid inspections, the state director shall make or cause to be made an inspection of each county care facility where mental patients are kept at least once each year by a competent psychiatrist employed by the state hospital in the hospital district where the county care facility is located. Such inspection shall include an examination of each mental patient which shall reveal the patient's condition of health and the likelihood of improvement or discharge and such other recommendations concerning the care of patients as the inspector deems pertinent. One copy of said inspection report shall be filed with the state director, one copy mailed to the county board of supervisors and one copy mailed to the steward of the facility inspected. [S13,§2727-a59; C24, 27, 31, 35, 39, §3518; C46, 50, 54, 58, 62, 66, 71, 73, 75,§227.2; 66GA, ch 67,§71]

227.3 Patients to have hearing. The inspector shall give each patient an opportunity to converse with him out of the hearing of any officer or employee of the institution, and shall fully investigate all complaints and report the result thereof in writing to said state director. The state director before acting on said report adversely to the institution, shall give the persons in charge thereof a copy of such report and an opportunity to be heard. [S13,§2727-a60; C24, 27, 31, 35, 39,§3519; C46, 50, 54, 58, 62, 66, 71, 73, 75,§227.3]

227.4 Repealed by 52GA, ch 126,§2.

227.5 Repealed by 52GA, ch 126,§3.

227.6 Removal of patients. Said state director, in case of failure to comply with his rules, is authorized to remove all said mentally ill persons kept in such institutions at public expense, to the proper state hospital, or to some private or county institution or hospital for the care of the mentally ill that has complied with the rules prescribed by said state director, such removal of patients, if to a state hospital, to be made by an attendant or attendants sent from the state hospital. If a female is removed under the provisions of this section, at least one attendant shall be a female. [S13,§2727-a63; C24, 27, 31, 35, 39,§3522; C46, 50, 54, 58, 62, 66, 71, 73, 75,§227.6]

227.7 Cost — collection from county. The cost of such removal, including all expenses of said attendant, shall be certified by the superintendent of the hospital receiving the patient, to the state comptroller, who shall draw his warrant upon the treasurer of state for said sum, which shall be credited to the support fund of said hospital and charged against the general revenues of the state and collected by the comptroller from the county which sent said patient to said institution. [S13,§2727-a63; C24, 27, 31, 35, 39,§3523; C46, 50, 54, 58, 62, 66, 71, 73, 75,§227.7]

Referred to in §227.10

227.8 Notification to guardians. The state director shall notify the guardian, or one or more of the relatives, of patients kept at private expense, of all violations of said rules by said private or county institutions, and of the action of the state director as to all other patients. [S13,§2727-a63; C24, 27, 31, 35, 39, §3524; C46, 50, 54, 58, 62, 66, 71, 73, 75,§227.8]

227.9 Investigating mental health. Should the state director believe that any person in any such county or private institution is in good mental health, or illegally restrained of liberty, he shall institute and prosecute proceedings in the name of the state, before the proper officer, board, or court, for the discharge of such person. [S13,§2727-a63; C24, 27, 31, 35, 39,§3525; C46, 50, 54, 58, 62, 66, 71, 73, 75, §227.9]

227.10 Transfers from county or private institutions. Patients who are suffering from acute mental illness, and who are violent, and confined at public expense in any such institution, may be removed by the state director to the proper state hospital for the mentally ill when, on competent medical testimony, the state director finds that said patient can be better cared for and with better hope of recovery in the state hospital. If the patient was hospitalized involuntarily, the state director shall report the transfer in the manner required of a chief medical officer under section 229.15, subsection 4. Such removal shall be at the expense of the proper county. Said expense shall be recovered as provided in section 227.7. [S13,§2727-a64; C24, 27, 31, 35, 39, 3526; C46, 50, 54, 58, 62, 66, 71, 73, 75,§227.10; 66GA, ch 139,§62]

227.11 Transfers from state hospitals. A county chargeable with the expense of a patient in a state hospital for the mentally ill shall remove such patient to a county or private institution for the mentally ill which has complied with the aforesaid rules when the state director so orders on a finding that said patient is suffering from chronic mental illness or from senility and will receive equal benefit by being so transferred. A county shall remove to its county care facility any patient in a state hospital for the mentally ill upon a finding by a commission, consisting of the superintendent of the state hospital in which the patient is confined and a physician or physicians chosen by the board of supervisors of the county of the patient's residence, said physician or physicians to be paid by the county of the patient's residence, that such patient can be properly cared for in the county care facility; and the finding of the commission, after its approval by the board of supervisors of the county of the patient's residence, shall be complete authority for such removal. In no case shall a patient be thus transferred except upon compliance with section 229.14, subsection 4, or without the written consent of a relative, friend, or guardian if such relative, friend, or guardian pays the expense of the care of such patient in a state hospital. [S13,§2727-a64; C24, 27, 31, 35,§§3527, 3528; C39, §**3527**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§227.11; 66GA, ch 67,§71, ch 139,§63]

Referred to in §227.16

227.12 Difference of opinion. When a difference of opinion exists between the state director and the authorities in charge of any private or county hospital in regard to the removal of a patient or patients as herein provided, the matter shall be submitted to the district court of the county in which such hospital is situated and shall be summarily tried as an equitable action, and the judgment of the district court shall be final. [S13,§2727-a68; C24, 27, 31, 35, 39,§**3529**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§227.12]

How issues tried, R.C.P. 177 et seq.

227.13 Discharge of transferred patient. Patients transferred from a state hospital to such county or private institutions shall not be discharged, when not cured, without the consent of the state director. [S13,§2727-a64; C24, 27, 31, 35, 39,§**3530**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§227.13]

227.14 Caring for mentally ill of other counties. Boards of supervisors of counties having no proper facilities for caring for the mentally ill, may, with the consent of the state director, provide for such care at the expense of the county in any convenient and proper county or private institution for the mentally ill which is willing to receive them. [S13,§2727-a65; C24, 27, 31, 35, 39,§**3531**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§227.14]

227.15 Authority to confine in hospital. No person shall be involuntarily confined and restrained in any private institution or hospital or county hospital or other general hospital with psychiatric ward for the care or treatment of the mentally ill, except by the procedure prescribed in sections 229.6 to 229.15. [S13,§2727-a66; C24, 27, 31, 35, 39,§**3532**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§227.15; 66GA, ch 139, §64]

227.16 State aid. For each patient heretofore or hereafter received on transfer from a state hospital for the mentally ill under the provisions of section 227.11, or committed to a county care facility by a commission of hospitalization, or any mentally retarded adult patient discharged or removed from the state hospital-schools and cared for and supported by the county in the county care facility or elsewhere outside a state institution for the mentally ill or mentally retarded the county shall be entitled to receive the amount of five dollars per week for each patient from the state mental aid fund hereinafter provided for. [C50, 54, 58, 62, 66, 71, 73, 75,§227.16; 66GA, ch 67,§71]

227.17 State mental aid fund. There is hereby created as a permanent fund in the office of the treasurer of state a fund to be known as the state mental aid fund, and for the purpose of establishing and maintaining said fund for each fiscal year, there is appropriated thereto from funds in the general fund, not otherwise appropriated, the sum of one million seventy-five thousand dollars. Any balance in said fund on June 30 of the second fiscal year shall revert to the general fund. [C50, 54, 58, 62, 66, 71, 73, 75,§227.17]

227.18 Claims filed quarterly. The state aid herein provided for shall be paid to the claimant county upon a verified claim being filed quarterly with the state director setting forth the total of weekly patient care furnished to transferees in county or private institutions from the county mental health and institutions fund. Approval of said verified claim by the state director shall be authority for the state comptroller to issue a warrant upon the state mental aid fund payable to the claimant county which shall be credited by that county to the county mental health and institutions fund established by section 444.12. [C50, 54, 58, 62, 66, 71, 73, 75,§227.18]

227.19 "Director" defined. For the purpose of this chapter "director" or "state director" shall mean the director of the division of mental health of the department of social services. [C71, 73, 75,§227.19]

CHAPTER 228

COMMISSION OF HOSPITALIZATION

Repealed by 66GA, ch 139,§82

CHAPTER 229

HOSPITALIZATION OF MENTALLY ILL PERSONS

Referred to in §783.5

229.1 Definitions.
229.2 Application for voluntary admission—authority to receive voluntary patients.
229.3 Discharge of voluntary patients.
229.4 Right to release on application.
229.5 Departure without notice.
229.6 Application for order of involuntary hospitalization.
229.7 Service of notice upon respondent.
229.8 Procedure after application is filed.
229.9 Respondent's attorney informed.
229.10 Physicians' examination—report.
229.11 Judge may order immediate custody.
229.12 Hearing procedure.
229.13 Hospitalization for evaluation.
229.14 Chief medical officer's report.
229.15 Periodic reports required.
229.16 Discharge and termination of proceeding.
229.17 Status of respondent during appeal.
229.18 Status of respondent if hospitalization is delayed.
229.19 Advocate appointed.
229.20 Respondents charged with or convicted of crime.
229.21 Judicial hospitalization referee.
229.22 Hospitalization—emergency procedure.
229.23 Rights and privileges of hospitalized persons.
229.24 Records of involuntary hospitalization proceeding to be confidential.
229.25 Medical records to be confidential—exceptions.
229.26 Exclusive procedure for involuntary hospitalization.
229.27 Hospitalization not to equate with incompetency — procedure for finding incompetency due to mental illness.
229.28 Hospitalization in certain federal facilities.
229.29 Transfer to certain federal facilities.
229.30 Orders of courts in other states.
229.31 Commission of inquiry.
229.32 Duty of commission.
229.33 Hearing.
229.34 Finding and order filed.
229.35 Compensation—payment.
229.36 Limitation on proceedings.
229.37 Habeas corpus.
229.38 Cruelty or official misconduct.
229.39 and 229.40 Repealed by 66GA, ch 139, §82.
229.41 Voluntary admission.
229.42 Costs paid by county.
229.43 Nonresidents of no-settlement patients.
229.44 "Director" defined.

229.1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

1. *"Mental illness"* means every type of mental disease or mental disorder, except that it does not refer to mental retardation as defined in section 222.2, subsection 5.

2. *"Seriously mentally impaired"* or *"serious mental impairment"* describes the condition of a person who is afflicted with mental illness and because of that illness lacks sufficient judgment to make responsible decisions with respect to his or her hospitalization or treatment, and who:

a. Is likely to physically injure himself or herself or others if allowed to remain at liberty without treatment; or

b. Is likely to inflict serious emotional injury on members of his or her family or others who lack reasonable opportunity to avoid contact with the afflicted person if the afflicted person is allowed to remain at liberty without treatment.

3. *"Serious emotional injury"* is an injury which does not necessarily exhibit any physical characteristics, but which can be recognized and diagnosed by a licensed physician or other qualified mental health professional and which can be casually connected with the act or omission of a person who is, or is alleged to be, mentally ill.

4. *"Respondent"* means any person against whom an application has been filed under section 229.6, but who has not been finally ordered committed for full-time custody, care and treatment in a hospital.

5. *"Patient"* means a person who has been hospitalized or ordered hospitalized to receive treatment pursuant to section 229.14.

6. *"Licensed physician"* means an individual licensed under the provisions of chapter 148 to practice medicine.

7. *"Qualified mental health professional"* means an individual experienced in the study

and treatment of mental disorders in the capacity of:

a. A psychologist certified under chapter 154B; or

b. A registered nurse licensed under chapter 152; or

c. A social worker who holds a masters degree in social work awarded by an accredited college or university.

8. *"Public hospital"* means:

a. A state mental health institute established by chapter 226; or

b. The state psychiatric hospital established by chapter 225; or

c. Any other publicly supported hospital or instituiton, or part thereof, which is equipped and staffed to provide inpatient care to the mentally ill, except that this definition shall not be applicable to the Iowa security medical facility established by chapter 223.

9. *"Private hospital"* means any hospital or institution not directly supported by public funds, or a part thereof, which is equipped and staffed to provide inpatient care to the mentally ill.

10. *"Hospital"* means either a public hospital or a private hospital.

11. *"Chief medical officer"* means the medical director in charge of any public hospital, or any private hospital, or that individual's physician-designee. Nothing in this chapter shall negate the authority otherwise reposed by law in the respective superintendents of each of the state hospitals for the mentally ill, established by chapter 226, to make decisions regarding the appropriateness of admissions or discharges of patients of that hospital, however it is the intent of this chapter that if the superintendent is not a licensed physician he shall be guided in these decisions by the chief medical officer of that hospital.

12. *"Clerk"* means the clerk of the district court. [R60,§1468; C73,§1434; C97,§2298; C24, 27, 31, 35, 39,§3580; C46, 50, 54, 58, 62, 66, 71, 73, 75,§229.40; 66GA, ch 139,§1, ch 1136§25]

229.2 Application for voluntary admission—authority to receive voluntary patients.

1. An application for admission to a public or private hospital for observation, diagnosis, care and treatment as a voluntary patient may be made by any person who is mentally ill or has symptoms of mental illness. In the case of a minor, the parent or guardian may make application for admission of the minor as a voluntary patient, however if the chief medical officer of the hospital to which application is made determines that the admission is appropriate but the minor objects to the admission, the parent or guardian must petition the juvenile court for approval of the admission before the minor is actually admitted. The juvenile court shall determine whether the admission is in the best interest of the minor and is consistent with his or her rights.

2. Upon receiving an application for admission as a voluntary patient, made pursuant to subsection 1:

a. The chief medical officer of a public hospital shall receive and may admit the person whose admission is sought, subject in cases other than medical emergencies to availability of suitable accommodations and to the provisions of sections 229.41 and 229.42.

b. The chief medical officer of a private hospital may receive and may admit the person whose admission is sought. [R60,§1480 C73, §1399; C97,§2264; C24, 27, 31, 35, 39,§3544; C46, §229.1; C50, 54, 58, 62, 66, 71, 73, 75,§§229.1, 229.41; 66GA, ch 139,§2]

Referred to in §§222.55, 229.4, 229.41

229.3 Discharge of voluntary patients. Any voluntary patient who has recovered, or whose hospitalization the chief medical officer of the hospital determines is no longer advisable, shall be discharged. Any voluntary patient may be discharged if to do so would in the judgment of the chief medical officer contribute to the most effective use of the hospital in the care and treatment of that patient and of other mentally ill persons. [66GA, ch 139, §3]

Referred to in §222.55

229.4 Right to release on application. A voluntary patient who requests his or her release or whose release is requested, in writing, by his or her legal guardian, parent, spouse or adult next-of-kin shall be released from the hospital forthwith, except that:

1. If the patient was admitted on his or her own application and the request for release is made by some other person, release may be conditioned upon the agreement of the patient; and

2. If the patient is a minor who was admitted on the application of his or her parent or guardian pursuant to section 229.2, subsection 1, his or her release prior to becoming eighteen years of age may be conditioned upon the consent of the parent or guardian, or upon the approval of the juvenile court if the admission was approved by the juvenile court; and

3. If the chief medical officer of the hospital, not later than the end of the next secular day on which the office of the clerk of the district court for the county in which the hospital is located is open and which follows the submission of the written request for release of the patient, files with that clerk a certification that in the chief medical officer's opinion the patient is seriously mentally impaired, the release may be postponed for the period of time the court determines is necessary to permit commencement of judicial procedure for involuntary hospitalization. That period of time may not exceed five days, exclusive of days on which the clerk's office is not open unless the period of time is extended by order of a district court judge for good cause shown. Until disposition of the application for involuntary hospitalization of the patient, if one

is timely filed, the chief medical officer may detain the patient in the hospital and may provide treatment which is necessary to preserve his or her life, or to appropriately control behavior by the patient which is likely to result in physical injury to himself or herself or to others if allowed to continue, but may not otherwise provide treatment to the patient without the patient's consent. [C50, 54, 58, 62, 66, 71, 73, 75,§229.41; 66GA, ch 139,§4]

Referred to in §222.55

229.5 Departure without notice. If a voluntary patient departs from the hospital without notice, and in the opinion of the chief medical officer the patient is seriously mentally impaired, the chief medical officer may file an application for involuntary hospitalization of the departed voluntary patient, and request that an order for immediate custody be entered by the court pursuant to section 229.11. [66GA, ch 139,§5]

Referred to in §222.55

229.6 Application for order of involuntary hospitalization. Proceedings for the involuntary hospitalization of an individual may be commenced by any interested person by filing a verified application with the clerk of the district court of the county where the respondent is presently located, or which is the respondent's place of residence. The clerk, or his or her designee, shall assist the applicant in completing the application. The application shall:

1. State the applicant's belief that the respondent is seriously mentally impaired.

2. State any other pertinent facts.

3. Be accompanied by:

a. A written statement of a licensed physician in support of the application; or

b. One or more supporting affidavits otherwise corroborating the application; or

c. Corroborative information obtained and reduced to writing by the clerk or his or her designee, but only when circumstances make it infeasible to comply with, or when the clerk considers it appropriate to supplement the information supplied pursuant to, either paragraph "*a*" or paragraph "*b*" of this subsection. [R60,§1480; C73,§1399; C97,§2264; C24, 27, 31, 35, 39,§**3544**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§229.1; 66GA, ch 139,§6]

Referred to in §§218.92, 222.7, 222.55, 225.11, 226.31, 227.15, 229.1, 229.19, 229.20, 229.22, 229.24, 229.26, 229.27, 229.38

229.7 Service of notice upon respondent. Upon the filing of an application for involuntary hospitalization, the clerk shall docket the case and immediately notify a district court judge who shall review the application and accompanying documentation. If the application is adequate as to form, the judge may set a time and place for a hearing on the application, if feasible, and shall direct the clerk to send copies of the application and supporting documentation, together with a notice informing the respondent of the procedures required by this chapter, to the sheriff or his or her deputy for immediate service upon the respondent. If the respondent is taken into custody under section 229.11, service of the application, documentation and notice upon the respondent shall be made at the time he or she is taken into custody. [R60,§1480; C73,§1400; C97,2265; C24, 27, 31, 35, 39,§**3545**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§229.2; 66GA, ch 139,§7]

Referred to in §§218.92, 222.7, 222.55, 226.31, 227.15, 229.19, 229.21, 229.22, 229.24, 229.26, 229.38

229.8 Procedure after application is filed. As soon as practicable after the filing of an application for involuntary hospitalization, the court shall:

1. Determine whether the respondent has an attorney who is able and willing to represent him or her in the hospitalization proceeding, and if not, whether the respondent is financially able to employ an attorney and capable of meaningfully assisting in selecting one. In accordance with those determinations, the court shall if necessary allow the respondent to select, or shall assign to him or her, an attorney. If the respondent is financially unable to pay an attorney, the attorney shall be compensated in substantially the manner provided by sections 775.5 and 775.6, except that if the county has a public defender the court may designate the public defender or an attorney on his or her staff to act as the respondent's attorney.

2. Cause copies of the application and supporting documentation to be sent to the county attorney or his or her attorney-designate for review.

3. Issue a written order which shall:

a. If not previously done, set a time and place for a hospitalization hearing, which shall be at the earliest practicable time; and

b. Order an examination of the respondent, prior to the hearing, by one or more licensed physicians who shall submit a written report on the examination to the court as required by section 229.10. [C73,§1400; C97,§2265; C24, 27, 31, 35, 39,§§**3548, 3549**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§229.5, 229.6; 66GA, ch 139,§8]

Referred to in §§218.92, 222.7, 222.55, 226.31, 227.15, 229.9, 229.19, 229.21, 229.22, 229.24, 229.26, 229.38

229.9 Respondent's attorney informed. The court shall direct the clerk to furnish at once to the respondent's attorney copies of the application for involuntary hospitalization of the respondent and the supporting documentation, and of the court's order issued pursuant to section 229.8, subsection 3. If the respondent is taken into custody under section 229.11, the attorney shall also be advised of that fact. The respondent's attorney shall represent the respondent at all stages of the proceedings, and shall attend the hospitalization hearing. [66GA, ch 139,§9]

Referred to in §§218.92, 222.7, 222.55, 226.31, 227.15, 229.19, 229.21, 229.22, 229.24, 229.26, 229.38

229.10 Physicians' examination—report.

1. An examination of the respondent shall be conducted by one or more licensed phy-

sicians, as required by the court's order, within a reasonable time. If the respondent is taken into custody under section 229.11, the examination shall be conducted within twenty-four hours. If the respondent so desires, he or she shall be entitled to a separate examination by a licensed physician of his or her own choice. The reasonable cost of such separate examination shall, if the respondent lacks sufficient funds to pay the cost, be paid from county funds upon order of the court.

Any licensed physician conducting an examination pursuant to this section may consult with or request the participation in the examination of any qualified mental health professional, and may include with or attach to the written report of the examination any findings or observations by any qualified mental health professional who has been so consulted or has so participated in the examination.

2. A written report of the examination by the court-designated physician or physicians shall be filed with the clerk prior to the hearing date. A written report of any examination by a physician chosen by the respondent may be similarly filed. The clerk shall immediately:

a. Cause the report or reports to be shown to the judge who issued the order; and

b. Cause the respondent's attorney to receive a copy of the report of the court-designated physician or physicians.

3. If the report of the court-designated physician or physicians is to the effect that the individual is not seriously mentally impaired, the court may without taking further action terminate the proceeding and dismiss the application on its own motion and without notice.

4. If the report of the court-designated physician or physicians is to the effect that the respondent is seriously mentally impaired, the court shall schedule a hearing on the application as soon as possible. The hearing shall be held not more than forty-eight hours after the report is filed, excluding Saturdays, Sundays and holidays, unless an extension for good cause is requested by the respondent, or as soon thereafter as possible if the court considers that sufficient grounds exists for delaying the hearing. [66GA, ch 139,§10]

Referred to in §§218.92, 222.7, 222.55, 225.30, 226.31, 227.15, 229.8, 229.14, 229.19, 229.20, 229.21, 229.22, 229.24, 229.26, 229.38

229.11 Judge may order immediate custody. If the applicant requests that the respondent be taken into immediate custody and the judge, upon reviewing the application and accompanying documentation, finds probable cause to believe that the respondent is seriously mentally impaired and is likely to injure himself or herself or other persons if allowed to remain at liberty, the judge may enter a written order directing that the respondent be taken into immediate custody by the sheriff or his or her deputy and be detained until the hospitalization hearing, which shall be held no more than five days after the date of the order. The judge may order the respondent detained for that period of time, and no longer, in accordance with subsection 1 if possible, and if not then in accordance with subsection 2 or, only if neither of these alternatives are available, in accordance with subsection 3. Detention may be:

1. In the custody of a relative, friend or other suitable person who is willing to accept responsibility for supervision of the respondent, and the respondent may be placed under such reasonable restrictions as the judge may order including, but not limited to, restrictions on or a prohibition of any expenditure, encumbrance or disposition of the respondent's funds or property; or

2. In a suitable hospital the chief medical officer of which shall be informed of the reasons why immediate custody has been ordered and may provide treatment which is necessary to preserve the respondent's life, or to appropriately control behavior by the respondent which is likely to result in physical injury to himself or herself or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or

3. In a public or private facility in the community which is suitably equipped and staffed for the purpose, provided that detention in a jail or other facility intended for confinement of those accused or convicted of crime may not be ordered except in cases of actual emergency when no other secure facility is accessible and then only for a period of not more than twenty-four hours and under close supervision. [66GA, ch 139,§11]

Referred to in §§218.92, 222.7, 222.55, 226.31, 227.15, 229.5, 229.7, 229.9, 229.10, 229.17, 229.18, 229.19, 229.21, 229.22, 229.24, 229.26, 229.38

229.12 Hearing procedure. At the hospitalization hearing, evidence in support of the contentions made in the application shall be presented by the county attorney. During the hearing the applicant and the respondent shall be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The respondent has the right to be present at the hearing. If the respondent exercises that right and has been medicated within twelve hours, or such longer period of time as the court may designate, prior to the beginning of the hearing or an adjourned session thereof, the judge shall be informed of that fact and of the probable effects of the medication upon convening of the hearing. All persons not necessary for the conduct of the proceeding shall be excluded, except that the court may admit persons having a legitimate interest in the proceeding. The respondent's welfare shall be paramount and the hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, but consistent therewith the issue shall be tried as a civil matter. Such discovery as is permitted under the Iowa

rules of civil procedure shall be available to the respondent. The court shall receive all relevant and material evidence which may be offered and need not be bound by the rules of evidence. There shall be a presumption in favor of the respondent, and the burden of evidence in support of the contentions made in the application shall be upon the applicant. If upon completion of the hearing the court finds that the contention that the respondent is seriously mentally impaired has not been sustained by clear and convincing evidence, it shall deny the application and terminate the proceeding. [R60,§1480; C73,§1400; C97, §2265; C24, 27, 31, 35, 39,§3547; C46, 50, 54, 58, 62, 66, 71, 73, 75,§229.4; 66GA, ch 139,§12]

Referred to in §§218.92, 222.7, 222.55, 225.11, 226.31, 227.15, 229.19, 229.20, 229.21, 229.22, 229.24, 229.26

229.13 Hospitalization for evaluation. If upon completion of the hearing the court finds that the contention that the respondent is seriously mentally impaired has been sustained by clear and convincing evidence, it shall order the respondent placed in a hospital as expeditiously as possible for a complete psychiatric evaluation and appropriate treatment. The court shall furnish to the hospital at the time the respondent arrives there a written finding of fact setting forth the evidence on which the finding is based. The chief medical officer of the hospital shall report to the court no more than fifteen days after the individual is admitted to the hospital, making a recommendation for disposition of the matter. An extension of time may be granted for not to exceed seven days upon a showing of cause. A copy of the report shall be sent to the respondent's attorney, who may contest the need for an extension of time if one is requested. Extension of time shall be granted upon request unless the request is contested, in which case the court shall make such inquiry as it deems appropriate and may either order the respondent's release from the hospital or grant extension of time for psychiatric evaluation. [R60,§1479; C73,§1401; C97, §2266; C24, 27, 31, 35, 39,§§3552, 3553; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§229.9, 229.10; 66GA, ch 139,§13]

Referred to in §§218.92, 222.7, 222.55, 225.11, 225.15, 225.17, 226.9, 226.31, 227.15, 229.14, 229.17, 229.18, 229.19, 229.20, 229.21, 229.22, 229.24, 229.26, 229.27, 229.38, 230.5

229.14 Chief medical officer's report. The chief medical officer's report to the court on the psychiatric evaluation of the respondent shall be made not later than the expiration of the time specified in section 229.13. At least two copies of the report shall be filed with the clerk, who shall dispose of them in the manner prescribed by section 229.10, subsection 2. The report shall state one of the four following alternative findings:

1. That the respondent does not, as of the date of the report, require further treatment for serious mental impairment. If the report so states, the court shall order the respondent's immediate release from involuntary hospitalization and terminate the proceedings.

2. That the respondent is seriously mentally impaired and in need of full-time custody, care and treatment in a hospital, and is considered likely to benefit from treatment. If the report so states, the court may order the respondent's continued hospitalization for appropriate treatment.

3. That the respondent is seriously mentally impaired and in need of treatment, but does not require full-time hospitalization. If the report so states it shall include the chief medical officer's recommendation for treatment of the respondent on an outpatient or other appropriate basis, and the court may enter an order directing the respondent to submit to the recommended treatment. The order shall provide that if the respondent fails or refuses to submit to treatment as directed by the court's order, he or she shall be taken into custody and treated as a patient requiring full-time custody, care and treatment in a hospital until such time as the chief medical officer reports that the respondent does not require further treatment for serious mental impairment or has indicated he or she is willing to submit to treatment on another basis as ordered by the court.

4. The respondent is seriously mentally impaired and in need of full-time custody and care, but is unlikely to benefit from further treatment in a hospital. If the report so states, the chief medical officer shall recommend an alternative placement for the respondent and the court may order the respondent's transfer to the recommended placement. If the court or the respondent's attorney consider the placement inappropriate, an alternative placement may be arranged upon consultation with the chief medical officer and approval of the court. [66GA, ch 139,§14]

Referred to in §§218.92, 222.7, 222.55, 225.15, 225.17, 225.27, 226.26, 226.31, 226.33, 227.11, 227.12, 229.1, 229.15, 229.16, 229.17, 229.19, 229.21, 229.26, 229.27, 229.28, 229.38

229.15 Periodic reports required.

1. Not more than thirty days after entry of an order for continued hospitalization of a patient under section 229.14, subsection 2, and thereafter at successive intervals of not more than sixty days continuing so long as involuntary hospitalization of the patient continues, the chief medical officer of the hospital shall report to the court which entered the order. The report shall be submitted in the manner required by section 229.14, shall state whether the patient's condition has improved, remains unchanged, or has deteriorated, and shall indicate if possible the further length of time the patient will be required to remain at the hospital. The chief medical officer may at any time report to the court a finding as stated in section 229.14, subsection 4, and the court shall act thereon as required by that section.

2. Not more than sixty days after the entry of a court order for treatment of a patient under section 229.14, subsection 3, and thereafter at successive intervals as ordered by the court but not to exceed ninety days so long as that

court order remains in effect, the medical director of the facility treating the patient shall report to the court which entered the order. The report shall state whether the patient's condition has improved, remains unchanged, or has deteriorated, and shall indicate if possible the further length of time the patient will require treatment by the facility. If at any time the patient without good cause fails or refuses to submit to treatment as ordered by the court, the medical director shall at once so notify the court, which shall order the patient hospitalized as provided by section 229.14, subsection 3, unless the court finds that the failure or refusal was with good cause and that the patient is willing to receive treatment as provided in the court's order, or in a revised order if the court sees fit to enter one. If the medical director at any time reports to the court that in his opinion the patient requires full-time custody, care and treatment in a hospital, the court may order the patient's involuntary hospitalization for appropriate treatment upon consultation with the chief medical officer of the hospital in which the patient is to be hospitalized.

3. When a patient has been placed in a facility other than a hospital pursuant to section 229.14, subsection 4, a report on the patient's condition and prognosis shall be made to the court which so placed the patient, at least once every six months. The report shall be submitted within fifteen days following the inspection, required by section 227.2, of the facility in which the patient has been placed.

4. When in the opinion of the chief medical officer the best interest of a patient would be served by a convalescent or limited leave or by transfer to a different hospital for continued full-time custody, care and treatment, the chief medical officer may authorize the leave or arrange and complete the transfer but shall promptly report the leave or transfer to the court. The patient's attorney or advocate may request a hearing on a transfer. Nothing in this section shall be construed to add to or restrict the authority otherwise provided by law for transfer of patients or residents among various state institutions administered by the department of social services.

5. Upon receipt of any report required or authorized by this section the court shall furnish a copy to the patient's attorney, or alternatively to the advocate appointed as required by section 229.19. The court shall examine the report and take the action thereon which it deems appropriate. Should the court fail to receive any report required by this section or section 229.14 at the time the report is due, the court shall investigate the reason for the failure to report and take whatever action may be necessary in the matter. [66GA, ch 139,§15]

Referred to in §§218.92, 220.7, 222.55, 225.15, 225.17, 226.31, 227.10, 227.15, 229.17, 229.19, 229.21, 229.26, 229.29, 229.38, 229.43

229.16 Discharge and termination of proceeding. When in the opinion of the chief medical officer a patient who is hospitalized under subsection 2, or is receiving treatment under subsection 3, or is in full-time care and custody under subsection 4 of section 229.14 no longer requires treatment or care for serious mental impairment, the chief medical officer shall tentatively discharge the patient and immediately report that fact to the court which ordered the patient's hospitalization or care and custody. The court shall thereupon issue an order confirming the patient's discharge from the hospital or from care and custody, as the case may be, and shall terminate the proceedings pursuant to which the order was issued. Copies of the order shall be sent by certified mail to the hospital and the patient. [66GA, ch 139,§16]

Referred to in §§225.15, 225.17, 225.27, 226.18, 226.19, 229.17, 229.21, 229.26

229.17 Status of respondent during appeal. Where a respondent appeals to the supreme court from a finding that the contention the respondent is seriously mentally impaired has been sustained, and the respondent was previously ordered taken into immediate custody under section 229.11 or has been hospitalized for psychiatric evaluation and appropriate treatment under section 229.13 before the court is informed of intent to appeal its finding, the respondent shall remain in custody as previously ordered by the court, the time limit stated in section 229.11 notwithstanding, or shall remain in the hospital subject to compliance by the hospital with sections 229.13 to 229.16, as the case may be, unless the supreme court orders otherwise. [66GA, ch 139,§17]

Referred to in §§229.21, 229.26

229.18 Status of respondent if hospitalization is delayed. When the court directs that a respondent who was previously ordered taken into immediate custody under section 229.11 be placed in a hospital for psychiatric evaluation and appropriate treatment under section 229.13, and no suitable hospital can immediately admit the respondent, the respondent shall remain in custody as previously ordered by the court, the time limit stated in section 229.11 notwithstanding, until a suitable hospital can admit the respondent. The court shall take appropriate steps to expedite the admission of the respondent to a suitable hospital at the earliest feasible time. [R60, §1436; C73,§1403; C97,§2271; S13,§2271; C24, 27, 31, 35, 39,§3564; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.24; 66GA, ch 139,§18]

Referred to in §§229.21, 229.26

229.19 Advocate appointed. The district court in each county shall appoint an individual who has demonstrated by prior activities an informed concern for the welfare and rehabilitation of the mentally ill, and who is not an officer or employee of the department of social services nor of any agency or facility providing care or treatment to the mentally ill, to act as advocate representing the interests

of all patients involuntarily hospitalized by that court, in any matter relating to the patients' hospitalization or treatment under sections 229.14 or 229.15. The advocate's responsibility with respect to any patient shall begin at whatever time the attorney employed or appointed to represent that patient as respondent in hospitalization proceedings, conducted under sections 229.6 to 229.13, reports to the court that his or her services are no longer required and requests the court's approval to withdraw as counsel for that patient. The clerk shall furnish the advocate with a copy of the court's order approving the withdrawal. The advocate's duties shall include reviewing each report submitted pursuant to sections 229.14 and 229.15 concerning any patient whose interests, as a patient, the advocate is required to represent under this section, and if the advocate is not an attorney, advising the court at any time it appears that the services of an attorney are required to properly safeguard the patient's interests. The court shall from time to time prescribe reasonable compensation for the services of the advocate. Such compensation shall be based upon reports filed by the advocate at such times and in such forms as the court shall prescribe. The report shall briefly state what the advocate has done with respect to each patient and the amount of time spent. The advocate's compensation shall be paid on order of the court from the county mental health and institutions fund of the county in which the court is located. [66GA, ch 139,§19]

Referred to in §§226.31, 229.15, 229.21, 229.26

229.20 Respondents charged with or convicted of crime.

1. If the court orders a respondent placed in a hospital for psychiatric evaluation and appropriate treatment at a time when the respondent has been convicted of a public offense, or when there is pending against the respondent an unresolved formal charge of a public offense, and the respondent's liberty has therefore been restricted in any manner, the finding of fact required by section 229.13 of this Act shall clearly so inform the chief medical officer of the hospital where the respondent is placed.

2. When a proceeding under section 229.6 and succeeding sections of this chapter arises under sections 783.5 or 789.8, and the respondent through his attorney waives the hearing otherwise required by section 229.12, the court may immediately order the respondent placed in a hospital for a complete psychiatric evaluation and appropriate treatment pursuant to section 229.13. In such cases, the court may in its discretion order or waive the physician's examination otherwise required under section 229.10. [R60,§1459; C73,§1412; C97,§2279; C24, 27, 31, 35, 39,§3555; C46, 50, 54, 58, 62, 66, 71, 73, 75,§229.12; 66GA, ch 139,§20]

Referred to in §§229.21, 229.26

229.21 Judicial hospitalization referee.

1. As soon as practicable after the adoption of this Act the judges in each judicial district shall meet and shall determine, individually for each county in the district, whether it appears that one or more district judges will be sufficiently accessible in that county to make it feasible for them to perform at all times the duties prescribed by sections 229.7 to 229.20 and by chapter 224. If the judges find that accessibility of district court judges in any county is not sufficient for this purpose, the chief judge of the district shall appoint in that county a judicial hospitalization referee. The judges in any district may at any time review their determination, previously made under this subsection with respect to any county in the district, and pursuant to that review may authorize appointment of a judicial hospitalization referee, or abolish the office, in that county.

2. The judicial hospitalization referee shall be an attorney, licensed to practice law in this state, who shall be chosen with consideration to any training, experience, interest, or combination of those factors, which are pertinent to the duties of the office. The referee shall hold office at the pleasure of and receive compensation at a rate fixed by the chief judge of the district. If the referee expects to be absent from the county for any significant length of time, the referee shall inform the chief judge who may appoint a temporary substitute judicial hospitalization referee having the qualifications set forth in this subsection.

3. When an application for involuntary hospitalization is filed with the clerk of the district court in any county for which a judicial hospitalization referee has been appointed, and no district judge is accessible in the county, the clerk shall immediately notify the referee in the manner required by section 229.7. The referee shall thereupon discharge all of the duties imposed upon judges of the district court by sections 229.7 to 229.20 in the proceeding so initiated. Upon termination of the proceeding or issuance of an order under section 229.13, the referee shall transmit either to the chief judge, or another judge of the district court designated by the chief judge, a statement of the reasons for the referee's action and a copy of any order issued.

4. Any respondent with respect to whom the judicial hospitalization referee has found the contention that he or she is seriously mentally impaired sustained by clear and convincing evidence presented at a hearing held under section 229.12, may appeal from the referee's finding to a judge of the district court by giving the clerk notice in writing, within seven days after the referee's finding is made, that an appeal therefrom is taken. The appeal may be signed by the respondent or by the respondent's next friend, guardian or attorney. When so appealed, the matter shall stand for trial de novo. Upon appeal, the court shall

schedule a hospitalization hearing before a district judge at the earliest practicable time.

5. If the appellant is in custody under the jurisdiction of the district court at the time of service of the notice of appeal, he or she shall be discharged from custody unless an order that the appellant be taken into immediate custody has previously been issued under section 229.11, in which case the appellant shall be detained as provided in that section until the hospitalization hearing before the district judge. If the appellant is in the custody of a hospital at the time of service of the notice of appeal, he or she shall be discharged from custody pending disposition of the appeal unless the chief medical officer, not later than the end of the next secular day on which the office of the clerk is open and which follows service of the notice of appeal, files with the clerk a certification that in the chief medical officer's opinion the appellant is seriously mentally ill. In that case, the appellant shall remain in custody of the hospital until the hospitalization hearing before the district court.

6. The hospitalization hearing before the district judge shall be held, and the judge's finding shall be made and an appropriate order entered, as prescribed by sections 229.12 and 229.13. If the judge orders the appellant hospitalized for a complete psychiatric evaluation, jurisdiction of the matter shall revert to the judicial hospitalization referee. [C97,§§2267, 2268; C24, 27, 31, 35, 39,§**3560, 3561**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§229.17, 229.18; 66GA, ch 139,§21]

229.22 Hospitalization — emergency procedure.

1. The procedure prescribed by this section shall not be used unless it appears that a person should be immediately detained due to serious mental impairment, but that person cannot be immediately detained by the procedure prescribed in sections 229.6 and 229.11 because there is no means of immediate access to the district court.

2. In the circumstances described in subsection 1, any peace officer who has reasonable grounds to believe that a person is mentally ill, and because of that illness is likely to physically injure himself or herself or others if not immediately detained, may without a warrant take or cause that person to be taken to the nearest available facility as defined in section 229.11, subsections 2 and 3. Immediately upon taking the person into custody, the nearest available magistrate, as defined in section 748.1, shall be notified and shall immediately proceed to the facility. The magistrate shall in the manner prescribed by section 229.8, subsection 1 insure that the person has or is provided legal counsel at the earliest practicable time, and shall arrange for the counsel to be present, if practicable, before proceeding under this section. The peace officer who took the person into custody shall remain until the magistrate's arrival and shall describe the circumstances of the detention to the magistrate. If the magistrate finds that there is probable cause to believe that the person is seriously mentally impaired, and because of that impairment is likely to physically injure himself or herself or others if not immediately detained, he or she shall enter a written order for the person to be detained in custody and, if the facility where the person is at that time is not an appropriate hospital, transported to an appropriate hospital. The magistrate's order shall state the circumstances under which the person was taken into custody and the grounds supporting the finding of probable cause to believe that he or she is seriously mentally impaired and likely to physically injure himself or herself or others if not immediately detained. A certified copy of the order shall be delivered to the chief medical officer of the hospital where the person is detained, at the earliest practicable time.

3. The chief medical officer of the hospital shall examine and may detain and care for the person taken into custody under the magistrate's order for a period not to exceed forty-eight hours, excluding Saturdays, Sundays and holidays. The hospital may provide treatment which is necessary to preserve the person's life, or to appropriately control behavior by the person which is likely to result in physical injury to himself or herself or others if allowed to continue, but may not otherwise provide treatment to the person without his or her consent. The person shall be discharged from the hospital and released from custody not later than the expiration of that period, unless an application for his or her involuntary hospitalization is sooner filed with the clerk pursuant to section 229.6. The detention of any person by the procedure and not in excess of the period of time prescribed by this section shall not render the peace officer, physician or hospital so detaining that person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician or hospital had reasonable grounds to believe the person so detained was mentally ill and likely to physically injure himself or herself or others if not immediately detained.

4. The cost of hospitalization at a public hospital of a person detained temporarily by the procedure prescribed in this section shall be paid in the same way as if the person had been admitted to the hospital by the procedure prescribed in sections 229.6 to 229.13. [66GA, ch 139,§22]

Referred to in §229.24

229.23 Rights and privileges of hospitalized persons. Every person who is hospitalized or detained under this chapter shall have the right to:

1. Prompt evaluation, emergency psychiatric services, and care and treatment as indicated by sound medical practice.

2. The right to refuse treatment by shock therapy or chemotherapy, unless the use of these treatment modalities is specifically consented to by the patient's next-of-kin or guardian.

3. In addition to protection of his constitutional rights, enjoyment of other legal, medical, religious, social, political, personal and working rights and privileges which he would enjoy if he were not so hospitalized or detained, so far as is possible consistent with effective treatment of that person and of the other patients of the hospital. If the patient's rights are restricted, the physician's direction to that effect shall be noted on the patient's record. The department of social services shall, in accordance with chapter 17A establish rules setting forth the specific rights and privileges to which persons so hospitalized or detained are entitled under this section, and the exceptions provided by section 17A.2, subsection 7, paragraphs *"a"* and *"k"*, shall not be applicable to the rules so established. The patient or his or her next-of-kin or friend shall be advised of these rules and be provided a written copy upon the patient's admission to or arrival at the hospital. [66GA, ch 139,§23]

229.24 Records of involuntary hospitalization proceeding to be confidential.

1. All papers and records pertaining to any involuntary hospitalization or application for involuntary hospitalization of any person under this chapter, whether part of the permanent record of the court or of a file in the department of social services, are subject to inspection only upon an order of the court for good cause shown. Nothing in this section shall prohibit a hospital from complying with the requirements of this chapter and of chapter 230 relative to financial responsibility for the cost of care and treatment provided a patient in that hospital, nor from properly billing any responsible relative or third-party payer for such care and treatment.

2. If authorized in writing by a person who has been the subject of any proceeding or report under sections 229.6 to 229.13 or section 229.22, or by the parent or guardian of that person, information regarding that person which is confidential under subsection 1 may be released to any designated person. [66GA, ch 139,§24]

229.25 Medical records to be confidential—exceptions. The records maintained by a hospital relating to the examination, custody, care and treatment of any person in that hospital pursuant to this chapter shall be confidential, except that the chief medical officer may release appropriate information when:

1. The information is requested by a licensed physician or attorney who provides the chief medical officer with a written wavier signed by the person about whom the information is sought; or

2. The information is sought by a court order; or

3. The information is requested for the purpose of research into the causes, incidence, nature and treatment of mental illness, however information shall not be provided under this subsection in a way that discloses patients' names or which otherwise discloses any patient's identity; or

4. The person who is hospitalized or that person's guardian, if the person is a minor or is not legally competent to do so, signs an informal consent to release information. Each signed consent shall designate specifically the person or agency to whom the information is to be sent, and the information may be sent only to that person or agency. [66GA, ch 139,§25]

229.26 Exclusive procedure for involuntary hospitalization. Sections 229.6 to 229.20 shall constitute the exclusive procedure for involuntary hospitalization of persons by reason of serious mental impairment in this state, except that nothing in this chapter shall negate the provisions of sections 245.12 and 246.16 relative to transfer of mentally ill prisoners to state hospitals for the mentally ill. [66GA, ch 139, §26]

229.27 Hospitalization not to equate with incompentency—procedure for finding incompetency due to mental illness.

1. Hospitalization of any person under this chapter, either voluntarily or involuntarily, shall not be deemed to constitute a finding of or to equate with nor raise a presumption of incompetency, or to cause the person so hospitalized to be deemed a lunatic, a person of unsound mind, or a person under legal disability for any purpose including but not limited to any circumstances to which sections 447.7, 472.15, 545.2, subsection 13, 545.11, subsection 7, 545.36, 567.7, 595.3, 597.6, 598.29, 614.8, 614.19, 614.22, 614.24, 614.27, 622.6, 633.244, 633.266, subsection 4, and 675.21 are applicable.

2. The applicant may, in initiating a petition for involuntary hospitalization of a person under section 229.6 or at any subsequent time prior to conclusion of the involuntary hospitalization proceeding, also petition the court for a finding that the person is incompetent by reason of mental illness. The test of competence for the purpose of this section shall be whether the person possesses sufficient mind to understand in a reasonable manner the nature and effect of the act in which he or she is engaged; the fact that a person is mentally ill and in need of treatment for that illness but because of the illness lacks sufficient judgment to make responsible decisions with respect to his or her hospitalization or treatment does not necessarily mean that that person is incapable of transacting business on any subject.

3. A hearing limited to the question of the person's competence and conducted in substantially the manner prescribed in sections 633.552 to 633.556 shall be held when:

a. The court is petitioned or proposes upon its own motion to find incompetent by reason

of mental illness a person whose involuntary hospitalization has been ordered under section 229.13 or 229.14, and who contends that he or she is not incompetent; or

b. A person previously found incompetent by reason of mental illness under subsection 2 petitions the court for a finding that he or she is no longer incompetent and, after notice to the applicant who initiated the petition for hospitalization of the person and to any other party as directed by the court, an objection is filed with the court. The court may order a hearing on its own motion before acting on a petition filed under this paragraph. A petition by a person for a finding that he or she is no longer incompetent may be filed at any time without regard to whether the person is at that time hospitalized for treatment of mental illness.

4. Upon petitioning the court for a finding that a respondent is incompetent by reason of mental illness, the applicant may also request the court to appoint a conservator for the respondent. The court may appoint a temporary conservator as provided by section 633.573, or may defer a decision on the appointment of a conservator until a report is received under section 229.13 if the respondent is hospitalized for evaluation pursuant to that section.

5. Nothing in this chapter shall preclude use of any other procedure authorized by law for declaring any person legally incompetent for reasons which may include mental illness, without regard to whether that person is or has been hospitalized for treatment of mental illness. [66GA, ch 139,§27]

Referred to in §§4.1, 48.30, 48.31, 229.27

229.28 Hospitalization in certain federal facilities. When a court finds that the contention that a respondent is seriously mentally impaired has been sustained or proposes to order continued hospitalization of any person, or an alternative placement, under section 229.14, subsection 2 or 4, and the court is furnished evidence that the respondent or patient is eligible for care and treatment in a facility operated by the veterans administration or another agency of the United States government and that the facility is willing to receive the respondent or patient, the court may so order. The respondent or patient, when so hospitalized or placed in a facility operated by the veterans administration or another agency of the United States government within or outside of this state, shall be subject to the rules of the veterans administration or other agency, but shall not thereby lose any procedural rights afforded the respondent or patient by this chapter. The chief officer of the facility shall have, with respect to the person so hospitalized or placed, the same powers and duties as the chief medical officer of a hospital in this state would have in regard to submission of reports to the court, retention of custody, transfer, convalescent leave or discharge. Jurisdiction is retained in the court to maintain surveillance of the person's treatment and care, and at any time to inquire into that person's mental condition and the need for continued hospitalization or care and custody. [C27, 31, 35,§3562-b1; C39, §3562.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§229.20; 66GA, ch 139,§28]

Referred to in §229.30

229.29 Transfer to certain federal facilities. Upon receipt of a certificate stating that any person involuntarily hospitalized under this chapter is eligible for care and treatment in a facility operated by the veterans administration or another agency of the United States government which is willing to receive the person without charge to the state of Iowa or any county in the state, the chief medical officer may transfer the person to that facility. Upon so doing, the chief medical officer shall notify the court which ordered the person's hospitalization in the same manner as would be required in the case of a transfer under section 229.15, subsection 4, and the person transferred shall be entitled to the same rights as he or she would have under that subsection. No person shall be transferred under this section who is confined pursuant to conviction of a public offense or whose hospitalization was ordered upon contention of incompetence to stand trial by reason of mental illness, without prior approval of the court which ordered that person's hospitalization. [C27, 31, 35,§3562-b1; C39,§3562.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§229.20; 66GA, ch 139,§29]

229.30 Orders of courts in other states. A judgment or order of hospitalization or commitment by a court of competent jurisdiction of another state or the District of Columbia, under which any person is hospitalized or placed in a facility operated by the veterans administration or another agency of the United States government, shall have the same force and effect with respect to that person while he or she is in this state as the judgment or order would have if the person were in the jurisdiction of the court which issued it. That court shall be deemed to have retained jurisdiction of the person so hospitalized or placed for the purpose of inquiring into that person's mental condition and the need for continued hospitalization or care and custody, as do courts in this state under section 229.28. Consent is hereby given to the application of the law of the state or district in which is situated the court which issued the judgment or order as regards authority of the chief officer of any facility, operated in this state by the veterans administration or another agency of the United States government, to retain custody, transfer, place on convalescent leave or discharge the person so hospitalized or committed. [C27, 31, 35,§3562-b1; C39,§3562.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.20; 66GA, ch 139,§30]

Sections 229.1 to 229.30, Code 1975, repealed by 66GA, ch 139,§31

229.31 Commission of inquiry. A sworn complaint, alleging that a named person is not seriously mentally impaired and is unjustly deprived of liberty in any hospital in the state, may be filed by any person with the clerk of the district court of the county in which such named person is so confined, or of the county in which such named person has a legal settlement, and thereupon a judge of said court shall appoint a commission of not more than three persons to inquire into the truth of said allegations. One of said commissioners shall be a physician and if additional commissioners are appointed, one of such commissioners shall be a lawyer. [C73,§1442; C97,§2304; C24, 27, 31, 35, 39,§**3571**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.31; 66GA, ch 139,§65]

Referred to in §229.36

229.32 Duty of commission. Said commission shall at once proceed to the place where said person is confined and make a thorough and discreet examination for the purpose of determining the truth of said allegations and shall promptly report its findings to said judge in writing. Said report shall be accompanied by a written statement of the case signed by the chief medical officer of the hospital in which the person is confined. [C73,§1442; C97, §2304; C24, 27, 31, 35, 39,§**3572**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§229.32; 66GA, ch 139,§66]

Referred to in §229.36

229.33 Hearing. If, on such report and statement, and the hearing of testimony if any is offered, the judge shall find that such person is not seriously mentally impaired, the judge shall order the person's discharge; if the contrary, the judge shall so state, and authorize the continued detention of the person, subject to all applicable requirements of this Act*. [C73,§1442; C97,§2304; C24, 27, 31, 35, 39,§**3573**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.33; 66GA, ch 139,§67]

Referred to in §229.36
*66GA, ch 139

229.34 Finding and order filed. The finding and order of the judge, with the report and other papers, shall be filed in the office of the clerk of the court where the complaint was filed. Said clerk shall enter a memorandum thereof on the appropriate record, and forthwith notify the chief medical officer of the hospital of the finding and order of the judge, and the chief medical officer shall carry out the order. [C73,§1442; C97,§2304; C24, 27, 31, 35, 39, §**3574**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§229.34; 66GA, ch 139,§68]

Referred to in §229.36

229.35 Compensation—payment. Said commissioners shall be entitled to their necessary expenses and a reasonable compensation, to be allowed by the judge, who shall certify the same to the state comptroller who shall thereupon draw the proper warrants on any funds in the state treasury not otherwise appropriated. The applicant shall pay said costs and expenses if the judge shall so order on a finding that the complaint was filed without probable cause. [C73,§1442; C97,§2304; C24, 27, 31, 35, 39,§**3575**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§229.35]

Referred to in §229.36

229.36 Limitation on proceedings. The proceeding authorized in sections 229.31 to 229.35, inclusive, shall not be had oftener than once in six months regarding the same person; nor regarding any patient within six months after his admission to the hospital. [C73,§1443; C97, §2305; C24, 27, 31, 35, 39,§**3576**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§229.36]

229.37 Habeas corpus. All persons confined as seriously mentally impaired shall be entitled to the benefit of the writ of habeas corpus, and the question of serious mental impairment shall be decided at the hearing. If the judge shall decide that the person is seriously mentally impaired, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person is no longer seriously mentally impaired. [R60,§1441; C73,§1444; C97,§2306; C24, 27, 31, 35, 39,§**3577**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§229.37; 66GA, ch 139,§69]

Constitutional provision, Art. I,§13
Habeas corpus, ch 663

229.38 Cruelty or official misconduct. If any person having the care of a mentally ill person who has voluntarily entered a hospital or other facility for treatment or care, or who is responsible for psychiatric examination care, treatment and maintenance of any person involuntarily hospitalized under sections 229.6 to 229.15, whether in a hospital or elsewhere, with or without proper authority, shall treat such patient with unnecessary severity, harshness, or cruelty, or in any way abuse the patient or if any person unlawfully detains or deprives of liberty any mentally ill or allegedly mentally ill person, or if any officer required by the provisions of this chapter and chapters 226 and 227, to perform any act shall willfully refuse or neglect to perform the same, the offending person shall, unless otherwise provided, be fined not to exceed five hundred dollars, or be imprisoned in the county jail not to exceed three months, and pay the costs of prosecution, or be both fined and imprisoned at the discretion of the court. [C73,§§1415, 1416, 1440, 1445; C97,§2307; C24, 27, 31, 35, 39,§**3578**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§229.38; 66GA, ch 139,§70]

229.39 and 229.40 Repealed by 66GA, ch 139, §82.

229.41 Voluntary admission.

Persons making application pursuant to section 229.2 on their own behalf or on behalf of another person who is under eighteen years of age, if the person whose admission is sought is received for observation and treatment on such application, shall be required to pay the costs of hospitalization at rates established by the state director, which costs may be

collected weekly in advance and shall be payable at the business office of the hospital. Such collections shall be remitted to the state comptroller monthly to be credited to the general fund of the state. [C50, 54, 58, 62, 66, 71, 73, 75,§229.41; 66GA, ch 139,§§71, 72]

Referred to in §§229.2, 229.42

229.42 Costs paid by county. If a person wishing to make application for voluntary admission to a mental hospital is unable to pay the costs of hospitalization or those responsible for such person are unable to pay such costs, application for authorization of voluntary admission must be made to any clerk of the district court before application for admission is made to the hospital. After determining the county of legal settlement the said clerk shall, on forms provided by the state director, authorize such person's admission to a mental health hospital as a voluntary case. The clerk shall at once provide a duplicate copy of the form to the county board of supervisors. The costs of the hospitalization shall be paid by the county of legal settlement to the state comptroller and credited to the general fund of the state, providing the mental health hospital rendering the services has certified to the county auditor of the responsible county the amount chargeable thereto and has sent a duplicate statement of such charges to the state comptroller.

All the provisions of chapter 230 shall apply to such voluntary patients so far as is applicable.

The provisions of this section and of section 229.41 shall apply to all voluntary inpatients or outpatients either away from or at the institution heretofore or hereafter receiving mental health services.

Should any county fail to pay these bills within sixty days from the date of certificate from superintendent, the state comptroller shall charge the delinquent county the penalty of one percent per month on and after sixty days from date of certificate until paid. Such penalties shall be credited to the general fund of the state. [C50, 54, 58, 62, 66, 71, 73, 75, §229.42; 66GA, ch 139,§73]

Referred to in §229.2

229.43 Nonresidents or no-settlement patients. The state director shall have the power to place patients of mental health institutes who have no county of legal settlement; who are nonresidents; or whose legal settlement is unknown, on convalescent leave to a private sponsor or in any health care facility licensed under chapter 135C, when in the opinion of the state director said placement is in the best interests of the patient and the state of Iowa. If the patient was involuntarily hospitalized the district court which hospitalized the patient must be informed when the patient is placed on convalescent leave, as required by section 229.15, subsection 4. [C24, 27, 31, 35, 39,§3446; C46, 50, 54, 58, 62,§222.36; C66, 71, 73, 75,§229.43; 66GA, ch 139,§74]

229.44 "Director" defined. As used in this chapter, "director" or "state director" means the director of the division of mental health of the department of social services. [C71, 73, 75,§229.44]

CHAPTER 230

SUPPORT OF THE MENTALLY ILL

Referred to in §§125.26, 223.8, 226.8, 229.24, 229.42, 783.5

230.1 Liability of county and state.
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230.30 Claim against estate.
230.31 Departers from other states.
230.32 Support of nonresident patients on leave.
230.33 Reciprocal agreements.
230.34 "Director" defined.

230.1 Liability of county and state. The necessary and legal costs and expenses attending the taking into custody, care, investigation, admission, commitment, and support of a mentally ill person admitted or committed to a state hospital shall be paid:

1. By the county in which such person has a legal settlement, or

2. By the state when such person has no legal settlement in this state, or when such settlement is unknown.

The legal settlement of any person found mentally ill who is a patient of any state institution shall be that existing at the time of admission thereto. [C73,§1402; C97,§2270; S13, §2270; C24, 27, 31, 35, 39,§3581; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.1]

230.2 Finding of legal settlement. The district court shall, when a person is ordered placed in a hospital for psychiatric examination and appropriate treatment, or as soon thereafter as it obtains the proper information, determine and enter of record whether the legal settlement of said person is:

1. In the county of the residence of said commissioners;

2. In some other county of the state;

3. In some foreign state or country; or

4. Unknown.

[C24, 27, 31, 35, 39,§3582; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.2; 66GA, ch 139,§75]

230.3 Certification of settlement. If such legal settlement is found to be in another county of this state, the court shall, as soon as said determination is made, certify such finding to the superintendent of the hospital to which said patient is admitted or committed, and thereupon said superintendent shall charge the expenses already incurred and unadjusted, and all future expenses of such patient, to the county so certified until said settlement shall be otherwise determined as hereinafter provided. [C73,§1417; C97,§2281; C24, 27, 31, 35, 39,§3583; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.3; 66GA, ch 139,§76]

230.4 Certification to debtor county. Said finding of legal settlement shall also be certified by the court to the county auditor of the county of such legal settlement. Such auditor shall lay such notification before the board of supervisors of his county, and it shall be conclusively presumed that such person has a legal settlement in said notified county unless said county shall within sixty days give notice in writing to the court that the county disputes the finding of legal settlement. [C73, §1402; C97,§2270; S13,§2270; C24, 27, 31, 35, 39, §3584; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.4; 66GA, ch 139,§77]

230.5 Nonresidents. If such legal settlement is found by the court to be in some foreign state or country, or unknown, it shall immediately notify the state director of such finding and furnish the state director with a copy of the evidence taken on the question of legal settlement, and shall in its order issued pursuant to section 229.13 direct that the patient be hospitalized at the appropriate state hospital for the mentally ill. [C73,§1402; C97,§2270; S13,§§2270, 2727-a28a; C24, 27, 31, 35, 39,§3585; C46, 50, 54, 58, 62, 66, 71, 73, 75, §230.5; 66GA, ch 139,§78]

Director, §230.34

230.6 Determination by director. The state director shall immediately investigate the legal settlement of said patient and proceed as follows:

1. If the state director finds that the decision of the court as to legal settlement is correct, the state director shall cause said patient either to be transferred to a state hospital for the mentally ill at the expense of the state, or to be transferred, with approval of the court as required by this Act* to the place of foreign settlement.

2. If the state director finds that the decision of the court is not correct, the state director shall order said patient to be maintained at a state hospital for the mentally ill at the expense of the state, and shall at once inform the court of such finding and request that the court's order be modified accordingly. [S13,§2727-a28a; C24, 27, 31, 35, 39,§3586; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.6; 66GA, ch 139, §79]

*66GA, ch 139

230.7 Transfer of nonresidents. Upon determining that a patient in a state hospital who has been involuntarily hospitalized under this Act* or admitted voluntarily at public expense was not a resident of this state at the time of the involuntary hospitalization or admission, the state director may cause that patient to be conveyed to his or her place of residence. However, a transfer under this section may be made only if the patient's condition so permits and other reasons do not render the transfer inadvisable. If the patient was involuntarily hospitalized, prior approval of the transfer must be obtained from the court which ordered the patient hospitalized. [C73,§1419; C97,§2283; S13,§§2283, 2727-a28a; C24, 27, 31, 35, 39,§3587; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.7; 66GA, ch 139,§80]

*66GA, ch 139

230.8 Transfers of mentally ill persons—expenses. The transfer to state hospitals or to the places of their legal settlement of mentally ill persons who have no legal settlement in this state or whose legal settlement is unknown, shall be made according to the directions of the state director, and when practicable by employees of state hospitals, and the actual and necessary expenses of such transfers shall be paid on itemized vouchers sworn to by the claimants and approved by the state director, from any funds in the state treasury not otherwise appropriated. [S13,§§2308-a, 2727-a28b; C24, 27, 31, 35, 39,§3588; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.8]

Referred to in §230.31

230.9 Subsequent discovery of residence. If, after a patient has been received into a state hospital for the mentally ill as a patient whose legal settlement is supposed to be outside this state or unknown, the state director finds that the legal settlement of said patient was, at the time of admission or commitment, in a county of this state, said state director shall charge all legal costs and expenses pertaining to the admission or commitment and support of said patient to the county of such legal settlement, and the same shall be collected as provided by law in other cases. [S13, §2727-a28a; C24, 27, 31, 35, 39,§**3589**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.9]

Collection, §230.20

230.10 Preliminary payment of costs. All legal costs and expenses attending the taking into custody, care, investigation, and admission or commitment of a person to a state hospital for the mentally ill under a finding that such person has a legal settlement in another county of this state, shall, in the first instance, be paid by the county of admission or commitment. The county of such legal settlement shall reimburse the county so paying for all such payments, with interest. [S13, §2308-a; C24, 27, 31, 35, 39,§**3590**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.10]

230.11 Recovery of costs from state. Costs and expenses attending the taking into custody, care, and investigation of a person who has been admitted or committed to a state hospital, veterans administration hospital or other agency of the United States government, for the mentally ill and who has no legal settlement in this state or whose legal settlement is unknown, including cost of commitment, if any, shall be paid out of any money in the state treasury not otherwise appropriated, on itemized vouchers executed by the auditor of the county which has paid them, and approved by the state director. [S13,§2308-a; C24, 27, 31, 35, 39,§**3591**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 230.11]

230.12 Action to determine legal settlement. When a dispute arises between different counties or between the state director and a county as to the legal settlement of a person admitted or committed to a state hospital for the mentally ill, the attorney general, at the request of the state director, shall, without the advancement of fees, cause an action to be brought in the district court of any county where such dispute exists, to determine such legal settlement. Said action may be brought at any time when it appears that said dispute cannot be amicably settled. All counties which may be the place of such legal settlement, so far as known, shall be made defendants and the allegation of such settlement may be in the alternative. Said action shall be tried as in equity. [C73,§1418; C97,§§2270, 2282; S13, §2270; C24, 27, 31, 35, 39,§**3592**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.12]

How issues tried, R.C.P. 177 et seq.

230.13 Judgment when settlement found within state. The court shall determine whether the legal settlement of said mentally ill person, at the time of the admission or commitment, was in one of the defendant counties. If the court so find, judgment shall be entered against the county of such settlement in favor of any other county for all legal costs and expenses arising out of said proceedings in mental illness, and paid by said other county. If any such costs have not been paid, judgment shall be rendered against the county of settlement in favor of the parties, including the state, to whom said costs or expenses may be due. [C73,§1418; C97,§2282; S13,§2308-a; C24, 27, 31, 35, 39,§**3593**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.13]

230.14 Order when nonresidence or unknown settlement appears. If the court finds that the legal settlement of said mentally ill person, at the time of admission or commitment, was in a foreign state or country, or was unknown, an order shall be entered that said mentally ill person shall be maintained in the hospital for the mentally ill at the expense of the state. In such case the state shall refund to any county, with interest, all legal costs and expenses arising out of said proceedings in mental illness and paid by said county. Any decision by the court shall be final. [C73,§1402; C97,§2270; S13,§2270; C24, 27, 31, 35, 39,§**3594**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.14]

230.15 Personal liability. Mentally ill persons and persons legally liable for their support shall remain liable for the support of such mentally ill. Persons legally liable for the support of a mentally ill person shall include the spouse of the mentally ill person, any person, firm, or corporation bound by contract for support of the mentally ill person, and, with respect to mentally ill persons under eighteen years of age only, the father and mother of the mentally ill person. The county auditor, subject to the direction of the board of supervisors, shall enforce the obligation herein created as to all sums advanced by the county. The liability to the county incurred under this section on account of any mentally ill person shall be limited to one hundred percent of the cost of care and treatment of the mentally ill person at a state mental health institute for one hundred twenty days of hospitalization, whether occurring subsequent to a single admission or accumulated as a consequence of two or more separate admissions, and thereafter to an amount not in excess of the average minimum cost of the maintenance of a physically and mentally healthy individual residing in his own home, which standard shall be established and may from time to time be revised by the department of social services. No lien imposed by section 230.25 shall exceed the amount of the liability which may be incurred under this section on account of any mentally ill person.

Nothing in this section shall be construed to prevent a relative or other person from voluntarily paying the full actual cost of the care and treatment of any mentally ill person as established by the department of social services.

Persons who as of July 1, 1972, are hospitalized in any state mental health institute, or who on that date or any later date have been so hospitalized for a total of one hundred twenty days or more, shall be considered to have incurred liability for one hundred percent of the cost of their care and treatment for one hundred twenty days, and shall thereafter be entitled to reduced liability as provided by this section. There shall be no forgiveness of any liability existing on July 1, 1972, for the cost of care and treatment of mentally ill persons, except as provided in section 230.17 and no person who has paid any such costs prior to that date shall be entitled to any refund by reason of this section. [R60,§1488; C73,1433; C97,§2297; C24, 27, 31, 35, 39,§**3595**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.15]

Referred to in §§230.16, 230.25, 234.39
Statutes made applicable, §224.2

230.16 Presumption. In actions to enforce the liability imposed by section 230.15, the certificate from the superintendent to the county auditor stating the sums charged in such cases, shall be presumptively correct. [R60,§1488; C73,§1433; C97,§2297; C24, 27, 31, 35, 39,§**3596**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.16]

230.17 Board may compromise lien. The board of supervisors is hereby empowered to compromise any and all liabilities to the county, created by this chapter, when such compromise is deemed to be for the best interests of the county. [C73,§1433; C97,§2297; C24, 27, 31, 35, 39,§**3597**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.17]

Referred to in §230.15

230.18 Expense in county or private hospitals. The estates of mentally ill persons who may be treated or confined in any county hospital or home, or in any private hospital or sanatorium, and the estates of persons legally bound for their support, shall be liable to the county for the reasonable cost of such support. [R60,§1488; C73,§1433; C97,§2297; C24, 27, 31, 35, 39,§**3598**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.18]

230.19 Nonresidents liable to state — presumption. The estates of all nonresident patients provided for and treated in state hospitals for the mentally ill in this state, and all persons legally bound for the support of such patients, shall be liable to the state for the reasonable value of the care, maintenance, and treatment of such patients while in such hospitals. The certificate of the superintendent of the state hospital in which any nonresident is or has been a patient, showing the amounts drawn from the state treasury or due therefrom as provided by law on account of such nonresident patient, shall be presumptive evidence of the reasonable value of the care, maintenance, and treatment furnished such patient. [S13,§2297-a; C24, 27, 31, 35, 39,§**3599**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.19]

230.20 Statement of charges to counties. The superintendent of each state hospital for the mentally ill established by section 226.1, or his designee, shall on the tenth day of July, October, January and April of each year, compute the amounts which are due the state from each county for services rendered by the hospital to patients chargeable to those counties. Each hospital's charges for services rendered in a particular quarter shall be based on that hospital's expenditures during the immediately preceding quarter, and shall be computed as follows:

1. The expenditures of the hospital during the preceding calendar quarter shall be separately computed by program in accordance with generally accepted accounting procedures. In so doing, the superintendent or his designee shall not include any of the following:

a. The costs of food, lodging and other maintenance provided to persons not patients of the hospital.

b. The costs of certain direct medical services, which shall be charged directly against the patient who received the services. The direct medical services to which this paragraph is applicable shall be specifically identified in rules adopted by the department of social services in accordance with chapter 17A, and may include but need not be limited to x-ray, laboratory and dental services.

c. The cost of outpatient and state placement services, which shall be charged directly against the patient who received the services at a rate to be established by the state director on the basis of the actual cost of the services.

2. The total patient days of service provided during the preceding calendar quarter shall be identified and accumulated for each program for which expenditures are separately computed under subsection 1 of this section.

3. The total expenditure during the preceding calendar quarter computed for each program pursuant to subsection 1 shall be divided by the total patient days of service provided during the calendar quarter by that program, determined pursuant to subsection 2, to derive the average daily patient cost for each program.

4. Each county shall be charged an amount computed as follows:

a. The charges attributable to each inpatient chargeable to that county, calculated by multiplying the average daily patient cost for each program under which the patient was served by the number of days the patient was so served during the calendar quarter, and adding the cost of direct medical services received by the patient during the calendar quarter; and

b. The charges attributable to each outpatient chargeable to that county who was served by the hospital during the calendar quarter, calculated at the cost established under subsection 1, paragraph "*c*".

5. An individual statement shall be prepared for any patient on or before the fifteenth day of the month next succeeding the month in which that patient leaves the hospital, and a general statement shall be prepared at least quarterly for each county to which charges are made under this section. Except as otherwise required by sections 224A.2 and 224A.3, the general statement shall list the name of each patient chargeable to that county who was served by the hospital during the preceding month or calendar quarter and the amount due on account of each patient, and the county shall be billed for one hundred percent of the stated charge for each patient, unless otherwise specified in the current appropriation for support of the state hospitals. The statement prepared for each county shall be certified by the superintendent of the hospital to the state comptroller and a duplicate statement shall be mailed to the auditor of that county.

6. All or any reasonable portion of the charges incurred for services rendered to any patient, to the most recent date for which the charges have been computed, may be paid at any time by the patient or by any other person on the patient's behalf. Any payment so made shall be credited against the patient's account and, if the charges so paid have previously been billed to a county, reflected in the hospital's next general statement to that county. [R60,§1487; C73,§1428; C97,§2292; S13, §2292; C24, 27, 31, 35, 39,§**3600**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.20; 66GA, ch 1132,§9]

Referred to in §§230.21, 230.22
Similar provisions, §§244.14, 271.14
Effective July 1, 1977

230.21 Duty of county auditor and treasurer. The county auditor, upon receipt of the duplicate statement required by section 230.20, shall enter the same to the credit of the state in his or her ledger of state accounts, shall furnish to the board of supervisors a list of the names of the persons so certified, and at once issue a notice authorizing the county treasurer to transfer the amount billed to the county by the statement from the county mental health and institutions fund to the general state revenue, which notice shall be filed by the treasurer as authority for making such transfer. The auditor shall promptly remit the amount so transferred to the treasurer of state, designating the fund to which it belongs. [R60,§1487; C73,§1428; C97,§2292; S13, §2292; C24, 27, 31, 35, 39,§**3601**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.21; 66GA, ch 1104,§10, ch 1132,§10]

Referred to in §230.25
Similar provisions, §244.14
See 66GA, ch 1132,§13 for effective date

230.22 Penalty. Should any county fail to pay the amount billed by a statement submitted pursuant to section 230.20 within sixty days from the date the statement is certified by the superintendent, the state comptroller shall charge the delinquent county the penalty of one percent per month on and after sixty days from the date the statement is certified until paid. Provided, however, that the penalty shall not be imposed if the county has notified the comptroller of error or questionable items in the billing, in which event, the comptroller may suspend penalty only during the period of negotiation. [C97,§2292; S13,§2292; C24, 27, 31, 35, 39,§**3602**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.22; 66GA, ch 1132,§11]

Amendment effective July 1, 1977

230.23 Cost paid from mental health and institutions fund. All expenses required to be paid by counties for the care, admission, commitment, and transportation of mentally ill patients in state hospitals shall be paid by the board of supervisors from the county mental health and institutions fund. [C97,§2292; S13, §2292; C24, 27, 31, 35, 39,§**3603**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.23; 66GA, ch 1132,§12]

Amendment effective July 1, 1977

230.24 Psychiatric treatment—mental health center. The county board of supervisors are authorized to expend from the county mental health and institutions fund established by section 444.12 funds for psychiatric examination and treatment of persons in need thereof, or for professional evaluation, treatment, and habilitation of mentally retarded persons, in each county which has facilities available for such treatment, and any county not having such facilities may contract through its board of supervisors with any other county, which has facilities for psychiatric examination and treatment or for professional evaluation, treatment, and habilitation of mentally retarded persons, for the use thereof. However, the county board of supervisors shall not expend from such fund for treatment other than in a state institution an amount which would exceed eight dollars per capita for counties having less than forty thousand population. [C97,§2308; S13,§2308; C24, 27, 31, 35, 39,§**3604**; C46, 50, 54, 58, 62, **66**, 71, 73, 75,§230.24]

Referred to in §230A.1

230.25 Financial investigation by supervisors.

1. Upon receipt from the county auditor of the list of names furnished pursuant to section 230.21, the board of supervisors shall make an investigation to determine the ability of each person whose name appears on the list, and also the ability of any person liable under section 230.15 for the support of that person, to pay the expenses of that person's hospitalization. If the board finds that neither the hospitalized person nor any person legally liable for his or her support is able to pay those expenses, they shall direct the county auditor not to index the names of any of those persons as would otherwise be required by section 230.26. However the board may

review its finding with respect to any person at any subsequent time at which another list is furnished by the auditor upon which that person's name appears. If the board finds upon review that that person or those legally liable for his or her support are presently able to pay the expenses of that person's hospitalization, that finding shall apply only to charges stated upon the certificate from which the list was drawn up and any subsequent charges similarly certified, unless and until the board again changes its finding.

2. All liens created under section 230.25, as that section appeared in the Code of 1975 and prior editions of the Code, are abolished effective January 1, 1977, except as otherwise provided by subsection 1. The board of supervisors of each county shall, as soon as practicable after July 1, 1976, review all liens resulting from the operation of said section 230.25, Code 1975, and make a determination as to the ability of the person against whom the lien exists to pay the charges represented by the lien, and if they find that the person is able to pay those charges they shall direct the county attorney of that county to take immediate action to enforce the lien. If action is commenced under this section on any lien prior to the effective date of the abolition thereof, that lien shall not be abolished but shall continue until the action is completed. [C39,§**3604.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §230.25; 66GA, ch 1104,§§11, 15]

Referred to in §§230.15, 230.30
48GA, ch 98,§4, editorially divided

230.26 Auditor to keep record. The auditor of each county shall keep an accurate account of the cost of the maintenance of any patient kept in any institution as provided for in this chapter and keep an index of the names of the persons admitted or committed from such county. The name of the husband or the wife of such person designating such party as the spouse of the person admitted or committed shall also be indexed in the same manner as the names of the persons admitted or committed are indexed. The book shall be designated as an account book or index, and shall have no reference in any place to a lien. [C39,§**3604.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §230.26; 66GA, ch 1104,§12]

Referred to in §230.25

230.27 Board and county attorney to collect. It shall be the duty of the board of supervisors to collect said claims and direct the county attorney to proceed with the collection of said claims as a part of the duties of his office. [C39,§**3604.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §230.27]

230.28 and 230.29 Repealed by 66GA, ch 1104,§17.

230.30 Claim against estate. On the death of a person receiving or who has received assistance under the provisions of this chapter, and whom the board has previously found, under section 230.25, is able to pay there shall be allowed against the estate of such decedent a claim of the sixth class for that portion of the total amount paid for that person's care which exceeds the total amount of all claims of the first through the fifth classes, inclusive, as defined in section 633.425, which are allowed against that estate. [C39, §**3604.6**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§230.30; 66GA, ch 1104,§13]

Unsatisfied prior to July 1, 1976, see 66GA, ch 1104,§16

230.31 Departers from other states. When any mentally ill person departs without proper authority from an institution in another state and is found in this state, any peace officer in any county in which such patient is found may take and detain him without order and shall report such detention to the state director who shall provide for the return of such patient to the authorities of the state where the unauthorized leave was made. Pending such return such patient may be detained temporarily at one of the institutions of this state governed by the state director or any other director of the state department of social services. Expenses incurred under this section shall be paid in the same manner as is provided for transfers in section 230.8. [C58, 62, 66, 71, 73, 75,§230.31]

230.32 Support of nonresident patients on leave. The cost of support of patients without legal settlement in this state, who are placed on convalescent leave or removed from a state mental institute to any health care facility licensed under chapter 135C for rehabilitation purposes, shall be paid from the hospital support fund and shall be charged on abstract in the same manner as state inpatients, until such time as the patient becomes self-supporting or qualifies for support under existing statutes. [C66, 71, 73, 75,§230.32]

230.33 Reciprocal agreements. The state director is hereby authorized to enter into agreements with other states, through their duly constituted authorities, to effect the reciprocal return of mentally ill and mentally retarded persons to the contracting states, and to effect the reciprocal supervision of persons on convalescent leave.

Provided that in the case of a proposed transfer of a mentally ill or mentally retarded person from this state that no final action be taken without the approval either of the commission of hospitalization, or of the district court, of the county of admission or commitment. [C66, 71, 73, 75,§230.33]

230.34 "Director" defined. As used in this chapter, "director" or "state director" means the director of the division of mental health of the department of social services. [C71, 73, 75,§230.34]

CHAPTER 230A

COMMUNITY MENTAL HEALTH CENTERS

Referred to in §125.22

230A.1 Establishment and support of community mental health centers.
230A.2 Services offered.
230A.3 Forms of organization.
230A.4 Trustees — qualifications — manner of selection.
230A.5 Election of trustees.
230A.6 Vacancies.
230A.7 Organization—meetings—quorum.
230A.8 Duties of secretary.
230A.9 Duties of treasurer.
230A.10 Powers and duties of trustees.
230A.11 Trustees — reimbursement — restrictions.
230A.12 Center organized as nonprofit corporation—agreement with county.
230A.13 Annual budget.
230A.14 Support of center—federal funds.
230A.15 Comprehensive community mental health program.
230A.16 Establishment of standards.
230A.17 Review and evaluation.
230A.18 Report of review and evaluation.

230A.1 Establishment and support of community mental health centers. A county or affiliated counties having a total or combined population of thirty-five thousand or more may by action of the board or boards of supervisors, with approval of the Iowa mental health authority, establish a community mental health center to serve the county or counties. In establishing the community mental health center, the board of supervisors of each county involved may make a single nonrecurring expenditure from the county mental health and institutions fund in an amount not exceeding two hundred fifty dollars per thousand population or major fraction thereof in the county, but no such expenditure shall be made under this section by any county which has prior to July 1, 1974, expended funds to assist in establishment of a community mental health center under section 230.24, third paragraph, Code 1966 or Code 1971, or section 230.24, second paragraph, Code 1973. Nothing in this section shall limit the authority of the board or boards of supervisors of any county or group of counties, which prior to July 1, 1974, established or joined in establishing a community mental health center in a manner consistent with the requirements of section 230A.3, to continue to expend money from the county mental health and institutions fund to support operation of the center, and to form agreements with the board of supervisors of any additional county for that county to join in supporting and receiving services from or through the center. [C66, 71, 73,§230.24; C75,§230A.1]

Referred to in §§230A.2, 230A.3, 230A.14, 230A.15, 230A.16

230A.2 Services offered. A community mental health center established or operating as authorized by section 230A.1 may offer to residents of the county or counties it serves any or all of the following services:

1. Diagnostic and treatment services for persons suffering from mental illness, mental retardation, emotional disorders, other debilitating psychiatric conditions and alcoholism or drug addiction or dependency; provided, however, that an individual whose primary illness is diagnosed as being an alcoholic shall be referred to a facility defined in chapter 125 if such a facility exists in the county where the community mental health center is located. The services may be provided, as indicated by the needs of the person served, on:

a. An outpatient basis, or

b. A partial hospitalization basis, or

c. An inpatient basis.

2. Aftercare and, where indicated, rehabilitative services for persons who have received services under subsection 1, or have been treated by a state mental health institute or other psychiatric facility, and upon request of a state mental health institute or other psychiatric facility, prehospitalization services to persons seeking, awaiting, or being considered for admission or commitment to such facility.

3. Emergency mental health services, which shall be continuously available on a twenty-four hour a day basis.

4. Collaborative and co-operative programs and services with public health and other groups for prevention of mental illness, emotional disorders and other debilitating psychiatric conditions.

5. Informational and educational services to the general public and professional groups.

6. Consultative services to schools, courts and health and welfare agencies.

7. In-service training, research and evaluation. [C75,§230A.2]

Referred to in §§230A.10, 230A.12, 230A.14, 230A.15

230A.3 Forms of organization. Each community mental health center established or continued in operation as authorized by section 230A.1 shall be organized and administered in accordance with one of the two alternative forms prescribed by this chapter. The two alternative forms are:

1. Direct establishment of the center by the county or counties supporting it and administration of the center by an elected board of trustees, pursuant to sections 230A.4 to 230A.11.

2. Establishment of the center by a nonprofit corporation providing services to the county or counties on the basis of an agreement with the board or boards of supervisors, pursuant to sections 230A.12 and 230A.13. [C75,§230A.3]

Referred to in §§230A.1, 230A.12

230A.4 Trustees—qualifications—manner of selection. When the board or boards of supervisors of a county or affiliated counties decides to directly establish a community mental health center the supervisors, acting jointly in the case of affiliated counties, shall appoint a board of community mental health center trustees to serve until the next succeeding general election. The board of trustees shall consist of at least seven members each of whom shall be a resident of the county or one of the counties served by the center. No employee of the center shall be eligible for the office of community mental health center trustee. At the first general election following establishment of the center, all members of the board of trustees shall be elected. They shall assume office on the second secular day of the following January, and shall at once divide themselves by lot into three classes of as nearly equal size as possible. The first class shall serve for terms of two years, the second class for terms of four years, and the third class for terms of six years. Thereafter, a member shall be elected to the board of trustees for a term of six years at each general election to succeed each member whose term will expire in the following year. [C75,§230A.4]

Referred to in §230A.3

230A.5 Election of trustees. The election of community mental health center trustees shall take place at the general election on ballots which shall not reflect a nominee's political affiliation. Nomination shall be made by petition in accordance with chapter 45. The petition form shall be furnished by the county commissioner of elections, signed by eligible electors of the county or affiliated counties equal in number to one percent of the vote cast therein for president of the United States or governor, as the case may be, in the last previous general election, and shall be filed with the county commissioner of elections at least fifty-five days prior to the date of the general election. A plurality shall be sufficient to elect community mental health center trustees, and no primary election for that office shall be held. [C75,§230A.5]

Referred to in §§230A.3, 230A.16

230A.6 Vacancies. Vacancies on the community mental health center board of trustees shall be filled by appointment in accordance with sections 69.11 and 69.12, by the remaining trustees, except that if the offices of more than half of the members of the board are vacant at any one time the vacancies shall be filled by the board of supervisors or boards of supervisors acting jointly in the case of affiliated counties. The office of any trustee who is absent from four consecutive regular board meetings, without prior excuse, may be declared vacant by the board of trustees and filled in accordance with this section. [C75,§230A.6]

Referred to in §§230A.3, 230A.16

230A.7 Organization—meetings — quorum. The members of the board of community mental health center trustees shall qualify by taking the usual oath of office within ten days after their appointment or prior to the beginning of the term to which they were elected, as the case may be. At the initial meeting following appointment of a board of trustees or of a majority of the members of a board, and at the first meeting in January after each biennial general election, the board shall organize by election of one of the trustees as chairman, one as secretary and one as treasurer. The secretary and treasurer shall each file with the chairman a surety bond in a penal sum set by the board of trustees and with sureties approved by the board for the use and benefit of the center, the reasonable cost of which shall be paid from the operating funds of the center. No other members of the board shall be required to post bond. The board shall meet at least once each month. One half plus one of the members of the board shall constitute a quorum. [C75,§230A.7]

Referred to in §230A.3

230A.8 Duties of secretary.

1. The secretary shall report to the county auditor and treasurer the names of the chairman, secretary and treasurer of the community mental health center board of trustees as soon as practicable after each has qualified.

2. The secretary shall keep a complete record of all proceedings of the board of trustees.

3. The secretary shall draw warrants on the funds of the center, which shall be countersigned by the chairman of the board of trustees, after claims are certified by the board.

4. The secretary shall file with the board of trustees, on or before the tenth day of each month, a complete statement of all receipts and disbursements from the center's funds during the preceding month and the balance remaining on hand at the close of the month. [C75,§230A.8]

Referred to in §§230A.3, 230A.9

230A.9 Duties of treasurer.

1. The treasurer of the community mental health center shall receive the funds made available to the center by the county or counties it serves, and any other funds which may be made available to the center, and shall disburse the center's funds upon warrants drawn as required by section 230A.8, subsection 3.

2. The treasurer shall keep an accurate account of all receipts and disbursements and shall register all orders drawn and reported

to him by the secretary, showing the number, date, to whom drawn, the purpose and amount.

3. At intervals specified by the county board of supervisors, not less often than once each ninety days, the county treasurer of each county served by the center shall notify the chairman of the center's board of trustees of all amounts due the center from the county which have not previously been paid over to the treasurer of the center. The chairman shall then file a claim for payment as specified in sections. 331.20, 333.2 and 334.1 to 334.7. [C75, §230A.9]

Referred to in §230A.3

230A.10 Powers and duties of trustees. The community mental health center board of trustees shall:

1. Have authority to adopt bylaws and rules for its own guidance and for the government of the center.

2. Employ a director and staff for the center, fix their compensation, and have control over the director and staff.

3. Designate at least one of the trustees to visit and review the operation of the center at least once each month.

4. Procure and pay premiums on insurance policies required for the prudent management of the center, including but not limited to public liability, professional malpractice liability, workers' compensation and vehicle liability, any of which may include as additional insureds the board of trustees and employees of the center.

5. Establish, with approval of the board or joint boards of supervisors of the county or counties served by the center, standards to be followed in determining whether and to what extent persons seeking services from the center shall be considered able to pay the cost of the services received.

6. Establish, with approval of the board or joint boards of supervisors of the county or counties served by the center, policies regarding whether the services of the center will be made available to persons who are not residents of the county or counties served by the center, and if so upon what terms.

7. Purchase or lease a site for the center, and provide and equip suitable quarters for the center.

8. Prepare and approve plans and specifications for all center buildings and equipment, and advertise for bids as required by law for county buildings before making any contract for the construction of any building or purchase of equipment.

9. File with the board of supervisors within thirty days after the close of each budget year, a report covering their proceedings with reference to the center and a statement of all receipts and expenditures during the preceding budget year.

10. Accept property by gift, devise, bequest or otherwise; and, if the board deems it advisable, may, at public sale, sell or exchange any property so accepted upon a concurring vote of a majority of all members of the board of trustees, and apply the proceeds thereof, or property received in exchange therefor, to the purposes enumerated in subsection 7, or to purchase equipment.

11. There shall be published quarterly in each of the official newspapers of the county as selected by the board of supervisors pursuant to section 349.1 the schedule of bills allowed and there shall be published annually in such newspapers the schedule of salaries paid by job classification and category, but not by listing names of individual employees. The names, addresses, salaries and job classification of all employees paid in whole or in part from public funds shall be a public record and open to inspection at reasonable times as designated by the board of trustees.

12. Recruit, promote, accept and use local financial support for the community mental health center from private sources such as community service funds, business, industrial and private foundations, voluntary agencies and other lawful sources.

13. Accept and expend state and federal funds available directly to the community mental health center for all or any part of the cost of any service the center is authorized to provide.

14. Enter into contracts with affiliates, which may be an individual or a public or private group, agency, or corporation, organized and operating on either a profit or a nonprofit basis, for any of the services described in section 230A.2, subsections 1 to 3, to be provided by the affiliate to residents of the county or counties served by the community mental health center who are patients or clients of the center and are referred by the center to the affiliate for service. [C75,§230A.10; 66GA, ch 1084,§43]

Referred to in §230A.3

230A.11 Trustees—reimbursement—restrictions.

1. No community mental health center trustee shall receive any compensation for his services in that office, but he shall be reimbursed for actual and necessary personal expenses incurred in the performance of his duties. An itemized and verified statement of any such expenses may be filed with the secretary of the board of trustees, and shall be allowed upon approval by the board.

2. No trustee shall have, directly or indirectly, any pecuniary interest in the purchase or sale of any commodities or supplies procured for or disposed of by the center. [C75, §230A.11]

Referred to in §230A.3

230A.12 Center organized as nonprofit corporation—agreement with county. Each community mental health center established or continued in operation pursuant to section

230A.3, subsection 2, shall be organized under the Iowa nonprofit corporation Act appearing as chapter 504A, except that a community mental health center organized under chapter 504 prior to July 1, 1974, shall not be required by this chapter to adopt the Iowa nonprofit corporation Act if it is not otherwise required to do so by law. The board of directors of each such community mental health center shall enter into an agreement with the county or affiliated counties which are to be served by the center, which agreement shall include but need not be limited to the period of time for which the agreement is to be in force, what services the center is to provide for residents of the county or counties to be served, standards the center is to follow in determining whether and to what extent persons seeking services from the center shall be considered able to pay the cost of the services received, and policies regarding availability of the center's services to persons who are not residents of the county or counties served by the center. The board of directors, in addition to exercising the powers of the board of directors of a nonprofit corporation may:

1. Recruit, promote, accept and use local financial support for the community mental health center from private sources such as community service funds, business, industrial and private foundations, voluntary agencies, and other lawful sources.

2. Accept and expend state and federal funds available directly to the community mental health center for all or any part of the cost of any service the center is authorized to provide.

3. Enter into contracts with affiliates, which may be an individual or a public or private group, agency or corporation, organized and operating on either a profit or a nonprofit basis, for any of the services described in section 230A.2, subsections 1 to 3, to be provided by the affiliate to residents of the county or counties served by the community mental health center who are patients or clients of the center and are referred by the center to the affiliate for service. [C75,§230A.12]

Referred to in §230A.3

230A.13 Annual budget. The board of directors of each community mental health center which is organized as a nonprofit corporation shall prepare an annual budget for the center and, when satisfied with the budget, submit it to the auditor or auditors of the county or affiliated counties served by the center, at the time and in the manner prescribed by chapter 24. The budget shall be subject to review by and approval of the board of supervisors of the county which is served by the center or, in the case of a center serving affiliated counties, by the board of supervisors of each county, acting separately, to the extent the budget is to be financed by taxes levied by that county or by funds allocated to that county by the state which the county may by law use to help support the center. [C75,§230A.13]

Referred to in §230A.3

230A.14 Support of center—federal funds. The board of supervisors of any county served by a community mental health center established or continued in operation as authorized by section 230A.1 may expend money from the county mental health and institutions fund, federal revenue-sharing funds, or other federal matching funds designated by the board of supervisors for such purpose, without a vote of the electorate of the county, to pay the cost of any services described in section 230A.2 which are provided by the center or by an affiliate under contract with the center, or to pay the cost of or grant funds for establishing, reconstructing, remodeling or improving any facility required for the center. However, the county board shall not expend money from that fund, except for designated revenue-sharing or other federal matching funds, for mental health treatment obtained outside a state institution in an amount exceeding eight dollars per capita in any county having less than forty thousand population. [C75,§230A.14; 66GA, ch 140,§1]

230A.15 Comprehensive community mental health program. A community mental health center established or operating as authorized by section 230A.1, or which a county or group of counties has agreed to establish or support pursuant to that section, may with approval of the board or boards of supervisors of the county or counties supporting or establishing the center, undertake to provide a comprehensive community mental health program for the county or counties. A center providing a comprehensive community mental health program shall, at a minimum, make available to residents of the county or counties it serves all of the services described in section 230A.2, subsection 1, including paragraphs "*a*," "*b*" and "*c*," and subsections 3, 5 and 6. [C75,§230A.15]

230A.16 Establishment of standards. The Iowa mental health authority, with approval of the committee on mental hygiene and subject to the provisions of chapter 17A, shall formulate and adopt and may from time to time revise standards for community mental health centers and comprehensive community mental health programs, with the overall objective of ensuring that each center and each affiliate providing services under contract with a center furnishes high quality mental health services within a framework of accountability to the community it serves. The standards shall be in substantial conformity with those of the psychiatric committee of the joint committee on accreditation of hospitals and other recognized national standards for evaluation of psychiatric facilities unless in the judgment of the Iowa mental health authority, with approval of the committee on mental hygiene, there are sound reasons for departing from such standards. When formulating or revising standards

under this section, the Iowa mental health authority shall designate an advisory committee representing boards of directors and professional staff of community mental health centers to assist in the formulation or revision of standards. The standards established under this section shall include requirements that each community mental health center established or operating as authorized by section 230A.1 shall:

1. Maintain and make available to the public a written statement of the services it offers to residents of the county or counties it serves, and employ or contract for services with affiliates employing specified minimum numbers of professional personnel possessing specified appropriate credentials to assure that the services offered are furnished in a manner consistent with currently accepted professional standards in the field of mental health.

2. Unless it is governed by a board of trustees elected or selected under sections 230A.5 and 230A.6, be governed by a board of directors which adequately represents interested professions, consumers of the center's services, socio-economic, cultural and age groups, and various geographical areas in the county or counties served by the center.

3. The financial condition and transactions of each community mental health center shall be audited once each year by the auditor of state; provided, however, that in lieu of an audit by state accountants, the local governing body of a community mental health center organized under the terms of this chapter in case it elects to do so, may contract with or employ certified public accountants to conduct such audit, pursuant to the applicable terms and conditions prescribed by sections 11.18 and 11.19 and audit format prescribed by the auditor of state. Copies of each audit shall be furnished by the accountant employed to the Iowa mental health authority and the board of supervisors supporting the audited community mental health center. [C75,§230A.16]

Referred to in §230A.18

230A.17 Review and evaluation. The committee on mental hygiene may review and evaluate any community mental health center upon its own motion or upon the recommendation of the Iowa mental health authority, and the committee shall do so upon the written request of the center's board of directors, its chief medical or administrative officer, or the board of supervisors of any county from which the center receives public funds. The cost of the review shall be paid by the Iowa mental health authority. [C75,§230A.17]

Referred to in §230A.18

230A.18 Report of review and evaluation. Upon completion of a review made pursuant to section 230A.17, the reviewing team shall submit its findings to the board of directors and chief medical or administrative officer of the center in such manner as the team members deem most appropriate. If the reviewing team concludes that the center fails to meet any of the standards established pursuant to section 230A.16, subsection 1, and that the response of the center to this finding is unsatisfactory, these conclusions shall be reported to the committee on mental hygiene which may forward the conclusions to the board of directors of the center and request an appropriate response within a reasonable period of time. If no response is received within a reasonable period of time, or if the response is unsatisfactory, the committee may as its ultimate sanction call this fact to the attention of the board of supervisors of the county or counties served by the center, and in doing so shall indicate what corrective steps have been recommended to the center's board of directors. [C75,§230A.18]

CHAPTER 231

JUVENILE COURT

Referred to in §232.2(1)

231.1 Jurisdiction.
231.2 How constituted.
231.3 Designation of judge or judicial magistrate—referee.
231.4 Effect.
231.5 Courts always open.
231.6 Records of court.
231.7 Clerk.
231.8 Probation officers—salaries.
231.9 Physicians and nurses.
231.10 Powers and duties—office and supplies.
231.11 Duties of clerk.
231.12 Salaries—expenses—how paid.
231.13 Salaries and expenses in certain counties.
231.14 Interstate juvenile compacts.
231.15 Confinement of delinquent juvenile.

231.1 Jurisdiction. There is hereby established in each county a juvenile court within the district court, which shall have and exercise the jurisdiction and powers provided by law. [S13,§254-a13; C24, 27, 31, 35, 39,§3605; C46, 50, 54, 58, 62, 66, 71, 73, 75,§231.1]

Referred to in §600A.2

231.2 How constituted. The juvenile court of each county shall be constituted as follows:

1. Of the judges of the district court.

2. Of the district associate judges if and as long as so designated by the chief judge of

the district. [S13,§254-a13; 2C4, 27, 31, 35, 39, §3606; C46, 50, 54, 58, 62, 66, 71, 73, 75,§231.2]

231.3 Designation of judge or judicial magistrate—referee. The chief judge of the district shall designate one or more of the district judges, district associate judges, judicial magistrates serving pursuant to section 602.51, or any thereof, to act as judge or judges of the juvenile court in any county or counties.

The judge of the juvenile court may appoint a referee in juvenile court proceedings. The referee shall be qualified for his duties by training and experience and shall hold office at the pleasure of the judge. The compensation of the referee shall be fixed by the judge. The judge may direct that any case or class of cases arising under chapter 232 or chapter 600A shall be heard in the first instance by the referee in the manner provided for the hearing of cases by the court.

Upon the conclusion of a hearing held as provided herein, the referee shall transmit to the judge findings of fact. Notice of the findings of fact of the referee, together with a statement concerning the right to a rehearing, shall be given to the parties to the proceeding heard by the referee, including the parents, guardian or custodian of a minor, and to any other interested person as the court may direct. This notice may be given orally at the hearing, or by certified mail or other service as directed by the court.

The parties to a proceeding heard before the referee shall be entitled to a rehearing by the judge of the juvenile court if requested within seven days after receiving notice of the findings of fact of the referee. In the interest of justice, the court may allow a rehearing at any time. If a rehearing is not requested, the court may enter any appropriate order based upon the referee's findings of fact.

In counties having a population of more than two hundred fifty thousand, the judge of the juvenile court may appoint a director of court services and shall fix his compensation. [C24, 27, 31, 35, 39,§3607; C46, 50, 54, 58, 62, 66, 71, 73, 75,§231.3; 66GA, ch 1229,§27]

Referred to in §§602.32, 602.60

231.4 Effect. The designation of any judge to hold the juvenile court shall not deprive him of other judicial functions, nor the other judges of the power to act as judges of the juvenile court during the absence, inability to act, or upon request, of the regularly designated juvenile judge. [C24, 27, 31, 35, 39, §3608; C46, 50, 54, 58, 62, 66, 71, 73, 75,§231.4]

231.5 Courts always open. Juvenile courts shall always be open for the transaction of business, but the hearing of any matter requiring notice shall be had only at such time and place as the judge may fix. [S13,§254-a13; C24, 27, 31, 35, 39,§3609; C46, 50, 54, 58, 62, 66, 71, 73, 75,§231.5]

231.6 Records of court. The juvenile court shall be a court of record, and the proceedings, orders, findings, and decisions thereof shall be entered in books kept for that purpose and designated as the juvenile court records. [S13,§254-a13; C24, 27, 31, 35, 39,§3610; C46, 50, 54, 58, 62, 66, 71, 73, 75,§231.6]

231.7 Clerk. The clerk of the court whose judge acts as the juvenile court shall act as clerk of the juvenile court. [C24, 27, 31, 35, 39, §3611; C46, 50, 54, 58, 62, 66, 71, 73, 75,§231.7]

231.8 Probation officers—salaries. The judge designated as judge of the juvenile court in any county, or where there is more than one judge designated such judges acting jointly, may appoint such probation officers as may be necessary to carry out the work of the court. In counties where more than one officer is appointed one of such officers shall be designated as chief probation officer. The salaries of such officers shall be fixed by a probation officer committee of three judicial officers of the judicial district appointed by the chief judge of the district. One member of the committee shall be a district judge, district associate judge or magistrate regularly assigned to preside over the juvenile court within a county in that district.

Probation officers may be appointed to serve two or more counties. The salaries of such officers and their deputies, if any, shall be fixed by the probation officer committee of district court judges appointed by the chief judge of the judicial district and such salaries and the expenses of the probation offices shall be prorated among the counties served in such proportion as may be determined by the committee of district court judges appointed by the chief judge of the judicial district who shall in making such determination, consider the volume of work in the several counties.

All probation officers so appointed shall serve at the pleasure of the probation officer committee appointed by the chief judge of the judicial district and shall be selected and appointed in accordance with such rules, standards, and qualifications as shall be established by the supreme court pursuant to section 684.21. The provision of this section shall not affect in any way the appointment or term of office of any probation officer presently serving in any county or counties.

Such secretarial, clerical and other help as may be needed in the administration of any probation office may be appointed by the judge or judges of the juvenile court who may fix their salaries, subject to the approval of the board of supervisors. [S13,§254-a18; C24, 27, 31, 35, 39,§3612; C46, 50, 54, 58, 62, 66, 71, 73, 75, §231.8; 66GA, ch 141,§1]

RULES, STANDARDS AND QUALIFICATIONS

The Supreme Court of Iowa has established the following rules, standards and qualifications of probation officers to be selected and appointed by juvenile court judges in Iowa.

FOR PROBATION OFFICERS

A. Age, Education and Experience
   1. Age at least 21 years, and a citizen of the United States.
   2. A bachelor's degree from an accredited college or university with emphasis on criminology, psychology, sociology or related fields of social sciences.
   3. A working knowledge of the Iowa court system and the functions of juvenile courts.

B. Personal Qualities
   1. Emotional maturity and stability; personal and professional integrity; ability to establish effective interpersonal relationships; an honest conviction of the dignity and value of the individual; belief in the capacity of people to change for the better; a genuine interest in helping others; a large amount of patience.
   2. Intellectual depth, mature judgment, warmth, continuing interest in professional improvement.
   3. Ability to co-operate with others and to accept constructive criticism, and suggestions and directions from superiors.

FOR CHIEF PROBATION OFFICERS OF JUDICIAL DISTRICTS OR MORE POPULOUS COUNTIES

A. Age, Education and Experience
   1. Same as for probation officers, as stated in 1, 2 and 3 above, plus at least three years of paid, full-time employment in the field of juvenile court service or comparable social casework agency.

B. Personal Qualities
   1. Same as for probation officers as stated in 1, 2 and 3 above, plus
   2. Ability to develop casework skills in others within the agency's legal, administrative, and budgetary limitations and to interpret departmental policies and procedures to staff.
   3. Demonstrated administrative and organizing abilities.
   4. Ability to write and speak effectively.
   5. Demonstrated ability to establish and maintain effective working relationships with individuals and groups.

MISCELLANEOUS

No one should be selected or appointed probation officer or chief probation officer without at least one personal interview between the juvenile court judge and the person under consideration.

By supreme court order July 18, 1968; amended by order of September 4, 1968

JUVENILE PROBATION OFFICERS

The Supreme Court of Iowa hereby establishes the following "Training Requirements" for juvenile probation officers:

TRAINING REQUIREMENTS

All juvenile probation officers appointed to office after July 1, 1974, must, within the first year of their employment, successfully complete a basic training program which is oriented toward the disciplines of law, law enforcement, corrections, and child welfare. Program length shall be not less than four consecutive weeks of five days each and not more than seven such weeks. The program shall be offered twice each calendar year.

Administration of the program shall be vested in a Training Committee comprised of five members appointed by the Supreme Court. The original appointment shall be one member for a one-year term, two for a two-year term, and two for a four-year term. The court shall designate one of the four-year members to be chairman. All succeeding appointments by the court shall be for terms of four years. Two of the members shall be juvenile court judges, two shall be juvenile probation officers, and one shall be a collegiate-level educator in the criminal justice field. Vacancies created by the resignation of a member shall be filled for the unexpired term in the same manner as the original appointments. Membership on the committee shall not constitute holding a public office and members shall serve without compensation.

It shall be the duties of the committee to fix the dates and locale of each training session, to determine the curriculum content of the program, to oversee the operation of the program, to seek out and secure funding for the program's operation, if necessary, and to develop rules, standards, and requirements, all subject to the approval of the Supreme Court.

The committee shall make an annual report to the Supreme Court by December 31 of each year. Included therein shall be relevant data regarding the curriculum, operation, standards, and the degree of participation in the Training Program.

By supreme court order July 1, 1974

231.9 Physicians and nurses. In any county having a population of one hundred twenty-five thousand or more, the judge or judges of the juvenile court may appoint a competent physician at a salary of not more than one hundred dollars per month, and a visiting nurse, who shall be a trained graduate, at a salary of not more than two hundred dollars per month, and prescribe their duties. [C24, 27, 31, 35, 39,§**3613**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§231.9]

231.10 Powers and duties—office and supplies. Probation officers, in the discharge of their duties as such, shall possess the powers of peace officers. They shall be furnished by the county with a proper office and all necessary blanks, books, and stationery. It shall be the duty of said probation officers to make such investigation as may be required by the court; to be present in court in order to rep-

resent the interests of the child when the case is heard; to furnish to the court such information and assistance as the judge may require, and to take such charge of any child before and after trial as may be directed by the court. [S13,§254-a18; C24, 27, 31, 35, 39,§**3614**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§231.10]

231.11 Duties of clerk. The clerk of court shall, if practicable, notify a convenient probation officer in advance when any child is to be brought before the said court. [S13,§254-a18; C24, 27, 31, 35, 39,§**3615**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§231.11]

231.12 Salaries—expenses—how paid. The judges making the appointments shall fix the salaries of all appointees at not exceeding the amount authorized by law. All appointees shall serve during the pleasure of such judges, and in addition to salaries shall receive their necessary and actual expenses incurred while performing their duties. For use of an automobile in the discharge of their duties within the particular county or counties for which they are appointed such officers may receive the mileage rate provided by law, or, in lieu thereof, they may receive a monthly allowance in such amounts as the judge or judges of the juvenile court may determine and order. For use of an automobile outside the county or counties for which they have been appointed such officers shall be paid the regular mileage rate. All salaries and expenses shall be paid by the county either from the general county fund or from the court expense fund. [S13, §254-a18; C24, 27, 31, 35, 39,§**3616**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§231.12]

231.13 Salaries and expenses in certain counties. The salaries and expenses of probation officers and deputies in counties which contain an educational institution under the control of the state board of regents with a student enrollment of at least forty-two hundred, may be paid either from the general county fund or from the court expense fund. [C27, 31, 35,§3616-b1; C39,§**3616.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§231.13]

231.14 Interstate juvenile compacts. The state of Iowa through its courts and agencies is hereby authorized to enter into interstate compacts on juveniles in behalf of this state with any other contracting state which legally joins therein in substantially the following form.

The contracting states solemnly agree:

ARTICLE I—FINDINGS AND PURPOSES

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The co-operation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

1. Co-operative supervision of delinquent juveniles on probation or parole;

2. The return, from one state to another, of delinquent juveniles who have escaped or absconded;

3. The return, from one state to another, of nondelinquent juveniles who have run away from home; and

4. Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake co-operatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to co-operate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II—EXISTING RIGHTS AND REMEDIES

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III—DEFINITIONS

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV—RETURN OF RUNAWAYS

a. That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may

tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

Referred to in Art. VI

b. That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

Referred to in Art. VIII *a*, *b*

c. That "juvenile" as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V—RETURN OF ESCAPEES AND ABSCONDERS

Referred to in Art. XIV *b*, *d*

a. That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a

written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

Referred to in Art. VI

b. That the state to which a delinquent juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

Referred to in Art. VIII *a*, *b*

ARTICLE VI—VOLUNTARY RETURN PROCEDURE

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV "*a*" or of Article V "*a*", may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of

the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII
CO-OPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES
Referred to in Art. XIV

a. That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

b. That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

c. That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

d. That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Referred to in Art. VIII *a*, *b*

ARTICLE VIII—RESPONSIBILITY FOR COSTS

a. That the provisions of Articles IV "*b*", V "*b*" and VII "*d*" of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

b. That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV "*b*", V "*b*" or VII "*d*" of this compact.

ARTICLE IX—DETENTION PRACTICES

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X—SUPPLEMENTARY AGREEMENTS
Referred to in Art. XIV

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the co-operative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

1. Provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;

2. Provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody;

3. Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

4. Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

5. Provide for reasonable inspection of such institutions by the sending state;

6. Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

7. Make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the co-operating states.

ARTICLE XI—ACCEPTANCE OF FEDERAL AND OTHER AID

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

ARTICLE XII—COMPACT ADMINISTRATORS

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII—EXECUTION OF COMPACT

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

ARTICLE XIV—RENUNCIATION

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present Article.

Out-of-State Confinement Amendment

a. Whenever the duly constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

b. Escapees and absconders who would otherwise be returned pursuant to Article V of the compact may be confined or reconfined in the receiving state pursuant to this amendment. In any such case the information and allegations required to be made and furnished in a requisition pursuant to such Article shall be made and furnished, but in place of the demand pursuant to Article V, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in Article V may be employed pursuant to this paragraph preliminary to disposition of the escapee or absconder.

c. The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this amendment shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.

d. As used in this amendment: (1) "Sending state" means sending state as that term is used in Article VII of the compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of Article V of the compact; (2) "receiving state" means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this amendment.

e. Every state which adopts this amendment shall designate at least one of its institutions for delinquent juveniles as a "Compact Institution" and shall confine persons therein as provided in paragraph "*a*" hereof unless the sending and receiving state in question shall make specific contractural arrangements to the contrary. All states party to this amendment shall have access to "Compact Institutions" at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.

f. Persons confined in "Compact Institutions" pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said "Compact Institution" for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge or for any purpose permitted by the laws of the sending state.

g. All persons who may be confined in a "Compact Institution" pursuant to the provi-

sions of this amendment shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this amendment be construed as a waiver of any rights which the delinquent would have had if he had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee, or absconder may be entitled (prior to confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

h. Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs as among themselves.

i. This amendment shall take initial effect when entered into by any two or more states party to the compact and shall be effective as to those states which have specifically enacted this amendment. Rules and regulations necessary to effectuate the terms of this amendment may be promulgated by the appropriate officers of those states which have enacted this amendment. [C62, 66, 71, 73, 75, §231.14]

231.15 Confinement of delinquent juvenile. In addition to any institution in which the authorities of this state may otherwise confine or order the confinement of a delinquent juvenile, such authorities may, pursuant to the out-of-state confinement amendment to the interstate compact on juveniles, confine or order the confinement of a delinquent juvenile in a compact institution within another party state. [C66, 71, 73, 75,§231.15]

CHAPTER 232

CHILDREN IN NEED OF ASSISTANCE AND DELINQUENT CHILDREN

Referred to in §§106.13, 231.3, 233.1(1), 235A.5, 238.32(1), 238.41, 242.5, 244.4, 321.482, 321G.14, 600A.8, 714.41

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232.1 Rule of construction. This chapter shall be liberally construed to the end that each child coming within the jurisdiction of the juvenile court shall receive, preferably in his home, the care, guidance, and control that will conduce to his welfare and the best interests of the state, and that when he is removed from the control of his parents, the court shall secure for him care as nearly as possible equivalent to that which he should have been given. [S13,§254-a14; C24, 27, 31, 35, 39,§**3617**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§232.1]

232.2 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Court"* means the juvenile court as established under chapter 231.

2. *"Judge"* means the judge of the juvenile court.

3. *"Minor"* or *"child"* means a person less than eighteen years of age or a person who is at least eighteen years of age but less than twenty-one years of age who is regularly attending an approved school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational or technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs.

4. *"Adult"* means a person eighteen years of age or older.

5. *"Detention"* means the temporary care of children who require secure custody for their own protection or the protection of the community in physically restricting facilities pending court disposition.

6. *"Shelter"* means the temporary care of children in physically unrestricting facilities pending court disposition.

7. *"Guardianship of the person"* with respect to a minor means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned about the general welfare of the minor. Guardianship of the person includes but is not limited to:

a. The authority to consent to marriage, to enlistment in the armed forces of the United States, to major medical, psychiatric, and surgical treatment, to represent the minor in legal actions, and to make other decisions of substantial legal significance concerning the minor.

b. The authority and duty of reasonable visitation except to the extent that such right of visitation has been limited by court order.

c. The rights and responsibilities of legal custody except where legal custody has been vested in another individual or in an authorized agency.

d. The authority to consent to the adoption of a child and to make any other decision concerning the child which could be made by the parents of the child when the parent-child relationship has been terminated by judical decree with respect to the parents or the only living parent, or when there is no living parent.

A juvenile court guardianship of the person does not include guardianship of any estate of the child.

Adoption in general, ch 600

8. *"Guardian"* means guardian as defined in section 600A.2, subsection 7.

9. *"Custodian"* means custodian as defined in section 600A.2, subsection 8.

10. *"Protective supervision"* is a legal status created by court order in proceedings not involving violation of law but when the legal custody of the child is subject to change, whereby the child is permitted to remain in the home under supervision by the court or an agency designated by the court and subject to return to the court during the period of protective supervision.

11. *"Commit"* means to transfer legal custody.

12. *"Delinquent child"* means a child:

a. Who has violated any state law or local laws or ordinances except any offense which is exempted from this chapter by law.

b. Who has violated a federal law or a law of another state and whose case has been referred to the juvenile court.

13. *"Child in need of assistance"* means a child:

a. Who is without a parent, guardian, or other custodian.

b. Who is in need of special care and treatment required by his physical or mental condition which the parents, guardian, or other custodian is unable to provide.

c. Whose parents, guardian, or other custodian for good cause desires to be relieved of his care and custody.

d. Who is abandoned by his parents, guardian, or other custodian.

e. Who for good cause desires to have his parents relieved of his care and custody.

f. Who is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of his parents, guardian, or other custodian.

g. Who is without proper parental care because of the faults or habits of his parents, guardian, or other custodian.

h. Who is living under conditions injurious to his mental or physical health or welfare.

i. Who is uncontrolled by his parents, guardian, or legal custodian by reason of being wayward or habitually disobedient.

j. Who habitually deports himself in a manner that is injurious to himself or others.

14. *"News media"* means representatives of newspapers, other periodicals, radio and television stations, and other agencies of mass communication.

15. The term *"director"* or *"state director"* means the director of the division of child and family services of the department of social services. [S13,§§254-a14,-a21; C24, 27, 31, 35, 39,§§**3618, 3619, 3620, 3638**; C46, 50, 54, 58, 62, §§232.2, 232.3, 232.4, 232.22; C66, 71, 73, 75,§232.2; 66GA, ch 142,§§1, 2, ch 1229,§28]

Referred to in §233.5

232.3 Information — investigation — petition. Whenever the court or any of its officers are informed by any competent person that a minor is within the purview of this chapter, an inquiry shall be made of the facts presented which bring the minor under this chapter to determine whether the interests of the public or of the minor require that further action be taken. After such an inquiry the judge, probation officer, or county attorney may authorize the filing of a petition with the clerk of the court by any informed person without payment of a filing fee. If the facts pleaded are admitted by the minor and consent is obtained from the parents, or guardian of the minor, the court may make whatever informal adjustment is practical without holding a formal hearing. Efforts to affect informal adjustment may be continued not longer than three months without review by the judge.

The petition and subsequent court documents shall be entitled "In the interest of ....., a child." The petition shall be verified and any statements may be made upon information and belief. The petition shall set forth plainly:

1. The facts which bring the child within the purview of this chapter.

2. The name, age, and residence of the child.

3. The names and residences of the parents of the child.

4. The name and residence of the legal guardian of the child if there be one, of the person or persons having custody or control of the child, or of the nearest known relative of the child if no parent or guardian can be found.

If any of the facts herein required are not known by the petitioner the petition shall so state.

Complaint with reference to more than one child may be embraced in one count of the petition subject to being later divided or separate hearings held on order of the court. [SS15,§254-a15; C24, 27, 31, 35, 39,§§**3621, 3622**; C46, 50, 54, 58, 62,§232.5, 232.6, C66, 71, 73, 75, §232.3]

Mental retardation—effect, §222.52

232.4 Hearing — appearance — summons. After a petition has been filed and unless the parties named in section 232.5 voluntarily appear, the court shall set a time for hearing and shall issue a summons requiring the person who has custody or control of the child to appear with the child before the court at a time and place stated. The summons shall recite briefly the substance of the petition or shall have attached a copy of the petition and shall give notification of the right to counsel provided for in section 232.28 and of the right to request the court to appoint counsel. [SS15, §254-a16; C24, 27, 31, 35, 39,§§**3623, 3624**; C46, 50, 54, 58, 62,§§232.7, 232.8; C66, 71, 73, 75,§232.4; 66GA, ch 1137,§1]

Referred to in §§232.5, 232.14

232.5 Service of notice. The court shall have notice of the pendency of the case and of the time and place of the hearing and all subsequent hearings served upon the acknowledged parents, upon the guardian or legal custodian of a child and the child if they are not summoned to appear as provided in section 232.4. The notice shall recite briefly the substance of the petition or shall have attached a copy of the petition and shall give notification of the right to counsel provided for in section 232.28 and of the right to request the court to appoint counsel. [SS15,§254-a16; C24, 27, 31, 35, 39,§§**3624, 3625, 3626**; C46, 50, 54, 58, 62,§§232.8, 232.9, 232.10; C66, 71, 73, 75,§232.5; 66GA, ch 1137,§2]

Referred to in §§232.4, 232.8

232.6 Subpoena. The court may issue a subpoena requiring the appearance of any other person whose presence in the opinion of the court is necessary at the hearing. A parent or guardian shall be entitled to subpoena the attendance of witnesses on his own behalf or on behalf of the child. [C66, 71, 73, 75,§232.6]

232.7 Child taken into custody. If it appears from the petition or by separate affidavit of a person having knowledge of the fact that the child is in such condition or surroundings that the welfare of the child requires that custody be immediately assumed by the court, the court may order by endorsement on the summons that the officer serving the summons take the child into custody immediately. [SS15, §254-a16; C24, 27, 31, 35, 39,§**3630**; C46, 50, 54, 58, 62,§232.14; C66, 71, 73, 75,§232.7]

Referred to in §232.15

232.8 Personal service. Service of the summons shall be made personally by the delivery of a copy thereof to the person summoned to appear. If the judge is satisfied that personal service of the notice provided for in section 232.5 is impracticable, the judge may order service by certified mail addressed to the last known address or by publication or both. Service of notice or summons shall be made not less than five days before the time fixed for the hearing. All notices of subsequent proceedings, after an initial valid notice or summons has been made, shall be made in such

manner and under such provisions as shall be prescribed by the court. [C66, 71, 73, 75,§232.8]

232.9 Who may serve summons. Service of summons, process, or notice required by this chapter may be made by any suitable person under the direction of the court and upon request of the court shall be made by any peace officer. [C24, 27, 31, 35, 39,§3625; C46, 50, 54, 58, 62, 66, 71, 73, 75,§232.9]

232.10 Contempt. If any person personally served with a summons or subpoena fails without reasonable cause to appear or to bring the child, the person may be proceeded against for contempt of court or the court may issue a warrant for the arrest of the person or both. When it appears to the court that the service will be ineffectual or that the welfare of the child will require that the child be brought forthwith into the custody of the court, the court may issue a warrant for the child. [SS15, §254-a16; C24, 27, 31, 35, 39,§§3627, 3628; C46, 50, 54, 58, 62,§§232.11, 232.12; C66, 71, 73, 75,§232.10]

Referred to in §232.15
Contempts, ch 665

232.11 Parent or guardian to be present. The hearing on the merit of the petition shall not take place without the presence of one or both of the parents or the guardian, or if none is present a guardian ad litem shall be appointed by the court to protect the interests of the child. The court shall also appoint a guardian ad litem whenever necessary for the welfare of the child whether or not a parent or guardian is present. [SS15,§254-a16; C24, 27, 31, 35, 39,§3631; C46, 50, 54, 58, 62,§232.15; C66, 71, 73, 75,§232.11]

232.12 Other issues adjudicated. When it appears during the course of any trial, hearing, or proceeding that some action or remedy other than or in addition to those indicated by the application or pleadings appears appropriate, the court may, provided all necessary parties consent, proceed to hear and determine the additional or other issues as though originally properly sought and pleaded. However, if termination of parental rights appears to be the appropriate action or remedy, the provisions of chapter 600A must be followed. [C66, 71, 73, 75,§232.12; 66GA, ch 1229,§29]

232.13 Examination of child. The court may order that a child for whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist, or psychologist and may order treatment by them of a child who has been adjudicated by the court. The court may place the child in a hospital or other suitable facility for such examination or treatment. [C66, 71, 73, 75,§232.13]

232.14 Report of social investigation. No decree other than discharge shall be entered until a written report of a social investigation by an officer of the court has been presented to and considered by the judge. Where the allegations of the petition are denied by the child or his parents, guardian, or custodian by written denial filed not later than two days excluding Sundays and holidays after service of summons as required in section 232.4 or at the time the parties appear voluntarily, the investigation shall not be made until after the allegations have been established at a hearing. The investigation shall include the circumstances of the offense or complaint, the social history and present condition of the child and family, and plans for the child's immediate care, as related to the decree. In cases of support, the investigation shall also include such matters as earnings, financial obligations, and employment. [C66, 71, 73, 75,§232.14]

232.15 When immediate custody may be taken. No child may be taken into immediate custody except:

1. With an order issued by the court in accordance with the provisions of section 232.7 or by a warrant issued in accordance with the provisions of section 232.10.

2. In accordance with the laws relating to arrests.

3. By a peace officer:

a. When it is reasonably believed that a child has run away from his parents, guardian, or custodian.

b. When a child is found in surroundings or conditions which endanger the health or welfare of the child.

4. By a peace officer or probation or parole officer when it is reasonably believed that the child has violated the terms of his probation, parole, or other official supervision.

The taking of a child into custody under the provisions of this section shall not be considered an arrest. [SS15,§254-a16; C24, 27, 31, 35, 39,§3630; C46, 50, 54, 58, 62,§232.14; C66, 71, 73, 75,§232.15]

Referred to in §232.16

232.16 Parents or guardians notified. When a child is taken into custody as provided in section 232.15, the parents, guardian, or custodian of the child shall be notified as soon as possible by the person taking the child into custody. Except where the immediate welfare of the child or the protection of the community requires that the child shall be detained, the child shall be released to the custody of the parents, guardian, custodian, or other suitable person on the promise of such person to bring the child to the court, if necessary, at such time as the court may direct. [C66, 71, 73, 75,§232.16]

Referred to in §232.17

232.17 Court notified of detention of child. If a child is not released as provided in section 232.16, the person taking the child into custody shall notify the court as soon as possible of the detention of the child and the reasons for the detention. The child shall be taken immediately to a place of detention specified in section 232.18 and may be held for not longer than twenty-four hours after the taking into

custody unless an order for detention specifying the reason for the detention is signed by the judge. No child may be held longer than forty-eight hours after the taking into custody unless a petition has been filed and the judge determines that the child shall remain in custody or unless the court refers the matter to the prosecuting authority for proper action in the criminal court. The parents, guardian, or custodian of the child shall be notified of the place of detention as soon as possible. If continued detention is not ordered, the court or designated officer shall release the child in the manner provided in section 232.16. [C66, 71, 73, 75,§232.17]

Referred to in §232.18

232.18 Where child may be detained. A child may be detained as provided in section 232.17 in one of the following places:

1. A juvenile home.

2. A licensed facility for foster care in accordance with the laws relating to facilities for foster care.

3. A suitable place designated by the court.

4. A room entirely separate from adults in a jail, lockup, police station, or other adult detention facility as provided in section 232.19. [S13,§254-a24; SS15,§254-a16; C24, 27, 31, 35, 39, §3633; C46, 50, 54, 58, 62,§232.17; C66, 71, 73, 75,§232.18]

Referred to in §§232.17, 232.19

232.19 Detention in jail—when. No child shall at any time be confined in a police station, lockup, jail, or prison except that a child may be detained for the purpose of protective custody for a period not to exceed twelve hours or a child fourteen years of age or older may upon the order of the judge be temporarily confined in a room entirely separate from adults in an adult detention facility. A child may be detained in an adult detention facility upon order of the judge only if the child is alleged to be delinquent and has shown by his habits, conduct, or conditions that he constitutes a menace to himself or society to the extent that he cannot be released or cannot be detained in a place designated in subsections 1, 2, or 3, of section 232.18. [S13,§254-a24; SS15,§254-a16; C24, 27, 31, 35, 39,§3633; C46, 50, 54, 58, 62,§232.17; C66, 71, 73, 75,§232.19]

Referred to in §232.18

232.20 Notice to court by custodian of jail. The sheriff, warden, or other official in charge of a jail or other facility for the detention of adult offenders or persons charged with crimes shall inform the juvenile court immediately when a child who is or appears to be under eighteen years of age is received at the facility. [C66, 71, 73, 75,§232.20]

232.21 Juvenile home may be maintained. County boards of supervisors may either singly or in conjunction with one or more other counties provide and maintain, separate, apart, and outside the enclosure of any jail or police station, a suitable juvenile home for children in need of assistance and delinquent children. Such a home shall be constructed so far as practicable so that children requiring detention shall be separated from the children requiring shelter. [S13,§254-a29; C24, 27, 31, 35, 39,§3653; C46, 50, 54, 58, 62,§232.35; C66, 71, 73, 75,§232.21; 66GA, ch 142,§3]

Referred to in §273.3

232.22 Issuance of bonds. For the purpose of providing and maintaining a county or multicounty juvenile home, the board of supervisors of any county may issue bonds and authorize the expenditure of such amounts as are consistent with the provisions of chapter 345. The board of supervisors of any county is authorized to levy a tax not to exceed thirteen and one-half cents per thousand dollars of assessed value for the purpose of maintaining a county or multicounty juvenile home. In counties of over one hundred fifty thousand population, the board of supervisors is authorized to levy a tax not to exceed twenty and one-fourth cents per thousand dollars of assessed value for the maintenance of a juvenile home. Expenses for providing and maintaining a juvenile home shall be paid by the county or counties participating in a manner to be determined by board or boards of supervisors of participating counties. [S13,§254-a30; C24, 27, 31, 35, 39,§3654; C46, 50, 54, 58, 62, §232.36; C66, 71, 73, 75,§232.22]

Referred to in §24.37

232.23 Supplies for instruction. Upon request of the board of supervisors, the county board or county boards of education shall provide suitable curriculum, teaching staff, books, supplies, and other necessary materials and equipment for the instruction of children of school age who are detained in the juvenile home. [C66, 71, 73, 75,§232.23]

232.24 Rules. The state director shall adopt minimal rules and standards for the establishment, maintenance, and operation of juvenile homes as shall be necessary to effect the purposes of this chapter. Said state director shall, upon request, give guidance and consultation in the establishment and administration of a juvenile home and a juvenile home program. [S13,§§254-a20,-a26; C24, 27, 31, 35, 39,§3655; C46, 50, 54, 58, 62,§232.37; C66, 71, 73, 75,§232.24]

232.25 Standards by state director. The state director shall approve annually all county or multicounty juvenile homes established and maintained under the provisions of this chapter. No county or multicounty juvenile home shall be approved unless such homes comply with minimal rules and standards adopted by said state director. [S13,§§254-a20,-a26; C24, 27, 31, 35, 39,§3655; C46, 50, 54, 58, 62,§232.37; C66, 71, 73, 75,§232.25]

232.26 Financial aid from state. Approved county or multicounty juvenile homes may be entitled to receive financial aid from the state in the amount and in such manner as determined by the state director. Aid paid by the

state shall not exceed fifty percent of the total cost of the establishment, improvements, operation, and maintenance of a juvenile home. [C66, 71, 73, 75,§232.26]

232.27 Hearings to court. Hearings on any matter shall be without a jury and may be conducted in an informal manner. Hearings may be continued from time to time and in the interim the court may make such orders as it deems in the best interests of the child. The court shall exclude the general public from hearings and shall admit the news media, except in those cases which in the opinion of the court the best interest of the child and the public are served by a private hearing. The court shall also admit those persons who in the discretion of the court have a direct interest in the case or in the work of the court; except that if the hearing involves a child charged by information or indictment with the commission of a felony, persons having a legitimate interest in the proceedings, including responsible representatives of public information media, shall not be excluded from such hearings. The court may require the presence of witnesses deemed necessary to the disposition of the petition. [S13,§254-a19; SS15,§254-a16; C24, 27, 31, 35, 39,§§3629, 3635; C46, 50, 54, 58, 62,§§232.13, 232.19; C66, 71, 73, 75,§232.27; 66GA, ch 1229,§30]

Referred to in §600A.7
How issues tried, R.C.P. 177 et seq.

232.28 Right to counsel. The child, parents, guardian, or custodian shall have the right to legal counsel. If the minor, parents, guardian, or custodian desire but are unable to employ counsel, such counsel shall be appointed by the court. [SS15,§2545-a16; C24, 27, 31, 35, 39, §3631; C46, 50, 54, 58, 62,§232.15; C66, 71, 73, 75,§232.28]

Referred to in §§232.4, 232.5, 336B.2, 600A.7

232.29 County attorney to present evidence. The county attorney shall present the evidence upon request of the court in all proceedings. [C66, 71, 73, 75,§232.29; 66GA, ch 1229,§31]

232.30 Presence of child waived. Except in delinquency proceedings, the court may waive the presence of the child in the court at any stage of the proceedings when the court deems it in the best interests of the child. In delinquency proceedings if the child is found to be delinquent, the court after the finding of delinquency is made may excuse the presence of the child from the hearing when the court deems it in the best interests of the child. In any proceedings, the court may temporarily excuse the presence of the parents or guardian of a child from the hearing when the court deems it in the best interests of the child. The attorney or guardian ad litem, if any, has the right to continue to participate in proceedings during the absence of the child, parents, or guardian. [C66, 71, 73, 75,§232.30; 66GA, ch 142,§4]

Referred to in §600A.7

232.31 Evidence by child and parents. The child and his parents, guardian, or custodian are entitled to be heard, to present evidence material to the case, and to question witnesses appearing at the hearing.

The court's finding with respect to child in need of assistance shall be based upon clear and convincing evidence under the rules applicable to the trial of civil cases, provided that relevant and material information of any nature including that contained in reports, studies, or examinations may be admitted and relied upon to the extent of its probative value. When information contained in a report, study, or examination is admitted in evidence, the person making such a report, study, or examination shall be subject to both direct and cross-examination when reasonably available. The court's finding with respect to delinquency shall be based on the evidentiary standard of beyond a reasonable doubt. [C66, 71, 73, 75, §232.31; 66GA, ch 142,§5]

232.32 Reporter required. Stenographic notes or mechanical recordings shall be required in all court hearings as in other civil cases unless the parties waive the right to such records and the court so orders. The juvenile shall not be considered as competent to make such waiver. However if the juvenile is represented by an attorney or guardian ad litem, the waiver may be made by the attorney or guardian. If the juvenile is not so represented, the waiver may be made by either of the parents or by the guardian of his person. [C66, 71, 73, 75,§232.32]

Referred to in §600A.7

232.33 Disposition of case of child in need of assistance—prohibited placement. If the court finds that the child is in need of assistance the court shall enter an order making any one or more of the following dispositions of the case:

1. Continue the proceedings from time to time under such supervision as the court may direct.

2. Place the child under the protective supervision of the county department of social welfare or a child placing agency in the home of the child under conditions prescribed by the court directed to the correction of the neglect or dependency of the child.

3. Transfer legal custody of the child, subject to the continued jurisdiction of the court, to one of the following:

a. A child placing agency.

b. The county department of social welfare or the state department of social services.

c. A reputable individual of good moral character.

4. Commit the child to the commissioner of social services or his designee for placement.

5. Commit to or place the child in any private institution or hospital for the care and training of children or any public institution or hospital for the care and training of children

other than an institution under the jurisdiction of the commissioner of social services.

6. If the child is in need of special treatment or care for his physical or mental health, the court may order the parents, guardian, or custodian of the child to provide such treatment or care. If the parents, guardian, or custodian fail to provide the treatment or care, the court may order the treatment or care provided.

7. At any time while the child is under the jurisdiction of the court, the court may terminate the proceedings and order the child released from the control of the court.

Notwithstanding the provisions of this section, subsections 4 and 5, a minor adjudicated as a child in need of assistance shall not be placed in the Iowa training school for boys, or the Iowa training school for girls. [C73, §§1653–1659; C97,§§2708, 2709; S13,§§254-a20, -a23; 2708, 2709; C24, 27, 31, 35, 39,§§**3637, 3646, 3647**; C46, 50, 54, 58, 62,§§232.21, 232.27, 232.28; C66, 71, 73, 75,§232.33; 66GA, ch 67,§21, ch **142**, §§6, 14]

Referred to in §§232.52, 234.36, 600A.5, 600A.9
Authorized institutions, §238.32

232.34 Disposition of case of delinquency. If the court finds that the child is delinquent, the court shall enter an order making any one or more of the following dispositions of the case:

1. Continue the proceeding from time to time under such supervision as the court may direct.

2. Place the child under the supervision of a probation officer or other suitable person in the home of the child.

3. Subject to the continued jurisdiction of the court, transfer legal custody of the child to one of the following:

a. A child placing agency.

b. A probation department.

c. A reputable individual of good moral character.

4. Commit the child to the commissioner of social services or his designee for placement.

5. Commit to or place the child in any private institution or hospital for care and training or any public institution or hospital for care and training other than an institution under the jurisdiction of the commissioner of social services.

6. If the child is in need of special treatment or care for his physical or mental health, the court may order such treatment or care provided by the parents, guardian, or custodian of the child. If the parents, guardian, or custodian fail to provide the treatment or care, the court may order the treatment or care provided.

7. At any time while the child is under the court's jurisdiction, the court may terminate the proceedings and order the child released from the control of the court. [C73,§§1653–1659; C97,§§2708, 2709; S13,§§254-a20,-a23, 2708, 2709; C24, 27, 31, 35, 39,§§**3637, 3646, 3647**; C46, 50, 54, 58, 62,§§232.27, 232.28, 232.31; C66, **71, 73**, 75,§232.34; 66GA, ch 67,§22]

Referred to in §§232.52, 234.36
Authorized institutions, §238.32

232.35 Commitment to state director. Commitment to the state director shall vest guardianship of the person of the child so committed in the state director and shall terminate the court's jurisdiction. [C66, 71, 73, 75,§232.35]

Commitments under this section prior to July 1, 1973, terminate at age eighteen, 65GA, ch 184,§1

232.36 Orders continue to majority of child. All orders for supervision, custody, or commitment shall be enforced until the minor reaches the age of eighteen years unless otherwise specified by the court. All orders shall be reviewed by the court at least annually unless the court's jurisdiction has been terminated. The court may make on its own motion or on the motion of an interested party and after notice to the parties and a hearing some other disposition of the case so long as the court retains jurisdiction. However, if termination of parental rights is utilized as another disposition of the case, the provisions of chapter 600A must be followed. [C73,§§1653–1658; C97,§2708; S13,§§254-a23, 2708; C24, 27, 31, 35, 39,§§**3639, 3649**; C46, 50, 54, 58, 62,§§232.23, 232.30; C66, 71, 73, 75,§232.36; 66GA, ch 1229,§32]

See also §218.91

232.37 Periodical reports to court. Any person, agency, or institution to whom legal custody is transferred shall report to the court in writing at such periods as the court may direct. [C66, 71, 73, 75,§232.37]

232.38 Transfer of custody to agency or institution. When the court transfers legal custody of a minor to any agency or commits a minor to any institution, the court shall transmit its order, a copy of its findings, and a summary of its information concerning the minor to the agency or institution. [C73,§1657; C97,§2708; S13,§2708; C24, 27, 31, 35, 39,§**3652**; C46, 50, 54, 58, 62,§232.34; C66, 71, 73, 75,§232.38]

232.39 Transfer in case of change of residency. Jurisdiction of a minor on probation or under protective supervision may in cases of change of residency be transferred to the court of the county wherein the new residence is established. Thereupon that court will have the same power with respect to the minor that it would have had if the petition had been initiated in that court. [C66, 71, 73, 75,§232.39]

232.40 to 232.50 Repealed by 66GA, ch 1229, §38.

232.51 Expenses. Whenever legal custody of a minor is transferred by the court or whenever the minor is placed by the court with someone other than the parents or whenever a minor is given physical or mental examinations or treatment under order of the court and no provision is otherwise made by law for payment for the care, examination, or treat-

ment of the minor, the costs shall be charged upon the funds of the county in which the proceedings are held upon certification of the judge to the board of supervisors. The court may inquire into the ability of the parents to support the minor and after giving the parents a reasonable opportunity to be heard may order the parents to pay in the manner and to whom the court may direct, such sums as will cover in whole or in part the cost of care, examination, or treatment of the minor. If the parents fail to pay the sum without good reason, the parents may be proceeded against for contempt or the court may inform the county attorney who shall proceed against the parents to collect the unpaid sums or both.

Any such sums ordered by the court shall be a judgment against each of the parents and a lien as provided in section 624.23. If all or any part of the sums that the parents are ordered to pay, is subsequently paid by the county, the judgment and lien shall thereafter be against each of the parents in favor of the county to the extent of such payments. [S13, §§254-a25,-a31,-a45,-a47; C24, 27, 31, 35, 39, §§3644, 3645; C46, 50, 54, 58, 62,§§232.25, 232.26; C66, 71, 73, 75,§232.51; 66GA, ch 1229,§33]

Referred to in §232.53
Contempts, ch 665
Enforcement of judgments and orders, §626.1
Similar provisions, §627.12

232.52 Expenses charged to county. The following expenses upon certification of the judge or upon such other authorization as provided by law are a charge upon the county in which the proceedings are held.

1. The fees and mileage of witnesses and the expenses and mileage of officers serving notices and subpoenas.

2. The expenses of transporting a child to a place designated by a child placing agency for the care of a child if the court transfers legal custody to a child placing agency.

3. The expense of transporting a child to or from a place designated by the court.

4. Reasonable compensation for an attorney appointed by the court to serve as counsel or guardian ad litem.

5. The expense of treatment or care ordered by the court under authority of subsection 6 of section 232.33 or subsection 6 of section 232.34. [C66, 71, 73, 75,§232.52]

Referred to in §232.53

232.53 Recovery of costs — from another county. The county charged with the cost and expenses under sections 232.51 and 232.52 may recover the costs and expenses from the county where the child has legal settlement by filing verified claims which shall be payable as are other claims against the county. A detailed statement of the facts upon which the claim is based shall accompany the claim. Any dispute involving the legal settlement of a child for which the court has ordered payment under authority of this section shall be settled in accordance with sections 252.22 and 252.23. [C66, 71, 73, 75,§232.53]

232.54 Legal record not confidential. The legal record of the juvenile court shall be a public record, and shall include the petition, information or indictment, notices, orders, decrees and judgments. [C66, 71, 73, 75,§232.54]

232.55 Petitions and reports segregated. The proceedings concerning delinquency petitions filed and petitions concerning children in need of assistance; the reports of juvenile court probation officers, social workers, doctors, and psychologists; and the reports of juvenile homes shall not be public records, but the court may make them public in its discretion. [C66, 71, 73, 75,§232.55; 66GA, ch 142,§9]

232.56 Records kept separate. Peace officers' records of children except for offenses exempted from this chapter by law shall be kept separate from the records of persons eighteen years of age or older. These records shall be public records. [C66, 71, 73, 75,§232.56]

232.57 Records confidential. All information obtained and social records prepared in the discharge of official duties by an employee of the court shall not be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive such information unless otherwise ordered by the judge. [C66, 71, 73, 75,§232.57]

232.58 Appeal. An interested party aggrieved by any order or decree of the court may appeal to the supreme court for review of questions of law and fact. The procedure for such appeals shall be governed by the same provisions applicable to appeals from the district court except when the decree or order affects the custody of a minor the appeal shall be heard at the earliest practicable time. The pendency of an appeal or application therefor shall not suspend the order of the juvenile court regarding a minor and shall not discharge the minor from the custody of the juvenile court or of the person, institution, or agency to whose care the minor has been committed or placed unless otherwise ordered by the appellate court on application of an appellant. If the appellate court does not dismiss the proceedings and discharge the minor, the court shall affirm or modify the order of the juvenile court and remand the minor to the jurisdiction of the juvenile court for disposition not inconsistent with the finding on the appeal. [C66, 71, 73, 75,§232.58; 66GA, ch 1241, §47]

232.59 Report to state department of social services. The juvenile court and all institutions receiving children shall between the first and fifteenth day of January of each year make a report to the state director. The report shall state the number of children of each sex

brought before the court during the past year, the number for whom homes have been provided, the number sent to state institutions, and the number in institutions. [S13,§254-a26; C24, 27, 31, 35, 39,§3656; C46, 50, 54, 58, 62, §232.38; C66, 71, 73, 75,§232.59]

232.60 Repealed by 66GA, ch 1229,§38.

232.61 Repealed by 62GA, ch 203,§12.

232.62 Concurrent jurisdicton of criminal offenses. The criminal court shall have concurrent jurisdiction with the juvenile court over children less than eighteen years of age who commit a criminal offense. [C66, 71, 73, 75,§232.62]

Constitutionality, 61GA, ch 215,§66

232.63 When jurisdiction is exclusive. The juvenile court shall have exclusive original jurisdiction, only, in proceedings concerning any child alleged to be delinquent or a child alleged to be in need of assistance, and in proceedings for termination of parental rights under chapter 600A, and in proceedings concerning any minor alleged to have been a delinquent prior to having become eighteen years of age except as otherwise provided by law. [C71, 73, 75,§232.63; 66GA, ch 142,§10, ch 1229,§34]

232.64 Juveniles transferred — exceptions. All juveniles appearing in any court other than the juvenile court and charged with a public offense not exempt by law and who are under eighteen years of age or who were under eighteen years of age at the time of the commission of the alleged offense shall immediately be transferred to the juvenile court of the county. [C71, 73, 75,§232.64]

Referred to in §§232.65, 232.73

232.65 How transferred. Transfer of cases under section 232.64 shall be made by filing with the clerk of the juvenile court a certificate or order of the transferring court showing the name, age, and residence of the minor, the names and addresses of the parents or guardian, if known, and the reasons for appearance of the minor in court, together with all the papers, documents, and testimony connected therewith. The case shall then be processed the same as all cases where the court has been informed that a child may be within the purview of this chapter. [C71, 73, 75,§232.65]

232.66 Jurisdiction attaches immediately. The jurisdiction of the juvenile court shall attach immediately upon the signing of the certificate or order of transfer and from the time of transfer any custody or detention of the minor shall be in accordance with this chapter. [C71, 73, 75,§232.66]

232.67 Limited jurisdiction. Jurisdiction obtained by the court in the case of a minor shall be retained by the court until the minor becomes eighteen years of age unless terminated prior thereto by order of court or provision of law. If a child is referred to the juvenile court because of alleged delinquency by reason of the commission of an indictable offense, the court may withhold an adjudication of delinquency, retain jurisdiction of the child, and place the child on probation until he is eighteen years of age at which time he shall be discharged. If the terms of the probation are violated before the person reaches the age of eighteen years, the court may enter an order referring the alleged commission of an indictable offense to the appropriate prosecuting authority for the proper action under the criminal law. [C71, 73, 75,§232.67]

232.68 Venue. Venue for children in need of assistance and delinquent proceedings shall be in the county where the minor is found or in the county of the minor's residence. If a minor is alleged to be delinquent, the county where the alleged delinquency occurred shall also have venue. [C71, 73, 75,§232.68; 66GA, ch 142,§11]

232.69 Transfer of venue. The judge may transfer any proceedings brought under this chapter to the court of any county having venue at any stage of the proceedings and in the following manner:

1. When it appears that the best interests of the minor, society, or the convenience of the proceedings shall be served by a transfer, the court may transfer the case to the court of the county of the minor's residence.

2. With the consent of the receiving court, the court may transfer the case to the court of the county where the minor is found.

3. With the consent of the receiving court, the court may transfer the case to the county where the alleged delinquency occurred. [C71, 73, 75,§232.69; 66GA, ch 142,§12]

232.70 Order of court. The court shall transfer the case by ordering the transfer and a continuance and by forwarding to the clerk of the receiving court a certified copy of all papers filed together with an order of transfer. The judge of the receiving court may accept the filings of the transferring court or may direct the filing of a new petition and hear the case anew. [C71, 73, 75,§232.70]

232.71 Resident of another state. If it appears at any stage of the proceedings that a minor before the court is a resident of another state, the court may invoke the provisions of the interstate compact on juveniles or, when in the best interests of the minor, the court may place the minor in the custody of the parents, guardian, or custodian, if the parents, guardian, or custodian agree to accept custody of the minor and to return the minor to the other state. [C71, 73, 75,§232.71]

232.72 Prosecution under criminal law. When a petition alleging delinquency is based on an alleged act committed after the minor's fourteenth birthday, and the court, after a

hearing, deems it contrary to the best interest of the minor or the public to retain jurisdiction, the court may enter an order making such findings and referring the alleged violation to the appropriate prosecuting authority for proper action under the criminal law. When such child pleads guilty or is found guilty of a public offense in another court that court may with the consent of the juvenile court refer the child back to juvenile court for further disposition. In any event the court before whom the plea was made or the conviction was had is expressly authorized to set aside such plea or conviction but only after the child has successfully completed a period of probation of not less than one year. [C71, 73, 75,§232.72]

232.73 Information or indictment. A child referred to juvenile court pursuant to section 232.64, may also be transferred to criminal court and tried as an adult by the filing of a county attorney's information or grand jury indictment charging the child with an indictable offense. No such county attorney's information, grand jury indictment, or information shall be filed or be valid to affect such a transfer after there has been an adjudication of delinquency in juvenile court. [C71, 73, 75, §232.73]

CHAPTER 233

CONTRIBUTING TO JUVENILE DELINQUENCY

233.1 Contributing to delinquency.
233.2 Penalty—bar.
233.3 Suspension of sentence.
233.4 Preliminary examination.
233.5 Interpretative clause.

233.1 Contributing to delinquency. It shall be unlawful:

1. To encourage any child under eighteen years of age to commit any act of delinquency defined in chapter 232 of this title.

2. To send, or cause to be sent, any such child to a house of prostitution or to any place where intoxicating liquors are unlawfully sold or unlawfully kept for sale, or to any policy shop, or to any gambling place, or to any public poolroom where beer is sold, or to induce any such child to go to any such places, knowing them to be such.

3. To knowingly encourage, contribute, or in any manner cause such child to violate any law of this state, or any ordinance of any city.

4. To knowingly permit, encourage, or cause such child to be guilty of any vicious or immoral conduct.

5. For a parent willfully to fail to support his child under eighteen years of age whom he has a legal obligation to support. [C24, 27, 31, 35, 39,§**3658**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §233.1]

Referred to in §233.2

233.2 Penalty—bar. A violation of section 233.1 shall be punishable by a fine of not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment. Said conviction shall not bar a prosecution of such convicted person for an indictable offense when the acts which caused or contributed to the delinquency or dependency of such child are indictable. [C24, 27, 31, 35, 39,§**3659**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§233.2]

See §233.5

233.3 Suspension of sentence. Upon said conviction being had, the court may, for a period not exceeding two years, suspend sentence under such conditions as to good behavior as it may prescribe. Should said conditions be fulfilled, the court may at any time enter an order setting said conviction aside and wholly releasing the defendant therefrom. Should said condition be not fulfilled to the satisfaction of the court, an order of sentence may at any time be entered which shall be effective from the date thereof. [C24, 27, 31, 35, 39, §**3660**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§233.3]

233.4 Preliminary examination. If, in proceedings in juvenile court, it appears probable that an indictable offense has been committed and that the commission thereof caused, or contributed to, the delinquency or dependency of such a child, said court may order the issuance of a warrant for the arrest of such suspected person, and on the appearance of such person said court may proceed to hold a preliminary examination, and in so doing shall exercise all the powers of a committing magistrate. [C24, 27, 31, 35, 39,§**3661**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§233.4]

233.5 Interpretative clause. For the purposes of this Act* the word "dependency" shall mean all the conditions as enumerated in section 232.2, subsection 13. [C31, 35,§3661-c1; C39,§**3661.001**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §233.5]

*43GA, ch 90

CHAPTER 234

CHILD AND FAMILY SERVICES

Federal funds appropriated, 65GA, ch 105,§4

234.1 Definitions.
234.2 Division created.
234.3 to 234.5 Repealed by 62GA, ch 209,§215.
234.6 Powers and duties of the state director.
234.7 Repealed by 62GA, ch 209,§215.
234.8 State division employees.
234.9 County board of social welfare.
234.10 Compensation of county board members.
234.11 Duties of the county board—food stamp program.
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234.1 Definitions. As used in this chapter: *"Division" or "state division"* means the division of child and family services of the department of social services; "director" or "state director" means the director of the division of child and family services of the department of social services; "county board" means the county board of social welfare. "Child" means a person less than eighteen years of age or a person who is at least eighteen years of age but less than twenty-one years of age who is regularly attending an approved school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational or technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs. [C71, 73, 75,§234.1]

Referred to in §219.15, 235.1, 249A.2, 252.14, 425.15

234.2 Division created. Within the state department of social services, there is hereby created a division of child and family services which shall be administered by the director of said division and such other officers and employees as may be hereafter provided. [C71, 73, 75,§234.2]

234.3 to 234.5 Repealed by 62GA, ch 209, §215.

234.6 Powers and duties of the state director. The state director shall be vested with the authority to administer aid to dependent children, child welfare, and emergency relief, family and adult service programs and any other form of public welfare assistance and institutions that may hereafter be placed under his administration. He shall perform such duties, formulate and make such rules as may be necessary; shall outline such policies, dictate such procedure and delegate such powers as may be necessary for competent and efficient administration. Subject to restrictions that may be imposed upon him by the commissioner of the department of social services and the council of social services, he shall have power to abolish, alter, consolidate or establish subdivisions and may abolish or change offices created in connection therewith. He may employ necessary personnel and fix their compensation. He may allocate or reallocate functions and duties among any subdivisions now existing or hereafter established. He may promulgate rules relating to the employment of personnel and the allocation of their functions and duties among the various subdivisions as competent and efficient administration may require.

The state director shall:

1. Co-operate with the federal social security board created by title VII of the Social Security Act [42 U.S.C. 901], enacted by the 74th Congress of the United States and approved August 14, 1935, or other agency of the federal government for public welfare assistance, in such reasonable manner as may be necessary to qualify for federal aid, including the making of such reports in such form and containing such information as the federal social security board, from time to time, may require, and to comply with such regulations as such federal social security board, from time to time, may find necessary to assure the correctness and verification of such reports.

2. Exercise general supervision over the county boards of social welfare and their employees.

3. Furnish information to acquaint the public generally with the operation of the acts under the jurisdiction of the state director.

4. With the approval of the commissioner of the department of social services, the governor and comptroller, set up from the funds under his control and management an administrative fund and from said administrative fund to pay the expenses of operating the state division.

5. Notwithstanding any provisions to the contrary in chapter 239 relating to the consideration of income and resources of claimants for assistance, the state director, with the consent and approval of the commissioner of the department of social services and the council of social services, shall make such rules as may be necessary to qualify for federal aid in the assistance programs administered by the state director.

6. The department of social services shall have the power and authority to use the funds available to it, to purchase services of all kinds from public or private agencies to provide for the needs of children, including but not limited to psychiatric services, supervision, specialized group, foster homes and institutional care.

7. Have authority to use funds available to the department, subject to any limitations placed on the use thereof by the legislation appropriating the funds, to provide to or purchase, for families and individuals eligible therefor, services including but not limited to the following:

a. Day care for children or adults, in facilities which are licensed or are approved as meeting standards for licensure.

b. Foster care, including foster family care, group homes and institutions.

c. Homemaker services, meeting the standards of the department, provided by agency trained or supervised homemakers placed in the homes of families or adults to assist with maintenance and management of the home, upgrade the level of living of occupants of the home, provide care for children while one or both parents are away, or provide personal care for an ill or disabled family member.

d. Family planning.

e. Protective services.

f. Chore services.

g. Preparation and delivery of meals to families or individuals living in private homes who, by reason of illness, infirmity or disability are unable to prepare nourishing meals and have no spouse or other individual living with or responsible for them who are able to do so.

h. Transportation services.

i. Any services, not otherwise enumerated in this subsection, authorized by or pursuant to the United States Social Security Act of 1934, as amended. [C39,§**3661.007**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§234.6]

Referred to in §234.38
See §13.6

234.7 Repealed by 62GA, ch 209,§215.

234.8 State division employees. Under employment procedures set up and provided for by the commissioner of the department of social services and the state council of social services, all employees of the state division shall be selected from among those who have successfully qualified in an examination given by the state director under and pursuant to rules promulgated by the commissioner, covering character, general training, and experience. Such examinations shall be open to all persons, and persons taking such examinations, upon successfully qualifying, shall be classified according to the fields of work for which said persons are fitted, all in accordance with rules and regulations of the commissioner of the department of social services. [C39,§**3661.009**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§234.8]

Referred to in §239.16
Assistant attorney general assigned, §13.6

234.9 County board of social welfare. The board of supervisors of each county shall appoint a county board of social welfare, which shall consist of three members in counties of less than thirty-three thousand population, not more than two of whom shall belong to the same political party, and at least one of whom shall be a woman; and which shall consist of five members in counties of more than thirty-three thousand population, not more than three of whom shall belong to the same political party, and at least one of whom shall be a woman. At the discretion of the board of supervisors one or more of said members may be chosen from the membership of said board of supervisors. Annually the board of supervisors shall appoint the members of the county board who shall serve for one year and until their successors are appointed. If a vacancy shall occur in the membership of the county board, other than by the expiration of a term, a member shall be appointed to fill such vacancy for the unexpired term. All appointments, made as herein provided, shall be made a part of the regular proceedings of the board of supervisors and shall be filed with the county auditor and with the state director. [C39,§**3661.010**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§234.9]

Referred to in §239.1(2)

234.10 Compensation of county board members. All members of the county board shall be reimbursed for the actual and necessary expenses incurred by them in the discharge of their duties. They shall also receive compensation for services at the rate of six dollars per diem, but such compensation shall not exceed a total of one hundred fifty dollars in any one year. The expenses and compensation of county board members shall be paid from the general fund of the county; provided, however, that members of the board of supervisors serving on said county board of social welfare shall not be paid compensation as members of said county board of social welfare for any day on which they are paid for their official work as members of the board of supervisors. [C39,

§3661.011; C46, 50, 54, 58, 62, 66, 71, 73, 75, §234.10]

234.11 Duties of the county board — food stamp program. The county board shall be vested with the authority to direct emergency relief with only such powers and duties as are prescribed in the laws relating thereto and shall determine the allocation of funds to child care centers pursuant to sections 237A.14 to 237A.18. The board shall act in an advisory capacity on programs within the jurisdiction of the department of social services. The board shall review policies and procedures of the local departments of social services and make recommendations for changes to insure that effective services are provided in their respective communities. The county board may also make recommendations for new programs which it is believed would meet needs in the community. The state department shall establish a procedure to insure that county board recommendations receive appropriate review at the level of policy determination.

Each county shall participate in federal commodity or food stamp program. [C39,§3661.012; C46, 50, 54, 58, 62, 66, 71, 73, 75,§234.11]

234.12 and 234.13 Repealed by 65GA, ch 175, §6.

234.14 Federal grants. The state treasurer is hereby authorized to receive such federal funds as may be made available for carrying out any of the activities and functions of the state division, and all such funds are hereby appropriated for expenditure upon authorization of the state director. [C39,§3661.015; C46, 50, 54, 58, 62, 66, 71, 73, 75,§234.14]

BANKHEAD-JONES FARM TENANT ACT

234.15 Agency. The state director* is hereby designated as the state agent to make application to and receive from the secretary of agriculture of the United States, or any other proper federal official, pursuant and subject to the provisions of Public Law 499, Eighty-first Congress, approved May 3, 1950 [64 Stat. L. 152], all of the trust assets held by the United States in trust for the Iowa Rural Rehabilitation Corporation now dissolved. [C54, 58, 62, 66, 71, 73, 75,§234.15]

Referred to in §234.17
*State social services commissioner

234.16 Agreements. The state director is authorized, in his discretion, to enter into agreements with the secretary of agriculture of the United States pursuant to section 2(*f*) of the aforesaid Act of Congress of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, authorizing the secretary of agriculture of the United States, or such federal agency as may be designated by him, to accept, administer, expend and use in the state of Iowa all or any part of such trust assets or any other funds in the state of Iowa which may be appropriated for such use in carrying out the purposes of Titles I and II of the Bankhead-Jones Farm Tenant Act, [50 Stat. L. 522]* in accordance with the applicable provisions of Title IV thereof and to do any and all things necessary to effectuate and carry out the purposes of said agreements. [C54, 58, 62, 66, 71, 73, 75,§234.16]

Referred to in §§234.17, 234.19
*7 U.S.C. §§1001-1005d, 1006, 1006c-1006e, 1007, 1008-1029

234.17 Assets. Except as to such of the assets as may be authorized to be administered by the secretary of agriculture of the United States under the provisions of section 234.16, the trust assets other than cash shall be taken on proper transfer or assignment in the name of the state director and administered by him as hereinafter provided and the future proceeds therefrom together with the cash items received under the application made pursuant to section 234.15 shall be deposited with the treasurer of state for the use of the state director in carrying out such of the rural rehabilitation purposes permissible under the charter of the now dissolved Iowa Rural Rehabilitation Corporation as may from time to time be agreed upon by the state director and the secretary of agriculture of the United States as required by section 2(c), Public Law 499, Eighty-first Congress. [C54, 58, 62, 66, 71, 73, 75,§234.17]

Referred to in §234.18(1)

234.18 Powers. In addition to the express and necessarily implied powers enumerated in the charter of the Iowa Rural Rehabilitation Corporation now dissolved, appearing of record in book 1253, page 143 in the office of the county recorder of Polk county, Iowa, the state director is specifically authorized and empowered to:

1. Receive written applications for loans, lend or advance moneys and execute all necessary written instruments in connection therewith needed in carrying out such of the rural rehabilitation purposes permissible and agreed upon as provided for in section 234.17.

2. Collect, compromise, adjust or cancel claims and obligations arising out of or administered under this division or under any mortgage, lease, contract or agreement entered into or administered pursuant to this division and, if in its judgment, necessary and advisable, pursue the same to final collection in any court having jurisdiction.

3. Bid for and purchase at any execution, foreclosure or other sale, or otherwise to acquire property upon which it has a lien by reason of a judgment or execution, or which is pledged, mortgaged, conveyed or which otherwise secures any loan or other indebtedness owing to or acquired by it under this division, and

4. Accept title to any property so purchased or acquired; operate or lease such property for such period as may be deemed necessary to protect the investment therein and sell or otherwise dispose of such property in a man-

ner consistent with the provisions of this division. [C54, 58, 62, 66, 71, 73, 75,§234.18]

Referred to in §234.19

234.19 Delegation of authority. The authority conferred upon the state director by section 234.18 may be delegated to the secretary of agriculture of the United States with respect to funds or assets authorized to be administered and used by him under agreements entered into pursuant to section 234.16. [C54, 58, 62, 66, 71, 73, 75,§234.19]

234.20 Liability. The United States and the secretary of agriculture thereof shall be held free from liability by virtue of the transfer of the assets to the state director of the division of child and family services of the department of social services of the state of Iowa pursuant to this division. [C54, 58, 62, 66, 71, 73, 75, §234.20]

FAMILY PLANNING SERVICES

234.21 Services to be offered. The state division may offer, provide, or purchase family planning and birth control services to every person who is an eligible applicant or recipient of service or any financial assistance from the department of social services, or who is receiving federal supplementary security income as defined in section 249.1. [C66, 71, 73, 75, §234.21]

234.22 Extent of services. Such family planning and birth control services may include interview with trained personnel; distribution of literature; referral to a licensed physician for consultation, examination, tests, medical treatment and prescription; and, to the extent so prescribed, the distribution of rhythm charts, drugs, medical preparations, contraceptive devices and similar products. [C66, 71, 73, 75,§234.22]

234.23 Charge for services. In making provision for and offering such services, the state division may charge those persons to whom family planning and birth control services are rendered a fee sufficient to reimburse the state division all or any portion of the costs of the services rendered. [C66, 71, 73, 75,§234.23]

234.24 Services may be refused. The refusal of any person to accept family planning and birth control services shall in no way affect the right of such person to receive public assistance or to avail himself of any other public benefit and every person to whom such services are offered shall be so advised initially both orally and in writing. Employees engaged in the administration of this section shall recognize that the right to make decisions concerning family planning and birth control is a fundamental personal right of the individual and nothing in this division shall in any way abridge such individual right, nor shall any individual be required to state his reason for refusing the offer of family planning and birth control services. [C66, 71, 73, 75,§234.24]

234.25 Language to be used. In all cases where the recipient does not speak or read the English language, the services shall not be given unless the interviews shall be conducted in, and all literature shall be written in, a language which the recipient understands. [C66, 71, 73, 75,§234.25]

234.26 Construction. This division shall be liberally construed to protect the rights of all individuals to pursue their religious beliefs and to follow the dictates of their own consciences, and to prevent the imposition upon any individual of practices offensive to the individual's moral standards. [C66, 71, 73, 75, §234.26]

234.27 Policy. The general assembly hereby finds, determines, and declares that this division is necessary for the immediate preservation of the public peace, health, and safety. [C66, 71, 73, 75,§234.27]

234.28 Obscenity laws not applicable. The provisions of chapter 725 shall not apply to services provided under the terms of this division. [C66, 71, 73, 75,§234.28]

234.29 to 234.34 Reserved.

FOSTER CARE EXPENSE

234.35 When state to pay foster care costs. The department of social services shall be initially responsible for paying the cost of foster care for a child under any of the following circumstances:

1. When a court has committed the child to the commissioner of social services or his designee.

2. When a court has transferred legal custody of the child to the department of social services.

3. When the department has agreed to provide foster care services for the child on the basis of a signed placement agreement between the department and the child's parent or guardian.

4. When the child has been placed in emergency care for a period of not more than thirty days upon approval of the commissioner or his designee. [C75,§234.35]

Referred to in §§234.37, 234.38, 242.7

234.36 When county to pay foster care costs. Each county shall pay from the county mental health and institutions fund as provided by section 444.12, subsection 2, the cost of foster care for a child placed by a court as provided in section 232.33, subsection 3 or 4, or section 232.34, subsection 3 or 4. However, in any fiscal year for which the general assembly appropriates state funds to pay for foster care for children placed by courts under the statutes cited in this section, the county shall become responsible for these costs only when the funds so appropriated to the department for that fiscal year have been exhausted. The rate of payment by the county or the state, as the

case may be, under this section shall be that fixed by the department of social services pursuant to section 234.38. [C75,§234.36]

Referred to in §§234.38, 242.7

234.37 Department may establish accounts for certain children. The department of social services is authorized to establish an account in the name of any child committed to the commissioner of social services or his designee, or whose legal custody has been transferred to the department, or who is voluntarily placed in foster care pursuant to section 234.35. Any money which the child receives from the United States government or any private source shall be placed in the child's account, unless a guardian of the child's property has been appointed and demands the money, in which case it shall be paid to the guardian. The account shall be maintained by the department as trustee for the child in an interest-bearing account at a reputable bank or savings and loan association, except that if the child is residing at an institution administered by the department a limited amount of the child's funds may be maintained in a separate account, which need not be interest bearing, in the child's name at the institution. Any money held in an account in the child's name or in trust for the child under this section may be used, at the discretion of the department and subject to restrictions lawfully imposed by the United States government or other source from which the child receives the funds, for the purchase of personal incidentals, desires and comforts of the child. All of the money held for a child by the department under this section and not used in the child's behalf as authorized by law shall be promptly paid to the child or his parent or legal guardian upon termination of the commitment of the child to the commissioner or his designee, or upon transfer or cessation of legal custody of the child by the department. [C75,§234.37]

Referred to in §§234.38, 242.10, 244.6

234.38 Department may pay foster parents directly. The department of social services is authorized to make payments directly to foster parents for services provided to children pursuant to section 234.6, subsection 7, paragraph "*b*", or sections 234.35 and 234.36. The rate of payment by the department for foster care shall be fixed by the department by rules adopted pursuant to chapter 17A. Payments may be made from any money legally available to the department for that purpose, including but not limited to funds appropriated by the general assembly, money available under section 234.37, and money received from the parent or legal guardian of a child to pay for that child's foster care.

The department shall certify to the comptroller each month the number of children served in foster care during the preceding month who are the children of veterans as defined by applicable laws of the United States or of this state, and the extent to which the cost of foster care for them was paid from funds appropriated to the department by the general assembly. The comptroller shall reimburse the department for the appropriated funds so expended, from any money in the general fund of the state not otherwise appropriated, and the reimbursement shall be placed in the department's foster care account. [C75,§234.38]

Referred to in §234.36

234.39 Responsibility for cost of services. It is the intent of this chapter that individuals served by the department of social services, and their respective parents or guardians, shall have primary responsibility for paying the cost of care and services provided by the department, to the extent consistent with their incomes and resources. The department shall establish a schedule of charges to be made for care and services provided, on a graduated scale related to the income and resources of the person responsible for payment, by rules adopted pursuant to chapter 17A. The schedule of charges established and adopted under this section shall not be inconsistent with the limitations on legal liability established under sections 222.78 and 230.15, and by any other statute limiting legal liability which may be imposed on any person for the cost of care and services provided by the department of social services. [C75,§234.39]

CHAPTER 235

CHILD WELFARE

Referred to in §135B.17
Child and family services, see ch 234

235.1 Definitions.
235.2 Powers and duties of state division.
235.3 Powers and duties of state director.
235.4 Duties of county departments.
235.5 Licenses.
235.6 Short title.

235.1 Definitions. The terms "state division", "state director", "county department", "county board" and "child" are used in this chapter and chapters 237 and 238 as said terms are defined in section 234.1.

"Child welfare services" means social welfare services for the protection and care of children who are homeless, dependent or neglected, or in danger of becoming delinquent, including when necessary care and mainte-

nance in a foster care facility. [C39,§3661.016; C46, 50, 54, 58, 62, 66, 71, 73, 75,§235.1]

235.2 Powers and duties of state division. The state division, in addition to all other powers and duties given it by law, shall:

1. Administer and enforce the provisions of this chapter.

2. Join and co-operate with the government of the United States through its appropriate agency or instrumentality or with any other officer or agency of the federal government in planning, establishing, extending and strengthening public and private child welfare services within the state.

3. Make such investigations and to obtain such information as will permit the state director to determine the need for public child welfare services within the state and within the several county departments thereof.

4. Apply for and receive any funds which are or may be allotted to the state by the United States or any agency thereof for the purpose of developing child welfare services.

5. Make such reports and budget estimates to the governor and to the general assembly as are required by law or such as are necessary and proper to obtain the appropriation of state funds for child welfare services within the state and for all the purposes of this chapter.

6. Co-operate with the several county departments within the state, and all county boards of supervisors and other public or private agencies charged with the protection and care of children, in the development of child welfare services.

7. Aid in the enforcement of all laws of the state for the protection and care of children.

8. Co-operate with the juvenile courts of the state and with the other directors and divisions of the department of social services regarding the management and control of state institutions and the inmates thereof. [C39,§3661.017; C46, 50, 54, 58, 62, 66, 71, 73, 75,§235.2]

Report to governor, §17.3

235.3 Powers and duties of state director. The state director shall:

1. Plan and supervise all public child welfare services and activities within the state as provided by this chapter.

2. Make such reports and obtain and furnish such information from time to time as may be necessary to permit co-operation by the state division with the United States children's bureau, the social security board, or any other federal agency which is now or may hereafter be charged with any duty regarding child care or child welfare services.

3. Make such rules and regulations as may be necessary or advisable for the supervision of the private child-caring agencies or officers thereof which the state director is empowered to license, inspect and supervise.

4. Supervise and inspect private institutions for the care of dependent, neglected and delinquent children, and to make reports regarding the same.

5. Designate and approve the private and county institutions within the state to which neglected, dependent and delinquent children may be legally committed and to have supervision of the care of children committed thereto, and the right of visitation and inspection of said institutions at all times.

6. Receive and keep on file annual reports from the juvenile courts of the state, and from all institutions to which neglected, dependent and delinquent children are committed; compile statistics regarding juvenile delinquency, make reports regarding the same and study prevention and cure of juvenile delinquency.

7. Require and receive from the clerks of the courts of record within the state duplicates of the findings of the courts upon petitions for adoption, and keep records and compile statistics regarding adoptions.

8. License and inspect maternity hospitals, private boarding homes for children, and private child-placing agencies; make reports regarding the same and revoke such licenses.

9. Make such rules and regulations as may be necessary for the distribution and use of funds appropriated for child welfare services. [C27, 31, 35,§§3661-a1,-a2; C39,§3661.018; C46, 50, 54, 58, 62, 66, 71, 73, 75,§235.3; 66GA, ch 1229, §35]

235.4 Duties of county departments. County departments are hereby charged with the duty of co-operating with the state division in carrying out the provisions of this chapter. They shall, upon request, make to the state division such reports regarding child welfare services, or the need thereof, within the respective counties. They shall also, when requested by the state division, make reports upon maternity hospitals, private boarding homes for children, private child-placing agencies and private institutions for the care of neglected, dependent or delinquent children which are located within the respective counties. For this purpose they shall act, if so designated, as agents of the state division. [C27, 31, 35,§3661-a1; C39,§3661.019; C46, 50, 54, 58, 62, 66, 71, 73, 75,§235.4]

235.5 Licenses. Licenses issued to maternity hospitals, private boarding homes for children, and private child-placing agencies by the state director, shall remain in effect for the period for which issued, unless sooner revoked according to law. Thereafter it shall be the duty of each of such agencies to apply to the state director for a new license, and to submit to such rules regarding the same as the state director may prescribe. [C39,§3661.020; C46, 50, 54, 58, 62, 66, 71, 73, 75,§235.5]

Constitutionality, 47GA, ch 118,§13

235.6 Short title. This chapter shall be known and may be cited as "The Child Welfare Act of 1937." [C39,§3661.021; C46, 50, 54, 58, 62, 66, 71, 73, 75,§235.6]

CHAPTER 235A

ABUSE OF CHILDREN

235A.1 Legislative findings—purpose and policy.
235A.2 Definitions.
235A.3 Mandatory and permissive reporters.
235A.4 Reporting procedure.
235A.5 Duties of the department upon receipt of report.
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CHILD ABUSE INFORMATION REGISTRY

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235A.20 Civil remedy.
235A.21 Criminal penalties.
235A.22 Education program.
235A.23 Registry reports.
235A.24 Council on child abuse information.

235A.1 Legislative findings — purpose and policy. Children in this state are in urgent need of protection from physical abuse. It is the purpose and policy of this chapter to provide the greatest possible protection to victims or potential victims of abuse through encouraging the increased reporting of suspected cases of such abuse, insuring the thorough and prompt investigation of these reports, and providing rehabilitative services, where appropriate and whenever possible to abused children and their families which will stabilize the home environment so that the family can remain intact without further danger to the child. [C66, 71, 73, 75,§235A.1]

235A.2 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Child"* means any person under the age of eighteen years.

2. *"Child abuse"* or *"abuse"* means any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child's parents, guardians or other person legally responsible for the child.

3. *"Department"* means the state department of social services and includes the local, county and regional offices of the department.

4. *"Health practitioner"* includes a licensed physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, optometrist, podiatrist or chiropractor; a resident or intern in any of such professions; and any registered nurse or licensed practical nurse.

5. *"Registry"* means the central registry for child abuse information established in section 235A.14. [C66, 71, 73, 75,§235A.2]

Referred to in §235A.3

235A.3 Mandatory and permissive reporters.

1. The following classes of persons shall make a report, as provided in section 235A.4, of cases of child abuse and willful neglect and child abuse suffered by a child during the care or custody of the child by a person not listed in section 235A.2, subsection 2:

a. Every health practitioner who examines, attends, or treats a child and who believes or has reason to believe that the child has had physical injury inflicted on the child as a result of abuse. If, however, the health practitioner examines, attends, or treats the child as a member of the staff of a hospital or similar institution, the examining health practitioner shall immediately notify and give complete information to the person in charge of the institution or the health practitioner's designated agent and the person in charge of the institution or designated agent shall make the report.

b. Every social worker under the jurisdiction of the department of social services, public or private health care facility as defined in section 135C.1, certified psychologist, certificated school employee, employee of a licensed day care facility, member of the staff of a mental health center, or peace officer, who, in the course of employment, examines, attends, counsels or treats a child and believes or has reason to believe that the child has had physical injury inflicted on the child as a result of abuse. Whenever such person is required to report under this section as a member of the staff of a public or private institution, agency or facility, that person shall immediately notify the person in charge of such institution, agency or facility, or that person's designated agent and the person in charge of the institution, agency, or facility, or the designated agent shall make the report.

2. Any other person who believes that a child has had physical injury inflicted upon him as a result of abuse may make a report as provided in section 235A.4. [C66, 71, 73, 75, §235A.3]

Referred to in §§235A.4, 235A.9, 235A.11

235A.4 Reporting procedure.

1. Each report made by a mandatory reporter, as defined in section 235A.3, subsection 1, shall be made both orally and in writing. Each report made by a permissive reporter, as defined in section 235A.3, subsection 2, may be oral, written, or both.

2. The oral report shall be made by telephone or otherwise to the department of social services. If the person making the report has reason to believe that immediate protection for the child is advisable, that person shall also make an oral report to an appropriate law enforcement agency.

3. The written report shall be made to the department of social services within forty-eight hours after such oral report.

4. The department of social services shall:

a. Immediately, upon receipt of an oral report, make an oral report to the registry;

b. Forward a copy of the written report to the registry; and

c. Notify the appropriate county attorney of the receipt of any report.

5. The oral and written reports shall contain the following information, or as much thereof as the person making the report is able to furnish:

a. The names and home address of the child and his parents or other persons believed to be responsible for his care;

b. The child's present whereabouts if not the same as the parent's or other person's home address;

c. The child's age;

d. The nature and extent of the child's injuries, including any evidence of previous injuries;

e. The name, age and condition of other children in the same home;

f. Any other information which the person making the report believes might be helpful in establishing the cause of the injury to the child, the identity of the person or persons responsible for the injury, or in providing assistance to the child; and

g. The name and address of the person making the report.

6. A report made by a permissive reporter, as defined in section 235A.3, subsection 2, shall be regarded as a report pursuant to this chapter whether or not the report contains all of the information required by this section and may be made to the department of social services, county attorney, or law enforcement agency. If the report is made to any agency other than the department of social services, such agency shall promptly refer the report to the department of social services. [C66, 71, 73, 75,§235A.4]

Referred to in §235A.3

235A.5 Duties of the department upon receipt of report.

1. Whenever a report is received, the department of social services shall promptly commence an appropriate investigation. The primary purpose of this investigation shall be the protection of the child named in the report.

2. The investigation shall include:

a. Identification of the nature, extent and cause of the injuries, if any, to the child named in the report;

b. The identification of the person or persons responsible therefor;

c. The name, age and condition of other children in the same home as the child named in the report;

d. An evaluation of the home environment and relationship of the child named in the report and any other children in the same home as the parents or other persons responsible for their care;

e. An investigation of all other pertinent matters.

3. The investigation may with the consent of the parent or guardian include a visit to the home of the child named in the report and examination of such child. If permission to enter the home and to examine the child is refused, the juvenile court or district court upon a showing of probable cause may authorize the person making the investigation to enter the home and examine the child.

4. The county attorney and any law enforcement or social services agency in the state shall co-operate and assist in the investigation upon the request of the department of social services. The county attorney and appropriate law enforcement agencies shall also take any other lawful action which may be necessary or advisable for the protection of the child.

5. The department of social services, upon completion of its investigation, shall make a complete written report of its investigation of a report of suspected abuse. A copy of this report shall be transmitted to the juvenile court within ninety-six hours after the department of social services initially receives the abuse report unless the juvenile court grants an extension of time for good cause shown. The juvenile court shall notify the registry of any action it takes with respect to a suspected case of child abuse.

6. The department of social services shall transmit a copy of the report of its investigation, including actions taken or contemplated, to the registry. The department of social services shall make periodic follow-up reports thereafter in a manner prescribed by the registry so that the registry is kept up-to-date and fully informed concerning the handling of a suspected case of child abuse.

7. The department of social services shall also transmit a copy of the report of its investigation to the county attorney. The county attorney shall notify the registry of any actions or contemplated actions with respect to a suspected case of child abuse so that the regis-

try is kept up-to-date and fully informed concerning the handling of such a case.

8. Based on the investigation conducted pursuant to this section, the department shall offer to the family of any child believed to be the victim of abuse such services as appear appropriate for either the child, the family, or both, if it is explained that the department has no legal authority to compel such family to receive such services.

9. If, upon completion of the investigation, the department of social services determines that the best interests of the child require juvenile court action, the department shall take the appropriate action to initiate such action under chapter 232. The attorney shall assist the county department of social services in the preparation of the necessary papers to initiate such action and shall appear and represent the department at all juvenile court proceedings.

10. The department of social services shall assist the juvenile court or district court during all stages of court proceedings involving a suspected child abuse case in accordance with the purposes of this chapter.

11. The department of social services shall provide for or arrange for and monitor rehabilitative services for abused children and their families on a voluntary basis or under a final or intermediate order of the juvenile court. [C66, 71, 73, 75,§235A.5]

Referred to in §§235A.6, 235A.12

235A.6 Jurisdiction—transfer. "Department of social services" or "county attorney" ordinarily refer to the local or county office serving the county in which the child's home is located.

However, if the person making the report pursuant to this chapter does not know where the child's home is located, or if the child's home is not located in the service area where the health practitioner examines, attends, or treats the child, the report may be made to the state department of social services or to the local office serving the county where the person making the report resides or the county where the health practitioner examines, attends, or treats the child. These agencies shall promptly proceed as provided in section 235A.5, unless the matter is transferred as provided in this section.

If the child's home is located in a county not served by the office receiving the report, the department shall promptly transfer the matter by transmitting a copy of the report of injury and any other pertinent information to the office and the county attorney serving the other county. They shall promptly proceed as provided in section 235A.5. [C66, 71, 73, 75, §235A.6]

235A.7 Immunity from liability. Anyone participating in good faith in the making of a report or photographs or X rays pursuant to this chapter shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in good faith in any judicial proceeding resulting from such report or relating to the subject matter of such report. [C66, 71, 73, 75,§235A.7]

235A.8 Evidence not privileged or excluded. Sections 622.7, 622.9 and 622.10 and any other statute or rule of evidence which excludes or makes privileged the testimony of a husband or wife against the other or the testimony of a health practitioner as to confidential communications, shall not apply to evidence regarding a child's injuries or the cause thereof in any judicial proceeding, civil or criminal, resulting from a report pursuant to this chapter or relating to the subject matter of such report. [C66, 71, 73, 75,§235A.8]

235A.9 Sanctions for failure to report.

1. Any person, official, agency or institution, required by this chapter to report a suspected case of child abuse who knowingly and willfully fails to do so is guilty of a misdemeanor and upon conviction shall be fined not more than one hunded dollars or be imprisoned in the county jail not more than ten days.

2. Any person, official, agency or institution, required by section 235A.3 to report a suspected case of child abuse who knowingly fails to do so is civilly liable for the damages proximately caused by such failure. [C75,§235A.9]

235A.10 Publicity and educational programs. The department, within the limits of available funds, shall conduct a continuing publicity and educational program for the personnel of the department, persons required to report, and any other appropriate persons to encourage the fullest possible degree of reporting of suspected cases of child abuse. Educational programs shall include but not be limited to the diagnosis and cause of child abuse, the responsibilities, obligations, duties and powers of persons and agencies under this chapter and the procedures of the department and the juvenile court with respect to suspected cases of child abuse and disposition of actual cases. [C75,§235A.10]

235A.11 Photographs and X rays. Any person who is required to report a case of child abuse may take or cause to be taken, at public expense, photographs of the areas of trauma visible on a child. Any health practitioner may, if medically indicated, cause to be performed radiological examination of the child. Any person who takes any photographs or X rays pursuant to this section shall notify the department of social services that such photographs or X rays have been taken, and shall retain such photographs or X rays for a reasonable time thereafter. Whenever such person is required to report under section 235A.3, in that person's capacity as a member of the staff of a medical or other private or public

institution, agency or facility, that person shall immediately notify the person in charge of such institution, agency, or facility or that person's designated delegate of the need for photographs or X rays. [C75,§235A.11]

CHILD ABUSE INFORMATION REGISTRY

235A.12 Legislative findings and purposes. The general assembly finds and declares that a central registry is required to provide a single source for the state-wide collection, maintenance and dissemination of child abuse information. Such a registry is imperative for increased effectiveness in dealing with the problem of child abuse. The general assembly also finds that vigorous protection of rights of individual privacy is an indispensable element of a fair and effective system of collecting, maintaining and disseminating child abuse information.

The purposes of this section and sections 235A.13 to 235A.24 are to facilitate the identification of victims or potential victims of child abuse by making available a single, state-wide source of child abuse data; to facilitate research on child abuse by making available a single, state-wide source of child abuse data; and to provide maximum safeguards against the unwarranted invasions of privacy which such a registry might otherwise entail. [C75, §235A.12]

Referred to in §§235A.13, 235A.24

235A.13 Definitions. As used in sections 235A.12 to 235A.24, unless the context otherwise requires:

1. "*Child abuse information*" means any or all of the following data maintained by the registry in a manual or automated data storage system and individually identified:

a. Report data.

b. Investigation data.

c. Disposition data.

2. "*Report data*" means information pertaining to any occasion involving or reasonably believed to involve child abuse, including:

a. The name and address of the child and the child's parents or other persons responsible for the child's care.

b. The age of the child.

c. The nature and extent of the injury, including evidence of any previous injury.

d. Any other information believed to be helpful in establishing the cause of the injury and the identity of the person or persons responsible therefor.

3. "*Investigation data*" means information pertaining to the evaluation of report data, including:

a. Additional information as to the nature, extent and cause of the injury, and the identity of persons responsible therefor.

b. The names and conditions of other children in the home.

c. The child's home environment and relationships with parents or others responsible for his or her care.

4. "*Disposition data*" means information pertaining to an opinion or decision as to the occurrence of child abuse, including:

a. Any intermediate or ultimate opinion or decision reached by investigative personnel.

b. Any opinion or decision reached in the course of judicial proceedings.

c. The present status of any case.

5. "*Confidentiality*" means the withholding of information from any manner of communication, public or private.

6. "*Expungement*" means the process of destroying child abuse information.

7. "*Individually identified*" means any report, investigation or disposition data which names the person or persons responsible or believed responsible for the child abuse.

8. "*Sealing*" means the process of removing child abuse information from authorized access as provided by this chapter. [C75, §235A.13]

Referred to in §§235A.12, 235A.24

235A.14 Creation and maintenance of a central registry.

1. There is created within the state department of social services a central registry for child abuse information. The department shall organize and staff the registry and adopt rules for its operation.

2. The registry shall collect, maintain and disseminate child abuse information as provided for by this chapter.

3. The department shall maintain a toll-free telephone line, which shall be available on a twenty-four hour a day, seven-day a week basis and which the department of social services and all other persons may use to report cases of suspected child abuse and that all persons authorized by this chapter may use for obtaining child abuse information.

4. An oral report of suspected child abuse initially made to the central registry shall be immediately transmitted by the department to the appropriate county department of social services or law enforcement agency, or both.

5. The registry, upon receipt of a report of suspected child abuse, shall search the records of the registry, and if the records of the registry reveal any previous report of child abuse involving the same child or any other child in the same family, or if the records reveal any other pertinent information with respect to the same child or any other child in the same family, the appropriate office of the department of social services or law enforcement agency shall be immediately notified of that fact.

6. The central registry shall include but not be limited to report data, investigation data and disposition data. [C75,§235A.14]

Referred to in §§235A.2, 235A.12, 235A.13, 235A.24

235A.15 Authorized access.

1. Notwithstanding chapter 68A, the confidentiality of all child abuse information shall be maintained, except as specifically provided by subsection 2.

2. Access to child abuse information is authorized only:

a. To a health practitioner who is examining, attending or treating a child whom the practitioner believes or has reason to believe has been the victim of abuse.

b. To employees of the department of social services having responsibility for the investigation of a child abuse report.

c. To a law enforcement officer having responsibility for the temporary emergency removal of a child from the child's parent or other legal guardian.

d. To a juvenile court or district court upon a finding that information is necessary for the resolution of an issue arising in any phase of a case involving child abuse, except that information obtained through the registry shall not be utilized in any aspect of any criminal prosecution.

e. To an authorized person or agency having responsibility for the care or supervision of a child named in a report as a victim of abuse or a person named in a report as having abused a child, if the juvenile court deems access to child abuse information by such person or agency to be necessary.

f. To a person conducting bona fide research on child abuse, if the details identifying any subject of a child abuse report are deleted.

g. To a person who is the subject of any report as provided in section 235A.19.

h. To registry or department personnel where necessary to the performance of their official duties.

i. To a court hearing an appeal for correction or expungement of registry information as provided in section 235A.19. [C75,§235A.15]

Referred to in §§235A.12, 235A.13, 235A.17, 235A.21, 235A.24

235A.16 Requests for child abuse information.

1. Requests for child abuse information shall be in writing on forms prescribed by the department, except as otherwise provided by subsection 2. Request forms shall require information sufficient to demonstrate authorized access.

2. Requests for child abuse information may be made orally by telephone where a person making such a request believes that the information is needed immediately and where information sufficient to demonstrate authorized access is provided. In the event that a request is made orally by telephone, a written request form shall nevertheless be filed within seventy-two hours. [C75,§235A.16]

Referred to in §§235A.12, 235A.13, 235A.24

235A.17 Redissemination of child abuse information. A person, agency or other recipient of child abuse information authorized to receive such information shall not redisseminate such information, except that redissemination shall be permitted when:

1. The redissemination is for official purposes in connection with prescribed duties or, in the case of a health practitioner, pursuant to professional responsibilities.

2. The person to whom such information would be redisseminated would have independent access to the same information under section 235A.15.

3. A written record is made of the redissemination, including the name of the recipient and the date and purpose of the redissemination.

4. The written record is forwarded to the registry within thirty days of the redissemination. [C75,§235A.17]

Referred to in §§235A.12, 235A.13, 235A.21, 235A.24

235A.18 Sealing and expungement of child abuse information.

1. Child abuse information relating to a particular case of suspected child abuse shall be sealed ten years after the receipt of the initial report of such abuse by the registry unless good cause be shown why the information should remain open to authorized access. If a subsequent report of a suspected case of child abuse involving the child named in the initial report as the victim of abuse or a person named in such report as having abused a child is received by the registry within this ten-year period, the information shall be sealed ten years after receipt of the subsequent report unless good cause be shown why the information should remain open to authorized access.

2. Child abuse information may be expunged where the probative value of the information is so doubtful as to outweigh its validity. Child abuse information shall be expunged if it is determined to be unfounded as a result of any of the following:

a. The investigation of a report of suspected child abuse by the department.

b. A successful appeal as provided in section 235A.19.

c. A court adjudication.

3. The registry, at least once a year, shall review and determine the current status of child abuse reports which are transmitted or made to the registry after July 1, 1974, which are at least one year old and in connection with which no investigatory report has been filed by the department of social services pursuant to section 235A.5. If no such investigatory report has been filed, the registry shall request the department of social services to file a report. In the event a report is not filed within ninety days subsequent to such a request, the report and information relating thereto shall be sealed and remain sealed un-

less good cause be shown why the information should remain open to authorized access. [C75,§235A.18]

Referred to in §§235A.12, 235A.13, 235A.24

235A.19 Examination, requests for correction or expungement and appeal.

1. Any person or that person's attorney shall have the right to examine child abuse information in the registry which refers to that person. The registry may prescribe reasonable hours and places of examination.

2. Any person who files with the registry a written statement to the effect that child abuse information referring to such person is in whole or in part erroneous, and requests a correction or expungement of that information, shall be notified within sixty days by the registry, in writing, of its decision or order regarding the correction or elimination. All decisions and orders shall be accompanied by findings of fact, and the registry shall provide the opportunity for a fair hearing when it initially determines that the information should not be corrected or expunged as requested.

3. The registry's decision or order may be appealed to the district court of Polk county by the person requesting the correction or expungement or to the district court of the district in which such person resides. Immediately upon such appeal the court shall order the registry to file with the court a certified copy of the child abuse information. Appeal shall be taken in accordance with the provisions of the Iowa administrative procedure Act.

4. Upon the request of the appellant, the record and evidence in such cases shall be closed to all but the court and its officers, and access thereto shall be prohibited unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. No person other than the appellant shall permit a copy of any of the testimony or pleadings or the substance thereof to be made available to any person other than a party to the action or his attorney. Violation of the provisions of this subsection shall be a public offense punishable under section 235A.21.

5. Whenever the registry corrects or eliminates information as requested or as ordered by the court, the registry shall advise all persons who have received the incorrect information of such fact. Upon application to the court and service of notice on the registry, any individual may request and obtain a list of all persons who have received child abuse information referring to him or her.

6. In the course of any proceeding provided for by this section, the identity of the person who reported the disputed information and the identity of any person who has been reported as having abused a child may be withheld upon a determination by the registry that disclosure of their identities would be detrimental to their interests. [C75,§235A.19]

Referred to in §§235A.12, 235A.13, 235A.15, 235A.18, 235A.24

235A.20 Civil remedy. Any aggrieved person may institute a civil action for damages under chapter 25A or 613A or to restrain the dissemination of child abuse information in violation of this chapter, and any person, agency or other recipient proven to have disseminated or to have requested and received child abuse information in violation of this chapter shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses, and reasonable attorney's fees incurred by the party bringing the action. In no case shall the award for damages be less than one hundred dollars. [C75,§235A.20]

Referred to in §§235A.12, 235A.13, 235A.24

235A.21 Criminal penalties.

1. Any person who willfully requests, obtains, or seeks to obtain child abuse information under false pretenses, or who willfully communicates or seeks to communicate child abuse information to any agency or person except in accordance with sections 235A.15 and 235A.17, or any person connected with any research authorized pursuant to section 235A.15 who willfully falsifies child abuse information or any records relating thereto, is guilty of a criminal offense and upon conviction for each such offense be punished by a fine of not more than one thousand dollars or by imprisonment in the state penitentiary for not more than two years, or by both such fine and imprisonment. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate child abuse information except in accordance with sections 235A.15 and 235A.17 shall for each such offense be fined not more than one hundred dollars or be imprisoned not more than ten days.

2. Any reasonable grounds for belief that a person has violated any provision of this chapter shall be grounds for the immediate withdrawal of any authorized access such person might otherwise have to child abuse information. [C75,§235A.21]

Referred to in §§235A.12, 235A.13, 235A.19, 235A.24

235A.22 Education program. The department shall require an educational program for employees of the registry on the proper use and control of child abuse information. [C75, §235A.22]

Referred to in §§235A.12, 235A.13, 235A.24

235A.23 Registry reports.

1. The registry may compile statistics and issue reports on child abuse, provided identifying details of the subject of child abuse reports are deleted.

2. The registry shall issue an annual report on its administrative operation, including information as to the number of requests for child abuse data, the proportion of requests attributable to each type of authorized access, the frequency and nature of irregularities, and other pertinent matters. [C75,§235A.23]

Referred to in §§235A.12, 235A.13, 235A.24

235A.24 Council on child abuse information.

1. There is created a council on child abuse information consisting of nine regular members. Two members shall be appointed from the house of representatives by the speaker of the house, no more than one of whom shall be from the same political party. Two members shall be appointed from the senate by the lieutenant governor, no more than one of whom shall be from the same political party. The remaining members of the council shall consist of a judge of the district court appointed by the chief justice of the supreme court, one local law enforcement official appointed by the governor, the commissioner of the department of social services or his designee, and two private citizens not connected with law enforcement appointed by the governor. The council shall select its own chairman. The members shall serve at the pleasure of those by whom their appointments are made.

2. The council shall meet at least annually and at any other time upon the call of the chairman of the council, or any three of its members. Each nonlegislative council member shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties from funds appropriated to the department of social services. Each legislative member shall receive expenses pursuant to section 2.10 and section 2.12.

3. The council shall have the following responsibilities and duties:

a. Shall periodically monitor the operation of the child abuse information registry established by this section and sections 235A.12 to 235A.23.

b. Shall review the implementation and effectiveness of legislation and administrative rules concerning the registry.

c. May recommend changes in said legislation and administrative rules to the legislature and the appropriate administrative officials.

d. May require such reports from state agencies as may be necessary to perform its duties.

e. May receive and review complaints from the public concerning the operation of the registry. [C75,§235A.24; 66GA, ch 1052,§9]

Referred to in §§235A.12, 235A.13

CHAPTER 236

MATERNITY HOSPITALS

Repealed by 66GA, ch 1056,§45

CHAPTER 237

CHILDREN'S BOARDING HOMES

Referred to in §235.1
Child and family services, see ch 234

237.1 Definitions.
237.2 "Children's boarding home" defined.
237.3 Power to license.
237.4 Conditions to granting.
237.5 Form of license.
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237.7 Notice of granting.
237.8 License essential.
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237.10 Posting of license.
237.11 Rules.
237.12 Tenure of license.
237.13 Revocation of license.
237.14 Records and inspection.
237.15 Burden of proof.
237.16 Penalty—injunction.

237.1 Definitions. The word *"person"* or *"agency"* where used in this chapter shall include individuals, institutions, partnerships, voluntary associations, and corporations other than institutions under the management of any division of the department of social services or any director thereof.

As used in this chapter the word *"director"* or *"state director"* means the director of the division of child and family services of the department of social services. [C27, 31, 35, §3661-a42; C39,§3661.056; C46, 50, 54, 58, 62, 66, 71, 73, 75,§237.1]

41GA, ch 78,§1, editorially divided

237.2 "Children's boarding home" defined. Any person who receives for care and treatment or has in his custody at any one time one or more children under the age of sixteen years unattended by parent or guardian, for the purpose of providing them with food, care, and lodging, except children related to him by blood or marriage, and except children received by him with the intent of adopting them into his own family, shall be deemed to maintain a children's boarding home. This definition shall not include any person who is caring for children for a period of less than

thirty days. [C27, 31, 35,§3661-a43; C39, §3661.057; C46, 50, 54, 58, 62, 66, 71, 73, 75,§237.2]

237.3 Power to license. The state director is hereby empowered to grant a license for one year for the conduct of any children's boarding home that is for the public good, that has adequate equipment for the work which it undertakes, and that is conducted by a reputable and responsible person. [C27, 31, 35,§3661-a44; C39,§3661.058; C46, 50, 54, 58, 62, 66, 71, 73, 75,§237.3]

41GA, ch 78,§2, editorially divided

237.4 Conditions to granting. No such license shall be issued unless the premises are in a fit sanitary condition, and the application for such license shall have been approved by the state department of health. [C27, 31, 35, §3661-a45; C39,§3661.059; C46, 50, 54, 58, 62, 66, 71, 73, 75,§237.4]

237.5 Form of license. The license shall state the name of the licensee, the particular premises in which the business may be carried on, and the number of children that may be properly boarded or cared for therein at any one time. [C27, 31, 35,§3661-a46; C39,§3661.060; C46, 50, 54, 58, 62, 66, 71, 73, 75,§237.5]

237.6 Record of license. A record of the licenses so issued shall be kept by the state director. [C27, 31, 35,§3661-a47; C39,§3661.061; C46, 50, 54, 58, 62, 66, 71, 73, 75,§237.6]

237.7 Notice of granting. The state director shall forthwith give notice to the state department of health and to the local board of health in whose jurisdiction the licensed premises are located of the granting of such license and the conditions thereof. [C27, 31, 35,§3661-a48; C39,§3661.062; C46, 50, 54, 58, 62, 66, 71, 73, 75,§237.7]

237.8 License essential. No person shall receive a child for care in any such home or solicit or receive funds for its support unless it has an unrevoked license issued by the state director within twelve months preceding to conduct such home. [C27, 31, 35,§3661-a49; C39, §3661.063; C46, 50, 54, 58, 62, 66, 71, 73, 75,§237.8]

237.9 Prohibited acts. No greater number of children shall be kept at any one time on the licensed premises than is authorized by the license and no child shall be kept in a building or place not designated in the license. [C27, 31, 35,§3661-a50; C39,§3661.064; C46, 50, 54, 58, 62, 66, 71, 73, 75,§237.9]

237.10 Posting of license. Such license shall be kept posted in a conspicuous place on the licensed premises. [C27, 31, 35,§3661-a51; C39, §3661.065; C46, 50, 54 58, 62, 66, 71, 73, 75, §237.10]

237.11 Rules. It shall be the duty of the state director to provide such general rules for the conduct of all such homes as shall be necessary to effect the purpose of this and of all other laws of the state relating to children so far as the same are applicable, and to safeguard the well-being of all children kept therein. [C27, 31, 35,§3661-a52; C39,§3661.066; C46, 50, 54, 58, 62, 66, 71, 73, 75,§237.11]

237.12 Tenure of license. Licenses granted under this chapter shall be valid for one year from the date of issuance thereof unless revoked in accordance with the provisions of this chapter. [C27, 31, 35,§3661-a53; C39, §3661.067; C46, 50, 54, 58, 62, 66, 71, 73, 75, §237.12]

41GA, ch 78,§3, editorially divided

237.13 Revocation of license. The state director may revoke any such license under the conditions and by the procedure specified for the revocation of licenses of child-placing agencies. [C27, 31, 35,§3661-a54; C39,§3661.068; C46, 50, 54, 58, 62, 66, 71, 73, 75,§237.13]

Procedure, §§238.10–238.12

237.14 Records and inspection. The state director shall have the same rights and duties relative to records, reports, and inspections of children's boarding homes as are provided for in connection with maternity hospitals. [C27, 31, 35,§3661-a55; C39,§3661.069; C46, 50, 54, 58, 62, 66, 71, 73, 75,§237.14]

Records, reports, inspections, §§236.27, 238.17, 238.19

237.15 Burden of proof. In a prosecution under the provisions of this law or any penal law relating thereto a defendant who relies for defense upon the relationship of any child to himself shall have the burden of proof. [C27, 31, 35,§3661-a56; C39,§3661.070; C46, 50, 54, 58, 62, 66, 71, 73, 75,§237.15]

237.16 Penalty—injunction. Every person who violates any of the provisions of this chapter or who intentionally shall make any false statements or reports to the state director with reference to the matters contained herein, shall be guilty of a misdemeanor. Any person who fails to comply with the provisions of this chapter may be restrained by temporary injunction from operating or maintaining a children's boarding home until they have complied with the provisions of this chapter. [C27, 31, 35,§3661-a57; C39,§3661.071; C46, 50, 54, 58, 62, 66, 71, 73, 75,§237.16]

Punishment,§687.7

CHAPTER 237A

CHILD CARE CENTERS

237A.1 Definitions.
237A.2 Licensing of child care centers.
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237A.4 Inspection and evaluation.
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237A.12 Rules.
237A.13 Apportionment of funds.
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237A.15 Application for funds.
237A.16 Use of funds
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237A.18 Restrictions on funding.
237A.19 Penalty.
237A.20 Injunction.
237A.21 State day care advisory committee.
237A.22 Duties of the state day care advisory committee.

237A.1 Definitions. As used in this chapter unless the context otherwise requires:

1. *"Commissioner"* means the commissioner of social services.

2. *"Department"* means the department of social services.

3. *"Director"* means the director of the division designated by the commissioner to administer this chapter.

4. *"County board"* means the county board of social welfare.

5. *"Child"* means a person under eighteen years of age.

6. *"Relative"* means a person who by marriage, blood or adoption is a parent, grandparent, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, or guardian.

7. *"Child day care"* means the care, supervision, or guidance of a child by a person other than the parent, guardian, relative or custodian for periods of two hours or more and less than twenty-four hours per day per child on a regular basis in a place other than the child's home, but does not include:

a. An instructional program administered by a public or nonpublic school system approved by the department of public instruction or the state board of regents.

b. A church-related instructional program of not more than one day per week.

c. Short-term classes held between school terms.

8. *"Child care center"* or *"center"* means a facility providing child day care for seven or more children.

9. *"Family day care home"* means a facility which provides child day care to less than seven children.

10. *"Child day care facility"* or *"facility"* means a child care center or registered family day care home.

11. *"Licensed center"* means a center issued a full or provisional license by the department under the provisions of this chapter or a center for which a license is being processed.

12. *"Low-income family"* means a family whose monthly gross income is less than the lower of:

a. Eighty percent of the median income of a family of four in this state adjusted to take into account the size of the family; or

b. The median income of a family of four in the fifty states and the District of Columbia adjusted to take into account the size of the family.

13. *"State day care advisory committee"* means the state day care advisory committee established pursuant to sections 237A.19 to 237A.22. [C75,§237A.1; 66GA, ch 144,§1]

Referred to in §§237A.2, 237A.3

237A.2 Licensing of child care centers. A person shall not establish or operate a child care center without obtaining a license under the provisions of this chapter. A center may operate for a specified period of time, to be established by rule of the department, if application for a license has been made. The department shall issue a license if it determines that the following conditions have been met:

1. An application for a license or a renewal has been filed with the director on forms provided by the department.

2. The center is maintained to comply with state health and fire laws.

3. The center is maintained to comply with rules promulgated under section 237A.12.

A person denied a license under the provisions of this section shall receive written notice of the denial stating the reasons for denial and shall be provided with an opportunity for an evidentiary hearing. Licenses granted under this chapter shall be valid for one year from the date of issuance unless revoked or suspended in accordance with the provisions of section 237A.8. A record of the license shall be kept by the department. The license shall be posted in a conspicuous place in the center and shall state the particular premises in which child day care may be offered and the number of individuals who may be received for care at any one time. No greater number of children than is authorized by the license shall be kept in the center at any one time.

The director may issue a provisional license for a period of time not to exceed one year if the center does not meet standards required under this section. A provisional license shall be posted in a conspicuous place in the center as provided in this section. If written plans to bring the center up to standards, giving specific dates for completion of work, are submitted to and approved by the department promulgating the regulations, the provisional license shall be renewable.

A facility which is not a child care center by reason of the definition of child day care in section 237A.1, subsection 7, but which provides care, supervision or guidance to a child may be issued a license if the facility complies with all the provisions of this chapter. [C75,§§237A.2, 237A.3; 66GA, ch 144,§2]

237A.3 Registration of family day care homes. A person who operates or establishes a family day care home may apply to the department for registration under the provisions of this chapter. The department shall issue a certificate of registration upon receipt of a statement from the family day care home that the home complies with rules promulgated by the department. The registration certificate shall be posted in a conspicuous place in the family day care home, shall state the name of the registrant, the number of individuals who may be received for care at any one time and the address of the home, and shall include a check list of registration compliances. No greater number of children than is authorized by the certificate shall be kept in the family day care home at any one time. The registration process may be repeated on an annual basis. A facility which is not a family day care home by reason of the definition of child day care in section 237A.1, subsection 7, but which provides care, supervision or guidance to a child may be issued a certificate of registration under the provisions of this chapter. [C75,§237A.3; 66GA, ch 144,§3]

237A.4 Inspection and evaluation. The local boards of health shall make periodic inspections of licensed centers to insure compliance with licensing requirements provided in this chapter. In those instances where no local board of health exists then the director may make periodic inspections of licensed centers as necessary to carry out the provisions of this chapter. The director may inspect records maintained by a licensed center and may inquire into matters concerning these centers and the persons in charge. The director shall require that the center be inspected by the state fire marshal or a designee for compliance with rules relating to fire safety before a license is granted or renewed. The director or a designee may periodically visit registered family day care homes for the purpose of evaluation of an inquiry into matters concerning compliance with rules promulgated under section 237A.12. Evaluation of family day care homes under this section may include consultative services provided pursuant to section 237A.6. [C75,§237A.4; 66GA, ch 144,§4]

237A.5 Personnel. All personnel in licensed centers shall have good health as evidenced by a report following a pre-employment physical examination taken within six months prior to beginning employment, including communicable disease tests by a licensed physician as defined in section 135C.1, at the time of initial employment and every three years thereafter. No staff member of a licensed center or registered home with direct responsibility for child care shall have a conviction by any law of any state involving lascivious acts with a child, child neglect or child abuse. [C75,§237A.5; 66GA, ch 144,§5]

237A.6 Consultative services. The department shall, and the commissioner of public health may provide consultative services to a person applying for a license or registration, or licensed or registered by the director under this chapter. [C75,§237A.6; 66GA, ch 144,§6]

Referred to in §237A.4

237A.7 Confidential information. Anyone who acquires through the administration of this chapter information relative to an individual in a child day care facility or to a relative of the individual shall not, directly or indirectly, disclose the information except upon inquiry before a court of law or with the written consent of the individual or, in the case of a child, the written consent of the parent or guardian or as otherwise specifically required or allowed by law.

This section shall not prohibit the disclosure of information relative to the structure and operation of a facility nor shall it prohibit the statistical analysis by duly authorized persons of data collected by virtue of this chapter, or the publication of the results of the analysis in a manner which does not disclose information identifying individual persons. [C75,§237A.7; 66GA, ch 144,§7]

237A.8 Suspension and revocation. The director, after notice and opportunity for an evidentiary hearing, may suspend or revoke a license or certificate of registration issued under the provisions of this chapter if the person to whom a license or certificate is issued violates any provision of this chapter or if a person makes false reports regarding the operation of the child day care facility to the director or a designee. [C75,§237A.8; 66GA, ch 144,§8]

Referred to in §237A.2

237A.9 to 237A.11 Repealed by 66GA, ch 144,§11.

237A.12 Rules. Subject to the provisions of chapter 17A, the director shall promulgate rules setting minimum standards to provide quality child day care in the operation and maintenance of child care centers and registered family day care homes relating to:

1. The number and qualifications of personnel necessary to assure the health, safety, and welfare of children in the facilities.

2. Physical facilities.

3. The adequacy of activity programs and food services available to the children.

4. Policies established by the center for parental participation.

5. Programs for education and in-service training of staff.

6. Records kept by the facilities.

7. Administration.

8. Health, safety and medical policies for children.

Rules promulgated by the state fire marshal for buildings used as child care centers as an adjunct to the primary purpose of the building shall take into consideration that children are received for temporary care only and shall not differ from rules promulgated for these buildings when they are used by groups of persons congregating from time to time in the primary use and occupancy of the buildings. However, the rules may require a fire-rated separation from the remaining portion of the building if the fire marshal determines that the separation is necessary for the protection of children from a specific flammable hazard.

Rules relating to fire safety and sanitation shall be promulgated under this chapter by the state fire marshal and the commissioner of public health respectively, in consultation with the department, and all rules shall be developed in consultation with the state day care advisory committee. The state fire marshal shall inspect the facilities. [C75,§237A.12; 66GA, ch 144,§9]

Referred to in §§237A.2, 237A.4

237A.13 Apportionment of funds. Funds appropriated to the department to assist child care centers shall be apportioned among the counties as follows:

1. Each county shall receive a share of one half of the total amount available for allocation among the counties which share is equivalent to a percentage of the total amount available determined by dividing the state's total population of children under seven years of age into the total number of children under seven years of age residing in the county. Data on the number and places of residence of children under seven years of age shall be derived from the most recent federal decennial census unless the commissioner with approval of the council of social services directs that some other specified source of data be used.

2. Each county shall receive a share of one half of the total amount available for allocation among the counties which share is equivalent to a percentage of the total amount available determined by dividing the total number of low-income families residing in the state into the total number of low-income families residing in the county. Data on the number and the places of residence of low-income families shall be derived from the most recent federal decennial census unless the commissioner with approval of the council of social services directs that some other specified source of data be used.

3. Notwithstanding subsections 1 and 2, no county's initial allocation shall be less than one quarter of one percent of the total amount available for allocation among the counties.

4. Any portion of the amount initially allocated to any county pursuant to subsections 1, 2 and 3 which remains unencumbered as of April 30 of any year shall be reclaimed from the county by the department and immediately reallocated in the manner provided by subsections 1 and 2 among those counties from which funds have not been reclaimed under this subsection. Any portion of the amounts so allocated which remains unencumbered as of June 30 of any year shall revert to the general fund of the state. [C75,§237A.13]

Referred to in §237A.17

237A.14 Allocation by the county. The county board shall determine how the funds received by that county under this chapter shall be allocated among existing or planned child care centers in the county on the basis of the following factors as applied to each child care center considered for financial assistance under this chapter:

1. The demonstrated need for child care services in the community served by the center.

2. The proportion of low-income families among all families served by the center.

3. The demonstrated need of the center for additional equipment, and improvement, enlargement or relocation of the center's physical facilities designed to bring the center into compliance with local health, fire and zoning laws.

4. The manner in which the center derives its support, other than funds made available to it under this chapter, and in particular the extent to which it is supported from sources other than tuition or fees paid by the parents or guardians of the children served by the center. [C75,§237A.14]

Referred to in §234.11

237A.15 Application for funds. The department shall:

1. Prescribe forms for use by licensed centers in applying to their respective county boards for funds appropriated by the general assembly.

2. Establish a procedure by which a licensed center aggrieved by a decision of a county board under section 237A.17 may appeal the decision to the commissioner or his designee, however, the judgment of the county board on the merits of any application shall not be overturned in the absence of a determination that the county board has misinterpreted any of the provisions of this chapter, has acted arbitrarily or capriciously, or both.

3. Seek to obtain from the federal government any funds which may be available to this state to pay any part of the cost of implementing or administering this chapter. [C75, §237A.15]

Referred to in §234.11

237A.16 Use of funds. A child care center may use funds received pursuant to this chapter only for the following purposes:

1. To acquire or improve physical facilities to house the center.

2. To acquire recreational or educational equipment or supplies.

3. To purchase assistance to child care centers for program development and staff development in meeting standards for child care centers established under this chapter. [C75,§237A.16; 66GA, ch 1132,§14]

Referred to in §234.11

237A.17 Distribution. The county board shall consider all applications which are submitted by child care centers in the county for funds allocated to the county under this chapter, and shall determine the distribution of the funds. Each child care center submitting an application shall indicate the amount of money requested and the intended use of the money. The county board may establish a deadline for submission of applications, which shall not be earlier than thirty days after it is notified by the department of the amount initially allocated to the county pursuant to section 237A.13. [C75,§237A.17]

Referred to in §§234.11, 237A.15

237A.18 Restrictions on funding. Funds shall be distributed only to licensed centers which serve primarily low-income families and which do not prohibit admission of children on the basis of race, creed, religion, sex, or national origin. [C75,§237A.18]

Referred to in §234.11

237A.19 Penalty. A person who establishes, conducts, manages, or operates a center without a license shall be guilty of a misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of the violation, shall be considered a separate offense. [66GA, ch 144,§10]

Referred to in §237A.1
Punishment, §687.7

237A.20 Injunction. Any person who establishes, conducts, manages, or operates a center without a license may be restrained by permanent injunction. [66GA, ch 144,§10]

Referred to in §237A.1

237A.21 State day care advisory committee. There is established a state day care advisory committee to consist of not less than nine and not more than fifteen members from urban and rural areas across the state. The membership shall consist of one-third providers of services, one-third interested citizens, and one-third parents of children served. Members shall be appointed by the commissioner from a list of names submitted by a nominating committee to consist of one member of the state day care advisory committee established pursuant to this section, one member of the day care unit of the department, and one member of a professional child care organization. Two names shall be submitted for each appointment. Members shall be appointed for terms of three years but no member shall be appointed to more than two consecutive terms. The state day care advisory committee shall write its own operational policies with departmental approval. The member of the state day care advisory committee who submits names of nominees for initial membership on the committee shall be a member of the state day care advisory committee established by regulation 220.4 of the Social Security Act of 1967. [C75,§237A.1(8); 66GA, ch 144,§10]

Referred to in §237A.1

237A.22 Duties of the state day care advisory committee. The state day care advisory committee shall:

1. Consult with and make recommendations to the department in the promulgation of rules under this chapter.

2. Recommend improvements in the licensing and registration of facilities.

3. Advise the department on licensing policy, planning, and priorities. [C75,§237A.12; 66GA, ch 144,§10]

Referred to in §237A.1

CHAPTER 238

CHILD-PLACING AGENCIES

Referred to in §§235.1, 422.9(2,*d*)
Child and family services, see ch 234
South Vietnamese refugee children placed, see 66GA, ch 145,§1

238.1 Definitions.
238.2 "Child-placing agency" defined.
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238.10 Revocation of license.
238.11 Written charges—findings—notice.
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238.42 Agreement in child placements.
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238.44 Burden of proof.
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238.1 Definitions. The word *"person"* or *"agency"* where used in this chapter shall include individuals, institutions, partnerships, voluntary associations, and corporations, other than institutions under the management or control of any division of the department of social services or any director thereof.

For the purpose of this chapter the word "director" or "state director" means director of the division of child and family services of the department of social services. [C27, 31, 35, §3661-a58; C39,§**3661.072**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.1]

41GA, ch 80,§1, editorially divided

238.2 "Child-placing agency" defined. Any agency, public, semipublic, or private, which represents itself as placing children permanently or temporarily in private family homes or as receiving children for such placement, or which actually engages, for gain or otherwise, in such placement, shall be deemed to operate a child-placing agency. [C27, 31, 35,§3661-a59; C39,§**3661.073**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.2]

Referred to in §§238.17, 600A.2

238.3 Power to license. The state director is hereby empowered to grant a license for one year for the conduct of any child-placing agency that is for the public good, and is conducted by a reputable and responsible person. [C27, 31, 35,§3661-a60; C39,§**3661.074**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.3]

41GA, ch 80,§2, editorially divided

238.4 Granting of license conditional. No such license shall be issued unless the person applying shall have shown that he and his agents are properly equipped by training and experience to find and select suitable temporary or permanent homes for children and to supervise such homes when children are placed in them, to the end that the health, morality, and general well-being of children placed by them shall be properly safeguarded. [C27, 31, 35,§3661-a61; C39,§**3661.075**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.4]

238.5 License required. No person shall conduct a child-placing agency or solicit or receive funds for its support without an unrevoked license issued by the state director within the twelve months preceding to conduct such agency. [C27, 31, 35,§3661-a62; C39, §**3661.076**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.5]

238.6 Form of license. The license shall state the name of the licensee and the particular premises in which the business may be carried on. [C27, 31, 35,§3661-a63; C39,§**3661.077**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.6]

238.7 Posting of license. Such license shall be kept posted in a conspicuous place on the licensed premises. [C27, 31, 35,§3661-a64; C39, §**3661.078**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.7]

238.8 Record of license. A record of the licenses so issued shall be kept by the state director. [C27, 31, 35,§3661-a65; C39,§**3661.079**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.8]

238.9 Tenure of license. Licenses granted under this chapter shall be valid for one year from the date of issuance thereof unless revoked in accordance with the provisions hereof. [C27, 31, 35,§3661-a66; C39,§**3661.080**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.9]

41GA, ch 80,§3, editorially divided

238.10 Revocation of license. The state director may, after due notice and hearing, revoke the license:

1. In case the person to whom the same is issued violates any provision of this chapter.

2. When in the opinion of the state director such agency is maintained in such a way as to waste or misuse funds contributed by the public or without due regard to sanitation or hygiene or to the health, comfort, or well-being of the child cared for or placed by the agency.

3. In case of violation by the licensee or his agents of any law of the state in a manner disclosing moral turpitude or unfitness to maintain such agency.

4. In case any such agency is conducted by a person of ill repute or bad moral character.

5. In case said agency operates in persistent violation of the reasonable regulations of the state director governing such agencies. [S13, §3260-k; C24,§3663; C27, 31, 35,§3661-a67; C39, §**3661.081**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §238.10]

238.11 Written charges — findings — notice. Written charges against the licensee shall be served upon him at least ten days before hearing shall be had thereon and a written copy of the findings and decisions of the state director upon hearing shall be served upon the licensee in the manner prescribed for the service of original notice in civil actions. [C27, 31, 35, §3661-a68; C39,§**3661.082**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.11]

Service of notice, R.C.P. 56(*a*)

238.12 Appeal—judicial review. Any licensee feeling himself aggrieved by any decision of the state director revoking his license may appeal to the council of social services in the manner of form prescribed by such council. The council shall, upon receipt of such an appeal give the licensee reasonable notice and opportunity for a fair hearing before such council or its duly authorized representative or representatives. Following such hearing the council of social services shall take its final action and notify the licensee in writing.

Judicial review of the actions of the council may be sought in accordance with the terms of the Iowa administrative procedure Act. [C27, 31, 35,§3661-a69; C39,§**3661.083**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.12]

238.13 to 238.15 Repealed by 65GA, ch 1090, §211.

238.16 Rules and regulations. It shall be the duty of the state director to provide such general regulations and rules for the conduct of all such agencies as shall be necessary to effect the purposes of this chapter and of all other laws of the state relating to children so far as the same are applicable, and to safeguard the well-being of children placed or cared for by such agencies. [C27, 31, 35,§3661-a73; C39, §**3661.087**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §238.16]

238.17 Forms for registration and record—preservation. The state director shall prescribe forms for the registration and record of persons cared for by any child-placing agency licensed under this chapter and for reports required by said state director from the agencies.

If, for any reason, a child-placing agency as defined by section 238.2 shall cease to exist, all records of registration and placement and all other records of any kind and character kept by such child-placing agency shall be turned over to the state director, for preservation, to be kept by the said state director as a permanent record. [C27, 31, 35,§3661-a74; C39, §**3661.088**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §238.17]

41GA, ch 80,§4, editorially divided
Referred to in §238.24

238.18 Duty of licensee. The licensee shall keep a record and make reports in the form to be prescribed by said state director. [C27, 31, 35,§3661-a75; C39,§**3661.089**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.18]

Referred to in §238.24

238.19 Inspection generally. Authorized officers and agents of the state director may inspect the premises and conditions of such agency at any time and examine every part thereof; and may inquire into all matters concerning such agencies and the children in the care thereof. [S13,§3260-j; C24,§§3669, 3684; C27, 31, 35,§3661-a76; C39,§**3661.090**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.19]

41GA, ch 80,§6, editorially divided
Referred to in §238.24

238.20 Minimum inspection — record. Authorized officers and agents of the state director shall visit and inspect the premises of licensed child-placing agencies at least once every six months and make and preserve written reports of the conditions found. [C27, 31, 35,§3661-a77; C39,§**3661.091**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.20]

Referred to in §238.24

238.21 Other inspecting agencies. Authorized agents of the state department of health and of the local board of health in whose jurisdiction a licensed child-placing agency is located may make inspection of the premises. [C27, 31, 35,§3661-a78; C39,§**3661.092**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.21]

Referred to in §238.24

238.22 Licensee to aid inspection. The licensees shall give all reasonable information to such inspectors and afford them every reasonable facility for obtaining pertinent information. [C27, 31, 35,§3661-a79; C39,§**3661.093**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.22]

Referred to in §238.24

238.23 Annual report. Every such agency shall file with the state director, during the month of January of each year, an annual written or printed report, which shall show:

1. The number of children cared for during the preceding year.
2. The number of children received for the first time and the number returned from families.
3. The number placed in homes.
4. The number deceased.
5. The number placed in state institutions.
6. The number returned to friends.
7. The number and names and number of months of each of those attending school.
8. A statement showing the receipts and disbursements of such agency.
9. The amount expended for salaries and other expenses, specifying the same.
10. The amount expended for lands, buildings, and other investments.
11. Such other information as the state director may require. [S13,§3260-j; C24,§3670; C27, 31, 35,§3661-a80; C39,§**3661.094**; C46, 50, 54, 58, 62 66, 71, 73, 75,§238.23]

Referred to in §238.24

238.24 Information confidential. No individual who acquires through the operation of the

provisions of sections 238.17 to 238.23, inclusive, or from the records provided for in this chapter, information relative to any agency or relative to any person cared for by such agency or relative to any relative of any such person, shall directly or indirectly disclose such information except upon inquiry before a court of law, or before some other tribunal, or for the information of the governor, general assembly, medical examiners, state director, state department of health, or the local board of health where such agency is located.

Nothing herein shall prohibit the state director from disclosing such facts to such proper persons as may be in the interest of a child cared for by such agency or in the interest of the child's parents or foster parents and not inimical to the child, or as may be necessary to protect the interests of the child's prospective foster parents. However, disclosure of termination and adoption records shall be governed by the provisions of section 600.16.

Nothing herein shall prohibit the statistical analysis by duly authorized persons of data collected by virtue of this chapter or the publication of the results of such analysis in such manner as will not disclose confidential information. [C27, 31, 35,§3661-a81; C39,§**3661.095**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.24; 66GA, ch 1229,§36]

238.25 to 238.29 Repealed by 66GA, ch 1229, §38.

238.30 Reports as to placements. Every month every child-placing agency licensed by the state director shall report to the state director the names of all children placed out by the agency since its preceding monthly report, together with the name and address of the person with whom each child has been placed, and such other information regarding the child and its foster home as may be required by the state director. [C27, 31, 35,§3661-a87; C39,§**3661.101**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.30]

41GA, ch 80,§9, editorially divided

238.31 Inspection of foster homes. The state director shall satisfy himself that each licensed child-placing agency is maintaining proper standards in its work, and said state director may at any time cause the child and home in which he has been placed to be visited by his agents for the purpose of ascertaining whether the home is a suitable one for the child, and may continue to visit and inspect the foster home and the conditions therein as they affect said child. [C27, 31, 35,§3661-a88; C39,§**3661.102**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.31]

238.32 Authority to agencies. Any institution incorporated under the laws of this state or maintained for the purpose of caring for, placing out for adoption, or otherwise improving the condition of unfortunate children may, under the conditions specified in this chapter and when licensed in accordance with the provisions of this chapter:

1. Receive children in need of assistance, or delinquent children who are under eighteen years of age, under commitment from the juvenile court, and control and dispose of them subject to the provisions of chapter 232 and chapter 600A.

2. Receive, control, and dispose of all minor children voluntarily surrendered to such institutions. [S13,§§254-a22, 3260-b; C24,§3662; C27, 31, 35,§3661-a89; C39,§**3661.103**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§238.32; 66GA, ch 1229,§37]

Juvenile commitments, §§232.33, 232.34

238.33 Interstate compact on placement of children. The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

ARTICLE I—PURPOSE AND POLICY

It is the purpose and policy of the party states to co-operate with each other in the interstate placement of children to the end that:

a. Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

b. The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

c. The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

d. Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II—DEFINITIONS

As used in this compact:

a. "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

b. "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

c. "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

d. "Placement" means the arrangement for the care of a child in a family free or boarding

home or in a child-caring agency or institution.

ARTICLE III—CONDITIONS FOR PLACEMENT
Referred to in §238.35

a. No sending state shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

b. Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

1. The name, date and place of birth of the child.

2. The identity and address or addresses of the parents or legal guardian.

3. The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.

4. A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

c. Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph *"b"* of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

d. The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV—PENALTY FOR ILLEGAL PLACEMENT

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V—RETENTION OF JURISDICTION
Referred to in §§238.34, 238.39

a. The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

Referred to in §238.36

b. When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

Referred to in §§238.37, 238.38

c. Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph *"a"* hereof.

ARTICLE VI—INSTITUTIONAL CARE OF DELINQUENT CHILDREN
Referred to in §238.39

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

a. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

b. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII—COMPACT ADMINISTRATOR
Referred to in §238.40

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general co-ordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII—LIMITATIONS

This compact shall not apply to:

a. The sending or bringing of a child into a receiving state by his parent, relative, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

b. Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX—ENACTMENT AND WITHDRAWAL

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X—CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[S13,§3260-1; C24,§§3672, 3675; C27, 31, 35,§§3661-a90,-a93,-a95,-a96; C39,§§3661.104, 3661.107, 3661.109, 3661.110; C46, 50, 54, 58, 62, 66,§§238.33, 238.36, 238.38, 238.39; C71, 73, 75,§238.33]
Referred to in §238.41

238.34 Financial responsibility. Financial responsibility for any child placed pursuant to the provisions of the interstate compact on the placement of children shall be determined in accordance with the provisions of article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of chapters 252 and 252A, fixing responsibility for the support of children also may be invoked. [C71, 73, 75,§238.34]
Referred to in §238.41

238.35 Department of social services as public authority. The "appropriate public authorities" as used in article III of the interstate compact on the placement of children shall, with reference to this state, mean the state department of social services and said department shall receive and act with reference to notices required by said article III. [C71, 73, 75,§238.35]
Referred to in §238.41

238.36 Department as authority in receiving state. As used in paragraph "*a*" of article V of the interstate compact on the placement of children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the state department of social services. [C71, 73, 75,§238.36]
Referred to in §238.41

238.37 Authority to enter agreements. The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph "*b*" of article V of the interstate compact on the placement of children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the director of family and children's services in the case of the state and the overseer of the poor in the case of a subdivision of the state. [C71, 73, 75,§238.37]
Referred to in §238.41

238.38 Visitation, inspection or supervision. Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph "*b*" of article V of the interstate compact on the placement of children. [C71, 73, 75,§238.38]
Referred to in §238.41

238.39 Court authority to place child in another state. Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to article VI of the interstate compact on the placement of children and shall retain jurisdiction as provided in article V thereof. [C71, 73, 75,§238.39]

Referred to in §238.41

238.40 Executive head. As used in article VII of the interstate compact on the placement of children, the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said article VII. [C71, 73, 75,§238.40]

Referred to in §238.41

238.41 Statutes not affected. Nothing contained in sections 238.33 through 238.40 shall be deemed to affect or modify the provisions of chapters 232 and 600. [C71, 73, 75,§238.41]

238.42 Agreement in child placements. Every agency placing a child in a foster home shall enter into a written agreement with the person taking the child, which agreement shall provide that the agency placing the child shall have access at all reasonable times to such child and to the home in which he is living, and for the return of the child by the person taking him whenever, in the opinion of the agency placing such child, or in the opinion of the state director, the best interests of the child shall require it. [C27, 31, 35,§3661-a97; C39,§**3661.111**; C46, 50, 54, 58, 62, 66,§238.40; C71, 73, 75,§238.42]

41GA, ch 80,§13, editorially divided
Referred to in §238.43

238.43 Exceptions. The provisions of section 238.42 shall not apply to children who have been legally adopted. [C27, 31, 35,§3661-a98; C39,§**3661.112**; C46, 50, 54, 58, 62, 66,§238.41; C71, 73, 75,§238.43]

238.44 Burden of proof. In a prosecution under the provisions of this chapter or any penal law relating thereto, a defendant who relies for defense upon the relationship of any woman or child to himself shall have the burden of proof. [C27, 31, 35,§3661-a99; C39, §**3661.113**; C46, 50, 54, 58, 62, 66,§238.42; C71, 73, 75,§238.44]

238.45 Penalty. Every person who violates any of the provisions of this chapter or who intentionally shall make any false statements or reports to the state director with reference to the matters contained herein, shall be guilty of a misdemeanor and upon conviction shall be punished accordingly. [C27, 31, 35,§3661-a100; C39,§**3661.114**; C46, 50, 54, 58, 62, 66,§238.43; C71, 73, 75,§238.45]

Punishment, §687.7

CHAPTER 239

AID TO DEPENDENT CHILDREN

Referred to in§§155.37, 217.30, 234.6(5), 239A.1, 239A.3, 249A.3, 249C.1, 249C.14, 252B.3, 252B.4

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239.18 State control exclusive.
239.19 Transfer aid funds to other work incentive programs.

239.1 Definitions. As used in this chapter:

1. *"Division"* or *"state division"* means the division of child and family services of the department of social services; "director" or "state director" means the director of the division of child and family services of the department of social services.

2. *"County board"* means the county board of social welfare provided for in section 234.9.

3. A *"dependent child"* means a needy child under the age of sixteen years, or under the age of twenty years who is a student regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent, or who is, in lieu of pursuing a course of study leading to a high school diploma or its equivalent, regularly attending a course of vocational or technical training designed to fit him for gainful employment, who has been deprived of parental support and care by reason of death, continued absence from home, physical or mental incapacity or unfitness of either parent, or partial or total unemployment of the father, and who

is living with his father or mother, or both, or with his grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, in a place of residence maintained by one or more of such relatives as his or their home or has been placed in a licensed foster home or with a public or nonprofit child care agency by the state division or by the county department of social welfare in lieu of living with any relative designated in this subsection.

Referred to in §§239.2(1), 239.5

4. *"Assistance"* means money payments to, or in behalf of, a needy, dependent child or children.

5. *"Recipient"* is the person to whom the assistance grant is made. [C39,§§3661.002, 3661.016; C46, 50, 54, 58, 62, 66, 71, 73, 75,§239.1]

Referred to in §§239.2(1), 239.5, 252B.1

239.2 Eligibility for aid to dependent children. Assistance shall be granted under this chapter to any needy dependent child who:

1. Is living in a suitable family home maintained by one or more of the persons referred to in section 239.1, subsection 3, or has been placed in a foster home or with a public nonprofit agency referred to in such subsection under a plan of care including services designated to improve the conditions of the home from which the child was removed or to otherwise make possible his being placed in the suitable home of a relative referred to in section 239.1, subsection 3, if the placement resulted from judicial proceedings initiated during a month in or for which the child:

a. Was in fact receiving assistance under this chapter; or

b. Would have received assistance under this chapter if application had been made therefor; or

c. Had within six months prior to the month in which the proceedings were initiated been living with a relative referred to in section 239.1, subsection 3, and would have received assistance under this chapter in and for the month in which the proceedings were begun if he had continued to live with that relative and application had been made therefor.

2. Has resided in the state for one year immediately preceding the application for such assistance; or was born within the state within one year immediately preceding the application, if the mother has resided in the state for one year immediately preceding the birth of said child, without regard to the residence of the person or persons with whom said child is living.

3. Is not in a public institution and because of a physical or mental condition, in need of continued care therein.

4. Is not, with respect to assistance applied for by reason of partial or total unemployment of the father, the child of a father who:

a. Has been unemployed for less than thirty days prior to receipt of assistance under this chapter.

b. Is partially or totally unemployed due to a work stoppage which exists because of a labor dispute at the factory, establishment or other premises at which he is or was last employed.

c. At any time during the thirty-day period prior to receipt of assistance under this chapter or at any time thereafter while assistance is payable under this chapter, has not been available for employment, has not actively sought employment, or has without good cause refused any bona fide offer of employment or training for employment. The following reasons for refusing employment or training are not good cause: unsuitable or unpleasant work or training, if the father is able to perform the work or training without unusual danger to his health; or the amount of wages or compensation, unless the wages for employment are below the federal minimum wage.

d. Has not registered for work with the state employment service established pursuant to section 96.12, or thereafter has failed to report at an employment office in accordance with regulations prescribed pursuant to section 96.4, subsection 1.

e. Has failed to participate in or to co-operate in any work or training program made available to him under chapter 249C, or has without good cause withdrawn from such program before completion. The department of social services shall have a program under chapter 249C for the partially or totally unemployed father under this subsection.

The division may prescribe requirements in addition to or in lieu of the foregoing, for eligibility for assistance under this chapter to children whose fathers are partially or totally unemployed, which are necessary to secure financial participation of the federal government in payment of such assistance. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§239.2]

239.3 Application for assistance. Application for assistance under this chapter shall be made to the county board of the county in which the dependent child resides or will reside in the event assistance is granted. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the state director. Such application shall be made by an adult person or a person eighteen years of age or older with whom the dependent child resides or will reside, and shall contain such information as may be required by said application form. One application may be made for several children of the same family if they reside or will reside with the same person. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§239.3]

239.4 Investigation of application. Whenever a county board receives a notification of the dependency of a child or an application for

assistance, an investigation and record of the circumstances shall promptly be made in order to ascertain the dependency of the child and the facts supporting the application.

The investigations shall include visits to the home of the child and of the person with whom the child will live during the time assistance is granted.

In cases involving physical or mental incapacity or unfitness of either parent, the county board of social welfare may require as a condition for granting assistance hereunder that such incapacity or unfitness be determined by a board of doctors which shall be selected by the county board of social welfare. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§239.4]

239.5 Granting of assistance and amount of assistance—co-operation of parent. Upon the completion of an investigation the county board shall decide whether the child is eligible for assistance under the provisions of this chapter and determine the amount of such assistance. The county board shall, within thirty days, notify the person with whom the child is living or will be living, of the decision made. The county board may require, as a condition of granting assistance, that a legal guardianship be established over any recipient, or any child or children and in such cases the assistance payments shall be made to such guardian, when appointed, but a guardian of a child or children only shall not be allowed to receive any assistance payments for any dependent child or children unless such guardian shall bear a relationship to the child or children embraced by subsection 3, section 239.1. In addition to the assistance granted as provided under this chapter, an amount not to exceed ten dollars per case per month may be allowed for guardian's fees when authorized by appropriate court order. The dependent child for whom the grant is made shall be originally charged to the county in which such child resides when application is made.

The county board, in accordance with rules and standards established by the state department of social services, shall fix the amount of assistance necessary for any dependent child. In determining the amount of assistance, the county board shall take into consideration the income and resources of any child or relative claiming assistance under this chapter. However, in fixing the amount of assistance for any child or family, the county board, in accordance with rules established by the state department of social services, may disregard a reasonable amount of the income of the child or the family, in order to encourage the family or any of its members to become self-supporting. The term "income" as used herein means income remaining after deduction of expenses reasonably attributable to the earning or securing of that income.

The county board, under the supervision of the state department of social services, shall establish services to help families and persons receiving assistance under this chapter to become self-supporting; shall participate in the work and training program established by chapter 249C; and shall co-operate with other public agencies and with private agencies to secure employment, education, and vocational training for members of such families. Assistance, when granted, shall be paid monthly to an adult person or a person eighteen years of age or older within the specified degrees of relationship and with whom the child is living, from the fund for aid to dependent children established by this chapter, upon the order of the state division, except that the county board may order the assistance payments made to another individual who is interested in or concerned with the welfare of the child or the person with whom the child is living when it has been demonstrated that the person with whom the child is living is unable to manage the assistance payments in the best interest of the child. Such protective payments shall not be made beyond one year and shall otherwise conform to the regulations established under the provisions of Title IV of the Social Security Act as amended by Public Law 90-248.

No payment for aid to dependent children shall be made unless and until the county board of social welfare, with the advice of the county attorney shall certify that the parent receiving the aid for the children is co-operating in legal actions and other efforts to obtain support money for said children from the persons legally responsible for said support.

The state comptroller shall, no later than January 1, 1977 and upon receipt of a written signed request from the person entitled to receive assistance established by this chapter, order that payments be made directly to a bank, savings and loan association, or credit union of his or her choice. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§239.5; 66GA, ch 1138,§1]

See Collins v. Board, 248 Iowa 369

239.6 Periodic reconsideration, changes, and termination of grants. Any or all assistance grants made under this chapter shall be subject to reconsideration at any time the county board deems necessary and shall be reinvestigated and reconsidered by the county board as frequently as may be required. After any such further investigation, the county board shall make further report to the state director. Upon such report, assistance may be continued, renewed, suspended, changed in amount, or entirely withdrawn, as the findings of such reports warrant. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§239.6]

239.7 Appeal—judicial review. If an application is not acted upon within a reasonable time, if it is denied in whole or in part, or if any award of assistance is modified, suspended, or canceled under any provision of this chapter, the applicant or recipient may appeal to the department of social services. The department shall give the appellant reasonable notice and opportunity for a fair hearing

before the commissioner or his designee. Judicial review of the result of such hearing may be sought in accordance with the terms of the Iowa administrative procedure Act. Upon receipt of the notice of the filing of a petition for judicial review, the department shall furnish the petitioner with a copy of any papers filed in support of the petitioner's position, a transcript of any testimony taken, and a copy of the department's decision. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§239.7]

239.8 Removal from county. When any child for whose benefit a grant of assistance has been made removes or is removed from the county in which he resided at the time he was granted assistance, it shall be the duty of the recipient to immediately notify the county board of the county of the fact of such removal and of the city (or the nearest city) and of the county to which the child has removed. If the removal is out of the state, assistance shall be continued as long as the child remains otherwise eligible for assistance under this chapter or until he becomes eligible for assistance from the state to which he has moved, but in no case may assistance payments from this state be continued for more than one year beyond the date of the child's removal from this state; provided, further, that during the period in which such assistance may be paid, the county board shall, by regular contact with the proper state or local welfare agency in the state to which such child has been removed, review and determine such child's eligibility for assistance other than with respect to the residence eligibility requirement.

Periodic status reports shall be requested of the recipients to assist in determining eligibility for assistance payments. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§239.8]

239.9 Funeral expenses. Upon the death of any child for whose benefit assistance payments are being made or have been authorized, a reasonable funeral expense for the burial of such child may be paid by the state division, provided such expenses do not exceed two hundred fifty dollars, and the estate of the deceased or any life insurance or payments by any death or funeral benefit association or society paid by reason of the death of such child to the child's estate or to any person legally liable for his support, are insufficient to defray such funeral expenses. The person to whom such funeral expenses are paid as above provided is hereby prohibited from soliciting, accepting, or contracting to receive any further compensation for services rendered or articles furnished in connection with such funeral except on written approval of the county board of the county to which the assistance is chargeable and subject to such rules and regulations as the state director shall prescribe. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §239.9]

239.10 Repealed by 65GA, ch 186,§28.

239.11 Repealed by 65GA, ch 175,§6.

239.12 Aid to dependent children account. There is hereby established in the state treasury an account to be known as the "Aid to Dependent Children Account" to which shall be credited all funds appropriated by the state for the payment of assistance and benefits under this chapter, and all other moneys received at any time for such purposes. All assistance and benefits under this chapter shall be paid from said account. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§239.12]

239.13 Assistance not assignable. Assistance granted under this chapter shall not be transferable or assignable at law or in equity, and none of the money paid or payable under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §239.13]

239.14 Fraudulent acts. Whoever obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement or representation, or by impersonation, or any fraudulent device, any assistance under this chapter to which the recipient is not entitled, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punishable by fine, not exceeding five hundred dollars or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§239.14]

239.15 Grant accepted without condition. No contribution or grant shall be received or accepted if any condition is attached as to its use or administration other than that it be used for assistance to dependent children as provided in this chapter.

If any contribution or grant has been accepted, and thereafter the same is discontinued or rejected, the county tax levy for the purpose of this chapter shall not be increased more than thirteen and one-half cents per thousand dollars of assessed value and the state appropriation shall not be increased more than seven hundred fifty thousand dollars in any one fiscal year by reason of such discontinuance or rejection of any such contribution or grant. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§239.15]

239.16 Merit rating for employees. The selection of all persons as employees of the state director in the administration of this chapter shall be governed by the provisions of section 234.8. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§239.16]

239.17 Recovery of assistance obtained by fraudulent act. Whosoever obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement or representation, or by impersonation or any fraudulent device, any assistance as defined in

this chapter to which the recipient is not entitled, shall be personally liable for the amount of assistance thus obtained. Such amount may be recovered from the offender or his estate in an action brought or by claim filed in the name of the state, and upon recovery the state shall pay the county a portion thereof equal to the amount paid by the county with respect to such assistance and return the balance of such recovery to the fund for aid to dependent children. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§239.17]

239.18 State control exclusive. Questions of policy and control respecting administration of this chapter shall vest and remain in the state division of child and family services of the department of social services of the state of Iowa and the state director of said division for the purposes of administering all provisions of this chapter. In order to provide a uniform state-wide program for aid to dependent children, the state director shall promulgate such rules and regulations as may be necessary to make the provisions of this chapter uniform in all of the counties of this state. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§239.18]

Constitutionality, 50GA, ch 130,§19
Omnibus repeal, 50GA, ch 130,§22

239.19 Transfer aid funds to other work incentive programs. The department of social services shall be authorized to transfer such of the aid to dependent children funds in its control to any other department or agency of the state of Iowa for the purpose of providing funds to carry out the work incentive program created by Public Law 90-248, 81 Stat. 821, Title II, section 204, the Social Security Amendments of 1967 to the Social Security Act, and nothing in the laws of the state of Iowa shall be construed as limiting the authority granted by that Act. [C71, 73, 75,§239.19]

CHAPTER 239A

PUBLIC WORKS POSITIONS FOR CERTAIN PERSONS

239A.1 Who may be placed.
239A.2 Projects determined.
239A.3 Target areas selected.

239A.1 Who may be placed. Any person who is receiving or has obtained approval of an application to receive assistance under chapter 239, and who is an eligible person as defined by section 249C.1, subsection 5, may be referred to the employment security commission for placement in public works positions available pursuant to this chapter or to such other authority as may be applicable. [66GA, ch 1139,§1]

Referred to in §§239A.2, 239A.3

239A.2 Projects determined. The employment security commission, in consultation with the commissioner of social services, shall establish a procedure for assignment of persons referred under section 239A.1 to positions available in public works projects. The employment security commission shall arrange with units of local government for establishment of such projects, which may include any type of work or endeavor that is within the scope of authority of the unit of local government involved so long as the project meets the following requirements:

1. The project must create new employment opportunities and not fund existing employment of persons working for the local government unit or resume funding of projects for which the local government unit has, without fault, terminated employees within the previous six months and has not recalled those employees.

2. The benefits of the project result must inure primarily to the community or public at large.

3. The following conditions of employment must be satisfied:

a. The unit of local government with which the project is arranged must be the employer of the persons hired under the project.

b. The employees under the project must be paid at the same rate as other employees doing similar work for that unit of local government.

c. The employees must be considered regular employees of the unit of local government involved and must be entitled to participate in benefit programs of that unit of local government, including but not limited to workmen's compensation, but shall not be entitled to qualify for unemployment compensation benefits on the basis of employment under the project. [66GA, ch 1139,§2]

Referred to in §239A.3

239A.3 Target areas selected. The employment security commission shall select not to exceed two target counties for implementation of sections 239A.1 and 239A.2. In selecting the target county or counties in which this chapter is to be implemented, the employment security commission shall be guided by the following criteria:

1. The total number of unemployed persons in the county.

2. The number of unemployed persons in the county as a percentage of the available work force there.

3. The total number of persons receiving assistance under chapter 239 in that county.

4. The number of persons receiving assistance under chapter 239 in that county as a percentage of the total population of the county.

5. The number of unemployed heads of households receiving assistance under chapter 239 in that county.

6. The number of unemployed heads of households receiving assistance under chapter 239 in that county as a percentage of all recipients of such assistance in that county. [66GA, ch 1139,§3]

CHAPTER 240

PRIVATE INSTITUTIONS FOR NEGLECTED, DEPENDENT AND DELINQUENT CHILDREN

Repealed by 66GA, ch 1056,§45

CHAPTER 241

AID FOR THE BLIND

Commission for blind, see ch 601B. Child and family services, see ch 234
Repealed by 65GA, ch 186,§26

CHAPTER 241A

AID TO DISABLED PERSONS

Repealed by 65GA, ch 186,§26

CHAPTER 242

TRAINING SCHOOLS

242.1 Official designation.
242.2 Superintendent—powers and duties.
242.3 Salary.
242.4 Instruction and employment.
242.5 Procedure to commit.
242.6 Conviction for crime.
242.7 Placing in families.
242.8 Articles of agreement.
242.9 Resuming custody of child.
242.10 Unlawful interference.
242.11 County attorney to appear for child.
242.12 Discharge or parole.
242.13 Binding out or discharge.
242.14 Transfers to other institutions.
242.15 Transfers to work in parks.

242.1 Official designation. The state training school at Eldora shall be known as the "Iowa Training School for Boys". The state training school at Mitchellville shall be known as the "Iowa Training School for Girls". For the purpose of this chapter the word "director" or "state director" shall mean the director of the division of child and family services of the department of social services. [S13, §2701-a; C24, 27, 31, 35, 39,§3685; C46, 50, 54, 58, 62, 66, 71, 73, 75,§242.1]

Utility easements, 64GA, ch 1135,§1; 65GA, ch 1075,§2

242.2 Superintendent — powers and duties. The superintendent shall have charge and custody of the inmates of the school. He shall discipline, govern, instruct, employ, and use his best endeavors to reform the pupils in his care, so that, while preserving their health, he may promote, as far as possible, moral, religious, and industrious habits, and regular, thorough, and progressive improvement in their studies, trade, and employment. [C73, §§1651, 1652; C97,§2707; S13,§2707; C24, 27, 31, 35, 39,§3686; C46, 50, 54, 58, 62, 66, 71, 73, 75, §242.2]

242.3 Salary. The salaries of the superintendents of the training schools shall be determined by the state director. [S13,§2727-3a;

C24, 27, 31, 35, 39,§3687; C46, 50, 54, 58, 62, 66, 71, 73, 75,§242.3]

242.4 Instruction and employment. The state director shall cause the boys and girls in said schools to be instructed in piety and morality, in such instruction on the Constitutions of the United States and of this state as is required in the common schools, and in such branches of useful knowledge as are adapted to their age and capacity, including the effect of alcoholic liquors, stimulants, and narcotics on the human system, and in some regular course of labor, either mechanical, agricultural, or manufactural, as is best suited to their age, strength, disposition, capacity, reformation, and well-being. [C73,§1648; C97,§2706; C24, 27, 31, 35, 39,§3688; C46, 50, 54, 58, 62, 66, 71, 73, 75,§242.4]

242.5 Procedure to commit. The procedure for the commitment of children to the state training school, except as otherwise provided, shall be the same as provided in chapter 232. [C73,§§1653–1659; C97,§§2708, 2709; S13,§§2708, 2709; C24, 27, 31, 35, 39,§3689; C46, 50, 54, 58, 62, 66, 71, 73, 75,§242.5]

242.6 Conviction for crime. When a boy or girl over twelve and under seventeen years of age, of sound mind, is found guilty in the district court of any crime except murder, the court may order the child sent to the state training school for boys, or for girls, as the case may be. [C73,§§1653, 1654; C97,§2708; S13, §2708; C24, 27, 31, 35, 39,§3690; C46, 50, 54, 58, 62, 66, 71, 73, 75,§242.6]

242.7 Placing in families. All children committed to and received in the training schools may be placed by the department under foster care arrangements, with any persons or in families of good standing and character where they will be properly cared for and educated. The cost of foster care provided under these arrangements shall be paid as provided in sections 234.35 and 234.36. [C73,§1649; C97,§2704; S13,§2704; C24, 27, 31, 35, 39,§3691; C46, 50, 54, 58, 62, 66, 71, 73, 75,§242.7]

Referred to in §242.11

242.8 Articles of agreement. Such children shall be so placed under articles of agreement, approved by the state director and signed by the person or persons taking them and by the superintendent. Said articles shall provide for the custody, care, education, maintenance, and earnings of said children for a time to be fixed in said articles, which shall not extend beyond the time when the persons bound shall attain the age of eighteen years. [C73,§1649; C97,§2704; S13,§2704; C24, 27, 31, 35, 39,§3692; C46, 50, 54, 58, 62, 66, 71, 73, 75,§242.8]

Referred to in §242.11

242.9 Resuming custody of child. In case a child so placed be not given the care, education, treatment, and maintenance required by such agreement, the state director may cause the child to be taken from the person with whom placed and returned to the institution, or may replace, release, or finally discharge him as may seem best. [C73,§1649; C97, §2704; S13,§2704; C24, 27, 31, 35, 39,§3693; C46, 50, 54, 58, 62, 66, 71, 73, 75,§242.9]

Referred to in §242.11

242.10 Unlawful interference. It shall be unlawful for any parent or other person not a party to such placing of a child to interfere in any manner or assume or exercise any control over such child or his earnings. Said earnings shall be used, held, or otherwise applied for the exclusive benefit of such child, in accordance with section 234.37. [S13,§2704; C24, 27, 31, 35, 39,§3694; C46, 50, 54, 58, 62, 66, 71, 73, 75,§242.10]

Referred to in §242.11

242.11 County attorney to appear for child. In case legal proceedings are necessary to enforce any right conferred on any child by sections 242.7 to 242.10, inclusive, the county attorney of the county in which such proceedings should be instituted shall, on request of the superintendent, approved by the state director, institute and carry on, in the name of the superintendent, the proceedings in behalf of the superintendent. [S13,§2704; C24, 27, 31, 35, 39,§3695; C46, 50, 54, 58, 62, 66, 71, 73, 75, §242.11]

242.12 Discharge or parole. The state director may at any time after one year's service order the discharge or parole of any inmate as a reward for good conduct, and may, in exceptional cases, discharge or parole inmates without regard to the length of their service or conduct, when satisfied that the reasons therefor are urgent and sufficient. If paroled upon satisfactory evidence of reformation, the order may remain in effect or terminate under such rules as the state director may prescribe. [C73,§§1660, 1661; C97,§2711; S13,§2711; C24, 27, 31, 35, 39,§3696; C46, 50, 54, 58, 62, 66, 71, 73, 75,§242.12]

242.13 Binding out or discharge. The binding out or the discharge of an inmate as reformed, or having arrived at the age of eighteen years, shall be a complete release from all penalties incurred by the conviction for the offense upon which the child was committed to the school. [C73,§1661; C97,§2711; S13,§2711; C24, 27, 31, 35, 39,§3697; C46, 50, 54, 58, 62, 66, 71, 73, 75,§242.13]

242.14 Transfers to other institutions. The state director may transfer to the schools minor wards of the state from any institution under his charge but no person shall be so transferred who is mentally ill or mentally retarded. Any child in the schools who is mentally ill or mentally retarded may be transferred by the director to the proper state institution. [C66, 71, 73, 75,§242.14]

242.15 Transfers to work in parks. The state director may detail boys and girls, classed as trustworthy, from the Iowa training

schools for boys at Eldora and the Iowa training school for girls at Mitchellville, to perform services for the state conservation commission within the state parks, state game and forest areas and other lands under the jurisdiction of said commission. The conservation commission shall provide such permanent housing and work guidance supervision, but the care and custody of said boys and girls shall remain under employees of the division of child and family services of the department of social services. All such programs shall have as their primary purpose and shall provide for inculcation or the activation of attitudes, skills and habit patterns which will be conducive to the habilitation of said youths.

The state director is hereby authorized to use state-owned mobile housing equipment and facilities in performing such services at temporary locations in the above areas. [C66, 71, 73, 75,§242.15]

CHAPTER 243

IOWA JUVENILE HOME

Repealed by 52GA, ch 139,§8. See chapter 244

CHAPTER 244

IOWA JUVENILE HOME

244.1 Definitions—objects.
244.2 Salary.
244.3 Admissions.
244.4 Procedure.
244.5 Transfers.
244.6 Profits and earnings.
244.7 Rules.
244.8 Repealed by 65GA, ch 185,§1.
244.9 Repealed by 66GA, ch 1133,§13.
244.10 Placing child under contract.
244.11 Recovery of possession.
244.12 Recovery of child—duty of county attorney.
244.13 Interference with child.
244.14 Counties liable.
224.15 Repealed by 66GA, ch §1133,§13.

244.1 Definitions—objects. For the purpose of this chapter, unless the context otherwise requires:

1. *"Director"* or *"state director"* means the director of the division of child and family services of the department of social services.

2. *"Home"* means the Iowa juvenile home.

3. *"Superintendent"* means the superintendent of the Iowa juvenile home.

The Iowa juvenile home shall be maintained for the purpose of providing care, custody and education of such children as are committed to the home. Such children shall be wards of the state. Their education shall embrace instruction in the common school branches and in such other higher branches as may be practical and will enable the children to gain useful and self-sustaining employment. The state director and the superintendent of the home shall assist all discharged children in securing suitable homes and proper employment. [C97,§2689; C24, 27, 31, 35, 39, §§3698, 3706; C46,§§243.1, 244.1; C50, 54, 58, 62, 66, 71, 73, 75,§244.1; 66GA, ch 1133,§4]

244.2 Salary. The salary of the superintendent of the home shall be determined by the state director. [S13,§2727-3a; C24, 27, 31, 35, 39,§3707; C46, 50, 54, 58, 62, 66, 71, 73, 75, §244.2; 66GA, ch 1133,§5]

244.3 Admissions. Admission to the home shall be granted to resident children of the state under seventeen years of age, as follows, giving preference in the order named:

1. Destitute children, and orphans unable to care for themselves, of soldiers, sailors, or marines.

2. Neglected, dependent or delinquent children committed thereto by the juvenile court.

3. Other destitute children. [C97,§2685; S13, §2685; C24, 27, 31, 35, 39,§§3699, 3708; C46, §§243.2, 244.3; C50, 54, 58, 62, 66, 71, 73, 75, §244.3; 66GA, ch 1133,§6]

244.4 Procedure. The procedure for commitment to the home shall be the same as provided by chapter 232, but admission may be granted on voluntary applications signed by the legal custodian of the child and approved by a judge of a court of record, or by the board of supervisors, of the county of the child's residence. Such applications shall be subject to the approval of the state director and shall be in such form as he or she may prescribe. Any child not mentally normal, or who is incorrigible, or who has any vicious habits, or whose presence in the home would be inimical to the moral or physical welfare of normal children therein, shall be denied

voluntary admission to the home. [C97,§2685; S13,§2685; C24, 27, 31, 35, 39,§**3709**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§244.4; 66GA, ch 1133,§7]

244.5 Transfers. The state director may transfer to the home minor wards of the state from any institution under the state director's charge or under the charge of any other director of the department of social services; but no person shall be so transferred who is not mentally normal, or who is incorrigible, or has any vicious habits, or whose presence in the home would be inimical to the moral or physical welfare of normal children therein, and any such child in the home may be transferred to the proper state institution. [C24, 27, 31, 35, 39,§**3710**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§244.5; 66GA, ch 1133,§8]

244.6 Profits and earnings. Any money earned by a child who is admitted to or placed in foster care from the home shall be used, held or otherwise applied for the exclusive benefit of that child, in accordance with section 234.37. [C97,§2689; S13,§2690-d; C24, 27, 31, 35, 39,§**3711**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §244.6; 66GA, ch 1133,§9]

244.7 Rules. All children admitted or committed to the home shall be wards of the state and subject to the rules of the home. Subject to the approval of the state director, any child received under voluntary application may be expelled by the superintendent for disobedience and refusal to submit to proper discipline. Children shall be discharged upon arriving at the age of eighteen years, or sooner if possessed of sufficient means to provide for themselves. [C73,§1634; C97,§§2685, 2688; S13, §§2685, 2688, 2690-b; C24, 27, 31, 35, 39,§**3712**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§244.7]

244.8 Repealed by 65GA, ch 185,§1.

244.9 Repealed by 66GA, ch 1133,§13.

244.10 Placing child under contract. Any child received in the home, unless adopted, may be placed by the department in foster care with any proper person or family. The foster care arrangement shall provide for the custody, care, education, maintenance, and earnings of the child for a fixed time which shall not extend beyond the age of majority, except that the time may extend beyond the child's eighteenth birthday until the child is twenty-one years of age if the child is regularly atending an approved school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs. [S13,§2690-b; C24, 27, 31, 35, 39,§**3716**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§244.10; 66GA, ch 1133,§10]

244.11 Recovery of possession. In case of a violation of the terms of such contract, the state director may cause the child to be taken from the person or persons with whom placed, and may make such other disposition of him as shall seem to be for his best interests. [S13, §2690-c; C24, 27, 31, 35, 39,§**3717**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§244.11]

244.12 Recovery of child—duty of county attorney. In case legal proceedings are necessary to recover the possession of such child, they may be instituted and carried on in the name of the superintendent, and the county attorney of the county in which the child is placed shall, if requested by the superintendent, act as his attorney in the proceedings. [S13,§2690-c; C24, 27, 31, 35, 39,§**3718**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§244.12]

244.13 Interference with child. It shall be unlawful for any parent or other person not a party to the placing of a child for a term of years, to interfere in any manner with or to assume or exercise any control over such child or his earnings while such contract is in force. [S13,§2690-d; C24, 27, 31, 35, 39,§**3719**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§244.13]

244.14 Counties liable. Each county shall be liable for sums paid by the home in support of all its children to the extent of a sum equal to one-half of the net cost of the support and maintenance of its children. The superintendent shall certify to the state comptroller on the first day of each fiscal quarter the amount chargeable to each county for such support. The sums for which each county is so liable shall be charged to the county and collected as a part of the taxes due the state, and paid by the county from the county mental health and institutions fund at the same time state taxes are paid.

Should any county fail to pay these bills within sixty days from the date of certificate from superintendent, the state comptroller shall charge the delinquent county the penalty of one percent per month on and after sixty days from date of certificate until paid. Such penalties shall be credited to the general fund of the state. [C97,§2692; SS15,§2692; C24, 27, 31, 35, 39,§**3720**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§244.14; 66GA, ch 1133,§11]

Similar provisions, §§230.20, 230.21, 271.14

244.15 Repealed by 66GA, ch 1133,§13.

CHAPTER 245

WOMEN'S REFORMATORY

245.1 Definitions—objects.
245.2 Superintendent—salary.
245.3 Service required.
245.4 Repealed by 65GA, ch 1093,§92.

245.5 Optional commitments for life.
245.6 Repealed by 66GA, ch 1141,§7.
245.7 Term of commitments.
245.8 Manner of committing females.
245.9 Costs of commitment.
245.10 Transfer of inmates—costs.
245.11 Effect of transfer.
245.12 Transfer of mentally ill.
245.13 Employment for discharged inmate.
245.14 Clothing, money and transportation.
245.15 Escape—reward.
245.16 Costs of returning inmate.
245.17 to 245.19 Reserved.
245.20 Federal prisoners.

245.1 Definitions—objects. For the purpose of this chapter *"director"* or *"state director"* shall mean the director of the division of corrections of the department of social services. [SS15,§§2713-n1,-n11; C24, 27, 31, 35, 39,§**3723**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§245.1; 66GA, ch 1141,§1]

Utility easements, 64GA, ch 1135,§3

245.2 Superintendent—salary. The superintendent of the women's reformatory shall receive a salary as determined by the state director. [SS15,§2713-n2; C24, 27, 31, 35, 39,§**3724**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§245.2]

245.3 Service required. The superintendent may, with the approval of the state director, require any inmate to perform any service suited to her strength and attainments and which may be needed for the benefit of the reformatory or for the welfare of such inmate. [SS15,§2713-n11; C24, 27, 31, 35, 39,§**3725**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§245.3]

245.4 Repealed by 65GA, ch 1093,§92.

245.5 Optional commitments for life. Any unmarried female over ten and under eighteen years of age convicted of an offense punishable by life imprisonment may be committed either to the Iowa training school for girls or to the women's reformatory. [SS15,§2713-n7; C24, 27, 31, 35, 39,§**3727**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§245.5]

245.6 Repealed by 66GA, ch 1141,§7.

245.7 Term of commitments. A female convicted of a felony shall not be detained in said reformatory under one commitment for a period longer than the maximum term of imprisonment provided by law for said felony. A female convicted of a crime and sentenced to a term of less than one year shall not be detained therein. [SS15,§2713-n12; C24, 27, 31, 35, 39,§**3729**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §245.7; 66GA, ch 1141,§2]

245.8 Manner of committing females. Females committed to said reformatory shall be taken thereto by some woman, or by some peace officer accompanied by some woman, appointed by the court. [SS15,§2713-n9; C24, 27, 31, 35, 39,§**3730**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§245.8]

245.9 Costs of commitment. The costs and expenses allowed for taking females to the reformatory shall be the same as those allowed by law for taking girls to the training school, and shall be audited and paid in like manner by the counties from which they are sent. [SS15,§2713-n9; C24, 27, 31, 35, 39,§**3731**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§245.9]

Costs of commitment, §337.11(10, 14)

245.10 Transfer of inmates—costs. The state director in co-operation with the commissioner of the department of social services and the directors of the other divisions of the department of social services may transfer inmates from the said reformatory to the training school for girls, and from such training school to such reformatory, whenever such course will be conducive to the welfare of the institution or of the other inmates therein, or of the inmates so transferred. The costs of such transfer shall be paid from the funds of the institution from which the transfer is made. [SS15,§2713-n10; C24, 27, 31, 35, 39,§**3732**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§245.10]

Referred to in §245.11

245.11 Effect of transfer. After a transfer to either institution is made, under section 245.10, the person transferred shall be subject to all the provisions of law and regulations of the institution to which she is transferred, and for the purposes of chapter 745, a person transferred from the training school for girls to the women's reformatory shall be regarded as having been committed thereto. [SS15,§2713-n10; C24, 27, 31, 35, 39,§**3733**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§245.11]

245.12 Transfer of mentally ill. The said state director may cause any woman committed to said reformatory and suspected of being mentally ill to be examined by one of the superintendents or his qualified designee of a state hospital for the mentally ill or transferred to the Iowa security medical facility for examination. If the woman is found to be mentally ill, the department may order such woman transferred to or retained at a state hospital or the Iowa security medical facility where she shall thereafter be maintained and treated at the expense of the state until such time as she regains her good mental health when she shall be returned to said reformatory. The cost of such transfer and return shall be paid as heretofore provided for other transfers. [C27, 31, 35,§3733-b1; C39,§**3733.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§245.12]

Referred to in §229.26
Examination, §246.16

245.13 Employment for discharged inmate. It shall be the duty of the superintendent, so far as is practicable, to obtain for each inmate

before she is paroled or discharged a home and suitable employment if they are not otherwise provided. [SS15,§2713-n14; C24, 27, 31, 35, 39, §3736; C46, 50, 54, 58, 62, 66, 71, 73, 75,§245.13]

245.14 Clothing, money and transportation. When an inmate is discharged, paroled, or placed on work release, the warden or superintendent shall furnish her, at state expense, appropriate clothing and transportation to the place in this state indicated in the inmate's discharge, parole, or work release plan. When an inmate is discharged, paroled, or placed on work release, the warden or superintendent shall provide her, at state expense, money in accordance with the following schedule:

1. Upon discharge or parole, one hundred dollars.
2. Upon being placed on work release, fifty dollars.
3. Upon going from an educational work release to parole or discharge, fifty dollars.

Those inmates receiving payment under subsections 2 or 3 shall not be eligible for payment under subsection 1 unless they are returned to the institution. The superintendent shall maintain an account of all funds expended pursuant to this section. [SS15, §2713-n14; C24, 27, 31, 35, 39,§3737; C46, 50, 54, 58, 62, 66, 71, 73, 75,§245.14; 66GA, ch 146,§1, ch 1142,§1]

245.15 Escape—reward. Any inmate of said reformatory who shall escape therefrom may be arrested and returned to said reformatory, by an officer or employee thereof without any other authority than this chapter, and by any peace officer or other person on the request in writing of the superintendent or the state director. [SS15,§2713-n15; C24, 27, 31, 35, 39,§3738; C46, 50, 54, 58, 62, 66, 71, 73, 75,§245.15]

245.16 Costs of returning inmate. The costs attending the return of escaped or paroled inmates shall be paid from the funds of the institution. [SS15,§2713-n15; C24, 27, 31, 35, 39, §3739; C46, 50, 54, 58, 62, 66, 71, 73, 75,§245.16]
Referred to in §229.26

245.17 to 245.19 Reserved.

245.20 Federal prisoners. Inmates sentenced for any term by any court of the United States may be received by the superintendent into the women's reformatory and there kept in pursuance of their sentences. Inmates at the women's reformatory may also be transferred to the federal bureau of prisons. If an inmate objects to her transfer to the federal bureau of prisons, the inmate shall be afforded a hearing as provided in section 217.22. [66GA, ch 1140,§1]

CHAPTER 246

PENITENTIARY AND MEN'S REFORMATORY

Utility easement at Anamosa, 66GA, ch 147,§1

246.1 Definitions.
246.2 Duty of wardens.
246.3 Salaries—uniforms.
246.4 Eight-hour day.
246.5 Repealed by 61GA, ch 223,§1.
246.6 Household and domestic service.
246.7 Dwellings.
246.8 Punishment and records thereof.
246.9 According prohibited privileges.
246.10 Failure to perform duty.
246.11 Federal prisoners.
246.12 Transfers from penitentiary.
246.13 Permissive transfers.
246.14 Mandatory transfers.
246.15 Repealed by 62GA, ch 199,§15.
246.16 Transfer of mentally ill.
246.17 Discharge of mentally ill.
246.18 Employment of prisoners—institutions and parks.
246.19 Erections or repairs at other institutions.
246.20 Repealed by 52GA, ch 140,§1.
246.21 Price lists to public officials.
246.22 Repealed by 52GA, ch 140,§1.
246.23 Purchase mandatory.
246.24 Selling price.
246.25 Limitation on contract.
246.26 Industry revolving fund.
246.27 Use of fund.
246.28 Fund permanent.
246.29 and 246.30 Repealed by 52GA, ch 140,§3.
246.31 Hard labor and solitary imprisonment.
246.32 Enforcing obedience to orders.
246.33 Insurrection.
246.34 Escape of prisoner.
246.35 Repealed by 65GA, ch 1164,§3.
246.36 Classification of prisoners.
246.37 Property of convict.
246.38 Time to be served—credit.
246.39 Reduction of sentence.
246.40 Records of prisoners.
246.41 Forfeiture of reduction.
246.42 Separate sentences.
246.43 Special reduction.
246.44 Clothing, transportation and money.
246.45 Repealed by 59GA, ch 140,§3.
246.46 Who may visit.
246.47 Patients for medical research.

246.1 Definitions. For the purpose of this chapter "director" or "state director" shall mean the director of the division of corrections of the department of social services. [C71, 73, 75,§246.1]

246.2 Duty of wardens. The wardens of the penitentiary and of the men's reformatory shall live within the precincts of said institutions, respectively, and shall devote their entire time to the duties of their positions. [C51, §3128; R60,§5142; C73,§4748; C97,§5663; S13,§5663; C24, 27, 31, 35, 39,§3740; C46, 50, 54, 58, 62, 66, §246.1; C71, 73, 75,§246.2]

246.3 Salaries — uniforms. The warden, deputy warden, assistant deputy warden, chief clerk, chaplain, additional chaplain, physician, storekeeper, record clerk, and receiving officer of the penitentiary and men's reformatory shall receive such salaries as shall be determined by the state director.

Captains, inspectors, turnkeys, guards first class, guards second class, and guards third class shall receive such compensation as shall be determined by the state director and in addition shall receive a midshift meal when on duty.

The state director shall provide each newly employed custodial staff employee uniforms required by the state director to be worn when on duty. All uniforms required to be worn by new and presently employed uniformed custodial staff employees shall be maintained and replaced at no cost to the employees. All uniforms and uniform replacements provided by the state director shall remain the property of the state director. [R60,§§5190, 5191, 5192, 5193; C73,§§4783, 4784; C97,§5716; SS15,§5716; C24, 27, 31, 35, 39, §§3741, 3742; C46, 50, 54, 58, 62, 66,§§246.2, 246.3; C71, 73, 75,§246.3]

246.4 Eight-hour day. Eight hours shall constitute a day's work for the receiving clerk, record clerk, all captains, turnkeys, and guards, and all necessary time in excess thereof shall be paid for at not less than pro rata pay. [C24, 27, 31, 35, 39,§3743; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.4]

246.5 Repealed by 61GA, ch 223,§1.

246.6 Household and domestic service. The wardens of the penitentiary and the men's reformatory shall be entitled to receive the labor of prisoners, not exceeding three at one time, for household and domestic service in their own families. [R60,§5168; C73,§4767; C97,§5717; SS15,§5717; C24, 27, 31, 35, 39,§3745; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.6]

246.7 Dwellings. Each deputy warden shall be furnished with a dwelling house by the state director, or house rent, and also furnished with water, heat, ice, and lights, and domestic service in his family by not more than one prisoner at one time. [SS15,§5717; C24, 27, 31, 35, 39,§3746; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.7]

246.8 Punishment and records thereof. Disobedience by the convicts of the disciplinary rules of the institution shall be punished by the infliction of such penalties as are provided by law and the rules which are prescribed for the government of said institution. The warden shall keep a register of all punishments inflicted on any convict, and the cause for which they were inflicted. [R60, §5179; C73,§4751; C97,§5666; C24, 27, 31, 35, 39,§3747; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.8]

246.9 According prohibited privileges. If any officer or other person employed in either of said institutions or its precincts, negligently suffer any convict confined therein to be at large without its precincts, or out of the cell or apartment assigned to him, or to be conversed with, relieved, or comforted contrary to law or the rules of the institution, he shall be punished by a fine not exceeding five hundred dollars. [C51,§3144; R60,§5157; C73,§4796; C97,§5694; C24, 27, 31, 35, 39,§3748; C46, 50, 54. 58, 62, 66, 71, 73, 75,§246.9]

246.10 Failure to perform duty. Any person required to perform any duty relative to either of said institutions who willfully fails to perform the same, shall be punished by a fine not exceeding one thousand dollars, and shall forfeit his office. Should such failure result in the escape of any of the convicts, or in loss of any of the funds appropriated to the use and benefit of the said institution, exceeding twenty dollars, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than ten years. [R60,§5196; C73,§4805; C97,§5701; C24, 27, 31, 35, 39,§3749; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.10]

246.11 Federal prisoners. Inmates sentenced for any term by any court of the United States may be received by the warden into the penitentiary or the men's reformatory and there kept in pursuance of their sentences. Inmates at either the penitentiary or men's reformatory may also be transferred to the federal bureau of prisons. If an inmate objects to his transfer to the federal bureau of prisons, the inmate shall be afforded a hearing as provided in section 217.22. [C51,§3119; R60, §5138; C73,§4771; C97,§5676; C24, 27, 31, 35, 39, §3750; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.11; 66GA, ch 1140,§2]

246.12 Transfers from penitentiary. The state director may transfer first term and promising prisoners from the penitentiary to unoccupied rooms in the men's reformatory whenever the number of inmates in the penitentiary exceeds the number of cells therein. He may also transfer to the men's reformatory other prisoners when satisfied that such transfer will be to the best interest of the institutions and of the prisoners. [S13,§5718-a10; C24, 27, 31, 35. 39,§3751; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.12]

246.13 Permissive transfers. The state director may transfer prisoners from the men's reformatory to the penitentiary:

1. When the prisoner has been guilty of insubordination or of repeated violations of the rules of the reformatory.

2. When the prisoner is not a hopeful subject for reformatory treatment. [S13,§5718-a7; C24, 27, 31, 35, 39,§3752; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.13]

246.14 Mandatory transfers. Said state director shall transfer a prisoner from the men's reformatory to the penitentiary when, after his commitment to the reformatory, it is discovered that he is over thirty years of age, or that he has, prior to his last conviction, been convicted in any court of any felony; but such transfer shall not be made unless there are suitable accommodations at the penitentiary to care for such prisoner. [S13,§5718-a8; C24, 27, 31, 35, 39,§3753; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.14]

246.15 Repealed by 62GA, ch 199,§15.

246.16 Transfer of mentally ill. When the said state director has cause to believe that a prisoner in the penitentiary or reformatory is mentally ill, the department may cause such prisoner to be transferred to the Iowa security medical facility for examination, diagnosis, or treatment. The prisoner shall be confined at such institution or a state hospital for the mentally ill until the expiration of his sentence or until he is pronounced in good mental health. If the prisoner is pronounced in good mental health before the expiration of his sentence, he shall be returned to the penitentiary or reformatory until the expiration of his sentence. The provisions of the Code applicable to an inmate at the correctional institution from which transferred shall remain applicable during the inmate's stay at the Iowa security medical facility. However, sections 246.32 and 246.33 shall apply to the total inmate population, including both convicts and patients. [SS15,§§5709-b,-e; C24, 27, 31, 35, 39, §3755; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.16]

Analogous provision, §245.12

246.17 Discharge of mentally ill. When the state director has reason to believe that a prisoner in the penitentiary or said reformatory, whose sentence has expired, is mentally ill, it shall cause examination to be made of such prisoner by competent physicians who shall certify to the state director whether such prisoner is in good mental health or mentally ill. The state director may make further investigation and if satisfied that he is mentally ill, he may cause him to be transferred to one of the hospitals for the mentally ill, or may order him to be confined in the Iowa security medical facility. [C97,§5710; C24, 27, 31, 35, 39, §3756; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.17]

246.18 Employment of prisoners — institutions and parks. Prisoners in the penitentiary or men's reformatory shall be employed only on state account in the maintenance of the institutions, in the erection, repair, or operation of buildings and works used in connection with said institutions, and in such industries as may be established and maintained in connection therewith by the state director. The state director may detail prisoners, classed as trusties, from the state penitentiary or reformatory to perform services for the conservation commission within the state parks. The conservation commission shall provide proper supervision, housing and maintenance for said prisoners but the surveillance of said prisoners shall remain under employees of the state director. All such employment, including but not limited to that provided in this section, shall have as its primary purpose, and shall provide for, inculcation or the reactivation of attitudes, skills, and habit patterns which will be conducive to prisoner rehabilitation. [S13,§5702-a; SS15,§5718-a11; C24, 27, 31, 35, 39,§3757; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.18]

246.19 Erections or repairs at other institutions. The state director may temporarily detail, under proper surveillance, trustworthy prisoners to perform services in the construction or repair of any work imposed on the state director at any institution under his control. [C24, 27, 31, 35, 39,§3758; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.19]

246.20 Repealed by 52GA, ch 140,§1.

246.21 Price lists to public officials. The state director shall, from time to time, prepare classified and itemized price lists of articles and things manufactured at the state institutions controlled by him, and furnish such lists to all boards of supervisors, boards of school directors, city councils and commissions, township trustees, and all other departments and officials of the state, county and cities empowered to make purchase of supplies for public purposes. [C24, 27, 31, 35, 39,§3760; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.21]

246.22 Repealed by 52GA, ch 140,§1.

246.23 Purchase mandatory. No articles or supplies so listed, except in case of emergency, shall be purchased for public use by the aforesaid public officials, bodies, and departments from any private source unless the state director is unable to promptly furnish such articles or supplies. Any public officer who willfully refuses or willfully neglects to comply with this section shall be punished by a fine of not more than one hundred dollars. [C24, 27, 31, 35, 39,§3762; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.23]

246.24 Selling price. Such supplies, material, and articles manufactured by convict labor within the state shall be furnished by the state director to the state, its institutions and political subdivisions, at a price not greater than that obtaining for similar products in the open market. [C24, 27, 31, 35, 39, §3763; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.24]

246.25 Limitation on contract. The state director or the warden of the state penitentiary or the warden of the reformatory shall

not, nor shall any other person employed by the state, make any contract by which the labor or time of any prisoner or inmate in such penitentiary or reformatory shall be contracted, let, farmed out, given, or sold to any person, firm, association, or corporation. [S13,§§2727-a51, 5718-a28a; C24, 27, 31, 35, 39, §3764; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.25]

246.26 Industry revolving fund. There shall be created and established for the state penitentiary at Fort Madison and for the state reformatory at Anamosa an establishing and maintaining industries revolving fund, which fund shall be permanent and composed of the receipts from the sales of articles and products manufactured and produced, from the sale of obsolete and discarded property belonging to the various industrial departments, and from the funds now in the establishing and maintaining industry funds for each of said institutions. [C27, 31, 35, §3764-b1; C39,§**3764.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.26]

Referred to in §§246.27, 246.28

246.27 Use of fund. The fund created and described in section 246.26 shall be used only for establishing and maintaining industries for the employment of the inmates at the respective institutions named, except that such fund, if available, may, at the discretion of and with the approval of the state director, be used to provide vocational and educational facilities and services for such inmates at the institutions named, and payments from said fund shall be made in the same manner as are payments from the appropriations, salaries, support and maintenance of the institutions under the jurisdiction of the state director. This fund shall not be used for the operation of farms under the jurisdiction of the state director. [C27, 31, 35,§3764-b2; C39,§**3764.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.27]

Referred to in §246.28

246.28 Fund permanent. The fund provided in sections 246.26 and 246.27 shall not revert to the general fund at the end of any annual or biennial period. [C27, 31, 35,§3764-b3; C39,§**3764.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.28]

246.29 and 246.30 Repealed by 52GA, ch 140, §3.

246.31 Hard labor and solitary imprisonment. All commitments to either of said institutions must be at hard labor. Solitary imprisonment of prisoners shall not be employed except for the purpose of discipline. [C51, §3118; R60,§5137; C73,§4770; C97,§5675; C24, 27, 31, 35, 39,§**3767**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.31]

246.32 Enforcing obedience to orders. Any officer of said institutions and his assistants shall, in case a prisoner resists his lawful authority, or refuses to obey his lawful command, enforce immediate obedience by the use of such weapons or other aids as may be effectual, and if, in so doing, such convict is wounded or killed, such officer and his assistants shall be justified. [C51,§3145; R60,§5158; C73,§4797; C97,§5695; C24, 27, 31, 35, 39,§**3768**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.32]

Referred to in §246.16

246.33 Insurrection. Every officer and citizen of the state within reach shall, by every means within their power, suppress and aid in suppressing any insurrection among the convicts in said institutions, and prevent and aid in preventing the escape or rescue of any convict therefrom, or from any legal confinement, or from any person in whose custody a convict may be. If in the performance of this duty or in arresting or assisting to arrest a convict who has escaped or been rescued, such officer or person wound or kill the convict, or a person aiding or assisting him, the same shall be held justifiable. [C51,§3146; R60, §5159; C73,§4798; C97,§5696; C24, 27, 31, 35, 39, §**3769**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.33]

Referred to in §246.16

246.34 Escape of prisoner. If a convict escapes from the penitentiary, Iowa security medical facility or the men's reformatory, the warden or superintendent shall take all proper measures for his apprehension. [C51,§3147; R60,§5160; C73,§4776; C97,§5681; C24, 27, 31, 35, 39,§**3770**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.34]

246.35 Repealed by 65GA, ch 1164,§3.

246.36 Classification of prisoners. The wardens shall, so far as practicable, prevent prisoners under eighteen years of age from associating with other prisoners. [C97,§5693; C24, 27, 31, 35, 39,§**3771**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.36]

246.37 Property of convict. The warden shall receive and care for any property any convict may have on his person upon entering, and, if convenient, place the same, if money, at interest for the owner's use, keeping an account thereof, and on the discharge of the convict, return, and if money, repay the same with the interest so earned, to him or his legal representatives, unless in the meantime it has been previously disposed of according to law. [C51,§3149; R60,§5162; C73,§4778; C97,§5683; C24, 27, 31, 35, 39,§**3772**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.37]

246.38 Time to be served—credit. No convict shall be discharged from the penitentiary or the men's reformatory until he has served the full term for which he was sentenced, less good time earned and not forfeited, unless he be pardoned or otherwise legally released. He shall be deemed to be serving his sentence from the day on which he is received into the institution, but not while in solitary confinement for violation of the rules of the institution; provided, however, if a convict had been confined to a county jail or other correc-

tional or mental institution at any time prior to sentencing, or after sentencing but prior to his case having been decided on appeal, because of failure to furnish bail or because of being charged with a nonbailable offense, he shall be given credit for such days already served in jail upon the term of his sentence. The clerk of the district court of the county from which the convict was sentenced, shall certify to the warden the number of days so served. [C51,§3148; R60,§5161; C73,§4777; C97, §5682; C24, 27, 31, 35, 39,§3773; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.38]

246.39 Reduction of sentence. Each prisoner who shall have no infraction of the rules of discipline of the penitentiary or the men's or women's reformatory or laws of the state, recorded against him, and who performs in a faithful manner the duties assigned to him, shall be entitled to a reduction of sentence as follows, and if the sentence be for less than a year, then the pro rata part thereof:

1. On the first year, one month.
2. On the second year, two months.
3. On the third year, three months.
4. On the fourth year, four months.
5. On the fifth year, five months.
6. On each year subsequent to the fifth year, six months.

[C97,§5703; C24, 27, 31, 35, 39,§3774; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.39]

246.40 Records of prisoners. The state director shall cause to be kept at each of the institutions the following permanent records:

1. A record of each infraction, by a prisoner, of the published rules of discipline.

2. Such other records for the use of the board of parole as they may request. [C97, §5703; S13,§5718-a12; C24, 27, 31, 35, 39,§3775; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.40]

246.41 Forfeiture of reduction. A prisoner who violates any of such rules shall forfeit the reduction of sentence earned by him. as follows:

1. For the first violation, two days.
2. For the second violation, four days.
3. For the third violation, eight days.
4. For the fourth violation, sixteen days and, in addition, whatever number of days more than one that he is in punishment.
5. For the fifth and each subsequent violation, or for an escape, or attempt to escape, the warden shall have the power, with the approval of the state director, to deprive the prisoner of any portion or all of the good time that the convict may have earned. [C97, §5704; C24, 27, 31, 35, 39,§3776; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.41]

246.42 Separate sentences. When a convict is committed under several convictions with separate sentences, they shall be construed as one continuous sentence in the granting or forfeiting of good time. [C97,§5705; C24, 27, 31, 35, 39,§3777; C46, 50, 54, 58, 62, 66, 71, 73, 75, §246.42]

246.43 Special reduction. Any prisoner in either of said institutions who may be employed in any service outside the walls of the institution, or who may be listed as a trusty, may, with the approval of the state director, be granted a special reduction of sentence, in addition to the reduction heretofore authorized, at the rate of ten days for each month so served. [SS15,§5718-a11b; C24, 27, 31, 35, 39, §3778; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.43]

246.44 Clothing, transportation and money. When an inmate is discharged, paroled or placed on work release, the warden or superintendent shall furnish him, at state expense, appropriate clothing and transportation to the place in this state indicated in the inmate's discharge, parole or work release plan. When an inmate is discharged, paroled or placed on work release, the warden or superintendent shall provide him, at state expense, money in accordance with the following schedule:

1. Upon discharge or parole, one hundred dollars.

2. Upon being placed on work release, fifty dollars.

3. Upon going from an educational work release to parole or discharge, fifty dollars.

Those inmates receiving payment under subsections 2 or 3 shall not be eligible for payment under subsection 1 unless they are returned to the institution. The warden or superintendent shall maintain an account of all funds expended pursuant to this section. [C51,§3150; R60,§5163; C73,§4779; C97,5684; S13, §5718-a22; C24, 27, 31, 35, 39,§§3779, 3796; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§246.44, 247.16; 66GA, ch 146,§2, ch 1142,§2]

Analogous provision, §247.16

246.45 Repealed by 59GA, ch 140,§3.

246.46 Who may visit. The following persons are authorized to visit said institutions at pleasure: The governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, members of the general assembly, judges of the supreme and district courts, including district associate judges and judicial magistrates, county attorneys, and all regular officiating ministers of the gospel. No other person shall be granted admission except by permission of the warden. [C51,§3152; R60, §5165; C73,§4781; C97,§5686; C24, 27, 31, 35, 39, §3781; C46, 50, 54, 58, 62, 66, 71, 73, 75,§246.46]

246.47 Patients for medical research. The state director may send to the hospital of the medical college of the state university inmates of the Iowa state penitentiary and the men's reformatory for medical research at the hospital. Before any inmate is sent to the medical college, he must volunteer his services in writing. An inmate may withdraw his consent at any time. [C66, 71, 73, 75,§246.47]

CHAPTER 246A

CORRECTIONAL RELEASE CENTER

(HALF-WAY HOUSE)

246A.1 Established by department of social services.
246A.2 Superintendent.
246A.3 Transfer of prisoners to center.
246A.4 Applicable statutes.

246A.1 Established by department of social services. The department of social services is hereby authorized to establish a facility for the preparation of all inmates of the corrective institutions under the department's jurisdiction for discharge or parole. The facility shall be known as the correctional release center and shall be operated in conjunction with and utilize the facilities of the prison honor farm at Newton, Iowa. [C71, 73, 75, §246A.1]

246A.2 Superintendent. The director of division of corrections, subject to approval of the department, shall appoint a superintendent who shall serve as the chief executive of the correctional release center. The superintendent shall be a reputable and qualified person experienced in the administration of programs for the rehabilitation and preparation of prisoners for their return to society. [C71, 73, 75,§246A.2]

246A.3 Transfer of prisoners to center. The department may transfer any inmate of a corrective institution within ninety days of the inmate's approaching release from custody to the release center for intensive training to assist the inmate in the transition to civilian living. [C71, 73, 75,§246A.3]

246A.4 Applicable statutes. The statutes applicable to an inmate at the corrective institution from which transferred shall remain applicable during the inmate's stay at the release center. [C71, 73, 75,§246A.4]

CHAPTER 247

PAROLES

Referred to in §§247A.9, 248.1
Federal funds appropriated, 65GA, ch 23,§2

247.1 Qualifications—term — vacancy—chairman.
247.2 Appointment—vacancies—expenses.
247.3 Secretary and staff.
247.4 Trips to other states.
247.5 Power to parole after commitment—detainers.
247.6 Rules.
247.7 Parole before commitment.
247.8 Employment for paroled prisoners.
247.9 Legal custody of paroled prisoners.
247.10 Reciprocal agreements with other states.
247.11 Order for recommitment—fees.
247.12 Parole time counted.
247.13 Investigations.
247.14 Duty of clerk of district court.
247.15 Duty of trial judge and prosecutor.
247.16 Repealed by 66GA, ch 1142,§3.
247.17 Parole relief fund.
247.18 Disbursement and repayment.
247.19 Vouchers.
247.20 and 247.21 Repealed by 65GA, ch 295, §16.
247.22 Powers of board and chief parole officer.
247.23 Expense.
247.24 Parole agent as peace officer.
247.25 Report by custodian.
247.26 Revocation of probation.
247.27 Violation of court probation.
247.28 Violation of board parole.
247.29 Criminal statistics.
247.30 Itemization of statistics.
247.31 Auditor to report statistics to clerk.
247.32 Biennial report.
247.33 Aiding and abetting parole violation.
247.34 to 247.39 Reserved.
247.40 Interstate probation and parole compact.

247.1 Qualifications—term—vacancy—chairman. The board of parole shall consist of three electors of the state. Not more than two members shall belong to the same political party. One member shall be a practicing attorney at law at the time of his appointment. Each member shall serve for six years from July 1 of the year of his appointment, except appointees to fill vacancies who shall serve for the balance of the unexpired term. The chairman of the board shall be the member whose term first expires. [S13,§5718-a14; C24, 27, 31, 35, 39,§3782; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.1]

247.2 Appointment — vacancies — expenses. The governor shall, during each regular session of the general assembly and within sixty

days after the convening thereof, appoint, with the approval of two-thirds of the members of the senate, a successor to that member of the board whose term will expire on July 1 following. Appointments may be made when the general assembly is not in session, to fill vacancies, but such appointments shall be subject to the approval of two-thirds of the members of the senate when next in session. Vacancies occurring during a session of the general assembly shall be filled as regular appointments are made and before the end of said session, and for the unexpired portion of the regular term.

Each member of the board, the secretary, and all other employees shall, in addition to salary, be entitled to receive their necessary traveling expenses by the nearest traveled route while engaged in official business. [S13, §§5718-a14,-a16; C24, 27, 31, 35, 39,§§**3783, 3784**; C46, 50, 54, 58, 62, 66,§§247.2, 247.3; C71, 73, 75,§247.2]

Confirmation, §2.32

247.3 Secretary and staff. The board of parole shall appoint an executive secretary and employ a clerical staff sufficient to carry on the necessary duties of the board. The board of parole shall employ not less than two persons who shall serve as liaison personnel between the board, inmates and staff at the state's penal and correctional facilities and who shall perform other duties designated by the board of parole. The board shall submit to the state comptroller an estimate of the funds needed for salaries, maintenance, and office supplies at the time and in the manner provided by section 8.23. [C71, 73, 75,§247.3]

247.4 Trips to other states. No traveling expenses to other states shall be allowed unless the trip is authorized by the board by a written resolution which shall state the purpose and declare the necessity for the trip prior to the actual making thereof, but emergency trips may be made on written order of the chairman which shall be reported to the board at its next meeting.

There is created within the office of the treasurer of state a fund to be known as the parolee security fund. There is transferred to the parolee security fund moneys presently in the custody of the executive secretary of the board of parole which moneys represent funds which were deposited as a bond to pay transportation costs which would be incurred if parolees who were allowed to leave this state violated the terms of their parole. The executive secretary of the board of parole may draw warrants against the parolee security fund to pay transportation costs incurred in returning parole violators from other states if funds in the parolee security fund were deposited as a bond for such a parolee, and may draw warrants to refund moneys deposited by a parolee or on the parolee's behalf when the term of parole expires. Unencumbered funds remaining in the parolee security fund as of June 30, 1980 shall revert to the general fund of the state. If a person shall establish after June 30, 1980 a valid claim to funds which were deposited in the parolee security fund, the amount of the claim may be refunded to the claimant by the state appeal board in the same manner as provided for refunds of fees paid to the state in section 25.2. [S13,§5718-a16; C24, 27, 31, 35, 39,§**3785**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.4; 66GA, ch 21,§2]

247.5 Power to parole after commitment—detainers. The board of parole shall determine which of the inmates of the state penal institutions qualify and thereafter shall be placed upon parole. Once an inmate is placed on parole he shall be under the supervision of the director of the division of corrections of the department of social services. There shall be a sufficient number of parole agents to insure proper supervision of all persons placed on parole. Parole agents shall not revoke the parole of any person but may recommend that the board of parole revoke such parole.

The board of parole shall, except as to prisoners serving life terms, or under sentence of death, or infected with venereal disease in communicable stage, have power to parole persons convicted of crime and committed to either the penitentiary or the men's or women's reformatory; provided, however, after any person has served fifteen years of a life term, the board of parole shall review the case and interview personally all such persons and make such recommendations as they see fit to the governor, and shall make similar interviews in each such case at least every three years thereafter.

The parole may be to a place outside the state when the board of parole shall determine it to be to the best interest of the state and the prisoner, under such rules and regulations as the board of parole may impose.

Prisoners against whom detainers have been filed, may, after serving a portion of their sentence, be released by parole to the institution or authorities filing the detainer.

Any detainer filed against a prisoner must within six months be supported by a grand jury indictment or county attorney's information. In the event such indictment is returned or information is filed, the prisoner shall have the right to demand immediate trial at the next term of court where the charge is filed. The prosecuting agency shall pay all costs of transportation, necessary expenses incurred by the prisoner and such guards and other safety measures as the warden shall deem necessary for the prisoner to appear at his trial.

In the event a detainer is not supported within six months by a county attorney's information or grand jury indictment, or in the event the prosecuting agency refuses or fails to give the prisoner immediate trial, or refuses or fails to furnish transportation and pay all other necessary and related costs incident to the prisoner appearing at his trial, the detainer

shall be held to be invalid and the parole board shall disregard such detainer in considering a prisoner for parole.

The board may also terminate or discharge a parole granted by it from the penitentiary or men's or women's reformatory or placed under its supervision by the district court at any time and at its sole discretion whenever it is satisfied that satisfactory evidence has been given that society will not suffer thereby. Said discharge shall relieve the parolee from further liability under his sentence. [S13,§5718-a18; C24, 27, 31, 35, 39,§3786; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.5]

247.6 Rules. Said board shall have power to establish rules and conditions under which paroles may be granted.

The director of the division of corrections of the department of social services shall also establish rules and conditions which shall be enforced by the chief parole officer and his staff regarding the supervision of parolees and probationers.

The rules and conditions of parole may require that restitution be made by the parolee to the victims who suffered pecuniary damages as a result of the parolee's criminal activities. Words defined in section 789A.8 shall have the same meaning in this paragraph. [S13,§5718-a18; C24, 27, 31, 35, 39, §3787; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.6]

247.7 Parole before commitment. Said board may, on the recommendation of the trial judge and prosecuting attorney, and when it appears that the good of society will not suffer thereby, parole, after sentence for less than life imprisonment and before commitment, prisoners who have not been previously convicted of a felony. [S13,§5718-a18; C24, 27, 31, 35, 39,§3788; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.7]

247.8 Employment for paroled prisoners. No person shall be released on parole until the board of parole shall have satisfactory evidence that arrangements have been made for his employment or maintenance. The chief parole officer may render assistance to prisoners about to be paroled in procuring employment and the necessary expense incident thereto shall be paid as other expenses of the chief parole officer are paid. [S13,§§5718-a18,-a26; C24, 27, 31, 35, 39,§3789; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.8]

247.9 Legal custody of paroled prisoners. All paroled prisoners shall remain, while on parole, in the legal custody of the warden or superintendent and under the control of the chief parole officer, and shall be subject, at any time, to be taken into custody and returned to the institution from which they were paroled.

During such time as the United States is at war the chief parole officer may relinquish the legal custody of a paroled prisoner to a military or naval authority for the period of service by the prisoner in the armed forces of the United States. [S13,§5718-a18; C24, 27, 31, 35, 39,§3790; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.9]

247.10 Reciprocal agreements with other states. The governor of the state of Iowa is hereby authorized and empowered to enter into compacts and agreements with other states, through their duly constituted authorities, in reference to reciprocal supervision of persons on parole or probation and for the reciprocal return of such persons to the contracting states for violation of the terms of their parole or probation. [C39,§3790.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.10]

Referred to in §247.40
See §247.40 for text of compact

247.11 Order for recommitment—fees. The written order of said board, certified to by the secretary of said board, that a prisoner on parole shall be taken into custody and returned to the institution from which paroled, shall be served by any peace officer or other person to whom it may be delivered for service, and such officer or person shall receive the same fees for serving such order as sheriffs receive for like service. [S13,§5718-a18; C24, 27, 31, 35, 39,§3791; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.11]

Fees, §337.11

247.12 Parole time counted. The time when a prisoner is on parole from the institution shall be held to apply upon the sentence against the parolee even if the parole is subsequently revoked, except that the time when the parolee is in violation of the terms of his parole agreement shall not apply upon the sentence.

The time when a prisoner is absent from the institution by reason of an escape shall not apply upon the sentence against the prisoner. [S13,§5718-a18; C24, 27, 31, 35, 39,§3792; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.12]

247.13 Investigations. Said board shall have power to direct the chief parole officer to make any investigation which such board may deem necessary in order to determine the facts relative to matters coming before it, but shall not receive, unsolicited by them, any petition or communication or argument in regard to application for parole, pardon, or discharge unless provided for in their adopted rules. Every public officer to whom inquiry may be addressed by the board of parole or the chief parole officer concerning any prisoner shall give said board or parole officer all information possessed by or accessible to him which may throw light upon the question of the fitness of a prisoner to receive the benefits of parole. [S13,§§5718-a19,-a26; C24, 27, 31, 35, 39,§3793; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.13]

247.14 Duty of clerk of district court. The clerk of the district court shall, as to each commitment to said institutions, furnish the board of parole and the chief parole officer with a copy of the indictment, the minutes of testi-

mony attached thereto, the name and residence of the trial judge, of the prosecuting attorneys, and of the jurors and witnesses sworn at the trial. [S13,§5718-a25; C24, 27, 31, 35, 39,§3794; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.14]

247.15 Duty of trial judge and prosecutor. The trial judge and the prosecuting attorney shall, when requested by the board or chief parole officer, furnish them with a full statement of the facts and circumstances attending the commission of the offense so far as known or believed by them. [S13,§5718-a25; C24, 27, 31, 35, 39,§3795; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.15]

Referred to in §218.97

247.16 Repealed by 66GA, ch 1142,§3.

247.17 Parole relief fund. There is hereby established, from any unappropriated funds in the state treasury, a fund of twelve hundred fifty dollars which shall be known as the parole relief fund. The treasurer of state shall continue to maintain said fund in said amount. [C24, 27, 31, 35, 39,§3797; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.17]

247.18 Disbursement and repayment. Said fund may be used for the relief of paroled prisoners who are in distress because of illness, loss of employment, or conditions creating personal need. In no instance shall the total amount advanced to a prisoner exceed twenty-five dollars. The prisoner, at the time of receiving an advancement, shall execute and deliver to the chief parole officer his written obligation to repay the same during the period of the parole. When so paid, the amount shall be deposited with the treasurer of state and credited to the fund from which drawn. [C24, 27, 31, 35, 39,§3798; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.18]

247.19 Vouchers. Such fund shall be drawn on vouchers executed by the chief parole officer in favor of said needy person. Each voucher shall show that the advancement was ordered by the chief parole officer. [C24, 27, 31, 35, 39,§3799; C46, 50, 54, 58, 62, 66, 71, 73, 75, §247.19]

247.20 and 247.21 Repealed by 65GA, ch 295, §16.

247.22 Powers of board and chief parole officer. The board of parole shall have and exercise over said probationer all the powers possessed by said board over prisoners paroled by it, and the chief parole officer shall supervise the probation of the convicted party in the same manner that he supervises prisoners paroled by the board of parole. [C24, 27, 31, 35, 39,§3802; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.22]

247.23 Expense. Any necessary expense contracted by the board in the care of a person committed to it under probation by the court shall be paid from the appropriation for the general expenditures of said board, except costs connected with the delivery of a person so granted probation to the institution to which sentenced upon revocation of the probation and the expenses of the chief parole officer shall be a part of and paid from the budget of the division of corrections of the department of social services. [C24, 27, 31, 35, 39,§3803; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.23]

247.24 Parole agent as peace officer. Any agent or investigator appointed or employed by the chief parole agent for the purpose of making investigations and of apprehending and returning persons granted a parole or probation under the jurisdiction of the chief parole agent to any institution, shall, while engaged in such duty or work, have all the powers of peace officers. [C31, 35,§3803-c1; C39, §3803.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.24]

247.25 Report by custodian. The person having the custody of such persons granted probation under order of court, shall, each thirty days, or oftener if required by the court, make written report to the judge as to the conduct of such persons granted probation. [S13,§5447-a; C24, 27, 31, 35, 39,§3804; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.25]

247.26 Revocation of probation. A suspension of a sentence by the court as herein provided may be revoked at any time, without notice, by the court or judge, and the defendant committed in obedience to such judgment. [S13,§5447-b; C24, 27, 31, 35, 39,§3805; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.26]

247.27 Violation of court probation. If the suspended sentence be an order for commitment to the training school, the fact that the defendant first violated his or her probation after reaching the age of seventeen years shall not prevent the enforcement of such sentence. [C24, 27, 31, 35, 39,§3806; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.27]

247.28 Violation of board parole. Whoever, while on parole, shall violate any condition of his parole, or any rule or regulation of the board granting the parole, shall be deemed guilty of a felony, and shall be punished by imprisonment in the institution from which he had been paroled, for a term of not more than five years, his sentence under such conviction to take effect upon the completion of his previous sentence. [C24, 27, 31, 35, 39,§3807; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.28]

247.29 Criminal statistics. The clerk of the district court shall, on or before July 15 each year, report to the board of parole and the director of the division of corrections of the department of social services:

1. The number of convictions of all offenses in that court, in his county, for the year ending June 30 preceding, the character of each offense, the sentence imposed, occupation of the offender, and whether such offender can read or write.

2. Number of acquittals.

3. Number of dismissals by the court without trial, and the nature of the charges so dismissed.

4. The expenses of the county for criminal prosecutions during said year. [C51,§148; R60, §349; C73,§203; C97,§293; S13,§293; C24, 27, 31, 35, 39,§3808; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.29]

Referred to in §247.30

247.30 Itemization of statistics. The fourth item required by section 247.29 shall be itemized as follows:

1. Jury fees in criminal cases.
2. Meals for jurors in criminal cases.
3. Bailiff's fee for service while attending criminal cases.
4. Expense of taking prisoners to prison.
5. Attorney fees under appointment to defend.
6. Grand jury fees.
7. Witness fees paid in criminal cases.
8. Reporters' fees for reporting and transcripting testimony in criminal cases at expense of county.
9. Grand jury witness fees paid.
10. Compensation to clerk of grand jury.
11. Compensation to bailiff of grand jury.
12. Fees and expenses paid sheriff and other officers by the county in connection with the grand jury.
13. Expense of jail, not including board of prisoners.
14. Board of prisoners.
15. Compensation and expense of county attorney and his assistants in criminal cases.
16. All jurors' fees, jurors' meals, and witness fees paid by the county in all criminal cases before a judicial magistrate. [C51,§148; R60,§349; C73,§203; C97,§293; S13,§293; C24, 27, 31, 35, 39,§3809; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.30]

247.31 Auditor to report statistics to clerk. The county auditor shall report to the clerk of the district court, on or before July 5 of each year, the expenses of the county in criminal prosecutions during the year ending June 30 preceding, including but distinguishing the compensation of the county attorney. Such report shall include all the items of criminal expenses which appear in the records of his office and which are required to be reported by the clerk of the district court to the board of parole and the director of the division of corrections of the department of social services. The clerk of the district court shall furnish to the auditor the blanks to be used in making such report. [C97,§475; S13,§475; C24, 27, 31, 35, 39,§3810; C46, 50, 54, 58, 62, 66, 71, 73, 75, §247.31]

247.32 Biennial report. The board of parole and the chief parole officer shall make such detailed reports to the director of the division of corrections of the department of social services as are requested by him and he shall forward such reports along with his personal recommendations to the commissioner of the department of social services. The commissioner in turn shall, biannually, at the time provided by law, report to the governor a summary of paroles granted and releases recommended, the names of all prisoners who have violated their paroles, and such other information concerning this departmental operation as may be deemed advisable, including an abstract for each year of the returns relative to criminal matters. [C24, 27, 31, 35, 39, §3811; C46, 50, 54, 58, 62, 66, 71, 73, 75,§247.32]

Time of filing report, §17.3

247.33 Aiding and abetting parole violation. It shall be unlawful to knowingly encourage, aid, or abet any parolee or court probationer referred to in this chapter to violate any condition of his parole or probation, or any rule or regulation of the board or chief parole officer or court granting the parole or probation.

A violation of this section shall be punishable by a fine of not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment. [C66, 71, 73, 75,§247.33]

247.34 to 247.39 Reserved.

247.40 Interstate probation and parole compact. Since the state of Iowa has been a signatory to the interstate probation and parole compact since 1937 by action of the governor pursuant to section 247.10, the general assembly deems it advisable to enter the full text of the compact into the Code for easy accessibility by the general public.

The interstate probation and parole compact is hereby placed in the Code as entered into by this state with other states legally joining therein in the form substantially as follows:

THE INTERSTATE PROBATION AND PAROLE COMPACT

Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an Act entitled "An Act granting the consent of Congress to any two or more states to enter into agreements or compacts for co-operative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

1. That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact, to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, while on probation or parole, if:

a. Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there.

b. Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there. Before granting such per-

mission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

2. That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

3. That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state. Provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

4. That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

5. That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

6. That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

7. That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other state party hereto. [66GA, ch 148,§1]

CHAPTER 247A

WORK RELEASE FOR INMATES OF INSTITUTIONS

247A.1 Title.
247A.2 Program.
247A.3 Committee.
247A.4 Application by inmate.
247A.5 Housing facilities.
247A.6 Willful escape.
247A.7 Surrender of earnings.
247A.8 Status of inmates on work release.
247A.9 Parole not affected.

247A.1 Title. This chapter may be referred to as the "Work Release Law". [C71, 73, 75,§247A.1]

247A.2 Program. The department of social services shall establish a work release program under which inmates sentenced to an institution under the jurisdiction of the department may be granted the privilege of leaving actual confinement during necessary and reasonable hours for the purpose of working at gainful employment in this state. Under appropriate conditions the program may also include release for the purpose of seeking employment and attendance at an educational institution. In the case of inmates who have children in their homes under the age of eighteen years, the program may include child care and housekeeping in their homes. [C71, 73, 75,§247A.2]

247A.3 Committee. A committee shall be designated by the department consisting of one member of the parole board or its designee, one representative of the division of corrections and one representative of the institution in which the inmate is confined at the time of application. [C71, 73, 75,§247A.3]

247A.4 Application by inmate. An inmate eligible to participate in the work release program may make application to the superintendent or executive officer of the institution in which confined for permission to par-

ticipate in the program. The application shall include a statement that the inmate agrees to abide by all terms and conditions of the particular plan adopted for him by the committee if the application is approved, shall state the name and address of the proposed employer, if any, and shall contain such other information as the committee may require. The superintendent or executive officer may, at his discretion, recommend such application to the committee. The committee may approve, disapprove, or defer action on the recommendation. If the recommendation is approved, the committee shall adopt a work release plan for the applicant which shall contain such terms and conditions as may be necessary and proper. The plan shall be signed by the inmate prior to participation in the program. Approval may be revoked for any reason by the superintendent or executive officer or by the committee at any time after being granted. [C71, 73, 75,§247A.4]

247A.5 Housing facilities. The department shall designate and adopt facilities in the institutions and camps under its jurisdiction for the housing of inmates granted work release privileges. In areas where facilities are not within reasonable proximity of the place of employment of an inmate so released, the department may contract with the proper authorities of political subdivisions of the state or suitable public or private agencies for the quartering of the inmate in local housing facilities. The committee shall include as a specific term or condition in the work release plan of any inmate the place where the inmate is to be housed when not on the work assignment. The committee shall not place an inmate on work release for longer than six months in any twelve-month period. Inmates may be temporarily released to the supervision of a responsible person to participate in family and selected community, religious, educational, social, civic and recreational activities when it is determined that the participation will directly facilitate the release transition from institution to community. [C71, 73, 75,§247A.5]

247A.6 Willful escape. Any inmate released from actual confinement under a work release plan who willfully fails to return to the designated place for housing at the time specified in the plan shall be guilty of a felony and upon conviction be subject to the penalty provided in section 745.1. [C71, 73, 75,§247A.6]

247A.7 Surrender of earnings. An inmate employed in the community under a work release plan shall surrender to the institution from which released his total earnings less payroll deductions required by law. The institution shall deduct from such earnings in the following order of priority:

1. An amount determined to be the cost to the state for providing food, lodging and clothing for the inmate while under the program.

2. The actual and necessary food, travel and other expenses of the inmate when released from actual confinement under the program.

3. An amount the inmate may be legally obligated to pay for the support of his dependents, the amount of which shall be paid to the dependents through the local department of social services in the county or city in which the dependents reside.

4. Court costs.

Any balance remaining after deductions and payments shall be credited to the inmate's personal account at the institution and shall be paid to him upon release. Any inmate so employed shall be paid a fair and reasonable wage in accordance with the prevailing wage scale for such work and shall work at fair and reasonable hours per day and per week. [C71, 73, 75,§247A.7]

247A.8 Status of inmates on work release. No inmate employed in the community under the provisions of this chapter shall be deemed to be an agent, employee, or involuntary servant of the department of social services while released from confinement under the terms of any work release plan. Should any inmate suffer an injury arising out of or in the course of the inmate's employment under this chapter, the inmate's recovery shall be from the insurance carrier of the employer of the project and no proceedings for compensation shall be maintained against the insurance carrier of the state institution or the state, and it is understood that there is no employer-employee relationship between the inmate and the state institution. [C71, 73, 75,§247A.8]

247A.9 Parole not affected. Nothing in this chapter shall be construed to affect eligibility for parole under chapter 247 or diminution of confinement of any inmate released under a work release plan. [C71, 73, 75,§247A.9]

CHAPTER 248

PARDONS, COMMUTATIONS, REMISSION OF FINES AND FORFEITURES, AND RESTORATION TO CITIZENSHIP

248.1 Reprieves and pardons.
248.2 Pardon.
248.3 Recommendation of restoration of rights of citizenship.
248.4 Soldiers, sailors, and marines.
248.5 Record.
248.6 Conditions prerequisite to a pardon.
248.7 Publication.
248.8 Investigation.
248.9 Information relative to applications.

248.10 Governor may take testimony.
248.11 Files in matters of pardon.
248.12 Restoration to rights of citizenship.
248.13 Fines and forfeitures.
248.14 Copies of pardons, reprieves, and other papers.
248.15 Copies when accused in custody.
248.16 Copies when accused not in custody.
248.17 Duty of clerk.

248.1 Reprieves and pardons. Nothing in chapter 247 shall be construed as impairing the power of the governor under the Constitution, to grant a reprieve, pardon, or commutation of sentence in any case. [S13,§5718-a21; C24, 27, 31, 35, 39,§**3812**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.1]

248.2 Pardon. A person whose sentence has been suspended may be pardoned by the governor at any time after such suspension on such conditions as he may think proper. [S13, §5447-a; C24, 27, 31, 35, 39,§**3813**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.2]

248.3 Recommendation of restoration of rights of citizenship. The board of parole shall recommend to the governor the restoration of citizenship of such persons as have been discharged from parole and who have, by their conduct given satisfactory evidence that they will continue to be law-abiding citizens. [S13, §5718-a20; C24, 27, 31, 35, 39,§**3814**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.3]

248.4 Soldiers, sailors, and marines. Said board shall also recommend to the governor the pardon of a paroled prisoner who, during parole, and during any war, entered the military, naval, or nursing service of the United States or of any of the countries with which the United States may have been allied or associated in such war, and who has been honorably discharged from such service or who has died in such service. [C24, 27, 31, 35, 39,§**3815**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.4]

248.5 Record. All recommendations of the board shall be entered in the proper records of the board. [S13,§5718-a20; C24, 27, 31, 35, 39, §**3816**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.5]

248.6 Conditions prerequisite to a pardon. After conviction for a felony, no pardon or commutation of sentence shall be granted by the governor until he shall have presented the matter to, and obtained the advice of, the board of parole. [C51,§§3278, 3281; R60,§5116; C73,§4712; C97,§5626; S13,§5626; C24, 27, 31, 35, 39,§**3817**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.6]

248.7 Publication. Before presenting an application for pardon to the board for its action, where the sentence is death* or imprisonment for life, the governor shall cause a notice containing the reasons assigned for granting the pardon to be published in two newspapers of general circulation, one of which shall be published at the capital and the other in the county where the conviction was had, once each week for four successive weeks, the last publication to be at least twenty days prior to the time of presenting such application to such board. [C73,§4712; C97,§5626; S13,§5626; C24, 27, 31, 35, 39,§**3818**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.7]

*Death penalty abolished by 61GA, ch 435

248.8 Investigation. The board shall, under the direction of the governor, take charge of all correspondence in reference to the pardon of persons convicted of crimes and carefully investigate each application, and file its recommendation with the governor with its reasons for the same. [S13,§5718-a23; C24, 27, 31, 35, 39,§**3819**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §248.8]

248.9 Information relative to applications. When an application is made to the governor for a pardon, reprieve, or commutation, or for the remission of a fine or forfeiture, he may require the judge of the court, or the county attorney or attorney general by whom the action was prosecuted, or the clerk of such court, to furnish him without delay a copy of the minutes of the evidence taken on the trial, and of any other facts having reference to the propriety of his exercise of his powers in the premises. [R60,§5120; C73,§4713; C97,§5627; C24, 27, 31, 35, 39,§**3820**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.9]

248.10 Governor may take testimony. The governor may also take such testimony, bearing upon applications, as he may deem advisable. Any person who, in giving such testimony, swears falsely, and any person who shall knowingly and corruptly make any false statements in an affidavit intended to be used in connection with an application for pardon, or for remission of fine or forfeiture, shall be guilty of perjury, and be punished accordingly. [R60,§5120; C73,§4713; C97,§5627; C24, 27, 31, 35, 39,§**3821**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.10]

Perjury, §721.1

248.11 Files in matters of pardon. All papers and documents relating to the pardon of any person shall, upon the granting of such pardon, become a part of the files of the governor's office. [S13,§5718-a20; C24, 27, 31, 35, 39, §**3822**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.11]

248.12 Restoration to rights of citizenship. The governor shall have the right to grant any convict, whom he shall think worthy thereof, a certificate of restoration to all his rights of citizenship. The warder or superintendent, upon request of the governor shall in case of application for such restoration, furnish him with a statement of the convict's

deportment during his imprisonment, and may at all times make such recommendations to the governor as he shall think proper respecting such restoration. [C97,§5706; C24, 27, 31, 35, 39,§3823; C46, 50, 54, 58, 62, 66, 71, 73, 75, §248.12]

248.13 Fines and forfeitures. The governor shall have power to remit fines and forfeitures upon such conditions as he may think proper. [C51,§3280; R60,§5116; C73,§4712; C97,§5626; S13, §5626; C24, 27, 31, 35, 39,§3824;C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.13]

248.14 Copies of pardons, reprieves, and other papers. Pardons, commutations of sentences, remissions of fines and forfeitures, and restorations of rights of citizenship shall, when issued, be in duplicate. Reprieves shall be in triplicate. [C24, 27, 31, 35, 39,§3825; C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.14]

248.15 Copies when accused in custody. Pardons, reprieves, and commutations of sentences shall be forwarded to the officer having custody of the party in question. Said officer shall retain one copy and make record in the books of his office, and act in accordance therewith. On one copy, said officer shall make such written return as the governor may require, and forward said copy and return to the clerk of the court wherein the judgment is of record. In case of reprieves, the third copy shall, in all cases, be delivered to the person whose sentence is reprieved. [C51,§3279; R60,§5121; C73, §4714; C97,§5628; S13,§5718-a20; C24, 27, 31, 35, 39,§3826; C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.15]

248.16 Copies when accused not in custody. In case the party in question is not in custody, and in case of remissions of fines and forfeitures and restorations of rights of citizenship, one copy shall be delivered to said party and one copy to the clerk aforesaid. [C51,§3279; R60,§5121; C73,§4714; C97,§5628; S13,§5718-a20; C24, 27, 31, 35, 39,§3827; C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.16]

248.17 Duty of clerk. Said clerk shall, upon receipt of any of said executive instruments, immediately file and preserve the same in his office and note such filing on the judgment docket of the case in question, except that remissions of fines and forfeitures shall be spread at length on the record books of the court, and indexed in the same manner as the original case. [C51,§3279; R60,§5121; C73,§4714; C97,§5628; C24, 27, 31, 35, 39,§3828; C46, 50, 54, 58, 62, 66, 71, 73, 75,§248.17]

CHAPTER 249

STATE SUPPLEMENTAL ASSISTANCE TO CERTAIN PERSONS

Referred to in §§78.2(6), 110.17, 142.1, 155.37, 249A.4, 249C.1, 425.2
Chapter 249, Code 1973, repealed by 65GA, ch 186,§1
Child and family services, see ch 234
Federal funds appropriated, 65GA, ch 105,§4

The old-age assistance revolving fund existing pursuant to section 249.39, Code 1973, shall be maintained in the state treasury until such time as the property heretofore managed by the department pursuant to that section has been disposed of in total. The fund shall then be closed and all money remaining in the fund transferred to the general fund of the state, see 65GA, ch 186,§27.

249.1 Definitions.
249.2 Agreement with federal authority.
249.3 Eligibility.
249.4 Application—amount of grant.
249.5 Judicial review.
249.6 Charge for cashing warrant unlawful.
249.7 Assistance inalienable.
249.8 Cancellation of warrants.
249.9 Funeral expenses.
249.10 Prior liens, claims and assignments.
249.11 Fraud.
249.12 Cost-related system.

249.1 Definitions. As used in this chapter:

1. *"Federal supplemental security income"* means cash payments made to individuals by the United States government under Title XVI of the Social Security Act as amended by United States public law 92-603, or any other amendments thereto.

2. *"State supplementary assistance"* means cash payments made to individuals:

a. By the United States government on behalf of the state of Iowa pursuant to section 249.2.

b. By the state of Iowa directly pursuant to sections 249.3 to 249.5.

3. *"Previous categorical assistance programs"* means the aid to the blind program authorized by chapter 241, the aid to the disabled program authorized by chapter 241A and the old-age assistance program authorized by chapter 249 of the Code of 1973.

4. *"Commissioner"* means the commissioner of social services.

5. *"Department"* means the department of social services. [C35,§5926-f1; C39,§§3684.01, 3828.001; C46, 50, 54, 58,§§241.1, 249.1; C62, 66, 71, 73,§§241.1, 241A.1, 249.1; C75,§249.1]

Referred to in §§234.21, 249.3, 249A.3, 403A.23, 427.9

249.2 Agreement with federal authority. The commissioner may enter into an agreement with the United States secretary of health, education and welfare for federal administration of a program of state supplementary assistance to prescribed categories of persons who are, or would be except for the amount of income they receive from other sources, receiving federal supplemental security income. The agreement may authorize the secretary to make such rules, in addition to and not in conflict with state laws and regulations, respecting eligibility for or the amount of state supplementary assistance paid under this section as he finds necessary to achieve efficient and effective administration of both the basic federal supplemental security income program and the state supplementary assistance program administered by the secretary under the agreement. The agreement shall provide for the state of Iowa to reimburse the federal government, from funds appropriated for that purpose, for state supplementary assistance paid by the federal government pursuant to the agreement. [C35,§§5296-f4,-f36; C39,§§**3684.04, 3828.003, 3828.045**; C46, 50, 54, 58,§§241.4, 249.2, 249.42; C62, 66, 71, 73, §§241.4, 241A.4, 249.2, 249.42; C75,§249.2]

Referred to in §§217.30, 249.1

249.3 Eligibility. The persons eligible to receive state supplementary assistance under section 249.1, subsection 2, paragraph "*b*," are:

1. Any person whose needs were taken into account in computing the grant of a recipient, who was eligible for and was receiving assistance under a previous categorical assistance program during the month of December 1973, because the person was deemed essential to the well-being of the recipient in maintaining a living arrangement in his own home, so long as the person continues to act in the capacity of essential person to the former recipient and to be in financial need according to standards established by the department.

2. Any person who meets the criteria established by paragraphs "*a*," "*b*" and "*c*" of this subsection:

a. Is receiving either:

(1) Care in a licensed adult foster home, boarding home or custodial home, as defined by section 135C.1, or in another type of protective living arrangement as defined by the department; or

(2) Nursing care in his own home, certified by a physician as being required, so long as the cost of the nursing care does not exceed standards established by the department.

b. Is in fact receiving or would, except for income in excess of applicable maximums, be receiving federal supplemental security income.

c. Does not have sufficient income to meet the cost of care in one of the living arrangements defined in paragraph "*a*" of this subsection, which cost of care shall not exceed the amount established by the rules of the department for each of those living arrangements.

3. Any person living in any living arrangement other than as a patient or resident of a facility licensed under chapter 135C, who meets the criteria established by paragraphs "*a*", "*b*" and "*c*":

a. Has living with him a dependent spouse, parent, child or adult child who is sharing the recipient's living arrangement, so long as the person continues in the relationship of dependent spouse, parent, child or adult child to the recipient and to be in financial need according to standards established by the department.

b. Is in fact receiving or would, except for income in excess of applicable maximums, be receiving federal supplemental security income.

c. Does not have sufficient income to meet the cost of providing for the dependent spouse, parent, child or adult child, according to standards established by the department. [SS15, §§2722-i,-j,-k; C24, 27, 31,§5379; C35,§§5296-f9, -f12, 5379; C39,§§**3684.02, 3828.007, 3828.008**; C46, 50, 54, 58,§§241.2, 249.5, 249.6; C62, 66, 71, 73, §§241.2, 241A.2, 249.5, 249.6; C75,§249.3]

Referred to in §§217.30, 249.1, 249.4

249.4 Application—amount of grant. Applications for state supplementary assistance shall be made in the form and manner prescribed by the commissioner or his designee, with the approval of the council on social services, pursuant to chapter 17A. Each person who so applies and is found eligible under section 249.3 shall, so long as his eligibility continues, receive state supplementary assistance on a monthly basis, from funds appropriated to the department for the purpose. [SS15, §§2722-m,-p; C24, 27, 31,§§5382, 5384; C35,§§5296-f17,-f18, 5382, 5384; C39,§§**3684.06, 3684.09, 3828.013, 3828.014**; C46, 50, 54, 58,§§241.6, 241.9, 249.10, 249.11; C62, 66, 71, 73,§§241.6, 241.9, 241A.5, 241A.6, 249.10, 249.11; C75,§249.4]

Referred to in §§217.30, 249.1

249.5 Judicial review. If an application is not acted upon within a reasonable time, if it is denied in whole or in part, or if any award of assistance is modified, suspended or canceled under any provision of this chapter, the applicant or recipient may appeal to the department, which shall give the appellant reasonable notice and opportunity for a fair hearing before the commissioner or his designee. Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act. Upon receipt of the petition for judicial review, the department shall furnish the petitioner with a copy of any papers filed by him in support of his position, a transcript of any testimony taken, and a copy of the department's decision. [C35,§5296-f18; C39,§§**3684.11, 3828.014**; C46, 50, 54, 58,§§241.11, 249.11; C62, 66, 71, 73,§§241.11, 241A.8, 249.11; C75,§249.5]

Referred to in §249.1

249.6 Charge for cashing warrant unlawful. It shall be unlawful for any person to charge a fee, service charge or exchange for the cashing of a warrant issued in payment of state supplementary assistance, or to discount or pay less than the face value of any warrant drawn in payment of such assistance, when cashing such a warrant or accepting it in payment of the purchase price of goods, services, rent, taxes or indebtedness. [C35,§5296-g4; C39, §3828.036; C46, 50, 54, 58, 62, 66, 71, 73,§249.33; C75,§249.6]

249.7 Assistance inalienable. All rights to state supplementary assistance shall be absolutely inalienable by any assignment, sale, execution or otherwise and, in case of bankruptcy, the assistance shall not pass to or through any trustees or other persons acting on behalf of creditors. [C35,§5296-f29; C39, §§3684.10, 3828.037; C46, 50, 54, 58,§§241.10, 249.34; C62, 66, 71, 73,§§241.10, 241A.7, 249.34; C75,§249.7]

249.8 Cancellation of warrants. The state comptroller, as of January, April, July and October 1 of each year, shall stop payment on and issue duplicates of all state supplementary assistance warrants which have been outstanding and unredeemed by the treasurer of state for six months or longer. No bond of indemnity shall be required for the issuance of such duplicate warrants which shall be canceled immediately by the state comptroller. If the original warrants are subsequently presented for payment, warrants in lieu thereof shall be issued by the state comptroller at the discretion of and upon certification by the commissioner or his designee. [C39,§3828.044; C46, 50, 54, 58, 62, 66, 71, 73,§249.41; C75,§249.8]

249.9 Funeral expenses. The department may pay, from funds appropriated to it for the purpose, a maximum of four hundred dollars toward funeral expenses on the death of any person receiving state supplementary assistance or who received assistance under a previous categorical assistance program prior to January 1, 1974, provided:

1. The total expense of the person's funeral does not exceed six hundred fifty dollars.

2. That the decedent does not leave an estate which may be probated, with sufficient proceeds to allow a funeral claim of at least six hundred fifty dollars.

3. That any payment which is due the decedent's estate or beneficiary by reason of the liability of any life insurance or death or funeral benefit company, association or society, or in the form of United States social security, railroad retirement, or veterans' benefits, upon the death of the decedent shall be deducted from the department's liability under this section. [C35,§5296-f25; C39,§§3684.17, 3828.021; C46, 50, 54, 58,§§241.17, 249.18; C62, 66, 71, 73,§§241.17, 241A.11, 249.18; C75,§249.9]

249.10 Prior liens, claims and assignments. Any lien or claim against the estate of a decedent existing on January 1, 1974, which lien was perfected or which claim was filed under the provisions of sections 249.19, 249.20 or 249.21 as they appeared in the Code of 1973 and prior Codes, and which liens or claims have not been satisfied, are void. Any assignment of personal property which was made under the provisions of chapter 249 as it appeared in the Code of 1973 and prior Codes, is void. The commissioner may in furtherance of this seetion release any lien or claim created or existing under that chapter. Each release made pursuant to this section shall be executed and acknowledged by the commissioner or his authorized designee, and when recorded shall be conclusive in favor of any third person dealing with or concerning the property affected by the release in reliance upon such record. [C35,§§5296-f15,-f16,-g1; C39,§§3828.022, 3828.023, 3828.024; C46, 50, 54, 58, 62, 66, 71, 73, §§249.19, 249.20, 249.21; C75,§249.10; 66GA, ch 149,§1]

249.11 Fraud. Any person who obtains assistance under this chapter by misrepresentation or by failure with fraudulent intent to bring forth all of the facts required of an applicant for assistance under this chapter, or any person who shall knowingly make false statements concerning an applicant's eligibility for assistance under this chapter, is guilty of a misdemeanor. [C35,§§5296-f31,-f32; C39, §§3684.19, 3828.049, 3828.050; C46, 50, 54, 58, §§241.19, 249.46, 249.47; C62, 66, 71, 73,§§241.19, 241A.12, 249.46, 249.47; C75,§249.11]

249.12 Cost-related system. In order to assure that the necessary data is available to aid the general assembly to determine appropriate funding for the custodial care program, the department of social services shall develop a cost-related system for financial supplementation to individuals who need custodial care and who have insufficient resources to purchase the care needed.

All privately operated licensed custodial facilities in Iowa shall co-operate with the department of social services to develop the cost-related plan. After the plan is implemented, state supplemental funds shall not be used for the care of any individual in facilities that have not submitted cost statements to the department of social services. [C35,§5296-f37; C39, §3828.046; C46, 50, 54, 58, 62, 66, 71, 73,§249.43; C75,§249.12]

CHAPTER 249A

MEDICAL ASSISTANCE

Referred to in §§155.37, 217.30, 222.93, 509.1(7), 514.1
Payment to hospital-school, §222.93

249A.1 Title.
249A.2 Definitions.
249A.3 Eligibility.
249A.4 Duties of commissioner.
249A.5 Recovery of payment.
249A.6 Repealed by 65GA, ch 1165,§6.
249A.7 Penalty.
249A.8 Repealed by 65GA, ch 186,§26.
249A.9 Direct payment to health care facility—no deduction for service.
249A.10 Remedial eye care.
249A.11 Payment for patient care segregated.
249A.12 Assistance to mentally retarded residents of county care facilities or certain other licensed facilities.

249A.1 Title. This chapter may be cited as the "Medical Assistance Act." [C62, 66, 71, 73, 75,§249A.1]

249A.2 Definitions. When used herein:

1. The terms *"department"* or *"state department"* shall mean the state department of social services.

2. The term *"commissioner"* shall mean the commissioner of the department of social services.

3. The term *"county board"* shall mean the county board of social welfare created by chapter 234.1.

4. *"Recipient"* shall mean a person who receives medical assistance under this chapter.

5. *"Medical assistance"* shall mean payment of all or part of the costs of the care and services enumerated in Title XIX, United States Social Security Act, section 1905(*a*), paragraphs (1) through (5), inclusive [Title XLII, United States Code, section 1396d(*a*), paragraphs (1) through (5), inclusive], as amended to January 15, 1974.

6. *"Additional medical assistance"* shall mean payment of all or part of the costs of any or all of the care and services enumerated in Title XIX, United States Social Security Act, section 1905(*a*), paragraphs (6), (7), and (9) to (17) [Title XLII, United States Code, section 1396d(*a*), paragraphs (6), (7), and (9) to (17)], as amended to January 15, 1974. [C62, 66, 71, 73, 75,§249A.2]

Referred to in §249A.4(1)

249A.3 Eligibility. The extent of and the limitations upon eligibility for assistance under this chapter shall be as prescribed by this section, and by laws appropriating funds therefor.

1. Medical assistance shall be provided to, or on behalf of, any individual or family residing in the state of Iowa, including those residents who are temporarily absent from the state, who:

a. Is a recipient of federal supplementary security income or who would be eligible for federal supplemental security income if living in their own home.

b. Is a recipient of aid to dependent children payments under chapter 239.

c. Was a recipient of one of the previous categorical assistance programs as of December 31, 1973, and would continue to meet the eligibility requirements for one of the previous categorical assistance programs as the requirements existed on that date.

2. Medical assistance may also, within the limits of available funds and in accordance with section 249A.4, subsections 1 and 2, be provided to, or on behalf of, other individuals and families who are not excluded under subsection 4 of this section and whose incomes and resources are insufficient to meet the cost of necessary medical care and services in accordance with the following order of priorities:

a. Individuals who are receiving care in a hospital or in a basic nursing home, intermediate nursing home, skilled nursing home or extended care facility, as defined by section 135C.1, and who meet all eligibility requirements for federal supplementary security income except that their income exceeds the allowable maximum therefor, but whose income is not in excess of the maximum established by subsection 4 for eligibility for medical assistance and is insufficient to meet the full cost of their care in the hospital or health care facility on the basis of standards established by the department.

b. Individuals under twenty-one years of age living in a licensed foster home, or in a private home pursuant to a subsidized adoption arrangement, for whom the department accepts financial responsibility in whole or in part and who are not eligible under subsection 1.

c. Individuals and families whose incomes and resources are such that they are eligible for federal supplementary security income or aid to dependent children, but who are not actually receiving such public assistance.

d. Individuals who are receiving state supplementary assistance as defined by section 249.1 or other persons whose needs are considered in computing the recipient's assistance grant.

e. Individuals and families who are ineligible under paragraph *"c"* solely because of their incomes and resources, but who would otherwise be eligible under paragraph *"c"*.

f. Persons under twenty-one years of age who qualify on a financial basis for, but who are otherwise ineligible to receive aid to dependent children.

g. Individuals who have attained the age of twenty-one but have not yet attained the age of sixty-five who qualify on a financial basis for, but who are otherwise ineligible to receive, federal supplementary security income or aid to dependent children.

Notwithstanding the provisions of this subsection establishing priorities for individuals and families to receive medical assistance, the department may determine within the priorities listed in this subsection which persons shall receive medical assistance based on income levels established by the department, subject to the limitations provided in subsection 4.

3. Additional medical assistance may, within the limits of available funds and in accordance with section 249A.4, subsections 1 and 2, be provided to, or on behalf of, either:

a. Only those individuals and families described in subsection 1 of this section; or

b. Those individuals and families described in both subsections 1 and 2.

4. No assistance shall be granted under this chapter to:

a. Any individual or family whose income, exclusive of the value of gifts or services contributed in kind to the individual or family, exceeds the following maximums:

(1) For an individual, after deduction of health care expenses incurred by the applicant, two thousand four hundred dollars annually.

(2) For any family living together, after deduction of health care expenses incurred by the family, two thousand four hundred dollars annually for the first adult member plus one thousand two hundred dollars for the second member and nine hundred dollars annually for each additional member of the family.

(3) For any individual receiving care in a hospital, any health care facility as defined in section 135C.1, or in another type of protective living arrangement, an amount equal to the cost of care in the hospital, facility or other arrangement, based on the department's standards.

b. Any individual whose resources, after deduction of health care expenses incurred by the applicant, exceeds two thousand dollars, or any family living together whose combined resources exceed two thousand dollars for the first member, one thousand dollars for the second member, plus two hundred dollars for each additional member. The value of resources shall be the current market value minus any encumbrances against such resource or resources. In determining the foregoing, the following resources shall be excluded: Real property occupied as a residence, household goods and furnishings, an automobile, personal effects and tools necessary for the pursuit of a trade, occupation or profession of a market value not to exceed six thousand dollars and the cash surrender value of life insurance not to exceed one thousand dollars, however, if the face value of such individual's life insurance does not exceed one thousand dollars, it shall be excluded without necessity for determining its cash surrender value. [C62, 66,§§249A.3, 249A.4; C71, 73, 75,§249A.3; 66GA, ch 9,§8]

Referred to in §249A.4(1,2), 249A.10
Legislative intent, see 66GA, ch 9,§9

249A.4 Duties of commissioner. The commissioner shall be responsible for the effective and impartial administration of this chapter and shall, in accordance with the standards and priorities established by this chapter, by applicable federal law, particularly Title XIX of the United States Social Security Act [Title XLII, United States Code, sections 1396 to 1396g], as amended to January 1, 1973, by the regulations and directives issued pursuant thereto, and by the state plan approved in accordance therewith, make rules, establish policies, and prescribe procedures to implement this chapter. Without limiting the generality of the foregoing delegation of authority, the commissioner is hereby specifically empowered and directed to:

1. Determine the greatest amount, duration, and scope of assistance which may be provided, and the broadest range of eligible individuals to whom assistance may effectively be provided, under this chapter within the limitations of available funds. In so doing, he shall at least every six months evaluate the scope of the program currently being provided under this chapter, project the probable cost of continuing a like program, compare such probable cost with the remaining balance of the state appropriation made for payment of assistance under this chapter during the current appropriation period, and expand or curtail the program accordingly; provided that in no event shall the scope of the program be less than payment of all costs of the care and services to which reference is made in section 249A.2, subsection 5, which are provided to the individuals and families described in section 249A.3, subsection 1. After each evaluation of the scope of the program, the commissioner shall report his conclusions and his action thereon to the general assembly through the legislative council or in such other manner as the general assembly may by resolution direct.

Referred to in §249A.3

2. Have authority to determine, when available funds permit expansion of the program provided under this chapter beyond the minimum scope required by subsection 1 of this section, whether priority shall be given to providing additional medical assistance to the individuals and families described in section 249A.3, subsection 1, or to providing medical assistance to some or all of the individuals and families described in section 249A.3, subsection 2, unless the general assembly has by law made such determination.

Referred to in §249A.3

3. Have authority to provide for payment under this chapter of assistance rendered to any applicant prior to the date his application is filed.

4. Have authority to contract with any corporation authorized to engage in this state in insuring groups or individuals for all or part of the cost of medical, hospital, or other health care or with any corporation maintaining and operating a medical, hospital, or health service prepayment plan under the provisions of chapter 514 or with any health maintenance organization authorized to operate in this state, for any or all of the benefits to which any recipients are entitled under this chapter to be provided by such corporation or health maintenance organization on a prepaid individual or group basis.

5. May, to the extent possible, contract with a private organization or organizations whereby such organization will handle the processing of and the payment of claims for services rendered under the provisions of this chapter and under such rules and regulations as shall be promulgated by such department. The state department may give due consideration to the advantages of contracting with any organization which may be serving in Iowa as "intermediary" or "carrier" under Title XVIII of the federal Social Security Act, as amended.

6. Shall co-operate with any agency of the state or federal government in any manner as may be necessary to qualify for federal aid and assistance for medical assistance in conformity with the provisions of chapter 249, this chapter and Titles XVI and XIX of the federal Social Security Act, as amended.

7. Shall provide for the professional freedom of those licensed practitioners who determine the need for or provide medical care and services, freedom of choice to recipients to select the provider of such care and services, and for medical direction and supervision as needed.

8. Shall advise and consult at least semiannually with a council composed of the president, or his or her representative who is a member of the professional organization represented by the president, of the Iowa Medical Society, the Iowa Society of Osteopathic Physicians and Surgeons, the Iowa State Dental Society, the Iowa State Nurses Association, the Iowa Pharmaceutical Association, the Iowa Podiatry Society, the Iowa Optometric Association, the Iowa Hospital Association, the Iowa Osteopathic Hospital Association, Iowa Ophthalmic Dispensers, Inc. (opticians) and the Iowa Nursing Home Association, together with one person designated by the Iowa state board of chiropractic examiners; one state representative from each of the two major political parties appointed by the speaker of the house, one state senator from each of the two major political parties appointed by the lieutenant governor, each for a term of two years; four public representatives, two of whom shall be appointed each year by the governor for terms of two years each and none of whom shall be members of, or practitioners of or have a pecuniary interest in any of the professions or businesses represented by, any of the several professional groups and associations specifically represented on the council under this subsection; the commissioner of public health, or representative designated by him, and the dean of the college of medicine, University of Iowa, or a representative designated by him.

For each council meeting, other than those held during the time the general assembly is in session, each legislative member of the council shall be reimbursed for actual traveling and other necessary expenses and shall receive a per diem of forty dollars for each day in attendance, as shall the public representatives, regardless of whether the general assembly is in session.

9. Shall take such action as may be necessary to assure that licensed practitioners of the healing arts who provide professional services under this chapter shall be paid their reasonable, usual and customary charges. Payment for other medical assistance under this chapter shall be the usual and customary fees, charges and rates, provided, however, that if such payments are otherwise limited by federal law, such payment shall be as near the usual and customary fees, charges or rates as may be permitted by federal law.

10. Shall provide for granting an opportunity for a fair hearing before the commissioner of the department of social services or his authorized representative to any individual whose claim for medical assistance under this chapter is denied or is not acted upon with reasonable promptness.

Judicial review of the actions of the commissioner or department may be sought in accordance with the terms of the Iowa administrative procedure Act. In the event a petition for judicial review is filed, the commissioner or his authorized representative shall furnish the petitioner with a copy of the application and all supporting papers, a transcript of the testimony taken at the hearing, if any, and a copy of its decision. [C62, 66,§§249A.5, 249A.10; C71, 73, 75,§249A.4]

Referred to in §249A.3

Terms of public representatives to the medical assistance advisory council; see 63GA, ch 1102,§4

249A.5 Recovery of payment. Medical assistance paid to, or on behalf of, any recipient cannot be recovered from such beneficiary unless such benefit had been incorrectly paid. If, while receiving assistance, the recipient becomes possessed of any resource or income in excess of the amount stated in the application provided for in this chapter, it shall be the duty of the recipient immediately to notify the county board of the receipt or possession of such resource or income. When it is found that any person has failed to so notify the board that he is or was possessed of any resource or income in excess of the amount allowed, or when it is found that, within five

years prior to the date of his application, a recipient made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this chapter, any amount of assistance paid in excess of the amount to which the recipient was entitled shall constitute benefits incorrectly paid. Any benefits incorrectly paid shall be recoverable from the recipient, while living, as a debt due the state and, upon his death, as a claim classified with taxes having preference under the laws of this state. [C62, 66,§249A.13; C71, 73, 75,§249A.5]

249A.6 Repealed by 65GA, ch 1165,§6.

249A.7 Penalty. Any person who shall obtain assistance or payments for medical assistance under this chapter by misrepresentation or failure with fraudulent intent to bring forth all the facts required of an applicant for aid under the provisions of this chapter and any person who shall knowingly make false statements concerning the applicant's eligibility for aid under this chapter shall be guilty of a misdemeanor, punishable as such. [C62, 66,§249A.15; C71, 73, 75,§249A.7]

Punishment, §687.7

249A.8 Repealed by 65GA, ch 186,§26.

249A.9 Direct payment to health care facility—no deduction for service. If the state department is making direct assistance payments to persons providing a recipient with services in a health care facility licensed under chapter 135C in amounts less than the usual and reasonable charge for such service, the state department shall permit the recipient or someone on his behalf to pay the person rendering the service the difference between the amount of assistance and the reasonable value of such service, without deducting such additional payment from the direct assistance payment to be made by the state department. [C71, 73, 75,§249A.9]

249A.10 Remedial eye care. The department shall establish a remedial eye care program for individuals who have been determined by an ophthalmologist, retained in accordance with rules of the department, to be in need of treatment to prevent blindness or to restore eyesight and who lack sufficient income to meet the cost of the remedial eye care. The department shall establish eligibility requirements not inconsistent with section 249A.3. [66GA, ch 150,§1]

249A.11 Payment for patient care segregated. Each hospital-school shall, upon receipt of any payment made under this chapter for the care of any patient, segregate an amount equal to that portion of the payment which is required by law to be made from nonfederal funds. The money segregated shall be deposited in the medical assistance fund of the department of social services. [66GA, ch 1132,§17]

249A.12 Assistance to mentally retarded residents of county care facilities or certain other licensed facilities.

1. Assistance may be furnished under this chapter, in accordance with subsection 2 of this section, to a mentally retarded person who is otherwise eligible for such assistance, to pay all or a portion of the cost of maintaining that person as a resident of:

a. A county care facility, or portion thereof, which is licensed in accordance with the provisions of chapter 135C and is certified as an intermediate care facility for the mentally retarded in accordance with federal and state standards governing the medical assistance program.

b. Another intermediate care facility for the mentally retarded that is so licensed and certified, when the mentally retarded person eligible for assistance is residing in the facility with approval of the county board of supervisors of the county in which that person resided prior to entering the facility.

2. Assistance may be furnished under this section only in cases where the county board of supervisors or the operator of the alternative intermediate care facility for the mentally retarded has entered into an agreement with the department to provide services that are in accordance with the department's appropriate district plan for delivery of services to mentally retarded and developmentally disabled citizens, and to upgrade and maintain the facility, or portion thereof, in accordance with the provisions of the technical plan of correction that has been approved for the facility. Assistance shall be furnished only when it is determined that adequate funding is available.

Each county board entering into an agreement with the department under this subsection shall agree to reimburse the department from the county poor fund or the county mental health and institutions fund, on a monthly basis, for that portion of the cost of assistance furnished under this section which is not paid from federal funds. The department shall place all such reimbursements from counties in the appropriation for medical assistance, and may use the reimbursed funds for any purpose for which the funds so appropriated by the general assembly may lawfully be used. Any county-reimbursed funds remaining unexpended shall revert to the general fund of the state in the same manner as the original appropriation. [66GA, ch 1132,§18]

CHAPTER 249B

COMMISSION ON THE AGING

Retired Iowan employment one-year program, 66GA, ch 110,§§6-10

249B.1 Commission created.
249B.2 Terms.
249B.3 Meetings—officers.
249B.4 Duties.
249B.5 Executive director.
249B.6 Expenses.
249B.7 Grants and gifts received.
249B.8 Area agencies.

249B.1 Commission created. There is hereby created the commission on the aging of the state of Iowa which shall consist of eleven members. Two members shall be appointed by the president of the senate from the members of the senate to serve as ex officio nonvoting members with no more than one member being appointed from the same political party. Two members shall be appointed by the speaker of the house of representatives from the members of the house to serve as ex officio nonvoting members with no more than one member being appointed from the same political party. Seven members shall be appointed by the governor. [C66, 71, 73, 75, §249B.1; 66GA, ch 1052,§10]

249B.2 Terms. All members of the commission shall be appointed for terms of four years except the terms of the nine initial appointees shall be as follows:

1. One member appointed from the senate shall serve from the date of appointment to June 30, 1975, and one member appointed from the senate shall serve from the date of appointment to June 30, 1977.

2. One member appointed from the house of representatives shall serve from the date of appointment to June 30, 1975, and one member appointed from the house of representatives shall serve from the date of appointment to June 30, 1977.

3. Two members appointed by the governor shall serve from the date of appointment to June 30, 1975, and three members appointed by the governor shall serve from the date of appointment to June 30, 1977.

The terms of office of all members shall thereafter commence on the first day of July following the convening of the general assembly. Any vacancy on the commission shall be filled for the unexpired term of the vacancy in the same manner as the original appointment. If a legislative member ceases to be a member of the general assembly he may continue to serve as a member of the commission until his successor is appointed. A successor may be appointed to complete the term of the person who ceases to be a member of the general assembly. [C66, 71, 73, 75,§249B.2]

249B.3 Meetings—officers. Members of the commission shall elect from the commission's membership a chairman, and such other officers as commission members deem necessary, who shall serve for a period of two years. The commission shall elect a new chairman every two years thereafter. The commission shall meet at regular intervals at least six times each year and may hold special meetings at the call of the chairman or at the request of a majority of the commission membership. The commission shall meet at the seat of government or such other place as the commission members may so designate. [C66, 71, 73, 75,§249B.3]

249B.4 Duties. It shall be the duty of the commission to:

1. Collect facts and statistics and make special studies of conditions and problems pertaining to the employment, health, financial status, recreation, social adjustment or other conditions and problems pertaining to the general welfare of the aging of the state.

2. To make recommendations to state and local agencies serving the aging for purposes of co-ordinating such agencies activities, and to request and receive reports from the various state agencies and institutions on matters within the jurisdiction of the commission.

3. Keep informed of the latest developments of research, studies, and programs being conducted throughout the nation on the problems and needs of the aging.

4. Serve as a central agency or advisory board, or both, for the mutual exchange of ideas and information on the aging between federal, state and local governmental agencies, private organizations, and individuals.

5. Co-operate with agencies, federal, state and local, or private organizations, in administering and supervising demonstration programs of services for aging designed to foster continued participation of older people in family and community life and to prevent insofar as possible the onset of dependency and the need for long-term institutional care.

6. Report and make recommendations to the general assembly on the activities of the commission and improvements and additional resources needed to promote the general welfare of the aging in Iowa.

7. Seek resources to provide direct service programs and services to the aging at the state, regional, county or local levels and provide services through contract arrangements with public or private nonprofit agencies.

The commission shall have the power to create subcommittees to undertake such special studies as commission members shall au-

thorize and may include noncommission members who are qualified in any field of activity related to the general welfare of the aging in the membership of such subcommittees. [C66, 71, 73, 75,§249B.4]

249B.5 Executive director. The governor with the consent of two-thirds of the members of the senate shall appoint an executive director who shall serve as executive officer of the commission. Notwithstanding the provisions of section 19A.3, the executive director shall be subject to the state merit system in matters related to salary and benefits. [C66, 71, 73, 75,§249B.5; 66GA, ch 1143,§1]

249B.6 Expenses. Members of the commission while engaged in their official duties shall be reimbursed for their actual and necessary expenses and be paid a forty-dollar per diem. Legislative members of the commission shall receive payment pursuant to section 2.10 and section 2.12. [C66, 71, 73, 75, §249B.6; 66GA, ch 1052,§11, ch 1056,§12]

249B.7 Grants and gifts received. The commission may receive federal funds or any grants and gifts on behalf of the state for such purposes as are within the jurisdiction of the commission. All federal funds, grants and gifts shall be deposited with the state treasurer and shall be used only for such purposes agreed upon as conditions for receiving the funds, grants and gifts. [C66, 71, 73, 75, §249B.7]

249B.8 Area agencies. The commission on aging may establish area agencies on aging for the planning and service areas developed by the office for planning and programming pursuant to the "Older Americans Comprehensive Services Amendments of 1973", United States Public Law 93—29, section 304. An area agency may be merged with a contiguous planning and service area but not without the approval of each policy making body which is a party to the merger. Merged planning and service areas forming one area agency shall be governed by only one policy making body. Funds appropriated pursuant to this Act* shall be allocated to each planning and service area for which an area agency has been designated by the end of the funding period, and shall be available for both program maintenance of effort and administrative expenditures. [66GA, ch 10,§5]

*66GA, ch 10

CHAPTER 249C

WORK AND TRAINING PROGRAM

Referred to in §§239.2, 239.5

249C.1 Definitions.
249C.2 Programs of rehabilitation.
249C.3 Work and training program.
249C.4 Co-operation.
249C.5 Bases for program.
249C.6 Participation required.
249C.7 Public or private training.
249C.8 Health and safety.
249C.9 Workers' compensation law applicable.
249C.10 Earnings applied to aid.
249C.11 Needs related to work.
249C.12 Care of children.
249C.13 Other social services.
249C.14 Transfer of funds.
249C.15 Rules adopted.
249C.16 Eligible persons not state employees.
249C.17 Chapter not to interfere with federal assistance.

249C.1 Definitions. For the purposes of this chapter:

1. *"Commissioner"* means the commissioner of social services, or his designee.

2. *"Department"* means the department of social services.

3. *"Training"* includes appropriate education.

4. *"Public assistance"* means aid or assistance under chapter 239 or 249.

5. *"Eligible person"* includes each person who is receiving public assistance or who lives in the same household as a recipient of public assistance and whose needs are taken into account in determining the assistance payment. However, the following are not "eligible persons" unless they voluntarily request to be included:

a. A person who is under the age of sixteen years.

b. A person who has attained the age of sixty-five years.

c. A person whose health or disability does not permit any kind of work or training.

d. A person who is already engaged in an adequate full-time program of work, training, or school.

e. A person who is required to be present and is actually present in the home on a substantially continuous basis because of the illness or incapacity of another member of the household.

f. A person who is required to be present and is actually present in the home on a substantially continuous basis for the purpose of child care. [C71, 73, 75,§249C.1; 66GA, ch 1056, §13]

Referred to in §239A.1

249C.2 Programs of rehabilitation. It is the policy of this state that public assistance pro-

grams shall, to the maximum possible extent, be programs of rehabilitation rather than mere support. Persons and members of families receiving public assistance shall be helped to become self-supporting, and shall be required to engage in work and training to the extent provided in this chapter. This chapter shall be interpreted and administered to carry out this policy. [C71, 73, 75,§249C.2]

249C.3 Work and training program. The commissioner shall establish a work and training program for persons and members of families receiving public assistance. The employment security commission, the Iowa state employment service, all county boards and departments of social welfare, and all state, county, and public educational agencies and institutions providing vocational rehabilitation, adult education, or vocational or technical training shall assist and co-operate in the program. They shall make agreements and arrangements for maximum co-operation and use of all available resources in the program. By mutual agreement the commissioner may delegate any of his powers and duties under this chapter to the employment security commission or the Iowa state employment service. [C71, 73, 75,§249C.3]

249C.4 Co-operation. The program shall provide for maximum co-operation with and participation in federal programs having similar purposes, but the state work and training program shall continue whether or not federal programs and federal funds are available. [C71, 73, 75,§249C.4]

249C.5 Bases for program. The program shall include, but not be limited to:

1. Placing eligible persons in employment and on-the-job training.

2. Institutional and work experience training for eligible persons for whom such training is likely to lead to regular employment.

3. Special work projects for eligible persons for whom a job in the regular economy cannot be found.

4. Incentives, opportunities, and services to aid eligible persons. [C71, 73, 75,§249C.5]

249C.6 Participation required. Each eligible person shall be required to participate in the work and training program, to co-operate fully in the program, and to accept any reasonably suitable employment, training, or education offered to him in connection with the program, as a condition of receiving public assistance. If he fails or refuses to do so, he shall not receive public assistance. His disqualification shall not disqualify other members of his family who are entitled to public assistance, but their public assistance shall not be paid to the disqualified person and shall be paid in a manner which will not permit the disqualified person to have access to the assistance funds. A person shall not be disqualified for public assistance if it is impossible to arrange suitable work or training for him. [C71, 73, 75,§249C.6]

249C.7 Public or private training. Work or training may be furnished by public or private agencies, organizations, or companies, under rules adopted by the commissioner. [C71, 73, 75,§249C.7]

249C.8 Health and safety. The commissioner shall establish and maintain reasonable standards for health, safety, and other conditions under the work and training program. [C71, 73, 75,§249C.8]

249C.9 Workers' compensation law applicable. Each eligible person, with respect to work performed under this chapter, shall be covered by the workers' compensation law or shall otherwise be provided with comparable protection. [C71, 73, 75,§249C.9; 66GA, ch 1084,§43]

249C.10 Earnings applied to aid. If earnings are received by an eligible person for work under the program, all or part of the earnings may be applied to reduce the cost of public assistance to the person or his family, under rules adopted by the commissioner. However, the commissioner may permit the eligible person to retain a reasonable part of his earnings as an incentive payment, without reduction of public assistance. [C71, 73, 75,§249C.10]

249C.11 Needs related to work. In determining needs for public assistance, expenses and needs reasonably related to work or training under the program shall be taken into account. [C71, 73, 75,§249C.11]

249C.12 Care of children. When needed, arrangements shall be made for the care of children during the absence from the home of a person participating in work or training under the program. [C71, 73, 75,§249C.12]

249C.13 Other social services. Eligible persons and their families shall be offered other social services which the commissioner deems advisable. [C71, 73, 75,§249C.13]

249C.14 Transfer of funds. For the purposes of the work and training program, the commissioner may use or transfer to any other agency any of the funds appropriated for public assistance and any other funds lawfully available. State and federal funds allocated to the program by the commissioner and the department of job service shall be at least equal to five percent of the total state and federal funds available to the department for assistance under chapter 239, unless the commissioner determines that a lesser amount is sufficient to provide an adequate work and training program for all eligible persons. [C71, 73, 75,§249C.14; 66GA, ch 1068,§38]

249C.15 Rules adopted. The commissioner shall adopt rules to implement this chapter and achieve its purposes. [C71, 73, 75,§249C.15]

249C.16 Eligible persons not state employees. No eligible person shall be deemed to be an employee of the state or any of its subdivisions by reason of his participation in the work and training program. However, this section shall not prevent him from having the status of an employee for the purposes of workers' compensation. [C71, 73, 75,§249C.16; 66GA, ch 1084,§43]

249C.17 Chapter not to interfere with federal assistance. If it is finally determined that any provision of this chapter would cause the work and training program to be ineligible for federal financial assistance which the state would otherwise receive, such provision may be suspended or modified to the extent which is essential to obtain such assistance. [C71, 73, 75,§249C.17]

Mandatory county participation in food stamp program, §234.11

CHAPTER 250

COMMISSION OF VETERAN AFFAIRS

250.1 Tax.
250.2 Control of fund.
250.3 Commission of veteran affairs.
250.4 Appointment—vacancies.
250.5 Compensation.
250.6 Qualification—organization.
250.7 Meetings—report—budget.
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250.17 Maintenance of graves.
250.18 Payment—how made.
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250.20 Repealed by 58GA, ch 180,§2.
250.21 World War II dates.

250.1 Tax. A tax not exceeding twenty-seven cents per thousand dollars of assessed value may be levied by the board of supervisors upon all taxable property within the county, to be collected at the same time and in the same manner as other taxes, to create a veteran affairs fund for the relief of, and to pay the funeral expenses of honorably discharged, indigent men and women of the United States who served in the military or naval forces of the United States in any war including the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, and including the Vietnam Conflict at any time between August 5, 1964 and ending on the date the armed forces of the United States are directed by formal order of the government of the United States to cease hostilities,* both dates inclusive, and their indigent wives, widows and minor children not over eighteen years of age, having a legal residence in the county. [C97,§430; SS15,§430; C24, 27, 31, 35,§5385; C39,§3828.051; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.1; 66GA, ch 76,§4]

Referred to in §24.37, 250.5

*See §427.3(4)

250.2 Control of fund. Said fund shall be expended for the purposes aforesaid by the joint action and control of the board of supervisors and the commission of veteran affairs hereinafter provided for. [SS15,§430; C24, 27, 31, 35,§5386; C39,§3828.052; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.2]

250.3 Commission of veteran affairs. The commission of veteran affairs shall consist of three persons, all of whom shall be honorably discharged men or women of the United States who served in the military or naval forces of the United States in any war, including the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, and including the Vietnam Conflict at any time between August 5, 1964 and ending on the date the armed forces of the United States are directed by formal order of the government of the United States to cease hostilities, both dates inclusive. Said membership shall at all times, as near as possible, be equally divided among the men and women who served in the Spanish American War, World War I and World War II. [C97,§431; C24, 27, 31, 35,§5387; C39,§3828.053; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.3; 66GA, ch 76,§5]

250.4 Appointment—vacancies. Members of said commission shall be appointed by said board at the regular meeting in June, and the first appointees shall hold their office for one, two, and three years, respectively, and until their successors shall be appointed and qualify, and thereafter one shall be appointed each year for a term of three years. Any appointee may be removed at any time by said board for neglect of duty or maladministration. Vacancies shall be filled by appointment by the board. [C97,§431; C24, 27, 31, 35,§5388; C39,§3828.054; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.4]

250.5 Compensation. The members of said commission shall be paid for their services the sum of five dollars per day for each day actually employed in the work of said commission, and also the same mileage that is paid to the members of the board of supervisors. Said per diem and mileage shall be paid out of the taxes raised under the provisions of section 250.1. In the event the commission has employed administrative or clerical help, the members of the commission shall receive compensation for attendance at the annual and monthly meetings only. [C27, 31, 35,§5388-b1; C39,§3828.055; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.5]

Mileage, §331.22

250.6 Qualification — organization. They shall qualify by taking the usual oath of office, and give bond in the sum of five hundred dollars each, conditioned for the faithful discharge of their duties with sureties to be approved by the county auditor. The commission shall organize by the selection of one of their number as chairman, and one as secretary. The commission, subject to the approval of the board of supervisors, shall have power to employ necessary administrative or clerical assistants when needed, the compensation of such employees to be fixed by the board of supervisors, but no member of the commission shall be so employed. The commission with the approval of the board of supervisors shall appoint one of the deputies of the county auditor to serve as administrative assistant to the commission, to serve without additional compensation, unless for good reasons shown, this arrangement is not feasible. [C97,§431; C24, 27, 31, 35,§5389; C39,§3828.056; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.6]

Oath, §63.10

250.7 Meetings—report—budget. The commission shall meet monthly on the first Monday and at such other times as may be necessary. At the monthly meeting it shall determine who are entitled to relief and the probable amount required to be expended therefor. The commission shall meet annually on the second Monday in June. At such annual meeting it shall prepare an estimated budget for all expenditures to be made in the next fiscal year and certify said budget to the board of supervisors, who shall have the power and authority to approve or reduce said budget for valid reasons shown and entered of record and such decision shall be final. [C97,§432; S13,§432; C24, 27, 31, 35,§5390; C39,§3828.057; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.7]

250.8 Accounting system. The state auditor shall prepare sample copies of a system of accounting and case records for the use of all county commissions of veteran affairs and this uniform system of accounting and case records shall be used by the several counties. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.8]

250.9 Names certified—relief changed. At each regular meeting the commission shall submit to the board of supervisors a certified list of those persons to whom relief has been authorized and the amounts so awarded. The amount awarded to any person may be increased, decreased, or discontinued by the commission at any meeting. New names may be added and certified thereat. [C97,§432; S13, §432; C24, 27, 31, 35,§5391; C39,§3828.058; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.9]

250.10 Disbursements — inspection of records. On the first Monday in each month, all claims certified shall be reviewed by the board of supervisors and the county auditor shall issue his warrants in payment of same drawn upon the veteran affairs fund. All applications, investigation reports and case records shall be privileged communications and held confidential, subject to use and inspection only by persons authorized by law in connection with their official duties relating to financial audits and the administration of the provisions of this chapter. Provided, however, that the county commission of veteran affairs shall prepare and file in the office of the county auditor on or before the thirtieth day of each January, April, July and October a report showing the names and addresses of all recipients receiving assistance under this chapter, together with the amount paid to each during the preceding quarter. Each report so filed shall be securely fixed in a record book to be used only for such reports made under this chapter.

The record book shall be and the same is hereby declared to be a public record, open to public inspection at all times during the regular office hours of the county auditor. Each person who desires to examine said records, other than in pursuance of official duties as hereinbefore provided, shall sign a written request to examine the same, which shall contain an agreement on the part of the signer that he will not utilize any information gained therefrom for commercial or political purposes.

It shall be unlawful for any person, body, association, firm, corporation or any other agency to solicit, disclose, receive, make use of or to authorize, knowingly permit, participate in or acquiesce in the use of any lists, names or other information obtained from the reports above provided for, for commercial or political purposes, and a violation of this provision shall constitute a misdemeanor punishable by a fine of not to exceed two thousand dollars or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment. [C97,§432; S13,§432; C24, 27, 31, 35,§5392; C39,§3828.059; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.10]

250.11 Data furnished bonus board. The commission of veteran affairs of each county shall obtain for and transmit to the state bonus board, created by chapter 35, at such time and in such manner as the board shall specify, such information as said board may request concerning any person having or claiming to

have any right to award from the additional bonus and disability fund created by said chapter. [C27, 31, 35,§5392-b1; C39,§**3828.060**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.11]

250.12 Relief information confidential. It shall be unlawful for the board of supervisors of any county or the commission of veteran affairs of any county to place the administration of the duties of the commission of veteran affairs under any other relief agency of any county, or to publish the names of the veterans or their families who receive relief under the provisions of this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.12]

250.13 Burial—expenses. The board shall designate some suitable person in each township to cause to be decently interred in a suitable cemetery and not in any cemetery or part thereof used exclusively for the burial of the pauper dead, the body of any honorably discharged man or woman of the United States, who served in the military or naval forces of the United States during any war, including the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, and including the Vietnam Conflict at any time between August 5, 1964, and ending on the date the armed forces of the United States are directed by formal order of the government of the United States to cease hostilities, both dates inclusive, or the spouse, surviving spouse, or child of such person, if any such person has died without leaving sufficient means to defray the funeral expenses. The commission shall pay such expenses in a sum not exceeding two hundred fifty dollars in any case. [C97,§433; S13,§433; C24, 27, 31, 35,§5393; C39,§**3828.061**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.13; 66GA, ch 76,§6]

250.14 Headstone. The grave of each soldier, sailor, marine, or nurse shall be marked by a headstone, showing his name and the organization to which he belonged or in which he served. The headstone shall be of such design and material as may be approved by the board of supervisors, and shall cost not more than fifteen dollars. If, however, a headstone of the above general description shall be provided by the national government or if a tombstone shall be furnished by private persons for such grave, the headstone herein provided for need not be provided at county expense. [C97,§434; C24, 27, 31, 35,§5394; C39, §**3828.062**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §250.14]

250.15 Expenses and audit thereof. The expenses of such burial and headstone shall be paid by the county in which such person died. If such person is a resident of a different county at the time of death, the latter county shall reimburse the county wherein he died for the cost of such burial and headstone. In either case, the board of supervisors of such respective counties shall audit the account and pay the same from the funds provided for in this chapter in such manner as other claims are audited and paid. [C97,§434; C24, 27, 31, 35, §5395; C39,§**3828.063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.15]

250.16 Markers for graves. The commission of veteran affairs in any county shall, upon the petition of five reputable freeholders of any township or municipality in their county, procure for and furnish to said petitioners some suitable and appropriate metal marker, at a cost not exceeding ten dollars each, for the grave of each honorably discharged man or woman of the United States, who served in the military or naval forces of the United States during any war, including the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, and including the Vietnam Conflict at any time between August 5, 1964, and ending on the date the armed forces of the United States are directed by formal order of the government of the United States to cease hostilities, both dates inclusive, who is buried within the limits of said township or municipality, to be placed at his grave to permanently mark and designate said grave for memorial purposes. The expenses thereof shall be paid from any funds raised as provided in this chapter. [SS15,§434-a; C24, 27, 31, 35,§5396; C39,§**3828.064**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.16; 66GA, ch 76,§7]

250.17 Maintenance of graves. The board of supervisors of the several counties in this state shall each year, out of the general fund of their respective counties, appropriate and pay to the owners of, or to the public board or officers having control of cemeteries within the state in which any such deceased service man or woman of the United States is buried, a sum sufficient to pay for the care and maintenance of the lots on which they are so buried, in any and all cases in which provision for such care is not otherwise made. [C27, 31, 35, §5396-a1; C39,§**3828.065**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.17]

41GA, ch 94,§1, editorially divided

250.18 Payment—how made. Such payment shall be made at the rate charged for like care and maintenance of other lots of similar size in the same cemetery, upon the affidavit of the superintendent or other person in charge of such cemetery, that the same has not been otherwise paid or provided for. [C27, 31, 35, §5396-a2; C39,§**3828.066**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.18]

250.19 Burial records. The commission of veteran affairs of each county shall be charged with securing the information requested by the adjutant general's office of every person having a service record buried in that county. Such information shall be secured from the undertaker in charge of the burial and shall be transmitted by him to the commission of veteran affairs of the county where burial is made and shall be recorded alphabetically and

by description of location in the cemetery where buried, in a book as prescribed by the adjutant general and kept for that purpose in the office of the commission. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§250.19]

250.20 Repealed by 58GA, ch 180,§2.

250.21 World War II dates. For the purposes of this chapter, World War II shall be from December 7, 1941, to December 31, 1946, both dates inclusive. [C58, 62, 66, 71, 73, 75, §250.21; 66GA, ch 76,§8]

CHAPTER 251

EMERGENCY RELIEF ADMINISTRATION

Child and family services, see ch 234

251.1 Definitions.
251.2 Administration of emergency relief.
251.3 Powers and duties.
251.4 Grants from state funds to counties.
251.5 Duties of the county board of social welfare.
251.6 County supervisors to determine relief and work projects.
251.7 County directors to act as executive officers.

251.1 Definitions. As used in this chapter: *"Division"* or *"state division"* means the division of child and family services of the department of social services; "director" or "state director" means the director of the division of child and family services of the department of social services. [C71, 73, 75, §251.1]

251.2 Administration of emergency relief. The state division, in addition to all other powers and duties given it by law, shall be charged with the supervision and administration of all funds coming into the hands of the state now or hereafter provided for emergency relief. [C39,§**3828.067**; C46, 50, 54, 58, 62, 66, §251.1; C71, 73, 75,§251.2]

251.3 Powers and duties. The state director shall have the power to:

1. Appoint such personnel as may be necessary for the efficient discharge of the duties imposed upon it in the administration of emergency relief, and to make such rules and regulations as it deems necessary or advisable covering its activities and those of the county boards.

2. Join and co-operate with the government of the United States, or any of its appropriate agencies or instrumentalities, in any proper relief activity.

3. Make such reports of budget estimates to the governor and to the general assembly as are required by law, or are necessary and proper to obtain appropriations of funds necessary for relief purposes and for all the purposes of this chapter.

4. Determine the need for funds in the various counties of the state basing such determination upon the amount of money needed in the various counties to provide adequate relief, and upon the counties financial inability to provide such relief from county funds. The state director may administer said funds belonging to the state within the various counties of the state to supplement local funds as needed.

5. Make such reports, obtain and furnish such information from time to time as may be required by the governor, by the general assembly, or by any other proper office or agency, state or federal, and make an annual report of its activities. [C39,§**3828.068**; C46, 50, 54, 58, 62, 66,§251.2; C71, 73, 75,§251.3]

Report to governor, §17.3

251.4 Grants from state funds to counties. The state division shall have the authority to require as a condition of making available state assistance to counties for emergency relief purposes, that the county boards of supervisors shall make maximum tax levies for relief and establish such budgets as are needed in respect to the relief situation in the counties. The state division shall also have the authority to require as a condition of grants of state aid to the counties that the county board of supervisors shall make no transfers from the county poor fund or charges against the county poor fund for purposes other than that for which the county poor fund is established by law, and it is hereby made mandatory upon the county board of supervisors, that taxes levied and collected for the county poor fund shall be expended only for the purposes levied. [C39,§**3828.069**; C46, 50, 54, 58, 62, 66,§251.3; C71, 73, 75,§251.4]

251.5 Duties of the county board of social welfare. The county board, in addition to all of the powers and duties given it by law, shall have the following duties:

1. Co-operate with the county board of supervisors in all matters pertaining to administration of relief.

2. At the request of the county board of supervisors, prepare requests for grants of state funds.

3. At the request of the county board of supervisors, administer county relief funds.

4. In counties receiving grants of state funds upon approval of the comptroller, administer both state and county relief funds.

5. Perform such other duties as may be prescribed by the state director and the county board of supervisors. [C39,§3828.070; C46, 50, 54, 58, 62, 66,§251.4; C71, 73, 75,§251.5]

251.6 County supervisors to determine relief and work projects. The local county board of supervisors shall ascertain all necessary details concerning those seeking relief, shall determine the minimum amount of relief required for each such person or family, and shall ascertain which of such persons are employable.

The board of supervisors may require that all employables contribute as many hours of his or her labor as that employable's requirements, as estimated by the board, will buy at the prevailing rate of compensation for that class of labor in that community.

The board of supervisors may determine on what projects of county-wide or community-wide nature such relief labor may be used. It may, however, delegate to its political subdivisions such authority as it deems advisable for administrative expediency.

To the board of supervisors is reserved all authority not expressly otherwise set out previously. [C39,§3828.071; C46, 50, 54, 58, 62, 66, §251.5; C71, 73, 75,§251.6]

251.7 County directors to act as executive officers. The county director shall be the executive officer of the county board in all matters pertaining to relief. [C39,§3828.072; C46, 50, 54, 58, 62, 66,§251.6; C71, 73, 75,§251.7]

CHAPTER 252

SUPPORT OF THE POOR

Referred to in §§155.37, 238.34

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252.39 Medical and dental service.
252.40 Supervision.
252.41 Employment.
252.42 Co-operation on work-relief projects.
252.43 Poor tax.
252.44 Repealed by 66GA, ch 1056,§45.
252.45 Future poor fund levy.

252.1 "Poor person" defined. The words *"poor"* and *"poor person"* as used in this chapter shall be construed to mean those who have no property, exempt or otherwise, and are unable, because of physical or mental disabilities, to earn a living by labor; but this section shall not be construed to forbid aid to needy persons who have some means, when the board shall be of opinion that the same will be conducive to their welfare and the best interests of the public. [C97,§2252; C24, 27, 31, 35,§5297; C39,§3828.073; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.1]

252.2 Parents and children liable. The father, mother, and children of any poor person, who is unable to maintain himself or herself by labor, shall jointly or severally relieve or maintain such person in such manner as, upon application to the township trustees of the township where such person has a residence or may be, they may direct. [C51,§787; R60,§1355; C73,§1330; C97,§2216; C24, 27, 31, 35, §5298; C39,§3828.074; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.2]

252.3 Putative father. The word "father" in this chapter includes the putative father of an illegitimate child, and the question of parentage may be tried in any proceeding to recover for or compel the support of such a child, and like proceedings may be prosecuted against

the mother independently of or jointly with the alleged father. [C51,§788; R60,§1356; C73, §1332; C97,§2250; C24, 27, 31, 35,§5299; C39, §3828.075; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.3]

Obligation of parent, ch 675

252.4 Who deemed trustee. The word "trustees" in this chapter shall be construed to include and mean any person or officer of any county or city charged with the oversight of the poor. [C51,§789; R60,§1357; C73,§1333; C97,§2251; C24, 27, 31, 35,§5300; C39,§3828.076; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.4]

252.5 Remote relatives. In the absence or inability of nearer relatives, the same liability shall extend to grandparents, if of ability without personal labor, and to the grandchildren who are of ability by personal labor or otherwise. [C51,§787; R60,§1355; C73,§1331; C97,§2217; C24, 27, 31, 35,§5301; C39,§3828.077; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.5]

252.6 Enforcement of liability. Upon the failure of such relatives so to relieve or maintain a poor person who has made application for relief, the township trustees, county social welfare board, or state division of child and family services of the department of social services may apply to the district court of the county where such poor person resides or may be, for an order to compel the same. [C51,§789; R60,§1357; C73,§1333; C97,§2218; C24, 27, 31, 35,§5302; C39,§3828.078; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.6]

252.7 Notice—hearing. At least ten days' notice in writing of the application shall be given to the parties sought to be charged, service thereof to be made as of an original notice, in which proceedings the county shall be plaintiff and the parties served defendants. No order shall be made affecting a person not served, but, as to such, notice may be given at any stage of the proceedings. The court may proceed in a summary manner to hear all the allegations and proofs of the parties, and order any one or more of the relatives who shall be able, to relieve or maintain him or her, charging them as far as practicable in the order above named, and for that purpose may bring in new parties when necessary. [C51,§§790–792; R60,§§1358–1360; C73,§§1334–1336; C97,§2219; C24, 27, 31, 35,§5303; C39,§3828.079; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.7]

Manner of service, R.C.P. 56(a)

252.8 Scope of order. The order may be for the entire or partial support of the applicant, may be for the payment of money or the taking of the applicant to a relative's house, or may assign him or her for a certain time to one and for another period to another, as may be just and right, taking into view the means of the several relatives liable, but no such assignment shall be made to one who is willing to pay the amount necessary for support. If the order be for relief in any other form than money, it shall state the extent and value thereof per week, and the time such relief shall continue; or the order may make the time of continuance indefinite, and it may be varied from time to time by a new order, as circumstances may require, upon application to the court by the trustees, the poor person, or the relative affected, ten days' notice thereof being given to the party or parties concerned. [C51, §§793–795; R60,§§1361–1363; C73,§§1337–1339; C97,§2219; C24, 27, 31, 35,§5304; C39,§3828.080; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.8]

252.9 Judgment—appeal. When money is ordered to be paid, it shall be paid to such person as the court may direct. If support be not rendered as ordered, the court upon such fact being shown by the affidavit of one or more of the proper trustees, may render judgment and order execution for the amount due, rating any support ordered in kind at the valuation previously made. An appeal may be taken from the judgment rendered to the supreme court. Support for later periods under the same order may be, as it becomes due, applied for and obtained in the same manner. [C51, §§796–798; R60,§§1364–1366; C73,§§1340–1342; C97,§2219; C24, 27, 31, 35,§5305; C39,§3828.081; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.9]

252.10 to 252.12 Repealed by 66GA, ch 1104, §17.

252.13 Recovery by county. Any county having expended any money for the relief or support of a poor person, under the provisions of this chapter, may recover the same from any of that person's kindred mentioned herein, from such poor person should he or she become able, or from his or her estate; from relatives by action brought within two years from the payment of such expenses, from such poor person by action brought within two years after becoming able, and from such person's estate by filing the claim as provided by law. There shall be allowed against the person's estate a claim of the sixth class for that portion of the liability to the county which exceeds the total amount of all claims of the first through the fifth classes, inclusive, as defined in section 633.425, which are allowed against that estate. [C51,§806; R60,§1374; C73, §1350; C97,§2222; C24, 27, 31, 35,§5309; C39, §3828.085; C46, 50, 54, 58, 62, 66, 71, 73, 75, §252.13; 66GA, ch 1104,§14]

Referred to in §252.14
Claims against estate, §633.410 et seq.

252.14 Homestead—when liable. When expenditures have been made for and on behalf of a poor person and his family, as contemplated by section 252.13, the homestead of such poor person is liable for such expenditures when such poor person dies without leaving a surviving husband or wife, or child, as defined in section 234.1. [C31, 35,§5309-c1; C39,§3828.086; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.14]

See also §561.21

252.15 Recovery by relative. A more distant relation, who may have been compelled

to aid a poor person, may recover from any one or more of the nearer relatives, and one so compelled to aid may recover contribution from others in the same degree, and a recovery may be had against the poor person or his estate, if, after such aid or support has been given, the person aided or supported becomes able to repay the same; but proceedings to recover therefor must be brought within two years from the time a cause of action accrues. [C51,§807; R60,§1375; C73,§1351; C97,§2223; C24, 27, 31, 35,§5310; C39,§**3828.087**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.15]

252.16 Settlement—how acquired. A legal settlement in this state may be acquired as follows:

1. Any person continuously residing in any county in this state for a period of one year acquires a settlement in that county.

2. Any person having acquired a settlement in any county of this state shall not acquire a settlement in any other county until such person shall have continuously resided in said county for a period of one year.

3. A person who is an inmate of or is supported by an institution whether organized for pecuniary profit or not or an institution supported by charitable or public funds in a county in this state shall not acquire a settlement in the county unless the person before becoming an inmate in the institution or being supported by an institution has a settlement in the county. A minor child residing in an institution assumes the settlement of his parent as prescribed in subsections 5 and 6. Settlement of the minor child changes with the settlement of his parent, except that the child retains the settlement that his parent has on the child's eighteenth birthday until he is discharged from the institution, at which time he acquires his own settlement, as provided in this section.

4. Minor children who reside with both parents take the settlement of the parents. If the minor child resides on a permanent basis with only one parent or a guardian, the minor child takes the settlement of the parent or guardian with whom the child resides.

5. Any person with settlement in this state who enlists in or is inducted into the military or naval service of the United States shall retain such settlement during the period of his military or naval service. Any person without settlement in this state who is serving in said military or naval service within the borders of this state shall not acquire a settlement during the period of such service.

6. The provisions of subsections 1, 2 and 3 of this section shall not apply to any blind person who is receiving assistance under the laws of this state. Any such person who has resided in any one county of this state for a period of six months shall have acquired legal settlement for support as provided in this chapter. [C51,§808; R60,§1376; C73,§1352; C97, §2224; C24, 27, 31, 35,§5311; C39,§**3828.088**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.16]

Referred to in §§222.60(1), 347.16
Settlement prior to July 1, 1974; see 65GA, ch 1093,§91

252.17 Settlement continues. A legal settlement once acquired shall so remain until such person has removed from this state for more than one year or has acquired a legal settlement in some other county or state. [C51,§809; R60,§1377; C73,§1353; C97,§2224; C24, 27, 31, 35, §5312; C39,§**3828.089**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.17]

252.18 Foreign paupers.

1. Any person who is a county charge or likely to become such, coming from another state and not having acquired a settlement in any county of this state or any such person having acquired a settlement in any county of this state who removes to another county, may be removed from this state or from the county into which such person has moved, as the case may be, at the expense of the county wherein said person is found, upon the petition of said county to the district or superior court of that county.

2. The court or judge shall fix the time and place of hearing on said petition and prescribe the time and manner of service of the notice of such hearing.

3. If upon the hearing on said petition such person shall be ordered to remove from the state or county and fails to do so, he shall be deemed and declared in contempt of court and may be punished accordingly; or the judge may order the sheriff of the county seeking the removal to return such person to the state or county of his legal settlement. [C51,§811; R60,§1379; C73,§1354; C97,§2225; C24, 27, 31, 35, §5313; C39,§**3828.090**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.18]

Contempts, ch 665

252.19 Importation prohibited. If any person knowingly bring within this state or any county from another county in this state any pauper or poor person, with the intent of making him a charge on any of the townships or counties therein, he shall be fined not exceeding five hundred dollars, and be charged with his support. [C51,§2736; R60,§4379; C73,§4045; C97,§5009; C24, 27, 31, 35,§5314; C39,§**3828.091**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.19]

252.20 and 252.21 Repealed by 58GA, ch 181, §2.

252.22 Contest between counties. When relief is granted to a poor person having a settlement in another county, the auditor shall at once by mail notify the auditor of the county of his settlement of such fact, and, within fifteen days after receipt of such notice, such auditor shall inform the auditor of the county granting relief if the claim of settlement is disputed. If it is not, the poor person, at the request of the auditor or board of supervisors

of the county of his settlement, may be maintained where he then is at the expense of such county, and without affecting his legal settlement.

All laws relating to the support of the poor as provided by this chapter shall be applicable to care, treatment, and hospitalization provided by county public hospitals. [C51,§§814, 816.817; R60,§§1382, 1384, 1385; C73,§§1357, 1359, 1360; C97,§2228; C24, 27, 31, 35,§5317; C39, §**3828.094**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §252.22]

Referred to in §232.53

252.23 Trial. If the alleged settlement is disputed, then, within thirty days after notice thereof as above provided, a copy of the notices sent and received shall be filed in the office of the clerk of the district court of the county against which claim is made, and a cause docketed without other pleadings, and tried as an ordinary action, in which the county affording the relief shall be plaintiff, and the other defendant, and the burden of proof shall be upon the county granting the relief. [C51, §§816, 817; R60,§§1384, 1385; C73,§§1359, 1360; C97,§2228; C24, 27, 31, 35,§5318; C39,§**3828.095**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.23]

Referred to in §232.53

252.24 County of settlement liable. The county where the settlement is shall be liable to the county rendering relief for all reasonable charges and expenses incurred in the relief and care of a poor person.

When relief as herein provided is furnished by any governmental agency of the county, township or city, such relief shall be deemed to have been furnished by the county in which such agency is located and the agency furnishing such relief shall certify the correctness of the costs of such relief to the board of supervisors of said county and said county shall collect from the county of such person's settlement. The amounts herein collected by said county shall be paid to the agency furnishing such relief. This statute as herein amended shall apply to services and supplies furnished as provided in section 139.30. [C51,§815; R60, §1383; C73,§1358; C97,§2229; C24, 27, 31, 35,§5319; C39,§**3828.096**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.24]

252.25 Relief by trustees. The township trustees of each township, subject to general rules that may be adopted by the board of supervisors, shall provide for the relief of such poor persons in their respective townships as should not, in their judgment, be sent to the county care facility. [C73,§1361; C97,§2230; S13, §2230; C24, 27, 31, 35,§5320; C39,§**3828.097**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.25; 66GA, ch 67, §71]

Referred to in §252.31

252.26 Overseer of poor. The board of supervisors in any county in the state may appoint an overseer of the poor for any part, or all of the county, who shall have within said county, or any part thereof, all the powers and duties conferred by this chapter on the township trustees. Said overseer shall receive as compensation an amount to be determined by the county board and may be paid either from the general or poor fund of the county. [C73, §1361; C97,§2230; S13,§2230; C24, 27, 31, 35,§5321; C39,§**3828.098**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.26]

Referred to in §252.31

252.27 Form of relief—condition. The relief may be either in the form of food, rent or clothing, fuel and lights, medical attendance, civil legal aid, or in money. Legal aid authorized herein shall be provided only through a legal aid program approved by the county board of supervisors. The amount of assistance issued to meet the needs of the person shall be determined by standards of assistance established by the county boards of supervisors. They may require any able-bodied person to labor faithfully on the streets or highways at the prevailing local rate per hour in payment for and as a condition of granting relief; said labor shall be performed under the direction of the officers having charge of working streets and highways. Subject to the provisions of section 142.1, such relief may also consist of the burial of nonresident indigent transients and the payment of the reasonable cost of such burial, provided such expenses do not exceed two hundred fifty dollars. [C73,§1361; C97, §2230; S13,§2230; C24, 27, 31, 35,§5322; C39, §**3828.099**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §252.27]

Referred to in §252.31

252.28 Medical services. When medical services are rendered by order of the trustees or overseers of the poor, no more shall be charged or paid therefor than is usually charged for like services in the neighborhood where such services are rendered. [C73,§1361; C97,§2230; S13,§2230; C24, 27, 31, 35,§5323; C39, §**3828.100**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §252.28]

Referred to in §252.31
40ExGA, HF 140,§12, editorially divided

252.29 Interest prohibited. No supervisor, trustee, or employee of the county, shall be directly or indirectly interested in any supplies furnished the poor. [C97,§2230; S13,§2230; C24, 27, 31, 35,§5324; C39,§**3828.101**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.29]

Referred to in §252.31
Similar provisions, §§19B.5, 68B.3, 86.7, 262.10, 314.2, 347.15, 403.16, 403A.22, 741.11

252.30 Special privileges to soldiers and others. No person who has served in the army or navy of the United States, or their widows or families, requiring public relief shall be sent to the county care facility when they can and prefer to be relieved to the extent above provided, and other persons and families may, at the discretion of the board, also be so relieved. [C73,§1362; C97,§2231; S13,§2231; C24, 27, 31, 35,

§5325; C39,§3828.102; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.30; 66GA, ch 67,§71]
Referred to in §252.31

252.31 County expense. All moneys expended as contemplated in sections 252.25 to 252.30, inclusive, shall be paid out of the county treasury, after the proper account rendered thereof shall have been approved by the boards of the respective counties, and in all cases the necessary appropriations therefor shall be made by the respective counties. But the board may limit the amount thus to be furnished. [C73, §1363; C97,§2232; C24, 27, 31, 35,§5326; C39, §3828.103; C46, 50, 54, 58, 62, 66, 71, 73, 75, §252.31]

252.32 Township trustees—duty. The trustees in each township, in counties where there is no county care facility, have the oversight and care of all poor persons in their township, and shall see that they receive proper care until provided for by the board of supervisors. [C51,§819; R60,§1387; C73,§1364; C97,§2233; S13, §2233; C24, 27, 31, 35,§5327; C39,§3828.104; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.32; 66GA, ch 67, §71]

252.33 Application for relief. The poor may make application for relief to a member of the board of supervisors, or to the overseer of the poor, or to the trustees of the township where they may be. If application be made to the township trustees and they are satisfied that the applicant is in such a state of want as requires relief at the public expense, they may afford such temporary relief, subject to the approval of the board of supervisors, as the necessities of the person require and shall report the case forthwith to the board of supervisors, who may continue or deny relief, as they find cause. [C51,§820; R60,§1388; C73, §1365; C97,§2234; S13,§2234; C24, 27, 31, 35, §5328; C39,§3828.105; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.33]
Referred to in §252.34

252.34 Allowance by board. The board of supervisors may examine into all claims, including claims for medical attendance, allowed by the township trustees for the support of the poor, and if they find the amount allowed by said trustees to be unreasonable, exorbitant, or for any goods or services other than for the necessaries of life, they may reject or diminish the claim as in their judgment would be right and just. This section shall apply to all counties in the state, whether there are county care facilities established in the same or not. This and section 252.33 shall apply to acts of overseers of poor in cities as well as to township trustees. [C51,§820; R60,§1388; C73,§1365; C97,§2234; S13,§2234; C24, 27, 31, 35,§5329; C39, §3828.106; C46, 50, 54, 58, 62, 66, 71, 73, 75, §252.34; 66GA, ch 67,§71]

252.35 Payment of claims. All claims and bills for the care and support of the poor shall be certified to be correct by the proper trustees and presented to the board of supervisors, and, if they are satisfied that they are reasonable and proper, they shall be paid out of the county treasury. [C51,§821; R60,§1389; C73, §1366; C97,§2235; C24, 27, 31, 35,§5330; C39, §3828.107; C46, 50, 54, 58, 62, 66, 71, 73, 75, §252.35]
Referred to in §347.16

252.36 Annual allowance. If a poor person of mature years and sound mind is likely to become a charge, the board may pay him such an annual allowance as will not exceed the cost of maintenance in the ordinary way. [C51,§822; R60,§1390; C73,§1367; C97,§2236; C24, 27, 31, 35,§5332; C39,§3828.108; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.36]

252.37 Appeal to supervisors. If any poor person; on application to the trustees, be refused the required relief, he may apply to the board of supervisors, who, upon examination into the matter, may direct the trustees to afford relief, or it may direct specific relief. [C51,§823; R60,§1391; C73,§1368; C97,§2237; C24, 27, 31, 35,§5333; C39,§3828.109; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.37]

252.38 Contracts for support. The board of supervisors may make contracts with the lowest responsible bidder for furnishing any or all supplies required for the poor, for a term not exceeding one year, or it may enter into a contract with the lowest responsible bidder, through proposals opened and examined at a regular session of the board, for the support of any or all the poor of the county for one year at a time, and may make all requisite orders to that effect, and shall require all such contractors to give bonds in such sum as it believes sufficient to secure the faithful performance of the same. [C51,§825; R60,§1393; C73,§1369; C97,§2238; C24, 27, 31, 35,§5334; C39, §3828.110; C46, 50, 54, 58, 62, 66, 71, 73, 75, §252.38]

252.39 Medical and dental service. The board of supervisors may make contracts with any reputable and responsible person licensed to practice medicine or dentistry in this state to furnish medical or dental attendance or services required for the poor, for any term not exceeding one year, and shall require all such contractors to give bonds in a company authorized to do business in this state in such sum as it believes sufficient to secure the faithful performance of such contracts. [C31, 35, §5334-c1; C39,§3828.111; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.39]
See also §150.9

252.40 Supervision. When a contract is made for the support of any or all the poor, the board shall, from time to time, appoint some person to examine and report upon the manner the poor are kept and treated, which shall be done without notice to the person contracting for their support, and if upon due notice and inquiry the board find that the poor are not reasonably and properly supported and cared for, it may, at a regular or

special session, set aside the contract, making proper allowances for the time it has been in force. [C51,§826; R60,§1394; C73,§1370; C97, §2239; C24, 27, 31, 35,§5335; C39,§3828.112; C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.40]

252.41 Employment. Any such contractor may employ a poor person in any work for which he is physically able, subject to the control of the board of supervisors, who may place said contractor under the supervision of the township trustees. [C51,§827; R60,§1395; C73,§1371; C97,§2240; C24, 27, 31, 35,§5336; C39, §3828.113; C46, 50, 54, 58, 62, 66, 71, 73, 75, §252.41]

252.42 Co-operation on work-relief projects. Notwithstanding the provisions of any laws to the contrary, the county board of supervisors shall have the power to use the poor fund to join and co-operate with the United States government, or cities within their boundaries, or both the United States government and cities within their boundaries, in sponsoring work projects, provided that the money used from the poor fund for such purposes does not exceed the cost per month of supplying relief to the certified persons working on projects who would be receiving direct relief if they were not employed on said work projects. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§252.42]

252.43 Poor tax. The expense of supporting the poor shall be paid out of the county treasury in the same manner as other disbursements for county purposes; and in case the ordinary revenue of the county proves insufficient for the support of the poor, the board may levy a poor tax, not exceeding forty and one-half cents per thousand dollars of assessed value, to be entered on the tax list and collected as the ordinary county tax.

Should the forty and one-half cents levy fail to provide adequate funds to take care of the poor, then the board of supervisors, with the approval of the state comptroller, shall levy an additional tax of not to exceed eighty-one cents per thousand dollars of assessed value, to be entered on the tax list and collected as the ordinary county tax. Before any such additional levy is made, a showing of the necessity for such additional levy shall be made to the state comptroller and no such additional levy shall be made unless it shall be approved in writing by the comptroller.

The expense of support for the poor for Indians residing in the settlement referred to in section 1.12 shall be paid from funds of the state division of child and family services of the department of social services. To administer such support for Indians residing on a settlement, such state division shall have the powers and duties assigned to county officials by this chapter, or the state division or director of same may designate the director of social welfare in the county where such Indians reside to administer such relief. [C51, §844; R60,§1412; C73,1381; C97,§2247; S13,§2247; C24, 27, 31, 35,§5337; C39,§3828.114; C46, 50, 54, 58, 62, 66, 71, 73, 75,252.43; 66GA, ch 1056,§14]

Transfers to poor fund, §24.22
Excess expenditures legalized, 45GA, ch 170
Additional levy from January 1, 1974 to July 1, 1975 permitted, 65GA, ch 175,§8

252.44 Repealed by 66GA, ch 1056,§45.

252.45 Future poor fund levy. For each fiscal year following the extended fiscal year the maximum levy for the support of the poor in each county shall be two-thirds of the maximum poor fund levy for the extended fiscal year beginning January 1, 1974 and ending June 30, 1975, determined pursuant to section 252.44.* However, the state appeal board may permit a higher levy for any year to the extent required in order to prevent severe hardship due to unusual circumstances beyond the control of the county government. [C75, §252.45; 66GA, ch 67,§67]

*See Code 1975

CHAPTER 252A

UNIFORM SUPPORT OF DEPENDENTS LAW

Referred to in §§238.34, 252B.3, 252B.4, 252B.5, 252B.7, 598.34, 675.38

252A.1 Title and purpose.
252A.2 Definitions.
252A.3 Spouse liable for support.
252A.4 Jurisdiction.
252A.5 When proceeding may be maintained.
252A.6 How commenced—trial.
252A.7 Petitioner's representatives to appear.
252A.8 Additional remedies.
252A.9 Construction.
252A.10 Costs advanced.
252A.11 Custody of respondent.
252A.12 Exchange lists of courts.
252A.13 Welfare recipients — assignment of support payments.

252A.1 Title and purpose. This chapter may be cited and referred to as the "Uniform Support of Dependents Law."

The purpose of this uniform chapter is to secure support in civil proceedings for dependent spouses, children and poor relatives from persons legally responsible for their support. [C50, 54, 58, 62, 66, 71, 73, 75,§252A.1; 66GA, ch 1141,§3]

252A.2 Definitions. As used in this chapter, unless the context shall require otherwise, the following terms shall have the meanings ascribed to them by this section:

1. *"State"* shall mean and include any state, territory or possession of the United States and the District of Columbia.

2. *"Court"* shall mean and include any court by whatever name known, in any state having reciprocal laws or laws substantially similar to this chapter upon which jurisdiction has been conferred to determine the liability of persons for the support of dependents within and without such state.

3. *"Child"* includes but shall not be limited to a stepchild, foster child or legally adopted child and means a child actually or apparently under eighteen years of age, and a dependent person eighteen years of age or over who is unable to maintain himself and is likely to become a public charge.

4. *"Dependent"* shall mean and include a spouse, child, mother, father, grandparent or grandchild who is in need of and entitled to support from a person who is declared to be legally liable for such support by the laws of the state or states wherein the petitioner and the respondent reside.

5. *"Petitioner"* shall mean and include each dependent person for whom support is sought in a proceeding instituted pursuant to this chapter.

6. *"Respondent"* shall mean and include each person against whom a proceeding is instituted pursuant to this chapter.

7. *"Petitioner's representative"* shall mean and include a corporation counsel, county attorney, state's attorney, commonwealth attorney and any other public officer, by whatever title his public office may be known, charged by law with the duty of instituting, maintaining or prosecuting a proceeding under this chapter or under the laws of the state or states wherein the petitioner and the respondent reside.

8. *"Summons"* shall mean and include a subpoena, warrant, citation, order or other notice, by whatever name known, provided for by the laws of the state or states wherein the petitioner and the respondent reside as the means for requiring the appearance and attendance in court of the respondent in a proceeding instituted pursuant to this chapter.

9. *"Initiating state"* shall mean the state of domicile or residence of the petitioner.

10. *"Responding state"* shall mean the state wherein the respondent resides or is domiciled or found. [C50, 54, 58, 62, 66, 71, 73, 75, §252A.2; 66GA, ch 1141,§4]

252A.3 Spouse liable for support. For the purpose of this chapter:

1. A spouse in one state is hereby declared to be liable for the support of his wife or her husband and any child or children under eighteen years of age and any other dependent residing or found in the same state or in another state having substantially similar or reciprocal laws, and, if possessed of sufficient means or able to earn such means, may be required to pay for their support a fair and reasonable sum according to his or her means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this chapter.

2. A parent in one state is hereby declared to be liable for the support of his or her child or children under eighteen years of age residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever the father or mother of such child or children is dead, or cannot be found, or is incapable of supporting such child or children, and, if the liable parent is possessed of sufficient means or able to earn such means, he or she may be required to pay for the support of such child or children a fair and reasonable sum according to his or her means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this chapter.

3. The parents in one state are hereby declared to be severally liable for the support of a dependent child eighteen years of age or older residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever such child is unable to maintain himself and is likely to become a public charge.

4. A child or children born of parents who, at any time prior or subsequent to the birth of such child, have entered into a civil or religious marriage ceremony, shall be deemed the legitimate child or children of both parents, regardless of the validity of such marriage.

5. A child or children born of parents who held or hold themselves out as husband and wife by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate child or children of both parents.

6. A man or woman who was or is held out as her husband or his wife by a person by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate spouse of such person.

7. Notwithstanding the fact that the respondent has obtained in any state or country a final decree of divorce or separation from his wife or her husband or a decree dissolving his or her marriage, the respondent shall be deemed legally liable for the support of any dependent child of such marriage.

8. Duties of support applicable under this chapter are those imposed or imposable under the laws of any state where the respondent was present during the period for which support is sought. The respondent is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

9. The natural parents of a child born out of wedlock shall be severally liable for the support of the child, but the liability of the

natural father shall not be enforceable unless he has been adjudicated to be the child's father by a court of competent jurisdiction, or he has acknowledged paternity of the child in open court or by written statement. [C50, 54, 58, 62, 66, 71, 73, 75,§252A.3; 66GA, ch 1141,§5]

252A.4 Jurisdiction. For the purposes of this chapter:

1. The court shall have jurisdiction regardless of the state of last residence or domicile of the petitioner and the respondent and whether or not the respondent has ever been a resident of the initiating state or the dependent person has ever been a resident of the responding state.

2. The court of the responding state shall have the power to order the respondent to pay sums sufficient to provide necessary food, shelter, clothing, care, medical or hospital expenses, expenses of confinement, expenses of education of a child, funeral expenses and such other reasonable and proper expenses of the petitioner as justice requires, having due regard to the circumstances of the respective parties.

3. The courts of both the initiating state and the responding state shall have the power to order testimony to be taken in either or both of such states by deposition or written interrogatories, and to limit the nature of and the extent to which the right so to take testimony shall be exercised, provided that the respondent is given a full and fair opportunity to answer the allegations of the petitioner. [C50, 54, 58, 62, 66, 71, 73, 75,§252A.4]

252A.5 When proceeding may be maintained. A proceeding to compel support of a dependent may be maintained under this chapter in any of the following cases:

1. Where the petitioner and the respondent are residents of or domiciled or found in the same state.

2. Where the petitioner resides in one state and the respondent is a resident of or is domiciled or found in another state having substantially similar or reciprocal laws.

3. Where the respondent is not and never was a resident of or domiciled in the initiating state and the petitioner resides or is domiciled in such state and the respondent is believed to be a resident of or domiciled in another state having substantially similar or reciprocal laws.

4. Where the respondent was or is a resident of or domiciled in the initiating state and has departed or departs from such state leaving therein a dependent in need of and entitled to support under this chapter and is believed to be a resident of or domiciled in another state having substantially similar or reciprocal laws.

5. Whenever the state or a political subdivision thereof furnishes support to a dependent, it has the same right through proceedings instituted by the petitioner's representative to invoke the provisions hereof as the dependent to whom the support was furnished, for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support; the petition in such case may be verified by any official having knowledge of such expenditures and consent of the dependent shall not be required in order to institute proceedings under this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§252A.5]

252A.6 How commenced—trial.

1. A proceeding under this chapter shall be commenced by a petitioner, or a petitioner's representative, by filing a verified petition in the court in equity in the county of the state wherein he or she resides or is domiciled, showing the name, age, residence and circumstances of the petitioner, alleging that he or she is in need of and is entitled to support from the respondent, giving the respondent's name, age, residence and circumstances, and praying that the respondent be compelled to furnish such support. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent including, but without limitation by enumeration, a photograph of the respondent, a description of any distinguishing marks of his or her person, other names and aliases by which he or she has been or is known, the name of his or her employer, his or her fingerprints, or social security number.

2. If the respondent be a resident of or domiciled in such state and the court has or can acquire jurisdiction of the person of the respondent under existing laws in effect in such state, such laws shall govern and control the procedure to be followed in such proceeding.

3. If the court of this state acting as an initiating state finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding state may obtain jurisdiction of the respondent or his or her property, it shall so certify and shall cause three copies of (*a*) the petition (*b*) its certificate and (*c*) this chapter to be transmitted to the court in the responding state. If the name and address of such court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.

4. When the court of this state, acting as a responding state, receives from the court of an initiating state the aforesaid copies, it shall docket the cause, notify the county attorney or other official acting as petitioner's representative, set a time and place for a hearing, and take such action as is necessary in accordance with the laws of this state to serve notice and thus obtain jurisdiction over the re-

spondent. If a court of the state, acting as a responding state, is unable to obtain jurisdiction of the respondent or his or her property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating state, shall on its own initiative use all means at its disposal to trace the respondent or his or her property, and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating state.

However, if the court of the responding state is unable to obtain jurisdiction because the respondent resides in or is domiciled or found in another county of the responding state, the papers received from the court of the initiating state may be forwarded by the court of the responding state which received the papers to the court of the county in the responding state in which the respondent resides or is domiciled or found, and the court of the initiating state shall be notified of the transfer. The court of the county where the respondent resides or is domiciled or found shall acknowledge receipt of the papers to both the court of the initiating state and the court of the responding state which forwarded them, and shall take full jurisdiction of the proceedings with the same powers as if it had received the papers directly from the court of the initiating state.

5. It shall not be necessary for the petitioner or the petitioner's witnesses to appear personally at such hearing, but it shall be the duty of the petitioner's representative of the responding state to appear on behalf of and represent the petitioner at all stages of the proceeding.

6. If at such hearing the respondent controverts the petition and enters a verified denial of any of the material allegations thereof, the judge presiding at such hearing shall stay the proceedings and transmit to the judge of the court in the initiating state a transcript of the clerk's minutes showing the denials entered by the respondent.

7. Upon receipt by the judge of the court in the initiating state of such transcript, such court shall take such proof, including the testimony of the petitioner and the petitioner's witnesses and such other evidence as the court may deem proper, and, after due deliberation, the court shall make its recommendation, based on all of such proof and evidence, and shall transmit to the court in the responding state an exemplified transcript of such proof and evidence and of its proceedings and recommendation in connection therewith.

8. Upon the receipt of such transcript, the court in the responding state shall resume its hearing in the proceeding and shall give the respondent a reasonable opportunity to appear and reply.

9. Upon the resumption of such hearing, the respondent shall have the right to examine or cross-examine the petitioner and the petitioner's witnesses by means of depositions or written interrogatories, and the petitioner shall have the right to examine or cross-examine the respondent and the respondent's witnesses by means of depositions or written interrogatories.

10. If a respondent, duly summoned by a court in the responding state, willfully fails without good cause to appear as directed in the summons, he or she shall be punished in the same manner and to the same extent as is provided by law for the punishment of a defendant or witness who willfully disobeys a summons or subpoena duly issued out of such court in any other action or proceeding cognizable by said court.

11. If, on the return day of the summons, the respondent appears at the time and place specified therein and fails to answer the petition or admits the allegations thereof, or, if, after a hearing has been duly held by the court in the responding state in accordance with the provisions of this section, such court has found and determined that the prayer of the petitioner, or any part thereof, is supported by the evidence adduced in the proceeding, and that the petitioner is in need of and entitled to support from the respondent, the court shall make and enter an order directing the respondent to furnish support to the petitioner and to pay therefor such sum as the court shall determine, having due regard to the parties' means and circumstances. An exemplified copy of such order shall be transmitted by the court to the court in the initiating state and such copy shall be filed with and made a part of the records of such court in such proceeding. The court shall place the respondent on probation on such terms and conditions as the court may deem proper or necessary to assure faithful compliance by the respondent with such order. The court shall also have power to require the respondent to furnish recognizance in the form of a cash deposit or surety bond in such amount as the court may deem proper and just to assure the payment of the amount required to be paid by the respondent for the support of the petitioner.

12. The court making such order may require the respondent to make payment at specified intervals to the clerk of the district court, or to the dependent, or to any state or county agency, and to report personally to the sheriff or any other official, at such times as may be deemed necessary.

13. A respondent who shall willfully fail to comply with or violate the terms or conditions of the support order or of his or her probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court or a violation of probation ordered by such court in any other suit or proceeding cognizable by such court.

14. The court of this state when acting as a responding state shall have the following duties which may be carried out through the

clerk of the court: Upon receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and upon request to furnish to the court of the initiating state a certified statement of all payments made by the respondent.

15. Any order of support issued by a court of the state acting as a responding state shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

16. The court of the initiating state shall receive and accept all payments made by the respondent to the probation department or bureau of the court of the responding state and transmitted by the latter on behalf of the respondent. Upon receipt of any such payment, and under such rules as the court of the initiating state may prescribe, the court, or its probation department or bureau, as the court may direct, shall deliver such payment to the dependent person entitled thereto, take a proper receipt and acquittance therefor, and keep a permanent record thereof. [C50, 54, 58, 62, 66, 71, 73, 75,§252A.6; 66GA, ch 1141,§6]

Referred to in §252A.12

252A.7 Petitioner's representatives to appear. It shall be the duty of all petitioner's representatives of this state to appear in this state on behalf of and represent the petitioner in every proceeding pursuant to this chapter, at the time the petition is filed and at all stages of the proceeding thereafter, and to obtain and present such evidence or proof as may be required by the court in the initiating state or the responding state. [C50, 54, 58, 62, 66, 71, 73, 75,§252A.7]

252A.8 Additional remedies. This chapter shall be construed to furnish an additional or alternative civil remedy and shall in no way affect or impair any other remedy, civil or criminal, provided in any other statute and available to the petitioner in relation to the same subject matter. [C50, 54, 58, 62, 66, 71, 73, 75,§252A.8]

252A.9 Construction. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it. [C50, 54, 58, 62, 66, 71, 73, 75,§252A.9]

Constitutionality, 53GA, ch 103,§10

252A.10 Costs advanced. Actual costs incurred in this state incidental to any action brought under the provisions of this chapter shall be advanced by the initiating party or agency unless otherwise ordered by the court. Where the action is brought by an agency of the state or county there shall be no filing fee. [C58, 62, 66, 71, 73, 75,§252A.10]

252A.11 Custody of respondent. When the court of this state, acting either as an initiating or responding state, has reason to believe that the respondent may flee the jurisdiction it may as an initiating state request in its certificate that the court of the responding state obtain the body of the respondent by appropriate process if that be permissible under the law of the responding state; or, it may as a responding state, obtain the body of the respondent by appropriate process. [C58, 62, 66, 71, 73, 75,§252A.11]

252A.12 Exchange lists of courts. The state division of child and family services of the department of social services is hereby designated as the state information agency under this chapter, and it shall be its duty to compile a list of the courts and their addresses in this state having jurisdiction under this chapter and transmit the same to the state information agency of every other state which has adopted this or a substantially similar Act and to maintain a register of such lists received from other states. [C58, 62, 66, 71, 73, 75, §252A.12]

252A.13 Welfare recipients—assignment of support payments. Persons entitled to periodic support payments pursuant to an order or judgment entered in a uniform support action pursuant to this chapter, who are also welfare recipients, shall assign their rights to the payments to the department of social services. The clerk of court shall forward support payments received pursuant to section 252A.6 to the department, unless the court has ordered the payments made directly to the department under subsection 12 of that section. The department shall have the right to secure support payments in default through proceedings prescribed in this chapter. The clerk shall furnish the department with copies of all orders or decrees awarding support to parties having custody of minor children when the parties are receiving welfare assistance. [66GA, ch 151,§11]

CHAPTER 252B

CHILD SUPPORT RECOVERY

252B.1 Definitions.
252B.2 Unit established.
252B.3 Duty of department to enforce child support.
252B.4 Nonassistance cases.
252B.5 Services of unit.
252B.6 Additional services in assistance cases.
252B.7 Legal services.
252B.8 Central information center.
252B.9 Availability of records.
252B.10 Criminal penalties.

252B.1 Definitions. As used in sections 252B.2 to 252B.10, unless the context otherwise requires:

1. *"Child"* includes but shall not be limited to a stepchild, foster child or legally adopted child and means a child actually or apparently under eighteen years of age, and a dependent person eighteen years of age or over who is unable to maintain himself and is likely to become a public charge. "Child" includes "dependent children" as defined in section 239.1, subsection 3.

2. *"Resident parent"* means the parent with whom the child is residing at the time the support collection or paternity determination services provided in sections 252B.5 and 252B.6 are requested or commenced.

3. *"Absent parent"* means the parent who either cannot be located or who is located and is not residing with the child at the time the support collection or paternity determination services provided in sections 252B.5 and 252B.6 are requested or commenced.

4. *"Department"* means the department of social services.

5. *"Commissioner"* means the commissioner of the department of social services.

6. *"Unit"* means the child support recovery unit created in section 252B.2. [66GA, ch 151,§1]

252B.2 Unit established. There is created within the department of social services a child support recovery unit for the purpose of providing the services required in sections 252B.3 to 252B.6. [66GA, ch 151,§2]

Referred to in §252B.1

252B.3 Duty of department to enforce child support. Upon receipt by the department of an application for public assistance on behalf of a child and determination by the department that the child has been abandoned by its parents or that the child and one parent have been abandoned by the other parent or that the parent or other person responsible for the care, support or maintenance of the child has failed or neglected to give proper care or support to the child, the department shall take appropriate action under the provisions of this chapter or under other appropriate statutes of this state including but not limited to chapters 239, 252A, 598, and 675, to insure that the parent or other person responsible for the support of the child fulfills the support obligation. [66GA, ch 151,§3]

Referred to in §§252B.1, 252B.2

252B.4 Nonassistance cases. The child support and paternity determination services established by the department pursuant to this Act and other appropriate services provided by law including but not limited to the provisions of chapters 239, 252A, 598 and 675 shall be made available by the unit to any individual not otherwise eligible as a public assistance recipient upon application by the individual for the services. The application shall be filed with the department. The commissioner may require an application fee not to exceed twenty dollars as determined by the commissioner. The commissioner may require an additional fee to cover the costs incurred by the department in providing the support collection and paternity determination services. The commissioner shall, by regulation, establish and make available to all applicants for support enforcement and paternity determination services a fee schedule, however, the fee shall not exceed ten percent of any support money recovered by department action. The fee for support collection and paternity determination services shall be agreed upon in writing by the individual requesting the services. The application fee and the additional fee for services provided may be deducted from the amount of the support money recovered by the department. Fees collected pursuant to this section shall be remitted to the treasurer of state who shall deposit them in the general fund of the state. The commissioner or a designee and the treasurer of state shall keep an accurate record of funds so remitted and deposited. [66GA, ch 151,§4]

Referred to in §§252B.1, 252B.2

252B.5 Services of unit. The child support recovery unit shall provide the following services:

1. Assistance in the location of an absent parent or any other person who has an obligation to support the child of the resident parent.

2. Aid in establishing paternity and securing a court order for support pursuant to chapter 675.

3. Aid in enforcing through court proceedings an existing court order for support issued pursuant to chapters 252A, 598, and 675. [66GA, ch 151,§5]

Referred to in §§252B.1, 252B.2, 252B.6, 252B.9

252B.6 Additional services in assistance cases. In addition to the services enumerated in section 252B.5, the unit may provide the following services in the case of a dependent child for whom public assistance is being provided:

1. Represent the child in obtaining a support order necessary to meet the child's needs or in enforcing a similar order previously entered.

2. Appear as a friend of the court in dissolution of marriage and separate maintenance proceedings, or proceedings supplemental thereto, when either or both of the parties to the proceedings are receiving public assistance, for the purpose of advising the court of the financial interest of the state in the proceeding.

3. Appear on behalf of the resident parent of a child for whom public assistance is being provided, upon request by the parent, for the purpose of assisting the parent in securing a modification of a dissolution or separate maintenance decree which provided no support or inadequate support for the child. However, the unit may appear on behalf of the resident parent pursuant to this subsection only when

the court determines that the resident parent is financially unable to employ legal counsel and is unable to engage free legal counsel. If the resident parent does not request the appearance of a unit representative, or does not qualify for representation pursuant to this subsection, the unit may appear as a friend of the court pursuant to subsection 2, however, the unit shall not otherwise participate in the proceeding.

4. If public assistance has been applied for or granted on behalf of a child of parents who are legally separated or whose marriage has been legally dissolved, the unit may apply to the district court for a court order directing either or both parents to show cause for the following:

a. Why an order of support for the child should not be entered, or

b. Why the amount of support previously ordered should not be increased, or

c. Why the parent should not be held in contempt for failure to comply with a support order previously entered.

5. Initiate any civil procedures deemed necessary by the department to secure reimbursement from the parent of a child for money expended by the state in providing public assistance or services to the child. [66GA, ch 151,§6]

Referred to in §§252B.1, 252B.2, 252B.9

252B.7 Legal services. The attorney general may perform the legal services for the child support recovery program and may enforce all laws for the recovery of child support from responsible relatives. The attorney general shall have power to file and prosecute:

a. Contempt of court proceedings to enforce any order of court pertaining to child support.

b. Cases under chapter 252A, the Uniform Support of Dependents Law.

c. An information charging desertion under the provisions of chapter 731.

d. Any other lawful action which will secure collection of support for minor children.

For the aforesaid purposes, the attorney general shall have the same power to commence, file and prosecute any action or information in the proper jurisdiction, which the county attorney could file or prosecute in that jurisdiction. This shall in no way relieve any county attorney from his or her duties, or the supervisory power of the attorney general, in recovery of child support. [66GA, ch 151,§7, ch 1056,§39]

Referred to in §252B.1

252B.8 Central information center. The department shall establish within the unit an information and administration co-ordinating center which shall serve as a registry for the receipt of information and for answering interstate inquiries concerning absent parents and shall co-ordinate and supervise unit activities. The information and administration co-ordinating center shall promote co-operation between the unit and law enforcement agencies to facilitate the effective operation of the unit. [66GA, ch 151,§8]

Referred to in §252B.1

252B.9 Availability of records. The commissioner may request from state, county and local agencies, information and assistance deemed necessary to carry out the provisions of this chapter. State, county and local agencies, officers and employees shall co-operate with the unit in locating absent parents of children on whose behalf public assistance is being provided and shall on request supply the department with available information relative to the location, income and property holdings of the absent parent, notwithstanding any provisions of law making such information confidential.

Information recorded by the department pursuant to this section shall be available only to the unit, attorneys prosecuting a case in which the unit may participate according to sections 252B.5 and 252B.6, courts having jurisdiction in support or abandonment proceedings, and agencies in other states charged with support collection and paternity determination responsibilities as determined by the rules of the department and the provisions of Title IV of the United States Social Security Act. [66GA, ch 151,§9]

Referred to in §§252B.1, 252B.10

252B.10 Criminal penalties.

1. Any person who willfully requests, obtains, or seeks to obtain paternity determination and support collection data available under section 252B.9 under false pretenses, or who willfully communicates or seeks to communicate such data to any agency or person except in accordance with this chapter, shall, upon conviction, for each such offense be punished by a fine of not more than one thousand dollars or by imprisonment in the state penitentiary for not more than two years, or by both fine and imprisonment. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate paternity determination and support collection data except in accordance with this chapter shall for each such offense be fined not more than one hundred dollars or be imprisoned not more than ten days.

2. Any reasonable grounds for belief that a public employee has violated any provision of this chapter shall be grounds for immediate removal from all access to paternity determination and support collection data recorded under section 252B.9. [66GA, ch 151,§10]

Referred to in §252B.1

CHAPTER 253

COUNTY CARE FACILITIES

Referred to in §§135B.18, 135C.23, 155.37
Exemption from hospital licenses, §135B.18

253.1 Establishment—submission to vote.
253.2 Management.
253.3 Annual published report.
253.4 Administrator.
253.5 Admission—labor required.
253.6 Order for admission.
253.7 Discharge.
253.8 Visitation and inspection.
253.9 Temporary admission.
253.10 Leasing.
253.11 Joint care by two or more counties.
253.12 Medication.
253.13 Monitoring of hallways and common areas.
253.14 Effect of approval of plans.

253.1 Establishment — submission to vote. The board of supervisors of each county may order the establishment of a county care facility in such county whenever it is deemed advisable, and may make the requisite contracts and carry such order into effect, provided the cost of said county care facility, if in excess of fifteen thousand dollars, shall be first estimated by said board and approved by vote of the people. [C51,§828; R60,§1396; C73,§1372; C97,§2241; SS15,§2241; C24, 27, 31, 35,§5338; C39,§**3828.115**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§253.1]

Submission of question, §345.1

253.2 Management. The board of supervisors, or any committee appointed by it for that purpose, may make all contracts and purchases requisite for the county farm and care facility and may prescribe rules for the management and government of the same, and for the sobriety, morality and industry of its occupants. [C51,§833; R60,§1401; C73,§1373; C97,§2242; S13, §2242; C24, 27, 31, 35,§5339; C39,§**3828.116**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§253.2]

253.3 Annual published report. The board of supervisors shall, during the month of July of each year, publish in the official papers of the county as part of its proceedings, a financial statement of the receipts of the county care facility, or county farm, itemizing the same and stating the source thereof, which report shall also set forth the total expenditures thereof and the value of the property on hand on July 1 of the year for which the report is made and a comparison with the inventory of the previous year. [C24, 27, 31, 35,§5340; C39,§**3828.117**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§253.3; 66GA, ch 1056,§15]

253.4 Administrator. The board may appoint an administrator of the county care facility, who shall be governed in all respects by the rules of the board and its committees, and may be removed by the board at pleasure, and who shall receive such compensation, perform such duties, and give such security for his faithful performance as the board may direct. [C51,§834; R60,§1402; C73,§1374; C97, §2243; S13,§2243; C24, 27, 31, 35,§5341; C39, §**3828.118**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§253.4]

Removal under preference law, §70.6

253.5 Admission—labor required. The administrator shall admit into the county care facility as residents only those persons ordered admitted in the manner prescribed by section 253.6 and shall maintain a record of the name and age of each person admitted and the date of his admission. The administrator may require of any resident of the county care facility, with approval of a physician, reasonable and moderate labor suited to the resident's age and bodily strength. Any income realized through the labor of residents, together with the receipts from operation of the county farm if one is maintained, shall be appropriated for use by the county care facility in such manner as the board of supervisors may direct. [C51,§§835, 836; R60, §§1403, 1404; C73,§§1375, 1376; C97,§2244; S13, §2244; C24, 27, 31, 35,§5342; C39,§**3828.119**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§253.5]

253.6 Order for admission. No person shall be admitted into the county care facility as a resident except upon order of the board of supervisors, which shall be issued only after the person seeking admission has received a preadmission physical examination by a physician. However, if the need for admission of the person to the county care facility is immediate and no physician is readily available to perform the examination, the board may order the person's admission pending an examination by a physician, any provisions of sections 135C.3 and 135C.4 to the contrary notwithstanding. When an admission is so ordered, the physical examination shall be completed within three days after the person's admission to the county care facility. [C51, §837; R60,§1405; C73,§1377; C97,§2244; S13,§2244; C24, 27, 31, 35,§5343; C39,§**3828.120**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§253.6]

Referred to in §253.5

253.7 Discharge. When any resident receiving treatment or care in the county care facility becomes able to support and care for himself or provide for his own care, the board may upon advice of a physician order his discharge from the county care facility. [C51,

§840; R60,§1408; C73,§1379; C97,§2245; S13,§2245; C24, 27, 31, 35,§5344; C39,§3828.121; C46, 50, 54, 58, 62, 66, 71, 73, 75,§253.7]

253.8 Visitation and inspection. The board shall cause the county care facility to be visited at least once a month by one of its body, who shall carefully examine the condition of the residents and the manner in which they are fed and clothed and otherwise provided for and treated, ascertain what labor they are required to perform, inspect the books and accounts of the administrator, and look into all matters pertaining to the county care facility and its residents, and report to the board. [C51,§842; R60,§1410; C73,§1380; C97,§2246; S13,§2246; C24, 27, 31, 35,§5345; C39, §3828.122; C46, 50, 54, 58, 62, 66, 71, 73, 75,§253.8]

253.9 Temporary admission. The district court may order temporary admission of persons under its jurisdiction to the county care facility until other arrangements are made for care of such persons. [C75,§253.9]

253.10 Leasing. The board is vested with authority to contract for the care of the residents and the use and occupancy of the county care facility and farm, if any, for a period not exceeding three years. [C51,§847; R60,§1415; C73,§1382; C97,§2248; S13,§2248; C24, 27, 31, 35, §5347; C39,§3828.124; C46, 50, 54, 58, 62, 66, 71, 73, 75,§253.10]

253.11 Joint care by two or more counties. In the interest of efficiency and economy, counties may agree in the manner provided by chapter 28E to jointly operate county care facilities. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §253.11]

253.12 Medication. Medication may be administered to residents of a county care facility by a properly trained person qualified under the rules of the state department of health, and may be a person other than the person preparing the dosage to be administered if individual doses of medication have been clearly labeled with the resident's name, time, and date to be administered. [C75, §253.12]

253.13 Monitoring of hallways and common areas. County care facilities may install electronic audio and visual monitoring devices in lieu of other monitoring methods within requirements of the fire safety rules. [C75, §253.13]

253.14 Effect of approval of plans. When plans for construction or modification of a county care facility have been properly approved by the department of health or other appropriate state agency, the facility constructed in accord with the plans so approved shall not for a period of at least ten years from completion of the construction or modification be considered deficient or ineligible for licensing by reason of failure to meet any regulation or standard established subsequent to approval of the construction and modification plans, unless a clear and present danger exists that would adversely affect the residents of the facility. [C75,§253.14]

CHAPTER 254

TUBERCULOUS PATIENTS

Repealed by 66GA, ch 1056,§45

CHAPTER 255

MEDICAL AND SURGICAL TREATMENT OF INDIGENT PERSONS

Referred to in §§135B.31, 155.37, 271.6

255.1 Complaint.
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255.26 Expenses—how paid—action to reimburse county.
255.27 Faculty to prepare blanks—printing.
255.28 Transfer of patients from state institutions.
255.29 Medical care for parolees.
255.30 Collecting and settling claims for care.

255.1 Complaint. Any adult resident of the state may file a complaint in the office of the clerk of any juvenile court, charging that any legal resident of Iowa residing in the county where the complaint is filed is pregnant or is suffering from some malady or deformity that can probably be improved or cured or advantageously treated by medical or surgical treatment or hospital care, and that neither such person nor persons legally chargeable with his support are able to pay therefor. [SS15,§254-b; C24, 27, 31, 35,§4005; C39,§**3828.132**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.1]

255.2 Duty of public officers and others. It shall be the duty of physicians, public health nurses, members of boards of supervisors and township trustees, overseers of the poor, sheriffs, policemen, and public school teachers, having knowledge of persons suffering from any such malady or deformity, to file or cause such complaint to be filed. [SS15,§254-b; C24, 27, 31, 35,§4006; C39,§**3828.133**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.2]

255.3 "Patient" defined. The word "patient" as used in this chapter means the person against whom the complaint is filed. [C24, 27, 31, 35,§4007; C39,§**3828.134**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.3]

255.4 Examination by physician. Upon the filing of such complaint, the clerk shall number and index the same and shall appoint a competent physician and surgeon, living in the vicinity of the patient, who shall personally examine the patient with respect to said pregnancy, malady, or deformity. The clerk may, after the expiration of five years from the filing of a complaint, destroy it and all papers or records in connection therewith. [SS15,§254-b; C24, 27, 31, 35,§4008; C39,§**3828.135**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.4]

255.5 Report by physician. Such physician shall make a report in duplicate on blanks furnished as hereinafter provided, answering the questions contained therein and setting forth the information required thereby, giving such history of the case as will be likely to aid the medical or surgical treatment or hospital care of such patient, describing the pregnancy, deformity, or malady in detail, and stating whether or not in his opinion the same can probably be improved or cured or advantageously treated, which report shall be filed in the office of the clerk within such time as the clerk may fix. [SS15,§§254-b,-j; C24, 27, 31, 35, §4009; C39,§**3828.136**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.5]

255.6 Investigation and report. When such complaint is filed, the clerk shall furnish the county attorney and board of supervisors with a copy thereof and said board shall, by the overseer of the poor or such other agent as it may select, make a thorough investigation of facts as to the legal residence of the patient, and the ability of the patient or others chargeable with his support to pay the expense of such treatment and care; and shall file a report of such investigation in the office of the clerk, at or before the time of hearing. [SS15,§254-b; C24, 27, 31, 35,§4010; C39,§**3828.137**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.6]

255.7 Notice of hearing—duty of county attorney. When the physician's report has been filed, the clerk shall, with the consent of the court or judge, fix a time and place for hearing of the matter by the court, and the county attorney shall cause such patient and the parent or parents, guardian, or person having the legal custody of said patient, if under legal disability, to be served with such notice of the time and place of the hearing as the judge or clerk may prescribe. [SS15,§254-c; C24, 27, 31, 35,§4011; C39,§**3828.138**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.7]

255.8 Hearing — order — emergency cases — cancellation of commitments. The county attorney and the overseer of the poor, or other agent of the board of supervisors of the county where the hearing is held, shall appear thereat. The complainant, the county attorney, the overseer of the poor or other agent of the board of supervisors, and the patient, or any person representing him, or her, may introduce evidence and be heard. If the court finds that said patient is a legal resident of Iowa and is pregnant or is suffering from a malady or deformity which can probably be improved or cured or advantageously treated by medical or surgical treatment or hospital care, and that neither the patient nor any person legally chargeable with his or her support is able to pay the expenses thereof, then the clerk of court, except in obstetrical cases and cases of crippled children, shall immediately ascertain from the admitting physician at the university hospital whether such person can be received as a patient within a period of thirty days, and if the patient can be so received, the court, or in the event of no actual contest, the clerk of the court, shall then enter an order directing that said patient be sent to the university hospital for proper medical and surgical treatment and hospital care. If the court ascertain, excepting in obstetrical cases and orthopedic cases, that a person of the age or sex of the patient, or afflicted by the complaint, disease

or deformity with which such person is affected cannot be received as a patient at the said university hospital within the period of thirty days, then he or the clerk shall enter an order directing the board of supervisors of the county to provide adequate treatment at county expense for said patient at home or in a hospital. Obstetrical cases and orthopedic cases may be committed to the university hospital without regard to the limiting period of thirty days hereinbefore stated.

In any case of emergency the court or the clerk without previous inquiry may at its discretion order the patient to be immediately taken to and accepted by the university hospital for the necessary care as provided in section 255.11, but if such a patient cannot be immediately accepted at the university hospital as ascertained by telephone if necessary, the court or the clerk may enter an order as in certain cases above set forth directing the board of supervisors to provide adequate treatment at county expense for the said patient at home or in a hospital. [SS15,§254-c; C24, 27, 31, 35,§4012; C39,§**3828.139**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.8]

Referred to in §§255.9, 255.14

255.9 Treatment for infant. Whenever a woman who is pregnant is committed to the hospital under the provisions of section 255.8, the said commitment shall authorize the hospital to provide proper medical or surgical treatment and hospital care for the infant. [C31, 35,§4012-d1; C39,§**3828.140**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.9]

255.10 Religious belief — denial of order. The court in its discretion may refuse to make such order in any case where the court finds the patient or his parent, parents, or guardian are members of a religious denomination whose tenets preclude dependence on the practice of medicine or surgery and desire in good faith to rely upon the practice of their religion for relief from disease or disorder. [C24, 27, 31, 35,§4013; C39,§**3828.141**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.10]

255.11 Order in case of emergency. In cases of great emergency, when the court or judge is satisfied that delay would be seriously injurious to the patient, he may make such order with the consent of the patient, if adult, or of the parent or parents, guardian, or person having the legal custody of said patient, if a minor or incompetent, without examination, report, notice, or hearing. [SS15,§254-c; C24, 27, 31, 35, §4014; C39,§**3828.142**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.11]

Referred to in §255.8

255.12 Certified copy of order. The clerk shall prepare a certified copy of said order, which, together with a copy of the physician's report, shall be delivered to the admitting physician of said hospital at or before the time of the reception of the patient into the hospital. [SS15,§254-j; C24, 27, 31, 35,§4015; C39,§**3828.143**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.12]

255.13 Attendant — physician — compensation. If the physician appointed to examine the patient shall certify that an attendant to accompany the patient to the said hospital is necessary, and the university hospital attendant and ambulance service is not available, then the court or judge or clerk of the court may appoint an attendant who shall receive not exceeding two dollars per day for the time thus necessarily employed and actual necessary traveling expenses by the most feasible route to said hospital whether by ambulance, train or automobile; but if such appointee is a relative of the patient or a member of his immediate family, or receives a salary or other compensation from the public for his services, no such per diem compensation shall be paid him. The physician appointed by the court or clerk to make the examination and report shall receive therefor three dollars for each examination and report so made and his actual necessary expenses incurred in making such examination, but if said physician receives a salary or other compensation from the public for his full-time services, then no such examination fee shall be paid. The actual, necessary expenses of transporting and caring for the patient shall be paid as hereinafter provided. [SS15,§254-h; C24, 27, 31, 35,§4016; C39,§**3828.144**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §255.13]

Referred to in §255.14

255.14 Expenses—how paid. An itemized, verified statement of all charges provided for in sections 255.8 and 255.13, in cases where the patient is admitted or accepted for treatment at the university hospital shall be filed with the superintendent of the university hospital, and upon his recommendation when approved by the judge or clerk of the court under whose order the same were incurred, they shall be charged on the regular bill for the maintenance, transportation and treatment of the patient, and be audited and paid in the manner as hereinafter provided. [SS15,§254-h; C24, 27, 31, 35,§4017; C39,§**3828.145**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.14]

255.15 Duty of admitting physician at hospital. The authorities in control of the medical college shall designate some physician to pass upon the admission of such patient, and it shall be his duty to receive such patient into the hospital and to provide for him, if available, a cot, bed, or room in said hospital, and to assign him to the appropriate clinic and for treatment by the proper physician, unless, in his judgment, the presence of the patient in the hospital would be dangerous to other patients, or there is no reasonable probability that he may be benefited by the proposed treatment or hospital care. If the admitting physician shall deny admission to the patient, he shall make

a report in duplicate of his reasons therefor. [SS15,§254-d; C24, 27, 31, 35,§4018; C39,§3828.146; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.15]
Referred to in §255.18

255.16 County quotas. Subject to subsequent qualifications in this section, there shall be treated at the university hospital during each fiscal year a number of committed indigent patients from each county which shall bear the same relation to the total number of committed indigent patients admitted during the year as the population of such county shall bear to the total population of the state according to the last preceding official census. This standard shall apply to indigent patients, the expenses of whose commitment, transportation, care and treatment shall be borne by appropriated funds and shall not govern the admission of either obstetrical or orthopedic patients. If the number of patients admitted from any county shall exceed by more than ten percent the county quota as fixed and ascertained under the first sentence of this section, the charges and expenses of the care and treatment of such patients in excess of ten percent of the quota shall be paid from the funds of such county at actual cost; but if the number of excess patients from any county shall not exceed ten percent, all costs, expenses, and charges incurred in their behalf shall be paid from the appropriation for the support of the hospital. [C35,§4018-f1; C39, §3828.147; C46, 50, 54, 58, 62, 66, 71, 73, 75, §255.16]

255.17 Report of physician in charge of clinic. If the physician or surgeon in charge of said clinic, or to whom such patient has been assigned for treatment, declines to treat such patient, he shall make a report in duplicate of his examination of such patient, and state therein his reasons for declining such treatment. [SS15,§254-d; C24, 27, 31, 35,§4019; C39, §3828.148; C46, 50, 54, 58, 62, 66, 71, 73, 75, §255.17]
Referred to in §255.18

255.18 Reports. One duplicate of each of the reports named in sections 255.15 and 255.17 shall be preserved in the records of said hospital, and the other transmitted to the clerk of the court where said order committing the patient to said hospital was entered, and by the clerk filed and preserved among the records in the cause. [SS15,§254-d; C24, 27, 31, 35, §4020; C39,§3828.149; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.18]

255.19 Treatment of other patients—use of earnings for new facilities. The university hospital authorities may at their discretion receive into the hospital for medical, obstetrical or surgical treatment or hospital care, patients not committed thereto under the provisions of this chapter; but the treatment or care of such patients shall not in any way interfere with the proper medical or surgical treatment or hospital care of committed patients. The university hospital ambulances and ambulance personnel may be used for the transportation of such patients at a reasonable charge if specialized equipment is required and is not otherwise available and if such use does not interfere with the ambulance transportation of patients committed to the hospital.

All of the provisions of this chapter except as to commitment of patients shall apply to such patients. The university hospital authorities shall collect from the person or persons liable for the support of such patients reasonable charges for hospital care and service and deposit the same with the treasurer of the university for the use and benefit of the university hospital. Earnings of the hospital whether from private patients, cost patients, or indigents shall be administered so as to increase as much as possible, the service available for indigents, including the acquisition, construction, reconstruction, completion, equipment, improvement, repair, and remodeling of medical buildings and facilities and additions thereto and the payment of principal and interest on bonds issued to finance the cost thereof as authorized by the provisions of chapter 263A. The physicians and surgeons on the hospital staff who care for patients provided for in this section may charge for their medical services under such rules, regulations and plan therefor as approved by the state board of regents. [C24, 27, 31, 35,§4021; C39, §3828.150; C46, 50, 54, 58, 62, 66, 71, 73, 75, §255.19]

255.20 Hospital treatment. When any patient has been admitted to the hospital for treatment, the physician or surgeon in charge of the case shall proceed with due care and diligence to perform such operation or bestow such treatment upon such patient as in his judgment shall be necessary and proper. Adequate nursing and hospital care shall be provided for said patient during such treatment. [SS15,§254-d; C24, 27, 31, 35,§4022; C39,§3828.151; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.20]

255.21 Treatment outside hospital—attendant. If, in the judgment of the physician or surgeon to whom the patient has been assigned for treatment, continuous residence of the patient in the hospital is unnecessary, such patient may, by the hospital authorities, be sent to his home or other appropriate place, and be required to return to the hospital when and for such length of time as may be for his benefit. The hospital authorities may, if necessary, appoint an attendant to accompany such patient and discharged patients, and the compensation of such attendant shall be fixed by the state board of regents and charged by the hospital as part of the costs of transporting patients. The compensation paid to and the expenses of the attendant shall be audited and paid in the same manner as is provided by law for the compensation of an attendant appointed by the court. [SS15,§§254-h,-i; C24, 27,

31, 35,§4023; C39,§3828.152; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.21]

255.22 Treatment authorized. No minor or incompetent person shall be treated for any malady or deformity except such as is reasonably well described in the order of court or the report of the examining physician, unless permission for such treatment is provided for in the order of court, or is granted by his parents or guardian; but the physician in charge may administer such treatment or perform such surgical operations as are usually required in cases of emergency. [SS15,§254-l; C24, 27, 31, 35,§4024; C39,§3828.153; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.22]

255.23 Treatment gratuitous—exception. No physician, surgeon, or nurse who shall treat or care for such patient shall charge or receive any compensation therefor except the salary or compensation fixed by the state board of regents to be paid from the hospital funds. If the physician, surgeon, or nurse is not in the regular employ of the state board of regents, his or her compensation shall be paid by the county upon approval of the board of supervisors. [SS15,§254-e; C24, 27, 31, 35,§4025; C39, §3828.154; C46, 50, 54, 58, 62, 66, 71, 73, 75, §255.23]

255.24 Record and report of expenses. The superintendent of said hospital shall keep a correct account of all medicine, care, and maintenance furnished to said patients, and shall make and file with the state comptroller an itemized, sworn statement of all expenses thereof incurred in said hospital. But he shall render separate bills showing the actual cost of all appliances, instruments, X-ray and other special services used in connection with such treatment, commitments, and transportation to and from the said university hospital, including the expenses of attendants and escorts.

All purchases of materials, appliances, instruments and supplies by said university hospital, in cases where more than one hundred dollars is to be expended, and where the prices of the commodity or commodities to be purchased are subject to competition, shall be upon open competitive quotations, and all contracts therefor shall be subject to the provisions of chapter 72. [SS15,§254-f; C24, 27, 31, 35, §4026; C39,§3828.155; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.24]

255.25 Audit of accounts of hospital. To arrive at a proper basis for the payment of said bills for treatment, care, and maintenance, the state board of regents shall cause to be made annually an audit of the accounts of the university hospital, and determine the average cost per day for the care and maintenance of each patient therein, exclusive of the salaries of the members of the faculty of said university college of medicine, and said bills shall be allowed at such average cost. All accounts shall be so adjusted and paid as to reimburse the funds of the hospital used for the purposes of this chapter. [C24, 27, 31, 35,§4027; C39, §3828.156; C46, 50, 54, 58, 62, 66, 71, 73, 75, §255.25]

Referred to in §255.26

255.26 Expenses—how paid—action to reimburse county. Warrants issued under section 255.25 shall be promptly drawn on the treasurer of state and forwarded by the state comptroller to the treasurer of the state university, and the same shall be by him placed to the credit of the funds which are set aside for the support of said hospital. The superintendent of the said university hospital shall certify to the auditor of state on the first day of January, April, July and October of each year, the amount as herein provided not previously certified by him due the state from the several counties having patients chargeable thereto, and the auditor of state shall thereupon charge the same to the county so owing. A duplicate certificate shall also be mailed to the auditor of each county having patients chargeable thereto.

The county auditor, upon receipt of such certificate, shall thereupon enter the same to the credit of the state in his ledger of state accounts, and at once issue a notice to his county treasurer authorizing him to transfer the amount from the poor or county fund to the general state revenue, which notice shall be filed by the treasurer as his authority for making such transfer; and he shall include the amount so transferred in his next remittance of state taxes to the treasurer of state, to accrue to the credit of the university hospital fund.

The state auditor shall certify the total cost of commitment, transportation and caring for each indigent patient under the terms of this statute to the county auditor of such patient's legal residence, and such certificate shall be preserved by the county auditor and shall be a debt due from the patient or the persons legally responsible for his or her care, maintenance or support; and whenever in the judgment of the board of supervisors the same or any part thereof shall be collectible, the said board may in its own name collect the same and is hereby authorized to institute suits for such purpose; and after deducting the county's share of such cost shall cause the balance to be paid into the state treasury to reimburse the university hospital fund.

Should any county fail to pay these bills within sixty days from the date of certificate from superintendent, the state comptroller shall charge the delinquent county the penalty of one percent per month on and after sixty days from date of certificate until paid. Such penalties shall be credited to the general fund of the state. [SS15,§254-g; C24, 27, 31, 35,§4028; C39,§3828.157; C46, 50, 54, 58, 62, 66, 71, 73, 75. §255.26]

255.27 Faculty to prepare blanks—printing. The medical faculty of the state university hospital shall from time to time prepare blanks containing such questions and requiring such information as may, in its judgment, be necessary and proper to be obtained by the physician who examines such patient under order of court. Such blanks shall be printed by the state, and a sufficient supply thereof shall be furnished by the state board of printing to the clerk of each juvenile court in the state. The cost of printing said blanks shall be audited, allowed, and paid in the same manner as other bills for public printing. [SS15, §254-j; C24, 27, 31, 35,§4029; C39,§**3828.158**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.27]

255.28 Transfer of patients from state institutions. The commissioner of the department of social services and the director of any of the divisions of such department, and the board in control* of the Iowa braille and sight-saving school, and the Iowa school for the deaf, may, respectively, send any inmate, student or patient of any of said institutions, or any person committed or applying for admission thereto, to the hospital of the medical college of the state university for treatment and care as provided in this chapter, without securing the order of court required in other cases. Said state department of social services and board in control* of the Iowa braille and sight-saving school and the Iowa school for the deaf shall respectively pay the traveling expenses of any patient thus committed, and when necessary the traveling expenses of an attendant for such patient, out of funds appropriated for the use of the institution from which he is sent. [SS15,§254-k; C24, 27, 31, 35,§4030; C39,§**3828.159**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§255.28]

*Board of regents, §262.7

255.29 Medical care for parolees. The director of the division of corrections of the department of social services may send former inmates of the Iowa state penitentiary and men's or women's reformatory, while on parole, to the hospital of the college of medicine of the state University of Iowa for treatment and care as provided in this chapter, without securing the order of the court required in other cases. Said director may pay the traveling expenses of any patient thus committed and, when necessary, the traveling expenses of an attendant of such patient out of funds appropriated for the use of such division. [C62, 66, 71, 73, 75,§255.29]

255.30 Collecting and settling claims for care. Whenever a patient or person legally liable for his care at the hospital has insurance, an estate, rights of action against others, or other assets, any of which can be subjected thereto, the university hospital, by its superintendent or his assistants through the facilities of the attorney general's office, is hereby authorized to file claims, institute or defend suits in courts, and use such other legal means as may be available to collect accounts incurred for the care of indigent or private patients, and may compromise, settle and release the same, all under such rules and procedures therefor as may be prescribed by the president of the university and the attorney general. If a county has paid any part of such patient's care a pro rata part of the amount collected, after deduction for cost of collection, shall be remitted to said county and the balance shall go into the hospital fund. [C66, 71, 73, 75, §255.30]

CHAPTER 256

DETENTION HOSPITAL FOR CONTAGIOUS DISEASES

Repealed by 66GA, ch 1056,§45

TITLE XII

EDUCATION

CHAPTER 257

DEPARTMENT OF PUBLIC INSTRUCTION

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257.1 State board established. There is hereby established a state board of public instruction for the state of Iowa. The state board of public instruction, hereinafter called the state board, shall consist of nine members who shall be appointed by the governor with the approval of two-thirds of the members of the senate. Not more than five members shall be of the same political party. [C54, 58, 62, 66, 71, 73, 75,§257.1]

Area education agency, ch 273

257.2 Qualifications of members. The members of the state board shall be qualified electors of the state, shall hold no other elective or appointive public office, and in order to preserve the lay character of the board, no person, the major portion of whose time is engaged in professional education or who derives a major portion of his income from any business or activity connected with education, shall be eligible for membership on the state board. In appointing members, the governor shall provide that at least one member has substantial knowledge related to vocational and technical training, and at least one member has substantial knowledge related to area community colleges. [C54, 58, 62, 66, 71, 73, 75, §257.2]

257.3 Terms. The terms of members of the state board shall be for six years beginning on the second secular day in January following their appointment.

At the first meeting of the board in each even-numbered year the board shall elect a president and vice president who shall serve for two years. [C54, 58, 62, 66, 71, 73, 75,§257.3]

257.4 Oath—vacancies. The members of the state board shall qualify by taking the regular oath of office as prescribed by law for state officers. All vacancies on said board which may occur when the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days after the general assembly next convenes. Vacancies occurring during a session of the general assembly shall be filled before the end of said session in the same manner in which regular appointments are required to be made. [C54, 58, 62, 66, 71, 73, 75,§257.4]

257.5 Repealed by 62GA, ch 244,§27.

257.6 Compensation and expenses. The members of the state board shall be paid a forty dollar per diem and shall be reimbursed for actual and necessary expenses incurred while engaged in their official duties. All per diem and expense moneys paid to the members shall be paid from funds appropriated to the department of public instruction. [C54, 58, 62, 66, 71, 73, 75,§257.6]

257.7 Place of meeting. The place of office of the state board shall be in the office of the

department of public instruction in the capitol of the state. [C54, 58, 62, 66, 71, 73, 75, §257.7]

257.8 Regular and special meetings. The state board shall hold at least six regular meetings each year. The first regular meeting shall be held on the second Thursday in January for purposes of organization. Special meetings of the state board may be called by the president or by any five members of the board on five days' notice given to each member. All meetings shall be held at the office of the department of public instruction unless a different place within the state of Iowa is designated by the state board or in the notice of the meeting. [C54, 58, 62, 66, 71, 73, 75,§257.8; 66GA, ch 152,§1]

257.9 General powers and duties of board. The state board shall exercise the following general powers and duties:

1. Determine and adopt such policies as are authorized by law and are necessary for the more efficient operation of any phase of public education.

2. Adopt necessary rules and regulations for the proper enforcement and execution of the provisions of the school laws.

3. Adopt and prescribe any minimum standards for carrying out the provisions of the school laws.

4. Perform such duties prescribed by law as it may find necessary for the improvement of the state system of public education in carrying out the purposes and objectives of the school laws. [C54, 58, 62, 66, 71, 73, 75,§257.9]

257.10 Specific powers and duties. It shall be the responsibility of the state board to exercise the following specific powers and perform the following duties:

1. Employ adequate clerical help to keep such records as are necessary to set forth clearly all actions and proceedings of the state board.

2. Direct the distribution of all moneys under the provisions of the law for the distribution of various state and federal aids to schools, when the amounts of the same have been computed by the superintendent of public instruction according to formulae provided by law and rules of the state board.

3. Adopt and transmit to the state comptroller as provided by law, on blanks provided by him for that purpose, on or before September 1 prior to the meeting of each regular session of the general assembly, estimates of expenditure requirements for all functions and services, including the department of public instruction, under the supervision of the state board, when the same have been prepared and submitted to the state board by the superintendent of public instruction, except as otherwise provided by law, for each fiscal year of the ensuing biennium.

4. Advise and counsel with the state superintendent of public instruction and other school officials and citizens concerning the school laws and the rules and regulations adopted pursuant thereto; and to review the record and decision of the superintendent of public instruction in all appeals heard and decided by said superintendent, whereupon it shall approve same or may direct a rehearing before said superintendent.

5. Authorize, approve, and require to be used such forms as are needed to promote uniformity, accuracy, and completeness in executing contracts, keeping records, and in pupil and cost accounting, making reports, and to require such reports to be made in such manner as may be recommended by the state superintendent of public instruction. Prior to January 1, 1978, approve a uniform system of program accounting to be implemented by all school districts pursuant to plans submitted by the state superintendent.*

*This amendment was erroneously enacted to apply to §257.9; 66GA, ch 1146,§18

6. Approve plans when submitted by the state superintendent of public instruction for co-operating with the federal government whenever it may find it desirable to do so, and provide for the acceptance and the administration of funds, subject to the approval of the legislature, which may be appropriated by Congress and apportioned to the state for any or all educational purposes relating to the public school system and for the acceptance of surplus commodities for distribution when made available by any government agency.

7. Approve plans submitted by the state superintendent for co-operating with all other agencies, federal, state, county and municipal, in the development of regulations and in the enforcement of laws for which the state board and such agencies are jointly responsible and approve plans for co-operating with other proper agencies in the improvement of conditions relating to the state system of public education.

8. Adopt a long-range program for the state system of public education based upon special studies, surveys, research, and recommendations submitted by or proposed under the direction of the state superintendent of public instruction.

9. Constitute a continuing research commission as to public school matters in the state and cause to be prepared and submitted to each regular session of the general assembly a report containing such recommendations as to revisions, amendments, and new provisions of the law as the state board has decided should be submitted to the legislature for its consideration.

10. Constitute the state board for vocational education, and have and exercise all the powers and perform all the duties imposed upon said board under the provisions of chapters 258 and 259, including both vocational education and vocational rehabilitation.

11. Constitute the board for the certification of administrative, supervisory and instructional personnel for the public school systems of the state; prescribe types and classes of certificates to be issued, the subjects and fields and positions which such certificates shall cover and determine the requirements for certificates; establish standards for the acceptance of degrees, credits, courses, and other evidences of training and preparation from institutions of higher learning, junior colleges, normal schools, or other training institutions, both public and private, within or without the state, for the certification of their students. The state board shall have and exercise all the powers and perform all the duties imposed upon the board of educational examiners under the provisions of chapter 260. The minimum requirements for awarding a permanent professional certificate shall be:

1. A professional certificate,

2. Four years of successful teaching experience, and

3. A master's degree or a professional degree beyond the baccalaureate degree.

12. Prescribe such minimum standards and rules and regulations as are required by law or recommended by the state superintendent of public instruction in accordance with law, and as it may find desirable to aid in carrying out the provisions of the Iowa school laws.

13. At the request of an employee through contractual agreement the board may arrange for the purchase of group or individual annuity contracts for any of its respective employees from any company the employee may choose that is authorized to do business in this state and through an Iowa-licensed insurance agent that the employee may select, for retirement or other purposes and may make payroll deductions in accordance with such arrangements for the purpose of paying the entire premium due and to become due under such contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits afforded under section 403b of the Internal Revenue Code of 1954 and amendments* thereto. The employee's rights under such annuity contract shall be nonforfeitable except for the failure to pay premiums. Whenever an existing tax-sheltered annuity contract is to be replaced by a new contract the agent or representative of the company shall submit a letter of intent to the company being replaced, to the insurance commissioner of the state of Iowa, and to his own company at least thirty days prior to any action by registered mail. This letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract.

*Acts of GA 1969

14. Approve, co-ordinate, and supervise the use of electronic data processing by local school districts, area education agencies and merged areas. A committee, consisting of the state superintendent of public instruction, the director of the department of general services, the state comptroller, or their designees, and two persons knowledgeable in the area of administrative-instructional computer systems to be appointed by the governor, shall assist and advise the state board of public instruction in approving, co-ordinating and supervising the use of electronic data processing computers by local school districts, area education agencies and merged areas. The committee shall further inventory current practice and prepare and recommend a state-wide plan for the use of electronic data processing computers in order to prevent the unnecessary proliferation of computers. These recommendations shall be submitted to the general assembly by December 1 of each year. For purposes of this subsection the term "electronic data processing computers" shall refer to equipment having as a component thereof a memory core to store information. [C54, 58, 62, 66, 71, 73, 75,§257.10; 66GA, ch 1144,§1, ch 1146,§18]

Referred to in §§273.2, 290.5

257.11 Superintendent appointed. The state board shall appoint, effective July 1, 1979, and each four years thereafter, with the approval of two-thirds of the members of the senate, a superintendent of public instruction. [C54, 58, 62, 66, 71, 73, 75,§257.11; 66GA, ch 1146,§19]

257.12 Qualifications of superintendent. The superintendent shall hold a master's degree in education or some related field; he shall have had at least five years' experience in educational administration. He shall hold or be eligible to hold a regular Iowa superintendent's certificate based upon training. The deputy superintendent shall have the same qualifications. [S13,§2627-b; C24, 27, 31, 35, 39,§3829; C46, 50,§257.1; C54, 58, 62, 66, 71, 73, 75,§257.12]

257.13 Oath. The superintendent and deputy superintendent shall take the oath of office prescribed by section 63.10. [C54, 58, 62, 66, 71, 73, 75,§257.13]

257.14 Bond. The superintendent and any members of his staff designated by the state board shall give bond as provided in section 64.6. [C54, 58, 62, 66, 71, 73, 75,§257.14]

257.15 Office in capitol. The superintendent shall maintain his office in the department of public instruction in the capitol of the state. [C51,§1078; C73,§1578; C97,§2621; S13,§§2627-c,-d; C24, 27, 31, 35, 39,§3830; C46, 50,§257.2; C54, 58, 62, 66, 71, 73, 75,§257.15]

257.16 Executive officer. The superintendent shall be the executive officer of the state board. [C54, 58, 62, 66, 71, 73, 75,§257.16]

257.17 Powers of superintendent. The superintendent shall have the following powers:

1. Exercise general supervision over the state system of public education, including the public elementary and secondary schools, the

junior colleges, and shall have educational supervision over the elementary and secondary schools under the control of a director of a division of the department of social services, and nonpublic schools to the extent that is necessary to ascertain compliance with the provisions of the Iowa school laws.

2. Advise and counsel with the state board on all matters pertaining to education, recommend to the state board such matters as in his judgment are necessary to be acted upon, and when approved, to execute or provide for the execution of the same when so directed by the state board.

3. Recommend to the state board for adoption such policies pertaining to the state system of public education as he may consider necessary for its more efficient operation.

4. Carry out all orders of the state board not inconsistent with state law.

5. Organize, staff and administer the state department so as to render the greatest service to public education in the state. [C51,§1081; C73,§1577; C97,§2622; S13,§2627-c; C24, 27, 31, 35, 39,§3831; C46, 50,§257.3; C54, 58, 62, 66, 71, 73, 75,§257.17]

257.18 Responsibilities of superintendent. It shall be the responsibility of the state superintendent of public instruction to exercise all powers and perform all duties hereinafter listed; provided, in those categories where policies are to be initiated by the superintendent and approved by the state board, such policies are to be executed by the superintendent only after having been approved by the state board.

1. Attend all meetings of the state board, except executive sessions of the state board, as may be requested by the state board, and call such special meetings of the board as he may be authorized to call by the president or by written request of five members of the board.

2. Keep such records of the proceedings of the board, including complete minutes, as are necessary to locate and identify the actions of the state board.

3. Act as custodian of a seal for his office with which, together with his signature, he shall authenticate all true copies of decisions, acts, or documents.

4. Act as the executive officer of the state board in all matters pertaining to vocational education and vocational rehabilitation.

5. Recommend to the state board the personnel of such committees as are required by law, and to appoint such other committees as may be deemed desirable by him or the state board for carrying out the provisions of the Iowa school laws.

6. Apportion to the respective school districts of the state all moneys provided by law according to the provisions of the various state and federal aid laws.

7. Provide the same educational supervision for the schools maintained by the state board of control as is provided for the public schools of the state and make recommendations to the board of control for the improvement of the educational program in such institutions.

8. Recommend ways and means of co-operating with the federal government in carrying out any or all phases of the educational program relating to the state system of public education in which, in the discretion of the board, co-operation is desirable. Recommend policies for administering funds which may be appropriated by Congress and apportioned to the state for any or all educational purposes relating to the public school system, and execute such plans as adopted by the state board.

9. Recommend to the state board policies and ways and means of co-operating with other agencies, federal, state, county and municipal, for carrying out those phases of the program in which co-operation is required by law, or in the discretion of the state board, it is deemed desirable and co-operate with such agencies in planning and bringing about improvements in the educational program.

10. Advise and counsel concerning the interpretation and meaning of the school laws and the rules and regulations adopted pursuant thereto; and, when practicable, amicably adjust and settle such controversies arising thereunder as may be submitted to him, directly or by appeal, by all persons directly concerned, to hear and decide appeals as provided by law.

11. Prepare for the approval of the state board, such forms and procedures as are deemed necessary to be used by area education agency boards, district boards, school officials, principals, teachers, and other employees, and to insure uniformity, accuracy, and efficiency in keeping records in both pupil and cost accounting, the execution of contracts, and the submission of reports; furnish, when deemed advisable by him and approved by the state board, those forms which can more economically and efficiently be provided in that manner; and notify the area education agency board, or district board, or school authorities, in any case when any report has not been filed in the manner or on the dates prescribed by law or by regulation of the state board that the school be not approved until the report has been properly filed.

12. Ascertain by inspection, supervision, or otherwise, the condition, needs, and progress of the schools under the supervision of his department and make recommendations to the proper authorities for the correction of deficiencies and the educational and physical improvement of such schools, and recommend to the state board the need for a state audit of the accounts of any school district, area education agency, school official, or any school employee handling school funds when it is apparent that such audit should be made. If deemed advisable the state board may call upon the state auditor to make such an audit and he shall proceed to do so as soon as practicable.

13. Preserve all reports, documents, and correspondence that may be of a permanent value, which shall be open for inspection under reasonable conditions by any citizen of the state.

14. Keep a record of the business transacted by him.

15. Endeavor to promote among the people of the state an interest in education.

16. Classify and define the various schools under the supervision of his department, formulate suitable courses of study therefor, and publish and distribute such classifications and courses of study and promote their use.

17. Report to the state comptroller on the first day of January of each year the number of persons of school age in each county.

Referred to in §302.13

18. Report biennially to the governor, at the time provided by law, the condition of the schools under his supervision, including the number and kinds of school districts, the number of schools of each kind, the number and value of schoolhouses, the enrollment and attendance in each county for the previous year, any measures proposed or plans matured for the improvement of the public schools, such financial and statistical information as may be of public importance, and such general information relating to educational affairs and conditions within the state or elsewhere.

19. Formulate rules and regulations for the administration of chapter 272, in accordance with the terms thereof.

20. Develop, print, and disseminate such information and facts as necessary to promote among the people of Iowa an interest and knowledge in education.

21. Cause to be printed in book form, during the months of June and July in the year 1955 and every four years thereafter, if deemed necessary, all school laws then in force with such forms, rulings, and decisions, and such notes and suggestions as may aid school officers in the proper discharge of their duties. A sufficient number shall be furnished to school officers, directors, superintendents, area administrators and others in such numbers as may be reasonably requested.

22. Cause to be printed in pamphlet form after each session of the general assembly any amendments or changes in the school laws with necessary notes and suggestions to be distributed as prescribed in subsection 21 of this section.

23. Prepare and submit to each regular session of the general assembly a report containing the recommendations of the state board as to revisions, amendments, and new provisions of school laws.

1-9. [C54, 58, 62, 66, 71, 73, 75,§257.18]

10. [C73,§1577; C97,§2623; S13,§2627-c; C24, 27, 31, 35, 39,§3832; C46, 50,§257.4; C54, 58, 62, 66, 71, 73, 75,§257.18]

11, 12. [S13,§2627-c; C24, 27, 31, 35, 39,§3832; C46, 50,§257.4; C54, 58, 62, 66, 71, 73, 75,§257.18]

13, 14. [C51,§1078; C73,§1578; C97,§2621; S13, §2627-d; C24, 27, 31, 35, 39,§3832; C46, 50,§257.4; C54, 58, 62, 66, 71, 73, 75,§257.18]

15, 16. [S13,§2627-c; C24, 27, 31, 35, 39,§3832; C46, 50,§257.4; C54, 58, 62, 66, 71, 73, 75,§257.18]

17. [C73,§1583; C97,§2625; S13,§2627-c; C24, 27, 31, 35, 39,§3832; C46, 50,§257.4; C54, 58, 62, 66, 71, 73, 75,§257.18]

18. [C51,§1086; C73,§1583; C97,§2625; S13, §2627-c; C24, 27, 31, 35, 39,§3832; C46, 50,§257.4; C54, 58, 62, 66, 71, 73, 75,§257.18]

19. [C73,§1577; C97,§2622; S13,§2627-c; C24, 27, 31, 35, 39,§3832; C46, 50,§257.4; C54, 58, 62, 66, 71, 73, 75,§257.18]

20. [S13,§2627-c; C24, 27, 31, 35, 39,§3832; C46, 50,§257.4; C54, 58, 62, 66, 71, 73, 75,§257.18]

21. [C51,§§1083, 1085; C73,§1579; C97,§2624; S13,§§2627-e, 2823-j; C24, 27, 31, 35, 39,§3832; C46, 50,§257.4; C54, 58, 62, 66, 71, 73, 75,§257.18]

22. [C73,§1579; C97,§2624; S13,§2627-e; C24, 27, 31, 35, 39,§3832; C46, 50,§257.4; C54, 58, 62, 66, 71, 73, 75,§257.18]

23. [C51,§1081; C73,§1577; C97,§2622; S13, §2627-c; C24, 27, 31, 35, 39,§3832; C46, 50,§257.4; C54, 58, 62, 66, 71, 73, 75,§257.18]

Referred to in §302.13
Biennial report, §17.3

257.19 Department of public instruction established. There is hereby established a department of public instruction to act as an administrative, supervisory, and consultative agency under the direction of the superintendent of public instruction and the state board. The state department shall be located in the office of the state superintendent, and shall assist the state superintendent in providing professional leadership and guidance and in carrying out such policies, procedures, and duties authorized by law or by the regulations of the state board, as are found necessary to attain the purposes and objectives of the school laws of Iowa. [C54, 58, 62, 66, 71, 73, 75,§257.19]

257.20 Divisions of department. The state department of public instruction shall be organized into such divisions, branches or sections as may be found desirable and necessary by the state superintendent, subject to the approval of the state board, to perform all the proper functions and render maximum services relating to the operation and improvement of the state system of public education; provided that the organization shall be such as to promote co-ordination of functions and services relating to administration and financial services on the one hand and the improvement of instruction on the other hand. [C54, 58, 62, 66, 71, 73, 75,257.20]

257.21 Employees of department. The state superintendent shall appoint all employees, with due regard to their qualifications for the duties to be performed, designate their titles and prescribe their duties. If deemed advisa-

ble, the state superintendent may for cause effect the removal of any employee in the state department of public instruction. The total amount of compensation for employees shall be subject to the limitation of the appropriation and other funds available for the maintenance of the department. The appointment, promotion, demotion, change in salary status or removal for cause of any employee shall be subject to the approval of the state board. [C54, 58, 62, 66, 71, 73, 75,§257.21]

257.22 Deputy superintendent. The state superintendent shall appoint a deputy state superintendent, subject to the approval of the state board, whose qualifications shall be the same as required for the state superintendent and whose duties shall be fixed by such superintendent. In the absence or inability of the state superintendent, the deputy state superintendent shall perform his duties. [C73,§§766, 767, 770; C97,§2621; S13,§2627-g; C24, 27, 31, 35, 39,§3835; C46, 50,§257.8; C54, 58, 62, 66, 71, 73, 75,§257.22]

257.23 Travel expenses. The superintendent of public instruction, his assistants, and the employees of his department shall receive their necessary travel expenses incurred in the performance of their official duties. [C51,§1087; C73,§§1580, 3760; C97,§2627; S13,§2627-h; C24, 27, 31, 35, 39,§3836; C46, 50,§257.9; C54, 58, 62, 66, 71, 73, 75,§257.23]

257.24 Salaries of superintendent and assistants. The salary of the superintendent of public instruction shall be fixed by the general assembly. The salary of the deputy state superintendent shall be fixed by the state board, however, such salary and the salary of any other employee of the department of public instruction shall not exceed eighty-five percent of the salary of the state superintendent. All appointments to the professional staff of the department of public instruction shall be without reference to political party affiliation, religious affiliation, sex, or marital status, but shall be based solely upon fitness, ability and proper qualifications for the particular position. The professional staff, including the state superintendent, shall serve at the discretion of the state board; provided, however, that no such person shall be dismissed for cause without at least ninety days' notice, except in cases of conviction of a felony or cases involving moral turpitude. In cases of procedure for dismissal, the accused shall have the same right to notice and hearing as teachers in the public school systems as provided in section 279.27, or as much thereof as may be applicable. [C54, 58, 62, 66, 71, 73, 75,§257.24]

Referred to in §§19A.3, 19A.9
Constitutionality, 55GA, ch 114,§43
Omnibus repeal, 55GA, ch 114,§44

257.25 Educational standards. In addition to the responsibilities of the state board of public instruction and the state superintendent of public instruction under other provisions of the Code, the state board of public instruction shall, except as otherwise provided in this section, establish standards for approving all public and nonpublic schools in Iowa offering instruction at any or all levels from the prekindergarten level through grade twelve. A nonpublic school which offers only a prekindergarten program may, but shall not be required to, seek and obtain approval under this chapter. A list of approved schools shall be maintained by the department of public instruction. The approval standards established by the state board shall delineate and be based upon the educational program described below:

1. If a school offers a prekindergarten program, the program shall be designed to help children to work and play with others, to express themselves, to learn to use and manage their bodies, and to extend their interests and understanding of the world about them. The prekindergarten program shall relate the role of the family to the child's developing sense of self and his perception of others. Planning and carrying out prekindergarten activities designed to encourage co-operative efforts between home and school shall focus on community resources. A prekindergarten teacher employed by a school corporation or county or joint county school system, or its successor agency, and receiving a salary from state and local funds shall hold a certificate certifying that the holder is qualified to teach in prekindergarten.

2. If a school offers a kindergarten program, the program shall include experiences designed to develop healthy emotional and social habits and growth in the language arts and communication skills, as well as a capacity for the completion of individual tasks, and protection and development of physical being. A kindergarten teacher shall hold a certificate certifying that the holder is qualified to teach in kindergarten.

3. The following areas shall be taught in the grades one through six: Language arts, including reading, handwriting, spelling, oral and written English, and literature; social studies, including geography, history of the United States and Iowa with attention given to the role in history played by all persons, and a positive effort shall be made to reflect the achievements of women, minorities and any others who, in the past, may have been ignored or overlooked by reason of race, sex, religion, physical disability or ethnic background, cultures of other peoples and nations, and American citizenship, including the study of national, state and local government in the United States; mathematics; science, including conservation of natural resources and environmental awareness; health and physical education, including the effects of alcohol, tobacco, drugs and poisons on the human body; the characteristics of communicable diseases; traffic safety, including pedestrian and bicycle safety procedures; music; and art.

4. The following shall be taught in grades seven and eight as a minimum program: Science, including conservation of natural resources and environmental awareness; mathematics; social studies; with attention given to the role in history played by all persons, and a positive effort shall be made to reflect the achievements of women, minorities and any others who, in the past, may have been ignored or overlooked by reason of race, sex, religion, physical disability or ethnic background, cultures of other peoples and nations, and American citizenship; language arts which shall include reading, spelling, grammar, oral and written composition, and may include other communication subjects; health and physical education, including the effects of alcohol, tobacco, drugs and poisons on the human body, the characteristics of communicable diseases, including venereal diseases and current crucial health issues; music; and art.

5. Provision for special education services and programs shall be made for children requiring special education.

6. In grades nine through twelve, a unit of credit shall consist of a course or equivalent related components or partial units taught throughout the academic year. The minimum program for grades nine through twelve shall be:

a. Four units of science including physics and chemistry; the units of physics and chemistry may be taught in alternate years.

b. Four units of the social studies. American history, American government, government and cultures of other peoples and nations, and general consumer education, family law, and economics, including comparative and consumer economics, shall be taught in the units but need not be required as full units. All students shall be required to take one unit of American history which shall give attention to the role in history played by all persons, and a positive effort shall be made to reflect the achievements of women, minorities and any others who, in the past, may have been ignored or overlooked by reason of race, sex, religion, physical disability or ethnic background and one-half unit of the governments of Iowa and the United States, including instruction in voting statutes and procedures, voter registration requirements, the use of paper ballots and voting machines in the election process, and the method of acquiring and casting an absentee ballot.

The county auditor, upon request and at a site chosen by him, shall make available to schools within the county voting machines or sample ballots that are generally used within the county, at such times that these machines or sample ballots are not in use for their recognized purpose.

c. Four units of English including language arts.

d. Four units of a sequential program in mathematics.

e. One unit of general mathematics.

f. Two units of one foreign language; the units of foreign language may be taught in alternate years, provided there is no break in the progression of instruction from one year to the next.

g. All students physically able shall be required to participate in physical education activities during each semester a student is enrolled in school. A minimum of one-eighth unit each semester shall be required, except that any pupil participating in an organized and supervised high school athletic program which requires at least as much time of participation per week as one-eighth unit may be excused from the physical education course during the time of his participation in the athletic program. Physical education activities shall emphasize leisure time activities which will benefit the student outside the school environment and after graduation from high school.

h. Five units of occupational education subjects, which may include, but shall not be limited to, programs, services and activities which prepare students for employment in office and clerical, trade and industrial, consumer and homemaking, agriculture, distributive and health occupations.

i. Units or partial units in the fine arts shall be taught which may include art, music and dramatics.

j. Health education, including an awareness of physical and mental health needs, the effects of alcohol, tobacco, drugs and poisons on the human body, the characteristics of communicable diseases, including venereal diseases and current crucial health issues.

7. A pupil shall not be required to enroll in either physical education or health courses if his parent or guardian files a written statement with the school principal that the course conflicts with his religious belief.

8. Upon request of the board of directors of any public school district or the authorities in charge of any nonpublic school, the state board of public instruction may, for a number of years to be specified by the state board, grant the district board or the authorities in charge of any nonpublic school exemption from one or more of the requirements of the educational program specified in subsection 6. The exemption may be renewed. Such exemptions shall be granted only if the state board deems that the request made is an essential part of a planned innovative curriculum project which the state board determines will adequately meet the educational needs and interests of the pupils and be broadly consistent with the intent of the educational program as defined in subsection 6.

The request for exemption shall include all of the following:

a. Rationale of the project to include supportive research evidence.

b. Objectives of the project.

c. Provisions for administration and conduct of the project, including the use of personnel, facilities, time, techniques and activities.

d. Plans for evaluation of the project by testing and observational measures of pupil progress in reaching the objectives.

e. Plans for revisions of the project based on evaluation measures.

f. Plans for periodic reports to the department of public instruction.

g. The estimated cost of the project.

9. To facilitate the implementation and economical operation of the educational program defined in subsections 4 and 6, each school offering any of grades seven through twelve, except a school which offers grades one through eight as an elementary school, shall have:

a. A qualified school media specialist who shall meet the certification and approval standards prescribed by the department of public instruction and adequate media center facilities as hereinafter defined.

(1) *School media specialist.* The media specialist may be employed on a part-time or full-time basis, or may devote only part time to media service activities, according to the needs of the school and the availability of media personnel, as determined by the local board. The state board shall recommend standards based upon the number of students in attendance, the nature of the academic curriculum and other appropriate factors.

(2) *Organization and adequacy of collection.* The media center shall be organized as a resource center of instructional material for the entire educational program. The number and kind of library and reference books, periodicals, newspapers, pamphlets, information files, audio-visual materials and other learning aids shall be adequate for the number of pupils and the needs of instruction in all courses.

b. A qualified school guidance counselor who shall meet the certification and approval standards prescribed by the department of public instruction. The guidance counselor may be employed on a part-time or full-time basis, or may devote only part time to counseling services, according to the needs of the school and the availability of guidance personnel, as determined by the local board. The state board shall recommend standards based upon the number of students in attendance and other appropriate factors. Other members of the noninstructional professional staff, including but not limited to physicians, dentists, nurses, school psychologists, speech therapists and other specialists, may also be employed or shared by one or more schools. The guidance counselor shall meet the certification and approval standards of the department of public instruction and noninstructional staff members shall meet the professional practice requirements of this state relating to their special services.

c. Arrangement for special education services.

d. Adequate instructional materials for classrooms.

10. As a basis for inclusion on the list of approved schools, the state department of public instruction shall evaluate the school educational program in the several school systems of the state for the purposes of school improvement and approval, and each public and nonpublic school system shall make such reports as the superintendent of public instruction deems necessary to show compliance with the curriculum programs and other requirements prescribed in the Code. The state department, in consultation with the board of directors and administration of the school district, shall conduct an immediate evaluation of the educational program of each school district which the department determines has failed to comply with the curriculum programs and other requirements prescribed in the Code.

The state superintendent shall make recommendations and suggestions in writing to each school and school district which is subject to this section when the department of public instruction determines, after due investigation, that deficiencies exist in any school or school district.

The state board of public instruction shall adopt approval standards and rules to implement, interpret and make effective the provisions of this section. In adopting the same, the board shall take into account recognized educational standards. Standards and rules shall be of general application without specific regard to school population.

Such standards and rules shall be subject to the provisions of chapter 17A. In addition, such standards and rules shall be reported by the state board to the general assembly within twenty days after the commencement of a regular legislative session. No school or school district shall be removed from the approved list for failure to comply with such standards or rules, until at least one hundred twenty days have elapsed following the reporting of such standards and rules to the general assembly as provided in this section.

11. The state board of public instruction shall remove for cause, after due investigation and notice, any school or school district from the approved list which fails to comply with such approval standards and rules in the manner prescribed in this subsection. The state board shall allow a reasonable period of time after notification of noncompliance, not to exceed the following school year, for compliance with such approval standards and rules. If the school or school district is making a good faith effort and substantial progress toward full compliance and if the failure to comply is due

to factors beyond the control of the board of directors or governing body of such school or school district additional time may be granted. In allowing such time for compliance, the board shall follow consistent policies, taking into account the circumstances of each case. The reasonable period of time for compliance shall not exceed the one-year notice requirement of subsection 12.

During the period of time allowed for compliance, the superintendent of public instruction and the president of the state board shall confer with the affected school board and with the school boards of contiguous school districts to assist the affected school board in determining how best to offer the students of that district an approved educational program.

12. The department of public instruction shall give any school or school district which is to be removed from the approved list at least one-year notice. Such notice shall be given by registered or certified mail addressed to the superintendent of the school district or the corresponding official of a private school, and shall specify the reasons for removal. Such notice shall also be sent by ordinary mail to each member of the board of directors or governing body of the school or school district, and to the news media which serve the area where the school or school district is located; but any good faith error or failure to comply with this sentence shall not affect the validity of any action by the state board. If, during said year, the school or school district remedies the reasons for removal and satisfies the state board that it will thereafter comply with the laws, approval standards and rules, the state board shall continue such school or school district on the approved list and shall give the school or school district notice of such action by registered or certified mail. At any time during said year, the board of directors or governing body of the school or school district may request a public hearing before the state board of public instruction, by mailing a written request to the state superintendent by registered or certified mail. The president of the state board shall promptly set a time and place for the public hearing, which shall be either in Des Moines or in the affected area. At least thirty days' notice of the time and place of the hearing shall be given by registered or certified mail addressed to the superintendent of the school district or the corresponding official of a private school. At least ten days before the hearing, notice of the time and place of the hearing and the reasons for removal shall also be published by the state department in a newspaper of general circulation in the area where the school or school district is located. At the hearing the school or school district may be represented by counsel and may present evidence. The state board may provide for the hearing to be recorded or reported. If requested by the school or school district at least ten days before the hearing, the state board shall provide for the hearing to be recorded or reported at the expense of such school or school district, using any reasonable method specified by such school or school district. Within ten days after the hearing, the state board shall render its written decision, signed by a majority of its members, and shall affirm, modify or vacate the action or proposed action to remove the school or school district from the approved list.

After notification of removal from the approved list, the board of directors shall seek to merge the territory of the school district with one or more contiguous school districts pursuant to the provisions of chapter 275. If on the date specified for removal from the approved list, the district, or any portion of the district, has not been merged with one or more contiguous school districts, the portion that has not been merged shall be merged with one or more contiguous school districts by the state board, and the provisions of sections 275.25 to 275.38 shall apply. Until the merger is completed, the school district shall pay tuition for its resident students to an approved school district under the provisions of section 279.18.

13. Notwithstanding the foregoing provisions of this section and as an exception to their requirements, a private high school or private combined junior-senior high school operated for the express purpose of teaching a program designed to qualify its graduates for matriculation at accredited four-year or equivalent liberal arts, scientific or technological colleges or universities shall be placed on a special approved list of college preparatory schools, which list shall signify approval of the school for such express purpose only, provided that:

a. Such school complies with minimum standards established by provisions of the Code other than this section, and administrative rules thereunder, applicable to:

(1) Courses comprising such limited program.

(2) Health requirements for personnel.

(3) Plant facilities.

(4) Other environmental factors affecting such programs.

b. At least eighty percent of those graduating from such school within the annually most recent four calendar years, other than those graduating who are aliens, graduates entering military or alternative civilian service, or graduates deceased or incapacitated before college acceptance, have been accepted by accredited four-year or equivalent liberal arts, scientific, or technological colleges or universities.

Any school claiming to be a private college preparatory school which fails in any year to comply with the requirement of paragraph "*b*" of this subsection shall be placed on the special approved list of college preparatory schools probationally if such school complies with the requirements of paragraph "*a*" of this

subsection, but such probational approval shall not continue for more than four successive years. [C24, 27, 31, 35, 39,§4257; C46, 50, 54, 58, 62,§280.8; C66, 71, 73,§§257.25, 280.8; C75,§257.25; 66GA, ch 79,§§2, 3, ch 153,§1]

Referred to in §§280.3, 299.2, 299.24, 622.10, 713A.3
Amendment effective January 1, 1975; 66GA, ch 79,§27

257.26 Sharing instructors and services.

1. The state board, when necessary to realize the purposes of this chapter, shall approve the enrollment in public schools for specified courses of students who also are enrolled in private schools, when the courses in which they seek enrollment are not available to them in their private schools, provided such students have satisfactorily completed prerequisite courses, if any, or have otherwise shown equivalent competence through testing. Courses made available to students in this manner shall be considered as compliance by the private schools in which such students are enrolled with any standards or laws requiring such private schools to offer or teach such courses.

2. The provisions of this section shall not deprive the respective boards of public school districts of any of their legal powers, statutory or otherwise, and in accepting such specially enrolled students, each of said boards shall prescribe the terms of such special enrollment, including but not limited to scheduling of such courses and the length of class periods. In addition, the board of the affected public school district shall be given notice by the state board of its decision to permit such special enrollment not later than six months prior to the opening of the affected public school district's school year, except that the board of the public school district may, in its discretion, waive such notice requirement. School districts and area education agency boards, may, when available, make public school services, which may include health services, special education services, services for remedial education programs, guidance services and school testing services, available to children attending nonpublic schools in the same manner and to the same extent that they are provided to public school students. However, services that are made available shall be provided on premises other than nonpublic school property, except health services which may be provided on nonpublic school premises. [C66, 71, 73, 75,§257.26; 66GA, ch 67,§23, ch 153,§2]

Referred to in §273.2
Sharing, see also §280.15

257.27 Repealed by 65GA, ch 1168,§20.

257.28 Nonresident pupils. The boards of directors of two or more school districts may by agreement provide for attendance of pupils residing in one district in the schools of another district for the purpose of taking courses not offered in the district of their residence. Courses made available to students in this manner shall be considered as complying with any standards or laws requiring the offering of such courses. The boards of directors of districts entering into such agreements may provide for sharing the costs and expenses of such courses. [C66, 71, 73, 75,§257.28]

257.29 Permanent revolving fund.

1. There is established a permanent revolving fund for the department of public instruction. From this fund shall be paid expenses incurred by the department of public instruction subject to reimbursement by the federal government.

2. There is hereby appropriated from the general fund of the state to the department of public instruction the sum of one hundred twenty-five thousand dollars for the purpose of establishing the fund created by subsection 1. If any surplus accrues to said revolving fund in excess of the original appropriation for which there is no anticipated need or use, the governor shall order such surplus to be deposited in the general fund. [C71, 73, 75, §257.29]

Veterans education fund to general fund, 65GA, ch 10, §6(3)

257.30 Private school advisory committee. There is hereby established a private school advisory committee which shall consist of five members, to be appointed by the governor, each of them shall be a citizen of the United States and a resident of the state of Iowa. The term of the members shall be four years. The duties of the committee shall be to advise the state board of public instruction on matters affecting private schools, including but not limited to the establishment of standards for teacher certification and the establishment of standards for, and approval of, all private schools. Notice of meetings of the state board of public instruction shall be sent by the state board to members of the committee. Committee members shall receive no compensation or expenses from public funds. [C71, 73, 75,§257.30]

CHAPTER 258

VOCATIONAL EDUCATION

Referred to in §§257.10(10), 280A.33, 282.7, 286A.4

258.1 Federal Act accepted.
258.2 State board for vocational education.
258.3 Personnel.
258.4 Duties of board.

258.5 Federal aid—conditions.
258.6 Definitions.
258.7 Vocational education advisory council.
258.8 Repealed by 63GA, ch 39,§2.
258.9 Local advisory committee.
258.10 Powers of district boards.
258.11 Salary and expenses.
258.12 Custodian of funds—reports.
258.13 Biennial report.
258.14 Vocational youth organization fund.

258.1 Federal Act accepted. The provisions of the Act of Congress entitled "An Act to provide for the promotion of vocational education; to provide for co-operation with the states in the promotion of such education in agriculture and in the trades and industries; to provide for co-operation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure", approved February 23, 1917, [39 Stat. L. 929; 20 U.S.C., ch 2] and all amendments thereto and the benefit of all funds appropriated under said Act and all other Acts pertaining to vocational education, are accepted. [C24, 27, 31, 35, 39,§3837; C46, 50, 54, 58, 62, 66, 71, 73, 75,§258.1]

258.2 State board for vocational education. The state board of public instruction shall constitute the board for vocational education. [C24, 27, 31, 35, 39,§3838; C46, 50, 54, 58, 62, 66, 71, 73, 75,§258.2]

See 55GA, ch 114,§§25, 40

258.3 Personnel. The superintendent of public instruction as executive officer of the state board of public instruction shall, with its approval, appoint, and direct the work of such personnel as may be necessary to carry out the provisions of this chapter. [C24, 27, 31, 35, 39,§3839; C46, 50, 54, 58, 62, 66, 71, 73, 75,§258.3]

See 55GA, ch 114,§§25, 40

258.4 Duties of board. The board shall:

1. Co-operate with the federal board for vocational education in the administration of said Act of Congress.

2. Provide for making studies and investigations relating to prevocational and vocational training in agricultural, industrial, and commercial subjects, and home economics.

3. Promote and aid in the establishment in local communities and public schools of departments and classes giving instruction in such subjects.

4. Co-operate with local communities in the maintenance of such schools, departments, and classes.

5. Establish standards for teachers of such subjects in approved schools, departments, and classes.

6. Co-operate in the maintenance of teachers training schools, departments, and classes, supported and controlled by the public, for the training of teachers and supervisors of such subjects.

7. Establish standards for, and annually inspect as a basis of approval, all schools, departments, and classes, area vocational-technical high schools and programs, area vocational schools and programs and all teachers training schools, departments, and classes, applying for federal and state moneys under the provisions of this chapter. [C24, 27, 31, 35, 39, §3840; C46, 50, 54, 58, 62, 66, 71, 73, 75,§258.4]

Part-time schools, ch 289

258.5 Federal aid—conditions. Whenever a school corporation maintains an approved vocational school, department, or classes in accordance with the rules and regulations established by the state board and the state plan for vocational education, adopted by that board and approved by the United States office of education or other federal agency to which its functions are assigned, the state board shall reimburse such school corporation at the end of the fiscal year for its expenditures for salaries and authorized travel of vocational teachers from federal and state funds: Provided, that no school corporation shall receive from federal and state funds a larger amount than one-half the sum which has been expended by the school corporation for that particular type of program; further, provided that in the event federal and state funds are not sufficient to make such reimbursement to the extent herein provided, the state board shall prorate the respective amounts available to the corporations entitled to such reimbursement.

The state board shall have the authority to use federal funds to reimburse approved teacher training schools, departments, or classes for the training of teachers of agriculture, home economics, trades and industrial education, distributive education, and for the training of guidance counselors. [C24, 27, 31, 35, 39, §§3841, 3844; C46, 50,§§258.5, 258.8; C54, 58, 62, 66, 71, 73, 75,§258.5]

258.6 Definitions. "Approved school, department, or class" shall mean a school, department, or class approved by said board as entitled under the provisions of this chapter to federal and state moneys for the salaries and authorized travel of teachers of vocational subjects. "Approved teachers training school, department, or class" shall mean a school, department, or class approved by the board as entitled under the provisions of this chapter to federal moneys for the training of teachers of vocational subjects. [C24, 27, 31, 35, 39, §3842; C46, 50, 54, 58, 62, 66, 71, 73, 75,§258.6]

258.7 Vocational education advisory council. There is hereby established a state advisory council for vocational education, consisting of thirteen members, which shall be

appointed by the governor. The term of each member shall be for three years, except that for the initial appointments the governor shall specify the terms of each member so that as nearly as possible, the terms of an equal number of members shall expire on the first day of July of each year.

The advisory council shall serve in an advisory capacity to the state board and shall perform such functions as may be necessary in order for the state of Iowa to qualify for federal aids and grants to vocational education.

The advisory council shall include members who are:

1. Familiar with the vocational needs and the problems of management and labor in the state.

2. Representative of state industrial and economic development agencies.

3. Representative of community and junior colleges and other institutions of higher education, area vocational schools, technical institutes, and postsecondary or adult education institutions, which provide programs of vocational or technical education and training.

4. Familiar with the administration of state and local vocational education programs.

5. Persons having special knowledge, experience, or qualifications with respect to vocational education and who are not involved in the administration of state or local vocational education programs.

6. Familiar with programs of technical and vocational education, including programs in comprehensive secondary schools.

7. Representative of local educational agencies.

8. Representative of school boards.

9. Representative of manpower and vocational education agencies in the state, including the comprehensive area manpower planning system of the state.

10. Representative of school systems with large concentrations of academically, socially, economically, and culturally disadvantaged students.

11. Persons having special knowledge, experience, or qualifications, with respect to the special educational needs of physically or mentally handicapped persons.

12. Representative of the general public, and not qualified for membership under the preceding subsections, including a person representative of and familiar with the problems of the poor and disadvantaged.

13. Representative of prospective employers of vocationally trained students.

The council shall meet at the call of the chairman at least once each quarter of the year. [C24, 27, 31, 35, 39,§3843; C46, 50, 54, 58, 62, 66, 71, 73, 75,§258.7]

258.8 Repealed by 63GA, ch 39,§2.

258.9 Local advisory committee. The board of directors of any school district having a population of more than five thousand persons, maintaining a school, department, or class receiving the benefit of federal moneys under the provisions of this chapter shall, as a condition of approval by such state board as herein provided, appoint a local advisory committee for vocational education, consisting of persons of experience in agriculture, industry, home economics, and business, to give advice and assistance to such board of directors in the establishment and maintenance of such schools, departments, and classes. The state board may require the board of directors of any school district that maintains an approved school, department, or class, to appoint such an advisory committee. Members of such advisory committee shall serve without compensation. [C24, 27, 31, 35, 39,§3845; C46, 50, 54, 58, 62, 66, 71, 73, 75,§258.9]

258.10 Powers of district boards. The board of directors of any school district is authorized to carry on prevocational and vocational instruction in subjects relating to agriculture, commerce, industry, and home economics, and to pay the expense of such instruction in the same way as the expenses for other subjects in the public schools are now paid. [C24, 27, 31, 35, 39,§3846; C46, 50, 54, 58, 62, 66, 71, 73, 75, §258.10]

258.11 Salary and expenses. The board is authorized to make such expenditures for salaries of assistants, actual expenses of the board and the state advisory committee incurred in the discharge of their duties, and such other expenses as in the judgment of the board are necessary to the proper administration of this chapter. [C24, 27, 31, 35, 39,§3847; C46, 50, 54, 58, 62, 66, 71, 73, 75,§258.11]

258.12 Custodian of funds—reports. The treasurer of state shall be custodian of the funds paid to the state from the appropriations made under said Act of Congress, and shall disburse the same on vouchers audited as provided by law. He shall report the receipts and disbursements of said funds to the general assembly at each biennial session. [C24, 27, 31, 35, 39,§3848; C46, 50, 54, 58, 62, 66, 71, 73, 75,§258.12]

Biennial report, §17.3

258.13 Biennial report. The superintendent of public instruction shall embrace in his biennial report a full report of all receipts and expenditures under this chapter, together with such observations relative to vocational education as may be deemed of value. [C24, 27, 31, 35, 39,§3849; C46, 50, 54, 58, 62, 66, 71, 73, 75, §258.13]

Biennial and special reports to the governor, §§17.3, 259.4, 259.8

258.14 Vocational youth organization fund.

1. There is created within the office of the treasurer of state a vocational youth organization fund. Moneys deposited in the fund shall be used to develop leadership in the youth of Iowa who are enrolled in vocational and oc-

cupational education programs and to encourage the youth of Iowa to pursue vocational and occupational education.

2. The board for vocational education is authorized to award grants from the vocational youth organization fund to the following organizations: Distributive education clubs of America, future farmers of America, future homemakers of America, office education clubs of America, future business leaders of America and vocational-industrial clubs of America. No moneys shall be used for salaries and travel of state or local advisors of vocational educational organizations. No vocational organization shall receive more than one-fifth of the moneys appropriated to the vocational youth organization fund in any year. [C73, 75,§258.14]

CHAPTER 259

VOCATIONAL REHABILITATION

Referred to in §§257.10(10), 601B.7

259.1 Acceptance of federal Act.
259.2 Custodian of funds.
259.3 State agency.
259.4 Duties of state board.
259.5 Plan of co-operation.
259.6 Gifts and donations.
259.7 Fund.
259.8 Report of gifts.

259.1 Acceptance of federal Act. The state of Iowa does hereby, through its legislative authority, accept the provisions and benefits of the Act of Congress, entitled "The Federal Vocational Rehabilitation Act [68 Stat. L. 652; 29 U.S.C. ch 4] approved August 3, 1954, (P. L. 565, 83d Congress) as amended", and will observe and comply with all the requirements of such Act.

In the same manner, the Act of Congress known as "The Rehabilitation Act of 1973 (P.L. 93-112)" is accepted. [C24, 27, 31, 35, 39, §3850; C46, 50, 54, 58, 62, 66, 71, 73, 75,§259.1]

259.2 Custodian of funds. The treasurer of state is hereby designated and appointed custodian of all moneys received by the state from appropriations made by the Congress of the United States for the vocational rehabilitation of persons disabled in industry or otherwise, and is authorized to receive and provide for the proper custody of the same and to make disbursement therefrom upon the requisition of the state board for vocational education.

The treasurer of state is hereby designated and appointed custodian of all moneys paid by the federal government to the state for the purpose of carrying out the agreement relative to making determinations of disability under Title II and Title XVI of the federal Social Security Act as amended [42 U.S.C. ch 7] and is authorized to receive the same and make disbursements therefrom upon the requisition of the state board for vocational education. [C24, 27, 31, 35, 39,§3851; C46, 50, 54, 58, 62, 66, 71, 73, 75,§259.2]

259.3 State agency. The state board of public instruction constituting the state board for vocational education is hereby designated as the state board for the purpose of co-operating with the secretary of health, education, and welfare in carrying out the provisions and the purposes of said federal Act providing for the vocational rehabilitation of persons disabled in industry or otherwise and is hereby designated to discharge the duties and exercise the powers hereinafter set forth. [C24, 27, 31, 35, 39,§3852; C46, 50, 54, 58, 62, 66, 71, 73, 75, §259.3]

259.4 Duties of state board. The state board for vocational education is hereby empowered and directed to:

1. Co-operate with the secretary of health, education, and welfare in the administration of said Act of Congress.

2. Administer any legislation pursuant thereto enacted by this state, and direct the disbursement and administer the use of all funds provided by the federal government and this state for the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.

3. Appoint such assistants as may be necessary to administer the provisions of this chapter and said Act of Congress in this state and fix the compensation of such persons.

4. Study and make investigations relating to the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment and to formulate plans for the vocational rehabilitation of such persons.

5. Make such surveys with the co-operation of the state commissioner of labor and the state industrial commissioner as will assist in the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.

6. Maintain a record of all such persons together with all measures taken for their rehabilitation.

7. Utilize in the rehabilitation of persons disabled in industry or otherwise such existing

educational and other facilities as may be advisable and practicable, including public and private educational institutions, public or private establishments, plants, factories, and the services of individuals specially qualified for the instruction and vocational rehabilitation of handicapped persons.

8. Promote the establishment and assist in the development of training agencies for the vocational rehabilitation of persons disabled in industry or otherwise.

9. Supervise the training of such persons and confer with their relatives and others concerning their vocational rehabilitation.

10. Make every possible endeavor looking to the placement of vocationally rehabilitated persons in suitable remunerative occupations, including supervision for a reasonable time after return to civil employment.

11. Utilize the facilities of such agencies, both public and private, as may be practicable in securing employment for such persons; and any such public agency is hereby authorized and directed to co-operate with the state board for vocational education for the purpose stated.

12. Co-operate with any agency of the federal government or of the state, or of any county or other municipal authority within the state, or any other agency, public or private, in carrying out the purposes of this chapter.

13. Make such rules and regulations as may be necessary for the administration of this chapter and said Act of Congress within this state.

14. Do all things necessary to secure the rehabilitation of those entitled to the benefits of this chapter.

15. Report on call or biennially to the governor the conditions of vocational rehabilitation within the state, such report to designate the educational institutions, establishments, plants, factories, etc., in which training is being given, and to contain a detailed statement of the expenditures of the state and federal funds in the rehabilitation of persons disabled in industry or otherwise.

16. Enter into an agreement with the secretary of the United States department of health, education and welfare relating to the matter of making determinations of disability under Title II and Title XVI of the federal Social Security Act as amended [42 U.S.C. ch 7].

17. Provide services as may be desirable and practicable for the vocational rehabilitation of severely handicapped persons and others entitled to the benefits of this chapter, including the establishment and operation of rehabilitation facilities and workshops.

18. Provide rehabilitation services to homebound and other handicapped individuals who as a result thereof can wholly or substantially achieve such ability of self help as to dispense or largely dispense with the need of an attendant.

19. Provide financial and other necessary assistance to public, or private agencies in the development, expansion, operation or maintenance of sheltered workshops or other rehabilitation facilities needed for the rehabilitation of the disabled when consistent with the policies of the board.

20. Provide vocational rehabilitation services to socially disadvantaged persons who are substantially impaired in their ability to earn a living. This may include but is not limited to recipients of public assistance, inmates of correctional institutions or rejectees of the selective service system, who because of lack of training, experience, skills or other factors, which if corrected would lead to self-support instead of dependency. [C24, 27, 31, 35, 39, §3853; C46, 50, 54, 58, 62, 66, 71, 73, 75,§259.4]

Biennial and special reports to the governor, §§17.3, 258.13, 259.8

259.5 Plan of co-operation. It shall be the duty of the state board for vocational education and the state labor commissioner and the state industrial commissioner as administrator of the workers' compensation law to formulate a plan of co-operation in accordance with the provisions of this chapter and said Act of Congress, such plan to become effective when approved by the governor of the state. [C24, 27, 31, 35, 39,§3854; C46, 50, 54, 58, 62, 66, 71, 73, 75,§259.5; 66GA, ch 1084,§43]

259.6 Gifts and donations. The state board for vocational education is hereby authorized and empowered to receive such gifts and donations from either public or private sources as may be offered unconditionally or under such conditions related to the vocational rehabilitation of persons disabled in industry or otherwise as in the judgment of the said state board are proper and consistent with the provisions of this chapter. [C24, 27, 31, 35, 39,§3855; C46, 50, 54, 58, 62, 66, 71, 73, 75,§259.6]

39GA, ch 14,§6, editorially divided

259.7 Fund. All the moneys received as gifts or donations shall be deposited in the state treasury and shall constitute a permanent fund to be called the special fund for the vocational rehabilitation of disabled persons, to be used by the said board in carrying out the provisions of this chapter or for purposes related thereto. [C24, 27, 31, 35, 39,§3856; C46, 50, 54, 58, 62, 66, 71, 73, 75,§259.7]

259.8 Report of gifts. A full report of all gifts and donations offered and accepted, together with the names of the donors and the respective amounts contributed by each, and all disbursements therefrom shall be submitted at call or biennially to the governor of the state by said state board. [C24, 27, 31, 35, 39, §3857; C46, 50, 54, 58, 62, 66, 71, 73, 75,§259.8]

Biennial and special reports to the governor, §§17.3, 258.13, 259.4

CHAPTER 259A

HIGH SCHOOL EQUIVALENCY DIPLOMAS

259A.1 Tests.
259A.2 Age.
259A.3 Notice and fee.
259A.4 Use of fees.
259A.5 Rules.
259A.6 Residents of juvenile institutions and juvenile probationers.

259A.1 Tests. The department of public instruction shall cause to be made available for qualified individuals a high school equivalency diploma. The diploma shall be issued on the basis of satisfactory competence as shown by tests covering: The correctness and effectiveness of expression; the interpretation of reading material in the social studies; interpretation of reading materials in the natural sciences; interpretation of literary materials; and general mathematical ability. [C66, 71, 73, 75, §259A.1; 66GA, ch 154,§1]

259A.2 Age. Every applicant must have attained the age of eighteen years, be a nonhigh school graduate, and not currently enrolled in a secondary school. However, an applicant is not eligible for the diploma until after the class in which the applicant was enrolled has graduated.

Application shall be made to a testing center approved by the department of public instruction, accompanied by an application fee in an amount prescribed by the department. The test scores shall be forwarded by the testing center to the department. [C66, 71, 73, 75, §259A.2; 66GA, ch 154,§2, ch 1145,§1]

Referred to in §259A.6

259A.3 Notice and fee. Any applicant who has achieved the minimum passing standards as established by the department, and approved by the state board, shall be issued a high school equivalency diploma by the department upon payment of an additional five dollars. [C66, 71, 73, 75,§259A.3; 66GA, ch 154,§4]

259A.4 Use of fees. The fees collected under the provisions of this chapter shall be used for the expenses incurred in administering, providing test materials, scoring of examinations and issuance of high school equivalency diplomas, and shall be disbursed on the authorization of the superintendent [of] public instruction. The treasurer of state shall be custodian of the funds paid to the department and shall disburse the same on vouchers audited as provided by law. The unobligated balance in such funds at the close of each biennium shall be placed in the general fund of the state. [C66, 71, 73, 75,§259A.4; 66GA, ch 154,§5]

259A.5 Rules. The superintendent of public instruction, subject to the approval of the state board of public instruction, is hereby authorized to adopt such rules, tests, definition of terms, and forms as are necessary and proper for the administration of this chapter. [C66, 71, 73, 75,§259A.5]

259A.6 Residents of juvenile institutions and juvenile probationers. Notwithstanding the provisions of section 259A.2 a minor who is a resident of a state training school or the Iowa juvenile home or a minor who is placed under the supervision of a juvenile probation office may make application for a high school equivalency diploma and upon successful completion of the program receive a high school equivalency diploma. [66GA, ch 154,§3]

CHAPTER 259B

NATIONAL DEFENSE EDUCATION

Repealed by 66GA, ch 1056,§45

CHAPTER 260

BOARD OF EDUCATIONAL EXAMINERS

Referred to in §257.10(11)

260.1 Members.
260.2 Powers.
260.3 Personnel.
260.4 Repealed by 55GA, ch 114,§26.
260.5 Definition of fields.
260.6 Classes of certificates.
260.7 Elementary certificates.
260.8 Secondary certificates.
260.9 Administrative and supervisory certificates.

260.10 Certificate to applicants from other states or countries.
260.11 Tenure of certificates.
260.12 Renewal of certificates.
260.13 Renewal for life.
260.14 Fees for renewal.
260.15 Applications—disbursement of fees.
260.16 Interpretative clause.
260.17 Special certificates.
260.18 Repealed by 65GA, ch 1172,§133.
260.19 Substitute teachers' certificates.
260.20 Registration of certificates and diplomas.
260.21 Renewal of former certificates.
260.22 Repealed by 65GA, ch 1172,§133.
260.23 Revocation by board.
260.24 to 260.26 Repealed by 65GA, ch 1172, §133.
260.27 Student teachers' certificates.
260.28 Expenditures.
260.29 Accounts.
260.30 Printing.

260.1 Members. The state board of public instruction shall constitute the board of educational examiners. [C97,§2628; C24, 27, 31, 35, 39,§3858; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.1]
See 55GA, ch 114,§§25, 40

260.2 Powers. The board of educational examiners shall have authority to issue certificates to applicants who are eighteen years of age or over, physically competent and morally fit to teach, and who have the qualifications and training hereinafter prescribed. [C97,§2629; S13,§2629; C24, 27, 31,§3863; C35,§3858-e1; C39, §3858.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.2]

260.3 Personnel. The state superintendent shall with the approval of the state board direct the work of such personnel as may be necessary to carry out the provisions of this chapter. [C97,§2634; S13,§2634-a; SS15,§2634-a; C24, 27, 31, 35, 39,§3859; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.3]
See 55GA, ch 114,§§25, 40

260.4 Repealed by 55GA, ch 114,§26.

260.5 Definition of fields. For the purposes of this Act* the elementary school field shall be construed to include the kindergarten and grades one to eight, inclusive; the secondary school field shall be construed to include the junior high school, the senior high school and the four-year high school; and the administrative and supervisory field shall be construed to include all administrative and supervisory positions in the public schools. [C35, §3872-e1; C39,§3872.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.5]
*45GA, ch 51

260.6 Classes of certificates. The board of educational examiners is hereby authorized to issue six classes of regular certificates as follows:

1. Elementary teachers' certificates.
2. Secondary teachers' certificates.
3. Administrative and supervisory teachers' certificates.
4. Special teachers' certificates.
5. Emergency teachers' certificates.
6. Substitute teachers' certificates.

Every person employed as an administrator, supervisor, or teacher in the public schools shall hold a certificate valid for the type of position in which he is employed. [C97,§2630; S13,§2630-b; C24, 27, 31,§3865; C35,§3872-e2; C39, §3872.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.6]

260.7 Elementary certificates. The elementary teachers' certificates shall include the advanced elementary certificate, the standard elementary certificate and limited elementary certificate and shall specify the division or divisions of the elementary school field for which the holders are especially trained.

1. *Advanced.* The advanced elementary certificate shall be issued to the holder of a diploma granted by an Iowa college accredited by the board of educational examiners certifying to the completion of a four-year course including such specific and professional training for teaching in some division of the elementary school field as the board shall prescribe. It shall be valid for teaching in the elementary school field and, when so designated on the certificate, in the ninth grade.

2. *Standard.* The standard elementary certificate shall be issued to the holder of a diploma or an official statement from an Iowa college accredited by the board of educational examiners certifying to the completion of a two-year course including such specific and professional training for teaching in some division of the elementary school field as the board shall prescribe. It shall be valid for teaching in the elementary school field and, when so designated on the certificate, in the ninth grade.

3. *Limited elementary certificate.* On and after September 1, 1946, the limited elementary certificate shall be issued to a person who has graduated from an approved four-year high school or has had equivalent academic training and who is the holder of official statements certifying to the completion of standard college work in an institution or institutions approved by the board of educational examiners for this purpose. The amount of such standard work shall be as follows: After September 1, 1946, ten semester hours; after September 1, 1948, thirty semester hours; after September 1, 1950, and up to August 31, 1952, forty-five semester hours. From and after August 31, 1952, no limited elementary certificates shall be issued except in renewal of a certificate previously issued as provided in section 260.12.

The limited elementary certificates shall be valid for teaching only in the elementary school field. [C35,§3872-e3; C39,§3872.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.7]

260.8 Secondary certificates. The secondary teachers' certificates shall include the advanced secondary certificate and the standard secondary certificate and shall specify the subjects or subject groups in the secondary school field for which the holders are especially trained.

1. *Advanced.* The advanced secondary certificate shall be issued to an applicant who has met the requirements for a standard secondary certificate and who is the holder of a standard master's degree. It shall be valid for teaching in the seventh and eighth grades, in a high school, and in a public junior college.

2. *Standard.* The standard secondary certificate shall be issued to the holder of a diploma granted by an Iowa college accredited by the board of educational examiners certifying to the completion of a four-year course including such specific and professional training for teaching two or more secondary school subjects as the board shall prescribe. It shall be valid for teaching in the seventh and eighth grades and in a high school. [C35,§3872-e4; C39, §3872.04; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.8]

260.9 Administrative and supervisory certificates. The administrative and supervisory certificates shall include the superintendent's certificate, the principal's certificate, and the supervisor's certificate.

1. *Superintendent's certificate.* The superintendent's certificate shall be issued to an applicant who has met the requirements for an advanced elementary certificate or an advanced or a standard secondary certificate and who has in addition such other qualifications with reference to special training and experience as the board of educational examiners shall from time to time prescribe. It shall be valid for service as superintendent, principal, or teacher in any elementary or secondary school.

The board of educational examiners shall establish a certificate for area education agency administrators. The area education agency administrator's certificate shall be issued to an applicant who has met either of the requirements in two of the four following paragraphs:

a. Five years' experience in higher education administration at a two- or four-year college or university which is accredited by the North Central Association of Colleges and Secondary Schools accrediting agency or which has been certified by the North Central Association of Colleges and Secondary Schools accrediting agency as a candidate for accreditation by such agency or as a school giving satisfactory assurance that it has the potential for accreditation and is making progress which, if continued, will result in its achieving accreditation by such agency within a reasonable time; or an earned doctorate in higher education administration.

b. Five years' experience in special education administration; or an earned doctorate in special education or any subspecialty thereof.

c. Five years' experience in primary or secondary school education; or an earned doctorate in educational administration for the primary or secondary level; and five years' teaching experience at any educational level.

d. Five years' experience in business or other nonacademic career pursuit; or an earned doctorate in public administration or business administration.

No person shall be issued a temporary or emergency certificate for more than one year; and no education agency shall employ uncertificated administrators, or employ temporary or emergency certificated administrators for more than two consecutive years.

The provisions of this subsection relating to the certification of an area education agency administrator shall not apply to persons holding a superintendent's certificate prior to July 1, 1975.

2. *Principal's certificate.* The principal's certificate shall include the secondary principal's certificate and the elementary principal's certificate.

a. The secondary principal's certificate shall be issued to an applicant who has met the requirements for an advanced or a standard secondary certificate and who has in addition such other qualifications with reference to special training and experience as the board of educational examiners shall from time to time prescribe. It shall be valid for service as principal or teacher in a high school.

b. The elementary principal's certificate shall be issued to an applicant who has met the requirements for an advanced or a standard elementary certificate and who has in addition such other qualifications with reference to special training and experience as the board of educational examiners shall from time to time prescribe. It shall be valid for service as principal or teacher in an elementary school and, when so designated on the certificate, in a junior high school.

3. *Supervisor's certificate.* The supervisor's certificate shall be issued to an applicant who has met the requirements for a standard elementary or a standard secondary certificate valid for teaching the subject or subjects over which supervision is to be exercised by the applicant and who has in addition such other qualifications with reference to special training and experience as the board of educational examiners shall from time to time prescribe. It shall be valid for teaching and for supervision of instruction in the subjects specified on the certificate in the elementary or the secondary school fields, or, when so designated on the certificate, in both the elementary and the secondary school fields. [C35,§3872-e5; C39, §3872.05; C46, 50, 54, 58, 62, 66, 71, 73,§§260.9, 260.18; C75,§260.9]

Referred to in §273.3

260.10 Certificate to applicants from other states or countries. The board of educational examiners may, at its discretion, issue any teacher's certificate provided for in this Act* to an applicant from another state or country who files with the board evidence of the possession of the required qualifications or the equivalent thereof. The board of educational examiners is hereby authorized to enter into reciprocity agreement with any other state or country for the certification of teachers on an equitable basis of mutual exchange, when such action is in conformity with law. [S13,§2634-f1; C24, 27, 31,§3867; C35,§3872-e6; C39,§**3872.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.10]

*45GA, ch 51

260.11 Tenure of certificates. The superintendent's certificate, the principal's certificate, the supervisor's certificate, the advanced secondary certificate, the standard secondary certificate, the advanced elementary certificate, and the standard elementary certificate shall be valid for terms of five years. The special certificates shall be valid for terms of one to five years at the discretion of the board of educational examiners. The limited elementary certificate shall be valid for a term of three years. The expiration date of each original or renewed certificate shall be June 30 and this expiration date shall be determined by counting each fraction of a year during the term of such certificate following the date of issuance as one full year. [S13,§2634-g; C24, 27, 31,§3868; C35,§3872-e7; C39,§**3872.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.11]

260.12 Renewal of certificates. Certificates authorized by this Act* shall be subject to renewal for terms as follows:

1. *Five-year certificates.* Any five-year certificate issued under this Act shall be subject to renewal at expiration for a term of five years upon the filing with the board of educational examiners of such evidence as the board may require, showing professional spirit, physical and moral fitness for work in the schools, and successful experience in administration, supervision, or teaching during the term for which the certificate was issued. The board of educational examiners may, at its discretion, accept credit earned in an approved college or graduate school in lieu of the teaching experience required for the renewal of five-year certificates.

2. *Special certificates.* The special certificate shall be subject to renewal under such conditions as the board of educational examiners shall prescribe.

3. *Limited elementary certificate.* The limited elementary certificate shall be subject at expiration to one renewal for a term of three years upon the filing with the board of educational examiners of such evidence as the board may require showing professional spirit, physical and moral fitness for work in the schools and successful teaching experience, except that the board of educational examiners may accept credit earned in an approved college in lieu of teaching experience. [C35,§3872-e8; C39, §**3872.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §260.12]

Referred to in §260.7(3)
*45GA, ch 51

260.13 Renewal for life. Any five-year certificate issued under this Act* may be renewed for life upon the filing with the board of educational examiners of such evidence as the board may require, showing professional spirit, physical and moral fitness for work in the schools, and five years of successful experience in administration, supervision, or teaching; provided that two years of this experience shall have occurred during the term of the certificate offered for life renewal. A certificate renewed for life shall lapse if the holder thereof shall cease to be employed in school work for any period of five consecutive years. [S13,§§2634-h,-h1,-h2; C24, 27, 31,§§3870–3872; C35,§3872-e9; C39,§**3872.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.13]

*45GA, ch 51

260.14 Fees for renewal. The fee for the issuance or the renewal of any certificate shall be fifteen dollars. [S13,§2634-h1; C24, 27, 31, §3871; C35,§3872-e10; C39,§**3872.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.14]

260.15 Applications—disbursement of fees. Applications for the issuance or renewal of all teachers' certificates shall be made to the superintendent of public instruction. All fees for the issuance or renewal of such certificates shall be paid to the superintendent of public instruction who shall deposit each fee received from these sources with the treasurer of state to be credited to the general revenue fund. In the event that an application for the issuance or renewal of a certificate is not approved, the state superintendent of public instruction shall remit such fee or fees to the applicant by a state comptroller's warrant issued by him on the general revenue fund not otherwise appropriated upon certification of the state superintendent of public instruction that such fee or fees have not been earned. [C35,§3872-e11; C39,§**3872.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.15]

260.16 Interpretative clause. No provision of this Act* shall affect or impair the validity of any certificate in force or renewable June 30, 1933. [C35,§3872-e12; C39,§**3872.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.16]

*45GA, ch 51

260.17 Special certificates. The special certificate shall be issued to any applicant meeting the requirements prescribed by the board of educational examiners. It shall be valid for teaching the subject or subjects specified in the field or fields designated on the certificate and, when so designated on the certificate, for supervision of instruction in these subjects.

[S13,§§2630-b, 2734-e; C24, 27, 31, 35, 39,§3878; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.17]

260.18 Repealed by 65GA, ch 1172,§133.

260.19 Substitute teachers' certificates. A substitute teacher's certificate may be issued to persons who have at some previous time held a valid Iowa teacher's certificate, upon presentation of such evidence and under such conditions as the board of educational examiners may require. Such certificate shall be valid for substitute teaching in the type of school, subjects or grades in which the holder was previously qualified to teach and for which the holder has at some time been granted approval by the department of public instruction. Such certificates shall be valid for two years and may be renewed at expiration without any additional training. [C97,§2737; S13,§2734-g; C24, 27, 31, 35, 39,§3879; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.19]

260.20 Registration of certificates and diplomas. All diplomas and certificates shall be valid in any area education agency when registered therein, and no person shall teach in any public school whose certificate has not been registered with the administrator of the area education agency in which the school is located, provided that whenever there is a sufficient number of holders of advanced and standard elementary certificates available to supply the elementary schools in any area education agency it shall not be incumbent upon the area education agency administrator to register limited elementary certificates. [S13, §§2734-q,-t; C24, 27, 31, 35, 39,§3888; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.20]

260.21 Renewal of former certificates. Uniform county certificates and normal training high school certificates in force or renewable at the dates when the respective repeals affecting them become effective, shall be subject to term renewals upon the filing with the board of educational examiners of such evidence as the board may require, showing professional spirit, physical and moral fitness for work in the schools, and successful experience in administration, supervision or teaching during the term for which the certificate was issued. The board may, at its discretion, accept credit in an approved college or graduate school in lieu of the teaching experience required for renewal of certificates. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.21]

260.22 Repealed by 65GA, ch 1172,§133.

260.23 Revocation by board. Any certificate issued by the board may be suspended or revoked by it for any cause which would have authorized or required a refusal to grant the same, and the holder shall have ten days' notice by registered mail and be allowed to be present and make defense. [C97,§2631; S13, §2734-t; C24, 27, 31, 35, 39,§3892; C46, 50, 54, 58, 62, 66, 71, 73, 75,§260.23]

260.24 to 260.26 Repealed by 65GA, ch 1172, §133.

260.27 Student teachers' certificates. Whenever the conditions prescribed by the board of educational examiners for issuance of any type or class of certificate provide that the applicant shall have completed work in student teaching it shall be lawful for any accredited college or university located within the state of Iowa and states conterminous with Iowa and offering a program or programs of teacher education approved by said board of educational examiners of Iowa or states conterminous with Iowa to enter into a written contract with any approved school district or private school, under such terms and conditions as may be agreed upon by such contracting parties. Students actually engaged under the terms of such contract, shall be entitled to the same protection, under the provisions of section 613A.8, as is afforded by said section to officers and employees of the school district, during the time they are so assigned. [C71, 73, 75,§260.27]

260.28 Expenditures. All expenditures authorized to be made by the board of educational examiners shall be certified by the superintendent of public instruction to the state comptroller, and if found correct, he shall approve the same and draw warrants therefor upon the treasurer of state from the funds appropriated for that purpose. [C97,§2634; S13, §2734-o; SS15,§2634-a; C24, 27, 31, 35, 39,§3896; C46, 50, 54, 58, 62, 66,§260.27; C71, 73, 75,§260.28]

260.29 Accounts. The board shall keep an accurate and detailed account of all money received and expended, which, with a list of those receiving certificates or diplomas, shall be published by the superintendent of public instruction in his annual report. [C97,§§2630, 2631, 2633; S13,§§2630-b, 2631, 2734-p; C24, 27, 31, 35, 39,§3897; C46, 50, 54, 58, 62, 66,§260.28; C71, 73, 75,§260.29]

Time for filing annual reports, §17.4

260.30 Printing. The board of educational examiners shall have authority to obtain all the necessary printing for the performance of their duties, as required by law, in the same manner as the printing is provided for state officers. [S13,§2634-a1; C24, 27, 31, 35, 39,§3898; C46, 50, 54, 58, 62, 66,§260.29; C71, 73, 75,§260.30]

CHAPTER 261

HIGHER EDUCATION FACILITIES COMMISSION

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261.1 Commission created. There is hereby created a commission to be known as the "Higher Education Facilities Commission" of the state of Iowa. Membership of the commission shall be as follows:

1. A member of the state board of regents to be named by the board, or the secretary thereof if so appointed by the board, who shall serve for a four-year term or until the expiration of his term of office. Such member shall convene the organizational meeting of the commission.

2. The superintendent of public instruction.

3. A member of the state advisory committee for vocational education to be named by the said committee who shall serve for a four-year term or until the expiration of his term of office.

4. A member of the senate to be appointed by the president of the senate to serve as an ex officio nonvoting member for a term of four years beginning on July 1 of the year of appointment.

5. A member of the house of representatives to be appointed by the speaker of the house to serve as an ex officio nonvoting member for a term of four years beginning on July 1 of the year of appointment.

6. Four additional members to be appointed by the governor. One of such members shall be selected to represent private colleges, private universities and private junior colleges located in the state of Iowa. When appointing such one member, the governor shall give careful consideration to any person or persons nominated or recommended by any organization or association of some or all private colleges, private universities and private junior colleges located in the state of Iowa. The other three such members, none of whom shall be official board members or trustees of an institution of higher learning or of an association of such institutions, shall be selected to represent the general public.

The members of the commission appointed by the governor shall serve for a term of four years, but the terms of the four initial appointees shall be as follows:

Two members shall serve from the date of appointment to June 30, 1965, and two members shall serve from the date of appointment to June 30, 1967.

Vacancies on the commission shall be filled for the unexpired term of such vacancies in the same manner as the original appointment.

A vacancy shall exist on the commission when a legislative member of the commission ceases to be a member of the general assembly. Such vacancy shall be filled within thirty days. [C66, 71, 73, 75,§261.1; 66GA, ch 1052,§12]

261.2 Duties of commission—federal co-operation. The commission shall:

1. Prepare and administer a state plan for higher education facilities which shall be the state plan submitted to the commissioner of education, federal department of health, education, and welfare, or any agency successor thereto, in connection with the participation of this state in programs authorized by the federal "Higher Education Facilities Act of 1963" (P. L. 88-204), [77 Stat. L. 363; 20 U.S.C. 701] together with any amendments thereto.

2. Provide for administrative hearings to every applicant for funds authorized under the "Higher Education Facilities Act of 1963" (P. L. 88-204), [77 Stat. L. 363; 20 U.S.C. 701] together with any amendments thereto, in regard to the priority assigned to such application for funds by said commission or to any other determination of the state commission adversely affecting the applicant.

3. Apply for, receive, administer, expend, and account for such federal moneys necessary for its own administrative expenses as authorized by the federal "Higher Education Facilities Act of 1963" (P. L. 88-204), [77 Stat. L. 363; 20 U.S.C. 701] together with any amendments thereto.

4. Prepare and administer a state plan for a state supported and administered scholarship program. Said state plan shall provide for

scholarships based on ability and need to deserving students of Iowa, matriculating in Iowa universities, colleges, area vocational schools, area community colleges, or schools of professional nursing.

5. Receive, administer, and allot a tuition loan fund for the benefit of Iowa resident students enrolled in Iowa studying to be physicians or osteopathic physicians and surgeons and who agree to become general practitioners (family doctors) and practice in Iowa.

Said fund shall be allotted to students for not more than three years of study and shall be in the nature of a loan. Such loan shall have as one of its terms that fifty percent thereof shall be canceled at the end of five years of the general practice in Iowa with an additional ten percent to be canceled each year thereafter until the entire loan may be canceled. No interest shall be charged on any part of the loan thus canceled. Additional terms and conditions of said loan shall be established by the higher education facilities commission so as to facilitate the purpose of this section.

Chapter 8 shall apply to this subsection except that section 8.5 shall not apply.

6. Administer the tuition grant program under this chapter. [C66, 71, 73, 75,§261.2]

Chapter 8, exc pt §8.5 applicable, 61GA, ch 230,§3

261.3 Organization — bylaws. The commission shall determine its own organization, draw up its own bylaws, and do such other things as may be necessary and incidental in the administration of this chapter, including the housing, employment, and fixing the compensation and bond of such persons as are required to carry out its functions and responsibilities.

The commission shall function at the seat of government or such other place as it might designate. [C66, 71, 73, 75,§261.3]

261.4 Funds — comptroller — compensation and expenses of commission. The state comptroller shall keep an accounting of all funds received and expended by the commission. The members of the commission, except those members who are employees of the state, shall be paid a forty-dollar per diem and shall be reimbursed for actual and necessary expenses. All per diem and expense moneys paid to nonlegislative members shall be paid from funds appropriated to the commission. Legislative members of the commission shall receive payment pursuant to section 2.10 and section 2.12. [C66, 71, 73, 75,§261.4; 66GA, ch 1053,§13]

STUDENT LOANS

261.5 Student loan reserve fund. The commission may establish a student loan reserve fund and receive moneys from federal, state, or private sources to guarantee payment of loans made by eligible lending institutions to student residents of the state of Iowa who are enrolled or accepted for enrollment at any eligible institution under the provisions of the "Higher Education Act of 1965" (P. L. 89-329), [79 Stat. L. 1219; 20 U.S.C. 1001], the "National Vocational Student Loan Insurance Act of 1965" (P. L. 89-287), [79 Stat. L. 1037; 20 U.S.C. 981] or any amendments thereto which are in effect on June 1, 1967. [C71, 73, 75,§261.5]

Referred to in §§261.6, 261.7

261.6 Authorized acts of commission. The commission may:

1. Contract, sue and be sued, and promulgate rules and regulations necessary to carry out the provisions of sections 261.5 through 261.8, but the commission shall not in any manner directly or indirectly pledge the credit of the state of Iowa.

2. Appoint such executive and other assistants and employees deemed necessary and fix their compensation within the limits of available appropriations and funds designated for administration of said sections.

3. Authorize payment from the student loan reserve fund and from any income received by investments of moneys in the fund for disbursement, costs, commissions, attorney fees, and other reasonable expenses related to and necessary for making and protecting guaranteed loans and the recovery of moneys, loans, or management of property acquired in connection with such loans. [C71, 73, 75,§261.6]

Referred to in §261.7

261.7 Obligations made by minors. Any contract, promissory note, or other written obligation made by any minor to repay or secure payment of a loan made under sections 261.5 through 261.8, payment of which is guaranteed by the commission, or which forms part of the same transaction as the making of such loan shall notwithstanding any provision of law to the contrary be as valid and binding as if the person were eighteen years of age or older at the time the obligation was made and executed. Obligations may be enforced in any action or proceeding by or against such person in the person's own name and shall be valid without the consent thereto of the parent or guardian of such person. Such person shall not in any action or proceeding arising out of any such loan disaffirm such instrument because of his age nor shall any person interpose the defense that he is, or was, a minor at the time of making and executing the instrument. [C71, 73, 75,§261.7]

Referred to in §261.6

261.8 Assets of fund restricted. The assets of the student loan reserve fund shall only be used to guarantee loans to student residents of the state of Iowa, purchase promissory notes evidencing such loans as may be in default, refund overpayment of fees on such loans when appropriate, and repay such advances made by the United States commissioner of education except that fees, interest, and other earnings of the fund may also be used for expenditures attributable to the necessary, proper, and efficient administration of such loans. [C71, 73, 75,§261.8]

Referred to in §§261.6, 261.7

TUITION GRANTS TO STUDENTS

261.9 Definitions. When used in this division, unless the context otherwise requires:

1. "Tuition grant" means an award by the state of Iowa to a qualified student under this division.

2. "Financial need" means the difference between the student's financial resources available, including those available from his parents as determined by a completed parents' confidential statement, and the student's anticipated expenses while attending the accredited private institution. Financial need shall be redetermined at least annually.

3. "Full-time resident student" means an individual resident of Iowa who is enrolled at an accredited private institution in a course of study including at least twelve semester hours or the trimester equivalent of twelve semester hours. "Course of study" does not include correspondence courses.

4. "Qualified student" means a full-time resident student who has established financial need and who is making satisfactory progress toward graduation.

5. "Accredited private institution" means an institution of higher learning located in Iowa which is operated privately and not controlled or administered by any state agency or any subdivision of the state, except for county hospitals as provided in paragraph *"d"* of this subsection, and

a. Which is accredited by the North Central Association of Colleges and Secondary Schools accrediting agency based on their requirements as of April 1, 1969, or

b. Which has been certified by the North Central Association of Colleges and Secondary Schools accrediting agency based on their requirements as of April 1, 1969, (1) as a candidate for accreditation by such agency or (2) as a school giving satisfactory assurance that it has the potential for accreditation and is making progress which, if continued, will result in its achieving accreditation by such agency within a reasonable time, or

c. Which has received letters from at least three Iowa institutions accredited by the North Central Association of Colleges and Secondary Schools accrediting agency based on their requirements as of April 1, 1969, stating that its credits are and have been accepted as if earned in an institution so accredited.

d. Which is a school of nursing accredited by the national league for nursing and approved by the board of nurse examiners, including such a school operated, controlled, and administered by a county public hospital.

6. "Commission" means the higher education facilities commission.

7. "Half-time resident student" means an individual resident of Iowa who is enrolled at an accredited private institution in a course of study including at least six semester hours or the trimester or quarter equivalent of six semester hours. "Course of study" does not include correspondence courses. [C71, 73, 75, §261.9; 66GA, ch 1146,§§3, 4, 5]

Referred to in §303.5

261.10 Who qualified. A tuition grant may be awarded to any resident of Iowa who is admitted and in attendance as a full-time or half-time resident student at any accredited private institution and who establishes financial need. [C71, 73, 75,§261.10; 66GA, ch 1146, §6]

261.11 Extent of grant. A qualified full-time resident student may receive tuition grants for not more than eight semesters of undergraduate study or the trimester or quarter equivalent. A qualified half-time resident student may receive tuition grants for not more than sixteen semesters of undergraduate study or the trimester or quarter equivalent. [C71, 73, 75,§261.11; 66GA, ch 1146,§7]

261.12 Amount of grant.

1. The amount of a tuition grant to a qualified full-time student for the fall and spring semesters, or the trimester equivalent, shall be the amount of his financial need for that period. However, a tuition grant shall not exceed the lesser of:

a. The total tuition and mandatory fees for that student for two semesters or the trimester or quarter equivalent, less the base amount determined annually by the higher education facilities commission, which base amount shall be within ten dollars of the average tuition for two semesters or the trimester equivalent of undergraduate study at the state universities under the board of regents, but in any event the base amount shall not be less than four hundred dollars; or

b. One thousand three hundred dollars.

2. The amount of a tuition grant to a qualified half-time student for the fall and spring semesters, or the trimester or quarter equivalent, shall be one-half the amount which would be paid for a qualified full-time student under the provisions of subsection 1. [C71, 73, 75,§261.12; 66GA, ch 60,§4, ch 1146,§8]

261.13 Annual grant. A tuition grant may be made annually for both the fall and spring semesters or the trimester equivalent. Payments under the grant shall be allocated equally among the semesters or trimesters and shall be paid at the beginning of each semester or trimester upon certification by the accredited private institution that the student is admitted and in attendance. If the student discontinues attendance before the end of any semester or trimester after receiving payment under the grant, the entire amount of any refund due that student, up to the amount of any payments made under the annual grant, shall be paid by the accredited private institution to the state. [C71, 73, 75,§261.13]

261.14 Other aid considered. If a student receives financial aid under any other program,

the full amount of such financial aid shall be considered part of the student's financial resources available in determining the amount of his financial need for that period. In no case may the state's total financial contribution to the student's education, including financial aid under any other state program, exceed the tuition and mandatory fees at the institution which he attends. [C71, 73, 75,§261.14]

261.15 Administration by commission — rules. The higher education facilities commission shall administer this program and shall:

1. Provide application forms and parents' confidential statement forms.

2. Adopt rules and regulations for determining financial need, defining tuition and mandatory fees, defining residence for the purposes of this division, processing and approving applications for tuition grants, and determining priority of grants. The commission may provide for proration of funds if the available funds are insufficient to pay all approved grants. Such proration shall take primary account of the financial need of the applicant. In determining who is a resident of Iowa, the commission's rules shall be at least as restrictive as those of the board of regents.

3. Approve and award tuition grants.

4. Make an annual report to the governor and general assembly, and evaluate the tuition grant program for the period. The commission may require the accredited private institution to promptly furnish any information which the commission may request in connection with the tuition grant program. [C71, 73, 75,§261.15]

Referred to in §§261.18, 261.26
Annual reports, §17.4

261.16 Application for grants. Each applicant, in accordance with the rules and regulations of the commission, shall:

1. Complete and file an application for a tuition grant.

2. Be responsible for the submission of the parents' confidential statement for processing, the processed information to be returned both to the commission and to the college in which he is enrolling.

3. Report promptly to the commission any information requested.

4. File a new application and parents' confidential statement annually on the basis of which his eligibility for a renewed tuition grant will be evaluated and determined. [C71, 73, 75,§261.16]

261.17 Vocational-technical tuition grants.

1. A vocational-technical tuition grant may be awarded to any resident of Iowa who is admitted and in attendance as a full-time student in a vocational-technical program at an area school in the state, and who establishes financial need.

2. A qualified student may receive vocational-technical tuition grants for not more than four semesters, eight quarters or the equivalent of two full years of study.

3. The amount of a vocational-technical tuition grant shall not exceed the lesser of four hundred dollars per year or the amount of the student's established financial need.

4. A vocational-technical tuition grant shall be awarded on an annual basis, requiring reapplication by the student for each year. Payments under the grant shall be allocated equally among the semesters or quarters of the year upon certification by the institution that the student is in full-time attendance in a vocational-technical program, as defined under rules of the department of public instruction. If the student discontinues attendance before the end of any term after receiving payment of the grant, the entire amount of any refund due that student, up to the amount of any payments made under the annual grant, shall be paid by the institution to the state.

5. If a student receives financial aid under any other program, the full amount of that financial aid shall be considered part of the student's financial resources available in determining the amount of his financial need for that period.

6. The higher education facilities commission shall administer this program and shall:

a. Provide application forms for distribution to students by Iowa high schools and area schools.

b. Adopt rules for determining financial need, defining residence for the purposes of this section, processing and approving applications for grants and determining priority for grants.

c. Approve and award grants on an annual basis.

d. Make an annual report to the governor and general assembly.

7. Each applicant, in accordance with the rules established by the commission, shall:

a. Complete and file an application for a vocational-technical tuition grant.

b. Be responsible for the submission of the financial information required for evaluation of his need for a grant, on forms determined by the commission.

c. Report promptly to the commission any information requested.

d. Submit a new application and financial statement for re-evaluation of his eligibility to receive a second-year renewal of the grant. [C75,§261.17]

261.18 Subvention program.

1. There is established a subvention program for resident students who are enrolled in the college of osteopathic medicine and surgery of Des Moines, Iowa. The subvention program shall be administered by the higher education

facilities commission in the manner provided in this section and section 261.19.

2. In making a final determination of who is a resident of Iowa, the higher education facilities commission shall adopt rules for the academic year commencing in 1976 and for each academic year thereafter consistent with those followed for determining Iowa resident students in section 261.15 and be subject to the provisions of chapter 17A. [66GA, ch 60,§5]

261.19 Payment of subvention. The registrar of the college of osteopathic medicine and surgery shall file, not later than August 1 of each year, a certificate of enrollment which shall include the number, names and addresses of all students enrolled, by class, and shall indicate which students are resident students. If the number of resident students does not equal thirty percent of the total enrollment of a class, the higher education facilities commission shall deduct the sum of twenty thousand dollars for each class member under the required percentage. The higher education facilities commission shall compute the amount of the subvention and shall transmit the funds to the college of osteopathic medicine and surgery by August 15 of each year for which funds are appropriated by the general assembly. [66GA, ch 60,§6]

Referred to in §261.18

261.20 to 261.24 Reserved.

261.25 Appropriation—standing limited.

1. There is appropriated from the general fund of the state to the higher education facilities commission for each fiscal year the sum of ten million dollars for tuition grants.

2. There is appropriated from the general fund of the state to the higher education facilities commission for each fiscal year the sum of three hundred fifty thousand dollars for scholarships.

3. There is appropriated from the general fund of the state to the higher education facilities commission for each fiscal year the sum of one hundred fifty thousand dollars for vocational-technical tuition grants.

4. This section shall not be construed to be a limitation on any of the amounts which may be appropriated by the general assembly for any program enumerated in this section.

It is the intent of the general assembly to extend the tuition grant program beginning July 1, 1977 to the half-time students as provided in this Act taking at least six semester hours or the trimester or quarter equivalent in the school year beginning in the fall of 1977 and limited to a maximum of five hundred thousand dollars for these half-time students unless this amount is changed by legislative action. It is the further intent to extend eligibility for the tuition grant program to nursing students as defined in this Act [66GA, ch 1196] beginning July 1, 1977. [66GA, ch 1146,§§9, 10]

261.26 Optometry schools. The higher education facilities commission shall contract with the proper officials of states which have accredited schools and colleges of optometry for the admission and education of qualified applicants who are domiciliaries of Iowa and who have demonstrated interest, aptitude, and readiness for study in the field of optometry. In making a final determination of who is a domiciliary of Iowa, the higher education facilities commission shall adopt rules for the academic year commencing in 1976 and for each academic year thereafter consistent with those followed for determining Iowa resident students in section 261.15 and subject to the provisions of chapter 17A. [66GA, ch 1146,§13]

Referred to in §261.27

261.27 Contract for right to enter school. In carrying out its duties under the provisions of section 261.26 the higher education facilities commission shall contract for the right of not less than ten qualified persons to enter accredited schools and colleges of optometry during the school year commencing in the year 1976. The higher education facilities commission shall initiate an affirmative action program to insure equal opportunity for participation by women, men, and minority students in the program provided for in this section and section 261.26. Funds expended on behalf of each person shall not exceed three thousand dollars during any one fiscal year. The higher education facilities commission shall make a report regarding its duties under section 261.26 to the legislative fiscal committee at such time as the legislative fiscal committee shall request. [66GA, ch 1146,§14]

CHAPTER 262

STATE BOARD OF REGENTS

One year mobile dental clinic for elderly and persons in need of care, 66GA, ch 110,§19
Fine arts expenditures, 66GA, ch 62,§13

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262.1 Membership. The state board of regents shall consist of nine members, who shall be selected from the state at large solely with regard to their qualifications and fitness to discharge the duties of the office. Not more than five members shall be of the same political party. [S13,§§2682-c,-d; C24, 27, 31, 35, 39,§**3912**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.1]

262.2 Term of office. The term of each member of said board shall be for six years. The terms of three members of the board shall expire on the first day of July of each odd-numbered year. [S13,§2682-d; C24, 27, 31, 35, 39,§**3913**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.2]

262.3 Appointment. During each regular session of the legislature, the governor shall appoint, with the approval of two-thirds of the members of the senate, three members of said board to succeed those whose terms expire on the first day of July next thereafter. [S13, §2682-d; C24, 27, 31, 35, 39,§**3914**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.3]

Confirmation, §2.32

262.4 Removals. The governor, with the approval of a majority of the senate during a session of the general assembly, may remove any member of the board for malfeasance in office, or for any cause which would render him ineligible for appointment or incapable or unfit to discharge the duties of his office, and his removal, when so made, shall be final. [S13,§2682-d; C24, 27, 31, 35, 39,§**3916**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.4]

262.5 Suspension. When the general assembly is not in session, the governor may suspend any member so disqualified and shall appoint another to fill the vacancy thus created, subject to the approval of the senate when next in session. [S13,§2682-d; C24, 27, 31, 35, 39,§**3917**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.5]

262.6 Vacancies. All vacancies on said board which may occur when the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days after the general assembly next convenes. Vacancies occurring during a session of the general assembly shall be filled before the end of said session in the same manner in which regular appointments are required to be made. [S13,§2682-d; C24, 27,

31, 35, 39,§3918; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.6]

262.7 Institutions governed. The state board of regents shall govern the following institutions:

1. The state University of Iowa.
2. The Iowa State University of science and technology, including the agricultural experiment station.
3. The University of Northern Iowa.
4. The Iowa braille and sight-saving school.
5. The state school for the deaf.
6. The Oakdale campus.
7. The state hospital-school. [R60,§§2157, 2158; C73,§§1685, 1686; C97,§2723; S13,§2682-c; C24, 27, 31, 35, 39,§3919; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.7; 66GA, ch 1146,§29]

262.8 Meetings. The board shall meet four times a year. Special meetings may be called by the board, by the president of the board, or by the secretary of the board upon written request of any five members thereof. [S13, §2682-e; C24, 27, 31, 35, 39,§3920; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.8]

262.9 Powers and duties. The board shall:

1. Each even-numbered year elect, from its members, a president of the board, who shall serve for two years and until his successor is elected and qualified.

2. Elect a president of each of said institutions of higher learning; a superintendent of each of said other institutions; a treasurer and a secretarial officer for each institution annually; professors, instructors, officers, and employees; and fix their compensation.

3. Make rules for admission to and for the government of said institutions, not inconsistent with law.

4. Manage and control the property, both real and personal, belonging to said institutions.

5. With the approval of the executive council, acquire real estate for the proper uses of said institutions, and dispose of real estate belonging to said institutions when not necessary for their purposes. A disposal of such real estate shall be made upon such terms, conditions and consideration as the board may recommend and subject to the approval of the executive council. If real estate subject to sale hereunder has been purchased or acquired from appropriated funds, the proceeds of such sale shall be deposited with the treasurer of state and credited to the general fund of the state. There is hereby appropriated from the general fund of the state a sum equal to the proceeds so deposited and credited to the general fund of the state to the state board of regents which, with the prior approval of the executive council, may be used to purchase other real estate and buildings, and for the construction and alteration of buildings and other capital improvements. All transfers shall be by state patent in the manner provided by law.

6. Accept and administer trusts and may authorize nonprofit foundations acting solely for the support of institutions governed by the board to accept and administer trusts deemed by the board to be beneficial. Notwithstanding the provisions of section 633.63, the board and such nonprofit foundations may act as trustee in such instances.

7. Direct the expenditure of all appropriations made to said institutions, and of any other moneys belonging thereto, but in no event shall the perpetual funds of the Iowa State University of science and technology, nor the permanent funds of the University of Iowa derived under Acts of Congress, be diminished.

8. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.

9. With the approval of the executive council, publish, from time to time, and distribute, such circulars, pamphlets, bulletins, and reports as may be in its judgment for the best interests of the institutions under its control, the expense of which shall be paid out of any funds in the treasury not otherwise appropriated.

10. With consent of the inventor and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors and officials, or take assignment of such letters patent or copyright and may make all necessary expenditures in regard thereto. That the letters patent or copyright on inventions when so secured shall be the property of the state, and the royalties and earnings thereon shall be credited to the funds of the institution in which such patent or copyright originated.

11. Perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it.

12. Grant leaves of absence with full or partial compensation to staff members to undertake approved programs of study, research, or other professional activity which in the judgment of the board will contribute to the improvement of the institutions. Any staff member granted such leave shall agree either to return to the institution granting such leave for a period of not less than two years or to repay to the state of Iowa such compensation as he shall have received during such leave.

13. Lease properties and facilities, either as lessor or lessee, for the proper use and benefit of said institutions upon such terms, conditions, and considerations as the board deems advantageous, including leases with provisions for ultimate ownership by the state of Iowa, and to pay the rentals from funds appropriated to the institution for operating expenses thereof or from such other funds as may be available therefor.

1. [S13,§2682-f; C24, 27, 31, 35, 39,§3921; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.9]

2. [R60,§§1739, 2157, 2158, 2162; C73,§§1614, 1685, 1686, 1690; C97,§§2654, 2676, 2723; S13,

§2682-f; C24, 27, 31, 35, 39,§3921; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.9]

3. [C97,§2676; S13,§2682-f; C24, 27, 31, 35, 39, §3921; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.9]

4. [S13,§2682-f; C24, 27, 31, 35, 39,§3921; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.9]

5. [S13,§2682-f; C24, 27, 31, 35, 39,§3921; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.9]

6. [S13,§2682-f; C24, 27, 31, 35, 39,§3921; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.9; 66GA, ch 1147, §1]

7. [C51,§§1017, 1018; R60,§1938; C73,§§1599, 1617; C97,§§2638, 2666; S13,§2682-f; C24, 27, 31, 35, 39,§3921; C46, 50, 54, 58, 62, 66, 71, 73, 75, §262.9]

8. [C24, 27, 31, 35, 39,§3921; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.9]

9. [S13,§2682-j; C24, 27, 31, 35, 39,§3921; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.9]

10. [C35, 39,§3921; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.9]

11. [S13,§2682-f; C24, 27, 31, 35, 39,§3921; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.9]

12. [C66, 71, 73, 75,§262.9]

13. [C66, 71, 73, 75,§262.9]

262.10 Purchases—prohibitions. No sale or purchase of real estate shall be made save upon the order of the board, made at a regular meeting, or one called for that purpose, and then in such manner and under such terms as the board may prescribe and only with the approval of the executive council. No member of the board or any of its committees, offices or agencies nor any officer of any institution, shall be directly or indirectly interested in such purchase or sale.

Purchases of real estate may be made on written contracts providing for payment over a period of years but the obligations thereon shall not constitute a debt or charge against the state of Iowa nor against the funds of the board or the funds of the institution for which said purchases are made. Purchase payments may be made from appropriated capital funds or from other funds lawfully available for that purpose and allocated therefor by the board, or from any combination of the foregoing, but not from appropriated operating funds. All state appropriated capital funds used for any one purchase contract shall be taken entirely from a single capital appropriation and shall be set aside for that purpose. In event of default, the only remedy of the seller shall be against the property itself and the rents and profits thereof, and in no event shall any deficiency judgment be entered or enforced against the state of Iowa, the board, or the institution for which the purchase was made. Provided, however, that no part of the tuition fees shall be used in the purchase of such real estate. [C24, 27, 31, 35, 39,§3922; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.10]

Similar provisions, §§19B.5, 68B.3, 86.7, 252.29, 314.2, 347.15, 403.16, 403A.22, 741.11

262.11 Record. All acts of the board relating to the management, purchase, disposition, or use of lands and other property of said institutions shall be entered of record, which shall show the members present, and how each voted upon each proposition. [S13,§2682-h; C24, 27, 31, 35, 39,§3923; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.11]

262.12 Committees and administrative offices under board. The board of regents shall also have and exercise all the powers necessary and convenient for the effective administration of its office and of the institutions under its control, and to this end may create such committees, offices and agencies from its own members or others, and employ persons to staff the same, fix their compensation and tenure and delegate thereto, or to the administrative officers and faculty of the institutions under its control, such part of the authority and duties vested by statute in the board, and shall formulate and establish such rules, outline such policies and prescribe such procedures therefor, all as may be desired or determined by the board as recorded in their minutes. [S13,§2682-h; C24, 27, 31, 35, 39,§3924; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.12]

262.13 Security officers at institutions as peace officers. The board may authorize any institution under its control to commission one or more of its employees as special security officers. Special security officers shall have the powers, privileges, and immunities of regular peace officers when acting in the interests of the institution by which they are employed. The board shall provide as rapidly as practicable for the adequate training of such special security officers at the Iowa law enforcement academy or in an equivalent training program, unless they have already received such training. [C71, 73, 75,§262.13]

262.14 Loans—conditions. The board may invest funds belonging to said institutions, subject to the following regulations:

1. Each loan shall be secured by a mortgage paramount to all other liens upon approved farm lands in this state, accompanied by abstract showing merchantable title in the borrower. The loan shall not exceed sixty-five percent of the cash value of the land, exclusive of buildings.

2. Each such loan if for a sum more than one-fourth of the value of the farm shall be on the basis of stipulated annual principal reductions.

3. Any portion of said funds may be invested in bonds or other evidences of indebtedness issued, assumed or guaranteed by the United States of America or by any agency or instrumentality of the United States; also in bonds of this state, and of counties, cities, and school districts in Iowa.

4. Any gift accepted by the Iowa state board of regents for the use and benefit of any institution under its control may be invested in securities designated by the donor, but whenever such gifts are accepted and the money invested according to the request of the said donor, neither the state, the Iowa state board of regents, nor any member thereof, shall be liable therefor or on account thereof.

5. A register containing a complete abstract of each loan and investment, and showing its actual condition, shall be kept by [the] board and be at all times open to inspection.

6. All loans made under the provisions of this section shall have an interest rate of not less than three and one-half percent per annum.

1. [C51,§1018; R60,§1938; C73,§1599; C97,§2638; S13,§2682-s; C24, 27, 31, 35, 39,§**3926**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.14]

2. [S13,§2682-s; C24, 27, 31, 35, 39,§**3926**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.14]

3. [R60,§1938; C73,§§1599, 1617; C97,§§2638, 2666; C24, 27, 31, 35, 39,§**3926**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.14]

4. [C31, 35, 39,§**3926**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.14]

5. [S13,§2682-s; C24, 27, 31, 35, 39,§**3926**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.14]

6. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.14]

262.15 Foreclosures and collections. The board shall have charge of the foreclosure of all mortgages and of all collections from delinquent debtors to said institutions. All actions shall be in the name of the state board of regents, for the use and benefit of the appropriate institution. [SS15,§2682-t; C24, 27, 31, 35, 39,§**3927**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §262.15]

262.16 Satisfaction of mortgages. When loans are paid, the board shall release mortgages securing the same as follows:

1. By a satisfaction piece signed and acknowledged by the treasurer of the institution to which the loan belongs, which shall be recorded in the office of the recorder of the county where said mortgage is of record; or

2. By entering a satisfaction thereof on the margin of the record of said mortgage, dated, and signed by the treasurer of the institution to which the loan belongs. [SS15,§2682-t; C24, 27, 31, 35, 39,§**3928**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.16]

262.17 Bidding in property. In case of a sale upon execution, the premises may be bid off in the name of the board of regents, for the benefit of the institution to which the loan belongs. [SS15,§2682-t; C24, 27, 31, 35, 39,§**3929**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.17]

262.18 Deeds in trust. Deeds for premises so acquired shall be held for the benefit of the appropriate institution and such lands shall be subject to lease or sale the same as other lands. [SS15,§2682-t; C24, 27, 31, 35, 39,§**3930**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.18]

262.19 Actions not barred. No lapse of time shall be a bar to any action to recover on any loan made on behalf of any institution. [C97, §2637; C24, 27, 31, 35, 39,§**3931**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.19]

262.20 Business offices—visitation. A business office shall be maintained at each of the institutions of higher learning, with such organizations, powers and duties as the board may prescribe and delegate. [S13,§2682-k; C24, 27, 31, 35, 39,§**3932**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.20]

262.21 Annuity contracts. At the request of an employee through contractual agreement the board may arrange for the purchase of group or individual annuity contracts for any of its respective employees from any company the employee may choose that is authorized to do business in this state, for retirement or other purposes, and may make payroll deductions in accordance with such arrangements for the purpose of paying the entire premium due and to become due under such contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits afforded under section 403b of the Internal Revenue Code of 1954 and amendments* thereto. The employee's rights under such annuity contract shall be nonforfeitable except for the failure to pay premiums.

Whenever an existing tax-sheltered annuity contract is to be replaced by a new contract the agent or representative of the company shall submit a letter of intent to the company being replaced, to the insurance commissioner of the state of Iowa, and to his own company at least thirty days prior to any action by registered mail. This letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract. [C75,§262.21]

*Acts 65GA, ch 1167, effective July 1, 1974

262.22 Comptroller's report. The state comptroller shall include in his report to the governor the amount paid for services and expenses of officers and employees of the board of regents and to whom paid. [S13, §2682-q; C24, 27, 31, 35, 39,§**3934**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.22]

Time for filing report, §17.3

262.23 Duties of treasurer. The treasurer of each of said institutions shall:

1. Receive all appropriations made by the general assembly for said institution, and all other funds from all other sources, belonging to said institution.

2. Pay out said funds on order of the board of regents, or of such committee or official as

it designates, on bills duly audited in accordance with the rules prescribed by said board.

3. Retain all bills, so paid by him, with receipts for their payment as his vouchers.

4. Keep an accurate account of all revenue and expenditures of said institution, so that the receipts and disbursements of each of its several departments shall be apparent at all times.

5. Annually, and at such other times as the board may require, report to it said receipts and disbursements in detail. [R60,§§1739, 1937; C73,§§1593, 1614; C97,§§2637, 2654; C24, 27, 31, 35, 39,§**3935**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.23]

262.24 Reports of executive officers. The executive officer of each of said institutions shall, on or before the first day of August of each even-numbered year, make a report to the board, setting forth such observations and recommendations as in his judgment are for the benefit of the institution, and also his recommendations of a budget for the several colleges and departments of the institution, in detail, and estimates of the amount of funds required therefor for the ensuing biennium. [R60,§§1939, 2149, 2161; C73,§§1600, 1601, 1677, 1694; C97,§§2641, 2717, 2725; S13,§§2641, 2717; C24, 27, 31, 35, 39,§**3936**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.24]

262.25 Reports of secretarial officers. The secretarial officer shall, for the institution of which he acts as secretary, on or before August 1 of each year, report to the board in such detail and form as it may prescribe:

1. The funds available each fiscal year from all sources for the erection, equipment, improvement, and repair of buildings.

2. Interest on endowment and other funds, tuition, state appropriations, laboratory and janitor fees, donations, rents, and income from all sources affecting the annual income of the support funds of said institution.

3. How the funds so received were expended, giving under separate heads the cost of instruction, administration, maintenance and equipment of departments, and the general expense of the institution.

4. The number of professors, instructors, fellows, and tutors, and the number of students enrolled in each course during each year, stating separately the number of students attending short courses.

5. The amount of unexpended balances of departments remaining in the hands of the treasurer, and the amounts undrawn from the state treasury on June 30 of each year.

The report for the Iowa State University of science and technology shall also show the receipts of the experiment station from all sources for each fiscal year, and how the same were expended. [S13,§2682-b; C24, 27, 31, 35, 39,§**3937**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.25]

262.26 Report of board. The board shall, biennially, at the time provided by law, report to the governor and the legislature such facts, observations, and conclusions respecting each of such institutions as in the judgment of the board should be considered by the legislature. Such report shall contain an itemized account of the receipts and expenditures of the board, and also the reports made to the board by the executive officers of the several institutions or a summary thereof, and shall submit budgets for biennial appropriations deemed necessary and proper to be made for the support of the several institutions and for the extraordinary and special expenditures for buildings, betterments, and other improvements. [R60,§1939; C73,§§1600, 1601; C97,§§2641, 2680; S13,§§2641, 2680, 2682-u; C24, 27, 31, 35, 39,§**3938**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.26]

Time for filing report, §17.3

262.27 Colonel of cadets—governor's award. The commandant and instructor of military science and tactics at each of the institutions for higher learning is given the rank of colonel of cadets, and the governor shall issue such commission upon the request of the president of such institution.

The governor of Iowa is hereby authorized to annually confer an appropriate award to any outstanding reserve officer training corps cadet or cadets at each university. Such award shall be on behalf of the people of the state of Iowa. [S13,§2644-c; C24, 27, 31, 35, 39,§**3939**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.27]

262.28 Appropriations — monthly installments. All appropriations made payable annually to each of the institutions under the control of the board of regents shall be paid in twelve equal monthly installments on the last day of each month on order of said board. [S13,§2682-y; C24, 27, 31, 35, 39,§**3940**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.28]

262.29 Expenses — filing and audit. All claims for the actual necessary expenses of the board and of its committees, offices, agencies and employees shall be filed with and allowed by the state comptroller in the same manner as may now or hereafter be required in the case of claims for similar expenses by state officers. [S13,§2682-l; C24, 27, 31, 35, 39,§**3941**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.29]

262.30 Contracts for training teachers. The board of directors of any school district in the state of Iowa may enter into contract with the state board of regents for furnishing instruction to pupils of such school district, and for training teachers for the schools of the state in such particular lines of demonstration and instruction as are deemed necessary for the efficiency of the University of Northern Iowa, state University of Iowa, and Iowa State University of science and technology as training schools for teachers. [C24, 27, 31, 35, 39,§**3942**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.30]

262.31 Payment. The contract for such instruction shall authorize the payment for such service furnished the school district or for such

service furnished the state, the amount to be agreed upon by the state board of regents and the board of the school district thus co-operating. [C24, 27, 31, 35, 39,§3943; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.31]

262.32 Contract—time limit. Such contracts shall be in writing and shall extend over a period of not to exceed two years, and a copy thereof shall be filed in the office of the administrator of the area education agency. [C24, 27, 31, 35, 39,§3944; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.32]

262.33 Fire protection contracts. The state board of regents shall have power to enter into contracts with the governing body of any city or other municipal corporation for the protection from fire of any property under the control of the board, located in any such municipal corporation or in territory contiguous thereto, upon such terms as may be agreed upon. [C31, 35,§3944-d1; C39,§3944.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.33]

262.34 Improvements — advertisement for bids. When the estimated cost of construction, repairs, or improvement of buildings or grounds under charge of the state board of regents shall exceed ten thousand dollars, the said board shall advertise for bids for the contemplated improvement or construction and shall let the work to the lowest responsible bidder; provided, however, if in the judgment of the board bids received be not acceptable, the said board may reject all bids and proceed with the construction, repair, or improvement by such method as the board may determine. All plans and specifications for repairs or construction, together with bids thereon, shall be filed by the board and be open for public inspection. All bids submitted under the provisions of this section shall be accompanied by a deposit of money or a certified check in such amount as the board may prescribe. [C24, 27, 31, 35, 39,§3945; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.34]

Referred to in §§262.56, 262A.4, 263A.2

DORMITORIES

262.35 Dormitories at state educational institutions. The state board of regents is authorized to:

1. Erect from time to time at any of the institutions under its control such dormitories as may be required for the good of the institutions.

2. Rent the rooms in such dormitories to the students, officers, guests, and employees of said institutions at such rates as will insure a reasonable return upon the investment.

3. Exercise full control and complete management over such dormitories. [C27, 31, 35, §3945-a1; C39,§3945.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.35]

Referred to in §262A.2(5, 6)

262.36 Purchase or condemnation of property. The erection of such dormitories is a public necessity and said board is vested with full power to purchase or condemn at said institutions, or convenient thereto, all real estate necessary to carry out the powers herein granted. [C27, 31, 35,§3945-a2; C39,§3945.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.36]

Referred to in §262A.2(5, 6)

262.37 Title to property. The title to all real estate so acquired and the improvements erected thereon shall be taken and held in the name of the state. [C27, 31, 35,§3945-a3; C39, §3945.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.37]

Referred to in §262A.2(5, 6)

262.38 Borrowing money and mortgaging property. In carrying out the above powers, said board may:

1. Borrow money.

2. Mortgage any real estate so acquired and the improvements erected thereon in order to secure necessary loans.

3. Pledge the rents, profits, and income received from any such property for the discharge of mortgages so executed. [C27, 31, 35, §3945-a4; C39,§3945.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.38]

Referred to in §262A.2(5, 6)

262.39 Nature of obligation—discharge. No obligation created hereunder shall ever be or become a charge against the state of Iowa but all such obligations, including principal and interest, shall be payable solely:

1. From the net rents, profits, and income arising from the property so pledged or mortgaged,

2. From the net rents, profits, and income which has not been pledged for other purposes arising from any other dormitory or like improvement under the control and management of said board, or

3. From the income derived from gifts and bequests made to the institutions under the control of said board for dormitory purposes. [C27, 31, 35,§3945-a5; C39,§3945.5; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.39]

Referred to in §§262.40, 262A.2(5, 6)

262.40 Limitation on discharging obligations. In discharging obligations under section 262.39 the dormitories at each of said institutions shall be considered as a unit and the rents, profits, and income available for dormitory purposes at one institution shall not be used to discharge obligations created for dormitories at another institution. [C27, 31, 35, §3945-a6; C39,§3945.6; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.40]

Referred to in §262A.2(5, 6)

262.41 Exemption from taxation. All obligations created hereunder shall be exempt from taxation. [C27, 31, 35,§3945-a7; C39,§3945.7; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.41]

Referred to in §262A.2(5, 6)

262.42 Limitation on funds. No state funds shall be loaned or used for this purpose. This

shall not apply to funds derived from the net earnings of dormitories now or hereafter owned by the state. [C27, 31, 35,§3945-a8; C39, §3945.8; C46, 50, 54, 58, 62, 66, 71, 73, 75,§262.42]

Referred to in §262A.2(5, 6)

TUITION TO LOCAL SCHOOLS

262.43 Students residing on state-owned land. The state board of regents shall pay to the local school boards the tuition payments and transportation costs, as otherwise authorized by statutes for the elementary or high school education of students residing on land owned by the state and under the control of the state board of regents. Such payments for the three institutions of higher learning, the state University of Iowa, the Iowa State University of science and technology and the University of Northern Iowa, shall be made from the funds of the respective institutions other than state appropriations, and for the three noncollegiate institutions, the Iowa braille and sight-saving school, the state school for the deaf and the state sanatorium, there is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to make such payments. [C54, 58, 62, 66, 71, 73, 75,§262.43]

SELF-LIQUIDATING FACILITIES OTHER THAN DORMITORIES

262.44 Areas set aside for improvement. The state board of regents is authorized to:

1. Set aside and use such portions of the respective campuses of the institutions of higher education under its control, namely, the state University of Iowa, the Iowa State University of science and technology, and the University of Northern Iowa, as the board shall determine to be suitable for the construction thereon of self-liquidating and revenue producing buildings and facilities, which the board deems necessary for the comfort, convenience and welfare of their students and suitable for the purposes for which the institutions were established, including student unions, recreational buildings, auditoriums, stadiums, field houses, athletic buildings and areas, parking structures and areas, and additions to or alterations of existing buildings or structures now or hereafter used for any or all of the purposes aforesaid.

2. Acquire by any lawful means additional land deemed by the board to be desirable and suitable for any or all of the aforesaid purposes.

3. Construct, equip, furnish, maintain, operate, manage and control any or all of the buildings, structures, facilities, areas, additions or improvements hereinbefore enumerated. [C62, 66, 71, 73, 75,§262.44]

Referred to in §§262A.2(5, 6), 265.3

262.45 Purchase or condemnation of real estate. The erection of the buildings, improvements and facilities for the educational institutions of higher learning in this state is a public necessity and the board is vested with full power to purchase or condemn at said institutions, or convenient thereto, all real estate necessary to carry out the powers herein granted. [C62, 66, 71, 73, 75,§262.45]

Referred to in §§262A.2(5, 6), 265.3

262.46 Title in name of state. The title to all real estate so acquired and the improvements erected thereon shall be taken and held in the name of the state. [C62, 66, 71, 73, 75,§262.46]

Referred to in §§262A.2(5, 6), 265.3

262.47 Fees and charges from students. When in the opinion of the board of regents, any of the buildings, structures, facilities, property, improvements, equipment, additions or alterations as above authorized are deemed necessary by said board for the comfort, convenience and welfare of the student body as a whole, or for any specified class or part thereof, the board of regents shall have authority to charge and collect, from all students in attendance at the university, college or institution, or from any specified class or part thereof for which such facilities are so deemed necessary, fees and charges for the use and availability of such buildings, facilities, improvements and for the services and benefits made available therefrom. The fees and charges if established shall be applied to the costs of acquisition, construction, maintenance and financing of such improvements. [C62, 66, 71, 73, 75,§262.47]

Referred to in §§262A.2(5, 6), 265.3

262.48 Borrowing money and pledge of revenue. In carrying out the above powers said board may:

1. Borrow money on the credit of the income and revenues to be derived from the operation or use of the building, structure, facility, area or improvement and from fees or charges made by said board to students for whom such facilities are made available and to issue notes, bonds, or other evidence of indebtedness in anticipation of the collection of such income, revenues, fees and charges.

2. Mortgage any real estate so acquired and the improvements erected thereon in order to secure necessary loans.

3. Pledge the rents, profits and income received from any such property for the discharge of the indebtedness.

4. Pledge the proceeds of all fees and charges to students attending the institution for the use or availability of such buildings, structures, areas or facilities for the discharge of the indebtedness. [C62, 66, 71, 73, 75,§262.48]

Referred to in §§262A.2(5, 6), 265.3

262.49 No obligation against state. No obligation created hereunder shall ever be or become a charge against the state of Iowa but all such obligations, including principal and interest, shall be payable solely:

1. From the net rents, profits and income arising from the property so pledged or mortgaged,

2. From the net rents, profits, and income which has not been pledged for other purposes arising from any similar building, facility, area or improvement under the control and management of said board,

3. From the fees or charges established by said board for students attending the institution for the use or availability of the building, structure, area, facility or improvement for which the obligation was incurred, or

4. From the income derived from gifts and bequests made to the institutions under the control of said board for such purposes. [C62, 66, 71, 73, 75,§262.49]

Referred to in §§262.50, 262A.2(5, 6), 265.3

262.50 Prohibited use of funds. In discharging the obligations under section 262.49 the buildings, structures, areas, facilities and improvements at each of said institutions shall be considered as a unit and the rents, profits and other income available for such purposes at one institution shall not be used to discharge obligations created for similar purposes at another institution. [C62, 66, 71, 73, 75, §262.50]

Referred to in §§262A.2(5, 6), 265.3

262.51 Tax exemption. All obligations created hereunder shall be exempt from taxation, together with the interest thereon. [C62, 66, 71, 73, 75,§262.51]

Referred to in §§262A.2(5, 6), 265.3

262.52 No state funds loaned. No state funds shall be loaned for this purpose. This shall not apply to funds derived from the net earnings of such buildings, structures, areas and facilities now or hereafter owned by the state or to funds received from student fees or charges. [C62, 66, 71, 73, 75,§262.52]

Referred to in §§262A.2(5, 6), 265.3

262.53 Construction of statutes. This division shall not be construed to repeal, modify or amend any law of this state now in force, but shall be deemed as supplemental thereto, nor shall it prevent the making of state appropriations, in whole or in part, for any of the purposes of this division. [C62, 66, 71, 73, 75, §262.53]

Referred to in §§262A.2(5, 6), 265.3

262.54 Repealed by 61GA, ch 237,§1.

SELF-LIQUIDATING DORMITORIES

262.55 Definitions. The following words or terms, as used in this division, shall have the respective meanings as stated:

1. "Board" shall mean the state board of regents.

2. "Project" shall mean the acquisition by purchase, lease or construction of buildings for use as student residence halls and dormitories, including dining and other incidental facilities therefor, and additions to such buildings, the reconstruction, completion, equipment, improvement, repair or remodeling of residence halls, dormitories, or additions thereto or facilities therefor, and the acquisition of property therefor of every kind and description, whether real, personal or mixed, by gift, purchase, lease, condemnation or otherwise and the improvement of the same.

3. "Institution" or "institutions" shall mean the state University of Iowa, the Iowa State University of science and technology and the University of Northern Iowa.

4. "Bonds or notes" shall mean revenue bonds or revenue notes which are payable solely and only from net rents, profits and income derived from the operation of residence halls, dormitories, facilities therefor and additions thereto. [C66, 71, 73, 75,§262.55]

Referred to in §262A.2(5, 6)

262.56 Authorization—contracts—title. Subject to and in accordance with the provisions of this division the state board of regents is hereby authorized to undertake and carry out any project as hereinbefore defined at the state University of Iowa, Iowa State University of science and technology and the University of Northern Iowa and to operate, control, maintain and manage student residence halls and dormitories, including dining and other incidental facilities, and additions to such buildings at each of said institutions. All contracts for the construction, reconstruction, completion, equipment, improvement, repair or remodeling of any buildings, additions or facilities shall be let in accordance with the provisions of section 262.34. The title to all real estate acquired under the provisions of this division and the improvements erected thereon shall be taken and held in the name of the state of Iowa. The board is authorized to rent the rooms in such residence halls and dormitories to the students, officers, guests and employees of said institutions at such rates, fees or rentals as will provide a reasonable return upon the investment, but which will in any event produce net rents, profits and income sufficient to insure the payment of the principal of and interest on all bonds or notes issued to pay any part of the cost of any project and refunding bonds or notes issued pursuant to the provisions of this division. [C66, 71, 73, 75, §262.56]

Referred to in §262A.2(5, 6)

262.57 Bonds or notes. To pay all or any part of the cost of carrying out any project at any institution the board is authorized to borrow money and to issue and sell negotiable bonds or notes and to refund and refinance bonds or notes heretofore issued or as may be hereafter issued for any project or for refunding purposes at a lower rate, the same rate or a higher rate or rates of interest and from time to time as often as the board shall find it to be advisable and necessary so to do. Such bonds or notes may be sold by said board at public sale in the manner prescribed by chapter 75 but if the board shall find it to

be advantageous and in the public interest to do so, such bonds or notes may be sold by the board at private sale without published notice of any kind and without regard to the requirements of chapter 75 in such manner and upon such terms as may be prescribed by the resolution authorizing the same, but such bonds or notes shall in any event be sold upon terms of not less than par plus accrued interest. Bonds or notes issued to refund other bonds or notes heretofore or hereafter issued by the board for residence hall or dormitory purposes at any institution, including dining or other facilities and additions, or heretofore or hereafter issued for refunding purposes, may either be sold in the manner hereinbefore specified and the proceeds thereof applied to the payment of the obligations being refunded, or the refunding bonds or notes may be exchanged for and in payment and discharge of the obligations being refunded, and a finding by the board in the resolution authorizing the issuance of such refunding bonds or notes that the bonds or notes being refunded were issued for a purpose specified in this division and constitute binding obligations of the board shall be conclusive and may be relied upon by any holder of any refunding bond or note issued under the provisions of this division. The refunding bonds or notes may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds or notes may be exchanged in part or sold in parts in installments at different times or at one time. The refunding bonds or notes may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds or other obligations to be refinanced thereby and may be issued for the purpose of refunding a like or greater principal amount of bonds or notes, except that the principal amount of the refunding bonds or notes may exceed the principal amount of the bonds or notes to be refunded to the extent necessary to pay any premium due on the call of the bonds or notes to be refunded or to fund interest in arrears or about to become due.

All bonds or notes issued under the provision of this division shall be payable solely and only from and shall be secured by an irrevocable pledge of a sufficient portion of (1) the net rents, profits and income derived from the operation of residence halls, dormitories, dining or other incidental facilities and additions, including necessary real and personal property, acquired or improved in whole or in part with the proceeds of such bonds or notes, regardless of the manner of such acquisition or improvement, and (2) the net rents, profits and income not pledged for other purposes derived from the operation of any other residence halls or dormitories, including dining or other incidental facilities and additions, at the particular institution. All bonds or notes issued under the provisions of this division shall have all the qualities of negotiable instruments under the laws of this state. [C66, 71, 73, 75,§262.57]

Referred to in §262A.2(5, 6)

262.58 Rates and terms of bonds or notes. Such bonds or notes may bear such date or dates, may bear interest at such rate or rates, payable semiannually, may mature at such time or times, may be in such form, carry such registration privileges, may be payable at such place or places, may be subject to such terms of redemption prior to maturity with or without premium, if so stated on the face thereof, and may contain such terms and covenants all as may be provided by the resolution of the board authorizing the issuance of the bonds or notes. In addition to the estimated cost of construction, the cost of the project shall be deemed to include interest upon the bonds or notes during construction and for six months after the estimated completion date, the compensation of a fiscal agent or adviser, and engineering, administrative and legal expenses. Such bonds or notes shall be executed by the president of the state board of regents and attested by the secretary thereof and the coupons thereto attached shall be executed with the original or facsimile signatures of said president and secretary. Any bonds or notes bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes, notwithstanding that before delivery thereof any or all such persons whose signatures appear thereon shall have ceased to be such officers. Each such bond or note shall state upon its face the name of the institution on behalf of which it is issued, that it is payable solely and only from the net rents, profits and income derived from the operation of residence halls or dormitories, including dining and other incidental facilities, at such institution as hereinbefore provided, and that it does not constitute a charge against the state of Iowa within the meaning or application of any constitutional or statutory limitation or provision. The issuance of such bonds or notes shall be recorded in the office of the treasurer of the institution on behalf of which the same are issued, and a certificate by such treasurer to this effect shall be printed on the back of each such bond or note. [C66, 71, 73, 75,§262.58]

Referred to in §262A.2(5, 6)

262.59 Refunding. Upon the determination by the state board of regents to undertake and carry out any project or to refund outstanding bonds or notes, said board shall adopt a resolution describing generally the contemplated project and setting forth the estimated cost thereof, or describing the obligations to be refunded, fixing the amount of bonds or notes to be issued, the maturity or maturities, the interest rate or rates and all details in respect thereof. Such resolution shall contain such covenants as may be determined by the board as to the issuance of additional bonds or notes that may thereafter be issued payable from the net rents, profits

and income of the residence halls or dormitories, the amendment or modification of the resolution authorizing the issuance of any bonds or notes, the manner, terms and conditions and the amount or percentage of assenting bonds or notes necessary to effectuate such amendment or modification, and such other covenants as may be deemed necessary or desirable. In the discretion of the board any bonds or notes issued under the terms of this division may be secured by a trust indenture by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the boundaries of the state of Iowa, but no such trust indenture shall convey or mortgage the buildings or facilities or any part thereof. The provisions of this division and of any resolution or other proceedings authorizing the issuance of bonds or notes and providing for the establishment and maintenance of adequate rates, fees or rentals and the application of the proceeds thereof shall constitute a contract with the holders of such bonds or notes. [C66, 71, 73, 75,§262.59]

Referred to in §262A.2(5, 6)

262.60 Rates, fees and rentals — pledge. Whenever bonds or notes are issued by the state board of regents, it shall be the duty of said board to establish, impose and collect rates, fees or rentals for the use of and services provided by the residence halls and dormitories, including dining and other incidental facilities therefor, at the institution on behalf of which such bonds or notes are issued, and to adjust such rates, fees or rentals from time to time, in order to always provide net amounts sufficient to pay the principal of and interest on such bonds or notes as the same become due and to maintain a reserve therefor, and said board is authorized to pledge a sufficient amount of the net rents, profits and income derived from the operation of residence halls and dormitories, including dining and other facilities therefor, at such institution for this purpose. Rates, fees or rentals collected at one institution shall not be used to discharge bonds or notes issued for or on account of another institution. All bonds or notes issued under the terms of this division shall be exempt from taxation by the state of Iowa and the interest thereon shall be exempt from the state income tax. [C66, 71, 73, 75, §262.60]

Referred to in §262A.2(5, 6)

262.61 Accounts. A certified copy of each resolution providing for the issuance of bonds or notes under this division shall be filed with the treasurer of the institution on behalf of which the bonds or notes are issued and it shall be the duty of said treasurer to keep and maintain separate accounts for each issue of bonds or notes in accordance with the covenants and directions set out in the resolution providing for the issuance thereof. All rates, fees or rentals collected for the use of and services provided by the residence halls and dormitories, including dining and other incidental facilities therefor, at each institution shall be held in trust by the treasurer thereof, separate and apart from all other funds, to be used solely and only for the purposes specified in this division and as may be required and provided for by the proceedings of the board authorizing the issuance of bonds or notes. It shall be the duty of the treasurer of each institution to disburse funds from the proper account for the payment of the principal of and interest on the bonds or notes in accordance with the directions and covenants of the resolution authorizing the issuance thereof. [C66, 71, 73, 75,§262.61]

Referred to in §262A.2(5, 6)

262.62 No obligation against state. Under no circumstances shall any bonds or notes issued under the terms of this division be or become or be construed to constitute a charge against the state of Iowa within the purview of any constitutional or statutory limitation or provision. No taxes, appropriations or other funds of the state of Iowa may be pledged for or used to pay such bonds or notes or the interest thereon but any such bonds or notes shall be payable solely and only as to both principal and interest from the net rents, profits and income derived from the operation of residence halls and dormitories, including dining and other incidental facilities therefor, at the institutions of higher learning under the control of the state board of regents as hereinbefore provided, and the sole remedy for any breach or default of the terms of any such bonds or notes or proceedings for their issuance shall be a proceeding either in law or in equity by suit, action or mandamus to enforce and compel performance of the duties required by this division and the terms of the resolution under which such bonds or notes are issued. [C66, 71, 73, 75,§262.62]

Referred to in §262A.2(5, 6)

262.63 Who may invest. All banks, trust companies, building and loan associations, savings and loan associations, investment companies and other persons carrying on an investment business, all insurance companies, insurance associations and other persons carrying on an insurance business and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or notes issued pursuant to this division; provided, however, that nothing contained in this section may be construed as relieving any persons from any duty of exercising reasonable care in selecting securities for purchase or investment. [C66, 71, 73, 75,§262.63]

Referred to in §262A.2(5, 6)

262.64 Federal or other aid accepted. The state board of regents is authorized to apply for and accept federal aid or nonfederal gifts or grants of funds and to use the same to pay all or any part of the cost of carrying

out any project at any institution under the terms of this division or to pay any bonds and interest thereon issued for any of the purposes specified in this division. [C66, 71, 73, 75,§262.64]

Referred to in §262A.2(5, 6)

262.65 Alternative method. This division shall be construed as providing an alternative and independent method for carrying out any project at any institution of higher learning under the control of the state board of regents, for the issuance and sale or exchange of bonds or notes in connection therewith and for refunding bonds or notes pertinent thereto, without reference to any other statute, and shall not be construed as an amendment of or subject to the provisions of any other law, and no publication of any notice, whether under section 23.12 or otherwise, and no other or further proceeding in respect to the issuance or sale or exchange of bonds or notes under this division, shall be required except such as are prescribed by this division, any provisions of other statutes of the state to the contrary notwithstanding. [C66, 71, 73, 75, §262.65]

Referred to in §262A.2(5, 6)

262.66 Prior action legalized. All rights heretofore acquired in connection with the financing of any project at any institution are hereby preserved and all acts and proceedings taken by the board preliminary to and in connection with the authorization and issuance of any previously issued and outstanding notes or other obligations for any project are hereby legalized, validated and confirmed and said notes or obligations are hereby declared to be legal and to constitute valid and binding obligations of the board according to their terms and payable solely and only from the sources referred to therein. [C66, 71, 73, 75,§262.66]

Referred to in §262A.2(5, 6)
Constitutionality, 60GA, ch 166,§13

EASEMENTS

262.67 Approval of executive council. With the approval of the executive council, the board is hereby authorized to grant easements for rights of way over, across, and under the surface of public lands under its jurisdiction when in its judgment such easements are desirable and will benefit the state of Iowa. [C62,§262.55; C66, 71, 73, 75,§262.67]

SPEED LIMITS

262.68 Speed limit on institutional grounds. The maximum speed limit of all vehicles on institutional roads at institutions under the control of the state board of regents shall be forty-five miles per hour. All driving shall be confined to driveways designated by the state board. Whenever the state board shall determine that the speed limit hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist at any place of congestion or upon any part of its institutional roads, said board shall determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such places of congestion or other parts of its institutional roads. Any person violating the aforementioned speed limits shall, upon conviction, be fined not to exceed one hundred dollars, or be imprisoned in the county jail not to exceed thirty days. [C66, 71, 73, 75,§262.68]

262.69 Traffic control and parking. The state board of regents may make such rules as it deems necessary and proper to provide for the policing, control, and regulation of traffic and parking of vehicles and bicycles on the property of any institution under its control. The rules may provide for the use of institutional roads, driveways, and grounds, registration of vehicles and bicycles, the designation of parking areas, the erection and maintenance of signs designating prohibitions or restrictions, the installation and maintenance of parking control devices, and assessment, enforcement, and collection of reasonable sanctions for the violation of the rules.

Any rules made pursuant to this section may be enforced under procedures adopted by the board for each institution under its control. Sanctions may be imposed upon students, faculty and staff for violation of the rules, including, but not limited to, a reasonable monetary sanction which may be deducted from student deposits and faculty or staff salaries or other funds in the possession of the institution, or added to student tuition bills. The rules made pursuant to this section may also be enforced by the impoundment of vehicles and bicycles parked in violation of the rules, and a reasonable fee may be charged for the cost of impoundment and storage, prior to the release of the vehicles and bicycles to their owners. Each institution under the control of the board shall establish procedures for the determination of controversies in connection with imposition of sanctions. The procedures shall require giving notice of the violation and the sanction involved and provide an opportunity for an administrative hearing. Judicial review of the administrative ruling may be sought in accordance with the terms of the Iowa administrative procedure Act. [C73, 75,§262.69; 66GA, ch 1148,§1]

CHAPTER 262A

STATE UNIVERSITIES BUILDINGS, FACILITIES AND SERVICES REVENUE BONDS

262A.1 Declaration of insufficient state revenue.
262A.2 Definitions.
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262A.4 Authorization of general assembly and governor.
262A.5 Borrowing money and issuing bonds.
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262A.12 Application for gifts, loans or grants.
262A.13 Alternative and independent method.

262A.1 Declaration of insufficient state revenue. The general assembly hereby determines that the annual revenues of the state are insufficient to finance the immediate building requirements and other facilities and utilities services requirements of the institutions of higher learning under the jurisdiction of the state board of regents and in order to provide these buildings, facilities and utilities services when they are needed, it is necessary to authorize the issuance of revenue bonds by the state board of regents, subject to the restrictions and limitations hereinafter set forth. It is the intent of the general assembly that revenue bonds issued for academic and administrative buildings and facilities and utilities services shall supplement and not supplant legislative appropriations for the same or similar purposes. [C71, 73, 75,§262A.1]

262A.2 Definitions. The following words or terms, as used in this chapter, shall have the respective meanings as stated:

1. *"Board"* shall mean the state board of regents.

2. *"Institution" or "institutions"* shall mean the state University of Iowa, the Iowa State University of science and technology, the University of Northern Iowa, and any other institution of higher learning under the jurisdiction of the state board of regents which offers a college program of four years or more, including any such institution the creation of which is hereafter authorized by the general assembly or which is placed under the jurisdiction of said board.

3. *"Buildings and facilities"* shall mean those academic buildings and other facilities used primarily for instructional and research purposes, including libraries, and such other administrative and service buildings and facilities as are deemed necessary by the board to provide supporting services to the instructional and research programs and activities of the institutions, including, without limiting the generality of the foregoing, administrative offices, facilities for business services, student services and extension and continuing education services, off-street parking areas and structures incidental to other buildings and facilities which are not primarily for parking purposes, garages, and storage and warehouse facilities, or any combination thereof. This phrase shall also include works and facilities deemed necessary by the board for furnishing utilities services to any buildings or structures operated by the institutions, including, without limiting the generality of the foregoing, water, electric, gas, communications, sewer and heating facilities, together with all necessary structures, buildings, tunnels, lines, reservoirs, mains, filters, pipes, sewers, boilers, generators, fixtures, wires, poles, equipment, treatment facilities and all other appurtenances in connection therewith, or any combination of the foregoing.

4. *"Project"* shall mean the acquisition by gift, purchase, lease or construction of buildings and facilities which are deemed necessary by the board for the proper performance of the instructional, research and service functions of the institutions, and additions to buildings and facilities, the reconstruction, completion, equipment, improvement, repair or remodeling of buildings and facilities, including the demolition of existing buildings and facilities which are to be replaced, the acquisition of air rights and the construction of projects thereon, and the acquisition of property of every kind and description, whether real, personal or mixed, for buildings and facilities by gift, purchase, lease, condemnation or otherwise and the improvement of the same, or any combination of the foregoing.

5. *"Student fees and charges"* shall mean all tuitions, fees and charges for general or special purposes levied against and collected from students attending the institutions except rates, fees, rentals or charges imposed and collected under the provisions of (*a*) sections 262.35 through 262.42, (*b*) sections 262.44 through 262.53, and (*c*) sections 262.55 through 262.66.

6. *"Institutional income"* shall mean income received by an institution from sources other than (*a*) student fees and charges, (*b*) rates, fees, rentals or charges imposed and collected under the provisions of (1) sections 262.35 through 262.42, (2) sections 262.44 through 262.53, and (3) sections 262.55 through 262.66, (*c*) state appropriations, and (*d*) "hospital

income", as that term is defined in subsection 5 of section 263A.1.

7. *"Bonds"* shall mean revenue bonds which are payable solely and only from student fees and charges and institutional income received by the institution at which the project is being undertaken. [C71, 73, 75,§262A.2]

262A.3 Ten-year program and two-year bond proposal submitted each year. The board shall prepare and submit to the general assembly for approval or rejection a proposed ten-year building program for each institution, including an estimate of the maximum amount of bonds which the board expects to issue under the provisions of this chapter during each year of the ensuing biennium. Such program and estimate shall be submitted no later than seven days after the passage of this chapter by the general assembly and thereafter no later than seven days after the convening of each regular annual session of the general assembly. The building program shall contain a list of the buildings and facilities which the board deems necessary to further the educational objectives of the institutions. This list shall be revised annually, but no project shall be eliminated from the list when bonds have previously been issued by the board to pay the cost thereof. Each such list shall contain an estimate of the cost of each of the buildings and facilities referred to therein. If the general assembly rejects or fails to approve any proposed ten-year building program, such action or inaction shall not affect the status or legality of any project previously or subsequently authorized by the general assembly as provided in section 262A.4. [C71, 73, 75,§262A.3]

262A.4 Authorization of general assembly and governor. Subject to and in accordance with the provisions of this chapter, the state board of regents after authorization by a constitutional majority of each house of the general assembly and approval by the governor may undertake and carry out any project as defined in this chapter at the institutions now or hereafter under the jurisdiction of the board. The state board of regents is authorized to operate, control, maintain, and manage buildings and facilities and additions to such buildings and facilities at each of said institutions. All contracts for the construction, reconstruction, completion, equipment, improvement, repair or remodeling of any buildings, additions, or facilities shall be let in accordance with the provisions of section 262.34. The title to all real estate acquired under the provisions of this chapter and the improvements erected thereon shall be taken and held in the name of the state of Iowa. [C71, 73, 75,§262A.4]

Referred to in §262A.3

262A.5 Borrowing money and issuing bonds. The board is authorized to borrow money under the provisions of this chapter, and the board may issue and sell negotiable bonds to pay all or any part of the cost of carrying out any project at any institution and may refund and refinance bonds issued for any project or for refunding purposes at the same rate or at a higher or lower rate or rates of interest. Bonds issued under the provisions of this chapter shall be sold by said board at public sale on the basis of sealed proposals received pursuant to a notice specifying the time and place of sale and the amount of bonds to be sold which shall be published at least once not less than seven days prior to the date of sale in a newspaper published in the state of Iowa and having a general circulation in said state. The provisions of chapter 75 shall not apply to bonds issued under authority contained in this chapter, but such bonds shall be sold upon terms of not less than par plus accrued interest. Bonds issued to refund other bonds issued under the provisions of this chapter may either be sold in the manner hereinbefore specified and the proceeds thereof applied to the payment of the obligations being refunded, or the refunding bonds may be exchanged for and in payment and discharge of the obligations being refunded. The refunding bonds may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in parts in installments at different times or at one time. The refunding bonds may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding bonds or other obligations to be refinanced thereby and may be issued for the purpose of refunding a like or greater principal amount of bonds, except that the principal amount of the refunding bonds may exceed the principal amount of the bonds to be refunded to the extent necessary to pay any premium due on the call of the bonds to be refunded or to fund interest in arrears or about to become due.

All bonds issued under the provisions of this chapter shall be payable solely and only from and shall be secured by an irrevocable pledge of a sufficient portion of the student fees and charges and institutional income received by the particular institution. All bonds issued under the provisions of this chapter shall have all the qualities of a negotiable investment security under the laws of this state. [C71, 73, 75,§262A.5]

262A.6 Form and condition of bonds. Such bonds may bear such date or dates, may bear interest at such rate or rates, payable semi-annually, may mature at such time or times, may be in such form and denominations, may carry such registration privileges, may be payable at such place or places, may be subject to such terms of redemption prior to maturity with or without premium, if so stated on the face thereof, and may contain such terms and covenants, including the establishment of reserves, all as may be provided by

the resolution of the board authorizing the issuance of the bonds. In addition to the estimated cost of construction, including site costs, the cost of the project may include interest upon the bonds during construction and for six months after the estimated completion date, the compensation of a fiscal agent or adviser, engineering, architectural, administrative and legal expenses and provision for contingencies. Such bonds shall be executed by the president of the state board of regents and attested by the executive secretary, secretary or other official thereof performing the duties of secretary, and the coupons thereto attached shall be executed with the original or facsimile signatures of said president, executive secretary, secretary or other official; provided, however, that the facsimile signature of either of such officers executing such bonds may be imprinted on the face of the bonds in lieu of the manual signature of such officer, but at least one of the signatures appearing on the face of each bond shall be a manual signature. Any bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes, notwithstanding that before delivery thereof any or all such persons whose signatures appear thereon shall have ceased to be such officers. Each such bond shall state upon its face the name of the institution on behalf of which it is issued, that it is payable solely and only from the student fees and charges and institutional income received by such institution as hereinbefore provided, and that it does not constitute a debt of or charge against the state of Iowa within the meaning or application of any constitutional or statutory limitation or provision. The issuance of such bonds shall be recorded in the office of the treasurer of the institution on behalf of which the same are issued, and a certificate by such treasurer to this effect shall be printed on the back of each such bond. [C71, 73, 75,§262A.6]

262A.7 Resolution of board and covenants undertaken. Upon the determination by the state board of regents to undertake and carry out any project or to refund outstanding bonds, said board shall adopt a resolution describing generally the contemplated project and setting forth the estimated cost thereof, or describing the obligations to be refunded, fixing the amount of bonds to be issued, the maturity or maturities, the interest rate or rates and all details in respect thereof. Such resolution shall contain such covenants as may be determined by the board as to the issuance of additional bonds that may thereafter be issued payable from the student fees and charges and institutional income received by the particular institution, the amendment or modification of the resolution authorizing the issuance of any bonds, the manner, terms, and conditions and the amount or percentage of assenting bonds necessary to effectuate such amendment or modification, and such other covenants as may be deemed necessary or desirable. In the discretion of the board any bonds issued under the terms of this chapter may be secured by a trust indenture by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the boundaries of the state of Iowa, but no such trust indenture shall convey or mortgage the buildings and facilities or any part thereof. The provisions of this chapter and of any resolution or other proceedings authorizing the issuance of bonds and providing for the establishment and maintenance of adequate student fees and charges and the application of the proceeds thereof, together with institutional income, shall constitute a contract with the holders of such bonds. [C71, 73, 75,§262A.7]

262A.8 Student fees to pay bonds. Whenever bonds are issued by the state board of regents, it shall be the duty of said board to establish, impose, and collect student fees and charges at the institution on behalf of which such bonds are issued, and to adjust such student fees and charges from time to time, in order always to provide amounts which, together with the institutional income, will be sufficient to pay the principal of and interest on such bonds as the same become due and to maintain a reserve therefor, and said board is authorized to pledge a sufficient amount of the student fees and charges and institutional income received by such institution for this purpose. Student fees and charges and institutional income received by one institution shall not be used to discharge bonds issued for or on account of another institution. All bonds issued under the terms of this chapter shall be exempt from taxation by the state of Iowa and the interest thereon shall be exempt from the state income tax. [C71, 73, 75,§262A.8]

262A.9 Bond fund account. A certified copy of each resolution providing for the issuance of bonds under this chapter shall be filed with the treasurer of the institution on behalf of which the bonds are issued and it shall be the duty of said treasurer to keep and maintain separate accounts for each issue of bonds in accordance with the covenants and directions set out in the resolution providing for the issuance thereof. A sufficient portion of the student fees and charges and institutional income received by each institution shall be held in trust by the treasurer thereof, separate and apart from all other funds, to be used solely and only for the purposes specified in this chapter and as may be required and provided for by the proceedings of the board authorizing the issuance of bonds. It shall be the duty of the treasurer of each institution to disburse funds from the proper account for the payment of the principal of and interest on the bonds in accordance with the directions and covenants of the resolution

authorizing the issuance thereof. [C71, 73, 75,§262A.9]

262A.10 Bonds not state obligation. Under no circumstances shall any bonds issued under the terms of this chapter be or become or be construed to constitute a debt of or a charge against the state of Iowa within the purview of any constitutional or statutory limitation or provision. No taxes, appropriations, or other funds of the state of Iowa may be pledged for or used to pay such bonds or the interest thereon but any such bonds shall be payable solely and only as to both principal and interest from the student fees and charges and institutional income received by the institutions of higher learning under the control of the state board of regents as provided in this chapter, and the sole remedy for any breach or default of the terms of any such bonds or proceedings for their issuance shall be a proceeding either in law or in equity by suit, action, or mandamus to enforce and compel performance of the duties required by this chapter and the terms of the resolution under which such bonds are issued. [C71, 73, 75,§262A.10]

262A.11 Bonds as security for investments. All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued pursuant to this chapter; provided, however, that nothing contained in this section may be construed as relieving any persons from any duty of exercising reasonable care in selecting securities for purchase or investment. [C71, 73, 75, §262A.11]

262A.12 Application for gifts, loans or grants. The state board of regents is authorized to apply for and accept federal or nonfederal gifts, loans, or grants of funds and to use the same to pay all or any part of the cost of carrying out any project at any institution under the terms of this chapter or to use the same, together with student fees and charges and institutional income, for the payment of debt service on bonds issued and to be issued by the board pursuant to authority contained in this chapter, in such manner as may be provided in the resolution authorizing the issuance of the bonds, which grants of funds or other aid shall be considered to constitute and may be commingled with student fees and charges and institutional income and may, together with such student fees and charges and institutional income, be pledged by the board in accordance with the provisions of this chapter and the bond resolution to the payment of debt service on bonds issued by the board under the authority contained in this chapter. [C71, 73, 75,§262A.12]

262A.13 Alternative and independent method. This chapter shall be construed as providing an alternative and independent method for carrying out any project at any institution of higher learning under the control of the state board of regents, for the issuance and sale or exchange of bonds in connection therewith and for refunding bonds pertinent thereto, without reference to any other statute, and shall not be construed as an amendment of or subject to the provisions of any other law, and no publication of any notice, whether under section 23.12 or otherwise, and no other or further proceedings in respect to the issuance or sale or exchange of bonds under this chapter shall be required except such as are prescribed by this chapter, any provisions of other statutes of the state to the contrary notwithstanding. [C71, 73, 75,§262A.13]

Constitutionality, 63GA, ch 181,§14

CHAPTER 263

UNIVERSITY OF IOWA

Referred to in §281.2

263.1 Objects—departments.
263.2 Degrees.
263.3 Cabinet of natural history.
263.4 Homeopathic materia medica and therapeutics.
263.5 Institute of child behavior and development.
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263.7 State hygienic laboratory — investigations.
263.8 Reports—tests.
HOSPITAL-SCHOOL FOR HANDICAPPED
263.9 Establishment and objectives.
263.10 Persons admitted.
263.11 Definitions.
263.12 Payment by counties.
263.13 Gifts accepted.

263.1 Objects—departments. The University of Iowa shall never be under the control of any religious denomination. Its object shall be to provide the best and most efficient means of

imparting to men and women, upon equal terms, a liberal education and thorough knowledge of the different branches of literature and the arts and sciences, with their varied applications. It shall include colleges of liberal arts, law, medicine, and such other colleges and departments, with such courses of instruction and elective studies as the state board of regents may determine from time to time. If a teachers training course is established by the board it shall include the subject of physical education. Instruction in the liberal arts college shall begin, so far as practicable, at the points where the same is completed in high schools. [C51,§1020; R60,§§1927, 1930, 1933; C73,§§1585, 1586, 1589; C97,§2640; C24, 27, 31, 35, 39,§**3946**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§263.1]

263.2 Degrees. No one shall be admitted to courses of instruction in the university who has not completed the elementary instruction in such branches as are taught in the common schools throughout the state. Graduates shall receive degrees or diplomas, or other evidences of distinction such as are usually conferred and granted by universities and are authorized by the state board of regents. [R60,§1933; C73, §§1585. 1589; C97,§2640; C24, 27, 31. 35, 39,§**3947**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§263.2]

263.3 Cabinet of natural history. For the purpose of supplying a cabinet of natural history, all geological and mineralogical specimens which are collected by the state geologists, or by others appointed by the state to investigate its natural history and physical resources, shall belong to and be the property of the university, under the charge of the professors of those departments. [R60,§§1931, 1935; C73,§§1597, 1598; C97,§2639; C24, 27, 31, 35, 39, §**3948**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§263.3]

263.4 Homeopathic materia medica and therapeutics. The state board of regents is hereby authorized and directed to establish and maintain a department of homeopathic materia medica and therapeutics in the college of medicine of the state University of Iowa, with suitable and sufficient hours and rooms for said department. The use of the university homeopathic hospital shall be left to the discretion of the board. [S13,§2640-a; C24, 27, 31, 35. 39,§**3949**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§263.4]

263.5 Institute of child behavior and development. The state board of regents is hereby authorized to establish and maintain at Iowa City as an integral part of the state University of Iowa the institute of child behavior and development, having as its objects the investigation of the best scientific methods of conserving and developing the normal child, the dissemination of the information acquired by such investigation, and the training of students for work in such fields. [C24, 27, 31, 35, 39, §**3950**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§263.5]

263.6 Management. The management and control of such institute shall be vested in a director appointed by the said board of regents and an advisory board of seven members to be appointed by the president of the university from the faculty of the graduate college of said university. [C24, 27, 31, 35, 39,§**3951**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§263.6]

263.7 State hygienic laboratory — investigations. The state hygienic laboratory shall be a permanent part of the state University of Iowa. It shall make or cause to be made microbiological and chemical examinations and other necessary investigations by both laboratory and field work in the determination of the causes of disease, shall suggest methods of overcoming and preventing the recurrence of the disease, and shall evaluate environmental effects and scientific needs, whenever requested to do so by any state agency, state institution, or local board of health when the investigation or evaluation is necessary in the interest of environmental quality and public health and for the purpose of preventing epidemics of disease. [S13,§2575-a8; SS15,§2575-a7; C24, 27, 31, 35, 39,§**3953**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§263.7; 66GA, ch 118,§2]

263.8 Reports — tests. Charges may be assessed for transportation of specimens and cost of examination. Reports of epidemiological examinations and investigations shall be sent to the responsible agency.

In addition to its regular work, the laboratory shall perform without charge all bacteriological, serological, and epidemiological examinations and investigations which may be required by the state department of health and said department shall establish rules therefor. The laboratory shall also provide, those laboratory, scientific field measurement, and environmental quality services which, by contract, are requested by the other agencies of government.

The laboratory is authorized to perform such other laboratory determinations as may be requested by any state institution, citizen, school, municipality or local board of health, and the laboratory is authorized to charge fees covering transportation of samples and the costs of examinations performed upon their request. [S13,§2575-e8; SS15,§§2575-a7,-a9; C24, 27, 31, 35, 39,§**3953**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§263.8; 66GA, ch 118,§3]

Duties of department of health, §135.11

HOSPITAL-SCHOOL FOR HANDICAPPED

263.9 Establishment and objectives. The state board of regents is hereby authorized to establish and maintain in reasonable proximity to Iowa City and in conjunction with the state University of Iowa and the university hospital, a hospital-school having as its objects the education and treatment of severely handicapped children. Such hospital-schools shall be conducted in conjunction with the activities of the University of Iowa children's hospital. Insofar

as is practicable, the facilities of the university children's hospital shall be utilized. [C50, 54, 58, 62, 66, 71, 73, 75,§263.9]

263.10 Persons admitted. Every resident of the state who is not more than twenty-one years of age, who is so severely handicapped as to be unable to acquire an education in the common schools, and every such person who is twenty-one and under thirty-five years of age who has the consent of the state board of regents, shall be entitled to receive an education, care, and training in the institution, and nonresidents similarly situated may be entitled to an education and care therein upon such terms as may be fixed by the state board of regents. The fee for nonresidents shall be not less than the average expense of resident pupils and shall be paid in advance. Residents and persons under the care and control of a director of a division of the department of social services who are severely handicapped may be transferred to the hospital-school upon such terms as may be agreed upon by the state board of regents and such director. [C50, 54, 58, 62, 66, 71, 73, 75,§263.10]

263.11 Definitions. The term "severely handicapped" shall be interpreted for the purpose of this division as the following:

1. Persons who are educable but severely physically and educationally handicapped as a result of cerebral palsy, muscular dystrophy, spina bifida, arthritis, poliomyelitis, or other severe physically handicapping conditions, and

2. Persons who are not eligible for admission to the schools already established for the deaf, blind, epileptic, or feeble-minded. [C50, 54, 58, 62, 66, 71, 73, 75,§263.11]

263.12 Payment by counties. The provisions of sections 270.4 to 270.8, inclusive, are hereby made applicable to the state hospital-school. [C50, 54, 58, 62, 66, 71, 73, 75,§263.12]

Referred to in §444.12(1,g)

263.13 Gifts accepted. The board of regents is authorized to accept, for the benefit of such hospital-schools, gifts, devises, or bequests of property, real or personal including grants from the federal government. Said board may exercise such powers with reference to the management, sale, disposition, investment, or control of property so given, devised, or bequeathed, as may be deemed essential to its preservation and the purposes for which made. No contribution or grant shall be received or accepted if any condition is attached as to its use or administration other than it be used for aid to such hospital-schools as provided in this division. [C50, 54, 58, 62, 66, 71, 73, 75,§263.13]

CHAPTER 263A

MEDICAL AND HOSPITAL BUILDINGS AT UNIVERSITY OF IOWA

Referred to in §255.19

263A.1 Definitions.
263A.2 Legislative approval before acting hereunder.
263A.3 Bonds or notes issued.
263A.4 Bonds or notes provisions.
263A.5 Resolution adopted—terms and conditions of bonds or notes.
263A.6 Rates, fees and charges for services.
263A.7 Accounts of all funds separate.
263A.8 No obligation of the state on bonds or notes.
263A.9 Investment in bonds or notes by financial institutions.
263A.10 Gifts, loans or grants accepted.
263A.11 Provisions independent of any other statute.

263A.1 Definitions. The following words or terms, as used in this chapter, shall have the respective meanings as stated:

1. *"Board"* shall mean the state board of regents.

2. *"Institution"* shall mean the state University of Iowa.

3. *"Buildings and facilities"* shall mean buildings to be used primarily for service, clinical instructional and clinical research purposes in the field of medicine with particular emphasis on the family practice of medicine and such other facilities as are deemed necessary by the board to support and carry out the service, instructional, and research objectives of the hospitals, medical clinics, and medical service laboratories of the institution, including, without limiting the generality of the foregoing, hospital buildings, clinic buildings, laboratory buildings, clinical staff facilities, building for housing interns, resident physicians and nurses, and medical record and film storage buildings, or any combination thereof.

4. *"Project"* shall mean the acquisition by gift, purchase, lease, or construction of buildings and facilities and additions to such buildings and facilities, the reconstruction, completion, equipment, improvement, repair, or remodeling of buildings and facilities, in-

cluding the demolition of existing buildings and facilities which are to be replaced, and the acquisition of property of every kind and description, whether real, personal or mixed, for buildings and facilities by gift, purchase, lease, condemnation, or otherwise and the improvement of the same or any combination of the foregoing.

5. *"Hospital income"* shall mean the income and funds received by the hospitals, medical service clinics, and medical service laboratories of the state University of Iowa, including the proceeds of rates, fees, and charges for services rendered by said hospitals, clinics, and laboratories, but excluding state appropriations to the institution.

6. *"Bonds or notes"* shall mean revenue bonds or revenue notes which are payable solely and only from hospital income. [C71, 73, 75,§263A.1]

Referred to in §262A.2(6)

263A.2 Legislative approval before acting hereunder. Subject to and in accordance with the provisions of this chapter, the state board of regents after authorization by a constitutional majority of the general assembly may undertake and carry out any project as defined in this chapter at the state University of Iowa. The state board of regents is authorized to operate, control, maintain, and manage buildings and facilities and additions to such buildings and facilities at said institution. All contracts for the construction, reconstruction, completion, equipment, improvement, repair, or remodeling of any buildings, additions, or facilities shall be let in accordance with the provisions of section 262.34. The title to all real estate acquired under the provisions of this chapter and the improvements erected thereon shall be taken and held in the name of the state of Iowa. [C71, 73, 75,§263A.2]

263A.3 Bonds or notes issued. The board is authorized to borrow money and to issue and sell negotiable bonds or notes to pay all or any part of the cost of carrying out any project at the institution and to refund and refinance bonds or notes issued for any project or for refunding purposes at the same rate or at a lower rate. Such bonds or notes shall be sold by the board at public sale on the basis of sealed proposals received pursuant to a notice specifying the time and place of sale and the amount of bonds to be sold which shall be published at least once not less than seven days prior to the date of sale in a newspaper published in the state of Iowa and having a general circulation in the state. The provisions of chapter 75 shall not apply to bonds or notes issued under authority contained in this chapter, but such bonds or notes shall be sold upon terms of not less than par plus accrued interest. Bonds or notes issued to refund other bonds or notes issued under the provisions of this chapter may either be sold in the manner specified in this chapter and the proceeds thereof applied to the payment of the obligations being refunded, or the refunding bonds or notes may be exchanged for and in payment and discharge of the obligations being refunded. The refunding bonds or notes may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds or notes may be exchanged in part or sold in parts in installments at different times or at one time. The refunding bonds or notes may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds, or other obligations to be refinanced thereby and may be issued for the purpose of refunding a like or greater principal amount of bonds or notes, except that the principal amount of the refunding bonds or notes may exceed the principal amount of the bonds or notes to be refunded to the extent necessary to pay any premium due on the call of the bonds or notes to be refunded or to fund interest in arrears or about to become due.

All bonds or notes issued under the provisions of this chapter shall be payable solely and only from and shall be secured by an irrevocable pledge of a sufficient portion of the hospital income of the institution. All bonds or notes issued under the provisions of this chapter shall have all the qualities of negotiable instruments under the laws of this state. [C71, 73, 75,§263A.3]

263A.4 Bonds or notes provisions. Such bonds or notes may bear such date or dates, may bear interest at such rate or rates, payable semiannually, may mature at such time or times, may be in such form and denominations, carry such registration privileges, may be payable at such place or places, may be subject to such terms of redemption prior to maturity with or without premium, if so stated on the face thereof, and may contain such terms and covenants, including the establishment of reserves, all as may be provided by the resolution of the board authorizing the issuance of the bonds or notes. In addition to the estimated cost of construction, including site costs, the cost of the project may include interest upon the bonds or notes during construction and for six months after the estimated completion date, the compensation of a fiscal agent or adviser, engineering, architectural, administrative, and legal expenses and provision for contingencies. Such bonds or notes shall be executed by the president of the state board of regents and attested by the executive secretary, secretary, or other official thereof performing the duties of secretary, and the coupons thereto attached shall be executed with the original or facsimile signatures of said president, executive secretary, secretary, or other official; provided, however, that the facsimile signature of either of such

officers executing such bonds may be imprinted on the face of the bonds in lieu of the manual signature of such officer, but at least one of the signatures appearing on the face of each bond shall be a manual signature. Any bonds or notes bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes, notwithstanding that before delivery thereof any or all such persons whose signatures appear thereon shall have ceased to be such officers. Each such bond or note shall state upon its face the name of the institution on behalf of which it is issued, that it is payable solely and only from hospital income received by such institution as provided in this chapter, and that it does not constitute a debt of or charge against the state of Iowa within the meaning or application of any constitutional or statutory limitation or provision. The issuance of such bonds or notes shall be recorded in the office of the treasurer of the institution, and a certificate by such treasurer to this effect shall be printed on the back of each such bond or note. [C71, 73, 75,§263A.4]

263A.5 Resolution adopted—terms and conditions of bonds or notes. Upon the determination by the state board of regents to undertake and carry out any project or to refund outstanding bonds or notes, said board shall adopt a resolution describing generally the contemplated project and setting forth the estimated cost thereof, or describing the obligations to be refunded, fixing the amount of bonds or notes to be issued, the maturity or maturities, the interest rate or rates, and all details in respect thereof. Such resolution shall contain such covenants as may be determined by the board as to the issuance of additional bonds or notes that may thereafter be issued payable from the hospital income received by the institution, the amendment or modification of the resolution authorizing the issuance of any bonds or notes, the manner, terms, and conditions and the amount or percentage of assenting bonds or notes necessary to effectuate such amendment or modification, and such other covenants as may be deemed necessary or desirable. In the discretion of the board, any bonds or notes issued under the terms of this chapter may be secured by a trust indenture by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the boundaries of the state of Iowa, but no such trust indenture shall convey or mortgage the buildings and facilities or any part thereof. The provisions of this chapter and of any resolution or other proceedings authorizing the issuance of bonds or notes and providing for the establishment and maintenance of adequate rates, fees, and charges for services rendered by the hospitals, medical clinics, and medical laboratories of the institution and the application of the proceeds thereof, together with other hospital income, shall constitute a contract with the holders of such bonds or notes. [C71, 73, 75,§263A.5]

263A.6 Rates, fees and charges for services. Whenever bonds or notes are issued by the state board of regents, it shall be the duty of said board to establish, impose, and collect rates, fees, and charges for services rendered by the hospitals, medical clinics, and medical laboratories of the institution and to adjust such rates, fees, and charges from time to time, in order to always provide amounts which, together with other hospital income, will be sufficient to pay the principal of and interest on such bonds or notes as the same become due and to maintain a reserve therefor, and said board is authorized to pledge a sufficient amount of the hospital income received by such institution for this purpose. All bonds or notes issued under the terms of this chapter shall be exempt from taxation by the state of Iowa and the interest thereon shall be exempt from the state income tax. [C71, 73, 75,§263A.6]

263A.7 Accounts of all funds separate. A certified copy of each resolution providing for the issuance of bonds or notes under this chapter shall be filed with the treasurer of the institution and it shall be the duty of said treasurer to keep and maintain separate accounts for each issue of bonds or notes in accordance with the covenants and directions set out in the resolution providing for the issuance thereof. A sufficient portion of the hospital income received by the institution shall be held in trust by the treasurer thereof, separate and apart from all other funds, to be used solely and only for the purposes specified in this chapter and as may be required and provided for by the proceedings of the board authorizing the issuance of bonds or notes. It shall be the duty of the treasurer of the institution to disburse funds from the proper account for the payment of the principal of and interest on the bonds or notes in accordance with the directions and covenants of the resolution authorizing the issuance thereof. [C71, 73, 75,§263A.7]

263A.8 No obligation of the state on bonds or notes. Under no circumstances shall any bonds or notes issued under the terms of this chapter be or become or be construed to constitute a debt of or a charge against the state of Iowa within the purview of any constitutional or statutory limitation or provision. No taxes, or other funds of the state of Iowa appropriated to the institution may be pledged for or used to pay such bonds or notes or the interest thereon but any such bonds or notes shall be payable solely and only as to both principal and interest from the hospital income received by the institution as hereinbefore provided, and the sole remedy for any breach or default of the terms of any such bonds or notes or proceedings for their issuance shall be a proceeding either in law or in equity by suit, action, or mandamus to enforce

and compel performance of the duties required by this chapter and the terms of the resolution under which such bonds or notes are issued. [C71, 73, 75,§263A.8]

263A.9 Investment in bonds or notes by financial institutions. All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or notes issued pursuant to this chapter; provided, however, that nothing contained in this section may be construed as relieving any persons from any duty of exercising reasonable care in selecting securities for purchase or investment. [C71, 73, 75,§263A.9]

263A.10 Gifts, loans or grants accepted. The state board of regents is authorized to apply for and accept federal or nonfederal gifts, loans, or grants of funds and to use the same to pay all or any part of the cost of carrying out any project at the institution under the terms of this chapter or to pay any bonds or notes and interest thereon issued for any of the purposes specified in this chapter. [C71, 73, 75,§263A.10]

263A.11 Provisions independent of any other statute. This chapter shall be construed as providing an alternative and independent method for carrying out any project related to the medical school and any project related to the hospital at the institution, for the issuance and sale or exchange of bonds or notes in connection therewith, and for refunding bonds or notes pertinent thereto, without reference to any other statute, and shall not be construed as an amendment of or subject to the provisions of any other law, and no publication of any notice, whether under section 23.12 or otherwise, and no other or further proceedings in respect to the issuance or sale or exchange of bonds or notes under this chapter shall be required except such as are prescribed by this chapter, any provisions of other statutes of the state to the contrary notwithstanding. [C71, 73, 75,§263A.11]

Constitutionality, 62GA, ch 235,§12

CHAPTER 264

PERPETUATION OF COLLEGE CREDITS

264.1 Mandatory transfer of record of credits.
264.2 Central depository.
264.3 Duty of depository.
264.4 Transcripts.
264.5 Fees.
264.6 Penalty.
264.7 Records of prior defunct institutions.

264.1 Mandatory transfer of record of credits. The trustees or officers of any institution of higher learning, whether incorporated or not, upon going out of existence or ceasing to function as an educational institution must transfer to the office of the registrar of the state University of Iowa complete records of all grades attained by its students. [C35,§3953-e1; C39,§**3953.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§264.1]

264.2 Central depository. The office of the registrar of the state university is hereby designated the central depository for the scholastic records of those educational institutions in this state which may hereafter cease to exist. [C35,§3953-e2; C39,§**3953.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§264.2]

264.3 Duty of depository. The office of the registrar of the state university shall proceed to collect the scholastic records of those educational institutions which may become extinct, and he shall have the supervision, care, custody, and control of said records. [C35, §3953-e3; C39,§**3953.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§264.3]

264.4 Transcripts. The registrar of the state university shall prepare transcripts of such scholastic records and when requested to do so he must furnish a copy of the said transcript to a former student. Whenever such transcript is made and after it has been compared with the original it shall be certified by the registrar of the state university, and thereafter it shall be considered and accepted as evidence for all purposes the same as the original would be. [C35,§3953-e4; C39,§**3953.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§264.4]

264.5 Fees. For the preparation of each of such transcripts the state university may charge a nominal fee, not to exceed five dollars, to compensate the institution for the actual labor of recording the credits, preparing a transcript, postage, etc. [C35,§3953-e5; C39, §**3953.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§264.5]

264.6 Penalty. The members of the board of trustees and the officers of an institution

of higher learning who do not file, in accordance with the provisions of this chapter, the record of grades in the office of the registrar of the state university within twelve months after the said institution has been closed or has ceased to function as an educational institution, may be fined an amount not to exceed five hundred dollars. [C35,§3953-e6; C39,§3953.6; C46, 50, 54, 58, 62, 66, 71, 73, 75,§264.6]

264.7 Records of prior defunct institutions. The office of the registrar of the state university is hereby designated the central depository for the records of any institution of higher learning which prior to the passage of this chapter may have ceased to exist, provided the custodian of the said records or former officials of the institution may wish to take advantage of the provisions of this chapter. [C35,§3953-e7; C39,§3953.7; C46, 50, 54, 58, 62, 66, 71, 73, 75,§264.7]

CHAPTER 265

LABORATORY SCHOOLS

265.1 Authority.
265.2 Buildings and facilities.
265.3 Financing.
265.4 Purposes.
265.5 Allocations to debt retirement fund.
265.6 State aid applicable.
265.7 Debt limit provisions not applicable.

265.1 Authority. The state board of regents is authorized to establish and operate elementary and secondary laboratory schools at the institutions of higher education under its control. For the purpose of this chapter, laboratory school shall mean a school operated by an educational institution for the purpose of instructing students, training teachers, and advancing teaching methods. [C66, 71, 73, 75,§265.1]

265.2 Buildings and facilities. Existing buildings and facilities now used for said purposes together with any additions to or alterations thereof and any new structures and facilities therefor, as the board shall determine to be suitable and authorize for said purposes, shall be set aside as the area on the respective campuses constituting the laboratory school for all purposes of this chapter. [C66, 71, 73, 75,§265.2]

265.3 Financing. A laboratory school at each institution where so established shall constitute a self-liquidating improvement unit to the extent funds are not appropriated by the general assembly and shall qualify for and may be financed as such under the provisions of sections 262.44 through 262.53. [C66, 71, 73, 75,§265.3]

265.4 Purposes. For the purposes of this chapter, the state board of regents and the board of directors of any school district in the state of Iowa may enter into contracts for the laboratory schools to furnish instruction to the pupils of such school district and to train teachers on an agreed basis for tuition and other compensation to be paid by the school district. Such contracts shall be in writing and may extend for any stipulated period not to exceed fifteen years. During the agreed period, such contracts shall be obligatory on both the school district and the state board of regents. [C66, 71, 73, 75,§265.4]

265.5 Allocations to debt retirement fund. The state board of regents may out of funds appropriated or otherwise available for the operation of the institution at which the laboratory school is located allocate an annual payment to the debt retirement fund for the buildings, areas, and facilities used by the institution for the laboratory school until such time as said improvement is fully paid. The board of regents may pledge said annual allotment together with the tuition received from school districts and all other income received from the operation of said laboratory school as security for the mortgage, bonds, or other debt by which said laboratory school is financed as authorized herein. [C66, 71, 73, 75,§265.5]

265.6 State aid applicable. The state board of regents which has established a laboratory school shall receive state aid pursuant to chapters 281 and 442 for each pupil enrolled in the laboratory school in the same amount as the public school district in which the pupil resides would receive aid for that pupil and shall transmit the amount received to the institution of higher education at which the laboratory school has been established. [C66, 71, 73, 75,§265.6]

265.7 Debt limit provisions not applicable. The obligations of any school district on any contract between it and the state board of regents entered into pursuant to this chapter shall be payable only out of current receipts from taxes, tuition or other income available therefor each year, and shall not constitute a debt for the purposes of any statutory or constitutional provision limiting the obligations said school district may incur. [C71, 73, 75, §265.7]

CHAPTER 266

IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY

GENERAL PROVISIONS
266.1 Grants accepted.
266.2 Courses of study.
266.3 Investigation of mineral resources.
266.4 Co-operative agricultural extension work.
266.5 State agency.
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HOG-CHOLERA SERUM LABORATORY
266.24 Directors—assistants—salary.
266.25 Sale of serum.
266.26 Receipts—how deposited—expenses.
CAPPER-KETCHAM ACT
266.27 Act accepted.
266.28 Receipt of funds—work authorized.

GENERAL PROVISIONS

266.1 Grants accepted. Legislative assent is given to the purposes of the various congressional grants to the state for the endowment and support of an Iowa State University of science and technology, and an agricultural experiment station as a department thereof, upon the terms, conditions, and restrictions contained in all Acts of Congress relating thereto, and the state assumes the duties, obligations, and responsibilities thereby imposed. All moneys appropriated by the state because of the obligations thus assumed, and all funds arising from said congressional grants, shall be invested or expended in accordance with the provision of such grant, for the use and support of said university of science and technology located at Ames. [R60, §1714; C73,§1604; C97,§2645; C24, 27, 31, 35, 39, §4031; C46, 50, 54, 58, 62, 66, 71, 73, 75,§266.1]

266.2 Courses of study. There shall be adopted and taught at said university of science and technology practical courses of study, embracing in their leading branches such as relate to agriculture and mechanic arts, mines and mining, and ceramics, and such other branches as are best calculated to educate thoroughly the agricultural and industrial classes in the several pursuits and professions of life, including military tactics. If a teachers training course is established it shall include the subject of physical education. [R60,§1728; C73, §1621; C97,§2648; S13,§2674-d; C24, 27, 31, 35, 39, §4032; C46, 50, 54, 58, 62, 66, 71, 73, 75,§266.2]

266.3 Investigation of mineral resources. The said university of science and technology shall provide, as a part of its engineering experiment station work, for the investigation of clays, cement materials, fuels, and other mineral resources of the state with especial reference to their economic uses, and for the publication and dissemination of information useful to such industries, and for the testing of the products thereof. [S13,§2674-e; C24, 27, 31, 35, 39,§4033; C46, 50, 54, 58, 62, 66, 71, 73, 75,§266.3]

266.4 Co-operative agricultural extension work. The assent of the legislature of the state of Iowa is hereby given to the provisions and requirements of an Act of Congress approved May 8, 1914, providing for co-operative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the Act of Congress approved July 2, 1862, and amendments thereto. [SS15, §2682-y1; C24, 27, 31, 35, 39,§4034; C46, 50, 54, 58, 62, 66, 71, 73, 75,§266.4]

SS15,§2682-y1, editorially divided

266.5 State agency. The state board of regents is hereby authorized and empowered to receive the grants of money appropriated under said Act and to organize and conduct agricultural and home economics extension work, which shall be carried on in connection with the Iowa State University of science and technology in accordance with the terms and conditions expressed in the Act of Congress aforesaid. [SS15,§2682-y1; C24, 27, 31, 35, 39, §4035; C46, 50, 54, 58, 62, 66, 71, 73, 75,§266.5]

266.6 Purnell Act. The assent of the legislature of the state of Iowa is hereby given to the provisions and requirements of the congressional Act approved February 24, 1925, commonly known as the Purnell Act; and that, in accordance with the requirements thereof, the state agrees to devote the moneys thus received to the more complete endowment and maintenance of the agricultural experiment station of the Iowa State University of science and technology as provided in said Act. [C27, 31, 35,§4035-b1; C39,§4035.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§266.6]

266.7 Receiving agent. The treasurer of the Iowa State University of science and technology is hereby authorized and empowered to receive the grants of money appropriated under the said Act. [C27, 31, 35,§4035-b2; C39, §4035.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§266.7]

266.8 to 266.19 Reserved.

266.20 Gastro enteritis research appropriation. There is appropriated to the Iowa State University of science and technology college of veterinary medicine from the general fund of the state the sum of seventy thousand dollars annually, or so much thereof as is necessary, which shall be used for research to determine methods for the prevention and cure for transmissible gastro enteritis and other enteric diseases affecting swine. Funds appropriated by this section shall become available on July 1 of each year and any unen-

cumbered balances of such funds remaining on June 30 of each year shall revert to the general fund of the state. Such funds may be expended for salaries, support, maintenance, and miscellaneous purposes but shall not be used for capital improvements. The college of veterinary medicine may accept funds, grants and gifts from any public or private source which shall be in addition to funds appropriated by this section and used to carry out the purposes of this section. [65GA, ch 1064, §9]

266.21 to 266.23 Reserved.

HOG-CHOLERA SERUM LABORATORY

266.24 Directors — assistants — salary. The state board of regents is hereby authorized to maintain at Ames, in connection with the Iowa State University of science and technology, a laboratory for the manufacture and distribution of hog-cholera serum, toxines, vaccines, and biological products and for such other work as the said state board of regents may, from time to time, deem advisable in the veterinary college, and to provide the necessary equipment therefor. The president of said university shall appoint the director of said laboratory and such assistants as are deemed necessary to efficiently carry on said work; and he shall, with the approval of said board, fix the salaries of said assistants. [SS15, §2538-w; C24, 27, 31, 35, 39,§**4042**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§266.24]

General regulations, ch 166

266.25 Sale of serum. The director of said laboratory may, when an emergency is declared to exist by the state board of regents, furnish said serum to any person, together with specific instructions for the use of same, at the approximate cost of manufacture, and such cost shall be stated on the package. The director of the serum laboratory is authorized to purchase serum or other biological products which he deems reliable, and he may sell the same at approximate cost in the same manner as products of the laboratory are sold. [SS15,§2538-w1; C24, 27, 31, 35, 39,§**4043**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§266.25]

266.26 Receipts—how deposited—expenses. The director shall deposit all funds with the treasurer of the Iowa State University of science and technology, which treasurer shall be responsible on his bond for the same. Upon receipt of said moneys, the said treasurer shall issue duplicate receipts therefor, one of which he shall deliver to the director and the other to the secretary of the state board of regents. Said moneys shall be kept by said treasurer in a separate fund to be known as the serum fund; and he shall pay out from said fund, as other university funds are expended, but only for expenses directly connected with the maintenance and development of said laboratory and for grounds and buildings. Said grounds and buildings shall be used, when so authorized by the board of regents, for any purpose in connection with the study, control, or treatment of animal diseases. [SS15,§2538-w2; C24, 27, 31, 35, 39,§**4044**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§266.26]

CAPPER-KETCHAM ACT

266.27 Act accepted. The assent of the legislature of the state of Iowa is hereby given to the provisions and requirements of the congressional Act approved May 22, 1928, commonly known as the Capper-Ketcham Act. [45 Stat. L. 711; 7 U.S.C.§341 et seq.] [C31, 35, §4044-c1; C39,§**4044.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§266.27]

266.28 Receipt of funds—work authorized. The Iowa state board of regents is hereby authorized and empowered to receive the grants of money appropriated under the said Act; and to organize and conduct agricultural extension work which shall be carried on in connection with the Iowa State University of science and technology, in accordance with the terms and conditions expressed in the Act of Congress aforesaid. [C31, 35,§4044-c2; C39, §**4044.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§266.28]

CHAPTER 267

IOWA CROP PEST ACT

Transferred to ch 177A

CHAPTER 268

UNIVERSITY OF NORTHERN IOWA

268.1 Official designation.
268.2 Courses offered and responsibility of university.
268.3 Repealed by 62GA, ch 237,§4.

268.1 Official designation. The state university at Cedar Falls shall be officially designated and known as the "University of Northern Iowa." [C97,§2675; S13,§2675; C24, 27, 31, 35, 39,§**4063**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §268.1]

268.2 Courses offered and responsibility of university. The university shall offer undergraduate and graduate courses of instruction, conduct research and provide extension and other public services in areas of its competence to facilitate the social, cultural and economic development of Iowa. Its primary responsibility shall be to prepare teachers and other educational personnel for schools, colleges, and universities and to carry out research and provide consultative and other services for the improvement of education throughout the state. In addition, it shall conduct programs of instruction, research and service in the liberal and vocational arts and sciences and offer such other educational programs as the state board of regents may from time to time approve. [C97,§2677; C24, 27, 31, 35, 39,§4064; C46, 50, 54, 58, 62, 66, 71, 73, 75,§268.2]

268.3 Repealed by 62GA, ch 237,§4.

CHAPTER 269

IOWA BRAILLE AND SIGHT-SAVING SCHOOL

Referred to in §281.2
Transportation payments, §270.9

269.1 Admission.
269.2 Expenses—residence of indigents.

269.1 Admission. All blind persons and persons whose vision is so defective that they cannot be properly instructed in the common schools, who are residents of the state and of suitable age and capacity, shall be entitled to an education in the Iowa braille and sight-saving school at the expense of the state. Nonresidents also may be admitted to the Iowa braille and sight-saving school if their presence would not be prejudicial to the interests of residents, upon such terms as may be fixed by the state board of regents. [R60,§§2147, 2148; C73,§§1672, 1680; C97,§2715; S13,§2715; C24, 27, 31, 35, 39, §4066; C46, 50, 54, 58, 62, 66, 71, 73, 75,§269.1]

Governed by board of regents, §262.7

269.2 Expenses—residence of indigents. The provisions of sections 270.4 to 270.8, inclusive, are hereby made applicable to the Iowa braille and sight-saving school. [C73,§1678; C97,§2716; C24, 27, 31, 35, 39,§4067; C46, 50, 54, 58, 62, 66, 71, 73, 75,§269.2]

Referred to in §444.12(1,g)

CHAPTER 270

SCHOOL FOR THE DEAF

Referred to in §281.2

270.1 Superintendent.
270.2 Labor of pupils.
270.3 Admission.
270.4 Clothing and transportation.
270.5 Certification to state comptroller.
270.6 Certification to auditor—collection.
270.7 Payment by county.
270.8 Residence during vacation.
270.9 School for deaf and sight-saving school.

270.1 Superintendent. The superintendent of the school for the deaf shall be a trained and experienced educator of the deaf. His salary may include residence in the institution and board from the funds or supplies thereof, but no such allowance shall be made except by express contract in advance. [C97,§2723; S13, §2727-3a; C24, 27, 31, 35, 39,§4068; C46, 50, 54, 58, 62, 66, 71, 73, 75,§270.1]

40GA, ch 242,§1, editorially divided
Governed by board of regents, §262.7

270.2 Labor of pupils. The board may utilize the labor of any pupil of the institution on the farm, in the workshops, in erection of buildings for the institution, or in domestic service, so far as practicable, without interference with their proper education. [C97,§2723; C24, 27, 31, 35, 39,§4069; C46, 50, 54, 58, 62, 66, 71, 73, 75,§270.2]

270.3 Admission. Any resident of the state less than twenty-one years of age, who has a hearing loss which is too severe to acquire an education in the public schools is eligible to attend the school for the deaf. Nonresidents similarly situated may be admitted to an education therein upon such terms as may be fixed by the state board of regents. The fee for nonresidents shall be not less than the average

expense of resident pupils and shall be paid in advance. [R60,§§2156, 2160; C73,§§1688, 1689; C97,§2724; S13,§2724; C24, 27, 31, 35, 39,§**4070**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§270.3; 66GA, ch 155,§1]

270.4 Clothing and transportation. When pupils are not supplied with clothing, or transportation, it shall be furnished by the superintendent, who shall make out an account therefor against the parent or guardian, if the pupil be a minor, and against the pupil if he have no parent or guardian, or has attained the age of majority, which bill shall be certified by him to be correct, and shall be presumptive evidence thereof in all courts. [C73, §1695; C97,§2726; S13,§2726; C24, 27. 31, 35, 39, §**4071**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§270.4]

S13,§2726, editorially divided
Referred to in §§263.12, 269.2, 444.12(1,*g*)

270.5 Certification to state comptroller. The superintendent shall, on the first days of June and December of each year, certify to the state comptroller the amounts due from the several counties, and the comptroller shall thereupon pass the same to the credit of the institution, and charge the amount to the proper county. [C73,§1695; C97,§2726; S13,§2726; C24, 27, 31, 35, 39,§**4072**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§270.5]

Referred to in §263.12, 269.2, 444.12(1,*g*)

270.6 Certification to auditor — collection. The superintendent shall, at the time of sending certificate to the state comptroller, send a duplicate copy to the auditor of the county of the pupil's residence, who shall, when ordered by the board of supervisors, proceed to collect the same by action if necessary, in the name of the county, and when so collected, shall pay the same into the county treasury. [C73,§1695; C97,§2726; S13,§2726; C24, 27, 31, 35, 39,§**4073**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§270.6]

Referred to in §§263.12, 269.2, 444.12(1,*g*)

270.7 Payment by county. The county auditor shall, upon receipt of said certificate, pass the same to the credit of the state, and thereupon issue a notice to the county treasurer authorizing him to transfer the amount from the county mental health and institutions fund to the general state revenue, which shall be filed by the treasurer as his authority for making such transfer, and shall include the amount in his next remittance of state taxes to the treasurer of state, designating the fund to which it belongs.

Should any county fail to pay these bills within sixty days from the date of certificate from superintendent, the state comptroller shall charge the delinquent county the penalty three-fourths of one percent per month on and after sixty days from date of certificate until paid. Such penalties shall be credited to the general fund of the state. [C73,§1695; C97,§2726; S13,§2726; C24, 27, 31, 35, 39,§**4074**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§270.7]

Referred to in §§263.12, 269.2, 444.12(1,*g*)

270.8 Residence during vacation. The residence of indigent or homeless children may, by order of the state board of regents, be continued during vacation months. [S13,§2727-a; C24, 27, 31, 35, 39,§**4075**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§270.8]

Referred to in §§263.12, 269.2

270.9 School for deaf and sight-saving school. There is appropriated from the general fund of the state to the state board of regents the sum of one hundred forty-eight thousand seven hundred fifty dollars, or so much thereof as is necessary, to be distributed to the school for the deaf and the Iowa braille and sight-saving school for payments to the parents or guardians of pupils in either institution as follows:

1. Transportation reimbursement at the rate specified in section 285.1, subsection 3 to the parents or guardians of children who do not reside in the institution, but are transported to the institution on a daily basis.
2. Transportation reimbursement at the rate specified in section 285.1, subsection 3 to the parents or guardians for not more than ten trips per year from the institution to the residence of the parent or guardian and return to the institution for children who reside in the institution. [66GA, ch 1146,§30]

CHAPTER 271

OAKDALE CAMPUS

Chapter 271, Code 1975, repealed by 66GA, chapter 1146,§31
Transfer of funds to university hospitals, 66GA, ch 1146,§33

271.1 Designation.
271.2 Purposes.
271.3 Governance.
271.4 Patient treatment.
271.5 Care of patients—professional services.
271.6 Integrated treatment of university hospital patients.

271.1 Designation. The state hospital located at Oakdale shall be known as the Oakdale campus. [S13,§2727-a75; C24, 27, 31, 35, 39,§**3385**; C46,§220.1; C50, 54, 58, 62, 66, 71, 73, 75,§271.1; 66GA, ch 1146,§23]

271.2 Purposes. The Oakdale campus shall be primarily devoted to health related research, education, and service programs, including experimental health care delivery models. To the extent that Oakdale campus resources are not required to meet the primary purposes, its resources shall be devoted to meeting other related needs of the state University of Iowa. [S13,§2727-a75; C24, 27, 31, 35, 39,§3386; C46,§220.2; C50, 54, 58, 62, 66, 71, 73, 75,§271.2; 66GA, ch 1146,§24]

271.3 Governance. The state board of regents shall have full power to manage, control, and govern the Oakdale campus in the same manner as other institutions under its control. [C66, 71, 73, 75,§271.20; 66GA, ch 1146,§25]

271.4 Patient treatment. Oakdale campus authorities may provide for treatment of such patients as they deem advisable and for which facilities and services are available. Except for patients admitted who are patients referred from the university hospitals, the Oakdale campus shall collect from the patients or a person liable for such support, such reasonable charges for care, service and treatment as may be fixed by the state board of regents. Earnings shall be deposited with the treasurer of the state University of Iowa for the use and benefit of the Oakdale campus and to supplement any other sources of income. Patient treatment and care on the Oakdale campus shall be provided by the faculty of the health science colleges of the state University of Iowa, staff of the university hospital, and professional and other staff as may be employed by the Oakdale campus. [C66, 71, 73, 75, §§271.3, 271.17(3); 66GA, ch 1146,§26]

271.5 Care of patients — professional services. Physicians and dentists who care for patients on the Oakdale campus may charge for their professional services under such rules and plans as may be approved by the state board of regents. [C66, 71, 73, 75,§271.18; 66GA, ch 1146,§27]

271.6 Integrated treatment of university hospital patients. The authorities of the Oakdale campus may authorize patients for admission to the hospital on the Oakdale campus who are referred from the university hospitals and who shall retain the same status, classification, and authorization for care which they had at the university hospitals. Patients referred from the university hospitals to the Oakdale campus shall be deemed to be patients of the university hospitals. The provisions of chapter 255 and operating policies of the university hospitals shall apply to the patients and to the payment for their care the same as the provisions apply to patients who are treated on the premises of the university hospitals. [C66, 71, 73, 75,§271.17; 66GA, ch 1146, §28]

CHAPTER 272

PROFESSIONAL TEACHERS MEETINGS, DEMONSTRATION TEACHING, AND FIELD WORK

Referred to in §257.18(19)

272.1 Improvement of instruction.
272.2 Plans approved by state superintendent.
272.3 Adjournment of schools.
272.4 Certificate of attendance.
272.5 Funds.
272.6 Use of fund.
272.7 Disbursement requirements.
272.8 Itemized account of funds.

272.1 Improvement of instruction. The area education agency administrator shall arrange for such professional teachers meetings, demonstration teaching or other field work for the improvement of instruction as may best fit the needs of the public schools in his area education agency and as directed by the superintendent of public instruction. [C31, 35,§4118-d1; C39,§4118.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§272.1]

272.2 Plans approved by state superintendent. All arrangements concerning plans for said improvement of instruction shall be subject to the final approval by the superintendent of public instruction. [C31, 35,§4118-d2; C39,§4118.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, §272.2]

272.3 Adjournment of schools. The school board of every school district shall allow its teachers to attend said meetings or to participate in such work for not more than one day in each school year without loss of salary. [C31, 35,§4118-d3; C39,§4118.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§272.3]

272.4 Certificate of attendance. The area education agency administrator shall notify the secretaries of the school boards as to the co-operation and attendance of its teachers in said meetings and any teacher failing to attend when requested by the area education agency administrator to do so, shall forfeit his average daily salary for that day of nonattendance, except when excused by the area education agency administrator for physical disability

to perform his duties in the schoolroom. [C31, 35,§4118-d4; C39,§4118.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§272.4]

272.5 Funds. The fund for carrying out the purpose of this chapter shall consist of:

1. Fifty dollars annually, which is hereby appropriated.

2. One-half of all examination fees collected in the county.

3. One hundred fifty dollars from the general county fund in any county having a population of thirty thousand or less, which amount shall be appropriated by the board of supervisors of such county at the January session of each year. Two hundred dollars from the general county fund in any county having a population of over thirty thousand, to be appropriated by the board of supervisors in like manner.

4. Such reasonable sum as may be appropriated by the board from the general fund of any city independent district. [C31, 35,§4118-d5; C39,§4118.5; C46, 50, 54, 58, 62, 66, 71, 73, 75, §272.5]

272.6 Use of fund. No part of this improvement of instruction fund may be used for any other purpose than to pay the expenses of the plans formed and approved for this work. [C31, 35,§4118-d6; C39,§4118.6; C46, 50, 54, 58, 62, 66, 71, 73, 75,§272.6]

272.7 Disbursement requirements. All disbursements from the fund provided by this chapter shall be by warrants drawn by the county auditor of each county in the area education agency upon the written order of the area education agency administrator, and said written order must be accompanied by an itemized bill for services rendered or expenses incurred in connection therewith, which bill must be signed and sworn to by the party in whose favor the order is made and must be verified by the area education agency administrator. All said orders and bills shall be kept on file in the auditor's office until the final settlement of the area education agency administrator with each board of supervisors in the area education agency at the close of his term of office. No warrant shall be drawn by the auditor in excess of the amount then in the county treasury. [C31, 35,§4118-d7; C39,§4118.7; C46, 50, 54, 58, 62, 66, 71, 73, 75,§272.7]

272.8 Itemized account of funds. The area education agency administrator shall furnish to the county board of supervisors of each county in the area education agency a certified itemized account of all receipts and disbursements for the improvement of instruction. They shall examine and audit the account and publish a summary thereof with the proceedings of the regular June meeting of the board. The area education agency administrator shall also make such reports to the superintendent of public instruction as required by him. [C31, 35,§4118-d8; C39,§4118.8; C46, 50, 54, 58, 62, 66, 71, 73, 75,§272.8]

CHAPTER 272A

PROFESSIONAL TEACHING PRACTICES COMMISSION

272A.1 Title.
272A.2 Definition.
272A.3 Teaching practices commission.
272A.4 Per diem and expenses.
272A.5 Organization and rules.
272A.6 Criteria of professional practices.
272A.7 Financing.
272A.8 Appointment of hearing officers.

272A.1 Title. This chapter shall be known as the "Professional Teaching Practices Act." [C71, 73, 75,§272A.1]

272A.2 Definition. For the purpose of this chapter, the "profession of teaching" or "teaching profession" shall mean persons engaged in teaching or providing related administrative, supervisory, or other services requiring certification from the state board of public instruction. [C71, 73, 75,§272A.2]

272A.3 Teaching practices commission. A professional teaching practices commission, which shall be included in the state department of public instruction for administrative purposes, is created consisting of nine members who shall be appointed by the governor. A person, in order to be qualified for appointment to the commission, shall hold a certificate authorizing him to teach in the state of Iowa or be a member of the faculty of an approved teacher education institution in Iowa. The commission shall be composed of four classroom teachers, three school administrators, one member of faculties representing two-year colleges or Iowa colleges or universities approved for teacher education, and one member representing the state department of public instruction.

Initial appointments shall be: Four for one year; three for two years; and two for three years. Thereafter, terms shall be for three years. A member may be reappointed to the commission for only one time. [C71, 73, 75,§272A.3]

272A.4 Per diem and expenses. The members of the commission shall be allowed a per diem of thirty dollars and their necessary travel and expense while engaged in their official duties. [C71, 73, 75,§272A.4]

272A.5 Organization and rules. This commission shall have the authority to select its own chairman, establish procedures for its own government and for the development of standards, adopt rules and regulations, and secure legal and other services necessary to its function. [C71, 73, 75,§272A.5]

272A.6 Criteria of professional practices. The commission shall have the responsibility of developing criteria of professional practices including, but not limited to, such areas as: (1) Contractual obligations; (2) competent performance of all members of the teaching profession; and (3) ethical practice toward other members of the profession, parents, students, and the community. However, membership or nonmembership in any teachers' organization shall never be a criterion of an individual's professional standing. A violation, as determined by the commission following a hearing, of any of the criteria so adopted shall be deemed to be unprofessional practice and a legal basis for the suspension or revocation of a certificate by the state board of educational examiners.

The commission, in administering its responsibilities under this chapter, after a hearing, shall exonerate, warn or reprimand the member of the profession or may recommend the holding of a certification suspension or revocation hearing by the state board of educational examiners. [C71, 73, 75,§272A.6]

272A.7 Financing. The commission shall be financed by the members of the teaching profession in the amount necessary to carry out the purpose of this chapter. [C71, 73, 75,§272A.7]

272A.8 Appointment of hearing officers. The commission shall maintain a list of qualified persons to serve as hearing officers who are experienced in the educational system of this state when a hearing is requested under the provisions of section 279.24. When requested under the provisions of section 279.24, the commission shall submit a list of five qualified hearing officers to the parties. The hearing shall be held pursuant to the provisions of chapter 17A relating to contested cases. The full costs of the hearing shall be shared equally by the parties. A person who is employed as a teacher or administrator by a school district shall not be eligible to serve as a hearing officer. [66GA, ch 1149,§1]

CHAPTER 272B

EDUCATION COMPACT

272B.1 Compact for education.
272B.2 Education commission of the states.
272B.3 Filing bylaws.

272B.1 Compact for education. The compact for education is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I—PURPOSE AND POLICY

1. It is the purpose of this compact to:

a. Establish and maintain close co-operation and understanding among executive, legislative, professional educational and lay leadership on a nationwide basis at the state and local levels.

b. Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

c. Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

d. Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

2. It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

3. The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

ARTICLE II—STATE DEFINED

As used in this compact, "state" means a state, territory or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico.

ARTICLE III—THE COMMISSION

1. The education commission of the states, hereinafter called "the commission", is hereby

established. The commission shall consist of seven members representing each party state.*

One of such members shall be the governor; two shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed ten nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations or professional educators or persons concerned with educational administration.

*See §272B.2

2. The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to article IV and adoption of the annual report pursuant to article III, paragraph 10.

3. The commission shall have a seal.

4. The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

5. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

6. The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

7. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph 6 of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

8. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

9. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

10. The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

ARTICLE IV—POWERS

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to:

1. Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

2. Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

3. Develop proposals for adequate financing of education as a whole and at each of its many levels.

4. Conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

5. Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

6. Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

ARTICLE V—
CO-OPERATION WITH FEDERAL GOVERNMENT

1. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.

2. The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

ARTICLE VI—COMMITTEES

1. To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of thirty-two members which, subject to the provisions of this compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One-fourth of the voting membership of the steering committee shall consist of governors, one-fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows:

Sixteen for one year and sixteen for two years. The chairman, vice chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regular ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two-term limitation.

2. The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.

3. The commission may establish such additional committees as its bylaws may provide.

ARTICLE VII—FINANCE

1. The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

2. The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

3. The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to article III, paragraph 7, of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to article III, paragraph 7 thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

4. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

5. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

6. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII—ELIGIBLE PARTIES —ENTRY INTO AND WITHDRAWAL

1. This compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term "governor", as used in this compact, shall mean the closest equivalent official of such jurisdiction.

2. Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least ten eligible party jurisdictions shall be required.

3. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Obsolete provisions omitted, see 65GA, ch 194,§1; Art. VIII, C

ARTICLE IX—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. [C75,§272B.1]

272B.2 Education commission of the states. The provisions of article III, paragraph 1, of the compact notwithstanding, the members of the education commission of the states representing this state shall consist of the governor, two nonlegislative members appointed by the governor, two members of the senate appointed by the president of the senate, and two members of the house of representatives appointed by the speaker of the house of representatives. The members shall serve four-year terms and for the initial appointments, half of the membership shall be appointed to two-year terms and half shall be appointed to four-year terms. Nonlegislative members shall serve on the education commission of the states without compensation, but shall receive their actual and necessary expenses and travel. Legislative members shall receive actual and necessary expenses and travel pursuant to section 2.10 and 2.12. Vacancies on the commission shall be filled for the unexpired portion of the term in the same manner as the original appointment. If a member ceases to be a member of the general assembly, he shall no longer serve as a member of the education commission of the states. [C75,§272B.2; 66GA, ch 1052,§14]

272B.3 Filing bylaws. Pursuant to article III, paragraph 9, of the compact, the commission shall file a copy of its bylaws and any amendment thereto with the governor. [C75, §272B.3]

CHAPTER 273

AREA EDUCATION AGENCY

Referred to in §§280.8, 281.8, 282.3, 282.27

273.1 Intent.
273.2 Area education agency established.
273.3 Duties of area education agency.
273.4 Area education agency administrator.
273.5 Special education.
273.6 Media centers.
273.7 Additional services.
273.8 Area education agency board of directors.
273.9 Funding.
273.10 Media production.

273.1 Intent. It is the intent of the general assembly to provide an effective, efficient, and economical means of identifying and serving children from under five years of age through grade twelve who require special education and any other children requiring special education as defined in section 281.2; to provide for media services and other programs and services for pupils in grades kindergarten through twelve and children requiring special education as defined in section 281.2; to provide a method of financing the programs and services; and to avoid a duplication of programs and services provided by any other school corporation in the state. [C75,§273.1]

Referred to in §§273.2, 273.3, 281.9

273.2 Area education agency established. There is established in each of the several merged areas of the state an area education agency, governed by an area education agency board of directors. The area education agency shall have boundaries which are conterminous with the boundaries of the merged areas as provided in chapter 280A.

The area education agency board shall furnish educational services and programs to the local school districts as provided in sections 273.1 to 273.9 and chapter 281. The programs and services provided shall be at least commensurate with programs and services existing on July 1, 1974.

The area education agency board shall provide for special education services and media services for the local school districts in the area.

The area education agency board may provide for the following programs and services to local school districts within the limits of funds available:

1. In-service training programs for employees of school districts and area education agencies, provided at the time programs and services are established they do not duplicate programs and services available in that area from the universities under the state board of regents and from other universities and four-year institutions of higher education in Iowa.

2. Educational data processing pursuant to section 257.10, subsection 14.

3. Research, demonstration projects and models, and educational planning for children under five years of age through grade twelve and children requiring special education as defined in section 281.2 as approved by the department of public instruction.

4. Auxiliary services for nonpublic school pupils as provided in section 257.26. However, if auxiliary services are provided their funding shall be based on the type of service provided.

5. Other programs and services for children under five years through grade twelve and children requiring special education as defined in section 281.2 and for employees of school districts and area education agencies as approved by the department of public instruction.

The board of directors of an area education agency shall not establish programs and services which duplicate programs and services which are or may be provided by the area schools under the provisions of chapter 280A. An area education agency shall contract, whenever practicable, with other school corporations for the use of personnel, buildings, facilities, supplies, equipment, programs, and services. [C75,§273.2; 66GA, ch 79,§§4, 5]

Referred to in §§273.3, 273.6, 281.9
Amendment effective January 1, 1975; 66GA, ch 79,§27

273.3 Duties of area education agency board. The board in carrying out the provisions of section 273.2 shall:

1. Determine the policies of the area education agency for providing programs and services.

2. Be authorized to receive and expend money for providing programs and services as provided in sections 273.1 to 273.9, chapter 281 and chapter 442. All costs incurred in providing the programs and services, including administrative costs, shall be paid from funds received pursuant to sections 273.1 to 273.9 and chapters 281 and 442.

3. Provide data and prepare reports as directed by the superintendent of public instruction.

4. Provide for advisory committees as deemed necessary.

5. Be authorized, subject to rules and regulations of the department of public instruction, to provide directly or by contractual arrangement with public or private agencies for special education programs and services, media services, and other programs and services requested by the local boards of education as provided in this chapter, including but not limited to contracts for the area education agency to provide programs or services to the local school districts and contracts for local school districts, other educational agencies, and public and private agencies to provide programs and services to the local school districts in the area education agency in lieu of the area education agency providing such services. Contracts may be made with public or private agencies located outside the state if the programs and services comply with the rules of the department. The cost of such programs and services for each child shall not exceed the amount of money available through the area education agency of the child's residence for each child under chapters 281 and 442.

6. Area education agencies may co-operate and contract between themselves to provide special education programs and services to children residing within their respective areas.

7. Be authorized, subject to the approval of the state board of public instruction, to lease, receive by gift and operate and maintain such facilities and buildings as deemed necessary

to provide authorized programs and services. However, the state board shall not approve the leasing or renting of facilities or buildings until it is satisfied by investigation that no public school corporations within the area have suitable facilities available.

8. Be authorized, subject to the approval of the department of public instruction, to enter into agreements for the joint use of personnel, buildings, facilities, supplies and equipment with school corporations as deemed necessary to provide authorized programs and services.

9. Be authorized to make application for, accept, and expend state and federal funds that are available for programs of educational benefit approved by the department of public instruction, and co-operate with the department in the manner provided in federal-state plans or department rules in the effectuation and administration of programs approved by the department, or approved by other educational agencies, which agencies have been approved as a state educational authority.

10. In any county operating a juvenile home, upon request of the county board of supervisors in co-operation with and at the expense of the school districts of residence of the children residing in the home, provide suitable curriculum, teaching staff, books, supplies, and other necessary materials for the instruction of children of school age who are maintained in the juvenile home of the county, as provided in section 232.21.

11. Be authorized to perform all other acts necessary to carry out the provisions and intent of this chapter.

12. Employ such personnel as may be required, if any, to carry out the functions of the area education agency which may include the employment of an administrator who shall possess a superintendent's certificate issued under the provisions of section 260.9. The administrator shall be employed pursuant to the provisions of section 279.20 and the provisions of sections 279.23, 279.24 and 279.25. The salary range for an area education agency administrator shall be from seventeen thousand dollars to twenty-seven thousand five hundred dollars per annum, including additional benefits, over and above the additional benefits given all full-time employees. The provisions of section 279.13 shall apply to the area education agency board and to all teachers employed by the area education agency. The provisions of sections 279.23, 279.24 and 279.25 shall apply to the area education board and to all administrators employed by the area education agency.

13. Prepare an annual budget estimating income and expenditures for programs and services as provided in sections 273.1 to 273.9 and chapter 281. The proposed budget shall be submitted to the department of public instruction, on forms provided by the department, no later than December 1 preceding the next fiscal year for approval. The department shall review the proposed budget and shall prior to January 1 either grant approval or return the budget without approval with comments of the department included. Any unapproved budget shall be resubmitted to the department for final approval.

14. Be authorized to pay, out of funds available to the board reasonable annual dues to an Iowa association of school boards. Membership shall be limited to those duly elected members of the area education agency board.

15. At the request of an employee through contractual agreement the board may arrange for the purchase of an individual annuity contract for any of its respective employees from any company the employee may choose that is authorized to do business in this state, and through an Iowa-licensed insurance agent that the employee may select, for retirement or other purposes and may make payroll deductions in accordance with such arrangements for the purpose of paying the entire premium due, and to become due, under the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits afforded under section 403b of the Internal Revenue Code of 1954 and amendments* thereto. The employee's rights under such annuity contract shall be nonforfeitable except for the failure to pay premiums.

16. Be authorized to establish and pay all or any part of the cost of group health insurance plans, nonprofit group medical service plans and group life insurance plans adopted by the board for the benefit of employees of the area education agency, from funds available to the board.

17. Meet quarterly with the members of the board of directors of the merged area in which the area education agency is located to discuss co-ordination of programs and services and other matters of mutual interest to the two boards.

18. Be authorized, subject to the approval of the department of public instruction, to acquire by retransfer from the county board of education of a county school system, within one year from the effective date of this Act**, at a cost not to exceed one thousand dollars, any land formerly held by the United States department of health, education, and welfare. [C51,§417; R60,§§648, 2074; C73,§§771, 1776; C97, §§2742, 2831, 2832; S13,§§2742, 2831, 2832; SS15, §2734-b; C24, 27, 31, 35, 39,§§**4122, 4456–4458, 5232–5234**; C46,§§273.4, 301.12–301.14, 340.13–340.15; C50, 54, 58, 62,§§273.12, 273.13; C66,§§273.12, 273.13, 273.22; C71, 73,§§273.12, 273.13, 273.22, 273.24; C75,§273.3; 66GA, ch 79,§§6, 7, ch 153,§3, ch 1149,§2]

Referred to in §§273.2, 273.9, 281.2, 281.9

*Act (65GA, ch 1172), effective July 1, 1974

**Amendment effective January 1, 1975; 66GA, ch 79,§27

273.4 Area education agency administrator. Under direction of the board of directors of the area education agency, the administrator of the area education agency shall, in addition to his other duties:

1. Co-operate with boards of directors of local school districts of the area education agency in considering and developing plans for the improvement of the educational programs and services in the area education agency.

2. When requested, provide such other assistance as possible to school districts of the area education agency for the general improvement of their educational programs and operations.

3. Submit program plans each year to the department of public instruction to reflect the needs of the area education agency for media services as provided in section 273.6. [C51, §1148; R60,§§2066–2068, 2071, 2073; C73,§§1766–1768, 1770, 1772, 1774, 1775; C97,§§2734–2740; S13,§§2734-f,-l,-m,-p, 2738, 2739; SS15,§§2734-b-c; C24, 27, 31, 35, 39,§4106; C46,§271.11; C50, 54, 58, 62, 66, 71, 73,§273.18; C75,§273.4; 66GA, ch 79,§8]

Referred to in §§273.2, 273.3, 273.9, 281.9
Amendment effective January 1, 1975; 66GA, ch 79,§27

273.5 Special education. There shall be established a division of special education of the area education agency which shall provide for special education programs and services to the local school districts. The division of special education shall be headed by a director of special education who meets certification standards of the department of public instruction. The director of special education shall have the responsibility for implementation of state regulations and guidelines relating to special education programs and services. The director of special education shall have the following powers and duties:

1. Properly identify children requiring special education.

2. Insure that each child requiring special education in the area receives an appropriate special education program or service.

3. Assign appropriate weights for each child requiring special education programs or services as provided in section 281.9.

4. Supervise special education support personnel.

5. Provide each school district within the area served and the department of public instruction with a special education weighted enrollment count for the second Friday in January and the second Friday in September of each year.

6. Submit to the department of public instruction special education instructional and support program plans and applications including those for new or expanded programs and services, subject to criteria listed in chapter 281 and this chapter, for approval by November 1 of each year for the school year commencing the following July 1. For the school years subsequent to the school year beginning July 1, 1975, the director shall include in the program plans submitted to the department for support services the costs necessary to fund the newly identified nonpublic school pupils served by the area with support services not previously counted in the program plans for support services.

7. Co-ordinate the special education program within the area served. [C75,§273.5; 66GA, ch 79,§9]

Referred to in §§273.2, 273.3, 273.9, 281.9, 281.11
Amendment effective January 1, 1975; 66GA, ch 79,§27

273.6 Media Centers.

1. The media centers required under section 273.2 shall contain:

a. A materials lending library, consisting of print and nonprint materials.

b. A professional library.

c. A curriculum laboratory, including textbooks and correlated print and audiovisual materials.

d. Capability for production of media-oriented instructional materials.

e. Qualified media personnel.

f. Appropriate physical facilities.

g. Other materials and equipment deemed necessary by the department.

2. Program plans submitted by the area education agency to the department of public instruction for approval of media centers under this subsection shall include all of the following:

a. Evidence that the services proposed are based upon an analysis of the needs of the local school districts in the area.

b. Description of the manner in which the services of the area education agency media center will be co-ordinated with other agencies and programs providing educational media.

c. Description of the means for delivery of circulation materials.

d. Evidence that the media center fulfills the requirements of subsection 1. [C75,§273.6]

Referred to in §§273.2, 273.3, 273.4, 273.9, 281.9

273.7 Additional services. If sixty percent of the number of local school boards located in an area education agency, or if local school boards representing sixty percent of the enrollment in the school districts located in the agency, request in writing to the area education agency board that an additional service be provided them, for pupils in grades kindergarten through twelve or children requiring special education as defined in section 281.2 or for employees or board members of school districts or area education agencies, the area education agency board shall arrange for the service to be provided to all school districts in the area within the financial capabilities of the area education agency. [C75,§273.7]

Referred to in §§273.2, 273.3, 281.9
Funding media services, see §442.27

273.8 Area education agency board of directors.

1. *Board of Directors.* The board of directors of an area education agency shall consist of the same number of directors as are au-

thorized to serve on the board of the merged area under the provisions of chapter 280A, within the area being served by the area education agency. The members of the area education agency board shall be elected from director districts in the manner provided in this section. Each director shall serve a three-year term which expires on the first Monday in October, except that directors elected at the initial election to take office on October 7, 1974, shall determine their respective terms by lot so that the terms of one-third of the members, as nearly as may be, shall expire on the first Monday of October of each succeeding year.

2. *Election of Directors.* Area education agency directors shall be elected from director districts which are conterminous with the director districts for the election of members of the merged area board under chapter 280A.

The board of directors of the area education agency shall be elected at director district conventions attended by members of the boards of directors of the local school districts located within the director district. The member of the area education agency board to be elected at the director district convention may be a member of a local school district board of directors and shall be an elector and a resident of the director district, other than school district employees.*

The director district conventions shall be called and the locations of the conventions shall be determined by the area education agency administrator. Annually the director district conventions shall be held within two weeks following the regular school election. Notice of the time, date and place of the director district conventions shall be published by the area education agency administrator at least forty-five days prior to the day of the district conventions in at least one newspaper of general circulation in the merged area. The cost of publication shall be paid by the area education agency.

The board of each separate school district which is located entirely or partially inside an area education agency director district shall cast a vote for director of the area education agency board based upon the ratio that the population of the school district, or portion of the school district, in the director district bears to the total population in the director district. The population of each school district or portion shall be determined by the department of public instruction.

Vacancies, as defined in section 277.29, in the membership of the area education agency board shall be filled for the unexpired portion of the term at a special director district convention called and conducted in the manner provided in this subsection for regular director district conventions.

A candidate for election to the area education agency board may file a statement of candidacy with the area education agency secretary at least ten days prior to the date of the director district convention, on forms prescribed by the department of public instruction. The statement of candidacy shall include the candidate's name, address and school district. The list of candidates shall be sent by the secretary of the area education agency by ordinary mail to the presidents of the boards of directors of all school districts within the director district immediately following the last day for filing the statement of candidacy. The filing of a statement of candidacy shall not be a prerequisite or eligibility requirement for election as an area education agency director. For the initial director district convention the statement of candidacy shall be filed with the county superintendent who determines the date and location of the district convention and he shall send the list of candidates to the presidents of the school boards.

3. *Organization.* The board of directors of each area education agency shall meet on the first Monday in October at a suitable place designated by the president. Directors whose terms commence at the organization meeting shall qualify by taking the oath of office required by section 279.31 at or before the organization meeting. For the initial board the location of the organization meeting shall be determined by the county superintendent who determined the date and location of the director district convention.

The provisions of section 280A.13 relating to organization, officers, appointment of secretary and treasurer, and meetings of the merged area board shall apply to the area education agency board.

4. *Quorum.* A majority of the members of the board of directors of the area education agency shall constitute a quorum. [C97,§2833; C24, 27, 31, 35, 39,§§**4119, 4121**; C46,§§273.1, 273.3; C50, 54, 58, 62, 66, 71, 73,§§273.4, 273.5, 273.9, 273.10; C75,§273.8; 65GA, ch 1172,§10; 66GA, ch 67,§24, ch 79,§10]

Referred to in§§273.2, 273.3, 281.9

Preference to former personnel, see 65GA, ch 1172,§11

*This sentence was enacted by 65GA, ch 1172,§10; It has been added at the request of the state superintendent of public instruction after omission in former codes as being attached to a temporary paragraph.

Amendment effective January 1, 1975; 66GA, ch 79,§27

273.9 Funding.

1. For the school year beginning July 1, 1975, and each succeeding school year, school districts shall pay for the programs and services provided through the area education agency and shall include expenditures for the programs and services in their budgets, in accordance with the provisions of this section.

2. School districts shall pay the costs of special education instructional programs with the moneys available to the districts for each child requiring special education, by application of the special education weighting plan in section 281.9. Special education instructional programs shall be provided at the local level if practicable, or otherwise by contractual arrangements with the area education

agency board as provided in section 273.3, subsection 5, but in each case the total money available through section 281.9 and chapter 442 because of weighted enrollment for each child requiring special education instruction shall be made available to the district or agency which provides the special education instructional program to the child, subject to adjustments for transportation or other costs which may be paid by the school district in which the child is enrolled. Each district shall co-operate with its area education agency to provide an appropriate special education instructional program for each child who requires special education instruction, as identified and counted within the certification by the area director of special education or as identified by the area director of special education subsequent to the certification, and shall not provide a special education instructional program to a child who has not been so identified and counted within the certification or identified subsequent to the certification.

3. The costs of special education support services provided through the area education agency shall be funded by an increase in the allowable growth of each school district, determined as provided in section 442.7. Special education support services shall not be funded until the program plans submitted by the special education directors of each area education agency as required by section 273.5 are modified as necessary and approved by the department of public instruction according to the criteria and limitations of chapter 281 and section 442.7.

4. The costs of media services provided through the area education agency shall be funded as provided in section 442.27. Media services shall not be funded until the program plans submitted by the administrators of each area education agency as required by section 273.4 are modified as necessary and approved by the department of public instruction according to the criteria and limitations of section 273.6 and of section 442.27.

5. The costs of other services provided through the area education agency shall be funded within the limitations in section 442.27. The department of public instruction shall promulgate rules under chapter 17A, as necessary to implement performance of its approval duties under this section. [C51,§417; R60, §§648, 2074; C73,§§771, 1776; C97,§§2742, 2831, 2832; S13,§§2742, 2831, 2832; SS15,§2734-b; C24, 27, 31, 35, 39,§§**4456–4458, 5232–5234**; C46,§§301.12–301.14, 340.13–340.15; C50, 54, 58, 62, 66, 71, 73, §273.13; C75,§273.9; 66GA, ch 79,§11]

Referred to in §§273.2, 273.3, 281.2, 281.8, 281.9, 442.8
Amendment effective January 1, 1975; 66GA, ch 79,§27

273.10 Media production. The purchase or lease of equipment or facilities for media production or reproduction by an area education agency shall require the approval of the state board of public instruction. However, the purchase or lease of equipment for television production, television transmission, or closed circuit television transmission by an area education agency is prohibited. If the area education agency wishes to use equipment for television production, television transmission, or closed circuit television transmission, the area education agency shall contract with the state educational radio and television facility board. [66GA, ch 79,§12]

Amendment effective January 1, 1975; 66GA, ch 79,§27

CHAPTER 274

SCHOOL DISTRICTS IN GENERAL

Referred to in §442.2

274.1 Powers and jurisdiction.
274.2 General applicability.
274.3 Repealed by 63GA, ch 1025,§23.
274.4 Record of reorganization filed.
274.5 Action to test reorganization.
274.6 Names.
274.7 Directors.
274.8 to 274.12 Repealed by 62GA, ch 239,§1.
274.13 Attaching territory to adjoining corporation.
274.14 Restoration.
274.15 Repealed by 62GA, ch 239,§1.
274.16 to 274.34 Repealed by 55GA, ch 117,§36.
274.35 and 274.36 Repealed by 62GA, ch 239,§1.
274.37 Boundaries changed by action of boards —buildings constructed.
274.38 Study of boundary changes requested.

NATIONAL DEFENSE PROJECTS

274.39 Sale of land to government.
274.40 Vesting of powers to convey.
274.41 Application of proceeds of sale.
274.42 Adjusting of district boundaries.
274.43 Relinquishing funds.
274.44 Determination final.
274.45 Expense audited and paid.
274.46 Repealed by 65GA, ch 1087,§27.

274.1 Powers and jurisdiction. Each school district shall continue a body politic as a school corporation, unless changed as provided by law, and as such may sue and be sued, hold property, and exercise all the powers granted by law, and shall have exclusive jurisdiction in all school matters over the territory therein contained. [C51,§1108; R60,§§2022, 2026; C73, §§1713, 1716; C97,§2743; C24, 27, 31, 35, 39,§**4123**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.1]

Right to bid under execution sale, §569.2

274.2 General applicability. The provisions of law relative to common schools shall apply alike to all districts, except when otherwise

clearly stated, and the powers given to one form of corporation, or to a board in one kind of corporation, shall be exercised by the other in the same manner, as nearly as practicable. But school boards shall not incur original indebtedness by the issuance of bonds until authorized by the voters of the school corporation. [C97,§2823; C24, 27, 31, 35,§4190; C39, §**4123.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.2]

Vote required to authorize bonds, see §75.1

274.3 Repealed by 63GA, ch 1025,§23.

274.4 Record of reorganization filed. When an election on the proposition of organizing, reorganizing, enlarging, or changing the boundaries of any school corporation carries by the required statutory margin, or the boundary lines of contiguous school corporations are changed by the concurrent action of the respective boards of directors, the secretary of said school corporation, shall file a written description of the new boundaries of the school corporation in the office of the county auditor of each county in which any portion of the school corporation lies. [C24, 27, 31, 35,§4193; C39,§**4123.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.4]

Referred to in §275.22

274.5 Action to test reorganization. No action shall be brought questioning the legality of the organization, reorganization, enlargement, or change in the boundaries of any school corporation in this state unless brought within six months after the date of the filing of said written description in the office of said county auditor or county auditors. When the said period of limitations shall have passed, it shall be conclusively presumed that all acts and proceedings taken with reference to the said organization, reorganization, enlargement or change in boundaries were legally taken for every purpose whatsoever and that a de jure school corporation exists. [C24, 27, 31, 35, §4192; C39,§**4123.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.5]

Actions excepted, 56GA, ch 135,§3

274.6 Names. School corporations shall be designated as follows: The independent school district of (naming city, township, or village, and if there are two or more districts therein, including some appropriate name or number), in the county of (naming county), state of Iowa; or, the consolidated school district of (some appropriate name or number), in the county of (naming county), state of Iowa; or, the community school district of (some appropriate name), in the county (or counties) of (naming county or counties), state of Iowa; or, the (some appropriate name) community school district, in the county (or counties) of (naming county or counties), state of Iowa. [C51,§1108; R60,§2026; C73,§1716; C97,§2744; S13,§2744; C24, 27, 31, 35, 39,§**4124**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.6]

Referred to in §278.1

274.7 Directors. The affairs of each school corporation shall be conducted by a board of directors, the members of which in all community or independent school districts shall be schosen for a term of three years. [C97, §2745; C24, 27, 31, 35, 39,§**4125**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.7]

A school district which has a seven-member board of directors for which the term of office has been shortened by law from four years to three years commencing with the election held September 9, 1975, shall hold elections as follows:

1. At the regular school election held September 9, 1975, two members shall be elected for two-year terms and three members shall be elected for three-year terms.
2. At the regular school election held September 14, 1976, two members shall be elected for three-year terms.
3. At the regular school election held September 13, 1977, two members shall be elected for three-year terms.

School officers, §39.24

274.8 to 274.12 Repealed by 62GA, ch 239,§1.

274.13 Attaching territory to adjoining corporation. In any case where, by reason of natural obstacles, any portion of the inhabitants of any school corporation in the opinion of the area education agency administrator cannot with reasonable facility attend school in their own corporation, he shall, by a written order, in duplicate, attach the part thus affected to an adjoining school corporation, the board of the same consenting thereto, one copy of which order shall be at once transmitted to the secretary of each corporation affected thereby, who shall record the same and make the proper designation on the plat of the corporation. Township or county lines shall not be a bar to the operation of this section. [C73,§1797; C97, §2791; C24, 27, 31, 35, 39,§**4131**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.13]

Referred to in §274.14

274.14 Restoration. When the natural obstacles by reason of which territory has been set off by the area education agency administrator from one school district and attached to another in the same or an adjoining county, as provided in section 274.13, have been removed, such territory may, upon the concurrence of the respective boards, be restored to the school district from which set off and shall be so restored by said boards upon the written application of two-thirds of the electors residing upon the territory so set off together with the concurrence of the area education agency administrator and the board of the school district from which such territory was originally set off by the said administrator. [C24, 27, 31, 35, 39,§**4132**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.14]

274.15 Repealed by 62GA, ch 239,§1.

274.16 to 274.34 Repealed by 55GA, ch 117, §36.

274.35 and 274.36 Repealed by 62GA, ch 239,§1.

274.37 Boundaries changed by action of boards—buildings constructed. The boundary lines of contiguous school corporations may be changed by the concurrent action of the respective boards of directors at their regular meetings in July, or at special meetings

called for that purpose. Such concurrent action shall be subject to the approval of the area education agency board but such concurrent action shall stand approved if the said board does not disapprove such concurrent action within thirty days following receipt of notice thereof. The corporation from which territory is detached shall, after the change, contain not less than four government sections of land.

The boards in the respective districts, the boundaries of which have been changed under this section, complete in all respects, except for the passage of time prior to the effective date of the change and when all right of appeal of the change has expired, may enter into joint contracts for the construction of buildings for the benefit of the corporations whose boundaries have been changed, using funds accumulated under section 278.1, subsection 7. The district in which the building is to be located may use any funds authorized in accordance with chapter 75. Nothing in this section shall be construed to permit the changed districts to expend any funds jointly which they are not entitled to expend acting individually. [C62, 66, 71, 73, 75,§274.37]

274.38 Study of boundary changes requested. Any school board may request a study and recommendations of the department of public instruction relative to the adjustment of boundary lines and the recommendations of the department of public instruction shall be submitted to those districts involved within sixty days after the request for such study and recommendations is made but such recommendations shall be advisory only and shall not be binding on the local districts. [C62, 66, 71, 73, 75,§274.38]

NATIONAL DEFENSE PROJECTS

274.39 Sale of land to government. Whenever the federal government, or any agency or department thereof shall have heretofore located or shall hereafter locate in any county an ordnance plant or other project which may be deemed desirable for the development of the national defense or for the purpose of flood control, and for the purpose of so locating such plant or project shall have heretofore determined, or shall hereafter determine, that real property and improvements thereon owned by school districts is required, the board of directors of such school districts by resolution is hereby authorized to sell and convey such property at a price and upon terms as may be agreed upon, any such instruments of conveyance to be executed on behalf of such school districts by the president of such district. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.39]

Referred to in §§274.40, 274.41

274.40 Vesting of powers to convey. Whenever a majority of the directors of any school district affected as in section 274.39 have moved from such district and have ceased to be residents thereof thereby creating vacancies on the school board and reducing it to less than a quorum, the powers vested by said section in the board of directors shall vest in the area education agency board and the instrument of conveyance shall be executed on behalf of such school district by the chairman of the area education agency board until an election is called pursuant to chapter 277. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.40]

Referred to in §§274.41, 274.42

274.41 Application of proceeds of sale. The proceeds of the sale of the property of a school district under the authority granted in sections 274.39 and 274.40 shall be deposited with the treasurer of the county and applied so far as necessary to the payment of the outstanding indebtedness of such school district. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.41]

274.42 Adjusting of district boundaries. Whenever the federal government, or any agency or department thereof shall have heretofore located or shall hereafter locate any project which may be deemed desirable for the development of the national defense or for the purpose of flood control, and for the purpose of so locating such project shall have heretofore determined or shall hereafter determine, that certain real property making up a portion of a school district is required, the superintendent of public instruction with the approval of the state board shall have the power by resolution to adjust the boundaries of school districts wherein the federally owned property is located and the boundaries of adjoining school districts so as to effectively provide for the schooling of children residing within all of said districts. A copy of such resolution shall be promptly filed with the board of directors of such adjoining school district or districts and with the board of directors of such school district wherein the federally owned property is located unless such board has been reduced below a quorum in the manner contemplated in section 274.40, in which event such resolution shall be posted in two public places within the altered district. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.42]

Referred to in §274.45

274.43 Relinquishing funds. The officers of the altered district shall relinquish to the proper officers of such adjoining district or districts all funds, claims for taxes, credits, and such other personal property in such a manner as the superintendent of public instruction shall direct, which said funds, credits, and personal property shall become the property of such adjoining district or districts as enlarged, to be used as the boards of directors of such districts may direct. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.43]

Referred to in §274.45

274.44 Determination final. The determination of the superintendent of public instruc-

tion in such matters shall be final. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.44]

Referred to in §274.45

274.45 Expense audited and paid. The expense of the superintendent of public instruction in respect to the carrying out of the provisions of sections 274.42 to 274.44, shall be paid from funds appropriated to the department of public instruction. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§274.45]

274.46 Repealed by 65GA, ch 1087,§27.

CHAPTER 275

REORGANIZATION OF SCHOOL DISTRICTS

Referred to in §257.25

275.1 Declaration of policy—surveys.
275.2 Scope of surveys.
275.3 Minimum standards.
275.4 Hearings.
275.5 Tentative plans.
275.6 Progressive program.
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275.8 Co-operation of state department—planning joint districts.
275.9 Methods of effectuating reorganization plans.
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275.12 Petition—method of election.
275.13 Affidavit—presumption.
275.14 Objection—time of filing—notice.
275.15 Hearing—decision—publication of order.
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275.17 Repealed by 57GA, ch 129,§4.
275.18 Special election called—time.
275.19 Repealed by 65GA, ch 136,§401.
275.20 Separate vote in existing districts.
275.21 Repealed by 57GA, ch 129,§6.
275.22 Canvass and return.
275.23 Frequency of change.
275.24 Effective date of change.
275.25 Election of directors.
275.26 Payment of expenses.
275.27 Names.
275.28 Plan of division of assets and liabilities.
275.29 Division of assets and liabilities after reorganization.
275.30 Arbitration.
275.31 Taxes to effect equalization.
275.32 School buildings—tax levy.
275.33 Contracts not affected.
275.34 Repealed by 65GA, ch 1090,§211.
275.35 Change of method of elections.
275.36 Submission of change to electors.
275.37 Increase in number of directors.
275.38 Implementing changed method of election.
275.39 Excluded territory included in new petition.
275.40 Repealed by 65GA, ch 1172,§133.

275.1 Declaration of policy—surveys. It is declared to be the policy of the state to encourage the reorganization of school districts into such units as are necessary, economical and efficient and which will insure an equal educational opportunity to all children of the state. All area of the state shall be in school districts maintaining twelve grades. If any school district ceases to maintain twelve grades, it shall merge with a contiguous school district within six months or the state board shall attach the school district not maintaining twelve grades to a contiguous district.

If a district is attached, division of assets and liabilities shall be made as provided in sections 275.29 to 275.31. The area education agency boards may initiate detailed studies and surveys of the school districts within the area education agency and adjacent territory for the purpose of promoting reorganization of school districts in order to effect more economical operation and the attainment of higher standards of education in the schools. [C97, §2798; SS15,§2794-a; C24, 27, 31, 35, 39,§§4152, 4154; C46, 50,§§274.37, 275.1, 276.1; C54, 58, 62, 66, 71, 73, 75,§275.1]

Referred to in §§275.9, 594A.6, 594A.8

275.2 Scope of surveys. The scope of such studies and surveys shall include the following matters in the various districts in the county: The adequacy of the educational program, average daily attendance of pupils, property valuations, existing buildings and equipment, natural community areas, road conditions, transportation, economic factors, and such other matters that may bear on educational programs meeting minimum standards required by law. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§275.2]

Referred to in §275.9

275.3 Minimum standards. No new school district shall be planned by an area education agency board nor shall any proposal for creation or enlargement of any school district be approved by an area education agency board or submitted to electors unless there reside within the proposed limits of such district at

least three hundred persons of school age who were enrolled in public schools in the preceding school year. Provided, however, that the state superintendent of public instruction shall have authority to grant permission to an area education agency board to approve the formation or enlargement of a school district containing a lower school population than above provided on the written request of such area education agency board if such request is accompanied by evidence tending to show that sparsity of population, natural barriers or other good reason makes it impracticable to meet said school population requirement. [R60,§2105; C73,§§1800, 1801; C97,§2794; SS15, §§2794, 2794-a; C24, 27, 31, 35, 39,§§**4143, 4161, 4173**; C46, 50,§§274.25, 275.3, 276.8, 276.20; C54, 58, 62, 66, 71, 73, 75,§275.3; 66GA, ch 67,§25]

Referred to in §275.9

275.4 Hearings. In making any studies and surveys the area education agency board shall consult with the officials of affected districts and other citizens, and shall from time to time hold public hearings, and may employ such research and other assistance as it may determine reasonably necessary in order to properly carry on its survey and prepare definite plans of reorganization.

Upon the written request of the area education agency boards in adopting reorganization plans which conform to the state-wide plan of education and to state laws, the superintendent of public instruction, subject to the approval of the state board of public instruction, shall cause reorganization plans and suggestions to be prepared and forwarded to the area education agency superintendents together with such recommendations as may promote the purposes set forth in section 275.1. [C24, 27, 31, 35, 39,§**4158**; C46, 50,§§275.1–275.3, 276.5; C54, 58, 62, 66, 71, 73, 75,§275.4]

Referred to in §275.9

275.5 Tentative plans. Any proposal for merger, consolidation or boundary change of local school districts shall first be submitted to the area education agency board for approval before being submitted at an election. The area education agency board shall adopt and file a tentative plan with the state department of public instruction no later than sixty days after a proposal for merger or consolidation has been presented to them for their approval under this section. Such proposals may provide for reducing an existing school district to less than four government sections and where such proposal is put into effect by election by the method hereinafter provided the area education agency board shall by resolution attach or subdivide and attach the remaining portion or portions of said district to another school district or districts. [C97, §2793; S13,§2793; SS15,§2794-a; C24, 27, 31, 35, 39,§§**4133, 4173**; C46, 50,§§274.16, 274.20, 275.1, 275.3, 275.4; C54, 58, 62, 66, 71, 73, 75,§275.5]

Referred to in §275.9

275.6 Progressive program. It is the intent of this chapter that the area education agency board shall carry on the program of reorganization progressively and shall, insofar as is possible, authorize submission of proposals to the electors as they are developed and approved. [R60,§§2097, 2105; C73,§§1800, 1801; S13,§§2820-e,-f; SS15,§2794-a; C24, 27, 31, 35, 39,§§**4141, 4188**; C46, 50,§§274.23, 275.8, 276.35; C54, 58, 62, 66, 71, 73, 75,§275.6]

275.7 Budget. The area education agency board shall include in the budget submitted each year such sums as it deems necessary to carry on its reorganization work under this chapter. [SS15,§2794-a; C24, 27, 31, 35, 39, §§**4139, 4177**; C46, 50,§§274.21, 275.9, 276.24; C54, 58, 62, 66, 71, 73, 75,§275.7]

275.8 Co-operation of state department—planning joint districts. The state department of public instruction shall co-operate with the several area education agency boards in making studies and surveys. In the case of controversy over the planning of joint districts, the matter shall be submitted to the state board* of public instruction judicial review of and its decision may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review must be filed within thirty days after the decision of the state board* of public instruction. Joint districts shall mean districts that lie in two or more adjacent area education agencies.

For purposes of this chapter the planning of joint districts is defined to include all of the following acts:

1. Preparation of a written joint plan in which contiguous territory in two or more area education agencies is considered as a part of a potential school district in the area education agency on behalf of which such plan is filed with the state department of public instruction by the area education agency board.

2. Adoption of such plan at a joint session of the several area education agency boards in whose areas such territory is situated.

3. Filing said plan with the state department of public instruction.

For purposes of subsection 1 hereof, joint planning shall be evidenced by filing the following items with the state department of public instruction:

a. A plat of the entire area of such potential district.

b. A statement of the number of pupils residing within the area of said potential district enrolled in public schools in the preceding school year.

c. A statement of the assessed valuation of taxable property located within such potential district.

d. An affidavit signed on behalf of each of said boards of directors of area education agencies by a member of such board stating the boundaries as shown on such plat have been

agreed upon by the respective boards as a part of the overall plan of school district reorganization of each such school. [C46, 50, §§275.10, 276.4; C54, 58, 62, 66, 71, 73, 75,§275.8]

Referred to in §275.16

*The word "board" used by authority of 55GA, ch 114,§34; but see ch 117,§8

275.9 Methods of effectuating reorganization plans. When any school district is enlarged, reorganized, or changes its boundaries pursuant to the plans hereinabove provided for, such enlargement, reorganization, or boundary change shall be accomplished by the method hereinafter provided.

The provisions of sections 275.1 to 275.5, relating to studies, surveys, hearings and adoption of plans shall constitute a mandatory prerequisite to the effectuation of any proposal for district boundary change. It shall be the mandatory duty of the area education agency board to dismiss the petition if the above provisions are not complied with fully. [C46, 50,§275.11; C54, 58, 62, 66, 71, 73, 75,§275.9]

275.10 Repealed by 57GA, ch 129,§2.

275.11 Proposals involving two or more districts. Subject to the approval of the area education agency board contiguous territory located in two or more school districts may be united into a single district in the manner provided in sections 275.12 to 275.22 hereof. [SS15,§2794-a; C24, 27, 31, 35, 39,§4166; C46, 50, §276.13; C54, 58, 62, 66, 71, 73, 75,§275.11]

275.12 Petition—method of election.

1. A petition describing the boundaries, or accurately describing the area included therein by legal descriptions, of the proposed district, which boundaries or area described shall conform to plans developed or the petition shall request change of the plan, shall be filed with the area education agency administrator of the area education agency in which the greatest number of electors reside. Such petition shall be signed by voters in each existing school district affected or portion thereof equal in number to at least twenty percent of the number of eligible voters or four hundred voters, whichever is the smaller number. School districts affected or portion thereof shall be defined to mean that area to be included in the plan of the proposed new school district.

2. Such petition shall also state the number of directors which may be either five or seven and the method of election of the school directors of the proposed district. The method of election of the directors shall be one of the following optional plans:

a. Election at large from the entire district by the electors of the entire district.

b. Division of the entire school district into designated geographical subdistricts on the basis of population, to be known as director districts, each of which director districts shall be represented on the school board by one director who shall be a resident of such director district but who shall be elected by the vote of the electors of the entire school district. The school district shall be divided into the same number of director districts as the number of school directors the district is authorized by law. The boundaries of such director districts and the area and population included within each district shall be such as justice, equity, and the interests of the people may require. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election. Insofar as may be practicable, the boundaries of such districts shall follow established political or natural geographical divisions.

c. Election of not more than one-half of the total number of school directors at large from the entire district and the remaining directors from and as residents of designated single-member director districts into which the entire school district shall be divided on the basis of population. In such case, all directors shall be elected by the electors of the entire school district. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election.

d. Division of the entire school district into designated geographical subdistricts on the basis of population, to be known as director districts, each of which director districts shall be represented on the school board by one director who shall be a resident of such director district and who shall be elected by the voters of said director district. Place of voting in such director districts shall be designated by the commissioner of elections. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election.

3. If the petition proposes the division of the school district into director districts, the boundaries of such proposed director districts shall be described in the petition.

4. The area education agency board in reviewing such petition as provided in sections 275.15 and 275.16 shall review the proposed method of election of school directors and shall have the duty and authority to change or amend such plan in any manner, including the changing of boundaries of director districts if proposed, or to specify a different method of electing school directors on the basis of area, school population, or assessed valuation as may be required by law, justice, equity, and the interest of the people. In such action the area education agency board shall follow the same procedure as is required by sections 275.15 and 275.16 for other action on the petition by the area education agency board. [R60,§§2097, 2105; C73,§§1800, 1801, 1811; C97,§§2794, 2799; S13,§§2793, 2820-e,-f; SS15, §§2793, 2794, 2794-a; C24, 27, 31, 35, 39,§§4133, 4134, 4141, 4153, 4155, 4174; C46, 50,§§274.16,

274.17, 274.23, 274.38, 276.2, 276.21; C54, 58, 62, §§275.10, 275.12; C66, 71, 73, 75,§275.12; 66GA; ch 67,§26, ch 81,§126]

Referred to in §§275.11, 275.23, 275.35, 275.38, 278.1(7)

275.13 Affidavit—presumption. Such petition shall be accompanied by an affidavit showing the number of qualified electors living in each affected district or portion thereof described in the petition and signed by a qualified elector residing in the territory, and if parts of the territory described in the petition are situated in different area education agencies, the affidavit shall show separately as to each agency, the number of qualified electors in the part of the agency included in the territory described. The affidavit shall be taken as true unless objections to it are filed on or before the time fixed for filing objections as provided in section 275.14 hereof. [C24, 27, 31, 35, 39,§**4156**; C46, 50,§276.3; C54, 58, 62, 66, 71, 73, 75,§275.13]

Referred to in §§275.11, 275.23, 275.36, 278.1(7)

275.14 Objection — time of filing — notice. Within ten days after the petition is filed, the area education agency administrator shall fix a final date for filing objections to the petition in the office of the administrator, and give notice for at least ten days, by one publication in a newspaper published within the territory described in the petition, or if none is published therein, in a newspaper published in the county where the petition is filed, and of general circulation in the territory described. The cost of publication shall be assessed to each district whose territory is involved in the ratio that the number of pupils in enrollment, as defined in section 442.4 in each district bears to the total number of pupils in enrollment in the total area involved. Objections shall be in writing in the form of an affidavit and may be made by any person residing or owning land within the territory described in the petition, or who would be injuriously affected by the change petitioned for and shall be on file not later than twelve o'clock noon of the final day fixed for filing objections. [SS15,§2794-a; C24, 27, 31, 35, 39,§§**4157, 4166, 4170**; C46, 50,§§276.4, 276.6, 276.17; C54, 58, 62, 66, 71, 73, 75,§275.14]

Referred to in §§275.11, 275.13, 275.23, 278.1(7)

275.15 Hearing — decision — publication of order. On the final day fixed for filing objections, interested parties may present evidence and arguments, and the area education agency board shall review the matter on its merits and within five days after the conclusion of any hearing, shall rule on the objections and shall enter an order fixing such boundaries for the proposed school corporation as will in its judgment be for the best interests of all parties concerned, having due regard for the welfare of adjoining districts or dismiss the petition. The agency administrator shall at once publish this order in the same newspaper in which the original notice was published. Within twenty days after the publication thereof the decision rendered by the area education agency board may be appealed to the district court in the county involved by any school district affected. [C24, 27, 31, 35, 39,§§**4158–4160**; C46, 50,§§276.5–276.7; C54, 58, 62, 66, 71, 73, 75,§275.15]

Referred to in §§275.11, 275.12(4), 275.16, 275.23, 278.1(7)

275.16 Hearing when territory in different counties. If the territory described in the petition for the proposed corporation lies in more than one area education agency, the agency administrator with whom the petition is filed shall fix the time and place and call a joint meeting of the members of all the agency boards in which any territory of the proposed school corporation lies, to act as a single board for the hearing of the said objections, and a majority of all members of the agency boards of the different agencies in which any part of the proposed corporation lies, shall constitute a quorum. The joint boards acting as a single board shall determine whether the petition conforms to plans or, if the petition requests a change in plans, whether such change should be made, and shall have the authority to change the plans of any or all the area education agency boards affected by the petition, and it shall determine and fix boundaries for the proposed corporation as provided in section 275.15 or dismiss the petition. However, if such joint boards cast a tie vote and are unable to agree to an order fixing the boundaries for the proposed school district or to an order to dismiss the petition, the time during which such actions must be taken under the provisions of section 275.15 shall be extended from five days to fifteen days after the conclusion of the hearing under the provisions of section 275.15, and such joint board shall reconvene not less than ten and not more than fifteen days after the conclusion of such hearing. At such hearing the joint board shall reconsider their action and if a tie vote shall again be cast it shall be deemed an order granting the petition and changing the plans of any and all of the agency boards affected by the petition and fixing the boundaries for the proposed school corporation. The agency administrator shall at once publish the decision in the same newspaper in which the original notice was published.

In case a controversy arises from such meeting, the area education agency board or boards or any school district aggrieved may bring the controversy to the state department of public instruction, as provided in section 275.8, within twenty days from the publication of this order, and if said controversy is taken to the state department of public instruction, a ten-day notice in writing shall be given to all agency boards and school districts affected or portions thereof. The state department shall have the authority to affirm the action of the joint boards, to vacate, to dismiss all proceedings or to make such modification of the action of the joint boards as in their judgment would serve the best interest of all the agencies. Judicial

review of the actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review must be filed within thirty days after the decision of the state department of public instruction. [C24, 27, 31, 35, 39,§**4162**; C46, 50,§276.9; C54, 58, 62, 66, 71, 73, 75,§275.16]

Referred to in §§275.11, 275.12(4), 275.23, 278.1(7)

275.17 Repealed by 57GA, ch 129,§4.

275.18 Special election called—time. When the boundaries of the territory to be included in a proposed school corporation and the number and method of the election of the school directors of such proposed school corporation have been determined as herein provided, the area education agency administrator with whom such petition is filed shall call a special election in such proposed school corporation within thirty days from the date of the final determination of such boundaries and serve notice on the county commissioner of elections of the county in the proposed school corporation which has the greatest taxable base in the proposed school corporation. The county commissioner of elections shall give notice of the election by one publication in the same newspaper in which previous notices have been published regarding the proposed school reorganization, and in addition thereto, if more than one county is involved, by one publication in a legal newspaper in each county other than that of the first publication, which publication shall be not less than four nor more than twenty days prior to the election. In the case of districts located in more than one county, no notice for an election shall be published until the time for appeal, which shall be the same as that provided in section 285.12, has expired; and in the event of an appeal, not until the same has been disposed of. [R60, §§2097, 2105; C73,§§1800, 1801; C97,§2794; SS15, §§2794, 2794-a; C24, 27, 31, 35, 39,§§**4142, 4164**; C46, 50,§§274.24, 275.4, 276.11; C54, 58, 62, 66, 71, 73, 75,§275.18]

Referred to in §§275.11, 275.23, 275.27, 278.1(7)

275.19 Repealed by 65GA, ch 136,§401.

275.20 Separate vote in existing districts. The voters shall vote separately in each existing school district affected or portion thereof upon the proposition to create such new school corporation. School districts affected or portion thereof shall be defined to mean that area included within the boundaries of the proposed new school corporation, except that where a portion of an existing school district operating a high school, or rural independent school district of eight sections or more operating a school formed prior to May 10, 1957, is included within the boundaries of the proposed new school corporation, that affected school district shall be defined as that existing district within and without the proposed new school corporation, and in such districts the entire district shall vote. If the proposition receives a majority of the votes cast in each of at least seventy-five percent of the said districts, and also a majority of the total number of votes cast in all of said districts, the proposition shall be deemed carried. Provided, however, that if two or more of the school districts affected have a resident average daily attendance in public schools of three hundred or more pupils who were enrolled in public schools in the preceding school year, the proposition must also receive a majority of the votes cast in each of said districts in order to be deemed carried, and in such districts the entire existing district shall vote. [R60,§§2097, 2105; C73,§§1800, 1801; C97,§2794; SS15,§§2794, 2794-a; C24, 27, 31, 35,§§4142, 4166, 4167, 4191; C39,§§**4142, 4144.1, 4166, 4167**; C46, 50,§§274.24, 274.27, 276.13; C54,§§275.20, 275.21; C58, 62, **66**, 71, 73, 75,§275.20]

Referred to in §§275.11, 275.22, 275.23, 278.1(7)

275.21 Repealed by 57GA, ch 129,§6.

275.22 Canvass and return. The precinct election officials shall count the ballots, make return to and deposit the ballots with the county commissioner of elections, who shall enter the return of record in his office. The county commissioner of elections shall certify the results of the election to the area education agency administrator. If the majority of the votes cast by the qualified electors are in favor of the proposition, as provided in section 275.20, a new school corporation shall be organized. The area education agency administrator shall file a written description of the boundaries as provided in section 274.4. [S13, §2820-f; SS15,§2794-a; C24, 27, 31, 35, 39,§§**4144, 4169**; C46, 50,§§274.26, 275.5, 275.7, 276.16; C54, 58, 62, 66, 71, 73, 75,§275.23; 66GA, ch 67,§§**27**, 68]

Referred to in §§275.11, 275.23, 278.1(7)

275.23 Frequency of change. A school district which is enlarged, reorganized, or changes its boundaries under the provisions of sections 275.12 to 275.22, shall not be allowed to file a petition under the provisions of section 275.12 for the purpose of reducing the area served or changing the boundaries to exclude areas encompassed by the enlargement, reorganization or boundary changes for a period of five years following the effective date of the enlargement, reorganization or boundary change unless such action is approved by the state board of public instruction. [66GA, ch 79,§13]

Amendment effective January 1, 1975; 66GA, ch 79,§27

275.24 Effective date of change. When any school district is enlarged, reorganized, or changes its boundary by the method hereinabove provided, the effective date of such change shall be July 1 following the election of the new board or, if no new board is elected, then on July 1 following the enlargement, reorganization or boundary change. [C54, 58, 62, 66, 71, 73, 75,§275.24]

275.25 Election of directors. If the proposition to establish a new corporation carries under the method hereinabove provided a special election shall be called by the area education agency administrator. The administrator shall notify the county commissioner of elections who shall publish notice by one publication in the same newspaper in which the former notices were published. At such election, two directors shall be elected to serve until the next regular election, two until the second, and one until the third regular election thereafter, except in districts which include all or part of a city of fifteen thousand or more population and in districts in which the proposition to establish a new corporation provides for seven directors, three directors shall be elected to serve until the third regular election thereafter, all of whom to serve until such time as their successors are elected and qualified. Provided, however, that in all community school districts which include a city of fifteen thousand or more population and which became effective prior to July 4, 1955, and in all community school districts containing a city which has attained a population of fifteen thousand or more as shown by the most recent decennial federal census, the board of directors shall consist of seven members. Where it becomes necessary to increase the membership of any such board under the provisions hereof, two directors shall be added according to the procedure described in section 277.23. The county board of supervisors shall canvass the votes and the county commissioner of elections report the results to the area education agency administrator who shall notify the persons who are elected directors. The new board shall organize within fifteen days following their election upon call of the administrator. The new board of directors shall have complete control of the employment of all personnel for the newly formed community school district for the ensuing school year. Following the organization of the new board they shall have authority to establish policy, organize curriculum, enter into contracts and complete such other planning and take such action as is essential for the efficient management of the newly formed community school district.

Provided, however, in cases involving two districts only, where the population of the new district does not exceed the population of the more populous of said districts by more than twenty-five percent, the incumbent board members of said more populous district shall continue to hold office as the directors of the new district for the remainder of their elective terms. Section 49.8, subsection 4 shall not be construed to permit a director to remain on the board of any school district after the effective date of a boundary change which places the director's residence outside the boundaries of the district. Vacancies so caused on any board shall be filled in the manner provided in sections 279.6 and 279.7. [R60,§§2099, 2100, 2106; C73,§1801; C97,§2795; S13,§2820-f; SS15,§2794-a; C24,§§4144, 4145, 4148; C27, 31, 35,§§4144-a1, 4145, 4148; C39,§§**4144.2, 4144.3, 4145, 4148**; C46, 50,§§274.28–274.30, 275.5, 276.18; C54, 58, 62, 66, 71, 73, 75,§275.25; 66GA, ch 81,§127]

Referred to in §257.25

275.26 Payment of expenses. If a district is established or changes its boundaries it shall pay all expenses incurred by the area education agency administrator and the area education agency board in connection with the proceedings. The county commissioner of elections shall assess the costs of the election against the district as provided in section 47.3. If the proposition is dismissed or defeated at the election all expenses shall be apportioned among the several districts in proportion to the assessed valuation of property therein.

If the proposed district or boundary change embraces territory in more than one area education agency such expenses shall be certified to and, if necessary, apportioned among the several districts by the joint agency board. If in only one agency the certification shall be made by the agency administrator.

The respective boards to which such expenses are certified shall audit and order the same paid from the general fund. In the event of failure of any board to so audit and pay the expenses certified to it, the area education agency administrator shall certify the expenses to the county auditor in the same manner as is provided for tuition claims in section 282.21 and the funds shall be transferred by the county treasurer from the debtor district to the agency board for payment of said expenses. [S13,§2820-h; C24, 27, 31, 35, 39,§§**4147, 4172**; C46, 50,§§274.32, 275.6, 276.19; C54, 58, 62, 66, 71, 73, 75,§275.26]

Referred to in §257.25

275.27 Names. School districts created or enlarged under the provisions of this chapter shall be known as community school districts and shall be part of the area education agency in which the greatest number of electors of said district reside at the time of the special election called for in section 275.18, and this provision pertaining to greatest number of electors shall be in full force and effect any statute to the contrary notwithstanding, and all provisions of the law applicable to the common schools generally shall be applicable to such districts in addition to the powers and privileges conferred by this chapter. [C73, §1715; C97,§2802; S13,§2802; SS15,§2794-a; C24, 27, 31, 35, 39,§**4136**; C46, 50,§274.18; C54, 58, 62, 66, 71, 73, 75,§275.27]

Referred to in §257.25

275.28 Plan of division of assets and liabilities. A plan of reorganization in addition to setting up the territory to comprise the reorganized districts may provide for a division of assets and liabilities of the old districts between reorganized districts. If no provision is made in the plan for division of assets and liabilities, such division shall be made under

the provisions of sections 275.29 to 275.31, inclusive, hereof. [C46, 50,§275.7; C54, 58, 62, 66, 71, 73, 75,§275.28]

Referred to in §257.25

275.29 Division of assets and liabilities after reorganization. Between July 1 and July 20, the board of directors of the newly formed community school district shall meet with the boards of all the old districts or parts of districts affected by the organization of the new school corporation for the purpose of reaching joint agreement on an equitable division of the assets of the several school corporations or parts thereof and an equitable distribution of the liabilities of the affected corporations or parts thereof. [C73,§1715; C97,§2802; S13,§§2802, 2820-g; C24, 27, 31, 35, 39,§4137; C46, 50,§274.19; C54, 58, 62, 66, 71, 73, 75,§275.29]

Referred to in §§257.25, 275.1, 275.28

275.30 Arbitration. If the boards cannot agree on such division and distribution, the matters on which they differ shall be decided by disinterested arbitrators, one selected by each board having an interest therein, and if the number thus selected is even, then one shall be added by the area education agency administrator. The decision of the arbitrators shall be made in writing and filed with the secretary of the new corporation, and any party to the proceedings may appeal therefrom to the district court by serving notice thereof on such secretary within twenty days after the decision is filed. Such appeal shall be tried in equity and a decree entered determining the entire matter, including the levy, collection, and distribution of any necessary taxes. [C73,§1715; C97,§2802; S13,§§2802, 2820-g; C24, 27, 31, 35, 39,§4138; C46, 50,§274.20; C54, 58, 62, 66, 71, 73, 75,§275.30]

Referred to in §§257.25, 275.1, 275.28

275.31 Taxes to effect equalization. If necessary to equalize such division and distribution, the board or boards may provide for the levy of additional taxes upon the property of any corporation or part of corporation and for the distribution of the same so as to effect such equalization. [S13,§2820-g; SS15,§2794-a; C24, 27, 31, 35, 39,§§4139, 4175; C46, 50,§§274.21, 276.22; C54, 58, 62, 66, 71, 73, 75,§275.31]

Referred to in §§257.25, 275.1, 275.28

275.32 School buildings — tax levy. The board of any school corporation shall establish attendance centers and provide suitable buildings for each school in the district, and may at the regular or a special meeting call a special election to submit to the qualified electors of the district the question of voting a tax or authorizing the board to issue bonds, or both, for any or all of the following purposes:

1. To secure sites, build, purchase, or equip school buildings.

2. To build or purchase a superintendent's or teacher's house or houses.

3. To repair or improve any school building or grounds, or superintendent's or teacher's house or houses, when the cost will exceed five thousand dollars.

All moneys received for such purposes shall be placed in the schoolhouse fund of said corporation and shall be used only for the purpose for which voted. [C73,§1804; C97,§2796; SS15, §2794-a; C24, 27, 31, 35, 39,§§4149, 4178; C46, 50,§§274.34, 275.9, 276.24; C54, 58, 62, 66, 71, 73, 75,§275.32]

Referred to in §§257.25, 283A.9

275.33 Contracts not affected. The terms of employment of superintendents, principals, and teachers, for any current school year shall not be affected by the formation of the new district. [S13,§2820-f; C24, 27, 31, 35, 39,§4146; C46, 50,§274.31; C54, 58, 62, 66, 71, 73, 75,§275.33]

Referred to in §257.25
See 57GA, ch 129,§18

275.34 Repealed by 65GA, ch 1090,§211.

275.35 Change of method of elections. Any existing or hereafter created or enlarged school district may change the number of directors to either five or seven and may also change its method of election of school directors to any method authorized by section 275.12 by submission of a proposal, stating the proposed new method of election and describing the boundaries of the proposed director districts if any, by the school board of such district to the electors at any regular or special school election. The school board shall notify the county commissioner of elections who shall publish notice of the election in the manner provided in section 49.53. The election shall be conducted pursuant to chapters 39 to 53 by the county commissioner of elections. Such proposal shall be adopted if it is approved by a majority of the votes cast on the proposition. [C58, 62, 66, 71, 73, 75,§275.35; 66GA, ch 81,§128]

Referred to in §257.25

275.36 Submission of change to electors. If a petition for a change in the number of directors or in the method of election of school directors, describing the boundaries of the proposed director districts, if any, signed by at least one-third of the voters residing within the school district and accompanied by affidavit as required by section 275.13 be filed with the school board of a school district, not earlier than six months and not later than two months before a regular or special school election, the school board shall submit such proposition to the voters at such election. [C58, 62, 66, 71, 73, 75,§275.36]

Referred to in §257.25

275.37 Increase in number of directors. At the next succeeding annual school election in a district where the number of directors has been increased from five to seven, and directors are elected at large, there shall be elected a director to succeed each incumbent director whose term is expiring in that year, and two additional directors. Upon organizing as re-

quired by section 279.1, the newly elected director who received the fewest votes in the election shall be assigned a term of either one year or two years if necessary in order that as nearly as possible one third of the members of the board shall be elected each year. [C58, 62, 66, 71, 73,§§275.37, 275.38; C75,§275.37]

Referred to in §§257.25, 275.38

275.38 Implementing changed method of election. If change in the method of election of school directors is approved at a regular or special school election, the directors who were serving unexpired terms or were elected concurrently with approval of the change of method shall serve out the terms for which they were elected. If the plan adopted is that described in section 275.12, subsection 2, paragraph "*b*," "*c*" or "*d*," the board shall at the earliest practicable time designate the districts from which residents are to be elected as school directors at each of the next three succeeding annual school elections, arranging so far as possible for elections of directors as residents of the respective districts to coincide with the expiration of terms of incumbent members residing in those districts. If an increase in the size of the board from five to seven members is approved concurrently with the change in method of election of directors, the board shall make the necessary adjustment in the manner prescribed in section 275.37, as well as providing for implementation of the districting plan under this section. [C75,§275.38]

Referred to in §257.25

275.39 Excluded territory included in new petition. Territory described in the petition of a proposed reorganization which has been set out of the proposed reorganization by the area education agency board or the joint boards, as the case may be, and in the event of an appeal, after the decision of the state department of public instruction or the courts as by law provided, may be included in any new petition for reorganization. [C62, 66, 71, 73, 75,§275.39]

275.40 Repealed by 65GA, ch 1172,§133.

CHAPTER 276

CONSOLIDATED SCHOOL DISTRICTS

Repealed by 55GA, ch 117,§35, see chapter 275 of this Code

CHAPTER 277

SCHOOL ELECTIONS

Referred to in §274.40

277.1 Regular election.
277.2 Special election.
277.3 Election laws applicable.
277.4 Nominations required.
277.5 Repealed by 65GA, ch 136,§401.
277.6 Territory outside county.
277.7 to 277.19 Repealed by 65GA, ch 136,§401.
277.20 Canvassing returns.
277.21 Repealed by 65GA, ch 136,§401.
277.22 Contested elections.
277.23 Directors—number—change.
277.24 Repealed by 63GA, ch 1025,§40.
277.25 Directors in new districts.
277.26 Repealed by 66GA, ch 81,§154.
277.27 Qualification.
277.28 Oath required.
277.29 Vacancies.
277.30 Vacancies filled by election.
277.31 Surrendering office.
277.32 Penalties.
277.33 Transferred to §277.3.
277.34 Repealed by 65GA, ch 136,§401.

277.1 Regular election. The regular election shall be held annually on the second Tuesday in September in each school district for the election of officers of the district, merged area, and county school system and for the purpose of submitting to the voters thereof any matter authorized by law. [C51,§§1111, 1114; R60, §§2027, 2030, 2031; C73,§§1717-1719; C97,§§2746, 2751; C24,§§4194, 4211; C27,§§4194, 4211, 4216-b1; C31, 35,§4216-c1; C39,§**4216.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.1]

Referred to in §§39.3, 280A.15

277.2 Special election. The board of directors in any school corporation may call a special election at which election the voters shall have the powers exercised at the regular election with reference to the sale of school property and the application to be made of the proceeds, the authorization of seven members on the board of directors, the authorization to establish or change the boundaries of director districts, the authorization of a schoolhouse tax or indebtedness, as provided by law, for the purchase of a site and the construction of

a necessary schoolhouse, and for obtaining roads thereto. [C97,§2750; S13,§2750; C24, 27, §4197; C31, 35,§4216-c2; C39,§**4216.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.2]

277.3 Election laws applicable. The provisions of chapters 39 to 53 shall apply to the conduct of all school elections and the school elections shall be conducted by the county commissioner of elections, except as otherwise specifically provided in this chapter. [C97, §2754; S13,§2754; C24, 27,§4204; C31, 35,§4216 -c33; C39,§**4216.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.33]

Transferred from §277.33

277.4 Nominations required. Nomination papers for all candidates for election to office in each school district shall be filed with the secretary of the school board not more than sixty-five days, nor less than forty days prior to the election. Nomination petitions shall be filed not later than five o'clock p.m. on the last day for filing. Each candidate shall be nominated by a petition signed by not less than ten eligible electors of the district. To each such petition shall be attached the affidavit of an eligible elector of the district that all of the signers thereof are electors of such district and that the signatures thereto are genuine. The candidate being nominated by the petition may sign the affidavit only if he or she personally circulated the petition. If the affiant also signed the nomination petition, that signature shall not be counted toward the total required by this section. The petition shall include the affidavit of the candidate being nominated, stating his name, his residence, that he is a candidate and is eligible for the office he seeks, and that if elected he will qualify for the office.

The secretary of the school board shall deliver all nomination petitions to the county commissioner of elections not later than five o'clock p.m. on the day following the last day on which nomination petitions can be filed. Any person on whose behalf nomination petitions have been filed under this section may withdraw as a candidate by filing a signed statement to that effect with the commissioner at any time prior to five o'clock p.m. on the thirty-fifth day before the election. [S13,§2754; C24,§4201; C27,§§4201, 4216-b4, -b5; C31, 35,§4216-c4; C39,§**4216.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.4; 66GA, ch 1075,§60]

Referred to in §§277.20, 279.6, 279.7

277.5 Repealed by 65GA, ch 136,§401.

277.6 Territory outside county. If there is within a school corporation any territory not within the limits of the county whose county commissioner of elections is responsible under section 47.2 for conducting that school corporation's elections, the commissioner may divide the territory which lies outside the county but within the school district into additional precincts, or may attach the various parts thereof to contiguous precincts within the responsible commissioner's county in accordance with section 49.3, and as will best serve the convenience of the electors of said territory in voting on school matters. [C24,§§4205, 4207; C27,§§4205, 4207, 4216-b2; C31, 35,§4216-c6; C39,§**4216.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.6; 66GA, ch 81, §129]

277.7 to 277.19 Repealed by 65GA, ch 136, §401.

277.20 Canvassing returns. On the next Friday after the regular school election, the county board of supervisors shall canvass the returns made to the county commissioner of elections from the several precinct polling places and the absentee ballot counting board, ascertain the result of the voting with regard to every matter voted upon and cause a record to be made thereof as required by section 50.24. Special elections held in school districts shall be canvassed at the time and in the manner required by that section. The board shall declare the results of the voting for members of boards of directors of school corporations nominated pursuant to section 277.4, and the commissioner shall at once issue a certificate of election to each person declared elected. The board shall also declare the results of the voting on any public question submitted to the voters of a single school district, and the commissioner shall certify the result as required by section 50.27.

The abstracts of the votes cast for members of the board of directors of any merged area, and of the votes cast on any public question submitted to the voters of any merged area, shall be promptly certified by the commissioner to the county commissioner of elections who is responsible under section 47.2 for conducting the elections held for that merged area. [C97,§2756; S13,§2756; C24,§4210; C27, §§4210, 4211-b6; C31, 35,§4216-c20; C39,§**4216.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.20; 66GA, ch 1075,§61]

Referred to in §280A.15

277.21 Repealed by 65GA, ch 136,§401.

277.22 Contested elections. School elections may be contested as provided by law for the contesting of other elections. [C24, 27,§4209; C31, 35,§4216-c22; C39,§**4216.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.22]

Contesting elections, ch 57 et seq.

277.23 Directors—number—change. In any district including all or part of a city of fifteen thousand or more population and in any district in which the voters have authorized seven directors, the board shall consist of seven members; in all other districts the board shall consist of five members.

A change from five to seven directors shall be effected in a district at the first regular election after authorization by the voters or when a district becomes wholly or in part within a city of fifteen thousand population or more in the following manner: If the term of one director of the five-member board expires at

the time of said regular election, three directors shall be elected to serve until the third regular election thereafter; if the terms of two directors expire at the time of said regular election, three directors shall be elected to serve until the third regular election thereafter and one director shall be elected to serve a term the expiration of which coincides with the expiration of the term of the director heretofore singly elected. [C51,§1112; R60, §§2031, 2035, 2075; C73,§§1720, 1721, 1808; C97, §§2752, 2754; S13,§§2752, 2754; C24,§§4198, 4212; C27,§§4198, 4211-b3,-b5; C31, 35,§4216-c23; C39, §4216.23; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.23]

Referred to in §275.25

277.24 Repealed by 63GA, ch 1025,§40.

277.25 Directors in new districts. At the first election in newly organized districts the directors shall be elected as follows:

1. In districts having three directors, one director shall be elected for one year, one for two years, and one for three years.

2. In districts having five directors, two shall be elected for one year, two for two years, and one for three years.

3. In districts having seven directors, two shall be elected for one year, two for two years, and three for three years. [C73,§1802; C97,§2754; S13,§2754; C24, 27,§4199; C31, 35,§4216-c25; C39,§4216.25; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.25]

277.26 Repealed by 66GA, ch 81,§154.

277.27 Qualification. A school officer or member of the board shall, at the time of election or appointment, be an eligible elector of the corporation or subdistrict. Notwithstanding any contrary provision of the Code, no member of the board of directors of any school district, or his or her spouse, shall receive compensation directly from the school board. No director or spouse affected by this provision on July 1, 1972, whose term of office for which elected has not expired, or whose contract of employment has a fixed date of expiration and has not expired, shall be affected by this provision until the expiration of the term of office to which elected, or the expiration date of the contract for which employed. [C97,§2748; C24, 27,§4213; C31, 35,§4216-c27; C39,§4216.27; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.27]

277.28 Oath required. Each director elected at a regular district or director district election, as the case may be, shall qualify by taking the oath of office on or before the time set for the organization meeting of the board the third Monday in September, and his election and qualification entered of record by the secretary. The oath may be administered by any qualified member of the board or the secretary of the board and may be taken in substantially the following form:

"Do you solemnly swear that you will support the Constitution of the United States and the Constitution of the state of Iowa and that you will faithfully and impartially to the best of your ability discharge the duties of the office of ..... (naming the office) in ..... (naming the district) as now or hereafter required by law?"

If the oath of office is taken elsewhere than in the presence of the board in session it may be administered by any officer listed in sections 78.1 and 78.2 and shall be subscribed to by the person taking it in substantially the following form:

"I, ..., do solemnly swear that I will support the Constitution of the United States and the Constitution of the state of Iowa and that I will faithfully and impartially to the best of my ability discharge the duties of the office of ..... (naming the office) in ..... (naming the district) as now or hereafter required by law."

Such oath shall be properly verified by the administering officer and filed with the secretary of the board. [C51,§§1113, 1120; R60, §§2032, 2079; C73,§§1752, 1790; C97,§2758; S13, §2758; C24, 27,§4214; C31, 35,§4216-c28; C39, §4216.28; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.28; 66GA, ch 1075,§62]

Referred to in §§279.3, 279.6, 279.7, 280A.15

277.29 Vacancies. Failure to elect at the proper election or to appoint within the time fixed by law or the failure of the officer elected or appointed to qualify within the time prescribed by law; the incumbent ceasing for any reason to be a resident of the district or removing his or her residence from the subdistrict; the resignation or death of incumbent or of the officer-elect; the removal of the incumbent from, or forfeiture of, his office, or the decision of a competent tribunal declaring his office vacant; the conviction of incumbent of an infamous crime or of any public offense involving the violation of his oath of office, shall constitute a vacancy. [C31, 35,§4216-c29; C39,§4216.29; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.29; 66GA, ch 81,§130]

Referred to in §§18.140, 273.8, 280A.12

277.30 Vacancies filled by election. When vacancies are to be filled by election, the provisions of section 69.12 shall control. [C73, §1802; C97,§2754; S13,§2754; C24, 27,§4199; C31, 35,§4216-c30; C39,§4216.30; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.30; 66GA, ch 81,§131]

277.31 Surrendering office. Each school officer or member of the board upon the termination of his term of office shall immediately surrender to his successor all books, papers, and moneys pertaining or belonging to the office, taking a receipt therefor. [R60,§2080; C73, §1791; C97,§2770; C24, 27,§4215; C31, 35,§4216-c31; C39,§4216.31; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.31]

277.32 Penalties. Any school officer willfully violating any law relative to common schools, or willfully failing or refusing to per-

form any duty imposed by law, shall forfeit and pay into the treasury of the particular school corporation in which the violation occurs the sum of twenty-five dollars, action to recover which shall be brought in the name of the proper school corporation, and be applied to the use of the schools therein. [C51,§1137; R60,§§2047, 2081; C73,§§1746, 1786; C97,§2822; C24, 27,§4216; C31, 35,§4216-c32; C39,§4216.32; C46, 50, 54, 58, 62, 66, 71, 73, 75,§277.32]

277.33 Transferred to §277.3.

277.34 Repealed by 65GA, ch 136,§401.

CHAPTER 278

POWERS OF ELECTORS

Referred to in §442.13

278.1 Enumeration.
278.2 Submission of proposition.
278.3 Power given electors not to limit directors' power.

278.1 Enumeration. The voters at the regular election shall have power to:

1. Direct a change of textbooks regularly adopted.

2. Direct the sale, lease, or other disposition of any schoolhouse or site or other property belonging to the corporation, and the application to be made of the proceeds thereof, provided, however, that nothing herein shall be construed to prevent the sale, lease, exchange, gift or grant and acceptance of any interest in real or other property by the board of directors without an election to the extent authorized in section 297.22.

3. Determine upon additional branches that shall be taught.

4. Instruct the board that school buildings may or may not be used for meetings of public interest.

5. Direct the transfer of any surplus in the schoolhouse fund to the general fund.

6. Authorize the board to obtain, at the expense of the corporation, roads for proper access to its schoolhouses.

7. Vote a schoolhouse tax, not exceeding sixty-seven and one-half cents per thousand dollars of assessed value in any one year, for the purchase of grounds, construction of schoolhouses or buildings, the payment of debts contracted for the erection or construction of schoolhouses or buildings, not including interest on bonds, for procuring or acquisition of libraries, for opening roads to schoolhouses or buildings, for the purchase of buildings or equipment for buildings or schoolhouses, for the purpose of repairing, remodeling, reconstructing, improving or expanding the schoolhouses or buildings for the school district, for the purpose of landscaping, paving, or improving the schoolhouse or building grounds, or for the rental of facilities pursuant to chapter 28E. Interest earned from investments of these funds may be used for the purposes voted. The power to levy said tax, when voted, shall continue for such period of time as may be authorized by the voters and shall not be affected by any change in the boundaries of the school district, in whatever manner effected, except in case the school district is reorganized pursuant to sections 275.12 to 275.22. Authorized levies for the period of time presently approved shall not be affected as a result of a failure of a proposition proposed to expand the purposes for which the funds may be expended. As used in this subsection, "repair" means to restore the existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance or customary repainting; and "reconstruction" means to rebuild or to restore again as an entity the thing which was lost or destroyed.

Referred to in §§274.37, 279.26

8. Authorize a change to either five or seven directors. The proposition for the change shall specify the number of directors to be elected, and which of the methods of election authorized by section 275.12, subsection 2 is to be used if the change is approved by the voters.

9. Authorize the establishment or abandonment of director districts or a change of boundaries of director districts. If a proposition submitted to the voters under this subsection is rejected, it may not be resubmitted to the voters of the district in substantially the same form within the next three years; if it is approved, no other proposal may be submitted to the voters of the district under this subsection within the next six years.

10. Change the name of the school district, without affecting its corporate existence, rights, or obligations, and subject to the requirements of section 274.6.

The board may, with approval of sixty percent of the voters, voting in a regular or special election in the school district, make extended time contracts not to exceed twenty years in duration for rental of buildings to supplement existing schoolhouse facilities; and

where it is deemed advisable for buildings to be constructed or placed on real estate owned by the school district, such contracts may include lease-purchase option agreements, such amounts to be paid out of the schoolhouse fund.

Before entering into a rental or lease-purchase option contract, authorized by the electors, the board shall first adopt plans and specifications for a building or buildings which it considers suitable for the intended use and also adopt a form of rental or lease-purchase option contract. The board shall then invite bids thereon, by advertisement published once each week for two consecutive weeks, in a newspaper published in the county in which the building or buildings are to be located, and the rental or lease-purchase option contract shall be awarded to the lowest responsible bidder, but the board may reject any and all bids and advertise for new bids.

The voters at the regular or special election shall have power to vote a **schoolhouse tax** not exceeding one dollar and thirty-five cents per thousand dollars of assessed value in any one year providing for lease-purchase option of school buildings. [C51,§1115; R60,§§2028, 2033; C73,§§1717, 1807; C97,§2749; C24, 27, 31, 35, 39,§**4217**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§278.1; 66GA, ch 81,§132, ch 156,§1, ch 1056,§16]

Referred to in §§274.37, 278.2, 278.3, 279.26, 283A.9, 297.25

278.2 Submission of proposition. The board may, and upon the written request of twenty-five eligible electors of any district having a population of five thousand or less, or of fifty eligible electors of any other district, shall direct the county commissioner of elections to provide in the notice of the regular election for submitting any proposition authorized by law to the voters. However, when the board has directed the commissioner to submit to the voters a proposition authorized by section 278.1, subsections 9 or 10, it shall not thereafter direct him to submit at the same election any other proposition under either of these subsections. [R60,§2028; C97,§2749; C24, 27, 31, 35, 39,§**4218**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§278.2; 66GA, ch 81,§133]

278.3 Power given electors not to limit directors' power. The power vested in the electors by section 278.1 shall not affect or limit the power granted to the board of directors of a school district in section 297.7, subsection 2, and the authority granted in said subsection shall be construed as independent of the power vested in the electors by section 278.1. [C75,§278.3]

CHAPTER 279

DIRECTORS—POWERS AND DUTIES

Referred to in §280A.23(4)

279.1 Organization.
279.2 Special meetings.
279.3 Appointment of secretary and treasurer.
279.4 Quorum.
279.5 Temporary officers.
279.6 Vacancies—qualification—tenure.
279.7 Vacancies filled by special election—qualification—tenure.
279.8 General rules—bonds of employees.
279.9 Use of tobacco.
279.10 School year.
279.11 Number of schools—attendance—terms.
279.12 Contracts—election of teachers.
279.13 Contracts with teachers—automatic continuation.
279.14 Evaluation criteria and procedures.
279.15 Notice of termination—request for hearing.
279.16 Private hearing—decision—record.
279.17 Appeal by teacher to adjudicator.
279.18 Appeal by either party to court.
279.19 Probationary period.
279.20 Superintendent—term.
279.21 Principals.
279.22 Reserved.
279.23 Continuing contract for administrators.
279.24 Contract with administrators—automatic continuation or termination.
279.25 Discharge of administrator.
279.26 Lease arrangements.
279.27 Discharge of teacher.
279.28 Insurance—supplies—textbooks.
279.29 Claims.
279.30 Exceptions.
279.31 Settlement with treasurer.
279.32 Compensation of officers.
279.33 Annual settlements.
279.34 Financial statement—publication.
279.35 Other districts—filing statement.
279.36 Summary of warrants published.
279.37 Employment of counsel.
279.38 Membership in association of school boards.
279.39 Repealed by 65GA, ch 1168,§20.
279.40 Sick leave.
279.41 Schoolhouses and sites sold—funds.
279.42 Gifts to schools.

279.1 Organization. The board of directors of each school corporation shall meet and organize at two o'clock p.m., or at seven-thirty o'clock p.m., if so ordered by the president of the board, on the third Monday in September each year at some suitable place to be

designated by the secretary. Notice of the place and hour of such meeting shall be given by the secretary to each member and each member-elect of the board.

Such organization shall be effected by the election of a president from the members of the board, who shall be entitled to vote as a member. [C51,§1119; R60,§2036; C73,§§1721, 1722; C97,§2757; SS15,§2757; C24, 27, 31, 35, 39, §4220; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.1]

Referred to in §275.37

40ExGA, SF 101,§17, editorially divided

279.2 Special meetings. Such special meetings may be held as may be determined by the board, or called by the president, or by the secretary upon the written request of a majority of the members of the board, upon notice specifying the time and place, delivered to each member in person, or by registered letter, but attendance shall be a waiver of notice. [C51,§1121; R60,§2036; C73,§1722; C97,§2757; SS15,§2757; C24, 27, 31, 35, 39,§4221; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.2]

279.3 Appointment of secretary and treasurer. At a regular or special meeting of the board held in July prior to or on July 15 the board shall appoint a secretary who shall not be a teacher or other employee of the board. It shall also appoint a treasurer. These officers shall be appointed from outside the membership of the board for terms of one year beginning with the date of appointment, and the appointment and qualification shall be entered of record in the minutes of the secretary. They shall qualify within ten days following appointment by taking the oath of office in the manner required by section 277.28 and filing a bond as required by section 291.2 and shall hold office until their successors are appointed and qualified. [C51,§1119; R60, §2035; C73,§1721; C97,§2757; SS15,§2757; C24, 27, 31, 35, 39,§4222; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.3; 66GA, ch 81,§134, ch 158,§1]

279.4 Quorum. A majority of the board of directors of any school corporation shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. [C51,§1120; R60,§§2037, 2038, 2079; C73, §§1730, 1738; C97,§§2758, 2771, 2772; S13,§§2758, 2771, 2772; C24, 27, 31, 35, 39,§4223; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.4]

42GA, ch 87,§1, editorially divided

279.5 Temporary officers. The board shall appoint a temporary president or secretary, in the absence of the regular officers. [C51,§1120; R60,§§2037, 2038, 2079; C73,§§1730, 1738; C97, §§2758, 2771, 2772; S13,§§2758, 2771, 2772; C24, §4223; C27, 31, 35,§4223-a1; C39,§4223.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.5]

279.6 Vacancies — qualification — tenure. Vacancies occurring among the officers or members of a school board shall be filled by the board by appointment. A person so appointed to fill a vacancy in an elective office shall hold office until a successor is elected and qualified pursuant to section 69.12. A person appointed to fill a vacancy in an appointive office shall hold such office for the residue of the unexpired term and until his successor is appointed and qualified. Any person so appointed shall qualify within ten days thereafter in the manner required by section 277.28.

However, if a member of a school board resigns from the board prior to the time for filing nomination papers for office as a school board member, as provided in section 277.4, and he specifies in his resignation that the resignation will be effective on the date the next term of office for elective school officials begins, the president of the board shall declare the office vacant as of that date and nomination papers shall be received for the unexpired term of the resigning member. The person elected at the next regular school election to fill the vacancy shall take office at the same time and place as the other elected school board members. [C51,§1120; R60,§§2037, 2038, 2079; C73,§§1730, 1738; C97,§§2758, 2771, 2772; S13,§§2758, 2771, 2772; C24,§4223; C27, 31, 35, §4223-a2; C39,§4223.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.6; 66GA, ch 81,§135]

Referred to in §275.25

279.7 Vacancies filled by special election—qualification—tenure. In any case where a vacancy or vacancies occur among the elective officers or members of a school board and the remaining members of such board have not filled such vacancy within ten days after the occurrence thereof, or when the board is reduced below a quorum for any cause, the secretary of the board, or if there be no secretary, the area education agency administrator shall call a special election in the district, subdistrict, or subdistricts, as the case may be, to fill such vacancy or vacancies. The county commissioner of elections shall publish the notices required by law for such special elections, which election shall be held not sooner than thirty days nor later than forty days after the tenth day following the occurrence of the vacancy. In any case where the secretary fails for more than three days to call such election, the administrator shall call it.

Any appointment by the board to fill any vacancy in an elective office on or after the day notice has been given for a special election to fill such vacancy as provided herein shall be null and void.

In any case of a special election as provided herein to fill a vacancy occurring among the elective officers or members of a school board before the expiration of a full term, the person so elected shall qualify within ten days thereafter in the manner required by section 277.28 and shall hold office for the residue of the unexpired term and until his successor is elected, or appointed, and qualified.

Nomination petitions shall be filed in the manner provided in section 277.4, except that the petitions shall be filed not less than ten days prior to the date set for the election. [C51,§1120; R60,§§2037, 2038, 2079; C73,§§1730,

1738; C97,§§2758, 2771, 2772; S13,§§2758, 2771, 2772; C24,§4223; C27, 31, 35,§4223-b1; C39,§**4223.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.7]

Referred to in §275.25

279.8 General rules—bonds of employees. The board shall make rules for its own government and that of the directors, officers, teachers and pupils, and for the care of the schoolhouse, grounds, and property of the school corporation, and aid in the enforcement of the same, and require the performance of duties by said persons imposed by law and the rules.

Employees of a school corporation maintaining a high school who have the custody of funds belonging to the corporation or funds derived from extracurricular activities and other sources in the conduct of their duties, shall be required to furnish suitable bond indemnifying the corporation or any activity group connected with the school against loss, and employees who have the custody of property belonging to the corporation or any activity group connected with the school may be required to furnish such bond. Said bond or bonds may be in such form and penalty as the board may approve and the premiums on same shall be paid from the general fund of the corporation. [R60,§2037; C97,§2772; S13, §2772; C24, 27, 31, 35, 39,§**4224**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.8]

40ExGA, SF 101,§21, editorially divided

279.9 Use of tobacco. Such rules shall prohibit the use of tobacco and the use or possession of alcoholic liquor or beer or any controlled substance as defined in section 204.101, subsection 6, by any student of such schools and the board may suspend or expel any student for any violation of such rule. [S13, §2772; C24, 27, 31, 35, 39,§**4225**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.9]

Referred to in §280A.23

279.10 School year. The school year shall begin on the first of July and each school regularly established shall continue for at least thirty-six weeks of five school days each and may be maintained during the entire calendar year. [R60,§§2023, 2037; C73,§§1724, 1727; C97, §2773; S13,§2773; C24, 27, 31, 35, 39,§**4226**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.10]

279.11 Number of schools—attendance—terms. The board of directors shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, determine the particular school which each child shall attend, and designate the period each school shall be held beyond the time required by law. [R60,§§2023, 2037; C73,§§1724, 1727; C97,§2773; S13,§2773; C24, 27, 31, 35, 39,§**4227**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.11]

279.12 Contracts—election of teachers. The board shall carry into effect any instruction from the regular election upon matters within the control of the voters, and shall elect all teachers and make all contracts necessary or proper for exercising the powers granted and performing the duties required by law, and may establish and pay all or any part thereof from school district funds the cost of group health insurance plans, nonprofit group hospital service plans, nonprofit group medical service plans and group life insurance plans adopted by the board for the benefit of employees of the school district, but the board may authorize any subdirector to employ teachers for the school in his subdistrict; but no such employment by a subdirector shall authorize a contract, the entire period of which is wholly beyond his term of office.

The board may approve a policy for educational leave for certificated school employees and for reimbursement for tuition paid by certificated school employees for courses approved by the board. For the purpose of this section "educational leave" means a leave granted to an employee for the purpose of study including study in areas outside of a teacher's area of specialization, travel, or other reasons deemed by the board to be of value to the school system. [C73,§§1723, 1757; C97,§2778; SS15,§2778; C24, 27, 31, 35, 39,§**4228**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.12; 66GA, ch 1150,§1]

279.13 Contracts with teachers—automatic continuation.

1. Contracts with teachers, which for the purpose of this section means all certificated employees of a school district and nurses employed by the board, excluding superintendents, assistant superintendents, principals, and assistant principals, shall be in writing and shall state the number of contract days, the annual compensation to be paid, and any other matters as may be mutually agreed upon. The contract may include employment for a term not exceeding the ensuing school year, except as otherwise authorized.

The contract is invalid if the teacher is under contract with another board of directors to teach during the same time period until a release from the other contract is achieved. The contract shall be signed by the president of the board when tendered, and after it is signed by the teacher, the contract shall be filed with the secretary of the board before the teacher enters into performance under the contract.

2. The contract shall remain in force and effect for the period stated in the contract and shall be automatically continued for equivalent periods except as modified or terminated by mutual agreement of the board of directors and the teacher or as terminated in accordance with the provisions specified in this chapter. A contract shall not be offered by the employing board to a teacher under its jurisdiction prior to March 15 of any year. A teacher who has not accepted a contract for the ensuing school year tendered by the employing board may resign effective at the end of the current school year by filing a written

resignation with the secretary of the board. The resignation must be filed not later than the last day of the current school year or the date specified by the employing board for return of the contract, whichever date occurs first. However, a teacher shall not be required to return a contract to the board or to resign less than twenty-one days after the contract has been offered. [R60,§2055; C73, §1757; C97,§2778; SS15,§2778; C24, 27, 31, 35, 39,§4229; C46, 50, 54, 58, 62, 66, 71, 73, 75, §279.13; 66GA, ch 1151,§1]

Referred to in §§273.3, 279.21, 279.23
66GA, ch 1151,§1 editorially divided

279.14 Evaluation criteria and procedures. The board shall establish evaluation criteria and shall implement evaluation procedures. If an exclusive bargaining representative has been certified, the board shall negotiate in good faith with respect to evaluation procedures pursuant to chapter 20. [66GA, ch 1151,§1]

279.15 Notice of termination — request for hearing.

1. The superintendent or the superintendent's designee shall notify the teacher not later than March 15 that the superintendent will recommend in writing to the board at a regular or special meeting of the board held not later than March 31 that the teacher's continuing contract be terminated effective at the end of the current school year.

2. Such notification shall be in writing and shall be personally delivered to the teacher, or mailed by certified mail. The notification shall be complete when received by the teacher. The notification and the recommendation to terminate shall contain a short and plain statement of the reasons, which shall be for just cause, why the recommendation is being made. The notification shall be given at or before the time the recommendation is given to the board.

As a part of the termination proceedings, the teacher's complete personnel file of employment by that board shall be available to the teacher, which file shall contain a record of all periodic evaluations between the teacher and appropriate supervisors.

Within five days of the receipt of the written notice that the superintendent is recommending termination of the contract, the teacher may request, in writing to the secretary of the board, a private hearing with the board. The private hearing shall not be subject to chapter 28A and shall be held no sooner than ten days and no later than twenty days following the receipt of the request unless the parties otherwise agree. The secretary of the board shall notify the teacher in writing of the date, time, and location of the private hearing, and at least five days before the hearing shall also furnish to the teacher any documentation which may be presented to the board at the private hearing and a list of persons who may address the board in support of the superintendent's recommendation at the private hearing. At least three days before the hearing, the teacher shall provide any documentation he or she expects to present at the private hearing, along with the names of any persons who may address the board on behalf of the teacher. This exchange of information shall be at the time specified unless otherwise agreed. [R60,§2055; C73,§1757; C97,§2778; SS15, §2778; C24, 27, 31, 35, 39,§4229; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.13; 66GA, ch 1115,§1]

Referred to in §§279.19, 279.27

279.16 Private hearing — decision — record. The participants at the private hearing shall be at least a majority of the members of the board, their legal representatives, if any, the superintendent, the superintendent's designated representatives, if any, the teacher's immediate supervisor, the teacher, the teacher's representatives, if any, and the witnesses for the parties. The evidence at the private hearing shall be limited to the specific reasons stated in the superintendent's notice of recommendation of termination. No participant in the hearing shall be liable for any damages to any person if any statement at the hearing is determined to be erroneous as long as the statement was made in good faith. The superintendent shall present evidence and argument on all issues involved and the teacher may cross-examine, respond and present evidence and argument in his or her behalf relevant to all issues involved. Evidence may be by stipulation of the parties and informal settlement may be made by stipulation, consent, or default or by any other method agreed upon by the parties in writing. The board shall employ a certified shorthand reporter to keep a record of the private hearing. The proceedings or any part thereof shall be transcribed at the request of either party with the expense of transcription charged to the requesting party.

The presiding officer of the board may administer oaths in the same manner and with like effect and under the same penalties as in the case of magistrates exercising criminal or civil jurisdiction. The board shall cause subpoenas to be issued for such witnesses and the production of such books and papers as either the board or the teacher may designate. The subpoenas shall be signed by the presiding officer of the board.

In case a witness is duly subpoenaed and refuses to attend, or in case a witness appears and refuses to testify or to produce required books or papers, the board shall, in writing, report such refusal to the district court of the county in which the administrative office of the school district is located, and the court shall proceed with the person or witness as though the refusal had occurred in a proceeding legally pending before the court.

The board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, but it shall hold the hearing in such manner as is best suited to ascertain and conserve the

substantial rights of the parties. Process and procedure under this section shall be as summary as reasonably may be.

At the conclusion of the private hearing, the superintendent and the teacher may file written briefs and arguments with the board within three days or such other time as may be agreed upon.

If the teacher fails to timely request a private hearing or does not appear at the private hearing, the board may proceed and make a determination upon the superintendent's recommendation, which determination in that case shall be not later than April 10, or not later than five days after the scheduled date for the private hearing, whichever is applicable. The board shall convene in open session and by roll call vote determine the termination or continuance of the teacher's contract.

Within five days after the private hearing, the board shall, in executive session, meet to make a final decision upon the recommendation and the evidence as herein provided. The board shall also consider any written brief and arguments submitted by the superintendent and the teacher.

The record for a private hearing shall include:

1. All pleadings, motions and intermediate rulings.

2. All evidence received or considered and all other submissions.

3. A statement of all matters officially noticed.

4. All questions and offers of proof, objections and rulings thereon.

5. All findings and exceptions.

6. Any decision, opinion, or conclusion by the board.

7. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

The decision of the board shall be in writing and shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts and supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

When the board has reached a decision, opinion, or conclusion, it shall convene in open meeting and by roll call vote determine the continuance or discontinuance of the teacher's contract. The record of the private conference and findings of fact and exceptions shall be exempt from the provisions of chapter 68A. The secretary of the board shall immediately mail notice of the board's action to the teacher. [66GA, ch 1151,§1]

Referred to in §§279.19, 279.27

279.17 Appeal by teacher to adjudicator. If the teacher is no longer a probationary teacher, the teacher may, within ten days, appeal the determination of the board to an adjudicator by filing a notice of appeal with the secretary of the board. The notice of appeal shall contain a concise statement of the action which is the subject of the appeal, the particular board action appealed from, the grounds on which relief is sought and the relief sought.

Within five days following receipt by the secretary of the notice of appeal, the board or the board's legal representative, if any, and the teacher or the teacher's representative, if any, may select an adjudicator who resides within the boundaries of the merged area in which the school district is located. If an adjudicator cannot be mutually agreed upon within the five-day period, the secretary shall notify the chairperson of the public employment relations board by transmitting the notice of appeal, and the chairperson of the public employment relations board shall within five days provide a list of five adjudicators to the parties. Within three days from receipt of the list of adjudicators, the parties shall select an adjudicator by alternately removing a name from the list until only one name remains. The person whose name remains shall be the adjudicator. The parties shall determine by lot which party shall remove the first name from the list submitted by the chairperson of the public employment relations board. The secretary of the board shall inform the chairperson of the public employee relations board of the name of the adjudicator selected.

If the teacher does not timely request an appeal to an adjudicator the decision, opinion, or conclusion of the board shall become final and binding.

Within thirty days after filing the notice of appeal, or within further time allowed by the adjudicator, the board shall transmit to the adjudicator the original or a certified copy of the entire record of the private hearing which may be the subject of the petition. By stipulation of the parties to review the proceedings, the record of the case may be shortened. The adjudicator may require or permit subsequent corrections or additions to the shortened record.

The record certified and filed by the board shall be the record upon which the appeal shall be heard and no additional evidence shall be heard by the adjudicator. In such appeal to the adjudicator, especially when considering the credibility of witnesses, the adjudicator shall give weight to the fact findings of the board; but shall not be bound by them.

Before the date set for hearing a petition for review of board action, which shall be within ten days after receipt of the record unless otherwise agreed or unless the adjudicator orders additional evidence be taken before the board, application may be made to the adjudicator for leave to present evidence in addition to that found in the record of the case. If it is shown to the adjudicator that the additional evidence is material and that

there were good reasons for failure to present it in the private hearing before the board, the adjudicator may order that the additional evidence be taken before the board upon conditions determined by the adjudicator. The board may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions, with the adjudicator and mail copies of the new findings or decisions to the teacher.

The adjudicator may affirm board action or remand to the board for further proceedings. The adjudicator shall reverse, modify, or grant any appropriate relief from the board action if substantial rights of the teacher have been prejudiced because the board action is:

1. In violation of a board rule or policy or contract; or

2. Unsupported by a preponderance of the competent evidence in the record made before the board when that record is viewed as a whole; or

3. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

The adjudicator shall, within fifteen days after the hearing, make a decision and shall give a copy of the decision to the teacher and the secretary of the board. The decision of the adjudicator shall become the final and binding decision of the board unless either party within ten days notifies the secretary of the board that the decision is rejected. The board may reject the decision by majority vote, by roll call, in open meeting and entered into the minutes of the meeting. The board shall immediately notify the teacher of its decision by certified mail. The teacher may reject the adjudicator's decision by notifying the board's secretary in writing within ten days of the filing of such decision.

All costs of the adjudicator shall be shared equally by the teacher and the board. [66GA, ch 1151,§1]

Referred to in §279.27

279.18 Appeal by either party to court. If either party rejects the adjudicator's decision, the rejecting party shall, within thirty days of the initial filing of such decision, appeal to the district court of the county in which the administrative office of the school district is located. The notice of appeal shall be immediately mailed by certified mail to the other party. The adjudicator shall transmit to the reviewing court the original or a certified copy of the entire record which may be the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the shortened record.

In proceedings for judicial review of the adjudicator's decision, the court shall not hear any further evidence but shall hear the case upon the certified record. In such judicial review, especially when considering the credibility of witnesses, the court shall give weight to the fact findings of the board; but shall not be bound by them. The court may affirm the adjudicator's decision or remand to the adjudicator or the board for further proceedings upon conditions determined by the court. The court shall reverse, modify, or grant any other appropriate relief from the board decision or the adjudicator's decision equitable or legal and including declaratory relief if substantial rights of the petitioner have been prejudiced because the action is:

1. In violation of constitutional or statutory provisions; or

2. In excess of the statutory authority of the board or the adjudicator; or

3. In violation of a board rule or policy or contract; or

4. Made upon unlawful procedure; or

5. Affected by other error of law; or

6. Unsupported by a preponderance of the competent evidence in the record made before the board and the adjudicator when that record is viewed as a whole; or

7. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

An aggrieved or adversely affected party to the judicial review proceeding may obtain a review of any final judgment of the district court by appeal to the supreme court. The appeal shall be taken as in other civil cases, although the appeal may be taken regardless of the amount involved. [66GA, ch 1151,§1]

Referred to in §§257.25, 279.27
Section 279.18, Code 1975, repealed by 66GA, ch 1153,§6

279.19 Probationary period. The first two consecutive years of employment of a teacher in the same school district are a probationary period. However, a board of directors may waive the probationary period for any teacher who previously has served a probationary period in another school district and the board may extend the probationary period for an additional year with the consent of the teacher.

In the case of the termination of a probationary teacher's contract, the provisions of sections 279.15 and 279.16 shall apply.

The board's decision shall be final and binding unless the termination was based upon an alleged violation of a constitutionally guaranteed right of the teacher or an alleged violation of public emyloyee rights of the teacher under section 20.10. [66GA, ch 1151,§1]

Referred to in §279.27

279.20 Superintendent—term. The board of directors of any school district shall have power to employ a superintendent of schools for one year. After serving at least seven months, he may be employed for a term of not to exceed three years. He shall be the executive officer of the board and have such powers and duties as may be prescribed by rules adopted by the board or by law. Boards of

directors may jointly exercise the powers conferred by this section. [R60,§2037; C73,§1726; C97,§2776; SS15,§2778; C24, 27, 31, 35, 39,§**4230**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.14]

Referred to in §273.3

279.21 Principals. The board of directors of a school district may employ principals, under the provisions of section 279.13. A principal shall hold a current valid principal's certificate. Notwithstanding the provisions of section 279.13, after serving at least nine months, a principal may be employed for a term of not to exceed two years.

The principal, under the supervision of the superintendent of the school district and pursuant to rules and policies of the board of directors of the school district, shall be responsible for administration and operation of the attendance center to which he is assigned.

The principal shall, pursuant to the policies adopted by the board of directors of the school district, be responsible for the planning, management, operation, and evaluation of the educational program offered at the attendance center to which the principal is assigned and shall submit recommendations to the superintendent regarding the appointment, assignment, promotion, transfer and dismissal of all personnel assigned to the attendance center. The principal shall perform such other duties as may be assigned by the superintendent. [66GA, ch 157,§1]

279.22 Reserved.

279.23 Continuing contract for administrators. Contracts with administrators shall be in writing and shall contain all of the following:

1. The term of employment.
2. The length of time during the school year services are to be performed.
3. The compensation per week of five consecutive days or month of four consecutive weeks.
4. A statement that the contract is invalid if the administrator is under contract with another board of directors in this state covering the same period of time, until such contract shall have been released or terminated by its provisions.
5. Such other matters as may be agreed upon.

The contract shall be signed by the president and the administrator and shall be filed with the secretary of the board before the administrator enters upon performance of the contract. A contract shall not be tendered by an employing board to an administrator under its jurisdiction prior to March fifteenth. A contract shall not be required to be signed by the administrator and returned to the board in less than twenty-one days after being tendered.

An administrator's contract shall be governed by the provisions of this section and sections 279.24 and 279.25 and not by section 279.13. For purposes of this section and 279.24 and 279.25, the term "administrator" includes school superintendents, assistant superintendents, educational directors, principals, assistant principals, and other certified school supervisors as defined under the provisions of section 20.4. [66GA, ch 1149,§4]

Referred to in §273.3

279.24 Contract with administrators—automatic continuation or termination. An administrator's contract shall remain in force and effect for the period stated in the contract. The contract shall be automatically continued in force and effect for one year beyond the end of its term, except as modified or terminated by mutual agreement of the board of directors and the administrator, or until terminated as hereinafter provided.

An administrator may file his or her written resignation with the secretary of the board on or before May 1 of each year or the date specified by the board for return of the contract, whichever date occurs first.

Administrators employed in a school district for less than two consecutive years are probationary administrators. However, a board may waive the probationary period for any administrator who has previously served a probationary period in another school district and the board may extend the probationary period for an additional year with the consent of the administrator. If a board determines that it should terminate a probationary administrator's contract, the board shall notify the administrator not later than March 31 that the contract will not be renewed beyond the current year. The notice shall be in writing by letter, personally delivered, or mailed by certified mail. The notification shall be complete when received by the administrator. Within ten days after receiving the notice, the administrator may request a private conference with the board to discuss the reasons for termination. The board's decision to terminate a probationary administrator's contract shall be final unless the termination was based upon an alleged violation of a constitutionally guaranteed right of the administrator.

The board may, by majority vote of the membership of the board, cause the contract of an administrator to be terminated. If the board determines that it should consider the termination of a nonprobationary administrator's contract, the following procedure shall apply:

On or before March 31, the administrator shall be notified in writing by a letter personally delivered or mailed by certified mail that the board has voted to consider termination of the contract. The notification shall be complete when received by the administrator.

The notice shall state the specific reasons to be used by the board for considering termination which for all administrators except superintendents shall be for just cause.

Within five days after receipt of the written notice that the board has voted to consider termination of the contract, the administrator may request in writing to the secretary of the board that the notification be forwarded to

the professional teaching practices commission along with a request that the professional teaching practices commission submit a list of five qualified hearing officers to the parties. Within three days from receipt of the list the parties shall select a hearing officer by alternatively removing a name from the list until only one name remains. The person whose name remains shall be the hearing officer. The parties shall determine by lot which party shall remove the first name from the list. The hearing shall be held no sooner than ten days and not later than thirty days following the administrator's request unless the parties otherwise agree. If the administrator does not request a hearing, the board, not later than April 15, may determine the continuance or discontinuance of the contract. Board action shall be by majority roll call vote entered on the minutes of the meeting. Notice of board action shall be personally delivered or mailed to the administrator.

The hearing officer selected shall notify the secretary of the board and the administrator in writing concerning the date, time, and location of the hearing. The board may be represented by a legal representative, if any, and the administrator shall appear and may be represented by counsel or by representative, if any. A transcript or recording shall be made of the proceedings at the hearing. No school board member or administrator shall be liable for any damage to any administrator or board member if any statement made at the hearing is determined to be erroneous as long as the statement was made in good faith.

The hearing officer shall, within ten days following the date of the hearing, make a proposed decision as to whether or not the administrator should be dismissed, and shall give a copy of the proposed decision to the administrator and the school board. Findings of fact shall be prepared by the hearing officer. The proposed decision of the hearing officer shall become the final decision of the board unless within ten days after the filing of the decision the administrator files a written notice of appeal with the board, or the board on its own motion determines to review the decision.

If the administrator appeals to the board, or if the board determines on its own motion to review the proposed decision of the hearing officer, a private hearing shall be held before the board within five days after the petition for review, or motion for review, has been made or at such other time as the parties may agree. The private hearing shall not be subject to the provisions of chapter 28A. The board may hear the case de novo upon the record as submitted before the hearing officer. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the board, an opportunity shall be afforded to each party to file exceptions, present briefs and present oral arguments to the board which is to render the final decision. The secretary of the board shall give the administrator written notice of the time, place, and date of the hearing. The board shall meet within five days after the hearing to determine the question of continuance or discontinuance of the contract. The board shall make findings of fact which shall be based solely on the evidence in the record and on matters officially noticed in the record.

The decision of the board shall be in writing and shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts and supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

When the board has reached a decision, opinion, or conclusion, it shall convene in open meeting and by roll call vote determine the continuance or discontinuance of the administrator's contract. The record of the private conference and findings of fact and exceptions shall be exempt from the provisions of chapter 68A. The secretary of the board shall immediately personally deliver or mail notice of the board's action to the administrator.

The administrator may within thirty days after notification by the board of discontinuance of the contract appeal to the district court of the county in which the administrative office of the school district is located.

The court may affirm the board action. The court shall reverse, modify, or grant any other appropriate relief from the board action, equitable or legal, and including declaratory relief, if substantial rights of the administrator have been prejudiced because the board action is:

1. In violation of constitutional or statutory provisions.
2. In excess of the statutory authority of the board.
3. In violation of board policy or rule.
4. Made upon unlawful procedure.
5. Affected by other error of law.
6. Is unsupported by substantial evidence in the record made before the board when that record is reviewed as a whole.
7. Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

[66GA, ch 1149,§5]

Referred to in §§272A.8, 273.3, 279.23, 279.25

279.25 Discharge of administrator. An administrator may be discharged at any time during the contract year for just cause. The administrator shall be notified in writing that the board has voted to consider termination of the administrator's contract and the applicable procedures of section 279.24 shall apply. [66GA, ch 1149,§6]

Referred to in §§273.3, 279.23

279.26 Lease arrangements. The board of directors of a local school district for which a schoolhouse tax has been voted pursuant to section 278.1, subsection 7, may enter into a rental or lease arrangement, consistent with

the purposes for which the schoolhouse tax has been voted, for a period not exceeding ten years and not exceeding the period for which the schoolhouse tax has been authorized by the voters. [C75,§279.23]

279.27 Discharge of teacher. A teacher may be discharged at any time during the contract year for just cause. The superintendent or the superintendent's designee, shall notify the teacher immediately that the superintendent will recommend in writing to the board at a regular or special meeting of the board held not more than fifteen days after notification has been given to the teacher that the teacher's continuing contract be terminated effective immediately following a decision of the board. The procedure for dismissal shall be as provided in sections 279.15(2) to 279.19. The superintendent may suspend a teacher under this section pending hearing and determination by the board. [C73,§1734; C97,§2782; C24, 27, 31, 35, 39,§**4237**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.24; 66GA, ch 1151,§2]

Referred to in §257.24

279.28 Insurance—supplies—textbooks. It may provide and pay out of the general fund to insure school property such sum as may be necessary, and may purchase dictionaries, library books, including books for the purpose of teaching vocal music, maps, charts, and apparatus for the use of the schools thereof as deemed necessary by the board of directors for each school building under its charge; and may furnish schoolbooks to indigent children when they are likely to be deprived of the proper benefits of the school unless so aided. [C73,§1729; C97,§2783; S13,§2783; C24, 27, 31, 35, 39,§**4238**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.25]

279.29 Claims. The board shall audit and allow all just claims against the corporation, and no order shall be drawn upon the treasury until the claim therefor has been audited and allowed. In any district in which the board consists of five or more members, an audit made by one or more members of the board designated by the board or by a certified public accountant employed by the board, and certified to the board by such member or members of the board or by such accountant, shall satisfy the requirements of this section with respect to the audit of a claim. [C51,§§1146, 1149; R60,§§2037, 2038; C73,§§1732, 1733, 1738, 1813; C97,§2780; S13,§2780; C24, 27, 31, 35, 39, §**4239**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.26]

Exceptions, §11.21

279.30 Exceptions. Each warrant shall be made payable to the person entitled to receive such money. The board of directors of any school district may, however, by resolution of record authorize the secretary to issue warrants when said board of directors is not in session in payment of freight, drayage, express, postage, printing, water, light, and telephone rents, but only upon duly verified bills for same filed with the secretary, and for the payment of salaries pursuant to the terms of a written contract and said secretary shall either deliver in person or mail said warrants to the payee. Each such warrant shall be made payable only to the person performing the service or furnishing the supplies for which said warrant makes payment, and shall state the purpose for which said warrant is issued. All bills and salaries for which warrants are issued prior to audit and allowance by the board as provided herein shall be passed upon by the board of directors at the first meeting thereafter and shall be entered of record in the regular minutes of the secretary. [C35,§4239-g1; C39,§**4239.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.27]

279.31 Settlement with treasurer. The board shall from time to time examine the accounts of the treasurer and make settlements with him. [C51,§§1146, 1149; R60,§§2037, 2038; C73,§§1732, 1733, 1738, 1813; C97,§2780; S13,§2780; C24,§4239; C27, 31, 35,§4239-a1; C39, §**4239.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.28]

Referred to in §273.8

279.32 Compensation of officers. The board shall fix the compensation to be paid the secretary. No member of the board or treasurer shall receive compensation for official services, except that in consolidated districts that contain a city having a population less than one thousand, the board may pay a legally qualified school treasurer a reasonable compensation.

Actual and necessary expenses, including travel, incurred by the board or individual members thereof in the performance of official duties may be paid or reimbursed. [C51,§§1146, 1149; R60,§§2037, 2038; C73,§§1732, 1733, 1738, 1813; C97,§2780; S13,§2780; C24,§4239; C27, 31, 35,§4239-a3; C39,§**4239.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.29]

279.33 Annual settlements. At a regular or special meeting held in July prior to or on July 15, the board of each school corporation shall meet, examine the books of and settle with the secretary and treasurer for the year ending on the thirtieth day of June preceding, and transact such other business as may properly come before it. The treasurer at the time of such settlement shall furnish the board with a sworn statement from each depository showing the balance then on deposit in such depository. Should the secretary or treasurer fail to make proper reports for such settlement, the board shall take action to secure the same. [SS15,§2757; C24, 27, 31, 35, 39,§**4240**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.30; 66GA, ch 158,§2]

40ExGA, SF 101,§18, editorially divided

279.34 Financial statement—publication. In each school district, the board shall, during the second week of July of each year, publish by one insertion in at least one newspaper, if there is a newspaper published in said district, a summarized statement verified by affidavit of the secretary of the board showing the receipts

and disbursements of all funds for the preceding school year. In all such districts of more than one hundred twenty-five thousand population, the statement of disbursements is to show the names of the persons, firms, or corporations, and the total amount paid to each during the school year. [C51,§1146; R60,§2037; C73,§1732; C97,§2781; C24, 27, 31, 35, 39,§4242; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.32]

279.35 Other districts—filing statement. In every school district wherein no newspaper is published, the president and secretary of the board of directors thereof shall file the above statement with the area education agency administrator during the second week of July of each year and shall post copies thereof in three conspicuous places in the district. [C27, 31, 35,§4242-b1; C39,§4242.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.33]

279.36 Summary of warrants published. In each school district, except districts of over one hundred twenty-five thousand population, the board shall quarterly publish by one insertion in at least one newspaper published in the district, if there is a newspaper published in the district, a statement verified by affidavit of the secretary of the board showing a summary of the proceedings of the board pertaining to financial matters or expenses to the district for the previous quarter, including the list of all warrants issued by the board, the names of the persons, firms or corporations receiving same, the amount thereof and the reason therefor; except that warrants issued to persons regularly employed by the school district for services regularly performed by them need be listed not oftener than annually. The fee for publication of the statement provided for herein shall not exceed three-fifths of the legal publication fee provided by statute for the publication of legal notices. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.34]

279.37 Employment of counsel. In all cases where actions may be instituted by or against any school officer to enforce any provision of law, the board may employ counsel, for which the school corporation shall be liable. [R60, §2040; C73,§1740; C97,§2759; C24, 27, 31, 35, 39, §4245; C46, 50, 54, 58, 62, 66, 71, 73, 75,§279.35]

C97,§2759, editorially divided

279.38 Membership in association of school boards. Boards of directors of school corporations may pay, out of funds available to them, reasonable annual dues to an Iowa association of school boards.

Membership in such an Iowa association of school boards shall be limited to those duly elected members of the boards of directors of local school corporations. [C71, 73, 75,§279.37]

279.39 Bird Day Repealed by 65GA, ch 1168,§20.

279.40 Sick leave. Public school employees are granted leave of absence for medically related disability with full pay in the following minimum amounts:

1. The first year of employment....10 days.
2. The second year of employment ..11 days.
3. The third year of employment ..12 days.
4. The fourth year of employment ..13 days.
5. The fifth year of employment. ..14 days.
6. The sixth and subsequent years of employment .....15 days.

The above amounts shall apply only to consecutive years of employment in the same school district and unused portions shall be cumulative to at least a total of ninety days. The school board shall, in each instance, require such reasonable evidence as it may desire confirming the necessity for such leave of absence.

Nothing in this section shall be construed as limiting the right of a school board to grant more time than the days herein specified.

Cumulation of sick leave by virtue of this section shall not be affected or terminated by reason of the organization of a community school district or districts which include all or the portion of the district which employed the particular public school employee for the school year previous to such organization, if such employee is employed by one of such community school districts for the first school year following its organization.

Any amounts due an employee under this section shall be reduced by benefits payable under sections 85.33 and 85.34, subsection 1. [C50, 54, 58, 62, 66, 71, 73, 75,§279.40; 66GA, ch 1082,§§3, 4]

279.41 Schoolhouses and sites sold—funds. Any fund received from the condemnation, sale, or other disposition for public purposes of schoolhouses, school sites or both schoolhouses and school sites may be deposited in the schoolhouse fund and may without a vote of the electorate be used for the purchase of school sites or the erection or repair of schoolhouses or both as ordered by the board of directors of such school district, provided, however, that the board shall comply with section 297.7. [C62, 66, 71, 73, 75,§279.41]

279.42 Gifts to schools. The board of directors of any school district which receives funds through gifts, devises and bequests may utilize the same, unless limited by the terms of the grant, in the general or schoolhouse fund expenditures. [C66, 71, 73, 75, §279.42]

See also §565.6

CHAPTER 280

UNIFORM SCHOOL REQUIREMENTS

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280.2 Definitions.
280.3 Duties of board.
280.4 Medium of instruction.
280.5 Display of United States flag and Iowa state banner.
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280.7 Dental clinics.
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280.11 Ear-protective devices.
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280.13 Requirements for interscholastic contests and competitions.
280.14 School requirements.
280.15 Joint employment and sharing.

280.1 Title. This chapter may be known and shall be cited as the "Uniform School Requirements" chapter. [C75,§280.1]

280.2 Definitions. The term "public school" means any school directly supported in whole or in part by taxation. The term "nonpublic school" means any other school. [C24, 27, 31, 35, 39,§**4251**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§280.2]

280.3 Duties of board. The board of directors of each public school district and the authorities in charge of each nonpublic school shall prescribe the minimum educational program for the schools under their jurisdictions. The minimum educational program shall be the curriculum set forth in section 257.25, except as otherwise provided by law. The board of directors of a public school district shall not allow discrimination in any educational program on the basis of race, color, creed, sex, marital status or place of national origin.

A nonpublic school which is unable to meet the minimum educational program may request an exemption from the state board of public instruction. The authorities in charge of the nonpublic school shall file with the superintendent of public instruction the names and locations of all schools desiring to be exempted and the names, ages, and post office addresses of all pupils of compulsory school age who are enrolled. The superintendent, subject to the approval of the state board, may exempt the nonpublic school from compliance with the minimum educational program for two school years. When the exemption has once been granted, renewal of the exemption for each succeeding school year may be conditioned by the state superintendent, with the approval of the board, upon proof of achievement in the basic skills of arithmetic, the communicative arts of reading, writing, grammar, and spelling, and an understanding of United States history, history of Iowa, and the principles of American government, of the pupils of compulsory school age exempted in the preceding year. Proof of achievement shall be determined on the basis of tests or other means of evaluation prescribed by the superintendent of public instruction with the approval of the board of public instruction. The testing or evaluation, if required, shall be accomplished prior to submission of the request for renewal of the exemption. Renewal requests shall be filed with the superintendent of public instruction by April 15 of the school year preceding the school year for which the applicants desire exemption. This section shall not apply to schools eligible for exemption under section 299.24.

The board of directors of each public school district and the authorities in charge of each nonpublic school shall establish and maintain attendance centers based upon the needs of the school age pupils enrolled in the school district or nonpublic school. Kindergarten and prekindergarten programs may be provided. In addition, the board of directors or governing authority may include in the educational program of any school such additional courses, subjects, or activities which it deems fit the needs of the pupils. [C75,§280.3]

280.4 Medium of instruction. The medium of instruction in all secular subjects taught in both public and nonpublic schools shall be the English language, except when the use of a foreign language is deemed appropriate in the teaching of any subject. [C24, 27, 31, 35, 39,§**4254**; C46, 50, 54, 58, 62, 66, 71, 73,§280.5; C75,§280.4]

280.5 Display of United States flag and Iowa state banner. The board of directors of each public school district and the authorities in charge of each nonpublic school shall provide and maintain a suitable flagstaff on each school site under its control, and the United States flag and the Iowa state banner shall be raised on all school days when weather conditions are suitable. [S13,§§2804-a,-b; C24, 27, 31, 35, 39,§**4253**; C46, 50, 54, 58, 62, 66, 71, 73, §280.4; C75,§280.5]

Display of flags on public buildings, §31.3

280.6 Religious books. Religious books such as the Bible, the Torah, and the Koran shall not be excluded from any public school or institution in the state, nor shall any child be required to read such religious books contrary to the wishes of his parent or guardian.

[R60,§2119; C73,§1764; C97,§2805; C24, 27, 31, 35, 39,§4258; C46, 50, 54, 58, 62, 66, 71, 73,§280.9; C75,§280.6]

280.7 Dental clinics. Boards of directors in all public school districts may establish and maintain dental clinics for children and offer courses of instruction on mouth hygiene. The boards may employ such legally qualified dentists and dental hygienists as may be necessary to accomplish the purpose of this section. The cost of the dental clinic shall be paid from the general fund. [C24, 27, 31, 35, 39, §4260; C46, 50, 54, 58, 62, 66, 71, 73,§280.11; C75, §280.7]

280.8 Special education. The board of directors of each public school district shall make adequate educational provisions for each resident child requiring special education appropriate to the nature and severity of the child's handicapping condition pursuant to rules promulgated by the department under the provisions of chapters 273 and 281. [C71, 73,§280.22; C75,§280.8; 66GA, ch 153,§4]

280.9 Career education. The board of directors of each local public school district and the authorities in charge of each nonpublic school shall incorporate into the educational program the total concept of career education to enable students to become familiar with the values of a work-oriented society. Curricular and cocurricular teaching-learning experiences from the prekindergarten level through grade twelve shall be provided for all students currently enrolled in order to develop an understanding that employment may be meaningful and satisfying. However, career education does not mean a separate vocational-technical program is required. A vocational-technical program includes units or partial units in subjects which have as their purpose to equip students with marketable skills.

Essential elements in career education shall include, but not be limited to:

1. Awareness of self in relation to others and the needs of society.

2. Exploration of employment opportunities and experience in personal decision making.

3. Experiences which will help students to integrate work values and work skills into their lives. [C75,§280.9]

280.10 Eye-protective devices. Every student and teacher in any public or nonpublic school shall wear industrial quality eye-protective devices at all times while participating, and while in a room or other enclosed area where others are participating, in any phase or activity of a course which may subject the student or teacher to the risk or hazard of eye injury from the materials or processes used in any of the following courses:

1. Vocational or industrial arts shops or laboratories involving experience with any of the following:

a. Hot molten metals.

b. Milling, sawing, turning, shaping, cutting, grinding or stamping of any solid materials.

c. Heat treatment, tempering or kiln firing of any metal or other materials.

d. Gas or electric arc welding.

e. Repair or servicing of any vehicle while in the shop.

f. Caustic or explosive materials.

2. Chemical or combined chemical-physical laboratories involving caustic or explosive chemicals or hot liquids or solids when risk is involved. Visitors to such shops and laboratories shall be furnished with and required to wear the necessary safety devices while such programs are in progress.

It shall be the duty of the teacher or other person supervising the students in said courses to see that the above requirements are complied with. Any student failing to comply with such requirements may be temporarily suspended from participation in the course and the registration of a student for the course may be canceled for willful, flagrant or repeated failure to observe the above requirements.

The board of directors of each local public school district and the authorities in charge of each nonpublic school shall provide the safety devices required herein. Such devices may be paid for from the general fund, but the board may require students and teachers to pay for the safety devices and shall make them available to students and teachers at no more than the actual cost to the district or school.

"Industrial quality eye-protective devices", as used in this section, means devices meeting American National Standard, Practice for Occupational and Educational Eye and Face Protection promulgated by the American National Standards Institute, Inc.* [C66, 71, 73,§280.20; C75,§280.10]

*Acts 65GA, ch 1168, effective July 1, 1974

280.11 Ear-protective devices. Every student and teacher in any public or nonpublic school shall wear industrial quality ear-protective devices while the student or teacher is participating in any phase or activity of a course which may subject the student or teacher to the risk or hazard of hearing loss from noise in processes or procedures used in any of the following courses:

1. Vocational or industrial arts shops or laboratories involving experiences with any of the following:

a. Milling, sawing, turning, shaping, cutting, grinding or stamping of any solid materials.

b. Kiln firing of any metal or other materials.

c. Electric arc welding.

d. Repair or servicing of any vehicle while in shop.

e. Static tests, maintenance or repair of internal combustion engines.

f. Letter press, paper folders, monotype.

It shall be the duty of the teacher or other person supervising the students in said courses to see that the above requirements are complied with. Any student failing to comply with such requirements may be temporarily suspended from participation in the course and the registration of a student for the course may be canceled for willful, flagrant or repeated failure to observe the above requirements.

The board of directors of each local public school district and the authorities in charge of each nonpublic school shall provide the safety devices required herein. Such devices may be paid for from the general fund, but the board may require students and teachers to pay for the safety devices and shall make them available to students and teachers at no more than the actual cost to the district or school.

"Industrial quality ear-protective devices", as used in this section, means devices meeting the American National Standard for Measurement of the Real-Ear Attentuation of Ear Protectors at Threshold promulgated by the American National Standards Institute, Inc.*

"Noise" as used in this section, means a noise level that meets or exceeds damage-risk criteria established by the present* federal standard for occupational noise exposure, Occupational Safety and Health Standards. [C75,§280.11]

*Acts 65GA, ch 1168, effective July 1, 1974

280.12 Evaluation of educational program. The board of directors of each public school district and the authorities in charge of each nonpublic school shall:

1. Determine major educational needs and rank them in priority order.
2. Develop long-range plans to meet such needs.
3. Establish and implement continuously evaluated year-by-year short-range and intermediate-range plans to attain the desired levels of pupil achievement.
4. Maintain a record of progress under the plan.
5. Make such reports of progress as the superintendent of public instruction shall require. [C75,§280.12]

280.13 Requirements for interscholastic contests and competitions. No public school shall participate in or allow students representing a public school to participate in any extracurricular interscholastic contest or competition which is sponsored or administered by an organization as defined in this section, unless the organization is registered with the state department of public instruction, files financial statements with the state department in the form and at the intervals prescribed by the state board of public instruction, and is in compliance with rules and regulations which the state board of public instruction shall adopt for the proper administration, supervision, operation, adoption of eligibility requirements, and scheduling of such extracurricular interscholastic contests and competitions and such organizations. For the purposes of this section "organization" means any corporation, association, or organization which has as one of its primary purposes the sponsoring or administration of extracurricular interscholastic contests or competitions, but shall not include an agency of this state, a public or private school or school board, or an athletic conference or other association whose interscholastic contests or competitions do not include more than twenty schools. [C66, 71, 73,§257.25(10); C75,§280.13]

280.14 School requirements. The board or governing authority of each school or school district subject to the provisions of this chapter shall establish and maintain adequate administration, school staffing, personnel assignment policies, teacher qualifications, certification requirements, facilities, equipment, grounds, graduation requirements, instructional requirements, instructional materials, maintenance procedures and policies on extracurricular activities. In addition the board or governing authority of each school or school district shall provide such principals as it finds necessary to provide effective supervision and administration for each school and its faculty and student body. [C66, 71, 73,§257.25(11, 15); C75,§280.14]

Referred to in §442.13

280.15 Joint employment and sharing. Any two or more public school districts may jointly employ and share the services of any school personnel, or acquire and share the use of classrooms, laboratories, equipment and facilities. [C66, 71, 73,§257.25(16); C75,§280.15]

See also §257.26

CHAPTER 280A

AREA VOCATIONAL SCHOOLS AND COMMUNITY COLLEGES

Referred to in §§49.73, 273.2, 273.8, 282.6, 594A.7, 594A.9
Budgets of programs, see 65GA, ch 110,§6

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280A.38 Lease agreements for space.
280A.39 Combining merged areas—election.
280A.40 Area vocational school attendance center.

280A.1 Statement of policy. It is hereby declared to be the policy of the state of Iowa and the purpose of this chapter to provide for the establishment of not more than seventeen areas which shall include all of the area of the state and which may operate either area vocational schools or area community colleges offering to the greatest extent possible, educational opportunities and services in each of the following, when applicable, but not necessarily limited to:

1. The first two years of college work including preprofessional education.
2. Vocational and technical training.
3. Programs for in-service training and retraining of workers.
4. Programs for high school completion for students of post-high school age.
5. Programs for all students of high school age who may best serve themselves by enrolling for vocational and technical training while also enrolled in a local high school, public or private.
6. Student personnel services.
7. Community services.
8. Vocational education for persons who have academic, socio-economic, or other handicaps which prevent succeeding in regular vocational education programs.
9. Training, retraining, and all necessary preparation for productive employment of all citizens.
10. Vocational and technical training for persons who are not enrolled in a high school and who have not completed high school. [C66, 71, 73, 75,§280A.1]

Policy of state as to merging areas. See 63GA, ch 1118,§1.

280A.2 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Vocational school"* means a publicly supported school which offers as its curriculum or part of its curriculum vocational or technical education, training, or retraining available to persons who have completed or left high school and are preparing to enter the labor market; persons who are attending high school who will benefit from such education or training but who do not have the necessary facilities available in the local high schools; persons who have entered the labor market but are in need of upgrading or learning skills; and persons who due to academic, socio-economic, or other handicaps are prevented from succeeding in regular vocational or technical education programs.

2. *"Junior college"* means a publicly supported school which offers as its curriculum or part of its curriculum two years of liberal arts, preprofessional, or other instruction partially fulfilling the requirements for a baccalaureate degree but which does not confer any baccalaureate degree.

3. *"Community college"* means a publicly supported school which offers two years of liberal arts, preprofessional, or other instruction partially fulfilling the requirements for a baccalaureate degree but which does not confer any baccalaureate degree and which offers in whole or in part the curriculum of a vocational school.

4. *"Merged area"* means an area where two or more county school systems or parts thereof merge resources to establish and operate a vocational school or a community college in the manner provided in this chapter.

5. *"Area vocational school"* means a vocational school established and operated by a merged area.

6. *"Area community college"* means a community college established and operated by a merged area.

7. *"State board"* means the state board of public instruction.

8. *"State superintendent"* means the state superintendent of public instruction.

9. *"Planning board"* means any county board of education which is a party to a plan for establishment of an area vocational school or area community college.

10. *"Area school"* means an area vocational school or area community college established under the provisions of this chapter. [C66, 71, 73, 75,§280A.2]

Referred to in §321.283(7)

280A.3 Combination of school systems. Boards of education of two or more counties are hereby authorized to plan for the merger of county school systems, or parts thereof, for the purpose of providing an area vocational school or area community college. Such plans shall be effectuated only upon approval by the state board and by subsequent concurrent action of the county boards of education at special meetings, called for that purpose, or at the regular July meetings of the county boards. No area which has less than four thousand public and private pupils in grades nine through twelve shall be approved by the state board as a merged area. [C66, 71, 73, 75,§280A.3]

280A.4 Division of county systems. Upon recommendation of the county board of education and approval by the state board in an area plan, a county school system may be divided to permit parts of the system to merge with one or more merged areas in establishing an area vocational school or area community college. When division is permitted, the county school system shall be divided along local school district boundaries. No local school district shall be a part of more than one merged area. The county board of education shall be the planning board for any portion of the county school system which is to become a part of a merged area. [C66, 71, 73, 75, §280A.4]

280A.5 Submission of plan to state board. Plans formulated for a merged area when submitted to the state board shall include the following:

1. A description of the geographic limits of the proposed area.

2. Total population, population trends, population density, and projected population density of the area.

3. Total school enrollments in grades one through eight within the area.

4. Total school enrollments in grades nine through twelve within the area.

5. Projections of school enrollments within the area.

6. A description of the types of educational offerings and capacities of educational facilities beyond high school existing within the area, or within fifty miles of the center of the area, at the time of submission of plans.

7. Identification of educational programs needed within the area.

8. An evaluation of local interest in and attitude toward establishment of the proposed area vocational school or area community college.

9. An evaluation of the ability of the area to contribute to the financial support of the establishment and operation of the proposed area vocational school or area community college.

10. Estimated number of students within the area who are eligible to attend the proposed area vocational school or area community college.

11. The curriculum intended to be offered in the proposed area vocational school or area community college and assurances that adequate and qualified personnel will be provided to carry on the proposed curriculum and any necessary related services.

12. The location or locations where the proposed area vocational school or area community college is to be constructed or established if such location or locations have been agreed upon. The site or sites of any proposed area vocational school or area community college shall be of sufficient size to provide for adequate future expansion.

13. The boundaries of director districts which shall number not less than five or more than nine if such districts have been agreed upon. Director districts shall be of approximately equal population.

14. When it is intended that one or more existing vocational schools, community colleges, or public junior colleges are to become an integrated part of an area vocational school or area community college, specific information regarding arrangements agreed upon for compensating the local school district or districts which operate or operated any existing school or college.

15. Such additional information as the state board may by administrative rule require. [C66, 71, 73, 75,§280A.5]

280A.6 Formulating plans — cost. County boards of education may expend public funds for the purpose of formulating plans for a merged area and may arrive at an equitable distribution of cost, subject to approval of the state board, to be paid by each participating board. [C66, 71, 73, 75,§280A.6]

280A.7 Investigation of plan. Upon receipt of any plan submitted, the state board shall cause the plan to be examined, conduct further investigation of and hearings on the plan if deemed necessary, and evaluate the plan in relation to all vocational schools, community colleges, and junior colleges existing, proposed, or needed throughout the state. The state board may approve or disapprove the plan or may return the plan to the planning boards for modification and resubmission. [C66, 71, 73, 75,§280A.7]

280A.8 Approval of plan. When a plan is approved, the state board shall issue an order of the approval, a copy of which shall be sent to each of the respective planning boards. The order shall:

1. Officially designate and classify the area school to be established as an area vocational school or area community college.

2. Describe all territory included in the county school systems which is to be a part of the approved area.

3. Officially designate the location or locations of the area vocational school or area community college. If the plan did not specify a location, the state board shall so determine.

4. Officially designate the boundaries of director districts. If the plan did not specify such boundaries, the state board shall so determine. [C66, 71, 73, 75,§280A.8]

280A.9 Disapproval of plan. When a plan is disapproved, a statement of the reasons for such disapproval shall be forwarded to each of the planning boards. Within fifteen calendar days from the date of receiving such statement, the planning boards or their authorized representative may request a hearing by the state board on the disapproved plan. The state board shall grant the hearing within thirty calendar days after receipt of the request. Upon receiving all evidence and arguments presented by the planning boards or their representative, the state board may reaffirm or reconsider its previous action with respect to the disapproved plan or may request the planning boards to modify and resubmit the plan. [C66, 71, 73, 75,§280A.9]

280A.10 Procedure after approval. When a plan proposing formation of a merged area is approved by the state board, each county board of education which is a planning board with respect to the approved plan shall:

1. Within thirty calendar days after approval of the plan by the state board, order published, in all official newspapers of the county, notice of intent to form the proposed merged area. The state board shall prescribe by administrative rule the form and content of such published notices.

2. Within seventy calendar days after approval of the plan by the state board hold a meeting to accept or reject the merger plan. In the event no decision has been made by a county board of education within seventy days, the county board shall be deemed to have approved the merger plan. The secretaries of the respective boards shall immediately notify the state board of the action taken at the meetings. [C66, 71, 73, 75,§280A.10]

280A.11 Procedure of state board. Upon receiving notice that all planning boards have given final approval to the proposal to form a merged area, the state board shall:

1. Officially designate all territory included in the plan approved by the county school systems as a merged area.

2. Direct the county commissioner of elections of the county in which the physical plant facilities of the area vocational school or area community college are to be located to call and conduct a special election to choose the members of the initial governing board of the merged area. If physical plant facilities are to be located in more than one county, the county commissioner of elections of the county in which the school or college administrative offices are to be located shall be responsible for calling and conducting the special election. [C66, 71, 73, 75,§280A.11]

280A.12 Governing board. The governing board of a merged area shall be a board of directors composed of one member elected from each director district in the area by the electors of the respective district. Members of the board shall be residents of the district from which elected. Successors shall be chosen at the annual school elections for members whose terms expire on the first Monday in October following such elections. Terms of members of the board of directors shall be three years except that members of the initial board of directors elected at the special election shall determine their respective terms by lot so that the terms of one-third of the members, as nearly as may be, shall expire on the first Monday in October of each succeeding year. Vacancies on the board which occur more than ninety days prior to the next regular school election may be filled at the next regular meeting of the board by appointment by the remaining members of the board. A member so chosen shall be a resident of the district in which the vacancy occurred and shall serve until a member shall be elected pursuant to section 69.12 to fill the vacancy for the balance of the unexpired term. A vacancy shall be defined as in section 277.29. No member shall serve on the board of directors who is a member of a board of directors of a local school district or a member of an area education agency board. [C66, 71, 73, 75,§280A.12; 66GA, ch 81,§136]

Referred to in §§39.24, 280A.15, 280A.39

280A.13 Directors of merged area. In each merged area, the initial board of directors elected at the special election shall organize within fifteen days following the election and may thereafter proceed with the establishment of the designated area vocational school or area community college. The board of directors shall thereafter organize on the first Monday in October of each year. Organization of the board shall be effected by the election of a president and such other officers from the board membership as board members so determine. The board of directors shall appoint a secretary and a treasurer who shall each give bond as prescribed in section 291.2 and who shall each receive such salary as shall be determined by the board. The secretary and treasurer shall perform such duties as are prescribed in chapter 291 and such additional duties as the board of directors may deem necessary. The frequency of meetings other than organizational meetings shall be as determined by the board of directors but the

president or a majority of the members may call a special meeting at any time. [C66, 71, 73, 75,§280A.13]

Referred to in §273.8

280A.14 Expenses prorated. All expenses incurred in electing the initial board of a merged area shall be prorated among the several county school systems included in the area, in the proportion that the value of taxable property in each county school system, or any portion thereof which is part of the merged area, bears to the total value of taxable property in the area. The county commissioner of elections responsible for conducting the election shall certify to each county board of education the amount which each board owes. [C66, 71, 73, 75,§280A.14]

280A.15 Conduct of elections.

1. Regular elections held annually by the merged area for the election of members of the board of directors as required by section 280A.12, for the renewal of the twenty and one-fourth cents per thousand dollars of assessed valuation levy authorized in section 280A.22, or for any other matter authorized by law and designated for election by the board of directors of the merged area, shall be held on the date of the school election as fixed by section 277.1. The election notice shall be made a part of the local school election notice published as provided in section 49.53 in each local school district where voting is to occur in the merged area election, and the election shall be conducted by the county commissioner of elections pursuant to chapters 39 to 53 and section 277.20.

2. Each candidate for member of the board of directors of a merged area shall be nominated by a petition signed by not less than fifty eligible electors of the director district from which the member is to be elected. The petition shall state the number of the director district from which the candidate seeks election, and the candidate's name and status as an eligible elector of the director district. Signers of the petition, in addition to signing their names, shall show their residence, including street and number if any, the school district in which they reside, and the date they signed the petition. Each nomination paper shall have appended to it an affidavit of an eligible elector other than the candidate in substantially the form provided in section 43.17, except as to party affiliation. The petition shall include the affidavit of the candidate being nominated, stating the candidate's name and residence, and that he or she is a candidate, is eligible for the office sought, and if elected will qualify for the office.

3. Nomination papers in behalf of candidates for member of the board of directors of a merged area shall be filed with the secretary of the board not earlier than sixty-five days nor later than five o'clock p.m. on the fortieth day prior to the election at which members of the board are to be elected. The secretary shall deliver all nomination petitions so filed, together with the text of any public measure being submitted by the board of directors to the electorate, to the county commissioner of elections who is responsible under section 47.2 for conducting elections held for the merged area, not later than five o'clock p.m. on the day following the last day on which nomination petitions can be filed. That commissioner shall certify the names of candidates, and the text and summary of any public measure being submitted to the electorate, to all county commissioners of elections in the merged area by the thirty-fifth day prior to the election.

4. The votes cast in the election shall be canvassed and abstracts of the votes cast shall be certified as required by section 277.20. In each county whose commissioner of elections is responsible under section 47.2 for conducting elections held for a merged area, the county board of supervisors shall convene at ten o'clock a.m. on the last Monday in September, canvass the abstracts of votes cast and declare the results of the voting. The commissioner shall at once issue certificates of election to each person declared elected, and shall certify to the merged area board in substantially the manner prescribed by section 50.27 the result of the voting on any public question submitted to the voters of the merged area. Members elected to the board of directors of a merged area shall qualify by taking the oath of office prescribed in section 277.28. [C66, 71, 73, 75, §280A.15; 66GA, ch 67,§67, ch 1075,§63]

280A.16 Status of merged area. A merged area formed under the provisions of this chapter shall be a body politic as a school corporation for the purpose of exercising powers granted under this chapter, and as such may sue and be sued, hold property, and exercise all the powers granted by law and such other powers as are incident to public corporations of like character and are not inconsistent with the laws of the state. [C66, 71, 73, 75,280A.16]

280A.17 Preparation of budget. The board of directors of each merged area shall prepare an annual budget designating the proposed expenditures for operation of the area vocational school or area community college. The board shall further designate the amounts which are to be raised by local taxation and the amounts which are to be raised by other sources of revenue for such operation. The budget of each merged area shall be submitted to the state board no later than December 1 preceding the next fiscal year for approval. The state board shall review the proposed budget and shall, prior to January 1, either grant its approval or return the budget without approval with the comments of the state board attached thereto. Any unapproved budget shall be resubmitted to the state board for final approval. Upon approval of the budget by the state board, the board of directors shall prorate the amount to be raised by local taxation among the respective school districts, in

the proportion that the value of taxable property in each school district bears to the total value of taxable property in the area. The board of directors shall certify the amount so determined to the respective county auditors and the boards of supervisors shall levy a tax sufficient to raise the amount. No tax in excess of twenty and one-fourth cents per thousand dollars of assessed value shall be levied on taxable property in a merged area for the operation of an area vocational school or area community college. Taxes collected pursuant to such levy shall be paid by the respective county treasurers to the treasurer of the merged area in the same manner that other school taxes are paid to local school districts.

It is the policy of this state that the property tax for the operation of area schools shall not in any event exceed twenty and one-fourth cents per thousand dollars of assessed value, and that the present and future costs of such operation in excess of the funds raised by such levy shall be the responsibility of the state and shall not be paid from property tax. [C66, 71, 73, 75,§280A.17]

Referred to in §§280A.22, 280A.34, 280A.38

280A.18 Other funds received. In addition to revenue derived by tax levy, a board of directors of a merged area shall be authorized to receive and expend:

1. Federal funds made available and administered by the state board, for such purposes as may be provided by federal laws, rules and regulations.

2. Other federal funds for such purposes as may be provided by federal law, subject to the approval of the state board.

3. Tuition in accordance with section 280A.23, subsection 3.

Referred to in §280A.34

4. State aid to be paid in accordance with the statutes which provide such aid.

Referred to in §280A.34

5. State funds for sites and facilities made available and administered by the state board.

Referred to in §280A.34

6. Donations and gifts which may be accepted by the governing board and expended in accordance with the terms of the gift without compliance with the local budget law.

7. Student fees collected from students for activities, laboratory breakage, instructional materials, and other objects and purposes for which student fees other than tuition are customarily charged by colleges and universities, as provided in a schedule of fees adopted by the area board of directors. The expenditure of funds collected from students for activities shall be determined by the student government unit with administrative and board approval. Any increases in student fees for activities shall be determined by the student government unit with adminstrative and board approval. [C66, 71, 73, 75, §280A.18]

Referred to in §§280A.34, 280A.38

280A.19 Acquisition of sites and buildings. Boards of directors of merged areas may acquire sites and erect and equip buildings for use by area vocational schools or area community colleges and may contract indebtedness and issue bonds to raise funds for such purposes. [C66, 71, 73, 75,§280A.19]

Referred to in §§280A.20, 280A.21, 280A.34

280A.20 Payment of bonds. Taxes for the payment of bonds issued under section 280A.19 shall be levied in accordance with chapter 76. The bonds shall be payable from a fund created from the proceeds of such taxes in not more than twenty years and bear interest at a rate not exceeding seven percent per annum, and shall be of such form as the board issuing the bonds shall by resolution provide. Any indebtedness incurred shall not be considered an indebtedness incurred for general and ordinary purposes. [C66, 71, 73, 75,§280A.20]

See 63GA, ch 87,§60

280A.21 Election to incur indebtedness. No indebtedness shall be incurred under section 280A.19 until authorized by an election. A proposition to incur indebtedness and issue bonds for area vocational school or area community college purposes shall be deemed carried in a merged area if approved by a sixty percent majority of all voters voting on the proposition in the area. [C66, 71, 73, 75, §280A.21]

280A.22 Additional tax. In addition to the tax authorized under section 280A.17, the voters in any merged area may at the annual school election vote a tax not exceeding twenty and one-fourth cents per thousand dollars of assessed value in any one year for a period not to exceed five years for the purchase of grounds, construction of buildings, payment of debts contracted for the construction of buildings, purchase of buildings and equipment for buildings, and the acquisition of libraries, and for the purpose of maintaining, remodeling, improving, or expanding the area vocational school or area community college of the merged area which tax shall be collected by the county treasurers and remitted to the treasurer of the merged area as other taxes are collected and remitted, and the proceeds of said tax shall be deposited in a separate and distinct fund to be known as the voted tax fund, to be paid out upon warrants drawn by the president and secretary of the board of directors of the merged area district for the payment of costs incurred in providing the school facilities for which the tax was voted.

In order to make immediately available to the merged area the proceeds of the voted tax hereinbefore authorized to be levied, the board of directors of any such merged area is hereby authorized, without the necessity for any further election, to borrow money and enter into loan agreements in anticipation of the collection of such tax, and such board shall, by resolution, provide for the levy of

an annual tax, within the limits of the special voted tax hereinbefore authorized, sufficient to pay the amount of any such loan and the interest thereon to maturity as the same becomes due. A certified copy of this resolution shall be filed with the county auditors of the counties in which such merged area is located, and the filing thereof shall make it a duty of such auditors to enter annually this levy for collection until funds are realized to repay the loan and interest thereon in full. Said loan must mature within the number of years for which the tax has been voted and shall bear interest at a rate or rates not exceeding seven percent per annum. Any loan agreement entered into pursuant to authority herein contained shall be in such form as the board of directors shall by resolution provide and the loan shall be payable as to both principal and interest from the proceeds of the annual levy of the voted tax hereinbefore authorized, or so much thereof as will be sufficient to pay the loan and interest thereon. In furtherance of the foregoing the board of directors of such merged area may, with or without notice, negotiate and enter into a loan agreement or agreements with any bank, investment banker, trust company, insurance company or group thereof, whereunder the borrowing of the necessary funds may be assured and consummated. The proceeds of such loan shall be deposited in a special fund, to be kept separate and apart from all other funds of the merged area, and shall be paid out upon warrants drawn by the president and secretary of the board of directors to pay the cost of acquiring the school facilities for which the tax was voted.

Nothing herein contained shall be construed to limit the authority of the board of directors to levy the full amount of the voted tax, but if and to whatever extent said tax is levied in any year in excess of the amount of principal and interest falling due in such year under any loan agreement, the first available proceeds thereof, to an amount sufficient to meet maturing installments of principal and interest under the loan agreement, shall be paid into the sinking fund for such loan before any of such taxes are otherwise made available to the merged area for other school purposes, and the amount required to be annually set aside to pay the principal of and interest on the money borrowed under such loan agreement shall constitute a first charge upon all of the proceeds of such annual special voted tax, which tax shall be pledged to pay said loan and the interest thereon.

This law shall be construed as supplemental and in addition to existing statutory authority and as providing an independent method of financing the cost of acquiring school facilities for which a tax has been voted under this section and for the borrowing of money and execution of loan agreements in connection therewith and shall not be construed as subject to the provisions of any other law. The fact that a merged area may have previously borrowed money and entered into loan agreements under authority herein contained shall not prevent such merged area from borrowing additional money and entering into further loan agreements provided that the aggregate of the amount payable under all of such loan agreements does not exceed the proceeds of the voted tax. All acts and proceedings heretofore taken by the board of directors or by any official of any merged area for the exercise of any of the powers granted by this section are hereby legalized and validated in all respects. [C66, 71, 73, 75,§280A.22]

Referred to in §§280A.15, 280A.34, 280A.35, 280A.38
Tax limitations not applicable to levies beyond 1975 up to 1⅛ mills, see 65GA, ch 1096,§§58, 61

280A.23. Authority of area directors. The board of directors of each area vocational school or area community college shall:

1. Determine the curriculum to be offered in such school or college subject to approval of the state board. If an existing private educational or vocational institution within the merged area has facilities and curriculum of adequate size and quality which would duplicate the functions of the area school, the board of directors shall discuss with the institution the possibility of entering into contracts to have the existing institution offer facilities and curriculum to students of the merged area. The board of directors shall consider any proposals submitted by the private institution for providing such facilities and curriculum. The board of directors may enter into such contracts. In approving curriculum, the state board shall ascertain that all courses and programs submitted for approval are needed and that the curriculum being offered by an area school does not duplicate programs provided by existing public or private facilities in the area. In determining whether duplication would actually exist, the state board shall consider the needs of the area and consider whether the proposed programs are competitive as to size, quality, tuition, purposes, and area coverage with existing public and private educational or vocational institutions within the merged area.

2. Change boundaries of director districts in merged areas after each decennial census; or after any change in boundaries of the merged area, to compensate for changes in population if such population changes have taken place, or at any time for the purpose of causing the boundaries of director districts to coincide, where feasible, with the boundary lines of election precincts established pursuant to sections 49.3 to 49.6. However, the director districts shall in all cases be of approximately equal population within each merged area.

3. Have authority to determine tuition rates for instruction. Tuition for residents of Iowa shall not exceed the lowest tuition rate per semester, or the equivalent, charged by an institution of higher education under the state board of regents for a full-time resident stu-

dent. However, if a local school district pays tuition for a resident pupil of high school age, the limitation on tuition for residents of Iowa shall not apply, the amount of tuition shall be determined by the board of directors of the area school with the consent of the local school board, and the pupil shall not be included in the full-time equivalent enrollment of the area school for the purpose of computing general aid to the area school. Tuition for nonresidents of Iowa shall be not less than one hundred fifty percent and not more than two hundred percent of the tuition established for residents of Iowa. Tuition for resident or nonresident students may be set at a higher figure with the approval of the state board. A lower tuition for nonresidents may be permitted under a reciprocal tuition agreement between a merged area and an educational institution in another state, if the agreement is approved by the state board.

4. Have the powers and duties with respect to such schools and colleges, not otherwise provided in this chapter, which are prescribed for boards of directors of local school districts by chapter 279 except that the board of directors is not required to prohibit the use of tobacco and the use or possession of alcoholic liquor or beer by any student under the provisions of section 279.9.

5. Have the power to enter into contracts and take other necessary action to insure a sufficient curriculum and efficient operation and management of the school or college and maintain and protect the physical plant, equipment, and other property of the school or college.

6. Establish policy and make rules, not inconsistent with law and administrative rules, regulations, and policies of the state board, for its own government and that of the administrative, teaching, and other personnel, and the students of the school or college, and aid in the enforcement of such laws, rules, and regulations.

7. Have authority to sell any article resulting from any vocational program or course offered at an area vocational school or area community college. Governmental agencies and governmental subdivisions of the state within the merged areas shall be given preference in the purchase of such articles. All revenue received from the sale of any article shall be credited to the funds of the board of the merged area.

8. With the consent of the inventor, and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors, and officials of any vocational school or community college of the merged area, or take assignment of such letters patent or copyright and make all necessary expenditures in regard thereto. Letters patent or copyright on inventions when so secured shall be the property of the board of the merged area and the royalties and earnings thereon shall be credited to the funds of the board.

9. Set the salary of the area superintendent. In setting the salary, the board shall consider the salaries of administrators of educational institutions in the merged area and the enrollment of the area school.

10. At the request of an employee through contractual agreement the board may arrange for the purchase of group or individual annuity contracts for any of its respective employees from any company the employee may choose that is authorized to do business in this state and through an Iowa-licensed insurance agent that the employee may select, for retirement or other purposes and may make payroll deductions in accordance with such arrangements for the purpose of paying the entire premium due and to become due under such contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits afforded under section 403b of the Internal Revenue Code of 1954 and amendments* thereto. The employee's rights under such annuity contract shall be nonforfeitable except for the failure to pay premiums. Whenever an existing tax-sheltered annuity contract is to be replaced by a new contract the agent or representative of the company shall submit a letter of intent to the company being replaced, to the insurance commissioner of the state of Iowa, and to his own company at least thirty days prior to any action by registered mail. This letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract. [C66, 71, 73, 75,§280A.23; 66GA, ch 81,§137, ch 159,§1, ch 1146,§20]

Referred to in §§280A.18, 280A.25(2)
*See 63GA, ch 185, effective July 1, 1969

280A.24 Area community college. The board of directors of a merged area initially organized for the establishment of, and which is operating, an area vocational school may with the approval of the state board expand the curriculum of the school to qualify as an area community college. The state board shall upon approval officially classify the school as an area community college.

The standard academic work load for an instructor in arts and science courses shall be fifteen credit hours per school term, and the maximum academic work load for any instructor shall be sixteen credit hours per school term, for classes taught during the normal school day. In addition thereto, any faculty member may teach a course or courses at times other than usual day-course hours, or on days other than the regular school week, involving total class instruction time equivalent to not more than a three-credit-hour course. The total work load for such instructors shall not exceed the equivalent of eighteen credit hours per school term. [C66, 71, 73, 75,§280A.24]

280A.25 Power of state board. The state board shall:

1. Have authority to designate any vocational school or community college as an "area vocational education school" within the meaning of, and for the purpose of administering, the Act of Congress designated the "Vocational Education Act of 1963". No vocational school or community college shall be so designated by the board for the expenditure of funds under section 35c, subsection "a", paragraph 5, Title 20, U.S.C., which has not been designated and classified as an area vocational school or area community college by the state board.

2. Change boundaries of director districts in any merged area when the board of directors of the area fails to change boundaries as required under section 280A.23, subsection 2.

3. Change boundaries of merged areas to take into account mergers of local school districts and changes in boundaries of local school districts, when necessary to maintain the policy of this chapter that no local school district shall be a part of more than one merged area. The state board may also make other changes in boundaries of merged areas with the approval of the board of directors of each merged area affected by the change. At any time when the boundaries of a merged area are so changed, the state board may authorize the board of directors of the merged area to levy additional taxes upon the property within the merged area, or any part thereof, and distribute the same so that all parts of the merged area are paying their share toward the support of the school or college.

4. Administer, allocate, and disburse any federal or state funds made available to pay any portion of the cost of acquiring sites for and constructing, acquiring, or remodeling facilities for area vocational schools or area community colleges, and establish priorities for the use of such funds.

5. Administer, allocate, and disburse any federal or state funds available to pay any portion of the operating costs of area vocational schools or area community colleges.

6. Approve, in such manner as it may prescribe, sites and buildings to be acquired, erected, or remodeled for use by area vocational schools or area community colleges.

7. Have authority to adopt such administrative rules and regulations as it deems necessary to carry out the provisions of this chapter.

8. Have the power to enter into contracts with local school boards within the area that have and maintain a technical or vocational high school and with private schools or colleges in the co-operative or merged areas to provide courses or programs of study in addition to or as a part of the curriculum made available in the community college or area vocational schools.

9. Make arrangements with boards of merged areas and local school districts to permit students attending high school to participate in vocational-technical programs and obtain credit for such participation for application toward the completion of a high school diploma. The granting of such credit shall be subject to the approval of the state board.

10. Prescribe a uniform system of accounting for area schools.

11. Review programs and make recommendations, and approve or disapprove requests of merged area schools to expand their programs. [C66, 71, 73, 75,§280A.25; 66GA, ch 1146,§17]

280A.26 Former community or junior colleges. Any local school district which operated a community or junior college for any period between September 1, 1964, and July 4, 1965, may continue to operate such college. Existing public community or junior colleges may be converted into area vocational schools or area community colleges in the manner provided in this chapter. In addition, an existing public community or junior college may be converted into an area vocational school or area community college by agreement between the board of directors of the local school district operating the community or junior college and the board of directors of the merged area. Such agreement shall be effective only if approved by the state board of public instruction. Such agreement shall provide for reasonable compensation to such local school district.

Where the board of any local school district operating a community or junior college and the board of directors of the merged areas are not in agreement on the reasonable value of any public community or junior college which is to be converted, the matters of disagreement shall be decided by three disinterested arbitrators; one selected by the local board, one by the board of the merged area, and one by the two arbitrators so selected. The decision of the arbitrators shall be made in writing and a copy of the decision shall be filed with the secretary of the board of the merged area and the secretary of the local board. Any party to the proceedings may appeal therefrom to the district court by serving notice thereof within twenty days after the decision is filed. Such appeal shall be tried in equity and a decree entered determining the entire matter. The decree so entered shall be final. [C66, 71, 73, 75,§280A.26]

280A.27 Area schools branch in department. There shall be an area schools branch within the state department of public instruction. The branch shall exercise the powers and perform the duties conferred by law upon the department with respect to area vocational schools and area and public community and junior colleges. [C66, 71, 73, 75,§280A.27]

280A.28 Repealed by 63GA, ch 1106,§3.

280A.29 to 280A.32 Repealed by 66GA, ch 160.§2

280A.33 Joint action with board of regents.

1. Approval standards, except as hereinafter provided, for area and public community and junior colleges shall be initiated by the area schools branch of the department and submitted to the state board of public instruction and the state board of regents, through the state superintendent of public instruction, for joint consideration and adoption.

2. Approval standards for area vocational schools and for vocational programs and courses offered by area community colleges shall be initiated by the area schools branch and submitted to the state board of public instruction through the state superintendent of public instruction, for consideration and adoption. No such proposed approval standard shall be adopted by the state board until the standard has been submitted to the advisory committee created by chapter 258 and its recommendations thereon obtained.

3. For purposes of this section, "approval standards" shall include standards for administration, qualifications and assignment of personnel, curriculum, facilities and sites, requirements for awarding of diplomas and other evidence of educational achievement, guidance and counseling, instruction, instructional materials, maintenance, and library.

4. Approval standards shall be subject to the provisions of chapter 17A. In addition, approval standards shall be reported by the state board to the general assembly within twenty days after the commencement of a regular legislative session. No area community college or area vocational school shall be removed from the approved list for failure to comply with the approval standards until at least one hundred twenty days have elapsed following the reporting of such standards to the general assembly as provided in this section.

5. The department of public instruction shall supervise and evaluate the educational program in the several area community colleges and area vocational schools of the state for the purpose of the improvement and approval of such institutions.

6. The superintendent of public instruction shall make recommendations and suggestions in writing to each area community college and area vocational school if the department of public instruction determines, after due investigation, that deficiencies exist.

7. The state board shall maintain a list of approved area community colleges and area vocational schools, and it shall remove from the approved list for cause, after due investigation and notice, any area community college or area vocational school which fails to comply with the approval standards. An area community college or area vocational school which is removed from the approved list pursuant to this section shall be ineligible to receive state financial aid during the period of such removal. The state board shall allow a reasonable period of time, which shall be at least one year, for compliance with approval standards if an area community college or area vocational school is making a good faith effort and substantial progress toward full compliance or if failure to comply is due to factors beyond the control of the board of directors of the merged area operating the institution. In allowing time for compliance, the board shall follow consistent policies, taking into account the circumstances of each case. The reasonable period of time for compliance may be, but need not be, given prior to the one-year notice requirement that is provided in this section.

8. The department of public instruction shall give any area community college or area vocational school which is to be removed from the approved list at least one year's notice. The notice shall be given by registered or certified mail addressed to the superintendent of the area community college or area vocational school and shall specify the reasons for removal. The notice shall also be sent by ordinary mail to each member of the board of directors of the area community college or area vocational school, and to the news media which serve the merged area where the school is located; but any good faith error or failure to comply with this sentence shall not affect the validity of any action by the state board. If, during the year, the area community college or area vocational school remedies the reasons for removal and satisfies the state board that it will thereafter comply with the laws and approval standards the state board shall continue the area community college or area vocational school on the approved list and shall transmit to the area community college or area vocational school notice of the action by registered or certified mail.

9. At any time during the year after notice is given, the board of directors of the area community college or area vocational school may request a public hearing before the state board of public instruction, by mailing a written request to the superintendent of public instruction by registered or certified mail. The president of the state board shall promptly set a time and place for the public hearing, which shall be either in Des Moines or in the affected merged area. At least thirty days' notice of the time and place of the hearing shall be given by registered or certified mail addressed to the superintendent of the area community college or area vocational school. At least ten days before the hearing, notice of the time and place of the hearing and the reasons for removal shall also be published by the state department in a newspaper of general circulation in the merged area where the area community college or area vocational school is located.

10. At the hearing the area community college or area vocational school may be represented by counsel and may present evidence. The state board may provide for the hearing to be recorded or reported. If requested by the area community college or area vocational school at least ten days before the hearing, the state board shall provide for the hearing to be recorded or reported at the expense of the area community college or area vocational school, using any reasonable method specified by the area community college or area vocational school. Within ten days after the hearing, the state board shall render its written decision, signed by a majority of its members, and shall affirm, modify or vacate the action or proposed action to remove the area community college or area vocational school from the approved list. [C66, 71, 73,§§257.25, 280A.33; C75,§280A.33; 66GA, ch 160,§1]

280A.34 Certain uses of funds prohibited. Funds obtained pursuant to section 280A.17; subsections 3, 4, and 5 of section 280A.18; section 280A.19; and section 280A.22 shall not be used for the construction or maintenance of athletic buildings or grounds. [C71, 73, 75,§280A.34]

280A.35 Limitation on land. A merged area may not purchase land which will increase the aggregate of land owned by such area, excluding land which has been or may be acquired by donation or gift, by more than three hundred twenty acres. Such limitation shall not apply to merged areas owning more than three hundred twenty acres, excluding land acquired by donation or gift, prior to January 1, 1969.

With the approval of the state board, the board of directors of any merged area at any time may sell any land in excess of one hundred sixty acres owned by the merged area, and no election shall be necessary in connection with such sale notwithstanding any other provisions of law. The proceeds of the sale may be used for any of the purposes stated in section 280A.22. This paragraph is in addition to any authority under other provisions of law. [C71, 73, 75,§280A.35]

280A.36 Faculty development. The administration of the college shall encourage the continued development of faculty potential by: (1) Regularly stimulating department chairmen or heads to meet their responsibilities in this regard; (2) lightening the teaching loads of first-year instructors whose course preparation and in-service training demand it; (3) stimulating curricular evaluation; and (4) encouraging the development of an atmosphere in which the faculty brings a wide range of ideas and experiences to the students, each other, and the community. [C71, 73, 75, §280A.36]

280A.37 Membership in association of school boards. Boards of directors of merged area schools may pay, out of funds available to them, reasonable annual dues to an Iowa association of school boards.

Membership in such an Iowa association of school boards shall be limited to those duly elected members of boards of directors of area schools. [C71, 73, 75,§280A.37]

280A.38 Lease agreements for space. The board of directors may, with the approval of the state board, enter into lease agreements, with or without purchase options, not to exceed twenty years in duration, for the leasing or rental of buildings for use basically as classrooms, laboratories, shops, libraries and study halls for vocational school or community college purposes, and pay for the same with funds acquired pursuant to section 280A.17, section 280A.18, and section 280A.22.

Such agreements may include the leasing of existing buildings on public or private property, buildings to be constructed upon real estate owned by the area school, or buildings to be placed upon real estate owned by the area school.

Before entering into a lease agreement with a purchase option for a building to be constructed, or placed, upon real estate owned by the area school, the board shall first adopt plans and specifications for the proposed building which it considers suitable for the intended use, and the board shall also adopt the proposed terms of the lease agreement and purchase option. Upon obtaining the approval of the state board, the board shall invite bids thereon, by advertisement published once each week for two consecutive weeks in the county where the building is to be located. Such lease agreement shall be awarded to the lowest responsible bidder, or the board may reject all bids and readvertise for new bids. [C71, 73, 75,§280A.38]

280A.39 Combining merged areas—election. Any merged area may combine with any adjacent merged area after a favorable vote by the electors of each of the areas involved. If the boards of directors of two or more merged areas agree to a combination, the question shall be submitted to the electors of each area at a special election to be held on the same day in each area. The special election shall not be held within thirty days of any general election. Prior to the special election, the board of each merged area shall notify the county commissioner of elections of the county in which the greatest proportion of the merged area's taxable base is located who shall publish notice of the election according to section 49.53. The two respective county commissioners of elections shall conduct the election pursuant to the provisions of chapters 39 to 53. The votes cast in the election shall be canvassed by the county board of supervisors and the county commissioners of elections who conducted the election shall certify the results to the board of directors of each merged area.

If the vote is favorable in each merged area, the boards of each area shall proceed to transfer the assets, liabilities, and facilities of the areas to the combined merged area, and shall serve as the acting board of the combined merged area until a new board of directors is elected. The acting board shall submit to the state board a plan for redistricting the combined merged area, and upon receiving approval from the state board, shall provide for the election of a director from each new district at the next regular school election. The directors elected from each new district shall determine their terms by lot as provided in section 280A.12. Election of directors for the combined merged area shall follow the procedures established for election of directors of a merged area. A combined merged area shall be subject to all provisions of law and regulations governing merged areas. [C71, 73, 75,§280A.39; 66GA, ch 81,§138]

280A.40 Area vocational school attendance center. Any merged area shall provide an area vocational school attendance center within a county of the merged area which contains a city of fifty thousand population or more as determined by the 1970 federal decennial census unless an exemption to the requirement is granted by the state board.

This section notwithstanding, Merged Area I shall provide an area vocational school attendance center within Dubuque county. [C71, 73, 75,§280A.40; 66GA, ch 1152,§1]

CHAPTER 281

EDUCATION OF CHILDREN REQUIRING SPECIAL EDUCATION

Referred to in §§265.6, 273.2, 273.3, 273.5, 273.9, 280.8, 281.2, 281.8, 281.9, 282.3, 282.27, 442.7

281.1 Division of education created.
281.2 Definitions.
281.3 Powers and duties of state department.
281.4 Powers of board of directors.
281.5 Secretary's report.
281.6 Parent's or guardian's duties.
281.7 Examinations of children.
281.8 Exceptions to attendance.
281.9 Weighting plan.
281.10 Repealed by 65GA, ch 1172,§133.
281.11 Program plans.

281.1 Division of education created. There is created within the state department of public instruction a division of special education for the promotion, direction, and supervision of education for children requiring special education in the schools under the supervision and control of the department. The state superintendent, subject to the approval of the state board of public instruction, is authorized to organize the division and to employ the necessary qualified personnel to carry out the provisions of this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§281.1]

281.2 Definitions.

1. *"Children requiring special education"* means persons under twenty-one years of age, including children under five years of age, who are handicapped in obtaining an education because of physical, mental, emotional, communication or learning disabilities or who are chronically disruptive, as defined by the rules of the department of public instruction.

2. *"Special education"* means classroom, home, hospital, institutional, or other instruction designed to meet the needs of children requiring special education as defined in subsection 1; transportation and corrective and supporting services required to assist children requiring special education, as defined in subsection 1, in taking advantage of, or responding to, educational programs and opportunities, as defined by rules of the department of public instruction.

It is the policy of this state to provide and to require school districts to make provision, as an integral part of public education, for special education opportunities sufficient to meet the needs and maximize the capabilities of children requiring special education. This chapter is not to be construed as encouraging separate facilities or segregated programs designed to meet the needs of children requiring special education when such children can benefit from all or part of the education program as offered by the local school district. To the maximum extent possible, children requiring special education shall attend regular classes and shall be educated with children who do not require special education. Whenever possible, hindrances to learning and to the normal functioning of children requiring special education within the regular school environment shall be overcome by the provision of special aids and services rather than by separate programs for those in need of special education. Special classes, separate schooling or other removal of children requiring special education from the regular educational environment, shall occur only when, and to the extent that the nature or severity of the educational handicap is such that education in regular classes, even with the use of supplementary aids and services, cannot be accomplished satisfactorily. For those children who cannot adapt to the regular educational or home living conditions, and who are attending facilities under chapters 263, 269 and 270, upon

the request of the board of directors of an area education agency, the department of social services shall provide residential or detention facilities and the area education agency shall provide special education programs and services. The area education agencies shall cooperate with the board of regents to provide the services required by this Act*.

Special aids and services shall be provided to children requiring special education who are less than five years of age if the aids and services will reasonably permit the child to enter the educational process or school environment when the child attains school age.

Every child requiring special education shall, if reasonably possible, receive a level of education commensurate with the level provided each child who does not require special education. The cost of providing such an education shall be paid as provided in section 273.9 and chapters 281 and 442. It shall be the primary responsibility of each school district to provide special education to children who reside in that district if the children requiring special education are properly identified, the educational program or service has been approved, the teacher or instructor has been certified, the number of children requiring special education needing that educational program or service is sufficient to make offering the program or service feasible, and the program or service cannot more economically and equably be obtained from the area education agency, another school district, another group of school districts, a qualified private agency, or in co-operation with one or more other districts.

Any funds received by the school district of the child's residence for the child's education, derived from funds received through chapters 442 and 281 and section 273.9 shall be paid by the school district of the child's residence to the appropriate education agency, private agency, or other school district providing special education for the child pursuant to contractual arrangements as provided in section 273.3, subsections 5 and 7. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§281.2]

Referred to in §§273.1, 273.2, 273.7
*65GA, ch 1172

281.3 Powers and duties of state department. The division of special education, subject to the approval of the state board, shall have the following duties and powers:

1. To aid in the organization of special schools, classes and instructional facilities for children requiring special education, and to supervise the system of special education for children requiring special education.

2. To establish standards for teachers to be employed under the provisions of this chapter, to give examinations for teachers to qualify to teach children requiring special education, and to issue certificates to teachers who qualify for such teaching.

3. To adopt rules consistent with the provisions of this chapter for the approval of plans for special education programs and services submitted by the director of special education of the area education agency.

4. To adopt plans for the establishment and maintenance of day classes, schools, home instruction, and other methods of special education for children requiring special education.

5. To purchase and otherwise acquire special equipment, appliances and other aids for use in special education, and to loan or lease same under such rules and regulations as the department may prescribe.

6. To prescribe courses of study, and curricula for special schools, special classes and special instruction of children requiring special education, including physical and psychological examinations, and to prescribe minimum requirements for children requiring special education to be admitted to any such special schools, classes or instruction.

7. To provide for certification by the director of special education of the eligibility of children requiring special education for admission to, or discharge from, special schools, classes or instruction.

8. To initiate the establishment of classes for children requiring special education or home study services in hospitals, nursing, convalescent, juvenile and private homes, in co-operation with the management thereof and local school districts or area education agency boards.

9. To co-operate with school districts or area education agency boards in arranging for any child requiring special education to attend school in a district other than the one in which he resides when there is no available special school, class, or instruction in the districts in which he resides.

10. To co-operate with existing agencies such as the state department of social welfare, the state department of public health, the state school for the deaf, the Iowa braille and sight-saving school, the state tuberculosis sanatorium, the children's hospitals, or other agencies concerned with the welfare and health of children requiring special education in the coordination of their educational activities for such children.

11. To investigate and study the needs, methods and costs of special education for children requiring special education.

12. To provide for the employment and establish standards for the performance of special education support personnel required to assist in the identification of and educational programs for children requiring special education.

13. To provide for the establishment of special education research and demonstration projects and models for special education program development.

14. To establish a special education resource, materials and training system for the purposes of developing specialized instructional materials and provide in-service training to personnel employed to provide educational services to children requiring special education.

15. To approve the acquisition and use of special facilities designed for the purpose of providing educational services to children requiring special education.

16. To make rules to carry out the powers and duties provided for in this section. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§281.3]

281.4 Powers of board of directors. The board of directors of any school district or area education agency, with the approval of the state department of public instruction, may provide special education programs and services as defined in this chapter. If services are provided by the area education agency, with the approval of the department of public instruction, the board of directors of the area education agency with the co-operation of the local school districts within its jurisdiction may:

1. Establish and operate special education programs and classes for the education of children requiring special education.

2. Acquire, maintain, and construct facilities in which to provide education, corrective services, and supportive services for children requiring special education.

3. Make arrangements with participating school districts for the provision of special education, corrective, and supportive services to the children requiring special education residing in the school districts.

4. Employ special education teachers and personnel required to furnish corrective or supportive services to children requiring special education services.

5. Provide transportation for children requiring special education services that are in need of transportation in connection with any programs, classes or services.

6. Receive, administer and expend funds appropriated for its use.

7. Receive, administer and expend the proceeds of any issue of school bonds or other bonds intended wholly or partly for its benefit.

8. Apply for, accept, and utilize grants, gifts or other assistance.

9. Participate in, and make its employees eligible to participate in, any retirement system, group insurance system, or other program of employee benefits, on the same terms as govern school districts and their employees.

10. Do such other things as are necessary and incidental to the execution of any of its powers.

The board of directors of the local district or the area education agency shall employ qualified teachers certified by the authority provided by law as teachers for children requiring such special education. The maximum number of pupils per teacher shall be determined by the board of directors of the local district or the area education agency board in accordance with the rules and regulations of the state department of public instruction.

The board of directors of the local district or the area education agency may establish and operate one or more special education centers to provide diagnostic, therapeutic, corrective, and other services, on a more comprehensive, expert, economic and efficient basis than can be reasonably provided by a single school district. Such services, if offered by the area education agency board, may be provided in the regular schools using personnel and equipment of the area education agency or, whenever it is impractical or inefficient to provide them on the premises of a regular school, the area education agency may provide services in its own facilities. To the maximum extent feasible, such centers shall be established at and in conjunction with, or in close proximity to one or more elementary and secondary schools. Local districts or the area education agencies may accept diagnostic and evaluation studies conducted by other individuals, hospitals, or centers, if determined to be competent. Children requiring special education services may be identified in any way that the department of public instruction determines to be reliable. Centers established pursuant to this section may contain classrooms and other educational facilities and equipment to supplement instruction and other services to handicapped children in the regular schools, and to provide separate instruction to children whose degree or type of educational handicap makes it impractical or inappropriate for them to participate in classes with normal children. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§281.4]

281.5 Secretary's report. The state department of public health shall from time to time as requested furnish to the state division of special education information obtained from birth certificates relative to the name, address, and disability of any case of congenital deformity or physical defect. The state crippled children's service shall from time to time as required furnish to the state division of special education the name, address, and disability of all children of their register. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§281.5]

281.6 Parent's or guardian's duties. When the school district or area education agency has provided special education services and programs as provided herein for any child requiring special education, either by admission to a special class or by supportive services, it shall be the duty of the parent or guardian to enroll said child for instruction in such special classes or supportive services as may be established, except in the event a doctor's certificate is filed with the secretary

of the school district showing that it is inadvisable for medical reasons for the child requiring special education to receive the special education provided; all the provisions and conditions of chapter 299 and amendments thereto shall be applicable to this section, and any violations shall be punishable as provided in said chapter.

A child, or his parent or guardian, or the school district in which the child resides, may obtain a review of any action or omission of state or local authorities pursuant to the procedures established in chapter 290 on the ground that the child has been or is about to be:

1. Denied entry or continuance in a program of special education appropriate to his condition and needs.

2. Placed in a special education program which is inappropriate to his condition and needs.

3. Denied educational services because no suitable program of education or related services is maintained.

4. Provided with special education which is insufficient in quantity to satisfy the requirements of law.

5. Assigned to a program of special education when he is not handicapped. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§281.6]

281.7 Examinations of children. In order to render proper instruction to each child requiring special education, the school districts shall certify children requiring special education for special instruction in accordance with the requirements set up by the division of special education and shall provide examinations for children preliminary to making certification. The examinations necessary for the certification of children requiring special education shall be prescribed by the state division of special education. Final decision in case of disagreement or appeal shall be the responsibility of the state superintendent of public instruction, who may secure the advice of competent medical and educational authorities including the state department of health, the university hospitals, the state department of social welfare, the superintendent of the state school for the deaf, the superintendent of the Iowa braille and sight-saving school, and the superintendent of the state tuberculosis sanatorium. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§281.7]

281.8 Exceptions to attendance. It shall not be incumbent upon the school districts to keep a child requiring special education in regular instruction when the child cannot sufficiently profit from the work of the regular classroom, nor to keep such child requiring special education in the special class or instruction for children requiring special education when it is determined by the director of special education of an area education agency that the child can no longer benefit from the instruction or needs more specialized instruction available in special schools. However, the school district shall count the child requiring special education in the enrollment as provided in sections 273.9 and 281.9 and 442.4 and shall insure that appropriate educational provisions are made for the child requiring special education within the limits of funds available under the provisions of chapters 273, 281, and 442.

In the case of any person who, by reason of congenital factors, accident or prolonged illness, has not been able to finish the special education by his or her twenty-first birthday, the period of special education may be continued for not exceeding three years thereafter.

No provision of this chapter shall be construed to require or compel any person who is a member of a well-recognized church or religious denomination and whose religious convictions, in accordance with the tenets or principles of his or her church or religious denomination, are opposed to medical or surgical treatment for disease to take or follow a course of physical therapy, or submit to medical treatment, nor shall any parent or guardian who is a member of such church or religious denomination and who has such religious convictions be required to enroll a child in any course or instruction which utilizes medical or surgical treatment for disease. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§281.8; 66GA, ch 153,§5]

281.9 Weighting plan.

1. In order to provide funds for the excess costs of instruction of children requiring special education, above the costs of instruction of pupils in a regular curriculum, a special education weighting plan for determining enrollment in each school district is adopted as follows:

a. Pupils in a regular curriculum are assigned a weighting of one.

b. Children requiring special education who require special adaptations while assigned to a regular classroom for basic instructional purposes and handicapped pupils placed in a special education class who receive part of their instruction in regular classrooms are assigned a weighting of one and eight-tenths for the school year commencing July 1, 1975.

c. Children requiring special education who require full-time, self-contained special education placement with little integration into a regular classroom are assigned a weighting of two and two-tenths for the school year commencing July 1, 1975.

d. Children requiring special education who are severely handicapped or who have multiple handicaps, or who are chronically disruptive, are assigned to a weighting of four and four-tenths for the school year commencing July 1, 1975.

e. Shared-time and part-time pupils of school age who require special education shall be placed in the proper category and counted in the proportion that the time for which they

are enrolled or receive instruction for the school year bears to the time that full-time pupils, carrying a normal course schedule, in the same school district, for the same school year are enrolled and receive instruction.

2. The weighting for each category of child multiplied by the number of children in each category in the enrollment of a school district, as identified and certified by the director of special education for the area, determines the weighted enrollment to be used in that district for purposes of computations required under the state school foundation plan in chapter 442.

3. The weight that a child is assigned under this section shall be dependent upon the required educational modifications necessary to meet the special education needs of the child. Enrollment for the purpose of this section, and all payments to be made pursuant thereto, includes all children for whom a special education program or course is to be provided pursuant to sections 273.1 to 273.9 and chapter 281, whether or not the children are actually enrolled upon the records of a school district.

4. On December 1, 1975, and no later than December 1 every two years thereafter, for the school year commencing the following July 1, the superintendent of public instruction shall report to the school budget review committee the average costs of providing instruction for children requiring special education in the categories of the weighting plan established under this section, and shall make recommendations to the school budget review committee for needed alterations to make the weighting plan suitable for subsequent school years. The school budget review committee shall establish the weighting plan for each school year after the school year commencing July 1, 1975, and shall report the plan to the superintendent of public instruction. The school budget review committee shall not alter the weighting assigned to pupils in a regular curriculum, but it may increase or decrease the weighting assigned to each category of children requiring special education by not more than two-tenths of the weighting assigned to pupils in a regular curriculum. The department of public instruction shall promulgate rules under chapter 17A, to implement the weighting plan for each year and to assist in identification and proper indexing of each child in the state who requires special education.

5. The division of special education shall audit the reports required in section 273.5 to determine that all children in the area who have been identified as requiring special education have received the appropriate special education instructional and support services, and to verify the proper identification of pupils in the area who will require special education instructional services during the school year in which the report is filed. The division shall certify to the state comptroller the correct total enrollment of each school district in the state, determined by applying the appropriate pupil weighting index to each child requiring special education, as certified by the directors of special education in each area.

6. The division may conduct an evaluation of the special education instructional program or special education support services being provided by an area education agency, school district, or private agency, pursuant to sections 273.1 to 273.9 and chapter 281, to determine if the program or service is adequate and proper to meet the needs of the child; if the child is benefiting from the program or service; if the costs are in proportion to the educational benefits being received; and if there are any improvements that can be made in the program or service. A written report of the evaluation shall be sent to the area education agency, school district, or private agency evaluated and to the president of the senate and speaker of the house of representatives of the general assembly. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§281.9]

Referred to in §§273.5, 273.9, 281.8, 282.27, 298.1, 442.4, 442.13, 442.29

281.10 Repealed by 65GA, ch 1172,§133.

281.11 Program plans. Program plans submitted to the department of public instruction pursuant to section 273.5 for approval shall establish all of the following:

1. That there are sufficient children requiring special education within the area.

2. That the service or program will be provided by the most appropriate educational agency.

3. That the educational agency providing the service or program has employed qualified special educational personnel.

4. That the instruction is a natural and normal progression of a planned course of instruction.

5. That all revenue raised for support of special education instruction and services is expended for actual delivery of special education instruction or services.

6. Other factors as the department may require. [C73, 75,§281.11; 66GA, ch 79,§14]

Referred to in §§8.58, 298.1, 442.29
Amendment effective January 1, 1975; 66GA, ch 79,§27

CHAPTER 282

SCHOOL ATTENDANCE AND TUITION

282.1 School age—nonresidents.
282.2 Offsetting tax.
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282.4 Majority vote—suspension.
282.5 Readmission of pupil.
282.6 Tuition.
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ATTENDANCE OUTSIDE OF HOME DISTRICT

282.17 High school outside home district.
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282.24 Tuition fees established.
282.25 Children in state institutions.
282.26 High school students attending advanced courses.
282.27 Payment for certain children.

282.1 School age — nonresidents. Persons between five and twenty-one years of age shall be of school age. A board may establish and maintain evening schools for all residents of the corporation regardless of age and for which no tuition need be charged. Nonresident children shall be charged the maximum tuition rate as determined in section 282.24 with the exception that those sojourning temporarily in any school corporation may attend school therein upon such terms as the board may determine. [C73,§1795; C97,§2804; C24, 27, 31, 35, 39,§**4268**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §282.1; 66GA, ch 1153,§1]

C97,§2804, editorially divided
Evening schools, §288.1

282.2 Offsetting tax. The parent or guardian whose child or ward attends school in any district of which he is not a resident shall be allowed to deduct the amount of school tax paid by him in said district from the amount of the tuition required to be paid. [C97,§2804; C24, 27, 31, 35, 39,§**4269**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§282.2]

282.3 Admission and exclusion of pupils.

1. The board may exclude from school children under the age of six years when in its judgment such children are not sufficiently mature to be benefited by regular instruction, or any incorrigible child or any child who in its judgment is so abnormal that regular instruction would be of no substantial benefit to him, or any child whose presence in school may be injurious to the health or morals of other pupils or to the welfare of such school. However, the board shall provide special education programs and services under the provisions of chapters 273, 281, and 442 for all children requiring special education.

2. The conditions of admission to public schools for work in the school year immediately preceding the first grade and in the first grade shall be as follows:

No child under the age of six years on the fifteenth of September of the current school year shall be admitted to any public school unless the board of directors of the school shall have adopted and put into effect courses of study for the school year immediately preceding the first grade, approved by the department of public instruction and shall have employed a teacher or teachers for this work with standards of training approved by the department of public instruction.

No child shall be admitted to school work for the year immediately preceding the first grade unless he is five years of age on or before the fifteenth of September of the current school year.

No child shall be admitted to the first grade unless he is six years of age on or before the fifteenth of September of the current school year; except that a child under six years of age who has been admitted to school work for the year immediately preceding the first grade under conditions approved by the department of public instruction, or who has demonstrated the possession of sufficient ability to profit by first-grade work on the basis of tests or other means of evaluation recommended or approved by the department of public instruction, may be admitted to first grade at any time before December 31.

3. Nothing herein provided shall prohibit a school board from requiring the attainment of a greater age than the age requirements herein set forth. [C97,§2782; C24, 27, 31, 35, 39,§**4270**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§282.3; 66GA, ch 153,§6]

282.4 Majority vote—suspension. The board may, by a majority vote, expel any scholar from school for immorality, or for a violation of the regulations or rules established by the board, or when the presence of the scholar is detrimental to the best interests of the school; and it may confer upon any teacher, principal, or superintendent the power temporarily to dismiss a scholar, notice of such dismissal being at once given in writing to the president of the board. [C73,§§1735, 1756; C97,§2782; C24, 27, 31, 35, 39,§**4271**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§282.4]

282.5 Readmission of pupil. When a scholar is dismissed by the teacher, principal, or superintendent, as above provided, he may be readmitted by such teacher, principal, or superintendent, but when expelled by the board he may be readmitted only by the board or in the manner prescribed by it. [R60,§2054; C73, §§1735, 1756; C97,§2782; C24, 27, 31, 35, 39,§**4272**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§282.5]

282.6 Tuition. Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years and to resident honorably discharged soldiers, sailors, and marines, as many months after becoming twenty-one years of age as they have spent in the military or naval service of the United States before they became twenty-one, provided, however, fees may be charged covering instructional costs for a summer school program. The board of education may, in a hardship case, exempt a student from payment of the above fees. Every person, however, who shall attend any school after graduation from a four-year course in an approved high school or its equivalent shall be charged a sufficient tuition fee to cover the cost of the instruction received by such person.

This section shall not apply to tuition authorized by chapter 280A. [C73,§§1724, 1727; C97,§2773; S13,§2773; C24, 27, 31, 35, 39,§**4273**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§282.6]

282.7 Attending in another corporation—payment. The board of directors in any school district may by record action discontinue any or all of its school facilities. When such action has been taken, the board shall designate an appropriate approved public school or schools for attendance. Tuition shall be paid by the resident district as required in section 282.20 for all pupils attending designated school, except that high school pupils may attend school of choice and be entitled to tuition, but must attend school designated for attendance to qualify for transportation. Designations shall be made as provided in chapter 285.

Any school district which does not have an area vocational technical high school or program, established and approved under the provisions of chapter 258, may permit a resident child to attend school in another district which has such a school or program. Said child shall meet the entrance requirements of the school district which has such an area school or program. Tuition, but not transportation, for such a child shall be paid by the resident district as required in section 282.20. [C51,§1143; R60, §2024; C73,§1793; C97,§2803; C24, 27, 31, 35, 39, §**4274**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§282.7; 66GA, ch 1153,§2]

See §282.24 for maximum tuition rates

282.8 Attending school outside state. The board of directors of school districts located near the state boundaries may designate a school or schools of equivalent standing across the state line for attendance of both elementary and high school pupils when the public school in the adjoining state is nearer than any appropriate public school in his district of residence or in Iowa, as provided in section 282.17. Arrangements shall be subject to reciprocal agreements made between the state superintendent of public instruction of the respective states subject to statutory limitations as to tuition and transportation. A person attending school in another state shall continue to be treated as a pupil of the district of his residence in the apportionment of the current school fund and the payment of state aid. [C31, 35,§§4274-c1,-c2; C39,§§**4274.01, 4274.02**; C46, §§282.8, 282.9; C50, 54, 58, 62, 66, 71, 73, 75, §282.8]

282.9 to 282.16 Repealed by 53GA, ch 116,§18. See §§282.8, 285.4.

ATTENDANCE OUTSIDE OF HOME DISTRICT

282.17 High school outside home district. Any person of school age who is a resident of a school corporation which does not offer a four-year high school course, and who has completed the course as approved by the department of public instruction for such corporation, shall be permitted to attend any public high school in the state approved in like manner that will receive him, or may attend any public high school of equivalent standing in an adjoining state, if said school in the adjoining state be nearer to the pupil's residence than any approved public high school in the state of Iowa, but no board shall pay tuition to a high school outside the state for pupils whose actual residence is nearer to an approved high school in Iowa when measured by the nearest traveled public road. [SS15, §2733-1a; C24, 27, 31, 35, 39,§**4275**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§282.17]

Referred to in §282.8

282.18 Children from charitable institution or state institution. Children who are living in a charitable institution organized under the laws of this state or are living in any institution under the jurisdiction of a director of a division of the department of social services and who have completed a course of study for the eighth grade and who do not require special education shall be permitted to enter any approved public high school in Iowa that will receive them and the tuition and transportation when required by law shall be paid by the treasurer of state from any money in his hands not otherwise appropriated and upon warrants drawn and signed by the state comptroller on requisition issued by the superintendent of public instruction. The superintendent of public instruction is hereby empowered to require such reports, from such institution and from the high school such pupils attend, as are necessary properly to carry out the provisions of this section. [C39,§**4275.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§282.18; 66GA, ch 153,§7]

Omnibus repeal, 48GA, ch 104,§2

282.19 Repealed by 63GA, ch 1025,§51.

282.20 Tuition fees — payment. The school corporation in which the student resides shall pay from the general fund to the secretary of the corporation in which he is permitted to enroll, the maximum tuition fee as prescribed in section 282.24.

It shall be unlawful for any school district to rebate to any pupils or their parents, directly or indirectly, any portion of the tuition collected or to be collected or to authorize or permit such pupils to receive at the expense of the district, directly or indirectly, any special compensation, benefit, privilege, or other thing of value that is not and cannot legally be made available to all other pupils enrolled in its schools. Any superintendent or board members responsible for such unlawful act shall each be personally liable to a fine of not to exceed one hundred dollars. Action to recover such penalty or action to enjoin such unlawful act may be instituted by the board of any school district or by a taxpayer in any school district.

On or before February 15 and June 15 of each year the secretary of the creditor district shall deliver to the secretary of the debtor district an itemized statement of such tuition fees. [SS15,§2733-1a; C24, 27, 31, 35, 39,§**4277**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§282.20; 66GA, ch 1153,§3]

Referred to in §282.7

282.21 Collection of tuition fees. If payment is not made, the board of the creditor corporation shall file with the auditor of the county of the pupil's residence a statement certified by its president specifying the amount due for tuition, and the time for which the same is claimed. The auditor shall transmit to the county treasurer an order directing him to transfer the amount of such account from the funds of the debtor corporation to the creditor corporation, and he shall pay the same accordingly. [SS15,§2733-1a; C24, 27, 31, 35, 39,§**4278**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§282.21]

Referred to in §275.26

282.22 Tuition in charitable institutions. When any child is cared for in any charitable institution in this state which does not maintain a school providing secular instruction, and which institution is organized and operating under the laws of Iowa, and the domicile of the child is in another school district than that wherein the institution is situated, then such child shall be entitled to attend school in the district where such institution is located. In such case the cost of the tuition and transportation, when required by law, shall be paid by the treasurer of the state as provided in section 282.23. [C24, 27, 31, 35, 39,§**4283**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§282.22]

282.23 Tuition when in boarding home. When any child of school age who does not require special education has become a public charge and is being cared for in a children's boarding home licensed by the state, and the residence of such child at the time it became a public charge was in another school district than the one in which the boarding home is located, then the child shall be entitled to attend public school in the school district in which the boarding home is located, or if such district does not maintain a school offering instruction in the grade in which the child is properly classified, then the child may attend upon such instruction in any approved public school in the state that will receive it. The tuition and transportation when required of such a child, at the rates established by law, shall be paid by the treasurer of state from any funds in the state treasury not otherwise appropriated, and upon warrants drawn by the state comptroller upon the requisition of the superintendent of public instruction. If such child was in the district at the time the regular biennial school census was taken, the semiannual apportionments shall be deducted from the tuition due the district under the provisions of this section. The superintendent of public instruction is hereby empowered to require such reports as are necessary properly to carry out the provisions of this section. [C39,§**4283.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§282.23; 66GA, ch 153,§8]

Referred to in §282.22

282.24 Tuition fees established. There is established a maximum tuition fee to be charged for students, elementary or high school, residing within another school district or corporation. That fee shall be the state cost per pupil as computed in section 442.8 or the district cost per pupil of the receiving district as computed in section 442.9, subsection 1, paragraph "*a*", whichever is the lesser amount.

Any school corporation which owns facilities used as attendance centers for students shall maintain an itemized statement of the appraised value of all buildings owned by the school corporation. Beginning July 1, 1976, the appraisal shall be updated at least one time every five years.

The superintendent of public instruction shall, after July 1 but before September 1 of each year, notify every school in the state, affected by this section, what the computed maximum tuition rate shall be for the ensuing year.

Nothing in this section shall prevent the corporation or district in which the student resides from paying a tuition in excess of the maximum computed tuition rates, if the actual per pupil cost of the preceding year so warrants, but in no case may the receiving district or corporation demand more than the maximum rate. [C35,§4233-e3; C39,§**4233.3**; C46, §279.18; C50, 54, 58, 62, 66, 71, 73, 75,§§279.18, 282.24; 66GA, ch 153,§9, ch 1153,§4]

Referred to in §§282.1, 282.20

282.25 Children in state institutions. When any child is cared for in any state supported institution in this state which does not main-

tain a school and the residence of the child is in another school district than that wherein the institution is situated, then such child shall be entitled to attend school in the district where such institution is located, provided, however, the board of the district has the authority to determine if such child can be benefited from such attendance. In such case, except if the child requires special education, the cost of tuition and transportation, at the rates established by law, shall be paid by the treasurer of the state from any funds in the state treasury not otherwise appropriated and upon warrants drawn by the state comptroller upon requisition of the superintendent of public instruction. [C66, 71, 73, 75,§282.25; 66GA, ch 153,§10]

282.26 High school students attending advanced courses. The board of any junior college school district may, by mutual agreement with any college or university, permit any specially qualified high school student to attend advanced courses of academic instruction therein.

The state board of regents and the department of public instruction may by rule permit such students to attend any institution of higher learning under their jurisdiction. Credit earned in any such course at a junior college, college or university may be applied toward credit for high school graduation. No public school funds shall be expended for payment of tuition or other costs for such attendance at any college or university, unless such payment is expressly permitted or required by law.

The foregoing provisions shall also apply to junior colleges, colleges and universities in adjacent states when such institutions are located nearer to the homes or schools of the school district than the closest junior college, college or university within the state. [C66, 71, 73, 75,§282.26]

282.27 Payment for certain children. When a child requiring special education is living in a state-supported institution, charitable institution, or licensed boarding home as defined in this chapter which does not maintain a school and the residence of the child requiring special education is in a school district other than the school district in which the state-supported institution, charitable institution, or licensed boarding home is located, the child is eligible for special education programs and services provided for children requiring special education who are residents of the school district in which the institution or boarding home is located. The special education instructional costs shall be computed by means of weighted enrollment for that child under the provisions of chapters 273, 281, and 442 as if that child were a resident of the school district in which the institution or boarding home is located but the child shall be included in the enrollment count in the district of residence in the manner provided in sections 281.9 and 442.4. The costs as computed shall be paid by the district of residence. No child requiring special education shall be denied special education programs and services because of a dispute over determination of residence of that child. If the residence of the child cannot be determined, the district in which the institution or boarding home is located shall provide the special education programs and services appropriate for that child and shall compute the costs by means of the weighted enrollment and may apply to the school budget review committee for reimbursement until the dispute over residence of the child is resolved. However, if the special education instructional costs incurred on behalf of the child exceed the amount which would be allowed if the child were provided the programs and services in the district of residence, the treasurer of the school district of residence shall make payment at the maximum amount allowed in that district for a child requiring special education who is similarly handicapped. If the child requiring special education is not counted in the weighted enrollment of any district under section 281.9, and payment is not made by any district, the district in which the institution or boarding home is located may make application for reimbursement from the school budget review committee. For the purposes of this section, the term "district of residence of the child" means the residence of the parent or legal guardian, or the location of the district court if the district court is the legal guardian, of the child. [66GA, ch 153,§11]

CHAPTER 283

ACCEPTANCE AND DISTRIBUTION OF FEDERAL FUNDS

283.1 Federal funds accepted.
283.2 Transferred to §18.15.

283.1 Federal funds accepted. The state board of public instruction is hereby designated as the "state educational authority" for the purpose of accepting and administering such funds as may be appropriated by Congress for educational purposes and all such funds shall be deposited with the treasurer of state and disbursed through the office of state comptroller on vouchers audited as provided by law. When state matching funds are

required as a condition to the acceptance of such federal funds, the state board of public instruction is authorized to make expenditures for matching only from funds provided by the legislature for such purpose; provided, however, that when federal funds may be matched with expenditures from funds appropriated for the general operation of the department of public instruction such may be done with the approval of the budget and financial control committee. [C39,§§4283.02–4283.08, 4283.10; C46, 50, 54, 58,§§283.1–283.7, 283.9; C62, 66, 71, 73, 75,§283.1]

283.2 Transferred to §18.15.

CHAPTER 283A

SCHOOL LUNCH PROGRAMS

283A.1 Definitions.
283A.2 School boards—rules.
283A.3 Expenditure of federal funds.
283A.4 Administration of program.
283A.5 Accounts, records, reports, and operations.
283A.6 Repealed by 65GA, ch 10,§7.
283A.7 Federal benefits accepted.
283A.8 Use of school lunch facilities by senior citizens.
283A.9 Building for school lunch facility.
283A.10 School lunch in nonpublic schools.

283A.1 Definitions. For the purpose of this chapter:

1. *"School board"* means a board of school directors regularly elected by the qualified voters of a school corporation or district of the state of Iowa.

2. *"School"* means a public school of high school grade or under.

3. *"School lunch program"* means a program under which lunches are served by any public school in the state of Iowa on a nonprofit basis to children in attendance, including any such program under which a school receives assistance out of funds appropriated by the Congress of the United States. [C54, 58, 62, 66, 71, 73, 75,§283A.1]

283A.2 School boards—rules. School boards shall have power to operate or provide for the operation of school lunch programs in schools under their jurisdiction, and may use therefor funds disbursed to them under the provisions of this chapter, gifts, funds received from sale of school lunches under such programs, and any other funds legally available.

All school districts shall operate or provide for the operation of school lunch programs at all public schools in each district, which programs shall be operated in compliance with the rules of the department of public instruction and pertinent federal rules, for all students in each district who attend public school four or more hours each school day and wish to participate in a school lunch program, and school districts may provide such programs for other students. [C54, 58, 62, 66, 71, 73, 75,§283A.2]

283A.3 Expenditure of federal funds. The superintendent of public instruction is hereby authorized to accept and direct the disbursement of funds appropriated by any Act of Congress and appropriated to the state of Iowa for use in connection with school lunch programs. The superintendent of public instruction shall deposit all such funds with the treasurer of the state of Iowa, who shall make disbursements therefrom upon the direction of the superintendent of public instruction. [C54, 58, 62, 66, 71, 73, 75,§283A.3]

283A.4 Administration of program. The superintendent of public instruction may enter into such agreements with any agency of the federal government, with any school board, or with any other agency or person, prescribe such regulations, employ such personnel, and take such other action as he may deem necessary to provide for the establishment, maintenance, operation, and expansion of any school lunch program, and to direct the disbursement of federal and state funds, in accordance with any applicable provisions of federal or state law. The superintendent of public instruction may give technical advice and assistance to any school board in connection with the establishment and operation of any school lunch program and may assist in training such personnel engaged in the operation of such program. The superintendent of public instruction and any school board may accept any gift for use in connection with any school lunch program. [C54, 58, 62, 66, 71, 73, 75,§283A.4]

283A.5 Accounts, records, reports, and operations. The superintendent of public instruction shall prescribe regulations for the keeping of accounts and records and the making of reports by or under the supervision of school boards. Such accounts and records shall at all times be available for inspection and audit by authorized officials and shall be preserved for such period of time, not in excess of five years, as the superintendent of public instruction may lawfully prescribe. The superintendent of public instruction shall conduct or cause to be conducted such audits and inspections with respect to school lunch programs as may be necessary to determine whether its agreement with school boards and regulations made pursuant to this chapter are being complied with, and to insure that school lunch programs are effectively administered. [C54, 58, 62, 66, 71, 73, 75,§283A.5]

283A.6 Repealed by 65GA, ch 10,§7.

283A.7 Federal benefits accepted. The provisions of the Acts of Congress known as the national school lunch Act and the child nutrition Act of 1966, found in 42 U.S. Code 1751–1785, and the benefit of all funds appropriated under said Acts, are hereby accepted by the state of Iowa. [C71, 73, 75,§283A.7]

283A.8 Use of school lunch facilities by senior citizens. Boards of directors of school corporations may authorize the use by senior citizen organizations of school lunch facilities subject to reasonable rules and regulations of the board. Such use shall not interfere with the use of the facilities for public school purposes. The board may charge for such use an amount not to exceed the cost to the district. [C71, 73, 75,§283A.8]

283A.9 Building for school lunch facility. School districts are authorized to purchase, erect, or otherwise acquire a building for use as a school lunch facility, and to equip such a building for such use, and pay for same from unencumbered funds on hand in the schoolhouse fund derived from taxes voted under authority of sections 278.1, subsection 7, or 275.32, subject to the terms of this section, or may pay for same from the proceeds of the sale of school property sold under section 297.22, or from surplus remaining in the schoolhouse fund after retirement of a bond issue, or from a tax voted for said purposes. [C75,§283A.9]

283A.10 School lunch in nonpublic schools. The authorities in charge of nonpublic schools may operate or provide for the operation of school lunch programs in schools under their jurisdiction and may use funds appropriated to them by the general assembly, gifts, funds received from sale of school lunches under such programs, and any other funds available to the nonpublic school. However, school lunch programs shall not be required in nonpublic schools. The department of public instruction shall direct the disbursement of state funds to nonpublic schools for school lunch programs in the same manner as state funds are disbursed to public schools. [C75,§283A.10]

CHAPTER 284

INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

284.1 Interstate agreement.
284.2 Designated state official.
284.3 Contracts on file.

284.1 Interstate agreement. The interstate agreement on qualification of educational personnel is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I—PURPOSE, FINDINGS, AND POLICY

1. The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of co-operation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interest of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of co-operation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

2. The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this agreement can increase the availability of educational manpower.

ARTICLE II—DEFINITIONS

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

1. *"Educational personnel"* means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

2. *"Designated state official"* means the education official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.

3. *"Accept"*, or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

4. *"State"* means a state, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

5. *"Originating state"* means a state (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to article III of this agreement.

6. *"Receiving state"* means a state (and the subdivisions thereof) which accepts educational personnel in accordance with the terms of a contract made pursuant to article III of this agreement.

ARTICLE III—INTERSTATE EDUCATIONAL PERSONNEL CONTRACTS

1. The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own state.

2. Any such contract shall provide for:

a. Its duration.

b. The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state.

c. Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

d. Any other necessary matters.

3. No contract made pursuant to this agreement shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

5. The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

6. A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states.

ARTICLE IV—APPROVED AND ACCEPTED PROGRAMS

1. Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

2. To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in applicable contract.

ARTICLE V—INTERSTATE CO-OPERATION

The party states agree that:

1. They will, so far as practicable, prefer the making of multilateral contracts pursuant to article III of this agreement.

2. They will facilitate and strengthen co-operation in interstate certification and other elements of educational personnel qualification and for this purpose shall co-operate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

ARTICLE VI—AGREEMENT EVALUATION

The designated state officials of any party states may meet from time to time as a group to evaluate programs under the agreement, and to formulate recommendations for changes.

ARTICLE VII—OTHER ARRANGEMENTS

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

ARTICLE VIII—EFFECT AND WITHDRAWAL

1. This agreement shall become effective when enacted into law by two states. There-

after it shall become effective as to any state upon its enactment of this agreement.

2. Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

3. No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

ARTICLE IX—CONSTRUCTION AND SEVERABILITY

This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters. [C75,§284.1]

Referred to in §284.2

284.2 Designated state official. The designated state official for this state, within the meaning of article II, paragraph 2, of the interstate agreement on qualification of educational personnel as set forth in section 284.1, shall be the superintendent of public instruction. He shall enter into contracts pursuant to article III of the agreement only with the approval of the specific text thereof by the state board of public instruction. [C75,§284.2]

284.3 Contracts on file. True copies of all contracts made on behalf of this state pursuant to the interstate agreement on qualification of educational personnel shall be kept on file in the department of public instruction and in the office of the secretary of state. The department of public instruction shall publish all such contracts in convenient form. [C75, §284.3]

CHAPTER 285

STATE AID FOR TRANSPORTATION

Referred to in §§282.7, 442.13

285.1 When entitled to state aid.
285.2 Payment of claims for nonpublic school pupil transportation.
285.3 Repealed by 62GA, ch 356,§27.
285.4 Pupils sent to another district.
285.5 Contracts for transportation.
285.6 Staff in state department.
285.7 Repealed by 62GA, ch 356,§28.
285.8 Powers and duties of state department.
285.9 Powers and duties of area boards.
285.10 Powers and duties of local boards.
285.11 Bus routes—basis of operation.
285.12 Disputes—hearings and appeals.
285.13 Disagreements between boards.
285.14 Nonstandard buses—penalties.
285.15 Forfeiture of reimbursement rights.

285.1 When entitled to state aid.

1. The board of directors in every school district shall provide transportation, either directly or by reimbursement for transportation, for all resident pupils attending public school, kindergarten through twelfth grade, except that:

a. Elementary pupils shall be entitled to transportation only if they live more than two miles from the school designated for attendance.

b. High school pupils shall be entitled to transportation only if they live more than three miles from the school designated for attendance.

For the purposes of this subsection, high school means a school which commences with either grade nine or grade ten, as determined by the board of directors of the school district or by the governing authority of the nonpublic school in the case of nonpublic schools.

Boards in their discretion may provide transportation for some or all resident pupils attending public school or pupils who attend nonpublic schools who are not entitled to transportation. Boards in their discretion may collect from the parent or guardian of the pupil not more than the pro rata cost for such optional transportation, determined as provided in subsection 12.

To the extent that this section as amended requires transportation which was not required before August 15, 1973, the board of directors shall not be required to provide such transportation before July 1, 1978.

2. Any pupil may be required to meet a school bus on the approved route a distance of not to exceed three-fourths of a mile without reimbursement.

3. In any district where transportation by school bus is impracticable or where school bus service is not available, the board may require the parents or guardian to transport

their children to the school designated for attendance. The parent or guardian shall be reimbursed for such transportation service for elementary pupils by the board of resident district for the distance one way from the pupil's residence to the school designated for attendance at the rate of fifty-six cents per mile per day irrespective of number of children transported. For high school pupils, the parent or guardian shall be reimbursed eighty dollars per pupil per year for such service, provided however no family shall receive more than one hundred sixty dollars per year for transporting the members of the family who attend high school. The provisions of this section shall apply to eligible nonpublic school pupils as well as to eligible public school pupils. However, reimbursement for nonpublic school pupils shall not exceed eighty dollars per pupil per year. The provisions of this subsection shall be effective for transportation of children commencing with the second semester of the school year beginning July 1, 1975.

4. In all districts where unsatisfactory roads or other conditions make it advisable, the board at its discretion may require the parent or guardian to transport their children up to two miles to connect with a vehicle of transportation. The parent or guardian shall be reimbursed for such transportation by the board of resident district at the rate of twenty-eight cents per mile per day, one way, per family for the distance from pupil's residence to the bus route.

5. Where transportation by school bus is impracticable or not available or other existing conditions warrant it, arrangements may be made for use of common carriers according to uniform standards established by the superintendent of public instruction and at a cost based upon the actual cost of service and approved by the board.

6. When the school designated for attendance of pupils is engaged in the transportation of pupils, the sending or designating school shall use these facilities and pay the pro rata cost of transportation except that a district sending pupils to another school may make other arrangements when it can be shown that such arrangements will be more efficient and economical than to use facilities of the receiving school, providing such arrangements are approved by the board of the area education agency.

7. If a local board closes either elementary or high school facilities and is approved by the board of the area education agency to operate its own transportation equipment, the full cost of transportation shall be paid by the board for all pupils living beyond the statutory walking distance from the school designated for attendance.

8. Transportation service may be suspended upon any day or days, due to inclemency of the weather, conditions of roads, or the existence of other conditions, by the board of the school district operating the buses, when in their judgment it is deemed advisable and when the school or schools are closed to all children.

9. Distance to school or to a bus route shall in all cases be measured on the public highway only and over the most passable and safest route as determined by the area education agency board, starting in the roadway opposite the private entrance to the residence of the pupil and ending in the roadway opposite the entrance to the school grounds or designated point on bus route.

10. The board in any district providing transportation for nonresident pupils shall collect the pro rata cost of transportation from the district of pupil's residence for all properly designated pupils so transported.

11. Boards in districts operating buses may transport nonresident pupils who attend public school, kindergarten through junior college, who are not entitled to free transportation provided they collect the pro rata cost of transportation from the parents.

12. The pro rata cost of transportation shall be based upon the actual cost for all the children transported in all school buses. It shall include one-seventh of the original net cost of the bus and such other items as shall be determined and approved by the superintendent of public instruction but no part of the capital outlay cost for school buses and transportation equipment for which the school district is reimbursed from state funds or that portion of the cost of the operation of any school bus used in transporting pupils to and from extra-curricular activities shall be included in determining said pro rata cost. In any district where because of unusual conditions, the cost of transportation is in excess of the actual operating cost of the bus route used to furnish transportation to nonresident pupils, the board of the local district may charge a cost equal to the cost of other schools supplying such service to that area, upon receiving approval of the state director of school transporation.

13. When a local board fails to pay transportation costs due to another school for transportation service rendered, the board of the creditor corporation shall file a sworn statement with the area education agency board specifying the amount due. The agency board shall check such claim and if the claim is valid shall certify to the county auditor. The auditor shall transmit to the county treasurer an order directing him to transfer the amount of such claim from the funds of the debtor corporation to the creditor corporation and the treasurer shall pay the same accordingly.

14. Resident pupils attending a nonpublic school located either within or without the school district of the pupil's residence shall be entitled to transportation on the same basis as provided for resident public school pupils.

under this section. The public school district providing transportation to a nonpublic school pupil shall determine the days on which bus service is provided, which shall be based upon the days for which bus service is provided to public school pupils, and the public school district shall determine bus schedules and routes. In the case of nonpublic school pupils the term "school designated for attendance" means the nonpublic school which is designated for attendance by the parents of the nonpublic school pupil.

15. If the nonpublic school designated for attendance is located within the public school district in which the pupil is a resident, the pupil shall be transported to the nonpublic school designated for attendance as provided in this section.

16. If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence, the pupil may be transported by the district of residence to a public school or other location within the district of the pupil's residence. A public school district in which a nonpublic school is located may establish school bus collection locations within its district from which nonresident nonpublic school pupils may be transported to and from a nonpublic school located in the district. If a pupil receives such transportation, the district of the pupil's residence shall be relieved of any requirement to provide transportation. As an alternative to the provisions enumerated in this subsection, subject to the provisions of section 285.9, subsection 3, where practicable, and at the option of the public school district in which a nonpublic school pupil resides, the school district may transport a nonpublic school pupil to a nonpublic school located outside the boundary lines of the public school district if the nonpublic school is located in a school district contiguous to the school district which is transporting the nonpublic school pupils, or may contract with the contiguous public school district in which a nonpublic school is located for the contiguous school district to transport the nonpublic school pupils to the nonpublic school of attendance within the boundary lines of the contiguous school district.

17. The public school district may meet the requirements of subsections 14 to 16 by any of the following:

a. Transportation in a school bus operated by a public school district.

b. Contracting with private parties as provided in section 285.5. However, contracts shall not provide payment in excess of the average per pupil transportation costs of the school district for that year.

c. Utilizing the transportation reimbursement provision of subsection 3. However, no reimbursement shall exceed eighty dollars per nonpublic school pupil per year.

d. Contracting with a contiguous public school district to transport resident nonpublic school pupils the entire distance from the nonpublic pupil's residence to the nonpublic school located in the contiguous public school district or from the boundary line of the public school district to the nonpublic school.

18. The state superintendent of public instruction may review all transportation arrangements to see that they meet all legal and established uniform standard requirements.

19. Transportation authorized by this chapter is exempt from all laws of this state regulating common carriers.

20. Transportation for which the pro rata cost or other charge is collected shall not be provided outside the state of Iowa except in accordance with rules adopted by the state department of public instruction in accordance with chapter 17A. The rules shall take into account any applicable federal requirements.

21. Boards in districts operating buses may in their discretion transport senior citizens, children and handicapped persons, who are not otherwise entitled to free transportation, and shall collect the pro rata cost of transportation. Transportation under this subsection shall not be provided when the school bus is being used to transport pupils to or from school unless the board determines that such transportation is desirable and will not interfere with or delay the transportation of pupils. [S13,§§2794-b,-c,-d,-e; SS15,§§2794-a,-g; C24, 27, 31,§§4179–4181, 4184, 4186; C35,§§4179–4181, 4184, 4186, 4233-e5; C39,§§**4179–4181, 4184, 4186, 4233.5**; C46,§§276.26, 276.28, 276.29, 276.32, 276.34, 279.20, 285.1, 285.5; C50, 54, 58, 62, 66, 71, 73, 75,§285.1; 66GA, ch 161,§§1, 2, ch 1153,§5, ch 1154,§§1, 2, 3]

Referred to in §§270.9, 285.2, 285.11, 321.18

285.2 Payment of claims for nonpublic school pupil transportation. Boards of directors of school districts shall be required to provide transportation services to nonpublic school pupils as provided in section 285.1 only during school years when the general assembly has appropriated funds to the department of public instruction for the payment of claims for transportation costs submitted by the school district.

If the funds appropriated by the general assembly are not sufficient to pay the claims submitted by the school districts, the amount paid to each school district by the department shall be prorated on the basis of funds so appropriated. The difference between the amount of the claim of a school district and the amount of payment received from the department of public instruction shall be paid by the parent or guardian of the nonpublic school pupil transported.

The costs of providing transportation to nonpublic school pupils as provided in section 285.1 shall not be included in the computation of district cost under chapter 442, but shall be shown in the budget as an expense from miscellaneous income. Any transportation reimbursements received by a local school district

for transporting nonpublic school pupils shall not affect district cost limitations of chapter 442. The reimbursements provided in this section are miscellaneous income as defined in section 442.5.

Claims for reimbursement shall be made to the department of public instruction by the public school district providing transportation or transportation reimbursement during a school year on a form prescribed by the department, and the claim shall state the services provided and the actual costs incurred. A claim shall not exceed the average transportation costs of the district per pupil transported. Claims shall be accompanied by an affidavit of an officer of the public school district affirming the accuracy of the claim. By February 1 and by June 15 of each year the department shall certify to the state comptroller the amounts of approved claims to be paid, and the state comptroller shall draw warrants payable to school districts which have established claims. Claims shall be allowed where practical, and at the option of the public school district of the pupil's residence, subject to approval by the area education agency of the pupil's residence, under the provisions of section 285.9, subsection 3, the public school district of the pupil's residence may transport any pupil to a school located in a contiguous public school district outside the boundary lines of the public school district of the pupil's residence. The public school district of the pupil's residence may contract with the contiguous public school district or with a private contractor under the provisions of section 285.5 to transport the pupils to the school of attendance within the boundary lines of the contiguous public school district. The public school district in which the pupil resides may contract with the contiguous public school district or with a private contractor under the provisions of section 285.5 to transport the pupil from the pupil's residence or from designated school bus collection locations to the school located within the boundary lines of the contiguous public school district, subject to the approval of the area education agency of the pupil's residence. The public school district of the pupil's residence may utilize the reimbursement provisions of section 285.1, subsection 3. [C75,§285.2; 66GA, ch 1154,§4]

See §4.12

285.3 Repealed by 62GA, ch 356,§27.

285.4 Pupils sent to another district. When a board closes its elementary school facilities for lack of pupils or by action of the board, it shall, if there is a school bus service available in the area, designate for attendance the school operating the buses, provided the board of such school is willing to receive them and the facilities and curricular offerings are adequate. The board of the district where the pupils reside may with the approval of the area education agency board, subject to legal limitations and established uniform standards, designate another rural school and provide their own transportation if the transportation costs will be less than to use the established bus service.

All designations must be submitted to the area education agency board on or before July 15, for review and approval. The agency board shall after due investigation alter or change designations to make them conform to legal requirements and established uniform standards for making designations and for locating and establishing bus routes. After designations are made, they will remain the same from year to year except that on or before July 15, of each year, the rural board or parents may petition the agency board for a change of designation to another school. Appeals from the decision of the agency board on designations may be made by either the parents or board to the state superintendent of public instruction as provided in section 285.12 and section 285.13. [C35,§§4274-e1,-e3,-e4,-e6; C39,§§4274.03, 4274.05, 4274.06, 4274.08; C46, §§282.10, 282.12, 282.13, 282.15, 285.4; C50, 54, 58, 62, 66, 71, 73, 75,§285.4; 66GA, ch 1056,§17]

285.5 Contracts for transportation.

1. Contracts for school bus service with private parties shall be in writing and be for the transportation of children who attend public school and children who attend nonpublic school. Such contracts shall define the route, the length of time, service contracted for, the compensation, the vehicle to be used. The contract shall prescribe the duties of the contractor and driver of the vehicles and shall provide that every person in charge of a vehicle conveying children to and from school shall be at all times subject to any rules said board shall adopt for the protection of the children, or to govern the conduct of the persons in charge of said conveyance. Contracts may be made for a period not to exceed three years.

The contract shall provide that the contractor will sell the equipment to the board should he desire to terminate the contract, provided the board should desire to purchase said equipment, the price of the equipment to be determined by an appraisal board composed of one person appointed by the school board, one appointed by the owner of the equipment, and a third selected by these two.

2. The contractor shall operate the vehicle himself or provide a driver who must be approved by the board. The contractor and driver shall be subject to all laws and prescribed standards for school bus drivers. Failure to comply shall constitute grounds for dismissal of the driver or cancellation of the contract if the board so desires.

3. All vehicles of transportation provided by contractor shall be inspected, approved and certified before being put into operation.

4. All contracts may be terminated by either party on a ninety-day notice.

5. The state superintendent of public instruction shall prepare a uniform contract containing provisions not in conflict with this chapter which shall be used by all schools in contracting for transportation service.

6. All contractors shall carry liability insurance in amounts and kind as provided in the official contract.

7. All contracts for transportation service and for drivers of school-owned and operated buses shall be made with someone outside the board except where no other transportation service is available, a board member may transport his own children.

8. Private buses other than common carriers not used exclusively in transportation of pupils while under contract to a school district shall meet all requirements for school-owned buses, as to construction and operation.

9. All bus drivers for school-owned equipment shall be under contract with the board. The superintendent of public instruction shall prepare a uniform contract containing provision not in conflict with this chapter which shall be used by all school boards in contracting with drivers of school-owned vehicles. [SS15,§2794-a; C24, 27, 31, 35, 39,§§4182, 4183; C46,§§276.30, 276.31; C50, 54, 58, 62, 66, 71, 73, 75,§285.5]

Referred to in §§285.1(17), 285.2

285.6 Staff in state department. The state superintendent, subject to the approval of the state board of public instruction, is authorized to organize and staff the division and to employ the necessary qualified personnel to carry out the provisions of this chapter. The appropriation provided by this chapter may be expended in part for the direction and supervision provided by the chapter which shall include salaries and all necessary traveling expense incurred by said personnel in the performance of their official duties. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§285.6]

285.7 Repealed by 62GA, ch 356,§28.

285.8 Powers and duties of state department. The powers and duties of the state department shall be to:

1. Exercise general supervision over the school transportation system in the state.

2. Review and establish the location of bus routes which are located in more than one area education agency when the area education agency boards of the affected area education agencies after formal action do not approve.

3. Establish uniform standards for locating and operating bus routes and for the protection of the health and safety of pupils transported.

4. Inspect or cause to be inspected all vehicles used as school buses to transport school children to determine if such vehicles meet all legal and established standards of construction and can be operated with safety, comfort, and economy. When it is determined that further use of such vehicles is dangerous to the pupils transported and to the safety and welfare of the traveling public, the department of public instruction shall order such vehicle to be withdrawn from further use on a specified date. School buses which do not conform to the requirements of the department of public instruction may be issued a temporary certificate of operation provided that such school buses can be operated with safety, and provided further that no such certificate shall be issued for a period in excess of one year. All equipment can be required to be altered, or safety equipment added in order to make vehicles reasonably safe for operation. New buses after initial inspection and approval shall be issued a seal of inspection. After each annual inspection a seal of inspection and approval shall be issued. Said seals shall be mounted on the lower right hand corner of the windshield.

5. Aid in the enforcement of the motor vehicle laws relating to the transportation of school children.

6. Prescribe uniform standards and regulations:

a. For the efficient operation and maintenance of school transportation equipment and for the protection of the health and safety of children transported.

b. For locating and establishing bus routes.

c. For procedures and requirements in making designations.

d. For standard of safety in construction of school transportation equipment.

e. For procedures for purchase of buses.

f. For qualification of school bus drivers.

g. As deemed necessary for the efficient administration of this chapter.

7. Review all transportation arrangements when deemed necessary and shall disapprove any arrangements that are not in conformity with the law and established standards and require the same to be altered or changed so that they do conform.

8. Conduct schools of instruction for transportation personnel as needed or requested. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§285.8; 66GA, ch 67,§28]

285.9 Powers and duties of area boards. The powers and duties of the respective area education agency boards shall be to:

1. Enforce all laws and all rules and regulations of the state department of public instruction relating to transportation.

2. Review and approve all transportation arrangements between districts in the agency and in all districts in the agency not operating high schools. If such transportation arrangements, designations, and contracts are not in conformity to law or established uniform standards for the locating and operating of

bus routes, the agency board shall, after receiving all facts, make such alterations or changes as necessary to make the arrangements, designations, and contracts conform to the legal and established requirements and shall notify local board of such action.

3. Approve all bus routes outside the boundary of the district of the school operating buses.

4. When a local board fails to make designations and other necessary arrangements for transporation as required by law, the agency board shall, after due notice to the local board, make necessary arrangements in conformity with law and established requirements. Notice shall be given to the local board of the arrangements as made. The arrangements shall be binding on the local board which shall pay the costs for service as arranged. [C35, §§4274-e1,-e2; C39,§§**4274.03, 4274.04**; C46,§§282.10, 282.11, 285.9; C50, 54, 58, 62, 66, 71, 73, 75,§285.9]

Referred to in §§285.1, 285.2

285.10 Powers and duties of local boards. The powers and duties of the local school boards shall be to:

1. Provide transportation for each resident pupil who attends public school, and each resident pupil who attends a nonpublic school, and who is entitled to transportation under the laws of this state.

2. Establish, maintain and operate bus routes for the transportation of pupils so as to provide for the economical and efficient operation thereof without duplication of facilities, and to properly safeguard the health and safety of the pupils transported.

3. Purchase or lease buses and other transportation facilities, and maintain same, and to enter into contracts for transportation subject to any provisions of law affecting same.

4. Employ such drivers and other employees as may be necessary and prescribe their qualifications and adopt rules for their conduct.

5. Exercise any and all powers and duties relating to transportation of pupils enjoined upon them by law.

6. Shall purchase liability insurance and other insurance coverage which the board deems advisable to insure the school district, its officers, employees and agents against liability incurred as a result of operating school buses, including but not limited to liability to pupils or other persons lawfully transported. Section 613A.7 shall apply to such insurance. However, the board of directors in its discretion shall determine the insurance coverages and limits, and the school district and directors shall not be liable as a result of any such discretionary decision.

7. When a school qualifies to purchase buses, they may be purchased as follows:

a. From such funds as may be available in the general fund.

b. May purchase buses and enter into contract to pay for such buses over a five-year period as follows: One-fourth of the cost when bus is delivered and the balance in equal annual installments, plus simple interest due. The interest rate shall be the lowest rate available and shall not exceed four percent simple interest. The bus shall serve as security for balance due. Bus bodies and chassis shall be purchased on separate contracts unless the bus is constructed as an integral unit, inseparable as to body and chassis, by the manufacturer or is a used or demonstrator bus.

8. Boards in school districts which have sufficient resident pupils they are required to transport to warrant the purchase of transportation equipment may purchase buses needed to provide the transportation.

9. In the discretion of the board, furnish a school bus and services of a qualified driver to an organization of, or sponsoring activities for, senior citizens, children, or handicapped persons in this state. The board shall charge and collect an amount sufficient to reimburse all costs of furnishing the bus and driver except when the bus is used for transporting pupils to and from extracurricular activities sponsored by the school. A school bus shall be used as provided in this subsection only at times when it is not needed for transportation of pupils.

10. In the discretion of the board furnish a school bus and services of a qualified driver for transportation of persons other than pupils to activities in which pupils from the school are participants or are attending the activity or for which the school is a sponsor. The board shall charge and collect an amount sufficient to reimburse all costs of furnishing the bus and driver. A school bus shall be used as provided in this subsection only at times when it is not needed for transportation of pupils. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§285.10; 66GA, ch 1154,§§5, 6, 8]

Referred to in §§285.11, 321.18

285.11 Bus routes—basis of operation. The establishment and operation of bus routes and the contracting for transportation shall be based upon the following considerations:

1. Each bus route shall be planned and adjusted to utilize the normal seating capacity of each bus insofar as it is possible to do so.

2. Each bus route shall serve only those pupils living in those areas where transportation by bus is the most economical method for providing adequate transportation facilities.

3. A route shall not be extended for the purpose of accommodating pupils whose homes are nearer another bus route.

4. Special contracts for transportation of pupils entitled to transportation shall be entered into only when it is more economical to make such special provision than to provide same by regular bus route, or when by reason of physical or mental handicap of the pupil such pupil cannot be transported with safety **by bus.**

5. The boards shall take advantage of all tax exemptions on fuel, equipment, and of such other economies as are available.

6. The use of school buses shall be restricted to transporting pupils to and from school and to and from extracurricular activities sponsored by the school when such extra curricular activity is under the direction of a qualified member of the faculty and a part of the regular school program and to transporting other persons to the extent permitted by section 285.1, subsection 1, and section 285.10, subsections 9 and 10. School employees of districts operating buses may be transported to and from school and approved activities which they are required to attend as a result of their responsibilities. Provided, however, nothing in this subsection shall prohibit the use of school buses in transporting a school teacher going to and from her school when such school is on an established school bus route and such teacher makes arrangements with the district operating such school bus.

7. No bus shall leave the public highway to receive or discharge pupils unless their safety is enhanced thereby, or the private road is maintained in the same manner as a public roadway.

8. Bus routes shall be established only to give service to properly designated pupils.

9. Bus drivers for school buses must present a certificate of physical fitness each year before being permitted to operate any vehicles transporting children to and from school.

10. Bus drivers must hold a regular or special chauffeur's license and in addition, a special school bus driver permit issued by the department of public instruction. [C39,§4179.1; C46,§§276.27, 285.11; C50, 54, 58, 62, 66, 71, 73, 75,§285.11; 66GA, ch 1154,§§7, 9]

285.12 Disputes—hearings and appeals. In the event of a disagreement between a school patron and the board of the school district, the patron if dissatisfied with the decision of the district board, may appeal the same to the area education agency board, notifying the secretary of the district in writing within ten days of the decision of the board and by filing an affidavit of appeal with the agency board within the ten-day period. The affidavit of appeal shall include the reasons for the appeal and points at issue. The secretary of the local board on receiving notice of appeal shall certify all papers to the agency board which shall hear the appeal within ten days of the receipt of the papers and decide it within three days of the conclusion of the hearing and shall immediately notify all parties of its decision. Either party may appeal the decision of the agency board to the superintendent of public instruction by notifying the opposite party and the agency administrator in writing within five days after receipt of notice of the decision of the agency board and shall file with the superintendent of public instruction an affidavit of appeal, reasons for appeal, and the facts involved in the disagreement. The agency administrator shall, within ten days of said notice, file with the superintendent of public instruction all records and papers pertaining to the case, including action of the agency board. The superintendent of public instruction shall hear the appeal within fifteen days of the filing of the records in his office, notifying all parties and the agency administrator of the time of hearing. The superintendent of public instruction shall forthwith decide the same and notify all parties of his decision and return all papers with a copy of the decision to the agency administrator. The decision of the superintendent of public instruction shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. Pending final order made by the superintendent of public instruction, upon any appeal prosecuted to such superintendent, the order of the agency board from which the appeal is taken shall be operative and be in full force and effect. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§285.12]

Referred to in §§275.18, 285.4, 285.13

285.13 Disagreements between boards. In the event of a disagreement between the board of a school district and the board of an area education agency, the board of the school district may appeal to the state superintendent of public instruction and the procedure and times provided for in section 285.12 shall prevail in any such case. The decision of the state superintendent of public instruction shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§285.13]

Referred to in §285.4

285.14 Nonstandard buses—penalties. Any person who operates or permits to be operated as a school bus to transport pupils, any vehicle which does not comply with the requirements provided by law or by the rules and regulations of the state department of public instruction, or for which there is not a valid temporary certificate for operation, shall be punished by a fine of not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§285.14]

285.15 Forfeiture of reimbursement rights. The failure of any local district to comply with the provisions of this chapter or any other laws relating to the transportation of pupils, or any rules made by the state department of public instruction under this chapter or the final decisions of the area education agency board, or the final decisions of the state department of public instruction shall during the period such failure to comply existed forfeit the rights to collect transportation

costs from school or parents while operating in such illegal manner. Any superintendent, board, or board member who knowingly operates or permits to be operated any school bus transporting public school pupils in violation of any school transportation law shall be deemed guilty of a misdemeanor. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§285.15]

Constitutionality, 51GA, ch 133,§17

CHAPTER 286

SUPPLEMENTARY AID TO SCHOOL DISTRICTS

Repealed by 62GA, ch 356,§25

CHAPTER 286A

GENERAL AID TO SCHOOLS

286A.1 Area vocational schools, community and junior colleges.
286A.2 Repealed by 62GA, ch 356,§22.
286A.3 Repealed by 66GA, ch 1056,§45.
286A.4 Determination.
286A.5 Information furnished by school district.
286A.6 Rules.
286A.7 Repealed by 62GA, ch 356,§24.
286A.8 General aid to junior or community colleges.
286A.9 Merged area schools general aid.
286A.10 Aid paid quarterly.
286A.11 Plan for allocation of remaining funds.
286A.12 Uniform accounting system.

286A.1 Area vocational schools, community and junior colleges. The several merged areas operating area vocational schools or community colleges and the several school districts operating junior colleges or community colleges in the state of Iowa shall be entitled to receive financial aid from the state in the manner and amount as provided in this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§286A.1]

286A.2 Repealed by 62GA, ch 356,§22.

286A.3 Repealed by 66GA, ch 1056,§45.

286A.4 Determination. The general school aid funds allocated to each district shall be determined as follows:

Multiply one dollar and thirty cents by the number of students for which the district pays tuition for such students to attend an area vocational technical high school or program which has been established and approved under the provisions of chapter 258. Multiply this product by the actual number of days that the vocational technical school was officially in session, not to exceed one hundred eighty days. For any district which has an area vocational technical high school or program established and approved under the provisions of chapter 258, multiply one dollar and fifty cents by the number of full-time day students who have graduated from high school or who are beyond twenty-one years of age and are tuition students. Multiply this product by the actual number of days that the school was officially in session, not to exceed one hundred eighty days. A school district, in computing the tuition to charge such a student, shall deduct the amount of general aid received for such student from the regular tuition for such student. [C50, 54, 58, 62, 66, 71, 73, 75,§286A.4]

286A.5 Information furnished by school district. At the close of each school year, but not later than July 5, the local district or merged area school shall supply to the state department of public instruction the information required for calculation of the amount reimbursable to the district for elementary and secondary school. For any day student who has been enrolled on a less than a full school-day basis, the reimbursement shall be calculated proportionately to the portion for which he is enrolled as shall be determined by the state department of public instruction. For school districts operating a junior college or community college, the aid to the district for such college shall be separately appropriated, calculated, prorated when necessary, and paid as hereinafter provided in sections 286A.8 to 286A.10. Forms for reporting information to calculate aid for elementary and secondary school purposes shall be supplied by the state department of public instruction to each school district not later than June 1. On or before August 1, the state department of public instruction shall furnish to the state comptroller estimates of the amount reimbursable for the year to each school district for general aid for elementary and secondary school purposes and upon said estimates the state comptroller shall, on or about August 1, make payment of the first half of the annual amount appropriated for such general aid. After all such claims have been calculated for the year and validated

for accuracy, the state department of public instruction shall certify the same to the state comptroller prior to February 1. On or about February 1, the state comptroller shall make payment to the school districts, of the balance of the amount appropriated for such general aid, which, when taken with the first half payment, conforms to the amount of full year reimbursement due each school district as then validated and certified by the state department of public instruction. In the event that the amount appropriated for reimbursement of the school districts for such purposes is insufficient to pay in full the amounts to each of the school districts or merged areas, then the amount of each payment shall be reduced by the state comptroller in the ratio that the total respective funds appropriated and available for such aid bears to the respective total amounts certified for reimbursement. All funds received or to be received under the provisions of this chapter shall be taken into account and considered by each school district or merged area when estimating the amount required for the general fund. [C50, 54, 58, 62, 66, 71, 73, 75,§286A.5]

286A.6 Rules. The superintendent of public instruction, subject to the approval of the state board of public instruction, is hereby authorized to adopt such rules and definitions of terms as are necessary and proper for the administration of this chapter. The necessary expenses incurred by the department of public instruction in the administration of this chapter may be paid from the appropriation therefor. When such conditions as unnatural weather hazards, bad roads, epidemics, and the like, occur to such an extent as to penalize any district, the superintendent of public instruction can adjust the formula by taking the average of several months' attendance in lieu of the months affected by such epidemics or hazards. [C50, 54, 58, 62, 66, 71, 73, 75,§286A.6]

286A.7 Repealed by 62GA, ch 356,§24.

286A.8 General aid to junior or community colleges. School districts operating a junior or community college shall be entitled to general school aid therefor as follows: Multiply one dollar by the average daily enrollment of the students who are residents of such school district carrying twelve or more semester hours of work plus the full-time equivalent of resident students carrying less than twelve semester hours of work. Multiply two dollars and twenty-five cents by the average daily enrollment of students who are nonresidents of the district carrying twelve or more semester hours of work plus the full-time equivalent of nonresident students carrying less than twelve semester hours of work. Multiply the sum of these products by the actual number of days school was officially in session, not to exceed one hundred eighty days. For the purposes of this section, "work" means subjects or courses; for which credit may be earned and applied toward fulfillment of the requirements for a certificate, diploma, or degree; and which are approved by the state department of public instruction for state aid. [C71, 73, 75,§286A.8]

Referred to in §§286A.5, 286A.10

286A.9 Merged area schools general aid. Merged areas operating area schools shall be entitled to general school aid. Each merged area shall be entitled to two dollars and twenty-five cents per day for the full-time equivalent enrollment of students who are residents of the state. The total amount of state aid allocated to each area shall be computed by the following formula:

State aid = Full-time equivalent enrollment × 180 days × $2.25.

The amount appropriated for general state aid for the fiscal year each year, shall first be allocated to each merged area, in accordance with the above formula, on the basis of its reimbursable full-time equivalent enrollment for the previous school year. Any amount remaining shall be allocated to each merged area as provided in sections 286A.11 and 286A.12. Any course or program, the direct operational costs of which are entirely paid by federal, state, or other governmental agencies or private subsidy, or both, shall not be eligible for reimbursement.

For the purpose of this chapter, the following definitions shall apply:

1. *"Full-time equivalent enrollment"* means the quotient of the total number of reimbursable hours carried by residents of the state attending a single area school, divided by five hundred forty, which represents fifteen reimbursable hours per week for a period of thirty-six weeks.

2. *"Reimbursable hour"* means any of the following:

a. One contact hour of lecture in an approved course in arts and science or vocational-technical education. A contact hour of lecture is one that requires significant outside preparation.

b. Two contact hours of laboratory in an approved course in arts and science or vocational-technical education.

c. Two contact hours in an approved course of adult education that is eligible for general state aid, except that basic adult education, high school completion, and college credit courses that qualify as lecture courses will be reimbursed on a one contact hour basis. Courses dealing with recreation, hobbies, casual cultural, or self-enjoyment subjects shall not be eligible for reimbursement. [C71, 73, 75,§286A.9]

Referred to in §§286A.5, 286A.10, 286A.11

286A.10 Aid paid quarterly. Payment of the aid provided in sections 286A.8 and 286A.9 shall be made to each merged area, and to each school district operating a junior or community college on a quarterly basis, at the end

of each quarter of the school year, which commences on July 1 and ends on the following June 30, in the following manner:

1. At the close of each school year but not later than July 5, the board of directors of each such school district or merged area shall certify to the state department of public instruction the information necessary to compute the aid entitlement, as hereinabove provided, for the school year ending on June 30 immediately preceding the said July 1. In addition thereto, each said board shall certify to the state department, its best bona fide estimate of what the same data and information will be for the school year that commences upon the said July 1, and ends on the following June 30.

2. On the basis of estimates certified, as provided in subsection 1 hereof, thirty percent of the anticipated aid entitlement for each such school district or merged area shall be paid to the district or merged area at the end of each of the first three quarters of the school year for which said estimates have been certified. The aid payment for the fourth quarter shall be equal to the difference between the aggregate aid payments for the first three quarters and the total amount of aid entitlement computed on the basis of the actual information required for calculation, as certified in the following July, plus or minus such pro rata amount as may be necessary to make the aggregate total of general school aid paid to all such school districts or merged areas, as the case may be, for the said year equal to the respective amounts of aid funds appropriated for payment to such districts or areas in the said year.

3. Forms for the purpose of reporting the information and estimates required under subsection 1 hereof shall be supplied by the state department. After quarterly payments have been calculated they shall be certified to the state comptroller for payment. Such certification shall be made to the comptroller on or about August 1, November 1, February 1, and May 1 for aid payable for the preceding quarter. The comptroller shall pay the quarterly amounts so certified forthwith. [C71, 73, 75,§286A.10]

Referred to in §286A.5

286A.11 Plan for allocation of remaining funds. The superintendent of public instruction, with the advice and participation of an advisory committee, shall submit a plan to the state comptroller for the allocation of any funds remaining after fulfilling the requirements of section 286A.9.

For the purpose of this section, the "advisory committee" shall consist of one board member from each merged area, to be appointed by each merged area board at its first meeting in July of each year. [C71, 73, 75,§286A.11]

Referred to in §286A.9

286A.12 Uniform accounting system. The superintendent of public instruction shall establish a uniform accounting system for area schools subject to the approval of the auditor of state. The accounting system shall provide for crediting all funds received in the form of federal aid, state aid, tuition, and miscellaneous fees to four separate accounts, as follows:

1. Arts and science education.
2. Vocational-technical education.
3. General adult education.
4. Co-operative programs or services.

All expenditures shall be charged to the appropriate accounts. No funds shall be transferred from one account to another without the approval of the superintendent of public instruction, and notification of all such transfers shall be given to the state comptroller. The accounting system of each area school shall be audited annually by the auditor of state. [C71, 73, 75,§286A.12]

Referred to in §286A.9
Budget law not applicable, 68GA, ch 190,§8

CHAPTER 287

SOCIETIES AND FRATERNITIES

287.1 Secret societies and fraternities.
287.2 Enforcement.
287.3 Suspension or dismissal.
287.4 "Rushing" prohibited.

287.1 Secret societies and fraternities. It shall be unlawful for any pupil, registered as such, and attending any public high school, district, primary, or graded school, which is partially or wholly maintained by public funds, to join, become a member of, or to solicit any other pupil of any such school to join, or become a member of, any fraternity or society wholly or partially formed from the membership of pupils attending any such schools, or to take part in the organization or formation of any such fraternity or society, except such societies or associations as are sanctioned by the directors of such schools. [S13,§2782-a; C24, 27, 31, 35, 39,§4284; C46, 50, 54, 58, 62, 66, 71, 73, 75,§287.1]

Referred to in §§287.2, 287.3

287.2 Enforcement. The directors of all schools shall enforce the provisions of section 287.1 and shall have full power and authority to make, adopt, and modify all rules and regulations which, in their judgment and discretion, may be necessary for the proper governing of such schools and enforcing all the provisions of section 287.1. [S13,§2782-b; C24, 27, 31, 35, 39,§4285; C46, 50, 54, 58, 62, 66, 71, 73, 75,§287.2]

287.3 Suspension or dismissal. The directors of such schools shall have full power and authority, pursuant to the adoption of such rules and regulations made and adopted by them, to suspend or dismiss any pupil or pupils of such schools therefrom, or to prevent them, or any of them, from graduating or participating in school honors when, after investigation, in the judgment of such directors, or a majority of them, such pupil or pupils are guilty of violating any of the provisions of section 287.1, or are guilty of violating any rule, rules, or regulations adopted by such directors for the purpose of governing such schools or enforcing said section. [S13,§2782-c; C24, 27, 31, 35, 39,§4286; C46, 50, 54, 58, 62, 66, 71, 73, 75,§287.3]

287.4 "Rushing" prohibited. No person shall go upon school grounds or enter any school building for the purpose of "rushing" or soliciting, while there, any pupil of such school to join any fraternity, society, or organization outside of said school. Persons violating the provisions of this section shall be fined not less than two dollars nor more than ten dollars, and on failure to pay such fine shall be imprisoned in the county jail for not more than ten days. Fines collected shall be paid to the county treasurer, and be by him added to the school fund of the district in which the offense was committed. [S13,§2782-d; C24, 27, 31, 35, 39,§4287; C46, 50, 54, 58, 62, 66, 71, 73, 75,§287.4]

CHAPTER 288

EVENING SCHOOLS

288.1 Evening schools authorized.
288.2 When establishment mandatory.
288.3 Who admitted.

288.1 Evening schools authorized. The board of any school district may establish and maintain public evening schools as a branch of the public schools when deemed advisable for the public convenience and welfare. [C24, 27, 31, 35, 39,§4288; C46, 50, 54, 58, 62, 66, 71, 73, 75,§288.1]

Additional provision, §282.1

288.2 When establishment mandatory. When ten or more persons over sixteen years of age residing in any school district shall, in writing, express a desire for instruction in the common branches at an evening school, the school board shall establish and maintain an evening school for such instruction for not less than two hours each evening for at least two evenings each week during the period of not less than three months of each school year. [C24, 27, 31, 35, 39,§4289; C46, 50, 54, 58, 62, 66, 71, 73, 75,§288.2]

288.3 Who admitted. Such evening school shall be available to all persons over sixteen years of age who for any cause are unable to attend the public day schools of such school district. [C24, 27, 31, 35, 39,§4290; C46, 50, 54, 58, 62, 66, 71, 73, 75,§288.3]

CHAPTER 289

PART-TIME SCHOOLS

289.1 Authorization.
289.2 Support.
289.3 Standards—time of instruction.
289.4 District reimbursed.
289.5 Powers of state vocational board.
289.6 Violations.
289.7 Enforcement.

289.1 Authorization. The board of directors in any school district situated in whole or in part in any city having a population of twelve thousand or over, in which there shall reside or be employed, or both, fifteen or more children over fourteen years of age and under sixteen years of age, who are not in regular attendance in a full-time day school and who have not graduated from a four-year approved high school, shall establish and maintain part-

time schools, departments, or classes for such children. In districts situated in whole or in part in cities having less than twelve thousand population, the board may establish and maintain such schools. When such part-time schools have been established, all persons having custody of such children shall cause them to attend the same. [C24, 27, 31, 35, 39, §4291; C46, 50, 54, 58, 62, 66, 71, 73, 75,§289.1]

289.2 Support. The board of directors may raise and expend money for the support of such part-time schools, departments, or classes in the same manner in which it is authorized to raise and expend funds for other school purposes. [C24, 27, 31, 35, 39,§4292; C46, 50, 54, 58, 62, 66, 71, 73, 75,§289.2]

289.3 Standards—time of instruction. Such part-time schools, departments, or classes, for the attendance of children over fourteen and under sixteen years of age, shall be organized in accordance with standards established by the state board for vocational education, and shall provide for not less than eight hours of instruction per week during the length of term for which public schools are established in the district. Such part-time schools, departments, or classes shall be held between the hours of eight o'clock a.m. and six o'clock p.m. [C24, 27, 31, 35, 39,§4293; C46, 50, 54, 58, 62, 66, 71, 73, 75,§289.3]

Board for vocational education, ch 258

289.4 District reimbursed. Whenever any such part-time school or class shall have been approved by the state board for vocational education, the board of directors shall be entitled to reimbursement on account of expenditure made for the salaries of teachers in such part-time schools, departments, or classes from any federal and state funds appropriated in aid of vocational education, as provided in the statutes governing such appropriations. [C24, 27, 31, 35, 39,§4294; C46, 50, 54, 58, 62, 66, 71, 73, 75,§289.4]

289.5 Powers of state vocational board. The state board for vocational education is hereby authorized to fix standards for the establishment of part-time schools, departments, or classes; to fix the requirements of teachers, and to approve courses of study for such part-time schools, departments, or classes. [C24, 27, 31, 35, 39,§4295; C46, 50, 54, 58, 62, 66, 71, 73, 75,§289.5]

289.6 Violations. When such part-time school shall have been established, any parent or person in charge of such minor as defined in this chapter who shall violate the provisions of this chapter, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or any person unlawfully employing any such minor shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars, or be imprisoned in the county jail not to exceed thirty days. [C24, 27, 31, 35, 39,§4296; C46, 50, 54, 58, 62, 66, 71, 73, 75,§289.6]

289.7 Enforcement. The enforcement of this chapter shall rest with the school board in the district in which such part-time school, department, or class shall have been established, and the state department of public instruction through its inspectors and the state board for vocational education through its supervisors of vocational education, in conjunction with the area education agency administrator, are empowered to require enforcement of the same on the part of school boards. [C24, 27, 31, 35, 39,§4297; C46, 50, 54, 58, 62, 66, 71, 73, 75,§289.7]

CHAPTER 290

APPEAL FROM DECISIONS OF BOARDS OF DIRECTORS

Referred to in §281.6

290.1 Appeal to state board.
290.2 Notice—transcript—hearing.
290.3 Hearing—shorthand reporter—decision.
290.4 Witnesses—fees—collection.
290.5 Decision of state board.
290.6 Money judgment.

290.1 Appeal to state board. Any person aggrieved by any decision or order of the board of directors of any school corporation in a matter of law or fact may, within thirty days after the rendition of such decision or the making of such order, appeal therefrom to the state board of public instruction; the basis of the proceedings shall be an affidavit filed with the state board by the party aggrieved within the time for taking the appeal, which affidavit shall set forth any error complained of in a plain and concise manner. [R60,§§2133–2135; C73,§§1829–1831; C97,§2818; C24, 27, 31, 35, 39,§4298; C46, 50, 54, 58, 62, 66, 71, 73, 75,§290.1]

290.2 Notice — transcript — hearing. The state board of public instruction shall, within five days after the filing of such affidavit, notify the secretary of the proper school corporation in writing of the taking of such appeal, who shall, within ten days after being thus notified, file with the state board a complete certified transcript of the record and proceedings relating to the decision appealed from. Thereupon, the state board shall notify in writing all persons adversely interested of the time when and place where the matter of appeal will be heard. [R60, §§2136, 2137; C73,§§1832–1834; C97,§2819; C24,

27, 31, 35, 39,§4299; C46, 50, 54, 58, 62, 66, 71, 73, 75,§290.2]

290.3 Hearing — shorthand reporter — decision. At the time fixed for the hearing, it shall hear testimony for either party, and may cause the same to be taken down and transcribed by a shorthand reporter, whose fees shall be fixed by the state board and be taxed as a part of the costs in the case, and it shall make such decision as may be just and equitable, which shall be final unless appealed from as hereinafter provided. [C97, §2819; C24, 27, 31, 35, 39,§4300; C46, 50, 54, 58, 62, 66, 71, 73, 75,§290.3]

290.4 Witnesses — fees — collection. The state board of public instruction in all matters triable before it shall have power to issue subpoenas for witnesses, which may be served by any peace officer, compel the attendance of those thus served, and the giving of evidence by them, in the same manner and to the same extent as the district court may do, and such witnesses and officers may be allowed the same compensation as is paid for like attendance or service in such court, which shall be paid out of the general fund of the proper school corporation, upon the certificate of the state board to and warrant of the secretary upon the treasurer; but if the board is of the opinion that the proceedings were instituted without reasonable cause therefor, or if, in case of an appeal, it shall not be sustained, it shall enter such findings in the record, and tax all costs to the party responsible therefor. A transcript thereof shall be filed in the office of the clerk of the district court and a judgment entered thereon by him, which shall be collected as other judgments. [C97,§2821; C24, 27, 31, 35, 39,§4301; C46, 50, 54, 58, 62, 66, 71, 73, 75,§290.4; 66GA, ch 67,§29]

Contempts, ch 665
Fees for serving subpoenas, §337.11

290.5 Decision of state board. The decision of the state board shall be final. The state board may adopt rules of procedure for hearing appeals which shall include the power to delegate the actual hearing of the appeal to the superintendent of public instruction and members of his staff designated by him. The record of appeal so heard shall be reviewed by the state board and the decision recommended by the superintendent of public instruction shall be approved by the state board in the manner provided in section 257.10, subsection 4. [R60,§2139; C73,§1835; C97,§2820; C24, 27, 31, 35, 39,§4302; C46, 50, 54, 58, 62, 66, 71, 73, 75,§290.5]

C97,§2820, editorially divided

290.6 Money judgment. Nothing in this chapter shall be so construed as to authorize the state board of public instruction to render judgment for money; neither shall they be allowed any other compensation than is now allowed by law. All necessary postage must first be paid by the party aggrieved. [R60,§2140; C73,§1836; C97,§2820; C24, 27, 31, 35, 39,§4303; C46, 50, 54, 58, 62, 66, 71, 73, 75,§290.6]

CHAPTER 291

PRESIDENT, SECRETARY, AND TREASURER OF BOARD

Referred to in §280A.13

291.1 President—duties.
291.2 Bonds of secretary and treasurer.
291.3 Cost of bond.
291.4 Oath.
291.5 Action on bond.
291.6 Duties of secretary.
291.7 Monthly receipts, disbursements, and balances.
291.8 Warrants.
291.9 School census.
291.10 Reports by secretary.
291.11 Officers reported.
291.12 Duties of treasurer—payment of warrants.
291.13 General and schoolhouse funds.
291.14 Financial statement.
291.15 Annual report.

291.1 President—duties. The president of the board of directors shall preside at all of its meetings, sign all warrants and drafts, respectively, drawn upon the county treasurer for money apportioned and taxes collected and belonging to his school corporation, and all orders on the treasurer drawn as provided by law, sign all contracts made by the board, and appear in behalf of his corporation in all actions brought by or against it, unless individually a party, in which case this duty shall be performed by the secretary. [C51,§§1122, 1123, 1125; R60,§§2039, 2040; C73,§§1739, 1740; C97,§2759; C24, 27, 31, 35, 39,§4304; C46, 50, 54, 58, 62, 66, 71, 73, 75,§291.1]

291.2 Bonds of secretary and treasurer. The secretary and treasurer shall each give bond to the school corporation in such penalty as the board may require, and with sureties to be approved by it, which bond shall be filed with the president, conditioned for the faithful performance of his official duties, but in no case less than five hundred dollars. [C51, §1144; R60,§2037; C73,§1731; C97,§2760; C24, 27, 31, 35, 39,§4305; C46, 50, 54, 58, 62, 66, 71, 73, 75,§291.2]

C97,§2760, editorially divided
Referred to in §§279.3, 280A.13

291.3 Cost of bond. If the bond of an association or corporation as surety is furnished, the reasonable cost of such bond may be paid by the school corporation. [C27, 31, 35,§4305-a1; C39,§4305.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §291.3]

291.4 Oath. Each shall take the oath required of civil officers, which shall be endorsed upon the bond, and shall complete his qualification within ten days. [C97,§2760; C24, 27, 31, 35, 39,§4306; C46, 50, 54, 58, 62, 66, 71, 73, 75, §291.4]

Oath of office, §63.10

291.5 Action on bond. In case of a breach of the bond, the president shall bring action thereon in the name of the school corporation. [C51,§1144; R60,§2037; C73,§1731; C97,§2760; C24, 27, 31, 35, 39,§4307; C46, 50, 54, 58, 62, 66, 71, 73, 75,§291.5]

291.6 Duties of secretary. The secretary shall:

1. *Preservation of records.* File and preserve copies of all reports made and all papers transmitted pertaining to the business of the corporation.

2. *Minutes.* Keep a complete record of all the proceedings of the meetings of the board and of all regular or special elections in the corporation in separate books.

3. *Account with treasurer.* Keep an accurate, separate account of each fund with the treasurer, charge him with all warrants and drafts drawn in his favor, and credit him with all orders drawn on each fund.

4. *Claims.* Keep an accurate account of all expenses incurred by the corporation, and present the same to the board for audit and payment. [C51,§§1126, 1128; R60,§§2041, 2042; C73, §§1741, 1743; C97,§2761; S13,§2761; C24, 27, 31, 35, 39,§4308; C46, 50, 54, 58, 62, 66, 71, 73, 75, §291.6]

S13,§2761, editorially divided

291.7 Monthly receipts, disbursements, and balances. The secretary of each district shall file monthly, on or before the tenth day of each month, with the board of directors, a complete statement of all receipts and disbursements from the various funds during the preceding month, and also the balance remaining on hand in the various funds at the close of the period covered by said statement, which monthly statements shall be open to public inspection. [S13,§2761; C24, 27, 31, 35, 39,§4309; C46, 50, 54, 58, 62, 66, 71, 73, 75,§291.7]

291.8 Warrants. He shall countersign all warrants and drafts upon the county treasurer drawn or signed by the president; draw each order on the treasurer, specify the fund on which it is drawn and the use for which the money is appropriated; countersign and keep a register of the same, showing the number, date, to whom drawn, the fund upon which it is drawn, the purpose and the amount; and at each regular annual meeting furnish the board with a copy of the same. [C51,§§1122, 1123, 1126; R60,§§2039, 2041, 2061; C73,§§1739, 1741, 1782; C97,§2762; S13,§2762; C24, 27, 31, 35, 39,§4310; C46, 50, 54, 58, 62, 66, 71, 73, 75,§291.8]

291.9 School census. He shall, between the first day of June and the first day of July of each even-numbered year, enter in a book prepared by the superintendent of public instruction for that purpose the following, taken as of June 1:

1. The name and post-office address of parents and guardians in his district with the name, sex, and age of all children or wards residing in the district who are between five and nineteen years of age.

2. The name, age, and post-office address of every person resident of the district without regard to age so blind as to be unable to acquire an education in the common schools.

3. The name, age, and post-office address of every person between the ages of five and thirty-five whose faculties with respect to speech and hearing are so deficient as to prevent him from obtaining an education in the common schools.

4. The name, sex, age, and disability of every physically handicapped or feeble-minded person of school age, with the name and post-office address of the parent or guardian. [C97, §2764; S13,§2764; C24, 27, 31, 35, 39,§4312; C46, 50, 54, 58, 62, 66, 71, 73, 75,§291.9]

See also §299.16

291.10 Reports by secretary. He shall notify the superintendent of public instruction when each school is to begin and its length of term, and, ten days after the regular July meeting in each year, file with the superintendent a report on blanks prepared for that purpose by the superintendent of public instruction, showing:

1. The number, as shown by the last preceding school census, of persons of school age in the corporation, distinguishing the sexes.

2. The number of schools and branches taught.

3. The number of scholars enrolled and the average attendance in each school.

4. The number of teachers employed and the average compensation paid per month, distinguishing the sexes.

5. The length of school in days.

6. The average cost of tuition per month for each scholar.

7. The textbooks used.

8. The number of volumes in library.

9. The value of apparatus belonging to the corporation.

10. The number of schoolhouses and their estimated value.

11. The name, age and post-office address of each person resident of the corporation, with-

out regard to age, so blind as to be unable to acquire an education in the common schools, and of each person between the ages of five and thirty-five whose faculties with respect to speech and hearing are so deficient as to prevent him from obtaining an education in the common schools, and the name, sex, age, and disability of every physically handicapped or feeble-minded person of school age, with the name and post-office address of the parent or guardian. [C51,§1127; R60,§2046; C73,§§1744, 1745; C97,§2765; S13,§2765; C24, 27, 31, 35, 39, §**4313**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§291.10]

291.11 Officers reported. He shall report to the superintendent of public instruction, the county auditor, and county treasurer the name and post-office address of the president, treasurer and secretary of the board as soon as practicable after the qualification of each. [C73,§1736; C97,§2766; C24, 27, 31, 35, 39,§**4314**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§291.11]

291.12 Duties of treasurer—payment of warrants. The treasurer shall receive all moneys belonging to the corporation, pay the same out only upon the order of the president countersigned by the secretary, keeping an accurate account of all receipts and expenditures in a book provided for that purpose. He shall register all orders drawn and reported to him by the secretary, showing the number, date, to whom drawn, the fund upon which drawn, the purpose and amount. [C51,§§1138–1140; R60, §§2048–2050; C73,§§1747–1750; C97,§2768; S13, §2768; C24, 27, 31, 35, 39,§**4316**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§291.12]

291.13 General and schoolhouse funds. The money collected by a tax authorized by the electors or the proceeds of the sale of bonds authorized by law or the proceeds of a tax estimated and certified by the board for the purpose of paying interest and principal on lawful bonded indebtedness or for the purchase of sites as authorized by law, shall be called the schoolhouse fund and, except when authorized by the electors, may be used only for the purpose for which originally authorized or certified. All other moneys received for any other purpose shall be called the general fund. The treasurer shall keep a separate account with each fund, paying no order that fails to state the fund upon which it is drawn and the specific use to which it is to be applied. [C51,§1139; R60,§2049; C73,§1748; C97, §2768; C24, 27, 31, 35, 39,§**4317**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§291.13]

Deposits in general, ch 453
Library fund, §292.1

291.14 Financial statement. He shall render a statement of the finances of the corporation whenever required by the board, and his books shall always be open for inspection. [C51,§1141; R60,§2051; C73,§1751; C97,§2769; S13, §2769; C24, 27, 31, 35, 39,§**4320**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§291.14]

S13,§2769, editorially divided

291.15 Annual report. He shall make an annual report to the board at its regular July meeting, which shall show the amount of the general fund and the schoolhouse fund held over, received, paid out, and on hand, the several funds to be separately stated, and he shall immediately file a copy of this report with the superintendent of public instruction and a copy with the county treasurer. [C97,§2769; S13,§2769; C24, 27, 31, 35, 39,§**4321**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§291.15]

CHAPTER 292

COMMON SCHOOL LIBRARIES

292.1 Library fund.
292.2 Purchase of books—distribution.
292.3 and 292.4 Repealed by 65GA, ch 1172, §133.
292.5 to 292.8 Repealed by 66GA, ch 1056,§45.

292.1 Library fund. The auditor of each county in this state shall withhold annually the money received from the semiannual apportionment of the interest of the permanent school fund for the several school districts for the purchase of books, as hereinafter provided. [S13,§2823-n; C24, 27, 31, 35, 39,§**4322**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§292.1]

Referred to in §292.2

292.2 Purchase of books—distribution. Between the first Monday of July and the first day of October in each year, the county auditor shall distribute all money withheld, as provided in section 292.1, for the purchase of books and materials for the use of the school districts to the area education agency board for the area media center.

Directors of the school districts having permanent libraries shall be permitted to make temporary and permanent exchanges of books between school districts or to turn books over to the area education agency administrator to become a part of the area media center. The administrator shall keep a record of all books in his custody. [S13,§2823-o; C24, 27, 31, 35, 39, §**4323**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§292.2]

292.3 and 292.4 Repealed by 65GA, ch 1172, §133.

292.5 to 292.8 Repealed by 66GA, ch 1056,§45.

CHAPTER 293

STANDARDIZATION AND STATE AID

Repealed by 62GA, ch 239,§4

CHAPTER 294

TEACHERS

294.1 Qualifications—compensation prohibited.
294.2 Experience in teaching recognized.
294.3 State aid and tuition.
294.4 Daily register.
294.5 Reports.
294.6 and 294.7 Repealed by 60GA, ch 176,§1.
294.8 Pension system.
294.9 Fund.
294.10 Management.

TERMINATION IN CITIES
294.11 Resolution adopted.
294.12 Pension fund held for survivors.
294.13 General fund replacements.
294.14 Estimate of funds needed—levy.
294.15 State teachers' pension.
294.16 Annuity contracts.

294.1 Qualifications—compensation prohibited. No person shall be employed as a teacher in a common school without having a certificate issued by some officer duly authorized by law.

No compensation shall be recovered by a teacher for services rendered while without such certificate. [R60,§2062; C73,§1758; C97, §2788; C24, 27, 31, 35, 39,§4336; C46, 50, 54, 58, 62, 66, 71, 73, 75,§294.1]

294.2 Experience in teaching recognized. No regulations or orders by the state superintendent of public instruction or the board of educational examiners with reference to the qualifications of teachers, in regard to having taken certain high school or collegiate courses or teachers training courses, shall be retroactive so as to apply to any teacher who has had at least three years' successful experience in teaching; and no teacher once approved for teaching in any kind of school shall be prevented by such regulations or orders from continuing to teach in the same kind of school for which he has previously been approved; provided, however, that this section shall not be construed as limiting the duties or powers of any school board in the selection of teachers, or in the dismissal of teachers for inefficiency or for any legal cause. [C24, 27, 31, 35, 39, §4337; C46, 50, 54, 58, 62, 66, 71, 73, 75,§294.2]

Referred to in §294.3

294.3 State aid and tuition. No school shall be deprived of its right to be approved for state aid or approved for tuition by reason of the employment of any teacher as authorized under section 294.2. [C24, 27, 31, 35, 39,§4338; C46, 50, 54, 58, 62, 66, 71, 73, 75,§294.3]

294.4 Daily register. Each teacher shall keep a daily register which shall correctly exhibit the name or number of the school, the district and county in which it is located, the day of the week, month, year, and the name, age, and attendance of each scholar, and the branches taught; and when scholars reside in different districts separate registers shall be kept for each district, and a certified copy of the register shall, immediately at the close of the school, be filed by the teacher in the office of the secretary of the board. [R60,§2062; C73, §§1759, 1760; C97,§2789; C24, 27, 31, 35, 39,§4339; C46, 50, 54, 58, 62, 66, 71, 73, 75,§294.4]

C97,§2789, editorially divided

294.5 Reports. The teacher shall file with the school superintendent and the superintendent of public instruction such reports and in such manner as may be required. [C97,§2789; C24, 27, 31, 35, 39,§4340; C46, 50, 54, 58, 62, 66, 71, 73, 75,§294.5]

294.6 and 294.7 Repealed by 60GA, ch 176,§1.

294.8 Pension system. Any school district located in whole or in part within a city having a population of twenty-five thousand one hundred or more may establish a pension and annuity retirement system for the public school teachers of such district provided said system, in cities having a population less than seventy-five thousand, be ratified by a vote of the people at a general election. [C24, 27, 31, 35, 39,§4345; C46, 50, 54, 58, 62, 66, 71, 73, 75, §294.8]

Referred to in §§294.11, 294.12

294.9 Fund. The fund for such retirement system shall be created from the following sources:

1. From the proceeds of an assessment of teachers in the school district not exceeding one percent of their salaries in a given school year, or such greater percentage as the board of directors of such school district may authorize and a majority of such teachers shall, at the time of such authorization by the board, agree to pay.

2. From the proceeds of an annual tax levy.

3. From the interest on any permanent fund which may be created by gift, bequest, or otherwise. [C24, 27, 31, 35, 39,§4346; C46, 50, 54, 58, 62, 66, 71, 73, 75,§294.9; 66GA, ch 50,§25]

Referred to in §294.11

Amendment effective January 1, 1976; 66GA; ch 50,§41

294.10 Management. The board of directors of the school district shall constitute the board of trustees and shall formulate the plan of the retirement; and shall make all necessary rules and regulations for the operation of said retirement system. [C24, 27, 31, 35, 39,§4347; C46, 50, 54, 58, 62, 66, 71, 73, 75,§294.10]

Referred to in §294.11

TERMINATION IN CITIES

294.11 Resolution adopted. Any school district which has in operation the pension and annuity retirement system created pursuant to sections 294.8 to 294.10, inclusive, may terminate such system by the adoption by the board of directors of such district, of a resolution declaring such system terminated as of a date specified therein. [C50, 54, 58, 62, 66, 71, 73, 75,§294.11]

Referred to in §294.12

294.12 Pension fund held for survivors. In the event of such termination, all assessments of teachers shall cease upon such date of termination, or upon such earlier date as may be prescribed in such resolution, and no additional taxes shall be levied or assessed for the operation of such system, save as in section 294.13. All undisposed of funds and accumulations derived from the operation of said system, including the proceeds, when collected, of any annual tax heretofore levied for the operation of said system, and including the proceeds of any annual tax levied hereafter pursuant to the provisions of section 294.13, shall constitute a retirement liquidation fund. Such liquidation fund shall be held for the benefit of those surviving beneficiaries under such system as of said date of termination, and of members of such system as of date of termination. There shall be set aside from such retirement liquidation fund an amount sufficient to provide for the payment of all surviving beneficiaries who shall be entitled to receive benefits under such system as of said date of termination, providing an actuarial computation has been made of the amount required to meet such benefit payments, providing the amount in the retirement liquidation fund is sufficient for this purpose, and the amount set aside shall be used for no other purpose than for the payment of claims to such beneficiaries. Any amount in excess of the actuarial equivalent of the sum required to pay such benefit payments shall be apportioned to persons who were as of the effective date of the termination of the system, members of such system, in proportion to the amount which the accumulated contribution of each such person bears to the total funds of such retirement system subject to such apportionment. Any member of such system as of the date of termination thereof, may, in lieu of receiving the cash refund of his share of the liquidation fund, elect to come under the coverage of any new pension and annuity retirement system established by the district, to which he is eligible, with credits toward future benefits in consideration of his prior contributions and length of service, and may direct the transfer of the amount payable to him to the assets of the new pension and annuity retirement system. In any case where the board of directors of a school district including a teachers retirement system established under the provisions of section 294.8, whose members were not under coverage of the Iowa old-age and survivors' insurance system prior to May 1, 1953, the board of directors may authorize the payment from funds in excess of the actuarial amount estimated as required for the payment of benefits to persons entitled to them, and for the purpose of obtaining retroactive social security coverage from January 1, 1951, until the effective date of federal coverage of Iowa public employees as provided by chapter 97C. Each surviving beneficiary entitled to receive retirement benefits of the date of termination of the system will be entitled to receive retirement benefits at the time and in the amount in effect with respect to such beneficiary immediately prior to the date of termination.

In any school district which has pursuant to section 294.11 terminated a previously existing pension and annuity retirement system and has after actuarial computation established a retirement reserve fund pursuant to this section in order to pay to surviving beneficiaries entitled to receive retirement benefits at date of termination of said system in the amount in effect with respect to such beneficiaries immediately prior to the date of termination, the board of directors may authorize each and every payment to each surviving beneficiary falling due subsequent to June 30, 1971, to be increased by an amount to be determined by the board such increased payments to be paid from the retirement reserve fund according to an actuarial computation thereof plus such additional amounts transferred from the general fund as may be required. In order to provide the additional amounts required from the general fund for such increased payments, the board of directors may annually at the meeting at which it estimates the amount required for the general fund in accordance with section 298.1 estimate such additional amount as an actuarial computation shall show is necessary from the general fund for the payment of such increased benefits for the current school year; provided the amount estimated and certified to be transferred from the general fund to the retirement reserve fund shall not exceed one and four-tenths cents per thousand dollars of the assessed valuation of the taxable property of the school corporation. The board of supervisors shall in accordance with the provisions of section 298.8 levy the taxes neces-

sary to raise the amount estimated by the board of directors as above provided and certified to the board of supervisors. Upon the death of the last beneficiary to survive, any balance remaining in said retirement reserve fund shall be transferred to the general fund of said school district. [C50, 54, 58, 62, 66, 71, 73, 75,§294.12]

Referred to in §294.14

294.13 General fund replacements. The board of directors of said district shall each year at the meeting at which it estimates the amount required for the general fund, in accordance with the provisions of section 298.1, estimate the additional amount, if any, necessary to provide the required annual payments to surviving beneficiaries, which amount shall be levied by the board of supervisors in accordance with the provisions of section 298.8. Upon the death of the last beneficiary to survive, any balance remaining in said fund, including any undisposed of accumulations, shall be transferred to the general fund of said school district. [C50, 54, 58, 62, 66, 71, 73, 75,§294.13]

Referred to in §294.12

294.14 Estimate of funds needed—levy. The board of directors of said district shall annually, for a period of five years after the effective date of the termination of its pension system, at the meeting at which it estimates the amount required for the general fund, in accordance with the provisions of section 298.1, estimate the additional amount if any necessary to pay to participants in the pension system who are not entitled to receive benefits under such system at the date of termination thereof, one-fifth of the amount paid into said pension fund by such participants therein, without interest, which amount shall be levied by the board of supervisors, in accordance with provisions of section 298.8 and, in addition thereto, the board of directors of said district shall each year at the meeting at which it estimates the amount required for the general fund, in accordance with the provisions of section 298.1, estimate the additional amount, if any, necessary to provide the required annual payments to surviving beneficiaries of said pension system, as defined in section 294.12, which amount shall be levied by the board of supervisors, in accordance with the provisions of section 298.8. Upon the death of the last beneficiary, as defined in section 294.12, to survive, any balance remaining in said fund, including any undisposed of accumulations, shall be transferred to the general fund of said school district. [C54, 58, 62, 66, 71, 73, 75, §294.14]

294.15 State teachers' pension. Any person having attained the age of sixty-five who shall have been an employee, holding a valid teaching certificate, in the public schools of this state with a record of service of twenty-five years or more, including a maximum of five years out-of-state service followed by at least ten years' service in this state prior to retirement and who shall have retired prior to July 4, 1953, shall be entitled to receive retirement allowance payments from the state of Iowa of one hundred dollars per month and beginning July 1, 1975, shall be entitled to receive two hundred dollars per month. Such sums as are necessary to meet this requirement shall be added to the retirement allowance payments, if any, now being received from the state of Iowa by individuals covered by the provisions of this section. No such person shall receive retirement benefits from the state of more than two hundred dollars per month. The word "employee" as used herein shall be construed to include persons who were state superintendents, county superintendents, or deputy county superintendents.

Application for such retirement allowance payments shall be made to the department of job service under such rules as the commission may prescribe. Eligible persons shall be entitled to receive such retirement allowance payments effective from the date of application to the commission, provided such application is approved, and such payments shall be continued on the first day of each month thereafter during the lifetime of any such person.

For the purpose of paying the teachers' retirement allowance payments granted under this section, there is hereby appropriated out of any funds in the state treasury not otherwise appropriated, a sum sufficient therefor. [C58, 62, 66, 71, 73, 75,§294.15; 66GA, ch 50,§26, ch 1068,§38]

294.16 Annuity contracts. At the request of an employee through contractual agreement a school district may purchase group or individual annuity contracts for an employee, from such insurance organization authorized to do business in this state and through an Iowa-licensed insurance agent as the employee may select, for retirement or other purposes and may make payroll deductions in accordance with such arrangements for the purpose of paying the entire premium due and to become due under such contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefit afforded under section 403*b* [26 USC §403*b*] of the federal internal revenue code and amendments* thereto. The employee's rights under such annuity contract shall be nonforfeitable except for the failure to pay premiums. Whenever an existing tax-sheltered annuity contract is to be replaced by a new contract the agent or representative of the company shall submit a letter of intent to the company being replaced, to the insurance commissioner of the state of Iowa, and to his own company at least thirty days prior to any action by registered mail. This letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract. [C66, 71, 73, 75,§294.16]

*65GA, ch 1167, effective July 1, 1974

CHAPTER 295

INSTRUCTION OF DEAF

Repealed by 62GA, ch 246,§1

CHAPTER 296

INDEBTEDNESS OF SCHOOL CORPORATIONS

296.1 Indebtedness authorized.
296.2 Petition for election.
296.3 Election called.
296.4 Notice—ballots.
296.5 Repealed by 66GA, ch 81,§154.
296.6 Bonds.

296.1 Indebtedness authorized. Subject to the approval of the voters thereof, school districts are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to defray the cost of purchasing, building, furnishing, reconstructing, repairing, improving or remodeling a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, school bus garage, teachers' or superintendent's home or homes, and procuring a site or sites therefor, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field, and for any one or more of such purposes. Taxes for the payment of said bonds shall be levied in accordance with chapter 76, and said bonds shall mature within a period not exceeding twenty years from date of issue, shall bear interest at a rate or rates not exceeding seven percent per annum and shall be of such form as the board of directors of such school district shall by resolution provide, but the aggregate indebtedness of any school district shall not exceed five percent of the actual value of the taxable property within said school district, as ascertained by the last preceding state and county tax lists. [S13,§2820-d1; C24, 27, 31, 35, 39,§**4353**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§296.1]

296.2 Petition for election. Before such indebtedness can be contracted in excess of one and one-quarter percent of the assessed value of the taxable property, a petition signed by a number equal to twenty-five percent of those voting at the last election of school officials shall be filed with the president of the board of directors, asking that an election be called, stating the amount of bonds proposed to be issued and the purpose for which the indebtedness is to be created, and that the necessary schoolhouse or schoolhouses cannot be built and equipped, or that sufficient land cannot be purchased to add to a site already owned, within the limit of one and one-quarter percent of the valuation. [S13,§2820-d2; C24, 27, 31, 35, 39,§**4354**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §296.2]

296.3 Election called. The president of the board of directors on receipt of such petition shall, within ten days, call a meeting of the board which shall call such election, fixing the time thereof, which may be at the time and place of holding the regular school election. The president shall notify the county commissioner of elections of the time of the election. [S13,§2820-d3; C24, 27, 31, 35, 39,§**4355**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§296.3]

296.4 Notice—ballots. Notice of the election shall be given by the county commissioner of elections by publication in accordance with section 49.53. The county commissioner of elections shall conduct the election pursuant to the provisions of chapters 39 to 53 and certify the results to the board of directors. [S13, §2820-d3; C24, 27, 31, 35, 39,§**4356**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§296.4; 66GA, ch 81,§139]

Form of ballot, §49.44 et seq.; also §345.6

296.5 Repealed by 66GA, ch 81,§154.

296.6 Bonds. If the vote in favor of the issuance of such bonds is equal to at least sixty percent of the total vote cast for and against said proposition at said election, the board of directors shall issue the same and make provision for payment thereof. [S13, §2820-d4; C24, 27, 31, 35, 39,§**4358**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§296.6]

See 60GA, ch 178,§3 for prior elections
Vote required to authorize bonds, §75.1

CHAPTER 297

SCHOOLHOUSES AND SCHOOLHOUSE SITES

Referred to in §726.12

297.1 Location.
297.2 Ten-acre limitation.
297.3 Thirty-acre limitation.
297.4 Repealed by 63GA, ch 1025,§52.

297.5 Tax.
297.6 Condemnation.
297.7 Erection or repair of schoolhouse.
297.8 Emergency repairs.
297.9 Use for other than school purposes.
297.10 Compensation.
297.11 Use forbidden.
297.12 Renting schoolroom.
297.13 Fence around schoolhouse sites.
297.14 Barbed wire.
297.15 Reversion of schoolhouse site.
297.16 Appraisers.
297.17 Notice.
297.18 Appraisement.
297.19 Public sale.
297.20 Sale of improvements.
297.21 Sale of unnecessary schoolhouse sites.

SALE OR LEASE IN CERTAIN DISTRICTS
297.22 Power to sell or lease.
297.23 Advertisement for bids.
297.24 Acceptance of bids.
297.25 Rule of construction.

MINING CAMP SCHOOLS
297.26 Sale by executive council.
297.27 Preference to owner of tract.
297.28 Appraisers.
297.29 Report filed.
297.30 Public sale.
297.31 Improvements.
297.32 Equipment and supplies.

297.1 Location. The board of each school district may fix the site for each schoolhouse, which shall be upon some public highway already established or procured by such board and not in any public park, and except in cities and villages, not less than thirty rods from the residence of any landowner who objects thereto.

In fixing such site, the board shall take into consideration the number of scholars residing in the various portions of the school district and the geographical location and convenience of any proposed site. [R60,§2037; C73,§§1724, 1825, 1826; C97,§§2773, 2814; S13,§§2773, 2814; C24, 27, 31, 35, 39,§**4359**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.1]

297.2 Ten-acre limitation. Except as hereinafter provided, any school district may take and hold so much real estate as may be required for such site, for the location or construction thereon of schoolhouses, and the convenient use thereof, but not to exceed ten acres exclusive of public highway. [C73,§1825; C97,§2814; S13,§2814; C24, 27, 31, 35, 39,§**4360**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.2]

297.3 Thirty-acre limitation. Any school district, including a city or village, may take and hold an area equal to two blocks exclusive of the street or highway, for a schoolhouse site, and not exceeding thirty acres for school playground, stadium, or field house, or other purposes for each such site. [C97,§2814; S13,§2814; C24, 27, 31, 35, 39,§**4361**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.3]

297.4 Repealed by 63GA, ch 1025,§52.

297.5 Tax. The directors in any high school district maintaining a program kindergarten through grade twelve may, by February 1 of each year certify an amount not exceeding twenty-seven cents per thousand dollars of assessed value to the board of supervisors, who shall levy the amount so certified, and the tax so levied shall be placed in the schoolhouse fund and used only for the purchase and improvement of sites in and for said school district as specified by the directors.

For the purpose of this section, "improvement of sites" includes: grading, landscaping, seeding and planting of shrubs and trees; constructing new sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; original surfacing and soil treatment of athletic fields and tennis courts; furnishing and installing for the first time, flagpoles, gateways, fences and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for capital improvements such as streets, curbs, and drains.

For the purpose of this section, "purchase of sites" includes legal costs relating to the site acquisition, costs of surveys of the sites, costs of relocation assistance under state and federal law, and other costs incidental to the site acquisition. [C24, 27, 31, 35, 39,§**4363**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.5; 66GA, ch 1156,§1]

Unencumbered funds from levy prior to July 1, 1976 may be used, 66GA, ch 1156,§2

297.6 Condemnation. If the owner of real estate desired for any purpose for which any school may be authorized to take and hold real estate refuses to convey the same, or is dead or unknown or cannot be found, or if in the judgment of the board of directors of the corporation they cannot agree with such owner as to the price to be paid therefor, such real estate may be taken under condemnation proceedings in accordance with the provisions of chapter 472. [C73,§1827; C97,§2815; C24, 27, 31, 35, 39,§**4364**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §297.6]

297.7 Erection or repair of schoolhouse.

1. The provisions of sections 23.2 and 23.18 shall be applicable to the construction or repair of school buildings. Before constructing any school building at a cost of more than five thousand dollars, the board of directors shall consult with the building consultant in the department of public instruction as to the most approved plan for such building, and the building consultant shall return the plan together with any recommendations to the board of

directors within thirty days following the receipt of the plan.

2. Any other law to the contrary notwithstanding, the board of directors of a school district may acquire by purchase, lease, or other arrangement real estate located within or adjoining the boundaries of a municipal airport, and may take title, leasehold, or other interest, subject to a right of purchase or repurchase by the city owning or controlling the municipal airport. The city may purchase, repurchase, or repossess such real estate and the improvements constructed on the real estate upon terms and conditions as agreed to by the board of directors and the city council. The board of directors of any such school district may construct a technical school on the real estate to carry on vocational instruction in aviation mechanics and other aviation programs upon compliance with conditions and limitations otherwise provided by law. [R60, §2037; C73,§1723; C97,§2779; C24, 27, 31, 35, 39, §4370; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.7; 66GA, ch 1155,§1]

Referred to in §§278.3, 279.41

297.8 Emergency repairs. When emergency repairs costing more than five thousand dollars are necessary in order to prevent the closing of any school, the provisions of the law with reference to advertising for bids shall not apply, and in that event the board may contract for such emergency repairs without advertising for bids; provided, however, that before such emergency repairs can be made to any schoolhouse, it shall be necessary to procure a certificate from the area education agency administrator that such emergency repairs are necessary to prevent the closing of such school. [C31, 35,§4370-c1; C39,§4370.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.8]

See §297.7

297.9 Use for other than school purposes. The board of directors of any school district may authorize the use of any schoolhouse and its grounds within such district for the purpose of meetings of granges, lodges, agricultural societies, and similar rural secret orders and societies, for parent-teacher associations, for community recreational activities, for public forums and similar community purposes; provided, however, that the board may not grant such permission to any organization known or believed to hold views that are in conflict with the republican form of government as set forth in the Constitution of the United States; and for election purposes, and for other meetings of public interest; provided that such use shall in no way interfere with school activities; such use to be for such compensation and upon such terms and conditions as may be fixed by said board for the proper protection of the schoolhouse and the property belonging therein, including that of pupils. [C24, 27, 31, 35, 39,§4371; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.9]

37GA, ch 229,§1, editorially divided
Schoolhouses as polling places, §49.24
Use by county conservation board, §111A.8

297.10 Compensation. Any compensation for such use shall be paid into the general fund and be expended in the upkeep and repair of such school property, and in purchasing supplies therefor. [C24, 27, 31, 35, 39,§4372; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.10]

297.11 Use forbidden. If at any time the voters of such district at a regular election forbid such use of any such schoolhouse or grounds, the board shall not thereafter permit such use until the said action of such voters shall have been rescinded by the voters at a regular election, or at a special election called for that purpose. [C24, 27, 31, 35, 39,§4373; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.11]

297.12 Renting schoolroom. The board may, when necessary, rent a room and employ a teacher, where there are ten children for whose accommodation there is no schoolhouse. [C73,§1725; C97,§2774; C24, 27, 31, 35, 39,§4374; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.12]

297.13 Fence around schoolhouse sites. Each board of directors in school districts where the school grounds adjoin cultivated or improved lands shall build and maintain a lawful fence between said grounds and cultivated or improved lands, and the owner of lands adjoining any such site shall have the right to connect the fence on his land with the fence around the school grounds, but he shall not be liable to contribute to the maintenance of such fence. [S13,§§2745-a,-b; C24, 27, 31, 35, 39,§4377; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.13]

Referred to in §297.14
Lawful fence, §113.18

297.14 Barbed wire. No fence provided for in section 297.13 shall be constructed of barbed wire, nor shall any barbed wire fence be placed within ten feet of any school grounds. Any person violating the provisions of this section shall be punished by a fine not exceeding twenty-five dollars. [C97,§2817; C24, 27, 31, 35, 39,§4378; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.14]

297.15 Reversion of schoolhouse site. Any real estate, owned by a school district, containing less than two acres, situated wholly outside of a city, and not adjacent thereto, and heretofore used as a schoolhouse site shall revert to the then owner of the tract from which the same was taken, provided that said owner of the tract last aforesaid shall, within the time hereinafter prescribed, pay the value thereof to such school district.

Any such schoolhouse site containing two or more acres shall be subject to the law as otherwise provided. [C73,§1828; C97,§2816; S13, §2816; C24, 27, 31, 35, 39,§4379; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.15]

39GA, ch 183,§1, editorially divided
Referred to in §§297.21, 297.22(4)

297.16 Appraisers. In case the school district and said owner of the tract from which such school site was taken, do not agree as to the value of such site, the chief judge of the judicial district of the county in which the greater part of such school district is situated, shall, on the written application of either party, appoint three disinterested voters of the county from the list of persons eligible to serve as compensation commissioners to appraise the site. [C97,§2816; S13,§2816; C24, 27, 31, 35, 39,§4380; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.16]

Referred to in §§297.21, 297.22(4)

297.17 Notice. The county sheriff shall give notice to both parties of the time and place of making such appraisement, which notice shall be served in the same manner and for the same time as for the commencement of action in the district court. [C24, 27, 31, 35, 39, §4381; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.17]

Referred to in §§297.21, 297.22(4)
Time and manner of service, R.C.P. 53 and 56(a)

297.18 Appraisement. Such appraisers shall inspect the premises and, at the time and place designated in the notice, appraise said site in writing, which appraisement, after being duly verified, shall be filed with the county sheriff. [C24, 27, 31, 35, 39,§4382; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.18]

Referred to in §§297.21, 297.22(4)

297.19 Public sale. If the owner of the tract from which said site was taken fails to pay the amount of such appraisement to such school district within twenty days after the filing of same with the county sheriff, the school district may sell said site to any other person at the appraised value, or may sell the same at public sale to the highest bidder. [C24, 27, 31, 35, 39,§4383; C46, 50, 54, 58, 62, 66, 71, 73, 75, §297.19]

Referred to in §§297.21, 297.22(4)

297.20 Sale of improvements. If there are improvements on said site, the improvements may, at the request of either party, be appraised and sold separately. [C97,§2816; S13, §2816; C24, 27, 31, 35, 39,§4384; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.20]

Referred to in §§297.21, 297.22(4)

297.21 Sale of unnecessary schoolhouse sites. Schoolhouses and school sites no longer necessary for school purposes, because of being located in community school districts, may be sold immediately after the organization of such community school districts, in the manner above provided.

During the use of such premises, no person owning a right of reversion shall have any interest in or control over the premises.

This and sections 297.15 to 297.20, inclusive, shall not apply to cases where schools have been temporarily closed by law on account of small attendance. [C73,§1828; C97,§2816; S13, §2816; C24, 27, 31, 35, 39,§4385; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.21]

SALE OR LEASE IN CERTAIN DISTRICTS

297.22 Power to sell or lease. The board of directors of an independent or community district composed wholly or in part of a city acting under a special charter and having a population of fifty thousand or more may lease, or by a unanimous vote pass a resolution to sell any schoolhouse, school site, or other property acquired for school purposes when in the opinion of said board such sale is for the benefit of the district.

The board of directors of other school districts may sell, lease, or dispose of, in whole or in part, any schoolhouse or site or other property belonging to the districts of a value not to exceed the following amounts:

1. Twenty-five hundred dollars in school districts which maintain a high school and in which the average daily attendance in the preceding year was two hundred or less.

2. Five thousand dollars in school districts which maintain a high school and in which the average daily attendance in the preceding year was more than two hundred but less than five hundred.

3. Ten thousand dollars in school districts which maintain a high school and in which the average daily attendance in the preceding year was five hundred or more.

4. Five hundred dollars in any school district which does not maintain a high school.

Proceeds from the sale, lease or disposition of real property shall be placed in the schoolhouse fund and proceeds from the sale, lease or disposition of property other than real property shall be placed in the general fund.

Before the board of directors may sell, lease or dispose of any property belonging to the school district it shall comply with the requirements set forth in sections 297.15 to 297.20, inclusive, and sections 297.23 and 297.24. Any real estate proposed to be sold shall be appraised by three disinterested freeholders residing in the school district and appointed by the chief judge of the judicial district of the county in which said real estate is located from the list of compensation commissioners.

The board of directors of any school corporation may sell, lease, exchange, give or grant and accept any interest in real property to, with or from any county, municipal corporation, school district or township if the real property is within the jurisdiction of both the grantor and grantee. The provisions of sections 297.15 to 297.20, sections 297.23 and 297.24, and the property value limitations and appraisal requirements of this section shall not apply to any such transaction between the aforesaid local units of government.

The board of directors of any school corporation may, subject to sections 297.23 and 297.24, sell, lease, or dispose of real estate upon which a structure has been erected by students as part of a regular course of study, and may purchase sites for the erection of additional structures.

The property value limitations listed in this section shall not apply to the sale, lease, or disposition of real estate upon which a structure has been erected by students as part of a regular course of study. [C27, 31, 35,§4385-a1; C39,§**4385.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §297.22]

Referred to in §§278.1(2), 283A.9, 297.25
Prior sales legalized, 64GA, ch 167,§2, ch 1064,§2
Sale for defense projects, §§274.39 to 274.41, inclusive

297.23 Advertisement for bids. Before making a sale, the board shall advertise for bids for said property. Such advertisement shall definitely describe said property and be published by at least one insertion each week for two consecutive weeks in some newspaper having general circulation in the district. [C27, 31, 35,§4385-a2; C39,§**4385.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.23]

Referred to in §§297.22(4), 297.25

297.24 Acceptance of bids. The board shall not, prior to two weeks after the said second publication, nor later than six months after said second publication, accept any bid. The board may accept only the best bid received prior to acceptance. The board may decline to sell if all the bids received are deemed inadequate. [C27, 31, 35,§4385-a3; C39,§**4385.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.24]

Referred to in §§297.22(4), 297.25

297.25 Rule of construction. Sections 297.22 to 297.24, inclusive, shall be construed as independent of the power vested in the electors by section 278.1, and as additional thereto. [C27, 31, 35,§4385-a4; C39,§**4385.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§297.25]

MINING CAMP SCHOOLS

297.26 Sale by executive council. Any school building or any school site, the title of which is vested in the state of Iowa by reason of it having been provided by state mining camp funds for schools in mining camps, shall be sold by the state executive council when the state board of public instruction certifies the same to the executive council in writing as being no longer needed for school purposes. [C50, 54, 58, 62, 66, 71, 73, 75,§297.26]

297.27 Preference to owner of tract. When such buildings or sites are sold by the executive council, the then owners of the tract from which the same was originally taken shall have first option on the purchase of the same. [C50, 54, 58, 62, 66, 71, 73, 75,§297.27]

297.28 Appraisers. In case the executive council and said owner of the tract from which such school site was taken, do not agree as to the value of such site or building, the chief judge of the judicial district of the county in which the greater part of such school site is situated shall, on the written application of either party, appoint three disinterested voters of the county from the list of compensation commissioners to appraise such site. The county sheriff shall give notice to both parties of the time and place of making such appraisement, which notice shall be served in the same manner and for the same time as for the commencement of an action in the district court. [C50, 54, 58, 62, 66, 71, 73, 75,§297.28]

297.29 Report filed. Such appraisers shall inspect the premises and at the time and place designated in the notice, appraise such site or building in writing, which appraisement, after being duly verified, shall be filed with the sheriff. [C50, 54, 58, 62, 66, 71, 73, 75,§297.29]

297.30 Public sale. If the owner of the tract from which said site was taken fails to pay the amount of such appraisement to such executive council within thirty days after the filing of the same with the sheriff, the executive council may sell said site or building to any other person at the appraised value, or may sell the same at public sale to the highest bidder and the proceeds of such sale are to be added to the permanent school fund of the state. [C50, 54, 58, 62, 66, 71, 73, 75,§297.30]

297.31 Improvements. If there are improvements on said site the same may at the request of either party be appraised and sold separately. [C50, 54, 58, 62, 66, 71, 73, 75, §297.31]

297.32 Equipment and supplies. If there is any school equipment, supplies, or other usable school materials, such as desks, blackboards, playground equipment, or the like, in or on said buildings or grounds, the superintendent of public instruction may remove the same and divert their use to other public school districts. [C50, 54, 58, 62, 66, 71, 73, 75,§297.32]

CHAPTER 298

SCHOOL TAXES AND BONDS

General fund deficit on June 30, 1975; see 64GA, ch 1020,§5

298.1 School taxes.
298.2 and 298.3 Repealed by 63GA, ch 1025, §§55, 56.
298.4 Repealed by 61GA, ch 251,§3.
298.5 Taxes estimated.
298.6 Repealed by 63GA, ch 1025,§57.
298.7 Contract for use of library.
298.8 Levy by board of supervisors.
298.9 Special levies.
298.10 Repealed by 63GA, ch 1025,§58.
298.11 Apportionment of school funds.
298.12 County auditor to report.

298.13 Monthly payment of taxes.
298.14 Repealed by 63GA, ch 1025,§59.
298.15 Payment of judgment.
298.16 Judgment tax.
298.17 Judgment levy.
298.18 Bond tax—election—leasing buildings.
298.19 Levy.
298.20 Funding or refunding bonds.
298.21 School bonds.
298.22 Form—rate of interest—where registered.
298.23 Redemption.
298.24 Record of bond buyers.

298.1 School taxes. The board of each school district shall estimate the amount of the proposed expenditures and proposed receipts for the general school purposes at a time and in a manner to effectuate the provisions of chapter 442 and sections 281.9 and 281.11. Compliance with chapter 24 shall be observed. [C51, §1152; R60,§§2033, 2034, 2037, 2038, 2044, 2088; C73,§§1777, 1778; C97,§2806; S13,§2806; SS15, §2794-a; C24, 27, 31, 35, 39,§**4386**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.1]

Referred to in §§294.12, 294.13, 294.14

298.2 and 298.3 Repealed by 63GA, ch 1025, §§55, 56.

298.4 Repealed by 61GA, ch 251,§3.

298.5 Taxes estimated. School corporations containing territory in adjoining counties may vote and estimate all taxes for school purposes in dollars and cents per thousand dollars of assessed value. [C97,§2806; S13,§2806; C24, 27, 31, 35, 39,§**4389**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.5]

298.6 Repealed by 63GA, ch 1025,§57.

298.7 Contract for use of library. The board of directors of any school corporation in which there is no free public library may contract with any free public library for the free use of such library by the residents of such school district, and pay such library the amount agreed therefor as provided by law. During the existence of such contract, the board shall certify annually a tax sufficient to pay such library the consideration agreed upon, not exceeding six and three-fourths cents per thousand dollars of assessed value of the taxable property of such district. During the existence of such contract, the school corporation shall be relieved from the requirement that the school treasurer withhold funds for library purposes. This section shall not apply in townships where a contract for other library facilities is in existence. [S13,§2806; C24, 27, 31, 35, 39,§**4391**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.7]

Referred to in §442.5
Withholding funds, §§292.1, 292.2

298.8 Levy by board of supervisors. The board of supervisors shall at the time of levying taxes for county purposes levy the taxes necessary to raise the various funds authorized by law and certified to it by law, but if the amount certified for any such fund is in excess of the amount authorized by law, it shall levy only so much thereof as is authorized by law. [R60,§2059; C73,§§1779, 1780; C97,§2807; SS15, §1303; C24, 27, 31, 35, 39,§**4393**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.8]

SS15,§1303, editorially divided
Referred to in §§294.12, 294.13, 294.14

298.9 Special levies. If a schoolhouse tax is voted at a special election and certified to said board after the regular levy is made, it shall at its next regular meeting levy such tax and cause the same to be forthwith entered upon the tax list to be collected as other school taxes. If the certification is so filed prior to April 1, said annual levy shall begin with the tax levy of the year of filing. If the certification is filed after April 1 in any year, such levy shall begin with the levy of the fiscal year succeeding the year of the filing of such certification. [C97,§2807; SS15,§1303; C24, 27, 31, 35, 39,§**4394**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.9]

298.10 Repealed by 63GA, ch 1025,§58.

298.11 Apportionment of school funds. The county auditor shall, on the first Monday in April and the first Monday in October of each year, apportion the school tax, together with the interest of the permanent school fund and rents on unsold school lands to which the county is entitled as shown in notice from the state comptroller, and all other money in the hands of the county treasurer belonging in common to the schools of the county and not included in any previous apportionment, among the several corporations therein, in proportion to the number of persons of school age, as shown by the reports filed with the state department of public instruction for the year immediately preceding.

He shall immediately notify the county treasurer of such apportionment and of the amount due thereby to each corporation.

The county treasurer shall thereupon give notice to the president of each corporation, and shall pay out such apportionment moneys in the same manner that he is authorized to pay other school moneys to the treasurers of the several school districts. [R60,§§1966, 2060, 2061; C73,§§1781, 1782, 1841; C97,§2808; S13,§2808; C24, 27, 31, 35, 39,§**4396**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.11]

298.12 County auditor to report. On the first day of January of each year the county auditor shall report to the state comptroller in such form as he may prescribe, giving the amount of permanent school funds held by the county, and the amount of interest due prior to

January 1, still remaining unpaid. [C73,§1783; C97,§2809; S13,§2809; C24, 27, 31, 35, 39,§4397; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.12]

298.13 Monthly payment of taxes. Before the fifteenth day of each month in each year, the county treasurer shall give notice to the president of the board of each school corporation in the county of the amount collected for each fund to the first day of such month, and the president of each board shall draw his draft therefor, countersigned by the secretary, upon the county treasurer, who shall pay such taxes to the treasurers of the several school boards only on such draft. [C73,§§1784, 1785; C97,§2810; C24, 27, 31, 35, 39,§4398; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.13]

C97,§2810, editorially divided

298.14 Repealed by 63GA, ch 1025,§59.

298.15 Payment of judgment. When a judgment shall be obtained against a school corporation, its board shall order the payment thereof out of the proper fund by an order on the treasurer, not in excess, however, of the funds available for that purpose. [R60,§2095; C73,§1787; C97,§2811; C24, 27, 31, 35, 39,§4400; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.15]

C97,§2811, editorially divided
Referred to in §442.5

298.16 Judgment tax. If the proper fund is not sufficient, then, unless its board has provided by the issuance of bonds for raising the amount necessary to pay such judgment, the voters thereof shall at their regular election vote a sufficient tax for the purpose. [R60, §2095; C73,§1787; C97,§2811; C24, 27, 31, 35, 39, §4401; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.16]

Referred to in §442.5

298.17 Judgment levy. In case of failure or neglect to vote such tax, the school board shall certify the amount required to the board of supervisors, who shall levy a tax on the property of the corporation for the same. [C97, §2811; C24, 27, 31, 35, 39,§4402; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.17]

Referred to in §442.5

298.18 Bond tax — election — leasing buildings. The board of each school corporation shall, when estimating and certifying the amount of money required for general purposes, estimate and certify to the board of supervisors of the proper county for the schoolhouse fund the amount required to pay interest due or that may become due for the fiscal year beginning July 1, thereafter, upon lawful bonded indebtedness, and in addition thereto such amount as the board may deem necessary to apply on the principal.

The amount estimated and certified to apply on principal and interest for any one year shall not exceed two dollars and seventy cents per thousand dollars of the assessed valuation of the taxable property of the school corporation except as hereinafter provided.

For the sole purpose of computing the amount of bonds which may be issued as a result of the application of any limitation referred to in this section, all interest on the bonds in excess of that accruing in the first twelve months may be excluded from the first annual levy of taxes, so that the need for including more than one year's interest in the first annual levy of taxes to pay the bonds and interest shall not operate to further restrict the amount of bonds which may be issued, and in certifying the annual levies to the county auditor or auditors such first annual levy of taxes shall be sufficient to pay all principal of and interest on said bonds becoming due prior to the next succeeding annual levy and the full amount of such first annual levy shall be entered for collection by said auditor or auditors, as provided in chapter 76.

The amount estimated and certified to apply on principal and interest for any one year may exceed two dollars and seventy cents per thousand dollars of assessed value by the amount approved by the voters of the school corporation, but not exceeding four dollars and five cents per thousand of the assessed value of the taxable property within any school corporation, provided that the qualified voters of such school corporation have first approved such increased amount at a special election, which may be held at the same time as the regular school election. The proposition submitted to the voters at such special election shall be in substantially the following form:

"Shall the board of directors of the ....., in
(insert name of school corporation)
the County of ....., State of Iowa, be authorized to levy annually a tax exceeding two dollars and seventy cents per thousand dollars, but not exceeding .....dollars and .....cents per thousand dollars of the assessed value of the taxable property within said school corporation to pay the principal of and interest on bonded indebtedness of said school corporation, it being understood that the approval of this proposition shall not limit the source of payment of the bonds and interest but shall only operate to restrict the amount of bonds which may be issued?"

Notice of the election shall be given by the county commissioner of elections according to section 49.53. The election shall be held on a date not less than four nor more than twenty days after the last publication of the notice. At such election the ballot used for the submission of said proposition shall be in substantially the form for submitting special questions at general elections. The county commissioner of elections shall conduct the election pursuant to the provisions of chapters 39 to 53 and certify the results to the board of directors. Such proposition shall not be deemed carried or adopted unless the vote in

favor of such proposition is equal to at least sixty percent of the total vote cast for and against said proposition at said election. Whenever such a proposition has been approved by the voters of a school corporation as hereinbefore provided, no further approval of the voters of such school corporation shall be required as a result of any subsequent change in the boundaries of such school corporation.

The voted tax levy referred to herein shall not limit the source of payment of bonds and interest but shall only restrict the amount of bonds which may be issued.

The ability of a school corporation to exceed two dollars and seventy cents per thousand dollars of assessed value to service principal and interest payments on bonded indebtedness is limited and conferred only to those school corporations engaged in the administration of elementary and secondary education.

Provided further that if a school corporation leases a building or property, which has been used as a junior college by such corporation, to a merged area school corporation operating or proposing to operate an area community college, the annual amounts certified as herein provided by such leasing school corporation for payment of interest and principal due on lawful bonded indebtedness incurred by such leasing school corporation for purchasing, building, furnishing, reconstructing, repairing, improving or remodeling the building leased or acquiring or adding to the site of such property leased, to the extent of the respective annual rent the school corporation will receive under such lease, shall not be considered as a part of the total amount estimated and certified for the purposes of determining if such amount exceeds any limitation contained in this section. [C73,§1823; C97,§2813; S13,§2813; C24, 27, 31, 35, 39,§4403; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.18; 66GA, ch 81,§140]

Referred to in §298.19
Maturity and payment of bonds, ch 76

298.19 Levy. The board of supervisors of the county to which the certificate is addressed within the contemplation of section 298.18 shall levy the necessary tax to raise the amount estimated, or so much thereof as may be lawful and within the limitation of said section which levy shall be made as other taxes for school purposes. [S13,§2813-a; C24, 27, 31, 35, 39,§4404; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.19]

298.20 Funding or refunding bonds. For the purpose of providing for the payment of any indebtedness of any school corporation represented by judgments or bonds, the board of directors of such school corporation, at any time or times, may provide by resolution for the issuance of bonds of such school corporation, to be known as funding or refunding bonds. The proceeds derived from the negotiation of such funding or refunding bonds shall be applied in payment of such indebtedness; or said funding bonds or refunding bonds may be issued in exchange for the evidences of such indebtedness, par for par. [S13,§2812-c; C24, 27, 31, 35, 39,§4405; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.20]

298.21 School bonds. The board of directors of any school corporation when authorized by the voters at the regular election or at a special election called for that purpose, may issue the negotiable, interest-bearing school bonds of said corporation for borrowing money for any or all of the following purposes:

1. To acquire sites for school purposes.

2. To erect, complete, or improve buildings authorized for school purposes.

3. To acquire equipment for schools, sites, and buildings. [S13,§2812-d; C24, 27, 31, 35, 39, §4406; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.21]

Vote required to authorize bonds, §75.1

298.22 Form—rate of interest—where registered. All of said bonds shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the action of the board providing therefor; shall run not more than twenty years, and may be sooner paid if so nominated in the bond; bear a rate of interest not exceeding seven percent per annum, payable semiannually; be signed by the president and countersigned by the secretary of the board of directors; and shall not be disposed of for less than par value, nor issued for other purposes than this chapter provides.

All of said bonds, when issued, shall be delivered to the secretary of the board of directors, who shall register them in a book to be kept for that purpose, and shall deliver them when they have been properly countersigned.

The expenses of engraving and printing of bonds may be paid out of the general fund. [SS15,§2812-e; C24, 27, 31, 35, 39,§4407; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.22]

Form of county bonds, §346.3

298.23 Redemption. Whenever the amount in the hands of the treasurer, belonging to the funds set aside to pay bonds, is sufficient to redeem one or more of the bonds which by their terms are subject to redemption, he shall give the owner of said bonds thirty days' written notice of the readiness of the district to pay and the amount it desires to pay. If not presented for payment or redemption within thirty days after the date of such notice, the interest on such bonds shall cease and the amount due thereon shall be set aside for its payment whenever it is presented. [S13, §2812-f; C24, 27, 31, 35, 39,§4408; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.23]

S13,§2812-f, editorially divided

298.24 Record of bond buyers. All redemptions shall be made in the order of their numbers. The treasurer shall keep a record of the parties to whom the bonds are sold, together with their post-office addresses, and notice mailed to the address as shown by such record shall be sufficient. [S13,§2812-f; C24, 27, 31, 35, 39,§**4409**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§298.24]

CHAPTER 299

COMPULSORY EDUCATION

Referred to in §§281.6, 713A.3

299.1 Attendance requirement.
299.2 Exceptions.
299.3 Reports from private schools.
299.4 Reports as to private instruction.
299.5 Proof of abnormality.
299.6 Violations.
299.7 Custody of records.
299.8 "Truant" defined.
299.9 Truant schools—rules for punishment.
299.10 Truancy officers — appointment — compensation.
299.11 Duties of truancy officer.
299.12 Neglect by truancy officer.
299.13 Incorrigibles.
299.14 Discharge from truant school.
299.15 Reports by school officers and employees.
299.16 Census by school officer.
299.17 Repealed by 64GA, ch 1065,§1.
299.18 Education—state school.
299.19 Proceeding against parent.
299.20 Order.
299.21 Contempt.
299.22 When deaf and blind children excused.
299.23 Agent of state board of regents.
299.24 Religious groups exempted from school standards.

299.1 Attendance requirement. Any person having control of any child over seven and under sixteen years of age, in proper physical and mental condition to attend school, shall cause said child to attend some public school for at least twenty-four consecutive school weeks in each school year, commencing with the first week of school after the first day of September, unless the board of school directors shall determine upon a later date, which date shall not be later than the first Monday in December.

The board may, by resolution, require attendance for the entire time when the schools are in session in any school year.

In lieu of such attendance such child may attend upon equivalent instruction by a certified teacher elsewhere. [S13,§2823-a; C24, 27, 31, 35, 39,§**4410**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.1]

Referred to in §§299.2, 299.6, 299.11
See also §281.6

299.2 Exceptions. Section 299.1 shall not apply to any child:

1. Who is over the age of fourteen and is regularly employed.

2. Whose educational qualifications are equal to those of pupils who have completed the eighth grade.

3. Who is excused for sufficient reason by any court of record or judge.

4. While attending religious services or receiving religious instructions.

5. Who is attending a private college preparatory school approved or probationally approved under the provisions of section 257.25, subsection 14. [S13,§2823-a; C24, 27, 31, 35, 39,§**4411**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §299.2]

Referred to in §§299.6, 299.11

299.3 Reports from private schools. Within ten days from receipt of notice from the secretary of the school district within which any private school is conducted, the principal of such school shall, once during each school year, and at any time when requested in individual cases, furnish to such secretary a certificate and report in duplicate of the names, ages, and number of days attendance of each pupil of such school over seven and under sixteen years of age, the course of study pursued by each such child, the texts used, and the names of the teachers, during the preceding year and from the time of the last preceding report to the time at which a report is required. The secretary shall retain one of the reports and file the other with the secretary of the area education agency. [S13,§2823-b; C24, 27, 31, 35, 39,§**4412**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.3]

Referred to in §§299.6, 299.11

299.4 Reports as to private instruction. Any person having the control of any child over seven and under sixteen years of age, who shall place such child under private instruction, not in a regularly conducted school, upon receiving notice from the secretary of the school district, shall furnish a certificate stating the name and age of such child, the period of time during which such child has been

under said private instruction, the details of such instruction, and the name of the instructor. [S13,§2823-b; C24, 27, 31, 35, 39,§4413; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.4]

Referred to in §§299.6, 299.11

299.5 Proof of abnormality. Any person having the control of any child over seven and under sixteen years of age, who is physically or mentally unable to attend school, shall furnish proofs by affidavit as to the physical or mental condition of such child. [S13,§2823-b; C24, 27, 31, 35, 39,§4414; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.5]

Referred to in §§299.6, 299.11

299.6 Violations. Any person who shall violate any of the provisions of sections 299.1 to 299.5, inclusive, shall be fined not less than five dollars nor more than twenty dollars for each offense. [S13,§2823-a; C24, 27, 31, 35, 39, §4415; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.6]

299.7 Custody of records. All such certificates, reports, and proofs shall be filed and preserved in the office of the secretary of the school corporation as a part of the records of his office, and he shall furnish certified copies thereof to any person requesting the same. [S13,§§2823-b,-c; C24, 27, 31, 35, 39,§4416; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.7]

299.8 "Truant" defined. Any child over seven and under sixteen years of age, in proper physical and mental condition to attend school, who fails to attend school regularly as provided in this chapter, without reasonable excuse for his absence, shall be deemed to be a truant. [S13,§2823-e; C24, 27, 31, 35, 39,§4417; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.8]

299.9 Truant schools—rules for punishment. The board of directors may provide for the confinement, maintenance, and instruction of truant children and may for that purpose establish truant schools or set apart separate rooms in any public school building; and it shall prescribe reasonable rules for the punishment of truants. [S13,§§2823-d,-h; C24, 27, 31, 35, 39,§4418; C46, 50, 54, 58, 62, 66, 71, 73, 75, §299.9]

299.10 Truancy officers — appointment — compensation. The board of each school district may, and in school districts having a population of twenty thousand shall, appoint a truancy officer.

In districts having therein a city, the board may appoint a member of the police force or marshal as such officer, and other districts may appoint a constable or other suitable person.

Such officers shall be paid a reasonable compensation by the board. [S13,§2823-e; C24, 27, 31, 35, 39,§4419; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.10]

299.11 Duties of truancy officer. The truancy officer shall take into custody without warrant any apparently truant child and place him in the charge of the teacher in charge of the public school designated by the board of directors of the school district in which said child resides, or of any private school designated by the person having legal control of the child; but if it is other than a public school, the instruction and maintenance of the child therein shall be without expense to the school district.

The truancy officer shall promptly institute criminal proceedings against any person violating any of the provisions of sections 299.1 to 299.5. [S13,§§2823-e,-f; C24, 27, 31, 35, 39, §4420; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.11; 66GA, ch 1157,§1]

299.12 Neglect by truancy officer. Any truancy officer or any director neglecting his duty to enforce the truancy law after written notice so to do served upon him by any citizen of the county or by the area education agency administrator shall be liable to a fine not exceeding twenty-five dollars and be removed from such office. The county attorney shall prosecute such persons upon request of the administrator. [S13,§2823-f; C24, 27, 31, 35, 39, §4421; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.12]

299.13 Incorrigibles. If the child is placed in a school other than a public school and does not maintain proper conduct, the board may cause the child's removal to an appropriate school or class. If a child placed in a public school fails to attend or to maintain proper conduct, the board may place that child in an appropriate school or class. [S13,§§2823-d,-e; C24, 27, 31, 35, 39,§4422; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.13; 66GA, ch 1157,§2]

299.14 Discharge from truant school. Any child placed in a truant school may be discharged therefrom at the discretion of the board under such rules as it may prescribe. [S13,§2823-g; C24, 27, 31, 35, 39,§4423; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.14]

299.15 Reports by school officers and employees. All school officers and employees shall promptly report to the secretary of the school corporation any violations of the truancy law of which they have knowledge, and he shall inform the president of the board of directors who shall, if necessary, call a meeting of the board to take such action thereon as the facts justify. [S13,§2823-g; C24, 27, 31, 35, 39,§4424; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.15]

299.16 Census by school officer. All school officers empowered to take the school census shall ascertain the number of children over seven and under sixteen years of age, in their respective districts, the number of such children who do not attend school, and so far as possible the cause of the failure to attend. [S13,§2823-i; C24, 27, 31, 35, 39,§4425; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.16]

School census, §291.9

299.17 Repealed by 64GA, ch 1065,§1.

299.18 Education — state school. Children over seven and under nineteen years of age who are so deaf or blind or severely handicapped as to be unable to obtain an education in the common schools shall be sent to the proper state school therefor, unless exempted, and any person having such a child under his control or custody shall see that such child attends such school during the scholastic year. [S13,§2718-c; C24, 27, 31, 35, 39,§**4427**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.18]

Referred to in §§299.19, 299.20

299.19 Proceeding against parent. Upon the failure of any person having the custody and control of such child to require its attendance as provided in section 299.18, the state board of regents may make application to the district court or the juvenile court of the county in which such person resides for an order requiring such person to compel the attendance of such child at the proper state institution. [S13,§§2718-d,-e; C24, 27, 31, 35, 39,§**4428**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.19]

Referred to in §299.20

299.20 Order. Upon the filing of the application mentioned in section 299.19, the time of hearing shall be determined by the juvenile court or the district court. If, upon hearing, the court determines that the person required to appear has the custody and control of a child who should be required to attend a state school under section 299.18, the court shall make an order requiring such person to keep such child in attendance at such school. [C24, 27, 31, 35, 39,§**4429**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.20]

299.21 Contempt. A failure to comply with the order of the court shall subject the person against whom the order is made to punishment the same as in ordinary contempt cases. [C24, 27, 31, 35, 39,§**4430**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.21]

Contempts, ch 665

299.22 When deaf and blind children excused. Attendance at the state institution may be excused when the superintendent thereof is satisfied:

1. That the child is in such bodily or mental condition as to prevent or render futile attendance at the school.

2. That the child is so diseased or possesses such habits as to render his presence a menace to the health or morals of other pupils.

3. That the child is efficiently taught for the scholastic year in a private or other school devoted to such instruction or by a private tutor, in the branches taught in public schools. [S13,§2718-f; C24, 27, 31, 35, 39,§**4431**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.22]

299.23 Agent of state board of regents. The state board of regents may employ an agent to aid in the enforcement of law relative to the education of deaf and blind children. The agent shall seek out children who should be in attendance at the state schools but who are not, and require such attendance. He shall institute proceedings against persons who violate the provisions of said law. The agent shall be allowed compensation at a rate fixed by the board of regents, and his necessary traveling and hotel expenses while away from home in the performance of his duty. [C24, 27, 31, 35, 39,§**4432**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§299.23]

299.24 Religious groups exempted from school standards. When members or representatives of a local congregation of a recognized church or religious denomination established for ten years or more within the state of Iowa prior to July 1, 1967, which professes principles or tenets that differ substantially from the objectives, goals, and philosophy of education embodied in standards set forth in section 257.25, and rules adopted in implementation thereof, file with the state superintendent of public instruction proof of the existence of such conflicting tenets or principles, together with a list of the names, ages, and post-office addresses of all persons of compulsory school age desiring to be exempted from the compulsory education law and the educational standards law, whose parents or guardians are members of the congregation or religious denomination, the state superintendent, subject to the approval of the state board of public instruction, may exempt the members of the congregation or religious denomination from compliance with any or all requirements of the compulsory education law and the educational standards law for two school years. When the exemption has once been granted, renewal of such exemptions for each succeeding school year may be conditioned by the state superintendent, with the approval of the board, upon proof of achievement in the basic skills of arithmetic, the communicative arts of reading, writing, grammar, and spelling, and an understanding of United States history, history of Iowa, and the principles of American government, by persons of compulsory school age exempted in the preceding year, which shall be determined on the basis of tests or other means of evaluation selected by the state superintendent with the approval of the board. The testing or evaluation, if required, shall be accomplished prior to submission of the request for renewal of the exemption. Renewal requests shall be filed with the state superintendent on or before April 15 of the school year preceding the school year for which the applicants desire exemption. [C71, 73, 75, §299.24]

Referred to in §280.3

CHAPTER 300

PUBLIC RECREATION AND PLAYGROUNDS

300.1 Establishment — maintenance — supervision.
300.2 Tax levy—petition—submission.
300.3 Levy—collection—limitation.
300.4 Duties of school treasurer.
300.5 Annual levy.
300.6 Discontinuance of levy.
300.7 Appropriation by city.

300.1 Establishment — maintenance — supervision. Boards of school directors in school districts containing or contained in any city are hereby authorized to establish and maintain for children in the public school buildings and on the public school grounds under the custody and management of such boards, public recreation places and playgrounds and necessary accommodations for same, without charge to the residents of said school district; also to co-operate with the commissioners or boards having the custody and management in such cities of public parks and public buildings and grounds of whatever sort, and, by making arrangements satisfactory to such boards controlling public parks and grounds, to provide for the supervision, instruction, and oversight necessary to carry on public educational and recreational activities, as described in this section in buildings and upon grounds in the custody and under the management of such commissioners or boards having charge of public parks and public buildings on grounds of whatever sort, in such cities. [S13, §2823-u; C24, 27, 31, 35, 39,§**4433**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§300.1]

Referred to in §§300.6, 300.7

300.2 Tax levy—petition—submission. The board of directors of any school district containing, or contained in, any city may, and upon petition to that effect signed by legally qualified voters aggregating not less than twenty-five percent of the number voting at the last preceding school election, shall, submit to the electors of such school district the question of levying a tax as provided in section 300.3; and if a majority of the votes cast upon such proposition be in favor thereof, then the board of school directors shall proceed to organize the work as authorized in this chapter, and levy a tax therefor at the time and in the manner provided in section 300.3. If at the time of filing said petition it shall be more than three months till the next regular school election, then the board of school directors shall submit said question at a special election within sixty days. [S13,§2823-u1; C24, 27, 31, 35, 39,§**4434**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§300.2]

Referred to in §§300.6, 300.7

300.3 Levy—collection—limitation. Boards of school directors in such districts shall fix and certify to the board of supervisors on or before the first Monday of March the amount of money required for the next fiscal year for the support of the aforementioned activities, in the same manner as the amount of necessary taxes for other school purposes is certified, and said board of supervisors shall levy and collect a tax upon all the property subject to taxation in said school district at the same time and in the same manner as other taxes are levied and collected by law, which shall be equal to the amount of money so required for such purposes by the said board of school directors; provided that the tax so levied upon each dollar of the assessed valuation of all property, real and personal, in said district, subject to taxation, shall not in any one year exceed thirteen and one-half cents per thousand dollars of assessed value for the purpose of the activities hereinbefore mentioned. The said tax shall not be used or appropriated directly or indirectly for any other purpose than provided in this chapter. [S13,§2823-u2; C24, 27, 31, 35, 39,§**4435**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§300.3]

Referred to in §§300.2, 300.4, 300.6, 300.7

300.4 Duties of school treasurer. All moneys received by or raised in such city for the aforementioned purpose shall be paid over to the treasurer of the school district, to be disbursed by him on orders of such board of school directors in such district in the same manner as other funds of said district are disbursed by him, but the tax provided in section 300.3 shall not be levied or collected nor shall the board have authority to certify the amount of taxes necessary for this purpose until after the question of the levy of such tax shall have been authorized by a majority vote at a regular or special election. [S13,§2823-u3; C24, 27, 31, 35, 39,§**4436**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§300.4]

Referred to in §§300.6, 300.7

300.5 Annual levy. After the question of the levy of such special tax has been submitted to and approved by the voters, the authority shall remain, and such tax shall be levied and collected annually until such time as the voters of the school district of such city shall by majority vote order the discontinuance of the levy and collection of such tax. [S13,§2823-u4; C24, 27, 31, 35, 39,§**4437**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§300.5]

Referred to in §§300.6, 300.7

300.6 Discontinuance of levy. The board of school directors in any district governed by sections 300.1 to 300.5, inclusive, may, and on petition to that effect signed by legally qualified voters aggregating not less than twenty-

five percent of the number voting at the last preceding school election, shall, submit to the electors of such school district the question of discontinuing the levying of such tax as may have been previously authorized under the said provisions, and if a majority of the votes cast upon such proposition be in favor thereof, then the levying of such tax shall be discontinued and shall not be resumed unless again authorized under the provisions of section 300.2. [S13,§2823-u5; C24, 27, 31, 35, 39, §4438; C46, 50, 54, 58, 62, 66, 71, 73, 75,§300.6]

Referred to in §300.7

300.7 Appropriation by city. The board of school directors in any district governed by sections 300.1 to 300.6, inclusive, of this chapter is also empowered to receive and expend for the purpose thereof any sums of money appropriated and turned over to them by the city council of such city for such purposes; and the city council may appropriate and turn over to the board of school directors of the school district containing or contained in such city any reasonable sums of money for the purposes herein set forth. [S13,2823-u6; C24, 27, 31, 35, 39,§4439; C46, 50, 54, 58, 62, 66, 71, 73, 75,§300.7]

CHAPTER 301

TEXTBOOKS

DISTRICT UNIFORMITY

301.1 Adoption—purchase and sale.
301.2 Custodian—bond.
301.3 Annual settlement by board of directors.
301.4 Payment from general fund.
301.5 Purchase—exchange.
301.6 Suit on bond.
301.7 Bids—advertisement.
301.8 Awarding contract.
301.9 Repealed by 63GA, ch 1025,§63.
301.10 Samples and lists.
301.11 Bond.

COUNTY UNIFORMITY

301.12 to 301.14 Repealed by 52GA, ch 147,§21.
301.15 to 301.18 Repealed by 63GA, ch 1025, §§64–67.
301.19 and 301.20 Repealed by 65GA, ch 1172, §133
301.21 to 301.23 Repealed by 63GA, ch 1025, §§68–70.

FREE TEXTBOOKS

301.24 Petition—election.
301.25 Loaning books.
301.26 General regulations.
301.27 Discontinuance of loaning.
301.28 Officers and teachers as agents for books and supplies.

DISTRICT UNIFORMITY

301.1 Adoption—purchase and sale. The board of directors of each and every school district is hereby authorized and empowered to adopt textbooks for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state, and to contract for and buy said books and any and all other necessary school supplies at said contract prices, and to sell the same to the pupils of their respective districts at cost, loan such textbooks to such pupils free, or rent them to such pupils at such reasonable fee as the board shall fix, and said money so received shall be returned to the general fund.

Textbooks adopted and purchased by a school district may be made available to pupils attending nonpublic schools upon request of the pupil or the pupil's parent under the same terms as made available to pupils attending public schools. [C97,§2824; C24, 27, 31, 35, 39, §4446; C46, 50, 54, 58, 62, 66, 71, 73, 75,§301.1; 66GA, ch 153,§12]

C97,§2824, editorially divided

301.2 Custodian—bond. The books and supplies so purchased shall be under the charge of the board, who may select one or more persons within the county to keep said books and supplies as the depository agent of the board under such rules and regulations as the board shall adopt. The board shall require of each person so appointed a bond in such sum as may seem to the board to be desirable, the reasonable cost of which, if a bond of an association or corporation as surety is furnished, shall be paid by the district. The board shall adopt rules and regulations to provide that no textbook in any branch determined by the board to be taught in the schools under its charge, shall be sold or rented by such depository agent to the pupils in such schools as a textbook other than those textbooks authorized by said board for use by the pupils in such schools; to provide that no such textbook shall be sold or rented by such depository agent at a price or fee higher than that fixed by the said board; and to provide such other measures not in conflict with law as are necessary properly to govern said depository agents and safeguard the said books and moneys. [C97,§2824; C24, 27, 31, 35, 39,§4447; C46, 50, 54, 58, 62, 66, 71, 73, 75,§301.2]

301.3 Annual settlement by board of directors. At the close of each school year the board of directors in each school district

shall cause a complete settlement to be made with each depository agent. A complete inventory of the textbooks on hand, with a statement itemized to show the expenses authorized and paid by the board, and the amount of money collected from each such depository agent during the year from the sale or rental of textbooks, shall be made in duplicate, signed by the secretary of the board and the depository agent and one copy filed with the secretary and one with the depository agent. [C39, §**4447.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§301.3]

301.4 Payment from general fund. All the books and other supplies purchased under the provisions of this chapter shall be paid for out of the general fund. [C97,§2825; C24, 27, 31, 35, 39,§**4448**; C46, 50, 54, 58, 62, 66, 71, 73, 75,301.4]

301.5 Purchase—exchange. In the purchasing of textbooks it shall be the duty of the board of directors to take into consideration the books then in use in the respective districts, and they may buy such additional number of said books as may from time to time become necessary to supply their schools, and they may arrange on equitable terms for exchange of books in use for new books adopted. [C97,§2826; C24, 27, 31, 35, 39,§**4449**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§301.5]

301.6 Suit on bond. If at any time the publishers of such books as shall have been adopted by any board of directors shall neglect or refuse to furnish such books when ordered by said board in accordance with the provisions of this chapter, at the very lowest price, either contract or wholesale, that such books are furnished any other district or state board, then said board of directors may and it is hereby made their duty to bring suit upon the bond given them by the contracting publisher. [C97, §2827; C24, 27, 31, 35, 39,§**4450**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§301.6]

301.7 Bids—advertisement. Before purchasing textbooks from a source other than the publisher and before purchasing supplies under the provisions of this chapter, it shall be the duty of the board of directors to advertise, by publishing a notice once each week for two consecutive weeks in one or more newspapers published in the county; said notice shall state the time up to which all bids will be received, the classes and grades for which textbooks and other necessary supplies are to be bought, and the approximate quantity needed. [C97,§2828; S13,§2828; C24, 27, 31, 35, 39,§**4451**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §301.7]

S13,§2828, editorially divided

301.8 Awarding contract. Said board shall award the contract for such textbooks or supplies to the lowest responsible bidder meeting the specifications set forth in the notice to bidders or may reject any and all bids, or any part thereof, and readvertise. [C97,§2828; S13,§2828; C24, 27, 31, 35, 39,§**4452**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§301.8]

301.9 Repealed by 63GA, ch 1025,§63.

301.10 Samples and lists. Any person or firm desiring to furnish books or supplies under this chapter shall, at or before the time of filing his bid hereunder, make available samples of all textbooks included in his bid, accompanied with lists giving the lowest wholesale and contract prices for the same. [C97,§2830; C24, 27, 31, 35, 39,§**4454**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§301.10]

C97,§2830, editorially divided

301.11 Bond. The board of directors shall require any person or persons with whom they contract for furnishing any books or supplies to enter into a good and sufficient bond, in such sum and with such conditions and sureties as may be required by such board of directors for the faithful performance of any such contract. Bonds of surety companies duly authorized under the laws of Iowa shall be accepted. [C97,§2830; C24, 27, 31, 35, 39, §**4455**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§301.11]

COUNTY UNIFORMITY

301.12 to 301.14 Repealed by 52GA, ch 147,§21, see §273.13.

301.15 to 301.18 Repealed by 63GA, ch 1025, §§64–67.

301.19 and 301.20 Repealed by 65GA, ch 1172,§133.

301.21 to 301.23 Repealed by 63GA, ch 1025, §§68–70.

FREE TEXTBOOKS

301.24 Petition—election. Whenever a petition signed by ten percent of the qualified voters, to be determined by the school board of any school district, shall be filed with the secretary thirty days or more before the regular election, asking that the question of providing free textbooks for the use of pupils in the public schools thereof be submitted to the voters at the next regular election, he shall cause notice of such proposition to be given in the notice of such election. [C97, §2836; C24, 27, 31, 35, 39,§**4464**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§301.24]

Referred to in §301.27

301.25 Loaning books. If, at such election, a majority of the legal voters present and voting by ballot thereon shall authorize the board of directors of said school district to loan textbooks to the pupils free of charge, then the board shall procure such books as shall be needed, in the manner provided by law for the purchase of textbooks, and loan them to the pupils. [C97,§2837; C24, 27, 31, 35, 39,§**4465**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§301.25]

C97,§2837, editorially divided

301.26 General regulations. The board shall hold pupils responsible for any damage to, loss of, or failure to return any such books,

and shall adopt such rules and regulations as may be reasonable and necessary for the keeping and preservation thereof. Any pupil shall be allowed to purchase any textbook used in the school at cost. No pupil already supplied with textbooks shall be supplied with others without charge until needed. [C97,§2837; C24, 27, 31, 35, 39,§**4466**; C46, 50 54, 58, 62, 66, 71, 73, 75,§301.26]

301.27 Discontinuance of loaning. The electors may, at any election called as provided in section 301.24, direct the board to discontinue the loaning of textbooks to pupils. [C97,§2837; C24, 27, 31, 35, 39,§**4467**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§301.27]

301.28 Officers and teachers as agents for books and supplies. It shall be unlawful for any school director, officer, area education director or teacher to act as agent for any school textbooks or school supplies during such term of office or employment, and any school director, officer, area education director or teacher, who shall act as agent or dealer in school textbooks or school supplies, during the term of such office or employment, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than ten dollars nor more than one hundred dollars, and pay the costs of prosecution. [C97,§2834; C24, 27, 31, 35, 39,§**4468**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§301.28]

CHAPTER 302

SCHOOL FUNDS

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302.1 Permanent fund. The permanent school fund, the interest of which only can be appropriated for school purposes, shall consist of:

1. Five percent of the net proceeds of the public lands of the state, which shall be paid to the state treasurer and be apportioned by the state comptroller among the several counties.

2. The proceeds of the sale of the five hundred thousand acres of land granted the state under the eighth section of an Act of Congress passed September 4, 1841, entitled: "An Act to appropriate the proceeds of all sales of public lands, and to grant pre-emption rights".

3. The proceeds of all intestate estates escheated to the state.

4. The proceeds of the sales of the sixteenth section in each township, or lands selected in lieu thereof. [R60,§§1962, 1964; C73,§§1837, 1839; C97,§2838; C24, 27, 31, 35, 39,§**4469**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.1]

C97,§2838, editorially divided

302.2 Lands and escheats. The proceeds of all lands sold, and all sums due from escheats, shall be payable to the treasurer of the county in which the lands or escheated estates are situated or found, and the county treasurer shall pay the proceeds to the state treasurer once each month. [R60,§1965; C73,§1840; C97, §2838; C24, 27, 31, 35, 39,§**4470**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.2]

302.3 Temporary fund. The temporary school fund, which shall be received and appropriated annually in the same manner as the interest of the permanent fund, shall consist of:

1. All forfeitures which are authorized to be made for the benefit of the school fund.

2. The proceeds of all fines collected for violation of the penal laws, and for the nonperformance of military duty.

3. The proceeds of the sale of lost goods and estrays.

These several funds shall be payable to the county treasurer of the several counties in which they arise, accounted for to the board of supervisors, and apportioned by it among the several school districts of the county as provided by law. [R60,§§1963, 1966; C73,§§1838, 1841; C97,§2839; C24, 27, 31, 35, 39,§**4471**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.3]

302.4 Division and appraisement. The board of supervisors may, at such time as it may fix, and as preliminary to a sale, authorize the trustees of any township, where the sixteenth section or land selected in lieu thereof has not been sold, to lay out the same into such tracts as in their judgment will be for the best interests of the school fund, conforming, as far as the interests of said fund will permit, to the legal subdivisions of the United States surveys, and appraise each tract at what they believe to be its true value, and certify to said board the divisions and appraisements made by them. Said division and appraisement shall be approved or disapproved by said board at its first meeting after such report, and in case it disapproves the same it may at once order another division and appraisement. If the board of supervisors approves, the county auditor shall make and keep a record of such division, appraisement, and approval; but no school lands of any kind shall be sold for less than the appraised value per acre, except as hereinafter provided; nor shall any member of the board of supervisors, county auditor, township trustee, or any person who was engaged in the division and appraisement of said land, be directly or indirectly interested in the purchase thereof; and any sale made, where such parties or any of them are so interested, shall be void. [R60,§§1970, 1971; C73,§§1845–1847; C97,§2840; C24, 27, 31, 35, 39,§**4472**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.4]

302.5 Notice — sale. When the board of supervisors shall offer for sale the sixteenth section or lands selected in lieu thereof, or any portion of the same, or any part of the five-hundred-thousand-acre grant, the county auditor shall give at least forty days' notice, by written or printed notices posted in five public places in the county, two of which shall be in the township in which the land to be sold is situated, and also publish a notice of said sale once each week for two weeks preceding the same in a newspaper published in the county, describing the land to be sold and the time and place of such sale. At such time and place, or at such other time and place as the sale may be adjourned to, he shall offer to the highest bidder, subject to the provisions of this chapter, and sell, either for cash or one-third cash and the balance on a credit not exceeding ten years, with interest on the same at the rate of not less than three and one-half percent per annum, to be paid at the office of the county treasurer of said county on the first day of January in each year, delinquent interest to bear the same rate as the principal. Such county treasurer shall pay to the state treasurer on the first day of February all interest collected. [R60,§1971; C73,§1846; C97,§2841; S13, §2841; C24, 27, 31, 35, 39,§**4473**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.5]

302.6 Sale without appraisement. When the board of supervisors of any county has once offered for sale any school lands in compliance with the requirements of this chapter, and they remain unsold, and it is unable to obtain therefor the appraised value thereof, and in the opinion of said board it is for the best interests of the school fund that the same be sold for a less price, it may instruct the auditor to transmit to the secretary of state a certified copy of its proceedings in relation to the order of sale thereof and subsequent proceedings in relation thereto, including the action of the township trustees, and the price per acre at which the land had been appraised, which transcript the secretary of state shall submit to the executive council; and if it approves of a sale at a less sum it shall certify such approval to the auditor of the county from which said transcript came, which certificate shall be transcribed in the minute book of the board of supervisors, and thereupon said land may again be offered and sold to the highest bidder, after notice given as in case of sales in the first instance, without being again appraised. [C73,§1849; C97,§2842; C24, 27, 31, 35, 39,§**4474**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.6]

302.7 Sale on credit — taxation — waste. When lands are sold upon a partial credit, the contract therefor shall be at once reduced to writing, signed by the proper parties, recorded in the county where the land is situated, and immediately thereafter filed in the office of the county auditor. Any purchaser or his assigns may at any time pay the full amount for lands with accrued interest, and receive from the county auditor a certificate of purchase, which shall be at once transmitted to the secretary of state and will entitle the holder to a patent for the lands, to be issued by the secretary of state and the governor. All school lands sold in pursuance of law shall be subject to taxation from and after the execution and delivery of a contract of purchase. All sales made, where the full price is not paid, shall be subject to the law relative to the prevention or punishment of waste, and in all such cases the township trustees in each township are charged with the duty of preventing the commission of waste upon any school lands lying in their township, and, if attempted, they shall apply by petition for an injunction to stay the same, and if granted the writ shall issue without bond, and the court issuing it may make such order in the premises as shall be equitable and best calculated to prevent threatened injury, and may adjudge damages for any injury done, the costs to abide the event of the action, and the

damages adjudged shall be paid to the county treasurer and the county treasurer shall forthwith pay the same to the state treasurer which shall become a part of the permanent school fund. [R60,§§1972, 1973, 1976–1978; C73,§§1851, 1852, 1856–1858; C97,§2843; C24, 27, 31, 35, 39, §4475; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.7]

302.8 Sale of lands bid in. When lands have been sold and bid in by the state in behalf of the school fund upon a judgment in favor of such fund, the land may be sold in like manner as other school lands, and when lands have been conveyed to the counties in which they are situated for the use of the school fund, instead of to the state, such conveyance shall be valid and binding, and upon proper certificates of sales patents shall issue in like manner as in cases where the conveyances were properly made to the state. [C73,§1850; C97, §2844; C24, 27, 31, 35, 39,§4476; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.8]

302.9 Cash or collateral security. When, in the judgment of the board of supervisors, any school lands are of such a character that a sale upon partial credit would be unsafe or incompatible with the interest of the school fund, and especially in the case of timbered lands, the board of supervisors may in its discretion exact the whole of the purchase money in advance; or if it sells such land upon a partial credit, as hereinbefore prescribed, it shall require good collateral security for the payment of the part upon which credit is given. [R60,§1974; C73,§1853; C97,§2845; C24, 27, 31, 35, 39,§4477; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.9]

302.10 Uniform interest date. In all cases where money is due to the school fund, either for loans or deferred payments of the purchase price of land sold, the interest shall be made payable on the first day of January each year, and if the debtor fails to pay the interest within six months thereafter, the entire amount of both principal and interest shall become due, and the county auditor shall make a report thereof to the county attorney, who shall immediately commence action for the collection of the amount reported to him as due, and this section is hereby declared to be a part of any contract made by virtue of this chapter, whether expressed therein or not. [R60,§§1975, 1979; C73,§§1854, 1855; C97,§2846; C24, 27, 31, 35, 39,§4478; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.10]

302.11 School fund accounts — audit of losses. The state comptroller shall keep the school fund accounts in books provided for that purpose, separate and distinct from the revenue books. The auditor of state shall audit all losses to the permanent school or university fund which shall have been occasioned by the defalcation, mismanagement, or fraud of the agents or officers controlling and managing the same, and for this purpose shall prescribe such regulations for those officers as may be necessary to ascertain such losses. [R60,§1969; C73,§1842; C97,§2847; C24, 27, 31, 35, 39,§4479; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.11]

C97,§2847, editorially divided

302.12 Bonds to cover losses. When any sum not less than one thousand dollars shall be so audited and so become a debt of the state to the fund, as provided by the Constitution, the auditor of state shall issue the bond or bonds of the state in favor of the fund, bearing six percent interest, payable semiannually on the first day of January and July after issuance, and the amount to pay the interest as it becomes due is appropriated out of any funds in the state treasury. [C73,§1843; C97, §2847; C24, 27, 31, 35, 39,§4480; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.12]

Constitution, Art. VII,§3

302.13 Apportionment of interest. On the first Monday of March annually, the state comptroller shall apportion the interest of the permanent school fund among the several counties, in proportion to the number of persons of school age in each county, as shown by the report of the superintendent of public instruction, as provided by section 257.18, subsection 17. [R60,§1969; C73,§1844; C97,§2847; C24, 27, 31, 35, 39,§§4481, 4482; C46, 50, §§302.13, 302.14; C54, 58, 62, 66, 71, 73, 75,§302.13]

See §8.6(9)

302.14 Repealed by 54GA, ch 101,§5, see §302.13.

302.15 Management. All property and money hereafter accrued to the school fund shall be managed and controlled by the state treasurer, and he shall be responsible for the safekeeping, investment, reinvestment and disbursement of the same. [R60,§1980; C73,§§1859, 1860; C97,§2848; C24, 27, 31, 35, 39,§4483; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.15]

C97,§2848, editorially divided

302.16 Actions. All actions for and in behalf of said fund may be brought in the name of the state for the use of the school fund, by the attorney general. [C73,§1860; C97,§2848; C24, 27, 31, 35, 39,§4484; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.16]

302.17 Liability of county. Each county shall be liable for all losses upon loans of the school fund, principal or interest, made in such county, unless the loss was not occasioned by reason of any default of its officers or by taking insufficient or imperfect securities, or from a failure to bid at an execution sale the full amount of the judgment and costs. [C73,§1860; C97,§2848; C24, 27, 31, 35, 39,§4485; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.17]

302.18 Exemption of county. All claims for exemption from liability on account of losses shall be examined into and adjusted by the state comptroller, upon proof submitted to him in writing in behalf of the county within three months after the county auditor shall be advised by the comptroller of his readiness to receive the proof. In the absence of evidence,

or if that submitted is insufficient, the loss may be charged against the county and be conclusive, but if found sufficient, the comptroller shall present the facts in his report to the next general assembly. [C73,§1860; C97,§2848; C24, 27, 31, 35, 39,§**4486**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.18]

Biennial report, §17.3

302.19 Loans. The permanent school fund shall be loaned out by the state treasurer as it comes into his hands. [R60,§1981; C73,§1861; C97,§2849; S13,§2849; C24, 27, 31, 35, 39,§**4487**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.19]

S13,§2849, editorially divided

302.20 Investment of permanent fund. The permanent school fund which is, at any time, in the custody of the treasurer of state, shall be invested as follows:

1. In bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality thereof.

2. In bonds, or other evidences of indebtedness of the state of Iowa, or of any school district, county, township, city or other political subdivision of the state of Iowa which are issued pursuant to law.

3. In savings accounts or in time deposits in Iowa banks approved as depositories by the executive council.

4. In any investments authorized for the Iowa public employees' retirement system in section 97B.7, subsection 2, paragraph "*b*", except that investment in common stocks shall not be permitted. [C39,§**4487.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.20]

302.21 to 302.23 Repealed by 54GA, ch 101,§10.

302.24 Redemption of prior lien — assignments. If it shall happen that a loan is made upon real estate which is in fact encumbered other than for taxes, the board of supervisors may, when necessary for the safety of the loan, appropriate out of any school fund on hand, if such encumbrance does not exceed one-half of the real value of the lands, so much as may be needed to take up and purchase the same, and may also at any meeting, by resolution, assign without recourse, upon payment of the amount due, any school fund note and mortgage to one holding a subsequent lien upon the mortgaged real estate. [C73,§§1868, 1869; C97,§2850; SS15,§2850; C24, 27, 31, 35, 39, §**4491**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.24]

Collection of mortgages, surrender of bonds, etc., 54GA, ch 101,§11

302.25 to 302.27 Repealed by 54GA, ch 101,§10.

302.28 Statute of limitation. Lapse of time shall in no case be a bar to any action to recover any part of the school fund, nor shall it prevent the introduction of evidence in such an action, except as provided in sections 614.29 to 614.38. [C73,§§1880, 2542; C97,§2852; C24, 27, 31, 35, 39,§**4495**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.28]

302.29 Payments. All payments to the school fund upon contracts, or loans of any other nature, shall be made to the treasurer of the county upon a certificate from the auditor showing the amount due. [R60,§1986; C73, §1867; C97,§2853; C24, 27, 31, 35, 39,§**4496**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.29]

C97,§2853, editorially divided

302.30 Release of mortgage. The auditor shall, when the debt is paid, release any mortgage or issue a certificate of purchase, as the case may be, and report the same to the board of supervisors at its next meeting, which report shall be carried into the records of the board. [R60,§1986; C73,§1867; C97,§2853; C24, 27, 31, 35, 39,§**4497**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.30]

302.31 School fund account — settlement. The auditor shall also keep in his office, in books to be provided for that purpose, an account to be known as the school fund account, in which a memorandum of all notes, mortgages, bonds, money, and assets of every kind and description which may come into his hands and those of the treasurer shall be entered, and separate accounts of principal and interest be kept; and the county treasurer shall keep a like account and record of all school funds coming into his hands. Settlements of such account shall be made with the board of supervisors at its January and June sessions, which settlements shall be recorded with the proceedings of the board. [R60,§§1990, 1991; C73,§§1876, 1877; C97,§2853; C24, 27, 31, 35, 39, §**4498**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.31]

302.32 Notice of default. When outstanding contracts for the sale of school lands or notes for money of the school fund loaned, or interest thereon, are due, the auditor shall by mail at once notify the debtor to make payment thereof within three months. [C73,§§1872, 1873; C97,§2854; C24, 27, 31, 35, 39,§**4499**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.32]

C97,§2854, editorially divided

302.33 Suit — attorney fee. If such debtor shall neglect to comply with such notice, the auditor shall report the same to the county attorney, who shall bring an action to recover the same, and an injunction may issue for cause, without bond when so prayed, and there shall be allowed in the judgment, entered and taxed as a part of the costs in the case, a

reasonable sum as compensation to plaintiff's attorney, not exceeding the amount as provided by law for attorneys' fees. [C73,§1873; C97,§2854; C24, 27, 31, 35, 39,§**4500**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.33]

Attorney fees, §625.22

302.34 Bid at execution sale. Upon a sale of lands under an execution founded upon a school fund claim or right, the auditor shall bid such sum as the interests of the fund require, and, if struck off to the state, it shall be thereafter treated in all respects the same as other lands belonging to said fund. [C73, §1874; C97,§2854; C24, 27, 31, 35, 39,§**4501**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.34]

302.35 Sheriff's deed to state. When lands have been bid in by the county for the state under foreclosure of school fund mortgages and the time for redemption has expired, a sheriff's deed shall be issued to the state for the use and benefit of the permanent school fund. The county auditor shall file the said deed for record in the office of the county recorder who shall record the same without fee and return the same when recorded to the county auditor who shall then forward the same to the secretary of state. The secretary of state shall record the said deed in his records and then file the same with the state comptroller. [C73,§1881; C97,§2855; S13,§2855; C24, 27, 31, 35, 39,§**4502**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.35]

302.36 Resale by state. All lands now acquired under permanent school fund foreclosure proceedings shall be resold within ten years from January 1, 1939, and lands acquired after such date shall be resold within six years from date of foreclosure. Such land shall be appraised, advertised, and sold in the manner provided for the appraisement, advertisement, sale and conveyance of the sixteenth section or lands selected in lieu thereof. [S13, §2855; C24, 27, 31, 35, 39,§**4503**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.36]

Appraisement, §302.4

302.37 Proceeds on resale. When a resale is made, the county auditor shall notify the state comptroller, who shall thereupon charge the county with the full amount of the resale, except that when the lands are sold for more than the unpaid portion of the principal, the excess shall be applied to reimburse the county for the costs of foreclosure and the interest paid by the county to the state by reason of default of payment of same by the makers of the notes, previous to the time when the right of redemption has expired, not to exceed three years. [C73,§§1881, 1882; C97, §2855; S13,§2855; C24, 27, 31, 35, 39,§**4504**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.37]

302.38 Excess—loss borne by county. Any excess over the amount of the unpaid portion of the principal, costs of foreclosure, and interest on the principal as above provided, shall inure to the county and be credited to the general county fund. If the lands shall be sold for a less amount than the unpaid portion of the principal, the loss shall be sustained by the county, and the board of supervisors shall at once order the amount of such loss transferred from the general fund or temporary school fund of the county to the permanent school fund account. [C73,§1881; C97,§2855; S13,§2855; C24, 27, 31, 35, 39,§**4505**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.38]

302.39 Report as to sales—interest. County auditors shall, on or before the first day of January of each year, report to the state comptroller the amount of all sales and resales made during the year previous, of the sixteenth section, five-hundred-thousand-acre grant, escheat estates, and lands taken under foreclosure of school fund mortgages, and the comptroller shall charge the same to the counties with interest from the date of such sale or resale to January 1, at the rate of three percent per annum. [C73,§1881; C97,§2855; S13, §2855; C24, 27, 31, 35, 39,§**4506**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.39]

302.40 Interest charged to counties. The state comptroller shall also, on the first day of January, charge to each county having permanent school funds under its control, interest thereon at the rate of three percent per annum for the preceding year, or such part thereof as such funds shall have been in the control of the county, which shall be taken as the whole amount of interest due from such county. All interest collected above the three percent charged by the state shall be transferred to the general county fund. [C73, §1882; C97,§2855; S13,§2855; C24, 27, 31, 35, 39, §**4507**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.40]

302.41 Uncollected interest. If any county fails or refuses to collect the amount of interest due the state, the deficiency shall be paid to the state from the general county fund. Any county delinquent in the payment of interest due the state shall be charged one percent per month on the amount delinquent until paid. [C73,§1882; C97,§2855; S13,§2855; C24, 27, 31, 35, 39,§**4508**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.41]

302.42 Report as to rents. County auditors shall, upon the first day of January of each year, report to the state comptroller the amount of rents collected during the preceding year on unsold school lands and lands taken under foreclosure of school fund mortgages then in the hands of the county treasurer, and the comptroller shall include the amount so reported in his semiannual apportionment of interest. [C73,§1884; C97,§2855; S13,§2855; C24, 27, 31, 35, 39,§**4509**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§302.42]

302.43 Repealed by 54GA, ch 101,§10.

302.44 Penalty against county auditor. Any county auditor failing or neglecting to perform any of the duties which are required of him by the provisions of this chapter, shall be liable to a penalty of not less than one hundred nor more than five hundred dollars, to be recovered in an action brought in the district court by the board of supervisors, the judgment to be entered against the party and his bondsmen, and the proceeds to go to the school fund. [R60,§1992; C73,§1878; C97,§2857; C24, 27, 31, 35, 39,§**4511**; C46, 50, 54, 58, 62, 66, 71, **73**, 75,§302.44]

CHAPTER 303

HISTORICAL DEPARTMENT

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303.1 Establishment of department. There is established the Iowa state historical department which shall be governed by a state historical board consisting of twelve members, six of whom shall be appointed by the governor and six of whom shall be elected by the members of the state historical society established in section 303.4 of this chapter. The members appointed by the governor shall include one professionally qualified architectural historian, one historian, and one archaeologist. The members elected by the society shall include one resident of each congressional district.

The term of office for both elected and appointed members shall commence on July 1 of each year and shall be three years. [C73, §§1885, 1901; C97,§§2858, 2883; S13,§2881-a; C24, 27, 31, 35,§§4512–4514, 4543; C39,§§**4541.01, 4541.02, 4543**; C46, 50, 54, 58, 62, 66, 71, 73,§§303.1, 303.2, 304.2; C75,§303.1; 66GA, ch 162,§1]

Referred to in §303.4
Initial terms, 65GA, ch 1175,§1

303.2 Officers—meetings. The state historical board shall annually elect a chairman and vice chairman from its membership, and the director of the division of historical museum and archives shall serve as secretary to the board. The board shall meet as often as deemed necessary, upon the call of the chairman and vice chairman, or at the request of a majority of the members of the board.

Members of the board shall be paid a forty-dollar per diem and shall be reimbursed for actual and necessary expenses while engaged in their official duties. [C75,§303.2]

303.3 Divisions of department. The Iowa state historical department shall consist of the division of historical museum and archives, located in Des Moines, the division of the state historical society, located in Iowa City, and the division of historic preservation. [C75, §303.3; 66GA, ch 1158,§5]

303.4 Membership in state historical society. The state historical board shall establish rules for membership of the general public in the state historical society, including rules relating to membership fees. Members shall be persons who indicate an interest in the history, progress, and development of the state and who pay the prescribed fee. The members of the state historical society may meet at least one time per year to further the understanding of the history of this state. The election of members of the state historical board, as pro-

vided in section 303.1, shall be by mailed ballot as provided in bylaws adopted by the society and approved by the state historical board. The society may elect officers and the director of the division of the state historical society shall serve as secretary to the society. The officers of the society shall not determine policy for the division of the state historical society but may perform functions to stimulate interest in the history of this state among the general public. The society may perform other activities related to history which are not contrary to the provisions of this chapter, subject to the approval of the board.

1. It is the intent of the general assembly that, as used in this chapter, "state historical society" means only the division of the Iowa state historical department, an agency solely of the state, which is denominated the division of the state historical society. It does not mean or include any private entity.

2. A corporation organized under the laws of this state shall not exercise any powers or duties exercisable by law by the Iowa state historical department and its divisions. If a corporation exercises or attempts to exercise these powers or duties, it shall be subject to an equitable suit for involuntary dissolution by any interested person.

3. Unless specifically designated otherwise, any gift, bequest, devise, endowment, or grant to or application for membership in the state historical society shall be presumed to be to or in the division of the state historical society of the Iowa state historical department. [C73,§1902; C97,§2884; C24, 27, 31, 35, 39, §4544; C46, 50, 54, 58, 62, 66, 71, 73,§304.3; C75, §303.4; 66GA, ch 1158,§10]

Referred to in §303.1
Take possession of state property—legal counsel, 66GA, ch 1158,§11

303.5 Powers and duties of the state historical board. The state historical board shall have the following powers and duties:

1. Establish policy for the division of historical museum and archives, the division of the state historical society, and the division of historic preservation, eliminating duplication of services whenever possible.

2. Appoint a director of the division of historical museum and archives, a director of the division of the state historical society, and a director of the division of historic preservation at annual salaries set by the general assembly. Directors of the divisions shall serve for six-year terms and may be reappointed.

3. Control the historical building, the centennial building, and other properties and assign space.

4. Determine the scope of and authorize publications.

5. Make a biennial report to the governor and to the general assembly.

6. Co-ordinate activities of the department with federal, state, and local agencies.

7. Select sites for uniform historical markers.

8. Co-ordinate historic preservation matters.

9. Approve nominations to and removals from the state and national registers of historic places. The standards of the national register shall be adopted as the standards for the listing of historic property on the state register.

10. Approve the state preservation plan.

11. Acquire historic properties by gift, purchase, devise or bequest; preserve, restore, transfer and administer such properties; and charge reasonable admissions to such properties.

12. Promulgate rules for the effective and efficient operation of the department subject to the provisions of chapter 17A.

13. May periodically loan historical articles and artifacts, such as the silver tea service of General Grenville Dodge, owned or in the possession of the state of Iowa and on display or under the control of the state historical board for display at suitable locations within the state. A policy shall be determined and regulations adopted by the state historical board which establishes standards for the preservation, protection and security of the articles and artifacts. Suitable recognition of the loan shall be displayed and security safeguards, package, and freight shall be at the expense of the recipient of the loaned items.

14. May enter into agreements with the University of Northern Iowa, the state University of Iowa, Iowa State University of science and technology, or any accredited private institution as defined in section 261.9 to establish multicounty area research centers, which are in addition to but do not duplicate archives as defined in section 303.12. An area research center shall serve as the depository for the archives of counties and municipalities and for other unpublished original resource material of a given area to be designated in the agreement.

15. The division of the state historical society shall acquire on behalf of the state of Iowa title to the site known as Montauk governor's mansion. It is the recommendation of the general assembly that a nominal entrance fee be charged, as authorized by subsection 11, for Montauk governor's mansion, with all fees collected to be deposited in the general fund as required by section 303.9. [C97,§§2858, 2875; S13,§§2881-a,-b,-d; C24, 27, 31, 35,§§4515–4517; C39,§4541.03; C46, 50, 54, 58, 62, 66, 71, 73,§303.3; C75,§303.5; 66GA, ch 1158,§§3, 4]

Biennial report, §17.3

303.6 Duties of the director of the division of historical museum and archives. The director of the division of historical museum and archives shall have the following powers and duties, under the direction of the board:

1. Administer the space in the historical building assigned to the department and maintain collections located in the building. Keep

the building open for use by the public during hours prescribed by the board.

2. Administer the archives of the state as defined in section 303.12.

3. Collect, preserve, organize, arrange, and classify works of art, books, maps, charts, public documents, manuscripts, newspapers, and other objects and materials illustrative of the natural and political history of the territory and state and of the central west, and of the traditions and history of all prior occupants who settled in the region, including women and the various racial, religious and ethnic groups.

4. Collect memorials and mementos of the pioneers of Iowa and the soldiers of all wars in which Iowa residents participated, including portraits, specimens of arms, clothing, army letters, commissions of officers and other military papers and documents.

5. Exhibit objects illustrative of the history and prehistory archaeology of this state, to interpret that history, and to publish such matters as may be of value and interest to the public.

6. Administer and care for and preserve the monuments, memorials, and works of art on the grounds and in the buildings at the seat of government, and report from time to time their condition and make recommendations to the proper officers or board.

7. Employ necessary personnel under the provisions of chapter 19A.

8. Report to the board as required.

9. Perform such other duties as may be imposed by law or prescribed by the rules of the board. [C97,§§2875–2878; S13,§2881-b; C24, 27, 31, 35,§4525; C39,§**4541.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§303.6]

303.7 Duties of director of division of state historical society. The director of the division of the state historical society shall have the following powers and duties, under the direction of the board:

1. Maintain a library of materials relating to the history of this state and illustrative of the progress and development of the state.

2. Conduct historical studies and researches and issue publications.

3. Disseminate a knowledge of the history of this state among the people of this state.

4. Encourage and assist local, county and regional organizations devoted to historical purposes and foster an understanding and appreciation of Iowa history among all units of government.

5. Maintain artifacts of archaelogical significance.

6. Plan, develop and publicize a uniform system of marking state historical archaeological, geological and legendary sites.

7. Employ necessary personnel under the provisions of chapter 19A.

8. Perform such other duties as may be imposed by law or prescribed by the rules of the board. [R60,§1959; C73,§1900; C97,§2882; S13, §2882-a; C24, 27, 31, 35, 39,§**4542**; C46, 50, 54, 58, 62,§304.1; C66, 71, 73,§§304.1, 304.8; C75,§303.7]

303.8 Duties of the director of the division of historic preservation. The director of the division of historic preservation shall have the following powers and duties, under the direction of the board:

1. Serve as the state historic preservation officer, certified by the governor in accordance with federal requirements.

2. Identify and document historic properties, including those owned by the state, its instrumentalities and political subdivisions.

3. Prepare and maintain the state register of historic places, including those listed on the national register of historic places.

4. Prepare and annually update the state's preservation plan.

5. Develop standards and criteria for the acquisition of historic properties and for the preservation, restoration, maintenance and operation of properties under the jurisdiction of the state historical board.

6. Accept federal aid for historic preservation purposes.

7. Co-operate with federal, state and local government agencies in historic preservation matters.

8. Co-ordinate the activities of, and provide technical and financial assistance if federal funds are available, to local historic preservation commissions and private parties in accordance with the state plan and programs for historic preservation.

9. Stimulate public interest in historic preservation.

10. Pursue historical, architectural and archaeological research and development, which may include but shall not be limited to, continuing surveys, excavation, scientific recording, interpretation and publication of the historical, architectural, archaeological and cultural sites, buildings and structures in the state.

11. Employ necessary personnel under the provisions of chapter 19A. [C75,§303.8]

303.9 Funds received by state historical department. All funds received by the state historical department, except as provided in this section, shall be deposited in the general fund of the state and shall be subject to appropriation by the general assembly. There is created in the office of the treasurer of state a life membership trust fund into which shall be deposited all funds received by the state historical society from the sale of life memberships, including such funds which may have been received prior to July 1, 1975 and which have not been expended. On July 1 of each year five percent of the funds deposited in the life membership trust fund shall be made

available to support life memberships in the state historical society and such funds are appropriated to the state historical department for such purpose. [C75,§303.9]

Referred to in §303.5

303.10 Acceptance and use of money grants. All federal grants to and the federal receipts of the agencies receiving funds under this chapter are appropriated for the purpose set forth in the federal grants or receipts. [C75, §303.10]

303.11 Gifts. The state historical board may accept gifts and bequests which shall be used in accordance with the desires of the donor if expressed. Funds contained in an endowment fund for either the department of history and archives or the state historical society existing on July 1, 1974 shall remain an endowment of either the division of historical museum and archives or the division of the state historical society. After July 1, 1974, gifts shall be accepted only on behalf of the state historical department. Funds in an endowment fund may be invested by the state historical board.

In instances where publication of a book is financed by the endowment fund, nothing in this chapter shall prevent the return of moneys from sales of the book to the endowment fund. [C24, 27, 31, 35,§§4526, 4527; C39, §§**4541.07, 4541.08**; C46, 50, 54, 58, 62,§§303.7, 303.8; C66, 71, 73,§§303.7, 303.8, 304.13; C75, §303.11]

303.12 Archives. Archives means those manuscripts, documents, records and materials originating under or passing through the hands of public officers in the regular course and performance of their legal duties which the chief executive of the office that has present custody of the manuscripts, documents, records and materials shall deem not to be necessary for use in the conduct of the regular current business of his office but warrant preservation, or which he shall consider to be in such physical condition that they cannot be used without risk of damage to them, or for which, in his opinion, he is unable to provide adequate or safe storage. The director of the division of historical museum and archives is the trustee and custodian of the archives of Iowa, except that archives does not include county or municipal archives unless they are voluntarily deposited with the director with the written consent of the director. The director shall prescribe rules and regulations for the systematic arrangement of archives, properly labeled to show their contents and order of filing, before the archives may be transferred to his custody. [SS15,§2881-p; C24, 27, 31, 35,§4528; C39,§**4541.09**; C46, 50, 54, 58, 62, 66, 71, 73,§303.9; C75,§303.12]

Referred to in §§303.5, 303.6, 303.13

303.13 Transfer of archives. The several state, executive, and administrative departments, officers or offices, councils, boards, bureaus, and commissions, may transfer and deliver to the state historical department archives as defined in section 303.12, and take the director's receipt. Before transferring archives, the office of present custody shall file with the director a classified list of the archives being transferred made in such detail as the director shall prescribe. If the director, on receipt of the list, and after consultation with the chief executive of the office filing the classified list or with a representative designated by the executive, shall find that, according to the records management manual, certain classifications of the archives listed are not of sufficient historical, legal or administrative value to justify permanent preservation, the director shall file a list with the state records commission with recommendations for their disposal. [SS15,§§2881-q,-r; C24, 27, 31, 35,§4529; C39,§**4541.10**; C46, 50, 54, 58, 62, 66, 71, 73,§303.10; C75,§303.13]

303.14 Removal of original. After any archives have been received by the director, they shall not be removed from his custody without his consent except in obedience to a subpoena of a court of record or a written order of the state executive council.

The director shall annually submit to the state historical board a list of papers and documents which have no further value, and upon approval of the state records commission the items shall be destroyed.

The director shall not be required to preserve permanently vouchers, claims, canceled or redeemed state warrants, or duplicate warrant registers, respectively, of the state comptroller and the treasurer of state but may, after microfilming, destroy by burning or shredding any such warrants, having no historical value, that have been in his custody for a period of three years and likewise to destroy by burning or shredding any vouchers, claims and duplicate warrant registers which have been in his custody for a period of three years. A properly authenticated reproduction of any such microfilmed record shall be admissible in evidence in any court in this state. [SS15,§§2881-q,-r,-t; C24, 27, 31, 35,§§4529, 4530; C39,§§**4541.10, 4541.11**; C46, 50, 54, 58, 62, 66, 71, 73,§§303.10, 303.11; C75,§303.14]

303.15 Certified copies—fees. Upon request of any person, the director of the division of historical museum and archives or the director of the division of the state historical society shall make a certified copy of any document, manuscript, or record contained in the archives or in the custody of the division of the state historical society, and when a copy is properly authenticated it shall have the same legal effect as though certified by the officer from whose office it was obtained or by the secretary of state. The copy may be made in writing, or by any suitable photographic process. The director shall charge and collect for such copies the fees allowed by law to the official in whose office the document originates for such certified copies. The director shall

charge a person requesting a search of census records for the purpose of determining geneology the actual cost of performing the search. [SS15,§2881-t; C24, 27, 31, 35,§4531; C39,**§4541.12**; C46, 50, 54, 58, 62, 66, 71, 73,§303.12; C75,§303.15]

303.16 to 303.19 Reserved.

HISTORICAL PRESERVATION DISTRICTS

303.20 Definitions. As used in this division of this chapter, unless the context otherwise requires:

1. *"Area of historical significance"* means contiguous pieces of property of no greater area than one hundred sixty acres under diverse ownership which:

a. Are significiant in American history, architecture, archaeology and culture, and

b. Possess integrity of location, design, setting, materials, workmanship, feeling and association, and

c. Are associated with events that have been a significant contribution to the broad patterns of our history, or

d. Are associated with the lives of persons significant in our past, or

e. Embody the distinctive characteristics of a type; period; method of construction; represent the work of a master; possess high artistic values; represent a significant and distinguishable entity whose components may lack individual distinction.

f. Have yielded, or may be likely to yield, information important in prehistory or history.

2. *"Commission"* is the five-person body, elected by the qualified electors in the historical preservation district from persons living in the district for the purpose of administering this division of this chapter.

3. *"District"* means a historical preservation district established under this division of this chapter.

4. *"Division"* means the division of historical preservation, Iowa state historical department.

5. *"Exterior features"* means the architectural style, general design and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. In the case of an outdoor advertising sign, "exterior features" means the style, material, size and location of the sign.

6. *"Property owner"* means an individual or corporation who is the owner of real estate for taxation purposes. [66GA, ch 1159,§1]

303.21 Petition. Not less than ten percent of the eligible voters in an area of asserted historical significance may petition the division for a referendum for the establishment of a district.

The petition shall contain a description of the property suggested for inclusion in the district, the reasons justifying the creation of the district. [66GA, ch 1159,§2]

303.22 Action by division. The division shall hold a hearing not less than thirty days or more than sixty days after the petition is received. The division shall publish notice of the hearing, at a reasonable time before the hearing is to take place, and shall post notice of the hearing in a reasonable number of places within the suggested district. The cost of notification shall be paid by the persons who petition for the establishment of a district.

At the hearing the division shall hear interested persons, accept written presentations, and shall determine whether the suggested district is an area of historical significance which may properly be established as a historical preservation district pursuant to the provisions of this division of this chapter. The division may determine the boundaries which shall be established for the district. The division shall not include property which is not included in the suggested district unless the owner of such property is given an opportunity to be heard.

The division, if it determines that the suggested district meets the criteria for establishment as a historical preservation district, shall indicate the owners of the property and residents included and shall forward a list of such owners and residents to the county commissioner of elections.

If the division determines that the suggested district does not meet the criteria for establishment as a historical preservation district, it shall so notify the petitioners. [66GA, ch 1159, §3]

303.23 Referendum. Within thirty days after the receipt of the list of owners of property and residents within the suggested historical preservation district, the county commissioner of elections shall fix a date not more than forty-five days from the receipt of the petition seeking a referendum on the question of establishment of a historical preservation district. The county commissioner of elections shall specify the polling place within the suggested district that will best serve the convenience of the voters and shall appoint from residents of the proposed district three judges and two clerks of election. [66GA, ch 1159,§4]

303.24 Notice. The county commissioner of elections shall post notice of the referendum in a reasonable number of places within the suggested district a reasonable time before it is to take place. The notice shall state the purpose of the referendum, a description of the district, the date of the referendum, the location of the polling place, and the hours when the polls will open and close. [66GA, ch 1159,§5]

303.25 Voting. A person shall be qualified to vote at the referendum if such person is a qualified elector of the area embraced by the proposed historic district.

An historic preservation district is established if a majority of the persons voting at

the referendum votes in favor of its establishment. [66GA, ch 1159,§6]

303.26 Commission. At the same time the referendum is held, an election shall be held for the commission. Each voter at the referendum may write upon the ballot the names of not more than five persons who are eligible voters within the district to be members of the commission.

The five persons receiving the highest number of votes shall constitute the commission. In the event one of the five receiving the highest number of votes elects not to serve on the commission, the person receiving the next highest number of votes shall serve.

Of the initial commission the person receiving the highest number of votes shall receive a five-year term of office, the next highest a four-year term, the next highest a three-year term, the next highest a two-year term, and the fifth highest a one-year term. Thereafter, an election shall be held annually in the district to elect a member to a five-year term as each term expires.

Vacancies in the commission occurring between elections shall be filled by the remaining members of the commission by majority vote. Should a majority of those voting vote not to establsih the district, the election shall be void. [66GA, ch 1159,§7]

303.27 Controls. After the establishment of a district, an exterior portion of any building, exterior fixture, or other exterior structure, or any above-ground utility structure or any type of outdoor advertising sign shall not be erected, altered, restored, moved or demolished within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the commission. [66GA, ch 1159,§8]

303.28 Interior. The commission shall not consider or attempt to control the interior arrangement of any building in the district. [66GA, ch 1159,§9]

303.29 Use of structures. No change in the use of any structure or property within a designated historical district shall be permitted until after an application for a certificate of appropriateness has been submitted to and approved by the commission. For purposes of this section "use" means the legal enjoyment of property that consists in its employment, exercise, or practice. [66GA, ch 1159,§10]

303.30 Procedures. Prior to issuance or denial of a certificate of appropriateness the commission shall take such action as may reasonably be required to inform persons likely to be materially affected by the application, and shall give the applicant and such persons an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application. The commission shall vote upon any application for a certificate of appropriateness within sixty days after its submission to the commission.

If the commission determines that the proposed construction, reconstruction, alteration, restoration, moving, demolition, or the change in use is appropriate, it shall forthwith approve such application and shall issue to the applicant a certificate of appropriateness.

If the commission determines that the proposed construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs or natural features, or the proposed change in use would be incongruous with the historical, architectural, archaeological or cultural aspects of the district, a certificate of appropriateness shall not be issued, and the commission shall place upon its records the reasons for such determination and shall notify the applicant of such determination, furnishing the applicant an attested copy of its reasons and its recommendations, if any, as appearing in the records of the commission.

The commission may approve the application in any case where a person would suffer extreme hardship, not including loss of profit, unless the certificate of appropriateness was issued. Any applicant aggrieved by a determination of the commission may appeal to the district court for the county in which the land concerned is located within sixty days of the commission's action. [66GA, ch 1159,§11]

303.31 Action by commission. The commission shall take action to enjoin any attempts to construct, reconstruct, alter, restore, move, or demolish any exterior feature, or to change the use of the property within the district without a certificate of appropriateness. [66GA, ch 1159,§12]

303.32 Ordinary maintenance and repair. Nothing in this division of this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior feature in a district which does not involve a change in design, material or outer appearance, nor to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which is required by public safety because of an unsafe or dangerous condition. [66GA, ch 1159,§13]

303.33 Termination of district. Two years after the establishment of a district, a referendum for the termination of the district shall be held if ten percent of the eligible voters in the district so request. If the qualified electors, by a majority of those voting, favor termination, this Act will no longer have any effect on the property formerly included in the district.

If an election is held to terminate a district under this section and such attempt fails, another referendum for termination of the district in question shall not take place for a period of two years. [66GA, ch 1159,§14]

CHAPTER 303A

STATE LIBRARY DEPARTMENT

303A.1 Definitions.
303A.2 Library department.
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303A.6 Department divisions.
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303A.8 Library compact authorized.
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303A.11 Enforcement.

303A.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. "Department" means the Iowa library department.

2. "Commission" means the state library commission. [C75,§303A.1]

303A.2 Library department. There is created the Iowa library department. The executive head of the department shall be the state librarian. The state librarian shall be appointed by the state library commission, with the approval of two-thirds of the members of the senate, and shall serve at the pleasure of the state library commission. The state librarian shall be a person upon whom a master's degree in library science has been conferred as a result of completing a program of study accredited by the American Library Association. [C75,§303A.2]

303A.3 Library commission. There is created a state library commission. The commission shall consist of the supreme court administrator, and four members appointed by the governor and serving four-year terms, one member of which shall be from the medical profession and three members selected at large, each based on their qualifications to serve as commission members. The appointed members of the commission shall be appointed for terms of one, two, three and four years and all subsequent appointments shall be for the full four-year term.

Members of the commission shall receive forty dollars per diem while engaged in their official duties. They shall be paid their actual and necessary travel and other official expenditures necessitated by their official duties.

The commission shall elect one of its members as chairman. It shall meet at such time and place as shall be specified by call of the chairman. At least one meeting shall be held bimonthly. All meetings shall be open to the public. Notice of each meeting shall be given in writing to each member at least three days in advance of the meeting. Three commissioners shall constitute a quorum for the transaction of business. [C75,§303A.3]

303A.4 Duties of commission. The state library commission shall:

1. Adopt and enforce rules necessary for the exercise of the powers and duties granted by this chapter and proper administration of the department.

2. Adopt rules providing penalties for injuring, defacing, destroying, or losing books or materials under the control of the commission. All fines, penalties, and forfeitures imposed by these rules may be recovered in an action in the name of the state and deposited in the general fund.

3. Develop and adopt plans to provide more adequate library service to all residents of the state.

4. Charge no fee for the use of libraries under its control or for the circulation of material from libraries, except where transportation costs are incurred in making materials available to users. The costs may be used as a basis for determining a fee to be charged to users.

5. Give advice and counsel to all public libraries in the state and to all political subdivisions which may propose to establish libraries.

6. Print lists and circulars of information and instruction as it deems necessary.

7. Continuously survey the needs of libraries throughout the state, and ascertain the requirements for additional libraries and for improving existing libraries to provide adequate service to all residents of the state.

8. Obtain from all public libraries reports showing the condition, growth, development and manner of conducting these libraries and at its discretion, obtain reports from other libraries in the state and make these facts known to the citizens of Iowa.

9. Encourage the implementation of the county library law, and of countywide library service through contracts with the boards of supervisors pursuant to chapter 378.* [C51, §§445, 451, 452; R60,§§690, 695, 696, 702, 703, 707; C73,§§1886–1888, 1890, 1895, 1896; C97,§§2858–2860, 2864, 2865, 2875; S13,§§2881-a,-b,-d, 2888-c,-d,-e; C24, 27, 31, 35,§§4515–4517, 4521–4524, 4534–4537, 4539, 4540; C39,§§**4541.03, 4541.14**; C46, 50, 54,§§303.3, 303.14; C58, 62, 66, 71, 73,§§303.3, 303.18; C75,§303A.4]

*Repealed by 64GA, ch 1088,§199, effective July 1, 1975

303A.5 Duties of state librarian. The state librarian shall:

1. Appoint the technical, professional, secretarial, and clerical staff necessary, within the

limits of available funds, to accomplish the purposes of this chapter subject to the provisions of chapter 19A.

2. Act as secretary to the commission, keeping accurate records of the proceeding of the commission.

3. Keep accurate accounts of all financial transactions of the department.

4. Supervise all activities of the Iowa library department.

5. Provide technical assistance in organizing new libraries and improving those already established.

6. Perform such other library duties as may be assigned to him by the commission. [S13, §§2888-c,-e; C24, 27, 31, 35,§§4534, 4535, 4537; C39, §4541.14; C46, 50, 54,§303.14; C58, 62, 66, 71, 73, §303.21; C75,§303A.5]

303A.6 Department divisions. The Iowa library department shall include but not be limited to the medical library division, the law library division and the military library division.

1. The medical library division shall be headed by a medical librarian, appointed by the state librarian with the approval of the state library commission, subject to the provisions of chapter 19A. The medical librarian shall:

a. Operate the medical library division which shall always be available for free use by the residents of Iowa under such reasonable rules as the commission may adopt.

b. Give no preference to any school of medicine and shall secure books, periodicals, and pamphlets for every legally recognized school without discrimination.

c. Perform such other duties as may be imposed by law or prescribed by the rules of the commission.

2. The law library division shall be headed by a law librarian, appointed by the state librarian with the approval of the state library commission and the Iowa supreme court, subject to the provisions of chapter 19A. The law librarian shall:

a. Operate the law library division which shall be maintained in the capitol or elsewhere in rooms convenient to the supreme court and which shall always be available for free use by the residents of Iowa under such reasonable rules as the commission may adopt.

b. Maintain as an integral part of the law library reports of various boards and agencies and copies of bills, journals and other information relating to current or proposed legislation.

c. Arrange to make exchanges of all printed material published by the several states and the government of the United States.

d. Perform such other duties as may be imposed by law or by the rules of the commission.

3. The military library division shall be headed by the adjutant general. The adjutant general shall:

a. Operate the military library division which shall be maintained in the memorial hall at Camp Dodge and which shall be available for free use by the residents of Iowa under such reasonable rules as the commission may adopt.

b. Maintain as an integral part of the military library documents, reports, records, and books which describe the history of the national guard and individual Iowans who have served in the armed services.

c. Perform such other duties related to the military library as may be imposed by law or by rules of the commission. [S13,§2881-b; C24, 27, 31, 35,§§4518, 4519, 4520; C39,§§4541.05, 4541.13; C46, 50, 54, 58, 62, 66, 71, 73,§§303.5, 303.13; C75,§303A.6; 66GA, ch 6,§§5, 6]

303A.7 Money grants. The commission is authorized and empowered to receive, accept, and administer any money or moneys appropriated or granted to it, separate and apart from the general library fund, by the federal government or by any other public or private agencies.

The fund shall be administered by the commission, which shall frame bylaws and rules for the allocation and administration of this fund.

The fund shall be used to increase, improve, stimulate, and equalize library service to the people of the whole state, and for adult education and shall be allocated among the cities, counties, and regions of the state, taking into consideration local needs, area and population to be served, local interest as evidenced by local appropriations, and such other facts as may affect the state program of library service.

Any gift or grant from the federal government or other sources shall become a part of the fund, to be used as part of the state fund, or may be invested in such securities in which the state sinking fund may be invested as in the discretion of the commission may be deemed advisable, the income to be used for the promotion of libraries. [C39,§4541.04; C46, 50, 54,§303.4; C58, 62, 66, 71, 73,§§303.4, 303.19; C75,§303A.7]

303A.8 Library compact authorized. The state library commission is hereby authorized to enter into interstate library compacts on behalf of the state of Iowa with any state bordering on Iowa which legally joins therein in substantially the following form.

The contracting states agree that:

ARTICLE I—PURPOSE

Because the desire for the services provided by public libraries transcends governmental boundaries and can be provided most effectively by giving such services to communities of people regardless of jurisdictional lines, it is the policy of the states who are parties to this compact to co-operate and share their responsibilities in providing joint and co-operative

library services in areas where the distribution of population makes the provision of library service on an interstate basis the most effective way to provide adequate and efficient services.

ARTICLE II—PROCEDURE
Referred to in Art. VII

The appropriate state library officials and agencies having comparable powers with those of the Iowa library commission of the party states or any of their political subdivisions may, on behalf of said states or political subdivisions, enter into agreements for the co-operative or joint conduct of library services when they shall find that the executions of agreements to that end as provided herein will facilitate library services.

ARTICLE III—CONTENT
Referred to in Art. VII

Any such agreement for the co-operative or joint establishment, operation or use of library services, facilities, personnel, equipment, materials or other items not excluded because of failure to enumerate shall, as among the parties of the agreement:

1. Detail the specific nature of the services, facilities, properties or personnel to which it is applicable;

2. Provide for the allocation of costs and other financial responsibilities;

3. Specify the respective rights, duties, obligations and liabilities;

4. Stipulate the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of said agreement.

ARTICLE IV—CONFLICT OF LAWS

Nothing in this compact or in any agreement entered into hereunder shall alter, or otherwise impair any obligation imposed on any public library by otherwise applicable laws, or be constituted to supersede.

ARTICLE V—ADMINISTRATOR

Each state shall designate a compact administrator with whom copies of all agreements to which his state or any subdivision thereof is party shall be filed. The administrator shall have such powers as may be conferred upon him by the laws of his state and may consult and co-operate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact.

ARTICLE VI—EFFECTIVE DATE

This compact shall become operative when entered in by two or more entities having the powers enumerated herein.

ARTICLE VII—RENUNCIATION

This compact shall continue in force and remain binding upon each party state until six months after any such state has given notice of repeal by the legislature. Such withdrawal shall not be construed to relieve any party to an agreement authorized by Articles II and III of the compact from the obligation of that agreement prior to the end of its stipulated period of duration.

ARTICLE VIII—SEVERABILITY—CONSTRUCTION

The provisions of this compact shall be severable. It is intended that the provisions of this compact be reasonably and liberally construed. [C66, 71, 73,§303.24; C75,§303A.8; 66GA, ch 67,§30]

303A.9 Administrator. The state librarian shall be the compact administrator. The compact administrator shall receive copies of all agreements entered into by the state or its political subdivisions and other states or political subdivisions; consult with, advise and aid such governmental units in the formulation of such agreements; make such recommendations to the governor, legislature, governmental agencies and units as he deems desirable to effectuate the purposes of this compact and consult and co-operate with the compact administrators of other party states. [C66, 71, 73,§303.25; C75,§303A.9]

303A.10 Agreements. The compact administrator and the chief executive of any county, city, village, town or library board is hereby authorized and empowered to enter into agreements with other states or their political subdivisions pursuant to the compact. Such agreements as may be made pursuant to this compact on behalf of the state of Iowa shall be made by the compact administrator. Such agreements as may be made on behalf of a political subdivision shall be made after due notice to the compact administrator and consultation with him. [C66, 71, 73,§303.26; C75, §303A.10]

303A.11 Enforcement. The agencies and officers of this state and its subdivisions shall enforce this compact and do all things appropriate to effect its purpose and intent which may be within their respective jurisdiction. [C66, 71, 73§303.27; C75,§303A.11]

CHAPTER 303B

REGIONAL LIBRARY SYSTEM

303B.1 Purpose.
303B.2 Regional library trustees.
303B.3 Election.
303B.4 Terms.
303B.5 Compensation.
303B.6 Powers and duties of regional trustees.
303B.7 Regional administrator.
303B.8 Administration of funds.
303B.9 Local financial support.

303B.1 Purpose. There is established a regional library system for the purpose of providing supportive library services to existing public libraries and to individuals with no other access to public library service and to encourage local financial support of public library service in those localities where it is presently inadequate or nonexistent. [C75, §303B.1]

303B.2 Regional library trustees. The regional library system shall consist of seven regional boards of library trustees which shall serve respectively the seven geographic regions specified in this section. Each region shall be divided into geographic districts, which shall be drawn along county lines and which shall be represented on regional boards by trustees elected to the boards in the following numbers and from the following districts:

1. To the southwestern board, two from Pottawattamie county and one from each of the following five districts:
a. Harrison, Shelby and Audubon counties.
b. Guthrie, Cass and Adair counties.
c. Mills, Fremont and Page counties.
d. Montgomery, Adams, Union and Taylor counties.
e. Clarke, Lucas, Ringgold, Decatur and Wayne counties.

2. To the northwestern board, two from Woodbury county and one from each of the following five districts:
a. Lyon, Sioux and Osceola counties.
b. Dickinson, Emmet, Clay and Palo Alto counties.
c. O'Brien, Plymouth and Cherokee counties.
d. Buena Vista, Pocahontas, Ida, Sac and Calhoun counties.
e. Monona, Crawford and Carroll counties.

3. To the north central board, two from a district composed of Hancock, Cerro Gordo and Franklin counties; two from a district composed of Humboldt, Wright and Webster counties; and one from each of the following three districts:
a. Kossuth and Winnebago counties.
b. Hamilton and Hardin counties.
c. Worth, Mitchell and Floyd counties.

4. To the central board, four from a district composed of Polk and Marion counties, and one from each of the following three districts:
a. Greene, Dallas, Madison and Warren counties.
b. Boone and Story counties.
c. Marshall and Jasper counties.

5. To the southeastern board, two from Scott county and one from each of the following five districts:
a. Appanoose, Davis and Wapello counties.
b. Jefferson, Van Buren and Lee counties.
c. Monroe, Mahaska and Keokuk counties.
d. Henry and Des Moines counties.
e. Muscatine, Louisa and Washington counties.

6. To the east central board, three from a district composed of Linn and Jones counties; two from a district composed of Iowa, Johnson and Cedar counties; and one from each of the following two districts:
a. Tama, Benton and Poweshiek counties.
b. Jackson and Clinton counties.

7. To the northeastern board, two from Black Hawk county; two from a district composed of Delaware and Dubuque counties; and one from each of the following three districts:
a. Grundy, Butler and Bremer counties.
b. Howard, Winnishiek, Allamakee and Chickasaw counties.
c. Buchanan, Fayette and Clayton counties. [C75,§303B.2]

303B.3 Election. A trustee of a regional board shall be elected without regard to political affiliation at the general election by the vote of the electors of his district from a list of nominees, the names of which have been taken from nomination papers filed in accordance with chapter 45 in all respects except that they shall be signed by not less than twenty-five eligible electors of the respective district. The election shall be administered by the commissioner who has jurisdiction under section 47.2. [C75,§303B.3]

Referred to in §39.21

303B.4 Terms. Regional library trustees shall take office on the first day of January following the general election and shall serve terms of four years, except that trustees elected to the initial board in the year 1974 shall determine their respective terms by lot so that three members shall serve terms of two years and four members shall serve terms of four years. A vacancy shall be filled when it occurs not less than ninety days before the next general election by appointment by the regional board for the unexpired term. No trustee shall serve on a local library board or be employed by a library during his or her term of office as a regional library trustee. [C75,§303B.4; 66GA, ch 81,§142]

303B.5 Compensation. Regional trustees shall be reimbursed for the actual and necessary expenses incurred by them in the discharge of their duties, but shall receive no compensation for services. [C75,§303B.5]

303B.6 Powers and duties of regional trustees. Regional trustees may:

1. Receive and expend available local, state, federal and private funds.

2. Contract with libraries, library agencies, or individuals to improve public library service.

3. Provide direct public library service without charge in their respective regions for an initial period of four years to individuals who have no access to public library service.

4. Acquire land and construct or lease facilities to carry out the provisions of this chapter.

5. Provide technical assistance for the purchasing and processing of library materials.

6. Assist public library agencies in:

a. Providing reference and information services;

b. Providing interlibrary loan services;

c. Providing universal loan services for individuals;

d. Preparing budgets;

e. Maintaining library collections;

f. Preparing book lists and bibliographies;

g. Promoting library use by the public;

h. Planning and presenting public programs; and

i. Training library staff.

7. Provide resources and services to strengthen local public library services throughout the region by contracting to utilize the strengths of the seven existing public library agencies, one for each region, which are as follows: Council Bluffs public library; Sioux City public library; North Iowa library extension, incorporated; Des Moines public library; Davenport public library; Cedar Rapids public library; and Waterloo public library.

8. Supply statistical and descriptive information on its service program to the Iowa state traveling library or its successor. [C75, §303B.6]

Referred to in §303B.9

303B.7 Regional administrator. A regional board shall appoint an administrator, who shall be a practicing librarian and who shall serve at the pleasure of the board. The administrator shall act as the executive secretary of the regional board and shall administer the public library system of the region in accordance with the objectives and policies adopted by the regional board. [C75,§303B.7]

303B.8 Administration of funds. Funds appropriated for the purpose of carrying out this chapter shall be distributed to regional boards by the board of trustees of the Iowa state traveling library or its successor on the basis of the population to be served by each regional board, but the funds shall, for the year commencing July 1, 1973, be allocated to regional boards on an equal basis. All funds appropriated for the regional library system shall be administered by the regional boards. [C75,§303B.8]

303B.9 Local financial support. A regional board shall have the authority to require as a condition for receiving services under section 303B.6 that a governmental subdivision maintain any tax levy for library maintenance purposes that is in effect on July 1, 1973. Commencing July 1, 1977, each city within its corporate boundaries and each county within the unincorporated area of the county shall levy a tax of at least six and three-fourths cents per thousand dollars of assessed value on the taxable property or at least the monetary equivalent thereof when all or a portion of the funds are obtained from a source other than taxation for the purpose of proving financial support to the public library which provides library services within the respective jurisdictions. [C75,§303B.9; 66GA, ch 67,§67, ch 1160, §2]

CHAPTER 304

MANAGEMENT OF STATE RECORDS

Referred to in §172A.18

304.1 Citation.
304.2 Definitions.
304.3 Commission created.
304.4 Expenses.
304.5 Meetings.
304.6 Powers.
304.7 Rules.
304.8 Disposal prohibited.
304.9 Lists of records.
304.10 Curator of history and archives—duties.
304.11 Termination of state agency.
304.12 Emergency preparations.
304.13 Duplicates.
304.14 Agency program.
304.15 Records state property.
304.16 Liability precluded.
304.17 Exemption—duty of board of regents.

304.1 Citation. This chapter shall be known and may be cited as the "Records Management Act." [C75,§304.1]

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

1. *"Record"* means a document, book, paper, photograph, sound recording or other material, regardless of physical form or characteristics, made, produced, executed or received pursuant to law in connection with the transaction of official business of state government. "Record" does not include library and museum material made or acquired and preserved solely for reference or exhibition purposes, miscellaneous papers or correspondence without official significance, extra copies of documents preserved only for convenience of reference, and stocks of publications and processed documents.

2. *"Agency"* means any department, office, commission, board or other unit of state government except as otherwise provided by law.

3. *"Commission"* means the state records commission created by this chapter. [C75, §304.2]

304.3 Commission created. There is created a state records commission. The commission shall consist of:

1. The secretary of state who shall act as chairman.
2. The curator* of history and archives.
3. The treasurer of state.
4. The state comptroller.
5. The court administrator of the judicial department.
6. A member of the general assembly serving as ex officio nonvoting member appointed by the legislative council.
7. Director of the department of general services who shall act as secretary of the commission.

It is the duty of the commission to determine what records have no administrative, legal, fiscal, research or historical value and should be disposed of or destroyed. The decisions of the commission shall be made by a majority vote of the entire membership. [C75,§304.3; 66GA, ch 1052,§15]

*Director of historical museum and archives

304.4 Expenses. The nonlegislative members of the commission shall serve without compensation but may receive their actual expenses incurred in the performance of their duties. Legislative members shall receive per diem and expenses pursuant to section 2.10 and section 2.12. [C75,§304.4; 66GA, ch 1052,§16]

304.5 Meetings. The commission shall have its offices at the seat of government but may hold meetings in other locations. It shall meet quarterly and at the call of the chairman. [C75, §304.5]

304.6 Powers. The primary agency responsible for providing administrative personnel and services for the commission shall be the department of general services. The purchase of equipment and supplies for record preservation by agencies shall be subject to the approval of the commission except as otherwise provided by law. The commission shall perform any act necessary and proper to carry out its duties. [C75,§304.6]

304.7 Rules. The commission shall adopt rules in accordance with the provisions of chapter 17A which are necessary for the exercise of the powers and duties granted by this chapter. The rules shall provide for:

1. Procedures to promote the economical and efficient management of records and to insure the maintenance and security of records deemed appropriate for preservation.
2. Procedures and standards for the efficient and economical utilization of space, equipment, and supplies needed for the purpose of creating, maintaining, storing and servicing records.
3. Standards for the selective retention of records of continuing value.
4. Procedures for compiling and submitting to the commission lists and schedules of records proposed for disposal.
5. Procedures for the physical destruction of records proposed for disposal.
6. Standards for the reproduction of records.

In carrying out its duties under this chapter, the commission shall develop a records management manual within one year of July 1, 1974. The records management manual shall be made available to agencies subject to the provisions of this chapter and shall contain the rules and regulations required by this chapter, such other information as is necessary, and shall provide for implementing the provisions of this chapter. The commission may contract for services required to develop the records management manual. The records management manual shall be revised and updated periodically to reflect decisions made by the commission. [C75,§304.7]

304.8 Disposal prohibited. After July 1, 1975, no records shall be disposed of by any agency unless prior approval of the commission is obtained or has been previously granted or disposal is provided for in the records management manual. [C75,§304.8]

304.9 Lists of records. The head of each agency shall submit to the commission lists of the records in his custody. The head of each agency shall also submit a schedule proposing the length of time each record should be retained for administrative, legal or fiscal purposes. [C75,§304.9]

304.10 Curator* of history and archives—duties. All lists and schedules submitted to the commission shall be referred to the curator* of history and archives, who shall determine whether the records proposed for disposal have value to other agencies of the state or have research or historical value. The curator* of history and archives shall submit the lists and schedules with his recommendations in writing to the commission and the final disposition of the records shall be according to the orders of the commission.

The curator* of history and archives shall submit to the commission, with his recommendations in writing, disposal lists of records that have been deposited in the state archives after having determined that the records concerned do not have sufficient value to warrant their continued preservation. Records deposited in the state archives by any agency shall not be disposed of by the commission without first consulting with the head of the agency concerned, except as provided in section 304.11. [C75,§304.10]

*Director of historical museum and archives

304.11 Termination of state agency. Upon the termination of any state agency whose functions have not been transferred to another agency, the records of the agency shall be deposited in the state archives. The commission shall determine which records are of sufficient legal, historical, administrative, research or fiscal value to warrant their continued preservation. Records that are determined to be of insufficient value to warrant their continued preservation shall be disposed of or destroyed. [C75,§304.11]

Referred to in §304.10

304.12 Emergency preparations. The commission shall establish a system for the protection and preservation of records essential for the continuity or establishment of governmental functions in the event of an emergency arising from enemy action or natural disaster. The commission shall:

1. Determine what records are essential for emergency government operations through consultation with all state agencies.

2. Determine what records are essential for postemergency government operations, and provide for their protection and preservation.

3. Establish the manner in which essential records for emergency and postemergency government operations shall be preserved to insure emergency use.

4. Provide for security storage or relocation of essential state records in the event of an emergency arising from enemy attack or natural disaster. [C75,§304.12]

304.13 Duplicates. The commission may make or cause to be made preservation duplicates of records and may designate as duplicates existing copies of initial state records. A preservation duplicate record shall be durable, accurate, complete and clear and shall be made by means designated by the commission.

A preservation duplicate record shall have the same force and effect for all purposes as the original record whether or not the original record is in existence. A transcript, exemplification or certified copy of a preservation duplicate record shall be deemed for all purposes to be a transcript, exemplification or certified copy of the original record.

The commission shall review all duplicating and microfilming systems and installations of agencies subject to this chapter and recommend any changes necessary to assure maximum efficiency and economic use of equipment and procedures, including but not necessarily limited to, the type of equipment, type of storage files, methods and procedures for keeping duplicate records and the location of equipment. The commission may establish centralized duplicating or microfilming facilities if it deems it in the best interest of the state. Agencies subject to this chapter shall consult with and receive approval of the commission prior to the purchase of any duplicating or microfilming equipment or files to be used for storage of records. [C75,§304.13]

304.14 Agency program. The head of each agency shall establish and maintain a program for the economical and efficient management of the records of the agency. The program shall:

1. Provide for effective controls over the creation, maintenance, and use of records in the conduct of current business.

2. Provide for co-operation with the secretary of the commission in applying standards, procedures, and techniques to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value.

3. Provide for compliance with the provisions of this chapter and the rules and regulations adopted by the commission. [C75,§304.14]

304.15 Records state property. All official records of this state are the property of the state and shall not be mutilated, destroyed, removed or disposed of, except as provided by law or by rule. [C75,§304.15]

304.16 Liability precluded. No member of the commission or head of an agency shall be held liable for damages or loss, or civil or criminal liability, because of the destruction of public records pursuant to the provisions of this chapter or any other law authorizing their destruction. [C75,§304.16]

304.17 Exemption—duty of board of regents. The highway division of the department of transportation and the agencies and institutions under the control of the state board of regents shall be exempt from the records management manual and the provisions of this chapter. However, the state highway division and the state board of regents shall adopt rules for their employees, agencies, and institutions which shall be consistent with the objectives of this chapter. The rules shall be approved by the state records commission and be subject to the provisions of chapter 17A. [C75, §304.17; 66GA, ch 67,§69]

CHAPTER 304A

STATE ARTS COUNCIL

Federal funds appropriated, 65GA, ch 19,§3

304A.1 State advisory agency.
304A.2 Terms—vacancies—expenses.
304A.3 Director appointed.
304A.4 Duties of council.
304A.5 Director's duties.
304A.6 Director's powers and authority.
304A.7 Restraints on director.

304A.1 State advisory agency. There is hereby created a state advisory agency, to be known as the Iowa state arts council which shall consist of fifteen members, to be appointed by the governor from among citizens of Iowa who are recognized for their interest or experience in connection with the performing and fine arts. In making such appointments, due consideration shall be given to the recommendations made by representative civic, educational, and professional associations and groups concerned with or engaged in the production or presentation of the performing and fine arts generally. [C71, 73, 75,§304A.1]

304A.2 Terms — vacancies — expenses. The term of office of each member of the Iowa state arts council shall be three years. The governor shall designate a chairman and a vice-chairman from the members of the council to serve as such at the pleasure of the governor. All vacancies shall be filled for the balance of any unexpired term in the same manner as original appointments. The members of the council shall not receive any compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the council. [C71, 73, 75,§304A.2]

304A.3 Director appointed. The council shall have a single executive who shall be known as the director of the Iowa state arts council and who shall be attached to the office of the governor. The director shall be nominated by the council and appointed by the governor with the consent of two-thirds of the senate to serve at the pleasure of the governor for a term which shall be coterminous with the term for which the governor was elected. [C71, 73, 75,§304A.3]

304A.4 Duties of council. The council shall:

1. Advise the director with respect to policies, programs, and procedures for carrying out his functions. duties. or responsibilities under the provisions of this chapter.

2. Review programs to be supported under this chapter and make recommendations thereon to the director. The director shall not approve or disapprove any such program until he has received the recommendation of the board on such program, unless the board fails to make a recommendation thereon within a reasonable time. [C71, 73, 75,§304A.4]

304A.5 Director's duties. The duties of the director shall be to:

1. Stimulate and encourage throughout the state the study and presentation of the performing and fine arts and public interest and participation therein.

2. Determine the legitimate cultural and artistic needs and aspirations of citizens in all parts of the state.

3. Make such surveys as may be deemed advisable of existing artistic and cultural programs and activities within the state, including but not limited to music, theatre, dance, painting, sculpture, architecture, and allied arts and crafts.

4. Ascertain how the state resources, including those already in existence and those which should be brought to existence, are to serve the cultural needs and aspirations of the citizens of the state.

5. Submit a report to the governor and to the general assembly not later than ten calendar days following the commencement of each general session of the general assembly concerning such studies as have been undertaken during the biennium and recommending such legislation and other action as is necessary for the implementation and enforcement of this chapter. [C71, 73, 75,§304A.5]

304A.6 Director's powers and authority. The director shall have the powers and authority necessary to carry out the duties imposed upon him by this chapter including the power to:

1. Employ such administrative, professional, and other personnel as may be necessary for the performance of his powers and duties and fix such personnel's compensation within the amounts made available for such purposes.

2. Make and sign any agreements and perform any acts which may be necessary, desirable, or proper to carry out the purpose of this chapter.

3. Request and obtain from any department, division, board, bureau, commissions, or agency of the state such assistance and data as will enable him properly to carry out his assigned powers and duties.

4. Appoint such advisory committees as he deems advisable and necessary to the carrying out of his assigned powers and duties.

5. Accept any federal funds granted, by Act of Congress or by executive order, for all or any purposes of this chapter, and receive and disburse as the official agency of the state any funds made available by the national foundation on the arts.

6. Accept gifts, contributions, or bequests for all or any of the purposes of this chapter. [C71, 73, 75,§304A.6]

304A.7 Restraints on director. In the course of carrying out his powers and duties under this chapter, the director shall avoid any actions which may interfere with the freedom of artistic expression or with the established or contemplated programs in any local community. [C71, 73, 75,§304A.7]

CHAPTER 305

GEOLOGICAL SURVEY

Federal funds appropriated, 65GA, ch.35,§6

305.1 Board.
305.2 State geologist and assistants.
305.3 Survey.
305.4 Investigations—collection—renting space.
305.5 Authority to enter lands.
305.6 Detailed reports.
305.7 Annual report.
305.8 Co-operation.
305.9 Publication of reports.
305.10 Distribution and sale of reports.
305.11 Expenses.
305.12 Maps—surveys.
305.13 Failure to furnish map.
305.14 Maps property of state—custody—copies.

305.1 Board. The geological survey of the state shall be under the direction of the geological board, consisting of the governor, the auditor of state, and the presidents of the Iowa State University of science and technology, the state University of Iowa, and the Iowa academy of science. [C97,§2497; C24, 27, 31, 35, 39, §**4549**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§305.1]

305.2 State geologist and assistants. Such board shall appoint and fix the salaries of a state geologist, and such expert assistants and other employees, recommended by him, as may be necessary. [R60,§§180, 181; C97,§2498; C24, 27, 31, 35, 39,§**4550**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§305.2]

305.3 Survey. The state geologist shall be director of the survey and shall make a complete survey of the natural resources of the state in all their economic and scientific aspects, including the determination of the order, arrangement, dip, and comparative magnitude of the various formations; the discovery and examination of all useful deposits, including their richness in mineral contents and their fossils; and the investigation of the position, formation, and arrangement of the different ores, coals, clays, building stones, glass sands, marls, peats, mineral oils, natural gases, mineral and artesian waters, and such other minerals or other materials as may be useful, with particular regard to the value thereof for commercial purposes and their accessibility. [R60,§182; C97,§2499; C24, 27, 31, 35, 39,§**4551**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§305.3]

305.4 Investigations — collection — renting space. The state geologist shall investigate the characters of the various soils and their capacities for agricultural purposes; the growth of timber, the animal and plant life of the state, the streams and water power, and other scientific and natural history matters that may be of practical importance and interest. For the purpose of preserving well drilling samples, rock cores, fossils, and other materials as may be necessary to carry on investigations, the state geologist shall have the authority to lease or rent sufficient space for storage of these materials with the approval of the director of the department of general services. A complete cabinet collection may, at the option of the board, be made to illustrate the natural products of the state, and the board may also furnish suites of materials, rocks, and fossils for colleges and public museums within the state, if it can be done without impairing the general state collection. [R60,§§182, 185, 187; C97,§2499; C24, 27, 31, 35, 39,§**4552**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§305.4]

305.5 Authority to enter lands. For the purpose of carrying on the aforesaid investigations the state geologist and his assistants and employees shall have authority to enter and cross all lands within the state; provided that in so doing no damage is done to private property. [C24, 27, 31, 35, 39,§**4553**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§305.5]

305.6 Detailed reports. The state geologist and his assistants shall make detailed maps and reports of counties and districts as fast as the work is completed, which reports shall embrace such geological, mineralogical, topographical, and scientific details as are neces-

sary to make complete records thereof, which may include the necessary illustrations, maps, charts, and diagrams. [R60,§184; C97,§2500; S13,§2500; C24, 27, 31, 35, 39,§**4554**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§305.6]

40ExGA, HF 116,§6, editorially divided

305.7 Annual report. The state geologist shall, annually, at the time provided by law, make to the governor a full report, approved by the board, of the work in the preceding year, which report shall be accompanied by such other reports and papers as may be considered desirable for publication. [R60,§184; C97,§§2498, 2500; S13,§2500; C24, 27, 31, 35, 39, §**4555**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§305.7]

Time of filing report and period covered, §17.4

305.8 Co-operation. The state geologist shall co-operate with the United States geological survey, with other federal and state organizations, and with adjoining state surveys in the making of topographic maps and the study of geologic problems of the state when, in the opinion of the geological board, such co-operation will result in profit to the state. [S13, §2500; C24, 27, 31, 35, 39,§**4556**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§305.8]

305.9 Publication of reports. The board may direct the preparation and publication of special reports and bulletins of educational and scientific value or containing information of immediate use to the people. [C97,§2501; S13,§2501; C24, 27, 31, 35, 39,§**4557**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§305.9]

Reports, §17.27

305.10 Distribution and sale of reports. All publications of the geological survey shall be distributed by the state as are other published reports of state officers when no special provision is made. When such distribution has been made the board shall retain a sufficient number of copies to supply probable future demands and any copies in excess of such number shall be sold to persons making application therefor at the cost price of publication, the money thus accruing to be turned into the treasury of the state. [C97,§2501; S13,§2501; C24, 27, 31, 35, 39,§**4558**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§305.10]

305.11 Expenses. The members of the board shall serve without compensation, but the state geologist and such board and its assistants shall be allowed their actual and necessary expenses incurred in the performance of their duties. [C97,§2502; S13,§2502; C24, 27, 31, 35, 39,§**4559**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §305.11]

See appropriation Act.

305.12 Maps—surveys. The operator of any underground mine shall comply with the following provisions relative to maps and surveys:

1. *Scale.* Each mine map shall be drawn to a scale of not more than two hundred feet to the inch.

2. *General specifications.* Each map shall show the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or operator, the certificate of the mining engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the map is drawn.

3. *Boundaries and surface lines.* Every map shall correctly show the surface boundary lines of the mineral rights pertaining to each mine and all section or quarter section lines or corners within the same, the lines of town lots and streets, the tracks and sidetracks of all railroads, the location of all wagon roads, rivers, streams, and ponds, and reservations made of the mineral.

4. *Underground conditions.* For the underground workings, the map shall show all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms, and crosscuts; the location of the escape ways, and of the fan or furnace or other means of ventilation and the direction of air currents, and the location of permanent pumps, hauling engines, engine planes, abandoned works, fire walls, and standing water.

5. *Separate maps.* A separate and similar map drawn to the same scale in all cases shall be made of each layer of minerals mined in any mine in this state. A separate map shall also be made of the surface whenever the surface buildings, lines, or objects are so numerous as to obscure the details of the mine workings if drawn upon the same sheet with them, and in such case the surface map shall be drawn upon transparent cloth or paper so that it can be laid upon the map of the underground workings and thus truly indicate the local relation of lines and objects on the surface to the excavations of the mine and any other principal workings of the mine.

6. *Rise and dip of minerals.* Each map of underground workings shall also show by profile drawing and measurement, the last one hundred fifty feet approaching the boundary lines, showing the rise and dip of the minerals.

7. *Copies.* The original or true copies of the maps shall be kept at the office of the mine, and true copies thereof shall also be furnished the state geologist within thirty days after the completion of the same.

8. *Extensions.* An accurate extension of the last preceding survey of every mine in active operation shall be made once in every twelve months prior to July 1 of every year and the result of such survey, with the date thereof, shall be promptly and accurately entered upon the original map, and a true, correct, and accurate copy of the extended map shall be forwarded to the state geologist so as to show

all changes in plan of new work in the mine, and all extensions of the old workings to the most advanced face or boundary of the workings which have been made since the last preceding survey, and the parts of the mine abandoned or worked out after the last preceding survey shall be clearly indicated and shown by colorings, which copy must be delivered to the state geologist within thirty days after the last survey is made.

9. *Abandoned mine.* When any underground mine is worked out or is about to be abandoned or indefinitely closed, the operator of the same shall make or cause to be made a completed and extended map of the mine and the result of the same shall be duly extended on all maps of the mine and copies thereof so as to show all excavations and the most advanced workings of the mine, and their exact relation to the boundary or section lines on the surface, and deliver to the state geologist a copy of the completed map.

10. *Copies furnished.* The state geologist shall provide the department of soil conservation a copy of each map and map extension received by him under this section. [C97, §2485; S13,§§2485, 2496-m; C24, 27, 31, 35, 39, §§**1245, 1351–1355, 1357, 1358**; C46, 50, 54, 58, 62, 66, 71, 73,§§82.28, 83.14–83.18, 83.20, 83.21; C75, §305.12]

Referred to in §305.14

305.13 Failure to furnish map. When the operator of any mine neglects or refuses for a period of ninety days to furnish to the state geologist the map or plan, or a copy thereof, of such mine or any extension thereof, as provided in this chapter, the state geologist shall cause to be made an accurate map or plan of such mine or extension as the case may be, at the expense of the operator. The cost shall be paid by the state and recovered from such operator. It shall be the duty of the county attorney of the county in which such mine is located, at the request of the state geologist, to bring action in the name of the state for such recovery. [S13,§§2485-a, 2496-m; C24, 27, 31, 35, 39,§§**1246, 1359**; C46, 50, 54, 58, 62, 66, 71, 73,§§82.29, 83.22; C75,§305.13]

305.14 Maps property of state — custody — copies. The maps so delivered to the state geologist shall be the property of the state and shall remain in the custody of the state geologist. They shall be kept at the office of the geological survey and be open to examination by all persons interested in the maps; but such examination shall only be made in the presence of the state geologist or a designee, and the state geologist shall not permit any copies of the maps to be made without the written consent of the operator or the owner of the property, except as provided in section 305.12 or if the mine has been abandoned for at least five years. [C97,§2485; S13,§§2485, 2496-m; C24, 27, 31, 35, 39,§§**1247, 1356**; C46, 50, 54, 58, 62, 66, 71, 73,§§82.30, 83.19; C75,§305.14; 66GA, ch 1161, §1]

CHAPTER 305A

STATE ARCHAEOLOGIST

305A.1 Appointment.
305A.2 Duties.
305A.3 Agreements with federal departments.
305A.4 Definitions.
305A.5 State department of transportation contracts.
305A.6 Federal funds.
305A.7 Reinterring ancient remains.
305A.8 Cemetery for ancient remains.

305A.1 Appointment. The state board of regents shall appoint a state archaeologist, who shall be a member of the faculty of the department of anthropology of the state University of Iowa. [C62, 66, 71, 73, 75,§305A.1]

305A.2 Duties. The state archaeologist shall have the primary responsibility for the discovery, location and excavation of archaeological sites and for the recovery, restoration and preservation of archaeological remains in and for the state of Iowa, and shall co-ordinate all such activities through co-operation with the state department of transportation, state conservation commission, and other state agencies concerned with archaeological salvage or the products thereof. The state archaeologist may publish educational and scientific reports relating to the responsibilities and duties of his office. [C62, 66, 71, 73, 75,§305A.2]

305A.3 Agreements with federal departments. The state archaeologist is authorized to enter agreements and co-operative efforts with the United States commissioner of public roads, the United States departments of commerce, interior, agriculture and defense, and any other federal or state agencies concerned with archaeological salvage or the preservation of antiquities. [C62, 66, 71, 73, 75,§305A.3]

305A.4 Definitions. As used in sections 305A.5 and **305A.6**:

1. *"Historical objects"* means archaeological and paleontological objects, including all ruins

sites, buildings, artifacts, fossils, or other objects of antiquity that have state and national significance from an historical or scientific standpoint for the inspiration and benefit of the people of the United States.

2. *"Salvage"* means the salvage of historical objects.

3. *"Appropriate authority"* means the federal or state authorities concerned with the preservation and study of historical objects. [C66, 71, 73, 75,§305A.4]

305A.5 State department of transportation contracts.

1. The state department of transportation in letting contracts for road construction shall take action to see that historical objects will not be needlessly destroyed or if such destruction cannot be avoided reasonable action shall be taken to obtain all information concerning such objects prior to destruction. If it should appear that the proposed construction will result in the destruction of historical objects and it is determined by the appropriate authority that such objects cannot be reasonably removed or otherwise preserved, consideration shall be given to possible alternate locations of the highway.

2. If during the course of construction, historical objects are encountered, the appropriate authority shall be notified immediately and steps taken to excavate and preserve the objects if practicable or if preservation is impracticable, to permit the appropriate authority to obtain and record data relative thereto.

3. Agreements may be entered into with the appropriate authority to pay from federal highway funds the reasonable cost of salvage work. Extra work orders may be issued to the contractor where necessary and extra work orders may be issued in cases within the meaning of "subsurface or lateral conditions" or "unknown physical conditions" where such terms are used in the standard contract forms. Payment for salvage work shall be limited to that performed within the roadway prism and any location designated as a source of material. If the contractor's operations are delayed because of salvage work such contractor shall be entitled to an appropriate extension of the contract time. If practicable, the operations shall be rescheduled to avoid the section where the historical material is, until the removal of it.

4. The cost of exploratory work prior to construction shall be borne by the appropriate authority. Costs of excavation of historical objects or recordation of data may be paid by the federal highway funds. Excavation costs may include costs of protecting and preservation during removal from the site but shall not include the expense of shipping historical objects from the site. [C66, 71, 73, 75,§305A.5]

Referred to in §305A.4

305A.6 Federal funds. Where federal funds are available to the state under federal statutes providing for archaeological and paleontological salvage, they shall be collected and credited as provided in section 307A.4. [C66, 71, 73, 75,§305A.6]

Referred to in §305A.4

305A.7 Reinterring ancient remains. The state archaeologist shall have the primary responsibility for investigating, preserving and reinterring discoveries of ancient human remains. For the purposes of this section ancient human remains shall be those remains found within the state which are more than one hundred fifty years old. The state archaeologist shall make arrangements for the services of a forensic osteologist in studying and interpreting ancient burials and may designate other qualified archaeologists to assist the state archaeologist in recovering physical and cultural information about the ancient burials. The state archaeologist shall file with the department of health a written report containing both physical and cultural information regarding the remains at the conclusion of each investigation. [Appropriations to the state board of regents] to be used by the state archaeologist in investigating, reporting upon and interring ancient human remains pursuant to this section. [66GA, ch 1158,§§6, 7]

Referred to in §714.21

305A.8 Cemetery for ancient remains. The state archaeologist shall establish, with the approval of the executive council, a cemetery on existing state lands for the reburial of ancient human remains found in the state. The cemetery shall not be open to the public. The state archaeologist in co-operation with the Iowa state conservation commission shall be responsible for co-ordinating interment in the cemetery. [66GA, ch 1158,§7]

TITLE XIII

TRANSPORTATION

CHAPTER 306

ESTABLISHMENT, ALTERATION AND VACATION OF HIGHWAYS

Referred to in §§306A.3–306A.8, 307.24, 313.2

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GENERAL PROVISIONS

306.38 Rental of acquired property pending use.
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306.1 Roads and streets.

1. *Functional classification of roads and streets.* The roads and streets of this state are classified into the following systems:

a. The freeway-expressway system.
b. The arterial system.
c. The arterial connector system.
d. The trunk system.
e. The trunk collector system.
f. The area service system.
g. The municipal arterial system.
h. The municipal collector system.
i. The municipal service system.
j. The municipal residential alley system.
k. The state park, state institution and other state land road system.
l. The county conservation parkway system.

2. *Definitions of road and street systems.* For the purpose of functionally classifying the roads and streets of this state, the following words and phrases relating to roads and streets shall have the following meanings:

a. The *freeway-expressway system* shall consist of those roads connecting and serving the major urban and regional areas of the state with high volume, long-distance traffic movements, and generally connecting with like roads of adjacent states. The national system of interstate and defense highways shall be a part of the freeway-expressway system. The freeway-expressway system, including the national interstate and defense highway mileage, shall not exceed three thousand miles.

b. The *arterial system* shall consist of those roads which connect the freeway-expressway system with the arterial connector system, or which serve long-distance movements of traffic, or which serve as collectors of long-distance traffic from other systems to the freeway-expressway system. The arterial system shall not exceed three thousand five hundred miles.

c. The *arterial connector system* shall consist of those roads providing service for short-distance intrastate and interstate traffic, or

providing connections between highways classified as arterial or freeway-expressway.

d. The *trunk system* shall consist of those intracounty and intercounty roads which serve principal traffic generating areas, and connect such areas to other trunk roads and roads on the arterial or freeway-expressway system. The trunk system shall not exceed fifteen thousand miles and shall include, but not be limited to, the major federal aid secondary roads of the state.

e. The *trunk collector system* shall consist of those roads providing service for short-distance intracounty and intercounty traffic, or providing connections between roads classified as trunk and area service. The trunk collector system shall not exceed twenty thousand miles. The trunk collector system and the trunk system shall constitute the farm-to-market road system of the state.

f. The *area service system* shall include those public roads outside of municipalities not otherwise classified.

g. The *municipal arterial system* shall consist of those streets within municipalities not included in other classifications which connect principal traffic generating areas or connect such areas with other systems. The municipal arterial system shall not exceed fifteen percent of the entire street mileage under the jurisdiction of a municipality, except that municipalities under two thousand population may exceed such limitation.

h. The *municipal collector system* shall consist of those streets within municipalities that collect traffic from the municipal service system and connect to other systems. The municipal collector system shall not exceed twenty percent of the entire street mileage under jurisdiction of the municipality, except that municipalities under two thousand population may exceed such limitation.

i. The *municipal service system* shall consist of those streets and commercial alleys within municipalities which serve primarily as access to commercial and residential property and shall also include streets within municipal parks.

j. The *municipal residential alley system* shall consist of those alleys which serve primarily as secondary access to residential property.

k. The *state park, state institution, and other state land road system* shall consist of those roads and streets wholly within the boundaries of state lands operated as parks, institutions, or other state governmental agencies.

l. The *county conservation parkway system* shall consist of those parkways located wholly within the boundaries of county lands operated as parks, forests, or other public access areas. [C24, 27,§4636; C31, 35,§4644-c2; C39, **§4644.02**; C46, 50,§309.2; C54, 58, 62, 66,§306.2; C71, 73, 75,§306.1]

Referred to in §§306.3, 306.6
See also §§306.8, 313.2

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

1. "*Department*" means the state department of transportation.

2. "*Agency*" means any governmental body which exercises jurisdiction over any road as provided in section 306.4. [C75,§306.2]

306.3 Definition of terms. As used in this chapter or in any chapter of the Code relating to highways:

1. "*Road*" or "*street*" means the entire width between property lines through private property or designated width through public property of every way or place of whatever nature when any part of such way or place is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

2. "*Primary roads*" or "*primary road system*" means those roads and streets, both inside and outside the boundaries of municipalities, classified under section 306.1 as freeway-expressway, arterial and arterial connector.

3. "*Interstate roads*" or "*interstate road system*" means those roads and streets of the primary road system that are designated by the secretary of the United States department of transportation as the National System of Interstate and Defense Highways in Iowa.

4. "*Secondary roads*" or "*secondary road system*" means those roads, outside the boundaries of municipalities, classified as trunk, trunk collector and area service under section 306.1.

5. "*Farm-to-market roads*" or "*farm-to-market road system*" means those rural secondary roads classified as trunk and trunk collector under section 306.1.

6. "*Local secondary roads*" or "*local secondary road system*" means those secondary roads which are classified as area service under section 306.1.

7. "*Municipal street system*" means those streets within municipalities classified as trunk, trunk collector, municipal arterial, municipal collector, municipal service and municipal alleys under section 306.1.

8. "*State park roads*" means those roads and streets classified as state park roads under section 306.1.

9. "*Institutional roads*" means those roads and streets classified as institutional roads under section 306.1.

10. "*Other state land roads*" means those roads and streets classified as other state land roads under section 306.1.

11. "*County conservation parkways*" or "*county conservation parkway system*" means those parkways classified as county conservation parkways under section 306.1. [C24, 27, §4636; C31, 35,§4644-c2; C39,**§4644.02**; C46, 50, §309.2; C54, 58, 62, 66,§306.2; C71, 73, 75,§306.3]

Referred to in §§307A.2(12), 309.3

306.4 Jurisdiction of systems. The jurisdiction and control over the roads and streets of the state are vested as follows:

1. Jurisdiction and control over the primary roads shall be vested in the department.

2. Jurisdiction and control over the secondary roads shall be vested in the county board of supervisors of the respective counties.

3. Jurisdiction and control over the municipal street system shall be vested in the governing bodies of each municipality; except that the department and the municipal governing body shall exercise concurrent jurisdiction over the municipal extensions of primary roads in all municipalities. The parties exercising concurrent jurisdiction shall enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof.

4. Jurisdiction and control over the roads and streets in any state park, state institution or other state land shall be vested in the board, commission, or agency in control of such park, institution, or other state land; except that:

a. The department and the controlling agency shall have concurrent jurisdiction over any road which is an extension of a primary road and which both enters and exits from the state land at separate points. The department may expend the moneys available for such roads in the same manner as the department expends such funds on other roads over which the department exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement the jurisdiction and control of such road shall remain in the department.

b. The board of supervisors of any county and the controlling state agency shall have concurrent jurisdiction over any road which is an extension of a secondary road and which both enters and exits from the state land at separate points. The board of supervisors of any county may expend the moneys available for such roads in the same manner as the board expends such funds on other roads over which the board exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such road shall remain in the board of supervisors of the county.

5. Jurisdiction and control over parkways within county parks and conservation areas shall be vested in the county conservation boards within their respective counties; except that:

a. The department and the county conservation board shall have concurrent jurisdiction over an extension of a primary road which both enters and exits from a county park or other county conservation area at separate points. The department may expend moneys available for such roads in the same manner as the department expends such funds on other roads over which the department exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such roads shall remain in the department.

b. The board of supervisors of any county and the county conservation board shall have concurrent jurisdiction over an extension of a secondary road which both enters and exits from a county park or other county conservation area at separate points. The board of supervisors of any county may expend moneys available for such roads in the same manner as the board expends such funds on other roads over which the board exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such roads shall remain in the board of supervisors of the county. [C51,§514; R60,§819; C73,§920; C97,§1482; C24, 27, §§4560, 4635–4677, 4780–4812; C31, 35,§§4560, 4644-c1; C39,§§**4560, 4644.01**; C46, 50,§309.1; C54, 58, 62, 66,§306.3; C71, 73, 75,§306.4]

Referred to in §§306.2, 307A.2(12)

Provisional transfer of jurisdiction of roads, §313.2 [65GA, ch 1177,§10]

306.5 Continuity of systems in municipalities, parks and institutions. The primary, trunk and trunk collector systems shall be continuous interconnected systems and provision shall be made for the continuity of such systems by the designation of extension within municipalities, state parks, state institutions, other state lands and county parks and conservation areas. The mileage of such extensions of these systems shall be included in the total mileage of a particular primary, trunk or trunk collector system and shall also be listed separately as an extension of such road system.

The department may reallocate mileage within the systems under its jurisdiction. The board of supervisors or the governing body of municipalities may alter the classification of roads under their jurisdiction with the approval of the functional classification board as provided in section 306.6. [C71, 73, 75,§306.5]

306.6 Functional classification board.

1. A functional classification board shall be appointed for each county and shall operate under procedural rules promulgated by the

department under the provisions of chapter 17A. Said board shall consist of three members to be appointed as follows: The department shall appoint one member from the staff of the department, the county board of supervisors shall apppoint one member who shall be either the county engineer or one of its own members, and the third member shall be a municipal official from within the county who shall be appointed by a majority of the mayors of the cities of the county. The mayors shall meet at the call of the chairman of the county board of supervisors who shall act as chairman of the meeting without vote. In the event the mayors cannot agree to and appoint this member within thirty days after the call of the meeting by the chairman, the two members previously appointed shall select the third member. The board shall serve without additional compensation and shall:

a. Classify each segment of each rural public road and each municipal street in the county in accordance with the classifications found in section 306.1.

b. Establish continuity between the systems within the county and with the systems of adjacent counties.

c. File a copy of the proposed road classification in the office of county engineer for public information and hold a public hearing before final approval of any road classification action. Notice of the date, the time, and the place of such hearing, and the filing of such proposed road classification for public information shall be published in an official newspaper in general circulation throughout the affected area at least twenty days prior to the established date of the hearing.

d. Report the selected classifications to the department. The department shall review the reports of the county classification boards and may:

(1) Alter the classification of roads coinciding with or crossing county lines to provide continuity of the various county systems.

(2) Adjust the mileage of roads classified in the trunk and trunk collector systems to assure equitable distribution among the counties of the total mileage of such systems.

(3) Any action authorized under subparagraphs (1) and (2) of this paragraph *"d"* shall not be taken by the department until the proposed action has been thoroughly discussed with the affected county classification boards and their comments heard.

2. There is created a state functional classification review board which shall consist of one state senator appointed by the president of the senate, one state representative appointed by the speaker of the house of representatives, one supervisor appointed by the Iowa state association of county supervisors, one engineer appointed by the Iowa county engineers' association, two persons appointed by the league of Iowa municipalities, one of whom shall be a licensed professional engineer, and two persons appointed by the department, one of whom shall be a commissioner and the other a staff member. This board shall select a permanent chairman from among its members by majority vote of the total membership. The chairman and all members of the board shall serve without additional compensation.

It shall be the responsibility of the state functional classification review board to hear any and all appeals from classification boards or board members, relative to disputes arising out of the functional classification of any segment of highway or street. The state functional classification review board shall have the authority and the responsibility to make final administrative determinations based on sound functional classification principles for all disputes relative to functional classification. The review board shall also serve, when requested jointly by state and local jurisdictions, as an advisory committee for review and adjustment of construction and maintenance guidelines used in updating road and street needs studies. [C71, 73, 75,§306.6]

Referred to in §306.5

306.7 Functions changed or new roads added. If the function of any road or street has been altered by new construction or by reconstruction or relocation, or if a new road or street has been constructed, the functional classification board shall reclassify said roads or streets within one year. If the functional classification board does not classify any road or street as provided herein, the department shall make the classification. [C71, 73, 75, §306.7]

306.8 Transfer of jurisdiction. When a change of jurisdiction occurs as a result of the classification or reclassification of a road or street, the unit of government having jurisdiction shall, prior to such change of jurisdiction, place the road or street and any structures thereon in good repair sufficient for the traffic thereon. [C71, 73, 75,§306.8]

306.9 Repealed by 65GA, ch 1177,§9.

306.10 Power to establish, alter or vacate. In the construction, improvement, operation or maintenance of any highway, or highway system, the agency which has control and jurisdiction over such highway or highway system, shall have power, on its own motion, to alter or vacate and close any such highway or railroad crossing thereon, and to establish new highways or railroad crossing thereon which are or are intended to become a part of the highway system over which said agency has jurisdiction and control. [C73,§§937, 954; C97, §§1496, 1509; S13,§1509; C24,§§4577, 4593, 4732; C27, 31,§§4577, 4593, 4755-b27, 4755-d2; C35, §§4577, 4593, 4631-e1, 4755-b27, 4755-d2; C39, **§§4577, 4593, 4631.1, 4755.23, 4755.37**; C46, 50, §§306.18, 306.34, 308.2, 313.25, 313.46; C54, 58, 62, 66,§306.4; C71, 73, 75,§306.10]

306.11 Hearing—place—date. In proceeding to the vacation and closing of any road, part thereof, or railroad crossing, the agency in

control of said road, or road system, shall fix a date for a hearing thereon in the county where said road, or part thereof, or crossing, is located, and if located in more than one county, then in a county wherein any part of such road or crossing is located. If the road to be vacated or changed is a secondary road located in more than one county, the boards of supervisors of such counties, acting jointly, shall fix a date for a hearing thereon in either or any of the counties where such road, or part thereof, is located. [C31, 35,§§4755-d2, 4755-d3; C39,§§**4755.37, 4755.38**; C46, 50,§§313.46, 313.47; C54, 58, 62, 66,§306.5; C71, 73, 75,§306.11]

Referred to in §306A.6

306.12 Notice—service. Notice of such hearing shall be published in some newspaper of general circulation in the county or counties where such road is located, at least twenty days prior to the date of hearing. The agency which instituted said proceedings and is holding such hearing, shall notify all adjoining property owners, all utility companies whose facilities adjoin the road right of way, and the department, the agency or boards of supervisors, or agency in control of affected state lands, as the case may be, of the time and place of such hearing, by certified mail addressed to the affected property owners, all utility companies whose facilities are on the road right of way and the department, the county auditor, or the agency in control of affected state lands, as the case may be. [SS15,§1527-r7; C24, 27, §4621; C31, 35,§§4621, 4755-d4; C39,§§**4621, 4755.39**; C46, 50,§§306.62, 313.48; C54, 58, 62, 66, §306.6; C71, 73, 75,§306.12]

Referred to in §306A.6

306.13 Notice — requirements. Said notice shall state the time and place of such hearing, the location of the particular road, or part thereof, or crossing, the vacation and closing of which is to be considered, and such other data as may be deemed pertinent. [C31, 35, §4755-d5; C39,§**4755.40**; C46, 50,§313.49; C54, 58, 62, 66,§306.7; C71, 73, 75,§306.13]

Referred to in §306A.6

306.14 Objections—claims for damages. At such hearing, the department, the board of supervisors, or the agency in control of affected state lands, as the case may be, and any interested person, may appear and object and be heard. Any person owning land abutting on a road which it is proposed to vacate and close, shall have the right to file, in writing, a claim for damages at any time on or before the date fixed for hearing. [C31, 35,§4755-d6; C39,§**4755.41**; C46, 50,§313.50; C54, 58, 62, 66, §306.8; C71, 73, 75,§306.14]

Referred to in §306A.6

306.15 Purchase and sale of property. If as to any one or more properties affected by the proposed vacation and closing of any secondary road, it should appear to the board of supervisors to be in the interest of economy or public welfare, the board may purchase or condemn, by proceeding as this chapter provides, the said entire property or properties, and make payment therefor out of the secondary road fund. After the road has been vacated and closed the board shall sell such property or properties at the best attainable price, and credit the proceeds of such sale to the secondary road fund. [C31, 35,§4755-d7; C39,§**4755.42**; C46, 50,§313.51; C54, 58, 62, 66,§306.9; C71, 73, 75,§306.15]

Referred to in §306A.6

306.16 Final order. After such hearing, the agency which instituted such proceedings and conducted such hearing, shall enter an order. Said agency may dismiss the proceedings, or it may vacate and close such road, part thereof, or crossing, in which event it shall determine and state in the order the amount of the damages allowed to each claimant. Said order thus entered shall be final except as to the amount of the damages. A copy of such order shall be filed with the county auditor of the county or counties in which the road, part thereof, or crossing, is located and with the department and the agency in control of any affected state land. [C31, 35,§4755-d7; C39, §**4755.42**; C46, 50,§313.51; C54, 58, 62, 66,§306.10; C71, 73, 75,§306.16]

Referred to in §306A.6

306.17 Appeal. Notwithstanding the terms of the Iowa administrative procedure Act, any claimant for damages may, by serving, within twenty days after the said final order has been issued, a written notice upon the agency which instituted and conducted such proceedings, appeal as to the amount of damages, to the district court of the county in which the land is located, in the manner and form prescribed in chapter 472 with reference to appeals from condemnation, and such proceedings shall thereafter likewise conform to the applicable provisions of said chapter. [R60,§873; C73, §959; C97,§1513; C24, 27,§4597; C31, 35,§§4597, 4755-d8; C39,§§**4597, 4755.43**; C46, 50,§§306.38, 313.52; C54, 58, 62, 66,§306.11; C71, 73, 75,§306.17]

Referred to in §306A.6

306.18 Establishment. In the establishment of any road, the agency in control of such road or road system need not cause a hearing to be held thereon or notice to be published thereof, but may do so. [C51,§§535, 536; R60,§§840, 841; C73,§934; C97,§1493; C24, 27, 31, 35, 39,§**4573**; C46, 50,§306.14; C54, 58, 62, 66,§306.12; C71, 73, 75,§306.18]

306.19 Purchase or condemnation of right of way—procedure—closing driveway—alternative access.

1. In the maintenance, relocation, establishment, or improvement of any road, including the extension of such road within cities, the agency having jurisdiction and control of such road shall have authority to purchase or to institute and maintain proceedings for the condemnation of the necessary right of way therefor. Such agency shall likewise have power to purchase or institute and maintain

proceedings for the condemnation of land necessary for highway drainage, or land containing gravel or other suitable material for the improvement or maintenance of highways, together with the necessary road access or right of access thereto.

2. Whenever the agency condemns or purchases property access rights or alters by lengthening any existing driveway to a road from abutting property, except during the time required for construction and maintenance of the road or highway, the agency shall:

a. Compensate the owner for any diminution in the market value of the property by the denial or alteration by lengthening the driveway; however, in computing such diminution in value no consideration shall be given to the additional maintenance expense for maintaining the additional length of driveway, but in lieu thereof, both in condemnation proceedings or negotiated purchases, the agency shall pay to the owner the sum of five dollars for every lineal foot of additional length of driveway located on said owner's property. This payment shall represent just compensation to said property owner for the additional driveway maintenance caused by reason of the highway or road project.

b. If in the opinion of the agency it would be more economical to purchase the entire tract of the property owner than to provide and pay the maintenance expense required under the provisions of this section, proceed with the acquisition of the entire tract of land; or

c. If mutually agreeable, move buildings from an existing location to a location requiring an equal or lesser length of driveway and provide an adequate driveway to a public road.

3. None of the foregoing requirements shall prohibit the property owner and the agency from entering into a mutually acceptable agreement for the replacement, relocation, construction, or maintenance of any alternate driveway on the owner's property.

4. Compensation for any property rights taken in the establishment of any alternative temporary or permanent access shall be paid as in any other purchase or condemnation of property. Proceedings for the condemnation of land for any highway shall be under the provisions of chapter 471 and chapter 472. Provided that, in the condemnation of right of way for secondary roads, the board of supervisors may proceed as provided in sections 306.28 to 306.37.

5. For the purposes of this section, the term "driveway" shall mean a way of ingress and egress located entirely on private property, consisting of a lane or passageway leading from a residence to a public roadway or highway. [C24, §4732; C27, 31, 35,§4755-b27; C39, §§**4658, 4683.23, 4755.23**; C46, 50,§§309.64, 310.23, 313.25; C54, 58, 62, 66,§306.13; C71, 73, 75,§306.19]

306.20 Cemeteries. No road shall be established through any cemetery or burying ground without the consent of all the parties affected by the same. [C51,§525; R60,§830; C73, §925; C97,§1487; SS15,§1527-r4; C24,§§4566, 4732; C27, 31, 35,§§4566, 4755-b27; C39,§§**4566, 4755.23**; C46, 50,§§306.7, 313.25; C54, 58, 62, 66,§306.14; C71, 73, 75,§306.20]

306.21 Plans, plats and field notes filed. All road plans, plats and field notes and true and accurate diagrams of water, sewage and electric power lines for rural subdivisions shall be filed with and recorded by the county auditor and approved by the board of supervisors and the county engineer before the subdivision is laid out and platted, and if any proposed rural subdivision is within one mile of the corporate limits of any city such road plans shall also be approved by the city engineer or council of the adjoining municipality. Such plans shall be clearly designated as "completed", "partially completed" or "proposed" with a statement of the portion completed and the expected date of full completion. In the event such road plans are not approved as herein provided such roads shall not become the part of any road system as defined in this chapter. [C51,§§533, 550; R60,§§838, 855; C73,§§933, 949; C97,§§1492, 1504; C24, 27,§§4571, 4589; C31, 35,§§4571, 4589, 4755-c1; C39,§§**4571, 4589, 4619, 4686.24, 4755.24**; C46, 50,§§306.12, 306.30, 306.60, 310.24, 313.26; C54, 58, 62, 66, §306.15; C71, 73, 75,§306.21]

Referred to in §§117A.1, 713.24(2, *d*)

306.22 Sale of unused right of way. When title to any tract of land has been or may be acquired for the construction or improvement of any highway, and when in the judgment of the agency in control of the highway, the tract will not be used in connection with or for the improvement, maintenance, or use of the highway, the agency in control of the highway may sell the tract for cash. If the tract of land is held or used in connection with any primary road, or state park or institutional road, the sale shall be subject to approval of the executive council of the state.

The department may contract for the sale of any tract of land subject to the following terms and conditions:

1. The discounted present market value of the contract offer, including the cash down payment, shall exceed one hundred ten percent of the highest cash offer submitted for the tract if a cash offer is received. The discount rate shall be the rate of interest stated in the contract.

2. The cash down payment shall be equal to or in excess of five percent of the total purchase price.

3. The term of the contract shall not exceed ten years.

4. The rate of interest stated in the contract shall not be less than the prevailing rate of interest charged on contract land sales by sellers in the county or general area in which the tract of land is located.

5. The department shall advertise for cash bids and contract offers before accepting a contract offer.

6. The appraised value of property sold under a land contract sale shall be at least five thousand dollars.

7. Any tract of land sold on contract shall be listed on the tax rolls by and taxed to the contract purchaser, as provided in chapters 428 and 443; assessed and valued as provided in chapter 441; taxes levied as provided in chapter 444; collected as provided in chapter 445; and subject to tax sale, redemption, and apportionment of taxes as provided in chapters 446 to 448. It shall be the duty of the contract purchaser to discharge and pay all taxes.

If any tract of land is sold, the sale shall be subject to the right of a utility association, company, or corporation to continue in possession of a right of way in use at the time of the sale. [C35,§4755-f1; C39,**§4755.44**; C46, 50, §313.53; C54, 58, 62, 66,§306.16; C71, 73, 75, §306.22]

306.23 Notice — preference of sale. Notice of intention to sell such tract, parcel, or piece of land, or part thereof, must, not less than ten days prior to the sale thereof, be sent by certified mail, by the agency in control of such land, to the last known address of the present owner of adjacent land from which said tract, parcel, piece of land or part thereof, was originally bought or condemned for highway purposes, and if located in a city, to the mayor thereof. Said notice shall give an opportunity to the present owner of adjacent property to be heard and make offers for the tract, parcel or piece of land to be sold, and if such offer is equal to or exceeds in amount any other offer received, it shall be given preference by the board in control of said land. Neglect or failure for any reason, to comply with the provisions of said notice, shall in no way prevent the giving of a clear title to the purchaser of said tract, parcel or piece of land. [C35,§4755-f2; C39,**§4755.45**; C46, 50,§313.54; C54, 58, 62, 66, §306.17; C71, 73, 75,§306.23]

306.24 Conditions. Any sale of land as herein authorized shall be upon the conditions that the tract, parcel, or piece of land so sold shall not be used in any manner so as to interfere with the use of the highway by the public, or to endanger public safety in the use of the highway, or to the material damage of the adjacent owner. [C35,§4755-f3; C39,**§4755.46**; C46, 50,§313.55; C54, 58, 62, 66,§306.18; C71, 73, 75,§306.24]

306.25 Execution of conveyance. Where a sale of land in connection with any primary road or state park or institutional road has been authorized as herein provided, written conveyances containing the conditions as prescribed by the executive council shall be made in the name of the state and signed by the governor and secretary of state, and the great seal of the state of Iowa attached thereto. Where a sale of land in connection with any secondary road has been authorized by the board of supervisors as herein provided, written conveyances containing the provisions prescribed by the board of supervisors shall be made in the name of the county and signed by the chairman of the board of supervisors and the county auditor. [C35,§4755-f4; C39,**§4755.47**; C46, 50,§313.56; C54, 58, 62, 66,§306.19; C71, 73, 75,§306.25]

306.26 Payment of damages and right of way cost—proceeds of sale. Damages allowed on account of the vacation of any highway and costs incident thereto, right of way or land purchased or condemned for or on account of any highway and costs incident thereto, and the funds received from the sale or rental of any highway right of way or land, shall be paid from or credited to, as the case may be, the road fund or funds applicable to said highway or highway system. [C51,§546; R60,§851; C73,§946; C97,§1501; C24, 27,§4586; C31, 35, §§4586, 4755-d8,-f5; C39,§§**4586, 4755.43, 4755.48**; C46, 50,§§306.27, 313.52, 313.57; C54, 58, 62, 66, §306.20; C71, 73, 75,§306.26]

Constitutionality, 54GA, ch 103,§25

CHANGES IN ROADS, STREAMS OR DRY RUNS

306.27 Changes for safety, economy and utility. The state department of transportation as to primary roads and the boards of supervisors as to secondary roads on their own motion may change the course of any part of any road or stream, watercourse or dry run and may pond water in order to avoid the construction and maintenance of bridges, or to avoid grades, or railroad crossings, or to straighten any road, or to cut off dangerous corners, turns or intersections on the highway, or to widen any road above statutory width, or for the purpose of preventing the encroachment of a stream, watercourse or dry run upon such highway. The department shall conduct its proceedings to accomplish the above in the manner and form prescribed in chapter 472, and the board of supervisors shall use the form prescribed in sections 306.28 to 306.37. All such changes shall be subject to the provisions of chapter 455A. [C97,§427; SS15,§1527-r1; C24, 27, 31, 35, 39,§**4607**; C46, 50, §306.48; C54, 58, 62, 66,§306.21; C71, 73, 75,§306.27; 66GA, ch 67,§69]

306.28 Appraisers. If the board is unable, by agreement with the owner, to acquire the necessary right of way to effect such change, three freeholders shall be selected to appraise the damages consequent on the taking of the right of way. The board of supervisors shall select one of said appraisers. The owner or owners of the land sought to be taken shall select one of said appraisers. The two appraisers so selected shall choose the third appraiser. In case the owners do not exercise their said right or in case they are unable to agree as to an appraiser, or in case their appointee fails to appear and qualify, the said

board of supervisors shall appoint two appraisers and said two appointees shall choose the third appraiser.

If the two appraisers selected shall fail within ten days to select a third, or the third appraiser so selected shall fail to serve, then the board of supervisors shall select the third appraiser. [SS15,§§1527-r1,-r2; C24, 27, 31, 35, 39,§**4610**; C46, 50,§306.51; C54, 58, 62, 66,§306.22; C71, 73, 75,§306.28]

Referred to in §§306.19, 306.27

306.29 Notice. The county auditor shall cause the following notice to be served on the individual owner of each tract or parcel of land to be taken for such right of way, as shown by the transfer books in the office of such county auditor, and upon each person owning or holding a mortgage, or lease, upon such land as shown by the county records, and upon the actual occupant of such land if other than the owner thereof:

To whom it may concern: Notice is given that the board of supervisors of..... county, Iowa, propose to condemn for road purposes the following described real estate in said county: (Here describe the right of way, and the tract or tracts from which such right of way will be taken.) The damages caused by said condemnation will be assessed by three appraisers. Notice is hereby given that the owner or owners of said real estate may, on or before the .... day of ....., appoint one of said appraisers and that in case such right be not exercised, or if exercised and the said appointee fails to appear and qualify, the said three appraisers will be otherwise appointed as provided by law. All parties interested are further notified that said three appraisers will, when duly appointed, proceed to appraise said damages, will report said appraisement to the said board of supervisors and that said latter board will pass thereon as provided by law, and that at all such times and places you may be present if you be so minded. You are further notified that at said hearing before the said supervisors you may file objections to the use of said land for road purposes and that all such objections not so made will be deemed waived.

.....

County Auditor.

[SS15,§§1527-r2,-r3,-r6; C24, 27, 31, 35, 39,§**4611**; C46, 50,§306.52; C54, 58, 62, 66,§306.23; C71, 73, 75,§306.29]

Referred to in §§306.19, 306.27

306.30 Service of notice. Owners, occupants, and mortgagees of record who are residents of the county shall be personally served in the manner in which and for the time original notices in the district court are required to be served.

Owners and mortgagees of record who do not reside in the county and owners and mortgagees of record who do reside in the county when the officer returns that they cannot be found in the county, shall be served by publishing the notice in one of the official newspapers of the county, once each week for two weeks, and also by mailing by certified mail a copy of such notice to such owner and mortgagee of record addressed to his last known address, and the county auditor shall furnish to the board of supervisors his affidavit that such notice has been sent, which affidavit shall be conclusive evidence of the mailing of such notice.

Personal service outside the county but within the state shall take the place of service by publication.

No service need be had on one who has exercised his right to select an appraiser. [SS15, §§1527-r2,-r3; C24, 27, 31, 35, 39,§**4612**; C46, 50, §306.53; C54, 58, 62, 66,§306.24; C71, 73, 75, §306.30]

Referred to in §§306.19, 306.27
Time and manner of service, R.C.P. 53 and 56(a)

306.31 Qualification and assessment. Upon the appointment of three appraisers, the county auditor shall cause them to appear before him and to take oath that they will faithfully and impartially assess the damages claimed. Said appraisers shall forthwith proceed to the assessment of said damages and make written report thereof to the board of supervisors. [SS15,§1527-r2; C24, 27, 31, 35, 39, §**4613**; C46, 50,§306.54; C54, 58, 62, 66,§306.25; C71, 73, 75,§306.31]

Referred to in §§306.19, 306.27

306.32 Hearing — adjournment. The board shall proceed to a hearing on the objections or assessment of damages of any owner, mortgagee of record, and the actual occupant of such land if any of whom it has acquired jurisdiction, or if there be owners, mortgagee of record, and the actual occupant of such land if any over whom jurisdiction has not been acquired, the board may adjourn such hearing until a date when jurisdiction will be complete as to all owners. [SS15,§1527-r3; C24, 27, 31, 35, 39,§**4614**; C46, 50,§306.55; C54, 58, 62, 66,§306.26; C71, 73, 75,§306.32]

Referred to in §§306.19, 306.27

306.33 Hearing on objections. The board shall, at the final hearing, first pass on the objections to the proposed change. If objections be sustained the proceedings shall be dismissed unless the board finds that the objections may be avoided by a change of plans, and to this end an adjournment may be ordered, if necessary, in order to secure service on additional parties. [SS15,§1527-r3; C24, 27, 31, 35, 39,§**4615**; C46, 50,§306.56; C54, 58, 62, 66, §306.27; C71, 73, 75,§306.33]

Referred to in §§306.19, 306.27

306.34 Hearing on claims for damages. When objections to the proposed change are overruled, the board shall proceed to determine the damages to be awarded to each claimant. If the damages finally awarded are, in the opinion of the board, excessive, the proceedings shall be dismissed; if not excessive,

the board may, by proper order, establish such proposed change. [SS15,§1527-r3; C24, 27, 31, 35, 39,§**4616**; C46, 50,§306.57; C54, 58, 62, 66,§306.28; C71, 73, 75,§306.34]
Referred to in §§306.19, 306.27

306.35 Appeals. Claimants for damages may appeal to the district court from the award of damages in the manner and time for taking appeals from the orders establishing highways generally. [C97,§428; SS15,§1527-r3; C24, 27, 31, 35, 39,§**4617**; C46, 50,§306.58; C54, 58, 62, 66,§306.29; C71, 73, 75,§306.35]
Referred to in §§306.19, 306.27

306.36 Damages on appeal — rescission of order. If the damages as finally determined on appeal be, in the opinion of the board, excessive, the board may rescind its order establishing such change. [SS15,§1527-r3; C24, 27, 31, 35, 39,§**4618**; C46, 50,§306.59; C54, 58, 62, 66,§306.30; C71, 73, 75,§306.36]
Referred to in §§306.19, 306.27

306.37 Tender of damages. No appeal from an award of damages shall delay the prosecution of the work when the amount of the award is tendered in writing to the claimant and such tender is kept good. An order to the auditor to issue warrants to claimants for damages shall constitute a valid tender, if funds are available to promptly meet such warrants. Acceptance of the amount of such tender bars an appeal. Should possession of the condemned premises be taken pending appeal and the final award be not paid, the county shall be liable for all damages caused during such possession. [SS15,§1527-r3; C24, 27, 31, 35, 39,§**4620**; C46, 50,§306.61; C54, 58, 62, 66, §306.31; C71, 73, 75,§306.37]
Referred to in §§306.19, 306.27

GENERAL PROVISIONS

306.38 Rental of acquired property pending use. In the event that land acquired for improvement of any highway is not immediately needed for such improvement, the agency in control of said highway may rent such land or buildings thereon to responsible persons for a cash rental consistent with the fair market value of similar property. The said agency may employ a local real estate firm for management and collection of rentals or may do so directly through its own personnel. The commission or service charge of such real estate company shall be paid out of such rentals. [C62, 66,§306.32; C71, 73, 75,§306.38]

306.39 Flooding highways — federal water resources projects. The agency which has control and jurisdiction over any highway or highway system which may be affected by a federal water resources project may grant, sell, exchange, or convey to the United States of America, the perpetual right, power, privilege and easement to overflow, flood, and submerge all of the portion of easements for highway purposes under the control and jurisdiction of such agency. [C66,§306.33; C71, 73, 75,§306.39]

306.40 Easements conveyed. Where such easement is conveyed in connection with any primary road or state park or institutional road, written conveyances containing the conditions as prescribed by the executive council shall be made in the name of the state and signed by the governor and secretary of state, and the seal of the state of Iowa attached thereto. Where such easement is conveyed in connection with any secondary road, written conveyances containing the provisions prescribed by the board of supervisors shall be made in the name of the county and signed by the chairman of the board and the county auditor. [C66,§306.34; C71, 73, 75,§306.40]

306.41 Temporary closing for construction. The agency having jurisdiction and control over any highway in the state, or the chief engineer of said agency when delegated by such agency, may temporarily close sections of a highway by formal resolution entered upon the minutes of such agency when reasonably necessary because of construction, reconstruction, maintenance or natural disaster and shall cause to be erected "road closed" signs and partial or total barricades in the roadway at each end of the closed highway section and on the closed highway where that highway is intersected by other highways if such intersection remains open. Any numbered road closed for over forty-eight hours shall have a designated detour route. The agency having jurisdiction over a section of highway closed in accordance with the provisions of this section, or the persons or contractors employed to carry out the construction, reconstruction, or maintenance of the closed section of highway, shall not be liable for any damages to any vehicle that enters the closed section of highway or the contents of such vehicle or for any injuries to any person that enters the closed section of highway, unless the damages are caused by gross negligence of the agency or contractor.

Nothing herein shall be construed to prohibit or deny any person from gaining lawful access to his property or residence, nor shall it change or limit liability to such persons. [C71, 73, 75,§306.41; 66GA, ch 163,§1]

CHAPTER 306A

CONTROLLED-ACCESS HIGHWAYS

Referred to in §307.24

306A.1 Declaration of policy.
306A.2 Definition of a controlled-access facility.
306A.3 Authority to establish controlled-access facilities.
306A.4 Design of controlled-access facility.

306A.5 Acquisition of property and property rights.
306A.6 New and existing facilities — grade-crossing eliminations.
306A.7 Authority of local units to consent.
306A.8 Local service roads.
306A.9 Repealed by 61GA, ch 259,§1.
RELOCATION OF UTILITY FACILITIES
306A.10 Notice to relocate—costs paid by state.
306A.11 What costs included.
306A.12 Limitation on reimbursement.
306A.13 Definition.

306A.1 Declaration of policy. The legislature hereby finds, determines, and declares that this chapter is necessary for the immediate preservation of the public peace, health, and safety, and for the promotion of the general welfare. [C58, 62, 66, 71, 73, 75,§306A.1]

306A.2 Definition of a controlled-access facility. For the purposes of this chapter, a controlled-access facility is defined as a highway or street especially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways or streets may be freeways open to use by all customary forms of street and highway traffic or they may be parkways from which trucks, buses, and other commercial vehicles shall be excluded. [C58, 62, 66, 71, 73, 75,§306A.2]

Referred to in §§306A.3, 321.366

306A.3 Authority to establish controlled-access facilities. Cities and highway authorities having jurisdicton and control over the highways of the state, as provided by chapter 306, acting alone or in co-operation with each other or with any federal, state, or local agency or any other state having authority to participate in the construction and maintenance of highways, are hereby authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use wherever such authority or authorities are of the opinion that traffic conditions, present or future, will justify such special facilities; provided, that within cities such authority shall be subject to such municipal consent as may be provided by law. Said cities and highway authorities, in addition to the specific powers granted in this chapter, shall also have and may exercise, relative to controlled-access facilities, any and all additional authority now or hereafter vested in them relative to highways or streets within their respective jurisdictions. Said cities and highway authorities may regulate, restrict, or prohibit the use of such controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with section 306A.2. [C58, 62, 66, 71, 73, 75,§306A.3]

306A.4 Design of controlled-access facility. Cities and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306, are authorized to so design any controlled-access facility and to so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended. In this connection such cities and highway authorities are authorized to divide and separate any controlled-access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and other devices. No person shall have any right of ingress or egress to, from, or across controlled-access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time. [C58, 62, 66, 71, 73, 75,§306A.4]

306A.5 Acquisition of property and property rights. For the purposes of this chapter, cities and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306 may acquire private or public property rights for controlled-access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation in the same manner as such units are now or hereafter may be authorized by law to acquire such property or property rights in connection with highways and streets within their respective jurisdictions. All property rights acquired under the provisions of this chapter shall be in fee simple. In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof, or service road in connection therewith, the said cities and highway authorities, in their discretion, acquire an entire lot, block, or tract of land, if, by so doing, the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right of way proper.

No access rights to any highway shall be acquired by any authority having jurisdiction and control over the highways of this state by adverse possession or prescriptive right. No action heretofore or hereafter taken by any such authority shall form the basis for any claim of adverse possession of, or prescriptive right to any access rights by any such authority. [C58, 62, 66, 71, 73, 75,§306A.5]

306A.6 New and existing facilities—grade-crossing eliminations. Cities and highway authorities having jurisdiction and control over the highways of the state, as provided

by chapter 306 may designate and establish an existing street or highway as included within a controlled-access facility. The state or any of its subdivisions shall have authority to provide for the elimination of intersections at grade of controlled-access facilities with existing state and county roads, and city or village streets, by grade separation or service road, or by closing off such roads and streets at the right of way boundary line of such controlled-access facility, the provisions of sections 306.11 to 306.17 shall apply and govern the procedure for the closing of such road or street and the method of ascertaining damages sustained by any person as a consequence of such closing, provided, however, that the highway authority desiring the closing of such road or street shall conduct the hearing and carry out the procedure therefor and pay any damages, including any allowed on appeal, as a consequence thereof, any law to the contrary notwithstanding, and after the establishment of any controlled-access facility, no highway or street which is not part of said facility shall intersect the same at grade. No city or village street, county or state highway, or other public way shall be opened into or connected with any such controlled-access facility without the consent and previous approval of the highway authority in the state, county, city or village having jurisdiction over such controlled-access facility. Such consent and approval shall be given only if the public interest shall be served thereby. [C58, 62, 66, 71, 73, 75,§306A.6]

306A.7 Authority of local units to consent. Cities and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306 are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access facilities or other public ways in their respective jurisdictions, to facilitate the purposes of this chapter. [C58, 62, 66, 71, 73, 75,§306A.7]

306A.8 Local service roads. In connection with the development of any controlled-access facility cities and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306, are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over controlled-access facilities under the terms of this chapter, if, in their opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets shall be of appropriate design, and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable by the proper authority. [C58, 62, 66, 71, 73, 75,§306A.8]

306A.9 Repealed by 61GA, ch 259,§1. See §321.366.

RELOCATION OF UTILITY FACILITIES

306A.10 Notice to relocate—costs paid by state. Whenever the state department of transportation shall determine that relocation or removal of any utility facility now located in, over, along, or under any highway or street, is necessitated by the construction of a project on routes of the national system of interstate and defense highways including extensions within cities, the utility owning or operating such facility shall relocate or remove the same in accordance with statutory notice. The costs of relocation or removal, including the costs of installation in a new location, shall be ascertained by the state department or as determined in condemnation proceedings for such purposes and paid by the state out of the primary road fund as part of the cost of such federally aided project. [C62, 66, 71, 73, 75,§306A.10]

306A.11 What costs included. Cost of relocation or removal shall include the entire amount paid by such utility properly attributable to such relocation or removal except the cost of land or any rights or interest in land, after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility. [C62, 66, 71, 73, 75,§306A.11]

306A.12 Limitation on reimbursement. No reimbursement shall be made for any relocation or removal of facilities under this division unless funds to be provided by federal aid amount to at least ninety percent of each reimbursement payment. [C62, 66, 71, 73, 75,§306A.12]

306A.13 Definition. The term "utility" shall include all privately, publicly, municipally or co-operatively owned systems for supplying water, sewer, electric lights, street lights and traffic lights, gas, power, telegraph, telephone, transit, pipeline, heating plants, railroads and bridges, or the like service to the public or any part thereof if such system be authorized by law to use the streets or highways for the location of its facilities. [C62, 66, 71, 73, 75,§306A.13]

CHAPTER 306B

OUTDOOR ADVERTISING ALONG INTERSTATE HIGHWAYS

Referred to in §§306C.10, 306C.13, 306C.15, 306C.18, 307.24

306B.1 Definitions.
306B.2 Advertising prohibited—exceptions.
306B.3 Rules.
306B.4 Purchase of existing signs.
306B.5 Removal after notice.
306B.6 Misdemeanor.
306B.7 Federal agreements.
306B.8 Funds accepted.

306B.1 Definitions. As used in this chapter:

1. *"Advertising device"* includes any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other device designed, intended, or used to advertise or to give information in the nature of advertising and having the capacity of being visible from the traveled portion of any highway of the interstate system in this state.

2. *"Interstate system"* means the system of highways as defined in Title 23 USC 103, subsection *"e"* or amendments thereto.

3. *"National policy"* means the provisions relating to control of advertising devices adjacent to the interstate system contained in Title 23 USC 131 or amendments thereto and the national standards promulgated pursuant to such provisions.

4. *"Department"* means the state department of transportation. [C66, 71, 73, 75,§306B.1; 66GA, ch 1056,§18]

306B.2 Advertising prohibited—exceptions. No advertising device shall be erected or maintained within six hundred sixty feet of the edge of the right of way of the interstate system except the following:

1. Directional or other official signs or notices that are erected by public officers or agencies and required or authorized by law.

2. Advertising devices in compliance with national policy and rules promulgated by the department which indicate the sale or lease of the property upon which such devices are located or which advertise activities being conducted on the property where the devices are located providing said rules promulgated by the said department shall not be more restrictive than required to conform to the national standards as set forth in Title 23, United States Code.

3. Advertising devices in compliance with national policy and rules promulgated by the department which advertise activities being conducted within twelve air miles of the place where such devices are located.

4. Advertising devices in compliance with national policy and rules promulgated by the department which are designed to give information in the specific interest of the traveling public.

5. Advertising devices which are located in commercial or industrial zones traversed by segments of the interstate system within the boundaries of incorporated municipalities as such boundaries existed September 21, 1959, where the use of property adjacent to the interstate system is subject to municipal regulation and control, or other areas where the land on September 21, 1959, was clearly established by law for industrial or commercial purposes. [C66, 71, 73, 75,§306B.2]

Referred to in §§306B.3, 306C.10, 306C.13(8, g)

306B.3 Rules. The department shall promulgate and enforce rules consistent with the safety of the traveling public and in compliance with national policy governing the erection, maintenance, and frequency of advertising devices within six hundred sixty feet of the edge of the right of way of the interstate system which are authorized by this chapter and which are outside of commercial and industrial zones designated in section 306B.2, subsection 5. [C66, 71, 73, 75,§306B.3]

306B.4 Purchase of existing signs. The department shall acquire by purchase, gift, or condemnation all advertising devices existing on May 21, 1965, which violate the provisions of this chapter or which fail to conform to rules promulgated by the said department under this chapter and all rights and interests of all persons in and to such devices; except that in instances involving any authorized device which fails to conform to rules, the said department shall give notice to the owner of the device and to the owner of the land on which the device is located and shall give the owner and landowner time to conform to such rules as provided in section 306B.5 before proceeding as directed in this section. The provisions of chapters 471 and 472 shall be applicable to any such condemnation and the said department shall have the right to take immediate possession of and remove such devices under the procedures of section 472.25. [C66, 71, 73, 75, §306B.4]

306B.5 Removal after notice. Any advertising device erected or maintained adjacent to any interstate system after May 21, 1965 in violation of this chapter or the rules promulgated by the department, is a public nuisance and may be removed by the department upon thirty days' notice, by certified mail, to the owner of the advertising device and to the owner of the land on which the advertising device is located. The notice shall require such owners to remove the advertising device if it is prohibited or to cause it to conform to this

chapter or rules promulgated by the department if it is not prohibited.

1. If the owner of the advertising device or the landowner fails to act within thirty days as required in the notice, the advertising device shall be deemed to be forfeited and the department may enter upon the land and remove the advertising device. Such entry after notice, shall not be deemed a trespass and the department may be aided by injunction to abate the nuisance and to insure peaceful entry.

2. The cost of removal, including any fees and costs or expenses as may arise out of any action brought by the department to insure peaceful entry and removal may be assessed against the owner of the advertising device. Should the owner of the advertising device fail to pay such fees, costs, or expenses within thirty days after assessment, the department may institute proceedings in the district court or small claims division as applicable, to collect said fees, costs, or expenses which when collected, shall be paid into the "highway beautification fund." [C66, 71, 73, 75,§306B.5; 66GA, ch 1162,§1]

Referred to in §§306B.4, 306C.10(18)

306B.6 Misdemeanor. Whoever erects or maintains an advertising device in violation of this chapter or in violation of rules and regulations promulgated by the department under this chapter shall be guilty of a misdemeanor and upon conviction be fined not less than twenty-five dollars nor more than one hundred dollars. [C66, 71, 73, 75,§306B.6]

306B.7 Federal agreements. The department may enter into agreements with the secretary of commerce of the United States concerning the erection, maintenance, regulation, location, frequency and related matters of advertising devices permitted under this chapter. [C66, 71, 73, 75,§306B.7]

306B.8 Funds accepted. The department may accept any allotment of funds by the United States or any department or agency thereof appropriated under Title 23 U.S.C. or amendments thereto to accomplish the purposes of this chapter. [C66, 71, 73, 75,§306B.8]

CHAPTER 306C

IOWA JUNKYARD BEAUTIFICATION AND BILLBOARD CONTROL

Referred to in §307.24

DIVISION I
JUNKYARD BEAUTIFICATION

306C.1 Definitions.
306C.2 Junkyards prohibited—exceptions.
306C.3 Junkyards lawfully in existence.
306C.4 Requirements as to screening.
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DIVISION II
BILLBOARD CONTROL

306C.10 Definitions.
306C.11 Advertising prohibited.
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306C.20 Bonus funds agreements.
306C.21 Information centers.
306C.22 Political signs.

DIVISION I
JUNKYARD BEAUTIFICATION

306C.1 Definitions. For the purposes of this division unless the context otherwise requires:

1. *"Junk"* means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts of automobiles, or iron, steel, or other old or scrap ferrous or nonferrous material.

2. *"Junkyard"* means an establishment or place of business which is maintained, operated, or used primarily for storing, keeping, buying, or selling junk; and the term includes garbage dumps, sanitary fills, and automobile graveyards.

3. *"Interstate highway"* includes "interstate road" and "interstate system" and means any highway of the primary system at any time officially designated as a part of the national system of interstate and defense highways by the department and approved by the appropriate authority of the federal government.

4. *"Primary highway"* means the federal aid primary system.

5. *"Department"* means the state department of transportation. [C73, 75,§306C.1]

306C.2 Junkyards prohibited — exceptions. A person shall not establish, operate, or maintain a junkyard, any portion of which is within one thousand feet of the nearest edge of the right of way of any interstate or primary highway, except:

1. Those which are screened by natural objects, plantings, fences, or other appropriate means obscuring them from view from the main-traveled portion of the highway.

2. Those located within areas which are zoned for industrial use under authority of law.

3. Those located within unzoned industrial areas which areas shall be determined from actual land uses and defined by regulations to be promulgated by the department under the provisions of chapter 17A in accordance with the standards, criteria, and rules and regulations promulgated under authority of Title 23, United States Code.

4. Those which are not visible from the main-traveled portion of the highway. [C73, 75,§306C.2]

Referred to in §306C.6

306C.3 Junkyards lawfully in existence. Any junkyard located outside a zoned or unzoned industrial area lawfully in existence on July 1, 1972, which is within one thousand feet of the nearest edge of the right of way and visible from the main-traveled portion of any highway on the interstate or primary system shall be screened, if feasible, by the department or the owner under rules and direction of the department, at locations on the highway right of way or in areas acquired for such purposes outside the right of way in order to obscure the junkyard from the main-traveled way of such highways. [C73, 75,§306C.3]

Referred to in §306C.6

306C.4 Requirements as to screening. The department may adopt rules pursuant to chapter 17A governing the location, planting, construction, and maintenance of screening or fencing required by this chapter including materials to be used. However, such rules shall be in accordance with the standards, criteria and rules promulgated under authority of Title 23, United States Code. [C73, 75,§306C.4]

306C.5 Acquisition of land for screening or removal. When the department determines that it is in the best interests of the state, it may acquire by gift, purchase, exchange, or condemnation, as provided by law, such property or rights or interests in property as may be necessary to provide adequate screening for junkyards. When the department determines that the topography of the land adjoining the highway will not permit adequate screening, or screening would not be economically feasible, the department may acquire such property or rights or interests in property as may be necessary to secure the relocation, removal, or disposal of the junkyard, and shall pay the cost of such relocation, removal, or disposal, with federal participation. However, no plan for relocation, removal, or disposal which qualifies for federal participation shall be undertaken unless the department has received notification from the federal government that the federal share to be paid is immediately available for that purpose. [C73, 75,§306C.5]

306C.6 Nuisance—injunction. Any junkyard which does not conform to the requirements of this division and which is not excepted under sections 306C.2 or 306C.3, is a public nuisance. The department may apply for an injunction to abate any nuisance arising from a violation of the provisions of this division or rules adopted pursuant to this division. [C73, 75, §306C.6]

306C.7 Interpretation. Nothing in this chapter shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution, which are more restrictive than the provisions of this division. [C73, 75, §306C.7]

306C.8 Agreements with the United States authorized. The department may enter into agreements with the United States secretary of transportation as provided by Title 23, United States Code, relating to control of junkyards in areas adjacent to the interstate and primary systems, and take action in the name of the state to comply with the terms of such agreements. [C73, 75,§306C.8]

306C.9 Compensation. Nothing in this division shall be construed as permitting the taking of private property or the restriction of the reasonable and existing uses of such property without just compensation and in accordance with the provisions of chapter 472 and Title 23, United States Code. [C73, 75,§306C.9]

DIVISION II
BILLBOARD CONTROL

306C.10 Definitions. For the purposes of this division, unless the context otherwise requires:

1. *"Department"* means the state department of transportation.

2. *"Interstate highway"* includes "interstate road" and "interstate system" and means any highway of the primary system at any time officially designated as a part of the national system of interstate and defense highways by the department and approved by the appropriate authority of the federal government.

3. *"Bonus interstate highways"* includes all interstate highways except those interstate highways adjacent to areas excepted from control under chapter 306B by authority of section 306B.2, subsection 5.

4. *"Primary highways"* includes the entire primary system as officially designated, or as may hereafter be so designated, by the department.

5. *"Freeway primary highway"* means those primary highways which have been constructed as a fully controlled access facility with no access to the facility except at established interchanges.

6. *"Main-traveled way"* means the portion of the roadway for movement of vehicles on which through traffic is carried exclusive of shoulders and auxiliary lanes. In the case of a divided highway, the main-traveled way includes each of the separated roadways for traffic in opposite directions, exclusive of frontage roads, turning roadways, or parking areas.

7. *"Advertising device"* includes any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other device designed, intended, or used to advertise or give information in the nature of advertising, and having the capacity of being visible from the traveled portion of any interstate or primary highway.

8. *"Structure"* means any sign supporting device including but not limited to buildings.

9. *"Erect"* means to construct, reconstruct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish; however, it shall not include any of the foregoing activities when performed incidental to the customary maintenance of an advertising device.

10. *"Maintain"* means to cause to remain in a state of good repair but does not include reconstruction.

11. *"Reconstruction"* means any repair to the extent of sixty percent or more of the replacement cost of the structure, excluding buildings.

12. *"Visible"* means capable of being read or comprehended without visual aid by a person of normal visual acuity.

13. *"Adjacent area"* means an area which is contiguous to and within six hundred sixty feet of the nearest edge of the right of way of any interstate, freeway primary, or primary highway.

14. *"Right of way"* means land area dedicated to public use for the highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes, but does not include temporary easements or rights for supplementary highway appurtenances.

15. *"Information center"* means a site, either with or without structures or buildings, established and maintained at a rest area for the purpose of providing "information of specific interest to the traveling public", as that phrase is defined in section 306C.11, subsection 5.

16. *"Rest area"* means an area or site established and maintained under authority of section 313.67 within the right of way of an interstate, freeway primary, or primary highway under supervision and control of the department for the safety, recreation, and convenience of the traveling public.

17. *"Commercial or industrial zone"* means those areas zoned commercial or industrial under authority of a law, regulation, or ordinance of this state, its subdivisions, or a municipality.

18. *"Commercial or industrial activities"* means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

a. Outdoor advertising structures.

b. Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce.

c. Activities in operation less than three months per year.

d. Activities conducted in a building principally used as a residence.

e. Railroad tracks and minor spurs.

f. Activities outside of adjacent areas, as defined by this division and section 306B.5.

g. Activities which have been used in defining and delineating an unzoned area but which have since been discontinued or abandoned.

h. Residential housing developments.

i. Mobile home parks.

j. Institutions of learning.

k. State, county and charitable institutions.

l. State and county conservation and recreation areas, public parks, forests, playgrounds, or other areas of historic interest or areas designated as scenic beautification areas under section 313.67.

19. *"Unzoned commercial or industrial area"* means those areas not zoned by state or local law, regulation, or ordinance, which are occupied by one or more commercial or industrial activities, and the land along the interstate highways and primary highways for a distance of seven hundred fifty feet immediately adjacent to the activities. All measurements shall be from the outer edge of the regularly used buildings, parking lots, storage, or processing areas of the activities and shall be parallel to the edge of pavement of the highway. Measurements shall not be from the property line of the activities unless that property line coincides with the limits of the activities. Unzoned commercial or industrial areas shall not include land on the opposite side of the highway from the commercial or industrial activities.

20. *"Political sign"* means an outdoor sign of a temporary nature, not larger than thirty-two square feet in surface area, erected for the purpose of soliciting votes or support for or in opposition to any candidate or any political party under whose designation any candidate is seeking nomination or election or any public question on the ballot in an election held under the laws of this state. [C73, 75,§306C.10; 66GA, ch 81,§143]

Referred to in §306C.11

306C.11 Advertising prohibited. Subject to the provision made in section 306C.13 regarding control of bonus interstate highways, no advertising device shall be erected or maintained within any adjacent area as defined in section 306C.10, or on the right of way of any primary highway, except the following:

1. Advertising devices concerning the sale or lease of property upon which they are located.

Referred to in §§306C.12, 306C.18

2. Advertising devices concerning activities conducted on the property on which they are located, nor shall the property upon which they are located be construed to mean located upon any contiguous area having inconsistent use, size, shape, or ownership.

Referred to in §§306C.12, 306C.18

3. Advertising devices within the adjacent area located in commercial or industrial zones or in unzoned commercial or industrial areas in compliance with the regulatory standards of this division and rules promulgated by the department.

Referred to in §306C.13

4. Official and directional signs and notices which shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, recreational attractions and municipal recognition signs, which shall conform with rules promulgated by the department, provided that such rules shall be consistent with national standards promulgated pursuant to Title 23, section 131, subsection "c" of the United States Code.

Referred to in §306C.18

5. Signs, displays, and devices giving specific information of interest to the traveling public, shall be erected by the department and maintained within the right of way in such areas, and at appropriate distances from interchanges on the interstate system and freeway primary highways as shall conform with the rules promulgated by the department. Such rules shall be consistent with national standards promulgated from time to time by the appropriate authority of the federal government pursuant to Title 23, section 131, paragraph "f" of the United States Code, except as provided in this section. For purposes of this division, "specific information of interest to the traveling public" means only information about public places for outdoor recreation, camping, lodging, eating, and motor fuel and associated services which means the business shall be in continuous operation sixteen hours per day, seven days per week, with telephones and restroom facilities, motor fuel, oil, and water, including trade names.

Business signs supplied to the department by commercial vendors shall be on panels, with dimensional and material specifications established by the department. No business sign included under the provisions of this section shall be posted unless it is in compliance with these specifications. The commercial vendor shall pay to the department an annual fee of fifty dollars for each business sign supplied for posting. Upon furnishing the business signs to the department and payment of all fees, the department shall post the business signs on eligible specific information panels. There is created in the office of the treasurer of state a fund to be known as the "highway beautification fund" and all funds received for the posting on specific information panels shall be deposited in the "highway beautification fund". Information on motor fuel and associated services may include vehicle service and repair where the same is available.

For the year beginning July 1, 1977, and each subsequent year the annual fee shall be equal to the sum of twenty-five dollars plus ten dollars per month. The ten dollar per month portion shall be due on or before the first of each month or payable quarterly with installments due on or before July 1, October 1, January 1, and April 1 of each year. The ten dollar per month portion of the annual fee shall be used by the department for the design, construction, erection and maintenance of specific information panels and administration costs of collecting the monthly fee. The twenty-five dollar portion of the annual fee shall be deposited in the highway beautification fund. [C73, 75,§306C.11; 66GA, ch 1162, §§2, 3, ch 1163,§1]

Referred to in §§306C.10(15), 306C.12, 306C.13, 306C.18

306C.12 None visible from highway. An advertising device shall not be constructed or reconstructed beyond the adjacent area in unincorporated areas of the state if it is visible from the main-traveled way of any interstate or primary highway except for advertising devices permitted in section 306C.11, subsections 1 and 2, and municipal recognition signs erected by any city. Any advertising device permitted beyond an adjacent area in unincorporated areas of the state shall be subject to the applicable permit provisions of section 306C.18. [C73, 75,§306C.12]

306C.13 Control by department of transportation. The department shall control the erection and maintenance of advertising devices authorized by section 306C.11, subsection 3, in accord with the following criteria, except that in the case of bonus interstate highways the department shall maintain the controls required under chapter 306B or the controls required by this division, whichever controls are stricter:

1. Advertising devices located within the adjacent area of interstate highways and freeway primary highways shall not be erected or maintained closer to another advertising device facing in the same direction than five hundred feet outside of cities, and within two hundred fifty feet if inside of cities. An advertising device may not be located within two hundred fifty feet of an interchange, or rest area. The measurement shall be from the nearest widening constructed for the pur-

pose of acceleration or deceleration of traffic movement to or from the main-traveled way to the advertising device.

2. Advertising devices located within the adjacent area of primary highways shall not be erected or maintained closer to another advertising device facing in the same direction than one hundred feet if inside the corporate limits of a municipality. No advertising device, other than as excepted or permitted by subsections 4, 5, or 6 of this section, shall be located within the triangular area formed by the line connecting two points each fifty feet back from the point where the street right of way lines of the main-traveled way and the intersecting street meet, or would meet, if extended.

3. Advertising devices located within the adjacent area of primary highways shall not be erected or maintained closer to another advertising device facing in the same direction than three hundred feet if outside the corporate limits of a municipality. No advertising device, other than those excepted or permitted by subsections 4, 5, or 6 of this section, shall be located within the triangular area formed by a line connecting two points each one hundred feet back from the point where the street right-of-way lines of the main-traveled way and the intersecting street meet, or would meet, if extended.

4. The distance spacing measurements fixed by subsections 2 and 3 of this section shall not apply to advertising devices which are separated by a building in such a manner that only one advertising device located within the minimum spacing distance is visible from a highway at any one time.

5. Within a triangular area, as defined by subsections 2 and 3 of this section, occupied by a building or structure, no advertising device shall be erected or maintained closer to the intersection than the building or structure itself, except that a wall advertising device may be attached to said building or structure not to protrude more than twelve inches.

6. Official and directional signs and notices and advertising devices concerning the sale or lease of the property or activities conducted upon the property as specified in Title 23, section 131, subsection "c" of the United States Code, shall not be taken into consideration in determining compliance with spacing requirements.

7. The minimum distance between two advertising devices facing the same direction shall apply without regard to the side of the highway on which the advertising devices may be located and shall be measured along the center line of the highway between points directly opposite the advertising devices.

8. Advertising devices shall not be erected, maintained, or illuminated:

a. In a manner to obscure or otherwise physically interfere with an official traffic sign, signal, or device, or to obstruct or physically interfere with any driver's view of approaching, merging, or intersecting traffic.

b. Unless effectively shielded to prevent light from being directed at any portion of the traveled highway with such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle.

c. Which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights, except those giving public service information such as, but not limited to time, date, temperature, weather, news and similar information.

d. Which imitate or resemble an official sign or signal or device or which are erected or maintained within or closer than three hundred feet from scenic areas, as defined and determined by the department, or which are located or maintained upon trees, or painted or drawn upon rocks or natural features, or which are structurally unsafe or in substantial disrepair.

e. Which exceed one thousand two hundred square feet in area or in the case of a back-to-back or V-type advertising device, with a maximum of two facings per advertising device, seven hundred fifty square feet in area, including border and trim but excluding base or apron, support, and other structural members.

f. Which do not comply with all applicable state or local laws, regulations and ordinances, including but not limited to zoning, building, and sign codes as locally interpreted and applied and enforced, or which violate chapter 319; however, nothing in this division shall prevent or restrict county or local zoning authorities from making a determination of customary use concerning size, lighting, and spacing of advertising devices in zoned commercial or industrial adjacent areas, and such determinations will be accepted in lieu of the standards of this division. The provisions of this division shall not prevent or restrict county or local zoning authorities within their respective jurisdictions from establishing standards imposing controls stricter than those required by this division.

g. The standards contained in this section pertaining to size, lighting, and spacing shall not apply to advertising devices erected or maintained within six hundred sixty feet of the right of way of those portions of the interstate highway system exempted from control under chapter 306B by authority of section 306B.2, subsection 5, nor to advertising devices erected and maintained within adjacent areas along primary highways within zoned and unzoned commercial and industrial areas, unless said advertising devices were erected subsequent to July 1, 1972. [C73, 75,§306C.13; 66GA, ch 1162,§4]

Referred to in §306C.11

306C.14 Existing signs—six-year limit. Any advertising device lawfully in existence in an

adjacent area on July 1, 1972, which does not conform with the provisions of this division, shall be required to be brought into conformity or removed within six years after July 1, 1972. Any advertising device lawfully erected after said date which subsequently becomes nonconforming, shall be required to be brought into conformity or removed within five years after the date the nonconformity occurs. However, no advertising device shall be acquired or be required to be removed pursuant to this division unless the department has received notification from the federal government that the federal share of "just compensation" to be paid is immediately available to contribute to the cost of acquisition or removal; this requirement shall not apply to the acquisition or removal of advertising devices for which no federal share is payable. [C73, 75,§306C.14]

306C.15 Acquisition of signs. The department shall acquire by purchase, gift, or condemnation, and shall pay "just compensation" upon the removal of any of the following advertising devices which are not in conformity with the provisions of this division:

1. Advertising devices lawfully in existence on July 1, 1972.

2. Advertising devices lawfully in existence on land adjoining any highway made an interstate, freeway primary, or primary highway after July 1, 1972.

3. Advertising devices lawfully erected on or after July 1, 1972, but which subsequently become nonconforming.

4. Any advertising device erected on the mistaken or negligent advice of any official or employee of the state of Iowa as to the interpretation, effect, or operation of this division, chapter 306B, or rules promulgated by the department. [C73, 75,§306C.15]

Referred to in §§306C.16, 306C.18

306C.16 Compensation. Compensation required by section 306C.15 shall be paid for the following:

1. The taking from the owner of such advertising device of all right, title, leasehold, and interest in such advertising device.

2. The taking from the owner of real property on which an advertising device is located, of the right to erect and maintain such advertising devices upon that real property. [C73, 75,§306C.16]

306C.17 Condemnation. The provisions of chapters 471 and 472 shall be applicable to any such condemnation commenced pursuant to this division, and the department may take immediate possession of and remove such advertising devices under the procedures of section 472.25. [C73, 75,§306C.17]

306C.18 Permit required. The owner of every advertising device regulated by the provisions of this chapter, except signs and advertising devices excepted by section 306C.11, subsections 1, 2, 4 and 5, shall be required to make application to the department for a permit.*

The application for a permit shall be on a form provided by the department and shall contain the name and address of the owner of the advertising device and the name and address of the owner of the real property on which it is located; the date of its erection; a description of its location; its dimensions; and such other information required by the department, together with a permit fee as provided in this section.

After July 1, 1972, no new advertising device for which an application for a permit is required may be erected without first obtaining a permit from the department, except in the case of advertising devices lawfully in existence in areas adjacent to any highway made an interstate, freeway primary, or primary highway after July 1, 1972. The owner shall be required to make application for a permit as provided for in this section within thirty days after the date the said highway acquired said designation.

Upon receipt of an application containing all the required information in due form and properly executed together with the fee required, the department shall issue a permit to be affixed to the advertising device if the advertising device will not violate any provision of this division or chapter 306B, or any rule promulgated by the department, provided that in the case of advertising devices to be acquired pursuant to section 306C.15, a provisional permit shall be issued.

The fee for both types of permits shall be twenty-five dollars for the initial fee and five dollars for each annual renewal. The fees collected for the above permits shall be credited to a special account entitled the "highway beautification fund" and all salaries and expenses incurred in administering this chapter shall be paid from this fund or from specific appropriations for this purpose, except that surveillance of, and removal of, advertising devices performed by regular maintenance personnel are not to be charged against the account. [C73, 75,§306C.18; 66GA, ch 1163,§2]

Referred to in §306C.12
*Application for initial permit before July 31, 1972

306C.19 Removal after notice. Any advertising device erected or maintained after July 1, 1972, in violation of this division or the rules promulgated by the department, is a public nuisance and may be removed by the department upon thirty days' notice, by certified mail, to the owner of the advertising device and to the owner of the land on which the advertising device is located. The notice shall require such owners to remove the advertising device if it is prohibited, or to cause it to conform to this division or rules promulgated by the department if it is not prohibited.

1. If the owner of the advertising device or the landowner fails to act within thirty days as required in the notice, the advertising de-

vice shall be deemed to be forfeited and the department may enter upon the land and remove the advertising device. Such entry after notice, shall not be deemed a trespass and the department may be aided by injunction to abate the nuisance and to insure peaceful entry.

2. The cost of removal, including any fees and costs or expenses as may arise out of any action brought by the department to insure peaceful entry and removal, may be assessed against the owner of the advertising device. Should the owner of the advertising device fail to pay such fees, costs, or expenses, within thirty days after assessment, the department may institute proceedings in the district court or small claims division as applicable, to collect said fees, costs, or expenses which when collected, shall be paid into the "highway beautification fund". [C73, 75,§306C.19; 66GA, ch 1162,§5]

306C.20 Bonus funds agreements. The department shall enter into agreements with the duly constituted federal authorities in order to secure for the state all bonus federal funds allotted and appropriations to the state and to avoid loss or reduction, under Title 23, section 131, of the United States Code, of federal aid funds apportioned or to be apportioned to the state under Title 23, section 104 of the United States Code. The department may accept funds from whatever source, including any allotment of funds by the United States, or any of its departments or agencies, appropriated to carry out the purposes of Title 23, section 131 of the United States Code. The department shall take such steps as may be necessary to obtain from the United States or any of its departments or agencies, funds allotted and appropriated for the purpose of paying the federal share of just compensation to be paid to advertising device owners and owners of the real property under the terms of this chapter and Title 23, section 131, paragraph "g" of the United States Code. All moneys received pursuant to the provisions of this chapter shall be deposited in the "highway beautification fund". [C73, 75,§306C.20]

306C.21 Information centers. The department may establish or enter into agreements with private persons, firms, or corporations for the establishment of information centers in rest areas on the interstate, freeway primary, and primary highways, subject to the approval of the appropriate authority of the federal government. [C73, 75,§306C.21]

306C.22 Political signs. It shall be lawful to place political signs on private property with permission of the owner or person in charge of the property at any time during the period beginning forty-five days before the date of the election to which the signs pertain and ending on the day of the election, even if such placement would otherwise be a violation of this chapter. This section shall not be construed to authorize placement of any political sign at any location where it may, because of its size, location, content or coloring constitute a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, by detracting from the visibility of any traffic-control device or by being confused with an authorized traffic-control device. The exemption from provisions of this chapter granted by this section for political signs shall expire on the seventh day following the date of the election to which the signs pertain. A municipal corporation shall adopt no ordinance which prohibits the placement of political signs on private property as permitted by this section during the period beginning twenty-one days before the date of the election to which the signs pertain, nor requires removal of the political signs so placed less than seven days after the date of that election. [66GA, ch 81,§144]

CHAPTER 307

DEPARTMENT OF TRANSPORTATION

Referred to in §307.24
Chapter 307, Code 1973, repealed or transferred to chapter 307A
Interim duties, see 65GA, ch 1180,§§31 to 35
Rural transportation services for elderly and handicapped, one year program, 66GA, ch 110,§18

307.1 Definitions.
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307.1 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Director"* means the director of transportation or his designee.

2. *"Department"* means the state department of transportation.

3. *"Commission"* means the state transportation commission.

4. *"Board"* means the transportation regulation board. [C75,§307.1]

307.2 Department of transportation. There is created a state department of transportation which shall be responsible for the planning, development, regulation and improvement of transportation in the state as provided by law. [C75,§307.2]

307.3 Transportation commission. There is created a state transportation commission which shall consist of seven members, not more than four of whom shall be from the same political party. The governor shall appoint the members of the state transportation commission for a term of four years, subject to the confirmation of the senate.

The commission shall meet in July of each year for the purpose of electing one of its members as chairman. [SS15,§1527-s; C24, 27, 31, 35, 39,§§**4622, 4623**; C46, 50, 54, 58, 62, 66, **71**, 73,§§307.1, 307.2; C75,§307.3]

307.4 Conflict of interest. A person shall not serve as a member of the state transportation commission who has an interest in a contract or job of work or material or the profits thereof or service to be performed for the department. Any member of the state transportation commission who accepts employment with or acquires any stock, bonds, or other interest in any company or corporation doing business with the department shall be disqualified from remaining a member of the state transportation commission. [C75,§307.4]

307.5 Vacancies on commission. Any vacancy on the commission which may occur when the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days following the convening of the next session of the general assembly. Prior to the expiration of the thirty-day period, the governor shall transmit to the senate for its approval the name of the appointee for the unexpired portion of the regular term. Any vacancy occurring when the general assembly is in session shall be filled in the same manner as regular appointments are made, and before the end of such session, and for the unexpired portion of the regular term.

In the event the governor fails to make an appointment to fill a vacancy, or fails to submit the appointment to the senate for confirmation, the senate may make the appointment prior to adjournment of the general assembly. [SS15,§1527-s; C24, 27, 31, 35, 39,§**4624**; C46, 50, 54, 58, 62, 66, 71, 73,§307.3; C75,§307.5]

307.6 Compensation—commission members. Each member of the commission shall receive a salary as fixed by the general assembly. [SS15,§1527-s1; C24, 27, 31, 35, 39,§**4625**; C46, 50, 54, 58, 62, 66, 71, 73,§307.4; C75,§307.6]

307.7 Commission meetings. The commission shall meet at the call of the chairman or when any four members of the commission file a written request with the chairman for a meeting. Written notice of the time and place of each meeting shall be given to each member of the commission. A majority of the commission members shall constitute a quorum. [C75,§307.7]

307.8 Expenses. Members of the commission, the director, and other employees of the department shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses and salaries shall be paid from appropriations for such purposes and the department shall be subject to the budget requirements of chapter 8. [C75, §307.8]

307.9 Removal from office. Any member of the commission may be removed for any of the causes and in the manner provided in chapter 66 and such removal shall not be in lieu of any other punishment that may be prescribed by the laws of this state. [C75,§307.9]

307.10 Duties of commission. The commission shall:

1. Develop and co-ordinate a comprehensive transportation policy for the state not later than January 1, 1975, which shall be submitted to the general assembly for its approval, and develop a comprehensive transportation plan by January 1, 1976, to be submitted to the governor and the general assembly, and to update the transportation policy and plan annually.

2. Promote the co-ordinated and efficient use of all available modes of transportation for the benefit of the state and its citizens including, but not limited to, the designation and development of multimodal public transfer facilities if carriers or other private businesses fail to develop such facilities.

3. Identify the needs for city, county and regional transportation facilities and services in the state and develop programs appropriate to meet these needs.

4. Identify methods of improving transportation safety in the state and develop programs appropriate to meet these needs.

5. Adopt rules in accordance with the provisions of chapter 17A as it may deem necessary to transact its business and for the administration and exercise of its powers and duties. The transportation commission shall also adopt rules, which rules shall be exempt from the provisions of chapter 17A, governing the length of vehicles and combinations of vehicles which are subject to the limitations imposed under section 321.457. The commission may adopt such rules which permit vehicles and

combinations of vehicles in excess of the length limitations imposed under section 321.457, but not exceeding sixty-five feet in length, which may be moved on the highways of this state. Any such proposed rules shall be submitted to the general assembly within five days following the convening of a regular session of the general assembly. The general assembly may approve or disapprove the rules submitted by the commission not later than sixty days from the date such rules are submitted and, if approved or no action is taken by the general assembly on the proposed rules, such rules shall become effective May 1 and thereafter all laws in conflict therewith shall be of no further force and effect.

6. Approve the budget of the department as prepared by the director, prior to submission of the budget to the governor and the general assembly.

7. Approve the reorganization of any existing divisions within the department.

8. Consider the energy and environmental issues in transportation development.

9. Enter into such contracts and agreements as provided in this chapter. [C75,§307.10]

Referred to in §384.56

307.11 Director of transportation—qualifications—salary. The commission shall appoint a director of transportation who shall serve at the pleasure of the commission and who shall in no event be a member of the commission. The director shall not hold any other office under the laws of the United States or of this or any other state or hold any other position for profit. The director shall not engage in any occupation, business, or profession interfering with or inconsistent with his duties, serve on or under any committee of any political party or contribute to the campaign fund of any person or political party. The director shall be appointed on the basis of his executive and administrative abilities and he shall devote his entire time to the duties of his position.

The director shall receive a salary as fixed by the general assembly. [C75,§307.11]

307.12 Duties of the director. The director shall:

1. Manage the internal operations of the department and establish guidelines and procedures to promote the orderly and efficient administration of the department.

2. Employ such personnel as are necessary to carry out the duties and responsibilities of the department, consistent with the provisions of chapter 19A and subject to the policies of the commission.

3. Assist the commission in developing state transportation policy and a state transportation plan and execute the policies adopted by the commission.

4. Establish temporary advisory boards of such size as he deems appropriate to advise the department, subject to the approval of the commission.

5. Prepare a budget for the department, subject to the approval of the commission, and prepare reports required by law or required by the commission.

6. Appoint the deputy director of transportation and the administrators of the various divisions of the department, subject to the approval of the commission.

7. Review and submit legislative proposals necessary to maintain current state transportation laws.

8. Appoint hearing officers or designate department personnel or the board to conduct hearings required by law or administrative rule. [C75,§307.12]

307.13 Reassignment of personnel. The director may reassign personnel within the department among the various divisions of the department in order to properly co-ordinate the work of the divisions and perform the duties and responsibilities of the department efficiently and economically.

However, any employee so transferred or transferred from one employment system to another either administratively or legislatively, shall not be considered to be a probationary employee simply because of this action. [C75, §307.13]

307.14 Divisions of the department. The following divisions are created within the department:

1. Transportation regulation board.
2. Administration division.
3. Planning division.
4. General counsel division.
5. Highway division.
6. Public transportation division.
7. Transportation regulation and safety division.
8. Railroad transportation division. [C75, §307.14]

307.15 Transportation regulation board. The transportation regulation board shall consist of three members, not more than two of whom shall be from the same political party. The governor shall appoint the members of the board for a term of six years, subject to the confirmation of the senate. [C75,§307.15]

Initial appointments, see 65GA, ch 1180,§15

307.16 Vacancies on board. Any vacancy on the transportation regulation board which may occur when the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days following the convening of the next session of the general assembly. Prior to the expiration of the thirty-day period, the governor shall transmit to the senate for its approval the name of the appointee for the unexpired portion of the regular term. Any vacancy occurring when the general as-

sembly is in session shall be filled in the same manner as regular appointments are made, and before the end of such session, and for the unexpired portion of the regular term.

In the event the governor fails to make an appointment to fill a vacancy, or fails to submit the appointment to the senate for confirmation, the senate may make the appointment prior to the adjournment of the general assembly. [C75,§307.16]

307.17 Compensation of board members. Each member of the transportation regulation board shall receive a salary as fixed by the general assembly. Each member shall be allowed actual and necessary expenses in the same amounts paid to other state employees incurred in the performance of his duties. [C75,§307.17]

307.18 Duties of board members. The transportation regulation board shall have the following duties and responsibilities:

1. Fix and approve rates, fares, and charges of common carriers regulated by chapters 325, 327, 327A and 327D.

2. Issue certificates of public convenience and necessity pursuant to the provisions of chapters 325 and 327A.

3. Fix and approve rates, fares, and charges of railroads and conduct safety and service permission hearings with respect to railroads regulated by chapters 327C to 327H.

4. Appoint such counsel as it deems necessary. The counsel shall have the following duties and responsibilities:

a. Investigate the legality of all rates, charges, tariffs, rules, regulations and practices of all common carriers and persons under the jurisdiction of the board, and institute civil proceedings before the board or any proper court to correct any illegality on the part of any common carrier and prosecute the same to final determination.

b. Investigate the reasonableness of rates, tariffs, charges, rules, regulations and practices of all such common carriers in interstate transportation when directed by the board, or when in his judgment they are unlawful, prejudicial, and discriminate against any city, community, business, industry or citizen of the state and institute before the interstate commerce commission or any other tribunal having jurisdiction and prosecute to final determination any proceeding growing out of such matters.

5. Approve any ordinance or resolution adopted by a political subdivision of this state which relates to the speed of a train in an area within the jurisdiction of the political subdivision. Any such speed ordinance or resolution adopted by a political subdivision of the state prior to July 1, 1975 which has not been approved by the Iowa state commerce commission shall be referred to the board by the political subdivision and shall be in full force and effect upon approval of the ordinance or resolution by the board. Nothing in this subsection shall be construed to abrogate, modify, or alter any historical or contractual agreement between a political subdivision of the state and a railroad corporation in existence on July 1, 1975. [S13,§2121-1; C24, 27, 31, 35, 39,§**7919**; C46, 50, 54, 58, 62, 66, 71, 73,§475.7; C75,§307.18; 66GA, ch 164,§1, ch 165,§1]

307.19 Proceedings. The transportation regulation board shall conduct its hearings pursuant to rules promulgated under the provisions of chapter 17A. [C75,§307.19]

307.20 Enforcement. The department shall be responsible for the enforcement of all orders issued by the board. [C75,§307.20]

307.21 Administration division. The administrator of the administration division shall have the following duties and responsibilities:

1. Provide for the proper maintenance and protection of the grounds, buildings and equipment of the department, in co-operation with the department of general services.

2. Establish, supervise and maintain a system of centralized electronic data processing for the department, in co-operation with the department of general services.

3. Assist the director in preparing the departmental budget.

4. Provide centralized purchasing services for the department, in co-operation with the department of general services.

5. Assist the director in employing the professional, technical, clerical and secretarial staff for the department and maintain employee records, in co-operation with the merit employment department and provide personnel services, including but not limited to training, safety education and employee counseling.

6. Assist the director in co-ordinating the responsibilities and duties of the various divisions within the department.

7. Carry out all other general administrative duties for the department.

8. Perform such other duties and responsibilities as may be assigned by the director.

The administrator of the administration division may purchase items from the department of general services and may co-operate with the director of general services by providing centralized purchasing services for the department of general services. [C75,§307.21]

307.22 Planning division. The administrator of the planning division shall have the following duties and responsibilities:

1. Assist the director in planning all modes of transportation in order to develop an integrated transportation system providing adequate transportation services for all citizens of the state.

2. Develop and maintain transportation statistical data for the department.

3. Assist the director in establishing, analyzing and evaluating alternative transportation policies for the state.

4. Co-ordinate the planning division's duties and responsibilities with the planning functions carried on by other divisions of the department.

5. Perform such other planning functions as may be assigned by the director.

The planning functions of this division shall not include the detailed design of highways or other modal transportation facilities, but shall be restricted to the needs of this state for multimodal transportation systems. [C75,§307.22]

307.23 General counsel division. The general counsel shall be a special assistant attorney general appointed by the attorney general who shall act as the attorney for the department and he shall have the following duties and responsibilities:

Act as legal advisor to the commission, the director and the various divisions of the department and provide all legal services for the department except for those provided to the board by its counsel.

The attorney general shall appoint such additional assistant attorneys general as the commission deems necessary to carry out the duties assigned to the general counsel division. The salary of the general counsel shall be fixed by the commission, subject to the approval of the attorney general. The commission shall provide and furnish a suitable office for the general counsel upon request of the attorney general. [SS15,§§1527-s,-s2; C24, 27,§307.8; C31, 35,§§4630, 4630-c1; C39,§§**4630, 4630.1**; C46, 50, 54, 58, 62, 66, 71, 73,§§307.8, 307.9; C75,§307.23]

307.24 Highway division. The administrator of the highway division shall be responsible for the planning, design, construction and maintenance of the state primary highways and shall administer the provisions of chapters 306 to 320 and perform such other duties as may be assigned by the director. There shall be a subdivision for urban systems, a subdivision for secondary roads, and such other subdivisions as may be necessary within the highway division. [C75,§307.24]

307.25 Public transportation division. The administrator of the public transportation division shall have the following duties and responsibilities:

1. Advise and assist the director in the development of aeronautics, including but not limited to the location of air terminals, accessibility of air terminals by other modes of public transportation, protective zoning provisions considering safety factors, noise, and air pollution, facilities for private and commercial aircraft, air freight facilities and such other physical and technical aspects as may be necessary to meet present and future needs.

2. Advise and assist the director in the development of river transportation and port facilities in the state.

3. Advise and assist the director in the study of local and regional transportation of goods and people including intracity and intercity bus systems, dial-a-bus facilities, rural and urban bus and taxi systems, the collection of data from these systems, feasibility study of increased government subsidy assistance and determination of the allocation of such subsidies to each mass transportation system, such other physical and technical aspects which may be necessary to meet present and future needs and apply for, accept and expend federal, state or private funds for the improvement of mass transit.

4. Advise and assist the director to study and develop highway transport economics to assure availability and productivity of highway transport services.

5. Administer the provisions of chapters 322A, 325, 327, 327A, 327B, 328, 329 and 330.

6. Perform such other duties and responsibilities as may be assigned by the director and the commission. [C75,§307.25]

307.26 Railroad transportation division. The administrator of the railroad transportation division shall have the following duties and responsibilities:

1. Advise and assist the director in conducting research on the basic railroad problems and identify the present capability of the existing railroads in order to determine the present obligation of the railroads to provide acceptable levels of public service.

2. Advise and assist the director in the development of rail transportation systems for expansion of passenger and freight services.

3. Advise and assist the director in developing programs in anticipation of railroad abandonment, including:

a. Development and evaluation of programs which will encourage improvement of rail freight and the upgrading of rail lines in order to improve freight service.

b. Development of alternative modes of transportation to areas and communities which lose rail service.

c. Advise the director when it may appear in the best interest of the state to assume the role of advocate in railroad abandonments and railroad rate schedules.

4. Develop and maintain a federal-state relationship of programs relating to railroad safety enforcement, track standards, rail equipment, operating rules and transportation of hazardous materials.

5. Advise and assist the director in the conduct of research on railroad-highway grade crossings and encourage and develop a safety program in order to reduce injuries or fatalities.

6. Apply for, accept, and expend federal, state or private funds for the improvement of rail transportation.

7. Advise and assist the director on studies for co-ordination of railway service with that of other transportation modes.

8. Advise and assist the director with studies of regulatory changes deemed necessary to effectuate economical and efficient railroad service.

9. Advise and assist the director regarding agreements with railroad corporations for the restoration, conservation or improvement of railroad as defined in section 327D.2, subsection 1 on such terms, conditions, rates, rentals, or subsidy levels as may be in the best interest of the state. The commission may enter into contracts and agreements which are binding only to the extent that appropriations have been or may subsequently be made by the legislature to effectuate the purposes of this subsection.

10. Administer the provisions of chapters 327D to 327H.

11. Perform such other duties and responsibilities as may be assigned by the director and the commission.

12. Advise and assist in the establishment and development of railroad districts upon request.

13. Conduct innovative experimental programs relating to rail transportation problems within the state.

14. Enter the role of "applicant" pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976, United States Public Law 94—781, and take such actions as are necessary to accomplish this role. [C75,§307.26; 66GA, ch 1056,§19, ch 1164,§§1, 2, 96]

307.27 Transportation regulation and safety division. The administrator of the transportation regulation and safety division shall have the following duties and responsibilities:

1. Administer and supervise the registration of motor vehicles pursuant to chapter 321.

2. Administer and supervise the licensing of motor vehicle manufacturers, distributors and dealers pursuant to chapter 322.

3. Administer the inspection of motor vehicles pursuant to chapter 321.

4. Administer motor vehicle registration reciprocity pursuant to chapter 326.

5. Administer the provisions of chapters 321A, 321B, 321E and 321F relating to motor vehicle financial responsibility, the implied consent law, the movement of vehicles of excessive size and weight and the leasing and renting of vehicles. [C75,§307.27]

307.28 Prorating departmental costs. The director shall, with the approval of the commission, prorate the costs of the department which will be expended for highways and such costs shall be paid from money appropriated from the road use tax fund. Prorated costs payable from the road use tax fund shall be based upon that portion of the commission's duties related to the construction, maintenance, and supervision of the public highways within the state or for the payment of bonds issued for the construction of public highways and the payment of interest on such bonds. The general assembly shall appropriate from the general fund of the state the remaining necessary departmental costs. [C75,§307.28]

CHAPTER 307A

TRANSPORTATION COMMISSION

Referred to in §307.24

307A.1 Definitions.
307A.2 Duties.
307A.3 Federal donations.
307A.4 Federal appropriations.
307A.5 State-owned lands—assessment.
307A.6 Repealed by 66GA, ch 1176,§6.
307A.7 Materials and equipment revolving fund.
307A.8 Longevity pay prohibited.

307A.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the state transportation commission of the state department of transportation.

2. *"Department"* means the state department of transportation. [C75,§307A.1]

307A.2 Duties. Said commission shall:

1. Devise and adopt standard plans of highway construction and furnish the same to the counties and provide information to the counties on the maintenance practices and policies of the department.

2. Furnish information and instruction to, answer inquiries of, and advise with, highway officers on matters of highway construction and maintenance and the reasonable cost thereof.

3. When in the interest of the state, the commission may allow a subsistence expense to an employee of the highway division of the department for continuous stay in one location while on duty away from established headquarters and place of domicile or either for a period not to exceed forty-five days; allow automobile expenses in accordance with section 79.9, for moving an employee and his

family from place of present domicile to new domicile, and actual transportation expense for moving of household goods. Such household goods shall not include pets or animals.

Similar provision, §79.16

4. Make surveys, plans, and estimates of cost, for the elimination of danger at railroad crossings on highways, and confer with local and railroad officials with reference to elimination of the danger.

5. Assist the board of supervisors and the department general counsel in the defense of suits wherein infringement of patents, relative to highway construction, is alleged.

6. Make surveys for the improvement of highways upon or adjacent to state property when requested by the board or department in control of said lands.

7. Record all important operations of said commission and, at the time provided by law, report the same to the governor.

Time of filing report and period covered, §17.9

8. Incur no expense to the state by sending out road lecturers.

9. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, other than railroad signals or crossing lights, located adjacent to a primary road and within three hundred feet of a railroad crossing at grade, which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle on such highway in observing the approach of trains or in observing signs erected for the purpose of giving warning of such railroad crossing.

10. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, located adjacent to a primary road and within three hundred feet of an intersection with another primary road, which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle on such highway in observing the approach of other vehicles or signs erected for the purpose of giving warning of such intersection.

11. Construct, reconstruct, improve and maintain state institutional roads and state park roads as defined in section 306.3 and bridges on such roads, upon the request of the state board, department or commission which has jurisdiction over such roads. This shall be done in such manner as may be agreed upon by the commission and the state board, department or commission which has jurisdiction. The commission may contract with any county or municipality for the construction, reconstruction, improvement or maintenance of such roads and bridges. Any state park road which is an extension of either a primary or secondary highway which both enters and exits from a state park at separate points shall be constructed, reconstructed, improved and maintained as provided in section 306.4.

Referred to in §§312.2(5), 313.4

12. Prepare, adopt and cause to be published a long-range program for the primary road system, in conjunction with the state transportation plan adopted by the commission. Such program shall be prepared for a period of at least five years and shall be revised, brought up to date and republished at least once every year in order to have a continuing five-year program. The program shall include, insofar as such estimates can be made, an estimate of the money expected to become available during the period covered by the program and a statement of the construction, maintenance, and other work planned to be performed during such period. The commission shall conduct periodic reinspections of the primary roads in order to revise, from time to time, its estimates of future needs to conform to the physical and service conditions of the primary roads. The commission shall annually cause to be published a sufficiency rating report showing the relative conditions of the primary roads. Before the last day of December of each year, the commission shall adopt and cause to be published from its long-range program, a plan of improvements to be accomplished during the next calendar year. This annual program shall list definite projects in order of urgency and shall include a reasonable year's work with the funds estimated to be available. The annual program shall be final and followed by the commission in the next year except that deviations may be made in case of disaster or other unforeseen emergencies or difficulties. The relative urgency of the proposed improvements shall be determined by a consideration of the physical condition, safety, and service characteristics of the various primary roads.

13. The commission shall adopt such rules and regulations in accordance with the provisions of chapter 17A as it may deem necessary to transact its business and for the administration and exercise of its powers and duties. [C97,§1532; S13,§1532; SS15,§§1527-s1,-s2; C24, 27, 31, 35, 39,§§**4626, 4631, 4632, 4633**; C46, 50, 54, 58, §§307.5, 308.1, 308.3. 308.4: C62. 66. 71. 73.§307.5: C75,§307A.2; 66GA, ch 166,§1, ch 167,§§1, 2]

40ExGA, SF 119,§6, editorially divided
Referred to in §§312.2(5), 313.4
Analogous provision, §474.11
Restricting weight of vehicles on highways, §321.474
Time of filing report and period covered, §17.9

307A.3 Federal donations. Should the government of the United States provide for free distribution among the states of machinery or other equipment, suitable for use in road improvement, the commission is empowered to receive and receipt for such machinery and equipment, and to take such action as will secure to the state the benefit of any such tenders by the federal authorities. Said commission is further authorized, in the event of such distribution to the states by the federal authorities, to make such apportionment of said machinery or other equipment among the counties of the state as in its judgment will best facilitate work in progress

or contemplated by any county or counties. but the title and right of possession of such property so received from the federal government shall at all times rest in the commission for the use and benefit of the state. [C24,§4739; C27, 31, 35,§4626-a1; C39,§**4626.1**; C46, 50, 54, 58, 62, 66, 71, 73,§307.6; C75,§307A.3]

307A.4 Federal appropriations. Where funds have been allotted or appropriated or may hereafter be allotted or appropriated by the government of the United States for the improvement of streets and highways in this state, and the federal statutes or the rules and regulations of the federal government provide or contemplate that such work shall be under the supervision of the commission, said commission is hereby authorized and empowered to let the necessary contracts for such construction work, to supervise and direct such construction work, to comply with the federal statutes and rules, and to co-operate with the federal government in the expenditures of said federal funds.

In order to avoid delays, payment for such street and highway projects or improvements constructed in co-operation with the federal government may be advanced from the primary road fund. [C35,§4626-f1; C39,§**4626.2**; C46, 50, 54, 58, 62, 66, 71, 73,§307.7; C75,§307A.4]

Referred to in §305A.6

307A.5 State-owned lands—assessment. Municipalities and counties may assess the cost of a public improvement when such improvement benefits property owned by the state and under the jurisdiction and control of the highway division of the department. The commission shall pay from the primary road fund such portion of the cost of the improvement as would be legally assessable against the land if privately owned.

Assessments against property under the jurisdiction of the highway division of the department shall be made in the same manner as those made against private property, except that the municipality or county making the assessment shall cause a copy of the public notice of hearing to be mailed to the commission by restricted certified mail.

Assessments against property owned by the state and not under the jurisdiction and control of the highway division of the department shall be made in the same manner as those made against private property and payment thereof shall be made by the executive council from any funds of the state not otherwise appropriated.

No such assessment in excess of twenty thousand dollars shall be valid unless it is provided for by or contained within a capital appropriation by the general assembly. [C97, §1532; S13,§§170-k, 1532; C24, 27, 31, 35, 39, §§**4631, 4634**; C46, 50, 54, 58,§§308.1, 308.5; C62, 66, 71, 73,§307.10; C75,§307A.5]

Referred to in §§312.2(5), 313.4, 384.56

307A.6 Repealed by 66GA, ch 1176,§6.

307A.7 Materials and equipment revolving fund. There is appropriated out of the primary road fund the sum of one hundred thousand dollars which shall be known as the highway materials and equipment revolving fund. From this fund shall be paid all materials and supplies, inventoried stock supplies, maintenance and operational costs of equipment and equipment replacements incurred in the operation of centralized purchasing for the highway division of the department. Direct salaries and expenses properly chargeable thereto shall be paid from said fund. For each month the commission shall render a statement to each department within the highway division for the actual cost of materials and supplies, operational and maintenance costs of equipment, and equipment depreciation used by the highway division. Such expense shall be paid by the division in the same manner as other interdepartmental billings are paid and when such expense is paid by the division, such sum shall be credited to the highway materials and equipment revolving fund. If any surplus accrues to said revolving fund in excess of one hundred thousand dollars for which there is no anticipated need or use, the governor shall order such surplus reverted to the primary road fund. When the highway division shares equipment with other divisions of the department, the director of transportation shall prorate the costs of the equipment among the divisions using the equipment. [C71, 73,§307.12; C75,§307A.7]

307A.8 Longevity pay prohibited. No employee of the highway division of the state department of transportation subject to the provisions of chapter 19A who is hired on or after July 1, 1971, shall be entitled to longevity pay. The provisions of this section shall not apply to any employee of the state highway division subject to chapter 19A who has been employed prior to July 1, 1971, and whose employment continues after June 30, 1971. Any employee of the highway division subject to chapter 19A whose employment is terminated on or after July 1, 1971, shall, if re-employed by the highway division, forfeit any right he may have to longevity pay.

Any employee of the highway division who becomes an employee of the state department of transportation on July 1, 1974, shall retain all rights to longevity pay so long as he continues employment with the state department of transportation. [C73,§307.13; C75,§307A.8; 66GA, ch 67,§69]

CHAPTER 308

MISSISSIPPI RIVER PARKWAY

Referred to in §307.24

Federal funds appropriated, 65GA, ch 50,§3

308.1 Planning commission.
308.2 Assent to federal Act.
308.3 Definitions.
308.4 Transportation commission authority.
308.5 Jurisdiction and control.
308.6 Transferring jurisdiction.
308.7 Duties of the state conservation commission.
308.8 Agreements authorized.
308.9 Establishing locations for the highway.

308.1 Planning commission. The Mississippi parkway planning commission shall be composed of ten members appointed by the governor, five members to be appointed for two-year terms beginning July 1, 1959, and five members to be appointed for four-year terms beginning July 1, 1959. In addition to the above members there shall be seven advisory ex officio members who shall be as follows: One member from the state transportation commission, one member from the state conservation commission, one member from the Iowa state soil conservation commission, one member from the state historical society of Iowa, one member from the faculty of the landscape architectural division of the Iowa State University of science and technology, one member from the Iowa development commission, and one member from the natural resources council. Members and ex officio members shall serve without pay, but the actual and necessary expenses of members and ex officio members may be paid if the commission so orders and if the commission has funds available for such purpose. [C62, 66, 71, 73, 75,§308.1]

308.2 Assent to federal Act. The general assembly of the state of Iowa hereby declares that the intent of this chapter is to assent to any Act of the United States Congress authorizing the development of any national parkway located wholly or partly within the state of Iowa, to the full extent that is necessary to secure any benefits under such Act, provided that the hunting of migratory waterfowl and other game and fishing shall not be prohibited or otherwise restricted by the United States government or any of its designated agencies in control of said project, and to authorize the appropriate state boards, commissions, departments and the governing bodies of counties, cities and villages and especially the state transportation commission to co-operate in the planning and development of all national parkways that may be proposed for development in Iowa, with any agency or department of the government of the United States in which is vested the necessary authority to construct or otherwise develop such national parkways. Whenever authority shall exist for the planning and development of any national parkway, of which any portion shall be located in the state of Iowa, it shall be the duty of the state transportation commission to make such investigations and studies in co-operation with the appropriate federal agency, and such state boards, commissions and departments as shall have an interest in such parkway development, to the extent that shall be desirable and necessary in order to provide that the state shall secure all advantages that may accrue through such parkway development and that the interests of the counties, cities and villages along the route shall be served. [C62, 66, 71, 73, 75,§308.2]

308.3 Definitions. As used in this chapter:

1. *"Secretary", "parkway", "scenic landscape", "sightly or safety easement", "access", "parkway road", "parkway development", "frontage"* and other similar terms have the same meaning as defined in any Act of the Congress of the United States related to a national parkway.

2. *"National parkway"* has the same meaning as defined in Public Law 93-87, first session, Ninety-third Congress of the United States.

3. *"Great river road"* means a scenic and recreational highway consisting of a designated system of roads and streets along the Mississippi river in this state.

4. *"A scenic and recreational highway"* means a public highway designated to allow enjoyment of aesthetic and scenic views, points of historical, archeological and scientific interest, state parks and other recreational areas and includes both the right of way and conservation area.

5. *"Scenic easement"* means a servitude which is acquired by gift, purchase, exchange or condemnation and is designed to permit land to remain in private ownership for its normal agricultural, residential or other use and, at the same time, to restrict and control the future use of the land for the purpose of preserving, restoring or enhancing the natural and historic beauty of the land subject to the scenic easement.

6. *"Right of way"* means land area dedicated to public use for a highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes, but does not include temporary easements or rights for supplementary highway appurtenances.

7. *"Conservation area"* means land in which the state transportation commission or the

state conservation commission has acquired rights other than that land necessary for a right of way. [C62, 66, 71, 73, 75,§308.3]

308.4 Transportation commission authority.

1. The state transportation commission shall make such investigations, surveys, studies and plans in connection with any proposed national parkway or parkway development as it shall deem necessary or desirable to determine if the proposed development is under the terms of the Act of the United States Congress applicable to such parkway or any regulations under such Act and is advantageous to the state. Such parkway development may be any portion of the proposed parkway which is proposed to be constructed as a project under such Act.

2. The state transportation commission, with the co-operation of the state conservation commission, shall also:

a. Plan, designate and establish the exact routing of the great river road, utilizing the general guidelines established in Title 23, United States Code.

b. Acquire all rights in land necessary for reconstruction or relocation of any portions of the great river road where such reconstruction or relocation is imperative for the safety of the traveling public, or where the condition or location of existing segments of the highway is not in keeping with the intent of the provisions of this chapter. Acquisitions of such rights in land shall be by gift, purchase, exchange, or by instituting and maintaining proceedings for condemnation. Gift, purchase, exchange, and condemnation shall include acquisition of a scenic easement. A scenic easement acquired under this chapter shall constitute easements both at law and in equity, and all legal and equitable remedies, including prohibitory and mandatory injunctions, shall be available to protect and enforce the state's interest in such scenic easements. Any scenic easement acquired under this chapter shall be deemed to be appurtenant to the roadway to which it is adjacent or from which it is visible. The duties created by any scenic easement acquired under this chapter shall be binding upon and enforceable against the original owner of the land subject to the scenic easement and his heirs, successors, and assigns in perpetuity, unless the instrument creating the scenic easement expressly provides for a lesser duration. A court shall not declare any scenic easement acquired under this chapter to have been extinguished or to have become unenforceable by virtue of changed conditions or frustration of purpose.

c. Accept and administer state, federal and any other public or private funds made available for the acquisition of rights in land and for the planning and construction or reconstruction of any segment of the great river road and any state and federal funds for the maintenance of that part of the great river road constituting the right of way. [C62, 66, 71, 73, 75,§308.4]

Referred to in §308.7

308.5 Jurisdiction and control. Jurisdiction and control of the great river road shall be vested in the state transportation commission. [C75,§308.5]

308.6 Transferring jurisdiction. The state transportation commission, with the concurrence of the state conservation commission, shall transfer jurisdiction of any adjacent conservation area to the state conservation commission upon completion of any new segment of the great river road. [C75,§308.6]

308.7 Duties of the state conservation commission. The state conservation commission, with the co-operation of the state transportation commission, shall:

1. Control the conservation area acquired by the state transportation commission.

2. Protect all scenic easements.

3. Maintain, improve, and beautify according to plans made under section 308.4, subsection 2, paragraph *"a"*, all conservation areas, including the establishment of off-road-vehicle trails, equestrian trails and hiking paths.

4. Accept and administer state, federal and any other public or private funds made available for the maintenance, improvement and beautification of conservation areas. [C75, §308.7]

308.8 Agreements authorized. The state transportation commission and the state conservation commission may enter into agreements with the United States secretary of transportation, as provided under the United States Code, Title 23 relating to scenic and recreational highway system, and with any other agency and jurisdiction, and take action in the name of the state to comply with the terms of any agreement. [C75,§308.8]

308.9 Establishing locations for the highway.

1. When, as a result of its investigations and studies, the state transportation commission, in co-operation with the state conservation commission, finds that there may be a need in the future for the development and construction or reconstruction of segments of the great river road and when the state transportation* commission determines that in order to prevent conflicting costly economic development on areas of lands to be available for the great river road when needed for such future development, there is need to establish and to inform the public of the approximate location and widths of new or improved segments of the great river road to be needed, the state transportation commission may proceed to establish such location and the approximate widths in the manner provided in this section. The state transportation commission shall give

notice and hold a public hearing on the matter in a convenient place in the area to be affected by the proposed improvement of the great river road. The state transportation commission shall consider and evaluate the testimony presented at the public hearing and it shall make a study and prepare a map showing location of the proposed new or reconstructed segment of the great river road and the approximate widths of right of way needed. There shall be shown on such map the existing roadway and the property lines and record owners of lands to be needed. The approval of such map shall be recorded by reference in the state transportation commission's minutes, and a notice of such action and a copy of the map showing the lands or interest in the lands needed in any county shall be filed in the office of the county recorder of such county. Notice of the action and of the filing shall be published once in a newspaper of general circulation in such county, and within sixty days following the filing, notice of the filing shall be served in registered mail on the owners of record on the date of filing and on the functional classification board of the county. Using the same procedures for approval, notice and publications, and notice to the affected record owners, the state transportation commission may, from time to time, amend the map.

2. After such location is established, within the area of the great river road as shown on the map or in such proximity to it as to result in consequential damages when the rights in land for the great river road are acquired, a person shall not erect or move in any additional structure or rebuild, alter or add to any existing structure, without giving to the state transportation commission by registered mail sixty days' notice of such contemplated construction, alteration, or addition describing the same. However, this prohibition and requirement shall not apply to any normal or emergency repairs or replacements which are necessary to maintain an existing structure of a facility in approximately its previously existing functioning condition. When the rights in land for a segment of the great river road are acquired, damages shall not be allowed for any construction, alterations, or additions in violation of tfiis subsection.

3. Without limiting any authority otherwise existing, rights in land needed for the great river road may be acquired at any time by the state, the county, or the municipality in which such segment of the great river road is located. If an owner's contiguous land is acquired to an extent which is less than the total amount shown on the map as needed, consequential damages to the land not acquired shall be allowed as found to exist. [C62, 66, 71, 73,§308.5; C75,§308.9]

CHAPTER 308A

RECREATIONAL BIKEWAYS

Referred to in §307.24

308A.1 Conservation and transportation commissions to co-operate.
308A.2 Funds.
308A.3 Certain elevated structures prohibited.

308A.1 Conservation and transportation commissions to co-operate. The state conservation commission, in consultation with the state transportation commission, is hereby authorized to establish recreational bikeways within this state for the use, enjoyment, and participation of the public in nonmotorized bicycling. The routes established for such bikeways shall be designed to maximize the safety of cyclists and motorists and may utilize secondary roads when the normal flow of motor vehicle traffic will not be hindered, as well as other infrequently traveled roads, streets, parkways, and appropriate thoroughfares. Such bikeways shall be routed, wherever possible, to allow the enjoyment of scenic views and points of historical interest, and may connect state parks and other recreational areas throughout the state.

Bikeway routes shall be clearly marked with appropriate signs to guide cyclists and to alert motorists. Such signs shall be placed at intervals and designed in such form as prescribed by the conservation commission in consultation with the state transportation commission.

The conservation commission is hereby authorized to co-operate with county conservation boards, boards of supervisors, city councils, or any private organizations interested in the establishment of bikeways, and may consult with such groups in the planning of appropriate bikeway routes and related activities. [C71, 73, 75,§308A.1]

308A.2 Funds. The state conservation commission may accept in the name of the state funds contributed by such groups; and such funds shall be used exclusively in the establishment of bikeways as herein provided. Additional funds as may be necessary in purchasing signs and otherwise carrying out the provisions of this chapter may be expended by the conservation commission if authorized by the general assembly pursuant to appropriations for such purposes; and the commission

shall be authorized to accept and expend federal funds made available for the purposes of aiding in the implementation of this chapter. [C71, 73, 75,§308A.2]

308A.3 Certain elevated structures prohibited. Bikeways and walkways approved as either incidental features of highway construction projects primarily for motor vehicular traffic or as an independent bikeway or walkway construction project constructed pursuant to the Highway Act of 1973, 23 U.S.C. 217, shall not be constructed as elevated structures joining private buildings or so constructed to provide elevated access or egress facilities to private buildings. [66GA, ch 1165,§1]

CHAPTER 309

SECONDARY ROADS

Referred to in §307.24

SECONDARY ROAD AND BRIDGE SYSTEMS IN GENERAL

309.1 Definition.
309.2 Repealed by 54GA, ch 103,§22.
309.3 Secondary bridge system.
309.4 to 309.6 Repealed by 57GA, ch 139,§1.
309.7 Levy for construction and maintenance.
309.8 Secondary road fund.
309.9 General pledge.
309.10 Repealed by 66GA, ch 167,§15.
309.11 Systems abolished.
309.12 Construction of terms.
309.13 to 309.15 Repealed by 57GA, ch 139,§1.
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309.44 Repealed by 53GA, ch 125,§8.
309.45 Repealed by 53GA, ch 125,§6.

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309.64 Repealed by 54GA, ch 103,§22.
309.65 Repealed by 53GA, ch 125,§10.
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309.67 Duties of county board of supervisors and the county engineer.
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309.69 Enforcement of duty.
309.70 Construction by department.
309.71 Payment.
309.72 Repealed by 53GA, ch 125,§11.
309.73 Bridges and culverts on city boundary line.
309.74 Width of bridges and culverts.
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309.76 to 309.78 Repealed by 60GA, ch 186, §§1–3.
309.79 Bridge specifications.
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309.86 Submission of question.
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309.89 Levy—bond.
309.90 Repealed by 53GA, ch 125,§12.
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309.93 Itemized statement.
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309.95 Amendments.
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SECONDARY ROAD AND BRIDGE SYSTEMS IN GENERAL

309.1 Definition. As used in this chapter, unless the context otherwise requires, *"department"* means the state department of transportation. [C75,§309.1]

309.2 Repealed by 54GA, ch 103,§22.

309.3 Secondary bridge system. The secondary bridge system of a county shall embrace all bridges and culverts on secondary roads as defined in section 306.3, subsection 4. [C24, 27,§§4664, 4665; C31, 35,§4644-c3; C39, §**4644.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.3; 66GA, ch 167,§3]

309.4 to 309.6 Repealed by 57GA, ch 139,§1.

309.7 Levy for construction and maintenance. The board of supervisors may annually, as a part of its regular budget preparation, levy for secondary road construction and maintenance purposes:

1. A tax of not to exceed three dollars and three-eighths cent per thousand dollars of assessed value of all taxable property in the county except on property within cities.

2. A tax not to exceed sixteen and seven-eighths cents per thousand dollars of assessed value of all taxable property in the county. [C97, SS15,§1303; C24, 27,§§4635, 4795; C31, 35,§§4644-c6,-c7,-c11,-c15; C39,§§**4644.06, 4644.07, 4644.11, 4644.14**; C46, 50, 54,§§309.6, 309.7, 309.11, 309.14; C58, 62, 66, 71, 73, 75,§309.7; 66GA, ch 167,§4]

Referred to in §24.37

309.8 Secondary road fund. There is hereby created a secondary road fund which fund shall consist of:

1. All funds derived from the secondary road tax levies.

2. All funds allotted to the county from the state road use tax fund.

3. All funds provided by individuals for the improvement of any secondary road from their own contributions.

4. All other funds which may by law be dedicated to said fund. [C24, 27,§§4635, 4794; C31, 35,§§4644-c8,-c13; C39,§§**4644.08, 4644.12**; C46, 50, 54,§§309.8, 309.12; C58, 62, 66, 71, 73, 75, §309.8]

Allocation of funds, §312.2
Payments from federal funds, §467B.13
See §311.7

309.9 General pledge. The secondary road fund is hereby pledged to and shall be used for any or all of the following purposes at the option of the board of supervisors:

1. Construction and reconstruction of secondary roads and costs incident thereto.

2. Maintenance and repair of secondary roads and costs incident thereto.

3. Payment of all or part of the cost of construction and maintenance of bridges in cities having a population of eight thousand or less and all or part of the cost of construction of roads located within a city of less than four hundred population, which lead to state parks.

4. Special drainage assessments levied on account of benefits to secondary roads.

5. Payment of interest on and principal of any bonds of the county issued on account of secondary roads, bridges or culverts constructed by the county.

6. Any legal obligation or contract in connection with secondary roads and bridges which is required by law to be taken over and assumed by the county, and

7. Secondary road equipment, materials, supplies and garages or sheds for the storage, repair and servicing thereof.

8. For the assignment or designation of names or numbers to roads in the county and to erect, construct or maintain guideposts or signs at the intersections thereof. [C24,§§4635, 4795, 4798, 4800, 4801; C27,§§4635-b1, 4795-b1, 4797, 4798, 4800, 4801; C31, 35,§§4644-c9,-c10, -c11,-c13,-c14,-c17; C39,§§**4644.09–4644.13, 4644.15**; C46, 50, 54,§§309.9–309.13, 309.15; C58, 62, 66, 71, 73, 75,§309.9]

309.10 Repealed by 66GA, ch 167,§15.

309.11 Systems abolished. The classification of secondary roads into "county trunk roads" and "local county roads" is hereby abolished. Wherever in any statute the words, "county trunk roads", "county road" or "local county road" appear, they shall be construed to mean "secondary road". [C31, 35,§§4644-c4, 5079-d1; C39,§§**4644.04, 5029.11**; C46, 50, 54, §§309.04, 321.351; C58, 62, 66, 71, 73, 75,§309.11]

309.12 Construction of terms. The classification of county road funds into "secondary road construction funds" and "secondary road maintenance funds" is hereby abolished. Wherever in any statute the words, "secondary road construction fund" or "secondary road maintenance fund" appear, they shall be construed to mean, "secondary road fund". [C24, 27,§§4635, 4797; C31, 35,§4644-c13; C39, §**4644.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.12]

309.13 to 309.15 Repealed by 57GA, ch 139,§1.

309.16 Duty of department. The department shall when requested by the board of supervisors advise with said boards as to the manner of constructing and maintaining the secondary roads. [C31, 35,§4644-c18; C39, §**4644.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.16]

COUNTY ENGINEER

309.17 Engineer—term. The board of supervisors shall employ one or more registered civil engineers who shall be known as county engineers. The board shall fix their term of employment which shall not exceed three years, but the tenure of office may be terminated at any time by the board. [C24, 27,§4641; C31, 35,§4644-c19; C39,§**4644.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.17]

309.18 Compensation. The board shall fix the compensation of said engineer or engineers, and pay the same, together with all engineering costs, from the general county fund, or from the secondary road construction fund or from the secondary road maintenance fund, or from any or all of said funds.

Said engineers shall, in the performance of their duties, work under the directions of said board and shall give bonds for the faithful performance of their duties in a sum not less than two thousand nor more than five thousand dollars, to be approved by the board. [C24, 27,§4641; C31, 35,§4644-c20,-c21; C39, §§**4644.18, 4644.19**; C46, 50, 54, 58, 62, 66,§§309.18, 309.19; C71, 73, 75,§309.18]

309.19 Adjacent counties joining in employment. The boards of supervisors of two or more adjacent counties may enter into an agreement to jointly employ a county engineer, employ professional and clerical assistants for the engineer, and to provide such services as can be carried on jointly and will operate to their mutual benefit. Such agreement shall be written and entered in their respective minutes. The engineer employed under such agreement shall be the official county engineer for each of the respective boards and shall be employed for such term of years as shall be determined by the boards but in no event longer than the period of time the mutual agreement between the boards is to be in effect. The written agreement shall provide for the determination of the cost of such joint program and the manner of allocation of the cost to each board for inclusion in the respective budgets. The boards by mutual agreement shall designate one board to make payments for salaries and other costs of the joint program. The board shall be reimbursed by the other board or boards in accordance with the joint agreement. The provisions of chapter 28E shall be applicable to this section. [C71, 73, 75,§309.19]

309.20 Engineers—itemized account. County engineers and their assistants shall file an itemized and verified account with the board of supervisors for the reimbursement of all expenses incurred. Mileage may be claimed as provided in section 79.9. [C24, 27,§4642; C31, 35,§4644-c22; C39,§**4644.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.20]

309.21 Supervision of construction and maintenance work. All construction and maintenance work shall be performed under the direct and immediate supervision of the county engineer who shall be deemed responsible for the efficient, economical and good-faith performance of said work. [C31, 35,§4644-c23; C39,§**4644.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.21]

Referred to in §309.67

CONSTRUCTION PROGRAM

309.22 Construction project — progress report by engineer. On or before the first day of December of each year the board of supervisors shall, subject to the approval of the department, adopt a project accomplishment list for the next calendar year, and a project priority list for the succeeding four years based upon the construction funds, local secondary and farm-to-market, estimated to be available for such year. Subject to departmental approval, any project on the approved priority list may be advanced to and constructed in the accomplishment year and the project accomplishment list may be revised due to unforeseen conditions.

At the close of each year, the county engineer as a part of his annual report to the said department shall include a statement of the progress made toward the completion of each project contained in the approved project accomplishment list on which work was accomplished, a statement of the total amount expended on each such project during the year, and a statement of what portion of the work on each such project was done on contract and the amount so expended on each contract for each such project. [C31, 35,§4644-c24; C39, §**4644.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.22; 66GA, ch 167,§5]

309.23 Repealed by 57GA, ch 139,§1.

309.24 Uniform and unified plan required. Said program or project shall be planned on the basis of one general, uniform, and unified plan for the complete and permanent construction of the roads embraced therein as to bridge, culvert, tile, and grading or other improvements. [C31, 35,§4644-c26; C39,§**4644.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.24]

309.25 Material considerations for farm-to-market roads. In planning and in adopting said program or project by the board of supervisors, said board and the county engineer shall give due and careful consideration, (1) to the location of primary roads, and of roads heretofore improved as county roads, (2) to the market centers and main roads leading thereto, and (3) to rural mail and school bus routes, it being the intent of this chapter that said program or project will, when finally executed, afford the highest possible systematic, intracounty and intercounty connections of all roads of the county. [C31, 35,§4644-c27; C39, §**4644.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.25]

Farm-to-market roads, ch 310

309.26 Provisional selection of roads. The board after due consultation with the county engineer, shall first select in a provisional way the roads which they then consider advisable to embrace in said program, and direct said engineer to make a reconnaissance survey and estimate of all said roads, or of such part thereof as, in view of the public necessity and convenience, present the most urgent need and necessity for early construction. [C24, 27, §4643; C31, 35,§4644-c28; C39,§**4644.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.26]

309.27 Report of engineer. In addition to the foregoing, the engineer, when so ordered by the board, shall make written report to

the board and shall designate therein in their order of importance the roads which, in his judgment, are most urgently in need of construction. [C24, 27,§4643; C31, 35,§4644-c29; C39, §4644.27; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.27]

309.28 Recommendations. The engineer may in his report recommend that certain definitely described roads or parts thereof be omitted from the provisional program or project, or that certain definitely described roads or parts thereof be added thereto, and in such case he shall clearly enter on his report the reasons therefor. [C31, 35,§4644-c30; C39,§4644.28; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.28]

309.29 Map required. A map of the county showing the location of the proposed program or project shall accompany the report of the engineer. [C24, 27,§4644; C31, 35,§4644-c31; C39, §4644.29; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.29]

309.30 Additional estimates. Additional reconnaissance surveys and estimates may be ordered by the board when it deems the same necessary or advisable. [C31, 35,§4644-c32; C39, §4644.30; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.30]

309.31 to 309.33 Repealed by 57GA, ch 139, §1.

309.34 Record required. After the construction program or project is finally determined, the county auditor shall record the same at length in a county road book. [C24, 27,§4646; C31, 35,§4644-c36; C39,§4644.34; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.34]

309.35 Surveys required. Before proceeding to the construction of any road or roads included in said program where the grading, exclusive of bridges and culverts, is estimated to cost over three thousand dollars per mile, the county engineer shall cause detailed surveys and plans for said road or roads to be prepared. [C24, 27,§4643; C31, 35,§4644-c37; C39, §4644.35; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.35]

309.36 Nature of survey. The engineer's survey shall be on the basis of the permanent improvement of said roads, as to bridge, culvert, tile, and road work. [C24, 27,§4644; C31, 35,§4644-c38; C39,§4644.36; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.36]

309.37 Details of survey. Said survey shall show:

1. A division into sections of all of the roads embraced in said provisional program, a designation of each section by some appropriate number, name, or letter, the starting point and terminus of each section, and the mileage of each section.

2. An accurate plan and profile of the roads surveyed, showing (*a*) cuts and fills, (*b*) outline of grades, (*c*) all existing permanent bridges, culverts and grades, and (*d*) proper bench marks on each bridge and culvert.

3. The drainage, both surface and subdrainage, necessary to prepare said roads for complete construction.

4. The location of all lines of tile and size thereof.

5. All necessary bridges and culverts, their length, height, and width and foundation soundings.

6. An estimate of the watershed having relation to each bridge and culvert.

7. An estimate of the construction cost of said roads on the basis of permanent bridges, culverts, tile, and road work. [C24, 27,§4644; C31, 35,§4644-c39; C39,§4644.37; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.37]

309.38 Existing surveys. The engineer may adopt any existing survey of any road or part thereof which is embraced in said program or project, provided such existing survey substantially complies, or is made to comply, with the requirements of this chapter. [C31, 35, §4644-c40; C39,§4644.38; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.38]

Additional provision as to surveys and reports, §309.56

309.39 Contracts and specifications. The various contracts for the carrying out of said construction program or project in the most efficient, practicable and economical manner shall, as far as possible, be accompanied by standard specifications, and no traveled roadway shall be less than twenty-two feet from shoulder to shoulder. [C31, 35,§4644-c41; C39, §4644.39; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.39]

309.40 Advertisement and letting. All contracts for road or bridge construction work and materials therefor of which the engineer's estimate exceeds twenty thousand dollars, except surfacing materials obtained from local pits or quarries, shall be advertised and let at a public letting. [C24, 27,§4647; C31, 35,§4644-c42; C39,§4644.40; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.40; 66GA, ch 168,§1]

Referred to in §§309.41, 309.56

309.41 Optional advertisement and letting. Contracts not embraced within the provisions of section 309.40 shall be either advertised and let at a public letting; or, where the cost does not exceed the engineer's estimate, let through informal bid procedure by contacting at least three qualified bidders prior to letting the contract. The informal bids received together with a statement setting forth the reasons for use of the informal procedure and bid acceptance shall be entered in the minutes of the board of supervisors meeting at which such action was taken.

Nothing contained in this section shall be deemed to prohibit the board of supervisors from purchasing material and using county equipment and regularly employed county road personnel on a project within their capability as determined by the county engineer. [C24, 27,§4648; C31, 35,§4644-c43; C39,§4644.41; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.41; 66GA, ch 168,§2]

309.42 Approval of road contracts. Contracts for road construction work which, according to the engineer's estimate, involve a

cost of five thousand dollars or more per mile, or more than twenty thousand dollars in the aggregate shall be first approved by the department before the same shall be effective as a contract. [C31, 35§4644-c44; C39,§**4644.42**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.42; 66GA, ch 168,§3]

Referred in §309.56

309.43 Record of bids. All bids received shall be publicly opened, at the time and place specified in the advertisement, and shall be recorded in detail, in the road book, by the county auditor; and the county engineer shall in all instances of day labor, private or public contracts, file a detailed cost accounting sheet with the county auditor; said book and cost sheets shall at all times be open to public inspection. [C24, 27,§4649; C31, 35,§4644-c45; C39, §**4644.43**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.43]

309.44 Repealed by 53GA, ch 125,§8, see §314.7.

309.45 Repealed by 53GA, ch 125,§6, see §314.5.

ANTICIPATION OF FUNDS

309.46 Construction fund anticipated. The board before issuing anticipatory certificates shall seek the advice of the department and issue said certificates to an amount not exceeding fifty percent of the estimated funds which will accrue to the secondary road fund during any stated period of from one to two years. [C31, 35,§4644-c48; C39,§**4644.46**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.46]

309.47 Anticipatory resolution. Such certificates shall be authorized by a duly adopted resolution which shall specify:

1. The secondary road funds, specifying the year or years, which are to be anticipated.
2. The amount of certificates authorized.
3. The denomination of each certificate.
4. The rate of interest which each certificate shall bear which shall not exceed five percent per annum, payable annually.
5. The authorization of the chairman of the board of supervisors and of the county auditor, respectively, to sign and countersign such certificates. [C31, 35,§4644-c49; C39,§**4644.47**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.47]

309.48 Recitals. Each certificate shall recite:

1. The annual accruing secondary road funds (naming the year) of which the certificate is anticipatory.
2. That said certificate shall be payable on or before December 31 of said year.
3. That said certificate is payable solely from said accruing secondary road funds. [C31, 35, §4644-c50; C39,§**4644.48**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.48]

309.49 Consecutive numbering and payment. The series of certificates which anticipate the accruing of funds during a given year shall be numbered consecutively and paid in the order of said numbering. [C31, 35,§4644-c51; C39,§**4644.49**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.49]

309.50 Execution. Upon the signing of each of said certificates by the chairman of the board, said certificates shall be delivered to the county auditor, who shall countersign the same, charge the county treasurer with the amount thereof, and deliver the same to such latter officer, who shall be responsible therefor on his bond. [C31, 35,§4644-c52; C39,§**4644.50**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.50]

309.51 Taxation. Said certificates shall be exempt from taxation. [C31, 35,§4644-c53; C39, §**4644.51**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.51]

309.52 Duty of treasurer. The treasurer shall sell said certificates in accordance with the provisions of chapter 75, and shall credit the amount received to said secondary road fund, or if unable to sell said certificates for par plus accrued interest, the treasurer may apply said certificates at par plus accrued interest in payment of any warrants duly authorized and issued for secondary road work. [C31, 35,§4644-c54; C39,§**4644.52**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.52]

309.53 Registration of certificate holders. The county treasurer shall enter on a record to be kept by him the name and post-office address of all persons to whom any of said certificates are issued, with a particular designation of the certificates delivered to each person. [C31, 35,§4644-c55; C39,§**4644.53**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.53]

309.54 Registration of new holder. Any subsequent holder may present his certificates to the county treasurer and cause his name and post-office address to be entered in lieu of that of such former holder. [C31, 35,§4644-c56; C39,§**4644.54**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.54]

309.55 Terminating interest. When the accruing funds in the hands of the county treasurer, for a year covered by anticipatory certificates, are sufficient to pay the first retirable certificate or certificates, the county treasurer shall, by mail, as shown by his records, promptly notify the holder of such certificate of such fact, and thirty days from and after the mailing of such letter all interest on such certificates shall cease. [C31, 35,§4644-c57; C39,§**4644.55**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.55]

MISCELLANEOUS PROVISIONS

309.56 Project plans. The plans for each project, on which contracts will be let pursuant to the provisions of sections 309.40, 309.42 and 309.80 as soon as approved by the board of supervisors, shall be submitted to the department, and the board of supervisors may designate to the department which projects, in their estimation, should be first passed upon

by said department. The department shall pass on such reports and plans, and in so doing, shall take into consideration the thoroughness, feasibility, and practicability of such plans. [SS15,§§1527-s8,-s21a; C24, 27, 31, 35, 39, §4645; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.56; 66GA, ch 167,§6]

Existing surveys, §309.38

309.57 Repealed by 53GA, ch 125,§2, see §314.1.

309.58 Action on bond—limitation. No provision in a contract shall be valid which seeks to limit the time to less than five years in which an action may be brought upon the bond covering concrete work nor to less than one year upon the bond covering other work. [S13,§1527-s18; C24, 27, 31, 35, 39,§4652; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.58]

309.59 Repealed by 53GA, ch 125,§4, see §314.3.

309.60 Repealed by 53GA, ch 125,§5, see §314.4.

309.61 Advance payment of payrolls. The board of supervisors may authorize the county auditor to draw warrants for the amount of payrolls for labor furnished under the day labor system, when said payrolls are certified to by the engineer in charge of the work. Said bills shall be passed on by the board at the first meeting following said payment. [SS15,§1527-s11; C24, 27, 31, 35, 39,§4655; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.61]

309.62 Repealed by 53GA, ch 125,§9, see §314.8.

309.63 Gravel beds. The board of supervisors of any county may, within the limits of such county and without the limits of any city, purchase or condemn any lands for the purpose of obtaining gravel or other suitable material with which to improve the secondary highways of such county, including a sufficient roadway to such land by the most reasonable route, or the board may purchase such material outside the limits of their county, and in either case pay for the same out of the secondary road funds. [S13,§4024-i; C24, 27, 31, 35, 39, §4657; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.63]

309.64 Repealed by 54GA, ch 103,§22, see §306.13.

309.65 Repealed by 53GA, ch 125,§10, see §314.9.

309.66 Use of gravel beds. The board of supervisors may permit private parties or municipal corporations to take materials from such acquired lands in order to improve any street or highway in the county, but it shall be a misdemeanor for any person to use or for the board of supervisors to dispose of any such material for any purpose other than for the improvement of such streets or highways. [S13,§§2024-i1,-i2; C24, 27, 31, 35, 39,§4659; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.66]

Punishment, §687.7

309.67 Duties of county board of supervisors and the county engineer. The county board of supervisors is charged with the duty of establishing policies and providing adequate funds to properly maintain the secondary road system. The county engineer, pursuant to section 309.21 and board policy, shall adopt such methods and recommend such personnel and equipment necessary to maintain continuously, in the best condition practicable, the entire mileage of said system. [S13,§1527-s15; C24, 27, 31, 35,§4660; C39,§§4660, 4778; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.67; 66GA, ch 167,§7]

Duty to remove obstruction, ch 319

309.68 Intercounty highways. Boards of supervisors of adjoining counties in this state shall, subject to the approval of the department:

1. Make proper connections between roads which cross county lines and which afford continuous lines of travel.

2. Adopt plans and specifications for road, bridge, and culvert construction, reconstruction, and repairs upon highways along and across county boundary lines, and make an equitable division between said counties of the cost and work attending the execution of such plans and specifications.

3. Make joint agreements for the location, construction, and maintenance of roads under their jurisdiction wholly within one county to provide road access to lands in an adjoining county, when such location provides the most economical and practical method of providing such road access. The expense of constructing and maintaining such a road shall be equitably shared by the counties in such proportion as the boards may determine. [C24, 27, 31, 35, 39, §4661; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.68]

309.69 Enforcement of duty. In case such boards fail to perform such duty, the department may, on its own motion, or in case said boards are unable to agree and one of said boards appeals to said department, said department shall notify the auditors of the interested counties that it will, on a day not less than ten days hence, at a named time and place within any of said counties, hold a hearing to determine all matters relating to such duty. At said hearing the department shall fully investigate all questions pertaining to said matters, and shall, as soon as practicable, certify its decision to the different boards, which decision shall be final, and said boards shall forthwith comply with said order in the same manner as though such work was located wholly within the county. [C24, 27, 31, 35, 39,§4662; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.69]

309.70 Construction by department. If the said boards or either of them, should, for a period of sixty days, fail to comply with said decision, the said department shall proceed to locate, construct, alter, or improve said road,

bridge, or culvert in accordance with said decision. [C27, 31, 35,§4662-a1; C39,§4662.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.70]

309.71 Payment. If said road be a secondary road or if the improvement be a bridge or culvert on a secondary road, bills therefor duly audited by said department in accordance with said decision shall be forwarded to the auditors of the respective counties, and said auditors shall forthwith draw warrants for the amounts so audited, and the county treasurers shall pay the same as other county warrants. [C27, 31, 35,§4662-a3; C39,§4662.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.71]

309.72 Repealed by 53GA, ch 125,§11, see §314.10.

309.73 Bridges and culverts on city boundary line. Bridges and culverts on highways or on parts thereof, which are located along the corporate limits of cities and which are partly within and partly without such limits and which highways are in whole or in part secondary roads, shall be constructed under plans and specifications, jointly agreed on by the city council and board of supervisors, and approved by the department. The city and county shall share proportionally in the cost. All matters in dispute between such city and county relative to such bridges and culverts shall be referred to the department and its decision shall be final and binding on both the city and county.

A county may contract with cities therein, for the joint construction and financing of a bridge. Such contracts may provide for the acquisition of right of way for, and construction of, highways connecting such bridge to existing city streets or secondary roads. Such bridge and highways shall be constructed under plans and specifications jointly agreed on by the respective contracting bodies. Such contract shall set forth the amount of money to be contributed by each contracting party and may provide for the amount of money to be contributed annually by each contracting party for the maintenance of the said public improvements. When such county and cities have agreed upon their respective portions of the cost of such bridge and highways they may pay same from their respective secondary road fund, street fund, or other funds available for highway or bridge purposes, or they may issue general obligation bonds to provide funds for the payment of their respective shares of such cost. Bonds issued by a city must be issued in accordance with provisions of law relating to general corporate purpose bonds of a city.

Taxes for the payment of county bonds shall be levied in accordance with chapter 76 and said bonds shall be payable in not more than twenty years and bear interest at a rate not exceeding five percent per annum, and shall be of such form as the respective councils or board of supervisors shall by resolution provide, but no city or county shall become indebted in excess of five percent of the actual value of taxable property within its taxing jurisdiction as shown by the last preceding state and county tax lists. The indebtedness incurred for the purpose provided in this section shall not be considered an indebtedness incurred for general or ordinary purposes. [SS15,§1527-s3; C24, 27, 31, 35, 39,§4666; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.73; 66GA, ch 167,§8]

309.74 Width of bridges and culverts. All culverts shall have a clear width of roadway of at least twenty feet. Bridges shall have a clear width of roadway of at least sixteen feet. [C51,§517; R60,§822; C73,§1001; C97,§1572; S13, §1527-s7; C24, 27, 31, 35, 39,§4667; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.74]

309.75 Definitions. The term *"culvert"* shall include any structure not classified as a bridge which provides an opening under any roadway, except that such term shall not include tile crossing the road, or intakes thereto, where such tile are a part of a tile line or system designed to aid subsurface drainage.

The term *"bridge"* shall include any structure including supports, erected over a depression or an obstruction, as water, a highway or railroad, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of the roadway of more than twenty feet between the undercopings of abutments or extreme ends of openings for multiple boxes.

The length of a bridge structure is the overall length measured along the line of survey stationing back to back of backwalls and abutments, if present, or otherwise from end to end of the bridge floor, but in no case less than the total clear opening of the structure. [C24, 27, 31, 35, 39,§4668; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.75; 66GA, ch 167,§9]

309.76 to 309.78 Repealed by 60GA, ch 186, §§1–3.

309.79 Bridge specifications. Standard specifications for all bridges and culverts, railroad overhead crossings, or subways, shall be furnished without cost to the counties and railroad companies by the department, and work shall be done in accordance therewith. [SS15, §1527-s11; C24, 27, 31, 35, 39,§4671; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.79]

309.80 Approval of contract. Any proposed contract which shall exceed the sum of ten thousand dollars for any one bridge or culvert shall be first approved by the department before the same shall be effective as a contract. [SS15,§1527-s11; C24, 27, 31, 35, 39,§4672; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.80; 66GA, ch 168,§4]

Referred to in §309.56

309.81 Record of plans. Before beginning the construction of any permanent bridge or culvert by day labor or by contract, the plans,

specifications, estimate of drainage area, estimates of costs, and specific designation of the location of the bridge or culvert shall be filed in the county auditor's office by the engineer. [SS15,§1527-s11; C24, 27, 31, 35, 39,§**4673**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.81]

309.82 Record of final cost. On completion of any bridge or culvert, a detailed statement of cost, and of any additions or alterations to the plans shall be filed by the engineer and recorded by the auditor in connection with the records of bids, all of which shall be retained in the county auditor's office as permanent records, and when said work is completed and approved, a duplicate statement of the costs thereof shall be filed with the department by the county auditor. [SS15,§1527-s11; C24, 27, 31, 35, 39,§**4674**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §309.82]

309.83 Bridges over ditches. Bridges erected over drainage ditches shall when necessary be so constructed as to allow the superstructure to be removed for cleaning said ditches with as little damage to the removable and permanent parts of said bridge as possible. [SS15,§1527-s11; C24, 27, 31, 35, 39,§**4676**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.83]

309.84 Bridges on county line roads. Bridges on county line roads may, under joint agreement between the boards of the adjoining counties, be located, constructed, and maintained wholly within one county in order to secure a proper site or in order to avoid unnecessary expense. The resulting work and expense shall be carried on and shared in such proportion as said boards may determine. [C97,§426; C24, 27, 31, 35, 39,§**4677**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.84]

309.85 Bridges over state boundary line streams. Ten percent of the legal voters, as shown by the returns of the last general election, of any county bordering upon a stream of water which forms the boundary line of this state, may petition the board of supervisors to submit to the voters the question whether such county shall be authorized to construct and maintain a bridge extending from such county across such boundary line river. Said petition shall state the amount to be expended for said purpose. [S13,§§424-a,-b; C24, 27, 31, 35, 39,§**4678**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.85; 66GA, ch 167,§10]

309.86 Submission of question. The board shall direct the county commissioner of elections to submit such question at the first general election occurring not less than sixty days after the filing of said petition. [S13,§424-b; C24, 27, 31, 35, 39,§**4679**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.86]

309.87 Notice. Notice of the submission of such question shall be published for two consecutive weeks in at least three newspapers published and of general circulation in the county, except in counties having less than three newspapers, said notices shall be published in all of the newspapers, the last of which publications shall be at least three days and not more than ten days before the holding of such election. [S13,§424-b; C24, 27, 31, 35, 39,§**4680**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.87]

309.88 Construction and maintenance. If a majority of the voters vote in favor of such authorization, the board shall have authority to construct and maintain said bridge, and may agree with the adjoining state, or with any other municipal division thereof, as to what part of said bridge said county will construct and maintain, or as to what percentage of the cost of construction and maintenance said county shall pay, and such county shall be under no greater liability than as evidenced by such agreement. [S13,§§424-b,-c; C24, 27, 31, 35, 39,§**4681**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §309.88]

309.89 Levy—bond. In order to build and maintain such bridge, the board may, from year to year and on all the property in the county, levy an annual tax of not to exceed six and three-fourths cents per thousand dollars of assessed value. The board may, in the manner provided for funding outstanding county indebtedness, issue the bonds of the county in the amount of the authorized expenditure. The maturity of such bonds may be distributed through a period of twenty years. In case bonds are so issued, the board shall maintain sufficient levies to meet the principal and interest as in other cases of bonds issued for outstanding county indebtedness. [S13,§424-b; C24, 27, 31, 35, 39,§**4682**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.89]

Certain bonds legalized, 52GA, ch 321
County funding bonds, ch 346
Maturity and payment of bonds, ch 76
Sale of bonds, ch 75

309.90 Repealed by 53GA, ch 125,§12, see §314.11.

309.91 Maintenance. Where there is a contract for joint maintenance of the entire structure, the county's liability for such maintenance shall only extend to that part or portion which is within the boundary line of this state. [S13,§424-d; C24, 27, 31, 35, 39,§**4684**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§309.91]

309.92 Repealed by 53GA, ch 125,§3, see §314.2.

COUNTY SECONDARY ROAD BUDGETS

309.93 Itemized statement. On or before December 1 of each year, the board of supervisors, with the assistance of the county engineer, shall adopt and submit to the department for approval the county secondary road budget for the next calendar year. The budget shall include an itemized statement of:

1. Estimated revenues to be raised by property taxation for secondary road purposes.

2. Estimated revenues to be received from the state road use tax fund.

3. Estimates of revenues from all other sources for secondary road purposes.

4. The proposed expenditures from each road fund during the next calendar year. The estimates of such proposed expenditures shall be itemized and classified in a manner which the department shall prescribe.

5. The actual expenditures for the last two prior years and the estimated expenditures for the current year. These shall be itemized and classified in the same manner as proposed expenditures.

6. The cash balance of each road fund at the end of the last prior year, an estimate of the cash balance at the end of the current year, and an estimate of the cash balance at the end of the next calendar year. [C58, 62, 66, 71, 73, 75,§309.93]

Referred to in §§309.97, 343.11

309.94 Review by department. The department shall have the power to approve or disapprove the budget adopted by the board of supervisors. If the budget is not approved, the department shall list the disapproved expenditures and shall state the reasons for disapproval when the budget is returned to the county. The department shall act upon a budget and return the budget to the county within forty-five days after the budget is received by the department. Upon disapproval of any proposed expenditure in a budget, the county may submit a revised budget to the department for approval. The department shall act upon such a revised budget within thirty days. [C58, 62, 66, 71, 73, 75,§309.94; 66GA, ch 167,§11]

Referred to in §309.97

309.95 Amendments. The budget shall be binding except that should bona fide unforeseen conditions arise, the board of supervisors may amend such budget during the year for which it was adopted. Such amendments shall be submitted to the department for approval with a statement of the reasons necessitating the amendment. The department shall approve or disapprove such amendments in the same manner as original budget estimates except that the department shall act upon and return such amendments within thirty days after their receipt by the department. The department acting upon budget amendments is directed to approve only such amendments as are actually necessitated by unforeseen conditions. [C58, 62, 66, 71, 73, 75,§309.95; 66GA, ch 167,§12]

Referred to in §309.97

309.96 Operation of budgeted program.

1. No county shall expend from the secondary road fund an amount in excess of the total amount of the budget or amended budget as adopted by the board of supervisors, whether such budget is approved or disapproved by the department. In order to permit any county to adjust its secondary road income to changed needs that may occur after the budget has been approved by the department the expenditures for any individual item within the budget may exceed by not more than ten percent the amount budgeted for that item without department approval or the submission of an amended budget, provided, however, that the expenditures for one or more other individual items are less than budgeted and the total expenditures from the secondary road fund do not exceed the total secondary road budget.

2. In the event that a county secondary road budget or amended budget thereto is disapproved by the department, the county may elect either to revise such budget or amended budget so as to receive approval or the county may elect to operate with such disapproved budget or amended budget. In the event the county secondary road budget is disapproved in whole or in part, within twenty days after receipt of the department's report, the board of supervisors shall cause to be published in the official newspapers of the county, notice of a public hearing to be held within ten days of said publication, on the department's recommendations, and at said hearing the board of supervisors shall amend or adopt their original budget. [C58, 62, 66, 71, 73, 75,§309.96]

Referred to in §309.97

309.97 Construction of law. Nothing in sections 309.93 to 309.96, inclusive, shall contravene or affect the provisions of chapter 24. [C58, 62, 66, 71, 73, 75,§309.97]

CHAPTER 310

FARM-TO-MARKET ROADS

Referred to in §307.24

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310.22 Right of way—how acquired.
310.23 and 310.24 Repealed by 54GA, ch 103, §22.
310.25 Repealed by 53GA, ch 125,§7.
310.26 Repealed by 53GA, ch 127,§5.
310.27 Period of allocation—reversion.
310.28 Engineering and other expense.
310.29 Maintenance by county.
310.30 Repealed by 53GA, ch 127,§5.
310.31 Repealed by 53GA, ch 122,§14.
310.32 Repealed by 66GA, ch 167,§15.
310.33 Repealed by 52GA, ch 162,§4.
310.34 Secondary road research fund.
310.35 Use of fund.
310.36 Report to governor.

310.1 Definitions. As used in this chapter, the following words, terms or phrases shall be construed or defined as follows:

1. *"County's allotment of road use tax fund"* or *"allotment of road use tax fund"* shall mean that part of the road use tax fund allotted to any county by the treasurer of state from the portion of the state road use tax fund which he has credited to the secondary road construction fund of the counties.

2. *"Federal aid"* or *"federal aid secondary road fund"* shall mean funds allotted to the state of Iowa by the federal government to aid in the construction of secondary roads and which funds must be matched with funds under the control of the department.

3. *"Department"* means the state department of transportation. [C39,§**4686.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.1]

310.2 Supervisors agreement. The county board of supervisors of any county is empowered, on behalf of the county, to enter into any arrangement or agreement with or required by the duly constituted federal or state authorities in order to secure the full co-operation of the government of the United States and of the state of Iowa, and the benefit of all present and future federal or state allotments in aid of secondary road construction, reconstruction or improvement. [C39,§**4686.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.2]

310.3 Funds. There is hereby created a fund which shall be known as the farm-to-market road fund which shall be made up as follows:

1. All federal aid secondary road funds received by the state.

2. All road use tax funds by law credited to the farm-to-market road fund.

3. All other funds which may, under the provisions of this chapter or any other law, be credited or appropriated for the use of the farm-to-market road fund. [C39,§**4686.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.3]

Allocation of funds, §312.2

310.4 Use of fund. Said farm-to-market road fund is hereby appropriated for and shall be used in the establishment, construction, reconstruction or improvement of the farm-to-market road system, including the drainage, grading, surfacing, resurfacing, construction of bridges and culverts, the elimination, protection, or improvement of railroad crossings, the acquiring of additional right of way and all other expenses incurred in the construction, reconstruction or improvement of said farm-to-market road system under this chapter. [C39,§**4686.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §310.4]

310.5 Repealed by 53GA, ch 122,§11, see §312.5.

310.6 Accounts by department. The department shall keep accounts in relation to the farm-to-market road fund and each county's allotment thereof, crediting each fund with all amounts by law creditable thereto, and charging each with all duly and finally approved vouchers for claims properly chargeable thereto. [C39,§**4686.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.6]

310.7 Treasurer's monthly statement. The account of the farm-to-market road fund, kept by the state comptroller and the state treasurer, shall deal with said fund as a single fund with all credits thereto and disbursements therefrom. [C39,§**4686.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.7]

See treasurer's report to department of transportation, §312.4

310.8 Quarterly statement to county engineer. The department shall, quarterly, advise each county engineer of the condition of said county's allotment of the farm-to-market road fund. Said statement shall show the balance in said county's allotment at the beginning of said period, the amount or amounts allotted to said county during said period, the amount disbursed from said county's allotment during said period, and the balance in said county's allotment at the end of said period. Said statement shall also show the estimated outstanding obligations against the said county's allotment at the date of said statement. [C39,§**4686.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.8]

310.9 Projects approved by department. Before approving any farm-to-market road project the department shall satisfy itself that the county engineer's office in that county is organized, equipped and financed to discharge satisfactorily the duties herein required. [C39, §**4686.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.9]

Referred to in §310.10

310.10 System designated—additions. The farm-to-market road system shall embrace those main secondary roads (not including roads within cities) which connect rural areas

with each other and with the cities, and primary roads, and which have heretofore been designated as farm-to-market roads under section 310.9, as amended, and section 310.10, Code 1946. Said road system may, with consent of the department, be changed and modified by the board of supervisors.

When all farm-to-market roads in any county have been built to established grade, bridged and surfaced in a manner suited to the traffic thereon, additional mileage may be added to the farm-to-market road system in said county. [C39,§**4686.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.10]

310.11 Participating county—funds reserved. Any county having complied with the provisions of this chapter may by its board of supervisors submit to the department for its approval project statements for the construction, reconstruction, or improvement of farm-to-market roads. [C39,§**4686.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.11]

310.12 Repealed by 53GA, ch 127,§5.

310.13 Surveys, plans and estimates. If the department approves a project submitted by the board of supervisors, the county engineer shall proceed to make or cause to be made, the surveys, plans and estimates for said project, and submit the same to the board of supervisors and the department for approval. The construction work on said project shall be done in accordance with said approved plans, except insofar as the same may be modified to meet unforeseen or better understood conditions, and no such modification shall be deemed an invalidating matter. [C39, §**4686.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §310.13]

310.14 Bids—department or county supervisors. When the approved plans and specifications for any farm-to-market funded project are filed with the department, it shall, if the estimated cost exceeds one thousand dollars, proceed to advertise for bids and make recommended award of contract. Said recommended award of contract shall be submitted to the board of supervisors of the county in which said project is located for its concurrence. Upon receiving the concurrence of the county board on said recommended contract award, the department shall take final action awarding said contract. Provided, that the said department shall determine and advise the county board as to any approved farm-to-market road project which is to be financed without the use of federal funds. On such project the above procedure may be reversed and the county board shall advertise for bids, and, subject to concurrence by the department, award contract for the construction work. [C39, §**4686.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.14; 66GA, ch 167,§13]

See §314.2

310.15 Repealed by 53GA, ch 125,§2, see §314.1.

310.16 Claims charged to county allotment. All claims for improving farm-to-market roads hereunder shall be paid from the farm-to-market road fund and charged to the allotment of said fund for the county in which said project is located. [C39,§**4686.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.16]

310.17 Repealed by 53GA, ch 125,§4, see §314.3.

310.18 Partial payments during construction. Partial payments may be made on the work during the progress thereof, but no such partial payment shall be deemed final acceptance of the work nor a waiver of any defect therein. The approval of any claims by the board of supervisors or by the department may be evidenced by the signature of the chairman of said board or department, or a majority of the members of the board or department, on the individual claims or on the abstract of a number of claims with the individual claims attached to said abstract. [C39, §**4686.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.18]

310.19 Supervision and inspection of work. The county engineer is charged with the duty of supervision, inspection and direction of the work of construction of farm-to-market road projects under this chapter. In such capacity, the county engineer shall be under the supervision of the department. [C39,§**4686.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.19; 66GA, ch 67,§69]

310.20 Supervisors resolution to state treasurer. Any county may, in any year, by resolution of its board of supervisors, make available for improvement or construction of farm-to-market roads within the county any portion of its allotment of road use tax funds. Upon certification of such a resolution, the state treasurer shall place in the county's allotment of the farm-to-market road fund the amount authorized by such resolution. [C39,§**4686.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.20]

Referred to in §312.5(2)

310.21 Repealed by 53GA, ch 125,§6, see §314.5.

310.22 Right of way—how acquired. Right of way for farm-to-market road projects under this chapter shall be acquired by the county. [C39,§**4686.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.22]

310.23 and 310.24 Repealed by 54GA, ch 103, §22, see §§306.13 and 306.15.

310.25 Repealed by 53GA, ch 125,§7, see §314.6.

310.26 Repealed by 53GA, ch 127,§5, see §312.7.

310.27 Period of allocation—reversion. The farm-to-market road fund allotted to any county as provided in this chapter shall remain available for expenditure in said county for three years after the close of the fiscal

year during which said sums respectively were allocated. Any sum remaining unexpended at the end of the period during which it is available for expenditure, shall be reapportioned among all the counties as provided in section 312.5 for original allocations.

For the purposes of this section, any sums of the farm-to-market road fund allotted to any county shall be presumed to have been "expended" when a contract shall have been awarded obligating said sums. If a county does not plan to utilize its allotted funds in any period up to one year, the funds may be temporarily allocated to another county, at no interest, by written agreement between the counties involved. The total of the temporarily allocated funds received by a county shall not exceed the total anticipated funds to that particular county's farm-to-market fund in the succeeding fiscal year and total reimbursement shall be completed by the end of the succeeding fiscal year. [C39,§**4686.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.27; 66GA, ch 167,§14]

310.28 Engineering and other expense. Engineering, inspection and administration expense in connection with any farm-to-market road project may be paid from said county's allotment of the farm-to-market road fund. Any such expense incurred by the department may in the first instance be advanced out of the primary road fund, said amounts later being reimbursed to said funds out of the farm-to-market road fund.

Provided, that no part of the salary or expense of the county engineer, any member of the county board of supervisors, any member of the department, the chief engineer, or any department head or district engineer of the department shall be paid out of the farm-to-market road fund. [C39,§**4686.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.28]

310.29 Maintenance by county. Any farm-to-market road constructed under the provisions of this chapter shall be maintained by the county in a manner satisfactory to the federal authorities and to the department. Should any county fail to so maintain any such road, the department shall give the board of supervisors notice of that fact. If within sixty days after receipt of such notice the said highway has not been placed in proper condition of maintenance the department shall proceed immediately to have such highway placed in proper condition of maintenance and charge the cost thereof against said county's allotment of the farm-to-market road fund. The amount so expended for maintenance work by the department shall be reimbursed to said county's allotment of the farm-to-market road fund, from said county's secondary road maintenance fund, before any more farm-to-market road projects in said county are approved by the department. [C39, §**4686.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§310.29]

310.30 Repealed by 53GA, ch 127,§5.

310.31 Repealed by 53GA, ch 122,§14.

310.32 Repealed by 66GA, ch 167,§15.

310.33 Repealed by 52GA, ch 162,§4.

310.34 Secondary road research fund. Notwithstanding any law to the contrary, the department is hereby authorized to set aside each year not to exceed one and one-half percent of the receipts in the farm-to-market road fund in a fund to be known as the secondary road research fund. [C50, 54, 58, 62, 66, 71, 73, 75,§310.34]

310.35 Use of fund. The secondary road research fund shall be used by the department solely for the purpose of financing engineering studies and research projects which have as their objective the more efficient use of funds and materials that are available for the construction and maintenance of secondary roads, including bridges and culverts located thereon. [C50, 54, 58, 62, 66, 71, 73, 75,§310.35]

Referred to in §310.36

310.36 Report to governor. The research projects and engineering studies authorized herein shall be conducted in co-operation with the county engineers. Once each year the department shall file a report with the governor and county engineers showing the work accomplished and projects undertaken under section 310.35, and copies of a biennial report of the same for the use and benefit of the general assembly shall be filed with the chief clerk of the house of representatives and the secretary of the senate on or before January 31 of each odd-numbered year. [C50, 54, 58, 62, 66, 71, 73, 75,§310.36]

Annual report, §17.9

CHAPTER 311

SECONDARY ROAD ASSESSMENT DISTRICTS

Referred to in §307.24

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311.3 Amount of assessment.
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311.26 Assessments certified to county treasurer.
311.27 Each district separate unit.
311.28 Certificates anticipating assessments.
311.29 Sale of certificates.
311.30 Certificates registered—payment.
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311.1 Power to establish. In order to provide for the graveling, oiling, or other suitable surfacing of secondary roads, the board of supervisors shall have power, on petition, to establish secondary road assessment districts. [C24, 27, 31, 35, 39,§**4746**; C46,§311.3; C50, 54, 58, 62, 66, 71, 73, 75,§311.1]

311.2 Width of district. Any such secondary road assessment district shall be not more than one-half mile wide on each side of the road or roads to be improved by said district. [C24, 27, 31, 35, 39,§**4746**; C46,§311.3; C50, 54, 58, 62, 66, 71, 73, 75,§311.2]

311.3 Amount of assessment. Special assessments in the aggregate amount of not less than twenty-five percent of the total estimated cost of surfacing any road included in a secondary road assessment district project shall be apportioned and levied on the lands included in said secondary road assessment district. [C24, 27, 31, 35, 39,§**4753**; C46,§311.10; C50, 54, 58, 62, 66, 71, 73, 75,§311.3]

311.4 County line road. Whenever it is desired to surface a secondary road on a county line, as a secondary road assessment district project, the board of supervisors of any county concerned may establish an assessment district in its county, and levy and collect special assessments for the payment of that portion of the estimated cost of such project assessable against lands in that county. Each county shall pay its share of the cost of said project as provided in this chapter, in the same manner as though the project were located wholly within that county. [C24, 27, 31, 35, 39,§**4746**; C46, §311.3; C50, 54, 58, 62, 66, 71, 73, 75,§311.4]

311.5 Project in city. Any road or street which is a continuation of a secondary road within any city and which the county board desires to improve by graveling, oiling, or other suitable surfacing, may by resolution of the county board and concurrence by the council of the city be improved as a secondary road assessment district project or part thereof as herein provided. The lands within such city abutting on or adjacent to such street or road may be included within such secondary road assessment district and assessed on account of such improvement upon the same basis and in the same manner as though such lands were located outside of a city. [C24, §4754; C27, 31, 35,§4745-a1; C39,§**4745.1**; C46, §311.2; C50, 54, 58, 62, 66, 71, 73, 75,§311.5]

311.6 Petition—information required. The petition for a secondary road assessment district proposing to establish such district shall intelligibly describe the road or roads proposed to be improved, the nature of the proposed improvement, the percentage of the estimated cost of the surfacing of said road proposed to be assessed against the property in the said district and the lands proposed to be included in such district.

Such petition shall be signed by thirty-five percent of the owners of the lands within such proposed district, or by thirty-five percent of the owners of the land within such proposed district who reside within said county. [C24, 27, 31, 35, 39,§**4746**; C46,§311.3; C50, 54, 58, 62, 66, 71, 73, 75,§311.6]

311.7 Improvement by private funds. The owner or a group of owners of not less than seventy-five percent of the lands adjacent to, or abutting upon any secondary road may, on or before October 1 of any year, petition the board of supervisors of their county for the improving by graveling or other suitable surfacing, of such road, and for the assessment of not less than fifty percent (or such greater portion as may be provided in said petition) of the cost of such improving, by graveling or other suitable surfacing, to the lands adjacent to, or abutting upon such road. When the petition has been filed, the board of supervisors shall review the project proposed by the petition and may accept or reject the proposed project. If the board of supervisors accepts the petition, the board shall include such project in the secondary road construction program of said county and establish a priority for the completion of such project.

The board of supervisors shall proceed with the construction and completion of said project in accordance with its assigned priority and under the same procedure as is prescribed generally for the improvement of secondary roads by assessment, and shall, as the law may provide, establish a special secondary road assessment district and assess against the lands included therein not less than fifty percent

(or such greater portion as may be provided in said petition) of the engineer's estimated cost of the surfacing of the road or roads included in said project against all the lands adjacent to or abutting upon the said road or roads.

Provided, that should the owner or owners of all the lands included in any special secondary road assessment district under this section, subscribe and deposit with the county treasurer an amount not less than fifty percent (or such greater portion as may be provided in said petition) of the engineer's estimated cost of the surfacing of the road or roads included in said project, the board of supervisors shall not establish such special assessment district as herein provided, but shall accept the said donations in lieu of an assessment, and shall otherwise proceed to the improvement of said road or roads as herein provided.

Provided further, that the total expenditure of secondary road funds of the county in any year for or on account of special secondary road assessment district projects on local secondary roads under this section shall not exceed the total secondary road funds legally expendable for construction on local secondary roads in said county in said year, and the expenditure of secondary road funds of the county, in any township in any three-year period, for or on account of special secondary road assessment district projects on local secondary roads under this section, shall not exceed said township's pro rata share, on the area basis, of the total secondary road funds legally expendable for construction on local secondary roads in said county in said three-year period, unless there be a township or townships from which there are no petitions filed during the first two years of said three-year period.

If the engineer's estimated cost of the grading, bridges, culverts, and draining of the road proposed to be included in any special assessment district project under this section, exceeds an average of seven thousand dollars per mile, the board of supervisors of said county may appeal to the state transportation commission as to whether the county shall proceed with the construction of said project. The state transportation commission shall hold a hearing on said matter, at a time and place of which the petitioners and the county board shall be duly notified, and shall have an opportunity to appear and be heard. After such hearing the state transportation commission shall determine whether the county shall proceed with said project, which determination shall be final.

Upon the completion of such road or roads, and the satisfaction of all claims in relation thereto, any balance then remaining of the funds provided by the sponsors shall be returned to them according to their respective interests, providing all guarantees made by such sponsors have been fulfilled.

Any road or roads so improved by graveling or other suitable surfacing under the provisions of this section shall be maintained by the county from the secondary road fund. [C24, 27, 31, 35, 39,§§**4747, 4753**; C46,§§311.4, 311.10; C50, 54, 58, 62, 66, 71, 73, 75,§311.7; 66GA, ch 1166,§1]

See §309.8

311.8 County engineer's report. Upon the filing of such petition with the county auditor proposing the establishment of such secondary road assessment district, the county engineer shall file a report thereon with the county auditor, which report shall include:

1. An estimate of the cost of the surfacing proposed on the road or roads included in such proposed district.

2. A plat of said proposed district which plat shall show the road or roads proposed to be improved, the various tracts and parcels of real estate included in said proposed district, and the ownership of such lands.

3. An approximately equitable apportionment of not less than twenty-five percent of the estimated cost of said improvement among the tracts and parcels of real estate included in such proposed district.

4. A statement whether all of the secondary roads to be surfaced in said proposed secondary road assessment district project have been built to permanent grade and properly drained.

5. Any information the county engineer may deem pertinent. [C24, 27, 31, 35, 39,§§**4746, 4748**; C46,§§311.3, 311.5; C50, 54, 58, 62, 66, 71, 73, 75,§311.8]

311.9 Publicly owned real estate. In making said apportionment, real estate owned by the state, county or any city, shall be treated as other real estate, but no other publicly owned real estate shall be included. In apportioning benefits to real estate owned by a city, the county or the state, no consideration shall be given to the buildings thereon. [C24,§4707; C27, 31, 35,§4753-a1; C39,§**4753.01**; C46,§311.11; C50, 54, 58, 62, 66, 71, 73, 75,§311.9]

311.10 Estimate and apportionment — presumption. Said estimated cost shall carry the presumption, in the absence of a contrary showing, that the same correctly represents the probable cost of said project as nearly as can be determined in advance of the actual doing and completion of the work. Said apportionment shall carry the presumption, in the absence of a contrary showing, that the same is fair, just, equitable, and in proportion to the benefits and not in excess thereof. [C24,§4707; C27, 31, 35,§4753-a1; C39,§**4753.01**; C46,§311.11; C50, 54, 58, 62, 66, 71, 73, 75,§311.10]

311.11 Hearing—notice. The board of supervisors shall fix a time for hearing on the proposal for the establishment of said secondary road assessment district and on the apportionment of not less than twenty-five percent of the estimated cost of the proposed improve-

ment, and shall cause the county auditor to publish notice of said hearing. Said notice shall state:

1. The time and place of hearing,

2. The road or roads proposed to be improved,

3. The type of surfacing proposed,

4. The estimated cost of the proposed improvement,

5. A description of the lands lying within said proposed district,

6. The ownership of said lands as shown by the transfer books in the auditor's office,

7. A statement of the amount apportioned to each tract or parcel of real estate as shown by the engineer's report,

8. That at said hearing the amount apportioned to any tract or parcel of land may be increased or decreased without further notice,

9. That all objections to the establishment of said district, to the said apportionment report, or to the proceedings relating thereto must be specifically made in writing and filed with the county auditor on or before noon of the day set for such hearing, and

10. That a failure to make and file such objections will be deemed a conclusive waiver of all such objections. [C24,§§4707, 4750, 4751; C27, 31, 35,§§4750, 4751, 4753-a1; C39,§§**4750, 4751, 4753.01**; C46,§§311.7, 311.8, 311.11; C50, 54, 58, 62, 66, 71, 73, 75,§311.11]

311.12 Publication of notice. Such notice shall be published once each week for two successive weeks in some newspaper published in the county as near as practicable to said district. The last publication shall be not less than five days previous to said hearing. Proof of such publication shall be made by the publisher by affidavit filed with the county auditor. [C24,§4707; C27, 31, 35,§4753-a1; C39,§**4753.01**; C46,§311.11; C50, 54, 58, 62, 66, 71, 73, 75,§311.12]

311.13 Errors in notice or apportionment report. Any omission or error in said apportionment report or notice with respect to any tract or parcel of real estate or the description thereof, or the name of the owner, or the amount of the assessment apportioned thereto, shall work no loss of jurisdiction on the part of the board over such proceeding. Such omission or error shall only affect the particular tract of real estate or person in question. If, before or after the board has entered its final order in the establishment of the said district or in the apportionment proceedings such omission or error is discovered, the board shall fix a time for a hearing as to such party or real estate and shall cause service of notice to be made upon them, either by publication as in this chapter provided, or by personal service in the time and manner required for service of original notices in the district court. After such hearing the board shall proceed as to such person or land as though such omission or error had not occurred. [C24,§4707; C27, 31, 35, §4753-a1; C39,§**4753.01**; C46,§311.11; C50, 54, 58, 62, 66, 71, 73, 75,§311.13]

311.14 Appearance. The appearance of any interested party, either in writing or personally, or by authorized agent, before the board of supervisors at any stage of the pending proceedings for a secondary road assessment district shall be deemed a full appearance. Only interested parties shall have the right to appear in such proceedings. All persons so appearing shall state for whom they appear. The clerk of the board shall make definite entry accordingly in the minutes of the board. [C24, §4707; C27, 31, 35,§4753-a1; C39,§**4753.01**; C46, §311.11; C50, 54, 58, 62, 66, 71, 73, 75,§311.14]

311.15 Hearing—adjournment—order. Hearings on the proposed establishment of said district may be adjourned from time to time without loss of jurisdiction by the board. On final hearing the board shall proceed to a determination of said matters. It may reject, approve, or modify and approve said proposal. The board may exclude lands from the district or may add lands thereto or otherwise modify the proposal.

Should the proposal be approved in whole or in part, the board shall establish such district. The order of the board establishing such district shall state the road or roads to be improved, the type of improvement, and the lands included in said district. Said order shall be final. No lands shall thereafter be added to or excluded from said district. [C24,§4709; C27, 31, 35,§4753-a2; C39,§**4753.02**; C46,§311.12; C50, 54, 58, 62, 66, 71, 73, 75,§311.15]

311.16 Final hearing—assessment levied. On final hearing the board shall hear and determine all objections filed. The board may increase, diminish, annul, or affirm the apportionment made in said report, or any part thereof, as may appear to the board to be just and equitable.

On the final determination the board shall levy such assessments and all installments thereof upon the real estate within said district as finally established. The entire amount of said assessment shall be then due and payable, and bear interest at six percent per annum commencing twenty days from the date of said levy, and shall be collected at the next succeeding March semiannual payment of ordinary taxes. [C24,§4710; C27, 31, 35,§4753-a3; C39, §**4753.03**; C46,§311.13; C50, 54, 58, 62, 66, 71, 73, 75,§311.16]

311.17 Assessments over ten dollars—waiver. If any owner other than the state or a county or city, of any tracts of land on which the assessment is more than ten dollars, shall, within twenty days from the date of said assessment, agree in writing filed in the office of the county auditor, that in consideration of his having the right to pay his assessment in installments, he will not make any objection of illegality or irregularity as to said assessment upon his said real estate, and will pay the same with six percent interest thereon, then and in that case said assessment shall be payable in ten equal installments. The first

installment shall be payable on the date of such agreement. The other installments with interest on the whole amount unpaid shall be paid annually thereafter at the same time and in the same manner as the March semiannual payment of ordinary taxes.

An owner of land who has availed himself of said ten-year option may at any time discharge his assessment by paying the balance then due on all unpaid installments, with interest on the entire amount of the unpaid installments for thirty days in advance. [C24, §311.13; C50, 54, 58, 62, 66, 71, 73, 75,§311.17] §4710; C27, 31, 35,§4753-a3; C39,§**4753.03**; C46,

311.18 Assessment delinquent — penalties. All such taxes shall become delinquent on the first day of March next after their maturity, shall bear the same interest, the same penalties, and be attended with the same rights and remedies for collection, as ordinary taxes. [C24,§4710; C27, 31, 35,§4753-a3; C39,§**4753.03**; C46,§311.13; C50, 54, 58, 62, 66, 71, 73, 75,§311.18]

311.19 Assessment ten dollars or less. Assessments of ten dollars or less against any tract of land, and assessments against lands owned by the state, county or city, shall be due and payable from the date of levy by the board of supervisors, or in the case of any appeal, from the date of final confirmation of the levy by the court.

In case of assessments on lands owned by the county, the same shall be paid from the county general fund. In case of assessments on lands owned by the state, the same shall be paid out of any funds in the state treasury not otherwise appropriated. In case of assessments on lands owned by a city, the same shall be paid from any available city fund. [C24,§4710; C27, 31, 35,§4753-a3; C39,§**4753.03**; C46,§311.13; C50, 54, 58, 62, 66, 71, 73, 75,§311.19]

311.20 Variation between estimated and actual cost. Any variation between the engineer's estimated cost and the actual cost of a secondary road assessment district project shall in no way affect the validity of the assessment. It is the intent of this chapter that the assessment shall be based on the estimated cost and not on the actual cost. [C24, §4711; C27, 31, 35,§4753-a4; C39,§**4753.04**; C46, §311.14; C50, 54, 58, 62, 66, 71, 73, 75,§311.20]

311.21 Procedures. The preparation and approval of plans and specifications, the advertising for bids, the award and approval of contract, the supervision and inspection of construction work, and the approval and payment of claims on any secondary road assessment district project, shall be conducted in the manner provided in the laws for secondary road construction work generally. [C24, 27, 31, 35, 39,§§**4749, 4752**; C46,§§311.6, 311.9; C50, 54, 58, 62, 66, 71, 73, 75,§311.21]

311.22 Road graded and drained. Any such secondary road shall be built to permanent grade and drained in a manner approved by the county engineer before being surfaced, as provided in this chapter. [C27, 31, 35, 39,§**4746**; C46,§311.3; C50, 54, 58, 62, 66, 71, 73, 75,§311.22]

311.23 Payment of construction costs. The total cost of any secondary road assessment district project shall in the first instance be paid out of the secondary road fund of said county. Any assessments which are paid in cash and in anticipation of which assessments no certificates have been issued, shall be transferred to the secondary road fund.

If no special assessment certificates are issued and sold on account of any particular secondary road assessment district, the special assessments on lands included in that district, and the interest on such assessments when collected, shall be transferred to the secondary road fund of said county. If certificates are issued and sold in anticipation of the special assessments levied on any such district as herein provided, the proceeds of such certificates shall be credited to the secondary road fund of said county. In that event, the special assessments in anticipation of which certificates have been issued, and the interest on such assessments shall, when collected, be used to retire such certificates. [C24, 27, 31, 35, 39, §**4752**; C46,§311.9; C50, 54, 58, 62, 66, 71, 73, 75,§311.23]

311.24 Appeal from assessment. Any owner of land in a secondary road assessment district may appeal to the district court from the order of the board of supervisors in levying the assessment against his real estate, by filing with the county auditor within fifteen days of the date of such levy, a bond conditioned to pay all costs in case the appeal is not sustained, and a written notice of appeal where he shall, with particularity, point out the specific objection which he desires to lodge against such levy. Said appeal shall have precedence over all other business pending before the court except criminal matters. The appeal shall be heard as in equity. The court may raise or lower the assessment in question and make an equitable assessment in the judgment of the court. The clerk of the district court shall, upon the entry of the final order of the court, certify such final order to the county auditor. The board of supervisors shall at once so adjust the assessments as to comply with the final order of the court. [C24,§4713; C27, 31, 35,§4753-a5; C39,§**4753.05**; C46,§311.15; C50, 54, 58, 62, 66, 71, 73, 75,§311.24]

311.25 Appeal docketed. When an appeal is taken, the county auditor shall at once make a transcript of the notice of appeal and appeal bond and transmit the same to the district court. The appellant shall, within twenty days after perfection of said appeal, docket said appeal and file a petition setting forth the order or decision of the board of supervisors appealed from, and his specific objections thereto. A failure to comply with either of these requirements shall be deemed a conclusive waiver of the appeal and in such case the

court shall dismiss the same. Appellee need not file answer, but may do so. [C24,§4714; C27, 31, 35,§4753-a6; C39,§**4753.06**; C46,§311.16; C50, 54, 58, 62, 66, 71, 73, 75,§311.25]

311.26 Assessments certified to county treasurer. When the board of supervisors has entered its final order as to the amounts of all special assessments on a given improvement, the county auditor shall at once certify a list of such assessments and a list of real estate upon which each assessment has been levied, with the specific designation of the district embracing such real estate, to the county treasurer, who shall enter each assessment on the tax books and continue such entry until such assessment is paid.

Each special assessment and all installments thereof shall be a lien upon the real estate upon which it is levied from the date of such certificate by the county auditor to the same extent and in the same manner as taxes levied for state and county purposes. Changes in the amount of any special assessment by reason of any ruling of the district court on appeals shall be likewise certified and the county treasurer shall make the proper correction on his books. [C24,§4715; C27, 31, 35, §4753-a7; C39,§**4753.07**; C46,§311.17; C50, 54, 58, 62, 66, 71, 73, 75,§311.26]

311.27 Each district separate unit. Each assessment district shall be considered a unit and all funds received by the county treasurer for or on behalf of such unit shall be carried as a distinct and separate account and under the same specific name as that used by the board in establishing such unit. [C24,§4716; C27, 31, 35,§4753-a8; C39,§**4753.08**; C46,§311.18; C50, 54, 58, 62, 66, 71, 73, 75,§311.27]

311.28 Certificates anticipating assessments. In order to render immediately available that amount of the estimated cost of an improvement which has been specially assessed, the board may issue road certificates in the name of the county in an aggregate amount not exceeding the then unpaid amount of the special assessment levied in said district. Each issue of certificates shall be under, and in accordance with, a duly adopted resolution of the board and which shall recite (1) the name or designation of the road district on account of which the certificates are issued; (2) that a stated amount (naming the amount) has been specially assessed against the lands within said district; (3) that a stated amount of said aggregate special assessment has not yet been paid (naming the unpaid amount); (4) that it is necessary to render such unpaid amount immediately available; (5) the number of road certificates authorized and the specific amount of each certificate; (6) the specific numbering or designation of such certificates; (7) the rate of interest which each certificate shall bear from date, to wit, not to exceed six percent per annum; (8) the fact that said certificates are payable solely from the proceeds of the special assessments which have been levied on the lands within said districts; (9) that each certificate shall be payable on or before the first day of January of the first year following the maturity of the last installment of such special assessments, and that interest thereon shall be paid annually; (10) the authorization to the chairman of the board, and to the county auditor, respectively, to sign and countersign each of said certificates. [C24,§4717; C27, 31, 35,§4753-a9; C39,§**4753.09**; C46,§311.19; C50, 54, 58, 62, 66, 71, 73, 75,§311.28]

311.29 Sale of certificates. Upon the signing of each of said certificates by the chairman of the board, said certificates shall be delivered to the county auditor, who shall countersign the same, charge the county treasurer with the amount thereof, and deliver the same to the latter officer, who shall be responsible therefor on his bond. The treasurer may apply said certificates in payment of any warrants duly authorized and issued for surfacing the roads within said district, or he may sell the same for the best attainable price and for not less than par, plus accrued interest, and credit the proceeds to the secondary road fund. Such certificates shall be retired in the order of the consecutive numbering thereof. [C24, §4717; C27, 31, 35,§4753-a9; C39,§**4753.09**; C46, §311.19; C50, 54, 58, 62, 66, 71, 73, 75,§311.29]

311.30 Certificates registered — payment. The county treasurer shall, in connection with the road account for said district, enter the name and post-office address of all persons to whom any of said certificates are issued, with a particular designation of the certificates delivered to each person. Any subsequent holder may present his certificate to the county treasurer and cause his name and post-office address to be entered in lieu of that of such former holder. Whenever the fund for such particular district has money to pay the first retirable certificate or certificates, the county treasurer shall, by mail, as shown by his records, promptly notify the holder of such certificate of such fact and that from and after ten days after the mailing of such letter all interest on such certificates will cease. [C24, §4717; C27, 31, 35,§4753-a9; C39,§**4753.09**; C46, §311.19; C50, 54, 58, 62, 66, 71, 73, 75,§311.30]

311.31 Previous assessments not invalidated. The passage of this chapter, the provisions hereof, and the repeal of sections hereby repealed, shall not in manner affect or invalidate any secondary road district assessments levied before this chapter became effective, or any certificate in anticipation of such assessments issued before or after this chapter becomes effective.

Said assessments and taxes shall be collected and applied to the purpose for which they were levied. Certificates in anticipation of such assessments may be issued. The proceeds of such certificates shall be applied to the purpose intended, and such certificates issued before or after this chapter becomes effective shall be paid in conformance with the provisions of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§311.31]

CHAPTER 312

ROAD USE TAX FUND

Referred to in §§8.58, 307.24

312.1 Fund created.
312.2 Allocations from fund.
312.3 Apportionment to counties and cities.
312.4 Treasurer's report to the department of transportation.
312.5 Division of farm-to-market road funds.
312.6 Limitation on use of funds.
312.7 Balance maintained in fund.
312.8 Amana colonies.
312.9 Applicability of chapter.
312.10 City street systems—map on file.
312.11 Accounts of expenditures — percentage required on arterial streets.
312.12 Program submitted.
312.13 Repealed by 65GA, ch 205,§2.
312.14 Cities to submit report.
312.15 When funds not allocated.
312.16 Definition.

312.1 Fund created. There is hereby created, in the state treasury, a road use tax fund. Said road use tax fund shall embrace and include:

1. All the net proceeds of the registration of motor vehicles under chapter 321.

2. All the net proceeds of the motor vehicle fuel tax or license fees under chapter 324, except those net proceeds allocated to the primary road fund under section 324.79.

3. All revenue derived from the use tax, under chapter 423 on motor vehicles, trailers, and motor vehicle accessories and equipment, as same may be collected as provided by section 423.7.

4. Any other funds which may by law be credited to the road use tax fund. [C50,§308A.1; C54, 58, 62, 66, 71, 73, 75,§312.1]

See §§321.145, 321.146, 423.24
Loans to counties repaid and remitted to state treasurer. Treasurer to reallocate to counties for bridge construction and repair, see 66GA, ch 1046,§4

312.2 Allocations from fund. The treasurer of the state shall, on the first day of each month, credit all road use tax funds which have come into his hands, to the primary road fund, the secondary road fund of the counties, the farm-to-market road fund, and the street construction fund of cities in the following manner and amounts:

1. To the primary road fund, forty-seven percent.

2. To the secondary road fund of the counties, twenty-nine percent.

3. To the farm-to-market road fund, nine percent.

4. To the street construction fund of the cities, fifteen percent.

5. The treasurer of state shall before making the above allotments credit annually to the highway grade crossing safety fund the sum of five hundred thousand dollars, credit annually to the primary road fund the sum of one million four hundred thousand dollars for carrying out subsection 12 of section 307A.2, the last paragraph of section 313.4 and section 307A.5, and credit annually to the primary road fund the sum of five hundred thousand dollars to be used for paying expenses incurred by the state department of transportation other than expenses incurred for extensions of primary roads in cities. All unobligated funds provided by this subsection, except those funds credited to the highway grade crossing safety fund, shall at the end of each year revert to the road use tax fund. Funds in the highway grade crossing safety fund shall not revert to the road use tax fund except to the extent they exceed five hundred thousand dollars at the end of any biennium.

6. The treasurer of state shall before making the above allotments credit annually to the primary road fund the sum of two million five hundred thousand dollars or an amount equal to one-ninth of the federal allotment whichever is the smaller, said sum to be used for matching the federal allotment to the state of Iowa for the use of the interstate and national defense highways in the state of Iowa.

7. The treasurer of state shall before making the allotments provided for in this section credit monthly to the division of motor vehicle registration of the state department of transportation funds sufficient in amount to pay the costs of purchasing supplies and materials and for the cost of prison labor used in manufacturing motor vehicle registration plates, decalcomania emblems, and validation stickers at the prison industries. [C50, §§308A.2, 422.62; C54, 58, 62, 66,§§312.2, 422.62; C71, 73,§§312.2, 422.69(2); C75,§312.2; 66GA, ch 35,§15, ch 232,§5]

Primary road fund, ch 313
Provisional transfer of jurisdiction of roads, §313.2 [65GA, ch 1177,§10]
See §§309.8, 309.10, 310.3, 310.20, 313.3
See §312.6, street fund

312.3 Apportionment to counties and cities. The treasurer of state shall, on the first day of each month:

1. Apportion among the counties in the ratio that the needs of the secondary roads of each county bear to the total needs of the secondary roads of the state for the twenty-year improvement program developed by the automotive safety foundation and filed with the Iowa highway study committee created by chapter 426, Acts of the Fifty-eighth General Assembly, and which is on record at the department*, sixty percent of the allocation from road use tax

funds which he has credited to the secondary road fund of the counties, and apportion among the counties in the ratio that the area of such county bears to the total area of the state, forty percent of the allocation from road use tax funds which he has credited to the secondary road fund of the counties.

2. Apportion among the cities of the state, in the ratio which the population of each city, as shown by the latest available federal census, bears to the total population of all such cities in the state, the fifteen percent of the road use tax funds which he has credited to the street fund of the cities, and shall remit to the city clerk of each such city the amount so apportioned to such city. A city may have one special federal census taken each decade, and the population figure thus obtained shall be used in apportioning amounts under this subsection beginning the calendar year following the year in which the special census is certified by the secretary of state.

Referred to in §312.8

3. In any case where a city has been incorporated since the latest available federal census the mayor and council shall certify to the state treasurer the actual population of such incorporated city as of the date of incorporation and its apportionment of funds under this section shall be based upon such certification until the next federal census enumeration. Any community which has dissolved its corporation shall not receive any apportionment of funds under this certificate for any period after said corporation has been dissolved.

4. In any case where a city has annexed any territory since the last available federal census or special federal census, the mayor and council shall certify to the treasurer of state the actual population of such annexed territory as determined by the last certified federal census of said territory and the apportionment of funds under this section shall be based upon the population of said city as modified by the certification of the population of the annexed territory until the next federal or special federal census enumeration.

5. In any case where two or more cities have consolidated, the apportionment of funds under this section shall be based upon the population of the city resulting from said consolidation and shall be determined by combining the population of all cities involved in the consolidation as determined by the last available federal or special federal census enumeration for said consolidating city. [C50,§308A.3; C54, 58, 62, 66, 71, 73, 75,§312.3]

Referred to in §312.8
See §310.1
*Department of transportation

312.4 Treasurer's report to the department of transportation. The treasurer of state shall, each month, certify to the department:

1. The amount which he has received and credited to the road use tax fund from each source of revenue creditable to the said road use tax fund.

2. The amount of the road use tax fund which he has credited to *(a)* the primary road fund, *(b)* the secondary road fund of the counties, *(c)* the farm-to-market road fund, and *(d)* the street fund of the cities.

3. The amount of the federal aid primary and urban funds which he has received from the federal government and credited to the primary road fund.

4. The amount of federal aid secondary road funds which he has received from the federal government and credited to the farm-to-market road fund. [C24,§4693; C27, 31, 35,§4755-b7; C39, §§4686.07, 4755.07; C46,§§310.7, 313.7; C50, §308A.4; C54, 58, 62, 66, 71, 73, 75,§312.4]

312.5 Division of farm-to-market road funds. The road use tax funds credited to the farm-to-market road fund by the treasurer of state are hereby divided as follows, and are to be known respectively as:

1. Need allotment farm-to-market road funds, sixty percent; and

2. Area allotment farm-to-market road funds, forty percent.

All farm-to-market road funds, except funds which under section 310.20 come from any county's allotment of the road use tax funds, shall be allotted among the counties by the department. Area allotment farm-to-market road funds and federal aid secondary road funds received by the state, shall be allotted among all the counties of the state in the ratio that the area of each county bears to the total area of the whole state.

Need allotment farm-to-market road funds shall be allotted among the counties in the ratio that the needs of the farm-to-market roads in each county bear to the total needs of the farm-to-market roads in the state for the twenty-year program developed by the automotive safety foundation and filed with the Iowa highway study committee created by chapter 426, Acts of the Fifty-eighth General Assembly, and which is on record at the department. [C39,§4686.05; C46,§310.5; C50, §308A.5; C54, 58, 62, 66, 71, 73, 75,§312.5]

Referred to in §310.27

312.6 Limitation on use of funds. Funds received by municipal corporations from the road use tax fund shall be used for any purpose relating to the construction, maintenance, and supervision of the public streets. [C39, §§4686.21, 4686.25; C46,§§310.21, 310.25; C50, §308A.6; C54, 58, 62, 66, 71, 73, 75,§312.6]

312.7 Balance maintained in fund. The treasurer of state shall maintain in the road use tax fund in the state treasury, of the funds collected as provided in chapter 321 or as said chapter may be amended, a cash balance sufficient, when added to the cash balance of receipts in the road use tax fund from other

sources, to pay the anticipated expenditures from the road use tax fund for the ensuing month.

When necessary to restore the balance in the road use tax fund in the state treasury, he shall draw upon the treasurer of each county of the state in proportion to the amounts in their possession, respectively, of the funds collected under the provisions of chapter 321 or as said chapter may be amended, and credited to the road use tax fund, a sum sufficient in the aggregate to restore the cash balance in the road use tax fund. Such drafts shall be honored by the treasurer of each county upon presentation. [C24, 27, 31, 35,§§4772, 5003; C39, §§**4686.26, 4772, 5010.03**; C46,§§310.26, 316.17, 321.147; C50,§308A.7; C54, 58, 62, 66, 71, 73, 75, §312.7]

312.8 Amana colonies. Where a tract of land is owned by a corporation organized under the provisions of chapter 491 with assets of the value of one million dollars or more, and having one or more platted villages located within the territorial limits of said tract of land, all of the territory within the plats of said villages with their addition or subdivisions shall, for the purposes of this chapter, be deemed to be one incorporated city. All funds to become due to said villages so consolidated shall be paid to the county auditor of the county in which said tract of land and said villages are situated. Said fund shall, thereupon, be administered and expended by the county board of supervisors of said county for the construction, reconstruction, repair, and maintenance of roads and streets within the plats of such villages in the same manner and with the same powers and duties as city councils in cities. In the event the population of such villages shall not have been separately enumerated in the federal census, then said county board of supervisors shall cause a census of said villages to be taken as soon as may be after this chapter becomes effective, which census shall be used in lieu of the federal census provided for in section 312.3, subsection 2.

All payments made under this section prior to July 4, 1961, are hereby legalized. [C50, §308A.8; C54, 58, 62, 66, 71, 73, 75,§312.8]

Referred to in §172C.4

312.9 Applicability of chapter. This chapter shall not apply to revenue collected previous to July 1, 1949. It shall apply to revenue collected on and after July 1, 1949. [C50,§308A.9; C54, 58, 62, 66, 71, 73, 75,§312.9]

312.10 City street systems—map on file. To maintain eligibilty for the receipt of road use tax funds on and after January 1, 1963, each city in the state shall have on file with the department a map showing the arterial street system and the local street system of such city as approved by the department. [C62, 66, 71, 73, 75,§312.10]

Referred to in §312.15

312.11 Accounts of expenditures—percentage required on arterial streets. Each city shall keep accounts showing the amount spent on street construction and reconstruction on arterial streets and the amount spent on street construction and reconstruction on local streets. Such amounts spent on arterial streets and such amounts spent on local streets shall be shown on the annual street report required by section 312.14.

Of the total street construction and reconstruction expenditures made each year from road use tax funds by each city, at least seventy-five percent shall be spent on the arterial streets of such city. However, if any city council by resolution declares that the seventy-five percent is not needed on its arterial streets, then it may be used on any other streets in the city. [C62, 66, 71, 73, 75,§312.11]

Referred to in §312.15

312.12 Program submitted. Cities which receive allotments of funds from road use tax funds which have a population of at least five thousand shall prepare and submit annually by June 10 in each year to the department for examination and review, a program of street construction and reconstruction on both the arterial street system and the local street system of such city for a period of three years subsequent to the year in which the program is submitted. Such cities which have a population of less than five thousand shall prepare and submit annually by June 10 each year to the department for examination and review, a program of proposed street construction and reconstruction for its arterial streets in the city. C62, 66, 71, 73, 75,§312.11] year. [C62, 66, 71, 73, 75,§312.12]

Referred to in §312.15

312.13 Repealed by 65GA, ch 205,§2.

312.14 Cities to submit report. Cities in the state which receive allotments of funds from road use tax funds shall prepare and submit by September 10 each year to the department an annual report showing all street receipts and expenditures for the city for the previous fiscal year. [C62, 66, 71, 73, 75,§312.14]

Referred to in §§312.11, 312.15

312.15 When funds not allocated. No funds shall be allocated to any city until such city shall have complied with the provisions of sections 312.12 and 312.14.

The department shall notify the treasurer of state if any city fails to comply with the provisions of sections 312.10 to 312.14. [C62, 66, 71, 73, 75,§312.15]

312.16 Definition. As used in this chapter, unless the context otherwise requires, *"department"* means the state department of transportation. [C75,§312.16]

CHAPTER 313

IMPROVEMENT OF PRIMARY ROADS

Referred to in §307.24

313.1 Federal and state co-operation.
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313.24 Separated cities.
313.25 and 313.26 Repealed by 54GA, ch 103,§22.
313.27 Bridges, viaducts, etc., on municipal primary extensions.
313.28 Temporary primary road detours.
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313.30 to 313.34 Code 1946, transferred to sections 313.59 to 313.65.
313.35 Repealed by 53GA, ch 125,§7.
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313.38 to 313.40 Repealed by 54GA, ch 107,§9.
313.41 Repealed by 54GA, ch 165,§26.
313.42 Definition.

MARKINGS FOR MUNICIPALITIES

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313.66 Mississippi bridges purchased.
313.67 Scenic and improvement fund.

313.1 Federal and state co-operation. The department is empowered on behalf of the state to enter into any arrangement or contract with and required by the duly constituted federal authorities, in order to secure the full co-operation of the government of the United States, and the benefit of all present and future federal allotments in aid of highway construction, reconstruction, improvement or maintenance. The good faith of the state is hereby pledged to cause to be made available each year, sufficient funds to equal the total of any sums now or hereafter apportioned to the state for road purposes by the United States government for such year, and to maintain the roads constructed with said funds. [C24,§4688; C27, 31, 35,§4755-b1; C39, §4755.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.1]

313.2 "Road systems" defined — roadside parks. The roads and streets of the state are, for the purpose of this chapter, assigned to the functional classification systems established under chapter 306.

Whenever the board of supervisors of a county and the department mutually determine that a portion of a highway under the jurisdiction of either party should be transferred to the jurisdiction of the other party, the board and department may enter into an agreement to effect such transfer. Such agreement may provide that each party may undertake or share responsibility for improving said road with the costs of such improvement to be borne entirely by either the county or the department or equitably divided between the two jurisdictions. All such improvements shall be completed and all actual costs thereof paid or reimbursed prior to the time transfer of the road is made. In carrying out such agreement, the board of supervisors may expend secondary road funds of the county and the department may expend primary road funds.

However, prior to entering into the agreement, a notice of intent to execute such agreement shall be published in a newspaper of general circulation within the county and the cost of such notice shall be jointly borne by the department and the board of supervisors. If one hundred or more residents of the county request by petition or in writing that a hearing be held in regard to such agreement within ten days after the publication of the notice, the board of supervisors and the department shall hold such a hearing not more than seven days after receiving the petition or written instrument, and based upon evidence presented at such hearing shall re-examine the merits of executing such agreement and make a decision in regard to it.

The department may, for the purpose of affording access to cities or state parks, or for the purpose of shortening the direct line of

travel on important routes, or to effect connections with interstate roads at the state line, add such road or roads to the primary system.

The department, either alone or in co-operation with any county, shall have the authority to utilize any land acquired incidental to the acquisition of land for highway right of way and to also accept by gift, lands not exceeding two acres in area for roadside parks and parking areas. The department may furnish necessary maintenance. The department shall also have authority to accept by gift, equipment or other installations incidental to the use of said parks and parking areas. Said parks and parking areas shall be a part of the primary road system and the department may at its discretion sell or otherwise dispose of said lands. No rest areas or rest area buildings shall be established or constructed on an interstate highway at intervals of less than sixty miles.

Reasonable maintenance and surveillance of rest area sites and buildings located thereon shall be provided by regular maintenance employees of the department under the district maintenance engineer in the district where the rest areas are located within the limits of appropriations provided for such purpose.

No transfer of jurisdiction and control of any road or street as required by this Act* shall be effective until the enactment of legislation which allocates the road use tax fund in a manner different from the law existing on January 1, 1974, and in a manner which compensates state, county and municipal jurisdictions for additional highway, road or street needs acquired by such transfer as determined by the department.

Notwithstanding the foregoing provision of this section, transfers in jurisdiction and control of roads and streets may take place if agreements are entered into by the jurisdictional divisions of government involved in the transfer of such roads and streets. [C24,§4689; C27, 31, 35,§4755-b2; C39,**§4755.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.2]

*65GA, ch 1177
Loveland rest area, 65GA, ch 296,§1
Mills county rest area, 64GA, ch 171,§1
See §306.1

313.3 Primary road fund. There is hereby created a primary road fund which shall include and embrace:

1. All road use tax funds which are by law credited to the primary road fund.

2. All federal aid primary and urban road funds received by the state.

3. All other funds which may by law be credited to the primary road fund.

4. All revenue accrued or accruing to the state of Iowa on or after January 26, 1949, from the sale of public lands within the state, under Acts of Congress approved March 3, 1845, supplemental to the Act for the admission of the states of Iowa and Florida into the Union, chapters 75 and 76 (Fifth Statutes, pages 788 and 790), shall be placed in the primary road fund.

Unless otherwise provided, the primary road fund is hereby appropriated for highway construction. [C24,§4690; C27, 31, 35,§4755-b3; C39, **§4755.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.3; 66GA, ch 35,§5, ch 1047,§6]

Allocation of funds, §312.2

313.4 Disbursement of fund.

1. Said primary road fund is hereby appropriated for and shall be used in the establishment, construction and maintenance of the primary road system, including the drainage, grading, surfacing, construction of bridges and culverts, the elimination or improvement of railroad crossings, the acquiring of additional right of way, all other expense incurred in the construction and maintenance of said primary road system and the maintenance and housing of the department.

2. Such fund is also appropriated and shall be used for the construction, reconstruction, improvement and maintenance of state institutional roads and state park roads and bridges on such roads as provided in subsection 12 of section 307A.2, for restoration of secondary roads used as primary road detours and for compensation of counties for such use, for restoration of municipal streets so used and for compensation of cities for such use, and for the payments required in section 307A.5.

3. It is further provided that there is appropriated from funds appropriated to the department which would otherwise revert to the primary road fund pursuant to the provisions of the Act appropriating the funds or chapter 8, an amount sufficient to pay the increase in salaries, which increase is not otherwise provided for by the general assembly in an appropriation bill, resulting from the annual review of the merit pay plan as provided in subsection 2 of section 19A.9. The appropriation herein provided shall be in effect from the date of approval by the executive council to the end of the fiscal biennium in which it becomes effective. [C24,§4690; C27, 31, 35,§4755-b4; C39,**§4755.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §313.4]

Referred to in §§19A.23, 312.2(5), 313.5

313.5 Biennial appropriation—budget. The department shall submit to the comptroller, as provided by chapter 8, a detailed estimate of the amount required by the department during each succeeding biennium for the support of the department and for engineering and administration of highway work and maintenance of the primary road system. Such estimate shall be in the same general form and detail as is required by chapter 8 and said chapter shall apply to the budgeting, appropriation, and expenditure of funds in the primary road fund in the same manner as such chapter applies to other departments. However, the amount of contracts for bituminous resurfacing, bridge painting, concrete paving repair, and agreements with municipalities for maintenance on primary road extensions need not be included in the amount appropriated for maintenance.

The provisions of chapter 8 shall apply except that the provisions of section 8.39 shall not apply to funds appropriated to the department under section 313.4, however, the first paragraph of section 8.39 shall apply to appropriations for support of the department and for engineering and administration of highway work and maintenance of the primary road system.

Any contingent fund appropriated to the department from the primary road fund shall be subject to the following conditions:

1. A written statement from the state comptroller shall be obtained, recommending expenditures from the fund for the purposes requested by the department.

2. The comptroller and the governor shall determine that the expenditures contemplated are in the best interest of the state, and that the purpose or project for which funds are requested was not presented to the general assembly by way of a bill and which failed to become enacted into law. [C39,§**4755.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.5]

See appropriation Act

313.6 Accounts and records required. The department shall keep accounts in relation to the primary road fund, crediting said fund with all amounts by law creditable thereto and charging said fund with the amount of all duly and finally approved vouchers for claims properly chargeable thereto. [C24, §4692; C27, 31, 35,§4755-b6; C39,§**4755.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.6]

313.7 Monthly certification of funds. The account of the primary road fund kept by the state comptroller and the state treasurer shall show the amount of the primary road fund with all credits thereto and disbursements therefrom. [C24,§4693; C27, 31, 35,§4755-b7; C39, §**4755.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.7]

313.8 Improvement of primary system. The department shall proceed to the improvement of the primary road system as rapidly as funds become available therefor until the entire mileage of the primary road system is built to established grade, bridged and surfaced with pavement or other surface suited to the traffic on such road. Improvements shall be made and carried out in such manner as to equalize the condition of the primary roads, as nearly as possible, in all sections of the state. [C27, 31, 35,§4755-b8; C39,§**4755.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.8]

313.9 Surveys, plans, and specifications. Before proceeding with the improvement of any primary road, the department shall cause suitable surveys, plans and specifications for said proposed work to be prepared and filed in its office, and the work shall be done in accordance therewith, except insofar as the same may be modified to meet unforeseen or better understood conditions, and no such modification shall be deemed an invalidating matter. [C24,§4699; C27, 31, 35,§4755-b9; C39,§**4755.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.9]

313.10 Bids—when not necessary. As soon as the approved plans and specifications for any primary road construction project are filed with the department, it shall, if the estimated cost exceeds one thousand dollars, proceed to advertise for bids for the construction of said improvement.

The department may contract for the emergency repair, restoration, or reconstruction of a highway or bridge without advertising for bids under the following conditions:

1. The emergency was caused by an unforeseen event causing the failure of a highway, bridge, or other highway structure so that the highway is unserviceable, or where immediate action is necessary to prevent further damage or loss;

2. The department solicits written bids from three or more contractors engaged in the type of work needed; and

3. The necessary work can be done for less than thirty thousand dollars. [C24,§4700; C27, 31, 35,§4755-b10; C39,§**4755.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.10]

See §314.2

313.11 Repealed by 53GA, ch 125,§2, see §314.1.

313.12 Supervision and inspection. The department is expressly charged with the duty of supervision, inspection and direction of the work of construction of primary roads on behalf of the state, and of supervising the expenditure of all funds paid on account of such work by the state or the county on the primary system and it shall do and perform all other matters and things necessary to the faithful completion of the work herein authorized. [C24,§4701; C27, 31, 35,§4755-b12; C39, §**4755.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.12]

313.13 Engineers—bonds. All engineers having responsible charge of any improvements, shall give bonds for the faithful performance of their duties and for like accounting for all property entrusted to their custody. All bonds given by such engineers in the employ of the department shall be deemed to embrace any and all improvements of which they may be in charge. [C24,§4701; C27, 31, 35,§4755-b13; C39,§**4755.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.13]

313.14 Claims. All claims for improving and maintaining the primary road system shall be paid from the primary road fund. [C24, §4702; C27, 31, 35,§4755-b14; C39,§**4755.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.14]

313.15 Repealed by 53GA, ch 125,§4, see §314.3.

313.16 Payment of awards or judgments. There is hereby appropriated from the primary road fund to the department a sum sufficient for the purpose of paying any award or judgment to a claimant under chapters 25 and 25A on a claim arising out of activities of the

department when such an award cannot be charged to a current appropriation. [C71, 73, 75,§313.16]

313.17 Contingent fund. The state treasurer is hereby directed to set aside from the primary road fund the sum of five hundred thousand dollars to be known as the primary road contingent fund. [C24,§4703; C27, 31, 35, §4755-b17; C39,§**4755.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.17]

313.18 Use of contingent fund. When claims for labor, freight, or other items which must be paid promptly and which are payable from the primary road fund are presented to the said department for payment, the said department may direct that warrants in payment of said claims be drawn on said primary road contingent fund. Such warrants when so drawn and signed by the auditor of the department, shall be honored by the state treasurer for payment from said contingent fund. [C24,§4704; C27, 31, 35,§4755-b18; C39,§**4755.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.18]

313.19 Audit of contingent claims. The claims in payment of which warrants are drawn on the primary road contingent fund, shall be audited in the usual manner prescribed by law and shall have noted thereon that warrants in payment thereof have been drawn on the said contingent fund. After the final audit of such claims, the state comptroller shall draw warrants therefor payable to the treasurer of state and forward the same to the department for record. When such warrants have been recorded in the office of the said department, they shall be forwarded to the state treasurer who shall redeem the same, charge them to the proper fund and credit the primary road contingent fund with the amount thereof. [C24,§4705; C27, 31, 35, §4755-b19; C39,§**4755.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.19]

313.20 Auditor — appointment — bond — duties. The state comptroller shall appoint the auditor of the department who shall give bond in the sum of fifty thousand dollars for the faithful performance of his duties. The premium on said bond shall be paid by the department from the primary road fund. Said auditor shall check and audit all claims against the department before such claims are approved by the department, and shall keep all records and accounts relating to the expenditures of the department. He shall, in the checking and auditing of claims against the department, and keeping the records and accounts of the department, be under the direction and supervision of the comptroller, and act as an agent of said comptroller. The department shall furnish said auditor with such help and assistants as may be necessary to properly perform the duties herein specified. The said auditor may be removed by the state comptroller. [C24,§4706; C27, 31, 35,§4755-b20; C39,§**4755.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.20]

313.21 Improvements in cities. The department is hereby given authority, subject to the approval of the council, to construct, reconstruct, improve and maintain extensions of the primary road system within any city including the construction, reconstruction, and improvement of storm sewers and electrical traffic control devices reasonably incident and necessary thereto, provided that such improvement, exclusive of storm sewers, shall not exceed in width that of the primary road system and the amount of funds expended in any one year shall not exceed thirty-five percent of the primary road construction fund.

The phrase "subject to approval of the council," as it appears in this section, shall be construed as authorizing the council to consider said proposed improvements in its relationship to municipal improvements (such as sewers, water lines, sidewalks and other public improvements, and the establishment or re-establishment of street grades). The location of said primary road extensions shall be determined by the department. [C24,§4731; C27, 31, 35,§4755-b26; C39,§**4755.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.21]

Referred to in §384.76
See §313.36

313.22 Paving of whole street by department. Any city and the department may enter into an agreement with respect to any project for the paving of any portion of a primary road extension, and for the construction, reconstruction, and improvement of storm sewers and electrical traffic control devices reasonably incident and necessary thereto, within such city. Said agreement shall specify that the city shall pay for that portion of the cost of said project which is not payable out of primary road funds, and may authorize the department to advertise for bids, let contracts, and supervise the construction of that portion of said project to be paid for by the city. Such agreement shall be a valid and binding obligation on the parties thereto. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.22]

Referred to in §384.76

313.23 Reimbursement by city. Payment for the work, including the city's portion thereof, may in the first instance be made out of the primary road fund. Upon completion of the project, the city shall reimburse the department for the amount so advanced out of the primary road fund, including the city's portion of the engineering and inspection costs. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.23]

Referred to in §384.76

313.24 Separated cities. The department shall designate the street or streets which shall constitute the primary road extensions in any city of the state, which city is separated from the remainder of the state by a river more than five hundred feet in width from bank to bank. The laws of this state relating to the construction, reconstruction or maintenance of the extensions of primary roads in

cities, and to the purchase or condemnation of right of way therefor, and to the expenditure of primary road funds thereon, shall apply to the roads or streets designated hereunder, the same as though said community were not so separated from the rest of the state. [C39, §4755.22; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.24]

313.25 Repealed by 54GA, ch 103,§22, see §§306.4, 306.13, 306.14.

313.26 Repealed by 54GA, ch 103,§22, see §306.15.

313.27 Bridges, viaducts, etc., on municipal primary extensions. The department may construct or aid in the construction, and may maintain bridges, viaducts, and railroad grade crossing eliminations on primary road extensions in cities. [C31, 35,§4755-d1; C39,§4755.25; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.27]

See §313.36

313.28 Temporary primary road detours. When the department, for the purpose of establishing, constructing or maintaining any primary road, determines that any secondary road or portion thereof is necessary for a detour or haul road, the department, after consultation with the county board of supervisors having jurisdiction of the route, shall by order temporarily designate the secondary road or portion thereof as a temporary primary road detour or as a temporary primary road haul road, and the department shall maintain the same as a primary road until it shall revoke the temporary designation order. Prior to use of a secondary road as a primary haul road or detour, the department shall designate a representative to inspect the secondary road with the county engineer to determine and note the condition of the road.

Prior to revoking the designation, the department shall:

1. Restore the secondary road or portion thereof to as good condition as it was prior to its designation as a temporary primary road, or

2. Determine such amount as will adequately compensate the county exercising exclusive or concurrent jurisdiction over the secondary road or portion thereof for excessive traffic upon the secondary road or portion thereof during the period of its designation as a temporary primary road. The department shall certify the amount determined to the state comptroller. The comptroller shall credit the amount to the secondary road fund of the county.

3. If on examination of the route, it is determined that the road can be restored to its original condition only by reconstruction, the department shall cause plans to be drawn, award the necessary contracts for work and proceed to reconstruct and make payments for in the same manner as is prescribed for primary construction projects. [C71, 73, 75, §313.28]

Referred to in §313.29

313.29 Detours located in city. When the temporary primary road detour or temporary primary road haul road, or any portion thereof, is located within the corporate limits of a city, then as to the portion so located, the provisions of section 313.28 as to consultation, designation, restoration and payment by the department shall apply in like manner to the benefit of the city, and credits thereunder shall be made to the general fund of the city. A city may designate the county engineer or city engineer to inspect such street so used jointly with the representative of the department. [C71, 73, 75,§313.29]

313.30 to 313.34 Code 1946, transferred to sections 313.59 to 313.65.

313.35 Repealed by 53GA, ch 125,§7, see §314.6.

313.36 Maintenance — limitation in cities. Primary roads shall be maintained by the department and the cost thereof paid out of the primary road fund. Extensions of primary roads in cities may be maintained by the department and the cost thereof paid out of the primary road fund.

The total amount of funds expended in any one year on extensions of primary roads in cities shall not exceed thirty-five percent of the primary road fund. [C24,§4736; C27, 31, 35, §4775-b29; C39,§4755.27; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.36]

See also §§306.10, 313.21

313.37 Road equipment. The department is authorized to purchase road material or road machinery required in the improvement or maintenance of the primary roads, after receiving competitive bids, and to pay for the same out of the primary road fund, and is directed to purchase, rent or lease any machinery or other articles necessary for the use and most economical operation of the field engineering work, the testing of materials, the preparation of plans, and for all allied purposes, in order to enable the department to carry out the provisions of this chapter. [C24, §4738; C27, 31, 35,§4755-b30; C39,§4755.28; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.37]

313.38 to 313.40 Repealed by 54GA, ch 107,§9.

313.41 Repealed by 54GA, ch 165,§26, see §420.41.

313.42 Definition. As used in this chapter, unless the context otherwise requires, *"department"* means the state department of transportation. [C75,§313.42]

MARKINGS FOR MUNICIPALITIES

313.43 Lateral or detour routes in cities. Any city located on the primary road system and in which the primary road extension as officially designated does not pass through the main part or business district of such city, may designate and mark a lateral or detour route in order to facilitate such primary road

traffic as may desire to get into and out of such business district. [C31, 35,§4755-c2; C39, §4755.34; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.43]

313.44 Standard markings required. Such lateral or detour routes shall be marked with standard markings adopted by the department therefor, which markings shall clearly indicate that such lateral route is not the official primary road extension but is in fact a lateral or detour extending to the business district. [C31, 35,§4755-c3; C39,§4755.35; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.44]

313.45 Cost. The cost of such markings shall be without expense to the state. [C31, 35, §4755-c4; C39,§4755.36; C46, 50, 54, 58, 62, 66, 71, 73, 75,§313.45]

313.46 to 313.52 Repealed by 54GA, ch 103, §22, see §§306.4 to 306.11, inc. and 306.20.

313.53 to 313.57 Repealed by 54GA, ch 103, §22, see §§306.16 to 306.20.

313.58 Special designations for highways. All of U. S. highway number six as it is now, or may hereafter be located in this state shall be known and designated as "Grand Army of the Republic Highway." The department is hereby directed to place suitable markers along said route at such points as they shall deem appropriate. [C50, 54, 58, 62, 66, 71, 73, 75,§313.58]

Blue star highway, see resolution by 53GA, ch 313

INTERSTATE BRIDGES—GIFT OR PURCHASE

313.59 Gift of bridge to state—acceptance. Should the owner of any bridge, for highway traffic, over the Mississippi river or the Missouri river, on the boundary of the state of Iowa, and which bridge is a connecting link between a primary road or primary road extension in a city of this state and a corresponding road or extension thereof in an adjoining state, offer to give such bridge and approaches thereto, or any part thereof, to the state, the department is hereby authorized, in its discretion, to accept such offer in the name of the state of Iowa, and to enter into written agreements evidencing such acceptance. [C46, §313.28; C50, 54, 58, 62, 66, 71, 73, 75,§313.59]

Referred to in §§313.64, 313.65

313.60 Indebtedness paid. When all outstanding indebtedness or other obligations against such bridge and approaches thereto have been paid and discharged the department shall accept transfer of title thereof to the state and is thereafter authorized to take possession of, operate and maintain such bridge and approaches, or any part thereof, free of tolls, as a part of the primary road system. [C46,§313.29; C50, 54, 58, 62, 66, 71, 73, 75, §313.60]

Referred to in §§313.64, 313.65

313.61 Taxes forgiven. Any such bridge and approaches, which has been offered to the department and with respect to which the department has entered into a written agreement accepting such offer, shall after the date of such agreement, be free from state and local property and income taxes in this state. [C46,§313.30; C50, 54, 58, 62, 66, 71, 73, 75,§313.61]

Referred to in §§313.64, 313.65

313.62 Department authority. The authority herein given to the department to enter into agreements for, accept, take over, operate and maintain such bridges may be exercised by the said department independently or in co-operation with other governmental agencies within this state or in adjoining states. [C46,§313.31; C50, 54, 58, 62, 66, 71, 73, 75,§313.62]

Referred to in §§313.64, 313.65

313.63 Action by adjoining state. The department shall not enter into an agreement of acceptance until the adjoining state enters into an agreement to accept ownership of that portion of the bridge being within such adjoining state, and agrees to pay the cost of maintaining such portion of the bridge or its proportionate share of the total cost of maintaining the bridge. [C46,§313.32; C50, 54, 58, 62, 66, 71, 73, 75,§313.63]

Referred to in §§313.64, 313.65

313.64 Financial statement annually. Should the department accept the offer of any bridge over a boundary stream and enter into a written agreement in relation thereto as provided in sections 313.59 to 313.65, the owner or operator of such bridge shall thereafter and until all indebtedness or other obligations against such bridge have been paid and discharged annually file with the department a sworn statement of its financial condition. Such statement shall show funds on hand and indebtedness at the beginning and end of the year, receipts, disbursements, indebtedness retired during the year and any other information required by the department to show the true and complete condition of the finances with respect to such bridge and approaches thereto.

The annual budget of authorized operating and other expenditures for or on behalf of such bridge and approaches shall be approved by the department before becoming effective. Expenditures during the year shall not exceed the approved budget unless an increase in the annual budget be likewise approved by the department. [C46,§313.33; C50, 54, 58, 62, 66, 71, 73, 75,§313.64]

Referred to in §313.65

313.65 Approval of taxing bodies. Before any bridge owned by any individual or private corporation shall be accepted by the department under the provisions of sections 313.59 to 313.64, inclusive, the said proposal and acceptance shall first be approved by the following tax levying and tax certifying bodies located in the said tax district: The board of supervisors, the city councils and the school board or boards. [C46,§313.34; C50, 54, 58, 62, 66, 71, 73, 75,§313.65]

Referred to in §313.64
Constitutionality, 51GA, ch 138,§8

313.66 Mississippi bridges purchased.

1. The department may purchase one-half of any bridge and its approaches for highway traffic over the Mississippi river on the boundary of the state and which is in receivership and is a connecting link between a primary road or primary road extension in a city of the state and a corresponding road or extension thereof in an adjoining state, providing proper approval is granted by the court having jurisdiction of such receivership.

2. The department is authorized to make payment for any such bridge and its approaches from the primary road fund provided however, that in no event shall the amount of such payment be more than one hundred thousand dollars for any one bridge and approaches thereto, and provided further that such purchase shall not be completed or payment made therefor until the adjoining state shall either have purchased or agreed to purchase ownership of the remaining one-half of said bridge and approaches, and agrees to pay the costs of repairing or maintaining such portion of the bridge and all approaches.

3. The department, after the purchase of any such bridge, is authorized to take possession thereof and maintain such portion of the bridge and its approaches thereto free of tolls as a part of the primary road system.

4. Before the purchase of any such bridge shall be completed by the department under the provisions of this section, the purchase thereof shall first be approved by the following tax levying and tax certifying bodies located in said district: The board of supervisors, the city councils, and the school board or boards. [C50, 54, 58, 62, 66, 71, 73, 75,§313.66]

313.67 Scenic and improvement fund. There is hereby created a primary road scenic and improvement fund which shall include and embrace all funds hereafter credited thereto. Said fund shall be administered by the department and shall be used for the construction, reconstruction, improvement and maintenance of roadside safety rest areas and scenic beautification areas along the primary roads of the state including the acquisition of such property and property rights needed to accomplish said purposes. Part or all of said fund may be used to match federal allotments made available to the state of Iowa for the purposes provided in this section and to this end, the department is empowered on behalf of the state to enter into any agreements or contracts with the duly constituted federal authorities in order to secure the benefit of all present and future federal allotments. [C66, 71, 73, 75,§313.67]

Referred to in §306C.10(16, 18)

CHAPTER 313A

INTERSTATE BRIDGES

Referred to in §307.24

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313A.1 Definitions. The following words or terms, as used in this chapter, shall have the respective meanings as stated:

1. *"Toll bridge"* shall mean an interstate bridge constructed, purchased or acquired under the provisions of this chapter, upon which

tolls are charged, together with all appurtenances, additions, alterations, improvements, and replacements thereof, and the approaches thereto, and all lands and interests therein used therefor, and buildings and improvements thereon.

2. *"Department"* shall mean the state department of transportation.

3. *"Construct, constructing, construction or constructed"* shall include the completion, reconstruction, remodeling, repair, or improvement of any existing toll bridge or any partially constructed interstate bridge, as well as the construction of any new toll bridge.

4. *"Acquisition by purchase, gift, or condemnation"* as used in this chapter shall mean acquisition by the department, whether such terms "purchase, gift, or condemnation" are used singularly or in sequence.

5. *"Federal bridge commission"* shall mean any bridge commission organized and operating pursuant to an Act of the Congress of the United States, even though such Act of Congress may declare the bridge commission not to be an agency of the federal government. [C71, 73, 75,§313A.1]

313A.2 Bridge to be controlled by department. The department shall have full charge of the construction and acquisition of all toll bridges constructed or acquired under the provisions of this chapter, the operation and maintenance thereof and the imposition and collection of tolls and charges for the use thereof. The department shall have full charge of the design of all toll bridges constructed under the provisions of this chapter. The department shall proceed with the construction of such toll bridges and other facilities and the approaches thereto by contract immediately upon there being made available funds for such work and shall prosecute such work to completion as rapidly as practicable. The department shall advertise for bids for the construction, reconstruction, improvement, repair or remodeling of any toll bridge by publication of a notice once each week for at least two consecutive weeks in a newspaper published and having a general circulation throughout the state of Iowa, the first publication to appear at least fifteen days prior to the date set for receiving bids. The department shall have the power to accept such offer or offers, propositions or bids, and enter into such contract or contracts as it shall deem to be to the best interest of the state. [C71, 73, 75,§313A.2]

313A.3 Toll bridges constructed over boundary rivers. The department is hereby authorized to establish and construct toll bridges upon any public highway, together with approaches thereto, wherever it is considered necessary or advantageous and practical for crossing any navigable river between this state and an adjoining state. The necessity or advantage and practicality of any toll bridge shall be determined by the department. To obtain information for the consideration of the department upon the construction of any toll bridge or any other matter pertaining thereto, any officer or employee of the state, upon the request of the department, shall make reasonable examination, investigation, survey, or reconnaissance to determine material facts pertaining thereto and shall report such findings to the department. The cost thereof shall be borne by the department or office conducting it from funds provided for its functions. [C71, 73, 75,§313A.3]

313A.4 Investigation of feasibility. The department is hereby authorized to enter into agreements with any federal bridge commission or any county or city of this state, and with an adjoining state or county, city, or town thereof, for the purpose of implementing an investigation of the feasibility of any toll bridge project for the bridging of a navigable river forming a portion of the boundary of this state and such adjoining state. The department may use any funds available for the purposes of this section. Such agreements may provide that in the event any such project is determined to be feasible and adopted, any advancement of funds by any state, county or city may be reimbursed out of any proceeds derived from the sale of bonds or out of tolls and revenues to be derived from such project. [C71, 73, 75,§313A.4]

313A.5 Acquiring existing bridge — bonds. Whenever the department deems it necessary or advantageous and practical, it may acquire by gift, purchase, or condemnation any interstate bridge which connects with or may be connected with the public highways and the approaches thereto, except that the department may not condemn an existing interstate bridge used for interstate highway traffic and combined highway and railway traffic and presently owned by a municipality, or a person, firm, or corporation engaged in interstate commerce. The department may also acquire by gift or purchase two or more existing interstate bridges and any partially constructed interstate bridge, all located within ten miles of each other, complete the partially constructed bridge and dismantle the bridge which it is designed to replace. In connection with the acquisition of any such bridge, bridges, or partially constructed bridge, the department and any federal bridge commission or any city, county, or other political subdivision of the state are authorized to do all acts and things as in this chapter are provided for the establishing and constructing of toll bridges and operating, financing, and maintaining such bridges insofar as such powers and requirements are applicable to the acquisition of any toll bridge and its operation, financing, and maintenance. In so doing, they shall act in the same manner and under the same procedures as provided for establishing, construct-

ing, operating, financing, and maintaining toll bridges insofar as such manner and procedures are applicable. Without limiting the generality of the above provisions, the department is hereby authorized to cause surveys to be made to determine the propriety of acquiring any such bridge and the rights of way necessary therefor, and other facilities necessary to carry out the provisions hereof; to issue, sell, redeem bonds or issue and exchange bonds with present holders of outstanding bonds of bridges being acquired under the provisions of this chapter and deposit and pay out of the proceeds of the bonds for the financing thereof, to impose, collect, deposit, and expend tolls therefrom; to secure and remit financial and other assistance in connection with the purchase thereof; and to carry insurance thereon. [C71, 73, 75,§313A.5]

313A.6 Rules adopted—financial statements. The department, its officials, and all state officials are hereby authorized to perform such acts and make such agreements consistent with the law which are necessary and desirable in connection with the duties and powers conferred upon them regarding the construction, maintenance, and operation and insurance of toll bridges or the safeguarding of the funds and revenues required for such construction and the payment of the indebtedness incurred therefor. The department shall adopt such rules and regulations in accordance with the provisions of chapter 17A as it may deem necessary for the administration and exercise of its powers and duties granted by this chapter, and shall prepare annual financial statements regarding the operation of such toll bridges which shall be made available for inspection by the public and by the holders of revenue bonds issued by the department under the provisions of this chapter at all reasonable times. [C71, 73, 75,§313A.6]

313A.7 Resolution of public interest and necessity—revenue bonds. Whenever the department deems it to be in the best interest of the primary highway system that any new toll bridge be constructed upon any public highway and across any navigable river between this state and an adjoining state, the department shall adopt a resolution declaring that the public interest and necessity require the construction of such toll bridge and authorizing the issuance of revenue bonds in an amount sufficient for the purpose of obtaining funds for such construction. The issuance of bonds as provided in this chapter for the construction, purchase, or acquisition of more than one toll bridge may, at the discretion of the department, be included in the same authority and issue or issues of bonds, and the department is hereby authorized to pledge the gross revenues derived from the operation of any such toll bridge under its control and jurisdiction to pay the principal of and interest on bonds issued to pay the cost of purchasing, acquiring, or constructing any such toll bridge financed under the provisions of this chapter. The department is hereby granted wide discretion, in connection with the financing of the cost of any toll bridge, to pledge the gross revenues of a single toll bridge for the payment of bonds and interest thereon issued to pay the cost of such bridge and to pledge the gross revenues of two or more toll bridges to pay bonds issued to pay the cost of one or more toll bridges and interest thereon as long as the several bridges included herein are not more than ten miles apart.

In addition, if the department in its discretion determines that the construction of a toll bridge cannot be financed entirely through revenue bonds and that the construction of such toll bridge is necessary, the department may advance funds from the primary highway fund to pay for that part of the construction cost, including the cost of approaches and all incidental costs, which is not paid out of the proceeds of revenue bonds. However, said funds advanced from the primary highway fund shall be used only to pay the construction cost, including the cost of approaches and all incidental costs, with respect to that part of the bridge which is or will be located within the state of Iowa. After all revenue bonds and interest thereon issued and sold pursuant to this chapter and payable from the tolls and revenues of said bridge have been fully paid and redeemed or funds sufficient to pay said bonds and interest, including premium, if any, have been set aside and pledged for that purpose, then such amount advanced from the primary road fund shall be repaid to the primary road fund from the tolls and revenues of said bridge before said bridge is made a toll free bridge under the provisions of this chapter. [C71, 73, 75,§313A.7]

Referred to in §313A.16

313A.8 Right of way secured. Whenever the department shall authorize the construction of any toll bridge, the department is empowered to secure rights of way therefor and for approaches thereto by gift or purchase or by condemnation in the manner provided by law for the taking of private property for public purposes. [C71, 73, 75,§313A.8]

313A.9 Consent to cross state property. The right of way is hereby given, dedicated, and set apart upon which to locate, construct, and maintain toll bridges or approaches thereto or other highway crossings, and transportation facilities thereof or thereto, through, over or across any of the lands which are now or may be the property of this state, including highways; and through, over, or across the streets, alleys, lanes, and roads within any city, county, or other political subdivision of the state. If any property belonging to any city, county or other political subdivision of the state is required to be taken for the construction of any such bridge or approach thereto

or should any such property be injured or damaged by such construction, such compensation therefor as may be proper or necessary and as shall be agreed upon may be paid by the department to the particular county, city or other political subdivision of the state owning such property, or condemnation proceedings may be brought for the determination of such compensation. [C71, 73, 75,§313A.9]

313A.10 Resolution precedent to action. Before the department shall proceed with any action to secure right of way or with the construction of any toll bridge under the provisions of this chapter, it shall first pass a resolution finding that public interest and necessity require the acquisition of right of way for and the construction of such toll bridge. Such resolution shall be conclusive evidence of the public necessity of such construction and that such property is necessary therefor. To aid the department in determining the public interest, a public hearing shall be held in the county or counties of this state in which any portion of a bridge is proposed to be located. Notice of such hearing shall be published at least once in a newspaper published and having a general circulation in the county or counties where such bridge is proposed to be located, not less than twenty days prior to the date of the hearing. When it becomes necessary for the department to condemn any real estate to be used in connection with any such bridge, or to condemn any existing bridge, such condemnation shall be carried out in a manner consistent with the provisions of chapters 471 and 472. In eminent domain proceedings to acquire property for any of the purposes of this chapter, any bridge, real property, personal property, franchises, rights, easements, or other property or privileges appurtenant thereto appropriated or dedicated to a public use or purpose by any person, firm, private, public or municipal corporation, county, city, district or any political subdivision of the state, may be condemned and taken, and the acquisition and use thereof as herein provided for the same public use or purpose to which such property has been so appropriated or dedicated, or for any other public use or purpose, shall be deemed a superior and permanent right and necessity, and a more necessary use and purpose than the public use or purpose to which such property has already been appropriated or dedicated, and any condemnation award may be paid from the proceeds of revenue bonds issued under the provisions of this chapter. [C71, 73, 75,§313A.10]

313A.11 Payment from available funds. If the department determines that any toll bridge should be constructed or acquired under its authority, all costs thereof, including land, right of way, surveying, engineering, construction, legal and administrative expenses, and fees of any fiscal adviser, shall be paid out of any funds available for payment of the cost of the bridge. [C71, 73, 75,§313A.11]

313A.12 Revenue bonds. The department is hereby authorized and empowered to issue revenue bonds for the acquisition, purchase or construction of any interstate bridge. Any and all bonds issued by the department for the acquisition, purchase, or construction of any interstate bridge under the authority of this chapter shall be issued in the name of the department and shall constitute obligations only of the department, shall be identified by some appropriate name, and shall contain a recital on the face thereof that the payment or redemption of said bonds and the payment of the interest thereon are secured by a direct charge and lien upon the tolls and other revenues of any nature whatever received from the operation of the particular bridge for the acquisition, purchase, or construction of which the bonds are issued and of such other bridge or bridges as may have been pledged therefor, and that neither the payment of the principal or any part thereof nor of the interest thereon or any part thereof constitutes a debt, liability, or obligation of the state of Iowa. When it is determined by the department to be in the best public interest, any bonds issued under the provisions of this chapter may be refunded and refinanced at a lower rate, the same rate or a higher rate or rates of interest and from time to time as often as the department shall find it to be advisable and necessary so to do. Bonds issued to refund other bonds theretofore issued by the department under the provisions of this chapter may either be sold in the manner hereinafter provided and the proceeds thereof applied to the payment of the bonds being refunded, or the refunding bonds may be exchanged for and in payment and discharge of the bonds being refunded. The refunding bonds may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in part in installments at different times or at one time. The refunding bonds may be sold at any time on, before, or after the maturity of any of the outstanding bonds to be refinanced thereby and may be issued for the purpose of refunding a like or greater principal amount of bonds, except that the principal amount of the refunding bonds may exceed the principal amount of the bonds to be refunded to the extent necessary to pay any premium due on the call of the bonds to be refunded or to fund interest in arrears or about to become due. The gross revenues of any toll bridge pledged to the payment of the bonds being refunded, together with the unpledged gross revenues of any other toll bridges located within ten miles of said bridge, may be pledged by the department to pay the principal of and interest on the refunding bonds and to create and maintain reserves therefor.

The department is empowered to receive and accept funds from the state of Iowa or the federal government or any other state upon a co-operative or other basis for the acquisition, purchase, or construction of any interstate bridge authorized under the provisions of this chapter and is empowered to enter into such agreements with the state of Iowa or any other state or the federal government as may be required for the securing of such funds.

The department is authorized and empowered to spend from annual primary road fund receipts sufficient moneys to pay the cost of operation, maintenance, insurance, collection of tolls and accounting therefor and all other charges incidental to the operation and maintenance of any toll bridge administered under the provisions of this chapter. However, said annual primary road fund receipts shall be used only to pay such costs and charges with respect to that part of the bridge which is located within the state of Iowa.

The department may also issue its revenue bonds to pay all or any part of the cost of acquiring two or more existing interstate bridges and any partially constructed interstate bridge, all located within ten miles of each other, of completing the partially constructed bridge and of dismantling the bridge which it is designed to replace, and to impose and collect tolls on all of such bridges and to pledge the revenues derived therefrom to the payment of the bonds issued to finance such project. The department may also issue its revenue bonds to pay all or any part of the cost of reconstructing, completing, improving, repairing, or remodeling any interstate bridge or partially constructed bridge, impose and collect tolls, and pledge the bridge revenues to the payment of said bonds. [C71, 73, 75, §313A.12]

Referred to in §313A.16

313A.13 Sale and exchange or retirement of bonds. The revenue bonds may be issued and sold or exchanged by the department from time to time and in such amounts as it deems necessary to provide sufficient funds for the acquisition, purchase, or construction of any such bridge and to pay interest on bonds issued for the construction of any toll bridge during the period of actual construction and for six months after completion thereof. The department is hereby authorized to adopt all necessary resolutions prescribing the form, conditions, and denominations of the bonds, the maturity dates therefor, and the interest rate or rates which the bonds shall bear. All bonds of the same issue need not bear the same interest rate. Principal and interest of the bonds shall be payable at such place or places within or without the state of Iowa as determined by the department, and the bonds may contain provisions for registration as to principal or interest, or both. Interest shall be payable at such times as determined by the department and the bonds shall mature at such times and in such amounts as the department prescribes. The department may provide for the retirement of the bonds at any time prior to maturity, and in such manner and upon payment of such premiums as it may determine in the resolution providing for the issuance of the bonds. All such bonds and any coupons attached thereto shall be signed by such officials of the department as the department may direct. Successive issues of such bonds within the limits of the original authorization shall have equal preference with respect to the payment of the principal thereof and the payment of interest thereon. The department may fix different maturity dates, serially or otherwise, for successive issues under any one original authorization. All bonds issued under the provisions of this chapter shall have all the qualities of negotiable instruments under the laws of the state of Iowa. All bonds issued and sold hereunder shall be sold to the highest and best bidder on the basis of sealed proposals received pursuant to a notice specifying the time and place of sale and the amount of bonds to be sold which shall be published at least once not less than seven days prior to the sale in a newspaper published in the state of Iowa and having a general circulation in said state. None of the provisions of chapter 75 shall apply to bonds issued under the provisions of this chapter but such bonds shall be sold upon terms of not less than par plus accrued interest. The department may reject any or all bids received at the public sale and may thereafter sell the bonds at private sale on such terms and conditions as it deems most advantageous to its own interests, but not at a price below that of the best bid received at the advertised sale. The department may enter into contracts and borrow money through the sale of bonds of the same character as those herein authorized, from the United States or any agency thereof, upon such conditions and terms as may be agreed to and the bonds shall be subject to all the provisions of this chapter, except that any bonds issued hereunder to the United States or any agency thereof need not first be offered at public sale. The department may also provide for the private sale of bonds issued under the provisions of this chapter to the state treasurer of Iowa upon such terms and conditions as may be agreed upon, and in such event said bonds need not first be offered at public sale. Temporary or interim bonds, certificates, or receipts, of any denomination, and with or without coupons attached, signed by such official as the department may direct, may be issued and delivered until the definitive bonds are executed and available for delivery [C71, 73, 75, §313A.13]

313A.14 Proceeds in trust fund. The proceeds from the sale of all bonds authorized and issued under the provisions of this chapter shall be deposited by the department in a fund designated as the construction fund of the particular interstate bridge or bridges for

which such bonds were issued and sold, which fund shall not be a state fund and shall at all times be kept segregated and set apart from all other funds and in trust for the purposes herein set out. Such proceeds shall be paid out or disbursed solely for the acquisition, purchase, or construction of such interstate bridge or bridges and expenses incident thereto, the acquisition of the necessary lands and easements therefor and the payment of interest on such bonds during the period of actual construction and for a period of six months thereafter, only as the need therefor shall arise and the department may agree with the purchaser of said bonds upon any conditions or limitations restricting the disbursement of such funds that may be deemed advisable, for the purpose of assuring the proper application of such funds. All moneys in such fund and not required to meet current construction costs of the interstate bridge or bridges for which such bonds were issued and sold, and all funds constituting surplus revenues which are not immediately needed for the particular object or purpose to which they must be applied or are pledged may be invested in obligations issued or guaranteed by the United States or by any person controlled by or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; provided, however, that the department may provide in the proceedings authorizing the issuance of said bonds that the investment of such moneys shall be made only in particular bonds and obligations within the classifications eligible for such investment and such provisions shall thereupon be binding upon the department and all officials having anything to do with such investment. Any surplus which may exist in said construction fund shall be applied to the retirement of bonds issued for the acquisition, purchase, or construction of any such interstate bridge by purchase or call and, in the event such bonds cannot be purchased at a price satisfactory to the department and are not by their terms callable prior to maturity, such surplus shall be paid into the fund applicable to the payment of principal and interest of said bonds and shall be used for that purpose. The proceedings authorizing the issuance of bonds may provide limitations and conditions upon the time and manner of applying such surplus to the purchase and call of outstanding bonds and the terms upon which they shall be purchased or called and such limitations and conditions shall be followed and observed in the application and use of such surplus. All bonds so retired by purchase or call shall be immediately canceled. [C71, 73, 75,§313A.14]

313A.15 Toll revenue fund. All tolls or other revenues received from the operation of any toll bridge acquired, purchased, or constructed with the proceeds of bonds issued and sold hereunder shall be deposited by the department to the credit of a special trust fund to be designated as the toll revenue fund of the particular toll bridge or toll bridges producing such tolls or revenue, which fund shall be a trust fund and shall at all times be kept segregated and set apart from all other funds. [C71, 73, 75,§313A.15]

313A.16 Funds transferred to place of payment. From the money so deposited in each separate construction fund as hereinabove provided, at the direction of the department there shall be transferred to the place or places of payment named in said bonds such sums as may be required to pay the interest as it becomes due on all bonds issued and outstanding for the construction of such particular toll bridge or toll bridges during the period of actual construction and during the period of six months immediately thereafter. The department shall thereafter transfer from each separate toll revenue fund to the place or places of payment named in the bonds for which said revenues have been pledged such sums as may be required to pay the interest on said bonds and redeem the principal thereof as such interest and principal become due. All funds so transferred for the payment of principal of or interest on bonds issued for any particular toll bridge or toll bridges shall be segregated and applied solely for the payment of said principal or interest. The proceedings authorizing the issuance of the bonds may provide for the setting up of a reserve fund or funds out of the tolls and other revenues not needed for the payment of principal and interest, as the same currently matures and for the preservation and continuance of such fund in a manner to be provided therein, and such proceedings may also require the immediate application of all surplus moneys in such toll revenue fund to the retirement of such bonds prior to maturity, by call or purchase, in such manner and upon such terms and the payment of such premiums as may be deemed advisable in the judgment of the department. The moneys remaining in each separate toll revenue fund after providing the amount required for the payment of principal of and interest on bonds as hereinabove provided, shall be held and applied as provided in the proceedings authorizing the issuance of said bonds. In the event the proceedings authorizing the issuance of said bonds do not require surplus revenues to be held or applied in any particular manner, they shall be allocated and used for such other purposes incidental to the construction, operation, and maintenance of any toll bridge as the department may determine and as permitted under sections 313A.7 and 313A.12. [C71, 73, 75, §313A.16]

313A.17 Warrants for payment. Warrants for payments to be made on account of such bonds shall be drawn by the department on duly approved vouchers. Moneys required to meet the costs of purchase or construction and all expenses and costs incidental to the acquisition, purchase, or construction of any

particular interstate bridge or to meet the costs of operating, maintaining, and repairing the same, shall be paid by the department from the proper fund therefor upon duly approved vouchers. All interest received or earned on money deposited in each and every fund herein provided for shall be credited to and become a part of the particular fund upon which said interest accrues. [C71, 73, 75, §313A.17]

313A.18 Depositaries or paying agents. The department may provide in the proceedings authorizing the issuance of bonds or may otherwise agree with the purchasers of bonds regarding the deposit of all moneys constituting the construction fund and the toll revenue fund and provide for the deposit of such money at such times and with such depositaries or paying agents and upon the furnishing of such security as may meet with the approval of the purchasers of such bonds. [C71, 73, 75,§313A.18]

313A.19 Expenses of department. Notwithstanding any provision contained in this chapter, the proceeds received from the sale of bonds and the tolls or other revenues received from the operation of any toll bridge may be used to defray any expenses incurred by the department in connection with and incidental to the issuance and sale of bonds for the acquisition, purchase, or construction of any such toll bridge including expenses for the preparation of surveys and estimates, legal, fiscal and administrative expenses, and the making of such inspections and examinations as may be required by the purchasers of such bonds; provided, that the proceedings authorizing the issuance of such bonds may contain appropriate provisions governing the use and application of said bond proceeds and toll or other revenues for the purposes herein specified. [C71, 73, 75,§313A.19]

313A.20 No diminution of duties while bonds outstanding. While any bonds issued by the department remain outstanding, the powers, duties or existence of the department or of any other official or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. The holder of any bond may by mandamus or other appropriate proceeding require and compel the performance of any of the duties imposed upon any state department, official, or employee or imposed upon the department or its officers, agents, and employees in connection with the acquisition, purchase, construction, maintenance, operation, and insurance of any bridge and in connection with the collection, deposit, investment, application, and disbursement of all tolls and other revenues derived from the operation and use of any bridge and in connection with the deposit, investment, and disbursement of the proceeds received from the issuance of bonds; provided, that the enumeration of such rights and remedies herein shall not be deemed to exclude the exercise or prosecution of any other rights or remedies by the holders of such bonds. [C71, 73, 75,§313A.20]

313A.21 Insurance or indemnity bond. When any toll bridge authorized hereunder is being built by the department it may carry or cause to be carried such an amount of insurance or indemnity bond or bonds as protection against loss or damage as it may deem proper. The department is hereby further empowered to carry such an amount of insurance to cover any accident or destruction in part or in whole to any toll bridge. All moneys collected on any indemnity bond or insurance policy as the result of any damage or injury to any such toll bridge shall be used for the purpose of repairing or rebuilding of any such toll bridge as long as there are revenue bonds against any such structure outstanding and unredeemed. The department is also empowered to carry insurance or indemnity bonds insuring against the loss of tolls or other revenues to be derived from any such toll bridge by reason of any interruption in the use of such toll bridge from any cause whatever, and the proceeds of such insurance or indemnity bonds shall be paid into the fund into which the tolls and other revenues of the bridge thus insured are required to be paid and shall be applied to the same purposes and in the same manner as other moneys in the said fund. Such insurance or indemnity bonds may be in an amount equal to the probable tolls and other revenues to be received from the operation of such toll bridge during any period of time that may be determined upon by the department and fixed in its discretion, and be paid for out of the toll revenue fund as may be specified in said proceedings. The department may provide in the proceedings authorizing the issuance of bonds for the carrying of insurance as authorized by this chapter and the purchase and carrying of insurance as authorized by this chapter shall thereupon be obligatory upon the department and be paid for out of the toll revenue fund as may be specified in said proceedings. [C71, 73, 75,§313A.21]

313A.22 Toll charges fixed by department. The department is hereby empowered to fix the rates of toll and other charges for all interstate bridges acquired, purchased, or constructed under the terms of this chapter. Toll charges so fixed may be changed from time to time as conditions may warrant. The department in establishing toll charges shall give due consideration to the amount required annually to pay the principal of and interest on bonds payable from the revenues thereof. The tolls and charges shall be at all times fixed at rates sufficient to pay the bonds and interest as they mature, together with the creation and maintenance of bond reserve funds and other funds as established in the proceedings authorizing the issuance of the bonds, for any particular toll bridge. The

amounts required to pay the principal of and interest on bonds shall constitute a charge and lien on all such tolls and other revenues and interest thereon and sinking funds created therefrom received from the use and operation of said toll bridge, and the department is hereby authorized to pledge a sufficient amount of said tolls and revenues for the payment of bonds issued under the provisions of this chapter and interest thereon and to create and maintain a reserve therefor. Such tolls and revenues, together with the interest earned thereon, shall constitute a trust fund for the security and payment of such bonds and shall not be used or pledged for any other purpose as long as such bonds or any of them are outstanding and unpaid. [C71, 73, 75, §313A.22]

313A.23 Political subdivision may aid. Whenever a proposed interstate bridge is to be acquired, purchased or constructed, any city, county, or other political subdivision located in relation to such facility so as to benefit directly or indirectly thereby, may, either jointly or separately, at the request of the department advance or contribute money, rights of way, labor, materials, and other property toward the expense of acquiring, purchasing or constructing the bridge, and for preliminary surveys and the preparation of plans and estimates of cost therefor and other preliminary expenses. Any such city, county, or other political subdivision may, either jointly or separately, at the request of the department advance or contribute money for the purpose of guaranteeing the payment of interest or principal on the bonds issued by the department to finance the bridge. Appropriations for such purposes may be made from any funds available, including county road funds received from or credited by the state, or funds obtained by excess tax levies made pursuant to law or the issuance of general obligation bonds for this purpose. Money or property so advanced or contributed may be immediately transferred or delivered to the department to be used for the purpose for which contribution was made. The department may enter into an agreement with a city, county, or other political subdivision to repay any money or the value of a right of way, labor, materials or other property so advanced or contributed. The department may make such repayment to a city, county, or other political subdivision and reimburse the state for any expenditures made by it in connection with the bridge out of tolls and other revenues for the use of the bridge. [C71, 73, 75,§313A.23]

313A.24 Sale of excess land to political subdivisions. If the department deems that any land, including improvements thereon, is no longer required for toll bridge purposes and that it is in the public interest, it may negotiate for the sale of such land to the state or to any city, county or other political subdivision or municipal corporation of the state. The department shall certify the agreement for the sale to the state executive council, with a description of the land and the terms of the sale and the state executive council may execute the deed and deliver it to the grantee. [C71, 73, 75,§313A.24]

Referred to in §313A.28

313A.25 Sale to public. If the department is of the opinion that any land, including improvements thereon, is no longer required for toll bridge purposes, it may be offered for sale upon publication of a notice once each week for two consecutive weeks in a newspaper published and having a general circulation throughout the state of Iowa, specifying the time and place fixed for the receipt of bids. [C71, 73, 75,§313A.25]

Referred to in §313A.28

313A.26 Acceptance or rejection of bids. The department may reject all such bids if the highest bid does not equal the reasonable fair market value of the real property, plus the value of the improvements thereon, computed on the basis of the reproduction value less depreciation. The department may accept the highest and best bid, and certify the agreement for the sale to the state executive council, with a description of the land and the terms of the sale and the state executive council shall execute the deed and deliver it to the grantee. [C71, 73, 75,§313A.26]

Referred to in §313A.28

313A.27 Franchises for use of bridge. If the department deems it consistent with the use and operation of any toll bridge, the department may grant franchises to persons, firms, associations, private or municipal corporations, the United States government or any agency thereof, to use any portion of the property of any toll bridge, including approaches thereto, for the construction and maintenance of water pipes, flumes, gas pipes, telephone, telegraph and electric light and power lines and conduits, trams or railways, and any other such facilities in the manner of granting franchises on state highways. [C71, 73, 75,§313A.27]

Referred to in §313A.28

313A.28 Deposit of proceeds. Any moneys received pursuant to the provisions of sections 313A.24 through 313A.27 shall be deposited by the department into the separate and proper trust fund established for the bridge. [C71, 73, 75,§313A.28]

313A.29 Tolls imposed for improving other bridges. The department shall have the right to impose and reimpose tolls for pedestrian or vehicular traffic over any interstate bridges under its control and jurisdiction for the purpose of paying the cost of reconstructing and improving existing bridges and their approaches, purchasing existing bridges, and constructing new bridges and approaches, provided that any such existing bridge or new bridge is located within ten miles of

the bridge on which tolls are so imposed or reimposed, to pay interest on and create a sinking fund for the retirement of revenue bonds issued for the account of such projects and to pay any and all costs and expenses incurred by the department in connection with and incidental to the issuance and sale of bonds and for the preparation of surveys and estimates and to establish the required interest reserves for and during the estimated construction period and for six months thereafter. [C71, 73, 75,§313A.29]

Referred to in §313A.30

313A.30 Bridges as part of primary roads. The bridges herein provided for may be incorporated into the primary road system as toll free bridges whenever the costs of the construction of the bridges and the approaches thereto and the reconstruction and improvement of existing bridges and approaches thereto, including all incidental costs, have been paid and when all revenue bonds and interest thereon issued and sold pursuant to this chapter and payable from the tolls and revenues thereof shall have been fully paid and redeemed or funds sufficient to pay said bonds and interest, including premium, if any, have been set aside and pledged for that purpose. However, tolls may again be imposed as provided in section 313A.29. [C71, 73, 75,§313A.30]

313A.31 Revenue bonds. The department shall have the power and is hereby authorized by resolution to issue, sell, or pledge its revenue bonds in an amount sufficient to provide funds to pay all or any part of the costs of construction of a new bridge and approaches thereto and the reconstruction, improvement, and maintaining of an existing bridge and approaches thereto, including all costs of survey, acquisition of right of way, engineering, legal, fiscal and incidental expenses, to pay the interest due thereon during the period beginning with the date of issue of the bonds and ending at the expiration of six months after the first imposition and collection of tolls from the users of said bridges, and all costs incidental to the issuance and sale of the bonds.

Except as may be otherwise specifically provided by statute, all of the other provisions of this chapter shall govern the issuance and sale of revenue bonds issued under this section, the execution thereof, the disbursement of the proceeds of issuance thereof, the interest rate or rates thereon, their form, terms, conditions, covenants, negotiability, denominations, maturity date or dates, the creation of special funds or accounts safeguarding and providing for the payment of the principal thereof and interest thereon, and their manner of redemption and retirement.

Such bonds shall include a covenant that the payment of the principal thereof and the interest thereon are secured by a first and direct charge and lien on all of the tolls and other gross revenues received from the operation of said toll bridges and from any interest which may be earned from the deposit or investment of any such revenues.

The tolls and charges shall be at all times fixed at rates sufficient to pay the bonds and interest as they mature, together with the creation and maintenance of bond reserve funds and other funds as established in the proceedings authorizing the issuance of the bonds. [C71, 73, 75,§313A.31]

313A.32 Operation and control of bridge. The department is hereby authorized to operate and to assume the full control of said toll bridges and each portion thereof whether within or without the borders of the state of Iowa, with full power to impose and collect tolls from the users of such bridges for the purpose of providing revenues at least sufficient to pay the cost and incidental expenses of construction and acquisition of said bridges and approaches in both states in which located and for the payment of the principal of and interest on its revenue bonds as authorized by this chapter. [C71, 73, 75,§313A.32]

313A.33 No obligation of state. Under no circumstances shall any bonds issued under the terms of this chapter be or become or be construed to constitute a debt of or charge against the state of Iowa within the purview of any constitutional or statutory limitation or provision. No taxes, appropriations or other funds of the state of Iowa may be pledged for or used to pay such bonds or the interest thereon, but any such bonds shall be payable solely and only as to both principal and interest from the tolls and revenues derived from the operation of any toll bridge or toll bridges acquired, purchased, or constructed under this chapter, and the sole remedy for any breach or default of the terms of any such bonds or proceedings for their issuance shall be a proceeding either in law or in equity by suit, action or mandamus to enforce and compel performance of the duties required by this chapter and the terms of the resolution under which such bonds are issued. [C71, 73, 75,§313A.33]

313A.34 Agreements with other states. The director of transportation may, subject to the approval of the state transportation commission, enter into such agreement or agreements with other state highway commissions and the governmental agencies or subdivisions of the state of Iowa or other states and with federal bridge commissions as they shall find necessary or convenient to carry out the purposes of this chapter, and is authorized to do any and all acts contained in such agreement or agreements that are necessary or convenient to carry out the purposes of this chapter. Such agreements may include, but shall not be restricted to, the following provisions:

1. A provision that the department shall assume and have complete responsibility for the operation of such bridges and approaches

thereto, and with full power to impose and collect all toll charges from the users of such bridges and to disburse the revenue derived therefrom for the payment of principal and interest on any revenue bonds herein provided for and to carry out the purposes of this chapter.

2. A provision that the department shall provide for the issuance, sale, exchange or pledge, and payment of revenue bonds payable solely from the revenues derived from the imposition and collection of tolls upon such toll bridges.

3. A provision that the department, after consultation with the other governmental agencies or subdivisions who are parties to such agreements, shall fix and revise the classifications and amounts of tolls to be charged and collected from the users of the toll bridges, with the further provision that such toll charges shall be removed after all costs of planning, designing, and construction of such toll bridges and approaches thereto and all incidental costs shall have been paid, and all of said revenue bonds, and interest thereon, issued pursuant to this chapter shall have been fully paid and redeemed or funds sufficient therefor have been set aside and pledged for that purpose.

4. A provision that all acts pertaining to the design and construction of such toll bridges may be done and performed by the department and that any and all contracts for the construction of such toll bridges shall be awarded in the name of the department.

5. A provision that the state of Iowa and adjoining state and all governmental agencies or subdivisions party to such agreement shall be reimbursed out of the proceeds of the sale of such bonds or out of tolls and revenues as herein allowed for any advances they may have made or expenses they may have incurred for any of the purposes for which said revenue bonds may be issued, after duly verified itemized statements of such advances and expenses have been submitted to and been approved by all parties to such agreement.

6. A provision that when all outstanding indebtedness or other obligations payable from the revenues of such bridges have been paid the adjoining state agrees to accept ownership of that portion of the bridge within such state and agrees to pay the cost of maintaining such portions of the bridge or proportionate share of the total cost of maintaining the bridge. [C71, 73, 75,§313A.34]

313A.35 General obligation bonds. Counties are hereby authorized to issue general obligation bonds for the purpose of contributing money to the department to help finance the construction of toll bridges across navigable rivers constituting boundaries between the county and an adjoining state. Prior to the issuance of such bonds the board of supervisors shall call and direct the county commissioner of elections to hold an election in said county at which the proposition shall be submitted to the voters of the county in the following form:

"Shall the county of ..... issue its bonds in the amount of $..... for the purpose of .....?"

Notice of such election, stating the date of the election, the hours of opening and closing the polls, the precincts and polling places therefor, and the question to be submitted shall be published once each week for three consecutive weeks in at least one newspaper published and having a general circulation in the county. The election shall be held on a day not less than five nor more than twenty days after the last publication of such notice. The proposition shall not be deemed carried or adopted unless the vote in favor thereof is equal to at least sixty percent of the total vote cast for and against said proposition at said election. [C71, 73, 75,§313A.35]

313A.36 Purposes of powers granted. The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the state of Iowa, for the increase of their commerce and prosperity and for the improvement of their health and living conditions, and as the acquisition, construction, operation, and maintenance by the department of the projects herein defined will constitute the performance of essential governmental functions, the department shall not be required to pay any taxes or assessments upon such projects or upon any property acquired or used by the department under the provisions of this chapter or upon the income from such projects, and the bonds issued under the provisions of this chapter, their transfer and the income therefrom including any profit made on the sale thereof shall at all times be free from taxation by or within the state of Iowa. [C71, 73, 75,§313A.36]

313A.37 Failure to pay toll—penalty. Any person who uses any toll bridge and fails or refuses to pay the toll provided therefor shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both. [C71, 73, 75,§313A.37]

313A.38 Independent of any other law. This chapter shall be construed as providing an alternative and independent method for the acquisition, purchase, or construction of interstate bridges, for the issuance and sale or exchange of bonds in connection therewith and for refunding bonds pertinent thereto, and for the imposition, collection, and application of the proceeds of tolls and charges for the use of interstate bridges, without reference to any other statute, and shall not be construed as an amendment of or subject to the provisions of any other law, and no publication of any notice, and no other or further proceeding in respect to the issuance or sale or exchange of bonds under this chapter shall

be required except such as are prescribed by this chapter, any provisions of other statutes of the state to the contrary notwithstanding. [C71, 73, 75,§313A.38]

313A.39 Construction. This chapter, being necessary for the public safety and welfare, shall be liberally construed to effectuate the purposes thereof. [C71, 73, 75,§313A.39]

Constitutionality, 62GA, ch 255,§39

CHAPTER 314

GENERAL ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

Referred to in §307.24

314.1 Bidders' statements of qualifications—basis for awarding contracts.
314.2 Interest in contract prohibited.
314.3 Claims—approval and payment.
314.4 Partial payments.
314.5 Extensions in certain cities.
314.6 Highways along city limits.
314.7 Trees—ingress or egress—drainage.
314.8 Government markers preserved.
314.9 Entering private land.
314.10 State-line highways.
314.11 Use of bridges by utility companies.
314.12 Borrow pits—topsoil preserved.
314.13 Definitions.

314.1 Bidders' statements of qualifications—basis for awarding contracts. The agency having charge of the receipt of bids and the award of contracts for the construction, reconstruction, improvement, repair or maintenance of any highway, may require, for any highway contract letting, that each bidder shall file with said agency a statement showing his financial standing, his equipment, and his experience in the execution of like or similar work. Said statements shall be on standard forms prepared by the department and shall be filed with said agency previous to the letting at which such bidder expects to bid. The agency may, in advance of the letting, notify the bidder as to the amount and the nature of the work for which he is deemed qualified to bid.

In the award of contracts for the construction, reconstruction, improvement, repair or maintenance of any highway, the agency having charge of awarding such contracts shall give due consideration not only to the prices bid but also to the mechanical or other equipment and the financial responsibility and experience in the performance of like or similar contracts. The agency may reject any or all bids, or may let by private contract or build by day labor, at a cost not in excess of the lowest bid received. Upon the completion of any contract or project on either the farm-to-market or secondary road system, the county engineer shall file with the county auditor a statement showing the total cost thereof with certificate that said work has been done in accordance with the plans and specifications. All contracts shall be in writing and shall be secured by a bond for the faithful performance thereof as provided by law. [S13,§1527-s18; C24, §§4651, 4700; C27, 31, 35,§§4644-c41, 4651, 4755-b11; C39,§§**4644.39, 4651, 4686.15, 4755.11**; C46,§§309.57, 310.15, 313.11; C50,§§308A.10, 309.39; C54,§§309.39, 314.1; C58, 62, 66, 71, 73, 75,§314.1]

314.2 Interest in contract prohibited. No state or county official or employee, elective or appointive shall be directly or indirectly interested in any contract for the construction, reconstruction, improvement or maintenance of any highway, bridge or culvert, or the furnishing of materials therefor. The letting of a contract in violation of the foregoing provisions shall invalidate the contract and such violation shall be a complete defense to any action to recover any consideration due or earned under the contract at the time of its termination. [S13,§1527-s15; C24,§§4685, 4700; **C27, 31, 35,§§4685, 4755-b10; C39,§§4685, 4686.14, 4755.10**; C46,§§309.92, 310.14, 313.10; C50,§308A.11; C54, 58, 62, 66, 71, 73, 75,§314.2]

Similar provisions, §§19B.5, 68B.3, 86.7, 252.29, 262.10, 347.15, 362.5, 403.16, 403A.22, 741.11

314.3 Claims—approval and payment. All claims for construction, reconstruction, improvement, repair, or maintenance on any highway shall be itemized on voucher forms prepared for that purpose, certified to by the claimants and by the engineer in charge, and then forwarded to the agency in control of that highway for final audit and approval. Claims payable from the farm-to-market road fund shall be approved by both the board of supervisors and the department. Upon approval by the department of vouchers which are payable from the farm-to-market road fund, or from the primary road fund, as the case may be, such vouchers shall be forwarded to the state comptroller, who shall draw warrants therefor and said warrants shall be paid by the treasurer of the state from the farm-to-market road fund or from the primary road fund, as the case may be.

If the engineer makes such certificate or a member of the agency approves such claim when said work has not been done in accordance with the plans and specifications, and said work be not promptly made good without additional cost, he shall be liable on his bond for the amount of such claim. [SS15,§1527-s10; C24,§§4653, 4702; C27, 31, 35,§§4653, 4755-b15;

C39,§§**4653, 4686.17, 4755.15**; C46,§§309.59, 310.17, 313.15; C50,§308A.12; C54, 58, 62, 66, 71, 73, 75,§314.3]

314.4 Partial payments. Partial payments may be made on highway contract work during the progress thereof, but no such partial payment shall be deemed final acceptance of the work nor a waiver of any defect therein. The approval of any claim by the agency in control of the work, or highway on which the work is located, may be evidenced by the signature of the chairman of said agency, or of a majority of the members of said agency, on the individual claims or on the abstract of a number of claims with the individual claims attached to said abstract. [SS15,§1527-s10; C24, §§4654, 4702; C27, 31, 35,§§4654, 4755-b16; C39, §§**4654, 4755.16**; C46,§§309.60, 313.16; C50, §308A.13; C54, 58, 62, 66, 71, 73, 75,§314.4]

314.5 Extensions in certain cities. The agency in control of any secondary road or any primary road is authorized, subject to approval of the council, to eliminate danger at railroad crossings and to construct, reconstruct, improve, repair, and maintain any road or street which is an extension of such road within any city. Provided, that this authority shall not apply to the extensions of secondary roads located in cities over twenty-five hundred population, where the houses or business houses average less than two hundred feet apart.

The phrase "subject to the approval of the council" as it appears in this section, shall be construed as authorizing the council to consider said proposed improvement only in its relationship to municipal improvements such as sewers, water lines, establishing grades, change of established street grades, sidewalks and other public improvements. The locations of such road extensions shall be determined by the agency in control of such road or road system. [C31, 35,§4644-c47; C39,§§**4644.45, 4686.21**; C46,§§309.45, 310.21; C50,§308A.14; C54, 58, 62, 66, 71, 73, 75,§314.5]

314.6 Highways along city limits. Whenever any public highway located along the corporate line of any city is an extension of a farm-to-market road, or of a primary road, it may be included in the farm-to-market road system or the primary road system, as the case may be, and may be constructed, reconstructed, improved, repaired, and maintained as a part of said road system. [C24, §4735; C27, 31, 35,§4755-b28; C39,§§**4686.25, 4755.26**; C46,§§310.25, 313.35; C50,§308A.15; C54, 58. 62, 66, 71, 73, 75,§314.6]

314.7 Trees — ingress or egress — drainage. Officers, employees, and contractors in charge of improvement or maintenance work on any highway shall not cut down or injure any tree growing by the wayside which does not materially obstruct the highway, or tile drains, or interfere with the improvement or maintenance of the road, and which stands in front of any city lot, farmyard orchard or feed lot, or any ground reserved for any public use. Nor shall they destroy or injure reasonable ingress or egress to any property, or turn the natural drainage of the surface water to the injury of adjoining owners. It shall be their duty to use strict diligence in draining the surface water from the public road in its natural channel. To this end they may enter upon the adjoining lands for the purpose of removing from such natural channel obstructions that impede the flow of such water. [C24, 27,§4791; C31, 35,§4644-c46; C39,§**4644.44**; C46,§309.44; C50, §308A.16; C54, 58, 62, 66, 71, 73, 75,§314.7]

See §§318.1, 318.2

314.8 Government markers preserved. Whenever it may become necessary in grading the highways to make a cut which will disturb, or fill which will cover up, a government or other established corner or land monument, it shall be the duty of the engineer to establish permanent witness corners or monuments, and make a record of the same, which shall show the distance and direction the witness corner is from the corner disturbed or covered up. When said construction work is completed the engineer shall permanently re-establish said corner or monument. A failure to perform said duties shall subject the engineer to a fine of not less than ten dollars nor more than fifty dollars to be collected on his bond. [S13,§1527-s7; C24, 27, 31, 35, 39,§**4656**; C46,§309.62; C50, §308A.17; C54, 58, 62, 66, 71, 73, 75,§314.8]

314.9 Entering private land. The agency in control of any highway or highway system or the engineer, or any other authorized person employed by said agency, may after thirty days' written notice by restricted certified mail addressed to the owner and also to the occupant, enter upon private land for the purpose of making surveys, soundings, drillings, appraisals and examinations as it deems appropriate or necessary to determine the advisability or practicability of locating and constructing a highway thereon or for the purpose of determining whether gravel or other material exists on said land of suitable quality and in sufficient quantity to warrant the purchase or condemnation of said land or part thereof. Such entry, after notice, shall not be deemed a trespass, and the agency may be aided by injunction to insure peaceful entry. The agency shall pay actual damages caused by such entry, surveys, soundings, drillings, appraisals or examinations.

Any damage caused by such entry, surveys, soundings, drillings, appraisals or examinations shall be determined by agreement or in the manner provided for the award of damages in condemnation of land for highway purposes. No such soundings or drillings shall be done within twenty rods of the dwelling house or buildings on said land without written consent of owner. [C27, 31, 35,§4658-a1; C39,§**4658.1**; C46,§309.65; C50,§308A.18; C54, 58, 62, 66, 71, 73, 75,§314.9]

314.10 State-line highways. The agency in control of any highway or bridge bordering on or crossing a state line is authorized to confer and agree with the agency or official of such border state, or subdivision of such state, having control of such highway or bridge relative to the interstate connection, the plans for the improvement, and maintenance, the division of work and the apportionment of cost of such highway or bridge. [S13,§1570-a; SS15, §1527-s3; C24, 27, 31, 35, 39,§4663; C46,§309.72; C50,§308A.19; C54, 58, 62, 66, 71, 73, 75,§314.10]

314.11 Use of bridges by utility companies. Telephone, telegraph, electric transmission and pipe lines may be permitted to use any highway bridge on or across a state line on such terms and conditions as the agency or officials jointly constructing, maintaining or operating such bridge may jointly determine. No discrimination shall be made in the use of such bridge as between such utilities. Joint use of telephone, telegraph, electric transmission or pipe lines may not be required. No grant to any public utility to use such bridge shall in any way interfere with the use of such bridge by the public for highway purposes. [S13, §424-e; C24, 27, 31, 35, 39,§4683; C46,§309.90; C50, §308A.20; C54, 58, 62, 66, 71, 73, 75,§314.11]

314.12 Borrow pits—topsoil preserved. In the award of contracts for the construction, reconstruction, improvement, repair or maintenance of any highway, the agency having charge of awarding such contracts shall require that when fill dirt, soil or other materials are to be removed from borrow pits for use in the project, adequate provision shall be made by agreement with the landowner for the restoration of the borrow pit area, either by removal and replacement of a minimum of eight inches of topsoil, or by fertilizing, mulching, reseeding or other appropriate measures to provide vegetative cover or prevent erosion. [C71, 73, 75,§314.12]

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

1. *"Department"* means the state department of transportation.

2. *"Agency"* means any governmental body which exercises jurisdiction over any road as provided by law. [C75,§314.13]

CHAPTER 315

FLIGHT STRIPS

Repealed by 63GA, ch 1030,§5

CHAPTER 316

RELOCATION OF PERSONS DISPLACED BY HIGHWAYS

Referred to in §307.24

316.1 Definitions.
316.2 Effect upon property acquisition.
316.3 Declaration of policy.
316.4 Moving and related expenses.
316.5 Replacement housing for homeowner.
316.6 Replacement housing for tenants and certain others.
316.7 Relocation assistance advisory services.
316.8 Housing replacement by department as last resort.
316.9 Rules adopted.
316.10 Applicable to other than federal-aid highways.
316.11 Acquisitions by other state agencies and political subdivisions.
316.12 Payments not to be considered as income.
316.13 Administration.
316.14 Funding.
316.15 Federal grants.

316.1 Definitions. As used in this chapter the term:

1. *"Person"* means any individual, partnership, corporation, or association.

2. *"Displaced person"* means any person who moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of an acquiring agency to vacate real property, for a program or project undertaken by the department with federal highway assistance; and solely for the purposes of sections 316.4 and 316.7, as a result of the acquisition of or as the result of the written order of the department to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

3. *"Business"* means any lawful activity, excepting a farm operation, conducted primarily:

a. For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

b. For the sale of services to the public;

c. By a nonprofit organization; or

d. Solely for the purposes of section 316.4, subsection 1, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

4. *"Farm operation"* means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

5. *"Mortgage"* means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of real property, under the laws of this state, together with the credit instruments, if any, secured thereby.

6. *"Federal agency"* means any department, agency, or instrumentality in the executive branch of the federal government, and any wholly owned federal government corporation.

7. *"Department"* means the state department of transportation.

8. *"Highway project"* means any federal-aid street or highway project requiring the purchase or condemnation of private property for public use.

9. *"Departmental rules"* means all rules subject to the provisions of chapter 17A. [C71, 73, 75,§316.1]

316.2 Effect upon property acquisition.

1. The provisions of this chapter shall not affect the validity of any property acquisitions by purchase or condemnation.

2. Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of this chapter.

3. In order to prevent unjust enrichment or a duplication of payments to any condemnee, the courts of this state, when determining just compensation in condemnation proceedings, shall not allow any damages which duplicate any of the benefits provided under the provisions of this chapter. [C71, §316.8; C73, 75,§316.2]

316.3 Declaration of policy. The purpose of this chapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of state and federally assisted highway programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. The general assembly declares that replacement housing for persons displaced by highway projects is a necessary and essential part of such highway projects. This chapter shall be known and may be cited as the "Highway Relocation Assistance Law." [C73, 75,§316.3]

316.4 Moving and related expenses.

1. Whenever the acquisition of real property for a program or project undertaken by the department will result in the displacement of any person, the department shall make a payment to any displaced person, upon proper application as approved by such department, for:

a. Actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

b. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the department; and

c. Actual reasonable expenses in searching for a replacement business or farm.

2. Any displaced person eligible for payments under subsection 1 who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection 1 may receive a moving expense allowance, determined according to a schedule established by the department not to exceed three hundred dollars; and a dislocation allowance of two hundred dollars.

3. Any displaced person eligible for payments under subsection 1 who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than two thousand five hundred dollars nor more than ten thousand dollars. In the case of a business, no payment shall be made under this subsection unless the department is satisfied that the business cannot be relocated without a substantial loss of its existing patronage, and is not a part of a commercial enterprise having at least one other establishment not being acquired for a highway project which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before federal, state, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired

for such project, or during such other period as the department determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. [C71,§316.3; C73, 75,§316.4]

Referred to in §§316.1(2, 3), 472.42

316.5 Replacement housing for homeowner.

1. In addition to payments otherwise authorized by this chapter, the department shall make an additional payment not in excess of fifteen thousand dollars to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

a. The amount, if any, which when added to the acquisition cost of the dwelling acquired by the department, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this paragraph shall be made in accordance with departmental rules established by the department in making these additional payments.

b. The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the department was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

c. Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

2. The additional payment authorized by this section shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one-year period beginning on the date on which he receives from the department final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date. [C71, §§316.4(1), 316.5; C73, 75,§316.5]

Referred to in §§316.6, 472.42

316.6 Replacement housing for tenants and certain others. In addition to amounts otherwise authorized by this chapter, the department shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 316.5 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either:

1. The amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed four thousand dollars, or

2. The amount necessary to enable such person to make a down payment, including incidental expenses described in section 316.5, subsection 1, paragraph "c", on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed four thousand dollars, except that if such amount exceeds two thousand dollars, such person must equally match any such amount in excess of two thousand dollars, in making the down payment. [C71,§§316.4(2), 316.5; C73, 75,§316.6]

Referred to in §472.42

316.7 Relocation assistance advisory services.

1. Whenever the acquisition of real property for a highway project undertaken by the department will result in the displacement of any person, the department shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection 3. If the department determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

2. The department shall co-operate to the maximum extent feasible with federal, state or local agencies to assure that such displaced persons receive the maximum assistance available to them.

3. Each relocation assistance advisory program required by subsection 1 shall include such measures, facilities, or services as may be necessary or appropriate in order to:

a. Determine the need, if any, of displaced persons, for relocation assistance;

b. Provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

c. Assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by the department, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the department may prescribe by departmental rules situations when such assurances may be waived;

d. Assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

e. Supply information concerning federal and state housing programs, and other federal or state programs offering assistance to displaced persons; and

f. Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

Referred to in §316.8

4. The department shall co-ordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs. [C71,§316.2; C73, 75,§316.7]

Referred to in §§316.1(2), 316.8

316.8 Housing replacement by department as last resort.

1. If a highway project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the department determines that such housing cannot otherwise be made available, the department may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project. The department may let contracts for the construction of said housing to approve plans and specifications for the building thereof, and to supervise, inspect and approve the housing once constructed in order that the housing so constructed complies with the terms and conditions of this chapter.

2. No person shall be required to move from his dwelling on or after July 1, 1971, on account of any highway project, unless the department is satisfied that replacement housing, in accordance with section 316.7, subsection 3, paragraph "*c*", is available to such person. [C73, 75,§316.8]

Referred to in §§316.13, 472.42

316.9 Rules adopted. The department shall make departmental rules and regulations necessary to effect the provisions of this chapter and to assure:

1. Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.

2. The payments authorized by this chapter are fair and reasonable and as uniform as practicable.

3. A displaced person who makes proper application for a payment authorized by this chapter is paid promptly after a move or, in hardship cases, is paid in advance.

4. Any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the department.

All rules shall be subject to the provisions of chapter 17A. [C71, 73, 75,§316.9]

316.10 Applicable to other than federal-aid highways. The department or any political subdivision may provide all or a part of the programs and payments authorized under this chapter to persons displaced by any street or highway project which is financed in whole or in part by the state or a political subdivision, which is not a federal-aid project, and which requires the purchase or condemnation of private property for public use. To the extent that a program or payment is provided under this section, it shall be provided on a uniform basis to all persons so displaced. The department shall make departmental rules and regulations to assure reasonable standards, which need not conform to federal rules and guidelines, for programs and payments provided under this section. [C71, 73, 75,§316.10]

Referred to in §316.14

316.11 Acquisitions by other state agencies and political subdivisions. Whenever real property is acquired by a state agency or a political subdivision of the state incident to a federal project or program, the state agency or political subdivision is hereby authorized and shall make all payments and provide all services required by this chapter of the commission in order to secure the federal funds available for such project or program. [C73, 75,§316.11]

316.12 Payments not to be considered as income. No payment received under this chapter shall be considered as income for the purposes of chapter 422. [C73, 75,§316.12]

316.13 Administration. In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, the department may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions through any govern-

mental agency, political subdivision, or instrumentality having an established organization for conducting relocation assistance programs. The department shall, in carrying out the relocation assistance activities described in section 316.8 whenever practicable, utilize the services of state or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities. [C73, 75,§316.13]

316.14 Funding. Payments and expenditures under the provisions of this chapter are incident to and arise out of the construction, maintenance, and supervision of public highways and streets, and, in the case of any federal-aid highway project, may be made by the department from the primary road fund and funds made available by the federal government for the purpose of carrying out the provisions of this chapter. Payments made under authority of section 316.10 may be made from the primary road fund in case of a primary road project only, and in other cases may be made from the secondary road fund or from appropriate funds under control of a political subdivision. [C71,§316.6; C73, 75,§316.14]

316.15 Federal grants. The department may do all things necessary to carry out the provisions of this chapter and to secure federal grants to make the payments required by this chapter, but the absence of federal aid to make such payments shall not discharge the obligation to make the payments. [C71,§316.7; C73, 75,§316.15]

CHAPTER 317

WEEDS

Referred to in §§307.24, 327F.27

317.1 Noxious weeds.
317.2 State botanist.
317.3 Weed commissioner.
317.4 Direction and control.
317.5 Weeds in abandoned cemeteries.
317.6 Entering land to destroy weeds—notice.
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317.8 Duty of secretary of agriculture.
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317.11 Weeds on roads or highways.
317.12 Weeds on railroad or public lands and gravel pits.
317.13 Program of control.
317.14 Notice of program.
317.15 Loss or damage to crops.
317.16 Failure to comply.
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317.18 Order for destruction on roads.
317.19 Road clearing fund.
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317.21 Cost of such destruction.
317.22 Duty of highway maintenance personnel.
317.23 Duty of county attorney.
317.24 Punishment of officer.
317.25 Teasel prohibited.

317.1 Noxious weeds. The following weeds are hereby declared to be noxious and shall be divided into two classes, namely:

1. Primary noxious weeds, which shall include quack grass (Agropyron repens), perennial sow thistle (Sonchus arvensis), Canada thistle (Cirsium arvense), bull thistle (Cirsium lanceolatum), European morning glory or field bindweed (Convolvulus arvensis), horse nettle (Solanum carolinense), leafy spurge (Euphorbia esula), perennial pepper-grass (Lepidium draba), Russian knapweed (Centaurea repens), buckthorn (Rhamnus, not to include Rhamnus frangula, and all other species of thistles belonging in genera of Cirsium and Carduus.)

2. Secondary noxious weeds, which shall include butterprint (Abutilon theophrasti) annual, cocklebur (Xanthium commune) annual, wild mustard (Brassica arvensis) annual, wild carrot (Daucus carota) biennial, buckhorn (Plantago lanceolata) perennial, sheep sorrel (Rumex acetosella) perennial, sour dock (Rumex crispus) perennial, smooth dock (Rumex altissimus) perennial poison hemlock (conium maculatum), wild sunflower (wild strain of Helianthus annus L.) annual, puncture vine (Tribulus terrestris) annual, teasel (Dipsacus)* biennial. [S13,§1565-b; C24, 27, 31, 35,§4818; C39,§**4829.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§317.1; 66GA, ch 169,§1, ch 1167,§1]

*See §317.25

See also §199.1

317.2 State botanist. The secretary of agriculture shall appoint as state botanist the head of the botany and plant pathology section of the Iowa agricultural experiment station whose duty shall be to co-operate in developing a constructive weed eradication program. [C39,§**4829.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §317.2]

317.3 Weed commissioner. The board of supervisors of each county shall annually appoint a county weed commissioner who shall be a person not otherwise employed by the county and one who is familiar with the various types of weeds and the recognized

methods for their control and elimination. The county weed commissioner's appointment shall be effective as of March 1 and continue for a term of one year unless he is sooner removed from office as provided for by law. The county weed commissioner may, with the approval of the board of supervisors, appoint a deputy or such number of deputies as are necessary to carry out the purposes of this chapter. The name and address of the person appointed as county weed commissioner shall, within ten days of the making of the appointment, be certified to the county auditor and to the secretary of agriculture. The board of supervisors shall fix the compensation of the county weed commissioner and his deputies, if any, and in addition to said compensation, they shall be paid their necessary travel expense; said compensation and expense shall be paid from the county general fund or the weed eradication and equipment fund.

Notwithstanding the provisions of this section as to time of hiring the county weed commissioner, the board of supervisors shall prescribe the time per year he shall work which may be during the part of year when noxious weeds can effectively be killed. Compensation shall be for the period of actual work only. The board of supervisors shall likewise determine whether employment shall be by hour, day or month and the rate of pay per employment time. [S13,§§1565-c,-d,-f; C24, 27,§4817; C31, 35,§§4817, 4817-d1; C39,§**4829.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§317.3]

317.4 Direction and control. Whenever, in this chapter, powers and duties are imposed upon a "commissioner," or "commissioners," such powers and duties shall apply to the county weed commissioners and their deputies within their respective counties. Each commissioner shall, subject to direction and control by the county board of supervisors, have supervision over the control and the destruction of all noxious weeds in his county, including those growing within the limits of cities, and within the confines of abandoned cemeteries, and of any other weeds growing along streets and highways unless otherwise provided and shall have the authority at any time to enter upon any land in his county for the performance of his duties, and shall hire the labor and equipment necessary for the performance of his duties subject to the approval of the board of supervisors, which shall be paid for in the same manner as the weed commissioner's compensation. [S13,§§1565-c, -d,-f; C24, 27, 31, 35,§4817; C39,§**4829.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§317.4]

317.5 Weeds in abandoned cemeteries. The commissioner shall spray the weeds growing in abandoned cemeteries in the county as often as needed to keep said weeds under control. [C58, 62, 66, 71, 73, 75,§317.5]

317.6 Entering land to destroy weeds — notice. In case of a substantial failure by the owner or person in possession or control of any land to comply with any order of destruction pursuant to the provisions of this chapter, the county weed commissioner, his deputies and employees acting under his direction shall have full power and authority to enter upon any land within their county for the purpose of destroying noxious weeds. Such entry may be made without the consent of the landowner or person in possession or control of the land but actual work of destruction shall not be commenced until five days after the service of a notice in writing on the landowner and on the person in possession or in control of the land. The notice shall state the facts as to failure of compliance with the county program of weed destruction order or orders made by the board of supervisors and shall be served in the same manner as an original notice except as hereinafter provided. The notice may be served by the weed commissioner, his deputies or any person designated in writing by the weed commissioner and filed in the office of the county auditor. Provided, however, that service on persons living temporarily or permanently outside of the county may be made by sending the written notice of noncompliance by certified mail to said person at the last known address to be ascertained, if necessary, from the last tax list in the county treasurer's office. Where any person, firm or corporation owning land within the county has filed a written instrument in the office of the county auditor designating the name and address of its agent, the notice herein provided may be served on that agent. In computing time hereunder it shall be from the date of service as evidenced on the return or if made by certified mail, from the date of mailing as evidenced by the certified mail book at the post office where mailed. [S13, §§1565-c,-d,-f; C24,§4817; C27, 31, 35,§§4817, 4823-b1; C39,§§**4829.05, 4829.06**; C46,§§317.5, 317.6; C50, 54, 58, 62, 66, 71, 73, 75,§317.6]

Referred to in §317.16

317.7 Report to board. Each weed commissioner shall for the territory under his jurisdiction on or before the first day of November of each year make a written report to the board of supervisors. Said report shall state:

1. The name and location of all primary noxious weeds, and any new weed which appears to be a serious pest.

2. A detailed statement of the treatment used, and future plans, for eradication of weeds on each infested tract on which he has attempted to exterminate weeds, together with the costs and results obtained.

3. A summary of the weed situation within his jurisdiction, together with suggestions and recommendations which may be proper and useful, a copy of which shall be forwarded to the state secretary of agriculture. [S13,§§1565-c,-d,-f; C24, 27, 31, 35,§4817; C39,§**4829.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§317.7]

317.8 Duty of secretary of agriculture. The secretary of agriculture shall be vested with

the following duties, powers and responsibilities:

1. He shall serve as state weed commissioner, and shall co-operate with all boards of supervisors and weed commissioners, and shall furnish blank forms for reports made by the supervisors and commissioners.

2. He may, upon recommendation of the state botanist, temporarily declare noxious any new weed appearing in the state which possesses the characteristics of a serious pest.

3. He shall aid the supervisors in the interpretation of the weed law, and make suggestions to promote extermination of noxious weeds. [S13,§§1565-c,-d,-f; C24, 27, 31, 35,§4817; C39,§**4829.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §317.8]

317.9 Duty of board to enforce. The responsibility for the enforcement of the provisions of this chapter shall be vested in the board of supervisors as to all farm lands, railroad lands, abandoned cemeteries, state lands and state parks, primary and secondary roads; roads, streets and other lands within cities unless otherwise provided. [S13,§§1565-c,-d,-f; C24, 27, 31, 35,§4817; C39,§**4829.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§317.9]

317.10 Duty of owner or tenant. Each owner and each person in the possession or control of any lands shall cut, burn, or otherwise destroy, in whatever manner may be prescribed by the board of supervisors, all noxious weeds thereon as defined in this chapter at such times in each year and in such manner as shall be prescribed in the program of weed destruction order or orders made by the board of supervisors, and shall keep said lands free from such growth of any other weeds, as shall render the streets or highways adjoining said land unsafe for public travel. [SS15,§1565-a; C24, 27, 31, 35,§4819; C39,§**4829.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§317.10]

317.11 Weeds on roads or highways. The board of supervisors shall destroy noxious weeds growing in secondary roads, and the state department of transportation shall destroy noxious weeds growing on primary roads. Nothing herein shall prevent the landowner from harvesting, in proper season, the grass grown on the road along his land. [S13, §§1565-c,-d,-f; SS15,§1565-a; C24, 27, 31, 35,§§4817, 4819; C39,§**4829.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§317.11]

317.12 Weeds on railroad or public lands and gravel pits. All noxious weeds on railroad lands, public lands and within incorporated cities shall be treated in such manner, approved by the board of supervisors, as shall prevent seed production and either destroy or prevent the spread of noxious weeds to adjoining lands. Gravel pits infested with noxious weeds shall not be used as sources of gravel for public highways without previous treatment approved by board of supervisors. [S13,§§1565-c,-d,-f; SS15,§1565-a; C24, 27, 31, 35, §§4817, 4819; C39,§**4829.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§317.12]

317.13 Program of control. The board of supervisors of each county shall each year, upon recommendation of the county weed commissioner, or commissioners, by resolution prescribe and order a program of weed destruction to be followed by landowners or tenants or both, which may be expected to destroy and immediately keep under control any areas infested with any noxious weeds on farm land, and shall designate the destruction dates to prevent seed production of all varieties of noxious weeds. Quack grass in pasture land, rough timbered land or on the highways, railway rights of way and public lands, when acting as soil binder, may be exempt from such order if approved by the supervisors. [S13, §§1565-c,-d; C24, 27, 31, 35,§4821; C39,§**4829.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§317.13]

Referred to in §317.14

317.14 Notice of program. Notice of any order made pursuant to section 317.13 shall be given by one publication in the official newspapers of the county and shall be directed to all property owners.

Said notice shall state:

1. The time for destruction.

2. The manner of destruction, if other than cutting above the surface of the ground.

3. That unless said order is complied with the weed commissioner shall cause said weeds to be destroyed and the cost thereof will be taxed against the real estate on which the noxious weeds are destroyed. [S13,§§1565-c,-d; C24, 27, 31, 35,§4822; C39,§**4829.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§317.14]

317.15 Loss or damage to crops. The loss or damage to crops or property incurred by reason of such destruction shall be borne by the titleholder of said real estate, unless said real estate shall be sold under contract whereby possession has been delivered to the purchaser, in which event such purchaser shall bear such loss or damage, excepting where a contract has been entered into providing a different adjustment for such loss or damage. [S13,§§1565-c,-d; C24, 27, 31, 35,§4822; C39, §**4829.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§317.15]

317.16 Failure to comply. In case of a substantial failure to comply by the date prescribed in any order of destruction of weeds made pursuant to the provisions of this chapter, the weed commissioner or his deputies shall, subsequent to the time after service of the notice provided for in section 317.6 enter upon the land and cause such weeds to be destroyed. The actual cost and expense of such cutting, burning or otherwise destroying of said weeds, the cost of serving notice and special meetings or proceedings, if any, shall be paid from the county general fund and, together with the additional assessment to apply toward costs of supervision and administration, be recovered by an assessment

against the tract of real estate on which the weeds were growing, as provided in section 317.21. [S13,§§1565-c,-d; C24, 27, 31, 35,§4823; C39,§**4829.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §317.16]

Referred to in §317.21

317.17 Additional noxious weeds. The board of supervisors shall order the weed commissioner, or commissioners, to destroy or cause to be destroyed any new weeds declared to be noxious by the secretary of agriculture, the cost of which shall be borne by the county. [C39,§**4829.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §317.17]

317.18 Order for destruction on roads. The board of supervisors shall order all weeds other than noxious weeds, on all county trunk and local county roads and between the fence lines thereof to be cut, burned or otherwise destroyed to prevent seed production thereof, either upon its own motion or upon receipt of written notice requesting such action from any residents of the township in which such roads are located, or any person regularly using said roads. Said order shall define the roads along which said weeds are required to be cut, burned or otherwise destroyed and shall require said weeds to be cut, burned or otherwise destroyed within thirty days after the publication of said order in the official newspapers of said county. If the adjoining owner fails to cut, burn or otherwise destroy said weeds as required in said order the county commissioner shall have same cut, burned or otherwise destroyed and the cost thereof shall be paid from the general county fund, and recovered later by an assessment against the adjoining property owners as provided in section 317.21. [C39,§**4829.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§317.18]

Referred to in §317.21

317.19 Road clearing fund. The board of supervisors in any county may levy against all the taxable property, other than incorporated cities, in said county not to exceed twenty and one-fourth cents per thousand dollars of assessed value, the proceeds of which said levy shall be known as the "road-clearing fund" and shall be used for no purpose except to cut, burn or otherwise destroy all weeds, second or undergrowth brush on said county trunk and local county roads between the fence rows of such roads thereof in time to prevent reseeding.

Out of said fund so provided for in this section the board of supervisors shall have the power to purchase or hire necessary equipment or to contract with the adjoining landowner to carry out the purposes of this section. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§317.19]

Referred to in §24.37

317.20 Levy for equipment and materials—use on private property. An additional six and three-fourths cents per thousand dollars of assessed value may be levied by the county board of supervisors for the purpose of purchasing weed eradicating equipment and materials to carry out the duties of the county weed commissioner for use on all lands in the county, public or private, and for the payment of the necessary expenses and compensation of the county weed commissioner, and his deputies, if any. Whenever equipment or materials so purchased are used on private property within the corporate limits of cities by the weed commissioner, the cost of materials used and an amount to be fixed by the board of supervisors for the use of said equipment shall be returned to this fund by the county treasurer upon the collection of the special assessment taxed against said property. In the certification to the county auditor and the county treasurer by the clerk of the board of supervisors this apportionment shall be designated along with the special tax assessed under the provisions of section 317.21. Such equipment and its use shall be subject to the authorization and direction of the county board of supervisors. [C50, 54, 58, 62, 66, 71, 73, 75,§317.20]

Referred to in §24.37

317.21 Cost of such destruction. When the commissioner, or commissioners, destroy any weeds under the authority of sections 317.16 or 317.18, after failure of the landowner responsible therefor to destroy such weeds pursuant to the order of the board of supervisors, the cost of such destruction shall be assessed against the land and collected from the landowner responsible in the following manner:

1. Annually, after the weed commissioner has completed his program of destruction of weeds by reason of noncompliance by persons responsible therefor, the board of supervisors shall determine as to each tract of real estate the actual cost of labor and materials used by the commissioner in cutting, burning or otherwise destroying said weeds, the cost of serving notice and special meetings or proceedings, if any. To the total of all such sums expended, they shall add an amount equal to twenty-five percent thereof to compensate for the cost of supervision and administration and assess the resulting sum against said tract of real estate by a special tax, which shall be certified to the county auditor and county treasurer by the clerk of the board of supervisors, and shall be placed upon the tax books, and collected, together with interest and penalty after due, in the same manner as other unpaid taxes. Such tax shall be due on March 1 after such assessment, and shall be delinquent after March 30. When collected, said funds shall be paid into the fund from which said costs were originally paid.

2. Before making any such assessment, the board of supervisors shall prepare a plat or schedule showing the several lots, tracts of land or parcels of ground to be assessed which shall be in accord with the assessor's records and the amount proposed to be assessed

against each of the same for destroying or controlling weeds during the fiscal year.

3. Such board shall thereupon fix a time for the hearing on such proposed assessments, which time shall not be later than December 15 of the year, and at least twenty days prior to the time thus fixed for such hearing shall give notice thereof to all concerned that such plat or schedule is on file, and that the amounts as shown therein will be assessed against the several lots, tracts of land or parcels of ground described in said plat or schedule at the time fixed for such hearing, unless objection is made thereto. Notice of such hearing shall be given by one publication in official county newspapers in the county in which the property to be assessed is situated; or by posting a copy of such notice on the premises affected and by mailing a copy by certified mail to the last known address of the person owning or controlling said premises. At such time and place the owner of said premises or anyone liable to pay such assessment, may appear with the same rights given by law before boards of review, in reference to assessments for general taxation. [S13,§§1565-c,-d; C24, 27, 31, 35,§§4824, 4825; C31, 35,§§4825-c1,-c2; C39, §4829.19; C46,§317.20; C50, 54, 58, 62, 66, 71, 73, 75,§317.21]

Referred to in §§317.16, 317.18, 317.20

317.22 Duty of highway maintenance personnel. It shall be the duty of all officers directly responsible for the care of public highways to make complaint to the weed commissioners or board of supervisors, whenever it shall appear that the provisions of this chapter may not be complied with in time to prevent the blooming and maturity of noxious weeds or the unlawful growth of weeds, whether in the streets or highways for which they are responsible or upon lands adjacent to the same. [S13,§§1565-c,-e; C24, 27, 31, 35,§4826; C39,§4829.20; C46,§317.21; C50, 54, 58, 62, 66, 71, 73, 75,§317.22]

317.23 Duty of county attorney. It shall be the duty of the county attorney upon complaint of any citizen that any officer charged with the enforcement of the provisions of this chapter has neglected or failed to perform his duty, to enforce the performance of such duty. [C24, 27, 31, 35,§4828; C39,§4829.21; C46,§317.22; C50, 54, 58, 62, 66, 71, 73, 75,§317.23]

317.24 Punishment of officer. Any officer referred to in this chapter who neglects or fails to perform the duties incumbent upon him under the provisions of this chapter shall be punished by a fine not exceeding one hundred dollars. [S13,§1565-i; C24, 27, 31, 35,§4829; C39,§4829.22; C46,§317.23; C50, 54, 58, 62, 66, 71, 73, 75,§317.24]

Constitutionality, 47GA, ch 131,§1

317.25 Teasel prohibited. No person shall sell, offer for sale, or distribute teasel (Dipsacus) biennial, or seeds thereof in any form in this state. Any person violating the provisions of this section shall be subject to a fine of not exceeding one hundred dollars. [C75, §317.25]

See §317.1(2)

CHAPTER 318

HEDGES ALONG HIGHWAYS

Referred to in §307.24

318.1 Hedges and windbreaks—trimming.
318.2 Destruction by supervisors—tax.
318.3 Expenses.
318.4 Sale of wood—costs—balance.
318.5 Exceptions.

318.1 Hedges and windbreaks — trimming. The owners of osage orange and hedges of shrubbery other than trees along the public highway shall keep the same trimmed by cutting back within five feet of the ground at least once in every two years, and burn or remove the trimmings from off the road. With the exception of osage orange hedge fences, no trees or shubbery, except as hereinafter provided, shall be permitted on the line or within the limits of the highway, unless the same shall be used as a windbreak for residences, orchards or feed lot, and no windbreak shall exceed forty rods in length, such forty rods to be determined by the owner within one day when requested by the board of supervisors; and in case he neglect or refuse to designate the forty rods of windbreak he desires, the board of supervisors shall select such forty rods of hedge. [C73,§999; C97,§1570; S13,§1570; C24, 27, 31, 35, 39,§4830; C46, 50, 54, 58, 62, 66, 71, 73, 75,§318.1]

See §314.7

318.2 Destruction by supervisors—tax. The board of supervisors shall have the authority to enforce the provisions of this chapter and destroy or cut back the hedges or trees, as specified above, upon the failure of any owner of the hedge or fence so to do. The board of supervisors shall cause notice in writing to be served upon any owner of any hedge or trees described above, to destroy or trim the same,

and upon complaint of any resident of the county the board of supervisors must serve such notice and destroy said trees or trim said hedge; and if the owner of the hedge or trees shall fail to destroy or cut back and trim them as herein required, within sixty days after receiving notice so to do, the board of supervisors shall cause the destruction or trimming of such hedge or trees to be done, as herein provided, and the cost thereof shall be certified by the said board to the county auditor and the same shall be assessed as taxes against the land upon which the said hedge or trees were destroyed or trimmed, which tax shall be collected by the county treasurer in the manner other taxes are collected. [C73, §999; C97,§1570; S13,§1570; C24, 27, 31, 35, 39, §4831; C46, 50, 54, 58, 62, 66, 71, 73, 75,§318.2]

See §314.7

318.3 Expenses. The expense of such destruction including costs of serving said notice and the costs if any of any special meetings may be advanced from the secondary road funds, which fund shall be reimbursed when the tax aforesaid is collected. [C27, 31, 35, §4831-b1; C39,§4831.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§318.3]

318.4 Sale of wood—costs—balance. In case the wood left from the cutting or trimming of said hedge or trees shall, in the judgment of the board of supervisors, more than pay for the cost of advertising and selling the same, the same shall be sold at public auction after giving ten days' notice thereof in the local newspaper nearest the hedge or trees destroyed, and the proceeds of the sale above the cost of trimming, cutting or destroying, selling and advertising for sale, shall be turned over to the owner of the hedge or trees. [C24, 27, 31, 35, 39,§4832; C46, 50, 54, 58, 62, 66, 71, 73, 75,§318.4]

318.5 Exceptions. This chapter shall not apply to evergreen trees, walnut trees, oak or maple trees, or other hardwood trees which in the judgment of the board of supervisors should be let stand, nor shall it apply to trees along the highway which are a part of a grove or forest that extends more than five rods from the road line; nor to any single tree or group of trees (not exceeding ten in number) which by reason of their age or beauty the board of supervisors in its judgment believes should not be cut down. [C24, 27, 31, 35, 39, §4833; C46, 50, 54, 58, 62, 66, 71, 73, 75,§318.5]

CHAPTER 319

OBSTRUCTIONS IN HIGHWAYS

Referred to in §§306C.13(8,f), 307.24

319.1 Removal.
319.2 Fences and electric transmission poles.
319.3 Notice.
319.4 Refusal to remove.
319.5 New lines.
319.6 Cost of removal—liability.
319.7 Duty of road officers.
319.8 Nuisance.
319.9 Injunction to restrain obstructions.
319.10 Billboards and signs.
319.11 Enforcement.
319.12 Billboards, reflectors, and signs prohibited.
319.13 Right and duty to remove.
319.14 Permit required.
319.15 Definition.

319.1 Removal. The department and the board of supervisors shall cause all obstructions in highways, under their respective jurisdictions, to be removed. [C51,§594; R60,§905; C73,§993; C97,§1560; S13,§§1527-s17, 1560; C24, 27, 31, 35, 39,§4834; C46, 50, 54, 58, 62, 66, 71, 73, 75,§319.1]

319.2 Fences and electric transmission poles. Poles used for telephone, telegraph, or other transmission purposes, shall not be removed until notice, in writing, of not less than thirty days, has been given to the owner or company operating such lines, or in the event the owner or company has been unable to remove such poles within such thirty-day period due to storm or other act of God, then such poles shall not be removed until the owner or company shall have had a reasonable time thereafter to remove such poles, and in case of fences, notice in writing of not less than thirty days has been given to the owner, occupant, or agent of the land enclosed by said fence, unless such poles or fences constitute an immediate and dangerous hazard to persons or property lawfully using the right of way. [C51,§594; R60,§905; C73,§993; C97,§1560; S13, §§1527-s17, 1560; C24, 27, 31, 35, 39,§4835; C46, 50, 54, 58, 62, 66, 71, 73, 75,§319.2]

319.3 Notice. Said notice shall, with reasonable certainty, specify the line to which such fences or poles shall be removed, and shall be served in the same manner that original notices are required to be served. [S13,§1527-s17; C24, 27, 31, 35, 39,§4836; C46, 50, 54, 58, 62, 66, 71, 73, 75,§319.3]

Manner of service, R.C.P. 56(a)

319.4 Refusal to remove. All such fences and poles shall, within the time named, be

removed to such line on the highway as the state highway engineer or county engineer may designate, as the case may be. If there be no county engineer, the board of supervisors, in case of secondary roads, shall designate said line. If not so removed, the public authorities may forthwith remove them. [S13, §1527; C24, 27, 31, 35, 39,§4837; C46, 50, 54, 58, 62, 66, 71, 73, 75,§319.4]

319.5 New lines. New lines, or parts of lines hereafter constructed, shall, in case of secondary roads, be located by the county engineer upon written application filed with the county auditor, and in case of primary roads, by the state highway engineer upon written application filed with the department, and shall thereafter be removable according to the provisions of this chapter. If there be no county engineer, the board of supervisors, in case of secondary roads, shall designate said location. [S13,§1527-s17; C24, 27, 31, 35, 39,§4838; C46, 50, 54, 58, 62, 66, 71, 73, 75,§319.5]

319.6 Cost of removal — liability. Any removal made in compliance with the foregoing sections shall be at the expense of the owners of said fences or poles. All removals shall be without liability on the part of any officer ordering or effecting such removal. [S13,§1527-s17; C24, 27, 31, 35, 39,§4839; C46, 50, 54, 58, 62, 66, 71, 73, 75,§319.6]

319.7 Duty of road officers. It shall be the duty of all officers responsible for the care of public highways, outside cities, to remove from the traveled portion and shoulders of the highways within their several jurisdictions, all open ditches, water breaks, and like obstructions, and to employ labor for this purpose in the same manner as for the repair of highways. [S13,§§1560-b,-e; C24, 27, 31, 35, 39,§4840; C46, 50, 54, 58, 62, 66, 71, 73, 75,§319.7]

Referred to in §319.8

319.8 Nuisance. Any person, partnership or corporation who makes, or causes to be made, any obstruction mentioned in section 319.7, in such traveled way, and any officer responsible for the care of such highway who knowingly fails to remove said obstructions, shall be deemed to have created a public nuisance and be punished accordingly. [S13,§§1560-a,-c; C24, 27, 31, 35, 39,§4841; C46, 50, 54, 58, 62, 66, 71, 73, 75,§319.8]

Nuisances in general, ch 657

319.9 Injunction to restrain obstructions. The department, and the board of supervisors may, as to roads under their respective jurisdictions, maintain suits in equity aided by injunction to restrain obstruction in such highways, and, in such actions, may cause the legal boundary lines of such highway to be adjudicated provided all interested parties are impleaded. [C24, 27, 31, 35, 39,§4842; C46, 50, 54, 58, 62, 66, 71, 73, 75,§319.9]

319.10 Billboards and signs. Billboards and advertising signs, whether on public or private property, which so obstruct the view of any portion of a public highway or of a railway track as to render dangerous the use of a public highway are public nuisances and may be abated, and the person or persons responsible for the erection and maintenance may be punished, as provided in the chapter on nuisances. [C24, 27, 31, 35, 39,§4844; C46, 50, 54, 58, 62, 66, 71, 73, 75,§319.10]

Referred to in §319.11
Nuisances in general, ch 657

319.11 Enforcement. Boards of supervisors and county attorneys as to secondary roads, and the department and the department general counsel as to primary roads, shall enforce section 319.10 by appropriate civil or criminal proceeding or by both such proceedings. [C24, 27, 31, 35, 39,§4845; C46, 50, 54, 58, 62, 66, 71, 73, 75,§319.11]

319.12 Billboards, reflectors, and signs prohibited. No billboard, advertising sign or device, fence other than right of way boundary fence, or other obstruction except signs or devices authorized by law or approved by the highway authorities shall be placed or erected upon the right of way of any public highway, nor shall any vehicle be abandoned upon the right of way of any public highway.

Except for official traffic-control devices as defined by section 321.1, subsection 62, no person shall place, erect, or attach any red reflector, or any object or other device which shall cause a red reflectorized effect, within the boundary lines of the public highways so as to be visible to passing motorists. [C24, 27, 31, 35, 39,§4846; C46, 50, 54, 58, 62, 66, 71, 73, 75,§319.12]

319.13 Right and duty to remove. If the following constitute an immediate and dangerous hazard, all billboards, advertising signs or devices, fences other than right of way boundary fences, or any temporary obstruction, including abandoned vehicles except signs or devices authorized by law or approved by the highway authorities, placed or erected upon the right of way of any public highway shall without notice or liability in damages be removable and the costs thereof assessed against:

1. The owner of any billboard, advertising sign or device so removed.

2. The vehicle owner in the case of abandoned vehicles.

3. The abutting property in the case of fences other than right of way line fences and other temporary obstructions placed by the owner of or tenant on said property.

4. The owner or person responsible for placement of all other obstructions.

Any such obstruction not constituting an immediate and dangerous hazard shall be removed without liability after forty-eight hour notice served in the same manner in which an original notice is served, or in writing by certified mail, or in any other manner reason-

ably calculated to apprise the person responsible for the obstruction that the obstruction will be removed at the expense of such person after the notice is given.

Such removal and assessment of cost in the case of primary roads shall be by the department and in the case of secondary roads by the board of supervisors.

Upon removal of the obstruction, the highway authority may immediately send a statement of the cost of removal to the person responsible for the obstruction. If within ten days after sending the statement the cost is not paid, the highway authority may institute proceeding in the district court system to collect the cost of removal. [C24, 27, 31, 35, 39, §4847; C46, 50, 54, 58, 62, 66, 71, 73, 75,§319.13]

319.14 Permit required. A person shall not excavate, fill or make any physical change within the right of way of a public road or highway without obtaining a permit from the highway authority having jurisdiction of such public road or highway. Any work performed under the permit shall be performed in conformity with the specifications prescribed by the highway authority. If the excavation, fill or physical change within the right of way of a public road or highway does not conform to the specifications that accompany the permit the person shall be notified to make such conforming changes. If after twenty days the changes have not been made, the public road or highway authority may make the necessary changes and immediately send a statement of the cost to the person responsible for the work done not in conformance to the specifications. If within ten days after sending the statement the cost is not paid, the highway authority may institute proceedings in the district court system to collect the cost of correction. Utility companies are exempt from the provisions of this section. [C75,§319.14]

319.15 Definition. As used in this chapter, unless the context otherwise requires, *"department"* means the state department of transportation. [C75,§319.15]

CHAPTER 320

USE OF HIGHWAYS FOR SIDEWALKS, SERVICE MAINS OR CATTLEWAYS

Referred to in §307.24

320.1 Construction of sidewalks in certain school districts.
320.2 Assessment of costs.
320.3 Repairs.
320.4 Water and gas mains, sidewalks and cattleways.
320.5 Term of grant.
320.6 Conditions—damages.
320.7 Failure to maintain.
320.8 Penalty.

320.1 Construction of sidewalks in certain school districts. Where an independent or community school district has within its limits a city of one hundred twenty-five thousand population or more, and has a schoolhouse located outside the city limits of such city and outside the limits of any city, the board of supervisors of the county in which such school district is located shall upon the filing of a petition signed by the owners of at least seventy-five percent of the property which will be assessed, order the construction or reconstruction of a permanent sidewalk not less than four feet in width along the highway adjacent to the property described and leading to such schoolhouse. [C27, 31, 35,§4857-b1; C39,§**4857.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §320.1]

42GA, ch 95,§1, editorially divided

320.2 Assessment of costs. Said work shall be undertaken and consummated and the cost thereof assessed to the abutting property in the manner and method and with the same effect as provided for the construction of sidewalks and the assessment of the costs thereof against benefited property by city councils within the limits of a city. [C27, 31, 35,§4857-b2; C39,§**4857.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§320.2]

320.3 Repairs. After the construction of such sidewalk the board of supervisors shall keep the same in repair and assess and certify the cost thereof in the same manner and to the same extent in which like repairs are assessed and certified by city councils. [C27, 31, 35,§4857-b3; C39,§**4857.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§320.3]

320.4 Water and gas mains, sidewalks and cattleways. The state department of transportation in case of primary roads, and the board of supervisors in case of secondary roads, on written application designating the particular highway and part thereof, the use of which is desired, may grant permission:

1. To lay gas and water mains in highways outside cities to local municipal distributing plants or companies, but not to pipe-line companies. This section shall not apply to or include pipe-line companies required to obtain a license from the Iowa state commerce commission.

2. To construct and maintain cattleways over or under such highways.

3. To construct sidewalks on and along such highways. [C97,§1524; S13,§1527-e; SS15,§1527-b; C24, 27, 31, 35, 39,§4858; C46, 50, 54, 58, 62, 66, 71, 73, 75,§320.4]

320.5 Term of grant. Such grants shall be on such reasonable conditions as the board may exact, and on such as the general assembly may hereafter prescribe. Grants for gas or water mains shall not exceed twenty years. [C97,§1524; S13,§1527-e; C24, 27, 31, 35, 39,§4859; C46, 50, 54, 58, 62, 66, 71, 73, 75,§320.5]

320.6 Conditions — damages. Such mains, pipes, and cattleways shall be so erected and maintained as not to interfere with public travel or with the future improvement of the highway. The owner of such mains, pipes, and cattleways shall be responsible for all damages arising from the laying, maintenance, or erection of the same or from the same not being kept in a proper state of repair.

The location of such mains or pipes shall be changed, on reasonable notice, when such change shall be necessary in the improvement or maintenance of the highway. [C97, §1524; S13,§1527-e; SS15,§1527-b; C24, 27, 31, 35, 39,§4860; C46, 50, 54, 58, 62, 66, 71, 73, 75,§320.6]

320.7 Failure to maintain. Failure of the grantee to comply with the terms of the grant shall be ground for forfeiture of the grant. [C24, 27, 31, 35, 39,§4861; C46, 50, 54, 58, 62, 66, 71, 73, 75,§320.7]

320.8 Penalty. Failure to comply with any of the conditions of said grant, whether made such by statute or by agreement, or the laying of any such mains, or the constructing of any such cattleways, without having secured the grant of permission as provided by law shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars. It shall be the duty of the state department of transportation and of the board of supervisors, as regards the highways under their respective jurisdictions, to enforce the provisions of this section and the laws relating thereto. [S13,§1527-d; C24, 27, 31, 35, 39,§4862; C46, 50, 54, 58, 62, 66, 71, 73, 75,§320.8]

CHAPTER 321

MOTOR VEHICLES AND LAW OF ROAD

Referred to in §§7.10, 81.3, 135D.19, 307.27, 312.1, 312.7, 321.283, 321F.8, 321G.1(2), 322.4(7), 322.9, 322A.1, 325.38, 326.5, 326.6, 326.11, 326.22, 326.30, 326.45, 327A.6, 749B.1, 789A.8
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DEFINITIONS

321.1 Definitions of words and phrases. The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. *"Vehicle"* means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. "Vehicle" does not include:

a. Any device moved by human power.

b. Any device used exclusively upon stationary rails or tracks.

c. Any steering axle, dolly, or other integral part of another vehicle, except an auxiliary axle as defined in subsection 69, which in and of itself is incapable of commercially transporting any person or property but is used primarily to support another vehicle.

d. Any integral part of a truck tractor or road tractor which is mounted on the frame of the truck tractor or road tractor immediately behind the cab and which may be used to transport persons and property but which cannot be drawn upon the highway by the truck tractor or another motor vehicle.

Referred to in §455B.75

2. *"Motor vehicle"* means every vehicle which is self-propelled but not including vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The terms "car," "new car," "used car" or "automobile" shall be synonymous with the term "motor vehicle."

"Used motor vehicle" or *"second-hand motor vehicle"* means any motor vehicle of a type subject to registration under the laws of this state which have been sold "at retail" as defined in chapter 322 and previously registered in this or any other state.

"New car" means every motor vehicle designed primarily for carrying nine passengers or less, excluding motorcycles, which has not been sold "at retail" as defined in chapter 322.

"Used car" means every motor vehicle designed primarily for carrying nine passengers or less, excluding motorcycles, which has been sold "at retail" as defined in chapter 322 and previously registered in this state or any other state.

3. *a. "Motorcycle"* means every motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground including a motor scooter but excluding a tractor and a motorized bicycle.

b. "Motorized bicycle" or *"motor bicycle"* means a two-wheeled motor vehicle with an engine having a displacement no greater than

fifty cubic centimeters as fixed by the department and not capable of operation at a speed in excess of twenty-five miles per hour on level ground unassisted by human power.

4. *"Motor truck"* means every motor vehicle designed primarily for carrying livestock, merchandise, freight of any kind, or over nine persons as passengers.

5. *"Light delivery truck," "panel delivery truck"* or *"pickup"* means any motor vehicle designed to carry merchandise or freight of any kind, not to exceed two thousand pounds.

6. *"Truck tractor"* means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

7. *"Farm tractor"* means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

8. *"Road tractor"* means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

9. *"Trailer"* means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

10. *"Semitrailer"* means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Wherever the word "trailer" is used in this chapter, same shall be construed to also include "semitrailer."

A "semitrailer" shall be considered in this chapter separately from its power unit.

11. *"Trailer coach"* means either a trailer or semitrailer designed for carrying persons.

12. *"Specially constructed vehicle"* means every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

13. *"Reconstructed vehicle"* means every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

14. *"Essential parts"* mean all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

15. *"Foreign vehicle"* means every vehicle of a type required to be registered hereunder brought into this state from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

16. *"Implement of husbandry"* means every vehicle which is designed for agricultural purposes and exclusively used, except as herein otherwise provided, by the owner thereof in the conduct of his agricultural operations. Implements of husbandry shall also include:

a. Portable livestock loading chutes without regard to whether such chutes are used by the owner in the conduct of his agricultural operations, provided, that such chutes are not used as a vehicle on the highway for the purpose of transporting property.

b. Any vehicle which is principally designed for agricultural purposes and which is moved during daylight hours by a person either:

(1) From a place at which such vehicles are manufactured, fabricated, repaired, or sold at retail to a farm site;

(2) To a place at which such vehicles are manufactured, fabricated, repaired, or sold at retail from a farm site; or

(3) From one farm site to another farm site. For the purpose of this subsection the term "farm site" means a place or location at which vehicles principally designed for agricultural purposes are used or intended to be used in agricultural operations or for the purpose of exhibiting, demonstrating, testing, or experimenting with the same, provided, however, that said place or location shall not be deemed a "farm site" if the movement of said vehicle, from or to the place at which vehicles principally designed for agricultural purposes are manufactured, fabricated, repaired, or sold at retail, exceeds a distance of fifty miles.

Notwithstanding the other provisions of this subsection any vehicle covered thereby if it otherwise qualifies may be registered as special mobile equipment, or operated or moved under the provisions of sections 321.57 to 321.63, if the person in whose name such vehicle is to be registered or to whom a special plate or plates are to be issued elects to do so and under such circumstances the provisions of this subsection shall not be applicable to such vehicle, nor shall such vehicle be required to comply with the provisions of sections 321.384 to 321.429, when such vehicle is moved during daylight hours, provided however, the provisions of section 321.383, shall remain applicable to such vehicle.

17. *"Special mobile equipment"* means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including trailers and bulk spreaders which are not self-propelled having a gross weight of not more than six tons used for the transportation of fertilizers and chemicals used for farm crop production, and other equipment used primarily for the application of fertilizers and chemicals in farm fields or for farm storage,

but not including trucks mounted with applicators of such products, road construction or maintenance machinery and ditch-digging apparatus. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this subsection; provided that nothing contained in this section shall be construed to include portable mills or corn shellers mounted upon a motor vehicle or semitrailer.

18. *"Pneumatic tire"* means every tire in which compressed air is designed to support the load.

19. *"Solid tire"* means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

20. *"Metal tire"* means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

21. *"Where a vehicle is kept"* shall refer to the county of residence of the owner or to the county where the vehicle is mainly kept if said owner is a nonresident of the state.

22. *"Garage"* means every place of business where motor vehicles are received for housing, storage, or repair for compensation.

23. *"Combination"* or *"combination of vehicles"* shall be construed to mean a group consisting of two or more motor vehicles, or a group consisting of a motor vehicle and one or more trailers, semitrailers or vehicles, which are coupled or fastened together for the purpose of being moved on the highways as a unit.

24. *"Gross weight"* shall mean the empty weight of a vehicle plus the maximum load to be carried thereon. The maximum load to be carried by a passenger-carrying vehicle shall be determined by multiplying one hundred fifty pounds by the number of passenger seats carried by such vehicle.

"Unladen weight" means the weight of a vehicle or vehicle combination without load.

25. *"Combined gross weight"* shall mean the gross weight of a motor vehicle plus the gross weight of a trailer or semitrailer to be drawn thereby.

26. *"Authorized emergency vehicle"* means vehicles of the fire department, police vehicles, ambulances and emergency vehicles owned by the United States, this state or any subdivision of this state or any municipality therein, and such privately owned ambulances, rescue or disaster vehicles as are designated or authorized by the director of transportation.

27. *"School bus"* means every vehicle operated for the transportation of children to or from school, except vehicles which are: (*a*) Privately owned and not operated for compensation, (*b*) Used exclusively in the transportation of the children in the immediate family of the driver, (*c*) Operated by a municipally or privately owned urban transit company for the transportation of children as part of or in addition to their regularly scheduled service, or (*d*) Designed to carry not more than nine persons as passengers, either school owned or privately owned, which are used to transport pupils to activity events in which the pupils are participants or used to transport pupils to their homes in case of illness or other emergency situations. The vehicles operated under the provisions of paragraph *"d"* of this section shall be operated by employees of the school district who are specifically approved by the local superintendent of schools for the assignment.

28. *"Railroad"* means a carrier of persons or property upon cars operated upon stationary rails.

29. *"Railroad train"* means an engine or locomotive with or without cars coupled thereto, operated upon rails.

30. *"Railroad corporation"* means any corporation organized under the laws of this state or any other state for the purpose of operating the railroad within this state.

31. *"Explosives"* mean any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that on ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

32. *"Flammable liquid"* means any liquid which has a flash point of 70 degrees F. or less, as determined by a Tagliabue or equivalent closed cup test device.

33. *"Department"* means the state department of transportation.

34. *"Director"* means the director of the state department of transportation or his designee.

35. *"Person"* means every natural person, firm, copartnership, association, or corporation. Where the term "person" is used in connection with the registration of a motor vehicle, it shall include any corporation, association, copartnership, company, firm, or other aggregation of individuals which owns or controls such motor vehicle as actual owner, or for the purpose of sale or for renting, whether as agent, salesman, or otherwise.

See also §321.499

36. *"Owner"* means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of a security agreement with an immediate right of possession vested in the debtor, then such debtor shall be deemed the owner for the purpose of this chapter.

Referred to in §321.126

37. *"Nonresident"* means every person who is not a resident of this state.

38. *"Dealer"* means every person engaged in the business of buying, selling or exchanging vehicles of a type required to be registered hereunder and who has an established place of business for such purpose in this state.

39. *"Transporter"* means every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling, or distributing plant to dealers or sales agents of a manufacturer.

40. *"Manufacturer"* means every person engaged in the business of constructing or assembling vehicles of a type required to be registered hereunder at an established place of business in this state.

41. *"Established place of business"* means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where his books and records are kept and a large share of his business is transacted.

42. *"Operator"* means every person, other than a chauffeur, who is in actual physical control of a motor vehicle upon a highway.

43. *"Chauffeur"* means any person who operates a motor vehicle in the transportation of persons, including school buses, for wages, compensation or hire, or any person who operates a truck tractor, road tractor or any motor truck which is required to be registered at a gross weight classification exceeding five tons, or any such motor vehicle exempt from registration which would be within such gross weight classification if not so exempt except when such operation by the owner or operator is occasional and merely incidental to his principal business.

Subject to the provisions of section 321.179, a farmer or his hired help shall not be deemed a chauffeur, when operating a truck owned by him, and used exclusively in connection with the transportation of his own products or property.

44. *"Driver"* means every person who drives or is in actual physical control of a vehicle.

45. *"Peace officer"* means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations in addition to its meaning in section 748.3.

46. *"Local authorities"* mean every county, municipal, and other local board or body having authority to adopt local police regulations under the Constitution and laws of this state.

47. *"Pedestrian"* means any person afoot.

48. *"Street"* or *"highway"* means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

49. *"Private road"* or *"driveway"* means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

50. *"Roadway"* means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

51. *"Sidewalk"* means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

52. *"Laned highway"* means a highway the roadway of which is divided into three or more clearly marked lanes for vehicular traffic.

53. *"Through (or thru) highway"* means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter or such entrances are controlled by a police officer or traffic-control signal. The term "arterial" shall be synonymous with "through" or "thru" when applied to highways of this state.

54. *"Intersection"* means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

55. *"Crosswalk"* means that portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections, or, any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

56. *"Safety zone"* means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

57. *"Business district"* means the territory contiguous to and including a highway when fifty percent or more of the frontage thereon for a distance of three hundred feet or more is occupied by buildings in use for business.

58. *"Residence district"* means the territory within a city contiguous to and including a highway, not comprising a business, suburban or school district, where forty percent or more of the frontage on such highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business.

59. *"School district"* means the territory contiguous to and including a highway for a distance of two hundred feet in either direction from a schoolhouse in a city.

Referred to in §321.285(4)

60. *"Suburban district"* means all other parts of a city not included in the business, school or residence districts.

61. The linear measure of the plot of ground upon which the building is located abutting upon the highway shall be deemed "frontage occupied by the building," and the phrase "frontage on such highway for a distance of three hundred feet or more" shall mean the total frontage on both sides of the highway for such distance.

62. *"Official traffic-control devices"* mean all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

Referred to in §319.12

63. *"Official traffic-control signal"* means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

64. *"Railroad sign"* or *"signal"* means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

65. *"Traffic"* means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.

66. *"Right of way"* means the privilege of the immediate use of the highway.

67. *"Alley"* means a thoroughfare laid out, established and platted as such, by constituted authority.

68. *a. "Mobile home"* means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons.

b. "Travel trailer" means a vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed to permit the vehicle to be used as a place of human habitation by one or more persons. Said vehicle may be up to eight feet in width and its over-all length shall not exceed thirty-two feet. Such vehicle shall be customarily or ordinarily used for vacation or recreational purposes and not used as a place of permanent habitation. If any such vehicle is used in this state as a place of human habitation for more than ninety consecutive days in one location it shall be classed as a mobile home regardless of the size limitations herein provided.

c. "Fifth-wheel travel trailer" means a type of travel trailer which is towed by a pickup by a connecting device known as a fifth wheel. However, this type of travel trailer may have an overall length which shall not exceed forty feet.

69. *"Auxiliary axle"* means a transferable axle with pneumatic tires utilized to convert any single axle to a tandem axle, or to convert any semitrailer to a full trailer with four or more wheels and which may be registered as if a vehicle.

70. *"Tandem axle"* means any two or more consecutive axles whose centers are more than forty inches but not more than eighty-four inches apart.

71. *"Guaranteed arrest bond certificate"* means any printed, unexpired certificate issued by an automobile club or association to any of its members, or any printed, unexpired certificate issued by an insurance company authorized to write automobile liability insurance within this state, which said certificate is signed by such member or insured and contains a printed statement that such automobile club, association or insurance company and a surety company which is doing business in this state under the provisions of section 515.48, subsection 2, guarantee the appearance of the person whose signature appears on the certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed two hundred dollars. If such insurance company is itself qualified under the provisions of section 515.48, subsection 2, then it may be its own surety. Bail in this form shall be subject to the forfeiture and enforcement provisions with respect to bail bonds in criminal cases as provided by law.

Referred to in §753.16

72. A *"special truck"* means a motor truck not used for hire with a gross weight registration of eight through eighteen tons used by a person engaged in farming to transport commodities produced only by the owner, or to transport commodities purchased by the owner for use in his own farming operation or occasional use for charitable purposes.

73. *"Component part"* means any part of a vehicle, other than a tire, having a component part number.

74. *"Component part number"* means the vehicle identification derivative consisting of numerical and alphabetical designations affixed to a component part by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the component part.

75. *"Vehicle identification number"* or the initials VIN mean the numerical and alphabetical designations affixed to a vehicle or a component part of a vehicle by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the vehicle.

76. *"Demolisher"* means any agency or person whose business is to convert a vehicle to junk, processed scrap or scrap metal, or otherwise to wreck or dismantle vehicles. [S13, §§1571-m1,-m20; C24, 27,§§4863, 5030, 13012; C31, 35,§§4863, 4960-d1, 5030, 13012; C39,§**5000.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.1; 66GA, ch 67,§65, ch 170,§§1–3, ch 1165,§§3, 4, 5, ch 1168, §1]

Referred to in §§319.12, 321.121, 321.126, 321.285(4), 321.471, 321.474, 321.486, 321G.9, 322.3, 326.2(13), 455B.75, 710.14, 753.16

321.2 Department. The state department of transportation shall administer and enforce the provisions of this chapter.

The division of the highway safety patrol of the department of public safety shall enforce the provisions of this chapter relating to traffic on the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and buses, and to see that proper safety rules are observed.

The state department of transportation and the department of public safety shall co-operate to insure the proper and adequate enforcement of the provisions of this chapter. [C24, 27, 31, 35,§4863; C39,§**5000.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.2]

321.3 Powers and duties of director. The director is hereby vested with the power and is charged with the duty of observing, administering, and enforcing the provisions of this chapter. [C39,§**5000.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.3]

321.4 Rules. The commission* is authorized to adopt and promulgate administrative rules governing procedures as may be necessary to carry out the provisions of this chapter; and to carry out any other laws the enforcement of which is vested in the department. [C24, 27, 31, 35,§5004; C39,§**5000.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.4; 66GA, ch 1165, §6]

*See §307.3

321.5 Duty to obey. All local officials charged with the administration and enforcement of this chapter shall be governed in their official acts by the rules promulgated by the department. [C24, 27, 31, 35,§5005; C39,§**5000.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.5]

321.6 Reciprocal enforcement—patrol beats. There shall be reciprocal co-operation between the members of the department, the state department of public safety and local authorities in the enforcing of local and state traffic laws and in making inspections, although this section shall not be construed to give the state department of public safety any right to establish regular patrol beats inside municipal limits unless requested for a special occasion or emergency by the mayor of such city or the sheriff of the county. [C24, 27, 31, 35,§5017; C39,§**5000.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.6]

321.7 Seal of department. The department may adopt an official seal. [C39,§**5000.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.7]

321.8 Director to prescribe forms. The director shall prescribe and provide suitable forms of applications, registration cards, certificates of title and all other forms requisite or deemed necessary to carry out the provisions of this chapter and any other laws, the enforcement and administration of which are turer's or importer's certificates. [C39,§**5000.08**; vested in the department except manufac- C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.8]

321.9 Authority to administer oaths. Officers and employees of the department designated by the director are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall do so without fee. [C39, §**5000.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.9]

321.10 Certified copies of records. The director and such officers of the department as he may designate are hereby authorized to prepare under the seal of the department and deliver upon request a certified copy of any record of the department, charging a fee of fifty cents for each document so authenticated, and every such certified copy shall be admissible in any proceeding in any court in like manner as the original thereof. [C39,§**5000.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.10]

321.11 Records of department. All records of the department, other than those declared by law to be confidential for the use of the department, shall be open to public inspection during office hours. [C39,§**5000.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.11]

321.12 Obsolete records destroyed. The director may destroy any records of the department which have been maintained on file for three years which he may deem obsolete and of no further service in carrying out the powers and duties of the department. [C39, §**5000.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.12]

321.13 Authority to grant or refuse applications. The department shall examine and determine the genuineness, regularity, and legality of every application lawfully made to the department, and may in all cases make investigation as may be deemed necessary or require additional information, and shall reject any such application if not satisfied of the genuineness, regularity, or legality thereof or the truth of any statement contained therein, or for any other reason, when authorized by law. [C39,§**5000.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.13]

321.14 Seizure of documents and plates. The department is hereby authorized to take possession of any registration card, certificate of title, permit, or registration plate, certificate of inspection or any inspection document or form, upon expiration, revocation, cancella-

tion, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued. [C39,§5000.14; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.14]

321.15 Publication of law. The department shall issue such parts of this chapter in pamphlet form, together with such rules, instructions, and explanatory matter as may seem advisable. Copies of such pamphlet shall be given as wide distribution as the department shall determine and a supply shall be furnished each county treasurer. [C24, 27, 31, 35,§5018; C39,§5000.15; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.15]

321.16 Giving of notices. Whenever the department is authorized or required to give any notice under this chapter or other law regulating the operation of vehicles, unless a different method of giving such notices is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by restricted certified mail addressed to such person at his address as shown by the records of the department. Return acknowledgment is required to prove such latter service.

Proof of the giving of notice by personal service may be made by the certificate of any officer or employee of the department or affidavit of any person over eighteen years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof. [C39,§5000.16; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.16]

ORIGINAL AND RENEWAL OF REGISTRATION AND CERTIFICATE OF TITLE

321.17 Misdemeanor to violate registration provisions. It is a misdemeanor punishable as provided in section 321.482, for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered hereunder which is not registered, or for which the appropriate fee has not been paid when and as required hereunder. [C24, 27, 31, 35,§5085; C39,§5001.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.17]

321.18 Vehicles subject to registration—exception. Every motor vehicle, trailer, and semitrailer when driven or moved upon a highway shall be subject to the registration provisions of this chapter except:

1. Any such vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, or nonresidents as contemplated by section 321.53 and chapter 326, or under a temporary registration permit issued by the department as hereinafter authorized.

2. Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.

3. Any implement of husbandry.

4. Any special mobile equipment as herein defined.

5. Any vehicle which is used exclusively for interplant purposes, in the operation of an industrial or manufacturing plant, consisting of a single unit comprising a group of buildings separated by streets, alleys, or railroad tracks, and which vehicle is used solely to transport materials from one part of the plant to another or from an adjacent railroad track to the plant and in so doing incidentally using said streets or alleys for not more than one thousand feet.

6. Any vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

7. Any school bus in this state used exclusively for the transportation of pupils to and from school or a school function or for the purposes provided in section 285.1, subsection 1, and section 285.10, subsection 9. Upon application the department shall, without charge, issue a registration certificate and shall also issue registration plates which shall have imprinted thereon the words "Private School Bus" and a distinguishing number assigned to the applicant. Such plates shall be attached to the front and rear of each bus exempt from registration under this subsection. [C24, 27, 31, 35,§4864; C39,§5001.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.18]

Referred to in §§324.17, 423.1(7), 554.9302

321.19 General exemptions.

1. All vehicles owned by the government and used in the transaction of official business by the representatives of foreign powers or by officers, boards, or departments of the government of the United States, and by the state of Iowa, counties, municipalities and other subdivisions of government including vehicles used by an urban transit company operated by a municipality and such self-propelling vehicles as are used neither for the conveyance of persons for hire, pleasure, or business nor for the transportation of freight other than those used by an urban transit company operated by a municipality, and all fire trucks, providing they are not owned and operated for a pecuniary profit, are hereby exempted from the payment of the fees in this chapter prescribed, except as provided for urban transit companies in subsection 2, but shall not be exempt from the penalties herein provided. The department shall furnish, on application, free of charge, distinguishing plates for vehicles thus exempted, which plates shall bear the word "official," and the department shall keep a separate record thereof. Provided that the director of general services or the director of transportation may order the issuance of regular registration plates, for any such exempted vehicle, used by peace officers in the enforcement of the law and persons enforcing chapter 204 and other laws relating to controlled substances. For purposes of sale of vehicles exempted as herein indicated,

the exempted governmental body, upon the sale of the exempted vehicle, may issue for in-transit purposes a pasteboard card bearing the words "Vehicle in Transit," the name of the official body from which the vehicle was purchased, together with the date of the purchase plainly marked in minimal of one-inch letters, and other information which may be required by the department. The in-transit card shall be valid for use only within forty-eight hours after the purchase date as indicated on the bill of sale which shall be carried by the driver.

2. "Urban transit company" means any person, firm, corporation, company, or municipality which operates buses or trolley cars or both, primarily upon the streets of cities over well-defined routes between certain termini, for the transportation of passengers for a uniform fare, and which accepts for passengers all who present themselves for transportation without discrimination up to the limit of the capacity of each vehicle. Included are street railways, plants, equipment, property, and rights, used and useful in the transportation of passengers. Motor carriers and interurbans subject to the jurisdiction of the state commerce commission, and taxicabs, are not included.

Any person, firm, corporation, or company operating an urban transit system shall pay to the county treasurer annually as a registration fee for each bus, car, or vehicle used in the transportation of passengers, five dollars, which shall be paid into the city general fund. Any urban transit company operated by a municipality is not required to pay such registration fees. The motor vehicle department, in accordance with subsection 1, shall furnish distinguishing plates for vehicles used by urban transit companies operated by a municipality. No other provision of law providing for the payment of taxes, registration, or license fees for vehicles shall be applicable to any bus, car, or vehicle for the transportation of passengers owned and operated by any urban transit company.

Section 324.3 and chapter 326 are not applicable to urban transit companies or systems. [C24, 27, 31, 35,§§4867, 4922; C39,§**5001.03**; C46, 50, 54, 58, 62,§321.19; C66, 71, 73,§§321.19, 386C.1–386C.3; C75,§321.19; 66GA, ch 1056,§20]

Referred to in §§321.39, 321.166, 321E.11
See also §§18.115(7), 321.170

321.20 Application for registration and certificate of title. Except as otherwise provided in this chapter, every owner of a vehicle subject to registration hereunder shall make application to the county treasurer, of the county of his residence, or to the department, if a nonresident, for the registration and issuance of a certificate of title thereof upon the appropriate form or forms furnished by the department, accompanied by a fee of two dollars, and every such application shall bear the signature of the owner written with pen and ink and said application shall contain:

1. The name, social security number if available, bona fide residence and mailing address of the owner or if the owner is a firm, association or corporation, the application shall contain the business address and employer identification number of the owner if available.

2. A description of the vehicle including, insofar as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the number of cylinders, the type of motor fuel used, the serial number of the vehicle, manufacturer's identification number, the engine or other number of the vehicle and whether new or used and if a new vehicle the date of sale by the manufacturer or dealer to the person intending to operate such vehicle.

3. Such further information as may reasonably be required by the department.

4. A statement of the applicant's title and of all liens or encumbrances upon said vehicle and the names and addresses of all persons having any interest therein and the nature of every such interest. When such application refers to a new vehicle, it shall be accompanied by a manufacturer's or importer's certificate duly assigned as provided in section 321.45.

5. The amount of tax to be paid under section 423.7. [S13, SS15,§1571-m2; C24, 27, 31, 35, §§4869, 5008, 5009; C39,§**5001.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.20; 66GA, ch 171,§1]

Referred to in §§321-29, 554.9302

321.21 Special mobile equipment plates.

1. A person owning any special mobile equipment as herein defined may make application to the department, upon the appropriate form furnished by the department, for a certificate containing a general distinguishing number and for one or more pairs of special mobile equipment plates or single special mobile equipment plates as appropriate to various types of special mobile equipment. The applicant shall also submit proof of the status of the vehicle or vehicles as special mobile equipment as may reasonably be required by the department.

2. The department upon granting such application, shall issue to the applicant a certificate containing, but not limited to, the applicant's name and address and the general distinguishing number assigned to the applicant and such other information deemed necessary by the department for proper identification.

3. The department shall also issue special mobile equipment plates as applied for, which shall have displayed thereon the general distinguishing number assigned to the applicant. Each plate or pair of plates so issued shall have displayed thereon the words: Special Mobile Equipment. The fee for each plate or pair of special plates shall be three dollars.

4. Every special mobile equipment plate issued hereunder shall expire at midnight on the thirty-first day of December of each year, and a new plate or plates for the ensuing year may be obtained by the person to whom any such expired plate or plates was issued upon application to the department and payment of the fee required by law.

5. Every person owning special mobile equipment for which a certificate and a plate or plates have been issued shall keep a written record of the vehicles upon which such special mobile equipment plates are used, which record shall be open to inspection by any police officer or any officer or employee of the department.

6. The certificate and plates issued hereunder shall be for purposes of identification only and shall not constitute a registration as required under the provisions of this chapter. A certificate of title need not be executed when the certificate and plates are issued hereunder and a certificate of title need not be delivered to the purchaser or transferee when special mobile equipment is sold or otherwise disposed of. [C66, 71, 73, 75,§321.21]

Referred to in §321E.12

321.22 Urban transit equipment plates.

1. An urban transit company or system having a franchise to operate in any city may make application to the motor vehicle department, upon forms furnished by the department, for a certificate containing a distinguishing number and for one or more pairs of transit bus plates to be attached to the front and rear of buses owned or operated by the urban transit company or system.

2. The department shall issue to the applicant a certificate, or certificates, containing, but not limited to, the applicant's name and address, the distinguishing number assigned to the applicant, and such other information deemed necessary by the department for proper identification of the buses.

3. The department shall issue urban transit bus (license) plates as applied for, which shall have imprinted thereon the words "Urban Transit Bus," and the distinguishing number assigned to the applicant. The department shall issue the certificates and plates without fee.

4. Every urban transit bus plate issued hereunder shall expire at midnight on the thirtieth day of June of each year, and new plates for the ensuing year may be obtained upon proper application. [C66, 71, 73, 75, §321.22]

321.23 Titles to specially constructed and foreign vehicles.

1. In the event the vehicle to be registered is a specially constructed, reconstructed, or foreign vehicle, such fact shall be stated in the application. A fee of two dollars shall be paid by the person making such application upon issuance of a certificate of title by the county treasurer. With reference to every specially constructed or reconstructed motor vehicle subject to registration the application shall be accompanied by a statement from the department authorizing such motor vehicle to be titled and registered in this state. The department shall cause a physical inspection to be made of all specially constructed or reconstructed motor vehicles, upon application therefor by the owner thereof, to determine whether such motor vehicle is in a safe operating condition and that the integral component parts thereof are properly identified and that the rightful ownership is established before issuing such owner the authority to have the motor vehicle registered and titled as herein provided. With reference to every foreign vehicle which has been registered heretofore outside of this state the owner shall surrender to the treasurer all registration plates, registration cards, and certificates of title, or, if vehicle to be registered is from a nontitle state, such evidence of foreign registration and ownership as may be prescribed by the department except as provided in subsection 2 hereof.

2. Where in the course of operation of a vehicle registered in another state it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender but shall submit for inspection said evidence of such foreign registration and the treasurer upon a proper showing shall register said vehicle in this state but shall not issue a certificate of title for such vehicle.

3. In the event an applicant for registration of a foreign vehicle for which a certificate of title has been issued is able to furnish evidence of being the registered owner of the vehicle to the county treasurer of his residence, although unable to surrender such certificate of title, the county treasurer may issue a registration receipt and plates upon receipt of the required registration fee but shall not issue a certificate of title thereto. Upon surrender of the certificate of title from the foreign state, the county treasurer shall issue a certificate of title to the owner, or person entitled thereto, of such vehicle as provided in this chapter.

4. Any vehicle which does not meet the equipment requirements of this chapter due to the particular use for which it is designed or intended, may be registered and titled by the department upon payment of appropriate fees and after inspection and certification by the department that the vehicle is not in an unsafe condition and will not endanger any person. If the department's inspection reveals that that vehicle may be safely operated only under certain conditions or on certain types of roadways, the department may restrict the registration to limit operation of the vehicle to the appropriate conditions or roadways. This subsection shall not apply to snowmo-

biles as defined in section 321G.1. [C39,§5001.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.23]

Referred to in §§321.30(9), 321.67, 321.238(12)

321.24 Issuance of registration and certificate of title. Upon receipt of the application for title and payment of the required fees for motor vehicle, trailer*, or semitrailer, the county treasurer shall, when satisfied as to the genuineness and regularity thereof, issue a registration receipt and certificate of title and shall file the application, the manufacturer's or importer's certificate, certificate of title, or other evidence of ownership, as prescribed by the department. The registration receipt shall be delivered to the owner and shall contain upon the face thereof the date issued, the name and address of the owner, the registration number assigned to the vehicle, the title number assigned to the owner of the vehicle, the amount of the fee paid, the amount of tax paid pursuant to section 423.7, type of fuel used and such description of the vehicle as determined by the department and upon the reverse side a form for notice of transfer of the vehicle. The county treasurer shall maintain in the county record system information contained on the registration receipt. Such information shall be accessible by registration number and shall be open for public inspection during reasonable business hours. Such copies as the department may require shall be sent to the department in the manner and at such time as the department may direct. The certificate of title shall contain upon the face thereof the identical information required upon the face of the registration receipt. In addition thereto, the certificate of title shall contain a statement of the owner's title, the amount of tax paid pursuant to section 423.7, name and address of previous owner, and a statement of all security interests and encumbrances as shown in the application, upon the vehicle therein described including the nature of the security interest, amount, date of notation and name and address of the secured party. Said certificate shall bear thereon the seal of the county treasurer, the signature of the county treasurer or that of the deputy county treasurer, and shall provide space for the signature of the owner. The owner shall sign the certificate of title in the space provided with pen and ink upon receipt of certificate of title. The certificate of title shall contain upon the reverse side a form for assignment of title or interest and warranty thereof by the owner, for reassignments by a licensed dealer and for application for a new certificate of title by the transferee as provided in this chapter. All certificates of title shall be typewritten or printed by other mechanical means. The original certificate of title shall be delivered to the owner in the event no security interest or encumbrance appears thereon. Otherwise the certificate of title shall be delivered by the county treasurer to the person holding the first security interest or encumbrance as shown in the certificate. The county treasurer shall maintain in the county records system information contained on the certificate of title. Such information shall be accessible by title certificate number for a period of three years from the date of notification of cancellation of title or that a new title has been issued as provided in this chapter. Such copies as the department may require shall be sent to the department in the manner and at such time as the department shall direct. The department shall designate a uniform system of title numbers so as to indicate the county of issuance.

If the county treasurer or department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the county treasurer or department may register the vehicle but shall as a condition of issuing a certificate of title and registration receipt, require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and either accompanied by the deposit of cash with the department or also executed by a person authorized to conduct a surety business in this state. The bond shall be in an amount equal to one and one-half times the current value of the vehicle as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this state and the currently valid certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond. [C24, 27, 31, 35,§4873; C39,§5001.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.24; 66GA, ch 171,§§2, 3]

Referred to in §§321.46, 321.152
*Certain trailers exempt, see §321.123

321.25 Application for registration and title—cards attached. Upon the sale of a motor vehicle by a manufacturer or dealer, the vendee shall within five days make application by mail or otherwise, for registration and certificate of title thereof, after which he may operate the same upon the public highway without its individual number plate thereon for a period of not more than twenty days after the purchase date of the vehicle, provided that during such period the motor ve-

hicle shall have attached thereto, in accordance with the provisions hereof, on the rear of such vehicle, a pasteboard card bearing the words, "registration applied for" and the registration number of the dealer from whom the vehicle was purchased together with the date of purchase plainly stamped or stenciled thereon. [S13,§1571-m10; C24, 27, 31, 35,§4880; C39, §5001.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.25]

321.26 Card issued conditionally. No manufacturer or dealer shall permit the use of such card unless an application for a registration and certificate of title has been made, as herein provided, and receipt issued to the user of the card by such manufacturer or dealer showing the fee paid by the person making the application, the county treasurer, or proper county or state official if purchaser is from a foreign state, to whom fee was mailed or delivered and the date of mailing or delivery of fee. [S13,§1571-m10; C24, 27, 31, 35,§4881; C39, §5001.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.26]

321.27 Cards furnished. The department shall, upon the application of any manufacturer or dealer, furnish "registration applied for" cards free of charge. No cards shall be used except those furnished by the department. [C24, 27, 31, 35,§4885; C39,§5001.11; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.27]

321.28 Failure to register. The treasurer shall withhold the registration of any vehicle the owner of which shall have failed to register the same under the provisions of this chapter, for any previous period or periods for which it appears that registration should have been made, until the fee for such previous period or periods shall be paid. [C24, 27, 31, 35,§4870; C39,§5001.12; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.28]

321.29 Renewal not permitted. Any vehicle once registered in the state and by removal no longer subject to registration in this state, shall upon being returned to this state and subject to registration be again registered in accordance with section 321.20. [C24, 27, 31, 35, §4876; C39,§5001.13; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.29]

321.30 Grounds for refusing registration or title. The treasurer shall refuse registration and issuance of a certificate of title or any transfer of title and registration upon any of the following grounds:

1. That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to registration and issuance of a certificate of title of the vehicle under this chapter.

2. That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways, providing such condition is revealed by a member of this department, or any peace officer.

3. That the treasurer has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration and issuance of a certificate of title would constitute a fraud against the rightful owner.

4. That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state.

5. That the required fee has not been paid except as provided in section 321.48.

6. That the required sales tax has not been paid.

7. If application for registration and certificate of title for a new vehicle is not accompanied by a manufacturer's or importer's certificate duly assigned.

8. If application for a transfer of registration and issuance of a certificate of title for a used vehicle registered in this state is not accompanied by a certificate of title duly assigned.

9. If application and supporting documents are insufficient to authorize the issuance of a certificate of title as provided by this chapter, except that an initial registration or transfer of registration may be issued as provided in section 321.23. [C39,§5001.14; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.30]

321.31 Records system. A state and county records system shall be maintained in the following manner:

1. *State records system.* The department shall install and maintain a records system which shall contain the name and address of the vehicle owner, current and previous registration number, vehicle identification number, make, model, style, date of purchase, registration certificate number, maximum gross weight, weight, list price or value of the vehicle as fixed by the department, fees paid and date of payment. The records system shall also contain a record of the certificate of title including the notation of all security interests recorded and released, and such other information as the department deems necessary. The information to be kept in the records system shall be entered within forty-eight hours after receipt insofar as is practical. The records system shall constitute the permanent record of ownership of each vehicle titled under the laws of this state.

The department may make photostatic, microfilm, or other photographic copies of certificates of title, registration receipts, or other records, reports or documents which are required to be retained by the department. When copies have been made, the department may destroy the original records in such manner as prescribed by the director. The photostatic, microfilm, or other photographic copies, when no longer of use, may be destroyed in the manner prescribed by the director, subject to the approval of the state records commis-

sion. Photostatic, microfilm, or other photographic copies of records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control of the copies of records.

2. *County records system.* Each county treasurer's office shall maintain a county records system for vehicle registration and certificate of title documents. The records system shall consist of information from the certificate of title including the notation and cancellation of security interests, information from the registration receipt, and such information shall be maintained by retention of one copy of the registration receipt in a registration number file and one copy of the title certificate in a title number file. In lieu of retaining one copy of the registration receipt and one copy of the title certificate, the information may be maintained in such other manner as may be approved by the department, provided such information is accessible by title certificate number and registration number.

The county treasurer may make photostatic, microfilm, or other photographic copies of certificates of title, registration receipts, or other records, reports or documents which are required to be retained by the county treasurer. When copies of records have been made, the county treasurer may destroy the original records three years after they have been issued, in such manner as prescribed by the department. When copies of records are no longer of use, they may be destroyed in a manner prescribed by the department. Photostatic, microfilm or other photographic copies of records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control of the copies of records. [S13,§1571-m2; C24, 27, 31, 35,§5010; C39, §**5001.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.31; 66GA, ch 171,§4]

321.32 Registration card signed, carried, and exhibited. Every owner upon receipt of a registration card shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers and shall be shown to any peace officer upon his request. [S13,§1571-m11; C24, 27, 31, 35,§4879; C39,§**5001.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.32]

321.33 Exception. The provisions requiring that a registration card be carried in the vehicle to which it refers shall not apply when such card is used for the purpose of making application for renewal of registration or upon a transfer of registration of said vehicle. [C39, §**5001.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.33]

321.34 Plates or validation sticker furnished.

1. *Plates issued.* The county treasurer upon receiving application, accompanied by proper fee, for registration of a vehicle shall issue to the owner one registration plate for a motorcycle, motorized bicycle, truck tractor, trailer, or semitrailer and two registration plates for every other motor vehicle.

2. *Gross weight emblems.* The county treasurer shall also issue to applicants for registration of a truck or a truck tractor, not including in the lowest registration class, two emblems which emblems designate the gross weight for which the vehicle is registered by figures which show the gross weight in tons. Number plates and weight limitation emblems which are issued with registrations or registration increases are hereby declared to be integral parts of the registration of the vehicle for which issued. The weight limitation emblems shall be applied to both sides of the vehicle, either to the doors of the cab or to the lower front corner of the box, or such other location as designated by the commissioner.

3. *Validation stickers.* In lieu of issuing new registration plates each year for a vehicle renewing registration, the department may reassign the registration plates previously issued to such vehicle and may adopt and prescribe an annual validation sticker indicating payment of registration fee, which annual validation sticker shall be attached to said registration plates bearing the numerals indicating the year for which the original plates are validated.

4. *Radio operators plates.* The owner of an automobile, light delivery truck, panel delivery truck, or pickup who holds an amateur radio license issued by the federal communications commission may, upon written application to the county treasurer accompanied by a fee of five dollars, order special registration plates bearing the call letters authorized the radio station covered by his amateur radio license. When received by the county treasurer, such special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to him. Not more than one set of special registration plates may be issued to an applicant. Said fee shall be in addition to and not in lieu of the fee for regular registration plates. Special registration plates must be surrendered upon expiration of the owner's amateur radio license or upon transfer of title to the automobile for which such plates have been issued; and the owner shall thereupon be entitled to his regular registration plates. The county treasurer shall furnish the department an alphabetically arranged list of those to whom special plates have been issued.

5. *New plates upon transfer.* Upon the transfer of ownership of a vehicle with registration plates which do not bear the designation of the county of the purchaser's or transferee's residence, the purchaser or transferee may, upon application to the county treasurer in accordance with section 321.46, also apply for new registration plates for the vehicle, and upon surrender of the plates for such vehicle and payment of an additional registration fee of five dollars, the county treasurer shall issue

new registration plates for such vehicle bearing the designation of that county.

6. *Multiyear plates.* In lieu of issuing annual registration plates for trailers and semitrailers, the county treasurer or department may issue a multiyear registration plate for a three-year period upon payment of the appropriate registration fee. This section shall not apply to trailers and semitrailers registered pursuant to chapter 326.

7. *Individualized registration plates.*

a. Upon application and the payment of a fee of twenty-five dollars, the director may issue to the owner of a motor vehicle, except a motor truck, which is registered in this state as provided in this chapter, a set of personalized registration plates marked with the initials, letters, or a combination of numerals and letters requested by the owner. Upon receipt of the personalized registration plates, the applicant shall surrender the regular registration plates to the director. Prior to transfer of title to the motor vehicle, the personalized registration plates shall be returned to the director and the owner shall be entitled to regular registration plates without additional fee. The fee for a set of personalized registration plates shall be in addition to the regular annual registration fee provided under section 321.109.

b. The personalized registration plates shall be validated in the same manner as regular registration plates are validated under this section.

c. The fees collected by the director under this section shall be paid to the treasurer of state and credited by him as provided in section 321.145. [SS15,§1571-m5; C24, 27, 31, 35, §4874; C39,§**5001.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.34; 66GA, ch 67,§§65, 66, ch 171,§16, ch 173,§1, ch 174,§§1, 2, ch 1165,§7]

Referred to in §§321.35, 321.167
Multiyear registration effective December 1, 1976

321.35 Numbers on plates. Every registration plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the numerical designation of the county, as determined by its alphabetical ranking among the counties of the state, in which the vehicle is registered, the name of this state, which may be abbreviated, and the year number for which it is issued or the date of expiration thereof.

The gross weight emblem provided for in section 321.34 shall show the gross weight for which registered in as large figures as possible in the upper three inches and the word "ton" in the lower one inch of the emblem. The emblem shall be of such material and quality that it will remain legible during the full registration period and that it cannot be removed from the vehicle without its being destroyed.

All motor vehicle registration plates shall be treated with a reflective material according to specifications prescribed by the director. [S13, §§1571-m12,-m13; C24, 27, 31, 35,§4978; C39, §**5001.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.35]

321.36 Size of numbers. Such registration plate and the required letters and numerals thereon, except the year number for which issued, shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight. [S13,§§1571-m12,-m13; C24, 27, 31, 35,§4978; C39,§**5001.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.36]

321.37 Display of plates. Registration plates issued for a motor vehicle other than a motorcycle, motorized bicycle or a truck tractor shall be attached thereto, one in the front and the other in the rear. The registration plate issued for a motorcycle or other vehicle required to be registered hereunder shall be attached to the rear thereof. The registration plate issued for a truck tractor shall be attached to the front thereof.

The registration plate issued for an auxiliary axle shall be attached to the rear thereof when directly visible from the rear, and in all other cases, shall be attached to the right frame of such axle so as to be visible from the right side of the vehicle utilizing such axle. [S13, §1571-m11; C24, 27, 31, 35,§4877; C39,§**5001.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.37; 66GA, ch 1165,§8]

Referred to in §§321.57, 753.15

321.38 Plates, method of attaching. Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible and shall be maintained free from foreign materials or imitation plate or plates imitating or purporting to imitate the official license plate of any other state or territory of the United States or of any foreign government and in a condition to be clearly legible. [S13,§1571-m11; C24, 27, 31, 35, §4877; C39,§**5001.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.38]

Referred to in §§321.57, 753.15

321.39 Expiration of registration. Every vehicle registration under this chapter and every registration card and registration plate issued hereunder except multiyear registration plates issued for trailers or semitrailers registered for a period of three years shall expire at midnight on the thirty-first day of December of each year. The provisions of this section shall not apply to any vehicle which is registered without the payment of fees as provided in section 321.19, but the registration plate or plates issued for such vehicle shall remain valid until suspended or revoked or canceled by the department, or until the title or ownership of such vehicle has been transferred. [S13,§1571-m16; C24, 27, 31, 35,§4868; C39,**5001.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.39; 66GA, ch 173,§2]

Referred to in §753.15

321.40 Application for renewal. Application for renewal of a vehicle registration shall be

made on or after December 1 of the year for which it is registered by the owner upon proper application and by payment of the registration fee for such vehicle, as provided by law.

Registration receipts issued for renewals shall have the word "renewal" imprinted thereon and, if the owner making a renewal application has been issued a certificate of title, the title number shall appear on the registration receipt. All registration receipts for renewals shall be typewritten or printed by other mechanical means. The applicant shall receive a registration receipt.

Not more than thirty days nor less than twenty days prior to December 1 the county treasurer shall cause to be published in a newspaper of general circulation in the county, a notice to vehicle owners. The notice shall contain a list of pertinent information which is required to register a vehicle. The notice shall also include a statement that application for renewal of a vehicle registration shall be made on or after December 1 of the year for which it is registered and that such renewal may be made by mail on or after November 1. The county treasurer may deliver registration plates and other registration documents on which application for renewal has been made in November, to the owner thereof, after the last day of November. [S13,§1571-m6; C24, 27, 31, 35,§4875; C39, §**5001.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.40; 66GA, ch 171,§§5, 6]

321.41 Change of address or name. Whenever any person after making application for or obtaining the registration of a vehicle shall move from the address named in the application or shown upon a registration card such person shall within ten days thereafter notify the county treasurer of the county in which the registration of said vehicle is of record, in writing of his old and new addresses.

Whenever the name of any person who has made application for or obtained the registration of a vehicle is thereafter legally changed such person shall within ten days notify the county treasurer of the county in which the title of said vehicle is of record, of such former and new name. [C39,§**5001.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.41]

321.42 Lost or damaged certificates, cards, and plates. In the event any registration card or registration plate is lost, mutilated, or becomes illegible the owner shall immediately make application for and may obtain a duplicate upon the applicant furnishing information satisfactory to the department together with the payment of a fee of two dollars for each such plate or registration card.

In the event of any lost or destroyed certificate of title, application shall be made to the department or county treasurer who issued the original document by the owner of such vehicle, or the holder of a lien thereon, for a certified copy of the original certificate of title accompanied by a fee of five dollars. Such application shall be signed by the person making the same. Thereupon the department or county treasurer shall, after a period of five days, issue a certified copy to the person entitled to receive the certificate of title as indicated by the records of the department at his most recent address shown by such records. Such certified copy shall clearly be marked "duplicate" and shall be identical in every respect to the original to include notation upon the face thereon of liens or encumbrances disclosed by the records of the department. Upon issuance of title the previous certificate last issued shall be void. The new purchaser or transferee shall be entitled to receive an original title upon presentation of the assigned duplicate copy to the county treasurer of the county where such new purchaser or transferee resides. Any purchaser of such vehicle may, at the time of purchase, require the seller of same to indemnify him and all subsequent purchasers of such vehicle against any loss which he or they may suffer by reason of any claim or claims presented upon the original certificate. Any person recovering an original certificate of title for which a duplicate has been issued shall forthwith surrender the same to a county treasurer or the department.

If a county treasurer issues vehicle registration documents for vehicles subject to registration for delivery to the owner through the United States postal service, and such documents are lost or damaged in transit, the owner of the vehicle may file application for reissuance of these documents, without cost, with the county treasurer which originally issued the documents not less than twenty days from the date the county treasurer placed such documents for delivery through the United States postal service. If the owner of the vehicle subject to registration receives the original registration documents through the United States postal service after reissuance of duplicate documents by the county treasurer, the owner of the vehicle shall surrender the original documents to the county treasurer not later than five days from the date of receipt of the original documents from the United States postal service. [SS15,§1571-m5; C24, 27, 31, 35, §4886; C39,§**5001.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.42; 66GA, ch 171,§7]

321.43 New identifying numbers. The department is authorized to assign a distinguishing number to a vehicle or auxiliary axle whenever the serial number thereon is destroyed or obliterated and to issue to the owner a special plate bearing such distinguishing number which shall be affixed to the vehicle or auxiliary axle in a position to be determined by the director. Such vehicle or auxiliary axle shall be registered and titled under such distinguishing number in lieu of the former serial number. [C27, 31, 35,§5083-b4; C39, §**5001.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.43]

321.44 Regulations governing change of motors. The director is authorized to enforce such rules governing registration as may be deemed necessary by the commission* and compatible with the public interest with respect to the change or substitution of one engine in place of another in any motor vehicle. [C39, §5001.28; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.44; 66GA, ch 1165,§9]

*See §307.3

TRANSFERS OF TITLE OR INTEREST

321.45 Title must be transferred with vehicle.

1. No manufacturer, importer, dealer or other person shall sell or otherwise dispose of a new vehicle subject to registration under the provisions of this chapter to a dealer to be used by such dealer for purposes of display and lease or resale without delivering to such dealer a manufacturer's or importer's certificate duly executed and with such assignments thereon as may be necessary to show title in the purchaser thereof; nor shall such dealer purchase or acquire a new vehicle that is subject to registration without obtaining from the seller thereof such manufacturer's or importer's certificate. In addition to the assignments stated herein, such manufacturer's or importer's certificate shall contain thereon the identification and description of the vehicle delivered and the name and address of the dealer to whom said vehicle was originally sold over the signature of an authorized official of the manufacturer or importer who made the original delivery.

For each new mobile home, travel trailer and camping trailer said manufacturer's or importer's certificate shall also contain thereon the exterior length and exterior width of said vehicle not including any area occupied by any hitching device, and the manufacturer's shipping weight.

2. No person shall acquire any right, title, claim or interest in or to any vehicle subject to registration under this chapter from the owner thereof except by virtue of a certificate of title issued or assigned to him for such vehicle or by virtue of a manufacturer's or importer's certificate delivered to him for such vehicle; nor shall any waiver or estoppel operate in favor of any person claiming title to or interest in any vehicle against a person having possession of the certificate of title or manufacturer's or importer's certificate for such vehicle for a valuable consideration except in case of:

a. The perfection of a lien or security interest by notation on the certificate of title as provided in section 321.50, or

b. The perfection of a security interest in new or used vehicles held as inventory for sale as provided in Uniform Commercial Code, chapter 554, Article 9, or

c. A dispute between a buyer and the selling dealer who has failed to deliver or procure the certificate of title as promised, or

d. Except for the purposes of section 321.493. Except in the above enumerated cases, no court in any case at law or equity shall recognize the right, title, claim or interest of any person in or to any vehicle subject to registration sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title or manufacturer's or importer's certificate duly issued or assigned in accordance with the provisions of this chapter.

Referred to in §321.493

3. Upon the transfer of any registered vehicle, the owner, except as otherwise provided in this chapter, shall endorse an assignment and warranty of title upon the certificate of title for such vehicle with a statement of all liens and encumbrances thereon, and he shall deliver the certificate of title to the purchaser or transferee at the time of delivering the vehicle except as otherwise provided in this chapter. The owner, except as otherwise provided in this chapter, shall also sign the reverse side of the registration card issued for such vehicle indicating the name and address of the transferee and the date of the transfer.

4. Within five days of the sale of a mobile home, the dealer making the sale shall certify to the county treasurer of the county where the unit is to be located, the name and address of the purchaser, and the make, taxable size, and identification number of the unit. [S13, §1571-m9; C24, 27, 31, 35,§4961; C39,§5002.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.45]

Referred to in §§321.20(4), 321.67(1, 2), 321.493

321.46 New title upon transfer of registration. The purchaser or transferee shall immediately apply for and obtain from the county treasurer of his residence a transfer of registration and a new certificate of title for such vehicle except as provided in section 321.48. The purchaser or transferee shall present with the application the certificate of title endorsed and assigned by the previous owner and the signed registration card. The purchaser or the transferee shall not be required to list a social security number as part of the application for a registration transfer and a new title.

Upon filing the application for a registration transfer and a new title, the applicant shall pay a fee of two dollars. The county treasurer, if satisfied of the genuineness and regularity of the application and that applicant has complied with all the requirements of this chapter, shall forthwith issue a new certificate of title and registration card to the purchaser or transferee and shall forward the necessary copies to the department on the date of issuance, as prescribed in section 321.24.

The seller or transferor may file an affidavit on forms prescribed and provided by the department with the county treasurer of the county where the vehicle is registered certifying the sale or transfer of ownership of such vehicle and the assignment and delivery of the certificate of title for such vehicle. Upon receipt of such affidavit the county treasurer

shall file such affidavit with the copy of the registration receipt for such vehicle on file in his office and on that day he shall forward copies of the affidavit to the department and to the county treasurer of the county of residence of the purchaser or transferee. Upon filing such affidavit it shall be presumed that the seller or transferor has assigned and delivered the certificate of title for such vehicle. [S13,§1571-m9; C24, 27, 31, 35,§4962; C39,§**5002.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.46; 66GA, ch 1165,§10]

Referred to in §321.34
Amendment effective January 1, 1977

321.47 Transfers by operation of law. In the event of the transfer of ownership of any vehicle by operation of law as upon inheritance, devise or bequest, order in bankruptcy, insolvency, replevin, foreclosure or execution sale, or whenever the engine of a motor vehicle is replaced by another engine, or whenever a vehicle is sold to satisfy an artisan's lien as provided in chapter 577, or is sold to satisfy a landlord's lien as provided in chapter 570, or a storage lien as provided in chapter 579, or repossession is had upon default in performance of the terms of a security agreement, the treasurer of the county in which the last certificate of title to any such vehicle was issued, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof to the county treasurer of ownership and right of possession to such vehicle and upon payment of a fee of two dollars and the presentation of an application for registration and certificate of title, may issue to the applicant a registration card for such vehicle and a certificate of title thereto. The person or persons entitled under the laws of descent and distribution of an intestate's property to the possession and ownership of a vehicle owned in whole or in part by a decedent, upon filing an affidavit stating the name and date of death of the decedent, the right to possession and ownership of the persons filing said affidavit, and that there has been no administration of the said decedent's estate, which instrument shall also contain an agreement to indemnify any creditors of the decedent who would be entitled to levy execution upon said motor vehicle to the extent of the value of said motor vehicle, shall be entitled upon fulfilling the other requirements of this chapter, to the issuance of a registration card for the interest of the decedent in such vehicle and a certificate of title thereto. No requirement of either chapter 450 or 451 shall be considered satisfied by the filing of the affidavit provided for in this section. If, from the records in the office of the county treasurer, there appear to be any lien or liens on such vehicle, such certificate of title shall contain a statement of such liens unless the application is accompanied by proper evidence of their satisfaction or extinction. Evidence of extinction may consist of, but is not limited to, an affidavit of the applicant stating that a security interest was foreclosed as provided in Uniform Commercial Code, chapter 554, Article 9, Part 5. [S13,§1571-m9; C24, 27, 31, 35,§4963; C39,§**5002.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.47]

Referred to in §321.71(7)

321.48 Vehicles acquired for resale.

1. When the transferee or purchaser of a vehicle is a dealer who holds the same for resale and operates the same only for purposes incident to a resale and displays thereon the registration plates issued for such vehicle, or displays his dealer plates thereon or does not drive such vehicle or permit it to be driven upon the highways, such transferee shall not be required to obtain transfer of registration or a new certificate of title but upon transferring his title or interest to another person shall execute and acknowledge an assignment and warranty of title upon the certificate of title assigned to him and deliver the same to the person to whom such transfer is made. The dealer shall also sign the reverse side of the registration card for such vehicle indicating the name and address of the new purchaser.

Referred to in §321.71(9)

2. Any foreign registered vehicle purchased or otherwise acquired by a dealer for the purpose of resale shall be issued a certificate of title thereto by the county treasurer of the dealer's residence upon proper application therefor as provided in this chapter and upon payment of a fee of two dollars and such dealer shall be exempt from the payment of any and all registration fees for such vehicle. Such application for certificate of title shall be made within forty-eight hours after said vehicle comes within the border of the state.

3. Whenever a dealer purchases or otherwise acquires a vehicle registered in this state he shall issue a signed receipt to the previous owner, indicating the date of purchase or acquisition, the name and address of such previous owner and the registration number of the vehicle purchased or acquired. The original receipt shall be delivered to the owner on the date of purchase or acquisition and two copies shall be mailed or delivered by the dealer to the county treasurer of his residence within forty-eight hours after purchase or acquisition. The county treasurer shall forward one copy to the department. Forms for such receipts shall be furnished by the department.

4. Nothing in this section shall be construed to prohibit a dealer from obtaining a new certificate of title and transfer of registration in the same manner as other purchasers. [C24, 27, 31, 35,§4965; C39,§**5002.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.48]

Referred to in §§321.30(5), 321.46, 321.51(5), 321.71(9), 322.9(4)

321.49 Time limit—power of attorney.

1. If an application for transfer of registration and certificate of title is not submitted to the county treasurer of the residence of purchaser or transferee within five days of the date of assignment or transfer of title, a penalty of five dollars shall accrue against said vehicle, and no registration card or certificate of title shall thereafter be issued until penalty is paid.

2. Certificates of title to vehicles may be assigned by an attorney in fact of the owner under a power of attorney appointed and so empowered on forms provided by the department. Such power of attorney shall be filed by the transferee with the application for title. [C24, 27, 31, 35,§4966; C39,§5002.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.49]

321.50 Security interest provisions.

1. A security interest in a vehicle subject to registration under the laws of this state, except trailers whose empty weight is two thousand pounds or less, and wagon box trailers subject to a registration fee of five dollars or less, and new or used vehicles held by a dealer or manufacturer as inventory for sale, is perfected by the delivery to the county treasurer of the county where the certificate of title was issued or, in the case of a new certificate, to the county treasurer where the certificate will be issued of an application for certificate of title which lists such security interest, or an application for notation of security interest signed by the owner, or a certificate of title from another jurisdiction which shows such security interest, and a fee of two dollars for each security interest shown. If the owner or secured party is in possession of the certificate of title, it must also be delivered at this time in order to perfect the security interest. If a vehicle is subject to a security interest when brought into this state, the validity of the security interest and the date of perfection is determined by the Uniform Commercial Code, section 554.9103. Delivery as provided in this subsection shall be deemed to be indication of a security interest on a certificate of title for purposes of chapter 554.

2. Upon receipt of the application and the required fee, the county treasurer shall notify the holder of the certificate of title to deliver to the county treasurer, within five days from the receipt of notice, the certificate of title to permit notation of the security interest. If the holder of the certificate of title shall fail to deliver it within the said five days, he shall be liable to anyone harmed by his failure.

3. Upon receipt of the application, the certificate of title, if any, and the required fee, the county treasurer shall note such security interest, and the date thereof, on the certificate over the signature of such officer or deputy and the seal of office. The county treasurer shall also note such security interest and the date thereof in the county records system and shall also notify the department. The county treasurer shall then mail the certificate of title to the first secured party as shown thereon.

4. When a security interest is discharged, the holder thereof shall execute a release within fifteen days after payment is received, such release to contain the certificate of title number, the date of the notation thereof, and the name and address of the person to whom the title shall be delivered when such delivery is requested as hereinafter provided. The holder shall also note a cancellation of same on the face of the certificate of title over his, her or its signature, and deliver the release and certificate of title to the county treasurer where title was issued. The county treasurer shall immediately note the cancellation of said security interest on the face of the certificate of title and in the county records system and shall also notify the department. The county treasurer shall on the same day deliver the certificate of title to the then first secured party or, if there is no such person, to the person as directed on the security interest release or, if there is no such person designated, then to the owner. Said cancellation of the security interest shall be noted on the certificate of title by the county treasurer without charge. The holder of a security interest discharged by payment who fails to release such security interest as herein provided within fifteen days after being requested in writing to do so shall forfeit to the person making such payment the sum of twenty-five dollars. Such request shall be on the release form as prescribed by the department and shall contain a statement signed by the owner setting forth the name and address of the person to whom the title shall be delivered.

5. The Uniform Commercial Code, chapter 554, Article 9, shall apply to all transactions intended to create a security interest in vehicles except as provided in this chapter.

6. Any person obtaining possession of a certificate of title for a vehicle not already subject to a perfected security interest, except new or used vehicles held by a dealer or manufacturer as inventory for sale, who purports to have a security interest in such vehicle shall, within thirty days from the receipt of the certificate of title, deliver such certificate of title to the county treasurer of the county where it was issued to note such security interest and, if such person fails to do so, his purported security interest in the vehicle shall be void and unenforceable and such person shall forthwith deliver the certificate of title to the county treasurer of the county where it was issued. If no security interest has been filed for notation on the certificate of title, the certificate shall be mailed by the treasurer to the owner of the vehicle. For purposes of determining the commencement date of the thirty-day period provided by this subsection, it shall be presumed that the purported security interest holder received the certificate of title on the date of the creation of his purported security interest in the vehicle or the date of the issuance of

the certificate of title, whichever is the latter. Any person collecting a fee from the owner of the vehicle for the purpose of perfecting a security interest in such vehicle who does not cause such security interest to be noted on the certificate of title by the county treasurer shall remit such fee to the department of revenue of this state.

7. Upon request of any person, the county treasurer shall issue his certificate showing whether there are, on the date and hour stated therein, any security interests noted on a particular vehicle's certificate of title, and the name and address of each secured party whose security interest is noted thereon. The uniform fee for a written certificate shall be two dollars if the request for the certificate is on a form conforming to standards prescribed by the secretary of state; otherwise, three dollars. Upon request and payment of the appropriate fee, the county treasurer shall furnish a certified copy of any security interest notations for a uniform fee of one dollar per page. [C24, 27, 31, 35,§4967; C39,§**5002.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.50; 66GA, ch 171,§8, ch 1107,§2]

Referred to in §321.45(2, *a*), 554.9302
See §554.11101

321.51 Transfers without inspection. Notwithstanding the provisions of chapter 322, and any other statute to the contrary, the title to a motor vehicle may be transferred without a certificate of inspection as prescribed by section 321.238, where such motor vehicle is materially damaged, inoperable, or unsafe for use upon the highway upon compliance with the following conditions:

1. That the registration fee of the vehicle is not delinquent.

2. That the vehicle was obtained for the purpose of restoring, rebuilding or repairing and not for use upon the highway and such facts are evidenced by an affidavit signed by both the transferor and the transferee on a form provided by the department.

3. The transferor shall surrender the registration plates, registration card and the certificate of title, or if a foreign vehicle from a non-title state, such evidence of foreign registration and ownership as may be prescribed by the department, unless the vehicle is sold or transferred pursuant to the provisions of sections 321.89 to 321.91, for the vehicle together with the application of the transferee for a restricted certificate of title, the affidavit as provided in subsection 2 of this section and the fee for transfer to the county treasurer of the residence of the transferor who shall transmit the application of the transferee for a restricted certificate of title, the affidavit as provided in subsection 2 of this section, and the fee for transfer to the county treasurer of the county of residence of the transferee. No refund of fees previously paid for the registration of such motor vehicle shall be allowed.

4. The county treasurer of the county of residence of the transferee upon receipt of the application for a new certificate of title, fee therefor, and the affidavit as provided in subsection 2 of this section, and when satisfied as to the genuineness and regularity thereof, shall issue a restricted certificate of title to the applicant but shall not issue registration plates or a registration card. A restricted certificate of title shall be red in color and shall have conspicuously imprinted thereon in bold print, in a manner prescribed by the department, the words "RESTRICTED CERTIFICATE OF TITLE—CANNOT BE REGISTERED AND OPERATED ON THE HIGHWAYS WITHOUT A VALID APPROVED CERTIFICATE OF INSPECTION EXCEPT AS PROVIDED IN SECTION 321.98." At such time as the transferee surrenders a valid approved certificate of inspection and the restricted certificate of title to the county treasurer of the county of his residence, the county treasurer, upon payment of the appropriate fees, shall issue a certificate of title that is not restricted for the vehicle and shall also issue a registration card and registration plates for the vehicle to the applicant, however, if the registration fee for the vehicle has been paid for the current year, the county treasurer shall issue a registration card and registration plates for the vehicle to the applicant upon payment of an additional registration fee of five dollars.

5. A motor vehicle which has a restricted certificate of title may be sold or otherwise transferred as provided in this section, except provisions pertaining to the surrender of current registration plates and registration card shall not apply; however, such motor vehicle may be sold or otherwise transferred pursuant to section 321.48 to a dealer licensed under chapter 322 without compliance with the provisions of this section.

6. No vehicle sold or otherwise transferred pursuant to the provisions of this section shall be driven upon the highway until a valid official certificate of inspection has been affixed thereto and an unrestricted certificate of title, a registration card, and registration plates for the vehicle have been issued to the purchaser or transferee, except as set out in section 321.98. However, upon receipt of an affidavit signed by the owner of the vehicle stating that the vehicle is reasonably safe for operation, an inspection station may issue a permit authorizing the owner to operate the vehicle to and from a specific inspection station. The affidavit and permit mentioned in this section shall be on forms prescribed and furnished by the department which shall forward these forms to each county treasurer where they shall be made available upon request, such permit shall be valid for forty-eight hours after issuance by inspection station.

7. The provisions of this section, except provisions pertaining to the surrender of current registration plates and registration card, shall also be applicable to the insurer of any vehicle who obtains ownership of the vehicle as a result of settlement resulting from the theft of a motor vehicle which has not been recov-

ered, provided the vehicle has been reported stolen as provided in section 321.85 and written proof of payment to the insured, resulting from such theft, is submitted by the applicant. Proof of payment for loss due to theft shall be submitted on forms prescribed or provided by the department. [C73, 75,§321.51; 66GA, ch 1165,§11]

Referred to in §321.238

321.52 Dismantled or destroyed vehicles.

1. When a vehicle is permanently dismantled or destroyed so that it can no longer be used on the public highway or is sold by the owner, dealer or otherwise, for junk, the owner shall detach the registration plates and registration card and surrender same along with the certificate of title to the county treasurer who shall cancel same on his records and forward the certificate of title to the department. The certificate of title surrendered by the owner shall have noted thereon the purpose of cancellation and the name of the purchaser if sold for junk and such notation shall be duly signed by the owner. The department shall notify the title issuing county, if other than the county where title was surrendered, authorizing the treasurer to cancel and destroy all records pertaining to the particular vehicle. The department is not authorized to make a refund of license fees on a dismantled, destroyed or junked vehicle unless and until the certificate of title thereto has been surrendered.

2. When a vehicle is sold outside the state for purposes other than for junk the owner, dealer or otherwise, thereof, shall detach the registration plates and registration card and shall indicate on the reverse side of such registration card the name and address of the foreign purchaser or transferee over his signature. The owner shall surrender the plates and registration card to the county treasurer who shall cancel his records and shall destroy the plates and forward the registration card to the department. The department shall make a notation on the records of the out-of-state sale, and, after a reasonable period, may destroy the files to that particular vehicle except the motor file. The department is not authorized to make a refund of license fees on a vehicle sold out of state unless and until it receives the registration card completed as herein provided. [C24, 27, 31, 35,§4887; C39, §**5002.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.52]

Referred to in §321.126(1, 2)

PERMITS TO NONRESIDENT OWNERS

321.53 Nonresident owners of passenger vehicles and trucks. A nonresident owner, except as provided in sections 321.54 and 321.55, of a private passenger motor vehicle, not operated for hire, may operate or permit the operation of such vehicle within this state without registering such vehicle in, or paying any fees to, this state subject to the condition that such vehicle at all times when operated in this state is duly registered in, and displays upon it a valid registration plate or plates issued for such vehicle in the place of residence of such owner. A nonresident who leases a vehicle from a resident owner shall not be considered a nonresident owner of such vehicle for the purpose of exemption under this section. This section shall be operative to the extent that under the laws of the foreign country, state, territory, or federal district of such nonresident owner's residence like exemptions and privileges are granted to vehicles registered under the laws, and owned by residents, of this state. A truck, truck tractor, trailer or semitrailer owned by a nonresident and operated on Iowa highways must have displayed upon it a valid registration plate or plates and a valid registration certificate, card, or other official evidence of its allowable weight in the state, district or county in which it is registered. [S13,§1571-m16; C24, 27, 31, 35,§4865; C39, §**5003.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.53]

Referred to in §321.18

321.54 Registration required of certain nonresident carriers. Nonresident owners of foreign vehicles operated within this state for the intrastate transportation of persons or property for compensation or for the intrastate transportation of merchandise shall register each such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this state.

The term intrastate transportation as used herein shall mean the transportation for compensation of persons or property originating at any point or place in the state of Iowa and destined to any other point or place in said state irrespective of the route or highway or highways traversed, including the crossing of any state line of the state of Iowa, or the ticket or bill of lading issued and used for such transportation. [C39,§**5003.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.54]

Referred to in §§321.53, 321.55, 753.15

321.55 Registration required of other nonresidents. Every nonresident owner or operator, in addition to those mentioned in section 321.54, but not including a person commuting from his residence in another state or whose employment is seasonal or temporary, not exceeding ninety days, engaged in remunerative employment or carrying on business within this state and owning or operating any motor vehicle, trailer, or semitrailer within this state, shall be required to register each such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this state. [C39,§**5003.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.55]

Referred to in §§321.53, 753.15

321.56 Repealed by 58GA, ch 250,§8. See chapter 326.

SPECIAL PLATES TO MANUFACTURERS, TRANSPORTERS, AND DEALERS

321.57 Operation under special plates. A dealer owning any vehicle of a type otherwise

required to be registered hereunder may operate or move the same upon the highways solely for purposes of transporting, testing, demonstrating or selling the same without registering each such vehicle upon condition that any such vehicle display thereon in the manner prescribed in sections 321.37 and 321.38 a special plate or plates issued to such owner as provided in sections 321.58 to 321.62. In addition to the foregoing, a new car dealer or a used car dealer may operate or move upon the highways any new or used car or trailer owned by him for either private or business purposes without registering the same providing, (1) such new or used car or trailer is in the dealer's inventory and is continuously offered for sale at retail, and (2) there is displayed thereon a special plate or plates issued to such dealer as provided in sections 321.58 to 321.62.

Also a transporter may operate or move any vehicle of like type upon the highways solely for the purpose of delivery upon likewise displaying thereon like plates issued to him as provided in these sections.

The provisions of this section and sections 321.58 to 321.62, shall not apply to any vehicles offered for hire, work or service vehicles owned by a transporter or dealer. [SS15,§1571-m14; C24, 27, 31, 35,§§4888, 4894, 4895; C39, §**5004.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.57]

Referred to in §§321.1(16), 321.69, 321.309, 321E.10

321.58 Application. Any dealer in new or used cars may, upon payment of a fee of thirty-five dollars, make application to the department upon the appropriate form for a certificate containing a general distinguishing number and for one or more pairs of special plates or single special plates as appropriate to various types of vehicles subject to registration hereunder, and all other dealers or transporters may, upon the payment of a fee of twenty-five dollars, make an application to the department in a like manner for a like certificate and number and plates as appropriate to various types of vehicles subject to registration hereunder. The applicant shall also submit proof of his status as a bona fide transporter or dealer as may reasonably be required by the department. Dealers in new vehicles shall furnish satisfactory evidence of a valid franchise with the manufacturer of such vehicles authorizing such dealership. [SS15,§1571-m14; C24, 27, 31, 35,§4888; C39,§**5004.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.58]

Referred to in §§321.1, 321.57, 321.309

321.59 Issuance of certificate. The department, upon granting any such application, shall issue to the applicant a certificate containing the applicant's name and address and the general distinguishing number assigned to the applicant. [SS15,§1571-m14; C24, 27, 31, 35, §§4890, 4891; C39,§**5004.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.59]

Referred to in §§321.1, 321.57

321.60 Issuance of special plates. The department shall also issue special plates as applied for, which shall have displayed thereon an identification of the type of vehicle and if a car, whether it is a new or used car and the general distinguishing number assigned to the applicant. Each plate or pair of plates so issued shall also contain a number or symbol identifying the same from every other plate or pair of plates bearing the same general distinguishing number. The fee for each special plate or pair of special plates for new car and used car plates shall be ten dollars. For all other special plates the fee for each special plate or pair of special plates shall be three dollars. [SS15,§1571-m14; C24, 27, 31, 35,§4892; C39,§**5004.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.60]

Referred to in §§321.1, 321.57

321.61 Expiration of special plates. Every special plate issued hereunder shall expire at midnight on the thirty-first day of December of each year, and a new plate or plates for the ensuing year may be obtained by the person to whom any such expired plate or plates was issued upon application to the department and payment of the fee provided by law. [S13, §**1571-m16**; C24, 27, 31, 35,§4868; C39,§**5004.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.61]

Referred to in §§321.1, 321.57

321.62 Records required. Every transporter or dealer shall keep a written record of the vehicles upon which such special plates are used, which record shall be open to inspection by any police officer or any officer or employee of the department. [C39,§**5004.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.62]

Referred to in §§321.1, 321.57

321.63 Different places of business. If a transporter or dealer has an established place of business in more than one city, he shall secure a separate and distinct certificate of registration and number plates for each such place of business. [SS15,§1571-m14; C24, 27, 31, 35,§4889; C39,§**5004.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.63]

Referred to in §321.1

321.64 Repealed by 60GA, ch 189,§19.

321.65 Garage record. Every person or corporation operating a public garage shall keep for public inspection a record of the registration number and engine or factory serial number of every motor vehicle offered for sale or taken in for repairs in said garage. [C24, 27, §§4988–4990; C31, 35,§4990-c1; C39,§**5004.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.65]

321.66 Duty to hold vehicles. The proprietor of a garage and his employees upon discovering that the engine number of a motor vehicle has been altered or obliterated shall immediately notify some member of the department or peace officer of the county in which the garage is located, and hold said vehicle for a period of twenty-four hours or until investigation shall have been made by such peace officer. [C24, 27, 31, 35,§4991; C39, §**5004.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.66]

USED MOTOR VEHICLES

321.67 Certificate of title must be executed.

1. No person, except as provided in sections 321.23 and 321.45 shall sell or otherwise dispose of a registered vehicle or a vehicle subject to registration without delivering to the purchaser or transferee thereof a certificate of title with such assignment thereon as may be necessary to show title in the purchaser.

2. No person shall purchase or otherwise acquire or bring into this state a registered vehicle or a vehicle subject to registration without obtaining a certificate of title thereto except for temporary use or as provided in sections 321.23 and 321.45. [C24, 27, 31, 35, §4898; C39,§**5005.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.67]

321.68 Sale in bulk. It shall be unlawful for any dealer in this state to sell and transfer his stock of used motor vehicles in bulk unless he complies with the following requirements:

1. The vendor shall file with the county treasurer and the department, duplicate inventories of all used motor vehicles proposed to be transferred, giving the factory number, last registration number, if any, and description of each such used motor vehicle and the name and address of proposed vendee, with a certification signed by both the vendee and the vendor that the certificates of title pertaining to all the used motor vehicles listed on the inventory have been duly assigned to the vendee as prescribed in this chapter.

2. The vendee shall, if he has not already secured a dealer's registration, immediately secure such registration from the department.

Upon the completion of such requirements the department shall certify to the county treasurer that such used motor vehicles are, from and after a date to be set by the department, the property of the vendee. [C24, 27, 31, 35,§4899; C39,§**5005.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.68]

321.69 Right to operate. Registered car dealers having on hand February 1 of any year for sale or trade, used motor vehicles upon which registration in Iowa for the previous year has been paid, as hereinafter provided, may operate such motor vehicles as provided by section 321.57. [C24, 27, 31, 35,§4900; C39, §**5005.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.69]

321.70 Dealer to list vehicles. Dealers registered under the provisions of this chapter must, on or before February 5 of each year, furnish the county treasurer and department with a list of all used motor vehicles held by them for sale or trade, and upon which the registration fee for the current year is not paid, giving registration number, initials of state issuing registration plates, the year, together with the factory number, description, and previous ownership at the time such motor vehicle was transferred to the dealer.

Dealers registered under the provisions of this chapter shall, on or before August 1 of each year, furnish the county treasurer and the department with a list of all used trucks, truck tractors, road tractors, trailers and semitrailers held by them for sale or trade, and on which the second installment of the current annual registration fee has not been paid, and the payment of the second installment shall then be waived, subject to the reregistration of such vehicle under the provisions of section 321.106 at such time as a dealer ceases to hold any such vehicle for sale or trade. [C24, 27, 31, 35,§4901; C39,§**5005.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.70]

Referred to in §321.136

321.71 Odometer requirements.

1. For the purposes of this section the following words and phrases shall have the meanings respectively ascribed to them:

a. "Intent and purpose of this section" is and shall mean to achieve the end that odometers of motor vehicles shall at all times correctly show the true mileage that the motor vehicle has been driven.

b. "True mileage" is the actual mileage the motor vehicle has been driven.

2. No person shall knowingly tamper with, adjust, alter, change, set back, disconnect or fail to connect the odometer of any motor vehicle, or cause any of the foregoing to occur to an odometer of a motor vehicle, so as to reflect a lower mileage than the true mileage driven by the motor vehicle.

3. No person shall conspire with any other person to evade the intent and purpose of this section.

4. No person shall with the intent to defraud operate a motor vehicle on any street or highway knowing that the odometer of the motor vehicle is disconnected or nonfunctional.

5. No person shall advertise for sale, sell, use or install on any part of a motor vehicle or on any odometer in a motor vehicle any device which causes the odometer to register any mileage other than the true mileage.

6. In the event any odometer is repaired or replaced, the reading of the repaired or replaced odometer shall be set at the reading of the odometer repaired or replaced immediately prior to repair or replacement, but where the odometer is incapable of registering the same mileage the odometer shall be adjusted to read zero and any adjustment made in accordance with the provisions of this subsection shall not be deemed a violation of any provision of this section.

7. As to motor vehicles of a model year subsequent to the model year 1968 which were equipped with an odometer by the manufacturer, no certificate of title shall be issued unless an odometer statement which is in compliance with federal law and regulations has been made by the transferor of such vehicle and is furnished with the application for certificate of title. The new certificate of title shall record on the face thereof the odometer reading and if the odometer reading is not

the true mileage or the true mileage is unknown, then the word "unknown" shall be recorded. However a certificate of title may be issued for a motor vehicle to a person who moves into this state if such person acquired ownership of the motor vehicle prior to moving to this state. The provisions of this subsection shall not apply to motor vehicles transferred by operation of law pursuant to section 321.47 nor to motor vehicles having a registered gross vehicle weight of more than sixteen thousand pounds.

8. Any person who knowingly makes or delivers a false odometer statement as required by subsection 7 shall be guilty of a violation of this section.

9. An Iowa licensed motor vehicle dealer shall not have in his possession as inventory for sale any used motor vehicle acquired by the dealer after January 1, 1972, for which he does not have in his possession an odometer statement by the transferor which is in compliance with federal law and regulations unless a certificate of title has been issued for such vehicle in the name of the dealer.

10. A transferee of a motor vehicle reassigning the certificate of title to such motor vehicle pursuant to the provisions of section 321.48, subsection 1, shall not be guilty of a violation of this section if such transferee has in his possession an odometer statement by the transferor which is in compliance with federal law and regulations and if he has no knowledge that the statement is false and that he has no knowledge that the odometer does not reflect the true mileage of such motor vehicle.

11. Any person who violates the provisions of this section shall be punished by a fine of not less than four hundred dollars and not more than one thousand dollars or by imprisonment in the county jail for a period not to exceed ninety days, or punished by both such fine and imprisonment. [C73, 75,§321.71; 66GA, ch 177,§1]

SPECIAL ANTITHEFT LAW

321.72 Report of stolen and recovered motor vehicles. Every sheriff, chief of police, or peace officer upon receiving reliable information that any vehicle registered hereunder has been stolen shall immediately report such theft to the department unless prior thereto information has been received of the recovery of such vehicle. Any said officer upon receiving information that any vehicle, which he has previously reported as stolen, has been recovered, shall immediately report the fact of such recovery to the local sheriff's office or police department and to the department. [C27, 31, 35,§13417-a1; C39,**§5006.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.72]

321.73 Reports by owners. The owner, or person having a lien or encumbrance upon a registered vehicle which has been stolen or embezzled, may notify the department of such theft or embezzlement, but in the event of an embezzlement may make such report only after having procured the issuance of a warrant for the arrest of the person charged with such embezzlement.

Every owner or other person who has given any such notice must notify the department of a recovery of such vehicle. [C39,**§5006.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.73]

321.74 Action by department. The department upon receiving a report of a stolen or embezzled vehicle as hereinbefore provided shall file and appropriately index the same and shall immediately suspend the registration of the vehicle so reported and shall not transfer the registration of the same until such time as it is notified in writing that such vehicle has been recovered. [C39,**§5006.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.74]

321.75 Bulletin of stolen vehicles. The department shall at least once each week compile and publish a list of motor vehicles reported stolen and all motor vehicles recovered, and shall send a copy thereof to each chief of police and sheriff in the state, and to the motor vehicle departments of each of the several states and also maintain at its headquarters office a list of all vehicles which have been stolen or embezzled or recovered as reported to it during the preceding week and such lists shall be open to inspection by any peace officer or other person interested in any such vehicle. [C27, 31, 35,§13417-a2; C39,**§5006.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.75]

321.76 Operating without consent. Any person who shall without the consent of the owner take or cause to be taken any motor vehicle, and operate or drive or cause the same to be operated or driven, shall be imprisoned in the penitentiary not to exceed one year, or be imprisoned in the county jail not to exceed six months, or be fined not to exceed five hundred dollars. [S13,§4823; C24, 27, 31, 35,§13092; C39,**§5006.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.76; 66GA, ch 1168,§2]

321.77 Receiving or transferring stolen vehicle. Any person who, with intent to procure or pass title to a vehicle which he knows or has reason to believe has been stolen or unlawfully taken, receives, or transfers possession of the same from or to another, or who has in his possession any vehicle which he knows or has reason to believe has been stolen or unlawfully taken, and who is not an officer of the law engaged at the time in the performance of his duty as such officer, is guilty of a felony and shall be punished as provided in section 321.483. [C24, 27, 31, 35,§5092; C39,**§5006.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.77]

Referred to in §322.6(9)

321.78 Injuring or tampering with vehicle. Any person who either individually or in association with one or more other persons willfully injures or tampers with any vehicle or breaks or removes any part or parts of or from

a vehicle without the consent of the owner is guilty of a misdemeanor punishable as provided in section 321.482. [C39,§**5006.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.78]

Referred to in §322.6(9)

321.79 Intent to injure. Any person who with intent to commit any malicious mischief, injury, or other crime climbs into or upon a vehicle whether it is in motion or at rest or with like intent attempts to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent sets in motion any vehicle while the same is at rest and unattended is guilty of a misdemeanor punishable as provided in section 321.482. [C39,§**5006.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.79]

321.80 Vehicles without identification numbers. Any person who knowingly buys, receives, disposes of, sells, offers for sale, or has in his or her possession any vehicle, or any component part of a vehicle, from which the vehicle identification number or component part number has been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of the vehicle or component part is guilty of a misdemeanor punishable as provided in section 321.482. [SS15,§1571-m12a; C24, 27, 31, 35, §5080; C39,§**5006.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.80; 66GA, ch 1168,§3]

Referred to in §322.6(9)
Similar provisions, §§321.92, 714.12

321.81 Presumptive evidence. Whoever shall conceal, barter, sell, possess or dispose of any vehicle or component part which has been stolen, or shall disguise, alter, or change such vehicle or component part or the vehicle identification number or component part number thereof, or remove or change the registration plate thereon, or do any act designed to prevent identification of such vehicle or component part, shall be presumed to have knowledge that such vehicle or component part had been stolen. [C24, 27, 31, 35,§5093; C39,§**5006.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.81; 66GA, ch 1168,§4]

Referred to in §322.6(9)

321.82 Larceny of vehicle. If any person shall steal, take and carry away, irrespective of value, any vehicle, he or she shall be punished by imprisonment in the penitentiary not more than ten years, or by fine of not more than one thousand dollars, or by both such fine and imprisonment. [C24, 27, 31, 35,§13011; C39, §**5006.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.82; 66GA, ch 1168,§5]

321.83 Jurisdiction. Jurisdiction of such offense may be in the county where the vehicle or component part was stolen, or through or into which it was taken, carried, or transported by the person or persons who committed the theft, or by any person or persons confederated with him or them in the theft. [C24, 27, 31, 35,§13013; C39,§**5006.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.83; 66GA, ch 1168, §6]

321.84 Seizure of vehicles. It shall be the duty of any peace officer who finds a vehicle or component part, the vehicle identification number or component part number of which has been altered, defaced, or tampered with, and who has reasonable cause to believe that the possessor of the vehicle or component part wrongfully holds it, to forthwith seize it, either with or without warrant, and deliver it to the sheriff of the county in which it is seized. [C27, 31, 35,§5083-b1; C39,§**5006.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.84; 66GA, ch 1168,§7]

Referred to in §321.85

321.85 Stolen vehicles or component parts. Whenever any vehicle or component part is seized under section 321.84 or whenever any vehicle or component part is stolen or embezzled, and is not claimed by the owner before the date on which the person charged with its stealing or embezzling is convicted, then the officer having the vehicle or component part in his or her custody must, on that date by certified mail, notify the department that he or she has such a vehicle or component part in his or her possession, giving a full and complete description of it, including all vehicle identification numbers and component part numbers. [C24,§12222; C27, 31, 35,§§5083-b2, 12222; C39,§**5006.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.85; 66GA, ch 1168,§8]

Referred to in §§18.11, 321.51(7)

321.86 Notice by director. The director shall, if the owner appears of record in his or her office, notify the owner of the fact that the vehicle or component part is in the custody of the officer, and if not of record in his or her office, the director shall mail the description to the county treasurer of each county. [C24, 27, 31, 35,§12223; C39,§**5006.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.86; 66GA, ch 1168,§9]

Referred to in §18.11

321.87 Delivery to owner. If, within forty days thereafter, the owner of the vehicle or component part appears and properly identifies it, the officer having the vehicle or component part in his or her custody shall deliver it to such owner upon payment by him or her of the costs incurred incident to the apprehension of the vehicle or component part and the location of the owner. [C24,§12224; C27, 31, 35,§§5083-b3, 12224; C39,§**5006.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.87; 66GA, ch 1168,§10]

Referred to in §18.11

321.88 Failure of owner to claim. If the owner does not appear within forty days, the motor vehicle shall be deemed abandoned and the officer having possession of the motor vehicle shall proceed as provided in section 321.89, subsections 3 and 4. [C24,§12225; C27, 31,

35,§§5083-b3, 12225; C39,§5006.17; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.88]
Referred to in §§18.11, 321.89(4)

321.89 Abandoned vehicles.

1. *Definitions.* As used in this section and sections 321.90 and 321.91 unless the context otherwise requires:

a. "Police authority" means the Iowa highway safety patrol or any law enforcement agency of a county or city.

b. "Abandoned vehicle" means any of the following:

(1) A vehicle that has been left unattended on public property for more than forty-eight hours and lacks current registration plates or two or more wheels or other parts which renders the vehicle totally inoperable, or

(2) A vehicle that has remained illegally on public property for more than seventy-two hours, or

(3) A vehicle that has been unlawfully parked on private property or has been placed on private property without the consent of the owner or person in control of the property for more than twenty-four hours, or

(4) A vehicle that has been legally impounded by order of a police authority and has not been reclaimed for a period of ten days, or

(5) Any vehicle parked on the highway determined by a police authority to create a hazard to other vehicle traffic, or

(6) However a vehicle shall not be considered abandoned for a period of fifteen days if its owner or operator is unable to move the vehicle and notifies the police authority responsible for the geographical location of the vehicle and requests assistance in the removal of the vehicle.

c. "Demolisher" means any city or public agency organized for the disposal of solid waste, or any person whose business it is to convert a vehicle to junk, processed scrap or scrap metal, or otherwise to wreck, or dismantle vehicles.

2. *Authority to take possession of abandoned vehicles.* A police authority may, and on the request of any other authority having the duties of control of highways or traffic, shall take into custody any abandoned vehicle on public property and may take into custody any abandoned vehicle on private property. A police authority taking into custody an abandoned vehicle determined to create a traffic hazard shall report the reasons constituting the hazard in writing to the appropriate authority having duties of control of the highway. The police authority may employ its own personnel, equipment and facilities or hire other personnel, equipment and facilities for the purpose of removing, preserving, storing, or disposing abandoned vehicles.

3. *Notification of owner and lienholders.*

a. A police authority which takes into custody an abandoned vehicle shall notify, within ten days, by certified mail, the last known registered owner of the vehicle and all lienholders of record, addressed to their last known address of record, that the abandoned vehicle has been taken into custody. Notice shall be deemed given when mailed. The notice shall describe the year, make, model, and serial number of the vehicle, set forth the location of the facility where it is being held, inform the owner and any lienholders of their right to reclaim the vehicle within twenty-one days after the effective date of the notice upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody. The notice shall also state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all lienholders of all right, title, claim and interest in the vehicle and that such failure to reclaim the vehicle is deemed consent to the sale of the vehicle at a public auction or disposal of the vehicle to a demolisher. If the owner and lienholders do not exercise their right to reclaim such vehicle within the twenty-one-day reclaiming period, such owner and lienholders shall no longer have any right, title, claim, or interest in or to such vehicle. No court in any case in law or equity shall recognize any right, title, claim, or interest of any such owner and lienholders after the expiration of the twenty-one-day reclaiming period.

b. If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the area where the vehicle was abandoned shall be sufficient to meet all requirements of notice under this section. The published notice may contain multiple listings of abandoned vehicles but shall be published within the same time requirements and contain the same information as prescribed for mailed notice in subsection 3, paragraph *"a"* of this section.

c. The owner or any lienholders may, by written request delivered to the police authority prior to the expiration of the twenty-one-day reclaiming period, obtain an additional fourteen days within which the vehicle may be reclaimed.
Referred to in §§321.88, 321.90(2)

4. *Auction of abandoned vehicles.* If an abandoned vehicle has not been reclaimed as provided for in subsection 3, the police authority shall make a determination as to whether or not the vehicle shall be sold for use upon the highways. If it is to be sold as a motor vehicle for use upon the highways, it shall first be inspected as required by section 321.238 and have a valid certificate of inspection affixed. If the vehicle is not sold for use upon the highways, it shall be sold for junk, or demolished and sold as scrap or sold as provided in section 321.88 with a restricted certificate of title and not for use upon the

highways. The police authority shall sell the vehicle at public auction. Notwithstanding any other provision of this section, any police authority, which has taken into possession any abandoned vehicle which lacks an engine or two or more wheels or other part which renders the vehicle totally inoperable may dispose of such vehicle to a demolisher for junk after complying with the notification procedures enumerated in subsection 3 and without public auction. The purchaser of the vehicle shall take title free and clear of all liens and claims of ownership, shall receive a sales receipt from the police authority, and shall be entitled to register the vehicle and receive a certificate of title if sold for use upon the highways or a restricted certificate of title as the case may be; however, if the vehicle is sold or disposed of to a demolisher for junk, the sales receipt by itself shall be sufficient title only for purposes of transferring the vehicle to such demolisher for demolition, wrecking, or dismantling and, when so transferred, no further titling of the vehicle shall be permitted. From the proceeds of the sale of an abandoned vehicle the police authority shall reimburse itself for the expenses of the auction, the costs of towing, preserving, and storing which resulted from placing the abandoned vehicle in custody, all notice and publication costs incurred pursuant to subsection 3, the cost of inspection, and any other costs incurred except costs of bookkeeping and other administrative costs. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for ninety days, and shall then be deposited in the reimbursement fund received by the department pursuant to section 321.145, subsection 2. The costs to police authorities of auction, towing, preserving, storage, and all notice and publication costs, inspection costs and all other costs which result from placing abandoned vehicles in custody, whenever the proceeds from a sale of such abandoned vehicles are insufficient to meet these expenses and costs, shall be paid from the reimbursement fund of the department under section 321.145, subsection 2. In the event the reimbursement fund is temporarily exhausted, payment shall be deferred until the reimbursement fund contains sufficient funds to meet the claims.

The state comptroller shall establish by rule a claims procedure to be followed by police authorities in obtaining expenses and costs from the fund. [C73, 75,§321.89; 66GA, ch 1169, §1]

Referred to in §§18.11, 321.51(3), 321.88, 321.90, 321.91

321.90 Disposal of abandoned motor vehicles.

1. *Garagekeepers and abandoned motor vehicles.* Any motor vehicle left in a garage operated for commercial purposes after the period for which the vehicle was to remain on the premises shall, after notice by certified mail to the last known registered owner of the vehicle addressed to his last known address of record to reclaim the vehicle within ten days of the date of the notice, be deemed an abandoned motor vehicle unless reclaimed by the owner within such ten-day period or the owner notifies the garagekeeper in writing within such period of time that such vehicle is not an abandoned motor vehicle and shall be reported by the garagekeeper to the police authority. If the identity or address of the last registered owner of the motor vehicle cannot be determined, the vehicle shall be deemed an abandoned motor vehicle on the eleventh day after the period for which the vehicle was to remain on the premises unless reclaimed by the owner within the ten-day period or the owner notifies the garagekeeper in writing within such period of time that such vehicle is not an abandoned motor vehicle and shall be reported by the garagekeeper to the police authority. All abandoned motor vehicles left in garages may be taken into custody by a police authority upon the request of the garagekeeper and sold in accordance with the procedures set forth in section 321.89, subsection 4, unless the motor vehicle is reclaimed. The proceeds of the sale shall be first applied to the garagekeeper's charges for towing and storage, and any surplus proceeds shall be distributed in accordance with section 321.89, subsection 4. Nothing in this section shall be construed to impair any lien of a garagekeeper under the laws of this state, or the right of a garagekeeper to foreclose his lien, provided that a garagekeeper shall be deemed to have abandoned his artisan lien when such vehicle is taken into custody by the police authority. For the purposes of this section "garagekeeper" means any operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of motor vehicles.

2. *Disposal to demolisher.*

a. Any person, firm, corporation, or unit of government upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost, or destroyed and is thereby unable to transfer title to the motor vehicle, may apply to the police authority of the jurisdiction in which the motor vehicle is situated for authority to sell, give away, or otherwise dispose of the motor vehicle to a demolisher.

b. The application shall set out the name and address of the applicant, the year, make, model, and serial number of the motor vehicle, if ascertainable, together with any other identifying features, and shall contain a concise statement of the facts surrounding the abandonment, or a statement that the title of the motor vehicle is lost or destroyed, or the reasons for the defect of title in the owner. The applicant shall execute an affidavit stating that the facts alleged are true and that no material fact has been withheld.

c. If the police authority finds that the application is executed in proper form, and shows that the motor vehicle has been abandoned

upon the property of the applicant, or if it shows that the motor vehicle is not abandoned but that the applicant appears to be the rightful owner, the police authority shall follow appropriate notification procedures as set forth in section 321.89, subsection 3.

d. If the abandoned motor vehicle is not reclaimed in accordance with section 321.89, subsection 3, or no lienholder objects to the disposal in the case of an owner-applicant, the police authority shall give the applicant a certificate of authority to dispose of the motor vehicle to any demolisher for demolition, wrecking, or dismantling. The demolisher shall accept such certificate in lieu of the certificate of title to the motor vehicle.

e. Notwithstanding any other provisions of this section and sections 321.89 and 321.91, any person, firm, corporation, or unit of government upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost, or destroyed, may dispose of such motor vehicle to a demolisher for junk without his title and without the notification procedures of section 321.89, subsection 3, if the motor vehicle lacks an engine or two or more wheels or other structural part which renders the vehicle totally inoperable.

f. The owner of an abandoned motor vehicle and all lienholders shall no longer have any right, title, claim, or interest in or to such motor vehicle; and no court in any case in law or equity shall recognize any right, title, claim, or interest of any such owner and lienholders after the disposal of such motor vehicle to a demolisher.

g. Any proceeds from the sale of an abandoned motor vehicle to a demolisher under this section, by one other than the owner of the vehicle, shall first be applied to that person's expenses in effecting the sale, including storage, towing, and disposal charges, and any surplus shall be distributed in accordance with section 321.89, subsection 4.

3. *Duties of demolishers.*

a. Any demolisher who purchases or otherwise acquires an abandoned motor vehicle for junk under the provisions of this section shall junk, scrap, wreck, dismantle, or demolish such motor vehicle. However, if the vehicle is acquired under the provisions of subsection 2, paragraph *"e"*, the demolisher shall apply to the police authority of the jurisdiction from which the vehicle was acquired for a certificate of authority to demolish the vehicle. In making the application the demolisher shall describe the motor vehicle as required by subsection 2, paragraph *"b"*. The police authority shall issue the certificate of authority upon complying with subsection 2, paragraph *"c"*, but shall be excused from following the notification procedures as required therein. No further titling of the motor vehicle shall be permitted. After the motor vehicle has been demolished, processed, or changed so that it physically is no longer a motor vehicle, the demolisher shall surrender the auction sales receipt or certificate of authority to dispose of or demolish a motor vehicle to the department for cancellation. The department shall issue such forms and rules governing the surrender of auction sales receipts, certificates of title, and certificates of authority to dispose of or demolish motor vehicles, and the cancellation and surrender of the registrations and certificates of title for such motor vehicles as are appropriate.

b. A demolisher shall keep an accurate and complete record of all motor vehicles purchased or received by him in the course of his business. These records shall contain the name and address of the person from whom each such motor vehicle was purchased or received and the date when such purchases or receipts occurred. Such records shall be open for inspection by any police authority at any time during normal business hours. Any record required by this section shall be kept by the demolisher for at least one year after the transaction to which it applies. [C73, 75, §321.90; 66GA, ch 67,§66]

Referred to in §§18.11, 321.51(3), 321.89(1), 321.91

321.91 Limitation on liability—penalty for abandonment.

1. No person, firm, corporation, unit of government, garagekeeper or police authority upon whose property an abandoned vehicle is found or who disposes of such abandoned vehicle in accordance with sections 321.89 and 321.90 shall be liable for damages by reason of the removal, sale, or disposal of such vehicle.

2. Any person who abandons a vehicle shall be guilty of a misdemeanor. [C73, 75, §321.91; 66GA, ch 1168,§11]

Referred to in §§18.11, 321.51(3), 321.89(1), 321.90

321.92 Altering or changing numbers. No person shall with fraudulent intent, deface, destroy, or alter the vehicle identification number or component part number or other distinguishing number or identification mark of a vehicle or component part nor shall any person place or stamp any serial, engine, or other number or mark upon a vehicle or component part, except one assigned thereto by the department. Any violation of this provision is a felony punishable as provided in section 321.483.

This section shall not prohibit the restoration of an original vehicle identification number, component part number or other number or mark when such restoration is made by the department, nor prevent any manufacturer from placing in the ordinary course of business numbers or marks upon vehicles or component parts. [SS15,§1571-m12a; C24, 27, 31, 35, §5080; C39,§5006.21; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.92; 66GA, ch 1168,§12]

Referred to in §322.6(9)
Similar provisions, §§321.80, 714.12

321.93 Defense. Under a charge of possessing a vehicle or component part, the vehicle identification number or component part number of which is defaced, altered, or tampered with, it shall be a complete defense that the accused at the time of such possession had in his or her possession a certificate of title from the officer whose duty it is to register vehicles and component parts in the state in which the vehicle or component part is registered, showing good and sufficient reason why numbers are defaced, changed, or tampered with, the original vehicle identification number or component part number, and the ownership of the vehicle or component part. [C24, 27, 31, 35,§5083; C39,§**5006.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.93; 66GA, ch 1168,§13]

321.94 Test to determine true number. Where it appears that a vehicle identification number or component part number has been altered, defaced or tampered with, any sheriff, state agent or peace officer, or inspector employed by the department, or any other person acting under their direction, may apply any recognized process or test to the part containing such number for the purpose of determining the true number. [C27, 31, 35,§5083 -b5; C39,§**5006.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.94; 66GA, ch 1168,§14]

321.95 Right of inspection. Peace officers or examiners employed in the department shall have the authority to inspect any vehicle or component part in possession of a demolisher or found upon the public highway or in any public garage or enclosure in which vehicles or component parts are kept for sale, storage, hire or repair and for that purpose may enter any such public garage or enclosure. Every person doing business as a demolisher or having used engines or transmissions which are component parts for sale shall keep an accurate and complete record of all vehicles demolished and of such component parts purchased or received in the course of business. These records shall contain the name and address of the person from whom each such vehicle or component part was purchased or received and the date when the purchase or receipt occurred. These records shall be open for inspection by any police authority at any time during normal business hours. Records required by this section shall be kept for at least three years after the transaction which they record. [C27, 31, 35,§5083-b6; C39, §**5006.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.95; 66GA, ch 1168,§15]

321.96 Prohibited plates — certificates — badges. No person shall display or cause or permit to be displayed, or have in his or her possession, any vehicle identification number or component part number except as provided in this chapter, or any canceled, revoked, altered, or fictitious registration number plates, registration receipt, certificate of title, chauffeur's license certificate, or chauffeur's badge, as the same are respectively provided for in this chapter. [C24, 27, 31, 35,§5084; C39,§**5006.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.96; 66GA, ch 1168,§16]

OFFENSES AGAINST REGISTRATION LAWS AND SUSPENSION OR REVOCATION OF REGISTRATION

321.97 Fraudulent applications. Any person who fraudulently uses a false or fictitious name in any application for the registration of, or certificate of title to, a vehicle or knowingly makes a false statement or knowingly conceals a material fact or otherwise commits a fraud in any such application, shall upon conviction be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year or both. [S13,§1571-m26; C24, 27, 31, 35,§5088; C39,§**5007.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.97]

Referred to in §322.6(9)

321.98 Operation without registration. No person shall operate, nor shall an owner knowingly permit to be operated upon any highway any vehicle required to be registered and titled hereunder unless there shall be attached thereto and displayed thereon when and as required by this chapter a valid registration card and registration plate or plates issued therefor for the current registration year and unless a certificate of title has been issued for such vehicle except as otherwise expressly permitted in this chapter. Any violation of this section is a misdemeanor punishable as provided in section 321.482. [C24, 27, 31, 35,§5085; C39,§**5007.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.98]

Referred to in §§321.51, 322.6(9), 753.15

321.99 Improper use of registration. No person shall lend to another any registration card, registration plate, special plate, or permit issued to him if the person desiring to borrow the same would not be entitled to the use thereof, nor shall any person knowingly permit the use of any of the same by one not entitled thereto, nor shall any person display upon a vehicle any registration card, registration plate or permit not issued for such vehicle or not otherwise lawfully used thereon under this chapter. Any violation of this section is a misdemeanor punishable as provided in section 321.482. [SS15,§1571-m12a; C24, 27, 31, 35, §§4878, 5080; C39,§**5007.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.99]

Referred to in §§322.6(9), 753.15

321.100 False evidences of registration. It is a felony, punishable as provided in section 321.483, for any person to commit any of the following acts:

1. To alter with a fraudulent intent any certificate of title, manufacturer's or importer's certificate, registration card, registration plate, manufacturer's vehicle identification plate, or permit issued by the department or county treasurer.

2. To forge or counterfeit any such document or plate.

3. To hold or use any such document or plate knowing the same to have been so altered, forged, or falsified.

4. To hold or use any certificate of title, manufacturer's or importer's certificate, registration card, registration plate, manufacturer's vehicle identification plate, or permit issued by the department or county treasurer, for any vehicle to which such document or plate is not legally assigned.

Every person selling new implements of husbandry at retail with a retail list price in excess of five thousand dollars upon which the manufacturer has affixed a vehicle identification number shall maintain a record of such number, the name and address of the purchaser and the date of sale for a period of ten years. [SS15,§1571-m 12a; C24, 27, 31, 35,§5080; C39,§**5007.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.100; 66GA, ch 1168,§§17, 18, 19]

Referred to in §322.6(9)

321.101 Suspension or revocation of registration or certificate of title. The department is hereby authorized to suspend or revoke the registration of a vehicle, registration card, registration plate, or any nonresident or other permit in any of the following events:

1. When the department is satisfied that such registration card, plate, or permit was fraudulently or erroneously issued.

2. When the department determines that a registered vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

3. When a registered vehicle has been dismantled or wrecked.

4. When the department determines that the required fee has not been paid and the same is not paid upon reasonable notice and demand.

5. When a registration card, registration plate, or permit is knowingly displayed upon a vehicle other than the one for which issued.

6. When the department determines that the owner has committed any offense under this chapter involving the registration card, plate, or permit to be suspended or revoked.

7. When the department is so authorized under any other provision of law.

8. The department is hereby authorized, and it shall be its duty, to cancel a certificate of title that appears to have been improperly issued or fraudulently obtained. Upon cancellation of any certificate of title the department shall notify the county treasurer who issued the same, who shall forthwith enter the cancellation upon his records. The department shall also notify the person to whom such certificate of title was issued, as well as any lienholders appearing thereon, of the cancellation and shall demand the surrender of such certificate of title, but the cancellation shall not affect the validity of any lien noted thereon.

9. Notice of suspension or revocation of the registration of a vehicle, registration card, registration plate, or any nonresident or other permit under the terms of this section shall be by personal delivery of said notice to the person to be so notified or by certified mail addressed to such person at his address as shown on the registration record. No return acknowledgment shall be necessary to prove such latter service. [C24, 27, 31, 35,§5090; C39, §**5007.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.101]

321.102 Suspending or revoking special registration. The department is also authorized to suspend or revoke a certificate or the special plates issued to a manufacturer, transporter, or dealer upon determining that any said person is not lawfully entitled thereto or has made or knowingly permitted any illegal use of such plates or has committed fraud in the registration of vehicles or failed to give notices of transfer when and as required by this chapter. [C39,§**5007.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.102]

321.103 Owner to return evidences of registration and title. Whenever the department as authorized hereunder cancels, suspends, or revokes the registration of a vehicle, or certificate of title, or registration card, or registration plate or plates, or any nonresident or other permit or the registration of any dealer, the owner or person in possession of the same shall immediately return the evidences of registration, certificate of title, or plates so canceled, suspended, or revoked to the department. [C39,§**5007.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.103]

321.104 Penal offenses against title law. It is a misdemeanor, punishable as provided in section 321.482 for any person to commit any of the following acts:

1. To operate any motor vehicle upon the highways upon which the certificate of title has been canceled, or while a certificate of registration of a motor vehicle is suspended or revoked.

2. For a dealer, or a person acting on behalf of a dealer to acquire, purchase, hold or display for sale a motor vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title, or assignments thereof, unless otherwise provided in this chapter.

3. Any person who shall fail to surrender any certificate of title or registration card or license plates upon cancellation, suspension or revocation of the same by the department and notice thereof as prescribed in this chapter.

4. Any person whoever shall purport to sell or transfer a motor vehicle, trailer or semitrailer without delivering to the purchaser or transferee thereof a certificate of title or a manufacturer's or importer's certificate

thereto duly assigned to such purchaser as provided in this chapter.

5. Any person whoever shall violate any of the other provisions of this chapter or any lawful rules promulgated pursuant to the provisions of this chapter. [S13,§1571-m24; C24, 27, 31, 35,§5086; C39,§**5007.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.104]

REGISTRATION FEES

321.105 Annual fee required. An annual registration fee shall be paid for each motor vehicle or trailer operated upon the public highways of this state unless said vehicle is specifically exempted under the provisions of this chapter.

Said registration fee shall be paid to the county treasurer at the same time the application is made for the registration or reregistration of said motor vehicle or trailer. Any owner may, when applying for registration or reregistration of his motor vehicle or trailer, request that the plates be mailed to his postoffice address. His request shall be accompanied by a mailing fee as determined annually by the director. Said fee shall be deposited in the county general fund.

Upon application by a financial institution, as defined in section 422.61, and approval of the application by the county treasurer, the county treasurer in any county may authorize the financial institution to receive applications for renewal of vehicle registrations and payment of the registration fees. The registration fees shall be delivered to the county treasurer at the time the county treasurer has processed the vehicle registration application. Registration fees received with vehicle registration applications shall be designated as public funds only upon receipt of such funds by the county treasurer from the financial institution.

In addition to the payment of an annual registration fee for each trailer and semitrailer to be issued an Iowa registration plate, an additional registration fee may be paid for a period of two subsequent registration years. This section shall not apply to trailers and semitrailers registered pursuant to chapter 326.

Seriously disabled veterans who have been provided with an automobile or other vehicle by the United States government under the provisions of sections 1901 to 1903, Title 38 of the United States Code, [38 U.S.C. §1901 et seq. (1970)] shall be exempt from payment of any automobile registration fee provided in this chapter, and shall be provided, without fee, with a registration plate. The disabled veteran, to be able to claim the above benefit, must be a resident of the state of Iowa and must produce a certificate of title to the automobile owned and registered in this state in the name of said veteran. [SS15,§1571-m7; C24, 27, 31, 35,§4904; C39,§**5008.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.105; 66GA, ch 171,§9, ch 173,§3]

Collection of mobile home tax, §135D.24

321.106 Registration for fractional part of year. Where there is no delinquency and the registration is made in February or succeeding months to and including November, registration fees for vehicles designed to carry nine passengers or less shall be computed on the basis of one-twelfth of the annual registration fee as provided in this chapter multiplied by the number of unexpired months of the year. No fee shall be required for the month of December for a vehicle on which there is no delinquency.

Where there is a delinquency, registration fees for vehicles designed to carry property or more than nine passengers which are registered after January 31 shall be computed on the basis of the full annual fee, plus penalties, for such vehicle. Where there is no delinquency and the registration is made in February or succeeding months, registration fees for vehicles designed to carry property or more than nine passengers shall be computed on the basis of one-twelfth of the annual registration fees as provided in this chapter multiplied by the number of unexpired months of the year. No fee shall be required for the month of December for vehicles on which there is no delinquency.

Whenever any registration fee computed under this section contains a fractional part of a dollar, the fee shall be computed to the nearest whole dollar, except that any such fee so computed shall not be less than five dollars, which amount shall be the fee collected. The fee so computed for an original registration shall be deemed to be the annual registration fee for the remainder of the registration year. [SS15,§1571-m7; C24, 27, 31, 35,§4905; C39, §**5008.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.106; 66GA, ch 171,§10]

Referred to in §§321.70, 321.126, 321.466

321.107 Sworn statement. Such reduction in the registration fee shall not be allowed until the applicant first file with the county treasurer an affidavit stating the date on which the vehicle first came into his possession or control in connection with his purchase or prospective purchase thereof, and the name and address of the party from whom purchased.

No reduction in the registration fee shall be allowed by the department until the applicant files satisfactory evidence to prove that there is no delinquency in registration.

If the applicant pays a penalty for any delinquent registration, the same penalty shall be assessed on the fees collected to increase the registered weight of the vehicle, if the increased weight is requested within forty-five days from the date the delinquent vehicle is registered for that year. [C24, 27, 31, 35,§4906; C39,§**5008.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.107]

321.108 Perjury. Any person who shall willfully make a false statement in such affidavit shall be deemed guilty of perjury and punished accordingly. [C24, 27, 31, 35,§4907; C39,

§5008.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.108]

Punishment, §721.1

321.109 Motor vehicle fee—transit fee.

1. The annual fee for all motor vehicles including vehicles designated by manufacturers as station wagons, except motor trucks, hearses, motorcycles, and motor bicycles, shall be equal to one percent of the value as fixed by the department plus forty cents for each one hundred pounds or fraction thereof of weight of vehicle, as fixed by the department. The weight of a motor vehicle, fixed by the department for registration purposes, shall include the weight of a battery, heater, bumpers, spare tire, and wheel. Provided, however, that for any new vehicle purchased in this state by a nonresident for removal to his state of residence the purchaser may make application to the county treasurer in the county of purchase for a transit plate for which a fee of five dollars shall be paid. And provided, however, that for any used vehicle held by a registered dealer and not currently registered in this state, or for any vehicle held by an individual and currently registered in this state, when purchased in this state by a nonresident for removal to his state of residence, the purchaser may make application to the county treasurer in the county of purchase for a transit plate for which a fee of three dollars shall be paid. The county treasurer shall issue a nontransferable certificate of registration for which no refund shall be allowed; and the transit plates shall be void thirty days after issuance. Such purchaser may apply for a certificate of title by surrendering the manufacturer's or importer's certificate or certificate of title, duly assigned as provided in this chapter. In this event, the treasurer in the county of purchase shall, when satisfied with the genuineness and regularity of the application, and upon payment of a fee of two dollars, issue a certificate of title in the name and address of such nonresident purchaser delivering the same to the person entitled thereto as provided in this chapter.

2. Dealers may, in addition to other provisions of this section, purchase from the department in-transit stickers, for which a fee of two dollars per sticker shall be paid at time of purchase. One such sticker shall be displayed on each vehicle purchased from a dealer by a nonresident for removal to the state of his residence, and one such sticker shall also be displayed on each vehicle not currently registered in Iowa and purchased by an Iowa dealer for removal to his place of business in this state. Such stickers shall be void three days after issuance by the selling dealer. Each sticker shall be at least five and one-half inches by eight inches and shall contain the following information:

a. The words "in-transit" in at least two-inch bold type.

b. The dealer's license number.

c. The date issued.

d. The purchaser's name and address.

e. The word "Iowa" in at least one-inch bold type.

f. The words "good for three days after the date of issuance".

g. Such other information as the director may require.

This information shall be on the gummed side of the sticker and the sticker shall be made of such type of material as to be self-destructive when the sticker is removed. The sales invoice verifying the sale shall be in the possession of the driver of the vehicle in transit and shall be signed by the owner or an authorized individual of the issuing dealership.

Motor vehicles brought into the state on a transit sticker for the purpose of installation of special equipment may also be subject to the provisions of this subsection. [C24, 27, 31, 35, §4908; C39,§5008.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.109]

Referred to in §§321.34, 321.110

321.110 Rejecting fractional dollars. When the registration fee, computed according to section 321.109, subsection 1, totals a fraction over a certain number of dollars the fee shall be arrived at by computing to the nearest even dollar. [C27, 31, 35,§4908-a1; C39,§5008.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.110]

321.111 Conversion of car—effect. Any motor vehicle originally registered as a passenger car and thereafter converted into a truck with a loading capacity of less than one thousand pounds, shall be registered as a passenger car. [C35,§4908-g1; C39,§5008.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.111]

321.112 Minimum motor vehicle fee. No motor vehicle, regardless of age, except as provided in section 321.115 shall be registered for a full year for less than ten dollars. [C24, 27, 31, 35,§4909; C39,§5008.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.112]

321.113 Automatic reduction. After said motor vehicle has been registered five times, that part of the registration fee which is based on the value of the vehicle shall be:

Seventy-five percent of the rate as fixed when new;

After six times, fifty percent;

After eight times, that part of the registration fee based on the value of said vehicle shall be ten percent. Where the ninth registration fee for a motor vehicle has been computed and fixed by the department prior to July 4, 1949, there shall be added to such registration fee, in lieu of the ten percent provided for herein, one dollar if such registration fee has been computed and fixed at fifteen dollars or less and two dollars if such registration fee has been computed and fixed at more than fifteen dollars. [SS15,§1571-m7; C24, 27, 31, 35, §4910; C39,§5008.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.113]

321.114 Proof of registration. The sworn statement of the registrant as to the number of times such motor vehicle has been registered shall be conclusive evidence of that fact. [C24, 27, 31, 35,§4911; C39,§5008.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.114]

321.115 Antiquated vehicles. Any motor vehicle twenty-five years old, or older, whose owner desires to use said motor vehicle exclusively for exhibition or educational purposes at state or county fairs, or other places where said motor vehicle may be exhibited for entertainment or educational purposes, shall be given a registration permitting the driving of said motor vehicle upon the public roads to and from said fair or other place of entertainment or education for a registration fee of five dollars per annum. [C35,§4911-f1; C39, §5008.11; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.115]

Referred to in §§321.112, 321.238(12), 321.438

321.116 Electric automobiles. For all electric motor vehicles the annual fee shall be twenty-five dollars. When any electric motor vehicle has been registered five times the annual registration fee shall be fifteen dollars. [C27, 31, 35,§4911-b1; C39,§5008.12; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.116]

321.117 Motorcycle and hearse fees. For all motorcycles the annual fee shall be ten dollars. For all motorized bicycles the annual fee shall be five dollars. When said motorcycle has been registered five times, the annual registration fee shall be five dollars. The annual registration fee for hearses shall be fifty dollars. Passenger car plates shall be issued for hearses. [C24, 27, 31, 35,§4912; C39, §5008.13; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.117; 66GA, ch 171,§11, ch 1165,§12]

321.118 Corn shellers and feed grinders. For trucks on which a corn sheller is mounted the annual registration fee shall be forty dollars. For trucks on which a portable mill is mounted the annual registration fee shall be forty dollars. The payment of the registration fee herein shall exempt the truck from property tax. [C39,§5008.14; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.118]

Registration fees, §§321.118–321.123

321.119 Repealed by 63GA, ch 213,§4.

321.120 Trucks with solid rubber tires. For motor trucks equipped with two or more solid rubber tires, the annual registration fee shall be the fee for motor trucks of the same gross weight equipped with pneumatic tires, plus twenty-five percent thereof. [C24, 27, 31, 35, §4914; C39,§5008.16; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.120]

Referred to in §321.134

321.121 Special trucks for farm use. The registration fee for a special truck shall be one hundred dollars for a gross weight of eight tons, and in addition, fifteen dollars for each ton over eight tons. Any person convicted of using a truck registered as a special truck for any purpose other than permitted by section 321.1, subsection 72, shall, in addition to any other penalty imposed by law, be required to pay regular motor truck registration fees upon such truck. A distinctive decal shall be applied to the special truck registration plate for easy identification. [C71, 73, 75, §321.121; 66GA, ch 1165,§13]

Referred to in §321.134

321.122 Trucks, truck tractors, road tractors, and semitrailers.

1. The annual registration fee for motor trucks except special trucks, truck tractors, or road tractors, shall be based on the combined gross weight of any combination of vehicles. All trucks, truck tractors, semitrailers, or road tractors shall be registered for a gross weight equal to or in excess of the unladen weight of the vehicle or combination of vehicles. The annual registration fee for such vehicle or combination of vehicles shall be:

For a combined gross weight of three tons or less, thirty-five dollars for the first ten full registrations, and the fee shall be twenty-five dollars thereafter.

For a combined gross weight exceeding three tons and not exceeding four tons, forty-five dollars.

For a combined gross weight exceeding four tons and not exceeding five tons, sixty dollars.

For a combined gross weight exceeding five tons and not exceeding six tons, seventy-five dollars.

For a combined gross weight exceeding six tons but not exceeding seven tons, one hundred dollars.

For a combined gross weight exceeding seven tons, but not exceeding twenty-four tons, the fee shall be one hundred dollars and in addition thereto thirty-five dollars for each ton over seven tons.

For a combined gross weight exceeding twenty-four tons, the fee shall be six hundred ninety-five dollars and in addition thereto forty dollars for each ton over twenty-four tons.

For a combined gross weight of thirty-four tons or more, a fee of twenty-five dollars, which shall be in addition to the registration fees herein provided.

Where an auxiliary axle has been registered under the provisions of this chapter, the registered gross weight of the vehicle or combination of vehicles shall be the sum of the registered gross weight of such auxiliary axle or axles added to the registered gross weight of the truck, truck tractor, or road tractor.

2. For semitrailers the annual registration fee shall be:

For each semitrailer drawn by a truck, road tractor or truck tractor, with a combined gross weight of twelve tons or less, thirty dollars.

For each semitrailer drawn by a truck, road tractor or truck tractor, with a combined gross weight exceeding twelve tons, sixty dollars.

3. For truck tractors or road tractors equipped with two or more solid rubber tires, the annual registration fee shall be the fee for truck tractors or road tractors with pneumatic tires and of the same combined gross weight, plus twenty-five percent thereof.

4. Nothing herein shall be construed to require a license for the operation of a rubber-tired farm tractor not for hire upon the public highways.

An auxiliary axle may be registered on an annual basis and the annual registration fee shall be forty dollars for each ton of registered gross weight.

No auxiliary axle shall be registered which is not permanently identified by a serial or other identifying number permanently affixed thereto and permanently and conspicuously displayed. [C31, 35,§4919-d1; C39,§**5008.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.122]

Referred to in §§321.123, 321.134, 321.310
Constitutionality, 63GA, ch 213,§11

321.123 Trailers and mobile homes. All trailers and mobile homes except farm trailers and those registered as semitrailers under the provisions of section 321.122 shall be subject to a registration fee to be fixed in accordance with the following schedule, provided, however, trailers whose empty weight is two thousand pounds or less shall be exempt from the certificate of title and lien provisions of this chapter:

1. When equipped with pneumatic tires:

Trailers with a gross weight of one thousand pounds or less, three dollars.

Trailers with a gross weight exceeding one thousand pounds and not exceeding two thousand pounds, ten dollars.

Trailers with a gross weight exceeding one ton and not exceeding two tons, twenty dollars.

Trailers with a gross weight exceeding two tons, but not exceeding twelve tons, thirty dollars.

Trailers with a gross weight in excess of twelve tons, sixty dollars.

2. When equipped with two or more solid rubber tires:

Trailers with a gross weight exceeding one ton and not exceeding two tons, thirty dollars.

Trailers with a gross weight exceeding two tons, but not exceeding twelve tons, thirty dollars.

Trailers with a gross weight in excess of twelve tons, sixty dollars.

3. Mobile homes, regardless of whether or not they are used on the highways, except those in a dealer's or a manufacturer's stock not used as a place for human habitation, a semiannual fee of two and one-half dollars which shall not be prorated or refunded. The semiannual tax provided in chapter 135D shall be paid at the same time that the registration fee is paid and the issuance of the registration certificate and plate herein provided shall be subject thereto. However, when the owner is any educational institution and the mobile home is used solely for student housing or when the owner is the state of Iowa or a subdivision thereof, the owner shall be exempt from the provisions of this chapter.

Travel trailers and fifth-wheel travel trailers, except those in manufacturer's or dealer's stock, an annual fee of twenty cents per square foot of floor space computed on the exterior overall measurements, but excluding three feet occupied by any trailer hitch as provided by and certified to by the owner, to the nearest whole dollar, which amount shall not be prorated or refunded; except the annual fee for travel trailers of any type, when registered in Iowa for the first time, shall be prorated on a monthly basis. The registrant of a travel trailer of any type shall be issued a "travel trailer" plate. It is further provided the annual fee thus computed shall be limited to seventy-five percent of the full fee after the sixth registration.

A travel trailer may be stored under the provisions of section 321.134, provided the travel trailer is not used for human habitation for any period during storage and is not moved upon the highways of the state. A travel trailer stored under the provisions of section 321.134 shall not be subject to either a personal property tax or a mobile home tax assessed under the provisions of chapter 135D.

If a mobile home or travel trailer shall have been registered under the provisions of this chapter at any time during a calendar year, said mobile home or travel trailer shall not be subject to a personal property tax for said year.

4. Trailers and bulk spreaders which are not self-propelled having a gross weight of not more than six tons used for the transportation of fertilizers and chemicals used for farm crop production, five dollars.

5. Motor trucks or truck tractors pulling trailers or semitrailers shall be registered for the combined gross weight of the motor truck or truck tractor and trailer or semitrailer, except that:

a. Motor trucks registered for six tons or less not used for hire, pulling trailers or semitrailers used by a person engaged in farming to transport commodities produced by the owner, or to transport commodities or livestock purchased by the owner for use in his own farming operation or used by any person to transport horses shall not be subject to registration for the gross weight of such trailer or semitrailer provided the combined gross weight does not exceed twelve tons, plus the tolerance provided for in section 321.466.

b. Motor trucks registered for six tons or less not used for hire, pulling trailers or semitrailers used by a person in his own operations shall not be subject to registration for the gross weight of such trailer or semitrailer provided the combined gross weight does not exceed eight tons, plus the tolerance provided for in section 321.466. [C24, 27, 31, 35,§4920;

C39,§5008.19; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.123; 66GA, ch 175,§1, ch 1165,§14, ch 1170, §1]

Referred to in §321.134
Exemptions, see §321.176
Provisions of subsection 5 are retroactive to December 1, 1974. Refunds of fees, see 66GA, ch 175,§2

321.124 Well-drilling equipment. A trailer equipped with solid rubber or pneumatic tires, upon which is mounted well-drilling equipment, including a truck or semitrailer equipped with well drills and well-boring apparatus, and not exceeding in combined weight ten thousand pounds shall be registered at an annual rate of ten dollars, such combination when in excess of above weight or of the motor vehicle laws relating to length and width shall be permitted to operate upon the highways of this state only upon issuance of a special permit by the department. [C35,§4920-e1; C39,§5008.20; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.124]

321.125 Effect of exemption. The exemption of a motor vehicle from a registration fee shall not exempt the operator of such vehicle from the performance of any other duty imposed on him by this chapter. [C24, 27, 31, 35,§4923; C39, §5008.21; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.125]

321.126 Refunds of fees. Refunds of fees previously paid for the registration of motor vehicles shall be allowed in accordance with this section, except that no refund shall be allowed and paid if the unused portion of the fee is less than five dollars. Such refunds shall be made as follows:

1. If the motor vehicle is destroyed by fire or accident, or junked and its identity as a motor vehicle entirely eliminated, or removed and continuously used beyond the boundaries of this state, the owner in whose name the motor vehicle was registered at the time of such destruction, dismantling or removal from the state shall return the plates to the county treasurer or the department and within thirty days thereafter make affidavit of such destruction, dismantling, or removal and make claim for refund. With reference to the destruction or dismantling of a vehicle, the affidavit shall be accompanied by the certificate of title, if titled in Iowa, as provided in section 321.52. With reference to the removal of a vehicle from this state as provided herein, the affidavit shall contain a statement indicating the foreign registration number of such vehicle, the name and address of the official of the foreign state to whom the Iowa certificate of title, if any, has been surrendered, and the number of the foreign certificate of title issued for such vehicle if registered in a title law state.

2. If the motor vehicle is sold to a person whose residence or place of business is without the state, the owner in whose name the motor vehicle was registered at the time of the sale shall give notice in accordance with the provisions of section 321.52, return the plates to the county treasurer or the department, and within thirty days thereafter make affidavit of such sale and make claim for refund.

3. If the motor vehicle is stolen, the owner shall give notice of such theft to the county treasurer within five days, who in turn shall notify the department. If the motor vehicle is not recovered by the owner before December 1 of the year for which the registration fee was paid, the owner shall make affidavit of such theft and make claim for refund.

4. If the motor vehicle is placed in storage by the owner upon his entry into the military service of the United States, the owner shall return the plates to the county treasurer or the department and make affidavit regarding such storage and military service and make claim for refund. Whenever the owner of a motor vehicle so placed in storage desires to again register such vehicle, the county treasurer or department shall compute and collect the fees for such registration in accordance with section 321.106.

5. If the motor vehicle is registered by the county treasurer during the registration year and the owner or lessee registers the vehicle for prorate under chapter 326, the owner of the registered vehicle shall surrender the registration plates to the county treasurer and may file a claim for refund.

A refund for trailers and semitrailers issued a multiyear registration plate shall be paid by the department upon application.

Notwithstanding any provision of this section to the contrary, there shall be no refund of proportional registration fees unless the state which issued the base plate for the vehicle allows such refund. If an owner subject to proportional registration leases the vehicle for which the refund is sought, the claim shall be filed in the names of both the lessee and the lessor and the refund payment made payable to both the lessor and the lessee. The term "owner" for purposes of this section shall include a person in whom is vested right of possession or control of a vehicle which is subject to a lease, contract, or other legal arrangement vesting right of possession or control in addition to the term as defined in section 321.1, subsection 36. [C24, 27, 31, 35,§4924; C39,§5008.22; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.126; 66GA, ch 67,§31, ch 173,§4, ch 1165, §15]

Referred to in §321.129

321.127 Amount of refund. For December and each succeeding month the refund for motor vehicles shall be computed on the basis of one-fourth of the annual registration fee multiplied by the number of remaining quarters of the year from date of the return of the vehicles plates to the county treasurer, computed to the nearest quarter dollar. The department shall make refund on or before the fifteenth day of the quarter following the quarter in which the claim is filed with the

department. For trailers or semitrailers issued a multiyear registration plate a refund shall be paid equal to the annual fee for twelve months times the remaining number of complete calendar years. [C24, 27, 31, 35,§4924; C39, §5008.23; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.127; 66GA, ch 173,§5]

321.128 Payment authorized. The department is hereby authorized to make such payments according to the above provisions, when sufficient proof of such destruction by accident, or the junking and entire elimination of identity as a motor vehicle, sale to a person whose residence or place of business is without the state, theft, storage by an owner entering the military service of the United States in time of war, or removal for continuous use beyond the boundaries of the state, is properly certified, approved by the county treasurer, and filed with the department.

The decision of the department shall be final. [C24, 27, 31, 35,§4925; C39,§5008.24; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.128]

Referred to in §321.129

321.129 Reimbursement fund. The county treasurer shall remit to the department one percent of all fees and penalties collected each year, to be used as a fund to cover refunds of motor vehicle fees as provided in sections 321.126 and 321.128. [C24, 27, 31, 35,§4926; C39, §5008.25; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.129]

321.130 Fees in lieu of taxes. The registration fees imposed by this chapter upon private passenger motor vehicles or semitrailers shall be in lieu of all taxes, general or local, to which motor vehicles or semitrailers may be subject, and if a motor vehicle or semitrailer shall have been registered at any time under this chapter it shall not thereafter be subject to a personal property tax unless such motor vehicle or semitrailer shall have been in storage continuously as an unregistered motor vehicle or semitrailer during the preceding registration year. [S13,§1571-m8; C24, 27, 31, 35,§4927; C39,§5008.26; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.130]

321.131 Lien of fee. All registration or other fees provided for in this chapter shall be and continue a lien against the vehicle for which said fees are payable until such time as they are paid as provided by law, with any accrued penalties. [S13,§1571-m21; SS15,§1571-m7; C24, 27, 31, 35,§4928; C39,§5008.27; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.131]

321.132 When lien attaches. The lien of the original registration fee shall attach, at the time the same is first payable, as provided by law, and the lien of all renewals of registration shall attach on January 1 of each year thereafter. [C24, 27, 31, 35,§4929; C39,§5008.28; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.132]

PENALTIES, COSTS, AND COLLECTIONS

321.133 Methods of collection. The collection of all fees and penalties may be enforced against any vehicle or they may be collected by suit against the owner who shall remain personally liable therefor until such time as the transfer thereof shall be reported to the county treasurer and the department or until such time as said vehicle ceases to be in use and all fees and penalties to such date shall be paid. [S13,§1571-m21; C24, 27, 31, 35,§4930; C39, §5009.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.133]

321.134 Monthly penalty. On February 1 of each year, a penalty of five percent of the annual registration fee shall be added to all fees not paid by that date, and five percent of the annual registration fee shall be added to such fees on the first of each month thereafter that the same remains unpaid, until paid, provided that the penalty in no case shall be less than one dollar, and provided that the owner of a vehicle who, before February 1 of any year, surrenders all registration plates for that vehicle to the county treasurer of the county in which the plates are of record, shall have the right to register the vehicle at any later period of that year by paying the full yearly registration fee without penalty. Provided, however, that the annual registration fee for trucks, truck tractors, road tractors, trailers and semitrailers, as provided in sections 321.120 to 321.123, when said annual registration fee is in excess of seventy dollars, may be payable in two equal semiannual installments except that semiannual installments shall not apply to commercial vehicles subject to proportional registration with a base state other than the state of Iowa as defined in section 326.2, subsection 6.

The penalties provided in the preceding paragraph shall be computed on the amount of the first installment only, and on August 1 of each year and on the first day of each month thereafter the same rate of penalty shall be added to the amount of the second installment, until the same is paid. [SS15,§1571-m7; C24, 27, 31, 35, §4931; C39,§5009.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.134; 66GA, ch 1165,§16]

Referred to in §321.123

321.135 When fees delinquent. Such delinquencies shall begin and penalty accrue the first of the month following the purchase of a new vehicle, and the first of the month following the date cars are brought into the state, except as herein otherwise provided. [C24, 27, 31, 35,§4932; C39,§5009.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.135]

321.136 List of delinquents. In the first week in March of each year the county treasurer shall cause to be made a list of all motor vehicles owned within his county upon which the registration fee was not paid before March 1, of that year, except motor vehicles held by registered dealers and listed by them with the

county treasurer and department, as provided in section 321.70 and except those motor vehicles the plates of which have been surrendered to said treasurer on or prior to February 1 of said year. Such list shall show the factory number, engine number, make and model of such vehicle, together with the name and post-office address of the owner thereof, as shown by the records of his office, and the amount of registration fee and penalties due against said vehicle as of March 1. [S13,§1571-m15; C24, 27, 31, 35,§4933; C39,**§5009.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.136]

321.137 Sheriff furnished list. The county treasurer shall on or before March 15 thereafter deliver to the sheriff of his county a certified copy of said list of such delinquents as shown. [C24, 27, 31, 35,§4936; C39,**§5009.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.137]

321.138 Collection by sheriff. The sheriff shall forthwith proceed to the collection of the unpaid fees and penalties, as certified to him by the county treasurer, by taking possession of the motor vehicle described in said certified list and proceed to advertise and sell same for the purpose of collecting fees, penalties, and costs. Said certified list shall for all purposes be a sufficient warrant therefor. [SS15,§1571-m7; C24, 27, 31, 35,§4937; C39,**§5009.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.138]

321.139 Notice. The sheriff shall give ten days' notice of the time, place, and hour of said sale:

1. By publishing said notice in one issue of one of the official newspapers of the county, and

2. By posting written notice thereof, in three places in the county; one of said places shall be at a main entrance door of the courthouse, one at some other public place in the county, and one at or as near as practicable to the place where said vehicle was seized. [C24, 27, 31, 35,§4938; C39,**§5009.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.139]

321.140 Warrant to foreign county. Should a motor vehicle on which the fee is delinquent be removed from the county in which it was originally registered, either by transfer or removal by owner to another county, without having notified the county treasurer or department of such removal, the sheriff may forward the warrant to the sheriff of the county where such motor vehicle is at that time and said latter sheriff shall proceed to collect the same as though the vehicle had been originally registered in his county, and make return to the county treasurer of the county from which he received the warrant. [C24, 27, 31, 35,§4939; C39,**§5009.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.140]

321.141 Fees and mileage. The sheriff shall be entitled to receive as costs the sum of two dollars for serving the writ or warrant of seizure and mileage expense for each mile actually traveled by him in collecting the fee and penalties, which shall be collected from the owner of such delinquent motor vehicle, and shall be retained by him in full for his services. He shall also collect from said owner the sum of fifty cents per day for care of the motor vehicle while in his possession which sum shall be accounted for by the sheriff as fees are accounted for, as provided in chapter 342. [C24, 27, 31, 35,§4940; C39,**§5009.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.141]

Rate, see §79.9

321.142 Remittance — issuance of plates. When the fee and penalties have been collected the same shall forthwith be returned to the county treasurer, together with a report showing the name and address of the owner and description of car upon which such fee was collected. Thereupon the county treasurer may issue to the owner number plates and a receipt showing payment of fees and penalties. [C24, 27, 31, 35,§4941; C39,**§5009.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.142]

321.143 Balance of proceeds. The sheriff, after deducting from the total receipts of the sale all fees, penalties, and costs, shall pay any balance to the owner of the vehicle. [C24, 27, 31, 35,§4942; C39,**§5009.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.143]

321.144 Junking in lieu of sale. In the event the vehicle is in such condition that, in the opinion of the sheriff, it cannot be sold for enough to pay the fees and penalties and defray the cost of the procedure hereinabove provided, and the owner waives the right to said sale, then it may be scrapped, dismantled, or otherwise destroyed by said owner, so that it can no longer be used upon the highways, and no registration shall thereafter be issued for such vehicle. [C39,**§5009.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.144]

FUNDS

321.145 Disposition. The money, except fines and forfeitures, and except operator's and chauffeur's license fees, certificate of title fees and lien or encumbrance notation fees collected pursuant to the provisions of this chapter shall be credited by the treasurer of state to the following funds:

1. Three percent of the gross fees and penalties thereon, to the general fund of the state.

2. The balance of said money, less the collection fees retained by the county treasurer pursuant to section 321.152 and less the one percent received by the department as a reimbursement fund from which to pay refunds, to the road use tax fund.

The treasurer of state shall credit certificate of title fees, and lien or encumbrance fees, to the general fund of the state, less the fees retained by the county treasurer pursuant to

section 321.152. [SS15,§1571-m32; C24, 27, 31, 35,§4999; C39,§**5010.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.145]

Referred to in §§321.34, 321.89(4)
Road use tax fund, §312.1

321.146 Unexpended balances. The treasurer of state shall at the end of said fiscal year ascertain the cost of administering the motor vehicle registration provisions of this chapter and transfer to the road use tax fund the ascertained difference between the amount retained in the general fund under the provision of this chapter and the maintenance cost of said department, together with any unexpended balance in the reimbursement fund. [SS15, §1571-m32; C24, 27, 31, 35,§5002; C39,§**5010.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.146]

Road use tax fund, §312.1

321.147 Repealed by 53GA, ch 122,§17. See §312.7.

321.148 Monthly estimate. The auditor of the department shall, on the first day of each month, furnish an estimate in writing to the treasurer of state of the amount of expenditures to be made by the department during that month. [C31, 35,§5003-c1; C39,§**5010.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.148]

321.149 Blanks. The department shall not later than November 15 of each year prepare and furnish the treasurer of each county all blank books, blank forms, and all supplies required for the administration of this chapter, including applications for registration and transfer of vehicles, quadruple receipts, and original remittance sheets to be used in remitting fees to the department, in such form as the department may prescribe. Contracts for such blank books, blank forms, and supplies shall be awarded by the state printing board to persons, firms, partnerships, or corporations engaged in the business of printing in Iowa unless, or through them, such persons, firms, partnerships or corporations cannot provide the required printing set forth in this section. In lieu of purchasing under competitive bids the state printing board shall have authority to arrange with the director of the division of corrections of the department of social services to furnish such supplies as can be made in the state institutions. [S13,§1571-m2; C24, 27, 31, 35,§5006; C39,§**5010.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.149]

321.150 Time limit. Blanks or forms for listing used motor vehicles shall be placed in the hands of county treasurers not later than December 15 of any year. [C24, 27, 31, 35,§5007; C39,§**5010.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.150]

321.151 Duty and liability of treasurer. The county treasurer shall collect the registration fee and penalties on each vehicle registered by him and shall be responsible on his bond for such amount. He shall remit such amount to the treasurer of state as herein provided. [C24, 27, 31, 35,§5011; C39,§**5010.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.151]

321.152 Fee for county. Each county treasurer shall be allowed to retain for deposit in the county general fund, seventy-five cents for each annual or semiannual vehicle registration and each duplicate registration card or plate issued; sixty-five percent of all fees collected for certificates of title, notations of lien or encumbrance and a certified copy of a certificate of title. The moneys retained shall be deducted, and reported to the department, when the county treasurer transfers the money collected under the provisions of this chapter; provided, however, that no such deduction shall be lawful unless the county treasurer has complied with the provisions of sections 321.24 and 321.153. [C24, 27, 31, 35,§5012; C39,§**5010.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.152]

Referred to in §321.145

321.153 Treasurer's report to department. The county treasurer shall on the tenth day of each month report under oath to the department, on forms furnished by it, giving a full and complete statement of all fees and penalties so received by him during the preceding calendar month, and shall forward to the treasurer of state a duplicate of such report. [C24, 27, 31, 35,§5013; C39,§**5010.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.153]

Referred to in §321.152

321.154 Reports by department. The department, immediately upon receiving said report, shall also report to the treasurer of state the amount so collected by such county treasurer. [C24, 27, 31, 35,§5014; C39,§**5010.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.154]

321.155 Duty of treasurer of state. The treasurer of state shall keep proper books of account for the purposes specified herein and shall report to the department each remittance from the county treasurer, when said remittance is received. [C24, 27, 31, 35,§5015; C39, §**5010.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.155]

321.156 Audit by department. The department shall check and audit all fees and penalties collected, and shall effect a settlement with the county treasurer annually. [C24, 27, 31, 35, §5016; C39,§**5010.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.156]

VALUE AND WEIGHT OF VEHICLES

321.157 Schedule of prices and weights. Every manufacturer or importer of a motor vehicle sold or offered for sale within this state, either by the manufacturer, importer, distributor, dealer, or any other person, shall file in the office of the department a sworn statement showing the various models manufactured by the manufacturer, importer, distributor, dealer, or other person, and the retail list price and weight of each model concurrently with a public announcement of such prices

or concurrently with notification of such prices to dealers licensed to sell such motor vehicles under chapter 322, whichever comes first. The manufacturer, importer, distributor, dealer, or other person shall also make the same report on subsequent new models manufactured. [C24, 27, 31, 35,§4968; C39,§**5011.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.157; 66GA, ch 171,§12.

Referred to in §321.161

321.158 Registration dependent on schedule. No motor vehicle shall be registered in this state unless the manufacturer thereof has furnished to the department the sworn statement herein provided, giving the list price and weight of the model of the motor vehicle that is offered for registration, except as provided in section 321.159. [C24, 27, 31, 35,§4970: C39, §**5011.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.158]

321.159 Exceptional cases. The department shall have the power to fix the registration fee on all makes and models of cars which are not now being furnished or upon which the statement from the factory cannot be obtained. [C24, 27, 31, 35,§4971; C39,§**5011.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.159]

Referred to in §321.158

321.160 Department to prepare statement. The department shall prepare, annually, a statement showing all the different makes and models of motor vehicles previously registered in the department, and all the different makes and models of motor vehicles, statements of which have been filed in the office by the manufacturers as heretofore provided, together with the retail list price and weight of the same.

The statement prepared by the department shall also include the load capacities of the various makes and models of motor trucks and trailers and the proper fee to be paid for the registration.

Copies of such statement shall be furnished each county treasurer and additional copies may be sold by the department to other persons, at a price to be set by the department, covering the approximate cost of same and service involved. All funds received shall be forwarded by the department to the treasurer of state. [C24, 27, 31, 35,§4972; C39,§**5011.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.160]

321.161 Department to fix values and weight. The department shall annually, and at such other times as new makes or models of motor vehicles are offered for sale or sold in this state, fix the value and weight of each of the different makes and models of motor vehicles which are sold or offered for sale within the state. The value and weight as fixed by the department shall, on 1975 and subsequent year model motor vehicles, be based on the original certification as provided in section 321.157. [C24, 27, 31, 35,§4973; C39,§**5011.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.161; 66GA, ch 171,§13]

321.162 Method of fixing value and weight. The value shall be fixed at the next even one hundred dollars above the retail list price f.o.b. the factory, and the weight shall be fixed at the next even one hundred pounds above the manufacturer's shipping weight or the actual weight of the vehicle fully equipped. [C24, 27, 31, 35,§4974; C39,§**5011.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.162]

PLATES, CONTAINERS, AND SUPPLIES

321.163 Repealed by 64GA, ch 84,§99.

321.164 Repealed by 64GA, ch 1019,§7.

321.165 Manufacture by state. The director shall have authority to arrange with the director of the division of corrections of the department of social services to furnish such supplies as may be made at the state institutions. [C24, 27, 31, 35,§4977; C39,§**5012.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.165]

321.166 Specifications. Such number plates shall be of metal, and of a size not to exceed six inches in width by fifteen inches in length, on which there shall be the word "Iowa", and numerals indicating the year for which it is issued. They shall be of a distinctively different color each year. There shall be at all times a marked contrast between the colors of the number plates and of the numerals or letters thereon, said colors to be designated by the department.

Number plates issued for use on a vehicle in accordance with the provisions of section 321.19 need not indicate the year for which issued nor be of a distinctively different color each year.

Number plates for vehicles on which the annual registration fee is payable in two installments shall prior to the payment of the second installment be of a distinctively different color than the plates used for other motor vehicles during the same year.

The distinctive number assigned to the vehicle shall be set forth in numerals which shall not exceed a length of four inches nor a stroke exceeding five-eighths of an inch in width.

In case of a motor vehicle registered by a manufacturer or dealer, there shall be on such plate, in addition to the foregoing, the letter "D", each stroke of such letter to be not to exceed four inches long and not to exceed five-eighths of an inch in width.

The number plates for use on a motor bicycle or a motorcycle shall be substantially one-half the dimensions above stated. [S13, §§1571-m12,-m13; C24, 27, 31, 35,§4978; C39, §**5012.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.166]

321.167 Delivery of plates or emblems. On or before the first day of December of each year, the department shall deliver or cause to be delivered to the county treasurer of each county, approximately as many duplicate num-

ber plates as there are motor vehicles registered in such county during the preceding year, the plates so delivered to each county treasurer to be in numerical sequence.

In lieu of plates, the department may furnish the county treasurers appropriate distinguishing emblems as provided in section 321.34. [C24, 27, 31, 35,§4979; C39,§**5012.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.167]

321.168 Additional deliveries. Thereafter, during the year, the department, upon requisition of the county treasurer, shall deliver additional number plates. [C24, 27, 31, 35,§4980; C39,§**5012.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.168]

321.169 Account of plates. The department shall keep an accurate record of all number plates issued to each county, and shall also keep a record showing the assignment thereof by the county treasurer to motor vehicles. [C24, 27, 31, 35,§4981; C39,§**5012.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.169]

321.170 Plates for exempt vehicles. The department shall furnish, on application, free of charge, distinguishing plates for motor vehicles exempted from a registration fee and shall keep a separate record thereof. [C24, 27, 31, 35,§4982; C39,§**5012.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.170]

See also §§18.115(7), 321.19

321.171 Title of plates. All number plates issued shall be and remain the property of the state. [C24, 27, 31, 35,§4983; C39,§**5012.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.171]

321.172 Repealed by 60GA, ch 190,§2.

321.173 When fees returnable. Whenever any application to the department is accompanied by any fee as required by law and such application is refused or rejected said fee shall be returned to said applicant.

Whenever the department through error collects any fee not required to be paid hereunder the same shall be refunded, from the refund account, to the person paying the same upon application therefor made within six months after the date of such payment. [C39,§**5012.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.173]

OPERATORS' AND CHAUFFEURS' LICENSES

321.174 Operators and chauffeurs licensed. No person, except those hereinafter expressly exempted shall drive any motor vehicle upon a highway in this state unless such person has a valid license as an operator or chauffeur issued by the department. No person shall operate a motor vehicle as a chauffeur unless he holds a valid chauffeur's license. [C31, 35,§4960-d2; C39,§**5013.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.174]

Referred to in §321.282

321.175 Chauffeurs exempted as operators. Any person holding a valid chauffeur's license hereunder need not procure an operator's license. [C31, 35,§4960-d21; C39,§**5013.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.175]

321.176 Persons exempt. The following persons are exempt from license hereunder:

1. Any person while operating a military motor vehicle in the service of the armed forces of the United States.

2. Any person while operating a farm tractor or implement of husbandry to or from the home farm buildings to any adjacent or nearby farm land for the exclusive purpose of conducting farm operations.

3. A nonresident who is at least sixteen years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country may operate a motor vehicle in this state only as an operator.

4. A nonresident who is at least eighteen years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this state either as an operator or chauffeur except any such person must be licensed as a chauffeur hereunder before accepting employment as a chauffeur from a resident of this state.

5. Any nonresident who is at least eighteen years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than ninety days in any calendar year, if the motor vehicle so operated is duly registered in the home state or country of such nonresident. [C31, 35, §§4960-d3,-d4; C39,§**5013.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.176; 66GA, ch 1165,§17]

321.177 Persons not to be licensed. The department shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of sixteen years; provided that, effective August 1, 1966, the department shall not issue a license to any person, as an operator, who is under the age of seventeen years and effective August 1, 1967, the department shall not issue a license to any person, as an operator, who is under the age of eighteen years, without his first having successfully completed an approved driver education course, in which case, the minimum age shall be sixteen years. However, the department may issue a restricted license as provided in section 321.194, or an instruction permit as provided in section 321.180, to any person who is at least fourteen years of age. The department may issue a license restricted only for use for motorized bicycles as provided in section 321.189, subsection 2, to any person fourteen years of age or older who has successfully completed an approved driver's education course established by the department of public instruction to acquaint the motorized bicycle operator with the rules of the road.

2. To any person, as a chauffeur, who is under the age of eighteen years.

Referred to in §321.376

3. To any person, as an operator or chauffeur whose license or driving privilege has been suspended during such suspension or to any person whose license, or driving privilege, has been revoked, until the expiration of one year after such revocation.

4. To any person, as an operator or chauffeur, who is a chronic alcoholic, or is addicted to the use of narcotic drugs.

5. To any person, as an operator or chauffeur, who has previously been adjudged to be incompetent by reason of mental illness and who has not at the time of application been restored to competency by the methods provided by law.

6. To any person, as an operator or chauffeur, who is required by this chapter to take an examination, unless such person shall have successfully passed such examination.

7. To any person when the director has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways. [C31, 35,§§4960-d5–4960-d9; C39,§5013.04; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.177; 66GA, ch 139,§81, ch 1165,§18]

Referred to in §§321.281, 321.376

321.178 Driver education.

1. *Approved course.* An approved driver education course as programmed by the department of public instruction shall consist of at least thirty clock hours of classroom instruction, and six or more clock hours of laboratory instruction of which at least three clock hours shall consist of street or highway driving.

Every public school district in Iowa shall offer or make available to all students residing in the school district or Iowa students attending a nonpublic school in the district an approved course in driver education. Said courses may be offered at sites other than at the public school, including nonpublic school facilities within the public school districts. An approved course offered during the summer months, on Saturdays, after regular school hours during the regular terms or partly in one term or summer vacation period and partly in the succeeding term or summer vacation period, as the case may be, shall satisfy the requirements of this section to the same extent as an approved course offered during the regular school hours of the school term. A student who successfully completes and obtains certification in an approved course in driver education may, upon proof of such fact, be excused from any field test which he would otherwise be required to take in demonstrating his ability to operate a motor vehicle.

"Student," for purposes of this section, means any person between the ages of fifteen years and twenty-one years who resides in the public school district and who satisfies the preliminary licensing requirements of the department or any person between fourteen and twenty-one years of age who resides in the public school district, who satisfies the preliminary licensing requirements of the department for operation of a motorized bicycle and who is enrolled in an approved driver education course for the purpose of qualifying for a motorized bicycle license as provided for in section 321.189, subsection 2.

Any person who successfully completes an approved driver education course at a private or commercial driver education school licensed by the department, shall likewise be eligible for an operator's license at the age of sixteen years, providing the instructor in charge of the student's training has satisfied the educational requirements for a teaching certificate at the secondary level and holds a valid certificate to teach driver education in the public schools of Iowa.

2. *Youths not attending school—no driver's training required.* Any person under the age of eighteen who is not attending a public or private school in which an approved driver's education course is offered or available, shall not be required to complete an approved driver's education course prior to being entitled to receive a one-year probationary operator's license from the department. Any person who re-enters any private or public school prior to age eighteen shall be required to attend an approved driver's education course.

3. An individual applying for a motorized bicycle license shall take the approved driver education course without meeting the highway driving experience requirement. [C66, §321.177; C71, 73, 75,§321.178; 66GA, ch 79,§15, ch 1165,§§19, 20]

321.179 Special restrictions on chauffeurs. No person who is under the age of eighteen years shall drive any motor vehicle while in use as a carrier of flammables or combustibles, or as a public or common carrier of persons, except a school bus. [C31, 35,§4960-d10; C39,§5013.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.179]

Referred to in §321.1(43)
School bus drivers, §321.375

321.180 Instruction permits. Any person who is at least fourteen years of age and who, except for his lack of instructions in operating a motor vehicle, would otherwise be qualified to obtain an operator's license, shall upon meeting the requirements of section 321.186 other than driving demonstration, and upon paying the required fee, be issued a temporary instruction permit by the department, entitling the permittee while having such permit in his immediate possession to drive a motor vehicle upon the highways for a period of two years from the date of issuance when accompanied by a licensed operator or chauffeur who is at least eighteen years of age,

or an approved driver education instructor, or a prospective driver education instructor who is enrolled in and has been specifically designated by a teacher education institution with a safety education program approved by the department of public instruction, and who is actually occupying a seat beside the driver; except that any instruction permit issued to a person who is less than sixteen years of age shall entitle such permittee to drive a motor vehicle upon the highways only when accompanied by a parent or guardian, or an approved driver education instructor, or a prospective driver education instructor, who is enrolled in and has been specifically designated by a teacher education institution with a safety education program approved by the department of public instruction, or by any person who is twenty-five years of age or more if written permission is granted by the parent or guardian, who is a holder of a valid operator's or a chauffeur's license, and who is actually occupying a seat beside the driver. [C31, 35,§4960-d23; C39,§**5013.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.180]

Referred to in §321.177(1)
Fee, §321.191

321.181 Temporary permit. The department may, in its discretion, issue a temporary driver's permit to an applicant for an operator's or chauffeur's license permitting him to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to such applicant's right to receive an operator's license. Such permit must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

Any person on first application for a license to operate a motor vehicle, except for a school license, who meets the requirements of section 321.186, shall be issued a temporary driver's permit for a period not to exceed one year. The permit shall be canceled upon the conviction for a moving traffic violation and reapplication may be made thirty days after the date of cancellation.

The cancellation of the temporary driver's permit upon conviction for a moving traffic violation shall not result in requiring the applicant to maintain proof of financial responsibility under section 321A.17, unless the conviction would otherwise result in a suspension or revocation of the persons driver's license.

As used in this section, "moving traffic violation" shall not include any violation of any section of the Code or any municipal ordinance pertaining to the standards to be maintained for motor vehicle equipment, except sections 321.430 or 321.431 or any municipal ordinance pertaining to motor vehicle brake requirements.

A person issued a temporary driver's permit whose permit is canceled upon conviction for a moving traffic violation may be issued by the department upon a showing of need by the permittee a restricted temporary driver's permit authorizing the permittee to drive from the permittee's residence to designated locations such as the permittee's place of employment during the cancellation period. The temporary restricted driver's permit shall be canceled upon violation of the restrictions of the permit or for conviction of a moving traffic violation and application for a temporary driver's permit or restricted temporary driver's permit may not be made within a time period fixed by the department but not to exceed ninety days.

The temporary driver's permit shall bear a colored photograph of the permittee and shall contain such other information as the department may by rule require. The department shall not retain a positive or negative photograph of the permittee. [C39,§**5013.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.181; 66GA, ch 1165,§21, ch 1171,§4]

Fee, §321.191

321.182 Application for license or permit. Every application for an instruction permit, or an operator's or chauffeur's license, a temporary driver's permit or a motorized bicycle license shall be made upon a form furnished by the department and shall be verified by the applicant before a person authorized to administer oaths, and officers and employees of the department are hereby authorized to administer such oaths without charge. The applicant shall write his usual signature with pen and ink upon the application in the space provided for signature. [C31, 35,§4960-d12; C39, §**5013.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.182; 66GA, ch 1165,§22]

321.183 Contents of application. Every said application shall state the full name, date of birth, occupation, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as an operator or chauffeur, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal. [C31, 35,§4960-d12; C39, §**5013.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.183]

321.184 Applications of unmarried minors. The application of any unmarried person under the age of eighteen years for an instruction permit, operator's license, motorized bicycle license, or permit issued under section 321.194 shall contain the verified consent and confirmation of applicant's birthday by either parent of the applicant; if neither parent is living, the guardian or other person having custody or the employer of such minor may consent. Officers and employees of the department are hereby authorized to administer such

oaths without charge. [C31, 35,§4960-d13; C39, §5013.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.184; 66GA, ch 1165,§23]

321.185 Death of person signing application —effect. The department upon receipt of satisfactory evidence of the death of the persons who signed the application of a minor for a license shall cancel such license and shall not issue a new license until such time as a new application, duly signed and verified, is made as required by this chapter. This provision shall not apply in the event the minor has attained the age of eighteen years. [C39, §5013.11; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.185]

321.186 Examination of new or incompetent operators. The department may examine every new applicant for an operator's, motorized bicycle or chauffeur's license or any person holding a valid operator's, motorized bicycle or chauffeur's license when the department has reason to believe that such person may be physically or mentally incompetent to operate a motor vehicle, or whose driving record appears to the department to justify such an examination. Such examinations shall be held in every county within periods not to exceed fifteen days. It shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic, his knowledge of the traffic laws of this state, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle and such further physical and mental examinations as the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways. [C31, 35,§4960-d14; C39,§5013.12; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.186; 66GA, ch 1165,§24]

Referred to in §§321.180, 321.181

321.187 Appointment of examiners. The department is hereby authorized to appoint persons from the members of the department or may designate the county sheriff for the purpose of examining applicants for operators', motorized bicycle and chauffeurs' licenses. It shall be the duty of any such person so appointed to conduct examinations of applicants for operators', motorized bicycle and chauffeurs' licenses under the provisions of this chapter to make a written report of findings and recommendations upon such examination to the department. Examiners appointed by the department when on duty shall wear a proper identifying badge or badges as prescribed by the director which shall be purchased by the department. [C31, 35,§4960-d17; C39,§5013.13; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.187; 66GA, ch 1165,§25]

321.188 Sheriff may issue temporary license. When a department uniformed examiner is not available, the county sheriff may in his discretion accept from a person holding a valid operator's license of this state or a valid chauffeur's license of another state, application to the department for a chauffeur's license accompanied by the regular fee therefor, and is hereby authorized to issue a license to operate a motor vehicle as a chauffeur, using forms provided by the department, to expire fifteen days from issuance. The entire fee and application shall be turned over to the department examiner on or before the date of expiration of such license and if the applicant does not appear within the calendar year for examination the license fee shall be considered an earned fee, but if upon examination the application is denied, the fee shall be returned to applicant by the department. No such license shall be issued to any person who has within the same calendar year been issued a license as herein provided or to any person previously denied any license by the department. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.188]

Fee, §321.191

321.189 Licenses issued.

1. *Motor vehicle license.* The department shall upon payment of the required fee, issue to every applicant qualifying therefor an operator's, motorized bicycle or chauffeur's license as applied for, which license shall bear thereon a distinguishing number assigned to the licensee, the full name, date of birth, occupation, sex, residence address, a colored photograph and a brief description of the licensee, and the usual signature of the licensee. If a person desires to obtain an operator's or chauffeur's license in the form authorized by this section prior to the person's renewal date, such license may be issued as a voluntary replacement upon payment of the required fee. The number of places where licenses are available shall not be reduced because of procedures or equipment required in placing colored photographs on licenses or permits. The department shall provide a space on every license where the licensee may affix a decal or sticker indicating that the licensee is a donor under the Uniform Anatomical Gift Act and a space shall be provided where the licensee may affix a symbol indicating the presence of a medical condition. The license may contain such other information as the department may by rule require. No license shall be valid unless it bears the usual signature of the licensee. The distinguishing number assigned to a licensee shall not be the licensee's social security number. The department shall not retain a positive or negative photograph of the licensee. The licensee may affix a decal or sticker on the license in the space provided which indicates that the licensee is a donor under the Uniform Anatomical Gift Act. The decal shall not be larger than one-half inch in diameter. The use of the decal or sticker on the license shall be authorized only if the licensee has complied with the provisions for making a gift under the Uniform Anatomical Gift Act and shall be effective only if the licensee carries

on or about the licensee's person a duly signed and executed donor card as authorized by the Uniform Anatomical Gift Act.

2. *Motorized bicycle license.*

a. The department may issue a motorized bicycle license to any person fourteen years of age or older who has passed the approved driver education course required for applicants for such license. A motorized bicycle license shall entitle the licensee to operate a motorized bicycle while having the license in immediate possession on the highways of the state for a period of two years.

b. A motorized bicycle license shall be canceled upon a conviction for a moving traffic violation and reapplication may be made thirty days after the date of cancellation. The cancellation of the license upon conviction for a moving traffic violation shall not result in requiring the applicant to maintain proof of financial responsibility under section 321A.17, unless the conviction would otherwise result in a suspension or revocation of a person's operator's license.

c. As used in this section, "moving traffic violation" does not include any violation of any section of the Code or any municipal ordinance pertaining to the standards to be maintained for motor vehicle equipment except sections 321.430 and 321.431, or any municipal ordinance pertaining to motor vehicle brake requirements as applicable to motorized bicycles.

d. A motorized bicycle license is not required to operate a motorized bicycle if possessed of an operator's or chauffeur's license.

e. A motorized bicycle license shall terminate upon issuance to the licensee of an operator's or chauffeur's license valid for operation of motorcycles. A valid motorized bicycle license shall be returned to the department prior to issuance of an operator's or chauffeur's license valid for operation of motorcycles.

3. *Carried and exhibited.* Every licensee shall have his operator's or chauffeur's, or motorized bicycle license in his immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a judicial magistrate or district associate judge, a peace officer, or a field deputy or examiner of the department. However, no person charged with violating this section shall be convicted if he produces in court, within a reasonable time, an operator's or chauffeur's or motorized bicycle license issued to him and valid at the time of his arrest. [C31, 35,§§4960-d19,-d20,-d22,-d28,-d29; C39, §§**5013.14, 5013.15**; C46, 50, 54, 58, 62, 66, **71**, 73, 75,§§321.189, 321.190; 66GA, ch 1165,§§2, 26, 27, ch 1171,§§5, 7]

Referred to in §§321.177, 321.178
Fee, §321.191
Motorized bicycle license effective January 1, 1977

321.190 Issuance of nonoperator's identification cards—fee.

1. *Application for and contents of card.* The department shall, upon application and payment of the required fee, issue to an applicant a nonoperator's identification card, which card shall bear a distinguishing number assigned to the card holder, the full name, date of birth, sex, residence address, a brief description and a colored photograph of the card holder, the usual signature of the card holder, and such other information as the department may by rule require. The card, including the colored photograph, shall be issued to the applicant at the time of application and no positive or negative photograph shall be retained. The department shall, by rule, establish procedures for the application for, and issuance of, a nonoperator's identification card. An identification card shall not be valid unless it bears the usual signature of the card holder.

The department shall use a process or processes for issuance of a nonoperator's identification card, that prevents, as nearly as possible, the opportunity for alteration or reproduction of, and the superimposition of a photograph on the nonoperator's identification card without ready detection.

The fee for a nonoperator's identification card shall be one dollar and the card shall be valid for the purpose of identification for a period of four years from the date of issuance. A fee of one dollar shall be charged for the voluntary replacement of an identification card.

The nonoperator's identification card fees shall be transmitted by the department to the treasurer of state who shall credit such fees to the general fund of the state.

2. *Unlawful use of nonoperator's identification cards.* It is a misdemeanor, punishable as provided in section 321.482, for any person:

a. To display or permit to be displayed or possess any fictitious or fraudulently altered nonoperator's identification card.

b. To lend his or her nonoperator's identification card to any person or knowingly permit the use of such card by another person.

c. To display or represent as one's own a nonoperator's identification card not issued to such person.

d. To fail or refuse to surrender to the department upon its lawful demand an expired or invalid nonoperator's identification card.

e. To use a false or fictitious name in any application for a nonoperator's identification card or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application.

f. To permit any unlawful use of a nonoperator's identification card issued to such person.

3. *Colored photograph—procedures.* The department shall in issuing licenses, permits and nonoperator's identification cards bearing a colored photograph of the licensee, permittee or card holder use such processes that prevent to the maximum extent possible, the alteration

or reproduction of the license, permit or card including the ability to superimpose a photograph on a license, permit or card without ready detection. [66GA, ch 1171,§§1, 2, 3]

Effective January 1, 1977

321.191 Fee. The fee for an operator's license shall be five dollars if issued for a period of two years, and ten dollars if issued for a period of four years. The fee for a chauffeur's license shall be ten dollars if issued for a period of two years, and twenty dollars if issued for a period of four years. The fee for an instruction permit shall be three dollars, for a temporary driver's permit, five dollars and for a motorized bicycle license, five dollars.

There shall be a fee of twenty dollars for reinstatement of a chauffeur's license or operator's license which is, after notice and opportunity for hearing, suspended or revoked pursuant to sections 321.209, 321.210, except subsection 4 thereof, and 321B.7. Such twenty-dollar fee shall be collected only if the person whose license was suspended or revoked was served personally with notice thereof. If the person whose license was suspended or revoked was served notice thereof by restricted certified mail, the reinstatement fee shall be ten dollars. [C31, 35,§4960-d26; C39,§**5013.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.191; 66GA, ch 1165,§28]

Temporary licenses and identification cards, 66GA, ch 1171,§8

321.192 Disposal of fees. Such license fees shall be forwarded by the department to the treasurer of state who shall place same in the general fund of the state, provided that for each operator's and motorized bicycle license issued by a county sheriff for which a license fee is paid, the sheriff issuing the same shall be entitled to retain the sum of fifteen cents and for each chauffeur's license, the sum of fifty cents, which shall be credited to the county general fund. [C31, 35,§4960-d25; C39,§**5013.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.192; 66GA, ch 1165,§29]

321.193 Restricted licenses. When provided in rules adopted pursuant to chapter 17A, the department upon issuing an operator's or chauffeur's license or motorized bicycle license shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to the type of vehicle or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee, including licenses issued under section 321.194, as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee. The department shall not require a person issued a valid operator's or chauffeur's license to comply with any other licensing requirements in order to operate a motorized bicycle.

The department may either issue a special restricted license or may set forth such restrictions upon the usual license form.

The department may upon receiving satisfactory evidence of any violation of the restrictions of such license suspend or revoke the same but the licensee shall be entitled to a hearing as upon a suspension or revocation under this chapter.

It is a misdemeanor, punishable as provided in section 321.482, for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him. [C39,§**5013.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.193; 66GA, ch 1165,§30]

321.194 Minors' school licenses. Whenever the necessity therefor is shown, a restricted license may be issued to any person between the ages of fourteen and eighteen years which license shall entitle the holder thereof, while having such license in his immediate possession, to operate a motor vehicle during the hours of 7 a.m. to 6 p.m. over the most direct and accessible route between the licensee's residence and his school of enrollment for the purpose of attending duly scheduled courses of instruction at such school or at any time when accompanied by a parent or guardian who is a holder of a valid operator's or chauffeur's license, and who is actually occupying a seat beside the driver. Such license shall expire on the licensee's eighteenth birthday or upon issuance of a temporary driver's permit. For the purpose of establishing a need for the license provided for in this section, each application shall be accompanied by an affidavit from the school board or superintendent of the applicant's school which affidavit shall be upon a form provided by the department and shall state the facts deemed to justify the issuance of a license to the applicant. Neither such affidavit nor the inability to obtain the same shall be binding on the department but may be considered by the department in its determining of whether or not to grant the application. The fact that the applicant resides at a distance less than one mile from his school shall be prima-facie evidence of the nonexistence of any necessity for the issuance of such a license. A license issued hereunder is subject to suspension or revocation in like manner as any other license or permit issued under any law of this state and in addition thereto the department may suspend such license upon receiving satisfactory evidence that the licensee has violated the restrictions of such license or has been involved in two or more accidents chargeable to such licensee and the department shall revoke any license issued hereunder upon receiving a record of such licensee's conviction for two or more violations of any law of this state or city ordinance, other than parking regulations, regulating the operation of motor vehicles on highways and after revoking a license hereunder the department shall not grant application for any new license or permit until the expiration of one year or

until the licensee attains his sixteenth birthday whichever is the longer period. [C31, 35, §4960-d5; C39,§**5013.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.194]

Referred to in §§321.177(1), 321.184, 321.193

321.195 Duplicate certificates. In the event that an instruction permit, operator's, chauffeur's license, motorized bicycle license or extension certificate issued under the provisions of this chapter is lost or destroyed, the person to whom the same was issued may upon payment of a fee of two dollars for an operator's or chauffeur's license, one dollar for an extension certificate, or motorized bicycle license, obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the department that such permit, license, or extension certificate has been lost or destroyed. A fee of one dollar shall be charged for the voluntary replacement of an instruction permit or an operator's or chauffeur's license. [C31, 35, §4960-d27; C39,§**5013.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.195; 66GA, ch 1165,§31, ch 1171, §6]

321.196 Expiration of operator's license—renewal—vision test mandatory. Prior to July 1, 1975, the director shall issue, under rules formulated by him, operators' licenses valid for two or four years. Each operator's license issued after July 1, 1975, shall expire four years from the licensee's birthday anniversary occurring in the year of issuance if the licensee is between the age of twenty-one and sixty-five years on the date of issuance of the license, otherwise for a period of two years but shall be renewable without written examination or penalty within a period of thirty days after such birthday anniversary and such person shall not be considered to be driving with an invalid license during such period before renewal, however for any license renewed within such thirty-day period, the date of issuance shall be considered to be the previous birthday anniversary on which it expired. Applicants whose licenses are restricted due to vision or other physical deficiencies may be required to renew their licenses every two years. For the purposes of this section the birthday anniversary of a person born on February 29 shall be deemed to occur on March 1. All applications for renewal of operators' licenses shall be made under the direct supervision of a uniformed member of the department and shall be approved by such uniformed member. The director may, in his discretion, authorize the renewal of a valid license upon application without an examination provided that, a person holding such license has not more than three convictions of moving traffic violations during the previous two years and, provided that such person satisfactorily passes a vision test as prescribed by the department.

Any resident of Iowa holding a valid operator's or chauffeur's license who is temporarily absent from the state, or incapacitated, may, at the time for renewal for such license, obtain from the sheriff of the county of his residence a form to apply for a temporary extension of his license. The department upon receipt of such application form properly filled out shall, upon a showing of good cause, issue a temporary extension of such license for not to exceed six months. The department shall prescribe and furnish such forms to each county sheriff.

As used in this section, "moving traffic violations" shall not include violations of any section of the Code or any municipal ordinance pertaining to the standards to be maintained for motor vehicle equipment, except sections 321.430 or 321.431 or any municipal ordinance pertaining to motor vehicle brake requirements. [C31, 35,§§4960-d15,-d30; C39,§**5013.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.196; 66GA, ch **178**,§**1**]

321.197 Expiration of chauffeur's license. Every chauffeur's license issued hereunder shall expire every two or four years at the option of the applicant thirty days after the licensee's birthday anniversary. However, if the licensee is sixty-five years of age or older on the date of issuance of the license, such license shall be issued to be valid for two years. Persons whose birthdays occur on February 29 shall be deemed to occur on March 1, for the purpose of this section. The department in its discretion may waive the examination of any such applicant previously licensed as a chauffeur under this chapter, provided that such person satisfactorily passes a vision test as prescribed by the department. All applications for the renewal of a chauffeur's license shall be made under the direct supervision of a uniformed member of the department and shall be approved by such uniformed member. [C31, 35,§4960-d31; C39, §**5013.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.197]

321.198 Military service exception. The effective date of a valid operator's license and of a valid chauffeur's license to the extent that it permits the operation of a motor vehicle as an operator, issued under the laws of this state, held by any person at the time of entering the military service of the United States or of the state of Iowa notwithstanding the expiration of such license according to its terms, is hereby extended without fee until six months following the initial separation from active duty of such person from the military service, provided such person is not suffering from such physical disabilities as to impair his competency as an operator and provided further that such licensee shall upon demand of any peace officer furnish satisfactory evidence of his military service. However, no person entitled to the benefits of this section, charged with operating a motor vehicle without an operator's license, shall be convicted if he produces in court, within a reasonable time, a valid operator's or chauffeur's license there-

tofore issued to him along with evidence of his military service as above mentioned.

The department is hereby authorized to renew any operator's license falling within the provisions and limitations of the preceding paragraph, without examination, upon application and payment of fee made within six months following separation from the military service.

The provisions of this section shall also apply to the spouse and children or ward of such military personnel when such spouse, children or ward are living with the above described military personnel outside of the state of Iowa and provided that such extension of license does not exceed five years. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.198]

321.199 Records. The department shall file every application for a license received by it and shall maintain suitable indexes containing, in alphabetical order:

1. All applications denied and on each thereof note the reasons for such denial.

2. All applications granted.

3. The name of every licensee whose license has been suspended or revoked by the department and after each such name note the reasons for such action. [C31, 35,§4960-d18; C39, §5013.23; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.199]

321.200 Conviction and accident file. The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the department upon any application for renewal of license and at other suitable times. [C39,§5013.24; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.200]

CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES

321.201 Authority to cancel license. The department is hereby authorized to cancel any operator's or chauffeur's license upon determining that the licensee was not entitled to the issuance thereof hereunder or that said licensee failed to give the required or correct information in his application or committed any fraud in making such application.

The provisions applicable in this section and sections 321.202 to 321.215 relating to cancellation, suspension or revocation of an operator's or chauffeur's license are also applicable to motorized bicycle licenses and licensees holding motorized bicycle licenses. [C31, 35,§4960-d33; C39,§5014.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.201; 66GA, ch 1165,§32]

321.202 Surrender of license. Upon such cancellation, the licensee must surrender the license so canceled to the department. [C39, §5014.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.201]

Referred to in §321.201

321.203 Suspending privileges of nonresidents. The privilege of driving a motor vehicle on the highways of this state given to a nonresident hereunder shall be subject to suspension or revocation by the department in like manner and for like cause as an operator's or chauffeur's license issued hereunder may be suspended or revoked. [C31, 35,§4960-d37; C39,§5014.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.203]

Referred to in §321.201

321.204 Certification of conviction. The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident. [C31, 35,§4960-d41; C39,§5014.04; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.204]

Referred to in §321.201

321.205 Conviction in another state. The department is authorized to suspend or revoke the license of any resident of this state upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator or chauffeur. [C31, 35,§4960-d39; C39,§5014.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.205]

Referred to in §321.201

321.206 Surrender of license—duty of court. Whenever any person is convicted of any offense for which this chapter makes mandatory the revocation of the operator's or chauffeur's license of such person by the department, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted and the court shall thereupon forward the same together with a record of such conviction to the department. [C31, 35, §4960-d32; C39,§5014.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.206]

Referred to in §321.201

321.207 Record forwarded. Every court having jurisdiction over offenses committed under this chapter, or any other law of this state or any city traffic ordinances, other than parking regulations, regulating the operation of motor vehicles on highways, shall forward to the department a record of the conviction of any person in said court for a violation of any said laws, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted, and the department shall thereupon consider and act upon such recommendation in such manner as may seem to it

best. [C31, 35,§4960-d32; C39,§5014.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.207]
Referred to in §§321.201, 321.555, 753.13, 753.16

321.208 "Conviction" defined. For the purposes of this chapter the term "conviction" shall mean a final conviction. Also for the purposes of this chapter a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction. [C39,§5014.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.208]
Referred to in §321.201

321.209 Mandatory revocation. The department shall forthwith revoke the license of any operator or chauffeur, or driving privilege, upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final:

1. Manslaughter resulting from the operation of a motor vehicle.

2. Driving a motor vehicle while under the influence of an alcoholic beverage, a narcotic, hypnotic or other drug, or any combination of such substances.

3. Any felony in the commission of which a motor vehicle is used.

4. Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another.

5. Perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles.

6. Conviction, or forfeiture of bail not vacated, upon two charges of reckless driving.
Referred to in §321.212

7. Conviction of drag racing. [C31, 35,§§4960-d33, 5027-d1; C39,§5014.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.209]
Referred to in §§321.191, 321.201, 321.210, 321.212, 321.282, 321B.2
"Alcoholic beverage" defined, see §321B.2

321.210 Authority to suspend—point system. The department is hereby authorized to establish rules under the provisions of chapter 17A providing for the suspension of the license of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that under the rules adopted by the department the licensee:

1. Has committed an offense for which mandatory revocation of license is required upon conviction.

2. Is an habitually reckless or negligent driver of a motor vehicle.

3. Is an habitual violator of the traffic laws.

4. Is incompetent to drive a motor vehicle.

5. Has permitted an unlawful or fraudulent use of such license.

6. Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation.

7. Has committed a serious violation of the motor vehicle laws of this state.

For the purpose of determining when to suspend a license under this section the director may, in accordance with the provisions of chapter 17A, promulgate a point system for the purpose of weighing traffic convictions, or offenses by their seriousness and may change such weighted scale from time to time as experience or the accident frequency in the state makes necessary or desirable.

Prior to a suspension taking effect under subsections 2, 3, 4, 5 or 7, the licensee shall have received twenty days advance notice of the effective date of the suspension. Notwithstanding the terms of the Iowa administrative procedure Act, the filing of a petition for judicial review shall operate to stay the suspension pending the determination by the district court.

If the department assesses any points against an operator or chauffeur of a motor vehicle under any point system devised by the department for the purpose of suspending operators' or chauffeurs' licenses, the licensee shall receive a credit of one point for each year in which the licensee had in continuous effect a valid operator's or chauffeur's license and during which no points were assessed against such licensee, but such credit of points shall not exceed five points at any one time. Credit points shall be subtracted from the total points assessed against the licensee in determining when to suspend a license.

If the department assesses any points against an operator or chauffeur of a motor vehicle under any point system devised by the department for the purpose of suspending operators' or chauffeurs' licenses, the department must notify the licensee by ordinary mail that such points have been assessed and the reason therefor. Provided that no license shall be suspended on the basis of any point system devised by the department without notice of proposed suspension to the licensee and a reasonable opportunity for a preliminary hearing before a member of the department who shall have authority in meritorious cases to revoke the suspension.

However, a warning memorandum, summons, conviction or forfeiture of bail not vacated, for a violation of any section of the Code or any municipal ordinance pertaining to the standards to be maintained for motor vehicle equipment, except sections 321.430 or 321.431 or any municipal ordinance pertaining to motor vehicle brake requirements, shall not be taken into consideration in determining suspension or the length of suspension of an operator's or chauffeur's license. A violation of sections 321.430 or 321.431 or any municipal ordinance pertaining to motor vehicle brake requirements shall not be taken into consideration in determining suspension or the length of suspension of an operator's or chauffeur's license if the equip-

ment in violation of the Code or municipal ordinance has been repaired within seventy-two hours of such warning memorandum, summons, conviction, or forfeiture of bail not vacated, and evidence of such repair has immediately been sent to the director.

The director may, on application, issue a temporary restricted license to any person convicted whose regular employment is the operation of a motor vehicle or who cannot perform his regular occupation without the use of a motor vehicle, but such person shall not operate a vehicle for pleasure while holding such restricted license. However, this paragraph shall not apply to any person whose license is revoked under the provisions of section 321.209. [C31, 35,§4960-d35; C39, §**5014.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.210]

Referred to in §§321.191, 321.201

321.211 Notice and hearing. Upon suspending the license of any person as hereinbefore authorized the department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing before the director or his duly authorized agent as early as practical within not to exceed thirty days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the director or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon such hearing the department shall either rescind its order of suspension or for good cause may extend the suspension of such license or revoke such license. [C31, 35,§4960-d36; C39, §**5014.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.211; 66GA, ch 1165,§33]

Referred to in §321.201

321.212 Period of suspension or revocation. The department shall not suspend a license for a period of more than one year, except that a license suspended because of incompetency to drive a motor vehicle shall be suspended until the department receives satisfactory evidence that the former holder thereof is competent to operate a motor vehicle and a refusal to reinstate shall constitute a denial of license within the provisions of section 321.215; upon revoking a license the department shall not in any event grant application for a new license until the expiration of one year after such revocation.

The department shall not revoke a license under the provisions of subsection 6 of section 321.209 for more than thirty days nor less than five days as recommended by the trial court. [C31, 35,§§4960-d40,-d45; C39,§**5014.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.212; 66GA, ch 67,§32]

Referred to in §§321.201, 321.281

321.213 Surrender of license. The department upon suspending or revoking a license shall require that such license be surrendered to and be retained by the department except that at the end of the period of suspension such license so surrendered shall be returned to the licensee. [C31, 35,§4960-d42; C39,§**5014.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.213]

Referred to in §321.201

321.214 No operation under foreign license. Any resident or nonresident whose operator's or chauffeur's license or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this chapter shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other state or country or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this chapter. [C31, 35,§4960-d38; C39,§**5014.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.214]

Referred to in §321.201

321.215 Judicial review. Judicial review of the actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act. [C31, 35,§§4960-d43,-d44; C39,§**5014.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.215]

Referred to in §§321.201, 321.212

VIOLATION OF LICENSE PROVISIONS

321.216 Unlawful use of license. It is a misdemeanor, punishable as provided in section 321.482 unless another punishment is otherwise provided, for any person:

1. To display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious or fraudulently altered temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license.

2. To lend his temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license to any other person or knowingly permit the use thereof by another.

3. To display or represent as one's own any temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license not issued to him.

4. To fail or refuse to surrender to the department upon its lawful demand any temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license which has been suspended, revoked, or canceled.

5. To use a false or fictitious name in any application for a temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application.

6. To permit any unlawful use of a temporary driver's permit, temporary instruction permit, motorized bicycle license, operator's license, or chauffeur's license issued to him. [C31, 35, §§4960-d46,-d52; C39,§**5015.01**; C46, **50, 54, 58, 62,** 66, 71, 73, 75,§321.216; 66GA, ch 1165,§34]

321.217 Perjury. Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed, is guilty of perjury and upon conviction shall be punishable by fine or imprisonment as other persons committing perjury are punishable. [C31, 35,§4960-d47; C39,§**5015.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.217]

Perjury, §721.1

321.218 Driving while license denied, suspended or revoked. Any person whose operator's or chauffeur's license or driving privilege, has been denied, canceled, suspended or revoked as provided in this chapter, and who drives any motor vehicle upon the highways of this state while such license or privilege is denied, canceled, suspended, or revoked, is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than two days or more than thirty days. The sentence imposed under this section shall not be suspended by the court, notwithstanding the provisions of section 789A.1 or any other provision of statute. The department, upon receiving the record of the conviction of any person under this section upon a charge of driving a motor vehicle while the license of such person was suspended or revoked, shall extend the period of suspension or revocation for an additional like period, and the department shall not issue a new license during such additional period.

Any person operating a motorized bicycle on the highways of the state not possessed of an operator's or chauffeur's license valid for operation of motorcycles or a valid motorized bicycle license, shall, upon conviction, be guilty of a misdemeanor and punished by a fine of not less than five nor more than fifty dollars. [C31, 35,§§4960-d34,-d51; C39,§**5015.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.218; 66GA, ch 1165,§35]

321.219 Permitting unauthorized minor to drive. No person shall cause or knowingly permit his child or ward under the age of eighteen years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of this chapter. [C31, 35,§4960-d48; C39,§**5015.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.219]

321.220 Permitting unauthorized person to drive. No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized hereunder or in violation of any of the provisions of this chapter. [C31, 35,§4960-d50; C39,§**5015.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.220]

321.221 Employing unlicensed chauffeur. No person shall employ as a chauffeur of a motor vehicle any person not then licensed as provided in this chapter. [C31, 35,§4960-d49; C39, §**5015.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.221]

321.222 Renting motor vehicle to another. No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed hereunder or, in the case of a nonresident, then duly licensed under the laws of the state or country of his residence except a nonresident whose home state or country does not require that an operator be licensed. [C39,§**5015.07**; C46, 50, 54, 58, 62, 66, **71, 73,** 75,§321.222]

321.223 License inspected. No person shall rent a motor vehicle to another until he has inspected the operator's or chauffeur's license of the person to whom the vehicle is to be rented and compared and verified the signature thereon with the signature of such person written in his presence. [C39,§**5015.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.223]

321.224 Record kept. Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person and the date and place when and where said license was issued. Such record shall be open to inspection by any police officer or officer or employee of the department. [C39,§**5015.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.224]

HOURS OF OPERATION

321.225 Maximum mechanical operation. No person shall operate a commercial vehicle for hire for more than a period of twelve hours out of any period of twenty-four hours upon the highways of this state without being relieved from duty for ten consecutive hours and where a driver puts in twelve hours of driving out of any period of twenty-four hours, though not consecutive he must be given at least eight hours off duty. [C31, 35,§5079-d8; C39,§**5016.01**; C46, 50, 54, 58, 62, 66, 71, **73,** 75,§321.225]

Referred to in §§321.226, 321.227

321.226 Maximum operation by employee. No person, firm, partnership, association, or corporation shall require or permit any employee or person to drive or operate any commercial motor vehicle upon the public highways of this state in violation of the provisions of section 321.225. [C31, 35,§5079-d9; C39, §**5016.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.226]

Referred to in §321.227

321.227 Violations. Any person, firm, partnership, association or corporation violating any of the provisions of sections 321.225 and 321.226 shall be guilty of a misdemeanor and,

upon conviction, may be fined not less than twenty-five dollars, nor more than one hundred dollars. [C31, 35,§5079-d10; C39,§5016.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.227]

OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

321.228 Provisions refer to highways—exceptions. The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.

2. The provisions of sections 321.261 to 321.274, section 321.277 and sections 321.280 to 321.282 shall apply upon highways and elsewhere throughout the state. [C39,§5017.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.228]

321.229 Obedience to police officers. No person shall willfully fail or refuse to comply with any lawful order or direction of any peace officer invested by law with authority to direct, control, or regulate traffic. [S13,§1571-m18; C24, 27, 31, 35,§5064; C39,§5017.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.229]

321.230 Public officers not exempt. The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state or any county, city, district, or any other political subdivision of the state, subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles. [C39,§5017.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.230]

321.231 Authorized emergency vehicles.

1. The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected perpetrator of a felony or in response to an incident dangerous to the public or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section.

2. The driver of any authorized emergency vehicle, may:

a. Park or stand an authorized emergency vehicle, irrespective of the provisions of this chapter.

b. Disregard laws or regulations governing direction of movement for the minimum distance necessary before an alternative route that conform to the traffic laws and regulations is available.

3. The driver of a fire department vehicle, police vehicle or ambulance may:

a. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.

b. Exceed the maximum speed limits so long as the driver does not endanger life or property.

4. The exemptions granted to an authorized emergency vehicle under subsection 2 and for a fire department vehicle, police vehicle or ambulance as provided in subsection 3 shall apply only when such vehicle is making use of an audible signaling device meeting the requirements of section 321.433, or a visual signaling device approved by the department except that use of an audible or visual signaling device shall not be required when exercising the exemption granted under subsection 3, paragraph *"b"* of this section when the vehicle is operated by a peace officer, pursuing a suspected violator of the speed restrictions imposed by or pursuant to this chapter, for the purpose of determining the speed of travel of such suspected violator.

5. The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others. [C39,§§5017.04, 5017.05, 5023.12; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§321.231, 321.232, 321.296; 66GA, ch 1165,§36]

321.232 Repealed by 66GA, ch 1165,§37.

321.233 Road workers exempted. The provisions of this chapter, except the provisions of section 321.277 and sections 321.280 to 321.282 shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway officially closed to traffic but shall apply to such persons and vehicles when traveling to or from such work. The provisions of this chapter shall not apply to maintenance equipment operated by or under lease to any state or local authority while engaged in road maintenance work, including to or from such work. [C39,§5017.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.233]

321.234 Bicycles or animal-drawn vehicles. Every person riding a bicycle or an animal or driving any animal drawing a vehicle upon a roadway shall be subject to the provisions of this chapter applicable to the driver of a vehicle, except those provisions of this chapter which by their nature can have no application. [C39,§5017.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.234]

321.235 Provisions uniform. The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter. [C39,§5017.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.235]

Highway patrol, see ch 80

POWERS OF LOCAL AUTHORITIES

321.236 Powers of local authorities. Local authorities shall have no power to enact, enforce, or maintain any ordinance, rule or regu-

lation in any way in conflict with, contrary to or inconsistent with the provisions of this chapter, and no such ordinance, rule or regulation of said local authorities heretofore or hereafter enacted shall have any force or effect, however the provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles.

Parking meter violations which are denied shall be charged and proceed before a court the same as other traffic violations. Parking violations which are admitted:

a. May be charged and collected upon a simple notice of a fine not exceeding five dollars payable to the city clerk, if authorized by ordinance. No costs or other charges shall be assessed. One hundred percent of all fines collected by a city pursuant to this paragraph shall be retained by the city.

b. Notwithstanding any such ordinance, may be prosecuted under the provisions of sections 753.13 to 753.20 or as any other traffic violation.

2. Regulating traffic by means of police officers or traffic-control signals.

3. Regulating or prohibiting processions or assemblages on the highways.

4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction.

Referred to in §321.237

5. Regulating the speed of vehicles in public parks.

Referred to in §321.237

6. Designating any highway as a through highway and requiring that all vehicles stop or yield the right of way before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersections.

Referred to in §321.237

7. Licensing and regulating the operation of vehicles offered to the public for hire and used principally in intracity operation.

8. Restricting the use of highways as authorized in sections 321.471 to 321.473.

Referred to in §321.237

9. Regulating or prohibiting the turning of vehicles at and between intersections.

10. Regulating the operation of bicycles and requiring the registration and licensing of the same, including the requirement of a registration fee.

11. Establishing speed limits in public alleys and providing the penalty for violation thereof.

12. Designating highways or portions of highways as snow routes. When conditions of snow or ice exist on the traffic surface of a designated snow route, it is unlawful for the driver of a vehicle to impede or block traffic if the driving wheels of the vehicle are not equipped with snow tires, tire chains or a nonslip differential. "Snow tires" as used in this subsection means tires designed for use when there are conditions of snow or ice on the highways, and meeting the standards which shall be promulgated by rule of the director of transportation. The standards promulgated by the director shall require that snow tires be so designed to provide adequate traction to maintain reasonable movement of the motor vehicle on highways under snow conditions.

Any person charged with impeding or blocking traffic for lack of snow tires, chains or nonslip differential shall have said charge dismissed upon a showing to the court that his motor vehicle was equipped with a nonslip differential. [S13,§§1571-m18,-m20; C24, 27, 31, 35,§§4992, 4995, 4997; C39,§**5018.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.236; 66GA, ch 67,§65, ch 176,§1]

Referred to in §§321.237, 364.3, 753.13, 753.15

321.237 Posting signs—regulating traffic—snow routes. No ordinance or regulation enacted under subsections 4, 5, 6, 8 or 12 of section 321.236 shall be effective until signs, giving notice of such local traffic regulations as specified in the department manual on uniform traffic-control devices, are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate and shall be erected at the expense of such municipality.

When a city has adopted an ordinance as authorized in section 321.236, subsection 12, or an ordinance which prohibits standing or parking of vehicles upon a street or streets during any time when snow-removal operations are in progress and before such operations have resulted in the removal or clearance of snow from such street or streets, signs as specified in the above manual, posted as hereinabove provided shall be deemed sufficient notice of the existence of such restrictions. [C39, §**5018.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.237]

321.238 Motor vehicle inspection—test drive conditions.

1. The director may grant permits for the operation of vehicle inspection stations authorized to issue official certificates of inspection of vehicles. The commission may adopt such rules subject to the provisions of chapter 17A as shall be necessary for the efficient operation and maintenance of vehicle inspection stations.

2. Application for an authorized inspection station permit shall be made upon forms provided by the director. The biennial fee for an inspection station permit shall be five dollars. The fee shall be submitted with the application for the permit.

3. Upon determining that the inspection station of an applicant for an authorized inspection station permit is properly equipped, has competent personnel to conduct vehicle in-

spections, and can properly conduct such inspections, the director shall grant such permit.

4. The director shall:

a. Supervise and cause inspections to be made of each vehicle inspection station issued a permit.

b. Provide instructions and all necessary forms to authorized inspection stations for the inspection of vehicles and the issuance of official certificates of inspection. The copy of the statement of inspection to be delivered by the inspection station to the owner of the vehicle inspected shall state the name and address of the inspection station and shall contain a conspicuous notice in substance as follows: "NOTICE: You should immediately notify the inspection station of any complaint about the inspection of this vehicle. If possible, your notice should be given within fifteen days after the date of inspection or before this vehicle has been driven five hundred miles after the inspection, whichever occurs first, or, if the inspection station sold the vehicle to you, within fifteen days after the sale or before this vehicle has been driven five hundred miles after the sale, whichever occurs first. Your notice should be in writing, specifying the complaint. Notice forms are available at any inspection station. You also have the right to make a complaint about the inspection to the director, statehouse, Des Moines, Iowa."

c. Provide instruction and all necessary forms for inspection orders. The inspection order shall direct the owner or custodian of the vehicle to present the inspection order to the inspection station for endorsement that the vehicle has been inspected and passed and an official certificate of inspection has been affixed. The inspection order shall direct that the vehicle be inspected at an inspection station within fourteen days.

Forms for notice of complaint shall be provided by the department to all authorized inspection stations, who shall provide them to any person upon request. The copy of the statement of inspection to be delivered by the inspection station to the owner of the vehicle inspected shall also contain a notice, which shall be printed on the face of the statement of inspection in eight-point boldface type, which contains the words "THE SAFETY INSPECTION IS APPLICABLE ONLY TO THE ITEMS CHECKED AND DOES NOT GUARANTEE OR WARRANT THE CONDITION OF THESE ITEMS OR THE OVERALL CONDITION OF THE VEHICLE."

d. Designate employees of the transportation regulation and safety division, or its successor, of the state department of transportation to conduct spot inspections.

e. Maintain and post at the office of the department lists of all stations holding permits and of stations whose permits have been revoked.

5. No permit for an official inspection station shall be assigned or transferred or used at any location other than the location designated in the permit and each authorized inspection station shall post its permit in a conspicuous place at the designated location of the station.

6. Official certificates of inspection shall be purchased by inspection stations from the department at a cost of twenty-five cents per certificate. A permit holder shall receive a credit or a refund, to be paid from the motor vehicle inspection fund, created by this section, in the amount of twenty-five cents for each unused certificate returned to the department.

7. No person shall make, possess, issue, or knowingly use any imitation or counterfeit of an official certificate of inspection. No person shall display or cause or permit to be displayed upon any vehicle any certificate of inspection knowing the certificate to be fictitious, or issued for another vehicle, or issued without an inspection having been made. No person shall possess a blank certificate of inspection nor shall any person issue an official certificate of inspection who does not hold a valid permit for the issuance of such certificate.

8. The fee for inspection, including the issuance of the certificate of inspection, shall be uniform according to class of vehicle and shall be established by the director. The fee shall be a reasonable and just charge based upon the average cost and time necessary to perform the inspection, and shall be retained by the inspection station. No inspection station shall absorb the inspection fee, or advertise or represent in any manner that the fee or any part of the fee is directly or indirectly absorbed by the station, nor shall any inspection station charge a fee for inspection services under this section in an amount other than the fees herein provided.

9. All fees collected by the department under the provisions of this section shall be remitted monthly to the treasurer of state. The moneys remitted shall be placed by the treasurer of state in a special fund to be known as the "motor vehicle inspection fund" and shall be used to defray the cost of administering the provisions of this section. Any unencumbered balance in excess of twenty thousand dollars remaining in the motor vehicle inspection fund at the end of each fiscal year shall revert to the general fund of the state on the thirtieth day of September following the end of the fiscal year.

10. In making a vehicle inspection, the inspection station shall inspect such of the following equipment as is applicable to the vehicle: Brakes, lights, turning signals, steering, sound devices, glass, mirrors, exhaust system, windshield wipers, seat belts, tires and such other safety equipment as may be prescribed for inspection under rules adopted by the director. The inspection station shall also inspect each motor vehicle to ascertain that none of the factory installed emission control devices have been removed or rendered inoperable.

Upon completion of inspection of a vehicle and determination that its equipment is in adequate condition and proper adjustment to warrant issuance of a certificate of inspection, the inspection station which has made the inspection shall affix an official certificate of inspection to such vehicle in the manner specified by the director and endorse on any inspection order presented that the certificate of inspection has been issued and forward the inspection order to the department. Except as otherwise provided, the certificate shall be valid for the period commencing with the calendar month of issue and ending at midnight on the last day of the twelfth calendar month following the month of issue and shall not be valid thereafter. The certificate shall cease to be valid if the vehicle is sold at retail during the twelve-month period.

11. If an inspection discloses the necessity for repairs, the owner of the vehicle or person having custody thereof shall be so notified. Repairs and adjustments need not be made at the inspection station which has made the inspection and if the owner or person having custody of the vehicle elects not to have the repairs or adjustments made at that time a certificate of rejection shall be affixed to the vehicle. If an official certificate of inspection has been affixed to the vehicle which is valid on the date of rejection, the certificate of inspection shall no longer be valid even though the period for which it was issued has not expired and the inspection station shall remove the certificate. After correction of the stated defects, the inspection station which made the inspection shall reinspect the vehicle once without additional charge if requested so to do within thirty days after its issuance of the rejection certificate.

The owner or other person having custody of the vehicle shall have such repairs made or defects corrected as are required by the rejection certificate within thirty days from the date of the rejection certificate. A vehicle for which the repairs are not made or defects not corrected, shall not thereafter be operated on the streets or highways until a valid certificate of inspection has been obtained and affixed to the vehicle.

The owner or person having custody of the vehicle to which a certificate of rejection has been affixed may appeal the rejection to the department. The appeal shall be in writing and shall be filed with the department within ten days of the rejection. The department shall hold a hearing on the appeal within ten days of receipt of the appeal and shall issue a decision affirming the rejection or disallowing the rejection, in whole or in part, within seven days of the hearing.

12. Every motor vehicle subject to registration under the laws of this state, except motor vehicles registered under section 321.115, and motorized bicycles, when first registered in this state, other than a registration to a dealer licensed under chapter 322, and each time when transferred for use within this state or when registration is changed from a registration as provided in section 321.115 to a regular registration, other than transfers to a dealer licensed under chapter 322, shall be inspected at an authorized inspection station, unless there is affixed to the motor vehicle a valid certificate of inspection which was issued for the motor vehicle not more than sixty days prior to the date on which the vehicle was transferred and the vehicle has not been transferred during the sixty-day period, provided that during a one-year period the vehicle may be transferred between parents and their children or between spouses without another inspection. A vehicle inspection is not required when the transfer of the vehicle or an interest in the vehicle is between spouses or when required pursuant to a decree for dissolution of marriage between former spouses. However, the certificate of inspection for a new motor vehicle which has not previously been sold at retail and which is not sold within sixty days after the date the inspection was performed may be revalidated by the inspection station without another inspection provided the motor vehicle has not been driven more than one hundred miles since the inspection was performed. If the motor vehicle is subject to inspection, the authorized inspection station shall issue and affix a valid certificate of inspection or certificate of rejection, as the case may be, in accordance with the results of the inspection. If an inspection is required, an applicant shall file with an application for title to the vehicle or for registration thereof under the provisions of section 321.23, subsection 2 or 3, with the county treasurer of the county of his residence, a statement on a form provided by the director, signed by an authorized inspection station certifying the date that a certificate of inspection was issued for and affixed to the vehicle. If an inspection is required the county treasurer shall not issue a title to the vehicle to the applicant or register the vehicle unless such statement is filed with the application showing that the inspection of the vehicle was made not more than sixty days prior to the date of sale or transfer, or unless the vehicle was purchased out of this state by a resident of this state who resides outside of this state, but desires to maintain his Iowa residency and he executes a statement to that effect in form and content as prescribed by the director. The county treasurer shall stamp the registration card for such vehicle with the words "NOT INSPECTED." A vehicle so registered shall be inspected at an authorized inspection station within fifteen days after being brought into this state. The county treasurer shall mail the statement of inspection or statement of out-of-state residency to the department at the time of mailing copies of the registration receipt. The department may destroy any forms, certificates or statements after one year from the date they are filed unless they relate to pending appeals. The

provisions of this subsection shall not be applicable to the transfer of a motor vehicle to the insurer of such vehicle who obtains ownership of such vehicle as a result of a settlement with the owner thereof arising out of damage to such vehicle and written proof thereof is submitted to the county treasurer on forms prescribed by the department.

13. Any peace officer who makes an investigation of an accident may direct that any motor vehicle involved in the accident shall be inspected at an official inspection station within the time fixed by such peace officer but in all cases within a period no longer than fourteen days. If the vehicle is undergoing repairs or parts necessary to make repairs are on order, the motor vehicle need not be inspected until such repairs are completed; provided, however, the motor vehicle shall not be driven upon the highways until the repairs have been completed and the vehicle has passed inspection, except to move it to and from an inspection station. The peace officer shall include in the report required by section 321.266 the date by which the inspection must be performed.

14. The director may authorize the acceptance in this state of a certificate of inspection issued in another state having an inspection law substantially similar to the provisions of this chapter pertaining to vehicle inspection.

15. Judicial review of the actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act.

16. The inspection of any vehicle and issuance of a certificate of inspection shall not be construed in any court as a warranty of the mechanical condition of the vehicle, and the failure to discover any defect in any vehicle in the course of an inspection under the provisions of this section shall not be made the basis of an action for damages in any court.

17. It is a misdemeanor for any owner or operator of any vehicle required to be inspected to fail to comply with the provisions of this section.

18. If an inspection is required by this section a person shall not transfer any motor vehicle, other than transfers to a dealer licensed under chapter 322, unless there is a valid official certificate of inspection affixed to such vehicle at the time of transfer. Any person violating the provisions of this subsection shall be subject to a fine of one hundred dollars and shall be liable to the purchaser in damages for all costs involved in obtaining a valid certificate of inspection for such vehicle.

19. As used in this section, "sale" means the delivery of possession of a vehicle to a person who has purchased or contracted to purchase the vehicle. As used in this section "transfer" means sale or any manner by which the title to a vehicle is conveyed from one person or corporation to another or the delivery of possession of a vehicle with the intent to transfer ownership.

20. After an investigation and hearing conducted by a hearing officer designated by the director of transportation held in the county in which the inspection station is located, the director may, if the hearing officer finds that the inspection station is not properly equipped or it is not properly conducting inspections, issue a warning, suspend the vehicle inspection station's permit for a period not to exceed ninety days, or revoke the vehicle inspection station's permit and require the operator of the vehicle inspection station to surrender the permit issued to the operator.

21. Notice of the suspension or revocation shall be by certified mail, return receipt requested, addressed to the operator of the vehicle inspection station for which the permit was issued. The suspension or revocation shall become effective ten days from the date of the mailing of the notice unless the permit holder files a written request for a review hearing of the suspension or revocation order. The review hearing shall be de novo and shall be conducted at the seat of government by a review board composed of the following persons:

a. A senior officer of the Iowa highway safety patrol designated by the director.

b. The state car dispatcher or his designee.

c. An employee of the state department experienced in automotive mechanics designated by the director.

Notwithstanding any other rule or statute to the contrary, the deposition of any witness taken in the manner prescribed by the rules of civil procedure shall be admissible at any hearing conducted by the review board in lieu of the witness appearing in person. Costs of depositions shall be paid from the motor vehicle inspection fund.

After the hearing, the review board may sustain, modify, or reverse the director's order of suspension or revocation. A suspension or revocation sustained or modified by the review board shall take effect ten days from the date of the decision. Judicial review of actions of the review board may be sought in accordance with the terms of the Iowa administrative procedure Act.

The review board shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before it in any hearing conducted by it under this section.

If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the district court of the state in and for Polk county may, upon application and proof of such refusal, make an order awarding process of subpoena, or subpoena duces tecum, out of the said court, for the witness to appear before the review board and to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of

said court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is directed to appear at the time and place therein designated.

Witnesses shall receive three dollars for each day's attendance and ten cents per mile for each mile actually traveled. Witnesses shall be compensated from the motor vehicle inspection fund. The treasurer of state may make rules setting forth the procedure for such reimbursement.

22. In any proceedings to suspend or revoke a vehicle inspection station's permit, there shall be a presumption that the inspection of a motor vehicle was properly conducted unless a written notice specifying the complaint is given to the operator or an employee of the vehicle inspection station which inspected the vehicle within fifteen calendar days after the date of the inspection or before the vehicle has been driven five hundred miles after the inspection, whichever occurs first, or if the vehicle inspection station sold the motor vehicle, within fifteen calendar days after the date of the sale or before the vehicle has been driven five hundred miles after the sale, whichever occurs first. The written notice may be informal. This presumption may be overcome only by clear and convincing evidence.

23. No person shall knowingly deliver possession of a motor vehicle, trailer or semitrailer to a person who has purchased or contracted to purchase at retail such motor vehicle, trailer, or semitrailer which does not contain those parts or is not equipped with such lamps and brakes and other equipment in proper condition and adjustment as required by this chapter or which is equipped in any manner in violation of the chapter, except when such sale is made in accordance with the provisions of section 321.51.

24. No person shall knowingly permit a prospective purchaser to test drive a motor vehicle on the highways of this state unless the vehicle is mechanically safe for the purposes and conditions of the test drive.

25. As used in this section:

a. "Authorized officer" means an officer of the Iowa highway safety patrol designated by the commissioner of public safety to make a spot vehicle inspection or a state employee of the transportation regulation and safety division, or its successor, of the state department of transportation designated by the director to make a spot vehicle inspection.

b. "Spot vehicle inspection" means an equipment safety inspection of a vehicle conducted by an authorized officer to determine if the vehicle should be inspected at an inspection station and shall not include inspection of the "glove compartment" or "trunk" or any other area that is not essential to the performance of an equipment safety inspection.

c. "Inspection order" means the form established by the department to be given to the operator of a vehicle by an authorized officer following a spot vehicle inspection when the vehicle requires further inspection at an inspection station.

26. An authorized officer may stop and inspect a vehicle being operated on the highways for a spot vehicle inspection when the authorized officer observes that the vehicle is being operated in a peculiar, erratic, or unsafe manner that would give the authorized officer reason to believe that a mechanical defect exists in the vehicle that would create a hazard to the safety of other persons. An authorized officer may also stop a vehicle and conduct a spot vehicle inspection if upon visual inspection of the vehicle, the authorized officer determines that the head lamps, rear lamps or any other equipment required by this chapter is not in adequate condition or proper adjustment and would create a hazard to the safety of other persons. The authorized officer shall indicate on any inspection order issued the reasons for which the vehicle is stopped in addition to any safety equipment deficiencies found to exist during the spot vehicle inspection. If after performing the spot vehicle inspection, the authorized officer determines to the best of his or her ability that operation of the vehicle does in fact create a hazard to the safety of other persons, the authorized officer may issue an inspection order to the operator and forward two copies to the department. The inspection order shall direct that the vehicle be inspected at an inspection station within fourteen days. If the authorized officer determines that the operator of the vehicle is not the owner or custodian of the vehicle, this fact shall be indicated on the inspection order. The department, upon receipt of an inspection order with an indication the operator is not the owner or custodian, shall forward one copy by certified mail to the owner or custodian with return receipt requested by a date certain as fixed by the department pursuant to rules and the fourteen-day period to obtain a vehicle inspection shall begin on the date of return receipt or return of the notice. If the vehicle is not inspected within the fourteen-day period it shall be deemed that the vehicle has not passed the inspection and the provisions of subsection 11 apply. Nothing in this subsection shall be construed to limit the applicability of sections 321.381 and 321.492. [C58, 62, 66, 71, §322.25; C73,§§321.238, 322.25; C75,§321.238; 66GA, ch 67,§§65, 69, ch 172,§§1–4, ch 179,§§1, 2, ch 1056,§21, ch 1165,§§38–42]

Referred to in §§321.51, 321.89(4)

321.239 Counties may restrict parking of vehicles. The county board of supervisors may adopt, amend, or repeal traffic ordinances to regulate or prohibit the standing or parking of vehicles within the right of way of any highway under its jurisdiction.

Any person violating a traffic ordinance adopted under this section shall be guilty of a misdemeanor and shall, upon conviction, be

fined not to exceed twenty-five dollars, or be imprisoned not to exceed seven days in the county jail. The form and style of the information shall be in the name of the county and as against the person in violation of the traffic ordinance. [C73, 75,§321.239]

321.240 to 321.246 Repealed by 64GA, ch 183, §7.

321.247 Repealed by 64GA, ch 1019,§7.

321.248 Parks and cemeteries. Local authorities may by general rule, ordinance, or regulation exclude vehicles from any cemetery or ground used for the burial of the dead, or exclude vehicles used solely or principally for commercial purposes, from any park or part of a park system where such general rule, ordinance, or regulation is applicable equally and generally to all other vehicles used for the same purpose, if, at the entrance, or at each entrance if there be more than one, to such cemetery or park from which vehicles are so excluded, there shall have been posted a sign plainly legible from the middle of the public highway on which such cemetery or park opens, plainly indicating such exclusion and prohibition. [S13,§1571-m20; C24, 27, 31, 35,§4994; C39,§**5018.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.248]

321.249 School zones. Cities and counties shall have the power to establish school zones and provide for the stopping of all motor vehicles approaching said zones, when movable stop signs have been placed in the streets in such cities and highways in counties at the limits of the zones, this notwithstanding the provisions of any statute to the contrary. All traffic-control devices provided for school zones shall conform to specifications included in the manual of traffic-control devices adopted by the department. [C31, 35,§4997-d1; C39, §**5018.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.249]

321.250 Discriminations. When the local authorities of other states shall, by the adoption of rules and regulations or otherwise, prohibit motor vehicles registered under the laws of this state from operating upon highways in any subdivision of such other state, the local authorities of this state may, by ordinance or otherwise, require the motor vehicles of the subdivisions of such other state while operating by their own power in this state to be registered under the laws of this state. [C24, 27, 31, 35,§4998; C39,§**5018.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.250]

321.251 Rights of owners of real property. Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this chapter, or otherwise regulating such use as may seem best to such owner. [C39,§**5018.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.251]

TRAFFIC SIGNS, SIGNALS, AND MARKINGS

321.252 Department to adopt sign manual. The department shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this chapter for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system then current as approved by the American association of state highway and transportation officials.

The department shall include in its manual of traffic-control devices, specifications for a uniform system of highway signs for the purpose of naming, warning, regulating, and guiding traffic to organized off-highway permanent camps, and camp areas, operated by recognized and established civic, religious, and nonprofit charitable organizations. The commission shall purchase, install, and maintain such signs upon the prepayment by the organization of the cost of such purchase, installation, and maintenance.

Local authorities shall adhere to the specifications for such signs as established by the department, and shall purchase, install, and maintain such signs in their respective jurisdictions upon prepayment by the organization of the cost of such purchase, installation, and maintenance. The department shall include in its manual of traffic-control devices specifications for a uniform system of traffic-control devices in legally established school zones. [C24, 27,§4627; C31, 35,§§4627, 5079-d7; C39, §**5019.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.252; 66GA, ch 1165,§43]

321.253 Department to erect signs. The department shall place and maintain such traffic-control devices, conforming to its manual and specifications, upon all primary highways as it shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic. Whenever practical, said devices or signs shall be purchased from the director of the division of corrections of the department of social services. [C24, 27,§4627; C31, 35,§§4627, 5079-d7; C39,§**5019.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.253; 66GA, ch 67,§69, ch 1165,§44]

Analogous provisions, §321.345

321.254 Local authorities restricted. No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the department except by the latter's permission. [C39,§**5019.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.254]

321.255 Local traffic-control devices. Local authorities in their respective jurisdiction shall place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn, or guide traffic. All such traffic-control devices hereafter erected shall conform to the state manual and specifications. [C39,§**5019.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.255]

321.256 Obedience to official traffic-control devices. No driver of a vehicle or motorman of a streetcar shall disobey the instructions of any official traffic-control device placed in accordance with the provisions of this chapter, unless at the time otherwise directed by a police officer. [C39,§5019.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.256]

321.257 Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution" or "Stop" or exhibiting different colored lights successively one at a time the following colors only shall be used and said terms and lights shall indicate as follows:

1. *Green alone or "Go."*

Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection at the time such signal is exhibited.

Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

2. *Yellow alone or "Caution"* when shown following the green or "Go" signal.

Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at the intersection, but if such stop cannot be made in safety a vehicle may be driven cautiously through the intersection.

Pedestrians facing such signal are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right of way to all vehicles.

3. *Red alone or "Stop."* Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection, and shall remain standing until an indication to proceed is shown. A right turn shall be permitted at an intersection by vehicular traffic which has come to a complete stop unless a sign is in place prohibiting such a turn. Any right turn made pursuant to this subsection shall be made in such a manner that it does not interfere with other vehicular or pedestrian traffic lawfully using the intersection.

Vehicular traffic on a one-way highway facing a steady red signal may, after making a stop pursuant to this subsection, cautiously enter the intersection and make a left turn onto an intersecting one-way highway on which traffic travels to the left, unless a sign is in place prohibiting such a turn. Any left turn made pursuant to this subsection shall be made in such a manner that it does not interfere with other vehicular or pedestrian traffic lawfully using the intersection.

No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic, but a vehicle turning right at such intersection shall yield the right of way to a pedestrian lawfully entering such intersection.

4. *Red with green arrow.* Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall not interfere with other traffic or endanger pedestrians lawfully within a crosswalk.

No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

The motorman of any streetcar shall obey all the above signals as applicable to vehicles. [C39,§5019.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.257]

321.258 Flashing signals. Whenever flashing red or yellow signals are used they shall require obedience by vehicular traffic as follows:

1. *Flashing red* (Stop signal). When a red lens is illuminated by rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

2. *Flashing yellow* (Caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution. [C39,§5019.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.258]

321.259 Unauthorized signs, signals or markings. No person shall place, maintain, or display upon or in view of any highway any sign, signal, marking, or device which purports to be or is an imitation of or resembles an official parking sign, curb or other marking, traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, if such sign, signal, marking, or device has not been authorized by the department and local authorities with reference to streets and highways under their jurisdiction and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information of a type that cannot be mistaken for official signs.

Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice. [C39,§5019.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.259]

321.260 Interference with devices, signs, or signals—unlawful possession. Any person who willfully and intentionally, without lawful au-

thority, attempts to or in fact alters, defaces, injures, knocks down, or removes any official traffic-control device, any authorized warning sign or signal or barricade, whether temporary or permanent, any railroad sign or signal, any inscription, shield or insignia on any of such devices, signs, signals, or barricades, or any other part thereof, shall, upon conviction, be punished by imprisonment in the county jail for not more than six months, or fined not more than five hundred dollars, or by both such fine and imprisonment.

It shall be unlawful for any person to have in his possession any official traffic-control device except by reason of his employment. Any person convicted of unauthorized possession of any official traffic-control device shall upon conviction be punished as provided in section 321.482. [C39,§**5019.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.260]

ACCIDENTS

321.261 Death or personal injuries. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of section 321.263. Every such stop shall be made without obstructing traffic more than is necessary.

Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment for not less than thirty days nor more than one year or by fine of not less than one hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment.

The director shall revoke the operator's or chauffeur's license of the person so convicted. [S13,§1571-m23; C24, 27, 31, 35,§§5072, 5074; C39, §**5020.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.261]

Referred to in §321.228

321.262 Damage to vehicle. The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of section 321.263. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor and punished as provided in section 321.482. [S13,§1571-m23; C24, 27, 31, 35,§5079; C39,§**5020.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.262]

Referred to in §321.228

321.263 Information and aid. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

If the accident causes the death of any person, the surviving driver shall not leave the scene of the accident except to seek necessary aid for himself or to report the accident to law enforcement authorities. Before leaving the scene of the accident, the surviving driver shall leave his automobile registration receipt or other identification data at the scene of the accident. After leaving the scene of the accident, the surviving driver shall promptly report the accident by telephone to law enforcement authorities, and shall immediately return to the scene of the accident, or shall inform the authorities where he can be located. [S13,§1571-m23; C24, 27, 31, 35,§§5072, 5079; C39, §**5020.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.263]

Referred to in §§321.228, 321.261, 321.262, 321.555

321.264 Striking unattended vehicle. The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof. [C24, 27, 31, 35,§5079; C39,§**5020.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.264]

Referred to in §321.228

321.265 Striking fixtures upon a highway. The driver of any vehicle involved in an accident resulting only in damage to property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's or chauffeur's license and shall make report of such accident when and as required in section 321.266. [C24, 27, 31, 35, §5079; C39,§**5020.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.265]

Referred to in §321.228

321.266 Reporting accidents.

1. The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately by the quickest

means of communication give notice of such accident to the sheriff of the county in which said accident occurred, or the nearest office of the Iowa highway safety patrol, or to any other peace officer as near as practicable to the place where the accident occurred.

2. The driver of a vehicle involved in an accident resulting in injury to or death of any person, or total property damage to an apparent extent of two hundred fifty dollars or more shall also, within seventy-two hours after such accident, forward a written report of such accident to the department.

3. Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in subsections 1 to 3 of this section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within twenty-four hours after completing such investigation, forward a written report of such accident to the department.

4. Any carrier transporting hazardous materials by rail, air, water, or upon a public highway in this state, in the case of an accident involving the transportation of hazardous materials, shall immediately notify the police radio broadcasting system established by the commissioner of public safety pursuant to section 750.1 or shall notify a peace officer of the county, township, or municipality in which the accident occurs. When a local law enforcement agency is informed of the accident, the agency shall notify the Iowa highway safety patrol. For purposes of this section "hazardous substances" shall mean hazardous substances as defined in the federal Transportation Safety Act of 1974 [Public Law 93-633, section 103]. A person who violates any provision of this subsection shall, upon conviction, be guilty of a misdemeanor.* [S13,§1571 -m23; C24,§§5073, 5075, 5104; C27, 31, 35,§§5073, 5075, 5105-a35, 5105-c21; C39,§**5020.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.266; 66GA, ch 143,§1, ch 1172,§1, ch 1173,§1]

Referred to in §§321.228, 321.238, 321.265, 321.267, 321.271
*Punishment, see §321.482

321.267 Supplemental reports. The department may require any driver of a vehicle involved in an accident of which report must be made as provided in section 321.266 to file supplemental reports whenever the original report is insufficient in the opinion of the department and may require witnesses of accidents to render reports to the department. [C39, §**5020.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.267]

Referred to in §321.228

321.268 Driver unable to report. Whenever the driver of a vehicle is physically incapable of making a required accident report and there was another occupant in the vehicle at the time of the accident capable of making a report, such occupant shall make or cause to be made said report. [C39,§**5020.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.268]

Referred to in §321.228

321.269 Accident report forms. The department shall prepare and upon request supply to police departments, coroners, sheriffs, and other suitable agencies or individuals, forms for accident reports required hereunder, which reports shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, condition then existing, and the persons and vehicles involved.

Every required accident report shall be made on a form approved by the department if said form is available. [C39,§**5020.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.269]

Referred to in §321.228

321.270 Repealed by 58GA, ch 258,§14.

321.271 Reports confidential—without prejudice—exceptions. All accident reports filed by a driver of a vehicle involved in an accident as required under section 321.266 shall be in writing. The report shall be without prejudice to the individual so reporting and shall be for the confidential use of the department, except that upon the request of any person involved in the accident, his insurance company or its agent, or the attorney for such person, the department shall disclose the identity and address of the person involved in the accident. The written report filed with the department shall not be admissible in or used in evidence in any civil or criminal case arising out of the facts on which the report is based.

All written reports filed by a law enforcement officer as required under section 321.266 shall be made available to any party to an accident, his insurance company or its agent, or his attorney on written request to the department and the payment of a fee of two dollars for each copy. [C39,§**5020.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.271]

Referred to in §§321.228, 321.273

321.272 Tabulation of reports. The department shall tabulate and may analyze all accident reports and shall publish annually or at more frequent intervals statistical information based thereon as to the number and circumstances of traffic accidents. [C39,§**5020.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.272]

Referred to in §321.228

321.273 City may require reports. Any incorporated city or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of such accident or a copy of any report herein required to be filed with the department. All such reports shall be for the confidential use of the city department and subject to the provisions of section 321.271. [C39,§**5020.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.273]

Referred to in §321.228

321.274 Accidents in cities over 15,000. When the accident occurs within the corporate limits of any city of fifteen thousand or more population, the accident and all information in

connection therewith, as required in this chapter, shall be reported at the office of the chief of police and when reported elsewhere shall not constitute a compliance with the provisions of this section. [S13,§1571-m23; C24, 27, 31, 35,§5073; C39,§**5020.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.274]

Referred to in §321.228

321.275 Operation of motorcycles.

1. Every person operating a motorcycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle except those rights and duties which by their nature can have no application.

2. A person operating a motorcycle shall ride only upon the permanent and regular attached seat thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear of the operator.

3. A person shall ride upon a motorcycle only when sitting astride the seat, facing forward with one leg on either side of the motorcycle.

4. No person shall operate a motorcycle while carrying any package, bundle, or other article which prevents him from keeping both hands on the handlebars.

5. No operator shall carry any person, nor shall any other person ride, in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

6. All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane with the exception that this shall not apply to motorcycles operated two abreast in a single lane.

7. The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

8. No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

9. Motorcycles shall not be operated more than two abreast in a single lane.

10. Any motorcycle carrying a person other than in a sidecar or enclosed cab shall be equipped with foot rests for such passenger.

11. No person shall operate any motorcycle with handlebars more than fifteen inches in height above that portion of the seat occupied by the operator.

12. The above regulations in regard to motorcycles shall not apply to motorcycles or motor scooters when used in a parade authorized by proper permit from local authorities.

13. The provisions of this section shall apply to motorized bicycles. [C71, 73, 75,§321.275; 66GA, ch 1165,§45]

This section amends chapter 321, see 63GA, ch 1148,§1

CRIMINAL OFFENSES

321.276 Repealed by 52GA, ch 172,§35.

321.277 Reckless driving. Any person who drives any vehicle in such manner as to indicate either a willful or a wanton disregard for the safety of persons or property is guilty of reckless driving.

Every person convicted of reckless driving shall be punished upon a conviction by imprisonment for a period of not more than thirty days, or by fine of not less than twenty-five dollars, nor more than one hundred dollars. [C73,§4071; C97,§5039; S13,§1571-m19; C24, 27, 31, 35,§5028; C39,§§**5022.04, 5022.05**; C46, 50, 54, 58, 62,§§321.283, 321.284; C66, 71, 73,§321.283; C75,§321.277]

Referred to in §§321.228, 321.233

321.278 Drag racing prohibited. No person shall engage in any motor vehicle speed contest or exhibition of speed on any street or highway of this state and no person shall aid or abet any motor vehicle speed contest or speed exhibition on any street or highway of this state, except that a passenger shall not be considered as aiding and abetting. Motor vehicle speed contest or exhibition of speed are defined as one or more persons competing in speed in excess of the applicable speed limit in vehicles on the public streets or highways.

Any person who violates the provisions of this section shall be guilty of drag racing and upon conviction shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C66, 71, 73,§321.284; C75, §321.278]

321.279 Repealed by 52GA, ch 172,§35.

321.280 Assaults and homicide. A conviction of the violation of any of the provisions of this chapter shall not be a bar to a prosecution for an assault or for a homicide committed by any person in operating motor vehicles. [S13,§1571-m30; C24, 27, 31, 35,§5091; C39, §**5022.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.280]

Referred to in §§321.228, 321.233

321.281 Operating while intoxicated or drugged — copy of judgment to commission — commitment of defendant for treatment. Whoever operates a motor vehicle upon the public highways of this state while under the influence of an alcoholic beverage, a narcotic, hypnotic or other drug, or any combination of such substances shall, upon conviction or a plea of guilty, be punished for the first offense by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not to exceed one year, or by both such fine and imprisonment; for the second offense by a fine of not less than five hundred dollars, nor more than one thousand dollars, or by imprisonment in the penitentiary for a period of not to exceed one year, or by both such fine and imprisonment; and for a third offense and

each offense thereafter by imprisonment in the penitentiary for any term of years not less than one or more than five, and the court may pronounce sentence for a lesser period than the maximum, the provisions of the indeterminate sentence law to the contrary notwithstanding.

In lieu of, or prior to imposition of, the punishment above described for second offense, third offense and each offense thereafter, the court upon hearing may commit the defendant for treatment of alcoholism or drug addiction or dependency to any hospital or institution in Iowa providing such treatment. The court may prescribe the length of time for such treatment or it may request that the hospital to which the person is committed immediately report to the court when the person has received maximum benefit from the program of the hospital or institution or has recovered from his addiction, dependency or tendency to chronically abuse alcohol or drugs. A person committed under this section shall be considered a state patient.

The court in pronouncing sentence may provide as to the period during which a new license to operate a motor vehicle shall not be issued to the defendant, provided said period shall not be less than one hundred twenty days for conviction of a first offense of operating a motor vehicle while under the influence of an alcoholic beverage, a narcotic, hypnotic or other drug, or any combination of such substances; of not less than two hundred forty days for conviction of a second offense of such charge; and not less than one year for conviction of a third offense of such charge and for each offense thereafter, notwithstanding the provisions of section 321.212; and the clerk of court shall forthwith certify to the department a true copy of the judgment sentencing the defendant under this section. The department may receive an application for and shall grant a new license at the expiration of the period provided in the judgment of the court notwithstanding the provisions of sections 321.177 and 321.212.

This section shall not apply to a person operating a motor vehicle while under the influence of a narcotic, hypnotic or other drug if such substances were prescribed for such person and have been taken under such prescription and in accordance with the directions of a reputable doctor of medicine, provided however there is no evidence of the consumption of alcohol and further provided said doctor of medicine has not directed such person to refrain from operating a motor vehicle.

For the purposes of this section, evidence that there was, at the time, more than ten hundredths of one per centum by weight of alcohol in his blood shall be admitted as presumptive evidence that the defendant was under the influence of an alcoholic beverage. No previous conviction for, or plea of guilty to, an offense under this section occurring more than six years prior to the date of the violation being charged shall be used to determine that the violation being charged is a second, third or subsequent offense. [S13, §1571-m23; C24, 27, 31, 35,§5027; C39,§5022.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.281; 66GA, ch 1056,§22]

Referred to in §§321.228, 321.233, 321.283, 321B.2, 602.18(11)
"Alcoholic beverage" defined, see §321B.2

321.282 Violations. If any person who has been convicted or pleaded guilty to driving or operating a motor vehicle upon the public highways of this state while in an intoxicated condition is found driving or operating any motor vehicle in violation of the provisions of sections 321.174 and 321.209 he shall, without regard to any other punishment provided by law, be imprisoned in the county jail for a period of not to exceed thirty days. [C31, 35,§5027-d2; C39,§5022.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.282]

Referred to in §§321.228, 321.233

OMVUI VIOLATIONS—INSTRUCTION COURSE

321.283 Court order for instruction to drinking drivers.

1. *Definitions.* As used in this division, unless the context otherwise requires:

a. "Course for drinking drivers" means an approved course designed to inform the offender about drinking and driving and encourage the offender to assess his own drinking and driving behavior in order to select practical alternatives.

b. "Satisfactory completion of a course" means receiving at the completion of a course a grade from the course instructor of "C" or "2.0," or better.

c. "Drivers license" means a license to drive a motor vehicle as an operator or chauffeur.

2. *Court order.* After the conviction of a person for operating a motor vehicle while under the influence of an alcoholic beverage, the court in addition to its power to commit the defendant for treatment of alcoholism under section 321.281, may in lieu of, or prior to or after the imposition of punishment for a first offense or prior to or after the imposition of punishment for any subsequent offense, order the defendant, at his own expense, to enroll, attend and successfully complete a course for drinking drivers. A copy of the order shall be forwarded to the department.

3. *Referred on conviction.* After any conviction for operating a motor vehicle while under the influence of an alcoholic beverage under section 321.281, the court may refer the defendant for treatment at a facility as defined in sections 125.1 to 125.26 and designated by the division on alcoholism. The court may prescribe the length of time for treatment or it may be left to the discretion of the facility to which the defendant was referred. A person referred under this section shall be considered a state patient, and charges and costs for treatment shall be paid for in the manner provided for payment for treatment of alcoholics who have no legal residence in this state.

4. *License revoked.* When the court orders a person to enroll, attend and successfully complete a course for drinking drivers, the court

shall also order that the revocation of the person's drivers license shall be for an indefinite period and until the required course is successfully completed and proof of completion has been filed with the department and the provisions of chapter 321A have been complied with.

5. *Training course not available.* No person shall have his drivers license revoked indefinitely under this division for failure to enroll in a course where the required course is not taught within a radius of one hundred miles from his usual residence.

6. *Temporary permit.* Any person required to attend a course by the provisions of this division, who is subject to a drivers license suspension or revocation, may be issued a temporary driving permit by the department restricted to driving to and from his home, place of employment, in his employment and the location of the required course. Any person who does not receive a temporary driving permit may after the period of license suspension or revocation under section 321.281 have his drivers license reissued subject to suspension for failure to comply with the provisions of this division. This section shall not permit the issuance of a temporary driving permit or reissuance of a drivers license where the provisions of chapter 321A have not been complied with.

Successful completion of a course required by this division shall not reverse a drivers license suspension or revocation or reduce the length of a suspension or revocation under section 321.281; however, the director may reduce the length of a suspension or revocation contingent upon successful completion of a course for drinking drivers.

7. *Course offered at area schools.* The course provided in this division shall be offered on a regular basis at each area school as defined in section 280A.2.

Enrollment in the courses shall not be limited to persons ordered to enroll, attend and successfully complete the course under the provisions of subsection 2, and any person convicted of operating a motor vehicle while under the influence of an alcoholic beverage who was not ordered to enroll, shall be allowed to enroll and attend a course for drinking drivers.

The course required by this division shall be taught by the area schools under the department of public instruction and approved by the department.

The department of public instruction shall establish reasonable fees to defray the expense of obtaining classroom space, instructor salaries, and class materials. No person shall be denied enrollment in a course by reason of his indigency.

8. *No discharge from employment.* No employer shall discharge a person from his employment solely for the reason of work absence to attend a course required by this division. Any employer who violates this section shall be liable for triple damages occasioned by the unlawful discharge from employment.

9. *Course available within one year.* The course required by this division shall, within the limit of available funds and instructors, be open for enrollment not later than one year after July 1, 1972.

10. *Hearing after revocation.* Upon written request the department shall afford a person having his drivers license revoked indefinitely under the provisions of this division an opportunity for a hearing before the director, within twenty days after receipt of the request and in the county where the licensee resides unless another county is mutually agreed upon. Following the hearing the revocation may be rescinded if the director determines the revocation is not authorized by this division.

11. *List of places and dates where course available.* The department of public instruction shall prepare a list of the locations of the courses taught under this division, the dates and times taught, the procedure for enrollment, and the schedule of course fees. The list shall be kept current and a copy of the list shall be sent to each court having jurisdiction over offenses provided in chapter 321.

12. *Data preserved.* The department of public instruction shall maintain enrollment, attendance, successful and nonsuccessful completion data on the persons ordered to enroll, attend and successfully complete a course for drinking drivers. This data shall be regularly forwarded to the department.

13. *Fee for temporary permit.* The fee for a temporary driving permit under subsection 6 shall be three dollars. The temporary driving permit must be in the permittee's immediate possession while operating a motor vehicle and shall be invalid when the permittee is issued a drivers license. The temporary driving permit shall be canceled upon conviction for a moving traffic violation.

14. *Penalty.* Any person violating a restriction or a temporary driving permit issued under subsection 6 shall be guilty of a misdemeanor. [C73,§§321B.15–321B.28; C75,§321.283; 66GA, ch 1103,§19]

Sections 321.283 and 321.284, Code 1973, transferred to 321.277 and 321.278

321.284 Reserved.

SPEED RESTRICTIONS

321.285 Speed restrictions. Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface and width of the highway and of any other conditions then existing, and no person shall drive any vehicle upon a highway at a speed greater than will permit him to bring it to a stop within the assured clear distance

ahead, such driver having the right to assume, however, that all persons using said highway will observe the law.

The following shall be the lawful speed except as hereinbefore or hereinafter modified, and any speed in excess thereof shall be unlawful:

1. Twenty miles per hour in any business district.

2. Twenty-five miles per hour in any residence or school district.

3. Forty miles per hour for any motor vehicle drawing another vehicle, except as hereinafter specified.

4. Forty-five miles per hour in any suburban district. Each school district as defined in subsection 59 of section 321.1 shall be marked by distinctive signs as provided by the current manual of uniform traffic control devices adopted by the department and placed on the highway at the limits of such school district.

5. Fifty-five miles per hour from sunset to sunrise and fifty-five miles per hour from sunrise to sunset.

6. Fifty-five miles per hour for any motor vehicle drawing a one- or two-wheel trailer or a tandem wheel trailer not more than thirty-two feet in length including towing arm and not more than eight feet in width.

7. Reasonable and proper, but not greater than fifty-five miles per hour at any time between sunrise and sunset, and not greater than fifty miles per hour at any time between sunset and sunrise, on secondary roads unless such roads are surfaced with concrete or asphalt or a combination of both, in which case the speed limits shall be the same as provided in subsection 5 of this section. Whenever the board of supervisors of any county shall determine upon the basis of an engineering and traffic investigation conducted by the department when so requested by said board that the speed limit on any secondary road is greater than is reasonable and proper under the conditions found to exist at any intersection or other place or upon any part of a secondary road, said board shall determine and declare a reasonable and proper speed limit thereat. Such speed limits as determined by the board of supervisors shall be effective when appropriate signs giving notice thereof are erected by the board of supervisors at such intersection or other place or part of the highway.

8. Notwithstanding any other speed restrictions, the speed limits for all vehicular traffic, except vehicles subject to the provisions of section 321.286 on fully controlled-access, divided, multilaned highways including the national system of interstate highways designated by the federal highway administration and this state [23 U.S.C. 103 *(d)*] shall be fifty-five miles per hour. However, the department or the cities, with the approval of the department, may establish a lower speed limit upon such highways located within the corporate limits of any city used as city alternate routes, commonly referred to as "freeways." For the purposes of this subsection a fully controlled-access highway is a highway that gives preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at grade or direct private driveway connections. It is further provided that a minimum speed of forty miles per hour, road conditions permitting, shall be established on the highways referred to in this subsection.

It is further provided that any kind of vehicle, implement, or conveyance incapable of attaining and maintaining a speed of forty miles per hour shall be prohibited from using the interstate system. [S13,§§1571-m19,-m20; C24, 27, 31, 35,§§5029, 5030; C39,§**5023.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.285; 66GA, ch 180,§1]

Referred to in §§321.291, 321.292, 321.293
Speed limits at state institutions, §262.68

321.286 Truck speed limits. It shall be unlawful for the driver of a freight-carrying vehicle, with a gross weight of over five thousand pounds, to drive the same at a speed exceeding the following:

1. Fifty-five miles per hour on all fully controlled-access, divided, multilaned highways including interstate highways.

2. Fifty-five miles per hour on all primary roads.

3. Fifty miles per hour on all secondary roads.

For the purposes of this section, interstate highways are those designated by the federal bureau of public roads and this state, and primary and secondary roads shall be those designated by the federal bureau of public roads and this state. [S13,§§1571-m19,-m20; C24, 27, 31, 35,§5029; C39,§**5023.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.286; 66GA, ch 180,§2]

Referred to in §§321.285, 321.291, 321.292

321.287 Bus speed limits. No passenger-carrying motor vehicle used as a common carrier, except school buses, shall be driven upon the highways at a greater rate of speed than fifty-five miles per hour at any time. No school bus shall be operated in violation of section 321.377. [C24,§5104; C27, 31, 35,§5105-a34; C39, §**5023.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.287; 66GA, ch 180,§3]

Referred to in §§321.291, 321.292

321.288 Control of vehicle. A person operating a motor vehicle shall have the same under control at all times and shall reduce the speed to a reasonable and proper rate:

1. When approaching and passing a person walking in the traveled portion of the public highway.

2. When approaching and passing an animal which is being led, ridden, or driven upon a public highway.

3. When approaching and traversing a crossing or intersection of public highways, or a bridge, or a sharp turn, or a curve, or a steep descent, in a public highway.

4. When approaching and passing a fusee, flares, red reflector electric lanterns, red reflectors or red flags displayed in accordance with section 321.448, or an emergency vehicle displaying a revolving or flashing light.

5. When approaching and passing a slow moving vehicle displaying a reflective device as provided by section 321.383. [S13,§1571-m18; C24, 27, 31, 35,§5031; C39,§**5023.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.288; 66GA, ch 1165, §§46, 47]

321.289 Speed signs — duty to install. The department shall furnish and place on primary roads or on extensions of primary roads within any city suitable standard signs showing the points at which the rate of speed changes and the maximum rate of speed in the district which the vehicle is entering. On all other main highways the city shall furnish and erect suitable signs giving similar information to traffic on such highways. [S13, §1571-m20; C24,§5030; C27, 31, 35,§5030-b2; C39, §**5023.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.289]

321.290 Special restrictions. Whenever the department shall determine upon the basis of an engineering and traffic investigation that any speed limit hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the primary road system or upon any part of a primary road extension, said department shall determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or part of the highway.

Whenever the council in any city shall determine upon the basis of an engineering and traffic investigation that any speed limit hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the city street system, except primary road extensions, said council shall determine and adopt by ordinance such higher or lower speed limit as it deems reasonable and safe thereat. Such speed limit shall be effective when proper and appropriate signs giving notice thereof are erected at such intersections or other place or part of the street. [C39,§**5023.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.290]

321.291 Information or notice. In every charge of violation of sections 321.285 to 321.287 the information, also the notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the speed limit applicable within the district or at the location. [C39,§**5023.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.291]

321.292 Civil action unaffected. The foregoing provisions of sections 321.285 to 321.287 shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence upon the part of the defendant as the proximate cause of an accident. [C39, §**5023.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.292]

321.293 Local authorities may alter limits. Local authorities in their respective jurisdiction may in their discretion subject to the approval of the department authorize by ordinance higher speeds than those stated in section 321.285 upon through highways or upon highways or portions thereof where stop or yield signs have been erected at the entrances thereto provided signs are erected giving notice of the authorized speed, but local authorities shall not have authority to authorize by ordinance a speed in excess of fifty-five miles per hour. If local authorities fail to authorize by ordinance higher speeds than those stated in section 321.285 upon through highways or upon highways or portions thereof where stop signs have been erected at the entrances thereto, the department may recommend, upon the basis of an engineering and traffic investigation, to the local authorities that the speed limit be increased. If local authorities fail to increase the speed limit upon said recommendation of the department, said department shall declare a reasonable and safe speed limit which shall be effective when appropriate signs are erected giving notice thereof. [C39,§**5023.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.293]

321.294 Minimum speed regulation. No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law. Peace officers are hereby authorized to enforce this provision by directions to drivers, and in the event of apparent willful disobedience to this provision and refusal to comply with direction of an officer in accordance herewith the continued slow operation by a driver shall be a misdemeanor, and be punished as provided in section 321.482. [C31, 35,§5021-c1; C39,§**5023.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.294]

See also §321.382

321.295 Limitation on bridge or elevated structures. No person shall drive a vehicle on any public bridge or elevated structure at a speed which is greater than the maximum speed permitted under this chapter on the street or highway at a point where said street or highway joins said bridge or elevated structure, provided that if the maximum speed permitted on said street or highway differs from the maximum speed on any other street or highway joining said bridge or elevated structure, then the lowest of said speeds shall be the maximum speed limit on said bridge or elevated structure, subject to the following:

The department upon request from any local authority shall, or upon its own initiative may, conduct an investigation of any bridge

or other elevated structure constituting a part of a highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this chapter, the department shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of two hundred feet before each end of such structure.

No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is sign-posted as provided in this section.

Upon the trial of any person charged with driving a vehicle at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, proof of such determination of the maximum speed by said department and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure. [C39,§**5023.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.295]

321.296 Repealed by 66GA, ch 1165,§37.

DRIVING ON RIGHT SIDE OF ROADWAY—OVERTAKING AND PASSING

321.297 Driving on right-hand side of roadway—exceptions.

1. A vehicle shall be driven upon the right half of the roadway upon all roadways of sufficient width, except as follows:

a. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement.

b. When an obstruction exists making it necessary to drive to the left of the center of the roadway, provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the roadway within such distance as to constitute an immediate hazard.

c. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon.

d. Upon a roadway restricted to one-way traffic.

2. Any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic upon all roadways, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection, an alley, private road or driveway.

3. A vehicle shall not be driven upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, to the left of the center line of the roadway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subsection 1, paragraph *"b."* This subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road, or driveway. [S13,§1571-m18; C24, 27, 31, 35, §5019; C39,§**5024.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.297]

Referred to in §321.298

321.298 Meeting and turning to right. Except as otherwise provided in section 321.297, vehicles or persons on horseback meeting each other on any roadway shall yield one-half of the roadway by turning to the right. [R60, §908; C73,§1000; C97,§1569; S13,§1569; C24, 27, 31, 35,§5020; C39,§**5024.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.298]

321.299 Overtaking a vehicle. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. [S13,§§1569, 1571-m18; C24, 27, 31, 35, §§5021, 5022; C39,§**5024.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.299]

Passing on right, §321.302

321.300 Failure to recognize signal. Any driver of a vehicle that is overtaken by a faster moving vehicle who fails to heed the signal of the overtaking vehicle when it is given under such circumstances that he could, by the exercise of ordinary care and observation and precaution, hear such signal and who fails to yield that part of the traveled way as herein provided, shall be guilty of a misdemeanor punishable as provided in section 321.482. [C24, 27, 31, 35,§5023; C39,§**5024.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.300]

Referred to in §321.301

321.301 Burden of proof. Upon proof that a signal was given as contemplated by section 321.300, the burden shall rest upon the accused to prove that he did not hear said signal. [C24, 27, 31, 35,§5024; C39,§**5024.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.301]

321.302 Overtaking on the right. The driver of a vehicle may overtake and pass upon the right of another vehicle which is making or about to make a left turn.

The driver of a vehicle may overtake and, allowing sufficient clearance, pass another vehicle proceeding in the same direction either upon the left or upon the right on a roadway with unobstructed pavement of sufficient width for four or more lines of moving traffic when such movement can be made in safety. No person shall drive off the pavement or upon the shoulder of the roadway in overtaking or passing on the right. [C39,§**5024.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.302]

321.303 Limitations on overtaking on the left. No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within one hundred feet of any vehicle approaching from the opposite direction. [C39, §**5024.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.303]

321.304 Prohibited passing. No vehicle shall, in overtaking and passing another vehicle or at any other time, be driven to the left side of the roadway under the following conditions:

1. When approaching the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed for a distance of approximately seven hundred feet.

2. When approaching within one hundred feet of any narrow bridge, viaduct, or tunnel, when so signposted, or when approaching within one hundred feet of or traversing any intersection or railroad grade crossing.

3. Where official signs are in place directing that traffic keep to the right or a distinctive center line or off-center line is marked, which distinctive line also so directs traffic as declared in the sign manual adopted by the department of transportation. [C35,§5024-e1; C39,§**5024.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.304; 66GA, ch 67,§69]

321.305 One-way roadways and rotary traffic islands. Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.

A vehicle passing around a rotary traffic island shall be driven only to the right of such island. [C39,§**5024.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.305]

321.306 Roadways laned for traffic. Whenever any roadway has been divided into three or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

Official signs may be erected directing slow-moving traffic to use a designated lane or allocating specified lanes to traffic moving in the same direction and drivers of vehicles shall obey the directions of every such sign.

Vehicles moving in a lane designated for slow-moving traffic shall yield the right of way to vehicles moving in the same direction in a lane not so designated when such lanes merge to form a single lane.

A portion of a highway provided with a lane for slow-moving vehicles does not become a roadway marked for three lanes of traffic. [C39,§**5024.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.306]

321.307 Following too closely. The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway. [C39,§**5024.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.307]

321.308 Motor trucks and towed vehicles—distance requirements. The driver of any motor truck, or of a motor vehicle drawing another vehicle, when traveling upon a roadway, outside of a business or residence district shall not follow within three hundred feet of another motor truck, or of a motor vehicle drawing another vehicle. The provisions of this section shall not be construed to prevent overtaking and passing nor shall the same apply upon any lane specially designated for use by motor trucks. [C31, 35,§5067-d9; C39, §**5024.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.308]

See §321.309 for convoys or caravans

321.309 Towing — convoys — drawbars. No person shall pull or tow by motor vehicle, for hire, another motor vehicle over any highway outside the limits of any incorporated city, except in case of temporary movement of a disabled motor vehicle to the place where repairs will be made, unless such person has complied with the provisions of sections 321.57 and 321.58. Provided, however, if such person is a nonresident of the state of Iowa and has complied with the laws of the state of his

residence governing licensing and registration as a transporter of motor vehicles he shall not be required to pay the fee provided in section 321.58 but only to submit proof of his status as a bona fide manufacturer or transporter as may reasonably be required by the department.

Every person pulling or towing by motor vehicle another motor vehicle in convoy or caravan shall maintain a distance of at least five hundred feet between the units of said convoy or caravan.

The drawbar or towing arm between a motor vehicle pulling or towing another motor vehicle shall be of a type approved by the commissioner, except in case of the temporary movement of a disabled vehicle in an emergency situation. [C31, 35,§5067-d9; C39,§**5024.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.309]

47GA, ch 134,§339-a1, editorially divided

321.310 Towing four-wheeled trailers. No motor vehicle shall tow any four-wheeled trailer with a steering axle, or more than one trailer or semitrailer, or both in combination, with the exception that this section shall not apply to any motor truck, truck tractor or road tractor registered at a combined gross weight of ten tons or more nor to a farm tractor towing a four-wheeled trailer, or to any farm tractor or motor vehicle towing implements of husbandry, or a wagon box trailer used by a farmer in transporting produce, farm products or supplies hauled to and from market.

Any four-wheeled trailer towed by a truck tractor or road tractor shall be registered under the semitrailer provisions of section 321.122, provided, however, that the provisions of this section shall not be applicable to motor vehicles drawing wagon box trailers used by a farmer in transporting produce, farm products or supplies hauled to and from market. [C39,§**5024.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.310]

TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING

321.311 Turning at intersections. The driver of a vehicle intending to turn at an intersection shall do so as follows:

Both the approach for a right turn and right turn shall be made as close as practical to the right-hand curb or edge of the roadway.

Approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and after entering the intersection the left turn shall be made so as to depart from the intersection to the right of the center line of the roadway being entered.

Approach for a left turn from a two-way street into a one-way street shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection. A left turn from a one-way street into two-way street shall be made by passing to the right of the center line of the street being entered upon leaving the intersection.

Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs. [S13,§1571-m18; C24, 27, 31, 35,§5033; C39,§**5025.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.311]

321.312 Turning on curve or crest of grade. No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade or hill, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet. [C39,§**5025.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.312]

321.313 Starting parked vehicle. No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety. [C39,§**5025.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.313]

321.314 When signal required. No person shall turn a vehicle from a direct course upon a highway unless and until such movement can be made with reasonable safety and then only after giving a clearly audible signal by sounding the horn if any pedestrian may be affected by such movement or after giving an appropriate signal in the manner hereinafter provided in the event any other vehicle may be affected by such movement. [S13,§1571-m18; C24, 27, 31, 35,§5032; C39,§**5025.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.314]

321.315 Signal continuous. A signal of intention to turn right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning when the speed limit is forty-five miles per hour or less and a continuous signal during not less than the last three hundred feet when the speed limit is in excess of forty-five miles per hour. [C39,§**5025.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.315]

321.316 Stopping. No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal. [S13,§1571-m18; C24, 27, 31, 35,§5032; C39,§**5025.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.316]

321.317 Signals by hand and arm or signal device.

1. The signals required under the provisions of this chapter may be given either by means of the hand and arm as provided in section

321.318, or by a mechanical or electrical directional signal device or light of a type approved by the department and conforming to the provisions of this chapter relating thereto.

2. Directional signal devices shall be designed with a white, yellow or amber lamp or lamps to be displayed on the front of vehicles and with a lamp or lamps of red, yellow or amber to be displayed on the rear of vehicles. Such devices shall be capable of clearly indicating any intention to turn either to the right or to the left and shall be visible and understandable during both daylight and darkness from a distance of at least one hundred feet from the front and rear of a vehicle equipped therewith.

3. After the thirty-first day of December, 1953, it shall be unlawful for any person to sell or offer for sale or operate on the highways of the state of Iowa any vehicle subject to registration under the provisions of this chapter which has never been registered in this or any other state prior to January 1, 1954, unless such vehicle is equipped with a directional signal device of a type approved by the department and is in compliance with the provisions of subsection 2 of this section. Motorcycles, motor scooters and semitrailers and trailers less than forty inches in width are exempt from the provisions of this section.

4. When a vehicle is equipped with a directional signal device, such device shall at all times be maintained in good working condition. No directional signal device shall project a glaring or dazzling light. All directional signal devices shall be self-illuminated when in use while other lamps on the vehicle are lighted.

5. Whenever any vehicle or combination of vehicles is disabled or for other reason may present a vehicular traffic hazard requiring unusual care in approaching, overtaking or passing during the hours of darkness, the operator of such vehicles may display on such vehicle or combination of vehicles four directional signals of a type complying with the provisions of this section relating to directional signal devices in simultaneous operation. The provisions of this subsection shall not be construed to exempt any vehicle or combination of vehicles from compliance with the provisions of sections 321.447 and 321.448. [S13, §1571-m18; C24, 27, 31, 35,§5032; C39,**§5025.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.317; 66GA, ch 1165,§48]

Referred to in §327A.13

321.318 Method of giving hand and arm signals. All signals herein required which may be given by hand and arm shall when so given be given from the left side of the vehicle and the following manner and interpretation thereof is suggested:

1. Left turn.—Hand and arm extended horizontally.

2. Right turn.—Hand and arm extended upward.

3. Stop or decrease of speed.—Hand and arm extended downward. [C39,**§5025.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.318]

Referred to in §321.317(1)

RIGHT OF WAY

321.319 Entering intersections from different highways. When two vehicles enter an intersection from different highways or public streets at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

The foregoing rule is modified at through highways and otherwise as hereinafter stated in this chapter. [S13,§1571-m18; C24, 27, 31, 35, §5035; C39,**§5026.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.319]

321.320 Left turns—yielding. The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right of way to all vehicles approaching from the opposite direction which are within the intersection or so close thereto as to constitute an immediate hazard, then said driver, having so yielded and having given a signal when and as required by this chapter, may make such left turn. [S13,§1571-m18; C24, 27, 31, 35,§5035; C39,**§5026.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.320]

See §321.1, (49, 54)

321.321 Entering through highways. The driver of a vehicle shall stop or yield as required by this chapter at the entrance to a through highway and shall yield the right of way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said through highway as to constitute a hazard, but said driver having so yielded may proceed cautiously and with due care enter said through highway. [C27,§§5079-b2,-b3; C31, 35, §§5079-b2,-b3,-d2,-d3; C39,**§5026.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.321]

321.322 Entering stop or yield intersection. The driver of a vehicle shall likewise stop or yield in obedience to a stop or yield sign as required herein at an intersection where a stop or yield sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop or yield which are within the intersection or approaching so closely as to constitute a hazard, but may then proceed.

The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions or shall stop if necessary and shall yield the right of way to any pedestrian legally crossing the roadway on which he is driving, and to any vehicle in the intersection or approaching on another highway so closely as to constitute a hazard. Said driver having so yielded may proceed with caution. [C27,§§5079-b2,-b3; C31, 35,§§5079-b2,-b3,-d2,-d3; C39,**§5026.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.322]

321.323 Backing vehicle on highway. No person shall operate a vehicle on a highway in reverse gear unless and until such operation can be made with reasonable safety, and shall yield the right of way to any approaching vehicle on the highway or intersecting highway thereto which is so close thereto as to constitute an immediate hazard. [C66, 71, 73, 75,§321.323]

321.324 Operation on approach of emergency vehicles. Upon the immediate approach of an authorized emergency vehicle with any lamp or device displaying a red light, or an authorized emergency vehicle of a fire department displaying a blue light, or when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right hand edge or curb of the highway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. For the purposes of this section, "red light" or "blue light" means a light or lighting device that, when illuminated, will exhibit a solid flashing or strobing red or blue light.

Upon the approach of an authorized emergency vehicle, as above stated, the motorman of every streetcar shall immediately stop such car clear of any intersection and keep it in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway. [C39,§5026.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.324; 66GA, ch 1165,§49]

See also §321.231

PEDESTRIANS RIGHTS AND DUTIES

321.325 Pedestrians subject to signals. Pedestrians shall be subject to traffic-control signals at intersections as heretofore declared in this chapter, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in sections 321.327 to 321.331. [C39,§5027.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.325]

321.326 Pedestrians on left. Pedestrians shall at all times when walking on or along a highway, walk on the left side of such highway. [C39,§5027.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.326]

321.327 Pedestrians right of way. Where traffic-control signals are not in place or in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this chapter. [C39,§5027.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.327]

Referred to in §321.325

321.328 Crossing at other than crosswalk. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway except that cities may restrict such a crossing by ordinance.

Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

Where traffic-control signals are in operation at any place not an intersection pedestrians shall not cross at any place except in a marked crosswalk. [C39,§5027.04; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.328]

Referred to in §§321.325, 321.329

321.329 Duty of driver—pedestrians crossing or working on highways. Notwithstanding the provisions of section 321.328 every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise due care upon observing any child or any confused or incapacitated person upon a roadway.

Every driver of a vehicle shall yield the right of way to pedestrian workers engaged in maintenance or construction work on a highway whenever the driver is notified of the presence of such workers by a flagman or a warning sign. [C39,§5027.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.329]

Referred to in §321.325

321.330 Use of crosswalks. Pedestrians shall move, whenever practicable, upon the right half of crosswalks. [C39,§5027.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.330]

Referred to in §321.325

321.331 Pedestrians soliciting rides. No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any private vehicle.

Nothing in this section or this chapter shall be construed so as to prevent any pedestrian from standing on that portion of the highway or roadway, not ordinarily used for vehicular traffic, for the purpose of soliciting a ride from the driver of any vehicle. [C39,§5027.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.331]

Referred to in §321.325

321.332 White canes restricted to blind persons. For the purpose of guarding against accidents in traffic on the public thoroughfares, it shall be unlawful for any person except persons wholly or partially blind to carry or use on the streets, highways, and public places of the state any white canes or walking sticks which are white in color or white tipped with red. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.332]

Referred to in §§321.334, 601D.8

321.333 Duty of drivers. Any driver of a vehicle or operator of a motor-driven vehicle who approaches or comes in contact with a person wholly or partially blind carrying a cane or walking stick white in color or white tipped with red, or being led by a guide dog wearing a harness and walking on either side of or slightly in front of said blind person, shall immediately come to a complete stop, and take such precautions as may be necessary to avoid accident or injury to the person carrying a cane or walking stick white in color or white tipped with red or being led by a guide dog. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.333]

Referred to in §601D.8

321.334 Penalties. Any person who shall carry a cane or walking stick such as prescribed in section 321.332 contrary to the provisions hereof, or who shall fail to heed the approach of a person lawfully so carrying a cane or walking stick white in color or white tipped with red, or being led by a guide dog, or who shall fail to immediately come to a complete stop, and take such precautions against accident or injury to such person, shall be fined not less than one dollar nor more than one hundred dollars for each offense. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.334]

STREETCARS AND SAFETY ZONES

321.335 to 321.339 Repealed by 66GA, ch 176,§33.

321.340 Driving through safety zone. No vehicle shall at any time be driven through or within a safety zone. [C39,§**5028.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.340]

SPECIAL STOPS REQUIRED

321.341 Obedience to signal of train. Whenever any person driving a vehicle approaches a railroad grade crossing and warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a train, the driver of such vehicle shall stop within fifty feet but not less than ten feet from the nearest track of such railroad and shall not proceed until he can do so safely.

The driver of a vehicle shall stop and remain standing and not traverse such a grade crossing when a crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a train. [C39,§**5029.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.341]

321.342 Stop at certain railroad crossings. The department with reference to primary highways and local authorities with reference to other highways under their jurisdiction are each hereby authorized to designate particularly dangerous highway grade crossings of railroads, and to install rumble strips, or to erect stop signs thereat. When such stop signs are erected the driver of any vehicle shall stop within fifty feet but not less than ten feet from the nearest track of such grade crossing and shall proceed only upon exercising due care. [C39,§**5029.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.342; 66GA, ch 1164,§3]

321.343 Certain vehicles must stop. The driver of any motor vehicle carrying passengers for hire, or of any school bus, or of any vehicle carrying explosive substances or flammable liquids or other hazardous materials as defined by the federal department of transportation, 49 Code of Federal Regulations sections 170 to section 189 of 1975, as a cargo or part of a cargo, before crossing at grade any track of a railroad, shall stop such vehicle within fifty feet but not less than ten feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely.

No stop need be made at any such crossing where a police officer or a traffic-control signal directs traffic to proceed. [C27, 31, 35,§5105-a33; C39,§**5029.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.343; 66GA, ch 1154,§10, ch 1164,§4]

321.344 Heavy equipment at crossing. No person shall operate or move any caterpillar tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of six or less miles per hour or a vertical body or load clearance of less than nine inches above the level surface of a roadway upon or across any tracks at a railroad grade crossing without first complying with this section.

Notice of any such intended crossing shall be given to a superintendent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than ten feet nor more than fifty feet from the nearest rail of such railway and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. [C39, §**5029.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.344]

321.345 Stop or yield at through highways. The department, based on an engineering study, with reference to primary highways, and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs or yield signs, in accordance with specifications established by the department at specified entrances thereto or may designate any

intersection as a stop intersection or as a yield intersection and erect like signs at one or more entrances to such intersection.

Every said sign shall bear the word "Stop" or "Yield" in letters not less than six inches in height. Every stop or yield sign shall be located as near as practical at the property line of the highway at the entrance to which the stop or yield must be made, or at the nearest line of the crosswalk thereat, or, if none, at the nearest line of the roadway.

Every driver of a vehicle and every motorman of a streetcar shall stop or yield at such sign or at a clearly marked stop line before entering an intersection except when directed to proceed by a police officer or traffic-control signal. [C27,§§5079-b3,-b4; C31, 35,§§5079-b3,-b4, -d3,-d4; C39,§5029.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.345]

Analogous provision, §321.253

321.346 Cost of signs. The cost of such signs on primary highways shall be paid out of the primary road fund. The cost of such signs on secondary roads shall be paid out of the county secondary road fund. [C27,§5079-b4; C31, 35,§§5079-b4,-d4; C39,§5029.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.346]

321.347 Exceptions. Provided that at intersections of such through highways with boulevards or heavy traffic streets in cities, the council, subject to the approval of the department, may determine that the through highway traffic shall come to a stop, or may erect traffic-control signals, or may adopt such other means of handling the traffic as may be deemed practical and proper. [C31, 35,§5079-c1; C39,§5029.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.347]

Referred to in §321.349

321.348 Limitations on cities. It shall be unlawful for any city to close or obstruct any street or highway which is used as the extension of a primary road within such city, except at times of fires or for the purpose of doing construction or repair work on such street or highway, or for other reasons with the consent of the department, and it shall also be unlawful for any city to erect or cause to be erected or maintained any traffic sign or signal inconsistent with the provisions of this chapter. [C31, 35,§5079-c2; C39,§5029.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.348]

Referred to in §321.349

321.349 Exceptions. The provisions of sections 321.347 and 321.348 as concerns the erection and maintenance of "stop" and "go" signals shall not apply to cities with a population of four thousand or over where said signals are situated within business districts of said city. [C31, 35,§5079-c3; C39,§5029.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.349]

321.350 Primary roads as through highways. Primary roads, and extensions of primary roads within cities are hereby designated as through highways. [C27, 31, 35,§5079-b1; C39, §5029.10; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.350]

321.351 Repealed by 57GA, ch 139,§1. See §309.11.

321.352 Additional signs—cost. The county board of supervisors shall, at places deemed by them unusually dangerous on the local county roads, furnish and erect suitable warning signs. The cost of such signs shall be paid out of the county road maintenance or construction fund. [C31, 35,§5079-d5; C39,§5029.12; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.352]

321.353 Stop before crossing sidewalk—right of way. The driver of a vehicle emerging from a private roadway, alley, driveway, or building shall stop such vehicle immediately prior to driving onto the sidewalk area and thereafter he shall proceed into the sidewalk area only when he can do so without danger to pedestrian traffic and he shall yield the right of way to any vehicular traffic on the street into which his vehicle is entering.

The driver of a vehicle about to enter or cross a highway from a private road or driveway shall stop such vehicle immediately prior to driving on said highway and shall yield the right of way to all vehicles approaching on said highway. [S13,§1571-m18; C24, 27, 31, 35, §5035; C39,§§5026.05, 5029.13; C46,§§321.323, 321.353; C50, 54, 58, 62, 66, 71, 73, 75,§321.353]

STOPPING, STANDING AND PARKING

321.354 Stopping on traveled way. Upon any highway outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main traveled part of the highway when it is practical to stop, park, or so leave such vehicle off such part of said highway, but in every event a clear and unobstructed width of at least twenty feet of such part of the highway opposite such standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle be available from a distance of two hundred feet in each direction upon such highway; provided, however, school buses may stop on highway for receiving and discharging pupils and all other vehicles shall stop for school buses which are stopped to receive or discharge pupils, as provided in section 321.372. [C24, 27, 31, 35,§5066; C39,§5030.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.354]

Referred to in §§321.355, 321.356

321.355 Disabled vehicle. Section 321.354 shall not apply to the driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position. [C39,§5030.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.355]

Referred to in §321.356

321.356 Officers authorized to remove. Whenever any peace officer finds a vehicle standing upon a highway in violation of any of the foregoing provisions of sections 321.354 and 321.355 such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or improved or main traveled part of such highway. [C39,§**5030.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.356]

321.357 Removed from bridge. Whenever any peace officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety. [C39, §**5030.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.357]

321.358 Stopping, standing or parking. No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control device, in any of the following places:

1. On a sidewalk.
2. In front of a public or private driveway.
3. Within an intersection.
4. Within five feet of a fire hydrant.
5. On a crosswalk.
6. Within ten feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway.
7. Between a safety zone and the adjacent curb or within ten feet of points on the curb immediately opposite the ends of a safety zone, unless any city indicates a different length by signs or markings.
8. Within fifty feet of the nearest rail of a railroad crossing, except when parked parallel with such rail and not exhibiting a red light.
9. Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance when properly signposted.
10. Alongside or opposite any street excavation or obstruction when such stopping, standing, or parking would obstruct traffic.
11. On the roadway side of any vehicle stopped or parked at the edge or curb of a street.
12. Upon any bridge or other elevated structure upon a highway outside of cities or within a highway tunnel.
13. At any place where official signs prohibit stopping or parking.
14. Upon any street within the corporate limits of a city when the same is prohibited by a general ordinance of uniform application relating to removal of snow or ice from the streets. [S13,§1571-m18; C24, 27, 31, 35,§§5057, 5058, 5060; C39,§**5030.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.358]

321.359 Moving other vehicle. No person shall move a vehicle not owned by such person into any such prohibited area or away from a curb such distance as is unlawful. [C39, §**5030.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.359]

321.360 Theaters, hotels and auditoriums. A space of not to exceed fifty feet is hereby reserved at the side of the street in front of any theater, auditorium, hotel having more than twenty-five sleeping rooms, or other buildings where large assemblages of people are being held, within which space, when clearly marked as such, no motor vehicle shall be left standing, parked, or stopped except in taking on or discharging passengers or freight, and then only for such length of time as is necessary for such purpose. [S13,§1571-m18; C24, 27, 31, 35,§5059; C39,§**5030.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.360]

321.361 Additional parking regulations. Except as otherwise provided in this section every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen inches of the right-hand curb.

Local authorities may by ordinance permit parking of vehicles with the left-hand wheels adjacent to and within eighteen inches of the left-hand curb of a one-way roadway.

Local authorities may by ordinance permit angle or center parking on any roadway under their jurisdiction. [S13,§1571-m18; C24, 27, 31, 35,§§4997, 5056; C39,§**5030.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.361]

MISCELLANEOUS RULES

321.362 Unattended motor vehicle. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, or when standing upon any perceptible grade without effectively setting the brake thereon and turning the front wheels to the curb or side of the highway. [S13,§1571-m18; C24, 27, 31, 35,§5038; C39, §**5031.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.362]

321.363 Obstruction to driver's view. No person shall drive a vehicle when it is so loaded, or when there are in the front seat such number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle. [C39,§**5031.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.363]

321.364 Control of vehicle — signals. The driver of a motor vehicle traveling through defiles or on approaching the crest of a hill or

grade shall have such motor vehicle under control and on the right-hand side of the roadway and, upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway, shall give audible warning with the horn of such motor vehicle. [S13,§1571-m18; C24, 27, 31, 35,§§5031, 5043; C39,§5031.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.364]

321.365 Coasting prohibited.

1. The driver of any motor vehicle when traveling upon a downgrade shall not coast with the gears of such vehicle in neutral.

2. The driver of a commercial motor vehicle when traveling upon a downgrade shall not coast with the clutch disengaged. [C39, §§5031.04, 5031.05; C46, 50, 54, 58, 62,§§321.365, 321.366; C66, 71, 73, 75,§321.365]

321.366 Crossing median strip or parking on controlled-access facilities. It is unlawful for any person (1) to drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line on controlled-access facilities; (2) to make a left turn or a semicircular or U-turn at maintenance cross-overs except by maintenance vehicles and authorized emergency vehicles; (3) to drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation, section, or lines; (4) to drive any vehicle into the controlled-access facility from a local service road except through an opening provided for that purpose in the dividing curb or dividing section or dividing line which separates such service road from the controlled-access facility property; (5) to stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved portion, the shoulders, or the right of way except at designated rest areas or in case of an emergency or other dire necessity, or in the case of an authorized emergency vehicle.

For the purpose of this section, controlled-access facility shall have the same meaning as the meaning prescribed in section 306A.2.

Violations of this section shall be punishable as provided in section 321.482. [C58, 62,§306A.9; C66, 71, 73, 75,§321.366]

321.367 Following fire apparatus. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm. [C39,§5031.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.367]

321.368 Crossing fire hose. No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private driveway, or streetcar track, to be used at any fire or alarm of fire, without the consent of the fire department official in command. [C39,§5031.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.368]

321.369 Putting debris on highway. No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris. No substance likely to injure any person, animal or vehicle upon such highway shall be thrown or deposited by any person upon any highway. Any person who violates any provision of this section or section 321.370 shall be guilty of a misdemeanor and upon arrest and conviction therefor shall be punished as provided in section 321.482. [S13, §§4808-a,-b; C24, 27, 31, 35,§13118; C39,§5031.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.369]

Referred to in §321.370
See §455B.97

321.370 Removing injurious material. Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material and other material as defined in section 321.369 shall immediately remove the same or cause it to be removed. [C39, §5031.09; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.370]

Referred to in §321.369

321.371 Clearing up wrecks. Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle. [C39,§5031.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.371]

SCHOOL BUSES

321.372 Discharging pupils—regulations.

1. The driver of any school bus used to transport children to and from a public or private school shall, when stopping to receive or discharge pupils, turn on flashing warning lamps at a distance of not less than three hundred feet nor more than five hundred feet from the point where said pupils are to be received or discharged from the bus. At the point of receiving or discharging pupils the driver of the bus shall bring bus to a stop, turn off the amber flashing warning lamps, turn on the red flashing warning lamps, and extend the stop arm. After receiving or discharging pupils, the bus driver shall turn off all flashing warning lamps, retract the stop arm and proceed on the route. No school bus shall stop to load or unload pupils unless there is at least three hundred feet of clear vision in each direction.

A school bus, when operating on a highway with four or more lanes shall not stop to load or unload pupils who must cross the highway, except at designated stops where pupils who must cross the highway may do so at points where there are official traffic control devices or police officers.

A school bus shall, while carrying passengers, have its headlights turned on.

2. All pupils shall be received and discharged from the right front entrance of every school bus and if said pupils must cross the highway, they shall be required to pass in front of the

bus, look in both directions, and proceed to cross the highway only on signal from the bus driver.

3. The driver of any vehicle when meeting a school bus on which the amber warning lamps are flashing shall reduce the speed of said vehicle to not more than twenty miles per hour, and shall bring said vehicle to a complete stop when school bus stops and stop signal arm is extended and said vehicle shall remain stopped until stop arm is retracted after which driver may proceed with due caution.

The driver of any vehicle overtaking a school bus shall not pass a school bus when red or amber warning signal lights are flashing and shall bring said vehicle to a complete stop not closer than fifteen feet of the school bus when it is stopped and stop arm is extended, and shall remain stopped until the stop arm is retracted and school bus resumes motion, or until signaled by the driver to proceed.

4. The driver of a vehicle upon a highway providing two or more lanes in each direction need not stop upon meeting a school bus which is traveling in the opposite direction even though said school bus is stopped.

This section shall not apply to "business" and "residence" districts, unless so provided by ordinance, but shall apply in suburban districts of cities where the speed limit is in excess of thirty-five miles per hour. [C31, 35,§§5079-c8,-c10,-c11; C39,§5032.01, 5032.03; C46, §§321.372, 321.374; C50, 54, 58, 62, 66, 71, 73, 75,§321.372]

Referred to in §§321.354, 321.373(5), 321.378, 321.380

321.373 Required construction — rules adopted.

1. Every school bus except private passenger vehicles used as school buses shall be constructed and equipped to meet safety standards prescribed in rules adopted by the state board of public instruction. Such rules shall conform to safety standards set forth in federal laws and regulations and shall conform, insofar as practicable, to the minimum standards for school buses recommended by the national conference on school transportation administered by the national commission on safety education and published by the national education association.

2. Rules prescribed for school buses shall provide standards for structural strength, materials, and insulation of the school bus body; color; seat and aisle arrangement; dimension and construction of service door; control of the front door or doors; emergency door and its location and construction; windows; roof ventilators; heaters; location, filling, and draining of the fuel tank; bumpers and how they shall be attached to the bus; lettering and identification of the bus; stop signal arm; warning lights and flashing lights.

3. The rules prescribed for school buses shall include special rules for passenger automobiles, and other vehicles designed to carry eight or fewer pupils, when used as school buses.

4. Every school bus shall be equipped with a comfortable seat for each child.

5. Vehicles owned by private parties and used as school buses shall have reversed or covered the words "school bus" wherever they appear on the vehicle when the vehicle is not in use as a school bus. It shall be unlawful to operate flashing stop warning signals on such privately-owned vehicles except as provided in section 321.372.

6. No vehicle except a school bus shall be operated on a public highway if the vehicle is painted the color known as national school bus glossy yellow. A school bus which has been permanently converted for a purpose other than transporting pupils to or from school shall be painted a color other than national school bus glossy yellow, and shall have the "school bus" signs, stop arm, and the special signal lamps removed.

7. A school bus may be equipped with a white flashing strobe light mounted on the roof of the bus to afford optimum visibility during periods of inclement weather. The light shall be of a type approved by the department of transportation and shall be installed and operated in accordance with rules promulgated by the department of public instruction. Each new school bus put into initial service after January 1, 1977 shall be equipped with such a light. [C31, 35,§§5079-c9, -c10,-c11; C39,§5032.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.373; 66GA, ch 1154,§§11, 12]

Referred to in §§321.378, 321.379, 321.380

321.374 Inspection — seal of approval. No vehicle shall be put into service as a school bus until it is given an original inspection to determine if it meets all legal and established uniform standards of construction for the protection of the health and safety of children to be transported. Vehicles which are approved shall be issued a seal of approval by the superintendent of public instruction. All vehicles used as school buses shall be given a safety inspection at least once a year. Buses passing the inspection shall be issued an inspection seal of approval by the superintendent of public instruction. The seal of original inspection and the annual seal of inspection shall be affixed to the lower right hand corner of the windshield. [C50, 54, 58, 62, 66, 71, 73, 75, §321.374]

Referred to in §§321.378, 321.380
Use of front entrance, see §321.372(2)

321.375 Drivers. The drivers of school buses must: (1) be at least eighteen years of age, unless such person has successfully completed an approved driver education course, in which case, the minimum age shall be sixteen years, (2) be physically and mentally competent, (3) not possess personal or moral habits which would be detrimental to the best interests of safety and welfare of the children transported, (4) have an annual physical examination and meet all established requirements for physical fitness.

Use of alcoholic beverages or immoral conduct on the part of the driver shall automatically cancel his contract and his re-employment for the balance of the year is hereby prohibited. [C31, 35,§4960-d10; C39,§**5032.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.375]

Referred to in §§321.378, 321.380

321.376 License and written permission. The driver of every school bus shall have a regular or special chauffeur's license issued by the department, and in addition thereto, must hold a school bus driver's permit issued by the department of public instruction.

Notwithstanding the provision of subsection 2 of section 321.177, the department is hereby authorized to issue a special chauffeur's license to a person sixteen or seventeen years of age, if such person has successfully completed an approved driver education course, to operate a school bus on request of local school board and recommendation of the state superintendent of public instruction. [C39,§**5032.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.376; 66GA, ch 1165,§50]

Referred to in §§321.378, 321.380
Chauffeurs' licenses, §321.174 et seq.

321.377 Speed of school bus. No motor vehicle in use as a school bus shall be operated at a speed in excess of fifty-five miles per hour on any fully controlled-access, divided, multilaned highways, interstate highways or on any four-lane primary highway. When not in operation on an interstate highway system or on any four-lane primary highway, the maximum speed for a school bus shall be fifty miles per hour when used for purposes of an educational trip or for transporting pupils to and from any extracurricular activity, and forty-five miles per hour at all other times. Any violation of this section, by a driver, shall be deemed sufficient cause for canceling his contract. For the purpose of this section, interstate highways means those highways included in the national system of interstate highways designated by the federal highway administration and this state. [C39,§**5032.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.377; 66GA, ch 180,§4]

Referred to in §§321.287, 321.378, 321.380

321.378 Applicability. The provisions of sections 321.372 to 321.380, shall apply to all public and nonpublic schools where children are transported to and from school. [C39,§**5032.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.378; 66GA, ch 1154,§13]

Referred to in §321.380

321.379 Violations. No school board, individual, or organization shall purchase, construct, or contract for use, to transport pupils to or from school, any school bus which does not comply with the minimum requirements of section 321.373 and any individual, or any member or officer of such board or organization who authorizes, the purchase, construction, or contract for any such bus not complying with these minimum requirements shall be guilty of a misdemeanor punishable as provided in section 321.482. [C31, 35,§§5079-c9,-c10,-c11; C39, §**5032.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.379]

Referred to in §§321.378, 321.380

321.380 Enforcement. It shall be the duty of all peace officers and of the highway safety patrol to enforce the provisions of sections 321.372 to 321.379. [C39,§**5032.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.380]

Referred to in §321.378

SAFETY STANDARDS

321.381 Scope and effect of regulations. It is a misdemeanor, punishable as provided in section 321.482, for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped with one or more unsafe tires or which is equipped in any manner in violation of this chapter. [C39,§**5033.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.381]

47GA, ch 134,§407, editorially divided
Referred to in §321.238

321.382 Upgrade pulls—minimum speed. No motor vehicle or combination of vehicles, which cannot proceed up a three percent grade, on dry concrete pavement, at a minimum speed of twenty miles per hour, shall be operated, after January 1, 1938, upon the highways of this state. [C39,§**5033.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.382]

321.383 Exceptions — slow vehicles identified.

1. The provisions of this chapter with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, bulk spreaders and other fertilizer and chemical equipment defined as special mobile equipment, road rollers, or farm tractors except as herein made applicable.

2. When operated on a highway in this state at a speed of twenty-five miles per hour or less, every farm tractor, or tractor with towed equipment, self-propelled implement of husbandry, road construction or maintenance vehicle, road grader, horse-drawn vehicle, or any other vehicle principally designed for use off the highway and any such tractor, implement, vehicle or grader when manufactured for sale or sold at retail after the thirty-first of December, 1971, shall be identified with a reflective device of a type approved by the director; however, this provision shall not apply to such vehicles when traveling in any escorted parade. The reflective device shall be visible from the rear and mounted in a manner approved by the director. All vehicles specified in this section shall be equipped with such reflective device after the

thirty-first of December, 1971. The director, when approving such device, shall be guided as far as practicable by the standards of the American society of agricultural engineers. No vehicle other than those specified in this section shall display a reflective device approved for the use herein described. On vehicles specified herein operating at speeds above twenty-five miles per hour, the reflective device shall be removed or hidden from view.

3. Garbage collection vehicles, when operated on the streets or highways of this state at speeds of twenty-five miles per hour or less, may display a reflective device of a type and in a manner approved by the director. At speeds in excess of twenty-five miles per hour the device shall not be visible.

Any person who violates any provision of this section shall be fined not more than five dollars. [C39,§**5033.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.383; 66GA, ch 182,§1, ch 1165,§51]

Referred to in §§321.1, 321.288, 321.398, 321.438
See also section 321.423(6)

LIGHTING EQUIPMENT

321.384 When lighted lamps required.

1. Every motor vehicle upon a highway within the state, at any time from sunset to sunrise, and at such other times when conditions such as fog, snow, sleet, or rain provide insufficient lighting to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet ahead, shall display lighted head lamps as provided in section 321.415, subject to exceptions with respect to parked vehicles as hereinafter stated.

2. Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in subsection 1 of this section upon a straight level unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated. [S13, §1571-m17; C24, 27, 31, 35,§5044; C39,§**5033.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.384]

Referred to in §§321.1, 321.392, 321.394, 321.395, 321.397, 321.398, 321.405, 321.415, 321.418, 321.419

321.385 Head lamps on motor vehicles. Every motor vehicle other than a motorcycle or motorized bicycle shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this chapter. [S13,§1571-m17; C24, 27, 31, 35,§5044; C39,§**5033.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.385; 66GA, ch 1165,§52]

Referred to in §321.1

321.386 Head lamps on motorcycles. Every motorcycle shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations of this chapter. [S13,§1571-m17; C24, 27, 31, 35, §5047; C39,§**5033.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.386]

Referred to in §321.1

321.387 Rear lamps. Every motor vehicle and every vehicle which is being drawn at the end of a train of vehicles shall be equipped with a lighted rear lamp, exhibiting a red light plainly visible from a distance of five hundred feet to the rear. [S13,§1571-m17; C24, 27, 31, 35,§§5045, 5046; C39,§**5033.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.387]

Referred to in §321.1

321.388 Illuminating plates. Either such rear lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. When the rear license plate is illuminated by an electric lamp other than the required rear lamp, said two lamps shall be turned on or off only by the same control switch at all times whenever head lamps are lighted. [S13,§1571-m17; C24, 27, 31, 35,§5045; C39,§**5033.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.388]

Referred to in §§321.1, 753.15

321.389 Reflectors additional. Every new motor vehicle, trailer, or semitrailer hereafter sold and every commercial vehicle hereafter operated on a highway shall also carry at the rear, either as a part of the rear lamp or separately, a red reflector meeting the requirements of this chapter. [C39,§**5033.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.389]

Referred to in §321.1

321.390 Reflector requirements. Whenever a red reflector is required or permitted to be used in substitution of lamps upon a vehicle under any one of the provisions of this chapter, such reflector shall be mounted upon the vehicle at a height not to exceed forty-two inches nor less than twenty inches above the ground upon which the vehicle stands, and every such reflector shall be so designed and maintained as to be visible at night from all distances within three hundred feet to fifty feet from such vehicle, except that on a commercial vehicle the reflector shall be visible from all distances within five hundred feet to fifty feet from such vehicle when directly in front of a motor vehicle displaying lawfully lighted head lamps as provided in section 321.409. [C31, 35,§4863; C39,§**5033.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.390]

Referred to in §321.1

321.391 Approval of reflectors. No reflector as required by this chapter shall be used except of a type approved by the department and the department is hereby authorized to approve or disapprove types of reflectors submitted and to publish a list of such approved types by trade name or otherwise. [C39, §**5033.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.391]

Referred to in §321.1

321.392 Clearance and identification lights. Every motor truck, and every trailer or semitrailer of over three thousand pounds gross

weight, shall be equipped with the following lighting devices and reflectors in addition to other requirements of this chapter, and such devices shall be lighted at the times mentioned in section 321.384.

1. Every motor truck, whatever its size shall have the following:

On each side, one reflector, at or near the rear; and

On the rear, two reflectors, one at each side.

2. Every motor truck, eighty inches or more in width shall have the following in addition to the requirements of subsection 1:

a. If thirty feet or less in over-all length—

On the front, two clearance lamps, one at each side; and

On the rear, two clearance lamps, one at each side.

b. If more than thirty feet in overall length—

On the front, two clearance lamps, one at each side;

On each side, two side-marker lamps, one at or near the front, and one at or near the rear, and an additional reflector at or near the front; and

On the rear, two clearance lamps, one at each side.

3. Every truck tractor or road tractor shall have the following:

On the front, two clearance lamps, one at each side if the tractor cab is as wide as, or wider than, the widest part of the vehicle or vehicles towed;

On each side, one side-marker lamp at or near the front; and

On the rear, one tail lamp.

4. Every trailer or semitrailer having a gross weight in excess of three thousand pounds shall have the following:

On the front, two clearance lamps, one at each side, if the trailer is wider in its widest part than the cab of the vehicle towing it;

On each side, one side-marker lamp at or near the rear; two reflectors, one at or near the front and one at or near the rear; and

On the rear, two clearance lamps, one at each side; one stop light; one tail lamp; and two reflectors, one at each side.

5. Every motor truck or combination of motor truck and trailer having a length in excess of thirty feet or a width in excess of eighty inches shall be equipped with three identification lights on both front and rear. Each such group shall be evenly spaced not less than six nor more than twelve inches apart along a horizontal line near the top of the vehicle. [C31, 35,§§5044-d1,-d2, 5105-c19; C39,**§5034.01**; C46, 50, 54, 58, 62, 66, **71, 73,** 75,§321.392]

Referred to in §§321.1, 321.395

321.393 Color and mounting. No lighting device or reflector, when mounted on or near the front of any motor truck or trailer, except school buses shall display any other color than white, yellow, or amber; provided that installations heretofore in place and otherwise complying with the law may display a green light until replacements are made.

No lighting device or reflector, when mounted on or near the rear of any motor truck or trailer, shall display any other color than red, except that the stop light may be red, yellow, or amber.

Clearance lamps shall be mounted on the permanent structure of the vehicle in such manner as to indicate the extreme width of the vehicle or its load.

The provisions of this section shall not prohibit the use of a lighting device or reflector displaying an amber light when such lighting device or reflector is mounted on a motor truck, trailer, tractor, or motor grader owned by the state, or any political subdivision of the state, or any municipality therein, while such equipment is being used for snow removal, sanding, maintenance, or repair of the public streets or highways. [C39, §**5034.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.393; 66GA, ch 1165,§53]

Referred to in §321.1

321.394 Lamp or flag on projecting load. Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in section 321.384, a red light or lantern plainly visible from a distance of at least five hundred feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than sixteen inches square. [C39,**§5034.03**; C46, 50, 54, 58, 62, 66, **71, 73,** 75,§321.394]

Referred to in §321.1

321.395 Lamps on parked vehicles. Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, outside of a business district whether attended or unattended during the times mentioned in section 321.384, such vehicle shall be equipped with one or more lamps which shall exhibit a white or amber light on the roadway side visible from a distance of five hundred feet to the front of such vehicle and a red light visible from a distance of five hundred feet to the rear, except that local authorities may provide by ordinance or resolution that no lights need be displayed upon any such vehicle when stopped or parked in accordance with local parking regulations upon a highway where there is sufficient light to reveal any person or object within a distance of five hundred feet upon such highway. Lamps on parked or stopped vehicles, except trucks, trailers or semitrailers as defined in section 321.392, required to be exhibited by this section, but not including running lights, shall not be lighted at any time when the vehicle is being driven on the highway unless the head lamps are

also lighted. Any lighted head lamps upon a parked vehicle shall be depressed or dimmed. [C24, 27, 31, 35,§5054; C39,§**5034.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.395]

Referred to in §§321.1, 321.396, 321.448

321.396 Exception. Section 321.395 shall not apply when an accident extinguishes said light and renders a vehicle incapable of use, and when the person in control of the vehicle erects, at the earliest opportunity after the accident, such proper light at or near the vehicle as will give warning of the presence of said vehicle. [C24, 27, 31, 35,§5055; C39,§**5034.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.396]

Referred to in §321.1

321.397 Lamps on bicycles. Every bicycle shall be equipped with a lamp on the front exhibiting a white light, at the times specified in section 321.384 visible from a distance of at least three hundred feet to the front and with a lamp on the rear exhibiting a red light visible from a distance of three hundred feet to the rear; except that a red reflector meeting the requirements of this chapter may be used in lieu of a rear light. [C31, 35,§5045-d1; C39, §**5034.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.397]

Referred to in §321.1

321.398 Lamps on other vehicles and equipment. All vehicles, including animal-drawn vehicles and including those referred to in section 321.383 not hereinbefore specifically required to be equipped with lamps, shall at the times specified in section 321.384 be equipped with at least one lighted lamp or lantern exhibiting a white light visible from a distance of five hundred feet to the front of such vehicle and, except for animal-drawn vehicles, with a lamp or lantern exhibiting a red light visible from a distance of five hundred feet to the rear. Animal-drawn vehicles shall be equipped with a flashing amber light visible from a distance of five hundred feet to the rear of the vehicle during the times specified in section 321.384. [C31, 35,§5045-d1; C39,§**5034.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.398; 66GA, ch 181,§1]

Referred to in §321.1

321.399 to 321.401 Repealed by 66GA, ch 182, §1.

321.402 Spot lamps. Any motor vehicle may be equipped with not to exceed one spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred feet ahead of the vehicle. [C24, 27, 31, 35,§5051; C39, §**5034.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.402]

Referred to in §321.1

321.403 Auxiliary driving lamps. Any motor vehicle may be equipped with not to exceed three auxiliary driving lamps mounted on the front at a height not less than twelve inches nor more than forty-two inches above the level surface upon which the vehicle stands, and every such auxiliary driving lamp or lamps shall meet the requirements and limitations set forth in this chapter. [C24, 27, 31, 35,§5050; C39,§**5034.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.403]

Referred to in §321.1

321.404 Signal lamps and signal devices. Every motor vehicle shall be equipped with a signal lamp or signal device which is so constructed and located on the vehicle as to give a signal of intention to stop, which shall be red or yellow in color, which signal shall be plainly visible and understandable in normal sunlight and at night from a distance of one hundred feet to the rear but shall not project a glaring or dazzling light. [C39,§**5034.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.404]

Referred to in §321.1

321.405 Self-illumination. All mechanical signal devices shall be self-illuminated when in use at the times mentioned in section 321.384. [C39,§**5034.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.405]

Referred to in §321.1

321.406 Cowl lamps. Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare. [C24, 27, 31, 35,§5050; C39,§**5034.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.406]

Referred to in §321.1

321.407 Courtesy lamps. Any motor vehicle may be equipped with not more than one running board courtesy lamp on each side thereof which shall emit a white or amber light without glare. [C24, 27, 31, 35,§5050; C39, §**5034.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.407]

Referred to in §321.1

321.408 Back-up lamps. Any motor vehicle may be equipped with a back-up lamp either separately or in combination with another lamp; except that no such back-up lamp shall be continuously lighted when the motor vehicle is in forward motion. [C24, 27, 31, 35,§5050; C39,§**5034.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.408]

Referred to in §321.1

321.409 Mandatory lighting equipment. Except as hereinafter provided, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles or motor driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

1. There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and ve-

hicles at a distance of at least three hundred fifty feet ahead for all conditions.

2. There shall be a lowermost distribution of light, or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

3. Every new motor vehicle, other than a motorcycle or motor driven cycle, registered in this state after January 1, 1956, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped. [C24, 27, 31, 35,§§5049, 5052; C39,§§**5034.18–5034.22**; C46, 50, 54,§§321.409–321.413; C58, 62, 66, 71, 73, 75,§321.409]

Referred to in §§321.1, 321.390, 321.415, 321.418

321.410 to 321.414 Repealed by 56GA, ch 166,§1.

321.415 Required usage of lighting devices. Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in section 321.384, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

Whenever a driver of a vehicle approaches an oncoming vehicle within five hundred feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in section 321.409, subsection 2, shall be deemed to avoid glare at all times, regardless of road contour and loading.

Whenever the driver of a vehicle follows another vehicle within two hundred feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in section 321.409, subsection 1. [C39,§§**5034.23–5034.25**; C46, 50, 54, §§321.414–321.416; C58, 62, 66, 71, 73, 75,§321.415]

Referred to in §§321.1, 321.384(1), 321.418

321.416 Repealed by 56GA, ch 166,§1

321.417 Single-beam road-lighting equipment. Head lamps arranged to provide a single distribution of light not supplemented by auxiliary driving lamps shall be permitted on motor vehicles manufactured and sold prior to July 1, 1938, in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead.

The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred feet. [C24, 27, 31, 35,§5049; C39, §**5034.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.417]

Referred to in §§321.1, 321.418

321.418 Alternate road-lighting equipment. Any motor vehicle may be operated under the conditions specified in section 321.384 when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects seventy-five feet ahead in lieu of lamps required in sections 321.409 and 321.415, or section 321.417, provided, however, that at no time shall it be operated at a speed in excess of twenty miles per hour. [C39,§**5034.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.418]

Referred to in §321.1

321.419 Number of driving lamps required or permitted. At all times specified in section 321.384 at least two lighted lamps, except where one only is permitted, shall be displayed, one on each side at the front of every motor vehicle except when such vehicle is parked subject to the regulations governing lights on parked vehicles. [C39,§**5034.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.419]

Referred to in §321.1

321.420 Number of lamps lighted. Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of an intensity greater than three hundred candlepower, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway. [C39,§**5034.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.420]

Referred to in §321.1

321.421 Special restrictions on lamps. Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, or auxiliary driving lamps which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle. [C39,§**5034.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.421]

Referred to in §321.1

321.422 Red light in front. No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying or reflecting a red light visible from directly in front thereof. This section shall not apply to authorized emergency vehicles, or school buses and vehicles as provided in section 321.423, subsection 6. No person shall display any color of light other than red on the rear of any vehicle, except that stop lights and directional signals may be red, yellow, or amber. [C39,§**5034.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.422]

Referred to in §321.1
See also §321.383(2)

321.423 Flashing lights.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. *"Fire department"* means a paid or volunteer organized fire department.

b. *"Member"* means a person who is a member in good standing of a fire department.

2. *Prohibited lights.* A flashing light on or in a motor vehicle is prohibited except as follows:

a. On an authorized emergency vehicle.

b. On a vehicle as a means of indicating a right or left turn, a mechanical failure, or an emergency stop or intent to stop.

c. On a motor vehicle used by a rural mail carrier when stopping or stopped on or near a highway in the process of delivering mail, if such a light is any shade of color between white and amber and if it is mounted as a dome light on the roof of the vehicle.

d. On a vehicle being operated under an excess size permit issued under chapter 321E.

e. A flashing blue light on a vehicle upon which a blue light is permitted pursuant to subsection 3 of this section.

3. *Blue light.* A blue light shall not be used on any vehicle except:

a. A vehicle owned or exclusively operated by a fire department; or

b. A vehicle authorized by the director when:

(1) The vehicle is owned by a member of a fire department.

(2) The request for authorization is made by the member on forms provided by the department.

(3) Necessity for authorization is demonstrated in the request.

(4) The chief of the fire department certifies that the member is in good standing with the fire department and recommends that the authorization be granted.

4. *Expiration of authority.* The authorization shall expire at midnight on the thirty-first day of December five years from the year in which it was issued, or when the vehicle is no longer owned by the member, or when the member has ceased to be an active member of the fire department or when the member has used the blue light beyond the scope of its authorized use.

5. *When used.* The certificate of authorization shall be carried at all times with the certificate of registration of the authorized vehicle and the operator of the vehicle shall not illuminate the blue light except:

a. When the member is en route to the scene of a fire or is responding to an emergency in the line of duty requiring the services of the member;

b. When the authorized vehicle is transporting a person requiring emergency care; or

c. When the authorized vehicle is at the scene of an emergency.

d. The use of a blue light in or on a private motor vehicle shall be for identification purposes only.

6. *Amber flashing light.* A farm tractor, farm tractor with towed equipment, self-propelled implement of husbandry, road construction or maintenance vehicle, road grader, or other vehicle principally designed for use off the highway which, when operated on a primary or secondary road, is operated at a speed of twenty-five miles an hour or less, shall be equipped with and display an amber flashing light visible from the rear at any time from sunset to sunrise. All vehicles specified in this subsection which are manufactured for sale or sold in this state shall be equipped with an amber flashing light. The type, number, dimensions, and method of mounting of the lights shall be determined by the director. The director, when approving the light, shall be guided as far as practicable by the standards of the American Society of Agricultural Engineers. [C39,§**5034.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.423; 66GA, ch 1165,§54]

Referred to in §§321.1, 321.422
See also §321.383(2)

321.424 Sale of lights — approval. On and after July 4, 1955, no person shall have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer, or use upon any such vehicle any head lamp, auxiliary, or fog lamp, rear lamp, signal lamp, or reflector, which reflector is required hereunder, or parts of any of the foregoing which tend to change the original design or performance, unless of a type which has been submitted to the director and approved by him.

The foregoing provisions of this section shall not apply to equipment in actual use when this section is adopted or replacement parts therefor.

No person shall have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer any lamp or device mentioned in this section which has been approved by the director unless such lamp or device bears thereon the trade-mark or name under which it is approved so as to be legible when installed.

No person shall use upon any motor vehicle, trailer, or semitrailer any lamps mentioned in this section unless said lamps are mounted,

adjusted and aimed in accordance with instructions of the director. [C24, 27, 31, 35,§§4986, 5087; C39,§§**5034.33–5034.36**; C46, 50, 54,§§321.424–321.427; C58, 62, 66, 71, 73, 75,§321.424]

Referred to in §321.1

Provisions regarding protective headgear for motorcycle riders, 66GA, ch 183,§2, repealed by 66GA, ch 1245,§527

321.425 to 321.427 Repealed by 56GA, ch 166,§1.

321.428 Approval by director. The director is hereby authorized to approve or disapprove lighting devices and to issue and enforce rules establishing standards and specifications for the approval of such lighting devices, their installation, adjustment and aiming, and adjustment when in use on motor vehicles. Such rules shall be approved by the transportation commission and shall correlate with and, so far as practicable, conform to the then current standards and specifications of the society of automotive engineers applicable to such equipment.

1. The director is hereby required to approve or disapprove any lighting device, of a type on which approval is specifically required in this chapter, within a reasonable time after such device has been submitted.

2. The director is further authorized to set up the procedure which shall be followed when any device is submitted for approval.

3. The director upon approving any such lamp or device shall issue to the applicant a certificate of approval together with any instructions determined by him.

4. The director shall publish lists of all lamps and devices by name and type which have been approved by him. [C24, 27, 31, 35, §§4985, 4987; C39,§**5034.37**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.428; 66GA, ch 1165,§55]

Referred to in §321.1

321.429 Revocation of certificate. When the director has reason to believe that an approved device as being sold commercially does not comply with the requirements of this chapter, he may, after giving thirty days' previous notice to the person holding the certificate of approval for such device in this state, conduct a hearing upon the question of compliance of said approved device. After said hearing the director shall determine whether said approved device meets the requirements of this chapter. If said device does not meet the requirements of this chapter he shall give notice to the person holding the certificate of approval for such device in this state.

If at the expiration of ninety days after such notice the person holding the certificate of approval for such device has failed to satisfy the director that said approved device as thereafter to be sold meets the requirements of this chapter, the director shall suspend or revoke the approval issued therefor until or unless such device is resubmitted to and retested by an authorized testing agency and is found to meet the requirements of this chapter, and may require that all said devices sold since the notification following the hearing be replaced with devices that do comply with the requirements of this chapter. The director may at the time of the retest purchase in the open market and submit to the testing agency one or more sets of such approved devices, and if such device upon such retest fails to meet the requirements of this chapter, the director may refuse to renew the certificate of approval of such device. [C39,§**5034.38**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.429]

Referred to in §321.1

BRAKES, HITCHES AND SWAY CONTROL

321.430 Brake, hitch and control requirements.

1. Every motor vehicle, other than a motorcycle, or motorized bicycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

2. Every motorcycle, and bicycle with motor attached, when operated upon a highway shall be equipped with at least one brake, which may be operated by hand or foot.

3. Every trailer or semitrailer of a gross weight of three thousand pounds or more, and every trailer coach or travel trailer of a gross weight of three thousand pounds or more intended for use for human habitation, when operated on the highways of this state, shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, and so designed as to be applied by the driver of the towing motor vehicle from its cab, or with self-actuating brakes, and weight equalizing hitch with a sway control of a type approved by the director of transportation. Every semitrailer, travel trailer, or trailer coach of a gross weight of three thousand pounds or more shall be equipped with a separate, auxiliary means of applying the brakes on the semitrailer, travel trailer, or trailer coach from the cab of the towing vehicle. Trailers or semitrailers with a truck or truck tractor need only comply with the brake requirements.

4. Except as otherwise provided in this chapter, every new motor vehicle, trailer, or semitrailer hereafter sold in this state and operated upon the highways shall be equipped with service brakes upon all wheels of every such vehicle with the following exceptions:

a. Any motorcycle or motorized bicycle.

b. Any trailer or semitrailer of less than three thousand pounds gross weight need not be equipped with brakes.

c. Trucks and truck tractors having three or more axles need not have brakes on the front wheels, except that such vehicles equipped with two or more front axles shall be equipped with brakes on at least one of such axles; provided that the service brakes of such vehicle comply with the performance requirements of section 321.431.

d. Only such brakes on the vehicle or vehicles being towed in a driveaway-towaway operation need be operative as may be necessary to insure compliance by the combination of vehicles with the performance requirements of section 321.431. The term "driveaway-towaway" operation as used in this subsection means any operation in which any motor vehicle or motor vehicles, new or used, constitute the commodity being transported, when one set or more of wheels of any such motor vehicle or motor vehicles are on the roadway during the course of transportation, whether or not any such motor vehicle furnishes the motive power. [S13,§1571-m17; C24, 27, 31, 35, §5039; C39,§5034.39; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.430; 66GA, ch 171,§14, ch 1165,§§56, 57]

Referred to in §§321.181, 321.189, 321.196, 321.210, 321.464(1)

When provisions applicable to travel trailers are effective, see 64GA, ch 174,§6

321.431 Performance ability.

1. The service brakes upon any motor vehicle or combination of motor vehicles, when upon dry asphalt or concrete pavement surface free from loose material where the grade does not exceed one percent, when traveling twenty miles an hour shall be adequate:

a. To stop such vehicle or vehicles having a gross weight of less than five thousand pounds within a distance of thirty feet.

b. To stop such vehicle or vehicles having a gross weight in excess of five thousand pounds within a distance of forty-five feet.

2. Under the above conditions the hand brake shall be adequate to hold such vehicle or vehicles stationary on any grade upon which operated.

3. Under the above conditions the service brakes upon a motor vehicle equipped with two-wheel brakes only, and when permitted hereunder, shall be adequate to stop the vehicle within a distance of forty-five feet and the hand brake adequate to stop the vehicle within a distance of fifty-five feet.

4. All braking distances specified in this section shall apply to all vehicles mentioned, whether such vehicles are not loaded or are loaded to the maximum capacity permitted under this chapter.

5. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle. [S13,§1571-m17; C24, 27, 31, 35,§5039; C39, §5034.40; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.431]

Referred to in §§321.181, 321.189, 321.196, 321.210, 321.430(4, c, d), 321.464(1)

MISCELLANEOUS EQUIPMENT

321.432 Horns and warning devices. Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a highway. [S13,§1571-m17; C24, 27, 31, 35,§§5040, 5041; C39,§5034.41; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.432]

321.433 Sirens and bells prohibited. No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section. It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal. Any authorized emergency vehicle may be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet and of a type approved by the department, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound said siren when necessary to warn pedestrians and other drivers of the approach thereof. [C39, §5034.42; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.433]

Referred to in §321.231

321.434 Bicycle sirens or whistles. No bicycle shall be equipped with nor shall any person use upon a bicycle any siren or whistle. [C39,§5034.43; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.434]

321.435 Loud signaling at night. Loud signaling devices shall not be used during the period of from one hour after sunset to one hour before sunrise, unless absolutely necessary to avoid accidents. [C24, 27, 31, 35,§5042; C39,§5034.44; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.435]

321.436 Mufflers, prevention of noise. Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use a muffler cutout, by-pass or similar device upon a motor vehicle on a highway. [S13,§1571-m18; C24, 27, 31, 35,§§5061–5063; C39,§5034.45; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.436]

321.437 Mirrors. Every motor vehicle shall be equipped with a mirror so located as to reflect to the driver a view of the highway for

a distance of at least two hundred feet to the rear of such vehicle. Any motor vehicle so loaded, or towing another vehicle in such manner, as to obstruct the view in a rear view mirror located in the driver's compartment shall be equipped with a side mirror so located that the view to the rear will not be obstructed. [C31, 35,§5105-c20; C39,§5034.46; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.437]

321.438 Windshields and windows. No person shall drive any motor vehicle equipped with a windshield, sidewings, or side or rear windows which do not permit clear vision. Every motor vehicle except a motorcycle, or a vehicle included in the provisions of section 321.383 or section 321.115 shall be equipped with a windshield in accordance with section 321.444. [C39,§5034.47; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.438; 66GA, ch 1165,§58]

321.439 Windshield wipers. The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle. [C39,§5034.48; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.439]

321.440 Restrictions as to tire equipment. Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery. Any pneumatic tire on a vehicle shall be considered unsafe if it has:

1. Any part of the ply or cord exposed;
2. Any bump, bulge or separation;
3. A tread design depth of less than one-sixteenth of an inch measured in any two or more adjacent tread grooves, exclusive of tie bars or, for those tires with tread wear indicators, worn to the level of the tread wear indicators in any two tread grooves;
4. A marking "not for highway use", "for racing purposes only", "unsafe for highway use";
5. Tread or sidewall cracks, cuts or snags deep enough to expose the body cord;
6. Such other conditions as may be reasonably demonstrated to render it unsafe;
7. Been regrooved or recut below the original tread design depth, excepting special tires which have extra under tread rubber and are identified as such, or if a pneumatic tire was originally designed without grooves or tread, the safety standards therefor shall be established by the director. [C31, 35,§5065-c1; C39, §5034.49; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.440]

321.441 Metal tires prohibited. No person shall operate or move on a paved highway any motor vehicle, trailer, or semitrailer having any metal tire or metal track in contact with the roadway. [C24, 27, 31, 35,§§4918, 4919; C39, §5034.50; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.441]

321.442 Projections on wheels. No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberances of any material other than rubber which projects beyond the tread of the traction surface of the tire except that it shall be permissible to use:

1. Farm machinery with tires having protuberances which will not injure the highway.
2. Tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.
3. Pneumatic tires with inserted ice grips or tire studs projecting not more than one-sixteenth inch beyond the tread of the traction surface of the tire upon any vehicle from November 1 of each year to April 1 of the following year, except that a school bus and fire department emergency apparatus may use such tires at any time. [S13,§1571-1a; C24, 27, 31, 35,§§5068, 5079; C39,§5034.51; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.442]

321.443 Exceptions. The department and local authorities in their respective jurisdictions shall review any application for a special permit and may, with good cause being shown, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this chapter. [C24, 27, 31, 35,§5069; C39, §5034.52; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.443]

321.444 Safety glass.

1. No person shall sell any new motor vehicle nor shall any motor vehicle, manufactured since July 1, 1935, be registered, or operated unless such vehicle is equipped with safety glass wherever glass is used in doors, windows, and windshields. Replacements of glass in doors, windows, or windshields shall be of safety glass.
2. The term "safety glass" shall mean any product composed of glass, so manufactured, fabricated, or treated as substantially to prevent shattering and flying of the glass when struck or broken or such other or similar product as may be approved by the director.
3. The director shall compile and publish a list of types of glass by name approved by him as meeting the requirements of subsection 2 and the director shall not register any motor vehicle which is subject to the provisions of subsection 1 unless it is equipped with an approved type of safety glass, and he shall suspend the registration of any motor vehicle so subject to said section which he finds is not so equipped until it is made to conform to the requirements of said section. [C35,§§4991-f1,-f4; C39,§§5034.53, 5034.54, 5034.55; C46, 50, 54, 58, 62,§§321.444, 321.445, 321.446; C66, 71, 73, 75,§321.444]

Referred to in §321.438

321.445 Safety belts. Every new or used car, pickup or school bus, 1966 model or newer, sold, offered for sale, or subject to registration in Iowa except commercial vehicles registered with the department, shall be equipped with at least two sets of safety belts or safety harnesses installed for use in the front seat of such vehicle; however, when a pickup or school bus has only an operator's seat, such vehicle need be equipped with only one safety belt or safety harness installed for use by the operator thereof. The safety belts or safety harnesses required shall not be removed unless replaced with approved safety belts or safety harnesses as long as the vehicle is subject to registration.

All safety belts and safety harnesses installed for use in any motor vehicle where such safety equipment is required shall be of a size to accommodate an adult person and shall be designed and installed for use in a manner to prevent or substantially reduce the movement of the person using the safety equipment in the event of a collision or accident.

All safety belts and safety harnesses installed for use in any motor vehicle as required under this section shall be of any approved type and shall be installed in a manner approved by the director.

The fact of use, or nonuse, of seat belts by a person shall not be admissible or material as evidence in civil actions brought for damages.

Failure to use seat belts installed in a motor vehicle shall not be a crime or a public offense. [C66, 71, 73, 75,§321.445]

Motorcycle riders equipment provisions repealed by 66GA, ch 1245,§52.7

321.446 Reserved.

321.447 Trucks to carry flares and reflective devices. No person shall operate any motor truck or truck tractor upon a highway outside of a business or residence district at any time from a half hour after sunset to a half hour before sunrise unless there shall be carried in such vehicle a sufficient number, not less than three, of flares, red reflector electric lanterns, red reflectors, reflective triangles or other signals capable of continuously producing three warning lights each visible from a distance of a least five hundred feet for a period of at least eight hours, except that a motor vehicle transporting flammables shall carry red reflectors, red reflector electric lanterns or reflective triangles in place of the other signals above mentioned, and during daylight hours every truck shall carry a sufficient number of red flags, not less than three, unless equipped with three reflective triangles.

Every such flare, lantern, signal or reflector shall be of a type approved by the director of transportation and he shall publish lists of those devices which he has approved as adequate for the purposes of this section and reflective triangles that conform to the requirements of the United States department of transportation standard number 125. [C35, §5067-e1; C39,§5034.56; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.447; 66GA, ch 67,§65]

Referred to in §§321.317(5), 327A.13

321.448 Display of flares or reflective devices. Whenever a motor truck, or a truck tractor, a trailer or a semitrailer drawn by a motor truck or a truck tractor is stopped upon or immediately adjacent to the main traveled portion of a highway outside of a business or residence district, during the times when lighted lamps must be displayed, then the driver or other person in charge of such vehicle shall, in addition to the requirements of section 321.395, cause a lighted fusee to be immediately placed on the roadway at the traffic side of such vehicle; as soon thereafter as possible, and in any case within the burning period of the fusee, three lighted flares, or three red reflector electric lanterns or three red reflectors or three reflective triangles shall be placed on the roadway, one at a distance of not less than one hundred feet in advance of such vehicle, one at a distance of not less than one hundred feet to the rear of such vehicle, and the third upon the traffic side of such vehicle; provided that if such vehicle is stopped within three hundred feet of a curve, crest of a hill, or other obstruction to view, the flare, red reflector electric lanterns, red reflectors or reflective triangles, in that direction shall be so placed as to afford ample warning to other users of the highway, but in no case less than one hundred feet from such vehicle. When such flares are taken up, during the times when lighted lamps must be displayed, a lighted fusee shall be placed at the traffic side of such vehicle.

In the event such vehicle is used in the transportation of flammable liquids or gases, whether loaded or empty, no open burning flares or fusees shall be used and red reflector electric lanterns or red reflectors or reflective triangles shall be used in lieu thereof.

During the times lighted lamps are not required, red flags or reflective triangles shall be used in place of flares or red reflector electric lanterns or red reflectors, provided that if such parking continues into the period when lighted lamps are required, flares or red reflector electric lanterns or red reflectors or reflective triangles shall be placed as above provided. Each of the red flags required under this section shall be not less than sixteen inches square. [C35,§5067-e1; C39,§5034.57; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.448]

Referred to in §§321.288, 321.317(5), 321.449, 327A.13

321.449 Explosives. No person shall at any time operate a motor truck or truck tractor transporting explosives as a cargo or part of a cargo upon a highway unless it carries flares or electric lanterns or reflective triangles as herein required, but such flares or electric lanterns or reflective triangles must be capable of producing a red light and shall be dis-

played upon the roadway when and as required in section 321.448. [C39,§5034.58; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.449]

321.450 Vehicles transporting explosives. Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

Said vehicle shall be marked or placarded on each side and the rear with the word "Explosives" in letters not less than eight inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four inches square marked with the word "Danger" in white letters six inches high.

Every said vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used. [C39, §5034.59; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.450]

321.451 Emergency vehicles—certificate of designation. The director is hereby authorized to designate a privately owned ambulance, rescue or disaster vehicle as an authorized emergency vehicle, and issue certificate of designation therefor, upon written request being made on forms provided by the department and showing necessity for such designation. Such certificate shall at all times be carried with the certificate of registration of the vehicle to which it refers and may be revoked by the director upon showing of abuse thereof. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.451]

SIZE, WEIGHT, AND LOAD

321.452 Scope and effect. Except for offenses punishable under the provisions of section 321.463 it is a misdemeanor, punishable as provided in section 321.482, for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this chapter, and the maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this chapter. [C39,§5035.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.452]

Referred to in §321E.1

321.453 Exceptions. The provisions of this chapter governing size, weight, and load shall not apply to fire apparatus or to implements of husbandry temporarily moved upon a highway, or to implements moved between the retail seller and farm purchaser within a fifty-mile radius from corporate limits wherein his place of business is located, or implements received and moved by a retail seller of implements of husbandry in exchange for an implement purchased, except on any part of the interstate highway system, or to a vehicle operating under the terms of a special permit issued as provided in chapter 321E. [C39, §5035.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.453]

Referred to in §321E.1

321.454 Width of vehicles. The total outside width of any vehicle or the load thereon shall not exceed eight feet. However, if hay, straw or stover moved on any implement of husbandry and the total width of load of the implement of husbandry exceeds eight feet in width, the implement of husbandry shall not be subject to the permit requirements of chapter 321E. If hay, straw or stover is moved on any other vehicle subject to registration, such moves shall be subject to the permit requirements for transporting loads exceeding eight feet in width as required under chapter 321E. [C24,§§5067, 5104; C27, §§5067, 5105-a32; C31, 35, §§5067, 5105-a32, 5105-c18; C39,§5035.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.454; 66GA, ch 171,§17]

Referred to in §§321E.1, 321E.8, 321E.9, 321E.10, 321E.17

321.455 Projecting loads on passenger vehicles. No passenger-type vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof. Passengers shall not ride on any part of any vehicle unless it is expressly designed either for passenger use or designed for carrying livestock, merchandise, or freight. [C31, 35,§5067-d1; C39, §5035.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.455; 66GA, ch 1165,§59]

Referred to in §321E.1

321.456 Height of vehicles. No vehicle unladen or with load shall exceed a height of thirteen feet, six inches. Nothing herein contained shall be construed to require any railroad or public authorities to provide sufficient vertical clearance to permit the operation of such vehicle upon the highways of this state. Any damage to highways, highway or railroad structures or underpasses caused by the height of any vehicle provided for by this section shall be borne by the operator or owner of such vehicle. [C31, 35,§5067-d2; C39,§5035.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.456]

Referred to in §§321E.1, 321E.8, 321E.9, 321E.17

321.457 Maximum length. The maximum length of any motor vehicle or combination of vehicles, except fire fighting apparatus and vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot be dismembered readily when required for emergency repair of public service facilities or properties, and such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance

lamps on both sides and marker lamps upon the extreme ends of any projecting load to mark clearly the dimensions of such load, at which time, a member of the state highway patrol shall be notified prior to the operation of such vehicle, shall be as follows:

1. No single truck, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of thirty-five feet.

2. No single bus, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of forty feet, provided that a bus in excess of thirty-five feet in overall length shall not have less than three axles.

3. Except as to combinations of vehicles, provisions for which are otherwise made in this chapter, no combination of truck tractor and a semitrailer hauling livestock shall have an overall length, inclusive of front and rear bumpers, in excess of sixty feet, nor shall any other combination of vehicles coupled together, unladen or with load, have an overall length, inclusive of front and rear bumpers, in excess of fifty-five feet. Combinations of vehicles consisting of a motor vehicle upon which a van box is fastened and which draws and bears a portion of the weight of a semitrailer purchased by an Iowa resident prior to April 16, 1974, may be operated on the highways of this state with a length exceeding fifty-five feet but not exceeding sixty feet, if a special overlength permit is obtained from the department for such operation. The special overlength permit shall be issued for the vehicle and such permit shall be valid until such time as the vehicle is no longer operable or until the owner of the vehicle transfers title to the vehicle to a nonresident. All such vehicles purchased after April 16, 1974, shall not be allowed to operate on the highways of this state.

4. However, a mobile home not in excess of forty-eight feet in length may be drawn by any motor vehicle, except a motor truck, provided, however, that the mobile home and its towing unit shall not be in excess of an overall length of sixty feet. For the purposes of this subsection, a light delivery truck, panel delivery truck or "pickup" shall not be construed to be a motor truck. Further providing that a portable livestock loading chute not in excess of a length of thirteen feet including its hitch or tongue may be drawn by any vehicle or combination of vehicles, provided that such vehicle or combination of vehicles drawing such loading chute is not in excess of the legal length provided for such vehicles or combinations.

5. No combination of vehicles coupled together which are used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, travel trailers, boats, farm and industrial tractors and self-propelled farm implements, nonself-propelled implements of husbandry, and self-propelled vehicles shall have an unladen length, inclusive of front and rear bumpers in excess of sixty feet, but the passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, or boats being transported may extend up to three feet beyond the front and rear bumpers of the transporting vehicles when the overall length of the vehicle with load does not exceed sixty-five feet.

6. No combination of three vehicles coupled together one of which is a motor vehicle, unladen or with load, shall have an overall length, inclusive of front and rear bumpers in excess of sixty feet.

7. A motor vehicle or combination of vehicles may be operated upon the highways of this state, irrespective of the length and weight limitations imposed by the laws of this state, if the motor vehicle or combination of vehicles is operated within the corporate limits of a city abutting a border of this state and such operations have been approved by ordinance of the city council and if the length and weight of the motor vehicle or combination of vehicles is in conformity with the laws relating to length and weight of the abutting state on July 1, 1974. If a city council has authorized such operation upon highways within the corporate limits, then the limit of travel for such motor vehicles or combination of vehicles within the state is extended to the commercial zones as described by federal regulations concerning interstate commerce, 49 code of federal regulations, paragraphs 1048.10, 1048.38, and 1048.101 as they exist on July 1, 1974. [C31, 35,§5067-d4; C39,§5035.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.457; 66GA, ch 67, §69, ch 1165,§§60, 61]

Referred to in §§307.10, 321E.1, 321E.10, 321E.11, 321E.17
Provisions for longer truck lengths and annual review by GA, see §307.10(5)

321.458 Loading beyond front. The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle or the front bumper of such vehicle if it is equipped with such a bumper. [C39,§5035.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.458]

Referred to in §321E.1

321.459 Dual axle requirement. No motor vehicle, trailer, or semitrailer having axles less than forty inches apart center to center, shall be operated on the highways of this state, unless the combined gross weight imposed on the highway by all of the wheels of all axles which are less than forty inches apart center to center does not exceed eighteen thousand pounds in the case of wheels equipped with pneumatic tires or fourteen thousand pounds in the case of wheels equipped with solid rubber tires. [C31, 35,§5067-d3; C39,§5035.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.459]

Referred to in §321E.1

321.460 Spilling loads on highways. No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping,

sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway. [C39,§5035.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.460]

Referred to in §321E.1

321.461 Trailers and towed vehicles. When one vehicle is towing another the drawbar or other connection shall not exceed fifteen feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery, or other objects of structural nature which cannot readily be dismembered. [C39,§5035.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.461]

Referred to in §321E.1

321.462 Drawbars and safety chains. When one vehicle is towing or pulling another vehicle the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and shall be fastened to the frame of the towing vehicle in such manner as to prevent sidesway, and in addition to such principal connection there shall be a safety chain which shall be so fastened as to be capable of holding the towed vehicle should the principal connection for any reason fail.

The connection between a truck tractor and a semitrailer with a gross weight of three thousand pounds or more shall be of a type approved by the director, and the commissioner is hereby given authority to approve or disapprove such types of connection submitted to him. [C39,§5035.11; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.462]

Referred to in §321E.1

321.463 Axle—maximum gross weight. An axle may be divided into two or more parts, provided, however, that all parts in the same vertical transverse plane shall be considered as one axle.

The gross weight on any one axle of a vehicle, or of a combination of vehicles, operated on the highways of this state, shall not exceed eighteen thousand pounds on an axle equipped with pneumatic tires, and shall not exceed fourteen thousand pounds on an axle equipped with solid rubber tires.

No vehicle or combination of vehicles shall be operated with a total gross weight in pounds in excess of the amount given in the following table corresponding to the distance in feet between the extreme axles of the said vehicle or combination of vehicles measured longitudinally to the nearest foot or fraction thereof.

No group of axles of any vehicle, or any combination of vehicles, shall carry a load in pounds in excess of the value given in the following table corresponding to the distance in feet between the extreme axles of the group measured longitudinally to the nearest foot or fraction thereof:

Distance in feet between the extremes of any group of axles or the extreme axles of the vehicle or combination.	Maximum load in pounds carried on any group of axles or of the vehicle or combination.
4	32,000
5	32,000
6	32,000
7	32,000
8	32,610
9	33,580
10	34,930
11	36,235
12	38,293
13	39,291
14	40,278
15	41,265
16	42,241
17	43,218
18	44,184
19	45,139
20	46,095
21	47,040
22	47,985
23	48,919
24	49,843
25	50,767
26	51,681
27	52,594
28	53,497
29	54,390
30	55,260
31	56,282
32	57,304
33	58,326
34	59,348
35	60,370
36	61,392
37	62,414
38	63,436
39	64,458
40	65,480
41	66,502
42	67,524
43	68,546
44	69,568
45	70,590
46	71,612
47	72,634

In no event shall the maximum gross weight, including the tolerances hereinafter set forth, exceed seventy-three thousand two hundred eighty pounds.

A tolerance above the maximum legal weight of any axle or vehicle or combination of vehicles may be allowed as follows:

Three percent on any axle, including tandem axles.

Eight percent of the gross weight on any particular group of axles.

Eight percent on the total gross weight of a vehicle or combination of vehicles.

The weight on any one axle, including a tandem axle, of a vehicle which is transporting livestock may exceed the legal maximum weight given in this chapter providing that the gross weight on any particular group of

axles on such vehicle does not exceed the gross weight allowable under this chapter for such group of axles.

Any person who operates any vehicle in violation of the provisions of this section, and any owner, or any other person, employing or otherwise directing the operator of any vehicle who requires or knowingly permits the operation of any vehicle in violation of the provisions of this section shall upon conviction or a plea of guilty be punished in accordance with the following schedule:

AXLE, TANDEM AXLE, GROUP OF AXLES AND GROSS WEIGHT VIOLATIONS

Percentage of Overload	Amount of Fine Per Hundred Pounds
Up to and including 8%	$1.00
Over 8% to and including 10%	1.25
Over 10% to and including 12%	1.50
Over 12% to and including 14%	2.00
Over 14% to and including 16%	3.00
Over 16% to and including 18%	4.00
Over 18% to and including 20%	5.00
Over 20%	6.00

No fine shall be assessed if the overload does not exceed the tolerance specified in this section. If the overload does exceed the tolerance specified in this section, the amount of the fine to be assessed shall be computed on the difference between the actual weight and the maximum legal weight specified in this section without allowance of any tolerance, by applying the appropriate rate in the preceding schedule for the total percentage of overload. The total percentage of overload shall be determined by dividing the appropriate maximum legal weight as specified in this section without allowance for any tolerance into the amount of pounds overloaded.

Overloads on axles and tandem axles and overloads on groups of axles or on an entire vehicle or combination of vehicles shall be considered as separate violations of the provisions of this section.

The penalties herein provided shall not be construed to be in lieu of any other penalties provided for violations of other provisions of this chapter.

Any person who issues or executes, or causes to be issued or executed, any bill of lading, manifest, or shipping document of any kind which states the false weight of the cargo set forth on such bill, manifest or document, to be less than the actual weight of such cargo, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days. [C24, 27, 31, 35, §5065; C39,§**5035.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.463]

Referred to in §§321.452, 321E.1, 321E.7, 321E.8, 321E.9, 321E.16, 321E.17, 753.15

321.464 Investigation as to safety. The director upon registering any vehicle under the laws of this state which vehicle is designed and used primarily for the transportation of property or for the transportation of ten or more persons, may require such information and may make such investigation or test as necessary to enable him to determine whether such vehicle may safely be operated upon the highways in compliance with all the provisions of this chapter. He shall register every such vehicle for a permissible gross weight not exceeding the limitations set forth in this chapter. Every such vehicle shall meet the following requirements:

1. It shall be equipped with brakes as required in sections 321.430 and 321.431.

2. Every motor vehicle to be operated outside of business and residence districts shall have motive power adequate to propel at a reasonable speed such vehicle and any load thereon or to be drawn thereby. [C39,§**5035.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.464]

Referred to in §321E.1

321.465 Weighing vehicles and removal of excess. Any peace officer having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the same either by means of portable or stationary scales and may require that such vehicle be driven to the nearest public scales.

Whenever an officer upon weighing a vehicle and load, as above provided, determines that the weight is unlawful, such officer may require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle to such limit as permitted under this chapter. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

Any driver of a vehicle who fails or refuses to stop and submit the vehicle and load to a weighing, or who fails or refuses when directed by an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section, shall be guilty of a misdemeanor and punished as provided in section 321.482.

Upon weighing a vehicle and load, as above provided, if such load is a sealed load, the weight officer shall issue a certificate setting forth the weights as determined by him and the seal number or numbers, if requested by the operator. [C31, 35,§4921-d1; C39,§**5035.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.465]

Referred to in §321E.1

321.466 Increased loading capacity—reregistration. An increased gross weight registration may be obtained for any vehicle by payment of the difference between the annual fee for the higher gross weight and the amount of the fee for the gross weight at which it is registered.

With respect to a vehicle held by a dealer for sale or trade, an increased gross weight registration may be obtained for any such vehicle on or after April 10 of each year upon change of ownership by payment of one-twelfth of the difference between the annual fee for the higher gross weight and the amount of the fee for the gross weight at which it is

registered, multiplied by the number of unexpired months of the year.

On or after July 1 of each year, the owner of a motor truck, truck tractor, road tractor, semitrailer or trailer may, if his operation thereof has not resulted in a conviction under this section or an action then pending against him for violation of the same, increase the gross load of any such vehicle to a higher gross weight classification by payment of one-twelfth of the difference between the annual fee for the higher gross weight and the amount of the fee for the gross weight at which it is registered, multiplied by the number of unexpired months of the year.

Upon conversion of a truck to a truck tractor or a truck tractor to a truck, an increased gross weight registration of the proper type may be obtained for any such vehicle by payment, except as provided in section 321.106, of one-twelfth of the difference between the annual fee for the higher gross weight and the amount of the annual fee for the gross weight at which the vehicle is registered, multiplied by the number of unexpired months of the year from the date of such conversion.

The registered gross weight of any vehicle or combination of vehicles may also be increased by installing and using a properly registered auxiliary axle or axles, and the combined registered gross weight of such vehicle and auxiliary axle or axles shall determine the total registered gross weight thereof. No auxiliary axle may be used to convert a single axle to a tandem axle unless equipped with a device to equalize the load carried by the single axle and the said auxiliary axle when in tandem and when in motion or when standing, and the load transmitted to the highway by either the single axle or the auxiliary axle shall not exceed that permitted for any single axle, nor shall the load transmitted to the highway when in tandem and when in motion or when standing, exceed that permitted for any tandem axle.

It shall be unlawful for any person to operate a motor truck, trailer, truck tractor, road tractor, semitrailer or combination thereof, or any such vehicle equipped with a transferable auxiliary axle or axles, on the public highways with a gross weight exceeding that for which it is registered by more than five percent of the gross weight for which it is registered, provided, however, that any vehicle or vehicle combination referred to herein, while carrying a load of raw farm products, soil fertilizers, including ground limestone, raw dairy products or livestock, live poultry, eggs, may be operated with a gross weight of twenty-five percent in excess of the gross weight for which it is registered.

For the purposes of this section cracked or ground soybeans, sargo, corn, wheat, rye, oats or other grain shall be deemed to be raw farm products, provided that such products are being directly delivered to a farm, from the place where the whole grain had been delivered from a farm for the purpose of cracking or grinding and immediate delivery to the farm to which such cracked or ground products are being delivered.

The truck operator shall have in his possession a receipt showing place of processing on his return trip.

Any person operating a vehicle on the public highways with a gross weight exceeding that for which it is registered shall be subject to a fine of one dollar for each one hundred pounds that the actual gross weight of the vehicle exceeds the registered gross weight. [C24, 27, §4921; C31, 35,§§4921-c1,-c2; C39,§**5035.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.466]

Referred to in §§321.123, 321E.1

321.467 to 321.470 Repealed by 62GA, ch 285,§1; see substitute, chapter 321E.

321.471 Local authorities may restrict. Local authorities with respect to highways under their jurisdiction may by ordinance or resolution prohibit the operation of vehicles upon any such highway or impose restrictions as to the weight of vehicles to be operated upon any such highway, except farm tractors as defined in section 321.1, subsection 7, for a total period of not to exceed ninety days in any one calendar year, whenever any said highway by reason of deterioration, rain, snow, or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced.

Any person who violates the provisions of such ordinance or resolution shall, upon conviction or a plea of guilty, be subject to a fine determined by dividing the difference between the actual weight and the maximum weight established by the ordinance or resolution by one hundred, and multiplying the quotient by two dollars. Local authorities may issue special permits, during periods such restrictions are in effect, to permit limited operation of vehicles upon specified routes with loads in excess of any restrictions imposed under this section, but not in excess of load restrictions imposed by any other provision of this chapter, and such authorities shall issue such permits upon a showing that there is a need to move to market farm produce of the type subject to rapid spoilage or loss of value or to move to any farm feeds or fuel for home heating purposes. [C24, 27,§4996; C31, 35,§§4686-c1, 4996; C39,§**5035.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.471]

Referred to in §321.236(8)

321.472 Signs posted. The local authority enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective unless and until such signs are erected and maintained. [C31, 35,§4686-c1; C39,§**5035.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.472]

Referred to in §321.236(8)

321.473 Limiting trucks. Local authorities with respect to highways under their jurisdiction may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles, or may impose limitations as to the weight thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways. [C39,§**5035.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.473]

Referred to in §§321.236(8), 321.474

321.474 Department may restrict. The department shall likewise have authority as hereinabove granted to local authorities to determine by resolution and to impose restrictions as to the weight of vehicles, except farm tractors as defined in section 321.1, subsection 7, operated upon any highway under the jurisdiction of said department and such restrictions shall be effective when signs giving notice thereof are erected upon the highway or portion of any highway affected by such resolution. Resolutions imposing restrictions under section 321.473 shall be for a definite period of time not to exceed twelve months. The expiration date of the resolution shall appear on all signs posted as required by this section.

Any person who violates the provisions of such resolution shall, upon conviction or a plea of guilty, be subject to a fine determined by dividing the difference between the actual weight and the maximum weight established by the resolution by one hundred, and multiplying the quotient by two dollars. The department may issue special permits, during periods such restrictions are in effect, to permit limited operation of vehicles upon specified routes with loads in excess of any restrictions imposed under this section, but not in excess of load restrictions imposed by any other provision of this chapter. The department shall issue special permits in accordance with the foregoing to trucks moving farm produce, which decays or loses its value if not speedily put to its intended use, to market upon a showing to the department that there is a requirement for trucking such produce or to trucks moving to any farm feeds or fuel necessary for home heating purposes. [C24, 27, 31, 35,§5066; C39,§**5035.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.474]

321.475 Liability for damage. Any person driving any vehicle, object, or contrivance upon any highway or highway structure shall be liable for all damage which said highway or structure may sustain as a result of any illegal operation, driving, or moving of such vehicle, object, or contrivance, or as a result of operation, driving, or moving any vehicle, object, or contrivance weighing in excess of the maximum weight in this chapter but authorized by a special permit issued as provided in this chapter.

Whenever such driver is not the owner of such vehicle, object, or contrivance, but is so operating, driving, or moving the same with the express or implied permission of said owner, then said owner and driver shall be jointly and severally liable for any such damage. Such damage may be recovered in a civil action brought by the authorities in control of such highway or highway structure. [C39, §**5035.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.475]

321.476 Weighing vehicles by department. Authority is hereby given to the department to stop any motor vehicle or trailer on the highways for the purposes of weighing and inspection, to weigh and inspect the same and to enforce the provisions of the motor vehicle laws relating to the registration, size, weight, and load of motor vehicles and trailers.

Authority is also hereby granted to subject to weighing and inspection, vehicles which have moved from a highway onto private property under circumstances which indicate that the load of the vehicle, if any, is substantially the same as the load which the vehicle carried before moving onto the private property.

Any person who prevents or in any manner obstructs an officer attempting to carry out the provisions of this section is guilty of a misdemeanor and shall be punished as provided in section 321.482. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.476]

Referred to in §§321.480, 321.481

321.477 Employees as peace officers. The department may designate by resolution certain of its employees upon each of whom there is hereby conferred the authority of a peace officer to control and direct traffic and weigh vehicles, and to make arrests for violations of the motor vehicle laws relating to the operating authority, registration, size, weight, and load of motor vehicles and trailers and registration of a motor carrier's interstate transportation service with the department. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.477]

Referred to in §§321.480, 321.481

321.478 Bond. Prior to entering upon the discharge of his duties as such peace officer, each of said designated employees shall furnish to the department a surety bond to the state in the sum of five hundred dollars, conditioned upon the faithful discharge of his duties. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.478; 66GA, ch 1165,§62]

Referred to in §§321.480, 321.481

321.479 Badge of authority. The department shall supply each of said employees so designated with a badge of authority, bearing a serial number, which shall be conspicuously displayed by the employee while in the performance of his duties as such peace officer. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.479]

Referred to in §§321.480, 321.481

321.480 Limitation on expense. For the purposes of sections 321.476 to 321.481 and the enforcement of the provisions of the motor vehicle laws relating to the size, weight, and load

of motor vehicles and trailers the department is hereby authorized to expend from the primary road fund only the amount appropriated for each biennium. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.480]

Referred to in §321.481

321.481 No impairment of other authority. Nothing in sections 321.476 to 321.480 shall be so construed as to limit or impair the authority or duties of other peace officers in the enforcement of the motor vehicle laws or any portion thereof. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.481]

Referred to in §321.480

CRIMINAL RESPONSIBILITY

321.482 Penalties for misdemeanor. It is a misdemeanor for any person to do any act forbidden or to fail to perform any act required by any of the provisions of this chapter unless any such violation is by this chapter or other law of this state declared to be a felony. Chapter 232 shall have no application in the prosecution of offenses committed in violation of this chapter which are punishable by a fine of not more than one hundred dollars, or by imprisonment for not more than thirty days.

Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days. [S13,§§1569, 1571-2a,-m21,-m22,-m26,-m27,-m29, 4808-b; SS15, §1571-m12a; C24,§§4903, 5081, 5089, 13119; C27, §§4903, 5055-b4, 5081, 5089, 13119; C31,§§4686-c2, 4903, 5055-b4, 5079-d6, 5081, 5089, 13119; C35, §§4686-c2, 4903, 4991-f5, 5024-e3, 5055-b4, 5067-e2, 5079-d6, 5081, 5089, 13119; C39,**§5036.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.482]

Referred to in §§80.6, 321.17, 321.78, 321.79, 321.80, 321.98, 321.99, 321.104, 321.190, 321.193, 321.216, 321.260, 321.262, 321.294, 321.300, 321.366, 321.369, 321.379, 321.381, 321.452, 321.465, 321.476, 321.487, 321B.15, 321E.16

321.483 Penalty for felony. Any person who is convicted of a violation of any of the provisions of this chapter herein declared to constitute a felony, and for which another punishment is not otherwise provided, shall be punished by imprisonment for a term of not more than five years, or by a fine of not less than five hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment. [C24, 27, 31, 35,§5081; C39,**§5036.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.483]

Referred to in §§321.77, 321.92, 321.100

321.484 Offenses by owners. It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law. [C24, 27, 31, 35, §5085; C39,**§5037.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.484]

321.485 Notice to appear. Except as provided in sections 753.13 to 753.20, whenever a peace officer has reasonable cause to believe that a person has violated any provision of this chapter punishable as a misdemeanor, such officer may:

1. Immediately arrest such person and take him before a magistrate; or

2. Without arresting the person, either

a. Prepare a written citation to appear in court containing the name and address of such person, the operator or chauffeur license number, if any, the registration number, if any of his vehicle, the offense charged, and the time when and place where such person shall appear in court; or

b. Prepare a memorandum of the alleged traffic violation containing the name and address of such person, the registration number, if any, of his vehicle, the offense alleged to have been committed, and such other information as may be prescribed by the commissioner of public safety with the concurrence of the director.

For preparing the summons or memorandum referred to in paragraphs *"a"* or *"b"* of this subsection, there shall be charged to the person named in the summons or memorandum, upon his conviction, a fee of two dollars. The fee shall be assessed as part of the court costs and shall be paid into the general fund of the county.

The number of copies and the form of the citations and memorandums authorized by this section shall be as prescribed by the commissioner of public safety with the concurrence of the director. [C24, 27, 31, 35,§5082; C39,**§5037.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.485; 66GA, ch 101,§3, ch 1165,§§63, 64]

Referred to in §§321.486, 753.18

321.486 Promise to appear—guaranteed arrest bond certificate. In lieu of bail the magistrate may release the arraigned person upon his written promise to appear in court for trial at time and place designated by such magistrate.

When bail is required to guarantee appearance for any offense charged under this chapter, the following nonexclusive forms shall be permitted subject to the following limitations:

1. A current guaranteed arrest bond certificate as defined in section 321.1, subsection 71 shall be considered sufficient surety if the defendant is charged with an offense where the penalty does not exceed two hundred dollars.

2. A valid credit card, as defined in section 537.1301, subsection 17, may be used and shall be sufficient surety when the defendant is charged with any scheduled offense under section 753.15. The defendant may use a credit card for bail purposes only in accordance with rules of the department of public safety adopted pursuant to chapter 17A.

If the officer prepares either a citation or a memorandum as provided in section 321.485, the alleged offender shall be requested to sign the same, and if he does sign may be released without arrest. In case a citation is issued,

the signing shall constitute a written promise to appear as stated in said citation. A copy of the citation shall be presented to the person named therein. If memorandum is prepared, the original shall be retained by the officer, a copy sent to the department, and a copy presented to the person named therein. [C39, §5037.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.486; 66GA, ch 1174,§1]

Referred to in §753.13

321.487 Violation of promise to appear. Any person willfully violating a citation to appear in court given as provided in this chapter, is guilty of a misdemeanor, punishable as provided in section 321.482 regardless of the disposition of the charge upon which he was cited. Venue shall be in the county where the defendant was to appear or in the county where he resides.

An appearance in response to such citation may be made either in person or by counsel. [C39,§5037.04; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.487]

Referred to in §§753.9, 753.16, 754.3

321.488 Procedure not exclusive. The foregoing provisions of this chapter shall govern all peace officers in making arrests without a warrant for violations of this chapter for offenses committed in their presence, but the procedure prescribed herein shall not be exclusive of any other method prescribed by law for the arrest and prosecution of a person. [C39,§5037.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.488]

321.489 Record inadmissible in a civil action. No record of the conviction of any person for any violation of this chapter shall be admissible as evidence in any court in any civil action. [C39,§5037.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.489]

321.490 Conviction not to affect credibility. The conviction of a person upon a charge of violating any provision of this chapter or other traffic regulation less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding. [C39,§5037.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.490]

321.491 Convictions to be reported. Every district court judge, district associate judge, and judicial magistrate shall keep a full record of every case in which a person is charged with any violation of this chapter or of any other law regulating the operation of vehicles on highways.

Within ten days after the conviction or forfeiture of bail of a person upon a charge of violating any provision of this chapter or other law regulating the operation of vehicles on highways every said magistrate of the court or clerk of the court of record in which such conviction was had or bail was forfeited shall prepare and immediately forward to the department an abstract of the record of said court covering the case in which said person was so convicted or forfeited bail, which abstract must be certified by the person so required to prepare the same to be true and correct.

Said abstract must be made upon a form furnished by the department and shall include the name and address of the party charged, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether bail forfeited and the amount of the fine or forfeiture as the case may be.

Every clerk of a court of record shall also forward a like report to the department upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

The failure, refusal, or neglect of any such officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be ground for removal therefrom.

The department shall keep all abstracts received hereunder at its main office and the same shall be open to public inspection during reasonable business hours. [S13,§1571-m23; C24, 27, 31, 35,§§5076–5078; C39,§5037.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.491]

321.492 Peace officers' authority. Any peace officer is authorized to stop any vehicle to require exhibition of the driver's operator or chauffeur license, to serve a summons or memorandum of traffic violation, to inspect the condition of the vehicle, to inspect the vehicle with reference to size, weight, cargo, bills of lading or other manifest of employment, tires and safety equipment, or to inspect the registration certificate, the compensation certificate, travel order, or permit of such vehicle. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.492]

Referred to in §321.238

CIVIL LIABILITY

321.493 Liability for damages. In all cases where damage is done by any motor vehicle by reason of negligence of the driver, and driven with the consent of the owner, the owner of the motor vehicle shall be liable for such damage.

A person who has made a bona fide sale or transfer of his right, title, or interest in or to a motor vehicle and who has delivered possession of such motor vehicle to the purchaser or transferee shall not be liable for any damage thereafter resulting from negligent operation of such motor vehicle by another, but the purchaser or transferee to whom possession was delivered shall be deemed the owner. The provisions of subsection 2 of section 321.45 shall not apply in determining, for the purpose of fixing liability hereunder, whether such sale or transfer was made. [C24, 27, 31, 35,§§4964, 5026; C39,§§5002.07, 5037.09; C46, 50, 54, 58, 62, §§321.51, 321.493; C66, 71, 73, 75,§321.493]

Referred to in §321.45(2, *d*)
Exemption from execution denied, §627.7

321.494 Guest statute. The owner or operator of a motor vehicle shall not be liable for any damages to any passenger or person riding in said motor vehicle as a guest or by invitation and not for hire unless damage is caused as a result of the driver of said motor vehicle being under the influence of an alcoholic beverage, a narcotic, hypnotic or other drug, or any combination of such substances, or because of the reckless operation by him of such motor vehicle. [C27, 31, 35,§5026-b1; C39, §5037.10; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.494]

Referred to in §321B.2
"Alcoholic beverage" defined; see §321B.2

321.495 to 321.497 Repealed by 62GA, ch 405,§13.

ACTIONS AGAINST NONRESIDENTS

321.498 Legal effect of use and operation. The acceptance by any nonresident of this state of the privileges extended by the laws of this state to nonresident operators or owners of operating a motor vehicle, or having the same operated, within this state shall be deemed:

1. An agreement by him that he shall be subject to the jurisdiction of the district court of this state over all civil actions and proceedings against him for damages to person or property growing or arising out of such use and operation, and

2. An appointment by such nonresident of the director* of this state as his lawful attorney upon whom may be served all original notices of suit pertaining to such actions and proceedings, and

3. An agreement by such nonresident that any original notice of suit so served shall be of the same legal force and validity as if personally served on him in this state.

4. The term "nonresident" shall include any person who was, at the time of the accident or event, a resident of the state of Iowa but who removed from the state before the commencement of such action or proceedings. [C31, 35,§5079-d11; C39,§5038.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.498]

Referred to in §§321.499, 321.558
*Director of transportation

321.499 "Person" defined. The term "person", as used in section 321.498 shall mean:

1. The owner of the vehicle whether it is being used and operated personally by said owner, or by his agent.

2. An agent using and operating the vehicle for his principal.

3. Any person who is in charge of the vehicle and of the use and operation thereof with the express or implied consent of the owner. [C31, 35,§5079-d12; C39,§5038.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.499]

Referred to in §321.558
See also §§321.1(35), 321.512

321.500 Original notice—form. The original notice of suit filed with the director of transportation shall be in form and substance the same as now provided in suits against residents of this state, except that that part of said notice pertaining to the return day shall be in substantially the following form, to wit:

"and unless you appear thereto and defend in the district court of Iowa in and for ..... county at the courthouse in ....., Iowa before noon of the sixtieth day following the filing of this notice with the director of transportation of this state, default will be entered and judgment rendered against you by the court." [C31, 35,§5079-d13; C39,§5038.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.500]

Referred to in §321.558

321.501 Manner of service. Plaintiff in any such action shall cause the original notice of suit to be served as follows:

1. By filing a copy of said original notice of suit with said director, together with a fee of two dollars, and

2. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the director, by restricted certified mail addressed to the defendant at his last known residence or place of abode, a notification of the said filing with the director. [C31, 35,§5079-d14; C39,§5038.04; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.501]

Referred to in §§321.502, 321.558

321.502 Notification to nonresident — form. The notification, provided for in section 321.501, shall be in substantially the following form, to wit:

"To .....(Here insert the name of each defendant and his residence or last known place of abode as definitely as known.)

You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the ..... day of ....., 19.., with the director of transporation of the state of Iowa.

Dated at ....., Iowa, this ..... day of ....., 19.....

.....
Plaintiff.

By .....
Attorney for plaintiff."

[C31, 35,§5079-d15; C39,§5038.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.502]

Referred to in §321.558

321.503 Repealed by 57GA, ch 267,§39.

321.504 Optional notification. In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery. [C31, 35,§5079-d17; C39, §5038.07; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.504]

Referred to in §321.558

321.505 Proof of service. Proof of the filing of a copy of said original notice of suit with the director, and proof of the mailing or personal delivery of said notification to said nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court. [C31, 35,§5079-d18; C39,§5038.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.505]

Referred to in §321.558

321.506 Actual service within this state. The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form and under the conditions provided for service on residents. [C31, 35,§5079-d19; C39,§5038.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.506]

Referred to in §321.558

321.507 Venue of actions. Actions against nonresidents as contemplated by this law may be brought in the county of which plaintiff is a resident, or in the county in which the injury was received, or damage done. [C31, 35,§5079-d20; C39,§5038.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.507]

321.508 Continuances. The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford him reasonable opportunity to defend said action. [C31, 35,§5079-d21; C39, §5038.11; C46, 50, 54, 58, 62, 66, 71, 73, 75, 321.508]

321.509 Duty of director. The director shall keep a record of all notices of suit filed with him, shall not permit said filed notices to be taken from his office except on an order of court, and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which he is defendant. [C31, 35,§5079-d22; C39,§5038.12; C46, 50, 54, 58, 62, 66, 71, 73, 75,§321.509]

321.510 Expenses and attorney fees. If judgment is rendered against the plaintiff, upon the trial of said action, said judgment shall include the reasonable expenses incurred by the defendant and his attorney in appearing to and defending against said action, provided that in the judgment of the trial court said action was commenced maliciously or without probable cause. [C31, 35,§5079-d23; C39, §5038.13; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.510]

321.511 Dismissal—effect. The dismissal of an action after the nonresident has entered a general appearance under the substituted service herein authorized, shall bar the recommencement of the same action against the same defendant unless said recommenced action is accompanied by actual personal service of the original notice of suit on said defendant in this state. [C31, 35,§5079-d24; C39, §5038.14; C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.511]

Constitutionality, 47GA, ch 134,§553

321.512 Action against insurance. Any contract insuring the liability of a nonresident motorist in Iowa shall, in the event of the death of said nonresident, be considered an asset of his estate having a situs in Iowa in any civil action arising out of a motor vehicle accident in which said nonresident may be liable. [C54, 58, 62, 66, 71, 73, 75,§321.512]

321.513 to 321.554 Reserved.

HABITUAL OFFENDER

321.555 Defined. As used in this division, "habitual offender" means any person who has accumulated convictions for separate and distinct offenses described in subsections 1, 2, or 3, committed after July 1, 1974, as follows:

1. Three or more convictions within a six-year period, of the following offenses, either singularly or in combination:

a. Manslaughter resulting from the operation of a motor vehicle.

b. Driving a motor vehicle while under the influence of an alcoholic beverage or a controlled substance as defined in section 204.101.

c. Driving a motor vehicle while operator's or chauffeur's license is suspended or revoked.

d. Perjury or the making of a false affidavit or statement under oath to the department of public safety.

e. An offense punishable as a felony under the motor vehicle laws of Iowa or any felony in the commission of which a motor vehicle is used.

f. Failure to stop and leave information or to render aid as required by section 321.263.

g. A violation of the traffic laws, except parking regulations, committed during a period of suspension or revocation.

2. Six or more convictions of any separate and distinct offenses within a two-year period in the operation of a motor vehicle which are required to be reported to the department of public safety by section 321.207, except equipment violations, violations of parking regulations of cities, violations of registration laws, operating a vehicle with an expired license or permit, failure to appear, and weights and measures violations and speeding violations of less than six miles per hour over the legal speed limit, as provided by law prior to enactment of chapter 1189, Acts of the Sixty-fifth General Assembly, 1974 Session.

3. The offenses included in subsections 1 and 2 shall be deemed to include offenses under any valid town, city or county ordinance paralleling and substantially conforming to the provisions of the Code concerning such offenses. [C75,§321.555]

Referred to in §321.560

321.556 Abstracts of conviction. The director of transportation shall certify three abstracts of the conviction record as maintained in the department of transportation of any person who appears to be an habitual offender, to the county attorney of the county in which such person resides, or to the attorney general if such person is not a resident of this state. The county attorney or attorney general, upon receiving the abstract from the director, shall file a petition against the person named therein in the district court of the state of Iowa in the county wherein such person resides or, in the case of a nonresident, in the district court in Polk county. The petition shall request the court to determine whether or not the person named therein is an habitual offender. [C75,§321.556; 66GA, ch 67,§§65, 66]

321.557 Admission in evidence. The abstract certified by the director may be admitted as evidence as provided in section 622.43. The abstract shall be prima-facie evidence that the person named therein was duly convicted by the court wherein such conviction or holding was made of each offense shown by such abstract, and if such person shall deny any of the facts as stated therein, he shall have the burden of proving that such is untrue. [C75,§321.557; 66GA, ch 67,§65]

321.558 Order to appear. Upon the filing of the petition, a judge of the district court shall enter an order incorporating by attachment the aforesaid abstract and direct the person named therein as defendant to appear as ordered by the court and show cause why such person should not be barred from operating a motor vehicle on the highways of this state. A copy of the petition, the show cause order, and the abstract shall be served upon the person named therein as defendant in the same manner as an original notice. Service of notice on any nonresident of this state may be made in the same manner as provided in sections 321.498 to 321.506. [C75,§321.558]

321.559 Finding of court. If the court finds that the defendant is not the same person named in the abstract, or that the defendant is not an habitual offender as provided in this division, the proceeding shall be dismissed. If the court finds that the defendant is an habitual offender, the court shall by appropriate judgment direct that such person not operate a motor vehicle on the highways of this state for the period specified in section 321.560. In such case the defendant shall surrender to the court all licenses or permits to operate a motor vehicle upon the highways of this state. The clerk of the court shall transmit a copy of such judgment together with any licenses or permits surrendered to the department of transportation. [C75,§321.559; 66GA, ch 67,§66]

321.560 Barred for six years. A license to operate a motor vehicle in this state shall not be issued to any person declared to be an habitual offender under section 321.555, subsection 1 for a period of six years from the date of judgment. A license to operate a motor vehicle in this state shall not be issued to any person declared to be an habitual offender under section 321.555, subsection 2, for a period of one year from the date of judgment. [C75, §321.560]

Referred to in §§321.559, 321.561

321.561 Punishment for violation. It shall be unlawful for any person convicted as an habitual offender to operate any motor vehicle in this state during the period of time specified in section 321.560. Any person guilty of violating the provisions of this section shall upon conviction be punished by imprisonment in the penitentiary for not more than two years and notwithstanding the provisions of section 687.2, such conviction shall constitute a misdemeanor and not a felony. [C75, §321.561]

321.562 Rule of construction. Nothing in this division shall be construed as amending, modifying, or repealing any existing law of this state or any ordinance of any political subdivision relating to the operation of motor vehicles, the licensing of persons to operate motor vehicles, or providing penalties for the violation thereof. [C75,§321.562]

CHAPTER 321A

MOTOR VEHICLE FINANCIAL RESPONSIBILITY

Referred to in §§307.27, 321.283

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WORDS AND PHRASES DEFINED

321A.1 Definitions. The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. *Director.* "Director" means the director of transportation or his designee.

2. *Judgment.* Any judgment which shall have become final by expiration without appeal during the time within which an appeal might have been perfected, or any judgment if an appeal from such judgment has been perfected, which has not been stayed by the execution, filing and approval of a bond as provided in rule 337 *(a)* of the rules of civil procedure, or any judgment which shall have become final by affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

3. *License.* Any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

4. *Motor vehicle.* "Motor vehicle" means every vehicle which is self-propelled but not including vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The term "car" or "automobile" shall be synonymous with the term "motor vehicle".

5. *Nonresident.* Every person who is not a resident of this state.

6. *Nonresident operating privilege.* The privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in this state.

7. *Operator.* Every person who is in actual physical control of a motor vehicle whether or not licensed as an operator or chauffeur under the laws of this state.

8. *Owner.* A person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of a security agreement with a right of possession in the debtor, then such debtor shall be deemed the owner for the purpose of this chapter.

9. *Person.* Every natural person, firm, copartnership, association, or corporation.

10. *Proof of financial responsibility.* Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a motor vehicle, in the amount of ten thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of five thousand dollars because of injury to or destruction of property of others in any one accident.

Referred to in §§321A.24(1), 516A.1, 516A.2

11. *Registration.* Registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

12. *State.* Any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.1]

Referred to §§321A.24(1), 516A.1, 516A.2

ADMINISTRATION

321A.2 Director to administer chapter—judicial review.

1. The director shall administer and enforce the provisions of this chapter and may make rules necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the director under the provisions of sections 321A.4 to 321A.11.

Such hearings shall be held before the director as early as practicable within not to exceed twenty days after receipt of such request in the county wherein the requesting person resides unless the director and such person agree that such hearing may be held in some other county. Upon such hearing the director may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require an examination under oath of the person requesting such hearing.

2. Judicial review of the actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.2]

321A.3 Director to furnish operating record—fees to be charged and disposition of fees. The director shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter, which abstract shall also fully designate the motor vehicles, if any, registered in the name of such person, and, if there shall be no record of any conviction of such person having violated any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the director shall so certify. A fee of two dollars shall be paid for each such abstract except by state, county, city or court officials. Such fees shall be used by the department for administering this chapter. Such abstracts shall not be admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.3]

Referred to in §749B.20

SECURITY FOLLOWING ACCIDENT

321A.4 Effect of failure to report accidents. The director shall suspend the license or any nonresident's operating privilege of any person who willfully fails, refuses, or neglects to make reports of a traffic accident as required by the laws of this state. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.4]

Referred to in §§321A.2, 321A.8 to 321A.11, and 321A.33

321A.5 Security required following accident—exceptions.

1. The director shall, immediately or within sixty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death or damage to the property of any one person in excess of two hundred fifty dollars, suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident, and if such operator is a nonresident the privilege of operating a motor vehicle within this state, and if such owner is a nonresident the privilege of the use within this state of any motor vehicle owned by him, unless such operator or owner or both shall deposit security in a sum which shall be sufficient in the judgment of the director to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against such operator or owner; provided notice of such suspension shall be sent by the director to such operator and owner not less than ten days prior to the effective date of such suspension and shall state the amount required as security.

2. This section shall not apply under the conditions stated in section 321A.6 or to any of the following:

a. To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

b. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

c. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the director, covered by any other form of liability insurance policy or bonds; or

d. To such owner if such owner is at the time of such accident qualified as a self-insurer under section 321A.34, or to any such operator operating such motor vehicle for such self-insurer.

3. No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this state, except that if such motor vehicle was not registered in this state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this state shall execute a power of attorney authorizing the director to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than ten thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said

limit for one person, to a limit of not less than twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than five thousand dollars because of injury to or destruction of property of others in any one accident.

Upon receipt of a report of a motor vehicle accident and information that an automobile liability policy or surety bond meeting the requirements of this chapter was in effect at the time of this accident covering liability for damages resulting from such accident, the director shall forward by regular mail to the insurance carrier or surety carrier which issued such policy or bond a copy of such information concerning insurance or bond coverage, and it shall be presumed that such policy or bond was in effect and provided coverage to both the operator and the owner of the motor vehicle involved in such accident unless the insurance carrier or surety carrier shall notify the director otherwise within fifteen days from the mailing of such information to such carrier; provided, however, that in the event the director shall later ascertain that erroneous information had been given him in respect to the insurance or bond coverage of the operator or owner of a motor vehicle involved in such accident, he shall take such action as he is otherwise authorized to do under this chapter within sixty days after the receipt by him of correct information with respect to such coverage. [C31, 35,§5079-c4; C39, §5021.01; C46,§321.275; C50, 54, 58, 62, 66, 71, 73, 75,§321A.5; 66GA, ch 143,§2]

Referred to in §§321A.2, 321A.6 to 321A.11 and 321A.32(3)

321A.6 Exceptions to requirement of security. The requirements as to security and suspension in section 321A.5 shall not apply:

1. To the operator or the owner of a motor vehicle involved in any accident wherein no injury or damage was caused to the person or property of anyone other than such operator or owner.

2. To the operator or the owner of a motor vehicle if at the time of the accident the vehicle was stopped, standing, or parked, whether attended or unattended, except that the requirements of this chapter shall apply in the event the director determines that any such stopping, standing, or parking of the vehicle was illegal or that the vehicle was not equipped with lighted lamps or illuminating devices or flags when and as required by the laws of this state and that any such violation contributed to the accident.

3. To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission.

4. If, prior to the date that the director would otherwise suspend license and registration or nonresident's operating privilege under section 321A.5, there shall be filed with the director evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a warrant for confession of judgment, payable when and in such installments as the parties have agreed to, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident; provided, however, in the event there shall be any default in the payment of any installment under any confession of judgment, then, upon notice of such default, the director shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until the entire amount provided for in said confession of judgment has been paid; and provided, further, that in the event there shall be any default in the payment of any installment under any duly acknowledged written agreement, then, upon notice of such default, the director shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until:

a. Such person deposits and thereafter maintains security as required under section 321A.5 in such amount as the director may then determine; or

b. Twelve months after such security was required, provided the department has not been notified that an action upon such an agreement has been instituted in a court in this state within one year after such security was required. [C50, 54, 58, 62, 66, 71, 73, 75, §321A.6; 66GA, ch 184,§1]

Referred to in §§321A.2, 321A.5(2), 321A.7 to 321A.11

321A.7 Duration of suspension. The license and registration and nonresident's operating privilege suspended as provided in section 321A.5 shall remain so suspended and shall not be renewed nor shall any such license or registration be issued to such person until:

1. Such person shall deposit or there shall be deposited on his behalf the security required under section 321A.5; or

2. Twelve months after such accident, provided the department has not been notified by any party to the action or an attorney for any party that an action for damages arising out of such accident has been instituted within one year from the date of the accident; or

3. Evidence satisfactory to the director has been filed with him of a release from liability, or a final adjudication of nonliability, or a warrant for confession of judgment, or a duly acknowledged written agreement, in accordance with section 321A.6, subsection 4; provided, however, in the event there shall be any default in the payment of any installment under any confession of judgment, then, upon notice of such default, the director shall forthwith suspend the license and registration or

nonresident's operating privilege of such person defaulting which shall not be restored unless and until the entire amount provided for in said confession of judgment has been paid; and provided, further, that in the event there shall be any default in the payment of any installment under any duly acknowledged written agreement, then, upon notice of such default, the director shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until

a. Such person deposits and thereafter maintains security as required under section 321A.5 in such amount as the director may then determine, or

b. Twelve months after such security was required, provided the department has not been notified by any party to the action or an attorney for any party that an action upon such an agreement has been instituted in a court in this state within one year after such security was required. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.7; 66GA, ch 184,§§2, 3]

Referred to in §§321A.2, 321A.8 to 321A.11

321A.8 Application to nonresidents, unlicensed drivers, and unregistered motor vehicles. In case the operator or the owner of a motor vehicle involved in an accident within this state has no license or registration, he shall not be allowed a license or registration until he has complied with the requirements of sections 321A.4 to 321A.11 to the same extent that would be necessary if, at the time of the accident, he had held a license and registration. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.8]

Referred to in §§321A.2, 321A.9 to 321A.11

321A.9 Form and amount of security.

1. The security required under sections 321A.4 to 321A.11 shall be in such form and in such amount as the director may require but in no case in excess of the limits specified in section 321A.5 in reference to the acceptable limits of a policy or bond. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the director or state treasurer, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons; provided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

2. The director may reduce the amount of security ordered in any case within six months after the date of the accident if, in his judgment, the amount ordered is excessive. In case the security originally ordered has been deposited the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of section 321A.10. [C50, 54, 58, 62, 66, 71, 73, 75, §321A.9]

Referred to in §§321A.2, 321A.8 to 321A.11

321A.10 Custody, disposition, and return of security. Security deposited in compliance with the requirements of sections 321A.4 to 321A.11 shall be placed by the director in the custody of the state treasurer and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than one year after the date of such accident, or within one year after the date of deposit of any security under subsection 3 of section 321A.7, and such deposit or any balance thereof shall be returned to the depositor or his personal representative when evidence satisfactory to the director has been filed with him that there has been a release from liability, or a final adjudication of nonliability, or a warrant for confession of judgment, or a duly acknowledged agreement, in accordance with subsection 4 of section 321A.6, or whenever, after the expiration of one year from the date of the accident, or within one year after the date of deposit of any security under subsection 3 of section 321A.7, the director shall be given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.10]

Referred to in §§321A.2, 321A.8 to 321A.11

321A.11 Matters not to be evidence in civil suits. Neither the report required by section 321A.4, the action taken by the director pursuant to sections 321A.4 to 321A.10 and this section, the findings, if any, of the director upon which action is based, nor the security filed as provided in said sections shall be referred to in any way, or be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.11]

Referred to in §§321A.2, 321A.8 to 321A.10

PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE

321A.12 Courts to report nonpayment of judgments.

1. Whenever any person fails within sixty days to satisfy any judgment, it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the director immediately after the expiration of said sixty days, a certified copy of such judgment.

2. If the defendant named in any certified copy of a judgment reported to the director is a nonresident, the director shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.12]

Referred to in §§321A.13, 321A.14

321A.13 Suspension for nonpayment of judgments—exceptions.

1. The director upon receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in section 321A.16.

2. If the judgment creditor consents in writing, in such form as the director may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the director, in his discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section 321A.16, provided the judgment debtor furnishes proof of financial responsibility.

3. Any person whose license, registration, or nonresident's operating privilege has been suspended or is about to be suspended or shall become subject to suspension under the provisions of sections 321A.12 to 321A.29 may be relieved from the effect of such judgment as hereinbefore prescribed in said sections by filing with the director an affidavit stating that at the time of the accident upon which such judgment has been rendered the affiant was insured, that the insurer is liable to pay such judgment, and the reason, if known, why such insurance company has not paid such judgment. Such a person shall also file the original policy of insurance or a certified copy thereof, if available, and such other documents as the director may require to show that the loss, injury, or damage for which such judgment was rendered, was covered by such policy of insurance. If the director is satisfied from such papers that such insurer was authorized to issue such policy of insurance at the time and place of issuing such policy and that such insurer is liable to pay such judgment, at least to the extent and for the amounts required in this chapter, the director shall not suspend such license or registration or nonresident's operating privilege, or if already suspended shall reinstate them. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.13]

Referred to in §321A.14

321A.14 Suspension to continue until judgments paid and proof given.

1. Such license, registration, and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is satisfied in full or to the extent hereinafter provided, and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 321A.13 and 321A.16.

2. A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of sections 321A.12 to 321A.29. [C31, 35,§5079-c4; C39,§**5021.01**; C46,§321.275; C50, 54, 58, 62, 66, 71, 73, 75,§321A.14]

Referred to in §321A.13

321A.15 Payments sufficient to satisfy requirements.

1. Judgments herein referred to shall, for the purpose of this chapter only, be deemed satisfied:

a. When ten thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

b. When, subject to such limit of ten thousand dollars because of bodily injury to or death of one person, the sum of twenty thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

c. When five thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

2. Provided, however, payments made in settlements of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section. [C31, 35,§5079-c4; C39,§**5021.02**; C46, §321.276; C50, 54, 58, 62, 66, 71, 73, 75,§321A.15]

Referred to in §§321A.13, 321A.14

321A.16 Installment payment of judgments—default.

1. A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

2. The director shall not suspend a license, registration, or nonresident's operating privilege, and shall restore any license, registration, or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

3. In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the director shall forthwith suspend the license, registration, or nonresident's operating privilege of the judgment debtor until such judg-

ment is satisfied, as provided in this chapter. [C31, 35,§5079-c4; C39,§5021.02; C46,§321.276; C50, 54, 58, 62, 66, 71, 73, 75,§321A.16]

Referred to in §§321A.13, 321A.14

321A.17 Proof required upon certain convictions.

1. Whenever the director, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction or a forfeiture of bail, the director shall also suspend the registration for all motor vehicles registered in the name of such person, except that he shall not suspend such registration, unless otherwise required by law, if such person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by such person.

2. Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state and not then unless and until he shall give and thereafter maintain proof of financial responsibility.

3. If a person is not licensed, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, or for operating an unregistered motor vehicle upon the highways, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until he shall give and thereafter maintain proof of financial responsibility.

4. Whenever the director suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility. [C31, 35,§§5079-c5,-c6; C39,§§5021.03, 5021.04; C46,§§321.277, 321.278; C50, 54, 58, 62, 66, 71, 73, 75,§321A.17]

Referred to in §§321.181, 321.189, 321A.13, 321A.14

321A.18 Alternate methods of giving proof. Proof of financial responsibility when required under this chapter may be given by filing:

1. A certificate of insurance as provided in section 321A.19 or section 321A.20; or

2. A bond as provided in section 321A.24; or

3. A certificate of deposit of money or securities as provided in section 321A.25. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.18]

Referred to in §§321A.13, 321A.14

321A.19 Certificate of insurance as proof.

1. Proof of financial responsibility may be furnished by filing with the director the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

2. No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such motor vehicle is so designated in such a certificate. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.19]

Referred to in §§321A.13, 321A.14, 321A.18, 321A.21, 321A.22

321A.20 Certificate furnished by nonresident as proof.

1. The nonresident owner of a motor vehicle not registered in this state may give proof of financial responsibility by filing with the director a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the motor vehicle, or motor vehicles, described in such certificate is registered, or if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms with the provisions of this chapter, and the director shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

a. Said insurance carrier shall execute a power of attorney authorizing the director to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state.

b. Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.

2. If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the director shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.20]

Referred to in §§321A.13, 321A.14, 321A.18, 321A.21, 321A.22

321A.21 "Motor vehicle liability policy" defined.

1. A "motor vehicle liability policy" as said term is used in this chapter shall mean an owner's or an operator's policy of liability insurance, certified as provided in section 321A.19 or section 321A.20 as proof of financial

responsibility, and issued, except as otherwise provided in section 321A.20, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

2. Such owner's policy of liability insurance:

a. Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

b. Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: Ten thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars because of injury to or destruction of property of others in any one accident.

3. Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

4. Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

5. Such motor vehicle liability policy need not insure any liability under any workers' compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

6. Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

a. The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy.

b. The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

c. The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in paragraph "*b*" of subsection 2 of this section.

d. The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the chapter shall constitute the entire contract between the parties.

7. Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

8. Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

9. Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

10. The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

11. Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.21; 66GA, ch 1084,§43]

Referred to in §§321A.13, 321A.14

321A.22 Notice of cancellation or termination of certified policy. When an insurance carrier has certified a motor vehicle liability policy under section 321A.19 or section 321A.20, the insurance so certified shall not be canceled or terminated until at least ten days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the director, except that such a policy subsequently procured and certified shall, on the effective date of its certification, terminate

the insurance previously certified with respect to any motor vehicle designated in both certificates. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.22]
Referred to in §§321A.13, 321A.14

321A.23 Chapter not to affect other policies.

1. This chapter shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are endorsed to conform with the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.

2. This chapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.23]
Referred to in §§321A.13, 321A.14

321A.24 Bond as proof.

1. Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state, or a bond with at least two individual sureties each owning real estate within this state, and together having equities equal in value to at least twice the amount of the bond, which real estate shall be scheduled in the bond approved by a judge or clerk of a court of record, which said bond shall be conditioned for payment of the amounts specified in section 321A.1, subsection 10. Such bond shall be filed with the director and shall not be cancelable except after ten days' written notice to the director. Such bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damage because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such bond was filed, upon the filing of notice to that effect by the director in the office of the proper clerk of court of the county where such real estate shall be located. Any individual surety so scheduling real estate security shall furnish satisfactory evidence of title thereto and the nature and extent of all encumbrances thereon and the value of the surety's interest therein, in such manner as the judge or clerk of the court of record approving the bond may require. The notice filed by the director shall, in addition to any other matters by him deemed to be pertinent, contain a legal description of the real estate so scheduled, the name of the holder of the record title, the amount for which it stands as security, and the name of the person in whose behalf proof is so being made. Upon the filing of such notice the clerk of the court of such county shall retain the same as part of the records of such court and enter upon the encumbrance book the date and hour of filing, the name of the surety, the name of the record titleholder, the description of the real estate, and the further notation that a lien is charged on such real estate pursuant to the notice filed hereunder. From and after the entry of the foregoing upon the encumbrance book all persons whomsoever shall be charged with notice thereof.

2. If such a judgment, rendered against the principal on such bond shall not be satisfied within sixty days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the state against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond. An action to foreclose any lien upon real estate scheduled by any surety under the provisions of this chapter shall be by equitable proceeding in the same manner as is provided for the foreclosure of real estate mortgages. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.24]
Referred to in §§321A.13, 321A.14, 321A.18

321A.25 Money or securities as proof.

1. Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named therein has deposited with him twenty-five thousand dollars in cash, or securities such as may legally be purchased by a state bank or for trust funds of a market value of twenty-five thousand dollars. The state treasurer shall not accept any such deposit and issue a certificate therefor and the director shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

2. Such deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid. [C50, 54, 58, 62, 66, 71, 73, 75, §321A.25]
Referred to in §§321A.13, 321A.14, 321A.18

321A.26 Owner may give proof for others. Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the

immediate family or household of the owner, the director shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided or has qualified as a self-insurer under section 321A.34. The director shall designate the restrictions imposed by this section on the face of such person's license. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.26]

Referred to in §§321A.13, 321A.14, 321A.33

321A.27 Substitution of proof. The director shall consent to the cancellation of any bond or certificate of insurance or the director shall direct and the state treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.27]

Referred to in §§321A.13, 321A.14

321A.28 Other proof may be required. Whenever any proof of financial responsibility filed under the provisions of this chapter no longer fulfills the purposes for which required, the director shall for the purpose of this chapter, require other proof as required by this chapter and shall suspend the license and registration or the nonresident's operating privilege pending the filing of such other proof. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.28]

Referred to in §§321A.13, 321A.14

321A.29 Duration of proof — when proof may be canceled or returned.

1. The director shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the director shall direct and the state treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this chapter as proof of financial responsibility, or the director shall waive the requirement of filing proof, in any of the following events:

a. At any time after three years from the date such proof was required when, during the three-year period preceding the request, the director has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration, or nonresident's operating privilege of the person by or for whom such proof was furnished; or

b. In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

c. In the event the person who has given proof surrenders his license and registration to the director;

2. Provided, however, that the director shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has within one year immediately preceding such request been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the director.

3. Whenever any person whose proof has been canceled or returned under paragraph "*c*" of subsection 1 of this section applies for a license or registration within a period of three years from the date proof was originally required, any such application shall be refused unless the applicant shall re-establish such proof for the remainder of such three-year period. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.29]

Referred to in §§321A.13, 321A.14

VIOLATIONS OF PROVISIONS OF CHAPTER—PENALTIES

321A.30 Transfer of registration to defeat purpose of chapter prohibited. This chapter shall not prevent the owner of a motor vehicle, the registration of which has been suspended hereunder, from effecting a bona fide sale of such motor vehicle to another person whose rights or privileges are not suspended under this chapter nor prevent the registration of such motor vehicle by such transferee. This chapter shall not in any wise affect the rights of any secured party or lessor of a motor vehicle registered in the name of another as owner who becomes subject to the provisions of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.30]

321A.31 Surrender of license and registration. Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated, or who shall neglect to furnish other proof upon request of the director shall immediately return his license and registration to the director. If any person shall fail to return to the director the license or registration as provided herein, the director shall forthwith direct any peace officer to secure possession thereof and to return the same to the director. [C31, 35,§5079-c4; C39,§5021.01; C46,§321.275; C50, 54, 58, 62, 66, 71, 73, 75,§321A.31]

Referred to in §321A.32(2)

321A.32 Other violations—penalties.

1. Any person whose license or registration or nonresident's operating privilege has been suspended, denied or revoked under this chapter or continues to remain suspended or revoked under this chapter, and who, during such suspension, denial or revocation, or during such continuing suspension or continuing

revocation, drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this chapter, shall be fined not more than five hundred dollars or imprisoned not exceeding six months, or both.

2. Any person willfully failing to return license or registration as required in section 321A.31 shall be fined not more than five hundred dollars or imprisoned not to exceed thirty days, or both.

3. Any person who shall forge or, without authority, sign any notice provided for under section 321A.5 that a policy or bond is in effect, or any evidence of proof of financial responsibility, or who files or offers for filing any such notice or evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than one thousand dollars or imprisoned not more than one year, or both.

4. Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be fined not more than five hundred dollars or imprisoned not more than ninety days, or both. [C31, 35, §5079-c7; C39,§**5021.05**; C46,§321.279; C50, 54, 58, 62, 66, 71, 73, 75,§321A.32]

GENERAL PROVISIONS

321A.33 Exceptions. This chapter shall not apply with respect to any motor vehicle owned by the United States, this state, or any political subdivision of this state, or any municipality therein, nor to any operator, except for section 321A.4, while on official duty operating such motor vehicle; nor, except for section 321A.4 and section 321A.26, with respect to any motor vehicle which is subject to the requirements of section 325.26, and section 327.15. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.33]

321A.34 Self-insurers.

1. Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the director as provided in subsection 2 of this section.

2. The director may, in his discretion, upon the application of such a person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person for damages arising out of the ownership, maintenance, or use of any vehicle owned by such person.

3. Upon not less than five days' notice and a hearing pursuant to such notice, the director may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment for damages arising out of the ownership, maintenance, or use of any vehicle owned by such self-insurer within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.34]

Referred to in §§321A.5(2,*d*), 321A.26

321A.35 Past application of chapter. This chapter shall not apply with respect to any accident, or judgment arising therefrom, or violation of the motor vehicle laws of this state, occurring prior to October 1, 1947. Any person who has before October 1, 1947, had his operator's license suspended or has had his motor vehicle registration plates suspended or who has been refused registration or license to operate a motor vehicle upon the highways of the state of Iowa, under the provisions of sections of the Code in effect before October 1, 1947, and has not had such suspension removed, as therein provided, shall not be issued an operator's license nor be entitled to registration of a motor vehicle in this state until proof is filed with the county treasurer and the state department of transportation that the judgment against him rendered by the court has been stayed, satisfied or otherwise discharged of record. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.35]

321A.36 Chapter not to prevent other process. Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.36]

321A.37 Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it. [C50, 54, 58, 62, 66, 71, 73, 75,§321A.37]

321A.38 Title of chapter. This chapter may be cited as the "Motor Vehicle Financial and Safety Responsibility Act." [C50, 54, 58, 62, 66, 71, 73, 75,§321A.38]

Constitutionality, 52GA, ch 172,§39

321A.39 Liability insurance — statement. Whenever any dealer licensed under chapter 322 sells a motor vehicle at retail and the transaction does not include the sale of liability insurance coverage which will protect the purchaser under the Iowa motor vehicle financial and safety responsibility Act the purchase order or invoice evidencing the transaction shall contain a statement in the following form:

"I understand that liability insurance coverage which would protect me under the Iowa Motor Vehicle Financial and Safety Responsibility Act IS NOT INCLUDED in my purchase of the herein described motor vehicle. I have received a copy of this statement.

.....
(Purchaser's signature)"

The seller shall print or stamp said statement on the purchase order or invoice in distinctive color ink and with clearly visible letters. Said statement shall be signed by the purchaser in the space provided therein on or

before the date of delivery of the motor vehicle described in the purchase order or invoice and a copy thereof shall be given to the purchaser by the seller.

No civil liability shall arise on account of the failure of any person to comply with the provisions of this section.

Any person violating any provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding fifty dollars. [C54, 58, 62, 66, 71, 73, 75,§321A.39]

CHAPTER 321B

INTOXICATED DRIVERS

(Implied consent law)
Referred to in §307.27

CHEMICAL TEST

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CHEMICAL TEST

321B.1 Declaration of policy. The general assembly hereby determines and declares that the provisions of this chapter are necessary in order to control alcoholic beverages and aid the enforcement of laws prohibiting operation of a motor vehicle while under the influence of an alcoholic beverage. [C66, 71, 73, 75,§321B.1]

321B.2 Definitions. As used in this chapter the words *"peace officer"* mean:

1. Members of the highway patrol.
2. Police officers under civil service as provided in chapter 400.
3. Sheriffs.
4. Regular deputy sheriffs who have had formal police training.
5. Any other law enforcement officer who has satisfactorily completed an approved course relating to motor vehicle operators under the influence of alcoholic beverages at the Iowa law enforcement academy or a law enforcement training program approved by the department of public safety.

As used in this chapter and sections 29B.106, 321.209, 321.281, 321.494 and 749.2 the words *"alcoholic beverage"* include alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.

As used in this chapter, unless the context otherwise requires, *"director"* means the director of transportation or his designee, and *"department"* means the state department of transportation. [C66, 71, 73, 75,§321B.2]

321B.3 Implied consent to test. Any person who operates a motor vehicle in this state upon a public highway, under such circumstances as to give reasonable grounds to believe the person to have been operating a motor vehicle while under the influence of an alcoholic beverage, shall be deemed to have given consent to the withdrawal from his body of specimens of his blood, breath, saliva, or urine, and to a chemical test or tests thereof, for the purpose of determining the alcoholic content of his blood, subject to the provisions hereinafter set out. The withdrawal of such body substances, and the test or tests thereof, shall be administered at the written request of a peace officer having reasonable grounds to believe the person to have been operating a motor vehicle upon a public highway of this state while under the influence of an alcoholic beverage, and only after the peace officer has placed such person under arrest for the offense of operating a motor vehicle while under the influence of an alcoholic beverage. The peace officer shall determine which of the four substances, breath, blood, saliva, or urine, shall be tested. Refusal to submit to a chemical test of urine, saliva or breath shall be deemed a refusal to submit, and the provisions of section 321B.7 shall apply. A refusal to submit to a chemical test of blood shall not be deemed a refusal to submit, but in that case, the peace officer shall then determine which one of the other three substances shall be tested, and shall offer such test. If such peace officer fails to provide a test within two hours after such arrest, no test shall be required, and there shall be no revocation under the provisions of section 321B.7. [C66, 71, 73, 75,§321B.3]

Referred to in §321B.5

321B.4 Taking sample for test. Only a licensed physician, or a medical technologist

or registered nurse designated by a licensed physician as his representative, acting at the written request of a peace officer may withdraw such body substances for the purpose of determining the alcoholic content of the person's blood. However, any peace officer, using devices and methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcoholic content of the person's blood. Only new, originally factory wrapped, disposable syringes and needles, kept under strictly sanitary and sterile conditions shall be used for drawing blood. Such person may have an independent chemical test or tests administered in addition to any administered at the direction of a peace officer. The failure or inability of the person to obtain an independent chemical test or tests shall not preclude the admission in evidence of the results of the test or tests taken at the direction of the peace officer. Upon the request of the person who is tested, the results of the test or tests taken at the direction of the peace officer shall be made available to him. [C66, 71, 73, 75,§321B.4]

321B.5 Dead or unconscious persons. Any person who is dead, unconscious or who is otherwise in a condition rendering him incapable of consent or refusal shall be deemed not to have withdrawn the consent provided by section 321B.3, and the test may be given; provided that a licensed physician shall certify in advance of such test that such person is dead, unconscious or otherwise in a condition rendering him incapable of consent or refusal. In such case such condition shall obviate the requirements of arrest and advice pursuant to section 321B.6. [C66, 71, 73, 75,§321B.5]

Referred to in §321B.6

321B.6 Statement of officer. A peace officer shall advise any person who is requested to take any chemical test that a refusal to submit to such test will result in revocation of the person's license or privilege to operate a motor vehicle; provided, however, that this requirement shall not apply in the case of any person referred to in section 321B.5. [C66, 71, 73, 75,§321B.6]

Referred to in §321B.5

321B.7 Refusal to submit. If a person under arrest refuses to submit to the chemical testing, no test shall be given, but the director, upon the receipt of a sworn report of the peace officer that he had reasonable grounds to believe the arrested person to have been operating a motor vehicle upon a public highway of this state while under the influence of an alcoholic beverage, that he had placed such person under arrest for the offense of operating a motor vehicle while under the influence of an alcoholic beverage and that the person had refused to submit to the chemical testing, shall revoke his license or permit to drive and any nonresident operating privilege for a period of not less than one hundred twenty days nor more than one year; or if the person is a resident without a license or permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit within one year from the date of the alleged violation, subject to review as hereinafter provided. The effective date of any such revocation shall be twenty days after the director has mailed notice of such revocation to such person by registered or certified mail. [C66, 71, 73, 75,§321B.7]

Referred to in §§321.191, 321B.3

321B.8 Hearing. Upon the written request of a person whose privilege to drive has been revoked or denied, the director shall grant the person an opportunity to be heard within twenty days after the receipt of the request, but the request must be made within thirty days of the effective date of revocation or denial. The hearing shall be before the director, in the county wherein the alleged events occurred for which the person was arrested, unless the director and the person agree that the hearing may be held in some other county. The hearing may be recorded and its scope shall cover the issues of whether a peace officer had reasonable grounds to believe the person to have been operating a motor vehicle upon a public highway of this state while under the influence of an alcoholic beverage, whether the person was placed under arrest and whether he refused to submit to the test or tests. The director shall order that the revocation or denial be either rescinded or sustained. [C66, 71, 73, 75,§321B.8]

321B.9 Judicial review. Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court in the county wherein the alleged events occurred for which the licensee was arrested or in the county in which the administrative hearing was held. [C66, 71, 73, 75,§321B.9]

321B.10 Evidence in any action. Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while operating a motor vehicle upon a public highway of this state while under the influence of an alcoholic beverage, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, saliva or urine is admissible. [C66, 71, 73, 75,§321B.10]

321B.11 Proof of refusal admissible. If the person under arrest refuses to submit to the test or tests, proof of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating a

motor vehicle upon a public highway of this state while under the influence of an alcoholic beverage. [C66, 71, 73, 75,§321B.11]

321B.12 Other evidence. The provisions of this chapter shall not be construed as limiting the introduction of any other competent evidence bearing on the question of whether the person was under the influence of an alcoholic beverage. [C66, 71, 73, 75,§321B.12]

321B.13 Information relayed to other states. When it has been finally determined under the procedures of this chapter that a nonresident's privilege to operate a motor vehicle in this state has been revoked or denied, the department shall give information in writing of the action taken to the official in charge of traffic control or public safety of the state of the person's residence and of any state in which he has a license. [C66, 71, 73, 75,§321B.13]

321B.14 Citation of Act. This chapter may be cited as the "Uniform Chemical Test for Intoxication Act." [C66, 71, 73, 75,§321B.14]

Constitutionality, 60GA, ch 114,§51

321B.15 Driving while license denied or revoked. Any person whose license, or driving privilege, has been denied or revoked as provided in this chapter, and who drives any motor vehicle upon the highways of this state while such license or privilege is denied or revoked, is guilty of a misdemeanor and upon conviction shall be punished as provided for misdemeanors in section 321.482. The department, upon receiving the record of the conviction of any person under this section upon a charge of driving a motor vehicle while the license of such person was revoked, shall extend the period of revocation for an additional like period, and the department shall not issue a new license during such additional period. [C75,§321B.15]

321B.16 to 321B.28 Transferred to 321.283.

CHAPTER 321C

INTERSTATE DRIVERS LICENSE COMPACTS

321C.1 Authority to compact.
321C.2 Enforcement.

321C.1 Authority to compact. The director of transportation may, subject to the approval of the state transportation commission, enter into drivers license compacts with other jurisdictions legally joining therein in substantially the following form.

The contracting states agree:

ARTICLE I—FINDINGS AND DECLARATION OF POLICY

a. The party states find that:

1. The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

2. Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

3. The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

b. It is the policy of each of the party states to:

1. Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

2. Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II—DEFINITIONS

As used in this compact:

a. "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

b. "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

c. "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction

or forfeiture is required to be reported to the licensing authority.

ARTICLE III—REPORTS OF CONVICTION

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

Referred to in Art. IV

ARTICLE IV—EFFECT OF CONVICTION

a. The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

1. Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

2. Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

3. Any felony in the commission of which a motor vehicle is used;

4. Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

b. As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

c. If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision "*a*" of this article, such party state shall construe the denominations and descriptions appearing in subdivision "*a*" hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V—APPLICATIONS FOR NEW LICENSES

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

1. The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

2. The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

3. The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI—APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other co-operative arrangement between a party state and a non-party state.

ARTICLE VII—COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

a. The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

b. The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII—ENTRY INTO FORCE AND WITHDRAWAL

a. This compact shall enter into force and become effective as to any state when it has enacted the same into law.

b. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The pro-

visions of this compact shall be severable. [C66, 71, 73, 75,§321C.1]

321C.2 Enforcement. The agencies and officers of this state and its subdivisions and municipalities shall enforce this compact and do all things appropriate to effect its purpose and intent which may be within their respective jurisdictions. [C66, 71, 73, 75,§321C.2]

CHAPTER 321D

VEHICLE EQUIPMENT COMPACTS

321D.1 Authority to compact.
321D.2 Enforcement.

321D.1 Authority to compact. The director of transportation may, subject to the approval of the state transportation commission, enter into vehicle equipment safety compacts with other jurisdictions legally joining therein in substantially the following form.

The contracting states agree:

ARTICLE I—FINDINGS AND PURPOSES

a. The party states find that:

1. Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

2. There is a vital need for the development of greater interjurisdictional co-operation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

b. The purposes of this compact are to:

1. Promote uniformity in regulation of and standards for equipment.

2. Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

3. To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision *"a"* of this article.

c. It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II—DEFINITIONS

As used in this compact:

a. "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

b. "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

c. "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III—THE COMMISSION

a. There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

b. The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

c. The commission shall have a seal.

d. The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission may appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission,

and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

e. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

f. The commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the commission shall be eligible for social security coverage in respect of old-age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

g. The commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

h. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

Referred to in Art. VI *e*

i. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

j. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

k. The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE IV—RESEARCH AND TESTING

The commission shall have power to:

a. Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

b. Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

c. Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

d. Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or co-ordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V—VEHICULAR EQUIPMENT

a. In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than sixty days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

b. Following the hearing or hearings provided for in subdivision "*a*" of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

c. Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

d. The commission shall send prompt notice of its action in issuing any rule, regulation or

code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

e. If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

f. Except as otherwise specifically provided in or pursuant to subdivisions *"e"* and *"g"* of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

g. The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

ARTICLE VI—FINANCE

a. The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

b. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: One-third in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

c. The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article III *"h"* of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article III *"h"* hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

d. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

e. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

f. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII—CONFLICT OF INTEREST

a. The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

b. Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the

commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII—ADVISORY AND TECHNICAL COMMITTEES

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may co-operate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

ARTICLE IX—ENTRY INTO FORCE AND WITHDRAWAL

a. This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

b. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal. [C66, 71, 73, 75,§321D.1]

321D.2 Enforcement. The agencies and officers of this state and its subdivisions and municipalities shall enforce this compact and do all things appropriate to effect its purpose and intent which may be within their respective jurisdictions. [C66, 71, 73, 75,§321D.2]

CHAPTER 321E

MOVEMENT OF VEHICLES OF EXCESSIVE SIZE AND WEIGHT

Referred to in §§307.27, 321.423(1), 321.453, 321.454
This chapter enacted as amendment to ch 321

321E.1 Permits by department.
321E.2 Primary road extensions.
321E.3 Escorts for movement—distance schedules.
321E.4 Adjustments on pavement for variations in road width and traffic.
321E.5 Adjustments on gravel roads.
321E.6 Variations in road width and traffic.
321E.7 Load limits per axle.
321E.8 Annual permits.
321E.9 Single-trip permits.
321E.10 Truck trailers manufactured in Iowa.
321E.11 Daylight movement only—holidays.
321E.12 Registration must be consistent.
321E.13 Financial responsibility.
321E.14 Fees for permits.
321E.15 Rules made available.
321E.16 Violations—penalties.
321E.17 Five or more violations.
321E.18 Overall operations considered.
321E.19 Permit suspended, changed or revoked.
321E.20 Suspension period.
321E.21 Process on nonresidents.
321E.22 Service of process.
321E.23 Failure to receive copy of process.
321E.24 Warning device on long loads.
321E.25 Use of highways of interstate system.
321E.26 Driver of escort vehicle—license required.
321E.27 Definition.
321E.28 Single-trip permits.

321E.1 Permits by department. The department and local authorities may in their discretion and upon application and with good cause being shown therefor issue permits for the movement of construction machinery being temporarily moved on streets, roads or highways and for vehicles with indivisible loads carried thereon which exceed the maximum dimensions and weights specified in sections 321.452 to 321.466, but not to exceed the limitations imposed in sections 321E.1 to 321E.15. Permits so issued may be single-trip permits or annual permits. All permits shall be in writing and shall be carried in the cab of the vehicle for which the permit has been issued and shall be available for inspection at all times. The vehicle and load for which the permit has been issued shall be open to inspection by any peace officer or to any authorized agent of any permit granting authority. When in the judgment of the issuing local authority in cities and counties the movement of a vehicle with an indivisible load or construction machinery which exceeds the maximum dimensions and weights will be unduly hazardous to public safety or will cause undue damage to streets, avenues, boulevards, thoroughfares, highways, curbs, sidewalks, trees, or other public or private property, the permit shall be denied and the reasons therefor endorsed upon the application. Permits issued by local authorities shall designate the days when and routes upon which loads and construction machinery may be moved within the county on other than primary roads. [C31, 35, §§5067-d7,-d8; C39,§§5035.16, 5035.18, 5035.19; C46, 50, 54, 58, 62, 66,§§321.467, 321.469, 321.470; C71, 73, 75,§321E.1]

Referred to in §§321E.8, 321E.9

321E.2 Primary road extensions. Annual permits and single-trip permits shall be issued by the authority responsible for the maintenance of such system of highways or streets except that the department shall have authority to issue permits on primary road extensions in cities in conjunction with movements on the rural primary road system. [C71, 73, 75,§321E.2]

Referred to in §321E.1

321E.3 Escorts for movement — distance schedules. All movements of mobile homes and other vehicles the width of which, including any load, exceeds the roadway lane width of the highway or street being traversed, shall be under escort. Permits for the movement of indivisible loads and single-trip permits for construction equipment being moved temporarily on highways and streets exceeding fourteen feet in width or mobile homes of widths including appurtenances exceeding twelve feet, five inches shall be restricted to maximum trip distances in accordance with the following schedule:

SCHEDULE OF OVER-WIDTH MOVEMENT DISTANCES FOR PAVEMENT WIDTHS OF 24 FEET OR MORE WITH TRAFFIC OF 4,000 OR MORE VEHICLES PER DAY

Load Width (ft.)	Distance (Miles)
13	50
14	50
15	41
16	32
17	23
18	15
19	10
20	8
21	7
22	6¼
23	5½
24	5
25	4½
26	4
27	3¾
28	3½
29	3¼
30	3
31	2¾
32	2½
33	2¼
34	2
35	1¾
36	1½
37	1¼
38	1
39	¾
40	½
Over 40	Not allowed

Notwithstanding the provisions of this section, the maximum trip distances for the movement of mobile homes and factory-built structures with widths including appurtenances exceeding twelve feet five inches may be waived under section 321E.28 by the department and local authorities. [C71, 73, 75, §321E.3; 66GA, ch 185,§1, ch 1174,§3]

Referred to in §§321E.1, 321E.4, 321E.5, 321E.8, 321E.9, 321E.28

321E.4 Adjustments on pavement for variations in road width and traffic. The following adjustments to the schedule under section 321E.3 shall be made for paved surface widths and traffic volumes to arrive at the effective load width used in determining the distance which shall be allowed:

1. For each foot of surface width less than twenty-four feet, two feet shall be added to the actual load width to determine the effective load width.

2. For traffic volumes under four thousand vehicles per day the effective load width shall be determined by subtracting from the actual load width at the rate of two feet for each one thousand vehicles per day less than four thousand vehicles per day. [C71, 73, 75,§321E.4]

Referred to in §321E.1

321E.5 Adjustments on gravel roads. The following adjustments to the schedule under section 321E.3 shall be made for gravel surface widths and traffic volumes to arrive at the effective load width used in determining the distance which shall be allowed:

1. For each foot of roadway width more than twenty-four feet, two feet shall be subtracted from the actual load width to determine the effective load width.

2. For traffic volumes under four thousand vehicles per day the effective load width shall be determined by subtracting from the actual load width at the rate of two feet for each one thousand vehicles per day less than four thousand vehicles per day. [C71, 73, 75,§321E.5]

Referred to in §321E.1

321E.6 Variations in road width and traffic. A movement of an indivisible load or construction machinery being temporarily moved over a highway or highways having sections carrying varying volumes of traffic and having varying surface widths shall have its permissible total distance computed on the basis of the lowest volume of traffic or the greatest highway width, whichever produces the greater distance by the foregoing schedule. However, no movement over a section or sections carrying a given shorter permissible maximum shall be greater than that shorter maximum and, in computing the distance which would be traveled on a section or sections having a certain width and traffic volume, distances which would be traveled on sections carrying shorter permissible move distances shall be included. [C71, 73, 75, §321E.6]

Referred to in §321E.1

321E.7 Load limits per axle. The gross weight on any axle of any vehicle or combination of vehicles traveling under a permit issued in accordance with the provisions of this chapter shall not exceed the maximum axle load prescribed in section 321.463; except that, construction machinery being temporarily moved on streets, roads, or highways

may have a gross weight of thirty-six thousand pounds on any single axle equipped with a minimum size twenty-six point five-inch by twenty-five-inch flotation pneumatic tires and a maximum gross weight of twenty thousand pounds on any single axle equipped with minimum size eighteen-inch by twenty-five-inch flotation pneumatic tires, provided that the total gross weight of the vehicle or a combination of vehicles does not exceed a maximum of one hundred twenty-six thousand pounds; and except that a manufacturer of machinery or equipment manufactured or assembled in Iowa may be granted a permit for the movement of such machinery or equipment mounted on pneumatic tires with axle loads exceeding the maximum axle load prescribed in section 321.463 for distances not to exceed twenty-five miles at a speed not greater than twenty miles per hour. The movement of such machinery or equipment shall be over a specified route between the place of assembly or manufacture and a storage area, shipping point, proving ground, experimental area, weighing station, or another manufacturing plant. [C31, 35,§5067-d7,-d8; C39,§5035.16; C46, 50, 54, 58, 62, 66,§321.467; C71, 73, 75,§321E.7]

Referred to in §§321E.1, 321E.9

321E.8 Annual permits. Except as provided under section 321E.3 and subject to the discretion and judgment provided for in section 321E.1, annual permits shall be issued in accordance with the following provisions:

1. Vehicles with indivisible loads having an overall width not to exceed twelve feet, five inches or mobile homes including appurtenances not to exceed twelve feet, five inches and an overall length not to exceed seventy feet, zero inches may be moved for unlimited distances. The vehicle and load shall not exceed the height of thirteen feet, ten inches and the total gross weight as prescribed in section 321.463.

2. Vehicles with indivisible loads having an overall width not to exceed fourteen feet, zero inches and an overall length not to exceed eighty feet, zero inches shall be restricted to trip distances not to exceed fifty highway and street miles in total aggregate. The vehicle and load shall not exceed the height as prescribed in section 321.456 and the total gross weight as prescribed in section 321.463.

3. Vehicles with indivisible loads having an overall length not to exceed one hundred feet, zero inches shall be restricted to trip distances not to exceed fifty highway and street miles in total aggregate. The vehicle and load shall not exceed the width as prescribed in section 321.454, the height as prescribed in section 321.456 and the total gross weight as prescribed in section 321.463. [C31, 35,§5067-d7, -d8; C39,§5035.16; C46, 50, 54, 58, 62, 66,§321.467; C71, 73, 75,§321E.8]

Referred to in §321E.1

321E.9 Single-trip permits. Except as provided in section 321E.3 and subject to the discretion and judgment provided for in section 321E.1, single-trip permits shall be issued in accordance with the following provisions:

1. Vehicles with indivisible loads having an overall width not to exceed twelve feet, five inches or mobile homes including appurtenances not to exceed twelve feet, five inches and an overall length not to exceed eighty-five feet, zero inches may be moved for unlimited distances. No mobile home may be moved under the provisions of this subsection if the actual mobile home unit exceeds sixty-seven feet six inches in length excluding hitch or any overhang. No unit moved under the provisions of this subsection shall exceed the height as prescribed in section 321.456 and the total gross weight as prescribed in section 321.463.

2. Vehicles with indivisible loads having an overall width not to exceed twelve feet, zero inches, an overall length not to exceed eighty feet, zero inches, and a total gross weight not to exceed seventy-five thousand pounds may be moved for unlimited distances over specified routes. The height of such vehicle and load shall be limited only to the height limitations of underpasses, bridges, power lines, and other established height restrictions on the specified route.

3. Vehicles with indivisible loads having an overall width not to exceed twelve feet, zero inches, an overall length not to exceed eighty feet, zero inches, and a total gross weight not to exceed ninety thousand pounds may be moved for unlimited distances over specified routes and, when the same is required by the issuing authority, shall be accompanied by a civilian escort approved by the issuing authority. The height of such vehicle and load shall be limited only to the height limitations of underpasses, bridges, power lines, and other established height restrictions on the specified route. An official escort may be provided for such movement at the option of the permit holder.

4. Vehicles with indivisible loads of widths exceeding twelve feet, zero inches, lengths not to exceed one hundred twenty feet, zero inches, and total gross weights including both vehicle and load not to exceed ninety thousand pounds shall be moved according to the schedule established in section 321E.3 when accompanied by an official escort approved by the issuing authority. The height of such vehicle and load shall be limited only to the height limitations of underpasses, bridges, power lines, or other established height restrictions on the specified route.

5. Vehicles especially designed for the exclusive movement of grain bins or vehicles with indivisible loads having an overall length not to exceed one hundred twenty feet, zero inches may be moved for unlimited distances over specified routes when accompanied by a civilian escort approved by the issuing authority. The vehicle and load shall not exceed the width as prescribed in section 321.454, the

height as prescribed in section 321.456, and the total gross weight as prescribed in section 321.463. An official escort may be provided for such movement at the option of the permit holder.

6. Vehicles with indivisible loads exceeding a total gross weight of ninety thousand pounds may be moved in special or emergency situations provided the gross weight on any axle shall not exceed the maximum prescribed in section 321.463. The issuing authority may impose any special restrictions deemed necessary on movements by permit under this subsection.

7. Vehicles or combinations of vehicles consisting of construction machinery being temporarily moved on streets, roads, and highways with a maximum total gross weight limitation and a single axle weight limitation prescribed in section 321E.7, an overall width not to exceed fourteen feet, an overall length not to exceed eighty feet, may be moved for unlimited distances over specified routes when accompanied by official escort approved by the issuing authority. The height of the vehicle or combination of vehicles shall be limited only to the height limitations of underpasses, bridges, power lines, and other established height restrictions on the specified route. [C39,§5035.18; C46, 50, 54, 58, 62, 66,§321.469; C71, 73, 75,§321E.9; 66GA, ch 185,§2, ch 1174,§4]

Referred to in §321E.1

321E.10 Truck trailers manufactured in Iowa. The department or local authorities may in their discretion and upon application issue annual trip permits for the movement of truck trailers manufactured or assembled in this state that exceed the maximum length specified in section 321.457 and the maximum width specified in section 321.454. Movement of such truck trailers shall be solely for the purpose of delivery or transfer from the point of manufacture or assembly to another point of manufacture or assembly within the state or to a point outside the state, shall be only on roadways of twenty-four feet or more in width or on four-lane highways, shall be on the most direct route necessary for such movement, and shall display the special plates designated in section 321.57. All truck trailers under permit for such movement shall contain no freight or additional load. All truck trailers under permit for such movement shall be at a speed not to exceed forty-five miles an hour or the established speed limit whichever is lower. No vehicle or combination of two or more vehicles inclusive of front and rear bumpers, including towing units, involved in the movement of truck trailers shall exceed seventy feet in length and an overall width of ten feet. All such vehicles or combinations shall be distinctly marked on both the front and rear of the unit in such manner as the director of transportation shall designate to indicate that the vehicles or combinations are being moved for delivery or transfer purposes only.

Permits issued under the provisions of this section shall be in writing and shall be carried in the cabs of the vehicles for which the permits have been issued and shall be available for inspection at all times. The vehicles for which the permits have been issued shall be open to inspection by any peace officer or to any authorized agent of any permit granting authority. [C31, 35,§§5067-d7,-d8; C39,§5035.16; C46, 50, 54, 58, 62, 66,§321.467; C71, 73, 75, §321E.10; 66GA, ch 67,§65]

Referred to in §321E.1

321E.11 Daylight movement only—holidays. Movements by permit in accordance with this chapter shall be permitted only during the hours from sunrise to sunset unless it is established by the issuing authority that the movement can be better accomplished at another period of time because of traffic volume conditions.

Except as provided in section 321.457, no movement by permit shall be permitted on holidays, after twelve o'clock noon on days preceding holidays and holiday weekends, or special events when abnormally high traffic volumes can be expected. Such restrictions shall not be applicable to urban transit systems as defined in section 321.19, subsection 2. For the purposes of this chapter, holidays shall include Memorial Day, Independence Day, and Labor Day. [C71, 73, 75,§321E.11; 66GA, ch 1174,§5]

Referred to in §321E.1

321E.12 Registration must be consistent. Any vehicle traveling under permit shall be properly registered for the gross weight of the vehicle and load. Any person owning special mobile equipment registered and in compliance with section 321.21, may use a transport vehicle registered for the gross weight of the transport without a load. [C71, 73, 75, §321E.12]

Referred to in §321E.1

321E.13 Financial responsibility. Prior to the issuance of any permit, the applicant for a permit shall be required to file proof of financial responsibility or to post a bond not to exceed ten thousand dollars with the issuing authority. Such bonds shall be used as security for repair or replacement of official signs, signals, and roadway foundations, surfaces, or structures which may be damaged or destroyed during the movement of a vehicle and load operating under such permit. [C71, 73, 75, §321E.13]

Referred to in §321E.1

321E.14 Fees for permits. The department or local authorities issuing such permits shall charge a fee of ten dollars for an annual permit and a fee of five dollars for a single-trip permit. Fees for the movement of buildings, parts of buildings, or unusual vehicles or loads may be increased to cover the costs of inspections by the issuing authority. A fee not to exceed eighty dollars per ten-hour day or pro-

rated fraction thereof per person and car for escort service may be charged when requested or when required under this chapter. Proration of escort fees between state and local authorities when more than one governmental authority provides or is required to provide escort for a movement during the period of a day shall be determined by rule under section 321E.15. The department and local authorities may charge any permit applicant for the cost of trimming trees and removal and replacement of natural obstructions or official signs and signals or other public or private property required to be removed during the movement of a vehicle and load. [C71, 73, 75,§321E.14]

Referred to in §321E.1

321E.15 Rules made available. The department may adopt and make available upon request to interested parties printed rules and regulations necessary for the movement by permit of vehicles and indivisible loads under the provisions of this chapter. No rule or regulation shall be adopted without prior notice to city and county officials and without a hearing on the proposed rule or regulation. All rules and regulations adopted shall have due regard for the safety of the traveling public and the protection of the highway surfaces and structures. Rules and regulations for permit travel on the interstate system shall be consistent with the federal requirements for the system. [C71, 73, 75,§321E.15]

Referred to in §§321E.1, 321E.14, 321E.16

321E.16 Violations—penalties. A person shall not commit any act forbidden or fail to perform any act required by the provisions of this chapter or any provision of rules adopted pursuant to section 321E.15. Any person who is convicted of a violation of any provision other than length, height, width, or weight of any permit issued under this chapter shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars. The fine for violation of the length, height, width, and weight allowed by permit shall be based upon the difference between the actual length, height, width, and weight of the vehicle and load and the maximum allowable by permit and in accordance with section 321.482 for violations of length, height, or width limitations and sections 321.482 and 321.463 for violation of weight limitations. If a vehicle with indivisible load traveling under permit is found to be in violation of weight limitations, the vehicle operator shall be allowed a reasonable amount of time to remove any ice, mud, snow, and other weight attributable to climatic conditions accumulated along the route prior to application of the penalties prescribed in sections 321.463 and 321.482. [C71, 73, 75,§321E.16; 66GA, ch 1174,§6]

321E.17 Five or more violations. Proof of imposition of penalties on five or more occasions for violation of sections 321.454, 321.456, 321.457, or 321.463 or any combination of penalties for violation of said sections totaling five or more incurred during any twelve-month period with respect to the operation of one or more vehicles by any one permit holder, whether operated personally or through agents, servants, or employees of the permit holder shall constitute prima-facie evidence that the permit holder has willfully operated or caused to be operated a vehicle or vehicles in violation of this chapter. [C71, 73, 75, §321E.17]

321E.18 Overall operations considered. In any proceeding brought under this chapter, the issuing authority shall consider evidence relating to the character and gravity of the violations and the extent of the operations of any vehicles by or on behalf of the permit holder upon the public highways of this state, which did not involve any violations. [C71, 73, 75,§321E.18]

321E.19 Permit suspended, changed or revoked. Upon complaint by local authorities or on the department's own initiative and after notice and hearing before one or more members of the permit issuing body, any permit issued under this chapter may be suspended, changed, or revoked in whole or in part by the issuing authority for willful failure to comply with any provisions of this chapter or with any rule or regulation adopted under authority of this chapter or with any term, condition, or limitation of the permit. [C71, 73, 75,§321E.19]

321E.20 Suspension period. Whenever the issuing authority shall find from the evidence adduced at such hearing that a permit holder has willfully operated or caused to be operated a vehicle or vehicles in violation of this chapter, the authority may enter an order suspending, modifying, or revoking the permit in whole or in part at its discretion for a period of not more than ninety days. If the issuing authority finds in a subsequent proceeding within twelve months from the date of the initial suspension, modification, or revocation that a permit holder has again willfully operated in violation of this chapter, the issuing authority shall order suspension, modification, or revocation of the permit in whole or in part for a period not to exceed one year. [C71, 73, 75,§321E.20]

321E.21 Process on nonresidents. Any person using and operating a vehicle over the highways of this state who is a nonresident of this state or at the time a cause for hearing arises under this chapter is a resident of the state but subsequently becomes a nonresident of this state, shall be deemed to have appointed the secretary of state of the state of Iowa to be the person's lawful attorney. Any legal processes in any proceeding brought against the person under this chapter shall be served on the secretary of state. The use and operation by the person shall be signification of the person's agreement that any such process

against him which is so served shall be of the same legal force and validity as though served upon him personally. [C71, 73, 75,§321E.21]

321E.22 Service of process. Service of such process shall be made by serving a copy upon or filing a copy in the office of the secretary of state. The service shall be sufficient service upon the person if notice of the service and a copy of the process are within ten days sent by registered mail by the department general counsel to the permit holder at the last known address of said permit holder. An affidavit of compliance therewith of the department general counsel shall be appended to the summons. The issuing authority may order such continuances as may be necessary to afford the permit holder reasonable opportunity to defend the action. The secretary of state shall keep a record of all such processes which shall show the day and hour of such service. [C71, 73, 75,§321E.22]

321E.23 Failure to receive copy of process. When a final order is entered against any permit holder who did not receive notice of service and a copy of the process by registered mail, the permit holder shall within six months after the entry of the order appear before the issuing authority and file a verified statement showing that he did not receive such notice of service and the copy of the process. The permit holder shall further show that he has a good and substantial defense to the action and may appear and answer the allegations made against him. Thereupon, the proceedings may be had as if the permit holder had appeared in due time and no order had been entered. If it appears at the hearing that the order ought not to have been entered, the order may be set aside, altered, or amended as shall appear just; otherwise it shall be ordered to stand affirmed against such permit holder. [C71, 73, 75,§321E.23]

321E.24 Warning device on long loads. Any vehicle which, including load, exceeds the length of sixty-five feet shall carry a warning device visible to a motorist approaching from the rear for a distance of at least five hundred feet. [C71, 73, 75,§321E.24]

321E.25 Use of highways of interstate system. Use of the national system of interstate and defense highways under the provisions of this chapter shall be restricted by regulation and other appropriate action of the department in such a manner as to not be in conflict with the applicable provisions of section 127, Title 23, United States Code. [C71, 73, 75,§321E.25]

321E.26 Driver of escort vehicle—license required. Any operator of an escort vehicle, serving as an escort in the movement of vehicles and loads of excess size and weight under permits as required by this chapter shall have a valid operator's or chauffeur's license. [C71, 73, 75,§321E.26]

321E.27 Definition. As used in this chapter, unless the context otherwise requires, "department" means the state department of transportation. [C75,§321E.27]

321E.28 Single trip permits. The department and local authorities may, upon application and with good cause shown, issue single-trip permits for the movement of mobile homes or factory-built structures of widths including appurtenances exceeding twelve feet five inches subject to the following conditions:

1. Single-trip permits issued under the provisions of this section shall be limited to mobile homes and factory-built structures of widths including appurtenances exceeding twelve feet five inches but not exceeding fourteen feet five inches, where the mobile home or factory-built structure does not exceed sixty-seven feet six inches in length excluding the hitch or any overhang, and where the overall length of the mobile home or the factory-built structure and the power unit does not exceed eighty-five feet.

2. Single-trip permits shall be issued only when the movement can be safely accomplished without causing unnecessary traffic congestion.

3. Single-trip permits issued under the provisions of this section shall specify the route over which the mobile home or factory-built structure shall be moved, and wherever possible, the department and local authorities shall specify highways having a roadway at least twenty-four feet in width.

4. Single-trip permits may be issued by the department or local authorities contingent upon favorable road and weather conditions.

5. A single trip permit shall be issued only when a mobile home or factory-built structure is moved from a point of origin in this state or to a point of destination in this state designated by a resident of this state who has purchased the mobile home or factory-built structure for use as his residence or when a mobile home or factory-built structure is being moved for a resident of this state. For the purposes of this section, "resident" includes a mobile home dealer licensed under the provisions of chapter 322, mobile home manufacturers licensed in this state, and manufacturers of factory-built structures in this state.

6. A single-trip permit may be issued to allow the movement of a mobile home or factory-built structure on a fully controlled-access, divided, multilaned highway at a speed exceeding forty miles per hour but not exceeding forty-five miles per hour.

For the purposes of this section, "factory-built structure" means any structure which is wholly or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation, on a building site and is temporarily moved on its own axles.

The distance limitations imposed on mobile home or factory-built structures under section 321E.3 shall not apply to single-trip permits issued under the provisions of this section, but in all other respects the provisions of this chapter shall apply. [66GA, ch 185,§3]

Referred to in §§321E.3, 321E.8

CHAPTER 321F

LEASING AND RENTING OF VEHICLES

Referred to in §307.27

321F.1 Definitions.
321F.2 License required.
321F.3 Application.
321F.4 Fees.
321F.5 Denial or suspension of license.
321F.6 Certificate of responsibility.
321F.7 Duplicate carried in vehicle.
321F.8 Registration of vehicle required.
321F.9 Option to purchase—dealer's license.
321F.10 Department employees.
321F.11 Rules adopted—deposit of fees.
321F.12 Penalty.

321F.1 Definitions. When used in this chapter, unless the context requires otherwise:

1. *"Person"* means an individual, partnership, corporation, association, or other business entity.

2. *"Motor vehicle"* means every vehicle which is self-propelled and subject to registration under the laws of this state.

3. *"Business"* means the business of leasing motor vehicles for use by others for compensation.

4. *"Lease"* means a written agreement providing for the leasing of a motor vehicle for a period of more than sixty days.

5. *"Licensee"* means a person licensed under the provisions of this chapter to engage in business.

6. *"Judgment"* means any judgment which shall have become final.

7. *"Evidence of financial responsibility"* means:

a. A certificate of an insurance carrier certifying that the lessor under a lease is insured against liability for a judgment in the amount of fifty thousand dollars for personal injury to one individual and in an aggregate amount of one hundred thousand dollars for personal injuries to all individuals involved in a single accident, and in the amount of ten thousand dollars for property damage, resulting from any such single accident in which a motor vehicle under a lease is involved; or

b. A bond executed by a surety company authorized to do business in this state providing for the payment of judgments, against a lessor under a lease, within the limits set forth in paragraph *"a"* of this subsection.

8. *"Director"* means the director of transportation or his designee. [C71, 73, 75,§321F.1]

321F.2 License required. No person shall engage in business in this state without first having obtained a license as provided in this chapter. [C71, 73, 75,§321F.2]

321F.3 Application. The application for a license to engage in business in this state shall be filed with the director and shall provide such information relating to applicant's business as the director may require. [C71, 73, 75,§321F.3]

321F.4 Fees. The license fee for a license to engage in business in this state for each calendar year or part thereof shall be fifteen dollars, to be paid at the time the application for a license is filed. If the application is denied, the amount of the fee shall be refunded to applicant. [C71, 73, 75,§321F.4]

321F.5 Denial or suspension of license. A license shall be denied if the applicant has engaged in business in this state within one year prior to the date of application without first having obtained a license as provided in this chapter, or has violated any rules and regulations of the director adopted for the administration of this chapter.

The license of any licensee who shall have violated any provision of this chapter or any rules and regulations of the director adopted for the administration of this chapter shall be suspended and such license shall not be renewed nor shall a new license be issued to such licensee within one year after the date of suspension of the license; provided that the suspension of a license shall not invalidate any lease entered into by lessor prior to suspension and the parties to the lease shall have the authority and remain liable to perform their respective obligations under such leases. [C71, 73, 75,§321F.5]

321F.6 Certificate of responsibility. Within ten days after delivery of a motor vehicle under a lease entered into by a lessor, such lessor shall file with the director evidence of financial responsibility and a copy of the lease, together with a certificate on forms to be provided by the director, setting forth the name and address of the lessee, the period of the lease, and such other information as the direc-

tor may require, except if the lessor has on file with the director evidence of financial responsibility covering all motor vehicles which may be leased by lessor, the lessor shall not be required to furnish further evidence of financial responsibility after delivery of the motor vehicle under a lease. In addition if a lessor has filed with the director a lease form under which motor vehicles are to be leased, the lessor shall not be required to file a copy of each lease.

The lessor shall pay a filing fee of fifty cents for each motor vehicle to be leased upon the filing of each certificate provided for in this section. [C71, 73, 75,§321F.6]

Referred to in §321F.7

321F.7 Duplicate carried in vehicle. A duplicate of the certificate required to be filed with the director under the provisions of section 321F.6 shall be carried in the motor vehicle leased in such manner as the director may prescribe.]C71, 73, 75,§321F.7]

321F.8 Registration of vehicle required. All motor vehicles which are primarily garaged or located in this state and which are the subject of a lease shall be registered in this state. This section shall not be construed to exempt any motor vehicle from registration which is otherwise subject to registration under the provisions of chapter 321, provided, however, that the provisions of this section shall not apply to motor vehicles in fleets whose registrations are apportioned under the provisions of section 326.2. [C71, 73, 75,§321F.8]

321F.9 Option to purchase—dealer's license. Any person engaged in business in this state shall not enter into any agreement for the use of a motor vehicle under the terms of which such person grants to another an option to purchase such motor vehicle without first having obtained a motor vehicle dealer's license under the provisions of chapter 322, and all sales of motor vehicles under such options shall be subject to sales or use taxes imposed under the provisions of chapters 422 and 423. Nothing contained in this section shall require such person to have a place of business as provided by section 322.6, subsection 8. [C71, 73, 75, §321F.9]

321F.10 Department employees. Section 322.1, as it pertains to employees and the expenditure of funds shall apply to the provisions of this chapter. [C71, 73, 75,§321F.10]

321F.11 Rules adopted—deposit of fees. The director shall adopt rules for the purpose of administering this chapter. All fees and funds accruing from the administration of this chapter shall be remitted to the treasurer of state monthly and by him deposited in the motor vehicle dealer's license fee fund in the manner provided in section 322.12. [C71, 73, 75, §321F.11]

321F.12 Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor. [C71, 73, 75,§321F.12]

Misdemeanor penalty, §687.7

CHAPTER 321G

SNOWMOBILES

It is the policy of this state to promote safety for persons, property, and the environment relating to the use, operation and equipment of snowmobiles and to promote uniformity of laws and rules relating thereto. [64GA, ch 1077,§1]

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321G.2 Rules.
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321G.4 County recorder.
321G.5 Plates or decal furnished—watercraft number.
321G.6 Expiration and renewal.
321G.7 Fees to conservation fund.
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321G.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the state conservation commission.

2. *"Snowmobiles"* means any self-propelled vehicle weighing less than one thousand pounds which utilizes wheels with low pressure tires and is designed to operate on land or ice or is equipped with sled-type runners or

skis, endless belt-type tread, or any combination thereof, and is designed for travel upon snow, land or ice, except any vehicle registered as a motor vehicle under chapter 321.

3. *"Person"* means an individual, partnership, firm, corporation, association, and the state, its agencies, and political subdivisions.

4. *"Owner"* means a person, other than a lienholder, having the property right in or title to a snowmobile. The term includes a person entitled to the use or possession of a snowmobile subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

5. *"Operate"* means to ride in or on, other than as a passenger, use or control the operation of a snowmobile in any manner, whether or not the snowmobile is moving.

6. *"Operator"* means every person who operates or is in actual physical control of a snowmobile.

7. *"Dealer"* means every person engaged in the business of buying, selling, or exchanging snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.

8. *"Manufacturer"* means every person engaged in the business of constructing or assembling snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.

9. *"Established place of business"* means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where his books and records are kept and his business is primarily transacted.

10. *"Special event"* means an organized race, exhibition, or demonstration of limited duration which is conducted according to a prearranged schedule and in which general public interest is manifested.

11. *"Roadway"* means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

12. *"Street"* or *"highway"* means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular travel, except in public areas in which the boundary shall be thirty-three feet each side of the center line of the roadway.

13. *"Railroad right of way"* shall mean the full width of property owned, leased or subject to easement for railroad purposes and shall not be limited to those areas on which tracks are located.

14. *"'A' scale"* means the physical scale marked "A" graduated in decibels on a sound level meter which meets the requirements of the American national standards institute, incorporated, publication S1.4-1961, general purpose sound level meters.

15. *"Safety certificate"* means a snowmobile safety certificate issued by the state conservation commission to qualified applicants who are twelve years of age or more. [C71, 73, 75,§321G.1]

Referred to in §321.23

321G.2 Rules. The commission is hereby vested with the power to adopt rules for the:

1. Registration of snowmobiles.

2. Use of snowmobiles insofar as game and fish resources are affected.

3. Use of snowmobiles on public lands under the jurisdiction of the commission.

4. Use of snowmobiles on any waters of the state under the jurisdiction of the commission, while such waters are frozen.

5. Establishment of a course of instruction for the safe use and operation of a snowmobile.

6. Issuance of safety certificates.

The director of transportation may adopt rules not inconsistent herewith regulating the use of snowmobiles on streets and highways, except that cities may regulate their use on streets under the jurisdiction of cities within their respective corporate limits.

In the promulgation of such rules, consideration shall be given to the need to protect the environment and the public health, safety and welfare; to protect private property, public parks and other public lands; to protect wildlife and the habitat thereof; and to promote uniformity of rules relating to the use, operation and equipment of snowmobiles. Such rules shall be in conformance with chapter 17A. [C71, 73, 75,§321G.2]

Referred to in §§321G.23, 321G.24

321G.3 Registration required. Every snowmobile used on public streets, highways, land or ice of this state shall be currently registered and numbered. No person shall operate, maintain, or give permission for the operation or maintenance of any such snowmobile on such land or ice unless the snowmobile is numbered in accordance with this chapter, or in accordance with applicable federal laws, or in accordance with an approved numbering system of another state, and unless the identifying number set forth in the registration is displayed on each side of the forward half of such snowmobile.

A registration number shall be assigned, without payment of fee, to snowmobiles owned by the state of Iowa or its political subdivisions upon application therefor, and the assigned registration number shall be displayed on the snowmobile as required under section 321G.5. [C71, 73, 75,§321G.3]

321G.4 County recorder. The owner of each snowmobile required to be numbered shall register it every year with the county recorder of the county in which the owner resides or, if the owner is a nonresident, he shall register

it in the county in which such snowmobile is principally used. The commission shall have supervisory responsibility over the registration of all snowmobiles and shall provide each county recorder with registration forms and certificates and shall allocate identification numbers to each county.

The owner of such snowmobile shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed and signed by the owner of the snowmobile and shall be accompanied by a fee of six dollars and a writing fee of fifty cents. Proof of payment of Iowa sales or use tax must accompany all applications for registration. Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter the same upon his records and shall issue to the applicant a pocket-size registration certificate. The certificate shall be executed in triplicate, one copy to be delivered to the owner, one copy to the commission, and one copy to be retained on file by the county recorder. The registration certificate shall bear the number awarded to such snowmobile and the name and address of the owner. The registration certificate shall be carried either in the snowmobile or on the person of the operator of such machine when in use. [C71, 73, 75,§321G.4]

321G.5 Plates or decal furnished—watercraft number. A plate or decal containing the identification numbers or letters shall be furnished by the conservation commission.

The owner shall cause the identification number to be attached to each side of the forward half of the snowmobile in such manner as may be prescribed by the rules and regulations of the commission and shall be maintained in legible condition at all times.

The owner of any snowmobile which is used as a watercraft and is required to be numbered as a watercraft may display the watercraft number on the forward half of the snowmobile in lieu of the snowmobile identification number, but the current snowmobile registration decal shall also be affixed aft of the current watercraft registration decal. [C71, 73, 75, §321G.5]

Referred to in §321G.3

321G.6 Expiration and renewal. Every registration certificate and number issued shall expire at midnight December 31,* unless sooner terminated or discontinued in accordance with the provisions of this chapter. After the first day of September each year, any unregistered snowmobile and renewals of registration may be so registered for the subsequent year beginning January 1.

After the first day of September any unregistered snowmobile may be registered for the remainder of the current registration period and for the subsequent registration period in one transaction. The fee shall be three dollars for the remainder of the current period, in addition to the registration fee of six dollars for the subsequent year beginning January 1, and a writing fee of fifty cents. Registration certificates and numbers may be renewed upon application of the owner in the same manner as provided for in securing the original registration. The snowmobile registration fee shall be in lieu of personal property tax for the calendar year of said registration.

If the application for registration for the subsequent year is not made before January 1 of each year, the applicant shall be charged a penalty of one dollar for each six months' delinquency, or any portion thereof.

Whenever any person, after registering a snowmobile, moves from the address shown on the registration certificate, he shall, within ten days, notify the county recorder in writing of such fact.

Upon the transfer of ownership of any snowmobile, the owner shall complete the form on the back of the registration certificate and shall deliver it to the purchaser or transferee at the time of delivering the snowmobile. The purchaser or transferee shall, within five days, file a new application form with the county recorder with a fee of one dollar and the appropriate writing fee, and a transfer of number shall be awarded in the same manner as provided for in any original registration.

All registrations must be valid for the current registration period prior to the transfer of any registration, including assignment to a dealer.

Duplicate registrations may be issued upon application therefor and the payment of the same fees collected for the transfer of registrations. [C71, 73, 75,§321G.6]

*See 64GA, ch 1077,§6

321G.7 Fees to conservation fund. All fees collected from the registration of snowmobiles shall be forwarded by the county recorder to the commission for remission to the treasurer of state, who shall place such money in the state conservation fund. The fees collected shall be appropriated by the general assembly to the commission solely for their use. [C71, 73, 75,§321G.7]

321G.8 Exempt vehicles. No registration shall be required for the following described snowmobiles:

1. Snowmobiles owned and used by the United States, another state, or a political subdivision thereof.

2. Snowmobiles registered in a country other than the United States temporarily used within this state.

3. Snowmobiles covered by a valid license of another state and which have not been within this state for more than twenty consecutive days.

4. Snowmobiles not registered or licensed in another state or country being used in this

state while engaged in a special event and not remaining in the state for a period of more than ten days. [C71, 73, 75,§321G.8]

321G.9 Operation on roadways. No person shall operate a snowmobile upon roadways or highways, as defined in section 321.1, except as provided in this chapter.

1. A snowmobile shall not be operated at any time within the right of way of any interstate highway or freeway within this state.

2. A snowmobile may make a direct crossing of a street or highway provided:

a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing; and

b. The snowmobile is brought to a complete stop before crossing the shoulder or main traveled way of the highway; and

c. The driver yields the right of way to all oncoming traffic which constitutes an immediate hazard; and

d. In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway.

3. A registered snowmobile shall not be operated on public highways:

a. On the roadway portion of a highway and adjacent shoulder, or at least five feet on either side of the roadway, except as provided in subsection 4 of this section, and

b. On limited access highways and approaches, and

c. For racing any moving object, and

d. Abreast with one or more other snowmobiles on a city highway.

4. A registered snowmobile may be operated under the following conditions:

a. Upon city highways which have not been plowed during the snow season or on such highways as designated by the governing body of a municipality.

b. On that portion of county roadways that have not been plowed during the snow season and not maintained or utilized for the operation of conventional motor vehicles.

c. On highways in an emergency during the period of time when and at locations where snow upon the roadway renders travel by conventional motor vehicles impractical.

d. On the roadways of that portion of county highways designated by the county board of supervisors for such use during a specified period. The county board of supervisors shall evaluate the traffic conditions on all county highways and designate roadways on which snowmobiles may be operated for the specified period without unduly interfering with or constituting an undue hazard to conventional motor vehicle traffic. Signs warning of the operation of snowmobiles on the roadway shall be placed and maintained on the portions of highway thus designated during the period specified for such operation.

e. On the roadway or shoulder when necessary to cross a bridge or culvert, or avoid an obstruction which makes it impossible to travel on the portion of the highway not intended for motor vehicles, if the snowmobile is brought to a complete stop before entering onto the roadway or shoulder and the driver yields the right of way to any approaching vehicle on the roadway.

5. The headlight and taillight shall be lighted during the operation on a public highway at any time from sunset to sunrise, and at such other times when conditions such as fog, snow, sleet or rain provide insufficient lighting to render clearly discernible persons and vehicles at a distance of five hundred feet ahead.

6. A snowmobile shall not be operated on or across a public highway by a person under sixteen years of age who does not have in his possession a safety certificate issued to him pursuant to this chapter.

7. A snowmobile shall not be operated within the right of way of any public highway between the hours of sunset and sunrise except on the right-hand side of such right of way and in the same direction as the motor vehicular traffic on the nearest lane of traveled portion of such right of way. [C71, 73, 75,§321G.9]

321G.10 Accident reports. Whenever any snowmobile is involved in an accident resulting in injury or death to anyone or property damage amounting to fifty dollars or more, either the operator or someone acting for him shall immediately notify the county sheriff or another law enforcement agency in the state. The operator shall file with the commission a report of the accident, within forty-eight hours, containing such information as the commission may require. [C71, 73, 75,§321G.10]

321G.11 Mufflers. A snowmobile shall not be operated without suitable and effective muffling devices which limit engine noise to not more than eighty-six decibels as measured on the "A" scale at a distance of fifty feet; and a snowmobile, manufactured after July 1, 1973, which is sold, offered for sale or used in this state, except in an authorized special event, shall have a muffler system that limits engine noise to not more than eighty-two decibels as measured on the "A" scale at a distance of fifty feet.

The commission may adopt rules with respect to the inspection of snowmobiles and the testing of snowmobile mufflers.

A separate placard shall be affixed, permanently and conspicuously, to any new snowmobile sold or offered for sale in this state that does not meet the muffler requirements as stated above. The placard shall designate each snowmobile which does not meet the muffler requirements.

A snowmobile manufactured after July 1, 1975, which is sold, offered for sale or used in this state, except in an authorized special

event, shall have a muffler system that limits engine noise to not more than seventy-eight decibels as measured on the "A" scale at a distance of fifty feet. [C71, 73, 75,§321G.11]

321G.12 Lamps required. Every snowmobile shall be equipped with at least one head lamp and one tail lamp, and with brakes which conform to standards prescribed by the director of transportation. [C71, 73, 75,§321G.12; 66GA, ch 67,§65]

321G.13 Unlawful operation. It shall be unlawful for any person to drive or operate any snowmobile:

1. At a rate of speed greater than reasonable or proper under all existing circumstances.

2. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto.

3. While under the influence of intoxicating liquor or narcotics or habit-forming drugs.

4. Without a lighted headlight and taillight from sunset to sunrise and at such other times when conditions provide insufficient lighting to render clearly discernible persons and vehicles at a distance of five hundred feet ahead.

5. In any tree nursery or planting in a manner which damages or destroys growing stock.

6. On any public land, ice, or snow, in violation of official signs of the commission prohibiting such operation in the interest of safety for persons, property, or the environment. Any officer appointed by the commission may post an official sign in an emergency for the protection of persons, property, or the environment.

7. In or on any park or fish and game areas except on designated snowmobile trails.

8. Upon an operating railroad right of way. A snowmobile may be driven directly across a railroad right of way only at an established crossing and, notwithstanding any other provisions of law, may, where necessary, use the improved portion of such established crossing after yielding to all oncoming traffic. The provisions of this subsection shall not apply to any law enforcement officer or railroad employee in the lawful discharge of his duties.

9. On any public road or street without a bright colored pennant or flag displayed at least sixty inches above the ground. Said pennant or flag shall be a minimum of six inches by nine inches, shall be orange and shall provide a fluorescent effect.

10. No person shall operate or ride in any snowmobile with any firearm in his possession unless it is unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case. [C71, 73, 75, §321G.13]

321G.14 Penalty. Any person who shall violate any provision of this chapter or any regulation of the commission or director of transportation shall be guilty of a misdemeanor and punished by a fine of not more than one hundred dollars, or by imprisonment for not more than thirty days.

Chapter 232 shall have no application in the prosecution of offenses which are committed in violation of this chapter, and which are punishable by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days. [C71, 73, 75,§321G.14]

321G.15 Operation pending registration. The state conservation commission shall furnish snowmobile dealers with pasteboard cards bearing the words "registration applied for". Any unregistered snowmobile sold by a dealer shall bear one of these cards which shall entitle the purchaser to operate it for ten days immediately following the purchase. The purchaser of a registered snowmobile shall be entitled to operate it for ten days immediately following the purchase, without having completed a transfer of registration. Any person who purchases a snowmobile from a dealer shall, within five days of the purchase, apply for a snowmobile registration or transfer of registration. [C73, 75,§321G.15]

321G.16 Special events. The commission may authorize the holding of organized special events as defined in this chapter within this state. The commission shall adopt and may amend rules and regulations relating to the conduct of special events held under commission permits and designating the equipment and facilities necessary for safe operation of snowmobiles or for the safety of operators, participants, and observers in the special events. At least thirty days before the scheduled date of a special event in this state, an application shall be filed with the commission for authorization to conduct the special event. The application shall set forth the date, time and location of the proposed special event and any other information as the commission may require. The special event shall not be conducted without written authorization of the commission. Copies of such rules shall be furnished by the commission to any person making an application therefor. [C73, 75,§321G.16]

321G.17 Violation of "stop" signal. It shall be unlawful for any person, after having received a visual or audible signal from any officer to come to a stop, to operate a snowmobile in willful or wanton disregard of such signal or interfere with or endanger the officer or any other person or vehicle, or increase his speed or attempt to flee or elude the officer. [C73, 75,§321G.17]

321G.18 Negligence. The owner and operator of any snowmobile shall be liable for any injury or damage occasioned by the negligent operation of such snowmobile. [C73, 75, §321G.18]

321G.19 Rented snowmobiles.

1. The owner of any rented snowmobile shall keep a record of the name and address of each person renting the snowmobile, its identification number, the departure date and time, and the expected time of return. The records shall be preserved for six months.

2. The owner of a snowmobile operated for hire shall not permit the use or operation of a rented snowmobile unless it shall have been provided with all equipment required by this chapter or rules of the commission or the director of transportation, properly installed and in good working order. [C73, 75,§321G.19; 66GA, ch 67,§65]

321G.20 Minors under twelve. No owner or operator of any snowmobile having an engine rating of three hundred cubic centimeters or more shall permit any person under twelve years of age to operate the snowmobile except when accompanied by a responsible person of at least eighteen years of age who is experienced in snowmobile operation. [C73, 75, §321G.20]

321G.21 Manufacturer, distributor or dealer —special registration.

1. A manufacturer, distributor or dealer owning any snowmobile required to be registered under this chapter may operate the snowmobile for purposes of transporting, testing, demonstrating, or selling it without the snowmobile being registered, except that a special identification number issued to the owner as provided in this chapter shall be displayed on the snowmobile. The special identification number may not be used on any snowmobile offered for hire or for any work or service performed by a manufacturer, distributor, or dealer.

2. Any manufacturer, distributor or dealer may, upon payment of a fee of fifteen dollars, make application to the commission, upon forms prescribed by the commission, for a special registration certificate containing a general identification number and for one or more duplicate special registration certificates. The applicant shall submit reasonable proof of his status as a bona fide manufacturer, distributor or dealer as may be required by the commission.

3. The commission, upon granting an application, shall issue to the applicant a special registration certificate containing the applicant's name and address, the general identification number assigned to the applicant, the word "manufacturer", "dealer" or "distributor", and such other information as the commission may prescribe. The manufacturer, distributor, or dealer shall have the assigned number printed upon or attached to a removable sign or signs which may be temporarily but firmly mounted or attached to the snowmobile being used. The display shall meet the requirements of this chapter and the rules of the commission.

4. The commission shall also issue duplicate special registration certificates which shall have displayed thereon the general identification number assigned to the applicant. Each duplicate registration certificate so issued shall contain a number or symbol identifying it from every other duplicate special registration certificate bearing the same general identification number. The fee for each additional duplicate special registration certificate shall be two dollars.

5. Each special registration certificate issued hereunder shall expire on December 31 of each year, and a new special registration certificate for the ensuing twelve months may be obtained upon application to the commission and payment of the fee provided by law.

6. Every manufacturer, distributor, or dealer shall keep a written record of the snowmobiles upon which special registration certificates are used, which record shall be open to inspection by any law enforcement officer or any officer or employee of the commission.

7. If a manufacturer, distributor, or dealer has an established place of business in more than one location, he shall secure a separate and distinct special registration certificate and general identification number for each place of business.

8. Dealers using special certificates under the provisions of this chapter shall, before January 10 of each year, furnish the commission with a list of all used snowmobiles held by them for sale or trade, and upon which the registration fee for the current year has not been paid, giving the previous registration number, name of previous owner at the time such snowmobile was transferred to the dealer, and such other information as the commission may require.

9. When the purchaser or transferee of a snowmobile is a dealer who holds the same for resale and operates the snowmobile only for purposes incidental to a resale and displays thereon his special dealer's certificate, or does not operate such snowmobile or permit it to be operated, such transferee shall not be required to obtain a new registration certificate but upon transferring his title or interest to another person he shall sign the reverse side of the registration certificate of such snowmobile indicating the name and address of the new purchaser.

10. Whenever a dealer purchases or otherwise acquires a snowmobile registered in this state, he shall issue a signed receipt to the previous owner, indicating the date of purchase or acquisition, the name and address of such previous owner, and the registration number of the snowmobile purchased or acquired. The original receipt shall be delivered to the previous owner and one copy shall be mailed or delivered by the dealer to the county recorder of the county in which the snowmobile is registered, and one copy shall be delivered to the commission within forty-eight hours.

11. Nothing in this section shall prohibit a dealer from obtaining a new registration and transfer of registration in the same manner as other purchasers. [C73, 75,§321G.21]

321G.22 Limitation of liability by public bodies. The state, its political subdivisions, and the owners of property adjoining the right of way of a public highway and their agents and employees owe no duty of care to keep the ditches or land contiguous to a highway or roadway under the control of the state or a political subdivision safe for entry or use by persons operating a snowmobile, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes except in the case of willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. This section shall not be construed to create a duty of care or ground of liability on behalf of the state, its political subdivisions, or the owners of property adjoining the right of way of a public highway and their agents and employees for injury to persons or property in the operation of snowmobiles in a ditch or on land contiguous to a highway or roadway under the control of the state or a political subdivision. The state, its political subdivisions and the owners of property adjoining the right of way of a public highway and their agents and employees shall, in no event, be liable for the operation of a snowmobile in violation of the provisions of this chapter. [C73, 75,§321G.22]

321G.23 Course of instruction.

1. The commission shall provide, by rules adopted pursuant to section 321G.2, for the establishment of a course of instruction to be conducted throughout the state for the safe use and operation of snowmobiles. The curriculum shall include instruction in the safe use, operation, and equipping of snowmobiles consistent with the provisions of this chapter and rules adopted by the commission and the director of transportation and such other matters as the commission deems pertinent for a qualified snowmobile operator.

2. The commission may certify any experienced, qualified operator to be an instructor of a class established under subsection 1. Each instructor shall be at least eighteen years of age.

3. Upon completion of the course of instruction, the commission shall provide for the administration of a written test to any student who wishes to qualify for a safety certificate.

4. The commission shall provide safety material relating to the operation of snowmobiles for the use of private or public elementary and secondary schools in this state. [C75,§321G.23; 66GA, ch 67,§65]

321G.24 Safety certificate.

1. Effective July 1, 1975, no person who is twelve years of age or more and less than sixteen years of age shall operate a snowmobile in this state without obtaining a valid safety certificate issued by the commission and having such certificate in his possession, or unless he is accompanied on the same machine by a responsible person of at least eighteen years of age who is experienced in snowmobile operation.

2. Upon application and payment of a fee of two dollars, a qualified applicant shall be issued a safety certificate which shall be valid until such person reaches his seventeenth birthday unless the certificate is suspended or revoked for a violation of a provision of this chapter or the rules of the commission or the director of transportation before that date. The application shall be made on forms issued by the commission and shall contain such information as the commission may reasonably require.

3. Any person who is required to have a safety certificate under this chapter and who has completed a course of instruction established under section 321G.2, subsection 5, including the successful passage of an examination which includes a written test relating to such course of instruction, shall be considered qualified to apply for a safety certificate. The commission may waive the requirement of completing such course of instruction if such person successfully passes a written test based on such course of instruction.

4. The permit fees collected under this section shall be credited to the state conservation fund and shall be used for safety and educational programs.

5. A valid snowmobile safety certificate or license issued to a nonresident by a governmental authority of another state shall be considered a valid certificate or license in this state if the permit or license requirements of such governmental authority, excluding fees, are substantially the same as the requirements of this chapter as determined by the commission. [C75,§321G.24; 66GA, ch 67,§65]

CHAPTER 322

MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS

Referred to in §§307.27, 321.1(2), 321.51, 321.89, 321.157, 321.238, 321A.39, 321E.28, 321F.9, 322A.2, 322A.12, 322A.14, 554.9203

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322.26 Short title.
322.27 Manufacturer's or distributor's license.
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322.29 Issuance of license—fees.
322.30 Display.
322.31 Denial of license.
322.32 Construction of applicability to contracts.
322.33 Applicability of the Iowa consumer credit code.

322.1 Administration. The administration of this chapter shall be vested in the director of transportation. The department may employ such employees as are necessary for the administration of this chapter, provided the amount expended in any one year shall not exceed the revenue derived from the provisions of this chapter. [C39,§**5039.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§322.1]

Referred to in §321F.10

322.2 Definitions. As used in this chapter and unless a different meaning appears from the context:

1. "*Person*" includes any individual, firm, corporation, copartnership, joint adventure, or association, and the plural as well as the singular number.

2. "*Department*" means the state department of transportation.

3. "*Selling*" includes bartering, exchanging, or otherwise dealing in.

4. "*At retail*" means to dispose of a motor vehicle to a person who may devote it to a consumer use.

5. "*Place of business*" means a designated location wherein proper and adequate facilities shall be maintained for displaying, reconditioning, and repairing either new or used cars.

6. "*Used motor vehicle*" or "*second-hand motor vehicle*" means any motor vehicle of a type subject to registration under the laws of this state which has been sold "at retail" as defined in this chapter and previously registered in this or any other state.

7. "*Motor vehicle*" means any vehicle subject to registration under the laws of this state.

8. "*Retail installment transaction*" means any sale evidenced by a retail installment contract between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from a retail seller at a time price payable in one or more installments.

9. "*Retail installment contract*" or "*contract*" means an agreement, entered into in this state, pursuant to which the title to, the property in or a lien upon the motor vehicle, which is the subject matter of a retail installment transaction, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the contract.

10. "*Retail seller*" or "*seller*" means a person who sells a motor vehicle to a retail buyer.

11. "*Retail buyer*" or "*buyer*" means a person who buys a motor vehicle from a retail seller.

12. "*Sales finance company*" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers. The term also includes a retail seller engaged, in whole or in part, in the business of creating and holding retail installment contracts. The term does not include the pledgee of an aggregate number of such contracts to secure a bona fide loan thereon.

13. The "*holder*" of a retail installment contract means the retail seller of the motor vehicle under or subject to the contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee.

14. Nothing contained herein shall be construed to require the licensing or to apply to any bank, credit union or trust company in Iowa.

15. "*Manufacturer*" means any person, resident or nonresident, who manufactures or assembles motor vehicles.

16. "*Distributor*" or "*wholesaler*" means a person, resident or nonresident, who in whole or part, sells or distributes motor vehicles to motor vehicle dealers, or who maintains distributor representatives.

17. *"Factory branch"* means a branch office maintained by a person who manufactures or assembles motor vehicles, for the sale of motor vehicles to distributors, or for the sale of motor vehicles to motor vehicle dealers or for directing or supervising in whole or part, its representatives.

18. *"Distributor branch"* means a branch office similarly maintained by a distributor or wholesaler for the same purposes.

19. *"Factory representative"* means a representative employed by a person who manufactures or assembles motor vehicles or by a factory branch, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers or prospective dealers.

20. *"Distributor representative"* means a representative similarly employed by a distributor, distributor branch or wholesaler. [C39,§**5039.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §322.2]

322.3 Prohibited acts.

1. No person shall engage in this state in the business of selling at retail new motor vehicles of any make or represent or advertise that he is engaged or intends to engage in such business in this state unless he is authorized by a contract in writing between himself and the manufacturer or distributor of such make of new motor vehicles to so dispose thereof in this state and unless the department has licensed the person as a motor vehicle dealer in this state in motor vehicles of such make and has issued to the person a license in writing as in this chapter provided.

2. No person, other than a licensed dealer in new motor vehicles, shall engage in this state in the business of selling at retail used motor vehicles or represent or advertise that he is engaged or intends to engage in such business in this state unless and until the department has licensed such person as a used motor vehicle dealer in the state and has issued to the person a license in writing as in this chapter provided.

3. Nothing contained in subsections 1 and 2 hereof shall be construed as requiring the separate licensing of persons employed as salesmen of motor vehicles by a retail motor vehicle dealer hereunder, but the department is hereby authorized and empowered to make, publish, and promulgate such reasonable rules and regulations as it may deem necessary for the proper identification of persons so employed as salesmen by any such licensee.

4. No person, who is engaged in the business of selling at retail motor vehicles, shall enter into any contract, agreement, or understanding, express or implied, with any manufacturer or distributor of any such motor vehicles that he will sell, assign, or transfer any retail installment contracts arising from the retail installment sale of such motor vehicles or any one or more thereof only to a designated person or class of persons. Any such condition, agreement, or understanding between any manufacturer or distributor and a motor vehicle dealer in this state is hereby declared to be against the public policy of this state and to be unlawful and void.

5. No manufacturer or distributor of motor vehicles or any agent or representative of such manufacturer or distributor, shall terminate or threaten to terminate, or fail to renew any contract, agreement, or understanding for the sale of new motor vehicles to any motor vehicle dealer in this state without just, reasonable and lawful cause therefor or because such motor vehicle dealer failed to sell, assign, or transfer any retail installment contract arising from the retail sale of such motor vehicles or any one or more of them to a person or a class of persons designated by such manufacturer or distributor. Provided, however, that the provisions of this subsection relating to "failure to renew" shall not apply to any contract, agreement, or understanding, which is for a term of five or more years.

Referred to in §322.14

6. No person, who is engaged in the business of selling at retail motor vehicles, shall make and enter into a retail installment contract unless such contract meets the following requirements:

a. Every retail installment contract shall be in writing, shall be signed by both the buyer and the seller and shall be completed as to all essential provisions prior to the signing of the contract by the buyer except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract after its execution.

b. The contract shall comply with the Iowa consumer credit code, where applicable.

7. Nothing contained herein shall be construed to require that a place of business as defined in this chapter shall be maintained by a person selling motor vehicles at retail solely for the purpose of disposing of motor vehicles acquired or repossessed by such person in exercise of powers or rights granted by lien or title-retention instruments or contracts given as security for loans or purchase money obligations.

Referred to in §322.6(8)

8. No manufacturer or distributor of motor vehicles or agent or representative of such manufacturer or distributor shall coerce or attempt to coerce any motor vehicle dealer to accept delivery of any motor vehicle or vehicles, parts, or accessories thereof, or any other commodity or commodities which shall not have been ordered by such dealer.

9. No person licensed under this chapter shall, either directly or through an agent, salesman or employee, engage in this state, or represent or advertise that he is engaged or intends to engage in this state, in the business of buying or selling at retail new or used

motor vehicles, other than mobile homes more than eight feet in width or more than thirty-two feet in length as defined in section 321.1, on the first day of the week, commonly known and designated as Sunday. [C39,§**5039.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§322.3; 66GA, ch 171,§15]

Referred to in §§322.6(8), 322.14

322.4 Application for license. Each person before engaging in this state in the business of selling at retail motor vehicles or representing or advertising that he is engaged or intends to engage in such business in this state shall file in the office of the department an application for license as a motor vehicle dealer in the state in such form as the department may prescribe, duly verified by oath, which application shall include the following:

1. The name of the applicant and his principal place of business wherever situated.

a. If the applicant is an individual—the name or style under which he intends to engage in such business.

b. If the applicant is a copartnership—the name or style under which such copartnership intends to engage in such business and the name and post-office address of each partner.

c. If the applicant is a corporation—the state of incorporation and the name and post-office address of each officer and director thereof.

2. The make or makes of new motor vehicles, if any, which the applicant will offer for sale to retail in this state.

3. The location of each place of business within this state to be used by the applicant for the conduct of his business.

4. If the applicant is a party to any contract or agreement or understanding with any manufacturer or distributor of motor vehicles or is about to become a party to such a contract, agreement, or understanding, the applicant shall state the name of each such manufacturer and distributor and the make or makes of new motor vehicles, if any, which are the subject matter of each such contract.

5. A statement of the previous history, record, and association of the applicant and if the applicant is a copartnership, of each partner thereof and if the applicant is a corporation, of each officer and director thereof, which statement shall be sufficient to establish to the department the reputation in business of the applicant.

6. A description of the general plan and method of doing business in this state, which the applicant will follow if the license applied for in such application is granted.

7. Before the issuance of a motor vehicle dealer's license to a dealer engaged in the sale of vehicles for which a certificate of title is required, under the provisions of chapter 321, the applicant for such license shall furnish a surety bond executed by the applicant as principal and executed by a corporate surety company, licensed and qualified to do business within this state, which bond shall run to the state of Iowa, be in the amount of twenty-five thousand dollars and be conditioned upon the faithful compliance by said applicant as a dealer, if the license be issued to it or him, that such dealer will comply with all of the statutes of this state regulating or being applicable to the business of said dealer as a dealer in motor vehicles, and indemnifying any person dealing or transacting business with said dealer in connection with any motor vehicle from any loss or damage occasioned by the failure of such dealer to comply with any of the provisions of chapter 321 and this chapter, including, but not limited to, the furnishing of a proper and valid certificate of title to the motor vehicle involved in any such transaction, and that such bond shall be filed with the department prior to the issuance of license provided by law. The aggregate liability of the surety of all persons, however, shall in no event exceed the amount of said bond.

Applicable to all licenses issued beginning with 1968

8. Such other information touching the business of the applicant as the department may require.

For the purpose of investigating the matters contained in such application the department may withhold the granting of a license for a period not exceeding thirty days. [C39, §**5039.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §322.4]

322.5 License fee. The license fee for a motor vehicle dealer for each calendar year or part thereof shall be the sum of thirty-five dollars for the licensee's principal place of business in each city or township and an additional five dollars for each used-car lot which is in the city or township wherein said place of business is located and which is not adjacent to such place, to be paid to the department at the time a license is applied for. In case the application is denied, the department shall refund the amount of such fee to the applicant. [C39,§**5039.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §322.5]

322.6 Denial of license. The department may deny the application of any person for a license as a motor vehicle dealer and refuse to issue a license to him as such, if, after reasonable notice and a hearing, the department determines that such applicant:

1. Has made a material false statement in his application for the license; or

2. Has not complied with the provisions of this chapter or any rules or regulations promulgated by the department thereunder except as otherwise provided; or

3. Is of bad business repute; or

4. Has been guilty of a fraudulent act in connection with selling, bartering, or otherwise dealing in motor vehicles; or

5. Is about to engage in any practice in connection with the sale, barter, or otherwise dealing in motor vehicles, which is fraudulent or in violation of the law; or

6. Has entered into contract or agreement or is about to enter into a contract or agreement with any manufacturer or distributor of motor vehicles which is contrary to any provision of this chapter; or

7. Has a contract or agreement with any manufacturer or distributor of motor vehicles or is about to enter into a contract or agreement with any manufacturer or distributor of motor vehicles, who without just, reasonable, and lawful cause therefor, has terminated within ninety days from the date of application a contract or agreement with a motor vehicle dealer in any county of the state in which the applicant proposes to engage in business;

8. Does not have a place of business within the meaning of this chapter unless applicant is a person referred to in subsection 7 of section 322.3;

9. Has violated any of the provisions of sections 321.77, 321.78, 321.80, 321.81, 321.92, 321.97, 321.98, 321.99, 321.100, 539.4 and 713.24; or

10. If it has been judicially determined that the licensee has intentionally violated any of the provisions of the Iowa consumer credit code, and the licensee continues to make consumer credit sales, consumer loans or consumer leases in violation of the Iowa consumer credit code.

It shall be sufficient cause for refusal or revocation of a license as a motor vehicle dealer in the case of a partnership or corporation if any member of the partnership or any officer or director of the corporation has committed any act or omission which would be cause for refusing or revoking a license to such person as an individual.

In considering whether or not a contract or agreement between a motor vehicle dealer and a manufacturer or distributor of motor vehicles has been terminated by such manufacturer or distributor without just and reasonable cause therefor, the department shall take into consideration the circumstances existing at the time of such termination, including the amount of business transacted by the motor vehicle dealer pursuant to the contract or agreement and prior to such termination; the investment necessarily made and the obligation necessarily incurred by the motor vehicle dealer in the performance of his part of such contract; the permanency of such investment; the reasons for such termination by such manufacturer or distributor and the fact that it is injurious to the public welfare for the business of a motor vehicle dealer to be disrupted by termination of such contract without just and reasonable cause.

Whenever the department determines to deny the application of any person for a license as a motor vehicle dealer and refuses to issue a license to him as such, the department shall enter a final order thereof with its findings relating thereto within thirty days from the date of the hearing thereon. [C39,§**5039.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§322.6; 66GA, ch 67,§33]

Referred to in §§321F.9, 322.9

322.7 License of motor vehicle dealer.

1. If the department grants the application of any person for a license as a motor vehicle dealer, it shall evidence the granting thereof by a final order and shall issue to the person a license in such form as may be prescribed by the department, which license shall include the following:

a. The name of the person licensed.

b. If the applicant is an individual or a copartnership—the name or style under which the licensee will engage in such business and if a copartnership, the name and address of each partner.

c. The principal place of business of the licensee and location therein of each place wherein the licensee is licensed to carry on such business.

d. The make or makes of new motor vehicles which the licensee is licensed to sell.

2. The instrument evidencing the license or a certified copy thereof provided by the department shall be kept posted conspicuously in the principal office of the licensee and in each place of business maintained and operated by the applicant pursuant to the license in this state.

3. The license of a motor vehicle dealer shall expire and terminate, unless sooner revoked or suspended, at the end of the calendar year in which it is granted.

4. The motor vehicle dealer license provided for in this chapter shall be renewed annually upon application in such form and content as prescribed by the department and upon payment of the required fee. Such renewal shall take effect on the first day of January of each year. [C39,§**5039.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§322.7]

322.8 Supplemental statements. Each motor vehicle dealer licensee shall promptly file with the department from time to time during the period of the license, statements supplemental to the statements contained in his application for license whenever any change shall occur in his personnel or in his plan or method of doing business or in the location of his place or places of business, so that the statements made in the application do, after such change, properly disclose the licensee's status and method and plan of doing business. The supplemental statement shall be in the form prescribed by the department and shall disclose such information as would have been required by this chapter if such changes had occurred prior to the licensee making application for a license.

If the department finds that the changes set forth in the supplemental statement do not violate the provisions of this chapter and it grants to the licensee the privilege of doing business in the manner set forth therein, it

shall upon surrender to it of the license of the motor vehicle dealer, issue to him a new license appropriate to the dealer's original application as modified by such supplemental statement. [C39,§**5039.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§322.8]

322.9 Revocation of license. The department is hereby authorized to revoke or suspend the license of any retail motor vehicle dealer if, after notice and hearing, it finds that such licensee has been guilty of any act which would have been a ground for the denial of a license under section 322.6.

The department is further authorized to revoke or suspend the license of any retail motor vehicle dealer if, after notice and hearing, it finds that such licensee has been convicted or has forfeited bail on three charges of:

1. Failing upon the sale or transfer of a vehicle to deliver to the purchaser or transferee of the vehicle sold or transferred, a manufacturer's or importer's certificate, or a certificate of title duly assigned, as provided in chapter 321.

2. Failing upon the purchasing or otherwise acquiring of a vehicle to obtain a manufacturer's or importer's certificate, or a certificate of title duly assigned as provided in chapter 321.

3. Failing upon the purchasing or otherwise acquiring of a vehicle to obtain a new certificate of title to such vehicle when and where required in chapter 321.

4. Failing to mail or deliver to the treasurer of the county of such licensee's residence two copies of the signed purchase receipt within forty-eight hours after purchase or acquisition of a vehicle registered in this state as provided in section 321.48. [C39,§**5039.09**; C46,§322.9; C50, 54,§§322.9, 322.16; C58, 62, 66, 71, 73, 75,§322.9]

322.10 Judicial review. Judicial review of actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act. The petitioner shall file with the clerk a bond for the use of the respondent, with sureties approved by such clerk and in an amount fixed by him, provided in no case shall the bond be less than fifty dollars, conditioned that the petitioner shall perform the orders of the court. [C39,§**5039.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§322.10]

Referred to in §322A.17

322.11 Injunctions. Whenever the department shall believe from evidence satisfactory to it that any person has or is now violating any provision of this chapter, the department may, in addition to any other remedy, bring an action in the name and on behalf of the state of Iowa against such person and any other person concerned in or in any way participating in or about to participate in practices or acts in violation of this chapter, to enjoin such person and said other person from continuing the same. In any such action, the department may apply for and on due showing be entitled to have issued the court's subpoena, requiring forthwith the appearance of any defendant, his agent and employees and the production of documents, books, and records as may appear necessary for the hearing of such petition to testify and give evidence concerning the acts or conduct or practices or things complained of in such application for injunction. In said action an order or judgment may be entered, awarding such preliminary or final injunctions as may be proper. [C39,§**5039.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§322.11]

322.12 Motor vehicle dealers license fee fund. All fees and funds of whatever character accruing from the administration of this chapter shall be accounted for and paid by the department into the state treasury monthly and shall constitute a separate and distinct fund which shall be known as the "Motor Vehicle Dealers License Fee Fund". All expenses incurred and all compensation paid by the department in the administration of this chapter shall be paid out of said fund in the same manner as other state expenses and compensation are paid. Any amount in such fund in excess of ten thousand dollars at the end of any calendar year on account of fees applicable to that calendar year shall be credited to the state general fund. [C39,§**5039.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§322.12]

Referred to in §321F.11

322.13 Rules.

1. The department shall have full authority to prescribe reasonable rules for the administration and enforcement of this chapter, in addition hereto and not inconsistent herewith. All rules shall be filed and entered by the department in its office in an indexed, permanent book or record, with the effective date thereof suitably indicated, and such book or record shall be a public document. Whenever a new rule or regulation is adopted by the department, a copy of the same shall be mailed by it to each licensee hereunder.

2. The department shall have power to prescribe the forms to be used in connection with the licensing of persons as herein provided. [C39,§**5039.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§322.13]

322.14 Penalties. Any person violating any of the provisions of this chapter where a penalty is not specifically provided for shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or thirty days in jail.

If a retail installment contract is subject to a provision of the Iowa consumer credit code which is enforced by a criminal penalty, such penalty shall be considered to be specifically provided for a violation of this chapter.

The provisions of this section shall not apply to violations under subsection 5 of section 322.3. [C39,§**5039.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§322.14]

322.15 Liberal construction. All provisions of this chapter shall be liberally construed to the end that the practice or commission of fraud in the sale, barter, or disposition of motor vehicles at retail in this state may be prohibited and prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of selling, bartering, or otherwise dealing in motor vehicles at retail in this state and reliable persons may be encouraged to engage in the business of selling, bartering, and otherwise dealing in motor vehicles at retail in this state. [C39,§5039.15; C46, 50, 54, 58, 62, 66, 71, 73, 75,§322.15]

Constitutionality, 47GA, ch 135,§17

322.16 Repealed by 56GA, ch 169,§2, see §322.9.

322.17 Copy of contract to buyer. A copy of every retail installment contract shall be furnished to the buyer at the time of the execution of the contract. An acknowledgment by the buyer contained in the body of the retail installment contract of the delivery of a copy thereof shall be conclusive proof of delivery in any action or proceeding by or against any assignee of a retail installment contract. [C58, 62, 66, 71, 73, 75,§322.17]

322.18 Dual-interest insurance. If dual-interest insurance on the motor vehicle is purchased by the holder it shall, within thirty days after execution of the retail installment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance and the coverages. The buyer shall have the privilege of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the holder; but in such case the inclusion of the insurance premium in the retail installment contract shall be optional with the seller. If any insurance is canceled, unearned insurance premium refunds received by the holder shall be credited to the final maturing installments of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them. [C58, 62, 66, 71, 73, 75,§322.18]

322.19 Finance charges—amount. Notwithstanding the provisions of any other existing law, a retail installment transaction may include a finance charge not in excess of the following rates:

Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, an amount equivalent to one and one-fourth percent per month simple interest on the declining balance of the amount financed.

Class 2. Any new motor vehicle not in Class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made, an amount equivalent to one and three-fourths percent per month simple interest on the declining balance of the amount financed.

Class 3. Any used motor vehicle not in Class 2 and designated by the manufacturer by a year model more than two years prior to the year in which the sale is made, an amount equivalent to two and one-fourth percent per month simple interest on the declining balance of the amount financed.

Amount financed shall be as defined in section 537.1301. [C58, 62, 66, 71, 73, 75,§322.19]

Referred to in §537.2201(1)

322.20 Extension of time. Sections 537.2503 and 537.3402 notwithstanding, if the holder of a retail installment contract, at the request of the buyer, extends the scheduled due date of all or any part of any installment or installments, the holder may restate the amount of the installments and the time schedule therefor, and collect for such extension not more than one percent per month simple interest on the respective declining balances of the amount financed computed on the amount and for the period of such extension or renewal. [C58, 62, 66, 71, 73, 75,§322.20]

322.21 and 322.22 Repealed by 65GA, ch 1250,§9.117.

322.23 Complaints. Any retail buyer having reason to believe that the provisions of this chapter relating to his installment contract have been violated may file with the department a written complaint setting forth the details of such alleged violation and the department, upon the receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee or other person relating to such specific complaint. [C58, 62, 66, 71, 73, 75,§322.23]

322.24 Hearing. The director of transportation shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction, control or supervision pertaining to this chapter.

If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the district court of the state of Iowa in and for Polk county may, upon application and proof of such refusal, make an order awarding process of subpoena, or subpoena duces tecum, out of the said court, for the witness to appear before the director and to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of said court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is di-

rected to appear at the time and place therein designated. [C58, 62, 66, 71, 73, 75,§322.24]

322.25 Repealed by 65GA, ch 208,§9.

322.26 Short title. This chapter may be cited as the "Motor Vehicle Dealers Licensing Act." [C39,§**5039.16**; C46,§322.16; C50, 54,§322.17; C58, 62, 66, 71, 73, 75,§322.26]

322.27 Manufacturer's or distributor's license. No manufacturer of motor vehicles, or factory branch, or distributor, or distributor branch, shall engage in business as such in this state without a license therefor as provided in this chapter. [C66, 71, 73, 75,§322.27]

322.28 Factory or distributor representative's license. No factory representative or distributor representative shall engage in business as such in this state without a license therefor as provided in this chapter. [C66, 71, 73, 75,§322.28]

322.29 Issuance of license—fees. Application for license shall be made to the department by a manufacturer, distributor, wholesaler, factory branch, distributor branch, factory representative or distributor representative in such form and contain such information as the department shall require and shall be accompanied by the required license fee. Such licenses shall be granted or refused within thirty days after application therefor, and shall expire, unless sooner revoked or suspended, on December 31 of the calendar year for which they are granted.

License fees for each calendar year, or part thereof, shall be as follows effective January 1, 1966:

For motor vehicle manufacturers, distributors or wholesalers, ten dollars; and for each factory branch in this state of a motor vehicle manufacturer, ten dollars.

For a factory representative or distributor branch representative, five dollars.

Every factory representative or distributor representative shall carry his license when engaged in his business, and display the same upon request. The license shall name his employer, and in case of a change of employer, the representative shall immediately mail his license to the department which shall endorse such change on the license without charge. [C66, 71, 73, 75,§322.29]

322.30 Display. The licenses of manufacturers, factory branches, distributors and distributor branches shall specify the location of the office or branch and must be conspicuously displayed at such location. In case such location be changed, the department shall endorse the change of location on the license without charge if it be within the same municipality. A change of location to another municipality shall require a new license. [C66, 71, 73, 75,§322.30]

322.31 Denial of license. The department may deny the application of any person for a license as a manufacturer, distributor, wholesaler, factory branch, distributor branch, factory representative or distributor representative if after reasonable notice and a hearing the department determines that such applicant has violated any provision of this chapter and may revoke or suspend any such license that has been issued if the department shall determine after reasonable notice and a hearing that such licensee has violated any provision of this chapter. [C66, 71, 73, 75,§322.31]

322.32 Construction of applicability to contracts. Nothing in this chapter shall be construed to impair the obligations of a contract or to prevent a licensee hereunder from requiring performance of a written contract entered into with another licensee hereunder, nor shall the requirement of such performance constitute a violation of any of the provisions of this chapter. [C66, 71, 73, 75,§322.32]

322.33 Applicability of the Iowa consumer credit code.

1. The provisions of the Iowa consumer credit code shall apply to a consumer credit sale in which a licensed motor vehicle dealer participates or engages, and any violation of that code shall be a violation of this chapter.

2. Article 2, parts 5 and 6, and article 3, sections 537.3203, 537.3206, 537.3209, 537.3304, 537.3305, and 537.3306 shall apply to any credit transaction as defined in section 537.1301, that is a retail installment transaction. For the purpose of applying provisions of the consumer credit code in those transactions, "consumer credit sale" shall include a sale for a business purpose.

3. A provision of the Iowa consumer credit code shall supersede a conflicting provision of this chapter. [C75,§322.33]

CHAPTER 322A

MOTOR VEHICLE FRANCHISERS

Referred to in §307.25

322A.1 Definitions.
322A.2 Discontinuing franchise.
322A.3 New franchise.
322A.4 Additional franchise.
322A.5 Warranties.
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322A.11 Condition barring change in franchise.
322A.12 Sale or transfer of ownership.
322A.13 Compulsory attendance at hearings.
322A.14 License to dealer denied.
322A.15 Board's guidelines.
322A.16 Board's additional guidelines.
322A.17 Judicial review.

322A.1 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Person"* means a sole proprietor, partnership, corporation, or any other form of business organization.

2. *"Franchiser"* means a person who manufactures or distributes motor vehicles and who may enter into a franchise as hereinafter defined.

3. *"Franchisee"* means a person who receives motor vehicles from the franchiser under a franchise and who offers and sells such motor vehicles to the general public.

4. *"Franchise"* means a contract between two or more persons when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The franchisee is granted the right to offer and sell motor vehicles manufactured or distributed by the franchiser.

c. The franchisee, as an independent business, constitutes a component of franchiser's distribution system.

d. The operation of franchisee's business is substantially associated with the franchiser's trade-mark, service mark, trade name, advertising, or other commercial symbol designating the franchiser.

e. The operation of the franchisee's business is substantially reliant on franchiser for the continued supply of motor vehicles, parts, and accessories.

5. *"Motor vehicle"* means "motor vehicles" as defined in chapter 321 which are subject to registration pursuant to the provisions thereof.

6. *"Community"* means the franchisee's area of responsibility as stipulated in the franchise.

7. *"Board"* means the transportation regulation board of the state department of transportation.

8. *"Consumer care"* means to perform, for the public, necessary maintenance and repairs to motor vehicles. [C71, 73, 75,§322A.1]

322A.2 Discontinuing franchise. Notwithstanding the terms, provisions or conditions of any agreement or franchise, no franchiser shall terminate or refuse to continue any franchise unless the franchiser has first established, in a hearing held under the provisions of this chapter, that:

1. The franchiser has good cause for termination or noncontinuance, and

2. Upon termination or noncontinuance, another franchise in the same line-make will become effective in the same community, without diminution of the motor vehicle service formerly provided, or that the community cannot be reasonably expected to support such a dealership; provided, however, a franchiser may terminate a franchise for a particular line-make if the franchiser discontinues that line-make and a franchiser may terminate a franchise if the franchisee's license as a motor vehicle dealer is revoked pursuant to the provisions of chapter 322. [C71, 73, 75,§322A.2]

322A.3 New franchise. In the event that a franchiser is permitted to terminate or not continue a franchise, and is further permitted not to enter into a franchise for the line-make in the community, no franchise shall thereafter be entered into for the sale of motor vehicles of that line-make in the community, unless the franchiser has first established, in a hearing held under the provisions of this chapter, that there has been a change of circumstances so that the community at that time can be reasonably expected to support the dealership. [C71, 73, 75,§322A.3]

322A.4 Additional franchise. No franchiser shall enter into any franchise for the purpose of establishing an additional motor vehicle dealership in any community in which the same line-make is then represented, unless the franchiser has first established in a hearing held under the provisions of this chapter that there is good cause for such additional motor vehicle dealership under such franchise, and that it is in the public interest. [C71, 73, 75,§322A.4]

322A.5 Warranties. Every franchiser and franchisee shall fulfill the terms of any express or implied warranty concerning the sale of a motor vehicle to the public of the line-make which is the subject of a contract or franchise agreement between the parties. If it is determined by the district court that either the franchiser or franchisee, or both, have violated an express or implied warranty, the court shall add to any award or relief granted an additional award for reasonable attorney fees and other necessary expenses for maintaining the litigation. [C71, 73, 75, §322A.5]

322A.6 Application filed with board. In the event that a franchiser seeks to terminate or not continue any franchise, or seeks to enter into a franchise establishing an additional motor vehicle dealership of the same line-make, the franchiser shall file an application with the board for permission to terminate or not continue the franchise, or for permission

to enter into a franchise for additional representation of the same line-make in that community. [C71, 73, 75,§322A.6]

322A.7 Board to hold hearing. Upon receiving an application, the board shall enter an order fixing a time, which shall be within ninety days of the date of such order, and place of hearing, and shall send by certified or registered mail, with return receipt requested, a copy of the order to the franchisee whose franchise the franchiser seeks to terminate or not continue. If the application requests permission to establish an additional motor vehicle dealership, a copy of the order shall be sent to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of orders shall be addressed to the franchisee at the place where the business is conducted. The board may also give notice of franchiser's application to any other parties whom the board may deem interested persons, such notice to be in the form and substance and given in the manner the board deems appropriate.

Any person who can show an interest in the application may become a party to the hearing, whether or not he receives notice; provided, however, a party not receiving notice shall be limited to participation at the hearing on the question of the public interest in the termination or continuation of the franchise or in the establishment of an additional motor vehicle dealership. [C71, 73, 75,§322A.7]

322A.8 Continuation. If the board finds it desirable it may upon request continue the date of hearing for a period of ninety days, and may upon application, but not ex parte, continue the date of hearing for an additional period of ninety days. [C71, 73, 75,§322A.8]

322A.9 Burden of proof. Upon hearing, the franchiser shall have the burden of proof to establish that under the provisions of this chapter he should be granted permission to terminate or not continue the franchise, or to enter into a franchise establishing an additional motor vehicle dealership.

Nothing contained in this chapter shall be construed to require or authorize any investigation by the board of any matter before the board under this chapter. Upon hearing, the board shall hear the evidence introduced by the parties and shall make its decision solely upon the record so made. [C71, 73, 75, §322A.9]

322A.10 Rules of evidence. The rules of civil procedure relating to discovery and inspection shall apply to hearings held under the provisions of this chapter, and the board may issue orders to give effect to such rules.

In the event issues are raised which would involve violations of any state or federal antitrust or price-fixing law, all discovery and inspection proceedings which would be available under such issues in a state or federal court action shall be available to the parties to the hearing, and the board may issue orders to give effect to such proceedings.

Evidence which would be admissible under the issues in a state or federal court action is admissible in a hearing held by the board. The board shall apportion all costs between the parties. [C71, 73, 75,§322A.10]

322A.11 Condition barring change in franchise. Notwithstanding the terms, provisions or conditions of any agreement or franchise, the following shall not constitute good cause for the termination or noncontinuation of a franchise, or for entering into a franchise for the establishment of an additional dealership in a community for the same line-make:

1. The sole fact that franchiser desires further penetration of the market.

2. The change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership, unless the franchiser, having the burden of proof, proves that such change of ownership or executive management will be substantially detrimental to the distribution of franchiser's motor vehicles in the community.

3. The fact that the franchisee refused to purchase or accept delivery of any motor vehicle or vehicles, parts, accessories or any other commodity or service not ordered by the franchisee. [C71, 73, 75,§322A.11]

Referred to in §§322A.12, 322A.15

322A.12 Sale or transfer of ownership. Notwithstanding the terms, provisions or conditions of any agreement or franchise, subject to the provisions of subsection 2 of section 322A.11, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer or in the event of change in the executive management of the franchisee's dealership the franchiser shall give effect to such a change in the franchise unless the transfer of the franchisee's license under chapter 322 is denied or the new owner is unable to obtain a license under said chapter, as the case may be. [C71, 73, 75,§322A.12]

322A.13 Compulsory attendance at hearings. The board may issue subpoenas, administer oaths, compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The board may apply to the district court of the county wherein the hearing is being held for a court order enforcing this section. [C71, 73, 75,§322A.13]

322A.14 License to dealer denied. In the event that a franchiser enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this chapter, no license under chapter 322

shall be issued to that franchisee or proposed franchisee to engage in the business of selling motor vehicles manufactured or distributed by that franchiser. [C71, 73, 75,§322A.14]

322A.15 Board's guidelines. In determining whether good cause has been established for terminating or not continuing a franchise, the board shall take into consideration the existing circumstances, including, but not limited to:

1. Amount of business transacted by the franchisee.

2. Investment necessarily made and obligations incurred by the franchisee in the performance of his part of the franchise.

3. Permanency of the investment.

4. Whether it is injurious to the public welfare for the business of the franchisee to be disrupted.

5. Whether the franchisee has adequate motor vehicle service facilities, equipment, parts and qualified service personnel to reasonably provide consumer care for the motor vehicles sold at retail by the franchisee and any other motor vehicles of the same line-make.

6. Whether the franchisee refuses to honor warranties of the franchiser to be performed by the franchisee, provided that the franchiser reimburses the franchisee for such warranty work performed by the franchisee.

7. Except as provided in section 322A.11, failure by the franchisee to substantially comply with those requirements of the franchise which are determined by the board to be reasonable and material.

8. Except as provided in section 322A.11, bad faith by the franchisee in complying with those terms of the franchise which are determined by the board to be reasonable and material. [C71, 73, 75,§322A.15]

322A.16 Board's additional guidelines. In determining whether good cause has been established for entering into an additional franchise for the same line-make, the board shall take into consideration the existing circumstances, including, but not limited to:

1. Amount of business transacted by other franchisees of the same line-make in that community.

2. Investment necessarily made and obligations incurred by other franchisees of the same line-make, in that community, in the performance of their part of their franchises.

3. Permanency of the investment.

4. Effect on the retail motor vehicle business as a whole in that community.

5. Whether it is injurious to the public welfare for an additional franchise to be established.

6. Whether the franchisees of the same line-make in that community are providing adequate consumer care for the motor vehicles of the line-make which shall include the adequacy of motor vehicle service facilities, equipment, supply of parts and qualified service personnel. [C71, 73, 75,§322A.16]

322A.17 Judicial review. Judicial review of actions of the board may be sought in the manner provided for in section 322.10. [C71, 73, 75,§322A.17]

Constitutionality, 63GA, ch 1160,§18

CHAPTER 323

MARKETING AND DISTRIBUTION OF MOTOR FUEL AND SPECIAL FUEL

323.1 Definitions.
323.2 Discontinuing distributor franchise.
323.3 Discontinuing dealer franchise.
323.4 Continuance.
323.5 Burden of proof.
323.6 Conditions barring change in distributor franchise.
323.7 Commission's guidelines.
323.8 Compulsory attendance at hearings.
323.9 Violations.
323.10 Intent.
323.11 Hearing.
323.12 Appeal.
323.13 Waiver.

323.1 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Distributor"* means a person who holds a motor fuel distributor's license or a special fuel distributor's license issued as provided in chapter 324.

2. *"Franchiser"* means a person who is engaged in the importation, refining or distribution of motor fuel or special fuel and who has entered into a distributor franchise or a dealer franchise.

3. *"Distributor franchise"* means a written agreement or contract, either written or oral, between a franchiser and a distributor when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The distributor is granted the right to offer and sell motor fuel or special fuel that is imported, refined or distributed by the franchiser.

c. The distributor, as an independent business, constitutes a component of the franchiser's distribution system.

d. The distributor's business, or a portion of it which is related to motor fuel or special fuel purchased from the franchiser is substantially reliant on the franchiser for the continued supply of motor fuel or special fuel.

e. The distributor's business or a portion of it which is related to motor fuel or special fuel purchased from the franchiser is substantially associated with the franchiser's trademark, service mark, trade name, advertising or other commercial symbol designating the franchiser.

4. *"Dealer"* means a person, other than an employee of a distributor or franchiser, who operates, maintains or conducts a place of business from which motor fuel or special fuel is sold or offered for sale at retail to the ultimate consumer, and who holds a license, issued as provided in chapter 214, for each pump and meter operated upon the retail premises.

5. *"Dealer franchise"* means an agreement or contract, either written or oral, between a franchiser and a dealer or between a distributor and a dealer when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The dealer is granted the right to offer and sell motor fuel or special fuel that is imported, refined or distributed by the franchiser or by the distributor.

c. The dealer's business is substantially reliant on the franchiser or distributor for the continued supply of motor fuel or special fuel.

6. *"Motor fuel"* means motor fuel as defined in chapter 324.

7. *"Special fuel"* means special fuel as defined in chapter 324.

8. *"Retaliatory action"* means action contrary to the purpose or intent of this chapter and may include a refusal to continue to sell or lease, a reduction in the quality or quantity of services or products customarily available for sale or lease, a violation of privacy, or an inducement of others to retaliate.

9. *"Retail premises"* means real estate either owned or leased by the dealer and used primarily for the sale at retail to the ultimate consumer of motor fuel or special fuel.

10. *"Commission"* means the Iowa state commerce commission. [C75,§323.1]

323.2 Discontinuing distributor franchise. Notwithstanding the terms, provisions or conditions of any distributor franchise, a franchiser shall not terminate or refuse to renew a distributor franchise except as provided in this chapter. A franchiser shall not terminate or refuse to renew a distributor franchise unless the franchiser gives to the distributor thirty days' written notice of franchiser's intent to terminate or not renew. Notice shall be given by restricted certified mail, as defined in section 618.15. If a distributor, within thirty days after the date of delivery of the notice from the franchiser, applies to the commission for a hearing under this chapter, the distributor franchise shall remain in effect pending a final order by the commission. The application filed by the distributor shall state, under oath, that the distributor's license as a motor fuel or special fuel distributor, as the case may be, has not been canceled pursuant to the provisions of chapter 324, that the distributor has not filed a petition in bankruptcy or been declared bankrupt within six months preceding the filing of the application, that the franchiser has not withdrawn entirely from the sale for resale of motor fuel and special fuel in this state, that there are no past due sums owing by the distributor to the franchiser, and that the distributor has not consented in writing to the termination or nonrenewal of the distributor franchise. [C75,§323.2]

323.3 Discontinuing dealer franchise. Notwithstanding the terms, provisions, or conditions of any dealer franchise, a distributor or franchiser shall not terminate or refuse to renew a dealer franchise except as provided in this chapter. A distributor or franchiser shall not terminate or refuse to renew a dealer franchise unless the distributor or franchiser gives to the dealer thirty days' written notice of distributor's or franchiser's intent to terminate or not renew. Notice shall be given by restricted certified mail, as defined in section 618.15. If a dealer, within thirty days after the date of delivery of the notice from the distributor or franchiser, applies to the commission for a hearing under this chapter, the dealer franchise shall remain in effect pending a final order by the commission. The application filed by the dealer shall state, under oath, that the dealer's license, issued pursuant to chapter 214, for pumps and meters located on the retail premises occupied by the dealer has not been canceled, that the dealer has not filed a petition in bankruptcy or been declared bankrupt within six months preceding the filing of the application, that the franchiser or distributor has not withdrawn entirely from the sale for resale of motor fuel and special fuel in this state, that there are no past due sums owing by the dealer to the franchiser or distributor, and that the dealer has not consented in writing to the termination or nonrenewal of the dealer franchise. [C75,§323.3]

Hearing procedure prior to July 1, 1975, see 65GA, ch 1198,§§4, 7, 11-13

323.4 Continuance. The commission may continue the date of hearing for a period of thirty days, and may upon application, but not ex parte, continue the date of hearing for an additional period of thirty days. [C75,§323.4]

323.5 Burden of proof. Upon hearing, if the commission finds the statements contained in

the application are true, then the franchiser or distributor that intends to terminate or not renew the distributor franchise or dealer franchise shall have the burden of proof to establish that the franchiser or distributor, as the case may be, has good cause for terminating or not renewing the franchise.

If the commission finds the statements contained in the application are not true, the application shall be denied. Nothing contained in this chapter shall be construed to require or authorize any investigation by the commission of any matter before the commission under this chapter. Upon hearing the commission shall hear the evidence introduced by the parties and shall make its decision solely upon the record made. If the commission denies the termination or nonrenewal of the franchise, it may make such further order as may be necessary to require compliance with the terms of the franchise and to prevent retaliatory action. [C75,§323.5]

323.6 Conditions barring change in distributor franchise. Notwithstanding the terms, provisions or conditions of a distributor franchise, the following shall not constitute good cause for the termination or refusal to renew a distributor franchise:

1. The sole fact that the franchiser desires further penetration of the market.

2. The change of executive management of the distributor, unless the franchiser, having the burden of proof, proves that the change of executive management will be substantially detrimental to the distribution of the franchiser's motor fuels or special fuels in the area served by the distributor.

3. The sale or change of ownership of the distributor's business, unless the transfer of the distributor's license pursuant to chapter 324 is denied or the new owner is unable to obtain a license under chapter 324. [C75, §323.6]

Referred to in §323.7

323.7 Commission's guidelines. In determining whether good cause has been established for terminating or not renewing a distributor franchise or dealer franchise, the commission shall take into consideration the existing circumstances, including, but not limited to:

1. Amount of business transacted by the distributor or dealer.

2. Investments made and obligations incurred by the distributor or dealer in performance of the franchise.

3. Permanency of the investment.

4. Whether it is injurious to the public welfare for the business of the distributor or dealer to be disrupted.

5. Ability of the distributor or dealer to timely pay his financial obligations.

6. Whether the distributor or dealer has adequate equipment and qualified personnel to reasonably provide for the distribution and marketing of the motor fuel or special fuel sold to him.

7. Except as provided in section 323.6, failure of the distributor to substantially comply with those requirements of the distributor franchise that are determined by the commission to be reasonable and material.

8. Failure of the dealer to substantially comply with those requirements of the dealer franchise that are determined by the commission to be reasonable and material. [C75, §323.7]

323.8 Compulsory attendance at hearings. The commission may issue subpoenas, administer oaths, compel the attendance of witnesses and production of books, papers, documents and other evidence. The commission may apply to the district court of the county in which the hearing is to be held for a court order to enforce actions taken under this section. [C75,§323.8]

323.9 Violations. Any person violating the provisions of this chapter is guilty of a misdemeanor and shall be punished by a fine not to exceed one hundred dollars or imprisonment in the county jail for a period of not to exceed thirty days. [C75,§323.9]

323.10 Intent. The provisions of this chapter are enacted in the exercise of the police powers of this state for the purpose of protecting the health, safety and general welfare of the people of this state and because methods and practices in the marketing and distribution of motor fuel and special fuel have impaired the availability to the public of the fuel and the services supplied by distributors and dealers who have entered into a franchise agreement with their respective suppliers. [C75,§323.10]

323.11 Hearing. Upon receiving an application, the commission shall order a hearing. The hearing shall be held within thirty days of receipt of the application and in accordance with the Iowa administrative procedure Act. The commission shall notify the franchiser or distributor of the time and place of the hearing. The commission may also give notice of the application to any other party the commission deems an interested person. The notice shall be in the form and substance and given in the manner determined by the commission.

Any person who can show an interest in the application may become a party to the hearing, whether or not he receives notice; but a party not receiving notice shall be limited to participation at the hearing on the question of the public interest in the termination or continuation of the franchise. [C75,§323.11]

323.12 Appeal. Appeal may be taken from the final order of the commission by either the distributor, franchiser or dealer,* to the district court of the county where the distributor or dealer either resides or maintains his

principal place of business, within thirty days from the time the decision is filed with the commission, by giving at least ten days' notice to the commission to be served on its chairman or secretary in the same manner as original notices are now served, and by filing with the clerk of court a bond for costs in the sum of not less than five hundred dollars. Appeal shall be taken in accordance with the provisions of the Iowa administrative procedure Act. [C75,§323.12]

*Including persons served with notice under 65GA, ch 1198,§4, see §17 of the Act

323.13 Waiver. Any provision of a dealer franchise or distributor franchise which is an attempted waiver of the benefits of this chapter shall be void and unenforceable. [C75, §323.13]

CHAPTER 324

MOTOR FUEL TAX LAW

Referred to in §§312.1, 323.1, 323.2, 323.6, 327A.1(4), 327A.15, 422.52(4)

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DIVISION I
MOTOR FUEL TAX

Referred to in §§324.32, 324.36(4), 324.38(4), 324.54, 324.56, 324.57, 324.65

324.1 Short title. This division, plus applicable provisions of division IV of this chapter and any amendments to either shall be known and may be cited as the "Motor Fuel Tax Law," and as so constituted is hereinafter referred to as this division. [C35,§5093-f40; C39,§5093.39; C46, 50, 54,§324.66; C58, 62, 66, 71, 73, 75,§324.1]

Similar provisions, §§324.31, 324.50

324.2 Definitions. As employed in this division:

1. *"Motor fuel"* shall mean *(a)* all products commonly or commercially known or sold as gasoline (including casinghead and absorption or natural gasoline) regardless of their classifications or uses; and *(b)* any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles, which when subjected to distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society of Testing Materials Designation D-86), show not less than ten per centum distilled (recovered) below three hundred forty-seven degrees Fahrenheit (one hundred seventy-five degrees Centigrade) and not less than ninety-five per centum distilled (recovered) below four hundred sixty-four degrees Fahrenheit (two hundred forty degrees Centigrade); provided, that the term "motor fuel" shall not include special fuel as defined in section 324.33, subsection 1, and shall not include liquefied gases which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute, nor naphthas and solvents as hereinafter defined unless the liquefied gases or naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within *(b)* above, in which event the resulting product shall be deemed to be motor fuel.

2. *"Distributor"* shall mean and include any person who first receives motor fuel within this state (within the meaning of the word "received" as hereinafter defined), and any person now or hereafter engaged in the business of selling motor fuel to a dealer in this state for resale, and shall include any person who sells special fuel as defined in section 324.33, subsection 1 in bulk for highway use provided that a person may bring into this state not to exceed twenty gallons of motor fuel in the fuel supply tank, or any other container, directly connected to the motor of a motor vehicle without becoming a distributor.

3. *"Licensee"* shall mean and include any person holding an uncanceled distributor's license issued by the department of revenue under this division or any prior motor fuel tax law.

4. *"Dealer," "agent"* and *"consignee"* shall mean and include any person (except distributors as herein defined) now or hereafter engaged in the business of selling motor fuel in this state.

5. *"Motor fuel deemed received."* *a.* Motor fuel refined at a refinery in this state and placed in tanks thereat, and motor fuel transferred from a refinery or a marine or pipe-line terminal in this state or from points outside this state to a refinery or a marine or pipe-line terminal in this state and placed in tanks thereat, shall be deemed received, for the purposes of this division, at the time withdrawn from such refinery or terminal storage for sale or use in this state or for transportation to destinations in this state other than refineries or marine or pipe-line terminals and not before.

When withdrawn from refinery or terminal storage as aforesaid, the motor fuel shall be deemed received by the person who was the owner thereof immediately prior to withdrawal, unless (1) the motor fuel is withdrawn for shipment or delivery to a licensee, in which case the motor fuel shall be deemed received by the licensee to whom shipped or delivered or (2) the motor fuel is withdrawn for shipment or delivery to a nonlicensee for the account of a licensee in which case the motor fuel shall be deemed received by the licensee for whose account the shipment or delivery to the nonlicensee is made.

b. Motor fuel imported into this state, other than that placed in storage at refineries or terminals as set out in paragraph *"a"* above, shall be deemed received at the time unloaded in this state and by the person who is the owner thereof immediately after it is unloaded in this state, except that if motor fuel so imported is used in this state directly from the transportation equipment by which imported then the motor fuel shall be deemed received at the time it is brought into this state and by the person using the motor fuel within this state; provided, however, that if motor fuel shipped or brought into this state by a licensee is sold and delivered directly to a nonlicensee in this state, then the gallonage so delivered shall be deemed received by the licensee shipping or bringing the motor fuel into this state.

c. Motor fuel produced, compounded, or blended in this state other than at a refinery, marine or pipe-line terminal, shall be deemed to be received at the time and by the person who is the owner thereof when the same is so produced, compounded or blended.

d. Motor fuel acquired in this state by any person, other than as set out in paragraphs *"a"*, *"b"*, or *"c"* above, shall, unless the person from whom the same is acquired has paid or incurred liability with respect thereto for the tax herein imposed, or unless the same be exempt under this division, be deemed to be received by the person so acquiring the same at the time so acquired.

Except as hereinbefore set forth, the word "received" shall be given its usual and customary meaning.

6. *"Naphthas and solvents"* shall mean and include those liquids which come within the distillation specifications for motor fuel set out under subsection 1, paragraph *"b,"* but which are designed and sold for exclusive use other than as a fuel for propelling motor vehicles. [C27, 31,§5093-a2; C35,§5093-f2; C39, §5093.02; C46, 50, 54,§324.1; C58, 62, 66, 71, 73, 75,§324.2]

Referred to in §422.86
See §§324.33, 324.57

324.3 Levy of excise tax—exemptions—credits. For the privilege of operating motor vehicles in this state an excise tax of seven cents a gallon is hereby imposed upon the use of all motor fuel used for any purpose except as otherwise provided in this division. The tax shall be paid in the first instance by the distributor upon the invoiced gallonage of all motor fuel received by him in this state, within the meaning of the word "received" as defined in this division, less the deductions hereinafter authorized. Thereafter, except as otherwise provided, the per gallon amount of such tax shall be added to the selling price of each and every gallon of such motor fuel sold in this state and collected from the purchaser to the end that the ultimate consumer shall bear the burden of such tax; provided, however, that no tax shall be imposed or collected under this division with respect to the following:

1. Motor fuel sold for export or exported from this state to any other state, territory, or foreign country.

2. Motor fuel sold to the United States or any agency or instrumentality thereof.

3. Motor fuel sold to any post exchange or other concessionaire on any federal reservation within this state; but the tax on motor fuel so sold, to the extent permitted by federal law, shall be collected by the post exchange or concessionaire, reported and paid the department of revenue.

4. Motor fuel sold to the state of Iowa or any of its agencies, but this exemption shall not apply to political subdivisions of this state. [C27, 31,§§4755-b38, 5093-a1; C35,§§5093-f3,-f4; C39,§§5093.03, 5093.04; C46, 50, 54,§§324.2, 324.3; C58, 62, 66, 71, 73, 75,§324.3]

Referred to in §§321.19, 324.8(4)
See §§324.35, 324.81

324.4 Distributor's license. It shall be unlawful for any person to receive motor fuel within this state or to otherwise act as a distributor or to sell special fuel in bulk for highway use unless he holds an uncanceled distributor's license issued by the department of revenue. To procure a license a distributor shall file with the department of revenue an application signed under penalty for false certificate and in such form as the department of revenue may prescribe, setting forth:

1. The name under which the distributor will transact business in the state of Iowa.

2. The location, with street number address, of the principal office or place of business of the distributor within this state.

3. The name and complete residence address of the owner or the names and addresses of the partners, if the distributor is a partnership, or the names and addresses of the principal officers, if the distributor is a corporation or association.

Concurrently with the filing of an application for a license, every distributor shall file with the department of revenue a bond of the character and in the amount provided for in this division. No license shall be issued unless application is accompanied by the bond, nor, if the applicant is a foreign corporation, unless it is at the time properly qualified under the laws of this state to do business therein.

If (*a*) any application for a license to transact business as a distributor in this state shall be filed by any person whose license shall have been canceled for cause at any time theretofore under the provisions of the chapter or any prior motor fuel tax law, or (*b*) the department of revenue shall be of the opinion that such application is not filed in good faith, or (*c*) the application is filed by some person as a subterfuge for the real person in interest whose license or registration shall theretofore have been canceled for cause under the provisions of this chapter or any prior motor fuel tax law, the department of revenue, after a hearing of which the applicant shall have been given fifteen days' notice in writing and in which said applicant shall have the right to appear in person or by counsel and present testimony, shall have and is hereby given the right and authority to refuse to issue to the applicant a distributor's license.

Upon the filing of the application, a filing fee of ten dollars shall be paid to the department of revenue.

The application in proper form having been accepted for filing, the filing fee paid, the bond having been accepted and approved and the other conditions and requirements of this section having been complied with, the department of revenue shall issue to the applicant a license to transact business as a distributor in

this state. The license shall remain in full force and effect until canceled as provided in this chapter.

The license shall not be assignable, and shall be valid only for the distributor in whose name issued, and shall be displayed conspicuously in the principal place of business of the distributor in this state.

The department of revenue shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensees. [C31,§5093-c2; C35,§§5093-f5,-f6, -f7; C39,§§5093.05–5093.07; C46, 50, 54,§§324.5, 324.6, 324.8–324.10; C58, 62, 66, 71, 73, 75,§324.4]

Referred to in §§324.5, 422.86

324.5 Permissive licensing of bulk storers as distributors. Any person other than a distributor as hereinabove defined having bulk storage in this state for rail tank car or four thousand gallon or more transport loads of motor fuel for use or for distribution in bulk by tank truck or tank car, or both, may, subject to and upon compliance with the provisions of section 324.4, also be licensed as a distributor and thereupon for all purposes of this division shall be deemed to be the distributor with respect to any motor fuel "received" by him while the license remains in effect. [C27, 31,§§5093-a3,-a4; C39,§§5093.04, 5093.05; C46, 50, 54,§§324.4, 324.6; C58, 62, 66, 71, 73, 75,§324.5]

324.6 Repealed by 63GA, ch 212,§1.

Prior rights not prejudiced, 63GA, ch 212,§2

324.7 Repealed by 66GA, ch 25,§4.

324.8 Tax reports — computation and payment of tax—credits. For the purpose of determining the amount of his liability for the tax herein imposed, each distributor shall, not later than the last day of the month next following the month in which this division becomes effective and not later than the last day of each calendar month thereafter, file with the department of revenue a monthly report, signed under penalty for false certificate, which shall include the following:

1. A statement of the number of invoiced gallons of motor fuel received (within the meaning of the term "received" as defined in this division) by the distributor within this state during the next preceding calendar month in such detail as is prescribed by the department of revenue and as may be necessary for the proper administration of this division.

2. A statement showing the deductions authorized in this division in such detail and with such supporting evidence as is prescribed by the department of revenue and as may be for proper administration of this division.

3. Such other information as the department of revenue may require for the enforcement of this chapter.

At the time of filing each monthly report, each distributor shall pay to the department of revenue the full amount of the motor fuel tax due from the distributor for the next preceding calendar month computed as follows:

4. From the total number of invoiced gallons of motor fuel "received" by the distributor within the state during the next preceding calendar month shall be made the following deductions:

First, the gallonage of motor fuel received and thereafter sold within the exemptions provided for in section 324.3; and second, the number of gallons of motor fuel equal to three per centum of the first three hundred thousand gallons and one and one-quarter per centum of all gallonage in excess of three hundred thousand gallons of invoiced gallons of motor fuel received by the distributor within this state during the next preceding calendar month, this percentage being a flat allowance to cover evaporation, shrinkage, and losses, other than those provided for in section 324.3, and the distributor's expenses and losses in collection, accounting for, and paying over the motor fuel tax.

5. The number of invoiced gallons remaining after the deductions hereinabove set forth shall be multiplied by the per gallon motor fuel tax rate and resulting figure shall be the amount of motor fuel tax in dollars and cents due from the distributor for the next preceding calendar month. Any outstanding credit memoranda issued by the department of revenue to the distributor may be applied against the amount due. [C27, 31,§§5093-a5,-b1; C35, §5093-f9; C39,§5093.09; C46, 50, 54,§§324.13–324.15, 324.17, 324.29; C58, 62, 66, 71, 73, 75,§324.8]

Referred to in §324.54

324.9 Report from persons not licensed as distributors. Every person other than a licensed distributor, who shall purchase, bring into this state or otherwise acquire within this state motor fuel, not otherwise exempted, with respect to which such person has knowingly not paid or incurred liability to pay either to a licensee or to a dealer the motor fuel tax shall be subject with respect to the motor fuel to all the provisions of this division that apply to distributors on motor fuel received by them in this state and shall make the same reports and tax payments thereon and be subject to the same penalties for delinquent or nonreporting or delinquent or nonpayment as apply to distributors. [C31,§5093-c2; C35,§5093-f6; C39, §5093.06; C46, 50, 54,§§324.8, 324.9; C58, 62, 66, 71, 73, 75,§324.9]

324.10 Required distributor and special fuel distributor and dealer records. Each motor fuel distributor and special fuel distributor shall maintain and keep for a period of three years, such records of all transactions by which he receives, uses, sells, delivers or otherwise disposes of motor fuel within this state, together with invoices, bills of lading and other pertinent records and papers as may reasonably be required by the department of revenue for the administration of this division.

If in the normal conduct of a distributor's business his records are maintained and kept at an office outside the state of Iowa, it shall be a sufficient compliance with this section if the records are made available for audit and examination by the department of revenue at the office outside Iowa, but such audit and examination outside Iowa shall be without expense to the state.

Each dealer handling motor fuel in this state shall maintain and keep for a period of two years records of all motor fuel purchased or otherwise acquired by him, together with delivery tickets, invoices, and bills of lading, and such other pertinent records as the department of revenue shall require.

The department of revenue, after an audit and examination of the records of a distributor or dealer may authorize their disposal, the authorization to be in writing after request by the distributor or dealer. [C27, 31,§§5093-a4,-a5; C35,§§5093-f5,-f8; C39,§§**5093.05, 5093.08**; C46, 50, 54,§§324.7, 324.11; C58, 62, 66, 71, 73, 75,§324.10]

324.11 Registration of carrier transportation equipment and identification of all highway transportation equipment.

1. Any person operating as a common or contract carrier and any distributor who is also engaged in transportation within this state of motor fuel for others, shall register with the department of revenue on or before the first day of the third calendar month which begins after the effective date of this division and currently thereafter as additional equipment is put to use, each vehicle used in aforesaid transportation in this state, except railroad, water-vessel or pipe-line equipment. The registration shall be on forms furnished by and shall contain such information as may reasonably be required by the department of revenue. A fee of one dollar shall be paid to the department of revenue for original registration of each vehicle. The department of revenue shall furnish to the registrant for each vehicle registered suitable identification which shall be permanently attached to the vehicle and shall be available for inspection at all times. Currently as any vehicle is retired or its use for the transportation of motor fuel for others is discontinued, the registrant shall notify the department of revenue or at the direction of the department of revenue shall either surrender to the department of revenue or destroy the vehicle identification issued under this section. Annually on or before the first day of July of each year, each carrier as aforesaid shall file with the department of revenue a statement showing each registered vehicle then in use for transportation of motor fuel for others.

2. Each vehicle used by a carrier, distributor or any person in the transportation on the highways in this state of fuels for motor vehicles shall be identified by having shown thereon, in lettering at least six inches in height made with a stroke of not less than three-fourths inch in width and of a color contrasting to that of the background upon which the lettering is placed, the name and address of the person transporting the fuel. The identification shall be placed on both sides of the vehicle; provided, that, transportation equipment operated by a licensee shall be identified with his distributor's license number in which case the trade or produce name or insignia generally used in identifying the highway transportation equipment of the licensee and well known and recognized throughout the area in which the transportation equipment is operated, may be shown in lieu of the name and address of the licensee.

3. The department of revenue shall have the power to refuse to register a vehicle owned or used by any person, either directly or indirectly, who has had a license revoked for cause which license was issued under the provisions of this chapter or any prior motor fuel tax law. [C27, 31,§5093-b1; C35,§§5093-f19, -f25; C39,§§**5093.19, 5093.25**; C46, 50, 54,§§324.12, 324.33, 324.36, 324.46; C58, 62, 66, 71, 73, 75, §324.11]

324.12 Loading and delivery evidence on transportation equipment.

1. There shall be carried on every vehicle, while in use in transportation service requiring that it be registered under the preceding section, a serially numbered manifest in form satisfactory to the department of revenue on which shall be entered the following information as to the cargo of motor fuel being moved in the vehicle. The date and place of loading, the place to be unloaded, the person for whom it is to be delivered, the nature and kind of product, and the amount thereof and such other information as is called for in the forms prescribed or approved by the department of revenue. The manifest covering each load transported upon consummation of the delivery shall be completed showing the date and place of actual delivery and the person to whom actually delivered and shall be kept as a permanent record for a period of three years, provided, however, that the record of the manifest of past cargoes need not be carried on the conveyance but must be preserved by the carrier for the inspection of the department of revenue. A carrier subject to this subsection may with the approval of the department of revenue when distributing for a licensee substitute the loading and delivery evidence required in subsection 2 of this section.

2. Every distributor or other person while transporting motor fuel from a refinery or marine or pipe-line terminal in this state or from a point outside this state via the highways of this state in service other than that covered in subsection 1 of this section shall carry in the vehicle a loading invoice showing the true name and address of the seller or consignor, the date and place of loading and the kind and quantity of motor fuel loaded, together with invoices showing the kind and quantity of each delivery therefrom, and the

name and address of each purchaser or consignee. [C35,§5093-f19; C39,§5093.19; C46, 50, 54, §§324.34, 324.35; C58, 62, 66, 71, 73, 75,§324.12]

324.13 Evidence produced upon request. The operator of any vehicle transporting motor fuel as covered in the preceding section shall, at the request of any sheriff, deputy sheriff or other peace officer or person authorized by law to inquire into or investigate said matters, produce and offer for inspection the manifest or loading and delivery invoices pertaining to the load and trip in question and shall permit the officer to inspect and measure the contents of the vehicle. If the vehicle operator fails to produce the covering evidence or if, when produced, it fails to contain the required information and if it appears that there is an attempt to evade payment of the motor fuel tax, then the officer or other person authorized to make the inquiry may take and impound the motor fuel together with the conveying vehicle until the tax on the motor fuel together with penalty, if an attempt to evade payment of the motor fuel is involved, amounting to one hundred percent of the tax have been paid. In case the tax and penalty found to be due are not paid within forty-eight hours after the taking of the property, the department of revenue may proceed to sell the vehicle and its cargo in the manner provided by law for the sale of personal property by the sheriff under execution. [C35,§5093-f19; C39,§5093.19; C46, 50, 54, §324.35; C58, 62, 66, 71, 73, 75,§324.13]

324.14 Penalty for operating unregistered transport. It shall be unlawful for any person to transport motor fuel in bulk upon the highways of this state in a conveyance the registration of which is required without the evidence of registration provided for and any person found guilty of the unlawful act shall be fined not to exceed one hundred dollars or imprisoned in the county jail not more than thirty days, and each cargo so transported shall be considered a separate offense. This penalty shall be in addition to penalties imposed under other provisions of this chapter. Persons transporting motor fuel in bulk upon the highways of this state in an amount of not to exceed four thousand gallons shall not be regarded as transporting in bulk. [C35, §5093-f20; C39,§5093.20; C46, 50, 54,§324.38; C58, 62, 66, 71, 73, 75,§324.14]

Referred to in §§324.76, 753.15

324.15 Transportation reports—refinery and pipe-line and marine terminal reports.

1. Every railroad and common or contract motor carrier transporting motor fuel either in interstate or intrastate commerce within this state and every person transporting motor fuel by whatever manner from a point outside this state to any point in this state shall, subject to penalties for false certificate, report to the department of revenue on forms prescribed by the department of revenue all deliveries of motor fuel to points within this state other than refineries or marine or pipe-line terminals. If any distributor or dealer is also engaged in the transportation of motor fuel for others, he shall make the same reports as required of common and contract carriers.

The report shall cover monthly periods and shall show as to each delivery:

a. The name and address of the person to whom actually and in fact made.

b. The name and address of the originally named consignee, if delivered to any other than the originally named consignee.

c. The point of origin, the point of delivery, and the date of delivery.

d. The number and initials of each tank car and the number of gallons contained therein, if shipped by rail.

e. The name of the boat, barge, or vessel, and the number of gallons contained therein, if shipped by water.

f. The registration number of each tank truck and the number of gallons contained therein, if transported by motor truck.

g. The manner, if delivered by other means, in which the delivery is made.

h. Such additional information relative to shipments of motor fuel as the department of revenue may require.

If any person required under this section to file transportation reports is a licensee under this division and if the information required in his transportation report is contained in any other report rendered by him under this division no separate transportation report of that information shall be required.

2. Every person operating storage facilities at a refinery or at a marine or pipe-line terminal in this state shall monthly make an accounting to the department of revenue on forms prescribed by the department of revenue of all motor fuel withdrawn from the refinery storage and all motor fuel delivered into, withdrawn from and on hand in the terminal storage.

3. The reports required in this section shall be for information purposes only and the department of revenue may in its discretion waive the filing of any of these reports not necessary for proper administration of this division. The reports required in this section shall be certified under penalty for false certificate and filed with the department of revenue within the time allowed for filing of distributors' reports of motor fuel received. [C27, 31,§§5093-a6,-b1; C35,§§5093-f25,-f26,-f27; C39, §§5093.25–5093.27; C46, 50, 54,§§324.46–324.48; C58, 62, 66, 71, 73, 75,§324.15]

324.16 Credit to licensee—nonmotor vehicle or watercraft use—casualty losses—nontaxable products—refunds. A licensee having received motor fuel or special fuel which thereafter (1) he uses for any purpose other than as fuel for propelling motor vehicles or watercraft or (2) while owned by him is lost or destroyed through accountable leakage or through fire, accident, lightning, flood, storm, act of war or public enemy or other like

cause, shall upon application to the department of revenue supported by two notarized affidavits covering circumstances of loss as proof, be entitled to a memorandum of credit which he may apply against subsequent liability under this chapter, or, if an applicant having paid the tax on the gallonage covered in the application is no longer engaged in activity for which his license was issued, the department of revenue shall refund the appropriate amount to the applicant. [C27, 31, §5093-a8; C35,§5093-f29; C39,§**5093.29**; C46, 50, 54, §§324.50, 324.56; C58, 62, 66, 71, 73, 75,§324.16]

324.17 Refund to nonlicensee — fuel used other than in watercraft or motor vehicles. Any person other than a licensee who shall use motor fuel for the purpose of operating or propelling farm tractors, corn shellers, roller mills, truck-mounted feed grinders, stationary gas engines, aircraft, for cleaning or dyeing or for any purpose other than in watercraft or in motor vehicles operated or intended to be operated upon the public highways and having paid the motor fuel tax on the fuel either directly to the department of revenue or by having the tax added to the price of the fuel, and who has a refund permit shall, upon presentation to and approval by the department of revenue of a claim for refund be reimbursed and repaid the amount of the tax which the claimant has paid on the gallonage so used. Every claim filed subsequent to July 4, 1957, shall be subject to the following conditions:

1. The claim shall be on a form prescribed by the department of revenue and be certified by the claimant under penalty for false certificate.

2. The claim shall have attached thereto the original invoice or invoices showing the purchase of the motor fuel on which a refund is claimed.

3. No invoice shall be acceptable in support of a claim for refund unless it is a separate serially numbered invoice covering no more than one purchase of motor fuel, prepared by the seller on a form approved by the department of revenue with double faced carbon paper under the original; nor unless it is legibly written with no corrections or erasures and shows the date of sale, the name and address of the seller and of the purchaser, the kind of motor fuel, the gallonage in words and figures, the per gallon price of the motor fuel, the per gallon rate of any tax added to the product price, the total purchase price including the Iowa motor fuel tax and that the total purchase price including tax has been paid; provided, that as to refund invoices made on a billing machine the department of revenue may waive any of the requirements of this subsection.

4. The claim shall state the gallonage of motor fuel that was used or will be used by the claimant other than in watercraft or motor vehicles, the manner in which the motor fuel was used or will be used and the equipment in which it was used or will be used.

5. The claim shall also state whether or not the claimant used fuel for watercraft or motor vehicles from the same tanks or receptacles in which the claimant kept the motor fuel on which the refund is claimed.

6. No refund will be paid with respect to any motor fuel taken out of this state in fuel supply tanks of motor vehicles.

7. No refund shall be paid with respect to motor fuel purchased more than three calendar months prior to the date the claim was filed with the department of revenue.

8. No refund shall be paid with respect to motor fuel used in the performance of a contract which is paid out of state funds unless the contract for the work contains a certificate made under penalty for false certificate that the estimate, bid or price to be paid for the work includes no amount representing motor fuel tax subject to refund.

9. If an original invoice is lost or destroyed the department of revenue may in its discretion approve a refund supported by a copy identified and certified by the seller as being a true copy of the original.

10. The right of a person to a refund under this section shall not be assignable. Claim shall be made by and the amount of the refund when determined by the department of revenue shall be paid to the person who purchased the motor fuel as shown in the supporting invoice.

11. In order to verify the validity of a claim for refund the department of revenue shall have the right to require the claimant to furnish such additional proof of validity as the department of revenue may determine and to examine the books and records of the claimant. Failure of a claimant to furnish his books and records for examination shall constitute a waiver of all rights to refund related to the transaction in question.

12. Refund may also be made on special fuel taxes paid on fuel consumed in the operation of corn shellers, roller mills and feed grinders mounted on trucks under the same conditions as provided by law for refunds on motor vehicle fuel.

13. Refunds shall be made of motor vehicle fuel taxes paid on motor fuel placed in motor vehicles and used, other than on public highways, in the extraction and processing of natural deposits, without regard to whether such motor vehicles are registered under section 321.18. An applicant for a refund under this subsection must maintain adequate records for a period of three years beyond the filing of the claim. The department of revenue will pay the claim upon the presentation of proof which he may reasonably require.

14. A bona fide commercial fisherman, licensed and operating under an owner's certificate for commercial fishing gear issued

pursuant to section 110.1 shall be entitled to receive a motor fuel tax refund under this section.

15. In lieu of the refund provided in this section, a person may receive an income tax credit as provided in chapter 422, division VIII. [C27, 31,§5093-a8; C35,§§5093-f29,-f30,-f36; C39,§§**5093.29, 5093.30, 5093.36**; C46, 50, 54, §§324.50, 324.52-324.57, 324.64; C58, 62, 66, 71, 73, 75,§324.17]

Referred to in §§324.18, 324.82, 324.84, 422.86

324.18 Refund permit. No person may claim a refund under section 324.17 until he shall have obtained a refund permit from the department of revenue and paid the fee therefor. A special permit shall be obtained by applicants claiming a refund under the provisions of this chapter on account of motor fuel used for the purpose of operating aircraft. Application for a refund permit shall be made to the department of revenue on a form provided by the department of revenue, shall be certified by the applicant under penalty for false certificate and shall contain among other things, the name, the address and occupation of the applicant, the nature of his business and a sufficient description for identification of the machines and equipment in which is to be used motor fuel for which refund may be claimed under the permit. Each permit shall bear a separate number and each claim for refund shall bear the number of the permit under which it is made. The department of revenue shall keep a permanent record of all permits issued and a cumulative record of the amount of refund claimed and paid under each. A fee of one dollar shall be collected by the department of revenue from each person to whom a refund permit is issued. A refund permit shall continue in effect until revoked as hereinafter provided or until the claimant shall have moved from the county with which his refund permit is identified. [C27, 31,§5093-a8; C35,§§5093-f29,-f30; C39,§§**5093.29, 5093.30**; C46, 50, 54,§§324.52, 324.57; C58, 62, 66, 71, 73, 75,§324.18]

Referred to in §§324.19, 422.86

324.19 Revocation of refund permit. Any refund permit issued under this chapter may be revoked by the department of revenue for any of the following violations, but only after the holder of the permit has been given reasonable notice of the intention to revoke the permit and reasonable opportunity to be heard:

1. Using in support of a refund claim a false or altered invoice.

2. Making a false statement in a claim for refund or in response to an investigation by the department of revenue of a claim for refund.

3. Refusal to submit his books and records for examination by the department of revenue.

A person whose refund permit is revoked for cause (except nonuse) may not obtain another refund permit for a period of one year after the revocation. A refund permit under which no refund is claimed for a period of one year from date of issuance or a refund permit whose holder has moved from the county wherein he resided at the time of application for said permit shall be revoked by the department of revenue subject to reinstatement or issuance of a new permit upon application as provided in section 324.18. [C27, 31,§§5093-a4,-a6,-a7,-a8; C35,§§5093-f22,-f31; C39, §§**5093.22, 5093.31**; C46, 50, 54,§§324.43, 324.58, 324.59; C58, 62, 66, 71, 73, 75,§324.19]

Referred to in §§324.74(4), 422.86

324.20 Posting price and discounts. Every distributor and other person selling motor fuel in this state for resale to dealers in this state, shall keep posted in a conspicuous place most accessible to the public at their place or places of business, including bulk plants, a placard showing in legible words and figures the same height and size, the price per gallon of each grade of motor fuel offered for sale, the amount of state excise tax per gallon thereon, the federal excise tax per gallon thereon, and the total thereof. If any rebate, discount, commission, or other concession is granted by distributors or persons engaged in the sale of motor fuel for resale to dealers of such nature as will reduce the cost or price to any purchaser or dealer in such products, the conditions, quantity, and amount of such rebate, discount, commission or other concession shall be posted as a part of the posted price. All price placards shall be subject to the approval of the department of revenue. Any distributor or person failing to post or keep posted the placard required by this section, or who posts placards not approved by the department of revenue as provided in this section, or who sells any motor fuel for resale at a price which directly or indirectly, by any means or device, deviates from the posted price set forth on the price placard approved by the department of revenue, shall be guilty of a misdemeanor and shall be punished by a fine of one hundred dollars or imprisonment in the county jail for thirty days. Nothing contained herein shall prohibit or restrict the distribution of earnings to the members of any distributor or person, nor to the distribution to consumers of road maps, publicity and other advertising media carrying the name of the distributor, person, or produce. Each day the required placard remains unposted or an unauthorized placard remains posted, or each deviation from the posted price, shall be considered a separate offense. In the event of a second conviction for the violation of any of the provisions of this section, the department of revenue may revoke the license of such distributor or person so convicted. [C27, 31, §§5093-a3,-a4,-a6,-a7,-a8,-b1; C35,§§5093-f4,-f15,-f17,-f25,-f31; C39,§§**5093.04, 5093.15, 5093.17, 5093.25, 5093.31**; C46, 50, 54,§§324.4, 324.30, 324.31, 324.47, 324.58, 324.59; C58, 62, 66, 71, 73, 75,§324.20]

324.21 to 324.30 Reserved.

DIVISION II

SPECIAL FUEL TAX

Referred to in §§324.54, 324.56, 324.57, 324.65

324.31 Short title. This division, applicable provisions of division IV of this chapter and any amendments to either shall be known, and may be cited, as the "Special Fuel Tax Law," and as so constituted is hereinafter referred to as this division. [C35,§5093-f40; C39,**§5093.39**; C46, 50, 54,§324.66; C58, 62, 66, 71, 73, 75,§324.31]

Similar provisions, §§324.1, 324.50

324.32 Purpose. The purpose of this division is to supplement division I of this chapter, by imposing an excise tax upon the receipt, delivery or placing into the fuel supply tanks of motor vehicles which are within this state, of all fuels not taxed under division I. [C27, 31,§§4755-b38, 5093-a1; C35,§5093-f3; C39,**§5093.03**; C46, 50, 54,§324.2; C58, 62, 66, 71, 73, 75,§324.32]

See §324.51

324.33 Definitions. As used in this division:

1. *"Special fuel"* means and includes fuel oils and all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles also any substance used for that purpose, except that it does not include motor fuel as defined in the motor fuel tax law.

2. *"Use"* means the receipt, delivery or placing of special fuels by a special fuel user into a supply fuel tank of a motor vehicle while the vehicle is in this state.

3. *"Special fuel dealer"* means any person in the business of handling special fuel who delivers any part thereof into a fuel supply tank of any motor vehicle.

4. *"Special fuel user"* means the owner or other person responsible for the operation of a motor vehicle at the time special fuel is placed in a fuel supply tank thereof while the vehicle is in this state.

5. *"Licensed special fuel user"* means and includes any person who dispenses special fuel for highway use from bulk sources owned and controlled by himself into the fuel supply tank of a motor vehicle or commercial motor vehicle owned or controlled by himself. A licensed special fuel user shall make bulk purchases of special fuel for highway use only from a licensed special fuel distributor.

6. *"Licensee"* shall mean and include any person who holds an uncanceled special fuel dealer license or special fuel user license, issued pursuant to this division. [C27, 31, §5093-a2; C35,§5093-f2; C39,**§5093.02**; C46, 50, 54, §324.1; C58, 62, 66, 71, 73, 75,§324.33]

Referred to in §§324.2(1, 2), 324.34, 422.86

See §§324.2, 324.57

324.34 Tax imposed. For the privilege of operating motor vehicles in this state, there is hereby levied and imposed an excise tax on the use (as defined herein) of special fuel in any motor vehicle. The rate of tax on special (diesel engine) fuel shall be eight cents per gallon. On all other special fuel the per gallon rate shall be the same as the motor fuel tax. The tax, with respect to all special fuel delivered by a special fuel dealer for use in this state as defined by section 324.33, shall attach at the time of the delivery and shall be collected by the dealer from the special fuel user and shall be paid over to the department of revenue as hereinafter provided. The tax, with respect to special fuel acquired by a special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the use (as herein defined) of the fuel and shall be paid over to the department of revenue by the user as hereinafter provided.

All deliveries by distributors of special fuel to be used for highway use must be made into storage connected to a sealed meter pump as licensed in said section.

The department of revenue shall make reasonable rules and regulations governing the dispensing of special fuel at retail service stations and licensed special fuel user locations and shall require that all pumps located at said stations and licensed special fuel user locations through which fuel oil can be dispensed, be metered, inspected, tested for accuracy, sealed and licensed by the state department of agriculture, and that special fuel delivered into the fuel supply tank of any motor vehicle shall be dispensed only through these pumps.

All gallonage for nonhighway use, dispensed through metered pumps as licensed above, on which special fuel tax is not collected, must be substantiated by nonhighway exemption certificates as provided by the department of revenue, signed by the purchaser, and retained by the dealer.

For the privilege of purchasing special fuel, dispensed through metered pumps as licensed above, on a basis exempt from the special fuel tax, the purchaser shall sign nonhighway exemption certificates for the gallonage claimed for nonhighway use.

The department of revenue will disallow all sales said to be for nonhighway use unless proof is established by the retention of said certificate. Certificates for nonhighway use sales must be retained by the dealer for a period of three years. [C27, 31,§4755-b38; C35, §§5093-a1, 5093-f3, 5093-f36; C39,§§**5093.03, 5093.36**; C46, 50, 54,§§324.2, 324.64; C58, 62, 66, 71, 73, 75,§324.34]

324.35 Exemptions. No tax is imposed under this division on special fuel used by the United States or any of its agencies or instrumentalities, but the tax on special fuel used or delivered into fuel supply tanks of motor vehicles by any post exchange or concessionaire on any federal reservation in this state, to the extent permitted by federal law, shall

be collected by the post exchange or concessionaire and paid to the department of revenue.

No tax is imposed under this division on special fuel used by the state of Iowa or any of its agencies, but this exemption shall not apply to political subdivisions of this state. [C58, 62, 66, 71, 73, 75,§324.35]

Exemptions under Division I, §324.3
See §324.81 for refund of federal tax

324.36 Special fuel dealers' and special fuel users' licenses.

1. *Required.* It shall be unlawful for any person to act as a special fuel dealer in this state unless he holds an uncanceled special fuel dealer's license issued to him by the department of revenue. Except for special fuel which is delivered by a special fuel dealer into a fuel supply tank of any motor vehicle in this state, the use (as herein defined) of special fuel in this state by any person shall be unlawful unless he holds an uncanceled special fuel user's license issued to him by the department of revenue.

2. *Application.* Application for a special fuel dealer's license or a special fuel user's license shall be made to the department of revenue. A special fuel dealer's license or a special fuel user's license, whichever is applicable, shall be required for each separate place of business or location where special fuels are regularly delivered or placed into the fuel supply tank of a motor vehicle. Provided, that, if a special fuel dealer also operates one or more bulk plants from which the distribution of a special fuel is primarily by tank vehicle, he need not obtain a separate license for any of these plants not provided with fixed equipment designed for fueling vehicles.

3. *Form of application.* The application shall be filed upon a form prepared and furnished by the department of revenue and shall contain such information as the department of revenue deems necessary.

4. *Issuance.* Upon receipt of the application, the department of revenue shall issue to the applicant a license to act as a special fuel dealer or a special fuel user; provided, however, the department of revenue may refuse to issue a special fuel dealer's license or a special fuel user's license to any person: (*a*) who formerly held either type of license and which has been revoked for cause; or (*b*) who is a subterfuge for the real party in interest whose license has been revoked for cause; or (*c*) upon other sufficient cause being shown. Before refusal, the department of revenue shall grant the applicant a hearing and give him at least fifteen days' written notice of the time and place thereof.

5. *Expiration of license.* Each special fuel dealer's license and special fuel user's license shall be valid until suspended or revoked for cause or otherwise canceled.

6. *Assignment forbidden.* No special fuel dealer's license or special fuel user's license shall be transferable. [C24,§3259; C27, 31,§5093-a5; C35,§§5093-f8,-f21; C39,§§**5093.08, 5093.21**; C46, 50, 54,§§324.11, 324.25, 324.26, 324.28, 324.39, 324.40; C58, 62, 66, 71, 73, 75,§324.36; 66GA, ch 25,§§2, 3]

Referred to in §422.86

324.37 Special fuel dealers' and special fuel users' records. For each location where special fuel is delivered or placed into the fuel supply tank of a motor vehicle, the special fuel dealer or user making the delivery shall prepare and maintain for a period of three years such records as the department of revenue may reasonably require with respect to all these deliveries, and with respect to inventories, receipts, purchases, and sales or other dispositions of special fuel. [C27, 31,§5093-a8; C35,§5093-f14; C39,§**5093.14**; C46, 50, 54,§§324.25–324.29; C58, 62, 66, 71, 73, 75,§324.37]

324.38 Monthly returns and tax payments.

1. *Returns.* For the purpose of determining the amount of his liability for special fuel tax each special fuel dealer and each special fuel user shall file with the department of revenue not later than the last day of the month next following the month in which this division becomes effective and not later than the last day of each calendar month thereafter a monthly tax return certified under penalties for false certificate. The return shall show, with reference to each location at which special fuel is delivered or placed by the dealer or user into a fuel supply tank of any motor vehicle during the next preceding calendar month, such information as the department of revenue may reasonably require for the proper administration and enforcement of this division; provided, however, that if a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, the monthly return to the department of revenue covering the location need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made.

2. *Computation.* The amount of tax due shall be computed by multiplying the appropriate tax rate per gallon by the number of gallons of special fuel delivered or placed by the special fuel dealer or user into supply tanks of motor vehicles.

3. *Payments.* The return shall be accompanied by remittance in the amount of the tax due for the month in which the special fuel was placed in the fuel tanks of motor vehicles.

4. *Reporting exemption for authorized tax-paid purchases.* Any special fuel dealer or user licensed under this division may upon application in writing to the department of revenue and at the discretion of the director of revenue, be authorized, subject to regulations prescribed by the department of revenue, to purchase on a tax-paid basis from any supplier licensed as a distributor under division I of this chapter all special fuel acquired by the

dealer or user for subsequent delivery into the fuel supply tanks of motor vehicles. Every supplier so licensed who sells or delivers special fuel on a tax-paid basis to special fuel users or special fuel dealers authorized as aforesaid shall make a return of these tax-paid sales to the department of revenue accompanied by payment of the special fuel tax on the tax-paid gallonage so sold or delivered. The return and payment shall be made at the same time as the supplier's motor fuel tax return or special fuel tax return for the month in which the covered sales or deliveries were made.

5. *Exemption for fueling by licensed dealers.* No return need be made by any special fuel user, not licensed as a special fuel dealer, whose entire use of special fuels in this state is limited solely to special fuels delivered into the fuel supply tank of the user's motor vehicles by special fuel dealers.

6. *Presumption.* For purposes of this section there shall be a prima-facie presumption that all special fuel received by a special dealer or special fuel user into storage and dispensing equipment designed to fuel motor vehicles is to be delivered by the special fuel dealer or special fuel user into the fuel supply tanks of motor vehicles. [C27, 31,§§5093-a5,-b1; C35, §§5093-f9,-f11; C39,§§**5093.09, 5093.11**; C46, 50, 54, §§324.13—324.17, 324.20; C58, 62, 66, 71, 73, 75,§324.38]

324.39 to 324.49 Reserved.

DIVISION III
MOTOR FUEL AND SPECIAL FUEL USE TAX FOR INTERSTATE MOTOR VEHICLE OPERATIONS
Referred to in §324.57, 324.58, 324.65

324.50 Short title. This division and applicable provisions of division IV of this chapter and any amendments to either shall be known and may be cited as the "Interstate Fuel Use Tax Law," and as so constituted is hereinafter referred to as this division. [C35,§5093-f40; C39, §**5093.39**; C46, 50, 54,§324.66; C58, 62, 66, 71, 73, 75,§324.50]

Similar provision, §§324.1, 324.31

324.51 Purpose. The purpose of this division is to provide an additional method of collecting fuel taxes from interstate motor vehicle operators commensurate with their operations on Iowa highways; and to permit the department of revenue to suspend this collection as to transportation entering Iowa from any other state where it appears that Iowa highway fuel tax revenue and interstate highway transportation moving out of Iowa will not be unduly prejudiced thereby. [C27, 31,§§4755-b38, 5093-a1; C35,§5093-f3; C39,§**5093.03**; C46, 50, 54,§324.2; C58, 62, 66, 71, 73, 75,§324.51]

324.52 Fuels imported in supply tanks of motor vehicles. No person shall bring into this state in the fuel supply tanks of a commercial motor vehicle, or any other container, regardless of whether or not the supply tanks are connected to the motor of the vehicle, any motor fuel or special fuel to be used in the operation of the vehicle in this state unless he has paid or made arrangements in advance with the department of revenue for payment of Iowa fuel taxes on the gallonage consumed in operating the vehicle in this state; except that this division shall not apply to a private passenger automobile.

Any person who brings into the state in the fuel supply tanks of a commercial motor vehicle more than thirty gallons of motor fuel or special fuel in violation of the provisions of the preceding paragraph is guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or shall be imprisoned in the county jail not more than thirty days. [C35,§5093-f19; C39,§**5093.19**; C46, 50, 54,§§324.34, 324.37; C58, 62, 66, 71, 73, 75, §324.52]

Referred to in §§324.76, 753.15

324.53 Permit—bond. The advance arrangements referred to in the preceding section shall include the procuring of a permit and may in the discretion of the department of revenue include the posting of a suitable indemnity bond in a sum to be fixed by the department of revenue to assure the required reporting, tax payments and the keeping of required records.

Persons choosing not to make advance arrangements with the department of revenue by the procuring of a permit are not relieved of their responsibility to purchase motor fuel and special fuel commensurate with their use of the state's highway system. The department may audit persons not holding a permit who are suspected of evading the fuel tax on commercial motor vehicles. Audits shall be conducted pursuant to section 324.55.

Permit may be obtained upon application to the department of revenue. The department of revenue shall charge a fee of one dollar for each permit issued. The holder of a permit under this division shall have the privilege of bringing into this state in the fuel supply tanks of commercial motor vehicles any amount of motor fuel or special fuel to be used in the operation of the vehicles and for that privilege shall pay Iowa motor fuel or special fuel taxes as provided in section 324.54.

Each vehicle operated into or through Iowa in interstate operations using motor fuel or special fuel acquired in any other state shall carry in or on each vehicle a duplicate or evidence of the permit required in this section. A visible sign of a compliance with this section may at the discretion of the director of revenue be attached to the outside of a commercial motor vehicle. A fee not to exceed fifty cents shall be charged by the department of revenue for each duplicate or other evidence of permit issued by him. [C35,§§5093-f19,-f20; C39, §§**5093.19, 5093.20**; C46, 50, 54,§324.38; C58, 62, 66, 71, 73, 75,§324.53]

324.54 Fuel tax computation—refund—reporting and payment. Fuel tax liability under this division shall be computed on the total

number of gallons of each kind of motor fuel and special fuel consumed in the operation in Iowa by commercial motor vehicles subject to this division at the same rate for each kind of fuel as would be applicable if taxed under division I or division II of this chapter. A refund against the fuel tax liability so computed shall be allowed, on excess Iowa motor fuel purchased, in the amount of fuel tax paid at the prevailing rate per gallon set out under division I or division II of this chapter on motor fuel and special fuel consumed by commercial motor vehicles, the operation of which is subject to this division.

Notwithstanding any provision of this chapter to the contrary, the director, upon application filed with the motor vehicle fuel tax division, not later than ninety days after the last day of the month in which the overpayment of Iowa fuel tax paid on excess purchases of motor fuel or special fuel was reported as provided in section 324.8, and which application is supported by such proof as the director may require, shall cause to be issued a warrant covering a refund of Iowa fuel tax paid on motor fuel or special fuel purchased in excess of the amount consumed by such commercial motor vehicles in their operation on the highways of this state.

Application for a refund of fuel tax under the provisions of this division must be made for each individual month in which the excess payment was reported, and will not be allowed unless the amount of fuel tax paid on the fuel purchased in this state, in excess of that consumed for highway operation in this state in the month applied for, is in an amount exceeding ten dollars. An application for a refund of excess Iowa fuel tax paid under the provisions of this division which is filed for any period or in any manner other than herein set out shall not be allowed.

To determine the amount of fuel taxes due under this division and to prevent the evasion thereof, the director shall require a monthly report on forms prescribed by the director. It shall be filed not later than the last day of the month following the month reported, and each month thereafter. These reports shall be required of all persons who have been issued a permit under this division and shall cover actual operation and fuel consumption in Iowa on the basis of the permit holder's average consumption of fuel in Iowa, determined by the total miles traveled and the total fuel purchased and consumed for highway use by the permittee's commercial motor vehicles in his entire operation in all states to establish an overall miles per gallon ratio, which ratio shall be used to compute the gallons used for the miles traveled in Iowa. [C27, 31,§5093-b1; C35, §§5093-f18,-f25; C39,§§**5093.18, 5093.25**; C46, 50, 54,§§324.32, 324.46; C58, 62, 66, 71, 73, 75,§324.54]

Referred to in §§324.53, 324.55

324.55 Records. Every person operating within the purview of this division shall make and keep for a period of three years such records as may reasonably be required by the department of revenue for the administration of this division. If in the normal conduct of the business, the required records are maintained and kept at an office outside the state of Iowa, it shall be a sufficient compliance with this section if the records are made available for audit and examination by the department of revenue at the office outside Iowa, but such audit and examination shall be without expense to the state of Iowa.

When, as a result of such audit and examination, fuel taxes unpaid and due are found owing the state of Iowa in an amount exceeding five hundred dollars such audit and expenses shall be without cost to the state of Iowa. The department of revenue within a period of one year from the issuance of a permit may audit the records of the permittee for the two years preceding the issuance of the permit. The department shall collect all taxes due had the permittee been licensed for the two years prior to the issuance of the permit and shall refund all excess credit that would have been paid pursuant to section 324.54. [C27, 31,§5093-a8; C35,§§5093-f14,-f21; C39, §§**5093.14, 5093.21**; C46, 50, 54,§§324.27, 324.28, 324.41; C58, 62, 66, 71, 73, 75,§324.55]

Referred to in §324.53

324.56 Not applicable to distributors. The provisions of this division shall not be required of a distributor licensed **under division I of this** chapter who elects to report and pay tax on motor fuel as is set out in division I and on special fuel as is set out in division II of this chapter, provided that a distributor so electing shall also report and pay Iowa fuel tax on motor fuel and special fuel purchased in another state which is used to propel a commercial motor vehicle owned or leased by the distributor on the highways of this state. Such distributor shall be allowed to enter this state with thirty gallons or more fuel in the supply tank of a commercial motor vehicle, but shall not be allowed any other provision of this division. [C58, 62, 66, 71, 73, 75,§324.56]

See §§324.3, 324.4, 324.32, 324.34

DIVISION IV

PROVISIONS COMMON TO TAXES IMPOSED UNDER DIVISIONS I, II AND III

Referred to in §§324.1, 324.31, 324.50

324.57 Definitions.

1. *"Fuel taxes"* means and includes the per gallon excise taxes imposed under divisions I, II and III of this chapter with respect to motor fuel and special fuel.

2. *"Motor vehicle"* shall mean and include all vehicles (except those operated on rails) which are propelled by internal combustion engines and are of such design as to permit their mobile use on public highways for transporting persons or property. A farm tractor while operated on a farm or for the purpose of hauling farm machinery, equipment or produce shall not be deemed to be a motor vehicle. "Motor vehicle" shall not include "mo-

bile machinery and equipment" as hereinafter defined.

3. *"Mobile machinery and equipment"* shall mean and include vehicles self-propelled by an internal combustion engine but not designed or used primarily for the transportation of persons or property on public highways and only incidentally operated or moved over a highway such as corn shellers, truck-mounted feed grinders, roller mills, ditch digging apparatus, power shovels, drag lines, earth moving equipment and machinery, and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers and earth moving scrapers. The foregoing enumeration shall not operate to exclude other vehicles which are within the general terms of this definition. "Mobile machinery and equipment" shall not however include dump trucks or self-propelled vehicles originally designed for the transportation of persons or property on public highways and to which machinery, such as truck-mounted transit mixers, cranes, shovels, welders, air compressors, well-boring apparatus or lime spreaders, has been attached. Mobile machinery or equipment originally designed as motor vehicles which are owned by the counties and cities of Iowa shall not be exempt from payment of fuel taxes on fuel used when operating on the public highways.

4. *"Public highways"* shall mean and include any way or place available to the public for purposes of vehicular travel notwithstanding temporarily closed.

5. *"Person"* shall mean and include natural persons, partnerships, firms, associations, corporations, representatives appointed by any court and political subdivisions of this state and use of the singular shall include the plural.

6. *"Department of revenue"* shall include the director of revenue or his authorized representative.

7. *"Commercial motor vehicle"* means a passenger vehicle that has seats for more than nine passengers in addition to the driver, any road tractor, any truck tractor, or any truck having two or more axles which passenger vehicle, road tractor, truck tractor, or truck is propelled on the public highways by either motor fuel or special fuel.

8. *"Carrier"* means and includes any person who operates or causes to be operated any commercial motor vehicle on any public highway in this state. [C27, 31,§5093-a2; C35,§5093-f2; C39,§**5093.02**; C46, 50, 54,§324.1; C58, 62, 66, 71, 73, 75,§324.57]

Referred to in §324.58
See §§324.2, 324.33

324.58 Commercial motor vehicles on lease. Every commercial motor vehicle as defined in section 324.57, subsection 7, leased to a carrier shall be subject to the provisions of this division and rules and regulations enforced pursuant thereto to the same extent and in the same manner as commercial vehicles owned by such carrier.

A lessor of a commercial motor vehicle shall be deemed a carrier with respect to such vehicles leased to others by him and motor fuel or special fuel consumed thereby if the lessor supplies or pays for the motor fuel or special fuel consumed by such vehicle or makes rental or other charges calculated to include the cost of such fuel.

The provisions of this section shall govern the primary liability pursuant to this section if either lessor or lessee primarily fails in whole or in part to discharge this liability. Such failing party as lessor or lessee party to the transaction shall be jointly and severally responsible and liable for the provisions of division III of this chapter and for payment of any tax unpaid and due pursuant thereto, provided that any taxes collected by this state shall not exceed the total amount or amounts of the taxes due on account of the transaction in question and such penalties and costs, if any, as may be imposed. [C71, 73, 75,§324.58]

324.59 Administrative rules. The department of revenue is authorized and empowered to make such reasonable rules relating to the administration and enforcement of this chapter as he may deem needful. These rules shall be effective when the provisions of chapter 17A have been complied with. [C35,§§5093-f18,-f21,-f36; C39,§§**5093.18, 5093.21, 5093.36**; C46, 50, 54,§§324.32, 324.40, 324.64; C58, 62, 66,§324.58; C71, 73, 75,§324.59]

See chapter 17A

324.60 Forms of report, refund claim and records. The department of revenue shall prescribe and furnish all forms upon which reports and applications shall be made and claims for refund presented under this chapter and may prescribe forms of record to be kept by motor fuel distributors, motor fuel dealers, motor fuel carriers, special fuel dealers, special fuel users, and interstate commercial motor vehicle operators.

Whenever in this chapter the department of revenue is authorized to prescribe the form of record to be kept, the department may in lieu thereof approve the form of record being kept, and shall approve the form of record where it furnishes in reasonably accessible form the information which the department of revenue requires, and substantially complies with the prescribed form. [C35,§§5093-f21,-f36; C39,§§**5093.21, 5093.36**; C46, 50, 54, §§324.42, 324.64; C58, 62, 66,§324.59; C71, 73, 75,§324.60]

324.61 Timely filing of reports—extension. The reports and remittances required under this chapter shall be deemed filed within the required time if postpaid, properly addressed and postmarked on or before midnight of the day on which due and payable. If the final filing date falls on a Saturday, Sunday or legal

holiday the next secular or business day shall be the final filing date.

The department of revenue upon application may grant a reasonable extension of time for the filing of any required report or tax payment, or both. [C27, 31,§§5093-a5,-b1; C35, §§5093-f9,-f21,-f25; C39,§§**5093.09, 5093.21, 5093.25**; C46, 50, 54,§§324.13, 324.41, 324.46; C58, 62, 66, §324.60; C71, 73, 75,§324.61]

324.62 Inspection of records. The department of revenue is hereby given the authority within the time prescribed for keeping records (1) to examine, during the usual business hours of the day, the records, books, papers, receipts, invoices, storage tanks, and any other equipment of (*a*) any distributor, dealer, purchaser, or common, contract or other carrier, pertaining to motor fuel received, used, sold, delivered, or otherwise disposed of, or (*b*) of any special fuel dealer, special fuel user or person supplying special fuel to any dealer therein or user thereof and (*c*) of any interstate operator of motor vehicles to verify the truth and accuracy of any statement, report or return, or to ascertain whether or not the taxes imposed by this chapter have been paid; (*d*) any person selling fuel oil that can be used for highway use; and (2) to examine the records, books, papers, receipts, and invoices of any distributor, special fuel dealer or special fuel user to determine financial responsibility for the payment of the taxes imposed by this chapter.

If any person within the purview of this section shall refuse access to pertinent records, books, papers, receipts, invoices, storage tanks or any other equipment, then the said department of revenue shall certify the names and facts to any court of competent jurisdiction, and the said court shall enter such order in the premises as the enforcement of this chapter and justice shall require. [C27, 31,§5093-a6; C35,§§5093-f26,-f29; C39,§§**5093.26, 5093.29**; C46, 50, 54,§§324.47, 324.52; C58, 62, 66,§324.61; C71, 73, 75,§324.62]

324.63 Information confidential. All information obtained by the department of revenue from the examining of reports or records required to be filed or kept under the provisions of this chapter shall be treated as confidential and shall not be divulged except to other state officers, a member or members of the general assembly or any duly appointed committee of either or both houses thereof or to a representative of the state having some responsibility in connection with the collection of the taxes imposed or in proceedings brought under the provisions of this chapter; provided, however, that the department of revenue shall make available for public information on or before the last day of the month following the month in which the tax is required to be paid the names of the distributors and as to each of them the total gallons received in the state and separately, the received gallons (1) exported or sold for export, (2) sold tax-free in the state to entities that are exempt from the tax and (3) sold tax-free in the state to entities required to report and account for the tax thereon. The department of revenue shall also make available to the public information with respect to special fuel dealers and users and as to each of them the gallonage used and taxes paid. The department of revenue, upon request of officials entrusted with enforcement of the motor vehicle fuel tax laws of the federal government or any other state, may forward to such officials any pertinent information which the department may have relative to motor fuel and special fuel provided the officials of the other state furnish to the department of revenue like information.

Any person violating the provisions of this section, and disclosing the contents of any records or reports required to be kept or made under the provisions of this chapter, except as hereinabove provided, shall upon conviction be fined not less than one hundred dollars nor more than one thousand dollars or be confined in the county jail not less than thirty days nor more than six months. [C27, 31,§5093-a6; C35,§5093-f27; C39,§**5093.27**; C46, 50, 54, §324.48; C58, 62, 66,§324.62; C71, 73, 75,§324.63]

324.64 Department of revenue may estimate taxable gallonage. If any person fails to make and file a report required of him or files an incorrect report, the department of revenue shall after investigation determine the gallonage with respect to which the person incurred liability for fuel taxes under this chapter in any month or months and fix the amount of taxes thereon. If the department of revenue should at any time receive complaints or reports from any source that a licensee or other person is suspected of evading fuel taxes imposed by this chapter or has failed to report all the gallonage the reporting of which is required under this chapter, or is suspected of acting as a distributor or special fuel dealer or user without a license or of withholding payment of fuel taxes, the department of revenue, upon five days' notice to the person complained against of the nature of the complaint or report and of the time and place of a hearing thereon, may proceed to hold the hearing and determine the amount of fuel taxes, if any, due from that person. The department of revenue may adjourn the hearing from time to time until the completion thereof. The department may use any information available in determining the amount, if any, of fuel taxes for which the person is liable. Upon determining the amount thereof the department shall add the penalties and interest provided for in section 324.65 and make an assessment for the amount of the unpaid taxes, penalties and interest, shall furnish a copy thereof to the person against whom the assessment is made and his surety and shall certify the same for collection or other appropriate action by the proper public official. The findings of the department of revenue as to the amount of fuel taxes due from any person shall be pre-

sumed to be the correct amount and in any litigation which may follow, the certificate of the department of revenue shall be admitted in evidence, shall constitute a prima-facie case, shall impose upon the other party the burden of showing any error in the department's finding and the extent thereof or that the finding was contrary to law. [C35,§§5093-f11,-f12; C39, §§**5093.11, 5093.12**; C46, 50, 54,§§324.19, 324.20, 324.21; C58, 62, 66,§324.63; C71, 73, 75,§324.64]

324.65 Penalty for failure to promptly report or pay fuel taxes. If a licensee or other person fails to file a required report with the department of revenue on or before the due date, unless it is shown that such failure was due to reasonable cause there shall be added to the amount required to be shown as tax due on the return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which such failure continues, not exceeding twenty-five percent in the aggregate. If a licensee or other person fails to remit the tax due with the filing of the return on or before the due date or fails to pay any amount of the tax required to be shown on the return, there shall be added to the tax a penalty of five percent of the amount of the tax due, unless it is shown that such failure was due to reasonable cause. The taxpayer shall also pay interest on the tax or additional tax at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. The department of revenue shall not remit any part of a penalty for delinquent payment where the delinquency results from the fact that a check given in payment is not honored because of insufficient funds in the account upon which the check was drawn. Provided, further, that if it appears as a result of investigation by the department of revenue or from a preponderance of the evidence adduced at a hearing before the department of revenue that there has been a deliberate attempt on the part of a licensee or other person to evade payment of fuel taxes there shall be added to the assessment against the offending person and collected a penalty of fifty percent of the tax due. When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file shall be in lieu of the penalty for failure to pay the tax due or required on the return, except in the case of a deliberate attempt on the part of the licensee or other person to evade payment of fuel taxes. Any report required of licensees or persons operating under divisions I, II and III, upon which no tax may be due, shall be subject to a penalty of ten dollars if such report is not timely filed. [C27, 31,§5093-a5; C35,§§5093-f9,-f11; C39,§§**5093.09, 5093.11**; C46, 50, 54,§§324.16, 324.19; C58, 62, 66,§324.64; C71, 73, 75,§324.65]

Referred to in §324.64

324.66 Lien of fuel taxes—priority.

1. The amount of fuel taxes imposed by this chapter, including interest and penalty and costs that may accrue, shall be a lien in favor of the state upon franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by a person liable for the payment of the fuel taxes from the date the taxes are due and payable as provided in this chapter and until the amount of the lien is paid or the property sold in payment thereof. Fuel tax liens shall have priority over any lien or encumbrance whatsoever except the lien of other state taxes having priority by law, and except that a fuel tax lien shall not have priority over any bona fide mortgagee, pledgee, attaching creditor or purchaser whose right shall have attached prior to the time the department of revenue shall have filed the lien certificate in the office of the clerk of the court.

2. The certificate of the department of revenue assessing the amount of fuel taxes and penalty due from a licensee or other person, ascertained in accordance with the provisions of this chapter or from a report of the person may be filed in the office of the clerk of the district court in the county in which the place of business of the licensee or other person is located. The clerk of the district court upon receipt of the certificate shall, without requiring payment of any fee, file and index the same in manner now provided for judgments. The department of revenue may in like manner, file a duplicate of the certificate in any other county where it shall be indexed in a like manner. The claim of the state of Iowa as shown by the certificate or duplicate so filed shall be a lien on the real estate of the person named therein as owing fuel taxes and located in the county where the certificate or duplicate is recorded, for the amount shown by the certificate to be due including penalty and interest from the date of filing to the same extent as a mortgage lien.

3. The department of revenue may give notice of the amount of fuel taxes and penalty due as ascertained by the department by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to a licensee or other person or to any person owing any debts to the licensee or other person. Thereafter the person notified shall neither transfer nor make any other disposition of credit or other personal property or debts until thirty days shall have elapsed from and after the receipt of the notice unless the department of revenue shall consent to a previous transfer or other disposition. At the expiration of the thirty-day period, the property shall be released, unless in the meantime it shall have been attached by process of court or the holder thereof garnished. All persons so notified, must, within five days after receipt of the notice, advise the department of revenue of any and all credits or personal property or debts in their possession or under their con-

trol belonging or owed to the licensee or other person from whom the fuel taxes are due.

4. When the property of a licensee is seized upon any mesne or final process of any court of this state or of the United States, or when the business of a licensee shall be suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, or when a petition in voluntary or involuntary bankruptcy has been filed by or against a licensee, then and in all such cases, all fuel taxes collected by the licensee under the provisions of this chapter or due and owing to the state shall be considered and treated as preferred claims, and the state shall be a preferred creditor and shall be paid in full.

5. No sheriff, receiver, assignee, master or other officer shall sell the property or franchises of any licensee without first filing with the department of revenue a statement containing the following information: Name or names of the plaintiff or party at whose instance or upon whose account the sale is made; name of the person whose property or franchise is to be sold; the time and place of sale; and the nature of the property and the location of the same. It shall be the duty of the department of revenue, after receiving notice as aforesaid, to furnish to the sheriff, receiver, trustee, assignee, master or other officer, having charge of the sale, a certified copy or copies of all assessments for fuel taxes, penalties, and interest on file in the department of revenue as liens against such person, and in the event there are no such liens a certificate showing that fact, which certified copy or copies of certificate shall be publicly read by such officer at and immediately before the sale of the property or franchise of such person.

6. It shall be the duty of the department of revenue to furnish to any person applying therefor a certificate showing the amount of all liens for fuel taxes, penalties, and interest that may be of record in the files of the department of revenue against any person under the provisions of this chapter.

7. It shall be the duty of the department of revenue, upon receipt of notice of the opening of the administration of an estate of any individual who was a licensee, to file a claim as a preferred creditor for all fuel taxes, penalties and interest due the state of Iowa, if any, in the court having jurisdiction over the administration of said estate. [C35,§5093-f13; C39, §5093.13; C46, 50, 54,§§324.22–324.24; C58, 62, 66, §324.65; C71, 73, 75,§324.66]

324.67 Procedure when tax payment in default.

1. It shall be unlawful for any distributor to sell or offer for sale motor fuel or for any special fuel dealer or user to dispense or offer to dispense special fuel into a fuel supply tank of a motor vehicle, while in default of or delinquent in the payment or the whole or any part of fuel taxes imposed under this chapter, and in the event of the failure or refusal to pay the whole of any of these taxes after assessment and notice thereof by the department of revenue, the delinquent fuel taxes, together with penalties and interest provided for shall be recovered by and in the name of the state of Iowa and the attorney general of the state of Iowa or the county attorney of any county in which the distributor, dealer or user resides or is engaged in business is hereby authorized and directed to institute suit therefor in any court of competent jurisdiction against the distributor or special fuel dealer or user or his surety or sureties, if any, or both.

2. A fuel tax lien filed in the office of the clerk of the district court of any county may be foreclosed in the same manner as real estate mortgage liens are foreclosed, and the court in the proceedings shall enter judgment against the licensee or other person for the amount found by the court to be due to the state, with interest and the penalty as assessed by the department of revenue, and may in the same proceedings foreclose on any security which the department of revenue may hold for the payment of the fuel taxes, and may in the same proceedings entertain suit on any bond filed as security for the payment of the fuel taxes.

3. In the event suit is instituted upon application made by the attorney general or other proper public official the court may issue a writ of injunction, without requiring bond, enjoining and restraining the defendant from engaging in any or all activities covered in subsection 1 of this section until any judgment and costs recovered in the suit or attached have been paid, and the court shall, upon application therefor by the attorney general or other proper public official appoint a receiver of the property and business of the delinquent defendant, for the purpose of impounding the same as security for any judgment recovered. The delinquent fuel taxes, penalties and interest shall also be collectible and enforceable by a writ of attachment brought by the attorney general or other proper public officials in the name of the state of Iowa against the lands, goods, chattels, credits and other personal property of the defendant. No attachment bond shall be required, nor shall an indemnity bond be required or demanded by any officer serving the writ of attachment, and no officer shall be liable in damages on account of levying the attachment when acting under the direction of the attorney general or other proper public official. The serving officer shall also summon the persons named in the writ as garnishees, and all other persons within his county whom the attorney general or other proper public officials shall designate as having any property, effects, choses in action, or credits in their possession or power, belonging to the defendant, or who are in anywise indebted to the defendant, the same as if their names had been inserted in the writ. The persons so summoned shall be considered as gar-

nishees, and the officer shall state, in his return, the names of all persons so summoned, and the date of service on each. All proceedings and hearings, civil or criminal, arising under this chapter shall have precedence over all other cases in any court where the same shall be brought excepting criminal or other cases in which the public is a moving party.

4. No action or other proceeding shall be maintained to enforce collection of any amount of fuel tax, penalty, or interest over and above the amount shown to be due by reports filed by a licensee except upon an assessment by the department of revenue as authorized in this chapter or unless brought within one year after the date of the assessment. No assessment shall be made covering any period beyond three years prior to the date of assessment. [C35,§§5093-f11,-f13; C39,§§**5093.11, 5093.13**; C46, 50, 54,§§324.19, 324.22–324.24; C58, 62, 66, §324.66; C71, 73, 75,§324.67]

324.68 Power of department of revenue to cancel licenses. If a licensee shall at any time file a false monthly report of the data or information required by this chapter, or shall fail, refuse, or neglect to file a monthly report required by this chapter, or to pay the full amount of fuel tax as required by this chapter, then after ten days' written notice by registered mail directed to the last known address of the licensee setting a time and place at which he may appear and show cause why his license should not be canceled, and if the licensee fails to appear or if upon the hearing it is shown by a preponderance of the evidence that the failure to correctly report or pay was with intent to evade the tax, the department of revenue may cancel the license and shall notify the licensee of the cancellation by registered mail to his last known address.

If a licensee shall at any time abuse the privileges for which the license was issued, fail to produce records reasonably requested by the department of revenue, or fail to extend reasonable co-operation to the department, the licensee shall be advised in writing of a hearing scheduled to determine if said license shall be canceled. The department upon the presentation of a preponderance of evidence shall be allowed to cancel a license for cause.

Upon receipt of written request from any licensee the department of revenue shall cancel the license of the licensee effective sixty days from the date of receipt of the request but no such license shall be canceled upon request unless and until the licensee shall, prior to the date of cancellation, have paid to the department of revenue all fuel taxes payable under this chapter, together with any and all penalties, interest and fines appertaining thereto. If, upon investigation, the department of revenue shall find that a licensee is no longer engaged in the activities for which a license was issued to him and has not been so engaged for a period of six months, the department of revenue shall cancel the license and give sixty days' notice of the cancellation mailed to the last known address of the licensee. [C27, 31,§5093-a5; C35,§§5093-f10,-f18,-f37; C39,§§**5093.10, 5093.18, 5093.37**; C46, 50, 54, §§324.18, 324.32, 324.65; C58, 62, 66,§324.67; C71, 73, 75,§324.68]

324.69 Hearings before department of revenue. Hearings before the department of revenue authorized under the provisions of this chapter may be held at the seat of government in Des Moines or elsewhere in the state as the department of revenue may direct. The department of revenue shall have the power to issue subpoenas including subpoenas duces tecum and to require the attendance of witnesses and the production of books, records and papers. In the event any person shall refuse to obey subpoena, or after appearing refuses to testify, the department of revenue shall certify the name of the person to the district court of the county where the hearing is being held and the court shall proceed with the witness in the same manner as if the refusal had occurred in open court. [C27, 31, §5093-a5; C35,§§5093-f10,-f11,-f12; C39,§§**5093.10, 5093.11, 5093.12**; C46, 50, 54,§§324.18–324.21; C58, 62, 66,§324.68; C71, 73, 75,§324.69]

324.70 Discontinuance of licensed activity—liability for taxes and penalties. If a licensee ceases to engage in the state in activities for which his license was issued or discontinues, sells, or transfers the business in which he has carried on that activity he shall notify the department of revenue in writing at least ten days prior to the time the cessation, discontinuance, sale or transfer takes effect. The notice shall give the date of proposed cessation or discontinuance, and, in the event of a proposed sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee thereof. All fuel taxes, penalties and interest under this chapter not yet due and payable shall, together with any and all interest accruing or penalties imposed under this chapter, notwithstanding any provisions thereof become due and payable concurrently with the cessation, discontinuances, sale or transfer, and thereupon it shall be the duty of the licensee to make a report and pay all the fuel taxes, interest, and penalties within ten days. [C27, 31,§5093-a5; C35,§5093-f10; C39, §**5093.10**; C46, 50, 54,§324.18; C58, 62, 66,§324.69; C71, 73, 75,§324.70]

324.71 Refunds to persons other than distributors. Any person other than a distributor who has paid or has had charged to his account with a distributor, dealer or special fuel dealer fuel taxes imposed under this chapter with respect to motor fuel or special fuel in excess of one hundred gallons, which is subsequently lost or destroyed, while he shall be the owner thereof, through leakage, fire, explosion, lightning, flood, storm, or other casualty, except evaporation, shrinkage, or unknown causes, shall be entitled to a refund of the tax so paid or charged. To qualify for the

refund, he shall notify the department of revenue in writing of the loss or destruction and the gallonage lost or destroyed within ten days from the date of discovery of the loss or destruction. Within sixty days after filing the notice, he shall file with the department of revenue an affidavit sworn to by the person having immediate custody of the motor fuel or special fuel at the time of the loss or destruction setting forth in full the circumstances and amount of the loss or destruction and such other information with respect thereto as the department of revenue may require. [C27, 31, §5093-a5; C35,§5093-f9; C39,**§5093.09**; C46, 50, 54, §§324.14, 324.15; C58, 62, 66,§324.70; C71, 73, 75,§324.71]

324.72 Refund or credit for fuel taxes erroneously or illegally collected. In the event that any fuel taxes, penalties, or interest have been erroneously or illegally collected from a licensee, the department of revenue may permit the licensee to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment or, shall certify the amount thereof to the comptroller of this state, who shall thereupon draw his warrant for the certified amount on the treasurer of state payable to the licensee. The refund shall be paid to the licensee forthwith.

No refund shall be made under the provisions of this section unless a written claim therefor setting forth the circumstances by reason of which the refund should be allowed, nor unless the claim is filed with the department of revenue within one year from the date of the payment of the taxes erroneously or illegally collected. [C27, 31,§§5093-a5,-b1; C35,§5093-f9; C39,**§5093.09**; C46, 50, 54,§§324.13, 324.15; C58, 62, 66,§324.71; C71, 73, 75,§324.72]

324.73 Embezzlement of fuel tax money—penalty. Every sale of motor fuel in this state and every sale of special fuel dispensed by the seller into a fuel supply tank of a motor vehicle shall, unless otherwise provided, be presumed to include as a part of the purchase price the fuel tax due the state of Iowa under the provisions of this chapter. Every person collecting fuel tax money as part of the selling price of motor fuel or special fuel, shall hold the tax money in trust for the state of Iowa unless the fuel tax on the fuel has been previously paid to the state of Iowa. Any person receiving fuel tax money in trust and failing to remit it to the department of revenue on or before time required shall be guilty of embezzlement of public funds and upon conviction shall be subjected to the penalty provided by law for that offense. [C27, 31,§5093-a5; C35, §§5093-f9–f13; C39,**§§5093.09–5093.13**; C46, 50, 54, §§324.16–324.22; C58, 62, 66,§324.72; C71, 73, 75,§324.73]

Embezzlement, chapter 710

324.74 Unlawful acts—penalty. It shall be unlawful:

1. For any person to knowingly fail, neglect or refuse to make any required return or statement or pay over fuel taxes as herein required.

2. For any person to knowingly make any false, incorrect or materially incomplete record required to be kept or made under the provisions of this chapter, to refuse to offer his books and records to the department of revenue for inspection on demand or to refuse to permit the department of revenue to examine his motor fuel or special fuel storage tanks and handling or dispensing equipment.

3. For any seller to issue or any purchaser to receive and retain any incorrect or false invoice or sales ticket in connection with the sale or purchase of motor fuel or special fuel.

4. For any claimant to alter any invoice or sales ticket, whether the invoice or sales ticket is to be used to support a claim for refund or income tax credit or not, provided, however, if claimant's refund permit shall have been revoked for cause as provided in section 324.19 such revocation shall be a bar to prosecution for violation of this subsection.

5. For any person to act as a motor fuel distributor, special fuel dealer or special fuel user without the required license.

6. For any person to use motor fuel or special fuel with respect to which he knowingly has not paid or had charged to his account with a distributor or dealer, or with respect to which does not within the time required in this chapter report and pay the applicable fuel tax.

7. For any special fuel dealer to dispense special fuel into the fuel supply tank of any motor vehicle without collecting the fuel tax.

8. Any delivery by a distributor of special fuel to a dealer or user for the purpose of evading the state tax on special fuels, into facilities other than those licensed above knowing that said fuel will be used as special fuel for highway use shall constitute a violation of this section. Any dealer or user for purposes of evading the state tax on special fuel, who allows a distributor to place special fuel for highway use in facilities other than those licensed above will also be deemed in violation of this section.

Any person found guilty of any of the foregoing illegal acts shall for the first offense be fined three hundred dollars, and for the second and subsequent offenses shall be fined five hundred dollars and all of his licenses held under the "Iowa Motor Fuel Tax Law" may, at the discretion of the court, be suspended for a period of up to six months. [C27, 31, §§5093-a4,-a6,-a7,-a8; C35,§5093-f31; C39,**§5093.31**; C46, 50, 54,§324.58; C58, 62, 66,§324.73; C71, 73, 75,§324.74; 66GA, ch 67,§34]

Referred to in §753.15
See §§324.14, 324.19

324.75 Penalty for false certificate. Any person who makes a false certificate, false fuel invoice, false fuel receipt, or false fuel sales ticket in any report, return, application, claim, or evidence required or provided for by this chapter or under any rule or regulation made

by the department of revenue shall be punished by imprisonment in the penitentiary for not more than one year, or by imprisonment in the county jail for such term as the court may determine, not exceeding six months, or by a fine of not more than two thousand dollars, or by such combination of either imprisonment and fine as the court may determine. [C27, 31,§§5093-a4,-a6,-a7,-a8; C35,§5093-f31; C39, §5093.31; C46, 50, 54,§§324.58, 324.59; C58, 62, 66, §324.74; C71, 73, 75,§324.75]

324.76 Enforcement authority. Authority is hereby given to the department of revenue to enforce the provisions of this chapter except sections 324.14 and 324.52. Employees of the department of revenue designated as enforcement officers shall have the power of peace officers in the performance of such duties.

Authority to enforce sections 324.14 and 324.52, is given to the state department of transportation. Employes of the department of transportation designated enforcement officers shall have the power of peace officers in the performance of their duties; however, they shall not be considered members of the Iowa highway safety patrol. The department of transportation shall furnish enforcement officers with necessary equipment and supplies in the same manner as provided in section 80.18, including uniforms which are distinguishable in color and design from those of the Iowa highway safety patrol. Enforcement officers shall be furnished and shall conspicuously display badges of authority.

It is hereby made the duty of all sheriffs, deputy sheriffs, constables, and all other peace officers to see that the provisions of this chapter are not violated, and to respond to the call of the department of revenue and state department of transportation to make investigations in their respective counties and report to the department of revenue and state department of transportation and said officers are authorized to stop conveyance suspected to be illegally transporting motor fuel on the highways, and to investigate the cargo for that purpose and to seize and impound said cargo and conveyance where it appears that said conveyance is being operated in violation of the provisions of this chapter. [C35, §§5093-f18,-f32; C39,§§5093.18, 5093.32; C46, 50, 54,§§324.32, 324.60; C58, 62, 66,§324.75; C71, 73, 75,§324.76; 66GA, ch 67,§69]

324.77 Moneys deposited in treasury — refunds — administration. All fees, taxes, interest and penalties imposed under this chapter must be paid to the department of revenue in the form of remittances payable to the treasurer of state, and the department of revenue shall transmit each payment daily to the treasurer of state. Such payments shall be deposited by the treasurer of state in a fund, hereby created, within the state treasury which shall be known as the "motor fuel tax fund," the net proceeds of which fund, after deductions by lawful transfers and refunds, shall be known as the "motor vehicle fuel tax fund". The department of revenue shall certify monthly to the state comptroller amounts of refunds of tax approved or determined by the department during each month, and the state comptroller shall draw warrants in such amounts on the motor fuel tax fund and transmit them. There is hereby appropriated out of the money received under the provisions of this chapter and deposited in the motor fuel tax fund sufficient funds to pay such refunds as may be authorized in this chapter.

The general assembly may appropriate from the motor fuel tax fund such amounts as it determines are necessary for administrative expenses. Allocations and transfers of fees, taxes, interest and penalties imposed under this chapter, pursuant to any provision of the Code, shall be made from the motor fuel tax fund. [C27, 31,§5093-a11; C35,§5093-f33; C39, §5093.33; C46, 50, 54,§324.61; C58, 62, 66,§324.76; C71, 73, 75,§324.77]

324.78 Other remedies available. The special remedies provided under the provisions of this chapter to enable the state to collect motor vehicle fuel excise tax shall not be construed as depriving the state of any other remedy it might have either at law or in equity independent of this chapter. The state shall have the right to maintain an action at law for the collection of said taxes required to be paid herein and in connection therewith shall be entitled to a writ of attachment without bond. [C35,§5093-f34; C39,§5093.34; C46, 50, 54,§324.62; C58, 62, 66,§324.77; C71, 73, 75, §324.78]

324.79 Use of revenue. The net proceeds of seven and one-half cents per gallon excise tax on the diesel special fuel and six and one-half cents per gallon excise tax on motor fuel and other special fuel, and penalties collected under the provision of this chapter, shall be credited to the road use tax fund.

The net proceeds of one-half cent per gallon excise tax on diesel special fuel and one-half cent per gallon excise tax on motor fuel and other special fuel collected under the provisions of this chapter shall be credited by the treasurer of state to the primary road fund.

A separate fund is hereby created and designated as the "marine fuel tax fund". All moneys derived from the excise tax on the sale of motor fuel used in watercraft shall be deposited in the marine fuel tax fund. Moneys in such fund shall be subject to appropriation by the general assembly to the state conservation commission for use in its recreational boating program, which may include but shall not be limited to:

1. Dredging and renovation of natural lakes of this state.

2. Acquisition, development and maintenance of access to public boating waters.

3. Development and maintenance of boating facilities and navigation aids.

4. Administration, operation and maintenance of the recreation boating division of the conservation commission.

5. Acquisition, development and maintenance of recreation facilities associated with recreation boating. [C27, 31,§§4755-b38, 5093-a9; C35,§5093-f35; C39,§**5093.35**; C46, 50, 54,§324.63; C58, 62, 66,§324.78; C71, 73, 75,§324.79]

Referred to in §§24.14, 312.1
See also §324.83

324.80 Microfilm or photographic copies—originals destroyed. The department of revenue shall have the power and authority to record, copy or reproduce by any photographic, photostatic, microfilm, microcard, miniature photographic or other process which accurately reproduces or forms a durable medium for so reproducing the original of any forms or records pertaining to motor fuel tax or special fuel tax, or any paper or document with respect to refund of such tax, and when such forms and records shall have been so reproduced, the department of revenue shall have the power to destroy the originals and such reproductions shall be competent evidence in any court in accordance with the provision of section 622.30. [C35,§5093-f36; C39,§**5093.36**; C46, 50, 54,§324.64; C58, 62, 66,§324.79; C71, 73, 75,§324.80]

Constitutionality, 57GA, ch 164,§81
Rights and obligations preserved, 57GA, ch 164,§80

324.81 Agreement for refund of federal tax.

1. The department of revenue is hereby authorized to enter into and empowered to carry out the provisions of agreements with any duly authorized agent or department of the United States government for joint or co-operative action by the state and the United States government in the making of refunds of the federal tax on gasoline. Such agreements may provide that the department of revenue may receive applications for and make refunds of the federal tax on gasoline as an agent of the United States. Such agreements shall provide that the United States shall provide the department of revenue with sufficient funds in advance to pay all costs to the state in the performance of such agreements and in the making of such refunds. In the event such an agreement is concluded, the director of revenue is hereby designated, appointed and empowered, through the motor vehicle fuel tax division of the department, to, as an agent of the United States government, accept applications for refunds of the federal tax on gasoline and to make such refunds from such moneys provided him in advance by the federal government.

2. All moneys that may be paid in advance by the United States to the state to pay the cost to the state of performing such agreements and the cost of making such refunds are hereby appropriated to the department of revenue for such purposes. Neither the state nor the department of revenue shall be liable in any manner for the actions of the department of revenue or employees of the department in the receipt, administration, and expenditure of such federal funds including the making of refunds. [C58, 62, 66,§324.80; C71, 73, 75,§324.81]

See exemptions, §324.3(2, 3)

324.82 Aviation gas tax fund. The portion of the moneys collected under the provisions of this chapter received on account of aviation gasoline shall be deposited in a separate fund to be maintained by the treasurer. All moneys reimbursed and repaid pursuant to section 324.17 or transferred pursuant to section 422.88 on account of motor fuel used for the purpose of operating aircraft shall be paid from said separate fund and all moneys remaining in said separate fund after all claims for refund and the cost of administering said fund have been paid shall be credited to the state aviation fund. [C71, 73, 75,§324.82]

Referred to in §422.88

324.83 Study by legislative service bureau. The legislative service bureau shall conduct a study to determine the percentage of total motor fuel tax collected which is attributable to motor fuel used in watercraft. The percentage determined by the study shall be used by the legislature in determining the amount of motor fuel tax which shall be credited to the marine fuel tax fund. The legislative service bureau shall use the most appropriate method available in conducting the study. The state conservation commission and the department of revenue shall co-operate with the legislative service bureau in conducting the study. The study shall be reviewed, and the applicable percentage recomputed, at least once every four years.* [C71, 73, 75,§324.83]

Referred to in §324.84
*First study July 1, 1970

324.84 Transfer to marine fuel tax fund. Pursuant to section 324.83, there shall be transferred from the motor fuel tax fund to the marine fuel tax fund* a portion of moneys collected under this chapter which is attributable to motor fuel used in watercraft which portion shall be computed as follows:

1. Determine monthly the total amount of motor fuel tax collected under this chapter and multiply such amount by nine-tenths of one percent.

2. Subtract from the figure computed pursuant to subsection 1 of this section three percent of such figure for administrative costs and further subtract from such figure the amounts refunded to commercial fishermen pursuant to subsection 14 of section 324.17. All moneys remaining after all claims for refund and the cost of administration have been made shall be transferred to the marine fuel tax fund. [C73, 75,§324.84]

*See §324.79

CHAPTER 325

MOTOR VEHICLE CERTIFICATED CARRIERS

Referred to in §§307.18, 307.25, 327.1(6), 327A.4, 327A.5(8)

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325.1 Definitions. When used in this chapter:

1. The term *"motor vehicle"* shall mean any automobile, automobile truck, motorbus, or other self-propelled vehicle, including any trailer, semitrailer, or other device used in connection therewith not operated upon fixed rails or track, used for the public transportation of freight or passengers for compensation between fixed termini, or over a regular route, even though there may be occasional, periodic, or irregular departures from such termini or route; except those owned by school corporations or used exclusively in conveying school children to and from schools.

2. The term *"motor carrier"* shall mean any person operating any motor vehicle upon any highway in this state.

3. The term *"highway"* shall mean every street, road, bridge, or thoroughfare of any kind in this state.

4. *"Board"* means the transportation regulation board of the state department of transportation.

5. *"Department"* means the state department of transportation.

6. The term *"charter"* means the agreement whereby the owner of a motorbus lets the same to a group of persons as one party for a specified sum and for a specified act of transportation at a specified time and over an irregular route.

7. The term *"charter carrier"* means a person who engages in the business of transporting the public by motorbuses under charter. The term "charter carrier" shall not be construed to include taxicabs or persons, firms or corporations having a license, contract or franchise with an Iowa municipality with a population of more than fifteen thousand people as shown by the last federal decennial census, to carry or transport passengers for hire, or a municipality with a population of more than fifteen thousand people as shown by the last federal decennial census, engaged in the business of carrying or transporting passengers for hire, provided however, that municipality or the person, firm or corporation having a license, contract or franchise with an Iowa municipality comply with sections 325.26, 325.28, 325.29, 325.31 and 325.35, or school bus operators when engaged in transportation involving any school activity or regular route common carriers of passengers. [C24,§5094; C27, 31, 35,§5105-a1; C39,§**5100.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.1]

325.2 Special powers of board. The board is hereby vested with power and authority, and it shall be its duty to:

1. Fix or approve the rates, fares, charges, classifications, and rules and regulations pertaining thereto, of each motor carrier, except that any carrier transporting livestock or unprocessed agricultural or horticultural products shall be exempt from tariff-filing requirements and the issuance of freight receipts if such carrier does not transport any other property for compensation.

2. Regulate and supervise the accounts, schedules, and service of each motor carrier.

3. Prescribe a uniform system and classification of accounts to be used, which among other things shall provide for the setting up of adequate depreciation charges, and after such accounting system shall have been promulgated, motor carriers shall use no other.

4. Require the filing of annual and other reports.

5. Supervise and regulate motor carriers in all other matters affecting the relationship between such carriers and the traveling and shipping public. [C24,§5095; C27, 31, 35,§5105 -a2; C39,**§5100.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.2]

41GA, ch 5,§2, editorially divided

325.3 General powers. The board shall also have power and authority by general order or otherwise to prescribe rules and regulations applicable to any and all motor carriers. The department is hereby authorized and empowered to prescribe and enforce safety regulations in the operation of motor carriers, require a periodic inspection of the equipment of every motor carrier from the standpoint of enforcement of safety regulations, and such equipment shall be at all times subject to inspection by properly authorized representatives of the department. [C24,§§5095, 5104; C27, 31, 35,§5105-a3; C39,**§5100.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.3]

325.4 Statutes applicable. All control, power, and authority over railroads and railroad companies now vested in the board, insofar as the same is applicable, are hereby specifically extended to include motor carriers. [C27, 31, 35,§5105-a4; C39,**§5100.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.4]

Powers of commerce commission, ch 474 et seq.

325.5 Rates. All charges made by any motor carrier for any service rendered or to be rendered in the public transportation of passengers or property, or in connection therewith, shall be just, reasonable and nondiscriminating, and every unjust, unreasonable, or discriminating charge for such service or any part thereof is prohibited and declared unlawful. [C24,§5096; C27, 31, 35,§5105-a5; C39, **§5100.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.5]

325.6 Certificate of convenience and necessity. It is hereby declared unlawful for any motor carrier to transport over a regular route or between fixed termini any person or property, for compensation, from any point or place in the state of Iowa to another point or place in said state irrespective of the route, highway or highways traversed, including the crossing of any state line of the state of Iowa, or the ticket or bill of lading issued and used for such transportation, without first having obtained from the board a certificate declaring that public convenience and necessity require such operation. No carrier of passengers shall operate as a charter carrier in this state unless already possessed of a certificate of convenience and necessity as a common carrier of passengers and operating in this state as such common carrier or possesses a certificate of convenience and necessity to engage in the business of a charter carrier.

The board may allow the provision of temporary service for which there is an immediate and urgent need to point or points requested by the application for a certificate of public convenience and necessity upon a finding that no carrier has operating authority to serve those points or no carrier is currently serving those points and upon meeting the requirements of this chapter and the rules and regulations of the board. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the board shall specify but not more than an aggregate of one hundred eighty days, and shall create no presumption that the corresponding application will be granted thereafter. [C24,§5097; C27, 31, 35,§5105-a6; C39,**§5100.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.6]

325.7 When certificate to be issued. Before a certificate shall be issued, the board shall, after a public hearing, make a finding that the service proposed to be rendered will promote the public convenience and necessity. If such finding be made, it shall be its duty to issue a certificate.

The board may issue a certificate, without holding a public hearing, if the service proposed will promote the public convenience and necessity and the service would not be provided if the expense of a public hearing was placed upon the applicant.

If a certificate is to be issued without a public hearing, the board shall publish notice of its action, at its own expense, in the same manner as provided in section 325.13. Written objections to the issuance of a certificate without holding a hearing may be filed within ten days of last publication of notice notwithstanding the provisions of section 325.16.* If no objections are filed within ten days of last publication of the notice, the board may proceed to issue the certificate in the manner provided in section 325.18. [C24, §5097; C27, 31, 35,§5105-a7; C39,**§5100.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.7]

41GA, ch 5,§5, editorially divided
Referred to in §327A.3
*Repealed by 66GA, ch 1174,§15

325.8 Financial ability of applicant. No certificate of convenience and necessity shall be issued until the applicant has made a satisfactory showing as to his financial ability to carry out the terms and conditions imposed. [C27, 31, 35,§5105-a8; C39,**§5100.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.8]

Referred to in §327A.3

325.9 Conditions. When the certificate is granted, the board may attach to the exercise of the rights therein conferred such terms and conditions as in its judgment the public convenience and necessity may require, which shall include the right and duty to transport newspapers. [C24,§5097; C27, 31, 35, §5105-a9; C39,**§5100.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.9]

Referred to in §327A.3

325.10 Amendment or revocation. For just cause, the board may at any time alter, amend, or revoke any certificate issued. [C24, §5097; C27, 31, 35,§5105-a10; C39,**§5100.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.10]

Referred to in §327A.3

325.11 Rules of procedure. The commission shall adopt rules governing the procedure to be followed in the filing of applications and in the conduct of hearings. [C24,§5097; C27, 31, 35,§5105-a11; C39,**§5100.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.11]

41GA, ch 5,§6, editorially divided
Referred to in §327A.3

325.12 Application for certificate. All applications shall be in writing and, in addition to the other information required, shall contain the following:

1. The name of the individual, firm, or corporation making the application.

2. The principal office or place of business of applicant.

3. A complete description of the route over which the applicant proposes to operate.

4. A schedule setting forth in detail the service which the applicant proposes to furnish.

5. A complete description of the equipment which the applicant proposes to use in furnishing the service.

6. A financial statement from which the board can determine whether or not the applicant is able to engage in the undertaking proposed in the application. [C24,§5097; C27, 31, 35,§5105-a12; C39,**§5100.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.12]

Referred to in §327A.3

325.13 Protests against applications.

1. Upon the filing of the application, the board shall publish a notice to the citizens of each county in which the proposed service will be rendered. The notice shall be published once in a newspaper of general circulation in each county.

2. Any person, firm, corporation, city, or county whose rights or interests may be affected may file written objections with the board.

3. A protest against the granting of the application shall state specifically the grounds upon which it is made and contain a concise statement of the interest of the person filing a protest in the proceeding.

4. A protest shall be filed with the board not later than thirty days from the date of the publication of notice.

5. Upon receipt of any protests complying with subsection 3, the board shall set the matter for hearing not less than ten days following the expiration of the time in which protests may be made and shall give notice to all persons who have filed protests of the time and place of the hearing. [C24,§5097; C27, 31, 35,§5105-a13; C39, §§**5100.13, 5100.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§325.13–325.16; 66GA, ch 1147,§7]

Referred to in §§325.7, 327A.3
41GA, ch 5,§7, editorially divided

325.14 to 325.16 Repealed by 66GA, ch 1174, §15.

325.17 Testimony receivable. The board shall consider the application and any objections filed thereto and may hear testimony to aid it in determining the propriety of granting the application. [C27, 31, 35,§5105-a17; C39, **§5100.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.17; 66GA, ch 1174,§8]

Referred to in §327A.3

325.18 Granting application. It may grant the application in whole or in part upon such terms, conditions, and restrictions and with such modifications as to schedule and route as may seem to it just and proper. The actual operation of such motor vehicles or vehicle shall not begin without a written statement of approval from the department to the effect that the safety provisions have been complied with. [C24,§5097; C27, 31, 35,§5105-a18; C39, **§5100.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.18]

Referred to in §§325.7, 327A.3

325.19 Expense of hearing. The applicant shall pay all the costs and expenses of the hearing and necessary preliminary investigation in connection therewith before his application shall be granted. The board shall establish appropriate fees which shall be paid to the department at the time the application is filed. [C27, 31, 35,§§5105-a19,-a20; C39, §§**5100.19, 5100.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§325.19, 325.20; 66GA, ch 1174,§9]

41GA, ch 5,§9, editorially divided
Referred to in §327A.3

325.20 Repealed by 66GA, ch 1174,§15.

325.21 Judicial Review. Judicial review of the decisions and actions of the board may be sought in accordance with the terms of the Iowa administrative procedure Act. Such petitioners must file with the clerk of the district court a bond for costs in the sum of not less than five hundred dollars. [C24,§5098; C27, 31, 35,§5105-a21; C39,**§5100.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.21]

41GA, ch 5,§10, editorially divided
Referred to in §327A.3
Manner of service, R.C.P. 56*(a)*
Presumption of approval of bond, §682.10

325.22 to 325.24 Repealed by 65GA, ch 1090, §211.

325.25 Transfer of certificate. No certificate of convenience and necessity shall be sold, transferred, leased, or assigned until the motor carrier shall have operated thereunder for at least ninety days continuous service, nor shall any contract or agreement with reference to or affecting any such certificate be made except with the written approval of the board. Nor shall any person be permitted to take over any such certificate unless he or it shall possess all the qualifications of and meet all the requirements and assume all the obligations imposed upon an original applicant. [C24,§5099; C27, 31, 35,§5105-a25; C39,**§5100.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.25]

325.26 Liability insurance and bond—proof of solvency. No certificate shall be issued until and after the applicant shall have filed with

the board an insurance policy, policies, surety bond, or certificate of insurance, in form to be approved by the board, issued by some company, association, reciprocal or interinsurance exchange or other insurer authorized to do business in this state. The minimum limits of liability of any policies or surety bond shall, for each motor vehicle thereby covered, be as follows:

1. *Passenger motor carriers.*

a. To cover the assured's legal liability as a motor carrier for bodily injury or death resulting therefrom as a result of any one accident or other cause, twenty-five thousand dollars for any recovery by one person and subject to said limit for one person one hundred fifty thousand dollars for more than one person.

b. To cover the assured's legal liability as a motor carrier for damage to or destruction of any property other than that of or in charge of the assured, as a result of any one accident or other cause, ten thousand dollars.

c. To cover the assured's legal liability as a motor carrier for loss of or damage to property of passengers as a result of any one accident or any other cause, one thousand dollars.

d. Any common carrier of passengers coming under the provisions of this chapter, furnishing satisfactory proofs to the board of such carrier's solvency and financial ability to cover the assured's legal liability as provided for herein and make payments to such persons as may be entitled thereto as a result of such legal liability, or when such common carrier deposits with the board, surety satisfactory to it as to guarantee for such payments, such common carrier will be relieved of the provisions of this section requiring liability insurance, surety bond or certificate of insurance; but such common carrier shall, from time to time, furnish such additional proof of solvency and financial ability to pay as may be required by the board.

2. *Freight motor carriers.*

a. To cover the assured's legal liability as a motor carrier for bodily injury or death resulting therefrom, as a result of any one accident or other cause twenty-five thousand dollars for any recovery by one person and subject to said limit for one person fifty thousand dollars for more than one person.

b. To cover the assured's legal liability as a motor carrier for damage to or destruction of any property other than that of or in charge of the assured, as a result of any one accident or other cause ten thousand dollars.

c. To cover the assured's legal liability as a motor carrier for loss of or damage to property in the possession or custody of the assured while for the purpose of or being transported, except property of the assured as a result of any one accident or other cause ten thousand dollars. Such insurance policy, policies, surety bond, or certificate of insurance shall bind the obligors thereunder to make compensation for injuries to persons, excluding injury to or death of the applicant's employees while engaged in the course of their employment, and loss of or damage to property resulting from the operation of such motor carrier and for which such motor carrier would be legally liable. Such insurance policy, policies, surety bond, or certificate of insurance shall also provide that any person, firm, association or corporation having a right of action against such motor carrier for injuries to persons or loss of or damage to property, when service cannot be obtained on the motor carrier within this state, may bring action for recovery directly upon such insurance policy, policies, surety bond, or certificate of insurance and against such insurance company, association, reciprocal or interinsurance exchange or other insurer or bonding company. No other or additional policies, bonds, or certificates shall be required of any motor carrier by any city or other agency of the state. [C24,§5103; C27, 31, 35,§5105-a26; C39,**§5100.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.26]

Referred to in §§321A.33, 325.1(7)
Similar provision, §327.15

325.27 Powers of cities. Cities may by ordinance adopt general rules of operation, and to designate the streets or routes over which motor carriers shall travel; provided, however, that the exercise of the power granted in this section shall be reasonable and fair. [C24,§5101; C27, 31, 35,§5105-a28; C39,**§5100.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.27]

325.28 Safe and sanitary condition of vehicle. Every motor vehicle and all parts thereof shall be maintained in a safe and sanitary condition at all times, and shall be at all times, subject to inspection by the members of the department. [C24,§5104; C27, 31, 35,§5105-a29; C39,**§5100.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §325.28]

41GA, ch 5,§15, editorially divided
Referred to in §325.1(7)

325.29 Driver of vehicle. Every driver employed by a motor carrier shall be at least eighteen years of age, in good physical condition, of good moral character, shall be fully competent to operate the motor vehicle under his charge, and shall hold a regular chauffeur's license from the department. [C24,§5104; C27, 31, 35,§5105-a30; C39,**§5100.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.29]

Referred to in §325.1(7)

325.30 Riding on outside part. On passenger-carrying motor vehicles passengers shall not be permitted to ride on the running boards, fenders, or on any other outside part of the vehicle. [C24,§5104; C27, 31, 35,§5105-a31; C39, §**5100.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.30]

325.31 Distinctive markings on vehicle. There shall be attached to each motor vehicle such distinctive markings or tags as shall be

prescribed by the board. [C24,§5104; C27, 31, 35,§5105-a36; C39,**§5100.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.31]

Referred to in §325.1(7)

325.32 Additional rules. The board shall promulgate such other safety rules as it may deem necessary to govern and control the operation of motor vehicles upon the highways and the maintenance and inspection thereof. [C24,§5104; C27, 31, 35,§5105-a37; C39, **§5100.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.32]

325.33 Cancellation of certificate. For violation of any provision of this chapter or of any rule or regulation promulgated thereunder by any motor carrier, the board may, in addition to other penalties herein provided, revoke and cancel the certificate of such motor carrier. In the event of any flagrant and persistent violation of safety regulations by the holder of a certificate or his agent, upon the request of the department the board shall suspend such certificate of necessity until the safety regulations prescribed by the department are complied with or the board may revoke the certificate at its discretion. [C24,§5104; C27, 31, 35,§5105-a38; C39,**§5100.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.33]

325.34 Misdemeanor—penalty. Every owner, officer, agent, or employee of any motor carrier, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, or regulation, direction, demand, or requirement or any part or provision thereof, of the commission, or who procures, aids, or abets any corporation or person in his failure to obey, observe, or comply with any such order, decision, rule, direction, demand, or regulation or any part or provision thereof, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail for a period of not to exceed thirty days. [C24,§5105; C27, 31, 35,§5105-a39; C39,**§5100.34**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§325.34]

325.35 Certificate conditioned on fee. No motor vehicle engaged in the transportation of property under a certificate of convenience and necessity issued under the provisions of this chapter shall be operated on the highways of this state unless there shall have been paid to the board for the administration of this chapter an annual fee in the amount of five dollars; provided, however, that the fee herein provided shall not be imposed on any tractor or truck tractor; provided, however, that the fee herein provided for each semitrailer shall be in the amount of six dollars.

For the purposes of this section the terms "tractor or truck tractor" shall mean every self-propelled vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

It shall be a misdemeanor, punishable by a fine of not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days, for any motor carrier to operate any motor vehicle for which the annual fee has not been paid and the board may revoke the certificate of convenience and necessity of any such violator. [C58, 62, 66, 71, 73, 75,§325.35]

Referred to in §325.1(7)

325.36 Use of fees. All moneys received under the provisions of this chapter shall be remitted to the treasurer of state and credited to the general fund of the state. [C58, 62, 66, 71, 73, 75,§325.36]

325.37 Safety equipment and regulations for all truck operators. "Motor carrier" when used in this section and sections 325.38 and 325.39 means carriers holding a certificate under this chapter, truck operators and contract carriers holding permits under chapter 327, liquid transport carriers holding a certificate under chapter 327A, and private carriers. However, private carriers operating intrastate are not subject to federal drivers compliance and qualification requirements. [C66, 71, 73, 75, §325.37; 66GA, ch 1165,§65]

325.38 Additional requirements. In addition to the requirements set forth in chapter 321, the department, in order to promote safety of operation, shall establish reasonable requirements prescribing standards of equipment for vehicles operated by motor carriers on the highways of this state pertaining to the following:

1. Lighting devices, reflectors, and electrical equipment.
2. Brakes.
3. Glazing and window construction.
4. Fuel systems.
5. Coupling devices and towing methods.
6. Emergency equipment.
7. The following miscellaneous parts and accessories:

a. Tires.
b. Heaters.
c. Windshield wiper.
d. Defrosting device.
e. Rear vision mirrors.
f. Horn.
g. Speedometer.
h. Exhaust system location.
i. Floors.
j. Protection against shifting cargo.
k. Rear end protection.
l. Flags on projecting loads.
m. Television receivers.
n. Buses, drive shaft protection.
o. Buses, standee line or bar.
p. Buses, aisle seats.
q. Buses, marking emergency doors.

[C66, 71, 73, 75,§325.38]

Referred to in §325.37

325.39 Violations. It shall be unlawful for any person to operate any vehicle subject to the standards prescribed by the department on the highways of this state in violation of such standards. [C66, 71, 73, 75,§325.39]

Referred to in §325.37

CHAPTER 326

MOTOR VEHICLE REGISTRATION RECIPROCITY

Referred to in §§307.27, 321.18, 321.19, 321.34, 321.105, 321.126

All rules, regulations, forms, orders, and directives promulgated by and in effect for the Iowa reciprocity board on July 1, 1975, shall continue in full force and effect as rules, regulations, forms, orders, and directives of the state department of transportation until amended or supplemented by affirmative action of the state transportation commission, see 65GA, ch 1180,§198

Transfer of employees to state department of transportation, see 65GA, ch 1180,§199

326.1 Policy.
326.2 Definitions.
326.3 and 326.4 Repealed by 65GA, ch 1180, §197.
326.5 Authority to agree to reciprocity.
326.6 Proportional registration of fleets.
326.7 Agreements on basis of compact miles.
326.8 Estimating mileage.
326.9 Individual vehicles not to be proportionally registered.
326.10 Minimum fee.
326.11 Subsequently acquired vehicles.
326.12 Vehicles deleted — registration transferred.
326.13 Information under oath.
326.14 Plates and receipts.
326.15 Total composite over one hundred percent—refund.
326.16 Delinquent fees.
326.17 Iowa base plates.
326.18 Fully registered for interstate movement.
326.19 Records preserved.
326.20 Benefits extended to leased vehicles.
326.21 Laws of other states—Iowa interests.
326.22 Operational laws of Iowa applicable.
326.23 Trip permits.
326.24 Repealed by 66GA, ch 173,§12.
326.25 Applications—investigations.
326.26 Forms.
326.27 Violations to negate agreements.
326.28 Copies of records—fee.
326.29 Fees to road use tax fund.
326.30 Motor vehicle law applicable.
326.31 Filing incorrect information—effect.
326.32 Additional fees or restrictions by other states—effect.
326.33 Rules adopted.

SINGLE CAB CARD

326.34 Definitions.
326.35 Election to carry single card.
326.36 Certificate of compliance.
326.37 Temporary permit.
326.38 Rules.
326.39 to 326.44 Reserved.

REGISTRATION IDENTIFICATION

326.45 Issuance—title obligation.

326.1 Policy. It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the negotiation and execution of motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other jurisdictions with respect to vehicles registered in this and such other jurisdictions, thus contributing to the economic and social development and growth of this state. [C71, 73, 75,§326.1]

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

1. *"Department"* means the state department of transportation.

2. *"Director"* means the director of transportation or his designee.

3. *"Commercial vehicle"* means any vehicle which is operated in interstate commerce or combined intrastate and interstate commerce and used for the transportation of persons for hire, compensation or profit, or designed or used primarily for the transportation of property.

4. *"Jurisdiction"* means any county, state, territory, federal district, foreign country, or political subdivision thereof.

5. *"Proportional registration"* or *"proration"* means division and distribution of registration fees imposed on commercial vehicles between two or more jurisdictions in accordance with a formula based on miles traveled by such vehicles.

6. *"Base state"* with respect to commercial vehicles subject to proportional registration means the state from which the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled, or also in the case of a fleet vehicle the state to which allocated for registration under statutory requirements.

7. *"Fleet"* means one or more commercial vehicles.

8. *"Total fleet miles"* means the mileage generated by any truck or truck tractor which was part of a prorate fleet during the fiscal year period of September 1 through August 31 preceding the year for which proportional registration is sought. Total fleet mileage to be reported for any truck or truck tractor which was deleted from or added to the prorate fleet during the fiscal year reporting period shall be only those miles generated by such truck or truck tractor while the vehicle was part of the prorated fleet during such fiscal year reporting period. "Total fleet miles" in relation to trailers or semitrailers which are part of a prorate fleet means the mileage generated by the power units of the fleet; provided, however, that if such trailers or semitrailers were towed during the fiscal year reporting period by the power units which collectively were proportionally registered by the same fleet owner during the fiscal year reporting period as part of two or more fleets, "total fleet miles" in relation to such trailers or semitrailers means the total mileage generated by the several power fleets during the fiscal year reporting period even though some of the power units did not actually travel a portion of their total miles in contracting states where the proportional registration of such trailers or semitrailers is sought.

9. *"In-state miles"* means the mileage generated within this state by commercial vehicles in the fleet subject to proportional registration; except that, with respect to fleet vehicles based in Iowa, "in-state miles" shall also include all mileage traveled by such vehicles in states with whom Iowa has a proportional registration agreement but with whom the owner elects not to apportion registration fees and mileage traveled by such vehicles under reciprocity obtained by virtue of Iowa registration.

10. *"Preceding year"* means a period of twelve consecutive months fixed by the board, which period shall be within the sixteen months immediately preceding the commencement of the registration year for which proportional registration is sought.

11. *"Trip"* for purposes of section 326.23 means:

a. A one-way movement from one point originating outside this state and destined to another point outside this state.

b. A round trip movement between two points within this state.

c. A round trip movement originating in this state or destined for a point within this state.

12. *"Broker"* for purposes of section 326.23 means any person who, as principal or agent, sells or offers for sale any transportation, or negotiates for, or holds himself out for solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation. The term "broker" shall not include motor carriers and employees or agents thereof.

13. The words *"vehicle," "motor vehicle," "motor truck," "truck tractor," "road tractor," "trailer," "semitrailer," "trailer coach," "combination"* or *"combination of vehicles," "gross weight," "person," "owner," "nonresident," "street"* or *"highway"*, and *"auxiliary axle"* shall have the meanings ascribed in section 321.1.

14. *"Compact miles"* means the total miles a fleet operates in this state and in all states with whom Iowa has an apportionment registration agreement and with whom the fleet owner has or will register vehicles on an apportioned registration basis. [C71, 73, 75,§326.2; 66GA, ch 173,§6]

Referred to in §§321.134, 321F.8, 326.7

326.3 and 326.4 Repealed by 65GA, ch 1180, §197.

326.5 Authority to agree to reciprocity. The director may, subject to the approval of the transporation commission, enter into reciprocity agreements with the duly authorized representatives of any jurisdiction exempting nonresidents of this state using the highways of this state from the registration requirements of chapter 321 and payment of any fees to this state with such conditions, restrictions, and privileges or lack of same as the director deems advisable. [S13,§1571-m16; C24, 27, 31, 35,§4866; C39,§5003.04; C46, 50, 54, 58,§321.56; C62, 66,§326.2; C71, 73, 75,§326.5]

Referred to in §§326.6, 326.18

326.6 Proportional registration of fleets. The department may, pursuant to section 326.5, provide for proportional registration between this state and other jurisdictions of fleets of commercial vehicles owned by residents or nonresidents engaged in interstate commerce or simultaneously engaged in interstate and intrastate commerce.

1. The owners of fleets of commercial vehicles subject to proportional registration under apportionment agreements negotiated by the department shall file a sworn statement with the department which shall contain the following information and such other information as the department may require:

a. Total fleet miles for the preceding year.

b. In-state miles for the preceding year.

c. A description and identification of each vehicle which is part of the fleet for which proportional registration is sought.

2. The dollar amount of registration fees due this state for each fleet subject to proportional registration shall be computed as follows:

a. Divide total fleet miles during the preceding year into in-state miles during the preceding year to determine the percentage of total fleet mileage allocable to this state.

b. Determine the sum total amount necessary to register each and every vehicle in the fleet based on the annual registration fees prescribed in chapter 321.

c. Multiply the percentage obtained under paragraph *"a"* of this subsection by the sum total obtained under paragraph *"b"* of this subsection.

d. The product so obtained under paragraph "*c*" of this subsection shall be the amount payable by the owner for proportional registration of the fleet for the registration year. Payment of registration fees shall be made in accordance with law.

3. The department may negotiate apportionment agreements on either a vehicle or a dollar basis. In apportionment on a vehicle basis, a sufficient number of vehicles shall be registered to produce total fee payments not less than an amount obtained by applying the proportion of in-state fleet miles to total fleet miles to the fees which would otherwise be required for total fleet registration in this state. [C71, 73, 75,§326.6; 66GA, ch 173,§7]

Referred to in §326.7

326.7 Agreements on basis of compact miles. Notwithstanding any other law to the contrary, and as an alternative to the procedure set out in section 326.6, the department may enter into agreements providing for proportional registration between this state and other jurisdictions of fleets of commercial vehicles owned by residents or nonresidents engaged in interstate commerce or simultaneously engaged in interstate and intrastate commerce on the basis of compact miles.

The Iowa prorate percent will be computed by dividing the Iowa miles by the compact miles as defined in section 326.2. If the composite percentage paid by the Iowa resident to each of the states a party to an apportioned registration agreement with Iowa for apportioned registrations is less than one hundred percent, the department will redetermine the registration fees due the state of Iowa to bring the composite percent to one hundred percent. If the composite percent paid by the nonresident fleet operator to each of the states a party to an apportioned registration agreement with Iowa for apportioned registration fees on vehicles base plated in Iowa is less than one hundred percent, the department will redetermine the registration fees due the state of Iowa to bring the composite percent to one hundred percent on such Iowa base plated vehicles. [S13,§1571-m16; C24, 27, 31, 35,§4866; C39,§**5003.04**; C46, 50, 54, 58,§321.56; C62, 66, §326.2; C71, 73, 75,§326.7]

326.8 Estimating mileage. When in-state and total fleet or compact mileage cannot be computed for a particular fleet on the basis of actual operation during the preceding year, estimated mileage shall be accepted for the fleet's first prorate application. Estimated mileage shall be based on the proposed operation of the fleet during the entire year for which proportional registration is sought. The applicant shall substantiate the estimate by submitting details of his proposed operation including, but not limited to, type of operation, its location, routes, and frequency of operation. [C71, 73, 75,§326.8]

326.9 Individual vehicles not to be proportionally registered. The registrations of individual vehicles shall not be subject to proportional registration with this state. The same fleet, consisting of the same vehicles in each state, shall be proportionally registered in each state with which the fleet is prorated; and every one of the vehicles shall be included in the fleet in each state. Failure to comply with these requirements shall constitute grounds for cancellation of proration privileges. [C71, 73, 75,§326.9]

326.10 Minimum fee. The minimum fee for each vehicle registered with this state under an apportionment agreement shall not be less than ten dollars for each truck or truck tractor and two dollars for each trailer. If the department enters into an apportionment agreement where minimum fees are not permitted, the provisions of this section shall not apply. In addition to proportional registration fees, the department shall collect the amounts of fees due as hereinafter provided for the issuance of plates, stickers or other identification of all vehicles subject to proportional registration. [S13,§1571-m16; C24, 27, 31, 35,§4866; C39, §**5003.04**; C46, 50, 54, 58,§321.56; C62, 66,§326.2; C71, 73, 75,§326.10; 66GA, ch 1174,§10]

Referred to in §326.11

326.11 Subsequently acquired vehicles. Vehicles acquired by a fleet owner after the commencement of the registration year and subsequently added to the fleet shall be prorated by applying the mileage percentage used in the original application for such fleet for such registration period to registration fees due under chapter 321 but in no case less than that required by section 326.10. A supplemental report shall be filed with the department not later than ten days after such addition to the fleet.

The executive secretary may issue temporary written authorization to carriers for vehicles acquired by a fleet owner and added to his prorate fleet after the beginning of the registration year. The temporary authority shall permit the operation of a commercial vehicle until permanent identification is issued, except that the temporary authority shall expire after thirty days. [C71, 73, 75,§326.11]

326.12 Vehicles deleted—registration transferred. Fleet owners who delete commercial vehicles displaying Iowa base plates from the fleet after the commencement of the registration year shall be allowed to transfer registration credit to a replacement vehicle in accordance with the provisions of this section. Iowa shall allow credit for non-Iowa based deleted vehicles only if the state designated by the fleet owner as the base state of the deleted vehicle permits transfer of registration credit to the replacement vehicle. The fleet owner shall notify the department not later than ten days after such deletion and replacement. Allowance of credit for deleted vehicles shall be subject to the following conditions:

1. No additional registration fee shall be assessed on a replacement vehicle upon which the registration fee would have been the same as that for the deleted vehicle. The fee for reissuance of registration credentials or for transfer of credentials shall be seven dollars.

2. No deletion shall be made nor credit allowed toward registration of a replacement vehicle unless the vehicle to be removed from service has been sold, junked, repossessed, foreclosed by mechanic's lien, title transferred by operation of law, or cancellation or expiration of a lease arrangement. The deleted vehicle shall have been disposed of on or before the date the replacement vehicle was acquired or in the possession of the applicant.

3. If a leased vehicle is to be deleted from the fleet and unexpired registration fees applied to the replacement vehicle, the lessee shall certify to the department that any unexpired registration fees paid by the lessor to the lessee have been refunded to the lessor prior to the date of the supplemental application requesting credit for registration fees paid on the deleted vehicle. [C71, 73, 75,§326.12]

326.13 Information under oath. The department shall require fleet owners to submit under oath any information deemed necessary to carry out the provisions of this chapter. Information furnished under this chapter shall be forwarded to the director of the department by each fleet owner no later than November 1 preceding each registration year. [S13,§1517-m16; C24, 27, 31, 35,§4866; C39, §5003.04; C46, 50, 54, 58,§321.56; C62, 66,§326.3; C71, 73, 75,§326.13]

326.14 Plates and receipts. The department shall issue registration plates and receipts pursuant to apportionment agreements or arrangements authorized under this chapter. [C71, 73, 75,§326.14]

326.15 Total composite over one hundred percent—refund. If the composite percentage apportioned by an owner on a fleet of vehicles based in Iowa to each of the states with which Iowa has an apportionment agreement is more than one hundred percent percentagewise, the fleet owner may file a claim with the department for a refund of registration fees paid in excess of one hundred percent percentagewise. The claim for such refund shall be filed on or after December 1 of the year for which refund is requested, and the fleet owner shall furnish satisfactory evidence of the alleged overpayment. The department shall prescribe and provide suitable forms requisite or deemed necessary to process such claims and insure that claims are paid to fleet owners who have complied with proportional registration requirements. The fleet owner may elect to apply any such refund to proportional registration fees payable the next registration year in lieu of any refund payable under this section. The state of Iowa shall not be liable for claims filed after December 1 of the following year. [C71, 73, 75,§326.15]

326.16 Delinquent fees. If the fees for such proportional registration are not paid to each contracting jurisdiction entitled thereto on the basis of the proportional registration application and supporting documents filed with the department by the fleet owner within a reasonable amount of time as determined by the department, the department shall redetermine fees due this state. If any additional fees due this state are not paid by the fleet owner within twenty days after the mailing to the owner of a notice by certified mail of the additional fees due, such owner's registration in this state shall be canceled. In addition, the fees due for registration in this state shall be a debt due to the state of Iowa. [S13,§1571-m16; C24, 27, 31, 35,§4866; C39,§5003.04; C46, 50, 54, 58,§321.56; C62, 66,§326.3; C71, 73, 75,§326.16]

326.17 Iowa base plates. Resident fleet owners shall be required to list Iowa as the base state for all commercial vehicles which qualify under the term "base state" as defined in this chapter, and Iowa base plates shall be displayed on all such commercial vehicles. Nonresident fleet owners subject to proportional registration shall display Iowa base plates if the commercial vehicle qualifies as an Iowa based vehicle as defined in this chapter. [C71, 73, 75,§326.17]

326.18 Fully registered for interstate movement. When a nonresident fleet owner has registered vehicles on a prorated basis, the vehicles shall be considered fully registered insofar as interstate commerce is concerned. The privileges granted to a nonresident pursuant to this chapter shall permit the operation of a vehicle which is simultaneously engaged in interstate movements and intrastate commerce, provided that the owner has intrastate authority or rights granted by the transportation regulation board. The board may also enter into reciprocity agreements pursuant to section 326.5 to permit interstate and intrastate movement of vehicles registered on a prorate basis by a nonresident fleet owner, provided the owner has intrastate authority granted by the Iowa state commerce commission and the jurisdiction in which the nonresident is base plated grants the same privilege to an Iowa base plated vehicle. Each vehicle upon which an Iowa base plate is required to be displayed under this chapter shall be considered fully registered for both interstate commerce and intrastate commerce. [S13,§1571-m16; C24, 27, 31, 35,§4866; C39,§5003.04; C46, 50, 54, 58,§321.56; C62, 66,§326.2; C71, 73, 75,§326.18]

326.19 Records preserved. Any owner complying with and granted proportional registration privileges shall preserve the records upon which applications are made for a period of four full years following the year for which the application was made. Upon request of the department, all fleet owners shall make all such records available to the department at the office of the director for audit as to accuracy of computation and payment. If the

owner does not produce such records when so requested, the owner shall pay the costs of an audit by a duly appointed representative of the department at the home office of the owner. The department may enter into agreements with authorized agencies or other contracting states for joint audits of any such owner. [S13,§1571-m16; C24, 27, 31, 35,§4866; C39,§**5003.04**; C46, 50, 54, 58,§321.56; C62, 66, §326.4; C71, 73, 75,§326.19]

326.20 Benefits extended to leased vehicles. The department may, notwithstanding any provisions of the Code to the contrary, enter into reciprocity or proportional registration agreements which extend the benefits thereof to leased vehicles on the basis of the residence of the lessee. [S13,§1571-m16; C24, 27, 31, 35, §4866; C39,§**5003.04**; C46, 50, 54, 58,§321.56; C62, 66,§326.6; C71, 73, 75,§326.20]

326.21 Laws of other states—Iowa interests. In the absence of an agreement with another jurisdiction, the department may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits, and privileges to be extended to vehicles or owners of vehicles properly registered or licensed in such other jurisdiction. The department shall consider the interests of the state of Iowa and the citizens thereof, the interests of the other jurisdictions and the citizens thereof, and the benefits which will accrue to the economy of the state of Iowa from the uninterrupted flow of commerce in declarations made under this section. Each declaration shall specify that the extent of exemptions, benefits, and privileges is subject to revision without notice upon adoption by the general assembly of legislation in conflict with the terms of any such declaration. [C71, 73, 75,§326.21]

326.22 Operational laws of Iowa applicable. Any nonresident registered vehicle shall be subject to all laws and rules governing the operation of such vehicle on the highways of this state. The registration number plates, sticker, or other identification assigned and furnished to any vehicle for the current registration year by the state in which the vehicle is registered shall be displayed on such vehicle substantially as provided in chapter 321 for vehicles registered pursuant to the provisions of this chapter. In addition, the department shall charge and collect an additional fee of one dollar for each plate, and two dollars for each sticker, or other identification furnished for each vehicle registered in accordance with the provisions of this section or extended reciprocity in accordance with the provisions of this section except that no charge shall be made for the initial registration receipt or cab card issued for each vehicle registered pursuant to an apportionment registration agreement. The same fee shall be charged for issuance of duplicate plates, stickers or other identification required and a fee of two dollars shall be charged for each duplicate or replacement registration receipt or cab card. [S13,§1517-m16; C24, 27, 31, 35,§4866; C39,§**5003.04**; C46, 50, 54, 58,§321.56; C62, 66,§326.5; C71, 73, 75,§326.22]

Referred to in §753.15

326.23 Trip permits.

1. The owner of a commercial vehicle which is properly registered and licensed in some other jurisdiction and is to be operated occasionally on highways in this state, may in lieu of payment of the annual registration fee for such vehicle obtain a trip permit authorizing operation of the vehicle on the highways of this state in interstate commerce for a period of not to exceed seventy-two hours. The fee for the trip permit shall be ten dollars.

2. The department may enter into agreements with owners and operators of truck stops to permit the owners and operators of truck stops to issue trip permits subject to any conditions imposed by the department. In addition to the trip permit fee, the owner or operator of a truck stop may charge an issuance fee of not more than one dollar. For the purposes of this section, "truck stop" means any place of business which sells fuel normally used by trucks and which is open twenty-four hours per day. [C66,§326.7; C71, 73, 75, §§326.23, 326.24; 66GA, ch 173,§8]

Referred to in §§326.2(11, 12), 753.15

326.24 Repealed by 66GA, ch 173,§12.

326.25 Applications — investigations. The department shall examine and determine the genuineness, regularity, and legality of every application lawfully made pursuant to this chapter, and may in all cases make investigations as may be deemed necessary or require additional information. The department shall reject any such application if not satisfied of the genuineness, regularity, or legality thereof of the truth of any statement contained therein, or for any other reason, when authorized by law. The department is hereby authorized to take possession of any indicia of proportional registration or reciprocity upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued.

The department may suspend or revoke the registration indicia of a vehicle registered on a prorated basis in any one of the following events:

1. When the department is satisfied that such registration indicia was issued upon fraudulent application. Bona fide errors shall be corrected within fifteen days after notification by the department.

2. When the department determines that the required fee has not been paid and same is not paid upon reasonable notice and demand.

3. When the registration indicia is knowingly displayed on a vehicle which is not in the prorate fleet of the registrant. [C71, 73, 75,§326.25]

326.26 Forms. The department shall prescribe and provide suitable forms of application, registration receipts, and all other forms requisite or deemed necessary to carry out the provisions of this chapter. [C71, 73, 75,§326.26]

326.27 Violations to negate agreements. Operation of a commercial vehicle or vehicles in violation of the requirements of this chapter, the motor vehicle registration laws of this state, or the terms of any agreement negotiated by the department pursuant to this chapter may, after due notice and hearing, be grounds for denial of reciprocal or proportional registration privileges on the vehicle or vehicles of an owner so operated. Any owner denied such reciprocal or proportional registration privileges shall be subject to payment of full annual Iowa registration fees on any such vehicle operated on Iowa highways. In addition to denial of reciprocal or proportional registration privileges, it shall be a misdemeanor punishable upon conviction by a fine of not more than one hundred dollars or imprisonment in the county jail for not more than thirty days, unless such act is declared under Iowa law to be a felony, for any person to operate under reciprocity or proportional registration in violation of any requirements of this chapter. [C66,§326.7; C71, 73, 75,§326.27; 66GA, ch 173,§9]

326.28 Copies of records—fee. A fee shall be charged for copies of such records as may be provided from the office of the department or the director. Such fee shall be one dollar for the first page and fifty cents for each additional page of copy received at any one time. [C71, 73, 75,§326.28]

326.29 Fees to road use tax fund. All fees collected by the department pursuant to the provisions of this chapter shall be remitted to the treasurer of state for deposit in the road use tax fund. [C71, 73, 75,§326.29]

326.30 Motor vehicle law applicable. All provisions of chapter 321 insofar as applicable, are hereby specifically extended to include owners who register vehicles in this state on a proportional registration basis or who operate interstate on Iowa highways under reciprocity. [C71, 73, 75,§326.30]

326.31 Filing incorrect information—effect. Whenever the director has reason to believe that a fleet owner has filed incorrect information with the department or the department of revenue, for the purpose of reducing the fleet owner's obligation for registration fees or fuel taxes, the director may cancel the apportioned registration privileges on all of the vehicles owned by such person. Any person who has such privileges canceled shall be subject to the payment of the full annual registration fee for all vehicles operated on the highways of this state for a period of at least five years thereafter. The director of revenue shall co-operate with the department in ascertaining the accuracy of all reports filed pertaining to registration fees and motor fuel taxes.

Any person whose privileges are canceled may request an administrative hearing of said action before the transportation regulation board, and during the period pending the hearing the apportioned registration privileges shall be reinstated if the fleet owner posts security with the department in an amount sufficient to pay such full annual fees if an adverse decision is rendered at the hearing. At such hearing the fleet owner shall have the burden of proof as to the accuracy of any report filed by the fleet owner with the department or the department of revenue. Judicial review of any decision reached at the administrative hearing may be sought in accordance with the terms of the Iowa administrative procedure Act. [C71, 73, 75,§326.31]

326.32 Additional fees or restrictions by other states—effect. If the laws of any other state or country impose any taxes, fees, charges, penalties, obligations, prohibitions, or limitations of any kind upon the vehicles of residents of Iowa, in addition to those imposed upon the vehicles of residents of such other state or country by the state of Iowa, the department may impose and collect fees and charges in the same amount and impose the same obligations, prohibitions, or limitations upon the owner or operator of a vehicle registered in such other state or country. [C71, 73, 75,§326.32]

326.33 Rules adopted. The board may promulgate any rules deemed necessary to carry out the provisions of this chapter. Such rulemaking authority shall be subject to the provisions of chapter 17A. [C71, 73, 75,§326.33]

Constitutionality, 63GA, ch 1163,§37

SINGLE CAB CARD

326.34 Definitions. When used in this division, unless the context otherwise requires:

1. *"Director"* means the director of transportation or his designee.
2. *"Participating agencies"* means the state department of transportation and the department of revenue.
3. *"Single cab card"* shall mean the single document issued pursuant to this chapter to indicate compliance with the various applicable requirements of the participating agencies.
4. *"Carrier"* shall include, where applicable, natural persons, corporations, trusts, unincorporated associations, and partnerships. [C71, 73, 75,§326.34]

326.35 Election to carry single card. Any carrier who operates vehicles subject to the provisions of this chapter may, in lieu of carrying evidence of compliance with the separate participating agencies, elect to carry a single cab card indicating evidence of compliance with all requirements of the participating agencies which must be carried within the cab of the vehicle. No fee shall be charged for the single

cab card, but this section shall not be construed to waive any fees imposed by law or required by the participating agencies. All single cab cards shall expire on December 31 of each year. [C71, 73, 75,§326.35]

326.36 Certificate of compliance. Upon compliance with the respective requirements of each participating agency by a carrier electing to carry the single cab card, a certificate of compliance shall be conveyed by the participating agency to the director. Upon receipt of the certificates of compliance, the director shall issue a single cab card which shall indicate compliance with all requirements of the participating agencies. If a certificate of compliance is withdrawn by any one of the participating agencies, the director shall cancel the single cab card. [C71, 73, 75,§326.36; 65GA, ch 1180,§147]

326.37 Temporary permit. The director may issue a temporary authorization permit to qualified carriers for vehicles not previously issued a permanent single cab card. Such temporary permit shall be valid until the issuance of a single cab card or cancellation of the permit by the director upon apprehension for violation of any requirements enforceable by each participating agency. [C71, 73, 75,§326.37]

326.38 Rules. The participating agencies shall jointly prepare and adopt rules to effectuate the purposes of this division. [C71, 73, 75,§326.38]

326.39 to 326.44 Reserved.

REGISTRATION IDENTIFICATION

326.45 Issuance — title obligation. The board shall, upon receiving application and payment of proper registration fee in compliance with the provisions of this chapter, issue registration identification to the carrier. Upon the issuance of Iowa base plates, the board shall notify the carrier of his obligation to title the vehicle and furnish the carrier with a title letter to be presented to the county treasurer of his county of residence and returned to the board. If the titling requirements of this section and chapter 321 are not satisfied within thirty days of issuance of registration identification, the carrier's registration shall be canceled until such time as the requirements are satisfied. [C75,§326.45]

CHAPTER 327

MOTOR VEHICLE TRUCK OPERATORS

Referred to in §§307.18, 307.25, 325.37

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327.1 Definitions. When used in this chapter:

1. The term *"motor truck"* shall mean any automobile, automobile truck, or other self-propelled vehicle, including any trailer, semi-trailer, or other device used in connection therewith, not operated upon fixed rails or track, used for the public transportation of freight for compensation, not operating between fixed termini, nor over a regular route, or used in connection with the transportation of property for compensation under an individual written contract.

2. The term *"truck operator"* shall mean any person operating any motor truck or motor trucks upon any highway in this state.

3. The term *"highway"* shall mean every street, road, bridge, or thoroughfare of any kind in this state.

4. *"Board"* means the transportation regulation board of the state department of transportation.

5. *"Department"* means the state department of transportation.

6. The term *"contract carrier"* shall mean any person who does not hold out to the general public to serve it indiscriminately and who, for compensation, engages in the business of transportation of property by motor truck under individual written contracts, thereby providing a special and individual service required by the peculiar needs of a particular shipper, but does not include, (1) a motor carrier as defined in chapter 325, (2) a truck operator, or (3) a person whose transportation by motor vehicle is in furtherance of a private enterprise other than the business of transportation for others for compensation.

The term *"individual written contract"* shall mean an agreement in writing between a contract carrier and a shipper, effective for a duration of at least three months, imposing mutual obligations to tender freight and perform transportation, and specifying the charges. The presence of goods originating from more than five shippers on one vehicle at any one time shall be prima-facie evidence that the carrier is a motor carrier and not a contract carrier.

Provided, however, a self-propelled vehicle used exclusively for towing of disabled vehicles shall not be subject to subsections 1 and 3 of section 327.2 or rules made under said subsections, and shall not be required to carry cargo insurance. [C31, 35,§5105-c1; C39,§**5105.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.1]

327.2 Jurisdiction. The board is hereby vested with power and authority and it shall be its duty to:

1. Fix or approve the rates, charges, classifications, and rules and regulations pertaining thereto, of each truck operator, after complaint has been filed in accordance with rules established by the board.

2. Regulate and supervise the service of each truck operator, provided that only the department shall prescribe and enforce safety regulations which it is hereby empowered to do.

3. Require the filing of annual and such other reports as it may deem necessary, provided, however, that this subsection shall not apply to truck operators operating not more than two motor vehicles and who are not engaged in interstate commerce.

4. Supervise and regulate truck operators in all other matters affecting the relationship between such truck operators and the traveling and shipping public. [C31, 35,§5105-c2; C39, §**5105.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.2]

Referred to in §327.1

327.3 Rules. The board shall also have power and authority by general or special order to prescribe rules applicable to any and all truck operators and contract carriers, provided that only the department shall prescribe and enforce safety regulations. [C31, 35,§5105-c3; C39,§**5105.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.3]

327.4 Powers. All control, power, and authority over railroads and railroad companies, motor vehicles and motor carriers now vested in the board, insofar as the same are applicable, are hereby specifically extended to include truck operators and contract carriers. [C31, 35, §5105-c4; C39,§**5105.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.4]

327.5 Charges. All charges made by any truck operator for any service rendered or to be rendered in the public transportation of property, or in connection therewith, shall be just, reasonable, and nondiscriminating, and every unjust, unreasonable, or discriminating charge for such service or any part thereof is prohibited and declared unlawful. [C31, 35, §5105-c5; C39,§**5105.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.5]

327.6 Permit. It is hereby declared unlawful for any truck operator or contract carrier to operate or furnish public service within this state without first having obtained from the board a permit as hereinafter defined. Providing, however, that any person, firm, or corporation whose truck operator or contract carrier permit has been revoked for a willful violation shall be required to pay a fee of one hundred dollars in addition to the other fees required by this section before such person, firm or corporation shall be granted a new permit. And providing, further, that any person, firm or corporation whose permit has been revoked shall not operate as a truck operator or contract carrier until such person, firm, or corporation shall have applied for and received a new permit from the board. [C31, 35,§5105-c6; C39,§**5105.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.6]

327.7 Application. Before a permit shall be issued, the person seeking the same shall file an application therefor. All such applications shall be in writing, and in addition to other information required, shall contain the following:

1. The name of the individual, firm or corporation making the application.

2. The principal office or place of business of the applicant.

3. A general description of the territory in which the applicant proposes to operate and a general description of the service proposed to be rendered.

4. A complete description of the equipment which the applicant proposes to use in furnishing the service. [C31, 35,§5105-c7; C39, §**5105.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.7]

327.8 Issuance. Upon the filing of the application and if the applicant shall otherwise comply with the terms and conditions of this chapter, the board shall issue to the applicant a permit as herein defined. The actual operation of such motor vehicle or vehicles shall not begin without the written approval of the state department, stating that the applicant has complied with the prescribed safety regulations. [C31, 35,§5105-c8; C39,§**5105.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.8]

327.9 Fee. No motor truck engaged in the transportation of property under a truck operator or contract carrier permit issued under the provisions of this chapter shall be operated on the highways of this state unless there shall have been paid to the board for the administration of this chapter an annual fee in the amount of five dollars; provided, however, that the fee herein provided shall not be imposed on any tractor or truck tractor;

provided, however, that the fee herein provided for each semitrailer shall be in the amount of six dollars.

For the purposes of this section the terms "tractor or truck tractor" shall mean every self-propelled vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

It shall be a misdemeanor for any truck operator or contract carrier to operate any motor truck for which the annual fee has not been paid and the board may revoke the truck operator or contract carrier permit of any such violator or both. [C31, 35,§5105-c9; C39,§**5105.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §327.9]

Referred to in §327.10

327.10 Nonresidents — reciprocal waiver of fee. The department established by law shall be empowered to waive the fee provided for in section 327.9, provided said motor truck is owned by a nonresident of this state and is operated upon the highways thereof only in the conduct of business in interstate commerce and provided further that the owner of said motor truck has complied with the registration requirements of the state of his or its residence, and said department shall do all things necessary or required to negotiate and perfect reciprocal agreements between the various states and the state of Iowa, waiving the fee provided for in section 327.9 for the purpose of securing exemptions and privileges for citizens of this state operating motor vehicles in other states . [C39,§**5105.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.10; 65GA, ch 1180,§151]

327.11 Payment of fee. It shall be the duty of the board to collect all permit fees provided in this chapter, and failure to pay any such permit fee within thirty days after the time the same shall become due shall be cause for revocation of the permit of the truck operator in arrears. [C31, 35,§5105-c10; C39, §**5105.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.11]

327.12 Repealed by 64GA, ch 1079,§6.

327.13 Expenditure of funds. All moneys received under the provisions of this chapter shall be remitted monthly to the treasurer of state and credited to the general fund of the state. [C31, 35,§§5105-c11,-c12; C39,§§**5105.12, 5105.13**; C46, 50, 54, 58, 62, 66, 71,§§327.12, 327.13; C73, 75,§327.13]

327.14 Permit—nature of. Permits issued hereunder shall be personal property and may be sold, transferred, leased, or assigned under such reasonable rules and regulations as may be fixed by the board. [C31, 35,§5105-c13; C39, §**5105.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.14]

327.15 Insurance or bond. No permit shall be issued until and after the applicant shall have filed with the board an insurance policy, policies, surety bond or certificate of insurance in form to be approved by the board issued by some insurance carrier or bonding company authorized to do business in this state. The minimum limits of liability of any policy, policies or surety bond shall, for each motor truck thereby covered, be as follows:

1. To cover the assured's legal liability as a truck operator or contract carrier for bodily injury or death resulting therefrom as a result of any one accident or other cause, twenty-five thousand dollars for any recovery by one person, and subject to said limit for one person fifty thousand dollars for more than one person.

2. To cover the assured's legal liability as a truck operator or contract carrier for damage to or destruction of any property other than that of or in charge of the assured, as a result of any one accident or other cause, ten thousand dollars.

3. To cover the assured's legal liability as a truck operator for loss of or damage to property in the possession or custody of the assured while for the purpose of or being transported, except property of the assured, as a result of any one accident or any other cause, two thousand dollars for each motor truck, except a combination of truck tractor and semitrailer for which such minimum limit shall be five thousand dollars. Such insurance policy, policies or surety bond shall bind the obligors thereunder to make compensation for injuries to persons, excluding injury to or death of the applicant's employees while engaged in the course of their employment, and loss of or damage to property resulting from the operation of such motor truck and for which such truck operator would be legally liable. Such insurance policy, policies or surety bond shall also provide that any person, firm, association or corporation having a right of action against such truck operator for injuries to persons or loss of or damage to property, may bring action for recovery directly upon such insurance policy, policies or surety bond against such insurance carrier or bonding company when service cannot be obtained on the truck operator within this state. No other or additional policies or bond shall be required of any truck operator by any city or other agency in the state. Failure to keep such insurance in force at all times shall cause the permit of the truck operator to be revoked. [C31, 35,§5105-c14; C39, §**5105.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.15]

Referred to in §§321A.33, 327.23
Similar provision, §325.26

327.16 Revocation of permit. For just cause, after due hearing, the board may at any time alter, amend or revoke any permit issued. If the holder of the permit or his agent persists in a violation of any safety regulation prescribed by the department, the latter may recommend to the board revocation of said permit and such violation shall be grounds for such revocation. [C31, 35,§5105-c15; C39, §**5105.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.16]

327.17 Equipment — inspection. Every motor truck and all parts thereof shall be maintained in a safe and sanitary condition at all times, and shall be at all times subject to inspection by the department. [C31, 35,§5105 -c16; C39,§**5105.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.17]

327.18 Drivers — conditions. Every person driving a motor truck as defined in this chapter shall be at least eighteen years of age, in good physical condition, of good moral character, shall be fully competent to operate the motor truck under his charge and shall hold a regular chauffeur's license from the department. [C31, 35,§5105-c17; C39,§**5105.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.18]

327.19 Required marking. There shall be attached to each motor truck such distinctive markings or tags as shall be prescribed by the board. [C31, 35,§5105-c22; C39,§**5105.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.19]

327.20 Rules for operation. The department shall promulgate such other safety rules as it may deem necessary to govern and control the operation of motor trucks upon the highways and the maintenance and inspection thereof. [C31, 35,§5105-c23; C39,§**5105.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.20]

327.21 Violations—effect. For violation by any truck operator of any provision of this chapter or of any rule promulgated thereunder, the board may, in addition to other penalties herein provided, suspend or revoke and cancel the permit of such truck operator. [C31, 35,§5105-c24; C39,§**5105.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.21]

327.22 Violations—punishment. Every owner, officer, agent, or employee of any truck operator, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, or regulation, direction, demand, or requirement or any part or provision thereof, of the commission, or the department, or who procures, aids, or abets any corporation or person in his failure to obey, observe, or comply with any such order, decision, rule, direction, demand, or regulation or any part or provision thereof, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail for a period of not to exceed thirty days. [C31, 35,§5105-c25; C39,§**5105.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§327.22]

Constitutionality, 43GA, ch 129,§27

327.23 Stone and road materials carriers. Any person, firm, or corporation may obtain a permit to engage as a contract carrier in this state in the transportation of agricultural limestone, aggregates such as sand, gravel, crushed or broken stone, and all other materials for road or bridge construction or reconstruction projects, by filing with the board an application therefor. No proof of need for service, nor public convenience or necessity shall be required of such applicant; there shall be no limitation on the number of individual contracts, oral or written, permitted and no tariff or schedule of rates or charges shall be required. The board shall issue such permit when the applicant has paid all fees required by this chapter, and complied with the provisions of section 327.15 relating to insurance protection. The holder of such permit shall in all cases comply with the safety rules provided for by this chapter and shall pay all annual permit fees required of other contract carriers and such permits shall, after due hearing, be subject to revocation for violation thereof. [C31, 35,§5105-c1; C39,§**5105.01**; C46, 50, 54,§327.1; C58, 62, 66, 71, 73, 75,§327.23]

CHAPTER 327A

LIQUID TRANSPORT CARRIERS

Referred to in §§307.18, 307.25, 325.37

327A.1 Definitions of words and phrases.
327A.2 Certificate required.
327A.3 Applicable sections of law.
327A.4 Disposal of certificate.
327A.5 Insurance required.
327A.6 All motor vehicle law applicable.
327A.7 Drivers requirements.
327A.8 Markings on vehicles.
327A.9 Cancellation or suspension.
327A.10 Hours of operation.
327A.11 Rest period.
327A.12 Records kept.
327A.13 Disabled vehicles.
327A.14 Prior service — rights transferred or assigned.
327A.15 Vehicles excepted.
327A.16 Dairy products exempt.
327A.17 Rules.
327A.18 Penalties.
327A.19 Fee for operation.
327A.20 Railroad control extended.
327A.21 Charges must be reasonable.

327A.1 Definitions of words and phrases. The following words and phrases, when used in this chapter, will for the purpose of this chapter, have the following meanings respectively ascribed to them:

1. *"Liquid transport carrier"* shall mean any person engaged in the transportation, for compensation, of liquid products in bulk upon any highway in this state.

2. *"Person"* shall mean any individual, association, partnership, firm or corporation.

3. *"Vehicle"* shall mean any self-propelled vehicle, any trailer, semitrailer, or other device used in connection therewith not operated upon fixed rails or tracks, equipped with one or more cargo tanks, or between fixed termini or over a regular route and used for the transportation of liquid products in bulk.

4. *"Transportation for compensation"* shall, in addition to all public transportation, also include transportation primarily for others by a person, not a distributor licensed under chapter 324, even though as an incident thereto he buys the liquids at the point where the transportation originates and sells it at a delivered price at destination and, except as otherwise provided, shall include transportation for others by a distributor licensed under chapter 324 or liquid products not owned by the distributor.

5. *"Board"* means the transportation regulation board of the state department of transportation.

6. *"Department"* means the state department of transportation. [C58, 62, 66, 71, 73, 75, §327A.1]

Referred to in §327A.15

327A.2 Certificate required. Except as otherwise provided, it is hereby declared unlawful for any liquid transport carrier to transport liquid products in bulk, for compensation from any point or place in the state of Iowa to another point or place in said state without first having obtained from the board a certificate declaring that public convenience and necessity require such operation. [C58, 62, 66, 71, 73, 75,§327A.2]

Referred to in §327A.15

327A.3 Applicable sections of law. The provisions of sections 325.7 to 325.21 insofar as applicable are hereby extended to include liquid transport carriers in relation to hearing on an application for the aforesaid certificate of convenience and necessity. [C58, 62, 66, 71, 73, 75,§327A.3; 66GA, ch 67,§35]

Referred to in §327A.15

327A.4 Disposal of certificate. Whenever any person shall file with the board an application for authority to sell, transfer, lease or assign a certificate of convenience and necessity issued under the provisions of this chapter, the board shall fix a date for hearing thereon and cause a notice addressed to the citizens of each county through or in which the proposed service will be rendered to be published in some newspaper of general circulation in each such county, once each week for two consecutive weeks, and shall notify each liquid transport carrier holding a certificate, issued by the board, to transport over, in, or through the area described in the application, by mailing notice of the hearing to each such carrier at least ten days before the date fixed for hearing, and the provisions of chapter 325, inclusive of this chapter shall, insofar as appropriate be applicable to the said hearing. [C58, 62, 66, 71, 73, 75,§327A.4]

Referred to in §§327A.14, 327A.15

327A.5 Insurance required. No certificate shall be issued until and after an applicant shall have filed with the board an insurance policy, policies, surety bond or certificate of insurance, in form to be approved by the board, issued by some company, association, reciprocal or interinsurance exchange or other insurer authorized to do business in this state.

The minimum limit of liability of any policy or surety bond shall, for each vehicle thereby covered, be as follows:

1. To cover the assured's legal liability as a liquid transport carrier for bodily injury or death resulting therefrom as a result of any one accident or other cause, one hundred thousand dollars for any recovery by one person, and subject to said limit for one person, one hundred thousand dollars, for more than one person.

2. To cover the assured's legal liability as a liquid transport carrier for damages to or destruction of any property other than that of or in charge of the assured, as a result of any one accident or other cause one hundred thousand dollars.

3. To cover the assured's legal liability as a liquid transport carrier for loss of or damage to property in the possession or custody of the assured while for the purpose of or being transported, except property of the assured as a result of any one accident or other cause ten thousand dollars. Such insurance policy, policies, surety bond, or certificate of insurance shall bind the obligors thereunder to make compensation for injuries to persons, excluding injury to or death of the applicant's employees while engaged in the course of their employment and loss to or damage to property resulting from the operation of such liquid transport carrier and for which such liquid transport carrier would be legally liable. Such insurance policy, policies, surety bond, or certificate of insurance shall also provide that any person, firm, association or corporation having a right of action against such liquid transport carrier for injuries to persons or loss of or damage to property, when service cannot be obtained on the liquid transport carrier within this state, may bring action for recovery directly upon such insurance policy, policies, surety bond, or certificate of insurance and against such insurance company, association, reciprocal or interinsurance exchange or other insurer or bonding company. Except as required in this chapter and in chapter 325 and except for ordinary registration of motor vehicles, no other or additional policies, bonds or certificates shall be required by any city or other agency of this state for any liquid transport vehicle. [C58, 62, 66, 71, 73, 75,§327A.5]

Referred to in §327A.15

327A.6 All motor vehicle law applicable. Every vehicle operated by a liquid transport carrier and all parts thereof shall comply with all of the provisions of chapter 321 applicable thereto and shall be maintained in a safe and sanitary condition at all times, and shall be at all times subject to inspection by the members of the department. [C58, 62, 66, 71, 73, 75, §327A.6]

Referred to in §327A.15

327A.7 Drivers requirements. Every driver employed by a liquid transport carrier shall be at least eighteen years of age; in good physical condition, of good moral character, shall be fully competent to operate the vehicle under his charge, and shall hold a regular chauffeur's license from the department. [C58, 62, 66, 71, 73, 75,§327A.7]

Referred to in §327A.15

327A.8 Markings on vehicles. There shall be attached to each vehicle such distinctive markings or tags as shall be prescribed by the board. [C58, 62, 66, 71, 73, 75,§327A.8]

Referred to in §327A.15

327A.9 Cancellation or suspension. For violation of any of the provisions of this chapter or of any rule or regulation promulgated hereunder by any liquid transport carrier, the board may revoke and cancel the certificate of such liquid transport carrier. In the event of any flagrant and persistent violation of safety laws or regulations by the holder of a certificate or his agent, upon the request of the department, the board shall suspend such certificate of necessity until the safety laws or regulations prescribed by the department are complied with or the board may revoke the certificate at its discretion. [C58, 62, 66, 71, 73, 75,§327A.9]

Referred to in §327A.15

327A.10 Hours of operation. No person shall operate a vehicle on the highways of this state when operation of such vehicle would result in more than twelve hours of continuous driving operation by such person. [C58, 62, 66, 71, 73, 75,§327A.10]

Referred to in §327A.15

327A.11 Rest period. No person shall operate a vehicle on the highways of this state for a period of eight hours following twelve consecutive driving hours of operation of any vehicle. [C58, 62, 66, 71, 73, 75,§327A.11]

Referred to in §327A.15

327A.12 Records kept. Every liquid transport carrier shall keep or cause to be kept a record accurately setting forth the hours of vehicle operation of each person operating a vehicle or vehicles owned or leased by such carrier. The department or the board may require any liquid transport carrier to submit such records for inspection. [C58, 62, 66, 71, 73, 75,§327A.12]

Referred to in §327A.15

327A.13 Disabled vehicles. All vehicles or combination of vehicles shall be equipped with direction signal devices of a type complying with the provisions of section 321.317 relating to such devices and whenever, during hours of darkness, any vehicle is disabled or for any other reason may present a vehicular traffic hazard requiring unusual care in approaching, overtaking or passing the operator of such vehicle shall display such directional signals on such vehicle or combination of vehicles in simultaneous operation. The provisions of this section shall not be construed to be in lieu of the provisions of sections 321.447 and 321.448 and the provisions of the said sections shall be fully applicable as provided therein. [C58, 62, 66, 71, 73, 75,§327A.13]

Referred to in §327A.15

327A.14 Prior service—rights transferred or assigned. Any liquid transport carrier actively and continuously engaged in business as such between the first day of December, 1956, and the fourteenth day of January, 1957, shall be issued a certificate of convenience and necessity covering all points in this state to all other points in this state, and all routes and areas in this state, provided that application therefor shall be made within sixty days after May 17, 1957. No rights so granted may be sold, leased, transferred or assigned to any person engaged directly or indirectly in the transportation for hire of liquid products in bulk or freight in interstate commerce or in intrastate commerce, in this or any other state, or the District of Columbia, or to any person engaged in the leasing of equipment for such purposes, except such rights as are actively being exercised at the time of sale, lease, transfer or assignment; provided, however, rights so granted may be sold, leased, transferred or assigned to any person who has not engaged directly or indirectly in the transportation for hire of liquid products in bulk or freight in interstate or intrastate commerce prior to the date of such transfer, or to any person who has not prior to such date engaged in the leasing of equipment for such purpose, and on hearing it shall not be necessary for the board to find that such sale, lease, transfer or assignment is necessary in the public interest. Before any rights may be sold, leased, transferred or assigned, application therefor shall be filed with the board, which shall fix a date for hearing thereon, and the provisions of section 327A.4 shall be applicable thereto. Rights actively being exercised may be sold, leased, transferred or assigned to any person engaged in the transportation for hire of liquid products in bulk or freight under the conditions hereinafter set forth:

1. Whenever an application for a sale, lease, transfer, assignment, consolidation, merger, or acquisition of control is filed with the board, if on hearing the board finds that (*a*) the proposed purchaser, lessee, transferee or assignee is fit, willing and able, and (*b*) that the proposed seller, lessor, transferor or assignor has

not abandoned, suspended or discontinued operations, and (*c*) that the transaction proposed will be consistent with the public interest and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such sale, lease, transfer, assignment, consolidation, merger or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe.

2. Except as otherwise provided in subsection 1, it shall be unlawful for any person to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more persons engaged in the transportation for hire of liquid products in bulk or freight or of one or more persons so engaged, however such result is attained, whether directly or indirectly, by use of common directors, officers or stockholders, holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever.

3. The board is hereby authorized, upon complaint, or upon its own initiative without complaint, but after notice, and hearing, to investigate and determine whether any person is violating the provisions of this section. If the board finds upon investigation that any person is violating the provisions of this section, it shall, by order, require such person to take such action consistent with the provisions of this chapter as may be necessary, in the opinion of the board, to prevent continued violation of such provisions. [C58, 62, 66, 71, 73, 75,§327A.14]

Referred to in §327A.15

327A.15 Vehicles excepted. Sections 327A.1 to 327A.14 shall not apply to (1) transportation in bulk by vehicle having a total cargo tank shell capacity of two thousand gallons or less, (2) transportation by a distributor licensed under chapter 324 incidental to and in the regular course of his business as a distributor of petroleum products, or (3) reciprocal exchange between distributors licensed under chapter 324 of transportation pursuant to an exchange of products between distributors so licensed. [C58, 62, 66, 71, 73, 75,§327A.15]

327A.16 Dairy products exempt. The provisions of this chapter shall not apply to the transportation of dairy products. [C58, 62, 66, 71, 73, 75,§327A.16]

327A.17 Rules. The board shall also have power and authority by general order or otherwise to prescribe rules applicable to liquid transport carriers. The state department is hereby authorized and empowered to prescribe and enforce safety rules in the operation of liquid transport carriers, require a periodic inspection of the equipment of every liquid transport carrier from the standpoint of enforcement of safety rules, and such equipment shall be at all times subject to inspection by properly authorized representatives of the department. [C62, 66, 71, 73, 75,§327A.17; 66GA, ch 67,§36]

327A.18 Penalties. Every owner, officer, agent or employee of any liquid transport carrier, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule or regulation, direction, demand, or requirement or any part or provision thereof of the board, or who procures, aids or abets any corporation or person in his failure to obey, observe, or comply with any such order, decision, rule, direction, demand or regulation or any part or provision thereof, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail for a period of not to exceed thirty days. [C62, 66, 71, 73, 75,§327A.18]

327A.19 Fee for operation. No certificate of convenience and necessity shall be issued nor continued in force until the holder thereof shall have paid to the board an annual certificate fee for each motor vehicle operated thereunder in the amount of five dollars, except that the fee for a tractor or truck tractor shall be fifteen dollars, and except that the fee herein provided shall not be imposed on any trailer or semitrailer. Fees collected pursuant to the provisions of this section shall be remitted to the treasurer of state and credited to the general fund of the state. [C62, 66, 71, 73, 75, §327A.19]

327A.20 Railroad control extended. All control, power and authority over railroads and railroad companies now vested in the board, insofar as the same is applicable, are hereby specifically extended to include liquid transport carriers. [C62, 66, 71, 73, 75,§327A.20]

327A.21 Charges must be reasonable. All charges made by any liquid transport carrier for any service rendered or to be rendered in the transfer of liquid products in bulk upon any highway, or in connection therewith, shall be just, reasonable and nondiscriminating, and every unjust, unreasonable or discriminating charge for such service or any part thereof is prohibited and declared unlawful. [C62, 66, 71, 73, 75,§327A.21]

CHAPTER 327B

INTERSTATE COMMERCE COMMISSION AUTHORITY OF MOTOR CARRIERS

Referred to in §307.25

327B.1 Authority secured and registered.
327B.2 Enforcement.
327B.3 Fees—use.
327B.4 Private carriers exempt.
327B.5 Penalty.

327B.1 Authority secured and registered. It shall be unlawful for any carrier to perform an interstate transportation service for compensation upon the highways of this state without first having secured appropriate authority from the interstate commerce commission, if such authority is required, and without first having registered such authority, if any, with the state department of transportation and it shall be unlawful for any carrier to perform such service for compensation if authority from the interstate commerce commission is not required without first having registered with the state department of transportation showing that interstate authority is not required provided, however, nothing in this section shall be construed to include any carrier transporting property consisting of ordinary livestock or agricultural (including horticultural) commodities (not including manufactured products thereof), if such carrier does not transport any other property for compensation.

Such registrations shall be granted upon application without hearing, upon payment of a filing fee in the amount of twenty-five dollars. Amendments may be filed upon payment of a filing fee in the amount of ten dollars for each filing of supplemental authority.

Upon registering with the state department of transportation as herein provided, the said department shall identify the registration by number and shall annually issue a decal or sticker bearing the registration number of the carrier for each tractor or truck of the carrier operating in this state and shall charge and collect from the carrier a fee of one dollar for each such decal or sticker. [C66, 71, 73, 75, §327B.1]

327B.2 Enforcement. The state department of transportation may designate by resolution certain of its employees upon each of whom there is hereby conferred the authority of a peace officer to make arrests for violations of laws relating to the registration of a motor carrier's interstate transportation service with the state department of transportation. [C66, 71, 73, 75,§327B.2]

327B.3 Fees—use. All fees paid under the provisions of this chapter shall be remitted to the treasurer of state and credited to the general fund of the state. [C66, 71, 73, 75,§327B.3]

327B.4 Private carriers exempt. The provisions of this chapter shall not be construed to include private carriers. [C66, 71, 73, 75, §327B.4]

327B.5 Penalty. Any person violating the provisions of this chapter shall, upon conviction, be subject to a fine of not more than one hundred dollars or imprisonment in the county jail for not more than thirty days. [66GA, ch 173,§10]

CHAPTER 327C

SUPERVISION OF CARRIERS

Formerly §§474.10 to 474.54, Code 1975
Referred to in §307.18

327C.1 Definition.
327C.2 General jurisdiction of transportation department.
327C.3 Removal of interfering lights.
327C.4 Inspection—notice to repair.
327C.5 Reserved.
327C.6 Changes in operation and improvements.
327C.7 Abandoning station.
327C.8 Objections—hearing.
327C.9 Order of board.
327C.10 Investigation and inquiry.
327C.11 Individual hearings.
327C.12 Aid from courts.
327C.13 Hindering or obstructing department.
327C.14 Cumulative remedies.
327C.15 Reserved.
327C.16 Mandatory injunction—contempt.
327C.17 When order effective—violation.
327C.18 Time may be extended to test legality.
327C.19 Judicial review.
327C.20 Remitting penalty.
327C.21 Costs—attorney's fees.
327C.22 Interstate freight rates.
327C.23 Application to interstate commerce commission.
327C.24 Choice of remedies.
327C.25 Complaints.
327C.26 Investigation—report.
327C.27 Orders—compliance.
327C.28 Violation of order—petition—notice.

327C.29 Interested party may begin proceedings.
327C.30 Duty of department and board counsel and county attorney.
327C.31 Hearing in equity—injunction.
327C.32 Violation of injunction.
327C.33 Appeal—effect.
327C.34 Suits by board.
327C.35 Uniform gauge—inspection—order.
327C.36 Rights and remedies not exclusive.
327C.37 Accidents—investigation of—report.
327C.38 Annual reports from companies.
327C.39 Details of report.
327C.40 Reserved.
327C.41 Additional reports.
327C.42 Uniform accounts.
327C.43 Violations.
327C.44 Reserved.

327C.1 Definition. As used in this chapter, unless the context otherwise requires *"department"* means the state department of transportation and *"board"* means the transportation regulation board. [C75,§474.54; 66GA, ch 1164, §29]

327C.2 General jurisdiction of transportation department. The department shall have general supervision of all railroads in the state, express companies, car companies, freight and freight-line companies, motor carriers, and any common carrier engaged in the transportation of passengers or freight. [C97,§2112; S13, §2120-n; C24, 27, 31, 35, 39,§7874; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.10; 66GA, ch 1164,§6]

Referred to in §472.42

327C.3 Removal of interfering lights. The department is hereby vested with authority to order the removal or alteration of any lights erected for illuminating purposes, whether on public or private property, when such lights interfere with the easy observation of railroad signals by those engaged in the operation of railroad trains or equipment. [C39,§7874.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.11]

Analogous provisions, §307A.2

327C.4 Inspection—notice to repair. The department shall inspect the condition of each railroad, its rail facilities, equipment, rolling stock, operations and pertinent records at reasonable times and in a reasonable manner to insure proper operations. Employees of the department shall have proper identification which shall be displayed upon request. If found unsafe, the department shall immediately notify the railroad corporation whose duty it is to put the same in repair, which shall be done by it within such time as the department shall fix. If any corporation fails to perform this duty the department may forbid and prevent it from running trains over the defective portion while unsafe or may regulate the speed and operation of trains moving over the defective portion of the railroad. If the railroad corporation violates any requirement provided by the department, the railroad corporation shall be subject to a fine of not more than one hundred dollars for each day the repairs have not been made from the date the department set for repairs to be completed. The court may consider the willingness and ability of the railroad corporation to cooperate in removing the safety hazard. Moneys received from the assessment of any fine shall be credited to the rail assistance fund. [C97,§2113; S13,§2113; C24, 27, 31, 35, 39,§7875; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.12; 66GA, ch 1164,§7]

Referred to in §327C.6
Section 474.13, Code 1975, repealed by 66GA, ch 1164,§98

327C.5 Reserved.

327C.6 Changes in operation and improvements. When, in the judgment of the department, any railroad corporation fails in any respect to comply with the terms of its charter or articles of incorporation or the laws of the state; or if any railroad corporation fails to operate its railroad and business in a reasonable and expedient manner which is safe and convenient to the public, the department may order such changes as it finds to be proper and shall serve an order upon such corporation. Nothing in this section or section 327C.4 shall be construed as to nullify responsibility or liability for damage to person or property by any railroad corporation. [C97,§2113; S13, §2113; C24, 27, 31, 35, 39,§7877; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.14; 66GA, 170,§5, ch 1164, §8]

Manner of service, R.C.P. 56(a)
Time of filing annual report, §17.10

327C.7 Abandoning station. It shall be unlawful for any railroad corporation owning or operating any railroad in whole or in part in this state, to abandon any station on its line of railroad, within this state, or to remove the depot, or to withdraw agency service, unless it shall first have filed notice of its intention with the department and otherwise complied with the provisions of this section and sections 327C.8 and 327C.9. Upon the receipt of such notice the department shall specify a notice be published and the railroad corporation shall, at its own expense, cause such notice to be published at least fifteen days in advance of the action to abandon or discontinue such station or agency, or remove such depot, and shall file proof of publication with the department. The notice shall be in such form as prescribed by the department and shall be published in a newspaper published in the county in which the station is located. An alternative notice procedure giving comparable public notice by registered mail to affected shippers may be prescribed by the department according to

rules promulgated under chapter 17A. [C39, §7877.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.15; 66GA, ch 1164,§9]

Referred to in §327C.8

327C.8 Objections — hearing. Any person directly affected by the proposed abandonment or discontinuance of any station or agency, or removal of any depot, may file written objections with the department, stating the grounds for such objections, within fifteen days from the time of the publication of the notice as provided in section 327C.7. Upon the filing of such objections the board shall fix the time and place for a hearing, which shall be held within sixty days from the filing of such objections. Written notice of the time and place of such hearing shall be mailed by the board to the railroad corporation and the person filing objections at least ten days prior to the date fixed for such hearing. [C39,§7877.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.16; 66GA, ch 1164,§10]

Referred to in §327C.7

327C.9 Order of Board. Upon said hearing the board may prohibit the abandonment or discontinuance of such station or agency, or the removal of the depot, or may make such other order as is warranted by the evidence produced at such hearing. But if no objections are filed the board may make an order permitting the railroad corporation to proceed with such abandonment or discontinuance, or removal of the depot. [C39,§7877.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.17; 66GA, ch 1164,§11]

Referred to in §327C.7

327C.10 Investigation and inquiry. The department or board may investigate and inquire into the management of all common carriers subject to its jurisdiction. The board or department shall have the right to obtain from them full and complete information necessary to enable the department or board to perform its duties including the administration of railroad assistance agreements. The board on its own initiative or upon request of the department shall have power to require the attendance and testimony of witnesses, the production of all books, papers, tariff schedules, contracts, agreements, and documents, relating to any matter under investigation, and to inspect the same and to examine under oath or otherwise any officer, director, agent, or employee of any common carrier; to issue subpoenas and to enforce obedience thereto. [C97, §§2115, 2133; C24, 27, 31, 35, 39,§7878; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.18; 66GA, ch 1164, §12]

327C.11 Individual hearings. The department may authorize one of the members or an examiner appointed by it to hold hearings and take evidence in any particular case and a hearing so held shall have the same force and effect as a hearing by the department, but any finding or order as a result of such hearing must be agreed to by a majority of the department. [C27, 31, 35,§7878-b1; C39,§7878.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.19]

Referred to in §78.1(5)

327C.12 Aid from courts. The department or board may invoke the aid of any court of record in the state in requiring the attendance and testimony of witnesses and the production of books, papers, tariff schedules, agreements, and other documents. Any court having jurisdiction of the inquiry shall, in case of the refusal of any person to obey a subpoena or other process, issue an order requiring any of the officers, agents, or employees of any carrier or other person to appear before the department or board and produce all books and papers required by such order and testify in relation to any matter under investigation. [C97,§2133; C24, 27, 31, 35, 39, §7879; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.20; 66GA, ch 1164,§13]

Contempts, ch 665

327C.13 Hindering or obstructing department. Any person who shall willfully obstruct the department or board in the performance of their duties, or who shall refuse to give any information within that person's possession that may be required by the board or department within the line of their duty, shall be fined not exceeding one thousand dollars, in the discretion of the court. [C97,§2115; C24, 27, 31, 35, 39,§7880; C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.21; 66GA, ch 1164,§14]

Section 474.22, Code 1975, repealed by 66GA, ch 170,§33

327C.14 Cumulative remedies. Nothing in this chapter or chapter 327D shall be construed to estop or hinder any persons from bringing action against any railway corporation for any violation of the laws of the state. [C97, §2118; C24, 27, 31, 35, 39,§7882; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.23; 66GA, ch 1164,§15]

Section 474.24, Code 1975, repealed by 66GA, ch 1164,§98

327C.15 Reserved.

327C.16 Mandatory injunction — contempt. It shall be the duty of the court in which any such cause shall be pending to require the issue to be made up within twenty days after commencement of the action and to give the same precedence over other civil business. If the court shall find that such rule, regulation, or order is reasonable and just, and that in refusing compliance therewith said railway company is neglecting and omitting the performance of any public duty or obligation, the court shall decree a mandatory and perpetual injunction, compelling obedience to and compliance with such rule, order, or regulation by said railroad company or person, its officers, agents, servants and employees, and may grant such other relief as may be deemed just and proper. All violations of such decree shall render the company, persons, officers, agents, servants and employees who are in any manner instrumental in such violation, guilty of contempt of court, and the court may

punish such contempt by a fine not exceeding one thousand dollars for each offense. Such decree shall continue and remain in effect and be enforced until the rule, order, or regulation shall be modified or vacated by the department. [C97,§2119; S13,§2119; C24, 27, 31, 35, 39, §7884; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.25]

Referred to in §§364.8, 327C.21

327C.17 When order effective — violation. All rules and orders affecting public rights, made by the department or board, as now or may hereafter be authorized for the direction and observance of railroads in this state, shall be in full force and effect from and after the date fixed by the department or board. If any railroad fails, neglects, or refuses to comply with any rule or order made by the department or board within the time specified, it shall, for each day of such failure, pay a penalty of one hundred dollars. Such moneys shall be credited to the railroad assistance fund. [S13,§2119; C24, 27, 31, 35, 39,§7885; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.26; 66GA, ch 1164,§16]

Referred to in §327C.21

327C.18 Time may be extended to test legality. The time for the taking effect of any rule, order, or regulation affecting public rights, made by the department, may, in its discretion, be extended; and said extension of time may be granted for the purpose of testing the legality thereof, upon application by any such aggrieved railroad, showing reasonable grounds therefor, and that said application is made in good faith and not for the purpose of delay. [S13,§2119; C24, 27, 31, 35, 39,§7886; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.27]

Referred to in §327C.21

327C.19 Judicial review. Judicial review of the actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act. [S13,§2119; C24, 27, 31, 35, 39,§7887; C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.28]

Referred to in §327C.21

327C.20 Remitting penalty. If a common carrier fails in a judicial review proceeding to secure a vacation of the order objected to, it may apply to the court in which the review proceeding is finally adjudicated for an order remitting the penalty which has accrued during the review proceeding. Upon a satisfactory showing that the petition for judicial review was filed in good faith and not for the purpose of delay, and that there were reasonable grounds to believe that the order was unreasonable or unjust or that the power of the department or board to make the same was doubtful, such court may remit the penalty that has accrued during the review proceeding. [S13,§2119; C24, 27, 31, 35, 39,§7888; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.29; 66GA, ch 1164,§17]

Referred to in §327C.21

327C.21 Costs—attorney's fees. When a decree shall be entered against a railroad corporation or person under sections 327C.16 to 327C.20 the court shall render judgment for costs, and attorney's fees for counsel representing the state. [C97,§2120; C24, 27, 31, 35, 39,§7889; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.30; 66GA, ch 1164,§18]

327C.22 Interstate freight rates. The department shall exercise constant diligence to ascertain the rates, charges, rules, and practices of common carriers operating in this state, in relation to the transportation of freight in interstate business. When it shall ascertain from any source or have reasonable grounds to believe that the rates charged on such interstate business or the rules or practices in relation thereto discriminate unjustly against any of the citizens, industries, interests, or localities of the state, or place any of them at an unreasonable disadvantage as compared with those of other states, or are in violation of the laws of the United States regulating commerce, or in conflict with the rulings, orders, or regulations of the interstate commerce commission, the department shall take the necessary steps to prevent the continuance of such rates, rules, or practices. [S13, §2120-a; C24, 27, 31, 35, 39,§7890; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.31]

327C.23 Application to interstate commerce commission. When any common carrier has put in force any rates, rules, or practices in relation to interstate freight business, in violation of the laws of the United States regulating commerce, or of the orders, rules, or regulations of the interstate commerce commission, or shall unjustly discriminate against any of the citizens, industries, interests, or localities of the state, the department shall present the material facts involved in such violations or discrimination to the interstate commerce commission and seek relief therefrom, and, if deemed necessary or expedient, the department shall prosecute any charge growing out of such violation or discrimination, at the expense of the state, before the interstate commerce commission. [S13,§2120-b; C24, 27, 31, 35, 39,§7891; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.32]

327C.24 Choice of remedies. Any person claiming damages from a common carrier on account of any violation of the provisions of chapter 327D may either make complaint to the department, or may bring action on his own behalf for the recovery of such damages; but he shall not have the right to pursue both of said remedies at the same time. [C97,§2131; C24, 27, 31, 35, 39,§7892; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.33]

327C.25 Complaints. Any person, city or county may file with the department a petition setting forth any particular in which any common carrier has violated the law to which it is subject and the amount of damages sustained by reason thereof. The department shall furnish to the carrier against which com-

plaint is filed, a copy thereof, and a reasonable time shall be fixed by the board within which such carrier shall answer the petition or satisfy the demand therein made. If such carrier fails to satisfy the complaint within the time fixed or there appears to be reasonable grounds for investigating the matters set forth in said petition, the board shall hear and determine the questions involved and make such orders as it shall find to be proper. When the board has reason to believe that any carrier is violating any of the laws to which it is subject, it may institute an investigation and cause a hearing to be held before it in relation to such matters in all respects as fully as if a petition had been filed. [C97,§2134; C24, 27, 31, 35, 39, §7893; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.34; 66GA, ch 1164,§19]

327C.26 Investigation—report. When a hearing has been held before the board after notice, it shall make a report in writing setting forth the findings of fact and its conclusions together with its recommendations or orders as to what reparation, if any, the offending carrier shall make to any party who has suffered damage. Such finding of fact shall thereafter in all legal proceedings be prima-facie evidence of every fact found. All reports of hearings and investigations made by the board shall be entered of record and a copy furnished to the carrier against which the complaint was filed, to the party complaining, and to any other person having a direct interest in the matter. A reasonable fee not to exceed the actual duplication costs may be charged for the copies. [C97,§2135; C24, 27, 31, 35, 39,§7894; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.35; 66GA, ch 1164,§20]

327C.27 Orders — compliance. When the board finds as the result of any investigation or hearing that a common carrier has violated or is violating any of the provisions of law to which it is subject, or that any complainant or other person has sustained damages by reason of such violation, the board shall order such carrier to cease such violation at once and shall fix a time within which it shall pay the amount of damage which has been found due to any person as a result of such violation. [C97,§2136; C24, 27, 31, 35, 39,§7895; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.36; 66GA, ch 1164, §21]

327C.28 Violation of order—petition—notice. When any person violates or fails to obey any lawful order or requirement of the department or board, the department or board shall apply by petition in the name of the state, against such person, to the district court, alleging such violation or failure to obey; the court shall hear and determine the matter set forth in the petition on reasonable notice to the person, to be fixed by the court and to be served in the same manner as original notices for the commencement of action. [C97,§2137; C24, 27, 31, 35, 39,§7896; C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.37; 66GA, ch 1164,§22]

Referred to in §§327C.29, 327C.30
Manner of service, R.C.P. 56(*a*)

327C.29 Interested party may begin proceedings. Any person or city or county interested in the matter of enforcing any order or requirement of the department or board, may file a petition against such person, alleging the failure to comply with such order or requirement and praying summary relief to the same extent and in the same manner as the department or board may do under section 327C.28, and the proceedings after the filing of such petition shall be the same as in section 327C.28. [C97,§2137; C24, 27, 31, 35, 39,§7897; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.38; 66GA, ch 1164,§23]

Referred to in §327C.30

327C.30 Duty of department and board counsel and county attorney. When any proceeding has been instituted under sections 327C.28 and 327C.29, the department general counsel or the legal counsel of the board shall prosecute the same, and the county attorney of the county in which such proceeding is pending shall render such assistance as the department general counsel or the board legal counsel may require. [C97,§2137; C24, 27, 31, 35, 39,§7898; C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.39; 66GA, ch 1164,§24]

327C.31 Hearing in equity—injunction. All such causes shall be in equity, and the order or report of the department or board in question shall be considered prima-facie evidence. If the court shall find that the order or requirement in question is lawful and has been violated, it shall issue an injunction or other proper process. [C97,§2137; C24, 27, 31, 35, 39, §7899; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.40; 66GA, ch 1164,§25]

327C.32 Violation of injunction. For a violation of any injunction or other process issued in such proceeding, any common carrier or any officer, agent, or employee thereof shall be fined for contempt in a sum not exceeding one thousand dollars. In addition to any other penalty the court may fix a sum not exceeding one thousand dollars which each defaulting carrier, officer, or agent shall pay after a fixed date for each day such injunction or other process is disobeyed and render judgment for penalty which shall accrue from disobedience after the time fixed. One-half of such sums collected shall be paid into the treasury of the county where the judgment is rendered and one-half into the state treasury. [C97,§2137; C24, 27, 31, 35, 39,§7900; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.41]

327C.33 Appeal—effect. An appeal to the supreme court shall not stay or supersede the order of the court or the execution of any writ or process thereon. When appeal is taken

by the department or board, it shall not be required to give an appeal bond or security for costs. [C97,§2137; C24, 27, 31, 35, 39,§7901; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.42; 66GA, ch 1164,§26]

327C.34 Suits by board. When the board has reason to believe that any person has been guilty of unjust discrimination, the board shall cause action to be commenced against such person. Such action may be brought in the district court of any county through which the railway owned or operated by such person may extend. [C97,§§2149, 2150; C24, 27, 31, 35, 39,§7902; C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.43; 66GA, ch 1164,§27]

327C.35 Uniform gauge—inspection—order. As often as it deems it expedient, the department shall examine all the railroads in the state that are less than four feet eight and one-half inches gauge, and if in the judgment of the department, it is necessary and reasonable to change the gauge of any such railroad to four feet eight and one-half inches, it shall make an order in writing, fixing a reasonable time within which such gauge shall be changed, taking into consideration the life of the rolling stock of such narrow-gauged road and all other facts and conditions bearing on the length of time required to make such change. [C24, 27, 31, 35, 39,§7903; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.44]

327C.36 Rights and remedies not exclusive. Nothing in this chapter shall abridge any rights or remedies existing at common law or by statute, but shall be in addition to such remedies. [C24, 27, 31, 35, 39,§7904; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.45]

327C.37 Accidents — investigations of — report. Upon the occurrence of any serious accident upon any railroad within this state, which shall result in personal injury, or loss of life, the corporation operating the road upon which the accident occurred shall give immediate notice thereof to the department whose duty it shall be, if they deem it necessary, to investigate the same, and promptly report to the governor the extent of the personal injuries, or loss of life, and whether the same was the result of mismanagement or neglect of the corporation on whose line the injury or loss of life occurred; but such report shall not be evidence or referred to in any case in any court. [S13,§2120-k; C24, 27, 31, 35, 39,§7905; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.46]

327C.38 Annual reports from companies. The department shall require annual reports from all common carriers subject to the provisions of chapter 327D and prescribe the manner in which specific answers to all questions upon which it may need information shall be made. [C73,§1280; C97,§2143; C24, 27, 31, 35, 39, §7906; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.47]

C97,§2143, editorially divided

327C.39 Details of report. The report shall be compiled pursuant to rules adopted pursuant to chapter 17A by the department. The report shall include but not be limited to anticipated capital improvements projected over the next five years and anticipated abandonments which may occur over the same period of time. The department may provide that certain portions of the report, except those portions dealing with anticipated abandonments, remain confidential if the department determines that the release of the information may cause an undue competitive advantage or disadvantage to a railroad corporation if the information is released. The information may be classified as confidential only with the approval of the director of the department. [C73,§1280; C97,§2143; C24, 27, 31, 35, 39,§7907, 7908; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.48, 474.49; 66GA, ch 1164,§28]

Section 474.49, Code 1975, repealed by 66GA, ch 1164,§98

327C.40 Reserved.

327C.41 Additional reports. The department may also require of any and all common carriers subject to the provisions of chapter 327D such other reports, and fix the time for filing the same, as in its judgment shall be necessary and reasonable, which reports shall be in such form, and concerning such subjects, and be from such sources as it shall direct, except as otherwise provided herein. [C97,§2143; C24, 27, 31, 35, 39,§7909; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.50]

327C.42 Uniform accounts. The department may prescribe uniformity and methods of keeping accounts, as near as may be, and fix a time when such regulations shall take effect. [C97,§2143; C24, 27, 31, 35, 39,§7910; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.51]

327C.43 Violations. Any corporation, company, or individual owning or operating a railway within the state, neglecting or refusing to make the required reports by the date fixed, or fixed by the department, shall be subject to a penalty of one hundred dollars for each and every day of delay in making the same after the date thus fixed. [C73,§§1281, 1282; C97, §2143; C24, 27, 31, 35, 39,§7911; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.52]

Section 474.53, Code 1975, repealed by 66GA, ch 1164,§98

327C.44 Reserved.

CHAPTER 327D

REGULATION OF CARRIERS

Referred to in §§307.18, 307.26, 327C.14, 327C.24, 327C.38, 327C.41
Formerly Chapter 479

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GENERAL PROVISIONS

327D.1 Applicability of chapter. The provisions of this chapter shall apply to intrastate transport of persons and property. [C97,§2122; C24, 27, 31, 35, 39,§8036; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.1; 66GA, ch 170,§21, ch 1164,§44]
Referred to in 327D.40

327D.2 Definitions. As used in this chapter unless the context otherwise requires:

1. *"Railroad"* means the terminal facilities necessary in the transportation of persons and property and includes bridges, railroad right of way, trackage, switches and other appurtenances necessary for the operation of a railroad, whether owned, leased or operated under some other contractual agreement.

2. *"Railway"* means a railroad as defined in subsection 1.

3. *"Railway corporation"* means all corporations, companies, or persons owning or operating any railroad or carrier in whole or in part within the state.

4. *"Railroad corporation"* means a railway corporation as defined in subsection 3.

5. *"Switching service"* means the shifting of a car between two points, both of which are within the industrial vicinity of an industry, a group of industries, a station, or a city, as such industrial vicinity may be defined by the department.

6. *"Transportation"* means all instrumentalities of shipment or carriage as well as services in connection with the actual transport.

7. *"Rates"* means fares, tariffs, tolls, charges, and all classifications, contracts, practices and rules of common carriers relating to such rates.

8. *"Joint tariffs"* embraces joint rates, tolls, contracts, classifications and charges.

9. *"Department"* means the state department of transportation.

10. *"Board"* means the transportation regulation board. [C97,§2122; SS15,§2125; C24, 27, 31, 35, 39,§§**8037, 8082**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§479.2, 479.48; 66GA, ch 1164,§45]

Referred to in §§307.26(9), 327D.40

327D.3 Duty to furnish cars and transport freight. Every railway corporation shall upon reasonable notice, and within a reasonable time, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight, and receive and transport such freight with all reasonable dispatch, and provide and keep suitable facilities for the receiving and handling thereof at any depot on the line of its road. [C97,§2116; S13,§2116; C24, 27, 31, 35, 39, §**8038**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.3]

40ExGA, HF 196,§2, editorially divided
Referred to in 327D.5, 327D.40

327D.4 Connections. If a railroad corporation in this state refuses to connect by proper switches or tracks with the tracks of another railroad corporation or refuses to receive, transport, load, discharge, reload or return cars furnished by another connecting railroad corporation, the board shall hold a hearing on the dispute. Upon conclusion of the hearing, the board shall issue an order to resolve the dispute. The order may include the allocation of costs between the parties. [C97,§§2113, 2116; S13,§§2113, 2116; C24, 27, 31, 35, 39,§§**7876, 8039**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§474.13, 479.4; 66GA, ch 1164,§46]

Referred to in §§327D.5, 327D.40
Section 479.5, Code 1975, repealed by 66GA, ch 170,§33

327D.5 Burden of proof. In any action in court, or before the department, brought against a railroad corporation for the purpose of enforcing rights arising under the provisions of this and sections 327D.3 and 327D.4 the burden of proving that the provisions thereof have been complied with by such railroad corporation, shall be upon such railroad corporation. [S13,§2116; C24, 27, 31, 35, 39, §**8041**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.6; 66GA, ch 170,§22]

Referred to in §327D.40
Section 479.7, Code 1975, repealed by 66GA, ch 1164,§98

327D.6 Reserved.

327D.7 Transporting persons or property for hire — limitation on liability. A contract, receipt or rule shall not exempt any person engaged in transporting for hire from the liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt or rule been made except as may be provided for liability for property loss by order of the board. [C73,§2184; C97,§3136; C24, 27, 31, 35, 39,§**8043**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.8; 66GA, ch 1164,§47]

Referred to in §327D.40

327D.8 Preference prohibited—exception. It shall be unlawful for any common carrier to give any preference or advantage to, or entail any prejudice or disadvantage upon any particular person, company, firm, corporation, locality, or any class of business or traffic, by any rate, rule, regulation, or practice whatsoever. This provision shall not prevent any common carrier from giving preference as to time of shipping livestock, live poultry, uncured meats, fruits, vegetables, or other perishable property. [C97,§2125; SS15,§2125; C24, 27, 31, 35, 39,§**8044**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.9]

Referred to in §327D.40

327D.9 Interchange of traffic — switching and forwarding. Common carriers shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and switching of cars and property to and from their several lines, and to and from other lines and places connected therewith; and shall not discriminate in their accommodations, rates, and charges between such connecting lines. Any common carrier may be required to switch and transfer cars for another, for the purpose of being loaded or unloaded, upon such terms and conditions as may be ordered by the board. [C97,§2125; SS15, §2125; C24, 27, 31, 35, 39,§**8045**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.10; 66GA, ch 170,§23, ch 1164,§48]

Referred to in §327D.40

327D.10 Unjust discrimination—exceptions. If any common carrier subject to the provisions of this chapter shall directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic, such common carrier shall be guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful; but this section shall not be construed as prohibiting a less rate per one hundred pounds in a carload lot than is charged, collected, or received for the same kind of freight in less than a carload lot. [C97, §2124; C24, 27, 31, 35, 39,§**8046**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.11]

Referred to in §327D.40

327D.11 Reconsignment without charge. Upon request of the consignee it shall be the duty of any common carrier of freight to reconsign, rebill, and reship from any place of destination within the state to any other place within the state any property in carload lots brought to said place of destination over its own or other line and treat the same in all respects as an original shipment between such places, provided the charges to first place of destination are paid or secured to the satisfaction of such corporation. [S13,§2157-r; C24, 27, 31, 35, 39,§**8047**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 479.12; 66GA, ch 1164,§49]

Referred to in §327D.40

327D.12 Charges to be reasonable. All rates and charges made for any service rendered or to be rendered in the transportation of passengers or property in this state, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just. [C97,§2123; C24, 27, 31, 35, 39,§**8048**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.13; 66GA, ch 1164,§50]

Referred to in §327D.40

327D.13 Long and short haul—fair rate. No common carrier, subject to the provisions of this chapter, shall charge more for the transportation of persons or property to or from any point on its railroad than a fair and just rate or charge.

No such carrier shall charge or receive any greater compensation in the aggregate for the transportation of persons or of a like kind of property for a shorter than for a longer distance, over the same line or route in the same direction within this state, the shorter being included within the longer distance, or charge any greater compensation as a through rate than the aggregate of the intermediate rates; but this shall not be construed as authorizing any such common carrier to charge or receive as great a compensation for a shorter as for a longer distance or haul; provided that upon application to the board such common carrier may, in special cases, after investigation, be authorized by the board to charge less for a longer than for a shorter distance for the transportation of persons or property; and the board may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation and requirement of this section; but in exercising the authority conferred upon it in this proviso, the board shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and, if a circuitous rail line or route is, because of such circuity, granted authority to meet the charges of a more direct line or route to or from competitive points and to maintain higher charges to or from intermediate points on its line, the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points. [C97,§2126; C24, 27, 31, 35, 39,§**8049**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.14; 66GA, ch 1164,§51]

Referred to in §327D.40

327D.14 Pooling contracts. It shall be unlawful for any common carrier subject to the provisions of this chapter to enter into any contract, agreement, or combination with any other common carrier for the pooling of freight of different and competing railroads, or divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof without the approval of the board when determined to be in the public interest by the board; and in case of an agreement for the pooling of freights without such approval, each day of its continuance shall be a separate offense. [C73, §§1297–1299; C97,§2127; C24, 27, 31, 35, 39, §**8050**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.15; 66GA, ch 1164,§52]

Referred to in §327D.40

327D.15 Continuous shipments. It shall be unlawful for any common carrier subject to the provisions of this chapter to enter into any combination, contract or agreement, expressed or implied, to prevent, by change of time schedules, carriage in different cars, or, by other means or device, the carriage of freights from being continuous from place of shipment to the place of destination in the state; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage, or to evade any of the provisions of this chapter. [C97,§2129; C24, 27, 31, 35, 39,§**8051**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.16]

Referred to in §327D.40

327D.16 Violations—treble damages. In case any common carrier subject to the provisions of this chapter shall do, cause, or permit to be done anything herein prohibited or declared to be unlawful, or shall willfully fail to do anything in this chapter required to be done, it shall be liable to the person injured thereby for three times the amount of damages sustained in consequence, together with costs of suit, and a reasonable attorney's fee to be fixed by the court, on appeal or otherwise, which shall be taxed and collected as part of the costs in the case; but in all cases demand in writing shall be made of the carrier for the money damages sustained before action is brought for a recovery under this section, and no action shall be brought until the expiration of fifteen days after such demand. [C97,§2130; C24, 27, 31, 35, 39,§8052; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.17; 66GA, ch 1164,§53]

Referred to in §327D.40

327D.17 Criminal liability. Except as otherwise specially provided for in this chapter, and unless relieved from the consequences of a violation of the law as provided herein, any common carrier subject to the provisions hereof, or, when such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party shall willfully do or cause to be done, or shall willfully suffer or permit to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this chapter required to be done, or shall cause or willingly suffer or permit any act, matter, or thing, so directed or required by the provisions of this chapter to be done, not to be so done; or shall aid or abet any such omission or failure, or shall be guilty of any infraction of the provisions of this chapter, or shall aid or abet therein, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not more than five thousand nor less than five hundred dollars for each offense. [C97,§2132; C24, 27, 31, 35, 39,§8053; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.18]

Referred to in §327D.40
Section 479.19, Code 1975, repealed by 66GA, 1164,§98

327D.18 Reserved.

327D.19 Discrimination — prima-facie evidence. The provisions of the following subsections shall constitute prima-facie evidence of undue and unjust discriminating rates, charges, accommodations, collections or receipts.

1. Charge, collect, or receive for the transportation of any passenger or freight of any description upon its railroad, for any distance within the state, a greater amount of toll or compensation than is at the same time charged, collected or received for the transportation in the same direction of any passenger or like quantity of freight of the same class, over a greater distance of the same railway; or

2. Charge, collect, or receive at any point upon its road a higher rate of toll or compensation for receiving, handling, or delivering freight of the same class and quantity than it shall at the same time charge, collect, or receive at any other point upon the same railway; or

3. Charge, collect, or receive for the transportation of any passenger or freight of any description over its railway a greater amount as toll or compensation than shall at the same time be charged, collected, or received by it for the transportation of any passenger or like quantity of freight of the same class being transported in the same direction over any portion of the same railway of equal distance; or

4. Charge, collect, or receive from any person a higher or greater amount of toll or compensation than it shall at the same time charge, collect, or receive from any other person for receiving, handling, or delivering freight of the same class and like quantity at the same point upon its railway; or

5. Charge, collect, or receive from any person for the transportation of any freight upon its railway a higher or greater rate of toll or compensation than it shall at the same time charge, collect, or receive from any other person or persons for the transportation of the like quantity of freight of the same class being transported from the same point in the same direction over equal distances of the same railway; or

6. Charge, collect, or receive from any person for the use and transportation of any railway car or cars upon its railroad for any distance, a greater amount of toll or compensation than is at the same time charged, collected, or received from any other person for the use and transportation of any railway car of the same class or number, for a like purpose, being transported in the same direction over a greater distance of the same railway; or

7. Charge, collect, or receive from any person for the use and transportation of any railway car upon its railway a higher or greater compensation in the aggregate than it shall, at the same time, charge, collect, or receive from any other person for the use and transportation of any railway car of the same class for a like purpose, being transported from the same original point in the same direction, over an equal distance of the same railway; or

8. Charge any undue or unjust discriminatory rates, charges, accommodations, collections or receipts whether made directly or indirectly by means of a rebate or other method. [C97,§2145; S13,§2145; C24, 27, 31, 35, 39,§8055; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.20; 66GA, ch 1164,§§54–56]

Referred to in §327D.40
S13,§2145, editorially divided
Section 479.21, Code 1975, repealed by 66GA, ch 170,§33
Sections 479.22 to 479.28, Code 1975, repealed by 66GA, ch 1164,§98

327D.20 to 327D.26 Reserved.

327D.27 Penalty for discrimination. Any corporation making any unjust discrimination as to freight rates, or the rates for the use and transportation of railway cars, or in receiving, handling, or delivering freight, shall, upon conviction thereof, be fined in any sum not less than one thousand nor more than five thousand dollars for the first offense, and for each subsequent offense not less than five thousand nor more than ten thousand dollars—such fine to be imposed in a criminal prosecution by indictment; or shall be subject to the liability prescribed in section 327D.28, to be recovered as therein provided. [C97,§2147; C24, 27, 31, 35, 39,§**8064**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.29; 66GA, ch 170,§27, ch 1164,§57]

Referred to in §§327D.28, 327D.40

327D.28 Civil forfeiture. Any railway corporation making any unjust discrimination as to passenger or freight rates, or the rates for the use and transportation of railway cars, or in receiving, handling, or delivering freight, shall forfeit and pay to the state not less than one thousand nor more than five thousand dollars for the first offense, and not less than five thousand nor more than ten thousand dollars for each subsequent offense, to be recovered in a civil action in the name of the state; and the release from liability or penalty provided for in this chapter shall not apply to a criminal prosecution under section 327D.27 or to a civil action under this section. [C97,§2148; C24, 27, 31, 35, 39,§**8065**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.30; 66GA, ch 1164,§58]

Referred to in §§327D.27, 327D.40

327D.29 Free or reduced freight rates permitted. Nothing in this chapter shall apply to free or reduced rates for the transportation, storage or handling of:

1. Property for the United States, this state, or municipal governments.

2. Materials to be used by public authorities in constructing or maintaining public highways outside of the corporate limits of cities.

3. Property for charitable purposes.

4. Property for exhibition at fairs or expositions.

5. Private property or goods for the family use of such employees as are entitled to free passenger transportation. [C97,§2150; C24, 27, 31, 35, 39,§**8066**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.31]

Referred to in §327D.40

327D.30 to 327D.39 Reserved.

JOINT RATES

327D.40 Authorization. Sections 327D.1 to 327D.29 of this chapter shall not be construed to prohibit the making of rates by two or more railway companies for the transportation of property over two or more of their respective lines within the state; and a less charge by each of said companies for its portion of such joint shipment than it charges for a shipment for the same distance wholly over its own line within the state shall not be considered a violation of said chapter, and shall not render such company liable to any of the penalties thereof. [C97,§2152; C24, 27, 31, 35, 39,§**8067**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.32]

C97,§2152, editorially divided
Section 479.33, Code 1975, repealed by 66GA, ch 1164,§98

327D.41 Reserved.

327D.42 Connecting lines. Every owner or consignor of freight to be transported by railway from any point within this state to any other point within this state shall have the right to require that the same shall be transported over two or more connecting lines of railway, to be transferred at the connecting point or points without change of car or cars if in carload lots, and with or without change of car or cars if in less than carload lots, whenever the distance from the place of shipment to destination, both being within this state, is less over two or more connecting lines of railway than it is over a single line of railway, or where the initial line does not reach the place of destination; and it shall be the duty, upon the request of any such owner or consignor of freight, made to the initial company, of such railway companies whose lines so connect, to transport the freight without change of car or cars if the shipment be in a carload lot or lots, and with change of car or cars if it be in less than carload lots, from the place of shipment to destination, whenever the distance from the place of shipment to destination, both being within this state, is less than the distance over a single line, or when the initial line does not reach the point of destination, for a reasonable joint through rate. [C97,§2153; S13,§2153; C24, 27, 31, 35, 39, §**8069**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.34; 66GA, ch 170,§28]

327D.43 Routing intrastate shipments. It shall be the duty of every common carrier subject to the provisions of this chapter, when shipments are tendered for transportation between points in this state, to route such shipments from shipping point to point of destination over the cheapest available route between such points except in cases where the shipper, in shipping orders or bills of lading, specifically designates a particular route over which it is desired such shipments shall be moved. [C31, 35,§8069-d1; C39,§**8069.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.35]

Section 479.36, Code 1975, repealed by 66GA, ch 1164,§98

327D.44 Reserved.

327D.45 Schedules of joint rates. The department shall make and publish a schedule of joint through railway rates for such traffic and on such routes as in its judgment the fair and reasonable conduct of business requires shall be done by carriage over two or more lines of railway, and will promote the in-

terests of the people of this state. [C97,§2155; S13,§2155; C24, 27, 31, 35, 39,§8071; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.37]

S13,§2155, editorially divided

Sections 479.38 to 479.44, Code 1975, repealed by 66GA, ch 1164,§98

327D.46 to 327D.52 Reserved.

Section 479.45, Code 1975, repealed by 66GA, ch 170,§33

327D.53 Division of joint rates. Before the promulgation of such rates, the board shall notify the railroad corporations interested in the schedule of joint rates fixed, and give them a reasonable time to agree upon a division of the charges provided. If such corporations fail to agree upon a division, and to notify the board thereof, the board shall, after a hearing of the corporations interested, decide the same, taking into consideration the value of terminal facilities and all the circumstances of the haul, and the division so determined by it shall, in all controversies or actions between the railroad corporations interested, be prima-facie evidence of a just and reasonable division thereof. [C97,§2156; C24, 27, 31, 35, 39, §8080; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.46; 66GA, ch 1164,§59]

Section 479.47, Code 1975, repealed by 66GA, ch 1164,§98

327D.54 to 327D.64 Reserved.

RATE SCHEDULES

327D.65 Reserved.

Section 479.48, Code 1975, repealed by 66GA, ch 1164,§93

327D.66 Rate schedules — filing and public access. Every common carrier, subject to the provisions of this chapter shall file with the board and shall print schedules showing the rates for the transportation within this state of persons and property from each point upon its route to all other points thereon and from all points upon its route to all points upon every other route leased, operated, or controlled by it; and from each point on its route or upon any route leased, operated, or controlled by it to all points upon the route of any other common carrier, whenever a through route and a joint rate shall have been established or ordered between any two such points. If no joint rate over a through route has been established, the schedules of the several carriers in such through route shall show the separately established rates, applicable to the through transportation.

Subject to rules which the board shall adopt, the schedules shall be plainly printed and a copy of often used schedules shall be kept by every carrier readily accessible to and for inspection by the public in every station and office of the carrier where passengers or property are received for transportation when the station or office is in the charge of an agent. A notice printed in bold type and stating that the often used schedules are on file with the agent and open to public inspection, and that the agent will assist any person to determine from the schedule any rate shall be posted by the carrier in public and conspicuous places in each station or office. The board shall, by rule, provide that adequate public access to schedules not often used be provided in a different manner. [C73,§1304; C97,§2128; C24, 27, 31, 35, 39,§§8083, 8085, 8087; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§479.49, 479.51, 479.53; 66GA, ch 1164,§60]

327D.67 Detailed requirements. The schedules shall plainly state the places between which such property and persons will be carried, and, separately, all terminal charges, storage charges, refrigeration charges, and all other charges which the board may require to be stated, all privileges or facilities granted or allowed, and all rules which may in any way change, affect, or determine any part or the aggregate of such rates, or the value of the various services rendered to the passenger, shipper, or consignee.

The form of every schedule shall be prescribed by the board and shall conform, in the case of common carriers, as nearly as may be to the form prescribed by the interstate commerce commission. [C73,§1304; C97,§2128; C24, 27, 31, 35, 39,§8084, 8088; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§479.50, 479.54; 66GA, ch 1164,§61]

Section 479.51, Code 1975, repealed by 66GA, ch 1164,§98

327D.68 Reserved.

327D.69 Right to inspect. Any or all of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person. [C24, 27, 31, 35, 39,§8086; C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.52]

Sections 479.53 and 479.54, Code 1975, repealed by 66GA, ch 1164,§98

327D.70 and 327D.71 Reserved.

327D.72 Interstate commerce schedules. When schedules and classifications required by the interstate commerce commission contain in whole or in part the information required by the provisions of this chapter, the posting and filing of a copy of such schedules and classifications with the board shall be deemed a compliance with the requirements of this chapter insofar as such schedules and classifications contain the information required by this chapter, and any additional or different information may be posted and filed in a supplementary schedule. [C24, 27, 31, 35, 39,§8089; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.55; 66GA, ch 1164,§62]

327D.73 Partial schedules. In lieu of filing its often used schedule in each station or office, any common carrier may file with the board and keep posted at such stations or offices, schedules of such rates as are applicable at, to, and from the places where such stations or offices are located subject to rules adopted by the board. [C97,§2128; C24, 27, 31, 35, 39,§8090; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.56; 66GA, ch 1164,§63]

327D.74 Changes in schedules. The board shall have power from time to time, in its discretion, to determine and prescribe by order such changes in the form of the schedules referred to in this chapter as it may find expedient, and to modify the requirements of any of its orders or rules in respect thereto. [C97,§2128; C24, 27, 31, 35, 39,§**8091**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.57; 66GA, ch 1164,§64]

327D.75 Joint tariff schedules. The names of the several common carriers which are parties to any joint tariff shall be specified in the schedule showing the same. Unless otherwise ordered by the board, a schedule showing such joint tariff need be filed with the board by only one of the parties if there is also filed with the board, in such form as the board may require, a concurrence in such joint tariff by each of the other parties thereto. [C97,§2128; C24, 27, 31, 35, 39,§**8092**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.58; 66GA, ch 1164,§65]

Section 479.59, Code 1975, repealed by 66GA, ch 1164, §98

327D.76 Reserved.

327D.77 Transportation prohibited. No common carrier shall undertake to perform any service nor engage or participate in the transportation of persons or property between points within this state, until its schedule of rates shall have been filed and posted as herein provided. [C24, 27, 31, 35, 39,§**8094**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.60; 66GA, ch 1164,§66]

327D.78 Change in rate. Unless the board otherwise orders, no change shall be made by any common carrier in any rate, except after thirty days' notice to the board and to the public as herein provided. The board shall adopt rules to insure public notice in any action instituted under this section. [C97, §2128; C24, 27, 31, 35, 39,§**8095**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.61; 66GA, ch 1164,§67]

327D.79 Notice of change. Such notice shall be given by filing with the board new schedules or supplements stating plainly the change to be made in the schedule then in effect, and the time when the change will go into effect. [C97,§2128; C24, 27, 31, 35, 39,§**8096**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.62; 66GA, ch 1164,§68]

327D.80 Changes without notice. The board, for good cause shown, may allow changes without requiring thirty days' notice by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published. [C97,§2128; C24, 27, 31, 35, 39, §**8097**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.63; 66GA, ch 1164,§69]

327D.81 Indicating change. When any change is proposed in any rate, such proposed change shall be plainly indicated on the new schedule filed with the board, by some typographic character immediately preceding or following the item. [C97,§2128; C24, 27, 31, 35, 39,§**8098**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.64; 66GA, ch 1164,§70]

327D.82 Schedule charge mandatory — refunds and discrimination. No common carrier, except as otherwise provided, shall charge, demand, collect, or receive a greater or less or different compensation for the transportation of persons or property or for any service in connection therewith than the rates, fares, and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified except upon order of the courts or of the board as may be now or hereafter by law provided, nor extend to any shipper or person any privilege or facility in the transportation of passengers or property except such as are specified in such schedules. [C97,§2128; C24, 27, 31, 35, 39,§**8099**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.65; 66GA, ch 1164,§71]

327D.83 Power to revise rates. Whenever there shall be filed with the board any schedule stating a rate, the board may, either upon complaint or upon its own motion, immediately, and, if it so orders, without answer or formal pleadings by the interested common carrier, enter upon a hearing concerning the propriety of such rate. [C24, 27, 31, 35, 39,§**8100**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.66; 66GA, ch 1164, §72]

327D.84 Suspension of rates. Pending the hearing and the decision thereon, such rate shall not go into effect; but the period of suspension of such rate shall not extend more than one hundred twenty days beyond the time when such rate would otherwise go into effect. [C24, 27, 31, 35, 39,§**8101**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.67; 66GA, ch 1164,§73]

327D.85 Decision. On such hearing the board shall establish the rates, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. [C24, 27, 31, 35, 39,§**8102**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.68; 66GA, ch 1164,§74]

327D.86 When rates effective. All such rates not so suspended shall, on the expiration of thirty days from the time of filing the same with the board or of such less time as the said board may grant, go into effect and be the established and effective rates, subject to the power of the board after a hearing had upon its own motion or upon complaint, as herein provided, to alter or modify the same. [C24, 27, 31, 35, 39,§**8103**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.69; 66GA, ch 1164,§75]

327D.87 Posting and filing of revised schedules. After such changes have been authorized by the board, copies of the new or revised schedules shall be posted or filed as provided in this chapter within such reasonable time

as may be fixed by the board. [C24, 27, 31, 35, 39,§**8104**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.70; 66GA, ch 1164,§76]

Section 479.71, Code 1975, repealed by 66GA, ch 1164,§98

327D.88 Reserved.

327D.89 Complaint of violation. When any person, city or county shall make complaint to the board that the rate charged or published by any railway corporation, or the maximum rate fixed by law, is unreasonably high or discriminating, the board may investigate the matter, and, hold a hearing, giving the parties notice of the time and place of the hearing. [C97,§2139; C24, 27, 31, 35, 39,§**8106**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.72; 66GA, ch 1164,§77]

327D.90 Hearing—evidence. At the time of the hearing the board shall receive any evidence and listen to any arguments presented by either party relevant to the matter under investigation, and the burden of proof shall not be upon the person making the complaint. The complainant shall add to the showing made at such hearing whatever information the complainant may then have, or can obtain from any source, including schedules of rates actually charged by any railway corporation for substantially the same kind of service, in this or any other state. The lowest rates published or charged by any railway corporation for substantially the same kind of service whether in this or another state, shall, at the instance of the person complaining, be accepted as prima-facie evidence of a reasonable rate for the services under investigation; and if the railway corporation complained of is operating a line of railroad beyond the state, or has a traffic arrangement with any such railway corporation, the same shall be taken into consideration in determining what is a reasonable rate; if it be operating a line of railway beyond the state, the rate charged or established for substantially a similar or greater service by it in another state shall also be considered. The board shall establish just and reasonable rates, in whole or in part or modified as the board shall determine. [C97,§2140; C24, 27, 31, 35, 39,§**8107**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.73; 66GA, ch 1164, ch 78]

Section 479.74, Code 1975, repealed by 66GA, ch 1164,§98

327D.91 to 327D.101 Reserved.

LIVESTOCK

Sections 479.75 to 479.79, Code 1975, repealed by 66GA, ch 170,§33

327D.102 Movement of livestock—burden of proof. It is hereby made the duty of all common carriers of freight within this state to move cars of livestock at the highest practicable speed consistent with reasonable safety and the reasonable movement of its general traffic. The burden of proof that cars of livestock are so moved shall be upon the carrier, and proof that such cars were moved according to schedule or time table shall not be prima-facie evidence that they were moved at the highest practicable speed consistent with reasonable safety. [S13,§2157-s; C24, 27, 31, 35, 39,§**8114**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.80]

327D.103 to 327D.112 Reserved.

Sections 479.81 to 479.88, Code 1975, repealed by 66GA, ch 170,§33

PASSENGER RATES

Sections 479.89 and 479.90, repealed by 64GA, ch 1019,§7
Section 479.91 repealed by 64GA, ch 84,§99
Section 479.92 repealed by 64GA, ch 1019,§7
Sections 479.93 to 479.97, Code 1975, repealed by 66GA, ch 170,§33

327D.113 Names of free pass beneficiaries reported. Every common carrier of passengers within the provisions of this chapter shall, whenever so requested by the department, file with the department a sworn statement showing the names of all persons within this state holding, or to whom during the preceding year such carrier issued, furnished, or gave a free ticket, free pass, free transportation, or a discriminating reduced rate, except wage earners of common carriers in their ordinary employment and families of such wage earners, and disclosing such further information as will enable the department to determine whether the person to whom it was issued was within the exception of said provisions. [S13,§2157-j; C24, 27, 31, 35, 39,§**8132**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.98; 66GA, ch 170, §29]

327D.114 Passenger tickets — redemption. Every railroad corporation shall redeem in whole or in part any unused passenger ticket at a rate equal to the transportation value of the unused portion. Any redemption shall be made not more than forty-five days from the date of the refund request. [S13,§2128-a; C24, 27, 31, 35, 39,§**8133**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.99; 66GA, ch 1164,§79]

Referred to in §327D.116
Section 479.100, Code 1975, repealed by 66GA, ch 1164,§98

327D.115 Reserved.

327D.116 Violations. Any railroad company, corporation, person, or persons, who as common carriers shall sell or issue tickets as set forth in section 327D.114, and shall refuse or neglect to redeem the same, as by said section provided, within ten days of date of demand, shall forfeit and pay to the owner of such ticket the purchase price of said ticket, and the further sum of one hundred dollars. [S13,§2128-c; C24, 27, 31, 35, 39,§**8135**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.101]

Section 479.102, Code 1975, repealed by 66GA, ch 170,§33

327D.117 to 327D.126 Reserved.

WEIGHING OF COAL

327D.127 Bulk commodities in car lots. Every person engaged in operating any railroad within the state shall maintain in good order, track scales of sufficient capacity to weigh all carloads of bulk commodities which the department may specify that may be transported over the railroad, and shall weigh the same at the request of any owner, consignor,

or consignee of such commodities, and furnish written certificates of such weights to such owner, consignor, or consignee. [S13,§2157-l; C24, 27, 31, 35, 39,**§8137**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.103; 66GA, ch 1164,§80]

Referred to in §§327D.131, 327D.132

327D.128 Commodity weighing — disagreement. If a railroad corporation and the owner, consignor, or consignee of bulk commodities which are specified by the department cannot reach agreement relative to the weighing of such commodities, appeal may be made to the board which shall, after hearing, issue such order as may be equitable to all parties. The order may include, but not be limited to allocation of installation costs and other costs and place and manner of weighing. The board may adopt rules for the administration of this section. [66GA, ch 1164,§81]

Referred to in §§327D.131, 327D.132

327D.129 Weight at destination—fee. Such bulk commodities designated by the department shall be weighed at destination upon request of consignee when there are track scales at such point. If not equipped with track scales at such point, then at nearest practicable point agreed to by both parties. A reasonable charge may be made for such weighing on request. [S13,§2157-n; C24, 27, 31, 35, 39,**§8139**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.105; 66GA, ch 1164, §82]

Referred to in §§327D.131, 327D.132

327D.130 Weighing commodities. The department may adopt rules establishing standards by which bulk commodities specified by the department shall be weighed. The rules shall include safety standards, accuracy, style and content of applicable forms and certificates to be used for weighing. Certificates of weight shall be furnished to the consignee and settlement of freight charges shall be based upon those weights but weight shall not be warranted for any other commercial purpose unless so stated upon its face. The department may enter into agreements with the department of agriculture for the administration of part or all of this section. [S13, §2157-o; C24, 27, 31, 35, 39,**§8140**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.106; 66GA, ch 1164,§83]

Referred to in §§327D.131, 327D.132

327D.131 Prima-facie evidence. Certificates mentioned in sections 327D.127 to 327D.132 shall be prima-facie evidence of the facts therein recited in any action arising between consignors and consignees and common carriers. [S13,§2157-p; C24, 27, 31, 35, 39,**§8141**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.107]

Referred to in §327D.132

327D.132 Violation—penalty. Any common carrier operating in this state violating any of the provisions of sections 327D.127 to 327D.131 by neglecting or refusing to weigh cars or to furnish certificates of weights as therein provided shall be guilty of a misdemeanor and shall be, upon conviction thereof, fined in the sum of not more than one hundred twenty-five dollars for each and every violation. [S13, §2157-q; C24, 27, 31, 35, 39,**§8142**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.108]

Referred to in §327D.131
Sections 479.109 to 479.115, Code 1975, repealed by 66GA, ch 1164,§98

327D.133 to 327D.159 Reserved.

ADJUSTMENT OF CLAIMS

327D.160 Rules. The board shall prescribe by rule, pursuant to chapter 17A, such rules as may be reasonably necessary for the orderly disposition of claims arising from loss or damage to property tendered for transportation. [S13, §2074-c; C24, 27, 31, 35, 39,**§8150**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.116; 66GA, ch 1164,§84]

Section 479.116, Code 1975, repealed by 66GA, ch 1164,§84
Sections 479.117 and 479.118, Code 1975, repealed by 66GA, ch 1164,§98

327D.161 to 327D.172 Reserved.

TERMINATING CARRIER'S LIABILITY

327D.173 Notice of arrival of shipment. All companies, corporations, or individuals that now, or hereafter, may own or operate any railroads, in whole or in part, in the state, and all persons, firms, or companies, and all associations of persons, whether incorporated or not, that shall do business as a common carrier upon any of the lines of railway in this state, shall be and remain liable as a common carrier upon all less than carload shipments until the consignee shall be notified of the arrival of the shipment and has reasonable time and opportunity to receive same. [SS15,§2074-f; C24, 27, 31, 35, 39,**§8153**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.119]

SS15,§2074-f, editorially divided
Referred to in §327D.174

327D.174 Notice prescribed. A deposit in the United States post office or public mailing box of a written notice addressed to the consignee at the address given upon the bill of lading will constitute service of the notice required by section 327D.173, and forty-eight hours from the date of the mailing of such notice shall be a reasonable time in which to receive said shipment. [SS15,§2074-f; C24, 27, 31, 35, 39,**§8154**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.120]

Section 479.121, Code 1975, repealed by 66GA, ch 1164,§98

327D.175 to 327D.185 Reserved.

NEGLIGENCE OF EMPLOYEES

327D.186 Liability for negligence of employees. Every corporation operating a railway shall be liable for all damages sustained by any person, including employees of such corporation, in consequence of the neglect of the agents, or by any mismanagement of the engineers, or other employees thereof, and in consequence of the willful wrongs, whether of commission or omission, of such agents, engineers, or other employees, when such wrongs are in any manner connected with the use and

operation of any railway on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding. [C73,§1307; C97,§2071; S13,§2071; C24, 27, 31, 35, 39,§8156; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.122]

Referred to in §§327D.187, 327D.188

327D.187 Relief or indemnity contract. No contract of insurance, relief, benefit, or indemnity in case of injury or death, entered into prior to the injury, between the person so injured and such corporation, or any other person or association acting for such corporation, and no acceptance of any such insurance, relief, benefit, or indemnity by the person injured, his widow, heirs, or legal representatives after the injury, from such corporation, person, or association, shall constitute any bar or defense to any cause of action brought under the provisions of section 327D.186; but nothing contained herein shall be construed to prevent or invalidate any settlement for damages between the parties subsequent to injuries received. [S13,§2071; C24, 27, 31, 35, 39, §8157; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.123]

327D.188 Contributory and comparative negligence. In all actions brought against any railway corporation to recover damages for the personal injury or death of any employee under or by virtue of any of the provisions of section 327D.186, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery; but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. [S13,§2071; C24, 27, 31, 35, 39,§8158; C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.124]

40ExGA, HF 194,§3, editorially divided
Burden of proof, R.C.P. 97

327D.189 Unallowable pleas. No such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier or corporation of any statute enacted for the safety of employees contributed to the injury or death of such employee; nor shall it be any defense to such action that the employee who was injured or killed assumed the risks of his employment. [S13, §2071; C24, 27, 31, 35, 39,§8159; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.125]

327D.190 Damages by fire. Any corporation operating a railway shall be liable for all damages sustained by any person on account of loss of or injury to his property occasioned by fire set out or caused by the operation of such railway. Such damages may be recovered by the party injured in the manner set out in sections 327G.6 to 327G.8 and to the same extent, save as to double damages. [C73,§1289; C97,§2056; C24, 27, 31, 35, 39,§8160; C46, 50, 54, 58, 62, 66, 71, 73, 75,§479.126]

Section 479.127, Code 1975, repealed by 66GA, ch 1164,§98

327D.191 Reserved.

327D.192 Spot checks for hazardous cargo. An employee of the railroad division of the department designated by the director of the department may conduct spot inspections of vehicles subject to registration which are owned or operated by a railroad corporation to determine whether the vehicle is used to transport products or property which may be a safety hazard for the operator of the vehicle subject to registration or any other employee of the railroad corporation who is transported in the vehicle. [66GA, ch 1164,§85]

CHAPTER 327E

GENERAL POWERS OF RAILWAY CORPORATIONS

Referred to in §§307.18, 307.26
Formerly Chapter 476

327E.1 Foreign railway companies.
327E.2 Sale or lease of railroad property.
327E.3 Motorbuses.

327E.1 Foreign railway companies. Any railway corporation organized or created by or under the laws of any other state, owning and operating a line or lines of railroad in such state, may build its road or branches into this state, and shall possess all the powers and privileges, and be subject to the same liabilities, as like corporations organized and incorporated under the laws of this state, if it shall file with the secretary of state a copy of its articles of incorporation, if incorporated under a general law of such state, or a certified copy of the statute incorporating it where the charter thereof was granted by statute. [C97, §2048; C24, 27, 31, 35, 39,§7941; C46, 50, 54, 58, 62, 66, 71, 73, 75,§476.22]

Sections 476.1 to 476.21, Code 1975, Repealed by 66GA, ch 170,§33

327E.2 Sale or lease of railroad property. Any railway corporation may sell or lease its property and franchises to, or make joint running arrangements not in conflict with law with, any corporation owning or operating any connecting railway, and any corporation operating the railway of another shall be liable in the same manner and extent as though

such railway belonged to it. [C73,§1300; C97, §2066; C24, 27, 31, 35, 39,§7942; C46, 50, 54, 58, 62, 66, 71, 73, 75,§476.23]

Referred to in §617.4

Sections 476.24 to 476.26, Code 1975, repealed by 66GA, ch 170,§33

327E.3 Motorbuses. Any person operating a railroad in this state may own and operate any other common carrier subject to applicable state laws. Any such person may purchase and own capital stock and securities of a corporation organized for or engaged in the business of a common carrier. [C31, 35,§7945-c1; C39,§7945.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §476.27; 66GA, ch 1164,§30]

CHAPTER 327F

CONSTRUCTION AND OPERATION OF RAILWAYS

Referred to in §§307.18, 307.26

Formerly Chapter 477

327F.1 Crossing railway, canal or watercourse.
327F.2 Maintenance of bridges—damages.
327F.3 Catwalks and handrails.
327F.4 Rights of riparian owners.
327F.5 Railroad on riparian land or lots.
327F.6 Automatic couplers.
327F.7 Brakes on trains and engines.
327F.8 Reserved.
327F.9 Violations.
327F.10 Nonassumption of risk.
327F.11 Switch engines—safety devices.
327F.12 Exceptions.
327F.13 Violations.
327F.14 Headlights and taillights.
327F.15 Exceptions.
327F.16 Violations.
327F.17 Exceptions.
327F.18 Standard caboose cars.
327F.19 Minimum length — construction — equipment.
327F.20 Violations.
327F.21 to 327F.25 Reserved.
327F.26 Freight offices.
327F.27 Vegetation on right of way.
327F.28 Violations.
327F.29 Enforcement.
327F.30 Power to eject passenger.
327F.31 to 327F.33 Reserved.
327F.34 Windshields on power track cars.
327F.35 Penalty.
327F.36 Screen exhaust fire controls.
327F.37 Sanitation and shelter.
327F.38 Definitions.

327F.1 Crossing railway, canal or watercourse. Any railroad company may build its railway across, over, or under any other railway, canal or watercourse, when necessary, but shall not thereby unnecessarily impede travel, transportation or navigation. It shall be liable for all damages caused by such crossing. [R60,§1325; C73,§1265; C97,§2020; C24, 27, 31, 35, 39,§7946; C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.1]

327F.2 Maintenance of bridges — damages. Every railroad company shall build, maintain, and keep in good repair all bridges, abutments, or other construction necessary to enable it to cross over or under any canal, watercourse, other railway, public highway, or other way, except as otherwise provided by law, and shall be liable for all damages sustained by any person by reason of any neglect or violation of the provisions of this section. [R60,§§1326, 1327; C73,§§1266, 1267; C97,§2021; C24, 27, 31, 35, 39,§7947; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.2]

327F.3 Catwalks and handrails. Any person operating a railroad in this state shall construct and maintain in good repair a catwalk and handrail on at least one side of every railway bridge and trestle which shall be constructed, or the structure of which is renovated in any manner, after January 1, 1976. The catwalk and handrail shall extend the length of the bridge or trestle. [66GA, ch 230,§1]

327F.4 Rights of riparian owners. All owners or lessees of lands or lots situated upon the Iowa banks of the Mississippi or Missouri rivers upon which any business is carried on which is in any way connected with the navigation of either of said rivers, or to which such navigation is a proper or convenient adjunct, are authorized to construct and maintain in front of their property, piers, cribs, booms, and other proper and convenient erections and devices for the use of their respective pursuits, and the protection and harbor of rafts, logs, floats, and watercraft, in such manner as to create no material or unreasonable obstruction to the navigation of the stream, or to a similar use of adjoining property. [C97,§2032; C24, 27, 31, 35, 39,§7948; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.3]

Referred to in §§327F.5, 420.165

327F.5 Railroad on riparian land or lots. No person or corporation shall construct or operate any railroad or other obstruction between the lots or lands referred to in section 327F.4 and either of said rivers, or upon the shore or margin thereof, unless the injury and damage to owners or lessees occasioned thereby shall

be first ascertained and paid in the manner provided for taking private property for works of internal improvement. [C97,§2033; C24, 27, 31, 35, 39,§**7949**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.4]

Referred to in §420.165
Condemnation procedure, ch 472
Sections 477.5 to 477.11, Code 1975, repealed by 66GA, ch 170,§33

327F.6 Automatic couplers. No corporation, company, or person operating a railroad and no car manufacturing or transportation company using or leasing cars shall operate upon any railroad in this state any car that is not equipped with safety automatic couplers, so constructed as to enable a person to couple and uncouple them without going between cars. [C97,§§2079, 2080; S13,§2080; C24, 27, 31, 35, 39,§**7957**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.12]

Referred to in §§327F.9, 327F.10

327F.7 Brakes on trains and engines. A train or engine shall not be operated in this state which does not have an operational braking system which complies with Title 45, sections 1 et seq., U.S.C. [C97,§§2081, 2082; C24, 27, 31, 35, 39,§§**7958, 7959**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§477.13, 477.14; 66GA, ch 1164, §31]

Referred to in §§327F.9, 327F.10
Section 477.14, Code 1975, repealed by 66GA, ch 1164, §98

327F.8 Reserved.

327F.9 Violations. Any railroad corporation operating a train or engine using any freight car, caboose, or other car contrary to the provisions of sections 327F.6 and 327F.7 shall be subject to a fine of not less than five hundred nor more than one thousand dollars for each and every offense and moneys so collected shall be credited to the railroad assistance fund. [C97,§2083; C24, 27, 31, 35, 39, §**7960**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.15; 66GA, ch 1164,§32]

C97,§2083, editorially divided

327F.10 Nonassumption of risk. Any railway employee who may be injured by the running of such engine, train, or car contrary to the provisions of sections 327F.6 and 327F.7 shall not be considered as waiving his right to recover damage by continuing in the employ of the corporation, company, or person operating such engine, train, or cars. [C97,§2083; C24, 27, 31, 35, 39,§**7961**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.16]

327F.11 Switch engines—safety devices. It shall be unlawful for any railway or terminal transfer company, or any corporation operating locomotives in switching or yard service, to operate, or permit the same to be operated, unless said locomotives are equipped with headlight on both front and rear of engine, when operated between sunset and sunrise, and all such engines shall be equipped with a footboard of substantially uniform height, width, and length, securely fastened, and a similar footboard on the rear end of engines, upon which employees may stand or ride when their duties require them so to do, and that a substantial grab rail or rod be securely fastened at each end and in the center, at a convenient height for employees to reach and hold on to with their hands, and also across the rear end of the engine. [S13,§2083-c; C24, 27, 31, 35, 39,§**7962**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.17; 66GA, ch 170,§6]

S13,§2083-c, editorially divided
Referred to in §§327F.12, 327F.13

327F.12 Exceptions. The provisions of section 327F.11 shall not apply to switching or yard service. [S13,§2083-c; C24, 27, 31, 35, 39, §**7963**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.18; 66GA, ch 1164,§33]

327F.13 Violations. Any person, railway company, terminal transfer, or other corporation or company who violates any of the provisions of section 327F.11 shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars or more than five hundred dollars for any such violation, and each day that every such engine is operated shall constitute a separate and distinct violation of said section. [S13,§2083-d; C24, 27, 31, 35, 39,§**7964**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.19]

Sections 477.20 and 477.21, Code 1975, repealed by 66GA, ch 170,§33

327F.14 Headlights and taillights. It shall be the duty of every person, firm, or corporation owning or operating any track power cars, engines or locomotives during the nighttime by employees in the performance of work, to equip such power track car, engines or locomotives with an electric headlight of sufficient candlepower, that will enable the operator to see an obstruction on the track for a distance of eight hundred feet in clear weather also two rear electric red lights of such construction and sufficient candlepower to be plainly visible. [S13,§2083-g; C24, 27, 31, 35, 39,§**7967**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.22; 66GA, ch 170,§7]

Referred to in §§327F.15, 327F.16
S13,§2083-g, editorially divided

327F.15 Exceptions. Section 327F.14 shall not be construed to apply to power cars or other equipment used exclusively for switching purposes, nor to engines or other equipment running after sunrise and before sunset. [S13,§2083-g; C24, 27, 31, 35, 39,§**7968**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.23; 66GA, ch 170,§8]

327F.16 Violations. Any person, firm, or corporation owning such line of railway or the equipment operated thereon, who shall cause or permit any locomotive, power vehicle, power car, or other equipment used as the equivalent thereof, to be operated without being equipped with the headlight required by the provisions of section 327F.14 shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than

one hundred dollars nor more than five hundred dollars for each offense. [S13,§2083-h; C24, 27, 31, 35, 39,§7969; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.24]

S13,§2083-h, editorially divided

327F.17 Exceptions. No punishment shall be imposed for the operation of any such locomotive or the equivalent thereof without such headlight, when such locomotive or track power work car was properly equipped with such headlight at the commencement of the trip, providing it is shown that such headlight was in good and sufficient working condition when the trip was begun and became disabled during the trip. [S13,§2083-h; C24, 27, 31, 35, 39, §7970; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.25]

327F.18 Standard caboose cars. The provisions of sections 327F.19 and 327F.20 shall apply to any person while engaged as a common carrier in the transportation by rail. [S13, §2083-i; C24, 27, 31, 35, 39,§7971; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.26; 66GA, ch 170,§9, ch 1164,§34]

Referred to in §327F.20

327F.19 Minimum length — construction — equipment. It shall be unlawful, except as otherwise provided in this chapter, for any such common carrier by railroad to use on its lines any caboose car or other car used for like purposes, unless such caboose or other car shall be at least twenty-four feet in length, exclusive of the platform, and equipped with two four-wheel trucks, and shall be provided with a door in each end thereof and an outside platform across each end of said car; each platform shall not be less than eighteen inches in width and shall be equipped with proper guardrails, and with grab irons and hand brakes, and steps for the safety of persons getting on and off said cars; said steps shall be equipped with a suitable rod, board, or other guard at each end and at the back thereof, properly designed to prevent slipping from said step. Such caboose or other car used for like purposes shall be provided with cupola, or side bay windows, and necessary closets and windows. Each caboose car shall be equipped with an emergency air valve and air gauge, which shall be placed on inside of said car; but the provisions hereof shall not apply to work trains, transfer service, or emergencies not exceeding thirty-six hours. [S13,§2083-j; C24, 27, 31, 35, 39,§7972; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.27]

Referred to in §§327F.18, 327F.20

327F.20 Violations. Any common carrier as provided in section 327F.18 violating any of the provisions of section 327F.19 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense. [S13,§2083-m; C24, 27, 31, 35, 39,§7973; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.28]

Referred to in §327F.18

Sections 477.29 to 477.36, Code 1975, repealed by 66GA, ch 170,§33

Sections 477.37 to 477.41, Code 1975, repealed by 66GA, ch 1164,§98

327F.21 to 327F.25 Reserved.

327F.26 Freight offices. All railroads in the state shall establish and maintain operating offices at localities accessible and convenient to the public. [C97,§2108; C24, 27, 31, 35, 39,§7981; C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.42; 66GA, ch 170,§11, ch 1164,§35]

Sections 477.43 to 477.50, Code 1975, repealed by 66GA, ch 170,§33

Sections 477.51 and 477.52, Code 1975, repealed by 66GA, ch 90,§15 and ch 170,§33

327F.27 Vegetation on right of way. Every railroad corporation shall insure that vegetation on railroad property which is on or immediately adjacent to the roadbed be controlled so that it does not:

1. Become a fire hazard to track-carrying structures.
2. Obstruct visibility of railroad signs and signals.
3. Interfere with railroad employees performing normal trackside duties.
4. Prevent proper functioning of signal and communication lines.
5. Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

Nothing in this section shall be construed to exempt a railroad corporation from carrying out noxious weed control programs as provided in chapter 317. [S13,§2110-i; C24, 27, 31, 35, 39,§7992; C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.53; 66GA, ch 1164,§36]

Referred to in §§327F.28, 327F.29
Weeds, ch 317

327F.28 Violations. Any failure to comply with the provisions of section 327F.27 shall be deemed a misdemeanor and shall be punished accordingly. [S13,§2110-j; C24, 27, 31, 35, 39, §7993; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.54]

Referred to in §327F.29
Punishment, §687.7

327F.29 Enforcement. It shall be the duty of the county attorneys in the respective counties to enforce the provisions of sections 327F.27 and 327F.28. [S13,§2110-k; C24, 27, 31, 35, 39,§7994; C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.55]

Section 477.56, Code 1975, repealed by 66GA, ch 170,§33

327F.30 Power to eject passenger. Any conductor of a railway train carrying passengers shall have the right to refuse to permit any person, not in the custody of an officer, to enter any passenger car on his train in his charge, who shall be in a state of intoxication; and shall have the further right to eject from his train at any station, or at any regular stop, any person found in a state of intoxication or disturbing the peace and for that purpose may call to his aid any employee of the railway. [S13,§2461-g; C24, 27, 31, 35, 39,§7996; C46, 50, 54, 58, 62, 66, 71, 73, 75,§477.57; 66GA, ch 170,§12]

Section 477.58 to 477.60, Code 1975, repealed by 66GA, ch 1164,§98

327F.31 to 327F.33 Reserved.

327F.34 Windshields on power track cars. All railroads shall be required to equip any regularly assigned section track power car used on its tracks with a transparent windshield sufficient in width and height to reasonably protect said employees; which windshield shall be of safety glass and shall be equipped with manually controlled windshield wiper which will remove rain, snow and sleet from the windshield while such power track car is in motion and tops of such material and construction to adequately provide reasonable protection for said employees from the inclement weather. [C66, 71, 73, 75,§477.61]

Referred to in §327F.35

327F.35 Penalty. Any railroad found guilty of violating the provisions of section 327F.34 shall be fined not less than twenty-five dollars nor more than one hundred dollars for each violation. [C66, 71, 73, 75,§477.62]

327F.36 Screen exhaust fire controls. No locomotive or other rolling stock shall be operated unless it is equipped with proper deflector and screen exhaust fire controls and uses adequate devices to prevent the escape of blowing or burning materials or substances and is maintained in good working order to protect against the start and spread of fires along the right of way. A violation of this section shall be a misdemeanor punishable by a fine of not more than one hundred dollars or thirty days in jail. The railroad, and any officers, agent, lessee or independent contractor found guilty of a violation of this section shall be punishable by a fine of not more than one hundred dollars or thirty days in jail. [C71, 73, 75,§477.63]

327F.37 Sanitation and shelter. A railway corporation within the state shall provide adequate sanitation and shelter for all railway employees. The Iowa bureau of labor shall adopt rules in accordance with chapter 17A relating to requirements for adequate sanitation and shelter for railway employees. [C73, 75,§477.64; 66GA, ch 1164,§37]

327F.38 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the state department of transportation.

2. *"Board"* means the transportation regulation board. [66GA, ch 1164,§38]

CHAPTER 327G

FENCES, CROSSINGS, SWITCHES, PRIVATE BUILDINGS, SPUR TRACKS AND REVERSION

Referred to in §§307.18, 307.26

Formerly chapters 473, 478 and 481

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DIVISION I. FENCES, CROSSINGS AND INTERLOCKING SWITCHES
Formerly Chapter 478

327G.1 Definition. As used in this division, unless the context otherwise requires, the term *"department"* means the state department of transportation. [C75,§478.37]

327G.2 Crossings—signs. Every corporation constructing or operating a railway shall make and construct at all points where such railway crosses any public road good, sufficient, and safe crossings and erect at such points, at a sufficient elevation from such road as to admit a free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railway, and warn persons of the necessity of looking out for trains. Any railway company neglecting or refusing to comply with the provisions of this section shall be liable for all damages sustained by reason of such refusal or neglect, and it shall only be necessary, in order to recover, for the injured party to prove such neglect or refusal. [R60, §1331; C73,§1288; C97,§2054; C24, 27, 31, 35, 39, §8000; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.1; 66GA, ch 170,§13]

327G.3 Railway fences required. All railway corporations owning or operating a line of railway within the state, shall construct, maintain, and keep in repair a fence on each side of the right of way, to prevent livestock getting upon the tracks. [C97,§2057; S13,§2057; C24, 27, 31, 35, 39,§8001; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.2; 66GA, ch 170,§14]

40ExGA, HF 190,§5, editorially divided
Section 478.3, Code 1975, repealed by 66GA, ch 170,§33

327G.4 Specifications. All fences shall be not less than fifty-four inches high and may be of any of the following types:

1. Not less than five barbed wires, properly spaced.
2. Not less than three barbed wires above and not less than twenty-four inches of woven wire below.
3. Entirely of woven wire.
4. Five boards properly spaced.
5. Any other type which the fence viewers of any township through which it passes may determine as efficient as any of the above types.

Each of the above types shall be securely nailed to posts firmly set, not more than twenty feet apart for the first three types, nor more than eight feet apart for the fourth. [C97,§2057; S13,§2057; C24, 27, 31, 35, 39,§8003; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.4]

327G.5 Hog-tight fences. When any person owning land abutting on the right of way is maintaining a hog-tight fence on all sides thereof or any division of such land except along such right of way, the railway company owning such right of way shall, on written request of the landowner, make such right of way fence along such enclosed land hog-tight by the addition of barbed or woven wire or other equally efficient means. [S13,§2057; C24, 27, 31, 35, 39,§8004; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.5]

327G.6 Failure to fence. Any corporation operating a railway and failing to fence its right of way shall be liable to the owner of any stock killed or injured by reason of the want of such fence for the full amount of the damages sustained by the owner, unless it was occasioned by the willful act of such owner or his agent; and to recover the same it shall only be necessary for him to prove the loss of or injury to his property. [C73, §1289; C97,§2055; C24, 27, 31, 35, 39,§8005; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.6; 66GA, ch 170, §15]

Referred to in §327D.190

327G.7 Double damages. If such corporation fails or neglects to pay such damages within ninety days after notice in writing that a loss or injury has occurred, accompanied by an affidavit thereof, served upon any officer or station or ticket agent employed by said corporation in the county where such loss or injury occurred, such owner shall be entitled to recover from the corporation double the amount of damages actually sustained by him. [C73,§1289; C97,§2055; C24, 27, 31, 35, 39,§8006; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.7; 66GA, ch 170,§16]

Referred to in §327D.190

327G.8 Laws and local regulations not applicable. No law of the state or any local or police regulations of any county, township or city, relating to the restraint of domestic animals, or in relation to the fences of farmers or landowners, shall be applicable to railway rights of way, unless specifically so stated in such law and regulation. [C73,§1289; C97, §2055; C24, 27, 31, 35, 39,§8007; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.8]

Referred to in §327D.190
Section 478.9, Code 1975, repealed by 66GA, ch 170,§33

327G.9 Failure to fence—general penalty. If the corporation, officer thereof or lessee owning or engaged in the operation of any railroad in the state refuses or neglects to comply with any provision of this chapter relating to the fencing of the tracts, such corporation, officer, or lessee shall be guilty of a misdemeanor, and upon conviction fined in a sum not exceeding five hundred dollars for each offense, and every thirty days' continuance of such refusal or neglect shall constitute a separate and distinct offense. [C97,§2058; C24, 27, 31, 35, 39,§8009; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.10]

C97,§2058, editorially divided

327G.10 Killing of stock — interpretative clause. Nothing herein contained shall be construed to relieve the corporation from liability arising from the killing or maiming of livestock on said track or right of way by its negligence or that of its employees, nor shall anything in this chapter interfere with the right of open or private crossings, or with the right

of persons to such crossings, nor in any way limit or qualify the liability of any corporation or person owning or operating a railway that fails to fence the same against livestock running at large for any stock injured or killed by reason of the want of such fence. [C97, §2058; C24, 27, 31, 35, 39,§**8010**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.11]

327G.11 Private crossings. When any person owns land on both sides of any railway, or when a railway runs parallel with a public highway thereby separating a farm from such highway, the corporation owning or operating such railway, on request of the owner of such land or farm, shall construct and maintain a safe and adequate farm crossing or roadway across such railway and right of way at such reasonable place as the owner of the land may designate. [R60,§1329; C73,§1268; C97,§2022; S13,§2022; C24, 27, 31, 35, 39,§**8011**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.12; 66GA, ch 170,§17]

327G.12 Overhead, underground, or more than one crossing. Such owner of land may serve upon such railroad corporation a request in writing for more than one such private crossing, or for an overhead or underground crossing, accompanied by a plat of his land designating thereon the location and character of crossing desired. If the railroad corporation refuses or neglects to comply within thirty days of such written request, the owner of the land may make written application to the department to hear and determine his rights in said respect. The board, after notice to the railroad corporation, shall hear said application and all objections thereto, and make such order as shall be reasonable and just, and if it requires the railroad company to construct any crossing or roadway, fix the time for compliance with the order. The matter of costs shall be in the discretion of the board. [S13, §2022; C24, 27, 31, 35, 39,§**8012**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.13; 66GA, ch 1164,§39]

Sections 478.14 to 478.18, Code 1975, repealed by 66GA, ch 170,§33

327G.13 Signals at road crossings. A bell and a horn shall be placed on each locomotive engine operated on any railway, which horn shall be sounded at least one thousand feet before a road crossing is reached, and after the sounding of the horn the bell shall be rung continuously until the crossing is passed; but at street crossings within the limits of cities the sounding of the horn may be omitted, unless required by ordinance or resolution of the council thereof; and the company shall be liable for all damages which shall be sustained by any person by reason of such neglect. [C97,§2072; C24, 27, 31, 35, 39,§**8018**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.19; 66GA, ch 170,§18]

Referred to in §327G.14
C97,§2072, editorially divided

327G.14 Violations. Any officer or employee of any railway company violating any of the provisions of section 327G.13 shall be punished by a fine not exceeding one hundred dollars for each offense. [C97,§2072; C24, 27, 31, 35, 39, §**8019**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.20]

Referred to in §327G.32

327G.15 Railway and highway crossing at grade. Wherever a railway track crosses or shall hereafter cross a highway, street or alley, the railway corporation owning such track and the department, in the case of primary highways, the board of supervisors of the county in which such crossing is located, in the case of secondary roads, or the council of the city, in the case of streets and alleys located within a city, may agree upon the location, manner, vacation, physical structure, characteristics and maintenance of the crossing and allocation of costs thereof. The department shall become a party to the agreement if grade crossing safety funds are to be used. Up to seventy-five percent of the maintenance cost of the crossing and an unlimited portion of the cost of the crossing may be paid from the grade crossing safety fund.

Notwithstanding other provisions of this section, maintenance of flasher lights or gate signals installed or ordered to be installed before July 1, 1973, shall be assumed wholly by the railroad corporation.

Payments from the grade crossing safety fund shall be made to* the treasurer of state upon certification by the department that the terms of the agreement have been followed.

The department shall promulgate rules according to chapter 17A for processing claims to the grade crossing safety funds.

The provisions of this section shall not apply to the repair of the grade crossing surface. [R60,§§1321, 1322; C73,§§1262, 1263; C97,§§2017, 2018; SS15,§2017; C24, 27, 31, 35, 39,§§**8020, 8024, 8025**; C46,§§478.21, 478.25, 478.26; C50, 54, 58, 62, 66, 71, 73, 75,§478.21; 66GA, ch 232,§1, ch 1164,§40]

Referred to in §327G.16
*"by" probably intended

327G.16 Disagreement—application—notice. If the persons specified in section 327G.15 cannot reach an agreement, either party may make written application to the board requesting resolution of the disagreement. The board shall fix a date for hearing and give the other party ten days' written notice by mail of such date. The board shall promulgate rules, pursuant to chapter 17A, for processing applications which are filed with the board prior to a written disagreement. The board may set a hearing date after the disagreement has been filed. [SS15,§2017; C24, 27, 31, 35, 39,§**8021**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.22; 66GA, ch 232,§2, ch 1164,§41]

Referred to in §327G.31

327G.17 Hearing — order. The board shall hear the evidence of each party to the controversy and shall make an order which may include, pursuant to the provisions of chapters 471 and 472 authority to condemn, resolving the controversy including what portion of the expense shall be paid by each party to such

controversy. In determining what portion of the expense shall be paid by each party the board may consider the ratio of the benefits accruing to the railroad or the governmental unit or both as it bears to the general public use and benefit and such benefits may in the case of construction be consistent with the standards adopted for similar purposes by the federal highway administration under the federal aid highway Act of 1973 as amended to July 1, 1976, [23 U.S.C. §101 et seq.]. [SS15, §2017; C24, 27, 31, 35, 39§**8022**; C46, 50, 54, 58, 62, 63, 71, 73, 75,§478.23; 66GA, ch 232,§3, ch 1164,§42]

Referred to in §327G.31

327G.18 Railway company to hold in trust. Any portion of the expense of making such crossing changes and alterations borne by any municipal corporation or township, the state or any person, shall forever be held in trust by such railroad corporation or its successors, and no part of such funds shall constitute any part of the value of its property on which it is entitled to receive a return. [SS15,§2017; C24, 27, 31, 35, 39,§**8023**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.24]

327G.19 Grade crossing fund. There is hereby created a fund which shall be known as the highway grade crossing safety fund and shall be made up of the amount allocated by the state treasurer from the road use tax fund. [C62, 66, 71, 73, 75,§478.25]

Section 478.26, Code 1975, repealed by 66GA, ch 1164,§98

327G.20 Reserved.

327G.21 Condition after change—temporary ways. When a railroad company changes, alters, or repairs a highway crossing, it shall upon completion of the work leave it free from obstructions to travel and in good condition. If travel will be obstructed while any alterations or repairs are being made, the railroad company shall provide safe and convenient temporary ways for the public to avoid or pass such obstructions. [R60,§§1321, 1324; C73,§§1262, 1264; C97,§§2017, 2019; SS15,§2017; C24, 27, 31, 35, 39,§**8026**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.27]

327G.22 Railway crossings near Mississippi river. When in the construction of a railway it becomes necessary to cross another railway near the shore of the Mississippi river, each shall be so constructed and maintained at the point of crossing that the respective roadbeds thereof shall be above high-water mark in such river; but where the crossing occurs within the limits of any city, the council may establish the crossing grade. [C73,§1290; C97, §2059; C24, 27, 31, 35, 39,§**8027**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.28]

327G.23 Grade crossings. The department shall have jurisdiction over all crossings at grade of railways within the state. Upon the application of any railway or upon its own motion, the said department may require the trains of any railway to stop at any crossing of such railway tracks at grade or said department may make such rules in relation to speed or other methods of operation at such grade crossings as in its judgment are necessary to protect the public safety. [C24, 27, 31, 35, 39, §**8028**;C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.29; 66GA, ch 170,§19]

Section 478.30, Code 1975, repealed by 66GA, ch 170,§33

327G.24 Stopping at crossings—exceptions. Except as otherwise in this chapter provided in relation to interlocking switches at railway grade crossings, all trains operated upon any railroad in this state which intersects and crosses any other railroad upon the same level, shall be brought to a full stop at a distance of not less than two hundred nor more than eight hundred feet from the point of intersection or crossing, before such intersection or crossing is passed. [C97,§2073; C24, 27, 31, 35, 39,§**8030**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.31; 66GA, ch 170,§20]

Section 478.32, Code 1975, repealed by 66GA, ch 170,§33

327G.25 Interlocking switches. When in any case two or more railroads cross each other at a common grade, or a railroad crosses a stream by swing or drawbridge, they may be equipped thereat with an interlocking switch system, or other suitable safety device rendering it safe for engines or trains to pass thereover without stopping. The plans for such proposed interlocking system or other safety device shall be first submitted to the department for approval, and after the same has been installed no engines or trains shall pass over such crossings or bridges without stopping until the department shall have inspected and issued a certificate of approval of such interlocking system or safety device. [C97, §2060; C24, 27, 31, 35, 39,§**8032**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.33]

327G.26 Changing plan. In the event any railroad company desires to make a change in the mechanical construction, arrangement, or location of any interlocking system or other safety device, or in any of the parts of such system or device, the plans showing specifically the nature of the changes proposed shall be filed with the department, and such system or device as changed shall not be operated until a certificate of approval thereof has been issued by the department. [C24, 27, 31, 35, 39, §**8033**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.34]

327G.27 Condemnation — reconstruction. Any interlocking system or other safety device now or hereafter constructed or operated, which may be found by the department, after inspection, to be unsafe or dangerous, may be condemned by the said department, and the railroad company or companies required to reconstruct the same in accordance with the rules governing the construction, operation, and maintenance of interlocking plants adopted by said department. [C24, 27, 31, 35, 39, §**8034**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.35]

327G.28 Compulsory establishment. Whenever in the judgment of the department it is necessary for the public safety, said department may require the establishment of an interlocking system or other safety device at any railroad crossing, junction or drawbridge. [C24, 27, 31, 35, 39,§8035; C46, 50, 54, 58, 62, 66, 71, 73, 75,§478.36]

327G.29 Grade crossing surface repair fund. There is established a highway railroad grade crossing surface repair fund in the office of the treasurer of state. The department may credit to this fund:

1. Moneys appropriated to the department from the general fund of the state.
2. Moneys appropriated to the department from the road use tax fund.
3. Available federal funds.
4. Moneys acquired by the department from any gift, grant, or contributions from any source.

The total amount of funds, except funds acquired pursuant to subsections 3 and 4, which shall be credited to the highway railroad grade crossing surface fund shall not exceed two hundred fifty thousand dollars in any one year. [66GA, ch 1164,§43]

327G.30 Adjustment of expense. If a grade crossing surface of a railroad track and a highway, street, or alley shall require repairs or maintenance, the costs for such maintenance may be paid equally by the owner of the track, the jurisdiction having primary authority over the highway, street, or alley, and the highway grade crossing surface repair fund.

If the railroad corporation and the jurisdiction having authority agree on the method of crossing maintenance and establish an agreement to each contribute one-third of the costs, a copy of the agreement shall be filed with the department which shall allocate an amount equal to one-third of the cost for the work if funds are available in the highway railroad grade crossing surface repair fund. The department shall make appropriate notification if the fund is exhausted in which case agreements shall not be made under the provisions of this section until additional funds are available. The fund shall be administered by the department.

Upon completion of the agreed repair work, a statement of costs shall be filed with the department by the railroad corporation in a form and manner prescribed by the department. The department, upon approval of the statement, shall pay to the railroad corporation an amount equal to one-third of the cost of the work from the highway railroad grade crossing surface repair fund. The owner of the track and the jurisdiction entering into the agreement shall each pay one-third of the cost. [66GA, ch 1164,§43]

327G.31 Disagreement resolved. If a railroad corporation and the jurisdiction having authority cannot reach agreement on grade crossing surface repair and maintenance, either party may appeal to the board if prior to disagreement both parties have filed a statement with the department to the effect that they have entered into negotiations on grade crossing surface repair and maintenance of a particular crossing. The board shall resolve the dispute in the manner provided in section 327G.16 and section 327G.17, except for the allocation of costs. [66GA, ch 1164,§43]

327G.32 Blocking highway crossing. A railroad corporation or its employees shall not operate any train in such a manner as to prevent vehicular use of any highway, street or alley for a period of time in excess of ten minutes except:

1. When necessary to comply with signals affecting the safety of the movement of trains.
2. When necessary to avoid striking any object or person on the track.
3. When the train is disabled.
4. When the train is in motion except while engaged in switching operations.
5. When there is no vehicular traffic waiting to use the crossing.
6. When necessary to comply with governmental safety regulations.

Any officer or employee of a railroad corporation violating any provision of this section shall, upon conviction be subject to the penalty provided in section 327G.14. An employee shall not be guilty of such violation if his action was necessary to comply with the direct order or instructions of a railroad corporation or its supervisors. Such guilt shall then be with the railroad corporation.

The provisions of this section notwithstanding, a political subdivision may pass a resolution or ordinance regulating the length of time a specific crossing may be blocked if the political subdivision demonstrates such a resolution or ordinance is necessary for public safety or convenience. If such a resolution or ordinance is passed the political subdivision shall immediately notify the board and the railroad corporation using the crossing affected by the resolution or ordinance. The resolution or ordinance shall become effective thirty days after such notification unless a person files an objection to the resolution or ordinance with the board. If an objection is filed the board shall hold a hearing according to the rules established by the board. The board may disapprove the resolution or ordinance if public safety or convenience does not require such a resolution or ordinance. Public safety or convenience may include, but shall not be limited to, high traffic density at a specific crossing of a main artery or interference with the flow of authorized emergency vehicles.

Political subdivisions shall notify the board within sixty days of the effective date* of this Act, of each existing resolution or ordinance which does not conform with the provisions of this section.

Such ordinances or resolutions may remain in effect until the board has acted upon each ordinance or resolution under the procedures specified in this section. [66GA, ch 1164,§43]

*July 1, 1976

327G.33 to 327G.60 Reserved.

DIVISION II. PRIVATE BUILDINGS AND SPUR TRACKS

Formerly Chapter 481

327G.61 Definition. As used in this division:

1. *"Department"* means the state department of transportation.

2. *"Board"* means the transportation regulation board. [C75,§481.9; 66GA, ch 1164,§89]

327G.62 Buildings on railroad lands. When a disagreement arises between a railroad corporation and the owner of any building used for receiving, storing, or manufacturing any article of commerce transported or to be transported, situated on the railroad right of way or any land owned or controlled by the railroad corporation for railroad purposes, as to the terms and conditions on which the same is to be continued thereon or removed therefrom, such railway corporation or person may make written application to the board and the board shall hear and determine such controversy and make such order in relation thereto as shall be just and equitable between the parties, which order shall be enforced in the same manner as other orders of the board. [S13,§2110-l; C24, 27, 31, 35, 39,§**8169**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§481.1; 66GA, ch 1164, §86]

Referred to in §327G.63

327G.63 Destruction of buildings. In the event that any building referred to in section 327G.62, situated on the right of way or other land of a railroad company used for railway purposes, shall be injured or destroyed by the negligence of the railroad company, or the servants or agents thereof in the conduct of the business of such company, the railroad company causing such injury or destruction shall be liable therefor to the same extent as if such building used for said purposes was not situated on the right of way or other land of such railroad company used for railway purposes, any provision in any lease or contract to the contrary notwithstanding. [S13, §2110-m; C24, 27, 31, 35, 39,§**8170**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§481.2]

327G.64 Spur tracks. Every railroad corporation shall acquire the necessary rights of way for, by condemnation or purchase, and shall construct, connect, and operate and maintain a reasonably adequate and suitable spur track, whenever such spur track does not necessarily exceed three miles in length, and is required for the successful operation of any existing or proposed mill, elevator, storehouse, warehouse, dock, wharf, pier, manufacturing establishment, lumber yard, coal dock, or other industry or enterprise, and its construction and operation is not unusually unsafe and dangerous, and is not unreasonably harmful to public interest. No such track is required to be constructed until, or if hereafter constructed need not be maintained unless, the board, after hearing, shall have declared the same to be necessary. [C24, 27, 31, 35, 39,§**8171**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§481.3; 66GA, ch 170,§30, ch 1164,§87]

327G.65 Cost of construction. Such railroad corporatoin may require the person primarily to be served thereby to pay the legitimate cost and expense of acquiring, by condemnation or purchase, the necessary right of way for such spur track and of constructing the same as shall be determined in separate items by the department. Except as in section 327G.66, the total cost thereof as ascertained by said department shall be deposited with the railroad corporation before it shall be required to incur any expense. If an agreement cannot be reached, the question shall be referred to the board which may after hearing issue an order. [C24, 27, 31, 35, 39,§**8172**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§481.4; 66GA, ch 1164,§88]

Referred to in §327G.68

327G.66 Bond for construction. When the total estimated cost has been ascertained by the department such person, firm, corporation, or association shall have the option to either deposit said amount with the railroad company or to file with such company its written election to build and construct such spur track accompanied by a good and sufficient surety company bond running to such railroad company and conditioned upon the construction of such spur track in a good and workmanlike manner according to plans and specifications furnished by such railroad company and approved by the department. If such person, firm, corporation, or association so elects to build such spur track it shall only be required to deposit with such railroad company the estimated cost of the necessary right of way for such spur track as ascertained by the department, and the total amount stated in such written election. [C24, 27, 31, 35, 39,§**8173**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§481.5]

Referred to in §327G.65, 327G.68

327G.67 Costs in excess of deposit. In any event before the railroad company shall be required to incur any expense whatever in the construction of such spur track the person, firm, corporation, or association primarily to be served thereby shall give the railroad company a bond to be approved by the department as to form, amount, and surety, securing the railroad company against loss on account of any expense incurred beyond the amount so deposited with the railroad company. [C24, 27, 31, 35, 39,§**8174**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§481.6]

Referred to in §327G.68

327G.68 Failure of company to act. In case of failure, neglect, or refusal of any railroad

company to comply with any of the provisions of sections 327G.65 to 327G.67, the person, firm, corporation, or association primarily to be served thereby may file a complaint with the department setting forth the facts upon which such grievance is based. The said department after reasonable notice to the railroad company shall investigate and determine all matters in controversy and make such order as the facts in relation thereto will warrant. Any such order shall have the same force and effect as other orders made by said department in other proceedings within its jurisdiction and shall be enforced in the same manner. [C24, 27, 31, 35, 39,§**8175**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§481.7]

327G.69 Connections with original spurs. Whenever such spur track is so connected with the main line, as provided in this chapter, at the expense of the owner of such proposed or existing mill, elevator, storehouse, dock, wharf, pier, manufacturing establishment, and any person, firm, corporation, or association shall desire a connection with such spur track, application therefor shall be made to the department, and such person, firm, corporation, or association shall be required to pay to the person, firm, corporation, or association that shall have paid or contributed to the primary cost and expense of acquiring the right of way for such original spur track, and of constructing the same, an equitable proportion thereof, to be determined by the department, upon such application and notice, to the persons, firms, corporations, or associations that have paid or contributed toward the original cost and expense of acquiring the right of way and constructing the same. [C24, 27, 31, 35, 39,§**8176**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§481.8]

327G.70 to 327G.75 Reserved.

DIVISION III. REVERSION TO OWNERS UPON ABANDONMENT
Formerly Chapter 473

327G.76 Relocation of railway. Such part of a railway right of way as is wholly abandoned for railway purposes by the relocation of the line of railway, shall revert to the persons who, at the time of the abandonment, are owners of the tract from which such abandoned right of way was taken. [C24, 27, 31, 35, 39, §**7861**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§473.1]

327G.77 Failure to operate or construct railway. If a railway, or any part thereof, shall not be used or operated for a period of eight years, or if, its construction having been commenced, work on the same has ceased and has not been in good faith resumed for eight years, the right of way, including the roadbed, shall revert to the persons who, at the time of the reversion, are owners of the tract from which such right of way was taken. [C73,§1260; C97, §2015; C24, 27, 31, 35, 39,§**7862**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§473.2]

CHAPTER 327H

TAX AID FOR RAILROADS

Referred to in §§307.18, 307.26

327H.1 Tax aid authorized.
327H.2 Requisites for petition.
327H.3 Filing of petition.
327H.4 Proceedings on petition.
327H.5 Form of notice.
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327H.11 Terms and conditions entered.
327H.12 Collection of special tax.
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327H.17 Taxes paid in labor or supplies.
327H.18 Railroad assistance fund established.
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327H.22 Railroad accounts.
327H.23 County funds.
327H.24 No reversion of funds.
327H.25 Transfer of duties.

327H.1 Tax aid authorized. The qualified voters of the following named districts may file a petition under the conditions hereinafter specified to vote taxes not exceeding thirty-four hundredths of one percent on the assessed value of the real property within the district for any of the following purposes:

1. To aid any railway incorporated under the laws of this state in constructing a projected railway into, through, or along a district composed of a township or a city.

2. To aid in the construction of a proposed railroad or in reconstruction, improvement, repair, or maintenance of a railroad heretofore constructed, the operation of which has been abandoned, into, through, or along a district contiguous to and within a distance not to exceed two and one-half miles from the

center line of the right of way thereof measured at right angles thereto. [C97,§§2084, 2086; S13,§§2084, 2086, 2091-b; C24, 27, 31, 35, 39, §8181; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.1; 66GA, ch 170,§§31, 32]

Referred to in §§327H.2, 384.12

327H.2 Requisites for petition. The petition shall show:

1. The name and the location of the principal office of the company to be aided.

2. For which of the purposes stated in section 327H.1 it is proposed to vote the taxes.

3. The rate of tax proposed and the number of years not exceeding five in which it shall be levied and paid in equal installments.

4. The location of the line of railway for which it is proposed to vote the tax.

5. The limits of the proposed district and the county or counties in which the same is located.

6. The amount of work required to be done and when and where the same shall be done before any of the tax shall be payable.

7. Any other conditions which shall be performed before any part of the tax shall be payable.

8. The signatures of a majority of the resident freehold taxpayers of the proposed district; except that in cities the provisions of section 362.4 apply. [C97,§2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39,§8182; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.2]

Section 483.3, Code 1975, repealed by 66GA, ch 170,§33

327H.3 Filing of petition. Said petition shall be filed in the office of the auditor of the county in which the district is wholly located or of the county in which the greater acreage of the proposed district is located. [C97,§2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39,§8184; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.4]

Referred to in §327H.4

327H.4 Proceedings on petition. At its next regular adjourned or special session after such petition is filed, the board of supervisors shall canvass the petition, and if found to meet the requirements of law, it shall fix a time and place for holding a special election in the proposed district, appoint precinct election officials of such election, fix the hours when the polls shall open and close and cause notice to be given as hereinafter provided. The date of such election shall be at least ten days after completed service of such notice. The county commissioner of elections shall perform all duties imposed on the county auditor by sections 327H.3 to 327H.10, but elections held under these sections shall be subject to the provisions of chapter 49 only where it is not in conflict with this chapter.

The railroad company for whose benefit such election is held shall pay the expense thereof, including publication of notice and printing of ballots. [C97,§2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39,§8185; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.5; 66GA, ch 67,§68]

327H.5 Form of notice. The notice shall be addressed to the qualified electors of the township, city, district, or territory in which the election is to be held and shall state:

1. The time and place of holding such election and the hours at which the polls will open and close.

2. The name and location of the principal office of the corporation to which it is proposed to vote the tax.

3. The purpose for which it is proposed to vote such tax.

4. The rate of such tax, the installments into which it shall be divided, the years in which it is payable, and the rate of interest on deferred payments.

5. The amount of work to be done, or any other conditions to be performed before the tax is payable.

6. From what point to what point the improvement shall extend and within what time it is to be completed.

7. Any other special conditions set forth in the petition. [C97,§2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39,§8186; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.6]

Referred to in §327H.4

327H.6 Manner of giving notice. The auditor shall cause such notice to be published for three consecutive weeks in the official newspapers of each county in which the election is to be held, and if in a district or territory extending into more than one county, then the official newspapers of each of such counties, and the last publication shall be not less than ten days before such election. Proof of such publication, by affidavit of the publisher, shall be filed with the auditor on completion of the publication.

The auditor shall also cause such notice to be posted in five public places in the proposed district, not less than ten days before the date of the election, and proof of such posting by affidavit of the parties who did or saw it done, shall be filed in the office of the auditor. [C97, §2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39, §8187; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.7]

Referred to in §327H.4

327H.7 Form of ballot. The auditor shall cause to be prepared and printed the ballots for such election on which shall be plainly stated the proposition to be voted upon, placed in interrogatory form with the words "yes" and "no" so arranged as to enable the voter to clearly indicate his vote for or against such proposition, which ballots shall be delivered to the precinct election officials by the time the polls are open. [C97,§2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39,§8188; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.8; 66GA, ch 67,§68]

Referred to in §327H.4

327H.8 Election returns. The precinct election officials shall count the ballots cast as soon as the polls close and certify and file the returns, with all the ballots cast, in the office of

the auditor. [C97,§2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39,§8189; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.9; 66GA, ch 67,§68]

Referred to in §327H.4

327H.9 Canvass of returns. On the filing of the returns, the board shall convene and canvass the same and certify the result to the auditor. If a majority of the votes cast are in favor of such taxes, the board shall, at the time of levying the ordinary taxes next following, levy such taxes as are voted and cause the same to be placed on the tax lists of the proper township, city or district as the case may be. [C97,§2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39, §8190; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.10]

Referred to in §327H.4

327H.10 District in more than one county. If the district or territory in which taxes are voted extends into more than one county, the auditor in whose office the returns are filed shall make and certify a copy of such returns and file the same in the office of the auditor of every other county into which the district extends. The board of supervisors of such other counties shall levy the tax upon the real estate in the portion of the district located in such county and cause such tax to be entered upon the tax list of such county. [C97,§2085; S13,§2085; C24, 27, 31, 35, 39,§8191; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.11]

Referred to in §327H.4

327H.11 Terms and conditions entered. In all cases where a tax has been voted and levied in aid of a railroad there shall be entered upon the tax lists of the county all the terms and conditions upon which such taxes are payable. [C97,§2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39,§8192; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.12]

327H.12 Collection of special tax. Special taxes voted for any of the purposes aforesaid, shall be collected at the same time and in the same manner as other taxes, with the same penalties for delinquency and the same manner of enforcing collection by sale as ordinary taxes. When collected they shall be kept in a separate fund and paid out only for the purposes for which and on the terms and conditions upon which they were voted, all of which shall be shown by the records and files of the auditor's office relating thereto. [C97,§2085; S13,§§2085, 2091-c; C24, 27, 31, 35, 39,§8193; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.13]

327H.13 Limitation. The aggregate amount of taxes on property in aid of railroads shall not during any ten years exceed one and thirty-five hundredths percent on the assessed value thereof. [C97,§2086; S13,§§2086, 2091-f; C24, 27, 31, 35, 39,§8194; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.14]

327H.14 Money paid out—certificate. The moneys collected under the provisions of this chapter shall be paid out by the county treasurer to the treasurer of the railway company for whom the same was voted, upon the orders of the president or managing director thereof, at any time after the trustees of such township or council of such city voting the same, or a majority thereof, shall have certified to the county treasurer that the conditions required of the railway company and set forth in the notice for the special election have been complied with, which certificate said township trustees or council of such city shall make when conditions have been sufficiently complied with to entitle the railway company thereto, or when the conditions are fully complied with on the part of the railway company; but if the costs and expenses of holding the election and of recording the certificates have not been paid, then the treasurer shall first deduct from the moneys collected the amount thereof, and pay same to the parties entitled thereto. [C97,§2087; C24, 27, 31, 35, 39, §8195; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.15]

Section 483.16, Code 1975, repealed by 66GA, ch 170,§33

327H.15 Liability of directors. The board of directors of any railway company receiving taxes voted in aid thereof under the provisions of this chapter, or any member thereof, who shall vote to bond, mortgage, or in any manner encumber said road to an amount exceeding the sum of eight thousand dollars per mile for a railroad of three feet gauge, or exceeding the sum of eighteen thousand five hundred dollars per mile for the ordinary four feet eight and one-half inch gauge, not including in either case any debt for ordinary operating expenses, shall be liable to the stockholders or either of them for double the amount, estimated at its par value, of the stock by him held, if the same should be rendered of less value or lost thereby. [C97,§2089; C24, 27, 31, 35, 39,§8197; C46, 50, 54, 58, 62, 66, 71, 73, 75, §483.17]

327H.16 Forfeiture of tax. Should the taxes voted in aid of any railroad under the provisions of this chapter remain in the county treasury for more than one year after the same have been collected, the right to them by the railroad company shall be forfeited, and the persons who paid the same entitled to receive back from the county treasurer their pro rata shares thereof remaining; and in all cases where any taxes have been voted or levied upon the real or personal property in any township or city to aid in the construction of any railroad, and the road in aid of which they were voted or levied has not been built, completed, or operated into or through such township or city, it shall be the duty of the board of supervisors of the county where said taxes have been voted and levied and still remain on the tax books to give the railway company in aid of which the tax was voted at least thirty days' notice in writing, to be served like original notices, of their intention to cancel such taxes, and thereupon to cause the same to be canceled and stricken from

the tax books of the county, which cancellation shall remove all liens created by the levy thereof.

In all cases where the railway company to whom taxes have been voted neglects or refuses to receive such taxes, or to require or permit the same to be collected and certificates therefor to be issued, for the period of one year after they become due and collectible, and in all cases where taxes have been voted in aid of any railroad, and the conditions upon which the same were voted have not in fact been complied with, and the time in which said conditions were to be fulfilled has expired, the same shall be forfeited, and the county officers of the county in which they have been levied and entered upon the tax books shall enter cancellation thereof upon the proper records.

In all cases where any taxes to aid in the construction of any railroad may be voted upon the inducement or promise offered on the part of said railroad company, or any duly authorized agent thereof, for any rebates or exemptions from said tax or any part thereof, or any agreed price to be paid for the stock that may be issued in lieu of said tax, or a division of said tax, or any portion or percentage thereof, with any of the voters or taxpayers as an inducement to procure said tax to be voted, all taxes so procured to be voted shall be void. [C97,§2090; C24, 27, 31, 35, 39, §8198; C43, 50, 54, 58, 62, 66, 71, 73, 75,§483.18]

327H.17 Taxes paid in labor or supplies. Nothing contained in this chapter shall preclude any taxpayer who may contract with a railroad company for which taxes may be voted to pay his tax, or any part thereof, in labor upon the line of said railroad, or in material for its construction, or supplies furnished or money paid for the construction thereof, in pursuance of the terms and conditions stipulated in the notices of election, in lieu of a payment to the county treasurer. Upon presenting to the county treasurer a receipt from such railroad company or its duly authorized agent, specifying the amount of such payment, the same shall be credited by the treasurer on his tax, with the same effect as though paid to him in money, and when such receipts have been presented and credited they shall have the same validity in his settlement with the board of supervisors as the orders from the railroad company provided for in this chapter. Laborers shall have a lien upon any tax voted in aid of a railroad company for the amount due them for labor performed in the construction of said railroad. [C97,§2091; C24, 27, 31, 35, 39, §8199; C46, 50, 54, 58, 62, 66, 71, 73, 75,§483.19]

Section 483.20, Code 1975, repealed by 66GA, ch 170,§33

327H.18 Railroad assistance fund established. There is established a railroad assistance fund in the office of the treasurer of state. Moneys in this fund shall be expended for providing assistance to railroads for the restoration, conservation and improvement of railroad branch lines. Any unencumbered funds appropriated pursuant to Acts of the 65 G.A., chapter 1113, section 13, or other funds appropriated by the general assembly for branch line railroad assistance shall be deposited in the railroad assistance fund. Any moneys received by the state department of transportation by agreements, grants, gifts, or other means from individuals, companies or other business entities, or cities and counties for the purposes set forth for the fund established pursuant to this section shall be credited to the railroad assistance fund. [66GA, ch 231,§1, ch 1164,§90]

Referred to in §§327H.20, 327H.21, 327H.23, 327H.25, 332.3

327H.19 Aid to railways. The state department of transportation shall identify those segments of branch line railroad trackage which, if improved, may provide increased transportation services for the citizens of this state. The department shall develop and implement programs to encourage the improvement of rail freight services on such railroad trackage. If the department determines that public assistance is in the best interest of the citizens of this state, the department may, in emergencies, provide financial assistance on behalf of the citizens of this state to railroad companies, which assistance shall be used exclusively to upgrade branch line railroad roadbeds in order to improve the freight-carrying capacity of the railroad and to increase the speed limitations of the railroad trackage. [C75,§93.9; 66GA, ch 1088,§4]

Referred to in §§327H.20, 327H.21, 327H.23, 327H.25, 332.3

327H.20 Assistance agreements. The director of the department of transportation with the approval of the state transportation commission, may enter into agreements with railroads, the United States government, persons, cities, counties, or railroad districts for carrying out the purposes of this section and sections 327H.18, 327H.19, 327H.21 to 327H.25. Agreements entered into between the director of the department of transportation and railroad corporations pursuant to this section may require payment by the railroad corporation of a portion of increased revenue derived from the improved branch line into the railroad assistance fund. The board of supervisors of a county may enter into an agreement with the state department of transportation to receive a portion of the payments made by a railroad corporation to the railroad assistance fund pursuant to this section. The amount received by a county shall not exceed the amount appropriated to the railroad assistance fund by the county pursuant to section 327H.23. [66GA, ch 232,§2, ch 1164,§91]

Referred to in §327H.21, 327H.23, 327H.25, 332.3

327H.21 Federal funds. The state department of transportation may accept federal

funds to carry out the provisions of this section and sections 327H.18 to 327H.20, 327H.22 to 327H.25. All federal funds received under provisions of said sections are appropriated for the purposes set forth in the federal grants. [66GA, ch 231,§3, ch 1164,§92]

Referred to in §327H.20, 327H.23, 327H.25, 332.3

327H.22 Railroad accounts. Agreements between the railroad corporations and the state department of transportation which do not require payment of a portion of the increased revenue derived from the improved branch line railroad to be paid by the railroad to the railroad assistance fund shall require that the railroad establish and maintain a separate railroad corporation fund to which a specified portion of the increase in revenue derived from the improved railroad branch line shall be credited and that these funds shall be used by the railroad for improvement, restoration, or conservation of railroad branch lines within the state. The terms and conditions governing the use of moneys in the special railroad corporation fund shall be stipulated in the agreement. The agreement shall also stipulate a penalty for use of the funds in a manner other than as set forth in the agreement. [66GA, ch 231,§4, ch 1164,§93]

Referred to in §§327H.20, 327H.21, 327H.23, 327H.25, 332.3

327H.23 County funds. The board of supervisors of a county may with the approval of the state department of transportation, appropriate funds from the county general fund to the railroad assistance fund. The county may, according to the provisions of section 327H.20, receive a partial or total reimbursement for this appropriation. The money shall be used in accordance with this section and sections 327H.18 to 327H.22, 327H.24 and 327H.25 only for conservation, restoration, or improvement of railroad branch lines within the county providing the funds. In any year the amount of money transferred to the railroad assistance fund by a county shall not exceed the amount of property taxes levied against the railroad property within the county. [66GA, ch 231,§5, ch 1164,§94]

Referred to in §§327H.20, 327H.21, 327H.25, 332.3

327H.24 No reversion of funds. Moneys deposited in the railroad assistance fund shall not be subject to sections 8.33 and 8.39. However, moneys credited to the fund by a city, county, or railroad district which are unexpended or unobligated following the expiration of an agreement shall be paid back to the city, county, or railroad district. [66GA, ch 231,§6, ch 1164,§95]

Referred to in §§327H.20, 327H.21, 327H.23, 327H.25, 332.3

327H.25 Transfer of duties. The administration of the railroad assistance fund shall be transferred from the energy policy council to the state department of transportation not later than July 1, 1976. All agreements for railroad assistance entered into by the energy policy council with railroads and other persons pursuant to section 93.9* or this section and sections 327H.18 to 327H.24 shall be carried out by the state department of transportation. [66GA, ch 231,§7]

Referred to in §§327H.20, 327H.21, 327H.23, 332.3
*Repealed by 66GA, ch 1088,§6

CHAPTER 328

AERONAUTICS

Referred to in §307.25
Federal funds appropriated, 65GA, ch 31,§5
Transfer of employees to department of transportation, see 65GA, ch 1180,§199

All rules, regulations, forms, orders, and directives promulgated by and in effect for the Iowa aeronautics commission on July 1, 1975, shall continue in full force and effect as rules, regulations, forms, orders, and directives of the state department of transportation until amended or supplemented by affirmative action of the state transportation commission, see 65GA, ch 1180,§198.

328.1 Definitions.
328.2 to 328.11 Repealed by 65GA, ch 1180, §197.
328.12 Powers and duties.
328.13 Co-operation with federal government.
328.14 Authority to receive federal moneys for the state and governmental subdivisions.
328.15 Contracts—law governing.
328.16 Disposition of federal funds.
328.17 and 328.18 Repealed by 65GA, ch 1180, §197.
328.19 Registration.
328.20 Registration of aircraft.
328.21 Aircraft registration fees.
328.22 Used aircraft.
328.23 Credit on registration fees.
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328.26 Application for registration.
328.27 Issuance of certificates.
328.28 Operation under special certificate.
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328.33 Records required.
328.34 Grounds for refusing, revoking or suspending certificates.
328.35 Exceptions to registration requirements.
328.36 State aviation fund.
328.37 Operations unlawful without certificate.
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328.39 Order of department—review.
328.40 Penalties.
328.41 Operating recklessly or while intoxicated.
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328.43 Transfer notice.
328.44 Application by new owner.
328.45 New registration upon transfer.
328.46 Penalty for delay.
328.47 Lien of fees.
328.48 Attachment of lien.
328.49 Collection of fees.
328.50 Penalty on delinquent registration.
328.51 Accrual of penalty.
328.52 Waiver.
328.53 Marking public aircraft.
328.54 Biennial report.
328.55 Inspections of governmental subdivision airports.
328.56 State aircraft pool and revolving fund.
328.57 Short title.

328.1 Definitions. The following words, terms, and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

1. *"Aeronautics"* means transportation by aircraft, the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes, the design, establishment, construction, extension, operation, improvement, repair, or maintenance of landing areas, or other air navigation facilities, and air instruction.

2. *"Aeronautics instructor"* means any individual giving or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward.

3. *"Aircraft"* means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air, for the purpose of transporting persons or property, or both.

4. *"Air instruction"* means the imparting of aeronautical information, by any aeronautics instructor, or in or by any air school or flying club.

5. *"Airman"* means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, aircraft appliances, or parachutes; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator. It shall not include individuals engaged in aeronautics as an employee of the United States or any state or foreign country and any individuals employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, and any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him.

6. *"Air navigation"* means the operation or navigation of aircraft in the air space over this state, or upon any landing area within this state.

7. *"Air navigation facility"* means any facility, other than one owned or controlled by the federal government, used, available for use, or designed for use, in aid of air navigation, including landing areas, and any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities or devices having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

8. *"Airport"* means any landing area used regularly by aircraft for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights of way, whether heretofore or hereafter established.

9. *"Air school"* means any person engaged in giving, or offering to give, instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward, and who employs other persons for such purposes. It does not include any public school or university of this state, or any institution of higher learning duly accredited and approved for carrying on collegiate work.

10. *"Civil aircraft"* means any aircraft other than a public aircraft.

11. *a. "Commission"* means the state transportation commission of the state department of transportation.

b. "Department" means the state department of transportation.

c. "Director" means the director of transportation or his designee.

12. *"Landing area"* means any locality, either of land or water, including intermediate landing fields, which is used or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo; it does not include any intermediate landing field established or maintained by the federal government as a part of any civil airway.

13. *"Governmental subdivision"* means any county or city of this state, and any other political subdivision, public corporation, authority, or district in this state which is or

may be authorized by law to acquire, establish, construct, maintain, improve, and operate landing areas and other air navigation facilities.

14. *"Operation of aircraft"* or *"operate aircraft"* means the use of aircraft for the purpose of air navigation, and includes the navigation or piloting of aircraft and shall embrace any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise).

15. *"Person"* means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

16. *"Public aircraft"* means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

17. *"Operation for hire"* shall mean hire to the general public or members or classes thereof, and shall not include such operations as are incidental to the carrying on of the general business of an aircraft owner engaged in business other than aeronautics.

18. The singular shall include the plural, and the plural the singular.

19. *"Air carrier airport"* means an existing public airport regularly served by an air carrier, other than a supplemental air carrier, certificated by the civil aviation board under section 401 of the federal Aviation Act of 1958.

20. *"General aviation airport"* means any airport that is not an air carrier airport. [C31, 35,§8338-c1; C39,**§8338.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.1; 66GA, ch 1175,§§1, 2]

328.2 to 328.11 Repealed by 65GA, ch 1180, §197, effective July 1, 1975.

328.12 Powers and duties. The commission in carrying out its duties relating to aeronautics shall have the following powers and duties:

1. *Promotion of aeronautics.* It is empowered and directed to encourage, foster and assist in the general development and promotion of aeronautics in this state, and to make disbursements from the state aviation fund for such purposes.

2. *Rules.* It shall have power to make such reasonable rules, consistent with the provisions of this chapter, as may be deemed by the commission to be necessary and expedient for the administration and enforcement of this chapter, and to amend said rules at any time.

3. *Filing of rules.* It shall keep on file at the office of the commission, for public inspection, a copy of all its aeronautic rules with all amendments thereto, and mail copy thereof to all registered landing areas in this state.

4. *Technical services available.* It shall, insofar as is reasonably possible, make available the engineering, management consulting, and other technical services of the department, without charge, in connection with aeronautics.

5. *Intervention.* It may participate as party plaintiff or defendant, or as intervenor, complainant or movant, on behalf of the state or any governmental subdivision or citizen thereof, in any proceeding having to do with aeronautics.

6. *Enforcement of aeronautics laws.* It shall be the duty of the department to enforce and assist in the enforcement of this chapter and of all rules issued pursuant thereto, and of all other laws of this state relating to aeronautics; and, in the aid of such enforcement and within the scope of such duties general powers of peace officers are hereby conferred upon the commission, the director, and such officers and employees of the department as may be designated by the commission to exercise such powers. The commission is further authorized, in the name of this state, to enforce the provisions of this chapter and the rules issued pursuant thereto by injunction in the courts of this state.

7. *Use of existing facilities.* The commission, in the discharge of all functions prescribed by this chapter, law enforcement, technical, and other, to every feasible extent shall use the facilities of other agencies of the state, and such agencies are authorized and directed to make available to the commission such facilities and services.

8. *Investigations.* The commission or any officer or employee of the department designated by it, when acting for, and with the authority of the commission, shall have the power to hold investigations, inquiries, and hearings concerning matters covered by the provisions of this chapter and orders and rules of the commission. In any such inquiry, investigation, or hearing, the person acting for the commission shall have power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and compel the attendance and testimony of witnesses, and the production of papers, books, and documents.

9. *Reports of investigations—limitations on use.* The reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose in any civil suit, growing out of any matter referred to in said investigation, hearing, or report thereof, except in case of criminal or other proceedings instituted in behalf of the commission or this state under the provisions of this chapter and other laws of this state relating to aeronautics.

10. *Authority to contract.* It may enter into any contracts necessary to the execution of the powers granted it by this chapter.

11. *No exclusive rights granted.* It shall grant no exclusive right for the use of any

airway, airport, landing area, or other air navigation facility under its jurisdiction.

12. *Sufficiency ratings.* It shall issue sufficiency ratings for all airports in the state based on the functional classification of those airports as set out in the department's annual transportation plan.

13. *Centralized purchasing agency.* It may encourage governmental subdivisions to utilize its services as a centralized purchasing agency for items including but not limited to airport and aeronautics equipment and chemicals.

14. *Safety inspections.* It may enter into agreements and otherwise co-operate with federal authorities in the safety inspection of registered landing areas and may promulgate safety standards for airports.

15. *Newsletter.* It may publish and distribute by subscription a state aeronautics newsletter or magazine. The department may charge a reasonable fee for subscriptions to such a newsletter or magazine. [C35,§§8338-f5, -f6,-f8,-f9,-f10,-f13; C39,§§**8338.05, 8338.06, 8338.08, 8338.09, 8338.10, 8338.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.12; 66GA, ch 35,§16, ch 1175, §§3–5]

328.13 Co-operation with federal government. The department is authorized to co-operate with the government of the United States, and any agency or department thereof, in the planning, acquisition, construction, improvement, maintenance and operation of airports and other air navigation facilities in this state, and to comply with the provisions of the laws of the United States and any regulations made thereunder for the expenditures of federal moneys upon such airports and other navigation facilities. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.13; 66GA, ch 1175,§6]

328.14 Authority to receive federal moneys for the state and governmental subdivisions.

1. The department shall act as agent for the state and shall upon request act as agent for a governmental subdivision which owns a general aviation or air carrier airport in accepting, receiving and receipting for all federal moneys provided that the request is submitted to the department by March 1 of each year. The department when acting as agent shall contract for all airport projects in which planning, construction, acquisition or improvements include federal or state funds, and the political subdivision owning the airport shall select all consultants. The department shall not have jurisdiction over the operation or maintenance of the airport after completion of the project, except for those contractual stipulations agreed to by all parties prior to receipt of state funds.

2. The department shall include in the annual report made by the department to the governor a report of all federal moneys it accepts, receives and receipts for under the provisions of this section. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.14; 66GA, ch 1175,§7]

Referred to in §328.16

328.15 Contracts—law governing. All contracts for the planning, acquisition, construction, improvement, maintenance, and operation of airports, or other air navigation facilities made by the department, either as the agent of this state or of any governmental subdivision, shall be made pursuant to the laws of this state governing the making of like contracts; provided, however, that where such undertaking is financed wholly or partially with federal moneys, the department, as such agent, or the governmental subdivision acting for itself, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §328.15; 66GA, ch 1175,§8]

328.16 Disposition of federal funds. All moneys accepted for disbursement by the department pursuant to section 328.14 shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be expended in accordance with federal laws and regulations and with this chapter. The department is authorized, whether acting for this state or as the agent of any of its governmental subdivisions, or when requested by the United States government or any agency or department thereof, to disburse such moneys for the designated purposes, but this shall not preclude any other authorized method of disbursement. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.16; 66GA, ch 1175,§9]

328.17 and 328.18 Repealed by 65GA, ch 1180, §197.

328.19 Registration.

1. The department shall promulgate rules pursuant to the provisions of chapter 17A governing the issuance by the department of certificates of registration to all airports in this state which are open for use by the public and governing the annual renewal of those certificates. These rules shall require that an airport applying for a certificate of registration or for a renewal shall comply with minimum standards of safety as promulgated by the department, adopt safe air traffic patterns, and demonstrate that such air traffic patterns are safely co-ordinated with those of all existing airports and approved airport sites in its vicinity before the certificates of registration or certificate of renewal may be issued. Certificates of registration or renewal may be issued subject to any conditions the department deems necessary to carry out the purposes of this section. The department may, after notice and opportunity for hearing as provided in chapter 17A, revoke any certifi-

cate of registration or renewal, or may refuse to issue a renewal, when it determines:

a. That there has been an abandonment of the airport as such;

b. That there has been a failure to comply with the conditions of the registration or renewal thereof; or

c. That because of change of physical or legal conditions or circumstances the airport has become either unsafe or unusable for the aeronautical purposes for which the registration or renewal was issued.

2. The department shall promulgate rules pursuant to the provisions of chapter 17A governing the issuance by the department of certificates of airport site approval. These rules shall provide that any person or governmental subdivision desiring or planning to construct or establish an airport shall obtain a certificate of site approval prior to acquisition of the site or prior to the construction or establishment of the airport. The department shall charge a reasonable fee, based on the cost of a safety inspection of the site approval application, for the issuance of a certificate of site approval, and shall issue such a certificate if it finds:

a. That the site is adequate for the proposed airport;

b. That such proposed airport, if constructed or established, will conform to minimum standards of safety as promulgated by the department; and

c. That safe air traffic patterns are established for the proposed airport which are safely co-ordinated with the traffic patterns of all existing airports and approved airport sites in its vicinity.

3. A certificate of site approval shall remain in effect until a certificate of registration has been issued to an airport located on the approved site as provided in subsection 1, unless the department, after notice and opportunity for hearing, revokes the certificate of site approval upon a finding that:

a. There has been an abandonment of the site as an airport site;

b. There has been a failure within two years to develop the site as an airport, or to comply with the conditions of the approval; or

c. Because of change of physical or legal conditions or circumstances the site is no longer usable for the aeronautical purposes for which the approval was granted.

4. No certificate of site approval shall be required for the site of any existing airport.

5. In considering an application for approval of a proposed airport site or the issuance of an airport registration certificate under subsections 1 and 2, the department may, on its own motion or upon the request of an affected or interested person, hold a hearing as provided in chapter 17A. [C31, 35,§8338-c2; C39, §**8338.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.19; 66GA, ch 186,§1, ch 1175,§10]

Referred to in §§328.26, 328.35

328.20 Registration of aircraft. Every civil aircraft owned either wholly or in part by persons residing in this state, unless specifically excepted under the provisions of this chapter, shall be registered annually with the department, by the owner thereof. [C31, 35, §8338-c2; C39,§**8338.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.20]

Referred to in §§328.26, 328.35

328.21 Aircraft registration fees. There shall be paid to the department at the time of such registration an annual registration fee for each such aircraft, to be computed as follows:

1. For the first registration, a sum equal to one and one-half percent of the manufacturer's list price of the aircraft.

2. After said aircraft has been registered once the registration fee shall be seventy-five percent of the rate as fixed for the first registration; after two times fifty percent; and after three times twenty-five percent; provided, however, that no aircraft shall be registered for a registration fee of less than ten dollars.

3. Where there is no delinquency and the registration is made in August or succeeding months to and including May, the fee shall be computed on the basis of one-twelfth of the annual registration fee multiplied by the number of the unexpired months of the year and said amount shall be the fee collected. No fee shall be required for the month of June for a new aircraft, in good faith delivered in that month, providing said aircraft is registered at the time of purchase for the following year.

4. The registration fee for an aircraft operated in scheduled interstate airline operation, owned by an Iowa person and operated part-time within this state shall be a fee of ten dollars each for the first two years of registration and thereafter a sum equal to a percentage of the aircraft registration fee hereinbefore provided for in subsections 2 and 3 of this section, which percentage shall be computed by dividing the total number of hours during which said aircraft is operated within this state by the total number of hours during which said aircraft is operated in scheduled interstate airline operation. The full registration fee shall be paid at the beginning of the registration period and adjustment and refund shall be made by the department following the close of the registration period upon application therefor by the person in whose name the aircraft was registered, said application to be supported by such records as the department shall prescribe.

5. Should the department find and determine that no established manufacturer's list price exists for any such aircraft the department is hereby authorized and empowered to thereupon determine and fix the fair value of such aircraft which fair value shall be used in lieu of a manufacturers' list price in computing the registration fee for each such aircraft as otherwise provided by this section.

When the fee as so computed results in a fractional part of a dollar, it shall be computed to the nearest quarter of a dollar. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.21]

Referred to in §328.26

328.22 Used aircraft. When an aircraft other than new is registered in Iowa the age of the aircraft in years calculated to the nearest anniversary of the date of manufacture shall be construed as the number of times previously registered, and reduction of the registration fee computed accordingly. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.22]

Referred to in §328.26

328.23 Credit on registration fees. There shall be credited upon the registration fee due for the registration of any aircraft pursuant to the provisions of this chapter, except aircraft used for the application of herbicides and pesticides, any tax, registration fee, or license fee levied upon or charged for said aircraft and paid to any other state, and the registration fee due and to be collected pursuant to the provisions of this chapter, shall be reduced by the amount of said tax, registration fee or license fee, upon the presentation of the official receipt therefor with the application for registration. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.23; 66GA, ch 186,§2]

328.24 Refunds of fees. If, during the year for which an aircraft, except nonresident aircraft used for the application of herbicides and pesticides, was registered and the required fee paid therefor, such aircraft is destroyed by fire or accident or junked, and its identity as an aircraft entirely eliminated, or it is removed and continuously used beyond the boundaries of the state, then the owner in whose name it was registered at the time of such destruction, dismantling, or removal from the state shall return the certificate of registration to the commission within ten days and make affidavit of such destruction, dismantling, or removal and make claim for such refund.

The registration fee for the unexpired portion of the year shall thereupon be refunded pro rata to the nearest full calendar month. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.24; 66GA, ch 186,§3]

328.25 Fees in lieu of taxes. The registration fees imposed by this chapter upon aircraft shall be in lieu of all taxes, general or local, except state sales or use tax, to which aircraft might otherwise be subject. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.25]

328.26 Application for registration. Every application for registration pursuant to sections 328.19 to 328.22 shall be made upon such forms, and shall contain such information, as the department may prescribe, and every application shall be accompanied by the full amount of the registration fee. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.26]

328.27 Issuance of certificates. The department shall forthwith cause to be issued, upon receipt of proper application and fee for registration, a certificate of registration which shall be numbered and recorded by the department, shall state the name and address of the person to whom it is issued, shall be entitled with the designation of the class of registrant covered thereby and shall contain such other information as the department may prescribe including, in the case of aircraft, a description thereof. Every certificate of registration or special certificate issued hereunder shall expire at midnight on the thirtieth day of June of each year. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §328.27]

328.28 Operation under special certificate. A manufacturer or dealer owning any aircraft otherwise required to be registered hereunder may operate the same for purposes of transporting, testing, demonstrating, or selling the same without registering each such aircraft, upon condition that any such aircraft display therein a special certificate issued to such owner as provided in this section and sections 328.29 to 328.33.

A transporter may operate any such aircraft solely for the purpose of delivery upon likewise displaying therein, a special certificate issued to him as provided in these sections.

The provisions of this section and sections 328.29 to 328.33 shall not apply to aircraft owned by manufacturer, transporter, or dealer, which are used for hire or principally for transportation of persons and property, aside from the transporting of the aircraft itself, or testing or demonstrating thereof. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.28]

328.29 Application. Any manufacturer, transporter, or dealer, may, upon payment of a fee of twenty-five dollars make application to the department upon such forms as the department may prescribe for a special certificate containing a general distinguishing number and for one or more duplicate special certificates hereunder. The applicant shall also submit such reasonable proof of his status as a bona fide manufacturer, transporter, or dealer as the department may require. Dealers in new aircraft shall furnish satisfactory evidence of a valid franchise with manufacturer or distributor of such aircraft authorizing such dealership. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §328.29]

Referred to in §328.28

328.30 Issuance of special certificates. The department upon granting any such application shall issue to the applicant a special certificate containing the applicant's name and address, and the general distinguishing number assigned to the applicant, and such other information as the department may prescribe. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.30]

Referred to in §328.28

328.31 Issuance of duplicate special certificates. The department shall also issue duplicate special certificates as applied for which shall have displayed thereon the general distinguishing number assigned to the applicant. Each duplicate special certificate so issued shall also contain a number or symbol identifying the same from every other duplicate special certificate bearing the same general distinguishing number. The fee for each additional such duplicate special certificate shall be three dollars. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.31]

Referred to in §328.28

328.32 Expiration of special certificate. Every special certificate issued hereunder shall expire at midnight on the thirtieth day of June of each year, and a new special certificate for the ensuing year may be obtained by the person to whom any such expired special certificate was issued, upon application to the department, and payment of the fee provided by law. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.32]

Referred to in §328.28

328.33 Records required. Every manufacturer, transporter, or dealer shall keep a written record of the aircraft upon which such special certificates are used, which records shall be open to inspection of any police officer, or any officer or employee of the department. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.33]

Referred to in §328.28

328.34 Grounds for refusing, revoking or suspending certificates. The department may refuse to issue, or may revoke or suspend a certificate of registration or special certificate for any one, or any combination, of the following reasons:

1. That the application contains any false or fraudulent material statement, or that the applicant has failed to furnish required information or reasonable additional information requested, or that the applicant is not entitled to registration of the aircraft under this chapter.

2. That the department has reasonable ground to believe that the aircraft is a stolen or embezzled aircraft, or that granting of registration would constitute a fraud against the rightful owner.

3. That the required fee has not been paid.

4. That the department has reasonable ground to believe that fraudulent use, against the state or any municipality or citizen thereof, is being made of such certificate of registration or special certificate.

5. That the person making application for, or holding, the certificate is not certificated or licensed by the government of the United States or any authorized agency thereof, pursuant to the laws of the United States or any rules or regulations promulgated thereunder, to do the acts for which he has been, or seeks to be, registered as performing, or to perform, pursuant to the provisions of this chapter.

6. That the aircraft registered, or for which application for registration is made, is not certificated or licensed for operation by the government of the United States or any authorized agency thereof, pursuant to the laws of the United States or any rules or regulations promulgated thereunder. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.34]

328.35 Exceptions to registration requirements.

1. The provisions of sections 328.19 and 328.20 shall not apply to:

a. An aircraft which has been registered by a foreign country with which the United States has a reciprocal agreement covering the operations of registered aircraft.

b. An aircraft which is owned by a resident of this state but which is continuously located and operated beyond the boundaries of the state.

c. Any airport, landing area, or other air navigation facility owned or operated by the federal government within this state.

2. No minimum standards of safety shall apply to the approval of sites or registration or renewal of a registration certificate for an airport owned by anyone other than a governmental subdivision.

3. No registration or site approval is required for an airport maintained solely for personal use and not for hire. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.35; 66GA, ch 1175,§11]

Referred to in §328.37

328.36 State aviation fund. There is hereby created a fund to be known as the state aviation fund, which shall consist of all moneys received by the department, together with all moneys appropriated to said fund by the state. Unless otherwise provided, the aeronautics fund is hereby appropriated for airport construction. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §328.36; 66GA, ch 35,§6, ch 1047,§7]

328.37 Operations unlawful without certificate. Except as provided in section 328.35, it shall be unlawful for any person to operate, or cause or authorize to be operated, any civil aircraft, airport, landing area, or other air navigation facility, or air school, or to engage in aeronautics as an airman or aeronautics instructor in this state, unless there has been issued therefor or thereto an appropriate certificate of registration or special certificate by the department and such certificate is in force and effect. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §328.37]

328.38 Exhibition of certificates. The certificate of registration or special certificate issued by the department or any agency of another state (unless the requirement therefor is excepted by the provisions of this chapter) shall, as to an airman or aeronautics instructor, be kept in his personal possession whenever engaging in aeronautics; as to an aircraft be conspicuously displayed therein; as to a landing area be conspicuously displayed in the office

of the person in charge thereof; as to an air school be conspicuously displayed in the principal office thereof; and as to a navigation facility be conspicuously displayed in the office of the person responsible for the operation thereof; and must be presented for inspection upon demand of any passenger, peace officer, authorized member, official, or employee of the department or any official, manager, or person in charge of any landing area in this state where landing is made. [C31, 35,§§8338 -c3,-c5; C39,§§**8338.16, 8338.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.38]

328.39 Order of department—review. In any case where the department refuses to issue a certificate of registration or special certificate, or in any case where it shall issue any order requiring certain things to be done, or revoking or suspending any certificate, it shall set forth its reasons therefor and shall state the requirements to be met before such certificate will be issued or such order will be modified or changed. Any order made by the department pursuant to the provisions of this chapter shall be served upon the interested persons by registered mail or in person.

Any order of the department or any refusal to issue, revocation or suspension of any certificate shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.39]

328.40 Penalties. Any person who violates any of the provisions of this chapter, or who makes any material false statement or representation in any application or statement filed with the department as required by this chapter or any of the rules and regulations issued pursuant thereto shall be guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly. [C31, 35,§8338-c8; C39, §**8338.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§328.40]

328.41 Operating recklessly or while intoxicated. It shall be unlawful for any person to operate an aircraft in the air space above this state or on the ground or water within this state, while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, or to operate an aircraft in the air space above this state or on the ground or water within this state in a careless or reckless manner so as to endanger the life or property of another.

Any person who operates an aircraft in a careless or reckless manner in violation of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished accordingly.

Any person who operates any aircraft, while in an intoxicated condition or under the influence of narcotic drugs in violation of this section, shall, upon conviction or a plea of guilty, be punished for the first offense by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period not to exceed one year, or by both such fine and imprisonment; for the second offense by a fine of not less than five hundred dollars, nor more than one thousand dollars, or by imprisonment in the penitentiary for a period of not to exceed one year, or by both such fine and imprisonment; and for a third offense by imprisonment in the penitentiary for a period not to exceed three years.

The court shall after pronouncing sentence cause the clerk to certify a true copy of the judgment to the Iowa liquor control commission. Said commission upon receipt of such copy shall cause notice of such conviction and judgment to be sent to the manager of each liquor store in the state which notice shall be posted therein. [C50, 54, 58, 62, 66, 71, 73, 75,§328.41]

328.42 Nonresident registration. Nonresident owners of aircraft operated within this state for the intrastate transportation of persons or property for compensation or the furnishing of services for compensation or for the intrastate transportation of merchandise, shall register each such aircraft and pay the same fees therefor as is required with reference to like aircraft owned by residents of this state. [C50, 54, 58, 62, 66, 71, 73, 75,§328.42]

53GA, ch 148,§5, editorially divided

328.43 Transfer notice. Upon the transfer of ownership of any registered aircraft, the owner shall immediately give notice to the department upon the form on the reverse side of the certificate of registration, stating the date of such transfer, the name and post-office address with street number, if in a city, of the person to whom transferred, the number of the registration certificate and such other information as the department may require. [C50, 54, 58, 62, 66, 71, 73, 75,§328.43]

328.44 Application by new owner. The purchaser of the aircraft shall join in the notice of transfer to the department and shall, at the same time, make application for a new certificate of registration. [C50, 54, 58, 62, 66, 71, 73, 75,§328.44]

328.45 New registration upon transfer. The department, if satisfied of the genuineness and regularity of such transfer, shall register said aircraft in the name of the transferee and issue a new certificate of registration as provided in this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§328.45]

328.46 Penalty for delay. If a transfer of ownership of an aircraft subject to registration is not completed, as herein provided, within five days of the actual change of possession, a penalty of five dollars shall accrue against said aircraft and no certificate of registration therefor shall thereafter issue until said penalty is paid. [C50, 54, 58, 62, 66, 71, 73, 75,§328.46]

328.47 Lien of fees. All registration fees provided for in this chapter shall be and continue a lien against the aircraft for which said fees are payable until such time as they are

paid as provided by law, with any accrued penalties. [C50, 54, 58, 62, 66, 71, 73, 75,§328.47]

328.48 Attachment of lien. The lien of the original registration fee shall attach at the time the same is first payable as provided by law and the lien of all renewals of registration shall attach on July 1, of each year thereafter. [C50, 54, 58, 62, 66, 71, 73, 75,§328.48]

328.49 Collection of fees. The collection of all fees and penalties provided for in the chapter may be enforced against any aircraft or they may be collected by suit against the owner who shall remain personally liable therefor until such time as the transfer thereof shall be reported to the department or until such time as the identity of such aircraft as an aircraft has been entirely eliminated and all fees and penalties to such date shall be paid. [C50, 54, 58, 62, 66, 71, 73, 75,§328.49]

328.50 Penalty on delinquent registration. On August 1 of each year, a penalty of five percent of the annual registration fee shall be added to all fees not paid by that date, and five percent of the annual registration fee shall be added to such fees on the first day of each month thereafter, that the same remains unpaid until paid, provided that said penalty in no case shall be less than one dollar. [C50, 54, 58, 62, 66, 71, 73, 75,§328.50]

328.51 Accrual of penalty. Such delinquency shall begin and penalty accrue the first of the month following the purchase of a new aircraft and the first of the month following the date aircraft are brought into the state, except as herein otherwise provided. [C50, 54, 58, 62, 66, 71, 73, 75,§328.51]

328.52 Waiver. The department, if it finds that a delinquency in registration was excusable and upon making a record of such finding and the reasons for such delinquency, shall have the power to waive or reduce any of the penalties provided for delinquent registrations. [C50, 54, 58, 62, 66, 71, 73, 75,§328.52]

328.53 Marking public aircraft. All aircraft owned by the state or a governmental subdivision of the state shall be marked to show ownership in a readily apparent manner. The department may promulgate regulations for marking such aircraft. [66GA, ch 1175,§12]

328.54 Biennial report. The commission shall publish biennially an airport directory which shall contain a listing of all airports in the state which are open to public use. The department may charge a reasonable fee based on the cost of publication and distribution to those persons receiving a copy of the directory. [66GA, ch 1175,§12]

328.55 Inspections of governmental subdivision airports. All governmental subdivision airports shall be inspected by the department between July 1, 1976 and July 1, 1977 and shall have one year from the date of inspection to comply with the rules established by the department. [66GA, ch 1175,§12]

328.56 State aircraft pool and revolving fund.

1. There is created within the department a state aircraft pool consisting of state-owned aircraft to be used for the purpose of providing air transportation to state officers, employees and other persons authorized to travel on official state business. The department shall promulgate rules relating to the operation and use of the state aircraft pool. The use of state aircraft in the state aircraft pool for official state business shall be scheduled by the department.

2. The following persons may be transported in state pool aircraft:

a. Any elected or appointed officer of state government.

b. Any employee of state government.

c. Any other person who may be traveling on official public business in the interest of the state when authorized by a department head.

3. There is created a state aircraft revolving fund which shall be used by the department to purchase, sell, operate, maintain and repair aircraft in the state aircraft pool. No state department or agency, except the department of public safety, the state board of regents and the department, shall purchase or sell aircraft. The department shall determine the hourly operational cost of the various aircraft in the state aircraft pool and submit a monthly statement to each state agency using aircraft from the pool. The operational cost shall be paid by the state agency to the department in the same manner as other expenses of the state agency are paid and the payment shall be credited to the state aircraft revolving fund. All expenses relating to the operation and maintenance of the aircraft in the state aircraft pool shall be paid from the state aircraft revolving fund. The operation costs of an aircraft shall include all expenses relating to the operation and maintenance of the aircraft including the salaries, support and maintenance of state aircraft pool personnel and insurance, hangar rental, office supply and equipment and other miscellaneous overhead costs.

4. All state departments, boards, and commissions, except the department of public safety and the state board of regents, shall charter aircraft from the state aircraft pool. If aircraft are not available within the pool, the state aircraft pool may provide for the chartering or rental of aircraft from other public or private persons or agencies.

5. The department shall report annually to the general assembly not later than January fifteenth on the status of the state aircraft pool, which report shall include information on the operational status of each aircraft, op-

erational income and expenses, number of travelers, and recommendations relating to future needs. [C71, 73,§§29A.78, 307.11; C75, §§29A.78, 307A.6; 66GA, ch 1176,§1]

328.57 Short title. This chapter may be cited as the "State Aeronautics Act." [C46, §328.41; C50, 54, 58, 62, 66, 71, 73, 75,§328.53]

Constitutionality, 51GA, ch 148,§43

CHAPTER 329

AIRPORT ZONING

Referred to in §§307.25, 476A.5

329.1 Definitions.
329.2 Airport hazards contrary to public interest.
329.3 Zoning regulations—powers granted.
329.4 Extra-territorial airport hazard areas.
329.5 Prevention of airport hazards.
329.6 Zoning powers.
329.7 Relation to comprehensive zoning regulations.
329.8 Conflicting regulations.
329.9 Procedure for adopting zoning regulations—zoning commission.
329.10 Airport zoning requirements.
329.11 Variances.
329.12 Board of adjustment—creation—powers—duties.
329.13 Administration of airport zoning regulations.
329.14 Enforcement and remedies.
329.15 Short title.

329.1 Definitions. The following words, terms, and phrases, when used in this chapter, shall, for the purposes of this chapter, have the meaning herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

1. "*Airport*" means any area of land or water designed and set aside for the landing and take-off of aircraft and utilized, or to be utilized, in the interest of the public for such purposes.

2. "*Airport hazard*" means any structure or tree or use of land which would exceed the federal obstruction standards as contained in 14 code of federal regulations sections 77.21, 77.23 and 77.25 as revised March 4, 1972, and which obstruct the air space required for the flight of aircraft and landing or takeoff at an airport or is otherwise hazardous to such landing or taking off of aircraft.

3. "*Airport hazard area*" means any area of land or water upon which an airport hazard might be established if not prevented as provided by this chapter.

4. "*Municipality*" means any county or city of this state.

5. "*Person*" means any individual, firm, copartnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

6. "*Structure*" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines, including the poles or other structures supporting the same.

7. "*Tree*" means any object of natural growth.

8. "*Obstruction*" means any tangible, inanimate physical object, natural or artificial, protruding above the surface of the ground.

9. "*Department*" means the state department of transportation.

10. The singular shall include the plural, and the plural the singular. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§329.1; 66GA, ch 1175,§13]

329.2 Airport hazards contrary to public interest. It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land and other persons in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared:

1. That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question.

2. That it is necessary in the interest of the public health, safety, and general welfare that the creation or establishment of airport hazards be prevented.

3. That this should be accomplished, to the extent legally possible, by proper exercise of the police power.

4. That the prevention of the creation or establishment of airport hazards, and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which municipalities may raise and expend public funds, as an incident to the operation of airports, to acquire land or property interests therein. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§329.2]

See §657.2(9)

329.3 Zoning regulations—powers granted. Every municipality having an airport hazard area within its territorial limits may adopt, administer, and enforce in the manner and upon the conditions prescribed by this chapter, zoning regulations for such airport hazard area, which regulations may divide such area into zones and, within such zones, specify the land uses permitted, and regulate and restrict, for the purpose of preventing airport hazards, the height to which structures and trees may be erected or permitted to grow. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§329.3]

Referred to in §§329.4(2), 329.6

329.4 Extra-territorial airport hazard areas. When any airport hazard area appertaining to an airport owned or controlled by a municipality is located outside the territorial limits of said municipality:

1. *Ordinances or resolutions.* The municipality owning or controlling the airport, and the municipality within which the airport hazard area is located, may by duly adopted ordinance or resolution, as may be appropriate, adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question.

2. *Petition to district court.* If the municipality within which is located such airport hazard area has failed or refused, within sixty days after demand has been made upon it by any municipality owning or controlling the airport, to adopt reasonably adequate airport zoning regulations under section 329.3, or to join in adopting joint airport zoning regulations as authorized in subsection 1 of this section, the municipality owning or controlling the airport may, upon a resolution of necessity therefor duly adopted by its governing body, petition the district court of the county in which such airport hazard area or any part thereof is located, in the name of the municipality owning or controlling the affected airport, praying that zoning regulations be established for the airport hazard area in question.

3. *Petition—contents.* Such petition shall allege all essential facts showing the necessity for bringing such action, the relief sought including proposed zoning regulations, and the necessity therefor.

Referred to in §329.6

4. *Parties.* The parties defendant in such action shall be the municipality in which such airport hazard area is located, and all persons having an apparent or contingent interest in the property located within such area, who may be joined in said action generally as a class.

Referred to in §329.6

5. *Procedure.* The action shall be triable in equity and in accordance with general rules of civil procedure, except that such action shall have precedence over any other business of the court except criminal cases, and the court shall set said petition for hearing not less than sixty days nor more than one hundred twenty days from the date it is filed with the clerk of said court.

Referred to in §329.6

6. *Notice.* The original notice in such action shall be served upon the municipality in which such airport hazard area is located, and in the same manner as original notice of any other action but not less than thirty days prior to the date set for trial; and upon all other defendants by the publication of said notice in some newspaper or newspapers of general circulation within the area described in the petition, or as near thereto as possible, which publication shall be in the same manner as provided for the publication of other original notices, provided, however, that the last publication thereof shall be not less than thirty days prior to the date set for trial.

Referred to in §329.6

7. *Decree and modification.* Upon trial the court may enter decree establishing such zoning regulations as it shall find reasonable and necessary. The court having once taken jurisdiction of such matter shall retain continuing jurisdiction thereof for such subsequent modification as it may deem advisable, upon proper application of interested parties, and due showing made thereunder after such notice to possible adverse parties as the court shall prescribe.

Referred to in §329.6

8. *Appeal.* Any person or municipality adversely affected or aggrieved by any findings of the court may appeal therefrom as in other civil actions.

Referred to in §329.6

9. *Enforcement.* Following the entry of any final decree by the district court, and unless appeal has been taken therefrom, the zoning regulations established by such decree may be enforced, and violations thereof punished, as provided by section 329.14. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§329.4]

Referred to in §329.6

329.5 Prevention of airport hazards. Any municipality owning or controlling an airport may maintain actions in equity to restrain and abate as nuisances the creation or establishment of airport hazards appertaining to said airport, in violation of any zoning regulations adopted or established pursuant to the provisions of this chapter for any area whether within or without the territorial limits of said municipality. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§329.5]

See §657.2(9)

329.6 Zoning powers. If any municipality owning or controlling an airport adjacent to which there is an airport hazard area shall fail or refuse, within sixty days after demand made upon it by the department, to adopt reasonably adequate airport zoning regulations under section 329.3, or to proceed as provided in section 329.4, the department may petition the district court of the county in which such airport hazard area, or any part thereof, is

located, in the name of the state, praying that zoning regulations be established for the airport hazard area in question, and the provisions of section 329.4, subsections 3 to 9, shall apply to such actions provided, however, that such municipality shall be joined as a party defendant in any such action.

The department may maintain actions in equity to restrain and abate as nuisances the creation or establishment of airport hazards appertaining to any airport within the state, in violation of any zoning regulations adopted or established pursuant to the provisions of this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§329.6]

329.7 Relation to comprehensive zoning regulations. Any municipality which has adopted, or hereafter adopts, zoning ordinances under the provisions of chapter 414, is hereby empowered to incorporate therein such airport hazard area zoning regulations as are provided for by this chapter, and to administer and enforce the same as herein provided. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§329.7]

329.8 Conflicting regulations. In the event of any conflict between any airport zoning regulations adopted or established under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§329.8]

329.9 Procedure for adopting zoning regulations — zoning commission. In adopting amending, and repealing airport zoning regulations under this chapter the governing body of the municipality shall follow the procedure as provided in sections 414.4 and 414.6. Any action taken on the part of any county under this chapter shall be by resolution of the board of supervisors thereof and no such action shall be taken without a majority of the board of supervisors voting therefor and consenting thereto. The commission so appointed shall be known as the airport zoning commission. The airport zoning commission shall consist of two members from each municipality selected by the governing body thereof and one additional member to act as chairman and to be selected by a majority vote of the members selected by the municipality. The terms of the members of the airport zoning commission shall be for six years excepting that when the board shall first be created, one of the members appointed by each municipality shall be appointed for a term of two years and one for a term of four years. Members may be removed for cause by the appointing authority upon written charges after public hearing. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant in the same manner in which said member was selected. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §329.9]

329.10 Airport zoning requirements.

1. All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not necessary to effectuate the purposes of this chapter.

2. No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree, or interfere with any use, not conforming to the regulations when adopted or amended, except that they may require the owner thereof to permit the municipality at its own expense to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to operators of aircraft the presence of the airport hazard.

3. All such regulations shall provide that no pre-existing nonconforming structure, tree, or use, shall be replaced, rebuilt, altered, allowed to grow higher, or replanted, so as to constitute a greater airport hazard than it was when such airport zoning regulations or amendments thereto were adopted. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§329.10]

329.11 Variances. Any person desiring to erect or increase the height of any structure, or to permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this chapter, may apply to the board of adjustment for a variance from the zoning regulations. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest, but would do substantial justice and be in accordance with the spirit of the regulations and this chapter; provided, however, that any such variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter, including the reservation of the right of the municipality, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to operators of aircraft the presence of the airport hazard. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§329.11]

329.12 Board of adjustment — creation — powers—duties. The governing body of any municipality availing or seeking to avail itself of the powers by this chapter conferred shall, by ordinance or resolution duly adopted, provide for the appointment of a board of adjustment, as provided in section 414.7. Such board of adjustment shall have the same powers and duties, and its procedure, and appeals thereto and therefrom, in all respects shall be governed by and subject to the same provisions established in sections 414.9 to 414.19.

The concurring vote of a majority of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of

the applicant on any matter upon which it is required to pass under any regulations adopted pursuant to this chapter or to effect any variance therefrom.

The board of adjustment shall consist of two members from each municipality, selected by the governing body thereof, and one additional member to act as chairman and to be selected by a majority vote of the members selected by the municipality. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant in the same manner in which said member was selected. The terms of the members of the board of adjustment shall be for five years, excepting that when the board shall first be created, one of the members appointed by each municipality shall be appointed for a term of two years and one for a term of four years. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§329.12]

329.13 Administration of airport zoning regulations. All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency (which may be an agency created by such regulations), or by any official, board, or other existing agency of the municipality adopting the regulations, or of one or both of the municipalities which participated therein, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall not include any of the powers herein delegated to the board of adjustment. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§329.13]

329.14 Enforcement and remedies. Each violation of this chapter or of any regulations, order, or rules promulgated pursuant to this chapter, shall constitute a misdemeanor, and the perpetrator thereof, upon conviction, shall be punished accordingly; and each day a violation continues to exist shall constitute a separate offense. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §329.14]

Referred to in §329.4(9)

329.15 Short title. This chapter shall be known and may be cited as the "Airport Zoning Act." [C46, 50, 54, 58, 62, 66, 71, 73, 75,§329.15]

Constitutionality, 51GA, ch 149,§15
Omnibus repeal, 51GA, ch 149,§16

CHAPTER 330

AIRPORTS

Referred to in §307.25

330.1 Definition.
330.2 Powers.
330.3 Repealed by 64GA, ch 1088,§263.
330.4 Joint exercise of powers.
330.5 Acquisition.
330.6 Improvements.
330.7 General bonds—election—levy of tax.
330.8 Repealed by 55GA, ch 149,§1.
330.9 Plans and specifications.
330.10 Costs.
330.11 Ordinances and rules.
330.12 Charges.
330.13 Federal aid.
330.14 Payment from earnings.
330.15 Deemed as public use.
330.16 Additional levy—election—bonds issued.
330.17 Airport commission—election.
330.18 Notice of election.
330.19 Form of question.
330.20 Appointment of commission.
330.21 Powers—funds.
330.22 Annual report—publishing.
330.23 Rules.
330.24 No restrictions on former commissions.

330.1 Definition. The word "airport" as used in this chapter, shall include landing field, airdrome, aviation field, or other similar term used in connection with aerial traffic. [C31, 35,§5903-c1; C39,§**5903.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.1]

330.2 Powers. Counties and townships may acquire, establish, improve, maintain and operate airports, either within or without their limits, and either within or without the territorial limits of this state. [C31, 35,§5903-c2; C39,§**5903.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §330.2]

330.3 Repealed by 64GA, ch 1088,§263.

330.4 Joint exercise of powers. Agreements between political subdivisions for joint exercise of any powers relating to airports may provide for the creation and establishment of a joint airport commission which, when so created or established, shall function in accordance with the provisions of sections 330.17 to 330.24 insofar as provided by said agreements. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.4]

330.5 Acquisition. A county or township may acquire by purchase, gift, condemnation, lease or otherwise, either within or without its limits, and either within or without the territorial limits of this state, real estate and

personal property for airport purposes; and in like manner to acquire or cause to be moved, removed, abated, eliminated, mitigated, or altered any structure or object protruding above the surface of the ground, or any use of land obstructing the airspace necessary for the safe and efficient flight of aircraft in landing or taking off at any airport, or otherwise constituting a hazard to such landing or taking off. [C31, 35,§5903-c3; C39,§**5903.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.5]

Gifts, see §565.6

330.6 Improvements. A county or township may erect on any land so acquired, or owned by it, such buildings and equipment, and make such improvements as may be necessary for the purpose of adapting such property to the use of aerial traffic. [C31, 35,§5903 -c4; C39,§**5903.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.6]

330.7 General bonds—election—levy of tax. A county or township may contract indebtedness and issue general obligation bonds to provide funds to pay the cost of establishing, acquiring and equipping an airport and for improving the same.

No such indebtedness to pay the cost of the establishment of an airport shall be incurred until approved by the electors of the county or township.

The governing body of the county or township may call a special election or may submit the question at the next general election. Notice of a special election must be published twice in a newspaper of general circulation in the county or township, not less than ten nor more than twenty-five days before the date of the election.

The question submitted to the voters shall state the maximum amount of bonds proposed and the maximum tax levy necessary to repay the bonds plus interest. If sixty percent of those voting approves the proposition, the governing body may proceed as proposed.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable in not more than twenty years and bear interest at a rate not exceeding seven percent per annum and shall be of such form as the governing body shall by resolution provide, but no county or township shall become indebted in excess of five percent of the actual value of its taxable property, as shown by the last preceding state and county tax lists. The indebtedness incurred for the purpose provided in this section shall not be considered an indebtedness incurred for general or ordinary purposes. [C31, 35,§5903 -c5; C39,§**5903.05**; C46, 50,§§330.7, 330.8; C54, 58, 62, 66, 71, 73, 75,§330.7]

Referred to in §§330.10, 330.16
See 63GA, ch 87,§60

330.8 Repealed by 55GA, ch 149,§1, see §330.7.

330.9 Plans and specifications. Before an airport is acquired by any city, county or township the plans and specifications therefor shall be submitted to the state department of transportation which shall require that they show:

The legal description and plat of the site; distance from the nearest post office and railroad station; location and type of highways; location and type of obstructions on and near the site; kind of soil and subsoil; costs and details of grading and draining; location of proposed runways, hangars, buildings, and other structures.

The department shall issue approval of the plans and specifications if it finds that they are in substantial accord with the rules promulgated by the department or with the regulations of the federal aviation administration or other department of the federal government having general supervision of air navigation as it relates to plans and specifications for airports. [C31, 35,§5903-c7; C39, §**5903.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.9; 66GA, ch 1175,§14]

330.10 Costs. The cost of preparing the plans and specifications shall be paid from any of the funds provided in section 330.7. [C31, 35,§5903-c8; C39,§**5903.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.10]

330.11 Ordinances and rules. A county or township may make and enforce rules for control, supervision, and operation of airports. This power shall extend to the space above the lands and waters included within the limits of any county or township. Provided, however, that no such rule shall be in conflict with state law or regulation, or in conflict with federal law or regulation. [C31, 35,§5903 -c9; C39,§**5903.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.11]

Referred to in §330.23

330.12 Charges. A county or township may from time to time fix, establish, and collect a schedule of charges for the use of such property or any part thereof, which charges shall be used in connection with the maintenance and operation of such airport. When the public needs will not be injured thereby, any such county or township may lease all or any portion of such property, for a period of years not exceeding fifty or sell any equipment no longer required. Real estate may be sold only by unanimous vote of all members of the governing body. [C31, 35,§5903-c10; C39,§**5903.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.12]

330.13 Federal aid. Any subdivision of government is authorized to accept, receive, and receipt for federal moneys, and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports, and other air navigation facilities, and sites therefor, and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon such air-

ports and other air navigation facilities. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.13]

330.14 Payment from earnings. All political subdivisions authorized by this chapter to acquire, establish, improve, maintain, and operate airports may, in connection therewith, purchase or construct, or contract for the construction of, and maintain and operate, hangars, administration and office buildings and other aeronautical and commercial facilities for which fees are charged, and pay for the same solely and only out of the earnings thereof. Such political subdivisions are authorized to borrow money for the purpose of purchasing or constructing the improvements herein authorized, and as evidence of such money borrowed to issue their bonds payable solely and only from the revenues derived from such improvements. Such bonds may be issued in such amounts as may be necessary to provide sufficient funds to pay all the costs of construction and operation of such improvement, including engineering and other expenses, together with interest to a date six months subsequent to the estimated date of completion. Bonds issued under the provisions of this section are declared to be negotiable instruments. The principal and interest of said bonds shall be payable solely and only from the special fund herein provided for such payments, and said bonds shall not in any respect be a general obligation of such political subdivision, nor shall they be payable in any manner by taxation. All details pertaining to the issuance of such bonds and the terms and conditions thereof shall be determined by ordinance or resolution duly adopted by the governing body of such political subdivision, which may pledge the property purchased or constructed, and the net earnings thereof, to the payment of said bonds and the interest thereon, and provide that the net earnings thereof shall be set apart as a sinking fund for that purpose. Such political subdivision is authorized and directed to charge the users of such improvements at rates which at all time, shall be sufficient to pay the principal and interest on the bonds issued under the provisions of this chapter, and the cost of operation and maintenance, and to provide an adequate depreciation fund. Bonds issued pursuant to the provisions of this section shall bear interest at a rate not exceeding seven percent per annum. This section shall be construed as granting additional power, without limiting the power already existing in political subdivisions. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.14]

See 63GA, ch 87,§60

330.15 Deemed as public use. Any property acquired, owned, controlled, or occupied for the purposes enumerated in this chapter, shall be and is hereby declared to be acquired, owned, controlled, and occupied for a public purpose and as a matter of public need, and the liability of any county or township in connection therewith shall be no greater than that imposed upon cities in the maintenance and operation of public parks. [C31, 35,§5903 c11; C39,§5903.11; C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.15]

330.16 Additional levy—election—bonds issued. Any county or township which has heretofore or may hereafter establish a municipal airport pursuant to the provisions of this chapter or of any other provision of law, is hereby authorized without approval at an election, to contract indebtedness and to issue general obligation bonds to provide funds to pay the cost of equipping, improving and enlarging such airport provided, however, that if at any time before the date fixed for taking action for the issuance of such bonds a petition is filed with the county auditor signed by qualified electors of the county or township equal in number to two percent of those who voted for the office of president of the United States or governor, as the case may be, at the last preceding general election as shown by the election registers, asking that the question of issuing such bonds be submitted to the legal voters, the governing body thereof shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall call a special election to vote upon the question of issuing the bonds.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable in not more than twenty years and bear interest at a rate not exceeding seven percent per annum and shall be of such form as the governing body shall by resolution provide, but no county or township shall become indebted in excess of five percent of the actual value of its taxable property, as shown by the last preceding state and county tax lists. The indebtedness incurred for the purpose provided in this section shall not be considered an indebtedness incurred for general or ordinary purposes.

Section 330.7 and this section shall be construed as granting additional power without limiting the power already existing. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.16]

Alternate levy, see §404.10(8)
See 63GA, ch 87,§60

330.17 Airport commission — election. The council of any city, county or township which owns or otherwise acquires an airport may, and upon the council's receipt of a valid petition as provided in section 362.4, or upon petition of ten percent of the number of qualified electors of the county or township who voted at the last general election shall, at a regular city election or a general election if one is to be held within sixty days from the filing of said petition, or special election called for that purpose, submit to the voters the question as to whether the management and control of such airport shall be placed in an airport commission. If a majority of the voters favors placing the management and control of the airport in an airport commission, the com-

mission shall be established as provided in this chapter.

The management and control of an airport by an airport commission may be ended in the same manner. If a majority of the voters does not favor continuing the management and control of the airport in an airport commission, said commission shall stand abolished sixty days from and after the date of such election, and the power to maintain and operate such airport shall revert to such city, county or township. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.17]

Referred to in §§330.4, 330.24

330.18 Notice of election. Notice of such election shall be given by publication in a newspaper of general circulation in the city, county or township, subject to the provisions of section 362.3. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.18]

Referred to in §§330.4, 330.24

330.19 Form of question. The question to be submitted shall be in the following form:

"Shall the City of ..... place (or continue) the management and control of its airport (or airports) in an Airport Commission?" [C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.19]

Referred to in §§330.4, 330.24

330.20 Appointment of commission. When a majority of the voters favors airport control and management by a commission, the governing body shall, within ten days, appoint an airport commission of three or five resident voters. In case of a commission of three members the first appointees shall hold office, one for two years, one for four years, and one for six years. In case of a commission of five members the first appointees shall hold office, one for two years, one for three years, one for four years, one for five years, and one for six years. All subsequent appointments shall be for a term of six years. Vacancies shall be filled as original appointments are made. Members of the airport commission shall serve without compensation. Each commissioner shall execute and furnish a bond in an amount fixed by the governing body and filed with the city clerk or county auditor. The cost of such bond shall be paid from the general fund. The commission shall elect from its own members a chairman and a secretary who shall serve for such term as the commission shall determine. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.20]

Referred to in §§330.4, 330.24

330.21 Powers — funds. The commission has all of the powers granted to cities, counties and townships under this chapter, except powers to sell the airport. The commission shall annually certify the amount of tax within the limitations of this chapter to be levied for airport purposes, and upon such certification the governing body may include all or a portion of said amount in its budget.

All funds derived from taxation or otherwise for airport purposes shall be under the full and absolute control of the commission for the purposes prescribed by law, and shall be deposited with the treasurer or city clerk to the credit of the airport commission, and shall be disbursed only on the written warrants or orders of the airport commission, including the payment of all indebtedness arising from the acquisition and construction of airports and the maintenance, operation, and extension thereof. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.21]

Referred to in §§330.4, 330.24

330.22 Annual report—publishing. The airport commission shall immediately after the close of each municipal fiscal year, file with the city clerk or county auditor a detailed and audited written report of all money received and disbursed by the commission during said fiscal year, and shall publish a summary thereof in an official newspaper. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.22]

Referred to in §§330.4, 330.24

330.23 Rules. The power conferred on counties and townships to make and enforce rules under section 330.11 is delegated to the airport commission. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.23]

Referred to in §§330.4, 330.24

330.24 No restrictions on former commissions. Nothing in sections 330.17 to 330.23 shall be interpreted as limiting or affecting airport commissions of cities in the above classification which have already been in existence and operation prior to January 1, 1941, under the provisions of this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§330.24]

Referred to in §330.4

CHAPTER 330A

AVIATION AUTHORITIES

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330A.1 Citation. This chapter shall be known and may be cited as the "Aviation Authority Act." [C71, 73, 75,§330A.1]

330A.2 Definitions. The following terms whenever used, or referred to, in this chapter shall have the following meanings, except in those instances where the context clearly indicates otherwise:

1. The term "authority" shall mean any aviation authority created pursuant to the provisions of this chapter.

2. The term "board" shall mean the governing body of an authority.

3. The term "municipality" shall mean any county or city of this state, and any political subdivision of any state whose borders are at any point conterminous with those of this state and whose laws shall permit the entry of and submission by such political subdivision to an authority created and operating pursuant to the provisions of this chapter.

4. The term "member municipality" shall mean any municipality which shall join in the creation of an aviation authority as provided herein.

5. The term "state" shall mean the state of Iowa.

6. The term "state government" shall mean and include the state, the governor of the state, and any department thereof, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the state, exclusive of counties and cities.

7. The term "federal government" shall mean and include the United States of America, the president of the United States of America, and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States of America.

8. The term "aviation facilities" shall mean and include airports, buildings, structures, terminal buildings, or space hangars, lands, warehouses, or other aviation facilities of any kind or nature, or any other facilities of any kind or nature related to or connected with said airports and other aviation facilities which an authority is authorized by law to construct, acquire, own, lease, or operate, including but not limited to parking facilities, restaurants, and related facilities together with all fixtures, equipment, and property, real or personal, tangible or intangible, necessary, appurtenant, or incidental thereto.

9. The term "person" shall mean any individual, firm, partnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee, or similar representative thereof. [C71, 73, 75,§330A.2]

330A.3 Creation. Two or more municipalities may under the provisions of this chapter enter into an agreement creating an authority in the manner and for the purposes hereinafter provided. Such authority so created shall be a joint public instrumentality and public body corporate to be known as ".....Airport Authority", and which is hereby authorized to exercise its jurisdiction, powers, and duties as herein set forth. [C71, 73, 75,§330A.3]

330A.4 Committee. Each authority shall have a committee whose duties shall consist of electing board members, as hereinafter provided, and advising the board on all matters with respect to the needs and operation of the authority. Committee membership shall be established in the following manner: Each member municipality shall appoint one person for each fifty thousand of its population or fraction thereof as shown in the last certified federal census to a committee which shall be known as the airport authority committee. In the computation of such population, a member county shall include only that portion thereof residing in the unincorporated areas of that county. Members of such a committee shall be appointed by the governing body of the member municipality they represent for a term of six years and may succeed themselves if reappointed. Each member of such committee shall qualify by taking an oath to faithfully perform the duties of his office. To be eligible for appointment as a member, each appointee must be a resident of the member municipality he represents and be willing to serve on the board if elected. However, no official or employee of any member municipality is eligible for such appointment. Within forty-five days after any vacancy occurs on such committee by death, resignation, change of residence or removal of any member, or from any other cause, the successor of such member shall be appointed in the same manner as his predecessor was appointed and shall serve for the unexpired term of his predecessor. The committee shall elect one of its members as chairman, who shall hold office for two years, and it shall also elect one of its members as secretary, who shall hold office for two years. Each committee member and officer shall serve until his successor is duly appointed and qualified unless he becomes

disqualified for such membership, in which event his position shall be deemed vacant. In no event shall a salary be paid to a committee member, however, each committee member shall be reimbursed for actual expenses incurred by him in the performance of his duties. [C71, 73, 75,§330A.4]

330A.5 Board. Each authority shall have a board and said board shall be the governing body of the authority exercising all of the rights, duties, and powers conferred by this chapter upon the authority. Board membership shall be established in the following manner: Committee members shall elect in separate ballots from among their membership seven persons, provided, however, that the maximum number of municipalities is represented on said board. Committee members elected to the board shall resign from the committee. Where a committee consists of less than seven members such committee shall elect sufficient nonmembers to the board so that the board consists of seven persons. However, no official or employee of any member municipality is eligible for election to the board. The term of the two persons first so elected shall be for five years, of the next three persons so elected for three years, and of the next two persons so elected for one year. Thereafter, as those terms expire, the terms of successors shall be for five years. Each member of the board shall qualify by taking an oath to faithfully perform the duties of his office. Within forty-five days after any vacancy occurs on the board by death, resignation, change of residence or removal of any member, or from any other cause, the successor of such member shall be elected in the same manner as his predecessor was elected and shall serve for the unexpired term of his predecessor. The board shall elect one of its members as chairman who shall hold office for two years, and it shall also elect one of its members as secretary, who shall hold office for two years, and it shall also elect one of its members as treasurer, who shall hold office for two years and who shall execute an adequate surety bond in a penal sum to be fixed from time to time by the authority, conditioned upon the faithful performance of the duties of his office, the premium on which shall be paid by the authority. Board members and officers shall serve until a successor is duly elected and qualified. In no event shall a salary be paid to a board member, however, each board member shall be reimbursed for actual expenses incurred by him in the performance of his duties. All actions by an authority shall require the affirmative vote of a majority of the board of an authority as it may exist at the time. [C71, 73, 75,§330A.5]

330A.6 Creation of an authority.

1. Whenever the governing body of any municipality shall desire to participate in the creation of an authority it shall adopt a resolution signifying its intention to do so and shall publish said resolution at least one time in a newspaper of general circulation in such municipality giving notice of a hearing to be held on the question of the municipality's entry into such authority. Such resolution shall be published at least fourteen days prior to the date of hearing, and shall contain therein the following information:

a. Intention to join in the creation of an authority pursuant to the provisions of this chapter.

b. The names of other municipalities which have expressed their intention to join in the creation of the authority.

c. Number of committee members to be appointed from such municipality.

d. Name of authority.

e. Place, date, and time of hearing.

2. After the hearing, and if in the best interests of the municipality, the municipality shall enact an ordinance authorizing the joining of the authority. [C71, 73, 75,§330A.6]

Referred to in §§330A.7, 330A.15

330A.7 Withdrawal.

1. Whenever an authority has been created by two or more municipalities, any one or more of such municipalities may withdraw therefrom but no municipality shall be permitted to withdraw from any authority after any obligations thereof have been incurred unless in the opinion of the authority satisfactory provision has been made by the withdrawing municipality for the payment of its portion of such outstanding obligations. Whenever an authority has been created by two or more municipalities, any municipality not having joined in the original agreement may subsequently join in the authority.

2. Any municipality wishing to withdraw from or to become a member of an existing authority shall signify its desire by resolution and shall publish said resolution at least one time in a newspaper of general circulation in such municipality giving notice of a hearing to be held on the question of withdrawing or joining and its intention to withdraw or join. Said resolution shall be published in a newspaper of general circulation in such withdrawing or joining municipality at least fourteen days prior to the date of hearing. A withdrawing municipality shall state in said resolution why it wishes to withdraw and how it intends to pay its portion of the outstanding obligation, if any. A joining municipality shall state in said resolution the information required in section 330A.6. A copy of said resolution shall be certified to the authority by the municipality at least fourteen days in advance of said hearing. After the hearing and if in the best interest of the municipality, the municipality shall enact an ordinance authorizing the withdrawing or joining. The authority shall by resolution express its consent to such withdrawal, or joining, if satisfactory provision has been made as aforesaid.

3. An application to withdraw or join shall be submitted to the authority and shall in all cases be executed by the proper officers of the withdrawing or incoming municipality under its municipal seal and accompanied by a certified copy of the authorizing ordinance, and shall be joined in by the proper officers of the governing body of the authority.

4. A municipality that joins initially or subsequently or withdraws shall file notice of such joining or withdrawal with the secretary of state and the county recorder in which such municipality is located. Upon its creation, the authority shall file with the secretary of state and with the county recorder wherein each municipality or part thereof is located a copy of the agreement creating the authority. [C71, 73, 75,§330A.7]

330A.8 Purposes and powers—general. An authority is hereby granted the following rights and powers, and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the powers enumerated in this chapter:

1. To sue and be sued in all courts.

2. To adopt, use, and alter at will a seal.

3. To acquire, hold, construct, improve, maintain, operate, own, and lease as lessor or lessee, aviation facilities, provided that no lease of the authority's property whose primary term is in excess of three years shall be entered by the authority until after publication of notice of the terms of the proposed lease once in the county in which said property is located, in the manner provided by section 618.14, together with the date, time, and place of a public hearing which shall be held not less than fourteen days thereafter, at which the authority will hear proponents for and objectors against the lease and may, thereafter, cause it to be executed.

4. To acquire, purchase, hold, own, operate, and lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of an authority and this chapter, and to sell, mortgage, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by it.

5. To enter into and make leases, either as lessee or lessor, for such period or periods of time and under such terms and conditions as an authority shall determine. Such leases may be entered into for buildings, structures, or facilities constructed or acquired or to be constructed or acquired by an authority, or may be entered into for lands owned by an authority where the lessee of said lands agrees as a consideration for said lease to construct or acquire buildings, structures, or facilities on said lands which will become the property of an authority under such terms, rentals, and other conditions as the authority shall deem proper.

6. To acquire by purchase, lease, or otherwise, and to construct, improve, maintain, repair, and operate aviation facilities.

7. To fix, alter, charge, establish, and collect rates, fees, rentals, and other charges for the services and facilities of aviation facilities, or any part thereof, at reasonable and uniform rates to be determined exclusively by an authority for the purposes of carrying out the provisions of this chapter.

8. To borrow money, make and issue negotiable bonds, certificates, refunding bonds, and other obligations (herein called "bonds") and notes of an authority and to secure the payment of such bonds or any part thereof by a pledge of any or all of an authority's revenues, rates, fees, rentals, or other charges, and any other funds which it has a right to, or may hereafter have the right to pledge for such purposes (hereafter sometimes referred to as "revenues"), and to mortgage its property as security for the payment of such bonds; and in general, to provide for the security of said bonds and the rights and remedies of the holders thereof. Such bonds may be issued to finance either one or more or a combination of aviation facilities and the revenues of any one or more aviation facilities may, subject to any prior rights of bondholders, be pledged for any one or more or a combination of aviation facilities. Any revenues from existing aviation facilities theretofore constructed or acquired pursuant to this chapter or existing laws, or existing aviation facilities constructed or acquired by an authority from any source may be pledged for any one or more or a combination of aviation facilities financed under this chapter, regardless of whether or not such existing aviation facilities are then being improved or financed by the proceeds of the bonds to be issued to finance the one or more or the combination of aviation facilities for which such revenues of such existing aviation facilities are to be pledged.

9. To make contracts of every kind and nature and to execute all instruments necessary or convenient for the carrying on of its business.

10. Without limitation of the foregoing, to borrow money and accept grants, contributions or loans from, and to enter into contracts, leases, or other transactions with, municipal, county, state, or federal government.

11. To have the power of eminent domain, such power to be exercised in the manner provided by law for municipal corporations of this state.

12. To pledge, hypothecate, or otherwise encumber all or any part of the revenues, rates, fees, rentals, or other charges or receipts of an authority as security for all or any of the obligations issued by an authority.

13. To pledge, mortgage, hypothecate, or otherwise encumber all or any part of the property, real or personal, of the authority as security for all or any of the obligations issued by an authority.

14. To employ technical experts necessary to assist an authority in carrying out or exercising any powers granted hereby, including but not limited to architects, engineers, attorneys, fiscal advisors, fiscal agents, investment bankers, and aviation consultants.

15. To do all acts and things necessary or convenient for the promotion of its business and the general welfare of an authority, in order to carry out the powers granted to it by this chapter or any other laws. An authority shall have no power at any time or in any manner to pledge the taxing power of the state or any political subdivision or agency thereof, nor shall any of the obligations issued by an authority be deemed to be an obligation of the state or any political subdivision or agency thereof secured by and payable from ad valorem taxes thereof, nor shall the state or any political subdivision or agency thereof be liable for the payment of principal of or interest on such obligations except from the special funds provided for in this chapter. [C71, 73, 75,§330A.8]

330A.9 Purposes and powers—bonds and notes.

1. The bonds issued by an authority pursuant to this chapter shall be authorized by resolution of the board thereof and shall be either term or serial bonds, shall bear such date or dates, mature at such time or times, not exceeding forty years from their respective dates, bear interest at such rate or rates, not exceeding eight per centum per annum payable semiannually, be in such denominations, be in such form, either coupon or fully registered, shall carry such registration, exchangeability and interchangeability privileges, be payable in such medium of payment and at such place or places, within or without the state, be subject to such terms of redemption and be entitled to such priorities on the revenues, rates, fees, rentals, or other charges or receipts of the authority as such resolution or any resolution subsequent thereto may provide. The bonds shall be executed either by manual or facsimile signature by such officers as an authority shall determine, provided that such bonds shall bear at least one signature which is manually executed thereon, and the coupons attached to such bonds shall bear the facsimile signature or signatures of such officer or officers as shall be designated by an authority and the bonds shall have the seal of the authority, affixed, imprinted, reproduced, or lithographed thereon, all as may be prescribed in such resolution or resolutions. Said bonds shall be sold at public sale at such price or prices as the authority shall determine to be in the best interests of the authority provided that such bonds shall not be sold at less than the par value thereof, plus accrued interest and provided that the net interest cost shall not exceed eight per centum per annum. Pending the preparation of definitive bonds, interim certificates or temporary bonds may be issued to the purchaser or purchasers of such bonds, and may contain such terms and conditions as the authority may determine.

2. An authority shall have the power, at any time and from time to time after the issuance of bonds thereof shall have been authorized, to borrow money for the purposes for which such bonds are to be issued in anticipation of the receipt of the proceeds of the sale of such bonds and within the authorized maximum amount of such bond issue. Any such loan shall be paid within three years after the date of the initial loan. Bond anticipation notes shall be issued for all moneys so borrowed under the provisions of this section, and such notes may be renewed from time to time, but all such renewal notes shall mature within the time above limited for the payment of the initial loan. Such notes shall be authorized by resolution of the board and shall be in such denomination or denominations, shall bear interest at such rate or rates not exceeding the maximum rate permitted by the resolution authorizing the issuance of the bonds, shall be in such form and shall be executed in such manner, all as such authority shall prescribe. Such notes shall be sold at public sale or, if such notes shall be renewal notes, they may be exchanged for notes then outstanding on such terms as the board shall determine. The board may, in its discretion, retire any such notes from the revenues derived from its aviation facilities or from such other moneys of the authority which are lawfully available therefor or from a combination of each, in lieu of retiring them by means of bond proceeds; provided, however, that before the retirement of such notes by any means other than the issuance of bonds it shall amend or repeal the resolution authorizing the issuance of the bonds, in anticipation of the proceeds of the sale of which such notes shall have been issued, so as to reduce the authorized amount of the bond issue by the amount of the notes so retired. Such amendatory or repealing resolution shall take effect upon its passage.

3. Any such resolution or resolutions authorizing any bonds hereunder may contain provisions which shall be part of the contract with the holders of such bonds, as to:

a. The pledging of all or any part of the revenues, rates, fees, rentals, or other charges or receipts of an authority derived by an authority from all or any of its aviation facilities.

b. The construction, improvement, operation, extensions, enlargement, maintenance, repair, or lease of such aviation facilities and the duties of an authority with reference thereto.

c. Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by the federal government or the state government or the county or any municipality therein, may be applied.

d. The fixing, charging, establishing, and collecting of rates, fees, rentals, or other charges for use of the services and facilities of the aviation facilities of an authority, or any part thereof.

e. The setting aside of reserves or sinking funds or repair and replacement funds or other funds and the regulation and disposition thereof.

f. Limitations on the issuance of additional bonds.

g. The terms and provisions of any deed of trust, mortgage, or indenture securing the bonds or under which the same may be issued.

h. Any other or additional agreements with the holders of the bonds as are customary and proper and which in the judgment of an authority will make said bonds more marketable.

4. An authority may enter into any deeds of trust, mortgages, indentures, or other agreements, with any bank or trust company or any other lender within or without the state as security for such bonds, and may assign and pledge all or any of the revenues, rates, fees, rentals, or other charges or receipts of an authority thereunder. Such deeds of trust, mortgages, indentures, or other agreements, may contain such provisions as may be customary in such instruments, or, as an authority may authorize, including, but without limitation, provisions as to:

a. The construction, improvement, operation, leasing, maintenance, and repair of the aviation facilities and duties of an authority with reference thereto.

b. The application of funds and the safeguarding and investment of funds on hand or on deposit.

c. The appointment of consulting engineers or architects and approval thereof by the holders of the bonds.

d. The rights and remedies of said trustee and the holders of the bonds.

e. The terms and provisions of the bonds or the resolution authorizing the issuance of the same.

Any of the bonds issued pursuant to this chapter are, and are hereby declared to be, negotiable instruments, and shall have all the qualities and incidents of negotiable instruments. [C71, 73, 75,§330A.9]

330A.10 Funds of an authority. Moneys of an authority shall be paid to the treasurer of the authority who shall not commingle said moneys with any other moneys, but shall deposit them in a separate account or accounts. The moneys in said accounts shall be paid out on check of the treasurer on requisition of the chairman of the authority, or of such other person, or persons, as the authority may authorize to make such requisition. Notwithstanding the aforementioned provisions an authority is hereby authorized, and shall have the right, to deposit any of its rates, fees, rentals, or other charges, receipts or income with any bank or trust company within the state and to deposit the proceeds of any bonds issued hereunder with any bank or trust company within the state, all as may be provided in any agreement with the holders of bonds issued hereunder. [C71, 73, 75,§330A.10]

330A.11 Transfer of existing facilities to authority.

1. Any municipality, airport commission, authority, or person may, and they are hereby authorized to sell, lease, lend, grant, or convey to the authority, any aviation facilities or any part or parts thereof, or any interest in real or personal property, which are within or without geographical boundaries of one or more of the municipal members and which may be used by an authority in the construction, improvement, maintenance, leasing, or operation of any aviation facilities. Any municipality, airport commission, authority, or person is additionally authorized hereby to transfer, assign, and set over to an authority any contract or contracts which may have been awarded by said municipality, airport commission, authority, or person for the construction of aviation facilities not begun or, if begun, not completed.

2. The proposed action of an authority, and the proposed agreement to acquire, shall be approved by the governing body of the owner of the aviation facilities. Whenever the governing body of any municipality, airport commission, or authority, shall desire to sell, lease, lend, grant, or convey to the authority, any aviation facilities or any part or parts thereof, as aforesaid, it shall adopt a resolution signifying its intention to do so and shall publish said resolution at least one time in a newspaper of general circulation in said municipality and in a newspaper or newspapers, if necessary, of general circulation of the area served by said airport commission or authority giving notice of a hearing to be held on the question of said sale, lease, loan, grant, or conveyance. Such resolution shall be published at least fourteen days prior to the date of hearing. After the hearing and if in the public interest, said municipality shall enact an ordinance authorizing said sale, lease, loan, grant, or conveyance and said airport commission or authority shall pass a resolution authorizing said sale, lease, loan, grant, or conveyance.

3. An owner, transferring existing facilities to an authority under the provisions of this section must notify the authority of and make provision in the transfer documents for, where necessary, existing rights, liens, securities, and rights of re-entry belonging to the state and federal government.

4. This section, without reference to any other law, shall be deemed complete authority for the acquisition by agreement, of aviation facilities as defined in this chapter, any provision of other laws to the contrary notwithstanding, and no proceedings or other action

shall be required except as herein prescribed. [C71, 73, 75,§330A.11]

330A.12 Award of contract. All contracts entered into by an authority for the construction, reconstruction, and improvement of aviation facilities shall be entered into pursuant to and shall comply with chapter 23. However, where an authority determines an emergency exists, it may enter into contracts obligating the authority for not in excess of twenty-five thousand dollars per emergency without regard to the requirements of chapter 23 and the authority may proceed with the necessary action as expeditiously as possible to the extent necessary to resolve such emergency. [C71, 73, 75,§330A.12]

330A.13 Acquisition of lands and property. An authority shall have the power to acquire, within or without the geographical boundaries of the member municipalities, by purchase or eminent domain proceedings, either the fees or such rights, title, interest, or easement in such lands and property, including but not limited to air rights and avigation easements, as the authority may deem necessary for any of the purposes of this chapter. The right of eminent domain herein conferred shall be exercised by the authority in the manner provided by law, as though the authority were a municipal corporation. [C71, 73, 75,§330A.13]

330A.14 Use of aviation facilities. The use of aviation facilities and the services and facilities thereof, by an authority and the operation of its business shall be subject to the rules and regulations, from time to time, adopted by the authority and applicable federal laws and regulations; provided, however, that an authority shall not be authorized to do anything which will impair the security of the holders of the obligations of the authority or violate any agreements with them or for their benefit. [C71, 73, 75,§330A.14]

330A.15 Tax for purposes of an authority. The governing body of a municipality after joining an authority and after determination by the authority pursuant to planning studies may by ordinance provide for the assessment of an annual levy not to exceed twenty-seven cents per one thousand dollars of assessed value upon all the taxable property in such municipality for a period not to exceed forty years as shall be agreed by the member municipalities or for such longer time as any revenue bonds of an authority shall be outstanding or until such municipality withdraws from the authority, whichever is sooner. A county which is a member municipality may levy such tax only upon the property in the unincorporated area of such county. Such tax may be levied in excess of any tax limitation imposed by statute. Such ordinance shall be enacted only after publication of notice and hearing in the manner prescribed in section 330A.6. Upon such enactment, a copy thereof shall be certified to the authority. An authority shall have the power to enforce the collection of such levy by mandamus or other appropriate remedy and such levy shall be collected in the manner other taxes are collected and allocated and paid to the authority for the exclusive and proper use of the authority, including but not limited to the purchase of land, and the acquiring, establishing, constructing, enlarging, operating, and maintaining of aviation facilities. In addition to the purposes listed above, moneys in said fund may be pledged to the payment of the principal, interest, and redemption premium, if any, on bonds of the authority. Money paid to the authority pursuant to this section shall be deposited by the authority in a special trust fund to be called the "..... Authority Capital Reserve Fund". Member municipalities may, in addition, deposit money from current operating funds in the capital reserve fund pursuant to agreement for the purpose of providing initial funds to the authority to be used for funding studies, plans, and other expenses of an authority pending receipt of funds from the annual levy herein authorized. Any such money so deposited shall be considered a gift and is not repayable. [C71, 73, 75,§330A.15]

Referred to in §§24.37, 384.12

330A.16 Exemption from taxation. The effectuation of the authorized purposes of an authority shall be in all respects for the benefit of the people of the state and the member municipalities, for the increase of their commerce and prosperity, and for the improvement of their welfare, health, and living conditions, and since an authority will be performing essential governmental functions in effectuating such purposes, an authority shall not be required to pay any taxes or assessments of any kind or nature whatsoever upon any property required or used by it for such purposes, or any rates, fees, rentals, receipts, or incomes at any time received by it, and the bonds issued by an authority, their transfer and the income therefrom (including any profits made on the sale thereof) shall at all times be free from taxation of any kind by the state, or any political subdivision or taxing agency or instrumentality thereof. [C71, 73, 75,§330A.16]

330A.17 Statute complete and additional authority. The powers conferred by this chapter shall be in addition and supplemental to any other law and this chapter shall not be construed so as to repeal any other law, except to the extent of any conflict between the provisions of this chapter and the provisions of any other law, in which event the provisions of this chapter shall be controlling and shall, to the extent of any such conflict, supersede the provisions of any other law. This chapter is intended to and shall provide an alternative and complete method for the exercise of the powers granted by this chapter, and the aviation facilities authorized by this

chapter may be constructed, acquired, or improved and bonds or other obligations issued pursuant to this chapter upon compliance with the provisions of this chapter without regard to or necessity for compliance with the limitations or restrictions contained in any other law. No approval of the qualified electors or qualified freeholders of the state, or of any other political subdivision or taxing unit or agency thereof, or of the member municipalities shall be required for the issuance of any bonds by an authority pursuant to this chapter. [C71, 73, 75,§330A.17]

330A.18 Co-operation between municipalities and authorities. The effectuation of the authorized purposes of an authority being in all respects for the benefit of the people of the state and the member municipalities, each member municipality is hereby authorized to aid and co-operate with an authority in carrying out any authorized purposes of the authority. Each member municipality is hereby authorized to enter into co-operation agreements for the making of a loan, gift, grant, or contribution to the authority for the carrying out of its authorized purposes. Each member municipality is hereby further authorized to grant and convey to an authority real or personal property, of any kind or nature, or any interest therein, for the carrying out of its authorized purposes. Each member municipality is, further and additionally, authorized to covenant in any such co-operation agreement made pursuant to this section to pay all or any part of the costs of operation and maintenance of the aviation facilities of an authority from moneys derived from ad valorem taxation or from any other available funds of the municipality. Any such co-operation agreement may be made and entered into pursuant to this chapter for such time or times not exceeding forty years as shall be agreed by the parties thereto or for such longer time as any revenue bonds of an authority, including refundings thereof, remain outstanding and unpaid and may contain such other details, terms, provisions, and conditions as shall be agreed upon by the parties thereto. Any such co-operation agreement may be made and entered into for the benefit of the holders of any revenue bonds of an authority as well as the parties thereto and shall be enforceable in any court of competent jurisdiction by the holders of any such revenue bonds or of the coupons appertaining thereto. [C71, 73, 75,§330A.18]

330A.19 Eligibility as investments and security for public funds. Notwithstanding the provisions of any other law or laws, all bonds issued by an authority pursuant to this chapter shall be and constitute legal investments for banks, savings banks, trustees, executors, and all other fiduciaries, and all such bonds shall be and constitute securities eligible for deposit for the securing of all state, municipal, and other public funds. [C71, 73, 75, §330A.19]

TITLE XIV

COUNTY AND TOWNSHIP GOVERNMENT

CHAPTER 331

BOARD OF SUPERVISORS

Identification and use of publicly owned automobiles, etc., §740.20 et seq.

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331.1 Number of members. The board of supervisors in each county shall consist of three persons, except where the number has been or may hereafter be increased in the manner provided by this chapter. They shall be qualified electors, and be elected by the qualified electors of their respective counties, and shall hold their office for four years. [R60,§303; C73,§§294, 299; C97,§410; SS15,§410; C24, 27, 31, 35, 39,§**5106**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.1]

331.2 Number increased by vote. When petitioned to do so by one-tenth of the qualified electors of said county having voted in the last previous general election for the office of president of the United States or governor, as the case may be, the board of supervisors shall, or may on its own motion by resolution, submit to the qualified electors of the county, at any regular election, a proposition as to whether or not the number of supervisors should be increased to five.

If a majority of the votes cast shall be in favor of the increase to five members, then at the next general election two additional supervisors shall be elected; one for a term of two years and one for a term of four years.

The length of term for which any person is a candidate and the time when the term begins shall be indicated on the ballot. [R60,§303; C73,§§294, 299; C97,§410; SS15,§410; C24, 27, 31, 35, 39,§**5107**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §331.2]

331.3 Number reduced by vote. In any county where the number of supervisors has been increased to five, the board of supervisors shall, on petition of one-tenth of the qualified electors of the county having voted in the last previous general election for the office of president of the United States or governor, as the case may be, or may on its own motion by resolution, submit to the qualified electors of the county, at any regular election, a proposition as to whether or not the number of supervisors should be decreased to three.

If a majority of the votes cast shall be in favor of the decrease to three members, then the number of supervisors shall be so reduced as provided in sections 331.6 and 331.7. [C73, §299; C97,§410; SS15,§410; C24, 27, 31, 35, 39, §**5108**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.3]

331.4 Petition in certain counties. In counties where there is a city operating under the commission form of government, with a population of more than seventy-five thousand people, the petition shall contain ten percent of the qualified electors residing in the county and outside of the city, and then ten percent of the qualified electors residing in the city. [C35,§5108-e1; C39,§**5108.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.4]

331.5 Vote in certain counties. When the proposition is voted upon, the qualified electors residing in the county and outside of the city, shall vote separately upon the proposition, and there shall be cast a majority vote of such electors outside of the city, and a majority vote of the qualified electors of the city, before such change shall be effective. [C35,§5108-e2;

C39,§5108.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, §331.5]

331.6 When reduction takes effect. If the proposition to reduce the number of members of the board carries, the board shall consist of the same number of members as at the time the proposition to reduce was submitted, until the first day in January following the next general election which is not a Sunday or legal holiday, at which time the terms of all members of the board shall expire. [C73,§299; C97, §410; SS15,§410; C24, 27, 31, 35, 39,§5109; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.6]

Referred to in §331.3

331.7 Election of new members. At the next general election following the one at which the proposition to reduce the number of members of the board to three was carried, such members shall be elected pursuant to the supervisor representation plan currently in effect in such county. One person shall be elected as member of the board for two years and two for four years.

The length of term for which any person is a candidate and the time when the term begins shall be indicated on the ballot. [SS15, §410; C24, 27, 31, 35, 39,§5110; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.7]

Referred to in §331.3

331.8 Supervisor districts.

1. Each county board of supervisors shall, by November 1, 1969, select one of the following alternative supervisor representation plans:

a. Plan one. Election at large and without district residence requirements for members.

b. Plan two. Election at large but with equal population district residence requirements for members.

c. Plan three. Election from single-member equal-population districts in which the electors of each district shall elect one member who shall be required to reside in that district.

2. The plan so selected and any plan thereafter selected by the board shall, subject to the provisions of section 331.9, remain in effect for at least six years. [C97,§416; S13,§416; C24, 27, 31, 35, 39,§5111; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.8]

Referred to in §§49.4, 331.9, 331.25, 331.26, 331.27

331.9 Special election on petition. The board of supervisors, when petitioned by ten percent of the number of qualified electors of the county having voted in the last previous general election for the office of president of the United States or governor, as the case may be, shall cause a special election to be held within the county for the purpose of selecting the supervisor representation plan enumerated in section 331.8 under which such county board shall thereafter be elected.

Such petition shall be filed with the county auditor by January 1 of any general election year. However, the plan selected by such special election and any plan thereafter selected by special election shall remain in effect for at least six years. Said special election shall be held at least one hundred days prior to the primary election. Notice of such special election shall be published once each week for three successive weeks in an official newspaper of the county and shall state the alternative representation plans to be submitted to the electors and that the election will be held not less than five nor more than twenty days from the date of last publication.

The alternative supervisor representation plans shall be stated in substantially the following manner:

The individual members of the county board of supervisors in ..... county, Iowa, shall be elected:

Plan 1. At large and without district residence requirements for members.

Plan 2. At large but with equal population district residence requirements for members.

Plan 3. From single-member equal-population districts in which the electors of each district shall elect one member who shall be required to reside in that district.

If the plan adopted by a plurality of the ballots cast in the special election is not the supervisor representation plan currently in effect in the county, the members of the board serving at the time of the special election shall continue their terms until the second secular day in January following the next general election, at which time the terms of all such members shall expire and members shall be elected pursuant to the requirements of the plan adopted by the people and set out in sections 331.25, 331.26 and 331.27. [C97,§417; C24, 27, 31, 35, 39,§5112; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.9]

Referred to in §§331.8, 331.25, 331.26, 331.27

331.10 and 331.11 Repealed by 63GA, ch 218,§11.

331.12 Absence from county—vacancy. The absence of any supervisor from the county for sixty days in succession shall be treated as a resignation of his office, and the board shall, at its next meeting thereafter, by resolution regularly adopted and spread upon its records, declare his seat vacant. [C73,§298; C97,§414; C24, 27, 31, 35, 39,§5115; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.12]

331.13 Organization. The board of supervisors, at its first meeting in each year, shall organize by choosing one of its members as chairman, who shall preside at all of its meetings during the year. [R60,§308; C73,§300; C97, §415; C24, 27, 31, 35, 39,§5116; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.13]

331.14 Quorum. A majority of the board of supervisors shall constitute a quorum to transact business, but should a division take place on any question when only two members of the board are in attendance, the question

shall be continued until there is a full board. [R60,§308; C73,§297; C97,§413; C24, 27, 31, 35, 39, §**5117**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.14]

331.15 Meetings. The members of the board of supervisors shall meet at the county seat of their respective counties on the second secular day in January and on the first Monday in April and the second Monday in June, September, and November in each year, and shall hold such special meetings as are provided by law, but in the event a quorum of said board fails to appear on a day set for a regular or an adjourned meeting the auditor of said county shall adjourn said meeting from day to day until a quorum is present. [R60,§307; C73,§296; **C97,§412; S13,§412; C24, 27, 31, 35, 39,§5118**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.15]

331.16 Special sessions. Special sessions of the board of supervisors shall be held only when requested by the chairman or a majority of the board, which request shall be in writing addressed to the county auditor, shall fix the date of meeting and shall specify the objects thereof, which may include the doing of any act not required by law to be done at a regular meeting. [R60,§309; C73,§301; C97, §420; C24, 27, 31, 35, 39,§**5119**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.16]

331.17 Notice. The auditor shall immediately give notice in writing or by telephone to each of the supervisors personally, or by leaving notice thereof at his residence, at least six days before the date set for such meeting, stating the time and place where the meeting will be held and the objects thereof as stated in the written request. No business shall be transacted at such session, except that stated in the request and notice. [R60,§309; C73,§301; C97,§420; C24, 27, 31, 35, 39,§**5120**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.17]

331.18 Acts requiring majority. No tax shall be levied, no contract for the erection of any public buildings entered into, no settlement with the county officers made, no real estate purchased or sold, no new site designated for any county buildings, no change made in the boundaries of townships, and no money appropriated to aid in the construction of highways and bridges, without a majority of the whole board of supervisors voting therefor and consenting thereto. [R60,§313; C73,§305; C97,§440; C24, 27, 31, 35, 39,§**5121**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.18]

331.19 Books to be kept. The board is authorized and required to keep the following books:

1. *Minute book.* A book to be known as the "minute book", in which shall be recorded all orders and decisions made by it except those relating to highways and drainage districts, and in which book, or in a separate book kept for that purpose, there shall be an alphabetical index of the proceedings of said board as shown by the minutes.

2. *Highway record.* A book to be known as the "highway record", in which shall be recorded all proceedings and adjudications relating to the establishment, change, or discontinuance of highways.

3. *Bridge book.* A book to be known as the "bridge book", where a record of bridges shall be kept in a numerical order in each congressional township, commencing in section one, and numbering each bridge; give location in fractional parts of sections; name the kind of material used for substructure and superstructure; give length and cost of bridge, and, when repaired, to keep a record of repairs and charge it to the bridge; and warrants drawn in payment for erection or repairs of bridges shall indicate the number of the bridge for which issued in payment.

4. *Warrant book.* A book to be known as the "warrant book", in which shall be entered, in the order of its issuance, the number, date, amount, name of drawee of each warrant drawn on the treasury, and the number of warrants, as directed in relation to the minute book.

5. *Claim register.* A book to be known as a "claim register", in which shall be entered a minute of all claims filed for allowance of money from the county treasury. [R60,§318; C73,§308; C97,§442; C24, 27, 31, 35, 39,§**5122**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.19]

331.20 Claims generally. Claims filed shall be numbered consecutively in the order of filing, and shall be entered on the claim register alphabetically, so as to show the date of filing, the number of the claim and its general nature, the name of the claimant and the action of the board thereon, stating, if allowed, the fund upon which allowance is made. A record of the allowance of claims at each session of the board shall be entered on the minute book by reference to the numbers of the claims as entered on the claim register. [C24, 27, 31, 35, 39,§**5123**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.20]

Referred to in §230A.9

331.21 Unliquidated claims. All unliquidated claims against counties and all claims for fees or compensation, except salaries fixed by statute, shall, before being audited or paid, be so itemized as to clearly show the basis of any such claim and whether for property sold or furnished the county, or for services rendered it, or upon some other account, and shall be signed by the claimant, filed with the county auditor for presentation to the board of supervisors; and no action shall be brought against any county upon any such claim until the same has been so filed and payment thereof refused or neglected. [C73,§§2610, 3843; C97, §§1300, 3528; C24, 27, 31, 35, 39,§**5124**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§331.21]

331.22 Compensation of supervisors. The board of supervisors shall receive an annual salary or per diem compensation as provided

in section 340A.6. The annual salary or per diem shall be in full payment for all services rendered to the county except that each member of the board is entitled to reimbursement for mileage expense incurred while engaged in the performance of official duties at the same rate as provided by law for state employees. The total mileage expense for a member of the board of supervisors shall not exceed one thousand five hundred dollars per year. [R60,§317; C73,§3791; C97,§469; S13,§469; C24, 27, 31, 35, 39,§§5125, 5127; C46, 50, 54, 58, 62, 66,§§331.22, 331.24; C71, 73, 75,§331.22; 66GA, ch 191,§8]

Referred to in §331.23
Rate, see §79.9
Additional provisions in re mileage, ch 79

331.23 Payment of mileage legalized. Notwithstanding the provisions of chapter 585, any proceeding taken by a board of supervisors between July 1, 1974 and June 30, 1975 under section 331.22 authorizing the payment of a mileage warrant for a member of the board of supervisors which exceeded an aggregate mileage expense of one thousand dollars per year but not more than an aggregate mileage expense of one thousand five hundred dollars per year is declared to be valid. [66GA, ch 191,§14]

331.24 Repealed by 63GA, ch 217,§2.

331.25 Plan "one" terms of office. If plan "one" is selected pursuant to section 331.8 or 331.9, the county board shall be elected as provided in this section.

1. In the primary and general elections, the number of supervisors, or candidates for such offices, which constitutes the county board in such county, shall be elected by the qualified electors of the county at large and no district residence requirements shall be imposed upon the candidates for such office.

2. In counties with three supervisors, one person shall be elected as a member of the board for two years and two persons shall be elected as members of the board for four years.

In counties with five supervisors, two persons shall be elected as members of the board for two years and three persons shall be elected as members of the board for four years.

In no case shall a board be composed of more than five members.

The determination as to whether a term of office shall be for two or four years shall be decided by lot prior to the primary election, and the results of such determination indicated on the ballot in such primary and general elections. [C71, 73, 75,§331.25]

Referred to in §§39.18, 331.9, 331.26
Terms when no special election is held, 63GA, ch 218,§3(2)

331.26 Plan "two" terms of office. If plan "two" is selected pursuant to section 331.8 or 331.9, the county board shall be elected as provided in this section.

1. The board of supervisors shall, before November 1, 1969, and before November 1 of the nonelection year following each federal decennial census thereafter, if necessary, divide the county into a number of supervisor districts corresponding to the number of supervisors in such county. However, if such plan is selected pursuant to section 331.9, the board shall so divide the county before March 15 of the election year. The board shall make a good-faith effort to achieve precise mathematical equality in the population of such districts as indicated by the most recent federal decennial census.

Such supervisor districts may be drawn on the basis of existing natural or artificial divisions and boundaries of the county; township and voting precinct lines may be crossed; but in no event shall the existence of convenient district boundaries justify the designation of supervisor districts which are not of as nearly precise mathematical equality in population as is practicable.

2. Members of the county board shall be required to reside one to each supervisor district but shall be elected by the electors of the county at large. Election ballots shall be prepared to specify the district which each candidate seeks to represent and each elector may cast a vote for one candidate from each district for which a supervisor is to be chosen in the general election.

3. The county board may redesignate supervisor districts once in every two years, and no sooner. In the event that the board redistricts, it must be completed and available to the public by November 1 of the year prior to the election to be applicable in that election year. The provisions of this subsection shall not be construed as having the effect of lengthening or diminishing the term of office of any member of such board as a result of such redesignation, nor shall districts be redesignated except in compliance with this section. No supervisor district shall be designated by the county board pursuant to subsection 1 of this section which, while complying with the requirement that it be of as nearly precise mathematical equality in population as practicable to the other supervisor districts of the county, discriminates by design for or against any political party, board member, candidate for board membership, racial or ethnic minority or any other group of persons.

4. At the primary and general elections the number of supervisors, or candidates for such offices, which constitute the county board in such county shall be elected as provided in this section. Terms of members shall be as provided in section 331.25, subsection 2. [C71, 73, 75,§331.26]

Referred to in §§39.18, 331.9, 331.27

331.27 Plan "three." If plan "three" is selected pursuant to section 331.8 or 331.9, the supervisor districts shall be drawn and members of the county board shall be elected as provided in section 331.26, except that boundaries of supervisor districts shall follow vot-

ing precinct lines and each member of the board, and each candidate for such office, shall, at the primary and general elections, be elected or nominated only by the electors of the district which that candidate seeks to represent. [C71, 73, 75,§331.27; 66GA, ch 1075,§64]

Referred to in §331.9

331.28 Repealed by 65GA, ch 136,§401.

CHAPTER 332

POWERS AND DUTIES OF BOARD OF SUPERVISORS

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332.1 Body corporate. Each county is a body corporate for civil and political purposes, may sue and be sued, must have a seal, may acquire and hold property, make all contracts necessary for the control, management, and improvement or disposition thereof, and do such other acts and exercise such other powers as are authorized by law. [C51,§93; R60,§221; C73,§279; C97,§394; C24, 27, 31, 35, 39,§**5128**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.1]

Right to bid under execution sale, ch 569

332.2 Concurrent jurisdiction. Counties bounded by a stream or other water have concurrent jurisdiction over the whole of the waters lying between them. [C51,§95; R60, §223; C73,§280; C97,§395; C24, 27, 31, 35, 39,§**5129**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.2]

332.3 General powers. The board of supervisors at any regular meeting shall have power:

1. To appoint one of its number chairman in the absence of the regular chairman, and a clerk, in the absence of the auditor and his deputy.

2. To make such rules not inconsistent with law, as it may deem necessary for its own government, the transaction of business, and the preservation of order.

3. To adjourn from time to time, as occasion may require.

4. To make such orders concerning the corporate property of the county as it may deem expedient, and not inconsistent with law.

5. To examine and settle all accounts of the receipts and expenditures of the county, and to examine, settle, and allow all claims against the county, unless otherwise provided by law.

Settlement with treasurer, §452.6 et seq.

6. To represent its county and have the care and management of the property and business thereof in all cases where no other provision is made.

7. To manage and control the school fund of its county, as provided by law.

School fund, ch 302

8. To require any county officer to make a report to it, under oath, on any subject connected with the duties of his office and to give

such bonds as shall be neccessary for the faithful performance of his duties.

9. To remove from office by a majority vote any officer who shall refuse or neglect to make any report or give any bond mentioned in the preceding subsection, within twenty days after being required so to do.

Removal from office, ch 66

10. To fix the compensation for all services of county and township officers not otherwise provided by law, and to provide for the payment of the same.

11. To cause the county buildings to be insured in the name of the county, or otherwise, for its benefit, and in case there are no county buildings, to provide suitable rooms for county purposes.

12. To purchase or acquire title or possession by lease or otherwise, for the use of the county, any real estate necessary for county purposes; to change the site of, or designate a new site for any building required to be at the county seat, when such site shall not be beyond the limits of the city at which the county seat is located at the time of such change; and to change the site of and designate a new site for the erection of any building for the care and support of the poor.

13. When any real estate, buildings, or other property are no longer needed for the purposes for which the same were acquired by the county, to convert the same to other county purposes* or to sell or lease* the same. Real property sold under this section shall be sold at public auction and not by use of sealed bids, but only after notice has been published once in a newspaper of general circulation in the county in which the property is located, stating the description of the property to be sold and the date, time, and place of the sale. The notice shall be published not less than fifteen days nor more than twenty-five days prior to the date of the sale. If after being offered once at public auction, such property is not sold, the board of supervisors may dispose of the property by selling it to a person or persons submitting sealed bids to the board. Sale by bids may only be effected thirty days after public notice of the proposed sale of such property.

*Exception as to county hospital organized under ch 269, Code 1939, see 51GA, ch 158,§3

14. To make appropriations not exceeding three hundred dollars in any one year for the growing, under the direction of the board, of experimental crops on lands owned by the county.

15. To build, equip, and keep in repair the necessary buildings for the use of the county and of the courts.

16. To permit any person to use any portion of the lands owned by the county for ornamental purposes, or for the erection of any monument or fountain under such restrictions as the board may from time to time enact, when such use will not interfere with the use for which such real estate was originally acquired by the county.

17. To sell, lease, exchange, give or grant and accept any interest in real property to, with or from any township, municipal corporation or school district if the real property is within the jurisdiction of both the grantor and grantee. State agencies and the county board of supervisors having jurisdiction and control over state and county owned land and buildings, which land and buildings may be affected by a federal water resources project, may grant, sell, exchange or convey to the United States of America the perpetual right, privilege and easement to overflow, flood and submerge such lands and buildings.

18. To own and operate automobiles used or needed by the county sheriff and used in the performance of the duties of that office; to operate a service garage for the purpose of servicing automobiles or other motor vehicles owned and operated by the county in the performance of its duties, and the board may own and service all motorcycles used by the county sheriff in the performance of the duties of that office. The board of supervisors may also make such contracts with the employees of the sheriff's office who use automobiles in the performance of their duties in connection with the use of such automobiles as in their judgment shall be advantageous to the county.

Referred to in §332.35

19. To establish, publish, and enforce rules regulating and restricting the use by the public of all county buildings and grounds. Such rules when established shall be posted in conspicuous places about said buildings and grounds. Any person violating any such rule shall be guilty of a misdemeanor and upon conviction be punished by a fine of not to exceed one hundred dollars or be imprisoned in the county jail not to exceed thirty days.

20. To purchase and pay the premiums on liability and property damage insurance covering and insuring county employees while in the performance of their duties and operating an automobile, truck, road grader, machinery, or other vehicles owned by the county, which insurance shall insure, cover and protect against individual personal liability the county employees or employee may incur. The amount of insurance a county may purchase shall not exceed ten thousand dollars for property damage or fifty thousand dollars for personal injury or death of one person or one hundred thousand dollars for personal injury or death of more than one person arising out of a single accident.

21. To provide, by contract or otherwise, for the seizure, impoundment and disposition of dogs in accordance with chapter 351.

22. To adopt a building code and to provide for the regulation and inspection of all construction, major repairs and remodeling, and the installation of electrical, heating, ventilating, air conditioning, and plumbing fixtures,

apparatus, and equipment and provide for the manner in which such regulations and inspection shall be determined, established and enforced, and from time to time amended, supplemented or changed. However, no such regulation shall become effective until after a public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in a paper of general circulation in such county. Upon compliance with the provisions of this chapter, the regulation shall become effective, the provisions of any other statute to the contrary notwithstanding. Such code shall not be construed to apply within the limits of any city, or to farmhouses or other farm buildings which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used or while under construction for such use.

23. To purchase, lease, equip, maintain and operate an ambulance or ambulances to provide necessary and sufficient ambulance service or to contract for such vehicles, equipment, maintenance or service.

The board may adopt a schedule of fees to be charged the users of such service, and such fee schedule may include considerations concerning the cost of the service and the user's ability to pay.

If a county provides ambulance service, it shall first ascertain what cities in the county also provide ambulance service. The county shall then co-ordinate its services with that provided by any city in order to eliminate duplication and to make the ambulance service provided by the county and the cities as economical as possible.

Any third party payor making payment for ambulance service shall make such payment either jointly to the person on whose behalf the payment is made and to the person or organization providing such ambulance service, or directly to the person or organization providing such ambulance service.

24. In counties which have not created a county conservation board pursuant to chapter 111A, to appropriate from the general fund of the county an amount, not to exceed two thousand dollars per annum, for the use of a local, nonprofit historical society, organized pursuant to chapter 504 or chapter 504A, for the purpose of collecting and preserving historical materials of the area, maintaining a historical library and collections, conducting historical studies and researches, issuing publications, providing public lectures of historical interest, and otherwise disseminating a knowledge of the history of the area to the general public. If such appropriation is made, the local historical society shall present to the county board of supervisors an annual report describing in detail its use of the funds appropriated.

25. To appropriate funds from the general fund to match any grant to the county under any state or federal program for the purpose of matching funds available to such county from federal programs including, but not limited to, crime control, public health, disaster services, highway safety, juvenile delinquency, narcotics control and pollution.

26. To appropriate moneys from the general fund to provide programs benefiting senior citizens, including, but not limited to, senior citizen centers, mobile meals, and counseling programs.

27. To provide for membership in the Iowa state association of counties, a nonprofit corporation organized under chapter 504A, for the purpose of maintaining a permanent organization to secure co-operation among counties and county officers in their effort to procure better and more efficient methods of government. The board of supervisors may authorize attendance at schools of instruction by county officers, appointees, and employees as the schools are called by the association and may authorize attendance at the annual meeting of the association by duly certified representatives of each county which is affiliated with the association. The board of supervisors may appropriate from the county general fund necessary funds to provide membership in the Iowa state association of counties, provided that the method of assessment shall be established on a basis whereby each county shall pay not to exceed one cent per capita and three-tenths of one cent per thousand dollars of each county's assessed value of taxable property. The total assessment collected from all of the member counties shall not exceed seventy-five thousand dollars per annum. In the event that more than seventy-five thousand dollars is collected, the excess shall be refunded proportionately to the counties from which payment is received. The association shall keep and make such accounts as are required by the auditor of state. The accounts shall be audited annually and published in the auditor of state's biennial report. The association shall annually publish an accounting of all moneys expended in connection with expenses incurred by and any salaries paid to legislative representatives or lobbyists of the association. No county funds may be expended for membership fees or for attendance expenses for any county officers association other than the Iowa state association of counties.

28. The board of supervisors of a county in which a military reservation is located may authorize any individual or corporation which is authorized to erect or maintain waterworks, to lay its mains in any of the highways of the county for the purpose of extending the mains to a military reservation.

29. To provide for the maintenance and improvement of cemeteries within the county.

30. To levy taxes in the affected township, subject to the limitation imposed under sections 359.30 and 359.33, and expend receipts from such taxes for the care and maintenance

of township owned and nonowned cemeteries upon the failure of township officers to levy taxes in the township for the care and maintenance of such cemeteries as prescribed in sections 359.30 and 359.33.

31. To require that any person, agency or organization which is not a part of the county government, but which is receiving funds from the county to pay in whole or in part for services furnished to third parties, must submit to audit by auditors assigned or employed for the purpose by the board. Upon request by the board, the person, agency or organization to be audited under this subsection shall make available all pertinent books, records and documents needed for the audit.

32. To enter into an agreement with the state department of transportation, shippers, a railroad corporation, a city or another county to provide financial assistance for railroad services. The agreement shall be administered by the state department of transportation and moneys necessary to implement the agreement shall be credited to the railroad assistance fund. However, this section shall not preclude a county from establishing an escrow fund to be used as collateral for a loan for railroad improvement, which loan shall be credited to the railroad assistance fund. Moneys appropriated pursuant to this subsection shall be from the county general fund, subject to the limitation provided in sections 327H.18 to 327H.25.

33. To assume and exercise the powers and duties of a governing body under the provisions of chapters 357, 357A, 357B, 358 or 462 if a governing body established under any such chapters has insufficient membership to perform the powers and duties of a governing body. The board of supervisors may, upon petition of the number of property owners within a proposed district and filing of a bond as provided in section 357A.2, establish a service district within the unincorporated area of the county and exercise the powers and duties granted under chapters 357, 357A, 357B, 357C, 358, 359, 384, division IV, or 462 within such district.

1–12. [R60,§312; C73,§303; C97,§422; SS15,§422; C24, 27, 31, 35, 39,§**5130**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.3]

13. [C24, 27, 31, 35, 39,§**5130**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.3]

14. [SS15,§422; C24, 27, 31, 35, 39,§**5130**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.3]

15. [R60,§312; C73,§303; C97,§422; SS15,§422; C24, 27, 31, 35, 39,§**5130**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.3]

16. [SS15,§422; C24, 27, 31, 35, 39,§**5130**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.3]

17. [C24, 27, 31, 35, 39,§**5130**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.3]

18, 19. [C31, 35, 39,§**5130**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.3]

20. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.3]

21. [C62, 66, 71, 73, 75,§332.3]

22. [C66, 71, 73, 75,§332.3]

23. [C71, 73, 75,§332.3]

24. [C71, 73, 75,§332.3]

25. [C71, 73, 75,§332.3; 66GA, ch 1074,§30]

26. [C73, 75,§332.3]

27. [C73, 75,§332.3]

28. [S13,§742-e; C24, 27, 31 35, 39,§**6151**; C46, 50, 54, 58, 62, 66, 71, 73,§397.37; C75,§332.3]

29. [66GA, ch 187,§1]

30. [66GA, ch 187,§1]

31. [66GA, ch 1103,§20]

32. [66GA, ch 1164,§5]

33. [66GA, ch 1177,§1]

Referred to in §§24.37, 332.35
Auditor of state, biennial report, §11.27

332.4 National defense projects — sale of land. Whenever the federal government or any agency or department thereof shall have heretofore located, or shall hereafter locate, within any county an ordnance plant or other project which it shall deem desirable in the development of the national defense, and for the purpose of so locating such plant or project shall have heretofore determined, or shall hereafter determine, that real property and improvements thereon owned by such county is required, the board of supervisors of such county, by resolution, is hereby authorized to sell and convey such property on behalf of said county at a price and upon terms as may be agreed upon, any such instrument of conveyance to be executed on behalf of such county by the chairman of said board with the seal of said county affixed. The board of supervisors of such county is hereby authorized to apply the proceeds of such sale and conveyance to the acquisition of other property and the construction thereon of buildings and other facilities in substitution for the property thus sold and conveyed, any other law to the contrary notwithstanding. All proceedings heretofore taken by any board of supervisors with respect thereto are hereby validated and confirmed. Any proceeds thus received by any county and not so expended shall be credited to the fund or funds of such county as may be ordered by its board of supervisors. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.4]

332.5 Veterans' newsstands. The board of supervisors of any county shall, on the application of any honorably discharged soldier, sailor, marine, or nurse of the army or navy of the United States in the late Civil War, Spanish-American War, Philippine insurrection, China relief expedition, World War I, World War II, from December 7, 1941, to December 31, 1946, both dates inclusive, including the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, and including the Vietnam Conflict at any time between August 5, 1964, and ending on the date the armed forces of the United States are directed by formal order of

the government of the United States to cease hostilities, both dates inclusive, who was disabled in said war, cause to be reserved in the courthouse of the county a reasonable amount of space in the lobby of said courthouse to be used by such applicant rent-free as a stand for the sale of news, tobaccos, and candies. Should there be more than one applicant for such reserved space, the board of supervisors shall award the same to the person in their opinion most deserving of the same. The supervisors shall prescribe the regulations by which the stands shall be operated. [C39, §**5130.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.5; 66GA, ch 76,§9]

Referred to in §601C.2
Veterans' newsstand in state capitol and courthouses, §19.16

332.6 County law library. The county board of supervisors may, when in their discretion they shall deem it advisable, provide by purchase or otherwise for the procuring, and for the maintaining of a suitable law library in the county courthouse, for the use of the judges, county attorney, county officers and their deputies, besides attorneys practicing in the courts of their respective counties, and such other persons as the supervisors may deem proper; such library shall be under the supervision and control of the judges of the district court of the county wherein the same is located. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §332.6]

332.7 Erection or repair of buildings.

1. *Contracts and bids required.* No building shall be erected or repaired when the probable cost thereof will exceed five thousand dollars except under an express written contract and upon proposals therefor, invited by advertisement for three weeks in all the official newspapers of the county in which the work is to be done. Contracts for the construction or repair of buildings, the probable cost of which does not exceed five thousand dollars, shall be let either through the formal bidding procedures specified herein or through informal bidding by notifying in writing at least three qualified bidders at least two weeks prior to letting the contract. The informal bids received, together with a statement of the reasons for use of said informal procedure and bid acceptance, shall be entered in the minutes of the board of supervisors meeting at which such action was taken.

2. *Bids—plans and specifications.* Contracts for buildings and repairs specified by subsection 1 shall be let to the lowest responsible bidder at a time and place which shall be distinctly stated in the advertisement. The board may on the day fixed for letting such contract adjourn the hearing to some later date and place, of which all parties shall take notice. The board may reject any and all bids and advertise for new ones. The detailed plans and specifications for such improvements shall be on file and open to public inspection in the office of the auditor of the county in which the work is to be done before advertisement for bids. [R60,§312; C73,§303; C97,§422; SS15,§422; C24, 27, 31, 35, 39,§§**5131, 5132**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§332.7, 332.8; 66GA, ch 1178,§1]

Referred to in §346A.2

332.8 Facilities for the handicapped. The county board of supervisors may provide facilities, including but not limited to buildings, and services for mentally or physically handicapped persons or both, in the form of sheltered workshops or in other forms. [66GA, ch 188,§1]

332.9 Offices furnished. The board of supervisors shall furnish the clerk of the district court, sheriff, recorder, treasurer, auditor, county attorney, county surveyor or engineer, and county assessor, with offices at the county seat, but in no case shall any such officer, except the county attorney, be permitted to occupy an office also occupied by a practicing attorney. [C73,§3844; C97,§468; C24, 27, 31, 35, 39,§**5133**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.9]

332.10 Supplies. The board of supervisors shall also furnish each of said officers with fuel, lights, blanks, books, and stationery necessary and proper to enable them to discharge the duties of their respective offices, but nothing herein shall be construed to require said board to furnish any county attorney with law books or library.

The board of supervisors of each county may furnish suitable uniforms for the sheriff and his deputies and such uniforms shall at all times remain the property of the county. [C73, §3844; C97,§468; C24, 27, 31, 35, 39,§**5134**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.10]

332.11 Insurance money. In any county in this state where any of the public buildings thereof have been or may hereafter be destroyed by fire, wind, or lightning, the board of supervisors of such county, for the purpose of reconstructing the same, may appropriate and use, in addition to the amount now authorized by law, the amount received by way of insurance on such building or buildings so destroyed. [C97,§425; C24, 27, 31, 35, 39,§**5135**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.11]

332.12 Compromise authorized. Where judgment has been or may hereafter be rendered against any county treasurer or other county officer and the sureties on his official bond, in favor of any county in this state, and remains unsatisfied, and the board of supervisors of such county are satisfied that the full amount thereof cannot be collected, such board of supervisors shall have power to compromise the said judgment, and to enter full satisfaction thereof under the terms of said compromise. [C97,§437; C24, 27, 31, 35, 39,§**5136**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.12]

Referred to in §§332.13, 332.14

332.13 Conditions of compromise. In all cases referred to in section 332.12, if the principal debtor and each of the sureties on his

official bond shall execute a written consent to a compromise with any one or more of said sureties, and to a release of said surety or sureties, and in such writing shall agree that such compromise or release shall not release any of the sureties who shall not compromise and be released from the payment of the unpaid judgment, then in that case, upon the filing of such written consent with the auditor of such county, the board of supervisors of such county shall have full power, and are hereby authorized, to compromise with any one or more of such sureties, and to release such surety or sureties upon the terms which may be agreed upon in such compromise. [C97, §438; C24, 27, 31, 35, 39,§5137; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.13]

Referred to in §332.14

332.14 Disposition of funds. In case of any compromise as provided in sections 332.12 and 332.13 being made, the money received by the county thereon shall be paid to the various funds of the county, in proportion to the amount that each fund is in default, as such default existed at the time the judgment was rendered, as nearly as the same can be ascertained, so that each fund shall receive its pro rata share, as the same shall be determined by the board of supervisors. [C97,§439; C24, 27, 31, 35, 39,§5138; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.14]

332.15 Useless documents. The board of supervisors is authorized to order the county auditor to destroy all duplicate tax receipts, poll tax receipts, and hunting license applications which have been on file in the office of the county treasurer or auditor for more than five years.

The board is also authorized to order the county auditor to destroy all assessors' books, assessment rolls, tax lists, county vouchers and canceled county warrants which have been on file in the office of the county auditor for more than ten years. [C24, 27, 31, 35, 39, §5139; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.15]

332.16 Neglect of duty. If any supervisor shall neglect or refuse to perform any of the duties which are or shall be required of him by law as a member of the board of supervisors, without just cause therefor, he shall, for each offense, forfeit one hundred dollars. [R60, §311; C73,§302; C97,§421; C24, 27, 31, 35, 39,§5140; C46, 50, 54, 58, 62, 66, 71, 73, 75,§332.16]

332.17 County offices combined. The duties of two or more of the following county officers and employees may be combined by the methods provided in this division of this chapter:

1. County sheriff
2. County treasurer
3. County recorder
4. County auditor
5. Medical examiner
6. Clerk of the district court
7. Overseer of the poor
8. County care facility steward
9. Commission on veteran affairs
10. Director of social welfare
11. County assessor
12. County weed commissioner. [C62, 66, 71, 73, 75,§332.17; 66GA, ch 67,§37]

Referred to in §§332.18, 332.21, 332.22, 441.56

332.18 Petition. The board of supervisors of any county shall, upon petition of electors equal in number to twenty-five percent of the votes cast for any county office receiving the greatest number of votes at the last preceding general election filed with the county auditor, call an election for the purpose of voting on a proposal or proposals for combining the duties of any officers or employees designated in section 332.17. If the petition contains more than one proposal for combining such duties, each proposal shall be listed on the ballot as a separate issue. If the majority of the votes cast be in favor of a proposal, the board of supervisors shall take all steps necessary to combine the duties as specified in the petition. [C62, 66, 71, 73, 75,§332.18]

Referred to in §§332.21, 332.22, 441.56

332.19 Statement. The petition shall state the offices and positions to be combined and the office or position which is to be abolished. [C62, 66, 71, 73, 75,§332.19]

Referred to in §§332.21, 332.22, 441.56

332.20 Vacating office. If an appointive position is abolished by a vote of the people, the term of office of the incumbent shall terminate one month from the day the proposal is approved. If the approved proposal provides for the abolishment of an elective office, the incumbent shall hold office until the completion of the term for which he was elected, except that if a proposal is approved at a general election which fills the abolished office, the person elected thereto shall not take office. [C62, 66, 71, 73, 75,§332.20]

Referred to in §§332.21, 332.22, 441.56

332.21 Salary. When the duties of any officer or employee named in section 332.17 are assigned to an elective officer designated in such section, the board of supervisors may set the salary for such elective officer in lieu of the salary provided in chapter 340. When the duties of any officers or employees are combined as permitted in sections 332.17 to 332.20, the person who fills the combined office shall take the oath and give the bond required for each office and perform all the duties pertaining to each.

If any county offices or positions are combined, the salary thereof shall be thirty percent greater than the salary otherwise established for such office. The salary for deputy county officers shall, nonetheless, continue to be based on that salary which would be drawn by the principal officer if combination of offices had not been effected. [C62, 66, 71, 73, 75,§332.21]

Referred to in §§332.22, 441.56

332.22 Separation of offices. Duties that have been combined under the provisions of sections 332.17 to 332.21 and section 441.56 may be subsequently separated to provide again for separate offices by petition and a vote in the manner provided in section 332.18. [C62, 66, 71, 73, 75,§332.22]

332.23 County business licenses. For the purpose of promoting the health, safety, recreation, and general welfare of the people of the county, the county board of supervisors shall have the power to regulate and license outside the limits of an incorporated city any theater, moving picture show, pool or billiard room or table, dance hall, skating rink, amusement park, bowling alley, restaurant or other business establishment open to the public and located on or accessible to a road or highway outside the limits of an incorporated city where entertainment, foodstuffs, prepared food or drink is furnished to the general public for hire, sale or profit. [C24, 27,§§5582, 5583; C31, 35,§§5582, 5582-c1, 5583; C39,§§**5582, 5582.1, 5583**; C46, 50, 54, 58,§§361.1–361.3; C62, 66, 71, 73, 75,§332.23]

Referred to in §§332.24, 332.25, 332.26, 332.30
See Central States Theatres v. Sar, 245 Iowa 1254

332.24 Application—fees. No person shall engage in the business activities specified in section 332.23 without first obtaining a license from the county board of supervisors. Upon application being made as herein provided and upon the payment of a fee prescribed by the county board of supervisors, not to exceed ten dollars per license, the board shall issue a license to the applicant for a period of not less than six months nor more than one year. The application shall be in writing and shall state under oath:

1. The name and address of all owners of such business.

2. The business or trade name, if any, and the address of such business.

3. The type of business activity to be engaged in.

4. A certification that such applicant will not permit any of the activities specified in section 332.27 to be engaged in on the premises of such business establishment.

5. Such additional information as the county board of supervisors may require. [C24, 27, §5583; C31, 35,§5582-c1; C39,§§**5582.1, 5583**; C46, 50, 54, 58,§§361.2, 361.3; C62, 66, 71, 73, 75, §332.24]

Referred to in §§332.25, 332.30

332.25 Terms and conditions. When a license is granted, the terms and conditions on which the business establishment may be operated, as specified in sections 332.23 to 332.30 shall be entered of record in the minutes of the board of supervisors and the licensee shall stand charged with notice thereof and shall, on demand, be furnished with a copy of such terms and conditions upon the payment of the cost of furnishing such copy to the licensee. [C24, 27, 31, 35, 39,§**5584**; C46, 50, 54, 58,§361.4; C62, 66, 71, 73, 75,§332.25]

Referred to in §332.30

332.26 Fees to general fund. All license fees shall be credited to the county general fund and all necessary expenses incurred in licensing and regulating the business establishments specified in section 332.23 shall be paid out of the county general fund. [C24, 27, 31, 35, 39,§**5585**; C46, 50, 54, 58,§361.5; C62, 66, 71, 73, 75,§332.26]

Referred to in §§332.25, 332.30

332.27 Revocation of license. The county board of supervisors may revoke a license whenever any licensee, or agent, employee or servant of any licensee, permits any intoxicated person to be in or remain upon the premises, or permits any profane or obscene language, lewd or lascivious acts, indecent or suggestive dancing or fighting or quarreling, to be uttered, done or engaged in upon the premises, or whenever necessary to promote the health, safety, recreation or general welfare of the people of the county. In the event any license is revoked the licensee shall be repaid a pro rata part of the license fee. [C24, 27, 31, 35, 39,§**5585**; C46, 50, 54, 58,§361.5; C62, 66, 71, 73, 75,§332.27]

Referred to in §§332.24(4), 332.25, 332.30

332.28 Abatement of nuisances. The county board of supervisors shall have the power by order of the district court to abate, restrain, or prohibit any business establishment where drunkenness, quarreling, fighting, or breaches of the peace are carried on or permitted to the disturbance of others, or where any other nuisance, public or private, is maintained. [C24, 27, 31, 35, 39,§**5585**; C46, 50, 54, 58,§361.5; C62, 66, 71, 73, 75,§332.28]

Referred to in §§332.25, 332.30

332.29 Appeal. Any person whose license has been revoked or whose business establishment has been restrained or prohibited by the action of the county board of supervisors may appeal therefrom to the district court of that county by serving a notice on the chairman of the county board of supervisors within twenty days after the final decision of the board. Such appeal shall be tried by the district court de novo and in equity. [C24, 27, 31, 35, 39,§**5586**; C46, 50, 54, 58,§361.6; C62, 66, 71, 73, 75,§332.29]

Referred to in §§332.25, 332.30

332.30 Penalty. Any person who violates any of the provisions of sections 332.23 to 332.29 or who violates any of the terms or conditions under which he is permitted to engage in the business activity for which he was licensed, shall be fined a sum not to exceed twenty-five dollars. [C24, 27, 31, 35, 39, §**5587**; C46, 50, 54, 58,§361.7; C62, 66, 71, 73, 75, §332.30]

Referred to in §332.25

332.31 Public disposal grounds. The board of supervisors of any county may determine

that a public disposal ground is needed in their county and may make a finding as to where such disposal ground shall be located. [C62, 66, 71, 73, 75,§332.31]

332.32 Tax levy. Said boards may within their respective jurisdictions make a determination of which townships of the county will be best served by such disposal ground and levy a tax of not to exceed six and three-fourths cents per thousand dollars of assessed value of all the property in said townships outside the incorporated limits of any city for the purpose of acquiring and maintaining such disposal grounds. Such funds shall be placed in a township dump fund. [C62, 66, 71, 73, 75, §332.32]

Referred to in §§24.37, 455B.81

332.33 Rules. The board of supervisors may make such rules and regulations for the use of such disposal grounds as it shall deem necessary, and may adopt and enter into contractual agreements with cities for the use of such disposal grounds. Any funds derived from such agreements shall be placed in the township dump fund established for that purpose and none other. [C62, 66, 71, 73, 75, §332.33]

332.34 Contractual agreements. The county boards of supervisors may enter into contractual agreements with cities, or with private corporations and persons for the use by residents of the county residing outside of incorporated cities, of dumps, disposal grounds, and sanitary land fills owned or operated by cities, private corporations or private individuals, and that funds from the township dump fund may be used for such purpose. County boards of supervisors may also use funds from said township fund, for the purpose of acquiring, constructing, operating, and maintaining sanitary land fills. [C66, 71, 73, 75, §332.34]

332.35 Sheriffs' use of private vehicles. Sheriffs and deputies shall not use private automobiles in the performance of their duties of office unless such use is pursuant to a contract made between the board of supervisors and the sheriff or deputy, as the case may be, as set forth in section 332.3, subsection 18. If no such contract is made regarding use of private vehicles, the board of supervisors must provide as many county-owned automobiles as the board determines are needed for the sheriff and deputies to perform their duties of office. [66GA, ch 1179,§1]

332.36 County indemnification fund in state treasury. There is created in the office of the treasurer of state a fund to be known as "the county indemnification fund" to be used to indemnify and pay on behalf of any elected county officer and any deputies, assistants or employees of the county, all sums that such officers, deputies, assistants or employees are legally obligated to pay because of their errors or omissions in the performance of their official duties, except that the first five hundred dollars of each such claim shall not be paid from this fund. [C73, 75,§332.36; 66GA, ch 189,§1]

332.37 Insurers not released or subrogated. The establishment of the fund provided shall not relieve any insurer issuing insurance under the provisions of section 613A.7 from paying any loss incurred thereunder; nor shall any such insurer be subrogated to any of the assets of the fund established regardless of any provisions in such policy of insurance. [C73, 75,§332.37]

332.38 Tax to support fund. If the balance in the fund on September 30 of any year is less than six hundred thousand dollars, the treasurer of state shall notify the board of supervisors of each county to again levy for that year one half cent per thousand dollars of assessed value to be collected with other taxes in the next year. [C73, 75,§332.38; 66GA, ch 189,§2]

Tax for 1972, 1973, 1974 and 1975, see 64GA, ch 1081,§3

332.39 Deposit of tax — investment. Not later than December 15 or June 15 of each year in which the tax is collected, the county auditor shall transmit the amount of the tax levied and collected, by warrant, to the treasurer of state who shall credit it to the county indemnification fund. The treasurer of state shall invest any moneys in the fund in the same manner as other public funds and shall credit any interest received from that investment to the county indemnification fund. [C73, 75,§332.39]

332.40 Claims paid. Any claim for any error or omission of any elected county officer or any deputy, assistant or employee of the county relating to such matters, committed after July 1, 1975, shall be processed in accordance with provisions of chapter 613A and paid from such fund, except that any payment of a claim, except a final judgment, in excess of fifteen hundred dollars shall have the unanimous approval of all members of the state appeal board, the attorney general, and the district court of Polk county. [C73, 75,§332.40; 66GA, ch 189,§3]

332.41 Insurance deductible. If a final judgment is obtained against any elected county officer, or any deputies, assistants, or employees of the county for an act committed subsequent to July 1, 1975, which is payable from the county indemnification fund, the county attorney shall ascertain if any insurance policy exists indemnifying such persons against such judgment or any part thereof. If no insurance exists, or if the judgment exceeds the limits of such insurance the county attorney shall submit a claim to the state comptroller against the county indemnification fund on behalf of the plaintiff to the action for the amount of the judgment exceeding the amount recoverable by reason of such insurance. The state comptroller shall promptly issue a warrant

payable to the plaintiff for such amount, and the treasurer of state shall pay the warrant. Such payment shall forever discharge such persons from any and all liability therefor. [C73, 75,§332.41; 66GA, ch 189,§4]

332.42 Insurance coverage on any employees. The board of supervisors may purchase insurance insuring any county officers and their employees in the performance of their official duties against personal liability as a result of negligent acts. The premiums for the insurance shall be paid from the general fund of the county. If the liability of any county officer or his employees in the performance of their official duties is not fully indemnified by insurance, the board of supervisors shall pay any such loss, for which the county officer or his employees shall be found liable, from the general fund of the county. Any county board of supervisors may compromise and settle any such claim. [C71,§332.35; C73, 75,§332.42; 66GA, ch 189,§5]

332.43 Surety bond purchased. The board of supervisors may purchase an individual or a blanket surety bond insuring the fidelity of county officers and county employees who are accountable for county funds or property subject to the minimum surety bond requirements of chapter 64. The board of supervisors may also purchase an individual or a blanket general liability insurance policy insuring county officers or county employees from liability for any negligent act, error or omission in the performance of their official duties.

Any elected county officer shall be deemed to have furnished surety if he is covered by a blanket bond purchased as provided in this section. [C73, 75,§332.43]

332.44 Waste disposal.

1. Counties and sanitary districts incorporated under the provisions of chapter 358 may own, acquire, establish, construct, purchase, equip, improve, extend, operate, maintain, reconstruct, and repair within or without the limits of the county or sanitary district, works and facilities useful and necessary for the collection, treatment, purification, and disposal in a sanitary manner of the liquid and solid waste, sewage, and industrial waste of the county or sanitary district, including sanitary disposal projects as defined in section 455B.75, also swimming pools or golf courses, and may acquire by gift, grant, purchase, condemnation, or otherwise all necessary lands, rights of way, and property therefor, within or without the county or sanitary district, may purchase and acquire an interest in a sanitary disposal project or such works and facilities which are owned by a city, county, or sanitary district and which are to be jointly used by them, and may issue revenue bonds to pay all or any part of the cost of establishing, acquiring, purchasing, constructing, equipping, improving, extending, reconstructing, repairing, operating, or maintaining a sanitary disposal project or such works and facilities, including the amount agreed upon for the purchase and acquisition by a county or sanitary district of an interest in the sanitary disposal project or works and facilities which are owned by a city, county, or sanitary district and which are to be jointly used. As used in this section the words "works and facilities", "works", or "facilities" shall include but not be limited to sanitary disposal projects as defined in section 455B.75.

The construction, acquisition, improvement, equipment, custody, operation, and maintenance of any works for the collection, treatment, or disposal of sewage, swimming pools, golf courses, or sanitary disposal projects, and the collection of revenues for the service rendered, shall be under the supervision and control of the county or sanitary district.

2. Counties and sanitary districts may by resolution or ordinance provide a schedule of fees to be charged for the use of and the services and facilities to be rendered by the sanitary disposal project or for the collection and disposal of garbage and may pay the cost of establishing, acquiring, purchasing, constructing, equipping, improving, extending, reconstructing, repairing, maintaining, and operating sanitary disposal projects, garbage disposal plants, or incinerating plants out of the earnings of project or plant. Revenue bonds, payable solely out of the earnings of the project or plant, may be issued in the manner provided in this section.

3. Counties and sanitary districts incorporated under the provisions of chapter 358 are authorized to borrow money from the federal government or a federal agency for any of the purposes referred to in this section by issuing revenue bonds under this section, and may deliver the bonds to the federal government or its agency, or may borrow money by issuing revenue bonds under this section and may deliver the bonds to the contractor in payment for the costs of any of the projects or improvements referred to in this section, or may sell the bonds at a public sale upon the same conditions provided by chapter 75, as applicable to bonds issued by counties and sanitary districts, and may use the proceeds from the sale of bonds to pay all or any part of the cost of the projects or improvements. As evidence of the loan, the county or sanitary district may issue its bonds payable solely from the revenues derived from the project or improvement. Bonds may be issued in amounts as necessary to provide sufficient funds to pay all costs of the project or improvement, including engineering, legal, and other expenses, together with interest to a date six months subsequent to the estimated date of completion. Such bonds are negotiable instruments, shall be executed by the chairman of the board of supervisors and county auditor of the county, or the trustees of the sanitary district, and shall be sealed with the corporate seal of the county or sanitary district. The principal

and interest of the bonds shall be payable solely from the special fund provided for payment, and the bonds shall not be a general obligation of the county or sanitary district, nor shall they be payable by taxation, nor shall the county or sanitary district be liable by reason of the earnings being insufficient to pay the bonds. All details pertaining to the issuance of bonds and the terms and conditions thereof, shall be determined by resolution or ordinance of the county or sanitary district. Counties and sanitary districts may also borrow money and issue revenue bonds for the purpose of purchasing and acquiring sanitary disposal projects or works and facilities useful and necessary for the collection, treatment, purification, and disposal in a sanitary manner of the liquid and solid waste, sewage, and industrial waste of any county or sanitary district and for the purpose of purchasing and acquiring an interest in any such projects, works, and facilities which are owned by a city, county, or sanitary district and which are to be jointly used. Bonds may be delivered to the seller of the sanitary disposal project or works and facilities or to the municipality selling an interest in its sanitary disposal project or sewage works and facilities in payment of the purchase price, or may be sold at public sale in the manner provided by chapter 75 and the proceeds from the sale applied to the payment of the purchase price.

4. This section applies to all proceedings heretofore taken by counties and sanitary districts for any of the purposes referred to in this section, notwithstanding that a portion of the funds have been derived from sources other than the issuance of bonds.

5. Before the issuance of bonds, the governing body of the county or sanitary district by resolution or ordinance shall pledge the net earnings of the sanitary disposal project or works to the payment of the bonds and the interest thereon, and shall provide that the net earnings shall be set apart as a sinking fund for that purpose.

6. The governing body of the county or sanitary district may by resolution or ordinance, establish and maintain just and equitable rates or charges for the use of and the services rendered by such works, to be paid by the owner of each and every lot, parcel of real estate, or building that is connected with and uses such works, by or through any part of the sewage system of the county or district, or that in any way uses or is served by such works. The governing body of the county or sanitary district may also by ordinance or resolution establish and maintain just and equitable rates or charges for the use of and the services and facilities rendered by a sanitary disposal project. The governing body may readjust rates or charges from time to time and may charge and collect reasonable rates and charges for swimming and golfing. Rates or charges shall be sufficient in each year for the payment of the proper and reasonable expenses of operation, repair, maintenance, acquisition, purchase, construction, equipping, improving, and extension of the sanitary disposal project or works, and for the payment of the sums required to be paid into a sinking fund, which fund shall be sufficient to meet the principal and interest and other charges, except rates or charges for the use of swimming pools and golf courses, of the bonded indebtedness. All such rates or charges if not paid as by the ordinance or resolution provided, when due, shall constitute a lien upon the premises served by the sanitary disposal project or works, and shall be collected in the same manner as taxes.

7. The provisions of this section apply to the construction, equipment, operation, and maintenance of any sewage treatment plant, by any sanitary district operating under the provisions of chapter 358; and any sanitary district may, in addition, use the power conferred upon it by said chapter to apply any of the provisions of this section relating to the construction, equipment, operation and maintenance of any sewage treatment plant of the sanitary district, or any combination of the power relating to sewage treatment plants granted such sanitary district by the provisions of this section and said chapter.

8. Counties and sanitary districts may issue from time to time negotiable interest-bearing refunding bonds to refund at maturity or pursuant to redemption provisions or at any time before maturity with the consent of the holders a like principal amount of outstanding revenue bonds or obligations previously issued by the county or sanitary district pursuant to the provisions of this section. All refunding bonds shall comply with the pertinent provisions of this section and may be made subject to redemption in a manner and upon terms with or without premium, as stated on the face thereof. Refunding bonds shall be payable only from the net earnings of the sanitary disposal project or works and facilities and shall not constitute a general obligation of any such county or sanitary district or be payable in any manner by taxation. Refunding bonds may be issued in exchange for the outstanding bonds or obligations to be refunded or may be sold and the proceeds applied to the payment of outstanding bonds or obligations.

Bonds issued pursuant to the provisions of this section shall bear interest at a rate not exceeding seven percent per annum. [C35, §§6066-f1, 6066-f3, 6066-f5–6066-f8; C39,§§**6066.24, 6066.26, 6066.28–6066.32**; C46,§§394.1, 394.3, 394.5–394.9; C50, 54, 58,§§394.1, 394.3, 394.5–394.9, 394.11; C62, 66,§§394.1, 394.3, 394.5–349.9, 394.11, 394.12; C71, 73,§§394.1, 394.3, 394.5–394.9, 394.11–394.13; C75,§332.44]

Referred to in §28F.12

332.45 Peddlers. Peddlers plying their vocation in any county in this state outside of a

city shall pay an annual county tax of twenty-five dollars for each pack peddler or hawker on foot, fifty dollars for each one-horse or two-wheeled conveyance, and seventy-five dollars for each two-horse conveyance, automobile, or any motor vehicle having attached thereto or made a part thereof a conveyance for merchandise or samples. [C51,§510; R60,§791; C73,§906; C97,§1347; S13,§1347-a; C24, 27, 31, 35, 39,§7174; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.13]

S13,§1347-a, editorially divided
Referred to in §§81.12, 332.47, 332.48, 332.49

332.46 Payment—license. Such tax shall be paid to the county treasurer, who shall issue to the person making such payment duplicate receipts therefor and upon presentation of one of same to the county auditor, he shall issue to the person presenting such receipt a license which shall not be transferable authorizing such person to ply the vocation of a peddler in such county for the term of one year from the date thereof. The license shall be good only in the county in which issued, and shall not authorize peddling in cities. [C97,§1348; S13, §§1347-a, 1348; C24, 27, 31, 35, 39,§7175; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.14]

S13,§1848, editorially divided
Referred to in §§332.47, 332.48

332.47 "Peddlers" defined. The word "peddlers" under the provisions of sections 332.45 and 332.46, and wherever found in the Code, shall be held to include and apply to all transient merchants and itinerant vendors selling by sample or by taking orders, whether for immediate or future delivery. [S13,§1347-a; C24, 27, 31, 35, 39,§7176; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.15]

Referred to in §332.48

332.48 Exceptions. The provisions of sections 332.45 to 332.47 shall not be construed to apply to persons selling at wholesale to merchants, nor to transient vendors of drugs, nor to persons running a huckster wagon, or selling and distributing fresh meats, fish, fruit, or vegetables, nor to persons selling their own work or production either by themselves or employees. [C97,§1347; S13,§1347-a; C24, 27, 31, 35, 39,§7177; C46, 50, 54, 58, 62, 66, 71, 73, 75, §444.16]

332.49 Peddling without license. Any person peddling outside the limits of a city without such license or after the expiration thereof, shall be guilty of a misdemeanor, whether he be the owner of the goods sold or carried by him or not, and, on conviction thereof, shall forfeit and pay into the county treasury, in addition to the penalty imposed therefor, double the amount of the tax for one year as fixed in section 332.45. [C51,§§511, 512; R60,§792; C73,§907; C97,§1348; S13,§1348; C24, 27, 31, 35, 39,§7178; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.17]

Punishment, §687.7

332.50 Public shows—license. The board of supervisors shall have power to regulate or prohibit in any county, outside the limits of a city, the public exhibition, for any price, gain or reward, of any traveling show, circus, rodeo, or other public display of any kind.

No person shall exhibit any traveling show, circus, rodeo, or other public display of any kind, as aforesaid, until he shall have obtained a license therefor from the county auditor, upon the payment to the county treasurer of such sum as may be fixed by the board of supervisors, not to exceed one hundred dollars for each place in the county at which such show or circus may exhibit. [C97,§1349; C24, 27, 31, 35, 39,§7179; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.18]

332.51 Violations. Any persons exhibiting any such show without first having obtained such license shall be guilty of a misdemeanor, and shall also forfeit and pay to the county treasurer double the amount fixed for such license, for the benefit of the school fund. [C97, §1349; C24, 27, 31, 35, 39,§7180; C46, 50, 54, 58, 62, 66, 71; 73, 75,§444.19]

Punishment, §687.7

CHAPTER 333

COUNTY AUDITOR

333.1 Duties.
333.2 Issuance of warrants.
333.3 Issuance of warrants without audit.
333.4 Issuance of warrants prior to audit.
333.5 Audit by board.
333.6 Form of warrants.
333.7 Erroneous certificates—liability.
333.8 Duty as to school fund.
333.9 Collection of moneys.
333.10 List of county officers—report.
333.11 Financial report.
333.12 Comparisons.
333.13 Additional matter.
333.14 Printing and distribution.
333.15 Fees to be collected.

333.1 Duties. The county auditor shall:

1. Record all the proceedings of the board in proper books provided for that purpose.

2. Make full entries of all its resolutions and decisions on all questions concerning the raising of money, and for the payment of money from the county treasury.

3. Record the vote of each supervisor on any question submitted to the board, if required by any member present.

4. Sign all orders issued by the board for the payment of money, and record, in a book provided for the purpose, the reports of the county treasurer of the receipts and disbursements of the county.

5. Preserve and file all accounts acted upon by the board, with its action thereon, and perform such special duties as are or may be required of him by law.

6. Designate upon every account, on which any sum shall be allowed by the board, the amount so allowed, and the charges for which the same was allowed.

7. Deliver to any person who may demand it a certified copy of any record or account in his office, on payment of his legal fees therefor.

8. Have the general custody and control of the courthouse in each county, respectively, subject to the direction of the board of supervisors. [R60,§§319, 320; C73,§§320, 323; C97, §§470, 473; C24, 27, 31, 35, 39,§**5141**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§333.1]

Duty as to forest and fruit-tree reservations, §161.13

333.2 Issuance of warrants. Except as otherwise provided, the auditor shall not sign or issue any county warrant, unless the board of supervisors by recorded vote or resolution shall have authorized the same, and every such warrant shall be numbered and the date, amount, and the number of the same, and the name of the person to whom issued, shall be entered in a book to be kept in his office for that purpose. [R60,§321; C73,§321; C97,§471; C24, 27, 31, 35, 39,§**5142**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§333.2]

Referred to in §§230A.9, 333.5

333.3 Issuance of warrants without audit. The county auditor is hereby authorized to issue warrants as follows before bills for same have been passed upon by the board of supervisors:

1. For jury fees and mileage on certificate of the clerk of the court upon which they were in attendance, which certificate shall be issued when the juror entitled thereto shall have been discharged or excused by the court.

2. For witness fees and mileage for attendance before the grand jury upon certificate of the county attorney and foreman of such jury.

3. For witness fees before the district court in jury trials therein in criminal cases, when such fees are payable by the county, upon certificate of the clerk of the court upon which they were in attendance.

4. The per diem of the shorthand reporter of the district court upon certificate of the judge holding said court.

5. For expense of the grand jury upon order of the judge of the district court. [R60,§321; C73,§321; C97,§471; C24, 27, 31, 35, 39,§**5143**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§333.3]

Referred to in §333.5
Judicially allowed claims, §606.18
Witnesses before county attorney, §769.23

333.4 Issuance of warrants prior to audit. The board of supervisors may, by resolution, authorize the county auditor to issue warrants when said board is not in session for the following named purposes:

1. For such fixed charges as freight, express, postage, water, light, and telephone rents, upon filing duly verified bills for same with the county auditor.

2. For salaries and payrolls where such compensation shall have been previously fixed by the board of supervisors, upon certificate of the officer or foreman under whom such compensation shall have been earned. [C24, 27, 31, 35, 39,§**5144**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§333.4]

Referred to in §333.5

333.5 Audit by board. All bills paid under the provisions of sections 333.2 to 333.4 shall be passed upon by the board of supervisors at the first meeting following such payment and shall be entered on the minutes as other claims allowed by the board. [C24, 27, 31, 35, 39,§**5145**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§333.5]

333.6 Form of warrants. Each warrant issued by the auditor shall be made payable to the person performing the service or furnishing the supplies for which said warrant makes payment, and shall state the purpose for which said warrant was issued. [C24, 27, 31, 35, 39,§**5146**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §333.6]

Character of county warrant, see 165 Iowa 325

333.7 Erroneous certificates—liability. Any officer making an erroneous certificate shall be liable on his official bond for any loss to the county thereby. [C24, 27, 31, 35, 39,§**5147**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§333.7]

333.8 Duty as to school fund. When the auditor of any county shall receive from the state comptroller notice of the apportionment of school moneys to be distributed in the county, he shall file the same in his office, and transmit a certified copy thereof to the county treasurer, and he shall also lay a certified copy thereof before the board at its next regular meeting. [R60,§322; C73,§322; C97,§472; C24, 27, 31, 35, 39,§**5148**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§333.8]

School funds, ch 302

333.9 Collection of moneys. The county auditor is hereby authorized to collect and receive all money due his county, except when otherwise provided by law, and shall be responsible for all public funds received or collected by him. [C73,§323; C97,§473; C24, 27, 31, 35, 39,§**5149**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §333.9]

333.10 List of county officers—report. The county auditor shall report to the secretary of state the name, office, and term of office of every county officer elected or appointed, within ten days after their election and qualification, and the secretary of state shall record

the same in a book to be kept for that purpose in his office. [R60,§§291, 292; C73,§324; C97, §474; C24, 27, 31, 35, 39,§**5150**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§333.10]

County auditor, duties as commissioner of elections, see §47.2

Secretary of state, duties as state commissioner of elections, see §47.1

333.11 Financial report. The county auditor shall, during the month of July of each year, compile and prepare a financial report, which shall contain schedules showing:

1. The amount of the various classes of warrants drawn on the county fund, except for court expenses, during the preceding year, including therein, among other items, the total amount paid each county officer, also their deputies and extra help, also other employees of the county, and amounts paid for rent and various other expenses, including printing and stationery, furniture and fixtures, publishing proceedings of the board of supervisors, postage allowed each county official, complete election expenses, including printing of ballots, expenses of registration, and items of like nature.

2. The amount of warrants drawn on the county fund for various court expenses, which shall include among other items the salary paid the county attorney and the amounts received by him as commission on fines and from other sources, and the amount paid to assistant counsel.

3. The amount paid jurors, witnesses and bailiffs, respectively, in district court, amount paid for shorthand reporting, amount paid for printing and stationery, amount paid for attorney fees for defending criminals, amount paid for meals for jurors, and items of like nature.

4. The expenses of the grand jury, stating amounts paid grand jurors, bailiffs, witnesses, and items of like nature.

5. The expenses of the county medical examiner.

6. The amount drawn by each member of the board of supervisors from the several funds of the county for services during the preceding year.

7. A recapitulation of the total amount of warrants drawn on the county fund, with a comparison with the amount of warrants drawn on the county fund each year for the last five years.

8. The various classes of warrants drawn on the poor fund for the preceding year, with a comparison with the total amount of warrants drawn on such fund each year for the last five years.

9. The amount of warrants drawn on the fund for the support of the insane for the preceding year, including the amounts received by each commissioner as fees and expenses, fees of witnesses, sheriff's fees and expenses, the cost of transportation, and items of like nature.

10. The total cost of maintenance of mentally ill, at county hospital, with number confined therein, and total paid the various state hospitals for the mentally ill, with the number of patients from the county confined in such hospitals.

11. The amount paid the various state institutions during the preceding year.

12. The amounts paid the sheriff for boarding prisoners during the preceding year, together with the amount paid the sheriff as jail expenses, with a comparison with the amounts paid for boarding prisoners, and for jail expenses each year during the last five years.

13. The amounts paid for the condemning of intoxicating liquors during the preceding year, also cost of convictions in the district court, for the violation of the laws relating to the sale of intoxicating liquors, together with the amount of fines collected for such violation and the amounts received as mulct tax, if any.

14. The amount of warrants drawn on each of the various funds of the county. [S13, §480-a; C24, 27, 31, 35, 39,§**5151**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§333.11]

Referred to in §333.12

333.12 Comparisons. The comparisons with preceding years provided for in section 333.11 shall be as follows:

1. The first year, comparison only with the preceding year.

2. The second year, with the two preceding years.

3. The third year, with the three preceding years.

4. The fourth year, with the four preceding years.

5. The fifth year, with the five preceding years.

6. Thereafter in the same order and manner for each five-year period. [S13,§480-a; C24, 27, 31, 35, 39,§**5152**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§333.12]

333.13 Additional matter. Said financial report shall also contain the following:

1. The report of the county auditor as required by law to be made to the superintendent of public instruction, relating to school funds and property.

2. The various reports as required by law to be made to the county board of supervisors of magistrates and other officers, including forfeited recognizances in their offices, fines, penalties, forfeitures imposed in their respective courts, and forfeited appearance bonds in criminal cases, all of which by law go into the county treasury for the benefit of the school fund.

3. The various reports made during the preceding year, by the county treasurer, auditor, recorder, sheriff, clerk of the district court, and the commission of veteran affairs as required by law.

4. The reports of the various committees that may be appointed by the board of supervisors to examine the affairs and accounts of the various county officials and employees.

5. Such other and further matters and information as the board of supervisors may direct or the auditor may deem advisable. [S13, §480-a; C24, 27, 31, 35, 39,§5153; C46, 50, 54, 58, 62, 66, 71, 73, 75,§333.13]

333.14 Printing and distribution. Said financial report shall be ordered printed by the board of supervisors in pamphlet form in such numbers as the board may direct, for distribution among the taxpayers of the county. The county auditor of each county shall, on or before October 1 of each year, furnish to the auditor of state the information contained in such financial report and any other information relative to the financial affairs of the county which he may require, upon blank forms provided by the auditor of state for this purpose. [S13,§480-b; C24, 27, 31, 35, 39,§5154; C46, 50, 54, 58, 62, 66, 71, 73, 75,§333.14]

333.15 Fees to be collected. The county auditor shall be entitled to charge and receive the following fees:

1. For transfers made in the transfer books, one dollar for each separate parcel of real estate described in any deed, or transfer of title certified by clerks of district courts, provided, however, if several parcels are described in any one such instrument and the parcels are contiguous or separated only by public streets or highways, the fee shall not exceed five dollars. A parcel of real estate outside of the limits of cities shall be all the unplatted land described in any deed or transfer of title lying within one numbered section of land.

2. For issuing certificate of redemption of land sold for taxes, one dollar.

3. For each certificate issued by the treasurer for lands sold for nonpayment of taxes, one dollar. [C73,§3797; C97,§478; C24, 27, 31, 35, 39,§5155; C46, 50, 54, 58, 62, 66, 71, 73, 75,§333.15]

CHAPTER 334

COUNTY TREASURER

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334.1 Duties. The treasurer shall receive all money payable to the county, and disburse the same on warrants drawn and signed by the county auditor and sealed with the county seal, and not otherwise, and shall keep a true account of all receipts and disbursements, and hold the same at all times ready for the inspection of the board of supervisors. [C51, §152; R60,§360; C73,§327; C97,§482; C24, 27, 31, 35, 39,§5156; C46, 50, 54, 58, 62, 66, 71, 73, 75, §334.1]

Referred to in §230A.9
Authorized deposits, §§452.10, 453.1
Restrictions, §§452.3, 452.4
Settlement with treasurer, §452.6 et seq.

334.2 Official seal. The county treasurer shall be provided with an impression seal on the face of which shall appear the name of the county, the word "county", either in full or abbreviated; the word "treasurer", either in full or abbreviated; and the word "Iowa", and the impression of said seal shall be placed upon each motor vehicle registration certificate signed by the county treasurer. [C24, 27, 31, 35, 39,§5157; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.2]

Referred to in §230A.9

334.3 Warrants—endorsement. The treasurer of every county, when he shall receive any warrant, scrip, or other evidence of its indebtedness, shall endorse thereon the date of its receipt, from whom received, and what amount he paid thereon. [R60,§2187; C73,§557; C97,§597; C24, 27, 31, 35, 39,§5158; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.3]

Referred to in §§230A.9, 334.4

334.4 Breach of duty. Any county treasurer, or any deputy or employee of such officer, who violates any of the provisions of section 334.3, shall be guilty of a misdemeanor, and fined not less than one hundred dollars, nor more than five hundred dollars, for each

offense. [R60,§2188; C73,§558; C97,§598; C24, 27, 31, 35, 39,§**5159**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.4]

Referred to in §230A.9

334.5 Warrants partially paid. When a person wishing to make a payment into the treasury presents a warrant of an amount greater than such payment, or presents for payment a warrant in excess of the funds in the treasury, the treasurer shall cancel the same and give the holder a certificate of the overplus, upon the presentation of which to the county auditor he shall file it, and issue a new warrant of that amount, and charge the treasurer therewith; and such certificate is transferable by delivery, and will entitle the holder to the new warrant, payable to his order, and containing reference to the original warrant. [C51,§§154, 490; R60,§§362, 755; C73,§329; C97, §485; C24, 27, 31, 35, 39,§**5162**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.5]

Referred to in §230A.9

334.6 Warrant book. The treasurer shall keep a record of all warrants drawn on him by the auditor and presented, in a book so ruled as to show in separate columns, as to each warrant, the number, date, principal, name of drawee, when paid, to whom paid, and amount of interest paid. [C51,§155; R60, §363; C73,§330; C97,§486; C24, 27, 31, 35, 39,§**5163**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.6]

Referred to in §230A.9

334.7 Cancellation of warrants. The warrants returned by the treasurer shall be compared with the warrant book, and the word "canceled" be written over the minute of the proper numbers in the warrant book, and the original warrant be preserved for at least two years, and he shall make monthly returns to the auditor of the number, date, drawee's name, when paid, to whom paid, original amount, and interest. [C51,§§159, 160; R60, §§365, 366; C73,§§332, 333; C97,§488; C24, 27, 31, 35, 39,§**5164**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §334.7]

Referred to in §230A.9
Analogous provisions, §12.6

334.8 Funds—separate account. The treasurer shall, for each term of his office, keep a separate account of the several taxes for state, county, school, highway, or other purposes, and of all other funds created by law, whether regular, temporary, or special, and no moneys in any such fund shall be paid out or used for any other purpose, except as specially authorized by law. The treasurer shall charge himself with the amount of the tax or other fund and credit himself with the amounts disbursed on each and with the amount of delinquent taxes, when authorized to do so. [C51, §§156, 161; R60,§§364, 367; C73,§§331, 334; C97, §§487, 489; C24, 27, 31, 35, 39,§**5165**; C46, 50. 54, 58, 62, 66, 71, 73, 75,§334.8]

334.9 State funds. The treasurer of each county shall on or before the fifteenth day of each month prepare sworn statements of the amount of money in his hands on the last day of the preceding month belonging to the state treasury, and forward by mail one such statement, accompanied by his remittance therefor, to the treasurer of state, and one such statement to the state comptroller. Provided in lieu of such remittance the treasurer of the county may deposit to the credit of the treasurer of the state said amount in interest-bearing accounts in a bank, or banks, of said county designated by the treasurer of the state. [R60,§799; C73,§914; C97,§1459; C24, 27, 31, 35, 39,§**5166**; C46, 50, 54,§§334.9, 334.10; C58, 62, 66, 71, 73, 75,§334.9]

334.10 Payment to state treasurer. The treasurer of state is hereby required to receive on all such payments the same kind of money and notes which the county treasurer is authorized and required by law to receive in payment of taxes. [R60,§799; C73,§914; C97, §1459; C24, 27, 31, 35, 39,§**5167**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.10]

County responsible to state, §452.1

334.11 Penalty. In case the treasurer of any county shall fail to prepare and forward the aforesaid statement and remittance, he shall forfeit and pay for each and every failure a sum not less than one hundred dollars or more than five hundred dollars, to be recovered in an action on the treasurer's bond, brought in the name of the state comptroller or the treasurer of state. [R60,§799; C73,§914; C97,§1459; C24, 27, 31, 35, 39,§**5168**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.11]

334.12 Unclaimed money. In any county of this state where any special levy has been made to pay any claim, bond, or other indebtedness, and the same shall have remained in the treasury of the county, uncalled for, for a period of three years, the board of supervisors of such county may authorize such unclaimed fund to be transferred to the general county fund. [C97,§456; C24, 27, 31, 35, 39,§**5169**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.12]

REPLACEMENT OF LOSSES

334.13 Losses. All losses of funds in the legal custody of a county treasurer, resulting from any act of omission or commission for which the said treasurer is legally responsible, except losses to the amount of the treasurer's bond, and except losses which are or may be occasioned by depositing said funds in authorized depositories, shall be replaced by the several counties of the state as hereinafter directed. [C27, 31, 35,§5169-a1; C39,§**5169.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.13]

334.14 Auditor to determine loss. The amount of the loss which is to be replaced shall be determined by the auditor of state from a full and detailed examination made by him, or under his authority, of the accounts of the treasurer in question, which examination shall be reduced to writing and filed with

the state comptroller. [C27, 31, 35,§5169-a2; C39,§**5169.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.14]

Referred to in §334.22

334.15 Loss to be apportioned. When the loss which is to be replaced has been determined by said auditor, the state comptroller shall, in writing filed in his office, apportion the same to each county of the state, including the county suffering the loss, in the proportion which the taxable property of each county bears to the total taxable property of all the counties of the state. [C27, 31, 35,§5169-a3; C39, §**5169.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.15]

Referred to in §334.22

334.16 Certification. The state comptroller shall forthwith certify to each county treasurer of the state the amount apportioned to the various counties. [C27, 31, 35,§5169-a4; C39, §**5169.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.16]

Referred to in §334.22

334.17 Counties to remit. Upon receipt of the certificate aforesaid, the county treasurer, except of the county suffering the loss, shall forthwith charge the general fund of his county with the amount apportioned to his county and forthwith remit said amount with interest, if any, to the state comptroller. [C27, 31, 35,§5169-a5; C39,§**5169.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.17]

Referred to in §334.22

334.18 Interest. The amount apportioned to a county shall draw interest at the rate of one percent per month on and after thirty days from the time the treasurer is notified of the amount apportioned to his county. [C27, 31, 35,§5169-a6; C39,§**5169.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.18]

Referred to in §334.22

334.19 Default—remedy. Should the amount apportioned to a county be not paid, the default shall be reported by the state comptroller to the director of revenue who shall forthwith levy upon all the taxable property of the delinquent county, except moneys and credits, a tax sufficient to raise said apportionment together with a penalty of twenty-five percent thereon, and all interest. Said levy shall be transmitted to the county auditor of the delinquent county who shall enter said levy on the first ensuing tax list of the county, and said tax shall be collected and remitted to the state comptroller. [C27, 31, 35,§5169-a7; C39, §**5169.07**; G46, 50, 54, 58, 62, 66, 71, 73, 75,§334.19]

Referred to in §334.22

334.20 Separate fund. The funds received for the purpose of reimbursing a county shall be carried by the treasurer of state as a separate fund. [C27, 31, 35,§5169-a8; C39,§**5169.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.20]

Referred to in §334.22

334.21 Comptroller to issue warrant. The state comptroller shall, from time to time, issue his warrant on the various reimbursement funds in favor of the county suffering the loss. [C27, 31, 35,§5169-a9; C39,§**5169.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.21]

Referred to in §334.22

334.22 Limitation. Nothing in sections 334.14 to 334.21 shall be construed to relieve any existing surety from any liability accruing prior to January 1, 1926. [C27, 31, 35,§5169-a10; C39,§**5169.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§334.22]

CHAPTER 334A

COUNTY GOVERNMENT ASSISTANCE FUND

334A.1 Fund created.
334A.2 Distribution of funds.

334A.1 Fund created. There is created a "county government assistance fund" in the office of the treasurer of state. Funds appropriated to such fund and distributed pursuant to section 334A.2 shall be used, insofar as practicable, for projects and programs developed and maintained for citizens of the county residing outside the incorporated areas of any city in the county. [66GA, ch 1180,§1]

334A.2 Distribution of funds. On or before December 15 of each fiscal year the state comptroller shall distribute the funds in the county government assistance fund to each county in the state in the proportion that the population residing in the unincorporated area of each county is to the total population residing in the unincorporated areas of all of the counties.

For purposes of this section "population" shall be based on the most recent federal census. [66GA, ch 1180,§2]

Referred to in §334A.1

CHAPTER 335

COUNTY RECORDER

335.1 Auditor as a temporary recorder.
335.2 General duties—typed signatures.
335.3 Error in recording—correction.
335.4 Military personnel record.
335.5 Record of death in service.
335.6 Commissions or warrants.
335.7 Veterans organizations.
335.8 Notice published by recorder.
335.9 Alphabetical index.
335.10 Free copies.
335.11 Old records destroyed.
335.12 Social security number.
335.13 Index.
335.14 Fees.
335.15 Exact time of filing.
335.16 List of deeds to department of revenue.
335.17 Records.

FEDERAL TAX LIEN REGISTRATION

335.18 Federal liens filed.
335.19 Certification by treasury secretary.
335.20 Notice of filing and release.
335.21 Fees.
335.22 Former liens.
335.23 Citation.

335.1 Auditor as a temporary recorder. In case of vacancy occurring in the office of recorder, by death or otherwise, the auditor shall discharge the duties pertaining to said office until such vacancy is filled by appointment by the board of supervisors. [C97,§497; C24, 27, 31, 35, 39,§**5170**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §335.1]

335.2 General duties — typed signatures. The recorder shall keep his office at the county seat, and shall record, and as speedily as possible, all instruments in writing which may be delivered to him for record, in the manner directed by law. All instruments filed for recordation or filing with the recorder shall have typed or legibly printed the names of all signers thereon, including those of the acknowledging officers and witnesses, beneath the original signatures; provided, however, that in the event that such instrument does not contain such typed or printed names, the recorder shall accept such instrument for recordation or filing if accompanied by an affidavit, for record with the instrument, correctly spelling in legible print or type the signatures appearing on said instrument. This requirement shall not apply to military discharges or military instruments, nor to wills or court records, or to any other instrument dated prior to July 4, 1959. Failure to print or type signatures as herein designated shall not invalidate the instrument. [C51,§150; R60,§358; C73,§335; C97,§494; S13,§494; C24, 27, 31, 35, 39, §**5171**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§335.2]

S13,§494, editorially divided
Recording articles of incorporation, §491.4

335.3 Error in recording—correction. If, in the recording of any such instrument heretofore recorded or hereafter to be filed for record, the recording fee for which has once been paid, the recorder shall commit an error in making the record thereof, it shall be his duty to re-record such instrument upon the presentation of the original by the owner thereof, without further compensation; and he shall also enter upon the margin of the new record a reference to the original record, and upon the margin of the original record a reference to the new record, giving the book and page thereof. When an error has been made in indexing any instrument, it shall be the duty of the recorder to reindex the same without further compensation. [S13,§494; C24, 27, 31, 35, 39,§**5172**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§335.3]

335.4 Military personnel record. The county recorder of each county in this state shall maintain in his office a special book or books of uniform type, kind, and form approved by the adjutant general of the state in which he shall, upon request, record without charge the discharge or discharges of any man or woman who:

1. Enlisted or was inducted from said county,
2. Resided at any time in said county, or
3. Is buried in said county.

This section shall apply to any man or woman entitled thereto who served at any time in any of the armed branches of the United States of America, including members of the merchant marine in time of war, and including the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, and the Vietnam Conflict at any time between August 5, 1964, and ending on the date the armed forces of the United States are directed by formal order of the government of the United States to cease hostilities, both dates inclusive, members of the armed forces of any country allied with the United States of America, and of the armed forces of Iowa, the various states and territories. [C24, 27, 31, 35, 39,§**5173**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§335.4; 66GA, ch 76,§10]

Referred to in §335.6

335.5 Record of death in service. Where no official discharge was issued, or where such person was killed in action or died in service, the recorder shall record an official certificate, general or special order, letter or telegram from competent authority, including letters from the pension bureau, veterans administration, or other governmental office which

shows the termination of such veteran's service. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§335.5]

335.6 Commissions or warrants. Said recorder shall also record without charge for the classes indicated in section 335.4 the commissions and warrants of officers and noncommissioned officers, and all orders citing said veteran for bravery and meritorious action, and all citations and bestowals of medals from the state, federal, and foreign governments. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§335.6]

335.7 Veterans organizations. In the event of the death of any veteran entitled to have his discharge or other records recorded, the same may be presented by any veterans organization for record with the same force as though tendered by the veteran himself during his or her lifetime. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§335.7]

335.8 Notice published by recorder. The county recorder may from time to time by published notice, request the filing of such documents as are referred to herein for the purpose of recording. Any expense incident to such notice shall be paid as an expense of the county recorder's office upon bills filed with the board of supervisors. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§335.8]

335.9 Alphabetical index. There shall be kept in connection with such record an alphabetical index referring to the name of the soldier, sailor, or marine, whose name appears in each discharge paper so recorded. [C24, 27, 31, 35, 39,§**5174**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§335.9]

335.10 Free copies. When a certified copy or copies of any public record in the state are required to perfect a claim of any soldier, sailor, or marine, in service or honorably discharged, or a claim of any dependent of such soldier, sailor, or marine, they shall, upon request, be furnished by the custodian of such records, without requiring any fee or compensation therefor. [C24, 27, 31, 35, 39,§**5175**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§335.10]

335.11 Old records destroyed. The county recorder may destroy, ten years after the maturity date, or ten years after the maturity date of any extension thereof, any chattel mortgage, conditional sales contract, or other instrument or writing relating thereto, filed prior to July 4, 1966, provided such destruction takes place in the presence of the county board of supervisors, or a committee appointed by the board from its members to supervise the destruction, and when so destroyed the date of destruction shall be entered on the index record under "remarks". [C73, 75,§335.11]

335.12 Social security number. Any person who is registered under the federal social security Act may have such record permanently recorded in the office of the county recorder, upon payment of a fee of twenty-five cents. [C39,§**5176.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§335.12]

335.13 Index. There shall be kept in connection with such record an alphabetical index, referring to the name of the person so registered under the federal social security Act. [C39,§**5176.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§335.13]

335.14 Fees. The recorder shall charge and collect the following fees:

1. For recording each instrument, two dollars and fifty cents for the first page or fraction thereof.
2. For each additional page or fraction thereof, two dollars.
3. The minimum fee for all deeds and real property mortgages shall be two dollars and fifty cents. [C51,§2534; R60,§4143; C73,§3792; C97,§498; S13,§498; C24, 27, 31, 35, 39,§**5177**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§335.14]

Referred to in §§96.14(3), 335.21, 422.26, 424.7

335.15 Exact time of filing. In addition to the other requirements of the law the recorder shall enter in his fee book the date of filing each instrument, the number and character thereof, and the names of the grantors and grantees therein. In numbering said instruments, he shall start with number one immediately after the date of his settlement with the board of supervisors each year, and continue to number them consecutively till his next settlement with said board. Where not otherwise already required by law the recorder shall also enter in the index book the exact time of the filing of each instrument. [C51,§2534; R60, §4143; C73,§3792; C97,§498; S13,§498; C24, 27, 31, 35, 39,§**5178**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §335.15]

335.16 List of deeds to department of revenue. The county recorder shall be required to compile a list of all deeds recorded in his office subsequent to July 4, 1951, which are dated or acknowledged more than six months prior to the date of recording and shall at monthly intervals forward a copy of the list as required herein to the inheritance tax division of the department of revenue. [C66, 71, 73, 75,§335.16]

335.17 Records.

1. *Microfilming records — indexing.* The county recorder may reproduce in miniature any instrument to be recorded in his office by processes enumerated in section 343.13. When any such recorded instrument involves a release or assignment, the separate instrument filed acknowledging such release or assignment shall be reproduced in miniature. In lieu of marginal entries the recorder shall make endorsements in red ink on both the index and the cross-index to the miniature instruments where such instruments were originally indexed. When an official record is so produced in miniature there shall at the same time be reproduced a security copy to be kept outside of the courthouse.

2. *Combined indexing system.* The county recorder may, in lieu of maintaining separate index books as required by law, prepare and maintain a combined index record or system which shall contain the same data and information as required to be kept in the separate index books. [C71, 73, 75,§335.17; 66GA, ch 190,§1]

FEDERAL TAX LIEN REGISTRATION

335.18 Federal liens filed.

1. Notices of liens upon real property for taxes payable to the United States, and certificates and notices affecting the liens shall be filed in the office of the recorder of the county in which the real property subject to a federal tax lien is situated.

2. Notices of liens upon personal property, whether tangible or intangible, for taxes payable to the United States and certificates and notices affecting the liens shall be filed as follows:

a. If the person against whose interest the tax lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state.

b. In all other cases, in the office of the recorder of the county where the taxpayer resides at the time of filing of the notice of lien. [C71, 73, 75,§335.18]

335.19 Certification by treasury secretary. Certification by the secretary of the treasury of the United States, or his delegate, of notices of liens, certificates, or other notices affecting tax liens, entitles them to be filed, and no other attestation, certification, or acknowledgment is necessary. [C71, 73, 75,§335.19]

335.20 Notice of filing and release.

1. If a notice of federal tax lien, a refiling of a notice of tax lien, or a notice of revocation of any certificate described in subsection 2 of this section is presented to the filing officer:

a. If the filing officer is the secretary of state, he shall cause the notice to be marked, held and indexed in accordance with the provisions of section 554.9403, subsection 4, as if the notice were a financing statement within the meaning of that section.

b. If the filing officer is a county recorder, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the identification number of the internal revenue service and the total unpaid balance of the assessment appearing on the notice of lien.

2. If a certificate of release, nonattachment, discharge or subordination of any tax lien is presented to the secretary of state for filing he shall:

a. Cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code, except that the notice of lien to which the certificate relates shall not be removed from the files.

b. Cause a certificate of discharge or subordination to be held, marked and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

3. If a refiled notice of federal tax lien referred to in subsection 1 of this section or any of the certificates or notices referred to in subsection 2 of this section is presented for filing with a county recorder, he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical federal tax lien index on the line where the original notice of lien is entered.

4. Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of federal tax lien or certificate or notice affecting the lien, filed on or after July 1, 1970, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is five dollars. Upon request the filing officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of five dollars per page. [C24, 27, 31, 35, 39,§5176; C46, 50, 54, 58, 62, 66,§335.11; C71, 73, 75,§335.20]

335.21 Fees. The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien shall be as provided in section 335.14. The officer shall bill the internal revenue service on a monthly basis for fees for documents filed by them. [C71, 73, 75, §335.21]

335.22 Former liens. Filing officers with whom notices of federal tax liens, certificates and notices affecting such liens have been filed on or before July 1, 1970, shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to July 1, 1970" containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before July 1, 1970, any certificate or notice affecting the lien shall be filed in the same office. [C71, 73, 75,§335.22]

335.23 Citation. This division may be cited as the uniform federal tax lien registration Act. [C71, 73, 75,§335.23]

CHAPTER 336

COUNTY ATTORNEY

336.1 Qualifications.
336.2 Duties.
336.3 Absence of county attorney—substitute —compensation.
336.4 Repealed by 64GA, ch 1124,§282.
336.5 County attorney—prohibitions—disqualified assistants.

336.1 Qualifications. County attorneys shall be qualified electors of their respective counties, duly admitted to practice as attorneys and counselors in the courts of this state as provided by law. No person shall be qualified for such office while his license to practice remains revoked or suspended. [S13,§308-b; C24, 27, 31, 35, 39,§**5179**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§336.1]

336.2 Duties. It shall be the duty of the county attorney to:

1. Diligently enforce or cause to be enforced in his county, all of the laws of the state, actions for a violation of which may be commenced or prosecuted in the name of the state of Iowa, or by him as county attorney, except as otherwise specially provided.

2. Appear for the state and county in all cases and proceedings in the courts of his county to which the state or county is a party, except cases brought on change of venue from another county, and to appear in the appellate courts in all cases in which the county is a party, and also in all cases transferred on change of venue to another county, in which his county or the state is a party.

3. Appear and prosecute all preliminary hearings upon charges triable upon indictment.

4. Appear and prosecute misdemeanors whenever he is not otherwise engaged in the performance of official duties.

5. Enforce all forfeited bonds and recognizances, and to prosecute all proceedings necessary for the recovery of debts, revenues, moneys, fines, penalties, and forfeitures accruing to the state or his county, or to any school district or road district in his county; also to prosecute all suits in his county against public service corporations, which are brought in the name of the state of Iowa.

6. Commence, prosecute, and defend all actions and proceedings in which any county officer, in his official capacity, or the county, is interested, or a party.

7. Give advice or his opinion in writing, without compensation, to the board of supervisors and other county officers and to school and township officers, when requested so to do by such board or officer, upon all matters in which the state, county, school, or township is interested, or relating to the duty of the board or officer in which the state, county, school, or township may have an interest; but he shall not appear before the board of supervisors upon any hearing in which the state or county is not interested.

8. Attend the grand jury whenever necessary for the purpose of examining witnesses before it, or of giving it legal advice, or to procure subpoenas or other process for witnesses, to prepare all informations and bills of indictment.

9. Give a receipt to all persons from whom he shall receive money in his official capacity, and file a duplicate thereof with the county auditor.

10. Make reports relating to the duties and the administration of his office to the governor or the attorney general whenever called upon by the governor or the attorney general so to do.

11. Perform other duties enjoined upon him by law. [C97,§301; SS15,§301; C24, 27, 31, 35, 39, §**5180**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§336.2; 66GA, ch 1241,§48]

336.3 Absence of county attorney—substitute—compensation. In case of absence, sickness, or disability of the county attorney and his deputies, the court before whom it is his duty to appear, and in which there may be business requiring his attention, may appoint an attorney to act as county attorney, by order to be entered upon the records of the court, and he shall receive out of the compensation allowed to the county attorney, in proceedings before a judicial magistrate, such sum as the board of supervisors shall determine to be reasonable for the services rendered, and, if in proceedings before a district associate judge or a district judge, such sum as the judge shall determine to be a reasonable compensation, and, while acting under said appointment, he shall have all the authority and be subject to all the responsibilities herein conferred upon county attorneys. [C97,§304; C24,§13675; C27, 31, 35,§5180-a1; C39,§**5180.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§336.3]

336.4 Repealed by 64GA, ch 1124,§282.

336.5 County attorney — prohibitions — disqualified assistants. No county attorney shall accept any fee or reward from or on behalf of anyone for services rendered in any prosecution or the conduct of any official business, nor shall he, or any member of a firm with which he may be connected, be directly or indirectly engaged as an attorney or otherwise for any party other than the state or county in any action or proceeding pending or arising in his

county, based upon substantially the same facts upon which a prosecution or proceeding has been commenced or prosecuted by him in the name of the county or state; nor shall any attorney be allowed to assist the county attorney in any criminal action, where such attorney is interested in any civil action brought or to be commenced, in which a recovery is or may be asked upon the matters and things involved in such criminal prosecution. [C97, §305; C24,§13677; C27, 31, 35,§1580-a3; C39, §5180.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§336.5]

CHAPTER 336A

PUBLIC DEFENDER

Referred to in §336B.3

336A.1 Office established or abolished.
336A.2 Contributions to funds.
336A.3 Nomination and appointment.
336A.4 Indigent defined.
336A.5 Compensation.
336A.6 Duty of defender.
336A.7 Other attorney appointed.
336A.8 Report to court.
336A.9 Office.
336A.10 Time devoted to office.
336A.11 Prohibited conduct.

336A.1 Office established or abolished. In any county, the board of supervisors may establish or abolish, by resolution of the board, the office of public defender. A county may join with one or more other contiguous counties within its judicial district to establish one office of public defender to serve those counties.

If more than one county is involved in the abolishment of the office of public defender, the office shall not be abolished unless the abolishment is authorized by resolution of the board of supervisors of each of the counties involved. [C66, 71, 73, 75,§336A.1]

336A.2 Contributions to funds. In addition to such funds as may be appropriated from the court fund by the county for this purpose, a county may accept money and other contributions from private organizations and individuals, and other public agencies, in order to finance the establishment or operation of the office of public defender, and be strictly accountable therefor. [C66, 71, 73, 75,§336A.2]

336A.3 Nomination and appointment.

1. The public defender shall be a qualified attorney admitted to practice before the Iowa supreme court. When a vacancy exists in the office of the public defender, the district court judges of the judicial district containing the county or counties which the defender is to serve, sitting en banc, shall nominate two attorneys qualified to serve as public defender and certify the names of such nominees to the board(s) of supervisors of the county or counties which the public defender is to serve. The supervisors shall, within thirty days after such certification, appoint by majority vote, one of these nominees to be public defender for a term of six years so long as he shall remain qualified as otherwise provided in this chapter.

2. The public defender shall represent without charge, each indigent person who is under arrest or charged with a crime if:

a. The defendant requests it; or

b. The court, on its own motion or otherwise so orders. [C66, 71, 73, 75,§336A.3]

336A.4 Indigent defined. For the purpose of this chapter, an indigent shall be any person who would be unable to retain in his behalf, legal counsel without prejudicing his financial ability to provide economic necessities for himself or his family.

Before the initial arraignment or other initial court appearance, the determination of indigency shall be made by the public defender within criteria set by the board(s) of supervisors. At or after arraignment or other initial court appearance, the determination shall be made by the court. [C66, 71, 73, 75,§336A.4]

336A.5 Compensation.

1. The compensation of the public defender shall be fixed by the board(s) of supervisors. The compensation shall not be more than that paid the highest paid county attorney of the county or counties the public defender serves.

2. The public defender may appoint as many assistant attorneys, clerks, investigators, stenographers, and other employees as the board(s) consider(s) necessary to enable him to carry out his responsibilities. Appointments under this section shall be made in the manner prescribed by the county board(s) of supervisors. An assistant attorney must be a qualified attorney licensed to practice before the supreme court.

3. The compensation of persons appointed under subsection 2 shall be fixed by the county board(s) of supervisors. [C66, 71, 73, 75, §336A.5]

336A.6 Duty of defender. When representing an indigent person in a criminal proceeding, the public defender shall counsel and defend him, whether he is held in custody without commitment or charged with a criminal offense, at every stage of the proceedings against him; and prosecute any appeals or other remedies before or after conviction that he considers to be in the interest of justice. [C66, 71, 73, 75,§336A.6]

336A.7 Other attorney appointed. The court may, for cause, upon the application of the indigent person or the public defender, or on its own motion, appoint an attorney other than the public defender, to represent the indigent person at any state of the proceedings or on appeal. The attorney so appointed shall be compensated as provided in section 775.5. [C66, 71, 73, 75,§336A.7]

336A.8 Report to court. The public defender shall make an annual report to the judges of the district court sitting in any county he serves, the attorney general and the board(s) of supervisors of any county he serves reporting all cases handled by him during the preceding year. [C66, 71, 73, 75,§336A.8]

336A.9 Office. The county board(s) of supervisors shall provide office space, furniture, equipment, and supplies for the use of the public defender suitable for the business of his office. However, an allowance may be provided in place of facilities. Each item is a charge against the county in which the services were rendered. If the public defender serves more than one county, expenses that are properly allocable to the business of more than one of those counties shall be prorated among the counties concerned. [C66, 71, 73, 75,§336A.9]

336A.10 Time devoted to office. Any public defender whose annual salary rate is twelve thousand dollars or more, and any assistant public defender whose annual salary rate is ten thousand dollars or more, shall devote his full time to the discharge of his duties and shall not directly or indirectly engage in the private practice of law, except that he may be a member of a law partnership on leave of absence. [C66, 71, 73, 75,§336A.10]

336A.11 Prohibited conduct. No public defender or assistant public defender who is subject to the preceding section shall directly or indirectly refer any legal matter or civil or criminal litigation to any particular lawyer or lawyers or directly or indirectly recommend or suggest to any person the employment of any particular lawyer or lawyers to counsel in, conduct, defend, or prosecute any legal matter or litigation, if the county is or is likely to be a party thereto or have a substantial interest therein; or receive any direct or indirect fee or compensation for or in connection with any such referral, recommendation, or suggestion. However, he may recommend a lawyer when requested to do so by any court, governmental agency, or legal aid society. [C66, 71, 73, 75,§336A.11]

CHAPTER 336B

COURT-APPOINTED COUNSEL AND PUBLIC DEFENDERS

336B.1 Definitions.
336B.2 Financial statement.
336B.3 Statement on request for counsel.
336B.4 Filing.
336B.5 False statement—penalty.
336B.6 Fee taxed as court costs.

336B.1 Definitions. As used in this chapter:

1. "Attorney" means a lawyer appointed by a court to represent an incompetent or indigent person.

2. "Client" means an incompetent or indigent person represented by a court-appointed lawyer or public defender.

3. "Financial statement" means a full disclosure of all assets, liabilities, current income, dependents and such other information as the court or public defender may require to determine if the client should have legal assistance at public expense. [C71, 73, 75,§336B.1]

336B.2 Financial statement. Before an attorney is appointed under the provisions of sections 68.8, 145.17, 145.19, 222.22, 232.28, 775.4 or 777.12, or to represent any person charged with a crime in this state, the court shall require the client, or his parent, guardian, or custodian to complete under oath a detailed financial statement. [C71, 73, 75,§336B.2]

336B.3 Statement on request for counsel. Any person requesting the assistance of a public defender under the provisions of chapter 336A shall be required to complete a financial statement. [C71, 73, 75,§336B.3]

336B.4 Filing. Whenever a client is granted legal assistance at public expense, the financial statement required by this chapter shall be filed in the client's court file and shall be retained as a permanent part thereof. [C71, 73, 75,§336B.4]

336B.5 False statement—penalty. Any person that submits to a court or to a public de-

fender a materially false financial statement, for the purpose of obtaining legal assistance at public expense, shall be guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days. [C71, 73, 75,§336B.5]

336B.6 Fee taxed as court costs. If a court finds that a person desires legal assistance, and is financially able to secure counsel but refuses to employ an attorney, the court shall appoint an attorney to represent such person at public expense. The attorney fee paid by the state or county in such cases shall be taxed as part of the court costs against the person receiving the legal assistance, and the state or county shall be reimbursed for said fee when the court costs are paid. [C71, 73, 75,§336B.6]

CHAPTER 337

SHERIFF

Identification and use of publicly owned automobiles, etc., §740.20 et seq.

337.1 Authority to summon aid.
337.2 School of instruction.
337.3 Execution and return of writs.
337.4 Investigation on order of county attorney.
337.5 Not relieved from duties.
337.6 Disobedience punished.
337.7 Bailiffs—appointment—duties.
337.8 Execution of process.
337.9 Delivery to successor.
337.10 Successor may execute process.
337.11 Fees.
337.12 Costs—when payable by county.
337.13 Contract in lieu of mileage.
337.14 Mileage in addition to salary.
337.15 Condemnation funds.
337.16 Unadjudicated condemnation funds.
337.17 Duty and liability of treasurer.
337.18 Record of funds.
337.19 Liability of sheriff.
337.20 First deputy as sheriff.
337.21 Indian settlement officer.

337.1 Authority to summon aid. The sheriff, by himself or deputy, may call any person to his aid to keep the peace or prevent crime, or to arrest any person liable thereto, or to execute process of law; and when necessary, the sheriff may summon the power of the county. The sheriffs may use the services of the state department of public safety in the apprehension of criminals and detection of crime. [C51,§173; R60,§386; C73,§340; C97,§502; S13,§499-a; C24, 27, 31, 35, 39,§**5182**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.1]

Referred to in §337.5

337.2 School of instruction. The sheriff of each county may, with the co-operation of the commissioner of public safety, annually hold a conference and school of instruction for all peace officers, including regularly organized vigilantes under his jurisdiction, within his county, at which time instruction may be given in all matters relating to the duties of peace officers. [C31, 35,§5182-d1; C39,§**5182.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.2]

337.3 Execution and return of writs. The sheriff shall, by himself or deputy, execute and return all writs and other legal process issued by legal authority to him directed. [C51,§170; R60,§383; C73,§337; C97,§499; S13,§499-b; C24, 27, 31, 35, 39,§**5183**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §337.3]

Referred to in §337.5

337.4 Investigation on order of county attorney. The sheriff shall, whenever directed so to do in writing by the county attorney, make special investigation of any alleged infraction of the law within his county, and report with reference thereto within a reasonable time to such county attorney. When such investigation is made the sheriff shall file with the county auditor a detailed, sworn statement of his expenses, accompanied by the written order of the county attorney, and the board shall audit and allow only so much thereof as it shall find reasonable and necessary. [S13, §499-c; C24, 27, 31, 35, 39,§**5184**; C46, 50, 54, 58, 62, 66, 71, 73, 75§337.4]

Referred to in §337.5

337.5 Not relieved from duties. Nothing in sections 337.1, 337.3 and 337.4 shall be so construed as to relieve any peace officer from the full and faithful discharge of all the duties now or hereafter enjoined upon him by law. [S13,§499-d; C24, 27, 31, 35, 39,§**5185**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.5]

337.6 Disobedience punished. His disobedience of the command of any such process is a contempt of the court from which it issued, and may be punished by the same accordingly, and he is further liable to action by any person injured thereby. [C51,§171; R60,§384; C73, §338; C97,§500; C24, 27, 31, 35, 39,§**5186**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.6]

Contempts, ch 665

337.7 Bailiffs — appointment — duties. The sheriff shall attend upon the district court judges, district associate judges, and judicial magistrates of his county, and while they remain in session he shall be allowed the as-

sistance of such number of bailiffs as the judge or magistrate may direct. They shall be appointed by the sheriff and shall be regarded as deputy sheriffs, for whose acts the sheriff shall be responsible. [C51,§174; R60,§387; C73, §341; C97,§503; C24, 27, 31, 35, 39,§5187; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.7]

337.8 Execution of process. Sheriffs and their deputies may execute any process which may be in their hands at the expiration of their office, and, in case of a vacancy occurring in the office of sheriff from any cause, his deputies shall be under the same obligation to execute legal process then in his or their hands, and to return the same, as if the sheriff had continued in office, and he and they will remain liable therefor, under the provisions of law, as in other cases. [C51,§177; R60,§390; C73,§344; C97,§504; C24, 27, 31, 35, 39,§5188; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.8]

Referred to in §337.9

337.9 Delivery to successor. When a sheriff goes out of office, he shall deliver to his successor all books and papers pertaining to the office, and property attached and levied upon, except as provided in section 337.8, and all prisoners in the jail, and take his receipts specifying the same, and such receipt shall be sufficient indemnity to the person taking it. [C51,§178; R60,§391; C73,§345; C97,§505; C24, 27, 31, 35, 39,§5189; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.9]

337.10 Successor may execute process. If the sheriff die or go out of office before the return of any process then in his hands, his successor, or other officer authorized to discharge the duties of the office, may proceed to execute and return the same in the same manner as the outgoing sheriff should have done; but nothing in this section shall be construed to exempt the outgoing sheriff and his deputies from the duty imposed on them to execute and return all process in their hands at the time the vacancy in the office of sheriff occurs. [R60,§3264; C73,§346; C97,§506; C24, 27, 31, 35, 39,§5190; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.10]

337.11 Fees. The sheriff shall charge and be entitled to collect the following fees:

1. For serving a notice and making return thereof, for the first person served, three dollars, and each additional person, three dollars except the fee for serving additional persons in the same household shall be one dollar for each additional service.

2. For each warrant served, three dollars, and the repayment of necessary expenses incurred, in executing such warrant, as sworn to by the sheriff; if service of the warrant cannot be made, the repayment of all necessary expenses actually incurred by the sheriff while attempting in good faith to serve such warrant.

3. For serving and returning a subpoena, for each person served, three dollars, and the necessary expenses incurred while serving subpoenas in criminal cases or insane process.

4. For summoning a grand or trial jury, all necessary and actual expenses incurred by him.

5. For summoning a jury to assess the damages to the owners of lands taken for works of internal improvement, and attending them, thirty dollars per day, and necessary expenses incurred. This subsection shall not be so construed as to allow a sheriff to make separate charges for different assessments, which can be made by the same jury and completed in one day of ten hours.

6. For serving an execution, attachment, or order for the delivery of personal property, injunction, or any order of court, and making return thereof, five dollars.

7. For making and executing a certificate or deed for lands sold on execution, or a bill of sale for personal property sold, five dollars.

8. For the time necessarily employed in making an inventory of personal property attached or levied upon, three dollars per hour.

9. For a copy of any paper required by law, made by him, twenty-five cents.

10. Mileage in all cases required by law, going and returning, provided that this subsection shall not apply where provision is made for expenses, and in no case shall the law be construed to allow both mileage and expenses for the same services and for the same trip. In case the sheriff transports by auto, one or more persons to any state institution or any other destination required by law, or in case one or more legal papers are served on the same trip, he shall be entitled to but one mileage at the rate prescribed herein, the mileage cost thereof to be prorated to the respective persons transported and also in the case of separate papers served. Provided, however, that in the serving of original notices in civil cases and in the serving and returning of a subpoena the sheriff shall be allowed mileage expenses in each action wherein such original notices or subpoena are served, with a minimum mileage expense of one dollar for each service, and, he may refuse to serve original notices in civil cases until the statutory fees and estimated mileage for service have been paid.

Rate, see §79.9
When mileage not allowed, §127.19

11. For attending sale of property, for each day, three dollars.

12. For conveying one or more persons to any state, county, or private institution by order of court, or commission, he shall be allowed his necessary expenses, for himself and such person or persons, and in addition thereto, three dollars per hour for the time necessarily employed in going to and from such institution, same to be charged and accounted for as fees. Should the sheriff or deputy sheriff need any assistance in taking any person to any such institution, the same shall be furnished at the expense of the county.

13. For serving any warrant for the seizure of intoxicating liquors, one dollar; for the removal and custody of such liquor, actual and reasonable expenses; for the destruction of such liquor under the order of the court, one dollar and his actual and reasonable expenses; for posting and leaving notices in such cases, one dollar and his actual expenses. [C51,§2536; R60,§§1570, 4145; C73,§§3788, 3789, 3807; C97, §511; S13,§511; C24, 27, 31, 35, 39,**§5191**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.11; 66GA, ch 101, §4]

Approval of warrant and expenses, §§79.12, 79.13

337.12 Costs—when payable by county. In all criminal cases where the prosecution fails, or where the money cannot be made from the person liable to pay the same, the facts being certified by the clerk or judicial magistrate as far as their knowledge extends, and verified by the affidavit of the sheriff, the fees allowed by law in such cases shall be audited by the county auditor and paid out of the county treasury. The board of supervisors may pay same out of the general fund or the court fund. [C51,§2537; R60,§4146; C73,§3790; C97,§512; C24, 27,§13967; C31, 35,§5191-a; C39,**§5191.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.12]

Similar provisions, §789.20

337.13 Contract in lieu of mileage. In counties having a population of one hundred thousand or over, the board of supervisors may contract with the sheriff for the use of an automobile on a monthly basis in lieu of the payment of mileage, in the service of criminal processes. [C27, 31, 35,§5191-a1; C39,**§5191.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.13]

337.14 Mileage in addition to salary. The amounts allowed by law for mileage may be retained by him in addition to his salary. [C51,§2536; R60,§4145; C73,§§3788, 3807; C97, §511; S13,§511; C24, 27, 31, 35, 39,**§5192**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.14]

337.15 Condemnation funds. On or before July 1 in each year the sheriff of each county having any condemnation funds in his possession shall make a detailed report under oath of all funds in his possession received from condemnation proceedings of any kind that have been finally adjudicated, reciting therein the names of the parties to whom said funds belong, when received, and describing the property condemned, which report shall be filed with the county treasurer, and the sum so shown due from such sheriff paid over to the county treasurer, who shall make a detailed receipt therefor. [C24, 27, 31, 35, 39, §5193; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.15]

Referred to in §§337.16, 337.18, 337.19

337.16 Unadjudicated condemnation funds. Every sheriff having any condemnation funds in his possession in cases not finally adjudicated, shall make a further report of funds received by him in such cases, in detail as called for in section 337.15, and file the same with the county auditor for examination and checking by the board of supervisors, and where any sheriff's term is expiring he shall pay such condemnation funds in cases not finally adjudicated to his successor in office, taking his receipt therefor. [C24, 27, 31, 35, 39, §5194; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.16]

Referred to in §§337.18, 337.19

337.17 Duty and liability of treasurer. The county treasurer receiving such funds shall enter the same in detail in a book kept for that purpose, listing the names of the parties to whom such funds are due, description of property condemned, and amount of each item so due, and the same shall be paid out by him to the parties to whom the same is due, upon warrants ordered by the board of supervisors and issued by the county auditor, drawn upon said condemnation fund, and shall not be payable out of any other fund. Such county treasurer and his sureties shall be liable for such funds the same as for other funds received in his official capacity. [C24, 27, 31, 35, 39,**§5195**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.17]

Referred to in §337.19

337.18 Record of funds. Any sheriff receiving funds as provided in section 337.16 shall list the same in detail in a book kept for that purpose, and pay the same to the parties entitled thereto, upon final adjudication of such cases, or if held, after final adjudication until the end of the fiscal year to the county treasurer as provided in section 337.15. [C24, 27, 31, 35, 39,**§5196**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.18]

Referred to in §337.19

337.19 Liability of sheriff. Nothing contained in sections 337.15 to 337.18 shall be construed as relieving such sheriffs or the sureties on their bonds from liability for such funds so received by them until such payment has been made to the county treasurer or successor in office as herein provided. [C24, 27, 31, 35, 39, §5197; C46, 50, 54, 58, 62, 66, 71, 73, 75,§337.19]

337.20 First deputy as sheriff. Upon a vacancy in the office of sheriff the first deputy shall assume the office of sheriff upon qualifying as required by law, and shall hold said office until the vacancy is filled, as provided by law. [C50, 54, 58, 62, 66, 71, 73, 75,§337.20]

337.21 Indian settlement officer. There is hereby appropriated from the general fund of the state to Tama county the sum of three thousand five hundred dollars per year for each year of each biennium commencing July 1, 1959, said money to be expended by said county only for the payment of the salary and expenses of an additional deputy sheriff of said county, the principal duties of which deputy shall be to provide law enforcement upon the Sac and Fox Indian settlement in said county. Said deputy shall if possible reside on said

Indian settlement. All additional sums necessary to pay the salary and expenses of said deputy shall be paid by the county of Tama. The expenditure of such funds from any moneys of said county which may be available for such purpose is hereby authorized. [C62, 66, 71, 73, 75,§337.21]

CHAPTER 337A

SHERIFFS' UNIFORMS

337A.1 Standard uniform and badge.
337A.2 Furnished by county.
337A.3 Department of general services to purchase.
337A.4 Safety commissioner to design uniform and adopt rules.
337A.5 When mandatory.
337A.6 Bailiffs to wear uniforms.

337A.1 Standard uniform and badge. County sheriffs and their deputies shall wear the standard uniform provided for in this chapter and display a standard badge of office when on duty, except that the sheriff may designate other apparel when he or any of his deputies are engaged in assignments involving special investigation, civil process, court duties, jail duties, and the handling of mental patients. Special deputies appointed by the sheriff shall be excluded from the requirements of this chapter. [C75,§337A.1]

337A.2 Furnished by county. The county board of supervisors shall provide the sheriff and his full-time bonded deputies with all uniforms and accessories deemed necessary by the sheriff for properly outfitting the sheriff and his deputies. The expenditure for uniforms and accessories shall not exceed three hundred dollars per man in any calendar year. [C75,§337A.2]

337A.3 Department of general services to purchase. The department of general services shall have the responsibility of purchasing all uniforms, and the cost of the uniforms shall be assessed against each county. [C75, §337A.3]

337A.4 Safety commissioner to design uniform and adopt rules. The commissioner of public safety, after considering the recommendations of the Iowa state association of sheriffs and deputy sheriffs, shall adopt rules designating the colors and design of the standard uniform to be worn by the sheriffs and their deputies. The uniform shall include standard shoulder patches, badges, nameplates, hats, trousers, neckties, jackets, socks, shoes and boots, and leather goods and be readily distinguishable from the uniform of other law enforcement agencies of the state. The rules shall allow for individual county designation on the uniforms where appropriate. The rules shall be adopted and may be amended in accordance with chapter 17A. [C75,§337A.4]

337A.5 When mandatory. All uniforms purchased after January 1, 1976, shall be of the designated color and design, and after January 1, 1977, all county sheriffs and their deputies shall wear the standard uniforms as provided in this chapter. [C75,§337A.5]

337A.6 Bailiffs to wear uniforms. A district court judge, district associate judge, or judicial magistrate may direct that deputy sheriffs who act as bailiffs dress in wearing apparel other than their uniforms while court is in session. [C75,§337A.6]

CHAPTER 338

CARE OF PRISONERS BY SHERIFF

338.1 Prisoners—duty of sheriff.
338.2 Purchase of supplies.
338.3 Inspection.
338.4 Cook and assistants.
338.5 Salaries.
338.6 Use of trusties.
338.7 Duty of cooks and assistants.
338.8 Washing.
338.9 Federal prisoners.
338.10 Wrongful use of supplies.
338.11 Series of acts.
338.12 Repealed by 65GA, ch 226,§5.

338.1 Prisoners—duty of sheriff. The duty of the sheriff to board and care for prisoners in his custody in the county jail shall be performed by the sheriff without compensation, reimbursement or allowance therefor except his salary as fixed by law. However, the board may reimburse the sheriff for the actual cost of board furnished prisoners directly by the sheriff, upon presentation of sufficient documentation showing the actual cost and

may compensate the spouse or a relative of the sheriff for services rendered in aiding the sheriff in carrying out the provisions of this section. [C51,§2536; R60,§4145; C73,§3788; C24, 27, 31, 35,§5197-d1; C39,§§**5191, 5197.01**; C46, 50, 54, 58, 62, 66, 71, 73,§§337.11, 338.1; C75,§338.1]

338.2 Purchase of supplies. The board of supervisors may, in such manner and under such regulations as it may deem fit, furnish to the sheriff at the county jail and at the expense of the county all supplies, wholesome provisions, and utensils, including gas, fuel, electricity and water, or may contract for the goods and services, which in its judgment are necessary to enable the sheriff to discharge his duty. [C31, 35,§5197-d2; C39,§**5197.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§338.2]

338.3 Inspection. The board shall (at all reasonable hours) have the right to full access to said jail and to said supplies in order to inspect the same and determine whether said supplies are being used for the sole purpose herein contemplated. [C31, 35,§5197-d3; C39, §**5197.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§338.3]

338.4 Cook and assistants. The sheriff may with the approval of the board of supervisors appoint a competent cook for each of the county jails of his county; also such assistants at each of said jails as said board may deem necessary. Said appointments shall be made by the board of supervisors when the sheriff fails to make them. [C31, 35,§5197-d4; C39, §**5197.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§338.4]

338.5 Salaries. Said board shall fix the salaries of said cook or cooks and assistants, which salaries shall be paid as other salaries in general are paid. Said salaries may include board and lodging in the jail. [C31, 35,§5197-d5; C39,§**5197.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §338.5]

338.6 Use of trusties. It shall be the duty of the sheriff of said counties to co-operate with said board in reducing the number of assistants to the minimum, and to this end the sheriff shall assign any of the work, made necessary by this chapter, inside the jail, to such prisoners as in the judgment of the sheriff can be trusted. [C31, 35,§5197-d6; C39, §**5197.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§338.6]

338.7 Duty of cooks and assistants. It shall be the duty of said cook or cooks, and of said assistants properly to prepare and serve, three times each day, the food for said prisoners, properly and adequately to wait on and care for said prisoners, and to wash the clothing of said prisoners as herein provided. When not so engaged they shall perform such work as the sheriff may direct. [C31, 35,§5197-d7; C39,§**5197.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §338.7]

338.8 Washing. The shirts and other underclothing of each prisoner, and the bed sheets and pillowcases shall be washed at least once each week, and oftener if necessary to avoid an insanitary condition. All other wearing apparel, and all other bedding shall be washed at such times as may be necessary to avoid an insanitary condition. [C31, 35,§5197-d8; C39, §**5197.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§338.8]

338.9 Federal prisoners. The sheriff of the counties embraced within this chapter shall account to the board of supervisors for all fees due or collected for the boarding, lodging, waiting on, washing for, and care of, every prisoner in his custody under an order of a court of the United States. [C31, 35,§5197-d9; C39,§**5197.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §338.9]

338.10 Wrongful use of supplies. Any person who willfully uses any supplies furnished by the board hereunder, for a purpose not herein authorized or contemplated, shall be guilty of a misdemeanor, but this provision shall not prevent the state from prosecuting an offender for larceny or embezzlement if the facts constitute either of such offenses. [C31, 35,§5197-d10; C39,§**5197.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§338.10]

Referred to in §338.11

338.11 Series of acts. In a prosecution for larceny or embezzlement as contemplated by section 338.10, if the property is stolen, embezzled, or converted by one and the same person by a series of acts, the total value of the property so embezzled, converted, or stolen shall be considered as embezzled, converted, or stolen in one act, and the offender shall be punished accordingly. [C31, 35,§5197-d11; C39,§**5197.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§338.11]

Larceny, ch 709; embezzlement, ch 710

338.12 Repealed by 65GA, ch 226,§5.

CHAPTER 339

COUNTY MEDICAL EXAMINER

Referred to in §97B.41[3,b,(1)]

339.1 County medical examiner.
339.2 Licensed practitioner.
339.3 Laboratory and assistants.
339.4 Deaths reported and investigated.
339.5 Reports by others.
339.6 Deaths affected with public interest.
339.7 Investigation by county examiner.
339.8 Findings of autopsy.

339.9 Dead body not to be moved.
339.10 Report in evidence.
339.11 Property or money on person.
339.12 Body delivered.
339.13 When unlawful to embalm.
339.14 Sudden, violent or suspicious death.

339.1 County medical examiner. The board of supervisors of each county shall appoint a county medical examiner who shall take office on January 2 each two years and serve for a term of two years and until his successor has been appointed and qualifies. Vacancies for an unexpired term shall be filled by the board of supervisors. [C62, 66, 71, 73, 75,§339.1]

339.2 Licensed practitioner. Each county medical examiner shall be licensed in Iowa as a doctor of medicine and surgery, as a doctor of osteopathic medicine and surgery, or as an osteopathic physician. He shall be appointed by the board of supervisors from lists of two or more names submitted by the medical society and the osteopathic society of the county in which he is a resident. If names are not submitted by either society, the board of supervisors may appoint any licensed physician, osteopathic physician and surgeon, or osteopathic physician of the county. If such qualified physician of the county will not serve, the board of supervisors may appoint a physician from another county. If a county medical examiner is unable to serve in any particular case or for any period of time, he shall promptly notify the chairman of the board of supervisors who shall then designate some other qualified physician to serve in his place. [C51,§§201, 202; R60,§§411, 412; C73,§§367, 368; C97,§§528, 529; C24, 27, 31, 35, 39,§§**5217, 5218**; C46, 50, 54, 58,§§339.21, 339.22; C62, 66, 71, 73, 75,§339.2]

339.3 Laboratory and assistants. The board of supervisors of each county may provide such laboratory facilities, deputy medical examiners, and other professional, technical, and clerical assistance as may be required by the county medical examiner in the performance of the duties imposed by this chapter. However, such requirements shall be subject to prior approval by the state medical examiner. [S13,§520; C24, 27, 31, 35, 39,§**5206**; C46, 50, 54, 58,§339.9; C62, 66,§339.8; C71, 73, 75,§339.3]

339.4 Deaths reported and investigated. The death of any person shall be reported to the county medical examiner or state medical examiner by the physician in attendance, by any law enforcement officer having knowledge of such death, by the embalmer, or by any other person present, if the deceased shall have died in the manner specified in section 339.6. The appropriate medical examiner shall notify the city or state law enforcement agency or county sheriff and take charge of the body. The county medical examiner shall also make inquiries regarding the cause and manner of death, reduce his findings to writing, promptly make a full report thereof to the state medical examiner on forms prescribed for such purpose, and deliver a copy of said report to the county attorney of his county. For each such preliminary investigation, including the making of the required reports, the county medical examiner shall receive a fee as set by the board of supervisors, plus his actual expenses, to be paid by the county for which the service was performed. [C51,§§186, 187, 202, 2539; R60,§§396, 397, 412, 4148; C73,§§352, 353, 368, 3799; C97, §§515, 517, 526, 529, 531; C24, 27, 31, 35, 39,§§**5200, 5202, 5214, 5218, 5237**; C46, 50, 54, 58,§§339.3, 339.5, 339.17, 339.19, 339.22, 340.19; C62, 66,§339.5; C71, 73, 75,§339.4]

339.5 Reports by others. Every person who knows of the existence of a body where death occurred in the manner specified in section 339.6, shall notify the county or state medical examiner or the city or state law enforcement agency or county sheriff thereof as soon as possible, unless such person shall have good reason to believe that such notice has already been given. If the remains are believed to be over one hundred fifty years old, the state archaeologist shall be notified. Any person who shall fail to give such notice shall be guilty of a public offense, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars. [C71, 73, 75,§339.5; 66GA, ch 1158,§8]

339.6 Deaths affected with public interest. The state medical examiner shall investigate or cause the county medical examiner to investigate human deaths where determination of the cause of death is in the public interest. Deaths affected with the public interest shall include, but not necessarily be limited to, all deaths known or suspected to be of the following types:

1. Violent deaths, including homicidal, suicidal, or accidental deaths.

2. Deaths caused by thermal, chemical, electrical, or radiation injury.

3. Deaths caused by criminal abortion including those self-induced, or by rape, carnal knowledge, or crimes against nature.

4. Deaths related to disease thought to be virulent or contagious, which might constitute a public hazard.

5. Deaths that have occurred unexpectedly, or from unexplained causes.

6. Deaths of persons confined in any prison, jail, or correctional institution.

7. Deaths of persons where a physician was not in attendance at any time at least thirty-six hours preceding death, with the exception of prediagnosed terminal or bedfast cases for which the time period shall be extended to twenty days.

8. Deaths of persons where the bodies are not claimed by relatives or friends.

9. Deaths of all persons wherein the identity of the deceased is unknown. [C51,§186; R60, §396; C73,§352; C24, 27, 31, 35, 39,§§**5200, 5201**; C46, 50, 54, 58,§§339.3, 339.4; C62, 66,§339.4; C71, 73, 75,§339.6]

Referred to in §§144.56, 339.4, 339.5, 339.7, 339.9, 339.13

339.7 Investigation by county examiner. The county medical examiner shall investigate each death occurring in the manner specified in section 339.6, and report each case to the state medical examiner. The county medical examiner shall conduct such investigation as may be required by the state medical examiner and shall determine whether or not the public interest requires an autopsy or other special investigation. In his determination of the need for an autopsy, the county medical examiner may consider the request for an autopsy made by private persons or public officials, except that the state medical examiner or the county attorney of the county where the death occurred may require an autopsy. [C71, 73, 75,§339.7]

Referred to in §144.56

339.8 Findings of autopsy. A complete record of the findings of a person making an autopsy shall be promptly made and filed in the office of the state medical examiner and the county attorney for the county where death occurred and the county attorney of the county wherein any injury contributing to or causing death was sustained. [C51,§§187, 188, 193; R60, §§397, 398, 403; C73,§§353, 354, 359; C97,§§517, **518, 521; C24, 27, 31, 35, 39,§§5202, 5203, 5208**; C46, 50, 54, 58,§§339.5, 339.6, 339.11; C62, 66, §339.6; C71, 73, 75,§339.8]

Referred to in §144.56

339.9 Dead body not to be moved. When any death occurs in the manner specified in section 339.6, the body shall not be disturbed or removed from the position in which it is found by any person without authorization from the county medical examiner or the state medical examiner, except for the purpose of preserving such body from loss or destruction, or permitting the passage of traffic on a highway, railroad, or airport, or if the failure to immediately remove such body might endanger life, safety, or health. It shall be unlawful for any person to move, disturb, or conceal a body in violation of this chapter or chapter 749A. [C71, 73, 75,§339.9]

Referred to in §144.56

339.10 Report in evidence. Reports of investigations made by the state medical examiner or his designee or by a county medical examiner or his designee, and the records and reports of autopsies made as provided in this chapter or chapter 749A, shall be received as evidence in any court or other proceedings, except that statements by witnesses or other persons and conclusions on extraneous matters included within the report are not hereby made admissible. The person preparing a report or record given in evidence hereunder may be subpoenaed as a witness in any civil or criminal case by any party to the cause. Copies of records, photographs, laboratory findings, and records in the office of the state medical examiner or any medical examiner, when duly attested to by the state medical examiner or one of his staff, or the medical examiner in whose office the same are, shall be received as evidence in any court or other proceedings for any purpose for which the original could be received without proof of the official character of the person whose name is signed thereto. [C51,§§190–192, 199; R60,§§400–402, 409; C73,§§356–358, 365; C97,§520; S13,§520; C24, 27, **31, 35, 39,§§5205, 5206**; C46, 50, 54, 58,§§339.8, 339.9; C62, 66,§339.9; C71, 73, 75,§339.10]

Referred to in §144.56

339.11 Property or money on person. If there is no person entitled by law to any property or money found on a deceased person, it shall be deposited with the clerk of the district court to be held until disposed of according to law. [C97,§§532, 533; C24, 27, 31, 35, 39,§**5216**; C46, 50, 54, 58,§339.20; C62, 66, 71, 73, 75,§339.11]

Referred to in §144.56

339.12 Body delivered. After an investigation has been completed, including an autopsy if one is made, the body shall be delivered to the relatives or friends of the deceased person for burial. No medical examiner shall use influence in favor of any particular funeral director. If no person claims a body, it shall be disposed of as provided in chapter 142. [C51, §200; R60,§410; C73,§366; C97,§527; C24, 27, 31, 35, 39,§**5215**; C46, 50, 54, 58,§339.19; C62, 66,§339.10; C71, 73, 75,§339.12]

Referred to in §144.56

339.13 When unlawful to embalm. It shall be unlawful to embalm a body when the embalmer has any reason to believe death occurred in a manner specified in section 339.6, or when there is evidence sufficient to arouse suspicion of crime in connection with the cause of death of the deceased, or where it is the duty of a medical examiner to view the body and investigate the death of the deceased person, until the permission of a county medical examiner has been obtained. Whenever feasible, the body shall be released to the funeral director for embalming within twenty-four hours of death.

It shall be unlawful to cremate, bury, or send out of the state the body of a deceased person when death occurred in a manner specified in section 339.6, until a medical examiner shall certify in writing that he has viewed the body and has made personal inquiry into the cause and manner of death and that all necessary autopsy or postmortem examinations have been completed. However, the body of a deceased person may be sent out of state for the purpose of an autopsy or postmortem examination if the county medical examiner certifies in writing that the out-of-state autop-

sy or postmortem examination is necessary or, in the case of a death which is not in the public interest, as defined in section 339.6, if the attending physician certifies to the county medical examiner that the performance of the autopsy out of state is proper.

A fee as set by the board of supervisors shall be paid the county medical examiner for an examination certificate by the person making application therefor, and a copy of such certificate shall be promptly filed by the medical examiner in his office. The certificate of the county medical examiner shall not be required in cases of stillborn infants if a physician was present at the stillbirth and the cause of stillbirth, as certified by the physician according to the provisions of chapter 144, is not such as to require an investigation by a medical examiner.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail not more than one year, or by both such fine and imprisonment. [C62, 66,§339.12; C71, 73, 75,§339.13]

339.14 Sudden, violent or suspicious death. In any case of sudden, violent, or suspicious death after which the body is buried without any investigation or autopsy, the county medical examiner shall, upon being advised of such facts, notify the county attorney. The county attorney shall thereupon apply for a court order requiring the body to be exhumed, in accordance with chapter 144. Upon receipt of the court order, an autopsy shall be performed by a medical examiner or by a pathologist designated by him and the facts disclosed by such autopsy communicated to the court ordering the disinterment for such action as may be proper. [C62, 66,§339.7; C71, 73, 75, §339.14]

CHAPTER 340

COMPENSATION OF COUNTY OFFICERS, DEPUTIES AND CLERKS

Referred to in §332.21

Effective date of salary increases in 1973, see 65GA, ch 224,§7

340.1 Compensation of auditor, treasurer, recorder and clerk.
340.2 Additional compensation in certain counties.
340.3 Repealed by 66GA, ch 191,§13.
340.4 Deputies compensation.
340.5 Resident tax collectors in certain cities.
340.6 Repealed by 62GA, ch 297,§1.
340.7 Compensation of sheriff.
340.8 Deputy sheriff.
340.9 Compensation of county attorney.
340.10 Assistant county attorney.
340.11 Repealed by 61GA, ch 307,§8.
340.12 County officers dividing salaries.
340.13 to 340.15 Repealed by 52GA, ch 147,§21, ch 187,§3.
340.16 Salaries—general fund.
340.17 Exception.
340.18 Dual county seats.
340.19 Repealed by 58GA, ch 258,§16.

340.1 Compensation of auditor, treasurer, recorder and clerk. The annual salary of the county auditor, county treasurer, county recorder, and clerk of the district court shall be determined as provided in section 340A.6. [C51,§§211, 213; R60,§§422, 424; C73,§§3784, 3792, 3793, 3798; C97,§§297, 479, 490, 495; S13, §297; SS15,§§479, 490, 490-a, 495; C24, 27, 31, 35, 39,§§**5220, 5222, 5224, 5230**; C46, 50, 54, 58, 62, §§340.1, 340.3, 340.5, 340.11; C66, 71, 73, 75,§340.1; 66GA, ch 191,§9]

See §444.2

340.2 Additional compensation in certain counties. In counties having a population of forty thousand or over in which there is a city of fifteen thousand or more population, of any form of government, the board of supervisors may allow additional compensation to the county treasurer not to exceed fifty dollars per annum for each five thousand population of such cities in excess of fifteen thousand. When such county has a city with a population of seventy-five thousand or over, the board of supervisors shall allow additional compensation in an amount not less than twenty-five dollars nor more than fifty dollars for each five thousand population of such cities in excess of seventy-five thousand; provided, however, that in no case shall such allowance exceed five hundred dollars.

The board of supervisors may allow an additional five hundred dollars compensation for each county auditor, county treasurer, county recorder, clerk of the district court, and county sheriff in counties having two places at which the district court is held. [C51, §211; R60,§422; C73,§3793; C97,§490; SS15,§§490, 490-a; C24, 27, 31, 35, 39,§**5222**; C46, 50, 54, 58, 62,§340.3; C66, 71, 73, 75,§340.2]

340.3 Repealed by 66GA, ch 191,§13.

340.4 Deputies compensation. The first and second deputies and the deputy in charge of the motor vehicle registration and title department, may be paid an amount not to exceed eighty percent of the amount of the annual salary of his or her principal. In counties where more than two deputies are

required, deputies in excess of two may be paid an amount not to exceed seventy-five percent of the annual salary of his or her principal. Upon certification to the board of supervisors by the elected official concerned, the amount of the annual salary for each deputy as above provided, the board of supervisors shall certify to the county auditor of any such county the annual salary certified by the elected officials, but in no event shall said board of supervisors be required to certify to the auditor of any such county an amount in excess of the amounts authorized above. The board of supervisors shall fix all compensation for extra help and clerks. [C51,§417; R60,§648; C73,§771; C97,§§298, 481, 491, 496; S13,§496; SS15,§§298, 298-a, 481, 491; C24, 27, 31, 35, 39, §§5221, 5223, 5225, 5331; C46,§§340.2, 340.4, 340.6, 340.12; C50, 54, 58, 62,§340.2; C66, 71, 73, 75, §340.4]

340.5 Resident tax collectors in certain cities. In any county in which there exists a city, not the county seat, having a population of six thousand or over, the treasurer may appoint a resident deputy collector of taxes for such city and vicinity under bond as provided for other deputies, and his compensation shall be the same percentage of the treasurer's salary as the chief deputy and second deputy in such county. Such resident deputy collector shall maintain an office in such city for a period of approximately five weeks each spring and fall, such periods to terminate on April 1 and October 1 respectively or as soon thereafter as possible. The treasurer in such case shall prepare the necessary books and records for such deputy each year, and the board of supervisors is authorized to allow payment of incidental expenses pertaining to the operations of such office, not to exceed one hundred dollars per year. [C51,§417; R60,§648; C73,§771; C97,§§298, 481, 491, 496; S13,§496; SS15,§§298, 298-a, 481, 491; C24, 27, 31, 35, 39,§§5221, 5223, 5225, 5331; C46,§§340.2, 340.4, 340.6, 340.12; C50, 54, 58, 62,§340.2; C66, 71, 73, 75,§340.5]

340.6 Repealed by 62 GA, ch 297,§1.

340.7 Compensation of sheriff. The annual salary of the sheriff shall be determined as provided in section 340A.6. [C51,§2536; R60, §4145; C73,§§3788, 3789; C97,§509; SS15,§§510-a,-c; C24, 27, 31, 35, 39,§5226; C46, 50, 54, 58, 62, 66, 71, 73, 75,§340.7; 66GA, ch 191,§10]

340.8 Deputy sheriff. Each deputy sheriff shall receive as his annual salary as follows:

1. The first deputy sheriff, and the second such deputy if a second deputy sheriff is required, shall receive an annual salary of not more than eighty-five percent of the amount of the salary of the sheriff, as fixed by the board of supervisors.

2. All other deputy sheriffs shall receive an annual salary as fixed by the board of supervisors, but not to exceed the salaries of the first or second deputies.

3. In any county where district court is held in two places, for any deputy other than the chief deputy in charge of the office where such court is held outside the county seat, an annual salary not to exceed seventy-five percent of the amount of the salary of the sheriff.

In counties over two hundred fifty thousand population where more than two deputies are required, said deputies may be paid an amount not to exceed seventy-five percent of the annual salary of his or her principal. Upon certification to the board of supervisors by the elected official concerned, the amount of the annual salary for each deputy as above provided, the board of supervisors may certify to the county auditor of any such county the annual salary certified by the elected officials, but in no event shall said board of supervisors be required to certify to the auditor of any such county an amount in excess of the amounts authorized above. The board of supervisors shall fix all compensation for extra help and clerks. [C51,§417; R60,§648; C73,§771; C97,§510; SS15,§510-b; C24, 27, 31, 35, 39,§5227; C46, 50, 54, 58, 62, 66, 71, 73, 75,§340.8]

Referred to in §341A.7

340.9 Compensation of county attorney. The annual salary of the county attorney shall be determined as provided in section 340A.6. The annual salary shall be full compensation for the duties performed in the office of county attorney and all fees and commissions which are taxed in favor of the county attorney shall be collected and credited to the court expense fund.

The board of supervisors may accept private grants, state or federal funds which may be used to pay the salary of the county attorney and the salaries of the assistant county attorneys.

The county attorney shall also be entitled to receive any actual and necessary expenses incurred in the performance of official duties of the office of county attorney. [C51,§169; R60,§§380, 381; C73,§3775; C97,§308; SS15,§308; C24, 27, 31, 35, 39,§5228; C46, 50, 54, 58, 62, 66, 71, 73, 75,§340.9; 66GA, ch 191,§11]

340.10 Assistant county attorney. Where an assistant county attorney is appointed he shall receive as compensation:

1. For the first assistant county attorney, not more than eighty-five percent of the amount of the salary of the county attorney.

2. For additional assistant county attorneys, not to exceed eighty percent of the amount of the salary of the county attorney, as fixed by the board of supervisors. [C97,§303; S13,§303-a; C24, 27, 31, 35, 39,§5229; C46, 50, 54, 58, 62, 66, 71, 73, 75,§340.10]

Referred to in §341.9

340.11 Repealed by 61GA ch 307,§8. See §340.1.

340.12 County officers dividing salaries. The principal elected official of any county office and his first deputy or first assistant, in coun-

ties having two courthouses, may enter into a written agreement for a division of the salaries to be paid. No such division shall allow payment to the official and his first deputy or assistant which is greater than the sum of the two salaries authorized under this chapter. Upon certification to the board of supervisors by the elected officials concerned, the board shall certify to the county auditor the annual salaries certified by the elected officials. [C71, 73, 75,§340.12]

340.13 to 340.15 Repealed by 52GA, ch 147, §21, ch 187,§3. See §273.13.

340.16 Salaries—general fund. The salaries fixed by the foregoing sections of this chapter shall be paid out of the general fund of the county except as otherwise provided by law. [C97,§308; SS15,§308; C24, 27, 31, 35, 39,§5235; C46, 50, 54, 58, 62, 66, 71, 73, 75,§340.16]

Manner of payment, §79.1

340.17 Exception. The salaries fixed for the clerk of the district court and his deputies may be paid from the court expense fund. [C27, 31, 35,§5235-a1; C39,§5235.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§340.17]

Court expense fund, §444.10

340.18 Dual county seats. In any county having two county seats and where the district court is held in two places, the first deputy county auditor, county treasurer, county clerk and county recorder shall receive not more than seventy-five percent of the amount of the salary of his principal. Other deputies shall receive between fifty percent and seventy-five percent of the amount of the salaries of their principals as determined by the board of supervisors. [C24, 27, 31, 35, 39,§5236; C46, 50, 54, 58, 62, 66, 71, 73, 75,§340.18]

340.19 Repealed by 58GA, ch 258,§16.

CHAPTER 340A

COUNTY COMPENSATION BOARD

340A.1 County compensation board.
340A.2 Conventions called.
340A.3 Convention organized—expenses.
340A.4 Board tenure—vacancy.
340A.5 Board organization.
340A.6 Compensation schedule.
340A.7 Expense of board.
340A.8 County officers salaries pending action by board.

340A.1 County compensation board. There is created in each county a county compensation board which shall be composed of five members who are residents of the county. The members of the county compensation board shall be selected as follows:

1. One member shall be a mayor of an incorporated city located within the county selected by a convention of the mayors of all incorporated cities located within the county.

2. One member shall be a member of a board of directors of a school district located within the county selected by a convention of the members of the boards of directors of all school districts located within the county.

3. One member shall be an elector of the county representing the general public selected by the members of the board of supervisors.

4. One member shall be a person representing the general public selected by a convention of the members of the boards of directors of all school districts located within the county.

5. One member shall be a person representing the general public selected by a convention of the mayors of all incorporated cities located within the county.

A member of the county compensation board selected to represent the general public pursuant to subsections 3, 4 and 5 shall not be an employee or officer of a state government, or a political subdivision of a state, or related within the third degree of consanguinity to any such governmental employee or officer. [66GA, ch 191,§1]

Referred to in §340A.4

340A.2 Conventions called. The county auditor shall convene the conventions of the mayors and the boards of directors of the school districts during the month of August, 1975, and each four years thereafter during the month of June, by written notice stating the date, time and location of each convention meeting to each person eligible to attend the convention. When a vacancy exists which must be filled by a convention, the county auditor shall convene a special meeting of such convention within thirty days after the county auditor becomes aware of the vacancy.

If the boundaries of a school district or a city extend into more than one county, a member of the board of directors of such school district or the mayor of such city shall be a member of the convention of the boards of directors or the mayors in the county of the director's or mayor's residence only. [66GA, ch 191,§2]

340A.3 Convention organized — expenses. Each convention of the boards of directors or mayors shall organize by electing a chairman and such other officers as deemed necessary from among its membership. Each member of the county compensation board to be select-

ed by the convention shall be elected by a majority vote of the members of such convention.

The members of the convention shall receive compensation and reimbursement for expenses incurred in the performance of their duties by the school district or the city which such member represents if such compensation or reimbursement is authorized by law. [66GA, ch 191,§3]

340A.4 Board tenure—vacancy. The members of the county compensation board shall be appointed to four-year terms, except the terms of the members of the initial board shall expire on June 30, 1979. Each term shall be effective on the first of July of the year of appointment and each vacancy shall be filled for the unexpired term in the same manner as the original appointment.

In addition to any circumstance which constitutes a vacancy under section 69.2, a vacancy shall exist on the county compensation board if any member of such board who is also an elective public officer ceases to hold the elective office under which such officer originally qualified for membership or if any member of such board who is selected under section 340A.1, subsections 3, 4 and 5 becomes an employee or officer of a state government or a political subdivision of a state or is related within the third degree of consanguinity to any such governmental employee or officer.

The members of the county compensation board shall receive no compensation, but they shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties. [66GA, ch 191,§4]

340A.5 Board organization. The county compensation board shall elect a chairman and vice chairman annually from among its membership. The board shall meet at the call of the chairman or upon written request of a majority of its membership. The concurrence of a majority of the members of the board shall determine any matter relating to its duties.

The board of supervisors shall provide the necessary office facilities and the technical and clerical assistance requested by the county compensation board to accomplish the purposes of this chapter. [66GA, ch 191,§5]

340A.6 Compensation schedule. The county compensation board annually shall review the compensation paid for comparable offices in other counties of this state, other states, private enterprise, and the federal government. The board shall prepare a recommended compensation schedule for the elective county officers. Following completion of the compensation schedule, the board shall publish the compensation schedule in a newspaper having general circulation throughout the county. If a county officer compensation study has been received from the general assembly within the preceding five years, a comparison of the compensation recommendations of such study and the compensation schedule prepared by the board shall be included in the publication. The publication shall also include a public notice of the date and location of a hearing to be held by the board not less than one week nor more than three weeks of the date of notice. Upon completion of the public hearing, the county compensation board shall prepare a final compensation schedule recommendation.

During the month of December, 1975 and each year thereafter, the county compensation board shall transmit its recommended compensation schedule to the board of supervisors. The board of supervisors shall review the recommended compensation schedule and determine the final compensation schedule of the elected county officers which shall not exceed the recommended compensation schedule. In determining the final compensation schedule if the board of supervisors wishes to reduce the amount of the recommended compensation schedule, the annual salary or compensation of each elected county officer shall be reduced an equal percentage. A copy of the final compensation schedule adopted by the board of supervisors shall be filed with the county budget at the office of state comptroller. The final compensation schedule shall become effective on the first day of July next following its adoption by the board of supervisors. [C66, 71, 73, 75,§340.3; 66GA, ch 191,§6]

Referred to in §§331.22, 340.1, 340.7, 340.9

340A.7 Expense of board. The expenses of the county compensation board members, the salaries and expenses of any technical and clerical assistance, and the cost of providing any facilities shall be paid from the general fund of the county. [66GA, ch 191,§7]

340A.8 County officers salaries pending action by board. Effective July 1, 1975, the annual salary or per diem compensation of the members of the board of supervisors, county treasurer, county auditor, county recorder, county attorney, sheriff, and clerk of the district court as such salary or per diem exists June 30, 1975 may be increased by resolution of the board of supervisors, according to the following schedule which shall remain effective until modified by the county compensation board as provided in this chapter. The increase shall be consistent with the following schedule:

1. For each member of the board of supervisors receiving an annual salary, a sum not to exceed one thousand dollars.

2. For each member of the board of supervisors receiving per diem compensation the per diem may be forty-four dollars, but the total sum shall not exceed six thousand five hundred dollars for each member per year.

3. For the county auditor, county treasurer, county recorder, clerk of district court, sheriff, and county attorney, a sum not to exceed one thousand five hundred dollars. [66GA, ch 191, §12]

CHAPTER 341

DEPUTY OFFICERS, ASSISTANTS, AND CLERKS

341.1 Appointment.
341.2 Certificate of appointment.
341.3 Revocation of appointment.
341.4 Qualifications.
341.5 Bond or liability policy.
341.6 Powers and duties.
341.7 Temporary assistance for county attorney.
341.8 Temporary assistance for county auditor.
341.9 Full-time county prosecutors.

341.1 Appointment. Each county auditor, treasurer, recorder, sheriff, county attorney, clerk of the district court, may, with the approval of the board of supervisors, appoint one or more deputies or assistants, respectively, not holding a county office, for whose acts he shall be responsible. The number of deputies, assistants, and clerks for each office shall be determined by the board of supervisors, and such number together with the approval of each appointment shall be by resolution made of record in the proceedings of such board. [C51,§§411, 415; R60,§§642, 646, 2069; C73,§§766, 769, 1770; C97,§§298, 303, 481, 491, 496, 510, 2734; S13,§303-a; SS15,§§298, 481, 491, 510-b, 2734-b; C24, 27, 31, 35, 39,§**5238**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§341.1]

Deputy state officers, §27.1

341.2 Certificate of appointment. When any such appointment has been approved by the board of supervisors, the officer making such appointment shall issue in writing a certificate of such appointment, and file the same in the office of the auditor where it shall be kept. [C51,§411; R60,§642; C73,§766; C97,§§298, 303, 481, 491, 496, 510; S13,§§303-a, 496; SS15,§§298, 481, 491, 510-b; C24, 27, 31, 35, 39,§**5239**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§341.2]

341.3 Revocation of appointment. Any certificate of appointment may be revoked in writing at any time by the officer making the appointment, which revocation shall be filed and kept in the office of the auditor. [C51, §411; R60,§642; C73,§766; C97,§§298, 481, 491, 496, 510; S13,§496; SS15,§§298, 481, 491, 510-b; C24, 27, 31, 35, 39,§**5240**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §341.3]

341.4 Qualifications. Each deputy shall be required to give a bond in an amount to be fixed by the officer having the approval of the bond of his principal, with sureties to be approved by such officer. Such bond when approved shall be filed and kept in the office of the auditor. Each deputy shall take the same oath as his principal, which shall be endorsed on the certificate of appointment. [C51,§§411, 416; R60,§§642, 647; C73,§§766, 770; C97,§§298, 481, 491, 496, 510; S13,§496; SS15, §§298, 481, 491, 496, 510-b; C24, 27, 31, 35, 39, §**5241**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§341.4]

Oath, approval of bond, §§63.10, 64.19

341.5 Bond or liability policy. The bond of sheriffs' deputies shall be either a bond or liability policy as may be required by the sheriff with the approval of the board of supervisors. [C31, 35,§5241-d1; C39,§**5241.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§341.5]

341.6 Powers and duties. Each deputy, assistant, and clerk shall perform such duties as may be assigned to him or her by the officer making the appointment, and during the absence or disability of his principal, the deputy or deputies shall perform the duties of such principal. [C51,§412; R60,§643; C73,§767; C97, §§298, 481, 491, 496; S13,§496; SS15,§§298, 481, 491; C24, 27, 31, 35, 39,§**5242**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§341.6]

341.7 Temporary assistance for county attorney. The county attorney may with the approval of a judge of the district court procure such assistants in the trial of a person charged with felony as he shall deem necessary and for such assistants upon presenting to the board of supervisors a certificate of the district judge before whom said cause was tried, certifying to the services rendered, shall be allowed a reasonable compensation therefor, to be fixed by the board of supervisors, but nothing in this chapter shall prevent the board of supervisors from employing an attorney to assist the county attorney in any cause or proceeding in which the state or county is interested. The compensation allowed to any such assistants shall be paid out of the court fund of the county. [C97,§303; S13,§303-a; C24, 27, 31, 35, 39,§**5243**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §341.7]

See §340.17

341.8 Temporary assistance for county auditor. In case no deputy shall be appointed, but on account of the pressure of business in his office the auditor is compelled temporarily to employ assistants, he shall file the bill for such services with the board of supervisors at their next regular meeting and it shall make a reasonable allowance therefor. [C97,§481; SS15, §481; C24, 27, 31, 35, 39,§**5244**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§341.8]

341.9 Full-time county prosecutors. In counties having a population in excess of one hundred fifty thousand, the county attorney may appoint, with the approval of the board of supervisors, assistant county attorneys to serve as full-time prosecutors who shall refrain from the private practice of law. The compensation paid to such assistant county attorneys shall not be subject to the provisions of section 340.10. [66GA, ch 192,§1]

CHAPTER 341A

CIVIL SERVICE FOR DEPUTY COUNTY SHERIFFS

341A.1 Definitions.
341A.2 Civil service commission.
341A.3 Combined civil service system.
341A.4 Statutory authority.
341A.5 Organization.
341A.6 Powers and duties.
341A.7 Classifications.
341A.8 Bases of appointments and promotions.
341A.9 Appointment as of effective date.
341A.10 Citizenship.
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341A.12 Discipline—hearing.
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341A.15 Leave of absence.
341A.16 Civil suits.
341A.17 Examination or registration right.
341A.18 Civil rights respected.
341A.19 Aid from all county officers and employees.
341A.20 Budget.
341A.21 Indictable misdemeanor.

341A.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the civil service commission or a combined county civil service commission created pursuant to the provisions of this chapter.

2. *"Commissioner"* means a member of the commission defined in subsection 1.

3. *"County"* means a single county or several counties combined for the purposes enumerated in section 341A.3. [C75,§341A.1]

341A.2 Civil service commission. Subject to the alternate plan enumerated in section 341A.3, there is created in each county a civil service commission composed of three members. One member shall be appointed by the county board of supervisors, one member shall be appointed by the presiding district court judge of each county, and one member shall be appointed by the county attorney of each county. Commission members shall be appointed within sixty days after August 15, 1973. Appointees to the commission shall be residents of the county for at least two years immediately preceding appointment, and shall be electors. Terms of office shall be six years, however, the initial members of the commission shall be appointed as follows:

The member appointed by the board of supervisors shall serve for a period of two years, the member appointed by the county attorney shall serve for a period of four years, and the member appointed by the district court judge shall serve for a period of six years.

Any member of the commission may be removed by the appointing authority for incompetence, dereliction of duty, malfeasance in office, or for other good cause, however, no member of the commission shall be removed until apprised in writing of the nature of the charges against him and a hearing on such charges has been held before the board of supervisors. In the event a vacancy occurs in the commission for any reason other than expiration of the term, an appointment to fill the vacancy for the unexpired term shall be made in the same manner as the original appointment.

A majority vote of the membership of the commission shall be sufficient to transact the business of the commission. Not more than two commissioners shall be members of the same political party. Commissioners shall hold no elective or other appointive public office during their terms of appointment to the commission. Commissioners shall serve without compensation but shall be reimbursed for necessary expense and mileage incurred in the actual performance of their duties. [C75, §341A.2]

Referred to in §341A.3

341A.3 Combined civil service system. Any combination of counties in this state may, by resolution of the boards of supervisors in each county, establish a combined civil service system to serve such counties. The specific terms of the agreement regarding the operation of the combined civil service system, including the appointment of qualified commissioners, and any other matters pertinent to the operation of such system shall be contained in the resolutions adopted by the respective boards of supervisors of the participating counties. Counties participating in a combined civil service system need not be contiguous.

Appointment of commissioners in combined counties shall be by joint meeting of the boards of supervisors, district court judges, and county attorneys, respectively. Each group meeting jointly shall appoint one commissioner whose term shall be six years, except that initial terms shall be as provided in section 341A.2. [C75,§341A.3]

Referred to in §§341A.1, 341A.2

341A.4 Statutory authority. If a county or combination of counties has a civil service commission, this commission shall serve as the commission established by this chapter and shall have all the powers and duties provided by this chapter.

If more than one civil service commission exists, the one from the county with the largest population shall serve as the commission under this chapter. [C75,§341A.4]

341A.5 Organization. The commission shall hold an organizational meeting immediately after its establishment and shall elect one of its members as chairman. The commission shall hold regular meetings at least once every three months, and may hold such additional meetings as may be required in the fulfillment of its responsibilities. All commission meetings shall be public meetings.

The commission shall appoint a personnel director who shall act as its secretary and such other personnel as may be necessary. The personnel director shall keep and preserve all records of the commission, including reports submitted to it and examinations held under its direction, advise the commission in all matters pertaining to the civil service system, and perform such other duties as the commission may prescribe. The commission may add the personnel director's duties to a presently employed county employee. [C75, §341A.5]

341A.6 Powers and duties. The commission shall have the following powers and duties:

1. To adopt, and amend as necessary, rules pursuant to the provisions of this chapter, which shall specify the manner in which examinations are to be held and appointments, promotions, transfers, reinstatements, demotions, suspensions, and discharges are to be made. The rules may make such other provisions regarding personnel administration and practices as are necessary or desirable in carrying out the purposes of this chapter. The commission rules, and their amendments, shall be printed and made available without cost to the public.

2. To administer practical tests designed to determine the ability of persons examined to perform the duties of the position for which they are seeking appointment. Such tests shall be designed and prepared by the director of the Iowa law enforcement academy, shall be administered by each commission in a uniform manner prescribed by the director, and shall be consistent with standards established pursuant to chapter 80B governing standards for employment of Iowa law enforcement officers. Notice of such tests shall be posted in the office of the sheriff and the office of the board of supervisors not less than thirty days prior to giving such tests.

3. To conduct and prepare annual investigations and reports concerning the effectiveness of, and compliance with, the provisions of this chapter and the rules adopted by the commission, and pursuant thereto, to inspect all departments, offices, and positions of employment affected by this chapter. In making such investigations a commissioner or the personnel director may administer oaths, issue subponeas and require the attendance of witnesses and the production of books, documents, and accounts pertaining to such investigation, and may also cause the deposition of witnesses to be taken as in civil actions in the district court.

4. To conduct informal hearings concerning matters contemplated by this chapter. The validity of any such hearing shall not be affected by the manner in which it is conducted, however, a majority of the commissioners shall affirm all orders, rules, and decisions made pursuant to such hearings.

5. To hear and determine appeals or complaints respecting the allocation of positions of employment, rejection of those persons certified to the sheriff for appointment, and such other matters as may be referred to the commission.

6. To arrange, compile, and administer competitive tests to determine the relative qualifications of persons seeking employment in any class of position and as a result thereof establish eligible lists for the various classes of positions, and provide that persons discharged because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed. Notice of competitive tests to be given shall be published at least two weeks prior to holding the tests in a newspaper of general circulation in the county or counties in which a vacancy exists.

7. To certify to the county sheriff when a vacant position is to be filled, on written request, a list of the names of the persons passing the examination.

8. To keep such records as may be necessary for the proper administration of this chapter.

9. To classify deputy sheriffs and subdivide them into groups according to rank and grade which shall be based upon the duties and responsibilities of the deputy sheriffs.

10. To purchase all necessary supplies, enter into contracts, and do all things necessary to carry out the provisions of this chapter.

11. To keep records of the service of each employee in the classified service. These records shall contain facts and statements on all matters relating to the character and quality of the work done and the attitude of the individual to his work. All such service records and employee records shall be subject only to the inspection of the commission. [C75, §341A.6]

341A.7 Classifications. The classified civil service positions covered by this chapter shall include persons actually serving as deputy sheriffs who are salaried pursuant to section 340.8, but do not include a chief deputy sheriff, two second deputy sheriffs in counties with a population of more than one hundred thousand, and four second deputy sheriffs in counties with a population of more than two hundred thousand. A deputy sheriff serving with

permanent rank under this chapter may be designated chief deputy sheriff or second deputy sheriff and retain such rank during the period of his service as chief deputy sheriff or second deputy sheriff and shall, upon termination of his duties as chief deputy sheriff or second deputy sheriff, revert to his permanent rank. [C75,§341A.7; 66GA, ch 1181,§1]

Referred to in §341A.9

341A.8 Bases of appointments and promotions. All appointments to and promotions to classified civil service positions in the office of county sheriff shall be made solely on merit, efficiency, and fitness, which shall be ascertained by open competitive examinations and impartial investigations, and no person in the classified civil service shall be reinstated in or transferred, suspended, or discharged from any such place, position, or employment contrary to the provisions of this chapter.

Whenever possible, vacancies shall be filled by promotion. Promotion shall be made from among deputy sheriffs qualified by competitive examination, training and experience to fill the vacancies and whose length of service entitles them to consideration. The commission shall for the purpose of certifying to the sheriff the list of deputy sheriffs eligible for promotion, rate the qualified deputy sheriffs on the basis of their service record, experience in the work, seniority, and military service ratings. Seniority shall be controlling only when other factors are equal. The names of not more than the ten highest on the list of ratings shall be certified. The certified eligible list for promotion shall hold preference for promotion until the beginning of a new examination, but in no case shall such preference continue longer than two years following the date of certification, after which said list shall be canceled and no promotion to such grade shall be made until a new list has been certified eligible for promotion. The sheriff shall appoint one of the ten certified persons. [C75, §341A.8]

Referred to in §341A.9

341A.9 Appointment as of effective date. All persons holding a position on August 15, 1973, which is deemed classified by section 341A.7 are eligible for a permanent appointment under civil service to the offices or positions currently held if they qualify for appointment pursuant to section 341A.8, and every such person shall be inducted permanently into civil service in the office or position of employment which he then holds. The commission shall designate a permanent rank for those persons as chief deputy on August 15, 1973, and such persons shall be inducted permanently into civil service in that rank. [C75, §341A.9]

341A.10 Citizenship. An applicant for any position under civil service shall be a citizen of the United States who can read and write the English language, and shall meet the minimum requirements of the Iowa law enforcement academy for a law enforcement officer. [C75,§341A.10]

341A.11 Probationary period — permanent status. The tenure of every deputy sheriff holding an office or position of employment under the provisions of this chapter shall be conditional upon a probationary period of not more than twelve months, and where such deputy sheriff attends the law enforcement academy or a regional training facility certified by the director of the Iowa law enforcement academy, a probationary period of not more than six months, during which time the appointee may be removed or discharged by the sheriff. Thereafter, he may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other privileges for any of the following reasons:

1. Incompetency, inefficiency, or inattention to or dereliction of duty.

2. Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, or any other act of omission or commission tending to injure the public, or any other willful failure to properly conduct himself, or any willful violation of the provisions of this chapter or the rules to be adopted hereunder.

3. Mental or physical unfitness for the position held.

4. Dishonest, disgraceful, or prejudicial conduct.

5. Drunkenness or habitual use of intoxicating liquor, or use of narcotics, or any other habit-forming drug, liquid, preparation or controlled substance.

6. Conviction of a felony or a misdemeanor involving moral turpitude.

7. Any other act or failure to act or to follow reasonable regulations prescribed by the sheriff which in the judgment of the commission is sufficient to show the offender to be unsuitable or unfit for employment. [C75, §341A.11]

341A.12 Discipline—hearing. No person in the classified civil service who has been permanently appointed or inducted into civil service under provisions of this chapter shall be removed, suspended, or demoted except for cause, and only upon written accusation of the county sheriff, which shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, or reduced in rank or grade may, within ten days after presentation to him of the order of removal, suspension or reduction, appeal to the commission from such order. The commission shall, within two weeks from the filing of such appeal, hold a hearing thereon, and fully hear and determine the matter, and either affirm, modify, or revoke such order. The appellant shall be entitled to appeal personally, produce evidence, and to have counsel.

The finding and decision of the commission shall be certified to the sheriff, and shall be enforced and followed by him, but under no condition shall the employee who has appealed to the commission be permanently removed, suspended, or reduced in rank until such finding and decision of the commission is certified to the sheriff pursuant to the rules of civil procedure.

If the order of removal, suspension, or demotion is concurred in by a majority of the commission, the accused may appeal therefrom to the district court of the county where he resides. Such appeal shall be taken by serving upon the commission within thirty days after the entry of its order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to its order, be filed by the commission with the court. The commission shall, within ten days after the filing of the notice make, certify, and file such transcript with the court. The court shall proceed to hear and determine the appeal in a summary manner. Such hearing shall be confined to the determination of whether the order of removal, suspension, or demotion made by the commission was made in good faith and for cause, and no appeal shall be taken except upon such grounds. The decision of the district court may be appealed to the supreme court. [C75,§341A.12]

341A.13 Vacant positions filled. Whenever a position in the classified service is to be filled, the sheriff shall notify the commission of that fact, and the commission shall certify the names and addresses of the ten candidates standing highest on the eligibility list for the class or grade for the position to be filled. The sheriff shall appoint one of the ten persons so certified, and the appointment shall be deemed permanent. [C75,§341A.13]

341A.14 Payroll certified. No treasurer, auditor, or other officer, or employee of any county subject to this chapter shall approve the payment of or be in any manner involved in paying, auditing, or approving salary, wage, or other compensation for services to any person subject to the provisions of this chapter, unless a payroll, estimate, or account for such salary, wage or other compensation containing the names of the persons to be paid, the amount to be paid to each person, the services on account of which same is paid, and any other information which, in the judgment of the civil service commission should be furnished on such payroll, bears the certificate of the civil service commission, or of its personnel director or other duly authorized agent. The certificate shall state that the persons named therein have been appointed or employed in compliance with the terms of this chapter and the rules of the commission, and that the payroll, estimate, or account is, insofar as known to the commission, a true and accurate statement. The commission shall refuse to certify the pay of any public officer or employee whom it finds to be illegally or improperly appointed, and may further refuse to certify the pay of any public officer or employee who, willfully or through culpable negligence, violates or fails to comply with this chapter or with the rules of the commission. [C75,§341A.14]

341A.15 Leave of absence. Leave of absence, without pay, may be granted by any county sheriff to any person under civil service, however, the sheriff shall give notice of leave to the commission. [C75,§341A.15]

341A.16 Civil suits. The commission shall initiate and conduct all civil suits necessary for the proper enforcement of this chapter and the rules of the commission. The commission shall be represented in such suits by the county attorney. In the case of the combined counties, any one or more of the county attorneys of such combined counties may be selected by the commission to represent it. [C75,§341A.16]

341A.17 Examination or registration right. A commissioner or any other person shall not, by himself or in co-operation with another, deceive or obstruct any person in respect to his right of examination or registration according to the commission rules, or falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined, registered, or certified pursuant to this chapter, or aid in so doing, or make any false representation concerning the same, or concerning the person examined. A commissioner or other person shall not furnish any person with special or secret information for the purpose of improving or reducing the prospects or chances of any person who is or will be examined, registered, or certified, or persuade any other person, or permit or aid in any manner any other person to impersonate him, in connection with any examination or registration of application or request to be examined or registered. The right of any person to an appointment or promotion shall not be withheld because of sex, color, creed, national origin, political affiliation or belief, nor shall any person be dismissed, demoted, or reduced in grade for such reason. [C75,§341A.17]

341A.18 Civil rights respected. A person shall not be appointed or promoted to, or demoted or discharged from, any position subject to civil service, or in any way favored or discriminated against with respect to employment in the sheriff's office because of his political or religious opinions or affiliations or race or national origin or sex, or age.

A person holding a position subject to civil service shall not, during his scheduled working hours or when performing his duties or when using county equipment or at any time on county property, take part in any way in

soliciting any contribution for any political party or any person seeking political office, nor shall such employee engage in any political activity that will impair his efficiency during working hours or cause him to be tardy or absent from his work. The provisions of this section do not preclude any employee from holding any office for which no pay is received or any office for which only token pay is received.

A person shall not seek or attempt to use any political endorsement in connection with any appointment to a position subject to civil service.

A person shall not use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in the appointment to a position subject to civil service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration.

An employee shall not use his official authority or influence for the purpose of interfering with an election or affecting the results thereof.

Any officer or employee subject to civil service who violates any of the provisions of this section shall be subject to suspension, dismissal, or demotion subject to the right of appeal herein.

All employees shall retain the right to vote as they please and to express their opinions on all subjects.

Any officer or employee subject to civil service who shall become a candidate for any partisan elective office for remuneration shall, commencing thirty days prior to the date of the primary or general election and continuing until such person is eliminated as a candidate, either voluntarily or otherwise, automatically receive leave of absence without pay and during such period shall perform no duties connected with the office or position so held. [C75,§341A.18]

341A.19 Aid from all county officers and employees. All officers and employees of each county shall aid in carrying out the provisions of this chapter. Rules as may, from time to time, be prescribed by the commission shall afford the commission, its members, and employees, all reasonable facilities and assistance in the inspection of books, documents, and accounts applying or in any way pertaining to all offices, places, positions, and employments subject to civil service. All officers and employees of a county shall produce books, documents, and accounts, and attend and testify, whenever required to do so by the commission or any commissioner. [C75,§341A.19]

341A.20 Budget. The county board of supervisors of each county shall provide in the county budget for each fiscal year a sum equal to one-half of one percent of the preceding year's total payroll of those included under the jurisdiction and scope of this chapter. The funds so provided shall be used for the support of the commission. Any part of the funds not expended for the support of the commission during the fiscal year shall be placed in the general fund of the county, or counties, according to the ratio of contribution, on the first day of January following the end of such fiscal year. [C75,§341A.20]

341A.21 Indictable misdemeanor. Any person who willfully violates any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not longer than thirty days or punished by both such fine and imprisonment. The district court shall have jurisdiction of all such offenses. [C75,§341A.21]

CHAPTER 342

COLLECTION AND ACCOUNTING OF FEES

Referred to in §321.141

342.1 Fees belong to county.
342.2 Record of fees.
342.3 Quarterly reports and payments.

342.1 Fees belong to county. Except as otherwise provided, all fees and charges of whatever kind collected for official service by any county auditor, treasurer, recorder, sheriff, clerk of the district court, and their respective deputies or clerks, shall belong to the county. [R60,§431; C73,§3785; C97,§§299, 508; S13,§508; SS15,§§479-a, 490-a; C24, 27, 31, 35, 39,§5245; C46, 50, 54, 58, 62, 66, 71, 73, 75,§342.1]

342.2 Record of fees. Each such officer shall keep a record to be known as the "fee book" of the office to which it relates and shall be kept in such office as a part of the permanent county records. It shall be ruled in appropriate columns for the date, kind of service, for whom rendered, and the amount of fee collected, and when the charge is for recording an instrument, the names of the parties there-

to. All said items shall be entered upon said record at the time the service is rendered. [C51,§212; R60,§423; C73,§3796; C97,§§480, 492; S13,§498; C24, 27, 31, 35, 39,§5246; C46, 50, 54, 58, 62, 66, 71, 73, 75,§342.2]

342.3 Quarterly reports and payments. Each of such officers shall make itemized and verified reports quarterly to the board of supervisors showing in detail the fees collected during the preceding quarter. Each such officer shall quarterly pay into the county treasury all fees collected during the preceding quarter, take duplicate receipts therefor and file one of such receipts in the office of the auditor. Each such officer shall also enter upon the fee book of his office the date and amount of each payment into the county treasury. [R60,§431; C73,§§3785, 3796; C97,§§299, 480, 492, 495, 508; S13,§§508, 550-c; SS15,§495; C24, 27, 31, 35, 39,§5247; C46, 50, 54, 58, 62, 66, 71, 73, 75,§342.3]

CHAPTER 343

GENERAL DUTIES OF COUNTY OFFICERS

343.1 Officers to furnish information.
343.2 Agent or attorney.
343.3 Acting as counsel.
343.4 Purchase of property.
343.5 Examination of accounts—expense.
343.6 Violations.
343.7 Purchase of warrants.
343.8 Money for sectarian purposes.
343.9 Violations.
343.10 Expenditures confined to receipts.
343.11 Exceptions.
343.12 Unallowable claim.
343.13 Miniature photographic copies of records.
343.14 Forms to state officers.

343.1 Officers to furnish information. It is the duty of each county officer, whenever called upon by the governor or either house of the general assembly, to communicate to the governor or such house any information that may be in his possession as such officer, and to furnish any statistics at his command, when thus called upon. [C97,§544; C24, 27, 31, 35, 39, §5249; C46, 50, 54, 58, 62, 66, 71, 73, 75,§343.1]

Referred to in §343.6

343.2 Agent or attorney. No county officer shall appear as agent, attorney, or solicitor for another, in any matter pending before the board of supervisors. [C73,§326; C97,§545; C24, 27, 31, 35, 39,§5250; C46, 50, 54, 58, 62, 66, 71, 73, 75,§343.2]

Referred to in §343.6

343.3 Acting as counsel. No sheriff or deputy sheriff shall appear in any court as attorney or counsel for any party, nor make any writing or process to commence any action or proceeding, or to be in any manner used in the same; and such writing or process made by any of them shall be rejected. [C51,§175; R60, §388; C73,§342; C97,§546; C24, 27, 31, 35, 39,§5251; C46, 50, 54, 58, 62, 66, 71, 73, 75,§343.3]

Referred to in §343.6

343.4 Purchase of property. No sheriff or deputy sheriff shall become the purchaser, either directly or indirectly, of any property by him exposed to sale under any process of law; and every such purchase shall be void. [C51,§176; R60,§389; C73,§343; C97,§547; C24, 27, 31, 35, 39,§5252; C46, 50, 54, 58, 62, 66, 71, 73, 75, §343.4]

Referred to in §343.6

343.5 Examination of accounts—expense. If any officer required by law to report the fees collected by him to the board of supervisors shall neglect or refuse to make such report, it shall be the duty of the board to employ an expert accountant to examine the books, papers, and accounts of such officer, and to make said report, the expense of which shall be charged to such delinquent officer, and shall be collectible upon his official bond. [C97,§548; C24, 27, 31, 35, 39,§5253; C46, 50, 54, 58, 62, 66, 71, 73, 75,§343.5]

Referred to in §343.6

343.6 Violations. Failure on the part of any officer to perform any duty required of him by sections 343.1 to 343.5 shall render him liable to prosecution and punishment for a misdemeanor. [C97,§550; C24, 27, 31, 35, 39,§5254; C46, 50, 54, 58, 62, 66, 71, 73, 75,§343.6]

Punishment, §687.7

343.7 Purchase of warrants. No officer of any county, nor any deputy or employee of such officer, shall, directly or indirectly, be permitted to take, purchase, or receive in payment, exchange, or in any way whatever, any warrant, scrip, or other evidence of its indebtedness or any demand against it, for a less amount than that expressed on the face of the warrant, scrip, or other evidence of indebtedness or demand, with accrued interest thereon. [R60,§2186; C73,§556; C97,§596; C24, 27, 31, 35, 39,§5255; C46, 50, 54, 58, 62, 66, 71, 73, 75, §343.7]

Referred to in §343.9

343.8 Money for sectarian purposes. Public money shall not be appropriated, given, or

loaned by the corporate authorities of any county or township, to or in favor of any institution, school, association, or object which is under ecclesiastical or sectarian management or control. [C73,§552; C97,§593; C24, 27, 31, 35, 39,§**5256**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §343.8]

Referred to in §343.9

343.9 Violations. Any officer of any county, or any deputy or employee of such officer, who violates any of the provisions of sections 343.7 and 343.8, shall be guilty of a misdemeanor, and fined not less than one hundred dollars, nor more than five hundred dollars, for each offense. [R60,§2188; C73,§558; C97,§598; C24, 27, 31, 35, 39,§**5257**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §343.9]

343.10 Expenditures confined to receipts.* It shall be unlawful for any county, or for any officer thereof, to allow any claim, or to issue any warrant, or to enter into any contract, which will result, during said year, in an expenditure from any county fund in excess of an amount equal to the collectible revenues in said fund for said year, plus any unexpended balance in said fund for any previous years.

Any officer allowing a claim, issuing a warrant, or making a contract contrary to the provisions of this section, shall be held personally liable for the payment of the claim or warrant, or the performance of the contract. [C24, 27, 31, 35, 39,§**5258**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§343.10]

Referred to in §§343.11, 344.11, 346.19
Analogous provision, §72.1
Limitation on indebtedness, §§407.1, 407.2
*Tuck law

343.11 Exceptions. Section 343.10 shall not apply to:

1. Expenditures for bridges or buildings destroyed by fire or flood or other extraordinary casualty.

2. Expenses incurred in connection with the operation of the courts.

3. Expenditures for bridges which are made necessary in any year by the construction of a public drainage improvement.

4. Expenditures for the benefit of any person entitled to receive help from public funds.

Referred to in §24.14

5. Expenditures authorized by vote of the electors.

6. Contracts let on the basis of the budget submitted pursuant to section 309.93. [C24, 27, 31, 35, 39,§**5259**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §343.11]

Referred to in §§24.14, 344.11, 346.19

343.12 Unallowable claim. No claim shall be allowed or warrant issued or paid for the expense incurred by any county officer in attending any convention of county officials. [C24, 27, 31, 35, 39,§**5260**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§343.12]

343.13 Miniature photographic copies of records. Any county officer may, at his discretion, make photographic, photostatic, microfilm, microcard, or other accurately reproduced copies, on a durable medium for so reproducing the original, of records, reports and other papers either filed or recorded in his office. When such copies have been made and have been properly filed and indexed, the county officer may, on approval of a judge of the district court of the judicial district, destroy the original records, reports or other papers that are more than ten years old or place them in the possession of a museum or historical society willing to accept them. [C54, 58, 62, 66, 71, 73, 75,§343.13]

Referred to in §335.17

343.14 Forms to state officers. All reports and forms required to be submitted by county officers to state officers and agencies shall be submitted on standardized forms furnished by the state officer or agency. All state officers and agencies which receive reports and forms from county officers shall consult with the state comptroller, and the office for planning and programming, and shall devise standardized reports and forms which will permit computer processing of the information submitted by county officers, and shall distribute the standardized reports and forms to the county officers. [C71, 73, 75,§343.14]

CHAPTER 344

COUNTY BUDGET

See ch 24 for note for transition provisions in re change of fiscal year

344.1 Annual itemized estimates.
344.2 Appropriation.
344.3 Contingent fund.
344.4 Form of resolution—limitation.
344.5 Contents of resolution.
344.6 Supplemental appropriation.
344.7 Report of unexpended balances.
344.8 Transfer of funds.
344.9 Transfers from other departments.
344.10 Expenditures exceeding appropriation.
344.11 Scope of statute.

344.1 Annual itemized estimates. On or before June 30 of each year, each elective or appointive officer of any county having charge of any county office or department shall prepare and submit to the board of supervisors a detailed estimate itemized in the same man-

ner that the various expenditures of such office or department are itemized on the records of the county auditor, showing the proposed expenditures of his office or department for the following fiscal year. If the estimated expenditures show an increase over those for the current year, a statement in writing of the reason for such estimated increase must also be submitted. [C31, 35,§5260-c1; C39,§**5260.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§344.1]

344.2 Appropriation. On or before July 31 of every year, the board of supervisors shall appropriate, by resolution, such amounts as are deemed necessary for each of the different county officers and departments during the ensuing fiscal year, and shall specify from which of the different county funds created by law the appropriated sums shall be derived. The appropriations to each separate county office or department shall be itemized in the same manner that the accounts are itemized on the records of the county auditor. [C31, 35,§5260-c2; C39,§**5260.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§344.2]

344.3 Contingent fund. The board of supervisors may also appropriate to a contingent account for one or each of the county funds, a sum which may be spent for purposes which cannot be anticipated at the beginning of the fiscal year, but said contingent appropriation together with other appropriations shall not exceed the anticipated revenues. [C31, 35, §5260-c3; C39,§**5260.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§344.3]

344.4 Form of resolution—limitation. Such resolution of appropriation also shall list, in three separate columns and opposite each separate appropriation item, the itemized expenditures of each county office or department for each of the two preceding years. The total amount appropriated from any county fund shall not exceed the anticipated receipts of that fund. [C31, 35,§5260-c4; C39,§**5260.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§344.4]

344.5 Contents of resolution. Such resolution of appropriation shall also contain an itemized statement of the anticipated receipts to each separate county fund for the current year, together with a statement of any balance carried over in any of the county funds from the preceding year. Such resolution of appropriation shall also contain in two columns and opposite each item of anticipated receipts, the actual receipts collected during each of the two preceding years. [C31, 35,§5260-c5; C39, §**5260.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§344.5]

344.6 Supplemental appropriation. If it shall have been determined during the course of any year that the actual receipts to any of the different county funds will be larger than were anticipated in the original resolution of appropriation, the board of supervisors may make a supplementary appropriation by resolution at any regular meeting, appropriating the sums in excess of the estimated receipts from any county fund augmented by larger revenues than were anticipated, to any county office or offices supported by said fund or funds. No such supplementary appropriation shall be made to any such county office or offices unless it shall be shown that a specific need therefor exists. Such supplementary appropriation shall clearly state the amount collected into such augmented county fund in excess of the amount estimated in the general resolution of appropriation. [C31, 35,§5260-c6; C39,§**5260.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §344.6]

344.7 Report of unexpended balances. On the fifteenth of October, January and April of each fiscal year, the county auditor shall furnish to each county office or department, a statement showing the various original appropriations to each office or department, expenditures of the office or department from its different appropriation accounts during the expired portion of the year, together with a statement of the balance of the appropriations for said office remaining unexpended. [C31, 35,§5260-c7; C39,§**5260.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§344.7]

344.8 Transfer of funds. In the event that any office has exceeded, or may find it necessary to exceed, the amount of its appropriation in any particular account, the board of supervisors, by resolution, may authorize a transfer from one or more of the other appropriation accounts of said office, any portion of such unexpended appropriation balance, to any other appropriation account of said office. [C31, 35,§5260-c8; C39,§**5260.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§344.8]

344.9 Transfers from other departments. In the event it shall be found necessary for any office or department to spend an amount in excess of the total of its original appropriations, the board of supervisors at a regular or special meeting may by resolution authorize a transfer of a portion of the appropriation balance of one office or department or contingent account to the account of another office or department, provided that the funds transferred are derived from the same tax fund and that the transfer does not violate existing statutes. [C31, 35,§5260-c9; C39,§**5260.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§344.9]

344.10 Expenditures exceeding appropriation. It shall be unlawful for any county official, the expenditures of whose office come under the provisions of this chapter, to authorize the expenditure of a sum for his department larger than the amount which has been appropriated by the county board of supervisors.

Any county official in charge of any department or office who violates this law shall be guilty of a misdemeanor and punished accordingly. [C31, 35,§5260-c10; C39,§**5260.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75§344.10]

Punishment, §687.7

344.11 Scope of statute. Nothing in this chapter shall be construed as affecting the provisions of section 343.11, and provisions of this chapter with reference to the penalty, shall be in addition to the provisions of section 343.10. [C31, 35,§5260-c11; C39,§**5260.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§344.11]

CHAPTER 345

SUBMISSION OF QUESTIONS TO VOTERS

Referred to in §§232.22, 347.27, 347A.2

345.1 Expenditures—when vote necessary.
345.2 Exceptions.
345.3 Improvements authorized.
345.4 Questions submitted to voters.
345.5 Depreciated warrants—tax.
345.6 Manner of submitting questions.
345.7 Voting of tax—when required.
345.8 Rate of tax.
345.9 Bonds—maturity—tax.
345.10 Tax for successive years.
345.11 Result published.
345.12 Rescission or diversion by subsequent vote.
345.13 Board must submit questions.
345.14 Regularity presumed.
345.15 Surplus of tax.
345.16 Interest rate on bonds.
345.17 Improvement account.

345.1 Expenditures—when vote necessary. The board of supervisors shall not order the erection of, or the building of an addition or extension to, or the remodeling or reconstruction or relocation and replacement of a courthouse, jail, county hospital,* county care facility or any other county building or facility, except as otherwise provided, when the probable cost will exceed ten thousand dollars, nor the purchase of real estate for county purposes exceeding ten thousand dollars in value, until a proposition therefor shall have been first submitted to the qualified electors of the county, and voted for by a majority of all persons voting for and against such proposition at a general or special election, notice of the same being given as in other special elections. However, such proposition need not be submitted to the voters if any such erection, construction, remodeling, reconstruction, relocation and replacement, or purchase of real estate may be accomplished from funds on hand or from federal revenue-sharing funds or federal matching funds and without the levy of additional taxes and if the probable cost of the entire project will not exceed one hundred thousand dollars in a county having a population of twenty-five thousand or less, one hundred fifty thousand dollars in counties having a population of more than twenty-five thousand but not more than fifty thousand, two hundred thousand dollars in counties having a population of more than fifty thousand but not more than one hundred thousand, two hundred fifty thousand dollars in counties having a population of more than one hundred thousand but not more than two hundred thousand, and five hundred thousand dollars in counties having a population of more than two hundred thousand. If a county project should be determined to cost in excess of the dollar limitation for the population category of such county, the proposition must be submitted to the qualified electors of the county without regard to the source from which such funds may be derived. However a proposition need not be submitted to the qualified electors to expend federal revenue-sharing funds for a mental health or mental retardation project or when a relocation and replacement is made necessary by the acquisition of county property for a federal or state project, and the cost of the relocation does not exceed the amount of the award of damages by the state or federal government. When the probable project cost exceeds fifty thousand dollars, the board shall provide notice and hold a public hearing on the project. When the expenditures authorized in this section exceed seventy-five thousand dollars and the proposition need not be submitted to the voters, the board of supervisors shall hold a public hearing on the proposition. Notice of the hearing shall be published at least two weeks prior to the hearing, in the newspaper published in the county having the largest circulation in the county. In determining whether the expenditure should be made, the board of supervisors shall give full consideration to the testimony given during the hearing. [R60,§312; C73,§303; C97,§423; SS15, §423; C24, 27, 31, 35, 39,§**5261**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.1; 66GA, ch 67,§71, ch 140,§2]

*Exception as to county hospital organized under ch 269, Code 1939, see 51GA, ch 158,§3

Funds derived from insurance, §332.11

Submission of question of county care facility, §253.1

345.2 Exceptions. Where a courthouse has been destroyed by fire and not less than one hundred thousand dollars has been donated to the county for the purpose of erecting a courthouse, the board of supervisors may, without authorization from the voters, use the amount so donated for the construction of the courthouse and in addition thereto may appropriate from the general fund for such purpose a sum not exceeding one-half of the amount donated,

provided there is in the general fund, unappropriated for other purposes, an amount sufficient to pay such appropriation. [C24, 27, 31, 35, 39,§**5262**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.2]

345.3 Improvements authorized. The board of supervisors in any county having a population of forty thousand or over, with a county seat having a population of more than five thousand, may also make necessary additions to such courthouse, jail, or county care facility where the funds are available in the general fund, unappropriated for other purposes, without additional tax levy and without submitting the proposition to the voters of such county, provided the cost thereof does not exceed twenty-five thousand dollars. [C31, 35,§5262-c1; C39,§**5262.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.3; 66GA, ch 67,§71]

345.4 Questions submitted to voters. The board of supervisors may submit to the people of the county at any regular election, or at any special election called for that purpose, the question whether money may be borrowed to aid in the erection and equipment or the building of additions or extensions to, the remodeling or the reconstruction of any public buildings, or the procuring of a site or grounds for such public buildings, or for both such site and buildings, and either or both of said propositions and other local or police regulations may be submitted at the same general or special election. [C51,§114; R60,§250; C73,§309; C97,§443; C24, 27, 31, 35, 39,§**5263**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.4]

345.5 Depreciated warrants—tax. When the warrants of a county are at a depreciated value, it may, in like manner, submit the question whether a tax of a higher rate than that provided by law shall be levied. [C51,§114; R60, §250; C73,§309; C97,§443; C24, 27, 31, 35, 39,§**5264**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.5]

345.6 Manner of submitting questions. The mode of submitting questions to the people shall be the following: The whole question, including the sum desired to be raised, or the amount of tax desired to be levied, or the rate per annum, and the whole regulation, including the time of its taking effect or having operation, if it be of a nature to be set forth, and the penalty for its violation if there be one, shall be embraced in a notice of the election. The notice shall, to the extent consistent with this section, be drawn up in accordance with and shall be published as required by section 49.53. A copy of the question to be submitted shall be posted at each polling place during the day of election. [C51,§115; R60,§251; C73, §310; C97,§446; S13,§446; C24, 27, 31, 35, 39,§**5265**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.6; 66GA, ch 1075,§65]

345.7 Voting of tax—when required. When any question submitted involves the borrowing or the expenditure of money, the same must be accompanied by a provision to levy a tax for the payment thereof, in addition to other taxes, as directed in section 345.8, and no vote adopting the question proposed will be of effect unless it adopt the tax also. [C51,§116; R60, §252; C73,§311; C97,§447; C24, 27, 31, 35, 39,§**5266**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.7]

345.8 Rate of tax. The rate of such tax shall in no case be more than seven hundredths of one percent on the county taxable valuation in any one year. When the object is to borrow money for the erection and equipment of public buildings, or for the procuring of sites or grounds therefor, or for both, the rate shall be such as to pay the debt in a period not exceeding ten years; but in counties having a population of twenty-five thousand or over, or in any county where one hundred thousand dollars or more has been or is proposed to be expended, the rate of levy shall be such as to pay the debt in not exceeding twenty-five years. [C51,§117; R60,§253; C73,§312; C97,§448; SS15,§448; C24, 27, 31, 35, 39,§**5267**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.8]

Referred to in §345.7

345.9 Bonds — maturity — tax. In issuing bonds for such indebtedness, no bond shall be issued with a maturity date deferred more than twenty-five years from date thereof. Such bonds shall be consecutively numbered and issued and paid in the order of such numbering. The interest and principal of such bonds shall be paid as rapidly as funds for such payment are collected. When the object is to construct, or to aid in constructing, any highway or bridge, the annual rate shall not be less than six and three-fourths cents per thousand dollars of the assessed valuation; and any of the above taxes becoming delinquent shall draw the same interest as ordinary taxes. [C51,§117; R60,§253; C73,§312; C97,§448; SS15, §448; C24, 27, 31, 35, 39,§**5268**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.9]

Maturity and payment of bonds, ch 76

345.10 Tax for successive years. When it is apparent that the levy of one year will not pay the entire amount, the proposition and the vote must be to continue the levy at the same rate from year to year until the amount is paid. [C51,§118; R60,§254; C73,§313; C97,§449; C24, 27, 31, 35, 39,§**5269**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.10]

345.11 Result published. The board of supervisors, on finding from a canvass of the returns that a majority of the votes were cast in favor of the proposition, shall cause the result of the vote to be entered at large in the minute book, and the proposition shall take effect and be in force thereafter. Notice of such adoption shall be published for the same time and in the same manner as above provided for publishing the notice of election. [C51,§119; R60,§255; C73,§314; C97,§450; C24, 27, 31, 35, 39,§**5270**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.11]

Vote required to authorize bonds, §75.1

345.12 Rescission or diversion by subsequent vote. Propositions thus adopted may be rescinded in like manner and upon like notice, by a subsequent vote taken thereon, but neither contracts made under them, nor taxes voted for carrying them into effect, can be rescinded, provided that taxes voted for carrying into effect any such proposition may be by subsequent vote of the electors allocated to another designated purpose. If upon such subsequent vote of the electors, a majority of the votes cast is adverse to the allocation proposed, then the tax fund shall revert to and become part of the county general fund. [C51, §120; R60,§256; C73,§315; C97,§451; C24, 27, 31, 35, 39,§**5271**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.12]

345.13 Board must submit questions. The board shall submit the question of the adoption or rescission of such a measure or the allocation of taxes voted to another designated purpose when petitioned by one-fourth of the qualified electors of the county, or by such different number as may be prescribed by law in any special case. [C51,§121; R60,§257; C73, §316; C97,§452; C24, 27, 31, 35, 39,§**5272**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.13]

345.14 Regularity presumed. The record of the adoption or rescission of any such measure or the allocation of the taxes voted to another designated purpose shall be presumptive evidence that all the proceedings necessary to give the vote validity have been regularly conducted. [C51,§122; R60,§258; C73,§317; C97,§453; C24, 27, 31, 35, 39,§**5273**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.14]

345.15 Surplus of tax. In case the amount produced by the rate of tax proposed and levied exceeds the amount required for the specific object, it shall not for that reason be held invalid, but the excess shall go into the general county fund. [C51,§123; R60,§259; C73, §318; C97,§454; C24, 27, 31, 35, 39,§**5274**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§345.15]

345.16 Interest rate on bonds. Bonds issued pursuant to the provisions of this chapter shall bear interest at a rate not exceeding seven percent per annum. [C71, 73, 75,§345.16]

See 63GA, ch 87,§60

345.17 Improvement account. Upon adoption of a resolution by the board of supervisors, the county commissioner of elections shall place on the ballot at the next general election a question asking the qualified electors of the county if the board of supervisors may establish an improvement account within the county general fund. The electors of the county shall vote on the establishment of the fund and the maximum amount to be credited annually to the account.

The question shall read: Shall the board of supervisors establish within the general fund of the county an improvement account into which the annual sum of money credited to the account shall not exceed ——— dollars?

After approval of the question by the electors, the board of supervisors may credit to and appropriate funds from the improvement account for the purposes provided in this chapter.

The board may continue to function under the limitations approved by the electors for a period of four full fiscal years after the question was approved. The authorization for collecting taxes for the account shall expire at the close of the fourth full fiscal year after the question was approved. Any unexpended balance in the account after the lapse of four full fiscal years shall carry over until all funds have been appropriated from the account at which time the account shall be closed unless reapproved by the electors of the county. [C75,§345.17]

CHAPTER 346

COUNTY BONDS

346.1 Funding and refunding bonds.
346.2 Refunding bridge bonds.
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346.5 Bonds—negotiation of—duties of treasurer.
346.6 Proceeds—how applied.
346.7 Record of bonds sold and transferred.
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346.21 Actions on bonds—estoppel.
346.22 Violations.
346.23 General obligation bonds for sanitary disposal.
346.24 Limit on indebtedness for general purposes.
346.25 Limit on total indebtedness.

JOINT COUNTY AND CITY BUILDINGS

346.26 Joint county and county seat city property.
346.27 "Authority" for control of joint property.

346.1 Funding and refunding bonds. When the outstanding indebtedness of any county on the first day of January, April, June or September in any year exceeds the sum of five thousand dollars, the board of supervisors, by a two-thirds vote of all its members, may fund or refund the same, and issue the bonds of the county therefor in sums not less than one hundred dollars nor more than ten thousand dollars each, payable at a time stated, not more than twenty years from their date. [C73,§289; C97,§403; S13,§403; C24, 27 31, 35, 39,§**5275**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.1]

Referred to in §346.3
Limitation on indebtedness, §§407.1, 407.2
Maturity and payment of bonds, ch 76

346.2 Refunding bridge bonds. Indebtedness incurred by any county in making and repairing bridges may be refunded whenever such outstanding indebtedness equals or exceeds the sum of five thousand dollars, and the tax to pay such bonds and interest shall be levied as hereinafter provided, except that no part of said tax shall be levied on property within any city which is authorized by law to levy its own bridge tax, nor on property within any city which has by ordinance assumed the care, supervision, and control of any public bridge or which has constructed a public bridge within its corporate limits. [S13,§403; C24, 27, 31, 35, 39,§**5276**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.2]

Referred to in §346.3
Cities controlling bridge levy, §384.12(5)

346.3 Rate of interest—form of bond. Said bonds shall bear interest not exceeding seven percent per annum, payable semiannually, and be substantially in the following form, but subject to changes that will conform them to the resolution of said board, to wit:

No. ....., Iowa, ...

The county of ...., in the state of Iowa, for value received, promises to pay to bearer ..... dollars, lawful money of the United States of America, on ....., with interest on said sum from the date hereof until paid at the rate of .... percent per annum, payable....annually on the first days of ..... and ..... in each year, on presentation and surrender of the interest coupons hereto attached. Both principal and interest payable at .....

This bond is issued by the board of supervisors of said county pursuant to the provisions of sections 346.1 to 346.3 of the Code of Iowa, and in conformity to a resolution of said board duly passed.

And it is hereby certified and recited that all acts, conditions, and things required by the laws and Constitution of the state of Iowa to be done precedent to and in the issue of this bond have been properly done, happened and been performed in regular and due form, as required by law, and that the total indebtedness of said county, including this bond, does not exceed the constitutional or statutory limitations.

In testimony whereof, said county, by its board of supervisors, has caused this bond to be signed by the chairman of the board and attested by the auditor, with the county seal attached, this .... day of .....

.....
Chairman Board of Supervisors.

Attest:

.....
County Auditor, ... County, Iowa.

(Form of Coupon)

The treasurer of ..... county, Iowa, will pay to bearer ..... dollars, on ....., at ....., for ..... annual interest on its ..... bond, dated .....

No. ....
County Auditor.

[C73,§289; C97,§403; S13,§403; C24, 27, 31, 35, 39, §**5277**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.3]

See 63GA, ch 87,§60

346.4 Provisions applicable. In making sale of such county bonds the county treasurer shall comply with and be governed by all the provisions of chapter 75. [C24, 27, 31, 35, 39, §**5278**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.4]

346.5 Bonds—negotiation of—duties of treasurer. When bonds issued under this chapter shall be executed, numbered consecutively, and sealed, they shall be delivered to the county treasurer and his receipt taken therefor, and he shall stand charged on his official bond with all bonds delivered to him and the proceeds thereof, and he shall sell the same, or exchange them, on the best available terms, for any legal indebtedness of the county outstanding on the first day of January, April, June, or September next preceding the resolution of the board authorizing their issue, but in neither case for a less sum than the face value of the bonds and all interest accrued on them at the date of such sale or exchange. [C73,§290; C97,§404; S13,§404; C24, 27, 31, 35, 39,§**5279**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.5]

346.6 Proceeds—how applied. If any portion of said bonds are sold for money, the proceeds thereof shall be applied exclusively for the payment of liabilities existing against the county at and before the date above named. When they are exchanged for warrants and other legal evidences of county indebtedness, the treasurer shall at once proceed to cancel such evidences of indebtedness by endorsing on the face thereof the amount for which they were received, the word "canceled" and date of cancellation. [C73,§290; C97,§404; S13,§404; C24, 27, 31, 35, 39,§**5280**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.6]

346.7 Record of bonds sold and transferred. He shall also keep a record of bonds sold or exchanged by him by number, date of sale, amount, date of maturity, and the name and post-office address of purchasers, and, if exchanged, what evidences of indebtedness were received therefor, which record shall be open

at all times for inspection by the public. Whenever the holder of any bond shall sell or transfer it, the purchaser shall notify the treasurer of such purchase, giving at the same time the number of the bond transferred and his post-office address, and every such transfer shall be noted on the records. [C73,§290; C97,§404; S13, §404; C24, 27, 31, 35, 39,§5281; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.7]

346.8 Treasurer to report bonds sold. The treasurer shall also report under oath to the board, at each regular session, a statement of all bonds sold or exchanged by him since the preceding report, and the date of such sale or exchange; and, when exchanged, a list or description of the county indebtedness exchanged therefor, and the amount of accrued interest received by him on such sale or exchange, which latter sum shall be charged to him as money received on bond fund, and so entered by him on his books; but such bonds shall not be exchanged for any indebtedness of the county except by the approval of the board of supervisors of said county. [C73,§290; C97,§404; S13,§404; C24, 27, 31, 35, 39,§5282; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.8]

346.9 Unconstitutional issue. Any member of a board of supervisors who shall vote to order an issue of bonds under the provisions of this chapter in excess of the constitutional limit, shall be held personally liable for the excess of such issue. [C97,§405; C24, 27, 31, 35, 39,§5283; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.9]

Constitutional provision, Art. XI,§3

346.10 Tax for bonded indebtedness. The board of supervisors shall not in any one year levy a tax of more than twenty and one-fourth cents per thousand dollars of assessed value for the payment of bonded indebtedness or judgments rendered therefor, except as provided in this chapter, unless the vote authorizing the issuance of the bonds provided for a higher rate. [C73,§840; C97,§1384; C24, 27, 31, 35, 39,§5284; C46, 50, 54, 58, 62, 66, 71, 73, 75, §346.10]

346.11 Levy to pay interest and principal. The board of supervisors shall cause to be assessed and levied each year upon the taxable property in the county, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on outstanding bonds issued in conformity with the provisions of this chapter, accruing before the next annual levy, and such proportion of the principal that, at the end of eight years, the sum raised from such levies shall equal at least fifteen percent of the amount of bonds issued; at the end of ten years, at least thirty percent of the amount; and at or before the date of maturity of the bonds, shall be equal to the whole amount of the principal and interest. [C73,§291; C97,§406; C24, 27, 31, 35, 39,§5285; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.11]

Referred to in §455B.81
Maturity and payment of bonds, ch 76

346.12 Bond fund — separate account. The money arising from such levies shall be known as the bond fund, and shall be used for the payment of bonds and interest coupons, and for no other purpose whatever; and the treasurer shall open and keep in his books a separate account thereof, which shall at all times show the exact condition of said bond fund. [C73,§291; C97,§406; C24, 27, 31, 35, 39,§5286; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.12]

346.13 Redemption—notice—interest. When the amount in the hands of the treasurer belonging to the bond fund, after setting aside the sum required to pay interest maturing before the next levy, is sufficient to redeem one or more bonds, which by their terms are subject to redemption, he shall notify the owner of such bond or bonds, in the manner hereinbefore prescribed, that he is prepared to pay the same, with all the interest accrued thereon. If not presented for payment or redemption within thirty days after the date of such notice, the interest on such bond or bonds shall cease, and the amount due thereon shall be set aside for its payment whenever presented. All redemptions shall be made in the order of their numbers. [C73,§292; C97,§407; S13,§407; C24, 27, 31, 35, 39,§5287; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.13]

346.14 Balance to particular fund. If after the payment of all bonds and interest as hereinbefore provided, there remains any money in said bond fund, the board of supervisors may by resolution transfer said funds to the particular fund or funds on account of which the indebtedness arose for which said bonds were issued. [S13,§407; C24, 27, 31, 35, 39,§5288; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.14]

346.15 Balance to general fund. The board of supervisors may, by resolution, transfer to the general fund any excess remaining from the proceeds of a county bond issue voted by the people, after the full completion of the purposes thereof. [C24, 27, 31, 35, 39,§5289; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.15]

346.16 Registry with department of revenue. If the board of supervisors of any county which has issued bonds under the provisions of this chapter shall fail to make the levy necessary to pay such bonds or interest coupons at maturity, and the same shall have been presented to the county treasurer and the payment thereof refused, the owner may file the bond, together with all unpaid coupons, with the department of revenue, taking its receipt therefor, and the same shall be registered in the office of the director of revenue. [C73,§293; C97, §408; C24, 27, 31, 35, 39,§5290; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.16]

346.17 State tax levied—payment. The director of revenue shall at each annual equalization, add to the state tax to be levied in said county a sufficient rate to realize the amount of principal or interest past due and to become due prior to the next levy upon any such

registered bonds, and the same shall be levied and collected as a part of the state tax, and paid into the state treasury, and passed to the credit of such county as bond tax, and shall be paid by warrant, as the payments mature, to the holder of such registered obligations, as shown by the register in the office of the director of revenue, until the same shall be fully satisfied and discharged; any balance then remaining being passed to the general account and credit of said county; but nothing in this chapter shall be construed to limit or postpone the right of any holder of any such bonds to resort to any other remedy which such holder might otherwise have. [C73,§293; C97,§408; C24, 27, 31, 35, 39,§**5291**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.17]

Similar provision; §444.20

346.18 Additional tax to pay interest. In any county wherein county bonds are issued in pursuance of a vote of the people to obtain money for the erection of any public building and wherein the annual tax named in the proposition so submitted for the purpose of paying the annual interest accruing upon such bonds is insufficient to pay the same as it matures, the board of supervisors is authorized to levy for said purpose, a tax, not exceeding six and three-fourths cents per thousand dollars of assessed value, until said bonds are paid; but this provision shall not prevent the levy of a greater tax than above mentioned, if any such proposition authorized such higher levy. [C97, §409; C24, 27, 31, 35, 39,§**5292**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.18]

346.19 Statutes applicable. The provisions of this chapter shall not be so construed as to limit in any way the application of the provisions of sections 343.10 and 343.11. [C24, 27, 31, 35, 39,§**5293**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.19]

346.20 County not to become stockholder. No county shall, in its corporate capacity, or by its supervisors or officers, directly or indirectly, subscribe for stock, or become interested as a partner, shareholder, or otherwise, in any banking institution, plank road, turnpike, railway, or work of internal improvement; nor shall it issue any bonds, bills of credit, scrip, or other evidence of indebtedness, for any such purposes; and all such evidences of indebtedness for said purposes are hereby declared void, and no assignment of the same shall give them validity; but this section shall not be so construed as to prevent counties from lawfully erecting their necessary public buildings and bridges, laying off highways, streets, alleys, and public grounds, or other local works in which such counties may be interested. [R60,§§1345, 1346; C73,§§553, 554; C97,§594; C24, 27, 31, 35, 39,§**5294**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.20]

Referred to in §346.22

346.21 Actions on bonds—estoppel. In all actions now pending, or hereafter brought, in any court in this state, on any bond or coupon issued, or purporting to be issued, by any county for the purposes prohibited in this chapter, a former recovery against such corporation on any one or more or any part of such bonds or coupons shall not bar or estop such corporation from setting up any defense it has made, or could have made, to such bonds or coupons, in the action in which such former recovery was had, but the county may allege and prove any matter of defense in such action to the same extent, and with the same effect, as though no former action had been brought, or former recovery had. [C73,§555; C97,§595; C24, 27, 31, 35, 39,§**5295**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.21]

Referred to in §346.22

346.22 Violations. Any officer of any county, or any deputy or employee of such officer, who violates any of the provisions of sections 346.20 and 346.21, shall be guilty of a misdemeanor, and fined not less than one hundred dollars, nor more than five hundred dollars, for each offense. [R60,§2128; C73,§558; C97,§598; C24, 27, 31, 35, 39,§**5296**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§346.22]

346.23 General obligation bonds for sanitary disposal. The boards of supervisors of counties are hereby authorized to contract indebtedness and to issue general obligation bonds of the county to provide funds to pay the cost of establishing, constructing, acquiring, purchasing, equipping, improving, extending, reconstructing and repairing sanitary disposal projects as defined in section 455B.75.

Such bonds shall be in denominations of not less than one hundred dollars nor more than ten thousand dollars, and shall draw interest at a rate not to exceed seven percent per annum, payable annually or semiannually. Such bonds shall be due and payable in not more than twenty years from the date of issuance but may be made subject to redemption in such manner and upon such terms as is stated on the face thereof, shall be in such form as the board of supervisors shall by resolution provide, and shall show on their face that they are county sanitary disposal bonds payable from the fund hereinafter provided. Funds available pursuant to the levy authorized by section 455B.81 shall be used to pay the interest and principal of such bonds as they become due. The limitation referred to in section 455B.81 shall not limit the source of payment of bonds and interest but shall only restrict the amount of bonds which may be issued. The money arising from such levies shall be known as the sanitary disposal bond fund and shall be used for the payment of such bonds and interest thereon only; and the treasurer shall open and keep in his books a separate account thereof, which shall show the exact condition of such fund. Such bonds shall be sold at public sale and the county treasurer shall comply with and be governed by all provisions of chapter 75. [C71, 73, 75,§346.23]

Referred to in §§24.37, 455B.81

346.24 Limit on indebtedness for general purposes. No county or other political corporation shall become indebted for its general or ordinary purposes to an amount exceeding in the aggregate one and one-fourth percent of the actual value of the taxable property within the corporation. The value of property shall be ascertained by the last tax list previous to the incurring of the indebtedness. Indebtedness incurred by a county solely for poor relief purposes is not for its general or ordinary purposes. [S13,§1306-b; C24, 27, 31, 35, 39, §6238; C46, 50, 54, 58, 62, 66, 71, 73,§407.1; C75, §346.24]

346.25 Limit on total indebtedness. No county, or other political corporation, shall become indebted for any purpose to an amount, in the aggregate, exceeding five percent of the actual value of the property within the corporation, to be ascertained by the last state and county tax lists previous to the incurring of the indebtedness. [C46, 50, 54, 58, 62, 66, 71, 73,§407.2; C75,§346.25]

JOINT COUNTY AND CITY BUILDINGS

346.26 Joint county and county seat city property.

1. A county may contract with its county seat city for the joint purchase, acquisition, ownership, and control of property suitable as the site of a building for use and occupancy by the city and county jointly, and any county owning a site or any interest therein, may, upon terms which appear fair and just to the board of supervisors, contract with reference to the joint acquisition, ownership, control, improvement, use, and occupancy of the property, and with reference to the construction, use, and occupancy of a building. The contract shall set forth the amount of money to be contributed by the county and by the city toward the acquisition of a site and its improvement or the proportion of their respective contributions and the purpose for which the building is to be used. The contract may provide for the amount of money to be contributed annually by the county and by the city for the upkeep, maintenance, and operation of the property and the building, or it may provide for the respective proportions of expense which the county and the city shall pay, and may provide for an adjustment at stated periods of the amounts or proportions to be paid. The contract may specify the part of property and building to be used and occupied by the county and by the city. Contracts shall be made on behalf of the county only when approved by resolution of the board of supervisors, and when made shall be binding upon the county and city during the period specified in the contract unless modified or abrogated by mutual consent.

2. When a county and city have agreed upon their respective portions or proportions of the cost of a building and site, the county may, for the purpose of paying its respective portion of the cost and for the purpose of equipping the portions of the building to be used and occupied by it, issue bonds. However, no bonds shall be issued by a county until the proposition has been approved by at least sixty percent of the votes cast for and against the proposition at an election. The proposition may be submitted at a general, regular, or special election pursuant to a resolution of the board of supervisors. Notice of the election setting forth the proposition as it is to be voted upon shall be given by publication once each week for at least three consecutive weeks in a newspaper having general circulation in the county, and if the election is unfavorable the proposition may be submitted at a subsequent election. To the extent not otherwise provided the general election laws are applicable to the election. Bonds issued by a city must be issued in accordance with the provisions of law relating to general corporate purpose bonds of a city.

3. County bonds may bear interest at a rate not exceeding seven percent per annum payable semiannually and the principal shall be scheduled to mature in not more than twenty years from the date of the bonds. When a county has issued bonds it shall annually levy on all taxable property in the county, a tax sufficient to pay the interest and principal of the bonds as they become due, and each county may levy taxes sufficient to pay its portion of the cost of operating, maintaining, and keeping insured the building acquired or constructed under this section.

4. Contracts for the construction of any building which involve the expenditure of five thousand dollars or more shall be entered into pursuant to advertisement for bids in a manner approved and authorized by both the board of supervisors of the county and the council of the city. A county may apply for and accept federal aid in the construction of a building under this section, subject to conditions and stipulations imposed in connection with the federal aid and as approved by the board of supervisors.

5. This division is a complete and independent law for providing joint county and city buildings. [C50,§§368.57–368.60; C54, 58, 62, 66, 71, 73,§§368.19–368.22; C75,§346.26]

Referred to in §384.12

346.27 "Authority" for control of joint property.

1. Any joint building acquired, owned, erected, constructed, controlled, or occupied in accordance with the authorization contained in this section is declared to be acquired, owned, erected, constructed, controlled, or occupied for a public purpose and as a matter of public need.

2. Any county may join with its county seat to incorporate an "Authority" for the purpose of acquiring, constructing, demolishing, improving, enlarging, equipping, furnishing, repairing, maintaining, and operating a public

building, and to acquire and prepare the necessary site, including demolition of any structures, for the joint use of the county and city or any school district which is within or is a part of the county or city.

3. The incorporation of an authority shall be accomplished by the adoption of articles of incorporation by the governing body of each incorporating unit. For adoption, the affirmative vote of a majority of the members of each governing body is required. The articles of incorporation shall be executed for and on behalf of each incorporating unit by the following officers:

a. For the county, by the chairman of the board of supervisors.

b. For the city, by its mayor and city clerk.

4. The articles of incorporation shall set forth the name of the authority, the name of the incorporating units, the purpose for which the authority is created, the number, terms, and manner of selection of its officers including its governing body which shall be known as the "commission", the powers and duties of the authority and of its officers, the date upon which the authority becomes effective, the name of the newspaper in which the articles of incorporation shall be published, and any other matters.

5. The authority shall be directed and governed by a board of commissioners of three members, one to be elected by the board of supervisors of the county from the area outside of the county seat, one to be elected by the council of the city from the area inside the city, and one to be elected by the joint action of the board of supervisors of the county and the council of the city, and if the governing bodies are unable to agree upon a choice for the third member within sixty days of the election of the first member, then the third member shall be appointed by the governor. The commissioners shall serve for six-year terms. Of the first appointees, the member appointed by the board of supervisors shall be for a term of two years, the member appointed by the city council shall be for a term of four years, and the member appointed by the joint action of the board and council shall be for a term of six years. The board of commissioners shall designate one of their number as chairman, one as secretary, and one as treasurer, and shall adopt bylaws and rules of procedure and provide therein for regular meetings and for the proper safekeeping of its records. No commissioner shall receive any compensation in connection with his services as commissioner. Each commissioner, however, shall be entitled to reimbursement for any necessary expenditures in connection with the performance of his duties.

6. The articles of incorporation shall be recorded in the office of the county recorder and filed with the secretary of state, and shall be published once in a newspaper designated in the articles of incorporation and having a general circulation within the county, and upon such recording and publication, the authority shall be deemed to come into existence.

7. Amendments may be made to the articles of incorporation if adopted by the governing body of each incorporating unit; provided that no amendment shall impair the obligation of any bond or other contract. Each amendment shall be adopted, executed, recorded and published in the same manner as specified for the original articles of incorporation.

8. Any incorporating unit may make donations of property, real or personal, including gratuitous lease, to the authority as deemed proper and appropriate in aiding the authority to effectuate its purposes.

9. The authority shall be a body corporate with power to sue and be sued in any court of this state, have a seal and alter the same at its pleasure, and make and execute contracts, leases, deeds, and other instruments necessary or convenient to the exercise of its powers. In addition, it shall have and exercise the following public and essential governmental powers and functions and all other powers incidental or necessary to carry out and effectuate its express powers:

a. To select, locate, and designate an area lying wholly within the territorial limits of the county seat of the county in which the authority is incorporated as the site to be acquired for the construction, alteration, enlargement, or improvement of a building. The site selected is subject to approval by a majority of the members of each governing body of the incorporating units.

b. To acquire in the corporate name of the authority the fee simple title to the real property located within the area by purchase, gift, devise, or by the exercise of the power of eminent domain, or to take possession of real estate by lease.

c. To demolish, repair, alter, or improve any building within the designated area, to construct a new building within the area and to furnish, equip, maintain, and operate the building.

d. To construct, repair, and install streets, sidewalks, sewers, water pipes, and other similar facilities and otherwise improve the site.

e. To make provisions for off-street parking facilities.

f. To operate, maintain, manage, and enter into contracts for the operation, maintenance, and management of buildings, and to provide rules for the operation, maintenance and management.

g. To employ and fix the compensation of technical, professional, and clerical assistance as necessary and expedient to accomplish the objects and purposes of the authority.

h. To lease all or any part of a building to the incorporating units for a period of time not to exceed fifty years, upon rental terms agreed upon between the authority and the incorporating units. The rentals specified shall

be subject to increase by agreement of the incorporating units and the authority if necessary in order to provide funds to meet obligations.

i. To procure insurance of any and all kinds in connection with the building. The bidding procedures provided in section 23.18 shall be utilized in the procurement of insurance.

j. To accept donations, contributions, capital grants, or gifts from individuals, associations, municipal and private corporations, and the United States, or any agency or instrumentality thereof, and to enter into agreements in connection therewith.

k. To borrow money and to issue and sell revenue bonds in an amount and with maturity dates not in excess of fifty years from date of issue, to provide funds for the purpose of acquiring, constructing, demolishing, improving, enlarging, equipping, furnishing, repairing, maintaining, and operating buildings, and to acquire and prepare sites, convenient therefor, and to pay all incidental costs and expenses, including, but not limited to architectural, engineering, legal, and financing expense and to refund and refinance revenue bonds as often as deemed advantageous by the board of commissioners.

l. The provisions of chapter 23 applicable to other municipalities are applicable to an authority.

10. After the incorporation of an authority, and before the sale of any issue of revenue bonds, except refunding bonds, the authority shall submit in a single countywide election to the qualified voters of the city and county, at a general, primary, or special election called for that purpose, the question of whether an authority shall issue and sell revenue bonds, stating the amount, for any of the purposes for which it is incorporated. An affirmative vote of a majority of the votes cast on the proposition is required to authorize the issuance and sale of revenue bonds. A notice of the election shall be published once each week for at least two weeks in some newspaper published in the county. The notice shall name the time when the question shall be submitted, and a copy of the question to be submitted shall be posted at each polling place during the day of election. The authority shall call this election with the concurrence of both incorporating units, and it shall establish the voting precincts and polling places, and appoint the election judges, and in so doing such election procedures shall be in accordance with the provisions of chapters 49 and 50.

11. When the board of commissioners decides to issue bonds subject to the election requirement, it shall adopt a resolution describing the area to be acquired, the nature of the existing improvements, the disposition to be made of the improvements, and a general description of any new buildings to be constructed.

12. The resolution shall set out the limit of the cost of the project, including the cost of acquiring and preparing the site, determine the period of usefulness and fix the amount of revenue bonds to be issued, the date or dates of maturity, the dates on which interest is payable, the sinking fund provisions, and all other details in connection with the bonds. The board shall determine and fix the rate of interest of any revenue bonds issued, in a resolution adopted by the board prior to the issuance. The resolution, trust agreement, or other contract entered into with the bondholders may contain covenants and restrictions concerning the issuance of additional revenue bonds as necessary or advisable for the assurance of the payment of the bonds authorized.

13. Bonds shall be issued in the name of the authority and are declared to have all the qualities and incidents of negotiable instruments under the laws of this state.

14. Bonds issued under this section may be issued as serial or term bonds, shall be of such denomination or denominations and form, including interest coupons to be attached, shall be payable at such place or places and bear such date as the board of commissioners fix by the resolution authorizing the bonds, shall mature within a period not to exceed fifty years, and may be redeemable prior to maturity with or without premium, at the option of the board of commissioners, upon terms and conditions the board shall fix by the resolution authorizing the issuance of bonds. The board of commissioners may provide for the registration of bonds in the name of the owner as to the principal alone or as to both principal and interest upon terms and conditions the board determines. All bonds issued by an authority shall be sold at a price so that the interest cost to the commission of the proceeds of the bonds shall not exceed seven percent per annum, payable semiannually, computed to maturity, and shall be sold in the manner and at the time the board of commissioners determines.

15. Bonds issued by an authority, and the interest thereon, shall be payable solely from the revenues derived from the operation, management, or use of the buildings acquired or to be acquired by the authority, which revenues shall include payments received under any leases or other contracts for the use of the buildings. Bonds shall recite that the principal and interest thereon are payable only from the revenues pledged, and shall state on their face that they are not an indebtedness of the authority or a claim against the property of the authority.

16. Bonds shall be executed in the name of the commission by the chairman of the board of commissioners or by another officer of the commission as the board, by resolution, may direct, and be attested by the secretary, or by another officer of the commission as the board,

by resolution, may direct, and shall be sealed with the commission's corporate seal. In case any officer whose signature appears on the bonds or coupons shall cease to be such officer before delivery of the bonds, his signature shall be valid and sufficient for all purposes, the same as if the officer had remained in office until delivery.

17. In its discretion, the authority may issue refunding bonds to refund its bonds prior to their maturity, refund its outstanding matured bonds, refund matured coupons evidencing interest upon its outstanding bonds, refund interest at the coupon rate that has accrued upon its outstanding matured bonds, and refund its bonds which by their terms are subject to call or redemption before maturity. All bonds redeemed or purchased shall be canceled.

18. To secure the payment of revenue bonds and for the purpose of setting forth the covenants and undertakings of the authority in connection with the issuance of revenue bonds and the issuance of any additional revenue bonds payable from such revenue income to be derived from the operation, management, or use of the buildings acquired or to be acquired by the authority, the authority may execute and deliver a trust agreement except that no lien upon any physical property of the authority shall be created.

19. The resolution shall provide for the creation of a sinking fund account into which shall be payable from the revenues of the project, from month to month as such revenues are collected, the sums in excess of the cost of maintenance and operation of the project and the cost of administration of the authority, sufficient to comply with the covenants of the bond resolution and sufficient to pay the accruing interest and retire the bonds at maturity. The board of commissioners, in a resolution, may provide for other accounts as necessary for the sale of the bonds. Moneys in the accounts shall be applied in the manner provided by the resolution, the trust agreement, or other contract with the bondholders.

20. No such bonds shall constitute a debt of the authority or of any public body within the meaning of any statutory or constitutional limitation as to debt.

21. From and after the issuance of bonds the board of commissioners shall establish and fix rates, rentals, fees, and charges for the use of any and all buildings or space owned and operated by the authority, sufficient at all times to pay maintenance and operation costs and to pay the accruing interest and retire the bonds at maturity and to make all payments to all accounts created by any bond resolution and to comply with all covenants of any bond resolution.

22. When an incorporating unit enters into a lease with the authority, the governing body of the incorporating unit shall provide by ordinance or resolution for the levy and collection of a direct annual tax sufficient to pay the annual rent payable under the lease as and when it becomes due and payable. The tax shall be levied and collected in like manner with the other taxes of the incorporating unit and shall be in addition to all other taxes authorized to be levied by that incorporating unit. This tax shall not be included within and shall be in addition to any statutory limitation of rate or amount for that incorporating unit. The fund realized from the tax levy shall be set aside for the payment of the annual rent and shall not be disbursed for any other purpose until the annual rental has been paid in full.

23. All leases, contracts, deeds of conveyance, bonds, or other instruments in writing on behalf of the authority, shall be executed in the name of the authority by the chairman and secretary of the authority, or by other officers as the board of commissioners, by resolution, directs, and the seal of the authority shall be affixed.

24. All property owned by any authority shall be exempt from taxation by the state or any taxing unit of the state. However, any interest derived from bonds issued by the authority shall be subject to taxation.

25. When all bonds issued by an authority have been retired, the authority may convey the title to the property owned by the authority to the incorporating units in accordance with the provisions therefor contained in the articles of incorporation, or, if none, in accordance with any agreement adopted by the respective governing bodies of the incorporating units, and the authority. The proposition of whether a conveyance shall be made shall be submitted to the legal voters of the city and county, utilizing the election procedures provided for bond issues, and an affirmative vote equal to at least a majority of the total votes cast on the proposition shall be required to authorize the conveyance. If the proposition does not carry, the authority shall continue to operate, maintain, and manage the building under a lease arrangement with the incorporating units. [C62,§§368.50–368.53; C66, 71, 73, §§368.54, 368.55, 368.57–368.71; C75,§346.27]

Referred to in §384.12

CHAPTER 346A

COUNTY HEALTH CENTER

346A.1 Definitions.
346A.2 Authorized in certain counties.
346A.3 General obligation bonds—election.
346A.4 Gifts or grants—tax exempt bonds.
346A.5 Alternate method.

346A.1 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Board"* means the board of supervisors of the county.

2. *"Health center"* means a building or buildings, together with necessary equipment, furnishings, facilities, accessories and appurtenances and the site or sites therefor used primarily for the purposes of providing centralized locations, at which a county having a population as required by section 346A.2 may:

a. Provide those health, welfare and social services which such a county is presently or hereafter authorized or required by law to provide;

b. Lease space in such building or buildings to other public corporations, public agencies and private nonprofit agencies which provide health, welfare and social services.

3. *"Project"* shall mean the acquisition by purchase or construction of health centers, additions thereto and facilities therefor, the reconstruction, completion, equipment, improvement, repair or remodeling of health centers, additions thereto and facilities therefor, and the acquisition of property therefor of every kind and description, whether real, personal or mixed by gift, purchase, lease, condemnation or otherwise and the improvement of the same. [C71, 73, 75,§346A.1]

346A.2 Authorized in certain counties. Subject to and in accordance with the provisions of this chapter, counties having a population over one hundred thousand, as determined by the last official United States census, are hereby authorized to undertake and carry out any project as hereinbefore defined, and the boards thereof are authorized to operate, control, maintain and manage health centers and additions thereto and facilities therefor. The boards thereof are further authorized to appoint such committees, groups, or operating boards as they may deem necessary and advisable to facilitate the operation and management of such health centers, additions and facilities. The board is further authorized to lease space in any health center to other public corporations, public agencies and private nonprofit agencies engaged in furnishing health, welfare and social services which lease shall be on such terms and conditions as the board may deem advisable. All contracts for the construction, reconstruction, completion, equipment, improvement, repair or remodeling of any buildings, additions or facilities shall be let in accordance with the provisions of section 332.7 and chapter 23. To pay the cost of operating, maintaining and managing a health center the board of any such county is authorized to levy an annual tax not exceeding fifty-four cents per thousand dollars of assessed value per annum on all the taxable property in the county, said levy to be in addition to all other levies authorized by law for similar purposes. [C71, 73, 75,§346A.2]

Referred to in §§24.37, 346A.1

346A.3 General obligation bonds—election. To pay all or any part of the cost of carrying out any project said counties are authorized to borrow money and to issue and sell general obligation bonds and to refund bonds issued for any project or for refunding purposes at the same rate or at a lower rate or rates and from time to time as often as the board shall find it advisable and necessary so to do. It shall not be necessary to submit to the voters the proposition of issuing bonds for refunding purposes, but prior to the issuance of bonds for other purposes the board shall submit to the voters of the county the proposition of issuing the bonds, and in this connection the board is hereby authorized to call a special election, on its own motion, at which the proposition shall be submitted to the voters. Notice of said election shall be published once each week for at least four consecutive weeks in a newspaper published and having a general circulation in the county, which notice shall state the date of the election, the hours of opening and closing the polls and the location thereof, as well as the question to be submitted. The election shall be held on a date not less than five nor more than twenty days after the last publication of the notice. At such election the ballot shall be prepared and used in substantially the form for submitting special questions at general elections and the form of proposition shall be substantially as follows:

"Shall the county of ....., in the state of Iowa issue bonds in the amount of ..... for the purpose of .....?" No such proposition shall be declared carried unless the vote in favor of the issuance of the bonds is equal to at least sixty percent of the total vote cast for and against the proposition at the election. Before the issuance of bonds under this chapter, the board shall adopt a resolution providing for the levy of annual taxes sufficient to pay maturing installments of the principal of and interest on said bonds in accordance with the provisions of chapter 76, and said bonds shall mature within a period not exceeding twenty years from date of issue, shall bear interest at a rate or rates not exceeding seven percent per annum and shall be of such form as the board shall by resolution provide, but the aggregate indebtedness of any such county shall not exceed five percent of the actual value of the taxable property within the county as ascertained by the last preceding state and county tax lists.

Bonds issued pursuant to the provisions of this chapter shall be sold by the board in the manner prescribed by chapter 75; provided however, that refunding bonds may either be sold and the proceeds thereof applied to the payment of the bonds being refunded, or the refunding bonds may be issued in exchange for and upon surrender and cancellation of the bonds being refunded. [C71, 73, 75,§346A.3]

See 63GA, ch 87,§60

346A.4 Gifts or grants—tax exempt bonds. The board of any such county is authorized

to apply for and accept federal aid or non-federal gifts or grants of funds and to use the same to pay all or any part of the cost of carrying out any project or of operating and maintaining the same. All bonds issued under the terms of this chapter shall be exempt from taxation by the state of Iowa and the interest thereon shall be exempt from the state income tax. [C71, 73, 75,§346A.4]

346A.5 Alternate method. This chapter shall be construed as providing an alternative and independent method for carrying out any project, for the issuance and sale or exchange of bonds in connection therewith and for refunding bonds pertinent thereto, without reference to any other statute, and shall not be construed as an amendment of or subject to the provisions of any other law, and no other or further proceeding in respect to the issuance or sale or exchange of bonds under this chapter shall be required, except such as are prescribed by this chapter, any provisions of other statutes of the state to the contrary notwithstanding. [C71, 73, 75,§346A.5]

CHAPTER 347 -

COUNTY PUBLIC HOSPITALS

Referred to in §§11.6, 37.27, 135B.31
See reference in §256.3

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347.1 Petition—requirements. When it is proposed to establish in any county a county public hospital, a petition shall be presented to the board of supervisors, signed by two hundred or more resident freeholders of such county, at least one hundred fifty of whom shall not be residents of the city or village where it is proposed to locate such hospital, requesting said board to submit to the electors the proposition to issue bonds for the purpose of procuring a site, and erecting, equipping, and maintaining such hospital, and specifying the amount of bonds proposed to be issued for such purpose.

The fact that one election has been held under this section and that bonds have been issued which are still outstanding shall not be a bar to submission to the electors at a subsequent election under this section for authority to issue additional bonds so long as the proposed issue, together with those outstanding, does not exceed the maximum sum as limited by the provisions of sections 347.5 and 347.7.

This section shall also be applicable when an existing hospital is in such poor condition that the electors of the county feel that the same should be abandoned or dedicated to some other use, when a proposition for such abandonment is included in the petition above referred to in the aforesaid petitions and propositions submitted to the voters. [S13,§§409-a, -f; C24, 27, 31, 35, 39,§5348; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.1]

347.2 Bond election for addition. The board of supervisors of any county in which there is already an established county public hospital, when requested by a petition therefor signed by qualified electors of the county equal in number to five percent of the votes cast for governor at the last general election, and which petition shall have been approved by the board of hospital trustees, shall submit to the voters at the next general election or at a special election called therefor, the proposition of issuing county public hospital bonds for the purpose of erecting and equipping hospital buildings and additions thereto, and procuring sites for such hospital buildings and additions thereto, which proposition shall state the maximum amount of bonds to be issued and the annual rate of tax to be levied for the payment

of said bonds. Should the proposition carry at such election by a majority equal to at least sixty percent of all the votes cast for or against such proposition, the board of supervisors shall proceed to issue the bonds in the form provided in section 347.5, in such an amount within the total amount voted, and at such time, as the board of hospital trustees shall request, and upon the issue of such bonds the board of supervisors shall make provision for the payment of the principal and interest of the bonds out of the county public hospital fund by the levy of a tax within the limitations provided for in section 347.7. [C39,§5348.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.2]

Referred to in §37.27

347.3 Submission at general election. Upon the presentation of such petition, the board of supervisors shall submit to the voters of the county at the next general election the question of issuing bonds and levying a tax for such hospital in the form and manner required for the submission of public measures in the title on elections. [S13,§§409-a,-b; C24, 27, 31, 35, 39,§5349; C46, 50, 54, 58, 62, 66, 71, 73, 75, §347.3]

Submission procedure, §49.43 et seq.; also ch 345

347.4 Submission at special election. Should said petition so request, and the board of supervisors unanimously so order, said proposition may be submitted at a special election to be called by said board in the manner provided by law for submitting propositions at special elections. [S13,§§409-a,-b; C24, 27, 31, 35, 39, §5350; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.4]

Submission procedure, §49.43 et seq.; also ch 345

347.5 Bonds. Should a majority of all the votes cast upon the proposition at a general election be in favor of establishing such hospital, the board of supervisors shall proceed to issue bonds of the county not to exceed the amount specified in said proposition, in denominations of not less than one hundred dollars nor more than one thousand dollars, drawing interest at a rate not to exceed seven percent per annum, payable annually or semiannually. Said bonds shall be due and payable in twenty years from date of issuance, but at the option of the county payable at any time after ten years from such date, and shall be substantially in the form provided for county bonds, and shall show on their face that they are county public hospital bonds payable only from the county public hospital fund as provided for in section 347.7. [S13,§§409-a,-b,-f; C24, 27, 31, 35, 39,§5351; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.5]

Referred to in §§347.1, 347.2
Maturity and payment of bonds, ch 76
See 63GA, ch 87,§60

347.6 Vote required at special election. Said proposition when presented at a special election shall not be deemed carried unless said proposition receives not less than sixty percent of the total vote cast at said election. [S13,§§409-a,-b; C24, 27, 31, 35, 39,§5352; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.6]

347.7 Tax levy. If the hospital be established, the board of supervisors, at the time of levying ordinary taxes, shall levy a tax at the rate voted not to exceed fifty-four cents per thousand dollars of assessed value in any one year for the erection and equipment thereof, and also a tax not to exceed twenty-seven cents per thousand dollars of value for the improvement, maintenance, and replacements of the hospital, as certified by the board of hospital trustees; provided, however, in counties having a population of two hundred twenty-five thousand inhabitants or over, the levy for improvements and maintenance of the hospital shall not exceed one dollar and thirty-five cents per thousand dollars of assessed value in any one year. The proceeds of such taxes shall constitute the county public hospital fund and such fund shall be subject to review by the board of supervisors in counties over two hundred twenty-five thousand. Provided, however, that the board of trustees of a county hospital of said county, where funds are available in the county public hospital fund of said county which are unappropriated, may use such unappropriated funds for erecting and equipping hospital buildings and additions thereto without authority from the voters of said county.

No levy shall be made for the improvement, maintenance, or replacements of the hospital until the hospital has been constructed, staffed, and receiving patients. Whenever revenue bonds are issued and outstanding under the provisions of section 347.27, the authority contained in section 347.27 to levy the tax to pay operating and maintenance expenses, when and as therein provided, shall be in lieu of and not in addition to the authority contained in this section to levy the tax of not to exceed twenty-seven cents per thousand dollars of assessed value for the improvement, maintenance and replacements of the hospital and of not to exceed one dollar and twenty-one and one-half cents per thousand dollars of assessed value for improvements and maintenance of the hospital in counties having a population of two hundred twenty-five thousand inhabitants or over. [S13,§§409-b,-j; C24, 27, 31, 35, 39, §5353; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.7]

Referred to in §§347.1, 347.2, 347.5

347.8 Sale of bonds. The county treasurer shall dispose of the bonds in the same manner as other county bonds, and the same shall not be sold for less than par with accrued interest. Upon the issuance of the bonds as herein authorized and the sale thereof by the county treasurer the board of supervisors may direct the county treasurer to invest the proceeds from the sale of said bonds in United States government bonds which said proceeds, when so invested, and the accumulation of interest on the bonds so purchased shall be used for the purposes for which said hospital bonds were authorized; such investment when so made shall remain in said United States government bonds until such time as in the judg-

ment of the board of supervisors it is deemed advisable to commence the construction of said county hospital or in the case of an addition to an already existing hospital until such time in the judgment of the board of hospital trustees it is deemed advisable to commence the construction of such addition. [S13,§409-f; C24, 27, 31, 35, 39,§5354; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.8]

Disposal of bonds, chs 75, 346

347.9 Trustees — appointment — terms of office. When it has been determined by the voters of a county to establish a county public hospital, the board shall appoint seven trustees chosen from among the resident citizens of the county with reference to their fitness for such office, and not more than four of such trustees shall be residents of the city or village at which such hospital is located. Such trustees shall hold office until the following general election, at which time their successors shall be elected, two for a term of two years, two for four years, and three for six years, and they shall determine by lot their respective terms, and thereafter their successors shall be elected for regular terms of six years each, none of whom shall be physicians or licensed practitioners. [S13,§409-c; C24, 27, 31, 35, 39, §5355; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.9]

347.10 Vacancies. Vacancies in the board of trustees may be filled by an appointment to fill the vacancy by the remaining members of the board of trustees or, if fewer than four trustees remain on the board, by the board of supervisors for the period until the vacancies are filled pursuant to section 69.12. Should any board member be absent for four consecutive regular board meetings, without prior excuse, his position shall be declared vacant and filled as set out above. [S13,§409-e; C24, 27, 31, 35, 39,§5356; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.10; 66GA, ch 81,§145]

347.11 Organization — meetings — quorum. Said trustees shall, within ten days after their appointment or election, qualify by taking the usual oath of office, but no bond shall be required of them, except as hereafter provided, and organize by the election of one of their number as chairman and one as secretary, and one as treasurer. The secretary and treasurer shall each file with the chairman of the board a surety bond in such penal sum as the board of trustees may require and with sureties to be approved by the board for the use and benefit of the county public hospital. The reasonable cost of such bonds shall be paid from operating funds of the hospital. The secretary shall report to the county auditor and treasurer the names of the chairman, secretary and treasurer of the board of hospital trustees as soon as practicable after the qualification of each. Said board shall meet at least once each month. Four members of said board shall constitute a quorum for the transaction of business. The secretary shall keep a complete record of its proceedings. [S13,§409-d; C24, 27, 31, 35, 39,§5357; C46, 50, 54, 58, 62, 66, 71, 73, 75, §347.11]

Oath of office, §63.10

347.12 Hospital treasurer. The treasurer of the county hospital shall receive and disburse all funds. Warrants shall be drawn by the secretary and countersigned by the chairman of the board after the claim has been certified by the board.

The treasurer of the county hospital shall keep an accurate account of all receipts and disbursements and shall register all orders drawn and reported to him by the secretary, showing the number, date, to whom drawn, the fund upon which drawn, the purpose and amount.

The secretary of the hospital board of trustees shall file monthly on or before the tenth day of each month with such board a complete statement of all receipts and disbursements from all funds during the preceding month, and also the balance remaining on hand in such funds at the close of the period covered by said statement.

Before the third Monday of each month in each year, the county treasurer shall give notice to the chairman of the board of hospital trustees of the amount of revenue collected for each fund of the hospital to the first day of such month, and the chairman shall draw his draft therefor countersigned by the secretary, upon the county treasurer, who shall pay such taxes to the treasurer of the hospital, only on such draft. [S13,§409-d; C24, 27, 31, 35, 39,§5358; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.12]

Referred to in §37.9

347.13 Powers and duties. Said board of hospital trustees shall:

1. Purchase, condemn, or lease a site for such public hospital, and provide and equip suitable hospital buildings.

2. Cause plans and specifications to be made and adopted for all hospital buildings and equipment, and advertise for bids, as required by law for other county buildings, before making any contract for the construction of any such building or the purchase of such equipment.

3. Have general supervision and care of such grounds and buildings.

4. Employ an administrator, and necessary assistants and employees, and fix their compensation.

5. Have control and supervision over the physicians, nurses, attendants, and patients in the hospital.

6. Cause one of its members to visit and examine said hospital at least twice each month.

7. Provide a suitable room for detention and examination of persons brought before the commissioners of hospitalization of the county, if such hospital is located at the county seat.

8. Determine whether or not any applicant is indigent or tuberculous and entitled to free

treatment therein, and to fix the price to be paid by other patients admitted to such hospital for their care and treatment therein.

9. Fix at its regular February meeting in each year, the amount necessary for the improvement and maintenance of the hospital during the ensuing fiscal year, and cause the president and the secretary to certify the same to the county auditor before March 1 of each year, subject to the provisions of section 347.27.

10. File with the board of supervisors during the fourth week in July of each year, a report covering their proceedings with reference to such hospital, and a statement of all receipts and expenditures during the preceding fiscal year.

11. Accept property by gift, devise, bequest, or otherwise; and, if said board deems it advisable, may, at public sale, sell or exchange any property so accepted upon a concurring vote of a majority of all members of the board of hospital trustees, and apply the proceeds thereof, or property received in exchange therefor, to the purposes enumerated in subsection 12 hereof or for equipment.

12. Submit to the voters at any regular or special election a proposition to sell or lease any sites and buildings, excepting those described in subsection 11 hereof, and upon such proposition being carried by a majority of the total number of votes cast at such election, may proceed to sell such property at either public or private sale, and apply the proceeds only for:

a. Retirement of bonds issued and outstanding in connection with the purchase of said property so sold;

b. Further permanent improvements as the board of hospital trustees may determine.

13. When it is determined by said board that all or a part of the facilities acquired under the provisions of this chapter and operated as a tuberculosis sanatorium are no longer needed for the uses provided or permitted under this chapter, the board may lease to the county or any political subdivision thereof for any public purpose, such facilities or such part thereof as the board deems proper.

14. There shall be published quarterly in each of the official newspapers of the county as selected by the board of supervisors pursuant to section 349.1 the schedule of bills allowed and there shall be published annually in such newspapers the schedule of salaries paid by job classification and category, but not by listing names of individual employees. The names, addresses, salaries, and job classification of all employees paid in whole or in part from a tax levy shall be a public record and open to inspection at reasonable times as designated by the board of trustees. [S13, §§409-d,-g,-h,-j,-l,-m,-p,-r; C24, 27, 31, 35, 39,§**5359**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.13]

Referred to in §145A.12
Advertisement for bids, §332.7
Powers under consolidation, §348.2

347.14 Optional powers and duties. The board of hospital trustees may:

1. Adopt bylaws and rules for its own guidance and for the government of the hospital.

2. Establish and maintain in connection with said hospital a training school for nurses.

3. Establish as a department in connection with said hospital a suitable building for the isolation and detention of persons afflicted with contagious diseases subject to quarantine.

4. Determine whether or not, and if so upon what terms, it will extend the privileges of the hospital to nonresidents of the county.

5. Adopt some suitable name other than county public hospital for hospitals either operating now, in process of construction, or to be established hereafter.

6. Operate said hospital as a tuberculosis sanatorium or provide as a department of such hospital suitable accommodation and means for the care of persons afflicted with tuberculosis.

7. Formulate rules and regulations for the government of tuberculous patients and for the protection of other patients, nurses, and attendants from infection.

8. In counties having a population of one hundred thirty-five thousand inhabitants or over, establish a psychiatric department in connection with said hospital to provide for temporary admission of patients for observation, examination, diagnosis and treatment, which admission shall be for a period of not more than sixty days.

9. Procure and pay premiums on any and all insurance policies required for the prudent management of the hospital, including but not limited to public liability, professional malpractice liability, workers' compensation and vehicle liability. Said insurance may include as additional insureds the board of trustees and employees of the hospital. This subsection applies to all county hospitals whether organized under this chapter, chapter 347A, chapter 37, or otherwise established by law.

10. Do all things necessary for the management, control and government of said hospital and exercise all the rights and duties pertaining to hospital trustees generally, unless such rights of hospital trustees generally are specifically denied by this chapter, or unless such duties are expressly charged by this chapter.

11. The said trustees may in their discretion establish a fund for depreciation as a separate fund. Said funds may be invested in United States government bonds and when so invested the accumulation of interest on the bonds so purchased shall be used for the purposes of said depreciation fund; such investment when so made shall remain in said United States government bonds until such time as in the judgment of the board of trustees it is deemed advisable to use said funds for hospital purposes.

12. Operate a health care facility as defined in section 135C.1 in conjunction with the hospital.

13. Purchase, lease, equip, maintain and operate an ambulance or ambulances to provide necessary and sufficient ambulance service or to contract for such vehicles, equipment, maintenance or service when such ambulance service is not otherwise available. [S13,§§409-d,-k,-o,-q; C24, 27, 31, 35, 39,§5360; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.14; 66GA, ch 1084,§43]

Referred to in §145A.12

347.15 Pecuniary interest prohibited. No trustee shall have, directly or indirectly, any pecuniary interest in the purchase or sale of any commodities or supplies procured for or disposed of by said hospital. [S13,§409-d; C24, 27, 31, 35, 39,§5361; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.15]

Similar provisions, §§19B.5, 68B.3, 86.7, 252.29, 262.10, 314.2, 362.5, 403.16, 403A.22, 741.11

347.16 Hospital benefits—terms. Any resident of the county who is sick or injured shall be entitled to the benefits of such hospital and shall pay to the board of hospital trustees reasonable compensation for care and treatment according to the rules and regulations established by the board.

Free care and treatment in such county public hospital in counties with a population of more than one hundred thirty-five thousand to any indigent or tuberculous persons shall be furnished to such residents of the county as have established legal settlement in the county as defined in section 252.16 and have been found by the board of hospital trustees to be indigent and entitled to said care, or be entitled to free care as provided in chapter 254*. Provided, however, such county public hospital may provide hospital benefits to indigent persons having a legal settlement outside the county and the county of such persons legal settlement shall pay to such county public hospital for the fair and reasonable cost of such care, treatment, and hospitalization.

Free care and treatment in such county public hospital in all other counties to any tuberculous persons may be furnished to such residents of the county as have established legal settlement in the county as defined in section 252.16 and are entitled to free care under the provisions of section 254.8*. In cases other than tuberculosis, care and treatment in such county public hospital to any indigent persons shall likewise be furnished to such residents of the county as have established legal settlement in the county as defined in section 252.16 and have been found by the board of hospital trustees to be indigent and entitled to said care. In integrated counties where the board of hospital trustees have no social service department, then under the supervision of the board of hospital trustees, the overseer of the poor or the director of social welfare shall determine whether or not said persons are indigent and entitled to said care. Cost of said care shall be the liability of the county, and upon claim made therefor paid under the authority and in the manner specified by section 252.35. Provided, however, such county public hospital may provide hospital benefits to indigent persons having a legal settlement outside the county and the county of such persons legal settlement shall pay to such county public hospital for the fair and reasonable cost of such care, treatment, and hospitalization.

A county public hospital shall not be required to provide facilities for treatment of tuberculous persons. Where such facilities for treatment of tuberculous persons are not available in the county public hospital, care and treatment shall be provided under the provisions of section 254.1.*

To be entitled to hospital benefits, patients shall at all times observe the rules of conduct prescribed by the board of hospital trustees. [S13,§409-k; C24, 27, 31, 35, 39,§5362; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.16]

*Repealed by 66GA, ch 1056,§45

347.17 Accounts—collection. It shall be the duty of the trustees either by themselves or through the superintendent to make collections of all accounts for hospital services rendered for others than indigent patients or patients entitled to free care as provided in chapter 254.* Such account shall be payable on presentation to the person liable therefor of an itemized statement and if not paid or secured within sixty days after such presentation the said trustees shall proceed to enforce collections by such means as are necessary and are authorized to employ any person for that purpose, and if legal proceedings are required they may employ counsel, the employment in either event to be on such arrangement for compensation as the trustees deem appropriate, provided, however, that should the county attorney act as attorney for the board in any such legal proceedings he shall serve without additional compensation. [C24, 27, 31, 35, 39, §5363; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.17]

*Repealed by 66GA, ch 1056,§45

347.18 Discrimination. In the management of such hospital, no discrimination shall be made against the practitioners of any recognized school of medicine; and each patient shall have the right to employ at his expense any physician of his choice; and any such physician, when so employed by the patient, shall have exclusive charge of the care and treatment of the patient; and attending nurses shall be subject to the direction of such physician. [S13,§409-n; C24, 27, 31, 35, 39,§5364; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.18]

Referred to in §347A.5

Applicable to hospitals payable from revenue, ch 347A

347.19 Compensation—expenses. No trustee shall receive any compensation for his services performed under this chapter, but he shall be reimbursed for any cash expenditures actually

made for personal expenses incurred in the performance of his duties. An itemized statement of such expenses, verified by the oath of each such trustee, shall be filed with the secretary, and the same shall only be allowed by an affirmative vote of all trustees present at the meeting of the board. [S13,§409-d; C24, 27, 31, 35, 39,§5365; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.19]

347.20 Municipal jurisdiction. When such hospital is located on land outside of, but adjacent to a city, the ordinances of such city relating to fire and police protection and control, sanitary regulations, and public utility service, shall be in force upon and over such hospital and grounds, and such city shall have jurisdiction to enforce such ordinances. [S13, §409-i; C24, 27, 31, 35, 39,§5366; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.20]

347.21 County contract for care of indigent persons. The board of supervisors of any county in which no county hospital has been established may in its discretion enter into a contract not to exceed one year with any hospital situated in the county for the hospital care of indigent persons, or others who may be the responsibility of said board of supervisors.

In no event shall any such contract provide that the hospital receive less than its cost of rendering such care to the recipient thereof as such cost may be determined by sound hospital accounting principles. [C24, 27, 31, 35, 39, §5367; C46, 50, 54, 58, 62, 66, 71, 73, 75,§347.21]

347.22 Who entitled to such care. In those counties in which the board of supervisors has entered into a contract with a hospital other than a county hospital for the hospital care of indigent persons the board of supervisors shall determine those persons entitled to care at the county's expense. [C24, 27, 31, 35, 39,§5368; C46, 50, 54, 58, 62, 66, 71, 73, 75, §347.22]

347.23 City hospital changed to county hospital. Any hospital organized and existing as a city hospital may become a county hospital organized and managed as provided for in this chapter, upon a proposition for such purpose being submitted to and approved by a majority of the electors of both the city in which such hospital is located, and of the county under whose management it is proposed that such hospital be placed, at any general or special election called for such purpose. The proposition shall be placed upon the ballot by the board of supervisors when requested by a petition therefor signed by qualified electors of the county equal in number to five percent of the votes cast for president of the United States or governor, as the case may be, at the last general election. The proposition may be submitted at the next general election or at a special election called therefor. Upon the approval of the proposition the hospital, its assets and liabilities, will become the property of the county and this chapter will govern its future management. The question shall be submitted in substantially the following form: "Shall the municipal hospital of ....., Iowa, be transferred to and become the property of, and be managed by the county of ....., Iowa?"

For the purpose of computing whether or not said proposition is carried, the votes of the residents of the city in which said hospital is located shall be counted both for the purpose of ascertaining whether or not the proposition is carried within the city and also for the purpose of ascertaining whether or not the proposition is carried within the county. [C62, 66, 71, 73,§§347.23, 380.12; C75,§347.23]

347.24 Law applicable to other hospitals. Hospitals organized under chapter 37 or chapter 347A may be operated as provided for in this chapter in any way not clearly inconsistent with the specific provisions of their chapters. [C62, 66, 71, 73, 75,§347.24]

347.25 Election of trustees. The election of hospital trustees whose offices are established by this chapter or chapter 145A or 347A shall take place at the general election on ballots which shall not reflect a nominee's political affiliation. Nomination shall be made by petition in accordance with chapter 45. The petition form shall be furnished by the county commissioner of elections, signed by eligible electors of the county equal in number to one percent of the vote cast for president of the United States or governor, as the case may be, by both political parties in the last previous general election, and shall be filed with the county commissioner of elections at least fifty-five days prior to the date of said general election. A plurality shall be sufficient to elect hospital trustees, it being the intent that there be no primary election.

If any of the provisions of this section shall be in conflict with any of the laws of this state, then the provisions of this section shall prevail. [C62, 66, 71, 73, 75,§347.25; 66GA, ch 81,§146]

Referred to in §§39.21, 145A.11

347.26 Health care facility in existing hospital. In any county where there is a county hospital in existence, a health care facility as defined in section 135C.1 may be established to be operated in conjunction therewith, and all of the provisions of this chapter and all of the proceedings authorized thereby relating to hospital buildings and additions thereto, shall apply to erecting, equipping and procuring sites for such facilities and additions thereto, as well as for improvements, maintenance and replacements of such facilities. [C62, 66, 71, 73, 75,§347.26]

347.27 Revenue bonds authorized. Any county having theretofore established a county public hospital being operated under the provisions of this chapter may equip, enlarge, and improve the county public hospital and acquire

the necessary lands, rights of way, and other property. For the purpose of equipping, enlarging, and improving any such county public hospital, including the acquisition of the necessary lands, rights of way, and other property, any county may, pursuant to resolution of the board of supervisors of the county and after it has been determined by the board of hospital trustees to be advisable, from time to time issue and dispose of its negotiable interest-bearing revenue bonds, payable solely as to both principal and interest from the revenues derived from the operation of the county public hospital. All such bonds may bear such date or dates, may mature at such time or times not exceeding thirty years from their respective dates, may bear interest at such rate or rates not exceeding seven percent per annum payable semiannually, may be in such form and payable at such place or places, and may be subject to such redemption privileges as are stated on the face thereof and as may be provided in the resolution.

After a resolution authorizing the revenue bonds has been adopted, the county auditor shall publish notice of the adoption in at least one newspaper of general circulation in the county at least once each week for two consecutive weeks. The notice shall identify the resolution by the date of its adoption and shall specify the amount of bonds proposed to be issued. If within thirty days following the date of the first publication of the notice a petition is filed with the county auditor signed by qualified voters of the county in a number equal to or exceeding twenty percent of the total number of votes cast in the county for governor at the last preceding regular election at which a governor was elected, then the bonds authorized by the resolution shall not be issued until the proposition to issue the bonds is submitted at an election throughout the county and approved by not less than sixty percent of the votes cast for and against the proposition. When any petition is filed, it shall be referred to the board of supervisors at its next meeting. The board of supervisors may either repeal the bond resolution or order the election which shall be called and conducted in the manner provided by chapter 345. If no petition is filed within the time provided or if a petition is filed and the proposition of issuing the bonds is approved at the election, then the board of supervisors may proceed with the equipment, enlargement and improvement of the county public hospital and the acquisition of the necessary lands, rights of way, and other property and the issuance of revenue bonds, as provided in this section.

Under no circumstances shall any revenue bonds issued under the provisions of this section be or become an indebtedness of the county within the purview of any constitutional or statutory limitation or provision. It shall be plainly stated on the face of each bond that it does not constitute such an indebtedness, but is payable solely from revenues derived from the operation of the county hospital. All the bonds shall be sold in a manner and upon terms prescribed by the resolution authorizing the issuance of the bonds, however no bonds shall be sold upon terms that will result in an interest cost computed to maturity of the bonds according to standard tables of bond values of more than seven percent per annum. The resolution authorizing the revenue bonds may contain any covenants determined by the board of supervisors to be desirable in connection with the use and application of the bond proceeds, the operation of the county public hospital, and the custody and application of the revenues from this operation. The sole remedy for any breach or default of the terms of any bonds or proceedings for their issuance shall be by mandamus in a court of competent jurisdiction to compel performance and compliance therewith.

The board of hospital trustees shall fix rates, fees, and charges for the services furnished by the county public hospital so that the revenues of the county public hospital will be at all times sufficient to provide for the payment of the interest on and principal of all revenue bonds issued and outstanding under the provisions of this section, and for the payment of all operating and maintenance expenses of the county public hospital. If in any year, after payment of the accruing interest on and principal due of any revenue bonds issued hereunder from the revenues derived from the operation of such hospital, there be a balance of such revenues insufficient to pay the expenses of operation and maintenance of the county public hospital the board of hospital trustees shall certify that fact as soon as ascertained to the board of supervisors of such county, and thereupon it shall be the duty of such board of supervisors to make the amount of such deficiency for paying the expenses of operation and maintenance of the county public hospital available from other county funds or, the board of supervisors of such county shall levy a tax not to exceed twenty-seven cents per thousand dollars of assessed value in counties having a population of less than two hundred twenty-five thousand inhabitants, or one dollar and twenty-one and one-half cents per thousand dollars of assessed value in counties having a population of two hundred twenty-five thousand inhabitants or over, in any one year on all the taxable property in said county in an amount sufficient for that purpose, it being conditioned that no general county funds or the proceeds of any taxes shall ever be used or applied to the payment of the interest on or principal of any revenue bonds issued under the provisions of this section, but that such general county funds or proceeds of taxes may only be used and applied to pay such expenses of operation and maintenance of the county public hospital as cannot be paid from available revenues derived from such operation.

All contracts for construction work to be paid for in whole or in part through the issuance of revenue bonds under the provisions

of this section shall be awarded by the board of supervisors on competitive bidding following such advertisement as may be prescribed by such board.

This section is an alternative and independent method for the equipment, enlargement, and improvement of a county public hospital, and for the issuance and sale of revenue bonds and shall not be construed as limiting or superseding any other method of equipping, enlarging, or improving a county public hospital. [C73, 75,§347.27]

Referred to in §§347.7, 347.13(9)

347.28 Sale or lease of property. Any county or city hospital may lease or sell any of its property which is not needed for hospital purposes to any person for use as a physician's office, medical clinic, or any other health-related purpose. [C75,§347.28]

Referred to in §347.30

347.29 Use of property for clinic. Any county or city hospital may use property received by gift, devise, bequest or otherwise, or the proceeds from the sale of such property, for the construction of facilities for lease or sale as a medical clinic or a physician's office subject to the approval of the appropriate local health planning agency. [C75,§347.29]

Referred to in §347.30

347.30 Advertise for bids. A county or city hospital shall advertise for bids before selling or leasing any property pursuant to sections 347.28 and 347.29. The advertisement shall definitely describe the property and shall be published by at least one insertion each week for two consecutive weeks in a newspaper having general circulation in the county where the property is located. Bids shall not be accepted prior to two weeks after the second publication nor later than six months after the second publication. The highest competent bid must be accepted unless all bids received are deemed inadequate and rejected. [C75, §347.30]

CHAPTER 347A

COUNTY HOSPITALS PAYABLE FROM REVENUE

Referred to in §§11.6, 347.14, 347.24, 347.25

See §§347.14(9), 347.24

347A.1 Contracts—trustees.
347A.2 Bonds—authorization—payment.
347A.3 Tax for maintenance and operation.
347A.4 Independent method.
347A.5 Discrimination prohibited.
347A.6 Collection of accounts.
347A.7 Enlarging and improving county hospital.
347A.8 Acquisition of private facilities.

347A.1 Contracts—trustees. Any county in the state of Iowa having a population less than one hundred fifty thousand is hereby authorized and empowered to acquire, construct, equip, operate and maintain a county hospital and, for the purpose of acquiring, constructing, equipping, enlarging or improving any such county hospital and acquiring the necessary lands, rights of way and other property necessary therefor, may issue revenue bonds all as in this chapter provided. All contracts for construction work of such county hospital shall be awarded by the board of supervisors on competitive bidding following such advertisement as may be prescribed by such board. The administration and management of any county hospital acquired, constructed, equipped, enlarged or improved under this chapter shall be vested in a board of hospital trustees consisting of five members appointed by the board of supervisors from among the resident citizens of the county with reference to their fitness for such office, and not more than two of such trustees shall be residents of the same township. Such trustees shall hold office until the next succeeding election, at which time their successors shall be elected, two for a term of two years, two for a term of four years and one for a term of six years, and thereafter their successors shall be elected for regular terms of six years each. Vacancies in the board of trustees may be filled in the same manner as original appointments to hold office until the vacancies are filled pursuant to section 69.12. Said trustees shall, within ten days after their appointment or election qualify by taking the usual oath of office, but no bond shall be required of them. The members of such board of hospital trustees shall receive no compensation but shall be reimbursed for all expenses incurred by them with the approval of said board in the performance of their duties. The board first appointed shall organize promptly following their appointment, and shall serve until such time as their successors are elected and qualified; thereafter no later than December 1 of each year the board shall reorganize by the appointment of a chairman, secretary, and treasurer. The secretary and treasurer shall each file with the chairman of the board a surety bond in such penal sum as the board of trustees re-

quires, with sureties to be approved by the board of trustees, for the use and benefit of the county hospital. The reasonable cost of the bonds shall be paid from the operating funds of the hospital. The secretary shall report to the county auditor and the county treasurer the names of the chairman, secretary, and treasurer of the board as soon as practicable after the appointment of each. The treasurer of the county hospital shall receive and disburse all funds. Warrants shall be drawn by the secretary and countersigned by the chairman of the board after the claim has been certified by the board. The treasurer of the county hospital shall keep an accurate account of all receipts and disbursements and shall register all orders drawn and reported to him by the secretary, showing the number, date, to whom drawn, the fund upon which drawn, the purpose, and amount. The secretary of the board of hospital trustees shall file with the board on or before the tenth day of each month, a complete statement of all receipts and disbursements from all funds during the preceding month, and also the balance remaining on hand in all funds at the close of the period covered by the statement. Before the third Monday of each month, the county treasurer shall give notice to the chairman of the board of hospital trustees of the amount of revenue collected for each fund of the hospital to the first day of that month, and the chairman shall draw his draft therefor countersigned by the secretary, upon the county treasurer, who shall pay such taxes to the treasurer of the hospital, only on such draft. The board of hospital trustees may employ, fix the compensation and remove at pleasure professional, technical and other employees, skilled or unskilled, as it may deem necessary for the operation and maintenance of the hospital, and disbursement of funds in such operation and maintenance shall be made upon order and approval of the board of hospital trustees. A county hospital may include a nurses home and nurses training school. The board of trustees shall make all rules and regulations governing its meetings and the operation of the county hospital and shall fix rates, fees and charges for the services thereby furnished so that the revenues will be at all times sufficient in the aggregate to provide for the payment of the interest on and principal of all revenue bonds that may be issued and outstanding under the provisions of this chapter, and for the payment of all operating and maintenance expenses of the hospital. [C50, 54, 58, 62, 66, 71, 73, 75,§347A.1; 66GA, ch 81, 147]

347A.2 Bonds — authorization — payment. For the purpose of acquiring, constructing, equipping, enlarging or improving such hospital or any part thereof, any such county may, pursuant to resolution of the board of supervisors of such county, from time to time issue and dispose of its negotiable interest-bearing revenue bonds payable solely as to both principal and interest from the revenues to be derived from the operation of such hospital. All such bonds may bear such date or dates, may mature at such time or times not exceeding thirty years from their respective dates, may bear interest at such rate or rates not exceeding seven percent per annum payable semiannually, may be in such form and payable at such place or places, and may be subject to such redemption privileges as is stated on the face thereof and as may be provided in such resolution. After a resolution authorizing such revenue bonds has been adopted the county auditor shall publish notice of such adoption in at least one newspaper of general circulation in the county at least once each week for two consecutive weeks. Such notice shall identify the resolution by the date of its adoption and shall specify the amount of bonds proposed to be issued, and if within twenty days following the date of the first publication of such notice a petition is filed with the county auditor signed by qualified voters of said county in number equal to or exceeding twenty percent of the total number of votes cast in such county for governor at the last preceding regular election whereat a governor was elected then the bonds authorized by such resolution shall not be issued unless and until the proposition to issue same shall have been submitted at an election throughout the county and approved by not less than sixty percent of the votes cast for and against the proposition. When any such petition is filed it shall be referred to the board of supervisors at its next meeting and thereupon the board of supervisors may either repeal the bond resolution or order the election which shall be called and conducted in the manner provided by chapter 345. If there be no petition filed within the time hereinbefore provided or if there be a petition filed and the proposition of issuing such bonds is approved at such election then the board of supervisors may proceed with the acquisition, construction, equipment, operation and maintenance of the county hospital and the issuance of bonds in connection therewith, all as in this chapter permitted and provided. Under no circumstances shall any revenue bonds issued under the provisions of this chapter be or become an indebtedness of the county within the purview of any constitutional or statutory limitation or provision, and it shall be plainly stated on the face of each bond that it does not constitute such an indebtedness, but is payable solely from the revenues as aforesaid. All such bonds shall be sold in such manner and upon such terms as is prescribed by the resolution authorizing the issuance thereof, provided, that no bonds shall be sold upon terms that will result in an interest cost computed to maturity of the bonds according to standard tables of bond values of more than seven percent per annum. The resolution authorizing such revenue bonds may contain such covenants as are determined by the board of supervisors to be desirable in connection with

the use and application of the bond proceeds, the operation of the county hospital and the custody and application of the revenues from such operation. The sole remedy for any breach or default of the terms of any such bonds or proceedings for their issuance shall be by mandamus in a court of competent jurisdiction to compel performance and compliance therewith. [C50, 54, 58, 62, 66, 71, 73, 75, §347A.2]

Referred to in §145A.20
See 63GA, ch 87,§60

347A.3 Tax for maintenance and operation. If in any year, after payment of the accruing interest on and principal due of any revenue bonds issued hereunder from the revenues derived from the operation of such hospital, there be a balance of such revenues insufficient to pay the expenses of operation and maintenance of the county hospital the board of hospital trustees shall certify that fact as soon as ascertained to the board of supervisors of such county, and thereupon it shall be the duty of such board of supervisors to make the amount of such deficiency for paying the expenses of operation and maintenance of the county hospital available from other county funds or, the board of supervisors of such county shall levy a tax not to exceed one dollar and eight cents per thousand dollars of assessed value in any one year on all the taxable property in said county in an amount sufficient for that purpose, it being conditioned that no general county funds or the proceeds of any taxes shall ever be used or applied to the payment of the interest on or principal of any revenue bonds issued under the provisions of this chapter, but that such general county funds or proceeds of taxes may only be used and applied to pay such expenses of operation and maintenance of the county hospital as cannot be paid from available revenue derived from such operation. [C50, 54, 58, 62, 66, 71, 73, 75,§347A.3]

347A.4 Independent method. This chapter shall be construed as providing an alternative and independent method for the acquisition, construction, equipment, enlargement, improvement, operation and maintenance of a county hospital, and for the issuance and sale of revenue bonds in connection therewith, and shall not be construed as an amendment of or subject to the provisions of any other law. [C50, 54, 58, 62, 66, 71, 73, 75,§347A.4]

347A.5 Discrimination prohibited. The provisions of section 347.18 are made applicable to this chapter. [C50, 54, 58, 62, 66, 71, 73, 75, §347A.5]

347A.6 Collection of accounts. It shall be the duty of the hospital trustees either by themselves or through the superintendent or similar person to make collections of all accounts for hospital services. Such account shall be payable on presentation to the person liable thereby of an itemized statement and if not paid or secured within sixty days after such presentation the said trustees shall proceed to enforce collections by such means as are necessary and are authorized to employ any person for that purpose and, if legal proceedings are required, may employ counsel, the employment in either event to be on such arrangement for compensation as the hospital trustees deem appropriate. [C58, 62, 66, 71, 73, 75,§347A.6]

347A.7 Enlarging and improving county hospital. For the purpose of enlarging and improving any county hospital or hospitals theretofore acquired and being operated under the provisions of this chapter, any such county, upon petition and recommendation of the board of hospital trustees, and pursuant to resolution of the board of supervisors of such county, may from time to time incur indebtedness and issue and sell the negotiable interest-bearing general obligation bonds of said county, provided that the principal amount of all such bonds which may be issued and outstanding under this section shall not be in excess of two percent of the assessed value of the taxable property in such county as shown by the latest state and county tax lists. All such bonds may bear such date or dates, may mature at such time or times not exceeding twenty years from their respective dates, may bear interest at such rate or rates not exceeding seven percent per annum payable semi-annually, may be in such form and payable at such place or places, and may be made subject to such privileges of redemption prior to maturity and upon such terms of redemption as are stated on the face of such bonds and as may be provided in such resolution.

For the purpose of paying such bonds and interest thereon, the board of supervisors of such county shall in and by the resolution authorizing the issuance thereof provide for the levy of an annual tax sufficient for that purpose on all of the taxable property in such county, in addition to all other taxes.

After the resolution authorizing any such bonds has been adopted the county auditor shall publish notice of such adoption in at least one newspaper of general circulation in the county at least once each week for two consecutive weeks. Such notice shall identify the resolution by the date of its adoption and shall specify the amount of bonds proposed to be issued, and if, within twenty days following the date of the first publication of such notice, a petition is filed with the county auditor signed by qualified voters of said county in number equal to or exceeding twenty percent of the total number of votes cast in such county for governor at the last preceding regular election whereat a governor was elected, then the bonds authorized by such resolution shall not be issued unless and until the proposition to issue same shall have been submitted at an election throughout the county and approved by not less than sixty percent of the

votes cast for and against the proposition. When any such petition is filed, it shall be referred to the board of supervisors at its next meeting and thereupon the board of supervisors may either repeal the bond resolution or order an election which shall be called and conducted substantially in the manner provided by chapter 37. If no petition is filed within the time hereinbefore provided or if a petition is filed and the proposition of issuing such bonds is approved at such election, then the board of supervisors may proceed with the enlargement and improvement of such county hospital and the issuance of bonds in connection therewith, all as in this section permitted and provided.

This section shall be construed as providing an alternative and independent method for the enlargement and improvement of such county hospital; shall not be construed as limiting or superseding any other method of enlargement and improvement of such county hospital; and shall not be construed as an amendment of or subject to the provisions of any other law. [C62, 66, 71, 73, 75,§347A.7]

See 63GA, ch 87,§60

347A.8 Acquisition of private facilities. Any county undertaking to acquire, construct, equip, operate, and maintain a county hospital under the provisions of this chapter may enter into agreements with the board of directors or board of trustees of any corporation owning and operating existing hospital facilities in the county under which all assets of the corporation shall be conveyed to the county and the county shall assume and pay any existing indebtedness and liability of such corporation. A county may further acquire, by gift or purchase, existing privately owned property and hospital facilities located in the county to operate and maintain such property and facilities in conjunction with the hospital established under the provisions of this chapter and may issue revenue bonds pursuant to provisions of this chapter to pay all or any part of the purchase price of any such property and facilities.

The provisions of sections 565.8 to 565.11 shall not apply to the acquisition of property and facilities as authorized in this section. [C71, 73, 75,§347A.8]

CHAPTER 348

CONSOLIDATION OF HOSPITAL SERVICE

348.1 Consolidation and powers.
348.2 Consolidation—powers of trustees.
348.3 Discrimination prohibited.
348.4 Sale of property after consolidation.
348.5 Repealed by 64GA, ch 1088,§286.

348.1 Consolidation and powers. The purpose of this chapter is to grant to hospital trustees additional powers, and to consolidate and combine under one management all of the public hospital service of the counties and cities coming within its provisions. [C27, 31, 35,§5368-a1; C39,§**5368.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§348.1]

348.2 Consolidation—powers of trustees. In all counties of the state having a population of one hundred thirty-five thousand inhabitants or over, and in which consolidation of hospital service has been completed as contemplated in this chapter, said board of hospital trustees shall:

1. Have general supervision and care of all grounds and buildings in said county and city occupied and used for public hospital purposes.

2. Have control and supervision over the physicians, nurses, attendants, and patients in all such hospitals.

3. Establish, maintain, and supervise, at a convenient place in such city located in said county, an emergency station for the treatment of emergency cases, including such venereal treatment as may be necessary for the protection of the public.

4. Establish, as early as funds are available, as a department in connection with said hospital, a suitable building or place for the isolation and detention of persons afflicted with contagious diseases subject to quarantine. [C27, 31, 35,§5368-a2; C39,§**5368.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§348.2]

348.3 Discrimination prohibited. In the management and control of hospitals coming within the provisions of this chapter, no distinction or discrimination shall be made between city and county patients. [C27, 31, 35, §5368-a3; C39,§**5368.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§348.3]

348.4 Sale of property after consolidation. In all cities located in counties in which both a public county and city hospital are being conducted under separate supervision and management, such cities are hereby authorized and directed, when consolidation is completed under this chapter and upon the recommendation of the board of hospital trustees, to sell the property now owned and used by such cities for hospital purposes, both real and personal, at public or private sale, the proceeds of

such sale to be used, first, for the retirement and payment of any outstanding bonds issued in connection with the purchase of such hospital property, and the remainder, if any, shall be turned into the county public hospital fund. [C27, 31, 35,§5368-a4; C39,§**5368.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§348.4]

348.5 Repealed by 64GA, ch 1088,§286.

CHAPTER 349

OFFICIAL NEWSPAPERS

349.1 Time of selection.
349.2 Source of selection.
349.3 Number.
349.4 Application—contest.
349.5 Contest—verified statements.
349.6 Determination of contest—evidence.
349.7 Subscribers—how determined.
349.8 Tie lists.
349.9 Fraudulent lists.
349.10 New date fixed if all rejected.
349.11 Appeal.
349.12 Transcript.
349.13 Trial of appeal.
349.14 Publication pending contest.
349.15 Division of compensation.
349.16 What published.
349.17 Cost.
349.18 Supervisors' proceedings — each payee listed—publication.

349.1 Time of selection. The board of supervisors shall, at the January session each year, select the newspapers in which the official proceedings shall be published for the ensuing year. [R60,§314; C73,§307; C97,§441; SS15,§441; C24, 27, 31, 35, 39,§**5397**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.1]

Referred to in §§230A.10, 347.13(14)

349.2 Source of selection. Such selection shall be from newspapers published, and having the largest number of bona fide yearly subscribers, within the county. When counties are divided into two divisions for district court purposes, each division shall be regarded as a county. [C73,§307; C97,§441; SS15,§441; C24, 27, 31, 35, 39,§**5398**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.2]

349.3 Number. The number of such newspapers to be selected shall be as follows:

1. In counties having a population of less than fifteen thousand, two such newspapers, or one, if there be but one published therein.

2. In counties having a population of more than fifty thousand, divided into two divisions for court purposes, three such newspapers in each such division, not more than two of which shall be published in the same city.

3. In counties having a population of less than fifty thousand, divided into two divisions for court purposes, two such newspapers in each such division.

4. In all other counties, three such newspapers, not more than two of which shall be published in the same city. [C73,§307; C97,§441; SS15,§441; C24, 27, 31, 35, 39,§**5399**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.3]

349.4 Application—contest. Any publisher who desires that his newspaper be so selected may make written application therefor to the board of supervisors at any time prior to the making of the selection. If more applications are filed than there are newspapers to be selected, a contest shall exist. [C24, 27, 31, 35, 39,§**5400**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.4]

349.5 Contest—verified statements. In case of a contest, each applicant shall deposit with the county auditor, in a sealed envelope, a statement, verified by him, showing the names of his bona fide yearly subscribers living within the county and the place at which each such subscriber receives such newspaper, and the manner of its delivery. [C97,§441; SS15,§441; C24, 27, 31, 35, 39,§**5401**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.5]

349.6 Determination of contest — evidence. The county auditor shall, on the direction of the board while it is in session, open said envelopes. The board may receive other evidence of circulation. In counties in which two newspapers are to be selected, the two newspapers showing the largest number of bona fide yearly subscribers living within the county shall be selected as such official newspapers. In counties in which three newspapers are to be selected, the three showing the largest number of such subscribers shall be selected except when such three newspapers are all published in the same city, in which case the two newspapers in such city having the largest lists of such subscribers and the newspaper having the next largest list of such subscribers and published outside such city, shall be selected as such official newspapers. [C97,§441; SS15, §441; C24, 27, 31, 35, 39,§**5402**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.6]

349.7 Subscribers—how determined. The board of supervisors shall determine the bona fide yearly subscribers of a newspaper within the county, as follows:

1. Those subscribers listed by the publisher whose papers are delivered, by or for him, by mail or otherwise, upon an order or subscription for same by the subscriber, and in accordance with the postal laws and regulations, and who have been subscribers at least six consecutive months prior to date of application.

2. Those subscribers, defined as in subsection 1, whose papers are delivered by carrier regularly, or purchased from the publisher for resale and delivery by independent carriers, said independent carriers having filed with the publisher a list of their subscribers. [C39, §5402.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.7]

349.8 Tie lists. When newspapers are, by equality of circulation, equally entitled to such selection, the board shall, in the presence of the contestants, determine the question by lot. [C24, 27, 31, 35, 39,§5403; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.8]

349.9 Fraudulent lists. No newspaper shall be selected as an official newspaper when it is made to appear that the verified list deposited by the applicant contains the names of persons who are not bona fide subscribers within the county and that such names were knowingly and willfully entered on such list by the applicant, or at his instance, with intent to deceive the board. [SS15,§441; C24, 27, 31, 35, 39,§5404; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.9]

Referred to in §349.10

349.10 New date fixed if all rejected. If all certified statements are rejected under the provisions of section 349.9, the board shall fix a new date for the selection of official newspapers and nothing herein shall be construed to prevent the applicants so rejected from filing new certified statements. [SS15,§441; C24, 27, 31, 35, 39,§5405; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.10]

349.11 Appeal. Any applicant may, within twenty days after the selection of official newspapers, appeal to the district court from the decision of the board of supervisors as to the selection of any or all newspapers so selected by filing in the office of the county auditor a bond for costs, in a sum and with sureties to be approved by said auditor, and by serving upon each applicant, whose selection he desires to contest, and the county auditor, a notice of appeal. [SS15,§441; C24, 27, 31, 35, 39,§5406; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.11]

Presumption of approval of bond, §682.10

349.12 Transcript. The auditor shall forthwith file with the clerk of the district court a transcript of all the proceedings before the board, together with all papers filed in connection with said matter. [SS15,§441; C24, 27, 31, 35, 39,§5407; C46, 50, 54, 58, 62, 66, 71, 73, 75, §349.12]

349.13 Trial of appeal. Said appeal shall be triable de novo as an equitable action without formal pleadings at any time after the expiration of twenty days following the filing of such transcript. [SS15,§441; C24, 27, 31, 35, 39,§5408; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.13]

Trial on appeal, §624.4

349.14 Publication pending contest. After the selection by the board of supervisors of official newspapers, no publisher shall receive pay for publishing official proceedings until the contest is finally determined, insofar as he is concerned. [C97,§441; SS15,§441; C24, 27, 31, 35, 39,§5409; C46, 50, 54, 58, 62, 66, 71, 73, 75, §349.14]

349.15 Division of compensation. If in any county the publishers of two or more newspapers, at least one of which by reason of its location and circulation is entitled to be selected as a county official newspaper, have entered into an agreement to publish the official proceedings or have united in a request to have their publication selected for such purposes, and such agreement or request has been filed with the board of supervisors prior to the naming of the official newspapers, the board of supervisors shall designate each of them a county official newspaper, but the combined compensation of the newspapers so requesting or agreeing, added to that of the other official newspaper or newspapers, if any, shall not exceed the combined compensation allowed by law to two official newspapers in counties having a population below fifteen thousand or to three official newspapers in counties having a population of fifteen thousand or more. [SS15,§441; C24, 27, 31, 35, 39, §5410; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.15]

349.16 What published. There shall be published in each of said official newspapers at the expense of the county during the ensuing year:

1. The proceedings of the board of supervisors, excluding from the publication of said proceedings, its canvass of the various elections, as provided by law; witness fees of witnesses before the grand jury and in the district court in criminal cases.

2. The schedule of bills allowed by said board.

3. The reports of the county treasurer, including a schedule of the receipts and expenditures of the county and the current cash balance in each fund in his office together with the total of warrants outstanding against each of said funds as shown by the warrant register in the auditor's office.

4. A synopsis of the expenditures of township trustees for road purposes as provided by law. [R60,§313; C73,§304; C97,§441; SS15,§441; C24, 27, 31, 35, 39,§5411; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.16]

Referred to in §§349.17, 358.3, 358.26

349.17 Cost. The cost of official publications provided for in section 349.16 shall not exceed three-fifths the legal fee provided by statute for the publication of legal notices. No such official publication shall be printed in type

smaller than five point. [C73,§307; C97,§441; SS15,§441; C24, 27, 31, 35, 39,§**5412**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§349.17]

349.18 Supervisors' proceedings—each payee listed—publication. All proceedings of each regular, adjourned, or special meeting of boards of supervisors, including the schedule of bills allowed, shall be published immediately after the adjournment of such meeting of said boards, and the publication of the schedule of the bills allowed shall show the name of each individual to whom the allowance is made and for what such bill is filed and the amount allowed thereon, except that names of persons receiving relief from the county poor fund shall not be published. The county auditor shall furnish a copy of such proceedings to be published, within one week following the adjournment of the board. [C27, 31, 35,§5412-a1; C39,§**5412.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §349.18]

CHAPTER 350
BOUNTIES ON WILD ANIMALS

350.1 Bounties on wild animals.
350.2 and 350.3 Repealed by 61GA, ch 310,§1.
350.4 Filing claims—proofs.
350.5 Showing required.
350.6 Auditor to destroy proofs.
350.7 False claim.
350.8 Levy.

350.1 Bounties on wild animals. The board of supervisors of each county may by resolution adopted and entered of record authorize the payment of bounties from the county treasury for wild animals caught and killed within the county. [R60,§2193; C73,§§303, 1487; C97,§§422, 2348; S13,§§2348-a,-d,-g,-j; SS15,§422; C24, 27, 31, 35, 39,§§**5413–5415**; C46, 50, 54, 58, 62,§§350.1–350.3; C66, 71, 73, 75,§350.1]

350.2 and 350.3 Repealed by 61GA, ch 310,§1.

350.4 Filing claims—proofs. All claims for bounties shall be verified by the claimant, and filed with the county auditor, with such other proof as may be required by the board. [R60, §2195; C73,§1487; C97,§2348; S13,§§2348-b,-e; C24, 27, 31, 35, 39,§**5416**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§350.4]

350.5 Showing required. The verified claim shall show that each animal for which bounty is claimed was caught and killed within the county within thirty days next prior to the filing of the claim, and the claimant shall exhibit before the county auditor:

1. The whole skin of each wolf, lynx, fox, or wildcat.
2. Both front feet and claws of each gopher.
3. The head and feet of each crow.
4. The head or scalp of each groundhog.
5. Two inches of the tail, with rattles attached, of each rattlesnake. [R60,§2194; C73, §1488; C97,§2348; S13,§§2348-a,-f,-h,-i,-k; C24, 27, 31, 35, 39,§**5417**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§350.5]

350.6 Auditor to destroy proofs. The auditor shall:

1. Destroy or deface the skin of each wolf, lynx, fox, and wildcat so as to prevent their use in obtaining another bounty, and may return to the owner any such defaced skins, and the rattles of any rattlesnake.
2. Destroy the heads, scalps, feet, claws, and other portions required to be exhibited of such animals. [R60,§2194; C73,§1488; C97,§2348; S13, §§2348-f,-l; C24, 27, 31, 35, 39,§**5418**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§350.6]

350.7 False claim. Any person who shall claim or attempt to procure any bounty provided for in this chapter upon any animal killed in another state or county, or upon any animal which has been domesticated, or who shall attempt to obtain any bounty by presenting any false claim or spurious exhibit, shall be fined not more than one hundred dollars nor less than fifty dollars for each offense. [C97,§2348; S13,§2348; C24, 27, 31, 35, 39,§**5419**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§350.7]

350.8 Levy. The board of supervisors of each county may levy the necessary taxes to pay the claims provided for under this chapter, and such taxes shall be used for no other purposes. [C54, 58, 62, 66, 71, 73, 75, §350.8]

Referred to in §24.37

CHAPTER 351

DOGS AND LICENSING THEREOF

Referred to in §332.3(21)

351.1 Annual license.
351.2 "Owner" defined.
351.3 Application by owner.
351.4 Subsequent application.
351.5 Form of application.
351.6 Fee.
351.7 Tag.
351.8 Use of tag.
351.9 Duration of license.
351.10 Transfer on change of ownership.
351.11 Transfer on change of residence.
351.12 Fee on transfer.
351.13 Tag not transferable.
351.14 Duplicate tag.
351.15 Assessors to list dogs—fees.
351.16 Payment to assessor.
351.17 Delinquency.
351.18 Certification of list.
351.19 Entry of tax.
351.20 Penalties.
351.21 Repealed by 52GA, ch 240,§50.
351.22 Record book.
351.23 Forms.
351.24 Taxation of dogs—municipal license.
351.25 Dog as property.
351.26 Right and duty to kill unlicensed dog.
351.27 Right to kill licensed dog.
351.28 Liability for damages.
351.29 Construction clause.
351.30 to 351.32 Repealed by 62GA, ch 118,§9.
351.33 Rabies vaccination.
351.34 Condition for license.
351.35 How and when.
351.36 Enforcement.
351.37 Apprehension and impoundage.
351.38 Owner's duty.
351.39 Confinement.
351.40 Quarantine.
351.41 Not a limitation on power of municipalities.
351.42 Exempt dogs.
351.43 Penalty.

351.1 Annual license. The owners of all dogs six months old or over, except dogs kept in kennels and not allowed to run at large, shall annually obtain license therefor, as herein provided. [C97,§458; S13,§458; C24, 27, 31, 35, 39,§**5420**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.1]

351.2 "Owner" defined. The term "owner" shall, in addition to its ordinary meaning, include any person who keeps or harbors a dog. [C97,§457; C24, 27, 31, 35, 39,§**5421**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.2]

351.3 Application by owner. The owner of a dog for which a license is required shall, on or before the first day of January of each year, apply to the auditor of the county in which he resides for a license for each dog owned by him. [C24, 27, 31, 35, 39,§**5422**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.3]

Referred to in §351.34

351.4 Subsequent application. Such application for license may be made after January 1 and at any time for a dog which has come into the possession or ownership of the applicant, or which has reached the age of three months after said date. [C24, 27, 31, 35, 39, §**5423**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.4]

351.5 Form of application. Such application shall be in writing on blanks provided by the county auditor and shall state the breed, sex, age, color, markings, and name, if any, of the dog, and address of the owner and be signed by him.

Such application shall also state the date of the most recent rabies vaccination, the type of vaccine administered, and the date the dog shall be revaccinated. [C24, 27, 31, 35, 39,§**5424**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.5]

351.6 Fee. The annual license fee shall be one dollar for each male, and three dollars for each female dog. Should it appear that said fees will not produce sufficient funds to pay the claims on the domestic animal fund, the board of supervisors shall have power, except as to dogs owned in cities which exact a license fee on dogs, to increase the said fees to a sum not exceeding three dollars for each male, and not exceeding five dollars for each female dog. A spayed female dog shall be deemed a male. Said fee shall be sent with the application. [C97,§458; S13,§458; C24, 27, 31, 35, 39,§**5425**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.6]

351.7 Tag. The county auditor shall, upon receipt of said application, deliver or mail to the applicant a license which shall be in the form of a metal tag stamped as follows:

1. The year in which issued.
2. Name of county issuing it.
3. Serial number as shown by the record book in the office of the county auditor. [C24, 27, 31, 35, 39,§**5426**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.7]

351.8 Use of tag. Said tag shall be attached by the owner to a substantial collar and, during the term of the license, shall be at all times kept on the dog for which the license is issued. Upon the expiration of the license the owner shall remove said tag from the dog. [C24, 27, 31, 35, 39,§**5427**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.8]

351.9 Duration of license. All licenses shall expire on January 1 of the year following the

date of issuance. [C24, 27, 31, 35, 39,§5428; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.9]

351.10 Transfer on change of ownership. When the permanent ownership of a dog is transferred, the license may be transferred by the auditor by notation on the license record, giving name and address of the new owner. [C24, 27, 31, 35, 39,§5429; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.10]

351.11 Transfer on change of residence. When a dog licensed in one county is permanently transferred to another county, the owner shall surrender the original license tag to the auditor of the county to which the dog is removed. The auditor shall preserve the surrendered tag, and, without license fee, issue a new license tag. The auditor shall note on the license record the fact that the newly issued license tag is issued to effect a transfer of, and is in lieu of, such surrendered license tag. [C24, 27, 31, 35, 39,§5430; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.11]

351.12 Fee on transfer. The auditor, on making any transfer, shall collect a fee of twenty-five cents. [C24, 27, 31, 35, 39,§5431; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.12]

351.13 Tag not transferable. A license tag issued for one dog shall not be transferable to another dog. [C24, 27, 31, 35, 39,§5432; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.13]

351.14 Duplicate tag. Upon the filing of an affidavit that the license tag has been lost or destroyed, the owner may obtain another tag on the payment of twenty-five cents. The auditor shall enter in the license record the new number assigned. [C24, 27, 31, 35, 39, §5433; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.14]

351.15 Assessors to list dogs—fees. The assessor shall, at the time of listing property for assessment, cause to be listed and return to the county auditor the names of all persons who own or harbor dogs, and indicate on such list whether the dogs be male, female, or spayed, and the number thereof. For such service, the assessor shall receive, from the domestic animal fund, the sum of ten cents for each dog reported, which fee shall be paid in full when return is made. Such fees shall be considered as earnings of the office and shall, within ten days of the receipt thereof, be paid to the county treasurer and credited to the general fund of the county. [C97,§§457, 459; S13, §458-b; C24, 27, 31, 35, 39,§§5434, 5443; C46, §§351.15, 351.21; C50, 54, 58, 62, 66, 71, 73, 75, §351.15]

Referred to in §441.12

351.16 Payment to assessor. If the owner of any dog upon which a license fee is due so desires, he may pay such fee to the assessor and the assessor shall give his receipt therefor, showing the name of the owner, the number of dogs owned upon which the fee is paid, the sex of each such dog, and the amount of the fee for each such dog. The assessor shall forthwith pay said fees collected by him to the auditor and shall make a full report to said auditor showing the name and address of the owner, the number of dogs and the sex of each owned by him, the evidence of rabies vaccination for each dog, and the fee paid on each such dog. The auditor shall forthwith mail to said owner the proper license tag or tags. The auditor may also assign the license tags to the assessor who may issue and record them when license fees are collected by him as provided in this section. [C27, 31, 35,§5434-b1; C39,§5434.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §351.16]

Referred to in §351.34

351.17 Delinquency. All license fees shall become delinquent on the first day of July of the year in which they are due and payable and a penalty of one dollar shall be added to each unpaid license on and after said date. [C24, 27, 31, 35, 39,§5435; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.17]

351.18 Certification of list. On or before the fifteenth of July, the auditor shall certify to the county treasurer:

1. The name of the owner of each unlicensed dog.
2. The number of dogs so owned by said person and the sex thereof.
3. The amount of the unpaid license fee, plus a penalty of one dollar for each dog. [C24, 27, 31, 35, 39,§5440; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.18]

351.19 Entry of tax. On receipt of said certificate, the treasurer shall at once enter, as a tax, against each person the amount therein indicated as owing by him, and said tax shall be attended with the same consequences, and be collected in the same manner, as ordinary taxes. [C24, 27, 31, 35, 39,§5441; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.19]

Collection of taxes, ch 445 et seq.

351.20 Penalties. The violation of any of the foregoing provisions of this chapter, or the removal of a license tag from a dog prior to the expiration of the license, by any person who is not the owner thereof or the agent of such owner, shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days. [C24, 27, 31, 35, 39, §5442; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.20]

351.21 Repealed by 52GA, ch 240,§50. See §351.15.

351.22 Record book. The county auditor shall keep a book to be known as the record of licenses which shall show:

1. The serial number and date of each application for a license.
2. The description of dog as specified in the application, together with the name of the owner of said dog.

3. The date when each license tag is issued and the serial number of such tag. The date of the most recent rabies vaccination, the type of vaccine administered, and the date the dog shall be revaccinated.

4. The amount of all fees, licenses, penalties, and costs paid to him.

5. Such other data as the law may require. [C24, 27, 31, 35, 39,§5444; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.22]

351.23 Forms. All forms for blanks and tags, including proper columns in the assessors' books in which to note the ownership of dogs, shall be prepared by the auditor. All such blanks and tags shall be furnished by the county. [S13,§458-a; C24, 27, 31, 35, 39,§5445; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.23]

351.24 Taxation of dogs—municipal license. Dogs kept in kennels and not allowed to run at large shall be taxed as personal property. Dogs licensed as herein provided shall not be so taxed. Cities may license dogs in addition to the license herein required. [C24, 27, 31, 35, 39,§5446; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.24]

351.25 Dog as property. All dogs under six months of age, and all dogs over said age and wearing a collar with a valid license tag attached thereto, shall be deemed property. Dogs not so provided with license tag shall not be deemed property. [C24, 27, 31, 35, 39, §5447; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.25]

351.26 Right and duty to kill unlicensed dog. It shall be lawful for any person, and the duty of all peace officers within their respective jurisdictions unless such jurisdiction shall have otherwise provided for the seizure and impoundment of dogs, to kill any dog for which a license is required, when such dog is not wearing a collar with license tag attached as herein provided. [C24, 27, 31, 35, 39,§5448; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.26]

351.27 Right to kill licensed dog. It shall be lawful for any person to kill a dog, licensed and wearing a collar with license tag attached, when such dog is caught in the act of worrying, chasing, maiming, or killing any domestic animal or fowl, or when such dog is attacking or attempting to bite a person. [C73,§1485; C97, §2340; S13,§2340; C24, 27, 31, 35, 39,§5449; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.27]

351.28 Liability for damages. The owner of any dog, whether licensed or unlicensed, shall be liable to the party injured for all damages done by said dog, except when the party damaged is doing an unlawful act, directly contributing to said injury. This section shall not apply to any damage done by a dog affected with hydrophobia unless the owner of such dog had reasonable grounds to know that such dog was afflicted with said malady, and by reasonable effort might have prevented the injury. [C73,§1485; C97,§2340; S13,§2340; C24, 27, 31, 35, 39,§5450; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.28]

351.29 Construction clause. A holding that one or more sections hereof are unconstitutional shall not be held to invalidate the remaining sections. [C24, 27, 31, 35, 39,§5451; C46, 50, 54, 58, 62, 66, 71, 73, 75,§351.29]

351.30 to 351.32 Repealed by 62GA, ch 118,§9.

351.33 Rabies vaccination. Every owner of a dog shall obtain a rabies vaccination for such animal. It shall be unlawful for any person to own or have a dog in his possession, six months of age or over, which has not been vaccinated against rabies. Dogs kept in kennels and not allowed to run at large shall not be subject to these vaccination requirements. [C66, 71, 73, 75,§351.33]

Referred to in §§351.35, 351.36, 351.42, 351.43

351.34 Condition for license. Before a license is issued for any dog, the owner must present evidence with the application required by section 351.3 that the dog has been vaccinated against rabies, or if the dog license fee is paid to the assessor, as permitted in section 351.16, such evidence must be presented to the assessor. Such evidence shall be a certificate of vaccination signed by a licensed veterinarian, and the certificate shall show that the vaccination does not expire within six months from the effective date of the dog license. [C66, 71, 73, 75,§351.34]

Referred to in §§351.36, 351.42, 351.43

351.35 How and when. The rabies vaccination required by section 351.33 shall be an injection of antirabies vaccine approved by the state department of agriculture, and the frequency of revaccination necessary for approved vaccinations shall be as established by such department. The vaccine shall be administered by a licensed veterinarian and shall be given as approved by the state department of agriculture. The veterinarian shall issue a tag with the certificate of vaccination, and such tag shall at all times be attached to the collar of the dog. [C66, 71, 73, 75,§351.35]

Referred to in §§351.36, 351.42, 351.43

351.36 Enforcement. Local health and law enforcement officials shall enforce the provisions of sections 351.33 to 351.43 relating to vaccination and impoundment of dogs. Such public officials shall not be responsible for any accident or disease of a dog resulting from the enforcement of the provisions of said sections. [C66, 71, 73, 75,§351.36]

Referred to in §§351.42, 351.43

351.37 Apprehension and impoundage. Any dog found running at large and not wearing a valid rabies vaccination tag and for which no rabies vaccination certificate can be produced shall be apprehended and impounded.

When such dog has been apprehended and impounded, the official shall give written notice in not less than two days to the owner, if known. If the owner does not redeem the dog within seven days of the date of the notice,

the dog may be humanely destroyed or otherwise disposed of in accordance with law. An owner may redeem a dog by having it immediately vaccinated and by paying the cost of impoundment.

If the owner of a dog apprehended or impounded cannot be located within seven days, the animal may be humanely destroyed or otherwise disposed of in accordance with law. [C66, 71, 73, 75,§351.37]

Referred to in §§351.36, 351.42, 351.43

351.38 Owner's duty. It shall be the duty of the owner of any dog, cat or other animal which has bitten or attacked a person or any person having knowledge of such bite or attack to report this act to a local health or law enforcement official. It shall be the duty of physicians and veterinarians to report to the local board of health the existence of any animal known or suspected to be suffering from rabies. [C66, 71, 73, 75,§351.38]

Referred to in §§351.36, 351.42, 351.43

351.39 Confinement. When a local board of health receives information that any person has been bitten by an animal or that a dog or animal is suspected of having rabies, it shall order the owner to confine such animal in the manner it directs. If the owner fails to confine such animal in the manner directed, the animal shall be apprehended and impounded by such board, and after two weeks the board may humanely destroy the animal. If such animal is returned to its owner, the owner shall pay the cost of impoundment. [C66, 71, 73, 75,§351.39]

Referred to in §§351.36, 351.42, 351.43

351.40 Quarantine. If a local board of health believes rabies to be epidemic, or believes there is a threat of epidemic, in its jurisdiction, it may declare a quarantine in all or part of the area under its jurisdiction and such declaration shall be reported to the state department of health. During the period of quarantine, any person owning or having a dog in his possession in the quarantined area shall keep such animal securely enclosed or on a leash for the duration of the quarantine period. [C66, 71, 73, 75,§351.40]

Referred to in §§351.36, 351.42, 351.43

351.41 Not a limitation on power of municipalities. Nothing in these sections shall be construed to limit the power of any city to prohibit dogs from running at large, whether or not they have been vaccinated for rabies, or to limit the power of any city to provide additional measures for the restriction of dogs for the control of rabies. [C66, 71, 73, 75,§351.41]

Referred to in §§351.36, 351.42, 351.43

351.42 Exempt dogs. Dogs that are under the control of the owner or handlers and which are in transit, or are to be exhibited shall be exempt from the vaccination provisions of these sections if they are within the state for less than thirty days. Dogs assigned to a research institution or a like facility shall be exempt from the provisions of sections 351.33 to 351.43. [C66, 71, 73, 75, §351.42]

Referred to in §§351.36, 351.43

351.43 Penalty. Any person refusing to comply with the provisions of sections 351.33 to 351.42 or violating any of their provisions, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned not more than thirty days, for each offense. [C66, 71, 73, 75,§351.43]

Referred to in §§351.36, 351.42

CHAPTER 351A

DOGS FOR SCIENTIFIC RESEARCH

351A.1 Definitions.
351A.2 Application to department of health.
351A.3 Dogs held for redemption by owner.
351A.4 Fee.
351A.5 Care and treatment.
351A.6 Penalty.
351A.7 Construction.

351A.1 Definitions. For the purposes of this chapter, the following definitions shall apply:

1. "Institution" shall mean any school or college of medicine, veterinary medicine, pharmacy, dentistry, and osteopathy, or hospital, diagnostic or research laboratories, or other educational or scientific establishment situated in this state properly concerned with the investigation of, or instruction concerning the structure or function of living organisms, the cause, prevention, control or cure of diseases or abnormal conditions of human beings or animals.

2. "Pound" shall mean any public or private agency, person, society, or corporation having custody of dogs seized or held under the authority of the state or any municipality or any political subdivision of the state. [C62, 66, 71, 73, 75,§351A.1]

351A.2 Application to department of health. An institution may apply annually to the state department of health for authority to obtain animals from a pound. If the state department of health shall find that such institution, by reason of its ethical standards, its personnel,

its facilities and the use it proposes to make of dogs is a fit and proper institution to be authorized to obtain dogs from a pound, and that the public interest would be served by such authority, then the state department of health shall authorize such institution to obtain dogs from a pound. [C62, 66, 71, 73, 75,§351A.2]

351A.3 Dogs held for redemption by owner. An institution so authorized by the state department of health may request dogs from a pound. The pound shall tender to such institution all dogs in its custody seized or held by authority of the state, municipality or other political subdivision, except that no dog shall be so tendered unless it has been held for redemption by its owner or sale for a period of not less than three nor more than fifteen days and no dog lawfully licensed at the time of its seizure shall be so tendered unless its owner shall so consent in writing. No dogs, except those actually sick or injured or those lawfully licensed at the time of seizure, shall be destroyed by a pound while a request to that pound of an authorized institution is unfulfilled unless first tendered to such institution and refused by it. [C62, 66, 71, 73, 75,§351A.3]

351A.4 Fee. An institution obtaining dogs from a pound shall pay to the municipality or other political subdivision under whose authority each dog is held or was seized a reasonable fee not to exceed five dollars for each dog so obtained, and shall provide for the transportation of the dogs so obtained from the pound. [C62, 66, 71, 73, 75,§351A.4]

351A.5 Care and treatment. Animals used in any institution authorized by this chapter shall receive every consideration for their bodily comfort; they shall be kindly treated, properly fed and their surroundings kept in a sanitary condition. All major operative procedures may be done under local infiltration anesthesia. If the nature of the study is such that the animal may survive, acceptable techniques shall be followed throughout the operation. If the study does not require survival, the animals shall be killed in a humane manner at the conclusion of the observations. The post-operative care of experimental animals shall be such as to minimize discomfort during convalescence. All conditions shall be maintained for the animal's comfort in accordance with the best practices followed in human medicine and surgery. [C62, 66, 71, 73, 75, §351A.5]

351A.6 Penalty. It shall be a misdemeanor for any person or corporation to violate any provision of this chapter. Every person convicted hereunder shall be punished by imprisonment for a period not more than thirty days, or by a fine not to exceed one hundred dollars. Any pound failing or refusing to comply with the provisions of this chapter shall become immediately ineligible for any public moneys notwithstanding the provisions of any contract, and it shall be unlawful for any public body to pay any public moneys to a pound after receipt by it of a notice of such noncompliance or refusal from any institution authorized by the state department of health to obtain dogs until such time as such institution shall have withdrawn its notice or the state department of health shall have notified such public body that such notice was without foundation. [C66, 71, 73, 75,§351A.6]

351A.7 Construction. This chapter shall be so construed and interpreted as to effectuate its purpose of making available for scientific, educational and research purposes unclaimed, unwanted and unlicensed dogs. [C66, 71, 73, 75,§351A.7]

CHAPTER 352

DOMESTIC ANIMAL FUND

352.1 Claims.
352.2 Forms of claims.
352.3 Allowance of claims.
352.4 Warrants and payment.
352.5 Certified list of warrants.
352.6 Transfer of funds.
352.7 Exception.

352.1 Claims.

1. Any person damaged by the killing or injury of any domestic animal or fowl by wolves, or by dogs not owned by said person, may, within ten days from the time he or his agent has knowledge of such killing or injury, file with the county auditor of the county in which such killing or injury occurred a claim for such damage.

2. Any person injured by a dog or wolf not owned by such person which resulted in the need for medical care or rabies prevention treatment, may, within sixty days from the time of such injury, file with the county auditor of the county a claim for the payment of the costs of such medical care or treatment. [S13,§458-c; C24, 27, 31, 35, 39,§5452; C46, 50, 54, 58, 62, 66, 71, 73, 75,§352.1]

Referred to in §352.2

352.2 Forms of claims.

1. Claims under section 352.1, subsection 1, shall state the amount of damages, a detailed

statement of the facts attending the killing or injury and be verified by affidavit of at least two disinterested persons not related to claimant.

2. Claims made under section 352.1 subsection 2, shall state the cost of such medical care or treatment and a detailed statement of the facts attending the injury. [S13,§458-c; C24, 27, 31, 35, 39,§**5453**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§352.2]

352.3 Allowance of claims. The board shall act on such claims within a reasonable time, and allow such part thereof as it may deem just. When a claim is allowed, the cost of such medical treatment or the value of each animal or fowl killed or injured shall be entered of record. [S13,§458-c; C24, 27, 31, 35, 39,§**5454**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§352.3]

352.4 Warrants and payment. Warrants for allowed claims shall be payable July 1 following their issuance and only from the domestic animal fund. [S13,§458-c; C24, 27, 31, 35, 39, §**5455**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§352.4]

352.5 Certified list of warrants. The auditor shall, on July 1 of each year, certify to the treasurer an itemized list of all warrants issued during the preceding fiscal year on the domestic animal fund, except warrants issued to pay fees of assessors. If said fund be sufficient, the treasurer shall pay said warrants on presentation. If said fund be not sufficient, said warrants shall be paid pro rata. [S13, §458-d; C24, 27, 31, 35, 39,§**5456**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§352.5]

352.6 Transfer of funds. When the balance in the said fund, after paying the warrants aforesaid, exceeds five hundred dollars, the board of supervisors may order the excess transferred to the general fund of the county, or the board of supervisors may authorize the use of said excess or any part thereof in payment of the claim or claims of duly organized societies for the prevention of cruelty to animals within the county for the care, keep and maintenance of abandoned or injured domestic animals or fowls. If within five years following such transfer, the amount in the domestic animal fund proves insufficient in any one year to pay all duly allowed claims thereon, the board shall transfer from said general fund to the domestic animal fund an amount, not exceeding the amount originally transferred, sufficient to pay the unpaid part of said warrants. [S13,§458-d; C24, 27, 31, 35, 39,§**5457**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§352.6]

352.7 Exception. The provisions of this chapter shall not apply to injuries or damages occurring within a city which provides for the licensing of dogs. [C75,§352.7]

CHAPTER 353

RELOCATION OF COUNTY SEATS

353.1 Time of application—limitation.
353.2 Petition.
353.3 Hearing.
353.4 Notice.
353.5 Remonstrances—filing.
353.6 Objections—evidence.
353.7 Rejection of petition or remonstrance.
353.8 Canvass.
353.9 Election.
353.10 Submission of question.
353.11 Notice.
353.12 Conduct of election — form of proposition.
353.13 Vote necessary.
353.14 Removal in certain cases.
353.15 Removal of records postponed.
353.16 Proof of service.

353.1 Time of application—limitation. Petitions for the relocation of a county seat shall be made to the board of supervisors at its regular June session and not oftener than once in five years. [R60,§231; C73,§§281, 288; C97, §396; C24, 27, 31, 35, 39,§**5458**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§353.1]

353.2 Petition. Said petition may be in different parts and shall be filed with the county auditor at least sixty days before said June session, and shall:

1. Designate the city at which the petitioners desire to have the county seat relocated.

2. Be signed by none but eligible electors of the county.

3. Contain the section, township, and range on which, or the precinct or ward if in a city, in which the petitioner resides.

4. Give the age and time of residence in the county of such petitioner.

5. Be accompanied at the time of filing by affidavits of one or more eligible electors of the county, stating:

a. That the signers of the petition were, at the time of signing, eligible electors of the county.

b. The number of signers to the petition at the time the affidavit is made. [R60,§§232, 233; C73,§282; C97,§397; C24, 27, 31, 35, 39,§**5459**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§353.2]

353.3 Hearing. Upon the filing of the petition, the county auditor shall fix a time for the hearing thereon before the board of supervisors, which time shall not be less than sixty nor more than ninety days after the first publication, or after the completed posting, of the notice hereinafter provided for. [C24, 27, 31, 35, 39,§**5460**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §353.3]

353.4 Notice. The county auditor shall forthwith cause a notice of the filing of such petition and of the time of hearing thereon, to be published once in a newspaper published in the county; if there be no newspaper published in the county, the auditor shall cause said notice to be posted in a public place in each township in the county, and also on the door of the courthouse. [R60,§235; C73,§284; C97, §399; S13,§399; C24, 27, 31, 35, 39,§**5461**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§353.4]

353.5 Remonstrances—filing. Remonstrances against such relocation, signed by voters with like qualifications, and in all respects as required of petitioners, and verified in the same manner, may be filed with the auditor ten days prior to the date of hearing as stated in said notice. [R60,§239; C73,§283; C97,§398; C24, 27, 31, 35, 39,§**5462**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§353.5]

353.6 Objections — evidence. Objections to the legal sufficiency of either the petition or remonstrance, or any part thereof, may be filed at any time before the hearing commences. The reception of such objections during the hearing shall be at the discretion of the board. The board may disregard any objection which is not specific, or may require it to be made specific. The board may receive evidence with reference to any material fact. [C24, 27, 31, 35, 39,§**5463**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§353.6]

353.7 Rejection of petition or remonstrance. A petition which fails to distinctly state the city at which the petitioners desire to have the county seat relocated shall be rejected without further investigation; likewise a petition or remonstrance which is not accompanied by the required affidavits. [C24, 27, 31, 35, 39,§**5464**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§353.7]

Referred to in §353.8

353.8 Canvass. If the petition be found to be sufficient as provided in section 353.7, the board shall proceed to canvass the same, and also the remonstrance if it be found to be sufficient. In such canvass the board shall proceed as follows:

1. It shall strike from both the petition and the remonstrance all names which do not appear therein in the form required by this chapter.

2. It shall strike from both the petition and the remonstrance the names of all persons shown not to have been eligible electors of the county at the time of signing.

3. It shall also strike from the petition and remonstrance all names not placed thereon within sixty days next preceding the filing of the petition or remonstrance.

4. It shall, after the foregoing has been determined, strike from the petition all names that appear on both petition and remonstrance. [C73,§285; C97,§400; S13,§400; C24, 27, 31, 35, 39,§**5465**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§353.8]

353.9 Election. If the petition shows, after all names have been stricken as hereinbefore required, that it has been signed by eligible electors equal to at least one-half of all persons eighteen years of age or older residing in the county as shown by the last federal census, and that such number of eligible electors so signing exceeds the number of eligible electors who have, after all names have been stricken as required, signed the remonstrance, then the board shall order the proposition submitted to a vote of the people. [R60,§234; C73, §285; C97,§400; S13,§400; C24, 27, 31, 35, 39, §**5466**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§353.9]

353.10 Submission of question. The proposal to relocate a county seat shall be submitted at the general election held in the year in which the order is made, if there be sufficient time in which to give the notice hereinafter required. If there be not sufficient time, and in those cases where no general election is held in the year in which the order is made, the board shall submit such proposition at a special election to be called by the board. [R60,§234; C73, §285; C97,§400; S13,§400; C24, 27, 31, 35, 39,§**5467**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§353.10]

353.11 Notice. The county commissioner of elections shall cause notice of the election to be published in the manner prescribed by law in some newspaper published in the county and of general circulation therein, if there be one published in the county. [R60,§234; C73, §285; C97,§400; S13,§400; C24, 27, 31, 35, 39,§**5468**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§353.11]

353.12 Conduct of election—form of proposition. The election shall be conducted pursuant to the applicable provisions of chapters 39 to 53. The question shall be submitted in the following form: Shall the proposition to change the county seat to (naming the city to which the change is proposed) be adopted? ☐ Yes ☐ No

[R60,§§236, 237; C73,§286; C97,§401; C24, 27, 31, 35, 39,§**5469**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §353.12]

353.13 Vote necessary. The board shall make a record of the total vote cast for and against the proposition. If a majority of all the votes cast be in favor of the proposition, the board shall, except as declared in section 353.14, declare the county seat removed accordingly, and, shall, as soon as practicable, proceed to remove the county records to the new location.

[R60,§238; C73,§287; C97,§402; S13,§402; C24, 27, 31, 35, 39,§5470; C46, 50, 54, 58, 62, 66, 71, 73, 75,§353.13]

353.14 Removal in certain cases. Where a county seat has been located continuously in one city for forty years or more, and the proposal is to relocate such county seat in another city, the corporate limits of which are more than a mile from the corporate limits of the present county seat, such proposition shall not be deemed carried, and the county records shall not be removed to the new county seat unless two-thirds of all the votes cast be in favor of such proposed removal. [S13,§§400, 402; C24, 27, 31, 35, 39,§5471; C46, 50, 54, 58, 62, 66, 71, 73, 75,§353.14]

Referred to in §353.13

353.15 Removal of records postponed. If the proposition to relocate be carried, the board of supervisors may permit the county records to remain at the old county seat, and the district court may continue to hold its sessions thereat until such time as a new courthouse is built and equipped at the new county seat. [C24, 27, 31, 35, 39,§5472; C46, 50, 54, 58, 62, 66, 71, 73, 75,§353.15]

353.16 Proof of service. Proof of the giving of notices required by this chapter shall be made as provided in case of original notices. [C24, 27, 31, 35, 39,§5473; C46, 50, 54, 58, 62, 66, 71, 73, 75,§353.16]

Proof of service, §§622.92, 622.94, and R.C.P. 63

CHAPTER 354

CHANGING NAMES OF VILLAGES

Villages defined, §354.9

354.1 Change authorized.
354.2 Petition.
354.3 Notice.
354.4 Hearing.
354.5 Order.
354.6 When order effective.
354.7 Notice of change—proof.
354.8 Costs.
354.9 Villages.

354.1 Change authorized. The board of supervisors may change the names of villages within their respective counties in the manner herein prescribed. [C97,§460; C24, 27, 31, 35, 39, §5474; C46, 50, 54, 58, 62, 66, 71, 73, 75,§354.1]

354.2 Petition. There shall be filed in the office of the auditor of the county in which such village or the major portion thereof is situated, a petition for that purpose, which must be signed by at least two-thirds of the qualified electors of said village, setting forth its name and location and giving the name by which they desire it to be known. [C97,§461; C24, 27, 31, 35, 39,§5475; C46, 50, 54, 58, 62, 66, 71, 73, 75,§354.2]

354.3 Notice. Notice of the filing and object of the petition and the time and place of hearing on the same shall be given by publication for at least four successive weeks in one of the official newspapers of the county, and the last publication shall be at least ten days prior to the regular meeting of the board at which the same is to be considered; or by posting a copy of the petition in at least three public places in the village, and on the front door of the courthouse, for at least four weeks before such meeting. [C97,§462; C24, 27, 31, 35, 39, §5476; C46, 50, 54, 58, 62, 66, 71, 73, 75,§354.3]

354.4 Hearing. At the first regular meeting of said board after publication of notice is completed, it shall consider any remonstrances against the proposed change, and shall hear and determine said petition, unless the same is for good cause continued until the next meeting. [C97,§463; C24, 27, 31, 35, 39,§5477; C46, 50, 54, 58, 62, 66, 71, 73, 75,§354.4]

354.5 Order. If on the hearing it shall appear that two-thirds of the qualified electors of said village have in good faith signed said petition for change of name, then the said board shall order said name to be changed as prayed for. [C97,§464; C24, 27, 31, 35, 39,§5478; C46, 50, 54, 58, 62, 66, 71, 73, 75,§354.5]

354.6 When order effective. The order of the board shall thereupon be entered of record, giving the name of said village as set forth in said petition, the new name given, the time when the change shall take effect, which shall not be less than thirty days thereafter. [C97, §465; C24, 27, 31, 35, 39,§5479; C46, 50, 54, 58, 62, 66, 71, 73, 75,§354.6]

354.7 Notice of change—proof. Notice of said change shall be published in at least one newspaper of general circulation published in the county at least ten days prior to the date fixed for the change to take effect. Proof of such publication, by the affidavit of the publisher, shall be filed in the office of the auditor and entered of record, whereupon the change shall be complete. [C97,§§465, 466; C24, 27, 31, 35, 39,§5480; C46, 50, 54, 58, 62, 66, 71, 73, 75, §354.7]

354.8 Costs. In cases arising under the provisions of this chapter, where there is no opposition to said petition, the petitioners shall pay all costs; in all other cases costs shall abide the result of the proceeding, and be taxed to either party, in the discretion of the board, or divided equitably between the parties. [C97, §467; C24, 27, 31, 35, 39,§5481; C46, 50, 54, 58, 62, 66, 71, 73, 75,§354.8]

354.9 Villages. Sites platted and unincorporated shall be known as "villages." [R60, §1016; C73,§559; C97,§638; C24, 27, 31, 35, 39, §5623; C46, 50,§363.1; C54, 58, 62, 66, 71, 73, 75, §354.9]

CHAPTER 355
LAND SURVEYS

355.1 County surveyor—appointment and duties.
355.2 Field notes of original survey.
355.3 Corners.
355.4 Rules to be followed.
355.5 Record furnished — presumptive evidence.
355.6 Record book.
355.7 Record.
355.8 Chainmen.
355.9 Witnesses—fees.
355.10 Right to enter upon land.
355.11 Damages—procedure.
355.12 Tender.
355.13 Costs.
355.14 Federal surveys—defacement.
355.15 Fees.

355.1 County surveyor — appointment and duties. A county surveyor may be appointed by the board of supervisors and shall hold office during the pleasure of said board. Said surveyor, who shall be a registered land surveyor holding a certificate issued under the provisions of chapter 114, shall make all surveys of land within his county which he may be called upon to make, and the field notes and plats made by him shall be transcribed into a well-bound book, under his supervision, at the expense of the person requesting the survey, which book shall be kept in the county auditor's office, and his surveys shall be held as presumptively correct. [C51,§§203, 204; R60, §§413, 414; C73,§§369, 370; C97,§534; SS15,§422; C24, 27, 31, 35, 39,§5482; C46, 50, 54, 58, 62, 66, 71, 73, 75,§355.1]

355.2 Field notes of original survey. Previous to making any survey, he shall procure a copy of the field notes of the original survey of the same land, if there be any in his office or in that of the auditor, and his survey shall be made in accordance therewith. [C51,§205; R60,§415; C73,§371; C97,§535; C24, 27, 31, 35, 39, §5483; C46, 50, 54, 58, 62, 66, 71, 73, 75,§355.2]

355.3 Corners. He is required to establish the corners by taking bearing trees, and noting particularly their course and distance, but if there be no trees within reasonable distance, the corners are to be marked by stones or other permanent monuments placed firmly in the earth. [C51,§206; R60,§416; C73,§372; C97, §536; C24, 27, 31, 35, 39,§5484; C46, 50, 54, 58, 62, 66, 71, 73, 75,§355.3]

355.4 Rules to be followed. In the resurvey and subdivision of land by county surveyors, their deputies or other persons, the rules prescribed by the Acts of Congress, and the instructions of the secretary of the interior, copies of which shall be furnished him by the county, shall be in all respects followed. [C73, §373; C97,§537; C24, 27, 31, 35, 39,§5485; C46, 50, 54, 58, 62, 66, 71, 73, 75,§355.4]

355.5 Record furnished — presumptive evidence. The county surveyor shall, when requested, furnish the person for whom the survey is made with a copy of the field notes and plat of the survey, and such copy, certified by him, and also a copy from the record, certified by the county auditor with the seal, shall be presumptive evidence of the survey and of the facts herein required to be set forth, and which are stated accordingly, between those persons who join in requesting it.

Such field notes and plat of survey shall not, however, be presumptive evidence in any action in court as opposed to the field notes and plat of survey made by any other competent surveyor at the instance of any party not joining in the request for the survey by the county surveyor. [C51,§207; R60,§417; C73, §374; C97,§538; C24, 27, 31, 35, 39,§5486; C46, 50, 54, 58, 62, 66, 71, 73, 75,§355.5]

355.6 Record book. The board of supervisors is required to furnish a substantial, well-bound book, in which the field notes and plats made by the county surveyor shall be recorded. [C51,§208; R60,§418; C73,§375; C97,§539; C24, 27, 31, 35, 39,§5487; C46, 50, 54, 58, 62, 66, 71, 73, 75,§355.6]

355.7 Record. The plat and record shall show distinctly of what piece of land it is a survey, at whose personal request it was made, the names of the chainmen, and that they were approved and sworn by the surveyor, and the

date of the survey; and the courses shall be taken according to the true meridian, and the variation of the magnetic from the true meridian stated. The surveyor shall determine the correct variation by an observation on the polestar, or some other approved method, at least once each year, and enter the same, with the date, and description of the method used, in his record. [C51,§209; R60,§419; C73,§376; C97, §540; C24, 27, 31, 35, 39,§**5488**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§355.7]

355.8 Chainmen. The necessary chainmen and other persons must be employed by the person requiring the survey done, unless otherwise agreed; but the chainmen must be disinterested persons, and approved by the surveyor, and sworn by him to measure justly and impartially, to the best of their knowledge and ability. [C51,§210; R60,§420; C73,§377; C97, §541; C24, 27, 31, 35, 39,§**5489**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§355.8]

355.9 Witnesses—fees. County surveyors, when engaged in the performance of official duties, may issue subpoenas for witnesses and administer oaths to them, and all fees for services of officers and attendance of witnesses shall be the same as in proceedings before judicial magistrates. [C73,§378; C97,§542; C24, 27, 31, 35, 39,§**5490**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§355.9]

Service and witness fees, §622.69

355.10 Right to enter upon land. Any person employed in the execution of any survey authorized by the Congress of the United States may enter upon lands within this state for the purpose of exploring, triangulating, leveling, surveying, and of doing any work which may be necessary to carry out the objects of then existing laws relative to surveys, and may establish permanent station marks, and erect the necessary signals and temporary observatories, doing no unnecessary injury thereby. [C24, 27, 31, 35, 39,§**5491**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§355.10]

355.11 Damages—procedure. If the parties interested cannot agree upon the amount to be paid for damages caused thereby, either of them may petition the district court in the county in which the land is situated, which court shall appoint a time for a hearing as soon as may be, and order at least twenty days' notice to be given to all parties interested, and, with or without a view of the premises, as the court may determine, hear the parties and their witnesses and assess damages. [C24, 27, 31, 35, 39,§**5492**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§355.11]

355.12 Tender. The person so entering upon land may tender to the injured party damages therefor, and if, in case of petition or complaint to the court, the damages finally assessed do not exceed the amount tendered, the person entering shall recover costs; otherwise the prevailing party shall recover costs. [C24, 27, 31, 35, 39,§**5493**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 355.12]

355.13 Costs. The costs to be allowed in all such cases shall be the same as allowed according to the rules of the court and provisions of law relating thereto. [C24, 27, 31, 35, 39,§**5494**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§355.13]

Costs generally, ch 625

355.14 Federal surveys—defacement. If any person shall willfully deface, injure or remove any signal, monument, building or other property of the United States coast and geodetic survey or the United States geological survey, constructed or used under or by virtue of the Act of Congress aforesaid, he shall forfeit a sum not exceeding fifty dollars for each offense, and shall be liable for damages sustained by the United States in consequence of such defacing, injury or removal, to be recovered in a civil action in any court of competent jurisdiction. [C24, 27, 31, 35, 39,§**5495**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§355.14]

355.15 Fees. The county surveyor shall receive the following fees:

1. For each day of service actually performed and travel necessary in making a survey, such amount as may be agreed upon by said surveyor and the person requesting the survey. In case of disagreement, the amount shall be fixed by the board of supervisors.
2. For making up the record of any survey, and the plat and field notes thereof, one dollar per page.
3. For certified copy of the plat or field notes, fifty cents. [C51,§2546; R60,§4155; C73,§3800; C97,§543; C24, 27, 31, 35, 39,§**5496**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§355.15]

CHAPTER 356

JAILS

Referred to in §746.17

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356.43 Inspection by department—report of inspection.
356.44 Rules of sheriff.
356.45 Expense at regional detention facility.
356.46 Time off for good behavior.
356.47 Sentence suspended.

356.1 How used. The jails in the several counties in the state shall be in charge of the respective sheriffs and used as prisons:

1. For the detention of persons charged with an offense and committed for trial or examination.

2. For the detention of persons who may be committed to secure their attendance as witnesses on the trial of a criminal cause.

3. For the confinement of persons under sentence, upon conviction for any offense, and of all other persons committed for any cause authorized by law.

4. For the confinement of persons subject to imprisonment under the ordinances of a city.

The provisions of this section extend to persons detained or committed by authority of the courts of the United States as well as of this state. [C51,§3103; R60,§5122; C73,§§485, 4723; C97,§§735, 5637; C24, 27, 31, 35, 39,§§5497, 5772; C46, 50,§§356.1, 368.40; C54, 58, 62, 66, 71, 73, §§356.1, 368.15; C75,§356.1]

Referred to in §§356A.1, 356A.7

356.2 Duty. The sheriff shall have charge and custody of the prisoners in the jail or other prisons of his county, and shall receive those lawfully committed, and keep them until discharged by law. [C51,§172; R60,§385; C73, §339; C97,§501; C24, 27, 31, 35, 39,§5498; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.2]

356.3 Minors separately confined. Any sheriff, city marshal, or chief of police, having in his care or custody any prisoner under the age of eighteen years, shall keep such prisoner separate and apart, and prevent communication by such prisoner with prisoners above that age, while such prisoners are not under the personal supervision of such officer, if suitable buildings or jails are provided for that purpose, unless such prisoner is likely to or does exercise an immoral influence over other minors with whom he may be imprisoned. Any officer having charge of prisoners who without just cause or excuse neglects or refuses to perform the duties imposed on him by this section may be suspended or removed from office therefor. [C97,§5638; C24, 27, 31, 35, 39,§5499; C46, 50, 54, 58, 62, 66, 71, 73, 75, §356.3]

356.4 Females. All jails shall be equipped with a separate apartment for females, who shall be detained only in such apartment, and males and females shall not at the same time be allowed in the same apartment. [C97,§5639; C24, 27, 31, 35, 39,§5500; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.4]

356.5 Keeper's duty. The keeper of each jail shall:

1. See that the jail is kept in a clean and healthful condition.

2. Furnish each prisoner with necessary bedding, clothing, towels, fuel, and medical aid.

3. Serve each prisoner three times each day with an ample quantity of wholesome food.

4. Furnish each prisoner sufficient clean, fresh water for drinking purposes and for personal use.

5. Keep an accurate account of the items furnished each prisoner.

6. To have a matron on the jail premises at all times during the incarceration of any one or more female prisoners and to make nighttime inspections while any prisoners are kept in confinement. [C51,§§3104, 3108; R60,§§5123, 5127; C73,§§4724, 4727; C97,§§5640, 5643; C24, 27, 31, 35, 39,§5501; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.5]

Referred to in §356A.2

356.6 Sheriff's duty. The sheriff must keep an accurate calendar of each prisoner committed to his care, which shall contain his name, place of abode, the day and hour of commitment and discharge, the cause and term of commitment, the authority that committed him, and a description of his person, a statement of his occupation, education, and general habits. When any prisoner is discharged, such calendar must show the day and hour when

and the authority by which it took place, and if a person escapes, it must state particularly the time and manner thereof. [C51,§3105; R60, §5124; C73,§4725; C97,§5641; C24, 27, 31, 35, 39, §5502; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.6]

Referred to in §356A.5

356.7 Calendar returned. On or before the fifteenth day of the months of January, April, July and October each year, the sheriff of each county must return a copy of such calendar to the district court of the district within which his county is situated. If a sheriff neglects or refuses to do so, he shall be punished by a fine not exceeding one hundred dollars. [C51,§3106; R60,§5125; C73,§4726; C97,§5642; C24, 27, 31, 35, 39,§5503; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.7]

Referred to in §356A.5

356.8 Removal. When a jail or any building contiguous or near thereto is on fire, and there is reason to apprehend that the prisoners therein may be injured thereby, the sheriff or keeper must remove such prisoners to some safe and convenient place, and there confine them so long as it may be necessary to avoid such danger. [C51,§3109; R60,§5128; C73,§4728; C97,§5644; C24, 27, 31, 35, 39,§5504; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.8]

356.9 Ex officio inspectors. The clerk of the district court and county attorney are inspectors of the jails and have power from time to time to visit and inspect the same and inquire into all matters connected with the government, discipline, and police thereof. [C51,§3110; R60,§5129; C73,§4729; C97,§5645; C24, 27, 31, 35, 39,§5505; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.9]

356.10 Visitation. Such inspectors shall visit and inspect such prisons twice each year, and, on or before the fifteenth day of the first month of the next calendar quarter, present to such court a detailed report of the condition of such prisons at the time of such inspection. [C51,§3111; R60,§5130; C73,§4730; C97,§5646; C24, 27, 31, 35, 39,§5506; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.10]

356.11 Report. Such report must state the number of persons confined, for what cause, the number usually confined in one room, the distinction, if any, observed in the treatment of prisoners, the evils found to exist in such prisons, and particularly whether any provision of this chapter has been violated or neglected, and in what respects. [C51,§3112; R60, §5131; C73,§4731; C97,§5647; C24, 27, 31, 35, 39, §5507; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.11]

356.12 Right to inspect. The keepers of prisons shall admit the inspectors or either of them into any part thereof, exhibit to them, upon demand, all the books, papers, documents, and accounts pertaining thereto, or to the prisoners confined therein, and render them every facility in their power to enable them to discharge their duties. [C51,§3113; R60, §5132; C73,§4732; C97,§5648; C24, 27, 31, 35, 39, §5508; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.12]

356.13 Officers examined. For the purpose of obtaining the necessary information to make the reports above required, the inspectors have power to examine, upon oath to be administered by either of them, any of the officers of the prison, or prisoners therein. [C51,§3114; R60,§5133; C73,§4733; C97,§5649; C24, 27, 31, 35, 39,§5509; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.13]

356.14 Refractory prisoners. If any person confined in a jail is refractory or disorderly, or willfully destroys or injures any part thereof or of its contents, the sheriff may chain or secure such person, or cause him to be kept in solitary confinement, not more than ten days for any one offense, during which time he may be fed with bread and water only, unless other food is necessary for the preservation of his health. [C51,§3115; R60,§5134; C73,§4734; C97, §5650; C24, 27, 31, 35, 39,§5510; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.14]

356.15 Expenses. All charges and expenses for the safekeeping and maintenance of prisoners shall be allowed by the board of supervisors, except those committed or detained by the authority of the courts of the United States, in which cases the United States must pay such expenses to the county, and those committed for violation of a city ordinance, in which case the city shall pay expenses to the county. [C51,§3116; R60,§5135; C73,§§485, 4735; C97,§§735, 5651; C24, 27, 31, 35, 39,§§5511, 5772; C46, 50,§§356.15, 368.40; C54, 58, 62, 66, 71, 73, §§356.15, 368.15; C75,§356.15]

Referred to in §356.45

356.16 Hard labor. Able-bodied persons over the age of sixteen, confined in any jail under the judgment of any tribunal authorized to imprison for the violation of any law, ordinance, bylaw or police regulation, may be required to labor during the whole or part of the time of their sentences, as hereinafter provided, and such tribunal, when passing final judgment of imprisonment, whether for nonpayment of fine or otherwise, shall have the power to and shall determine whether such imprisonment shall be at hard labor or not. [C51,§3107; R60,§5126; C73,§4736; C97,§5652; S13, §5652; C24, 27, 31, 35, 39,§5512; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.16]

356.17 Labor on public works. Such labor may be on the streets or public roads, on or about public buildings or grounds, or at such other places in the county where confined, and during such reasonable time of the day as the person having charge of the prisoners may direct, not exceeding eight hours each day. [C73,§4737; C97,§5653; C24, 27, 31, 35, 39,§5513; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.17]

356.18 Supervision. If the sentence be for the violation of any of the statutes of the state, the sheriff of the county shall superintend the

performance of the labor, and furnish the tools and materials, if necessary, to work with, at the expense of the county in which the convict is confined, and such county shall be entitled to his earnings. [C51,§3107; R60,§5126; C73, §4738; C97,§5654; C24, 27, 31, 35, 39,§**5514**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.18]

356.19 Rules—labor not to be leased. Such labor shall be performed in accordance with such rules as may be made by resolution of the board of supervisors, not inconsistent with the provisions of this chapter, and such labor shall not be leased. [C97,§5654; C24, 27, 31, 35, 39, §**5515**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.19]

356.20 Violation of city ordinance. When the imprisonment is under the judgment of any court, for the violation of any ordinance, the marshal or chief of police shall superintend the labor and furnish the tools and materials, if necessary, at the expense of the city requiring the labor, and the city shall be entitled to the earnings of its convicts. [C73, §4739; C97,§5655; C24, 27, 31, 35, 39,§**5516**; C46, 50, 54, 58, 62, 66, 71, 73 75,§356.20]

356.21 Control and punishment. The officer having charge of any prisoner may use such means as are necessary to prevent his escape, and if the prisoner attempts to escape or if, being convicted, he refuses to labor, the officer having him in charge may, to secure his person or cause him to labor, deal with him as with other disorderly or refractory prisoners. Such punishment shall be inflicted within the jail or jail enclosure, and the time of such solitary confinement shall not be considered as any part of the time for which the prisoner is sentenced. [C73,§4740; C97,§5656; C24, 27, 31, 35, 39,§**5517**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §356.21]

356.22 Credit for labor. For every day of labor performed by any convict under the provisions hereof, there shall be credited on any judgment for fine and costs against him the sum of one dollar and fifty cents. [C73, §4741; C97,§5657; C24, 27, 31, 35, 39,§**5518**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.22]

356.23 Cruel treatment. If any officer or other person treat any prisoner in a cruel or inhuman manner, he shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment. [C73,§4742; C97,§5658; C24, 27, 31, 35, 39,§**5519**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §356.23]

356.24 Protecting prisoners. The officer having a prisoner in charge shall protect him from insult and annoyance and communication with others while at labor, and in going to and returning from the same, and may use such means as are necessary and proper therefor. [C73,§4743; C97,§5659; C24, 27, 31, 35, 39,§**5520**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.24]

356.25 Annoyance of prisoner. Any person persisting in insulting or annoying or communicating with any prisoner, after being commanded by such officer to desist, shall be punished by a fine not exceeding ten dollars, or by imprisonment not exceeding three days. [C73,§4743; C97,§5659; C24, 27, 31, 35, 39,§**5521**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§356.25]

356.26 Leaving jail for certain purposes. The district court may grant by appropriate order to any person sentenced to a county jail the privilege of leaving the jail at necessary and reasonable hours for any of the following purposes:

1. Seeking employment.
2. Working at his employment.
3. Conducting his own business or other self-employed occupation, including housekeeping and attending to family needs.
4. Attendance at an educational institution.
5. Medical treatment.

All released prisoners shall remain, while absent from the jail, in the legal custody of the sheriff, and shall be subject, at any time, to being taken into custody and returned to the jail. [C66, 71, 73, 75,§356.26]

Referred to in §§356.28, 356.30, 356.33, 356A.4

356.27 Privilege expressly granted. Unless such privilege is expressly granted by the court, the prisoner is sentenced to ordinary confinement. Any prisoner may petition the court for such privilege at the time of sentencing or thereafter, and the court in its discretion may review the petition and make appropriate orders. The court may withdraw the privilege at any time by order entered with or without notice or hearing. [C66, 71, 73, 75,§356.27]

Referred to in §§356.28, 356.30, 356.33, 356A.4

356.28 Employment. The sheriff or any suitable person or agency designated by the court may endeavor to secure employment for unemployed prisoners granted privileges under sections 356.26 to 356.36. [C66, 71, 73, 75,§356.28]

Referred to in §§356.30, 356.33, 356A.4

356.29 Wages or salary collected by sheriff. If a prisoner is employed for wages or salary the sheriff may collect the same or require the prisoner to turn over his wages or salary in full when received, and the sheriff shall deposit the same in a trust checking account and shall keep a ledger showing the status of the account of each prisoner. Such wages or salary are not subject to garnishment during the prisoner's term and shall be disbursed only as provided in these sections. [C66, 71, 73, 75,§356.29]

Referred to in §§356.28, 356.30, 356.33, 356A.4

356.30 Prisoner to pay for board. Every prisoner gainfully employed is liable for the cost of his board in the jail as fixed by the county board of supervisors. The sheriff shall

charge his account for such board and any meals provided in section 356.31. If the prisoner is gainfully self-employed he shall pay the sheriff for such board, in default of which his privilege under this chapter is automatically forfeited. If necessarily absent from jail at a meal time, he shall at his request be furnished with a lunch to carry to work. If the jail food is furnished directly, by the county, the sheriff shall account for and pay over such meal payments to the county treasurer. The county board of supervisors may by resolution provide that the county furnish or pay for the transportation of prisoners employed under sections 356.26 to 356.36 to and from the place of employment. [C66, 71, 73, 75,§356.30]

Referred to in §§356.28, 356.33, 356A.4

356.31 Application of wages. By order of the court, the wages, salaries, or other income of employed prisoners shall be disbursed by the sheriff for the following purposes and in the order stated.

1. The meals of the prisoner.
2. Necessary travel expense to and from work including reimbursement for travel furnished by the county, and other incidental expenses of the prisoner.
3. Support of the prisoner's dependents, if any.
4. Payment, either in full or ratably, of the prisoner's obligations if acknowledged by him in writing or which have been reduced to judgment.
5. The balance, if any, to the prisoner upon his release. [C66, 71, 73, 75,§356.31]

Referred to in §§356.28, 356.30, 356.33, 356A.4

356.32 Employment in another county. The court may by order authorize the sheriff to whom the prisoner is committed, to contract with a sheriff of another county, for the employment of the prisoner in the other's county, and while so employed to be in the other's custody, but in other respects to be and continue subject to the commitment. [C66, 71, 73, 75,§356.32]

Referred to in §§356.28, 356.30, 356.33, 356A.4

356.33 Orders of courts. District judges, district associate judges, and judicial magistrates, within their respective jurisdictional authority, may make all determinations and orders under sections 356.26 to 356.36.*

If the prisoner was convicted in a court in another county, the district court in the county where the prisoner is jailed, at the request or the concurrence of the committing court, may make all determinations and orders under this secton as might otherwise be made by the sentencing court after the prisoner is received at the jail. [C66, 71, 73, 75,§356.33]

Referred to in §§356.28, 356.30, 356A.4

*See 61GA, ch 312,§8

356.34 Support of dependents. The sheriff or any other suitable person or agency designated by the court shall, at the request of the court, investigate and report to the court the amount necessary for the support of the prisoner's dependents. [C66, 71, 73, 75,§356.34]

Referred to in §§356.28, 356.30, 356.33, 356A.4

356.35 Suspension of privileges. The sheriff may in his discretion suspend the privilege provided he files with the court the next regular court day a statement of his reasons therefor. Unless the court acts to rescind its order, such suspension of the privileges may not exceed five days. [C66, 71, 73, 75,§356.35]

Referred to in §§356.28, 356.30, 356.33, 356A.4

356.36 Contempt of court. Any person who fails to return to said jail after the hours of release authorized by the court order and who does not thereby fall within the provisions of section 745.8, may be deemed guilty of contempt of court and punished as provided in section 665.4. [C66, 71, 73, 75,§356.36]

Referred to in §§356.28, 356.30, 356.33, 356A.4

356.37 Safe and suitable jails. The county board of supervisors shall provide safe and suitable jails for their respective counties, and shall cause the same to be maintained in good sanitary condition at all times, properly ventilated, heated and lighted, structurally sound, fire resistant and kept in good repair. They shall cause the jails in their respective counties to be kept clean, provided with water of safe quality and ample quantity and sewer disposal facilities in accordance with good sanitary standards, and provided with clean, comfortable mattresses and blankets, sufficient for the comfort of the prisoners, and that food be prepared and served in a palatable and sanitary manner and according to good dietary practices and of a quality to maintain good health. [C66, 71, 73, 75,§356.37]

Referred to in §§356.38, 356.39, 356.42, 356.43, 356A.1, 356A.7

356.38 Defined. For the purpose of sections 356.37 to 356.44 the term "safe and suitable jails" is further defined to mean jails which provide adequate security and safety facilities by having separate cells or compartments, dormitories, and day rooms, of varying dimensions and capacities for prisoners confined therein, except that, when practicable, no such cell or compartment shall be designed for confining two prisoners only. Cells or compartments shall be designed to accommodate one or from three to eight prisoners each, and furthermore, such dormitories and day rooms shall be designed to accommodate not more than twenty-four prisoners each. Dormitory space may be provided to accommodate not more than forty percent of the total designated prisoner capacity of the jail. All cells, compartments, and dormitories for sleeping purposes, where each such cell, compartment, or dormitory is designed to accommodate three or more prisoners shall be accessible to a day room to which prisoners may be given access during the day. Cells for one prisoner only shall have a minimum floor area of forty square feet and all other cells, compartments, dormitories and day rooms (including safety vestibule area) shall have a minimum floor

area equal to eighteen square feet for each prisoner to be confined therein. The ceiling height above finished floor shall be not less than eight feet for any cell, compartment, dormitory or day room where prisoners are confined. [C66, 71, 73, 75,§356.38]

Referred to in §§356.39, 356.42, 356.43, 356A.7

356.39 Further requirements. The term "safe and suitable jails," as used in sections 356.37 to 356.44 is further defined to mean that, for reasons of safety to officers and security, the entrance and exit to each group of enclosures forming a cell block or group of cells and compartments used for the confinement of three or more prisoners shall be through a safety vestibule having one or more interior doors in addition to the main outside entrance door to such cell block, all arranged to be locked, unlocked, opened or closed by control means located outside of any such enclosure or cell block. All such enclosures or cell blocks, for the confinement of prisoners, shall be separated from the building wall on at least one side, by a corridor not less than three feet wide and so designed that no prisoners in confinement areas shall have direct access to windows in the walls of the building. [C66, 71, 73, 75,§356.39]

Referred to in §§356.38, 356.40, 356.42, 356.43, 356A.7

356.40 Basement facilities — use limited. Basement or semibasement facilities may be used for detention of day parole prisoners only and in such facility, requirements of section 356.39 may be excepted. [C66, 71, 73, 75,§356.40]

Referred to in §§356.38, 356.39, 356.42, 356.43, 356A.7

356.41 Sanitation and health. The term "safe and suitable jails" is further defined to mean jails which provide adequate facilities for maintaining proper standards in sanitation and health. Each cell designed for one prisoner only shall be provided with a water closet and a combination lavatory and clean tap water, table and a seat. Each cell, compartment or dormitory designed for three or more prisoners, shall be provided with one water closet and one combination lavatory and clean tap water for each twelve prisoners or fraction thereof to be confined therein. All such cells, compartments and dormitories shall be provided with one bunk, not less in size than two feet, three inches wide and six feet, three inches long, for each prisoner to be confined therein. Each day room for the confinement of three or more prisoners shall be provided with one water closet, one combination lavatory and drinking fountain and one shower bath for each twelve prisoners, or fraction thereof, to be confined therein. Each day room shall be otherwise suitably furnished. [C66, 71, 73, 75,§356.41]

Referred to in §§356.38, 356.39, 356.42, 356.43, 356A.7

356.42 When applicable. Sections 356.37 to 356.44 shall apply to all jails and additions and extensions to jails constructed after July 4, 1965, and all existing jails which are substantially remodeled or reconstructed after July 4, 1965. These sections shall apply to all other existing jails from and after July 1, 1966, except that these sections shall not require improvements to such a jail if the probable cost of such improvements will exceed the amount which the board of supervisors may lawfully authorize without submitting the proposition to the voters. [C66, 71, 73, 75,§356.42]

Referred to in §§356.38, 356.39, 356.43

356.43 Inspection by department—report of inspection. The state department of social services shall have general charge and supervision of the provisions of sections 356.37 to 356.44. The state department of social services and its inspectors and agents shall have the power and duty to make periodic inspections of each such jail and all such facilities established pursuant to chapter 356A, and officially to notify the county board of supervisors in writing to comply fully with the provisions of sections 356.37 to 356.44.

The department of social services may order the governing body of a political subdivision to either correct any violations found in the inspection of a jail within a designated period, or may prohibit the confinement of prisoners in the jail. If the governing body fails to comply with the order within the period designated, the department of social services may schedule a hearing on the alleged violation. The department may subpoena witnesses, documents, and other information deemed necessary to determine the validity of the alleged violation. The department shall upon written request from the governing body of the political subdivision grant representatives of the political subdivision the right to appear before the department at the hearing. Such representatives shall have the right to counsel and may produce witnesses and present statements, documents, and other information with respect to the alleged violation for consideration at the hearing.

The department after the hearing shall affirm, revoke, or modify the original order. If the order is upheld, the department may include a schedule for correction of the violation or violations and designate the date before each violation shall be corrected.

If the political subdivision does not comply with the order within the designated period, the department may petition the attorney general to institute proceedings to enjoin the political subdivision from confining prisoners in the jail and require the transfer of prisoners to a jail declared by the director to be suitable for confinement. The county or municipality from which prisoners are transferred shall be liable for the cost of transfer and expenditures incurred in the confinement of prisoners in the jail to which transferred. Following inspection of any county jail, a report of the same shall be filed with the director of the division of corrections of the department of social services, a copy with the sheriff, the county board of supervisors, and

one copy with the county attorney, which shall be presented at the next session of the grand jury of that county. [C66, 71, 73, 75,§356.43]

Referred to in §§356.38, 356.39, 356.42

356.44 Rules of sheriff. The county sheriff shall formulate rules for the conduct and behavior of county jail prisoners. These rules may include provisions for county jail prisoners to do all necessary cleaning and upkeep of cells, compartments, dormitories and day rooms. Extra penalties may be provided for intentional damage of county jail property. Such rules and regulations shall be approved by a district judge from the district in which the county jail is located. [C66, 71, 73, 75, §356.44]

Referred to in §§356.38, 356.39, 356.42, 356.43

356.45 Expense at regional detention facility. Each county from which a person sentenced to the county jail is transferred to serve all or any part of such sentence in the regional detention facility* shall reimburse the department of social services for the full cost of maintenance of such person in the facility. The average daily cost of maintenance of an individual in the facility shall be computed, and the respective counties shall be advised of the amounts due the department of social services under this section and shall remit such amounts, at the times and in the manner provided by law for the support of patients of state mental health institutes. Such amounts shall be deemed a charge the county is required to pay under section 356.15. The amounts so received by the department of social services from the respective counties may be used by the department to supplement appropriated funds for the cost of operating the regional detention facility. [C71, 73, 75, §356.45]

*Developed pursuant to 63GA, ch 1010,§1(1)

356.46 Time off for good behavior. Every prisoner in the county jail may, upon the recommendation of the sheriff, and at the discretion of the sentencing judge, receive a reduction of his sentence of not more than twenty percent if:

1. No infraction of the rules of discipline of the county jail or of the laws of the state has been recorded against him since the beginning of his incarceration; and
2. He has performed in a faithful manner the duties assigned to him. [C73, 75,§356.46]

356.47 Sentence suspended. A judge who sentences a person to the county jail or other detention facility pursuant to this chapter, may suspend any part of such sentence and place such person on probation, upon such terms and conditions as the sentencing judge may direct, after such person has served that part of his sentence which was not suspended. [C73, 75,§356.47]

CHAPTER 356A

COUNTY DETENTION FACILITY

Referred to in §356.43

356A.1 County supervisors may act.
356A.2 Contract.
356A.3 Alternative confinement of prisoners.
356A.4 Work release.
356A.5 Calendar kept.
356A.6 Transfer.
356A.7 Contract with another county.

356A.1 County supervisors may act. A county board of supervisors may, by majority vote, establish and maintain by lease, purchase, or contract with a public or private nonprofit agency or corporation to establish and maintain, facilities where persons may be detained or confined pursuant to a court order as provided in section 356.1. Such facilities may be in lieu of or in addition to the jail required in section 356.37. The board shall establish rules and regulations for the operation of each such facility. Any person detained or confined to such a facility shall be required to do all cleaning, upkeep, maintenance, minor repairs, and anything else necessary to properly maintain, operate, and preserve such facility. The sheriff shall not have charge or custody of any person detained or confined in such facility or transferred thereto. Such facility need not contain any cells, cell blocks, or bars, if it is not necessary for the protection of the public, as determined by the board. [C73, 75,§356A.1]

Referred to in §§356A.3, 356A.4, 356A.5, 356A.6

356A.2 Contract. If the board of supervisors contract with a public or private nonprofit agency or corporation for the establishment and maintenance of such a facility, the contract shall state the charge per person per day to be paid by the county; that each such facility shall insure the performance of the duties of the keeper as defined in section 356.5; the activities and service to be provided those detained or confined; the extent of security to be provided in the best interests of the community; the maximum number of persons that can be detained or committed at any one time; the number of employees to be provided by the contracting private nonprofit agency or corporation for the maintenance, supervision, control,

and security of persons detained or confined therein; and any other matters deemed necessary by the supervisors. All such contracts shall be for a period not to exceed two years. The board of supervisors shall deliver a copy of the contract to each municipal court judge in the county and to each district court judge of the district which includes that county. [C73, 75,§356A.2]

Referred to in §§356A.3, 356A.4, 356A.5, 356A.6

356A.3 Alternative confinement of prisoners. Any municipal or district court judge may sentence and commit a person to a facility established and maintained pursuant to section 356A.1 or 356A.2 instead of the county jail. A district court judge may order the transfer of a person sentenced and committed to the county jail to such a facility upon his own motion, the motion of the sentenced and committed person, or the motion of the sheriff. The original order of commitment or the order of transfer to the facility shall set forth the terms and conditions of the detention or commitment; that the detained or committed person shall abide by the terms and conditions of this chapter and the rules and regulations of the facility to which committed or transferred. The order shall be read to the detained, committed or transferred person in open court. The committing court or a district court judge may order any person who has been detained, committed, or transferred to such a facility to be transferred to the county jail if, upon hearing, the court determines such person has been refractory, disorderly, has willfully destroyed or injured any property in the facility, or has violated any of the terms and conditions of the order of detention, commitment, or transfer or the provisions of this chapter or the rules and regulations of the facility wherein he was detained or committed. Any violations of the order of detention, commitment, or transfer shall further be punished as contempt of court pursuant to chapter 665. The provisions of chapter 745 shall be applicable to any person detained, committed, or transferred to a facility established and maintained pursuant to this chapter. The county or city to which the cause originally belonged shall be liable for the expense of the original detention, commitment, or transfer and the subsequent expenses of maintaining such person in the facility. The county's expense shall be levied and paid out of the court expense fund pursuant to section 444.10. [C73, 75,§356A.3]

356A.4 Work release. A person detained, committed, or transferred to a facility established and maintained pursuant to sections 356A.1 or 356A.2, may further be released from such facility during necessary and reasonable hours, by court order, for the purposes stated in section 356.26. Such release and any wages earned shall be governed by the provisions of sections 356.27 to 356.36 except that during such time the released person shall not be in the legal custody of the sheriff; any wages earned shall be collected, managed, and dispensed by the person in charge of the facility and not the sheriff; and any wages earned shall first be applied to the reasonable cost of housing such person in the facility. [C73, 75, §356A.4]

356A.5 Calendar kept. Any person sentenced, detained, committed, or transferred to a facility established and maintained pursuant to section 356A.1 or 356A.2 shall be discharged therefrom upon completion of their original term of detention or commitment. The person in charge of such facility shall keep a calendar as required in section 356.6 and return a copy of the calendar as required by section 356.7. [C73, 75,§356A.5]

356A.6 Transfer. A judge of the municipal or district court may originally commit a person to the county jail to serve any part of the sentence pronounced and thereafter be transferred to a facility established and maintained pursuant to section 356A.1 or 356A.2. [C73, 75,§356A.6]

356A.7 Contract with another county. A county board of supervisors may further contract with another county or a city maintaining a jail meeting the requirements of sections 356.37 to 356.41 for detention and commitment of persons pursuant to section 356.1. Any person detained or confined therein shall be in charge of and in the custody of the governmental unit maintaining the jail. The cost of detention and confinement shall be levied and paid by the city or from the court expense fund of the county to which the cause originally belonged pursuant to section 444.10. [C73, 75,§356A.7]

CHAPTER 357

BENEFITED WATER DISTRICTS

Referred to in §332.3

357.1 Petition.
357.2 Territory included.
357.3 Scope of assessment.
357.4 Public hearing.
357.5 Decision at hearing.
357.6 Examination by engineer.
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357.1 Petition. The board of supervisors of any county shall, on the petition of twenty-five percent of the resident property owners in any proposed benefited water district, grant a hearing relative to the establishment of such proposed water district; such petition shall set out the following and any other pertinent facts:

1. The need of a public water supply.
2. The approximate district to be served.
3. The approximate number of families in the district.
4. The proposed source of supply.
5. The type of service desired, whether domestic only or for fire protection and other uses.

The board of supervisors may, at its option, require a bond of the petitioners as provided in section 455.10.

A benefited water district located wholly within the corporate limits of a city is not subject to the provisions of this chapter. [C24, 27, 31, 35,§5523; C39,**§5526.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.1]

357.2 Territory included. The benefited water district may include part or all of any incorporated city or cities, together with or without surrounding territory including cemeteries and all publicly owned land. Said publicly owned property shall pay and bear its proportionate share of the cost and expense of said water system upon the same basis as privately owned property. [C39,**§5526.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.2]

357.3 Scope of assessment. The special assessment hereinafter provided for may be used to cover the costs of installing all the necessary elements of a water system, for both production and distribution. [C24, 27, 31, 35, §5522; C39,**§5526.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.3]

357.4 Public hearing. When the board of supervisors receives a petition for the establishment of a benefited water district, a public hearing shall be held within twenty days of the presentation of the petition. Notice of such hearing shall be given by posting bills in three public places within the district, or by publication in two successive issues of any paper of general circulation within the district. The last publication or posting shall be not less than one week before the proposed hearing. [C24, 27, 31, 35,§5523; C39,**§5526.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.4]

357.5 Decision at hearing. On the day fixed for such hearing, the board of supervisors shall by resolution establish the benefited water district or disallow the petition. For adequate reasons the board of supervisors may defer action on such petition for not to exceed ten days after the day first set for a hearing. [C24, 27, 31, 35,§5523; C39,**§5526.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.5]

357.6 Examination by engineer. When the board of supervisors shall have established the benefited water district, they shall appoint a competent disinterested civil engineer and instruct him to examine the proposed improvement, make preliminary designs in sufficient detail to make an accurate estimate of the cost of the proposed water system. He shall also report as to the suitability of the proposed source of water supply. [C39,**§5526.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.6]

357.7 Water source without district. When in any proposed benefited water district, it is anticipated that the source of supply will be without the district, and not under its control, the board of supervisors shall instruct the engineer who is appointed to make the preliminary design and dummy assessment, to also obtain from the corporation or municipality which controls the proposed source of supply, a statement in writing, outlining the terms upon which water will be furnished to the district, or to the individuals within the district and on what terms in either case.

This preliminary proposal from the governing body of the source of supply shall be binding, and shall be in the nature of an option to purchase water by the district, or the individual within the same, if and when the proposed benefited water district shall have completed its construction, and is ready to use water. This proposal shall accompany and be a part of the engineer's preliminary report to the board of supervisors. [C39,**§5526.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.7]

357.8 Plat. The said engineer shall prepare a preliminary plat showing the proper design

in general outline, the size and location of the water mains, the general location of hydrants, if such are included in said petition, valves and other appurtenances, and shall show the lots and parcels of land within the proposed district as they appear on the county auditor's plat books, together with the names of the owners and the amount which it is estimated that such lot or parcel will be assessed. [C39, §5526.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.8]

357.9 Compensation of engineer. The compensation of such engineer on the preliminary investigation shall be determined by the board of supervisors and may be by percentage or per diem. [C39,§5526.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.9]

357.10 Filing of report and plat. The engineer's report, together with the dummy plat showing the tentative design and assessment, shall be filed with the county auditor within thirty days of such engineer's appointment, unless for adequate reasons it is impossible for him to do so, in which case the board of supervisors may extend the time therefor. [C39, §5526.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.10]

357.11 Hearing on report. On receipt of the engineer's report, the board of supervisors shall give notice in the same manner as before, of a hearing on the engineer's tentative design and dummy plat. On the day set, or within ten days thereafter, the board of supervisors shall approve or disapprove the engineer's plan and proposed assessment. If it shall appear advisable, the board of supervisors may make changes in the design and assessment, as they appear on the dummy plat. [C39,§5526.11; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.11]

357.12 Election. When the preliminary design and assessment have been approved by the board of supervisors, a date not more than thirty days after such approval shall be set for an election within the district to determine whether or not the proposed improvement shall be constructed and to choose candidates for the offices of trustee within the district. Notice of the election, including the time and place of holding the same, shall be given in the same manner as for the public hearing heretofore provided for. The vote shall be by ballot which shall state clearly the proposition to be voted upon, and any qualified elector residing within the district at the time of the election shall be entitled to vote. It shall not be mandatory for the county commissioner of elections to conduct elections held pursuant to this chapter, but they shall be conducted in accordance with the provisions of chapter 49 where not in conflict with this chapter. Judges will be appointed to serve without pay, by the board of supervisors from among the qualified electors of the district who will have charge of the election. The proposition shall be deemed to have carried if a majority of those voting thereon vote in favor of the same. [C24, 27, 31, 35,§5524; C39,§5526.12; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.12]

Referred to in §357.13

357.13 Trustees—terms. At the election provided for in section 357.12, the names of the trustees shall be written by the voter on blank ballots without formal nomination and the board of supervisors shall appoint three from among the five receiving the highest number of votes as trustees for the district, one to serve for one year, one for two years, and one for three years, which trustees and their successors shall give bond in the amount the board of supervisors may require, the premium of which shall be paid by the district said trustees represent. Vacancies may thereafter be filled by election, or by appointment by the board of supervisors, at the option of the remaining trustees. The term of succeeding trustees shall be for three years. [C24, 27, 31, 35, §5524; C39,§5526.13; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.13]

357.14 Bids for construction. If the result of said election be in favor of said improvement, the board of supervisors shall instruct the engineer to complete the plans and specifications, ready for receiving bids for construction of the project, which he shall do within thirty days of receiving notice to do so, unless for adequate reason the board shall extend the time.

When the completed plans and specifications are on file with the county auditor, the board of supervisors shall advertise for bids and shall cause notice to be given by publication once each week for two consecutive weeks in some newspaper published in the county wherein the improvement is to be constructed, setting forth the location and nature of the improvement and the date and place where bids will be received by the board. The last published notice to bidders shall be at least seven days before the time set for receiving bids. Bidders will be required to submit certified checks for five percent of the amount of the bid. [C24, 27, 31, 35,§5524; C39,§5526.14; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.14]

357.15 Inadequate assessment. When bids have been received, if it is apparent that the final assessment will need to be increased more than ten percent over the preliminary assessment, the board of supervisors shall, at its option, reject bids and readvertise for bids as provided herein, or reject bids and revise the dummy assessment. If the dummy assessment is revised, another election shall be held within the district in the same manner and with the same notices as the first, except that the candidates for trustees shall not be voted for. [C39,§5526.15; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.15]

357.16 Second election. If the majority of the votes cast at said second election be in favor of said improvement, the board of super-

visors shall again advertise for bids in the same manner as before. If the bids at the second letting will not necessitate raising the second preliminary assessment more than ten percent, the board may let the contract to the lowest responsible bidder. [C24, 27, 31, 35, §5524; C39,§**5526.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.16]

357.17 Bond of contractor. The successful bidder, when awarded a contract, shall be required to give an approved surety bond for one hundred percent of the contract price, guaranteeing completion of the work in accordance with the plans and specifications, and for maintenance, including backfilling, for one year after the final acceptance of the work.

If the contractor shall fail to complete the work as provided in his contract, or shall abandon the same, or fail to proceed in a reasonable manner toward its final completion, the board may proceed against the contractor and bondsman as provided in sections 455.114 and 455.115. [C39,§**5526.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.17]

357.18 Acceptance of work. When in the opinion of the engineer in charge, the construction in any benefited water district has been completed in accordance with the plans, specifications, and contract, he shall certify this fact to the board of supervisors, and recommend the acceptance of the work by the said board. The board of supervisors shall proceed in accordance with sections 455.111 and 455.112. [C39,§**5526.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.18]

357.19 Completing assessment. After the final acceptance of the work by the board of supervisors, the engineer shall complete the final assessment, which shall be made on all the property within the district, whether abutting or not, for an amount approximately ten percent greater than the total cost of the project. The assessment shall not exceed benefits conferred and shall take into consideration the location and value of the property assessed. Where a pipe in excess of six inches in diameter is used, the assessment against the abutting property shall be limited to the cost of a six-inch pipe, and the difference between the cost of the pipe used and a six-inch pipe shall be paid by a uniform assessment against all benefited property within the water district. The final assessment on any lot or parcel of land shall not exceed the final preliminary assessment by more than ten percent, and shall in no case exceed twenty-five percent of the actual value of the property. The board of supervisors may alter an assessment to increase or decrease it within the limits outlined above, and must approve by resolution the final assessment as made. [C24, 27, 31, 35, §5522; C39,§**5526.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.19]

357.20 Due date—bonds. Assessments of less than ten dollars will come due at the first tax-paying date after the approval of the final assessment, and assessments of ten dollars or more may be paid in ten annual installments with interest at six percent on the unpaid balance. The board of supervisors shall issue bonds against the completed assessment in an amount equal to the total cost of the project, so that the amount of the assessment will be approximately ten percent greater than the amount of the bonds. [C24, 27, 31, 35,§5522; C39,§**5526.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.20]

357.21 Substance of bonds. Each of such bonds shall be numbered, and have printed upon its face that it is a benefited water district bond, stating the county and the number of the district for which it is issued, and the date of maturity; that it is in pursuance of a resolution of the board of supervisors, and that it is to be paid for only from special assessment theretofore levied and taxes levied as hereinafter provided for that purpose within the said district for which the bond is issued. The provisions of sections 455.83 and 455.86 shall govern the issuance of these bonds except that the contractor will not be paid anything on the work until its completion and final acceptance. [C39,§**5526.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.21]

357.22 Lien of assessments—tax. When the assessment has been completed and the bonds sold and the schedule of assessment shall be turned over to the county auditor, the installments due thereon shall be collected in the same manner as ordinary taxes and shall constitute a lien on the property against which they are made. If the treasurer does not receive sufficient funds to enable him to pay the interest and retire the bonds as they become due, he shall levy an annual tax of eighty-one cents per thousand dollars of assessed value of all taxable property within the district to pay such deficiency, and the county treasurer shall apply the proceeds of such levy to the payment of the bonds and the interest on the same so long as the bonds are in arrears on either interest or principal. [C24, 27, 31, 35,§5525; C39,§**5526.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.22]

357.23 Surplus. The board of supervisors shall be required to levy the annual tax of eighty-one cents per thousand dollars of assessed value of taxable property so long as the bonds are in arrears. [C39,§**5526.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.23]

357.24 Fee of engineer. The fee for engineering services shall be fixed by the board of supervisors and he may be paid either a percentage or a per diem, from proceeds of the bond sale or by cash from the contractor, if the contractor takes bonds in settlement for his work under his contract. [C39,§**5526.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.24]

357.25 Management by trustees. After the final acceptance of the work by the board of supervisors, the management of the utility

shall automatically go to the three trustees previously appointed by the board of supervisors. The trustees shall have power to levy an annual tax not to exceed thirteen and one-half cents per thousand dollars of assessed value of all taxable property in the district, for the maintenance of the system. This levy shall be optional with the trustees. The trustees may purchase material and employ labor to properly maintain and operate the utility. The trustees shall be allowed necessary expenses in the discharge of their duties, but shall not receive any salary. [C24, 27, 31, 35, §5526; C39,§**5526.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.25]

357.26 Duties of trustees. It is anticipated that this law will usually be utilized to finance a distribution system where the source of supply is without the district, and not under its control, and that individuals within the district will pay water rent to a municipality or corporation without the district. It is intended that the trustees may so operate the utility as will best serve the users, and they are expressly authorized to buy and sell water, to fix the rates to consumers and make all contracts reasonable or necessary to accomplish the purpose of this chapter and to carry on all the operations incident to maintaining and operating said utility and to the procuring and furnishing of water to the consumers therein. If the development of a source of supply is within the means of the district, the trustees may install wells, tanks, meters and any other equipment properly pertaining to operate it. [C39,§**5526.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.26]

357.27 Public property in district. Whenever property of the state of Iowa, or any political subdivision thereof, shall be included either wholly or in part within such water district and shall own facilities which may be used as a part of such water system, the executive council, board of supervisors or city council, as the case may be, may permit such use of said facilities for such consideration and on such terms as may be agreed upon with the board of trustees. [C39,§**5526.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.27]

357.28 Private mains — additional assessments. Any person or persons within any water district, who may, after the initial installation of the improvement in any such district, desire to construct additional mains, and who have been assessed on the original assessment, may with the consent of the trustees, connect such lateral mains as they desire with the original system to serve property within the district which has been assessed, provided that the entire cost thereof shall be borne by the parties so interested.

The trustees shall have power to make additional assessments on unimproved lots or parcels of land within the district when said unimproved lots or parcels are improved and ready to receive the full benefits of the district. This additional assessment shall be determined and fixed by the trustees and shall not exceed the average assessment for improved property in said districts less the original assessment on said unimproved lots or parcels. Said assessments shall be paid to the county treasurer before service pipes are laid into said improvement. The assessment shall be put in the benefited water district fund of the district of which said lots or parcels are a part and shall be used by the county treasurer for the retirement of bonds and interest. When the bonds are all retired, the trustees shall be authorized to use said fund for maintenance purposes, changing size of mains, eliminating dead ends, or extending mains for the benefit of the district. [C39,§**5526.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.28]

357.29 Subdistricts. If the cost of the desired extensions will be as much as five thousand dollars, the interested parties may petition the board of supervisors to organize a subdistrict, and in such case the board shall proceed in the same manner as for a new district, and may take in territory not originally assessed.

The board of supervisors shall have power at any time to alter the boundaries of any district prior to the time of posting or publishing notice of the election within the district. [C24, 27, 31, 35,§5522; C39,§**5526.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.29]

357.30 Additional territory. When the district is under the control of trustees, they are empowered to deal with parties without the district who desire to be taken into the district or to obtain water from the district and determine the amount to be assessed against said district to be taken in or connected with. The trustees shall have power in such cases to make agreements for the district, and may, with the consent of the board of supervisors, alter the district boundaries to take in additional territory. No lot or parcel of land shall be put out of a district without the consent of the owner, after it has paid any assessment to the district. [C24, 27, 31, 35,§5522; C39,§**5526.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.30]

357.31 Right of way. The board of supervisors shall have power to condemn, in the same manner as provided for the condemnation of land, right of way through private property, sufficient for the construction and maintenance of water mains. The cost of such right of way shall constitute a part of the expense of the improvement and shall be covered by the special assessment. [C39,§**5526.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.31]

357.32 Record book. The board of supervisors shall provide a record book which shall be in the custody of the auditor, in which shall be kept a full and complete record of the proceedings relative to water districts, so arranged and indexed, as to enable any proceedings relative to any district to be readily

examined. [C24, 27, 31, 35,§5524; C39,§**5526.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.32]

357.33 Appeal procedure. Any person aggrieved, may appeal from any final action of the board of supervisors in relation to any matter involving his rights, to the district court of the county in which the district is located. The procedure in such appeals shall be governed by the provisions of sections 455.94 to 455.109 provided that whenever in the above sections the words "drainage district" occur, the words "benefited water district" shall be substituted. [C39,§**5526.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§357.33]

357.34 Conveyance of district to city. Where a city is situated wholly or partly within a benefited water district or the source of supply for such benefited water district is a municipal water system, the board of supervisors having jurisdiction of said benefited water district, at the request of the trustees of said benefited water district, may, by proper resolution, convey unto said city any and all rights which said board of supervisors may have in and to said benefited water district. Said conveyance, however, shall not become effective until all existing obligations against said district have been completely and fully discharged and such conveyance accepted and confirmed by a resolution of the council of said city or of the board of waterworks trustees of said city if there be one, specially passed for such purpose.

Upon acceptance, the district, including the plant and distribution system, as well as all funds and credits shall become the property of said city and be operated and used by it to the same extent as if acquired under such provisions of law under which said city is then operating its waterworks. Also, the offices of the trustees as provided in this chapter shall be abolished upon acceptance by the city and their duties as such shall immediately cease. [C54, 58, 62, 66, 71, 73, 75,§357.34]

CHAPTER 357A

RURAL WATER DISTRICTS

Referred to in §§332.3, 476.1

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357A.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"District"* means a rural water district incorporated and organized pursuant to the provisions of this chapter.

2. *"Board"* means the board of directors of a district, and "director" means a member of such board of directors.

3. *"Member"* means any owner of land which is located within a district, or the occupant thereof or other person acting for the owner with the owner's written consent.

4. *"Participating member"* means a member who has subscribed to and paid the established fee for at least one benefit unit in a district, in the manner provided by this chapter.

5. *"Supervisors"* means the board of supervisors of any county, or the joint boards of supervisors of any two or more counties, in which a district has been incorporated and organized or is proposed to be incorporated and organized.

6. *"Auditor"* means the county auditor of any county in which a district has been incorporated and organized or is proposed to be incorporated and organized or, in the case of a district or proposed district lying in two or more counties, the auditor of the county having the largest district acreage.

7. *"Council"* means the Iowa natural resources council. [C71, 73, 75,§357A.1]

357A.2 Petition—bond. A petition may at any time be filed with the auditor requesting the supervisors to incorporate and organize a district encompassing an area, not then included in any other district, in any county or any two or more adjacent counties for the purpose of providing an adequate supply of water for domestic purposes to residents of the area who are not served by the water mains of any city water system and who

cannot feasibly obtain adequate supplies of water from wells on their own premises.

There shall be filed with the petition a bond, certified check or cash in an amount and with sureties approved by the auditor, sufficient for the payment of all costs and expenses incurred in the proceedings if the district is not finally established.

The petition shall be signed by the owners of at least fifty percent of all land lying within the outside perimeter of the area designated for inclusion in the proposed district, and shall state:

1. The location of the area so designated, describing such area by section, or fraction thereof, and by township and range.

2. The reasons a district is needed. [C71, 73, 75,§357A.2]

Referred to in §§332.3, 357A.20

357A.3 Hearing after filing with auditor. When a petition for incorporation and organization of a district is filed with the auditor, he shall so inform the supervisors who shall fix a time for a hearing thereon, not less than fifteen nor more than thirty days after the filing of the petition. The auditor shall prepare a notice as hereinafter required, which shall at least seven days before the date fixed for the hearing on the petition:

1. Be published in a newspaper of general circulation in the area to be incorporated.

2. Be transmitted, together with a copy of the original petition, to the council. [C71, 73, 75,§357A.3]

Referred to in §357A.4

357A.4 Publication of notice. The notice prepared by the auditor pursuant to section 357A.3 shall set forth:

1. The location of the land designated by the petitioners for incorporation in the proposed district, as described by the original petition.

2. The time and place fixed by the supervisors for the hearing on the petition.

3. That all owners or occupants of land within the boundaries described may appear and be heard.

4. That the proposed district, if incorporated, shall have no power or authority to levy any taxes whatsoever. [C71, 73, 75, §357A.4]

357A.5 Who may be heard. At the hearing on the petition, any owner or occupant of land within the boundaries of the area described in the petition may appear, in person or by his designated representative, and any representative of the council may also appear, in favor of or in opposition to the incorporation and organization of the proposed district. Such appearances may also be filed in writing prior to the time set for the hearing. [C71, 73, 75,§357A.5]

357A.6 Findings by board. After the hearing, the supervisors may strike off any part of the territory that testimony shows will not be benefited by the creation of the district. If the supervisors do not find that the district is reasonably necessary, they shall dismiss the petition.

If the supervisors find that required notice of the hearing has been given and that such district is reasonably necessary for the public health, convenience, fire protection, and comfort of the residents, they shall make an order establishing the district as a body politic, describing its boundary, and designating it by name or number. The order shall be published in the same newspaper which published the notice of hearing. The supervisors shall prepare and preserve a complete record of the hearing on the petition and their findings and action thereon. [C71, 73, 75,§357A.6]

357A.7 Meeting of members. As a part of the order incorporating the district, the supervisors shall fix the time and place at which the members shall meet to select from their number a board of directors. Selection of the initial board shall be not later than thirty days after the hearing. The number of directors on the board, not to exceed nine, shall be determined by a majority vote of those members present. Any member elected a director who fails to become a participating member, within thirty days after entry in the minutes of the board of a declaration of availability of benefit units for subscription, shall forfeit his office. [C71, 73, 75,§357A.7]

Referred to in §357A.20

357A.8 Bylaws submitted at special meeting. Within thirty days after election of the original board, proposed bylaws shall be submitted for adoption at a special meeting of members of the district, written notice of which shall be mailed to each member. Members present at the special meeting may adopt or amend any of the proposed bylaws, and may propose and adopt alternative or additional bylaws. The bylaws may subsequently be amended at any annual or special meeting of the participating members of the district. However, the bylaws of each district shall provide:

1. For an annual meeting of participating members between January 1 and March 1 of each year following the year of incorporation of the district, and for the mailing of written notice of the time and place of each annual meeting to each participating member and publication of such notice in a newspaper of general circulation in the district not less than ten nor more than thirty days prior to each meeting.

2. That each participating member of the district shall be entitled to a single vote at all annual and special meetings of the district, regardless of the number of benefit units to which he has subscribed. [C71, 73, 75,§357A.8]

Referred to in §357A.20

357A.9 Members divided into classes. The initial board of each district shall divide its

members by lot into three classes of as nearly equal size as possible. The terms of the directors in the first, second, and third classes shall expire on the dates of the annual meetings in the first, second, and third years, respectively, following the year in which the district is incorporated, or as soon thereafter as their respective successors are elected and have qualified. At the annual meeting in each year after the year in which the district is incorporated, a director shall be elected to succeed each director whose term of office expires on that date, and each director so elected shall hold office for a term of three years and until his successor is elected and has qualified. Vacancies shall be filled by appointment by the remaining directors, for the unexpired term. [C71, 73, 75,§357A.9]

Referred to in §357A.20

357A.10 Board meetings. The board shall meet annually on the same day as, and immediately following, the annual meeting of participating members, and may meet at such other times as it may determine, or upon the call of the chairman or any two directors. At the first meeting of the initial board following its election, and at each succeeding annual board meeting, the board shall elect a chairman, vice-chairman, secretary, and treasurer for the ensuing year. [C71, 73, 75,§357A.10]

Referred to in §357A.20

357A.11 Board's powers and duties. The board shall be the governing body of the district, and shall:

1. Adopt rules, regulations, and rate schedules in conformity with the provisions of this Act and the bylaws of the district as necessary for the conduct of the business of the district.

2. Maintain at its office a record of the district's proceedings, rules and regulations, and any decisions and orders made pursuant to the provisions of this chapter, and furnish copies thereof to the supervisors or the council upon request.

3. Employ, appoint, or retain attorneys, engineers, other professional and technical employees, and such other personnel as necessary, and require and approve bonds of district employees.

4. Prior to each annual meeting of participating members:

a. Prepare an estimated budget for the coming year, and adjust water rates if necessary in order to produce the revenue required to fund the estimated budget, and make a report thereon at the annual meeting.

b. Have an audit made of the district's records and accounts, and make copies of the audit report available to all participating members attending the annual meeting and to any other participating member who so requests.

5. Have authority to acquire by gift, lease, purchase, or grant any property, real or personal, in fee or a lesser interest needed to achieve the purposes for which the district was incorporated, to acquire easements for water lines and reservoirs by condemnation proceedings, and to sell and convey property owned, but no longer needed, by the district. Condemnation proceedings shall not apply to existing wells, ponds or reservoirs.

6. Have authority to construct, operate, maintain, repair, and when necessary to enlarge or extend, such ponds, reservoirs, pipe lines, wells, check dams, pumping installations, or other facilities for the storage, transportation, or utilization of water, and such appurtenant structures and equipment, as may be necessary or convenient to carry out the purposes for which the district was incorporated. A district may purchase its water supply from any source.

7. Have power to borrow from, co-operate with and enter into such agreements as deemed necessary with any agency of the federal government, and to accept financial or other aid from any agency of the federal government. To evidence any indebtedness the obligations may be one or more bonds or notes and the obligations may be sold at private sale.

8. Have power to finance up to ninety-five percent of the cost of the construction or purchase of any project necessary to carry out the purposes for which the district is incorporated, provided the balance of the cost of construction or purchase is acquired by subscription, donation, gift, or otherwise than through the medium of loans, or to refinance up to ninety-five percent of the original cost of any such project, and to evidence such financing by issuance of revenue bonds or notes which shall mature in a period not to exceed forty years from date of issuance, shall bear interest, or combined interest and insurance charges, at a rate not to exceed six percent per annum, shall be payable only from revenue derived from sale of water by the district, and shall never become or be construed to be a debt against the state of Iowa or any of its political subdivisions other than the district issuing the bonds. A statutory mortgage lien shall exist upon the water system and appurtenances and extensions so acquired in favor of the holders of the bonds and notes. [C71, 73, 75,§357A.11]

357A.12 Plans and specifications. As soon as reasonably possible after incorporation of a district, the board shall file with the supervisors and the council copies of the plans and specifications for, and estimates of the cost of, any improvements authorized by this chapter which the board proposes to construct or acquire. The board shall determine a reasonable fee which each member shall pay for the privilege of utilizing the district's facilities which shall be known as a benefit unit. Benefit units may be classified. The board, by publication in a newspaper of general circulation in the district, shall generally describe the planned improvements, the area to be served

and the fee members will be required to pay for each service connected to the water system. [C71, 73, 75,§357A.12]

357A.13 Selling water. If the capacity of the district's facilities permits, the district may sell water by contract to any city, other district, or other person, public or private, not within the boundaries of a district. [C71, 73, 75,§357A.13]

357A.14 Petition to attach to district.

1. Owners of land outside any district which can economically be served by the facilities of the district may petition to be attached to the district. The petition therefor shall be filed with the auditor, and the auditor and supervisors shall proceed thereon, in substantially the same manner as is provided by this chapter for filing of a petition for incorporation and organization of a district.

2. All or any part of an incorporated city may be included in the boundaries of any existing water district or water district being newly organized, provided the governing body of such city by resolution or ordinance gives, or has given, its consent.

3. Boards of any two or more districts may by concurrent action and by approval of the supervisors merge their districts into one. In case of merger the members of the boards of the merged districts may serve out the terms for which they were elected. The resulting district shall take over all the assets and legal liabilities of the water districts joining in the merger. Obligations of any district secured by the revenue of the systems operated by the district shall continue to be retired, or a sinking fund for such purpose created from revenue from the system operated over the same area by the resulting district in accordance with the laws under which the obligations were issued, until all obligations of the old district have been retired. [C71, 73, 75, §357A.14]

357A.15 Taxing prohibited. No district shall have any power to levy any taxes. Neither the facilities constructed or otherwise acquired by any district, including but not limited to ponds, reservoirs, pipe lines, wells, check dams, and pumping installations, the revenues obtained by the district from the sale of water, nor the revenue bonds or interest therefrom issued by any district shall be taxable in any manner by the state of Iowa or any of its political subdivisions. [C71, 73, 75,§357A.15]

357A.16 Detaching land from district. If it becomes apparent that certain lands included within a district cannot economically or adequately be served by the facilities of the district, the owners of such lands may file with the auditor a petition to the supervisors requesting that those lands be detached from the district. The petition shall:

1. Describe by section, or fraction thereof, and by township and range, the lands which it is proposed to detach from the district.

2. State that such lands cannot economically or adequately be served by the facilities of the district, and that it is not feasible for the district to enlarge or extend its facilities so as to economically and adequately serve such lands.

3. Be signed by the owners of all the lands which it is desired to detach from the district. [C71, 73, 75,§357A.16]

Referred to in §356A.18

357A.17 Inactive district dissolved. A petition may be filed with the auditor requesting the supervisors to dissolve an inactive district. The petition shall:

1. State that the district owns no property of any kind exclusive of records, maps, plans, and files, and that all of its debts and obligations have been fully paid.

2. State that the board has not held a meeting for more than one year prior to the date of filing of the petition, that the district is not functioning, and will probably continue to be inoperative.

3. Be signed by three-fourths of the members of the district. [C71, 73, 75,§357A.17]

Referred to in §356A.18

357A.18 Hearing. Upon the filing with the auditor of a petition under either section 357A.16 or section 357A.17, the auditor shall so inform the supervisors who shall fix a time for consideration of the petition. The supervisors may, but shall not be required to, hold a hearing thereon. After consideration of the petition, and after the hearing if one is held, the supervisors shall ascertain whether:

1. The petition meets all of the requirements prescribed by this Act for such petition.

2. It appears from all information available to the supervisors that each allegation included in the petition is factual.

If the supervisors' finding on each of the foregoing points is positive, it shall declare the lands described in the petition detached from the district, or declare the district dissolved, as the case may be. The supervisors shall notify the secretary of the district of its action, and the secretary shall amend the records of the district to show that the land described in the petition has been detached from the district, or shall within thirty days deliver to the auditor all records, maps, plans, and files of the district dissolved, as the case may be. [C71, 73, 75,§357A.18]

357A.19 Not exempt from other requirements. Nothing in this chapter shall be construed to exempt any district from the requirements of any other statute, whether enacted prior to or subsequent to July 1, 1970, under which the district is required to obtain the permission or approval of, or to notify, the council, the Iowa commerce commission, or any other agency of this state or of any of its political subdivisions prior to proceeding with

construction, acquisition, operation, enlargement, extension, or alteration of any works or facilities which the district is authorized to undertake pursuant to this chapter. [C71, 73, 75,§357A.19]

357A.20 Alternate operation by nonprofit corporation. A nonprofit corporation incorporated under the laws of the state of Iowa for the specific purpose of operating a rural water system may petition the supervisors for incorporation of a district, in the manner provided by section 357A.2. The signatures of the corporation's officers on the petition shall suffice in lieu of signatures of owners of fifty percent of the land in the proposed district, provided the corporation presents evidence satisfactory to the supervisors that a sufficient number of members of the proposed district will subscribe to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition shall be as provided by this chapter. In any district incorporated upon the petition of a nonprofit corporation, the officers and board of directors of the corporation shall be the officers and board of the district. The applicable laws of the state and the articles of incorporation and bylaws of the corporation shall control the initial size and initial term of office of such officers and board, in lieu of sections 357A.7, 357A.9, and 357A.10. At the first annual meeting of the participating members and board of directors, the district shall bring its operation and structure in compliance with sections 357A.7 to 357A.10. [C71, 73, 75,§357A.20]

CHAPTER 357B

BENEFITED FIRE DISTRICTS

Referred to in §332.3

357B.1 Benefited fire districts continued.
357B.2 Board of trustees.
357B.3 Powers of the board of trustees.
357B.4 Anticipation of tax.
357B.5 Dissolution of district.
357B.6 Use of federal revenue sharing funds.
357B.7 to 357B.17 Repealed by 66GA, ch 194,§12.

357B.1 Benefited fire districts continued. A benefited fire district established under this chapter prior to July 1, 1975 shall provide fire protection within its boundaries until it is dissolved as provided in section 357B.5. A benefited fire district shall not be established nor shall the territorial boundaries of an established benefited fire district be enlarged after June 30, 1975. [66 GA, ch 194,§1]

Section 357B.1, Code 1975, repealed by 66GA, ch 194,§1

357B.2 Board of trustees. A benefited fire district shall be governed by a board of trustees consisting of three members who shall serve overlapping, three-year terms. Each trustee shall give bond in an amount to be determined by the board of supervisors, the premium for which shall be paid by the district of the trustee. The members of the board of trustees shall be elected at an election called by the board of supervisors. Notice of the election shall be given by publication in two successive issues of a newspaper having general circulation within the district. The notice shall contain the date, time and location of the election. The final publication of the notice of election shall not be less than one week before the date of election. It is not mandatory for the commissioner of elections to conduct the elections held under this chapter, but the elections shall be conducted in accordance with the provisions of chapter 49 when such provisions are not in conflict with this chapter. The precinct election officials shall be appointed by the board of supervisors from among the qualified electors of the district and shall serve without pay. Any vacancy on the board shall be filled by election or by appointment of the board of supervisors for the unexpired term. [C58, 62, 66,§§357A.9, 357A.10; C71, 73, 75,§§357B.9, 357B.10; 66GA, ch 194,§2]

Section 357B.2, Code 1975, repealed by 66GA, ch 194,§2

357B.3 Powers of the board of trustees. The board of trustees may purchase, own, rent, or maintain fire apparatus or equipment within the state or outside the territorial jurisdiction and boundary limits of this state and provide housing for such apparatus or equipment. The board of trustees may contract with any public or private agency under chapter 28E for the purpose of providing fire protection under this chapter. The board of trustees may levy an annual tax not exceeding forty and one-half cents per thousand dollars of assessed value for the purpose of exercising the powers granted in this section. The board of trustees may purchase material and employ persons to provide for the maintenance and operation of the benefited fire district. The trustees shall be allowed reimbursement for any necessary expenses incurred in the performance of their duties, but they shall not receive any other compensation for their ser-

vices. [C58, 62, 66,§357A.11; C71, 73, 75, §357B.11; 66GA, ch 194,§3]

Section 357B.3, Code 1975, repealed by 66GA, ch 194,§3

357B.4 Anticipation of tax. The board of trustees of a benefited fire district may anticipate the collection of taxes authorized under section 357B.3 and, for the purpose of providing fire protection, may issue bonds payable in not more than ten equal installments at an interest rate not exceeding seven percent per annum. The bonds shall be in such form and payable at such place as specified by resolution of the board of trustees. The provisions of sections 23.12 to 23.16 and chapter 408* shall apply to such bonds to the extent applicable. [C58, 62, 66,§357A.12; C71, 73, 75, §357B.12; 66GA, ch 194,§4]

*Repealed by 64GA, ch 168,§199
Section 357B.4, Code 1975, repealed by 66GA, ch 194,§4

357B.5 Dissolution of district. Upon petition of a number of registered voters residing in a district at least equal to thirty-five percent of the property taxpayers in such district, the board of supervisors may dissolve a benefited fire district and dispose of any remaining property, the proceeds of which shall first be applied against any outstanding obligation of the district. Any remaining balance shall be applied as a tax credit for the property owners of the district. The board of supervisors shall continue to levy an annual tax after the dissolution of a district not to exceed forty and one-half cents per thousand dollars of assessed value of the taxable property of the district until all outstanding obligations of the district are paid. [C58, 62, 66,§357A.14; C71, 73, 75, §357B.14; 66GA, ch 194,§5]

Referred to in §357B.1
Section 357B.5, Code 1975, repealed by 66GA, ch 194,§5

357B.6 Use of federal revenue sharing funds. The board of supervisors may appropriate federal revenue sharing funds to aid in providing fire protection services and equipment jointly with any other public agency of this state to residents of such county. The board of supervisors may use federal revenue sharing funds for providing other services and equipment for use of the residents of the county. The use of federal revenue sharing funds shall be consistent with federal law and rules promulgated pursuant to such law. [66GA, ch 194,§11]

Section 357B.6, Code 1975, repealed by 66GA, ch 194,§12

357B.7 to 357B.17 Repealed by 66GA, ch 194, §12.

CHAPTER 357C
BENEFITED STREET LIGHTING DISTRICTS

Referred to in §332.3

357C.1 Petition for public hearing.
357C.2 Limitation on area.
357C.3 Time of hearing.
357C.4 Action by board.
357C.5 Engineer.
357C.6 Hearing on engineer's report.
357C.7 Election on proposed levy.
357C.8 Trustees.
357C.9 Trustees' powers.
357C.10 Bonds in anticipation of revenue.
357C.11 Dissolution of district.
357C.12 Adding property to district.
357C.13 Determination of fee.

357C.1 Petition for public hearing. The board of supervisors of any county shall, on the petition of twenty-five percent of the resident property owners in any proposed benefited street lighting district if the assessed valuation of the property owned by the petitioners represents at least twenty-five percent of the total assessed value of the proposed district, or the board of supervisors of any county with a population in excess of two hundred fifty thousand persons shall, on the petition of twenty-five percent of the resident property owners in any proposed benefited lighting district, hold a public hearing concerning the establishment of such proposed street lighting district. Such a petition shall include a statement containing the following:

1. The need for street lighting service.
2. The district to be served.
3. The approximate number of families in the district.
4. The proposed utility to provide the street lighting service.

The board of supervisors may require a bond of the petitioners conditioned for the payment of all costs and expenses incurred in the proceedings in case the street lighting district is not established. [C71, 73, 75,§357C.1; 66GA, ch 195,§1]

357C.2 Limitation on area. A benefited street lighting district may include all or portions of the unincorporated areas of one township and any unincorporated areas of adjoining townships or portions thereof. However, such district shall contain only such area wherein the benefits derived from such street lighting shall be ratably spread between those people and families to be served. [C71, 73, 75,§357C.2]

357C.3 Time of hearing. Such public hearing shall be held within thirty days of the

presentation of the petition. Notice of hearing shall be given by publication in two successive issues of any paper of general circulation within the district. The last publication shall be not less than one week before the proposed hearing. [C71, 73, 75,§357C.3]

357C.4 Action by board. After the hearing, the board of supervisors may by resolution establish the benefited street lighting district or disallow the petition. The board of supervisors may defer action on such petition for not to exceed ten days after the day first set for a hearing. [C71, 73, 75,§357C.4]

357C.5 Engineer. When the board of supervisors shall have established a benefited street lighting district, they shall appoint a competent disinterested civil engineer, who shall prepare a preliminary plat showing:

1. The proper design in general outline of the district.
2. The lots and parcels of land within the proposed district as they appear on the county auditor's plat books with the names of the owners.
3. The assessed valuation of said lots and parcels.

The compensation of such engineer on the preliminary investigation shall be determined by the board of supervisors. The engineer shall file his report with the county auditor within thirty days of his appointment. The board of supervisors may extend such time upon good cause shown. [C71, 73, 75,§357C.5]

357C.6 Hearing on engineer's report. After the engineer's report is filed, the board of supervisors shall give notice in the same manner as for the original hearing, of a public hearing to be held concerning the engineer's preliminary plat. On the day set for such hearing, or within ten days thereafter, the board of supervisors shall approve or disapprove the preliminary plat. The board of supervisors may make changes in the boundaries as they appear on the engineer's report. [C71, 73, 75,§357C.6]

357C.7 Election on proposed levy. When a preliminary plat has been approved by the board of supervisors, an election shall be held within the district within sixty days to approve or disapprove the levy of a tax of not more than fifty-four cents per thousand dollars of assessed value on all the taxable property within the district, and to choose candidates for the offices of trustees of the district. Notice of the election, including the time and place of holding the same, shall be given in the same manner as for the original public hearing as provided herein. The vote shall be by ballot which shall state clearly the proposition to be voted upon, and any qualified elector residing within the district at the time of the election shall be entitled to vote. It shall not be mandatory for the county commissioner of elections to conduct elections held pursuant to this chapter, but they shall be conducted in accordance with the provisions of chapter 49 where not in conflict with this chapter. Judges shall be appointed to serve without pay by the board of supervisors from among the qualified electors of the district who will have charge of the election. The proposition shall be deemed to have carried if sixty percent of those voting thereon vote in favor of same. [C71, 73, 75,§357C.7]

357C.8 Trustees. At such election, the names of candidates for trustee shall be written in by the voters on blank ballots without formal nomination, and the board of supervisors shall appoint three from among the five receiving the highest number of votes as trustees for the district; one to serve for one year, one for two years, and one for three years. The trustees and their successors shall give bond in the amount the board of supervisors may require, the premium of which shall be paid by the district said trustees represent. Vacancies may thereafter be filled by election, or by appointment by the board of supervisors. The term of succeeding trustees shall be for three years. [C71, 73, 75, §357C.8]

357C.9 Trustees' powers. The trustees may purchase street lighting service and facilities and may levy an annual tax not to exceed fifty-four cents per thousand dollars of assessed value for the purpose of exercising the powers granted in this chapter. This levy shall be optional with the trustees, but no levy shall be made unless first approved by the voters as provided herein. The trustees may purchase material, employ labor, and may perform all other acts necessary to properly maintain and operate the benefited street lighting district. The trustees shall be allowed necessary expenses in the discharge of the duties, but shall not receive any salary. [C71, 73, 75, §357C.9]

357C.10 Bonds in anticipation of revenue. Benefited street lighting districts may anticipate the collection of taxes by the levy herein provided, and to carry out the purposes of this chapter may issue bonds payable in not more than ten equal installments, with the rate of interest thereon to not exceed seven percent per annum. No indebtedness shall be incurred under this Act until authorized by an election. Such election shall be held and notice given in the same manner as the election provided herein for the authorization of a tax levy, and the same sixty percent vote shall be necessary to authorize indebtedness. Both propositions may be submitted to the voters in the same election. [C71, 73, 75, §357C.10]

357C.11 Dissolution of district. Upon petition of thirty-five percent of the resident eligible electors, the board of supervisors may dissolve a benefited street lighting district and dispose of any remaining property, proceeds of which shall first be applied against outstanding obli-

gations and any balance shall be applied to tax credit of property owners of the district. The board of supervisors shall continue to levy tax after dissolution of a district, of not to exceed fifty-four cents per thousand dollars of assessed value on all the taxable property of the district, until all outstanding obligations of the district are paid. [C71, 73, 75,§357C.11]

357C.12 Adding property to district. The owner of any property in an unincorporated area immediately contiguous to the boundaries of any established benefited street lighting district may petition the board of supervisors to be included in the district. Upon receipt of such petition the board shall submit the request to a competent disinterested civil engineer to investigate the feasibility of adding such additional territory and to make a report to the board. If the board agrees that said property should be added to the district, the tax levy for the next year shall be applied to said property and on the first day of the said next year said property shall be considered a part of the district. If the benefited street lighting district lies in more than one county the joint action of the boards of supervisors shall be required to add additional territory. [C71, 73, 75,§357C.12]

357C.13 Determination of fee. The owner of any property joining an established benefited street lighting district shall pay to the board of trustees of the district an initial fee to be computed as follows:

1. The board of trustees shall first determine fair market value of all property and improvements owned by the benefited street lighting district, less any indebtedness.
2. The board shall then determine the assessed value of all property in said district. This shall be divided into the value determined in subsection 1 of this section.
3. The board shall determine the assessed value of the property of each landowner joining the established district.
4. The result obtained in subsection 2 shall be multiplied by the result obtained in subsection 3. The result shall be the initial fee to be charged each landowner.

The initial fees paid to the district trustees shall be used to help defray the cost and maintenance of the district's street lighting service. [C71, 73, 75,§357C.13]

CHAPTER 358

SANITARY DISTRICTS

Referred to in §§28F.1, 28F.12, 332.3, 332.44

358.1 Incorporation.
358.2 Petition.
358.3 Jurisdiction—decisions—records.
358.4 Date and notice of hearing.
358.5 Hearing of petition and order.
358.6 Notice of election.
358.7 Election.
358.8 Expenses and costs of election.
358.9 Election of trustees—term of office.
358.10 Trustee's bond.
358.11 Sanitary district to be a body corporate.
358.12 Board of trustees—powers.
358.13 Ordinances — publication or posting — time of taking effect.
358.14 Proof of ordinances.
358.15 Personal interest in contracts.
358.16 Power to provide for sewage disposal.
358.17 Power to acquire and dispose of property.
358.18 Taxes—power to levy—tax sales.
358.19 Records and disbursements.
358.20 Rentals and charges.
358.21 Debt limit — borrowing — bonds — purposes.
358.22 Special assessments.
358.23 Appeal to district court.
358.24 Contracts outside of district.

CONVEYANCE TO CITY

358.25 Petition filed.
358.26 Jurisdiction by board of supervisors.
358.27 Hearing on petition.
358.28 Notice.
358.29 Conducting hearing.
358.30 Filing order of discontinuance.
358.31 Pending rights or liabilities.
358.32 Indebtedness assumed.
358.33 Claims prosecuted against city.

358.1 Incorporation. Whenever any area of contiguous territory is so situated that the construction, maintenance and operation of a trunk sewer system and of a plant or plants for the treatment of sewage and the maintenance of one or more outlets for the drainage thereof, after having been so treated by and through such plant or plants, will be conducive to the public health, comfort, convenience or welfare, such area may be incorporated as a sanitary district in the manner set forth in this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.1]

358.2 Petition. Any twenty-five or more eligible electors resident within the limits of any proposed sanitary district may file a petition in the office of the county auditor of the county in which the proposed sanitary district, or the major portion thereof, is located, requesting that there be submitted to the qualified electors of such proposed district the question whether the territory within the boundaries of such proposed district shall be organized as a sanitary district under this chapter. Such petition shall be addressed to the board

of supervisors of the county wherein it is filed and shall set forth:

1. An intelligible description of the boundaries of the territory to be embraced in such district.

2. The name of such proposed sanitary district.

3. That the public health, comfort, convenience or welfare will be promoted by the establishment of such sanitary district.

4. The signatures of the petitioners.

No territory shall be included within more than one sanitary district organized under this chapter, and if any proposed sanitary district shall fail to receive a majority of votes cast at any election thereon as hereinafter provided, no petition shall be filed for establishment of such a sanitary district within one year from the date of such previous election.

There shall be filed with the petition a bond, certified check or cash in an amount and with sureties approved by the auditor, sufficient for the payment of all costs and expenses incurred in the proceedings if the district is not finally established.

No preliminary expense shall be incurred before the establishment of the proposed sanitary district by the board in excess of the amount of bond filed by the petitioners. In case it is necessary to incur any expense in addition to the amount of the bond, the board of supervisors shall require the filing of an additional security until the additional bond is filed in sufficient amount to cover the expense. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.2]

358.3 Jurisdiction—decisions—records. The board of supervisors of the county in which the proposed sanitary district, or the major portion thereof, is located shall have jurisdiction of the proceedings on said petition as herein provided, and the decision of a majority of the members of said board shall be necessary for adoption. All orders of the board made hereunder shall be spread at length upon the records of the proceedings of the board of supervisors, but need not be published under section 349.16. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.3]

358.4 Date and notice of hearing. It shall be the duty of the board of supervisors to whom said petition is addressed, at its next regular, special, or adjourned meeting, to set the time and place when it will meet for a hearing upon said petition, and it shall direct the county auditor in whose office said petition is filed to cause notice to be given to all persons whom it may concern, without naming them, of the pendency and prayer of said petition, by publication of a notice once each week for two consecutive weeks in some newspaper of general circulation published in such proposed district, the last of which publications shall not be less than twenty days prior to the date set for the hearing of said petition, and if no such newspaper is published in such proposed district, then by posting at least five copies of such notice in such proposed district at least twenty days before such hearing. Proof of giving such notice shall be made by affidavit of the publisher or affidavit of the person who posted said notices, and such proof shall be on file with the county auditor at the time the hearing begins. Said notice of hearing shall be directed to all persons it may concern, and shall state:

1. That a petition has been filed with the county auditor, of the county, naming it, for establishment of a proposed sanitary district, and the name of such proposed district.

2. An intelligible description of the boundaries of the territory to be embraced in such district.

3. The date, hour, and the place where such petition will come on for hearing before the board of supervisors of said named county.

4. That the board of supervisors will fix and determine the boundaries of such proposed district as described in the petition or otherwise, and for that purpose may alter and amend such petition, and at the said hearing all interested persons shall have an opportunity to be heard touching the location and boundaries of such proposed district and to make suggestions regarding same. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.4]

Referred to in §§358.5, 358.6

358.5 Hearing of petition and order. The board of supervisors to whom the petition is addressed shall preside at the hearing provided for in section 358.4 and shall continue the same in session, with adjournments from day to day, if necessary, until completed, without being required to give any further notice thereof. Proof of the residence and qualification of the petitioners as eligible electors shall be made by affidavit or otherwise as the board may direct. Said board shall have power and authority to consider the boundaries of any such proposed sanitary district, whether the same shall be as described in such petition or otherwise, and for that purpose may alter and amend such petition and limit or change the boundaries of the proposed district as stated in the petition. The boundaries of any proposed district shall not be changed to incorporate therein any property not included in the original petition and published notice until the owner or owners of said property shall be given notice thereof as on the original hearing. All persons in such proposed district shall have an opportunity to be heard touching the location and boundaries of the proposed district and to make suggestions regarding the same, and said board of supervisors, after hearing the statements, evidence and suggestions made and offered at the hearing, shall enter an order fixing and determining the limits and boundaries of such proposed district and directing that an election be held for the purpose of submitting to the qualified electors resident within the boundaries of the proposed district the question of organization and establishment of the proposed sanitary district as

determined by said board of supervisors. The order shall fix a date for the election not more than sixty days after the date of the order. establish voting precincts within the proposed district and define their boundaries and specify the polling places therein as in the board's judgment will best serve the convenience of the voters, and shall appoint from residents of the proposed district three judges and two clerks of election for each voting precinct established. It shall not be mandatory for the county commissioner of elections to conduct an election held pursuant to this section, but it shall be conducted in accordance with the provisions of chapter 49 where not in conflict with this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.5]

358.6 Notice of election. In its order for such election the board of supervisors shall direct the county auditor with whom said petition is filed to cause notice of such election to be given by posting at least five copies of such notice in public places in such proposed district at least twenty days before the date of election and by publication of such notice once each week for three consecutive weeks in some newspaper of general circulation published in such proposed district, or, if no such paper is published within the proposed district, then in such a newspaper published in the county in which the major part of such proposed district is located, the last publication to be at least twenty days prior to the date of election. Such notice shall state the time and place of holding the election and the hours when the polls will open and close, the purpose of the election, with the name of such proposed sanitary district and a description of the boundaries thereof, and shall set forth briefly the limits of each voting precinct and the location of the polling places therein. Proof of posting and publication shall be made in the manner provided in section 358.4 and filed with the county auditor. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §358.6]

358.7 Election. Each qualified elector resident within such proposed sanitary district shall have the right to cast a ballot at such election and no person shall vote in any precinct but that of his or her residence. Ballots at such election shall be in substantially the following form, to wit:

For Sanitary District	
Against Sanitary District	

The board of supervisors shall cause a statement of the result of such election to be spread upon the records of the county auditor. If a majority of the votes cast upon the question of incorporation of the proposed sanitary district shall be in favor of the proposed sanitary district, such proposed sanitary district shall thenceforth be deemed an organized sanitary district under this chapter and established as conducive to the public health, comfort, convenience, and welfare. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.7]

Referred to in §358.9

358.8 Expenses and costs of election. All expenses incurred in carrying out the foregoing sections of this chapter, together with the costs of the election therein provided for, as determined by the board of supervisors, shall be paid by those who will be benefited by the proposed sanitary district. If the district is not established, the expenses and costs shall be collected upon the bond or bonds of the petitioners. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.8]

358.9 Election of trustees —— term of office. At the election provided for in section 358.7, the names of candidates for trustee of the district shall be written by the voters on blank ballots without formal nomination, and the board of supervisors which had jurisdiction of the proceedings for establishment of the sanitary district, together with the board of supervisors of any other county in which any part of the district is located, shall appoint three trustees from among the five persons receiving the greatest number of votes as trustees of the district. One of the trustees shall be designated to serve a term expiring one year from the next succeeding June 30, one to serve a term of two years from that date, and one to serve a term of three years from that date. Their successors shall each serve terms of three years commencing July 1 of the year in which they are chosen. Successors to the initial trustees may be chosen by appointment by the same board or boards of supervisors which made the initial appointments or by election, at the option of the remaining trustees.

Vacancies in the office of trustee of a sanitary district shall be filled by the remaining members of the board for the period until a successor is chosen in the manner prescribed by this section or by section 69.12, whichever is applicable.

In cases where the state of Iowa owns at least four hundred acres of land contiguous to lakes within said district, then and only then the Iowa natural resources council shall appoint two members of said board of trustees in addition to the three members hereinbefore provided in this section. The additional two members shall be qualified as follows: They shall be United States citizens, not less than eighteen years of age, and shall be property owners within said district. In such cases the two additional appointive members shall have equal vote and authority with other members of trustees and shall hold office at the pleasure of the Iowa natural resources council. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.9; 66GA, ch 67, §68, ch 81,§148, ch 1075,§66]

Iowa Natural Resources Council, ch 455A
Terms of trustees during transition period until June 30, 1979, see 66GA, ch 1075,§77

358.10 Trustee's bond. Each trustee shall, before entering upon the duties of his office,

execute a bond payable to the district, with security to be approved by the board of supervisors which had jurisdiction of the petition for establishment of the district, in such form and amount as said board of supervisors may determine, which bond shall be filed with the county auditor of said county. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.10]

358.11 Sanitary district to be a body corporate. Each sanitary district organized under this chapter shall be a body corporate and politic, with the name and style under which it was organized, and by such name and style may sue and be sued, contract and be contracted with, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter the same at pleasure, and exercise all the powers conferred in this chapter.

All courts of this state shall take judicial notice of the existence of sanitary districts organized hereunder. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.11]

358.12 Board of trustees—powers. The trustees elected in pursuance of the foregoing provisions of this chapter shall constitute a board of trustees for the district by which they are elected, which board of trustees is hereby declared to be the corporate authority of such sanitary district, and shall exercise all the powers and manage and control all the affairs and property of such district. A majority of the board of trustees shall constitute a quorum, but a smaller number may adjourn from day to day. Said board of trustees shall have the right to elect a president, a clerk, and a treasurer from their own number and, from without their own number, such employees as the board may deem necessary, who shall hold their employment during the pleasure of the board, and shall prescribe the duties and fix the compensation of all employees of said sanitary district and the amount of bond to be filed by the treasurer of the district and by any employee for whom they may require bond, provided, however, that the compensation of members of the board of trustees is hereby fixed at not to exceed ten dollars per day for each day the board is actually in session and ten dollars per day when not in session but employed on committee service, and ten cents for every mile traveled in going to and from sessions of the board and in going to and from the place of performing committee service; provided further, that members of said board shall not receive compensation for more than sixty days of session and committee service each year.

Said board of trustees shall have full power to pass all necessary ordinances, resolutions, rules and regulations for the proper management and conduct of the business of said board of trustees and of said corporation and for carrying into effect the objects for which such sanitary district is formed. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.12]

358.13 Ordinances—publication or posting—time of taking effect. All ordinances, resolutions, orders, rules and regulations adopted by the board shall take effect five days from and after their adoption and publication. The publication thereof shall be by one publication in a newspaper published in the district or by posting copies thereof in five public places within the district. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.13]

358.14 Proof of ordinances. All ordinances, resolutions, orders, rules and regulations, and the date when same became effective, may be proven by the certificate of the clerk, under the seal of the corporation, if one has been adopted, and when printed in book or pamphlet form and purporting to be published by the board of trustees such book or pamphlet shall be received as evidence of the passage and legal publication or posting thereof as of the dates mentioned therein, in all courts and places, without further proof. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.14]

358.15 Personal interest in contracts. No trustee of such district shall be directly or indirectly interested in any contract, work, or business of the district, or in the sale of any article the expense, price, or consideration of which is paid by such district; nor in the purchase of any real estate or other property belonging to the district, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of said district; provided, that nothing herein shall be construed as prohibiting the selection of any person as trustee because of his ownership of real estate in the district or because he is a taxpayer in the district. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.15]

358.16 Power to provide for sewage disposal. The board of trustees of any sanitary district organized under this chapter shall have power to provide for the disposal of the sewage thereof, including the sewage and drainage of any city or village within the boundaries of such district; to acquire, lay out, locate, establish, construct, maintain, and operate one or more drains, conduits, treatment plants, disposal plants, pumping plants, works, ditches, channels, and outlets of such capacity and character as may be required for the treatment, carrying off, and disposal of the sewage and industrial wastes and other drainage incidental thereto of such district; to lay out, establish, construct, maintain, and operate all such adjuncts, additions, auxiliary improvements, and works as may be necessary or proper for accomplishment of the purposes intended, and to procure supplies of water for operating, diluting, and flushing purposes; to maintain, repair, change, enlarge, and add to such facilities, improvements, and works as may be necessary or proper to meet the future requirements for the purposes aforesaid; and, when necessary for such purposes, any such facilities, improvements, and works and the maintenance and operation thereof may ex-

tend beyond the limits of such district, and the rights and powers of said board of trustees in respect thereto shall be the same as if located within said district, provided, no taxes shall be levied upon any property outside of such district; and provided further, that the district shall be liable for all damages sustained beyond its limits in consequence of any work or improvement authorized hereunder.

The board of trustees, however, may upon such petition of property owners representing at least twenty-five percent of the valuation of property not included within the district as constituted which seeks benefit from the operation of such sanitary district, include such property and the area involved within the limits of such sanitary district, and such added areas shall be subject to the same taxation as other portions of the district.

Nothing contained herein shall be construed to authorize or empower such board of trustees to operate a system of waterworks for the purpose of furnishing water to the inhabitants of the district, or to construct, maintain, or operate local municipal sewerage facilities, or to deprive municipalities within the district of their powers to construct and operate sewers for local purposes within their limits.

The board of trustees of such sanitary district may, however, upon petition of the council or governing body of any incorporated city within the sanitary district, contract with such city to undertake the operation of local municipal sewage facilities as part of the functioning of the sanitary district and make an agreement with such municipality for the levying of additional sewer or sewage disposal taxes, which taxes shall be levied by the municipality as now provided by law. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.16]

358.17 Power to acquire and dispose of property. Any sanitary district organized under this chapter may acquire by purchase, condemnation, or otherwise, any and all real and personal property, rights of way and privileges, either within or without its corporate limits, required for its corporate purposes. Condemnation proceedings shall be conducted in the same manner, as near as may be, as provided for condemnation by counties under the laws of Iowa. Said sanitary districts shall have power to sell, convey, or otherwise dispose of any of the properties belonging to them when no longer required for their purposes. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.17]

358.18 Taxes — power to levy — tax sales. The board of trustees of any sanitary district organized under this chapter shall have the power by ordinance to levy annually for the purpose of paying the administrative costs of such district, or for the payment of deficiencies in special assessments, or for both, a tax upon property within the territorial limits of such sanitary district not exceeding fifty-four cents per thousand dollars of the adjusted taxable valuation of the property within such district for the preceding fiscal year.

All taxes thus levied by the board shall be certified by the clerk on or before March 1 to the county auditor of each county wherein any of the property included within the territorial limits of said sanitary district is located, and shall by said auditor or auditors be placed upon the tax list for the current fiscal year; and the county treasurer, or treasurers, of more than one county, shall collect all taxes so levied in the same manner as other taxes, and when delinquent they shall draw the same interest and penalties. All taxes so levied and collected shall be paid over by the officer collecting the same to the treasurer of the sanitary district.

Sales for delinquent taxes owing to such sanitary district shall be made at the same time and in the same manner as such sales are made for other taxes, and all provisions of the law of this state relating to the sale of property for delinquent taxes shall be applicable, so far as may be, to such sales. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.18]

358.19 Records and disbursements. The clerk of each sanitary district shall keep a record of all the proceedings and actions of the trustees. The treasurer shall receive, collect, and disburse all moneys belonging to the district, and no claim shall be paid or disbursement made until it has been duly audited by the board of trustees. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.19]

358.20 Rentals and charges. Any sanitary district may by ordinance establish just and equitable rates or charges or rentals for the utilities and services furnished by it to be paid to such district by every person, firm or corporation whose premises are served by a connection to such utilities and services directly or indirectly. Such rates, charges, or rentals, as near as may be in the judgment of the board of trustees of the district, shall be equitable and in proportion to the services rendered and the cost thereof, and taking into consideration in the case of each such premises the quantity of sewage produced thereby and its concentration, strength, and pollution qualities. The board of trustees may change such rates, charges, or rentals from time to time as it may deem advisable, and by ordinance may provide for the collection thereof. The board is authorized to contract with any municipality within the district, whereby such municipality may collect or assist in collecting any of such rates, charges, or rentals, whether in conjunction with water rentals or otherwise, and any such municipality is hereby empowered to undertake such collection and render such service. Such rates, charges, or rentals, if not paid when due, shall constitute a lien upon the property served by a connection as aforesaid and shall be collected in the same manner as other taxes.

In no case shall such rates, rentals, or charges, or the funds accruing from the collection thereof, be used to meet that part of

the cost of any construction within the district which has been financed by special assessment against benefited properties.

Sewer rentals, charges, or rates may supplant or replace, in whole or in part, any monetary levy of taxes which may be, or have been, authorized by the board of trustees for any of the following purposes:

1. To meet interest and principal payments on bonds legally authorized for the financing of sanitary utilities in any manner.

2. To pay costs of the construction, maintenance, or repair of such sanitary facilities or utilities, including payments to be made under any contract between municipalities for either the joint use of sewerage or sewage facilities, or for the use by one municipality of all or a part of the sewerage or sewer system of another municipality.

When a sewer rental ordinance has been passed and put into effect, prior ordinances or resolutions providing for monetary levy of taxes against real and personal property for such purposes, or the portion thereof replaced, may be repealed. [C31, 35,§6066-d7; C39, §6066.21; C46, 50, 54, 58, 62, 66, 71, 73,§§358.20, 393.7; C75,§358.20; 66GA, ch 67,§67]

358.21 Debt limit—borrowing—bonds—purposes. Any sanitary district organized hereunder may borrow money for its corporate purposes, but shall not become indebted in any manner or for any purpose to an amount in the aggregate exceeding five percent on the value of the taxable property within such district, to be ascertained by the last state and county tax lists previous to the incurring of such indebtedness. Indebtedness within this constitutional limit shall not include the indebtedness of any other municipal corporation located wholly or partly within the boundaries of such sanitary district.

Subject only to this debt limitation, any such sanitary district organized hereunder shall have and it is hereby vested with all of the same powers to issue bonds, including both general obligation and revenue bonds, which cities now or may hereafter have under the laws of this state. In the application of such laws to this chapter, the words used in any such laws referring to municipal corporations or to cities shall be held to include sanitary districts organized under this chapter, the words "council" or "city council" shall be held to include the board of trustees of a sanitary district; the words "mayor" and "clerk" shall be held to include the president and clerk of any such board of trustees or sanitary district; and like construction shall be given to any other words in such laws where required to permit the exercise of such powers by sanitary districts.

Any and all bonds issued hereunder shall be signed by the president of the board of trustees and attested by the clerk, with the seal of the district, if any, affixed, and interest coupons attached thereto shall be attested by the signature of the clerk.

The proceeds of any bond issue made under the provisions of this section shall be used only for the purpose of acquiring, locating, laying out, establishing and construction of drainage facilities, conduits, treatment plants, pumping plants, works, ditches, channels and outlets of such capacity and character as may be required for the treatment, carrying off and disposal of the sewage and industrial wastes and other drainage incidental thereto of such district, or to repair, change, enlarge and add to such facilities as may be necessary or proper to meet the requirements present and future for the purposes aforesaid. Proceeds from such bond issue may also be used for the payment of special assessment deficiencies. Said bonds shall be payable in not more than forty annual installments and at interest not exceeding seven percent per annum, and shall be made payable at such place and be of such form as the board of trustees shall by resolution designate. Any sanitary district issuing bonds as authorized in this section is hereby granted authority to pledge the future avails of a tax levy not exceeding one dollar and thirty-five cents per thousand dollars of assessed value of taxable property per annum to the payment of the principal and interest of such bonds after the same come due, and the power to impose and certify said levy is hereby granted to the trustees of sanitary districts organized under the provisions of this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.21]

See 63GA, ch 87,§60

358.22 Special assessments. The board of trustees of any sanitary district may provide for payment of all or any portion of the costs and expenses of constructing, reconstructing, or extending any drains, sewers, or laterals, and other necessary adjuncts thereto, including pumping stations, by assessing all, or any portion thereof, on abutting and adjacent property according to the benefits derived thereby, and for this purpose said board may define adjacent property as all that included within a designated benefited district or districts to be fixed by the board, which may be all of the property located within the sanitary district or any lesser portion thereof. It shall constitute no objection to any special assessment that the improvement for which the same is levied is outside the limits of such sanitary district, but no special assessment shall be made upon property situated outside of such sanitary district. Special assessments shall be in proportion to the special benefits conferred upon the property thereby, and not in excess of such benefits, and the same shall not exceed twenty-five percent of the actual value of the property at the time of levy, and the last preceding assessment roll shall be taken as prima-facie evidence of such value.

Such assessments may be made to extend over a period of ten years, payable in as nearly equal annual installments as practicable, and certificates or bonds may be issued in anticipation thereof. Proceedings for improve-

ments to be made and paid for, in whole or in part, by special assessments, as herein authorized shall be initiated by resolution of necessity, and said resolution and the plat, schedule, hearings, notices, objections, orders, assessments, levies, contracts, bonds, certification of assessments, liens, payment, tax sales, and appeals, and the issuance and sale of certificates, and bonds, shall correspond, as near as may be, to the provisions therefor relating to special assessment bonds of a city, which provisions shall govern such proceedings, to the extent applicable, except as modified hereby. A majority vote of the board of trustees shall be requisite and sufficient for any action required by the board under the provisions of this section. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §358.22]

Referred to in §358.23

358.23 Appeal to district court. Any person aggrieved by any proceeding had by the board of supervisors or by the board of trustees as herein provided in relation to any matter involving his rights not included under the provisions of section 358.22 may appeal to the district court of the county in which the proceedings were had. Such appeals shall be governed in all respects as is provided by pertinent sections under chapter 455. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§358.23]

358.24 Contracts outside of district. A sanitary district may enter into contracts with persons or firms outside its limits for the processing of sewage but the rate for processing shall not be less than that charged the inhabitants of the district.

A district entering into a contract may lay sewer lines in highways outside the district upon first obtaining the permission of the state department of transportation in the case of primary roads and the board of supervisors in case of secondary roads, on written application designating the particular highway and part thereof, the use of which is desired.

A sanitary district adjoining a border of the state and owning and operating a sewage disposal plant, may contract with the governing body of any legal entity in an adjacent area in another state, to process the sewage from the area. The contract shall be subject to approval of the state department of health. [C58, 62, 66, 71, 73,§§393.10, 393.11, 393.13; C75,§358.24; 66GA, ch 67,§69]

CONVEYANCE TO CITY

358.25 Petition filed. A board of trustees of a sanitary district may, by resolution, authorize the filing of a petition in the office of the county auditor of the county in which the sanitary district or a major portion of it is located, requesting the conveyance and discontinuance of the sanitary district. The petition shall be addressed to the board of supervisors of the county where it is filed and must set forth:

1. The name of the sanitary district.

2. That the sanitary district lies wholly or partially within the corporate limits of a city, or the depository for the sanitary district is a municipal sanitary sewage system.

3. That the public health, comfort, convenience or welfare will be promoted by the conveyance and discontinuance of the sanitary district and the assumption of the duties, responsibilities and functions of the sanitary district by the city.

4. A statement that the city has agreed to assume the duties, responsibilities and functions of the sanitary district upon the conveyance and discontinuance. A copy of the agreement shall be attached to the petition.

5. A listing of the assets and liabilities of the sanitary district, including a complete statement of indebtedness.

6. A copy of the resolution of the board of trustees of the sanitary district. [C75,§358.25]

358.26 Jurisdiction by board of supervisors. The board of supervisors of the county in which the sanitary district or a major portion of it is located shall have jurisdiction of the proceedings on the petition, and the decision of a majority of the members of the board shall be necessary for approval of the petition for conveyance and discontinuance. Orders of the board made under this section shall be spread upon the records of the proceedings of the board of supervisors, and shall be filed with the county recorder but need not be published under section 349.16. [C75,§358.26]

358.27 Hearing on petition. It shall be the duty of the board of supervisors to whom the petition is addressed, at its next regular meeting to set the time and place when it shall meet for a hearing on the petition, and it shall direct the county auditor in whose office the petition is filed to cause notice to be given to all persons whom it may concern, without naming them, of the pendency and request of the petition for the conveyance and discontinuance by publication of a notice once each week for two consecutive weeks in a newspaper of general circulation in the sanitary district, the last of the publications to be not less than twenty days prior to the date set for hearing on the petition. Proof of giving notice shall be made by affidavit of the publisher and shall be filed with the county auditor at the time the hearing begins. [C75, §358.27]

358.28 Notice. The notice of hearing shall state the following:

1. That a petition has been filed with the county auditor of the county for the conveyance and discontinuance of the sanitary district.

2. An intelligible description of the boundaries of the sanitary district.

3. The date, hour and place where the petition will be heard before the board of supervisors of the county.

4. That the board of supervisors will hear all persons having an interest in the matter and that after the hearing, the board of supervisors will take action as is in the best interest of the sanitary district. [C75,§358.28]

358.29 Conducting hearing. The board of supervisors to whom the petition is addressed shall preside at the hearing and shall continue the same in session with adjournments from day to day, if necessary, and until completed, without being required to give further notice. At the hearing, all persons interested in the matter of the conveyance and discontinuance of the sanitary district may appear and shall be heard, for and against the conveyance and discontinuance, and the board shall examine into the matter and the equitable distribution of the assets, and equitable distribution and assumption of the liabilities which have accrued during the time the sanitary district has been in existence. The board shall receive evidence on the question from the parties interested, and, after hearing and reviewing the statements, evidence, and suggestions made and offered at the hearing, if it finds that the sanitary district lies wholly or partially within the corporate limits of a city or that the depository of the district is a municipal sanitary sewage system, that the public health, comfort, convenience or welfare will be promoted by the conveyance and discontinuance of the sanitary district and the assumption of the duties, responsibilities and functions of the sanitary district by the city, and that the city has agreed to assume the duties, responsibilities and functions of the sanitary district, shall enter an order specifying the matter and specifying the equitable distribution of the assets, and the equitable distribution and assumption of the liabilities and responsibilities of the sanitary district and setting an effective date of the conveyance and discontinuance. [C75,§358.29]

358.30 Filing order of discontinuance. When a sanitary district has been discontinued by order of the board of supervisors, as provided in this division, the order of the board of supervisors shall be filed in the office of the recorder in the county or counties in which the sanitary district is located. The agreement of the city in which the sanitary district is located and which has agreed to assume the duties, responsibilities and functions of the sanitary district shall also be filed along with, and as part of the order of the board of supervisors conveying and discontinuing the district. [C75,§358.30]

358.31 Pending rights or liabilities. The assumption by the city shall not affect or impair any rights or liabilities then existing for or against either the sanitary district or the city, and they may be enforced as provided in this division. [C75,§358.31]

358.32 Indebtedness assumed. The indebtedness of the sanitary district shall be assumed and paid by the city, and may be paid by a tax to be levied exclusively upon the property within the jurisdiction of the sanitary district as it existed prior to the conveyance and discontinuance, or by the issuance of such bonds as cities may issue for purchasing and acquiring any sanitary sewer system or sewage disposal works and facilities or both. [C75,§358.32]

Referred to in §358.33

358.33 Claims prosecuted against city. Suits to enforce claims or demands existing at the time of the conveyance, discontinuance and assumption may be prosecuted or brought against the city which assumes the obligations of the sanitary district, and judgments obtained shall be paid as provided in section 358.32 for the payment of the indebtedness. [C75,§358.33]

CHAPTER 358A

COUNTY ZONING COMMISSION

Referred to in §§455B.79, 476A.5

358A.1 Where applicable.
358A.2 Farms exempt.
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358A.20 Record advanced.
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358A.22 Precedence.
358A.23 Restraining order.
358A.24 Conflict with other regulations.
358A.25 Plumbing code enforced.
358A.26 Penalty.

358A.1 Where applicable. The provisions of this chapter shall be applicable to any county of the state at the option of the board of supervisors of any such county. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.1]

Referred to in §§358A.3, 358A.25

358A.2 Farms exempt. No regulation or ordinance adopted under the provisions of this chapter shall be construed to apply to land, farm houses, farm barns, farm outbuildings or other buildings, structures, or erections which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used; provided, however, that such regulations or ordinances which relate to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream shall apply thereto. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.2]

Referred to in §§358A.3, 358A.25, 414.23

358A.3 Powers. Subject to the provisions of sections 358A.1 and 358A.2, the board of supervisors of any county is hereby empowered to regulate and restrict the height, number of structures, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence or other purposes, and to regulate, restrict and prohibit the use for residential purposes of tents, trailers and portable or potentially portable structures; provided that such powers shall be exercised only with reference to land and structures located within the county but lying outside of the corporate limits of any city. The board of supervisors of any county may prescribe and charge a reasonable building permit fee, and upon receipt of an application containing all required information, in due form and properly executed, showing that the proposed structure will comply with all applicable regulations of the political subdivision in which it is to be located and upon payment of the required permit fee, the board of supervisors shall, within seven days, issue a permit to the applicant. [C50, 54, 58, 62, 66, 71, 73, 75, §358A.3]

358A.4 Areas and districts. For any and all of said purposes the board of supervisors may divide the county, or any area or areas within the county, into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures or land. All such regulations and restrictions shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.4]

358A.5 Objectives. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the street or highway; to secure safety from fire, flood, panic, and other dangers; to protect health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

Such regulations shall be made with reasonable consideration, among other things, as to the character of the area of the district and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such county. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.5]

358A.6 Public hearings. The board of supervisors shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in a paper of general circulation in such county. Such notice shall state the location of the district affected by naming the township and section, and the boundaries of such district shall be expressed in terms of streets or roads wherever possible. [C50, 54, 58, 62, 66, 71, 73, 75, §358A.6]

Referred to in §358A.7

358A.7 Changes and amendments. Such regulations, restrictions, and boundaries may, from time to time, be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change signed by the owners of twenty percent or more either of the area included in such proposed change, or of the area immediately adjacent thereto and within five hundred feet of the boundaries thereof, such amendment shall not become effective except by the favorable vote of at least sixty percent of all of the members of the board of supervisors. The provisions of section 358A.6 relative to public hearings and official notice shall apply equally to all changes or amendments. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.7]

358A.8 Commission appointed. In order to avail itself of the powers conferred by this chapter, the board of supervisors shall appoint a commission, a majority of whose members shall reside within the county but outside the corporate limits of any city, to be known as the county zoning commission, to recommend the boundaries of the various original districts, and appropriate regulations and restrictions to be enforced therein. Such commission shall, with due diligence, prepare a preliminary report and hold public hearings thereon before submitting its final report; and the board of supervisors shall not hold its public hearings or take action until it has received the final report of such commission. After the adoption of such regulations, restrictions, and boundaries of districts, the zoning commission may, from

time to time, recommend to the board of supervisors amendments, supplements, changes or modifications. The zoning commission, with the approval of the board of supervisors, may contract with professional consultants, regional planning commissions, the Iowa development commission, or the federal government, for local planning assistance. [C50, 54, 58, §358A.8; C62, 66, 71, 73,§§358A.8, 373.21; C75, §358A.8]

358A.9 Administrative officer. The board of supervisors shall appoint an administrative officer authorized to enforce the resolutions or ordinances so adopted by the board of supervisors. Such administrative officer may be a person holding other public office in the county, or in a city or other governmental subdivision within the county, and the board of supervisors is authorized to pay to such officer out of the general fund such compensation as it shall deem fit. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.9]

358A.10 Board of adjustment. The board of supervisors shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this chapter shall provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinances or regulations in harmony with its general purpose and intent and in accordance with the general or specific rules therein contained, and provide that any property owner aggrieved by the action of the board of supervisors in the adoption of such regulations and restrictions may petition the said board of adjustment direct to modify regulations and restrictions as applied to such property owners. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.10]

358A.11 Membership of board. The board of adjustment shall consist of five members, a majority of whom shall reside within the county but outside the corporate limits of any city, each to be appointed for a term of five years, excepting that when the board shall first be created one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.11]

358A.12 Rules. The board shall adopt rules in accordance with the provisions of any regulation or ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.12]

358A.13 Appeals to board. Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken. [C50, 54, 58, 62, 66, 71, 73, 75, §358A.13]

358A.14 Stay of proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.14]

358A.15 Powers of board. The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

3. To authorize upon appeal, in specific cases, such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.15]

358A.16 Decision. In exercising the above-mentioned powers such board may, in conformity with the provisions of this chapter,

reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.16]

358A.17 Vote required. The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.17]

358A.18 Petition to court. Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer, or any officer, department, board or bureau of the county, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.18]

358A.19 Review by court. Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.19]

358A.20 Record advanced. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions hereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.20]

358A.21 Trial to court. If upon the hearing which shall be tried de novo it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.21]

358A.22 Precedence. All issues in any proceedings under the foregoing sections shall have preference over all other civil actions and proceedings. [C50, 54, 58, 62, 66, 71, 73, 75, §358A.22]

358A.23 Restraining order. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure, or land is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the board of supervisors, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.23]

358A.24 Conflict with other regulations. Wherever the regulations made under authority of this chapter require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this chapter shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this chapter, the provisions of such statute or local ordinance or regulation shall govern. Wherever any regulation proposed or made under authority of this chapter relates to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream, prior approval of the Iowa natural resources council shall be required to establish, amend, supplement, change, or modify such regulation or to grant any variation or exception therefrom. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.24]

358A.25 Plumbing code enforced. Subject to the provisions of sections 358A.1 and 358A.2, the board of supervisors of any county is further authorized to adopt regulations to provide that every dwelling, whether now or hereafter

erected within the county but outside the corporate limits of any city which shall develop a private water supply or install a pressure water system or install sanitary house drains, shall comply with the recommendations of the state department of health on minimum requirements as set out in the state plumbing code* in regard to such development or installation. Any such regulation may be enforced in the same manner as any other regulation adopted under this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.25]

*See §135.11(7, 8) and I.A.C. Health Dept., 470, Title III

358A.26 Penalty. In addition to any other remedy granted herein, the violation on any regulation, restriction or boundary adopted under this chapter or the occupancy or use of any structure erected, altered or maintained in violation of this chapter shall constitute a misdemeanor. Such occupancy or use shall be deemed a continuing violation and may be the subject of repeated prosecutions if so continued. Every person convicted of a misdemeanor, by reason of violations hereinabove set forth, shall be punished by a fine of not more than one hundred dollars or by imprisonment of not more than thirty days. [C50, 54, 58, 62, 66, 71, 73, 75,§358A.26]

CHAPTER 358B

COUNTY LIBRARIES

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358B.1 Power to establish. Counties may provide for the formation and maintenance of free public libraries open to the use of all inhabitants under proper regulations, and may purchase, erect, or rent buildings or rooms suitable for this purpose and provide for the compensation of necessary employees. [C50, 54, 58, 62, 66, 71, 73, 75,§358B.1]

358B.2 Library districts formed. A county library district may be established composed of one county or two or more adjacent counties and may include or exclude the entirety of a city partly within one of the counties.

Eligible electors residing within the proposed district in a number not less than five percent of those voting for president of the United States or governor, as the case may be, within said district at the last general election may petition the board of supervisors of the county or counties for the establishment of such county library district. Said petition shall clearly designate the area to be included in the district.

The board of supervisors of each county containing area within the proposed district shall submit the proposition to the qualified electors within their respective counties at any general or primary election provided said election occurs not less than forty days after the filing of the petition.

A county library district shall be established, if a majority of the electors voting on the proposition and residing outside of cities maintaining a free public library favor it.

The result of the election within cities maintaining a free public library shall be considered separately, and no city shall be included within the county library district unless a majority of its electors, voting on the proposition, favor its inclusion. In such cases the boundaries of an established district may vary from those of the proposed district.

After the establishment of a county library district other areas may be included by mutual agreement of the board of trustees of the county library district and the governing body of the area sought to be included. [C50, 54, 58, 62, 66, 71, 73, 75,§358B.2]

358B.3 Gifts accepted. Counties may receive, hold and dispose of all gifts, donations, devises, and bequests that may be made to them for the purpose of establishing, increasing, or improving any library. When the conditions thereof have been accepted by the county, their use for the county library may be enforced against the county board of supervisors by the library board by an action of mandamus or by other proper action. [C50, 54, 58, 62, 66, 71, 73, 75,§358B.3]

358B.4 Library trustees. In any county or counties in which a library district has been established a board of library trustees, consisting of five, seven, or nine electors of the

library district, shall be appointed by the board or boards of supervisors of the county or counties comprising such library district. Membership on the library board shall be apportioned between the rural and city areas of the district in proportion to the population in each of such areas. In the event the library district is composed of two or more counties, representation on said library board shall be equitably divided between or among said counties in proportion to the population in each of such counties. [C50, 54, 58, 62, 66, 71, 73, 75,§358B.4]

358B.5 Terms. Of said trustees so appointed on boards to consist of nine members, three shall hold office for two years, three for four years, and three for six years; on boards to consist of seven members, two shall hold office for two years, two for four years, and three for six years; and on boards to consist of five members, one shall hold office for two years, two for four years. and two for six years, from the first day of July following their appointment in each case. At their first meeting they shall cast lots for their respective terms, reporting the result of such lot to the board of supervisors. All subsequent appointments, whatever the size of the board, shall be for terms of six years each. Vacancies shall be filled for unexpired terms by the governing body of the taxing unit of the district represented by the retiring member. [C50, 54, 58, 62, 66, 71, 73, 75,§358B.5]

358B.6 Removal or absence of trustee. The board of library trustees may declare the office of a trustee vacant by his removal from the library district or his unexplained absence from six consecutive regular meetings. [C50, 54, 58, 62, 66, 71, 73, 75,§358B.6]

358B.7 No compensation. Members of said board shall receive no compensation for their services. [C50, 54, 58, 62, 66, 71, 73, 75,§358B.7]

358B.8 Powers. Said board of library trustees shall have and exercise the following powers:

1. To meet and organize by the election of one of their number as president of the board, and by the election of a secretary and such other officers as the board may deem necessary.

2. To have charge, and supervision of the public library, its appurtenances and fixtures, and rooms containing the same, directing and controlling all the affairs of such library.

3. To employ a librarian, such assistants and employees as may be necessary for the proper management of said library, and fix their compensation; but, prior to such employment, the compensation of such librarian, assistants, and employees shall be fixed for the term of employment by a majority of the members of said board voting in favor thereof.

4. To remove such librarian, assistants, or employees by a vote of two-thirds of such board for misdemeanor, incompetency, or inattention to the duties of such employment.

5. To select and make purchases of books, pamphlets, magazines, periodicals, papers, maps, journals, furniture, fixtures, stationery, and supplies for such library.

6. To authorize the use of such libraries by school corporations or by nonresidents of the area which is taxed to support such libraries and to fix charges therefor.

7. To make and adopt, amend, modify, or repeal bylaws, rules, and regulations, not inconsistent with law, for the care, use, government, and management of such library and the business of said board, fixing and enforcing penalties for the violation thereof.

8. To have exclusive control of the expenditures of all taxes levied for library purposes as provided by law, and of the expenditures of all moneys available by gift or otherwise for the erection of library buildings, and of all other moneys belonging to the library fund, including fines and rentals collected under the rules of the board of trustees. Said board shall keep a record of its proceedings.

9. To accept gifts of any property, including trust funds; to take the title to said property in the name of said library; to execute deeds and bills of sale for the conveyance of said property; and to expend the funds received by them from such gifts, for the improvement of said library. [C50, 54, 58, 62, 66, 71, 73, 75, §358B.8]

358B.9 Methods of service. Library service shall be accomplished by one or more of the following methods in whole or in part:

1. By the establishment of depositories of books or other educational materials to be loaned at stated times and places.

2. By the transportation of books and other educational materials by conveyances for lending the same at stated times and places.

3. By the establishment of branch libraries for lending books and other educational materials.

4. By contracting for library service with a free public library of any city. [C50, 54, 58, 62, 66, 71, 73, 75,§358B.9]

358B.10 Library fund. All moneys received and set apart for the maintenance of such library shall be deposited in the treasury of such county to the credit of the library fund, and shall be kept by the treasurer separate and apart from all other moneys, and paid out upon the orders of the board of trustees, signed by its president and secretary.

Provided that where a free public library is maintained jointly by two or more counties, the library trustees may elect a library treasurer therefor, and it shall be the duty of the city and county treasurers to pay over to said library treasurer any and all library taxes that may be collected by them monthly.

Such library treasurer shall be required to furnish a bond conditioned as provided by

section 64.2 in such amount as agreed upon by the boards of supervisors and the cost thereof shall be paid by the counties. [C50, 54, 58, 62, 66, 71, 73, 75,§358B.10]

358B.11 Annual report. The board of trustees shall, immediately after the close of each fiscal year, make to the board of supervisors a report containing a statement of the condition of the library, the number of books added thereto, the number circulated, the number not returned or lost, the amount of fines collected, and the amount of money expended in the maintenance thereof during such year, together with such further information as it may deem important. [C50, 54, 58, 62, 66, 71, 73, 75,§358B.11]

358B.12 Real estate acquired. In any county in which a free library has been established, the board of library trustees may purchase real estate in the name of the county for the location of library buildings and branch libraries, and for the purpose of enlarging the grounds thereof. [C50, 54, 58, 62, 66, 71, 73, 75, §358B.12]

358B.13 Maintenance expense on proportionate basis. The maintenance of a county library shall be on a proportionate population basis whereby each taxing unit as hereinafter defined shall bear its share in proportion to its population to the whole of said county library district. The board of library trustees shall on or before January 10 of each year make an estimate of the amount it deems necessary for the maintenance of the county library and shall transmit said estimate in dollars to the board or boards of supervisors and to the city councils within the district. The entire rural area of each county in the library district shall be considered as a separate taxing unit. Each city which is a part of the county library district shall be considered as a separate taxing unit. The board of supervisors and the council of each city composing said county library district shall make the necessary levies accordingly for library maintenance purposes, but the county levy may not exceed fifty-four cents per thousand dollars of assessed value. Any unexpended balance in the library maintenance fund at the end of the fiscal year shall remain in said fund and be available without reappropriation. [C50, 54, 58, 62, 66, 71, 73, 75, §358B.13]

Referred to in §24.37

358B.14 Not applicable to contract service. The provisions of this chapter pertaining to the establishment of a county library district shall not apply to any area receiving library service from any city library, unless the petition for a county library district, in addition to the required signatures of electors, is signed by the governing body of the area receiving library service under contract. [C50, 54, 58, 62, 66, 71, 73, 75,§358B.14]

358B.15 Existing contracts assumed. Whenever a county library district is established the board of trustees thereof shall assume all the obligations of the existing contracts made by cities, townships, school corporations or counties to receive library service from free public libraries. [C50, 54, 58, 62, 66, 71, 73, 75, §358B.15]

358B.16 Withdrawal of city from district. A city may withdraw from the county library district by giving notice by certified mail to the board of library trustees of the county library and the county auditor prior to January 10, and on that date shall cease to be a part of or included in the county library district. [C54, 58, 62, 66, 71, 73, 75,§358B.16]

358B.17 Historical association. Whenever a local county historical association is formed in a county having a free public library, the trustees of the library may unite with the historical association and set apart the necessary room to care for articles which come into the possession of the association. The trustees may purchase necessary receptacles and materials for the preservation and protection of articles which are of a historical and educational nature and may pay for the same out of the library fund. [S13,§729-e; C24, 27, 31, 35, 39,§5864; C46, 50, 54, 58, 62, 66, 71, 73,§378.16; C75,§358B.17]

358B.18 Contracts to use city library.

1. Contracts may be made by a school corporation, township, county, or the trustees of any county library district for the use by their residents of a city library. Townships and counties may enter into contracts, but may only contract for the residents outside of cities. A contract by a county shall supersede all contracts by townships or school corporations within the county outside of cities.

2. Contracts shall provide for the rate of tax to be levied. They may, by mutual consent of the contracting parties, be terminated at any time. They may also be terminated by a majority of the voters represented by either of the contracting parties, voting on a proposition to terminate which shall be submitted by the governing body upon a written petition of qualified voters in a number not less than five percent of those who voted in the area for governor at the last general election.

3. The proposition may be submitted at any election provided by law which covers the area of the unit seeking to terminate the contract. The petition shall be presented to the governing body not less than forty days before the election at which the question is to be submitted.

4. The board of trustees of any township which has entered into a contract shall at the April meeting levy a tax not exceeding six and three-fourth cents per thousand dollars of of assessed valuation on all taxable property in the township to create a fund to fulfill its obligation under the contract.

The board of supervisors, after it makes such contract, shall levy annually on the taxable property of the county outside of cities,

a tax of not more than twenty-seven cents per thousand dollars of assessed valuation to create a fund to fulfill its obligation under the contract.

5. Qualified voters of that part of any county outside of cities in a number of not less than twenty-five percent of those in the area who voted for governor at the last general election may petition the board of supervisors to submit the proposition of requiring the board of supervisors to provide library service for them and their area by contract as provided by this section.

6. The board of supervisors shall submit the proposition to the voters of the county residing outside of cities at the next election, primary or general, provided that the petition has been filed not less than forty days prior to the date of the election at which the question is to be submitted.

7. If a majority of those voting upon the proposition favors it, the board of supervisors shall within thirty days appoint a board of library trustees from residents of the petitioning area. Vacancies shall be filled by the board of supervisors.

8. The board of trustees is authorized to contract with any library for library use or service for the benefit of the residents and area represented by it.

9. The board of supervisors shall levy annually on the taxable property of the county outside of cities, a tax of not more than twenty-seven cents per thousand dollars of assessed valuation to create a fund to fulfill the contract obligations of the trustees appointed by it. [S13,§§592-a, 792-a; SS15,§422; C24, 27, 31, 35, 39,§§5859, 5861–5863; C46, 50, 54, 58, 62, 66, 71, 73,§§378.11, 378.13–378.15; C75,§358B.18; 66GA, ch 67,§67]

Referred to in §24.37

CHAPTER 359

TOWNSHIPS AND TOWNSHIP OFFICERS

Referred to in §332.3

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DIVISION, BOUNDARIES, AND CHANGE OF NAMES

359.1 Division authorized. The board of supervisors shall divide the county into townships, as convenience may require, defining the boundaries thereof, and may, from time to time, make such alterations in the number and boundaries of the townships as it may deem proper. [C51,§219; R60,§441; C73,§379; C97,§551; C24, 27, 31, 35, 39,§5527; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.1]

359.2 Repealed by 63GA, ch 1025,§71.

359.3 Boundaries conterminous with city. Where the boundaries of any city have been changed, the board of supervisors of the coun-

ty in which the same is situated shall have power to change the boundary lines of townships so as to make them conform to the boundaries of the city, and to make such other changes in township lines, and the number of townships, as it may deem necessary; but no action shall be taken affecting the boundaries or existing conditions of school districts. [C97, §552; C24, 27, 31, 35, 39,§5529; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.3]

359.4 Record. The description of the boundaries of each township, and all alterations in them, and of all new townships, shall be recorded in full in the records of the board of supervisors, and of the township. [C51,§220; R60,§442; C73,§381; C97,§553; C24, 27, 31, 35, 39, §5530; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.4]

359.5 Divisions where city included. When any township has within its limits a city with a population exceeding fifteen hundred, the eligible electors of such township residing without the limits of such city may, at any regular session of the board of supervisors of the county, petition to have such township divided into two townships; the one to embrace the territory without, and the other the territory within such corporate limits. [C73,§382; C97,§554; C24, 27, 31, 35, 39, §5531; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.5]

359.6 Petition—remonstrance. Such petition shall be accompanied by the affidavit of three eligible electors, to the effect that all the signatures to such petition are genuine, and that the signers thereof are all eligible electors of said township, residing outside said corporate limits. Remonstrances signed by such eligible electors may also be presented at the hearing before the board of supervisors hereinafter provided for, and if the same persons petition and remonstrate, they shall be counted on the remonstrance only. [C73,§382; C97,§554; C24, 27, 31, 35, 39,§5532; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.6]

359.7 Notice. Notice of the time when such petition will be heard shall be given by posting in five public places in the township, two of which shall be without, and three within such corporate limits, at least ten days prior to such hearing. [C73,§383; C97,§555; S13,§555; C24, 27, 31, 35, 39,§5533; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.7]

359.8 Division—effect. If such petition is signed by a majority of the eligible electors of the township residing without the corporate limits of such city, the board of supervisors shall divide such township into two townships, as prayed; but, except for election purposes, including the appointment of all judges and clerks of election rendered necessary by the change, such division shall not take effect until the first day of January following the next general election which is not a Sunday or a legal holiday. [C73,§384; C97,§556; C24, 27, 31, 35, 39, §5534; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.8]

359.9 Restoration to former township. When the citizens of any township so set off desire to dissolve their township organization and return again to the township from which they were taken, they may do so by the same proceedings as provided for the division thereof, except that said petition shall be signed by a majority of the electors of both townships. [C97,§556; C24, 27, 31, 35, 39,§5535; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.9]

359.10 New township—first election. When a new township is formed, in which township officers are to be elected, the board of supervisors shall call the first township election, to be held at such place as it may designate, on the day of the next general election. If at any time a new township has been created in a year in which no general election is held, the board may call a special election for the election of the township officers of the new township, who shall continue in office until their successors are elected and qualified. [C51, §231; R60,§453; C73,§385; C97,§557; S13,§1074-a; C24, 27, 31, 35, 39,§5536; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.10]

359.11 Officers to be elected. At said election there shall be elected one trustee for a term of two years, one trustee for a term of three years, and one trustee for a term of four years, and other officers as provided by law. [S13,§1074-a; C24, 27, 31, 35, 39,§5537; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.11]

359.12 Order for election. The county commissioner of elections shall issue an order for such first election, stating the time and place of the same, the officers to be elected, and any other business to be transacted; and no business not named in such order shall be transacted at such election. [C51,§232; R60,§454; C73,§386; C97,§558; C24, 27, 31, 35, 39,§5538; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.12]

359.13 Service and return. Such order may be directed to any citizen of the same township, by name, and shall be served by posting copies thereof, in three of the most public places in the township, fifteen days before the day of the election; the original order shall be returned to the presiding officer of the election, to be returned to the clerk when elected, with a return thereon of the manner of service, verified by oath, if served by any other than an officer. [C51,§233; R60,§455; C73,§387; C97, §559; C24, 27, 31, 35, 39,§5539; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.13]

359.14 Changing name — petition — notice. Any township desirous of changing its name may petition the board of supervisors and, if it shall appear to said board that a majority of the actual resident voters of such township are in favor of such change, such board shall cause notices, attested by the auditor, to be posted in three of the most public places of such township, for at least thirty days previous to the next regular session of said board, which notice shall state the fact that a peti-

tion has been presented to said board by the citizens of said township, praying for a change of the name of the same and recite the name prayed for in said petition, and that, unless those interested in the change of such name shall appear at the next regular session of said board and show cause why said name shall not be changed, there will be an order made granting such change. [C73,§412; C97, §580; C24, 27, 31, 35, 39,§**5540**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.14]

359.15 Hearing—order. If, at the time fixed for the hearing of said petition, the board be satisfied that there is a majority in favor of such change of name, it shall make an order granting the same, which shall be attested by the auditor, and recorded in the office of the recorder of the county. [C73,§413; C97,§581; C24, 27, 31, 35, 39,§**5541**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.15]

359.16 Petition dismissed. If it appears to said board that a majority of the citizens of such township are opposed to such change, such petition shall be dismissed. The cost of the proceeding in all cases shall be taxed against the petitioners. [C73,§414; C97,§582; C24, 27, 31, 35, 39,§**5542**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.16]

TRUSTEES

359.17 Trustees — duties — meetings. The board of township trustees in each township shall consist of three qualified electors of the township. The trustees shall act as overseers of the poor and as fence viewers. The board of trustees shall meet on the first Monday in February, April, and November in each year. [C51,§§221, 224; R60,§§443, 446; C73,§§389, 393, 969; C97,§§574, 1074, 1538; S13,§§1074, 1528; C24, 27, 31, 35, 39,§**5543**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.17]

Estrays and trespassing animals, ch 188
Fences, ch 113
Support of the poor, ch 252

359.18 County attorney as counsel. In counties having a population of less than twenty-five thousand, where the trustees institute, or are made parties to, litigation in connection with the performance of their duties, as provided in this chapter, the county attorney, as a part of his official duties, shall appear in behalf of the township trustees, except in cases in which the interests of the county and those of the trustees are adverse. [S13,§564; C24, 27, 31, 35, 39,§**5544**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.18]

Referred to in §359.19

359.19 Employment of counsel. When litigation shall arise in any case not covered by section 359.18, involving the right or duty of township trustees with reference to any matter within their jurisdiction, and the trustees become or are made parties to such litigation, they shall have authority to employ attorneys in behalf of said township, and to levy the necessary tax to pay for their services, and to defray the expenses of such litigation. [C97, §564; S13,§564; C24, 27, 31, 35, 39,§**5545**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.19]

CLERK

359.20 Clerk to keep record. The township clerk shall keep a record of all the proceedings and orders of the trustees, and of all acts done by him, including the filing of certificates of official oaths having been taken before other officers, and perform such other acts as may be required of him by law. [C51,§§223, 226, 227; R60,§§445, 448, 449; C73,§§392, 395, 396; C97,§576; S13,§576; C24, 27, 31, 35, 39,§**5546**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.20]

Branding of animals, duties, ch 187
Estrays and trespassing animals, ch 188

359.21 Custody of funds. Each township clerk shall receive, collect, and disburse, under the orders of the township trustees, all funds belonging to his township, including the cemetery fund, and those which are now or may hereafter be by law created or authorized. No claim shall be paid until it has been duly audited by the trustees. [S13,§576; C24, 27, 31, 35, 39,§**5547**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §359.21]

Deposits in general, §453.1

359.22 Notify auditor of elections. The clerk, immediately after the election of officers in his township, shall send a written notice thereof to the county auditor, stating the names of the persons elected, and to what offices, and the time of the election, and shall enter the time of the election of each officer in the township record. [C51,§228; R60,§450; C73,§397; C97,§577; C24, 27, 31, 35, 39,§**5551**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.22]

359.23 Receipts and expenditures. Each township clerk shall prepare, on or before September 30 of each year, a statement in writing, showing all receipts of money and disbursements in his or her office for the preceding fiscal year, which shall be certified as correct by the trustees of the township. Each township clerk shall send a copy of this written statement to the county auditor no later than seven days after the statement is certified by the trustees. [C97,§578; SS15,§578; C24, 27, 31, 35, 39,§**5552**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.23; 66GA, ch 1075,§67]

359.24 Clerk and trustees abolished. Where a city constitutes one or more civil townships the boundary lines of which coincide throughout with the boundary lines of the city, the offices of township clerk and trustee are abolished. [C97,§560; S13,§560; C24, 27, 31, 35, 39, §**5553**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.24]

Referred to in §359.27

359.25 Clerk and council to act. The duties required by law of the township clerk in such cities shall be performed by the city clerk, and those required of the board of trustees shall be performed by the city council. [C97,§561; C24,

27, 31, 35, 39,§5554; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.25]
Referred to in §359.27

359.26 Transfer of funds. The moneys and assets belonging to such civil township shall become the moneys and assets of the city in which said civil township is situated, and the township clerks shall turn such moneys and assets over to the city treasurer or clerk, to be disbursed by the city in the same manner and for the same purposes as required by law for the disposition of township funds, and such cities shall assume all liabilities of a civil township to which the provisions of this section apply. [C97,§562; C24, 27, 31, 35, 39,§5555; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.26]
Referred to in §359.27

359.27 Payment of funds. County treasurers are hereby authorized to pay over to the treasurers or clerks of cities which come under the provisions of sections 359.24, 359.25 and 359.26 all funds which would otherwise be paid over to the township clerks of such townships. [C97,§563; C24, 27, 31, 35, 39,§5556; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.27]

PUBLIC GROUNDS OR BUILDINGS

359.28 Condemnation. The township trustees are hereby empowered to condemn, or purchase and pay for out of the general fund, or the specific fund voted for such purpose, and enter upon and take, any lands within the territorial limits of such township for the use of cemeteries, a community center or juvenile playgrounds, in the same manner as is now provided for cities. [C97,§585; S13,§585; C24, 27, 31, 35, 39,§5558; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.28]
S13,§585, editorially divided
Procedure, ch 472

359.29 Gifts and donations. Civil townships are hereby authorized and empowered to receive by gift, devise, or bequest, money or property for the purpose of establishing and maintaining libraries, township halls, cemeteries, or for any other public purpose. All such gifts, devises, or bequests shall be effectual only when accepted by resolution of the board of trustees of such township. [S13,§585; C24, 27, 31, 35, 39,§5559; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.29]
Referred to in §359.30
Township halls, ch 360

359.30 Cemetery and park tax. They shall, at the regular meeting in November, levy a tax sufficient to pay for any lands so condemned or purchased, or for the necessary improvement and maintenance of cemeteries thus established, and for the necessary improvement and the maintenance of public parks acquired by gift, devise, or bequest under section 359.29, or for the maintenance and improvement of cemeteries so established in adjoining townships, in case they deem such action advisable. [C97,§586; SS15,§586; C24, 27, 31, 35, 39,§5560; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.30]
Referred to in §§332.3, 359.34, 359.37

359.31 Power and control. They shall control any such cemeteries, or appoint trustees for the same, or sell the same to any private corporation for cemetery purposes. [C97,§586; SS15,§586; C24, 27, 31, 35, 39,§5561; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.31]
40ExGA, SF 151,§20, editorially divided

359.32 Sale of lots—gifts. They shall have authority to provide for the sale of lots or portions thereof, in any cemetery under their control, and make rules in regard thereto, and may provide for perpetual upkeep by the establishment of a perpetual upkeep fund from the proceeds of sale of lots, and may accept gifts, devise or bequest, made to them for that purpose. [C39,§5561.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.32]

359.33 Tax for nonowned cemetery. They may levy a tax not to exceed six and three-fourths cents per thousand dollars of assessed value of taxable property to improve and maintain any cemetery not owned by the township, provided the same is devoted to general public use. [C97,§586; SS15,§586; C24, 27, 31, 35, 39,§5562; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.33]
Referred to in §§332.3, 359.34

359.34 Scope of levy. The levy authorized in sections 359.30 and 359.33 may be extended to property within the limits of any city so far as same is situated within the township, unless such city is already maintaining a cemetery, or has levied a tax in support thereof. The said tax may be so expended for the support and maintenance of any such cemetery after the same has been abandoned and is no longer used for the purpose of interring the dead. [SS15,§586; C24, 27, 31, 35, 39, §5563; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.34]

359.35 Cemetery funds—use. Cemetery tax funds of a township may be used for the maintenance and support of cemeteries in adjoining counties and townships and in cities, if such cemeteries are utilized for burial purposes by the people of the township and, when any such cemetery has been so utilized for more than twenty-five years and has been maintained by township funds, the township trustees of the township where the cemetery is located shall continue to improve and maintain the same. [C24, 27, 31, 35, 39,§5564; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.35]

359.36 Joint boards. A city council and the trustees of a township may join in the common purpose of improving, maintaining, and supporting a township cemetery. In such case the two official bodies shall constitute a joint cemetery board and shall have equal voting power. [C24, 27, 31, 35, 39,§5565; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.36]

359.37 Regulations. The trustees, board of directors, or other officers having the custody and control of any cemetery in this state, shall have power, subject to the bylaws and regu-

lations of such cemetery, to enclose, improve, and adorn the ground of such cemetery; to construct avenues in the same; to erect proper buildings for the use of said cemetery; to prescribe rules for the improving or adorning the lots therein, or for the erection of monuments or other memorials of the dead upon such lots; and to prohibit any use, division, improvement or adornment of a lot which they may deem improper.

The trustees, after such land has been advertised for sealed bids by the trustees, shall have authority to sell and dispose of any lands or parcels of lands heretofore dedicated for cemetery purposes and which are no longer necessary for such purposes, for the reason that no burials are being made in such cemetery, provided that any portion of said cemetery in which burials have been made shall be kept and maintained by said trustees. The proceeds from such sales shall be deposited in the tax fund established in accordance with section 359.30, to be used for the purposes of that fund. [C97,§587; SS15,§587; C24, 27, 31, 35, 39,§**5566**; C46, 50, 54, 58, 62, 66, **71, 73, 75**,§359.37]

359.38 Watchmen appointed. Such trustees, directors, or other officers may appoint as many day and night watchmen of their grounds as they may think expedient, and such watchmen, and also all their sextons, superintendents, gardeners, and agents, stationed upon or near said grounds are hereby authorized to take and subscribe to an oath of office as provided in section 63.10. [C97,§589; C24, 27, 31, 35, 39,§**5567**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.38]

Oath, §63.10

359.39 Ex officio police officers. Upon the taking of such oath, such watchmen, sextons, superintendents, gardeners, and agents shall have and exercise all powers of police officers within and adjacent to the cemetery grounds and each shall have power to arrest any and all persons engaged in violating the laws of this state, and to bring such person so offending before any judicial magistrate, to be dealt with according to law. [C97,§589; C24, 27, 31, 35, 39,§**5568**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.39]

Powers, ch 755 et seq.

359.40 Cemeteries—plats—records. Where there is located in any township one or more cemeteries, the owner of the same, or any party owning an interest therein, may cause the same to be surveyed, platted, and laid out into subdivisions and lots, numbering the same by progressive numbers, giving the length and breadth, also the location with reference to known or permanent monuments to be made. The plat shall accurately describe all the subdivisions of the tract of land used, or designed to be used as a cemetery, and shall be recorded in the office of the county recorder, and filed with and recorded by the township clerk, and preserved by him among the records of his office. [C97,§583; C24, 27, 31, 35, 39,§**5569**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.40]

359.41 Conveyance of lots. All conveyances of subdivisions or lots of a cemetery thus platted shall be by deed from the proper owner, which deed shall be recorded with the township clerk in a book kept by him for that purpose, for the recording of which the said clerk shall be entitled to a fee of fifty cents for each instrument recorded, to be paid by the party desiring the record made. [C97,§584; C24, 27, 31, 35, 39,§**5570**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.41]

FIRE EQUIPMENT

359.42 Township fire protection. The trustees of each township in this state shall provide fire protection for the township, exclusive of any part of the township within a benefited fire district. The trustees may purchase, own, rent or maintain fire protection apparatus or equipment and provide housing for such equipment. The trustees may contract with any public or private agency under chapter 28E for the purpose of providing fire protection under this section. [C31, 35,§5570-c1; C39,§**5570.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.42; 66GA, ch 194,§6]

Referred to in §359.43

359.43 Tax levy. The township trustees may levy an annual tax not exceeding forty and one-half cents per thousand dollars of assessed value of the taxable property in the township, excluding any property within a benefited fire district or within the corporate limits of a city, for the purpose of exercising the powers granted in section 359.42. However, in any township having a fire protection agreement with a special charter city having a paid fire department, the township trustees may levy an annual tax not exceeding fifty-four cents per thousand dollars of the assessed value of the taxable property for such purpose and in any township which has a common boundary with a city having a population of two hundred thousand or more, the township trustees may levy an annual tax not exceeding sixty-seven and one-half cents per thousand dollars of assessed value of taxable property for fire protection purposes. [C31, 35,§5570-c2; C39,§**5570.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.43; 66GA, ch 194,§7, ch 196,§1]

Referred to in §359.45

359.44 Repealed by 66GA, ch 194,§12.

359.45 Anticipatory bonds. Townships may anticipate the collection of taxes authorized by section 359.43 and for such purposes may issue bonds payable in not more than ten equal annual installments and at a rate of interest not exceeding seven percent per annum and payable at such place and be in such form as the board of trustees shall designate by resolution. Sections 23.12 to 23.16, inclusive, and provisions of law relating to essential corporate purpose bonds of a city, so far as appli-

cable, shall apply to such bonds. [C39,§5570.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.45; 66GA, ch 194,§8]

COMPENSATION

359.46 Compensation of trustees. Township trustees shall receive:

1. For each day of service of eight hours necessarily engaged in official business, to be paid out of the county treasury, eight dollars each.

2. For each day engaged in assessing damages done by trespassing animals, one dollar each, to be paid as other costs are in such cases.

3. When acting as fence viewers or in any other case where provision is made for their payment otherwise, they shall not be paid out of such treasury, but in all such cases their fees shall be paid in the first instance by the party requiring their services, and they shall append to the report of their proceedings a statement thereof, and therein shall direct who shall pay said fees, and in what sums respectively; and the party having so advanced any such fees may have his action therefor against the party so directed to pay the same, unless, within ten days after demand by the party entitled thereto, he shall be reimbursed therefor. [C51,§2548; R60,§4156; C73,§3808; C97,§590; S13, §590; C24, 27, 31, 35, 39,§5571; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.46]

359.47 Compensation of clerk. The township clerk shall receive:

1. For each day of eight hours necessarily engaged in official business, where no other compensation or mode of payment is provided, to be paid from the county treasury, eight dollars.

2. For all money coming into his hands by virtue of his office, except from his predecessor in office, unless otherwise provided by law, one percent.

3. For making out and certifying the papers in any appeal taken from an assessment by the trustees of damages done by trespassing animals, such additional compensation as the board of supervisors may allow. [C51,§2548; R60,§§909, 911; C73,§3809; C97,§591; S13,§591; C24, 27, 31, 35, 39,§5572; C46, 50, 54, 58, 62, 66, 71, 73, 75,§359.47]

Compensation for handling township hall funds, §360.2

359.48 Repealed by 52GA, ch 240,§50, see §405A.4.

CHAPTER 360

TOWNSHIP HALLS

360.1 Election.
360.2 Tax.
360.3 Transfer of fund.
360.4 Location.
360.5 Construction.
360.6 Custodian.
360.7 Bond.
360.8 Tax for repairs.
360.9 Reversion of real estate—payment.

360.1 Election. The trustees, on a petition of a majority of the resident freeholders of any civil township, shall request the county commissioner of elections to submit the question of building or acquiring by purchase, or acquiring by a lease with purchase option, a public hall to the electors thereof. The county commissioner shall conduct the election pursuant to the applicable provisions of chapters 39 to 53 and certify the result to the trustees. The form of the proposition shall be: "Shall the proposition to levy a tax of ..... cents per thousand dollars of assessed value for the erection of a public hall be adopted?" Notice of the election shall be given as provided by chapter 49. [C97,§567; C24, 27, 31, 35, 39,§5574; C46, 50, 54, 58, 62, 66, 71, 73, 75,§360.1]

Gifts and donations, §359.29

360.2 Tax. If a majority of the votes cast are in favor of the tax, the trustees shall certify such fact to the board of supervisors, and they shall thereupon levy a tax not to exceed the rate voted and not to exceed twenty and one-fourth cents per thousand dollars of assessed value each year for a period not exceeding five years on the taxable property of the township, except that such five-year limitation shall not apply in case of a public hall acquired by a lease with a purchase option. When such tax is collected by the treasurer, it shall be paid to the township clerk; but said clerk shall not receive to exceed one percent for handling said money. [C97,§568; C24, 27, 31, 35, 39,§5575; C46, 50, 54, 58, 62, 66, 71, 73, 75,§360.2]

360.3 Transfer of fund. When there are funds in the hands of any township clerk, raised under the provisions of this chapter which are not desired for the purposes for which they were raised, the funds may be transferred to the school fund of any school district or districts pro rata wherein same was raised, when a petition is presented to the trustees, signed by a majority of the qualified electors of said township, as shown by the election register or registers of the last preceding primary or general election held in said township, said transfer of funds to be made by the township clerk upon order of the trustees after the filing of said petition with said clerk.

[S13,§592-b; C24, 27, 31, 35, 39,§5576; C46, 50, 54, 58, 62, 66, 71, 73, 75,§360.3]

360.4 Location. Any public hall built under the provisions of this chapter shall be located by the township trustees so as to accommodate the greatest number of the resident taxpayers, and for such purpose the trustees may purchase land not to exceed in value five hundred dollars. They shall also have the power to join with the city authorities of any city within their borders and build and equip said building as a public hall or as a memorial building as provided in section 37.21 under such terms and conditions as may be mutually agreed upon. [C97,§569; C24, 27, 31, 35, 39,§5577; C46, 50, 54, 58, 62, 66, 71, 73, 75,§360.4]

Referred to in §360.6

360.5 Construction. The township trustees or in case of joint ownership, in conjunction with the city authorities shall have charge of the building of such hall, shall receive bids, and shall let the building of the same to the lowest responsible bidder, and the township clerk shall pay out of the funds collected, only on the order of the trustees of said township for the township's share of the cost thereof. [C97,§570; C24, 27, 31, 35, 39,§5578; C46, 50, 54, 58, 62, 66, 71, 73, 75,§360.5]

360.6 Custodian. The township clerk, under the direction of the trustees, shall be the custodian of the building, and the use thereof may be permitted by the township trustees to citizens of the township for any lawful purpose; and, for the purposes of this chapter, the township clerk is hereby clothed with all the powers and duties of a constable of the township, to maintain order within and about the premises, protect the property, and enforce orders of the township trustees with respect thereto. In case of joint ownership by the township and city, the duties herein enumerated shall devolve jointly upon the township trustees and the city authorities or they may purchase a building already built with the same limitations as in said section 360.4. A copy of this section shall be at all times kept posted in a conspicuous place in said hall. [C97,§571; C24, 27, 31, 35, 39,§5579; C46, 50, 54, 58, 62, 66, 71, 73, 75,§360.6]

360.7 Bond. When a tax is voted as provided in this chapter, the township clerk shall, before drawing any of said tax from the treasury of the county, execute a bond, with penalty double the amount of said tax, which bond shall be approved by the board of supervisors. [C97,§572; C24, 27, 31, 35, 39,§5580; C46, 50, 54, 58, 62, 66, 71, 73, 75,§360.7]

360.8 Tax for repairs. The trustees of any township where such building has been erected or acquired by purchase, lease with purchase option, or by gift are hereby authorized to certify to the board of supervisors that a tax of not exceeding in any one year, thirteen and one-half cents per thousand dollars of assessed value, on the taxable property of the township, should be levied, to be used in keeping such building in repair, to furnish same with necessary furniture, and provide for the care thereof. Provided, that in counties with a population of seventeen thousand to seventeen thousand two hundred fifty census 1960, where such buildings are of brick construction with at least one hundred thousand cubic feet of space, such tax may be twenty-seven cents per thousand dollars of assessed value on the taxable property. When such certificate is filed in the auditor's office, the board of supervisors shall levy such tax. [C97,§573; C24, 27, 31, 35, 39,§5581; C46, 50, 54, 58, 62, 66, 71, 73, 75, §360.8]

360.9 Reversion of real estate — payment. Any real estate, including improvements thereon, situated wholly outside of a city, owned by a township and heretofore used for township purposes and which is no longer necessary for township purposes, shall revert to the present owner of the tract from which the same was taken, provided that said owner of the tract last aforesaid shall, within the time hereinafter prescribed, pay the value thereof to the township clerk. In the event the township trustees and said owner of the tract from which such real property was taken do not agree as to the value of such property and improvements thereon, the township clerk shall, on written application of either party, appoint three disinterested residents of the township to appraise such property and improvements thereon.

The township clerk shall give notice to said trustees and said owner of the time and place of making such appraisement, which notice shall be served in the same manner and for the same time as for the commencement of action in the district court. Such appraisers shall inspect the real estate and improvements and, at the time and place designated in the notice, appraise the same in writing, which appraisement, after being duly verified, shall be filed with the township clerk.

If the present owner of the tract from which said site was taken fails to pay the amount of such appraisement to such township within twenty days after the filing of same with the township clerk, the township trustees may sell said site, including any improvements thereon, to any person at the appraised value, or may sell the same at public auction for the best bid.

Any real estate, including improvements thereon, situated within a city, owned by a township and heretofore used for township purposes and which is no longer necessary for township purposes, may be sold by the township trustees at public auction for the best bid.

The township trustees in the case of joint ownership, in conjunction with any city authorities, shall not sell such real estate including improvements thereon unless the city authorities concur in such sale. The proceeds of such sale of jointly owned real estate including improvements located thereon shall be prorated between the township and the city

on the basis of their respective contribution to the acquisition and maintenance of such property.

Sales at public auction contemplated herein shall be made only after the township trustees advertise for bids for such property. Such advertisement shall definitely describe said property and be published by at least one insertion each week for two consecutive weeks in some newspaper having general circulation in the township.

The township trustee shall not, prior to two weeks after the said second publication, nor later than six months after said second publication, accept any bid. The township trustees may accept only the best bid received prior to acceptance. The township trustees may decline to sell if all the bids received are deemed inadequate.

Subject to the right of reversion to the present owner as above provided, the township trustees may sell, lease, exchange, give or grant and accept any interest in real property to, with or from any county, municipal corporation or school district if the real property is within the jurisdiction of both the grantor and grantee and the advertising and public auction requirements of this section shall not apply to any such transaction between the aforesaid local units of government. [C71, 73, 75,§360.9]

CHAPTER 361

WEATHER MODIFICATION

361.1 Definitions.
361.2 Modification board.
361.3 Program—contract.
361.4 Fund.
361.5 Election on question.
361.6 Budget request.
361.7 Cancellation of program.

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

1. *"Agricultural land"* means any tract of land of ten acres or more used for agricultural or horticultural purposes.

2. *"Public agency"* means public agency as defined in section 28E.2.

3. *"Private agency"* means private agency as defined in section 28E.2. [C73, 75,§361.1]

361.2 Modification board. The county board of supervisors shall, upon receipt of a petition signed by at least one hundred owners and tenants of agricultural land located in the county, establish a weather modification board consisting of five members appointed by the board of supervisors for three-year terms, except that two members of the initial board shall be appointed for two-year terms. In the case of a vacancy, the appointment shall be made for the unexpired term. The members of the board shall organize annually by the election of a chairman and vice-chairman. Meetings shall be held at the call of the chairman or at the request of a majority of the members of the board. A majority vote of the members of the board shall be required to determine any matter relating to their duties. [C73, 75,§361.2]

361.3 Program—contract. The weather modification board may:

1. Investigate and study the feasibility of artificial weather modification for the county.

2. Develop and administer an artificial weather modification program.

3. Contract with any public or private agency as provided in chapter 28E to carry out an artificial weather modification program.

4. Request the county board of supervisors to conduct a referendum authorizing the levy and collection of a tax, not to exceed two cents per acre on agricultural land in the county, for the administration of an artificial weather modification program.

5. Accept, receive, and administer grants, funds, or gifts from public or private agencies to develop or administer an artificial weather modification program. [C73, 75,§361.3]

361.4 Fund. There is created in the office of county treasurer of each county having a weather modification board a weather modification fund. Any taxes or other funds received by the weather modification board shall be placed in the fund and used exclusively for the purpose of artificial weather modification as provided in this chapter. [C73, 75,§361.4]

361.5 Election on question. Upon request of the weather modification board, the county board of supervisors shall submit to the owners and tenants of agricultural land in the county at any general election or special election called for that purpose, the question of whether a tax not to exceed two cents per acre shall be levied annually on agricultural land. Notice of the election shall be published each week for two consecutive weeks in a newspaper of general circulation throughout the county. The notice shall include the date and time of the election and the question to be voted upon. A majority of the agricultural landowners and tenants voting shall determine the question. [C73, 75,§361.5]

Referred to in §§361.6, 361.7

361.6 Budget request. The weather modification board shall annually submit a budget

request to the county board of supervisors. If the annual tax levy is approved as provided in section 361.5, the weather modification board shall determine the tax levy needed, not to exceed two cents per acre on agricultural land, to meet the budget request. The tax shall be levied by the board of supervisors and collected at the same time and in the same manner as other property taxes. [C73, 75,§361.6]

Referred to in §361.7

361.7 Cancellation of program. If a tax levy has been authorized under section 361.5, the county board of supervisors shall, upon receipt of a petition signed by at least one hundred owners and tenants of agricultural land located in the county, submit to the owners and tenants of agricultural land at any general election or special election called for that purpose the following question: "Shall the power to levy a tax for the administration of an artificial weather modification program be canceled?" Notice of the date and time of election and the question to be voted upon shall be published each week for two consecutive weeks in a newspaper of general circulation throughout the county. If a majority of the agricultural landowners and tenants voting favor the question, no further tax levy as provided in section 361.6 shall be made. [C73, 75,§361.7]

TITLE XV

CITY GOVERNMENT

[This title contains the Home Rule Act of 64GA as amended]
For tax levies prior to July 1, 1975, see 65GA, ch 1231,§§68-113

CHAPTER 362

DEFINITIONS AND MISCELLANEOUS PROVISIONS

Referred to in §376.1

362.1 Citation.
362.2 Definitions.
362.3 Publication of notices.
362.4 Petition of eligible electors.
362.5 "Contract" defined.
362.6 Conflict of interest.
362.7 Prior measures valid.
362.8 Construction.
362.9 Application of city code.

362.1 Citation. This chapter and chapters 364, 368, 372, 376, 380, 384, 388 and 392 may be cited as the "City Code of Iowa". [C75,§362.1; 66GA, ch 197,§1]

362.2 Definitions. As used in the city code of Iowa, unless the context otherwise requires:

1. *"City"* means a municipal corporation,* but not including a county, township, school district, or any special-purpose district or authority. When used in relation to land area, "city" includes only the area within the city limits.

*Includes towns incorporated prior to July 1, 1975

2. *"City code"* means the city code of Iowa.

3. *"Council"* means the governing body of a city.

4. *"Councilman"* means a member of a council, including an alderman.

5. *"Clerk"* means the recording and record-keeping officer of a city regardless of title.

6. *"Secretary"* of a utility board means the recording and record-keeping officer of the utility board regardless of title.

7. *"Charter"* means the form of government selected by a city as provided in chapter 372.

8. *"Officer"* means a natural person elected or appointed to a fixed term and exercising some portion of the power of a city.

9. *"Person"* means an individual, firm, partnership, domestic or foreign corporation, company, association or joint stock association, trust, or other legal entity, and includes a trustee, receiver, assignee, or similar representative thereof, but does not include a governmental body.

10. *"Governmental body"* means the United States of America or an agency thereof, a state, a political subdivision of a state, a school corporation, a public authority, a public district, or any other public body.

11. *"Shall"* imposes a duty.

12. *"Must"* states a requirement.

13. *"May"* confers a power.

14. *"Property," "real property,"* and *"personal property"* have the same meaning as provided in section 4.1.

15. *"Qualified elector"* means the same as it is defined in section 39.3, subsection 2.

16. *"Eligible elector"* means the same as it is defined in section 39.3, subsection 1.

17. *"Measure"* means an ordinance, amendment, resolution, or motion.

18. *"Ordinance"* means a city law of a general and permanent nature.

19. *"Amendment"* means a revision or repeal of an existing ordinance or code of ordinances.

20. *"Resolution"* or *"motion"* means a council statement of policy or a council order for action to be taken, but "motion" does not require a recorded vote.

21. *"Recorded vote"* means a record, roll call vote.

22. *"City utility"* means all or part of a waterworks, gasworks, sanitary sewage system, electric light and power plant and system, or heating plant any of which are owned by a city, including all land, easements, rights of way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the utility.

23. *"Administrative agency"* means an agency established by a city for any city purpose or for the administration of any city facility, as provided in chapter 392, except a board established to administer a municipal utility, a zoning commission and zoning board of adjustment, or any other agency which is controlled by state law. An administrative agency may be designated as a board, board of trustees, commission, or by another title. If an agency is advisory only, such a designation must be

included in its title. [C50,§391A.1; C54, 58, 62, 66, 71, 73,§§363A.2, 391A.1; C75,§362.2; 66GA, ch 197,§§2–4, ch 203,§11]

Referred to in §§386.1, 390.1

362.3 Publication of notices. Unless otherwise provided by state law:

1. If notice of an election, hearing, or other official action is required by the city code, the notice must be published at least once, not less than four nor more than twenty days before the date of the election, hearing, or other action.

2. A publication required by the city code must be in a newspaper published at least once weekly and having general circulation in the city. However, if the city has a population of two hundred or less, or in the case of ordinances and amendments to be published in a city in which no newspaper is published, a publication may be made by posting in three public places in the city which have been permanently designated by ordinance. [R60,§1133; C73,§492; C97,§§686, 687; C24, 27, 31, 35,§§5720, 5721, 5721-a1; C39,§§**5720, 5721, 5721.1**; C46, 50, §§366.7–366.9; C54, 58, 62, 66, 71, 73,§366.7; C75, §362.3]

Referred to in §§37.4, 330.18, 364.7, 364.12, 368.2, 368.15, 368.20, 372.9, 376.5, 380.3, 380.7, 380.8, 384.16, 384.22, 384.25, 384.37, 384.40, 384.50, 384.60, 384.83, 384.96, 384.102, 386.3, 392.7

362.4 Petition of eligible electors. If a petition of the voters is authorized by the city code, the petition is valid if signed by eligible electors of the city equal in number to ten percent of the persons who voted at the last preceding regular city election, but not less than ten persons, unless otherwise provided by state law. [C75,§362.4; 66GA, ch 203,§12]

Referred to in §§28E.17, 37.2, 327H.2, 330.17, 364.2, 372.11, 376.2, 384.7, 384.12, 384.26, 388.2, 392.5

362.5 "Contract" defined. When used in this section, "contract" means any claim, account, or demand against or agreement with a city, express or implied.

A city officer or employee shall not have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for his city. A contract entered into in violation of this section is void. The provisions of this section do not apply to:

1. The payment of lawful compensation of a city officer or employee holding more than one city office or position, the holding of which is not incompatible with another public office or is not prohibited by law.

2. The designation of a bank or trust company as a depository, paying agent, or for investment of funds.

3. An employee of a bank or trust company, who serves as treasurer of a city.

4. Contracts made by a city of less than three thousand population, upon competitive bid in writing, publicly invited and opened.

5. Contracts in which a city officer or employee has an interest solely by reason of employment, or a stock interest of the kind described in subsection 9, or both, if the contracts are made by competitive bid, publicly invited and opened, and if the remuneration of employment will not be directly affected as a result of the contract and the duties of employment do not directly involve the procurement or preparation of any part of the contract. The competitive bid requirement of this subsection shall not be required for any contract for professional services not customarily awarded by competitive bid.

6. The designation of an official newspaper.

7. A contract in which a city officer or employee has an interest if the contract was made before the time he was elected or appointed, but the contract may not be renewed.

8. Contracts with volunteer firemen or civil defense volunteers.

9. A contract with a corporation in which a city officer or employee has an interest by reason of stockholdings when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by the officer or employee or the spouse or immediate family of such officer or employee.

10. A contract made by competitive bid, publicly invited and opened, in which a member of a city board of trustees, commission, or administrative agency has an interest if he is not authorized by law to participate in the awarding of the contract. The competitive bid requirement of this subsection does not apply to any contract for professional services not customarily awarded by competitive bid. [R60, §1122; C73,§490; C97,§943; S13,§§668, 879-q, 1056-a31; C24, 27, 31, 35, 39,§§**5673, 6534, 6710**; C46, 50, §§363.47, 416.58, 420.20; C54, 58, 62, 66, 71, 73, §368A.22; C75,§362.5]

Similar provisions, §§18.5, 68B.3, 86.7, 252.29, 262.10, 314.2, 347.15, 403.16, 553.23, 741.11

362.6 Conflict of interest. A measure voted upon is not invalid by reason of conflict of interest in an officer of a city, unless the vote of the officer was decisive to passage of the measure. If a specific majority or unanimous vote of a municipal body is required by statute, the majority or vote must be computed on the basis of the number of officers not disqualified by reason of conflict of interest. However, a majority of all members is required for a quorum. For the purposes of this section, the statement of an officer that he declines to vote by reason of conflict of interest is conclusive and must be entered of record. [C71, 73, §368A.25; C75,§362.6]

362.7 Prior measures valid. A valid measure adopted by a city prior to July 1, 1975, remains valid unless the measure is irreconcilable with the city code. [C75,§362.7]

362.8 Construction. The city code, being necessary for the public safety and welfare, shall be liberally construed to effectuate its purposes. [C75,§362.8]

Constitutionality, 64GA, ch 1088,§8

362.9 Application of city code. The provisions of this chapter and chapters 364, 368, 372, 376, 380, 384, 388 and 392 are applicable to all cities. [C75,§362.9; 66GA, ch 197,§5]
See temporary provisions, 64GA, ch 1088,§9

CHAPTER 363
MUNICIPAL ORGANIZATION AND OFFICERS

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 363A
MAYOR-COUNCIL FORM OF MUNICIPAL GOVERNMENT

Repealed by 64GA, ch 1088,§199

CHAPTER 363B
COMMISSION FORM OF MUNICIPAL GOVERNMENT

Repealed by 64GA, ch 1088,§199

CHAPTER 363C
COUNCIL-MANAGER FORM OF MUNICIPAL GOVERNMENT BY ELECTION

Repealed by 64GA, ch 1088,§199

CHAPTER 363D
CITY MANAGER PROVIDED BY ORDINANCE

Repealed by 64GA, ch 1088,§199

CHAPTER 363E
COUNCIL-MANAGER-WARD FORM OF GOVERNMENT

Repealed by 64GA, ch 1088,§199

CHAPTER 364
POWERS AND DUTIES OF CITIES

Referred to in §§362.1, 362.9, 376.1, 476.23
See note under Title XV

364.1 Scope.
364.2 Vesting of power.
364.3 Limitation of powers.
364.4 Property right.
364.5 Joint action—league of municipalities.
364.6 Procedure.
364.7 Disposal of property.
364.8 Overpasses or underpasses.
364.9 Flood control—railway tracks.
364.10 Repealed by 66GA, ch 1164,§98.
364.11 Street construction by railways.
364.12 Responsibility for public places.
364.13 Installments.
364.14 Personal injuries.
364.15 Changing grade of streets.
364.16 Municipal fire protection.

364.1 Scope. A city may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents. This grant of home rule powers does not include the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent city power. [C51, §664; R60,§§1047, 1056, 1057, 1071–1073, 1095; C73,§§454–456, 482, 524; C97,§§680, 695, 947; C13, §695; C24, 27, 31, 35, 39,§§**5714, 5738, 6720**; C46, 50,§§366.1, 368.2, 420.31; C54, 58, 62, 66, 71, 73, §§366.1, 368.2, 420.31; C75,§364.1]

364.2 Vesting of power.

1. A power of a city is vested in the city council except as otherwise provided by a state law.

2. The enumeration of a specific power of a city does not limit or restrict the general grant of home rule power conferred by the Constitution. A city may exercise its general powers subject only to limitations expressly imposed by a state or city law.

3. An exercise of a city power is not inconsistent with a state law unless it is irreconcilable with the state law.

4. *a.* A city may grant to any person a franchise to erect, maintain, and operate plants and systems for electric light and power, heating, telephone, telegraph, cable television, district telegraph and alarm, motor bus, trolley bus, street railway or other public transit, waterworks, or gasworks, within the city for a term of not more than twenty-five years. The franchise may be granted, amended, extended, or renewed only by an ordinance, but no exclusive franchise shall be granted, amended, extended, or renewed.

b. No such ordinance shall become effective unless approved at an election. The proposal may be submitted by the council on its own motion to the voters at any city election. Upon receipt of a valid petition as defined in section 362.4 requesting that a proposal be submitted to the voters, the council shall submit the proposal at the next regular city election or at a special election called for that purpose prior to the next regular city election. If a majority of those voting approves the proposal the city may proceed as proposed.

c. Notice of the election shall be given by publication as prescribed in section 49.53 in a newspaper of general circulation in the city.

d. The person asking for the granting, amending, extension, or renewal of a franchise shall pay the costs incurred in holding the election, including the costs of the notice. A franchise shall not be finally effective until an acceptance in writing has been filed with the council and payment of the costs has been made.

e. The franchise ordinance may regulate the conditions required and the manner of use of the streets and public grounds of the city, and it may, for the purpose of providing electrical, gas, heating, or water service, confer the power to appropriate and condemn private property upon the person franchised. [C51,§664; R60,§§1047, 1056, 1057, 1090, 1094, 1095; C73, §§454–456, 471, 473, 474, 517, 523, 524; C97,§§695, 720–722, 775, 776; S13,§§695, 720–722, 776; C24, 27, 31, 35,§§5738, 5904, 5904-c1, 5905–5909, 6128, 6131–6134; C39,§§**5738, 5904, 5904.1, 5905–5909, 6128, 6131–6134**; C46, 50,§§368.1, 386.1–386.7, 397.2, 397.5–397.8; C54, 58, 62, 66,§§368.2, 386.1–386.7, 388.5–388.9, 397.2, 397.5–397.8; C71, 73, §§368.2, 386.1–386.7, 397.2, 397.5–397.8; C75, §364.2; 66GA, ch 81,§149, ch 197,§6]

Referred to in §56.29

364.3 Limitation of powers. The following are limitations upon the powers of a city:

1. A city council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance.

2. A city may not provide a penalty in excess of a one hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. An amount equal to ten percent of all fines collected by municipal corporations shall be remitted quarterly to the county treasurer of the county in which the municipal corporation is located for deposit in the county general fund. However, one hundred percent of all fines collected by a city pursuant to section 321.236, subsection 1, shall be retained by the city.

3. A city may not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

4. A city may not levy a tax unless specifically authorized by a state law. [R60,§§1071–1073, 1095; C73,§§482, 524; C97,§§668, 680, 947; S13,§668; C24, 27, 31, 35, 39,§§**5663, 5714, 6720**; C46, 50,§§363.36, 366.1, 420.31; C54, 58, 62,§§366.1, 368A.1(10), 420.31; C66, 71, 73,§§366.1, 368.2, 368A.1(10), 420.31; C75,§364.3]

See also constitutional Amendment 2 of 1968

364.4 Property right. A city may:

1. Acquire, hold, and dispose of property outside the city in the same manner as within.

2. By contract, extend services to persons outside the city.

3. Enact and enforce ordinances relating to city property and city-extended services outside the city. [SS15,§§741-d, 741-g; C24, 27, 31, 35, 39,§**5773**; C46,§§368.41, 368.42; C50,§§368.42, 368.56; C54, 58, 62, 66, 71, 73,§368.18; C75,§364.4]

364.5 Joint action—league of municipalities. A city or a board established to administer a city utility, in the exercise of any of its powers, may act jointly with any public or private agency as provided in chapter 28E.

The financial condition and the transactions of the league of Iowa municipalities shall be audited in the same manner as cities as provided in section 11.18.

It is unlawful for the league of Iowa municipalities to provide any form of aid to a political party or to the campaign of a candidate for political or public office. Any person violating or being an accessory to a violation of this section is guilty of a misdemeanor.

A city may enter into an agreement with the federal government acting through any of its authorized agencies, and may carry out provisions of the agreement as necessary to meet federal requirements to obtain the funds or co-operation of the federal government or its agencies for the planning, construction, rehabilitation, or extension of a public improvement. [S13,§694-c; C24, 27, 31, 35, 39,§**5684**; C46, 50,§363.62; C54, 58, 62, 66, 71, 73,§363.43; C75,§364.5; 66GA, ch 203,§13]

364.6 Procedure. A city shall substantially comply with a procedure established by a state law for exercising a city power. If a procedure is not established by state law, a city may determine its own procedure for exercising the power. [C66, 71, 73,§368.2; C75, §364.6]

364.7 Disposal of property. A city may not dispose of an interest in real property by sale, lease for a term of more than three years, or gift, except in accordance with the following procedure:

1. The council shall set forth its proposal in a resolution and shall publish notice as provided in section 362.3, of the resolution and of a date, time and place of a public hearing on the proposal.

2. After the public hearing, the council may make a final determination on the proposal by resolution.

3. A city may not dispose of real property by gift except to a governmental body for a public purpose. However, a city may dispose of real property for use in an Iowa homesteading program under section 220.14 for a nominal consideration, including but not limited to property in an urban renewal area. [C73,§470; C97,§§883, 1001; S13,§1056-a47; C24, 27,§§6205, 6206, 6580, 6602, 6738, 6739; C31, 35, §§6205, 6206, 6580, 6602, 6679-c1, 6738, 6739; C39, §§**6205, 6206, 6580, 6602, 6679.1, 6738, 6739**; C46, 50,§§390.6, 403.11, 403.12, 416.108, 416.131, 419.66, 420.49, 420.50; C54, 58, 62, 66, 71, 73,§§368.35, 368.39, 390.6; C75,§364.7; 66GA, ch 138,§38]

364.8 Overpasses or underpasses. A city may by ordinance require a railway company operating railway tracks on or across a city street to construct or reconstruct, and maintain, an overpass or underpass to permit the street to pass over or under the tracks, and may establish specifications for the construction or reconstruction of such an overpass or underpass, subject to the following:

1. The requirement may not be enforced until the Iowa state department of transportation approves the specifications for a construction or reconstruction, after examination and a determination that the overpass or underpass is necessary for public safety and convenience.

2. The council shall hold a hearing on the matter and shall give not less than twenty days' notice of the hearing to the railway companies involved, served in the same manner as an original notice.

3. A city may not require overpasses or underpasses of the same railway company to be constructed closer than on every fourth parallel street, nor require a company to construct or contribute to the construction of more than one overpass or underpass each year, nor require the construction of approaches longer than a total of eight hundred feet for a single overpass or underpass.

4. A city which requires construction or reconstruction of an overpass or underpass shall provide for appraisal and assessment of resulting damage to private property, and shall pay the damages assessed, all as provided in chapter 472.

5. A city shall pay one half of all required maintenance costs, and may allocate costs between railway companies whose tracks are to be crossed by an overpass or underpass.

6. A city may enforce a requirement made as provided in this section by an action in mandamus, to be conducted and enforced as provided in section 327C.16 for actions brought by the state department of transportation. If the city prevails in the mandamus action, in addition to other remedies it may cause the required construction, reconstruction, or maintenance work to be done, and have judgment for the cost of the work against the companies. [C97,§770–774; S13,§§771, 773, 774; C24, 27, 31, 35, 39,§§**5910–5913, 5916–5920, 5923–5925**; C46, 50, 54, 58, 62, 66, 71, 73,§§387.1–387.4, 387.7–387.11, 387.14–387.16; C75,§364.8; 66GA, ch 67, §38]

364.9 Flood control—railway tracks. A city may require a railway company to provide necessary structures, temporary and permanent, to carry its tracks during and after construction of a diverted channel for flood control purposes, subject to the following:

1. The city shall give notice to the railway company, served in the same manner as an original notice, stating:

a. The nature of the flood control project.

b. The place where the diverted channel will cross the company's right of way.

c. The specifications for construction of the diverted channel across the company's right of way.

d. Details of the city's requirement for the company to provide the necessary structures where the diverted channel crosses the right of way, including a designated period of time for construction, and a requirement that the

construction be in a manner which does not interfere with the construction of the diverted channel or the free flow of water.

2. If the company does not comply with the requirement, the city may provide the necessary structures, and the railway is liable for the cost of the construction, in addition to its liability for assessment for special benefits as other property is assessed. The cost of the construction may be collected by the city from the company by court action. [C24, 27, 31, 35, 39,§§6093–6095; C46, 50, 54, 58, 62, 66, 71, 73, §§395.15–395.17; C75,§364.9]

364.10 Repealed by 66GA, ch 1164,§98.

364.11 Street construction by railways. All railway companies shall construct and repair all street improvements between the rails of their tracks, and one foot outside, at their own expense, unless by ordinance the railway is required to improve other portions of the street, and in that case the railway shall construct and repair the improvement of that part of the street specified by the ordinance, and the improvement or repair must be of the material and character ordered by the city, and must be done at the time the remainder of the improvement is constructed or repaired.

When an improvement is made, the company shall lay rail as required by the council, and shall then keep up to grade that part of the improvement they are required to construct or maintain.

If a railway fails or refuses to comply with the order of the council to construct or repair an improvement, the work may be done by the city and the expense shall then be assessed upon the property of the railway company, for collection in the same manner as a property tax. A tax assessed under this section shall also be a debt due from the railway, and may be collected in an action at law in the same manner as other debts. [R60,§1068; C73, §478; C97,§§834, 840; C13,§791-i; SS15,§840-r; C24, 27, 31, 35, 39,§§6052–6055; C46, 50, 54, 58, 62, 66, 71, 73,§§391.79–391.82; C75,§364.11]

364.12 Responsibility for public places.

1. As used in this section, "property owner" means the contract purchaser if there is one of record, otherwise the record holder of legal title.

2. A city is responsible for the care, supervision, and control of public grounds, streets, sidewalks, alleys, bridges, culverts, overpasses, underpasses, grade crossing separations and approaches, except those lawfully required to be maintained by a railway company, and the city shall keep all public ways, squares, and commons open, in repair, and free from nuisance, with the following exceptions:

a. Public ways and grounds may be temporarily closed by resolution. Following notice as provided in section 362.3, such public ways and grounds may be vacated by ordinance.

b. The abutting property owner is responsible for the prompt removal of snow, ice, and accumulations from the sidewalks.

c. The abutting property owner may be required by ordinance to maintain all property outside the lot and property lines and inside the curb lines upon the public streets, except that the property owner shall not be required to remove diseased trees or dead wood on the publicly owned property or right of way.

d. A city may serve notice on the abutting property owner, by certified mail to the property owner as shown by the records of the county auditor, requiring him to repair, replace, or reconstruct sidewalks.

e. If the abutting property owner does not perform an action required under this subsection within a reasonable time, a city may perform the required action and assess the costs against the abutting property for collection in the same manner as a property tax.

3. A city may:

a. Require the abatement of a nuisance, public or private, in any reasonable manner.

b. Require the removal of diseased trees or dead wood, except as stated in subsection 2, paragraph "*c*" of this section.

c. Require the removal, repair, or dismantling of a dangerous building or structure.

d. Require the numbering of buildings.

e. Require connection to public drainage systems from abutting property when necessary for public health or safety.

f. Require connection to public sewer systems from abutting property, and require installation of sanitary toilet facilities and removal of other toilet facilities on such property.

g. Require the cutting or destruction of weeds or other growth which constitutes a health, safety, or fire hazard.

h. If the property owner does not perform an action required under this subsection within a reasonable time after notice, a city may perform the required action and assess the costs against the property for collection in the same manner as a property tax. Notice may be in the form of an ordinance or by certified mail to the property owner as shown by the records of the county auditor, and shall state the time within which action is required. However, in an emergency a city may perform any action which may be required under this section without prior notice, and assess the costs as provided in this subsection, after notice to the property owner and hearing.

1. [64GA, ch 1088,§21]

2. [R60,§1097; C73,§§467, 527; C97,§§753, 757, 780, 781; C24, 27, 31, 35, 39,§§5874, 5945, 5950, 5969; C46, 50,§§381.1, 389.12, 389.19, 389.38; C54, 58, 62, 66,§§368.33, 381.1, 389.12, 389.38; C71, 73, §§368.33, 381.1, 381.2, 389.12, 389.38; 64GA, ch 1088,§21]

3. [R60,§§1057, 1058, 1070, 1096; C73,§§456, 457, 480, 526; C97,§§696, 698, 699, 709–712; S13,§§696, 711, 713-b, 737; C24, 27, 31, 35, 39,§§5739, 5751,

5752, 5755, 5759, 5784–5786; C46,§§368.2, 368.14, 368.15, 368.18, 368.22–368.24, 368.44, 368.53–368.55; C50,§§368.2, 368.14, 368.15, 368.18, 368.22–368.24, 368.44, 368.53–368.55, 368.62; C54, 58, 62, 66, 71, 73,§§368.3 368.4, 368.9, 368.26, 368.31; C75,§364.12; 66GA, ch 197,§7, ch 1182,§1]

Referred to in §364.13
Fire escapes, ch 103; housing law, ch 413
Nuisances in general, ch 657

364.13 Installments. If any amount assessed against property under section 364.12 will exceed one hundred dollars, a city may permit the assessment to be paid in up to ten annual installments, in the same manner and with the same interest rates provided for assessments against benefited property under chapter 384, division IV. [C24, 27, 31, 35, 39, §§**5784–5786**; C46, 50,§§368.53–368.55; C54, 58, §368.26; C62, 66,§§368.26, 389.38; C71, 73,§§368.3, 368.26, 389.38; C75,§364.13]

364.14 Personal injuries. When action is brought against a city for personal injuries alleged to have been caused by its negligence, the city may notify in writing any person by whose negligence it claims the injury was caused. The notice shall state the pendency of the action, the name of the plaintiff, the name and location of the court where the action is pending, a brief statement of the alleged facts from which the cause arose, that the city believes that the person notified is liable to it for any judgment rendered against the city, and asking the person to appear and defend. A judgment obtained in the suit is conclusive in any action by the city against any person so notified, as to the existence of the defect or other cause of the injury or damage, as to the liability of the city to the plaintiff in the first named action, and as to the amount of the damage or injury. A city may maintain an action against the person notified to recover the amount of the judgment together with all the expenses incurred by the city in the suit. [C97,§1053; C24, 27, 31, 35, 39, §**6735**; C46, 50,§420.46; C54, 58, 62, 66, 71, 73, §§368.34, 420.46; C75,§364.14]

364.15 Changing grade of streets. If a city has established the grade of a street or alley, and any person has made improvements on lots abutting the street or alley according to the established grade, and afterward the grade is altered in a manner to damage, injure, or diminish the value of the improved property, the city shall pay to the owner of the property the amount of such damage or injury.

If a city has opened a street or alley, and any person has made improvements on lots abutting the street or alley or uses such street or alley for ingress or egress, and afterward the street or alley is vacated causing damage or injury or loss of access, or diminishing the value of the improved property, the city shall pay to the owner of the property the amount of such damage or injury. [C73,§469; C97,§§785, 786; C24, 27, 31, 35, 39,§§**5953, 5954**; C46, 50, 54, 58, 62, 66, 71, 73,§§389.22, 389.23; C75,§364.15]

364.16 Municipal fire protection. Each city shall provide for the protection of life and property against fire and may establish, house, equip, staff, uniform and maintain a fire department. A city may establish fire limits and may, consistent with code standards promulgated by nationally recognized fire prevention agencies regulate the storage, handling, use, and transportation of all inflammables, combustibles, and explosives within the corporate limits and inspect for and abate fire hazards. A city may provide conditions upon which the fire department will answer calls outside the corporate limits or the territorial jurisdiction and boundary limits of this state. A city shall have the same governmental immunity outside its corporate limits when providing fire protection as when operating within the corporate limits. Firemen operating equipment on calls outside the corporate limits shall be entitled to the benefits of chapter 410 or 411 when otherwise qualified. [R60,§§1058, 1096; C73,§§457, 525; C97, §711, 716; S13,§711; C24, 27,§§5760, 5766; C31, 35,§§5760, 5766; C39,§§**5760, 5766, 5766.1**; C46, 50, §§368.23, 368.29, 368.30; C54, 58, 62, 66, 71, 73, §368.11; 66GA, ch 194,§9]

CHAPTER 365
CIVIL SERVICE

Transferred to ch 400

CHAPTER 365A

Transferred to ch 509A

CHAPTER 366
ORDINANCES

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 367

MAYORS' AND POLICE COURTS

Repealed by 64GA, ch 1124,§282

CHAPTER 368

CITY DEVELOPMENT

Referred to in §§362.1, 362.9, 376.1
See note under Title XV

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DIVISION I
DEFINITIONS

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

1. *"Board"* means the city development board established in section 368.9.

2. *"Committee"* means the board members, and the local representatives appointed as provided in section 368.14, to hear and make a decision on a petition or plan for city development.

3. *"City development"* means an incorporation, discontinuance or boundary adjustment.

4. *"Incorporation"* means establishment of a new city.

5. *"Discontinuance"* means termination of a city.

6. *"Boundary adjustment"* means annexation, severance or consolidation.

7. *"Annexation"* means the addition of territory to a city.

8. *"Severance"* means the deletion of territory from a city.

9. *"Consolidation"* means the combining of two or more cities into one city.

10. *"Territory"* means the land area proposed to be incorporated, annexed, or severed.

11. *"Adjoining"* means having a common boundary for not less than two hundred feet. Land areas may be adjoining although separated by a roadway or waterway.

12. *"Urbanized area"* means the land area within three miles of the boundaries of a city of fifteen thousand or more population. [C58, 62, 66, 71, 73, 75,§362.1]

DIVISION II
GENERAL PROVISIONS

368.2 Name change. A city may change its name as follows:

1. The council shall propose the name change and shall notify the county commissioner of elections that the question shall be submitted at the next regular city election.

2. The county commissioner of elections shall publish notice, as provided in section 362.3, of the proposed new name, and of the fact that the question will be submitted at the next regular city election. The county commissioner of elections shall report the results of the balloting on the question to the mayor and the city council.

3. If a majority of those voting on the question approves the proposed new name, the city clerk shall enter the new name upon the city records and file certified copies of the proceedings, including the council's proposal, proof of publication of notice, and certification of the election result, with the county recorder of each county which contains part of the city, and with the secretary of state. Upon proper filing the name change is complete and effective. [C97,§§628–630; C24, 27, 31, 35, 39,§§**5619–5622**; C46, 50, 54,§§362.34–362.37; C58, 62, 66, 71, 73,§§362.38–362.41; C75,§368.2]

Village name changes, ch 354

368.3 Discontinuance. A city is discontinued if, for a period of six years or more, it

has held no city election and has caused no taxes to be levied. If the board receives knowledge of facts which cause an automatic discontinuance under this section, it shall make a determination that the city is discontinued, shall take control of the property of the discontinued city, and shall carry out all necessary procedures as if the city were discontinued under a petition or plan. [C46, 50, 54, 58, 62, 66, 71, 73,§362.18; C75,§368.3]

368.4 Annexing moratorium. A city, following notice and hearing, may by resolution agree with another city or cities to refrain from annexing specifically described territory for a period not to exceed ten years and, following notice and hearing, may by resolution extend the agreement for subsequent periods not to exceed ten years each. If such an agreement is in force, the board shall dismiss a petition or plan which violates the terms of the agreement. [C66, 71, 73,§362.26(7, 8); C75, §368.4; 66GA, ch 203,§14]

368.5 Annexing state property. Territory owned by the state of Iowa may be annexed, but the attorney general must be served with notice of the hearing and a copy of the proposal. [C58, 62, 66, 71, 73,§§362.34, 362.35; C75, §368.5]

368.6 Repealed by 66GA, ch 197,§34.

368.7 Annexation by petition. All of the owners of land in a territory adjoining a city may apply in writing to the council of the adjoining city requesting annexation of the territory. Territory comprising railway right of way may be included in the application without the consent of the railway if a copy of the application is mailed by certified mail to the owner of the right of way, at least ten days prior to the filing of the application with the city council. The application must contain a map of the territory showing its location in relationship to the city.

An application for annexation under this section must be approved by resolution of the council which receives the application. If the territory is within the urbanized area of a city other than the city to which the request for annexation is directed, the application must also be approved by the board. Upon receiving approval of the council, the city clerk shall file a copy of the map and resolution with the board. The annexation is completed when the board has filed copies of the applicable portions of the proceedings as required in section 368.20, subsection 2. [R60, §1038; C73,§426; C97,§§617, 621; C24, 27, 31, 35, 39,§§5615, 5616; C46, 50, 54, 58, 62, 66, 71, 73, §§362.30, 362.31; C75,§368.7; 66GA, ch 203,§15, ch 1182,§2]

368.8 Severing territory. Any territory may be severed upon the unanimous consent of all owners of the territory and approval by resolution of the council of the city in which the territory is located. The council shall provide in the resolution for the equitable distribution of assets and equitable distribution and assumption of liabilities of the territory as between the city and the severed territory. The council shall file a copy of the resolution and a map with the board. The severance shall be completed when the board has filed copies of the resolution and map as provided in section 368.20, subsection 2. [R60,§§1048–1052; C73, §§440–444; C97,§§622–626; S13,§622; C24, 27, 31, 35, 39,§5617; C46, 50, 54, 58, 62, 66, 71, 73,§362.32; C75,§368.8; 66GA, ch 203,§16]

DIVISION III
CITY DEVELOPMENT BOARD

368.9 Board created. A city development board is hereby created. The office for planning and programming shall provide office space, staff assistance, and shall budget funds to cover expenses and compensation of the board and committees. The board consists of three members appointed by the governor with the approval of two-thirds vote of the senate. The initial appointments must be for terms of two, four, and six years. Successive appointments must be for six years, or to fill an unexpired term in case of a vacancy. Members are eligible for reappointment, but no member shall serve more than two complete six-year terms.

Each member is entitled to receive from the state his actual and necessary expenses and forty dollars compensation for each day spent in performance of board duties. [C75,§368.9]

Referred to in §§368.1, 384.38

368.10 Annual report. The board shall conduct studies of city development, and shall submit an annual report to the governor and the general assembly.

The board may establish rules for the performance of its duties and the conduct of proceedings before it. The board's rules are subject to chapter 17A, as applicable. [C75, §368.10]

Time of filing report, §17.4

368.11 Petition for incorporation. A petition for incorporation, discontinuance, or boundary adjustment may be filed with the board by a city council, a county board of supervisors, a regional planning authority, or five percent of the qualified electors of a city or territory involved in the proposal. Notice of the filing, including a copy of the petition, must be served upon the council of each city for which a discontinuance or boundary adjustment is proposed, the board of supervisors for each county which contains a portion of a city to be discontinued or territory to be incorporated, annexed or severed, and any regional planning authority for the area involved.

Within ninety days of receipt of a petition, the board shall initiate appropriate proceedings or dismiss the petition. The board may

combine for consideration petitions or plans which concern the same territory or city.

The petition must include substantially the following information as applicable:

1. A general statement of the proposal.

2. A map of the territory, city or cities involved.

3. Assessed valuation of platted and unplatted land.

4. Names of property owners.

5. Population density.

6. Description of topography.

7. Plans for disposal of assets and assumption of liabilities.

8. Description of existing municipal services, including but not limited to water supply, sewage disposal, and fire and police protection.

9. Plans for agreements with any existing special service districts.

10. In a case of annexation or incorporation, the petition must state that none of the territory is within a city.

11. In a case of incorporation or consolidation, the petition must state the name of the proposed city. [R60,§§1031, 1038, 1043; C73, §§421, 426, 430, 431, 447, 448; C97,§§599, 604, 610, 611, 615, 617, 621; S13,§615; C24, 27, 31, 35, 39, §§5588, 5598, 5612–5614, 5616; C46, 50,§§362.1, 362.11, 362.26, 362.28, 362.29, 362.31; C54, 58, 62, 66, 71, 73,§§362.1, 362.11, 362.26, 362.31; C75, §368.11; 66GA, ch 197,§8]

Referred to in §524.1202

368.12 Dismissal. The board may dismiss a petition only if it finds that the petition does not meet the requirements of this part, or that substantially the same incorporation, discontinuance, or boundary adjustment has been disapproved by a committee formed to consider the proposal, or by the voters, within the two years prior to the date the petition is filed with the board. The board shall file for record a statement of each dismissal and the reason for it, and shall promptly notify the parties to the proceeding of its decision. [C75, §368.12]

Referred to in §524.1202

368.13 Board may initiate proceedings. Based on the results of its studies, the board may initiate proceedings for the incorporation, discontinuance, or boundary adjustment of a city. The board may request a city to submit a plan for boundary adjustment, or may formulate its own plan for incorporation, discontinuance, or boundary adjustment. A plan submitted at the board's initiation must include the same information as a petition and be filed and acted upon in the same manner as a petition. A petition or plan may include any information relevant to the proposal, including but not limited to results of studies and surveys, and arguments. [C75,§368.13]

Referred to in §524.1202

368.14 Local representatives. If a petition is not dismissed, the board shall direct the appointment of local representatives to serve with board members as a committee to consider the proposal. Each local representative is entitled to receive from the state his actual and necessary expenses spent in performance of committee duties. Two board members and one local representative, or if the number of local representatives exceeds one, two board members and at least one-half of the appointed local representatives, are required for a quorum of the committee. A local representative must be a qualified elector of the territory or city he represents, and must be selected as follows:

1. From a territory to be incorporated, one representative appointed by the county board of supervisors. If the territory is in more than one county, the board shall direct the appointment of a local representative from each county involved.

2. From a city to be discontinued, one representative appointed by the city council.

3. From a territory to be annexed to or severed from a city, one representative appointed by the county board of supervisors.

4. From a city to which territory is to be annexed or from which territory is to be severed, one representative appointed by the city council.

5. From each city to be consolidated, one representative appointed by each city council. [C75,§368.14; 66GA, ch 203,§17]

Referred to in §§368.1, 524.1202

368.15 Public hearing. The committee shall conduct a public hearing on a proposal as soon as practicable. Notice of the hearing must be served upon the council of each city for which a discontinuance or boundary adjustment is proposed, the county board of supervisors for each county which contains a portion of a city to be discontinued or territory to be incorporated, annexed, or severed, and any regional planning authority for the area involved. A notice of the hearing, which includes a brief description of the proposal and a statement of where the petition or plan is available for public inspection, must be published as provided in section 362.3, except that there must be two publications in a newspaper having general circulation in each city and each territory involved in the proposal. Any person may submit written briefs, and in the committee's discretion, may be heard on the proposal. The board may subpoena witnesses and documents relevant to the proposal. [C75,§368.15]

Referred to in §§368.18, 368.21, 524.1202

368.16 Approval of proposal. Subject to section 368.17, the committee shall approve any proposal which it finds to be in the public interest. A committee shall base its finding upon all relevant information before the committee, including but not limited to the following:

1. Statements in the petition or plan, and evidence supporting those statements.

2. Recommendations of the regional planning authority for the area.

3. Commercial and industrial development.

4. Potential growth in population.

5. Cost and adequacy of existing services and facilities.

6. Potential effect of the proposal and of possible alternative proposals on the cost and adequacy of services and facilities.

7. Potential effect of the proposal on adjacent areas, and on any unit of government directly affected, including but not limited to the potential effect on future revenues of any such unit of government. [C75,§368.16]

Referred to in §524.1202

368.17 When approval barred. The committee may not approve:

1. An incorporation unless it finds that the city to be incorporated will be able to provide customary municipal services within a reasonable time.

2. A discontinuance or severance if the city to be discontinued or the territory to be severed will be surrounded by one or more cities unless a petition for annexation of the same area is also filed and approved.

3. A discontinuance or severance unless it finds that the county or another city will be able to provide necessary municipal services to the residents.

4. An annexation unless the territory is adjoining the city to which it will be annexed, and the committee finds that the city will be able to provide to the territory substantial municipal services and benefits not previously enjoyed by such territory, and that the motive for annexation is not solely to increase revenues to the city.

5. A consolidation unless the cities are contiguous.

6. An incorporation of territory, any part of which is within an urbanized area of a city, unless a petition for annexation of substantially the same territory to such city has been dismissed, disapproved, or voted upon unfavorably within the last five years. [R60,§1043; C73,§§430, 431; C97,§§610, 611, 615; S13,§615; C24, 27, 31, 35, 39,§§5612–5614; C46, 50,§§362.26, 362.28, 362.29; C54,§362.26; C58, 62, 66, 71, 73, §§362.1, 362.26; C75,§368.17]

Referred to in §§368.16, 524.1202

368.18 Amendment. The committee may amend a petition or plan. If a petition or plan is substantially amended, the committee shall continue the hearing to a later date and serve and publish a notice describing the amended petition or plan, as required in section 368.15. [C97,§600; S13,§600; C24, 27, 31, 35, 39,§5591; C46, 50, 54, 58, 62, 66, 71, 73,§362.4; C75,§368.18]

Referred to in §524.1202

368.19 Time limit—election. The committee shall approve or disapprove the petition or plan as amended, within ninety days of the final hearing, and shall file its decision for record and promptly notify the parties to the proceeding of its decision. If a petition or plan is approved, the board shall set a date within ninety days for a special election on the proposal and the county commissioner of elections shall conduct the election. In a case of incorporation or discontinuance, qualified electors of the territory or city may vote, and the proposal is authorized if a majority of those voting approves it. In a case of annexation or severance, qualified electors of the territory and of the city may vote, and the proposal is authorized if a majority of the total number of persons voting approves it. In a case of consolidation, qualified electors of each city to be consolidated may vote, and the proposal is authorized only if it receives a favorable majority vote in each city. The county commissioner of elections shall publish notice of the election as provided in section 49.53 and shall conduct the election in the same manner as other special city elections.

The costs of an incorporation election shall be borne by the initiating petitioners if the election fails, but if the proposition is approved the cost shall become a charge of the new city. [R60,§§1032, 1037, 1043, 1044; C73, §§422, 423, 425, 430–432, 447–450; C97,§§600–605, 610–612, 615; S13,§§600–602, 615; C24, 27, 31, 35, 39,§§5592–5594, 5596, 5598, 5599, 5605, 5606, 5612–5614; C46, 50,§§362.5–362.7, 362.9, 362.11, 362.12, 362.19, 362.20, 362.26, 362.28, 362.29; C54, 58, 62, 66, 71, 73,§§362.5–362.7, 362.9, 362.11, 362.12, 362.19, 362.20, 362.26; C75,§368.19; 66GA, ch 197,§9, ch 1075,§68]

Referred to in §524.1202

368.20 Procedure after approval. After the county commissioner of elections has certified the results to the board, the board shall:

1. Serve and publish notice of the result as provided in section 362.3.

2. File with the secretary of state, the clerk of each city incorporated or involved in a boundary adjustment, and with the recorder of each county which contains a portion of any city or territory involved, copies of the proceedings including the original petition or plan and any amendments, the order of the board approving the petition or plan, proofs of service and publication of required notices, certification of the election result, and any other material deemed by the board to be of primary importance to the proceedings. Upon proper filing and expiration of time for appeal, or upon a subsequent date as provided in the proposal, the incorporation, discontinuance, or boundary adjustment is complete, except that if an appeal to any of the proceedings is pending, completion does not occur until the appeal is decided. The clerk of each city incorporated or involved in a boundary adjustment shall also file with the state department of transportation and with the city development board a copy of the plat and legal

land description of each completed annexation. [R60,§§1044, 1053, 1054; C73,§§432, 445, 446, 452; C97,§§267, 603, 608, 612; C24, 27, 31, 35, 39, §§**5596, 5603, 5606, 5618**; C46, 50, 54, 58, 62, 66, 71, 73,§§362.9, 362.16, 362.20, 362.33; C75,§368.20; 66GA, ch 198,§1, ch 1182,§3]

Referred to in §§368.7, 368.8, 524.1202

368.21 Supervision of procedures. When an incorporation, discontinuance, or boundary adjustment is complete, the board shall supervise procedures necessary to carry out the proposal. In the case of an incorporation, the county commissioner of elections shall conduct an election for mayor and council of the city, who shall serve until their successors take office following the next regular city election. In the case of a discontinuance, the board shall publish two notices as provided in section 368.15 that it will receive and adjudicate claims against the discontinued city for a period of six months from the date of last notice, and shall cause necessary taxes to be levied against the property within the discontinued city to pay claims allowed. All records of a discontinued city shall be deposited with the county auditor of the county designated by the board. Any remaining balances shall be deposited in the general fund of the county where the former city was located. In the case of boundary adjustments, the proper city officials shall carry out procedures necessary to implement the proposal. [R60,§§1037, 1045; C73,§§425, 433, 449, 451, 453; C97,§§602, 603, 605–607, 613; S13,§602; C24, 27, 31, 35, 39,§§**5594, 5597, 5600–5602, 5607**; C46, 50, 54, 58, 62, 66, 71, 73, §§362.7, 362.10, 362.13–362.15, 362.21; C75,§368.21; 66GA, ch 197,§10]

Referred to in §524.1202

368.22 Appeal. A city, or a resident or property owner in the territory or city involved may appeal a decision of the board or a committee, or the legality of an election, to the district court of a county which contains a portion of any city or territory involved.

Appeal must be filed within thirty days of the filing of a decision or the second publication of notice of the result of an election.

Appeal of an approval of a petition or plan does not stay the election.

The court's review on appeal of a decision is limited to questions relating to jurisdiction, regularity of proceedings, and whether the decision appealed from is arbitrary, unreasonable, or without substantial supporting evidence. The court may reverse and remand a decision of the board or a committee, with appropriate directions. [C75,§368.22]

Referred to in §524.1202

CHAPTER 368A

GENERAL POWERS AND DUTIES OF MUNICIPAL OFFICERS

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 369

PERSONAL SERVICE TRADES

Repealed by 64GA, ch 1088,§199

CHAPTER 370

PARK COMMISSIONERS

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 371

PERMANENT PARK BOARDS

Repealed by 64GA, ch 1088,§199

CHAPTER 372

ORGANIZATION OF CITY GOVERNMENT

Referred to in §§362.1, 362.2, 362.9, 376.1
Chapter 372, Code 1973, repealed by 64GA, ch 1088,§199
See note under Title XV

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DIVISION II
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DIVISION I
FORMS OF GOVERNMENT

372.1 Forms of cities. The forms of city government are:

1. Mayor-council, or mayor-council with appointed manager.
2. Commission.
3. Council-manager-at-large.
4. Council-manager-ward.
5. Home rule charter.
6. Special charter.

A city when first incorporated has the mayor-council form. A city retains its form of government until it adopts a different form as provided in this division.

Within thirty days of the date that this section becomes effective, a city shall adopt by ordinance a charter embodying its existing form of government, which must be one of the forms provided in this division, and shall file a copy of its charter with the secretary of state, and maintain copies available for public inspection. [C54, 58, 62, 66, 71, 73,§§363.1, 363.30; C75,§372.1; 66GA, ch 197,§11]

Referred to in §372.12

372.2 Six-year limitation. A city may adopt a different form of government not oftener than once in a six-year period. A different form, other than a home rule charter or special charter, must be adopted as follows:

1. Eligible electors of the city, equal in number to at least twenty-five percent of the persons who voted at the last regular city election, may petition the mayor to adopt a different form of city government.

2. Within one week after receiving a valid petition, the mayor shall proclaim a special city election to be held within sixty days to determine whether the city shall change to a different form of government. The mayor shall notify the county commissioner of elections to publish notice of the election and conduct the election pursuant to the provisions of chapters 39 to 53. The county commissioner of elections shall certify the results of the election to the mayor.

3. If a majority of the persons voting at the special election approves the proposed form, it is adopted.

4. If a majority of the persons voting at the special election does not approve the proposed form, that form may not be resubmitted to the voters within the next four years.

5. If the proposed form is adopted:

a. The elective officers provided for in the adopted form are to be elected at the next regular city election held more than sixty days after the special election at which the form was adopted, and the adopted form becomes effective at the beginning of the new term following the regular city election.

b. The change of form does not alter any right or liability of the city in effect at the time of the special election at which the form was adopted.

c. All departments and agencies shall continue to operate until replaced.

d. All measures in effect remain effective until amended or repealed, unless they are irreconcilable with the adopted form.

e. Upon the effective date of the adopted form, the city shall adopt by ordinance a new charter embodying the adopted form, and shall file a copy of its charter with the secretary of state, and maintain copies available for public inspection. [C73,§§434–439; C97,§§631–635, 637; S13,§§633, 1056-a17,-a18,-a19,-a20,-a39; SS15, §§1056-b1,-b2,-b22,-b26; C24, 27, 31, 35, 39,§§6478, 6482–6487, 6491, 6549, 6568, 6569, 6616, 6617, 6619, 6620, 6623, 6680–6682, 6687, 6689, 6690, 6936–6940, 6942; C46, 50,§§416.3, 416.6, 416.7–416.11, 416.15, 416.73, 416.93, 416.94, 419.2, 419.3, 419.5, 419.6, 419.9, 419.67–419.69, 419.74, 419.76, 419.77, 420.289–420.293, 420.295; C54, 58, 62, 66, 71, 73,§§363.31–363.38, 363B.6, 363C.12, 420.289–420.293, 420.295; C75,§372.2; 66GA, ch 197,§12, ch 203,§18]

Referred to in §§372.4, 372.5

372.3 Home rule charter. The filing of a petition for appointment of a home rule char-

ter commission stays the special election on adoption of another form of government until the charter proposed by the commission is filed, and both forms must be published as provided in section 372.9, and submitted to the voters at the special election. [C75,§372.3]

372.4 Mayor-council form. A city governed by the mayor-council form has a mayor and five councilmen elected at large, unless by ordinance a city so governed chooses to have a mayor elected at large and an odd number of councilmen but not less than five, including at least two councilmen elected at large and one councilman elected by and from each ward. The council may, by ordinance, provide for a city manager and prescribe his powers and duties, and as long as the council contains an odd number of councilmen, may change the number of wards, abolish wards, or increase the number of councilmen at large without changing the form.

However, a city governed, on the effective date of this section, by the mayor-council form composed of a mayor and a council consisting of two councilmen elected at large, and one councilman from each of four wards, or a special charter city governed, on the effective date of this section, by the mayor-council form composed of a mayor and a council consisting of two councilmen elected at large and one councilman elected from each of eight wards, may continue until the form of government is changed as provided in section 372.2 or section 372.9. While a city is thus operating with an even number of councilmen, the mayor may vote to break a tie vote on motions not involving ordinances, resolutions or appointments made by the council alone, and in a special charter city operating with ten councilmen under this section, the mayor may vote to break a tie vote on all measures.

The mayor shall appoint a councilman as mayor pro tem, and shall appoint the marshal or chief of police except where an intergovernmental agreement makes other provisions for police protection. Other officers must be selected as directed by the council. The mayor is not a member of the council and may not vote as a member of the council. [R60,§§1081, 1086, 1093, 1095, 1098, 1103, 1105, 1106; C73, §§511, 515, 521, 524, 528, 532, 534, 535; C97, §§645, 646, 652, 654, 655; S13,§§645, 646, 652, 654, 655; SS15,§§679-1a, 937; C24, 27, 31, 35, 39, **§§5631, 5634–5636, 6611, 6691**; C46, 50,§§363.9, 363.13–363.15, 418.1, 420.1; C54, 58, 62,§§363A.2, 363A.3, 363D.1; C66, 71, 73,§§363A.2, 363A.3, 363A.5, 363D.1; C75,§372.4; 66GA, ch 197,§13, ch 203,§19]

Referred to in §380.4

372.5 Commission form. A city governed by the commission form has five departments as follows:

1. Department of public affairs.
2. Department of accounts and finances.
3. Department of public safety.
4. Department of streets and public improvements.
5. Department of parks and public property.

A city governed by the commission form has a council composed of a mayor and four councilmen elected at large. The mayor administers the department of public affairs and each other councilman is elected to administer one of the other four departments.

However, a city governed, on the effective date of this section, by the commission form and having a council composed of a mayor and two councilmen elected at large may continue with a council of three until the form of government is changed as provided in section 372.2 or section 372.9 or without changing the form, may submit to the voters the question of increasing the council to five members assigned to the five departments as set out in this section.

The mayor shall supervise the administration of all departments and report to the council all matters requiring its attention. The mayor is a member of the council and may vote on all matters before the council.

The councilman elected to administer the department of accounts and finances is mayor pro tem.

The council may appoint a city treasurer or may, by ordinance, provide for his election. [S13,§§1056-a18,-a20,-a24,-a25,-a26,-a29; C24, 27, 31, 35, 39,§§**6484, 6488, 6489, 6502, 6520, 6524, 6526, 6527, 6565, 6566**; C46, 50,§§416.8, 416.12–416.14, 416.26, 416.44, 416.48, 416.50, 416.51, 416.90, 416.91; C54, 58, 62, 66, 71, 73,§§363B.1, 363B.2, 363B.4, 363B.5, 363B.7, 363B.8; C75, §372.5; 66GA, ch 197,§14, ch 203,§20]

372.6 Council-manager-at-large form. A city governed by the council-manager-at-large form has five councilmen elected at large for staggered four-year terms. At the first meeting of the new term following each city election, the council shall elect one of the councilmen to serve as mayor, and one to serve as mayor pro tem. The mayor is a member of the council and may vote on all matters before the council. As soon as possible after the beginning of the new term following each city election, the council shall appoint a manager.

The council may by ordinance provide that the city will be governed by council-manager-ward form. The ordinance must provide for the election of the mayor and councilmen required under council-manager-ward form at the next regular city election. [SS15,§§1056-b1,-b7,-b12; C24, 27, 31, 35, 39,§§**6621, 6622, 6645, 6665**; C46, 50,§§419.7, 419.8, 419.31, 419.51; C54, 58, 62, 66,§§363C.1, 363C.3; C71, 73,§§363C.1, 363C.3, 363C.17; C75,§372.6; 66GA, ch 197,§15]

372.7 Council-manager-ward form. A city governed by council-manager-ward form has a council composed of a mayor and two councilmen elected at large, and one councilman elected from each of four wards. The mayor and other councilmen serve four-year stag-

gered terms. The mayor is a member of the council and may vote on all matters before the council.

As soon as possible after the beginning of the new term following each city election, the council shall appoint a city manager, and a councilman to serve as mayor pro tem. [C71, 73,§363E.1; C75,§372.7; 66GA, ch 197,§16]

372.8 Council-manager form — supervision. When a city adopts a council-manager-at-large or council-manager-ward form of government:

1. The city manager is the chief administrative officer of the city.

2. The city manager shall:

a. Supervise enforcement and execution of the city laws.

b. Attend all meetings of the council.

c. Recommend to the council any measures necessary or expedient for the good government and welfare of the city.

d. Supervise the official conduct of all officers of the city whom he has appointed, and take active control of the police, fire, and engineering departments of the city.

e. Supervise the performance of all contracts for work to be done for the city, make all purchases of material and supplies, and see that such material and supplies are received, and are of the quality and character called for by the contract.

f. Supervise the construction, improvement, repair, maintenance, and management of all city property, capital improvements, and undertakings of the city, including the making and preservation of all surveys, maps, plans, drawings, specifications, and estimates for capital improvements, except property, improvements, and undertakings managed by a utility board of trustees.

g. Co-operate with any administrative agency or utility board of trustees.

h. Be responsible for the cleaning, sprinkling, and lighting of streets, alleys, and public places, and the collection and disposal of waste.

i. Provide for and cause records to be kept of the issuance and revocation of licenses and permits authorized by city law.

j. Keep the council fully advised of the financial and other conditions of the city, and of its future needs.

k. Prepare and submit to the council annually the required budgets.

l. Conduct the business affairs of the city and cause accurate records to be kept by modern and efficient accounting methods.

m. Make to the council not later than the tenth day of each month an itemized financial report in writing, showing the receipts and disbursements for the preceding month. Copies of financial reports must be available at the clerk's office for public distribution.

n. Appoint a treasurer subject to the approval of the council.

o. Perform other duties at the council's direction.

3. The city manager may:

a. Appoint administrative assistants, with the approval of the council.

b. Employ, reclassify, or discharge all employees and fix their compensation, subject to civil service provisions and chapter 70, except the city clerk, deputy city clerk, and city attorneys.

c. Make all appointments not otherwise provided for.

d. Suspend or discharge summarily any officer, appointee, or employee that he has power to appoint or employ, subject to civil service provisions and chapter 70.

e. Summarily and without notice investigate the affairs and conduct of any department, agency, officer, or employee under his supervision, and compel the production of evidence and attendance of witnesses.

f. Administer oaths.

4. The city manager shall not take part in any election for councilmen, other than by casting his vote, and shall not appoint a councilman to city office or employment, nor shall a councilman accept such appointment. [SS15, §§1056-b3,-b12,-b15,-b16,-b19,-b20; C24, 27, 31, 35, 39,§§6631, 6665, 6669–6672, 6675, 6676; C46, 50, §§419.17, 419.51, 419.55–419.58, 419.61, 419.62; C54, 58, 62, 66, 71, 73,§§363C.3, 363C.7, 363C.10, 363C.11; C75,§372.8]

372.9 Home rule charter procedure. A city to be governed by the home rule charter form shall adopt a home rule charter in which its form of government is set forth. A city may adopt a home rule charter only by the following procedures:

1. A home rule charter may be proposed by:

a. The council, causing a charter to be prepared and filed and by resolution submitting it to the voters.

b. Eligible electors of the city equal in number to at least twenty-five percent of the persons who voted at the last regular city election petitioning the council to appoint a charter commission to prepare a proposed charter. The council shall, within thirty days of the filing of a valid petition, appoint a charter commission composed of not less than five nor more than fifteen members. The charter commission shall, within six months of its appointment, prepare and file with the council a proposed charter.

2. When a charter is filed, the council and mayor shall notify the county commissioner of elections to publish notice and conduct the election. The notice shall be published at least twice in the manner provided in section 362.3, except that the publications must occur within sixty days of the filing of the home rule charter, with a two-week interval between each publication. The council shall provide copies of a proposed charter for public distribution by the city clerk.

3. The proposed home rule charter must be submitted at a special city election on a date selected by the mayor after consulting regarding the date on which the election may most conveniently be held with the county commissioner of elections who will be responsible for conducting the election. However, the date of the election must be not less than thirty nor more than sixty days after the last publication of the proposed home rule charter.

4. If a proposed home rule charter is rejected by the voters, it may not be resubmitted in substantially the same form to the voters within the next four years. If a proposed home rule charter is adopted by the voters, no other form of government may be submitted to the voters for six years.

5. If a petition for the appointment of a charter commission is filed at any time within two weeks after the second publication of a charter proposed by the council, the submission to the voters of a charter proposed by the council must be delayed, a charter commission appointed, and the council proposal and the charter proposed by the charter commission must be submitted to the voters at the same special election.

6. The ballot submitting a proposed charter or charters must also submit the existing form of government as an alternative.

7. If only two forms of government are being voted upon, the form of government which receives the highest number of votes is adopted.

If more than two forms are being voted upon and no form receives a majority of the votes cast in the special election, there must be a runoff election between the two proposed forms which receive the highest number of votes in the special election. The runoff election must be held within thirty days following the special election and must be conducted in the same manner as a special city election.

8. If a home rule charter is adopted:

a. The elective officers provided for in the charter are to be elected at the next regular city election held more than sixty days after the special election at which the charter was adopted, and the adopted charter becomes effective at the beginning of the new term following the regular city election.

b. The adoption of the charter does not alter any right or liability of the city in effect at the time of the special election at which the charter was adopted.

c. All departments and agencies shall continue to operate until replaced.

d. All measures in effect remain effective until amended or repealed, unless they are irreconcilable with the charter.

e. Upon the effective date of the home rule charter, the city shall adopt by ordinance the home rule charter, and shall file a copy of its charter with the secretary of state, and maintain copies available for public inspection. [C75,§372.9; 66GA, ch 197,§17, ch 203,§21, ch 1182,§4]

Referred to in §§372.3, 372.4, 372.5

372.10 Contents of charter. A home rule charter must contain provisions for:

1. A council of an odd number of members, not less than five.

2. A mayor, who may be one of those council members.

3. Two-year or staggered four-year terms of office for the mayor and council members.

4. The powers and duties of the mayor and the council, consistent with the provisions of the city code. [C75,§372.10; 66GA, ch 203,§22]

372.11 Amendment to charter. A home rule charter may be amended by one of the following methods:

1. The council, by resolution, may submit a proposed amendment to the voters at a special city election, and the proposed amendment becomes effective if approved by a majority of those voting.

2. The council, by ordinance, may amend the charter. However, within thirty days of publication of the ordinance, if a petition valid under the provisions of section 362.4 is filed with the council, the council must submit the ordinance amendment to the voters at a special city election, and the amendment does not become effective until approved by a majority of those voting.

3. If a petition valid under the provisions of section 362.4 is filed with the council proposing an amendment to the charter, the council must submit the proposed amendment to the voters at a special city election, and the amendment becomes effective if approved by a majority of those voting. [C75,§372.11]

372.12 Special charter form limitation. A city may not adopt the special charter form but a city governed by a special charter on the effective date of the city code is considered to have the special charter form although it may utilize elements of the mayor-council form in conjunction with the provisions of its special charter. In adopting and filing its charter as required in section 372.1, a special charter city shall include the provisions of its charter and any provisions of the mayor-council form which are followed by the city on the effective date of the city code.

A special charter city may utilize the provisions of chapter 420 in lieu of conflicting sections, until the city changes to one of the other forms of government as provided in this chapter. [C75,§372.12]

DIVISION II
CITY OFFICERS

372.13 The council.

1. A majority of all councilmen is a quorum.

2. A vacancy in an elective city office during a term of office shall be filled by the council, within thirty days after the vacancy occurs, for the balance of the unexpired term unless a special election is sooner held to fill the office for the remaining balance of the unex-

pired term. Such an election shall be called if the council is presented with a petition so requesting, signed by eligible electors entitled to vote to fill the office in question. The petition must bear signatures equal in number to two percent of those who voted for candidates for the office at the last preceding election at which the office was on the ballot, but in no case fewer than ten signatures. If the petition so requests and is timely filed, the special election may be held concurrently with any pending election as provided by section 69.12. Otherwise, a special election to fill the office shall be called at the earliest practicable time after the petition is presented to the council.

3. The council shall appoint a city clerk to maintain city records and perform other duties prescribed by state or city law.

4. Except as otherwise provided by state or city law, the council may appoint city officers and employees, and prescribe their powers, duties, compensation, and terms. The appointment of a city manager must be made on the basis of his qualifications and not on the basis of political affiliation.

Removal of appointees, §372.15

5. The council shall determine its own rules and maintain records of its proceedings. City records and documents, or accurate reproductions thereof, must be maintained for at least ten years, except that ordinances, resolutions, council proceedings, and records and documents relating to real property transactions or bond issues must be maintained permanently.

6. Within fifteen days following a regular or special meeting of the council, the clerk shall cause the minutes of the proceedings of the council, including the total expenditure from each city fund, to be published in a newspaper of general circulation in the city. The publication shall include a list of all claims allowed and a summary of all receipts and shall show the gross amount of the claim. Matters discussed in closed session pursuant to section 28A.3 shall not be published until entered on the public minutes. However, in cities having more than one hundred fifty thousand population the council shall each month print in pamphlet form a detailed itemized statement of all receipts and disbursements of the city, and a summary of its proceedings during the preceding month, and furnish copies to the city library, the daily newspapers of the city, and to persons who apply at the office of the city clerk, and the pamphlet shall constitute publication as required. Failure by the clerk to make publication is a misdemeanor. The provisions of this subsection are applicable in cities in which a newspaper is published, or in cities of two hundred population or over, but in all other cities, posting the statement in three public places in the city which have been permanently designated by ordinance is sufficient compliance with this subsection.

7. By ordinance, the council may divide the city into wards based upon population, change the boundaries of wards, eliminate wards or create new wards.

8. By ordinance, the council shall prescribe the compensation of the mayor, councilmen, and other elected city officers, but a change in the compensation of the mayor shall not become effective during the term in which the change is adopted, and the council shall not adopt such an ordinance changing the compensation of the mayor or councilmen during the months of November and December immediately following a regular city election. A change in the compensation of councilmen shall become effective for all councilmen at the beginning of the term of the councilmen elected at the election next following the change in compensation. No elected city officer shall receive any other compensation for any other city office or city employment during his term of office, but may be reimbursed for his actual expenses. However, if the mayor pro tem performs the duties of the mayor during his absence or disability for a continuous period of fifteen days or more, the mayor pro tem may be paid for that period such compensation as determined by the council, based upon his performance of the mayor's duties and upon the compensation of the mayor.

9. A councilman, during the term for which he is elected, is not eligible for appointment to any city office if the office has been created or the compensation of the office has been increased during the term for which he is elected. A person who resigns from an elective office is not eligible for appointment to the same office during the time for which he was elected if during that time, the compensation of the office has been increased.

1. [R60,§§1081, 1093; C73,§§511, 522; C97,§668; S13,§668; C24, 27, 31, 35, 39,§**5663**; C46, 50, §363.36; C54, 58, 62, 66, 71, 73,§368A.1(2); C75, §372.13(1)]

2. [R60,§1101; C73,§§514, 524; C97,§668; S13, §668; C24, 27, 31, 35, 39,§**5663**; C46, 50,§363.36; C54, 58, 62, 66, 71, 73,§368A.1(8); C75,§372.13(2); 66GA, ch 81,§150, ch 1075,§69]

3. [R60,§§1082, 1093; C73,§§512, 522; C97,§§651, 659, 940; S13,§651; SS15,§§1056-a26, 1056-b18; C24, 27, 31, 35, 39,§§**5633, 5640, 5663, 6528, 6651, 6703**; C46, 50,§§363.11, 363.19, 363.36, 416.52, 419.37, 420.13; C54, 58, 62, 66, 71, 73,§§368A.1(**1**), 368A.3; C75,§372.13(3)]

4. [R60,§§1086, 1093, 1095, 1098, 1103, 1105, 1134; C73,§§493, 515, 522, 524, 528, 532, 534; C97, §§651, 657, 668, 676; S13,§§651, 657, 668, 1056-a27, 1056-a28; SS15,§§1056-a26, 1056-b14, 1056-b17, 1056-b18; C24, 27, 31, 35, 39,§§**5638, 5663, 5671, 6519, 6528, 6529, 6533, 6651, 6666, 6674**; C46, 50, §§363.11, 363.17, 363.36, 363.45, 416.43, 416.52, 416.53, 416.57, 419.37, 419.52, 419.60; C54, 58, 62, 66, 71, 73,§§363.40, 363A.4, 363B.11, 363C.4, 363C.9, 368A.1(7, 9, 10); C75,§372.13(4); 66GA, ch 203,§23]

5, 6. [R60,§§1082, 1093; C73,§§512, 522; C97, §§659, 668; S13,§§668, 687-a; C24, 27, 31, 35, 39, §§**5640, 5663, 5722**; C46, 50,§§363.19, 363.33, 366.10; C54, 58, 62, 66, 71, 73,§§368A.1(4), 368A.3; C75, §372.13(5, 6); 66GA, ch 203,§23, ch 1182,§5]

7. [R60,§1092; C73,§520; C97,§641; S13,§641; C24, 27, 31, 35, 39,§**5626**; C46, 50,§363.4; C54, 58, 62, 66, 71, 73,§363.7; C75,§372.13(7); 66GA, ch 203,§23]

8. [R60,§§1091, 1095, 1098; C73,§§505, 519, 524, 528; C97,§§669, 676, 943, 945; S13,§§669, 1056-a28; SS15,§1056-b9; C24, 27, 31, 35, 39,§§**5664, 5671, 6517, 6633, 6704, 6705**; C46, 50,§§363.38, 363.45, 416.41, 419.19, 420.14, 420.15; C54, 58, 62, 66, §§363.39, 363A.4, 363B.9, 363C.2, 420.14, 420.15; C71, 73,§§363.39, 363A.4, 363B.9, 363C.2, 363E.1, 420.14, 420.15; C75,§372.13(8); 66GA, ch 203,§23, ch 1056,§23]

9. [R60,§§1091, 1122; C73,§§490, 491, 519; C97, §§668, 677; S13,§668; C24, 27, 31, 35, 39,§**5672**; C46, 50,§§363.46, 420.17–420.19; C54, 58, 62, 66, 71, 73,§368A.21; C75,§372.13(9)]

Removal of officers, ch 66

372.14 The mayor.

1. The mayor is the chief executive officer of the city and presiding officer of the council. Except for the supervisory duties which have been delegated by law to a city manager, the mayor shall supervise all city officers and departments.

2. The mayor may take command of the police and govern the city by proclamation when he determines a time of emergency or public danger exists. Within the city limits, he has all the powers conferred upon the sheriff to suppress disorders.

3. The mayor pro tem is vice president of the council. When the mayor is absent or unable to act, the mayor pro tem shall perform the mayor's duties, except that the mayor pro tem may not appoint, employ, or discharge officers or employees without the approval of the council. Official actions of the mayor pro tem when the mayor is absent or unable to act are legal and binding to the same extent as if done by the mayor. The mayor pro tem retains all his powers as a councilman. [R60,§§1082, 1085, 1091, 1102, 1105, 1121; C73,§§506, 512, 518, 519, 531, 534, 537, 547; C97,§658; S13,§658; SS15,§1056-b7; C24, 27, 31, 35, 39,§§**5639, 6619, 6647**; C46, 50,§§363.18, 419.33, 420.9–420.11; C54, 58, 62, 66, 71, 73, §§363C.13, 368A.2; C75,§372.14]

Enforcement of motor vehicle law, §321.6

372.15 Removal of appointees. Except as otherwise provided by state or city law, all persons appointed to city office may be removed by the officer or body making the appointment, but every such removal shall be by written order. The order shall give the reasons, be filed in the office of the city clerk, and a copy shall be sent by certified mail to the person removed who, upon request filed with the clerk within thirty days of the date of mailing the copy, shall be granted a public hearing before the council on all issues connected with the removal. The hearing shall be held within thirty days of the date the request is filed, unless the person removed requests a later date. [66GA, ch 203,§24]

CHAPTER 373

CITY PLAN COMMISSION

Repealed by 64GA, ch 1088,§199

CHAPTER 374

COMMUNITY CENTER HOUSES AND RECREATION GROUNDS

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 374A

AUDITORIUM TRUSTEES IN CERTAIN CITIES

Repealed by 64GA, ch 1088,§199

CHAPTER 375

MUNICIPAL BANDS

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 376

CITY ELECTIONS

Referred to in §§362.1, 362.9, 376.1

376.1 City election held.
376.2 Terms.
376.3 Nominations.
376.4 Candidacy.
376.5 Publication of ballot.
376.6 When primary must be held.
376.7 Date of primary.
376.8 Persons elected in city elections.
376.9 Runoff election.
376.10 Contest.
376.11 Candidates nominated by write-in vote.

376.1 City election held. A city shall hold a regular city election on the first Tuesday after the first Monday in November of each odd-numbered year. A city shall hold regular, special, primary, or runoff city elections as provided by state law.

The mayor or council shall give notice of any special election to the county commissioner of elections. The county commissioner of elections shall publish notice of any city election and conduct the election pursuant to the provisions of chapters 39 to 53, except as otherwise specifically provided in chapters 362 to 392. The results of any election shall be canvassed by the county board of supervisors and certified by the county commissioner of elections to the mayor and the council of the city for which the election is held. [R60,§1130; C73,§501; C97,§§642, 936; S13,§§646, 1056-a20, -21; SS15,§§1056-b5, -b6; C24, 27, 31, 35, 39,§§**5627, 6488, 6494, 6507, 6514, 6643, 6644, 6737**; C46, 50, §§363.5, 416.12, 416.18, 416.31, 416.38, 419.29, 419.30; C54, 58, 62, 66, 71, 73,§§363.8, 363.20, 363.24, 363.26; C75,§376.1]

Referred to in §§39.20, 48.5

376.2 Terms. Terms of city officers begin and end at noon on the first day in January which is not a Sunday or legal holiday, following a regular city election.

Except as otherwise provided by state law or the city charter, terms for elective offices are two years. However, the term of an elective office may be changed to two or four years by petition and election. Upon receipt of a valid petition as defined in section 362.4, requesting that the term of an elective office be changed, the council shall submit the question at a special city election to be held within sixty days. If a majority of the persons voting at the special election approves the changed term, it becomes effective at the beginning of the term following the next regular city election. If a majority does not approve the changed term, the council shall not submit the same proposal to the voters within the next four years.

At the first regular city election after the terms of councilmen are changed to four years, terms shall be staggered as follows:

1. If an even number of councilmen are elected at large, the half of the elected councilmen who receive the highest number of votes are elected for four-year terms. The remainder are elected for two-year terms.

2. If an odd number of councilmen are elected at large, the majority of the elected councilmen who receive the highest number of votes are elected for four-year terms. The remainder are elected for two-year terms.

3. In case of a tie the mayor and clerk shall determine by lot which councilmen are elected for four-year terms.

4. If the councilmen are elected from wards, the councilmen elected from the odd-numbered wards are elected for four-year terms and the councilmen elected from even-numbered wards are elected for two-year terms. [R60,§§1081, 1084, 1091, 1093, 1106; C73,§§390, 511, 514, 518, 521, 535; C97,§§646–649; S13,§§646–649; SS15, §1056-b3; C24, 27, 31, 35, 39,§§**5632, 6625, 6626**; C46, 50,§§363.10, 419.11, 419.12; C54, 58, 62, 66, 71, 73,§§363.9, 363.10, 363.28; C75,§376.2; 66GA, ch 197,§18, ch 1075,§70]

Referred to in §39.20

376.3 Nominations. Candidates for elective city offices must be nominated as provided in sections 376.4 to 376.9 unless by ordinance a city chooses the provisions of chapters 44 or 45. However, a special charter city may continue to hold partisan elections as provided in sections 43.112 to 43.118 and 420.126 to 420.137. [S13,§1056-a21; SS15,§1056-b4; C24, 27, 31, 35, 39,§§**6492, 6496, 6634, 6638**; C46, 50,§§416.16, 416.20, 419.20, 419.24; C54, 58, 62, 66, 71, 73, §§363.11, 363.16; C75,§376.3; 66GA, ch 197,§19]

376.4 Candidacy. An eligible elector of a city may become a candidate for an elective city office by filing with the city clerk a valid petition requesting that his or her name be placed on the ballot for that office. The petition must be filed not more than sixty-five days nor less than forty days before the date of the election, and must be signed by eligible electors equal in number to at least two percent of those who voted to fill the same office at the last regular city election, but not less than ten persons. Nomination petitions shall be filed not later than five o'clock p.m. on the last day for filing.

The petitioners for an individual seeking election from a ward must be residents of the

ward at the time of signing the petition. An individual is not eligible for election from a ward unless he is a resident of the ward at the time he files the petition and at the time of election.

The petition must include the signature of the petitioners, a statement of their place of residence, and the date on which they signed the petition.

The petition must include the affidavit of at least one eligible elector other than the petitioners, stating the affiant's knowledge, information, and belief as to the residence of the petitioners. The candidate for whom the petition is filed may sign the affidavit only if he or she personally circulated the petition. If the affiant also signed the nomination petition, that signature shall not be counted toward the total required by this section.

The petition must include the affidavit of the individual for whom it is filed, stating his name, his residence, that he is a candidate and eligible for the office, and that if elected he will qualify for the office

The city clerk shall accept the petition for filing if on its face it appears to have the requisite number of signatures and if it is timely filed.

The city clerk shall deliver all nomination petitions to the county commissioner of elections not later than five o'clock p.m. on the day following the last day on which nomination petitions can be filed. Any person on whose behalf nomination petitions have been filed under this section may withdraw as a candidate by filing a signed statement to that effect as prescribed in section 44.9. [S13,§§1056-a21, -a40; SS15,§1056-b4; C24, 27, 31, 35, 39,§§**6478, 6495–6498, 6634–6638**; C46, 50,§§416.2, 416.19–416.22, 419.20–419.24; C54, 58, 62, 66, 71, 73, §§363.11–363.16; C75,§376.4; 66GA, ch 81,§151, ch 203,§25, ch 1075,§71]

Referred to in §376.3

376.5 Publication of ballot. Notice containing a copy of the ballot for each regular, special, primary, or runoff city election must be published by the county commissioner of elections as provided in section 362.3, except that notice of a regular, primary, or runoff election may be published not less than four days before the date of the election. The published ballot must contain the names of all candidates, and may not contain any party designations. The published ballot must contain any question to be submitted to the voters. [S13,§1056-a21; SS15,§1056-b4; C24, 27, 31, 35, 39,§§**6499, 6500, 6501, 6503, 6640**; C46, 50,§§416.23–416.25, 416.27, 419.26; C58, 62, 66, 71, 73,§363.19; C75,§376.5]

Referred to in §376.3

376.6 When primary must be held. An individual for whom a valid petition is filed becomes a candidate in the regular city election for the office for which he has filed, except that a primary election must be held for offices for which the number of individuals for whom valid petitions are filed is more than twice the number of positions to be filled. However:

1. The council may by ordinance choose to have a runoff election, as provided in section 376.9, in lieu of a primary election.

2. If the council has by ordinance chosen to have nominations made in the manner provided by chapter 44 or 45, neither a primary election nor a runoff election is required. [S13,§1056-a21; SS15,§1056-b4; C24, 27, 31, 35, 39,§§**6492, 6510, 6638**; C46, 50,§§416.16, 416.34, 419.24; C54, 58, 62, 66, 71, 73,§§363.16, 363.18; C75,§376.6]

Referred to in §376.3

376.7 Date of primary. If a primary election is necessary, it shall be held on the Tuesday three weeks before the date of the regular city election. The county board of supervisors shall publicly canvass the tally lists of the vote cast in the primary election, following the procedures prescribed in section 50.24, at a meeting to be held beginning at one o'clock in the afternoon on the second day following the primary election.

The names of those candidates who receive the highest number of votes for each office on the primary election ballot, to the extent of twice the number of unfilled positions, must be placed on the ballot for the regular city election as candidates for that office. [S13,§1056-a21; SS15,§1056-b5; C24, 27, 31, 35, 39,§§**6493, 6507, 6643**; C46, 50,§§416.17, 416.31, 419.29; C54, 58, 62, 66, 71, 73,§§363.17, 363.24; C75,§376.7; 66GA, ch 1075,§72]

Referred to in §376.3

376.8 Persons elected in city elections.

1. In a regular city election following a city primary, the candidates receiving the greatest number of votes cast for each office on the ballot are elected, to the extent necessary to fill the positions open.

2. In a regular city election held for a city where the council has chosen a runoff election in lieu of a primary, candidates are elected as provided by subsection 1, except that no candidate is elected who fails to receive a majority of the votes cast for the office in question. In the case of at-large elections to a multimember body, a majority is one vote more than half the quotient found by dividing the total number of votes cast for all candidates for that body by the number of positions to be filled.

3. In a regular city election held for a city where the council has chosen to have nominations made in the manner provided by chapter 44 or 45, the candidates who receive the greatest number of votes for each office on the ballot are elected, to the extent necessary to fill the positions open. [S13,§1056-a21; SS15,§1056-b4; C24, 27, 31, 35, 39,§§**6492, 6638**; C46, 50,§§416.16, 419.24; C54, 58, 62, 66, 71, 73, §363.16; C75,§376.8; 66GA, ch 1075,§73]

Referred to in §376.3

376.9 Runoff election. A runoff election may be held only for positions unfilled because of failure of a sufficient number of candidates to receive a majority vote in the regular city election. When a council has chosen a runoff election in lieu of a primary, the county board of supervisors shall publicly canvass the tally lists of the vote cast in the regular city election, following the procedures prescribed in section 50.24, at a meeting to be held beginning at one o'clock in the afternoon on the second day following the regular city election. Candidates who do not receive a majority of the votes cast for an office, but who receive the highest number of votes cast for that office in the regular city election, to the extent of twice the number of unfilled positions, are candidates in the runoff election.

Runoff elections shall be held three weeks after the date of the regular city election and shall be conducted in the same manner as regular city elections.

Candidates in the runoff election who receive the highest number of votes cast for each office on the ballot are elected to the extent necessary to fill the positions open. [C71, 73,§363.16; C75,§376.9; 66GA, ch 197,§20, ch 1075,§74]

Referred to in §§52.22, 376.3, 376.6

376.10 Contest. A nomination or election to a city office may be contested in the manner provided in chapter 62 for contesting elections to county offices, except that a statement of intent to contest must be filed with the city clerk within ten days after the nomination or election. The mayor is presiding officer of the court for the trial of a nomination or election contest, except that if the mayor's nomination or election is contested, the council shall elect one of its members other than the mayor to serve as presiding officer. [C97,§§678, 679; C24, 27, 31, 35, 39, §5629; C46, 50,§363.7; C54, 58, 62, 66, 71, 73, §363.22; C75,§376.10]

376.11 Candidates nominated by write-in vote. Any person nominated by a write-in vote in a city primary election, or in a regular city election in a city where the council has chosen a runoff election in lieu of a primary, shall execute an affidavit in substantially the form required by section 45.3 and file it with the county commissioner of elections or the city clerk not later than five o'clock p.m. of the day after the canvass of the primary or regular city election, as the case may be. If the person so nominated fails to complete and file the affidavit at the time required, the county commissioner of elections shall disregard the write-in votes cast for that person and proceed in accordance with the requirements of this chapter on the basis of the canvass of all other votes cast at the primary or regular city election. [66GA, ch 1075,§75]

CHAPTER 377

JUVENILE PLAYGROUNDS AND RECREATION CENTERS

Repealed by 64GA, ch 1088,§199

CHAPTER 378

PUBLIC LIBRARIES

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 378A

MUNICIPAL CIVIC CENTERS

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 379

MUNICIPAL ART GALLERIES

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 379A

SYMPHONY ORCHESTRA TAX

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 379B

MUNICIPAL CULTURAL FACILITIES

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 380

CITY LEGISLATION

Referred to in §§362.1, 362.9, 376.1
Chapter 380, Code 1973, repealed by 64GA, ch 1088,§199
See note under Title XV

380.1 Title of ordinance.
380.2 Amendment.
380.3 Two considerations before final passage —how waived.
380.4 Majority requirement—tie vote.
380.5 Mayor.
380.6 Effective date.
380.7 City clerk.
380.8 Code of ordinances published.
380.9 Fee for publication.
380.10 Adoption by reference.
380.11 Certain measures recorded.

380.1 Title of ordinance. The subject matter of an ordinance or amendment must be generally described in its title. [R60,§1122; C73, §489; C97,§681; C24, 27, 31, 35, 39,§5715; C46, 50, 54, 58, 62, 66, 71, 73,§366.2; C75,§380.1]

380.2 Amendment. An amendment to an ordinance or to a code of ordinances must specifically repeal the ordinance or code, or the section or subsection to be amended, and must set forth in full the ordinance, code, section or subsection as amended. [R60,§1122; C73, §489; C97,§681; C24, 27, 31, 35, 39,§5715; C46, 50, 54, 58, 62, 66, 71, 73,§366.2; C75,§380.2; 66GA, ch 197,§21]

380.3 Two considerations before final passage—how waived. A proposed ordinance or amendment must be considered and voted on for passage at two council meetings prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than three-fourths of the council members.

However, if a summary of the proposed ordinance or amendment is published as provided in section 362.3, prior to its first consideration, and copies are available at the time of publication at the office of the city clerk, the ordinance or amendment must be considered and voted on for passage at one meeting prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than three-fourths of the council members. [R60,§1122; C73,§489; C97,§682; C24, 27, 31, 35, 39,§5716; C46, 50, 54, 58, 62, 66, 71, 73,§366.3; C75,§380.3; 66GA, ch 203,§26]

380.4 Majority requirement—tie vote. Passage of an ordinance, amendment, or resolution requires an affirmative vote of not less than a majority of the council members, except when the mayor may vote to break a tie vote in a city with an even number of councilmen, as provided in section 372.4. A motion to spend public funds in excess of ten thousand dollars on any one project, or a motion to accept public improvements and facilities upon their completion, also requires an affirmative vote of not less than a majority of the council members. Each councilman's vote on an ordinance, amendment, or resolution must be recorded. [R60,§§1122, 1134, 1135; C73,§§466, 489, 493, 494; C97,§§683, 684, 793; S13,§§683, 693; C24, 27, 31, 35, 39,§5717; C46, 50, 54, 58, 62, 66, 71, 73,§366.4; C75, ch 380.4; 66GA, ch 197, §22]

380.5 Mayor. The mayor may sign, veto, or take no action on an ordinance, amendment, or resolution passed by the council. However, the mayor may not veto a measure if the mayor was entitled to vote on the measure at the time of passage. [C97,§685; C24, 27, 31, 35, 39,§5718; C46, 50, 54, 58, 62, 66, 71, 73,§366.5; C75, §380.5; 66GA, ch 203,§27]

380.6 Effective date. Measures passed by the council, other than motions, become effective in one of the following ways:

1. If the mayor signs the measure, a resolution becomes effective immediately upon signing and an ordinance or amendment becomes a law when published, unless a subsequent effective date is provided within the measure.

2. If the mayor vetoes the measure, he shall explain his reasons for the veto in a message to the council at the time of the veto. Within thirty days after the mayor's veto, the council may pass the measure again by a vote of not less than two-thirds of the council members. If the mayor vetoes a measure and the council repasses the measure after the mayor's veto, a resolution becomes effective immediately upon repassage, and an ordinance or amendment becomes a law when published,

unless a subsequent effective date is provided within the measure.

3. If the mayor takes no action on the measure, a resolution becomes effective fourteen days after the date of passage and an ordinance or amendment becomes a law when published, but not sooner than fourteen days after the date of passage, unless a subsequent effective date is provided within the measure. [R60,§1133; C73,§492; C97,§§685–687; C24, 27, 31, 35,§§5718, 5720, 5721, 5721-a1; C39,§§**5718, 5720, 5721, 5721.1**; C46, 50,§§366.5, 366.7–366.9; **C54, 58,** 62, 66, 71, 73,§§366.5, 366.7; C75,§380.6]

380.7 City clerk. The city clerk shall:

1. Promptly record each measure, with a statement, where applicable, indicating whether the mayor signed, vetoed, or took no action on the measure, and whether the measure was repassed after the mayor's veto.

2. Publish all ordinances and amendments in the manner provided in section 362.3.

3. Authenticate all measures except motions with his signature and certification as to time and manner of publication, if any. The clerk's certification is presumptive evidence of the facts stated therein.

4. Maintain for public use copies of all effective ordinances and codes. [R60,§1133; C73,§492; C97,§§686, 687; C24, 27, 31, 35,§§5719–5721, 5721-a1; C39,§§**5719–5721, 5721.1**; C46, 50, §§366.6–366.9; C54, 58, 62, 66, 71, 73,§§366.6, 366.7; C75,§380.7]

380.8 Code of ordinances published. At least once every five years, a city shall compile a code of ordinances containing all of the city ordinances in effect, except grade ordinances, bond ordinances, zoning ordinances, and ordinances vacating streets and alleys.

If a proposed code of ordinances contains only existing ordinances edited and compiled without change in substance, the council may adopt the code by ordinance.

If a proposed code of ordinances contains a proposed new ordinance or amendment, the council shall hold a public hearing on the proposed code before adoption. The clerk shall publish notice of the hearing as provided in section 362.3. Copies of the proposed code of ordinances must be available at the city clerk's office and the notice must so state. Within thirty days after the hearing, the council may adopt the proposed code of ordinances which becomes law upon publication of the ordinance adopting it. If the council substantially amends the proposed code of ordinances after a hearing, notice and hearing must be repeated.

Ordinances and amendments which become effective after adoption of a code of ordinances may be compiled as supplements to the code, and upon adoption of the supplement by resolution, become part of the code of ordinances.

An adopted code of ordinances is presumptive evidence of the passage, publication, and content of the ordinances therein as of the date of the clerk's certification of the ordinance adopting the code or supplement. [R60,§1133; C73,§492; C97,§§686, 687; C24, 27, 31, 35,§§5720, 5721, 5721-a1; C39,§§**5720, 5721, 5721.1**; C46, 50, §§366.7–366.9; C54, 58, 62, 66, 71, 73,§366.7; C75, §380.8; 66GA, ch 197,§23, ch 1182,§6]

Referred to in §§380.10, 622.62

380.9 Fee for publication. The compensation paid to a newspaper for any publication required by this chapter may not exceed three-fourths of the fee provided in section 618.11. [S13,§687-b; C24, 27, 31, 35, 39,§**5723**; C46, 50, 54, 58, 62, 66, 71, 73,§366.11; C75,§380.9]

380.10 Adoption by reference. A city may adopt the provisions of any statewide or nationally recognized standard code or portions of any such code by an ordinance which identifies the code by subject matter, source and date, and incorporates the provisions by reference without setting them forth in full. Such code or portion must be adopted only after notice and hearing in the manner provided in section 380.8. [R60,§1133; C73,§492; C97,§§686, 687; C24, 27, 31, 35,§§5720, 5721, 5721-a1; C39,§§**5720, 5721, 5721.1**; C46, 50,§§366.7–366.9; C54, 58, 62, 66, 71, 73,§366.7; C75,§380.10; 66GA, ch 203,§28]

380.11 Certain measures recorded. Immediately after the effective date of a measure establishing any zoning district, building lines or fire limits, the city clerk shall certify the measure and a plat showing the district, lines or limits, to the recorder of any county which contains part of the city. The county recorder shall record the measure and plat in the miscellaneous record or other book provided for special records, and shall index the record. The city shall pay the recording fee. [C24, 27, 31, 35, 39,§§**5724–5727**; C46, 50, 54, 58, 62, 66, 71, 73, §§366.12–366.15; C75,§380.11]

CHAPTER 381

BRIDGES

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 382

INTERSTATE BRIDGES IN CITIES

Repealed by 64GA, ch 1088,§199

CHAPTER 383

INTERSTATE BRIDGES (ADDITIONAL ACT)

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 384

CITY FINANCE

Referred to in §§362.1, 362.9, 376.1
Chapter 384, Code 1973, repealed by 64GA, ch 1088,§199
See note under Title XV

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DIVISION I
TAXES AND FUNDS
Referred to in §420.41

384.1 Taxes certified. A city may certify taxes to be levied by the county on all taxable property within the city limits, for all city government purposes. However, the tax levied by a city on lots of more than ten acres and the personal property thereon, occupied and used for agricultural or horticultural purposes, may not exceed thirty-three and three-fourths cents per thousand dollars of assessed value in any year. A city's tax levy for the general fund may not exceed eight dollars and ten cents per thousand dollars of taxable value in any tax year, except for the levies authorized in section 384.12. [C97,§§616, 890; S13,§616; C24, 27, 31, 35, 39,§**6210**; C46, 50,§404.4; C54, 58, 62, 66, 71, 73,§§404.1, 404.2, 404.15; C75,§384.1]

Referred to in §§24.36, 384.12, 386.8, 386.9

384.2 Fiscal year and tax year. Except as otherwise provided for special charter cities, a city's fiscal year shall be as provided in section 24.2, subsection 4. All city property taxes must be certified by a city to the county auditor on or before the fifteenth day of March of each year, unless otherwise provided by state law. However, municipal utilities, if not supported by taxation or the proceeds of outstanding indebtedness payable from taxes may, with the council's consent, choose to operate on a fiscal year which is the calendar year. The receipt by the utility of payments from other governmental funds for public fire protection, street lighting or other public use of the utility's services shall not be deemed support by taxation. After notice and hearing in the same manner as required for the city's regular budget under section 384.16, the utility budget must be approved by resolution of the council not later than twenty days prior to the beginning of the calendar year for which the budget applies.

The county auditor shall place city taxes and assessments upon the tax list for the current year, and the county treasurer shall collect city taxes and assessments in the same manner as other taxes. Delinquent city taxes and assessments draw the same interest and penalties as other taxes. Sales for delinquent city taxes and assessments must be made in the manner provided in chapter 446. The county treasurer shall combine in one tax sale all taxes and assessments due from the same person and collectible by the county. [R60, §§1123, 1126; C73,§§495, 498; C97,§902; S13,§§902, 1056-a7, 1056-a34; C24,§§5678, 6227, 6228, 6570, 6571; C27, 31, 35,§§5676-a1, 6227, 6228, 6570, 6871; C39,§§**5676.1, 6227, 6228, 6570, 6871**; C46, 50, §§363.51, 404.21, 404.22, 416.95, 420.212; C54, 58, §§363.29, 404.3, 404.21; C62, 66, 71, 73,§§363.29, 404.3, 404.22; C75,§384.2; 66GA, ch 203,§29]

384.3 General fund. All moneys received for city government purposes from taxes and other sources must be credited to the general fund of the city, except that moneys received for the purposes of the debt service fund, the trust and agency fund, the capital improvements reserve fund, the emergency fund and other funds established by state law must be deposited as otherwise required or authorized by state law. All moneys received by a city from the federal government must be reported to the office for planning and programming. [C50,§395.26; C54, 58,§§395.26, 404.2, 404.23; C62, 66, 71, 73,§§395.26, 404.2, 404.24; C75,§384.3]

384.4 Debt service fund. A city shall establish a debt service fund and shall certify taxes to be levied for the debt service fund in the amount necessary to pay:

1. Judgments against the city, except those authorized by state law to be paid from other funds.

2. Interest as it becomes due and the amount necessary to pay, or to create a sinking fund to pay, the principal at maturity of all general obligation bonds issued by the city.

Moneys pledged or available to service general obligation bonds, and received from sources other than property taxes, must be deposited in the debt service fund.

If a final judgment is entered against a city with a population of five hundred or less for an amount in excess of eighty-eight thousand dollars over and above what is covered by liability insurance, such city may spread the budgeting and payment of that portion not covered by insurance over a period of time not to exceed ten years. Interest shall be paid by the city on the unpaid balance. This paragraph shall only apply to final judgments entered but not fully satisfied prior to March 25, 1976. [C97,§894; SS15,§§879-s, 894; C24, 27, 31, 35, 39,§§**6211, 6603**; C46, 50,§§404.5, 416.132; C54, 58, 62, 66, 71, 73,§404.13; C75,384.4; 66GA, ch 1183,§1]

Referred to in §§384.24, 384.32, 384.74

384.5 Excess tax. A tax levied for the debt service fund is not invalid if it raises moneys in excess of those needed for a specific purpose. Only excess moneys remaining after retirement of all indebtedness payable from the

fund may be transferred from the debt service fund to any other city fund, subject to the terms of the original bond issue, and as provided in rules promulgated by the city finance committee created in section 384.13. [C51, §§123, 124; R60,§§259, 260; C73,§§318, 319; C97, §897; C24, 27, 31, 35, 39,§6222; C46, 50,§404.16; C54, 58,§404.20; C62, 66, 71, 73,§404.21; C75, §384.5]

384.6 Trust and agency fund. A city may establish a trust and agency fund for the following purposes:

1. Accounting for pension and related employee benefit funds. A city may certify taxes to be levied for the trust and agency fund in the amount necessary to meet such obligations.

2. Accounting for gifts received by the city for a particular purpose.

3. Accounting for money and property received and handled by the city as trustee or custodian or in the capacity of an agent. [C54, 58, 62, 66, 71, 73,§404.16; C75,§384.6]

See §509A.2, Code 1973

384.7 Capital improvements fund. A city may establish a capital improvements reserve fund, and may certify taxes not to exceed sixty-seven and one-half cents per thousand dollars of taxable value each year to be levied for the fund for the purpose of accumulating moneys for the financing of specified capital improvements, or carrying out a specific capital improvement plan.

The question of the establishment of a capital improvements reserve fund, the time period during which a levy will be made for the fund, and the amount to be levied therefor is subject to approval by the voters, and may be submitted at any city election upon the council's motion, or shall be submitted at the next regular city election upon receipt of a valid petition as provided in section 362.4.

If a continuing capital improvements levy is established by election, it may be terminated in the same manner, upon the council's motion or upon petition. Balances in a capital improvements reserve fund are not unencumbered or unappropriated funds for the purpose of reducing tax levies. Transfers may be made between the capital improvements reserve fund, construction funds, and the general fund, as provided in rules promulgated by the city finance committee created in section 384.13. [C75,§384.7; 66GA, ch 197,§24]

Referred to in §386.9

384.8 Emergency fund. A city may establish an emergency fund and may certify taxes not to exceed twenty-seven cents per thousand dollars of taxable value each year to be levied for the fund. Transfers may be made from the emergency fund to the general fund as provided in rules promulgated by the city finance committee created in section 384.13. [C24, 27, 31, 35, 39,§373; C46, 50, 54, 58, 62, 66, 71, 73, §24.6; C75,§384.8]

Referred to in §34.36

384.9 Additional funds. A city may establish other funds and may certify taxes to be levied for the funds as provided by state law. The status of each account or fund must be included in the annual report required in section 384.22. [C54, 58, 62, 66, 71, 73,§404.1; C75, §384.9]

384.10 Short-term loans. A city may negotiate short-term loans, and may issue warrants as provided in chapter 74, in anticipation of and not in excess of its estimated revenues for the current fiscal year. However, natural disaster loans from the state or federal government and loans for projects where payment of state or federal funds has been guaranteed but receipt of such funds may not coincide with the fiscal year, may be negotiated in anticipation of revenues for a period of time longer than the current fiscal year. [R60, §1129; C73,§500; C97,§898; C24, 27, 31, 35, 39, §6223; C46, 50,§404.17; C54, 58,§404.18; C62, 66, 71, 73,§404.19; C75,§384.10; 66GA, ch 1184,§1]

Referred to in §§384.57, 386.12

384.11 Tax revenues paid. On or before the third Monday of each month, the county treasurer shall pay to each city the tax revenues collected specifying the amount collected for each city fund up to the first day of that month. The city shall credit the revenues to the proper fund and shall issue a receipt to the county treasurer. [R60,§§1123, 1126; C73, §§495, 498; C97,§902; S13,§902; C24, 27, 31, 35, 39,§6229; C46, 50,§404.23; C54, 58,§404.19; C62, 66, 71, 73, §404.20; C75,§384.11; 66GA, ch 1071,§2]

384.12 Additional taxes. A city may certify, for the general fund levy, taxes which are not subject to the limit provided in section 384.1, and which are in addition to any other moneys the city may wish to spend for such purposes, as follows:

1. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value for the support of a municipal band, subject to the following:

a. Upon receipt of a petition valid under the provisions of section 362.4, the council shall submit to the voters at the next regular city election the question of whether a tax shall be levied.

b. If a majority approves the levy, it may be imposed.

c. The levy can be eliminated by the same procedure of petition and election.

d. A tax authorized by an election held prior to the effective date of the city code may be continued until eliminated by the council, or by petition and election.

2. A tax not to exceed eighty-one cents per thousand dollars of assessed value for development, operation, and maintenance of a memorial building or monument, subject to the provisions of subsection 1.

3. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value

for support of a symphony orchestra, subject to the provisions of subsection 1.

4. A tax not to exceed twenty-seven cents per thousand dollars of assessed value for the operation of cultural and scientific facilities, subject to the provisions of subsection 1, except that the question may be submitted on the council's own motion.

5. A tax to aid in the construction of a county bridge, subject to the provisions of subsection 1, except that the question must be submitted at a special election. The expense of a special election under this subsection must be paid by the county. The notice of the special election must include full details of the proposal, including the location of the proposed bridge, the rate of tax to be levied, and all other conditions.

6. A tax to aid a company incorporated under the laws of this state in the construction of a highway or combination bridge across any navigable boundary river of this state, commencing or terminating in the city and suitable for use as highway, or for both highway and railway purposes. This tax levy is subject to the provisions of subsections 1 and 5. The levy is limited to one dollar and thirty-five cents per thousand dollars of the assessed value of taxable property in the city. The estimated cost of the bridge must be at least ten thousand dollars, and the city aid may not exceed one-half of the estimated cost. The notice of the special election must include the name of the corporation to be aided, and all conditions required of the corporation. Tax moneys received for this purpose may not be paid over by the county treasurer until the city has filed a statement that the corporation has complied with all conditions.

7. If a tax has been voted for aid of a bridge under subsection 6, a further tax may be voted for the purpose of purchasing the bridge, subject to the provisions of subsection 1. The levy under this subsection is limited to three dollars and thirty-seven and one-half cents per thousand dollars of the assessed value of the taxable property in the city, payable in not less than ten annual installments.

8. A tax for the purpose of carrying out the terms of a contract for the use of a bridge by a city situated on a river over which a bridge has been built. The tax may not exceed sixty-seven and one-half cents per thousand dollars of assessed value each year.

9. A tax for aid to a public transportation company, subject to the procedure provided in subsection 1, except the question must be submitted at a special election. The levy is limited to three and three-eighths cents per thousand dollars of assessed value. In addition to any other conditions the following requirements must be met before moneys received for this purpose may be paid over by the county treasurer:

a. The public transportation company shall provide the city with copies of state and federal income tax returns for the five years preceding the year for which payment is contemplated or for such lesser period of time as the company has been in operation.

b. The city shall, in any given year, be authorized to pay over only such sums as will yield not to exceed two percent of the public transportation company's investment as the same is valued in its tax depreciation schedule, provided that corporate profits and losses for the five preceding years or for such lesser period of time as the company has been in operation shall not average in excess of a two percent net return. Taxes levied under this subsection may not be used to subsidize losses incurred prior to the election required by this subsection.

10. A tax for the operation and maintenance of a municipal transit system, and for the creation of a reserve fund for the system, in an amount not to exceed fifty-four cents per thousand dollars of assessed value each year, when the revenues from the transit system are insufficient for such purposes, but proceeds of the tax may not be used to pay interest and principal on bonds issued for the purposes of the transit system.

11. If a city has entered into a lease of a building or complex of buildings to be operated as a civic center, a tax sufficient to pay the installments of rent and for maintenance, insurance and taxes not included in the lease rental payments.

12. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value each year for operating and maintaining a civic center owned by a city.

13. A tax not to exceed six and three-fourths cents per thousand dollars of assessed value for planning a sanitary disposal project.

14. A tax not to exceed twenty-seven cents per thousand dollars of assessed value each year for an aviation authority as provided in section 330A.15.

15. If a city has joined with the county to form an authority for a joint county-city building, as provided in sections 346.26 and 346.27, and has entered into a lease with the authority, a tax sufficient to pay the annual rent payable under the lease.

16. A tax not to exceed six and three-fourths cents per thousand dollars of assessed value each year for a levee improvement fund in special charter cities as provided in section 420.155.

17. A tax not to exceed three dollars and thirty-seven and one-half cents per thousand dollars of the assessed value to aid a railway as provided in section 327H.1.

18. A tax not to exceed twenty and one-half cents per thousand dollars of assessed value each year to maintain an institution received by gift or devise, as provided in section 565.8.

19. A tax to pay the premium costs on tort liability insurance as provided in section 613A.7.

1. [C24, 27, 31, 35, 39,§§**5835–5839**; C46, 50, 54, 58, 62, 66, 71, 73,§§375.1–375.5; C75,§384.12(1)]

2. [C75,§384.12(2); 66GA, ch 197,§25]

3. [C50, 54, 58, 62, 66, 71, 73,§§379A.1–379A.5; C75,§384.12(3); 66GA, ch 197,§25]

4. [C62, 66, 71, 73,§§379B.1, 379B.2; C75,§384.12(4)]

5, 6. [R60,§710; C73,§796; C97,§758–764, 888, 895, 1303; C24, 27, 31, 35, 39,§§**5882–5887, 6209, 6221**; C46, 50,§§381.9–381.14, 404.3, 404.15; C54, 58, 62, 66, 71, 73,§§381.9–381.14, 404.7; C75,§384.12(5, 6)]

7. [S13,§§766-a, 766-b; C24, 27, 31, 35, 39, §§**5890, 5891, 5894**; C46, 50, 54, 58, 62, 66, 71, 73, §§381.17, 381.18, 382.1; C75,§384.12(7)]

8. [C97,§766; C24, 27, 31, 35, 39,§**5889**; C46, 50, 54, 58, 62, 66, 71, 73,§381.16; C75,§384.12(8)]

9. [C58, 62, 66, 71, 73,§§386A.1, 386A.4, 386A.9, 386A.12; C75,§384.12(9)]

10. [C58, 62, 66, 71, 73,§**386B.12**; C75,§384.12(10)]

11. [C71, 73,§378A.6; C75,§384.12(11)]

12. [C71, 73,§378A.10; C75,§384.12(12)]

13. [C71, 73,§404.27; C75,§384.12(13)]

14. [C75,§384.12(14)]

15. [C66, 71, 73,§368.67; C75,§384.12(15)]

16, 17. [C75,§384.12(16, 17)]

18. [S13,§740; C24, 27, 31, 35, 39,§**10190**; C46, 50, 54, 58, 62, 66, 71, 73,§565.8; C75,§384.12(18)]

19. [C75,§384.12(19)]

Referred to in §§24.36, 37.8, 384.1

DIVISION II
BUDGETING AND ACCOUNTING

Referred to in §24.42

384.13 Finance committee. As used in this division, unless the context otherwise requires, "committee" means the city finance committee. A nine-member city finance committee is hereby created. Members of the committee are:

1. The auditor of state or his designee.

2. The state comptroller or his designee.

3. A representative of the division of municipal affairs within the office for planning and programming, to be designated by the director of the office for planning and programming.

4. Four city officials who are regularly involved in budget preparation. One official must be from a city with a population of at least two thousand but not over five thousand, one from a city with a population of over five thousand but not over fifteen thousand, one from a city with a population of over fifteen thousand but not over fifty thousand, and one from a city with a population of over fifty thousand. The governor shall select and appoint, with the approval of two-thirds of the members of the senate, the city officials.

5. One certified public accountant experienced in city accounting, to be selected and appointed by the governor, with the approval of two-thirds of the members of the senate.

6. One operations research analyst experienced in cost effectiveness analysis of city services to be selected by, and serve at the pleasure of, the legislative council of the general assembly.

City official members and the certified public accountant are appointed for a four-year term, except that of the initial appointments, two city official members are to be appointed for a two-year term. When a city official member no longer holds the office which qualified him for appointment, he may no longer be a member of the committee. Any person appointed to fill a vacancy during a term is appointed to serve for the unexpired portion of the term. Any member is eligible for reappointment, but no member shall be appointed to serve more than two complete terms. [C75,§384.13]

Referred to in §§384.5, 384.7, 384.8, 384.89

384.14 Office of committee. The committee is located for administrative purposes within the office of the state comptroller. The comptroller shall provide office space, staff assistance, and shall budget funds to cover expenses of the committee.

Each member is entitled to receive his actual and necessary expenses incurred in the performance of committee duties. Each member other than the state official members is also entitled to receive forty dollars compensation for each day spent in performance of committee duties. [C75,§384.14]

384.15 Rules. The committee shall:

1. Promulgate rules relating to budget amendments and the procedures for transferring moneys between funds, and other rules necessary or desirable in order to exercise its powers and perform its duties. The committee's rules are subject to chapter 17A as applicable.

2. Select its officers, except that the state comptroller or his designee shall serve as chairman.

3. Establish guidelines for program-performance budgeting and accounting and the preparation of capital improvement plans by cities. The guidelines should provide that budgets, accounts, and financial reports of cities account for all city receipts and expenditures in terms of city government programs and anticipated or actual performance levels within each program wherever practicable. The guidelines and the deadlines for initiation of program-performance budgeting and accounting and for preparation of capital improvement plans may be modified for different cities. However, as soon as practicable, the committee may require all cities of over two thousand population to prepare and adopt a tentative budget for a one-year or a two-year period following the budget to be adopted for the next fiscal year and a capital improvement plan for a five-year period. The budget for the second and third following years may be less detailed than that for the next fiscal year. A city shall hold a public hearing on its capital improvement plan before adoption of the plan.

The committee shall, where practicable, utilize recommendations from the national committee on governmental accounting.

4. Review and comment on the form of proposed budgets of selected cities, chosen as determined by its rules. The committee may require the submission of a city's form of budget presentation at any time. The committee shall not disapprove the form of any proposed budget which substantially meets the guidelines it has established, but may make recommendations to a city for improvement of its subsequent budgets at the earliest practicable time. If the committee disapproves the form of a proposed city budget, it shall notify the mayor as soon as possible, and shall specify in detail the changes recommended before future budgets will be acceptable. At the request of the council, at least two members of the committee shall meet with city officials to advise and assist them in complying with the recommendations of the committee.

5. Conduct studies of municipal revenues and expenditures, including comparative evaluations of the efficiency and effectiveness of programs of public service in comparable cities. Study areas may be selected each year by the committee. Cities must submit any information requested by the committee during the conduct of any of its studies. Forty-five days prior to the approval of any study by the committee, a draft report must be made available to each city mentioned in the study and written comments of any such city must be attached to the final report describing the study. [C75, ch 384.15; 66GA, ch 197,§26]

384.16 City budget. Annually, a city shall prepare and adopt a budget, and shall certify taxes as follows:

1. A budget must be prepared for at least the following fiscal year. When required by rules of the committee, a tentative budget must be prepared for one or two ensuing years. A proposed budget must show estimates of the following:

a. Expenditures for each program.

b. Income from sources other than property taxation.

c. Amount to be raised by property taxation, and the property tax rate expressed in dollars per one thousand dollars assessed valuation.

A budget must show comparisons between the estimated expenditures in each program in the following year and the actual expenditures in each program during the two preceding years. Wherever practicable, as provided in rules of the committee, a budget must show comparisons between the levels of service provided by each program as estimated for the following year, and actual levels of service provided by each program during the two preceding years.

2. Not less than twenty days before the date that a budget must be certified to the county auditor and not less than ten days before the date set for the hearing, the clerk shall make available a sufficient number of copies of the detailed budget to meet the requests of taxpayers and organizations, and have them available for distribution at the offices of the mayor and clerk and at the city library, if any, or have a copy posted at one of the three places designated by ordinance for posting notices if there is no library.

3. The council shall set a time and place for public hearing on the budget before the final certification date and shall publish notice before the hearing as provided in section 362.3. A summary of the proposed budget shall be included in the notice. Proof of publication must be filed with the county auditor.

4. At the hearing, any resident or taxpayer of the city may present to the council objections to any part of the budget for the following fiscal year or arguments in favor of any part of the budget.

5. After the hearing, the council shall adopt by resolution a budget for at least the next fiscal year, and the clerk shall certify the necessary tax levy for the next fiscal year to the county auditor and the county board of supervisors. The tax levy certified may be less than but not more than the amount estimated in the proposed budget submitted at the final hearing, unless an additional tax levy is approved at a city election. Two copies each of the detailed budget as adopted and of the tax certificate must be transmitted to the county auditor, who shall complete the certificates and transmit a copy of each to the state comptroller. [C24, 27, 31, 35, 39,§§**370, 375–378, 381, 383**; C46, 50, 54, 58, 62, 66, 71, 73,§§24.3, 24.9–24.12, 24.15, 24.17; C75,§384.16; 66GA, ch 197,§27, ch 203,§30]

Referred to in §§24.42, 384.2, 384.18, 419.11

384.17 Levy by county. At the time required by law, the county board of supervisors shall levy the taxes necessary for each city fund for the following fiscal year. The levy must be as shown in the adopted city budget and as certified by the clerk, subject to any changes made after a protest hearing, and any additional tax rates approved at a city election. A city levy is not valid until proof of publication or posting of notice of a budget hearing is filed with the county auditor. [C24, 27, 31, 35, 39,§§**376, 385**; C46, 50, 54, 58, 62, 66, 71, 73,§§24.10, 24.19; C75,§384.17]

384.18 Budget amendment. A city budget as finally adopted for the following fiscal year becomes effective July 1 and constitutes the city appropriation for each program and purpose specified therein until amended as provided in this section. A city budget for the current fiscal year may be amended for any of the following purposes:

1. To permit the appropriation and expenditure of unexpended, unencumbered cash balances on hand at the end of the preceding fiscal year which had not been anticipated in the budget.

2. To permit the appropriation and expenditure of amounts anticipated to be available from sources other than property taxation, and which had not been anticipated in the budget.

3. To permit transfers from the debt service fund, the capital improvements reserve fund, the emergency fund, or other funds established by state law, to any other city fund, unless specifically prohibited by state law.

4. To permit transfers between programs within the general fund.

A budget amendment must be prepared and adopted in the same manner as the original budget, as provided in section 384.16, and is subject to protest as provided in section 384.19, except that the committee may by rule provide that amendments of certain types or up to certain amounts may be made without public hearing and without being subject to protest. [C24, 27, 31, 35, 39,§375; C46, 50, 54, 58, 62, 66, 71, 73,§24.9; C75,§384.18]

384.19 Written protest. Within a period of ten days after the final date that a budget or amended budget may be certified to the county auditor, persons affected by the budget may file a written protest with the county auditor, specifying their objections to the budget or any part of it. A protest must be signed by qualified electors equal in number to one-fourth of one percent of the votes cast for governor in the last preceding general election in the city, but the number shall not be less than ten persons and the number need not be more than one hundred persons.

Upon the filing of any such protest, the county auditor shall immediately prepare a true and complete copy of the written protest, together with the budget to which the objections are made, and shall transmit the same forthwith to the state appeal board, and shall also send a copy of the protest to the council.

The state appeal board shall proceed to consider the protest in accordance with the same provisions that protests to budgets of municipalities are considered under chapter 24, except that final disposition of appeals of city budgets shall be made on or before April 24 of each year. The state appeal board shall certify its decision with respect to the protest to the county auditor, and such decision shall be final.

The county auditor shall make up his records in accordance with such decision and the levying board shall make its levy in accordance therewith. Upon receipt of such decision, the county auditor shall immediately notify both parties thereof, whereupon the council shall correct its records accordingly, if necessary. [C39,§§390.2, 390.7; C46, 50, 54,§§24.26, 24.31; C58, 62, 66, 71, 73,§§24.27, 24.32; C75, §384.19; 66GA, ch 197,§28, ch 1067,§16]

Referred to in §§24.43, 384.18

384.20 Separate accounts. A city shall keep separate accounts corresponding to the programs and items in its adopted or amended budget, as recommended by the committee.

A city shall keep accounts which show an accurate and detailed statement of all public funds collected, received, or expended for any city purpose, by any city officer, employee, or other person, and which show the receipt, use, and disposition of all city property. Public moneys may not be expended or encumbered except under an annual or continuing appropriation. [S13,§§741-a, 741-b; C24, 27, 31, 35, 39, §§5675, 5676; C46, 50,§§363.49, 363.50; C54, 58, 62, 66, 71, 73,§§368A.5, 368A.6; C75,§384.20]

384.21 Reserved.

384.22 Annual report. Not later than October 1 of each year, a city shall publish an annual report as provided in section 362.3 containing a summary for the preceding fiscal year of all collections and receipts, all accounts due the city, and all expenditures, the current public debt of the city, and the legal debt limit of the city for the current fiscal year. A copy of this report must be furnished to the auditor of state. [S13,§§741-c, 1056-a7, 1056-a9, 1056-a33; C24, 27, 31, 35, 39,§§5677, 5679, 5680, 6581; C46, 50,§§363.54, 363.56, 363.57, 416.109; C54, 58, 62, 66, 71, 73,§§368A.9, 368A.11, 368A.12; C75, §384.22]

Referred to in §384.9

DIVISION III
GENERAL OBLIGATION BONDS

Referred to in §386.12

384.23 Construction of words "and" and "or." As used in divisions III to VI of this chapter, the use of the conjunctive "and" includes the disjunctive "or" and the use of the disjunctive "or" includes the conjunctive "and," unless the context clearly indicates otherwise. [C75,§384.23]

Referred to in §390.5

384.24 Definitions. As used in this division, unless the context otherwise requires:

1. "General obligation bond" means a negotiable bond issued by a city and payable from the levy of unlimited ad valorem taxes on all the taxable property within the city through its debt service fund which is required to be established by section 384.4.

2. "City enterprise" means any of the following, including the real estate, fixtures, equipment, accessories, appurtenances, and all property necessary or useful for the operation of any of the following:

a. Parking facilities systems, which may include parking lots and other off-street parking areas, parking ramps and structures on, above, or below the surface, parking meters, both on-street and off-street, and all other fixtures, equipment, accessories, appurtenances, and requisites useful for the successful operation of a parking facilities system.

b. Civic centers or civic center systems, which may include auditoriums, music halls,

theatres, sports arenas, armories, exhibit halls, meeting rooms, convention halls, or combinations of these.

c. Recreational facilities or recreational facilities systems, including, without limitation, real and personal property, water, buildings, improvements, and equipment useful and suitable for administering recreation programs, and also including without limitation, zoos, museums, and centers for art, drama, and music, as well as those programs more customarily identified with the term "recreation" such as public sports, games, pastimes, diversions, and amusement, on land or water, whether or not such facilities are located in or as a part of any public park.

d. Port facilities or port facilities systems, including without limitation, real and personal property, water, buildings, improvements and equipment useful and suitable for taking care of the needs of commerce and shipping, and also including without limitation, wharves, docks, basins, piers, quay walls, warehouses, tunnels, belt railway facilities, cranes, dock apparatus, and other machinery necessary for the convenient and economical accommodation and handling of watercraft of all kinds and of freight and passengers.

e. Airport and airport systems.

f. Solid waste collection systems and disposal systems.

g. Bridge and bridge systems.

h. Hospital and hospital systems.

i. Transit systems.

j. Stadiums.

k. Housing for the elderly or physically handicapped.

3. "Essential corporate purpose" means:

a. The opening, widening, extending, grading, and draining the right of way of streets, highways, avenues, alleys, public grounds, and market places, and the removal and replacement of dead or diseased trees thereon; the construction, reconstruction, and repairing of any street improvements; the acquisition, installation, and repair of traffic control devices; and the acquisition of real estate needed for any of the foregoing purposes.

b. The acquisition, construction, improvement, and installation of street lighting fixtures, connections, and facilities.

c. The construction, reconstruction, and repair of sidewalks and pedestrian underpasses and overpasses, and the acquisition of real estate needed for such purposes.

d. The acquisition, construction, reconstruction, extension, improvement, and equipping of works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner, for the collection and disposal of solid waste, and for the collection and disposal of surface waters and streams.

e. The acquisition, construction, reconstruction, enlargement, improvement, and repair of bridges, culverts, retaining walls, viaducts, underpasses, grade crossing separations, and approaches thereto.

f. The settlement, adjustment, renewing, or extension of any part or all of the legal indebtedness of a city, whether evidenced by bonds, warrants, or judgments, or the funding or refunding of the same, whether or not such indebtedness was created for a purpose for which general obligation bonds might have been issued in the original instance.

g. The undertaking of any project jointly or in co-operation with any other governmental body which, if undertaken by the city alone, would be for an essential corporate purpose, including the joint purchase, acquisition, construction, ownership, or control of any real or personal property.

h. The acquisition, construction, reconstruction, improvement, and extension of works and facilities useful for the control and elimination of any and all sources of air, water, and noise pollution, and the acquisition of real estate needed for such purposes.

i. The acquisition, construction, reconstruction, and improvement of all waterways, and real and personal property, useful for the protection or reclamation of property situated within the corporate limits of cities from floods or high waters, and for the protection of property in cities from the effects of flood waters, including the deepening, widening, alteration, change, diversion, or other improvement of watercourses, within or without the city limits, the construction of levees, embankments, structures, impounding reservoirs, or conduits, and the establishment, improvement, and widening of streets, avenues, boulevards, and alleys across and adjacent to the project, as well as the development and beautification of the banks and other areas adjacent to flood control improvements.

j. The equipping of fire, police, sanitation, street, and civil defense departments.

k. The acquisition and improvement of real estate for cemeteries, and the construction, reconstruction, and repair of receiving vaults, mausoleums, and other cemetery facilities.

l. The acquisition of ambulances and ambulance equipment.

m. The reconstruction and improvement of dams already owned.

n. The reconstruction, extension, and improvement of an airport already owned.

o. The rehabilitation and improvement of parks already owned, including the removal, replacement and planting of trees thereon.

p. The rehabilitation and improvement of area television translator systems already owned.

q. The aiding in the planning, undertaking, and carrying out of urban renewal projects

under the authority of chapter 403, and all of the purposes set out in section 403.12. However, bonds issued for this purpose are subject to the right of petition for an election as provided in section 384.26, without limitation on the amount of the bond issue or the size of the city, and the council shall include notice of the right of petition in the notice required under section 384.25, subsection 2.

4. "General corporate purpose" means:

a. The acquisition, construction, reconstruction, extension, improvement, and equipping of city utilities, city enterprises, and public improvements as defined in section 384.37, other than those which are essential corporate purposes.

b. The acquisition, construction, reconstruction, enlargement, improvement, and equipping of community center houses, recreation grounds, recreation buildings, juvenile playgrounds, swimming pools, recreation centers, parks, and golf courses, and the acquisition of real estate therefor.

c. The acquisition, construction, reconstruction, enlargement, improvement, and equipping of city halls, jails, police stations, fire stations, garages, libraries, and hospitals, including buildings to be used for any combination of the foregoing purposes, and the acquisition of real estate therefor.

d. The acquisition, construction, reconstruction, and improvement of dams at the time of acquisition.

e. The removal, replacement, and planting of trees, other than those on public right of way.

f. The acquisition, purchase, construction, reconstruction, and improvement of greenhouses, conservatories, and horticultural centers for growing, storing, and displaying trees, shrubs, plants, and flowers.

g. The acquisition, construction, reconstruction, and improvement of airports at the time of establishment.

h. The undertaking of any project jointly or in co-operation with any other governmental body which, if undertaken by the city alone, would be for a general corporate purpose, including the joint purchase, acquisition, construction, ownership, or control of any real or personal property.

i. Any other facilities or improvements which are necessary for the operation of the city or the health and welfare of its citizens.

5. The "cost" of any project for an essential corporate purpose or general corporate purpose includes construction contracts and the cost of engineering, architectural, technical, and legal services, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights of way, supervision, inspection, testing, publications, printing and sale of bonds, and provisions for contingencies.

1. [C75,§384.24(1)]

2. a. [C46,§390.1; C50, 54, 58, 62, **66, 71, 73,** §§390.1, 390.7; C75,§384.24(2,a)]

b. [C35,§5903-f1; C39,§**5903.12**; C46, 50, 54, 58, 62, 66,§385.1; C71, 73,§§378A.1, 385.1; C75,§384.24(2,b)]

c. [R60,§1111; C73,§538; C97,§957; C24, 27, 31, 35, 39,§**6742**; C46, 50,§§368.9, 420.53; C54, 58, 62, 66, 71, 73,§368.30; C75,§384.24(2,c)]

d. [S13,§741-w2; C24, 27, 31,§5902; C35,§§5902, 6066-f2; C39,§§**5902, 6066.25**; C46, 50, 54, 58, 62, 66, 71, 73,§§384.3, 394.2; C75,§384.24(2,d)]

e. [C31, 35,§5903-c2; C39,§**5903.02**; C46, 50, 54, 58, 62, 66, 71, 73,§330.2; C75,§384.24(2,e)]

f. [S13,§1056-a61; SS15,§696-b; C24, 27, 31, §§5746, 6592; C35,§§5746, 6066-f1, 6066-f5, 6592; C39,§§**5746, 6066.24, 6066.28, 6592**; C46, 50,§§368.9, 394.1, 394.5, 416.120; C54, 58, 62, 66, 71, 73,§§368.24, 394.1, 394.5; C75,§384.24(2,f)]

g. [C31, 35,§5899-c1; C39,§**5899.01**; C46, 50, 54, 58, 62, 66, 71, 73,§383.1; C75,§384.24(2,g)]

h. [C75,§384.24(2,h)]

i. [C58, 62, 66, 71, 73,§386B.2; C75,§384.24(2,i)]

j. [C75,§384.24(2,j)]

k. [C75,§384.24(2,k)]

3. a. [R60,§§1064, 1097; C73,§§464, 465, 527; C97,§§751, 782; S13,§1056-a65; SS15,§§751, 997-a, -c; C24, 27, 31, 35, 39,§§**5938, 5951, 6608, 6744, 6746**; C46, 50,§§389.1, 389.20, 416.138, 420.55, 420.57; C54, 58, 62, 66, 71, 73,§§368.32, 389.1, 389.20, 408.17; C75,§384.24(3,a)]

b. [R60,§1064; C73,§464; C97,§756; C24, 27, 31, 35, 39,§**5949**; C46, 50, 54, 58, 62, 66, 71, 73,§389.16; C75,§384.24(3,b)]

c. [C73,§466; C97,§779; S13,§779; C24, 27, 31, 35, 39,§**5962**; C46, 50, 54, 58,§389.31; C62, 66, 71, 73,§§389.31, 391.1; C75,§384.24(3,c)]

d. [S13,§1056-a63; C24, 27, 31, 35, 39,§§**6125, 6594**; C46, 50,§§396.22, 416.122; C54, 58,§§396.22, 404.18; C62, 66, 71, 73,§396.22, 404.19; C75, §384.24(3,d)]

e. [R60,§1097; C73,§527; C97,§§757, 758; SS15, §758; C24, 27, 31, 35, 39,§§**5874–5876**; C46, 50, §§381.1–381.3; C54, 58, 62, 66,§381.1; C71, 73, §§381.1, 381.3; C75,§384.24(3,e) 1216,§4]

f. [C97,§905; C24, 27, 31, 35, 39,§**6252**; C46, 50, 54, 58, 62, 66, 71, 73,§408.1; C75,§384.24(3,f)]

g. [C27, 31, 35,§6066-a1; C39,§**6066.03**; C46, 50, 54,§392.1; C58, 62, 66, 71, 73,§§368.49, 392.1; C75,§384.24(3,g)]

h. [C75,§384.24(3,h)]

i. [SS15,§849-a; C24, 27, 31, 35, 39,§**6080**; C46, 50, 54, 58, 62, 66, 71, 73,§395.1; C75,§384.24(3, i)]

j. [C54, 58, 62, 66, 71, 73,§368.16; C75, §384.24(3, j)]

k. [R60,§1060; C73,§458; C97,§697; C24, 27, 31, 35, 39,§**5750**; C46, 50,§368.13; C54, 58, 62, 66, 71, 73,§368.29; C75,§384.24(3,k)]

l. [C66, 71, 73,§368.74; C75,§384.24(3,l)]

m.–p. [66GA, ch 203,§31]

q. [C75,§384.24(4,g); 66GA, ch 203,§31]

4. a. [S13,§§741-w2, 1306-b; C24, 27, 31, 35, 39, §§**5902, 6239**; C46, 50,§§384.3, 407.3(1); C54, 58, 62, 66, 71, 73,§§384.3, 390.13, 407.3(1); C75,§384.24(4,a)]

b. [R60,§1111; C73,§538; C97,§§852, 957; S13, §850-c; SS15,§879-r; C24, 27, 31, 35, 39,§§**5793, 5830, 5844, 6239, 6742**; C46, 50,§§368.9, 370.7, 374.1, 377.1, 407.3(2,3), 420.53; C54, 58, 62, 66, 71, 73,§§368.30, 370.7, 374.1, 377.1, 407.3(2,3); C75,§384.24(4,b)]

c. [R60,§1116; C73,§542; C97,§§732, 735; S13, §§668, 732, 741-r; SS15,§741-f; C24, 27,§§5772, 6239; C31,§§5772, 6239, 6600-c1; C35,§§5772, 6239, 6579-f; C39,§§**5772, 6239, 6579.1**; C46, 50,§§368.40, 407.3(4–6), 416.107; C54, 58, 62, 66,§§368.15, 368.41, 407.3(4–6); C71, 73,§§368.15, 368.41, 407.3 (4–6, 9); C75,§384.24(4,c)]

d. [C27, 31, 35, 39,§**6239**; C46, 50, 54, 58, 62, 66, 71, 73,§407.3(7); C75,§384.24(4,d); 66GA, ch 203,§32]

e. S13,§1056-a65; SS15,§§997-a,-c; C24, 27, 31, 35, 39,§§**6608, 6744, 6746**; C46, 50,§§416.138, 420.55, 420.57; C54, 58, 62, 66, 71, 73,§368.32; C75,§384.24 (4,e)]

f. [C75,§384.24(4, f)]

g. [66GA, ch 203,§32]

h. [C31, 35,§5766-c1; C39,§**5766.2**; C46,§**368.31**; C50,§§368.31, 368.57, 392.1; C54, 58, 62, 66, 71, 73,§§368.12, 368.19, 392.1; C75,§384.24(4,h)]

i. [C75,§384.24(4,i)]

5. [C75,§384.24(5)]

Referred to in §§384.27, 384.28, 384.80, 386.6, 386.12, 390.5, 392.1

384.25 General obligation bonds for essential purposes.

1. A city which proposes to carry out any essential corporate purpose within or without its corporate limits, and to contract indebtedness and issue general obligation bonds to provide funds to pay all or any part of the cost of a project must do so in accordance with the provisions of this division.

2. Before the council may institute proceedings for the issuance of bonds for an essential corporate purpose, a notice of the proposed action, including a statement of the amount and purposes of the bonds, and the time and place of the meeting at which the council proposes to take action for the issuance of the bonds, must be published as provided in section 362.3. At the meeting, the council shall receive oral or written objections from any resident or property owner of the city. After all objections have been received and considered, the council may, at that meeting or any adjournment thereof, take additional action for the issuance of the bonds or abandon the proposal to issue the bonds. Any resident or property owner of the city may appeal the decision of the council to take additional action to the district court of the county in which any part of the city is located, within fifteen days after the additional action is taken, but the additional action of the council is final and conclusive unless the court finds that the council exceeded its authority. The provisions of this subsection with respect to notice, hearing, and appeal, are in lieu of the provisions contained in chapter 23, or any other law. [R60,§1060; C73,§458; C97,§697; S13,§§716-d, **840-e**, 849-h, -j, 912, 912-a, 1056-a43, -a63, -a64; SS15, §§758-b, -e, 840-g, -p, 997-a, -c; C24,§§5750, 5878–5881, 6103, 6126, 6261–6263, 6265, 6576, 6594, 6595, 6608, 6744, 6746; C27, 31, 35,§§5750, 5878–5881, 6066-a11, 6103, 6126, 6261–6263, 6265, 6594, 6595, 6608, 6744, 6746; C39,§§**5750, 5878–5881, 6066.13, 6103, 6126, 6261, 6261.1, 6261.2, 6262, 6263, 6265, 6576, 6594, 6595, 6608, 6744, 6746**; C46, 50,§§368.13, 381.5–381.8, 392.11, 395.25, 396.22, 408.10–408.14, 408.16, 416.101, 416.104, 416.122, 416.123, 416.138, 420.55, 420.57; C54, 58,§§368.16, 368.29, 368.32, 381.7, 392.11, 395.25, 396.22, 404.18, 408.17; C62, 66, 71, 73,§368.16, 368.29, 368.32, 381.7, 392.11, 395.25, 396.22, 404.19, 408.17; C75, §384.25]

Referred to in §§28E.17, 384.24, 384.71, 386.11, 390.5
See amendment to §404.19, Code 1973, in 66GA, ch 202, relating to sanitary disposal bonds

384.26 General obligation bonds for general purposes.

1. A city which proposes to carry out any general corporate purpose within or without its corporate limits, and to contract indebtedness and issue general obligation bonds to provide funds to pay all or any part of the costs of a project, must do so in accordance with the provisions of this division.

2. Before the council may institute proceedings for the issuance of bonds for a general corporate purpose, it shall call a special city election to vote upon the question of issuing the bonds. At the election the proposition must be submitted in the following form:

"Shall the ..... issue
(insert the name of the city)
its bonds in an amount not exceeding the amount of $..... for the purpose of .....?"

3. Notice of the election must be given by publication as required by section 49.53 in a newspaper of general circulation in the city. At the election the ballot used for the submission of the proposition must be in substantially the form for submitting special questions at general elections.

4. The proposition of issuing general corporate purpose bonds is not carried or adopted unless the vote in favor of the proposition is equal to at least sixty percent of the total vote cast for and against the proposition at the election. If the proposition of issuing the general corporate purpose bonds is approved by the voters, the city may proceed with the issuance of the bonds.

5. *a.* Notwithstanding the provisions of subsection 2, a council may, in lieu of calling an election, institute proceedings for the issuance of bonds for a general corporate purpose by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, together with the

maximum rate of interest which the bonds are to bear, and the right to petition for an election, to be published at least once in a newspaper of general circulation within the city at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds subject to the following limitations:

(1) In cities having a population of five thousand or less, in an amount of not more than twenty-five thousand dollars.

(2) In cities having a population of more than five thousand and not more than seventy-five thousand, in an amount of not more than seventy-five thousand dollars.

(3) In cities having a population in excess of seventy-five thousand, in an amount of not more than one hundred fifty thousand dollars.

b. If at any time before the date fixed for taking action for the issuance of the bonds, a petition is filed with the clerk of the city in the manner provided by section 362.4, asking that the question of issuing the bonds be submitted to the qualified electors of the city, the council shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. Notice of the election and its conduct shall be in the manner provided in the preceding subsections of this section.

c. If no petition is filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the council may proceed with the authorization and issuance of the bonds. [C73,§461; C97,§§727, 741-4, 852–855; S13,§§727, 741-q,-r,-v,-w2, 850-c, -e,-f, 1306-d,-e; SS15,§§696-b, 741-f,-g,-h, 879-r,-s; C24, 27,§§5793–5795, 5800–5804, 5902, 6241, 6244–6246, 6248; C31, 35,§§5793–5795, 5800–5804, 5902, 5903-c5, 6241, 6244–6246, 6248; C39, §§**5793–5795, 5800–5804, 5902, 5903.05, 6241, 6244–6246, 6248, 6261.1**; C46, 50,§§330.7, 330.8, 370.7–370.9, 370.15–370.19, 384.3, 407.5, 407.8–407.10, 407.12, 408.11; C54, 58, 62, 66,§§330.7, 370.7, 384.3, 390.13, 407.5, 407.8–407.10, 407.12; C71, 73,§§330.7, 370.7, 378A.11, 384.3, 390.13, 407.5, 407.8–407.10, 407.12, 408A.1, 408A.2, 408A.6; C75,§384.26; 66GA, ch 81,§152, ch 203,§33]

Referred to in §§28E.17, 384.24, 384.28, 384.71, 390.5

384.27 Sale of bonds.

1. A city may sell general obligation bonds at public or private sale in the manner prescribed by chapter 75.

2. General obligation funding or refunding bonds issued for the purposes specified in section 384.24, subsection 3, paragraph "*f*," may be exchanged for the evidences of the legal indebtedness being funded or refunded, or such funding or refunding bonds may be sold in the manner prescribed by chapter 75 and the proceeds applied to the payment of such indebtedness. Funding or refunding bonds may bear interest at the same rate as, or at a higher or lower rate or rates of interest than the indebtedness being funded or refunded. [C97,§910; C24, 27, 31, 35, 39,§§**6258, 6259**; C46, 50, 54, 58, 62, 66,§§408.7, 408.8; C71, 73,§§378A.11, 408.7, 408.8; C75,§384.27]

Referred to in §390.5

384.28 Categories for general obligation bonds. A city may issue general obligation bonds pursuant to a resolution adopted at a regular or special meeting by a majority of the total number of members to which the council is entitled. Each paragraph of section 384.24, subsections 3 and 4 describes a separate category. Separate categories of essential corporate purposes and of general corporate purposes may be incorporated in a single notice of intention to institute proceedings for the issuance of bonds, or separate categories may be incorporated in separate notices, and after an opportunity has been provided for filing objections, or after a favorable election has been held, if required, the council may include in a single resolution and sell as a single issue of bonds, any number or combination of essential corporate purposes or general corporate purposes. If an essential corporate purpose is combined with a general corporate purpose in a single notice of intention to institute proceedings to issue bonds, then the entire issue is subject to the referendum requirement provided in section 384.26. [C75,§384.28]

Referred to in §390.5

384.29 Form of bonds. As provided by resolution of the council, general obligation bonds may:

1. Bear dates.

2. Bear interest at rates not exceeding the limitations imposed by chapter 75.

3. Mature in one or more installments.

4. Be in either coupon or registered form.

5. Carry registration and conversion privileges.

6. Be payable as to principal and interest at times and places.

7. Be subject to terms of redemption prior to maturity with or without premium.

8. Be in one or more denominations.

9. Be designated with a brief reference to purpose, or if issued for a combination of purposes, be designated "corporate purpose bond".

10. Contain other provisions not in conflict with the laws of the state of Iowa. [C97,§908; C24, 27, 31, 35, 39,§**6255**; C46, 50, 54, 58, 62, 66, 71, 73,§408.4; C75,§384.29]

Referred to in §§386.11, 390.5

384.30 Execution. General obligation bonds must be executed by the mayor and city clerk. If coupons are attached to the bonds, they must be executed with the original or facsimile signature of the clerk. A general obligation bond is valid and binding if it bears the signatures of the officers in office on the date

of the execution of the bonds, notwithstanding that any or all such persons whose signatures appear thereon have ceased to be such officers prior to the delivery thereof. [C97,§907; C24, 27, 31, 35, 39,§**6254**; C46, 50, 54, 58, 62, 66, 71, 73,§408.3; C75,§384.30]

Referred to in §§386.11, 390.5

384.31 Negotiable. General obligation bonds issued pursuant to this part are negotiable instruments. [C75,§384.31]

Referred to in §§386.11, 390.5

384.32 Tax to pay. Taxes for the payment of general obligation bonds must be levied in accordance with chapter 76, and the bonds are payable from the levy of unlimited ad valorem taxes on all the taxable property within the city through its debt service fund authorized by section 384.4. [C97,§§852–855, 912; S13,§§741-w2, 758-b, 849-j, 850-c, -e, -f, 912-a, 1056-a43, -a63, -a64, -a65; SS15,§§840-g, -p, 997-c; C24, 27, 31,§§5793–5795, 5800–5804, 5878–5881, 5902, 6103, 6261–6263, 6265, 6594, 6595, 6608, 6746; C35,§§5793–5795, 5800–5804, 5878–5881, 5902, 6103, 6261–6263, 6265, 6578-b1, 6594, 6595, 6608, 6746; C39,§§**5793–5795, 5800–5804, 5878–5881, 5902, 6103, 6261–6263, 6265, 6578.1, 6594, 6595, 6608, 6746**; C46, 50,§§370.7–370.9, 370.15–370.19, 381.5–381.8, 384.3, 395.25, 408.10–408.14, 408.16, 416.104, 416.122, 416.123, 416.138, 420.57; C54, 58,§§368.16, 368.29, 368.32, 370.7, 381.7, 384.3, 390.14, 395.25, 404.18, 408.17; C62, 66,§§368.16, 368.29, 368.32, 370.7, 381.7, 384.3, 390.13, 395.25, 404.19, 408.17; C71, 73,§§368.16, 368.29, 368.32, 370.7, 378A.11, 381.7, 384.3, 390.13, 395.25, 404.19, 408.17; C75,§384.32]

Referred to in §390.5

384.33 Action. No action may be brought which questions the legality of general obligation bonds or the power of the city to issue the bonds or the effectiveness of any proceedings relating to the authorization and issuance of the bonds from and after sixty days from the time the bonds are ordered issued by the city. [C71, 73,§378A.13; C75, §384.33]

Referred to in §390.5

384.34 Local budget law. The provisions of division II of this chapter do not apply to any bonds issued pursuant to this division. [C75, §384.34; 66GA, ch 197,§29]

Referred to in §390.5

384.35 Rule of construction. The enumeration in this division of specified powers and functions is not a limitation of the powers of cities, but the provisions of this division and the procedures prescribed for exercising the powers and functions enumerated in this division shall control and govern in the event of any conflict with the provisions of any other section, division or chapter of the city code or with the provisions of any other law. [C75, §384.35]

Referred to in §390.5

384.36 Prior proceedings. Projects and proceedings for the issuance of general obligation bonds commenced before the effective date of the city code may be consummated and completed as required or permitted by any statute or other law amended or repealed by the city code as though the repeal or amendment had not occurred, and the rights, duties, and interests flowing from such projects and proceedings remain valid and enforceable. Without limiting the foregoing, projects commenced prior to the effective date may be financed by the issuance of general obligation bonds under any such amended or repealed law or by the issuance of general obligation bonds under the city code. For the purposes of this section, commencement of a project includes but is not limited to action taken by the council or authorized officer to fix a date for a hearing in connection with any part of the project, and commencement of proceedings for the issuance of general obligation bonds includes but is not limited to action taken by the council to fix a date for either a hearing or a sale in connection with any part of the general obligation bonds, or to order any part thereof to be issued. [C75,§384.36]

Referred to in §390.5

DIVISION IV

SPECIAL ASSESSMENTS

Referred to in §§332.3, 364.13, 384.23, 384.74

384.37 Definitions. As used in this division, unless the context otherwise requires:

1. *"Public improvement"* includes the principal structures, works, component parts and accessories of any of the following:

a. Sanitary, storm and combined sewers.

b. Drainage conduits, channels and levees.

c. Street grading, paving, graveling, macadamizing, curbing, guttering, and surfacing with oil, oil and gravel or chloride.

d. Street lighting fixtures, connections and facilities.

e. Sewage pumping stations, and disposal and treatment plants.

f. Underground gas, water, heating, sewer and electrical connections located in streets for private property.

g. Sidewalks and pedestrian underpasses or overpasses.

h. Drives and driveway approaches located within the public right of way.

i. Waterworks, water mains and extensions.

j. Plazas, arcades and malls.

k. Parking facilities.

l. Removal of diseased or dead trees from any public place, publicly owned right of way or private property.

2. *"Construction"* includes materials, labor, acts, operations and services necessary to complete a public improvement.

3. *"Repair"* includes materials, labor, acts, operations and services necessary for the re-

pair, reconstruction, reconstruction by widening or resurfacing of a public improvement.

4. *"Street"* means a public street, highway, boulevard, avenue, alley, parkway, public place, plaza, mall or publicly owned right of way or easement within the limits of the city.

5. *"Lot"* means a lot, part of lot, tract, or parcel of land under one ownership, including improvements. Two or more contiguous lots, tracts, or parcels upon which a single improvement has been erected by a common owner are one lot for purposes of this part if such lots bear common improvements.

6. *"Total cost"* or *"cost"* of a public improvement includes the cost of engineering, preliminary reports, property valuations, estimates, plans, specifications, notices, legal services, acquisition of land, consequential damages or costs, easements, rights of way, construction, repair, supervision, inspection, testing, notices and publication, interest during construction and for not more than six months thereafter, and printing and sale of bonds.

7. *"Gravel"* includes gravel, crushel rock, cinders, shale and similar materials suitable for street construction or repair.

8. *"Oil"* means any asphaltic or bituminous material suitable for street construction or repair.

9. *"Sewer"* means structures designed, constructed and used for the purpose of controlling or carrying off streams, surface waters, waste or sanitary sewage.

10. *"Main sewer"* means a sewer which serves as an outlet for two or more lateral sewers, and which is commonly referred to as an intercepting sewer, outfall sewer or trunk sewer.

11. *"Lateral sewer"* means a sewer which contributes sewage, or surface or ground water from a local area to a main sewer or outlet.

12. *"Sewer systems"* are composed of the main sewers, sewage pumping stations, treatment and disposal plants, lateral sewers, drainage conduits or channels and sewer connections in public streets for private property.

13. *"District"* means the lots or parts of lots within boundaries established by the council for the purpose of the assessment of the cost of a public improvement.

14. *"Private property"* means all property within the district except streets.

15. *"Abutting lot"* means a lot which abuts or joins the street in which the public improvement is located or which abuts the right of way of the public improvement.

16. *"Adjacent lot"* means a lot within the district which does not abut upon the street or right of way of the public improvement.

17. *"Street improvement"* means the construction or repair of a street by grading, paving, curbing, guttering, and surfacing with oil, oil and gravel, or chloride, and street lighting fixtures, connections and facilities.

18. *"Proposal"* means a legal bid on work advertised for a public improvement under division VI of this chapter.

19. *"Paving"* means any kind of hard street surface, including, but not limited to, concrete, bituminous concrete, brick, stabilized gravel, or combinations of these, together with or without curb and gutter.

20. *"Engineer"* means a professional engineer, registered in the state of Iowa, authorized by the council to render services in connection with the public improvement.

21. *"Grade"* means the longitudinal reference lines, as established by ordinance of the council, which designate the elevations at which a street or sidewalk is to be built.

22. *"Final grade"* means the grade to which the public improvement is proposed to be constructed or repaired as shown on the final plans adopted by the council.

23. *"Railways"* means all railways except street railways.

24. *"Publication"* means public notice given in the manner provided in section 362.3.

25. *"Property owner"* or *"owner"* means the owner or owners of property, as shown by the transfer books in the office of the county auditor of the county in which the property is located.

26. *"Parking facilities"* means parking lots or other off-street areas for the parking of vehicles, including areas below or above the surface of streets. [R60,§§1064, 1097; C73, §§464–466, 527; C97,§§751, 779, 792; S13,§§779, 792, 792-f, 840-c,-d; SS15,§§751, 840-h,-r; C24, 27,§§5938, 5962, 5974, 5975, 5987; C31, 35,§§5938, 5962, 5974, 5975, 5987, 6610-c8; C39,§§**5938, 5962, 5974, 5975, 5987, 6610.04**; C46,§§389.1, 389.31, 391.1, 391.2, 391.14, 417.8; C50, 54, 58, 62,§§389.1, 389.31, 391.1, 391.2, 391.14, 391A.1, 417.8; C66, 71, 73,§§389.1, 389.31, 390A.39, 391.1, **391.2**, 391.14, 391A.1, 417.8; C75,§384.37]

Referred to in §§384.24, 384.44, 386.1, 425.17(10)

384.38 Certain costs assessed to private property.

1. A city may assess to private property within the city the cost of construction and repair of public improvements within the city, and main sewers, sewage pumping stations, disposal and treatment plants, waterworks, water mains, extensions, and drainage conduits extending outside the city.

2. Upon petition as provided in section 384.41, subsection 1, a city may assess to private property affected by public improvements within three miles of the city's boundaries the cost of construction and repair of public improvements within that area. The right of way of a railway company shall not be assessed unless the company joins as a petitioner for said improvements. In the petition the property own-

ers shall waive the limitation provided in section 384.62 that an assessment may not exceed twenty-five percent of the value of the lot. The petition shall contain a statement that the owners agree to pay the city an amount equal to five percent of the cost of the improvements, to cover administrative expenses incurred by the city. This amount may be added to the cost of the improvements. Before the council may adopt the resolution of necessity, the preliminary resolution, preliminary plans and specifications, plat, schedule, and estimate of cost must be submitted to, and receive written approval from the board of supervisors of any county which contains part of the property, and the city development board established in section 368.9. [SS15,§§840-d,-g; C24, §§5985, 5986; C27, 31, 35,§§5985, 5986, 6190-a1; C39,§§**5985, 5986, 6190.01**; C46,§§391.12, 391.13, 401.1; C50,§§391.12, 391.13, 391A.2, 401.1, 420.56; C54, 58, 62,§§391.12, 391.13, 391A.2, 401.1; C66, 71, 73,§§390A.3, 390A.18, 391.12, 391.13, 391A.2, 401.1; C75,§384.38]

Referred to in §384.68, 425.17(10)

384.39 Improvements brought to grade. Paving, curbing, guttering, or sidewalks may not be constructed unless the improvement, when completed, will be to grade. [C73,§466; C97,§§779, 792; S13,§§779, 792; SS15,§840-q; C24, 27, 31, 35, 39,§§**5962, 5976**; C46,§§389.31, 391.3; C50,§§389.31, 391.3, 391A.2; C54, 58, 62, 66, 71, 73,§§389.31, 391.3, 391A.3; C75,§384.39]

Referred to in §425.17(10)

384.40 Underground improvements. A city may include underground gas, water, heating, sewer, or electrical connections to the street or property line for private property as a part of the public improvement, or a city may order the property owner to make, repair, or relocate such connections by publication of a notice once each week for two consecutive weeks in the manner provided by section 362.3, and if the order is not complied with at the end of thirty days after the date of the first publication, the city may cause the work to be done and assess the cost against the property served by the connection. [C97,§§779, 809; S13,§§779, 792-f; **C24, 27, 31, 35, 39,§5981; C46,§391.8; C50,** §§391.8, 391A.16; C54, 58, 62, 66, 71, 73,§§391.8, 391A.4; C75,§384.40]

Referred to in §384.55, 425.17(10)

384.41 Petition by property owners.

1. Property owners may initiate a plan for a public improvement to be paid for in whole or in part by special assessments, by written contract to be approved by the city and signed by all of the owners of record of all property affected by the proposed assessment. If all owners of record of all the property to be affected by the public improvement petition the council, said owners may, in their petition, waive notice to property owners by publication and mailing, as provided in section 384.50, and the council may proceed to adopt a preliminary resolution, a plat, schedule and estimate, and resolution of necessity, and order preparation of detailed plans and specifications. Special assessments initiated without notice under this section are liens upon the property to be affected by the assessment, to the same extent as provided in section 384.65, subsection 5, except that they shall be subordinate to any perfected lien unless the holder of such perfected lien consents in writing to the initiation of the public improvement.

2. A petition may be filed subsequent to the initiation by the council of a plan for a public improvement, and if the petition is received prior to advertising for bids, the public improvement petitioned for may be added by amendment to the resolution of necessity. If the petition is received subsequent to advertising for bids and prior to the completion of the work under contract, the council may, in its discretion, approve the petition and contract with the contractor at a cost not to exceed the unit prices bid at public letting for the construction of the public improvements petitioned for by property owners.

3. This section does not limit the power of a city to initiate a public improvement project on its own motion. [C31, 35,§6610-c7; C39, §**6610.13**; C46, 50, 54, 58, 62, 66, 71, 73,§417.7; C75,§384.41]

Referred to in §384.38, 425.17(10)

384.42 Procedure on public improvement. To construct or repair a public improvement to be paid for in whole or in part by special assessments, the council shall proceed as follows:

1. Arrange for engineering services to prepare the plats, schedules, estimates of cost, plans, and specifications and to supervise construction of the proposed improvement.

2. Adopt a preliminary resolution by the vote of a majority of all the members of the council. The preliminary resolution shall contain the following:

a. A description of the types or alternate types of improvement proposed.

b. The beginning and terminal points or general location of the proposed improvement.

c. An order to the engineer to prepare preliminary plans and specifications, estimated total cost of the work, and a plat and schedule, and to file them with the clerk.

d. A general description of the property or a designation of the lots which the council believes will be specially benefited by the improvement.

3. The preliminary resolution may also contain the following:

a. A statement of the proportion of the total cost which the council proposes to assess against specially benefited property.

b. A short and convenient designation for the public improvement by which it may be referred to in all subsequent proceedings.

4. A preliminary resolution may include more than one improvement or class of improvement.

5. A single improvement may be in more than one locality or street, and that portion of the street which has been improved by any railway, or which the city may require the railway to improve under franchise or contract, may be excluded. [C50,§391A.4; C54, 58, 62, 66, 71, 73,§391A.5; C75,§384.42; 66GA, ch 197, §30]

Referred to in §425.17(10)

384.43 Preliminary plans. Preliminary plans and specifications must only be in sufficient detail to advise any person interested of the general nature, character, and type of the improvement. [C54, 58, 62, 66, 71, 73,§391A.6; C75,§384.43]

Referred to in §425.17(10)

384.44 Estimated cost. The estimated total cost of any public improvement constructed under this part must include all of the items of cost listed in section 384.37, subsection 6, which the council proposes to include as a part of the cost of the public improvement, and may include an item to be known as the default fund amounting to not more than ten percent of the portion of the total cost of the improvement which the council proposes to assess against specially benefited property. [C50,§391A.25; C54, 58, 62, 66, 71, 73,§391A.7; C75,§384.44]

Referred to in §425.17(10)

384.45 Plats. The plat as prepared and filed by the engineer must show the following information:

1. The boundaries of the district containing the lots proposed to be assessed.

2. The location of each lot under separate ownership within the district, including the property of all railways and utilities subject to assessment.

3. The location of the improvement within the district, together with the terminal points of all major parts proposed to be assessed.

4. The type and general details of the improvement. [C97,§965; S13,§§849-b, 965; SS15, §840-k; C24, 27, 31, 35, 39,§§**5993, 6081, 6913**; C46,§§391.20, 395.3, 420.265; C50,§§391.20, 391A.5, 395.3, 420.265; C54, 58, 62,§§391.20, 391A.8, 395.3, 420.265; C66, 71, 73,§§390A.9, 391.20, 391A.8, 395.3, 420.265; C75,§384.45]

Referred to in §425.17(10)

384.46 Lot valuations. Upon completion of the plat, the council shall determine the valuation of each lot within the proposed assessment district and shall report the valuations to the engineer, who shall show such valuations on the schedule before it is filed with the clerk. A valuation must be the present fair market value of the property with the proposed public improvement completed. As an aid in determining valuations, the council may appoint a committee of three persons skilled in the knowledge of real estate values within the city to appraise the present fair market value of each lot within a district and to file a written report of its appraisals with the council. [C31, 35,§6610-c4; C39,**§6610.08**; C46, 50,§417.4; C54, 58, 62, 66, 71, 73,§§391A.9, 417.4;C75,§384.46]

Referred to in **§425.17(10)**

384.47 Schedule. The schedule, as prepared by the engineer, must show the following information for each lot within the district:

1. A description of each lot and the name of the property owner.

2. The valuation of each lot as determined by the council.

3. The total amount proposed to be assessed to each lot, including the assessment for the default fund, if any.

4. The proportion of the estimated total cost of the public improvement which is allocated to each lot.

5. The amount of deficiency, if any, between the amount proposed to be assessed and the proportion of the estimated total cost of the public improvement allocated to each lot. The amount of deficiency shall be shown as a conditional deficiency assessment as authorized by sections 384.60, 384.62 and 384.63. [C97,§965; S13,§§849-b, 965; SS15,§§751, 840-k; C24, 27, 31, 35, 39,§§**5993, 6081, 6913**; C46,§§391.20, 395.3, 420.265; C50,§§391.20, 391A.6, 395.3, 420.265; C54, 58, 62,§§391.20, 391A.10, 395.3, 420.265; C66, 71, 73,§§390A.9, 391.20, 391A.10, 395.3, 420.265; C75, §384.47]

Referred to in §425.17(10)

384.48 Adoption of plat. When the plat, schedule, and estimate of cost have been filed, the council may, before adopting a proposed resolution of necessity, cause the estimate, valuation, or assessment of any lot or the boundaries of the district as reported by the engineer to be amended, and may adopt the plat, schedule, and estimate as amended or as filed. [C50,§391A.8; C54, 58, 62, 66, 71, 73,§391A.11; C75,§384.48]

Referred to in §§384.54, 425.17(10)

384.49 Resolution of necessity. If, upon adoption of the plat, schedule, and estimate, the council determines to proceed with all or any part of the public improvement, it shall cause a proposed resolution of necessity to be prepared and introduced.

1. The resolution of necessity must include all of the following:

a. A brief description of the proposed public improvement.

b. A statement that there is on file in the office of the clerk an estimated total cost of the work, and a preliminary plat and schedule showing the amount proposed to be assessed to each lot for the improvement.

c. The date, time, and place the council will hear property owners subject to the assessment and interested parties for or against the improvement, its cost, the assessment, or the boundaries of the district.

2. A resolution of necessity may include:

a. Any number of streets or sewer lines for improvement.

b. All improvements which are included in the preliminary resolution.

c. A provision that unless a property owner files objections with the clerk at the time of hearing on the resolution of necessity, he is deemed to have waived all objections pertaining to the regularity of the proceeding and the legality of using the special assessment procedure. [C73,§§465, 466; C97,§§791, 810; S13, §849-c; SS15,§§751, 810, 840-j, 840-m; C24,§§5942, 5991, 5992; C27,§§5942-b2, 5991, 5992, 5995, 6082; C31, 35,§§5942-b2, 5991, 5992, 5995, 6082, 6610-c17; C39,§§**5942.2, 5991, 5992, 5995, 6082, 6610.16**; C46,§§389.6, 391.18, 391.19, 391.22, 395.4, 417.17; C50,§§389.6, 391.18, 391.19, 391.22, 391A.9, 395.4, 417.17; C54, 58, 62,§§389.6, 391.18, 391.19, 391.22, 391A.12, 395.4, 417.17; C66, 71, 73,§§389.6, 390A.7, 390A.8, 390A.11, 391.18, 391.19, 391.22, 391A.12, 395.4, 417.17; C75,§384.49]

Referred to in §425.17(10)

384.50 Notice of hearing. The clerk shall publish notice of the date, time, and place of the hearing once each week for two consecutive weeks in the manner provided by section 362.3, the first publication of which shall be not less than ten days before the date of the hearing. The notice must be in substantially the following form:

NOTICE TO PROPERTY OWNERS

Notice is given that there is now on file for public inspection in the office of the clerk of ....., Iowa, a proposed resolution of necessity, an estimate of cost, and a plat and schedule showing the amounts proposed to be assessed against each lot and the valuation of each lot within a district approved by the council of ....., Iowa, for a ..... improvement of the type(s) and in the location(s) as follows: .....

The council will meet at ..... o'clock ...m., on ....., 19.., at the ....., at which time the owners of property subject to assessment for the proposed improvement or any other person having an interest in the matter may appear and be heard for or against the making of the improvement, the boundaries of the district, the cost, the assessment against any lot, or the final adoption of a resolution of necessity. A property owner will be deemed to have waived all objections unless at the time of hearing he has filed objections with the clerk.

.....
Clerk.

Not less than fifteen days before the hearing, the clerk shall send a copy of the notice by certified mail to each property owner whose property is subject to assessment for the improvement at the address as shown by the records of the county auditor. If a property is shown to be in the name of more than one owner at the same mailing address, a single notice may be mailed addressed to all owners at that address. Failure to receive a mailed notice is not a defense to the special assessment. [C97,§§810, 823, 824, 965, 971; S13, §§823, 840-a, 849-c, 965, 971; SS15,§§810, 840-l,-r; C24, 27,§§5997, 6026, 6029, 6083, 6092, 6901, 6914; C31, 35,§§5997, 6026, 6029, 6083, 6092, 6610-c9, 6610-c10, 6901, 6914; C39,§§**5997, 6026, 6029, 6083, 6092, 6610.21, 6610.22, 6901, 6914**; C46,§§391.24, 391.53, 391.56, 395.5, 395.14, 417.9, 417.10, 420.253, 420.266; C50,§§391.24, 391.53, 391.56, 391A.10, 395.5, 395.14, 417.9, 417.10, 420.253, 420.266; C54, 58, 62,§§391.24, 391.53, 391.56, 391A.13, 395.5, 395.14, 417.9, 417.10, 420.253, 420.266; C66, 71, 73, §§390A.13, 390A.27, 390A.29, 391.24, 391.53, 391.56, 391A.13, 395.5, 395.14, 417.9, 417.10, 420.253, 420.266; C75,§384.50]

Referred to in §§384.41, 384.55, 384.56, 425.17(10)

384.51 Adoption of resolution. The council shall meet as specified in the published notice, and after hearing all objections and endorsements from property owners and other persons having an interest in the matter, and after considering all filed, written objections, may adopt or amend and adopt the proposed resolution of necessity, or may defer action until a subsequent meeting. A resolution of necessity requires for passage the vote of three-fourths of all the members of the council, or, in cities having but three members of the council, the vote of two members, and where a remonstrance has been filed with the clerk, signed by the owners subject to seventy-five percent of the amount of the proposed assessments for the entire public improvement included in the resolution of necessity, a resolution of necessity requires a unanimous vote of the council. An amendment which extends the boundaries of a district, increases the amount to be assessed against a lot, or adds additional public improvements, is not effective until an amended plat, schedule, and estimate have been prepared and adopted, a notice published and mailed by certified mail to all affected property owners, and hearing held in the same manner as the original proceedings, or until all affected property owners agree in writing to the change. The adoption of a resolution of necessity is a legislative determination that the improvement is expedient and proper and that property assessed will be specially benefited thereby and this determination of the council is conclusive. Ownership of property to be assessed by any improvement shall not, except for fraud or bad faith, disqualify a council member from voting on any measure.

After adopting the resolution of necessity, the clerk shall certify to the county auditor of each county in which the city is located, a copy of the resolution of necessity, the plat and the schedule of assessments. In counties in which taxes are collected in two or more places, the resolution of necessity, the plat and the schedule of assessments shall be certified to the office of county auditor where

the special assessments are collected. The county auditor shall preserve such resolution, plat and schedule as a part of the records of his or her office until the city certifies final assessment schedule as provided in section 384.60 or certifies that the public improvement has been abandoned. [C73,§466; C97,§§793, 794, 810, 811, 965; S13,§§792-b, 793, 965; SS15,§§810, 840-m; C24, 27,§§5996, 5999, 6915; C31, 35,§§5996, 5999, 6610-c15, 6610-c16, 6915, 6915-cl; C39,§§**5996, 5999, 6610.26, 6610.28, 6915, 6915.1**; C46,§§391.23, 391.26, 417.15, 417.16, 420.267, 420.268; C50, §§391.23, 391.26, 391A.11, 417.15, 417.16, 420.267, 420.268; C54, 58, 62,§§391.23, **391.26, 391A.14**, 417.15, 417.16, 420.267, 420.268; C66, 71, 73, §§390A.12, 391.23, 391.26, 391A.14, 417.15, 417.16, 420.267, 420.268; C75,§384.51; 66GA, ch 1185,§1]

Referred to in §384.54, 384.65, 425.17(10)

384.52 Detailed plans and specifications. After adopting a resolution of necessity, the council may, by resolution, order the engineer to prepare and file with the clerk detailed plans and specifications, and order the engineer and city attorney, or any attorney designated by the council, to prepare and file with the clerk a notice to bidders and form of contract. [C97, §965; S13,§965; C24, 27, 31, 35, 39,§**6915**; C46, §420.267; C50,§§391A.12, 420.267; C54, 58, 62, 66, 71, 73,§§391A.15, 420.267; C75,§384.52]

Referred to in §425.17(10)

384.53 Procedures to let contract. Contract letting procedures shall be as provided in division VI of this chapter. The council may award any number of contracts for construction of any public improvement. [C97,§§791, 812; S13,§840-a; C24, 27, 31, 35, 39,§**6001**; C46, 50, 54, 58, 62, 66, 71, 73,§391.28; C75,§384.53]

Referred to in §425.17(10)

384.54 Confirmation by decree. At any time after final adoption of the resolution of necessity, but before awarding the contract, the council may proceed as follows:

1. To direct the city attorney to file, in the district court of the county in which the property proposed to be assessed is located, a petition praying that the acts done by the council relative to the proposed public improvement be confirmed by decree.

2. The following must be filed with the petition in the office of the clerk of the court:

a. A copy of the resolution of necessity as adopted by the council.

b. A copy of the proposed schedule of assessments as adopted by the council under sections 384.48 and 384.51, which schedule shows the maximum amount that the council proposes to assess against any lot.

c. Preliminary plans and specifications, or, if available, detailed plans and specifications as prepared by the engineer.

d. A copy of the proposed contract if prepared.

3. Notice of the filing of the petition must be given in the same manner as is provided for service of original notice by publication by the rules of civil procedure, except as follows:

a. No affidavit of inability to obtain personal service within the state of Iowa is required.

b. The original notice must name as defendants those property owners who, on the date of filing the petition, have an interest in the real property to be assessed as a part of the public improvement, and the original notice must state that a plat and schedule is on file in the office of the clerk of the district court where the action is pending. No property owner is an indispensable party to the action. Publication of plat and schedule as part of the original notice is not required, nor shall reference in the original notice to specific descriptions of affected real property or the amounts of proposed assessments be necessary.

4. The petition must be given precedence over any other business of the court, except criminal cases. The court shall set the petition for hearing within thirty days from the date of final publication of notice. As a part of its order, the court may provide for a pretrial conference to be held not earlier than twenty days from the date of final publication of notice and require the appearance at the pretrial conference of all interested parties. Failure to appear at the pretrial conference may be grounds for dismissing any objection.

5. If no person having an interest in property proposed to be assessed has entered an appearance or filed an answer within the time set for hearing on the petition, the court shall confirm the assessment, and order the clerk of court to certify its decree to the city clerk.

6. If any person having an interest in property proposed to be assessed has entered an appearance or filed an answer to the petition, the court shall hear the cause as an action triable in equity.

7. Upon the hearing the court may correct any irregularities or inequalities in valuations or in the schedule of assessments, and shall consider any objections because of alleged illegal procedure or fraud.

8. The court shall render a decision upon the hearing as soon as practical after the final submission of the cause.

9. The clerk of the court shall certify to the city clerk the final action of the court, within three days from the date of the final decree upon the petition, showing assessments as confirmed in the schedule of assessments.

10. An appeal from the decree of the district court must be taken as in other equity cases.

11. A contract may or may not be let, in the discretion of the council, until appeals are finally determined, but the appeals need not delay the letting and execution of a contract for the work, if the council concludes the appeals were not taken in good faith.

12. An appeal does not, in the discretion of the council, delay the certification of an assessment or progress of an improvement, but upon

decision of the appeal the assessment appealed from must be corrected and collected in the same manner as provided in section 384.74.

13. Corrections of assessments or valuations made by order of the district court are conclusive and not subject to review on appeal, or otherwise, except as provided in subsections 10 to 12 of this section. When court confirmation is obtained there is no right of appeal under the provisions of section 384.66.

14. If no contract is entered into within ninety days from the date of confirmation by the district court or within a further time allowed by the court on subsequent application, and if no appeal is pending, the court shall cancel the assessment, upon application of the city attorney.

15. The cost of all court proceedings are a legitimate item of expense in connection with a public improvement, and may be included within the final assessment against any property specially benefited in the assessment district.

Whenever on a hearing by the court, the amount of any assessment is reduced or canceled so that there is a deficiency in the total amount remaining assessed in the proceeding, the court may assess the deficiency to the city or distribute the deficiency upon the other property abutting upon or adjacent to the improvement or in the district assessed, in a manner the court finds to be just and equitable, not exceeding, however, the amount the property would be specially benefited by the improvement, and not exceeding twenty-five percent of the value of the lot as shown by the plat and schedule of assessments or as reduced by the court. [C31, 35,§§6610-c28,-c31, -c32,-c34–c40,-c42–c44,-c56; C39,§§**6610.31–6610.33, 6610.36–6610.41, 6610.43, 6610.44, 6610.46, 6610.65, 6610.67**; C46, 50,§§417.28, 417.31, 417.32, 417.34–417.40, 417.42–417.44, 417.60; C54, 58, 62, 66, 71, 73,§§391A.18, 417.28, 417.31, 417.32, 417.34–417.40, 417.42–417.44, 417.60; C75,§384.54]

Referred to in §425.17(10)

384.55 Notice of paving to water board. In cities having a water utility under the management of a board of trustees and in which water connections are not installed by the trustees at public expense, the council shall notify the board at the time of the adoption of a preliminary resolution, of any proposed street paving projects. The board shall report to the council the number of connections from water mains in streets to the curb lines of the proposed improvement necessary to serve private property dependent upon those particular mains for water supply, and the numbers of the lots to be served by the connections, and the names of the owners. Notice must be given to property owners, at the same time and in the same manner as the notice provided in section 384.50, to install the necessary connections within thirty days after hearing. For the purposes of the hearing, property owners who are notified to install water connections, but whose property is not within the proposed assessment district, may appear as interested parties. If upon hearing, the council determines to proceed with the improvement, and any property owner fails to make connections as required, the board of waterworks trustees shall cause them to be made and certify the cost to the council to be assessed against the property and collected in the same manner as provided in section 384.40 for other underground connections. [C97,§809; S13,§§779, 792-f; C24, 27, 31, 35, 39,§§**5892, 5893**; C46,§§391.9, 391.10; C50,§§391.9, 391.10, 391A.17; C54, 58, 62, 66, 71, 73,§§391.9, 391.10, 391A.20; C75,§384.55]

Referred to in §425.17(10)

384.56 State lands.

1. Cities may assess the cost of a public improvement which extends through, abuts upon, or is adjacent to lands owned by the state, and the executive council shall pay the assessable portion of the cost of the improvement through or along the lands as provided. The executive council shall pay assessments as provided in section 307A.5.

2. When a state park or institutional road abutting on or adjacent to state lands on one side of the road is improved by paving, the state shall pay one-half the total assessed cost of the portion of the improvement abutting, or adjacent to state lands, lots, or portions thereof, but for any other type of improvement so constructed and located, the state shall pay, as provided in section 307A.5, the portion of the cost which would be assessable against state lands if they were privately owned.

3. When any portion of the cost of a public improvement is to be paid by the state under this section, the clerk shall send, at the time of publication of the notice required by section 384.50, a copy of the notice to the secretary of the executive council by restricted certified mail.

4. Cities in which state buildings are located shall permit sewers for such buildings to be constructed through or under the streets of the city, and connections to be made to the sewer system of the city under the same regulations as for sewer connections to private property.

5. Subsections 1 and 3 of this section do not apply to lands under the jurisdiction and control of the department of transportation. [C97, §794; C24, 27, 31, 35, 39,§**5988**; C46,§391.15; C50, §§391.15, 391A.18; C54, 58, 62,§§391.15, 391A.21; C66, 71, 73,§§390A.22, 391.15, 391A.21; C75, §384.56; 66GA, ch 197,§31]

Referred to in §425.17(10)

384.57 Monthly payments. The city may contract to pay not to exceed ninety percent of the engineer's estimated value of the acceptable work completed during the month to the contractor at the end of each month. Payment may be made in warrants drawn on any fund or funds from which payment for the work may be made. The warrants, unless paid

upon presentation, draw interest at a rate not to exceed seven percent per annum from and after the date of presentation for payment. If such funds are depleted, anticipatory warrants may be issued, which do not constitute a violation of section 384.10, even if the collection of taxes or special assessments or income from the sale of bonds applicable to the public improvement is after the end of the fiscal year in which the warrants are issued. If the city arranges for the private sale of anticipatory warrants, they may be sold and the proceeds used to pay the contractor. Such warrants may also be used to pay other persons furnishing services constituting a part of the cost of the public improvement. [C50,§391A.19; C54, 58, 62, 66, 71, 73,§391A.22; C75,§384.57]

Referred to in §§384.58, 425.17(10)

384.58 Inspection of work.

1. The engineer for the city shall inspect all work done under this division, and within fifteen days of final completion of the public improvement, he shall file a certificate with the clerk stating:

a. That he has inspected the completed work.

b. That the work has or has not been performed in compliance with the terms of the contract, and the particulars, if any, in which the work varies from the terms.

c. The total cost of the completed work.

2. Within fifteen days after the filing of the engineer's certificate, the council shall by resolution accept or reject the work.

3. Upon accepting the work, or within ten days thereafter, the council shall ascertain the total cost and by resolution determine the proportion or amount of the cost to be assessed against private property within the assessment district. If the council has elected to award more than one contract for the work, the council may elect to proceed separately with the acceptance and levy of assessments for the work done under each contract.

4. Upon accepting the work, the council may order payment of any amount due the contractor, to be made by warrants issued in the manner provided by section 384.57. [C97,§§820, 822; S13,§§779, 792-f, 820, 840-a; SS15,§840-r; C24, 27,§§6018, 6025; C31, 35,§§6018, 6025, 6610-c52, 6610-c54; C39,§§**6018, 6025, 6610.53, 6610.56**; C46, §§391.45, 391.52, 417.56, 417.58; C50,§§391.45, 391.52, 391A.20, 417.56, 417.58; C54, 58, 62, 66, 71, 73,§§391.45, 391.52, 391A.23, 417.56, 417.58; C75, §384.58]

Referred to in §425.17(10)

384.59 Assessment schedule. Within thirty days after the council adopts a resolution fixing the amount to be assessed against private property, the engineer shall file with the clerk an assessment schedule showing:

1. A description of each lot to be assessed.

2. The valuation of each lot as fixed by the council.

3. The amount to be assessed against each lot, which shall include the assessment for the default fund, if any, and the amount of deficiency, if any, which may be subsequently assessed against each lot under section 384.63. [C97,§821; S13,§792-f; SS15,§840-r; C24,§§6022, 6023; C31, 35,§§6022, 6023, 6610-c19; C39,§§**6022, 6023, 6610.45**; C46,§§391.49, 391.50, 417.19; C50, §§391.49, 391.50, 391A.21, 417.19; C54, 58, 62, §§391.49, 391.50, 391A.24, 417.19; C66, 71, 73, §§390A.24, 391.49, 391.50, 391A.24, 417.19; C75, §384.59; 66GA, ch 203,§34]

Referred to in §425.17(10)

384.60 Adoption of schedule. Within ten days after filing of the assessment schedule, the council shall meet, consider, and adopt or amend and adopt, by resolution, the final assessment schedule. The resolution must:

1. Confirm and levy assessments, including a conditional levy of the amount of deficiencies which may be subsequently assessed against each lot under section 384.63.

2. State the number of annual installments, not exceeding fifteen, into which assessments of fifty dollars or more are divided.

3. Provide for interest on all unpaid installments at not more than seven percent per annum.

4. State the time when assessments are payable.

5. Direct the clerk to certify the final schedule to the auditor of the county or counties in which the assessed property is located, and to publish notice thereof once each week for two consecutive weeks in the manner provided in section 362.3, the first publication of which shall be not more than fifteen days from the date of filing of the final schedule. On or before the second publication of the notice, the clerk shall send by certified mail to each property owner whose property is subject to assessment for the improvement, as shown by the records in the office of the county auditor, a copy of the notice. Such notice shall also include a statement in substance that assessments may be paid in full without interest within thirty days after the date of certification, and thereafter all unpaid special assessments will draw annual interest at seven percent, computed to the December 1 next following the due dates of the respective installments, and each installment will be delinquent on September 30 following its due date, and will draw additionally the same delinquent interest and the same penalties as ordinary taxes. Such notice shall also state substantially that property owners may elect to pay any installment semiannually in advance. If a property is shown by the records to be in the name of more than one owner at the same mailing address, a single notice may be mailed to all owners at that address. Failure to receive a mailed notice is not a defense to the special assessment.

The county auditor shall place on the tax list the amounts to be assessed against each lot within the assessment district, as certified. [R60,§1068; C73,§481; C97,§§825, 826, 982; S13, §§791-c, 825, 849-e; SS15,§840-r; C24, 27,§§5966, 6030, 6034, 6101, 6923; C31, 35,§§5966, 6030, 6034, 6101, 6610-c45, 6923; C39,§§**5966, 6030, 6034, 6101, 6610.47, 6923**; C46,§§389.35, 391.57, 391.61, 395.23, 417.45, 420.276; C50,§§389.35, 391.57, 391.61, 391A.22, 395.23, 417.45, 420.276; C54, 58, 62, §§389.35, 391.57, 391.61, 391A.25, 395.23, 417.45, 420.276; C66, 71, 73,§§389.35, 390A.30, 391.57, 391.61, 391A.25, 395.23, 417.45, 420.276; C75, §384.60]

Referred to in §§384.47, 384.51, 384.63, 425.17(10)

384.61 Assessment of benefits. The total cost of a public improvement, except for paving that portion of a street lying between railroad tracks and one foot outside of the tracks, or which is to be otherwise paid, must be assessed against all lots within the assessment district in accordance with the special benefits conferred upon the property, and not in excess of such benefits.

If an owner of property subject to special assessment divides the property into two or more lots, and if the plan of division is approved by the council, he may discharge the lien upon any of the lots by payment of the amount unpaid, calculated as determined by the council. [C97,§828; S13,§§792-a,-f, 849-e; SS15,§§840-a,-j,-r; C24,§§6021, 6036, 6089; C27, §§5942-b3, 6021, 6036, 6089; C31, 35,§§5942-b3, 6021, 6036, 6089, 6610–6620; C39,§§**5942.3, 6021, 6036, 6089, 6610.14**; C46,§§389.7, 391.48, 391.63, 395.11, 417.20; C50,§§389.7, 391.48, 391.63, 391A.23, 395.11, 417.20; C54, 58, 62, 66, 71, 73,§§389.7, 391.48, 391.63, 391A.26, 395.11, 417.20; C75, §384.61]

Referred to in §425.17(10)

384.62 Limit. A special assessment against a lot for a public improvement may not be in excess of the amount of the assessment, including the conditional deficiency assessment, as shown in the schedule confirmed by the court, or if court confirmation is not utilized, then on the original plat and schedule adopted by the council, and an assessment may not exceed twenty-five percent of the value of the lot as shown by the plat and schedule approved by the council or as reduced by the court.

Special assessments for the construction or repair of underground connections for private property for gas, water, sewers, or electricity may be assessed to each lot for the actual cost of each connection for that lot, and the twenty-five percent limitation does not apply. Such connections shall not be installed to service railway right of way without written agreement with the railway company owning or leasing the right of way. [S13,§§792-a,-f, 849-e; SS15,§§840-a,-j,-r; C24, 27,§§6021, 6089; C31, 35,§§6021, 6089, 6610-c55; C39,§**6021, 6089, 6610.66**; C46,§§391.48, 395.11, 417.59; C50,§§391.48, 391A.24, 395.11, 417.59; **C54, 58, 62, 66, 71, 73,** §§391.48, 391A.27, 395.11, 417.59; C75,§384.62; 66GA, ch 203,§35]

Referred to in §§384.38, 384.47, 384.63, 425.17(10)

384.63 Insufficiency—certification to county auditor—deficiency assessment. If the special assessment which may be levied against a lot is insufficient to pay its proportion of the cost of the improvement, or if no special assessment may be levied against a lot, the deficiency shall be paid from the city fund or funds designated by the council.

The council shall, by resolution, provide that the deficiencies for the lots specially benefited by a public improvement shall be certified to the county auditor, who shall record them in a separate book entitled "Special Assessment Deficiencies", and to the appropriate city official charged with the responsibility of issuing building permits, who shall notify the council when a private improvement is subsequently constructed on any lot subject to a deficiency. Certification to county auditor shall include a legal description of each lot. The council shall establish by ordinance a period of amortization for a public improvement for which there are deficiencies, based upon the useful life of the public improvement, but not to exceed ten years. Deficiencies may be assessed only during the period of amortization, which shall also be certified to the county auditor and the city official charged with the responsibility of issuing building permits. Certification to the county auditor shall include a legal description of each lot. When a private improvement is constructed on a lot subject to a deficiency, during the period of amortization, the council shall, by resolution, assess a pro rata portion of the deficiency on that lot, in the same proportion to the total deficiency on that lot as the number of full calendar years remaining in the period of amortization is to the total number of years in the period of amortization, subject to the twenty-five percent limitation of section 384.62. A deficiency assessment becomes a lien on the property and is payable in the same manner, and subject to the same interest and penalties as the other special assessments. The council shall direct the clerk to certify a deficiency assessment to the county auditor, and to send a notice of the deficiency assessment by certified mail to each owner, as provided in section 384.60, subsection 5, of this division, but publication of the notice is not required. An owner may appeal from the amount of the assessment within thirty days of the date notice is mailed. County officials shall collect a deficiency assessment, commencing in the year following the assessment, in the manner provided for the collection of other special assessments. Upon collection, the county auditor shall make the appropriate credit entries in the "Special Assessment Deficiencies" book, and shall credit the amounts collected as provided for other special assessments on the same public improvement, or to the city,

to the extent that the deficiency has been previously paid from other city funds. [S13,§792-b; C24, 27, 31, 35, 39,§6017; C46,§391.44; C50, §§391.44, 391A.25; C54, 58, 62,§§391.44, 391A.28; C66, 71, 73,§§390A.19, 391.44, 391A.28; C75, §384.63]

Referred to in §§384.47, 384.59, 384.60, 425.17(10)

384.64 Assessment to railway company. The right of way of a railway company is subject to special assessments for public improvements, and such assessments constitute a debt due the city which is a paramount lien upon the track of the railway company owning or leasing the right of way within the limits of the city. The property of a railway to which a lien for unpaid special assessment has attached may not be released from the lien until the whole assessment is paid. [C97,§§816, 828; S13,§§791-i, 792-f, 816; SS15,§840-r; C24, 27, 31, 35, 39,§§6009, 6010, 6013; C46,§§391.36, 391.37, 391.40; C50,§§391.36, 391.37, 391.40, 391A.26; C54, 58, 62, 66, 71, 73,§§391.36, 391.37, 391.40, 391A.29; C75,§384.64]

Referred to in §425.17(10)

384.65 Installments due.

1. The first installment of each assessment, or the total amount if less than fifty dollars, is due and payable on July 1 next succeeding the date of the levy, unless the assessment is filed with the county auditor after May 31 in any year. The first installment shall bear interest on the whole assessment from the date of acceptance of the work by the council to the first day of December following the due date.

2. The succeeding annual installments, with interest on the whole unpaid amount, to the first day of December following the due date, are respectively due on July 1 annually, and must be paid at the same time and in the same manner as the September semiannual payment of ordinary taxes.

3. All future installments of an assessment may be paid on any date by payment of the then outstanding balance, plus interest to December 1 following the due date of the next maturing installment.

4. Each installment of an assessment with interest on the unpaid balance is delinquent after the thirtieth day of September next after its due date, and bears the same delinquent interest with the same penalties as ordinary taxes. When collected, the interest and penalties must be credited to the same fund as the special assessment.

5. From the date of filing of a certified copy of the resolution of necessity, the plat, and the schedule of assessments as provided in section 384.51, all special assessments with all interest and penalties become and remain a lien on the benefited properties until paid, and have equal precedence with ordinary taxes, and are not divested by any judicial sale.

6. Any property owner may elect to pay one-half of any annual installment of principal and interest of a special assessment in advance, with the second semiannual payment of ordinary taxes collected in the year preceding the due date of such installment. The county treasurer shall accept such partial payment of the special assessment, and shall credit the next annual installment of such special assessment to the extent of such payment, and shall remit the payments to the city. [R60, §1068; C73,§§478, 481; C97,§§816, 825, 827, 974, 975; S13,§§791-b,-c, 792-f, 816, 825, 840-a, 975; SS15,§§840-r, 974; C24, 27, 31, 35, 39,§§5965, 5966, 6008, 6033, 6906–6908; C46,§§389.33–389.35, 391.35, 391.60, 420.258–420.260; C50,§§389.33–389.35, 391.35, 391.60, 391A.27, 420.258–420.260; C54, 58, 62, 66, 71, 73,§§389.33–389.35, 391.35, 391.60, 391A.30, 420.258–420.260; C75,§384.65; 66GA, ch 1185,§2]

Referred to in §§384.41, 425.17(10)

384.66 Test of regularity.

1. A person having an interest in property subject to special assessment may, within twenty days after the adoption of a resolution of necessity, test the regularity of the proceedings or legality of the assessment procedure by a petition in equity filed in the district court of the county where the property is located. A petition does not stay further proceedings on the improvement by the council, unless there is also filed a bond in an amount and with security approved by the court.

2. A person having an interest in any property specially assessed may appeal from the amount of the assessment, at any stage of the special assessment procedure up to twenty days after the final publication of notice of filing of the final assessment schedule, by petition to the district court of the county where the property is located but such appeal is only to the amount of that assessment and does not stay further proceedings by the council on the improvement. No action shall be brought appealing the amount of any special assessment from and after twenty days after said final publication.

3. A person having an interest in property subject to special assessment has a right of appeal to the district court on the ground of fraud.

4. No action may be brought questioning the regularity of the proceedings pertaining to special assessments or the validity of any special assessment levied for any public improvement under this part, from and after sixty days after the final publication of notice of filing the final assessment schedule. [C97, §839; S13,§§792-c,-f, 840-a; SS15,§840-r; C24, 27, 31, 35, 39,§§6063–6065, 6091; C46,§§391.88–391.90, 395.13; C50,§§391.88–391.90, 391A.28, 395.13; C54, 58, 62, 66, 71, 73,§§391.88–391.90, 391A.31, 395.13; C75,§384.66]

Referred to in §§384.54, 425.17(10)

384.67 Payment to county treasurer. Assessments levied and certified under the provisions of this division, including installments and interest, are payable at the office of the

county treasurer of the county where the property assessed is located, except that assessments may be paid in full and without interest within thirty days after the date of certification, at the office of the county treasurer or the city clerk. [C97,§825; S13,§825; C24, 27, 31, 35, 39,§6031; C46,§391.58; C50,§§391.58, 391A.29; C54, 58, 62, 66, 71, 73,§§391.58, 391A.32; C75,§384.67]

Referred to in §425.17(10)

384.68 Bonds issued.

1. After certification of the final assessment schedule, the city may, by resolution, authorize and issue bonds in anticipation of the collection of unpaid special assessments. However, the total principal amount of bonds issued for a public improvement may not exceed the total amount of unpaid special assessments less the proportionate unpaid amount assessed for the default fund.

2. All special assessment bonds are negotiable, must state on their face that they are issued under the provisions of this division, and are payable as to both principal and interest from the proceeds of the special assessments levied for the public improvement. Such bonds may bear interest at a rate not exceeding seven percent per annum payable annually or semiannually, must mature serially on December 1 of the years in which any of the principal is scheduled to become due, and may contain a provision that the city reserves the right and option of calling and redeeming any or all of the bonds prior to maturity on any interest payment date or within forty-five days thereafter upon the terms specified therein. Such bonds must be called "improvement bonds", must designate the general type of improvement or improvements for which issued, and may be issued in any denomination, not exceeding ten thousand dollars. Bonds issued for a public improvement authorized in section 384.38, subsection 2, must be named in a way to distinguish them from other improvement bonds of the city, and to designate the property specially assessed for the improvement. Improvement bonds issued for any one levy must bear the same date and be divided into as many series as there are years in which installments of the special assessment mature, and each series must be as nearly equal in amount as practicable.

3. The proceeds of the special assessments and interest collected thereon must be used and applied by the city to the payment of the interest on the bonds and to the retirement of the principal as rapidly as proceeds are collected. Such bonds and coupons do not make the city liable in any way, except for the proper application of special assessments. If interest becomes due on any of the bonds when there is no fund or funds from which to pay it, the council may make a temporary loan for payment of the interest, which loan must be repaid from the special assessments and interest pledged to secure the bonds, but in case of purchase by the city at tax sale of the property on which a special assessment is levied, the loan must be repaid from the funds of the city from which deficiencies on the improvement were paid, or if there were no deficiencies, from the general fund.

4. Special assessment bonds must be sold at public or private sale in the manner provided by chapter 75, and may not be sold for less than par value with accrued interest from date to the time of delivery, or if no bids are received at public sale, bonds may be delivered to the contractor in payment of the cost of the public improvement. The proceeds of the sale must be applied to the payment of the cost of the public improvement.

5. Any excess of proceeds from special assessments remaining after all of the bonds for a particular improvement have been paid with interest may be credited to the fund from which deficiencies for the improvement could have been paid. However, any excess in a default fund established for a public improvement authorized in section 384.38, subsection 2, shall be held by the city in a special fund to guarantee other improvement bonds which may be issued by the city for public improvements authorized under that section.

6. Cities may issue refunding bonds to pay off and take up special assessment bonds issued in payment for public improvements, or to refund any part thereof, as follows:

a. Refunding bonds must substantially conform to the provisions of this division, and the face value is limited to the amount of the unpaid special assessments with the interest thereon of the particular issue of bonds to be refunded.

b. Refunding bonds or their proceeds may be used only to pay improvement bonds taken up.

c. The expense of refunding bonds must be paid out of the funds of the city from which the cost of similar improvements might lawfully be paid.

d. When refunding bonds are issued to pay improvement bonds, all special assessments and sinking funds applicable to the payment of the improvement bonds previously issued must be applied in the same manner and to the same extent to the payment of the refunding bonds, and all the powers and duties to levy and to carry special assessments and taxes, to create liens upon property, and to establish sinking funds in respect to the bonds previously issued continue until refunding bonds are paid.

e. The city shall collect the special assessment out of which the refunding bonds are payable and hold the proceeds in trust for the payment of the refunding bonds, but it is not liable except for the proper application of the assessments.

7. No action shall be brought questioning the legality of the bonds authorized by this section from and after sixty days from the

date the bonds are ordered issued by the city. [C97,§§842, 843, 845, 847, 987; C24,§§6109–6113, 6117, 6118, 6121–6124, 6925, 6932; C27,§§5942-b3, 6066-a11, 6109–6113, 6117, 6118, 6121–6124, 6126-a1–a6, 6925, 6932; C31, 35,§§5942-b3, 6066-a11, 6109–6113, 6117, 6118, 6121–6124, 6126-a1–a6, 6610-c65,-c66, 6925, 6932; C39,§§**5942.3, 6066.13, 6109–6113, 6117, 6118, 6121–6124, 6126.1–6126.6, 6610.71, 6610.72, 6925, 6932**; C46,§§389.7, 392.11, 396.6–396.10, 396.14, 396.15, 396.18–396.21, 396.24–396.29, 417.68, 417.69, 420.278, 420.285; C50, §§389.7, 391A.30, 392.11, 396.6–396.10, 396.14, 396.15, 396.18–396.21, 396.24–396.29, 417.68, 417.69, 420.278, 420.285; C54, 58, 62, 66, 71, 73,§§389.7, 391A.33, 392.11, 396.6–396.10, 396.14, 396.15, 396.18–396.21, 396.24–396.29, 417.68, 417.69, 420.278, 420.285; C75,§384.68]

Referred to in §425.17(10)

384.69 Property sold at tax sale. Property against which a special assessment has been levied for public improvements may be sold for any sum of principal or interest due and delinquent, at any regular or adjourned tax sale in the same manner with the same forfeitures, penalties, right of redemption, certificates, and deeds, as for the nonpayment of ordinary taxes. The purchaser at a tax sale takes the property charged with the lien of the remaining unpaid installments and interest. When bonds have been issued in anticipation of special assessments and interest for which property is to be sold, the city may be a purchaser and is entitled to all rights of purchasers at tax sales. The proceeds subsequently realized from sales of property so purchased by the city must be credited to the funds of the city from which deficiencies on the improvement were paid, or if there were no deficiencies, to the general fund. [C97,§§829, 976, 983; SS15, §840-r; C24, 27, 31, 35, 39,§§**6037–6040, 6909–6911, 6924**; C46,§§391.64–391.67, 420.261–420.263, 420.277; C50,§§391.64–391.67, 391A.31, 420.261–420.263, 420.277; C54, 58, 62, 66, 71, 73,§§391.64–391.67, 391A.34, 420.261–420.263, 420.277; C75, §384.69]

Referred to in §425.17(10)

384.70 Redemption by bondholder. A holder of a special assessment bond payable in whole or in part out of a special assessment against any lot or parcel of ground, or a city within which the lot or parcel of ground is situated, which lot or parcel of ground has been sold for taxes, either general or special, may have an assignment of any certificate of tax sale of the property for any general taxes or special taxes thereon, upon tender to the holder or to the county auditor of the amount to which the holder of the tax sale certificate would be entitled in case of redemption. [C97, §816; S13,§§792-f, 816; C24, 27, 31, 35, 39,§**6041**; C46, 50, 54, 58, 62, 66, 71, 73,§391.68; C75,§384.70]

Referred to in §425.17(10)

384.71 Costs paid from applicable funds. The whole or any part of the cost of construction or repair of a public improvement may be paid from the proceeds of the issuance of general obligation bonds under the provisions of section 384.25 or 384.26, as applicable, or from the fund or funds of the city authorized to be used for the particular type of improvement, and the council shall provide that the tax authorized for purposes of the fund or funds must be annually levied to the full extent necessary to reimburse the fund or funds for the amount paid for the construction or repair of the improvement. [R60,§1064; C73,§465; C97, §§751, 830, 831, 977, 978; S13,§§840-a,-d; SS15, §751; C24, 27, 31, 35, 39,§**5940, 6042, 6050, 6125, 6916, 6917**; C46,§§389.3, 391.69, 391.75, 396.22, 420.269, 420.270; C50,§§389.3, 391.69, 391.75, 391A.32, 396.22, 420.269, 420.270; C54, 58, 62, §§389.3, 391.69, 391.75, 391A.35, 396.22, 420.269, 420.270; C66, 71, 73,§§389.3, 390A.18, 391.69, **391.75, 391A.35, 396.22, 420.269, 420.270**; C75, §384.71; 66GA, ch 197,§32]

Referred to in §425.17(10)

384.72 Reassessment and relevy. When by reason of nonconformity to any law or resolution, or by reason of any omission, informality, or irregularity, any special tax or assessment levied is determined by the council to be invalid or is adjudged illegal, the council may correct the levy by resolution, and may reassess and relevy with the same force and effect as if done at the proper time and in the manner provided by law or by the resolution. [C97,§§836, 980; S13,§840-a; SS15,§§836, 840-r; C24, 27,§§6059, 6920; C31, 35,§§6059, 6610-c58, 6920; C39,§§**6059, 6610.68, 6920**; C46,§§391.84, 417.62, 420.273; C50,§§391.84, 391A.33, 417.62, 420.273; C54, 58, 62, 66, 71, 73,§§391.84, 391A.36, 417.62, 420.273; C75,§384.72]

Referred to in §§384.75, 425.17(10)

384.73 Void tax or assessment. When a special tax or assessment, upon property not exempt, is adjudged void for any jurisdictional defect, or other reason, the council may as to such property, by resolution, cause to be prepared a schedule and proposed reassessment in proportion to and not in excess of benefits, cause notice to be given, hear objections, and make necessary corrections, and may reassess and relevy the tax or special assessment as corrected with the same force and effect as if jurisdiction had been acquired in the first instance and all subsequent proceedings had been regularly and legally had. [SS15,§§836, 840-r; C24, 27, 31, 35, 39,§**6060**; C46, 50, 54, 58, 62, 66, 71, 73,§391.85; C75,§384.73]

Referred to in §§384.75, 425.17(10)

384.74 Correction of errors. When, in making a special assessment, any property is assessed too little or too much, the assessment may be corrected and a reassessment and relevy made in conformity with the correction, and a tax collected in excess of the proper amount must be refunded to the person paying the same. Corrected assessments are a lien on the lots the same as the original assessment, must be certified by the clerk to the county auditor in the same manner, and must so far as practicable, be collected in the same

installments, draw interest at the same rate, and be enforced in the same manner as the original assessment.

However, if the city does not certify the assessments within six months of final publication as required by division IV of this chapter, all such assessments shall be null, void, and of no effect. Any bonds issued with such void assessments as security shall be paid by the city as they become due out of its debt service as provided in section 384.4. [C97, §§837, 981; SS15,§840-r; C24,§§6061, 6921; C31, 35,§§6061, 6610-c21, 6921; C39,§§**6061, 6610.59, 6921**; C46, 50, 54, 58, 62, 66, 71, 73,§§391.86, 417.21, 420.274; C75,§384.74]

Referred to in §§384.54, 384.75, 425.17(10)

384.75 Special provisions. Any provision of law, resolution, or ordinance specifying a time when or the order in which acts must be done in a proceeding which may result in a special assessment, is subject to the qualifications of sections 384.72 to 384.74.

A city may combine any one or more of the procedural acts required by this division and call for bids for construction of a public improvement and comply with legal requirements respecting public contracts so as to permit the council to receive and consider proposals at the time of hearing on the resolution of necessity. [C97,§§838, 981; SS15,§840-r; C24, 27, 31, 35, 39,§§**6062, 6921**; C46, 50, 54, 58, 62, 66, 71, 73,§§391.87, 420.274; C75,§384.75]

Referred to in §425.17(10)

384.76 Application to joint undertakings. The provisions of this division apply to any public improvement undertaken jointly by the city and another city or by the city and the state or any other political subdivision of the state, and a city may enter into an agreement for such purpose under the provisions of chapter 28E and may assess and pay its portion of the cost of a public improvement as provided in this division, but any requirement of this part in respect to approval of detailed plans and specifications, calling for construction bids, awarding construction contracts and acceptance of the completed improvement may be carried out by each city with other cities, the state or any other political subdivision of the state, as provided in an agreement entered into as permitted by chapter 28E. However, an agreement between the city and the state department of transportation is also governed by the provisions of sections 313.21 to 313.23. [C50,§391A.34; C54, 58, 62, 66, 71, 73,§§391A.37; C75,§384.76; 66GA, ch 67,§69]

Referred to in §425.17(10)

384.77 Assessments along railways. In the making of assessments for paving streets, avenues or public places along or upon which a track of a railway or street railway company is located, the engineer shall make an estimate of the cost of building the improvement, and an estimate of the cost of the improvement if tracks were not there. The railway or street railway company may be charged with the difference between the two estimates of cost, and shall make payment in the same manner as other special assessments are paid. This section applies only to track within the limits of the improvement proper and shall not be construed as exempting a railway or street railway company from a special assessment on other property, adjacent or abutting, within the assessment district and owned by the company, nor does this section relieve a company from any of its duties and liabilities set forth in any other law concerning repair or construction of the strip of paving between the rails and one foot outside. [C31, 35,§6051-c1; C39,§**6051.1**; C46, 50,§391.77; C54, 58, 62, 66, **71**, 73,§§391.77, 391A.38; C75,§384.77]

Referred to in §425.17(10)

384.78 Prior proceedings. Projects and proceedings for the levy of special assessments and the issuance of special assessment bonds commenced before the effective date of the city code may be hereafter consummated and completed and special assessments levied and special assessment bonds issued as required or permitted by any statute or other law amended or repealed by 64GA, chapter 1088, as though such repeal or amendment had not occurred, and the rights, duties, and interests flowing from such projects and proceedings remain valid and enforceable. Without limiting the foregoing, projects commenced prior to said effective date may be financed by the issuance of special assessment bonds and other bonds under any such amended or repealed law or by the issuance of special assessment bonds, or other bonds under the city code. For the purposes of this section, commencement of a project includes but is not limited to action taken by the council or authorized officer to fix a date for a hearing in connection with any part of a public improvement, and commencement of proceedings for the levy of special assessments and the issuance of special assessment bonds includes but is not limited to action taken by the council to fix a date for a hearing in connection with any public improvement proposed to be financed in whole or in part through special assessments. [C75, §384.78]

Referred to in §425.17(10)

384.79 Conflicting provisions. The enumeration in this division of special powers and functions is not a limitation of the powers of cities, but the provisions of this division and the procedures prescribed for exercising the powers and functions enumerated in this division control and govern in the event of any conflict with the provisions of any other section, division or chapter of the city code or with the provisions of any other law. [C75, §384.79]

Referred to in §425.17(10)

DIVISION V

REVENUE FINANCING

Referred to in §§384.23, 384.99, 386.7, 392.1, 392.3

384.80 Definitions. As used in this division, unless the context otherwise requires:

1. *"Combined utility system"* means two or more city utilities owned by a single city, and combined and operated as a single system.

2. *"City enterprise"* means the same as defined in section 384.24.

3. *"Combined city enterprise"* means two or more city enterprises combined and operated as a single enterprise.

4. *"Governing body"* means the public body which by law is charged with the management and control of a city utility, combined utility system, city enterprise, or combined city enterprise. The council is the governing body of each city utility, combined utility system, city enterprise, or combined city enterprise, except that a utility board, as provided in chapter 388, is the governing body of the city utility, city utilities or combined utility system which it operates.

5. *"Project"* means the acquisition, construction, reconstruction, extending, remodeling, improving, repairing, and equipping of all or part of a city utility, combined utility system, city enterprise, or combined city enterprise within or without the corporate limits of the city.

6. *"Rates"* means rates, fees, tolls, rentals and charges for the use of or service provided by a city utility, combined utility system, city enterprise, or combined city enterprise.

7. *"Gross revenue"* means all income and receipts derived from the operation of a city utility, combined utility system, city enterprise, or combined city enterprise.

8. *"Operating expense"* means salaries, wages, cost of maintenance and operation, materials, supplies, insurance and all other items normally included under recognized accounting practices, but does not include allowances for depreciation in the value of physical property.

9. *"Net revenues"* means gross revenues less operating expenses.

10. *"Revenue bond"* means a negotiable bond issued by a city and payable from the net revenues of a city utility, combined utility system, city enterprise, or combined city enterprise.

11. *"Pledge order"* means a promise to pay out of the net revenues of a city utility, combined utility system, city enterprise, or combined city enterprise, which is delivered to the contractors or other persons in payment of all or part of the cost of the project. [C75, §384.80]

Referred to in §§388.1, 390.1, 390.5

384.81 Provisions of city code exclusive.

1. A city which proposes to establish, own, acquire by purchase, condemnation, or otherwise, lease, sell, construct, reconstruct, extend, remodel, improve, repair, equip, maintain and operate within or without its corporate limits a city utility, combined utility system, city enterprise, or combined city enterprise must do so in accordance with the provisions of the city code.

2. If all of the utilities involved in the establishment of a combined utility system are, at the time of establishment, controlled and managed by the same utility board, such utility board shall continue as the governing body of the combined utility system; otherwise the city council is the governing body of a combined utility system, but a utility board for a combined utility system may be established as provided in chapter 388. If a combined utility system or combined city enterprise is dissolved, each city utility or city enterprise shall continue in existence as a separate city utility or city enterprise unless the voters additionally authorize the abandonment thereof. The governing body of a combined utility system which is dissolved shall continue as the governing body of each city utility which was a part of the combined utility system unless changed as provided in chapter 388. The adding of an additional city utility to an existing combined utility system is the establishment of a new combined utility system and must be approved by the voters of the city as provided in chapter 388, but the governing body of the existing combined utility system shall continue as the governing body of the new combined utility system.

3. A combined utility system or combined city enterprise may be established, but if there are obligations outstanding which by their terms are payable from the revenues of any city utility or city enterprise involved, all such outstanding obligations must be assumed by the governing body of the combined utility system or combined city enterprise subject to all terms established at the time of the original issue, or refunded through the issuance of revenue bonds of the combined utility system or combined city enterprise as a part of the procedure for the establishment of the combined utility system or combined city enterprise, or funds sufficient to pay the principal of and all interest and premium, if any, on such outstanding obligations at and prior to maturity must have been properly set aside and pledged for that purpose. Any revenues earmarked for payment of the obligations must be handled by the governing body of the combined utility or combined city enterprise in the same manner as they were handled by the governing body of the city utility or city enterprise involved. A city utility or city enterprise may not be abandoned and a combined utility system or combined city enterprise may not be dissolved so long as there are obligations outstanding which by their terms are payable from the revenues of the city utility, combined utility system, city enterprise, or combined city enterprise unless funds sufficient

to pay the principal of and all interest and premium, if any, on such outstanding obligations at and prior to maturity have been properly set aside and pledged for such purpose. [C73,§§471–473; C97,§720; S13,§720; C24, 27, 31, 35, 39,§6127; C46, 50, 54,§§390.1, 397.1; C58, 62, 66, 71, 73,§§386B.2, 390.1, 397.1; C75,§384.81]

Referred to in §390.5

384.82 Procedure for financing.

1. A city may carry out projects, borrow money, and issue revenue bonds and pledge orders to pay all or part of the cost of projects, such revenue bonds and pledge orders to be payable solely and only out of the net revenues of the city utility, combined utility system, city enterprise, or combined city enterprise involved in the project. The cost of a project includes the construction contracts, interest upon the revenue bonds and pledge orders during the period or estimated period of construction and for twelve months thereafter, or for twelve months after the acquisition date, such reserve funds as the governing body may deem advisable in connection with the project and the issuance of revenue bonds and pledge orders, and the costs of engineering, architectural, technical, and legal services, preliminary reports, surveys, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights of way, supervision, inspection, testing, publications, printing and sale of bonds and provisions for contingencies. A city may sell revenue bonds at public or private sale in the manner prescribed by chapter 75 and may deliver revenue bonds and pledge orders to the contractors, sellers, and other persons furnishing materials and services constituting a part of the cost of the project in payment therefor.

A city may deliver its revenue bonds to the federal government or any agency thereof which has loaned the city money for sanitary or solid waste projects, water projects or other projects for which the government has a loan program.

2. A city may issue revenue bonds to refund revenue bonds, pledge orders, and other obligations which are by their terms payable from the net revenues of the same city utility, combined utility system, city enterprise, or combined city enterprise, or from a city utility comprising a part of the combined utility system or a city enterprise comprising a part of the combined city enterprise, at lower, the same, or higher rates of interest. A city may sell refunding revenue bonds at public or private sale in the manner prescribed by chapter 75 and apply the proceeds thereof to the payment of the obligations being refunded, and may exchange refunding revenue bonds in payment and discharge of the obligations being refunded. The principal amount of any refunding revenue bonds may exceed the principal amount of the obligations being refunded to the extent necessary to pay any premium due on the call of the obligations being refunded and to fund interest accrued and to accrue on the obligations being refunded. [C31,§6134-d1; C35,§§5903-f4, 6066-f6, 6134-d1,-f1; C39,§§5903.15, 6066.29, 6134.01–6134.03; C46, §§385.4, 394.6, 397.9–397.11; C50,§§385.4, 390.9, 394.6, 397.9–397.11; C58, 62, 66,§§385.4, 386B.10, 390.9, 394.6, 397.9–397.11; C71, 73,§§385.4, 386B.10, 390.9, 390.16, 394.6, 397.9–397.11; C75,§384.82; 66GA, ch 203,§36, ch 1186,§1]

Referred to in §390.5

384.83 Revenue bonds.

1. A city may issue revenue bonds pursuant to a resolution of the governing body of the city utility, combined utility system, city enterprise, or combined city enterprise, adopted at a regular or special meeting by a majority of the total number of members to which the governing body is entitled.

2. Before the governing body institutes proceedings for the issuance of revenue bonds, it shall fix a time and place of meeting at which it proposes to take action and give notice by publication in the manner directed in section 362.3. The notice must include a statement of the time and place of the meeting, the maximum amount of the proposed revenue bonds, the purpose for which the revenue bonds will be issued, and the city utility, combined utility system, city enterprise, or combined city enterprise whose net revenues will be used to pay the revenue bonds and interest thereon. The governing body shall at the meeting receive oral or written objections from any resident or property owner of the city. After all objections have been received and considered, the governing body may, at the meeting or any adjournment thereof, take additional action for the issuance of the bonds or abandon the proposal to issue bonds. Any resident or property owner of the city may appeal a decision of the governing body to take additional action to the district court of the county in which any part of the city is located within fifteen days after the additional action is taken, but the additional action of the governing body is final and conclusive unless the court finds that the governing body exceeded its authority. The provisions of this subsection with respect to notice, hearing, and appeal in connection with the issuance of revenue bonds are in lieu of those contained in chapter 23 or any other law.

3. Revenue bonds may bear dates, bear interest at rates not exceeding any limitations imposed by chapter 75, mature in one or more installments, be in either coupon or registered form, carry registration and conversion privileges, be payable as to principal and interest at times and places, be subject to terms of redemption prior to maturity with or without premium, and be in one or more denominations, all as provided by the resolution of the governing body authorizing their issuance. The resolution may also prescribe additional provisions, terms, conditions, and covenants

which the governing body deems advisable, consistent with the provisions of the city code, including provisions for creating and maintaining reserve funds, the issuance of additional revenue bonds ranking on a parity with such revenue bonds and additional revenue bonds junior and subordinate to such revenue bonds, and that such revenue bonds shall rank on a parity with or be junior and subordinate to any revenue bonds which may be then outstanding. Revenue bonds are a contract between the city and holders and the resolution is a part of the contract.

4. If the governing body is a city council, the revenue bonds must be executed by the mayor and clerk of the city. If the governing body is a utility board, the revenue bonds must be executed by the chairman and secretary of the board. If coupons are attached to the revenue bonds, they must be executed with the original or facsimile signature of the clerk or secretary. A revenue bond is valid and binding for all purposes if it bears the signatures of the officers in office on the date of the execution of the bonds notwithstanding that any or all persons whose signatures appear thereon have ceased to be such officers prior to the delivery thereof. The issuance of revenue bonds must be recorded in the office of the city treasurer or other financial officer designated by the council, and a certificate of the recording by the treasurer or other officer must be printed on the back of each revenue bond.

5. Revenue bonds and pledge orders issued pursuant to this division are negotiable instruments.

6. A city may issue pledge orders pursuant to a resolution of the governing body of the city utility, combined utility system, city enterprise, or combined city enterprise, adopted by a majority of the total number of members to which the governing body is entitled, at a regular or special meeting, ordering their issuance and delivery in payment for all or part of the cost of a project. Pledge orders may bear interest at rates not exceeding eight percent per annum.

7. The physical properties of a city utility, combined utility system, city enterprise, or combined city enterprise may not be pledged or mortgaged to secure the payment of revenue bonds or pledge orders or the interest thereon. [C35,§§5903-f4, 6066-f6,-f7; C39,§§**5903.15, 6066.29–6066.31**; C46, 50,§§385.4, 394.6–394.8; C58, 62, 66, 71, 73,§§385.4, 386B.10, 394.6–394.8; C75, §384.83; 66GA, ch 203,§37]

Referred to in §390.5

384.84 Rates for proprietary functions.

1. The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise may establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise and, whenever revenue bonds or pledge orders are issued and outstanding pursuant to the provisions of this division, shall establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise, and to leave a balance of net revenues sufficient at all times to pay the principal of and interest on the revenue bonds and pledge orders as the same became due and to maintain a reasonable reserve for the payment of such principal and interest, and a sufficient portion of net revenues must be pledged for such purpose. Rates must be established by ordinance of the council or by resolution of the trustees, published in the same manner as an ordinance. All rates or charges for the services of sewer systems, sewage treatment, solid waste collection, solid waste disposal, or any of these, if not paid as provided by ordinance of council, or resolution of trustees, shall constitute a lien upon the premises served by any of these services and may be certified to the county auditor and collected in the same manner as taxes.

2. The governing body of a city utility, combined utility system, city enterprise or combined city enterprise may:

a. By ordinance of the council or by resolution of the trustees published in the same manner as an ordinance, establish, impose, adjust, and provide for the collection of charges for connection to a city utility or combined utility system.

b. Contract for the use of or services provided by a city utility, combined utility system, city enterprise, or combined city enterprise with persons whose type or quantity of use or service is unusual.

c. Lease for a period not to exceed fifteen years all or part of a city enterprise or combined city enterprise, if the lease will not reduce the net revenues to be produced by the city enterprise or combined city enterprise.

d. Contract for a period not to exceed forty years with other governmental bodies for the use of or the services provided by the city utility, combined utility system, city enterprise, or combined city enterprise on a wholesale basis.

e. Contract for a period not to exceed forty years with persons and other governmental bodies for the purchase or sale of water, gas, or electric power and energy on a wholesale basis. [C73,§§471, 473, 475; C97,§§720, 725, 749; S13,§§720, 724, 725, 766-c; C24, 27, 31,§§5892, 5898, 6130, 6142, 6143, 6159; C35,§§5892, 5898, 5903-f3, 5903-f6, 6066-f5, 6066-f8, 6130, 6142, 6143, 6159; C39,§§**5892, 5898, 5903.14, 5903.17, 6066.28, 6066.32, 6130, 6142, 6143, 6159**; C46,50, 54,§§381.19, 382.5, 385.3, 385.6, 390.4, 390.5, 394.5, 394.9, 397.4, 397.27, 397.28, 398.10; C58,§§381.19, 382.5, **385.3,** 385.6, 386B.8, 390.4, 390.5, 394.5, 394.9, 397.4, 397.27, 397.28, 398.10; C62,§§381.15, 382.5, 385.3,

385.6, 386B.8, 390.4, 390.5, 392.11, 394.5, 394.9, 397.4, 397.27, 397.28; C66,§§368.24, 381.19, 382.5, 385.3, 385.6, 386B.8, 390.4, 390.5, 392.11, 394.5, 394.9, 397.4, 397.27, 394.28, 398.10; C71, 73, §§368.24, 378A.7–378A.9, 381.19, 382.5, 385.3, 385.6, 386B.8, 390.4, 390.5, 392.11, 393.14, 394.5, 394.9, 397.4, 397.27, 397.28, 398.10; C75,§384.84; 66GA, ch 203,§38]

Referred to in §390.5

384.85 Books and records.

1. The governing body of each city utility, combined utility system, city enterprise, or combined city enterprise being operated on a revenue producing basis shall maintain a proper system of books, records, and accounts.

2. The gross revenues of each city utility, combined utility system, city enterprise, or combined city enterprise must be deposited with the treasurer of the governing body and kept by the treasurer in a separate account apart from the other funds of the city and from each other. The treasurer shall apply the gross revenues of each city utility, combined utility system, city enterprise, or combined city enterprise only as ordered by the governing body and in strict compliance with such orders, including the provisions, terms, conditions, and covenants of any and all resolutions of the governing body pursuant to which revenue bonds or pledge orders are issued and outstanding. If the council is the governing body, it may designate another city officer to serve as treasurer. [C97,§748; S13, §§741-w2, 748; C24, 27, 31, 35, 39,§§**5902, 6158**; C46, 50, 54, 58, 62, 66, 71, 73,§§384.3(12), 398.9; C75,§384.85]

Referred to in §390.5

384.86 Pledge valid and effective to others. The pledge of any net revenues of a city utility, combined utility system, city enterprise, or combined city enterprise is valid and effective as to all persons and other governmental bodies when it becomes valid and effective between the city and the holders of the revenue bonds or pledge orders. [C75, §384.86]

Referred to in §390.5

384.87 Payable from revenues. Revenue bonds and pledge orders are payable both as to principal and interest solely out of the portion of the net revenues of the city utility, combined utility system, city enterprise, or combined city enterprise pledged to their payment and are not a debt of or charge against the city within the meaning of any constitutional or statutory debt limitation provision. [C58, 62, 66, 71, 73,§386B.10; C75,§384.87]

Referred to in §390.5

384.88 Sole remedy. The sole remedy for a breach or default of a term of a revenue bond or pledge order is a proceeding in law or in equity by suit, action or mandamus to enforce and compel performance of the duties required by this division and of the terms of the resolution authorizing the issuance of the revenue bonds or pledge orders, or to obtain the appointment of a receiver to take possession of and operate the city utility, combined utility system, city enterprise, or combined city enterprise, and to perform the duties required by this division and the terms of the resolution authorizing the issuance of the revenue bonds or pledge orders. [C58, 62, 66, 71, 73,§386B.10; C75,§384.88]

Referred to in §390.5

384.89 Transfer of surplus. The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise which has on hand surplus funds, after making all deposits into all funds required by the terms, covenants, conditions, and provisions of outstanding revenue bonds, pledge orders, and other obligations which are payable from the revenues of the city utility, combined utility system, city enterprise, or combined city enterprise and after complying with all of the requirements, terms, covenants, conditions and provisions of the proceedings and resolutions pursuant to which revenue bonds, pledge orders, and other obligations are issued, may transfer such surplus funds to any other fund of the city in accordance with any rules promulgated by the city finance committee created in section 384.13 if the transfer is also approved by the city council, provided that no transfer may be made if it conflicts with any of the requirements, terms, covenants, conditions or provisions of any resolution authorizing the issuance of revenue bonds, pledge orders, or other obligations which are payable from the revenues of the city utility, combined utility system, city enterprise, or combined city enterprise which are then outstanding. [C27, 31, 35,§§6151-b1–6151-b3, 6151-c1; C39,§§**6151.1–6151.4**; C46, 50, 54, 58, 62, 66, 71, 73,§§397.38–397.41; C75,§384.89]

Referred to in §390.5

384.90 Part payment from general revenue. This division does not prohibit or prevent a city from using funds derived from the issuance of general obligation bonds, the levy of special assessments and the issuance of special assessment bonds, and any other source which may be properly used for such purpose, to pay a part of the cost of a project. [C75,§384.90]

Referred to in §390.5

384.91 Payment to use services. The city shall pay for the use of or the services provided by the city utility, combined utility system, city enterprise, or combined city enterprise as any other customer, except that the city may pay for use or service at a reduced rate or receive free use or service so long as the city complies with the provisions, terms, conditions and covenants of any and all resolutions pursuant to which revenue bonds or pledge orders are issued and outstanding. [C75,§384.91]

Referred to in §§388.6, 390.5

384.92 Statute of limitation. No action may be brought which questions the legality of revenue bonds or the power of the city to issue revenue bonds or the effectiveness of any proceedings relating to the authorization and issuance of revenue bonds, from and after sixty days from the time the bonds are ordered issued by the city. [C97,§913; C24, 27, 31, 35, 39,§6264; C46, 50, 54, 58, 62, 66, 71, 73,§408.15; C75,§384.92]

Referred to in §§386.7, 390.5

384.93 Conflicting provisions. The enumeration in this division of specified powers and functions is not a limitation of the powers of cities, but the provisions of this division and the procedures prescribed for exercising the powers and functions enumerated in this division control and govern in the event of any conflict with the provisions of any other section, division or chapter of the city code or with the provisions of any other law. [C75, §384.93]

Referred to in §390.5

384.94 Prior projects preserved. Projects and proceedings for the issuance of revenue bonds, pledge orders, and other temporary obligations commenced before the effective date of the city code may be consummated and completed as required or permitted by any statute or other law amended or repealed by 64GA, chapter 1088, as though such repeal or amendment had not occurred, and the rights, duties, and interests flowing from such projects and proceedings remain valid and enforceable. Without limiting the foregoing, projects commenced prior to said effective date may be financed by the issuance of revenue bonds, pledge orders, and other temporary obligations under any such amended or repealed law or by the issuance of revenue bonds and pledge orders under the city code. For purposes of this section, commencement of a project includes, but is not limited to, action taken by the governing body or authorized officer to fix a date for either a hearing or an election in connection with any part of the project, and commencement of proceedings for the issuance of revenue bonds, pledge orders, and other temporary obligations includes, but is not limited to, action taken by the governing body to fix a date for either a hearing or a sale in connection with any part of such revenue bonds, pledge orders, or other temporary obligations or to order any part thereof to be issued. [C75,§384.94]

Referred to in §390.5

DIVISION VI
CONTRACT LETTING PROCEDURE

Referred to in §§384.23, 384.53, 386.6, 386.7

384.95 Definitions. As used in this division, unless the context clearly indicates otherwise:

1. "Public improvement" means any building or construction work, either within or outside the corporate limits of a city, to be paid for in whole or in part by the use of funds of the city, regardless of sources, including a building or improvement constructed or operated jointly with any other public or private agency, but excluding urban renewal and low-rent housing projects, industrial aid projects authorized under chapter 419, emergency work or work performed by employees of a city or a city utility.

2. "Governing body" means the council of a city, a utility board of trustees or an administrative agency which is charged with the management and control of a building or improvement project. [C75,§384.95]

Referred to in §390.3

384.96 Sealed bids. When the estimated total cost of a public improvement exceeds the sum of ten thousand dollars, the governing body shall advertise for sealed bids for the proposed improvement by publishing a notice to bidders as provided in section 362.3. [C58, 62, 66, 71, 73,§386B.9; C75,§384.96]

Referred to in §§384.103, 390.3
Analogous provision, §23.18

384.97 Notice to bidders. The notice to bidders must state the following items:

1. The time and place for filing sealed proposals.

2. The time and place sealed proposals will be opened and considered on behalf of the governing body.

3. The general nature of the public improvement on which bids are requested.

4. In general terms when the work must be commenced and when it must be completed.

5. That each bidder shall accompany his bid with a bid security as defined herein and as specified by the governing body, as security that the successful bidder will enter into a contract for the work bid upon and will furnish after the award of contract a corporate surety bond, acceptable to the governing body, for the faithful performance of the contract, in an amount equal to one hundred percent of the amount of the contract. The bidder's security must be in an amount fixed by the governing body, and must be in the form of a cashier's or certified check drawn on a bank in Iowa or a bank chartered under the laws of the United States, or the governing body may provide for a bidder's bond with corporate surety satisfactory to the governing body, which bid bond shall contain no condition except as provided in this section.

6. Any further information which the governing body deems pertinent.

The notice to bidders may provide that bids will be received for the furnishing of all labor and materials and furnishing or installing equipment under one contract, or for parts thereof in separate sections.

On public improvements to be financed wholly or partially by special assessments against benefited property, the governing body, in the notice to bidders, may request aggregate bids for all projects included in any

resolution of necessity, notwithstanding variations in the sizes of the improvements and notwithstanding that some parts of the improvements are assessable and some nonassessable, and may award the contract to the lowest responsible bidder submitting the lowest aggregate bid. [C97,§§813, 815; S13, §§840-a, 849-d; SS15,§813; C24, 27,§§6004–6006, 6084–6086, 6088; C31, 35,§§6004–6006, 6084–6086, 6088, 6134-d5, 6610-c48; C39,§§**6004–6006, 6084–6086, 6088, 6134.09, 6610.50**; C46,§§391.31–391.33, 395.6–395.8, 395.10, 397.17, 417.51; C50,§§391.31–391.33, 391A.13, 391A.14, 395.6–395.8, 395.10, 397.17, 417.51; C54,§§391.31–391.33, 391A.16, 391A.17, 395.6–395.8, 395.10, 397.17, 417.51; C58, 62, 66, 71, 73,§§386B.9, 391.31–391.33, 391A.16, 391A.17, 395.6–395.8, 395.10, 397.17, 417.51; C75, §384.97]

Referred to in §§384.103, 390.3

384.98 Bid security. The amount of bid security must be fixed by the governing body prior to ordering publication of the notice to bidders and must equal at least five percent, but may not exceed ten percent of either the estimated total contract cost of the public improvement, or the amount of each bid. [C97, §813; SS15,§813; C24, 27, 31, 35, 39,§**6004**; C46, §391.31; C50,§§391.31, 391A.13; C54, 58, 62, 66, 71, 73,§§391.31, 391A.16; C75,§384.98]

Referred to in §§384.103, 390.3

384.99 Award of contract. The contract for the public improvement must be awarded to the lowest responsible bidder, provided, however, that contracts relating to public utilities or extensions or improvements thereof, as described in division V of this chapter, may be awarded by the governing body as it deems to be in the best interests of the city. [C97,§813; SS15,§813; C24, 27,§6004; C31, 35,§§6004, 6134-d6, 6610-c48; C39,§§**6004, 6134.10, 6610.50**; C46, §§391.31, 397.18, 417.51; C50,§§391.31, 391A.14, 397.18, 417.51; C54, 58, 62, 66, 71, 73,§§391.31, 391A.17, 397.18, 417.51; C75,§384.99]

Referred to in §§384.100, 384.103, 390.3

384.100 Opening and considering bids. The governing body shall open, announce the amount of the bids, and file all proposals received, at the time and place specified in the notice to bidders. The governing body may, by resolution, award the contract for the public improvement to the bidder submitting the best bid, determined as provided in section 384.99, or it may reject all bids received, fix a new date for receiving bids, and order publication of a new notice to bidders. The bid security furnished by the successful bidder must be retained by the governing body until the approved contract form has been executed, and a bond filed by the bidder guaranteeing the performance of the contract, and the contract and bond, have been approved by the governing body. The provisions of chapter 573, where applicable, apply to contracts awarded under this division.

The checks or bidder's bonds of the unsuccessful bidder must be promptly returned to the bidders by the governing body as soon as the successful bidder is determined or within thirty days whichever is sooner. [C97, §813; S13,§849-d; SS15,§813; C24, 27,§§6005, 6086; C31, 35,§§6005, 6086, 6610-c48, 6610-c49; C39, §§**6005, 6086, 6610.50, 6610.51**; C46,§§391.32, 395.8, 417.51, 417.52; C50,§§391.32, 391A.14, 391A.15, 395.8, 417.51, 417.52; C54,§§391.32, 391A.17, 391A.19, 395.8, 417.51, 417.52; C58, 62, 66, 71, 73, §§386B.9, 391.32, 391A.17, 391A.19, 395.8, 417.51, 417.52; C75,§384.100]

Referred to in §§384.103, 390.3

384.101 Delegation of authority. When bids or proposals are required to be taken in connection with any public improvement, the governing body may delegate, by ordinance or resolution, to the city manager, clerk, engineer, or other public officer, the duty of receiving and opening bids and announcing the results. The officer shall report the results of the bidding with his recommendations thereon to the governing body at its next meeting. [C66, 71, 73,§368A.1(14); C75,§384.101]

Referred to in §§384.103, 390.3

384.102 When hearing necessary. When the estimated total cost of a public improvement exceeds the sum of ten thousand dollars, the governing body shall not enter into a contract for the improvement until it has held a public hearing on the proposed plans, specifications, and form of contract, and estimated cost for the improvement. Notice of the hearing must be published as provided in section 362.3. At the hearing any interested person may appear and file objections to the proposed plans, specifications, contract, or estimated cost of the improvement. After hearing objections, the governing body shall by resolution enter its decision on the plans, specifications, contract, and estimated cost. [C31, 35,§§6134-d4, 6134-d6; C39,§§**6134.08, 6134.10**; C46, 50, 54, 58, 62, 66, 71, 73,§§397.16, 397.18; C75,§384.102]

Referred to in §§384.103, 390.3
Analogous provision, §§23.2, 23.3

384.103 Bonds authorized.

1. A governing body may authorize, sell, issue, and deliver its bonds whether or not notice and hearing on the plans, specifications, form of contract, and estimated cost for the public improvement to be paid for in whole or in part from the proceeds of said bonds has been given, and whether or not a contract has been awarded for the construction of the improvement. This subsection does not apply to bonds which are payable solely from special assessment levies against benefited property.

2. When emergency repair of a public improvement is necessary and the delay of advertising and a public letting might cause serious loss or injury to the city, the governing body shall, by resolution, make a finding of the necessity to institute emergency proceed-

ings under this section, and shall procure a certificate from a competent registered professional engineer or architect, not in the regular employ of the city, certifying that emergency repairs are necessary.

In that event the governing body may contract for emergency repairs without holding a public hearing and advertising for bids, and the provisions of sections 384.96 to 384.102, do not apply. [C75,§384.103]

Referred to in §390.3
Analogous provision, §23.19

CHAPTER 385

ARMORIES

Repealed by 64GA, ch 1088,§199

CHAPTER 386

SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICTS

Referred to in §376.1

386.1 Definitions.
386.2 Authorization.
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386.14 Independent provisions.

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

1. *"District"* means a self-supported municipal improvement district which may be created and the property therein taxed in accordance with this chapter.

2. *"Improvement"* means any of the following:

a. All or any part of a city enterprise as defined in section 384.24, subsection 2.

b. Public improvements as defined in section 384.37, subsection 1.

c. Those structures, properties, facilities or actions, the acquisition, construction, improvement, installation, reconstruction, enlargement, repair, equipping, purchasing, or taking of which would constitute an essential corporate purpose or general corporate purpose as defined in section 384.24, subsections 3 and 4.

3. *"Self-liquidating improvement"* means any facility or property proposed to be leased in whole or in part to any person or governmental body to further the corporate purposes of the city and:

a. To aid in the commercial development of the district.

b. To further the purposes of the districts or

c. Not substantially reduce the city's property tax base.

4. *"Cost"* of any improvement or self-liquidating improvement includes construction contracts and the cost of engineering, architectural, technical, and legal services, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights-of-way, supervision, inspection, testing, publications, printing and sale of bonds, interest during construction and for not more than six months thereafter, and provisions for contingencies.

5. The use of the conjunctive "and" includes the disjunctive "or" and the use of the disjunctive "or" includes the conjunctive "and", unless the context clearly indicates otherwise.

6. All definitions in section 362.2 are incorporated by reference as a part of this chapter, except as provided in subsection 7.

7. *"Property"* means real property as defined in section 4.1, subsection 8.

8. *"Property owner"* or *"owner"* means the owner of property, as shown by the transfer books in the office of the county auditor of the county in which the property is located. [66GA, ch 1187,§1]

386.2 Authorization. A city which proposes to create a district, to provide for its existence and operation, to provide for improvements or self-liquidating improvements for the district, to authorize and issue bonds for the purposes of the district, and to levy the taxes authorized by this chapter must do so in accordance with the provisions of this chapter. [66GA, ch 1187,§2]

386.3 Establishment of district.

1. Districts may be created by action of the council in accordance with the provisions of this chapter. A district shall:

a. Be comprised of contiguous property wholly within the boundaries of the city. A self-supported municipal improvement district shall not be comprised of any property in districts which are zoned for any use other than commercial or industrial.

b. Be given a descriptive name containing the words "self-supported municipal improvement district".

c. Be comprised of property related in some manner, including but not limited to present or potential use, physical location, condition, relationship to an area, or relationship to present or potential commercial or other activity in an area, so as to be benefited in any manner, including but not limited to a benefit from present or potential use or enjoyment of the property, by the condition, development or maintenance of the district or of any improvement or self-liquidating improvement of the district, or be comprised of property the owners of which have a present or potential benefit from the condition, development or maintenance of the district or of any improvement or self-liquidating improvement of the district.

2. The council shall initiate proceedings for establishing a district upon the filing with its clerk of a petition containing:

a. The signatures of at least twenty-five percent of all owners of property within the proposed district. These signatures must together represent ownership of property with an asssessed value of twenty-five percent or more of the assessed value of all of the property in the proposed district.

b. A description of the boundaries of the proposed district or a consolidated description of the property within the proposed district.

c. The name of the proposed district.

d. A statement of the maximum rate of tax that may be imposed upon property within the district. The maximum rate of tax may be stated in terms of separate maximum rates for the debt service tax, the capital improvement fund tax, and the operation tax, or in terms of a maximum combined rate for all three.

e. The purpose of the establishment of the district, which may be stated generally, or in terms of the relationship of the property within the district or the interests of the owners of property within the district, or in terms of the improvements or self-liquidating improvements proposed to be developed for the purposes of the district, either specific improvements, self-liquidating improvements, or general categories of improvements, or any combination of the foregoing.

f. A statement that taxes levied for the self-supported improvement district operation fund shall be used for the purpose of paying maintenance expenses of improvements or self-liquidating improvements financed pursuant to this Act for a specified length of time, along with any options to renew, if such taxes are to be used for this maintenance purpose.

3. The council shall notify the city planning commission upon the receipt of a petition. It shall be the duty of the city planning commission to make recommendations to the council in regard to the proposed district. The city planning commission shall, with due diligence, prepare an evaluative report for the council on the merit and feasibility of the project. The council shall not hold its public hearings or take further action on the establishment of the district until it has received the report of the city planning commission. In addition to its report, the commission may, from time to time, recommend to the council amendments and changes relating to the project.

If no city planning commission exists, the council shall notify the metropolitan or regional planning commission upon receipt of a petition, and such commission shall have the same duties as the city planning commission set forth in this subsection. If no planning commission exists, the council shall notify the zoning commission upon receipt of a petition, and such commission shall have the same duties as the city planning commission set forth in this subsection. If no planning or zoning commission exists, the council shall call a hearing on the establishment of a district upon receipt of a petition.

4. Upon the receipt of the commission's final report the council shall set a time and place for a meeting at which the council proposes to take action for the establishment of the district, and shall publish notice of the meeting as provided in section 362.3, and the clerk shall send a copy of the notice by certified mail not less than fifteen days before the meeting to each owner of property within the proposed district at the owner's address as shown by the records of the county auditor. If a property is shown to be in the name of more than one owner at the same mailing address, a single notice may be mailed addressed to all owners at that address. Failure to receive a mailed notice is not grounds for objection to the council's taking any action authorized in this chapter.

5. In addition to the time and place of the meeting for hearing on the petition, the notice must state:

a. That a petition has been filed with the council asking that a district be established.

b. The name of the district.

c. The purpose of the district.

d. The property proposed to be included in the district.

e. The maximum rate of tax which may be imposed upon the property in the district.

6. At the time and place set in the notice the council shall hear all owners of property in the proposed district or residents of the city desiring to express their views. The council must wait at least thirty days after the public hearing has been held before it may adopt an ordinance establishing a district which must be comprised of all the property which the council finds has the relationship or whose owners have the interest described in subsection 1, paragraph *"c"*. Property included in the proposed district need not be included in the established district. However, no property may be included in the district that was not included in the proposed district until the council has held another hearing after it has published and mailed the same notice as required in subsections 4 and 5 of this section on the original petition to the owners of the additional property, or has caused a notice of the inclusion of the property to be personally served upon each owner of the additional property, or has received a written waiver of notice from each owner of the additional property.

7. Adoption of the ordinance establishing a district requires the affirmative vote of three-fourths of all of the members of the council, or in cities having but three members of the council, the affirmative vote of two members. However if a remonstrance has been filed with the clerk signed by at least twenty-five percent of all owners of property within the proposed district representing ownership of property with an assessed value of twenty-five percent or more of the assessed value of all of the property in the proposed district, the adoption of the ordinance requires a unanimous vote of the council.

8. The clerk shall cause a copy of the ordinance to be filed in the office of the county recorder of each county in which any property within the district is located.

9. At any time prior to adoption of an ordinance establishing a district, the entire matter of establishing such district shall be withdrawn from council consideration if a petition is filed with its clerk containing the signatures of at least forty percent of all owners of property within the proposed district or signatures which together represent ownership of property with an assessed value of forty percent or more of the assessed value of all property within the proposed district.

10. The adoption of an ordinance establishing a district is a legislative determination that the property within the district has the relationship or its owners have the interest required under subsection 1, paragraph *"c"* and includes all of the property within the area which has that relationship or the owners of which have that interest in the district.

11. Any resident or property owner of the city may appeal the action and the decisions of the council, including the creation of the district and the levying of the proposed taxes for the district, to the district court of the county in which any part of the district is located, within thirty days after the date upon which the ordinance creating the district becomes effective, but the action and decision of the council are final and conclusive unless the court finds that the council exceeded its authority. No action may be brought questioning the regularity of the proceedings pertaining to the establishment of a district or the validity of the district, or the propriety of the inclusion or exclusion of any property within or from the district, or the ability of the city to levy taxes in accordance with the ordinance establishing the district, after thirty days from the date on which the ordinance creating the district becomes effective.

12. The procedural steps for the petitioning and creation of the district may be combined with the procedural steps for the authorization of any improvement or self-liquidating improvement, or the procedural steps for the authorization of any tax, or any combination thereof.

13. The rate of debt service tax referred to in the petition and the ordinance creating the district shall only restrict the amount of bonds which may be issued, and shall not limit the ability of the city to levy as necessary in subsequent years to pay interest and amortize the principal of that amount of bonds.

14. The ordinance creating the district may provide for the division of all of the property within the district into two or more zones based upon a reasonable difference in the relationship of the property or the interest of its owners, whether the difference is qualitative or quantitative. The ordinance creating the district and establishing the different zones may establish a different maximum rate of tax for each zone, or may provide that the rate of tax for a zone shall be a certain set percentage of the tax levied in the zone which is subject to the highest rate of tax. [66GA, ch 1187,§3]

Referred to in §§386.4, 386.6

386.4 Amendments to district.

1. The ordinance creating the district may be amended and property may be added to the district and the maximum rate of taxes referred to in the ordinance may be increased at any time in the same manner and by the

same procedure as for the establishment of a district. All property added to a district shall be subject to all taxes currently and thereafter levied including debt service levies for bonds previously or thereafter issued.

2. Action by the council amending the ordinance creating the district, including adding any eligible property or deleting any property within the district or changing any maximum rate of taxes, shall be by ordinance adopted by an affirmative vote of three-fourths of all of the members of the council, or in cities having but three members of the council, the affirmative vote of two members. However, if a remonstrance has been filed with the clerk signed by at least twenty-five percent of all owners of property within the district and all property proposed to be included representing ownership of property with an assessed value of twenty-five percent or more of the assessed value of all the property in the district and all property proposed to be included, the amending ordinance must be adopted by unanimous vote of the council.

3. The clerk shall cause a copy of the amending ordinance to be filed in the office of the county recorder of each county in which any property within the district as amended is located.

4. At any time prior to council amendment of the ordinance creating the district, the entire matter of amending such ordinance shall be withdrawn from council consideration if a petition is filed with its clerk containing either the signatures of at least forty percent of all owners of property within the district and all property proposed to be included or signatures which together represent ownership of property with an assessed value of forty percent or more of the assessed value of all property within the district and all property proposed to be included.

5. Any resident or property owner of the city may appeal the action or decisions of the council amending the ordinance creating the district, to the district court of the county in which any part of the district, as amended, is located, within fifteen days after the date upon which the ordinance amending the ordinance creating the district becomes effective, but the action and decision of the council are final and conclusive unless the court finds that the council exceeded its authority. No action may be brought questioning the regularity of the proceedings pertaining to the amended ordinance or the validity of the district as amended, or the propriety of the inclusion or exclusion of any property within or from the amended district, or the ability of the city to levy taxes in accordance with the ordinance establishing the district, as amended, after thirty days from the date upon which the amending ordinance becomes effective.

6. All other provisions in section 386.3 shall apply to an amended district and to the ordinance amending the ordinance creating the district with the same effect as they apply to the original district and the ordinance creating the original district. [66GA, ch 1187,§4]

386.5 Dissolution. A district may be dissolved and terminated by action of the council rescinding the ordinance creating the district, and any subsequent ordinances amending the district, by an affirmative vote of three-fourths of all members of the council, or in cities having but three members of the council, the affirmative vote of two members. However, if a remonstrance has been filed with the clerk signed by at least twenty-five percent of all owners of property within the district representing ownership of property with an assessed value of twenty-five percent or more of the assessed value of all the property in the district, the rescission of the ordinance creating the district, and any subsequent ordinances amending the district, requires a unanimous vote of the council.

At any time prior to action of the council rescinding the ordinance creating the district, and any subsequent ordinances amending the district, the entire matter of dissolving a district shall be withdrawn from council consideration if a petition is filed with its clerk containing the signatures of at least forty percent of all owners of property within the district or signatures which together represent ownership of property with an assessed value of forty percent or more of the assessed value of all property within the district. [66GA, ch 1187,§5]

386.6 Improvements. When a city proposes to construct an improvement the cost of which is to be paid or financed under the provisions of this chapter, it must do so in accordance with the provisions of this section, as follows:

1. The council shall initiate proceedings for a proposed improvement upon receipt of a petition signed by at least twenty-five percent of all owners of property within the district representing ownership of property with an assessed value of twenty-five percent or more of the assessed value of all the property in the district.

2. Upon the receipt of such a petition the council shall notify the city planning commission, if one exists, the metropolitan or regional planning commission, if one exists, or the zoning commission, if one exists, in the order set forth in section 386.3, subsection 3. Upon notification by the council, the commission shall prepare an evaluative report for the council on the merit and feasibility of the improvement and carry out all other duties as set forth in section 386.3, subsection 3. If no planning or zoning commission exists, the council shall call a hearing on a proposed improvement upon receipt of a petition.

3. Upon the receipt of the commission's report the council shall set a time and place of meeting at which the council proposes to take action on the proposed improvement and shall

publish and mail notice as provided in section 386.3, subsections 4 and 5.

4. The notice must include a statement that an improvement has been proposed, the nature of the improvement, the source of payment of the cost of the improvement, and the time and place of hearing.

5. At the time and place set in the notice the council shall hear all owners of property in the district or residents of the city desiring to express their views. The council must wait at least thirty days after the public hearing has been held before it may take action to order construction of the improvement. The provisions of section 386.3, subsections 7 and 9 relating to the adoption of the ordinance establishing a district, the requisite vote therefor, the remonstrance thereto and the withdrawal of the entire matter from council consideration apply to the adoption of the resolution ordering the construction of the improvement.

6. If the council orders the construction of the improvement, it shall proceed to let contracts therefor in accordance with chapter 384, division VI.

7. The adoption of a resolution ordering the construction of an improvement is a legislative determination that the proposed improvement is in furtherance of the purposes of the district and that all property in the district will be affected by the construction of the improvement, or that all owners of property in the district have an interest in the construction of the improvement.

8. Any resident or property owner of the city may appeal the action or decisions of the council ordering the construction of the improvement to the district court of the county in which any part of the district is located within thirty days after the adoption of the resolution ordering construction of the improvement, but the action and decisions of the council are final and conclusive unless the court finds that the council exceeded its authority. No action may be brought questioning the regularity of the proceedings pertaining to the ordering of the construction of an improvement, or the right of the city to apply moneys in the capital improvement fund referred to in this chapter to the payment of the costs of the improvement, or the right of the city to issue bonds referred to in this chapter for the payment of the costs of the improvement, or the right of the city to levy taxes which with any other taxes authorized by this Act do not exceed the maximum rate of tax that may be imposed upon property within the district for the payment of principal of and interest on bonds issued to pay the costs of the improvement, after thirty days from the date of adoption of the resolution ordering construction of the improvement.

9. The procedural steps contained in this section may be combined with the procedural steps for the petitioning and creation of the district or the procedural steps for the authorization of any tax or any combination thereof. [66GA, ch 1187,§6]

Referred to in §§386.7, 386.13

386.7 Self-liquidating improvements. When a city proposes to construct a self-liquidating improvement, the cost of which is to be paid or financed under the provisions of this Act, it must do so in accordance with the provisions of this section as follows:

1. Section 386.6, subsections 1 to 5 are applicable to a self-liquidating improvement to the same extent as they are applicable to an improvement and the proceedings initiating a self-liquidating improvement shall be governed thereby.

2. Before the council may order the construction of a self-liquidating improvement, and after hearing thereon, it must find that the self-liquidating improvement and the leasing of a part or the whole of it to any person or governmental body will further the corporate purposes of the city and will:

a. Aid in the commercial development of the district.

b. Further the interests of the district; or

c. Not substantially reduce the city's property tax base.

3. If the council orders the construction of the self-liquidating improvement, any contracts shall be let therefor in accordance with chapter 384 of division VI.

4. The adoption of a resolution ordering the construction of a self-liquidating improvement is a legislative determination that the proposed self-liquidating improvement and the leasing of a part or the whole of it to any person or governmental body will further the corporate purposes of the city and will:

a. Aid in the commercial development of the district.

b. Further the interests of the district; or

c. Not substantially reduce the city's property tax base.

5. A city may lease any or all of a self-liquidating improvement to any person or governmental body.

6. A city may issue revenue bonds payable from the income and receipts derived from the self-liquidated improvement. Chapter 384, division V applies to revenue bonds for self-liquidating improvements and the term "city enterprise" as used in that division shall be deemed to include self-liquidating improvements authorized by this chapter.

7. Any resident or property owner of the city may appeal a decision of the council to order the construction of a self-liquidating improvement or to lease any or all of a self-liquidating improvement to the district court of the county in which any part of the district is located, within thirty days after the adoption of the resolution ordering the self-liquidating improvement, but the action of the council is

final and conclusive unless the court finds that the council exceeded its authority.

8. No action may be brought questioning the regularity of the proceedings pertaining to the ordering of the construction of a self-liquidating improvement after thirty days from the date of adoption of the resolution ordering construction of the self-liquidating improvement. No action may be brought questioning the regularity of the proceedings pertaining to the leasing of any or all of a self-liquidating improvement after thirty days from the date of the adoption of a resolution approving the proposed lease. In addition to the limitation contained in section 384.92, no action may be brought which questions the legality of revenue bonds or the power of the city to issue revenue bonds or the effectiveness of any proceedings relating to the authorization and issuance of revenue bonds relating to a self-liquidating improvement after thirty days from the time the bonds are ordered issued by the city.

9. The procedural steps contained in this section may be combined with the procedural steps for the petitioning and creation of the district. [66GA, ch 1187,§7]

386.8 Operation tax. A city may establish a self-supported improvement district operation fund, and may certify taxes not to exceed the rate limitation as established in the ordinance creating the district, or any amendment thereto, each year to be levied for the fund against all of the property in the district, for the purpose of paying the administrative expenses of the district, which may include but are not limited to administrative personnel salaries, a separate administrative office, planning costs including consultation fees, engineering fees, architectural fees, and legal fees and all other expenses reasonably associated with the administration of the district and the fulfilling of the purposes of the district. The taxes levied for this fund may also be used for the purpose of paying maintenance expenses of improvements or self-liquidating improvements financed pursuant to this chapter for a specified length of time with one or more options to renew if such is clearly stated in the petition which requests the council to authorize construction of the improvement or self-liquidating improvement, whether or not such petition is combined with the petition requesting creation of a district. Parcels of property which are assessed as residential property for property tax purposes are exempt from the tax levied under this section. A tax levied under this section is not subject to the levy limitation in section 384.1. [66GA, ch 1187,§8]

386.9 Capital improvement fund. A city may establish a capital improvement fund for a district and may certify taxes, not to exceed the rate established by the ordinance creating the district, or any subsequent amendment thereto, each year to be levied for the fund against all of the property in the district, for the purpose of accumulating moneys for the financing or payment of a part or all of the costs of any improvement or self-liquidating improvement. However, parcels of property which are assessed as residential property for property tax purposes are exempt from the tax levied under this section. A tax levied under this section is not subject to the levy limitations in sections 384.1 or 384.7. [66GA, ch 1187,§9]

Referred to in §386.12

386.10 Debt service fund. A city shall establish a self-supported municipal improvement district debt service fund whenever any self-supported municipal improvement district bonds are issued and outstanding, other than revenue bonds, and shall certify taxes to be levied against all of the property in the district for the debt service fund in the amount necessary to pay interest as it becomes due and the amount necessary to pay, or to create a sinking fund to pay, the principal at maturity of all self-supported municipal improvement district bonds as authorized in section 386.11, issued by the city. However, parcels of property which are assessed as residential property for property tax purposes are exempt from the tax levied under this section. [66GA, ch 1187, §10]

Referred to in §386.11

386.11 Self-supported municipal improvement district bonds.

1. A city may issue and sell self-supported municipal improvement district bonds at public or private sale payable from taxes which must be levied in accordance with chapter 76. The bonds are payable from the levy of unlimited ad valorem taxes on all the taxable property within the district through the district debt service fund authorized by section 386.10. When self-supported municipal improvement district bonds are issued and taxes are levied in accordance with chapter 76, the taxes shall continue to be levied, until the bonds and interest thereon are paid in full, against all of the taxable property that was included in the district at the time of the issuance of the bonds, regardless of any subsequent removal of any property from the district or the dissolution of the district.

2. The proceeds of the sale of the bonds may be used to pay any or all of the costs of any improvement, or be used to pay any legal indebtedness incurred for the cost of any improvement including bonds or warrants previously issued to pay the costs of an improvement, or bonds may be exchanged for the evidences of such legal indebtedness.

3. Before the council may institute proceedings for the issuance of bonds, it shall proceed in the same manner as is required for

the institution of proceedings for the issuance of bonds for an essential corporate purpose as provided in section 384.25, subsection 2 and all of the provisions of that subsection apply to bonds issued pursuant to this section.

4. A city may issue bonds authorized by this section pursuant to a resolution adopted at a regular or special meeting by an affirmative vote of a majority of the total members to which the council is entitled. The proceeds of a single bond issue may be used for various improvements.

5. The provisions of sections 384.29, 384.30, and 384.31 apply to bonds issued pursuant to this section, except that the bonds shall be designated "municipal improvement district bonds".

6. No action may be brought which questions the legality of bonds issued pursuant to this section or the power of a city to issue the bonds or the effectiveness of any proceedings relating to the authorization and issuance of the bonds after thirty days from the time the bonds are ordered issued by the city. [66GA, ch 1187,§11]

Referred to in §§386.10, 386.12

386.12 Payment for improvements. The costs of improvements may be paid from any of the following sources or a combination thereof:

1. The capital improvement fund referred to in section 386.9.

2. The proceeds of bonds referred to in section 386.11.

3. Any other funds of the city which are legally available to pay all or a portion of the cost of an improvement. The fact that an improvement is initiated under the provisions of this chapter, or any of the costs of an improvement or any part of an improvement are being paid under the provisions of this chapter, shall not preclude the city from paying any costs of an improvement from any fund from which it might otherwise have been able to pay such costs. In addition, and not in limitation of the foregoing, any improvement which constitutes an essential corporate purpose or a general corporate purpose as defined in section 384.24, subsections 3 and 4, may be financed in whole or in part with the proceeds of the issuance of general obligation bonds of the city pursuant to the provisions of chapter 384, division III.

4. Payment for the costs of an improvement may also be made in warrants drawn on any fund from which payment for the improvement may be made. The warrants, unless paid upon presentation, draw interest at a rate not to exceed seven percent per annum from the date of presentation for payment. If such funds are depleted, anticipatory warrants may be issued which do not constitute a violation of section 384.10, even if the collection of taxes or income from the sale of bonds applicable to the improvement is after the end of the fiscal year in which the warrants are issued. If the city arranges for the private sale of anticipatory warrants, they may be sold and the proceeds used to pay the costs of the improvement. Such warrants may be used to pay other persons furnishing services constituting a part of the cost of the improvement. [66GA, ch 1187,§12]

386.13 Parking fee abatements. A city may apply moneys in the operation fund of the district to prepay parking fees at any city parking facility located in or used in conjunction with the district but only after notice and hearing as required by section 386.6. The authority to prepay such fees shall exist only for the period of time set out in the notice to owners and in the resolution of the council authorizing the application of funds for that purpose. Upon the application of sufficient amounts of prepaid fees, the city need not charge individual users of the parking facility. Before adopting a resolution authorizing the application of funds for such purpose, the council must find that the application will further the purposes of the district, including but not limited to increasing the commercial activity in the district. [66GA, ch 1187,§13]

386.14 Independent provisions. The provisions of this chapter with respect to notice, hearing and appeal for the construction of improvements and self-liquidating improvements and the issuance and sale of bonds are in lieu of the provisions contained in chapters 75 and 23, or any other law, unless specifically referred to and made applicable by this chapter. [66GA, ch 1187,§14]

CHAPTER 386A

PUBLIC TRANSPORTATION SUBSIDY

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 386B

MUNICIPAL TRANSIT SYSTEMS

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 386C

URBAN TRANSIT COMPANIES VEHICLE FEES

Repealed by 64GA, ch 1088,§199

CHAPTER 387

VIADUCTS OR UNDERPASSES

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 388

CITY UTILITIES

Referred to in §§362.1, 362.9, 376.1, 384.80, 384.81, 392.1, 392.3

388.1 Definitions.
388.2 Submission to voters.
388.3 Procedure upon approval.
388.4 Utility board.
388.5 Control of tax revenues.
388.6 Discrimination in rates.
388.7 Prior utility board.

388.1 Definitions. As used in this chapter:

1. *"Combined utility system"* means the same as defined in section 384.80.

2. *"Utility board"* or *"board"* means a board of trustees established to operate a city utility, city utilities, or a combined utility system. A single utility board may operate more than one city utility even though such city utilities are not a combined utility system. [C75, §388.1]

388.2 Submission to voters. The proposal of a city to establish, acquire, lease, or dispose of a city utility, except a sanitary sewage system, in order to undertake or to discontinue the operation of the city utility, or the proposal to establish or dissolve a combined utility system, or the proposal to establish or discontinue a utility board, is subject to the approval of the voters of the city, except that a board may be discontinued by resolution of the council when the city utility, city utilities, or combined utility system it administers is disposed of or leased for a period of over five years.

The proposal may be submitted to the voters at any city election by the council on its own motion. Upon receipt of a valid petition as defined in section 362.4, requesting that a proposal be submitted to the voters, the council shall submit the proposal at the next regular city election.

A proposal for the establishment of a utility board must specify a board of either three or five members.

If a majority of those voting for and against the proposal approves the proposal, the city may proceed as proposed.

If a majority of those voting for and against the proposal does not approve the proposal, the same or a similar proposal may not be submitted to the voters of the city for at least four years from the date of the election at which the proposal was defeated. [C73,§471; C97,§§720, 721; S13,§§720, 721; C24, 27, 31, 35, 39,§§**6131–6133, 6144**; C46, 50, 54, 58,§§397.5–397.7, 397.29; C62, 66, 71, 73,§§397.5–397.7, 397.29, 397.43; C75, §388.2]

388.3 Procedure upon approval. If a proposal to establish a utility board receives a favorable majority vote, the mayor shall appoint the board members, as provided in the proposal, subject to the approval of the council. The council shall by resolution provide for staggered six-year terms for, and shall set the compensation of, board members.

A board member appointed to fill a vacancy occurring by reason other than the expiration of a term is appointed for the balance of the unexpired term.

A public officer or a salaried employee of the city may not serve on a utility board. [C97, §747; S13,§§747-a, -b; C24, 27,§§6147, 6148, 6157; C31, 35,§§6147, 6148, 6157, 6943-c1,-c2,-c3; C39, §§**6147, 6148, 6157, 6943.001–6943.003**; C46, 50, 54, 58, 62, 66, 71, 73,§§397.32, 397.33, 398.8, 420.297–420.299; C75,§388.3]

388.4 Utility board. The title of a utility board must be appropriate to the city utility, city utilities, or combined utility system administered by the board. A utility board may be a party to legal action. A utility board may exercise all powers of a city in relation to the city utility, city utilities, or combined utility

system it administers, with the following exceptions:

1. A board may not certify taxes to be levied, pass ordinances or amendments, or issue general obligation or special assessment bonds.

2. The title to all property of a city utility or combined utility system must be held in the name of the city, but the utility board has all the powers and authorities of the city with respect to the acquisition by purchase, condemnation, or otherwise, lease, sale, or other disposition of such property, and the management, control, and operation of the same, subject to the requirements, terms, covenants, conditions, and provisions of any resolutions authorizing the issuance of revenue bonds, pledge orders, or other obligations which are payable from the revenues of the city utility or combined utility system, and which are then outstanding.

3. A board shall make to the council a detailed annual report, including a complete financial statement.

4. Immediately following a regular or special meeting of a utility board, the secretary shall prepare a condensed statement of the proceedings of the board and cause the statement to be published in a newspaper of general circulation in the city. The statement must include a list of all claims allowed, showing the name of the person or firm making the claim, the reason for the claim, and the amount of the claim. Salary claims must show the gross amount of the claim except that salaries paid to persons regularly employed by the utility, for services regularly performed by them, must be published once annually showing the gross amount of the salary. In cities having more than one hundred fifty thousand population the utility board shall each month prepare in pamphlet form the statement herein required for the preceding month, and furnish copies to the city library, the daily newspapers of the city, the city clerk, and to persons who apply at the office of the secretary, and the pamphlet shall constitute publication as required. Failure by the secretary to make publication is a misdemeanor. [S13,§§1056-a7,-c24; C24,§§5678, 6149; C27, 31, 35,§§5676-a2, 6149, 6159-a1; C39,§§**5676.2, 6149, 6159.1**; C46, 50, §§363.52, 397.34, 398.11; C54, 58, 62, 66, 71, 73, §§368A.7, 368A.24, 397.34, 398.11; C75,§388.4]

388.5 Control of tax revenues. A utility board shall control tax revenues allocated to the city utility, city utilities, or combined utility system it administers and all moneys derived from the operation of the city utility, city utilities, or combined utility system, the sale of utility property, interest on investments, or from any other source related to the city utility, city utilities, or combined utility system.

All city utility moneys received must be held in a separate utility fund, with a separate account or accounts for each city utility or combined utility system. If a board administers a municipal utility or combined utility system, moneys may be paid out of that utility account only at the direction of the board. [C97,§748; C13,§§741-b, 748; C24, 27, 31, 35, 39, §§**5676, 6158**; C46, 50,§§363.50, 398.9; C54, 58, 62, 66, 71, 73,§§368A.6, 398.9; C75,§388.5]

388.6 Discrimination in rates. A city utility or a combined utility system may not provide use or service at a discriminatory rate, except to the city or its agencies, as provided in section 384.91. [C75,§308.6]

388.7 Prior utility board. A utility board functioning on the effective date of the city code shall continue to function until discontinued as provided in this chapter, and has all the powers granted in this chapter.

Nothing in the city code shall be construed to allow the abrogation of any franchise. [C75,§388.7]

CHAPTER 389

STREETS AND PUBLIC GROUNDS

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 390

JOINT ELECTRICAL UTILITIES

Referred to in §376.1, 476.23
Chapter 390, Code 1973, repealed by 64GA, ch 1088,§199
See note under Title XV

390.1 Definitions.
390.2 Additional power.
390.3 Hearing—exception to general statutes.
390.4 Undivided joint interest.
390.5 Financing.
390.6 Construction.
390.7 Construction of amendments.

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

1. *"City"* means a municipal corporation,* but not including a county, township, school district or special purpose district or authority.

2. *"City utility"* has the same meaning provided in section 362.2, subsection 22, and includes a "combined utility system", as defined in section 384.80, which operates facilities for the generation or transmission of electric energy.

3. *"Joint facility"* means all property necessary or useful for generating, purchasing, obtaining by exchange or otherwise acquiring, or transmitting electric power and energy, which is owned and operated pursuant to a joint agreement.

4. *"Joint agreement"* means an agreement of participants pursuant to the provisions of this chapter. A joint agreement may be one or more documents, and may be entitled joint agreement, agreement, contract or otherwise.

5. *"Electric co-operative"* means a co-operative association which owns and operates property for generating, purchasing, obtaining by exchange or otherwise acquiring, or transmitting electric power and energy.

6. *"Participant"* means a city, electric co-operative or privately owned utility company which is a party to a joint agreement.

7. *"Governing body"* means the public body which by law is charged with the management and control of a city utility as defined in section 384.80, subsection 4.

8. *"Or"* includes the conjunctive "and" and "and" includes the disjunctive "or", unless the context clearly indicates otherwise.

9. *"Acquisition"* of a joint facility includes the purchase, lease, construction, reconstruction, extension, remodeling, improvement, repair, and equipping of the joint facility.

10. *"Own and ownership"* in the case of transmission facilities, including substations and associated facilities, which are located in Iowa, may include the right to the use of an amount of the capacity thereof, if the joint agreement so provides. [C75,§390.1; 66GA, ch 199,§1, ch 1188,§1]

Referred to in §476.22

*Including corporations formerly designated as towns, see 65GA, ch 1087,§32

390.2 Additional power. In addition to other powers conferred by the Constitution and laws of this state, any city having established a utility which operates an existing electric generating facility or distribution system may enter into and carry out joint agreements with other participants for the acquisition of ownership of an undivided interest in a joint facility and for the planning, financing, operation and maintenance of the joint facility. [C75,§390.2; 66GA, ch 199, §2]

390.3 Hearing—exception to general statutes. Before a city may enter into or amend a joint agreement, the governing body shall adopt a proposed form of agreement and give notice and conduct a public hearing on the agreement in the manner provided by sections 23.1 to 23.11, which action shall be subject to appeal as provided in chapter 23.

However, in the performance of a joint agreement, the governing body shall not be subject to statutes generally applicable to public contracts, including hearings on plans, specifications, form of contracts, costs, notice and competitive bidding required under chapter 23 or chapter 397 of the 1973 Code or sections 384.95 to 384.103, unless all parties to the joint agreement are cities located within the state of Iowa. [C75,§390.3; 66GA, ch 199,§3]

390.4 Undivided joint interest. In substance, a joint agreement shall:

1. Provide that each participant shall own an undivided interest in the joint facility, the interest being equal to the percentage of the money furnished, value of property furnished, or services rendered by each participant toward the total cost of the joint facility, and that each participant shall own and control a like percentage of the output of the joint facility.

2. Provide that each participant shall undertake to finance its portion of the cost of planning, acquisition, operation, and maintenance of the joint facility.

3. Provide that each participant in the ownership of the joint facility shall bear all taxes, if any, chargeable to its ownership of the joint facility under statutes now or hereafter in effect.

4. Provide for the planning, financing, acquisition, operation and maintenance of the joint facility, or for any one or more of said purposes, including the cost to be contributed by each participant.

5. Provide for a uniform method of determining and allocating operation and maintenance expenses of the joint facility.

6. Provide that a participant may be liable only for its own acts with regard to the joint facility, or as principal for the acts of the manager in proportion to its percentage of ownership, and shall not be jointly or severally liable for the acts, omissions or obligations of other participants.

7. Provide that the undivided interest of a participant in the joint facility may not be charged directly or indirectly with a debt or obligation of another participant or be subject to any lien as a result thereof.

8. Provide for the management and operation of the affairs of the joint facility, and the indemnification of the manager, which may include a provision that the joint facility shall be managed and operated by one or more of the participants.

9. Provide that no participant may withdraw from the joint agreement during its duration so long as obligations payable in whole or in part from revenues derived from the operation of the joint facility, and issued by a city, are outstanding, unless prior consent is first granted by each of the other participants either in the joint agreement or otherwise.

10. Provide for the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property and assets upon partial or complete termination. The provisions of the joint agreement for disposition of the joint facilities shall not be subject to the statutes limiting or prescribing procedure for the sale of city-owned properties.

11. Provide for the duration of the agreement. An agreement authorized by this chapter shall not be limited as to period of existence, except as may be limited by the terms of the agreement itself.

12. Include other provisions as the parties may deem necessary or appropriate with respect to the conduct of the participants, the operation or ownership of the joint facility, or the settlement of disputes. [C75,§390.4; 66GA, ch 199,§4]

390.5 Financing. A city may finance its share of the cost of a joint facility by the use of any method of financing available for city utilities under the statutes of this state, for the financing of electric generation or transmission facilities to be owned by a city in their entirety, including but not limited to the provisions of chapters 397 and 407, Code 1973, and sections 384.23 to 384.36 and sections 384.80 to 384.94 as applicable. Revenues derived by a city utility from its share of ownership or operation of a joint facility shall be deemed to be revenues of the city utility for all purposes including the issuance and payment of bonds secured by or payable from the revenues of a city utility. A joint agreement shall be deemed payable from revenues or revenue bonds of a city utility in the absence of provision to the contrary or a referendum approving the issuance of general obligation bonds. [C75,§390.5; 66GA, ch 199,§5]

390.6 Construction. This chapter being necessary for the public health, public safety and general welfare, shall be liberally construed to effectuate its purposes. This chapter shall be construed as providing a separate and independent method for accomplishing its purposes, and except as provided or necessarily implied shall not be construed as subject to or an amendment of any other law. In particular, without limiting the generality of the foregoing, no restrictions or requirements contained in this chapter shall be construed as applying to bonds issued pursuant to the provisions of chapter 419. Nothing contained in this chapter shall be construed to limit the powers and authority of privately owned utility companies or electric co-operatives under any other law. [C75,§390.6]

390.7 Construction of amendments. The provisions of 66GA, chapter 199 are retroactive in application to all joint agreements entered into and executed prior to July 1, 1975, under this chapter, on behalf of cities which, on the date of executing the agreements, operated existing electric generating or distribution facilities. However, all such joint agreements which complied with the provisions of this chapter prior to amendment by 66GA, chapter 199, are also in full force and effect according to their terms, and are not rendered invalid in any respect by any provision of 66GA, chapter 199. [66GA, ch 199,§6]

CHAPTER 390A

OFF-STREET PARKING BENEFITED DISTRICTS

Repealed by 64GA, ch 1088,§199

CHAPTER 391

STREET IMPROVEMENTS, SEWERS AND SPECIAL ASSESSMENTS

Repealed by 64GA, ch 1088,§199

CHAPTER 391A

STREET IMPROVEMENTS AND SEWERS (ALTERNATIVE METHOD)

Repealed by 64GA, ch 1088,§199

CHAPTER 392

ADMINISTRATIVE AGENCIES

Referred to in §§362.1, 362.2, 362.9, 376.1
Chapter 392, Code 1973, repealed by 64GA, ch 1088,§199
See note under Title XV

392.1 Establishment by ordinance.
392.2 Pledging credit or taxing power prohibited.
392.3 Contracts reviewable by council.
392.4 Joint action.
392.5 Library board.
392.6 Hospital trustees.
392.7 Prior agencies.

392.1 Establishment by ordinance. If the council wishes to establish an administrative agency, it shall do so by an ordinance which indicates the title, powers, and duties of the agency, the method of appointment or election, qualifications, compensation, and term of members, and other appropriate matters relating to the agency. The title of an administrative agency must be appropriate to its function. The council may not delegate to an administrative agency any of the powers, authorities, and duties prescribed in division V of chapter 384 or in chapter 388, except that the council may delegate to an administrative agency power to establish and collect charges, and disburse the moneys received for the use of a city facility, including a city enterprise, as defined in section 384.24, so long as there are no revenue bonds or pledge orders outstanding which are payable from the revenues of the city enterprise. Except as otherwise provided in this chapter, the council may delegate rule-making authority to the agency for matters within the scope of the agency's powers and duties, and may prescribe penalties for violation of agency rules which have been adopted by ordinance. Rules governing the use by the public of any city facility must be made readily available to the public. [C75, §392.1; 66GA, ch 197,§33, ch 203,§39]

392.2 Pledging credit or taxing power prohibited. An administrative agency may not pledge the credit or taxing power of the city. [C75,§392.2]

392.3 Contracts reviewable by council. Unless otherwise stated in the ordinance establishing the agency, contracts and agreements entered into by administrative agencies are subject to review and approval by the council, but when so approved and to the extent such contracts and agreements are otherwise valid by law, are valid and not voidable by subsequent actions of the city even if the administrative agency is dissolved, but no such contract or agreement may conflict with the provisions of division V of chapter 384 or chapter 388, or any action taken pursuant to the provisions of the same. [C75,§392.3]

392.4 Joint action. Subject to approval by the council, an administrative agency may take action jointly with other public or private agencies as provided in chapter 28E. [C75,§392.4]

392.5 Library board. A city library board of trustees functioning on the effective date of the city code shall continue to function in the same manner until altered or discontinued as provided in this section.

In order for the board to function in the same manner, the council shall retain all applicable ordinances, and shall adopt as ordinances all applicable state statutes repealed by 64GA, chapter 1088.

A library board may accept and control the expenditure of all gifts, devises, and bequests to the library.

A proposal to alter the composition, manner of selection, or charge of a library board, or to replace it with an alternate form of administrative agency, is subject to the approval of the voters of the city.

The proposal may be submitted to the voters at any city election by the council on its own motion. Upon receipt of a valid petition as defined in section 362.4, requesting that a proposal be submitted to the voters, the council shall submit the proposal at the next regular city election. A proposal submitted to the voters must describe with reasonable detail the action proposed.

If a majority of those voting approves the proposal, the city may proceed as proposed.

If a majority of those voting does not approve the proposal, the same or a similar proposal may not be submitted to the voters of the city for at least four years from the date of the election at which the proposal was defeated. [C97,§§728, 729; S13,§729; SS15,§728; C24, 27, 31, 35, 39,§§5851, 5858; C46, 50, 54, 58, 62, 66, 71, 73,§§378.3, 378.10; C75,§392.5]

392.6 Hospital trustees. If a hospital or health care facility is established by a city, the city shall by ordinance provide for the election, at a general, city, or special election, of three trustees, whose terms of office shall be six years; but at the first election, three shall be elected and hold their office, respectively, for two, four, and six years, and they shall by lot determine their respective terms. A board of trustees elected pursuant to this section shall serve as the sole and only board of trustees for any and all institutions established by a city as provided for in this section.

Cities maintaining an institution as provided for in this section which have a board of trustees consisting of three members may by ordinance increase the number of members to five and provide for the appointment of one of the additional members until the next succeeding general or city election, and for the appointment of the other additional member until the second succeeding general or city election. Thereafter, the terms of office of such additional members shall be six years.

The trustees shall within ten days after their election qualify by taking the oath of office, and organize as a board by the election of one of their number as chairman and one as secretary, but no bond shall be required of them.

The official serving as treasurer of the city shall be the treasurer of the board of trustees, and shall receive and disburse all funds under the control of the board as ordered by it, but shall receive no additional compensation for his services. The treasurer shall give bond in a form and amount as determined by the board in its discretion.

No trustee shall receive any compensation for his services performed, but he may receive reimbursement for any cash expenses actually made for personal expenses incurred as trustee, but an itemized statement of all expenses and moneys paid out shall be made under oath by each of the trustees and filed with the secretary and allowed only by the affirmative vote of the full board.

The board of trustees shall be vested with authority to provide for the management, control, and government of the city hospital or health care facility established as permitted by this section, and shall provide all needed rules for the economic conduct thereof and shall annually prepare a condensed statement of the total receipts and expenditures for the hospital or health care facility and cause the same to be published in a newspaper of general circulation in the city in which the hospital or health care facility is located. In the management of the hospital or health care facility no discrimination shall be made against practitioners of any school of medicine recognized by the laws of the state.

As a part of the board's authority it may accept property by gift, devise, bequest or otherwise; and, if the board deems it advisable, may, at public sale, sell or exchange any property so accepted upon a concurring vote of a majority of all members of the board of trustees, and apply the proceeds thereof, or property received in exchange therefor, to any legitimate hospital or health care facility purpose.

The trustees may in their discretion establish a fund for depreciation as a separate fund. Said funds may be invested in United States government bonds and when so invested the accumulation of interest on the bonds so purchased shall be used for the purposes of the depreciation fund; an investment when so made shall remain in United States government bonds until such time as in the judgment of the board of trustees it is deemed advisable to use the funds for hospital or health care facility purposes.

Boards of trustees of institutions provided for in this section are granted all of the powers and duties necessary for the management, control and government of the institutions, specifically including but not limited to any applicable powers and duties granted boards of trustees under other provisions of the Code relating to hospitals, nursing homes, and custodial homes irrespective of the chapter of the Code under which such institutions are established, organized, operated or maintained. [S13,§§741-o,-p; C24,§§5867–5871; C27, 31, 35, §§5867, 5867-a1, 5868–5871; C39,§§**5867, 5867.1, 5868–5871**; C46, 50, 54, 58, 62, 66,§§380.1–380.6; C71, 73,§§380.1–380.6, 380.16; C75,§392.6]

392.7 Prior agencies. Except as otherwise provided in this chapter, an administrative agency established by a city shall continue with the same powers and duties until altered or discontinued as provided in this section. The council may by ordinance reduce or increase an administrative agency's power and duties, or may transfer powers and duties from one agency to another. The council may discontinue an administrative agency by adopting a resolution proposing the action, and publishing notice as provided in section 362.3, of the resolution and of a date, time and place of a public hearing on the proposal, and may discontinue the agency by ordinance or amendment not sooner than thirty days following the hearing. [C97,§850; S13,§§679-m, 741-w1, 850-a, 1056-a6d; C24,§§5685, 5787, 5832, 5845, 5901, 6827; C27,§§5685, 5787, 5829-a1, 5832, 5845, 5866-a2, 5901, 6827; C31, 35,§§5685, 5787, 5813-d2, 5829-a1, 5832, 5845, 5866-a2, 5901, 6827; C39,§§**5685, 5787, 5813.2, 5829.01, 5832, 5845, 5866.02, 5901, 6827**; C46, 50,§§364.1, 370.1, 371.2, 373.1, 374.3, 377.2, 379.2, 384.2, 420.160; C54,§§364.1, 370.1, 371.2, 373.1, 374.3, 374A.1, 377.2, 379.2, 384.2, 420.160; C58, 62, 66, 71, 73,§§364.1, 370.1, 371.2, 373.1, 374.3, 374A.1, 377.2, 379.2, 384.2, 386B.6, 420.160; C75,§392.7]

CHAPTER 393

SEWER RENTALS

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 394

ZOOLOGICAL GARDENS

Chapter 394, Code 1973, repealed by 64GA, ch 1088,§199
See note under Title XV
See also §384.24(2, c)

394.1 Authority to issue bonds—taxes.
394.2 Question submitted to voters.
394.3 Tax for operating zoo.
394.4 Contracts with other cities—election.

394.1 Authority to issue bonds — taxes. Cities are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to pay the cost of opening, establishing, constructing, improving, extending or remodeling of a zoo or zoological garden and to construct, reconstruct or repair any such improvement and to pay the cost of land needed for any of said purposes.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76, and said bonds shall be payable through the debt service fund in not more than twenty years, and bear interest at a rate not exceeding seven percent per annum, and shall be of such form as the city council shall by resolution provide, but no city shall become indebted in excess of five percent of the actual value of the taxable property within said city, as shown by the last preceding state and county tax lists. The indebtedness incurred for the purpose provided in this section shall not be considered an indebtedness incurred for general or ordinary purposes.

This section shall be construed as granting additional power without limiting the power already existing in cities.

The provisions of this section shall be applicable to all municipal corporations regardless of form of government or manner of incorporation. [C75,§394.1]

394.2 Question submitted to voters. It shall not be necessary to submit to the voters the proposition of issuing bonds for refunding purposes, but prior to the issuance of bonds for other purposes the council shall submit to the voters of the city at a general election or a regular municipal election the proposition of issuing the bonds. Notice of the election on the proposition of issuing bonds shall be published as required by section 49.53. The notice shall also state whether or not an admission fee is to be charged by the zoo or zoological gardens.

Bonds issued pursuant to the provisions of this chapter shall be sold by the council in the manner prescribed by chapter 75; however, refunding bonds may either be sold and the proceeds applied to the payment of the bonds to be refunded, or the refunding bonds may be issued in exchange for the bonds being refunded upon their surrender and cancellation. [C75,§394.2; 66GA, ch 81,§153]

394.3 Tax for operating zoo. A city establishing or having established a zoo or zoological garden may authorize not to exceed a levy of twenty-seven cents per thousand dollars of assessed valuation on all taxable property within the corporation for the purpose of paying the costs of operating, maintaining and managing a zoo or zoological garden. The levy shall be subject to cumulative levy limitations otherwise provided by law unless said levy shall have been submitted to and approved by the voters of said city. [C75,§394.3; 66GA, ch 67, §67]

394.4 Contracts with other cities—election. Contracts may be made between any city establishing or having established a zoo or zoological garden and any other city or county, but a county may contract only with respect to residents outside of any city, for the use of such zoo or zoological garden or any extension service thereof by its residents, and for the levy of a tax in support thereof. Such contracts shall provide for the rate of tax to be levied during the term thereof, not exceeding twenty-seven cents per thousand dollars of assessed valuation. Said contracts may be submitted to the voters of either city and shall not be subject to termination if approved by the voters of both parties.

If not so approved, such contracts may be modified by mutual consent or may be terminated by the voters of either party thereto.

Any such tax shall be subject to cumulative levy limitations applicable generally to the contracting parties unless the contract shall have been approved by the voters.

Any election held hereunder may be held upon notice and in any manner provided by law applicable to the contracting party with respect to elections upon special public propositions; provided that it shall not be necessary to set out the contract provisions in full as a part of the ballot. [C75,§394.4; 66GA, ch 67, §67]

CHAPTER 395

PROTECTION FROM FLOODS

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 396

BONDS AND CERTIFICATES FOR STREET IMPROVEMENTS AND SEWERS

Repealed by 64GA, ch 1088,§199

CHAPTER 397

HEATING PLANTS, WATER OR GAS WORKS AND ELECTRIC PLANTS

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 397A

PURCHASE-LEASE AGREEMENTS FOR CONSTRUCTION OF FEDERAL BUILDINGS

Repealed by 64GA, ch 1088,§199

CHAPTER 398

PURCHASE AND CONSTRUCTION OF WATERWORKS IN CERTAIN CITIES

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 398A

WATERWORKS IN CITIES OR TOWNS WITH INSTITUTIONS UNDER BOARD OF REGENTS

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 399

PURCHASE OF WATERWORKS BY CITIES OF FIFTY THOUSAND OR OVER

Repealed by 64GA, ch 1088,§199

CHAPTER 400

CIVIL SERVICE

Referred to in §§19A.16, 28E.25, 137.6, 321B.2
Applicable to all cities
Civil service for deputy sheriffs, see ch 341A

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400.1 Appointment of commission. In cities having a population of eight thousand or over, having a paid fire department or a paid police department, the mayor, one year after each regular municipal election, with the approval of the council, shall appoint three civil service commissioners who shall hold office, one until the first Monday in April of the second year, one until the first Monday in April of the fourth year, and one until the first Monday in April of the sixth year after such appointment, whose successors shall be appointed for a term of six years. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5689**; C46, 50, 54, 58, 62, 66, 71, 73,§365.1; C75,§400.1]

40ExGA, SF 155,§1, editorially divided

400.2 Qualifications. The commissioners must be citizens of Iowa, eligible electors as defined in chapter 39, and residents of the city for more than five years next preceding their appointment, and shall serve without compensation. No person while on said commission, shall hold or be a candidate for any office of public trust. Provided, this section notwithstanding, when a human rights commission has been established by any city, the director thereof shall ex officio be a member, without vote, of the civil service commission. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5690**; C46, 50, 54, 58, 62, 66, 71, 73,§365.2; C75,§400.2; 66GA, ch 1189,§1]

400.3 Optional appointment of commission —abolishing commission. In cities having a population of less than eight thousand, the city council may, by ordinance, adopt the provisions of this chapter in which case it shall either appoint such commission or provide, by ordinance, for the exercise of the powers and performance of the duties of the commission by the council. Where the city council exercises the powers of the commission the term "commission" as used in this chapter shall mean the city council.

Whenever the city council appoints a commission, it may, by ordinance, abolish it, and the commission shall stand abolished sixty days from the date of the ordinance and the powers and duties of the commission shall revert to the city council except whenever a city having a population of less than eight thousand provides for the appointment of a civil service commission, it may by ordinance abolish such office, but said ordinance shall not take effect until it has been submitted to the voters at a regular municipal election and approved by a majority of the voters at such election. The ordinance shall be published once each week for two consecutive weeks preceding the date of said election in a newspaper published in and having a general circulation in said city. In the event there is no newspaper published in such city, publication may be made in any newspaper having general circulation in the county. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5691**; C46, 50, 54, 58, 62, 66, 71, 73,§365.3; C75,§400.3]

400.4 Chairman—clerk—records. The chairman of the commission for each biennial period shall be the member whose term first expires. In cities having a population of more than seventy-five thousand the commission shall appoint an employee in the city clerk's office who is employed under the provisions of this chapter to be clerk of the commission and his duties as such clerk shall have precedence over any additional duties of his regular employment. In all other cities the city clerk shall be clerk of the commission.

The civil service commission shall keep a record of all its meetings and also a complete individual service record of each civil service employee which record shall be permanent and kept up to date.

When duly certified by the clerk of the commission copies of all records and entries or papers pertaining to said record shall be admissible in evidence with the same force and effect as the originals. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5692**; C46, 50, 54, 58, 62, 66, 71, 73, §365.4; C75,§400.4]

400.5 Rooms and supplies. The council shall provide suitable rooms in which the commission may hold its meetings and supply the commission with all necessary equipment and a qualified shorthand reporter to enable it properly to perform its duties. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5693**; C46, 50, 54, 58, 62, 66, 71, 73,§365.5; C75,§400.5]

400.6 Applicability—exceptions.

1. The provisions of this chapter shall apply to all appointive officers and employees, including former deputy clerks of the municipal court who became deputies of the district court clerks, in cities under any form of government having a population of more than fifteen thousand except:

a. City clerk, deputy city clerk, city solicitor, assistant solicitor, assessor, treasurer, auditor, civil engineer, health physician, chief of police, assistant chief of police in departments numbering more than two hundred fifty members, market master, city manager and administrative assistants to the manager.

b. Laborers whose occupation requires no special skill or fitness.

c. Election officials.

d. Secretary to the mayor or to any commissioner.

e. Commissioners of any kind.

f. Casual employees.

2. In all other cities under any form of government, the provisions of this chapter shall apply only to members of the police and fire departments, except the following persons connected with such departments:

a. Chiefs of police.

b. Janitors, clerks, stenographers, secretaries.

c. Casual employees. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5694**; C46, 50, 54, 58, 62, 66, 71, 73, §365.6; C75,§400.6]

400.7 Preference by service. Any person regularly serving in or holding any position in the police or fire department, or a nonsupervisory position in any other department, which is within the scope of this chapter on April 16, 1937*, in any city, who has then five years of service in a position or positions within the scope of this chapter, shall retain his position and have full civil service rights therein.

Persons in nonsupervisory positions, appointed without competitive examination, who have served less than five years in such position or positions on said date, shall submit to examination by the commission and if successful in passing such examination they shall retain their positions in preference to all other applicants and shall have full civil service rights therein, but if they fail to pass such examination they shall be replaced by successful applicants.

Provided, that persons who have heretofore been certified by the commission as eligible for appointment to any position in which they are regularly serving on said date, and persons regularly serving on said date in any position with civil service rights by reason of long and efficient service rendered prior to October, 1924, shall retain such position and shall have full civil service rights therein without further examination. Other persons regularly serving in supervisory positions in departments other than police or fire on April 16, 1937*, shall be eligible for appointment to said positions after qualifying in competitive examination.

Provided, further, however, that nothing in this section shall apply to any person temporarily acting in a position regularly held by another, or in a vacancy, except to establish his rights in his own regular position. [SS15, §1056-a32; C24, 27, 31, 35, 39,§**5695**; C46, 50, 54, 58, 62, 66, 71, 73,§365.7; C75,§400.7]

*47GA, ch 156

400.8 Original entrance examination — appointments.

1. The commission shall at such times as shall be found necessary under such rules, including minimum and maximum age limits, as shall be prescribed and published in advance by the commission and posted in the city hall, hold examinations for the purpose of determining the qualifications of applicants for positions under civil service, other than promotions, which examinations shall be practical in character and shall relate to such matters as will fairly test the mental and physical ability of the applicant to discharge the duties of the position to which the applicant seeks appointment. Provided, however, that such physical examination of applicants for appointment to the positions of policeman, policewoman, police matron or firefighter shall be held under the direction of and as specified by the boards of trustees of the fire or police retirement systems established by section 411.5. An applicant shall not be discriminated against on the basis of height, weight, sex, or race in determining physical or mental ability of the applicant. Reasonable rules relating to strength, agility, and general health of applicants shall be prescribed. The costs of the physical examination required under this subsection shall be paid from the trust and agency fund of the city.

2. The commission shall establish the guidelines for conducting the examinations under subsection 1 of this section. It may prepare and administer the examinations or may hire persons with expertise to do so if the commission approves the examinations. It may also hire persons with expertise to consult in the preparation of such examinations if the persons so hired are employed to aid personnel of the commission in assuring that a fair examination is conducted. A fair examination shall explore the competence of the applicant in the particular field of examination.

3. All appointments to such positions shall be conditional upon a probation period of not to exceed six months, and in the case of police patrolmen and firemen a probation period not to exceed twelve months, during which time the appointee may be removed or discharged from such position by the appointing person or body without the right of appeal to the commission. A person removed or discharged during a probationary period shall, at the time of discharge, be given a notice in writing

stating the reason or reasons for the dismissal. A copy of such notice shall be promptly filed with the commission. Continuance in the position after the expiration of such probationary period shall constitute a permanent appointment. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5696**; C46, 50, 54, 58, 62, 66, 71, 73,§365.8; C75,§400.8; 66GA, ch 200,§1, ch 1189,§2]

400.9 Promotional examinations — promotions.

1. The commission shall, at such times as shall be found necessary, under such rules as shall be prescribed and published in advance by the commission, and posted in the city hall, hold competitive promotional examinations for the purpose of determining the qualifications of applicants for promotion to a higher grade under civil service, which examinations shall be practical in character, and shall relate to such matters as will fairly test the ability of the applicant to discharge the duties of the position to which he seeks promotion.

2. The commission shall establish guidelines for conducting the examinations under subsection 1. It may prepare and administer the examinations or may hire persons with expertise to do so if the commission approves the examinations and if the examinations apply to the position in the city for which the applicant is taking the examination. It may also hire persons with expertise to consult in the preparation of such examinations if the persons so hired are employed to aid personnel of the commission in assuring that a fair examination is conducted. A fair examination shall explore the competence of the applicant in the particular field of examination.

3. Hereafter, all vacancies in the civil service grades above the lowest in each shall be filled by promotion of subordinates when such subordinates qualify as eligible, and when so promoted, they shall hold such position with full civil service rights in the position. If, however, a current employee does not pass one of two successive promotional examinations and otherwise qualify for the vacated position, an entrance examination for the vacated position may be used to fill it. [C31, 35, §5696-d1; C39,§**5696.1**; C46, 50, 54, 58, 62, 66, 71, 73,§365.9; C75,§400.9; 66GA, ch 200,§2]

400.10 Preferences. In all examinations and appointments under the provisions of this chapter, other than promotions and appointments of chief of the police department and chief of the fire department, honorably discharged men and women from the military or naval forces of the United States in any war in which the United States was or is now* engaged, including the Philippine Insurrection, China Relief Expedition and the Korean Conflict at any time between June 25, 1950 and January 31, 1955, both dates inclusive, and the Vietnam Conflict beginning August 5, 1964, and ending on the date the armed forces of the United States are directed by formal order of the government of the United States to cease hostilities, both dates inclusive, and who are citizens and residents of this state, shall be given the preference, if otherwise qualified.

For the purposes of this section World War II shall be from December 7, 1941, to December 31, 1946, both dates inclusive. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5697**; C46, 50, 54, 58, 62, 66, 71, 73,§365.10; C75,§400.10; 66GA, ch 76,§11]

*Act effective July 4, 1947
Soldiers preference law, ch 70

400.11 Names certified—temporary appointment. The commission shall, within ninety days after the beginning of each competitive examination for original appointment or for promotion, certify to the city council a list of the names of the ten persons who qualify with the highest standing as a result of each examination for the position they seek to fill, or such number as may have qualified if less than ten, in the order of their standing, and all newly created offices or other vacancies in positions under civil service which shall occur before the beginning of the next examination for such positions shall be filled from said lists, or from the preferred list existing as provided for in case of diminution of employees, within thirty days. Preference for temporary service in civil service positions shall be given those on such lists.

In cities of fifty thousand or more population, the commission shall hold in reserve a second list of the ten persons next highest in standing, in order of their grade, or such number as may qualify and, thereafter, if the list of ten persons provided in the first paragraph hereof be exhausted within one year, may certify such second list of persons to the council as eligible for appointment to fill such vacancies as may exist.

Except where such preferred list exists, persons on the certified eligible list for promotion shall hold preference for promotion two years following the date of certification, after which said lists shall be canceled and no promotion to such grade shall be made until a new list has been certified eligible for promotion.

When there is no such preferred list or certified eligible list, or when the eligible list shall be exhausted, the person or body having the appointing power may temporarily fill a newly created office or other vacancy only until an examination can be held and the names of qualified persons be certified by the commission, and such temporary appointments are hereby limited to ninety days for any one person in the same vacancy, but such limitation shall not apply to persons temporarily acting in positions regularly held by another. Any person temporarily filling a vacancy in a position of higher grade for twenty days or more, shall receive the salary paid in such higher

grade. [SS15,§1056-a32; C24, 27, 31, 35, 39,§5698; C46, 50, 54, 58, 62, 66, 71, 73,§365.11; C75,§400.11; 66GA, ch 200,§3]

400.12 Seniority. For the purpose of determining the seniority rights of civil service employees, seniority shall be computed, beginning with the date of appointment to or employment in any positions for which they were certified or otherwise qualified and established as provided in this chapter, but shall not include any period of time exceeding sixty days in any one year during which they were absent from the service except for disability.

In the event that a civil service employee has more than one classification or grade, the length of his seniority rights shall date in the respective classfications or grades from and after the time he was appointed to or began his employment in each classification or grade. In the event that an employee has been promoted from one classification or grade to another, his civil service seniority rights shall be continuous in any department grade or classification that he formerly held.

A list of all civil service employees shall be prepared and posted in the city hall by the civil service commission on or before July 1 of each year, indicating the civil service standing of each employee as to his seniority. [C39, §5698.1; C46, 50, 54, 58, 62, 66, 71, 73,§365.12; C75,§400.12]

Referred to in §§400.13, 400.28

400.13 Chief of police and chief of fire department. The chief of the fire department and the chief of the police department shall be appointed from the chiefs' civil service eligible lists. Such lists shall be determined by original examination open to all persons applying, whether or not members of the employing city. The chief of a fire department shall have had a minimum of five years' experience in a fire department, or three years experience in a fire department and two years of comparable experience or educational training. The chief of a police department shall have had a minimum of five years experience in a public law enforcement agency, or three years experience in a public law enforcement agency and two years of comparable experience or educational training. A chief of a police department or fire department shall maintain his civil service rights as determined by section 400.12.

Any person who becomes chief of police or chief of the fire department shall be allowed to transfer all rights he may have acquired under chapter 410 or 411, including employer contributions during his years of service in a city, employee contributions, and interest, to the retirement system of the city that hires him as chief. Such person shall also transfer with him his number of years served as seniority toward other benefits provided by the city which hires him. If a chief of a police or fire department is relieved of that position, he shall be entitled to remain in the department for which he was chief at a position commensurate with his civil service status, even if this means that the city must create a position for him to fill until a regular position becomes vacant.

In cities under the commission plan of government the superintendent of public safety, with the approval of the city council, shall appoint the chief of the fire department and the chief of the police department. In cities under the city manager plan the city manager shall make such appointments with the approval of the city council, and in all other cities such appointments shall be made by the mayor. [C24, 27, 31, 35, 39,§5699; C46, 50, 54, 58, 62, 66, 71, 73,§365.13; C75,§400.13; 66GA, ch 1189, §3]

400.14 Civil service status of chiefs. A police officer under civil service may be appointed chief of police and a fireman under civil service may be appointed chief of the fire department without losing his civil service status, and shall retain, while holding the office of chief, the same civil service rights he may have had immediately previous to his appointment as chief, but nothing herein shall be deemed to extend to such individual any civil service right upon which he may retain the position of chief. [C27, 31, 35,§5699-a1; C39, §5699.1; C46, 50, 54, 58, 62, 66, 71, 73,§365.14; C75,§400.14]

400.15 Appointing powers. All appointments or promotions to positions within the scope of this chapter other than those of chief of police and chief of fire department shall be made:

In cities under the commission form of government, by the superintendents of the respective departments, with the approval of the city council; in cities under the city manager plan, by the city manager; in all other cities with the approval of the city council, and in the police and fire departments by the chiefs of the respective departments.

All such appointments or promotions shall promptly be reported to the clerk of the commission by the appointing officer. An appointing authority may transfer an employee, other than policemen and firemen, with his consent without coercion, from one department to the same civil service classification in another department, and such employee shall retain the same civil service status. [SS15,§1056-a32; C24, 27, 31, 35,§5698; C39,§5699.2; C46, 50, 54, 58, 62, 66, 71, 73,§365.15; C75,§400.15]

400.16 Qualifications. All appointive officers and employees of cities shall be selected with reference to their qualifications and fitness and for the good of the public service, and without reference to their political faith or party allegiance. [SS15,§1056-a32; C24, 27, 31, 35, 39,§5700; C46, 50, 54, 58, 62, 66, 71, 73,§365.16; C75,§400.16]

400.17 Employees under civil service—qualifications. Except as otherwise provided, no person shall be appointed or employed in any

capacity in the fire or police department, or any department which is governed by the civil service, until such person shall have passed a civil service examination as provided in this chapter, and has been certified to the city council as being eligible for such appointment; provided, however, that in cases of emergency, in which the peace and order of the city is threatened by reason of fire, flood, storm, or mob violence, making additional protection of life and property necessary, in which case the person having the appointing power may deputize additional persons, without examination, to act as peace officers until such emergency shall have passed. In no case shall any person be appointed or employed in any capacity in the fire or police department, or any department which is governed by civil service, unless such person:

1. Is of good moral character.

2. Is able to read and write the English language.

3. Is not a liquor or drug addict.

Employees shall not be required to be a resident of the city in which they are employed, but they shall become a resident of the state at the time such appointment or employment begins and shall remain a resident of the state during employment. Cities may set reasonable maximum distances outside of the corporate limits of the city that policemen, firemen and other critical municipal employees may live.

A person shall not be appointed, promoted, discharged, or demoted to or from a civil service position or in any other way favored or discriminated against in that position because of political or religious opinions or affiliations, race, national origin, sex, or age. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5701**; C46, 50, 54, 58, 62, 66, 71, 73,§365.17; C75,§400.17; 66GA, ch 67,§40, ch 200,§§4, 5]

400.18 Removal, demotion, or suspension. No person holding civil service rights as provided in this chapter shall be removed, demoted, or suspended arbitrarily, except as otherwise provided in this chapter, but may be removed, demoted, or suspended after a hearing by a majority vote of the civil service commission, for neglect of duty, disobedience, misconduct, or failure to properly perform his duties. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5702**; C46, 50, 54, 58, 62, 66, 71, 73,§365.18; C75,§400.18]

400.19 Removal or discharge of subordinates. The person having the appointing power as provided in this chapter, or the chief of police and the chief of the fire department may peremptorily suspend, demote, or discharge any subordinate then under his direction, for neglect of duty, disobedience of orders, misconduct or failure to properly perform his duties.

Chiefs of police and fire departments of cities under the commission plan shall report suspensions, demotions, or discharges made by them to the superintendent of public safety within twenty-four hours thereafter.

In cities under the manager plan, such report shall be made to the manager, unless the suspension, demotion, or discharge is made by him, in which case he shall report the same to the city council.

In other cities, the report shall be made to the mayor.

Such report shall be in writing, stating the reasons for such suspension, demotion, or discharge, and a copy thereof shall promptly be given to the clerk of the commission. The person or body to whom the report is made shall affirm or revoke such suspension, demotion, or discharge, according to the facts and merits of the case. [SS15,§1056-a32; C24, 27, 31, 35, 39, §**5703**; C46, 50, 54, 58, 62, 66, 71, 73,§365.19; C75, §400.19]

Referred to in §602.34

400.20 Appeal. If there is an affirmance of the suspension, demotion, or discharge of any person holding civil service rights, he may, within twenty days thereafter, appeal therefrom to the civil service commission. If the suspension, demotion, or discharge is not affirmed within five days the person who suspended, demoted, or discharged such officer or employee may in like manner appeal. [SS15, §1056-a32; C24, 27, 31, 35, 39,§**5704**; C46, 50, 54, 58, 62, 66, 71, 73,§365.20; C75,§400.20]

Referred to in §602.34

400.21 Notice of appeal. If the appeal be taken by the person suspended, demoted, or discharged, notice thereof, signed by the appellant and specifying the ruling appealed from, shall be filed with the clerk of commission; if by the person making such suspension, demotion, or discharge, such notice shall also be served upon the person suspended, demoted, or discharged. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5705**; C46, 50, 54, 58, 62, 66, 71, 73, §365.21; C75,§400.21]

Referred to in §602.34

400.22 Charges. Within five days from the service of such notice of appeal, the person or body making the ruling appealed from shall file with the body to which the appeal is taken a written specification of the charges and grounds upon which the ruling was based. If such charges are not so filed the person suspended or discharged may present the matter to the body to whom the appeal is to be taken by affidavit, setting forth the facts, and such body shall forthwith enter an order reinstating the person suspended or discharged for want of prosecution. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5706**; C46, 50, 54, 58, 62, 66, 71, 73, §365.22; C75,§400.22]

Referred to in §602.34

400.23 Time and place of hearing. Within ten days after such specifications are filed, the commission shall fix the time, which shall be not less than five nor more than twenty days thereafter, and place for hearing the appeal

and shall notify the parties in writing of the time and place so fixed, and the notice shall contain a copy of the specifications so filed. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5707**; C46, 50, 54, 58, 62, 66, 71, 73,§365.23; C75,§400.23]

Referred to in §602.34

400.24 Oaths—books and papers. The presiding officer of the commission or the council, as the case may be, shall have power to administer oaths in the same manner and with like effect and under the same penalties as in the case of magistrates exercising criminal or civil jurisdiction. The council or commission shall cause subpoenas to be issued for such witnesses and the production of such books and papers as either party may designate. The subpoenas shall be signed by the chairman of the commission or mayor, as the case may be. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5708**; C46, 50, 54, 58, 62, 66, 71, 73,§365.24; C75,§400.24]

Referred to in §602.34

400.25 Contempt. In case a witness is duly subpoenaed and refuses to attend, or in case a witness appears and refuses to testify or to produce required books or papers, the official body hearing the appeal shall, in writing, report such refusal to the district court of the county, and said court shall proceed with said person or witness as though said refusal had occurred in a proceeding legally pending before said court. [C24, 27, 31, 35, 39,§**5709**; C46, 50, 54, 58, 62, 66, 71, 73,§365.25; C75,§400.25]

Referred to in §602.34
Contempts, ch 665

400.26 Public trial. The trial of all appeals shall be public, and the parties may be represented by counsel. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5710**; C46, 50, 54, 58, 62, 66, 71, 73,§365.26; C75,§400.26]

Referred to in §602.34

400.27 Jurisdiction—attorney—decision. The civil service commission shall have jurisdiction to hear and determine all matters involving the rights of civil service employees, and may affirm, modify, or reverse any case on its merits.

The city attorney or solicitor shall be the attorney for the commission or when requested by the commission shall present any matters concerning civil service employees to the commission, except the commission in cities of over one hundred thousand population may hire a counselor or an attorney on a per diem basis to represent them other than the city attorney or solicitor when in the opinion of the commission there is a conflict of interest between the commission and the city council.

The city or any civil service employee shall have a right to appeal to the district court from the final ruling or decision of the civil service commission. The appeal shall be taken within thirty days from the filing of the formal decision of the commission. The district court of the county in which the city is located shall have full jurisdiction of the appeal and the said appeal shall be a trial de novo as an equitable action in the district court.

The appeal to the district court shall be perfected by filing a notice of appeal with the clerk of the district court within the time herein prescribed and by serving notice thereof on the secretary of the civil service commission, from whose ruling or decision the appeal is taken.

In the event the ruling or decision appealed from is reversed by the district court, the appellant, if it be an employee, shall then be reinstated as of the date of the said suspension, demotion, or discharge and shall be entitled to compensation from the date of such suspension, demotion, or discharge. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5711**; C46, 50, 54, 58, 62, 66, 71, 73,§365.27; C75,§400.27]

400.28 Employees — number diminished. Whenever the public interests may require a diminution of employees in any classification or grade under civil service, the city council, by resolution and acting in good faith, and after notifying the commission of such action, may either:

1. Abolish the office and remove the employee from his classification or grade thereunder, or

2. Reduce the number of employees in any classification or grade by suspending the necessary number.

In case it thus becomes necessary to so remove or suspend any such employees, the persons so removed or suspended shall be those having seniority of the shortest duration in the classifications or grades affected, and such seniority shall be computed as provided in section 400.12 for all persons holding seniority in the classification or grade affected, regardless of their seniority in any other classification or grade, but any such employee so removed from any classification or grade shall revert to his seniority in the next lower grade or classification; if such seniority is equal, then the one less efficient and competent as determined by the person or body having the appointing power shall be the one affected.

In case of such removal or suspension, the civil service commission shall issue to each person so affected a certificate showing his comparative seniority or length of service in each classification or grade from which he is so removed and the fact that he has been honorably so removed, and his name shall be carried for a period of not less than three years after such suspension or removal, on a preferred list and all appointments or promotions made during said period to his former duties in such classification or grade shall be made in the order of greater seniority from such preferred lists. [S13,§679-h; C24, 27, 31, 35, 39,§**5712**; C46, 50, 54, 58, 62, 66, 71, 73,§365.28; C75,§400.28]

400.29 Campaign contributions.

1. A person holding a civil service position shall not, while performing official duties or while using city equipment at the person's disposal by reason of the position, solicit in any manner contribution for any political party or candidate or engage in any political activity during working hours that impairs the efficiency of the position or presence during the working hours. A person shall not seek or attempt to use any political endorsement in connection with any appointment to a civil service position.

2. A person holding a civil service position shall not, by the authority of the position, secure or attempt to secure in any manner for any other person an appointment or advantage in appointment to a civil service position or an increase in pay or other advantage of employment in any such position for the purpose of influencing the vote or political action of that person or for any other consideration.

3. A person who in any manner supervises a person holding a civil service position shall not directly or indirectly solicit the person supervised to contribute money, anything of value, or service to a candidate seeking election, or a political party or candidate's political committee.

4. A civil service employee who becomes a candidate for any elective public office shall, upon request of the employee and commencing any time within thirty days prior to a primary, special, or general election and continuing until after this thirty-day period, automatically be given a leave of absence without pay. An employee who is a candidate for any elective public office shall not campaign while on duty as an employee.

5. This section shall not be construed to prohibit any employee or group of employees, individually or collectively, from expressing honest opinions and convictions, or making statements and comments concerning their wages or other conditions of their employment. [SS15,§1056-a32; C24, 27, 31, 35, 39,§**5713**; C46, 50, 54, 58, 62, 66, 71, 73,§365.29; C75,§400.29; 66GA, ch 200,§6]

400.30 Penalty. The provisions of this chapter shall be strictly carried out by each person or body having powers or duties thereunder, and any act or failure to act tending to avoid or defeat the purposes of such provisions is hereby prohibited and shall be punishable as a misdemeanor. [C39,§**5713.1**; C46, 50, 54, 58, 62, 66, 71, 73,§365.30; C75,§400.30]

Constitutionality, 47GA, ch 156,§24
Punishment, §687.7

400.31 Waterworks employees. In cities where board of waterworks trustees has adopted resolution placing its employees under the provisions of this chapter as to civil service, the civil service commissioner appointed and acting under said chapter shall have charge and control of the civil service procedure as to such employees and the provisions and procedure of this chapter shall apply in such cases. [C50, 54, 58, 62, 66, 71, 73,§365.31; C75,§400.31]

CHAPTER 401

EXTENSION OF WATER MAINS

Repealed by 64GA, ch 1088,§199

CHAPTER 402

STREET RAILWAY REGULATIONS

Repealed by 64GA, ch 1088,§199

CHAPTER 403

URBAN RENEWAL LAW

Referred to in §384.24
Applicable to all cities

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403.1 Title. This chapter shall be known and may be cited as the "urban renewal law." [C58, 62, 66, 71, 73, 75,§403.1]

403.2 Declaration of policy.

1. It is hereby found and declared that there exist in municipalities of the state slum and blighted areas, as herein defined, which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous municipal burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blighted areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency and consume an excessive proportion of state revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities.

2. It is further found and declared that certain slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this chapter, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that fringe areas can be conserved and rehabilitated through appropriate public action as herein authorized, and through the co-operation and voluntary action of the owners and tenants of property in such areas.

3. It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and for which the power of eminent domain and police power exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination. [C58, 62, 66, 71, 73, 75,§403.2]

403.3 Municipal program. The local governing body of a municipality may formulate for the municipality a workable program for utilizing appropriate private and public resources to eliminate slums and prevent the development or spread of slums and urban blight and to encourage needed urban rehabilitation. Such workable program may include, without limitation, provisions for:

1. The prevention of the spread of blight into areas of the municipality which are free from blight, through diligent enforcement of housing, zoning and occupancy controls and standards.

2. The rehabilitation or conservation of slum or blighted areas or portions thereof by replanning, by removing congestion, by providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures.

3. The clearance of slum and blighted areas or portions thereof.

4. The redevelopment of slum and blighted areas by approval of urban renewal plans. [C58, 62, 66, 71, 73, 75,§403.3]

Referred to in §403.14(2, *d*)

403.4 Resolution of necessity. No municipality shall exercise the authority herein conferred upon municipalities by this chapter until after its local governing body shall have adopted a resolution finding that:

1. One or more slum or blighted areas exist in such municipality.

2. The rehabilitation, conservation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality. [C58, 62, 66, 71, 73, 75,§403.4]

Referred to in §§403.14(2, *e*), 403.15(1)

403.5 Urban renewal plan.

1. A municipality shall not approve an urban renewal project for an urban renewal area unless the governing body has, by resolution, determined such area to be a slum area or a blighted area or a combination thereof, and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a general plan for the municipality has been prepared. For this purpose and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt and to revise from time to time, a general plan for the physical development of the municipality as a whole, giving due regard to the environs

and metropolitan surroundings. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project in accordance with subsection 4 hereof.

2. The municipality may itself prepare or cause to be prepared an urban renewal plan; or any person or agency, public or private, may submit such a plan to a municipality. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality, if any, for review and recommendations as to its conformity with the general plan for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or, if no recommendations are received within said thirty days, then, without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project prescribed by subsection 3 hereof.

3. The local governing body shall hold a public hearing on an urban renewal project after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal project under consideration.

4. Following such hearing, the local governing body may approve an urban renewal project if it finds that:

a. A feasible method exists for the location of families who will be displaced from the urban renewal area into decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families;

b. The urban renewal plan conforms to the general plan of the municipality as a whole; provided, that if the urban renewal area consists of an area of open land to be acquired by the municipality, such area shall not be so acquired except:

(1) If it is to be developed for residential uses, the local governing body shall determine that a shortage of housing of sound standards and design with decency, safety and sanitation exists in the municipality; that the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas, including other portions of the urban renewal area; that the conditions of blight in the area and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime, and constitute a menace to the public health, safety, morals, or welfare; and that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality.

(2) If it is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives. The acquisition may require the exercise of governmental action, as provided in this chapter, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, or because of the need for the correlation of the area with other areas of a municipality by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area.

Referred to in §§403.14(2, *e*), 403.17(9)

5. An urban renewal plan may be modified at any time: Provided, that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification may be conditioned upon such approval of the owner, lessee or successor in interest as the municipality may deem advisable, and in any event such modification shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest, may be entitled to assert.

6. Upon the approval by a municipality of an urban renewal plan or of any modification thereof, such plan or modification shall be deemed to be in full force and effect for the respective urban renewal area, and the municipality may then cause such plan or modification to be carried out in accordance with its terms.

7. Notwithstanding any other provisions of this chapter, where the local governing body certifies that an area is in need of redevelopment or rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the governor of the state has certified the need for disaster assistance under Public Law 875, Eighty-first Congress, [64 Stat. L. 1109; 42 U.S.C.§§1855-1855g] or other federal law, the local governing body may approve an urban renewal plan and an urban renewal project with respect to such area without regard to the provisions of subsection 4 of this section and without regard to provisions of this section requiring a general plan for the municipality and a public hearing on the urban renewal project. [C58, 62, 66, 71, 73, 75,§403.5]

Referred to in §§403.14(2, *e*), 403.17[9, 12(*a*)]

403.6 Powers of municipality. Every municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

1. To undertake and carry out urban renewal projects within its area of operation; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter; and to disseminate slum clearance and urban renewal information.

2. To arrange or contract for the furnishing or repair by any person of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions, that it may deem reasonable and appropriate, attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project; and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

3. Within its area of operation, to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise, any real property, or personal property for administrative purposes, together with any improvements thereon; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter: Provided, however, that no statutory provision with respect to the acquisition, clearance or disposition of property by public bodies shall restrict a municipality or other public body exercising powers hereunder in the exercise of such functions with respect to an urban renewal project, unless the legislature shall specifically so state.

4. To invest any urban renewal project funds held in reserves or sinking funds, or any such funds not required for immediate disbursement, in property or securities in which a state bank may legally invest funds subject to its control; to redeem such bonds as have been issued pursuant to section 403.9 at the redemption price established therein, or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.

5. To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this chapter, and to give such security as may be required, and to enter into and carry out contracts in connection therewith. A municipality may include in any contract, for financial assistance with the federal government for an urban renewal project, such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of the chapter.

6. Within its area of operation, to make or have made all surveys and planning necessary to the carrying out of the purposes of this chapter, and to contract with any person in making and carrying out of such planning, and to adopt or approve, modify and amend such planning. Such planning may include, without limitation:

a. A general plan for the locality as a whole;

b. Urban renewal plans;

c. Preliminary plans outlining urban renewal activities for neighborhoods to embrace two or more urban renewal areas;

d. Planning for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;

e. Planning for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements;

f. Appraisals, title searches, surveys, studies, and other planning and work necessary to prepare for the undertaking of urban renewal projects. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight and to apply for, accept and utilize grants of funds from the federal government for such purposes.

7. To plan for the relocation of persons, including families, business concerns and others, displaced by an urban renewal project, and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government.

8. To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this chapter, and to levy taxes and assessments for such purposes; to zone or rezone any part of the municipality or make exceptions from building regulations; and to enter into agreements, respecting action to be taken by such municipality pursuant to any of the powers granted by this chapter, with an urban renewal agency vested with

urban renewal project powers under section 403.14, which agreements may extend over any period, notwithstanding any provision of rule of law to the contrary.

Referred to in §403.14(2,g)

9. To close, vacate, plan or replan streets, roads, sidewalks, ways or other places; and to plan or replan any part of the municipality.

10. Within its area of operation, to organize, co-ordinate and direct the administration of the provisions of this chapter as they apply to such municipality in order that the objective of remedying slum and blighted areas, and preventing the causes thereof, within such municipality, may be most effectively promoted and achieved; and to establish such new office or offices of the municipality, or to reorganize existing offices, in order to carry out such purpose most effectively.

11. To exercise all or any part of combination of powers herein granted.

12. To approve urban renewal plans.

13. To sell and convey real property in furtherance of an urban renewal project.

14. To supplement the rent required to be paid by any family residing in the municipality forced to relocate by reason of any governmental activity, provided it is necessary to do so in order to house such family in decent, safe and sanitary housing and provided further that such family does not have sufficient means, as determined by the municipality, to pay the required rent for such housing. Any such rent supplement for any such family shall not continue for more than five years.

15. To acquire by purchase, gift or condemnation real property within its area of operation for the relocation of railroad passenger and freight depots, tracks, and yard and other railroad facilities and to sell or exchange and convey such real property to railroads.

16. To acquire or dispose of by purchase, construction, or lease, or otherwise to deal in air rights, and facilities or easements for lateral or vertical support of land or structures of any kind. [C58, 62, 66, 71, 73, 75,§403.6]

Referred to in §403.14(2, g)

403.7 Condemnation of property. A municipality shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project under this chapter. A municipality may exercise the power of eminent domain in the manner provided in chapter 472, and acts amendatory thereof or supplementary thereto, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner: Provided, that no real property belonging to the state, or any political subdivision thereof, may be acquired without its consent, provided further that no real property or any right or interest therein owned by any public utility company, pipe-line company, railway or transportation company vested with the right of eminent domain under the laws of this state, shall be acquired without the consent of such company, or without first securing, after due notice to such company and after hearing, a certificate authorizing condemnation of such property from the board, commission or body having the authority to grant a certificate authorizing condemnation. [C58, 62, 66, 71, 73, 75,§403.7]

403.8 Sale or lease of property.

1. A municipality may sell, lease or otherwise transfer real property or any interest therein acquired by it, and may enter into contracts for such purposes, in an urban renewal area for residential, recreational, commercial, industrial or other uses, or for public use, subject to such covenants, conditions and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas, or to otherwise carry out the purposes of this chapter. Provided, that such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and they may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to: The uses provided in such plan; the restrictions upon, and the covenants, conditions and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of slum or blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease or otherwise transfer the real property, without the prior written consent of the municipality, until he has completed the construction of any or all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible in the public interest, consistent with the carrying out of the provisions

of the urban renewal plan. Any contract for such transfer under the urban renewal plan, or such part or parts of such contract or plan as the municipality may determine, may be recorded in the land records of the county in such manner as to afford actual or constructive notice thereof.

2. A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe, or as hereinafter provided in this subsection. A municipality, by public notice by publication in a newspaper having a general circulation in the community, thirty days prior to the execution of any contract to sell, lease or otherwise transfer real property, and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, may invite proposals from and make available all pertinent information to any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof, and shall state that proposals shall be made by those interested within thirty days after the date of publication of said notice, and that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all such redevelopment or rehabilitation proposals, and the financial and legal ability of the persons making such proposals to carry them out, and the municipality may negotiate with any persons for proposals concerning the purchase, lease or other transfer of any real property acquired by the municipality in the urban renewal area. The municipality may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this chapter: Provided, that a notification of intention to accept such proposal shall be filed with the governing body not less than thirty days prior to any such acceptance. Thereafter, the municipality may execute such contract in accordance with the provisions of subsection 1 of this section and may deliver deeds, leases and other instruments and may take all steps necessary to effectuate such contract.

3. A municipality may temporarily operate and maintain real property acquired in an urban renewal area pending the disposition of the property as authorized in this chapter, without regard to the provisions of subsection 1 above, for such uses and purposes as may be deemed desirable, even though not in conformity with the urban renewal plan. [C58, 62, 66, 71, 73, 75,§403.8]

See ch 403A

403.9 Issuance of bonds.

1. A municipality shall have power to periodically issue bonds in its discretion to pay the costs of carrying out the purposes and provisions of this chapter, including, but not limited to, the payment of principal and interest upon any advances for surveys and planning, and the payment of interest on bonds, herein authorized, not to exceed three years from the date the bonds are issued. The municipality shall have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Said bonds shall be payable solely from the income and proceeds of the fund and portion of taxes referred to in subsection 2 of section 403.19, and revenues and other funds of the municipality derived from or held in connection with the undertaking and carrying out of urban renewal projects under this chapter. The municipality may pledge to the payment of the bonds the fund and portion of taxes referred to in subsection 2 of section 403.19, and may further secure the bonds by a pledge of any loan, grant or contribution from the federal government or other source in aid of any urban renewal projects of the municipality under this chapter, or by a mortgage of any such urban renewal projects, or any part thereof, title which is vested in the municipality.

2. Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

3. Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates not exceeding seven per centum per annum, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

4. Such bonds may be sold at not less than par at public or private sale, or may be exchanged for other bonds on the basis of par.

5. In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this chapter shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

6. In any suit, action or proceeding involving the validity or enforceability of any bond issued under this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this chapter. [C58, 62, 66, 71, 73, 75,§403.9]

Referred to in §§403.6(4), 403.12(5), 403.19

403.10 Bonds as legal investment. All banks, trust companies, building and loan associations, savings and loan associations, investment companies and other persons carrying on an investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this chapter, or those issued by any urban renewal agency vested with urban renewal project powers under section 403.14: Provided, that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government, in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which, together with any other moneys irrevocably committed to the payment of interest on such bonds or other obligations, will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities. [C58, 62, 66, 71, 73, 75,§403.10]

403.11 Exemptions from legal process.

1. All property of a municipality, including funds, owned or held by it for the purposes of this chapter shall be exempt from levy and sale by virtue of an execution; and no execution or other judicial process shall issue against the same; nor shall judgment against a municipality be a charge or lien upon such property: Provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this chapter by a municipality on its rents, fees, grants or revenues from urban renewal projects.

2. The property of a municipality, acquired or held for the purposes of this chapter, is declared to be public property used for essential public and governmental purposes, and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof: Provided, that such tax exemption shall terminate when the municipality sells, leases or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property. [C58, 62, 66, 71, 73, 75,§403.11]

403.12 Powers of municipality.

1. For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

a. Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or other rights or privileges therein to a municipality;

b. Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

c. Do any and all things necessary to aid or co-operate in the planning or carrying out of an urban renewal project;

d. Lend, grant or contribute funds to a municipality;

e. Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance in connection with an urban renewal project;

f. Cause public buildings and public facilities, including parks, playgrounds, and recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished;

g. Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places;

h. Plan or replan, zone or rezone any part of the public body or make exceptions from building regulations;

i. Cause administrative and other services to be furnished to the municipality.

2. If at any time title to or possession of any urban renewal project is held by any public body or governmental agency, including any agency or instrumentality of the United States, other than the municipality, which is author-

ized by law to engage in the undertaking, carrying out, or administration of urban renewal projects, the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this subsection, the term "municipality" shall also include an urban renewal agency vested with all of the urban renewal project powers pursuant to the provisions of section 403.14.

3. Any sale, conveyance, lease or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement or public bidding.

4. For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of an urban renewal agency, a municipality may, in addition to its other powers and upon such terms, with or without consideration, as it may determine, do and perform any or all of the actions or things which, by the provisions of subsection 1 of this section, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

5. For the purposes of this section, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of a municipality, the municipality may, in addition to any authority to issue bonds pursuant to section 403.9, issue and sell its general obligation bonds. Any bonds issued by a municipality pursuant to this section must be issued by resolution of the council in the manner and within the limitations prescribed by chapter 408A.* Bonds issued pursuant to the provisions of this subsection must be sold in the manner prescribed by chapter 75. The power granted in this subsection for the financing of public improvements within an urban renewal project shall not be construed as a limitation of the existing powers of cities. [C58, 62, 66, 71, 73, 75,§403.12]

Referred to in §384.24
*Repealed 64GA, ch 1088,§199, effective July 1, 1975

403.13 Presumption of title. Any instrument executed by a municipality and purporting to convey any right, title or interest in any property under this chapter shall be conclusively presumed to have been executed in compliance with the provisions of this chapter insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned. [C58, 62, 66, 71, 73, 75, §403.13]

403.14 Urban renewal agency powers.

1. A municipality may itself exercise its urban renewal project powers, as herein defined, or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency, if one exists or is subsequently established in the community. In the event the local governing body makes such determination, the urban renewal agency shall be vested with all of the urban renewal project powers in the same manner as though all such powers were conferred on such agency instead of the municipality. If the local governing body does not elect to make such determination, the municipality in its discretion may exercise its urban renewal project powers through a board or commissioner, or through such officers of the municipality as the local governing body may by resolution determine.

2. As used in this section, the term "urban renewal project powers" shall include the rights, powers, functions and duties of a municipality under this chapter, except the following:

a. The power to determine an area to be a slum or blighted area or combination thereof and to designate such area as appropriate for an urban renewal project and to hold any public hearings required with respect thereto;

b. The power to approve urban renewal plans and modifications thereof;

c. The power to establish a general plan for the locality as a whole;

d. The power to formulate a workable program under section 403.3;

e. The power to make the determinations and findings provided for in section 403.4, and section 403.5, subsection 4;

f. The power to issue general obligation bonds;

g. The power to appropriate funds, to levy taxes and assessments, and to exercise other powers provided for in section 403.6, subsection 8. [C58, 62, 66, 71, 73, 75,§403.14]

Referred to in §§403.6(8), 403.10, 403.12(2), 403.15(1), 403.16

403.15 Agency created.

1. There is hereby created in each municipality a public body corporate and politic to be known as the "urban renewal agency" of the municipality: Provided, that such agency shall not transact any business or exercise its powers hereunder until or unless the local governing body has made the finding prescribed in section 403.4, and has elected to have the urban renewal project powers exercised by an urban renewal agency as provided in section 403.14.

2. If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency, which board shall consist of five commissioners. The term of office of each such commissioner shall be one year.

3. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be

filed with the clerk of the municipality, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

4. The powers of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency, and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the area of operation of the agency, which area shall be conterminous with the area of operation of the municipality, and if they are otherwise eligible for such appointments under this chapter.

5. The mayor shall designate a chairman and vice-chairman from among the commissioners. An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and the agency may determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expense as of the end of such fiscal year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality, and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

6. For inefficiency, or neglect of duty, or misconduct in office, a commissioner may be removed only after a hearing, and after he shall have been given a copy of the charges at least ten days prior to such hearing, and after he shall have had an opportunity to be heard in person or by counsel. [C58, 62, 66, 71, 73, 75,§403.15]

Referred to in §403.17(1)

403.16 Personal interest prohibited. No public official or employee of a municipality, or board or commission thereof, and no commissioner or employee of an urban renewal agency, which has been vested by a municipality with urban renewal project powers under section 403.14, shall voluntarily acquire any personal interest, as hereinafter defined, whether direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body. If any such official, commissioner or employee presently owns or controls, or has owned or controlled within the preceding two years, any interest, as hereinafter defined, whether direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body; and any such official, commissioner or employee shall not participate in any action by the municipality, or board or commission thereof, or urban renewal agency affecting such property, as the terms of such proscription are hereinafter defined. For the purposes of this section the following definitions and standards of construction shall apply:

1. "Action affecting such property" shall include only that action directly and specifically affecting such property as a separate property but shall not include any action, any benefits of which accrue to the public generally, or which affects all or a substantial portion of the properties included or planned to be included in such a project.

2. Employment by a public body, its agencies, or institutions or by any other person having such an interest shall not be deemed an interest by such employee or of any ownership or control by such employee of interests of his employer. Such an employee may participate in an urban renewal project so long as any benefits of such participation accrue to the public generally, such participation affects all or a substantial portion of the properties included or planned to be included in such a project, or such participation promotes the public purposes of such project, and shall limit only that participation by an employee which directly or specifically affects property in which an employer of an employee has an interest.

3. The word "participation" shall be deemed not to include discussion or debate preliminary to a vote of a local governing body or agency upon proposed ordinances or resolutions relating to such a project or any abstention from such a vote.

4. The designation of a bank or trust company as depository, paying agent, or agent for investment of funds shall not be deemed a matter of interest or personal interest.

5. Stock ownership in a corporation having such an interest shall not be deemed an indicia of an interest or of ownership or control by the person owning such stocks when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by such person.

6. The word "action" shall not be deemed to include resolutions advisory to the local governing body or agency by any citizens group, board, body, or commission designated to serve a purely advisory approving or recommending function under this chapter.

7. The limitations of this section shall be construed to permit action by a public official, commissioner, or employee where any benefits of such action accrue to the public generally, such action affects all or a substantial portion of the properties included or planned to be included in such a project, or such action promotes the public purposes of such project, and shall be construed to limit only that action by a public official, commissioner, or employee which directly or specifically affects property in which such official, commissioner, or employee has an interest or in which an employer of such official, commissioner, or employee has an interest. Any disclosure required to be made by this section to the local governing body shall concurrently be made to an urban renewal agency which has been vested with urban renewal project powers by the municipality pursuant to the provisions of section 403.14. No commissioner or other officer of any urban renewal agency, board or commission exercising powers pursuant to this chapter shall hold any other public office under the municipality, other than his commissionership or office with respect to such urban renewal agency, board or commission. Any violation of the provisions of this section shall constitute misconduct in office, but no ordinance or resolution of a municipality or agency shall be invalid by reason of a vote or votes cast in violation of the standards of this section unless such vote or votes were decisive in the passage of such ordinance or resolution. [C58, 62, 66, 71, 73, 75,§403.16]

Prior actions legalized on condition, 63GA, ch 238,§1
Similar provisions, §§18.5, 68B.3, 86.7, 252.29, 262.10, 314.2, 347.15, 403A.22, 741.11

403.17 Definitions. The following terms wherever used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

1. *"Agency"* or *"urban renewal agency"* shall mean a public agency created by section 403.15.

2. *"Municipality"* shall mean any city in the state.

3. *"Public body"* shall mean the state or any political subdivision thereof.

4. *"Local governing body"* shall mean the council or other legislative body charged with governing the municipality.

5. *"Mayor"* shall mean the mayor of a municipality, or other officer or body having the duties customarily imposed upon the executive head of a municipality.

6. *"Clerk"* shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

7. *"Federal government"* shall include the United States or any agency or instrumentality, corporate or otherwise, of the United States.

8. *"Slum area"* shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which: By reason of dilapidation, deterioration, age or obsolescence; by reason of inadequate provision for ventilation, light, air, sanitation, or open spaces; by reason of high density of population and overcrowding; by reason of the existence of conditions which endanger life or property by fire and other causes; or which by any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime, and which is detrimental to the public health, safety, morals or welfare.

9. *"Blighted area"* shall mean an area which by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use: Provided, that if such blighted area consists of open land, the conditions contained in the proviso in section 403.5, subsection 4, shall apply: And provided further, that any disaster area referred to in section 403.5, subsection 7, shall constitute a "blighted area".

10. *"Urban renewal project"* may include undertakings and activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal program. Such undertakings and activities may include:

a. Acquisition of a slum area or a blighted area or portion thereof;

b. Demolition and removal of buildings and improvements;

c. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this chapter in accordance with the urban renewal plan;

d. Disposition of any property acquired in the urban renewal area, including sale, initial leasing or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan;

e. Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

f. Acquisition of any other real property in the urban renewal area, where necessary to eliminate unhealthful, insanitary or unsafe conditions, or to lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities;

g. Sale and conveyance of real property in furtherance of an urban renewal project.

11. *"Urban renewal area"* means a slum area or a blighted area, or a combination thereof, which the local governing body designates as appropriate for an urban renewal project.

12. *"Urban renewal plan"* means a plan, as it exists from time to time, for an urban renewal project. The plan shall:

a. Conform to the general plan for the municipality as a whole except as provided in section 403.5, subsection 7;

b. Be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, and to indicate zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plans relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

13. *"Real property"* shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

14. *"Bonds"* shall mean any bonds, including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures or other obligations.

15. *"Obligee"* shall include any bondholder, agents or trustees for any bondholders, or any lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government, when it is a party to any contract with the municipality.

16. *"Person"* shall mean any individual, firm, partnership, corporation, company, association, joint stock association; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity for an individual or such entities.

17. *"Area of operation"* shall mean the area within the corporate limits of the municipality and the area within five miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated city, unless a resolution shall have been adopted by the governing body of such other city declaring a need therefor.

18. *"Board"* or *"commission"* shall mean a board, commission, department, division, office, body or other unit of the municipality.

19. *"Public officer"* shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality. [C58, 62, 66, 71, 73, 75,§403.17]

Referred to in §403A.22

403.18 Rule of construction. Insofar as the provisions of this chapter may be inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law. [C58, 62, 66, 71, 73, 75,§403.18]

Constitutionality, 57GA, ch 197,§18

403.19 Division of revenue from taxation. A municipality may provide by ordinance that taxes levied on taxable property in an urban renewal project each year by or for the benefit of the state, city, county, school district, or other taxing district after the effective date of such ordinance, shall be divided as follows:

1. That portion of the taxes which would be produced by the rate at which the tax is levied each year by or for each of the taxing districts upon the total sum of the assessed value of the taxable property in the urban renewal project, as shown on the assessment roll used in connection with the taxation of property by the taxing district, last equalized prior to the effective date of the ordinance, or the assessment roll last equalized prior to the date of initial adoption of the urban renewal plan in the case of projects commenced prior to July 1, 1972, shall be allocated to and when collected be paid into the fund for the respective taxing district as taxes by or for said taxing district into which all other property taxes are paid. For the purpose of allocating taxes levied by or for any taxing district which did not include the territory in an urban renewal project on the effective date of the ordinance or initial adoption of the plan, but to which the territory has been annexed or otherwise included after the effective date, the assessment roll of the county last equalized on the effective date of the ordinance or initial adoption of the plan shall be used in determining the assessed valuation of the taxable property in the project on the effective date.

2. That portion of the taxes each year in excess of such amount shall be allocated to and when collected be paid into a special fund of the municipality to pay the principal of and interest on loans, moneys advanced to, or indebtedness, whether funded, refunded, assumed, or otherwise, including bonds issued under the authority of section 403.9, subsection 1, incurred by the municipality to finance or refinance, in whole or in part, the redevelopment project, except that taxes for the payment of bonds and interest of each taxing district must be collected against all taxable property within the taxing district without limitation by the provisions of this subsection. Unless and until the total assessed valuation of the taxable property in an urban renewal project exceeds the total assessed value of the taxable property in such project as shown by the last equalized assessment roll referred to in subsection 1 of this section, all of the taxes levied and collected upon the taxable property in the urban renewal project shall be paid into the funds for the respective taxing districts as taxes by or for said taxing districts in the same manner as all other property taxes. When such loans, advances, indebtedness, and bonds, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such urban renewal project shall be paid into the funds for the respective taxing districts in the same manner as taxes on all other property.

3. The portion of taxes mentioned in subsection 2 of this section and the special fund into which they shall be paid, may be irrevocably pledged by a municipality for the payment of the principal and interest on loans, advances, bonds issued under the authority of section 403.9, subsection 1, or indebtedness, incurred by a municipality to finance or refinance, in whole or in part, the urban renewal project.

4. As used in this section the word "taxes" includes, but is not limited to, all levies on an ad valorem basis upon land or real property. [C71, 73, 75,§403.19]

Referred to in §403.9

CHAPTER 403A

LOW-RENT HOUSING LAW

Referred to in §403A.27

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403A.1 Short title. This chapter shall be known and may be cited as the "Low-Rent Housing Law." [C62, 66, 71, 73, 75,§403A.1]

403A.2 Definitions. The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

1. *"Municipality"* shall mean any city or county in the state.

2. *"State public body"* means any city, county, township, municipal corporation, commission, district or other subdivision or public body of the state.

3. *"Local governing body"* shall mean the council or other legislative body charged with governing the municipality.

4. *"Mayor"* means the mayor of the municipality or the officer thereof charged with the duties customarily imposed on the mayor or executive head of a municipality.

5. *"Clerk"* means the clerk of the municipality or the officer charged with the duties customarily imposed on such clerk.

6. *"Area of operation"* includes *(a)* all of a municipality and *(b)* any area adjacent to and within one mile of such municipality, provided that the governing body of such adjacent area approves and consents.

7. *"Federal government"* includes the United States of America, the Public Housing Administration, or any other agency or instrumentality, corporate or otherwise of the United States of America.

8. *"Slum"* means any area where dwellings predominate which by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health and morals.

9. *"Housing project"* or *"project"* means any work or undertaking: *(a)* to demolish, clear or remove buildings from any slum areas; or *(b)* to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for families of low income, lower-income families, or very low-income families; or *(c)* to accomplish a combination of the foregoing. Such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, utilities, parks, site preparation, landscaping, administrative, community, health, recreational, welfare or other purposes. The term "housing project" or "project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration or repair of the improvements and all other work in connection therewith, and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

10. *a. "Families of low income"* means families who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe and sanitary dwellings for their use.

b. "Lower-income families" means families whose incomes do not exceed eighty percent of the median income for the area with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area.

c. "Very low-income families" means families whose incomes do not exceed fifty percent of the median income for the area with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area.

d. "Families" includes, but is not limited to, families consisting of a single person in the case of any of the following:

(1) A person who is at least sixty-two years of age.

(2) A person who is under a disability.

(3) A person who is handicapped.

(4) A displaced person.

(5) The remaining member of a tenant family.

e. "Families" includes two or more persons living together, who are at least sixty-two years of age, are under a disability or are handicapped, or one or more such individuals living with another person who is essential to such individual's care or well-being.

f. "Disability" means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.

g. "Handicapped" means having a physical or mental impairment which is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of a nature that the ability to live independently could be improved by more suitable housing conditions.

h. "Displaced" means displaced by governmental action, or having one's dwelling extensively damaged or destroyed as a result of a disaster.

i. The municipality, by resolution, or the agency by rule shall establish further definitions applicable to this subsection as necessary to assure eligibility for funds available under federal housing laws.

11. *"Bonds"* means any bonds, notes, interim certificates, debentures or other obligations issued by a municipality pursuant to this chapter.

12. *"Real property"* includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years.

13. *"Obligee"* includes any bondholder, agent or trustee for any bondholder, or lessor demising to a municipality, property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality in respect to a housing project.

14. *"Persons engaged in national defense activities"* means persons in the armed forces of the United States; employees of the department of defense; and workers engaged or to be engaged in activities connected with national defense. The term also includes the families of the persons, employees and workers who reside with them.

15. *"Major disaster"* means any flood, drought, fire, hurricane, earthquake, storm or other catastrophe which, in the determination of the governing body, is of sufficient severity and magnitude to warrant the use of available

resources of the federal, state and local governments to alleviate the damage, hardship or suffering caused thereby.

16. An *"agreement"* of any municipality authorized by this chapter with respect to a housing project, means a resolution or resolutions of the governing body of such municipality setting forth the action to be taken or the matter determined. Such resolutions shall be deemed to be agreements made for the benefit of the holders of bonds then outstanding or thereafter issued in connection with such project and for the benefit of any person, firm, corporation, state public body or the federal government which has agreed or thereafter agrees to make a grant or annual contribution for or in aid of such project.

17. *"Agency"* or *"low-rent housing agency"* shall mean a public agency created under the provisions of section 403A.5. [C62, 66, 71, 73, 75,§403A.2; 66GA, ch 201,§§1, 2]

403A.3 Powers. Every municipality in addition to other powers conferred by this or any other chapter, shall have power:

1. To prepare, carry out, and operate housing projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any housing project or any part thereof.

2. To undertake and carry out studies and analyses of the housing needs and of the meeting of such needs (including data with respect to population and family groups and the distribution thereof according to income groups, the amount and quality of available housing and its distribution according to rentals and sales prices, employment, wages and other factors affecting the local housing needs and the meeting thereof) and to make the results of such studies and analyses available to the public and the building, housing and supply industries; and to engage in research and disseminate information on housing and slum clearance.

3. To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a housing project or the occupants thereof; and (notwithstanding anything to the contrary contained in this chapter or in any other provision of law) to agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractor comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

4. To lease or rent any dwellings, accommodations, lands, buildings, structures or facilities embraced in any project and (subject to the limitations contained in this chapter with respect to the rental of dwellings in housing projects) to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance, in any stock or mutual company of any real or personal property or operations of the municipality against any risks or hazards; to procure or agree to the procurement of federal or state government insurance or guarantees of the payment of any bonds or parts thereof issued by a municipality, including the power to pay premiums on any such insurance.

5. To invest any funds held in connection with a housing project in reserve or sinking funds, or any fund not required for immediate disbursement, in property or securities which banks designated as state depositories may use to secure the deposit of state funds; to redeem its bonds at the redemption price established therein or to purchase its bonds at less than such redemption price, all bonds so redeemed or purchased to be canceled.

6. To determine where slum areas exist or where there is unsafe, insanitary or overcrowded housing; to make studies and recommendations relating to the problem of clearing, replanning and reconstructing of slum areas and the problem of eliminating unsafe, insanitary or overcrowded housing and providing dwelling accommodations for persons of low income; and to co-operate with any state public body in action taken in connection with these problems.

7. To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the state or unable to attend or excused from attendance; to make available to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or insanitary structures within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

8. To, within its area of operation, enter into any building or property in any municipal

housing area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted.

9. To exercise all or any part or combination of powers herein granted. No provision of law with respect to the acquisition, operation or disposition of property by public bodies shall be applicable to a municipality in its operations pursuant to this chapter unless the legislature shall specifically so state.

10. To co-operate with the Iowa housing finance authority, to participate in any of its programs, to use any of the funds available to the municipality for the uses of this chapter to contribute to such programs in which it participates, and to comply with the provisions of sections 220.1 to 220.36 and the rules of the Iowa housing finance authority promulgated thereunder. [C62, 66, 71, 73, 75,§403A.3; 66GA, ch 138,§39]

403A.4 Aid from federal government. In addition to the powers conferred upon a municipality by other provisions of this chapter, a municipality is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any housing project within its area of operation, to take over, lease or manage any project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and enter into such contracts, covenants, mortgages, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this chapter to authorize every municipality to do any and all things necessary or desirable to secure the financial aid or co-operation of the federal government in the undertaking, construction, maintenance or operation of any housing project by such municipality. To accomplish this purpose a municipality, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the federal government any provisions, which the federal government may require as conditions to its financial aid of a housing project, not inconsistent with the purposes of this chapter. [C62, 66, 71, 73, 75,§403A.4]

403A.5 Exercise of municipal housing powers—low-rent housing agency. Any municipality may create, in such municipality, a public body corporate and politic to be known as the "Low-Rent Housing Agency" of such municipality except that such agency shall not transact any business or exercise its powers hereunder until or unless the local governing body has elected to exercise its municipal housing powers through such an agency as prescribed in this section.

If the low-rent housing agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the low-rent housing agency which board shall consist of five commissioners. The term of office for three of said commissioners originally appointed shall be two years and the term of office for two of said commissioners originally appointed shall be one year. Thereafter the term of office for each commissioner shall be two years.

A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers of a low-rent housing agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency, and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the area of operation of the agency, which area shall be conterminous with the area of operation of the municipality, and if they are otherwise eligible for such appointments under this chapter.

The mayor shall designate a chairman and vice-chairman from among the commissioners. An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and the agency may determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expense as of the end of such fiscal year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality, and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

For inefficiency, or neglect of duty, or misconduct in office, a commissioner may be removed by a majority vote of the governing body of the municipality only after a hearing before said body, and after he shall have been given a copy of the charges at least ten days prior to such hearing, and after he shall have

had an opportunity to be heard in person or by counsel.

A municipality may itself exercise the powers in connection with municipal housing as defined in this chapter, or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the low-rent housing agency, if one exists or is subsequently established in the community. In the event the local governing body makes such determination, the low-rent housing agency shall be vested with all of the low-rent housing project powers in the same manner as though all such powers were conferred on such agency instead of the municipality. If the local governing body does not elect to make such determination, the municipality in its discretion may exercise its low-rent housing project powers through a board or commissioner, or through such officers of the municipality as the local governing body may by resolution determine.

A municipality or a "Low-Rent Housing Agency" may not proceed with a housing project until a study or a report and recommendation on housing available within the community is made public by the municipality or agency and is included in its recommendations for a housing project. Such recommendations must receive majority approval from the local governing body before proceeding on the housing project. [C58,§403.19; C62, 66, 71, 73, 75, §403A.5]

Referred to in §§403A.2(17), 403A.22

403A.6 Operation of housing not for profit. It is hereby declared to be the policy of this state that each municipality shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals or payments for dwelling accommodations at low rates consistent with its providing decent, safe and sanitary dwelling accommodations for persons of low income, and that no municipality shall construct or operate any housing project for profit, or as a source of revenue to the municipality. To this end the municipality shall fix the rentals or payments for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income and receipts in connection with or for such projects from whatever sources derived, including federal financial assistance) will be sufficient (1) to pay, as the same become due, the principal and interest on the bonds issued pursuant to this chapter; (2) to create and maintain such reserves as may be required to assure the payment of principal and interest as it becomes due on such bonds; (3) to meet the cost of, and to provide for, maintaining and operating the projects (including necessary reserves therefor and the cost of any insurance, and of administrative expenses); and (4) to make such payments in lieu of taxes and, after payment in full of all obligations for which federal annual contributions are pledged, to make such repayments of federal and local contributions as it determines are consistent with the maintenance of the low-rent character of projects. Rentals or payments for dwellings shall be established and the projects administered, insofar as possible, so as to assure that any federal financial assistance required shall be strictly limited to amounts and periods necessary to maintain the low-rent character of the projects. [C62, 66, 71, 73, 75,§403A.6]

403A.7 Housing rentals and tenant admissions. A municipality shall (1) rent or lease the dwelling accommodations in a housing project only to persons or families of low income and at rentals within their financial reach; (2) rent or lease to a tenant such dwelling accommodations consisting of the number of rooms which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and (3) fix income limits for occupancy and rents after taking into consideration (*a*) the family size, composition, age, physical handicaps, and other factors which might affect the rent-paying ability of the person or family, and (*b*) the economic factors which affect the financial stability and solvency of the project. Provided, however, such determination of eligibility shall be within the limits of the income limits hereinbefore set out.

Nothing contained in this or the preceding section shall be construed as limiting the power of a municipality with respect to a housing project, to vest in an obligee the right, in the event of a default by the municipality, to take possession or cause the appointment of a receiver thereof, free from all the restrictions imposed by this or the preceding section. [C62, 66, 71, 73, 75,§403A.7]

403A.8 Dwellings for disaster victims and defense workers. Notwithstanding the provisions of this or any other chapter relating to rentals of, preferences or eligibility for admission to, or occupancy of dwellings in housing projects, during the period when a municipality determines that there is an acute need in its area of operation for housing to assure the availability of dwellings for persons engaged in national defense activities or for victims of a major disaster, a municipality may undertake the development and administration of housing projects for the federal government, and dwellings in any housing project under the jurisdiction of the municipality may be made available to persons engaged in national defense activities or to victims of a major disaster, as the case may be. A municipality is authorized to contract with the federal government or the state or a state public body for advance payment or reimbursement for the furnishing of housing to victims of a major disaster, including the furnishing of the housing free of charge to needy disaster victims during any period covered by a determination of acute need by the municipality as herein provided. [C62, 66, 71, 73, 75,§403A.8]

403A.9 Co-operation between municipalities. Any two or more municipalities may join or co-operate with one another in the exercise of any or all of the powers conferred hereby for the purpose of financing, planning, undertaking, constructing or operating a housing project or projects. [C62, 66, 71, 73, 75,§403A.9]

403A.10 Tax exemption and payments in lieu of taxes. The property acquired or held pursuant to this chapter is declared to be public property used exclusively for essential city, or municipal public and governmental purposes and such property is hereby declared to be exempt from all taxes and special assessments of the state or of any state public body. In lieu of taxes on such property a municipality may agree to make payments to the state or a state public body (including itself) as it finds consistent with the maintenance of the low-rent character of housing projects and the achievement of the purposes of this chapter. [C62, 66, 71, 73, 75,§403A.10]

403A.11 Planning, zoning and building laws. All housing projects of a municipality shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the project is situated. [C62, 66, 71, 73, 75,§403A.11]

403A.12 Bonds. A municipality shall have power to issue bonds from time to time in its discretion, for any of the purposes of this chapter. A municipality shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. A municipality may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable (1) exclusively from the income and revenues of the project financed with the proceeds of such bonds, or (2) exclusively from the income and revenues of certain designated housing projects whether or not they are financed in whole or in part with the proceeds of such bonds. Any such bonds may be additionally secured by a pledge of any loan, grant or contribution or parts thereof from the federal government or other source, or a pledge of any income or revenues connected with a housing project or a mortgage of any housing project or projects.

Neither the governing body of a municipality nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof hereunder. The bonds and other obligations issued under the provisions of this chapter (and such bonds and obligations shall so state on their face) shall be payable solely from the sources provided in this section and shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds issued pursuant to this chapter are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes. The tax exemption provisions of this chapter shall be considered part of the security for the repayment of bonds and shall constitute, by virtue of this chapter and without the necessity of the same being restated in said bonds, a contract between the bondholders and each and every one thereof, including all transferees of said bonds from time to time on the one hand and the respective municipalities issuing said bonds and the state on the other. [C62, 66, 71, 73, 75,§403A.12]

403A.13 Form and sale of bonds. Bonds of a municipality shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding seven per centum per annum, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide. The bonds may be sold at public or private sale at not less than par.

If the officers of the municipality whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of the bonds, their signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

In any suit, action or proceedings involving the validity or enforcement of any bond issued pursuant to this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality pursuant to this chapter shall be conclusively deemed to have been issued for such purpose and the housing project in respect to which such bond was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this chapter. [C62, 66, 71, 73, 75,§403A.13]

403A.14 Provisions of bonds, trust indentures and mortgages. In connection with the issuance of bonds pursuant to this chapter or the incurring of obligations under leases made pursuant to this chapter and in order to secure the payment of the bonds or obligations, a municipality, in addition to its other powers, shall have power to:

1. Pledge all or any part of the gross or net rents, fees or revenues of a housing project, financed with the proceeds of such bonds, to which its rights then exist or may thereafter come into existence.

2. Mortgage all or any part of its real or personal property, then owned or thereafter acquired or held pursuant to this chapter.

3. Covenant against pledging all or any part of the rents, fees and revenues or against mortgaging all or any part of its real or personal property, acquired or held pursuant to this chapter, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; covenant with respect to limitations on the right to sell, lease or otherwise dispose of any housing project or any part thereof; and covenant as to what other, or additional debts or obligations may be incurred by it.

4. Covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; provide for the replacement of lost, destroyed, or mutilated bonds; covenant against extending the time for the payment of its bonds or interest thereon; and covenant for the redemption of the bonds and to provide the terms and conditions thereof.

5. Covenant subject to the limitations contained in this chapter as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and the use and disposition to be made thereof; create or authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and covenant as to the use and disposition of the moneys held in such funds.

6. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the proportion of outstanding bonds the holders of which must consent to such action, and the manner in which such consent may be given.

7. Covenant as to the use, maintenance and replacement of any or all of its real or personal property acquired pursuant to this chapter, the insurance to be carried thereon and the use and disposition of insurance moneys.

8. Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation; and covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

9. Vest in any obligees or any specified proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; vest in an obligee or obligees the right, in the event of a default by the municipality to take possession of and use, operate and manage any housing project or any part thereof or any funds connected therewith, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement between the municipality and such obligees; provide for the powers and duties of such obligees and limit the liabilities thereof; and provide the terms and conditions upon which such obligees may enforce any covenant or rights securing or relating to the bonds.

10. Exercise all or any part or combination of the powers herein granted; make such covenants (other than and in addition to the covenants herein expressly authorized) and do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said municipality, as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

This chapter without reference to other statutes of the state, shall constitute full authority for the authorization and issuance of bonds hereunder. No other act or law with regard to the authorization or issuance of obligations that requires a bond election or in any way impedes or restricts the carrying out of the acts herein authorized to be done shall be construed as applying to any proceedings taken hereunder or acts done pursuant hereto. [C62, 66, 71, 73, 75,§403A.14]

403A.15 Remedies of an obligee. An obligee of a municipality shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee.

1. By mandamus, suit, action or proceeding at law or in equity to compel said municipality to perform each and every term, provision and covenant contained in any contract of said municipality with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said municipality and the fulfillment of all duties imposed by this chapter.

2. By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said municipality. [C62, 66, 71, 73, 75,§403A.15]

403A.16 Additional remedies conferrable by a municipality. A municipality shall have power by its resolution, trust indenture, mortgage, lease or other contract to confer upon any obligee the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction to:

1. Cause possession of any housing project or any part thereof to be surrendered to any such obligee.

2. Obtain the appointment of a receiver of any housing project of said municipality or any part thereof and of the rents and profits therefrom, and provide that, if a receiver be appointed, he may enter and take possession of such housing project or any part thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the municipality as the court shall direct.

3. Require said municipality and the officers, agents and employees thereof to account as if it and they were the trustees of an express trust. [C62, 66, 71, 73, 75,§403A.16]

403A.17 Exemption of property from execution sale. All property (including funds) owned or held by a municipality for the purposes of this chapter shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the municipality be a charge or lien upon such property: Provided, however, that the provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage or other security executed or issued pursuant to this chapter or the right of obligees to pursue any remedies for the enforcement of any pledge or lien on rents, fees or revenues or the right of the federal government to pursue any remedies conferred upon it pursuant to the provisions of this chapter. [C62, 66, 71, 73, 75,§403A.17]

403A.18 Transfer of possession or title to federal government. In any contract with the federal government for annual contributions to a municipality, the municipality may obligate itself (which obligation shall be specifically enforceable and shall not constitute a mortgage, notwithstanding any other law) to convey to the federal government possession of or title to the housing project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenant or conditions to which the municipality is subject; and such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey or otherwise deal with the housing project and funds in accordance with the terms of such contract: Provided, that the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the housing project have been cured and that the housing project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the municipality the housing project as then constituted. [C62, 66, 71, 73, 75, §403A.18]

403A.19 Certificate of state auditor. The municipality may submit to the state auditor a certified copy of the proceedings for the issuance of any bonds hereunder, including the form of such bonds. Upon the submission of these documents to the state auditor, it shall be the duty of the state auditor to pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of this chapter and are otherwise regular in form and if such bonds when delivered and paid for will constitute binding and legal obligations enforceable according to the terms thereof, the state auditor shall so certify in an opinion addressed to the municipality. [C62, 66, 71, 73, 75,§403A.19]

403A.20 Condemnation of property. A municipality shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with a municipal housing project under this chapter. A municipality may exercise the power of eminent domain in the manner provided in chapter 472, and acts amendatory thereof or supplementary thereto, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner: Provided, that no real property belonging to the state, or any political subdivision thereof, may be acquired without its consent, provided further that no real property or any right or interest therein owned by any public utility company, pipe-line company, railway or transportation company vested with the right of eminent domain under the laws of this state, shall be acquired without the consent of such company, or without first securing, after due notice to such company and after hearing, a certificate authorizing condemnation of such property from the board, commission or body having the authority to grant a certificate authorizing condemnation. [C62, 66, 71, 73, 75,§403A.20]

403A.21 Co-operation in undertaking housing projects. For the purpose of aiding and co-operating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may upon such terms, with or without consideration, as it may determine:

1. Dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or any other rights or privileges therein to any municipality, or to the federal government.

2. Cause parks, playgrounds, recreational community, educational, water, sewer or drainage facilities or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects.

3. Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake.

4. Cause services to be furnished for housing projects of the character which such state public body is otherwise empowered to furnish.

5. Enter into agreements with respect to the exercise by such state public body of its powers relating to the repair, elimination or closing of unsafe, insanitary or unfit dwellings.

6. Do any and all things necessary or convenient to aid and co-operate in the planning, undertaking, construction or operation of such housing projects.

7. Incur the entire expense of any public improvements made by such state public body in exercising the powers granted in this chapter.

8. Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with any municipality respecting action to be taken by such state public body pursuant to any of the powers granted by this chapter. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development or administration of low-rent housing or slum clearance projects, including any agency or instrumentality of the United States of America, the provisions of such agreements shall inure to the benefit of and may be enforced by such public body or governmental agency.

9. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a state public body without appraisal, public notice, advertisement or public bidding. [C62, 66, 71, 73, 75,§403A.21]

403A.22 Personal interest prohibited. No public official or employee of a municipality or board or commission thereof and no commissioner or employee of a low-rent housing agency which has been vested with low-rent housing project powers under section 403A.5, shall voluntarily acquire any personal interest, as hereinafter defined, whether direct or indirect, in any municipal housing project, or in any property included or planned to be included in any municipal housing project of such municipality, or in any contract or proposed contract in connection with such municipal housing project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body. If any such official, commissioner or employee presently owns or controls, or has owned or controlled within the preceding two years, any interest, as hereinafter defined, whether direct or indirect, in any property which he knows is included or planned to be included in a municipal housing project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body; and any such official, commissioner or employee shall not participate in any action by the municipality, or board or commission thereof affecting such property, as the terms of such proscription are hereinafter defined. For the purposes of this section the following definitions and standards of construction shall apply:

1. "Action affecting such property" shall include only that action directly and specifically affecting such property as a separate property but shall not include any action of which any benefits accrue to the public generally, or which affects all or a substantial portion of the properties included or planned to be included in such a project.

2. Employment by a state public body, its agencies, and institutions or by any other person as defined in subsection 16 of section 403.17, having such an interest shall not be deemed an interest by such employee or of any ownership or control by such employee of interests of his employer. Such an employee may participate in a low-rent housing project so long as any benefits of such participation accrue to the public generally, such participation affects all or a substantial portion of the properties included or planned to be included in such a project, or such participation promotes the public purposes of such project, and shall limit only that participation by an employee which directly or specifically affects property in which an employer of an employee has an interest.

3. The word "participation" shall be deemed not to include discussion or debate preliminary to a vote by a local governing body or agency upon proposed ordinances or resolutions relating to such a project or any abstention from such a vote.

4. The designation of a bank or trust company as a depository, paying agent, or agent for investment of funds shall not be deemed a matter of interest or personal interest.

5. Stock ownership in a corporation having such an interest shall not be deemed an interest or of ownership or control by the person owning such stocks when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by such person.

6. The word "action" shall not be deemed to include resolutions advisory to the local governing body or agency by any citizens group, board, body, or commission designated to serve a purely advisory function of approving or recommending under this chapter.

7. The limitations of this section shall be construed to permit action by a public official, commissioner, or employee where any benefits of such action accrue to the public generally, such action affects all or a substantial portion of the properties included or planned to be included in such a project, or such action pro-

motes the public purposes of such project, and shall be construed to limit only that action by a public official, commissioner, or employee which directly or specifically affects property in which such official, commissioner, or employee has an interest or in which an employer of such official, commissioner, or employee has an interest. Any violation of the provisions of this section shall constitute misconduct in office, but no ordinance or resolution of a municipality or agency shall be invalid by reason of a vote or votes cast in violation of the standards of this section unless such vote or votes were decisive in the passage of such ordinance or resolution. [C62, 66, 71, 73, 75, §403A.22]

Constitutionality, 63GA, ch 238,§3
Prior actions legalized on condition, 63GA, ch 238,§2
Similar provisions, §§19B.5, 68B.3, 86.7, 252.29, 262.10, 314.2, 347.15, 403.16, 741.11

403A.23 Eligibility of persons receiving public assistance. Any statute to the contrary notwithstanding, no person otherwise eligible to be a tenant in a municipal housing project, shall be declared ineligible therefor or denied occupancy therein merely because he is receiving in some form public assistance such as federal supplemental security income or state supplementary payments, as defined by section 249.1, or welfare assistance, unemployment compensation, social security payments, etc. [C62, 66, 71, 73, 75,§403A.23]

403A.24 Chapter controlling. The provisions of this chapter shall be controlling, notwithstanding anything to the contrary contained in any other law of this state, or local ordinance. Any action of a municipality or the governing body thereof in carrying out the purposes of this chapter, whether by resolution, ordinance or otherwise, shall be deemed administrative in character, and no public notice or publication need be made with respect to such action taken. [C62, 66, 71, 73, 75,§403A.24]

403A.25 and 403A.26 Repealed by 64GA, ch 1092,§2.

403A.27 Percentage of rent as taxes. Any provision of chapter 403A notwithstanding, no housing project shall be approved unless as a condition at least ten percent of all rents and supplemental rental aid shall be paid annually as taxes to the office of the treasurer in the respective county in which said project is located, except as to the use of dwelling units in existing structures leased from private owners. [C71, 73, 75,§403A.27]

403A.28 Public hearing required. The low-rent housing agency shall not undertake any low-cost housing project until such time as a public hearing has been called, at which time the agency shall advise the public of the name of the proposed project, its location, the number of living units proposed and their approximate cost. Notice of the public hearing on the proposed project shall be published at least once in a newspaper of general circulation within the municipality, at least fifteen days prior to the date set for the hearing. [C73, 75,§403A.28]

CHAPTER 404

MUNICIPAL REVENUE

Repealed by 64GA, ch 1088,§199
See ch 384
See note under Title XV

CHAPTER 405

MUNICIPAL ASSISTANCE FUND

Referred to in §411.20

405.1 Fund created—distribution.

405.1 Fund created—distribution. There is created a "municipal assistance fund" in the office of the treasurer of state.

On or before December 15 of each fiscal year, the state comptroller shall distribute the moneys in the municipal assistance fund to each city in the state in the proportion that the population of each city is to the total population of all cities in the state. However, the comptroller shall in no event distribute in any year to any city an amount in excess of one-half the amount to be collected from property tax levies by that city for that year. Any moneys remaining in the municipal assistance fund shall remain in the fund and be available for distribution the following year.

1. The population of each city shall be determined by the latest available federal census. An incorporated city may have one special federal census taken each decade, and the population figure obtained shall be used in apportioning amounts under this section beginning the calendar year following the year in which the special census is certified to the secretary of state.

2. In any case where an incorporated city has been incorporated since the latest available federal census, the mayor and council

shall certify to the treasurer of state the actual population of the incorporated city as of the date of incorporation and its apportionment of funds under this section shall be based upon such certification until the next federal census enumeration. Any community which has dissolved its corporation shall not receive any apportionment of funds under this section after its dissolution.

3. In any case where an incorporated city has annexed any territory since the last regular or special federal census, the mayor and council shall certify to the treasurer of state the actual population of the annexed territory as determined by the last certified federal census of the territory and the apportionment of funds under this section shall be based upon the population of the city as modified by the certification of the population of the annexed territory until the next regular or special federal census enumeration.

4. In any case where two or more incorporated cities have consolidated, the apportionment of funds under this section shall be based upon the population of the incorporated city resulting from the consolidation and shall be determined by combining the population of all incorporated cities involved in the consolidation as determined by the last regular or special federal census enumeration for the consolidating city. [C73, 75,§405.1]

Referred to in §§8.58, 24.14

CHAPTER 405A

ASSESSORS IN CITIES

Repealed by 58GA, ch 291; see ch 441

CHAPTER 406

SANITARY DISPOSAL PROJECTS

Repealed by 64GA, ch 1119,§112
See ch 455B

CHAPTER 407

INDEBTEDNESS

Repealed by 64GA, ch 1088,§199
See ch 384
See note under Title XV

CHAPTER 408

BONDS

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 408A

BOND PROPOSALS—PETITION FOR ELECTION

Repealed by 64GA, ch 1088,§199
See note under Title XV

CHAPTER 409

PLATS

Applicable to all cities
Referred to in §§117A.1, 441.65, 592.3, 713.24(2, *d*)

409.1 Subdivisions or additions.
409.2 Covenant of warranty.
409.3 Conveyances according to plat.
409.4 Streets and blocks.
409.5 Grade of streets.
409.6 Alleys.
409.7 Filing—approval.
409.8 Acknowledgment.
409.9 Abstract of title—opinion—certificates—utility easements.
409.10 Encumbrances—payment—creditor's refusal.
409.11 Encumbrance—bond.
409.12 Record—filing.
409.13 Effect of record.

409.14 Approval condition to filing and recording.
409.15 Disapproval—appeal.
409.16 Void plat—action to annul.
409.17 Change of name of street.
409.18 Vacation by proprietor before sale.
409.19 Partial vacation by proprietor.
409.20 Streets, alleys, and public grounds.
409.21 Correction of plat.
409.22 Vacation by lot owners—petition—notice.
409.23 Time of hearing—notice.
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409.1 Subdivisions or additions. Every original proprietor of any tract or parcel of land of forty acres or less or of more than forty acres if divided into parcels any of which are less than forty acres and every original proprietor of any tract or parcel of land of any size located within a city or within two miles of a city subject to the provisions of section 409.14, who shall subdivide the same into three or more parts, shall cause a registered land surveyor's plat of such subdivision, with references to known or permanent monuments, to be made by a registered land surveyor holding a certificate issued under the provisions of chapter 114, giving the bearing and distance from some corner of the subdivision to some corner of the congressional division of which it is a part, which shall accurately describe all the subdivisions thereof, numbering the same by progressive numbers, giving their dimensions by length and breadth, and the breadth and courses of all the streets and alleys established therein.

The registered surveyor shall certify on the plat of the subdivision that the plat is a true and correct representation of the lands surveyed. The certification shall be signed by the surveyor and shall display the surveyor's registration number and official seal.

Prior to, or at the time of conveyance of the tract or a parcel thereof, the proprietor shall cause a certified copy of the plat to be recorded by the county recorder for assessment and taxation purposes, and the county recorder shall forward certified copies of the plat to the county auditor and assessor. The recording of a plat pursuant to this paragraph is in addition to any other requirement of this chapter, and the recording for assessment and taxation purposes shall not constitute a dedication or impose any liability upon the state or any of its political subdivisions. [C73,§559; C97,§914; C24, 27, 31, 35, 39,§**6266**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.1; 66GA, ch 1190,§1]

C97,§914, editorially divided
Referred to in §§409.2, 409.9, 409.12

409.2 Covenant of warranty. The duty to file for record a plat as provided in section 409.1 shall attach as a covenant of warranty, in all conveyances of any part or parcel of such subdivisions, by the original proprietors against any and all assessments, costs, and damages paid, lost, or incurred by any grantee or person claiming under him, in consequence of the omission on the part of said proprietor to file such plat. [C73,§559; C97,§914; C24, 27, 31, 35, 39,§**6267**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §409.2]

409.3 Conveyances according to plat. Description of lots or parcels of land in such subdivisions according to the number and designation thereof on said plat, in conveyances or for the purposes of taxation, shall be valid. [C73,§559; C97,§914; C24, 27, 31, 35, 39,§**6268**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.3]

409.4 Streets and blocks. The plat of any addition to any city or subdivision of any part or parcel of lands lying within or adjacent to any city shall be divided by streets into blocks, and such blocks and streets shall conform as nearly as practicable to the size of blocks and the widths of streets therein, and shall be extensions of the existing system of streets. [C73,§559; C97,§916; S13,§916; C24, 27, 31, 35, 39, §**6269**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.4]

Referred to in §409.7
40ExGA, ch 78,§1, editorially divided

409.5 Grade of streets. The council may require the owner of the land to bring all streets to a grade acceptable to the council and may also require the installation of sidewalks, paving, sewers, water, gas, and electric utilities before the plat is approved.

The council or commission may tentatively approve such plat prior to such installation, but any such tentative approval shall be revokable. In lieu of the completion of such improvements and utilities prior to the final approval of the plat, the council or commission may accept a bond with surety to secure to the city the actual construction and installa-

tion of such improvements or utilities within a fixed time and according to specifications determined by or in accordance with the regulation of the council or commission. The city is hereby granted the power to enforce such bond by all appropriate legal and equitable remedies. [C24, 27, 31, 35, 39,§**6270**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.5]

Referred to in §409.7

409.6 Alleys. It may require alleys to be platted separating abutting lots and if so platted, the alleys shall conform as nearly as practicable to the width of alleys in the city and shall be extensions of the existing system of alleys. [S13,§916; C24, 27, 31, 35, 39,§**6271**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.6]

Referred to in §409.7

409.7 Filing—approval. All such plats shall be filed with the clerk of the city and when so filed the council within a reasonable time shall consider the same, and shall, if it is found to conform to the provisions of sections 409.4, 409.5, and 409.6, by resolution approve the plat and direct the mayor and clerk to certify the resolution which shall be affixed to the plat. [C97,§916; S13,§916; C24, 27, 31, 35, 39,§**6272**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.7]

Referred to in §409.14

409.8 Acknowledgment. Each plat shall be accompanied by a correct description of the land or parcel of land subdivided and by a statement to the effect that the subdivision as it appears on the plat is with the free consent and in accordance with the desire of the proprietor, signed and acknowledged by such proprietor and his spouse, if any, before some officer authorized to take the acknowledgment of deeds. [C73,§560; C97,§915; S13,§915; C24, 27, 31, 35, 39,§**6273**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.8]

409.9 Abstract of title—opinion—certificates—utility easements. Every plat shall be accompanied by a complete abstract of title and an opinion from an attorney at law showing that the fee title is in the proprietor and that the land platted is free from encumbrance, or is free from encumbrance other than that secured by the bond provided for in section 409.11, and a certified statement from the treasurer of the county in which the land lies that it is free from taxes, and from the clerk of the district court that it is free from all judgments, attachments, mechanics' or other liens as appears by the record in his office, and from the recorder of the county that the title in fee is in such proprietor and that it is free from encumbrance or free from encumbrance other than that secured by the bond provided for in section 409.11, as shown by the records of his office.

Utility easements shall not be construed to be encumbrances hereunder and the location thereof with reference to the land platted may be shown by drawing on the plat described under section 409.1. Grantees of said utility easements shall not be construed to be original proprietors of the land to be platted and shall not join in platting or dedicating the platted land. [C97,§915; S13,§915; C24, 27, 31, 35, 39, §**6274**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.9]

409.10 Encumbrances—payment—creditor's refusal. If the land so platted is encumbered with a debt certain in amount and which the creditor will not accept with accrued interest to the date of proffered payment if it draws interest, or with a rebate of six percent per annum if it draws no interest, or if the creditor cannot be found, then such proprietor, and if a corporation, its proper officer or agent, may make an affidavit stating either that the proprietor offered to pay the creditor the full amount of his debt, or the debt with the rebate, as the case may be, and that he would not accept the same, or that he cannot be found. [C97,§915; S13,§915; C24, 27, 31, 35, 39,§**6275**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.10]

409.11 Encumbrance—bond. The proprietor shall then execute and file with the recorder a bond in double the amount of the encumbrance, which bond shall be approved by the recorder and clerk of the district court. The bond shall run to the county and be for the benefit of purchasers of land subdivided by the plat and shall be conditioned for the payment of the encumbrance, and the cancellation thereof, of record as soon as practicable after the same becomes due and to hold all purchasers and those claiming under them forever harmless from such encumbrance. [C97,§915; S13, §915; C24, 27, 31, 35, 39,§**6276**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.11]

Referred to in §409.9

409.12 Record—filing. The signed and acknowledged plat and the attorney's opinion, together with the certificates of the clerk, recorder, and treasurer, and the affidavit and bond, if any, together with the certificate of approval of the council, shall be entered of record in the proper record books in the office of the county recorder. When so entered, the plat only shall be entered of record in the offices of the county auditor and assessor and shall be of no validity until so filed, in those offices. A plat certified by the council shall supersede any plat recorded for assessment and taxation purposes pursuant to section 409.1 and any plat so superseded shall be voided. [C51,§§635, 636; R60,§§1019, 1020; C73,§560; C97, §§915, 917; S13,§915; C24, 27, 31, 35, 39,§**6277**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.12; 66GA, ch 1190,§2]

40ExGA, ch 78,§7, editorially divided

Exception as to plats filed before July 4, 1949, see 53GA, ch 181,§3

409.13 Effect of record. Such acknowledgment and recording shall be equivalent to a deed in fee simple of such portion of the premises platted as is set apart for streets or other public use, or as is dedicated to charitable, religious, or educational purposes. [C51,§637;

R60,§1021; C73,§561; C97,§917; C24, 27, 31, 35, 39, §6278; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.13]

409.14 Approval condition to filing and recording. No county recorder shall hereafter file or record, nor permit to be filed or recorded, any plat purporting to lay out or subdivide any tract of land into lots and blocks within any city having a population by the latest federal census of twenty-five thousand or over, or within a city of any size which by ordinance adopts the restrictions of this section or, except as hereinafter provided, within two miles of the limits of such city, unless such plat has been first filed with and approved by the council of such city as provided in section 409.7, after review and recommendation by the city plan commission in cities where such commission exists.

If in any case the limits of any such city are at any place less than four miles distant from the limits of any other city, then at such place jurisdiction to approve plats shall extend to a line equidistant between the limits of said cities.

For the information of the city council and the city plan commission, where such exists, and to facilitate action on proposed plats, the city council shall have authority by ordinance to prescribe reasonable rules and regulations governing the form of said plats and require such data and information to accompany same on presentation for approval as may be deemed necessary by the said council.

Said plats shall be examined by such city council, and city plan commission where such exists, with a view to ascertaining whether the same conform to the statutes relating to plats within the city and within the limits prescribed by this section, and whether streets, alleys, boulevards, parks and public places shall conform to the general plat of the city and conduce to an orderly development thereof, and not conflict or interfere with rights of way or extensions of streets or alleys already established, or otherwise interfere with the carrying out of the comprehensive city plan, in case such has been adopted by such city. If such plats shall conform to the statutes of the state and ordinances of such city, and if they shall fall within the general plan for such city and the extensions thereof, regard being had for public streets, alleys, parks, sewer connections, water service, and service of other utilities, then it shall be the duty of said council and commission to endorse their approval upon the plat submitted to it; provided that the city council may require as a condition of approval of such plats that the owner of the land bring all streets to a grade acceptable to the council, and comply with such other reasonable requirements in regard to installation of public utilities, or other improvements, as the council may deem requisite for the protection of the public interest.

The council may require that the owner of the land or his contractor, furnish a good and sufficient bond for the installation of the said improvements according to city specifications and for the repairs necessitated by defects in material or workmanship not to exceed two years from and after completion.

The approval of the city council shall be deemed an acceptance of the proposed dedication for public use, and owners and purchasers shall be deemed to have notice of the public plans, maps and reports of the council and city plan commission, if any, having charge of the design, construction and maintenance of the city streets affecting such property within the jurisdiction of such cities.

If any such plat of land is tendered for recording in the office of the county recorder of any county in which any city of the above class may be situated, it shall be the duty of such county recorder to examine such plat, to ascertain whether the endorsement of approval by the city council, as herein provided for, shall appear thereon. If it shall, and the plat otherwise conforms to the provisions of law, said officer shall accept same for recording. If such endorsement does not appear thereon said officer shall refuse and decline to accept such plat, and any filing thereof shall be void. Any failure to observe the provisions of this section on the part of any county recorder shall constitute a misdemeanor in office. [C27, 31, 35,§6278-b1; C39,§**6278.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.14; 66GA, ch 1190, §3]

Referred to in§§409.1, 409.16

409.15 Disapproval—appeal. In case, on application for such approval of any plat, the city council shall fail to either approve or reject the same within sixty days from date of application, the person proposing said plat shall have the right to file the same with the county recorder, assessor and auditor. If said plat is disapproved by the council such disapproval shall point out wherein said proposed plat is objectionable. From the action of the council refusing to approve any such plat, the applicant shall have the right to appeal to the district court within twenty days after such rejection by filing written notice of appeal with the city clerk. Such appeal shall be triable de novo as an equitable proceeding and accorded such preference in assignment as to assure its prompt disposition. [C27, 31, 35, §6278-b2; C39,§**6278.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.15; 66GA, ch 1190,§4]

Referred to in §409.16

409.16 Void plat—action to annul. In case any plat shall be filed and recorded in violation of sections 409.14 and 409.15, the same shall be void, and the mayor of any city who shall be authorized so to do by resolution of the council having authority to approve such plat, may institute a suit in equity in the district court in which suit the court may order such plat expunged from the records. [C27, 31, 35,§6278-b3; C39,§**6278.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.16]

409.17 Change of name of street. Cities shall have authority to change by ordinance the name of a platted street. The mayor and city clerk shall certify and file the ordinance, after its passage, with the county recorder, assessor and auditor. The county auditor shall make the proper changes on the plats found in the office of the auditor. The county recorder shall enter the instrument of record and make a reference on the margin of the original plat or upon a reference sheet or page attached to the original plat for that purpose. [S13,§917-a; C24, 27, 31, 35, 39,§**6279**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.17; 66GA, ch 1190,§5]

Referred to in §592.7

409.18 Vacation by proprietor before sale. Any such plat may be vacated by the proprietor thereof, with the consent of the city, at any time before the sale of any lots, by a written instrument declaring the same to be vacated, executed, acknowledged, and recorded in the same office with the plat to be vacated, and the execution and recording of such writing shall operate to annul the plat so vacated, and to divest all public rights in the streets, alleys, and public grounds described therein. In cases where any lots have been sold, the plat may be vacated as in this chapter provided by all the owners of lots joining in the execution of the writing aforesaid. [C73,§563; C97,§918; C24, 27, **31, 35, 39,§6280**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.18]

409.19 Partial vacation by proprietor. Any part of a plat may be thus vacated, provided it does not abridge or destroy any right or privilege of any proprietor in said plat, but nothing contained in this section shall authorize the closing or obstruction of highways. [C73,§564; C97,§919; C24, 27, 31, 35, 39,§**6281**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.19]

C97,§919, editorially divided

409.20 Streets, alleys, and public grounds. When any part of a plat is vacated, the proprietors of the lots may enclose the streets, alleys, and public ground adjoining them in equal proportion, except as provided in sections 409.24 and 409.25. [C73,§565; C97,§919; C24, 27, 31, 35, 39,§**6282**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.20]

409.21 Correction of plat. The recorder in whose office the plats are recorded shall write across that part of the plat so vacated the word "vacated", and make a reference on the same to the volume and page in which the instrument is recorded. [C73,§566; C97,§919; C24, 27, 31, 35, 39,§**6283**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.21]

409.22 Vacation by lot owners—petition—notice. Whenever the owners of any tract of land which has been platted into city lots, and the plat of which has been recorded, shall desire to vacate the plat or a part thereof, a petition, signed by all the owners of it or the part to be vacated, shall be filed in the office of the clerk of the district court of the county in which the land is situated, and notice shall be published once each week for three consecutive weeks in a newspaper of general circulation published within the county. [C97, §920; C24, 27, 31, 35, 39,§**6284**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.22]

C97,§920, editorially divided

409.23 Time of hearing—notice. After completion of notice, the court shall fix a time for hearing the petition and notice of the day so fixed shall be given by the clerk by publication in a newspaper of general circulation published within the county not less than twenty days in advance of the date set for hearing. [C97,§920; C24, 27, 31, 35, 39,§**6285**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.23]

409.24 Decree. At the hearing of the petition, if it shall appear that all the owners of lots in the plat or part thereof to be vacated desire the vacation, and there is no valid objection thereto, a decree shall be entered vacating such portion of the plat, and the streets, alleys, and avenues therein, and for all purposes of assessment such portion of the city shall be as if it had never been platted into lots; but if any street as laid out on the plat shall be needed for public use, it shall be excepted from the order of vacation and shall remain a public highway. [C97,§920; C24, 27, 31, 35, 39,§**6286**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.24]

Referred to in §409.20

409.25 Public lands. Vacations made under this chapter shall not be construed to affect any lands lying within any city which have been dedicated or deeded to the public for parks or other public purposes. [C97,§920; C24, 27, 31, 35, 39,§**6287**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.25]

Referred to in §409.20

409.26 Replatting. The owner of any lots in a plat vacated may cause the same and a proportionate part of the adjacent streets and public grounds to be replatted and numbered by the registered land surveyor in the same manner as is required for platting in the first instance, and when such plat is acknowledged by such owner, and is recorded as provided in this chapter, such lots may be conveyed and assessed by the numbers given them on such plat. [C73,§567; C97,§921; C24, 27, 31, 35, 39, §**6288**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.26; 66GA, ch 1190,§6]

409.27 to 409.29 Repealed by 66GA, ch 1190, §16.

409.30 Monumentation.

1. Prior to the offering of the plat of any subdivision for record, the registered land surveyor shall confirm the prior establishment of permanent control monuments at each controlling corner on the boundaries of the parcel or tract of land being subdivided. If no permanent control monuments exist, the registered land surveyor shall establish at least

two permanent control monuments for each block created, or if the area subdivided into lots is less than a block in size, at least two permanent control monuments shall be established for the subdivision. Permanent control monuments shall be constructed of reasonably permanent material solidly embedded in the ground and capable of being detected by commonly used magnetic or electronic equipment. The registered land surveyor shall affix a cap of reasonably inert material bearing an embossed or stencil cut marking of the Iowa registration number of the registered land surveyor to the top of the monument.

2. Other monuments established prior to the recording of the plat of the subdivision and described on the plat shall be considered monuments of record and shall be given the same weight as original permanent control monuments if the monuments remain undisturbed in their original positions. The additional monuments shall be constructed and embedded according to the provisions for permanent control monuments prescribed in subsection 1 of this section.

3. Monuments other than the permanent control monuments required in subsection 1 of this section shall not be required to be established before the recording of the plat or the conveyancing of lands by reference to the plat if the registered land surveyor includes in the certification of the plat that the additional monuments required by this chapter or by any local ordinance shall be established before a specified future date.

4. Additional monuments shall be constructed and embedded according to the provisions for permanent control monuments prescribed in subsection 1 of this section, and shall be set at all of the following locations whether set prior to the recording of the plat, or subsequent to such recording:

a. At every corner and angle point of every lot, block or parcel of land created.

b. At every point of intersection of the outer boundary of the subdivision with an existing or created right of way line of any street, railroad, or other way.

c. At every point of curve, tangency, reversed curve, or compounded curve on every right of way line established.

When the placement of a monument required by this chapter at the prescribed location is impractical, it is permissible to establish a reference monument in close proximity to the prescribed location. If the reference monument is established prior to the recording of the plat and its location properly shown on the plat, the reference monument shall have the same status as other monuments of record. Where any point requiring monumentation has been previously monumented, the existence of the monument shall be confirmed by the registered land surveyor. The existing monument shall be considered a monument of record when properly shown and described on the recorded plat. [66GA, ch 1190,§10]

Referred to in §409.31
Section 409.30, Code 1975, repealed by 66GA, ch 1190,§16

409.31 Plats made for record. Every plat of a subdivision offered for record shall conform to all of the following provisions where applicable:

1. The plat shall be a permanent copy or a photographic print made on a stable plastic film. Exact copies of the plat to be recorded shall be provided to and filed by the county recorder, assessor and auditor. The original plat drawing shall remain the property of the registered land surveyor.

2. The size of each sheet showing any portion of the subdivided lands shall not be greater than eighteen inches by twenty-four inches nor less than eight and one-half inches by eleven inches.

3. Whenever more than one sheet is used to accurately portray the lands subdivided, each sheet shall display both the number of the sheet and the total number of sheets included in the plat, as well as clearly labeled match lines indicating where the other sheets adjoin. An index sheet shall be provided to show the relationship between the sheets.

4. A maximum scale of one hundred feet to one inch shall be used unless permission to use a different scale is obtained in writing from the local governing body. The scale used shall be clearly stated and graphically illustrated by a bar scale drawn on every sheet showing any portion of the lands subdivided.

5. Subdivisions shall be designated, by name or as otherwise prescribed, in bold letters inside the margin at the top of each sheet included in the plat.

6. An arrow indicating the northern direction shall be drawn in a prominent place on each sheet included in the plat.

7. All monuments to be of record shall be adequately described and clearly identified on the plat. When additional monuments are to be established subsequent to the recording of the plat as provided in section 409.30, subsection 3, the location of the additional monuments shall be shown on the plat.

8. Sufficient survey data shall be shown to positively describe the bounds of every lot, block, street, easement, or other areas shown on the plat, as well as the outer boundaries of the subdivided lands.

9. All distances shall be shown in feet to the nearest one-hundreth of a foot, and in accordance with the definition of a foot adopted by the United States bureau of standards. All measurements shall refer to the horizontal plane.

10. The course of every boundary line shown on the plat shall be indicated by a direct bearing reference or by an angle between the boundary line and an intersecting line having a shown bearing, except when the

boundary line has an irregular or constantly changing course, as along a body of water, or when a description of the boundary line is better achieved by measurements shown at points or intervals along a meander line having a shown course. All bearings and angles shown shall be given to at least the nearest minute of arc.

11. Curve data shall be stated in terms of radius, central angle, and tangent, or length of curve, and unless otherwise specified by local ordinance curve data for streets of uniform width may be shown only with reference to the center line, and lots fronting on such curves may show only the chord bearing and distance of such portion of the curve as is included in their boundary. In all other cases, the curve data must be shown for the line affected.

12. The minimum unadjusted acceptable error of closure for all subdivision boundaries shall be 1:10,000 and shall be 1:5,000 for any individual lot.

13. When any lot or portion of the subdivision is bounded by an irregular line, the major portion of that lot or subdivision shall be enclosed by a meander line showing complete data with distances along all lines extending beyond the enclosure to the irregular boundary shown with as much certainty as can be determined or as "more or less", if variable. In all cases, the true boundary shall be clearly indicated on the plat.

14. All interior excepted parcels shall be clearly indicated and labeled, "not a part of this plat".

15. All adjoining properties shall be identified, and where such adjoining properties are a part of a recorded subdivision, the name of that subdivision shall be shown. If the subdivision platted is a resubdivision of a part or the whole of a previously recorded subdivision, sufficient ties shall be shown to controlling lines appearing on the earlier plat to permit an overlay to be made. Resubdivisions shall be labeled as such in a subtitle following the name of the subdivision wherever the name appears on the plat.

16. The purpose of any easement shown on the plat shall be clearly stated and shall be confined to only those easements pertaining to public utilities including gas, power, telephone, water, sewer, and such drainage easements as are deemed necessary for the orderly development of the land encompassed within the plat. All such easements relative to their usage and maintenance shall be approved by the governing or jurisdictional body prior to the recording of the plat.

17. A strip of land shall not be reserved by the subdivider unless the land is of sufficient size and shape to be of some practical use or service as determined by the governing body.

18. The purpose of all areas dedicated to the public must be clearly indicated on the plat. [66GA, ch 1190,§11]

Section 409.31, Code 1975, repealed by 66GA, ch 1190,§16

409.32 Affidavit confirming error on plat. If an appreciable error or omission in the data shown on any plat duly recorded under the provisions of this chapter is detected by subsequent examinations or revealed by a retracement of the lines run during the original survey of the lands as shown on the plat, the registered land surveyor responsible for the original survey and the preparation of the plat may file an affidavit confirming that the error or omission was made, describing the nature and extent of the error or omission and the appropriate correction that should be substituted for the erroneous data shown on the plat. If the registered land surveyor is deceased, or is no longer available, or unwilling to confirm the error or omission, a similar affidavit may be filed by two registered land surveyors confirming the error through an independent survey. In either case where such affidavit has been filed for record, it shall be the duty of the county recorder, assessor, and auditor to place a notation on copies of the plat stating that the affidavit has been filed, the date filed, and the book and page where it is recorded. The affidavit shall have no effect upon the validity of the plat, or on the information shown thereon, but shall be admissible as evidence in a court and given the same weight as testimony offered voluntarily by an expert witness. [66GA, ch 1190,§12]

Section 409.32, Code 1975, repealed by 66GA, ch 1190,§16

409.33 Applicability. The provisions of this chapter shall not be applicable to parcels of land divided solely by the conveyance of land for right of way purposes to the state or any of its political subdivisions or other person having the power of eminent domain. [66GA, ch 1190,§13]

Section 409.33, Code 1975, repealed by 66GA, ch 1190,§16

409.34 to 409.36 Repealed by 66GA, ch 1190, §16.

409.37 Requirements. Such plat shall describe said tract and any other subdivisions of the smallest congressional subdivision of which the same is part, numbering them by progressive numbers, setting forth the courses and distances, the number of acres, and such other memoranda as is necessary; and descriptions of such lots or subdivisions according to the number and designation thereof on said plat shall be deemed sufficient for all purposes. [C73,§570; C97,§924; S13,§924; C24, 27, 31, 35, 39,§6299; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.37]

409.38 Resurvey of city plats. In all cases where the original plat of any city or any addition thereto or subdivision thereof, has been or may be lost or destroyed after the sale and conveyance of any subdivision, block or lot thereof by the original proprietor and before the same shall have been recorded, or the property so platted has been indefinitely located or the plat is materially defective, any three persons owning real property within the

limits of such plat may have the same resurveyed and replatted, and such plat recorded as hereinafter directed. [C97,§925; C24, 27, 31, 35, 39,§6300; C46, 50, 54, 58, 62, 66, 71, 73, 75, §409.38; 66GA, ch 1190,§7]

40ExGA, ch 78,§12, editorially divided

409.39 Conditions—jurisdiction. In no case shall such plat or replat be made and recorded as hereinafter directed, without the consent in writing, endorsed thereon, of the original proprietor, if he be alive and known, nor before an order has been entered by the district court upon application of the parties desiring a replat to be made, that such replat is necessary. The court shall have jurisdiction of the matter upon proof of publication of notice of the application for at least two weeks in some newspaper of general circulation in the city. [C97, §925; C24, 27, 31, 35, 39,§6301; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.39]

409.40 How resurvey made. The county surveyor of any county in which is situated any city, village, or addition thereto, as contemplated in this chapter, may, and upon payment of his legal fees by any person desiring the same must make a resurvey of such city, village, or addition, or any portion, and plat thereof, which plat shall conform as near as may be with the original lines of the parcel or tract so resurveyed, and be made in all respects in accordance with the provisions of this chapter. [C97,§926; S13,§926; C24, 27, 31, 35, 39,§6302; C46, 50, 54, 58, 62, 66, 71, 73, 75, §409.40]

S13,§926, editorially divided

409.41 Power of surveyor. In making a resurvey and plat, the surveyor may summon witnesses, administer oaths, and take and hear evidence touching the original plat lines and subdivisions, whether the original proprietor is dead, and any other matter which may assist in arriving at and establishing the true lines and boundaries. [C97,§926; S13,§926; C24, 27, 31, 35, 39,§6303; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.41]

409.42 Notice of resurvey. No resurvey shall be made except upon notice to be given by the surveyor by a publication of the contemplated resurvey once each week for two consecutive weeks in some newspaper printed in the county. [C97,§926; S13,§926; C24, 27, 31, 35, 39,§6304; C46, 50, 54, 58, 62, 66, 71, 73, 75, §409.42]

409.43 Plat certified and filed—effect. When the surveyor has completed the plat pursuant to the resurvey, he shall attach his certificate thereto, to the effect that it is a just, true, and accurate plat of said city, or addition so surveyed by him; which shall be filed for record in the offices of the county recorder, county auditor and assessor, and from the date of such filing it shall be treated in all courts of this state as though the same had been made by the original proprietor thereof.

Any resurvey plat so recorded shall supersede a previously recorded plat for assessment and taxation purposes unless the county auditor objects thereto in writing. A person aggrieved by an objection of the auditor may appeal within thirty days after the mailing of the written objection to the board of supervisors as provided in chapter 441. [C97,§927; C24, 27, 31, 35, 39,§6305; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.43; 66GA, ch 1190,§8]

409.44 Contest—decree. Any person may at any time within six months from the date of its filing for record, commence an action in equity against the persons employing the surveyor, setting up his cause of complaint and asking that such record be canceled. If it appears on the trial that the city, village, or addition was originally laid out and platted; that the original proprietor had sold any or all of the lots thereof; that he intended to dedicate to the public the streets, alleys, or public squares therein; that the plat thereof has never been recorded, but is lost; that the plat was indefinitely located or materially defective; that the proprietor is dead or his place of residence unknown; and that the resurvey and plat for record is a substantially accurate survey and plat of the original plat of such city, village, or addition, then the action shall be dismissed at the cost of the complainants; otherwise the court shall set aside said plat and cancel the same of record at the cost of the defendant. [C97,§925; C24, 27, 31, 35, 39,§6306; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.44]

409.45 Sale or lease without plat. Any person who shall dispose of or offer for sale or lease any lots in any city or addition to any city, until the plat thereof has been acknowledged and recorded as provided in this chapter, shall forfeit and pay fifty dollars for each lot and part of lot sold or disposed of, leased, or offered for sale. [R60,§1027; C73,§572; C97,§930; C24, 27, 31, 35, 39,§6307; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.45]

409.46 and 409.47 Repealed by 63GA, ch 1025, §§72, 73.

409.48 Assessment of platted lots. When any plat is made, filed and recorded by the proprietor or owners under the provisions of this chapter, the individual lots contained therein shall not be assessed in excess of the total assessment of the land as acreage or unimproved property for a period of three years after the recording of said plat, or until such time as the lots are actually improved with permanent construction upon and within the boundaries of the individual lot or lots whichever period is shorter. When an individual lot has been improved with permanent construction, it shall then be assessed for taxation as provided in chapters 428 and 441.

The provisions of this section shall have no effect upon special assessment tax levies. [C58, 62, 66, 71, 73, 75,§409.48]

CHAPTER 410

DISABLED AND RETIRED FIREMEN AND POLICEMEN

Referred to in §§20.9, 28E.25, 364.16, 400.13
Applicable to all cities

410.1 Pension funds.
410.2 Boards of trustees—officers.
410.3 Investment of surplus.
410.4 Gifts, devises, or bequests.
410.5 Membership fee—assessments.
410.6 Who entitled to pension—conditions.
410.7 Soldiers and sailors.
410.8 Disability—how contracted.
410.9 Retired members assigned for light duty.
410.10 Pensions—surviving spouse—children—dependents.
410.11 Exemption.
410.12 Volunteer or call firemen.
410.13 Re-examination of retired members.
410.14 Decision of board.
410.15 Guarantee of pension benefits.
410.16 Moneys drawn—how paid—report.
410.17 City marshal.
410.18 Hospital expense.

HOURS OF SERVICE

410.19 Hours on duty limited.
410.20 Exceptions.

410.1 Pension funds. Any city having an organized fire department may, and all cities having an organized police department or a paid fire department shall, levy annually on taxable property a tax not to exceed three and three-eighths cents per thousand dollars of assessed value for each such department, for the purpose of creating firemen's and policemen's pension funds.

Provided that cities having a population of more than six thousand five hundred may annually levy on taxable property a tax of not more than thirteen and one-half cents per thousand dollars of assessed value for each such department for such purpose. Provided, further, that cities, in which a police or fire retirement system based upon actuarial tables shall be established by law, shall levy for the police or fire pension funds a tax sufficient in amount to meet all necessary obligations and expenditures; and said obligations and expenditures shall be direct liabilities of said cities.

Whenever there is a sufficient balance in both of said funds to meet any proper or legitimate charges that may be made against the same, such city shall not be required to levy a tax for this purpose.

All moneys derived from each tax so levied, and all moneys received as membership fees and dues, and all moneys received from grants, donations, and devises for the benefit of each fund shall constitute separate funds, to be known and designated as a policemen's pension fund and a firemen's pension fund.

The provisions of this chapter shall not apply to policemen and firemen who entered employment after March 2, 1934, except that any policeman or fireman who had been making payments of membership fees and assessments as provided in section 410.5 prior to July 1, 1971, shall on July 1, 1973, be fully restored and entitled to all pension rights and benefits, vested or not vested, under this chapter if the city has not returned to such policeman or fireman the membership fees and assessments paid by him prior to July 1, 1971, and if such policeman or fireman pays to the city within six months after July 1, 1973, the amount of the fees and assessments that he would have paid to his policemen's or firemen's pension fund from July 1, 1971, to July 1, 1973, if Acts of the Sixty-fourth General Assembly, 1971 Session, Sixty-fourth General Assembly, chapter 108, had not been adopted. If the membership fees and assessments paid by such policeman or fireman prior to July 1, 1971, have been returned to him, all pension rights and benefits, vested or not vested, under this chapter shall be fully restored to him on July 1, 1973, if, within six months after July 1, 1973, such policeman or fireman repays the fees and assessments so returned and pays the amount of the fees and assessments to the city that he would have paid to his policemen's or firemen's pension fund from July 1, 1971, to July 1, 1973, if Acts of the Sixty-fourth General Assembly, 1971 Session, chapter 108 had not been adopted. [S13,§§932-a,-j; C24, 27, 31, 35, 39,§6310; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.1]

410.2 Boards of trustees—officers. The chief officer of each department, with the city treasurer and the city solicitor or attorney of such cities, shall be ex officio members of and shall constitute separate boards of trustees for the management of each fund. The chief officer of the department shall be president and the city treasurer, treasurer of such boards, and the faithful performance of the duties of the treasurer shall be secured by his official bond as city treasurer. Such trustees shall not receive any compensation for their services as members of said boards. Provided, however, that in any city where contributory fire and/or police retirement systems based upon actuarial tables shall be established by this Act* for the benefit of policemen and/or firemen appointed to the force after the establishment of same, the board of trustees of each such system, respectively, shall also constitute the board of trustees for the management of

each fund under this section as a separate and distinct fund in itself. [S13,§§932-a,-b,-j,-k; C24, 27, 31, 35, 39,§**6311**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.2]

*45ExGA, ch 75, effective date March 2, 1934

410.3 Investment of surplus. The boards shall have power to invest any surplus left in such funds, respectively, at the end of the fiscal year, but no part of the funds realized from any tax levy shall be used for any purpose other than the payment of pensions. Investments shall be limited to interest-bearing bonds of the United States, of the state of Iowa, of any county, township, or municipal corporation of the state of Iowa. All such securities shall be deposited with the treasurer of the boards of trustees for safekeeping. [S13,§932-l; SS15,§932-c; C24, 27, 31, 35, 39,§**6312**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.3]

410.4 Gifts, devises, or bequests. Each board may take by gift, grant, devise, or bequest, any money or property, real or personal, or other thing of value for the benefit of said funds. All rewards in moneys, fees, gifts, or emoluments of every kind or nature that may be paid or given to any police or fire department or to any member thereof, except when allowed to be retained or given to endow a medal or other permanent or competitive reward on account of extraordinary services rendered by said departments or any member thereof, and all fines and penalties imposed upon members, shall be paid into the said pension fund and become a part thereof. [S13,§§932-d,-m; C24, 27, 31, 35, 39,§**6313**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.4]

410.5 Membership fee—assessments. Every member of said departments shall be required to pay to the treasurer of said funds a membership fee to be fixed by the board of trustees, not exceeding five dollars, and shall also be assessed and required to pay annually an amount equal to one percent per annum upon the amount of the annual salary paid to him, which assessment shall be deducted and retained in equal monthly installments out of such salary. [S13,§§932-d,-m; C24, 27, 31, 35, 39, §**6314**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.5]

Referred to in §410.1

410.6 Who entitled to pension—conditions. Any member of said departments who shall have served twenty-two years or more in such department, and shall have reached the age of fifty years; or who shall while a member of such department become mentally or physically permanently disabled from discharging his duties, shall be entitled to be retired, and upon retirement shall be paid out of the pension fund of such department a monthly pension equal to one-half the amount of salary received by him monthly at the date he actually retires from said department. If any member shall have served twenty-two years in said department, but shall not have reached the age of fifty years, he shall be entitled to retirement, but no pension shall be paid while he lives until he reaches the age of fifty years.

Any member of said departments who has attained the age of sixty-five, shall be retired forthwith, provided that upon the request of the administrative head of either department, the respective boards of trustees may permit such member to remain in service for periods not to exceed one year from the date of such request. Provided further that no member of said departments, employed on July 4, 1965, shall be so retired until he has completed twenty-two years' service for service retirement and will receive his pension benefits.

Upon the adoption of any increase in pension benefits effective subsequent to the date of a member's retirement, the amount payable to each member as his regular pension shall be increased by an amount equal to fifty percent of any increase in the pension benefits for the rank at which the member retired.

Pensions payable under this chapter shall be adjusted as follows:

1. As of the first of July each year, the monthly pension authorized in this chapter payable to each retired member and to each beneficiary, except children, of a deceased member shall be recomputed. The applicable formulas authorized in this chapter which were used to compute the retired member's or beneficiary's pension at the time of retirement or death shall be used in the recomputation except the earnable compensation payable on each July 1 to an active member having the same or equivalent rank or position as was held by such retired or deceased member at the time of retirement or death, shall be used in lieu of the final compensation which the retired or deceased member was receiving at the time of retirement or death. At no time shall the monthly pension or payment to the beneficiary be less than the amount which was paid at the time of such member's retirement or death.

2. All monthly pensions adjusted as provided in this section shall be payable beginning on July 1 of the year which the adjustment is made and shall continue in effect until the next following July 1 at which time the monthly pension shall again be recomputed and all monthly pensions adjusted in accordance with the computations.

3. The adjustment of pensions required by this section shall recognize the retired or deceased member's position on the salary scale within his rank at the time of his retirement or death. In the event that the rank or position held by the retired or deceased member at the time of his retirement or death is subsequently abolished, adjustments in the pensions of the member or of the member's spouse or children shall be computed by the board of trustees as though such rank or position had not been abolished and salary increases had been granted to such rank or position on the same basis as that granted to other ranks and positions in the department.

At no time shall the monthly pension or payment to the member be less than one hundred fifty dollars. [S13,§§932-e,-n; C24, 27, 31, 35, 39,§6315; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.6]

Referred to in §410.10(1)

410.7 Soldiers and sailors. Any member of the fire or police department, who resigned or obtained leave of absence therefrom to serve in the United States air force or air force reserve, army, navy or marine reserve, or marine corps, of the United States, or as a member of the United States army and navy reserve, the Spanish-American War, in the World War 1917-1918, or in World War II from December 7, 1941, to December 31, 1946, both dates inclusive, or in the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, or in the Vietnam Conflict at any time between August 5, 1964, and ending on the date the armed forces of the United States are directed by formal order of the government of the United States to cease hostilities, both dates inclusive, and has returned with an honorable discharge from such service, to the fire or police department, shall have the period of such service included as part of his period of service in the department. [C27, 31, 35,§6315-b1; C39,§6315.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.7; 66GA, ch 76,§12]

410.8 Disability—how contracted. No member who has not served five years or more in said department shall be entitled to be retired and paid a pension under the provisions of this chapter, unless such disability was contracted while engaged in the performance of his duties, or by reason of following such occupation. The question of disability shall be determined by the trustees upon the concurring report of at least two out of three physicians designated by the board of trustees to make a complete physical examination of the member. After any member shall become entitled to be retired, such right shall not be lost or forfeited by discharge or for any other reason except conviction for felony. [S13, §§932-e,-n; C24, 27, 31, 35, 39,§6316; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.8]

410.9 Retired members assigned for light duty. The chief of the police department and the chief of the fire department of such city may assign any member of such departments, respectively, retired by reason of mental or physical disability under the provisions of this chapter, to the performance of light duties in such department. [S13,§§932-e,-n; C24, 27, 31, 35, 39,§6317; C46, 50, 54, 58, 62, 66, 71, 73, 75, §410.9]

410.10 Pensions — surviving spouse — children—dependents. Upon the death of any acting or retired member of such departments, leaving a spouse or minor children, or dependent father or mother surviving, there shall be paid out of said fund as follows:

1. To the surviving spouse, so long as said spouse remains unmarried and of good moral character, a sum equal to one-half of the deceased member's total adjusted pension as provided for in section 410.6, but in no event less than seventy-five dollars per month.
2. If there be no surviving spouse, or upon the death or remarriage of such spouse, then to the dependent father and mother, if both survive, or to either dependent parent, if one survives, thirty dollars per month.
3. To the guardian of each surviving child under eighteen years of age, twenty dollars per month.

Provided, however, that the benefits provided by this section shall be subject to the following definitions: The term "spouse" shall mean only such surviving spouse of a marriage contracted prior to retirement of a deceased member from active service, or of a marriage of a retired member contracted prior to March 2, 1934. The terms "child" and "children" shall mean only the surviving issue of a deceased active or retired member, or the child or children legally adopted by a deceased member prior to his retirement from active service, or by a member now retired prior to March 2, 1934.

This section and its provisions shall be interpreted for all purposes as including all surviving spouses. [S13,§§932-e,-n; C24, 27, 31, 35, 39,§6318; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.10]

410.11 Exemption. All pensions paid under the provisions of this chapter shall be exempt from liability for debts of the person to or on account of whom the same is paid, and shall not be subject to seizure upon execution or other process. [S13,§§932-e,-n; C24, 27, 31, 35, 39,§6319; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.11]

410.12 Volunteer or call firemen. The provisions of this chapter shall apply to volunteer or call members of a paid fire department, but the amount of pension to be paid to such members shall be determined by the board of trustees. [S13,§932-e; C24, 27, 31, 35, 39,§6320; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.12]

410.13 Re-examination of retired members. The board of trustees of each department shall have power, at any time, to cause any member of such department retired by reason of physical or mental disability to be brought before it and again examined by three competent physicians appointed by the board of trustees to discover whether such disability yet continues and can be improved and whether such retired member should be continued on the pension roll, and shall have power to examine witnesses for the same purpose. The question of continued disability or ability to perform regular or light duty in the police or fire department shall be determined by the concurring report of at least two of the three examining physicians. Such member shall be entitled to reasonable notice that such examination will be made, and to be present at the time of the taking of any testimony, shall have the right

to examine the witnesses brought before the board and to introduce evidence in his own behalf. All witnesses shall be examined under oath, which may be administered by any member of such board. [S13,§§932-g,-p; C24, 27, 31, 35, 39,§**6321**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §410.13]

410.14 Decision of board. The decision of such board upon such matters shall be final and conclusive, in the absence of fraud, and no appeal shall be allowed therefrom. Such disabled member shall remain upon the pension roll unless and until reinstated in such department by reason of such examination. [S13,§§932-g,-p; C24, 27, 31, 35, 39,§**6322**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.14]

410.15 Guarantee of pension benefits. Each city, in which contributory fire or police retirement systems based upon actuarial tables, shall be established by this Act* for the benefit of firemen or policemen appointed to either force after the establishment of the same, is hereby bound and obligated to carry out, and authorized to enter into a written agreement evidencing the same, with each person, on retired or active service, who has heretofore contributed, or, at the time of the taking effect of this Act, is contributing to the pension system now in effect in said city, in consideration of his past and his future payments to the pension fund of the system to which he is, or has been contributing, the present and prospective benefits provided by the pension system to which he is or has been contributing, guaranteeing that the present rate of payment by such person to said pension fund shall not be increased, also guaranteeing that the present and prospective rights and benefits provided for by said systems shall not be abridged nor lessened, and guaranteeing to all such persons so contributing all of the rights and benefits present and prospective provided in such pension system. The obligation of each such city for said rights and benefits shall be a direct charge on said city. [S13,§§932-h,-q; C24, 27, 31, 35, 39,§**6323**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.15]

*45ExGA, ch 75, effective date, March 2, 1934

410.16 Moneys drawn — how paid — report. All pensions paid and all moneys drawn from the pension fund under the provisions of this chapter shall be upon warrants signed by the appropriate board of trustees, which warrants shall designate the name of the person and the purpose for which payment is made. The treasurer's annual report shall show the receipts and expenditures of each fund for the preceding fiscal year, the money on hand, and how invested. [S13,§§932-i,-r; C24, 27, 31, 35, 39, §**6324**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.16]

410.17 City marshal. Service by any member of the police department as city marshal shall not deprive him of any rights under this chapter. In any matter in which said city marshal shall be individually interested and which requires the action of the board of trustees of the policemen's pension fund, he shall not act as a member of said board, but the mayor of the city shall act with the other two trustees of the board with respect thereto. Upon the termination of his term as city marshal, he shall regain the rank he held in the police department at the time of his appointment as city marshal. [C24, 27, 31, 35, 39,§**6325**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.17]

410.18 Hospital expense. Cities shall provide hospital, nursing, and medical attention for the members of the police and fire departments of such cities, when injured while in the performance of their duties as members of such department, and the cost of such hospital, nursing, and medical attention shall be paid out of the appropriation for the department to which such injured person belongs; provided that any amounts received by such injured person under the workers' compensation law of the state, or from any other source for such specific purposes, shall be deducted from the amount paid by such city under the provisions of this section. [C24, 27, 31, 35, 39,§**6326**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.18; 66GA, ch 1084,§43]

HOURS OF SERVICE

410.19 Hours on duty limited. Firemen employed in the fire department of cities of ten thousand population or more, or under civil service, shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of fifty-six hours per week and no single period of time, or shift, shall exceed twenty-four hours in length, provided that in cases of serious emergencies such firemen may be required to remain on duty until such emergency has passed, when so ordered by the chief of the department or person acting in his place. Firemen called back to duty under this provision shall be duly compensated in accordance with their regular hourly wage. [C27, 31, 35,§6326-a1; C39,§**6326.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.19]

Referred to in §410.20
See also §411.16

410.20 Exceptions. The provisions of section 410.19 shall not apply to the chief, or other persons when in command of the fire department, nor to firemen who are employed subject to call only. [C27, 31, 35,§6326-a2; C39, §**6326.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§410.20]

CHAPTER 411

RETIREMENT SYSTEMS FOR POLICEMEN AND FIREMEN

Referred to in §§20.9, 28E.25, 85.1, 97A.7, 364.16, 400.13, 602.34
Applicable to all cities
Creating retirement systems for policemen and firemen appointed after March 2, 1934

411.1 Definitions controlling.
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411.18 Transfer of authority to peace officers' system.
411.19 Transfer of benefits to another city.
411.20 Appropriation to municipal assistance fund.

411.1 Definitions controlling. The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

1. *"Retirement system"* shall mean either the fire or the police retirement system of the said cities as defined in section 411.2.

2. *"Policeman"* or *"policemen"* shall mean only the members of a police department who have passed a regular mental and physical civil service examination for policeman, policewoman, or matron, and who shall have been duly appointed to such positions. Such members shall include patrolmen, patrolwomen, probationary patrolmen, matrons, sergeants, lieutenants, captains, detectives, and other senior officers who are so employed for police duty.

3. *"Fireman"* or *"firemen"* shall mean only the members of a fire department who have passed a regular mental and physical civil service examination for fireman and who shall have been duly appointed to such position. Such members shall include firemen, probationary firemen, lieutenants, captains, and other senior officers who have been so employed for the duty of fighting fires.

4. *"Member"* shall mean a member of either the police or fire retirement systems as defined by section 411.3.

5. *"He"*, *"his"*, and all other terms in the masculine gender shall be considered to include the feminine gender.

6. *"Board of fire trustees"* and "board of police trustees" shall mean the boards provided in section 411.5 to administer the fire retirement system and the police retirement system respectively.

7. *"Medical board"* shall mean the board of physicians provided for in section 411.5.

8. *"Membership service"* shall mean service as policemen or firemen rendered since last becoming a member, or, where membership is regained as provided in this chapter, all of such service.

9. *"Beneficiary"* shall mean any person receiving a pension, an annuity, a retirement allowance or other benefit as provided by this chapter.

10. *"Surviving spouse"* shall mean only such surviving spouse of a marriage consummated prior to retirement of a deceased member from active service.

11. *"Child"* or *"children"* shall mean only surviving issue of a deceased active or retired member, or the child or children legally adopted by a deceased member prior to his retirement.

12. *"Regular interest"* shall mean interest at the rate of four percent per annum, compounded annually and credited to the member's account as of the date of the member's retirement or termination from employment.

13. *"Accumulated contributions"* shall mean the sum of all amounts deducted from the compensation of a member and credited to the member's individual account in the annuity savings fund together with regular interest thereon as provided in section 411.8. Accumulated contributions do not include any amount deducted from the compensation of a member and credited to the pension accumulation fund.

14. *"Earnable compensation"* or *"compensation earnable"* shall mean the regular compensation which a member would earn during one year on the basis of the stated compensation for his rank or position excluding any amount received for overtime compensation, meal and travel expenses, and uniform allowances and excluding any amount received upon termination or retirement in payment for accumulated sick leave.

15. *"Amount earned"* shall mean the amount of money actually earned by a beneficiary in some definite period of time.

16. *"Average final compensation"* shall mean the average earnable compensation of the member during the five years of service he earned his highest salary as a policeman or

fireman, or if he has had less than five years of such service, then the average earnable compensation of his entire period of service.

17. *"Annuity"* shall mean annual payments for life derived from the accumulated contributions of a member. All annuities shall be payable in monthly installments.

18. *"Pensions"* shall mean annual payments for life derived from appropriations provided by the said cities and from contributions of the members which are deposited in the pension accumulation fund. All pensions shall be paid in equal monthly installments.

19. *"Retirement allowance"* shall mean the sum of the annuity and the pension, or any benefits in lieu thereof granted to a member upon retirement.

20. *"Annuity reserve"* shall mean the present value of all payments to be made on account of an annuity, or benefit in lieu of an annuity, granted under the provisions of this chapter, upon the basis of such mortality tables as shall be adopted by the boards of trustees, and regular interest.

See mortality tables at end of Vol. II

21. *"Pension reserve"* shall mean the present value of all payments to be made on account of any pension, or benefit in lieu of a pension, granted under the provisions of this chapter, upon the basis of such mortality tables as shall be adopted by the boards of trustees, and regular interest.

22. *"Actuarial equivalent"* shall mean a benefit of equal value, when computed upon the basis of mortality tables adopted by the boards of trustees, and regular interest.

23. *"City" or "cities"* shall mean any city or cities in which fire or police retirement systems are established by this chapter.

24. *"Superintendent of public safety"* shall mean any elected city official who has direct jurisdiction over the fire or police department, or the city manager in cities under the city manager form of government.

25. *"Pension compensation"* shall mean the member's average final compensation adjusted in the ratio of the earnable compensation payable on each July 1 to an active member having the same or equivalent rank or position as was held by the retired or deceased member at the time of retirement or death to the earnable compensation of such member at his retirement or death. [C35,§6326-f1; C39,**§6326.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§411.1; 66GA, ch 1089, §18]

411.2 Name and date of establishment. In any city in which the firemen or policemen are or shall be appointed under the civil service law of this state, there are hereby created and established two separate retirement or pension systems for the purpose of providing retirement allowances only for firemen or policemen of said cities who shall be so appointed after the date this chapter takes effect, or benefits to their dependents. Each such system shall be under the management of a board of trustees hereinafter described, and shall be known as the "fire retirement system of ..... (name of city)", and the "police retirement system of ..... (name of city)", and by such names all of their business shall be transacted, all funds invested, and all cash and securities and other property held. The retirement systems so created shall begin operation as of the first day of the month in which said systems are there established by this chapter. [C35,§6326-f2; C39,**§6326.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§411.2]

Referred to in §411.1(1)

411.3 Membership.

1. All persons who become policemen or firemen after the date such retirement systems are established by this chapter, shall become members thereof as a condition of their employment. Such members shall not be required to make contributions under any other pension or retirement system of city, county, or state of Iowa, anything to the contrary notwithstanding.

2. Should any member in any period of five consecutive years after last becoming a member, be absent from service for more than four years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member. [C35,§6326-f3; C39,**§6326.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§411.3]

Referred to in §411.1(4)
Omnibus repeal, 53GA, ch 183,§2

411.4 Service creditable. The board of trustees shall fix and determine by proper rules and regulations how much service in any year shall be equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year, nor shall the board of trustees allow credit as service for any period of more than one month duration during which the member was absent without pay. [C35,§6326-f4; C39, **§6326.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§411.4]

411.5 Administration.

1. *Boards.* The general administration and the responsibility for the proper operation of the retirement systems and for making effective the provisions of this chapter are hereby vested in a board of fire trustees to administer the system relating to firemen and a board of police trustees to administer the system relating to policemen. The said boards shall be constituted as follows:

a. The chief officer of the fire department, the city treasurer, the city solicitor or attorney, two firemen elected by secret ballot by the members of said department who are entitled to participate in a firemen's pension fund established by law, and two citizens who do not hold any other public office, who shall be appointed by the mayor with the approval of the city council, shall constitute the members of the board of trustees of the fire retirement system.

b. The chief officer of the police department, the city treasurer, the city solicitor or attorney, two policemen elected by secret ballot by the members of said department who are entitled to participate in a policemen's pension fund established by law, and two citizens who do not hold any other public office, who shall be appointed by the mayor with the approval of the city council, shall constitute the members of the board of trustees of the police retirement system.

c. The two citizens appointed by the mayor shall serve on both of said boards.

d. Upon the taking effect of this chapter, such members of each said department in said cities shall elect by secret ballot two active members of each such department to serve as members of said respective boards; one of whom shall serve until the first Monday in April of the second year, and one until the first Monday in April of the fourth year. Thereafter each such department shall, every second year, on such date and in such manner as shall be prescribed by said board of trustees, elect by ballot one such member to serve for a term of four years.

e. Upon the taking effect of this chapter, the mayor, with the approval of the city council, shall appoint two citizens who do not hold any other public office, to serve as members of said boards of trustees; one of whom shall serve until the first Monday in April of the second year, and one until the first Monday in April of the fourth year. Thereafter, every second year, one such citizen shall be so appointed for a four-year term.

f. If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

2. *Voting.* Each trustee shall be entitled to one vote on each board. Four concurring votes shall be necessary for a decision by the trustees at any meeting of either board.

3. *Compensation.* The trustees shall serve as such without compensation, but they shall be reimbursed from the expense fund for all necessary expenses which they may incur through service on the board.

4. *Rules.* Subject to the limitations of this chapter, each board of trustees shall, from time to time, establish rules and regulations for the administration of funds created by this chapter and for the transaction of its business.

5. *Employees.* Each board of trustees shall elect from its membership a chairman, and shall, by majority vote of its members, appoint a secretary, who may, but need not be, one of its members. It shall engage such actuarial and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by each board of trustees and all other expenses of each board necessary for the operation of the retirement system, shall be paid at such rates and in such amounts as each board of trustees shall approve.

6. *Data.* Each board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the system.

7. *Records—reports.* Each board of trustees shall keep a record of all its proceedings, which record shall be open to public inspection. It shall annually make a report to the city council showing the fiscal transactions of the retirement system for the preceding fiscal year, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system.

8. *Legal adviser.* The city attorney or solicitor of the said cities shall be the legal adviser of the boards of trustees.

9. *Medical board.* The board of fire trustees and the board of police trustees jointly shall designate a medical board to be composed of three physicians who shall arrange for and pass upon all medical examinations required under the provisions of this chapter, except that for examinations required because of disability three physicians from the University of Iowa hospitals and clinics who shall pass upon the medical examinations required for disability retirements, and shall report in writing to each board of trustees, respectively, its conclusions and recommendations upon all matters duly referred to it.

10. *Duties of actuary.* The actuary shall be the technical adviser of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

11. *Tables—rates.* Immediately after the establishment of each retirement system, the actuary shall make such investigation of anticipated interest earnings and of the mortality, service and compensation experience of the members of the system as the actuary shall recommend and the board of trustees shall authorize, and on the basis of such investigation the actuary shall recommend for adoption by the board of trustees such tables and such rates as are required in subsection 12 of this section. The board of trustees shall adopt the rate of interest and tables, and certify rates of contribution to be used by the system.

See mortality tables at end of Vol. II

12. *Actuarial investigation.* In the year 1938, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement system, and the interest and other earnings on the moneys and other assets of the retirement system, and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the results of such investigation and valuation, the board of trustees shall:

a. Adopt for the retirement system such interest rate, mortality and other tables as shall be deemed necessary;

b. Certify the rates of contribution payable by the said cities in accordance with section 411.8 of this chapter.

13. *Valuation.* On the basis of such rate of interest and such tables as the boards of trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the retirement systems created by this chapter.

14. *Commissioner of insurance.* Within five days following its submission to the city council, each board of trustees shall transmit to the commissioner of insurance a copy of the report submitted to the city council and the amount of contributions deposited in the pension accumulation fund by the city. The commissioner of insurance shall review the report and the adequacy of the contribution of the city. The commissioner of insurance shall inform the city council of each city in which the contribution of a city is deemed to be inadequate. [C35,§6326-f5; C39,§**6326.07**; C46 50, 54, 58, 62, 66, 71, 73, 75,§411.5; 66GA, ch 1089,§§19–22]

Referred to in §§400.8, 411.1(6, 7)

411.6 Benefits.

1. *Service retirement benefit.* Retirement of a member on a service retirement allowance shall be made by each board of trustees as follows:

a. Any member in service may retire upon his written application to the board of police or fire trustees as the case may be, setting forth at what time, not less than thirty nor more than ninety days subsequent to the execution and filing therefor, he desires to be retired, provided, that the said member at the time so specified for his retirement shall have attained the age of fifty-five and shall have served twenty-two years or more in said department, and notwithstanding that, during such period of notification, he may have separated from the service.

b. Any member in service who has attained the age of sixty-five years, shall be retired forthwith, provided, that upon the request of the superintendent of public safety, the respective board of trustees may permit such member to remain in service for periods not to exceed one year from the date of the last request from the superintendent of public safety. Provided further that no member of said departments employed on July 4, 1965, shall be so retired until he has completed twenty-two years' service for service retirement and will receive his pension benefits.

c. Any member in service who has been a member of the retirement system fifteen or more years and whose employment is terminated prior to his retirement, other than by death or disability, shall upon attaining retirement age, receive a service retirement allowance of fifteen twenty-seconds of the retirement allowance he would receive at retirement if his employment had not been terminated, and an additional one twenty-second of such retirement allowance for each additional year of service not exceeding twenty-two years of service. The amount of the retirement allowance shall be based on the average final compensation at the time of termination of employment. The allowance shall not be available to a member who has chosen to withdraw his accumulated contributions as provided in subsection 10 of this section.

2. *Allowance on service retirement.* Upon retirement from service, a member shall receive a service retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

b. A pension given by the city which shall equal one-half of the member's average final compensation.

Referred to in subsection 13

3. *Ordinary disability retirement benefit.* Upon the application of a member in service or of the chief of the police or fire departments, respectively, any member shall be retired by the respective board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on an ordinary disability retirement allowance, provided, that the medical board after a medical examination of such member shall certify that said member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

4. *Allowance on ordinary disability retirement.* Upon retirement for ordinary disability a member shall receive a service retirement allowance if he has attained the age of fifty-five, otherwise he shall receive an ordinary disability retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and

b. A pension which together with the member's annuity shall make a total retirement allowance equal to ninety percent of 1/70 of the member's average final compensation multiplied by the number of years of membership service, if such retirement allowance exceeds one-half of the member's average final compensation, otherwise a pension which together with the member's annuity shall provide a total retirement allowance equal to one-half of the member's average final compensation except if the member has not had five or more years of membership service the member shall receive a pension which together with the member's annuity shall provide a total retirement allowance equal to one-fourth of the member's average final compensation.

Referred to in subsection 13
Amendment of 56GA, ch 203, retroactive to July 4, 1953

5. *Accidental disability benefit.* Upon application of a member in service or of the chief of the police or fire departments, respectively, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place, or while acting pursuant to order, outside of the city by which he is regularly employed, shall be retired by the respective board of trustees, provided, that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

Should a member in service or the chief of the police or fire departments become incapacitated for duty as a natural or proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time or place or while acting, pursuant to order, outside the city by which he is regularly employed, he shall, upon being found to be temporarily incapacitated following an examination by the board of trustees, be entitled to receive his full pay and allowances until re-examined by said board and found to be fully recovered or permanently disabled.

Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases.

6. *Retirement after accident.* Upon retirement for accidental disability a member shall receive a service retirement allowance if the member has attained the age of fifty-five, otherwise the member shall receive an accidental disability retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

b. A pension, in addition to the annuity, of 66⅔ percent of his average final compensation.

Referred to in subsection 13

7. *Re-examination of beneficiaries retired on account of disability.* Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the respective board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained age fifty-five to undergo a medical examination at a place designated by the medical board. Such examination shall be made by the medical board or in special cases, by an additional physician or physicians designated by such board. Should any disability beneficiary who has not attained the age of fifty-five refuse to submit to such medical examination, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all rights in and to his pension may be revoked by the respective board of trustees.

a. Should any beneficiary for either ordinary or accidental disability be engaged in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation, then the amount of his pension shall be reduced to an amount which together with his annuity and the amount earned by him shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified, provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earned by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired at age fifty-five or greater, shall not again become a member of the retirement system and shall have his retirement allowance suspended while in active service.

b. Should a disability beneficiary under age fifty-five be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member and he shall contribute thereafter at the same rate he paid prior to disability, and any former service on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect ,and upon his subsequent retirement he shall be credited with all his service as a member and also with the period of disability retirement, provided that during such period of disability he has not engaged in a gainful occupation from which his net earnings exceeded the difference between his disability retirement allowance and the amount he would have received for said period if his compensation at the time of disability had continued.

c. The chief of the fire department or the chief of the police department of such city may, subject to approval of the medical board, assign any former member of such department who is retired and drawing a pension for disability under the provisions of this chapter, to the performance of light duties in such department.

8. *Ordinary death benefit.* Upon the receipt of proper proofs of the death of a member in service, or a member not in service who has completed fifteen or more years of service as provided in subsection 1, paragraph "*c*", of this section, there shall be paid to such person having an insurable interest in the member's life as the member shall have nominated by written designation duly executed and filed with the respective board of trustees:

a. The member's accumulated contributions and, if the member has had one or more years

of membership service and no pension is payable under the provisions of subsection 9 of this section, in addition thereto—

b. An amount equal to fifty percent of the compensation earnable by the member during the year immediately preceding the member's death if the member is in service or an amount equal to fifty percent of the compensation earned by the member during the member's last year of service if the member is not in service; or

If there be no such nomination of beneficiary, the benefits provided in paragraphs *"a"* and *"b"* shall be paid to the member's estate; or in lieu thereof, at the option of the following beneficiaries, respectively, even though nominated as such for a member in service, there shall be paid a pension which, together with the actuarial equivalent of the member's accumulated contributions, shall be equal to one-fourth of the average final compensation of such member, but in no instance less than seventy-five dollars. In addition to the benefits herein enumerated, there shall also be paid for each child of a member under the age of eighteen years the sum of twenty dollars per month or for a member not in service the pension shall be reduced as provided in subsection 1, paragraph *"c,"* of this section and shall be paid commencing when the member would have attained the age of fifty-five except if there is a child of the member under the age of eighteen, or under the age of twenty-two who is a full-time student, or who is disabled, under the definitions used in section 402 of the Social Security Act as amended to July 1, 1976 42 U.S.C. 402 the pension shall be paid commencing with the member's death until the children reach the age of eighteen, or twenty-two if applicable. The pension shall resume commencing when the member would have attained the age of fifty-five;

Referred to in subsection 9(*c*)

c. To the spouse to continue so long as said party remains unmarried; or

Referred to in subsection 9(*b*)

d. If there be no spouse, or if the spouse dies or remarries before any child of such deceased member shall have attained the age of eighteen years, then to the guardian of his child or children under said age, divided in such manner as the board of trustees in its discretion shall determine, to continue as a joint and survivor pension until every such child dies or attains the age of eighteen; or

Referred to in subsection 9(*b*)

e. If there be no surviving spouse or child under age eighteen, then to his dependent father or mother or both, as the board of trustees in its discretion shall determine, to continue until remarriage or death.

Referred to in subsections 9 and 14(*b*)

9. *Accidental death benefit.* If, upon the receipt of evidence and proof that the death of a member in service or the chief of police or fire departments was the natural and proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place, or while acting pursuant to order, outside of the city by which he is regularly employed, the board of trustees shall decide that death was so caused in the performance of duty there shall be paid, in lieu of the ordinary death benefit provided in subsection 8 of this section, to his estate or to such person having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the respective board of trustees the benefits set forth in paragraphs *"a"*, *"b"* and *"c"* of this subsection:

a. His accumulated contributions; and in addition thereto—

b. A pension equal to one-half of the average final compensation of such member shall be paid to his spouse, children or dependent parents as provided in paragraphs *"c"*, *"d"* and *"e"* of subsection 8 of this section. In addition to the benefits for the spouse herein enumerated, there shall also be paid for each dependent child of a member under the age of eighteen years the sum of twenty dollars per month.

c. If there be no spouse, children under the age of eighteen years or dependent parent surviving such deceased member, the death shall be treated as an ordinary death case and the benefit payable in accordance with the provisions of subsection 8, paragraph *"b"*, in lieu of the pension provided in paragraph *"b"* of this subsection 9, shall be paid to his estate.

Disease under this subsection shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison, or gases.

Referred to in subsections 8(*a*) and 14(*b*)

10. *Return of accumulated contributions.* Should a member cease to be a policeman or fireman except by death or retirement, he shall be paid on demand the amount of his accumulated contributions standing to the credit of his individual account in the annuity savings fund.

Referred to in subsection 1

11. *Optional allowance.* With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, in which event such a beneficiary shall be considered as an active member at the time of death; until the first payment on account of any benefit becomes normally due, any beneficiary may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent at that time of his retirement allowance in a lesser retirement allowance payable throughout life with the provision that an amount in money not exceeding the amount of his accumulated contributions shall be immediately paid in cash to such member or some other benefit or benefits shall be paid either to the member or to such person or

persons as he shall nominate, provided such cash payment or other benefit or benefits, together with the lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance and shall be approved by the board of trustees; provided, that a cash payment to such member or beneficiary at the time of retirement of an amount not exceeding fifty percent of his accumulated contributions shall be made by the board of trustees upon said member's or beneficiary's election.

12. *Pensions offset by compensation benefits.* Any amounts which may be paid or payable by the said cities under the provisions of any workers' compensation or similar law to a member or to the dependents of a member on account of any disability or death, shall be offset against and payable in lieu of any benefits payable out of funds provided by the said cities under the provisions of this chapter on account of the same disability or death. In case the present value of the total commuted benefits under said workers' compensation or similar law is less than the pension reserve on the benefits otherwise payable from funds provided by the said cities under this chapter, then the present value of the commuted payments shall be deducted from the pension reserve and such benefits as may be provided by the pension reserve so reduced shall be payable under the provisions of this chapter.

Workers' compensation, ch 85

13. *Pension to spouse and children of deceased pensioned member.* In the event of the death of any member receiving a retirement allowance under the provisions of subsections 2, 4, or 6 of this section there shall be paid a pension:

a. To the spouse to continue so long as said partner remains unmarried, equal to one-half the amount received by such deceased beneficiary, but in no instance less than seventy-five dollars per month, and in addition thereto the sum of twenty dollars per month for each child under eighteen years of age; or

b. In the event of the death of the spouse either prior or subsequent to the death of the member, to the guardian of each surviving child under eighteen years of age, in the sum of twenty dollars per month for the support of such child.

Referred to in subsection 14(*b*)

14. *Annual readjustment of pensions.* Pensions payable under this section shall be adjusted as follows:

a. As of the first of July of each year, the monthly pensions authorized in this section payable to each retired member and to each beneficiary, except children, of a deceased member shall be recomputed. The formula authorized in this section which was used to compute the retired member's or beneficiary's pension at the time of retirement or death shall be used in the recomputation except the pension compensation shall be used in lieu of the average final compensation which the retired or deceased member was receiving at the time of retirement or death. The adjusted monthly pension shall be the amount payable at the member's retirement or death adjusted by one-half of the difference between the recomputed pension and the amount payable at the member's retirement or death. At no time shall the monthly pension or payment to the beneficiary be less than the amount which was paid at the time of the member's retirement or death.

b. As of the first of July of each year, the monthly pension payable to each surviving child in accordance with subsections 8, 9, and 13 of this section shall be adjusted to equal six percent of the monthly salary payable on such July 1 to an active member having the rank of first-class fireman, in the case of a child of a deceased member of the fire department, or of a first-class patrolman, in the case of a child of a deceased member of the police department. If the monthly pension so computed is less than the amounts provided in subsections 8, 9 and 13 of this section, the amounts provided for in said subsections shall be payable.

c. All monthly pensions adjusted as provided in this subsection shall be payable beginning on July 1 of the year in which the adjustment is made and shall continue in effect until the next following July 1 at which time the monthly pensions shall again be recomputed and all monthly pensions shall be adjusted in accordance with the recomputations.

d. The adjustment of pensions required by this subsection shall recognize the retired or deceased member's position on the salary scale within his rank at the time of his retirement or death. In the event that the rank or position held by the retired or deceased member at the time of retirement or death is subsequently abolished, adjustments in the pensions of the member or of the member's spouse or children shall be computed by the board of trustees as though such rank or position had not been abolished and salary increases had been granted to such rank or position on the same basis as increases granted to other ranks and positions in the department.

e. A retired member who became eligible for benefits under the provisions of subsection 1 of this section but who did not serve twenty-two years and did not attain the age of fifty-five years prior to his termination of employment shall not be eligible for the annual readjustment of pensions provided for by this subsection. [C35,§6326-f6; C39,§**6326.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§411.6; 66GA, ch 1089, §§23–29, ch 1084,§43]

411.7 Management of funds.

1. The respective boards of trustees shall be the trustees of the several funds created by this chapter as provided in section 411.8 and shall have full power to invest and reinvest such funds subject to the terms, conditions, limitations and restrictions imposed by subsection 2 of this section, and subject to like

terms, conditions, limitations, and restrictions said trustees shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as of the proceeds of said investments and any moneys belonging to said funds.

2. The city treasurer may invest at the direction of the respective boards of trustees such portion of the several funds created by this chapter as in the judgment of the respective boards are not needed for current payment of benefits under this chapter in interest-bearing securities issued by the United States, or interest-bearing bonds issued by the state of Iowa, or make deposits of such funds in banks as provided in chapter 453, or in bonds issued by counties, school districts, or general obligation or limited levy bonds issued by municipal corporations in this state as authorized for investment by insurance companies under section 511.8 and subject to all limitations contained in said section. In the event of loss on the redemption or sale of securities, where invested as prescribed by law, neither the treasurer nor the trustees shall be personally liable, but such loss shall be charged against the retirement funds. The city treasurer may sell any securities in such funds and reinvest the proceeds in accordance with the direction of the respective boards of trustees when such action may be deemed advisable by the trustees for the protection of said funds or the preservation of the value of the investment.

Referred to in subsection 1

3. Each board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the pension accumulation fund and the expense fund. The amount so allowed shall be due and payable to said funds and shall be annually credited thereto by the respective board of trustees from interest and other earnings on the moneys and other assets of the retirement systems. Any additional amount required to meet the interest on the funds of the retirement system shall be paid by the cities and any excess of earnings over such amount required shall be deductible from the amounts to be contributed by the said cities.

4. The treasurer of the said cities shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the respective board of trustees. A duly attested copy of the resolution of the respective board of trustees designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it shall previously have been allowed by resolution of the respective board of trustees.

5. For the purpose of meeting disbursements for pensions, annuities, and other payments, there may be kept available cash not exceeding ten percent of the total amount in the several funds of the retirement system on deposit in one or more banks or trust companies in said cities, organized under the laws of the state of Iowa, or of the United States, provided, that the amount on deposit in any one bank or trust company shall not exceed twenty-five percent of the paid-up capital and surplus of such bank or trust company.

6. No trustee and no employee of either board shall have any direct interest in the gains or profits of any investment made by the respective boards of trustees. No trustee shall receive any pay or emolument for his services except as secretary. No trustee or employee of either board of trustees shall directly or indirectly for himself or as an agent in any manner use the assets of the retirement system except to make such current and necessary payments as are authorized by the board of trustees, nor shall any trustee or employee of the boards become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the respective board of trustees. [C35,§6326-f7; C39, §6326.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§411.7; 66GA, ch 1089,§30]

Referred to in §411.18

411.8 Method of financing. All the assets of each retirement system created and established by this chapter shall be credited according to the purpose for which they are held to one of five funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, the pension reserve fund, and the expense fund.

1. *Annuity savings fund.*

a. The annuity savings fund shall be the fund in which shall be accumulated contributions from the compensation of the members to provide for their annuities. The rates of contribution payable by members according to their ages when becoming members shall be as follows:

Age when becoming a member	Rate of contribution
20	4.91%
21	4.97%
22	5.04%
23	5.11%
24	5.18%
25	5.26%
26	5.33%
27	5.41%
28	5.48%
29	5.56%
30	5.64%
31	5.72%
32	5.80%
33	5.88%
34	5.97%
35	6.05%
36	6.14%
37	6.22%

38 ..... 6.31%
39 ..... 6.40%
40 ..... 6.50%

Credit of excess paid before July 4, 1947, see 52GA, ch 219,§9

b. The proportions so computed for a person at age forty shall be applied to a member who attains a greater age before he becomes a member. The respective boards of trustees shall certify to the superintendent of public safety and the superintendent of public safety shall cause to be deducted from the salary of each member on each and every payroll for each and every pay period, the proportion of the compensation of each member so computed.

c. The deductions provided for herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be reduced thereby. Every member shall be deemed to consent to the deductions made and provided for herein, and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered during the period covered by the payment except as to benefits provided by this chapter. The superintendent of public safety shall certify to the respective boards of trustees on each and every payroll, or in such other manner as the said boards of trustees shall prescribe, the amount deducted from each member's salary, and such amounts shall be paid into the respective annuity savings fund and shall be credited together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

d. The accumulated contributions of a member withdrawn by him or paid to his estate or designated beneficiary in the event of his death shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

Military service exception, §411.9

2. *Annuity reserve fund.* The annuity reserve fund shall be the fund from which shall be paid all annuities and all benefits in lieu of annuities payable as provided in this chapter. Should a beneficiary retired on account of disability be restored to active service and again become a member of the retirement system, his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

3. *Pension accumulation fund.* The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by the said cities and from which shall be paid the lump-sum death benefits for all members payable from the said contributions. Contributions to and payments from the pension accumulation fund shall be as follows:

a. On account of each member there shall be paid annually into the pension accumulation fund by the said cities an amount equal to a certain percentage of the earnable compensation of the member to be known as the "normal contribution". The rate percent of such contribution shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuations. Until the first valuation the normal contribution shall be 7.9 percent.

b. On the basis of the rate of interest and of such mortality, interest and other tables as shall be adopted by the boards of trustees, the actuary engaged by the said boards to make each valuation required by this chapter, shall immediately after making such valuation, determine the uniform and constant percentage of the earnable compensation of the average new entrant, which, if contributed throughout his entire period of active service, would be sufficient to provide for the payment of any death benefit or pension payable on this account. The rate percent so determined shall be known as the "normal contribution rate". The normal contribution rate shall be the rate percent of the earnable compensation of all members obtained by deducting from the total liabilities of the fund the amount of the funds in hand to the credit of the fund and dividing the remainder by one percent of the present value of the prospective future compensation of all members as computed on the basis of the rate of interest and of mortality and service tables adopted by the boards of trustees. The normal rate of contribution shall be determined by the actuary after each valuation.

c. The total amount payable in each year to the pension accumulation fund shall be not less than the rate percent known as the normal contribution rate of the total compensation earnable by all members during the year, provided, however, that the aggregate payment by the said cities shall be sufficient when combined with the amount in the fund to provide the pensions and other benefits payable out of the fund during the then current year.

d. All lump-sum death benefits on account of death in active service payable from contributions of the said cities shall be paid from the pension accumulation fund.

e. Upon the retirement or death of a member an amount equal to the pension reserve on any pension payable to him or on account of his death shall be transferred from the pension accumulation fund to the pension reserve fund.

f. An amount equal to one and twenty-one hundredths percent of each member's compensation from the compensation of the member shall be paid to the pension accumulation fund. The provisions of this section, subsection 1, paragraphs *"b"* and *"c"*, relating to the contributions of members shall be applicable to this paragraph.

4. *Pension reserve fund.* The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members or to their beneficiaries and from which such pensions and benefits in lieu thereof shall be paid. Should a beneficiary retired on account of disability be restored to active service and again become a member of the retirement system, his pension reserve shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of a disability beneficiary be reduced as a result of an increase in his amount earned, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

5. *Expense fund.* The expense fund shall be the fund to which shall be credited all money provided by the said cities to pay the administration expenses of the retirement system and from which shall be paid all the expenses necessary in connection with the administration and operation of the system. Annually the boards of trustees shall estimate the amount of money necessary to be paid into the expense fund during the ensuing year to provide for the expense of operation of the retirement system. [C35,§6326-f8; C39,**§6326.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§411.8; 66GA, ch 1089,§§31, 32]

Referred to in §§411.1(13), 411.5(12,b), 411.7, 411.9

411.9 Military service exceptions. Any member who is absent while serving in the armed services of the United States or its allies and is discharged or separated therefrom under honorable conditions shall have any such period or periods of absence while serving in such armed services on other than a voluntary basis and one such period of absence, not in excess of four years, while serving in such armed forces on a voluntary basis included as part of his period of service in the department. Such member shall not be required to continue the contributions required of him under section 411.8 during such period of military service, provided that he shall, within six months after he has been discharged or separated under honorable conditions from such military service, return and resume his duties in the department, and provided further, that such member shall be declared physically capable of resuming such duties upon examination by the medical board. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§411.9]

Referred to in §411.10
Resolutions before January 1, 1947, restoring to active duty legalized, 52GA, ch 319,§1

411.10 Fund to pay contributions of absent members. The cities which have a retirement system as provided under this chapter, shall create a fund for the purpose of paying the contributions to this fund of those members who voluntarily or by induction enter the military service or who are serving in the armed forces. Such fund shall be used for the purpose of paying the contributions which are required of the members, but which under the provisions of section 411.9 are waived during periods of military service as defined by section 411.9 and six months thereafter following discharge or separation under honorable conditions. Should any member fail to return to the department within six months after his honorable discharge from the military service, the amount credited to his account in this fund by the city shall revert back to such city and such member or his representative shall not be entitled to claim any interest in the contribution so made by the city. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§411.10]

411.11 Contributions by the city.

1. On or before January 1 of each year the respective boards of trustees shall certify to the superintendent of public safety the amounts which will become due and payable during the year next following to the pension accumulation fund and the expense fund. The amounts so certified shall be included by the superintendent of public safety in his annual budget estimate. The amounts so certified shall be appropriated by the said cities and transferred to the retirement system for the ensuing year. Said cities shall annually levy a tax sufficient in amount to cover such appropriations.

2. To cover the requirements of the respective retirement systems for the period prior to the date when the first regular appropriation is due as provided in subsection 1 of this section, such amounts as shall be necessary to cover the needs of the retirement system shall be paid into the pension accumulation fund and expense fund by special appropriations to the retirement system. [C35,§6326-f9; C39, **§6326.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§411.11]

411.12 Guaranty. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund and the maintenance of annuity reserves and pension reserves as provided for the payment of all pensions, annuities, retirement allowances, refunds, and other benefits granted under the provisions of this chapter and all expenses in connection with the administration and operation of the retirement systems are hereby made direct liability obligations of the said cities. All income, interest, and dividends derived from deposits and investments authorized by this chapter shall be used for the payment of the said obligations of the said cities. Any amounts derived therefrom, which, when combined with regular appropriations made under the provisions of this chapter, exceed the amount required to provide for the discharge of such obligations, shall be used to reduce the regular appropriations otherwise required. [C35,§6326-f10; C39,**§6326.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§411.12]

411.13 Exemption from tax and execution. The right of any person to a pension, annuity, or retirement allowance, to the return of con-

tributions, the pension, annuity, or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the various funds created under this chapter, are hereby exempt from any tax of the state and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this chapter specifically provided. [C35,§6326-f11; C39,§6326.13; C46, 50, 54, 58, 62, 66, 71, 73, 75,§411.13]

411.14 Protection against fraud. Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of such retirement system in any attempt to defraud such system as a result of such act, shall be guilty of a misdemeanor, and shall be punishable therefor under the laws of this state. Should any change or errors in records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the respective board of trustees shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled, shall be paid. [C35,§6326-f12; C39,§6326.14; C46, 50, 54, 58, 62, 66, 71, 73, 75, §411.14]

Constitutionality, 45ExGA, ch 75,§20
Punishment, §687.7

411.15 Hospitalization and medical attention. Cities shall provide hospital, nursing, and medical attention for the members of the police and fire departments of such cities, when injured while in the performance of their duties as members of such department, and the cost of such hospital, nursing, and medical attention shall be paid out of the appropriation for the department to which such injured person belongs; provided that any amounts received by such injured person under the workers' compensation law of the state, or from any other source for such specific purposes, shall be deducted from the amount paid by such city under the provisions of this section. [C66, 71, 73, 75,§411.15; 66GA, ch 1084,§43]

411.16 Hours of service. Firemen employed in the fire department of cities of ten thousand population or more, or under civil service, shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of fifty-six hours per week and no single period of time, or shift, shall exceed twenty-four hours in length, provided that in cases of serious emergencies such firemen may be required to remain on duty until such emergency has passed, when so ordered by the chief of the department or person acting in his place. Firemen called back to duty under this provision shall be duly compensated in accordance with their regular hourly wage. [C66, 71, 73, 75,§411.16]

Referred to in §411.17
See also §410.19

411.17 Provisions not applicable. The provisions of section 411.16 shall not apply to the chief, or other persons when in command of a fire department, nor to firemen who are employed subject to call only. [C66, 71, 73, 75, §411.17]

411.18 Transfer of authority to peace officers system. Each board of trustees may, in lieu of investing funds as provided in section 411.7, transfer authority to invest funds to the board of trustees of the peace officers' retirement, accident and disability system under chapter 97A. Assets held by the system electing to transfer investment authority shall either be transferred in cash or market value plus accrued interest. The assets of the system may be commingled with assets of the peace officers' retirement, accident and disability system for purposes of investment, and no system shall have any right to any specific asset deposited in any of the peace officers' retirement, accident and disability funds other than its undivided interest in all assets. The board of trustees of chapter 97A shall maintain the necessary records to determine the interest of any system in the funds. All income or gain realized from investments of moneys in the funds and all investment expense or loss shall be allocated to the funds of each system in the same ratio that the average quarterly balances based on market values of the funds of each system bear to the total average quarterly balance of the funds in chapter 97A.

The board of trustees electing to transfer investment authority may withdraw in total or in part its assets from the funds established under chapter 97A. Withdrawal shall be by written notice and the amount payable shall be the balance as of the end of the quarter next following receipt of the notice. [66GA, ch 1089,§33]

411.19 Transfer of benefits to another city. A member of a retirement system established in this chapter who terminates employment with a city and is subsequently employed by another city and is eligible for coverage under this chapter may transfer membership service earned under the first system to the system under which the member is employed. Upon the written request of the member with verification by the board of trustees of the system under which the member is employed, the board of trustees of the first system shall transmit to the board of trustees of the system under which the member is employed, within thirty days of the receipt of the request, the member's accumulated contributions to be deposited in the annuity savings fund of the system under which the member is employed and the actuarial equivalent of the amount in the pension accumulation fund which would

be necessary to fund a pension equal to one twenty-second times the number of years of membership service completed, under the first system, to be deposited in the pension accumulation fund of the system under which the member is employed. [66GA, ch 1089,§34]

411.20 Appropriation to municipal assistance fund. There is appropriated from the general fund of the state to the municipal assistance fund established in chapter 405 for each fiscal year an amount necessary to be distributed to cities which have established pension accumulation funds of fire retirement systems or police retirement systems under the provisions of this chapter. Funds shall be used to finance the costs of benefits provided in this chapter by amendments of 66GA, chapter 1089. The amounts distributed to each eligible city in the manner provided in chapter 405 shall be based upon claims filed with the state comptroller by the cities accompanied by the verified statement of the claim signed by the consulting actuary of the retirement system. The claim shall specify for each fiscal year the normal contribution rate which would be required to pay the city's share in the retirement systems and the total amount payable to the pension accumulation funds by the city under the formula by which benefits were computed prior to July 1, 1976 and the normal contribution rate which would be required to pay the city's share in the retirement systems and the total amount payable to the pension accumulation funds by the city under this chapter. The state comptroller shall pay the difference between the two amounts. [66GA, ch 1089,§35]

CHAPTER 412

MUNICIPAL UTILITY RETIREMENT SYSTEM

Applicable to cities over 5,000 population

412.1 Authority to establish system.
412.2 Source of funds.
412.3 Rules.
412.4 Legal reserve insurance.
412.5 Public utility defined.

412.1 Authority to establish system. The council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate any municipally owned waterworks system, or other municipally owned and operated public utility, may establish a pension and annuity retirement system for the employees of any such waterworks system, or other municipally owned and operated public utility. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§412.1]

412.2 Source of funds. The fund for such pension and annuity retirement system shall be created from any or all of the following sources:

1. From the proceeds of the assessments on the wages and salaries of employees, of any such waterworks system, or other municipally owned and operated public utility, eligible to receive the benefits thereof.
2. From the interest on any permanent fund which may be created by gift, bequest, or otherwise.
3. From moneys derived from the operation of such waterworks, or other municipally owned and operated public utility, available and appropriated therefor by the council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate such waterworks or other municipally owned and operated public utility. Such money so expended shall constitute an operating expense of such utility. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§412.2]

Referred to in §412.4

412.3 Rules. The council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate such waterworks, or other municipally owned and operated public utility, may formulate and establish such pension and annuity retirement system, and may make and establish such rules for the operation thereof as may be deemed necessary or appropriate. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§412.3]

412.4 Legal reserve insurance. The council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate any such waterworks, or other municipally owned and operated public utility, shall have the right and power to contract with any legal reserve insurance company, authorized to conduct its business in the state, or any bank located in Iowa having trust powers for the investment of funds contributed to an annuity or pension system, for the payment of the pensions or annuities provided in such pension or annuity retirement system, and may pay the premiums or make the contribution of such contract out of the fund provided in section 412.2. Funds contributed to a bank pursuant to such a contract shall be invested in the manner prescribed in section 633.123, and may be commingled with and invested as a part of a common or master fund managed for the benefit of more than one public utility. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§412.4]

412.5 Public utility defined. Public utility as that term is used in this chapter shall be limited to any waterworks, sewage works, gas, or electric plants and systems managed, operated, and owned by a municipality. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§412.5]

CHAPTER 413

HOUSING LAW

Referred to in §§135B.7, 135B.17, 135C.14(1)
Applicable to all cities
Applicable to mining camps, §135.16

This chapter was repealed by 64GA, ch 1088,§199, effective July 1, 1974; 65GA, ch 1212,§1 postponed the effective date of the repeal to July 1, 1975; however, 65GA, ch 1096,§§29 and 30 had indicated the repeal is not effective and the original statute is reinstated as published herewith. See 65GA, ch 1096,§§30, 54.

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GENERAL PROVISIONS

413.1 Applicability. This chapter shall be known as the housing law and shall apply to every city which, by the last federal census, had a population of fifteen thousand or more, and shall apply to any dwelling in any area adjacent to and within one mile of such municipalities, except estates of real property of ten acres or more in said adjacent area, and to every city as its population shall reach fifteen thousand thereafter by a federal census. [C24, 27, 31, 35, 39,§6327; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.1]

38GA, ch 123,§1, editorially divided

413.2 Cities—authority. In all other cities having a population of less than fifteen thousand, the council may adopt ordinances for the regulation and control of any or all matters covered by the provisions of this chapter, insofar as same may be reasonably applicable, and fix penalties for the violation thereof; and fix rules and regulations not inconsistent with those provided in this chapter for the enforcement of said ordinances. [C24, 27, 31, 35, 39,§6328; C46, 50, 54, 58, 62, 66, 71, 73, 75, §413.2]

413.3 Definitions. Certain words in this chapter are defined for the purposes thereof as follows: Words used in the present tense include the future; words in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word "person" includes a corporation as well as a natural person.

1. *Dwelling.* A "dwelling" is any house or building or portion thereof which is occupied in whole or in part as the home or residence of one or more human beings, either permanently or transiently.

2. *Classes of dwellings.* For the purposes of this chapter dwellings are divided into the following classes: "Private dwellings", "two-family dwellings", and "multiple dwellings".

a. A private dwelling is a dwelling occupied by but one family alone.

b. A two-family dwelling is a dwelling occupied by but two families alone.

c. A multiple dwelling is a dwelling occupied by more than two families.

3. *Classes of multiple dwellings.* All multiple dwellings are for the purposes of this chapter divided into classes, viz.: Class A and Class B.

Class A. Multiple dwelling of class A are dwellings which are occupied more or less permanently for residence purposes by several families and in which the rooms are occupied in apartments, suites, or groups. This class includes tenement houses, flats, apartment houses, apartment hotels, bachelor apartments, studio apartments, kitchenette apartments, and all other dwellings similarly occupied whether specifically enumerated or not.

Class B. Multiple dwellings of class B are dwellings which are occupied, as a rule transiently, as the more or less temporary abiding place of individuals who are lodged, with or without meals, and in which as a rule the rooms are occupied singly. This class includes hotels, lodging houses, boarding houses, furnished room houses, club houses, asylums, boarding schools, convents, hospitals, jails, and all other dwellings similarly occupied whether specifically enumerated herein or not.

4. *Hotel.* A "hotel" is a multiple dwelling of class B in which persons are lodged for hire and in which there are more than twenty-five sleeping rooms.

5. *Family occupancy.* For the purposes of this chapter, a "family" is a group of persons living together, whether related to each other by birth or not, and may consist of one or more persons.

6. *Mixed occupancy.* In cases of mixed occupancy where a building is occupied only in part as a dwelling, the part so occupied shall be deemed a dwelling for the purposes of this chapter.

7. *Yards.* A "rear yard" is an open unoccupied space on the same lot with a dwelling, between the extreme rear line of the lot and the extreme rear line of the house. A yard between the front line of the house and the front line of the lot is a "front yard". A yard between the side line of the house and the side line of the lot which extends from the front line or front yard to the rear yard is a "side yard".

8. *Courts.* A "court" is an open unoccupied space, other than a yard, on the same lot with a dwelling. A court not extending to the street

or front or rear yard is an inner court. A court extending to the street or front yard or rear yard is an outer court.

9. *Corner and interior lots.* A "corner lot" is a lot of which at least two adjacent sides abut upon a street. A lot other than a corner lot is an "interior lot". The word "lot" is any deeded parcel of land whether a full platted lot or not.

10. *Front, rear, and depth of lot.* The front of a lot is that boundary line which borders on the street. In case of a corner lot the owner may elect by statement on his plans either street boundary line as the front. The rear of a lot is the side opposite to the front. The depth of a lot is the dimension measured from the front of the lot to the extreme rear line of the lot. In case of irregular shaped lots the mean depth shall be taken.

11. *Public hall.* A "public hall" is a hall, corridor, or passageway not within the exclusive control of one family.

12. *Stair hall.* A "stair hall" is a public hall and includes the stairs, stair landings, and those portions of the building through which it is necessary to pass in going between the entrance floor and the roof.

13. *Basement, cellar, attic.* A "basement" is a story partly underground having at least one-fourth of its height above the adjoining ground level and having a depth from finish floor level to bottom of floor joists of not less than six feet eight inches, but to be considered as habitable space the finish floor level of the habitable rooms shall not be lower than forty-eight inches, average depth, below adjoining grade and the ceiling height shall be not less than seven feet from finish floor to finish ceiling. A basement with less than fifty percent of its floor area as habitable area shall not be counted as a story.

A "cellar" is a story having less than one-fourth its height above adjoining ground level and having a depth from finish floor level to bottom of floor joists of not less than six feet four inches. A cellar shall not be counted as a story for purpose of height measurement.

In the case of private dwellings and two-family dwellings an "attic", or space in a sloping roof, if not occupied for living purposes, shall not be counted as a story; in the case of multiple dwellings an attic room shall be counted as a story if used for living purposes.

14. *Height.* The "height" of a dwelling is the perpendicular distance measured in a straight line from the curb level to the highest point of the roof beams in the case of flat roofs, and to the average of the height of the gable in the case of pitched roofs; the measurements in all cases to be taken through the center of the front of the house. Where a dwelling is situated on a terrace above the curb level such height shall be measured from the level of the adjoining ground. Where a dwelling is on a corner lot and there is more than one grade or level, the measurements shall be taken from the mean elevation.

15. *Curb level.* The "curb level" is the level of the established curb in front of the building measured at the center of such front. Where no curb has been established the city engineer shall establish such curb level or its equivalent for the purposes of this chapter.

16. *Occupied spaces.* Outside stairways, fire towers, porches, platforms, balconies, boiler flues, and other projections shall be considered as part of the building and not as a part of the yards or courts or unoccupied spaces. This provision shall not apply to unenclosed outside porches not exceeding two stories in height which do not extend into the front or rear yard a greater distance than ten feet from the front or rear walls of the building, nor to any such porch which does not extend into the side yard a greater distance than twelve feet from the side wall of the building nor exceed twelve feet in its other horizontal dimension, nor to an enclosed rear porch or attached garage with or without sleeping porch above and not exceeding twelve by twenty feet, nor to cornices or eaves not exceeding eighteen inches in width.

17. *Fire-resistive materials.* Fire-resistive materials as used in this chapter shall mean brick, stone, concrete, concrete block, tile, any combination thereof, or any assembly of materials equal to but in no case less than one-hour fire-resistive construction as rated by a nationally recognized testing laboratory such as the Underwriters' Laboratories, Incorporated, and as set out in the national fire codes published by the National Fire Protective Association, and approved fire-resistive material.

18. *Wooden buildings.* A "wooden building" is a building of which the exterior walls or a portion thereof are of wood. Court walls are exterior walls.

19. *Nuisance.* The word "nuisance" shall be held to embrace nuisance as known at common law or in equity jurisprudence; and whatever is dangerous to human life or detrimental to health, whatever dwelling is overcrowded with occupants or is not provided with adequate ingress or egress to or from the same, or is not sufficiently supported, ventilated, sewered, drained, cleaned, or lighted, in reference to its intended or actual use, and whatever renders the air or human food or drink unwholesome, are also severally, in contemplation of this chapter, nuisances, and all such nuisances are hereby declared illegal.

20. *Construction of certain words.* The word "shall" is always mandatory and not directory, and denotes that the dwelling shall be maintained in all respects according to the mandate as long as it continues to be a dwelling. Wherever the words "charter", "ordinances", "regulations", "superintendent of buildings", "health department", "the board of health", "health officer", "commissioner of public safety", "com-

missioner of public health", "department charged with the enforcement of this chapter", "corporation counsel", "mayor", "city treasury" or "fire limits" occur in this chapter they shall be construed as if followed by the words "of the city in which the dwelling is situated".

Wherever the words "health department", "health officer", or "duly authorized assistant", or "board of health", "commissioner of public safety", or "commissioner of public health" are employed in this chapter, such words shall be deemed and construed to mean the official or officials in any city to whom is committed the charge of safeguarding the public health. The terms "superintendent of buildings", "building department", and "inspector of buildings" shall embrace the department and the executive head thereof specially charged with the execution of laws and ordinances relating to the construction of buildings. Wherever the words "occupied" or "used" are employed in this chapter such words shall be construed as if followed by the words "or is intended, arranged, designed, built, altered, converted to, rented, leased, let or hired out, to be occupied or used".

Wherever the words "dwelling", "two-family dwelling", "multiple dwelling", "building", "house", "premises", or "lot" are used in this chapter, they shall be construed as if followed by the words "or any part thereof". Wherever the words "city water" are used in this chapter, they shall be construed as meaning any public supply of water through street mains; and wherever the words "public sewer" are used in this chapter they shall be construed as meaning any part of a system of sewers that is used by the public or by concerted action of several users, whether or not such part was constructed at the public expense. Wherever the word "street" is used in this chapter it shall be construed as including for the purpose hereinafter stated any public alley sixteen feet or more in width, namely, for the sole purpose of determining the required open space around and the allowable height of any building abutting thereon.

"Approved fire-resistive material" means as set forth by ordinances, or if not so determined, as approved by the superintendent of buildings. [C24, 27, 31, 35, 39,§**6329**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.3]

413.4 Alteration—change of class. A building not a dwelling, if hereafter converted or altered to such use, shall thereupon become subject to such provisions of this chapter relative to dwellings hereafter erected as the board of health may require. A dwelling of one class if hereafter altered or converted to another class shall thereupon become subject to such provisions of this chapter relative to such latter class as the board of health may require. [C24, 27, 31, 35, 39,§**6330**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.4]

413.5 Unlawful alteration. No dwelling hereafter erected shall at any time be altered so as to be in violation of any provision of this chapter.

No dwelling erected prior to the passage of this chapter shall at any time be altered so as to be in violation of those provisions of this chapter applicable to such dwelling.

If any dwelling or any part thereof is occupied by more families than provided in this chapter, or is erected, altered, or occupied contrary to law, such dwelling shall be deemed an unlawful structure and the health officer may cause such dwelling to be vacated. Any such dwelling shall not again be occupied until it, or its occupation, as the case may be, has been made to conform to the law. [C24, 27, 31, 35, 39,§**6331**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 413.5]

413.6 Dwelling rebuilt. If a dwelling be damaged by fire or other cause to the extent of sixty-five percent or more of its original value, exclusive of the value of the foundations, such dwelling shall not be repaired or rebuilt except in conformity with the provisions of this chapter relative to dwellings hereafter erected; provided, however, the owner shall be permitted to rebuild a building of the same size as before, subject to such reasonable provisions regarding light, ventilation, and sanitation as the board of health may prescribe. [C24, 27, 31, 35, 39,§**6332**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.6]

413.7 Dwelling moved. If any dwelling be hereafter moved from one lot to another it shall thereupon be made to conform to all the provisions of this chapter relative to dwellings hereafter erected, unless the board of health shall in a written permit for such removal certify that such dwelling is reasonably safe and sanitary. [C24, 27, 31, 35, 39,§**6333**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.7]

413.8 Sewer connections — water supply. The provisions of this chapter with reference to sewer connections and water supply shall be deemed to apply only where connection with a public sewer and with public water mains is or becomes reasonably accessible. All questions of the practicability of such sewer and water connections shall be decided by the health officer or such other official as the board of health may direct. [C24, 27, 31, 35, 39,§**6334**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.8]

Referred to in §§413.31, 413.67

413.9 Minimum requirements — power of cities. The provisions of this chapter shall be held to be the minimum requirements adopted for the protection of health, welfare, and safety of the community. Nothing herein contained shall be deemed to invalidate existing ordinances or regulations of any city or county imposing requirements higher than the minimum requirements laid down in this chapter relative to light, ventilation, sanita-

tion, fire prevention, egress, occupancy, maintenance and uses for dwellings; nor be deemed to prevent any city subject to this chapter from enacting and putting in force from time to time ordinances and regulations imposing requirements higher than the minimum requirements laid down in this chapter; nor shall anything herein contained be deemed to prevent such cities from prescribing for the enforcement of such ordinances and regulations, remedies and penalties similar or additional to those prescribed herein. Every city subject to this chapter is empowered to enact such ordinances and regulations and to prescribe for their enforcement; and to enact such other ordinances pertaining to the housing of the people, not in conflict with the provisions of this chapter, as shall be deemed advisable by the city council. No ordinance, regulation, ruling, or decision of any municipal body, officer, or authority shall repeal, amend, modify, or dispense with any of the said minimum requirements laid down in this chapter, except as specifically provided herein. [C24, 27, 31, 35, 39,§**6335**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.9]

Referred to in §413.122

413.10 Improvements. All improvements specifically required by this chapter upon dwellings erected prior to the date of its passage shall be made within one year from said date, unless time is extended by the health department. [C24, 27, 31, 35, 39,§**6336**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.10]

413.11 Application of provisions. All the provisions of this chapter shall apply to all classes of dwellings, except that in sections where specific reference is made to one or more specific classes of dwellings such provisions shall apply only to those specific classes to which reference is made.

Provisions of this chapter in conflict with the state building code shall not apply where the state building code has been adopted or when the state building code applies throughout the state. [C24, 27, 31, 35, 39,§**6337**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.11]

LIGHT AND VENTILATION

413.12 Repealed by 63GA, ch 1195,§1.

413.13 Rear yards. Immediately behind every single and two-family dwelling hereafter erected there shall be, except as hereinafter provided, a rear yard extending across the lot, for a distance equal to at least the width of the dwelling. Such yard shall be open and unobstructed from the ground to the sky. Every part of such yard shall be directly accessible from every other part thereof. The depth of said yard shall be measured at right angles from the rear lot line to the extreme rear part of the dwelling. Such rear yard space shall in no case be less than ten feet deep, and two feet additional for each story of the dwelling on said lot above the first.

An irregular shaped lot, or lot subject to building line restrictions, may be occupied by a dwelling without complying with the provisions of this section, if the total yard space equals that required by this section.

The provisions of this section shall not apply to hotels. [C24, 27, 31, 35, 39,§**6339**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.13]

Referred to in §§413.19, 413.47

413.14 Building to side line of lot — side yards. Dwellings hereafter erected may be built up to the side lot line, if the side wall is without windows, or if with windows the air and light required by this chapter are provided otherwise than by windows on the lot line, or if the side lot line abuts on a street or alley. If, however, any side yard is left, it shall be open and unobstructed from the ground to the sky, and its width shall be proportionate to the height of the dwelling, and no side yard shall be less in width in any part than as follows:

1. *Multiple dwellings.* In the case of all multiple dwellings hereafter erected, one story in height and having a side yard, the width of the side yard measured to the side lot line shall be at least four feet, and such side yard shall be increased in width by one foot for each additional story above the first.

2. *Private dwellings and two-family dwellings.* In the case of private dwellings and two-family dwellings hereafter erected, one story or two stories in height, the width of the side yard measured to the side lot line shall be at least four feet; such side yard shall be increased in width one foot for each additional story above the second.

3. *Distance between buildings on same lot.* Where more than one dwelling is erected upon the same lot, the distance between them shall not be less than eight feet in the case of dwellings of one or two stories in height, this distance to be increased two feet for each additional story above the second. [C24, 27, 31, 35, 39,§**6340**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.14]

Referred to in §§413.19, 413.47, 413.86

413.15 Courts—size of. The size of all courts in dwellings hereafter erected shall be proportionate to the height of the dwelling. No court shall be less in any part than the minimum sizes prescribed in this section. The minimum width of an outer court for a one-story dwelling shall be five feet, for a two-story dwelling six feet, for a three-story dwelling seven feet, and shall increase one foot for each additional story above three stories. The least dimension of an inner court shall never be less than twice the minimum width prescribed by this section for an outer court. The width of all courts adjoining the lot line shall be measured to the lot line and not to an opposite building. [C24, 27, 31, 35, 39,§**6341**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.15]

Referred to in §413.86

413.16 Covered courts. No court of a dwelling hereafter erected shall be covered by a roof or skylight. Every such court shall be at every point open from the ground to the sky

unobstructed; except that in the case of hotels, courts may start on the floor level of the lowest bedroom story, and in the case of other multiple dwellings where there are stores or shops on the lower story or stories, courts may start on the top of such lower story or stories. [C24, 27, 31, 35, 39,§**6342**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.16]

413.17 Air intake. In all dwellings hereafter erected every inner court extending through more than one story shall be provided with a horizontal air intake at the bottom. [C24, 27, 31, 35, 39,§**6343**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.17]

413.18 Corners of courts. Nothing contained in the foregoing sections concerning courts shall be construed as preventing the cutting off of the corners of said courts. [C24, 27, 31, 35, 39,§**6344**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §413.18]

413.19 Other buildings on same lot. If any building is hereafter placed on the same lot with a dwelling, there shall always be maintained between the said buildings an open and unoccupied space extending upwards from the ground. If such buildings are placed at the side of each other the space between them shall conform to the provisions of section 413.14 relating to side yards, but shall be twice the minimum therein required. If such buildings are placed one at the rear of the other the space between them shall be the same as that prescribed in section 413.13 for rear yards. In all cases the height of the highest building on the lot shall regulate the dimensions.

No building of any kind shall be hereafter placed upon the same lot with a dwelling so as to decrease the minimum sizes of courts or yards hereinbefore prescribed, except that, in case of a lot less than seventy-five feet deep, a one-story garage, not more than twenty-five feet deep, measured lengthwise of the lot, nor more than twenty-five feet in the other dimension, or other one-story building, of like dimensions, used exclusively for domestic purposes and not as a dwelling or for the shelter or habitation of animals or fowls of any kind, may occupy one-third of the depth of the open space in this section prescribed.

If any dwelling is hereafter erected upon any lot upon which there is already another building, it shall comply with all the provisions of this chapter, and, in addition, the space between the said building and the said dwelling shall be of such size and arranged in such manner as is herein prescribed, the height of the highest building on the lot to regulate the dimensions. [C24, 27, 31, 35, 39, §**6345**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.19]

413.20 Windows. In every dwelling hereafter erected every room shall have at least one window opening directly upon the street or a public alley or other public space which measures fifteen feet in width, or upon a yard or court of the dimensions specified in this chapter, and located on the same lot, and such window shall be so located as to properly light all portions of such rooms. This provision shall not, however, apply to rooms used as kitchens, art galleries, swimming pools, gymnasiums, squash courts or for similar purposes, provided such rooms are adequately lighted and ventilated. For purposes of this section adequate ventilation may be either a system of mechanical ventilation which provides not less than fifteen air changes per hour or natural ventilation as specified in section 413.21; and further, for purposes of this section adequate light may be either a system of artificial light which provides healthful and sanitary conditions in all spaces of the room or natural light as specified in section 413.21. [C24, 27, 31, 35, 39,§**6346**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.20]

Referred to in §413.59

413.21 Window area — crawl spaces and attics. In every dwelling hereafter erected the window area in each habitable room shall be not less than ten percent of the superficial floor area for window light. For purposes of this section window area shall mean the glass area of a window or exterior door. Each habitable room, except as otherwise provided in this chapter, shall have an area not less than four percent of the superficial floor area for ventilation.

All basements and cellars shall provide light and ventilation with window area of not less than one percent of the superficial floor area.

Crawl spaces and attic spaces shall be provided with ventilating area not less than one three-hundredths of the floor area. No mechanical exhaust system, exhausting vapors, odors or gases, shall be discharged into any attic, crawl space or cellar but shall be directed to the outside air; except this shall not prevent the mechanical exhausting of normal room air to attics when used solely for cooling purposes. [C24, 27, 31, 35, 39,§**6347**; C46, 50, 54, 58 62, 66, 71, 73, 75,§413.21]

Referred to in §§413.20, 413.59

413.22 Living rooms and bedrooms. In every dwelling hereafter erected all living rooms and bedrooms shall be of the following minimum sizes: Every such room shall contain at least eighty square feet of floor area except the kitchenettes may be forty square feet in area; no such room, except kitchenette, shall be, in any part of required area less than seven feet wide. In all dwellings and in each apartment, group or suite of rooms there shall be at least one room containing not less than one hundred twenty square feet of floor area. [C24, 27, 31, 35, 39,§**6348**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.22]

413.23 Height of rooms. No room in a dwelling hereafter erected shall be in any part less than seven feet high from finished floor to finished ceiling; the average height of any such room shall not be less than seven feet six inches, except that an attic room used for living purposes in a private or two-family

dwelling need be seven feet six inches in one-half its area and that areas less than five feet shall not be considered as a part of the required room area. [C24, 27, 31, 35, 39,§6349; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.23]

413.24 Partitions. In every dwelling hereafter erected an alcove in any room intended or used for separate occupancy shall be separately lighted and ventilated as provided for rooms in the foregoing sections. No part of any room in a dwelling hereafter erected shall be enclosed or subdivided at any time, wholly or in part, by a fixed partition for permanent separate occupancy, unless such part of the room so enclosed or subdivided shall be separately lighted and ventilated as provided for rooms in the foregoing sections. [C24, 27, 31, 35, 39,§6350; C46, 50, 54, 58, 62, 66, 71, 73, 75, 413.24]

Referred to in §413.59

413.25 Windows in bathrooms. In every dwelling hereafter erected every water closet compartment and every bathroom shall have an aggregate window area of at least four square feet between stop beads opening directly upon the street, or upon a yard or court of the dimensions specified in this chapter. Every such window shall be made so as to open in all its parts. Nothing in this section contained shall be construed so as to prohibit a general toilet room containing several water closet compartments separated from each other by dwarf partitions, provided such toilet room is adequately lighted and ventilated to the outer air as above provided, and that such water closets are supplemental to the water closet accommodations required by the provisions of section 413.32.

The above provision shall not apply to hotels or dwellings that have a system of forced ventilation so constructed as entirely to change the air in every bathroom, toilet room, or water closet compartment every seven minutes. [C24, 27, 31, 35, 39,§6351; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.25]

Referred to in §§413.32, 413.55

413.26 Lighting and ventilation of halls. Every multiple dwelling, every public hall, and stair hall shall have adequate lighting and ventilation as the board of health may require. [C24, 27, 31, 35, 39,§6352; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.26]

SANITATION

413.27 Cellar rooms. In dwellings hereafter erected no room in the cellar shall be occupied for living purposes. [C24, 27, 31, 35, 39,§6353; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.27]

413.28 Basement rooms. In dwellings hereafter erected no room in the basement shall be occupied for living purposes, unless in addition to the other requirements of this chapter such room shall have sufficient light and ventilation, shall be well drained and dry, and shall, in the opinion of the board of health, be fit for human habitation. [C24, 27, 31, 35, 39,§6354; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.28]

413.29 Basement or cellar under entrance floor. Every dwelling hereafter erected shall have a basement, cellar, or excavated space under the entire entrance floor, at least three feet in depth, or shall be elevated above the ground so that there will be a clear air space of at least eighteen inches between the top of the ground and the floor joists so as to insure ventilation and protection from dampness; provided, however, that cement floors may be laid on the ground level if desired. [C24, 27, 31, 35, 39,§6355; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.29]

413.30 Courts and yards graded and drained. In every dwelling hereafter erected all courts, areas, and yards shall be properly graded and drained, and when required by the health officer the courts shall be properly concreted in whole or in part as may be necessary. [C24, 27, 31, 35, 39,§6356; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.30]

413.31 Sinks and washbowls. In every dwelling hereafter erected and not exempted in section 413.8, there shall be a proper sink and washbowl with running water, exclusive of any sink in the cellar. In two-family dwellings and in multiple dwellings of class A there shall be such a sink or washbowl in each apartment, suite, or group of rooms. [C24, 27, 31, 35, 39, §6357; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.31]

413.32 Water closets. In every dwelling hereafter erected there shall be a separate water closet. Each such water closet shall be placed in a compartment completely separated from every other water closet; such compartment shall be not less than thirty inches wide, and shall be enclosed with partitions which shall extend to the ceiling. Every such compartment shall have a window opening directly upon the street or upon a yard or court of the minimum sizes prescribed by this chapter and located upon the same lot. Nothing in this section contained shall be construed so as to prohibit a general toilet room containing several water closet compartments separated from each other by dwarf partitions, provided such toilet room is adequately lighted and ventilated to the outer air as above provided and that such water closets are supplemental to the water closet accommodations required by other provisions of this section for the occupants of said house. No water closet fixture shall be encased with any woodwork. No water closet shall be placed in a cellar of a multiple dwelling except with written permit from the health officer. In two-family dwellings and in multiple dwellings of class A hereafter erected there shall be for each family a separate water closet constructed and arranged as above provided and located within each apartment, suite, or group of rooms. In multiple dwellings of class B hereafter erected there shall be provided at least one water closet for every twen-

ty occupants or fraction thereof. Every water closet compartment hereafter placed in any dwelling shall be provided with proper means of lighting the same at night. The provisions of this section regarding windows in water closet compartments shall not apply to dwellings that have a system of forced ventilation as provided in section 413.25. [C24, 27, 31, 35, 39,§6358; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.32]
Referred to in §§413.25, 413.55

413.33 Accessibility to city water and sewers. No multiple dwelling shall hereafter be erected unless there is accessible city water and a public sewer, or a private sewer connected directly with a public sewer. No cesspool or similar means of sewage disposal shall be used in connection with any dwelling where connection with a public sewer is practicable. [C24, 27, 31, 35, 39,§6359; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.33]

413.34 Plumbing fixtures. In every dwelling hereafter erected no plumbing fixtures shall be encased, but the space underneath shall be left entirely open. Plumbing pipes shall be exposed, when so required by the health officer. All plumbing work shall be sanitary in every particular and, except as otherwise specified in this chapter, shall be in accordance with the plumbing regulations of said city. All fixtures shall be trapped. Pan, plunger, and long hopper closets will not be permitted. Wooden sinks will not be permitted. [C24, 27, 31, 35, 39,§6360; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.34]
Referred to in §413.55

FIRE PROTECTION

413.35 Dwellings — fire-resistive materials —alternative requirements. In any county or city which has been authorized by law to adopt a building code and which has adopted and is enforcing a nationally recognized standard building code, said county or municipality shall enforce all requirements for fire-resistive construction and exits in such a code in lieu of the requirements of this division consisting of sections 413.35 to 413.46. [C24, 27, 31, 35, 39,§6361; C46, 50, 54, 58, 62, 66, 71, 73, 75, §413.35]
Referred to in §413.121

413.36 Egress from multiple dwellings. Every multiple dwelling hereafter erected exceeding two stories in height shall have at least two independent ways of egress, each of which shall extend from the ground floor to the roof, and shall be located remote from each other, and each shall be arranged as provided elsewhere in this chapter. One of such ways of egress shall be a flight of stairs constructed and arranged as provided in sections 413.39 to 413.42. In multiple dwellings of class A the second way of egress shall be directly accessible to each apartment, group, or suite of rooms without having to pass through the first way of egress. In multiple dwellings of class B the second way of egress shall be directly accessible from a public hall. The second way of egress may be any one of the following, as the owner may select:

1. A system of outside balcony fire escapes constructed and arranged so as to comply with the state fire laws.

2. An additional flight of stairs, either inside or outside, constructed and arranged as provided in sections 413.38 to 413.41.

3. A fire tower located, constructed, and arranged as may be required by the superintendent of buildings. [C24, 27, 31, 35, 39,§6362; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.36]
Referred to in §§413.35, 413.89, 413.121

413.37 Flat-roofed multiple dwellings. Every flat-roofed multiple dwelling hereafter erected exceeding one story in height shall have in the roof a bulkhead or a scuttle not less than two feet by three feet in size. Such scuttle or bulkhead shall be fireproof or covered with metal on the outside and shall be provided with stairs leading thereto and easily accessible to all occupants of the building. No scuttle or bulkhead shall be located in a closet or room, but shall be located in the ceiling of the public hall on the top floor, and access through the same shall be direct and uninterrupted. [C24, 27, 31, 35, 39,§6363; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.37]
Referred to in §§413.35, 413.121

413.38 Stairs in two-story multiple dwellings. Every multiple dwelling two stories or more in height hereafter erected shall have at least one flight of stairs extending from the entrance floor to the roof; and the stairs and public halls therein shall each be at least four feet wide in the clear. All stairs shall be constructed with a rise of not more than eight inches and with treads not less than ten inches wide and not less than four feet long in the clear. Winding stairs will not be permitted. [C24, 27, 31, 35, 39,§6364; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.38]
Referred to in §§413.35, 413.36, 413.53, 413.121

413.39 Stairs in multiple dwellings. In multiple dwellings hereafter erected which exceed three stories in height, the stair halls shall be constructed of fire-resistive material throughout. The risers, strings, and balusters shall be of metal, concrete, or stone. The treads shall be of metal, slate, concrete, or stone, or of hardwood not less than two inches thick. Wooden handrails will be permitted if constructed of hardwood. The floors of all such stair halls shall be constructed of iron, steel, or concrete beams and fireproof filling, and no wooden flooring or sleepers shall be permitted. In multiple dwellings hereafter erected which exceed two stories in height, at least one flight of stairs shall be enclosed in fireproof walls from the cellar to the roof. Multiple dwellings two stories in height having more than three thousand square feet of floor area above the first floor and three-story multiple dwellings shall be of not less than one-hour fire-resistive construction throughout. [C24, 27, 31, 35, 39, §6365; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.39]
Referred to in §§413.35, 413.36, 413.121

413.40 Stair halls in such dwellings. In all multiple dwellings hereafter erected which

exceed three stories in height, all stair halls shall be enclosed on all sides with walls of brick or other fire-resistive material not less than eight inches thick. The doors opening from such stair halls shall be fire-resistive and self-closing fire doors of the swinging type. There shall be no transom or sash or similar opening from such stair hall to any other part of the building occupied for living purposes. In multiple dwellings two stories in height with more than three thousand square feet of floor area above the first floor and in multiple dwellings three stories in height, stair halls shall be of one-hour fire-resistive construction. [C24, 27, 31, 35, 39,§**6366**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.40]

Referred to in §§413.35, 413.36, 413.121

413.41 Multiple dwelling of less than five stories. In multiple dwellings hereafter erected less than five stories high, where there is but one stairway, the entrance hall shall be not less than five feet wide in the clear; and in multiple dwellings five or more stories high, the width shall be not less than six feet and the entrance hall shall have an additional width of two feet for each additional stairway served. In every multiple dwelling hereafter erected, access shall be had from the street or alley to the yard, either in a direct line or through a court. [C24, 27, 31, 35, 39,§**6367**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.41]

Referred to in §§413.35, 413.36, 413.53, 413.121

413.42 Dumb-waiters, chutes, and shafts. In multiple dwellings hereafter erected all dumb-waiters, chutes, ventilating and miscellaneous shafts shall be enclosed in an enclosure of fire-resistive material with self-closing fire doors at all entrances into same, including cellar entrances.

In multiple dwellings hereafter erected which shall exceed two stories in height or which are occupied by more than two families above the grade floor, elevators, if provided, shall not be permitted in well holes or in the same shaft as the stairs, but shall be in a separate shaft or enclosure of fire-resistive material such as brick not less than eight inches in thickness, reinforced concrete not less than four inches in thickness, well-burned tile or terra cotta not less than six inches in thickness.

All entrances into elevator shafts shall be protected by fire doors either self-closing or closed inside by elevator operator. [C24, 27, 31, 35, 39,§**6368**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.42]

Referred to in §§413.35, 413.36, 413.121

413.43 Inside cellar stairs. In multiple dwellings hereafter erected inside cellar stairs shall be in an enclosure constructed of fire-resistive walls and shall have a fire-resistive self-closing door of the swinging type at the bottom. [C24, 27, 31, 35, 39,§**6369**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.43]

Referred to in §§413.35, 413.121

413.44 Closets in multiple dwellings. In multiple dwellings hereafter erected no closet of any kind shall be constructed under any staircase leading from the entrance story to the upper stories, but such space shall be left entirely open and kept clear and free from encumbrance. [C24, 27, 31, 35, 39,§**6370**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.44]

Referred to in §§413.35, 413.121

413.45 Cellar entrance. In every multiple dwelling hereafter erected there shall be an entrance to the cellar or other lowest story from the outside of said building. [C24, 27, 31, 35, 39,§**6371**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §413.45]

Referred to in §§413.35, 413.121

413.46 Wooden multiple dwellings. No wooden multiple dwelling shall hereafter be erected exceeding three stories in height and no wooden building not now used as a multiple dwelling shall hereafter be altered into a multiple dwelling exceeding two stories in height. [C24, 27, 31, 35, 39,§**6372**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.46]

Referred to in §§413.35, 413.121

ALTERATIONS

413.47 Enlargement of dwellings. No dwelling shall hereafter be enlarged or its lot diminished, or other building placed on the lot, so that the rear yard or side yard shall be less in size than the minimum sizes prescribed in sections 413.13 and 413.14 for dwellings hereafter erected. [C24, 27, 31, 35, 39,§**6373**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.47]

413.48 Inner courts. An inner court hereafter constructed in a dwelling erected prior to the passage of this chapter, if extending only through one or two stories, shall be not less than six feet by eight feet in size; and if it extends through more than two stories, it shall be not less than eight feet by ten feet in size. All inner courts shall be opened to the sky, without skylight, or roof of any kind. [C24, 27, 31, 35, 39,§**6374**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.48]

413.49 Additional halls or rooms. Any additional room or hall that is hereafter constructed or created in a dwelling shall comply in all respects with the provisions of this chapter with reference to dwellings hereafter erected, except that it may be of the same height as the other rooms of the same story of the dwelling. [C24, 27, 31, 35, 39,§**6375**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.49]

413.50 Light and ventilation. No dwelling shall be so altered or its lot diminished that any room or public hall or stairs shall have its light or ventilation diminished in any way not approved by the health officer. [C24, 27, 31, 35, 39,§**6376**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §413.50]

413.51 Stairs. No stairs leading to the roof in any multiple dwelling shall be removed or

be replaced with a ladder. [C24, 27, 31, 35, 39, §6377; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.51]

413.52 Bulkheads. Every bulkhead hereafter constructed in a multiple dwelling shall be constructed of fire-resistive material or covered with metal. [C24, 27, 31, 35, 39,§6378; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.52]

413.53 Public halls or stairs. No public hall or stairs in a multiple dwelling shall be reduced in width so as to be less than the minimum width prescribed in sections 413.38 and 413.41. [C24, 27, 31, 35, 39,§6379; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.53]

413.54 Dumb-waiter and elevator shafts. All dumb-waiters and elevators hereafter constructed in multiple dwellings shall be in enclosures constructed of fire-resistive material with fire-resistive doors at all openings at each story, including the cellar. In the case of dumb-waiter shafts such doors shall be self-closing; and such shafts shall be completely separated from the stairs by walls of approved fire-resistive material enclosing the same.

This section does not apply to dumb-waiter shafts or elevator shafts which are already in existence, but only to those which may be installed after this chapter takes effect. [C24, 27, 31, 35, 39,§6380; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.54]

413.55 Water closets. Any water closet hereafter placed in a dwelling, except one provided to replace a defective or insanitary fixture in the same location, shall comply with the provisions of sections 413.25, 413.32, and 413.34, relative to water closets in dwellings hereafter erected. [C24, 27, 31, 35, 39,§6381; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.55]

413.56 Height of dwellings. No dwelling shall be increased in height so that it exceeds one and one-half times the width of the widest street on which it abuts nor in any case exceeds one hundred feet. [C24, 27, 31, 35, 39, §6382; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.56]

413.57 General rule as to alterations. Except as specified above, no dwelling shall be so altered nor shall its lot be so diminished, nor shall any building be so placed on the same lot, as to cause the dwelling to be in violation of the requirements of this chapter for dwellings hereafter erected; nor shall any room, public hall, or stairs have its light or ventilation diminished in any way not approved by the health officer. [C24, 27, 31, 35, 39,§6383; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.57]

413.58 Skylights—ventilators. All new skylights hereafter placed in a multiple dwelling shall be provided with ventilators having a minimum opening of forty square inches and also with either fixed or movable louvers or with movable sashes, and shall be of such size as may be determined to be practicable by the health officer. [C24, 27, 31, 35, 39,§6384; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.58]

413.59 Divided rooms—window. No part of any room in a dwelling shall hereafter be enclosed or subdivided for separate occupancy, wholly or in part by a fixed partition, unless such part of a room so enclosed or subdivided shall contain a window as required by sections 413.20, 413.21, and 413.24 and have a floor area of not less than eighty square feet. [C24, 27, 31, 35, 39,§6385; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.59]

MAINTENANCE

413.60 Lights. In every multiple dwelling a proper light shall be kept burning by the owner in the public hallways near the stairs upon each floor every night from sunset to sunrise throughout the year if so required by the health officer. [C24, 27, 31, 35, 39,§6386; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.60]

413.61 Water closets. No water closet shall be maintained in the cellar of any dwelling without a permit in writing from the health officer, who shall have power to make rules and regulations governing the maintenance of such closets. Under no circumstances shall the general water closet accommodations of any multiple dwelling be permitted in the cellar or basement thereof; this provision, however, shall not be construed so as to prohibit a general toilet room containing several water closets, provided such water closets are supplementary to those required by law. [C24, 27, 31, 35, 39,§6387; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.61]

413.62 Number of water closets. In every dwelling existing prior to the passage of this chapter, there shall be provided at least one water closet for every two apartments, groups, or suites of rooms, or fraction thereof, except that in multiple dwellings of class B there shall be provided at least one water closet for every twenty occupants or fraction thereof. [C24, 27, 31, 35, 39,§6388; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.62]

Referred to in §413.86

413.63 Cellar or basement rooms. No room in the cellar of any dwelling erected prior to the passage of this chapter shall be occupied for living purposes. And no room in the basement of any such dwelling shall be so occupied without a written permit from the health officer. No such room shall hereafter be occupied unless all the following conditions are complied with:

1. Such room shall be at least seven feet high in every part from the floor to the ceiling.

2. The ceiling of such room shall be in every part at least three feet six inches above the surface of the street or ground outside of or adjoining the same.

3. There shall be appurtenant to such room the use of a water closet.

4. At least one of the rooms of the apartment of which such room is an integral part shall have a window or windows opening directly to

the street or yard, with an aggregate of at least twelve square feet in size clear of the sash frame, and which shall open readily for purposes of ventilation.

5. The lowest floor shall be waterproof and damp proof.

6. Such room shall have sufficient light and ventilation, shall be well-drained and dry, and shall be fit for human habitation. [C24, 27, 31, 35, 39,§6389; C46, 50, 54, 58, 62, 66, 71, 73, 75, §413.63]

413.64 Color of cellar walls. The cellar walls and cellar ceilings of every multiple dwelling shall by the owner be thoroughly whitewashed or painted a light color and shall be so maintained by him when required by the health officer. [C24, 27, 31, 35, 39,§6390; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.64]

413.65 Floor beneath water closets. In all two-family dwellings and multiple dwellings the floor or other surface beneath and around water closets and sinks shall be maintained in good order and repair and if of wood shall be kept well painted. [C24, 27, 31, 35, 39,§6391; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.65]

413.66 Repair of dwelling. Every dwelling and all the parts thereof shall be kept in good repair by the owner, and the roof shall be kept so as not to leak, and all rainwater shall be so drained and conveyed therefrom as not to cause dampness in the walls or ceilings. [C24, 27, 31, 35, 39,§6392; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.66]

413.67 Water supply—sinks. Every dwelling not exempted in section 413.8 shall have within the dwelling at least one proper sink with running water furnished in sufficient quantity at one or more places exclusive of the cellar. In two-family dwellings and multiple dwellings of class A there shall be at least one sink on every floor, accessible to each family on the floor occupied by said family without passing through any other apartment. Where city water is not available the owner shall provide proper and suitable tanks, pumps, or other appliances to receive and to distribute an adequate and sufficient supply of water at each floor in the said dwelling at all times of the year, during all hours of the day and night. But a failure in the general supply of city water shall not be construed to be a failure on the part of such owner, provided proper and suitable appliances to receive and distribute such water have been provided in said dwelling. [C24, 27, 31, 35, 39,§6393; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.67]

413.68 Catch basins. In the case of dwellings where, because of lack of city water supply or sewers, sinks with running water are not provided inside the dwellings, one or more catch basins or some other approved convenience for the disposal of waste water, if necessary in the opinion of the health officer, shall be provided in the yard or court, level with the surface thereof and at a point easy of access to the occupants of such dwelling. [C24, 27, 31, 35, 39,§6394; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.68]

413.69 Accumulations of dirt. Every dwelling and every part thereof shall be kept clean and shall also be kept free from any accumulation of dirt, filth, rubbish, garbage, or other matter in or on the same, or in the yards, courts, passages, areas, or alleys connected with or belonging to the same. The owner of every dwelling and in the case of a private dwelling the occupant thereof, shall thoroughly cleanse or cause to be cleansed all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, water closets, cesspools, drains, halls, cellars, roofs, and all other parts of the said dwelling, or part of the dwelling of which he is the owner or in case of a private dwelling the occupant, to the satisfaction of the health officer, shall keep the said parts of the said dwelling in a clean condition at all times. [C24, 27, 31, 35, 39,§6395; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.69]

413.70 Color of walls of courts. In multiple dwellings the walls of all courts, unless built of a light color brick or stone, shall be thoroughly whitewashed by the owner or shall be painted a light color by him, and shall be so maintained. Such whitewash or paint shall be renewed whenever necessary, as may be required by the health officer. [C24, 27, 31, 35, 39,§6396; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.70]

413.71 Color of walls of other rooms. In all multiple dwellings erected prior to this chapter, the health officer may require the walls and ceilings of every room that does not open directly on the street to be calcimined or painted so as to furnish adequate lighting of such room and may require this to be renewed as often as may be necessary. [C24, 27, 31, 35, 39,§6397; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.71]

413.72 Garbage receptacles. The owner of every dwelling and in the case of a private dwelling the occupant shall provide for said dwelling, keep clean and in place, proper covered receptacles of nonabsorbent material for holding garbage, refuse, rubbish, and other waste matter. Garbage chutes are prohibited. [C24, 27, 31, 35, 39,§6398; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.72]

413.73 Animals. No horse, cow, calf, swine, sheep, goat, chickens, geese, or ducks shall be kept in any dwelling or part thereof. Nor shall any such animal be kept on the same lot or premises with a dwelling except under such conditions as may be prescribed by the health officer. No such animal, except a horse, shall under any circumstances be kept on the same lot or premises with a multiple dwelling. No dwelling or the lot or premises thereof shall be used for the storage or handling of rags or junk. [C24, 27, 31, 35, 39,§6399; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.73]

413.74 Articles dangerous to life or health. No dwelling nor any part thereof, nor of the lot upon which it is situated, shall be used as a place of storage, keeping, or handling of any article dangerous or detrimental to life or health; nor of any combustible article except under such conditions as may be prescribed by the fire commissioner, or the proper official, under authority of a written permit issued by him. [C24, 27, 31, 35, 39,§**6400**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.74]

413.75 Openings where paint or oil is stored. There shall be no transom, window, or door opening into a public hall from any part of a multiple dwelling where paint, oil, gasoline, or drugs are stored or kept for the purpose of sale or otherwise. This provision shall not apply to hotels. [C24, 27, 31, 35, 39,§**6401**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.75]

413.76 Janitors. In any multiple dwelling in which the owner thereof does not reside, there shall be a janitor, housekeeper, or other responsible person who shall have charge of the same, if the health officer shall so require. [C24, 27, 31, 35, 39,§**6402**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.76]

413.77 Overcrowding of rooms. If any room in a dwelling is overcrowded the health officer may order the number of persons sleeping or living in said room to be so reduced that there shall be not less than four hundred cubic feet of air to each adult and two hundred cubic feet of air to each child under twelve years of age occupying such room. [C24, 27, 31, 35, 39,§**6403**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.77]

413.78 Subletting of lodgings—eviction. The health officer may prohibit in any multiple dwelling the letting of lodgings therein by any of the tenants occupying such multiple dwelling, and may prescribe conditions under which lodgers or boarders may be taken in multiple dwellings. It shall be the duty of the owner in the case of multiple dwellings to see that the requirements of the health officer in this regard are at all times complied with, and a failure to so comply on the part of any tenant, after due and proper notice from said owner or from the health officer, shall be deemed sufficient cause for the summary eviction of such tenant and the cancellation of his lease. The provisions of this section may be extended to private dwellings and two-family dwellings, as may be found necessary by the health officer. [C24, 27, 31, 35, 39,§**6404**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.78]

413.79 Dwellings unfit for habitation—eviction. Whenever it shall be certified by an inspector or officer of the health department that a dwelling is infected with contagious disease or that it is unfit for human habitation, or dangerous to life or health by reason of want of repair, or of defects in the drainage, plumbing, lighting, ventilation, or the construction of the same, or by reason of the existence on the premises of a nuisance likely to cause sickness among the occupants of said dwelling, the health officer may issue an order requiring all persons therein to show cause why they should not be required to vacate such house within a time to be set by him, for the reasons to be mentioned in said order. In case such order is not complied with within the time specified, the health officer may cause said dwelling to be vacated. The health officer, whenever he is satisfied that the danger from said dwelling has ceased to exist, or that it is fit for human habitation, may revoke said order or may extend the time within which to comply with the same. [C24, 27, 31, 35, 39,§**6405**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.79]

413.80 Nuisances. Whenever any dwelling or any building, structure, excavation, business pursuit, matter, or thing, in or about a dwelling, or the lot on which it is situated, or the plumbing, sewerage, drainage, light, or ventilation thereof, is in the opinion of the health officer in a condition or in effect dangerous or detrimental to life or health, the health officer may after notice and failure to correct, declare that the same to the extent he may specify is a public nuisance, and may order the same to be removed, abated, suspended, altered, or otherwise improved or purified as the order shall specify. [C24, 27, 31, 35, 39,§**6406**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.80]

413.81 Fire escapes. The owner of every multiple dwelling on which there are fire escapes shall keep them in good order and repair, and whenever rusty shall have them properly painted with two coats of paint. No person shall at any time place an obstruction of any kind before or upon such fire escape. [C24, 27, 31, 35, 39,§**6407**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.81]

413.82 Scuttles and bulkheads. In all multiple dwellings where there are scuttles or bulkheads, they and all stairs or ladders leading thereto shall be easily accessible to all occupants of the building and shall be kept free from obstruction and ready for use at all times. No scuttle and no bulkhead door shall at any time be locked with a key, but may be fastened on the inside by movable bolts or hooks. [C24, 27, 31, 35, 39,§**6408**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.82]

IMPROVEMENTS

413.83 Windows. No room in a dwelling erected prior to the passage of this chapter shall hereafter be occupied for living purposes unless it shall have a window of an area of not less than eight square feet opening directly upon the street, or upon a rear yard not less than four feet deep, or above the roof of an adjoining building, or upon a court or side yard of not less than twenty-five square feet in area open to the sky without roof or skylight, unless such room is located on the top floor and is adequately lighted and ventilated by a skylight, opening directly to the outer air;

except that a room which cannot be made to comply with the above provisions may be occupied if provided with a sash window of not less than fifteen square feet in area, opening into an adjoining room in the same apartment group or suite of rooms, which latter room opens directly on the street or on a rear yard of the above dimensions. Said sash window shall be a vertically sliding pulley-hung sash not less than three feet by five feet between stop beads, both halves shall be made so as to readily open, and the lower half shall be glazed with translucent glass, and so far as possible it shall be in line with windows in the said outer room opening on the street or rear yard so as to afford a maximum of light and ventilation. [C24, 27, 31, 35, 39, §6409; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.83]

413.84 Light and ventilation. In all multiple dwellings erected prior to the passage of this chapter the public halls and stairs shall be provided with as much light and ventilation to the outer air as may be deemed practicable by the board of health who may order the cutting in of windows and skylights and such other improvements and alterations in said dwellings as in its judgment may be necessary and appropriate to accomplish this result. All new skylights hereafter placed in such dwellings shall be of such size as may be determined to be practicable by said board of health. [C24, 27, 31, 35, 39,§6410; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.84]

413.85 Sinks and water closets. In all multiple dwellings erected prior to the passage of this chapter the woodwork encasing sinks, except sinks in butler's pantries, and water closets shall be removed and the space underneath said fixtures shall be left open. The floor and wall surfaces beneath and around the said fixtures shall be put in good order and repair, and if of wood shall be kept well painted. Defective and insanitary water closet fixtures shall be replaced by proper fixtures, as defined by this chapter. [C24, 27, 31, 35, 39, §6411; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.85]

413.86 Sewer connections. Whenever a connection with a sewer is possible, all privy vaults, range closets, cesspools, or other similar receptacles used to receive fecal matter, urine, or sewerage, shall, before July 1, 1920, with their contents, be completely removed and the place where they were located properly disinfected under the direction of the health officer. Such appliances shall be replaced by individual water closets of durable nonabsorbent material, properly sewer-connected, and with individual traps and properly connected flush tanks providing an ample flush of water to thoroughly cleanse the bowl. Each such water closet shall be located inside the dwelling or other building in connection with which it is to be used in a compartment completely separated from every other water closet, and such compartment shall contain a window of not less than four square feet in area opening directly to the street or rear yard or on a side yard or court of the minimum size prescribed in sections 413.14 and 413.15. Such water closets shall be provided in such numbers as required by section 413.62. Such water closets and all plumbing in connection therewith shall be sanitary in every respect and, except as in this chapter otherwise provided, shall be in accordance with the local ordinances and regulations in relation to plumbing and drainage. Pan, plunger, and long hopper closets will not be permitted except upon written permit of the health officer. No water closet shall be placed out-of-doors. [C24, 27, 31, 35, 39,§6412; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.86]

413.87 Freedom from dampness. The floor of the cellar or lowest floor of every dwelling shall be free from dampness, and, when necessary in the judgment of the health officer, shall be concreted with not less than two inches of concrete of good quality and with a finished surface. [C24, 27, 31, 35, 39,§6413; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.87]

413.88 Access to shaft or court. In every dwelling where there is a court or shaft of any kind, there shall be at the bottom of every such shaft and court a door giving sufficient access to such shaft or court to enable it to be properly cleaned out; provided that where there is already a window giving proper access it shall be deemed sufficient. [C24, 27, 31, 35, 39,§6414; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.88]

413.89 Ways of egress. Every multiple dwelling exceeding two stories in height shall have at least two independent ways of egress constructed and arranged as provided in section 413.36. In the case of multiple dwellings erected prior to the passage of this chapter, where it is not practicable in the judgment of the building inspector to comply in all respects with the provisions of that section, said building inspector shall make such requirements as may be appropriate to secure proper means of egress from such multiple dwellings for all the occupants thereof. No existing fire escape shall be deemed a sufficient means of egress unless the following conditions are complied with:

1. All parts of it shall be of iron, cement, or stone.

2. The fire escape shall consist of outside balconies which shall be properly connected with each other by adequate stairs or stationary ladders, with openings not less than twenty-four by twenty-eight inches.

3. All fire escapes shall have proper drop ladders or stairways from the lowest balcony of sufficient length to reach a safe landing place beneath.

4. All fire escapes not on the street shall have a safe and adequate means of egress from the yard or court to the street or alley or to the adjoining premises.

5. Prompt and ready access shall be had to all fire escapes, which shall not be obstructed

by bathtubs, water closets, sinks, or other fixtures, or in any other way. [C24, 27, 31, 35, 39, §6415; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.89]

Referred to in §413.121
Fire escapes, ch 103

413.90 Additional egress. Whenever any multiple dwelling is not provided with sufficient means of egress in case of fire, the building inspector shall order such additional means of egress as may be necessary. [C24, 27, 31, 35, 39,§6416; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.90]

Referred to in §413.121

413.91 Skylight — access to roof. Unless there is a bulkhead in the roof there shall be over every inside stairway used by more than one family, a skylight or scuttle not less than two feet by three feet in size. Every flat roof multiple dwelling, exceeding one story in height, shall have at least one convenient and permanent means of access to the roof located in a public part of the building and not in a room or closet. [C24, 27, 31, 35, 39,§6417; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.91]

Referred to in §413.121

REQUIREMENTS AND REMEDIES

413.92 Plans, plat, and specifications required. Before the construction or alteration of a dwelling, or the alteration or conversion of a building for use as a dwelling is commenced and before the construction or alteration of any building or structure on the same lot with a dwelling, the owner, or his agent or architect, shall submit to the board of health a detailed statement in writing, certified by the affidavit of the person making the same, of the specifications for such dwelling or building, upon blanks or forms to be furnished by such board of health, and also full and complete copies of the plans of such work. With such statement there shall be submitted a plat of the lot showing the dimensions of the same, the location of the proposed building and all other buildings on the lot. [C24, 27, 31, 35, 39,§6418; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.92]

Referred to in §413.104
38GA, ch 123,§92, editorially divided

413.93 Detailed requirements. Such statement shall give in full the name and residence, by street and number, of the owner or owners of such dwelling or building and the purposes for which such dwelling or building will be used. If such construction, alteration, or conversion is proposed to be made by any other person than the owner of the land in fee, such statement shall contain the full name and residence, by street and number, not only of the owner of the land, but of every person interested in such dwelling, either as owner, lessee, or in any representative capacity. Said affidavit shall allege that said specifications and plans are true and contain a correct description of such dwelling, building, structure, lot, and proposed work. [C24, 27, 31, 35, 39,§6419; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.93]

Referred to in §413.104

413.94 By whom made. The statements and affidavits herein provided for may be made by the owner, his agent or architect, or by the person who proposes to make the construction, alteration, or conversion, or by the agent or architect of such person. [C24, 27, 31, 35, 39, §6420; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.94]

Referred to in §413.104

413.95 Who deemed agent. No one, however, shall be recognized as the agent of the owner or of such person unless he shall file with said health officer a written instrument signed by such owner or person, as the case may be, designating him as such agent. [C24, 27, 31, 35, 39,§6421; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.95]

Referred to in §413.104

413.96 Perjury. Any intentional false oath in a material point in any such affidavit shall be deemed perjury. [C24, 27, 31, 35, 39,§6422; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.96]

Referred to in §413.104

413.97 Filing and preservation. Such specifications, plans, and statements shall be filed in said health department and shall be deemed public records, but no such specifications, plans, or statements shall be removed from said health department. [C24, 27, 31, 35, 39, §6423; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.97]

Referred to in §413.104

413.98 Approval. The health officer shall cause all such plans and specifications to be examined. If such plans and specifications conform to the provisions of this chapter they shall within five days be approved by the health officer or his duly authorized assistant, and a written certificate to that effect shall be issued by him to the person submitting the same. The health officer shall, from time to time, approve changes in any plans and specifications previously approved by him, provided the plans and specifications when so changed shall be in conformity with law. [C24, 27, 31, 35, 39,§6424; C46, 50, 54, 58, 62, 66, 71, 73, 75, §413.98]

Referred to in §413.104

413.99 Construction prohibited. The construction, alteration, or conversion of such dwelling, building, or structure, or any part thereof, shall not be commenced until the filing of such specifications, plans, and statements, and the approval thereof, as above provided. [C24, 27, 31, 35, 39,§6425; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.99]

Referred to in §413.104

413.100 Certificate of health officer. No permit shall be granted and no plan approved by the department of buildings, where such exists, for the construction or alteration of a dwelling or for the alteration or conversion of any building for use as a dwelling until there has been filed in the office of the department of buildings a certificate of the health officer issued as above provided to the effect that such dwelling conforms to the provisions of

this chapter. [C24, 27, 31, 35, 39,§6426; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.100]
Referred to in §413.104

413.101 Construction authorized. The construction, alteration, or conversion of such dwelling, building, or structure shall be in accordance with such approved specifications and plans. [C24, 27, 31, 35, 39,§6427; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.101]
Referred to in §413.104

413.102 Permit automatically canceled. Any permit or approval which may be issued by the health officer, but under which no work has been done above the foundation walls within one year from the time of the issuance of such permit or approval, shall expire by limitation. [C24, 27, 31, 35, 39,§6428; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.102]
Referred to in §413.104

413.103 Revocation of permit. The health officer or his duly authorized assistant shall have power to revoke or cancel any permit or approval in case of any failure or neglect to comply with any of the provisions of this chapter, or in case any false statement or representation is made in any specifications, plans, or statements submitted or filed for such permit or approval. [C24, 27, 31, 35, 39,§6429; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.103]
Referred to in §413.104

413.104 Enforcement in certain cities. In cities of more than one hundred thousand population, as shown by the last federal census, having a department or division of building inspection in charge of a person devoting his entire time to the supervision of building construction and to the enforcement of laws and ordinances relating to building construction, repair, alteration, removal, and to related matters, the city council may by ordinance provide that said person shall be charged with the powers and duties charged in sections 413.92 to 413.103 to the board of health and to the health officer, and that all plans, specifications, affidavits, forms, and statements, in said sections prescribed to be filed with the health officer shall be filed with such person; and that said person may issue valid permits, certificates, and orders providing, without the certificate of the health officer hereinbefore provided to be filed in the office of the department of buildings. [C24, 27, 31, 35, 39,§6430; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.104]

413.105 New or altered buildings—habitation. No part of a building hereafter constructed as or altered into a dwelling shall be occupied in whole or in part for human habitation until the issuance of a certificate by the health officer that such part of said dwelling conforms to the requirements of this chapter relative to dwellings hereafter erected. Such certificate shall be issued within three days after written application therefor if said dwelling at the date of such application shall be entitled thereto. [C24, 27, 31, 35, 39,§6431; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.105]
Referred to in §413.106

413.106 Rents uncollectible. If any building hereafter constructed as, or altered into, a dwelling be occupied in whole or in part for human habitation in violation of section 413.105, during such unlawful occupation no rent shall be recoverable by the owner or lessee of such premises for said period, and no action or special proceeding shall be maintained therefor or for possession of said premises for nonpayment of said rent, and said premises shall be deemed unfit for human habitation and the health officer may cause them to be vacated accordingly. [C24, 27, 31, 35, 39,§6432; C46, 50, 54, 58, 62, 66, 71, 73, 75, §413.106]

413.107 Violations. Every person who shall violate or assist in the violation of any provision of this chapter shall be guilty of a misdemeanor punishable by a fine of not less than ten dollars or more than one hundred dollars, and in default in payment thereof, by imprisonment in the county jail for not more than thirty days. [C24, 27, 31, 35, 39,§6433; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.107]
38GA, ch 123,§95, editorially divided

413.108 Civil liability. The owner of any dwelling, or of any building or structure upon the same lot with a dwelling, or of the said lot, where any violation of this chapter, or a nuisance as herein defined, exists who has been guilty of such violation or of creating or knowingly permitting the existence of such nuisance, and any person who shall violate or assist in violating any provision of this chapter, shall also jointly and severally for each such violation and each such nuisance be subject to a civil penalty of fifty dollars to be recovered for the use of the health department in civil action brought in the name of the municipality by the health officer. Such persons and also said premises shall also be liable in such case for all costs, expenses, and disbursements paid or incurred by the health department, by any of the officers, agents, or employees thereof in the removal of any such nuisance or violation. [C24, 27, 31, 35, 39, §6434; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.108]

413.109 Additional liability. Any person who having been served with a notice or order to remove any such nuisance or violation shall fail to proceed in good faith to comply with said notice or order within five days after such service, or shall continue to violate any provisions or requirements of this chapter in the respect named in said notice or order, shall also be subject to a civil penalty of fifty dollars. [C24, 27, 31, 35, 39,§6435; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.109]

413.110 Recovery. For the recovery of any such penalties, costs, expenses, or disbursements, an action may be brought in any court

of competent civil jurisdiction. [C24, 27, 31, 35, 39,§6436; C46, 50, 54, 58, 62, 66, 71, 73, 75, §413.110]

413.111 Lien on property. The existence of a nuisance in or upon such dwelling, structure on the same lot with a dwelling, or on such lot, which the owner thereof has created or permitted to exist and any violation of this chapter as to such dwelling, structure, and lot of which the owner has been guilty shall in such proceeding subject such dwelling, structure, and lot respectively to a penalty of fifty dollars, which shall be a lien thereon until paid; and any violation of an order made or a notice given by the health officer, permitted or committed by the owner of a dwelling, structure on the same lot with a dwelling, or such lot, shall in such proceeding subject the dwelling, structure, and lot respectively to a penalty of fifty dollars, which penalty shall be a lien thereon until paid. [C24, 27, 31, 35, 39,§6437; C46, 50, 54, 58, 62, 66, 71, 73, 75, §413.111]

413.112 Practice and procedure generally. Except as herein otherwise specified, the procedure for the prevention of violations of this chapter or for the vacation of premises unlawfully occupied, or for other abatement of nuisances, or for the bringing of action therefor, shall be in accordance with the existing practice and procedure. [C24, 27, 31, 35, 39,§6438; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.112]

88GA, ch 123,§96, editorially divided

413.113 Action to enjoin. In case any dwelling, building, or structure is constructed, altered, converted, or maintained in violation of any provision of this chapter, or of any order or notice of the health officer, or in case a nuisance exists in any such dwelling, building, or structure or upon the lot on which it is situated, said health officer may institute any appropriate action or proceeding to prevent such unlawful construction, alteration, conversion, or maintenance, to restrain, correct, or abate such violation or nuisance, to prevent the occupation of said dwelling, building, or structure, or to prevent any illegal act, conduct, or business in or about such dwelling or lot. [C24, 27, 31, 35, 39,§6439; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.113]

413.114 Injunction. In any such action or proceeding said health officer may by petition duly verified, setting forth the facts, apply to the district court for an order granting the relief for which said action or proceeding is brought, or for an order enjoining all persons from doing or permitting to be done any work in or about such dwelling, building, structure, or lot, or from occupying or using the same for any purpose until the entry of final judgment or order. [C24, 27, 31, 35, 39,§6440; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.114]

Referred to in §413.116
Injunction, R.C.P. 320–330

413.115 Authority to execute. In case any notice or order issued by said health officer is not complied with, said health officer may apply to the district court for an order authorizing him to execute and carry out the provisions of said notice or order, to correct any violation specified in said notice or order, or to abate any nuisance in or about such dwelling, building, or structure or the lot upon which it is situated. [C24, 27, 31, 35, 39,§6441; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.115]

Referred to in §413.116

413.116 Orders authorized. The court is hereby authorized to make any order specified in sections 413.114 and 413.115. [C24, 27, 31, 35, 39,§6442; C46, 50, 54, 58, 62, 66, 71, 73, 75, §413.116]

413.117 Eviction. If the occupant of a dwelling shall fail to comply with the provisions of this chapter after due and proper notice from the health officer, such failure to comply shall be deemed sufficient cause for the eviction of such tenant by the owner and the cancellation of his lease. [C24, 27, 31, 35, 39,§6443; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.117]

413.118 Name and address of agent filed. Every owner, agent, or lessee of a dwelling may file in the health department a notice containing the name and address of an agent of such dwelling, for the purpose of receiving service of all notices required by this chapter, and also a description of the property by street number or otherwise as the case may be, in such manner as will enable the health department easily to find the same. The name of the owner or lessee may be filed as agent for this purpose. [C24, 27, 31, 35, 39,§6444; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.118]

Referred to in §§413.119, 413.120

413.119 Notices generally. Every notice or order required by this chapter shall be served at least ten days before the time for doing the thing in relation to which it shall have been issued, unless otherwise herein provided. The posting of a copy of such notice or order in a conspicuous place in the dwelling, together with the mailing of a copy thereof on the same day that it is posted, to the owner and lessee of the dwelling affected thereby, and each person, if any, whose name has been filed with the health department in accordance with the provisions of section 413.118 at his address as filed, shall be sufficient service thereof. [C24, 27, 31, 35, 39,§6445; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.119]

413.120 Notice of actions. In any action brought by the health officer in relation to a dwelling for injunction, vacation of the premises, or abatement of nuisance, or to establish a lien thereon, or to recover a civil penalty, service of notices shall be in the manner provided by law for the service of original notices; provided that if the address of any agent whose name and address have been filed in accordance with the provisions of section 413.118

is in the county in which the dwelling is situated, then such notice may be served upon such agent. [C24, 27, 31, 35, 39,§6446; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.120]

Manner of service, R.C.P. 56(a)

413.121 Enforcement generally. The provisions of this chapter shall be enforced in each city by the health officer, except that the department of buildings, where such department exists in a city, shall enforce the provisions contained in sections 413.35 to 413.46 and 413.89 to 413.91, and in the area adjacent to and within one mile of such municipalities, the provisions of this chapter shall be enforced by the county board of health. [C24, 27, 31, 35, 39,§6447; C46, 50, 54, 58, 62, 66, 71, 73, 75, §413.121]

413.122 Construction. The powers conferred by this chapter upon the public officials heretofore in this chapter mentioned shall be in addition to the powers already conferred upon said officers, and shall not be construed as in any way limiting their powers except as provided in section 413.9. [C24, 27, 31, 35, 39, §6448; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.122]

413.123 Inspection of multiple dwellings. The health officer, or such other appropriate public official as the mayor may designate, shall cause an inspection to be made of every multiple dwelling at least once a year. Such inspection shall include thorough examination of all parts of such multiple dwelling and the premises connected therewith. The health officer or such other official so designated is also hereby empowered to make similar inspections of all dwellings as frequently as may be necessary; and shall make inspection at any time on complaint of the owner, tenant, or other person concerned. Cities of twenty-five thousand or more population may establish a reasonable schedule of fees for the purpose of defraying the costs of inspection, enforcement, and administration of the provisions of this section relating to multiple dwellings. The fees shall not exceed seven dollars and fifty cents for the first unit and seventy-five cents for each additional unit and shall apply only to the annual inspections. [C24, 27, 31, 35, 39, §6449; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.123]

Referred to in §413.124

413.124 Entrance and survey of buildings. The health officer and all inspectors, officers, and employees of the board of health, and such other persons as may be authorized by the health officer, may without fee, except as provided in section 413.123, or hindrance enter, examine, make necessary records, and survey all premises, grounds, erections, structures, apartments, dwellings, buildings, and every part thereof in the city. The owner or his agent or representative and the lessee and occupant of every dwelling and every person having the care and management thereof shall at all reasonable times when required by any such officers or persons give them free access to such dwellings and premises. The owner of a dwelling and his agents and employees shall have right of access to such dwelling at reasonable times for the purpose of bringing about compliance with the provisions of this chapter or any order issued thereunder. [C24, 27, 31, 35, 39,§6450; C46, 50, 54, 58, 62, 66, 71, 73, 75, §413.124]

413.125 Ordinances. All charter provisions, regulations, and ordinances of cities are hereby superseded insofar as they do not impose requirements other than the minimum requirements of this chapter, and except in case of such higher local requirements, this chapter shall in all cases govern. [C24, 27, 31, 35, 39, §6451; C46, 50, 54, 58, 62, 66, 71, 73, 75,§413.125]

CHAPTER 414

MUNICIPAL ZONING

Referred to in §329.7, 476A.5
Applicable to all cities

414.1 Building restrictions—powers granted.
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414.1 Building restrictions—powers granted. For the purpose of promoting the health, safety, morals, or the general welfare of the community, any city is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other struc-

tures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. [C24, 27, 31, 35, 39,§**6452**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.1]

414.2 Districts. For any or all of said purposes the local legislative body, hereinafter referred to as the council, may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations and restrictions shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts. [C24, 27, 31, 35, 39,§**6453**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.2]

Certification of zoning district ordinance, §380.11

414.3 Basis of regulations. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the street; to secure safety from fire, flood, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Such regulations shall be made with reasonable consideration, among other things, as to the character of the area of the district and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city. [C24, 27, 31, 35, 39,§**6454**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.3]

414.4 Regulations and boundaries. The council of such city shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in a paper of general circulation in such city. [C24, 27, 31, 35, 39,§**6455**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.4]

Referred to in §§329.9, 414.5

414.5 Changes—hearing—notice. Such regulations, restrictions, and boundaries may, from time to time, be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change signed by the owners of twenty percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending the depth of one lot or not to exceed two hundred feet therefrom, or of those directly opposite thereto, extending the depth of one lot or not to exceed two hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of at least three-fourths of all the members of the council. The provisions of section 414.4 relative to public hearings and official notice shall apply equally to all changes or amendments. [C24, 27, 31, 35, 39,§**6456**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.5]

414.6 Zoning commission. In order to avail itself of the powers conferred by this chapter, the council shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts, and appropriate regulations and restrictions to be enforced therein. Where a city plan commission already exists, it may be appointed as the zoning commission. Such commission shall, with due diligence, prepare a preliminary report and hold public hearings thereon before submitting its final report; and such council shall not hold its public hearings or take action until it has received the final report of such commission. After the adoption of such regulations, restrictions, and boundaries of districts, the zoning commission may, from time to time, recommend to the council amendments, supplements, changes, or modifications. [C24, 27, 31, 35, 39,§**6457**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.6]

Referred to in §329.9

414.7 Board of adjustment. The council shall provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this chapter shall provide that the said board of adjustment may in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the ordinances in harmony with its general purpose and intent and in accordance with general or specific rules therein contained and provide that any property owner aggrieved by the action of the council in the adoption of such regulations and restrictions may petition the said board of adjustment direct to modify regulations and restrictions as applied to such property owners. [C24, 27, 31, 35, 39,§**6458**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §414.7]

40GA, ch 134,§7, editorially divided
Referred to in §329.12

414.8 Membership. The board of adjustment shall consist of five members each to be appointed for a term of five years, excepting that when the board shall first be created one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Mem-

bers shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. [C24, 27, 31, 35, 39,§**6459**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.8]

414.9 Rules—meetings—general procedure. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. [C24, 27, 31, 35, 39,§**6460**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.9]

Referred to in §329.12

414.10 Appeals. Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. [C24, 27, 31, 35, 39,§**6461**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §414.10]

Referred to in §329.12

414.11 Effect of appeal. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. [C24, 27, 31, 35, 39,§**6462**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.11]

Referred to in §329.12

414.12 Powers. The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. [C24, 27, 31, 35, 39,§**6463**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §414.12]

Referred to in §329.12

414.13 Decision on appeal. In exercising the above-mentioned powers such board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. [C24, 27, 31, 35, 39, §**6464**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.13]

Referred to in §329.12

414.14 Vote required. The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. [C24, 27, 31, 35, 39,§**6465**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.14]

Referred to in §329.12

414.15 Petition for certiorari. Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board. [C24, 27, 31, 35, 39, §**6466**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.15]

Referred to in §329.12

414.16 Writ—restraining order. Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due

cause shown, grant a restraining order. [C24, 27, 31, 35, 39,§**6467**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.16]
Referred to in §329.12

414.17 Return. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. [C24, 27, 31, 35, 39,§**6468**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.17]
Referred to in §329.12

414.18 Trial—judgment—costs. If upon the hearing which shall be tried de novo it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from. [C24, 27, 31, 35, 39,§**6469**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.18]
Referred to in §329.12

414.19 Preference in trial. All issues in any proceedings under the foregoing sections shall have preference over all other civil actions and proceedings. [C24, 27, 31, 35, 39,§**6470**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.19]
Referred to in §329.12

414.20 Actions to correct violations. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure, or land is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the council, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. [C24, 27, 31, 35, 39,§**6471**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§414.20]

414.21 Conflicting rules, ordinances, and statutes. Wherever the regulations made under authority of this chapter require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this chapter shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this chapter, the provisions of such statute or local ordinance or regulation shall govern. Wherever any regulation proposed or made under authority of this chapter relates to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream, prior approval of the Iowa natural resources council shall be required to establish, amend, supplement, change or modify such regulation or to grant any variation or exception therefrom. [C24, 27, 31, 35, 39,§**6472**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §414.21]

414.22 Repealed by 64GA, ch 1088,§312.

414.23 Extending beyond city limits. The powers granted by this chapter may be extended by ordinance by any city to the unincorporated area up to two miles beyond the limits of such city, except for those areas within a county where a county zoning ordinance exists. The ordinance shall describe in general terms the area to be included. The exemption from regulation granted by section 358A.2 to property used for agricultural purposes shall apply to such unincorporated area. If the limits of any such city are at any place less than four miles distant from the limits of any other city which has extended or thereafter extends its zoning jurisdiction under this section, then at such time the powers herein granted shall extend to a line equidistant between the limits of said cities.

A municipality, during the time its zoning jurisdiction is extended under this section, shall increase the size of its planning and zoning commission and its board of adjustment each by two members. The additional members shall be residents of the area outside the city limits over which the zoning jurisdiction is extended. They shall be appointed by the board of supervisors of the county in which such extended area is located and for the same terms of office and have the same rights, privileges, and duties as other members of each of said bodies.

Property owners affected by such zoning regulations shall have the same rights of hearing, protest, and appeal as those within the municipality exercising this power.

Whenever a county in which this power is being exercised by a municipality adopts a county zoning ordinance the power exercised by the municipality and the specific regulations and districts thereunder shall be termi-

nated within three months of the establishment of the administrative authority for county zoning, or at such date as mutually agreed upon by the municipality and county. [C71, 73, 75,§414.23]

414.24 Restricted residence districts. A city may, and upon petition of sixty percent of the owners of the real estate in the district sought to be affected who are residents of the city shall, designate and establish, after notice and hearing, restricted residence districts within the city limits.

In the ordinance designating and establishing a restricted residence district, the city may establish reasonable rules for the use and occupancy of buildings of all kinds within the district, and provide that no bulding or other structure, except residences, schoolhouses, churches and other similar structures, shall be erected, altered, repaired or occupied without first securing from the city council a permit to be issued under reasonable rules as may be provided in the ordinance. An ordinance and rules passed under this section shall not conflict with applicable building and housing codes.

A building or structure erected, altered, repaired, or used in violation of an ordinance passed under this section shall be deemed a nuisance.

When a city has proceeded under the other provisions of this chapter, this section shall no longer be in effect for the city. [C24, 27, 31, 35, 39,§§**6473, 6474, 6475, 6476**; C46, 50, 54, 58, 62, 66, 71, 73,§§414.22, 415.1, 415.2, 415.3; 66GA, ch 203,§40]

CHAPTER 415

RESTRICTED RESIDENCE DISTRICTS

Repealed by 64GA, ch 1088,§199
See §414.24

CHAPTER 416

GOVERNMENT OF CITIES BY COMMISSION

All sections of this chapter, Code 1950, repealed or transferred as indicated in Code 1954

CHAPTER 417

STREET IMPROVEMENTS AND SEWERS IN CITIES OVER 125,000 POPULATION

Repealed bp 64GA, ch 1088,§199

CHAPTER 418

CITY MANAGER PLAN BY ORDINANCE

Transferred to ch 363D in Code 1973
Chapter 363D, Code 1973, repealed by 64GA, ch 1088,§199

CHAPTER 419

MUNICIPAL SUPPORT OF INDUSTRIAL PROJECTS

Referred to in §§75.12, 76.6, 384.95, 390.6, 422.45

419.1 Definitions.
419.2 Powers.
419.3 Bonds as limited obligations.
419.4 Pledge of revenues.
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419.7 Application of proceeds limited.
419.8 No payment by municipality.
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419.11 Tax equivalent to be paid—assessment procedure—appeal.
419.12 Purchase.
419.13 Exception to budget law and certain bond provisions.
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419.16 Intent of law.

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

1. "*Municipality*" means any county, or any incorporated city in this state.

2. "*Project*" means all or any part of, or any interest in, (*a*) any land, buildings or improvements, whether or not in existence at the time of issuance of the bonds issued under authority of this chapter, which shall be suitable for the use of any voluntary nonprofit hospital, clinic or health care facility as defined in section 135C.1, subsection 8, or of any private college or university, whether for the establishment or maintenance of such college or university, or of any industry or industries for the manufacturing, processing or assembling of any agricultural or manufactured products, even though such processed products may require further treatment before delivery to the ultimate consumer, or of any commercial enterprise engaged in storing, warehousing or distributing products of agriculture, mining or industry including but not limited to barge facilities and river-front improvements useful and convenient for the handling and storage of goods and products or (*b*) pollution control facilities which shall be suitable for use by any industry, commercial enterprise or utility. "Pollution control facilities" means any land, buildings, structures, equipment, pipes, pumps, dams, reservoirs, improvements, or other facilities useful for the purpose of reducing, preventing, or eliminating pollution of the water or air by reason of the operations of any industry, commercial enterprise or utility. "Improve", "improving" and "improvements" shall embrace any real property, personal property or mixed property of any and every kind that can be used or that will be useful in connection with a project, including, without limiting the generality of the foregoing, rights of way, roads, streets, sidings, trackage, foundations, tanks, structures, pipes, pipe lines, reservoirs, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, improvements, instrumentalities and other real, personal or mixed property of every kind. whether above or below ground level.

3. "*Governing body*" means the board, council or other body in which the legislative powers of the municipality are vested.

4. "*Mortgage*" shall include a deed of trust.

5. "*Equip*" means to install or place on or in any building or improvements or the site thereof equipment of any and every kind, including, without limiting the generality of the foregoing, machinery, utility service connections, building service equipment, fixtures, heating equipment, and air conditioning equipment.

6. "*Lessee*" includes a single person, firm or corporation or any two or more persons, firms or corporations which shall lease the project as tenants-in-common or otherwise and which shall undertake rental payments and other monetary obligations under the lease of the project sufficient in the aggregate to satisfy the rental and other monetary obligations required by this chapter to be undertaken by the lessee of a project.

7. "*Lease*" includes a lease containing an option to purchase the project for a nominal sum upon payment in full, or provision therefor, of all bonds issued in connection with the project and all interest thereon and all other expenses incurred in connection with the project, and a lease containing an option to purchase the project at any time, as provided therein, upon payment of the purchase price which shall be sufficient to pay all bonds issued in connection with the project and all interest thereon and all other expenses incurred in connection with the project, but which payment may be made in the form of one or more notes, debentures, bonds or other secured or unsecured debt obligations of the lessee providing for timely payments, including without limitation, interest thereon sufficient for such purposes and delivered to the municipality or to the trustee under the indenture pursuant to which the bonds were issued. A single lease may contain both of the foregoing options.

8. "*Sale contract*" means a contract providing for the sale of one or more projects to one or more contracting parties and includes a contract providing for payment of the purchase price in one or more installments. If the sale contract permits title to the project to pass to the other contracting party or parties prior to payment in full of the entire purchase price, it shall also provide for the other contracting party or parties to deliver to the municipality or to the trustee under the indenture pursuant to which the bonds were issued one or more notes, debentures, bonds or other secured or unsecured debt obligations of such contracting party or parties providing for timely payments, including without limitation, interest thereon for the balance of the purchase price at or prior to the passage of such title.

9. "*Loan agreement*" means an agreement providing for a municipality to loan the proceeds derived from the issuance of bonds pur-

suant to this chapter to one or more contracting parties to be used to pay the cost of one or more projects and providing for the repayment of such loan by the other contracting party or parties, and which may provide for such loans to be secured or evidenced by one or more notes, debentures, bonds or other secured or unsecured debt obligations of the contracting party or parties, delivered to the municipality or to the trustee under the indenture pursuant to which the bonds were issued.

10. *"Contracting party"* or *"other contracting party"* means any party to a sale contract or loan agreement except the municipality.

11. *"Revenues"* of a project, or derived from a project, include payments under a lease or sale contract and repayments under a loan agreement, or under notes, debentures, bonds and other secured or unsecured debt obligations of a lessee or contracting party delivered as herein provided.

12. *"Bonds"* of a municipality includes bonds, notes or other securities.

13. *"Corporation"* includes a corporation whether organized for profit or not for profit for which the secretary of state has issued a certificate of incorporation or a permit for the transaction of business within the state and further includes a co-operative association. [C66, 71, 73, 75,§419.1; 66GA, ch 203,§1]

Referred to in §524.901

419.2 Powers. In addition to any other powers which it may now have, each municipality shall have the following powers:

1. To acquire, whether by construction, purchase, gift or lease, and to improve and equip, one or more projects. Such projects shall be located within this state, may be located within or near the municipality, but shall not be located more than eight miles outside the corporate limits of the municipality, provided that ancillary improvements necessary or useful in connection with the main project may be located more than eight miles outside the corporate limits of the municipality.

2. To lease to others one or more projects for such rentals and upon such terms and conditions as the governing body may deem advisable in accordance with the provisions of this chapter, but in no case shall the rentals be less than the average rental cost for like or similar facilities within the competitive commercial area.

3. To sell to others one or more projects for such payments and upon such terms and conditions as the governing body may deem advisable in accordance with the provisions of this chapter.

4. To enter into loan agreements with others with respect to one or more projects for such payments and upon such terms and conditions as the governing body may deem advisable in accordance with the provisions of this chapter.

5. To issue revenue bonds for the purpose of defraying the cost of any project and to secure payment of such bonds as provided in this chapter.

6. To grant easements for roads, streets, water mains and pipes, sewers, power lines, telephone lines, all pipe lines, and to all utilities.

No municipality shall have the power to operate any project financed under this chapter, as a business or in any manner except as specifically provided in this chapter. [C66, 71, 73, 75,§419.2]

Referred to in §524.901

419.3 Bonds as limited obligations.

1. All bonds issued by a municipality, under the authority of this chapter, shall be limited obligations of the municipality. The principal of and interest on such bonds shall be payable solely out of the revenues derived from the project to be financed by the bonds so issued under the provisions of this chapter including debt obligations of the lessee or contracting party obtained from or in connection with the financing of a project. Bonds and interest coupons issued under authority of this chapter shall never constitute an indebtedness of the municipality, within the meaning of any state constitutional provision or statutory limitation, and shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated on the face of each such bond.

2. The bonds referred to in subsection 1 of this section may be executed and delivered at any time and from time to time; be in such form and denominations; without limitation as to the denomination of any bond, any other law to the contrary notwithstanding; be of such tenor; be fully registered, registrable as to principal or in bearer form; be transferable; be payable in such installments and at such time or times, not exceeding thirty years from their date; be payable at such place or places in or out of the state of Iowa; bear interest at such rate or rates, payable at such place or places in or out of the state of Iowa; be evidenced in such manner and may contain other provisions not inconsistent herewith; all as shall be provided in respect of the foregoing or other matters in the proceedings of the governing body whereunder the bonds are authorized to be issued. The governing body may provide for the exchange of coupon bonds for fully registered bonds and of fully registered bonds for coupon bonds and for the exchange of any such bonds after issuance for bonds of larger or smaller denominations, all in such manner as may be provided in the proceedings authorizing their issuance, provided the bonds in changed form or denominations shall be exchanged for the surrendered bonds in the same aggregate principal amounts and in such manner that no overlapping interest is paid, and such bonds in changed form or denomina-

tions shall bear interest at the same rate or rates and shall mature on the same date or dates as the bonds for which they are exchanged. Where any exchange is made under this section, the bonds surrendered by the holders at the time of the exchange shall be canceled. The exchange shall be made only at the request of the holders of the bonds to be surrendered, and the governing body may require all expenses incurred in connection with the exchange to be paid by the holders. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until delivery.

3. Unless otherwise provided in the proceedings of the governing body whereunder the bonds are authorized to be issued, bonds issued under the provisions of this chapter shall be subject to the general provisions of law, presently existing or that may hereafter be enacted, respecting the execution and delivery of the bonds of a municipality and respecting the retaining of options of redemption in proceedings authorizing the issuance of municipal securities.

4. Any bonds, issued under the authority of this chapter, may be sold at public sale in such manner, at such price and at such time or times as may be determined by the governing body to be most advantageous. The municipality may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof.

5. All bonds, issued under the authority of this chapter and all interest coupons applicable thereto, shall be construed to be negotiable instruments, even though they are payable solely from a specified source. [C66, 71, 73, 75,§419.3]

Referred to in §419.6

419.4 Pledge of revenues.

1. The principal of and interest on any bonds, issued under authority of this chapter, shall be secured by a pledge of the revenues out of which such bonds shall be made payable. They may be secured by a mortgage covering all or any part of the project from which the revenues so pledged may be derived or by a pledge of the lease, sale contract or loan agreement with respect to such project or by a pledge of one or more notes, debentures, bonds or other secured or unsecured debt obligations of the lessee or contracting party.

2. The proceedings under which the bonds are authorized to be issued under the provisions of this chapter, and any mortgage given to secure the same, may contain any agreements and provisions customarily contained in instruments securing bonds, including, but not limited to:

a. Provisions respecting custody of the proceeds from the sale of the bonds including their investment and reinvestment until used to defray the cost of the project.

b. Provisions respecting the fixing and collection of rents or payment with respect to any project covered by such proceedings or mortgage.

c. The terms to be incorporated in the lease, sale contract or loan agreement with respect to such project.

d. The maintenance and insurance of such project.

e. The creation, maintenance, custody, investment and reinvestment and use of special funds from the revenues of such project, and

f. The rights and remedies available in case of a default to the bond holders or to any trustee under the lease, sale contract, loan agreement or mortgage.

A municipality shall have the power to provide that proceeds from the sale of bonds and special funds from the revenues of the project shall be invested and reinvested in such securities and other investments as shall be provided in the proceedings under which the bonds are authorized to be issued including:

(1) obligations issued or guaranteed by the United States;

(2) obligations issued or guaranteed by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States;

(3) obligations issued or guaranteed by any state of the United States, or the District of Columbia, or any political subdivision of any such state or district;

(4) prime commercial paper;

(5) prime finance company paper;

(6) bankers' acceptances drawn on and accepted by banks organized under the laws of any state or of the United States;

(7) repurchase agreements fully secured by obligations issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; and

(8) certificates of deposit issued by banks organized under the laws of any state or of the United States; whether or not such investment or reinvestment is authorized under any other law of this state. The municipality shall also have the power to provide that such proceeds or funds or investments and the amounts payable under the lease, sale contract or loan agreement shall be received, held and disbursed by one or more banks or trust companies located in or out of the state of Iowa. A municipality shall also have the power to provide that the project and improvements shall be constructed by the municipal-

ity, lessee, the lessee's designee, the contracting party, or the contracting party's designee, or any one or more of them on real estate owned by the municipality, the lessee, the lessee's designee, the contracting party, or the contracting party's designee, as the case may be, that the bond proceeds shall be disbursed by the trustee bank or banks, trust company or trust companies, during construction upon the estimate, order or certificate of the lessee, the lessee's designee, the contracting party, or the contracting party's designee.

In making such agreements or provisions, a municipality shall not have the power to obligate itself, except with respect to the project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

3. The proceedings authorizing any bonds under the provisions of this chapter, or any mortgage securing such bonds, may provide that if there is a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and payments and to apply the revenues from the project in accordance with such proceedings or the provisions of such mortgage.

4. Any mortgage, made under the provisions of this chapter, to secure bonds issued thereunder, may also provide that if there is a default in the payment thereof or a violation of any agreement contained in the mortgage, it may be foreclosed and sold under proceedings in equity or in any other manner permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any bonds secured thereby may become the purchaser at any foreclosure sale if he is the highest bidder therefor. [C66, 71, 73, 75,§419.4]

Referred to in §419.6

419.5 Determination of rent.

1. Prior to entering into a lease, sale contract or loan agreement with respect to any project, the governing body must determine the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued to finance such project; the amount necessary to be paid each year into any reserve funds which the governing body may deem advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project; and unless the terms of the lease, sale contract or loan agreement provide that the lessee or contracting party shall maintain the project and carry all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured.

2. The determination and findings of the governing body, required to be made by subsection 1 of this section, shall be set forth in the proceedings under which the proposed bonds are to be issued; provided, however, that the foregoing amounts need not be expressed in dollars and cents in the lease, sale contract or loan agreement or in the proceedings under which the bonds are authorized to be issued, but may be set forth in the form of a formula or formulas. Prior to the issuance of the bonds authorized by this chapter the municipality shall enter into a lease, sale contract or loan agreement with respect to the project which shall require the lessee or contracting party to complete the project and which shall provide for payment to the municipality of such rentals or payments as, upon the basis of such determinations and findings, will be sufficient to pay the principal of and interest on the bonds issued to finance the project; to build up and maintain any reserves deemed advisable, by the governing body, in connection therewith and unless the lease, sale contract or loan agreement obligates the lessee or contracting party to pay for the maintenance and insurance on the project, to pay the costs of maintaining the project in good repair and keeping it properly insured. [C66, 71, 73, 75,§419.5]

Referred to in §419.11

419.6 Refunding bonds. Any bonds, issued under the provisions of this chapter and at any time outstanding, may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby, but the holders of any bonds to be so refunded shall not be compelled, without their consent, to surrender their bonds for payment or exchange prior to the date on which they are payable by maturity date, option to redeem or otherwise, or if they are called for redemption, prior to the date on which they are by their terms subject to redemption by option or otherwise. All refunding bonds, issued under authority of this chapter, shall be payable solely from the revenues out of which the bonds to be refunded thereby are payable and shall be subject to the provisions contained in section 419.3 and may be secured in accordance with the provisions of section 419.4. [C66, 71, 73, 75,§419.6]

419.7 Application of proceeds limited. The proceeds from the sale of any bonds, issued

under authority of this chapter, shall be applied only for the purpose for which the bonds were issued and if, for any reason, any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, such unneeded portion of said proceeds shall be applied to the payment of the principal or the interest on said bonds. The cost of any project shall be deemed to include the actual cost of acquiring a site or the cost of the construction of any part of a project which may be constructed including architects' and engineers' fees, the purchase price of any part of a project that may be acquired by purchase, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition, an amount to be held as a bond reserve fund, and the interest on such bonds for a reasonable time prior to construction, during construction and for not exceeding six months after completion of construction, and with respect to any health care facility or voluntary nonprofit hospital the cost of retiring any existing indebtedness of such health care facility or voluntary nonprofit hospital which the governing body of the municipality determines to be reasonably necessary in connection with the issuance of the bonds. [C66, 71, 73, 75,§419.7; 66GA, ch 203,§2]

419.8 No payment by municipality. No municipality shall have the power to pay out of its general fund or otherwise contribute any part of the costs of a project and shall not have the power to use land already owned by the municipality, or in which the municipality has an equity, unless specifically acquired for development of projects, or unless the land is determined by the municipal governing body to no longer be necessary for municipal purposes other than the project, for the construction thereon of a project or any part thereof. The entire cost of any project must be paid out of the proceeds from the sale of bonds issued under the authority of this chapter, but this provision shall not be construed to prevent a municipality from accepting donations of property to be used as a part of any project or money to be used for defraying any part of the cost of any project. [C66, 71, 73, 75,§419.8]

419.9 Public hearing. Prior to the issuance of any bonds under authority of this chapter, the municipality shall conduct a public hearing on the proposal to issue said bonds. Notice of intention to issue the bonds, specifying the amount and purpose thereof and the time and place of hearing, shall be published at least once not less than fifteen days prior to the date fixed for the hearing in a newspaper published and having a general circulation within the municipality. If there is no newspaper published therein, the notice shall be published in a newspaper published in the county and having a general circulation in the municipality. At the time and place fixed for the public hearing the governing body of the municipality shall give all local residents who appear at the hearing an opportunity to express their views for or against the proposal to issue the bonds and at the hearing, or any adjournment thereof, shall adopt a resolution determining whether or not to proceed with the issuance of the bonds. [C66, 71, 73, 75, §419.9]

419.10 Default. In case of a default in the payment of any revenue bonds, issued pursuant to the provisions of this chapter, the municipality which defaulted in such payment shall be precluded from entering into any activity of its own except to release the property for some industrial activity. [C66, 71, 73, 75,§419.10]

419.11 Tax equivalent to be paid—assessment procedure—appeal. Any municipality acquiring, purchasing, constructing, reconstructing, improving or extending any industrial buildings or pollution control facilities, as provided in this chapter, shall annually pay out of the revenue from such industrial buildings or pollution control facilities to the state of Iowa and to the city, school district and any other political subdivision, authorized to levy taxes, a sum equal to the amount of tax, determined by applying the tax rate of the taxing district to the assessed value of the property, which the state, county, city, school district or other political subdivision would receive if the property were owned by any private person or corporation, any other statute to the contrary notwithstanding. For purposes of arriving at such tax equivalent, the property shall be valued and assessed by the assessor in whose jurisdiction the property is located, in accordance with chapter 441, but the municipality, the lessee on behalf of the municipality, and such other persons as are authorized by chapter 441 shall be entitled to protest any assessment and take appeals in the same manner as any taxpayer. Such valuations shall be included in any summation of valuations in the taxing district for all purposes known to the law. Income from this source shall be considered under the provisions of section 384.16, subsection 1, paragraph "*b*". If and to the extent the proceedings under which the bonds authorized to be issued under the provisions of this chapter so provide, the municipality may agree to co-operate with the lessee of a project in connection with any administrative or judicial proceedings for determining the validity or amount of any such payments and may agree to appoint or designate and reserve the right in and for such lessee to take all action which the municipality may lawfully take in respect of such payments and all matters relating thereto, provided, however, that such lessee shall bear and pay all costs and expenses of the municipality thereby incurred at the request of such lessee or by reason of any such action taken by such lessee in behalf of

the municipality. Any lessee of a project which has paid, as rentals additional to those required to be paid pursuant to section 419.5, the amounts required by the first sentence of this section to be paid by the municipality shall not be required to pay any such taxes to the state or to any such county, city, school district or other political subdivision, any other statute to the contrary notwithstanding. To the extent that any lessee or contracting party pays taxes on a project or part thereof, the municipality shall not be required to pay the tax equivalent herein provided, and to such extent the lessee or contracting party shall not be required to pay amounts to the municipality for such purpose. This section shall not be applicable to any municipality acquiring, purchasing, constructing, reconstructing, improving, or extending any buildings for the purpose of establishing, maintaining, or assisting any private college or university, nor to any municipality in connection with any project for the benefit of a voluntary nonprofit hospital, clinic, or health care facility, the property of which is otherwise exempt under the provisions of chapter 427. The payment, collection, and apportionment of the tax equivalent shall be subject to the provisions of chapters 445, 446 and 447. [C66, 71, 73, 75,§419.11]

Appeals, see §§441.37, 441.38

419.12 Purchase. The municipality may accept any bona fide offer to purchase which is sufficient to pay all the outstanding bonds, interest, taxes, special levies, and other costs that have been incurred. [C66, 71, 73, 75, §419.12]

419.13 Exception to budget law and certain bond provisions. The provisions of sections 23.12 to 23.16 shall not apply to bonds issued under the provisions of this chapter. [C66, 71, 73, 75,§419.13; 66GA, ch 1056,§24]

419.14 Eminent domain not available. No land acquired by a municipality by the exercise of condemnation through eminent domain can be used to effectuate the purposes of this chapter. [C66, 71, 73, 75,§419.14]

419.15 Limitation of actions. No action shall be brought questioning the legality of any contract, lease, mortgage, proceedings or bonds executed in connection with any project or improvements authorized by this chapter from and after three months from the time the bonds are ordered issued by the proper authority. [C66, 71, 73, 75,§419.15]

419.16 Intent of law. In order to provide available alternatives to enable municipalities to accomplish the purposes of this chapter in the manner deemed most advisable by the governing body, it is the intent of this chapter that a lessee or contracting party under a sale contract or loan agreement is not required to be the eventual user of a project; provided, that any sublessee or assignee shall assume all of the obligations of the lessee or contracting party under the lease, sale contract or loan agreement, the lessee or contracting party remains primarily liable for all of its obligations under the lease, sale contract or loan agreement, and the use of the project is consistent with the purposes of this chapter. [C75,§419.16]

CHAPTER 420

CITIES UNDER SPECIAL CHARTER

Referred to in §372.12

OFFICERS AND EMPLOYEES

420.1–420.7 Repealed by 54GA, ch 145,§106, ch 165,§3.
420.8–420.13 Repealed by 54GA, ch 165,§3.
420.14 and 420.15 Repealed by 64GA, ch 1088, §314.
420.16 to 420.25 Repealed by 64GA, ch 1124, §282.
420.26–420.30 Repealed by 54GA, ch 147,§40 and ch 165,§3.

ORDINANCES

420.31 Repealed by 64GA, ch 1088,§314.
420.32 and 420.33 Repealed by 54GA, ch 165,§3.
420.34 Repealed by 64GA, ch 1124,§282.
420.35 to 420.40 Repealed by 64GA, ch 1088, §314.

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420.42 Repealed by 54GA, ch 165,§4.
420.43 Application of certain terms.
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420.45 Claims for personal injury—limitation.
420.46 Repealed by 64GA, ch 1088,§317.
420.47–420.58 Repealed by 54GA, ch 105,§4.
420.59 to 420.61 Repealed by 64GA, ch 1088, §317.
420.62–420.120 Repealed by 54GA, ch 165,§4.
420.121–420.125 Repealed by 54GA, ch 151,§57, ch 165,§4.

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420.156 Repealed by 64GA, ch 1088,§317.
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420.159 Repealed by 54GA, ch 165,§4.
420.160 to 420.164 Repealed by 64GA, ch 1088, §317.
420.165 Grants of state lands — erection of structures.
420.166 to 420.180 Repealed by 64GA, ch 1088, §317.
420.181 Repealed by 63GA, ch 1025,§74.
420.182 to 420.189 Repealed by 64GA, ch 1088, §317.

GENERAL TAXATION

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420.204 and 420.205 Repealed by 64GA, ch 1088, §317.
420.206 Levy and collection.
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420.208 Repealed by 54GA, ch 165,§4.
420.209 and 420.210 Repealed by 52GA, ch 240, §50.
420.211 and 420.212 Repealed by 54GA, ch 165, §4.
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420.247 Failure to obtain deed—cancellation of sale.
420.248 Penalty or interest on unpaid taxes.
420.249 Repealed by 54GA, ch 165,§4.
420.250 to 420.285 Repealed by 64GA, ch 1088, §317.

AMENDMENT OF CHARTER

420.286 Procedure.
420.287 Proclamation of result.
420.288 Submission at special election.
420.289 to 420.304 Repealed by 64GA, ch 1088, §317.

OFFICERS AND EMPLOYEES

420.1 to 420.7 Repealed by 54GA, ch 145, §106, ch 165,§3.

420.8 to 420.13 Repealed by 54GA, ch 165,§3.

420.14 and 420.15 Repealed by 64GA, ch 1088,§314.

420.16 to 420.25 Repealed by 64GA, ch 1124, §282.

420.26 to 420.30 Repealed by 54GA, ch 147, §40 and ch 165,§3.

420.31 Repealed by 64GA, ch 1088,§314.

420.32 and 420.33 Repealed by 54GA, ch 165, §3.

420.34 Repealed by 64GA, ch 1124,§282.

420.35 to 420.40 Repealed by 64GA, ch 1088, §314.

GENERAL PROVISIONS AND POWERS

420.41 Applicability of provisions.

1. No state law shall be deemed to impair, alter or affect the provisions of any such special charter or any existing amendment thereto in any of the following respects:

a. As an act of incorporation or as evidence thereof.

b. In respect of authority to license, tax and regulate various persons, occupations, amusements, places and objects, as said general subjects of licensing, taxing and regulation are more specifically set forth in the respective charters of such cities.

c. In respect of the levy and collection of taxes for city purposes, in accordance with

provisions of the respective charters of such cities and other provisions of law relating to such levy and collections including, but without limitation, provisions relating to liens, distraint, tax sales, redemptions, tax deeds and other provisions incident to the levy and collection of taxes; provided that this paragraph shall apply only with respect to cities which prior to and currently with the taking effect of this subsection collect general city taxes directly or by or through their own officers, rather than indirectly and by or through any other public body or officer thereof.

d. In respect of the election or appointment of a clerk, treasurer, police magistrate and marshal or in respect of the authority, functions, duties or compensation of any thereof.

e. In respect of the power or authority of any such city to borrow and expend money and issue bonds or other evidences of indebtedness therefor.

f. In respect of the appropriation, condemning or taking of lands and property by any such city for public purposes and in respect of procedure and appeals in connection with any such taking.

g. In respect of the power to enact, make, adopt, amend and repeal ordinances necessary or proper in connection with any provisions referred to in paragraphs "*a*" to "*f*" inclusive, of this subsection.

2. The fiscal year for special charter cities, which prior to and concurrently with the taking effect of this subsection collect general city taxes directly through their own officers, and for all departments, boards and commissions thereof, shall be as established by city ordinance.

3. Special charter cities which prior to and concurrently with the taking effect of this subsection collect general city taxes directly through their own officers, shall, within the applicable provisions of chapter 384, division I, make the appropriations for the necessary expenditures for the next ensuing fiscal year by ordinance. The proposed ordinance shall, upon first reading, be placed on file with the clerk for public inspection, and, upon second reading, if and as amended, forthwith be published in a newspaper of general circulation, together with the time and place for a public hearing on said proposed ordinance, which hearing shall be not less than ten days prior to the council meeting at which it shall be placed upon its passage. [C97,§933; C24, §6730; C27, 31, 35,§§4755-f35, 6730; C39,§§**4755.32, 6730**; C46, 50,§§313.41, 420.41, 420.62–420.117; C54, 58, 62, 66, 71, 73, 75,§420.41]

420.42 Repealed by 54GA, ch 165,§4.

420.43 Application of certain terms. Whenever the words "boards of supervisors", "county auditor or recorder of deeds", and "county treasurer" are used in any section made applicable by this chapter to special charter cities, the words "city council", "city clerk" or "city recorder", and "city collector or treasurer" shall be respectively substituted.

This section shall not be construed as depriving boards of supervisors, county auditors, and county treasurers of their powers to spread tax levies and collect taxes certified by cities acting under special charter as provided in section 420.206 and other state law. Nothing contained herein shall be deemed to affect the procedure for the assessment of property by the city or county assessor. [C97,§§958, 1024; S13,§958; C24, 27, 31, 35, 39,§**6732**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.43]

See also §420.41

420.44 Unliquidated claim—limitation of action. No suit shall be brought against any such city for any unliquidated claim or demand unless within three months from the time the same became due or cause of action accrued thereon, nor unless a written, verified statement of the general nature, cause, and amount of same is filed with the clerk or recorder thirty days before the commencement of such suit. [C97,§1050; C24, 27, 31, 35, 39,§**6733**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.44]

420.45 Claims for personal injury—limitation. In all cases of personal injury or damage to property resulting from defective streets or sidewalks, or from any cause originating in the neglect or failure of any municipal corporation or its officers to perform their duties, no suit shall be brought against any such city after three months from the time of the injury or damage, and not then unless a written verified statement of the amount, nature, and cause of such injury or damage, and the time when and the place where such injury occurred, and the particular defect or negligence of the city or its officers which it is claimed caused or contributed to the injury or damage, shall be presented to the council or filed with the clerk within thirty days after said alleged injury or damage was sustained. [C97,§1051; C24, 27, 31, 35, 39,§**6734**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §420.45]

Similar provision, §614.1, subsection 1

420.46 Repealed by 64GA, ch 1088,§317.

420.47 Repealed by 54GA, ch 151,§55 and ch 165,§4. See §§368.36, 391.66.

420.48 Repealed by 54GA, ch 145,§107 and ch 165,§4. See §363.26.

420.49 and 420.50 Repealed by 54GA, ch 151, §56 and ch 165,§4. See §368.39.

420.51 Repealed by 54GA, ch 151,§56 and ch 165,§4. See §368.37.

420.52 Repealed by 54GA, ch 151,§56 and ch 165,§4. See §368.38.

420.53 Repealed by 54GA, ch 151,§56 and ch 165,§4. See §§368.27, 368.30.

420.54 Repealed by 54GA, ch 151,§56 and ch 165,§4. See §657.2.

420.55 Repealed by 54GA, ch 151,§56 and ch 165,§4. See §368.32.

420.56 Repealed by 54GA, ch 151,§56 and ch 165,§4. See §391A.2.

420.57 Repealed by 54GA, ch 151,§56 and ch 165,§4. See §368.32.

420.58 Repealed by 54GA, ch 151,§56 and ch 165,§4. See §397.29.

420.59 to 420.61 Repealed by 64GA, ch 1088, §317.

420.62 to 420.117 Repealed by 54GA, ch 165, §4. See §420.41.

420.118 Repealed by 54GA, ch 165,§4. See §§395.15, 478.21.

420.119 and 420.120 Repealed by 54GA, ch 165,§4.

420.121 to 420.125 Repealed by 54GA, ch 151, §57 and ch 165,§4. See ch 397, also §330.2.

POLITICAL PARTIES IN CERTAIN CITIES

420.126 City convention. Political parties in special charter cities having a population of fifty thousand or more shall hold a city convention within the city on the second Friday following the primary election. The city central committee shall set the time and place of the convention and shall file the same in the office of the city clerk at least ten days prior to the convention. [C66, 71, 73, 75, §420.126]

Referred to in §376.3

420.127 Delegates elected. Delegates to city conventions of their respective political parties shall be elected at precinct caucuses held at eight p.m. on the third Monday in August of the same year in which the city general election is conducted. The precinct caucuses shall be convened within the boundaries of each precinct at places designated by the city central committee. The chairman of the city central committee shall file with the city clerk a certified list of places where the precinct caucuses will be held not later than ten days prior to the date of the caucus and shall cause the time and place of said caucus to be published in two newspapers within the city not later than ten days prior to the convening of the precinct caucus. [C66, 71, 73, 75,§420.127]

Referred to in §376.3

420.128 Chairman and secretary. The precinct caucus shall elect, by a majority vote of those present, a chairman and secretary who shall certify to the city central committee and city clerk the names and addresses of those elected as delegates to the city convention. The number of delegates from each voting precinct shall be determined by a ratio adopted by the respective political party's city central committee, and the chairman of the city central committee shall file with the city clerk a statement designating the number of delegates for each voting precinct in the city not less than twenty-five days before the date of the precinct caucuses. If the chairman of the city central committee fails to so act, the county chairman shall designate the number of delegates to be elected from each voting precinct and shall cause such information to be published in two newspapers within the city at least ten days prior to holding the precinct caucuses. [C66, 71, 73, 75,§420.128]

Referred to in §376.3

420.129 Term. The delegates shall hold office from the day following the election for a period of two years. [C66, 71, 73, 75,§420.129]

Referred to in §376.3

420.130 Affidavit of candidacy. Candidates for city precinct committeemen and committeewomen shall cause their names to be printed on the primary ballot by filing an affidavit as provided for in section 43.18 with the county commissioner of elections at least thirty days prior to the day fixed for conducting the primary election. [C66, 71, 73, 75,§420.130]

Referred to in §§43.115, 376.3

420.131 Members from each precinct. Two persons for each political party shall be elected from each precinct to the city central committee at the primary election. They shall hold office for a period of two years immediately following the adjournment of the city convention, or until their successors are duly elected and qualified, unless sooner removed by the city central committee for failing to perform the duties of committeemen, incompetency, or failing to support the ticket nominated by their respective party. [C66, 71, 73, 75,§420.131]

Referred to in §376.3

420.132 Committee meetings — vacancies. The city central committee shall commence performing their duties on the day of the city convention and vacancies occurring therein may be filled by the city chairman subject to confirmation of the central committee. [C66, 71, 73, 75,§420.132]

Referred to in §376.3

420.133 Returns of election. Election judges shall make returns of the election of members of the city central committee in the same manner as returns are conducted for other officers except that the election judges shall canvass the returns as to members of the city central committee, and certify the results thereof to the county commissioner of elections with the returns. [C66, 71, 73, 75,§420.133]

Referred to in §376.3

420.134 Certified list of those elected. After the canvass of votes by the county board of supervisors, the county commissioner of elections shall notify the members of the central committee who have been elected of the time and place of holding the city convention, and shall deliver a certified list of those elected to the chairman of their respective political

party's central committee in the city on or before the second Thursday following the primary election. [C66, 71, 73, 75,§420.134]

Referred to in §376.3

420.135 Elected delegates. The city convention shall be composed of the delegates elected at the last preceding city precinct caucus, and the city clerk shall forward a certified list of said elected delegates at least ten days prior to the city convention to the chairman of the city central committee. [C66, 71, 73, 75,§420.135]

Referred to in §376.3

420.136 Duties of city clerk. The city clerk shall keep a certified list of delegates to the city convention elected at the precinct caucuses and a record of the precinct committeeman and committeewoman elected at the primary election. The city clerk shall maintain a current list of all members of the city central committee. The certified list and records shall be maintained by the city clerk for at least two years subsequent to the election of the delegates and precinct committeeman and shall be available for public inspection. [C66, 71, 73, 75,§420.136]

Referred to in §376.3

420.137 Applicable laws. All laws or other provisions of the Code governing political parties and the nomination of candidates in elections shall, as far as applicable, govern the political parties and nomination and election of candidates in cities acting under a special charter which has a population of fifty thousand or more. [C66, 71, 73, 75,§420.137]

Referred to in §376.3

420.138 Repealed by 65GA, ch 136,§401.

420.139 to 420.148 Repealed by 54GA, ch 165, §4. See ch 397, also §420.297.

420.149 Repealed by 54GA, ch 151,§58 and ch 165,§4. See §§370.23, 386.1.

420.150 to 420.153 Repealed by 54GA, ch 165, §4. See chs 413 to 415.

420.154 Repealed by 54GA, ch 165,§4. See §§413.98, 415.2.

RIVER-FRONT AND LEVEE IMPROVEMENTS

420.155 Water-front improvement — fund. Any city acting under special charter, which is bounded in part or divided by a river, may improve said water front by constructing retaining walls, filling, grading, paving, macadamizing, or riprapping the same and may improve and beautify its water front and the river bank and nearby uplands and made and reclaimed lands in such city; and to pay for such improvements the council of such city is empowered to levy a tax of not exceeding six and three-fourths cents per thousand dollars of assessed value per annum on the taxable property thereof, the same when collected to be known as the levee improvement fund. The proceeds of such fund shall be used exclusively for said purposes. [S13,§1056-a6a; C24, 27, 31, 35, 39,§6823; C46, 50, 54, 58, 62, 66, 71, 73, 75, §420.155]

Referred to in §384.12

420.156 Repealed by 64GA, ch 1088,§317.

420.157 Bonds. In the event that the proceeds of such tax in any one year shall be insufficient to pay for the improvements of that year, or if the city council shall deem best to extend the payment over a number of years, then upon a majority vote of said council approving the same, said cities may borrow the money to make such improvements and issue the negotiable interest-bearing bonds of said city to evidence said debt; provided that the total bond that may be issued under this chapter by any one city shall not exceed twenty-seven hundredths of one percent of the assessed value of said city. [S13,§1056-a6b; C24, 27, 31, 35, 39,§6824; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.157]

420.158 Repealed by 64GA, ch 1088,§317.

420.159 Repealed by 54GA, ch 165,§4. See ch 372.

420.160 to 420.164 Repealed by 64GA, ch 1088, §317.

420.165 Grants of state lands—erection of structures. With respect to any lands title to which has been or may be granted by the state to any municipal corporation of the state, acting under special charter, sections 327F.4 and 327F.5 shall not, after the occurrence of such grant, continue to apply, excepting only that permanent structures erected prior to such grant under authority of said section 327F.4 may continue to be used, occupied, and maintained thereunder, and excepting further only that such lands may continue to be used and occupied thereunder, to the extent only that use and occupancy of such lands shall be necessary to the use and occupancy of such structures for like purposes and in like manner as before such grant; provided that nothing herein contained shall be deemed to affect riparian rights at common law. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.165]

420.166 to 420.180 Repealed by 64GA, ch 1088, §317.

420.181 Repealed by 63GA, ch 1025,§74.

420.182 to 420.189 Repealed by 64GA, ch 1088, §317.

GENERAL TAXATION

420.190 Garbage can tax—assessment against property. Special chartered cities which collect both rubbish and garbage by a monthly can tax shall have the power by ordinance to declare the service a benefit to the property so served and in case of failure to pay said monthly charge to assess the actual cost thereof against the property benefited. [C54, 58, 62, 66, 71, 73, 75,§420.190]

420.191 to 420.203 Repealed by 54GA, ch 165,§4. See ch 404.

420.204 and 420.205 Repealed by 64GA, ch 1088,§317.

420.206 Levy and collection. The council shall have power to levy and collect taxes for all general and special purposes in this chapter authorized, upon all property within the city not exempted from taxation by the general law of the state, and to fix the amount to be levied on the value thereof, which shall be ascertained by the assessor of said city. [C97,§1010; C24, 27, 31, 35, 39,§6867; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.206]

Referred to in §420.43
C97,§1010, editorially divided

420.207 Taxation in general. The provisions of sections 427.1, 427.3 to 427.11, 428.4, 428.16 to 428.23, 436.10, 436.11, 437.1, 437.3, 437.14, 441.21, 443.1 to 443.3, 443.20, 444.2 to 444.5, and 447.9 to 447.13, so far as applicable, shall apply to cities acting under special charters. [S13,§1322-3a; C24, 27, 31, 35,§7007; C39,§6867.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.207]

420.208 Repealed by 54GA, ch 165,§4. See §441.13.

420.209 and 420.210 Repealed by 52GA, ch 240,§50. See §421.17.

420.211 and 420.212 Repealed by 54GA, ch 165,§4. See §§404.3, 405.13.

420.213 Collection procedure. Such cities shall have power and shall provide by ordinance when general or special taxes and assessments shall become delinquent, and the rate of interest which they shall thereafter bear, not exceeding ten percent per annum on the whole amount thereof, including penalty, and for the sale of both real and personal property for the collection of general and special delinquent taxes and assessments, on such terms as the council may determine. [C97,§1012; C24, 27, 31, 35, 39,§6872; C46, 50, 54, 58, 62, 66, 71, 73, 75, §420.213]

C97,§1012, editorially divided

420.214 Sale of real estate—notice. In the sale of real property for taxes and assessments, the notice of the time and place of such sale shall be given by the treasurer or the collector, and shall contain the description of each separate tract to be sold, as taken from the tax list; the amount of taxes for which it is liable, delinquent for each year, and the amount of penalty, interest, and cost thereon; the name of the owner, if known, or the person, if any, to whom it is taxable; by publication in some newspaper in the city once each week for two consecutive weeks, the last of which shall be not more than two weeks before the date of such sale, and by posting a copy thereof at the door of the office of the collector or treasurer one week before the day of such sale. [C97, §1012; C24, 27, 31, 35, 39,§6873; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.214]

420.215 Cost of publication. The compensation for such publication shall not exceed thirty cents for each description, and shall be paid by the city. The amount paid therefor shall be collected as a part of the costs of sale and paid into the treasury. [C97,§1012; C24, 27, 31, 35, 39,§6874; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.215]

420.216 Sufficiency of notice. In all cases such advertisement shall be sufficient notice to the owners and persons having an interest in or claiming title to any lot or parcel of real estate, of the sale of their property for delinquent taxes. [C97,§1012; C24, 27, 31, 35, 39, §6875; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.216]

420.217 Irregularities disregarded. No irregularity or informality in the advertisement shall affect the legality of any sale or the title of any property conveyed, if it shall appear that said property was subject to taxation for the year or years for which the same was sold, and that the tax was due and unpaid at the time of sale. [C97,§1012; C24, 27, 31, 35, 39, §6876; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.217]

420.218 Demand unnecessary. A failure of the collector to make personal demand of taxes shall not affect the validity of any sale or the title of any property acquired under such sale. [C97,§1012; C24, 27, 31, 35, 39,§6877; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.218]

420.219 Adjournment of sale. Section 446.25 is made applicable to cities acting under special charters. [C97,§1013; C24, 27, 31, 35, 39, §6878; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.219]

420.220 City tax sale after public bidder sale. Property located in a city acting under special charter which collects its own taxes, shall not, after sale of such property to the county for taxes, be offered or sold at any sale for taxes or special assessments collectible by any such city except in the following events:

1. In the event of redemption from sale to the county or transfer by the county of the certificate of purchase then sale may be made by the city as freely as if sections 420.220 to 420.229 had never become law.

2. In the event that any special assessment or installment thereof levied by any such city, prior to April 22, 1941, shall be or become delinquent, then the property against which the same was levied may be sold therefor only at the first regular tax sale of such city occurring within such a period of time after delinquency that sale for such assessment or installment might lawfully be made at such first regular tax sale.

3. In the event of sale or conveyance of the property by the county after issuance of tax deed to it then sale may be made for general city taxes levied after such sale or conveyance by the county.

4. In the event of levy of any special assessment against the property after purchase thereof at tax sale by the county, then sale

may be made for any such special assessment or installment thereof, then delinquent.

The county auditor shall, promptly after the purchase of any real estate by the county at tax sale, certify to the city treasurer of any such city, a statement showing the tracts or parcels so purchased and the dates of purchase thereof respectively. In the event either of redemption from any such sale or transfer of the certificate of purchase, the county auditor shall promptly certify to the city treasurer a statement showing such redemption or transfer. The city treasurer shall make appropriate entries in his tax books of the facts so certified by the county auditor as well as of the matters certified by such treasurer to said auditor under the provisions of section 420.222. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.220; 66GA, ch 1056,§25]

Referred to in §§420.224, 420.229

420.221 Tax deed to county—city's option to purchase—city tax levies. In the event that there shall be issued to a county a tax deed for any real estate located in a special charter city which collects its own taxes, the county auditor of any such county shall promptly certify to the city treasurer of such city a statement showing each tract or parcel of real estate conveyed by any such deed, the date of conveyance thereof and the total amount which, immediately prior to the issuance of such deed, would have been required to be paid to make redemption from the sale to the county of each such tract or parcel as well as to pay all subsequent taxes due the county thereon. If any special assessment levied against any such parcel by any such city shall then remain uncollected in whole or part such city shall, at any time during three months next ensuing such certification, have the exclusive option to purchase from the county all its right, title, and interest in and to any such tract by paying to the county auditor the amount so certified in respect to such tract. Payment in any such case shall be made from the improvement fund of such city which fund it is hereby authorized to expend for the purposes stated. No general taxes shall be levied by any such city against real estate conveyed to the county by tax deed until the same shall have been sold or conveyed by the county. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.221]

Referred to in §§420.220(1), 420.224, 420.229

420.222 Unpaid city taxes certified to county auditor. The city treasurer shall, promptly after the certification to him by the county auditor of the fact of issuance to the county of a tax deed for any real estate, certify to such auditor a statement showing all unpaid general taxes, with interest, penalties, and costs to date, due said city and levied against the tracts or parcels of real estate so conveyed by tax deed to the county and also showing whether or not there are any unpaid special assessments against such respective tracts or parcels. After such certification (and, in respect to the tracts or parcels against which there shall so be shown to be any unpaid special assessments, after expiration of the optional right of purchase thereof by the city), the management and sale of any real estate acquired by the county under any such tax deed, as well as distribution of proceeds of sale and other incidents and proceedings consequential to the issuance of such deed, shall occur and be had in like manner and with like effect as if the general taxes, penalties, and costs so certified by such city treasurer had originally been collectible by the county treasurer for the account of the city as general taxes collectible with other general taxes for the respective corresponding years. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.222]

Referred to in §§420.220(1, 4), 420.224, 420.229

420.223 Purchase by city at tax sale. In the event that any general tax or special assessment levied by any special charter city which collects its own taxes, or any installment of any such assessment, shall remain unpaid for two years or more after any delinquency in payment thereof, then such city may, at any regular sale for taxes thereafter, purchase any such real estate for the full amount of the general taxes, with interest, penalties and costs of advertising, for which the same shall be offered and for such further amount, if any as such city may elect, not to exceed the amount of the special assessments or installments thereof, with interest and penalties, for which the same may be offered. Payment to the extent of the amount of such general taxes, with interest, penalties, and costs of advertising, shall be made, without any necessity or prerequisite of appropriation therefor, by charging the respective funds to which such general taxes, interest, penalties, and costs shall be payable, in the amounts so payable, and, to the extent of any further amount, shall be made from the improvement fund of said city, which funds it is hereby authorized to expend for the purposes stated. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.223]

Referred to in §§420.220(1), 420.224, 420.229

420.224 Limitation on resale by city. No property which may be sold at tax sale to any such city shall be offered at any sale for taxes or special assessments, collectible by such city, while it holds the certificate of purchase thereof or tax deed thereon except only as follows: In the event that any special assessment or installment thereof levied by any such city prior to April 22, 1941, shall be or become delinquent after purchase of such property at tax sale by the city, then the property against which the same was levied may be sold therefor only at the first regular tax sale of such city occurring within such a period of time after delinquency that sale for such assessment or installment might lawfully be made at such first regular tax sale. Nothing in sections 420.220 to 420.229 shall prevent the sale of property for any unpaid taxes collectible by

the county. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.224]

Referred to in §§420.220(1), 420.229

420.225 City subrogated to county's rights —payment procedure. Any such city, holding a certificate of purchase at tax sale, may, at its option, pay any unpaid taxes due the county and purchase from the county any tax sale certificate held by the county on the same real estate, making payment in the event of such purchase of the amount which would then be required to redeem from sale to the county or any lesser amount which the county may be lawfully enabled to accept. All amounts so paid shall be entered in the tax sale records of such city and added to the amount required to redeem from sale. All amounts so paid shall be payable out of the general fund. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.225]

Referred to in §§420.220(1), 420.224, 420.229

420.226 City clerk makes purchases. The city clerk shall act on behalf of the city under general or specific resolutions of its city council in making the purchases at tax sale hereby authorized. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §420.226]

Referred to in §§420.220(1), 420.224, 420.229

420.227 Notice of expiration of redemption period. After nine months from the date of such purchase at tax sale by the city and as soon as permitted by law with respect to any tax sale certificate held by such city, the city clerk shall, on behalf of the city, cause notice to be served of the expiration of the right of redemption from such sale on persons of the same description and in like manner as in general provided by law with respect to tax sales by such city and, on expiration of ninety days from completed service of such notice, tax deed shall be issued in like manner and with like effect as provided by law with respect to such other sales. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.227]

Referred to in §§420.220(1), 420.224, 420.229
Publication, ch 618

420.228 City may compromise tax — effect. For the purpose of collecting and realizing on account of delinquent taxes and special assessments collectible by it as fully and expeditiously as deemed possible in the judgment of its city council any such city is hereby authorized to settle, compromise, and adjust any general tax, then having been delinquent for a period of two years or more and any special assessment then having been delinquent in whole or as to any installment thereof for a period of two years or more, and, in connection with any such settlement, compromise or adjustment, to accept a conveyance of real property and extend the time for payment of any installment of any special assessment. If any special assessment shall be reduced in amount in connection with any such settlement, compromise, or adjustment, the full amount of the reduction shall thereby become an obligation of such city to the special assessment fund into which such assessment was payable. The lien or charge created by law for the payment of any special assessment certificates or bonds against any special assessment so reduced in amount or against the proceeds thereof shall remain in effect against the balance of such special assessment and the proceeds of such balance. All such settlements, compromises, and adjustments heretofore effected are hereby ratified and validated. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.228]

Referred to in §§420.220(1), 420.224, 420.229

420.229 Delinquent city taxes — exclusive collection procedure. All general city taxes and special assessments which, under the provisions of sections 420.220 to 420.229 shall not be collectible by sale or shall be collectible by sale only in events or in a manner hereby prescribed shall respectively be deemed barred or barred as to collection thereof in any other event or any other manner than so prescribed. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.229]

Referred to in §§420.220(1), 420.224

420.230 Tax list. All assessments and taxes levied by the council, except as otherwise provided by law, shall be placed by the auditor, clerk, or recorder, as provided by ordinance, upon the proper tax book, to be known as the "tax list", properly ruled and headed with distinct columns to correspond with the assessment books, with a column for polls and one for payments, and he shall complete the same by carrying out the consolidated tax and all other taxes levied, and at the end of the list shall make an abstract thereof and apportion the consolidated tax among the respective funds to which it belongs, according to the amount levied for each, and certify the same to the collector or treasurer at or before the regular time for the collection and payment of taxes. [R60,§§1123, 1126; C73,§§495, 498; C97, §1014; C24, 27, 31, 35, 39,§6879; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.230]

420.231 Lien on real estate. Taxes upon real estate shall be a lien thereon against all persons except the state. Taxes due from any person upon personal property shall be a lien upon any and all real estate owned by such person or to which he may acquire title, which lien shall attach to real estate owned by such person on the date when such personal property taxes become delinquent and shall continue for a period of ten years only thereafter. [C97,§1015; C24, 27, 31, 35, 39,§6880; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.231]

Referred to in §420.234
C97,§1015, editorially divided

420.232 Lien between vendor and vendee. As between vendor and vendee, such lien shall attach to real estate on the thirty-first day of December following the levy, unless otherwise provided in this chapter. [C97,§1015; C24, 27, 31, 35, 39,§6881; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.232]

420.233 Stocks of goods. Taxes upon stocks of goods and merchandise shall be a lien thereon, and shall continue a lien thereon when sold in bulk, and may be collected from the owner, purchaser, or vendee, but the property of the seller thereof shall be first exhausted for the payment. [C97,§1015; C24, 27, 31, 35, 39,§6882; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.233]

420.234 When lien attaches. All of such taxes shall remain a lien on the property aforesaid from and after the date of the levy in each year, except as provided in section 420.231, with respect to the lien of personal property taxes on real estate. [C97,§1015; C24, 27, 31, 35, 39,§6883; C46, 50, 54, 58, 62, 66, 71, 73, 75, §420.234]

420.235 Tax receipt. The collector or treasurer shall in all cases make out and deliver to the taxpayer a receipt, which receipt shall contain the description and the assessed value of each lot and parcel of real estate, and the assessed value of personal property, and in case the property has been sold for taxes and not redeemed, the date of such sale and to whom sold, also the amount of taxes, interest, and costs paid; and the collector or treasurer shall give separate receipts for each year; whereupon he shall make proper entries of such payments on the books of his office. [C97, §1016; C24, 27, 31, 35, 39,§6884; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.235]

Referred to in §420.236(2)
C97,§1016, editorially divided

420.236 Payment refused—receipt made conclusive. The council may provide by ordinance:

1. That no person shall be permitted to pay taxes of any one year until the taxes for the previous years shall be first paid.

2. That the receipt contemplated in section 420.235 shall be conclusive evidence that all taxes and the costs of every kind against the property described in such receipt are paid to the date of such receipt.

3. That for any failure or neglect on the part of the collector, or on the part of anyone acting as collector, he and his bondsmen shall be liable to an action on his official bond for damages sustained by any person or the city for such neglect. [C97,§1016; C24, 27, 31, 35, 39, §6885; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.236]

420.237 Certificate of purchase. The treasurer or collector of taxes, or person authorized to act as collector, shall make, sign, and deliver to the purchaser of any real property sold for the payment of any taxes or special assessments authorized by the provisions of this chapter, or by any law applicable to such cities, a certificate of purchase, which shall have the same force and effect as certificates issued by county treasurers for the sale of property for delinquent county taxes. [C97,§1017; C24, 27, 31, 35, 39,§6886; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.237]

County treasurer's certificate, §446.29

420.238 Redemption—terms. Real property sold under the provisions of this chapter, or by virtue of any power heretofore given, may be redeemed before the time of redemption expires, as hereinafter provided, by payment to the treasurer, collector, or person authorized to receive the same, to be held by him subject to the order of the purchaser on surrender of the certificate, or in case the same is lost and destroyed, on his making affidavit of such fact, and of the further fact that it was not assigned, of the amount for which the same was sold, and ten percent of such amount immediately added as a penalty, with eight percent per annum on the whole amount thus made from the day of sale, and the amount of all taxes, either general or special, with interest and costs, paid at any time by the purchaser or his assignee subsequent to the sale, and a similar penalty of ten percent added as before on the amount of the payment made at any subsequent time, with eight percent interest per annum on the whole of such amount or amounts from the day or days of payment; provided that such penalty for the nonpayment of the taxes at any subsequent time or times shall not attach, unless such subsequent tax or taxes shall have remained unpaid for thirty days after they became delinquent. [C97,§1018; C24, 27, 31, 35, 39,§6887; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.238]

C97,§1018, editorially divided

420.239 Certificate of redemption. The treasurer, collector, or person authorized to receive the same, upon application of any party to redeem real property sold as aforesaid, and being satisfied that such person has a right to redeem the same, and on payment of the proper amount, shall issue to such party a certificate of redemption, in substance and form as provided for the redemption of property sold for state and county taxes, and shall make proper entry thereof in the sale book, which redemption shall thereupon be deemed complete without further proceedings. [C97,§1018; C24, 27, 31, 35, 39,§6888; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.239]

Tax redemption, ch 447

420.240 Redemption statutes applicable. The provisions of sections 447.7 to 447.13 shall, so far as the same shall be applicable, and are not herein changed or modified, apply to sales of real estate for delinquent taxes herein contemplated; but where the words "auditor of the county" or "treasurer" are used in said sections the words "city clerk", "recorder", "auditor", or "person authorized to make out the tax list" and "city collector" or "city treasurer or officer authorized to receive same" shall be substituted. [C97,§1018; C24, 27, 31, 35, 39, §6889; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.240]

420.241 Deed—when executed. Immediately after the expiration of ninety days from the date of service of the notice, as prescribed by sections 447.9 to 448.1, the treasurer, collector, or person authorized to act as collector of

taxes, shall make out a deed for each lot or parcel of land sold and remaining unredeemed and deliver the same to the purchaser upon the return of the certificate of purchase. [C97, §1019; C24, 27, 31, 35, 39,§6890; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.241]

C97,§1019, editorially divided

420.242 Different parcels. Any number of parcels of real estate bought by one person may be included in one deed, if required by the purchaser. [C97,§1019; C24, 27, 31, 35, 39,§6891; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.242]

420.243 Formal execution. Deeds executed by the city treasurer, collector, or person authorized to act as collector, may be in form substantially as provided by section 448.2, and shall be signed and acknowledged by him in his official capacity. [C97,§1019; C24, 27, 31, 35, 39,§6892; C46, 50, 54, 58, 62, 66, 71, 73, 75, §420.243]

420.244 Force and effect. All deeds and conveyances hereafter made and executed on account of any general or special tax sale shall be of the same force and effect as deeds made by the county treasurer as provided in sections 448.3 to 448.5 for delinquent county taxes. [C97,§1019; C24, 27, 31, 35, 39,§6893; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.244]

420.245 Rights and remedies. The purchaser as well as the owner of any real property sold on account of such general or special delinquent taxes or assessments shall be entitled to all the rights and remedies which are granted and prescribed by sections 446.35, 446.36, and 448.6 to 448.14, but wherever the words "county and county treasurer and auditor" are used, the words "city, city treasurer, city clerk, recorder, auditor, or collector or officer authorized to act as collector", shall be substituted. [C97,§1019; C24, 27, 31, 35, 39,§6894; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.245]

420.246 Tax and deed statutes applicable. Sections 445.2, 445.47 to 445.51, 446.3 to 446.6, 446.16, 446.32, 446.33, 448.10 to 448.13 are hereby made applicable to cities acting under special charters, except that, where the word "treasurer" is used, there shall be used the words "city collector or treasurer or deputy treasurer or deputy or officer authorized to collect city taxes"; and where the word "auditor" is used, there shall be substituted the words "city clerk or recorder". [C97,§1020; S13,§1020; C24, 27, 31, 35, 39,§6895; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.246]

420.247 Failure to obtain deed—cancellation of sale. After July 4, 1942, section 446.37 shall apply to cities acting under special charter which collect their own taxes, the terms "county auditor" and "county treasurer" in said section to be taken, for the purposes of this section, to refer to the persons performing their respective functions in relation to tax sales by such cities. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.247]

420.248 Penalty or interest on unpaid taxes. Cities which act under special charters and which levy and collect their own taxes shall not collect any further penalty or interest on general taxes remaining unpaid four years or more after March 31 of the year for which such general taxes are levied. [S13,§1056-a4; C24, 27, 31, 35, 39,§6896; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.248]

420.249 Repealed by 54GA, ch 165,§4.

420.250 to 420.285 Repealed by 64GA, ch 1088, §317.

AMENDMENT OF CHARTER

420.286 Procedure. On the presentation of a petition signed by one-fourth of the electors, as shown by the vote at the next preceding city election, of any city acting under a special charter or act of incorporation, to the governing body thereof, asking that the question of the amendment of such special charter or act of incorporation be submitted to the electors of such city, such governing body shall immediately propose sections amendatory of said charter or act of incorporation, and shall submit the same, as requested, at the first ensuing city election. At least ten days before such election the mayor of such city shall issue his proclamation setting forth the nature and character of such amendment, and shall cause such proclamation to be published in a newspaper published therein, or, if there be none, he shall cause the same to be posted in five public places in such city. On the day specified, the proposition to adopt the amendment shall be submitted to the electors thereof for adoption or rejection, in the manner provided by the general election laws. [R60,§1141; C73,§548; C97,§1047; C24, 27, 31, 35, 39,§6933; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.286]

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420.287 Proclamation of result. If a majority of the votes cast be in favor of adopting said amendment, the mayor shall issue his proclamation accordingly; and the amendment shall thereafter constitute a part of said charter. [R60,§1142; C73,§549; C97,§1048; C24, 27, 31, 35, 39,§6934; C46, 50, 54, 58, 62, 66, 71, 73, 75, §420.287]

420.288 Submission at special election. The legislative body of said city may submit any amendment to the vote of the people as aforesaid at any special election, provided one-half of the electors as aforesaid petition for that purpose, and the proceedings shall be the same as at the general election. [R60,§1143; C73,§550; C97,§1049; C24, 27, 31, 35, 39,§6935; C46, 50, 54, 58, 62, 66, 71, 73, 75,§420.288]

420.289 to 420.304 Repealed by 64GA, ch 1088, §317.

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VOLUME II

CODE OF IOWA

1977

CONTAINING

ALL STATUTES OF A GENERAL AND PERMANENT NATURE

To and including the Acts of a permanent nature
of the Sixty-sixth General Assembly, 1976

WAYNE A. FAUPEL
CODE EDITOR

PHYLLIS BARRY
DEPUTY CODE EDITOR

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14.17 Citation of permanent Code or supplements. The permanent Codes or supplements thereto published subsequent to the adjournment of the extra session of the Fortieth General Assembly shall be known and cited as "The Code .....", or "supplement to the Code .....", giving year of edition of such Code or supplement thereto.

14.18 Citation of session laws. The session laws of each general assembly shall be known and cited as "..... ..... Session of the ..... General Assembly, Chapter (or File No.) ....., Section ....." (inserting the appropriate number).

14.19 Citation of prior Codes. All prior Codes and supplements shall be cited by the year in which published.

Chapters of the Code are cited as whole numerals; as chapter 180 or chapter 180G.

Sections are cited as decimal numerals; as section 180.5 or section 180G.54. Occasionally, sections are divided into subsections as 1., 2., 3. etc.; and subsections into paragraphs *a*, *b*, *c* etc.; and paragraphs into subparagraphs as (1), (2), (3) etc. Example: section 180G.54, subsection 1, paragraph "*a*", subparagraph (3). This may be abbreviated as 180G.54[1,*a*, (3)].

Section 14.20 of the Code of Iowa is as follows:

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

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ABBREVIATIONS

C51	Code of 1851
R60	Revision of 1860
C73	Code of 1873
C97	Code of 1897
S'02	Supplement of 1902
S'07	Supplement of 1907
S13	Supplement 1913
SS15	Supplemental Supplement 1915
C24	Code of 1924
C27	Code of 1927
C31	Code of 1931
C35	Code of 1935
C39	Code of 1939
C46	Code of 1946
C50	Code of 1950
C54	Code of 1954
C58	Code of 1958
C62	Code of 1962
C66	Code of 1966
C71	Code of 1971
C73	Code of 1973
C75	Code of 1975
GA	General Assembly
§ or Sec.	Section
Ch	Chapter
Et seq.	And following
HF	House File
SF	Senate File
Ex	Extra Session
R.C.P.	Rules of Civil Procedure
Stat. L.	Statutes at Large (U.S.)
U.S.C.	United States Code

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Construction of extended fiscal year Act in re tax levies formerly made; see 65GA, ch 1096,§§59—61

CHAPTER 421

DEPARTMENT OF REVENUE

Referred to in §441.49

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421.2 Department of revenue.
421.3 Director to have no conflicting interests.
421.4 Deputies.
421.5 Settling doubtful claims for taxes.
421.6 Rules—deposit of departmental moneys.
421.7 and 421.8 Repealed by 62GA, ch 342,§1.
421.9 Duties of director of revenue.
421.10 to 421.13 Repealed by 62GA, ch 342,§7.
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421.21 Administration of oaths.
421.22 Service of orders.
421.23 Fees and mileage.
421.24 Reciprocal interstate tax enforcement.
421.25 Professional appraisers employed.

421.1 State board of tax review. There is hereby established within the department of revenue for administrative and budgetary purposes a state board of tax review for the state of Iowa. The state board of tax review, hereinafter called the state board, shall consist of three members.

The members of the state board shall be qualified electors of the state and shall hold no other elective or appointive public office.

Except for the first appointees, the terms of members of the state board shall be for six years beginning on the first day of July following their appointment. No member who is appointed for a six-year term shall be permitted to succeed himself.

Members shall be appointed by the governor subject to confirmation by two-thirds of the members of the senate. Appointments to the board shall be bipartisan and of the first appointees, one shall be for two years, one shall be for four years and one shall be for six years.

The members of the state board shall qualify by taking the regular oath of office as prescribed by law for state officers. A vacancy on the board shall be filled by appointment by the governor in the same manner as the original appointment.

The members of the state board shall be allowed a per diem of forty dollars and their necessary travel and expenses while engaged in their official duties. They shall organize the board and select one of their members as chairman.

The place of office of the state board shall be in the office of the tax department in the capitol of the state.

The state board shall hold at least six regular meetings each year, the first of which shall be on the second secular day of July. Special meetings of the state board may be called by the chairman on five days' notice given to each member. All meetings shall be held at the office of the tax department unless a different place within the state is designated by the state board or in the notice of the meeting.

It shall be the responsibility of the state board to exercise the following general powers and duties:

1. Determine and adopt such policies as are authorized by law and are necessary for the more efficient operation of any phase of tax review.

2. Perform such duties prescribed by law as it may find necessary for the improvement of the state system of taxation in carrying out the purposes and objectives of the tax laws.

3. Employ, pursuant to the Iowa merit system, adequate clerical help to keep such records as are necessary to set forth clearly all actions and proceedings of the state board.

4. Advise and counsel with the director of revenue concerning the tax laws and the regulations adopted pursuant thereto; and, upon their own motion or upon appeal by any affected taxpayer, review the record evidence and the decisions of, and any orders or directive issued by, the director of revenue for the assessment and collection of taxes by the de-

partment or an order to reassess or to raise assessments to any local assessor and shall expeditiously affirm, modify, reverse or remand the same. In order for any appeal to the board to be valid, written notice thereof must be given to the department within thirty days of the rendering of the decision, order or directive from which such appeal is taken. The director shall thereafter cause to be certified to the board the record, documents, reports, audits and all other information pertinent to the decision, order or directive from which such appeal is taken.

The affected taxpayer and the department shall be given at least fifteen days' written notice by the board of the date the appeal shall be heard and both parties may be present at such hearing if they desire. The board shall adopt and promulgate, pursuant to chapter 17A, rules for the conduct of appeals by the board. The record and all documents, reports, audits and all other information certified to the board by the director, and hearings held by the board pursuant to the appeal and the decision of the board thereon shall be open to the public notwithstanding the provisions of sections 422.72, subsection 1, and 422.20; except that the board upon the application of the affected taxpayer may order the record and all documents, reports, audits, and all other information certified to it by the director, or so much thereof as it deems necessary, held confidential, if the public disclosure of same would reveal trade secrets or any other confidential information that would give the affected taxpayer's competitor a competitive advantage. Any deliberation of the board in reaching a decision on any appeal shall be confidential.

5. Adopt a long-range program for the state system of tax reform based upon special studies, surveys, research, and recommendations submitted by or proposed under the direction of the director of revenue.

The state board shall constitute a continuing research commission as to tax matters in the state and cause to be prepared and submitted to each regular session of the general assembly a report containing such recommendations as to revisions, amendments, and new provisions of the law as the state board has decided should be submitted to the legislature for its consideration.

6. All of the provisions of section 422.70, shall also be applicable to the state board of tax review. [C51,§§481, 482; R60,§742; C73,§834; C97,§1378; S13,§1378; C24, 27, 31, 35, 39,§7140; C46, 50, 54, 58,§422.15; C62, 66,§441.46; C71, 73, 75,§421.1]

Referred to in §425.31

421.2 Department of revenue. There is hereby created a department of revenue. The department shall be administered by a director of revenue who shall be appointed by the governor with the approval of two-thirds of the members of the senate and shall serve at the pleasure of the governor. If the office of the director becomes vacant during a session of the general assembly, the vacancy shall be filled in the same manner as provided for the original appointment. Any such vacancy occurring while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire thirty days after the general assembly next convenes. Within said thirty days the governor shall transmit an appointment to the senate. The director may establish, abolish, and consolidate departments within the department of revenue when necessary for the efficient performance of the various functions and duties of the department of revenue. [C31, 35,§§6943-c11,-c12,-c15,-c17; C39,§§**6943.010, 6943.011, 6943.014, 6943.016**; C46, 50, 54, 58, 62, 66,§§421.1, 421.2, 421.5, 421.7; C71, 73, 75,§421.2]

421.3 Director to have no conflicting interests. The director of revenue shall not hold any other office under the laws of the United States or of this or any other state or hold any other position of profit. The director shall not engage in any occupation, business, or profession interfering with or inconsistent with his duties, serve on or under any committee of any political party, or contribute to the campaign fund of any person or political party. The director shall be of high moral character, shall be recognized for his executive and administrative capacity, and shall possess expert knowledge and skills in the fields of taxation and property tax assessment. The director shall devote his entire time to the duties of his position. [C31, 35,§6943-c14; C39, §**6943.013**; C46, 50, 54, 58, 62, 66,§421.4; C71, 73, 75,§421.3]

421.4 Deputies. The director may appoint deputy directors and may designate one or more of the deputies as acting director. Any deputy designated to serve in the absence of the director shall have all of the powers possessed by the director. The director may employ certified public accountants, engineering and technical assistants, and such other employees necessary to protect the interests of the state and any political subdivision. He shall create a separate property tax division for which he shall appoint a deputy director who shall administer all functions of the department of revenue relating to the assessment, levy and collection of property taxes as provided by law. All independent contracts and fees provided for in this section shall be subject to the approval of the governor. [C71, 73, 75,§421.4]

421.5 Settling doubtful claims for taxes. The director may compromise and settle doubtful and disputed claims for taxes or tax liability of doubtful collectibility notwithstanding the provisions of section 19.9. Whenever such a compromise and settlement is made or any other compromise and settlement in excess of the director's authority is made, the director shall make a complete record of the case

showing the tax assessed, recommendations, reports, and audits of departmental personnel if any, the taxpayer's grounds for dispute or contest together with all evidence thereof, and the amounts, conditions, and settlement or compromise of same. [C71, 73, 75,§421.5]

421.6 Rules—deposit of departmental moneys. The director shall further prescribe by rule the manner and methods by which all departments and agencies of the state who collect money for and in behalf of the state shall cause the money to be deposited with the treasurer of state or in a depository designated by the state treasurer. All such moneys collected shall be deposited at such times and in such depositories to permit the state of Iowa to deposit the funds in a manner consistent with the state's investment policies. All such moneys shall be promptly deposited, as directed, even though the individual amount remitted may not be correct. If any individual amount remitted is in excess of the amount required, the department or agency receiving the same shall refund the excess amount thereof. If the individual amount remitted is insufficient, the person, firm, or corporation concerned shall be immediately billed for the amount of the deficiency. [C71, 73, 75,§421.6]

421.7 and 421.8 Repealed by 62GA, ch 342,§1.

421.9 Duties of director of revenue.

1. The director of revenue or a designated deputy shall sign on behalf of the department all orders, subpoenas, warrants, and other documents of like character issued by the department.

2. The office of the department shall be maintained at the seat of government in this state. The department shall be deemed to be in continuous session and open for the transaction of business except Saturdays, Sundays and legal holidays. The director of revenue may hold sessions in conducting investigations any place within the state when necessary to facilitate and render more thorough the performance of the director's duties.

3. The director of revenue shall appoint a secretary, who shall:

a. Keep full and correct minutes of all hearings, transactions, and proceedings conducted by the director.

b. Keep an assessment record, wherein shall be recorded the detailed proceedings relating to valuations and assessments of properties made, taxes levied, and levies determined by the director.

c. Certify to the several county auditors all property assessments and levies so made by the director, when such certification is required by law.

d. Keep a complete and accurate record of all tax assessments compromised or settled.

e. Perform such other duties as may be required by the director. [C31, 35,§§6943-c20,-c21, -c22,-c23; C39,§§**6943.019, 6943.020, 6943.021, 6943.022**; C46, 50, 54, 58, 62, 66,§§421.10, 421.11, 421.12, 421.13; C71, 73, 75,§421.9]

421.10 to 421.13 Repealed by 62GA, ch 342, §7.

421.14 Rules—director's duties. The director shall have power to establish all needful rules not inconsistent with law for the orderly and methodical performance of the director's duties, and to require the observance of such rules by those having business with or appearing before the department. [C31, 35,§6943-c24; C39,§**6943.023**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §421.14]

421.15 Seal. The director shall have an official seal, and orders or other papers executed by the director may, under his direction, be attested, with the seal affixed, by the secretary. [C31, 35,§6943-c25; C39,§**6943.024**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§421.15]

421.16 Expenses. The director, deputy directors, secretary and assistants shall be entitled to receive from the state their actual necessary expenses while traveling on the business of the department; such expenditures to be sworn to by the party who incurred the expense, and approved by the director, and allowed by the state comptroller. Provided, however, that no such expense shall be allowed the director, deputy directors, secretary or employees of the department while in the city of Des Moines or traveling between their homes and the city of Des Moines. [C31, 35,§6943-c26; C39,§**6943.025**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§421.16]

421.17 Powers and duties. In addition to the powers and duties transferred to the director of revenue, the director shall have and assume the following powers and duties:

1. To have and exercise general supervision over the administration of the assessment and tax laws of the state, over boards of supervisors and all other officers or boards of assessment and levy in the performance of their official duties, in all matters relating to assessments and taxation, to the end that all assessments of property and taxes levied thereon be made relatively just and uniform in substantial compliance with the law.

2. To supervise the activity of all assessors and boards of review in the state of Iowa; to co-operate with them in bringing about a uniform and legal assessment of property as prescribed by law.

The director may order the reassessment of all or part of the property in any taxing district in any year. Such reassessment shall be made by the local assessor according to law under the direction of the director and the cost thereof shall be paid in the same manner as the cost of making an original assessment.

The director shall determine the degree of uniformity of valuation as between the various taxing districts of the state and shall have the authority to employ competent personnel for the purpose of performing this duty.

For the purpose of bringing about uniformity and equalization of assessments throughout the state of Iowa, the director shall prescribe rules relating to the standards of value to be used by assessing authorities in the determination, assessment and equalization of actual value for assessment purposes of all property subject to taxation in the state, and such rules shall be adhered to and followed by all assessing authorities.

3. To prescribe and promulgate all forms of books and forms to be used in the listing and assessment of property, and on or before November 1 of each year shall furnish to the county auditor of each county such prescribed forms of assessment rolls and other forms to properly list and assess all property subject to taxation in each county. The department of revenue shall also from time to time prepare and furnish in like manner forms for any and all other blanks, memoranda or instructions which the director deems necessary or expedient for the use or guidance of any of the officers over which the director is authorized by law to exercise supervision.

4. To confer with, advise, and direct boards of supervisors, boards of review, and others obligated by law to make levies and assessments, as to their duties under the laws.

5. To direct proceedings, actions, and prosecutions to be instituted for the enforcement of the laws relating to the penalties, liabilities, and punishment of public officers, and officers or agents of corporations, and other persons or corporations, for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property; to make or cause to be made complaints against members of boards of review, boards of supervisors or other assessing, reviewing, or taxing officers for official misconduct or neglect of duty. Provided, that employees of the department of revenue shall not during their regular hours of employment engage in the preparation of tax returns for individuals, except in connection with a regular audit thereof.

6. To require city, township, school districts, county, state, or other public officers to report information as to the assessment of property and collection of taxes and such other information as may be needful or desirable in the work of the department in such form and upon such blanks as the director may prescribe.

The director shall require all county recorders and city and county assessors to prepare a quarterly report in the manner and form to be prescribed by the director showing for each warranty deed or contract of sale of real estate, divided between rural and urban, during the last completed quarter the amount of revenue stamps, sale price or consideration, and the equalized value at which that property was assessed that year. This report with such further information as may be required by the director shall be submitted to the department within sixty days after the end of each quarter. The department shall prepare annual summaries of such records of the ratio of assessments to actual sales prices for all counties, and for cities having city assessors, and such information for the preceding year shall be available for public inspection by May 1.

7. To hold public hearings either at the seat of government or elsewhere in the state, and tax the costs thereof; to summon and compel witnesses to appear and give testimony, to administer oaths to said witnesses, and to compel said witnesses to produce for examination records, books, papers, and documents relating to any matter which the director shall have the authority to investigate or determine. Provided, however, that no bank or trust company or its officers or employees shall be required to divulge knowledge concerning the property of any person when such knowledge was obtained through information imparted as a part of a business transaction with or for such person and in the usual and ordinary course of business of said bank or trust company, and was necessary and proper to the discharge of the duty of said bank or trust company in relation to such business transaction. This proviso shall be additional to other provisions of the law relating to confidential and privileged communications.

8. To cause the depositions of witnesses residing within or without the state, or absent therefrom, to be taken either on written or oral interrogatories, and the clerk of the district court of any county shall upon the order of the director issue a commission for the taking of such depositions. The proceedings therefor shall be the same as the proceedings for the taking of depositions in the district court so far as applicable.

9. To investigate the work and methods of boards of review, boards of supervisors, or other public officers, in the assessment, equalization, and taxation of all kinds of property, and for that purpose the director or employees of the department may visit the counties or localities when deemed necessary so to do.

10. To require any board of review at any time after its adjournment to reconvene and to make such orders as the director shall determine are just and necessary; to direct and order any board of review to raise or lower the valuation of the property, real or personal, in any township, city, or taxing district, to order and direct any board of review to raise or lower the valuation of any class or classes of property in any township, city, or taxing district, and generally to make any order or direction to any board of review as to the valuation of any property, or any class of property, in any township, city, county, or taxing district, which in the judgment of the director may seem just and necessary, to the end that all property shall be valued and assessed in the manner and according to the real intent of the law. For the purpose of this paragraph the words "taxing district" include drainage districts and levee districts.

The director may correct errors or obvious injustices in the assessment of any individual property, but the director shall not reduce the valuation of any individual property except upon the recommendation of the local board of review and no order of the director affecting any valuation shall be retroactive as to any reduction or increase in taxes payable prior to January 1 of the year in which such order is issued, or prior to September 1 of the preceding year in cities under special charter which collect their own municipal levies. Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act.

The director may order made effective reassessments or revaluations in any taxing district for any taxing year or years and the director may in any year order uniform increases or decreases in valuation of all property or upon any class of property within any taxing district or any area within such taxing district, such orders to be effective in the year specified by the director. For the purpose of this paragraph the words "taxing district" include drainage districts and levee districts.

11. To carefully examine into all cases where evasion or violation of the law for assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered, and cause to be instituted such proceedings as will remedy improper or negligent administration of the laws relating to the assessment or taxation of property.

12. To make a summary of the tax situation in the state, setting out the amount of moneys raised by both direct and indirect taxation; and also to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation. To recommend such additions to and changes in the present system of taxation that in the director's judgment are for the best interest of the state and will eliminate the necessity of any levy for state purposes.

13. To transmit biennially to the governor and to each member and member-elect of the legislature, thirty days before the meeting of the legislature, the report of the director, covering the subject of assessment and taxation, the result of the investigation of the director, recommendations for improvement in the system of taxation in the state, together with such measures as may be formulated for the consideration of the legislature.

14. To publish in pamphlet form the revenue laws of the state and distribute them to the county auditors, assessors, and boards of review.

15. To procure in such manner as the director may determine any information pertaining to the discovery of property which is subject to taxation in this state, and which may be obtained from the records of another state, and may furnish to the board or proper officers of another state, any information pertaining to the discovery of property which is subject to taxation in such state as disclosed by the records in this state.

16. To call upon any state department or institution for technical advice and data which may be of value in connection with the work of assessment and taxation.

17. To certify to the state comptroller on January 1 of each year the aggregate of each state tax for each county for said year.

18. To prepare and issue a state appraisal manual which each county and city assessor shall use in assessing and valuing all classes of property in the state. The appraisal manual shall be continuously revised and the manual and revisions shall be issued to the county and city assessors in such form and manner as prescribed by the director.

19. To issue rules as are necessary, subject to the provisions of chapter 17A, to provide for the uniform application of the exemptions provided in section 427.1 in all assessor jurisdictions in the state.

The provisions of sections 17A.10 to 17A.18 relating to contested cases shall not apply to any matters involving the equalization of valuations of classes of property as authorized by this chapter and chapter 441. This exemption shall not apply to a hearing before the state board of tax review. [C97,§§1010, 1011; C24, 27,§§6868, 6869; C31, 35,§§6868, 6869, 6943-c27; C39,§§**6868, 6869, 6943.026**; C46,§420.209, 420.210, 421.17; C50, 54, 58, 62, 66, 71, 73, 75, §421.17; 66GA, ch 204,§1]

Referred to in §§441.47, 443.22
Biennial report to governor, §17.3

421.18 Duties of public officers. It shall be the duty of all public officers of the state and of all municipalities to give to the director of revenue information in their possession relating to taxation when required by the director, and to co-operate with and aid the director's efforts to secure a fair, equitable, and just enforcement of the taxation and revenue laws. [C31, 35,§6943-c28; C39,§**6943.027**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§421.18]

421.19 Counsel. It shall be the duty of the attorney general and of the county attorneys in their respective counties to commence and prosecute actions, prosecutions, and complaints, when so directed by the director of revenue and to represent the director in any litigation arising from the discharge of the director's duties. [C31, 35,§6943-c29; C39, §**6943.028**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §421.19]

Assistant attorney general assigned, §13.5

421.20 Actions. The director of revenue may bring actions of mandamus or injunction or any other proper actions in the district court to compel the performance of any order made by the director or to require any board of equalization or any other officer or

person to perform any duty required by this chapter. The director shall commence an action only in the district court in the county in which the defendant or defendants in the action perform their official duties.

Upon the filing of an action in the county required by this section the director may move to change the action to another county, and the motion shall be granted upon a showing of good cause. As used in this section, good cause shall mean those grounds for change specified in rule 167 of the Rules of Civil Procedure: However, the director shall not be required to submit affidavits of disinterested persons in order to prevail in the motion. [C31, 35,§6943-c30; C39,§**6943.029**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§421.20; 66GA, ch 205,§1]

Garnishment proceedings for collection of tax, §§626.29-626.31

421.21 Administration of oaths. The director of revenue, or his deputies and other employees of the department when duly authorized by the director, shall have the power to administer all oaths authorized and required under the provisions of this chapter.

Each county treasurer, each deputy treasurer, and each automobile clerk of each county treasurer's office shall have the power to administer all oaths authorized and required by the director in connection with the issuance in this state of an original certificate of registration for motor vehicles and trailers and concerning the collection of, or exemption from, use tax thereon. The personal signature of the person administering such an oath shall be subscribed to the jurat thereof and the seal of the county treasurer shall be affixed thereto. [C31, 35,§6943-c31; C39,§**6943.030**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§421.21]

421.22 Service of orders. Any sheriff, constable, or other person may serve any subpoena or order issued under the provisions of this chapter. [C31, 35,§6943-c32; C39,§**6943.031**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§421.22]

421.23 Fees and mileage. The fees and mileage of witnesses attending any hearing of the department, pursuant to any subpoena, shall be the same as those of witnesses in civil cases in district court. [C31, 35,§6943-c33; C39, §**6943.032**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §421.23]

Fees and mileage, §622.69

421.24 Reciprocal interstate tax enforcement.

1. At the request of the director the attorney general may bring suit in the name of this state, in the appropriate court of any other state to collect any tax legally due in this state, and any political subdivision of this state or the appropriate officer thereof, acting in its behalf, may bring suit in the appropriate court of any other state to collect any tax legally due to such political subdivision.

2. The courts of this state shall recognize and enforce liabilities for taxes lawfully imposed by any other state, or any political subdivision thereof, which extends a like comity to this state, and the duly authorized officer of any such state or a political subdivision thereof may sue for the collection of such tax in the courts of this state. A certificate by the secretary of state of such other state that an officer suing for the collection of such a tax is duly authorized to collect the same shall be conclusive proof of such authority.

3. For the purposes of this section, the words "tax" and "taxes" shall include interest and penalties due under any taxing statute, and liability for such interest or penalties, or both, due under a taxing statute of another state or a political subdivision thereof, shall be recognized and enforced by the courts of this state to the same extent that the laws of such other state permit the enforcement in its courts of liability for such interest or penalties, or both, due under a taxing statute of this state or a political subdivision thereof.

The courts of this state may not enforce interest rates or penalties on taxes of any other state which exceed the interest rates and penalties imposed by the state of Iowa for the same or a similar tax. [C66, 71, 73, 75,§421.24]

421.25 Professional appraisers employed. The director shall employ professional appraisers to assist county and city assessors in assessing and valuing property required to be assessed and valued by county and city assessors and assist the director in equalizing property values in the state. The department shall, upon request, provide technical assistance to county and city assessors in assessing and valuing property required to be assessed and valued by county and city assessors. [C73, 75,§421.25]

CHAPTER 422

INCOME, CORPORATION, SALES AND BANK TAX

Referred to in §§78.2(7), 85.61, 316.12, 321F.9, 324.17

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DIVISION I

INTRODUCTORY PROVISIONS
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422.1 Classification of chapter. The provisions of this chapter are herein classified and designated as follows:

Division I	Introductory provisions.
Division II	Personal net income tax.
Division III	Business tax on corporations.
Division IV	Retail sales tax.
Division V	Taxation of financial institutions.
Division VI	Administration.
Division VII	Allocation of revenues.
Division VIII*	Fuel tax credit.

[C35,§6943-f1; C39,§6943.033; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.1]

*See 65GA, ch 1223,§1

422.2 Purpose or object. This chapter shall be known as the "Property Relief Act", and shall have for its purpose the direct replacement of taxes already levied or to be levied on property to the extent of the net revenue obtained from the taxes imposed herein, which shall be apportioned back to the credit of individual taxpayers on the basis of the assessed valuation of taxable property as provided in division VII of this chapter. [C35,§6943-f2;

C39,§6943.034; C46, 50, 54, 58, 62, 66, 71, 73, 75, §422.2]

See §§422.69, 425.1(1)

422.3 Definitions controlling chapter. For the purpose of this chapter and unless otherwise required by the context:

1. The word "taxpayer" includes any person, corporation, or fiduciary who is subject to a tax imposed by this chapter.

2. "Department" means the department of revenue.

3. "Court" means the district court in the county of the taxpayer's residence.

4. "Director" means the director of revenue. [C35,§6943-f3; C39,§6943.035; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.3]

Referred to in §423.1(12)

DIVISION II
PERSONAL NET INCOME TAX

Referred to in §§422.1, 422.16(5), 422.32, 422.38, 422.39, 422.41, 422.86, 427.1(22)

422.4 Definitions controlling division. For the purpose of this division and unless otherwise required by the context:

1. The words *"taxable income"* mean the net income as defined in section 422.7 minus the deductions allowed by section 422.9, in the case of individuals; in the case of estates or trusts, the words "taxable income" mean the taxable income (without a deduction for personal exemption) as computed for federal income tax purposes under the Internal Revenue Code of 1954, but with the adjustments specified in section 422.7 plus the Iowa income tax deducted in computing said taxable income and minus federal income taxes as provided in section 422.9.

2. The word *"person"* includes individuals and fiduciaries.

3. The words *"income year"* mean the calendar year or the fiscal year upon the basis of which the net income is computed under this division.

4. The words *"tax year"* mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this division.

a. If a taxpayer has made the election provided by section 441, subsection *"f"*, of the Internal Revenue Code of 1954, *"tax year"* means the annual period so elected, varying from fifty-two to fifty-three weeks.

b. If the effective date or the applicability of a provision of this division is expressed in terms of a tax year beginning, including or ending with reference to a specified date which is the first or last day of a month, a tax year described in paragraph *"a"* of this subsection shall be treated as beginning with the first day of the calendar month beginning nearest to the first day of the tax year or as ending with the last day of the calendar month ending nearest to the last day of the tax year.

c. This subsection is effective for tax years ending on or after December 14, 1975.

5. The words *"fiscal year"* mean an accounting period of twelve months, ending on the last day of any month other than December.

6. The word *"fiduciary"* means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

7. The word *"paid"*, for the purposes of the deductions under this division, means "paid or accrued" or "paid or incurred", and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this division. The term "received", for the purpose of the computation of net income under this division, means "received or accrued", and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this division.

8. The word *"resident"* applies only to individuals and includes, for the purpose of determining liability to the tax imposed by this division upon or with reference to the income of any tax year, any individual domiciled in the state, and any other individual who maintains a permanent place of abode within the state.

9. The words *"foreign country"* mean any jurisdiction other than one embraced within the United States. The words "United States", when used in a geographical sense, include the states, the District of Columbia, and the possessions of the United States.

10. The word *"individual"* means a natural person; and where an individual is permitted to file as a corporation, under the provisions of the Internal Revenue Code of 1954, such fictional status shall not be recognized for purposes of this chapter, and such individual's taxable income shall be computed as required under the provisions of the Internal Revenue Code of 1954 relating to individuals not filing as a corporation, with the adjustments allowed by this chapter.

11. The term *"head of household"* shall have the same meaning as provided by the Internal Revenue Code of 1954.

12. The word *"nonresident"* applies only to individuals, and includes all individuals who are not "residents" within the meaning of subsection 8 hereof.

13. The term *"withholding agent"* means any individual, fiduciary, estate, trust, corporation, partnership or association in whatever capacity acting and including all officers and employees of the state of Iowa, or any municipal corporation of the state of Iowa and of any school district or school board of the state, or of any political subdivision of the state of Iowa, or any tax-supported unit of government

that is obligated to pay or has control of paying or does pay to any resident or nonresident of the state of Iowa or his agent any wages that are subject to the Iowa income tax in the hands of such resident or nonresident, or any of the above-designated entities making payment or having control of making such payment of any taxable Iowa income to any nonresident.

14. The term *"wages"* shall have the same meaning as provided by the Internal Revenue Code of 1954.

15. The term *"employer"* shall mean and include those who have a right to exercise control as to how, when, and where services are to be performed.

16. The term *"other person"* shall mean that person or entity properly empowered to act in behalf of an individual payee and shall include authorized agents of such payees whether they be individuals or married couples.

17. *"Internal Revenue Code of 1954"* means the Internal Revenue Code of 1954, as amended to and including January 1, 1976.* [C35, §6943-f4; C39,§**6943.036**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.4; 66GA, ch 206,§1, ch 1191,§1, ch 1192,§1]

Referred to in §§422.16(9), 422.32, 422.42(13), 451.1(8)
*Amendments to revenue code effective for tax years beginning on or after January 1, 1975; 66GA, ch 206,§4, ch 1192,§4
Amendment to subsection 4 retroactive to December 14, 1975
Constitutionality, 58GA, ch 295,§5

422.5 Tax imposed — applicable to federal employees. A tax is hereby imposed upon every resident of the state, and upon that part of the taxable income of any nonresident which is derived from any property, trust, or other source within this state, including any business, trade, profession, or occupation carried on within this state, which tax shall be levied, collected, and paid annually upon and with respect to his entire taxable income as herein defined at rates as follows:

1. On the first one thousand dollars of taxable income, or any part thereof, one-half of one percent.

2. On the second thousand dollars of taxable income, or any part thereof, one and one-fourth percent.

3. On the third thousand dollars of taxable income, or any part thereof, two and three-fourths percent.

4. On the fourth thousand dollars of taxable income, or any part thereof, three and one-half percent.

5. On the fifth, sixth, and seventh thousand dollars of taxable income, or any part thereof, five percent.

6. On the eighth and ninth thousand dollars of taxable income, or any part thereof, six percent.

7. On the tenth through the fifteenth thousand dollars of taxable income or any part thereof, seven percent.

8. On the sixteenth through the twentieth thousand dollars of taxable income or any part thereof, eight percent.

9. On the twenty-first through the twenty-fifth thousand dollars of taxable income or any part thereof, nine percent.

10. On the twenty-sixth through the thirtieth thousand dollars of taxable income or any part thereof, ten percent.

11. On the thirty-first through the fortieth thousand dollars of taxable income or any part thereof, eleven percent.

12. On the forty-first through the seventy-fifth thousand dollars of taxable income or any part thereof, twelve percent.

13. On all taxable income over seventy-five thousand dollars, thirteen percent.

However, no tax shall be imposed on any resident or nonresident whose net income, as defined in section 422.7, is four thousand dollars or less; but in the event that the payment of tax under this division would reduce the net income to less than four thousand dollars, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of four thousand dollars. The preceding sentence does not apply to estates or trusts. For the purpose of this paragraph, the entire net income, including any part thereof not allocated to Iowa, shall be taken into account. If the combined net income of a husband and wife exceeds four thousand dollars, neither of them shall receive the benefit of this paragraph, and it is immaterial whether they file a joint return or separate returns. An unmarried child under twenty-one years of age who is a dependent of his parent or parents as defined in section 422.12, shall not receive the benefit of this paragraph if such parent's net income exceeds four thousand dollars or if the combined net income of such parents exceeds four thousand dollars.

A resident of Iowa who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, section 101, for more than six continuous months, shall not include any income received for such service performed on or after January 1, 1969, in computing the tax imposed by this section.

Referred to in §422.21

The tax herein levied shall be computed and collected as hereinafter provided.

The provisions of this division shall apply to all salaries received by federal officials or employees of the United States government as provided for herein.

A person who is disabled or is sixty-two years of age or older and receives an annuity or annuities from the United States civil service retirement and disability trust fund, and whose net income, as defined in section 422.7, is sufficient to require that the tax be imposed upon it under this section, may determine final taxable income for purposes of imposition of the tax by excluding the amount of an

annuity or annuities received from the United States civil service retirement and disability trust fund, which are not already excluded in determining net income, as defined in section 422.7, up to a maximum each tax year of four thousand two hundred fifty dollars for a person who files a separate state income tax return and six thousand five hundred dollars total for a husband and wife who file a joint state income tax return. The amount of the exemption shall be reduced by the amount of any social security benefits received. For the purpose of this section, the amount of an annuity or annuities received from the United States civil service retirement and disability trust fund taxable under the Internal Revenue Code of 1954 shall be included in net income for purposes of determining eligibility under the four thousand dollar or less exclusion. [C35,§6943-f5; C39,**§6943.037**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.5; 66GA, ch 207,§§1, 4, ch 1106,§5]

Referred to in §§56.2, 422.6, 422.16[8, 9, 11(*e*)], 422.21, 442.15

Retroactive provisions, 64GA, ch 165,§38, 65GA, ch 242,§3; 66GA, ch 207,§4

1976 amendment effective January 1, 1977

422.6 Income from estates or trusts. The tax imposed by section 422.5 shall apply to and become a charge against estates and trusts with respect to their taxable income, and the rates shall be the same as those applicable to individuals. The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether such income be taxable to the estate or trust or to the beneficiaries thereon.

The beneficiary of a trust who receives an accumulation distribution shall be allowed credit without interest for the Iowa income taxes paid by the trust attributable to such accumulation distribution in a manner corresponding to the provisions for credit under the federal income tax relating to accumulation distributions as contained in the Internal Revenue Code of 1954.* The trust shall not be entitled to a refund of taxes paid on the distributions. The trust shall maintain detailed records to verify the computation of the tax. [C35,§6943-f6; C39,**§6943.038**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.6; 66GA, ch 1193,§1]

Referred to in §§422.14, 422.16[9, 11(*e*)]

*Retroactive to January 1, 1976

422.7 "Net income" — how computed. The term "net income" means the adjusted gross income as properly computed for federal income tax purposes under the Internal Revenue Code of 1954, with the following adjustments:

1. Subtract interest and dividends from federal securities.

2. Add interest and dividends from foreign securities and from securities of state and other political subdivisions exempt from federal income tax under the Internal Revenue Code of 1954.

3. Where the adjusted gross income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Subtract installment payments received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan when the commuted value of said installments has been included as a part of the decedent employee's estate for Iowa inheritance tax purposes.

5. Add the amount by which the basis of qualified depreciable property is required to be increased for depreciation purposes under the Internal Revenue Code Amendments Act of 1964 to the extent that such amount equals the net amount of the special deduction allowed on the basis of the amount by which the depreciable basis of such qualified property was required to be reduced for depreciation purposes under the Internal Revenue Code Amendments Act of 1962. The "net amount of the special deduction" shall be computed by taking the sum of the amounts by which the basis of qualified property was required to be decreased for depreciation purposes for the years 1962 and 1963 and subtracting from it the sum of the amounts by which the basis of such property was required to be increased, prior to 1964, for depreciation or disposition purposes under the Internal Revenue Code Amendments Act of 1962. [C35, §6943-f7; C39,**§6943.039**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.7]

Referred to in §§422.4(1), 422.5, 422.16[9, 11(*e*)], 425.17, 450.4(5)

422.8 Allocation of income earned in Iowa and other states. Under rules prescribed by the director, net income of individuals, estates and trusts shall be allocated as follows:

1. The amount of income tax paid to another state or foreign country by a resident taxpayer of this state on income derived from sources in another state or foreign country shall be allowed as a credit against the tax computed under the provisions of this chapter, except that the credit shall not exceed what the amount of the Iowa tax would have been on the same income which was taxed by the other state or foreign country. The limitation on this credit shall be computed according to the following formula: Income earned in another state or country and taxed by such other state or country shall be divided by the total income of the taxpayer resident in Iowa. Said quotient multiplied times the net Iowa tax as determined on the total income of the taxpayer as if entirely earned in Iowa shall be

the maximum tax credit against the Iowa net tax.

2. In the case of nonresident taxpayers, if any net income is received from a business, trade, profession, or occupation carried on partly within and partly without the state of Iowa, only the portion of said net income as is fairly and equitably attributable to that part of the business, trade, profession, or occupation carried on within the state of Iowa shall be allocated to Iowa and income from any property, trust, estate or other source within Iowa shall be allocated to Iowa, except that annuities, interest on bank deposits and interest-bearing obligations, and dividends shall be allocated to Iowa only to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state of Iowa. However, income received by an individual who is a resident of another state shall not be allocated to Iowa if the income is subject to an income tax imposed by the state where the individual resides, and if the state of residence allows a similar exclusion for income received in that state by residents of Iowa. The director shall designate the states which allow a similar exclusion for income received by residents of Iowa, and may enter into agreements with other states to provide that similar exclusions will be allowed, and to provide suitable withholding requirements in each state, in order to implement the exclusions.

3. Taxable income of resident and nonresident estates and trusts shall be allocated in the same manner as individuals. [C35,§6943-f8; C39,§§**6943.040, 6943.050**; C46, 50, 54, 58,§§422.8, 422.18; C62, 66, 71, 73, 75,§422.8]

Referred to in §§422.9(4), 422.16 [9,11(e)]

422.9 Deductions from net income. In computing taxable income of individuals, there shall be deducted from net income the larger of the following amounts:

1. An optional standard deduction of ten percent of the net income after deduction of federal income tax, not to exceed five hundred dollars for a married person who files separately, or one thousand dollars for a single person or a husband and wife who file a joint return.

2. The total of contributions, interest, taxes, medical expense, child-care expense, losses and miscellaneous expenses deductible for federal income tax purposes under the Internal Revenue Code of 1954, with the following adjustments:

a. Subtract the deduction for Iowa income taxes.

b. Add the amount of federal income taxes paid or accrued as the case may be, during the tax year, adjusted by any federal income tax refunds. Provided, however, that where married persons, who have filed a joint federal income tax return, file separately, such total shall be divided between them according to the portion thereof paid or accrued, as the case may be, by each.

c. Add the amount donated to a political party or parties as defined by section 43.2, not to exceed one hundred dollars.

d. Add the amount by which expenses paid or incurred in connection with the adoption of a child by the taxpayer exceed three percent of the net income of the taxpayer, or of the taxpayer and spouse in the case of a joint return. The expenses may include medical and hospital expenses of the natural mother which are incident to the child's birth and are paid by the taxpayer, welfare agency fees, legal fees, and all other fees and costs relating to the adoption of a child if the child is placed by a child-placing agency licensed under chapter 238 or by a person making an independent placement according to the provisions of chapter 600.

3. Where married persons file separately, both must use the optional standard deduction if either elects to use it.

4. A taxpayer affected by section 422.8 shall, if the optional standard deduction is not used, be permitted to deduct only such portion of the total referred to in subsection 2 above as is fairly and equitably allocable to Iowa under the rules prescribed by the director. [C35, §6943-f9; C39,**§6943.041**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.9; 66GA, ch 207,§§2, 3, ch 1229,§39]

Referred to in §§422.4(1), 422.16[9, 11(e)]
Retroactive to January 1, 1975; 66GA, ch 207,§4

422.10 and 422.11 Repealed by 56GA, ch 208, §9.

422.12 Deductions from computed tax. There shall be deducted from the tax after the same shall have been computed as set forth in this division, a personal exemption as follows:

1. For a single individual, or a married person filing a separate return, fifteen dollars.

2. For a head of household, or a husband and wife filing a joint return, thirty dollars.

3. For each dependent, an additional ten dollars. As used in this section, the term "dependent" shall have the same meaning as provided by the Internal Revenue Code of 1954.

4. For a single individual, husband, wife, or head of household, an additional exemption of fifteen dollars for each of said individuals who has attained the age of sixty-five years before the close of the tax year or on the first day following the end of the tax year.

5. For a single individual, husband, wife, or head of household, an additional exemption of fifteen dollars for each of said individuals who is blind at the close of the tax year. For the purposes of this subsection, an individual is blind only if his central visual acuity does not exceed twenty-two hundredths in the better eye with correcting lenses, or if his visual acuity is greater than twenty-two hundredths but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

For the purpose of this section the determination of whether an individual is married shall be made as of the close of his tax year unless his spouse dies during his tax year, in which case such determination shall be made as of the date of such death. An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married. [C35, §6943-f12; C39,§**6943.044**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.12]

Referred to in §§56.2, 422.5, 422.16[9, 11(*e*)], 442.15

422.13 Return by individual.

1. Every resident of Iowa who is required to file a federal income tax return under the Internal Revenue Code of 1954, or who has a net income of two thousand dollars or more for the tax year from sources taxable under this division, shall make and sign a return.

2. Every nonresident who is required to file a federal income tax return under the Internal Revenue Code of 1954 and who has a net income of two thousand dollars or more for the tax year from sources taxable under this division, shall make and sign a return.

3. If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

4. A nonresident taxpayer shall file a copy of his federal income tax return for the current tax year with the return required by this section. [C35,§6943-f13; C39,§**6943.045**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.13]

Referred to in §422.16[9, 11(*e*)]
Retroactive provisions, 65GA, ch 242,§3

422.14 Return by fiduciary.

1. Every fiduciary subject to taxation under the provisions of this division, as provided in section 422.6, shall make and sign a return for the individual, estate or trust for whom or for which he acts, if the taxable income thereof amounts to six hundred dollars or more. A nonresident fiduciary shall file a copy of the federal income tax return for the current tax year with the return required by this section.

2. Under such regulations as the director may prescribe, a return may be made by one of two or more joint fiduciaries.

3. Fiduciaries required to make returns under this division shall be subject to all the provisions of this division which apply to individuals. [C35,§6943-f14; C39,§**6943.046**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.14]

Referred to in §422.16[9, 11(*e*)]

422.15 Information at source.

1. Every person or corporation being a resident of or having a place of business in this state, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers and all officers and employees of the state or of any political subdivision of the state, having the control, receipt, custody, disposal or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits and income, amounting to one thousand dollars or over, paid or payable during any year to any individual, whether a resident of this state or not, shall make complete return under such regulations and in such form and manner and to such extent as may be prescribed by the director.

2. Every partnership including limited partnerships organized under provisions of chapter 545, having a place of business in the state, shall make a return, stating specifically the net income and capital gains (or losses) reported on the federal partnership return, the names and addresses of the partners, and their respective shares in said amounts.

3. Every fiduciary shall make a return for the individual, estate, or trust for whom or for which he acts, and shall set forth in such return the taxable income, the names and addresses of the beneficiaries, and the amounts distributed or distributable to each as reported on the federal fiduciary income tax return. Such return may be made by one or two or more joint fiduciaries. [C35,§6943-f15; C39, §**6943.047**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §422.15]

Referred to in §§422.16[9, 11(*e*)], 422.38

422.16 Withholding of income tax at source.

1. Every withholding agent as defined herein and every employer as defined herein and further defined in the Internal Revenue Code of 1954, as amended, with respect to income tax collected at source, making payment of wages as defined herein to either a resident employee or employees, or a nonresident employee or employees, working in Iowa, shall deduct and withhold from such wages an amount which will approximate the employee's annual tax liability on a calendar year basis, calculated on the basis of tables to be prepared by the department and schedules or percentage rates, based on such wages, to be prescribed by the department. Every employee or other person shall declare to such employer or withholding agent the number of his personal exemptions and dependency exemptions or credits to be used in applying such tables and schedules or percentage rates, provided that no more such personal or dependency exemptions or credits may be declared by such employee or other person than the number to which he is entitled. Such claiming of such exemptions or credits in excess of entitlement shall constitute a misdemeanor.

Referred to in §422.17

2. Every withholding agent required to deduct and withhold tax under subsections 1 and 12 of this section shall, for each quarterly period, on or before the last day of the month following the close of each calendar quarterly period make a return on forms prescribed by

the director and pay over to the department, in the form of remittances made payable to "Treasurer, State of Iowa", the tax required to be withheld, or the tax actually withheld, whichever is greater, under the provisions of subsections 1 and 12 hereof; provided, however, every withholding agent who withholds more than fifty dollars in any one month shall deposit with the department said sum, made out on a deposit form for the month in such form and manner as may be prescribed by the director. The said deposit form being due on or before the fifteenth day of the month next succeeding the month of withholding, except that no deposit shall be required for the amount withheld in the third month of the quarter but the total amount of withholding for the quarter shall be computed and that amount by which the aforementioned deposit fails to equal the total quarterly liability shall be due upon the filing of the quarterly report which shall be due within the month next succeeding the end of the quarter. If the director in any case has reason to believe that the collection of the tax provided for in subsections 1 and 12 hereof is in jeopardy, the director may require the employer or withholding agent to make such return and pay such tax at any time, in accordance with section 422.30. The director may authorize incorporated banks and trust companies which are depositories or financial agents of the United States, or of this state, to receive any tax imposed under this chapter, in such manner, at such times and under such conditions as the director may prescribe; and the director shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the department.

3. Every withholding agent employing not more than two persons who expects to employ either or both of such persons for the full calendar year may, with respect to such persons, pay with the withholding tax return due for the first calendar quarter of the year the full amount of income taxes required to be withheld from the wages of such persons for the full calendar year. The amount to be paid shall be computed as if the employee were employed for the full calendar year for the same wages and with the same pay periods as prevailed during the first quarter of the year with respect to such employee. No such lump sum payment of withheld income tax shall be made without the written consent of all employees involved. The withholding agent shall be entitled to recover from the employee any part of such lump sum payment that represents an advance to the employee. If a withholding agent pays a lump sum with the first quarterly return he shall be excused from filing further quarterly returns for the calendar year involved unless he hires other or additional employees.

4. Every withholding agent who fails to withhold or pay to the department any sums required by this chapter to be withheld and paid, shall be personally, individually, and corporately liable therefor to the state of Iowa, and any sum or sums withheld in accordance with the provisions of subsections 1 and 12 hereof, shall be deemed to be held in trust for the state of Iowa.

5. In the event a withholding agent fails to withhold and pay over to the department any amount required to be withheld under subsections 1 and 12 of this section, such amount may be assessed against such employer or withholding agent in the same manner as prescribed for the assessment of income tax under the provisions of divisions II and VI, chapter 422.

6. Whenever the director determines that any employer or withholding agent has failed to withhold or pay over to the department sums required to be withheld under subsections 1 and 12 of this section the unpaid amount thereof shall be a lien as defined in section 422.26, shall attach to the property of said employer or withholding agent as therein provided, and in all other respects the procedure with respect to such lien shall apply as set forth in said section 422.26.

7. Every withholding agent required to deduct and withhold a tax under subsections 1 and 12 of this section shall furnish to such employee, nonresident, or other person in respect of the remuneration paid by such employer or withholding agent to such employee, nonresident, or other person during the calendar year, on or before January 31 of the succeeding year, or, in the case of employees, if the employee's employment is terminated before the close of such calendar year, within thirty days from the day on which the last payment of wages is made, if requested by such employee, but not later than January 31 of the following year, a written statement showing the following:

a. The name and address of such employer or withholding agent, and the identification number of such employer or withholding agent.

b. The name of the employee, nonresident, or other person and his federal social security account number, together with the last known address of such employee, nonresident, or other person to whom wages have been paid during such period.

c. The gross amount of wages, or other taxable income, paid to the employee, nonresident, or other person.

d. The total amount deducted and withheld as tax under the provisions of subsections 1 and 12 of this section.

e. The total amount of federal income tax withheld.

The statements required to be furnished by this subsection in respect of any wages or other taxable Iowa income shall be in such form or forms as the director may, by regulation, prescribe.

8. An employer or withholding agent shall be liable for the payment of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, under subsections 1 and 12 of this section; and any amount deducted and withheld as tax under subsections 1 and 12 of this section during any calendar year upon the wages of any employee, nonresident, or other person shall be allowed as a credit to the employee, nonresident, or other person against the tax imposed by section 422.5, irrespective of whether or not such tax has been, or will be, paid over by the employer or withholding agent to the department as provided by this chapter.

9. The amount of any overpayment of the individual income tax liability of the employee taxpayer, nonresident, or other person which may result from the withholding and payment of withheld tax by the employer or withholding agent to the department under subsections 1 and 12 hereof, as compared to the individual income tax liability of the employee taxpayer, nonresident, or other person properly and correctly determined under the provisions of section 422.4, to and including section 422.25, may be credited against any income tax or installment thereof then due the state of Iowa and any balance of one dollar or more shall be refunded to the employee taxpayer, nonresident or other person with interest at the rate of three-fourths of one percent per month or fraction of a month, such interest to begin to accrue thirty days after the date the return was due to be filed or was filed, whichever is the later date. Amounts less than one dollar shall be refunded to the taxpayer, nonresident, or other person only upon written application, in accordance with section 422.73, only if such application is filed within twelve months after the due date of the return. Refunds in the amount of one dollar or more provided for by this subsection shall be paid by the treasurer of state by means of warrants drawn by the comptroller at the direction of the director, or an authorized employee of the department, and the taxpayer's return of income shall constitute a claim for refund for this purpose, except in respect to amounts of less than one dollar. There is hereby appropriated, out of any funds in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this subsection.

10. *a.* Any employer or withholding agent required under the provisions of this chapter to furnish a statement required by this chapter who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish such statement shall, for each such failure, be subject to a civil penalty of one hundred dollars, such penalty to be in addition to any criminal penalty otherwise provided by the Code.

b. Any employer or withholding agent required under the provisions of this chapter to withhold taxes on wages or other taxable Iowa income subject to this chapter who fails to file a return for the withholding of tax with the department of revenue on or before the due date, unless it is shown that such failure was due to reasonable cause, shall be subject to a penalty determined by adding to the amount required to be shown as tax due on the return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which such failure continues, not exceeding twenty-five percent in the aggregate. If any person or withholding agent fails to remit the tax due with the filing of the return on or before the due date, or fails to pay any amount of any tax required to be shown on the return, there shall be added to the tax a penalty of five percent on the tax due unless it is shown that such failure was due to reasonable cause. When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file shall be in lieu of the penalty provision for failure to pay the tax due or required on the return. The taxpayer shall also pay interest on the tax or additional tax at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. Such penalty and interest shall become a part of the tax due from the withholding agent.

c. If any withholding agent, being a domestic or foreign corporation, required under the provisions of this section to withhold on wages or other taxable Iowa income subject to this chapter, fails to withhold the amounts required to be withheld, make the required returns or remit to the department the amounts withheld, the director may, having exhausted all other means of enforcement of the provisions of this chapter, certify such fact or facts to the secretary of state, who shall thereupon cancel the articles of incorporation or certificate of authority (as the case may be) of such corporation, and the rights of such corporation to carry on business in the state of Iowa shall thereupon cease. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by him. The provisions of section 422.40, subsection 3, shall be applicable.

d. The department shall upon request of any fiduciary furnish said fiduciary with a certificate of acquittance showing that no liability as a withholding agent exists with respect to the estate or trust for which said fiduciary acts, provided the department has determined that there is no such liability.

11. *a.* Every person or married couple filing a joint return shall make a declaration of estimated tax if his or their Iowa income tax attributable to income other than wages subject to withholding can reasonably be expected to amount to fifty dollars or more for the taxable year, except that, in the cases of farmers and fishermen, the exceptions provided in the Internal Revenue Code of 1954 with re-

spect to such declarations shall apply. The declaration provided for herein shall be filed on or before the last day of the fourth month of the taxpayer's tax year for which such declaration is filed, in such form as the director may require by regulations. The estimated tax shall be paid in quarterly installments. The first installment shall be paid at the time of filing the declaration. The other installments shall be paid on or before June 30, September 30, and January 31. However, at the election of the person or married couple filing jointly, any installment of the estimated tax may be paid prior to the date prescribed for its payment. Whenever a person or married couple filing a joint return have reason to believe that his or their Iowa income tax may increase or decrease, either for purposes of meeting the requirement to file a declaration of estimated tax or for the purpose of increasing or decreasing such declaration, an amended estimate shall be filed by him or them to reflect such increase or decrease in estimated Iowa income tax.

b. In the case of persons or married couples filing jointly, the total balance of the tax payable after credits for taxes paid through withholding, as provided in subsection 1 of this section, or through declaration and payment of estimated tax, or a combination of such withholding and declaration of estimated tax payments, as provided herein, shall be due and payable on or before April 30, next following the close of the calendar year, or if the return should be made on the basis of a fiscal year, then on or before the last day of the fourth month next following the close of such fiscal year.

c. The declaration provided for in this section may be filed or amended during the taxable year under regulations prescribed by the director.

d. If a taxpayer is unable to make his own declaration, the declaration may be made by a duly authorized agent, or by the guardian or other person charged with the care of the person or property of such taxpayer.

e. Any amount of tax paid on a declaration of estimated tax shall be a credit against the amount of tax found payable on a final, completed return, as provided in subsection 9 hereof, relating to the credit for the tax withheld against the tax found payable on a return properly and correctly prepared under the provisions of section 422.5, to and including section 422.25, and any overpayment of one dollar or more shall be refunded to the taxpayer and such return shall constitute a claim for refund for this purpose. Amounts less than one dollar shall be refunded to the taxpayer only upon written application in accordance with section 422.74, but only if such application is filed within twelve months after the due date for the return. The method provided by the Internal Revenue Code of 1954 for determining what shall be applicable to the addition to tax for underpayment of the tax payable shall apply to persons required to file declarations and make payments of estimated tax under the provisions of this section except the amount to be added to the tax for underpayment of estimated tax shall be an amount determined at the rate of three-fourths of one percent per month. This addition to tax specified for underpayment of the tax payable shall not be subject to waiver provisions relating to reasonable cause. Underpayment of estimated tax shall be determined in the same manner as provided under the provisions of the Internal Revenue Code of 1954 and the exceptions therein provided shall also apply.

f. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on his final, completed return for the taxable year credited to his tax liability for the following taxable year.

12. In the case of nonresidents having income subject to taxation by Iowa, but not subject to withholding of such tax under subsection 1 hereof, withholding agents shall withhold from such income at the same rate as provided in subsection 1 hereof, and such withholding agents and such nonresidents shall be subject to the provisions of this section, according to the context, except that such withholding agents may be absolved of such requirement to withhold taxes from such nonresident's income upon receipt of a certificate from the department issued in accordance with the provisions of section 422.17, as hereby amended. In the case of nonresidents having income from a trade or business carried on by them in whole or in part within the state of Iowa, such nonresident shall be considered to be subject to the provisions of subsection 12 hereof unless such trade or business is of such nature that the business entity itself, as a withholding agent, is required to and does withhold Iowa income tax from the distributions made to such nonresident from such trade or business.

Referred to in §422.17

13. The director shall enter into an agreement with the secretary of the treasury of the United States with respect to withholding of income tax as provided by this chapter, pursuant to an Act of Congress, 66 Stat. 765, Chap. 940; Pub. Law 587; 5 USC, Section 84b, 84c, July 17, 1952, and Executive Order No. 10407, 17 F. R. 10132, November 7, 1952, Laws 1961, Page 527, Par. 19. [C39,§**6943.048**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.16; 66GA, ch 1194, §1, ch 1195,§§1, 2]

Referred to in §§422.17, 422.38

422.17 Certificate issued by department to make payments without withholding. Any nonresident whose Iowa income is not subject to section 422.16, subsection 1, in whole or in part, and who elects to be governed by subsection 12 of said section to the extent that he makes such declaration and pays the entire amount of tax properly estimated thereunder on or before the last day of the fourth month of his tax year, for such year, may for each such year of each such election and such pay-

ment, be granted a certificate from the department authorizing each withholding agent, the income from whom the nonresident has included in his declaration of estimate and to the extent such income is included in such declaration of estimate, to make payments to such nonresident without withholding such tax from such payments. Withholding agents, whenever such payments exceed the amount estimated by such nonresident upon his declaration of estimate, as indicated upon such certificate, shall proceed to withhold tax in accordance with subsection 12 of section 422.16. [C39,§**6943.049**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.17]

Referred to in §§422.16[9, 11(*e*), 12], 422.38

422.18 Repealed by 59GA, ch 228,§2.

422.19 Scope of nonresidents tax. The tax herein imposed upon certain income of nonresidents shall apply to all such income actually received by such nonresident regardless of when such income was earned. If the nonresident is reporting on the accrual basis it shall apply to all such income which first became available to the nonresident so that he might demand payment thereof regardless of when such income was earned. The duty to withhold herein imposed upon withholding agents shall apply only to amounts paid after June 30, 1937. [C39,§**6943.051**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.19]

Referred to in §§422.16[9, 11(*e*)], 422.38
Constitutionality, 47GA, ch 184,§9

422.20 Information confidential — penalty. It shall be unlawful for any officer or employee of the state of Iowa to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any person committing an offense against the foregoing provision shall, upon conviction for each such offense, be punished by imprisonment in the county jail for a term not exceeding one year, or by a fine of not more than one thousand dollars, or both; and if the offender be an officer or employee of the state of Iowa he shall also be dismissed from office or discharged from employment. Nothing herein shall prohibit turning over to duly authorized officers of the United States information and income returns pursuant to agreement between the director and the secretary of the treasury of the United States or his delegate. [C62, 66, 71, 73, 75,§422.20]

Referred to in §§421.1(4), 422.16[9, 11(*e*)], 422.38, 425.28, 442.16

422.21 Form and time of return. Returns shall be in such form as the director may, from time to time, prescribe, and shall be filed with the department on or before the last day of the fourth month after the expiration of the tax year except that co-operative associations as defined in section 6072(d) of the Internal Revenue Code of 1954 shall file their returns on or before the fifteenth day of the ninth month following the close of the taxable year. In case of sickness, absence, or other disability, or whenever good cause exists, the director may allow further time for filing returns. The director shall cause to be prepared blank forms for said returns and shall cause them to be distributed throughout the state and to be furnished upon application, but failure to receive or secure the form shall not relieve the taxpayer from the obligations of making any return herein required. The department may as far as consistent with the provisions of the Code so draft income tax forms as to conform to the income tax forms of the internal revenue department of the United States government. Each return by a taxpayer upon whom a tax is imposed by section 422.5, subsection 7, shall show the county of the residence of the taxpayer.

The department shall make available to persons required to make personal income tax returns under the provisions of this chapter, and when such income is derived mainly from salaries and wages or from the operation of a business or profession, a form which shall take into consideration the normal deductions and credits allowable to any such taxpayer, and which will permit the computation of the tax payable without requiring the listing of specific deductions and credits. In arriving at schedules for payment of taxation under such forms the department shall as nearly as possible base such schedules upon a total of deductions and credits which will result in substantially the same payment as would have been made by such taxpayer were he to specifically list his allowable deductions and credits. In lieu of such return any taxpayer may elect to list permissible deductions and credits as provided by law. It is the intent and purpose of this provision to simplify the procedure of collection of personal income tax, and the director shall have the power in any case when deemed necessary or advisable to require any taxpayer, who has made a return in accordance with the schedule herein provided for, to make an additional return in which all deductions and credits are specifically listed. The department may revise the schedules adopted in connection with such simplified form whenever such revision is necessitated by changes in federal income tax laws, or to maintain the collection of substantially the same amounts from taxpayers as would be received were the specific listing of deductions and credits required.

The department shall provide space on the prescribed income tax form, wherein the taxpayer shall enter the name of the school dis-

trict of his residence. Such place shall be indicated by prominent type. A nonresident taxpayer shall so indicate. If such information is not supplied on the tax return it shall be deemed an incompleted return. [C35,§6943-f17; C39,§6943.053; C46, 50, 54, 58, 62, 66, 71, 73, 75, §422.21]

Referred to in §§422.16[9, 11(e)], 422.38, 442.17
Co-operative associations amendment effective January 1, 1973, 65GA, ch 243,§2

422.22 Supplementary returns. If the director shall be of the opinion that any taxpayer required under this division to file a return has failed to file such a return or to include in a return filed, either intentionally or through error, items of taxable income, the director may require from such taxpayer a return or supplementary return in such form as the director shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this division. If from a supplementary return, or otherwise, the director finds that any items of income, taxable under this division, have been omitted from the original return, the director may require the items so omitted to be added to the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which he may be liable under any provisions of this division, whether or not the director required a return or a supplementary return under this section. [C35,§6943-f18; C39,§6943.054; C46, 50, 54, 58, 62, 66, 71, 73, 75, §422.22]

Referred to in §§422.16[9, 11(e)], 422.38, 442.16

422.23 Return by administrator. The return by an individual, who, while living, was subject to income tax in the state during the tax year, and who has died before making the return, shall be made in his name and behalf by the administrator or executor of the estate and the tax shall be levied upon and collected from his estate. In the making of said return, the executor or administrator shall use the same method of computation, either cash or accrual, as was last used by the deceased taxpayer.

The judge of the district court in which the estate of the decedent is probated may, upon application being filed by the executor or administrator setting forth the income received by said estate, fix a time and place for hearing upon said application and prescribe the notice to be given to the director and may upon hearing determine whether or not the said estate is subject to income tax and, if the facts warrant such a finding, enter an order relieving said executor or administrator from making an income tax report and order that the said estate is not subject to the payment of income tax. Such order shall not become final until thirty days after the same has been filed with the clerk of the district court and a copy of the order entered by the judge shall be immediately mailed to the director by said executor or administrator by registered mail and a return filed showing the mailing of the same. [C35,§6943-f19; C39, §6943.055; C46, 50, 54, 58, 62, 66, 71, 73, 75, §422.23]

Referred to in §422.16[9, 11(e)], 442.16

422.24 Installment payments—interest.

1. For all taxpayers the total tax due shall be paid in full at the time of filing the return.

2. When, at the request of the taxpayer, the time for filing the return is extended, interest at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month, on the total tax due, from the time when the return was required to be filed to the time of payment, shall be added and paid. [C35,§6943-f20; C39,§6943.056; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.24]

Referred to in §§422.16[9, 11(e)], 422.39, 422.66, 442.16
Constitutionality, 61GA, ch 348,§7

422.25 Computation of tax, interest, and penalties—limitation.

1. As soon as practicable and in any event within three years after the return is filed the department shall examine it and determine the correct amount of tax, and the amount so determined by the department shall be the tax; provided that if the taxpayer omits from income such an amount as will, under the Internal Revenue Code of 1954, extend the statute of limitations for assessment of federal tax to six years under said Code, the period for examination and determination shall be six years; and provided further that the period for examination and determination shall be unlimited in the case of a false or fraudulent return with intent to evade tax or in the case of failure to file a return. Notwithstanding the periods of limitation for examination and determination heretofore specified, the department shall have six months to make an examination and determination from the date of receipt by the department of notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the particular tax year. In order to begin the running of the six-months' period, the notice shall be in writing in any form sufficient to inform the department of such final disposition with respect to such year, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice. The burden of proof of additional tax owing under the six-year period, or unlimited period, shall be on the department. If the tax found due is greater than the amount paid, the department shall compute the amount due, together with interest and penalties as provided in subsection 2, and shall notify the taxpayer by certified mail of the total, which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked, or on or before the last day of the following month if the notice is postmarked after the twentieth day of any month. The

notice shall also inform the taxpayer of the additional interest and penalty which will be added to the total due if not paid on or before the last day of the applicable month.

See 56GA, ch 210,§2 for barred claims
The provisions of 65GA, ch 244, shall be effective for all outstanding tax audits conducted by the internal revenue service where final disposition of such audits has not been determined by July 1, 1973.

2. In addition to the tax or additional tax as determined by the department under the provisions of subsection 1 of this section, the taxpayer shall pay interest on the tax or additional tax at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. In case of failure to file a return with the department on or before the due date (determined with regard to any extension of time for filing), unless it is shown that such failure was due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. If any person fails to remit the tax due with the filing of the return on or before the due date, or fails to pay any amount of any tax required to be shown on the return, there shall be added to the tax a penalty of five percent of the tax due unless it is shown that such failure was due to reasonable cause. In case of willful failure to file a return with intent to evade tax, or in case of willfully filing a false return with intent to evade tax, in lieu of the penalty above provided, there shall be added to the amount required to be shown as tax on such return fifty percent of the amount of such tax. When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file shall be in lieu of the penalty provision for failure to pay the tax due or required on the return except in the case of willful failure to file a return and willfully filing of a false return with intent to evade tax.

3. If the amount of the tax as determined by the department shall be less than the amount theretofore paid, the excess shall be refunded with interest after sixty days from the date of payment at three-fourths of one percent per month counting each fraction of a month as an entire month under the provisions of such rules as may be prescribed by the director. If an overpayment of tax results from a net operating loss or net capital loss which is carried back to a prior year, the overpayment shall be considered as having been made at the close of the taxable year in which the net operating loss or net capital loss occurred or sixty days from the date of the actual payment of the tax, whichever is later. However, when the net operating loss or net capital loss carry back to a prior year eliminates or reduces an underpayment of tax due for an earlier year, the full amount of the underpayment of tax shall bear interest at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month from the due date of the tax for the earlier year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

The net operating loss and net capital loss provisions of subsection 3 shall be effective for tax loss years or periods beginning on or after January 1, 1974, except that interest on refunds or credits for periods prior to January 1, 1974, which were created by tax loss years or periods beginning on or after January 1, 1974, shall be limited to six percent per annum.

4. All payments received must be credited first, to the penalty and interest accrued, and then to the tax due.

5. Any person required to supply any information, to pay any tax, or to make, sign, or file any return or supplemental return, who willfully makes any false or fraudulent return, or willfully fails to pay such tax, supply such information, or make, sign, or file such return, at the time or times required by law, shall upon conviction for each such offense be punished by imprisonment in the county jail for a term not exceeding one year, or by a fine not exceeding twenty-five hundred dollars, or both such fine and imprisonment.

6. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required under the provisions of this division shall be prima-facie evidence thereof except as otherwise provided in this section.

7. The periods of limitation provided by this section may be extended by the taxpayer by signing a waiver agreement to be provided by the department. Such agreement shall stipulate the period of extension and the year or years to which such extension applies. It shall further provide that a claim for refund may be filed by the taxpayer at any time during the period of extension. In consideration of such agreement, interest due in excess of thirty-six months on either a tax deficiency or tax refund shall be waived.

8. Any person who willfully attempts in any manner to defeat or evade any tax imposed by this division or the payment thereof, shall upon conviction for each such offense be punished by imprisonment in the county jail for a term not exceeding one year or in the state penitentiary for a term not exceeding five years or by a fine not exceeding five thousand dollars, or both such fine and imprisonment.

9. The jurisdiction of any offense as defined in this section is in the county of the residence of the person so charged, unless such person be a nonresident of this state or his residence in this state is not established, in either of which events jurisdiction of such offense is in the county of the seat of government of the state of Iowa.

10. A prosecution for any offense defined in this section must be commenced within six years after the commission thereof, and not after. [C35,§6943-f21; C39,§**6943.057**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.25]

Referred to in §§422.16[9, 11(e)], 422.39, 422.59, 422.66, 442.16

422.26 Lien of tax — collection — action authorized. Whenever any taxpayer liable to pay a tax and penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said taxpayer.

The lien aforesaid shall attach at the time the tax becomes due and payable and shall continue until the liability for such amount is satisfied.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the director shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in his office a book to be known as "index of income tax liens", so ruled as to show in appropriate columns the following data, under the names of taxpayers, arranged alphabetically:

1. The name of the taxpayer.
2. The name "State of Iowa" as claimant.
3. Time notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. When satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall forthwith index said notice in said index book and shall forthwith record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof.

The department shall pay a recording fee as provided in section 335.14, for the recording of such lien, or for the satisfaction thereof.

Upon the payment of a tax as to which the director has filed notice with a county recorder, the director shall forthwith file with said recorder a satisfaction of said tax and the recorder shall enter said satisfaction on the notice on file in his office and indicate said fact on the index aforesaid.

The department shall, substantially as provided in sections 445.6 and 445.7, proceed to collect all taxes and penalties as soon as practicable after the same become delinquent, except that no property of the taxpayer shall be exempt from the payment of said tax. In the event service has not been made on a distress warrant by the officer to whom addressed within five days from the date the distress warrant was received by him, the authorized revenue agents of the department are hereby empowered to serve and make return of such warrant to the clerk of the district court of the county named in the distress warrant, and all subsequent procedure shall be in compliance with chapter 626.

The attorney general shall, upon the request of the director, bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any taxes and penalties, and in such action he shall have the assistance of the county attorney of the county in which the action is pending.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the director or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law. [C35,§6943-f22; C39,§**6943.058**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.26]

Referred to in §§422.16(6), 422.39, 422.56, 422.66, 425.27, 425.29, 442.16

Garnishment proceedings for collection of tax, §§626.29–626.31

422.27 Final report of fiduciary—conditions.

1. No final account of an executor, administrator, or trustee shall be allowed by any court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this division upon the executor, administrator, or trustee, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit or otherwise. The certificate of the director and the receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax to the extent of said certificate.

2. For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the director may, on behalf of the state, agree upon the amount of taxes at any time due or to become due from such fiduciaries under the provisions of this division, and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates. [C35,§6943-f23; C39,§**6943.059**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.27; 66GA, ch 208,§1]

Referred to in §§422.39, 442.16
Fiduciaries' reports, §682.33
Similar provision, §450.58

422.28 Revision of tax. A taxpayer may appeal to the director for revision of the tax, interest or penalties assessed against him at any time within ninety days from the date of the notice of the assessment of tax, additional tax, interest or penalties. The director shall grant a hearing and if, upon the hearing, the director shall determine that the tax, interest or penalties are excessive or incorrect, the director shall revise them according to the law and the facts and adjust the computation of

the tax, interest or penalties accordingly. The director shall notify the taxpayer by registered mail of the result of the hearing and shall refund to the taxpayer the amount, if any, paid in excess of the tax, interest or penalties found by the director to be due, with interest after sixty days from the date of payment by the taxpayer at the rate of three-fourths of one percent per month or a fraction of a month. The director may, on his own motion at any time, abate any portion of tax, interest or penalties which he determines is excessive in amount, or erroneously or illegally assessed. The director shall prepare quarterly reports, which shall be included in the annual statistical reports required under section 422.75, summarizing each case in which an abatement of tax, interest or penalties was made under this section, but the report shall not disclose the identity of the taxpayer. [C35, §6943-f24; C39,§**6943.060**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.28; 66GA, ch 1195,§3]

Referred to in §§422.29(1), 422.41, 422.66, 442.16
See state board of tax review, §421.1(4)

422.29 Judicial review.

1. Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the petitioner resides, or in which his principal place of business is located, or in the case of a nonresident not maintaining a place of business in this state either in any county in which the income involved was earned or derived or in Polk county, within sixty days after he shall have received notice of a determination by the director as provided for in section 422.28.

2. The petitioner shall file with the clerk a bond for the use of the respondent, with sureties approved by such clerk, in penalty at least double the amount of tax appealed from, and in no case shall the bond be less than fifty dollars, conditioned that the petitioner shall perform the orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court of this state irrespective of the amount involved. [C35,§6943-f25; C39,§**6943.061**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.29]

Referred to in §§98.29, 422.41, 422.66, 430A.5, 442.16

422.30 Jeopardy assessments. If the director believes that the assessment or collection of taxes will be jeopardized by delay, the director may immediately make an assessment of the estimated amount of tax due, together with all interest, additional amounts, or penalties, as provided by law, and demand payment thereof from the taxpayer. If such payment is not made, a distress warrant may be issued or a lien filed against such taxpayer immediately.

The director shall be permitted to accept a bond from the taxpayer to satisfy collection until the amount of tax legally due shall be determined. Such bond to be in an amount deemed necessary, but not more than double the amount of the tax involved, and with securities satisfactory to the director. [C35, §6943-f26; C39,§**6943.062**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.30]

Referred to in §§422.16(2), 422.41, 422.59, 422.66, 423.23, 425.27, 425.29, 442.16

422.31 Statute applicable to personal tax. All the provisions of section 422.36, subsection 3, shall be applicable to persons taxable under this division. [C35,§6943-f27; C39,§**6943.063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.31]

Referred to in §442.16
Constitutionality, 56GA, ch 208,§22; 60GA, ch 258,§6

DIVISION III
BUSINESS TAX ON CORPORATIONS
Referred to in §§422.1, 422.86, 427.1(22)

422.32 Definitions. For the purpose of this division and unless otherwise required by the context:

1. The word *"corporation"* includes joint stock companies, and associations organized for pecuniary profit, except limited partnerships organized under chapter 545.

2. The words *"domestic corporation"* mean any corporation organized under the laws of this state.

3. The words *"foreign corporation"* mean any corporation other than a domestic corporation.

4. *"Internal Revenue Code of 1954"* means the Internal Revenue Code of 1954, as amended to and including January 1, 1976.

5. The term *"affiliated group"* means a group of corporations as defined in section one thousand five hundred four (1504) (a) of the Internal Revenue Code of 1954.

6. The term *"unitary business"* means a business carried on partly within and partly without a state where the portion of the business carried on within the state depends on or contributes to the business outside the state.

The words, terms, and phrases defined in division II, section 422.4, subsections 1, and 3 to 10, when used in this division, shall have the meanings ascribed to them in said section except where the context clearly indicates a different meaning. [C35,§6943-f28; C39,§**6943.064**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.32; 66GA, ch 206,§2, ch 209,§1, ch 1192,§§2, 4]

Amendments effective for tax years beginning on or after January 1, 1975; 66GA, ch 206,§4; ch 209,§3; 66GA, ch 1192, §4

422.33 Corporate tax imposed. A tax is hereby imposed upon each corporation organized under the laws of this state, and upon every foreign corporation doing business in this state, annually in an amount computed by applying the following rates of taxation to the net income received by the corporation during the income year:

On the first twenty-five thousand dollars of taxable income, or any part thereof, the rate of six percent.

On taxable income between twenty-five thousand dollars and one hundred thousand dollars or any part thereof, the rate of eight percent.

On taxable income of one hundred thousand dollars or more, the rate of ten percent.

1. If the trade or business of the corporation is carried on entirely within the state, the tax shall be imposed on the entire net income, but if such trade or business is carried on partly within and partly without the state, the tax shall be imposed only on the portion of the net income reasonably attributable to the trade or business within the state, said net income attributable to the state to be determined as follows:

a. Interest, dividends, rents, and royalties (less related expenses) received in connection with business in the state, shall be allocated to the state, and where received in connection with business outside the state, shall be allocated outside of the state.

b. Net income of the above class having been separately allocated and deducted as above provided, the remainder of the net income of the taxpayer shall be allocated and apportioned as follows:

Where income is derived from business other than the manufacture or sale of tangible personal property, such income shall be specifically allocated or equitably apportioned within and without the state under rules of the director.

Where income is derived from the manufacture or sale of tangible personal property, the part thereof attributable to business within the state shall be in that proportion which the gross sales made within the state bear to the total gross sales.

The gross sales of the corporation within the state shall be taken to be the gross sales from goods delivered or shipped to a purchaser within the state regardless of the f.o.b. point or other conditions of the sale, excluding deliveries for transportation out of the state.

For the purpose of this section, the word "sale" shall include exchange, and the word "manufacture" shall include the extraction and recovery of natural resources and all processes of fabricating and curing. The words "tangible personal property" shall be taken to mean corporeal personal property, such as machinery, tools, implements, goods, wares, and merchandise, and shall not be taken to mean money deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property and evidences of debt.

2. If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed, as administered by the director and applied to his business, has operated or will so operate as to subject him to taxation on a greater portion of his net income than is reasonably attributable to business or sources within the state, he shall be entitled to file with the director a statement of his objections and of such alternative method of allocation and apportionment as he believes to be proper under the circumstances with such detail and proof and within such time as the director may reasonably prescribe; and if the director shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, the director shall redetermine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the state for taxation the portion of the income reasonably attributable to business and sources within the state, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment. [C35,§6943-f29; C39,**§6943.065**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.33; 66GA, ch 210,§1]

Referred to in §§422.35, 422.37(2)
Retroactive provisions, 64GA, ch 165,§38

422.34 Exempted corporations and organizations. The following organizations and corporations shall be exempt from taxation under this division:

1. All state banks, as defined in section 524.103, and all national and private banks, credit unions, title insurance and trust companies, building and loan associations, production credit associations, corporations operating under the provisions of chapter 501, insurance companies or insurance associations, reciprocal or inter-insurance exchanges, fraternal beneficiary associations, now or hereafter organized or incorporated by or under the laws of this state or lawfully operating in the state.

2. Cemetery corporations, organizations and associations and corporations organized for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

3. Business leagues, chambers of commerce, labor unions and auxiliary organizations, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

4. Civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

5. Clubs, organizations, or associations organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member.

6. Farmers associations and fruit growers associations, or like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expense, on the basis of the quantity of produce furnished by them. [C35,§6943-f30; C39,**§6943.066**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.34]

Referred to in §422.37

422.35 Net income of corporation — how computed. The term "net income" means the taxable income less the net operating loss deduction, both as properly computed for federal income tax purposes under the Internal Revenue Code of 1954, with the following adjustments:

1. Subtract interest and dividends from federal securities.

2. Add interest and dividends from foreign securities and from securities of state and other political subdivisions exempt from federal income tax under the Internal Revenue Code of 1954.

3. Where the net income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules and regulations prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Subtract fifty percent of the federal income taxes paid or accrued, as the case may be, during the tax year, adjusted by any federal income tax refunds; and add the Iowa income tax deducted in computing said taxable income.

Effective date of tax increase, see 62GA, ch 348,§17

5. Add the amount by which the basis of qualified depreciable property is required to be increased for depreciation purposes under the Internal Revenue Code Amendments Act of 1964 to the extent that such amount equals the net amount of the special deduction allowed on the basis of the amount by which the depreciable basis of such qualified property was required to be reduced for depreciation purposes under the Internal Revenue Code Amendments Act of 1962. The "net amount of the special deduction" shall be computed by taking the sum of the amounts by which the basis of qualified property was required to be decreased for depreciation purposes for the years 1962 and 1963 and subtracting from it the sum of the amounts by which the basis of such property was required to be increased, prior to 1964, for depreciation or disposition purposes under the Internal Revenue Code Amendments Act of 1962.

Provided, however, that a corporation affected by the allocation provisions of section 422.33 shall be permitted to deduct only such portion of the deductions for net operating loss and federal income taxes as is fairly and equitably allocable to Iowa, under rules prescribed by the director. [C35,§6943-f31; C39, §6943.067; C46, 50, 54, 58, 62, 66, 71, 73, 75, §422.35]

Referred to in §422.61

422.36 Returns.

1. Every corporation shall make a return and the same shall be signed by the president or other duly authorized officer. Before a corporation shall be dissolved and its assets distributed it shall make a return for any settlement of the tax for any income earned in the income year up to its final date of dissolution.

2. When any corporation, liable to taxation under this division, conducts its business in such a manner as either directly or indirectly to benefit the members or stockholders thereof or any person interested in such business by selling its products or the goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products, goods or commodities of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of said corporations, or where a corporation, owning directly or indirectly a substantial portion of the stock of another corporation, acquires and disposes of the products, goods, or commodities, of the corporation of which it so owns a substantial portion of the stock, in such a manner as to create a loss or improper net income for either of said corporations, the department may determine the amount of taxable income of either or any of such corporations for the calendar or fiscal year, having due regard to the reasonable profits which, but for such arrangement or understanding, might or could have been obtained, by the corporation or corporations liable to taxation under this division, from dealing in such products, goods, or commodities.

3. Where the director has reason to believe that any person or corporation so conducts his trade or business as either directly or indirectly to distort his true net income and the net income properly attributable to the state, whether by the arbitrary shifting of income, through price fixing, charges for services, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, the director may require such facts as are necessary for the proper computation of the entire net income and the net income properly attributable to the state, and shall determine the same, and in the determination thereof the director shall have regard to the fair profits which would normally arise from the conduct of the trade or business.

4. Foreign corporations shall file a copy of their federal income tax return for the current tax year with the return required by this section.

5. Where a corporation is not subject to income tax and the stockholders of such corporation are taxed on the corporation's income

under the provisions of the Internal Revenue Code of 1954, the same tax treatment shall apply to such corporation and such stockholders for Iowa income tax purposes. [C35,§6943-f32; C39,**§6943.068**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.36]

Referred to in §422.31

422.37 Consolidated returns. Any affiliated group of corporations may, not later than the due date for filing its return for the taxable year, including any extensions thereof, under rules to be prescribed by the director, elect, and upon demand of the director shall be required, to make a consolidated return showing the consolidated net income of all such corporations and other information as the director may require, subject to the following:

1. The affiliated group filing under this section shall file a consolidated return for federal income tax purposes for the same taxable year.

2. All members of the affiliated group shall join in the filing of an Iowa consolidated return to the extent they are subject to the tax imposed by section 422.33 or have operations which constitute a part of the unitary business of one or more members which are subject to the Iowa tax.

3. Members of the affiliated group exempt from taxation by section 422.34 of the Code shall not be included in a consolidated return.

4. All members of the affiliated group shall use the statutory method of allocation and apportionment unless the director has granted permission to all members to use an alternative method of allocation and apportionment.

5. Each member of the affiliated group shall consent to the filing by specific written authorization at the time the consolidated return is filed, unless the director requires the filing of a consolidated return.

6. The filing of a consolidated return for any taxable year shall require the filing of consolidated returns for all subsequent taxable years so long as the filing taxpayers remain members of the affiliated group unless the director determines that the filing of separate returns will more clearly disclose the taxable incomes of each member of the affiliated group. This determination shall be made after specific request by the taxpayer for the filing of separate returns.

7. The computation of consolidated taxable income for the members of an affiliated group of corporations subject to tax shall be made in the same manner and under the same procedures, including all intercompany adjustments and eliminations, as are required for consolidating the incomes of affiliated corporations for the taxable year for federal income tax purposes in accordance with section 1502 of the Internal Revenue Code of 1954. [C35, §6943-f33; C39,**§6943.069**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.37; 66GA, ch 209,§2]

This section retroactive to January 1, 1975; 66GA, ch 209,§3

422.38 Statutes governing corporations. All the provisions of sections 422.15 to 422.22 of division II, insofar as the same are applicable, shall apply to corporations taxable under this division. [C35,§6943-f34; C39,**§6943.070**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.38]

422.39 Statutes applicable to corporation tax. All the provisions of sections 422.24 to 422.27 of division II, respecting payment and collection, shall apply in respect to the tax due and payable by a corporation taxable under this division. [C35,§6943-f35; C39,**§6943.071**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.39]

422.40 Cancellation of authority—penalty—offenses.

1. If a corporation required by the provisions of this division to file any report or return or to pay any tax or fee, either as a corporation organized under the laws of this state, or as a foreign corporation doing business in this state for profit, or owning and using a part or all of its capital or plant in this state, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this division for making such report or return, or for paying such tax or fee, the director may certify such fact to the secretary of state. The secretary of state shall thereupon cancel the articles of incorporation of any such corporation which is organized under the laws of this state by appropriate entry upon the margin of the record thereof, or cancel the certificate of authority of any such foreign corporation to do business in this state by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by him.

2. Any person or persons who shall exercise or attempt to exercise any powers, privileges, or franchises under articles of incorporation or certificate of authority after the same are canceled, as provided in any section of this division, shall pay a penalty of not less than one hundred dollars nor more than one thousand dollars, to be recovered by an action to be brought by the director.

3. Any corporation whose articles of incorporation or certificate of authority to do business in this state have been canceled by the secretary of state, as provided in subsection 1, or similar provisions of prior revenue laws, upon the filing, within ten years after such cancellation, with the secretary of state, of a certificate from the department that it has complied with all the requirements of this division and paid all state taxes, fees, or penalties due from it, and upon the payment to the secretary of state of an additional penalty of fifty dollars, shall be entitled again to exercise its rights, privileges, and franchises in this state; and the secretary of state shall cancel the entry made

by him under the provisions of subsection 1 or similar provisions of prior revenue laws, and shall issue his certificate entitling such corporation to exercise its rights, privileges and franchises.

Referred to in §422.16(10,c)

4. Any person, or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any requirement of this division or any lawful requirement of the director thereunder, shall fail to pay any tax or to make, sign, or verify any return or to supply any information required by or under the provisions of this division, shall be guilty of a misdemeanor* and punished accordingly. Any person, corporation, or any officer or employee of a corporation, or member or employee of any partnership, who, with intent to evade any of the requirements of this division, or any lawful requirements of the director thereunder, shall make, render, sign, or verify any false or fraudulent return or statement, or shall supply any false or fraudulent information, or who shall aid, abet, direct, cause, or who shall procure anyone so to do, shall be liable to a penalty of not more than five thousand dollars, to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also upon conviction be punished by imprisonment in the penitentiary for a term not exceeding one year, or by a fine of not less than five hundred dollars nor more than five thousand dollars, or both. Such penalty shall be in addition to all other penalties in this division provided. [C35, §6943-f36; C39,§**6943.072**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.40]

Referred to in §422.16(10,c)
*Punishment, §687.7

422.41 Corporations. All the provisions of sections 422.28, 422.29, and 422.30 of division II in respect to revision, appeal, and jeopardy assessments shall be applicable to corporations taxable under this division. [C35,§6943-f37; C39,§**6943.073**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.41]

DIVISION IV
RETAIL SALES TAX

Referred to in §§422.1, 423.4(1), 423.8
See also §98.26

422.42 Definitions. The following words, terms, and phrases, when used in this division, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. *"Person"* includes any individual, firm, copartnership, joint adventure, association, corporation, municipal corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

2. *"Sales"* means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

3. *"Retail sale"* or *"sale at retail"* means the sale to a consumer or to any person for any purpose, other than for processing or for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with taxable services, and the sale of gas, electricity, water, and communication service to retail consumers or users, but does not include commercial fertilizer or agricultural limestone or materials, but not tools or equipment, which are to be used in disease control, weed control, insect control or health promotion of plants or livestock produced as part of agricultural production for market, or electricity or steam or any taxable service when purchased and used in the processing of tangible personal property intended to be sold ultimately at retail. Tangible personal property is sold for processing within the meaning of this subsection only when it is intended that such property shall by means of fabrication, compounding, manufacturing, or germination become an integral part of other tangible personal property intended to be sold ultimately at retail, or shall be consumed as fuel in creating heat, power, or steam for processing including grain drying or for generating electric current, or consumed in implements of husbandry engaged in agricultural production, or such property is a chemical, solvent, sorbent, or reagent, which is directly used and is consumed, dissipated, or depleted, in processing personal property which is intended to be sold ultimately at retail, and which may not become a component or integral part of the finished product.

Notwithstanding the foregoing provisions of this subsection, the sale of newsprint and ink delivered after the effective date of this Act* to any person, firm or corporation to be incorporated in or used in the printing of any newspaper, free newspaper or shoppers guide for publication in this state shall be considered as a sale at retail and such person, firm or corporation shall be deemed to be the consumer of such newsprint and ink and subject to the payment of sales tax.

*Chapter 1201,§5, Acts 63GA, Second Session

4. *"Business"* includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

5. *"Retailer"* includes every person engaged in the business of selling tangible goods, wares, merchandise or taxable services at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this division or operating amusement devices or other forms of commercial amusement from which revenues are derived; provided, however, that when in the opinion of the director it is necessary for the efficient administration of this division to regard any salesmen, representatives, truckers, peddlers, or canvassers, as agents of the dealers, distributors, supervisors, employers, or

persons under whom they operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this division.

6. *"Gross receipts"* means the total amount of the sales of retailers, valued in money, whether received in money or otherwise; provided, however,

a. That discounts for any purpose allowed and taken on sales shall not be included if excessive sales tax is not collected from the purchaser, nor shall the sale price of property returned by customers when the total sale price thereof is refunded either in cash or by credit.

b. That in all transactions in which tangible personal property is traded toward the purchase price of tangible personal property of greater value, the gross receipts shall be only that portion of the purchase price represented by the difference between the total purchase price of such tangible personal property of greater value and the amount of such tangible personal property traded.

7. *"Relief agency"* means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work.

8. The word *"taxpayer"* includes any person within the meaning of subsection 1 hereof, who is subject to a tax imposed by this division, whether acting for himself or as a fiduciary.

9. Sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders, for the erection of buildings or the alteration, repair or improvement of real property, are retail sales in whatever quantity sold. Where the owner, contractor, subcontractor or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, he shall purchase such items of tangible personal property without liability for the tax if such property will be subject to the tax at the time of resale or at the time it is withdrawn from inventory for construction purposes. The sales tax shall be due in the reporting period when the materials, supplies, and equipment are withdrawn from inventory for construction purposes or when sold at retail.

10. The use within this state of tangible personal property by the manufacturer thereof, as building materials, supplies or equipment, in the performance of construction contracts or for any other purpose except for resale or processing, shall, for the purpose of this division, be construed as a sale at retail thereof by the manufacturer who shall be deemed to be the consumer of such tangible personal property. The tax shall be computed upon the cost to him of the fabrication or production thereof.

11. *"Place of business"* shall mean any warehouse, store, place, office, building or structure where goods, wares or merchandise are offered for sale at retail or where any taxable amusement is conducted or each office where gas, water, heat, communication or electric services are offered for sale at retail.

12. *"Casual sales"* means sales of tangible personal property by the owner of a nonrecurring nature, if the seller, at the time of sale, is not engaged for profit in the business of selling tangible goods or services taxed under section 422.43.

13. *"Services"* means all acts or services rendered, furnished, or performed, other than services performed on tangible personal property delivered into interstate commerce, or services used in processing of tangible personal property for use in taxable retail sales or services, for an "employer" as defined in section 422.4, subsection 15, for a valuable consideration by any person engaged in any business or occupation specifically enumerated in this division. The tax shall be due and collectible when the service is rendered, furnished, or performed for the ultimate user thereof.

14. *"User"* means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

15. *"Value of services"* means the price to the user exclusive of any direct tax imposed by the federal government or by this division.

16. *"Gross taxable services"* means the total amount received in money, credits, property, or other consideration, valued in money, from services rendered, furnished, or performed in this state except where such service is performed on tangible personal property delivered into interstate commerce or is used in processing of tangible personal property for use in taxable retail sales or services and embraced within the provisions of this division. However, the taxpayer may take credit in his report of gross taxable services for an amount equal to the value of services rendered, furnished, or performed when the full value of such services thereof is refunded either in cash or by credit. Taxes paid on gross taxable services represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax due hereunder, but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts so collected.

Where a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin-operated machines at more than one location within the state, the office, build-

ing or place where the books, papers and records of the taxpayer are kept shall be deemed to be the taxpayer's place of business.

Every operator of a vending machine or amusement device equipment, the receipts from the operation of which are taxable under section 422.43, shall by means of a sticker identify each such machine operated by him to show the valid sales tax permit number issued to him under which the sales tax concerning the operation of each given machine is being reported and remitted to the department. The stickers shall be provided by the department and it shall be the duty of each operator to place and maintain same in a place easily seen by the user on each machine operated by him. Failure to so identify such machines shall be unlawful and a misdemeanor. [C35, §6943-f38; C39,§6943.074; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.42]

Referred to in §§422.43, 423.1(8, 10)
Amendment to subsection 3 retroactive to January 1, 1970

422.43 Tax imposed. There is hereby imposed a tax of three percent upon the gross receipts from all sales of tangible personal property, consisting of goods, wares, or merchandise, except as otherwise provided in this division, sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from the sales, furnishing or service of gas, electricity, water, heat, and communication service, including the gross receipts from such sales by any municipal corporation furnishing gas, electricity, water, heat, and communication service to the public in its proprietary capacity, except as otherwise provided in this division, when sold at retail in the state to consumers or users; and a like rate of tax upon the gross receipts from all sales of tickets or admissions to places of amusement, athletic events including those of educational institutions, fairs; and a like rate of tax upon that part of private club membership fees or charges paid for the privilege of participating in any athletic sports provided club members.

There is hereby imposed a tax of three percent upon the gross receipts derived from the operation of all forms of amusement devices and games of skill, games of chance, raffles and bingo games as defined in chapter 99B, and commercial amusement enterprises operated or conducted within the state of Iowa, such tax to be collected from the operator in the same manner as is provided for the collection of taxes upon the gross receipts of tickets or admission as provided in this section.

The tax thus imposed shall cover all receipts from the operation of games of skill, games of chance, raffles and bingo games as defined in chapter 99B, and musical devices, weighing machines, shooting galleries, billiard and pool tables, bowling alleys, pinball machines, slot-operated devices selling merchandise not subject to the general sales taxes and on all receipts from devices or systems where prizes are in any manner awarded to patrons and upon the receipts from fees charged for participation in any game or other form of amusement, and generally upon the gross receipts from any source of amusement operated for profit not specified herein, and upon the gross receipts from which no tax is collected for tickets or admission, but no tax shall be imposed upon any activity exempt from sales tax under the provision of section 422.45, subsection 4. Every person receiving gross receipts from the sources as defined in this section shall be subject to all provisions of this division relating to retail sales tax and such other provisions of this chapter as may be applicable.

There is hereby imposed a like rate of tax upon the gross receipts from the renting of any and all rooms, apartments, or sleeping quarters in any hotel, motel, inn, public lodging house, rooming house, or tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals. "Renting" and "rent" include any kind of direct or indirect charge for such rooms, apartments, sleeping quarters, or the use thereof. For the purposes of this division, such renting is regarded as a sale of tangible personal property at retail. However, such tax shall not apply to the gross receipts from the renting of a room, apartment, or sleeping quarters while rented by the same person for a period of more than thirty-one consecutive days.

All revenues arising under the operation of the provisions of this section shall become part of the state general fund.

Nothing herein shall legalize any games of skill or chance or slot-operated devices which are now prohibited by law.

The tax herein levied shall be computed and collected as hereinafter provided. The tax herein imposed shall be at the rate of three percent.

There is hereby imposed, a tax of three percent upon the gross receipts from the rendering, furnishing, or performing of services as defined in section 422.42.

The following enumerated services shall be subject to the tax herein imposed on gross taxable services: Alteration and garment repair; armored car; automobile repair; battery, tire and allied; investment counseling (excluding investment services of trust departments); bank service charges; barber and beauty; boat repair; car wash and wax; carpentry; roof, shingle, and glass repair; dance schools and dance studios; dry cleaning, pressing, dyeing, and laundering; electrical repair and installation; engraving, photography, and retouching; equipment rental; excavating and grading; farm implement repair of all kinds; flying service, except agricultural aerial application services and aerial commercial and charter transportation services*; furniture, rug, upholstery repair and cleaning; fur storage and repair; golf and country clubs and all commercial recreation; house and building moving;

household appliance, television, and radio repair; jewelry and watch repair; machine operator; machine repair of all kinds; motor repair; motorcycle, scooter, and bicycle repair; oilers and lubricators; office and business machine repair; painting, papering, and interior decorating; parking lot; pipe fitting and plumbing; wood preparation; private employment agencies; printing and binding; sewing and stitching; shoe repair and shoeshine; storage warehouse and storage locker; telephone answering service; test laboratories; termite, bug, roach, and pest eradicators; tin and sheet metal repair; turkish baths, massage, and reducing salons; vulcanizing, recapping, and retreading; warehouse; weighing; welding; well drilling; wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl and vegetables; wrecking service; wrecker and towing. C35, §6943-f39; C39,§6943.075; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.43; 66GA, ch 5,§3]

Referred to in §§29C.15, 422.42, 422.48, 422.52, 422.53, 422.58, 423.2, 423.9, 423.10, 423.14, 423.21, 423.22

Tax on services in building and construction contracts:

Before October 1, 1967, equals 0 percent, 62GA, ch 348,§20;

Between October 1, 1967, and June 1, 1969, equals 3 percent, 62GA, ch 348,§25;

After June 1, 1969, equals 0 percent, 63GA, ch 248,§9

*Retroactive to July 1, 1974; 66GA, ch 5,§6

422.44 Tax on surplus war material. Purchases of tangible personal property or services from the government of the United States or any of its agencies by ultimate consumer-users are hereby declared to be subject to the state use tax.

This section shall not apply to purchases made by counties or municipal corporations. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.44]

422.45 Exemptions. There are hereby specifically exempted from the provisions of this division and from the computation of the amount of tax imposed by it, the following:

1. The gross receipts from sales of tangible personal property services rendered, furnished, or performed which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state.

2. The gross receipts from the sales, furnishing or service of transportation service.

3. The gross receipts from sales of educational, religious, or charitable activities, where the entire proceeds therefrom are expended for educational, religious, or charitable purposes, except the gross receipts from games of skill, games of chance, raffles and bingo games as defined in chapter 99B.

4. The gross receipts from sales of vehicles subject to registration.

5. The gross receipts or from services rendered, furnished, or performed and of all sales of goods, wares or merchandise used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state board of regents, state department of social services, state department of transportation and all divisions, boards, commissions, agencies or instrumentalities of state, federal, county or municipal government which derive disbursable funds from appropriations or allotments of funds raised by the levying and collection of taxes, except sales of goods, wares or merchandise or from services rendered, furnished, or performed and used by or in connection with the operation of any municipally-owned public utility engaged in selling gas, electricity or heat to the general public.

The exemption provided by this subsection shall also apply to all such sales of goods, wares or merchandise or from services rendered, furnished, or performed and subject to use tax under the provisions of chapter 423.

6. The gross receipts from "casual sales".

7. Any private nonprofit educational institution in this state or any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state board of regents, state department of social services, state department of transportation, and all divisions, boards, commissions, agencies or instrumentalities of state, federal, county or municipal government which derive disbursable funds from appropriations or allotments of funds raised by the levying and collection of taxes may make application to the department for the refund of any sales or use tax upon the gross receipts of all sales of goods, wares or merchandise or from services rendered, furnished, or performed to any contractor, used in the fulfillment of any written contract with the state of Iowa or any political subdivision thereof, or any private nonprofit educational institution in this state which property becomes an integral part of the project under contract and at the completion thereof becomes public property, or is devoted to educational uses as specified in this subsection except goods, wares or merchandise or services rendered, furnished, or performed used in the performance of any contract in connection with the operation of any municipal utility engaged in selling gas, electricity, or heat to the general public; and excepting such goods, wares and merchandise used in the performance of any contract for a "project" under chapter 419 as defined therein other than goods, wares or merchandise used in the performance of any contract for any "project" under said chapter 419 for which a bond issue was or will have been approved by a municipality prior to July 1, 1968.

a. Such contractor shall state under oath, on forms provided by the department, the amount of such sales of goods, wares or merchandise or services rendered, furnished, or performed and used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the governmental unit or private nonprofit educational institution which has made any written contract for performance by said contractor. Such forms shall be filed by the contractor with the

governmental unit or educational institution before final settlement is made.

b. Such governmental unit or educational institution shall, not more than six months after the final settlement has been made, make application to the department for any refund of the amount of such sales or use tax which shall have been paid upon any goods, wares or merchandise, or services rendered, furnished, or performed, such application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit such claim and, if approved, request the comptroller to issue his warrant to such governmental unit or educational institution in the amount of such sales or use tax which has been paid to the state of Iowa under such contract.

c. Any contractor who shall willfully make false report of tax paid under the provisions of this subsection shall be guilty of a misdemeanor and in addition thereto shall be liable for the payment of the tax with penalty and interest thereon.

8. The gross receipts of all sales of goods, wares, or merchandise, or services, used for educational purposes to any private nonprofit educational institution in this state. The exemption provided by this subsection shall also apply to all such sales of goods, wares or merchandise, or services, subject to use tax under the provisions of chapter 423.

9. Gross receipts from the sales of newspapers, free newspapers or shoppers guides and the printing and publishing thereof.

10. The gross receipts from sales of tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

11. The gross receipts from the sale of motor fuel and special fuel consumed for highway use or in watercraft where the fuel tax has been imposed and paid and no refund has been or will be allowed.

12. Gross receipts from the sale of all foods for human consumption which are eligible for purchase with food coupons issued by the United States department of agriculture pursuant to regulations in effect on July 1, 1974, regardless of whether the retailer from which the foods are purchased is participating in the food stamp program. However, as used in this subsection, "foods" does not include meals prepared for immediate consumption on or off the premises of the retailer, and does not include foods sold through vending machines.

13. The gross receipts from the sale of prescription drugs, as defined in section 155.3, subsection 10, if dispensed for human use or consumption by a registered pharmacist licensed under chapter 155, a physician and surgeon licensed under chapter 148, an osteopath licensed under chapter 150, an osteopathic physician and surgeon licensed under chapter 150A, a dentist licensed under chapter 153, or a podiatrist licensed under chapter 149.

14. Gross receipts from the sale of insulin, hypodermic syringes, and diabetic testing materials for human use or consumption.

15. Gross receipts from the sale of prosthetic, orthotic or orthopedic devices for human use. For purposes of this subsection, "orthopedic devices" means those devices prescribed to be used for orthopedic purposes by a physician and surgeon licensed under chapter 148, an osteopath licensed under chapter 150, an osteopathic physician and surgeon licensed under chapter 150A, a dentist licensed under chapter 153, or a podiatrist licensed under chapter 149.

16. Gross receipts from the sale of oxygen prescribed by a licensed physician or surgeon, osteopath, or osteopathic physician or surgeon for human use or consumption. [C35,§6943-f40; C39,§**6943.076**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §422.45; 66GA, ch 211,§1]

Referred to in §§422.43, 423.4(3, 4)
Sales tax exemptions, subsections 12 to 15, applicable July 1, 1974, 65GA, ch 1221,§5
Subsection 9 retroactive to January 1, 1970

422.46 Credit on tax. Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax herein provided; provided, that if such accounts are thereafter collected by the retailer, a tax shall be paid upon the amount so collected. [C35,§6943-f41; C39,§**6943.077**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §422.46]

422.47 Credit to relief agencies.

1. A relief agency may apply to the director for refund of the amount of tax imposed hereunder and paid upon sales to it of any goods, wares, merchandise, or services rendered, furnished, or performed, used for free distribution to the poor and needy.

2. Such refunds may be obtained only in the following amounts and manner and only under the following conditions:

a. On forms furnished by the department, and filed within such time as the director shall provide by regulation, the relief agency shall report to the department the total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services rendered, furnished, or performed, used for free distribution to the poor and needy.

b. On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency.

c. The relief agency must prove to the satisfaction of the director that the person making the sales has included the amount thereof in the computation of the gross receipts of such person and that such person has paid the tax levied by this division, based upon such computation of gross receipts.

3. If satisfied that the foregoing conditions and requirements have been complied with,

the director shall refund the amount claimed by the relief agency. [C35,§6943-f42; C39, §6943.078; C46, 50, 54, 58, 62, 66, 71, 73, 75, §422.47]

422.48 Adding of tax.

1. Retailers shall, as far as practicable, add the tax imposed under this division, or the average equivalent thereof, to the sales price or charge, less trade-ins allowed and taken and when added such tax shall constitute a part of such price or charge, shall be a debt from consumer or user to retailer until paid, or until the director assumes responsibility for collection of a tax on services, as provided in section 422.43, and shall be recoverable at law in the same manner as other debts.

2. Agreements between competing retailers, or the adoption of appropriate rules and regulations by organizations or associations of retailers to provide uniform methods for adding such tax or the average equivalent thereof, and which do not involve price-fixing agreements otherwise unlawful, are expressly authorized and shall be held not in violation of chapter 553, or other antitrust laws of this state. The director shall co-operate with such retailers, organizations, or associations in formulating such agreements and rules. The director may adopt and promulgate rules and regulations for adding such tax, or the average equivalent thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling such retailers to add and collect, as far as practicable, the amount of such tax. [C35,§6943-f43; C39,§6943.079; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.48]

422.49 Absorbing tax prohibited. It shall be unlawful for any retailer to advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed by this division will be assumed or absorbed by the retailer or that it will not be considered as an element in the price to the consumer, or if added, that it or any part thereof will be refunded. [C35, §6943-f44; C39,§6943.080; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.49]

Referred to in §422.58(2)

422.50 Records required. It shall be the duty of every retailer required to make a report and pay any tax under this division, to preserve such records of the gross proceeds of sales as the director may require and it shall be the duty of every retailer to preserve for a period of five years all invoices and other records of goods, wares, or merchandise purchased for resale; and all such books, invoices, and other records shall be open to examination at any time by the department, and shall be made available within this state for such examination upon reasonable notice when the director shall so order. [C35,§6943-f45; C39, §6943.081; C46, 50, 54, 58, 62, 66, 71, 73, 75, §422.50]

422.51 Return of gross receipts.

1. Each person subject to sections 422.52 and 422.53 and in accordance with the provisions thereof shall, on or before the last day of the month following the close of each calendar quarter during which such person is or has become or ceased being subject to the provisions of such sections, make, sign, and file a return for such calendar quarter in such form as may be required. Such returns shall show information relating to gross receipts including goods, wares, and services converted to the use of such person, the amounts of gross receipts excluded and exempt from the tax, the receipts subject to tax, a calculation of tax due, and such other information for the period covered by the return as may be required. Persons required to file, or committed to file by reason of voluntary action or by order of the department of revenue, monthly deposits of taxes due under this division shall be entitled to take credit against the total quarterly amount of tax due such amount as shall have been deposited by such persons during such calendar quarter. The balance remaining due after such credit for monthly deposits shall be entered on the return; provided, however, that such person may be granted an extension of time not exceeding thirty days for filing such quarterly return, upon a proper showing of necessity therefor. If such extension be granted such person shall have paid by the twentieth day of the month following the close of such quarter ninety percent of the estimated tax due.

2. If necessary or advisable in order to insure the payment of the tax imposed by this division, the director may require returns and payment of the tax to be made for other than quarterly periods, the provisions of section 422.52 or elsewhere to the contrary notwithstanding.

3. Returns shall be signed by the retailer or his duly authorized agent, and must be duly certified by him to be correct. [C35,§6943-f46; C39,§6943.082; C46, 50, 54, 58, 62, 66, 71, 73, 75, §422.51]

422.52 Payment of tax—bond.

1. The tax levied hereunder shall be due and payable in quarterly installments on or before the last day of the month next succeeding each quarterly period provided, however, every retailer who collects more than five hundred dollars in retail sales taxes in any one month shall deposit with the department or in a depository bank designated by the director, said sum, made out on a deposit form for the month in such form and manner as may be prescribed by the director, said deposit form being due on or before the twentieth day of the month next succeeding the month of collection, except no deposit will be required for the third month of the calendar quarter and the total quarterly amount, less the amounts deposited for the first two months of the quarter, will be due with the quarterly report on the last day of the

month next succeeding the month of collection. Provided further, however, every retailer who collects more than fifty dollars and not more than five hundred dollars in retail sales tax in any one month shall deposit with the department or in a depository bank designated by the director, said sum, or an amount equal to not less than thirty percent of the tax collected and paid to the department during the last preceding quarter, made out on a deposit form for the month in such form and manner as may be prescribed by the director, said deposit form being due on or before the twentieth day of the month next succeeding the month of collection, except no deposit will be required for the third month of the calendar quarter and the total quarterly amount, less the amounts deposited for the first two months of the quarter, will be due with the quarterly report on the last day of the month next succeeding the month of collection. Said monthly remittance procedure shall be optional for any sales tax permit holder whose average monthly collection of tax amounts to more than twenty-five dollars and less than fifty dollars. If the exact amounts of the taxes due or an amount equal to not less than thirty percent of the tax collected and paid to the department during the last preceding quarter on the monthly deposit form are not ascertainable by the retailer, or would work undue hardship in the computation of the taxes due by the retailer, the director may provide by rules alternative procedures for estimating the amounts (but not the dates) so due by the retailers. The form so prescribed by the director shall be referred to as "retailers monthly tax deposit". Deposit forms shall be signed by the retailer or his duly authorized agent, and must be duly certified by him to be correct. The director may authorize incorporated banks and trust companies which are depositories or financial agents of the United States, or of this state, to receive any tax imposed under this chapter, in such manner, at such times and under such conditions as the director may prescribe. The director shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the department.

2. Every permit holder at the time of making the return required hereunder, shall compute and pay to the department the tax due for the preceding period.

3. The director may, when necessary and advisable in order to secure the collection of the tax levied under this division, require any person subject to such tax to file with the director a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the director may fix, to secure the payment of any tax or penalties due or which may become due from such person. In lieu of such bond, securities approved by the director, in such amount as the director may prescribe, may be deposited with the department, which securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor thereof, if it becomes necessary so to do in order to recover any tax or penalties due. Upon any such sale, the surplus, if any, above the amounts due under this division shall be returned to the person who deposited the securities.

4. The tax by this division imposed upon those sales of motor vehicle fuel which are subject to tax and refund under chapter 324 shall be collected by the state treasurer by way of deduction from refunds otherwise allowable under said chapter. The amount of such deductions he shall transfer from the motor vehicle fuel fund to the special tax fund.

5. The provisions of subsection 1, according to the context, shall apply to persons having receipts from rendering, furnishing, or performing services enumerated in section 422.43. [C35,§6943-f47; C39,§6943.083; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.52]

Referred to in §422.51

422.53 Permits—applications for.

1. It shall be unlawful for any person to engage in or transact business as a retailer within this state, unless a permit or permits shall have been issued to him as hereinafter prescribed, except as otherwise provided in subsection 7. Every person desiring to engage in or conduct business as a retailer within this state shall file with the department an application for a permit or permits. Every application for such a permit shall be made upon a form prescribed by the director and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the director may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner thereof; in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.

2. At the time of making such application, the applicant shall pay to the department a permit fee of one dollar for each permit, and the applicant must have a permit for each place of business.

3. Upon the payment of the permit fee or fees herein required, the department shall grant and issue to each applicant a permit for each place of business within the state. A permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

4. Permits issued under the provisions of this division shall be valid and effective without further payment of fees until revoked by the department.

5. Whenever the holder of a permit fails to comply with any of the provisions of this division or any orders or rules of the department prescribed and adopted under this division, the director upon hearing after giving ten days' notice of the time and place of the hearing to show cause why his permit should not be revoked, may revoke the permit. The director shall also have the power to restore licenses after such revocation.

6. The department shall charge a fee of one dollar for the issuance of a permit to a retailer whose permit has been previously revoked.

7. Persons not regularly engaged in selling at retail and not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district or local fairs, carnivals and the like, shall report and remit the tax on a nonpermit basis, under such rules as the director shall provide for the efficient collection of the sales tax on such sales.

8. The provisions of subsection 1, dealing with lawful right of a retailer to transact business, according to the context, shall apply to persons having receipts from rendering, furnishing, or performing services enumerated in section 422.43, except that no person holding a permit pursuant to subsection 1 shall be required to obtain any separate sales tax permit for the purpose of engaging in business involving such services. [C35,§6943-f48; C39, §**6943.084**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §422.53]

Referred to in §§422.51, 422.58(2), 423.22

422.54 Failure to file return—incorrect return.

1. As soon as practicable after a return is filed and in any event within five years after the return is filed the department shall examine it, assess and determine the tax due if the return is found to be incorrect and give notice to the taxpayer of such assessment and determination as provided in subsection 2 hereof. If the determination that a return is incorrect is the result of an audit of the books and records of the taxpayer, the tax, or additional tax, if any is found due, shall be assessed and determined and the aforesaid notice to the taxpayer shall be given by the department within one year after the completion of the examination of said books and records.

Referred to in §423.16

2. If a return required by this division is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the same is required by notice from the department, the department shall determine the amount of tax due from such information as the department may be able to obtain and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by him, his stock on hand, or other factors. The department shall give notice of such determination to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within thirty days after the giving of notice of such determination, apply to the director for a hearing or unless the director on his own motion shall reduce the same. At such hearing evidence may be offered to support such determination or to prove that it is incorrect. After such hearing the director shall give notice of the decision to the person liable for the tax. [C35, §6943-f49; C39,§**6943.085**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.54]

Referred to in §423.16

422.55 Judicial review.

1. Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act.

2. The petitioner shall file with the clerk a bond for the use of the respondent, with sureties approved by such clerk, in penalty at least double the amount of tax appealed from, and in no case shall the bond be less than fifty dollars, conditioned that the petitioner shall perform the orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court of this state irrespective of the amount involved. [C35,§6943-f50; C39,§**6943.086**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.55]

Referred to in §§423.16, 425.31, 551A.11
Filing petition on appeal, R.C.P. 368
Service of original notice, R.C.P. 56(*a*)

422.56 Statute applicable to sales tax. All the provisions of section 422.26 shall apply in respect to the taxes and penalties imposed by this division, excepting that, as applied to any tax imposed by this division, the lien therein provided shall be prior and paramount over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer without the necessity of recording as therein provided. The requirements for recording shall, as applied to the tax imposed by this division, apply only to the liens upon real property. When requested to do so by any person from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director shall, upon being satisfied that such a situation exists, inform such person as to the amount of unpaid taxes due by such taxpayer under the provisions of this division. The giving of such information under such circumstances shall not be deemed a violation of section 422.72 as applied to this divi-

sion. [C35,§6943-f51; C39,§6943.087; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.56]
Referred to in §423.17

422.57 Service of notices.

1. Any notice authorized or required under the provisions of this division may be given by mailing the same to the person for whom it is intended by certified mail, addressed to such person at the address given in the last return filed by him pursuant to the provisions of this division, or if no return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this division by the giving of notice shall commence to run from the date of registration and posting of such notice.

2. The provisions of the Code relative to the limitation of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty provided by this division. [C35,§6943-f52; C39,§6943.088; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.57]
Referred to in §§423.16, 423.17, 425.30

422.58 Penalties—offenses.

1. If any person fails to file a permit holders monthly tax deposit or a return with the department of revenue on or before the due date, unless it is shown that such failure was due to reasonable cause, there shall be added to the amount required to be shown as tax on the monthly tax deposit or return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which such failure continues, not exceeding twenty-five percent in the aggregate. If any person or permit holder fails to remit the tax due with the filing of the monthly tax deposit or return on or before the due date, or fails to pay any amount of any tax required to be shown on the return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due, there shall be added to the tax a penalty of five percent on the tax due, unless it is shown that such failure was due to reasonable cause. When penalties are applicable for failure to file a monthly tax deposit or return and failure to pay the tax due or required on the monthly tax deposit or return, the penalty provision for failure to file shall be in lieu of the penalty provision for failure to pay the tax due or required on the monthly tax deposit or return. The taxpayer shall also pay interest on the tax or additional tax at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month, computed from the date the monthly tax deposit or return was required to be filed. Such penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this division. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this division.

2. Any person who shall sell tangible personal property, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, and communication service at retail, or engage in the rendering, furnishing, or performing services enumerated in section 422.43, in this state after his license shall have been revoked, or without procuring a license within sixty days after the effective date of this division, as provided in section 422.53, or who shall violate the provisions of section 422.49, and the officers of any corporation who shall so act, shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one hundred dollars or imprisonment in the county jail for not more than thirty days in the discretion of the court.

3. Any person required to make, render, sign, or certify any return or supplementary return, who makes any false or fraudulent return with intent to defeat or evade the assessment required by law to be made, shall be guilty of a felony and shall, for each such offense, be fined not less than five hundred dollars and not more than five thousand dollars, or be imprisoned not exceeding one year, or be subject to both such fine and imprisonment, in the discretion of the court.

4. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this division, shall be prima-facie evidence thereof. [C35,§6943-f53; C39,§6943.089; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.58; 66GA, ch 1195, §4]

422.59 Statutes applicable. The director shall administer the taxes imposed by this division in the same manner and subject to all the provisions of, and all of the powers, duties, authority, and restrictions contained in section 422.25, subsection 4, section 422.30 and sections 422.67 to 422.75 or any amendments which may hereafter be made thereto, all of which sections are by this reference incorporated herein. [C39,§6943.090; C46, 50, 54, 58, 62, 66, 71, 73, 75,§422.59]
Constitutionality, 47GA, ch 196,§19
Omnibus repeal, 47GA, ch 196,§20

DIVISION V
TAXATION OF FINANCIAL INSTITUTIONS
Referred to in §§422.1, 428.36

422.60 Imposition of tax. A franchise tax according to and measured by net income is hereby imposed on financial institutions. [C71, 73, 75,§422.60]

422.61 Definitions. In this division, unless the context otherwise requires:

1. *"Financial institution"* means a state bank as defined in section 524.103, subsection 19, a national banking association having its

principal office within this state, a trust company, a federally chartered savings and loan association, a financial institution chartered by the federal home loan bank board, an association incorporated or authorized to do business under chapter 534, or a production credit association.

2. *"Taxable year"* means the calendar year or the fiscal year ending during a calendar year, for which the tax is payable.

3. *"Taxpayer"* means a financial institution subject to any tax imposed by this division.

4. *"Net income"* means the net income of the financial institution computed in accordance with section 422.35, with the exception that interest and dividends from federal securities shall not be subtracted and interest and dividends from evidences of indebtedness and securities of this state and its political subdivisions, exempt from federal income tax under the Internal Revenue Code of 1954 as amended to and including January 1, 1976, shall not be added. [C71, 73, 75,§422.61; 66GA, ch 206,§3, ch 1192,§3]

Referred to in §321.105
Effective for tax years beginning on or after January 1, 1975; 66GA, ch 206,§4, ch 1192,§4

422.62 When due. The franchise tax is due and payable on the first day following the end of the taxable year of each financial institution, and is delinquent after the last day of the fourth month following the due date. Every financial institution shall file a return as prescribed by the director on or before the delinquency date. The provisions of this section shall become effective for all taxable years ending on or after January 1, 1970. As to fiscal years ending prior to May 9, 1970, the time for filing a return is extended to the last day of the fourth month following such date. [C71, 73, 75,§422.62]

See 63GA, ch 1204,§4, for tax years prior to 1970

422.63 Amount of tax. The franchise tax is imposed annually in an amount measured by applying the following rates to the net income received or accrued during the taxable year:

1. On the first twenty-five thousand dollars of net income, or any part thereof, five percent.

2. On the next fifty thousand dollars of net income, or any part thereof, six percent.

3. On the next twenty-five thousand dollars of net income, or any part thereof, seven percent.

4. On all net income in excess of one hundred thousand dollars, eight percent. [C71, 73, 75,§422.63]

422.64 Tax payable to treasurer. The franchise tax shall be made payable to the treasurer of state and shall accompany the franchise tax return at the time of filing. [C71, 73, 75,§422.64]

422.65 Allocation of revenue. Fifty-five percent of the total moneys received from the franchise tax shall be deposited in the state general fund. The remaining moneys received from the franchise tax shall be deposited in a franchise tax fund hereby established in the office of the treasurer of state, and shall be paid quarterly on warrants by the state comptroller, after certification by the director of revenue, as follows:

1. Sixty percent to the general fund of the city from which the tax is collected.

2. Forty percent to the general fund of the county from which the tax is collected.

If the financial institution maintains one or more offices for the transaction of business, other than its principal office, a portion of its franchise tax shall be allocated to each office, based upon a reasonable measure of the business activity of each office. The director of revenue shall prescribe, for each type of financial institution, a method of measuring the business activity of each office. Financial institutions shall furnish all necessary information for this purpose at the request of the director.

Quarterly, the director of revenue shall certify to the treasurer of state the amounts to be paid to each city and county from the franchise tax fund. All moneys received from the franchise tax are hereby appropriated according to the provisions of this section. [C71, 73, 75,§422.65]

Funds collected after July 1, 1970

422.66 Revenue department to enforce. The department of revenue shall administer and enforce the provisions of this division, and all applicable provisions of sections 422.24, 422.25, 422.26, 422.28, 422.29, and 422.30, and division VI of this chapter, apply to financial institutions and to the franchise tax imposed by this division. [C71, 73, 75,§422.66]

DIVISION VI
ADMINISTRATION
Referred to in §§422.1, 422.16(5), 422.66

422.67 Generally—bond—approval. The director shall administer the taxes imposed by this chapter. The director shall give a bond in an amount to be fixed by the governor, which has been issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility. The reasonable cost of said bond shall be paid by the state, out of the proceeds of the taxes collected under the provisions of this chapter. [C35,§6943-f54; C39,§6943.091; C46, 50, 54, 58, 62, 66,§422.60; C71, 73, 75,§422.67]

Referred to in §§422.59, 423.23

422.68 Powers and duties.

1. The director shall have the power and authority to prescribe all rules not inconsistent with the provisions of this chapter, necessary and advisable for its detailed administration and to effectuate its purposes.

2. The director may, for administrative purposes, divide the state into districts, provided that in no case shall a county be divided in forming a district.

3. The director shall have the power to destroy any and all useless records and all returns, reports, and communications of any taxpayer filed with or kept by the department after such returns, records, reports, or communciations shall have been in the custody of the department for a period of not less than five years, provided, however, after the accounts of any person shall have been examined by the director and the amount of tax and penalty due shall have been finally determined, then the director may order the destruction of any records previously filed by such taxpayer, notwithstanding the fact that such records shall have been in the custody of the department for a period less than five years. Such records and documents shall be destroyed in such manner as shall be prescribed by the director.

4. The department may make photostat, microfilm or other photographic copies of records, reports and other papers either filed by the taxpayer or prepared by the department. When such photostat or microfilm copies have been made, the department may destroy such original records in such manner as prescribed by the director. Such photostat or microfilm copies, when no longer of use, may be destroyed as provided in subsection 3. Such photostat, microfilm, or other photographic records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control thereof. [C35,§6943-f55; C39,§**6943.092**; C46, 50, 54, 58, 62, 66,§422.61; C71, 73, 75,§422.68]

Referred to in §§422.59, 423.23, 442.16

422.69 Funds.

1. All fees, taxes, interest and penalties imposed under this chapter shall be paid to the department of revenue in the form of remittances payable to the state treasurer and the department of revenue shall transmit each payment daily to the state treasurer.

2. Unless otherwise provided the fees, taxes, interest and penalties collected under this chapter shall be credited to the general fund. [C35,§6943-f56; C39,§§**6943.093, 6943.101**; C46, §§422.62, 422.70; C50, 54, 58, 62, 66,§422.62; C71, 73, 75,§422.69]

Referred to in §§422.59, 423.23
Repeal of sales tax to road use tax fund effective July 1, 1975, 65GA, ch 202,§5
Temporary transfer to road use tax fund, 65GA, ch 202,§4

422.70 General powers—hearings.

1. The director, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income or receipts of any taxpayer, shall have power: To examine or cause to be examined by any agent or representative designated by the director, books, papers, records, or memoranda, such an examination not to include any transaction completed five years or more prior to such an examination, provided, however, that the director may, by rules, provide for a limitation of time of any number of years less than five; to require by subpoena the attendance and testimony of witnesses; to issue and sign subpoenas; to administer oaths, to examine witnesses and receive evidence; to compel witnesses to produce for examination books, papers, records, and documents relating to any matter which the director shall have the authority to investigate or determine.

2. Where the director finds the taxpayer has made a fraudulent return, the costs of said hearing shall be taxed to the taxpayer. In all other cases the costs shall be paid by the state.

3. The fees and mileage to be paid witnesses and taxed as costs shall be the same as prescribed by law in proceedings in the district court of this state in civil cases. All costs shall be taxed in the manner provided by law in proceedings in civil cases. Where the costs are taxed to the taxpayer they shall be added to the taxes assessed against said taxpayer and shall be collected in the same manner. Costs taxed to the state shall be certified by the director to the state comptroller who shall issue warrant on the state treasurer for the amount of said costs, to be paid out of the proceeds of the taxes collected under this chapter.

4. In case of disobedience to a subpoena the director may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and production of records, books, papers, and documents, and such court may issue an order requiring the person to appear before the director and give evidence or produce records, books, papers, and documents, as the case may be, and any failure to obey such order of court may be punished by the court as a contempt thereof.

5. Testimony on hearings before the director may be taken by a deposition as in civil cases, and any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as hereinbefore provided. [C35,§6943-f57; C39, §**6943.094**; C46, 50, 54, 58, 62, 66,§422.63; C71, 73, 75,§422.70]

Referred to in §§421.1(6), 422.59, 423.23, 425.27
Contempts, ch 665

422.71 Assistants — salaries — expenses — bonds.

1. The director may appoint and remove such agents, auditors, clerks, and employees as the director may deem necessary, such persons to have such duties and powers as the director may, from time to time, prescribe.

2. The salaries of all assistants, agents, and employees shall be fixed by the director in a budget to be submitted to the comptroller and approved by the legislature.

3. All such agents and employees shall be allowed such reasonable and necessary traveling and other expenses as may be incurred in the performance of their duties.

4. The director may require certain officers, agents, and employees to give bond for the faithful performance of the duties in such sum

and with such sureties as the director may determine and the state shall pay, out of the proceeds of the taxes collected under the provisions of this chapter, the premiums on such bonds.

5. The director may utilize the office of treasurer of the various counties in order to administer this chapter and effectuate its purposes, and may appoint the treasurers of the various counties as agents to collect any or all of the taxes imposed by this chapter, provided, however, that no additional compensation shall be paid to said treasurer by reason thereof. [C35,§6943-f58; C39,§**6943.095**; C46, 50, 54, 58, 62, 66,§422.64; C71, 73, 75,§422.71]

Referred to in §§422.59, 423.23

422.72 Information deemed confidential.

1. It shall be unlawful for the director, or any person having an administrative duty under this chapter, to divulge or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any person or corporation visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; provided, however, that the director may authorize examination of such returns by other state officers, or, if a reciprocal arrangement exists, by tax officers of another state, or the federal government. This subsection shall prevail over the provisions of any general law of this state relating to public records.

2. Any person violating the provisions of subsection 1 of this section shall be guilty of a misdemeanor and punishable by a fine not to exceed one thousand dollars. [C35,§6943-f59; C39,§**6943.096**; C46, 50, 54, 58, 62, 66,§422.65; C71, 73, 75,§422.72]

Referred to in §§421.1(4), 422.56, 422.59, 423.23, 425.28, 442.16

422.73 Correction of errors. If it shall appear that, as a result of mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount shall be credited against any tax due, or to become due, under this chapter from the person who made the erroneous payment, or such amount shall be refunded to such person by the department. No claim for refund or credit that has not been filed with the department within five years after the tax payment upon which a refund or credit is claimed became due, or one year after such tax payment was made, whichever time is the later, shall be allowed by the director. Notwithstanding the period of limitation specified, the taxpayer shall have six months from the day of final disposition of any income tax controversy between the taxpayer and the internal revenue service with respect to the particular tax year or years to claim an income tax refund or credit, provided the taxpayer has notified the department of revenue of the existence of said income tax controversy within the five-year limitation period. [C35,§6943-f60; C39,§**6943.097**; C46, 50, 54, 58, 62, 66,§422.66; C71, 73, 75,§422.73]

Referred to in §§422.16(9), 422.59, 423.23, 424.12, 442.16

422.74 Certification of refund. Wherever in any division of this chapter a refund is authorized, the director shall certify the amount of the refund and the name of the payee to the state comptroller. Upon certification from the director, the state comptroller shall draw his warrant on the state general fund in the amount specified payable to the named payee, and the state treasurer shall pay the same. [C35,§6943-f61; C39,§**6943.098**; C46, 50, 54, 58, 62, 66,§422.67; C71, 73, 75,§422.74]

Referred to in §422.16(11)"e", 422.59, 423.23, 424.12, 442.16

422.75 Statistics — publication of. The department shall prepare and publish annually statistics reasonably available, with respect to the operation of this chapter, including amounts collected, classification of taxpayers, and such other facts as are deemed pertinent and valuable. [C35,§6943-f62; C39,§**6943.099**; C46, 50, 54, 58, 62, 66,§422.68; C71, 73, 75,§422.75]

Referred to in §§422.28, 422.59, 423.23, 442.16
Annual report, §17.4

DIVISION VII
ALLOCATION OF REVENUES

Referred to in §§422.1, 422.2

422.76 Repealed by 52GA, ch 230,§3.

422.77 Repealed by 53GA, ch 192,§1.

422.78 Allocation to moneys and credits replacement fund in each county. There is created a permanent fund in the office of the treasurer of state to be known as the "moneys and credits replacement fund". The director shall determine the percentage which the aggregate taxable value for the year 1965 of the property described in and subject to taxation under section 429.2, Code 1966, owned or held by individuals, administrators, executors, guardians, conservators, trustees or an agent or nominee thereof, and the aggregate taxable value for the year 1965 of the property described in and subject to taxation under section 431.1, Code 1966, for the year 1965 but not subject to taxation under said section for the year 1966, in each county bears to the total aggregate taxable value of such property reported from all of the counties in the state and shall certify the percentage for each county to the state comptroller prior to January 1, 1967. In July of each year, the state comptroller shall apply said percentage to the money which shall have accumulated in the moneys and credits tax replacement fund prior to such July and thereby determine the amount thereof due to each county. The state comptroller shall draw warrants on the moneys and credits tax replacement fund in such amounts payable to the

county treasurer of each county and transmit them. The county treasurer shall apportion these amounts as follows: For the amounts received in January 1972, and all previously collected amounts, twenty percent to the county general fund, fifty percent to the school general fund, and the remaining thirty percent to cities and towns in the proportion that the taxable values for each city and town for 1965 of property subject to taxation in 1965 under sections 429.2, Code 1966, and 431.1, Code 1966, is to the total of such taxable values for all cities and towns within the county; for the amounts received in January 1973, and all subsequently collected amounts, forty percent to the county general fund, and the remaining sixty percent to cities and towns in the proportion that the taxable values for each city and town for the year 1965 under sections 429.2 and 431.1, Code 1966, is to the total of such taxable values for all the cities and towns within the county.

Not later than December 31, 1973, the county auditor may file a certified statement with the state comptroller demonstrating errors made in calculating the aggregate taxable value for the year of 1965. The comptroller, upon vertifying that an error was made, shall recalculate the amount payable to counties for the previous seven years, based upon the amounts which were available in the moneys and credits tax replacement fund in January of each year, and shall notify each county of its total overpayment or underpayment for the seven-year period. If a county has received an overpayment, it shall refund the overpayment to the comptroller for deposit in the moneys and credits tax replacement fund. The refund of an overpayment shall be made not later than December 31, 1976. If a county has received an underpayment, the comptroller shall pay the amount of the underpayment to the county from the moneys and credits tax replacement fund, not later than January of 1977. The refund of an overpayment shall be made from the county general fund, and the amount received for an underpayment shall be deposited in the county general fund, but the board of supervisors shall distribute thirty percent of the overpayment to cities and towns in the county in proportion to the corrected taxable values for each city and town for 1965. [C66,§422.71; C71, 73, 75,§422.78]

Appropriation, 64GA, ch 165,§50

422.79 to 422.85 Reserved.

DIVISION VIII
FUEL TAX CREDIT
Referred to in §§324.17, 422.1
Applicable to purchases made on or after July 1, 1974

422.86 Income tax credit in lieu of refund. In lieu of the fuel tax refund provided in sections 324.17 to 324.19, each person or corporation subject to taxation under divisions II or III of this chapter, except those persons or corporations licensed under sections 324.4 or 324.36, may elect to receive an income tax credit for tax years beginning on or after January 1, 1975. The person or corporation which elects to receive an income tax credit shall cancel its refund permit obtained under section 324.18 within thirty days after the first day of its tax year. When the election to receive an income tax credit has been made, it remains effective for at least one tax year, and for subsequent tax years unless a change is requested and a new refund permit applied for within thirty days after the first day of the person's or corporation's tax year. The income tax credit shall be the amount of the Iowa fuel tax paid on fuel purchased by the person or corporation and used as follows:

1. Motor fuel as defined in section 324.2, subsection 1, used for the purpose of operating or propelling farm tractors, corn shellers, roller mills, truck-mounted feed grinders, stationary engines, aircraft, for cleaning or dyeing, or for any purpose other than in watercraft or in motor vehicles operated or intended to be operated upon the public highways.

2. Special fuel as defined in section 324.33, subsection 1, used for the purpose of operation of corn shellers, roller mills and feed grinders mounted on trucks.

3. Motor fuel placed in motor vehicles and used, other than on public highways, in the extraction and processing of natural deposits.

4. Motor fuel or special fuel used by a bona fide commercial fisherman, licensed and operating under an owner's certificate for commercial fishing gear issued pursuant to section 110.1.

However, no credit shall be given with respect to motor fuel taken out of the state in fuel supply tanks of motor vehicles, or motor fuel used in the performance of a contract which is paid out of state funds unless the contract for the work contains a certificate made under penalty for false certificate that the estimate, bid or price to be paid for the work includes no amount representing motor fuel tax subject to a credit. The right to a credit under this section is not assignable and the credit may be claimed only by the person or corporation that purchased the fuel. [C75,§422.86]

Referred to in §422.87

422.87 Fuel tax credit as income tax credit. The fuel tax credit may be applied against the income tax liability of the person or corporation as determined on the tax return filed for the year in which the fuel tax was paid. The fuel tax credit for tax paid on motor fuel used for the purpose of operating aircraft must be itemized separately. The department shall provide forms for claiming the fuel tax credit. If the fuel tax credit would result in an overpayment of income tax, the person or corporation may apply for a refund of the amount of overpayment or may have the overpayment credited to income tax due in subsequent years. Each person or corporation that claims a fuel tax credit shall maintain the original invoices showing the purchase of the fuel on

which a credit is claimed. No invoice is acceptable in support of a claim for credit unless it is a separate serially numbered invoice covering no more than one purchase of motor fuel or special fuel, prepared by the seller on a form approved by the department, nor unless it is legibly written with no corrections or erasures and shows the date of sale, the name and address of the seller and of the purchaser, the kind of fuel, the gallonage in figures, the per gallon price of the fuel, the total purchase price including the Iowa fuel tax, and that the total purchase price has been paid. However, as to refund invoices made on a billing machine the department may waive these requirements. If an original invoice is lost or destroyed, the department may approve a credit supported by a copy identified and certified by the seller as being a true copy of the original. Each person or corporation that claims a fuel tax credit shall maintain complete records of purchases of motor fuel or special fuel on which Iowa fuel tax was paid, and for which a fuel tax credit is claimed.

In order to verify the validity of a claim for credit the department of revenue shall have the right to require the claimant to furnish such additional proof of validity as the department of revenue may determine and to examine the books and records of the claimant. Failure of the claimant to furnish his books and records for examination shall constitute a waiver of rights to claim a credit related to that taxpayer's year and the department may disallow the entire credit claimed by the taxpayer for that year.

If in verifying the validity of a claim for a refund of fuel taxes through an income tax credit under this section for tax years beginning on or after January 1, 1975 and ending on or before December 31, 1976, the department discovers that all requirements of the law with respect to a refund of fuel taxes through an income tax credit have been complied with except for the provision of section 422.86 requiring cancellation of the refund permit, the department may allow the income tax credit. [C75,§422.87; 66GA, ch 1196,§1]

Amendment retroactive to January 1, 1975; 66GA, ch 1196,§2

422.88 Aircraft fuel tax transfer. The department shall certify quarterly to the treasurer of state the amount of credit that has been taken against income tax liability since the time of the last certification, for the Iowa fuel tax paid on motor fuel, special fuel and motor fuel used for the purpose of operating aircraft, and the treasurer of state shall transfer the amount of the total credit from the motor fuel tax fund, or in the case of aircraft motor fuel, from the separate fund established by section 324.82, to the general fund of the state. [C75,§422.88; 66GA, ch 67,§41]

Referred to in §324.82

CHAPTER 423

USE TAX

Referred to in §§312.1, 321F.9, 422.45
Refunds to governmental bodies, §422.45

423.1 Definitions.
423.2 Imposition of tax.
423.3 Tax on surplus war material.
423.4 Exemptions.
423.5 Evidence of use.
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423.21 Books—examination.
423.22 Revoking permits.
423.23 Statutes applicable.
423.24 Deposit of revenue.
423.25 Taxation in another state.
423.26 Penalty for false statement.

423.1 Definitions. The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them in this section:

1. *"Use"* means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing, or the sale of that property in the regular course of business. Property used in "processing" within the meaning of this subsection shall mean and include (*a*) any tangible personal property including containers which it is intended shall, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail, (*b*) fuel which is consumed in creating power, heat, or steam for processing or for generating electric current, or (*c*) chem-

icals, solvents, sorbents, or reagents, which are directly used and are consumed, dissipated, or depleted in processing personal property, which is intended to be sold ultimately at retail, and which may not become a component or integral part of the finished product.

Notwithstanding the foregoing provisions of this subsection, the purchase of newsprint and ink delivered after the effective date of this Act* to any person, firm or corporation to be incorporated in or used in the printing of any newspaper, free newspaper or shoppers guide for publication in this state shall be subject to the use tax imposed by this chapter.

*Chapter 1201,§5, Acts 63GA, Second Session

2. *"Purchase"* means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

3. *"Purchase price"* means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise; provided that cash discounts and trade-in allowances taken on sales shall not be included.

4. *"Tangible personal property"* means tangible goods, wares, and merchandise, and gas, electricity, and water when furnished or delivered to consumers or users within this state.

5. *"Retailer"* means and includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter; provided, however, that when in the opinion of the director it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, truckers, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this chapter.

6. *"Retailer maintaining a place of business in this state"* or any like term, shall mean and include any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within this state pursuant to chapter 494.

7. *"Vehicles subject to registration"* means any vehicle subject to registration pursuant to section 321.18.

8. *"Person"* and *"taxpayer"* shall have the same meaning as defined in section 422.42.

9. *"Trailer"* shall mean every trailer, as is now or may be hereafter so defined by the motor vehicle law of this state, which is required to be registered under such motor vehicle law.

10. Definitions contained in section 422.42 shall apply to the provisions of this chapter according to their context.

11. *"Street railways"* shall mean and include urban transportation systems.

12. *"Department"* and *"director"* shall have the same meaning as defined in section 422.3. [C39,§**6943.102**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.1]

Amendment to subsection 1 retroactitve to January 1, 1970, 63GA, ch 1201,§4

See 63GA, ch 193,§3

423.2 Imposition of tax. An excise tax is hereby imposed on the use in this state of tangible personal property purchased for use in this state, at the rate of three percent of the purchase price of such property. Said tax is hereby imposed upon every person using such property within this state until such tax has been paid directly to the county treasurer or department of public safety, to a retailer, or to the department as hereinafter provided. An excise tax is hereby imposed on the use in this state of services enumerated in section 422.43 at the rate of three percent. Said tax shall be applicable where services are rendered, furnished, or performed in this state or where the product or result of such service is used in this state. Such tax is imposed on every person using such services or the product of such services in this state until such user has paid such tax either to an Iowa use tax permit holder or has paid such tax to the department of revenue. [C39,§**6943.103**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.2]

Referred to in §§29C.15, 423.3, 423.6(4)

423.3 Tax on surplus war material. Purchases of tangible personal property made from the government of the United States or any of its agencies by ultimate consumers shall be subject to the tax imposed by section 423.2. Services purchased from the same source or sources shall be subject to service tax imposed by this chapter and apply to the user thereof.

This section shall not apply to purchases made by counties or municipal corporations. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.3]

423.4 Exemptions. The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this chapter:

1. Tangible personal property, the gross receipts from the sale of which are required to be included in the measure of the tax imposed by division IV of chapter 422, and any amendments made or which may hereafter be made thereto. This exemption does not include vehicles subject to registration.

2. All articles of tangible personal property brought into the state of Iowa by a nonresident individual thereof for his or her use or enjoyment while within the state.

3. Services exempt from taxation by provisions of section 422.45.

4. Tangible personal property, the gross receipts from the sale of which are exempted from the retail sales tax by the terms of section 422.45, except subsection 4 and subsection 6 of section 422.45 as it relates to the sale of vehicles subject to registration.

5. Advertisement and promotional material and matter, seed catalogs, envelopes for same, and other similar material temporarily stored in this state which are acquired outside of Iowa and which, subsequent to being brought into this state, are sent outside of Iowa, either singly or physically attached to other tangible personal property sent outside of Iowa.

6. Tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor. [C39,§**6943.104**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.4]

Referred to in §423.9
Tax paid in another state, §423.25

423.5 Evidence of use. For the purpose of the proper administration of this chapter and to prevent evasion of the tax, evidence that tangible personal property was sold by any person for delivery in this state shall be prima-facie evidence that such tangible personal property was sold for use in this state. [C39, §**6943.105**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.5]

423.6 How collected. The tax herein imposed shall be collected in the following manner:

1. The tax upon the use of all vehicles subject to registration shall be collected by the county treasurer who shall retain twenty-five cents from each tax payment collected for use and benefit of the county general fund or department of public safety pursuant to the provisions of section 423.7.

2. The tax upon the use of all tangible personal property other than that enumerated in subsection 1 hereof, which is sold by a retailer maintaining a place of business in this state, or by such other retailer as the director shall authorize pursuant to section 423.10, shall be collected by such retailer and remitted to the department, pursuant to the provisions of sections 423.9 to 423.13.

3. The tax upon the use of all tangible personal property not paid pursuant to subsections 1 and 2 hereof shall be paid to the department directly by any person using such property within this state, pursuant to the provisions of section 423.14.

4. The tax on services imposed in section 423.2 shall be collected, remitted, and paid to the department of revenue of this state in the corresponding manner as use tax on tangible personal property is collected, remitted and paid under provisions of this chapter. [C39, §**6943.106**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.6]

423.7 Vehicles subject to registration. The tax hereby imposed upon the use of vehicles subject to registration shall be paid by the owner thereof to the county treasurer or department of public safety from whom the registration receipt is obtained. No registration receipt for any vehicle subject to registration shall be issued until said tax has been so paid. The county treasurer or department of public safety shall require every applicant for a registration receipt for any vehicle subject to registration to supply such information as he or the director may deem necessary as to the time of purchase, the purchase price, and other information relative to the purchase of said vehicle subject to registration. On or before the tenth day of each month the county treasurer or department of public safety shall remit to the department the amount of the taxes so collected during the preceding month, accompanied by a copy of each registration receipt issued in conjunction with the certificate of title issued for each vehicle subject to registration. [C39,§**6943.107**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.7]

Referred to in §§312.1, 321.20(4), 321.24, 423.6(1), 423.9, 423.24, 423.26
Motor vehicles from other states, §423.25

423.8 Sales tax report — deduction. Motor vehicle or trailer dealers, in making their reports and returns to the department for the purpose of paying the retail sales tax imposed by division IV of chapter 422, shall be permitted to deduct all gross receipts from retail sales of vehicles subject to registration. Gross receipts from sales of vehicles subject to registration are hereby expressly exempted from the tax imposed by said division IV, but, if required by the director, such gross receipts shall be included in the returns made by motor vehicle or trailer dealers under said division IV, and proper deductions taken pursuant to this section. [C39,§**6943.108**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.8]

423.9 Collection by retailer. Every retailer maintaining a place of business in this state and making sales of tangible personal property for use in this state, not exempted under the provisions of section 423.4 nor collectible under the provisions of section 423.7, shall at the time of making such sales, whether within or without the state, collect the tax imposed by this chapter from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the director, if the director shall, by regulation, require such receipt. Each such retailer shall list with the department the name and address of all his agents operating in this state, and the location of any and all his distribution or sales houses or offices or other places of business in this state.

Every person rendering, furnishing, or performing services enumerated in section 422.43, maintaining a place of business in this state shall be subject to the provisions of the preceding paragraph. [C39,§**6943.109**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.9]

Referred to in §§423.6(2), 423.12, 423.13, 423.15

423.10 Foreign retailers. The director may, upon application authorize the collection of the tax herein imposed by any retailer not maintaining a place of business within this state, who, to the satisfaction of the director furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax in such manner, and subject to such regulations and agreements as the director shall prescribe. When so authorized, it shall be the duty of such retailer to collect the tax upon all tangible personal property sold to his knowledge for use within this state, in the same manner and subject to the same requirements as a retailer maintaining a place of business within this state. Such authority and permit may be canceled when, at any time, the director considers the security inadequate, or that such tax can more effectively be collected from the person using such property in this state.

The discretionary power granted therein is extended to apply in the case of persons rendering, furnishing or performing services enumerated in section 422.43. [C39,§**6943.110**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.10]

Referred to in §§423.6(2), 423.12, 423.13, 423.15, 423.22

423.11 Absorbing tax prohibited. It shall be unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by this chapter will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. The director shall have the power to adopt and promulgate rules for adding such tax, or the average equivalent thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling such retailers to add and collect, as far as practicable, the amount of such tax. Any person violating any of the provisions of this section within this state shall be guilty of a misdemeanor and subject to the penalties provided in section 423.20. [C39,§**6943.111**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.11]

Referred to in §423.6(2)

423.12 Tax as debt. The tax herein required to be collected by any retailer pursuant to sections 423.9 or 423.10, and any tax collected by any retailer pursuant to said sections, shall constitute a debt owed by the retailer to this state. [C39,§**6943.112**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.12]

Referred to in §423.6(2)

423.13 Payment to department. Each permit holder required or authorized, pursuant to sections 423.9 or 423.10, to collect the tax herein imposed, shall be required to pay to the department the amount of such tax, on or before the last day of the month next succeeding each quarterly period. At such time, each such retailer shall file with the department a return for the preceding quarterly period in such form as may be prescribed by the director showing the sales price of any or all tangible personal property sold by the retailer during such preceding quarterly period, the use of which is subject to the tax imposed by this chapter, and such other information as the director may deem necessary for the proper administration of this chapter. The return shall be accompanied by a remittance of the amount of such tax, for the period covered by the return. If necessary in order to insure payment to the state of the amount of such tax, the director may in any or all cases require returns and payments of such amount to be made for other than quarterly periods. The director may, upon request and a proper showing of the necessity therefor, grant an extension of time not to exceed thirty days for making any return and payment. Returns shall be signed by the retailer or his duly authorized agent, and must be certified by him to be correct. [C39,§**6943.113**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.13]

Referred to in §§423.6(2), 423.14

423.14 Liability of user. Any person who uses any property or services enumerated in section 422.43 upon which the tax herein imposed has not been paid, either to the county treasurer or to a retailer or direct to the department as herein provided, shall be liable therefor, and shall on or before the last day of the month next succeeding each quarterly period pay the tax herein imposed upon all such property used by him during the preceding quarterly period in such manner and accompanied by such returns as the director shall prescribe. All of the provisions of section 423.13 with reference to such returns and payments shall be applicable to the returns and payments herein required. [C39,§**6943.114**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.14]

Referred to in §423.6(3)

423.15 Bond to secure payment. The director may, when necessary and advisable in order to secure the collection of the tax levied under this chapter, authorize any person subject to such tax, and any permit holder required or authorized to collect such tax pursuant to the provisions of sections 423.9 and 423.10, to file with the department a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the director may fix, to secure the payment of any tax, amount, or penalties due or which may become due from such person. In lieu of such bond, securities approved by the director, in such amount as the director may prescribe, may be deposited with the department, which securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor thereof, if it becomes necessary to do so in order to recover any tax or penalties

due. Upon any such sale, the surplus, if any, above the amounts due under this chapter shall be returned to the person who deposited the securities. [C39,§**6943.115**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.15].

423.16 Determination by department. If any return required by this chapter is not filed, or if any return when filed is incorrect or insufficient, and the maker or person from whom it is due fails to file a corrected or sufficient return within twenty days after the same is required by notice from the department, the department shall have the same power to determine the amount due, as is vested in the department by sections 422.54, 422.55, and 422.57, subject to all of the provisions, and restrictions, and rights to seek judicial review provided in said sections. Where a return required by this chapter has been filed, the five-year period of limitation specified in section 422.54, subsection 1, shall apply to the making of a determination by the department of the amount of tax due hereunder and to the giving of notice to the taxpayer of such determination. [C39,§**6943.116**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.16]

423.17 Lien of tax — penalties. All of the provisions of sections 422.56 and 422.57 shall apply in respect to the procedure, taxes, amounts required to be paid, or penalties imposed, as provided by this chapter. [C39, §**6943.117**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §423.17]

423.18 Failure to pay—penalties. If any person fails to file a return with the department of revenue on or before the due date, unless it is shown that such failure was due to reasonable cause, there shall be added to the amount required to be shown as tax on the return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which such failure continues, not exceeding twenty-five percent in the aggregate. If any person fails to remit the tax due with the filing of the return on or before the due date, or fails to pay any amount of any tax required to be shown on the return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due, there shall be added to the tax a penalty of five percent on such tax due, unless it is shown that such failure was due to reasonable cause. When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file shall be in lieu of the penalty provision for failure to pay the tax due or required on the return. The taxpayer shall also pay interest on the tax or additional tax at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. Such penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this chapter. Unpaid penalty and interest may be enforced in the same manner as the tax imposed by this chapter. The certificate of the director to the effect that a tax or amount required to be paid by this chapter has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima-facie evidence thereof. [C39,§**6943.118**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.18]

423.19 Fraud. Any person required to make, render, sign, or certify any return or supplementary return, who makes any false or fraudulent return with intent to defeat or evade the tax, or amount required to be paid by this chapter, shall be guilty of a felony and shall, for each such offense, be fined not less than five hundred dollars and not more than five thousand dollars, or be imprisoned not exceeding one year, or be subject to both such fine and imprisonment, in the discretion of the court. [C39,§**6943.119**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.19]

423.20 Penalty. Any retailer or other person failing or refusing to furnish any return herein required to be made, or failing or refusing to furnish a supplemental return or other data required by the director, shall be guilty of a misdemeanor and subject to a fine of not to exceed one hundred dollars for each such offense, or to imprisonment for not to exceed thirty days, or to both such fine and imprisonment, in the discretion of the court. [C39,§**6943.120**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §423.20]

Referred to in §423.11

423.21 Books—examination. Every retailer required or authorized to collect taxes imposed by this chapter and every person using in this state tangible personal property shall keep such records, receipts, invoices, and other pertinent papers as the director shall require, in such form as the director shall require. The director or any duly authorized agent of the department may examine the books, papers, records, and equipment of any person either selling tangible personal property or liable for the tax imposed by this chapter, and investigate the character of the business of any such person in order to verify the accuracy of any return made, or if no return was made by such person, ascertain and determine the amount due under the provisions of this chapter. Any such books, papers, and records shall be made available within this state for such examination upon reasonable notice when the director shall deem it advisable and shall so order. The preceding requirements shall likewise apply to users and persons rendering, furnishing, or performing service enumerated in section 422.43. [C39,§**6943.121**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.21]

423.22 Revoking permits. Whenever any retailer maintaining a place of business in this state, or authorized to collect the tax herein imposed pursuant to section 423.10, fails to comply with any of the provisions of this chapter or any orders or rules prescribed and adopted under this chapter, the director may, upon notice and hearing as hereinafter provided, by order revoke the permit, if any, issued to such retailer under section 422.53, or if such retailer is a corporation authorized to do business in this state under chapter 494, may certify to the secretary of state a copy of an order finding that such retailer has failed to comply with certain specified provisions, orders or rules. The secretary of state shall, upon receipt of such certified copy, revoke the permit authorizing said corporation to do business in this state, and shall issue a new permit only when such corporation shall have obtained from the director an order finding that such corporation has complied with its obligations under this chapter. No order authorized in this section shall be made until the retailer is given an opportunity to be heard and to show cause why such order should not be made, and he shall be given ten days' notice of the time, place, and purpose of such hearing. The director may issue a new permit pursuant to section 422.53 after such revocation. The preceding provision shall apply to users and persons supplying services enumerated in section 422.43. [C39,§**6943.122**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§423.22]

423.23 Statutes applicable. The director is hereby charged with the enforcement of the provisions of this chapter, and the director and employees of the department shall administer this chapter and the taxes imposed by this chapter in the same manner and subject to all of the provisions of, and all of the powers, duties, authority, and restrictions contained in section 422.30 and sections 422.67 to 422.75 or any amendments which may hereafter be made thereto, all of which sections are by this reference incorporated herein. [C39, §**6943.123**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §423.23]

423.24 Deposit of revenue. All revenue arising under the operation of this chapter, derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment, as same may be collected as provided by section 423.7 shall be credited to the road use tax fund. All other revenue arising under the operation of this chapter shall be credited to the general fund of the state. [C39, §**6943.124**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §423.24]

Road use tax fund, §312.1

423.25 Taxation in another state. If any person who causes tangible personal property to be brought into this state has already paid a tax in another state in respect to the sale or use of such property, or an occupation tax in respect thereto, in an amount less than the tax imposed by this title, the provisions of this title shall apply, but at a rate measured by the difference only between the rate herein fixed and the rate by which the previous tax on the sale or use, or the occupation tax, was computed. If such tax imposed and paid in such other state is equal to or more than the tax imposed by this title, then no tax shall be due in this state on such personal property. [C39, §**6943.125**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §423.25]

Constitutionality, 47GA, ch 198,§27

423.26 Penalty for false statement. Any person who willfully makes any false statement in regard to the purchase price of a vehicle subject to taxation under section 423.7 is guilty of a misdemeanor. [C73, 75,§423.26]

CHAPTER 423A

DISCLOSURE OF INFORMATION IN PREPARATION OF TAX RETURNS

423A.1 Definitions.
423A.2 Disclosure prohibited.
423A.3 Engaged in business.
423A.4 Penalty.

423A.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Person"* means any person, firm, corporation, association, partnership or an employee or agent of one of these.

2. *"Tax return"* means any federal, state, or local form required to be filled out, by or for a taxpayer, incident to the collection or refund of a tax.

3. *"Information"* for the purpose of this chapter shall include but not be limited to the name, address and statistical data of the taxpayer. [C73, 75,§423A.1]

423A.2 Disclosure prohibited. A person who obtains any information in the course of or arising out of the business of preparing or assisting in the preparation of a tax return of another person, shall not disclose any of the information obtained unless the disclosure is within any of the following:

1. Consented to in writing by the taxpayer in a separate document.

2. Expressly authorized by state or federal law.

3. Necessary to the preparation of the return.

4. Pursuant to court order. [C73, 75,§423A.2]

423A.3 Engaged in business. A person is engaged in the business of preparing income tax returns or assisting in preparing of returns if he does any of the following:

1. Advertises, or gives publicity to the effect that he prepares or assists others in the preparation of tax returns.

2. Prepares or assists others in the preparation of tax returns for compensation. [C73, 75,§423A.3]

423A.4 Penalty. A person who violates the provisions of this chapter shall upon conviction be punished by imprisonment in the county jail for not more than one year or be fined not more than ten thousand dollars or punished by both such imprisonment and fine. [C73, 75,§423A.4]

CHAPTER 424

CHAIN STORE TAX

424.1 Title.
424.2 Definitions.
424.3 Exemptions.
424.4 Tax imposed.
424.5 Failure to file return—incorrect return.
424.6 Judicial review.
424.7 Lien of tax—collection—action authorized.
424.8 Service of notices.
424.9 Limitation on actions.
424.10 Director to enforce chapter.
424.11 Examination of books.
424.12 Payments.
424.13 Penalties—offenses.
424.14 As occupation tax.
424.15 Partial invalidity—effect.
424.16 Nonapplicability of chapter.

424.1 Title. This chapter shall be known as the "Chain Store Tax Act of 1935". [C35,§6943-g1; C39,§**6943.126**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§424.1]

424.2 Definitions. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

1. *"Department"* means department of revenue.

2. *"Director"* means director of revenue.

3. *"Person"* includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit, and the plural as well as the singular thereof, and all firms however organized and whatever be the plan of operation.

4. *"Sale"* means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

5. *"Retail sale"* or *"sale at retail"* means the sale to a consumer or to any person for any purpose, other than for resale, of tangible personal property including goods, wares, and merchandise.

6. *"Business"* includes any merchandising activity engaged in by any person or caused to be engaged in by him with the object of gain, profit, or advantage, either direct or indirect.

7. *"Store"* means any store or stores, or any mercantile or other establishment in which tangible goods, wares, or merchandise of any kind are sold or kept for sale at retail.

8. *"Conducting a business by a system of chain stores"* when used in this chapter shall be construed to mean and include every person, as defined in this chapter, in the business of owning, operating, or maintaining, directly or indirectly, under the same general management, supervision, control, or ownership in this state, or in this state and any other state, two or more stores, where goods, wares, articles, commodities, or merchandise of any kind whatsoever are sold or offered for sale at retail and where the person operating such store or stores receives the retail profit from the commodities sold therein. Two or more stores shall, for the purpose of this chapter, be treated as being under a single or common ownership, control, supervision, or management, if directly or indirectly owned or controlled by a single person or any group of persons, or by a common interest in such stores, or if any part of the gross revenues, net revenues, or profits from such store shall, directly or indirectly, be required to be immediately or ultimately made available for the beneficial uses, or shall directly or indirectly inure to the immediate or ultimate benefit, of any single person or group of persons having a common interest therein. Not more than one of said stores need be located in this state, if one or more of said stores of said person is located in any other state. The fact that two or more retail stores are ostensibly owned and operated by different persons, shall not defeat the application of this chapter where such stores are under the same general management, supervision, or ownership. Lease and agency, and lease and ownership agreements or contracts, or operation under a common name shall, unless shown to the contrary, be

deemed to constitute operation under the same general management, supervision, or ownership. Provided, however, that leased or licensed departments, located in a store under a contract obligating such departments to pay to the store a fixed rental or a percentage of the gross receipts, shall not be deemed to be owned, operated, supervised, or managed by the store in which such departments are located.

9. *"Gross receipts"* when used in this chapter shall be construed to mean and include the total amount of all sales at retail valued in money, whether received in money or otherwise, provided, however, that discounts for any purpose allowed or taken on sales shall not be included, nor shall the sale price of property returned by customers when the full sale price thereof is refunded either by cash or in credit be included. Provided, however, that on sales at retail valued in money when such sales are made under a conditional sales contract, or under other forms of sale wherein the payment of the principal sum thereunder be extended over a period longer than sixty days, that only such portion of the sale amount thereof shall be accounted for, for the purpose of the imposition of the tax in this chapter as has actually been received in cash by the retailer during the taxable year as herein defined. Gross receipts as interpreted under this section shall not include any federal or state sales tax or any special taxes now or hereafter imposed by the state or federal government which special tax or taxes are added to or included in the retail selling price of any merchandise sold under this chapter. Gross receipts shall not include the consideration received by the vendor from the purchaser residing without this state unless the purchaser is present within this state at the time of such sale or purchase.

10. *"Taxable year"* means the year commencing on July 1 and ending on June 30 of each calendar year. [C35,§6943-g2; C39,**§6943.127**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§424.2]

424.3 Exemptions. There are specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it the following:

1. Co-operative associations not organized for profit under the laws of this state in good faith and not for the purpose or with the intent of evading the tax hereby imposed.

2. Persons exclusively engaged in gardening or farming, selling in this state products of their own raising.

3. Persons selling at retail one or more of the following products: Coal, ice, lumber, grain, feed, agricultural seeds, (as defined in section 199.1), fertilizer, twine, building materials (not including builders and general hardware, glass, and paints) if the total retail sales of any such person or persons of such products within the state shall, during such taxable year, exceed ninety-five percent of the total retail sales of all sources within the state of any such person or persons.

4. Liquor stores, established and operated by the state liquor control commission.

5. Hotels or rooming houses, including dining rooms or cafes operated in connection therewith and by the same management. [C35, §6943-g3; C39,**§6943.128**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§424.3]

424.4 Tax imposed. There is hereby imposed upon every person within the state of Iowa engaged in conducting a business by a system of chain stores from any of which stores are sold or otherwise disposed of at retail, tangible personal property such as goods, wares, and merchandise an annual occupation tax for each taxable year during which year or any part thereof, such person is so engaged, as follows to wit:

1. A specific amount on each person engaged in conducting a business by a system of chain stores to be determined as follows:

a. Five dollars for each store in excess of one and not in excess of ten if said business is conducted at not in excess of ten stores within this state under a single or common ownership, supervision, or management.

b. Fifteen dollars for each store in excess of ten and not in excess of twenty if said business is conducted at in excess of ten but not in excess of twenty stores within this state under a single or common ownership, supervision, or management.

c. Thirty-five dollars for each store in excess of twenty and not in excess of thirty if said business is conducted at in excess of twenty but not in excess of thirty stores within this state under a single or common ownership, supervision, or management.

d. Sixty-five dollars for each store in excess of thirty and not in excess of forty if said business is conducted at in excess of thirty but not in excess of forty stores within this state under a single or common ownership, supervision, or management.

e. One hundred five dollars for each store in excess of forty and not in excess of fifty if said business is conducted at in excess of forty and not in excess of fifty stores within the state under a single or common ownership, supervision, or management.

f. One hundred fifty-five dollars for each store in excess of fifty if said business is conducted at in excess of fifty stores within this state under a single or common ownership, supervision, or management.

2. This subsection 2 (formerly subsection *"b"*) invalidated by Supreme Court, 222 Iowa 908; see also 299 U. S. 32.

The tax imposed by subsection 1 hereof shall be due and payable on July 1 of each year; the tax imposed hereby as far as measured by subsection 1 hereof, shall be computed on the basis of the number of stores operated by any person under a system of chain stores in this state as of July 1 of each taxable year. [C35, §6943-g4; C39,**§6943.129**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§424.4]

424.5 Failure to file return—incorrect return. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the same is required by notice from the department, the department shall determine the amount of tax due from such information as the department may be able to obtain and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by him, his stock on hand, or other factors. The director shall give notice of such determination to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within thirty days after the giving of notice of such determination, apply to the director for a hearing or unless the director of his own motion shall reduce the same. At such hearing evidence may be offered to support such determination or to prove that it is correct. After such hearing the director shall give notice of the decision to the person liable for the tax. [C35, §6943-g6; C39,§**6943.130**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§424.5]

424.6 Judicial review.

1. Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act.

2. The petitioner shall file with the clerk a bond for the use of the respondent and the state with sureties approved by such clerk, in penalty at least double the amount of tax from which review is sought, and in no case shall the bond be less than fifty dollars and conditioned that the petitioner shall pay any amount found to be due the respondent or the state and will perform the orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court of this state irrespective of the amount involved. [C35,§6943-g7; C39,§**6943.131**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§424.6]

Service of original notice, R.C.P. 56 (*a*)

424.7 Lien of tax—collection—action authorized. Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the court costs that may accrue in the collection thereof, shall be a lien in favor of the state of Iowa upon all property and rights to property, whether real or personal, belonging to said taxpayer.

The lien aforesaid shall attach at the time the tax becomes due and payable and shall continue until the liability for such amount is satisfied.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the director shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in his office a book to be known as "index of chain store tax liens" so ruled as to show in appropriate columns the following data, under the names of taxpayers, arranged alphabetically:

1. The name of the taxpayer.
2. The name "State of Iowa" as claimant.
3. Time notice of lien was received.
4. Date of notice.
5. Amount of lien when due.
6. When satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall forthwith index said notice in said index book and shall forthwith record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof.

The department shall pay a recording fee as provided in section 335.14 for the recording of such lien, or for the satisfaction thereof.

Upon the payment of a tax as to which the director has filed notice with a county recorder, the director shall forthwith file with said recorder a satisfaction of said tax and the recorder shall enter said satisfaction on the notice on file in his office and indicate said fact on the index aforesaid.

Upon any tax herein provided for becoming delinquent the director may notify the county treasurer of any county in which the person owing the tax owns real or personal property of the amount of such delinquent tax with interest and penalties. Upon receiving such notification the treasurer shall spread the amount of such tax with interest and penalties upon the records in his office against the person owing the same and shall proceed to collect such amount in the manner provided for the collection of delinquent taxes under chapters 445, 446, 447, 448.

The amount realized by the method provided in this paragraph shall not discharge the lien of such tax unless the full amount owing is received. Any amount received by the treasurer shall be remitted by him to the department.

The attorney general shall, upon the request of the director, bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any taxes or penalties, and in such action he shall have the assistance of the county attorney of the county in which the action is pending.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the director or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law. [C35,§6943-g8; C39,§**6943.132**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§424.7]

424.8 Service of notices. Any notice, except notice of appeal, authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended by certified mail, addressed to such person at the address given in the last return filed by him pursuant to the provisions of this chapter, or if no return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of registration and posting of such notice. [C35,§6943-g9; C39,§**6943.133**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§424.8]

424.9 Limitation on actions. The provisions of the Code relative to the limitation of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty provided by this chapter. [C35,§6943-g10; C39,§**6943.134**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§424.9]

424.10 Director to enforce chapter. The director shall administer and enforce the assessment of the tax imposed by this chapter. The director may make and publish such rules not inconsistent with this chapter, and shall distribute the same throughout the state and furnish them on application, but failure to receive or secure them shall not relieve any person from the obligation of making any return required of him by this chapter. [C35,§6943-g11; C39,§**6943.135**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §424.10]

424.11 Examination of books. For the purpose of determining the correctness of any return, or of determining whether or not any person should have made a return or paid tax hereunder, the director may examine or cause to be examined any books, papers, records, or memoranda which are the property of or in the possession of the taxpayer or any other person. The director may also require the attendance of any taxpayer or other person having knowledge, or information relevant to such determinations aforementioned, compel the production of books, papers, records, or memoranda by persons so required to attend, take testimony on matters material to such determinations, and administer oaths or affirmations in any such connection. The director may require any owner, manager, or employee of any store in the state to file with the department, a statement under oath, showing the ownership, management, and control of such store for the purpose of determining whether or not such store is subject to the tax hereby imposed. Such statement shall be in such form as the director shall prescribe. [C35,§6943-g12; C39,§**6943.136**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§424.11]

424.12 Payments. All fees, taxes, interest, and penalties imposed under this chapter must be paid to the department in the form of remittances payable to the treasurer of the state, and the department shall transmit each payment daily to the state treasurer, to be deposited in the state treasury to the credit of the general fund. If it shall appear that an overpayment has been made or shall have been made, then, all of the provisions, power, duties, authority and restrictions contained in sections 422.73 and 422.74 shall apply hereto. [C35, §6943-g14; C39,§**6943.137**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§424.12]

424.13 Penalties—offenses.

1. If any person fails to file a return with the department of revenue on or before the due time, unless it is shown that such failure was due to reasonable cause, there shall be added to the amount required to be shown as tax on the return five percent of the amount of tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of a month during which such failure continues, not exceeding twenty-five percent in the aggregate. If any person fails to remit the tax due with the filing of the return on the due date, or fails to pay any amount in respect of any tax required to be shown on the return, there shall be added to the tax a penalty of five percent on such tax due, unless it is shown that such failure was due to reasonable cause. When penalties are applicable for failure to file a return and failure to pay the tax due or required on the return, the penalty provision for failure to file shall be in lieu of the penalty provision for failure to pay the tax due or required on the return. The taxpayer shall also pay interest on the tax or additional tax at the rate of three-fourths of one percent per month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. Such penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed.

2. Any person required to make, render, sign, or verify any return or supplementary return, who makes any false or fraudulent return with the intent to defeat or evade tne assessment required by law to be made, shall be guilty of a felony and shall, for each such offense, be fined not less than five hundred dollars, nor not more than five thousand dollars, or be imprisoned not exceeding one year, or be subject to both fine and imprisonment, in the discretion of the court.

3. The certificate of the director to the effect that the tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima-facie evidence

thereof. [C35,§6943-g15; C39,§6943.138; C46, 50, 54, 58, 62, 66, 71, 73, 75,§424.13]

424.14 As occupation tax. The tax levied and collected under this chapter shall not be affected or be in lieu of the Iowa retail sales tax or any other tax levied under any other Act but the taxes levied and collected hereunder are levied and collected as an occupation tax. [C35,§6943-g16; C39,§6943.139; C46, 50, 54, 58, 62, 66, 71, 73, 75,§424.14]

424.15 Partial invalidity—effect. If any section, provision or clause of this chapter should be declared invalid, such invalidity shall not be construed to affect the portions of this chapter not so held invalid. [C35,§6943-g17; C39, §6943.140; C46, 50, 54, 58, 62, 66, 71, 73, 75, §424.15]

424.16 Nonapplicability of chapter. This chapter shall not apply to any stores owned or operated by any person, firm, or corporation when all of said stores so owned or operated are located in unincorporated villages and no store is more than eight miles distant from every other store so owned or operated. [C35, §6943-g18; C39,§6943.141; C46, 50, 54, 58, 62, 66, 71, 73, 75,§424.16]

Constitutionality, 46GA, ch 75,§19
Omnibus repeal, 46GA, ch 75,§20

CHAPTER 425

HOMESTEAD TAX CREDIT

Referred to in §426.3

Claims for property taxes paid and rent effective January 1, 1976; 66GA, ch 213,§5

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PROPERTY TAX RELIEF FOR ELDERLY AND DISABLED

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425.38 Credit for fiscal year ending in 1975.
425.39 Fund created—appropriation.

425.1 Ratio and manner of distribution.

1. There is hereby appropriated annually from the general fund of the state to the department of revenue to be credited to the homestead credit fund, which fund is hereby created, an amount sufficient to carry out the provisions of this chapter.

The director of revenue shall requisition the state comptroller to issue his warrants on the homestead credit fund payable to the county treasurers of the several counties of the state under the provisions of this chapter.

2. The homestead credit fund shall be apportioned each year as hereinafter provided so as to give a credit against the tax on each eligible homestead in the state, as defined herein; the amount of such credit to be in the same proportion that the assessed valuation of each eligible homestead in the state in an amount not to exceed nine thousand two hundred sixty dollars* bears to the total assessed valuation of all eligible homesteads in the state in an amount not to exceed nine thousand two hundred sixty dollars* for each homestead.

3. The revenue distributable from the homestead credit fund, as provided for in subsection 1 hereof, shall be allocated every six months to the several counties of the state in the same proportion that the assessed valuation of all eligible homesteads in each county in an amount not to exceed nine thousand two hundred sixty dollars* for each homestead, bears to the total assessed valuation of all eligible homesteads in the state in an amount not to exceed nine thousand two hundred sixty dollars* for each homestead. Every six months the department of revenue shall

certify and remit to the county treasurer of each county in the state the total amount of money which has been apportioned or is then apportionable to that county.

4. Annually the department of revenue shall estimate the credit not to exceed six dollars and seventy-five cents per thousand dollars* of assessed value to be given to each dollar of eligible homestead valuation based upon the estimated revenue that may be distributable from the homestead credit fund for the ensuing year, and shall certify to the county auditor of each county such credit and the amount in dollars thereof. Each county auditor shall then enter such credit against the tax levied on each eligible homestead in each county payable during the ensuing year, designating on the tax lists such credit as being from the homestead credit fund, and credit shall then be given to the several taxing districts in which such eligible homesteads are located in an amount equal to the credits allowed on the taxes of such homesteads. The amount of said credits shall be apportioned by each county treasurer to the several taxing districts as provided by law, in the same manner as though the amount of the credit had been paid by the owners of said homesteads; provided, however, that the several taxing districts shall not be permitted to draw the funds so credited until after the semiannual allocations have been received by the county treasurer, as provided in this chapter. Each county treasurer shall show on each tax receipt the amount of credit received from the homestead credit fund. [C35,§§6943-f63,-f64; C39,§§**6943.100, 6943.142**; C46,§§422.69, 425.1; C50, 54, 58, 62, 66, 71, 73, 75,§425.1; 66GA, ch 1067,§§20–22]

Referred to in 425.16, 425.17, 425.23, 425.38

See 66GA, ch 1067 for temporary provisions relating to 1975, 1976, and 1977 claims

*Actual levy on $4,500 for 1975 claims, 66GA, ch 1067, §20–22

For homestead credit in special charter cities, see 66GA, ch 1197

425.2 Qualifying for credit. Any person applying for homestead tax credit shall each year on or before July 1 deliver to the assessor, on forms furnished by the assessor, a verified statement and designation of homestead as claimed. The assessor shall return said statement and designation on July 2 of each year to the county auditor with a recommendation for allowance or disallowance endorsed thereon. In case the owner of the homestead is in active service in the armed forces of this state or of the United States, or is sixty-five years of age or older, or is disabled, such statement and designation may be signed and delivered by any member of the owner's family. The commissioner of social services or his designee may make application for the benefits of this chapter as the agent for and on behalf of persons receiving assistance under chapter 249.

Any person sixty-five years of age or older or any person who is disabled may request from the appropriate assessor forms for filing for homestead tax credit. Any person sixty-five years of age or older or who is disabled may complete the form and return it to the appropriate assessor, by ordinary mail. [C39, §**6943.143**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §425.2]

Referred to in §425.11(2)

425.3 Verification by board. The county board of supervisors in each county shall forthwith examine all such claims, delivered to the assessors as herein provided, and shall either allow or disallow said claims, and in the event of disallowance notice thereof shall be sent by certified mail to claimant at his last known address. [C39,§**6943.144**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§425.3]

425.4 Certification to treasurer. All claims which have been allowed by the board of supervisors shall be certified on or before August 1, in each year, by the county auditor to the county treasurer, which certificates shall list the total amount of dollars, listed by taxing district in the county, due for homestead tax credits claimed and allowed. The county treasurer shall forthwith certify to the department of revenue the total amount of dollars, listed by taxing district in the county, due for homestead tax credits claimed and allowed. [C39,§**6943.145**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§425.4]

425.5 Correcting listing. If the assessor who last listed and valued a claimed eligible homestead did not, in the description and valuation thereof, comply with the provisions of section 428.7, he shall, if still in office, on the written request of such claimant and without expense to the claimant or to the county, correct his listing and valuations of such claimed homestead and contiguous real property originally listed and valued by him, and file such corrected listing and valuations with the county auditor, who forthwith shall certify the same to the county treasurer, and said county treasurer shall so correct his tax books; provided, that if the assessor who last listed and valued such property is not still in office, the assessor in office shall, on such written request and at the expense of the county, so correct such listing and valuations of said homestead and said contiguous real property. [C39,§**6943.146**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§425.5]

425.6 Waiver by neglect. If any person fails to make claim for the credits provided for under this chapter as herein required, he shall be deemed to have waived the homestead credit for the year in which he failed to make claim. [C39,§**6943.147**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§425.6]

425.7 Appeals permitted.

1. Any person whose claim is denied under the provisions of this chapter may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated by giving written notice of such appeal to the county audi-

tor of said county within twenty days from the date of mailing of notice of such action by the board of supervisors.

2. In the event any claim under this chapter is allowed, any owner of an eligible homestead may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated, by giving written notice of such appeal to the county auditor of said county and such notice to the owner of said claimed homestead as a judge of the district court shall direct.

3. Should the director of revenue determine, upon investigation, that any claim for homestead credit has been allowed by any board of supervisors which is not justifiable under the law and not substantiated by proper facts, the director may, at any time within twenty-four months from July 1 of the year in which the claim is filed, set aside such allowance. Notice of such disallowance shall be given to the county auditor of the county in which such claim has been improperly granted and a written notice of such disallowance shall also be addressed to the claimant at his last known address. Such claimant, or the board of supervisors, may seek judicial review of the action of the director of revenue in accordance with the terms of the Iowa administrative procedure Act. In any case where a claim is so disallowed by the director of revenue and no petition for judicial review is filed with respect to such disallowance, any amounts of credits allowed and paid from the homestead credit fund shall become a lien upon the property on which said credit was originally granted, if still in the hands of the claimant, and not in the hands of a bona fide purchaser, and any amount so erroneously paid shall be collected by the county treasurer in the same manner as other taxes and such collections shall be returned to the department of revenue and credited to the homestead credit fund. The director of revenue shall also have the authority to institute legal proceedings against a homestead credit claimant for the collection of all payments made on such disallowed credits. [C39,§**6943.148**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§425.7; 66GA, ch 212,§1]

425.8 Forms—rules. The director of revenue shall prescribe the form for the making of verified statement and designation of homestead, and the form for the supporting affidavits required herein, and such other forms as may be necessary for the proper administration of this chapter. As soon as practicable after the effective date of this chapter, and from time to time thereafter as necessary the department of revenue shall forward to the county auditors of the several counties in the state such prescribed sample forms, and the county auditors shall furnish blank forms prepared in accordance therewith with the assessment rolls, books, and supplies delivered to the assessors.

The director of revenue may prescribe rules, not inconsistent with the provisions of this chapter, necessary to carry out and effectuate its purposes. [C39,§**6943.149**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§425.8]

425.9 Credits in excess of tax — appeals — refunds. If the amount of credit apportioned to any homestead under the provisions of this chapter in any year shall exceed the total tax, exclusive of any special assessments levied against said homestead, then such excess shall be remitted by the county treasurer to the department of revenue to be redeposited in the homestead credit fund and be reallocated the following year by the department as provided hereunder.

In the event any claim for credit made hereunder has been denied by the board of supervisors, and such action is subsequently reversed on appeal, the same credit shall be allowed on the assessed valuation, not to exceed nine thousand two hundred sixty dollars in amount, of the homestead involved in said appeal, as was allowed on other homestead valuations for the year or years in question, and the director of revenue, the county auditor, and the county treasurer are hereby authorized and directed to make such credit and to change their books and records accordingly.

In the event the appealing taxpayer has paid one or both of the installments of the tax payable in the year or years in question on such homestead valuation, remittance shall be made to such taxpayer of the amount of such credit.

The amount of such credit shall be allocated and paid from the surplus redeposited in the homestead credit fund provided for in the first paragraph of this section. [C39,§**6943.150**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§425.9]

425.10 Reversal of allowed claim. In the event any claim is allowed, and subsequently reversed on appeal, any credit made thereunder shall be void, and the amount of such credit shall be charged against the property in question, and the director of revenue, the county auditor, and the county treasurer are authorized and directed to correct their books and records accordingly. The amount of such erroneous credit, when collected, shall be returned by the county treasurer to the homestead credit fund to be reallocated the following year as provided herein. [C39,§**6943.151**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§425.10]

425.11 Definitions. For the purpose of this chapter and wherever used in this chapter:

1. The word, *"homestead"*, shall have the following meaning:

a. The homestead must embrace the dwelling house in which the owner is living at the time of filing the application, except as herein provided, and said application must contain an affidavit of his intention to occupy said dwelling house, in good faith, as a home for six months or more in the year for which the credit is claimed.

When any person is inducted into active service under the Selective Training and Service Act of the United States or whose voluntary entry into active service results in a credit on the quota of persons required for service under the Selective Training and Service Act, or who, being a member of any component part of the military, naval, or air forces or nurse corps of this state or nation, is called or ordered into active service, such person shall be considered as occupying or living on the homestead during such service and, where equitable or legal title of the homestead is in the spouse of the person who is a member of or is inducted into the armed services of the United States, the spouse shall be considered as occupying or living on the homestead during such service.

When any person is confined in a nursing home, extended-care facility, or hospital, such person shall be considered as occupying or living on a homestead where such person is the owner of such homestead and such person maintains such homestead and does not lease, rent, or otherwise receive profits from other persons for the use thereof.

b. It may contain one or more contiguous lots or tracts of land with the buildings or other appurtenances thereon habitually, and in good faith, used as a part of the homestead.

c. If within a city, it must not exceed one-half acre in extent; if, however, its assessed valuation is less than nine thousand two hundred sixty dollars, the land area may be enlarged until its assessed valuation reaches that amount.

d. If outside of a city, it must not contain more than forty acres.

e. It must not embrace more than one dwelling house, but where a homestead outside of a city has more than one dwelling house situated thereon, the credit provided for in this chapter shall apply to forty acres, the home and buildings used by the owner, but shall not apply to any other dwelling house and buildings appurtenant thereto situated upon said forty acres.

f. The words *"dwelling house"* shall embrace any building occupied wholly or in part by the claimant as a home.

2. The word, *"owner"*, shall mean the person who holds the fee simple title to the homestead, and in addition shall mean the person occupying as a surviving spouse or the person occupying under a contract of purchase which contract has been recorded in the office of the county recorder of the county in which the property is located, or the person occupying the homestead under devise or by operation of the inheritance laws where the whole interest passes or where the divided interest is shared only by persons related or formerly related to each other by blood, marriage or adoption, or the person occupying the homestead under a deed which conveys a divided interest where the divided interest is shared only by persons related or formerly related to each other by blood, marriage or adoption. For the purpose of this chapter the word "owner" shall be construed to mean a bona fide owner and not one for the purpose only of availing himself of the benefits of this chapter. In order to qualify for the homestead tax credit, evidence of ownership shall be on file in the office of the clerk of the district court or recorded in the office of the county recorder at the time the owner files with the assessor a verified statement of the homestead claimed by him as provided in section 425.2.

3. The words *"assessed valuation"* shall mean the taxable valuation of the homestead as fixed by the assessor, or by the board of review, under the provisions of section 441.21, without deducting therefrom the exemptions authorized in section 427.3.

Where not in conflict with the terms of the definitions above set out, the provisions of chapter 561 shall control. [C39,§**6943.152**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§425.11]

See §441.10

425.12 Indian land. Each forty acres of land, or fraction thereof, occupied by a member or members of the Sac and Fox Indians in Tama county, which land is held in trust by the secretary of the interior of the United States for said Indians, shall be given a homestead tax credit within the meaning and under the provisions of this chapter. Application for such homestead tax credit shall be made to the county auditor of Tama county and may be made by a representative of the tribal council. [C39,§**6943.153**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§425.12]

425.13 Conspiracy to defraud. If any two or more persons conspire and confederate together with fraudulent intent to obtain the credit provided for under the terms of this chapter by making a false deed, or a false contract of purchase, they are guilty of a conspiracy and every person who is convicted of such a conspiracy shall be imprisoned in the county jail for a period not to exceed one year, or shall be fined in a sum not to exceed one thousand dollars, or shall be imprisoned in the penitentiary not more than three years. [C39, §**6943.154**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §425.13]

425.14 False affidavits. Any person making a false claim or affidavit for the purpose of securing a homestead tax credit, or for the purpose of aiding another to secure such homestead tax credit, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail not more than thirty days, or by both such fine and imprisonment. [C39,§**6943.155**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§425.14]

Constitutionality, 47GA, ch 195,§23

425.15 Disabled veteran tax credit. In the event the owner of the homestead, allowed a credit under this chapter, is a veteran of any

of the military forces of the United States who acquired the homestead under the provisions of the United States Code, title 38, chapter 21, sections 801 and 802, the credit allowed on said homestead from the homestead credit fund herein provided shall be the entire amount of the tax levied on said homestead. The credit herein allowed shall be continued to the estate of such veteran who is deceased or the surviving spouse and any child, as defined in section 234.1 who are the beneficiaries thereof so long as the surviving spouse remains unmarried. The provisions of this section shall not be applicable to the holder of title to any such homestead whose annual income, together with that of his spouse, if any, for the last preceding twelve-month income tax accounting period exceeds five thousand dollars. For the purpose of this section "income" means taxable income for federal income tax purposes plus income from securities of state and other political subdivisions exempt from federal income tax. Any veteran or his beneficiary who elects to secure the credit provided in this section shall not be eligible for any other real property tax exemption provided by law for veterans of military service. [C71, 73, 75,§425.15]

PROPERTY TAX RELIEF FOR ELDERLY AND DISABLED

425.16 Additional tax credit. In addition to the homestead tax credit allowed under section 425.1, subsections 1 to 4, persons who own or rent their homesteads and who meet the qualifications provided in this division are eligible for an extraordinary property tax reimbursement payable in September of any year. [C75,§425.16]

425.17 Definitions. As used in this division, unless the context otherwise requires:

1. *"Income"* means the sum of Iowa net income as defined in section 422.7, plus all of the following to the extent not already included in Iowa net income: Capital gains, alimony, child support money, cash public assistance and relief, except property tax relief granted under this division, the gross amount of any pension or annuity, including but not limited to railroad retirement benefits, all payments received under the federal social security Act, and all military retirement and veterans' disability pensions, interest received from the state or federal government or any of its instrumentalities, workers' compensation and the gross amount of disability income or "loss of time" insurance. "Income" does not include gifts from nongovernmental sources, or surplus foods or other relief in kind supplied by a governmental agency.

2. *"Household"* means a claimant, spouse, and any person related to the claimant or spouse by blood, marriage, or adoption and living with the claimant at any time during the base year. "Living with" refers to domicile and does not include a temporary visit.

3. *"Household income"* means all income of the claimant and the claimant's spouse in a household and actual monetary contributions received from any other household member during their respective twelve-month income tax accounting periods ending with or during the base year.

4. *"Homestead"* means the dwelling owned or rented and actually used as a home by the claimant during all or part of the base year, and so much of the land surrounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built. It does not include personal property except that a mobile home may be a homestead. Any dwelling or a part of a multidwelling or multipurpose building which is exempt from taxation shall not qualify as a homestead under the provisions of this division. A homestead must be located in this state.

5. *"Claimant"* means a person filing a claim for reimbursement under this division who has attained the age of sixty-five years on or before December 31 of the base year or who is a surviving spouse having attained the age of fifty-five years on or before December 31 of the base year, or who is totally disabled and was totally disabled on or before December 31 of the base year, and was domiciled in this state during the entire base year and is domiciled in this state at the time the claim is filed. "Claimant" includes a vendee in possession under a contract for deed and may include one or more joint tenants or tenants in common. In the case of a claim for rent constituting property taxes paid, the claimant shall have rented the property during any part of the base year. When two persons of a household are able to meet the qualifications for a claimant, they may determine between them who will be the claimant. If they are unable to agree, the matter shall be referred to the director of revenue not later than July 31 of each year and his decision shall be final. If a homestead is occupied by two or more persons, and more than one person is able to qualify as a claimant, and some or all of the qualified persons are not related, the persons may determine among them who will be the claimant. If they are unable to agree, the matter shall be referred to the director of revenue not later than July 31 of each year and his decision shall be final.

6. *"Totally disabled"* means the inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or is reasonably expected to last for a continuous period of not less than twelve months.

7. *"Rent constituting property taxes paid"* means twenty-five percent of the gross rent actually paid in cash or its equivalent during

the base year by the claimant or the claimant's household solely for the right of occupancy of their homestead in the base year, and which rent constitutes the basis, in the succeeding year, of a claim for reimbursement under this division by the claimant.

8. *"Gross rent"* means rental paid at arm's length solely for the right of occupancy of a homestead or mobile home, including rent for space occupied by a mobile home not to exceed one acre, exclusive of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as a part of the rental agreement whether or not expressly set out in the rental agreement. If the director of revenue determines that the landlord and tenant have not dealt with each other at arm's length, and the director of revenue is satisfied that the gross rent charged was excessive, he shall adjust the gross rent to a reasonable amount as determined by the director. If the landlord does not supply the charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by him, or if the charges appear to be incorrect, the director of revenue may apply a percentage determined from samples of similar gross rents paid solely for the right of occupancy.

9. *"Property taxes paid"* means property taxes including one-half of any special assessments*, but exclusive of delinquent interest and charges for services, paid on a claimant's homestead in this state, but includes only property taxes for which the claimant was liable and which were actually paid by the claimant. If the property taxes have actually been paid, they shall be deemed to have been paid when due, regardless of the date of actual payment. "Property taxes paid" shall be computed with no deduction for any credit under this division or for any homestead credit allowed under section 425.1. Claims for property tax reimbursement filed in 1974 shall be based upon the property taxes paid in 1973. Claims for property tax reimbursement filed in 1975 shall be limited to two-thirds of the property taxes paid in 1974 and the first one-half of 1975. Each year thereafter, each claim shall be based upon the taxes paid during the base year. If a homestead is owned by two or more persons as joint tenants or tenants in common, and one or more persons are not a member of claimant's household, "property taxes paid" is that part of property taxes paid on the homestead which equals the ownership percentage of the claimant and his household. The county treasurer shall include with the tax receipt a statement that if the owner of the property is sixty-five years of age or over or is totally disabled, or is a surviving spouse of such person who is over the age of fifty-five years of age, the person may be eligible for the credit allowed under this division. If a claimant changes his homestead, this shall not prevent him from filing a claim based on property taxes for which the claimant was liable and which were actually paid by the claimant, but duplication of claims shall not be allowed. If a homestead is an integral part of a farm, the claimant may use the total property taxes paid for the larger unit, but not exceeding forty acres of land. If a homestead is an integral part of a multidwelling or multipurpose building the property taxes paid for the purpose of this subsection shall be prorated to reflect the portion which the value of the property that the household occupies as its homestead is to the value of the entire structure. For purposes of this subsection, "unit" refers to that parcel of property covered by a single tax statement of which the homestead is a part.

10. *"Special assessment"* means special assessments made pursuant to sections 384.37 to 384.79. The amount of a special assessment which may be included in the amount of property taxes paid for one year shall be an amount equal to one-twentieth of the total amount of the special assessment levied against the homestead of the claimant, if the claimant elected to pay the total amount of the special assessment in one payment. If the claimant elects to pay the special assessment in ten annual installments as provided by law, the claimant may include as a portion of the property taxes paid during the base year an amount equal to one-half of the special assessment, including interest, paid during that same base year.*

11. *"Base year"* means:

a. For a claimant filing a claim for rent constituting property taxes paid, the calendar year last ending before the claim is filed.

b. For a claimant filing a claim for property taxes paid, the state fiscal year ending in the calendar year in which the claim is filed. [C75,§425.17; 66GA, ch 213,§§1,2, ch 1067,§§30, 31, ch 1084,§43]

Referred to in §135D.22

*Effective January 1, 1977

Amendments by 66GA, ch 213,§§1, 2 effective January 1, 1976

425.18 Claim is personal. The right to file a claim under this division shall be personal to the claimant and shall not survive his death, but the right may be exercised on behalf of a claimant by his legal guardian or attorney. If a claimant dies after having filed a claim, the amount of the reimbursement may be paid to another member of the household as determined by the director. If the claimant was the only member of his household, the reimbursement may be paid to his executor or administrator, but if neither is appointed and qualified within one year from the date of the filing of the claim, the reimbursement shall escheat to the state. [C75,§425.18]

425.19 Claim and reimbursement. Subject to the limitations provided in this division, a claimant may annually claim a reimbursement for property taxes paid or rent constituting property taxes paid in the base year. The amount of the reimbursement for property taxes paid for a homestead, after audit or cer-

tification by the director, shall be paid to the claimant and the amount of the reimbursement for rent constituting property taxes paid shall be paid to the claimant from the state general fund on or before September 25 of each year commencing in 1974. However, the claimant for reimbursement for property taxes paid may designate on the claim at the time it is filed that the check for reimbursement for property taxes paid be made payable to the claimant and the county treasurer of the county in which the homestead is located. [C75,§425.19; 66 GA, ch 214,§1]

425.20 Filing date. A claim for reimbursement for property taxes paid or rent constituting property taxes paid shall not be paid or allowed, unless the claim is actually filed with and in the possession of the department of revenue on or before July 31 of the year following the base year, beginning July 31, 1974.

In case of sickness, absence, or other disability of the claimant or if, in the judgment of the director of revenue, good cause exists and the claimant requests an extension prior to August 1, the director may extend the time for filing a claim for reimbursement for a period not to exceed three months. The director may also extend the time for filing for all claimants or for any reasonable group or class of claimants for a period not to exceed three months if, in his judgment, good cause exists. [C75,§425.20]

425.21 Satisfaction of outstanding tax liabilities. The amount of any claim for reimbursement payable under this division may be applied by the department of revenue against any tax liability outstanding on the books of the department against the claimant, or against a spouse who was a member of the claimant's household in the base year. [C75,§425.21]

425.22 One claimant per household. Only one claimant per household per year shall be entitled to reimbursement under this division. [C75,§425.22]

425.23 Schedule for claims for reimbursement. The amount of any claim for reimbursement filed under this division shall be determined as provided in this section.

1. The tentative reimbursement shall be the higher of the two amounts determined as follows:

a. The amount shall be determined in accordance with the following schedule:*

If the household income is:	Percent of property taxes paid or rent constituting property taxes paid allowed as a reimbursement:
$ 0 - 999.99	100%
1,000 - 1,999.99	95
2,000 - 2,999.99	85
3,000 - 3,999.99	70
4,000 - 4,999.99	55
5,000 - 5,999.99	45
6,000 - 6,999.99	35
7,000 - 7,999.99	30
8,000 - 8,999.99	25

b. If the claim is for property taxes paid and the household income of the claimant is less than four thousand dollars, the alternative tentative reimbursement shall be one hundred twenty-five dollars, but not to exceed the amount of property taxes paid during the base year.

2. The actual reimbursement for property taxes paid shall be determined by subtracting from the tentative reimbursement the amount of the homestead credit under section 425.1 which was allowed as a credit against property taxes paid in the base year by the claimant or any person of his household, except that the credit shall not exceed two-thirds of the amount of the credit received on the homestead in the extended fiscal year beginning January 1, 1974, and ending June 30, 1975. If the subtraction produces a negative amount, there shall be no reimbursement but no refund shall be required. The actual reimbursement for rent constituting property taxes paid shall be equal to the tentative reimbursement. [C71, 73,§425.1(5); C75,§425.23; 66GA, ch 213, §3, ch 1067,§32]

Referred to in §§425.26, 425.38

*Amendments effective January 1, 1976 and January 1, 1977; 66GA, ch 1067,§33

425.24 Maximum property tax. In any case in which property taxes paid or rent constituting property taxes paid in any base year for any household exceeds six hundred dollars, the amount of property taxes paid or rent constituting property taxes paid shall be deemed to have been six hundred dollars for purposes of this division. [C75,§425.24]

425.25 Administration. The director of revenue shall make available suitable forms with instructions for claimants. Each assessor and county treasurer shall make available the forms and instructions. The claim shall be in such form as the director may prescribe. The director may also devise a tax reimbursement table, with amounts rounded to the nearest whole dollar. Reimbursements in the amount of less than one dollar shall not be paid. [C71, 73,§425.1(5); C75,§425.25]

425.26 Proof of claim. Every claimant shall give the department of revenue, in support of his claim reasonable proof of:

1. Age and total disability, if any;
2. Property taxes paid or rent constituting property taxes paid, including the portion of gross rent paid for providing utilities, services, furniture, furnishings, and personal property appliances, and the name and address of the owner or manager of the property rented and a statement whether the claimant is related by blood, marriage or adoption to the owner or manager of the property rented;
3. Homestead credit allowed against property taxes paid;
4. Changes of homestead;
5. Household membership;
6. Household income;
7. Size and nature of property claimed as the homestead; and

8. A statement that the property taxes paid and used for purposes of this division have been or will be paid by him, and that there are no delinquent property taxes on the homestead.

9. Any information needed to determine whether the claimant is eligible for the alternative reimbursement under section 425.23, subsection 1, paragraph *"b"*.

The director may require any additional proof necessary to support a claim. [C71, 73, §425.1(5); C75,§425.26; 66GA, ch 213,§4]

Amendment effective January 1, 1976; 66GA, ch 213,§5

425.27 Audit of claim. If on the audit of any claim for reimbursement under this division, the director determines the amount of the claim to have been incorrectly calculated or that the claim is not allowable, he shall recalculate the claim and notify the claimant of the recalculation or denial and his reasons for it. The director shall not adjust any claim after three years from July 31 of the year in which the claim was filed. If the claim for reimbursement has been paid, the amount may be recovered by assessment in the same manner that income taxes are assessed under sections 422.26 and 422.30. The recalculation of the claim shall be final unless appealed as provided in section 425.31. The provisions of section 422.70 shall be applicable with respect to this division. [C75,§425.27]

425.28 Waiver of confidentiality. A claimant shall expressly waive any right to confidentiality relating to all income tax information obtainable through the department of revenue, including all information covered by sections 422.20 and 422.72. This waiver shall apply to information available to the county or city assessor who shall hold the information confidential except that it may be used as evidence to disallow the credit. [C71, 73,§425.1(5); C75,§425.28]

425.29 False claim — penalty. Any person making a false affidavit for the purpose of obtaining reimbursement provided for in this division or who knowingly receives the reimbursement without being legally entitled to it or makes claim for the reimbursement in more than one county in the state shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one hundred dollars or imprisoned in the county jail for not more than thirty days or be subject to both such fine and imprisonment. An action under this section shall be brought in the county in which the affidavit was filed. The claim for reimbursement shall be disallowed in full and if the claim has been paid the amount may be recovered by assessment in the manner that income taxes are assessed pursuant to sections 422.26 and 422.30. The director of revenue shall send a notice of disallowance of the claim. [C71, 73,§425.1(5); C75,§425.29]

Referred to in §425.36

425.30 Notices. Section 422.57, subsection 1, shall apply to all notices under this division. [C75,§425.30]

425.31 Appeals. Any person aggrieved by an act or decision of the director of revenue or the department of revenue under this division shall have the same rights of appeal and review as provided in sections 421.1 and 422.55 and the rules of the department of revenue. [C75,§425.31]

Referred to in §§425.27, 425.34

425.32 Disallowance of certain claims. A claim for reimbursement shall be disallowed if the department finds that the claimant or a person of his household received title to his homestead primarily for the purpose of receiving benefits under this division. [C75,§425.32]

425.33 Rent increase—request and order for reduction. If upon petition by a claimant the department of revenue determines that a landlord has increased the claimant's rent primarily because the claimant is eligible for reimbursement under this division, the department of revenue shall request the landlord by certified mail to reduce the rent appropriately.

In determining whether a landlord has increased a claimant's rent primarily because the claimant is eligible for reimbursement under this division, the department of revenue shall consider the following factors:

1. The amount of the increase in rent.

2. If the landlord operates other rental property, whether a similar increase was imposed on the other rental property.

3. Increased or decreased costs of materials, supplies, services, and taxes in the area.

4. The time the rent was increased.

5. Other relevant factors in each particular case.

If the landlord fails to comply with the request of the department of revenue within fifteen days after the request is mailed by the department, the department of revenue shall order the rent reduced by an appropriate amount. [C75,§425.33]

Referred to in §135D.33

425.34 Hearings and appeals. If the department of revenue orders a landlord to reduce rent to a claimant, then upon the request of the landlord the department of revenue shall hold a prompt hearing of the matter, to be conducted in accordance with the rules of the department. The department of revenue shall give notice of the decision by certified mail to the claimant and to the landlord.

The claimant and the landlord shall have the rights of appeal and review as provided in section 425.31. [C75,§425.34]

425.35 Defense to action for nonpayment of rent. It is an affirmative defense to any action by a landlord based upon nonpayment or partial payment of rent that the landlord increased the rent primarily because the ten-

ant had received, or was eligible for, reimbursement under this division. [C75,§425.35]

425.36 Discrimination in rentals or rent charges. Discrimination by a landlord in the rental of or in rent charges for a homestead because the tenant has received or is eligible for reimbursement under this division is a misdemeanor and the punishment shall be the same as provided in section 425.29. [C75, §425.36]

Referred to in §135D.33

425.37 Rules. The director of revenue shall adopt rules in accordance with chapter 17A for the interpretation and proper administration of this division, including rules to prevent and disallow duplication of benefits and to prevent any unreasonable hardship or advantage to any person. [C75,§425.37]

425.38 Credit for fiscal year ending in 1975.

1. Any person who is entitled to the alternative homestead tax credit as provided in section 425.1, subsection 5, and who properly applies for the credit on or before July 1, 1973, shall be allowed the credit against taxes on the eligible homestead payable in the extended fiscal year beginning January 1, 1974, and ending June 30, 1975.

2. The credits referred to in subsection 1 of this section shall be the final credits allowed under section 425.1, subsection 5, and thereafter no credit shall be allowed thereunder.

3. Credits allowed under section 425.1, subsection 5, against taxes payable in 1973 shall be subtracted in determining reimbursement under this division as provided in section 425.23, subsection 2, for claims filed in 1974. [C75,§425.38]

425.39 Fund created—appropriation. There is appropriated annually from the general fund of the state to the department of revenue to be credited to the extraordinary property tax reimbursement fund, which fund is hereby created, funds not otherwise appropriated, an amount sufficient to carry out the provisions of this division. [C75,§425.39]

CHAPTER 426

AGRICULTURAL LAND TAX CREDIT

426.1 Agricultural land credit fund.
426.2 Definition.
426.3 Where credit given.
426.4 and 426.5 Repealed by 52GA, ch 152, §§11, 12.
426.6 Computation by auditor—appeal.
426.7 Warrants drawn by comptroller.
426.8 Apportionment by auditor.
426.9 Pro rata disbursement.
426.10 Rules prescribed.

426.1 Agricultural land credit fund. There is hereby created as a permanent fund in the office of the treasurer of state a fund to be known as the agricultural land credit fund, and for the purpose of establishing and maintaining said fund for each fiscal year there is appropriated thereto from funds in the general fund not otherwise appropriated the sum of eighteen million dollars.* Any balance in said fund on June 30 shall revert to the general fund. [C39,§**6943.156**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§426.1; 66GA, ch 1067,§25]

*$24 million additional for 1976 fiscal year, 66GA, ch 1067, §25

426.2 Definition. "Agricultural lands" as used in this chapter shall mean and include all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within any school corporation in this state and in good faith used for agricultural or horticultural purposes.

Any land laid off or platted into lots of less than ten acres belonging to and a part of other lands of more than ten acres and in good faith used for agricultural or horticultural purposes shall be entitled to the benefits of this chapter. [C39,§**6943.165**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§426.2]

426.3 Where credit given. The agricultural land credit fund shall be apportioned each year in the manner hereinafter provided so as to give a credit against the tax on each tract of agricultural lands within the several school districts of the state in which the levy for the general school fund exceeds five dollars and forty cents per thousand dollars of assessed value; the amount of such credit on each tract of such lands shall be the amount the tax levied for the general school fund exceeds the amount of tax which would be levied on said tract of such lands were the levy for the general school fund five dollars and forty cents per thousand dollars of assessed value for the previous year, except in the case of a deficiency in the agricultural land credits fund to pay said credits in full, in which case the credit on each eligible tract of such lands in the state shall be proportionate and shall be applied as hereinafter provided. The agricultural land credit as provided herein shall not be made to any taxpayer on any portion of his property upon which he may obtain a homestead credit, as provided by chapter 425. [C39,§§**6943.157, 6943.164**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§426.3]

Constitutionality, 61GA, ch 356,§3

426.4 and 426.5 Repealed by 52GA, ch 152, §§11, 12. See §426.6.

426.6 Computation by auditor—appeal. The agricultural land tax credit allowed each year shall be computed as follows: On or before the first of June the county auditor shall list by school districts all tracts of agricultural lands which they are entitled to credit hereunder, together with the taxable value for the previous year, together with the budget from each school district for the previous year, and the tax rate determined for the general fund of the district in the manner prescribed in section 444.3 for the previous year, and if such tax rate is in excess of five dollars and forty cents per thousand dollars of assessed value he shall multiply the tax levy which is in excess of five dollars and forty cents per thousand dollars of assessed value by the total taxable value of the agricultural lands entitled to credit hereunder in the district, and on or before the first of June certify the amount thereof to the state comptroller.

In the event the county auditor denies a credit upon any such lands, he shall immediately mail to the owner at his last known address notice of his decision thereon. The owner may, within thirty days thereafter, appeal to the board of supervisors of the county wherein the land involved is situated by serving notice of said appeal upon the chairman of said board. The board shall hear such appeal promptly and shall determine anew all questions involved in said appeal and shall within ten days after such hearing, mail to the owner at his last known address, notice of its decision. In the event of disallowance the owner may, within ten days from the date such notice is mailed, appeal such disallowance by the board of supervisors to the district court of that county by serving written notice of appeal on the county auditor. The appeal shall be tried de novo and may be heard in term time or vacation. The decision of the district court thereon shall be final. [C39, §§**6943.160–6943.163**; C46,§§426.4–426.6; C50, 54, 58, 62, 66, 71, 73, 75,§426.6]

Referred to in §426.7

426.7 Warrants drawn by comptroller. After receiving from the several county auditors of the state the certifications provided for in section 426.6, and on or before September 15 of the following year, the state comptroller shall draw warrants on the agricultural land credits fund created by this chapter, payable to the county treasurers of the several counties of the state in the total amount certified by the county auditors of the respective counties and mail said warrants to the county auditors of said counties, provided that in the event the agricultural land credits fund is insufficient to pay in full the total of the amounts certified to the state comptroller on the first of June, he shall prorate the fund to the several county treasurers and notify the several county auditors of the pro rata percentage on or before August 1. [C39,§**6943.157**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§426.7]

426.8 Apportionment by auditor. Upon receiving the pro rata percentage from the state comptroller, the county auditor shall determine the amount thereof to be credited to each tract of agricultural land, and shall enter upon tax lists as a credit against the tax levied on each tract of agricultural land on which there has been made an allowance of credit before delivering said tax lists to the county treasurer. Upon receipt of the comptroller's warrant by the county auditor, he shall deliver said warrant to the county treasurer for apportionment. The county treasurer shall show on each tax receipt the amount of tax credit for each tract of agricultural land. In case of change of ownership the credit shall follow the title. [C39,§**6943.158**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§426.8]

426.9 Pro rata disbursement. If the appropriation herein is insufficient to pay the credits in full, then in that event they shall be paid on a pro rata basis. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§426.9]

426.10 Rules prescribed. The state comptroller shall have the power and authority to prescribe forms and rules, not inconsistent with the provisions of this chapter, necessary to carry out and effectuate its purposes. [C54, 58, 62, 66, 71, 73, 75,§426.10]

CHAPTER 426A

MILITARY SERVICE TAX CREDIT

Referred to in §123.53(7)

426A.1 Military service tax credit fund.
426A.2 Where credit given.
426A.3 Computation by auditor.
426A.4 Certification by director of revenue.
426A.5 Proportionate shares to districts.
426A.6 Setting aside allowance.
426A.7 Forms—rules.
426A.8 Excess remitted—appeals.
426A.9 Erroneous credits.
426A.10 Balance in reserve.

426A.1 Military service tax credit fund. There is hereby appropriated from any moneys in the state treasury not otherwise appropriated, the sum of eight hundred thousand dollars to establish a fund to be known as "the military service tax credit fund", in which

fund shall also be included the amounts credited to the military service tax fund provided by section 123.53, subsection 7. [C50, 54, 58, 62, 66, 71, 73, 75,§426A.1]

426A.2 Where credit given. The military service tax credit fund shall be apportioned each year as hereinafter provided so as to replace all or a portion of the tax on property eligible for military service tax exemption in the state, were such property subject to taxation the amount of such credit to be equal to not more than six dollars and seventy-five cents per thousand dollars of assessed value upon the valuation of property subject to the tax which, but for military service tax exemption, would be payable upon such property in the taxing district to which such property is located. [C50, 54, 58, 62, 66, 71, 73, 75,§426A.2]

426A.3 Computation by auditor. On or before August 1 of each year the county auditor shall certify to the county treasurer all claims for military service tax exemptions which have been allowed by the board of supervisors. Such certificate shall list the total amount of dollars, listed by taxing district in the county, due for military service tax credits claimed and allowed. The county treasurer shall forthwith certify to the department of revenue the amount of dollars, listed by taxing district in the county, due for military service tax credits claimed and allowed. [C50, 54, 58, 62, 66, 71, 73, 75,§426A.3]

426A.4 Certification by director of revenue. Sums distributable from the military service tax credit fund shall be allocated every six months to the several counties of the state. On March 25 and September 25 annually the director of revenue shall certify to the comptroller the total credits claimed by each county. Upon receipt of the certification from the director of revenue, the comptroller shall draw warrants to the treasurer of each county payable from the military tax service credit fund in the amount claimed; provided that if the amount of money in said fund is insufficient to pay the credits claimed in full, then in that event they shall be paid on a pro rata basis. [C50, 54,§§426A.2, 426A.4; C58, 62, 66, 71, 73, 75,§426A.4]

426A.5 Proportionate shares to districts. The amount of credits received under this chapter shall then be apportioned by each county treasurer to the several taxing districts. Each taxing district shall receive its proportionate share of the military service tax credit allowed on each and every tax exemption allowed in such taxing district, in the proportion that the levy made by such taxing district upon general property bears to the total levy upon all property subject to general property taxation by all taxing districts imposing a general property tax in such taxing district. [C50,§§426A.2, 426A.4; C58, 62, 66, 71, 73, 75,§426A.5]

426A.6 Setting aside allowance. Should the director of revenue determine, upon investigation, that any claim for military service tax exemption has been allowed by any board of supervisors which is not justifiable under the law and not substantiated by proper facts, the director may, at any time within twenty-four months from July 1 of the year in which the claim is filed, set aside such allowance. Notice of such disallowance shall be given to the county auditor of the county in which such claim has been improperly granted and a written notice of such disallowance shall also be addressed to the claimant at his last known address. Such claimant, or the board of supervisors, may seek judicial review of the action of the director of revenue in accordance with the terms of the Iowa administrative procedure Act. In any case, where a claim is so disallowed by the director of revenue and no petition for judicial review is filed with respect to such disallowance, any amounts of credits allowed and paid from the military service tax credit fund shall become a lien upon the property on which said credit was originally granted, if still in the hands of the claimant, and not in the hands of a bona fide purchaser, and any amount so erroneously paid shall be collected by the county treasurer in the same manner as other taxes and such collections shall be returned to the department of revenue and credited to the military service tax credit fund. The director of revenue shall also have the authority to institute legal proceedings against a military service tax exemption claimant for the collection of all payments made on such disallowed exemptions. [C50, 54, 58, 62, 66, 71, 73, 75,§426A.6; 66GA, ch 212,§2]

426A.7 Forms—rules. The director of revenue shall prescribe the form for the making of a verified statement and designation of property eligible for military service tax exemption, and the form for the supporting affidavits required herein, and such other forms as may be necessary for the proper administration of this chapter. As soon as practicable after the effective date of this chapter, and from time to time thereafter as necessary, the department of revenue shall forward to the county auditors of the several counties of the state, such prescribed sample forms. The director of revenue shall have the power and authority to prescribe rules, not inconsistent with the provisions of this chapter, necessary to carry out and effectuate its purposes. [C50, 54, 58, 62, 66, 71, 73, 75,§426A.7]

426A.8 Excess remitted — appeals. If the amount of credit apportioned to any property eligible to military service tax exemption under the provisions of this chapter in any year shall exceed the total tax, exclusive of any special assessments levied against such property eligible for military service tax exemption then such excess shall be remitted by the county treasurer to the department of revenue to be redeposited in the military service tax

credit fund and reallocated the following year by the department as provided hereunder.

In the event any claim for exemption made hereunder has been denied by the board of supervisors, and such action is subsequently reversed on appeal, the same credit shall be allowed on the assessed valuation, not to exceed the amount of the military service tax exemption involved in said appeal, as was allowed on other military service tax exemption valuations for the year or years in question, and the director of revenue, the county auditor, and the county treasurer are hereby authorized and directed to make such credit and to change their books and records accordingly.

In the event the appealing taxpayer has paid one or both of the installments of the tax payable in the year or years in question on such military service tax exemption valuation, remittance shall be made to the county treasurer in the amount of such credit.

The amount of such credit shall be allocated and paid from the surplus redeposited in the military tax credit fund provided for in the first paragraph of this section. [C50, 54, 58, 62, 66, 71, 73, 75,§426A.8]

426A.9 Erroneous credits. In the event any claim is allowed, and subsequently reversed on appeal, any credit made thereunder shall be void, and the amount of such credit shall be charged against the property in question, and the director of revenue, the county auditor and the county treasurer are authorized and directed to correct their books and records accordingly. The amount of such erroneous credit, when collected, shall be returned by the county treasurer to the military service tax credit fund to be reallocated the following year as provided herein. [C50, 54, 58, 62, 66, 71, 73, 75,§426A.9]

426A.10 Balance in reserve. Any balance not required for the payment of military service tax credits in any one year from the funds appropriated shall remain in the military service tax credit fund as a reserve to be applied upon payment of future claims. [C50, 54, 58, 62, 66, 71, 73, 75,§426A.10]

CHAPTER 427

PROPERTY EXEMPT AND TAXABLE

Referred to in §§419.11, 441.47

See 64GA, ch 1020,§11, for extended fiscal year provision relating to assessment and valuation of property

427.1 Exemptions.
427.2 Roads and drainage rights of way.
427.3 Military service—exemptions.
427.4 Exemptions to relatives.
427.5 Reduction—discharge of record—oath.
427.6 Allowance—continuing effectiveness.
427.7 Penalty.
427.8 Petition for exemption.
427.9 Suspension of taxes.
427.10 Additional order.
427.11 Grantee or devisee to pay tax.
427.12 Suspended tax list.
427.13 What taxable.
427.14 County lands.
427.15 Interest of lessee.
427.16 Exemption provisions for personal property in transit.
427.17 Tax credit for livestock tax.

427.1 Exemptions. The following classes of property shall not be taxed:

1. *Federal and state property.* The property of the United States and this state, including state university, university of science and technology, and school lands. The exemption herein provided shall not include any real property subject to taxation under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time as the Congress of the United States shall expressly authorize the taxation of such machinery and equipment.

Federal-owned lands, §1.4 et seq.

2. *Municipal and military property.* The property of a county, township, city, school corporation, levee district, drainage district or military company of the state of Iowa, when devoted to public use and not held for pecuniary profit except property of a municipally owned electric utility held under joint ownership which shall be subject to assessment and taxation under provisions of chapters 428 and 437.

3. *Public grounds and cemeteries.* Public grounds, including all places for the burial of the dead; and crematoriums with the land, not exceeding one acre, on which they are built and appurtenant thereto, so long as no dividends or profits are derived therefrom.

4. *Fire equipment and grounds.* Fire engines and all implements for extinguishing fires, and the publicly owned buildings and grounds used exclusively for keeping them and for meetings of fire companies.

5. *Public securities.* Bonds or certificates issued by any municipality, school district, drainage or levee district, river-front improvement commission or county within the state of Iowa. No deduction from the assessment of

the shares of stock of any bank or trust company shall be permitted because such bank or trust company holds such bonds as are exempted above.

6. *Property of associations of war veterans.* The property of any organization composed wholly of veterans of any war, when such property is devoted entirely to its own use and not held for pecuniary profit.

Referred to in subsection 23

7. *Property of nonprofit cemetery associations.* Burial grounds, mausoleums, buildings and equipment owned and operated by nonprofit cemetery associations and used exclusively for the maintenance and care of the cemeteries devoted to interment of human bodies and human remains.

Referred to in subsection 10

8. *Libraries and art galleries.* All grounds and buildings used for public libraries, public art galleries, and libraries and art galleries owned and kept by private individuals, associations, or corporations, for public use and not for private profit.

Referred to in subsection 10

9. *Property of religious, literary, and charitable societies.* All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used or under construction with a view to pecuniary profit. All deeds or leases by which such property is held shall be filed for record before the property herein described shall be omitted from the assessment. All such property shall be listed upon the tax rolls of the district or districts in which it is located and shall have ascribed to it an actual fair market value and an assessed or taxable value, as contemplated by section 441.21, whether such property be subject to a levy or be exempted as herein provided and such information shall be open to public inspection.

Referred to in subsections 10, 23
Church property leased, §565.2

10. *Personal property of institutions and students.* Moneys and credits belonging exclusively to the institutions named in subsections 7, 8, and 9 and devoted solely to sustaining them, but not exceeding in amount or income the amount prescribed by their charters or articles of incorporation; and the books, papers, pictures, works of art, apparatus, and other personal property belonging to such institutions and used solely for the purposes contemplated in said subsections and the like property of students in such institutions used for their education.

11. *Property of educational institutions.* Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township except any real property acquired after January 1, 1965, by any educational institution as a part of its endowment fund or upon which any income is derived or used, directly or indirectly, for full or partial payment for services rendered, shall be taxed beginning with the levies applied for taxes payable in the year 1967, at the same rate as all other property of the same class in the taxing district or districts in which such real property is located. Such property acquired prior to January 1, 1965, and held or owned as part of the endowment fund of an educational institution shall be subject to assessment and levy in the assessment year 1974 for taxes payable in 1975. All such property shall be listed on the assessment rolls in the district or districts in which such property is located and an actual fair market value and an assessed or taxable value be ascribed to it, as contemplated by section 441.21, irrespective of whether an exemption under this subsection may be or is affirmed, and such information shall be open to public inspection; it being the intent of this section that such property be valued whether or not it be subject to a levy. Every educational institution claiming an exemption under the provisions of this subsection shall file with the assessor not later than February 1 of the year for which such exemption is requested, a statement upon forms to be prescribed by the director of revenue, describing and locating the property upon which such exemption is claimed.

12. *Homes for soldiers.* The buildings, grounds, furniture, and household equipment of homes owned and operated by organizations of soldiers, sailors, or marines of any of the wars of the United States when used for a home for disabled soldiers, sailors, or marines and not operated for pecuniary profit.

13. *Agricultural produce.* Growing agricultural and horticultural crops and products, except commercial orchards and vineyards, and all horticultural and agricultural produce harvested by or for the person assessed within one year previous to the listing, all wool shorn from his sheep within such time, all poultry, ten stands of bees, honey and beeswax produced during that time and remaining in the possession of the producer, and all livestock.

14. *Rent.* Obligations for rent not yet due and owned by the original payee.

15. *Family equipment.* All tangible personal property customarily located and used in or about the residence or residences of the owner of said property; all wearing apparel and food used or to be used by the owner or his family; and all personal effects.

16. *Farm equipment — drays — tools.* The farming utensils of any person who makes his livelihood by farming, the team, wagon, and harness of the teamster or drayman who makes his living by their use in hauling for others, and the tools of any mechanic, not in any case to exceed one thousand one hundred eleven dollars in taxable value.

17. *Government lands.* Government lands entered and located, or lands purchased from this state, for the year in which the entry, location, or purchase is made.

18. *Fraternal beneficiary funds.* The accumulations and funds held or possessed by fraternal beneficiary associations for the purposes of paying the benefits contemplated by section 512.2, or for the payment of the expenses of such associations.

19. *Capital stock of companies.* The shares of capital stock of telegraph and telephone companies, freight-line and equipment companies, transmission line companies as defined in section 437.1, express companies, corporations engaged in merchandising as defined in section 428.16, domestic corporations engaged in manufacturing as defined in section 428.20, and manufacturing corporations organized under the laws of other states having their main operating offices and principal factories in the state of Iowa, and corporations not organized for pecuniary profit.

Referred to in §§433.4, 433.12, 437.1

20. *Public airports.* Any lands, the use of which (without charge by or compensation to the holder of the legal title thereto) has been granted to and accepted by the state or any political subdivision thereof for airport or aircraft landing area purposes.

21. *Grain.* Grain handled, as defined under section 428.35.

22. *Pension and welfare plans.* All intangible property held pursuant to any pension, profit sharing, unemployment compensation, stock bonus or other retirement, deferred benefit or employee welfare plan the income from which is exempt from taxation under divisions II and III of chapter 422, or as the same may hereafter be amended, provided that until the Korean War veterans bonus bonds are retired and paid the tax of twenty-seven cents per thousand dollars of assessed valuation imposed by section 35B.11 shall be levied and collected thereon.

23. *Statement of objects and uses filed.* Every society or organization claiming an exemption under the provisions of either subsection 6 or subsection 9 of this section shall file with the assessor not later than February 1 of the year for which such exemption is requested, a statement upon forms to be prescribed by director of revenue, describing the nature of the property upon which such exemption is claimed and setting out in detail any uses and income from such property derived from such rentals, leases or other uses of such property not solely for the appropriate objects of such society or organization. The assessor, in arriving at the valuation of any property of such society or organization, shall take into consideration any uses of the property not for the appropriate objects of the organization and shall assess in the same manner as other property, all or any portion of the property involved which is leased, let or rented and is used regularly for commercial purposes for a profit to any party or individual. In any case where a portion of the property is used regularly for commercial purposes no exemption shall be allowed upon property so used and the exemption granted shall be in the proportion of the value of the property used solely for the appropriate objects of the organization, to the entire value of the property. No exemption shall be granted upon any property upon or in which persistent violations of the laws of the state of Iowa are permitted. Every claimant of an exemption shall, under oath, declare that no such violations will be knowingly permitted or have been permitted on or after January 1 of the year for which a tax exemption is requested. Claims for such exemption shall be verified under oath by the president or other responsible heads of the organization.

24. *Delayed claims.* In any case where no such claim for exemption has been made to the assessor prior to the time his books are completed, such claims may be filed with the local board of review or with the county auditor not later than July 1 of the year for which such exemption from taxation is claimed, and a proper assessment shall be made either by the board of review or by the county auditor, if said property is all or in part subject to taxation.

25. *Mandatory denial.* No exemption shall be granted upon any property which is the location of a federal retail liquor sales permit or in which federally licensed devices not lawfully permitted to operate under the laws of the state of Iowa are located.

26. *Revoking exemption.* Any taxpayer or any taxing district may make application to the director of revenue for revocation for any exemption, based upon alleged violations of the provisions of this chapter. The director of revenue may also on his own motion set aside any exemption which has been granted upon property for which exemption is claimed under this chapter. The director of revenue shall give notice by certified mail to the societies or organizations claiming an exemption upon property, exemption of which is questioned before or by the director of revenue, and any order made by the director of revenue revoking or modifying such exemption shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court having jurisdiction in the county in which such property is located, and must be filed within thirty days after any order revoking such exemption is made by the director of revenue.

27. *Tax provisions for armed forces.* If any person enters any branch of the armed service of the United States in time of national emergency, all personal property used in making his livelihood, in excess of three hundred dollars in value, of such person shall be assessed but no tax shall be due if such person upon return from service, or in event of his death if his executor, administrator or next of kin, executes an affidavit to the county assessor that such property was not used in any manner during his absence, the tax as assessed

thereon shall be waived and no payment shall be required.

28. *Goods stored by warehouseman.* All personal property intended for ultimate sale or resale, with or without additional processing, manufacturing, fabricating, compounding or servicing, stored in a warehouse of any person, copartnership or corporation engaged in the business of storing goods for profit as defined in section 554.7201 et seq., provided such personal property is not offered for sale or sold by the owner at retail directly from the public warehouse.

29. *Personal property.* All personal property in transit.

See §427.16

30. *Rural water sales.* The real and personal property of a nonprofit corporation engaged in the distribution and sale of water to rural areas when devoted to public use and not held for pecuniary profit.

31. *Assessed value of exempt property.* Each county and city assessor shall determine the assessment value that would be assigned to the property if it were taxable and value all tax exempt property within his jurisdiction. The list of tax exempt property shall contain a legal description of the tax exempt property and the name of the owner of the tax exempt property, the market value of the tax exempt property, and the assessed value of the tax exempt property. The list of tax exempt property shall be filed with the director of revenue and the local board of review on or before April 16 of each year.

32. *Pollution control.* Pollution-control property as defined in this subsection shall be exempt from taxation for the periods and to the extent provided in this subsection, upon compliance with the provisions of this subsection.

This exemption shall apply to new installations of pollution-control property for a period of ten years beginning on January 1 after the construction or installation of the property is completed. This exemption shall apply for a period of ten years beginning on January 1, 1975, to existing pollution-control property if its construction or installation was completed after September 23, 1970. This exemption shall apply with respect to each of the ten annual assessments within the ten-year exemption period and the property taxes payable on the basis of each of such ten annual assessments. This exemption for existing pollution-control property shall begin with respect to the assessment as of January 1, 1975, and the taxes payable on the basis of this assessment during the fiscal year beginning July 1, 1976.

This exemption shall be limited to the market value, as defined in section 441.21, of the pollution-control property. If the pollution-control property is assessed with other property as a unit, this exemption shall be limited to the net market value added by the pollution-control property, determined as of the assessment date.

Application for this exemption shall be filed with the assessing authority not later than the first of February of the year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the specific pollution-control property to be exempted.

The first annual application for any specific pollution-control property shall be accompanied by a certificate of the executive director of the department of environmental quality stating that the air quality commission or the water quality commission has directed the department of environmental quality to certify that the primary use of the pollution-control property is to control or abate pollution of any air or water of this state or to enhance the quality of any air or water of this state.

A taxpayer may appeal a determination of the air quality commission or the water quality commission in accordance with the provisions of sections 455B.19 and 455B.39.

The air quality commission and the water quality commission of the department of environmental quality shall adopt rules relating to certification under this subsection and information to be submitted for evaluating pollution-control property for which a certificate is requested. The revenue department shall adopt any rules necessary to implement this subsection, including rules on identification and valuation of pollution-control property. All rules adopted shall be subject to the provisions of the statutes on administrative rules.

For the purposes of this subsection "pollution-control property" means personal property or improvements to real property, or any portion thereof, used primarily to control or abate pollution of any air or water of this state or used primarily to enhance the quality of any air or water of this state. In the event such property shall also serve other purposes or uses of productive benefit to the owner of the property, only such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to the control or abatement of pollution or to the enhancement of the quality of the air or water of this state shall be exempt from taxation under this subsection.

For the purposes of this subsection "pollution" means air pollution as defined in section 455B.10 or water pollution as defined in section 455B.30. "Water of the state" means the water of the state as defined in section 455B.30. "Enhance the quality" means to diminish the level of pollutants below the air or water quality standards established by the water quality commission or the air quality commission of the department of environmental quality.

33. *Impoundment structures.* The impoundment structure and any land underlying an impoundment located outside any incorporated city, which are not developed or used directly or indirectly for nonagricultural income-producing purposes and which are maintained in a condition satisfactory to the soil

conservation district commissioners of the county in which the impoundment structure and the impoundment are located. Any person owning land which qualifies for a property tax exemption under this subsection shall apply to the county assessor each year before the first of July for the exemption. The application shall be made on forms prescribed by the department of revenue. The first application shall be accompanied by a copy of the water storage permit approved by the water commissioner of the Iowa natural resources council and a copy of the plan for the construction of the impoundment structure and the impoundment. The construction plan shall be used to determine the total acre-feet of the impoundment and the amount of land which is eligible for the property tax exemption status. The county assessor shall annually review each application for the property tax exemption under this subsection and submit it, with the recommendation of the soil conservation district commissioners, to the board of supervisors for approval or denial. Any applicant for a property tax exemption under this subsection may appeal the decision of the board of supervisors to the district court. As used in this subsection, "impoundment" means any reservoir or pond which has a storage capacity of at least eighteen acre-feet of water or sediment at the time of construction; "storage capacity" means the total area below the crest elevation of the principal spillway including the volume of any excavation in such area; and "impoundment structure" means any dam, earthfill or other structure used to create an impoundment.

34. *Low-rent housing.** The property owned and operated by a nonprofit organization providing low-rent housing for the elderly and the physically and mentally handicapped. The exemption granted under the provisions of this subsection shall apply only until the terms of the original low-rent housing development mortgage is paid in full or expires, subject to the provisions of subsections 23 and 24.

*Effective January 1, 1977

1. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

2. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

3, 4. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

5. [SS15,§1304; C24, 27, 31, 35, 39,§**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

6. [C24, 27, 31, 35, 39,§**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

7, 8, 9, 10. [C51,§455; R60,§711; C73,§797; C97, §1304; SS15,§1304; C24, 27, 31, 35, 39,§**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

11. [C97,§1304; SS15,§1304; C24, 27, 31, 35, 39, §**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

12. [C24, 27, 31, 35, 39,§**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

13. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

14. [C97,§1304; SS15,§1304; C24, 27, 31, 35, 39, §**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

15. [C97,§1304; SS15,§1304; C24, 27, 31, 35, 39, §**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

16. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1; 66GA, ch 215,§1]

17. [R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

18. [SS15,§1304; C24, 27, 31, 35, 39,§**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

19. [C51,§§468, 469; R60,§§723, 724; C73,§§815, 816; C97,§§1318, 1319, 1323; S13,§§1330-g, 1342-g, 1346-g; SS15,§1346-s; C24, 27, 31, 35, 39,§**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

20. [C35, 39,§**6944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.1]

21. [C50, 54, 58, 62, 66, 71, 73, 75,§427.1]

22. [C62, 66, 71, 73, 75,§427.1; 66GA, ch 67,§67]

23. [C50, 54, 58, 62, 66, 71, 73, 75,§427.1]

24, 25. [C50, 54, 58, 62, 66, 71, 73, 75,§427.1]

26. [C54, 58, 62, 66, 71, 73, 75,§427.1]

27. [C54, 58, 62, 66, 71, 73, 75,§427.1]

28. [C62, 66, 71, 73, 75,§427.1]

29. [C66, 71, 73, 75,§427.1]

30. [C71, 73, 75,§427.1]

31. [C73, 75,§427.1]

32. [C75,§427.1; 66GA, ch 67,§70]

33. [C75,§427.1]

34. [66GA, ch 1106,§6]

*Effective January 1, 1977
40ExGA, SF183,§1, editorially divided
Referred to in §§420.207, 421.17(19), 427.13, 433.4, 433.12, 437.1

427.2 Roads and drainage rights of way. Real estate occupied as a public road, and rights of way for established public levees and rights of way for established, open, public drainage improvements shall not be taxed. [C73,§809; C97,§1344; C24, 27, 31, 35, 39,§**6945**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.2]

427.3 Military service — exemptions. The following exemptions from taxation shall be allowed:

1. The property, not to exceed eleven thousand one hundred eleven dollars in taxable value, and poll tax of any honorably discharged union soldier, sailor, or marine of the Mexican war or the war of the rebellion.

2. The property, not to exceed six thousand six hundred sixty-seven dollars in taxable value, and poll tax of any honorably discharged soldier, sailor, marine or nurse of the war with Spain, Tyler Rangers, Colorado volunteers in the war of the rebellion, 1861 to 1865, Indian wars, Chinese relief expedition or the Philippine insurrection.

3. The property, not to exceed two thousand seven hundred seventy-eight dollars in taxable value of any honorably discharged soldier, sailor, marine, or nurse of the first World War.

4. The property, not to exceed one thousand eight hundred fifty-two dollars in taxable value of any honorably separated, retired, furloughed to a reserve, placed on inactive status, or discharged soldier, sailor, marine, or nurse of the second World War from December 7, 1941 to December 31, 1946, army of occupation in Germany November 12, 1918, to July 11, 1923, American expeditionary forces in Siberia November 12, 1918, to April 30, 1920, second Nicaraguan campaign with the navy or marines in Nicaragua or on combatant ships 1926–1933, second Haitian suppressions of insurrections 1919–1920, navy and marine operations in China 1937–1939 and Yangtze service with navy and marines in Shanghai or in the Yangtze Valley 1926–1927 and 1930–1932 or of the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, or those who served on active duty during the Vietnam Conflict beginning August 5, 1964, and ending June 30, 1973, both dates inclusive, and as defined in section 35C.2.

5. The provisions of this section shall apply to personal property held in partnership but not in excess of the value of the veteran's share actually held. Wherever the word "soldier" shall appear in this chapter, it shall be construed to include, without limitation, the members of the United States air force. [C97,§1304; S13, SS15,§1304; C24, 27, 31, 35, 39, §6946; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.3; 66GA, ch 216,§1]

Referred to in §§420.207, 425.11(3), 427.4, 427.5, 427.7, 427A.2
Co-operative apartments, see §499A.14
Amendment by 66GA, ch 216, retroactive to January 1, 1975

427.4 Exemptions to relatives. In case any person in the foregoing classifications does not claim any such exemption from taxation, it shall be allowed in the name of such person to the same extent on the property of any one of the following persons in the order named:

1. The spouse, or surviving spouse remaining unmarried, of any such soldier, sailor, marine, or nurse, where they are living together or were living together at the time of the death of such person.

2. The parent whose spouse is deceased and who remains unmarried, of any such soldier, sailor, marine, or nurse, whether living or deceased, where such parent is, or was at the time of death of the soldier, sailor, marine, or nurse, dependent on such person for support.

3. The minor child, or children owning property as tenants in common, of any such deceased soldier, sailor, marine, or nurse.

No more than one tax exemption shall be allowed under this section or section 427.3 in the name of any honorably discharged soldier, sailor, marine, or nurse. [C97,§1304; S13, SS15, §1304; C24, 27, 31, 35, 39,§6946; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.4]

Referred to in §§420.207, 427.7

427.5 Reduction—discharge of record—oath. Any person named in section 427.3, provided he is a resident of and domiciled in the state of Iowa, shall receive a reduction equal to his exemption, to be made from any property owned by such person and designated by him by proceeding as hereafter provided. In order to be eligible to receive said exemption or reduction the person claiming same shall have had recorded in the office of the county recorder of the county in which he shall claim exemption or reduction, the military certificate of satisfactory service, order transferring to inactive status, reserve, retirement, or order of separation from service, or honorable discharge of the person claiming or through whom is claimed said exemption; in the event said evidence of satisfactory service, separation, retirement, furlough to reserve, inactive status, or honorable discharge is lost he may record in lieu of the same, a certified copy thereof. Said person shall file with the city or county assessor, as the case may be, his claim for exemption or reduction in taxes under oath, which claim shall set out the fact that he is a resident of and domiciled in the state of Iowa, and a person within the terms of section 427.3, and give the volume and page on which the certificate of satisfactory service, order of separation, retirement, furlough to reserve, inactive status, or honorable discharge or certified copy thereof is recorded in the office of the county recorder, and may include the designation of the property from which he desires said exemption or reduction to be made, and shall further state that he is the equitable and legal owner of the property designated therein. The assessor shall tabulate and deliver or file said claims with the county auditor, having his recommendations for allowance or disallowance endorsed thereon. In case the owner of the property is in active service in any of the armed forces of the United States or of this state, including the nurses corps of the state or of the United States, said claim may be executed and delivered or filed by the owner's spouse, parent, child, brother, or sister, or by any person who may represent him under power of attorney. No person may claim a reduction or exemption in more than one county of the state, and if no designation is made the exemption shall apply to the homestead, if any. [C24, 27, 31, 35, 39,§6947; C46, 50, 54, 58, 62, 66, 71, 73, 75, §427.5]

Referred to in §§420.207, 427.7
Veterans' claims for tax exemption prior to December 1, 1974, see 65GA, ch 1096,§55

427.6 Allowance — continuing effectiveness. Said claim for exemption, if filed on or before July 1 of any year and allowed by the board of supervisors, shall be effective to secure an exemption only for the year in which such exemption is filed. Provided, notwithstanding

the filing of the claim on or before July 1 of any year, the claimant shall be the legal or equitable owner of the property upon which exemption is claimed, on the first day of July of the year in which said exemption is claimed.

Any person whose claim is denied under the provisions of this chapter may appeal from the action of the board of supervisors in the district court of the county in which said claimed military service tax exemption is situated by giving written notice of such appeal to the county auditor of said county within twenty days from the date of mailing of notice of such action by the board of supervisors. [SS15,§1304-1a; C24, 27, 31, 35, 39,§6948; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.6]

Referred to in §§420.207, 427.7

427.7 Penalty. Any person making a false affidavit for the purpose of obtaining the exemption provided for in sections 427.3 to 427.6 or who knowingly receives such exemption without being legally entitled thereto, or who makes claim for exemption in more than one county in the state shall be guilty of a misdemeanor and upon conviction thereof fined not more than one hundred dollars or imprisoned in the county jail for not more than thirty days or be both so fined and imprisoned. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.7]

Referred to in §420.207

427.8 Petition for exemption. Whenever a person, by reason of age or infirmity, is unable to contribute to the public revenue, such person may file a petition, duly sworn to, with the board of supervisors, stating such fact and giving a statement of property, real and personal, owned or possessed by such applicant, and such other information as the board may require. The board of supervisors may thereupon order the county treasurer to suspend the collection of the taxes assessed against such petitioner, his polls or estate, or both, for the current year, or such board may cancel and remit said taxes, provided, however, that such petition shall first have been approved by the council of the city in which the property of the petitioner is located, or by the township trustees of the township in which said property is located. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6950; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.8]

Referred to in §§420.207, 427.9, 427.10, 446.7

427.9 Suspension of taxes. Whenever a person is a recipient of federal supplementary security income or state supplementary assistance, as defined in section 249.1, or is a resident of a health care facility, as defined by section 135C.1, which is receiving payment from the department of social services for his care, such person shall be deemed to be unable to contribute to the public revenue. The commissioner of social services shall thereupon notify the board of supervisors, of the county in which such assisted person owns property, of the aforesaid fact, giving a statement of property, real and personal, owned, possessed, or upon which said person is paying taxes as a purchaser under contract. It shall then be the duty of the board of supervisors so notified, without the filing of a petition and statement as specified in section 427.8, to order the county treasurer to suspend the collection of all the taxes assessed against said property and remaining unpaid by such person or contractually payable by him, for such time as such person shall remain the owner or contractually prospective owner of such property, and during the period such person receives assistance as described in this section. [C35,§6950-g1; C39, §6950.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.9]

Referred to in §§420.207, 427.10, 427.12

Nothing in 65GA, ch 186, shall be construed to make any person liable for the payment of property taxes which were suspended under this section at any time prior to January 1, 1974, see 65GA, ch 186,§29

427.10 Additional order. The board of supervisors may, if in their judgment it is for the best interests of the public and the petitioner referred to in section 427.8, or the public and the aged person referred to in section 427.9, cancel and remit the taxes assessed against the petitioner referred to in section 427.8, or the aged person referred to in section 427.9, his polls or estate or both, even though said taxes have previously been suspended as provided in sections 427.8 and 427.9. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15, §1304; C24, 27, 31, 35, 39,§6951; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.10]

Referred to in §420.207

427.11 Grantee or devisee to pay tax. In the event that the petitioner shall sell any real estate upon which the tax has been suspended in the manner above provided, or in case any property, or any part thereof, upon which said tax has been suspended, shall pass by devise, bequest, or inheritance to any person other than the surviving spouse or minor child of such infirm person, the taxes, without any accrued penalty, that have been thus suspended shall all become due and payable, with six percent interest per annum from the date of such suspension, except that no interest on taxes shall be charged against the property or estate of a person receiving or having received monthly or quarterly payments of old-age assistance, and shall be enforceable against the property or part thereof which does not pass to such spouse or minor child. The petitioner, or any other person, shall have the right to pay the suspended taxes at any time. [C24, 27, 31, 35, 39,§6952; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.11]

Referred to in §420.207

427.12 Suspended tax list. The county treasurer shall keep and maintain in his office a book which shall be known as the "suspended tax list" and in which he shall enter the following data relative to all taxes, and polls, the collection of which have been suspended by order of the board of supervisors, to wit:

1. A governmental or platted description of the land on which the said tax has been levied or on which it is a lien.

2. The name of the owner of said land.

3. The amount, and current year, of said tax.

4. The date of the order suspending collection of said tax.

Said book shall be so prepared, ruled, and headed that all entries of taxes and polls against the land in a given section or in a given city plat addition, or auditor's plat shall be separate from the entry of taxes against the land in any other section, or city plat, addition, or auditor's plat.

The county treasurer shall, prior to January 1, 1946, enter in said book the aforesaid data as to all unpaid, uncanceled and unremitted taxes, and polls, the collection of which have been ordered suspended by the board of supervisors since July 4, 1921. The data relative to all other suspended taxes and polls shall be entered immediately following the entry of such suspension.

If a tax or poll on said book be paid, or be subsequently legally canceled and remitted, the treasurer shall enter in said book and over his official signature a satisfaction thereof.

Said suspended tax list shall be considered the only official suspended tax list of the county. When any suspension, heretofore or hereafter ordered by the board of supervisors for any reason provided by law, has been entered therein, such entry shall, on and after date of said entry, be a lien and notice thereof in accordance with the provisions of sections 427.9 and 445.10. Such entries of suspended taxes shall not be required to be entered in or carried forward to any other book or tax list, notwithstanding any provision of law to the contrary. [C31, 35,§6952-d1; C39,**§6952.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.12]

427.13 What taxable. All other property, real or personal, is subject to taxation in the manner prescribed, and this section is also intended to embrace:

1. Ferry franchises and toll bridges, which, for the purpose of this chapter are considered real property.

2. Household furniture, beds and bedding made use of in hotels and boarding houses and not hereinbefore exempted.

3. Gold and silver plate, watches, jewelry, and musical instruments.

4. Every description of vehicle, including bicycles, except as otherwise provided.

5. Threshing machines.

6. Boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of the state or not, if owned either wholly or in part by inhabitants of this state, to the amount owned in this state.

However, the provisions of this section shall be subject to the provisions of section 427.1.

Previously tax exempt property under section 427.1, subsections 2 to 9 and subsections 11 and 12, placed on the tax assessment rolls will be prorated monthly from the time of the transfer or beneficial possession. [C51,§456; R60,§712; C73,§801; C97,§1308; C24, 27, 31, 35, 39, §6953; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.13]

Bridges taxed, §434.20
Motor fees in lieu of taxes, §321.130
Pensions exempt, §411.13

427.14 County lands. All lands in this state which are owned or held by any other county or counties claiming title under locations with swampland indemnity scrip, or otherwise, shall be taxed the same as other real estate within the limits of the county. [C51,§456; R60, §712; C73,§801; C97,§1308; C24, 27, 31, 35, 39, §6954; C46, 50, 54, 58, 62, 66, 71, 73, 75,§427.14]

427.15 Interest of lessee. In all cases where land belonging to any state institution has been leased and the leases renewed, containing an option of purchase, the interest of the lessees therein shall be subject to assessment and taxation as real estate. The value of such interest shall be fixed by deducting from the value of the lands and improvements the amount required by the lease to acquire the title thereto, which leasehold interest so assessed and taxed may be sold for delinquent taxes and deeds issued thereunder as in other cases of tax sales, and the same rights shall accrue to the grantee therein as were held and owned by the tenant. [C97,§1351; C24, 27, 31, 35, 39,§6955; C46, 50, 54, 58, 62, 66, 71, 73, 75, §427.15]

427.16 Exemption provisions for personal property in transit.

1. *Definition.* When used in this chapter, the term *"personal property in transit"* means inanimate tangible personal property, goods, wares and merchandise:

a. Which is moving in interstate commerce through or over the state of Iowa, or

b. Which is consigned to a private warehouse within the state of Iowa from outside the state of Iowa for storage in transit to a final destination outside the state of Iowa, whether the out-of-state ultimate destination was specified when transportation begins or afterward.

2. *Construction.*

a. "Private warehouse", for the purposes of this chapter, shall mean any building, structure, or enclosure used or to be used for storage of inanimate tangible goods, wares or merchandise by and belonging to private person, partnership, joint venture, corporation, fiduciary, trust or estate.

b. "Personal property in transit" is deemed to have acquired no situs in Iowa for purposes of taxation. Such "personal property in transit" shall not be deprived of exemption because it is, or may be, bound, divided, severed, broken in bulk, labeled or relabeled, packaged or repackaged while in the warehouse or because the property is being held for reconsignment outside the state of Iowa.

3. *Books and records.*

a. All personal property claimed to be "personal property in transit" shall be designated as such upon the books and records of the warehouse where such personal property is located.

b. The books and records of the warehouse shall be of such nature as to show a description of the property, the quantity, value and source of each shipment received and a description of the property, the quantity, value and destination of all goods taken from the warehouse, with each such receipt or release of such goods dated and described. Such records shall be transmitted to the assessor or assessors of the taxing district or districts in which the warehouse is located for examination and verification and at such time show a recapitulation which must reveal that all shipments (or parts thereof) received are either on hand or disposed of by delivery or destruction and, if by destruction, by what means destroyed or partially destroyed, and if partially destroyed, then what disposition was effected. The annual date of such transmittal of such records shall be not later than February 1 of each year and shall cover the annual accounting period of the warehouse as established on its books and records for all purposes which period has concluded prior to January 1 of each year. Such other reports as may be required by assessors on a periodic basis may be transmitted in form of a written report or in form of copies of bills of lading countersigned by the consignee or his agent containing the factors first enumerated above, as mutually agreed upon by the assessor, or assessors, and operator of the warehouse.

c. The books and records of any warehouse in which "personal property in transit" is stored shall be open at all times to the inspection of authorized personnel of the department of revenue and the taxing authorities of any political subdivision of the state of Iowa.

4. *Form of claim.* Any person, firm, copartnership, association, corporation, joint venture, fiduciary, trust or estate making claim to no situs status of any property under this chapter shall do so in the form and manner prescribed by the director of revenue on or before February 1 of each personal property assessment year. Such claim shall be filed with the assessor or assessors of the district or districts in which such property is situated. All such claims shall be accompanied by a certification of the warehouse operator as to the status on its books of the property involved, and all such claims shall be allowed in accordance with the decision of the board or boards of review of such taxing district or districts in which the property is situated.

5. *Actual value.* Where the records of the warehouse indicate, or where an audit of such records indicates, as the case may be, that goods handled by or disposed of through such warehouse with a destination within the state of Iowa, the total market value of such goods with such destination shall be taken into account in determination of their actual value in accordance with sections 428.17 and 428.21, and such actual value shall be the basis for determining the assessed valuation of merchandise inventory of the warehouse for the year next following the year for which such total market value is computed.

6. *Evasion of tax.* If any owner, shipper, warehouse operator, or the agent or employee of any owner, shipper, or warehouse operator shall misrepresent, conceal or secrete any personal property as defined herein of which he is possessed either by title or by custody so as to evade or avoid assessment or levy of taxes, then such owner, shipper, or warehouse operator shall be liable to the taxing district in which the personal property is located at the time of such misrepresentation, concealment or secreting of such personal property for such assessment or levy of taxes so evaded or avoided plus a penalty of five percent for each month of such evasion or avoidance up to a maximum of twenty-five percent plus interest on the amount of such assessment or levy of taxes at the rate of six percent per annum.

7. *Penalty.* If any person willfully makes or causes to be made any statement to the officer charged with assessment or valuation of property for tax purposes in his taxing district containing a false statement of a material fact, be he owner, shipper, storageman, or warehouseman, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars or by imprisonment in the county jail for not less than thirty days or more than one hundred fifty days. [C66, 71, 73, 75,§427.16]

See §427.1(29)

427.17 Tax credit for livestock tax.

1. The personal property tax levied on all livestock assessed for taxation as of January 1, 1973, shall not be collected in 1974, or any subsequent year, from the owners of the livestock or from those having liability for the payment of the tax.

2. A tax credit shall be allowed each taxing district in the state for each head of livestock that was assessed as of January 1, 1973. The tax credit shall commence and be effective for the tax year 1974 and each year thereafter based upon the livestock assessed as of January 1, 1973.

3. On or before January 15, 1974, the county auditor of each county shall prepare a statement listing for each taxing district in the county the assessed or taxable values of all livestock assessed for taxation as of January 1, 1973. The statement shall also show the tax rates of the various taxing districts and the total amount of taxes which in the absence of this section would have been levied upon livestock assessed as of January 1, 1973. The

county auditor shall certify and forward copies of the statement to the director of revenue not later than January 15, 1974. The director of revenue shall compute the applicable tax credit and certify to the state comptroller the amount due to each taxing district, which amount shall be the dollar amount which would be payable if all livestock so assessed were taxed, based upon those assessed as of January 1, 1973.

4. The amounts due each taxing district shall be paid on warrants payable to the respective county treasurers in two equal payments by the state comptroller on March 15 and September 15 of each year with the first payment starting March 15, 1974. The county treasurer shall apportion the proceeds to the various taxing districts in the county.

5. In the event that the amount appropriated for reimbursement of the taxing districts is insufficient to pay in full the amounts due to each of the taxing districts, then the amount of each payment shall be reduced by the director of revenue according to the ratio that the total amount of funds to be paid to each taxing district bears to the total amount to be paid to all taxing districts in the state.

There is appropriated from the general fund of the state of Iowa to the state comptroller for the fiscal year beginning July 1, 1973, and ending June 30, 1974, the sum of four million dollars, or so much thereof as may be necessary, and for each succeeding fiscal year the sum of eight million dollars, or so much thereof as may be necessary, to carry out the provisions of this section. [C71, 73,§427.13(2); C75, §427.17]

Referred to in §442.2

CHAPTER 427A

PERSONAL PROPERTY TAX CREDIT

See 64GA, ch 1020,§8, for extended fiscal year provisions relating to personal property tax credit

427A.1 Personal property tax credit.
427A.2 In addition to military exemption — personal property tax credit.
427A.3 Property must be listed.
427A.4 Limit of credit.
427A.5 Jointly owned property—division of credit.
427A.6 Listing by auditor.
427A.7 and 427A.8 Repealed by 65GA, ch 255, §4.

PERSONAL PROPERTY TAX PHASE OUT

427A.9 Additional personal property tax credit.
427A.10 Phase out of tax.
427A.11 Limit on assessment.
427A.12 Replacement fund.
427A.13 Appropriation.
427A.14 Computing debt limitations.

427A.1 Personal property tax credit.

1. All tangible property except that which is assessed and taxed as real property is subject to the personal property tax credits provided in this chapter, unless the property is taxed, licensed, or exempt from taxation under other provisions of law. For the purposes of property taxation only, the following shall be assessed and taxed, unless otherwise qualified for exemption, as real property:

a. Land and water rights.

b. Substances contained in or growing upon the land, before severance from the land, and rights to such substances. However, growing crops shall not be assessed and taxed as real property, and this paragraph is also subject to the provisions of section 441.22.

c. Buildings, structures or improvements, any of which are constructed on or in the land, attached to the land, placed for use upon the land, or placed upon a foundation whether or not attached to the foundation. However, property taxed under chapter 135D shall not be assessed and taxed as real property.

d. Buildings, structures, equipment, machinery or improvements, any of which are attached to the buildings, structures, or improvements defined in paragraph "*c*" of this subsection.

e. Machinery used in manufacturing establishments. The scope of property taxable under this paragraph is intended to be the same as, and neither broader nor narrower than, the scope of property taxable under section 428.22* prior to July 1, 1974.

f. Property taxed under chapter 499B.

g. Rights to space above the land.

h. Property assessed by the department of revenue pursuant to sections 428.24 to 428.29, or chapters 433 to 438.

i. Property used but not owned by the persons whose property is defined in paragraph "*h*" of this subsection, which would be assessed by the department of revenue if the persons owned the property. However, this paragraph does not change the manner of assessment or the authority entitled to make the assessment.

j. (1) Computers. As used in this paragraph, "computer" means stored program processing equipment and all devices fastened to the computer by means of signal cables or communication media that serve the function of signal cables.

(2) Computer output microfilming equipment.

(3) Key entry devices that prepare information for input to a computer.

(4) All equipment that produces a final output from one of the facilities listed in subparagraphs (1), (2) and (3) of this paragraph.

2. As used in subsection 1, "attached" means any of the following:

a. Connected by an adhesive preparation.

b. Connected in a manner so that disconnecting requires the removal of one or more fastening devices, other than electric plugs.

c. Connected in a manner so that removal requires substantial modification or alteration of the property removed or the property from which it is removed.

3. Notwithstanding the definition of "attached" in subsection 2, property is neither "attached" nor "placed for use upon the land" if it is a kind of property which would ordinarily be removed when the owner of the property moves to another location. In making this determination the assessing authority shall not take into account the intent of the particular owner.

4. Notwithstanding the other provisions of this section, property described in this section, if held solely for sale, lease or rent as part of a business regularly engaged in selling, leasing or renting such property, and if the property is not yet sold, leased, rented or used by any person, shall not be assessed and taxed as real property. This subsection does not apply to any building.

5. Nothing in this section shall be construed to permit an item of property to be assessed and taxed in this state more than once in any one year.

6. The assessing authority shall annually reassess property which is assessed and taxed as real property, but which would be regarded as personal property except for this section. This section shall not be construed to limit the assessing authority's powers to assess or reassess under other provisions of law.

7. The director of revenue shall promulgate rules subject to chapter 17A to carry out the intent of this section. [C71, 73, 75,§427A.1]

Referred to in §§427A.2, 427A.4, 427A.9, 427A.10, 427A.14

*Repealed by 65GA, ch 1228,§2

427A.2 In addition to military exemption—personal property tax credit. Persons entitled to exemption from personal property tax under provisions of section 427.3, shall be granted such exemption, in addition to the credits provided by this chapter. There is hereby granted a credit of not to exceed ten thousand dollars against the assessed value of tangible personal property as defined in section 427A.1, owned by a person or business enterprise.

For the purposes of this section:

1. *"Person"* means an individual, partnership, joint venture, association, corporation, trust, or estate.

2. *"Business enterprise"* means a person engaged in business. [C71, 73, 75,§427A.2]

Referred to in §427A.9

427A.3 Property must be listed. The personal property tax credit authorized by this chapter shall not excuse the taxpayer from listing all personal property as required in chapter 428. The valuation of such personal property shall be determined as prescribed in chapter 441, so that the valuations of all personal property in a taxing district shall be known and shall be made a part of the tax list compiled by the county auditor under chapter 443. [C71, 73, 75,§427A.3]

Referred to in §427A.9

427A.4 Limit of credit. No person or business enterprise in the state shall be allowed a credit on personal property tax in excess of ten thousand dollars assessed valuation. Any person or business enterprise who owns personal property subject to taxation in more than one county of the state shall designate in reporting such property to the assessor for the purpose of assessment as required in section 427A.1 in which counties of the state the property is located and may claim the entire credit in one county or a proportionate part thereof in each county where the property is situated, and in no case shall he claim more than the ten thousand dollars assessed value for all personal property assessed in all counties.

Each year, on or before July 1, the taxpayer shall deliver to the assessor an application for personal property tax credit and state by such affidavit or affidavits filed in each county where his personal property is situated, that he has not claimed a total personal property tax credit in all counties in excess of a total of ten thousand dollars assessed valuation.

It shall be the duty of the assessor to examine claims for such credit filed with him and recommend on each such claim the disallowance thereof where it appears that an owner of tangible personal property has attempted to divide the ownership thereof for purpose of obtaining additional credit beyond the amount of ten thousand dollars in a year.

If any person fails to make application for the credits provided for under this chapter as herein required, he shall be deemed to have waived the personal property tax credit for the year in which he failed to make claim.

Any person making a false affidavit for the purpose of obtaining the credit provided for in this section, or who knowingly receives such credit without being legally entitled thereto, or who makes claim for credit of more than ten thousand dollars in the state shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars or imprisoned in the county jail for not more than thirty days or be both so fined and imprisoned. [C71, 73, 75,§427A.4]

Referred to in §427A.9

427A.5 Jointly owned property—division of credit. If personal property is owned separately by a husband and wife, they may divide the credit or one may take the entire credit, but in no case may a husband and wife receive a total credit of more than ten thousand dol-

lars unless husband, wife or minor children own farm units separately. If personal property is owned by separate business enterprises and the business enterprises are controlled or owned by the same person, the separate business enterprises may divide the credit or one may take the entire credit, but in no case may separate business enterprises which are controlled or owned by the same person receive a total exemption of more than ten thousand dollars.

Business enterprises are controlled or owned by the same person if over fifty percent of their assets or shares of stock are controlled or owned by the same person, or if they are in fact controlled and managed by the same person, regardless of how actual title to the assets or shares of stock are held. The assessor shall deliver the sworn affidavits to the county auditor by August 1 of each year. [C71, 73, 75,§427A.5]

Referred to in §427A.9

427A.6 Listing by auditor. On or before July 1 of each year, the auditor of each county shall prepare a statement listing for each taxing district in the county all personal property upon which taxes shall not be collected due to the tax credit granted in this chapter. The statement shall show the tax rates of the various taxing districts and the total amount of taxes which shall not be collected in each district because of the tax credit. The auditor shall certify and forward one copy each of the statement to the state comptroller and to the department of revenue on or before July 15 of such year. The department of revenue shall have the responsibility of auditing credits allowed in all counties in the state and the assessed values and assessment practices which affect the amounts of credits and such audit shall be completed within twenty-four months from July 1 of the year the claims were filed. A copy of the audit containing disallowed credits shall be sent to the county auditor, the county treasurer and state comptroller, and such individuals shall be directed to correct their books and records accordingly. The amount of such erroneous credit shall be charged to the county by the state comptroller. The director of revenue shall be authorized and directed to disallow any claim where the audit or investigation revealed that the claimant was not entitled to the credit claimed. Persons and business enterprises may appeal any disallowed personal property credit to the state board of tax review. [C71, 73, 75,§427A.6]

427A.7 and 427A.8 Repealed by 65GA, ch 255,§4.

PERSONAL PROPERTY TAX PHASE OUT

427A.9 Additional personal property tax credit. Each taxpayer entitled to the personal property tax credit granted pursuant to sections 427A.1 to 427A.5 of this chapter is granted an additional personal property tax credit against the taxpayer's assessed value of personal property which would otherwise be taxable in the tax year.

The amount of the additional personal property tax credit shall be a fixed amount for each tax year. The amount of the additional personal property tax credit shall be increased for the extended tax year beginning January 1, 1974, and ending June 30, 1975, and shall be increased for each tax year immediately following a tax year in which the growth of state general fund revenues, adjusted for changes in rate or basis, exceeds five and one-half percent. An increase in the additional personal property tax credit, once granted, shall continue for each succeeding tax year. For the purposes of this chapter the state comptroller may estimate the state percent of growth if necessary to avoid delay in the collection of taxes. After nine such increases have been made, all taxes on personal property shall be repealed as provided in the following section. The director of revenue and the state comptroller, jointly, shall determine the amount of the credit for each such tax year. Such amount shall be the maximum amount, rounded to the nearest ten dollars, which will permit complete funding of the replacement obligation under this division, including the replacement obligation for the tax credit granted pursuant to sections 427A.1 to 427A.5, out of the appropriation provided in this chapter.

As used in this division "additional personal property tax credit" means the additional personal property tax credit granted pursuant to this section.

As used in this division "tax year" means the year in which taxes are payable.

No application shall be required for the additional personal property tax credit. The assessor and county auditor shall take all necessary action to assure that each taxpayer receives the credit. [C75,§427A.9]

Referred to in §442.2

427A.10 Phase out of tax. Effective on July 1 after the tax year in which the ninth increase in the additional personal property tax credit becomes effective, all taxes on personal property as defined in section 427A.1 are repealed, and personal property shall not thereafter be listed or assessed. This section shall prevail over all inconsistent statutes. [C75, §427A.10]

Referred to in §442.2

427A.11 Limit on assessment. For each annual assessment of personal property through the final assessment, the total assessed value of all personal property in each assessing jurisdiction shall not exceed the total actual value of all personal property in the assessing jurisdiction as of January 1, 1973, excluding livestock. The assessor shall determine the assessed value of all taxable personal property in accordance with chapter 441. If the total assessed value exceeds the limitation established by this section, the assessor shall reduce the assessed value of each taxpayer's personal property after the board of review adjourns

and prior to certifying values to the county auditor, by the same percentage, so that the total assessed value of all personal property in the assessing jurisdiction shall be equal to the total actual value of all personal property in the assessing jurisdiction as of January 1, 1973, excluding livestock. The assessor shall inform taxpayers of any percentage that the value of personal property is reduced in the assessor jurisdiction by publication of notice in a newspaper of general circulation in the city or county. This section shall prevail over all inconsistent statutes. [C75,§427A.11]

Referred to in §442.2

427A.12 Replacement fund.

1. A personal property tax replacement fund is established as a permanent fund in the office of the treasurer of state, for the purpose of reimbursing the taxing districts for their loss of revenue from personal property taxes due to the provisions of this chapter, determined as provided in this section.

2. On or before January 15, 1974, the county auditor of each county shall prepare a statement listing for each taxing district in the county:

a. The total assessed value of all personal property assessed for taxation as of January 1, 1973, excluding livestock but including other personal property eligible for tax credits granted by this chapter.

b. The millage rate of each taxing district levied in 1972 and payable in 1973.

c. The personal property tax replacement base for each taxing district, which shall be equal to the amount determined pursuant to paragraph "*a*" of this subsection multiplied by the millage rate specified in paragraph "*b*".

3. The county auditor shall certify and forward one copy each of the statement to the state comptroller and to the director of revenue not later than January 15, 1974. The director of revenue shall make any necessary corrections and certify to the state comptroller the amount of the personal property tax replacement base for each taxing district in the state, determined pursuant to subsection 2.

4. The personal property tax replacement base for each taxing district shall be permanent and shall not be adjusted, except that the state comptroller shall make any necessary corrections and shall make appropriate adjustments to reflect mergers, annexations and other changes in taxing districts or their boundaries.

5. For each state fiscal year ending with or before the year in which the ninth increase in the additional personal property tax credit under this division becomes effective, each taxing district shall be reimbursed from the personal property tax replacement fund in an amount equal to its personal property tax replacement base multiplied by a fraction the numerator of which is the total assessed value of all personal property, excluding livestock, in the taxing district on which taxes are not payable during such fiscal year because of the various tax credits granted by this chapter, and the denominator of which is the total assessed value of all personal property in the taxing district, excluding livestock but including other personal property eligible for tax credits granted by this chapter. For the half year beginning January 1, 1974, and ending June 30, 1974, the amount of reimbursement shall be half the amount determined pursuant to this subsection. The county auditor shall certify and forward to the state comptroller and the director of revenue, at the times and in the form directed by the director of revenue, any information needed for the purposes of this subsection. The director of revenue shall make any necessary corrections and certify the appropriate information to the state comptroller.

6. For each state fiscal year beginning after the year in which the ninth increase in the additional personal property tax credit under this division becomes effective, each taxing district shall be reimbursed from the personal property tax replacement fund in an amount equal to its personal property tax replacement base.

7. The amount due each taxing district shall be paid in the form of warrants payable to the respective county treasurers by the state comptroller in two equal payments on September 15 and March 15 of each fiscal year. The first payment shall be made on March 15, 1974. The county treasurer shall pay the proceeds to the various taxing districts in the county.

8. It is the intent of the general assembly that the amounts appropriated by this division shall be sufficient to pay in full the amounts due to all taxing districts. If, for any fiscal year the amount appropriated to the personal property tax replacement fund is insufficient to pay in full the amounts due to all taxing districts, then the amount of each payment shall be reduced by the same percentage, so that the aggregate payments to all taxing districts shall be equal to the amount appropriated for such payments. [C71, 73,§427A.7; C75,§427A.12]

Referred to in §442.2

427A.13 Appropriation. There is hereby appropriated from the general fund of the state of Iowa to the personal property tax replacement fund the following sums, or so much thereof as may be necessary, to carry out the provisions of this chapter as amended by this division. For the fiscal year beginning July 1, 1973, and ending June 30, 1974, there is appropriated the sum of thirty-one million nine hundred thousand dollars. For the fiscal year beginning July 1, 1974, and ending June 30, 1975, and each succeeding fiscal year, there is appropriated the sum of thirty-five million seven hundred thousand dollars. For each fiscal year for which an increase in the additional personal property tax credit becomes effective as provided in this division, the appropriation

under this section shall be increased by three million eight hundred thousand dollars, and such increased appropriation shall continue for each succeeding fiscal year. For the fiscal year for which the ninth increase in the additional personal property tax credit becomes effective as provided in this division, and for each succeeding fiscal year, the total appropriation shall be sixty-eight million dollars per year. [C71, 73,§427A.8; C75,§427A.13]

Referred to in §442.2

427A.14 Computing debt limitations. For the purposes of computing all debt limitations for municipalities, political subdivisions, school districts and taxing districts with respect to any debt incurred or proposed to be incurred after July 1, 1973, the actual value of all personal property as defined in section 427A.1 shall not exceed its actual value as of January 1, 1973. [C75,§427A.14]

Referred to in §442.2

CHAPTER 428

LISTING IN GENERAL

Referred to in §§111.25, 306.22, 409.48, 427.1, 427A.3, 441.47
See 63GA, ch 1204,§22, for 1970 tax levies

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428.36 Listing property of financial institutions.
428.37 Listing certain electric power generating plants.

428.1 Listing—by whom. Every inhabitant of this state, of full age and sound mind, shall list for the assessor all property subject to taxation in the state, of which he is the owner, or has the control or management, in the manner herein directed:

1. The property of one under disability, by the person having charge thereof.
2. The property of a married person, by either party.
3. The property of a beneficiary for whom the property is held in trust, by the trustee.
4. The personal property of a decedent, by the executor or administrator, or if there is none, by any person interested therein.
5. The property of a body corporate, company, society or partnership, by its principal accountant, officer, agent, or partner, as the assessor may demand.
6. Property under mortgage or lease is to be listed by and taxed to the mortgagor or lessor, unless listed by the mortgagee or lessee. [C51, §458; R60,§714; C73,§803; C97,§1312; S13,§1312; C24, 27, 31, 35, 39,§6956; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.1]

S13,§1312, editorially divided
Referred to in §441.19(1)

428.2 Listing property of another. Any person required to list property belonging to another shall list it in the same county in which he would be required to list it if it were his own, except as herein otherwise directed; but he shall list it separately from his own, giving the assessor the name of the person or estate to which it belongs. [C51,§461; R60,§716; C73, §805; C97,§1316; C24, 27, 31, 35, 39,§6957; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.2]

Referred to in §441.19(1)

428.3 Agent personally liable. Any person acting as the agent of another, and having in his possession or under his control or management any money, notes, and credits, or personal property belonging to such other person, with a view to investing or loaning or in any other manner using or holding the same for pecuniary profit, for himself or the owner, shall be required to list the same at the real value, and such agent shall be personally liable for the tax on the same; and if he refuse to render the list or to swear to the same, the amount of such money, property, notes, or credits may be listed and valued according to

the best knowledge and judgment of the assessor. [R60,§725; C73,§817; C97,§1320; C24, 27, 31, 35, 39,§6958; C46, 50, 54, 58, 62, 66, 71, 73, 75, §428.3]

Referred to in §441.19(1)

428.4 Personal property—real estate—buildings. Property shall be assessed for taxation each year. Personal property shall be listed and assessed each year in the name of the owner of the personal property on the first day of January and the assessment made shall be the value of the personal property as of January 1 of the year of the assessment. Real estate shall be listed and assessed in 1978 and every two years thereafter. The assessment of real estate shall be the value of the real estate as of January 1 of the year of the assessment. The year 1978 and each even-numbered year thereafter shall be a reassessment year. In any year, after the year in which an assessment has been made of all the real estate in any assessing jurisdiction, it shall be the duty of the assessor to value and assess or revalue and reassess, as the case may require, any real estate that the assessor finds was incorrectly valued or assessed, or was not listed, valued and assessed, in the real estate assessment year immediately preceding, also any real estate the assessor finds has changed in value subsequent to January 1 of the preceding real estate assessment year. The assessor shall determine the actual value and compute the taxable value thereof as of January 1 of the year of the revaluation and reassessment. The assessment shall be completed as specified in section 441.28, but no reduction or increase in actual value shall be made for prior years. If an assessor makes a change in the valuation of the real estate as provided for herein, the provisions of sections 441.23, 441.37, 441.38 and 441.39 shall apply.

The assessor shall notify the director of revenue, in the manner and form to be prescribed by the director, as to the class or classes of real estate reviewed, revalued, and reassessed and shall report such details as to the effects or results of the revaluation and reassessment as may be deemed necessary by the director. This notification shall be contained in a report to be attached to the abstract of assessment for the year in which the new valuations become effective.

Any buildings erected, improvements made, or buildings removed in a year after the assessment of the class of real estate to which they belong shall be valued, listed and assessed and reported by the assessor to the county auditor after approval of the valuations by the local board of review, and said auditor shall thereupon enter the taxable value of such building or taxable improvement on the tax list as a part of real estate to be taxed. If such buildings are erected by any person other than the owner of the land, they shall be listed and assessed to the owner of the buildings or improvements as real estate. [C51,§§460, 465; R60,§§719, 720; C73,§812; C97,§1350; C24, 27, 31, 35, 39,§6959; C46, 50, 54, 58, 62, 66, 71, 73, 75, §428.4; 66GA, ch 1198,§2, ch 1199,§1]

Referred to in §§420.207, 441.49, 443.22, 445.32
Amendments retroactive to January 1, 1976

428.5 Unknown owners. When the name of the owner of any real estate is unknown, it shall be assessed without connecting therewith any name, but inscribing at the head of the page the words "owners unknown", and such property, whether lands or city lots, shall be listed as nearly as practicable in the order of the numbers thereof. [R60,§737; C73,§826; C97, §1353; C24, 27, 31, 35, 39,§6960; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.5]

C97,§1353, editorially divided

428.6 Deceased owner. The real estate of persons deceased may be listed as belonging to his estate or his heirs, without enumerating them. [C51,§461; R60,§716; C73,§805; C97,§1353; C24, 27, 31, 35, 39,§6961; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.6]

428.7 Description of tracts—manner. A description shall not comprise more than one city lot or other smallest subdivision of the land according to the government surveys, except in cases where the boundaries are so irregular that it cannot be described in the usual manner in accordance therewith. However, descriptions may be combined for assessment purposes to allow the assessor to value the property as a unit. This section shall apply to known owners and unknown owners, alike. [C97,§1353; C24, 27, 31, 35, 39,§6962; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.7; 66GA, ch 1190,§14]

Referred to in §425.5

428.8 Place of listing. Moneys and credits, notes, bills, bonds, and corporate shares or stocks not otherwise assessed, shall be listed and assessed where the owner lives, except as otherwise provided, and except that, if personal property not consisting of moneys, credits, corporation or other shares of stock, or bonds, has been kept in another assessment district during the greater part of the year preceding the first of January, or of the portion of that period during which it was owned by the person subject to taxation therefor, it shall be taxed where it has been so kept. [C97, §1313; C24, 27, 31, 35, 39,§6963; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.8]

428.9 "Owner" defined. Commission merchants, and all persons, other than warehousemen as defined in section 554.7102 trading and dealing on commission, and assignees authorized to sell, and persons having in their possession property belonging to another subject to taxation in the assessment district where said property is found, when the owner of the goods does not reside in the county, are, for the purpose of taxation, to be deemed the owners of the property in their possession. [C51,§459; R60,§715; C73,§804; C97,§1314; C24, 27,

31, 35, 39,§6964; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.9]

428.10 Ice and coal dealers. Each ice or coal dealer shall be assessed upon the average amount of capital used by him in conducting his business. In estimating the amount of capital so used, there shall be taken into consideration the increase and decrease of the value of ice and coal held in store, and upon the value of his warehouses or ice houses situated upon lands leased from railway companies or other persons, and upon the value, if any, of such leasehold interest.

Such assessment shall be listed as personal property. In determining the average amount of capital invested the assessor shall take into consideration the entire year's business prior to January 1, next preceding the assessment period. [C97,§1315; C24, 27, 31, 35, 39,§6965; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.10]

Excise tax on grain handled, §428.35

428.11 Business in different districts. When a person, firm, or corporation is doing business in more than one assessment district, the property and credits existing in any one of such districts, or arising from business done in such district, shall be listed and taxed in that district, and the credits not existing in or pertaining especially to the business in any district shall be listed and taxed in that district where the principal place of business may be. [C51, §463; R60,§717; C73,§806; C97,§1317; C24, 27, 31, 35, 39,§6966; C46, 50, 54, 58, 62, 66, 71, 73, 75, §428.11]

C97,§1317, editorially divided

428.12 Branch banks. The personalty, moneys and credits connected with or growing out of all business transacted directly or indirectly by or through the servants, employees or agents of any person, firm, or corporation engaged in the banking business, having an office in more than one assessment district for the transaction of business, shall be taxable in the assessment district where said bank office is located. [C97,§1317; C24, 27, 31, 35, 39, §6967; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.12]

428.13 How assessment made. An assessment made in such district shall be considered and proper deduction made in determining the taxable property of such person or firm, or shares of stock of such corporation, at its principal place of business. [C97,§1317; C24, 27, 31, 35, 39,§6968; C46, 50, 54, 58, 62, 66, 71, 73, 75, §428.13]

428.14 Stipulation for payment. The stipulation for the payment of obligations growing out of the business of such agency, in another district than the place where such agency is located, shall not determine where the property or credits of such parties shall be taxed. [C97,§1317; C24, 27, 31, 35, 39,§6969; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.14]

428.15 Partners. Any individual of a partnership is liable for the taxes due from the firm. [C51,§463; R60,§717; C73,§806; C97,§1317; C24, 27, 31, 35, 39,§6970; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.15]

428.16 "Merchant" defined. Any person, firm, or corporation owning or having in his possession or under his control within the state, with authority to sell the same, any personal property purchased with a view to its being sold, or which has been consigned to him from any place out of this state to be sold within the same, or to be delivered or shipped by him within or without this state, except a warehouseman as defined in chapter 554, article 7, part 2, shall be held to be a merchant for the purposes of this title. [C51,§468; R60,§723; C73,§815; C97,§1318; C24, 27, 31, 35, 39,§6971; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.16]

Referred to in §§420.207, 427.1(19), 428.18

428.17 Stocks of merchandise. In assessing such stocks of merchandise, the assessor shall require the production of the last inventory and enter the date thereof in the assessment roll. If, in the judgment of the assessor, the inventory is not correct, or if it was taken at such time as to render it unreliable as to the amount or value of such merchandise, he shall assess the same by personal examination. The assessment shall be made at the same ratio of the average value of the stock during the year next preceding the time of assessment, as is provided by section 441.21, and if the merchant has not been engaged in business for one year, then at a like ratio of the average value during such time as he shall have been so engaged, and if commencing on January 1, then at the same ratio of the value at that time. [C51,§468; R60,§723; C73,§815; C97,§1318; C24, 27, 31, 35, 39,§6972; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.17]

Referred to in §§420.207, 427.16, 428.21
See §441.21

428.18 Warehouseman to file list. A warehouseman as specified in section 428.16 shall, upon request, file with the assessor a written statement showing all property in his possession belonging to another subject to taxation, and the name and address of the person, firm, corporation, or estate to which it belongs. [C24, 27, 31, 35, 39,§6973; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.18]

Referred to in §420.207
40ExGA, SF 183,§7-a1, editorially divided

428.19 Warehouseman deemed owner. If said warehouseman fails to furnish such statement all property in the possession of the warehouseman belonging to another subject to taxation, shall be deemed to be owned by the warehouseman for the purpose of taxation, and he shall be liable for taxes thereon. [C24, 27, 31, 35, 39,§6974; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.19]

Referred to in §420.207

428.20 "Manufacturer" defined—duty to list. Any person, firm, or corporation who purchases, receives, or holds personal property of

any description for the purpose of adding to the value thereof by any process of manufacturing, refining, purifying, combining of different materials, or by the packing of meats, with a view to selling the same for gain or profit, shall be deemed a manufacturer for the purposes of this title, and shall list such property for taxation. [C51,§469; R60,§724; C73,§816; C97,§1319; C24, 27, 31, 35, 39,§6975; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.20]

40ExGA, SF 183,§9, editorially divided
Referred to in §§420.207, 427.1(19), 428.23

428.21 Assessment—how made. Such personal property, whether in a finished or unfinished state, shall be assessed at the same ratio as provided in section 441.21 of its average value estimated upon those materials only which enter into the combination, manufacture, or pack, such average to be ascertained as in section 428.17. [C51,§469; R60,§724; C73,§816; C97,§1319; C24, 27, 31, 35, 39,§6976; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.21]

Referred to in §§420.207, 427.16
See §441.21

428.22 Repealed by 65GA, ch 1228,§2.

428.23 Manufacturer to list. Corporations organized under the laws of this state for pecuniary profit and engaged in manufacturing as defined in section 428.20 shall list their real estate, personal property not hereinbefore mentioned, and moneys and credits in the same manner as is required of individuals. [C97,§1319; C24, 27, 31, 35, 39,§6978; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.23]

Referred to in §420.207

428.24 Public utility plants. The lands, buildings, machinery, and mains belonging to individuals or corporations operating waterworks or gasworks or pipe lines; the lands, buildings, machinery, tracks, poles, and wires belonging to individuals or corporations furnishing electric light or power; the lands, buildings, machinery, poles, wires, overhead construction, tracks, cables, conduits, and fixtures belonging to individuals or corporations operating railways by cable or electricity, or operating elevated street railways; and the lands, buildings, tracks, and fixtures of street railways operated by animal power, shall be listed and assessed by the department of revenue. In the making of any such assessment of waterworks plants, the value of any interest in the property so assessed, of the municipal corporation wherein the same is situated, shall be deducted, whether such interest be evidenced by stock, bonds, contracts, or otherwise. [C97,§1343; C24, 27, 31, 35, 39,§6979; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.24]

C97,§1343, editorially divided
Referred to in §§427A.1, 428.28, 437.12, 437.13

428.25 Property in different districts. Where any such property except the capital stock is situated partly within and partly without the limits of a city, such portions of the said plant shall be assessed separately, and the portion within the said city shall be assessed as above provided, and the portion without the said city shall be apportioned by the department of revenue to the district or districts in which it is located. [C97,§1343; C24, 27, 31, 35, 39,§6980; C46, 50, 54, 58, 62, 66, 71, 73, 75, §428.25]

Referred to in §§427A.1, 428.37, 437.12, 437.13

428.26 Personal property. All the personal property of such individuals and corporations used or purchased by them for the purposes of such gas or waterworks, electric light plants, electric or cable railways, elevated street railways or street railways operated by animal power, including the rolling stock of such railways and street railways, and the animals belonging to such street railways operated by animal power, shall be listed and assessed by the department of revenue. In the making of any such assessment of waterworks plants, the value of any interest in the property so assessed, of the municipal corporation wherein the same is situated, shall be deducted, whether such interest be evidenced by stock, bonds, contracts, or otherwise. [C97,§1343; C24, 27, 31, 35, 39,§6981; C46, 50, 54, 58, 62, 66, 71, 73, 75, §428.26]

Referred to in §§427A.1, 437.12, 437.13

428.27 Capital stock listed and assessed. The actual value of the capital stock over and above that of the above-listed property shall be listed and assessed. [C97,§1343; C24, 27, 31, 35, 39,§6982; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.27]

Referred to in §§427A.1, 428.37, 437.12, 437.13

428.28 Annual report by utility. Every individual, copartnership, corporation, or association operating for profit, waterworks or gasworks or pipelines, electric light or power plant, railways operated by electricity, elevated street railways, shall, annually on or before the first day of May of each calendar year, make a report on blanks to be provided by the department of revenue of all of the property owned by such individual, copartnership, corporation, or association within the incorporated limits of any city in the state, and give such other information as the director of revenue shall require.

Every individual, copartnership, corporation, association or city which operates a public utility on a nonprofit basis, as defined in section 428.24 shall annually, on or before the first day of May of each calendar year, make a report on blanks to be provided by the department of revenue of all of the property owned by such individual, copartnership, corporation, association or city within the incorporated limits of any city in the state, and give such other information as the director of revenue shall require. Any public utility which reports according to this paragraph shall not be assessed. [C31, 35,§6982-d1; C39,§6982.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.28]

Referred to in §427A.1

428.29 Assessment and certification. The director of revenue shall on the second Monday of July of each year proceed to determine, upon the basis of the data required in such report and any other information the director may obtain, the actual value of all property, subject to the director's jurisdiction, of said individual, copartnership, corporation, or association, and shall make assessments upon the taxable value thereof, as provided by section 441.21. The director of revenue shall, on or before the third Monday in August, certify to the county auditor of every county in the state the valuations fixed for assessment upon all such property in each and every taxing district in each county by the department of revenue. This valuation shall then be spread upon the books in the same manner as other valuations fixed by the department of revenue upon property assessed under the department's jurisdiction. [C31, 35,§6982-d2; C39,§6982.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.29]

Referred to in §§427A.1, 437.13, 443.22
See §441.21

428.30 Review. Any taxpayer subject to assessment under the provisions of this chapter shall have the right to ask for a review of its assessment by the director of revenue within ten days after the date the assessment is certified to the county auditor. [C31, 35, §6982-d3; C39,§6982.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.30]

428.31 Judicial review. Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the provisions of said Act, petitions for judicial review shall be filed within thirty days after the final decision of the director has been certified to the county auditor. [C31, 35,§6982-d4; C39, §6982.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.31]

428.32 and 428.33 Repealed by 65GA, ch 1090, §211.

428.34 Real estate of corporations. All real estate owned by corporations, returned in their statements as part of their assets for purposes of taxation, shall be valued therein for such assessment as other real estate, except as otherwise provided, and shall not be otherwise assessed. [C97,§1327; C24, 27, 31, 35, 39,§6983; C46, 50, 54, 58, 62, 66, 71, 73, 75,§428.34]

428.35 Grain handled.

1. *Definitions.* "Person" as used herein means individuals, corporations, firms and associations of whatever form. "Handling or handled" as used herein means the receiving of grain at or in each elevator, warehouse, mill, processing plant or other facility in this state in which it is received for storage, accumulation, sale, processing or for any purpose whatsoever. "Grain" as used herein means wheat, corn, barley, oats, rye, flaxseed, field peas, soybeans, grain sorghums, spelts, and such other products as are usually stored in grain elevators. Such term excludes such seeds after being processed, and the products of such processing when packaged or sacked. The term "processing" shall not include hulling, cleaning, drying, grading or polishing.

2. *Tax imposed.* An annual excise tax is hereby levied on such handling of grain in the amount hereinafter provided. All grain so handled shall be exempt from all taxation as property under the laws of this state. The amount of such excise tax shall be a sum equal to one-fourth mill per bushel upon all grain as herein defined so handled.

3. *Statement filing form.* Every person engaged in handling grain shall, on the first day of January of each year and not later than sixty days thereafter, make and file with the assessor a statement of the number of bushels of grain handled by him in that district during the year immediately preceding, or the part thereof, during which he was engaged in handling grain; and on demand the assessor shall have the right to inspect all such person's records thereof. A form for making such statement shall be included in the blanks prescribed by the director of revenue. If such statement is not furnished as herein required, section 441.24, shall be applicable.

4. *Assessment.* The assessor of each such district, from the statement required or from such other information as he may acquire, shall ascertain the number of bushels of grain handled by each person handling grain in his district during the preceding year, or part thereof, and shall assess the amount herein provided to such person under the provisions of this section.

5. *Computation of tax.* The rate imposed by subsection 2 shall be applied to the number of bushels of grain so handled, and the computed amount thereof shall constitute the tax to be assessed.

6. *Payment of tax.* Such specific tax, when determined as aforesaid, shall be entered in the same manner as general personal property taxes on the tax list of the taxing district, and the proceeds of the collection of such tax shall be distributed to the same taxing units and in the same proportion as the general personal property tax on the tax list of said taxing district. All provisions of the law relating to the assessment and collection of personal property taxes and the powers and duties of the county treasurer, county auditor and all other officers with respect to the assessment, collection and enforcement of personal property taxes shall apply to the assessment, collection and enforcement of the tax imposed by this section. [C50, 54, 58, 62, 66, 71, 73, 75,§428.35]

Referred to in §427.1(21)

428.36 Listing property of financial institutions. The real estate, fixtures, equipment, and tangible personal property of every financial institution, as defined in chapter 422, division V, and of every credit union established under chapter 533 shall be listed, assessed, and taxed to the institution or the credit union

in the same manner and at the same rate as such property in the hands of individuals. [C71, 73, 75,§428.36]

428.37 Listing certain electric power generating plants.

1. As used in this section, unless the context otherwise requires:

a. "Taxable value" means one hundred percent of the actual value of an electric power generating plant.

b. "Electric power generating plant" means each taxable name plate rated electric power generating plant owned solely or jointly by any person in which electrical energy is produced from other forms of energy, including all equipment used in the production of such energy through its step-up transformer.

c. "Electric operating property" means all electric property belonging to such owner, as determined by the department of revenue and assessed by it under this chapter and chapter 437, except electric power generating plants.

2. Notwithstanding sections 428.25 and 428.27, the taxable value of an electric power generating plant placed in commercial service after December 31, 1972, shall be apportioned by the director of revenue, commencing with the year 1973, as follows:

a. The first forty-four million, four hundred forty-four thousand, four hundred forty-five dollars of taxable value shall be apportioned to the taxing districts in which each such electric power generating plant is situated.

b. The remaining taxable value shall be apportioned to each taxing district in which electric operating property of the owner thereof is located, in the ratio that the actual value of that part of such owner's electric operating property which is located in the affected taxing district bears to the total actual value of the electric operating property of such owner located in the state. If the owner has no taxable property in this state other than the electric power generating plant which is assessed, then the remainder shall be assessed and levied on at the current rate of the taxing district in which the plant is located. Tax moneys received from such remainder assessments and levies shall be paid to the county treasurer, who shall pay such tax moneys to the treasurer of state not later than fifteen days from the date the moneys are received by the county treasurer for deposit in the general fund of the state.

c. Notwithstanding the provisions of paragraph *"b"* of this subsection, if the owner is a municipal electric utility, the remaining taxable value shall be allocated to each taxing district in which the municipal electric utility is serving customers and has electric meters in operation in the ratio that the number of operating electric meters of the municipal electric utility located in the taxing district bears to the total number of operating electric meters of the municipal electric utility in the state as of January 1 of the calendar year in which the assessment is made. If the municipal electric utility has no operating electric meters in this state, then the remainder shall be assessed and levied on at the current rate of the taxing district in which the electric power generating plant is located. Tax moneys received from such remainder assessment and levies shall be paid to the county treasurer, who shall pay such tax moneys to the treasurer of state not later than fifteen days from the date the tax moneys are received by the county treasurer for deposit in the general fund of the state.

All municipal electric utilities which shall have taxable value apportioned under this section shall, annually on or before the first day of May of each calendar year, make a report listing the total operating meters of the municipal electric utility in each taxing district it serves as of the first day of January of each calendar year on forms provided by the department of revenue.

d. If an electric power generating plant is jointly owned by two or more owners, each owner's pro rata share of the first forty-four million, four hundred forty-four thousand, four hundred forty-five dollars of taxable value shall be apportioned to the taxing district or districts in which such plant is situated. Each owner's pro rata share of the remainder of such taxable value shall be allocated as provided in paragraphs *"b"* and *"c"* of this subsection, whichever is applicable. [C75,§428.37]

CHAPTER 428A

TAXATION OF REAL ESTATE TRANSFERS

Referred to in §441.47

428A.1 Amount of tax on transfers.
428A.2 Exceptions.
428A.3 Who liable for tax.
428A.4 Recording refused.
428A.5 Stamps affixed.
428A.6 Canceling stamp.
428A.7 Stamps furnished by director of revenue.
428A.8 Remittance to state treasurer—portion retained in county.
428A.9 Duty of county recorders.
428A.10 Penalty.
428A.11 Enforcement.
428A.12 Definition.
428A.13 Nonapplicability.
428A.14 Credit on tax.

428A.1 Amount of tax on transfers. There is imposed on each deed, instrument, or writing by which any lands, tenements, or other realty in this state shall be granted, assigned, transferred, or otherwise conveyed, a tax determined in the following manner: When there is no consideration or when the deed instrument or writing is executed and tendered for recording as an instrument corrective of title, and so states, there shall be no tax. When there is consideration and the actual market value of the real property transferred is in excess of five hundred dollars, the tax shall be fifty-five cents for each five hundred dollars or fractional part of five hundred dollars in excess of five hundred dollars. The term "consideration" as used in this chapter, means the full amount of the actual sale price of the real property involved, paid or to be paid, including the amount of an incumbrance or lien on the property, whether assumed or not by the grantee. It shall be presumed that the sale price so stated shall include the value of all personal property transferred as part of the sale unless the dollar value of said personal property is stated on the instrument of conveyance. When the dollar value of the personal property included in the sale is so stated, it shall be deducted from the consideration shown on the instrument for the purpose of determining the tax. [C66, 71, 73, 75,§428A.1]

Referred to in §§428A.2, 428A.4

428A.2 Exceptions. The tax imposed by this chapter shall not apply to:

1. Any executory contract for the sale of land under which the vendee is entitled to or does take possession thereof, or any assignment or cancellation thereof.

2. Any instrument of mortgage, assignment, extension, partial release, or satisfaction thereof.

3. Any will.

4. Any plat.

5. Any lease.

6. Any deed, instrument, or writing in which the United States or any agency or instrumentality thereof or the state of Iowa or any agency, instrumentality, or governmental or political subdivision thereof is the grantor, assignor, transferor, or conveyor; and any deed, instrument or writing in which any of such unit of government is the grantee or assignee where there is no consideration.

7. Deeds for cemetery lots.

8. Deeds which secure a debt or other obligation, except those included in the sale of real property.

9. Deeds for the release of a security interest in property excepting those pertaining to the sale of real estate.

10. Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded.

11. Deeds between husband and wife, or parent and child, without actual consideration.

12. Tax deeds.

13. Deeds of partition where the interest conveyed is without consideration. However, if any of the parties take shares greater in value than their undivided interest a tax is due on the greater values, computed at the rate set out in section 428A.1.

14. The making or delivering of instruments of transfer resulting from a corporate merger, consolidation, or reorganization under the laws of the United States or any state thereof, where such instrument states such fact on the face thereof. [C66, 71, 73, 75,§428A.2]

Referred to in §428A.4

428A.3 Who liable for tax. Any person, firm or corporation who grants, assigns, transfers, or conveys any land, tenement, or realty by a deed, writing, or instrument subject to the tax imposed by this chapter shall be liable for such tax but no public official shall be liable for a tax with respect to any instrument executed by him in connection with his official duties. [C66, 71, 73, 75,§428A.3]

428A.4 Recording refused. The county recorder shall refuse to record any deed, instrument, or writing, taxable under the provisions of section 428A.1 on which documentary stamps in the amount evidencing payment of the tax determined on the full amount of the consideration in the transaction have not been affixed. However, if the deed, instrument, or writing, is subject to an exception provided for in section 428A.2, the county recorder shall not refuse to record the document if there is filed with or endorsed on it a statement signed by either the grantor or grantee or his authorized agent, that the instrument or writing is excepted from the tax under section 428A.2. The validity of the effectiveness of an instrument as between the parties thereto, and as to any person who would otherwise be bound thereby, shall not be affected by the failure to comply herewith; nor if an instrument is accepted for recording or filing contrary to the provision hereof, shall the failure to comply herewith destroy or impair the record thereof as notice. [C66, 71, 73, 75,§428A.4]

428A.5 Stamps affixed. The tax imposed by this chapter shall be paid by the affixing of a documentary stamp or stamps in the amount of the tax to the document or instrument with respect to which the tax is paid and stamps in excess of the amount of the tax shall not be affixed to the document or instrument. [C66, 71, 73, 75,§428A.5]

Referred to in §428A.10

428A.6 Canceling stamp. A person using or affixing a stamp shall cancel it and so deface it as to render it unfit for reuse by marking it in ink with his initials and the date on which such affixing occurs. [C66, 71, 73, 75,§428A.6]

Referred to in §428A.10

428A.7 Stamps furnished by director of revenue. The director of revenue shall cause documentary stamps to be printed and shall furnish such stamps as may be necessary to the county recorders of the state without charge. Documentary stamps may be purchased from any county recorder and may be used in payment of the tax imposed by this chapter or may be resold by the owner at any time. [C66, 71, 73, 75,§428A.7]

428A.8 Remittance to state treasurer—portion retained in county. On or before the tenth day of each month the county recorder shall determine and pay to the treasurer of state seventy-five percent of the receipts from the sale of documentary stamps during the preceding month and the treasurer of state shall deposit such receipts in the state treasury to the credit of the general fund.

The county recorder shall deposit the remaining twenty-five percent of the receipts to the credit of the county general fund.

The county recorder shall keep such records and make such reports with respect to the documentary stamps entrusted to his custody and with respect to the sale of such stamps as the director of revenue shall prescribe. [C66, 71, 73, 75,§428A.8]

428A.9 Duty of county recorders. The care of documentary stamps entrusted to county recorders and the duties imposed upon county recorders by this chapter shall be within the duties of such office. [C66, 71, 73, 75,§428A.9]

428A.10 Penalty. Any person, firm or corporation liable for the tax imposed by this chapter who knowingly fails to comply with the provisions of sections 428A.5 and 428A.6 relating to the attachment or cancellation of documentary stamps, shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars. [C66, 71, 73, 75, §428A.10]

428A.11 Enforcement. The director of revenue shall enforce the provisions of this chapter and may prescribe rules for their detailed and efficient administration. [C66, 71, 73, 75,§428A.11]

428A.12 Definition. The term "documentary stamps" means all stamps issued by the department of revenue for use in payment of the taxes imposed by this chapter. [C66, 71, 73, 75,§428A.12]

428A.13 Nonapplicability. This chapter shall not apply with respect to any deed, instrument, or writing where such deed, instrument, or writing may not under the Constitution of this state or under the Constitution or laws of the United States be made the subject of taxation by this state. [C66, 71, 73, 75, §428A.13]

428A.14 Credit on tax. There shall be allowed as a credit against the amount of the tax hereby imposed an amount equal to the amount of tax actually paid to the United States of America under provisions of section 4361 of subchapter "C" of chapter 34 of the federal Internal Revenue Code of 1954. [C66, 71, 73, 75,§428A.14]

CHAPTER 429

TAXATION OF MONEYS AND CREDITS

Repealed by 63GA, ch 1204,§16

CHAPTER 430

TAXATION OF BANKS

Repealed by 63GA, ch 1204,§16

CHAPTER 430A

TAXATION OF LOAN AGENCIES

Referred to in §441.47

430A.1 Verified statement filed.
430A.2 Exemptions.
430A.3 Levy.
430A.4 Computation by assessor.
430A.5 Forms—several places of business.
430A.6 Real and personal assessment.
430A.7 Repealed by 63GA, ch 1204,§19.

430A.1 Verified statement filed. Every corporation not organized under the laws of Iowa and every individual, partnership or other nonincorporated agency engaged in the business of making loans or investments within the state of Iowa on other than real estate security, shall annually on or before March 1 furnish to the assessor of the taxing district in which its principal place of business is located, a verified statement showing specifically with reference to the next year preceding the first day of January then last past: (1) The total amount of money loaned or invested by such financial corporation or loaning agency on security other than real estate or upon unsecured loans outside the state of Iowa; (2) The total assets of such corporation; (3) The total indebtedness of such corporation, or loaning agency excluding indebtedness not relating to the business of loaning money upon security other than real estate, or upon unsecured loans; (4) The location of each place of business maintained within or without the state by such corporation, or loaning agency; (5) The amount of money loaned on security other than real estate or upon unsecured loans by each place of business in Iowa; and such other information as the assessor shall require in order to determine the amount of capital employed in such business within the state of Iowa. The terms "loaned" or "invested" as employed in this section shall have the same meaning and effect with respect to loans and investments outside the state of Iowa as is hereinafter provided with respect to loans and investments within the state of Iowa. [C50, 54, 58; 62, 66, 71, 73, 75,§430A.1]

430A.2 Exemptions. The provisions of this chapter shall not apply to corporations or agencies which are exempt from taxation under the provisions of the Constitution of the United States or federal statutes, or to insurance companies subject to tax on gross premiums, under chapter 432, or to corporations organized under the laws of the state of Iowa, or to production credit associations, or to rural electrification association loans, or to national and state banks. [C50, 54, 58, 62, 66, 71, 73, 75, §430A.2]

430A.3 Levy. There is hereby imposed upon capital employed in the business of making loans or investments within the state of Iowa, as determined under the provisions of this chapter, a tax of five mills on each dollar of such capital; such tax to be considered a tax upon moneys and credits of such corporations which shall be levied by the board of supervisors, and placed upon the tax list and collected by the county treasurer. The amount collected in each taxing district in cities shall be apportioned twenty percent to the county general fund, thirty percent to the city general fund, and fifty percent to the general fund of the state, and the amount collected in each taxing district outside of cities shall be apportioned fifty percent to the county general fund and fifty percent to the general fund of the state. The term "loans" as used herein shall mean the lending of money to members of the general public upon other than real estate security. The term "investments" as used herein shall mean the discounting, purchasing, or otherwise acquiring notes, mortgages, sales contracts, debentures, or any other evidences of indebtedness, based upon other than real estate security when such investments are made in connection with loans made to members of the general public in the state of Iowa or in the course of any operations having as their effect the financing of business transactions within the state of Iowa resulting in the incurring of any indebtedness based upon security other than real estate security. [C50, 54, 58, 62, 66, 71, 73, 75,§430A.3]

430A.4 Computation by assessor. The assessor shall, upon the basis of the return made to him under the provisions of this chapter, determine the amount of capital employed by the maker of the return in the business of making loans or investments within the state of Iowa on other than real estate security, and shall deduct from the amount thus determined a pro rata share of the indebtedness of such corporation, individual, partnership or other nonincorporated agency, appertaining to the loaning of money on other than real estate security, a percentage equal to that which the amount of money loaned by such financial corporation in Iowa, unsecured or upon security other than real estate, bears to the total amount loaned by such loaning agency, unsecured or upon security other than real estate outside the state of Iowa; provided that no deduction for indebtedness shall be allowed in excess of eighty percent of the amount of capital employed in the business of making loans or investments within the state of Iowa as provided by this chapter and that in the determination of the indebtedness deducted, any and all assets of the company in the form of accounts receivable, cash on hand, or other capital used or available for use in connection with loans and investments on other than real estate security which have not been included in capital, shall be deductible from any such indebtedness for which credit is claimed or allowed. The amount thus determined shall be assessed as moneys and credits. [C50, 54, 58, 62, 66, 71, 73, 75,§430A.4]

430A.5 Forms — several places of business. The director of revenue shall prescribe forms for the making of returns as provided by this chapter. Any individual, partnership or agency subject to the provisions of this chapter and which maintains more than one place of business within the state of Iowa, may elect to make the return provided for by this chapter to the director of revenue, who shall determine the proper assessment to be made in each taxing district in which such taxpayer maintains a place of business, and the results thereof shall be by the director of revenue

promptly certified to the county auditors of the respective counties in which offices are maintained, who shall add such assessments to the tax lists. In making such assessments the director of revenue shall determine the proportion of business done by such taxpayer in each taxing district in which a place of business is maintained, and shall assess in each taxing district an amount in proportion to the business done in such taxing district to the amount of business done in the entire state. The director of revenue shall have the power to require the making of a return by any corporation, individual, partnership, or agency which the director deems to be subject to taxation under the provisions of this chapter and in case of failure or refusal to make such a return, the director of revenue shall make an assessment based upon the best information the director is able to obtain against any such corporation, individual, partnership, or agency, and shall certify such assessment as provided by this chapter. Judicial review may be sought of the action of the director of revenue in regard to assessments or orders made by the director in connection with this chapter under the same procedure generally, as is provided by section 422.29. [C50, 54, 58, 62, 66, 71, 73, 75,§430A.5]

430A.6 Real and personal assessment. All real and tangible personal property of individuals, corporations or agencies subject to the provisions of this chapter and located within the state of Iowa shall be assessed in the same manner as other real and tangible personal property. [C50, 54, 58, 62, 66, 71, 73, 75,§430A.6]

430A.7 Repealed by 63GA, ch 1204,§19.

CHAPTER 431

CORPORATION STOCK TAXATION

Repealed by 63GA, ch 1204,§20

CHAPTER 432

INSURANCE COMPANIES TAXATION

Referred to in §§430A.2, 441.47, 508.12, 515.57

432.1 Tax on gross premiums.
432.2 Repealed by 56GA, ch 235,§2.
432.3 Receipts—certificate of authority.
432.4 Deduction for debts.
432.5 Repealed by 64GA, ch 1019,§7.
432.6 Personal and real property.
432.7 Assessment.
432.8 Repealed by 64GA, ch 1019,§7.
432.9 Debts deductible.
432.10 Sufficiency of remitted tax—notice.

432.1 Tax on gross premiums. Every insurance company or association of whatever kind or character, not including fraternal beneficiary associations, and nonprofit hospital and medical service corporations, shall, at the time of making the annual statement as required by law, pay to the director of the department of revenue, or to a depository designated by the director, as taxes, an amount equal to the following, except that the premium tax applicable to county mutual associations shall be governed by section 518.18:

1. Two percent of the gross amount of premiums received during the preceding calendar year by every life insurance company or association, not including fraternal beneficiary associations, or the gross payments or deposits collected from holders of fraternal beneficiary association certificates, on contracts of insurance covering risks resident in this state during the preceding year, including contracts for group insurance and annuities and without including or deducting any amounts received or paid for reinsurance.

In determining the gross amount of premiums to be taxed hereunder, there shall be excluded all premiums received from policies or contracts issued in connection with a pension, annuity, profit sharing plan or individual retirement annuity qualified or exempt under sections 401, 403, 404, 408 or 501(a) of the federal Internal Revenue Code as now or hereafter amended and all premiums returned to policyholders or annuitants during the preceding calendar year, except cash surrender values, all dividends that, during said year, have been paid in cash or applied in reduction of premiums or left to accumulate to the credit of policyholders or annuitants.

2. Two percent of gross amount of premiums, assessments, and fees received during the preceding calendar year by every company or association other than life on contracts of insurance other than life for business done in this state, including all insurance upon prop-

erty situated in this state, after deducting the amounts returned upon canceled policies, certificates and rejected applications but not including the gross premiums, assessments and fees in connection with ocean marine insurance authorized in section 515.48. [C51,§464; R60,§718; C73,§807; C97,§1333; S13,§§1333, 1333-d; C24, 27, 31, 35, 39,§§**7021, 7022, 7025**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§432.1; 66GA, ch 217,§1]

Referred to in §§432A.9, 496.19, 514B.31

432.2 Repealed by 56GA, ch 235,§2.

See §505.14

432.3 Receipts—certificate of authority. At the time of paying said taxes, said companies and associations shall take duplicate receipts therefor, one of which shall be filed with the commissioner of insurance, and upon filing of said receipt, and not till then, the commissioner of insurance shall issue the annual certificate as provided by law. [C73,§807; C97, §1333; S13,§1333; C24, 27, 31, 35, 39,§**7023**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§432.3]

Referred to in §496.19

432.4 Deduction for debts. No deduction or exemption from the taxes herein provided shall be allowed for or on account of any indebtedness owing by any such insurance company or association; provided, however, that companies doing a fire insurance business may deduct from the gross amount of premiums received, the amount of premiums returned upon canceled policies issued upon property situated in this state. [C97,§1333; S13,§1333; C24, 27, 31, 35, 39,§**7024**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§432.4]

Referred to in §496.19

432.5 Repealed by 64GA, ch 1019,§7.

432.6 Personal and real property. Every insurance corporation or association organized under the laws of this state, not including corporations with capital stock, county mutuals, and fraternal beneficiary associations, which county mutuals and fraternal beneficiary associations are not organized for pecuniary profit, shall, on or before the twenty-sixth day of January in each year, for the purpose of assessment of its property, furnish to the assessor of the assessment district in which its principal place of business is located, a statement verified by its president, showing specifically with reference to the year next preceding the first day of January then last past:

1. A duplicate of the statement required by law to be made to the commissioner of insurance for the said year last past.

2. A detailed statement of all its property and assets of every kind and nature whatsoever, and the value of each item thereof, including surplus, guaranty, and reserve fund, and the amount of each. [S13,§1333-b; C24, 27, 31, 35, 39,§**7027**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§432.6]

Referred to in §432.7
S13,§1333-b, editorially divided

432.7 Assessment. It shall be the duty of the assessor, upon the receipt of said statements, and from other information acquired by him, to assess against every corporation or association referred to in section 432.6, the value of all personal property owned by such corporation or association, together with the actual value of each parcel of real estate situated in the assessment district of such assessor, and all the said property shall be assessed at the same rate, and for the same purposes as the property of private individuals, as provided in section 441.21. [S13,§1333-b; C24, 27, 31, 35, 39,§**7028**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §432.7]

See §441.21

432.8 Repealed by 64GA, ch 1019,§7.

432.9 Debts deductible. In ascertaining the indebtedness or liability of such corporation, company, or association, a debt shall be deemed to exist on account of its liability on the policies, certificates or other contracts of insurance issued by it equal to the amount of the surplus or other funds accumulated by any such corporation or association for the purpose of fulfilling its policies, certificates, or other contracts of insurance, and which can be used for no other purpose. [S13,§1333-c; C24, 27, 31, 35, 39,§**7030**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§432.9]

432.10 Sufficiency of remitted tax—notice. The commissioner of insurance shall determine whether or not the tax remitted is correct. If the tax remitted is not sufficient, the commissioner shall notify the delinquent company of the amount of such delinquency and certify the amount thereof to the department of revenue which shall proceed to collect such delinquency. [C71, 73, 75,§432.10]

CHAPTER 432A

MARINE INSURANCE TAXATION

432A.1 Amount of tax on underwriting profit.
432A.2 Profit within this state.
432A.3 Profit within United States.
432A.4 Computation of net earned premiums.
432A.5 Expenses incurred.
432A.6 Computation of tax on ocean marine insurance profit.
432A.7 Tax payable annually.
432A.8 Filing tax return.
432A.9 Underwriting profits tax in lieu of other taxes.

432A.1 Amount of tax on underwriting profit. Every insurer authorized to do the business of selling marine insurance in this state, as authorized in section 515.48, shall, with respect to all insurance written within this state upon hulls, freights, or disbursements, or upon goods, wares, merchandise and all other personal property and interests therein, in the course of exportation from or importation into any country, or transportation coastwise including transportation by land or water from point of origin to final destination in respect to or appertaining to or in connection with, any and all risks or perils of navigation, transit or transportation and upon the property while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto, including war risks and marine builder's risks, pay a tax of six and one-half percent on its taxable underwriting profit ascertained as provided in section 432A.2, from such insurance written within this state. [C75,§432A.1]

432A.2 Profit within this state. The underwriting profit on such insurance written within this state shall be that proportion of the total underwriting profit of such insurer from such insurance written within the United States which the amount of net premiums of such insurer from such insurance written within this state bears to the total amount of net premiums of such insurer from such insurance written within the United States. [C75,§432A.2]

Referred to in §432A.1

432A.3 Profit within United States. The underwriting profit of such insurer on such insurance written within the United States shall be determined by deducting from the net earned premiums on such ocean marine insurance written within the United States during the taxable year which is the calendar year preceding the date on which such tax is due, the following items:

1. Net losses incurred, which means gross losses incurred during such calendar year under ocean marine insurance contracts written within the United States, less reinsurance claims collected or collectible and less net salvages or recoveries collected or collectible from any source applicable to the corresponding losses under such contracts.

2. Net expenses incurred in connection with such ocean marine contracts, including all state and federal taxes in connection therewith, but in no event shall the aggregate amount of such net expenses deducted exceed forty percent of the net premiums on such ocean marine insurance contracts, ascertained as provided in section 432A.4.

3. Net dividends paid or credited to policyholders on such ocean marine insurance contracts. [C75,§432A.3]

432A.4 Computation of net earned premiums. In determining the amount of the tax imposed by this chapter, net earned premiums on ocean marine insurance contracts written within the United States during the taxable year shall be arrived at by deducting from gross premiums written on such contracts during the taxable year all return premiums, premiums on policies not taken, premiums paid for reinsurance of such contracts and net unearned premiums on all such outstanding contracts at the end of the taxable year, and adding to such amount net unearned premiums on such outstanding marine insurance contracts at the end of the calendar year preceding the taxable year. [C75,§432A.4]

Referred to in §432A.3

432A.5 Expenses incurred. In determining the amount of the tax imposed by this chapter, net expenses incurred shall be determined as the sum of the following:

1. Specific expenses incurred on such ocean marine insurance business, consisting of all commissions, agency expenses, taxes, licenses, fees, loss adjustment expenses, and all other expenses incurred directly and specifically in connection with such business, less recoveries or reimbursements on account of or in connection with such commissions or other expenses collected or collectible because of reinsurance or from any other source.

2. General expenses incurred on such ocean marine insurance business, consisting of that proportion of general or overhead expenses incurred in connection with such business which the net premiums on such ocean marine insurance written during the taxable year bear to the total net premiums written by such insurer from all classes of insurance written by it during the taxable year. Within the meaning of this subsection, general or overhead expenses shall include salaries of officers and employees, printing and stationery, all taxes of this state and of the United States, except as included in subsection 1, and all other expenses of such insurer, not included in subsection 1, after deducting expenses specifically chargeable to any or all other classes of insurance business. [C75,§432A.5]

432A.6 Computation of tax on ocean marine insurance profit. In determining the amount of the tax imposed by this chapter, the taxable underwriting profit of such insurer on such ocean marine insurance business written within this state, shall be ascertained as follows:

1. In the case of every such insurer which has written any such business within this state during three calendar years immediately preceding the year in which such taxes were payable, the taxable underwriting profit shall be determined by adding or subtracting, as the case may be, the underwriting profit or loss on all such insurance written within the United States, ascertained as hereinbefore pro-

vided, for each of such three years and dividing by three.

2. In the case of every such insurer other than as specified in subsection 1 such taxable underwriting profit, if any, shall be the underwriting profit, if any, on such ocean marine insurance business written within this state during the taxable year, ascertained as hereinbefore provided, but after such insurer has written such ocean marine insurance business within this state during three calendar years, an adjustment shall be made on the three-year average basis by ascertaining the amount of tax payable in accordance with subsection 1. [C75,§432A.6]

432A.7 Tax payable annually. The tax imposed by this chapter shall be paid annually, on or before the first day of June, by every insurer authorized to do the business of marine insurance in this state during any one or more of the preceding three calendar years, and the calendar year next preceding such June 1 shall be deemed the taxable year within the meaning of this section. [C75, §432A.7]

432A.8 Filing tax return. Every insurer liable to pay the tax shall, on or before June 1 of each year, file with the commissioner of insurance a tax return in accordance with or upon forms prescribed by the commissioner of insurance. The tax shown to be due, if any, shall be paid to the director of revenue who shall issue to the insurer a receipt in duplicate, one of which shall be filed with the commissioner of insurance before issuance of the annual certificate as provided by law. [C75, §432A.8]

432A.9 Underwriting profits tax in lieu of other taxes. The tax imposed by this chapter shall be paid upon the marine underwriting profits, if any, upon all marine insurance business written in this state each calendar year. The tax on gross premiums under section 432.1 shall not be levied on marine insurance premiums reportable in a tax return prescribed by the commissioner of insurance to record taxable underwriting profit, if any, defined herein. The tax return required shall be in lieu of all other tax requirements imposed by section 432.1 [C75,§432A.9]

CHAPTER 433

TELEGRAPH AND TELEPHONE COMPANIES TAXATION

Referred to in §§427A.1, 441.47

433.1 Statement required.
433.2 Additional statement.
433.3 Failure to make statement.
433.4 Assessment.
433.5 Actual value per mile.
433.6 Taxable value.
433.7 Hearing.
433.8 Assessment in each county—how certified.
433.9 Entry of certificate.
433.10 Rate of taxation—collection.
433.11 Other real and personal property.
433.12 "Company" defined.
433.13 Line operated by railroad.
433.14 Maps required.
433.15 Failure to file.

433.1 Statement required. Every telegraph and telephone company operating a line in this state shall, on or before the first day of May in each year, furnish to the director of revenue a statement verified by its president or secretary showing:

1. The total number of miles owned, operated, or leased within the state, with a separate showing of the number leased.

2. The average number of poles per mile, and the whole number of poles on its lines in this state.

3. The total number of miles in each separate line or division thereof, also the average number of separate wires thereon.

4. The whole number of stations on each line, and the value of the same, including furniture.

5. The whole number of instruments on each separate line, and the gross rental charges per instrument, where the same are rented to patrons of the company making the return, together with the number of stations maintained, other than railroad stations.

6. The gross receipts and operating expenses of said company for the year ending December 31 next preceding, on business originating and terminating in this state.

7. The gross receipts and operating expenses of said company for the year ending December 31 next preceding, and not included in the statement made under subsection 6 hereof.

8. The total capital stock of said company.

9. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

10. The market value of such shares of stock on the first day of January next preceding,

and if such shares have no market value, the actual value thereof.

11. All real estate and other property owned by such company and subject to local taxation within this state.

12. The specific real estate, together with the permanent improvements thereon, owned by such company and situated outside this state and taxed as other real estate in the state where located, with a specific description of each piece, where located, and the purpose for which the same is used, and the actual value thereof in the locality where situated.

13. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

14. The total length of the lines of said company.

15. The total length of the lines of said company outside this state. [C97,§1328; S13,§1328; C24, 27, 31, 35, 39,§**7031**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.1]

Referred to in §433.3

433.2 *Additional statement.* Upon the receipt of said statements from the several companies, the director of revenue shall examine said statements and if the director shall deem the same insufficient and that further information is requisite, the director shall require the officer making same to make such other or further statement as the director may desire. [C97,§1329; S13,§1329; C24, 27, 31, 35, 39,§**7032**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.2]

S13,§1329, editorially divided

433.3 Failure to make statement. In case of failure or refusal of any company to make out or deliver to the director of revenue the statements required in section 433.1, such company shall forfeit and pay to the state one hundred dollars for each day such report is delayed beyond the first day of May, to be sued and recovered in any proper form of action in the name of the state, and on the relation of the director of revenue, and such penalty, when collected, shall be paid into the general fund of the state. [C97,§1329; S13,§1329; C24, 27, 31, 35, 39,§**7033**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.3]

433.4 Assessment. The director of revenue shall on the second Monday in July of each year, proceed to find the actual value of the property of such companies in this state, taking into consideration the information obtained from the statements above required, and any further information the director can obtain, using the same as a means for determining the actual cash value of the property of such companies within this state; also taking into consideration the valuation of all property of such companies, including franchises and the use of the property in connection with lines outside the state, and making such deductions as may be necessary on account of extra value of property outside the state as compared with the value of property in the state, in order that the actual cash value of the property of the company within this state may be ascertained. Said assessment shall include all property of every kind and character whatsoever, real, personal, or mixed, used by said companies in the transaction of telegraph and telephone business; and the property so included in said assessment shall not be taxed in any other manner than as provided in this chapter and section 427.1, subsection 19. [C97,§1330; S13,§1330; C24, 27, 31, 35, 39,§**7034**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.4]

433.5 Actual value per mile. The director of revenue shall ascertain the value per mile of the property of each of said companies within this state by dividing the total value, as above ascertained, by the number of miles of line of such company within the state, and the result shall be deemed and held to be the actual value per mile of line of the property of such company within this state. [S13,§1330-a; C24, 27, 31, 35, 39,§**7035**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.5]

S13,§1330-a, editorially divided

433.6 Taxable value. The taxable value shall be determined by taking the percentage of the actual value so ascertained, as provided by section 441.21, and the ratio between the actual value and the assessed or taxable value of the property of each of said companies shall be the same as in the case of property of private individuals. [S13,§1330-a; C24, 27, 31, 35, 39,§**7036**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.6]

See §441.21

433.7 Hearing. At such meeting in July any company interested shall have the right to appear, by its officers or agents, before the director of revenue and be heard on the question of the valuation of its property for taxation. [S13,§1330-a; C24, 27, 31, 35, 39,§**7037**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.7]

433.8 Assessment in each county—how certified. The director of revenue shall, for the purpose of determining what amount shall be assessed to any one of said companies in each county of the state into which the line of the said company extends, multiply the assessed or taxable value per mile of line of said company, as above ascertained, by the number of miles in each of said counties, and the result thereof shall be by the director certified to the several county auditors of the respective counties into, over, or through which said line extends. [S13,§1330-b; C24, 27, 31, 35, 39,§**7038**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.8]

433.9 Entry of certificate. At the first meeting of the board of supervisors held after such statement is received by the county auditor, it shall cause such statement to be entered in its minute book, and make and enter therein an order stating the length of the lines and the assessed value of the property of each of said companies situated in each city, township, or lesser taxing district in its county, as fixed by

the director of revenue, which shall constitute the taxable value of said property for taxing purposes, and the taxes on said property when collected by the county treasurer shall be disposed of as other taxes on real estate. The county auditor shall transmit a copy of said order to the council or trustees of each city or township in which the lines of said company extend. [S13,§1330-c; C24, 27, 31, 35, 39, §7039; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.9]

433.10 Rate of taxation—collection. All telegraph and telephone property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes as the property of individuals within such counties, cities, townships, or lesser taxing districts, and the county treasurer shall collect such taxes at the same time and in the same manner as other taxes, and the same penalties for the nonpayment shall be due and collectible as for the nonpayment of individual taxes. [S13,§1330-d; C24, 27, 31, 35, 39,§7040; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.10]

433.11 Other real and personal property. Land, lots, and other real estate and personal property belonging to any telegraph company or telephone company not used exclusively in its telegraph or telephone business shall be subject to assessment and taxation on the same basis as other property of individuals in the several counties where situated. [S13, §1330-e; C24, 27, 31, 35, 39,§7041; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.11]

433.12 "Company" defined. The word "company" as used in this chapter and section 427.1, subsection 19, shall be deemed and construed to mean and include any person, copartnership, association, corporation, or syndicate that shall own or operate, or be engaged in operating, any telegraph or telephone line, whether formed or organized under the laws of this state or elsewhere. [S13,§1330-f; C24, 27, 31, 35, 39,§7042; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.12]

433.13 Line operated by railroad. No telegraph line shall be assessed which is owned and operated by any railroad company exclusively for the transaction of its business, and which has been duly reported as such in its annual report under the laws providing for the taxation of railroad property. [C97,§1332; C24, 27, 31, 35, 39,§7043; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.13]

433.14 Maps required. On or before the first day of August 1904, each telephone or telegraph company owning or operating a telephone or telegraph line, any part of which lies within the state of Iowa, shall file with the several county auditors of the counties within which any part of its line is located, a map of all its lines within said county, except its line within any platted city, drawn to a scale of not less than one inch to four miles, on which the location of the line or lines of said company is correctly shown. The map of any line situated upon any highway or street which is the dividing line between taxing districts shall show on which side of said street or highway said line is situated and shall locate all points at which said line may cross said street or highway. A statement showing the length of pole line in each taxing district of each company shall be filed when no map of the pole lines of such company is required under the terms of this section. A telephone or telegraph company whose line is situated upon the right of way of a railway may file, in lieu of the map required to be filed by the provisions of this section, a certificate setting forth along what lines of railway said company's telephone or telegraph line extends. On or before the first day of March 1905, and annually thereafter, like maps, statements, or certificates shall be filed with the several county auditors of counties in which any part of said lines may have been extended, constructed, relocated, or taken down entirely, during the preceding calendar year, showing the correct location of all such new or relocated lines, and the location of any part abandoned or taken down, as the same existed on the thirty-first day of December preceding; provided county auditors of the several counties shall, upon application of any company owning or operating a telephone or telegraph line in their respective counties, furnish a map or maps accurately showing the boundaries of all taxing districts in said county, and the public highways located within such taxing districts. [S13,§1400-a; C24, 27, 31, 35, 39,§7044; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.14]

Referred to in §§433.15, 437.15

433.15 Failure to file. In the event of the failure or refusal of any telephone or telegraph company, owning or operating any telephone or telegraph line not situated upon the right of way of a railway, to file the map required under the provisions of section 433.14, at the time and according to the conditions named, then the county auditor may cause the same to be prepared by the county surveyor and the cost thereof shall, in the first place, be audited and paid by the board of supervisors of the county, out of the county fund, and the amount thereof shall be by said board levied as a special tax against said company and the property of said company, which shall be collected in the same manner as county taxes and become a part of the county fund. [S13,§1400-b; C24, 27, 31, 35, 39,§7045; C46, 50, 54, 58, 62, 66, 71, 73, 75,§433.15]

Referred to in §437.15

CHAPTER 434

RAILWAY COMPANIES TAXATION

Referred to in §§427A.1, 441.47

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434.22 Levy and collection of tax.
434.23 Rates—purposes.

434.1 When assessed — statement required. On the second Monday in July of each year, the director of revenue shall assess all the property of each railway corporation in the state, excepting the lands, lots, and other real estate belonging thereto not used in the operation of any railway, and excepting railway bridges across the Mississippi and Missouri rivers, and excepting grain elevators; and for the purpose of making such assessment its president, vice-president, general manager, general superintendent, receiver, or such other officer as the director of revenue may designate, shall, on or before the first day of April in each year, furnish the department of revenue a verified statement showing in detail for the year ended December 31 next preceding:

1. The whole number of miles of railway owned, operated, or leased by such corporation or company within and without the state.

2. The whole number of miles of railway owned, operated, or leased within the state, including double tracks and sidetracks, the mileage of the main line and branch lines to be stated separately, and showing the number of miles of track in each county.

3. A full and complete statement of the cost and actual present value of all buildings of every description owned by said railway company within the state not otherwise assessed.

4. The total number of ties per mile used on all its tracks within the state.

5. The weight of rails per yard in main line, double tracks, and sidetracks.

6. The number of miles of telegraph lines owned and used within the state.

7. The total number of engines, and passenger, chair, dining, official, express, mail, baggage, freight, and other cars, including handcars and boarding cars used in constructing and repairing such railway, in use on its whole line, and the sleeping cars owned by it, and the number of each class on its line within the state, each class to be valued separately.

8. Any and all other movable property owned by said railway within the state, classified and scheduled in such manner as may be required by the director of revenue.

9. The gross earnings of the entire road, and the gross earnings in this state.

10. The operating expenses of the entire road, and the operating expenses within this state.

11. The net earnings of the entire road, and the net earnings within this state. [C73,§§810, 1317, 1318; C97,§1334; S13,§1334; C24, 27, 31, 35, 39,§7046; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.1]

Referred to in §§434.2, 434.14

434.2 Real estate holdings — statement required. Each railway or other corporation required by law to report to the department of revenue under the provisions of the law as it appears in section 434.1 shall, on or before the first day of April 1905, make to the department of revenue a detailed statement showing the amount of real estate owned or used by it on December 31, 1904, for railway purposes, in each county in the state in which said real estate is situated, including the right of way, roadbed, bridges, culverts, depot grounds, station buildings, yards, section and tool houses, roundhouses, machine and repair shops, water tanks, turntables, gravel beds and stone quarries, and for all other purposes, with the estimated actual value thereof, in such manner as may be required by the director of revenue. [S13,§1334-a; C24, 27, 31, 35, 39,§7047; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.2]

Referred to in §434.5
S13,§1334-a, editorially divided

434.3 Continuing record. Only one such detailed statement by any corporation shall be necessary, and when received by the department of revenue it shall become the record of railway lands of such corporation, and be deemed as annually thereafter reported for valuation and assessment by the department of revenue. [S13,§1334-a; C24, 27, 31, 35, 39,§7048; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.3]

Referred to in §434.5

434.4 Additional statements. On or before the first day of April of each subsequent year such corporation shall in like manner report

all real estate acquired for any of the railway purposes above named during the preceding calendar year, and also a list of any real estate, previously reported, disposed of during the same period, which disposition shall be noted by the director of revenue in an appropriate column opposite to the description of said tract in the original report of the same in the record of railway land. [S13,§1334-a; C24, 27, 31, 35, 39,§**7049**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.4]

Referred to in §434.5

434.5 Record of railway lands. The director of revenue shall, by some convenient method of binding, arrange the statements required to be made under the provision of sections 434.2 to 434.4 so as to form a consolidated list of all real estate reported to the director as being owned or used for railway purposes within the state, which list shall be known as the record of railway lands. [S13,§1334-b; C24, 27, 31, 35, 39,§**7050**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.5]

434.6 Sleeping and dining cars. In addition to the matters required to be contained in the statement made by the company for the purposes of taxation, such statement shall show the number of sleeping and dining cars not owned by such corporation, but used by it in operating its railway in this state during each month of the year for which the return is made, the value of each car so used, and also the number of miles each month said cars have been run or operated on such railway within the state, and the total number of miles said cars have been run or operated each month within and without the state. Such statement shall show the average daily sleeping car and dining car service or wheelage operated on each part or division of the line or system within the state, designating the points on the line where variations occur, with the mileage of that part having the same daily service or wheelage. [C97,§1340; S13,§1340; C24, 27, 31, 35, 39,§**7051**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.6]

Referred to in §434.16

434.7 Gross earnings. For the purpose of making reports to the department of revenue, the gross earnings of railway companies, owning or operating a line or lines of railway partly within this state and partly within another state, or other states, or territory, or territories, upon their line or lines within this state, shall be ascertained and reported by said railway companies as follows, to wit: The aggregate of the earnings upon business originating and terminating within this state, upon business originating in this state and terminating elsewhere, upon business originating elsewhere and terminating in this state, and upon business neither originating nor terminating in this state but carried on or done over the line or lines in this state or over some part thereof, shall be reported; and with respect to all such interstate business the earnings in this state for the purpose of report shall be actually computed upon the basis of the length of haul or carriage in this state as compared with the length of haul or carriage elsewhere. It is hereby declared that for the purpose of making reports looking to the assessment of railway property for taxation, the gross earnings or business done or carried partly within this state and partly in another state, or other states, or territories, shall be that proportion of the entire earnings of such business that the haul or carriage in this state bears to the entire haul or carriage. [S13,§1340-a; C24, 27, 31, 35, 39,§**7052**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §434.7]

Referred to in §§434.10, 434.12

434.8 Method of accounting. The director of revenue shall have the power to prescribe such rules and regulations with respect to the keeping of accounts by the railway companies doing business in this state as will insure the accurate division of earnings as aforesaid, and uniformity in reporting the same to the department of revenue. [S13,§1340-b; C24, 27, 31, 35, 39,§**7053**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.8]

Referred to in §§434.10, 434.12

434.9 Net earnings. The director of revenue shall have the power to prescribe a method for all railway companies doing business in this state, together with the rules and regulations, for the ascertainment of the net earnings of the railway lines in this state, to the end that all such railway companies, in ascertaining and making report of net earnings, shall proceed upon the same basis and in a uniform manner. [S13,§1340-c; C24, 27, 31, 35, 39,§**7054**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §434.9]

Referred to in §§434.10, 434.12

434.10 Reports additional. The reports provided for in sections 434.7 to 434.9 are not in lieu of, but in addition to, the reports provided for by law, and they shall be made at the time and as a part of the reports already required. [S13,§1340-d; C24, 27, 31, 35, 39,§**7055**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.10]

Referred to in §434.12

434.11 Additional rules and regulations. The rules, regulations, method, and requirements herein provided to be made by the director of revenue shall be made and communicated in writing or print to the said several railway companies and shall be and become binding upon said railway companies as provided in chapter 17A, provided, however, that the director shall have the power to prescribe supplemental or additional rules, regulations, and requirements in the manner prescribed by chapter 17A. [S13,§1340-e; C24, 27, 31, 35, 39, §**7056**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.11]

Referred to in §434.12

434.12 Refusal to obey. If any railway company shall fail or refuse to obey or conform to the rules, regulations, method, and requirements so made or prescribed by the director of revenue under the provisions of sections 434.7 to 434.11 or to make the reports therein provided, the director of revenue shall proceed

to assess the property of such railway company so failing or refusing, according to the best information obtainable, and shall then add to the taxable valuation of such railway company twenty-five percent thereof, which valuation and penalty shall be separately shown, and together shall constitute the assessment for that year. [S13,§1340-f; C24, 27, 31, 35, 39,§**7057**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.12]

434.13 Operating expenses. There shall not be included in said operating expenses any payments for interest or discount, or construction of new tracks, except needed sidings, for raising or lowering tracks above or below crossings at grade in cities, for new equipment except replacements, for reducing any bonded or permanent debt, nor for any other item of operating expenses not fairly and reasonably chargeable as such in railway accounts. [C97, §1335; C24, 27, 31, 35, 39,§**7058**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.13]

C97,§1335, editorially divided

434.14 Amended statement. The director of revenue may demand, in writing, detailed, explanatory, and amended statements of any of the items mentioned in section 434.1, or any other items deemed by the director important, to be furnished the director by such railway corporation within thirty days from such demand, in such form as the director may designate, which shall be verified as required for the original statement. The returns, both original and amended, shall show such other facts as the director, in writing, shall require. [C73,§1318; C97,§1335; C24, 27, 31, 35, 39,§**7059**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.14]

434.15 Assessment of railways. The said property shall be valued at its actual value, and the assessments shall be made upon the taxable value of the entire railway within the state, except as otherwise provided, and the actual value so ascertained shall be assessed as provided by section 441.21, and shall include the right of way, roadbed, bridges, culverts, rolling stock, depots, station grounds, shops, buildings, gravel beds, and all other property, real and personal, exclusively used in the operation of such railway. In assessing said railway and its equipments, the director of revenue shall take into consideration the gross earnings per mile for the year ending January 1, preceding, and any and all other matters necessary to enable the director to make a just and equitable assessment of said railway property. If a part of any railway is without this state, then, in estimating the value of its rolling stock and movable property, the director shall take into consideration the proportion which the business of that part of the railway lying within the state bears to the business of the railway without this state.

Trackless trolleys, buses, cars and vehicles used for the transportation of passengers owned and operated by any urban transit company as a part of an urban transit system shall not be included in the determination of the value of an urban transit system for taxation purposes. [C73,§1319; C97,§1336; C24, 27, 31, 35, 39,§**7060**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.15]

Referred to in §443.22
See §441.21

434.16 Assessment of sleeping and dining cars. The director of revenue shall, at the time of the assessment of other railway property for taxation, assess for taxation the average number of sleeping and dining cars as provided in section 434.6 so used by such corporation each month and the assessed value of said cars shall bear the same proportion to the entire value thereof that the monthly average number of miles such cars have been run or operated within the state shall bear to the monthly average number of miles such cars have been used or operated within and without the state. Such valuation shall be in the same ratio as that of the property of individuals, and shall be added to the assessed valuation of the corporation, fixed under the preceding sections. [C97,§1341; C24, 27, 31, 35, 39,§**7061**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.16]

See §441.21

434.17 Certification to county auditors. On or before the third Monday in August of each year, the director of revenue shall transmit to the county auditor of each county, through and into which any railway may extend, a statement showing the length of the main track within the county, and the assessed value per mile of the same, as fixed by a ratable distribution per mile of the assessed valuation of the whole property. [C73,§1320; C97,§1337; S13,§1337; C24, 27, 31, 35, 39,§**7062**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.17]

434.18 Plats. Every railroad company owning or operating a line of railroad within this state shall, on or before the first day of August 1902, place on file in the office of the county auditor of each county in the state into which any part of the lines of any said company lies, a plat of the lines of said companies within said county, showing the length of their said lines and the area of the land owned or occupied by said companies in each government subdivision of land not included within the platted portion of any city, within each of said counties, and the length of the said lines within the platted portion of cities. Companies having on file such plats of part or all of their lines, in any of said counties, shall be required to file plats only of that part of their lines not fully shown as above required on the plats now on file. On the first day of January of each year hereafter, like plats shall be filed of all new lines or extensions of existing lines built or completed within the calendar year preceding. [S13,§1337-a; C24, 27, 31, 35, 39,§**7063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.18]

Referred to in §434.19

434.19 Failure to file. In the event of the failure or refusal of any railroad company to file the plats required under the provisions of

section 434.18, at the time or according to the conditions named, then the county auditor may cause the same to be prepared by the county surveyor and the cost thereof shall, in the first place, be audited and paid by the board of supervisors out of the county fund, and the amount thereof shall be by said board levied as a special tax against said company and the property of said company, which shall be collected as county taxes and when collected be paid into the county fund. [S13,§1337-b; C24, 27, 31, 35, 39,§7064; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.19]

434.20 Property assessed by local authorities. Lands, lots, and other real estate belonging to any railway company, not used exclusively in the operation of the several roads, and all railway bridges across the Mississippi and Missouri rivers, and grain elevators, shall be subject to assessment and taxation on the same basis as property of individuals in the several counties where situated. [C73,§808; C97, §1342; C24, 27, 31, 35, 39,§7065; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.20]

See also §427.13

434.21 Roadbeds. No real estate used by railway corporations for roadbeds shall be included in the assessment to individuals of the adjacent property, but all such real estate shall be the property of such companies for the purpose of taxation. [C73,§809; C97,§1344; C24, 27, 31, 35, 39,§7066; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.21]

434.22 Levy and collection of tax. At the first meeting of the board of supervisors held after said statement is received by the county auditor, it shall cause the same to be entered on its minute book, and make and enter therein an order stating the length of the main track and the assessed value of each railway lying in each city, township or lesser taxing district in its county, through or into which said railway extends, as fixed by the director of revenue, which shall constitute the taxable value of said property for taxing purposes; and the taxes on said property, when collected by the county treasurer, shall be disposed of as other taxes. The county auditor shall transmit a copy of said order to the council or trustees of the city or township. [C73,§1321; C97,§1338; C24, 27, 31, 35, 39,§7067; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.22]

434.23 Rates—purposes. All such railway property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purpose as the property of individuals within such counties, cities, townships, and lesser taxing districts. [C73,§1322; C97, §1339; C24, 27, 31, 35, 39,§7068; C46, 50, 54, 58, 62, 66, 71, 73, 75,§434.23]

CHAPTER 435

FREIGHT-LINE AND EQUIPMENT COMPANIES TAXATION

Referred to in §§427A.1, 441.47

435.1 "Company" defined.
435.2 "Freight-line company" defined.
435.3 "Equipment company" defined.
435.4 Statement required.
435.5 Additional statements.
435.6 Failure to furnish.
435.7 Assessment.
435.8 Rate of tax—payment—distress and sale.
435.9 Deposit of funds.

435.1 "Company" defined. The word "company" as used in this chapter shall be deemed and construed to mean any person, copartnership, association, corporation, or syndicate that may own or operate, or be engaged in operating, furnishing, or leasing cars, as defined and described in sections 435.2 and 435.3, whether formed or organized under the laws of this state, or any other state or territory, or any foreign country. [S13,§1342-f; C24, 27, 31, 35, 39,§7069; C46, 50, 54, 58, 62, 66, 71, 73, 75,§435.1]

435.2 "Freight-line company" defined. Every company engaged in the business of operating cars, not otherwise listed for taxation or taxed in Iowa, for the transportation of freight, whether such freight be owned by such company, or any other person or company, over any railway line or lines, in whole or in part within this state, such line or lines, not being owned, leased, or operated by such company, whether such cars be termed box, flat, coal, ore, tank, stock, gondola, furniture, or refrigerator cars, or by some other name, shall be deemed to be a freight-line company. [S13, §1342-a; C24, 27, 31, 35, 39,§7070; C46, 50, 54, 58, 62, 66, 71, 73, 75,§435.2]

S13,§1342-a, editorially divided
Referred to in §§435.1, 435.4

435.3 "Equipment company" defined. Every company engaged in the business of furnishing or leasing cars of whatsoever kind or description, to be used in the operation of any railway line or lines, wholly or partially within this state, such line or lines not being owned, leased or operated by such company, and such cars not being otherwise listed for taxation in Iowa shall be deemed to be an equipment com-

pany. [S13,§1342-a; C24, 27, 31, 35, 39,§7071; C46, 50, 54, 58, 62, 66, 71, 73, 75,§435.3]
Referred to in §§435.1, 435.4

435.4 Statement required. Every freight-line and every equipment company, as designated in sections 435.2 and 435.3, doing business, or owning cars which are operated in this state, shall, annually, on or before the first Monday of June in each year, make out and deliver to the director of revenue a statement, verified by oath of an officer or agent of such company making such statement, with reference to the first day of January next preceding, showing:

1. The name of the company.

2. The nature of the company, whether a person or persons, an association, copartnership, corporation, or syndicate, and under the laws of what state or county organized.

3. The location of its principal office or place of business.

4. The name and post-office address of the president, secretary, auditor, treasurer, and superintendent or general manager.

5. The name and post-office address of the chief officer or managing agent of the company in Iowa.

6. The aggregate number of miles traveled within the state of Iowa by its cars during the preceding calendar year.
Referred to in §435.7

7. The average number of miles traveled by the cars of each class of its cars during the preceding calendar year. The number of cars necessary for the mileage traveled within the state of Iowa, under the circumstances that ordinarily attend the use of such cars, and where different classes of cars are used by said company, as to the matters embraced in this and the preceding subsection, it shall furnish the required information as to each class of said cars, in the form prescribed by blanks to be furnished by the department of revenue.
Referred to in §435.7

8. The actual cash value, on the first day of January next preceding, of the said number of cars necessary to provide for the mileage, to be reported as required by subsection 6 of this section.

9. The real estate, personal property, structure, machinery, fixtures and appliances, owned by said company, subject to local taxation within the state, and the location and the actual value thereof in the county, township or district where the same is assessed for local taxation. [S13,§1342-b; C24, 27, 31, 35, 39, §7072; C46, 50, 54, 58, 62, 66, 71, 73, 75,§435.4]
Referred to in §§435.6, 435.7

435.5 Additional statements. Upon the filing of such statements the director of revenue shall examine each of them, and if the director shall deem the same insufficient, or if they fail to fully set out the matters required to be reported, the director shall require such officer or agent to make such other and further statements as to such matters as the director may deem proper. [S13,§1342-c; C24, 27, 31, 35, 39, §7073; C46, 50, 54, 58, 62, 66, 71, 73, 75,§435.5]
S13,§1342-c, editorially divided

435.6 Failure to furnish. In case of the failure or refusal of any company to make and deliver to the director of revenue any statement or statements required by section 435.4, such company shall forfeit and pay to the state of Iowa one hundred dollars each day such report is delayed beyond the first Monday of June, to be sued and recovered in any proper form of action, in the name of the state of Iowa, and such penalty when collected shall be paid into the general fund of the state. [S13,§1342-c; C24, 27, 31, 35, 39,§7074; C46, 50, 54, 58, 62, 66, 71, 73, 75,§435.6]

435.7 Assessment. On the second Monday in July of each year, the director of revenue shall value and assess as the property of said company within this state, the cars of the said company necessary, under the circumstances ordinarily attending the use of such cars, for the mileage to be reported under section 435.4, subsections 6 and 7, after examining such statements and after ascertaining the actual value of said property of such company therefrom, and from such other information as the director may have or obtain. For that purpose the director may require such company, by its agents or officers, to appear before the director with such books, papers, or additional statements as the director may require, and may compel the attendance of witnesses in case the director shall deem it necessary to enable ascertainment of the actual value of such property. From the entire actual value of the property within the state so ascertained, there shall be deducted by the director the actual value of all cars locally assessed, and the residue of actual value so ascertained shall be assessed as provided by section 441.21. [S13,§1342-d; C24, 27, 31, 35, 39,§7075; C46, 50, 54, 58, 62, 66, 71, 73, 75,§435.7]
Referred to in §443.22
Contempts, ch 665
See §441.21

435.8 Rate of tax—payment—distress and sale. The director of revenue shall at the time of assessment determine the rate of tax to be levied and collected upon said assessments, which shall be equal, as nearly as may be, to the average rate of taxes, state, county, municipal, and local, levied throughout the state during the previous year, which rate shall be ascertained from the records and files in the auditor's office, and said tax shall be in full of all taxes except on real estate, personal property locally assessed, and special assessments, and shall become due and payable to the department of revenue on the first day of February, following the levy thereof, and if not so paid, the director shall collect the same by distress and sale of any property belonging to such company in the state in the same manner as is required of county treasurers in like cases; and the order of the director in

such cases shall be sufficient authority therefor. The director may also bring garnishment proceedings for the collection of such delinquent taxes as provided by section 626.29. [S13, §1342-e; C24, 27, 31, 35, 39,§**7076**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§435.8]

435.9 Deposit of funds. All revenues arising from the tax imposed under this chapter shall be credited to the general fund of the state. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§435.9]

CHAPTER 436

EXPRESS COMPANIES TAXATION

Referred to in §§427A.1, 441.47

436.1 "Company" defined.
436.2 "Express company" defined.
436.3 Statement required.
436.4 Additional statements.
436.5 Failure to furnish.
436.6 Assessment — additional statements — hearing.
436.7 Actual value—how ascertained.
436.8 Actual value per mile—taxable value.
436.9 Assessment in each county—how certified.
436.10 Entry of certificate.
436.11 Levy of tax—rates.
436.12 Action to collect.

436.1 "Company" defined. The word "company", as used in this chapter, shall be deemed and construed to mean and include any person, copartnership, association, corporation, or syndicate that may own or operate, or be engaged in operating, any express route as herein defined, whether formed or organized under the laws of this state, any other state or territory, or of any foreign country. [S13,§1346-i; C24, 27, 31, 35, 39,§**7077**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§436.1]

436.2 "Express company" defined. Every company engaged in conveying to, from, through, in, or across this state, or any part thereof, money, packages, gold, silver, plate, merchandise, or any other article, by express, under a contract, express or implied, with any railroad company, or the managers, lessees, agents, or receivers thereof, provided such company is not a railroad company, a freight-line company, nor an equipment company, shall be deemed and held to be an express company, within the meaning of this chapter. [C97,§1345; S13,§1346-a; C24, 27, 31, 35, 39,§**7078**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§436.2]

S13,§1346-a, editorially divided

436.3 Statement required. Every such express company shall, annually, between the first day of February and the first day of March, make out and deliver to the director of revenue a statement verified by the oath of an officer or agent of said company, making such statement, with reference to the first day of January next preceding, showing:

1. The name of the company, and whether a corporation, partnership, or person, and under the laws of what state or country organized.

2. The principal place of business, and the location of its principal office, and the name and post-office address of its president, secretary, and superintendent or general manager, and the name and post-office address of its principal officers or managing agent in Iowa.

3. The total capital stock of said company; (*a*) authorized; (*b*) issued.

4. The number of shares of capital stock issued and outstanding, and the par face value of each share, and in case no shares of stock are issued, in what manner the capital stock thereof is divided, and in what manner such holdings are evidenced.

5. The market value of said shares of stock on the first day of January next preceding, and if such shares have no market value then the actual value thereof; and in case no shares of stock have been issued state the market value, or the actual value, in case there is no market value of the capital thereof, and the manner in which the same is divided.

6. The real estate, buildings, machinery, fixtures, appliances, and personal property owned by said company and subject to local taxation within the state, and the location and actual value thereof in the county, township, or district where the same is assessed for local taxation.

Referred to in §436.7

7. The specific real estate, together with the improvements thereon, and all bonds, mortgages, and other personal property owned by said company, situated outside of the state, and used exclusively outside the conduct of the business, with a specific description of all bonds, mortgages, and other personal property, and the cash value thereof, the purposes for which the same are used, and where the same are kept or deposited and each piece of real estate, where located, the purpose for which the same is used, and the actual value thereof, in the locality where situated.

8. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

9. *a.* The total length of lines or routes over which the company transports such merchandise, freight, or express.

b. The total length of such lines or routes as are outside of the state.

c. The length of such lines or routes within each of the counties, townships, and assessment districts within the state. [C73,§811; C97, §1346; S13,§1346-a; C24, 27, 31, 35, 39,§**7079**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§436.3]

Referred to in §§436.5, 436.7

436.4 Additional statements. Upon the filing of such statements, the director of revenue shall examine each of them, and if the director shall deem the same insufficient, or in case the director shall deem that other information is requisite, the director shall require such officer or agent to make such other and further statements as the director may require. [S13, §1346-b; C24, 27, 31, 35, 39,§**7080**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§436.4]

S13,§1346-b, editorially divided
Referred to in §436.5

436.5 Failure to furnish. In the case of the failure or refusal of any company to make out and deliver to the director of revenue any statement or statements required by sections 436.3, 436.4, and 436.6, such company shall forfeit and pay to the state one hundred dollars for each day such report is delayed beyond the first Monday in March of that year, to be sued and recovered in any proper form of action in the name of the state, on the relation of the director of revenue, and such penalty when collected shall be paid into the general fund of the state. [S13,§1346-b; C24, 27, 31, 35, 39,§**7081**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§436.5]

436.6 Assessment—additional statements—hearing. On the second Monday in July of each year, the director of revenue shall value and assess the property of such company, in the manner hereinafter set forth, after examining such statements, and after ascertaining the actual value of the property of such company therefrom, and from such other information as the director may have or obtain. For that purpose the director may require such company, by its agents or officers, to appear before the director with such books, papers, or statements as the director may require additional statements to be made by such company, and may compel the attendance of witnesses, in case the director shall deem it necessary, to enable ascertainment of the actual value of such property. Any such company interested may, upon written application, appear before the director at such meeting and be heard in the matter of the valuation of the property of such company for taxation. [S13,§1346-c; C24, 27, 31, 35, 39,§**7082**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§436.6]

Referred to in §436.5
Contempts, ch 665

436.7 Actual value—how ascertained. The director of revenue shall first ascertain the actual value of the entire property owned by said company, from said statements or otherwise, for that purpose taking the aggregate market value of all shares of capital stock, in case said shares have a market value, and, in case they have none, taking the actual value thereof or of the capital of said company, in whatever manner the same is divided, in case no shares of capital stock have been issued; provided, however, that in case the whole or any portion of the property of said company shall be encumbered by a mortgage or mortgages, the director shall ascertain the actual value of such property by adding to the market value or the aggregate shares of stock or to the value of the capital, in case there shall be no such shares, the aggregate amount of the market or cash value of such mortgage or mortgages, and the result shall be deemed and treated as the actual value of the property of such company. The director shall, for the purpose of ascertaining the actual value of the property within the state, next ascertain from such statements or otherwise the actual value of the property, both real and personal, owned by the company; and which is used exclusively outside the general business of the company, and also the actual value of that part of its property, if any, without the state which cannot lawfully be considered in determining the mileage value of its route; and the aggregate of such values shall be deducted from the entire actual value of the property as above ascertained. The director shall next ascertain and deduct the actual value of the sea or ocean routes of any such company, and in ascertaining the same may take into consideration the earnings, both gross and net per mile, of such sea or ocean routes, as compared with the earnings, gross and net, of the land routes of such company, or may ascertain their value in any other practicable manner, and may require that the reports heretofore provided for shall show such earnings. Thereupon the director shall ascertain the actual value of the property of such company within the state, and for that purpose may take into consideration the proportional value of the company's property without and within the state, and shall take as a basis of valuation of the company's property in this state the proportion of the whole aggregate value of the property of said company, as above ascertained, after making the deductions above provided for which the length of the routes within the state bears to the whole length of the routes of such company other than sea or ocean routes, and such amount so ascertained shall be considered and taken to be the entire actual value of the property of such company within the state. From the entire actual value of the property within the state so ascertained, there shall be deducted by the director the actual value of all the real estate, buildings, machinery, appliances, and personal property not used exclusively in the conduct of the business within the state that are subject to local taxation within the counties, townships, and other assessment districts as hereinbefore described in

section 436.3, subsection 6. [S13,§1346-d; C24, 27, 31, 35, 39,§7083; C46, 50, 54, 58, 62, 66, 71, 73, 75,§436.7]

436.8 Actual value per mile—taxable value. The director of revenue shall thereupon ascertain the value per mile of the property within the state, by dividing the total value as above ascertained, after deducting the specific properties locally assessed within the state, by the number of miles within the state, and the result shall be deemed and held to be the actual value per mile of the property of such company within the state. The assessed or taxable value shall be determined by taking that percentage of the actual value so ascertained, as is provided by section 441.21, and such valuation and assessment shall be in the same ratio as that of the property of individuals. [S13, §1346-e; C24, 27, 31, 35, 39,§7084; C46, 50, 54, 58, 62, 66, 71, 73, 75,§436.8]

See §441.21

436.9 Assessment in each county—how certified. The director of revenue shall thereupon, for the purpose of determining what amount shall be assessed to said company in each county of the state through, across, into, or over which the route of said company extends, multiply the value per mile, as above ascertained, by the number of miles in each of said counties, as reported in said statements, or as otherwise ascertained, and the result thereof, with the mileage and the rate of assessment per mile, shall be by the director certified to the auditors respectively of the several counties through, into, over, and across which the routes of said company extend. [S13,§1346-f; C24, 27, 31, 35, 39,§7085; C46, 50, 54, 58, 62, 66, 71, 73, 75,§436.9]

436.10 Entry of certificate. At the first meeting of the board of supervisors held after such certificate is received by the county auditor, it shall cause the same to be entered in its minute book, and make and enter therein an order stating the length of the routes and the assessed value of each in each city, township, or other taxing district in its county, through or into which said routes extend, which shall constitute the taxable value of said property for taxing purposes, and the taxes on said property, when collected by the county treasurer, shall be disposed of as other taxes. [S13,§1346-g; C24, 27, 31, 35, 39,§7086; C46, 50, 54, 58, 62, 66, 71, 73, 75,§436.10]

Referred to in §420.207

436.11 Levy of tax — rates. The county auditor shall immediately thereafter transmit a copy of said order to the councils of cities, and to the trustees of each township in the county, and shall also add to the value so apportioned the assessed value of the real estate, buildings, machinery, fixtures, appliances, and personal property not used exclusively in the conduct of the business situated in any township or taxing district as returned by the assessor thereof, and extend the taxes thereon upon the tax list as in other cases. All such property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes as the property of individuals within such counties, townships, or taxing districts. The property so included in said assessment shall not be otherwise taxed. [S13,§1346-g; C24, 27, 31, 35, 39, §7087; C46, 50, 54, 58, 62, 66, 71, 73, 75,§436.11]

Referred to in §420.207

436.12 Action to collect. In case any such company shall fail or refuse to pay any taxes assessed against it in any county, township, or assessment district in the state, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the state by the county attorneys of the different counties of the state, on the relation of the auditors of the different counties of the state, and judgment in such action shall include a penalty of fifty percent of the amount of the taxes so assessed and unpaid, together with reasonable attorney's fees for the prosecution of such action, which action may be prosecuted in any county into, through, over, or across which the routes of any such company shall extend, or in any county where such company shall have an officer or agent for the transaction of business. [S13,§1346-h; C24, 27, 31, 35, 39,§7088; C46, 50, 54, 58, 62, 66, 71, 73, 75,§436.12]

CHAPTER 437

ELECTRIC TRANSMISSION LINES TAXATION

Referred to in §§427.1, 427A.1, 428.37, 441.47

437.1 "Company" defined.
437.2 Statement required.
437.3 Verification.
437.4 Additional statement.
437.5 Failure to furnish.
437.6 Actual value.
437.7 Taxable value.
437.8 Hearing.
437.9 County assessment—certification.
437.10 Entry of certificate.
437.11 Rate—purposes.
437.12 Assessment exclusive.
437.13 Local assessment.
437.14 Co-operative corporations or associations—assessment.
437.15 Reassessment—procedure and requirements.

437.1 "Company" defined. The word "company" as used in this chapter and section 427.1, subsection 19, shall be deemed and considered to mean and include any person, copartnership, association, corporation, or syndicate (except co-operative corporations or associations which are not organized or operated for profit) that shall own or operate transmission line or lines for the conducting of electric energy located within the state and wholly or partly outside cities, whether formed or organized under the laws of this state or elsewhere. [SS15,§1346-r; C24, 27, 31, 35, 39,§**7089**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §437.1]

Referred to in §§420.207, 427.1(19), 437.14
40ExGA, SF 183,§17-a1, editorially divided

437.2 Statement required. Every company owning or operating a transmission line or lines for the conduct of electric energy and which line or lines are located within the state, and which said line or lines are also located wholly or partly outside cities, shall, on or before the first day of May in each year, furnish to the director of revenue a verified statement as to its entire line or lines within this state, when all of said line or lines are located outside cities, and as to such portion of its line or lines within this state as are located outside cities, when such line or lines are located partly outside and partly inside cities, showing:

1. The total number of miles of line owned, operated, or leased, located outside cities within this state, with a separate showing of the number of miles leased.

2. The location and length of each division within the state and the character of poles, towers, wires, substation equipment, and other construction of each such division, designating the length and portion thereof in each separate county into which each such division extends. [SS15,§1346-k; C24, 27, 31, 35, 39,§**7090**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§437.2]

Referred to in §§437.5, 437.6, 437.11, 437.13, 437.14, 437.15
Blanks for reports, §428.28

437.3 Verification. The verification of any statement required by law shall, in the case of a person, be made by such person; in the case of a corporation, by the president or secretary thereof; and in the case of a copartnership, association, or syndicate, by some member, officer, or agent thereof having knowledge of the facts. [SS15,§1346-r; C24, 27, 31, 35, 39,§**7091**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§437.3]

Referred to in §420.207

437.4 Additional statement. Upon receipt of said statements from the several companies, the director of revenue shall examine such statements, and if the director shall deem same insufficient, and that further information is requisite, the director shall require the company making same to make such other or further statement as the director may desire, notifying such company thereof by certified mail. [SS15,§1346-l; C24, 27, 31, 35, 39,§**7092**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§437.4]

Referred to in §437.5
SS15,§1346-l, editorially divided

437.5 Failure to furnish. In case of the total failure or refusal to make any statement required by sections 437.2 and 437.4 to be made by May 1 in any year, or of failure or refusal to make such other or further statement within thirty days from the time the certified mail notice thereof is received by said company that the same is required by the director of revenue, such company shall forfeit and pay to the state, one hundred dollars for each day the total failure or refusal to make any report is continued beyond the said first day of May of the year in which it is required, or in case of any such other or further report required by the director for each day the same is delayed beyond thirty days from the receipt of the notice by said company that same is required, such forfeiture to be sued for and recovered in any proper form of action in the name of the state and on relation of the director of revenue of the state, and such penalty when collected, shall be paid into the general fund. [SS15,§1346-l; C24, 27, 31, 35, 39,§**7093**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§437.5]

437.6 Actual value. On the second Monday in July of each year, the director of revenue shall proceed to find the actual value of that part of such transmission line or lines referred to in section 437.2, owned or operated by any company, that is located within this state but outside cities, including the whole of such line or lines when all of such line or lines owned or operated by said company is located wholly outside of cities, taking into consideration the information obtained from the statements required by this chapter, and any further information obtainable, using the same as a means of determining the actual cash value of such transmission line or lines or part thereof, within this state, located outside of cities. The director shall then ascertain the value per mile of such transmission line or lines owned or operated by each company specified in section 437.2, by dividing the total value as above ascertained by the number of miles of line of such company within the state located outside of cities, and the result shall be deemed and held to be the actual value per mile of said transmission line or lines of each of said companies within the state located outside of cities. [SS15,§1346-m; C24, 27, 31, 35, 39,§**7094**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§437.6]

Referred to in §§437.11, 437.14
SS15,§1346-m, editorially divided

437.7 Taxable value. The taxable value of such line or lines of which the director of revenue by this chapter is required to find the value, shall be determined by taking the percentage of the actual value so ascertained, as provided by section 441.21, and the ratio between the actual value and the assessed or taxable value of the transmission line or lines of each of said companies located outside of

cities shall be the same as in the case of the property of private individuals. [SS15,§1346-m; C24, 27, 31, 35, 39,§**7095**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§437.7]

Referred to in §437.11
See §441.21

437.8 Hearing. At the time of determination of value by the director of revenue, any company interested shall have the right to appear by its officers, agents, and attorneys before the director, and be heard on the question of the value of its property for taxation. [SS15,§1346-m; C24, 27, 31, 35, 39,§**7096**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§437.8]

Referred to in §437.11

437.9 County assessment—certification. The director of revenue shall, for the purpose of determining what amount shall be assessed to any one of said companies in each county of the state into which the line or lines of the company extend, multiply the assessed or taxable value per mile of line of said company, as ascertained according to the provisions of this chapter, by the number of miles of line in each of said counties, and the result thereof shall be by the director certified to the several county auditors of the respective counties into, over, or through which said line or lines extend. [SS15,§1346-n; C24, 27, 31, 35, 39,§**7097**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§437.9]

Referred to in §437.11

437.10 Entry of certificate. At the first meeting of the board of supervisors held after said statements are received by the county auditor, it shall cause such statement to be entered in its minute book and make and enter therein an order stating the length of the lines and the assessed value of the property of each of said companies situated in each township or lesser taxing district in each county outside cities, as fixed by the director of revenue, which shall constitute the taxable value of said property for taxing purposes. The county auditor shall transmit a copy of said order to the trustees of each township and to the proper taxing boards in lesser taxing districts into which the line or lines of said company extend in the county. The taxes on said property when collected by the county treasurer shall be disposed of as other taxes on real estate. [SS15,§1346-o; C24, 27, 31, 35, 39,§**7098**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§437.10]

437.11 Rate — purposes. Such portions of the transmission line or lines within the state referred to in section 437.2, as are located outside cities, shall be taxable upon said assessment provided for by sections 437.6 to 437.9 at the same rate, by the same officers and for the same purposes as property of individuals within such counties, townships or lesser taxing districts, outside cities, and the county treasurer shall collect said taxes at the same time and in the same manner as other taxes, and the same penalties shall be due and collectible as for the nonpayment of individual taxes. [SS15,§1346-p; C24, 27, 31, 35, 39,§**7099**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§437.11]

437.12 Assessment exclusive. Every transmission line or part thereof, of which the director of revenue is required by this chapter to find the value, shall be exempt from other assessment or taxation either under sections 428.24 to 428.27, or under any other law of this state except as provided in this chapter. [SS15,§1346-q; C24, 27, 31, 35, 39,§**7100**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§437.12]

SS15,§1346-q, editorially divided

437.13 Local assessment. All lands, buildings, machinery, poles, towers, wires, station and substation equipment, and other construction owned or operated by any company referred to in section 437.2, and where such property is located within any city within this state, shall be listed and assessed for taxation in the same manner as provided in sections 428.24, 428.25, and 428.29, for the listing and assessment of that part of the lands, buildings, machinery, tracks, poles, and wires within the limits of any city belonging to individuals or corporations furnishing electric light or power, and where such property, except the capital stock, is situated partly within and partly without the limits of a city. All personal property of every company owning or operating any such transmission line referred to in section 437.2, used or purchased by it for the purpose of such transmission line, shall be listed and assessed in the assessment district where usually kept and housed and under sections 428.26, 428.27, and 428.29. [SS15,§1346-q; C24, 27, 31, 35, 39,§**7101**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§437.13]

Referred to in §437.14

437.14 Co-operative corporations or associations—assessment. Notwithstanding the provisions of sections 437.1 and 441.21, co-operative corporations or associations which are not organized for profit shall file a verified statement as provided by section 437.2, and the director of revenue shall determine the value and shall assess electric lines and associated facilities outside the incorporated areas of cities of the co-operative corporations or associations which are not organized for profit as follows:

1. Electric lines and associated facilities operating at thirty-four thousand five hundred volts or higher voltage, and substations, transformers and associated facilities operated at thirty-four thousand five hundred or more volts on the low voltage side are defined as transmission lines and shall be valued and assessed as otherwise provided in this chapter.

2. Electric lines and associated facilities operated at less than thirty-four thousand five hundred volts and substations, transformers and associated facilities operated at less than thirty-four thousand five hundred volts on the low voltage side are defined as distribution lines and the actual value thereof for the purpose of section 437.6 shall be twenty-five per-

cent of the original cost of the distribution lines.

Except as provided in this section, the taxation of electric lines and associated facilities of the co-operative corporations or associations shall be identical, including rates of capitalization, to the provisions for other electric lines as provided in this chapter.

3. Any electric lines and associated facilities described in this section which are included within the boundaries of a city as a result of annexation, incorporation or otherwise, shall be valued, assessed and taxed in the manner provided for valuation, assessment and taxation of transmission lines under this section. Any such electric lines, whether transmission or distribution lines, located within the boundaries of a city shall be listed and assessed for taxation as provided in section 437.13 and shall be subject to all ordinances of the city including the authority of any such city to impose taxes, charges or fees as provided by law. [C24, 27, 31, 35, 39,§7102; C46, 50, 54, 58, 62, 66, 71, 73, 75,§437.14; 66GA, ch 1200,§1]

Referred to in §420.207

437.15 Reassessment — procedure and requirements. Sections 433.14, 433.15, 439.1, and 439.2 shall apply to the property of transmission lines which are referred to in section 437.2. [SS15,§1346-t; C24, 27, 31, 35, 39,§7103; C46, 50, 54, 58, 62, 66, 71, 73, 75,§437.15]

CHAPTER 438

PIPELINE COMPANIES TAXATION

Referred to in §§427A.1, 441.47

438.1 Taxation procedure.
438.2 Definitions.
438.3 Statement required.
438.4 Real estate holdings.
438.5 Statement deemed permanent.
438.6 Additional corrective statements.
438.7 Consolidated list of real estate.
438.8 Gross earnings.
438.9 Accounts—regulation.
438.10 Rules—promulgation.
438.11 Refusal to comply—penalty.
438.12 Amended and explanatory statements.
438.13 Basis of valuation and assessment.
438.14 Valuation and certification thereof.
438.15 Assessed value in each taxing district—record.
438.16 Taxation procedure.
438.17 Collection.
438.18 Nonpayment of tax—effect.
438.19 Scope of chapter.

438.1 Taxation procedure. Every person, copartnership, association, corporation or syndicate engaged in the business of transporting or transmitting gas, gasoline, oils, or motor fuels by means of pipelines, whether such pipe lines be owned or leased, shall be taxed as herein provided. [C31, 35,§7103-d1; C39, §7103.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.1]

Referred to in §438.2

438.2 Definitions. The words "pipeline company" as used in this chapter shall be deemed and construed to mean any person, copartnership, association, corporation or syndicate that may own or operate or be engaged in operating or utilizing pipelines for the purposes described in section 438.1. [C31, 35,§7103-d2; C39,§7103.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, §438.2]

438.3 Statement required. Every pipeline company having lines in the state of Iowa shall annually, on or before the first day of April in each year, make out and deliver to the director of revenue a statement, verified by the oath of an officer or agent of such pipeline company making such statement, showing in detail for the year ended December 31 next preceding:

1. The name of the company.

2. The nature of the company, whether a person or persons, an association, copartnership, corporation or syndicate, and under the laws of what state organized.

3. The location of its principal office or place of business.

4. The name and post-office address of the president, secretary, auditor, treasurer and superintendent or general manager.

5. The name and post-office address of the chief officer or managing agent of the company in Iowa.

6. The whole number of miles of pipeline owned, operated or leased within the state, including a classification of the size, kind and weight thereof, separated, so as to show the mileage in each county, and each lesser taxing district.

7. A full and complete statement of the cost and actual present value of all buildings of every description owned by said pipeline company within the state and each lesser taxing district, not otherwise assessed.

8. The number, location, size and cost of each pressure pump or station.

9. Any and all other property owned by said pipeline company within the state which property must be classified and scheduled in

such a manner as the director of revenue may by rule require.

10. The gross earnings of the entire company, and the gross earnings on business done within this state.

11. The operating expenses of the entire company and the operating expenses within this state.

12. The net earnings of the entire company and the net earnings within this state. [C31, 35,§7103-d3; C39,**§7103.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.3]

Referred to in §438.12
Blanks for reports, §428.28

438.4 Real estate holdings. Every pipeline company required by law to report to the director of revenue under the provisions of this chapter shall, on or before the first day of April, 1932, make to the director a detailed statement showing the amount of real estate owned or used by it on December 31, 1931, for pipeline purposes, the county in which said real estate is situated, including the rights of way, pumping or station grounds, buildings, storage or tank yards, equipment grounds for any and all purposes, with the estimated actual value thereof, in such manner as may be required by the director. [C31, 35,§7103-d4; C39, §**7103.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.4]

Referred to in §438.7
44GA, ch 179,§4, editorially divided

438.5 Statement deemed permanent. Only one such detailed statement by any pipeline company shall be necessary, and when received by the director of revenue, it shall become the record of the pipeline lands of such company, and be deemed as annually thereafter reported for valuation and assessment by the director. [C31, 35,§7103-d5; C39,**§7103.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.5]

Referred to in §438.7

438.6 Additional corrective statements. On or before the first day of April of each subsequent year, such company shall, in like manner, report all real estate acquired for any of the pipeline purposes above named during the preceding calendar year; and also, a list of any real estate, previously reported, disposed of during the same period, which disposition shall be noted by the director of revenue in an appropriate column opposite to the description of said tract in the original report of the same in the record of pipeline land. [C31, 35,§7103-d6; C39,**§7103.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §438.6]

Referred to in §438.7

438.7 Consolidated list of real estate. The director of revenue shall, by some convenient method of binding, arrange the statements required to be made by sections 438.4 to 438.6 so as to form a consolidated list of all real estate reported to the director as being owned or used for pipeline purposes within the state of Iowa. [C31, 35,§7103-d7; C39,**§7103.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.7]

438.8 Gross earnings. For the purpose of making reports to the director of revenue, the gross earnings of a pipeline company, owning or operating a line or lines within this state, shall be computed and reported by said company upon such bases as the director may by rule require. [C31, 35,§7103-d8; C39, §**7103.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.8]

438.9 Accounts—regulation. The director of revenue may prescribe such rules with respect to the keeping of accounts by the pipeline companies doing business or having property in this state as will insure the accurate division of the accounts and the information to be reported, and uniformity in reporting the same to the director. [C31, 35,§7103-d9; C39, §**7103.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.9]

438.10 Rules — promulgation. The rules, method and requirements herein provided to be made by the director of revenue shall be made and communicated in writing or printing to the said several pipeline companies, and shall be and become binding upon said pipeline companies as provided in chapter 17A; provided that the director shall have the power to prescribe supplemental or additional rules and requirements in the manner prescribed by chapter 17A. [C31, 35,§7103-d10; C39,**§7103.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §438.10]

438.11 Refusal to comply—penalty. If any pipeline company shall fail or refuse to obey and conform to the rules, method and requirements so made and prescribed by the director of revenue under the provisions of this chapter, or to make the reports herein provided, the director shall proceed to assess the property of such pipeline company so failing or refusing, according to the best information obtainable, and shall then add to the director's valuation of such pipeline company twenty-five percent thereof, which valuation and penalty shall be separately shown, and together shall constitute the assessment for that year. [C31, 35,§7103-d11; C39,**§7103.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.11]

438.12 Amended and explanatory statements. The director of revenue may demand, in writing, detailed, explanatory and amended statements of any of the items mentioned in section 438.3, or any other item deemed to be important, to be furnished to the director by such pipeline company within thirty days from such demand in such form as the director may designate, which shall be verified as required for the original statement. The returns, both original and amended, shall show such other facts as the director, in writing, shall require. [C31, 35,§7103-d12; C39, §**7103.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.12]

438.13 Basis of valuation and assessment. The said property shall be valued at its actual value, and the assessments shall be made upon the taxable value of the entire pipeline

property within the state, except as otherwise provided, and the actual and taxable value so ascertained shall be assessed as provided by section 441.21; and shall include the rights of way, easements, the pipelines, stations, grounds, shops, buildings, pumps and all other property, real and personal exclusively used in the operation of such pipeline. In assessing said pipeline company and its equipment, the director of revenue shall take into consideration the gross earnings and the net earnings for the entire property, and per mile, for the year ending December 31 preceding, and any and all other matters necessary to enable the director to make a just and equitable assessment of said pipeline property. [C31, 35,§7103-d13; C39,§**7103.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.13]

Referred to in §443.22
See §441.18

438.14 Valuation and certification thereof. The director of revenue shall on or before the third Monday in August of each year determine the value of pipeline property located in each taxing district of the state, and in fixing said value shall take into consideration the structures, equipment, pumping stations, etc., located in said taxing district, and shall transmit to the county auditor of each such county through and into which any pipe line may extend, a statement showing the assessed value of said property in each of the taxing districts of said county. The said property shall then be taxed in said county and lesser taxing districts, based upon the valuation so certified, in the same manner as in other property. [C31, 35,§7103-d14; C39,§**7103.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.14]

438.15 Assessed value in each taxing district—record. At the first meeting of the board of supervisors held after said statement is received by the county auditor, it shall cause the same to be entered on its minute book, and make and enter therein an order describing and stating the assessed value of each pipe line lying in each city, township or lesser taxing district in its county, through or into which said pipeline extends, as fixed by the director of revenue, which shall constitute the assessed value of said property for taxing purposes; and the taxes on said property, when collected by the county treasurer, shall be disposed of as other taxes. The county auditor shall transmit a copy of said order to the council of the city, or the trustees of the township, as the case may be. [C31, 35,§7103-d15; C39,§**7103.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §438.15]

44GA, ch 179,§12, editorially divided

438.16 Taxation procedure. All such pipeline property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purpose as the property of individuals within such counties, cities, townships and lesser taxing districts. [C31, 35,§7103-d16; C39,§**7103.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.16]

438.17 Collection. If said tax is not paid, the county treasurer shall collect the same by whatever method may seem proper. [C31, 35, §7103-d17; C39,§**7103.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.17]

438.18 Nonpayment of tax—effect. If said tax is not paid within the fiscal year in which the same is due, the company shall not be permitted thereafter to use the public or private property of the state of Iowa, or to operate in Iowa for any purpose. [C31, 35, §7103-d18; C39,§**7103.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.18]

438.19 Scope of chapter. The provisions of this chapter shall not apply to a gas distributing plant or company located entirely within any city and not a part of a pipeline transportation company. Such local municipal plant shall be taxed in the municipality where located. [C31, 35,§7103-d19; C39,§**7103.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§438.19]

CHAPTER 439

REASSESSMENT BY DIRECTOR OF REVENUE

Referred to in §441.47

439.1 Reassessment and relevy.
439.2 Voluntary payments.

439.1 Reassessment and relevy. When by reason of nonconformity to any law, or by any omission, informality, or irregularity, or for any other cause, any tax heretofore or hereafter levied and assessed against any person, company, association, or corporation by the director of revenue is invalid or is adjudged illegal, the director may assess and levy a tax against such person, company, association, or corporation for the year or years for which such tax is invalid or illegal, or when necessary may assess and certify the same to the proper county officers, who shall levy such tax as by law in such cases made and provided, with the same force and effect as though done at the proper time and under any valid law, whether in force at the time of said levy and assessment or thereafter enacted. [S13,§1330-h;

C24, 27, 31, 35, 39,§**7104**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§439.1]
Referred to in §§437.15, 439.2

439.2 Voluntary payments. When any person, company, association, or corporation, against whom any tax has been assessed and levied by the director of revenue and held invalid or illegal, shall have paid the same voluntarily or shall otherwise waive such invalidity and illegality, the director shall accept such tax in lieu of the tax to be raised by the reassessment and relevy provided for in section 439.1. [S13,§1330-i; C24, 27, 31, 35, 39,§**7105**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§439.2]
Referred to in §437.15

CHAPTER 440

ASSESSMENT OF OMITTED PROPERTY BY DIRECTOR OF REVENUE

Referred to in §441.47

440.1 Assessment of omitted property.
440.2 Notice.
440.3 Form of notice.
440.4 Service of notice.
440.5 Procedure—penalty.
440.6 Fraudulent withholding—penalty.
440.7 Entry on tax books.
440.8 Delinquency.

440.1 Assessment of omitted property. When the director of revenue is vested with power and duty to assess property and said assessment has, for any reason, been omitted, the director shall proceed to assess said property for each of the omitted years, not exceeding five years last past. [C27, 31, 35,§7105-a1; C39, §**7105.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§440.1]

440.2 Notice. Notice of the intention to assess such omitted property and of the time and place of hearing shall be served on the persons, firms, or corporations holding or possessing said property. [C27, 31, 35,§7105-a2; C39,§**7105.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §440.2]
41GA, ch 145,§2, editorially divided

440.3 Form of notice. Such notice shall contain a general description of said property and the year or years for which it is proposed to assess it. [C27, 31, 35,§7105-a3; C39,§**7105.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§440.3]

440.4 Service of notice. Such notice shall be served in such manner and for such reasonable time prior to the hearing as the director of revenue may determine. [C27, 31, 35,§7105-a4; C39,§**7105.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §440.4]

440.5 Procedure—penalty. If it is made to appear that said property is assessable by the director of revenue as omitted property, the director shall proceed in the manner in which the director would have proceeded had the assessment not been omitted, except that the director shall find the value of such omitted property for each year during which it has been omitted and shall add ten percent to each yearly value as a penalty. [C27, 31, 35,§7105-a5; C39,§**7105.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §440.5]
41GA, ch 145,§3, editorially divided

440.6 Fraudulent withholding—penalty. In case the property has been fraudulently withheld from assessment, the director of revenue may, in addition to said ten percent add any additional percent, not exceeding fifty percent. [C27, 31, 35,§7105-a6; C39,§**7105.6**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§440.6]

440.7 Entry on tax books. Should an assessment be made at such time in the year that, in the opinion of the director of revenue, said assessment cannot conveniently be entered on the current tax books, the director may direct that the assessment be entered on the first ensuing tax books. [C27, 31, 35,§7105-a7; C39, §**7105.7**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§440.7]

440.8 Delinquency. A tax based on said assessment shall be deemed delinquent from and after its entry on the tax books. [C27, 31, 35,§7105-a8; C39,§**7105.8**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§440.8]

CHAPTER 441

ASSESSMENT AND VALUATION OF PROPERTY

Referred to in §§111.25, 306.22, 409.43, 409.48, 419.11, 421.17, 427A.3, 427A.11, 441.47
See also 65GA, ch 1230
See note under this chapter head in Code 1975

441.1 Office created.
441.2 Conference board.
441.3 Examining board.
441.4 Removal of member.
441.5 Examination and certification of applicants.

441.6 Appointment of assessor.
441.7 Special examination.
441.8 Term—filling vacancy.
441.9 Removal of assessor.
441.10 Examination and appointment of deputies.
441.11 Incumbent assessors and deputies.
441.12 Dog fee.
441.13 Office personnel.
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441.15 Bond.
441.16 Budget.
441.17 Duties of assessor.
441.18 Listing and valuation.
441.19 Owner to assist—provisions for assessment.
441.20 Oath.
441.21 Actual, assessed and taxable value.
441.22 Forest and fruit-tree reservations.
441.23 Notice of valuation.
441.24 Refusal to furnish statement.
441.25 False statement.
441.26 Assessment rolls and books.
441.27 Uniform assessment rolls.
441.28 Assessment rolls — change — notice to taxpayer.
441.29 Plat book—index system.
441.30 Completion of assessment—oath.
441.31 Board of review.
441.32 Terms—vacancies.
441.33 Sessions of board of review.
441.34 Quarters—hours—expenses.
441.35 Powers of review board.
441.36 Change of assessment—notice.
441.37 Protest of assessment—grounds.
441.38 Appeal to district court.
441.39 Trial on appeal.
441.40 Costs, fees and expenses apportioned.
441.41 Legal counsel.
441.42 Appeal on behalf of public.
441.43 Power of court.
441.44 Notice of voluntary settlement.
441.45 Abstract to state department of revenue.
441.46 Assessment year.
441.47 Adjusted valuations.
441.48 Notice of adjustment.
441.49 Adjustment by assessor.
441.50 Appraisers employed.
441.51 Repealed by 65GA, ch 1230,§8, 9.
441.52 Failure to perform duty.
441.53 Political activity prohibited.
441.54 Construction.
441.55 Conflicting laws.
441.56 Assessor's duties — combined appointment.
441.57 Reporting of agricultural land valuation.
441.58 to 441.64 Reserved.
411.65 Platting for assessment and taxation by auditor.
441.66 Execution and filing — effect.
441.67 Costs and expenses.
441.68 Collection or assessment of costs.
441.69 Appeal.
441.70 Determination by board.
441.71 Plat requirements.

441.1 Office created. In every city in the state of Iowa having more than one hundred twenty-five thousand population and in every county in the state of Iowa the office of assessor is hereby created. A city having a population of ten thousand or more, but not in excess of one hundred twenty-five thousand, according to the latest federal census, may by ordinance provide for the selection of a city assessor and for the assessment of property in the city under the provisions of this chapter. A city desiring to provide for assessment under the provisions of this chapter shall, not less than sixty days before the expiration of the term of the assessor in office, notify the taxing bodies affected and proceed to establish a conference board, examining board, and board of review and select an assessor, all as provided in this chapter. [C50, 54, 58,§§405A.1, 441.1; C62, 66, 71, 73, 75,§§441.1, 441.51; 65GA, ch 1230,§1]

Optional in other cities, §441.51
Amendment effective January 1, 1976; 65GA, ch 1230,§9

441.2 Conference board. In each county and each city having an assessor there shall be established a conference board. In counties the conference board shall consist of the mayors of all incorporated cities in the county whose property is assessed by the county assessor, one representative from the board of directors of each high school district of the county, who is a resident of the county, said board of directors appointing said representative for a one-year term and notifying the clerk of the conference board as to their representative, and members of the board of supervisors. In cities having an assessor the conference board shall consist of the members of the city council, school board and county board of supervisors. In the counties the chairman of the board of supervisors shall act as chairman of the conference board, in cities having an assessor the mayor of the city council shall act as chairman of the conference board. In any action taken by the conference board, the mayors of all incorporated cities in the county whose property is assessed by the county assessor shall constitute one voting unit, the members of the city board of education or one representative from the board of directors of each high school district of the county shall constitute one voting unit, the members of the city council shall constitute one voting unit, and the county board of supervisors shall constitute one voting unit, each unit having a single vote and no action shall be valid except by the vote of not less than two out of the three units. The majority vote of the members present of each unit shall determine the vote of the unit. The assessor shall be clerk of the conference board. [R60,§739; C73,§§829, 830, 832; C97,§§1368, 1370, 1375, 1376; C24, 27, 31, 35, 39,§§7127, 7129, 7137,

7138; C46,§§441.21, 442.1, 442.12, 442.13; C50, 54, 58,§§441.2, 442.1; C62, 66, 71, 73, 75,§441.2]

441.3 Examining board. At a regular meeting of the conference board each voting unit of the conference board shall appoint one qualified person to serve as a member of an examining board to hold an examination for the positions of assessor or deputy assessor. This examining board shall organize as soon as possible after its appointment with a chairman and secretary. All its necessary expenditures shall be paid as hereinafter provided. Members of the board shall serve without compensation. The terms of each shall be for six years. [C46,§405.1; C50, 54, 58,§§405.1, 405A.2, 441.3; C62, 66, 71, 73, 75,§441.3]

441.4 Removal of member. A member of this examining board may be removed by the voting unit of the conference board by which he was appointed but only after specific charges have been filed and a public hearing held, if requested by the discharged member of the board. Subsequent appointments and an appointment to fill a vacancy, shall be made in the same way as the original appointment. [C46, 50, 54, 58,§405.2; C62, 66, 71, 73, 75,§441.4]

441.5 Examination and certification of applicants. For the purpose of examining and certifying candidates for the positions of assessor and deputy assessor, the director of revenue shall prepare and administer a written examination. The examinations shall be administered twice each year in the city of Des Moines. Notification of the time, place and date of the examinations shall be mailed to each city and county assessor, county auditor and chairman of each city and county conference board at least thirty days prior to the date of the examination.

These examinations shall be conducted by the director of revenue in the same manner as other similar examinations, including secrecy regarding questions prior to the examination and in accordance with other rules as may be prescribed by the director of revenue. The examination shall cover the following and related subjects:

1. Laws pertaining to the assessment of property for taxation, with emphasis on market value assessment as provided in this chapter.

2. Laws on tax exemption.

3. Assessment of real estate and personal property, including market value assessment in accordance with this chapter and including fundamental principles and practices of property appraisal and valuation which are consistent with market value assessment as provided in this chapter.

4. The rights of taxpayers and property owners related to the assessment of property for taxation.

5. The duties of the assessor.

6. Other items related to the position of assessor.

Only individuals who possess a high school diploma or its equivalent are eligible to take the examination. A person desiring to take the examination shall complete an application prior to the administration of the examination.

The director of revenue shall grade the examination taken. The director shall notify, in writing, each applicant of the score attained by the applicant on the examination. An individual who attains a score of seventy percent or greater on the examination is eligible to be certified by the director of revenue as a candidate for any assessor position. Any person who passes the examination and who possesses at least two years of appraisal related experience as determined by the director of revenue shall be granted regular certification and become eligible for appointment to a six-year term as assessor. Any person who passes the examination but who lacks such experience shall be granted temporary certification, and shall be eligible for a provisional appointment as assessor.

Any person possessing temporary certification who receives a provisional appointment as assessor shall, during the person's first eighteen months in office, be required to complete a course of study prescribed and administered by the director of revenue. Upon the successful completion of this course of study, the assessor shall be granted regular certification and shall be eligible to remain in office for the balance of his or her six-year term. All expenses incurred in obtaining regular certification shall be defrayed by the assessment expense fund.

Following the administration of an examination, the director of revenue shall establish a register containing the names of all individuals eligible for appointment as assessor. The register shall also indicate the examination score of the individual and whether each eligible candidate has been granted a regular or a temporary certificate. All eligible candidates shall remain on the register for a period of two years following the date certification is granted by the director. [C46,§405.3; C50, 54, 58,§§405.3, 441.2, 441.3; C62, 66, 71, 73, 75,§441.5; 65GA, ch 1230,§2]

Referred to in §§441.7, 441.8, 441.10, 441.11, 441.56
This section effective January 1, 1976, 65GA, ch 1230,§9

441.6 Appointment of assessor. When a vacancy occurs in the office of city or county assessor, the examining board shall request the director of revenue to forward a register containing the names of all individuals eligible for appointment as assessor. The examining board may, at its own expense, conduct a further examination, either written or oral, of any person whose name appears on the register, and shall make written report of the examination and submit the report together with the names of those individuals certified

by the director of revenue to the conference board within fifteen days after the receipt of the register from the director of revenue.

Not later than seven days after receipt of the report of the examining board, the chairman of the conference board shall by written notice call a meeting of the conference board to appoint an assessor. The physical condition, general reputation of the applicants, and their fitness for the position as determined by the examining board shall be taken into consideration in making the appointment. The chairman of the conference board shall give written notice to the director of revenue of the appointment and its effective date within ten days of the decision of the board. [C46, 50, 54, 58,§405.4; C62, 66, 71, 73, 75,§441.6; 65GA, ch 1230,§3]

Referred to in §§441.8, 441.56
This section effective January 1, 1976; 65GA, ch 1230,§9

441.7 Special examination. If the conference board fails to appoint an assessor from the list of individuals on the register, the examining board shall request permission from the director of revenue to hold an examination in the particular city or county in which the vacancy has occurred. Permission may be granted by the director of revenue after consideration of factors such as the availability of candidates in that particular city or county. The examination shall be conducted by the director of revenue as provided in section 441.5, except as otherwise provided in this section. The examining board shall give notice of holding the examination for assessor by posting a written notice in a conspicuous place in the county courthouse in the case of county assessors or in the city hall in the case of city assessors, stating that at a specified date, an examination for the position of assessor will be held at a specified place. Similar notice shall be given at the same time by one publication of the notice in three newspapers of general circulation in the case of a county assessor, or in case there are not three such newspapers in a county, then in newspapers which are available, or in one newspaper of general circulation in the city in the case of city assessor. The conference board of the city or county in which a special examination is held shall reimburse the department of revenue for all expenses incurred in the administration of the examination, to be paid for by the respective city or county assessment expense fund. Following the administration of this special examination, the director of revenue shall certify to the examining board a new list of candidates eligible to be appointed as assessor. [C46, 50, 54, 58,§405.5; C62, 66, 71, 73, 75,§441.7; 65GA, ch 1230,§4]

Referred to in §441.56
This section effective January 1, 1976; 65GA, ch 1230,§9

441.8 Term—filling vacancy. The term of office of an assessor appointed under this chapter shall be for six years. Appointments for each succeeding term shall be made in the same manner as the original appointment except that not less than ninety days before the expiration of the term of the assessor the conference board shall hold a meeting to determine whether or not it desires to reappoint the incumbent assessor to a new term. The conference board shall have the power to reappoint the incumbent assessor without re-examination if it sees fit to do so. If the incumbent assessor is not reappointed as above provided, then not less than sixty days before the expiration of the term of said assessor, a new assessor shall be selected as provided in section 441.6.

In the event of the removal, resignation, death, or removal from the county of the said assessor, the conference board shall within thirty days at a meeting as provided in section 441.6, select from the register provided in section 441.5 an assessor to serve out the unexpired term; or in case of inability to agree upon a selection from this register, the new selection shall be made as provided in section 441.6. Until the vacancy is filled, the chief deputy shall act as assessor, and in the event there be no deputy, in the case of counties the auditor shall act as assessor and in the case of cities having an assessor the city clerk shall act as assessor. [C46,§405.6; C50, 54, 58,§§405.6, 441.3; C62, 66, 71, 73, 75,§441.8; 65GA, ch 1230,§5]

Referred to in §§441.11, 441.56
Amendments effective January 1, 1976; 65GA, ch 1230,§9

441.9 Removal of assessor. The assessor may be removed by a majority vote of the conference board, after charges of misconduct, nonfeasance, malfeasance, or misfeasance in office shall have been substantiated at a public hearing, if same is demanded by the assessor by written notice served upon the chairman of the conference board. [C46,§405.7; C50, 54, 58,§§405.7, 441.3; C62, 66, 71, 73, 75,§441.9]

441.10 Examination and appointment of deputies. Immediately after the appointment of the assessor, and at other times as the conference board directs, one or more deputy assessors may be appointed by the assessor. Appointments shall be made only from the list of eligible candidates provided by the director of revenue. The list of eligible candidates shall contain only the names of those persons who achieve a score of seventy percent or greater on the examination administered by the director of revenue. Examinations for the position of deputy assessor shall be conducted in the same manner as examinations for the position of city or county assessor. The applicable provisions of section 441.5 regarding the register of names shall also apply to the list of eligible candidates established under the provisions of this section.

The assessor may peremptorily suspend or discharge any deputy assessor under his direction upon written charges for neglect of duty, disobedience of orders, misconduct, or failure to properly perform his duties. Within

five days after delivery of written charges to the employee, he may appeal by written notice to the secretary or chairman of the examining board. The board shall grant him a hearing within fifteen days, and a decision by a majority of the examining board is final. The assessor shall designate one of the deputies as chief deputy, and the assessor shall assign to each deputy the duties, responsibilities, and authority as is proper for the efficient conduct of his office. [C46,§405.8; C50, 54, 58,§§405.8, 441.3; C62, 66, 71, 73, 75,§441.10; 65GA, ch 1230, §6]

Referred to in §441.11
This section effective January 1, 1976; 65GA, ch 1230,§9

441.11 Incumbent assessors and deputies. The director of revenue shall grant a restricted certificate to any city or county assessor or deputy assessor holding office as of January 1, 1976. An assessor possessing such a certificate shall be considered eligible to remain in his or her present position and to be reappointed to that position as provided in section 441.8 and 441.10. A deputy assessor possessing such a certificate shall be considered eligible to remain in his or her present position. To become eligible for another assessor or deputy assessor position, however, an assessor or deputy assessor presently holding office is required to obtain certification as provided for in section 441.5. [C46,§405.9; C50, 54, 58,§§405.9, 441.3; C62, 66, 71, 73, 75,§441.11; 65GA, ch 1230,§7, ch 1201,§1]

This section effective January 1, 1976; 65GA, ch 1230,§9

441.12 Dog fee. The dog listing fee provided in section 351.15 shall not be retained by the assessor but shall be a part of the assessment expense fund. [C46, 50, 54, 58, §405.10; C62, 66, 71, 73, 75,§441.12]

441.13 Office personnel. Other office personnel shall be appointed by the assessor subject to the limitations of the annual budget as hereinafter provided. The assessor shall select field persons, so far as possible, from the eligible list of deputy assessors. Their compensation shall be fixed as provided in section 441.16. They shall serve at the pleasure of the assessor. [C46,§§405.10, 405.11; C50, 54, 58, §§405.10, 405.11, 441.8; C62, 66, 71, 73, 75,§441.13]

441.14 Office space. The county board of supervisors shall provide adequate office space for the office of the county assessor, and for the office of the city assessor, if any, including such services as are ordinarily afforded in any county office. [C46,§405.12; C50, 54, 58,§§405.12, 441.7; C62, 66, 71, 73, 75,§441.14]

441.15 Bond. Assessors and deputy assessors shall be required to furnish bond for the performance of their duties in such amount as the conference board may require and the cost thereof shall be provided for in the budget of the assessor and paid out of the assessment expense fund. [C50, 54, 58,§441.6; C62, 66, 71, 73, 75,§441.15]

441.16 Budget. All expenditures under this chapter shall be paid as hereinafter provided.

Not later than January 1 of each year the assessor, the examining board, and the board of review, shall each prepare a proposed budget of all expenses for the ensuing fiscal year. The assessor shall include in his proposed budget the probable expenses for defending assessment appeals. Said budgets shall be combined by the assessor and copies thereof forthwith filed by him in triplicate with the chairman of the conference board.

Such combined budgets shall contain an itemized list of the proposed salaries of the assessor and each deputy, the amount required for field personnel and other personnel, their number and their compensation; the estimated amount needed for expenses, printing, mileage and other expenses necessary to operate the assessor's office, the estimated expenses of the examining board and the salaries and expenses of the local board of review.

Each fiscal year the chairman of the conference board shall, by written notice, call a meeting to consider such proposed budget and shall fix and adopt a consolidated budget for the ensuing year not later than January 15.

At such meeting the conference board shall authorize:

1. The number of deputies, field personnel, and other personnel of the assessor's office.

2. The salaries and compensation of members of the board of review, the assessor, chief deputy, other deputies, field personnel, and other personnel, and determine the time and manner of payment.

3. The miscellaneous expenses of the assessor's office, the board of review and the examining board, including office equipment, records, supplies, and other required items.

4. The estimated expense of assessment appeals. All such expense items shall be included in the budget adopted for the ensuing year.

All tax levies and expenditures provided for herein shall be subject to the provisions of chapter 24 and the conference board is hereby declared to be the certifying board.

Any tax for the maintenance of the office of assessor and other assessment procedure shall be levied only upon the property in the area assessed by said assessor and such tax levy shall not exceed forty and one-half cents per thousand dollars of assessed value in assessing areas where the valuation upon which the tax is levied does not exceed ninety-two million, six hundred thousand dollars; thirty-three and three-fourths cents per thousand dollars of assessed value in assessing areas where the valuation upon which the tax is levied exceeds ninety-two million, six hundred thousand dollars and does not exceed one hundred eleven million, one hundred twenty thousand dollars; twenty-seven cents per thousand dollars of assessed value in assessing areas where the valuation upon which the tax is levied exceeds one hundred eleven million, one hundred twenty thousand dollars. The

county treasurer shall credit the sums received from such levy to a separate fund to be known as the "assessment expense fund" and from which fund all expenses incurred under this chapter shall be paid. In the case of a county where there is more than one assessor the treasurer shall maintain separate assessment expense funds for each assessor.

The county auditor shall keep a complete record of said funds and shall issue warrants thereon only on requisition of the assessor.

The assessor shall not issue requisitions so as to increase the total expenditures budgeted for the operation of the assessor's office. However, for purposes of promoting operational efficiency, the assessor shall have authority to transfer funds budgeted for specific items for the operation of the assessor's office from one unexpended balance to another; such transfer shall not be made so as to increase the total amount budgeted for the operation of the office of assessor, and no funds shall be used to increase the salary of the assessor or the salaries of permanent deputy assessors. He shall issue requisitions for the examining board and for the board of review on order of the chairman of each board and for costs and expenses incident to assessment appeals, only on order of the city legal department, in the case of cities and of the county attorney in the case of counties.

Unexpended funds remaining in the assessment expense fund at the end of a year shall be carried forward into the next year. [R60, §730; C73,§§390, 3810; C97,§§592, 661, 674; S13, §§592, 661, 674; SS15,§1056-b18; C24, 27, 31, 35, 39,§§**5573, 5656, 5669, 6652, 6653**; C46,§§359.48, 363.29, 363.43, 405.18, 419.38, 419.39, 441.5; C50, 54, 58,§§405.18, 405A.4, 441.5, 442.12; C62, 66, 71, 73, 75,§441.16]

Referred to in §441.13

441.17 Duties of assessor. The assessor shall:

1. Devote his entire time to the duties of his office and shall not engage in any occupation or business interfering or inconsistent with such duties.

2. Cause to be assessed, in accordance with section 441.21, all the property, personal and real, in his county or city as the case may be, except such as is exempt from taxation, or the assessment of which is otherwise provided for by law.

3. Have access to all public records of the county and, so far as practicable, make or cause to be made a careful examination of all such records and files in order to obtain all available information which may contribute to the accurate listing at its taxable value, and to the proper persons, of all property subject to assessment by him.

4. Co-operate with the director of revenue as may be necessary or required, and he shall obey and execute all orders, directions, and instructions of the director of revenue, insofar as the same may be required by law.

5. Have power to apply to the district court of the county for an order to examine witnesses and requiring the production of books and records of any person, firm, association or corporation within the county, whenever he has reason to believe that such person, firm, association or corporation has not listed his or its property as provided by law. The proceeding for the examination of witnesses and examination of the books and records of any such taxpayer, to determine the existence of taxable property, shall be instituted and conducted in the manner provided for the discovery of property under the provisions of chapter 630. The court shall make an appropriate finding as to the existence of taxable property not listed. All taxable property discovered thereby shall thereupon be assessed by the assessor in the manner provided by law.

In all cases where the court finds that the taxpayer has not listed its or his property, as provided by law, and in all hearings where the court decides a matter against the taxpayer, the costs shall be paid by the taxpayer, otherwise they shall be paid out of the assessment expense fund. The fees and mileage to be paid witnesses shall be the same as prescribed by law in proceedings in the district courts of this state in civil cases. Where the costs are taxed to the taxpayer they shall be added to the taxes assessed against said taxpayer and his property and shall be collected in the same manner as are other taxes.

6. Make up all assessor's books and records as prescribed by the director of revenue, turn the completed assessor's books and records required for the preparation of the tax list over to the county auditor each year when the board of review has concluded its hearings and the county auditor shall proceed with the preparation of the current year tax list and the assessor shall co-operate with the auditor in the preparation of the tax lists.

7. Submit on or before May 1 of each year completed assessment rolls to the board of review.

8. Lay before the board of review such information as he may possess which will aid said board in performing its duties in adjusting the assessments to the valuations required by law.

9. Furnish to the director of revenue any information which he may have relative to the ownership of any property that may be assessable within this state, but not assessable or subject to being listed for taxation by him.

10. Measure the exterior length and exterior width of all mobile homes except those for which said measurements are contained in the manufacturer's and importer's certificate of origin, and report said information to the county treasurer. Check all mobile homes and travel trailers for violations of registration and for inaccuracy or measurements as necessary or upon written request of the county treasurer and report such findings immediately to

the county treasurer. If a mobile home has been converted to real estate the registration certificate, registration plates, and title shall be collected and returned to the county treasurer for cancellation. If the registration fees and any taxes due for prior years have not been paid, the assessor shall collect the unpaid registration fees and taxes due as a condition of conversion. It shall be the further duty of the assessor to make sufficiently frequent inspections and checks within his entire jurisdiction of all mobile homes and mobile home parks and travel trailers and make all the required and needed reports to carry out the intents and purposes of this section. [C51, §§474, 475; R60,§§735, 736; C73,§§824, 825; C97, §§1355, 1359, 1366; S13,§§1355, 1366; C24, 27, 31, 35, 39,§§**7108, 7114, 7122, 7123**; C46,§§441.3, 441.9, 441.17, 441.18; C50, 54, 58,§§405A.8, 441.4, 441.9, 441.12; C62, 66, 71, 73, 75,§441.17]

441.18 Listing and valuation. Each assessor shall, with the assistance of each person assessed, or who may be required by law to list property belonging to another, enter upon the assessment rolls the several items of property required to be entered for assessment. He shall personally affix values to all property assessed by him. [C51,§473; R60,§733; C73,§822; C97, §1352; C24, 27, 31, 35, 39,§**7106**; C46,§§405.19, 441.1; C50, 54, 58,§§405.19, 405A.6, 405A.7, 441.10; C62, 66, 71, 73, 75,§441.18]

441.19 Owner to assist—provisions for assessment. The assessor shall list every person in his county or city as the case may be and assess all the property therein, personal and real, except such as is heretofore exempted or otherwise assessed. Any person who shall refuse to assist in making out a list of his property, or of any property which he is by law required to assist in listing, or who shall refuse to make either of the oaths or affirmations or combinations thereof required by section 441.20, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in a sum not to exceed five hundred dollars.

1. Supplemental and optional to the procedure for the assessment of property by the assessor as provided in this chapter, the assessor is hereby authorized to require from all persons required to list their property for taxation as provided by sections 428.1, 428.2 and 428.3, a supplemental return to be prescribed by the director of revenue upon which such person shall list his property. Such supplemental return shall be in substantially the same form as now prescribed by law for the assessment rolls used in the listing of property by the assessors, and the director of revenue may prescribe separate supplemental forms for the listing of personal property, both tangible and intangible. It shall be the duty of every person required to list property for taxation to make a complete listing of such property upon such supplemental forms and to return the same to the assessor as promptly as possible. Such return shall be verified over the signature of the person making the return and the provisions of section 441.25 shall apply to any person making such return. The assessor shall make such supplemental return forms available as soon as practicable after the first day of January of each year. The assessor shall make such supplemental return forms available to the taxpayer by mail, or at a designated place within the taxing district.

2. Upon receipt of such supplemental return from any person the assessor shall prepare a roll assessing such person as hereinafter provided. In the preparation of such assessment roll the assessor shall be guided not only by the information contained in such supplemental roll, but by any other information he may have or which may be obtained by him as prescribed by the law relating to the assessment of property. The assessor shall not be bound by any values as listed in such supplemental return, and he may include in the assessment roll any property omitted from the supplemental return which in the knowledge and belief of the assessor should be listed as required by law by the person making the supplemental return. Upon completion of such roll he shall deliver to the person submitting such supplemental return a copy of the assessment roll, either personally or by mail.

3. Any taxpayer aggrieved by the action of the assessor in the preparation of an assessment roll upon which a supplemental return has been made shall have the same rights and privileges of appeal as provided by law in connection with the assessment rolls prepared in entirety by the assessor, but no assessment rolls prepared by the assessor after receiving a supplemental return shall be deemed insufficient or invalid because of the fact that such assessment roll does not bear the signature of the person assessed, and the signature of the person listing property upon the supplemental return shall be deemed a signature on the roll as prepared by the assessor.

4. The supplemental returns herein provided for shall be preserved in the same manner as assessment rolls, but shall be confidential to the assessor, board of review, or director of revenue, and shall not be open to public inspection, but any final assessment roll as made out by the assessor shall be a public record, provided that such supplemental return shall be available to counsel of either the person making the return or of the public, in case any appeal is taken to the board of review or to the court.

5. In the event of failure of any person required to list property to make a supplemental return, as required herein, on or before the fifteenth day of February of any year when such listing is required, the assessor shall proceed in the listing and assessment of his property as provided by this chapter, and no person subject to taxation shall be relieved of his obligation to list his property through failure to make a supplemental return as herein provided, and any roll prepared by the assessor after receiving a supplemental return

or when prepared in accordance with other provisions of this chapter, shall be a valid assessment.

6. The provisions of this chapter relating to assessment rolls shall be applicable to the preparation of rolls upon which a supplemental return has been received, insofar as they are not in conflict with the provision of this section. [C51,§477; R60,§734; C73,§823; C97, §1354; S13,§1354; C24, 27, 31, 35, 39,§7107; C46, §441.2; C50, 54, 58,§441.11; C62, 66, 71, 73, 75, §441.19]

441.20 Oath. The assessor shall administer the oath or affirmation printed on the assessment rolls hereinafter prescribed, or combination thereof, to each person assessed, and require the person taking such oath to subscribe the same, and, in case anyone refuses so to do, he shall note the fact in the column of remarks opposite such person's name. [C51,§§474, 475; R60,§735; C73,§824; C97,§1355; S13,§1355; C24, 27, 31, 35, 39,§7108; C46,§441.3; C50, 54, 58,§441.12; C62, 66, 71, 73, 75,§441.20]

Referred to in §441.19

441.21 Actual, assessed and taxable value.

1. All real and tangible personal property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and shall be assessed at one hundred percent of such actual value, and such value so assessed shall be taken and considered as the assessed value and taxable value of such property upon which the levy shall be made.

The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property. "Market value" is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property. Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value. In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.

In assessing and determining the actual value of special purpose industrial real and tangible personal property having an actual value of five million dollars or more, the assessor shall equalize the values of such property with the actual values of other comparable special purpose industrial property in other counties of the state. Such special purpose industrial property includes, but is not limited to chemical plants. If a variation of ten percent or more exists between the actual values of comparable industrial property having an actual value of five million dollars or more located in separate counties, the assessors of such counties shall consult with each other and with the department of revenue to determine if adequate reasons exist for such variation. If no such reasons exist, the assessors shall make adjustments in such actual values to provide for a variation of ten percent or less. For the purposes of this paragraph, special purpose industrial property includes structures which are designed and erected for operation of a unique and special use, are not rentable in existing condition and are incapable of conversion to ordinary commercial or industrial use except at a substantial cost.

Actual value of property in one assessing jurisdiction shall be equalized as compared with actual value of property in an adjoining assessing jurisdiction. If a variation of five percent or more exists between the actual values of similar, closely adjacent property in adjoining assessing jurisdictions in Iowa, the assessors thereof shall determine whether adequate reasons exist for such variation. If no such reasons exist, the assessors shall make adjustments in such actual values to reduce the variation to five percent or less.

In assessing and determining the actual value of agricultural property fifty percent consideration shall be given to each of the following factors:

a. The productivity and net earning capacity determined on the basis of the use for agricultural purposes capitalized at a rate representing a fair return on the investment, such rate to be established by the state board of tax review and applied uniformly among counties and among classes of property.

b. The fair and reasonable market value of such property as defined herein, but such market value shall be based only on its current use and not on its potential value for other uses.

In counties or townships in which field work on a modern soil survey has been completed since January 1, 1949, the assessor and the department of revenue shall place emphasis upon the results of such survey in determining the productive and earning capacity of such agricultural property.

Notwithstanding any other provision of this section, the actual value of any property shall not exceed its fair and reasonable market value.

The market value of an inventory or goods in bulk shall be their market value as such inventory or goods in bulk, not their retail or unit price. Such market value shall be fair and reasonable based on market value of similar classes of property.

In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may determine the value of the property using the other uniform and recognized appraisal methods including its productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor. The following shall not be taken into consideration: Special value or use value of the property to its present owner, and the good will or value of a business which uses the property as distinguished from the value of the property as property. Upon adoption of uniform rules by the revenue department* or succeeding authority covering assessments and valuations of such properties, said valuation on such properties shall be determined in accordance therewith for assessment purposes to assure uniformity, but such rules shall not be inconsistent with or change the foregoing means of determining the actual, market, taxable and assessed values.

"Actual value", "taxable value", or "assessed value" as used in other sections of the Code shall mean the valuations as determined by this section; however, other provisions of the Code providing special methods or formulas for assessing or valuing specified property shall remain in effect, but this section shall be applicable to the extent consistent with such provisions. The assessor and department of revenue shall disclose at the written request of the taxpayer all information in any formula or method used to determine the actual value of his property.

The burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable or capricious; however, in protest or appeal proceedings when the complainant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

2. For the purpose of computing the debt limitations for municipalities, political subdivisions and school districts, the term "actual value" means the "actual value" as determined by this section and entered opposite each item, and as listed on the tax list as provided in section 443.2 as "actual value".

Whenever any board of review or other tribunal changes the assessed value of property, all applicable records of assessment shall be adjusted to reflect such change in both assessed value and actual value of such property.

3. Any normal and necessary repairs to any building, not amounting to structural replacements or modification, shall not increase the taxable value of such building. The provisions of this paragraph shall apply only to repairs of five hundred dollars or less per building per year. [C97,§1305; S13,§1305; C24, 27, 31, 35, 39, §7109; C46,§441.4; C50, 54, 58,§441.13; C62, 66, 71, 73, 75,§441.21; 66GA, ch 205,§2, ch 1199,§2]

Referred to in §§420.207, 425.11(3), 427.1(9, 11, 32), 428.17, 428.21, 428.29, 432.7, 433.6, 434.15, 435.7, 436.8, 437.7, 437.14, 438.13, 441.17(2), 441.49, 443.22

*See 62GA, ch 342

441.22 Forest and fruit-tree reservations. Forest reservations fulfilling the conditions of sections 161.1 to 161.13, inclusive, shall be assessed on a taxable valuation of fourteen dollars and eighty-two cents per acre. Fruit-tree reservations shall be assessed on a taxable valuation of fourteen dollars and eighty-two cents per acre for a period of eight years from the time of planting. In all other cases where trees are planted upon any tract of land, without regard to area, for forest, fruit, shade, or ornamental purposes, or for windbreaks, the assessor shall not increase the valuation of such property because of such improvements. [S13,§1400-l; C24, 27, 31 35, 39,§7110; C46,§441.5; C50, 54, 58,§441.14; C62, 66, 71, 73, 75,§441.22]

Referred to in §427A.1

441.23 Notice of valuation. If there has been an increase or decrease in the valuation of the property, or upon the written request of the person assessed, the assessor shall, at the time of making the assessment, inform the person assessed, in writing, of the valuation put upon his property, and notify him, if he feels aggrieved, to appear before the board of review and show why the assessment should be changed. In odd-numbered years, the owners of real property shall be notified not later than April 15 of any adjustment of the real property assessment. In even-numbered years, the notice of an increase or decrease in the valuation of the property shall be provided to the owners of real property not later than June 30 as provided in section 441.49. [C97, §1356; C24, 27, 31,§7111; C35,§7111, 7129-e1; C39, §§7111, 7129.1; C46,§§441.6, 442.2; C50, 54, 58, §§441.15, 442.2; C62, 66, 71, 73, 75,§441.23; 66GA, ch 218,§1, ch 1199,§3]

Referred to in §§428.4, 441.49

441.24 Refusal to furnish statement. If any corporation or person refuse to furnish the verified statements required in connection with the assessment of property by the assessor, or to list his property, or to take or subscribe the oath required, the director of revenue, or assessor, as the case may be, shall proceed to list and assess such property according to the best information obtainable, and shall add to the taxable valuation one hundred percent thereof, which valuation and penalty shall be separately shown, and shall constitute the assessment; and if the valuation of such property shall be changed by any board of review, or on appeal therefrom, a like penalty shall be added to the valuation

thus fixed. [C51,§475; R60,§734; C73,§§823, 1318; C97,§1357; C24, 27, 31, 35, 39,§7112; C46,§441.7; C50, 54, 58,§441.16; C62, 66, 71, 73, 75,§441.24]

Referred to in §428.35(3)

441.25 False statement. Any person making any verified statement or return, or taking any oath required by this title, who knowingly makes a false statement therein, shall be guilty of perjury. [C97,§1358; C24, 27, 31, 35, 39,§7113; C46,§441.8; C50, 54, 58,§441.17; C62, 66, 71, 73, 75,§441.25]

Referred to in §441.19(1)
Perjury, punishment, §721.1

441.26 Assessment rolls and books. The director of revenue shall each year prescribe the form of assessment roll to be used by all assessors in assessing real and personal property, including moneys and credits, in this state, also the form of pages of the assessor's assessment book. Such assessment rolls shall be in such form as will permit entering thereon, separately, the names of all persons, partnerships, corporations, or associations assessed; shall contain a form of oath or affirmation to be administered to each person assessed, and shall also contain a notice in substantially the following form:

"If you are not satisfied that the foregoing assessment is correct, you may file a protest against such assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment, such protest to be confined to the grounds specified in section 441.37. Dated ..... day of ....., 19...., ...County/City Assessor."

The dates specified in the notice sent to the owner of property in even-numbered years shall contain the dates for filing of protests as provided in section 441.49.

Such assessment rolls shall be used in listing the property and showing the values affixed to such property of all persons, partnerships, corporations, or associations assessed, which rolls shall be made in duplicate. Said duplicate roll shall be signed by the assessor, detached from the original and delivered to the person assessed if there has been an increase or decrease in the valuation of the property, or upon the written request of the person assessed. It shall be lawful to combine the affidavit or form of oath or affirmation with reference to real and personal property, and the affidavit or form of oath or affirmation as to moneys and credits, into one affidavit or form of oath or affirmation, and only the one such affidavit or form of oath or affirmation shall be sufficient on the assessment roll. The pages of the assessor's assessment book shall contain columns ruled and headed for the information required by this chapter and that which the director of revenue may deem essential in the equalization work of the director. The assessor shall return all assessment rolls and any schedules therewith to the county auditor, along with the completed assessment book, as provided in this chapter, and the county auditor shall carefully keep and preserve all such rolls, schedules and book for a period of five years from the time of filing of the same in his office. [C51,§§471, 473; R60,§§732, 733; C73,§821; C97,§§1360, 1361; S13,§§1360, 1361; C24, 27, 31, 35, 39,§§7115, 7116, 7117, 7118; C46, §§405.20, 441.10, 441.11, 441.13; C50, 54, 58, §§405.20, 441.18, 441.19, 441.20, 441.21; C62, 66, 71, 73, 75,§441.26; 66GA, ch 1199,§4]

Referred to in §441.49

441.27 Uniform assessment rolls. The director of revenue shall from time to time prepare and certify to each assessor such instructions as to a uniform method of making up the assessment rolls as the director of revenue thinks necessary to secure a compliance with the law and uniform returns, which shall be printed upon each assessment roll, and also prepare instructions for the same purpose as to making up the assessment book, which shall be printed therein. [C97,§1362; C24, 27, 31, 35, 39,§7119; C46,§441.14; C50, 54, 58,§441.22; C62, 66, 71, 73, 75,§441.27]

441.28 Assessment rolls—change—notice to taxpayer. The assessment shall be completed not later than April 15 in odd-numbered years and not later than May 15 in even-numbered years. If the assessor makes any change in an assessment after it has been entered on the assessor's rolls, he shall note on said roll, together with the original assessment, the new assessment and the reason for the change, together with his signature and the date of the change. Provided, however, in the event the assessor increases any assessment he shall give notice in writing thereof to the taxpayer by mail prior to the meeting of the board of review. No changes shall be made on the assessment rolls after April 15 in odd-numbered years and after May 15 in even-numbered years except by order of the board of review or by decree of court. [C51,§§471, 473; R60,§§732, 733, 736; C73,§§821, 825; C97,§§1360, 1366; S13,§§1360, 1366; C24, 27, 31, 35, 39,§§7115, 7122, 7123; C46,§§405.20, 441.10, 441.17, 441.18; C50, 54, 58,§405.20, 441.18, 441.25; C62, 66, 71, 73, 75,§441.28; 66GA, ch 1199,§5]

Referred to in §§428.4, 441.49

441.29 Plat book—index system. The county auditor shall furnish to each assessor a plat book on which shall be platted the lands and lots in his assessment district, showing on each subdivision or part thereof, written in ink or pencil, the name of the owner, the number of acres, or the boundary lines and distances in each, and showing as to each tract the number of acres to be deducted for railway right of way and for roads and for rights of way for public levees and open public drainage improvements.

The auditor of any county with the approval of the board of supervisors may establish a permanent real estate index number system with related tax maps for all real estate tax administration purposes, including the assessment, levy and collection of such taxes. Where-

ever in real property tax administration the legal description of tax parcels is required, such permanent number system may be adopted in addition thereto or in lieu thereof. If established, the permanent real estate index number system shall describe real estate by township, section, quarter section, block series and parcel; and the auditor shall prepare and maintain permanent real estate index number tax maps, which shall carry such numbers and reflect the legal description of each parcel of real estate and delineate it graphically; and the auditor shall prepare and maintain cross indexes of the numbers assigned under said system, with legal description of the real estate to which such numbers relate. Indexes and tax maps established as provided herein shall be open to public inspection. [C51,§181; R60,§733; C73,§821; C97,§1364; C24, 27, 31, 35, 39,§7120; C46,§441.15; C50, 54, 58,§441.23; C62, 66, 71, 73, 75,§441.29]

441.30 Completion of assessment—oath. The assessment shall be completed by the first day of May in odd-numbered years or June 1 in even-numbered years, and the assessor shall attach to the assessment rolls his oath in the following form:

"I, (A..... B.....), assessor of city/county of ..... state of Iowa, do solemnly swear (or affirm) that the taxable values of all property, money, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is herein set forth in such statement; that in every case, where I have been required to ascertain the amount or value of any property, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value, and as I verily believe the taxable values thereof are set forth in the annexed return; in no case have I knowingly omitted to demand of any person, of whom I was required to do so, a statement of the items of his property which he was required by law to list, nor to administer the oath to him, unless he refused to take it, nor in any way connive at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

.....
Assessor

Subscribed and sworn to (or affirmed) this .... day of .....A.D....., before me.

.....
Notary Public/Clerk of Court"

[C51,§479; R60,§§736, 740; C73,§§825, 831; C97, §§1365, 1366, 1371; S13,§§1366, 1371; C24, 27, 31, 35, 39,§§7121–7123, 7130; C46,§§441.16–441.18, 442.3; C50, 54, 58,§§441.24, 442.3; C62, 66, 71, 73, 75,§441.30; 66GA, ch 1199,§6]

Referred to in §441.49

441.31 Board of review. The chairman of the conference board shall call a meeting by written notice to all of the members thereof for the purpose of appointing a board of review for all assessments made by the assessor. Such board of review may consist of either three members or five members. As nearly as possible this board shall include one licensed real estate broker and one registered architect or person experienced in the building and construction field. In the case of a county, at least one member of the board shall be a farmer. Not more than two members of the board of review shall be of the same profession or occupation and no two members of the board of review shall be citizens of the same city or township except in the case of cities having their own assessor in which case the members shall be selected so as to give each of the townships included within the city the highest possible numerical representation. The terms of the members of the board of review shall be for six years, beginning with January 1 of the year following their selection. In boards of review having three members the term of one member of the first board to be appointed shall be for two years, one member for four years and one member for six years. In the case of boards of review having five members, the term of one member of the first board to be appointed shall be for one year, one member for two years, one member for three years, one member for four years and one member for six years. [R60,§739; C73,§§829, 830, 832; C97,§§1368, 1370, 1375, 1376; C24, 27, 31, 35, 39,§§7127, 7129, 7137, 7138; C46,§§441.21, 442.1, 442.12, 442.13; C50, 54, 58,§§405.13, 405A.3, 442.1; C62, 66, 71, 73, 75,§441.31]

441.32 Terms—vacancies. The terms of the members of the board of review shall be for six years each. Members of this board may be removed by the conference board but only after a public hearing upon specified charges, if requested by such member. Subsequent appointments, and an appointment to fill a vacancy, shall be made in the same way as the original selection. The board shall have the power to subpoena witnesses and administer oaths. [R60,§739; C73,§§829, 830, 832; C97,§§1368, 1370, 1375, 1376; C24, 27, 31, 35, 39,§§7127, 7129, 7137, 7138; C46,§§405.14, 441.21, 442.1, 442.12, 442.13; C50, 54, 58,§§405.14, 441.3, 442.1; C62, 66, 71, 73, 75,§441.32]

441.33 Sessions of board of review. The board of review shall be in session from May 1 to May 31 in each odd-numbered year and for such additional period as may be required under section 441.37 and shall hold as many meetings as are necessary to discharge its duties. On June 1 in any odd-numbered year in which a session has not been extended as required under section 441.37, said board shall return all books, records and papers to the assessor except undisposed of protests and records pertaining thereto. If it has not completed its work prior to June 1, in those years in which the session has not been extended under section 441.37 the director of revenue may authorize the board of review to continue in session for such period as is necessary to complete its work, but in no event shall the director of revenue approve a continuance

extending beyond July 15. On June 1 or on the final day of any extended session required under section 441.37 or authorized by the director of revenue as herein provided the board of review shall be adjourned until May 1 of the following year. It shall adopt its own rules of procedure, elect its own chairman from its membership, and keep minutes of its meetings. The board shall appoint a clerk who may be a member of such board or any other qualified person, except the assessor or any member of his staff. It may be reconvened by the director of revenue. All undisposed protests in its hands on July 15 shall be automatically overruled and returned to the assessor together with its other records.

In even-numbered years, the board of review shall be in session at the times designated in section 441.49.

Within fifteen days following the adjournment of any regular or special session, the board of review shall submit to the director of revenue, on forms prescribed by the director, a report of any actions taken during that session. [R60,§739; C73,§§829, 830, 832; C97, §§1368, 1370, 1375, 1376; C24, 27, 31, 35, 39,§§**7127, 7129, 7137, 7138**; C46,§§405.15, 441.21, 442.1, 442.12, 442.13; C50, 54, 58,§§405.15, 442.1, 442.12; C62, 66, 71, 73, 75,§441.33; 66GA, ch 1199,§7]

Referred to in §§441.35, 441.45, 441.49

441.34 Quarters — hours — expenses. The board of review of assessments shall hold meetings in quarters provided by the board of supervisors. Said board shall be in session such hours each day and shall devote such time to its duties as may be necessary to the discharge of its duties and to accomplish substantial justice. The expenses of the board shall be included in the assessor's annual budget as provided hereafter. [C39,§**7134.1**; C46, 50, 54, 58,§§405.16, 405.17, 442.8; C62, 66, 71, 73, 75,§441.34]

Referred to in §441.49

441.35 Powers of review board. The board of review shall have the power:

1. To equalize assessments by raising or lowering the individual assessments of real property, including new buildings, personal property or moneys and credits made by the assessor.

2. To add to the assessment rolls any taxable property which has been omitted by the assessor.

In any year after the year in which an assessment has been made of all of the real estate in any taxing district, it shall be the duty of the board of review to meet as provided in section 441.33, and where it finds the same has changed in value, to revalue and reassess any part or all of the real estate contained in such taxing district, and in such case, it shall determine the actual value as of January 1 of the year of the revaluation and reassessment and compute the taxable value thereof, and any aggrieved taxpayer may petition for a revaluation of his property, but no reduction or increase shall be made for prior years. If the assessment of any such property is raised, or any property is added to the tax list by the board, the clerk shall give notice in the manner provided in section 441.36, provided, however, that if the assessment of all property in any taxing district is raised the board may instruct the clerk to give immediate notice by one publication in one of the official newspapers located in the taxing district, and such published notice shall take the place of the mailed notice provided for in section 441.36, but all other provisions of said section shall apply. The decision of the board as to the foregoing matters shall be subject to appeal to the district court within the same time and in the same manner as provided in section 441.38. [C35,§7129-e1; C39,§**7129.1**; C46, 50, 54, 58,§§405.21, 442.2; C62, 66, 71, 73, 75,§441.35; 66GA, ch 1198,§3, ch 1199,§8]

Referred to in §441.37, 441.49

Amendment retroactive to January 1, 1976; 66GA, ch 1198,§6

441.36 Change of assessment — notice. All changes in assessments authorized by the board of review, and reasons therefor, shall be entered in the minute book kept by said board and on the assessment roll. Said minute book shall be filed with the assessor after the adjournment of the board of review and shall at all times be open to public inspection. In case the value of any specific property or the entire assessment of any person, partnership, or association is increased, or new property is added by the board, the clerk shall give immediate notice thereof by mail to each at the post-office address shown on the assessment rolls, and at the conclusion of the action of the board therein the clerk shall post an alphabetical list of those whose assessments are thus raised and added, in a conspicuous place in the office or place of meeting of the board, and enter upon the records a statement that such posting has been made, which entry shall be conclusive evidence of the giving of the notice required. The board shall hold an adjourned meeting, with at least five days intervening after the posting of said notices, before final action with reference to the raising of assessments or the adding of property to the rolls is taken, and the posted notices shall state the time and place of holding such adjourned meeting, which time and place shall also be stated in the proceedings of the board. [R60, §740; C73,§831; C97,§§1371, 1372; S13,§§1371, 1372; C24, 27, 31, 35, 39,§§**7130, 7131**; C46, 50, 54, 58, §§405.23, 442.3, 442.4; C62, 66, 71, 73, 75,§441.36]

Referred to in §§441.35, 441.39

441.37 Protest of assessment—grounds. Any property owner or aggrieved taxpayer who is dissatisfied with his assessment may file a protest against such assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment. In any county which has been declared to be a disaster area by proper federal authorities after March 1 and prior to May 20 of said year of

assessment, the time for filing a protest shall be extended to and include the period from May 25 to June 5 of such year. Said protest shall be in writing and signed by the one protesting or by his duly authorized agent. The dates specified in this section shall apply only in odd-numbered years. The time for filing of protests in even-numbered years shall be as provided in section 441.49. Taxpayer may have an oral hearing thereon if request therefor in writing is made at the time of filing the protest. Said protest must be confined to one or more of the following grounds:

1. That said assessment is not equitable as compared with assessments of other like property in the taxing district. When this ground is relied upon as the basis of a protest the legal description and assessments of a representative number of comparable properties, as described by the aggrieved taxpayer shall be listed on the protest, otherwise said protest shall not be considered on this ground.

2. That his property is assessed for more than the value authorized by law, stating the specific amount which the protesting party believes his property to be overassessed, and the amount which he considers to be its actual value and the amount he considers a fair assessment.

3. That his property is not assessable and stating the reasons therefor.

4. That there is an error in the assessment and state the specific alleged error.

5. That there is fraud in the assessment which shall be specifically stated.

In addition to the above, the property owner may protest annually to the board of review under the provisions of section 441.35, but such protest shall be in the same manner and upon the same terms as heretofore prescribed in this section.

After the board of review has considered any protest filed by a property owner or aggrieved taxpayer and made final disposition of the protest, the board shall give written notice to the property owner or aggrieved taxpayer who filed the protest of the action taken by the board of review on the protest. [R60, §740; C73,§831; C97,§1373; S13,§1373; C24, 27, 31, 35, 39,§**7132**; C46, 50, 54, 58,§§405.22, 442.5; C62, 66, 71, 73, 75,§441.37; 66GA, ch 1199,§9]

Referred to in §§428.4, 441.26, 441.33, 441.38, 441.45, 441.49

441.38 Appeal to district court. Appeals may be taken from the action of the board of review with reference to protests of assessment, to the district court of the county in which such board holds its sessions within twenty days after its adjournment. No new grounds in addition to those set out in the protest to the board of review as provided in section 441.37 can be pleaded, but additional evidence to sustain said grounds may be introduced. The assessor shall have the same right to appeal and in the same manner as an individual taxpayer, public body or other public officer as provided in section 441.42. Appeals shall be taken by a written notice to that effect to the chairman or presiding officer of the board of review and served as an original notice. [R60, §738; C73,§§827, 831; C97,§§1367, 1373; S13,§1373; C24, 27, 31, 35, 39,§§**7126, 7133**; C46,§441.20; C50, 54, 58,§§405.24, 441.27, 442.6; C62, 66, 71, 73, 75, §441.38]

Referred to in §§428.4, 441.35
Manner of service, R.C.P. 56 (*a*)

441.39 Trial on appeal. The court shall hear the appeal in equity and determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof. The court shall consider all of the evidence and there shall be no presumption as to the correctness of the valuation of assessment appealed from. Its decision shall be certified by the clerk of the court to the county auditor, and the assessor, who shall correct the assessment books accordingly. [C97,§1373; S13,§1373; C24, 27, 31, 35, 39,§**7134**; C46, 50, 54, 58,§442.7; C62, 66, 71, 73, 75,§441.39]

Referred to in §§428.4, 443.11

441.40 Costs, fees and expenses apportioned. The clerk of the court shall likewise certify to the county treasurer the costs assessed by the court on any appeal from a board of review to the district court, in all cases where said costs are taxed against the board of review or any taxing body. Thereupon the county treasurer shall compute and apportion the said costs between the various taxing bodies participating in the proceeds of the collection of the taxes involved in any such appeal, and said treasurer shall so compute and apportion the various amounts which said taxing bodies are required to pay in proportion to the amount of taxes each of said taxing bodies is entitled to receive from the whole amount of taxes involved in each of such appeals. The said county treasurer shall deduct from the proceeds of all general taxes collected the amount of costs so computed and apportioned by him from the moneys due to each taxing body from general taxes collected. The amount so deducted shall be certified to each taxing body in lieu of moneys collected. Said county treasurer shall pay to the clerk of the district court the amount of said costs so computed, apportioned and collected by him in all cases now on file or hereafter filed in which said costs have not been paid. [R60,§730; C73,§§390, 3810; C97,§§592, 661, 674; S13,§§592, 661, 674; SS15,§1056-b18; C24, 27, 31, 35,§§5573, 5656, 5669, 6652, 6653; C39, §§**5573, 5656, 5669, 6652, 6653, 7134.1**; C46, §§359.48, 363.29, 363.43, 419.38, 419.39, 442.8; C50, 54, 58,§§405A.4, 442.8; C62, 66, 71, 73, 75,§441.40]

441.41 Legal counsel. In the case of cities having an assessor, the city legal department shall represent the assessor and board of review in all litigation dealing with assessments. In the case of counties, the county attorney shall represent the assessor and board of review in all litigation dealing with assessments. Any taxing body interested in the taxes received from such assessments may be repre-

sented by an attorney and shall be required to appear by attorney upon written request of the assessor to the presiding officer of any such taxing body. The conference board may employ special counsel to assist the city legal department or county attorney as the case may be. [C39,§**7134.2**; C46, 50, 54, 58,§§405.26, 442.9; C62, 66, 71, 73, 75,§441.41]

441.42 Appeal on behalf of public. Any officer of a county, city, township, drainage district, levee district, or school district interested or a taxpayer thereof may in like manner make complaint before said board of review in respect to the assessment of any property in the township, drainage district, levee district or city and an appeal from the action of the board of review in fixing the amount of assessment on any property concerning which such complaint is made, may be taken by any of such aforementioned officers.

Such appeal is in addition to the appeal allowed to the person whose property is assessed and shall be taken in the name of the county, city, township, drainage district, levee district, or school district interested, and tried in the same manner, except that the notice of appeal shall also be served upon the owner of the property concerning which the complaint is made and affected thereby or person required to return said property for assessment. [S13,§1373; C24, 27, 31, 35, 39,§**7135**; C46, 50, 54, 58,§§405.25, 442.10; C62, 66, 71, 73, 75, §441.42]

Referred to in §441.38

441.43 Power of court. Upon trial of any appeal from the action of the board of review fixing the amount of assessment upon any property concerning which complaint is made, the court may increase, decrease, or affirm the amount of the assessment appealed from. [S13, §1373; C24, 27, 31, 35, 39,§**7136**; C46, 50, 54, 58, §§405.24, 442.11; C62, 66, 71, 73, 75,§441.43]

Referred to in §443.11

441.44 Notice of voluntary settlement. No voluntary court settlement of an assessment appeal shall be valid unless written notice thereof shall first be served upon each of the taxing bodies interested in the taxes derived from such assessment. [C46, 50, 54, 58,§405.27; C62, 66, 71, 73, 75,§441.44]

441.45 Abstract to state department of revenue. The county assessor of each county and each city assessor shall, on or before July 1 in odd-numbered years and on before September 15 in even-numbered years, make out and transmit to the department of revenue an abstract of the real and personal property in his county or city, as the case may be, and file a copy thereof with the county auditor, in which he shall set forth:

1. The number of acres of land and the aggregate taxable values of the same, exclusive of city lots, returned by the assessors, as corrected by the board of review.

2. The aggregate taxable values of real estate by class in each school district, township and city in the county, returned as corrected by the board of review.

3. The aggregate taxable values of personal property.

4. Other facts as may be required by the director of revenue.

In any case where a board of review continues in session beyond June 1, in any odd-numbered year, or beyond August 15 in even-numbered years, under provisions of sections 441.33 and 441.37 the abstract of the real and personal property shall be made out and transmitted to the department of revenue within fifteen days after the date of final adjournment by said board. [R60,§741; C73,§833; C97,§1377; S13,§1361; C24, 27, 31, 35, 39,§§**7117, 7139**; C46, 50, 54, 58,§§441.20, 442.14; C62, 66, 71, 73, 75,§441.45; 66GA, ch 219,§§1, 2, ch 1199,§10]

Referred to in §§441.49, 443.22

441.46 Assessment year. The assessment date of January 1 is the first date of an assessment year period which constitutes a calendar year commencing January 1 and ending December 31. All property tax statutes providing for tax exemptions or credits and requiring, as a prerequisite thereto, that a claim be filed, shall be construed to require such claims to be filed during the assessment year. In the event that no claim is required to be filed to procure an exemption or credit, the status of the property as exempt or taxable on the levy date of the fiscal year which commences during the assessment year determines its eligibility for exemption or credit. Any statute requiring proration of property taxes for any purpose shall be for the assessment year, unless otherwise stated, and such proration shall be based on the status of the property during the assessment year.

The assessment date for property taxes for the fiscal period beginning January 1, 1973 and ending June 30, 1974 and which became delinquent during the fiscal period beginning January 1, 1974 and ending June 30, 1975, was January 1, 1973. The assessment date for property taxes for the fiscal year beginning July 1, 1974 and ending June 30, 1975 and which became delinquent during the fiscal year beginning July 1, 1975 and ending June 30, 1976, was January 1, 1974. Thereafter, the assessment date is January 1 for taxes for the fiscal year which commences six months after the assessment date and which become delinquent during the fiscal year commencing eighteen months after the assessment date. [66GA, ch 1198,§4]

This section retroactive to January 1, 1976; 66GA, ch 1198,§6

441.47 Adjusted valuations. The director of revenue on or about August 15, 1977 and every two years thereafter shall order the equalization of the levels of assessment of each class of property in the several assessing jurisdictions by adding to or deducting from the

valuation of each class of property such percentage in each case as may be necessary to bring the same to its taxable value as fixed in this chapter and chapters 427 to 443*, inclusive. The director shall adjust to actual value the valuation of any class of property as set out in the abstract of assessment when the valuation is at least five percent above or below actual value as determined by the director. For purposes of such value adjustments and before such equalization the director shall adopt, in the manner prescribed by chapter 17A, such rules as may be necessary to determine the level of assessment for each class of property in each county. The rules shall cover: (1) The proposed use of the assessment-sales ratio study set out in section 421.17, subsection 6; (2) the proposed use of any state-wide income capitalization studies; (3) the proposed use of other methods that would assist the director in arriving at the accurate level of assessment of each class of property in each assessing jurisdiction. [C51,§§481, 482; R60,§742; C73,§834; C97,§1379; C24, 27, 31, 35, 39,§7141; C46, 50, 54, 58,§442.16; C62, 66, 71, 73, 75,§441.47; 66GA, ch 1199,§11]

*Chapters 427A and 432A were enacted later than this reference; also chapters 429–431 have been repealed

441.48 Notice of adjustment. Before the director of revenue shall adjust the valuation of any class of property any such percentage, the director shall serve ten days' notice by mail, on the assessor whose valuation is proposed to be adjusted and the director shall hold an adjourned meeting after such ten days' notice, at which time such assessing jurisdiction may appear by its city council or board of supervisors, city or county attorney, and other assessing jurisdiction officials, and make written or oral protest against such proposed adjustment, which protest shall consist simply of a statement of the error, or errors, complained of with such facts as may lead to their correction, and at such adjourned meeting final action may be taken in reference thereto. [C24, 27, 31, 35, 39,§7142; C46, 50, 54, 58,§§405.23, 442.17; C62, 66, 71, 73, 75,§441.48; 66GA, ch 205,§3, ch 1199,§12]

441.49 Adjustment by assessor. The director shall keep a record of the review and adjustment proceedings and finish such proceedings on or before October 1 unless for good cause the proceedings cannot be completed by that date. The director shall notify each assessor by mail of the final action taken at the proceedings and specify any adjustments in the valuations of any class of property to be made effective for the assessing jurisdiction.

The assessor shall prior to May 15 of the year following, in completing the reassessment of real estate as provided in section 428.4 take into consideration the final equalization order of the director to the end that the aggregate actual valuation for each class of property affected by the order will be the amount determined by the director. In making the adjustments the assessor shall see to it that in no case shall the assessed value of an individual property exceed one hundred percent of its actual value determined in accordance with section 441.21. Not later than May 20, the assessor shall submit to the director of revenue, on forms prescribed by the director, a report of all actions he has taken to comply with the equalization order issued to him in October of the preceding year.

If the director of revenue determines that the assessor has complied with the equalization order, he shall on or about June 1 notify the assessor to proceed with the issuance of assessment rolls as provided in section 441.26, except that the rolls shall contain the statement that protests against the assessment may be filed with the board of review between July 1 and July 20. All assessment rolls shall be delivered not later than June 30.

In each even-numbered year the board of review shall be in regular session from July 15 to August 15 for purposes of performing its functions as defined in sections 441.33 to 441.37. The director of revenue may authorize the board of review to continue in session for such period as may be necessary to complete its work, but the director shall not approve a continuance extending beyond October 15.

If the director of revenue determines that the assessor has not complied with the equalization order by making the necessary adjustments in valuation, he shall on or about June 1 reconvene the local board of review in special session. During this special session, the board of review shall, by resolution, make the adjustments necessary to comply with the equalization order. The board shall not later than June 30 notify, by mail in the form and manner prescribed by the director, all taxpayers in the classes of property affected by the board's action with respect to the implementation of the equalization order. The notice shall contain a statement of the assessed valuation of their property, that they may protest the valuations to the board of review between the dates of July 1 and July 20, and that the board will act on such protests during its July session. Not later than June 30, the board of review shall submit to the director of revenue, on forms prescribed by the director, of its actions taken to comply with the director's equalization order. The director shall have the authority under chapter 421 to make any orders to a board of review or otherwise take whatever actions deemed necessary to ensure the implementation of the final equalization order.

In each even-numbered year, the abstract of assessment provided for in section 441.45 shall be submitted to the director by not later than September 15. If the session of a board of review is extended beyond August 15 of a reassessment year, the abstract of assessment for the assessing jurisdiction shall be sub-

mitted to the director within fifteen days after the final adjournment of the board.

Not later than twenty days after the date the final equalization order is issued, the assessor of the affected assessor jurisdiction may appeal the final equalization order to the state board of tax review.

The dates contained in this section pertaining to the completion of the assessment, notification of taxpayers, the filing of protests with local boards of review, the sessions of board of review, and the abstracts of assessment, shall pertain only to even-numbered years. In odd-numbered years, the dates pertaining to the completion of the assessment, notification of taxpayers, filing of protest with local boards of review the sessions of local boards of review, and the abstracts of assessment, shall be those dates contained in sections 441.23, 441.26, 441.28, 441.30, 441.33, 441.37, and 441.45. [C51, §483; R60,§743; C73,§836; C97,§1382; S13,§1382; C24, 27, 31, 35, 39,§7143; C46, 50, 54, 58,§442.18; C62, 66, 71, 73, 75,§441.49; 66GA, ch 205,§4, ch 1199,§13]

Referred to in §441.23, 441.26, 441.33, 441.37

441.50 Appraisers employed. The conference board shall have power to employ appraisers or other technical or expert help to assist in the valuation of property, the cost thereof to be paid in the same manner as other expenses of the assessor's office. The conference board may certify for levy annually an amount not to exceed forty and one-half cents per thousand dollars of assessed value of taxable property for the purpose of establishing a special appraiser's fund, to be used only for such purposes. From time to time the conference board may direct the transfer of any unexpended balance in the special appraiser's fund to the assessment expense fund. [C50, 54, 58,§§405.19, 405A.6; C62, 66, 71, 73, 75,§441.50]

441.51 Repealed by 65GA, ch 1230,§§8, 9.

441.52 Failure to perform duty. If any assessor or member of any board of review shall knowingly fail or neglect to make or require the assessment of property for taxation to be of and for its taxable value as provided by law or to perform any of the duties required of him by law, at the time and in the manner specified, he shall forfeit and pay the sum of five hundred dollars to be recovered in an action in the district court in the name of the county or in the name of the city as the case may be, and for its use, and the action against the assessor shall be against him and his bondsmen. [R60,§738; C73,§827; C97,§1367; C24, 27, 31, 35, 39,§7126; C46, 50, 54, 58,§§405.29, 441.27; C62, 66, 71, 73, 75,§441.52]

Punishment, §687.7

441.53 Political activity prohibited. Neither the assessor nor any employee of the assessor's office shall directly or indirectly contribute any money or anything of value to any candidate, his agent or personal representative, for nomination or election to any office, or to any campaign or political committee, or take an active part in any political campaign, except to cast his vote, or to express his personal opinion, nor shall any such candidate, person, representative, agent, or committee, solicit such contribution or active political support from any such officer or employee. Any person convicted of violating any provision of this chapter shall immediately be dismissed from office or may be punished as for an indictable misdemeanor. [C46,§§405.28, 405.29; C50, 54, 58,§§405.28, 405.29, 441.28; C62, 66, 71, 73, 75,§441.53]

Punishment, §687.7

441.54 Construction. Whenever in the laws of this state, the words "assessor" or "assessors" appear, singly or in combination with other words, they shall be deemed to mean and refer to the county or city assessor, as the case may be. [C50, 54, 58,§§441.29, 442.13; C62, 66, 71, 73, 75,§441.54]

441.55 Conflicting laws. If any of the provisions of this chapter shall be in conflict with any of the laws of this state, then the provisions of this chapter shall prevail. [C62, 66, 71, 73, 75,§441.55]

Constitutionality, 58GA, ch 291,§72

441.56 Assessor's duties—combined appointment. When the duties of the county assessor are combined with the duties of another officer or employee as provided in sections 332.17 to 332.21, the person named to perform the combined duties shall be appointed as provided in sections 441.5 to 441.8. [C62, 66, 71, 73, 75, §441.56]

Referred to in §332.22

441.57 Reporting of agricultural land valuation. Each county assessor shall, not later than February 1 of each year, report to the department of revenue the following information:

1. Proposed changes in the valuation of agricultural land in the county.

2. The total increase or decrease in agricultural land valuations which will result from the proposed changes.

3. Specific changes proposed in the valuations of agricultural land located adjacent to boundaries of the county. [66GA, ch 205,§5]

441.58 to 441.64 Reserved.

441.65 Platting for assessment and taxation by auditor. Whenever a lot or subdivision of land is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels thereof cannot, in the judgment of the county auditor or the assessor, be made sufficiently certain and accurate for the purposes of assessment and taxation without noting the metes and bounds of the same, or whenever the original proprietor of any subdivision of land has sold or conveyed any part thereof, or invested the public with any rights therein, and has failed to file for record a plat as provided in chapter

409, the county auditor by certified mail shall notify all of the owners, and demand compliance. If the owners fail to execute and file the plat within sixty days after the issuance of such notice to execute and file said plat for record, the auditor shall cause a plat to be made as the auditor deems appropriate in accordance with the provisions of chapter 409. The auditor may contract for the services of a registered land surveyor as necessary to comply with this section. Every conveyance of land in this state shall be deemed to be a warranty that the description therein contained is sufficiently definite and accurate to enable the auditor to enter the same on the plat book required to be kept; and when there is presented for entry on the transfer book any conveyance in which the description is not sufficiently definite and accurate, the auditor shall note such fact on the deed, with that of the entry for transfer, and shall notify the person presenting it that the land therein is not sufficiently described, and that it must be platted within sixty days thereafter. If the grantor in the conveyance shall neglect for sixty days thereafter to file for record a plat thereof, then the auditor shall proceed as is provided in this section, and cause the plat to be made in accordance with the provisions of chapter 409 and recorded in the office of the auditor, and the office of the county recorder, and in the office of the assessor. [C73,§§568–570; C97,§§922–924; S13,§§922–924; C24, 27, 31, 35, 39,§§**6289, 6293, 6295, 6298**; C46, 50, 54, 58, 62, 64, 66, 71, 73, 75,§§409.27, 409.31, 409.33, 409.36; 66GA, ch 1190,§15]

441.66 Execution and filing — effect. The plat shall be signed and acknowledged by the auditor, who shall certify that it was executed by the auditor by reason of the failure of the owners named to do so, and the auditor shall file it for record in the office of the auditor and in the office of the assessor and in the office of the county recorder, and when so filed it shall have the same effect as if executed, acknowledged, and recorded by the owners. [C73,§568; C97,§922; S13,§922; C24, 27, 31, 35, 39,§**6290**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.28; 66GA, ch 1190,§15]

441.67 Costs and expenses. A correct statement of the costs and expenses of the plat, survey and record, verified by oath, shall be presented by the auditor to the board of supervisors, which shall allow the same. [66GA, ch 1190,§15]

441.68 Collection or assessment of costs. The auditor shall at the same time assess the amount pro rata by area upon the several subdivisions of the tract, lot or parcel so subdivided, and it shall be collected in the same manner as general taxes, and shall go to the general county fund. [C73,§568; C97,§922; S13, §922; C24, 27, 31, 35, 39,§**6292**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.30; 66GA, ch 1190,§15]

441.69 Appeal. Any person aggrieved by a notice to execute and file a plat given by the auditor, or by the use of an erroneous plat for assessment and taxation purposes, may within thirty days from the date of the notice appeal therefrom to the board of supervisors by giving notice thereof in writing to the board of supervisors and thereupon no further proceeding shall be taken by the auditor. [C73,§570; C97,§924; S13,§924; C24, 27, 31, 35, 39,§**6296**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.34; 66GA, ch 1190,§15]

441.70 Determination by board. At its next session the board of supervisors shall determine the matter and direct that a plat be executed and filed or that the auditor accept a plat for filing, and shall specify the time within which the action shall be taken. The aggrieved person shall be given an opportunity to be heard in person or by counsel. [C73,§570; C97,§924; S13,§924; C24, 27, 31, 35, 39, §**6297**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§409.35; 66GA, ch 1190,§15]

441.71 Plat requirements. Every plat required by this chapter shall describe the tract and any other subdivisions of the smallest congressional subdivision of which the same is part, numbering them by progressive numbers, setting forth the courses and distances, the number of acres, and other memoranda as is necessary; and descriptions of the lots or subdivisions according to the number and designation thereof on the plat shall be deemed sufficient for all purposes. A plat recorded pursuant to this chapter is for assessment and taxation purposes only and shall not constitute a dedication or impose any liability upon the state or any of its political subdivisions. [66GA, ch 1190,§15]

CHAPTER 442

SCHOOL FOUNDATION PROGRAM

Referred to in §§265.6, 273.3, 273.9, 281.2, 281.8, 281.9, 282.3, 282.27, 285.2, 298.1, 441.47
See 66GA, ch 205,§8 for temporary appropriation for computation of consumer price index
Amendments to this chapter by 66GA, ch 79, retroactive to January 1, 1975, see §27 thereof

442.1 State school foundation program.
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442.22 Repealed by 65GA, ch 258,§16.
442.23 Rules.
442.24 Local budget law.
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442.28 Advance for increasing enrollment.
442.29 Reimbursement restrictions for prior years.

442.1 State school foundation program. This chapter establishes a state school foundation program. For each school year, each school district in the state is entitled to receive state school foundation aid, which shall be an amount per pupil equal to the difference between the amount per pupil of foundation property tax in the district, and the state foundation base or the district cost per pupil, whichever is less. However, if the amount so determined for any district is less than two hundred dollars per pupil, the district is entitled to receive not less than two hundred dollars per pupil. However, if the receipt of two hundred dollars by a school district plus the money raised by the foundation property tax exceeds the maximum allowed district cost for the budget year, the district shall be entitled to receive in state foundation aid an amount equal to the difference between the money raised by the foundation property tax for the budget year and the district cost for the budget year. In making computations and payments under this chapter, except in the case of computations relating to funding of special education support services, media services and other services provided through the area education agencies, the state comptroller shall round amounts to the nearest whole dollar. [C73, 75,§442.1; 66GA, ch 79,§§16, 27]

Referred to in §§8.58, 442.5, 442.14

442.2 Foundation property tax — livestock credit. Each school district shall cause to be levied each year, for the school general fund, a foundation property tax of five dollars and forty cents per thousand dollars of assessed valuation on all taxable property in the district. For the purpose of this chapter, a school district is defined as a school corporation organized under chapter 274. Each county auditor shall certify to each school district within the county and to the state comptroller, not later than January 1 each year, the assessed valuation of taxable property for the current year in each school district within the county.

The amount paid to each school district for the tax credit for livestock under section 427.17 shall be regarded as property tax. The portion of the payment which is foundation property tax shall be determined by applying the foundation property tax rate to the taxable value of livestock assessed for taxation in the district as of January 1, 1973, determined pursuant to section 427.17, and adjusted to actual value as provided in Acts of the Sixty-fifth General Assembly, chapter 1231, section 174*.

The amount paid to each school district from the personal property tax replacement fund established by sections 427A.9 to 427A.14 shall be regarded as property tax. For budget years beginning after the year in which the ninth increase in the additional personal property tax credit becomes effective as provided in said sections, the portion of the payment which is foundation property tax shall be determined by applying the foundation property tax rate to the total actual value of all personal property assessed for taxation in the district as of January 1, 1973, excluding livestock, but including other personal property eligible for tax credits granted by sections 427A.9 to 427A.14. For budget years to and including the year in which the ninth increase in the additional personal property tax credit becomes effective as provided in said sections, the portion of the payment which is foundation property tax shall be determined by the state comptroller pursuant to uniform methods established by him. [C73, 75,§442.2; 66GA, ch 205,§6]

Referred to in §442.14
*See note under ch 441

442.3 State foundation base. The state foundation base for the school year beginning July 1, 1972, is seventy percent of the state cost per pupil. For each succeeding school year the state foundation base shall be increased by the amount of one percent of the state cost per pupil, up to a maximum of eighty percent of the state cost per pupil. The district foundation base is the larger of the state foundation base or the amount per pupil which the district will receive from foundation property tax and state school foundation aid. [C73, 75,§442.3]

Referred to in §442.14

442.4 Enrollment.

1. Basic enrollment for the budget year is determined by adding the resident pupils who

were enrolled on the second Friday of January in the base year in public elementary and secondary schools of the district and in public elementary and secondary schools in another district or state for which tuition is paid by the district. For the school year beginning July 1, 1975, pupils who were enrolled on the second Friday of January in the base year in special education programs conducted by a county or joint county school system are included in basic enrollment. For the school year beginning July 1, 1975, and each succeeding school year, pupils enrolled in prekindergarten programs other than special education programs are not included in basic enrollment.

Resident pupils of high school age for which the district pays tuition to attend an Iowa area school are included in basic enrollment on a full-time equivalent basis as of the second Friday of January in the base year.

Shared-time and part-time pupils of school age, irrespective of the districts in which the pupils reside, are included in basic enrollment as of the second Friday of January in the base year, in the proportion that the time for which they are enrolled or receive instruction for the school year is to the time that full-time pupils carrying a normal course schedule, at the same grade level, in the same school district, for the same school year, are enrolled and receive instruction. Tuition charges to the parent or guardian of a shared-time or part-time out-of-district pupil shall be reduced by the amount of any increased state aid occasioned by the counting of the pupil.

Pupils attending a university laboratory school are not counted in any district's basic enrollment, but the laboratory school shall report them directly to the department of public instruction.

A school district shall certify its basic enrollment to the state department of public instruction by January 25 of each year, and the department shall promptly forward the information to the state comptroller. For purposes of determining whether a district is entitled to an advance for increasing enrollment, and for record-keeping purposes, a determination of enrollment shall be made on the second Friday of September in the budget year, in the same manner as the January basic enrollment is determined.

However, for the school year beginning July 1, 1974, basic enrollment is equal to the actual enrollment used for that year prior to adjustment for decreasing enrollment.

2. An adjusted enrollment for each district shall be computed as follows:

a. For the school year beginning July 1, 1975, if a district has a decrease from the sum of the basic enrollment in the base year plus adjustments for decreasing enrollment made in the base year, to the basic enrollment in the budget year, the state comptroller shall compute an amount to be added to the basic enrollment for the budget year. The amount to be added is equal to fifty percent of this decrease, to the extent that the decrease does not exceed five percent of the sum of the basic enrollment in the base year plus adjustments made for decreasing enrollment in the base year, and twenty-five percent of the remaining decrease. If the district does not experience this decrease, the adjusted enrollment for the budget year is equal to the basic enrollment for the budget year.

b. For the school years subsequent to the school year beginning July 1, 1975, if a district has a decrease from the basic enrollment in the base year to the basic enrollment in the budget year the state comptroller shall compute an amount to be added to the basic enrollment for the budget year. The amount to be added is equal to fifty percent of the basic enrollment decrease to the extent that it does not exceed five percent of the base year's basic enrollment, and twenty-five percent of the remaining basic enrollment decrease. If the school district does not experience a decrease from the basic enrollment in the base year to the basic enrollment in the budget year the adjusted enrollment for the budget year is equal to the basic enrollment for the budget year.

3. Weighted enrollment is the adjusted enrollment as modified by application of the special education weighting plan in section 281.9. [C73, 75,§442.4; 66GA, ch 79,§§17, 27]

Referred to in §§275.14, 281.8, 282.27, 442.8, 442.9, 442.14, 442.28

442.5 Miscellaneous income—expenditures.

1. As used in this chapter:

a. "*Miscellaneous income*" means all receipts deposited to the general fund of a school district which are not obtained from state aid provided under section 442.1 or 442.11, or from property tax authorized under section 442.2 or 442.9.

b. "*Expenditures*" means the total amounts paid out of the general fund of a school district, exclusive of amounts paid for the following purposes, for which special levies are authorized:

(1) A contract for the use of a library under section 298.7.

(2) A judgment under sections 298.15 to 298.17.

(3) Tort liability under chapter 613A.

2. The authorized expenditures during a school year may not exceed the lesser of the budget for that year certified under section 24.17 plus any allowable amendments permitted in this section, or the authorized budget, which is the sum of the district cost for that year plus the actual miscellaneous income received for that year plus the actual unspent balance from the preceding year. If actual miscellaneous income for a school year exceeds the anticipated miscellaneous income in the certified budget for that year, or if an

unspent balance has not been previously certified, a school district may amend its certified budget. [C73, 75,§442.5; 66GA, ch 79,§§18, 27]

Referred to in §§285.2, 442.14

442.6 Definitions. As used in this chapter:

1. *"District cost"* and *"district cost per pupil"* mean the amounts computed as provided in section 442.9.

2. *"Base year"* means the school year ending during the calendar year in which a budget is certified.

3. *"Budget year"* means the school year beginning during the calendar year in which a budget is certified. [C73, 75,§442.6]

Referred to in §442.14

442.7 State percent of growth — allowable growth.

1. For the school year beginning July 1, 1975, the state percent of growth is ten and seven-tenths percent.

Seven-tenths of one percent of the state percent of growth is to compensate for the cost of improvements to the Iowa public employees' retirement system and also to fund a portion of the cost of driver education classes offered by the district and formerly funded partly by a state appropriation.

2. For school years subsequent to the school year beginning July 1, 1975, a state percent of growth for the budget year shall be computed by the state comptroller prior to February 15 of each year and forwarded to the superintendent of public instruction. The state percent of growth shall be an average of the following four percentages of growth:

a. The difference in the state general fund revenues received during the year, adjusted for changes in rates or basis, computed or estimated as a percentage of change for each of the following periods:

(1) From the year immediately preceding the base year to the base year.

(2) From the base year to the budget year.

b. The difference in the Iowa consumer price index which shall be computed by the state comptroller prior to January 1, 1976, and recomputed each month subsequent to January 1, 1976, based upon a comprehensive sampling of the costs of goods and services within Iowa, and until an Iowa consumer price index is available, the consumer price index published by the bureau of labor statistics, United States department of labor computed or estimated as a percentage of change for the following periods:

(1) From July 1 of the base year to July 1 of the budget year.

(2) From July 1 of the budget year to July 1 of the year immediately following the budget year.

3. If the state percent of growth so computed is negative, that percentage shall not be used and the state percent of growth shall be zero.

4. Each year prior to February 15 the state comptroller shall recompute the state percent of growth for the previous year using adjusted estimates and the actual figures available. The difference between the recomputed state percent of growth for the base year and the original computation shall be added to or subtracted from the state percent of growth for the budget year, as applicable.

5. The state comptroller shall compute an estimated state percent of growth for the budget year prior to September 15 in the base year and shall forward this estimate to the superintendent of public instruction.

6. The basic allowable growth per pupil for the budget year shall be computed by multiplying the state cost per pupil for the base year times the state percent of growth for the budget year.

7. The allowable growth per pupil for each school district is the basic allowable growth per pupil, for the budget year modified as follows:

a. If the state cost per pupil in the base year exceeds the district cost per pupil in the base year, the basic allowable growth per pupil for the budget year is modified to equal the lesser of one hundred twenty-five percent of the basic allowable growth per pupil for the budget year or an amount sufficient to equalize the district cost per pupil in the budget year with the state cost per pupil in the budget year.

b. By the school budget review committee under section 442.13.

c. For the school year beginning July 1, 1975 only, by adding to the basic allowable growth per pupil for the budget year an amount to compensate for the costs of special education support services provided through the area education agency. The total amount for each area shall be based upon the program plans submitted by the special education director of the area education agency as required by section 273.5, which shall be modified as necessary and approved by the department of public instruction according to the criteria and limitations of section 273.5 and chapter 281. The amount of additional allowable growth per pupil for the budget year for each district in an area shall be determined by dividing the total amount for the area so determined by the weighted enrollment of the area for the budget year.

d. For each year following the school year beginning July 1, 1975, by adding to the basic allowable growth an amount to compensate for the additional costs of special education support services provided through the area education agency. The total amount for each area shall be based upon the amount needed in the area to serve children newly identified as requiring the services pursuant to plans submitted by the special education director of the area education agency as required by

section 273.5, which shall be modified as necessary and approved by the department of public instruction according to the criteria and limitations of section 273.5 and chapter 281. The amount of additional allowable growth per pupil for the budget year for each district in an area shall be determined by dividing the total amount for the area so determined by the weighted enrollment of the area for the budget year.

e. For the additional allowable growth computed under paragraphs *"c"* or *"d"* of this subsection, the department of public instruction, in co-operation with the appropriate personnel of the area education agency, shall determine the amounts for each area education agency, as required and the state comptroller shall calculate the amounts of additional allowable growth for each district, and shall calculate the amounts due from each district to its area education agency by multiplying the additional allowable growth per pupil by the weighted enrollment in the district for the budget year. The state comptroller shall deduct the amounts so calculated for each school district from the state aid due to the district pursuant to this chapter and shall pay the amounts to the area education agencies on a quarterly basis during each school year. The state comptroller shall notify each school district of the amount of state aid deducted for this purpose and the balance of state aid will be paid to the district. If a district does not qualify for state aid under this chapter in an amount sufficient to cover its amount due to the area education agency as calculated by the state comptroller, the school district shall pay the deficiency to the area education agency from other moneys received by the district, on a quarterly basis during each school year.

8. For the school year beginning July 1, 1976, the state percent of growth otherwise computed by the state comptroller under this section shall be increased by an amount equal to seven-tenths of one percent for school districts in which all employees are members of the Iowa public employees' retirement system to compensate for the cost of increased employer contributions to the Iowa public employees' retirement system.

For the school year beginning July 1, 1976, the school budget review committee may approve an increase in the state percent of growth otherwise computed by the state comptroller under this section by an amount not to exceed thirty-five hundredths of one percent for school districts for which contributions are made both to a retirement system established by the school district under section 294.8 and to the Iowa public employees' retirement system. In order to receive the additional allowable growth, such school districts shall show that there is a need of additional funds in order to compensate for the cost of increased employer contributions to retirement systems.

[C73, 75,§442.7; 66GA, ch 79,§§19, 27, ch 1067, §§27, 28, 29, ch 1146,§21]

Referred to in §§273.9, 442.8, 442.13, 442.14, 442.28

442.8 State cost per pupil. As used in this chapter, *"state cost per pupil"* for the school year beginning July 1, 1974, and prior school years means state cost per pupil in enrollment as enrollment was determined under section 442.4 prior to January 1, 1975, and "state cost per pupil" for the school year beginning July 1, 1975, and subsequent school years means state cost per pupil in weighted enrollment. The state cost per pupil for the school year beginning July 1, 1972, is nine hundred three dollars. The state cost per pupil for the school year beginning on July 1, 1973, and for each succeeding school year is the base year's state cost per pupil plus the allowable growth for the budget year. If the state percent of growth is zero, the state cost per pupil shall be the same as the base year's state cost per pupil.

For the school year beginning July 1, 1975, the allowable growth added to the state cost per pupil shall be the basic allowable growth as otherwise computed under section 442.7, increased by an amount equal to the average of the amounts of allowable growth added for each school district in the state for special education support services provided through the area education agencies under sections 273.9, subsection 3, and 442.7, subsection 7, paragraph *"c"*. For each succeeding school year, the allowable growth added to the state cost per pupil as otherwise computed under section 442.7 shall be the basic allowable growth increased by an amount equal to the average of the amounts of allowable growth added for each school district in the state for additional special education support services needed for that year to serve newly identified children who require the services, under sections 273.9, subsection 3 and 442.7, subsection 7, paragraph *"d"*. The state comptroller shall compute the applicable amount of allowable growth to be added to the state cost per pupil for each school year. [C73, 75,§442.8; 66GA, ch 79,§§20, 27]

Referred to in §§282.24, 442.14

442.9 District cost per pupil—district cost—additional school district property tax levy.

1. The state comptroller shall determine the additional school district property tax levy for each school district, which is in addition to the foundation property tax levy, as follows:

a. As used in this chapter, *"district cost per pupil"* for the school year beginning July 1, 1974, and for prior school years means the district cost per pupil in enrollment, as enrollment was determined under section 442.4 prior to January 1, 1975, and "district cost per pupil" for the school year beginning July 1, 1975, and subsequent school years means district cost per pupil in weighted enrollment. The district cost per pupil for the budget year is equal to the district cost per pupil for the base year plus the allowable growth.

b. The district cost for the budget year is equal to the district cost per pupil for the budget year multiplied by the weighted enrollment, plus the additional district cost allocated to the district under section 442.27 to fund media services and other services provided through the area education agency. A school district may not increase its district cost for the budget year except to the extent that an excess tax levy is authorized by the school budget review committee as provided in section 442.13, subsection 7.

c. The amount to be raised by the additional school district property tax levy is equal to the district cost for the budget year, less the product of the state or district foundation base and the weighted enrollment. However, said amount shall be adjusted in accordance with the maximum levy provided in section 442.10.

2. No later than May 1 of each year, the state comptroller shall notify the county auditor of each county the amount, in dollars and cents per thousand dollars of assessed value, of the additional property tax levy in each school district in the county. Each county auditor shall spread the additional property tax levy for each school district over all taxable property in the district. [C73, 75,§442.9; 66GA, ch 79,§§21, 27, ch 205,§7]

Referred to in §§282.24, 442.6, 442.14, 442.27, 442.28

442.10 Maximum levy. For the purpose of determining the maximum tax levy for the general fund in a school district, the state comptroller shall determine the sum of the foundation property tax levy and the additional property tax levy, in dollars and cents per thousand dollars of assessed value. When this total levy exceeds the district general fund levy for the school year which began July 1, 1970, he shall adjust the district general fund levy to a rate equal to the levy for the school year beginning July 1, 1970, except that an excess tax levy authorized by the school budget review committee, as provided in section 442.13, subsection 7, may be added to that rate. However, in making this adjustment for the school years beginning July 1, 1975, and July 1, 1976, the general fund levy for each district for the school year which began July 1, 1970, shall be determined by including the levy certified by the county school system or joint county system in which the district was located, for the school year which began July 1, 1970. [C73, 75,§442.10]

Referred to in §§442.9, 442.13, 442.14

442.11 Guaranteed state aid. For the school year beginning July 1, 1972, and for the next four succeeding school years, the state shall provide specific funds, called guaranteed state aid, to any school district in which the amount to be raised by the maximum levy plus the state school foundation aid, does not meet the district cost.

There is hereby appropriated from the general fund of the state to the department of public instruction moneys sufficient to pay the guaranteed state aid provided in this section. The state comptroller shall pay this aid in installments, at the same time as the installments of state school foundation aid are paid. [C73, 75,§442.11]

Referred to in §§442.5, 442.14

442.12 School budget review committee. A school budget review committee is established, consisting of the superintendent of public instruction, the state comptroller, and three members appointed by the governor to represent the public and to serve three-year staggered terms. The committee shall meet and hold hearings each year and shall continue in session until it has reviewed budgets of school districts, as provided in section 442.13. It may call in school board members and employees as necessary for the hearings. Legislators shall be notified of hearings concerning school districts in their constituencies.

The committee shall adopt its own rules of procedure. The superintendent of public instruction shall serve as chairman, and the state comptroller shall serve as secretary. The committee members representing the public are entitled to receive a per diem equal to the per diem of members of the board of public instruction, and their necessary travel and other expenses while engaged in their official duties. Expense payments shall be made from appropriations to the department of public instruction. [C71,§442.21; C73, 75,§442.12]

Referred to in §442.14, 442.15

442.13 Duties of the committee.

1. The school budget review committee may recommend the revision of any rules, regulations, directives, or forms relating to school district budgeting and accounting, confer with local school boards or their representatives and make recommendations relating to any budgeting or accounting matters, and may direct the superintendent of public instruction or the state comptroller to make studies and investigations of school costs in any school district.

2. The committee shall report to each session of the general assembly, which report shall include any recommended changes in laws relating to school districts, and shall specify the number of hearings held annually, the reasons for the committee's recommendations, and other information as the committee deems advisable.

3. The committee shall review the proposed budget and certified budget of each school district, and may make recommendations. The committee may make decisions affecting budgets to the extent provided in this chapter. The costs and computations referred to in this section relate to the budget year unless otherwise expressly stated.

4. Subject to the minimum for the school years beginning July 1, 1974, and July 1, 1975, as provided in section 442.7, the committee may establish a modified allowable growth by reducing the allowable growth:

a. If the district cost per pupil exceeds the state cost per pupil.

b. If in the committee's judgment the district cost is unreasonably high in relation to the comparative cost factors of similar districts, even if the district cost per pupil does not exceed the state cost per pupil.

5. If a district has unusual circumstances, creating an unusual need for additional funds, including but not limited to the following circumstances, the committee may grant supplemental aid to the district from any funds appropriated to the department of public instruction for the use of the school budget review committee for this purpose, and such aid shall be miscellaneous income and shall not be included in district cost; or may establish a modified allowable growth for the district by increasing its allowable growth; or both:

a. Any unusual increase or decrease in enrollment.

b. Unusual natural disasters.

c. Unusual transportation problems.

d. Unusual initial staffing problems.

e. The closing of a nonpublic school, wholly or in part.

f. Substantial reduction in miscellaneous income due to circumstances beyond the control of the district.

g. Unusual necessity for additional funds to permit continuance of a course or program which provides substantial benefit to pupils.

h. Unusual need for a new course or program which will provide substantial benefit to pupils, if the district establishes such need and the amount of necessary increased cost.

i. Unusual need for additional funds for special education or compensatory education programs.

j. Year-round or substantially year-round attendance programs which apply toward graduation requirements, including but not limited to trimester or four-quarter programs. Enrollment in such programs shall be adjusted to reflect equivalency to normal school year attendance.

k. Severe hardship due to the exclusion of miscellaneous income from computations under this chapter. For the school year beginning July 1, 1973, the committee shall increase the district's allowable growth to the extent necessary to prevent such hardship.

l. Transportation equipment needs which become necessary because of the furnishing of transportation to nonpublic school pupils under chapter 285.

m. Enrollment decrease caused by the availability of transportation to nonpublic school pupils in a district.

n. Costs of special education programs and services for children requiring special education who are living in a state-supported institution, charitable institution, or licensed boarding home which does not maintain a school and the child has not been counted in the weighted enrollment under section 281.9.

6. If a nonpublic school closes wholly or in part, the committee may authorize an increase in the district general fund tax levy beyond the maximum permitted by section 442.10, but only to the extent necessary to cover the cost of absorbing the former nonpublic school pupils into the public school system. The school board shall establish the amount of necessary increased cost to the satisfaction of the school budget review committee before an increase in tax levy is authorized.

7. The committee may authorize a district to spend a reasonable and specified amount from its unexpended cash balance for the sole purpose or purposes of furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the district have approved a bond issue as provided by law or a tax as provided in chapter 278. No other expenditure, including but not limited to expenditures for salaries or recurring costs, shall be authorized under this subsection. Expenditures authorized under this subsection shall not be included in allowable growth or district cost, and the portion of the unexpended cash balance which is authorized to be spent shall be regarded as if it were miscellaneous income. Any part of such amount which is not actually spent for the authorized purpose shall revert to its former status as part of the unexpended cash balance.

8. The committee may approve or modify the initial base year district cost of any district which changes accounting procedures.

9. When the committee makes a decision under subsections 3 to 8, it shall make all necessary changes in the district cost, budget, and tax levy. It shall give written notice of its decision, including all such changes, to the school board through the state comptroller.

10. All decisions by the committee under this chapter shall be made in accordance with reasonable and uniform policies which shall be consistent with this chapter. All such policies of general application shall be stated in rules adopted in accordance with chapter 17A. The committee shall take into account the intent of this chapter to equalize educational opportunity, to provide a good education for all the children of Iowa, to provide property tax relief, to decrease the percentage of school costs paid from property taxes, and to provide reasonable control of school costs. The committee shall also take into account the amount of funds available.

11. Failure by any school district to provide information or appear before the committee as requested for the accomplishment of review or hearing shall constitute justification for the committee to instruct the state comptroller to withhold any state aid to that district until the committee's inquiries are satisfied completely.

12. The committee shall review the recommendations of the superintendent of public instruction relating to the special education

weighting plan, and shall establish a weighting plan for each school year after the school year commencing July 1, 1975, and report the plan to the superintendent of public instruction.

13. The committee may recommend that two or more school districts jointly employ and share the services of any school personnel, or acquire and share the use of classrooms, laboratories, equipment, and facilities as specified in section 280.14. [C71,§§442.21, 442.22; C73, 75,§442.13; 66GA, ch 79,§§22, 27, ch 153,§13]

Referred to in §§442.9(1), 442.10, 442.12, 442.14
Sharing, see also §§257.26, 280.15

442.14 Additional enrichment amount.

1. For the budget year beginning July 1, 1976, and each succeeding school year, if a school board wishes to spend more than the amount permitted under sections 442.1 to 442.13, and the school board has not attempted by resolution to raise an additional enrichment amount for that budget year, the school board may raise an additional enrichment amount not to exceed five percent of the state cost per pupil multiplied by the adjusted enrollment in the district, as provided in this section. However, the additional enrichment amount may be used only for educational research, curriculum maintenance or development, or innovative programs.

2. The board shall determine the additional enrichment amount per pupil needed, within the limits of this section, and shall direct the county commissioner of elections to submit the question of whether to raise that amount under the provisions of this section and section 442.15, to the qualified electors of the school district at a regular or special school election held not later than February 15 of the base year. If a majority of those voting favors raising the enrichment amount, the board may include the approved amount in its certified budget.

3. The additional enrichment amount needed shall be raised within the limits provided in this section by a combination of an enrichment property tax and a school district income surtax imposed in the proportion of a property tax of twenty-seven cents per thousand dollars of assessed valuation of taxable property in the district for each two and one-half percent of income surtax.

4. The additional enrichment amount for a district is limited to the amount which may be raised by a combination tax in the prescribed proportion which does not exceed a property tax of fifty-four cents per thousand dollars of assessed valuation and an income surtax of five percent. [C73, 75,§442.14; 66GA, ch 79,§§23, 27]

Referred to in §442.15

442.15 Computation of enrichment amount. If a majority of those voting in an election approves raising the additional enrichment amount under section 442.14 and this section, the board shall certify to the state comptroller that the required procedures have been carried out, and the state comptroller shall establish the amount of additional enrichment property tax to be levied and the amount of school district income surtax to be imposed for each school year for which the additional enrichment amount is authorized. The state comptroller shall determine these amounts based upon the most recent figures available for the district's valuation of taxable property, individual state income tax paid, and adjusted enrollment in the district, and shall certify to the district's county auditor the amount of enrichment property tax, and to the director of revenue the amount of school district income surtax to be imposed.

The school district income surtax shall be imposed on the state individual income tax for the calendar year during which the school's budget year begins, or for a taxpayer's fiscal year ending during the second half of that calendar year or the first half of the succeeding calendar year, and shall be imposed on all individuals residing in the school district on the last day of the applicable tax year. As used in this section, "state individual income tax" means the tax computed under section 422.5, less the deductions allowed in section 422.12.

An additional enrichment amount authorized under section 442.14 or a lesser amount than the amount so authorized may be continued as provided in this section for a period of five school years. If the amount authorized is less than the maximum of five percent of the state cost per pupil and the board wishes to increase the amount, it shall re-establish its authority to do so in the manner provided in section 442.14. If the board wishes to continue any additional enrichment amount beyond the five-year period, it shall re-establish its authority to do so in the manner provided in section 442.14 within the twelve-month period prior to termination of the five-year period. [C73, 75,§442.15; 66GA, ch 79,§§24, 27]

Referred to in §442.14

442.16 Statutes applicable. The director of revenue shall administer any school district income surtax imposed under this chapter, and all the provisions of sections 422.20, 422.22 to 422.31, 422.68, and 422.72 to 422.75, shall apply in respect to administration of the school district income surtax. [C73, 75,§442.16]

442.17 Form and time of return. The school district income surtax shall be made a part of the Iowa individual income tax return subject to the conditions and restrictions set forth in section 422.21. [C73, 75,§442.17]

442.18 Deposit of school district income surtax. The director of revenue shall deposit all moneys received as school district income surtax to the credit of each district from which the moneys are received, in a "school district

income surtax fund" which is established in the office of the treasurer of state. [C73, 75, §442.18]

442.19 School district income surtax certification. On or before October 20 each year, the director of revenue shall make an accounting of the school district income surtax collected under this chapter applicable to tax returns for the last preceding calendar year, or for fiscal year taxpayers, on the last day of their tax year ending during that calendar year and after the date of the election approving the surtax, from taxpayers in each school district in the state which has imposed a surtax, and shall certify to the state comptroller and the state department of public instruction the amount of total school district income surtax credited from the taxpayers of each school district. Additional returns in process, if any, at the time of certification shall be completed and the additional amount of school district income surtax reported to the state comptroller for distribution back to the school district with the first installment of the following school year. [C73, 75,§442.19]

442.20 School district income surtax distribution. The state comptroller shall draw warrants in payment of the amount of surtax payable to each of the school districts in two installments to be paid on approximately the first day of December and the first day of February, and shall cause the warrants to be delivered to the respective school districts. [C73, 75,§442.20]

442.21 Repealed by 65GA, ch 1233,§9.

442.22 Repealed by 65GA, ch 258,§16.

442.23 Rules. The superintendent of public instruction, after consultation with the state comptroller, may adopt rules and definitions of terms as necessary and proper for the administration of this chapter. [C71,§442.18; C73, 75, §442.23]

442.24 Local budget law. Provisions of chapter 24 remain applicable to school budgets. [C73, 75,§442.24]

442.25 Estimates of miscellaneous aids. No later than September 1 of each year, the department of public instruction shall certify to the state comptroller the amounts of any state aids other than the amounts provided in this division that will be received by each school district in the state. [C71,§442.20; C73, 75, §442.25]

442.26 Appropriations. There is hereby appropriated each year from the general fund of the state an amount necessary to pay the state school foundation aid.

All state aids paid under this chapter unless otherwise stated, shall be paid in installments due on or about September 15, December 15, March 15, and May 15 of each year, and the installments shall be as nearly equal as possible as determined by the state comptroller, taking into consideration the relative budget and cash position of the state resources.

All moneys received by a school district from the state under the provisions of this chapter shall be deposited in the general fund of the school district, and may be used for any school general fund purpose. [C71,§442.15; C73, 75,§442.26]

Referred to in §442.28

442.27 Funding media and other services. Media services and other services provided through the area education agencies shall be funded, to the extent provided, by an addition to the district cost of each school district, determined as follows:

1. For the budget year beginning July 1, 1975, the total amount funded in each area for media services shall be the greater of an amount equal to the costs for media services in the area in the base year times the sum of one hundred percent plus the state percent of growth, or an amount equal to five dollars times the enrollment served in the area in the budget year. The costs for media services in the area in the base year beginning July 1, 1974, shall be a proportionate part of the budgeted expenditures by county school systems and joint county systems formerly serving pupils in the area based upon the enrollment served in that area in the base year by each county school system and joint county system compared to the total enrollment served by that county system or joint county system.

2. For each succeeding budget year, the total amount funded in each area for media services shall be the total amount funded in the area for media services in the base year times the sum of one hundred percent plus the state percent of growth.

3. However, the total amount funded in each area for media services in any budget year shall not exceed an amount equal to eight dollars times the enrollment served in the area in the budget year.

4. For the budget year beginning July 1, 1975, the total amount funded in each area for other services shall be an amount equal to ten dollars times the enrollment served in the area in the budget year.

5. For each succeeding budget year, the total amount funded in each area for other services shall be the total amount funded in the area for other services in the base year times the sum of one hundred percent plus the state percent of growth. Part of the amount funded for other services may be used by the area education agencies for nonrecurring media costs for the school year beginning July 1, 1975.

6. Of the total amounts funded in each area each year for media services and other services, a portion shall be allocated to each district in the area. The portion to be allocated to each district in an area shall be the same percentage of the total amount that the en-

rollment served in the budget year in the district is of the enrollment served in the budget year in the area.

7. The portion allocated to each district in an area each budget year for media services and other services shall be added to the district cost of that district for the budget year as provided in section 442.9.

8. The department of public instruction and the state comptroller shall determine the total amounts funded in each area for media services and other services each year, and the amounts to be allocated to each district. The state comptroller shall deduct the amounts so calculated for each school district from the state aid due to the district pursuant to this chapter and shall pay the amounts to the districts' area education agencies on a quarterly basis during each school year. The state comptroller shall notify each school district the amount of state aid deducted for this purpose and the balance which will be paid to the district. If a district does not qualify for state aid under this chapter in an amount sufficient to cover the amount due to its area education agency as calculated by the state comptroller, the school district shall pay the deficiency to its area education agency from other moneys received by the district, on a quarterly basis during each school year.

9. *"Enrollment served"* means the basic enrollment plus the number of nonpublic school pupils served with media services or other services, as applicable, except that if a nonpublic school pupil receives services through an area other than the area of the pupil's residence, the pupil shall be deemed to be served by the area of his residence, which shall by contractual arrangement reimburse the area through which the pupil actually receives services. For the budget year beginning July 1, 1975, the total number of nonpublic pupils served by each area education agency and the number of nonpublic school pupils residing within each school district in the area to be served by the area education agency for media and other services shall be submitted by the department of public instruction to the state comptroller within one week after this Act* is duly published. For school years subsequent to the school year beginning July 1, 1975, each school district shall include in the second Friday in January enrollment report the number of nonpublic school pupils within each school district for media and other services served by the area. [66GA, ch 79,§§25, 27]

Referred to in §273.9, 442.9, 442.28
*House File 558 [chap. 79, 66GA] was published June 10, 1975

442.28 Advance for increasing enrollment. If a district's weighted enrollment on the second Friday of September in the budget year, determined in the same manner as the January weighted enrollment is determined under section 442.4, is higher than its weighted enrollment on the second Friday of January in the base year, the district is entitled to an advance from the state of an amount equal to its district cost per pupil less the amount per pupil for special education support services, media services and other services computed as a part of district cost under the provisions of section 442.7 and section 442.27 for the budget year multiplied by its increase in weighted enrollment. The advance shall be miscellaneous income.

If a district receives an advance under this section for a budget year, the state comptroller shall determine the amount of the advance which would have been met by local property tax revenues if the September weighted enrollment had been used for that budget year, less the amount of the adjustment to the district cost for increases in the weighted enrollment made in the first paragraph in this section, shall reduce the district's total state school aids available under this chapter for the next following budget year by the amount so determined, and shall increase the district's tax levy computed under section 442.9, for the next following budget year by the amount necessary to compensate for the reduction in state aid, so that the local property tax for the next following year will be increased only by the amount which it would have been increased in the budget year if the September weighted enrollment could have been used to establish the levy less the amount of the adjustment to the district cost for increases in the weighted enrollment made in the first paragraph in this section.

There is appropriated each year from the general fund of the state the amount required to pay advances authorized under this section, which shall be paid to school districts in the same manner as other state aids are paid under section 442.26. [66GA, ch 79,§§25, 27]

442.29 Reimbursement restrictions for prior years. Notwithstanding the provisions of sections 281.9 and 281.11 as those sections are in effect prior to July 1, 1975, reimbursement shall not be made to local school districts for the special education costs for the school year beginning July 1, 1974, incurred for programs provided for the school year beginning July 1, 1971, or prior years, but reimbursement shall be made to local school districts for new and expanded programs for the school year beginning July 1, 1974, beyond those programs provided for the school year beginning July 1, 1971, and reimbursement applied for by county boards of education and joint county boards of education under those sections shall be made. [66GA, ch 79,§§26, 27]

CHAPTER 443

TAX LIST

Referred to in §§111.25, 306.22, 427A.3, 441.47

443.1 Consolidated tax.
443.2 Tax list.
443.3 Correction—tax apportioned.
443.4 Tax list delivered — informality and delay.
443.5 Aggregate valuations certified.
443.6 Corrections by auditor.
443.7 Notice.
443.8 Right of appeal.
443.9 Adjustment of accounts.
443.10 Expense—report to supervisors.
443.11 Procedure on appeal.
443.12 Corrections by treasurer.
443.13 Action by treasurer—apportionment.
443.14 Duty of treasurer.
443.15 Time limit.
443.16 Entry by treasurer—details required.
443.17 Presumption of five-year ownership.
443.18 Real estate—duty of owner.
443.19 Irregularities, errors and omissions—effect.
443.20 Discovery of property not listed.
443.21 Assessments certified to county auditor.
443.22 Uniform assessments mandatory.

443.1 Consolidated tax. All taxes which are uniform throughout any township or school district shall be formed into a single tax and entered upon the tax list in a single column, to be known as a consolidated tax, and each receipt shall show the percentage levied for each separate fund. [C73,§838; C97,§1383; S13,§1383; C24, 27, 31, 35, 39,§**7144**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.1]

Referred to in §420.207
40ExGA, SF 183,§20, editorially divided

443.2 Tax list. Before the first day of July in each year, the county auditor shall transcribe the assessments of the several townships or cities into a book or record, to be known as the tax list, properly ruled and headed, with separate columns, in which shall be entered the names of the taxpayers, descriptions of lands, number of acres and value, numbers of city lots and value, value of personal property and each description of tax, with a column for polls and one for payments, and shall complete the same by entering the amount due on each installment, separately, and carrying out the total of both installments. The total of all columns of each page of each book or other record shall balance with the tax totals. [C51,§486; R60,§745; C73,§837; C97,§1383; S13,§1383; C24, 27, 31, 35, 39,§**7145**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.2]

Referred to in §§420.207, 441.21(2), 443.21, 445.15
Limitation on section, §445.15

443.3 Correction—tax apportioned. At the time of transcribing said assessments into the tax list, the county auditor shall correct all transfers up to date and place the legal descriptions of all real estate in the name of the owner at said date as shown by the transfer book in his office. At the end of the list for each township or city he shall make an abstract thereof, and apportion the consolidated tax among the respective funds to which it belongs, according to the amounts levied for each. [C97,§1383; S13,§1383; C24, 27, 31, 35, 39, §**7146**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.3]

Referred to in §420.207

443.4 Tax list delivered — informality and delay. He shall make an entry upon the tax list showing what it is, for what county and year, and deliver it to the county treasurer on or before June 30, taking his receipt therefor; and such list shall be a sufficient authority for the treasurer to collect the taxes therein levied. No informality therein, and no delay in delivering the same after the time above specified, shall affect the validity of any taxes, sales, or other proceedings for the collection of such taxes. [C51,§487; R60,§748; C73,§843; C97,§1387; C24, 27, 31, 35, 39,§**7147**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.4]

443.5 Aggregate valuations certified. At the time of delivering the list to the treasurer, the auditor shall furnish to the director of revenue a certified statement showing separately the aggregate taxable valuations of the real and personal property in the county, and also the aggregate amount of each separate tax as shown by the tax list. [R60,§748; C73,§844; C97,§1388; C24, 27, 31, 35, 39,§**7148**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.5]

Referred to in §443.22
See §441.21

443.6 Corrections by auditor. The auditor may correct any error in the assessment or tax list, and the assessor or auditor may assess and list for taxation any omitted property. [R60, §747; C73,§841; C97,§1385; S13,§1385-b; C24, 27, 31, 35, 39,§**7149**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.6]

S13,§1385-b, editorially divided

443.7 Notice. Before assessing and listing for taxation any omitted property, the assessor or auditor shall notify by certified mail the person, firm, corporation, or administrator or other person in whose name the property is taxed, to appear before him at his office within ten days from the time of said notice and show cause, if any there be, why such correction or assessment should not be made. [S13,§1385-b; C24, 27, 31, 35, 39,§**7150**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.7]

443.8 Right of appeal. Should such party feel aggrieved at the action of said assessor or auditor he shall have the right of appeal therefrom to the district court. [S13,§1385-b; C24, 27, 31, 35, 39,§**7151**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.8]

Referred to in §443.11

443.9 Adjustment of accounts. If such correction or assessment is made after the books or other records approved by the state auditor have passed into the hands of the treasurer he shall be charged or credited therefor as the case may be. In the event such assessment of omitted property is made by the assessor after the tax records have passed into the hands of the auditor or treasurer, such correction or assessment shall be entered on the records by the auditor or treasurer. [S13,§1385-b; C24, 27, 31, 35, 39,§**7152**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.9]

443.10 Expense—report to supervisors. All expense incurred in the making of said correction or assessment shall be borne pro rata by the funds which are affected by said correction and the proceedings shall be reported to the board of supervisors. [S13,§1385-b; C24, 27, 31, 35, 39,§**7153**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §443.10]

443.11 Procedure on appeal. The appeal provided for in section 443.8 shall be taken within ten days from the time of the final action of the assessor or auditor, by a written notice to that effect to the assessor or auditor, and served as an original notice. The court on appeal shall hear and determine the rights of the parties in the same manner as appeals from the board of review, as prescribed in sections 441.39 and 441.43. [S13,§1385-c; C24, 27, 31, 35, 39,§**7154**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.11]

Service of original notice, R.C.P. 56(a)

443.12 Corrections by treasurer. When property subject to taxation is withheld, overlooked, or from any other cause is not listed and assessed, the county treasurer shall, when apprised thereof, at any time within five years from the date at which such assessment should have been made, demand of the person, firm, corporation, or other party by whom the same should have been listed, or to whom it should have been assessed, or of the administrator thereof, the amount the property should have been taxed in each year the same was so withheld or overlooked and not listed and assessed, together with six percent interest thereon from the time the taxes would have become due and payable had such property been listed and assessed. [C97,§1374; C24, 27, 31, 35, 39, §**7155**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.12]

C97,§1374, editorially divided

443.13 Action by treasurer—apportionment. Upon failure to pay such sum within thirty days, with all accrued interest, he shall cause an action to be brought in the name of the treasurer for the use of the proper county, to be prosecuted by the county attorney, or such other person as the board of supervisors may appoint, and when such property has been fraudulently withheld from assessment, there shall be added to the sum found to be due a penalty of fifty percent upon the amount, which shall be included in the judgment. The amount thus recovered shall be by the treasurer apportioned ratably as the taxes would have been if they had been paid according to law. [C97,§1374; C24, 27, 31, 35, 39,§**7156**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.13]

443.14 Duty of treasurer. The treasurer shall assess any real property subject to taxation which may have been omitted by the assessor, board of review, or county auditor, and collect taxes thereon, and in such cases shall note, opposite the tract or lot assessed, the words "by treasurer". [C51,§491; R60,§752; C73, §851; C97,§1398; C24, 27, 31, 35, 39,§**7157**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.14]

C97,§1398, editorially divided

443.15 Time limit. Such assessment shall be made within four years after the tax list shall have been delivered to the treasurer for collection, and not afterwards, if the property is then owned by the person who should have paid the tax. [C73,§851; C97,§1398; C24, 27, 31, 35, 39,§**7158**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §443.15]

443.16 Entry by treasurer—details required. When the county treasurer makes an entry of taxes on the tax list, or an entry of the correction of a tax, he shall, immediately in connection with the entry, enter the year, month, day, hour, and minute when the entry was made. [C31, 35,§7158-d1; C39,§**7158.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.16]

443.17 Presumption of five-year ownership. In any action or proceeding, now pending or hereafter brought, to recover taxes upon property not listed or assessed for taxation during the lifetime of any decedent, it shall be presumed that any property, any evidence of ownership of property, and any evidence of a promise to pay, owned by a decedent at the date of his death, had been acquired and owned by such decedent more than five years before the date of his death; and the burden of proving that any such property had been acquired by such decedent less than five years before the date of his death shall be upon the heirs, legatees, and legal representatives of any such decedent. [C35,§7158-f1; C39,§**7158.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.17]

443.18 Real estate—duty of owner. In all cases where real estate subject to taxation has not been assessed, the owner, by himself or agent, shall have the same done by the treasurer, and pay the taxes thereon; and if he fails to do so the treasurer shall assess the same and collect the tax assessed as he does other

taxes. [R60,§753; C73,§852; C97,§1399; C24, 27, 31, 35, 39,§7159; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.18]

C97,§1399, editorially divided

443.19 Irregularities, errors and omissions —effect. No failure of the owner to have such property assessed or to have the errors in the assessment corrected, and no irregularity, error or omission in the assessment of such property, shall affect in any manner the legality of the taxes levied thereon, or affect any right or title to such real estate which would have accrued to any party claiming or holding under and by virtue of a deed executed by the treasurer as provided by this title, had the assessment of such property been in all respects regular and valid. [R60,§753; C73,§852; C97, §1399; C24, 27, 31, 35, 39,§7160; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.19]

443.20 Discovery of property not listed. It shall be lawful for the board of supervisors of any county to employ any person, corporation, or firm for a reasonable salary or per diem to assist the proper officers in the discovery of property not listed or assessed for taxation as required by law, and the amount allowed as compensation shall be apportioned pro rata to the funds benefited. [S13,§1407-f; C24, 27, 31, 35, 39,§7161; C46, 50, 54, 58, 62, 66, 71, 73, 75,§443.20]

Referred to in §420.207

443.21 Assessments certified to county auditor. All assessors and assessing bodies, including the department of revenue having authority over the assessment of property for tax purposes shall certify to the county auditor of each county the assessed values of all the taxable property in such county as finally equalized and determined, and the same shall be transcribed onto the tax lists as required by section 443.2. [C71, 73, 75,§443.21]

443.22 Uniform assessments mandatory. All assessors and assessing bodies, including the department of revenue having authority over the assessment of property for tax purposes, shall comply with the provisions of sections 428.4, 428.29, 434.15, 435.7, 438.13, 441.21, 441.45 and 443.5. The department of revenue having authority over such assessments, shall exercise its powers and perform its duties under section 421.17 and other applicable laws so as to require the uniform and consistent application of said section. [C71, 73, 75,§443.22]

See error in enrolled Act, striking reference to §420.284, 64GA, ch 1088,§319

CHAPTER 444

TAX LEVIES

Referred to in §§111.25, 137.20, 306.22

CERTIFICATION OF TAXES
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444.2 Amounts certified in dollars.
444.3 Computation of rate—moneys and credits tax replacement fund.
444.4 Fractional rates disregarded.
444.5 Interpretative clause.
444.6 Record of rates.
444.7 Excessive tax prohibited.
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COUNTY LEVIES
444.9 Annual levies.
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444.13 to 444.17 Transferred to 332.45 to 332.49.

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444.18 and 444.19 Transferred to 332.50 and 332.51.

LEVIES BY DEPARTMENT OF REVENUE
444.20 Levy to pay municipal bonds.
444.21 General fund of the state.
444.22 Annual levy.
444.23 Rate certified to county auditor.

CERTIFICATION OF TAXES

444.1 Basis for amount of tax. In all taxing districts in the state, including townships, school districts, cities and counties, when by law then existing the people are authorized to determine by vote, or officers are authorized to estimate or determine, a rate of taxation required for any public purpose, such rate shall in all cases be estimated and based upon the adjusted taxable valuation of such taxing district for the preceding calendar year. [C24, 27, 31, 35, 39,§7162; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.1]

Referred to in §444.8

444.2 Amounts certified in dollars. When any authorized tax rate within any taxing district, including townships, school districts, cities and counties, shall have been thus determined as provided by law, the officer or officers charged with the duty of certifying said authorized rate to the county auditor or board of supervisors shall, before certifying the same, compute upon the adjusted taxable valuation of such taxing district for the preceding fiscal year (not including moneys and credits, and other moneyed capital taxed at a flat rate as provided in section 429.2*), the amount of tax said rate will raise, stated in

dollars, and shall certify said computed amount in dollars and not by rate, to the county auditor and board of supervisors. [C24, 27, 31, 35, 39,§7163; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.2]

Referred to in §§420.207, 444.8
*Chapter 429 repealed by 63GA, ch 1204,§16

444.3 Computation of rate — moneys and credits tax replacement fund. When the valuations for the several taxing districts shall have been adjusted by the several boards for the current year, the county auditor shall thereupon apply such a rate, not exceeding the rate authorized by law, as will raise the amount required for such taxing district, and no larger amount.

Provided that the county auditor shall, in computing the tax rate for any taxing district, deduct from the total budget requirements certified by any such district all of the tax to be derived from the moneys and credits and other moneyed capital taxed at a flat rate as provided in section 429.2* and for years commencing with the year 1966 from the moneys and credits tax replacement fund and shall then apply such rate to the adjusted taxable value of the property in the district, necessary to raise the amount required after the deductions herein provided have been made.

For years commencing with the year 1966, in computing the amount to be derived from the moneys and credits tax replacement fund the county auditor shall use the amount of the tax to be derived from the property described in and subject to taxation under section 429.2* owned or held by individuals, administrators, executors, guardians, conservators, trustees or an agent or nominee thereof which was used in computing the tax rate in such district for the year 1965; and shall also use the amount of the tax to be derived from the property described in and subject to taxation under section 431.1** for the year 1965 but not subject to taxation under said section for the year 1966, which was used in computing the tax rate in such district for the year 1965.

If any taxing district or part thereof shall have been merged or consolidated with another district or shall cease to exist, the tax to be derived from the moneys and credits tax replacement fund for such taxing district shall be allocated to or among the surviving or successor districts by the county auditor.

The county auditor at the time of the delivery of the tax list to the county treasurer shall furnish the county treasurer with the amount of tax to be derived from the moneys and credits tax replacement fund used by the county auditor in determining the tax rate in each taxing district in the county. [C24, 27, 31, 35, 39,§7164; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.3]

Referred to in §§420.207, 426.6, 444.8
40ExGA, SF 183,§23, editorially divided
*Chapter 429 repealed by 63GA, ch 1204,§16
**Chapter 431 repealed by 63GA, ch 1204,§20

444.4 Fractional rates disregarded. If in adjusting the rate to be levied in any taxing district to conform to law, such rates shall make necessary the levying of a fraction of a cent, said fractional excess may be computed as one cent, which latter shall be the smallest required to be spread upon the tax lists for any purpose except rates applicable to a state purpose. [C24, 27, 31, 35, 39,§7166; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.4]

Referred to in §§420.207, 444.8

444.5 Interpretative clause. Nothing herein shall be construed as interfering with the right of any taxing district to receive its due proportion of the taxes on moneys and credits and other moneyed capital taxed at a flat rate as provided in section 429.2.* [C24, 27, 31, 35, 39, §7167; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.5]

Referred to in §§420.207, 444.8
*Chapter 429 repealed by 63GA, ch 1204,§16

444.6 Record of rates. On the determination by the auditor of the necessary rates as herein directed, it is made his duty to enter a record of such rates for each taxing district upon the permanent records of his office in a book to be kept for that purpose. [C24, 27, 31, 35, 39, §7168; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.6]

Referred to in §444.8

444.7 Excessive tax prohibited. It is hereby made a misdemeanor for the board of supervisors to authorize, or the county auditor to carry upon the tax lists for any year, an amount of tax for any public purpose in excess of the amount certified or authorized as provided by law. The state comptroller shall prescribe and furnish the county auditors forms and instructions to aid them in determining the legality and authorized amount of tax levies. In the case of an excessive levy, it shall be the duty of the county auditor to reduce it to the maximum amount authorized by law, and in any event not in excess of the amount certified; and in case of an illegal levy the county auditor shall not enter or carry any tax on the tax lists for such levy. [C24, 27, 31, 35, 39,§7169; C46, 50, 54, 58, 62, 66, 71, 73, 75, §444.7]

Referred to in §444.8
Misdemeanor, punishment, §687.7

444.8 Mandatory provisions. The provisions of sections 444.1 to 444.7, and the methods of computation, certification, and levy therein provided shall be obligatory on all officers within the several counties of the state upon whom devolves the duty of determining, certifying, and levying taxes. [C24, 27, 31, 35, 39, §7170; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.8]

COUNTY LEVIES

444.9 Annual levies. The board of supervisors of each county shall, annually, at its March session, levy the following taxes upon the assessed value of the taxable property in the county:

1. *State revenue.* For state revenue, such rate of tax as shall be fixed by the director of revenue as hereinafter provided.

2. *Ordinary county revenue.* For ordinary county revenue, not to exceed one dollar and

twenty-one and one-half cents per thousand dollars of assessed value in counties having an assessed value of less than fifty-nine million, two hundred sixty thousand dollars, not to exceed one dollar and eight cents per thousand dollars of assessed value in counties having an assessed value of fifty-nine million, two hundred sixty thousand dollars or more and less than ninety-six million, three hundred thousand dollars, not to exceed ninety-four and one-half cents per thousand dollars of assessed value in counties having an assessed value of ninety-six million, three hundred thousand dollars or more and less than one hundred eighteen million, five hundred twenty thousand dollars, and not to exceed eighty-one cents per thousand dollars of assessed value in counties having an assessed value of one hundred eighteen million, five hundred twenty thousand dollars or more.

3. *Election expense fund.* There is created in the office of the county treasurer of each county a fund to be known as the election expense fund. Annually, the board of supervisors shall levy an amount sufficient to pay the costs of elections and voter registration, pursuant to chapter 48, incurred by the county. The funds deposited in this account shall be used to pay election and voter registration costs and shall not be appropriated for any other purposes or transferred into any other county fund.

4. *Des Moines county levy.* In all counties having a population of thirty-five thousand, or more, and not more than forty thousand, and having an ordnance plant located therein owned by the United States government, the board of supervisors may, with the approval of the state comptroller, levy not to exceed fifty-four cents per thousand dollars of assessed value under the provisions of this section. [C51,§454; R60,§710; C73,§796; C97,§1303; SS15,§1303; C24, 27, 31, 35, 39,§**7171**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.9]

Referred to in §24.37
SS15,§1303, editorially divided

444.10 Court expense. In any county where the rates herein fixed for ordinary county revenue are found to be insufficient to pay all expenses incident to the maintenance and operation of the courts, the board of supervisors may create an additional fund to be known as court expense fund, and may levy for such fund such rate of taxes as shall be necessary to pay all court expenses chargeable to the county. Such fund shall be used for no other purpose, and the levy therefor shall be dispensed with when the authorized levy for the ordinary county revenue is sufficient to meet the necessary county expenditures including such court expenses. [C97, §1303; SS15,§1303; C24, 27, 31, 35, 39,§**7172**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.10]

Referred to in §§356A.3, 356A.7
Legalizing Act, 50GA, ch 217,§2
Omnibus repeal, 50GA, ch 217,§3
Salaries payable from, §340.17

444.11 County orphan fund. The board of supervisors may levy a tax, not exceeding three and three-eighths cents per thousand dollars of assessed value in any one year, on all the taxable property in its county, at the same time other taxes are levied, and to be collected in the same manner, to aid in and for the maintenance and education of destitute orphans. The fund thus raised shall be called the "county orphan fund", and shall be expended in such sums and manner as the exigencies of each case may demand. If there be such children who are without guardian, or, having one, are neglected, they shall be cared for through some suitable person to be appointed by the board. [C73,§§1638–1641; C97, §2687; C24, 27, 31, 35, 39,§**7173**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.11]

Referred to in §24.37

444.12 County mental health and institutions fund. The board of supervisors of each county shall establish a county mental health and institutions fund, from which shall be paid:

1. All charges which the county is obligated by statute to pay for:

a. Care and treatment of patients by any state mental health institute.

b. Care and treatment of patients by either of the state hospital-schools or by any other facility established under chapter 222.

c. Care and treatment of patients by the psychopathic hospital at Iowa City.

d. Care and treatment of tuberculosis patients admitted or committed to the state sanatorium at Oakdale or any similar institution established or maintained by any county under chapter 254*, and the cost of outpatient care of tuberculosis patients by a tuberculosis sanatorium may be paid from such fund.

e. Care and treatment of persons at the alcoholic treatment center at Oakdale or any facilities as provided in chapter 125, provided, however, that any admission to a facility shall be reported to the county board of supervisors within five days by the center or facility offering such treatment.

f. Care of children admitted or committed to the Iowa juvenile home at Toledo.

g. Clothing, transportation, and medical or other services provided persons attending the Iowa braille and sight-saving school, the Iowa school for the deaf, or the state hospital-school for severely handicapped children at Iowa City, for which the county becomes obligated to pay pursuant to sections 263.12, 269.2, and 270.4 through 270.7.

2. Any portion which the board of supervisors may deem advisable of the cost of psychiatric examination and treatment of persons in need thereof or of professional evaluation, treatment, training, habilitation, and care of persons who are mentally retarded, autistic children or persons who are afflicted by any other developmental disability, at any suitable public or private facility providing inpatient

or outpatient care in such county. As used in this subsection:

a. "Developmental disability" has the meaning assigned that term by title 42, section 2691, subsection 1, United States Code, as amended to January 1, 1974.

b. "Autistic children" means persons, regardless of age, with severe communication and behavior disorders that became manifest during the early stages of childhood development and that are characterized by a severely disabling inability to understand, communicate, learn and participate in social relationships. "Autistic children" includes but is not limited to those persons afflicted by infantile autism, profound aphasia and childhood psychosis.

The board of supervisors may require any public or private facility as a condition of payment from county funds to furnish the board with a statement of the income, assets, and township or municipality and the county of legal residence of each person receiving services under this section, provided, however, the facility shall not disclose to anyone without the permission of the person receiving services for which commitment is not required such person's name or street or route address.

3. The cost of care and treatment of persons placed in the county hospital, county care facility, a health care facility as defined in section 135C.1, subsection 8, or any other public or private facility:

a. In lieu of admission or commitment to a state mental health institute, hospital-school, or other facility established pursuant to chapter 222.

b. Upon discharge, removal, or transfer from a state mental health institute or state hospital-school or other institution established pursuant to chapter 222.

4. Any contribution which the board of supervisors may make to the establishment and initial operation of a community mental health center in the manner and subject to the limitations provided by law.

The board of supervisors shall, at the time of levying other taxes, estimate the amount necessary to meet the foregoing expenses which it is anticipated that the county will incur in the coming year, and levy a tax sufficient to raise the amount needed. The proceeds of the tax shall be credited to the county mental health and institutions fund, and used only for the purposes prescribed by this section. Should any county fail to levy a tax sufficient to meet the expenses which the county is required to pay, or which the board of supervisors chooses to pay, from the county mental health and institutions fund pursuant to this section, the deficiency shall be met by transfer of funds from the county general fund to the county mental health and institutions fund.

5. Foster care and related services provided to any child who is under the jurisdiction of the juvenile court, if provided upon the order of the court.

Nothing in this section or any other statute shall be construed to prohibit parents or other persons from voluntarily reimbursing the county or state for the reasonable cost of caring for an individual while he was a patient or inmate in the county hospital, county home, mental health institute, hospital-school, training school, or home for children. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.12; 66GA, ch 67,§71, ch 1133,§12, ch 1202,§1]

Referred to in §§125.28, 218.99, 227.18, 230.24, 234.36
*Repealed by 66GA, ch 1056,§45

444.13 to 444.17 Transferred to 332.45 to 332.49.

PUBLIC SHOWS AND CIRCUSES

444.18 and 444.19 Transferred to 332.50 and 332.51.

LEVIES BY DEPARTMENT OF REVENUE

444.20 Levy to pay municipal bonds. Whenever any municipal corporation, board, or tribunal is charged with the duty of levying a tax to pay any bonds or interest thereon, and fails to make such levy, the holder thereof may, after obtaining final judgment thereon, in addition to any other remedies he may have, file a transcript thereof with the director of revenue, taking his receipt therefor, and the same shall be registered with the department, and the director of revenue shall levy upon the taxable property of the county, city or school district for which such bonds were issued a sufficient rate of taxation to realize the amount of interest, or principal and interest, due or to become due on the bonds so filed, prior to the next levy, and the money arising from such levy shall be known as the bond fund, and collected as a part of the state tax, paid into the state treasury, and placed to the credit of such county, city or school district for the payment of said bonds and interest, and shall be paid out as the interest installments or the principal may mature, by warrants drawn by the state comptroller in favor of the holder of such bonds, as shown by the register aforesaid, until the same shall be paid; and, when paid, the bonds and coupons shall be canceled and returned to the treasurer of the county, city or school district issuing the same, who shall receipt therefor. [C97,§1381; C24, 27, 31, 35, 39,§7181; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.20.

Similar provision, §346.17

444.21 General fund of the state. The amount derived from taxes levied for state general revenue purposes, and all other sources which are available for appropriations for general state purposes, and all other money in the state treasury which is not by law otherwise segregated, shall be established as a general fund of this state. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.21]

444.22 Annual levy. In each year the director of revenue shall fix the rate in percentage to be levied upon the assessed valuation of the taxable property of the state necessary to raise

such amount for general state purposes as shall be designated by the state comptroller under the provisions of section 8.6, subsection 13. [S13,§1380-c; C24, 27, 31, 35, 39,§7182; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.22]

444.23 Rate certified to county auditor. The director of revenue shall certify the rate so fixed to the auditor of each county. [S13,§1380-d; C24, 27, 31, 35, 39,§7183; C46, 50, 54, 58, 62, 66, 71, 73, 75,§444.23]

CHAPTER 445

COLLECTION OF TAXES

Referred to in §§111.25, 306.22, 419.11, 424.7

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445.1 Duty of treasurer. The treasurer, after making the entry provided in section 445.10, shall proceed to collect the taxes, and the list shall be his authority and justification against any illegality in the proceedings prior to receiving the list; and he is also authorized and required to collect, as far as practicable, the taxes remaining unpaid on the tax books or other records approved by the state auditor of previous years, his efforts to that end to include the sending by mail of a statement to each delinquent taxpayer not later than May 1 of each fiscal year. [R60,§751; C73,§846; C97, §1390; C24, 27, 31, 35, 39,§7184; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.1]

445.2 Resistance. If the treasurer, his deputy, or collector is resisted or impeded in the execution of the duties of his office, he may require any person to assist him therein, and if such person refuses, he shall forfeit a sum not exceeding ten dollars, to be recovered by civil action in the name of the county, and the person resisting shall be punished as in the case of resisting an officer in the execution of legal process. [C51,§494; R60,§758; C73,§860; C97,§1408; C24, 27, 31, 35, 39,§7185; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.2]

Referred to in §420.246
Punishment, §742.1

445.3 Actions authorized. In addition to all other remedies and proceedings now provided by law for the collection of taxes on personal property, the county treasurer is hereby authorized to bring or cause an ordinary suit at law to be commenced and prosecuted in his name for the use and benefit of the county for the collection of taxes from any person, persons, firm, or corporation as shown by the tax list in his office, and the same shall be in all respects commenced, tried, and prosecuted to final judgment the same as provided by the Code for ordinary actions. [S13,§1452-a; C24, 27, 31, 35, 39,§**7186**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.3]

Referred to in §445.4

445.4 Statutes applicable — attachment — damages. All the provisions of chapters 639 and 642 are hereby made applicable to any proceedings instituted by a county treasurer under section 445.3, and a writ of attachment shall be issued upon the county treasurer complying with the provisions of said chapters, for taxes, whether due or not due, except that no bond shall be required from the treasurer or county in such cases, but the county shall be liable for damages, only, as provided by section 639.14. [S13,§1452-b; C24, 27, 31, 35, 39,§**7187**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.4]

445.5 Receipt. The treasurer shall in all cases make out and deliver to the taxpayer a receipt, stating the time of payment, the description and assessed value of each parcel of land, and the assessed value of personal property, the amount of each kind of tax, the interest on each and costs, if any, giving a separate receipt for each year; and he shall make the proper entries of such payments on the books or other records approved by the state auditor of his office. Such receipt shall be in full of the first or second half or all of such person's taxes for that year, but the treasurer shall receive the full amount of any county, state, or school tax whenever the same is tendered, and give a separate receipt therefor. [R60, §760; C73,§867; C97,§1405; C24, 27, 31, 35, 39, §**7188**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.5]

445.6 Distress and sale — immediate collection of tax. The treasurer shall collect all delinquent taxes by distress or sale of any personal property belonging to the person to whom such taxes are assessed, and not exempt from taxation, or any real or personal property upon which they are a lien, but he shall continue to receive the same until collected, and any owner or claimant of any real estate advertised for sale may pay to the county treasurer, at any time before the sale thereof, the taxes due thereon, with accrued penalties, interest, and costs to the time of payment.

Whenever the county treasurer shall have reason to believe that any owner of taxable personal property, who is a resident of the state of Iowa and against whom personal property taxes have been assessed, is about to remove from the county or is about to dispose of his personal property, he shall immediately regard and declare the taxes due and payable, shall file a notice of such lien with the county recorder, and shall proceed immediately to collect such taxes, together with costs and any interest and penalty that may be due, by distress and sale of the personal property so assessed which is not exempt from taxation. In the event the county treasurer proceeds to collect such taxes prior to date of levy, the amount of such taxes shall be presumed to be the taxable value of such property multiplied by the tax rate established at the date of levy next preceding. [C51,§§495, 497; R60,§§759, 760, 769; C73,§§865, 866; C97, §1414; C24, 27, 31, 35, 39,§**7189**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.6]

Referred to in §§96.14(3), 422.26
Certain property of national guardsmen exempt, §29A.41
Garnishment proceedings by department of revenue, §§626.29–626.31

445.7 Distress warrant—form. Distress warrants issued by the county treasurer for the collection of delinquent personal taxes shall be substantially in the following form:

State of Iowa, }
..... County } ss.

To the sheriff or any constable or tax collector of ..... county, Iowa.

Whereas, personal taxes have been duly assessed and levied and entered upon the tax lists in ..... county, Iowa, against ..... of ....., Iowa, in the amount and for the years ..... as follows:

Personal tax .....$.....
Interest .....$.....
Penalty .....$.....
Total .....$.....

And, whereas, said taxes and interest remain unpaid as shown by said tax list,

Now, therefore, you are hereby commanded to forthwith distrain, seize, levy upon, and sell, as provided by law, any personal property belonging to the said ..... not exempt from taxation, and any personal property upon which said taxes are a lien, sufficient to make the full amount of said taxes, interest, penalty and costs, and to make due and prompt return to my office of the taxes, interest and penalty so collected.

Witness my hand and official signature at ....., Iowa, this ..... day of ....., 19.....

.....
Treasurer of ..... county, Iowa.

[C31, 35,§7189-d1; C39,§**7189.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.7]

Referred to in §§96.14(3), 422.26, 445.8(3)
Sale, see §§446.3–446.6

445.8 Delinquent personal tax list—distress warrant.

1. The treasurer shall, after April 1, and before June 30, of each year, enter in a book or other record to be kept in his office as a part of the records thereof, to be known as the delinquent personal tax list, all delinquent

personal taxes and delinquent poll taxes of any preceding year which do not appear thereon; if the tax list maintained by said treasurer is such that all delinquent personal taxes and delinquent taxes of any preceding year are at all times therein recorded, then he shall not be required to keep in his office, as a part of the records thereof, a separate delinquent personal tax list.

2. The treasurer shall cause to be compiled a list of all delinquent personal property taxes for the current assessment year, as shown by the delinquent personal property tax list. Such list shall show the amount of the taxes delinquent when the amount of the tax is more than five dollars and the amount of penalty, interest and costs thereon, the name of the owner, if known, or the person, if any, to whom it is taxed, and shall be published in some newspaper in the county once each week for two consecutive weeks, the last of which shall be not more than two weeks before the first Monday in June, and by immediately posting a copy of the first publication thereof at the door of the courthouse, if there be one, if not, at the door of the place where the last term of district court was held. The provisions of sections 446.10 and 446.11 shall prevail in connection with the publication of such notice. The treasurer shall obtain a copy of the notice as published, and a certificate of the publication thereof from the printer or publisher, and file it in the office of the auditor.

3. The treasurer shall, within ten days following the final publication of such notice, issue a distress warrant in the form as prescribed in section 445.7. The publication of delinquent personal property tax lists shall include a notice that, unless such delinquent personal property taxes are paid within ten days of the date of final publication of the notice, a distress warrant will be issued for the collection thereof.

4. The distress warrant so issued shall be collectible by any sheriff or constable or tax collector in the same manner as any other warrant for the distraint and sale of personal property. The amount to be collected shall include cost of publication of the notice, as herein provided, all interest and penalties upon such tax, and the fees of the collecting officer, as prescribed by law.

5. Any taxpayer affected may at any time pay to the treasurer the amount of delinquent taxes and penalty, plus the cost of publication of the notice as shown by the personal property list, and any other costs prior to the issuance of the distress warrant herein provided. [C51,§488; R60,§750; C73,§845; C97,§1389; S13, §1389-a; C24, 27, 31, 35, 39,§**7190**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.8]

445.9 Record—contents. Such entry of tax on delinquent personal tax list shall give the names of delinquents alphabetically arranged, with amounts of tax and for what year or years, and where property was located when assessed. [R60,§750; C73,§845; C97,§1389; S13, §1389-b; C24, 27, 31, 35, 39,§**7191**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.9]

445.10 Former delinquent real estate taxes. The treasurer shall each year, upon receiving the tax list, enter upon the same in separate columns opposite each parcel of real estate on which the tax remains unpaid for any previous year, the amount of such unpaid tax, and unless such delinquent real estate tax is so brought forward and entered it shall cease to be a lien upon the real estate upon which the same was levied, and upon any other real estate of the owner. But to preserve such lien it shall only be necessary to enter such tax, as aforesaid, opposite any tract upon which it was a lien. Any sale for the whole or any part of such delinquent tax not so entered shall be invalid. Nothing contained in this section shall be held to require that in order to preserve the lien of such tax and make such tax sale valid, delinquent taxes must be brought forward upon the current tax list if said tax list is received by the county treasurer less than six months preceding the date of conducting the said tax sale as provided in section 446.25 or section 446.28 if the tax list received each year by the treasurer is such that all delinquent real estate and delinquent personal taxes of any preceding year are shown against each parcel of the real estate on which the tax remains unpaid for any year and the amount of such unpaid tax is shown, the treasurer shall not be required to make any further entry. [R60,§750; C73,§845; C97,§1389; S13,§1389-d; C24, 27, 31, 35, 39,§**7193**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.10]

Referred to in §§427.12, 445.1, 445.14, 445.15
Limitation on section, §445.15
See also §§448.13, 589.16

445.11 Special assessment book. Upon the record of the levy of any special assessment within any county coming into the hands of the county auditor, the county auditor shall, in blue or black ink, prepare in a book to be known as a special assessment book, the list of the persons owning real estate to be affected thereby, in alphabetical or numerical order, which book shall contain a description of the real estate so affected, the date of the assessment, the total amount so assessed, and the installments to be paid, together with the amounts of the respective installments if said assessment is payable in installments. [C31, 35,§7193-d1; C39,§**7193.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.11]

445.12 Additional data. Said special assessment tax list shall also contain space for showing penalties, if any, that may be incurred, a column showing payments and amounts thereof, a column showing number of receipt to be issued by the county treasurer, and a column that may be used to show the date of payment of said assessment, or any installment thereof. [C31, 35,§7193-d2; C39,§**7193.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.12]

445.13 Entries—delivery to treasurer—informalities. Said county auditor shall make

an entry upon the special assessment tax list showing what it is, for what county, and deliver it to the county treasurer on or before July 31, taking his receipt therefor; such list shall be a sufficient authority for the county treasurer to collect the taxes therein levied. No informality therein and no delay in delivering the same after the time above specified, shall affect the validity of any special assessment taxes, sales or other proceeding for the collection of such special assessment taxes. [C31, 35,§7193-d3; C39,§**7193.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.13]

445.14 Entries on general tax list. The county treasurer shall each year, upon receiving the tax list referred to in section 445.10 enter in red ink upon the same, in separate columns opposite each parcel of real estate upon which the special assessment remains unpaid for any previous year, the book, page and line number of the special assessment tax list where such special assessment levy and the amount so levied may be found. [C31, 35, §7193-d4; C39,§**7193.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.14]

445.15 Limitations. Nothing contained in sections 443.2 and 445.10 shall apply to special assessment levies. [C31, 35,§7193-d5; C39, §**7193.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.15]

445.16 Compromising tax. When any property in this state has been offered by the county treasurer for sale for taxes for two consecutive years and not sold, or sold for only a portion of the delinquent taxes, then and in that event the board of supervisors of the county is hereby authorized to compromise the delinquent taxes against said property antedating any tax sale certificate; or being a part of the taxes due for the year for which such property was sold for taxes, and may enter into a written agreement with the owner of the legal title or with any lienholder for the payment of a stipulated sum in full liquidation of all delinquent taxes included in such agreement. [C27, 31, 35,§7193-a1; C39,§**7193.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.16]

Referred to in §445.19
41GA, ch 148,§1, editorially divided

445.17 Filing of compromise agreement. A copy of such agreement shall be filed with the county treasurer and county auditor. [C27, 31, 35,§7193-a2; C39,§**7193.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.17]

Referred to in §445.19

445.18 Effect of compromise payment. When payment is made, as by such agreement provided, all taxes included in such agreement shall be thereby fully satisfied and canceled and the county auditor and county treasurer shall cause their books to show such satisfaction. [C27, 31, 35,§7193-a3; C39,§**7193.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.18]

Referred to in §445.19

445.19 Compromising tax on personal property. When personal property taxes are not a lien upon any real estate and are delinquent for one or more years, the board may, when it is evident that such tax is not collectible in the usual manner, compromise such tax as provided in sections 445.16 to 445.18. [C27, 31, 35,§7193-b1; C39,§**7193.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.19]

445.20 Penalty and interest limited — unavailable taxes. No penalty or interest, except for the first four years, shall be collected upon taxes remaining unpaid four years or more from June 30 of the year in which the tax books containing the same were first placed in the hands of the county treasurer, and the board of supervisors at the July meeting may declare such tax unavailable, and when so declared by the board, the amount shall be credited to the treasurer by the auditor as unavailable and he shall apportion such tax among the funds to which it belongs. [C97, 1391; SS15,§1391; C24, 27, 31, 35, 39,§**7194**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.20]

Referred to in §445.21
SS15,§1391, editorially divided

445.21 County credited. Any portion of such tax belonging to the state shall be reported by him in his semiannual settlement sheets to the state comptroller as unavailable, whereupon the comptroller shall credit the county with the amount so reported, but nothing in this or section 445.20 shall be construed to in any way release the county treasurer from any duty required of him in the collection of delinquent taxes, nor to release the taxpayer from his liability for the same. [SS15,§1391; C24, 27, 31, 35, 39,§**7195**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.21]

445.22 Subsequent collection. Should any of such tax afterward be collected, the county treasurer shall distribute the net amount collected among the several funds the same as though it had never been declared unavailable, and the portion belonging to the state shall be credited back to the state and included in the treasurer's remittance of other state taxes to the treasurer of state and shall be reported by the county auditor in his semiannual settlement sheets to the state comptroller, who shall recharge the same to the county. [SS15,§1391; C24, 27, 31, 35, 39,§**7196**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.22]

445.23 Certificate of taxes due. The county treasurer, when requested to do so by anyone having an interest therein, shall certify in writing the entire amount of taxes and assessments due upon any parcel of real estate, together with all sales of the same for unpaid taxes or assessments shown by the books or records in his office, with the amount required for redemption from the same, if still redeemable, if he is paid or tendered his fees for such certificate at the rate of one dollar for the first parcel in each township or city, and twenty cents for each subsequent parcel in the same township or city, and in computing such fees each description in the tax list shall be

reckoned a parcel. [C73,§848; C97,§1393; C24, 27, 31, 35, 39,§7197; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.23]

445.24 Effect of certificate and receipt. Such certificate, with the treasurer's receipt showing the payment of all the taxes therein specified, and the auditor's certificate of redemption from the tax sales therein mentioned, shall be conclusive evidence for all purposes, and against all persons, that the parcel of real estate in said certificate and receipt described was, at the date thereof, free and clear of all taxes and assessments, and sales for taxes or assessments, except sales whereon the time of redemption had already expired and the tax purchaser had received his deed. [C73,§849; C97,§1394; C24, 27, 31, 35, 39,§7198; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.24]

445.25 Treasurer liable. For any loss resulting to the county, or any subdivision thereof, or to any tax purchaser, or taxpayer, from an error in said certificate or receipt, the treasurer and his sureties shall be liable on his official bond. [C73,§850; C97,§1395; C24, 27, 31, 35, 39, §7199; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.25]

445.26 Information as to taxes due. The treasurer, when applied to by letter and receiving sixty cents in postage stamps or money, and twenty cents additional for each tract of one hundred sixty acres in excess of three hundred twenty acres, in no case to exceed one dollar, shall correctly answer the same by mail, giving the amount and interest of unpaid taxes and of any tax sales thereof as the same appear upon the tax list in his office, and upon the return of the letter or a copy, before the last day of the current month, with the demand due as shown therein, he shall pay the taxes and forward to the sender a tax receipt without further charge. [C73, §3794; C97,§1396; C24, 27, 31, 35, 39,§7200; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.26]

Referred to in §445.27

445.27 Penalty. Any treasurer who shall neglect for twenty days after the receipt of any such letter, with money or stamps enclosed as aforesaid, to answer the same fully as required in section 445.26, or who shall directly or indirectly receive or be concerned in receiving any greater compensation for the service mentioned than as above provided, shall forfeit to the person aggrieved, for each offense, the sum of fifty dollars, which may be recovered in a civil action. [C73,§3795; C97,§1397; C24, 27, 31, 35, 39,§7201; C46, 50, 54, 58, 62, 66, 71, 73, 75, 445.27]

445.28 Lien of taxes on real estate. Taxes upon real estate shall be a lien thereon against all persons except the state. [C51,§495; R60, §759; C73,§§853, 865; C97,§1400; S13,§1400; C24, 27, 31, 35, 39,§7202; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.28]

S13,§1400, editorially divided

445.29 Lien of personal taxes. All taxes due from any person upon personal property shall, for a period of one year following June 30 of the year of levy, be a lien upon any and all real estate owned by such person or to which he may acquire title and situated in the county in which the tax is levied. From and after the expiration of said one year said taxes shall be a lien on all such real estate for an additional period of nine years provided said taxes are entered upon the delinquent personal tax list as provided by law. But in no instance shall said taxes be a lien after the expiration of ten years from June 30 of the year in which levied. This section shall apply to all taxes on personal property whether levied prior or subsequent to the time this section takes effect. Personal property taxes, together with any interest, penalty, or costs, shall be a lien in favor of the county upon all the taxable personal property and rights to property belonging to the taxpayer, such lien to relate back to and exist from January 1 of the year in which such personal property is assessed. Such a lien shall not be effective or applicable, however, as against the rights of purchasers or mortgagees who acquired an interest in or lien against real estate owned by the resident against whom such tax is assessed before the date that the treasurer files notice of such lien. [C73, §853; C97,§1400; S13,§1400; C24, 27, 31, 35, 39, §7203; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.29]

445.30 Lien between vendor and purchaser. As against a purchaser, such liens shall attach to real estate on and after June 30 in each year. [C97,§1400; S13,§1400; C24, 27, 31, 35, 39, §7204; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.30]

445.31 Lien follows certain personal property. Taxes upon stocks of goods or merchandise, fixtures and furniture in hotels, restaurants, rooming houses, billiard halls, moving picture shows and theaters, shall be a lien thereon and shall continue a lien thereon when sold in bulk, and may be collected from the owner, purchaser, or vendee, and such owner, purchaser, or vendee of any of such goods, merchandise, furniture, or fixtures shall be personally liable for all taxes thereon. [C24, 27, 31, 35, 39,§7205; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.31]

445.32 Liens on buildings. In all cases where buildings are erected by any person other than the owner of the land on which the building is located, as provided for in section 428.4, the taxes on the building shall be and remain a lien on the building from the date of levy until paid. If the property taxes on such a building become delinquent for a tax year the county treasurer shall offer the building at public sale in accordance with section 446.7. [S13,§1400; C24, 27, 31, 35, 39, §7206; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.32]

445.33 Payment — what receivable. The treasurer is authorized and required to receive in payment of all taxes by him collected, to-

gether with the interest and principal of the school fund, the circulating notes of national banking associations organized under and in accordance with the conditions of the Act of the Congress of the United States, entitled, "An Act to provide a national currency secured by the pledge of the United States stocks, and to provide for the redemption thereof", approved February 25, 1863 [12 Stat. L. 665], and acts amendatory thereto [12 U. S. C. §1 et seq.], United States legal tender notes, and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency. [C73,§855; C97,§1402; C24, 27, 31, 35, 39,§**7207**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.33]

445.34 Certain warrants receivable. State comptroller's warrants shall be received by the county treasurer in full payment of state taxes, and county warrants shall be received by the treasurer of the proper county for ordinary county taxes, but money only shall be received for the school tax. [C51,§489; R60, §§754, 2057, 2059; C73,§§854, 1779; C97,§1401; C24, 27, 31, 35, 39,§**7208**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.34]

445.35 Warrants not receivable. Warrants issued by any city shall not be received by the county treasurer in payment of the city taxes. [C97,§900; C24, 27, 31, 35, 39,§**7209**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.35]

445.36 Payment—installments.

1. For fiscal years after July 1, 1975, the property taxes which become delinquent during the fiscal year shall be for the previous fiscal year.

2. No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation to attend at the office of the treasurer, at some time between the first Monday in August and September 1 following, and pay his or her taxes in full, or one-half thereof before September 1 succeeding the levy, and the remaining half before March 1 following. [C51,§492; R60,§756; C73,§857; C97,§1403; C24, 27, 31, 35, 39,§**7210**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.36; 66GA, ch 1198,§5]

C97,§1403, editorially divided
Amendment retroactive to July 1, 1975; 66GA, ch 1198,§6

445.37 When delinquent. In all cases where the half of any taxes has not been paid before October 1 succeeding the levy, the amount thereof shall become delinquent from October 1 after due; and in case the second installment is not paid before April 1 succeeding its maturity, it shall become delinquent from April 1 after due. [C97,§1403; C24, 27, 31, 35, 39,§**7211**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.37; 66GA, ch 1198,§1, ch 1199,§14]

The three installments of property taxes which became delinquent on April 1, 1974, October 1, 1974, and April 1, 1975, pursuant to the provisions of chapter 445, were the property taxes for the period beginning January 1, 1973 and ending June 30, 1974.

The two installments of property taxes which became delinquent on October 1, 1975, and April 1, 1976, were the property taxes for the fiscal year beginning July 1, 1974 and ending June 30, 1975. (66GA, ch 1198,§1)
Retroactive to January 1, 1973; 66GA, ch 1198,§6

Notwithstanding the provisions of section 445.37, if one-half of the property taxes due have not been paid for October 1, 1976 or thirty days from the date of the certification of the tax list to the county treasurer, whichever date occurs later, the amount due shall become delinquent and subject to the penalties provided in section 445.39 and 445.40. The provisions of this section shall only be applicable to property taxes levied in 1976 and payable during the fiscal year beginning July 1, 1976 and ending June 30, 1977. (66GA, ch 1199,§14)

445.38 Apportionment. In all cases where taxes are paid by installment, each of such payments shall be apportioned among the several funds for which taxes have been assessed in their proper proportions. [C97, §1403; C24, 27, 31, 35, 39,§**7212**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.38]

445.39 Interest as penalty. If the first installment of taxes shall not be paid by October* 1, said installment shall become due and draw interest, as a penalty, of one percent per month until paid, from October* 1 following the levy; and if the last half shall not be paid by April* 1 following such levy, then a like interest shall be charged from the date such last half became delinquent. [C51,§§495, 497; R60,§§759, 760; C73,§865; C97,§1413; C24, 27, 31, 35, 39,§**7214**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §445.39]

*Rule of construction, 65GA, ch 1234,§3

445.40 Penalty on personal taxes. On all personal taxes not paid on or before the first Monday in June* a penalty of five percent shall be added and collected in addition to the one percent per month penalty herein provided; and the tax with all penalties shall be collected at the same time and in the same manner. [C73,§866; C97,§1413; C24, 27, 31, 35, 39,§**7215**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.40]

*Rule of construction, 65GA, ch 1234,§3

445.41 When interest penalty omitted. No interest as a penalty shall be added to taxes levied by any court to pay a judgment on county, city or school district indebtedness, other than the interest which such judgment may draw, nor upon taxes levied in aid of the construction of any railroad. [C73,§866; C97, §1413; C24, 27, 31, 35, 39,§**7216**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.41]

445.42 Assessment of migratory property of nonresident. All personal property, the owner of which is a nonresident of the state, and which property is by the owner thereof intended for sale or consumption at a place, or shipment to a place other than where said property is located, shall be assessed in the owner's name, if the owner is known, and if the owner is unknown or uncertain the same shall be assessed to "unknown owner", and shall be by the assessor sufficiently described so that said property may be identified. [C97, §1404; C24, 27, 31, 35, 39,§**7217**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.42]

C97,§1404, editorially divided

445.43 Lien on migratory personal property —maturity of tax. A lien for the tax upon said property as herein provided shall relate back to and exist from January 1 of the year for

which it is assessed, and if anyone seeks to remove the said property from the county before the tax for said year shall be paid, the tax shall immediately become due and collectible. [C97,§1404; C24, 27, 31, 35, 39,§**7218**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.43]

445.44 Enforcement of lien. It shall be the duty of the assessor to notify the county auditor if said property is being, or is about to be, removed from the county. In such event, or if the knowledge of the removal of or intent to remove said property shall come to him in any other authentic manner, the said auditor shall certify such fact to the county treasurer, with a full description of the property as the same appears on the assessor's books, giving assessment district, where located, and the amount of said assessment, and the county treasurer shall thereupon proceed by distress to restrain the removal of said property and secure the lien of the tax due or to become due. [C97, §1404; C24, 27, 31, 35, 39,§**7219**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.44]

445.45 Release of lien by bond. If at the time of such distress the levy for the year is unknown, the auditor is authorized to release the lien of such tax upon a good and sufficient bond, with sureties resident in the county, being filed with said auditor, to be by him approved, which bond shall obligate all parties thereto to pay all taxes due on said property when same are payable. Upon the filing and approving of such bond, the auditor shall make a certificate releasing the said personalty from the lien of such tax. [C97,§1404; C24, 27, 31, 35, 39,§**7220**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.45]

445.46 Payment — effect. The payment of said tax shall be a bar against the collection of taxes for same year on said property in any other county in this state. [C97,§1404; C24, 27, 31, 35, 39,§**7221**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.46]

445.47 Collectors — appointment. Immediately after the taxes become delinquent, each county treasurer shall proceed to collect the same by distress and sale of the personal property of the delinquent taxpayers, and for this purpose he may appoint one or more collectors to assist him in collecting the same. [C73,§859; C97,§1407; S13,§1407; C24, 27, 31, 35, 39,§**7222**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.47]

S13,§1407, editorially divided

Referred to in §420.246

445.48 Compensation and accounting. Each collector appointed shall receive for his services and expenses the sum of five percent on the amount of all taxes collected and paid over by him, which percentage he shall collect from the delinquent, together with the whole amount of delinquent taxes and interest; and pay the same to the treasurer at the end of each month. [C73,§859; C97,§1407; S13,§1407; C24, 27, 31, 35, 39,§**7223**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.48]

Referred to in §420.246

445.49 Sheriff as collector. In the discharge of his duties as collector, should it become necessary to make the delinquent taxes by distress and sale, or should no collector be appointed, or should the collector fail to institute proceedings to collect said delinquent taxes, the treasurer shall place the same in the hands of the sheriff who shall proceed to collect the same. [C73,§859; C97,§1407; S13, §1407; C24, 27, 31, 35, 39,§**7224**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.49]

Referred to in §420.246

445.50 Personal property tax collectors. The boards of supervisors may in their discretion authorize the appointment by the treasurer of one or more collectors to assist in the collection of such delinquent personal tax as the board may designate, and may pay such collector as full compensation for all services rendered and expenses incurred a sum not to exceed ten percent of the amount collected, which sum shall in no event be paid or allowed until all such taxes collected have been paid over to the county treasurer by such collector. [C73,§859; C97,§1407; S13,§1407; C24, 27, 31, 35, 39,§**7225**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.50]

Referred to in §420.246

445.51 Current taxes—when delivered for collection. In no case shall delinquent taxes of the current fiscal year be turned over for collection, whether designated by the board or otherwise, before May 1. The provisions of this section shall not apply to counties having a population of eighty thousand or more. [C24, 27, 31, 35, 39,§**7226**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.51]

Referred to in §420.246

445.52 Interest and penalties — apportionment—compensation of collectors. The interest and penalty on delinquent taxes collected shall be apportioned to and become a part of the general fund of the county, and the amount allowed as compensation to delinquent tax collectors shall be paid from said fund. [S13,§1407-1a; C24, 27, 31, 35, 39,§**7227**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.52]

445.53 Taxes certified to another county. In all cases of delinquent taxes in any county, where the person upon whose property the same were levied shall have disposed of or removed the said property and the treasurer of the county where the taxes were levied can find no property within said county out of which said taxes can be made, the treasurer of the county where said taxes are delinquent shall make out a certified abstract thereof and forward the same to the treasurer of the county in which the delinquent resides or has property, when the treasurer transmitting the said abstract has reason to believe that said taxes can be collected thereby. [C73,§861; C97,§1409; SS15,§1409; C24, 27, 31, 35, 39,§**7228**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.53]

445.54 Collection in such case. The treasurer forwarding and the one receiving said abstract shall each keep a record thereof, and, upon receipt and filing in the office of the treasurer to whom sent, it shall have the effect of a levy of taxes in that county, and the collection of the same shall be proceeded with in the same manner as in the collection of other taxes. [C73,§862; C97,§1410; C24, 27, 31, 35, 39, §7229; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.54]

445.55 Penalties collectible. The officer collecting taxes so certified into another county shall, in addition to the penalties on delinquent taxes, assess and collect the further penalty of twenty percent on the whole amount of such taxes, inclusive of the penalties thereon. [C73, §863; C97,§1411; C24, 27, 31, 35, 39,§7230; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.55]

Referred to in §445.56

445.56 Return. The officer receiving said abstract shall, when in his opinion the taxes are uncollectible, return the same with the endorsement thereon "uncollectible", and, if collected, he shall remit the amount to the treasurer of the county where said taxes were levied, less the penalty provided by section 445.55. [C73,§864; C97,§1412; C24, 27, 31, 35, 39, §7231; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.56]

445.57 Monthly apportionment. On or before the tenth day of each month, the treasurer shall apportion all taxes collected during the preceding month among the several funds to which they belong according to the amount levied for each fund, and the interest and penalties thereon to the general fund, and shall enter the same upon his cash account, and report the amount of each tax and the interest and penalties collected on the same to the county auditor, who shall charge him in each fund with the same. [C73,§868; C97, §1415; S13,§1415; C24, 27, 31, 35, 39,§7232; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.57]

445.58 Misapplied interest or penalty. Any interest or penalty on delinquent taxes apportioned or transferred to any fund other than the general fund, together with a penalty of ten percent and interest at six percent on the aggregate, from the time such tax is due and payable, may be recovered in a civil action brought against the county treasurer and his bondsmen by any person in control of the fund affected thereby. [S13,§1415; C24, 27, 31, 35, 39, §7233; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.58]

445.59 Record of separate funds. The auditor shall keep a complete account with the treasurer, with each separate fund or tax by itself, and in each account he shall charge him with the amounts in his hands at the opening of such account whether it be delinquent taxes, notes, cash, or other assets belonging to such fund, the amount of each tax for each year when the tax list is received by him, and all additions to each tax or fund whether by additional assessments, interest on delinquent taxes, amount received for licenses, or other items, and upon proper vouchers shall credit him for money disbursed for double and erroneous assessments, including all improper and illegal assessments the correction or remission of which causes a diminution of the tax, and for unavailable or uncollectible taxes, as directed by the board of supervisors. [R60, §761; C73,§869; C97,§1416; C24, 27, 31, 35, 39, §7234; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.59]

445.60 Refunding erroneous tax. The board of supervisors shall direct the treasurer to refund to the taxpayer any tax or portion thereof found to have been erroneously or illegally exacted or paid, with all interest and costs actually paid thereon. [R60,§762; C73,§870; C97, §1417; C24, 27, 31, 35, 39,§7235; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.60]

C97,§1417, editorially divided

445.61 Sale for erroneous tax. In case any real estate subject to taxation shall be sold for the payment of such erroneous tax, interest or costs, the error or irregularity in the tax may be corrected at any time provided in this chapter, but such correction shall not affect the validity of the sale or the right or title conveyed by a treasurer's deed, if the property was subject to taxation for any of the purposes for which any portion of the taxes for which the land was sold was levied, and the taxes were not paid before the sale, or the property redeemed from sale. [R60,§762; C73, §870; C97,§1417; C24, 27, 31, 35, 39,§7236; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.61]

445.62 Remission in case of loss. The board of supervisors shall have power to remit in whole or in part the taxes of any person whose buildings, crops, stock, or other property has been destroyed by fire, tornado, or other unavoidable casualty, if said property has not been sold for taxes, or if said taxes have not been delinquent for thirty days at the time of the destruction. The loss for which such remission is allowed shall be such only as is not covered by insurance. The loss of capital stock in a bank operated within the state and the making and paying of a stock assessment for the year such stock was assessed for taxation shall be a destruction within the meaning of this section. [R60,§818; C73,§800; C97,§1307; C24, 27, 31, 35, 39,§7237; C46, 50, 54, 58, 62, 66, 71, 73, 75,§445.62]

CHAPTER 446

TAX SALE

Referred to in §§111.25, 306.22, 384.2, 419.11, 424.7, 447.1

446.1 Sale shown.
446.2 Notice of previous sale.
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446.5 Time of sale—adjournment.
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446.8 Dual county seats.
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446.16 Bid—purchaser.
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446.30 Loss of certificate.
446.31 Assignment — presumption from deed recitals.
446.32 Payment of subsequent taxes by purchaser.
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446.35 Assessment to wrong person.
446.36 Certified copies of records as evidence.
446.37 Failure to obtain deed—cancellation of sale.
446.38 Suspended taxes of old-age assistance recipients.
446.39 Iowa housing finance authority statement.

446.1 Sale shown. The auditor, when making up the tax list, before it is placed in the hands of the county treasurer, shall designate each piece or parcel of real estate sold for taxes, and not redeemed, by writing opposite the same the year in which it was sold in a column made for that purpose and headed "sold in". [C73,§842; C97,§1386; C24, 27, 31, 35, 39,§**7238**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.1]

446.2 Notice of previous sale. Each county treasurer, when any person offers to pay taxes on any real estate marked "sold", shall notify him of such fact and inform him for what taxes and when the sale was made. [C73,§847; C97,§1392; C24, 27, 31, 35, 39,§**7239**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.2]

446.3 Sale of personal property. If anyone neglects to pay his taxes at or before maturity, the treasurer may collect the same by distress and sale of his personal property not exempt from taxation, and the tax list alone shall be sufficient warrant therefor. When the treasurer distrains goods, and the owner refuses to give a sufficient bond for the delivery of the same on the day of sale, he may keep them at the expense of the owner. [C51,§§492, 493; R60, §§756, 757; C73,§§857, 858; C97,§1406; C24, 27, 31, 35, 39,§**7240**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §446.3]

Referred to in §420.246
C97,§1406, editorially divided

446.4 Notice of time and place of sale. The treasurer shall give notice of the time and place of their sale within five days after the taking, in the manner constables are required to give notice of the sale of personal property under execution. [C51,§493; R60,§757; C73,§858; C97,§1406; C24, 27, 31, 35, 39,§**7241**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.4]

Referred to in §420.246

446.5 Time of sale—adjournment. The time of sale shall not be more than twenty days from the day of taking, but he may adjourn the sale from time to time, not exceeding five days in all, and shall adjourn at least once when there are no bidders, and, in case of adjournment, he shall post up a notice thereof at the place of sale, announcing the time to which the adjournment is ordered. [C51,§493; R60,§757; C73,§858; C97,§1406; C24, 27, 31, 35, 39, §**7242**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.5]

Referred to in §420.246

446.6 Surplus. Any surplus remaining above the taxes, charges of keeping, and fees for sale, shall be returned to the owner, and the treasurer shall, on demand, render an account in writing of the sale and charges. [C51,§493; R60,§757; C73,§858; C97,§1406; C24, 27, 31, 35, 39,§**7243**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.6]

Referred to in §420.246

446.7 Annual tax sale. Annually, on the third Monday in June the treasurer shall offer at his office at public sale all lands, city lots, or other real property on which taxes of any description for the preceding fiscal year or years are delinquent, which sale shall be made for the total amount of taxes, interest, and

costs due and unpaid thereon, including all prior suspended taxes, provided, however, that no property, against which the county holds a tax sale certificate, shall be offered or sold. No interest or penalty on suspended taxes shall be included in the sale price, except that six percent interest per annum from the date of suspension shall be included as to taxes suspended under the provisions of section 427.8.

Property of municipal and political subdivisions of the state of Iowa and property held by a city or county agency or the Iowa housing finance authority for use in an Iowa homesteading project, shall not be offered or sold at tax sale and any purported tax sale thereof shall be void from its inception. Whenever delinquent taxes are owing against property owned or claimed by any municipal or political subdivision of the state of Iowa, or property held by a city or county agency or the Iowa housing finance authority for use in an Iowa homesteading project, the treasurer shall give notice to the governing body thereof which shall then pay the amount of the due and delinquent taxes from its general fund. In the event such governing body fails to make payment upon such notice, the collection and enforcement of the taxes, penalty, interest, and costs shall be suspended for so long as the property shall remain in public ownership, and for so long as the property is the subject of a conditional conveyance under an Iowa homesteading project, but the same may be collected and enforced against the property in the event of its subsequent sale by such municipal or political subdivision, agency or authority, to a private purchaser. However, such taxes, penalty, interest and costs shall be canceled if the property is the subject of an absolute conveyance of the fee to a holder of the conditional conveyance granted under an Iowa homesteading project. No penalty, interest or costs shall be added during such period of public ownership or while the property is the subject of a conditional conveyance under an Iowa homesteading project. [C51,§496; R60, §763; C73,§871; C97,§1418; C24, 27, 31, 35, 39, §7244; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.7; 66GA, ch 138,§41]

Referred to in §445.32
C97,§1418, editorially divided

446.8 Dual county seats. In counties having two county seats and divided into two districts for the collection of taxes, such sale may be made by the deputy treasurer and the deputy auditor at the county seat where the taxes for the district are collected, and the records thereof shall be kept thereat. Such deputy treasurer and the deputy auditor shall have all the powers conferred by law upon the treasurer and auditor in relation to the collection of the revenue, sales for delinquent taxes, redemption therefrom, the execution of tax deeds thereunder, and every other matter connected therewith. [C97,§1418; C24, 27, 31, 35, 39,§7245; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.8]

446.9 Notice of sale—service. Notice of the time and place of such sale shall be given by the treasurer, and shall contain a description of each separate tract to be sold as taken from the tax list, the amount of taxes for which it is liable delinquent for each year, and the amount of penalty, interest, and costs thereon, the name of the owner, if known, or the person, if any, to whom it is taxed, by publication in some newspaper in the county, once each week, for two consecutive weeks, the last of which shall be not more than two weeks before the day of sale, and by immediately posting a copy of the first publication thereof at the door of the courthouse, if there be one, if not, at the door of the place where the last term of district court was held. A description of each separate tract to be sold, as herein provided, shall be construed to permit but one description of each separate tract of real estate so to be sold, whether all of the delinquent tax, both regular and special, then existing against the same for the year in which the tax sale is held, and all property which has theretofore been advertised and remains unsold and against which there remains delinquent taxes, shall be indicated by an asterisk preceding the same. [C51,§498; R60,§764; C73,§§872–874, 3833; C97,§1419; S13,§1419; C24, 27, 31, 35, 39, §7246; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.9]

S13,§1419, editorially divided

446.10 Costs. The compensation for such publication shall not exceed seventy-five cents for each description, and shall be paid by the county. Headings and other matter shall be compensated for as provided in section 618.11. The amount paid therefor shall be collected as a part of the costs of sale and paid into the county treasury. [C51,§498; R60,§764; C73, §§873, 3833; C97,§1419; S13,§1419; C24, 27, 31, 35, 39,§7247; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.10]

Referred to in §445.8(2)

446.11 Substituted service. If the treasurer cannot procure the publication of the notice for the sum herein fixed, then the notice may be given by posting the same in four of the most public places in the county, to be selected by him, for four weeks, and filing a copy thereof with the auditor before the day of sale, with his verified statement thereon that it had been posted as and for the time herein required, and that he could not obtain a publication thereof at the legal rate. [C51,§498; R60,§764; C73,§§873, 3833; C97,§1419; S13,§1419; C24, 27, 31, 35, 39, §7248; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.11]

Referred to in §445.8(2)

446.12 Certificate of publication. The treasurer shall obtain a copy of the notice of sale, with a certificate of the publication thereof, from the printer or publisher, and file it in the office of the auditor, which certificate shall be substantially in the following form:

I, A.....B....., publisher (or printer) of the ....., a newspaper printed and published in the county of ..... and state of Iowa, do hereby certify that the fore-

going notice and list were published in said newspaper once in each week for two consecutive weeks, the last of which publications was made on the ..... day of ....., A. D. ....., and that copies of each number of said paper in which said notice and list were published were delivered by carrier or transmitted by mail to each of the subscribers to said paper, according to the accustomed mode of business in this office.

A..... B.....

State of Iowa, } ss.
..... County. }

The above certificate of publication was subscribed and sworn to before me by the above named A..... B....., who is personally known to me to be the identical person described therein, on the ..... day of ....., A.D. .....

.....
Auditor ..... County, Iowa.

[C51,§500; R60,§771; C73,§881; C97,§1420; C24, 27, 31, 35, 39,§**7249**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.12]

446.13 Method of describing lands, etc. In all entries required to be made by the auditor, treasurer, or other officer, letters and figures may be used to denote townships, ranges, sections, parts of sections, lots, blocks, date, and the amount of taxes, interest, and costs. [R60, §770; C73,§880; C97,§1421; C24, 27, 31, 35, 39, §**7250**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.13]

C97,§1421, editorially divided

446.14 Irregularities in advertisement. No irregularity or informality in the advertisement shall affect the legality of the sale or the title to any real estate conveyed by the treasurer's deed under this and chapters 447 and 448, and in all cases its provisions shall be sufficient notice to the owners of the sale thereof. [R60,§770; C73,§880; C97,§1421; C24, 27, 31, 35, 39,§**7251**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §446.14]

446.15 Offer for sale. The treasurer shall, on the day of the sale, at ten o'clock in the forenoon, at his office, offer for sale, separately, each tract or parcel of real estate advertised for sale on which the taxes and costs shall not have been paid. [C51,§499; R60,§765; C73,§875; C97,§1422; C24, 27, 31, 35, 39,§**7252**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.15]

446.16 Bid—purchaser. The person who offers to pay the amount of taxes which are a lien on any parcel of land or city lot for the smallest portion thereof shall be the purchaser, and when such purchaser shall designate the portion of any tract of land or city lot for which he will pay the whole amount of taxes for which it may be sold, the portion thus designated shall be an undivided portion. [C51, §501; R60,§766; C73,§876; C97,§1423; C24, 27, 31, 35, 39,§**7253**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §446.16]

Referred to in §420.246

446.17 Sale continued. The treasurer shall continue the sale from day to day as long as there are bidders, or until the taxes are all paid. [C51,§499; R60,§767; C73,§877; C97,§1424; C24, 27, 31, 35, 39,§**7254**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.17]

446.18 "Scavenger sale" — notice. Each treasurer shall, on the day of the regular tax sale each year or any adjournment thereof, offer and sell at public sale, to the highest bidder, all real estate which remains liable to sale for delinquent taxes, and shall have previously been advertised and offered for two years or more and remained unsold for want of bidders, general notice of such sale being given at the same time and in the same manner as that given of the regular sale. [C97, §1425; C24, 27, 31, 35, 39,§**7255**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.18]

Referred to in §§446.19, 446.38, 447.9
C97,§1425, editorially divided

446.19 County as purchaser. When property is offered at a tax sale under the provisions of section 446.18, and no bid is received, or if the bid received is less than the total amount of the delinquent general taxes, interest, penalties and costs, the county in which said real estate is located, through its board of supervisors, shall bid for the said real estate a sum equal to the total amount of all delinquent general taxes, interest, penalties and costs charged against said real estate. No money shall be paid by the county or other tax-levying and tax-certifying body for said purchase, but each of the tax-levying and tax-certifying bodies having any interest in said general taxes for which said real estate is sold shall be charged with the full amount of all the said delinquent general taxes due said levying and tax-certifying bodies, as its just share of the purchase price. [C27, 31, 35,§7255-b1; C39,§**7255.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.19]

Referred to in §446.21
Management and disposal, ch 569

446.20 Repealed by 54GA, ch 165,§61.

446.21 Applicable statute. In all tax sales made under the provisions of section 446.19, any holder of any special assessment certificate against a lot or parcel of ground, or any holder of a bond payable in whole or in part out of a special assessment against any lot or parcel of ground, or any city within which such lot or parcel of ground is situated, which lot or parcel of ground has been sold for taxes, either general or special, shall be entitled to an assignment of any certificate of tax sale of said property for any general taxes or special taxes thereon, upon tender to the holder or to the county auditor of the amount to which the holder of the tax sale certificate would be entitled in case of redemption. [C97,§816; S13,§§792-f, 816; C24, 27, 31,§6041; C35,§§6041, 7255-g2; C39,§§**6041, 7255.3**; C46, 50, 54, 58, 62, 66, 71, 73,§§391.68, 446.21; C75,§446.21]

446.22 Unavailable tax—credit given. Any taxes on such real estate, in excess of the amount for which the same was sold, shall be credited to the treasurer by the auditor as unavailable, and he shall apportion such excess among the funds to which it belongs, and if any of such excess belongs to the state, it shall be reported by him to the state comptroller as unavailable, who shall give the county credit therefor. [C97,§1425; C24, 27, 31, 35, 39,§**7256**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §446.22]

446.23 Resale. The person purchasing any parcel or part thereof shall forthwith pay to the treasurer the amount bid, and on failure to do so the same shall at once be again offered as if no such sale had been made. Such payments may be made in the funds receivable in payment of taxes. [C51,§502; R60,§768; C73, §878; C97,§1426; C24, 27, 31, 35, 39,§**7257**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.23]

446.24 Record of sales. The auditor shall attend all sales of real estate for taxes, and keep a record thereof in a book to be kept by him for that purpose, therein describing each tract of real estate on which the taxes and costs were paid by the purchaser as they are described in the copy of the notice on file in his office, stating in separate columns the amount, as obtained from the treasurer's tax list, of each kind of tax, interest, and costs for each tract, how much and what part of each parcel was sold, to whom, and date thereof. The treasurer shall also keep a book of sales in which he shall make the same record. He shall also note in the tax list, opposite the description of the property sold, the fact and date thereof. [R60,§772; C73,§882; C97,§1427; C24, 27, 31, 35, 39,§**7258**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.24]

446.25 Sale adjourned. When all the real estate advertised for sale has been offered, and a part remains unsold for want of bidders, the treasurer shall adjourn the sale to some day not exceeding two months from adjournment, due notice of which day shall be given at the time thereof, and by keeping such notice posted in a conspicuous place in his office, and no further notice shall be necessary. On the day fixed by the adjournment, the same proceedings shall be had as in the first instance. Further adjournment shall be made from time to time, not exceeding two months, and the sales thus continued until the next regular annual sale, or until all the taxes are paid. [R60,§773; C73,§883; C97,§1428; C24, 27, 31, 35, 39,§**7259**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.25]

Referred to in §§420.219, 445.10; see also §§448.13, 589.16

446.26 Misconduct of officers. Any treasurer or auditor failing to attend a sale of lands in person or by deputy shall forfeit and pay the sum of one hundred dollars, to be recovered in an action in the name of the county and for its use. If such officer or deputy shall sell or assist in selling any real estate, knowing it is not subject to taxation, or that the taxes for which it is sold have been paid, or shall knowingly and willfully sell or assist in selling any real estate for taxes to defraud the owner thereof, or shall knowingly and willfully execute a deed for property so sold, he shall, upon conviction, be fined in a sum of not less than one thousand nor more than three thousand dollars, or imprisoned in the county jail not exceeding one year, or both fined and imprisoned, and shall be liable to pay the injured party all damages sustained by him on account thereof, and all such sales shall be void. [R60, §774; C73,§884; C97,§1429; C24, 27, 31, 35, 39, §**7260**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.26]

446.27 Fraud of officers. If any treasurer or auditor shall be directly or indirectly concerned in the purchase of any real estate sold for the nonpayment of taxes, he and his sureties shall be liable on his official bond for all damages sustained by the owner of such property, and all such sales shall be void. In addition thereto, the officer so offending shall, upon conviction, be fined in a sum of not more than one thousand dollars. [R60,§775; C73,§885; C97,§1430; C24, 27, 31, 35, 39,§**7261**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.27]

446.28 Subsequent sale. If, from neglect of officers to make returns, or other good cause, real estate cannot be advertised and offered for sale on the third Monday of June, the treasurer shall make the sale on the first Monday of the next succeeding month in which the required notice can be given. [R60,§776; C73, §886; C97,§1431; C24, 27, 31, 35, 39,§**7262**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.28]

Referred to in §445.10; see also §§448.13, 589.16

446.29 Certificate of purchase. The treasurer shall prepare, sign, and deliver to the purchaser of any real estate sold for the nonpayment of taxes a certificate of purchase, describing it as shown in the record of sales, giving the part of each tract or lot sold, the amount of each kind of tax, interest, and costs for each tract or lot as described in such record, and that payment has been made therefor. Not more than one such parcel or description shall be entered upon each certificate of purchase. The treasurer shall receive one dollar for each certificate of purchase. [C51,§503; R60,§777; C73,§887; C97,§1432; S13,§1432; C24, 27, 31, 35, 39,§**7263**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.29]

S13,§1432, editorially divided
Recovery for waste, §658.9

446.30 Loss of certificate. In case of loss of said certificate of purchase, the owner thereof, as appears on record, may, by filing an affidavit of such loss or destruction with the county treasurer, receive a duplicate thereof, which shall take the place of the original certificate and have the same force and effect in law and be subject to the same rules. [S13, §1432; C24, 27, 31, 35, 39,§**7264**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.30]

446.31 Assignment—presumption from deed recitals. The certificate of purchase shall be assignable by endorsement and entry in the register of tax sales in the office of county treasurer of the county from which said certificate issued, and when such assignment is so entered, it shall vest in the assignee or his legal representatives all the right and title of the assignor. The statement in the treasurer's deed of the fact of the assignment shall be presumptive evidence thereof. When the county acquires a certificate of purchase and has the same in its possession for one year, or more, the board of supervisors may compromise and assign the said certificate of purchase, with the written approval of all tax-levying and tax-certifying bodies having any interest in said general taxes. All money received from assignment of said certificates shall be apportioned to the tax-levying and certifying bodies in proportion to their interests in the taxes for which said real estate was sold. [R60,§778; C73,§888; C97,§1433; S13, §1433; C24, 27, 31, 35, 39,§**7265**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.31]

446.32 Payment of subsequent taxes by purchaser. The treasurer shall also prepare, sign, and deliver to the purchaser of any real estate sold for taxes duplicate receipts for taxes, interest, and costs paid by him after the date of his purchase for any subsequent year or years, one of which receipts shall be filed in the office of the auditor and noted on the register of sales therein. [C73,§889; C97,§1434; C24, 27, 31, 35, 39,§**7266**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §446.32]

Referred to in §420.246
C97,§1434, editorially divided

446.33 Failure to file duplicate receipt. If such duplicate receipt is not so filed before redemption, such tax shall not be a lien upon the land, and the person paying the tax shall not be entitled to recover it of the owner of the real estate. [C73,§889; C97,§1434; C24, 27, 31, 35, 39,§**7267**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.33]

Referred to in §420.246

446.34 School, agricultural college, or university land. When any school, agricultural college, or university land sold on credit is sold for taxes, the purchaser shall acquire only the interest of the original purchaser therein, and no sale of any such lands for taxes shall prejudice the rights of the state, agricultural college, or university. In all cases where the real estate is mortgaged or otherwise encumbered to the school, agricultural college, or university fund, the interest of the person who holds the fee shall alone be sold for taxes, and in no case shall the lien or interest of the state be affected by any sale thereof. The foregoing provision shall include all lands exempt from taxation by law, and any legal or equitable estate therein held, possessed, or claimed for any public purpose, and no assessment or taxation of such lands, nor the payment of any such tax by any person, or the sale and conveyance for taxes of any such lands, shall in any manner affect the right or title of the public therein, or confer upon the purchaser or person who pays such taxes any right or interest in such land. [R60,§§810, 811; C73,§900; C97,§1435; C24, 27, 31, 35, 39,§**7268**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.34]

446.35 Assessment to wrong person. No sale of real estate for taxes shall be invalid on account of its having been taxed in any other name than that of the rightful owner, if it is in other respects sufficiently described. [R60, §787; C73,§904; C97,§1450; C24, 27, 31, 35, 39, §**7269**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.35]

Referred to in §420.245

446.36 Certified copies of records as evidence. The books and records belonging to the offices of the auditor and treasurer, or copies thereof properly certified, shall be sufficient evidence to prove the sale of any real estate for taxes, the redemption thereof, or the payment of taxes thereon. [R60,§788; C73, §905; C97,§1451; C24, 27, 31, 35, 39,§**7270**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.36]

Referred to in §420.245
Similar provision, §622.43

446.37 Failure to obtain deed—cancellation of sale. After five years have elapsed from the time of any tax sale, and action has not been completed during such time which qualifies the holder of a certificate to obtain a deed, it shall be the duty of the county auditor and county treasurer to cancel such sale from their tax sale index and tax sale register. [C97, §1452; C24, 27, 31, 35, 39,§**7271**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§446.37]

Referred to in §420.247
Certificates outstanding July 1, 1967, limitation, 62GA, ch 357,§3(3)

446.38 Suspended taxes of old-age assistance recipients. In cases where taxes have been suspended one year or more upon the property of a deceased old-age assistance recipient and no estate was opened within ninety days after the death of the recipient and the surviving spouse of the recipient is not occupying the property, the county treasurer shall issue a public bidder tax sale certificate to the county auditor. In such cases the requirements of section 446.18 to the effect that the real estate shall have been advertised and offered for sale two years or more, shall not be applicable. [C66, 71, 73, 75,§446.38]

Referred to in §§446.39, 447.9

446.39 Iowa housing finance authority statement. A city or county, a city or county agency as authorized by the Iowa housing finance authority,* or the Iowa housing finance authority may file with the treasurer a verified statement that a parcel of property to be sold at tax sale is abandoned and deteriorating in condition, or is inhabited but is not safe for human habitation, or is or is likely to become a public nuisance, and that the property

is suitable for use and is to be used in an Iowa homesteading project under section 220.14. Other information may be included. Upon proper filing of the statement, and if the property is offered at any tax sale and no bid is received, or if the bid received is less than the total amount of the delinquent general taxes, interest, penalties and costs, or if the property is to be transferred to the county under section 446.38, the city, county, city or county agency, or Iowa housing finance authority may bid for the property for use in an Iowa homesteading project, bidding a sum equal to the total amount of all delinquent general taxes, interest, penalties and costs charged against the property. Each of the tax-levying and tax-certifying bodies having an interest in the taxes for which the property is sold shall be charged with the full amount of all delinquent taxes due to it, as its share of the purchase price. [66GA, ch 138,§40]

Referred to in §447.9
*ch 220

CHAPTER 447

TAX REDEMPTION

Referred to in §§84.20, 111.25, 306.22, 419.11, 424.7, 446.14

447.1 Redemption—terms.
447.2 Nonallowable penalties.
447.3 Agricultural college lands.
447.4 Redemption from sale for part of tax.
447.5 Certificate of redemption—countersigned by treasurer.
447.6 Erasures prohibited.
447.7 Minors and lunatics.
447.8 Redemption after delivery of deed.
447.9 Notice of expiration of right of redemption.
447.10 Service on nonresidents except mortgagees.
447.11 Agent of nonresident.
447.12 When service deemed complete — presumption.
447.13 Cost—fee—report.

447.1 Redemption—terms. Real estate sold under the provisions of this chapter and chapter 446 may be redeemed at any time before the right of redemption is cut off, by the payment to the auditor, to be held by him subject to the order of the purchaser, of the amount for which the same was sold and four percent of such amount added as a penalty, with six percent interest per annum on the whole amount thus made from the day of sale, and the amount of all taxes, interest, and costs paid by the purchaser or his assignee for any subsequent year or years, with a similar penalty added as before on the amount of the payment for each subsequent year, and six percent per annum on the whole of such amount or amounts from the day or days of payment. [C51,§505; R60,§779; C73,§890; C97,§1436; S13,§1436; C24, 27, 31, 35, 39,§7272; C46, 50, 54, 58, 62, 66, 71, 73, 75,§447.1]

Referred to in §447.7
S13,§1436, editorially divided

447.2 Nonallowable penalties. The penalty for nonpayment of taxes of any subsequent year or years shall not attach, unless the same shall have remained unpaid until October 1 after they become due and have become delinquent, nor shall said penalties apply to taxes voted in aid of the construction of any railroad. [C73,§890; C97,§1436; S13,§1436; C24, 27, 31, 35, 39,§7273; C46, 50, 54, 58, 62, 66, 71, 73, 75, §447.2]

Referred to in §447.7

447.3 Agricultural college lands. In redeeming from a sale of a leasehold interest in agricultural college land, the amount to be paid shall include any amount paid by the holder of the certificate as interest or principal due by the terms of the lease or otherwise to prevent a forfeiture thereof, as provided by law, and for which proper voucher shall have been filed with the auditor, with interest thereon at eight percent per annum from date of payment, which amount shall be paid by the auditor to the holder of the certificate, and the certificate of redemption shall show the amount so paid by the party redeeming. [C51, §505; R60,§779; C73,§890; C97,§1436; S13,§1436; C24, 27, 31, 35, 39,§7274; C46, 50, 54, 58, 62, 66, 71, 73, 75,§447.3]

Referred to in §447.7

447.4 Redemption from sale for part of tax. In case a redemption is made of any real estate sold for a less sum than the taxes, penalty, interest, and costs, the purchaser shall receive only the amount paid and a ratable part of such penalty, interest, and costs. In determining the interest and penalties to be paid upon redemption from such sale, the sum due on any parcel sold shall be taken to be the full amount of taxes, interest, and costs due thereon at the time of such sale, and the amount paid for any such parcel at such sale shall be apportioned ratably among the several funds to which it belongs. Real estate so sold shall be redeemable in the same manner and with the same penalties as that sold for the taxes of the preceding year. [C97,§1437; C24, 27, 31, 35, 39,§7275; C46, 50, 54, 58, 62, 66, 71, 73, 75, §447.4]

447.5 Certificate of redemption — countersigned by treasurer. The auditor shall, upon application of any party to redeem real estate sold for taxes, and being satisfied that he has a right to redeem the same upon the payment of the proper amount, issue to such party a certificate of redemption, setting forth the facts of the sale substantially as contained in the certificate thereof, the date of the redemption, the amount paid, and by whom redeemed, and make the proper entries in the book of sales in his office, and immediately give notice of such redemption to the treasurer. The certificate of redemption shall then be presented to the latter, who shall countersign it, noting such fact in the sale book opposite the entry of the sale, and no certificate of redemption shall be evidence of such redemption without the signature of the treasurer. [R60,§780; C73, §891; C97,§1438; C24, 27, 31, 35, 39,§7276; C46, 50, 54, 58, 62, 66, 71, 73, 75,§447.5]

447.6 Erasures prohibited. Said entries by the auditor and treasurer shall be made in ink, and in case errors are subsequently discovered such entries shall not be erased but shall be corrected by drawing a line through the erroneous entries with ink accompanied by the initials of the person who made the alteration and the date when made. [C31, 35,§7276-c1; C39,§7276.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§447.6]

447.7 Minors and lunatics. If real property of any minor, lunatic, or person of unsound mind is sold for taxes, it may be redeemed at any time within one year after such disability is removed, in the manner specified in section 447.8, or redemption may be made by the guardian or legal representative under sections 447.1 to 447.3 at any time before the delivery of the deed. [R60,§779; C73,§892; C97,§1439; C24, 27, 31, 35, 39,§7277; C46, 50, 54, 58, 62, 66, 71, 73, 75,§447.7]

Referred to in §§229.27, 420.240

447.8 Redemption after delivery of deed. Any person entitled to redeem lands sold for taxes after the delivery of the deed shall do so by an equitable action in a court of record, in which all persons claiming an interest in the land derived from the tax sale, as shown by the record, shall be made defendants, and the court shall determine the rights, claims, and interest of the several parties, including liens for taxes and claims for improvements made on the land by the person claiming under the tax title. No person shall be allowed to redeem land sold for taxes in any other manner after the service of the notice provided for by section 447.9 and the execution and delivery of the treasurer's deed. [C73,§893; C97,§1440; C24, 27, 31, 35, 39,§7278; C46, 50, 54, 58, 62, 66, 71, 73, 75,§447.8]

Referred to in §§420.240, 447.7

447.9 Notice of expiration of right of redemption. After two years and nine months from the date of sale, or after nine months from the date of a sale made under the provisions of section 446.18, section 446.38 or section 446.39, the holder of the certificate of purchase may cause to be served upon the person in possession of such real estate, and also upon the person in whose name the same is taxed, if such person resides in the county where the land is situated, in the manner provided for the service of original notices, a notice signed by him, his agent, or attorney, stating the date of sale, the description of the property sold, the name of the purchaser, and that the right of redemption will expire and a deed for the land be made unless redemption is made within ninety days from the completed service thereof. When said notice is given by a county as a holder of a certificate of purchase the notice shall be signed by the county auditor, and when given by a city, it shall be signed by the city officer designated by resolution of the council. When the notice is given by the Iowa housing finance authority or a city or county agency holding the property as part of an Iowa homesteading project,* it shall be signed on behalf of the agency or authority by one of its officers, as authorized in rules of the agency or authority. Service of such notice shall also be made by certified mail on any mortgagee, or his assignee, of record, whether resident or nonresident of the county, if his address is disclosed by the recorded instrument or by a certificate showing the address of the mortgagee or assignee duly filed with the recorder, or the state of Iowa in case of an old-age assistance lien by service upon the state department of social services. Such notice shall also be served on any city where such real estate is situated. [R60,§781; C73,§894; C97,§1441; S13, §1441; C24, 27, 31, 35, 39,§7279; C46, 50, 54, 58, 62, 66, 71, 73, 75,§447.9; 66GA, ch 138,§42]

Referred to in §§420.207, 420.240, 420.241, 447.8
Management when county acquires deed, ch 569
Service of original notice, R.C.P. 56(a)
*§220.14

447.10 Service on nonresidents except mortgagees. Service may be made upon nonresidents of the county, except mortgagees or their assignees of record, by publishing the same once each week, for three consecutive weeks, in some newspaper in said county, or by personal service thereof elsewhere in the same manner as original notices may be served. [C73,§894; C97,§1441; S13,§1441; C24, 27, 31, 35, 39,§7280; C46, 50, 54, 58, 62, 66, 71, 73, 75, §447.10]

Referred to in §§420.207, 420.240, 420.241
40ExGA, SF 183,§25, editorially divided

447.11 Agent of nonresident. Any such nonresident may in writing appoint a resident of the county in which such land is situated as agent, and file said appointment with the treasurer of said county, who shall forthwith record the same in a record kept in his office therefor, and index the same, after which personal service of said notice shall be made upon said agent. [C73,§894; C97,§1441; S13,§1441; C24, 27, 31, 35, 39,§7281; C46, 50, 54, 58, 62, 66, 71, 73, 75,§447.11]

Referred to in §§420.207, 420.240, 420.241

447.12 When service deemed complete—presumption. Service shall be complete only after an affidavit has been filed with the treasurer, showing the making of the service, the manner thereof, the time when and place where made, and under whose direction the same was made; such affidavit to be made by the holder of the certificate or by his agent or attorney, and in either of the latter cases stating that such affiant is the agent or attorney, as the case may be, of the holder of such certificate; which affidavit shall be filed by the treasurer and entered upon the sale book opposite the entry of the sale, and said record or affidavit shall be presumptive evidence of the completed service of said notice, and the right of redemption shall not expire until ninety days after service is complete. When the property is held by a city or county, a city or county agency, or the Iowa housing finance authority*, for use in an Iowa homesteading project, whether or not the property is the subject of a conditional conveyance granted under the project, the affidavit shall be made by the county auditor of the county, a city officer designated by resolution of the council, or on behalf of the agency or authority, by one of its officers as authorized in rules of the agency or authority. [C73,§894; C97,§1441; S13,§1441; C24, 27, 31, 35, 39,§7282; C46, 50, 54, 58, 62, 66, 71, 73, 75,§447.12; 66GA, ch 138,§43]

Referred to in §§420.207, 420.240, 420.241, 448.1
*Ch 220

447.13 Cost—fee—report. The cost of serving the notice and affidavit of publication shall be added to the amount necessary to redeem. The fee for serving the notice shall be the same as for service of an original notice, including copy fee and mileage. The treasurer shall, upon the filing of proof of service and statement of costs, forthwith report the same in writing to the auditor, who shall enter it on the sale book against the proper tract of real estate. The holder of the certificate of sale or his agent may report in writing to the county auditor the amount of costs incurred in giving such notice, and the auditor shall enter the same in the sale book. No redemption shall be complete until such costs are paid. If the property is held by a city or county, a city or county agency, or the Iowa housing finance authority*, for use in an Iowa homesteading project, whether or not the property is the subject of a conditional conveyance granted under the project, the costs incurred for repairs and rehabilitation work required and undertaken in order to make the property meet applicable building or housing code standards shall be added to the amount necessary to redeem, and no redemption shall be complete until such costs are paid. [C73,§894; C97,§1441; S13,§1441; C24, 27, 31, 35, 39,§7283; C46, 50, 54, 58, 62, 66, 71, 73, 75,§447.13; 66GA, ch 138,§44]

Referred to in §§420.207, 420.240, 420.241; see also §589.15
*Ch 220
Costs of service, §337.11
Legalizing Act, §589.15

CHAPTER 448

TAX DEED

Referred to in §§111.25, 306.22, 424.7, 446.14

448.1 Deed executed.
448.2 Form.
448.3 Execution and effect of deed.
448.4 Presumptive evidence.
448.5 Conclusive evidence.
448.6 Facts necessary to defeat deed.
448.7 Additional facts necessary.
448.8 Sale made by mistake.
448.9 Fraudulent sale.
448.10 Wrongful sales—purchaser indemnified.
448.11 Correcting wrongful sale.
448.12 Limitation of actions.
448.13 Limitation of action on tax sales and deeds.
448.14 Officers de facto.
448.15 Affidavit by tax-title holder.
448.16 Claims adverse to tax title barred.
448.17 Indexing and recording of affidavits and claims.

448.1 Deed executed. Immediately after the expiration of ninety days from the date of completed service of the notice provided in section 447.12 the treasurer then in office shall make out a deed for each lot or parcel of land sold and unredeemed, and deliver it to the purchaser upon the return of the certificate of purchase. The treasurer shall receive three dollars for each deed made by him, and may include any number of parcels of land purchased by one person in one deed, if desired by him. [C51,§§503, 504; R60,§§781, 782; C73, §895; C97,§1442; C24, 27, 31, 35, 39,§7284; C46, 50, 54, 58, 62, 66, 71, 73, 75,§448.1]

Referred to in §420.241
Management when county acquires deed, ch 569

448.2 Form. Deeds executed by the treasurer shall be substantially in the following form:

KNOW ALL MEN BY THESE PRESENTS, that the following described real estate, viz.: (Here follows the description), situated in the county of ..... and state of Iowa, was subject to tax-

ation for the year (or years) A. D. ....., and the taxes assessed thereon for the year (or years) aforesaid remained due and unpaid at the date of the sale hereinafter named; and the treasurer of said county, having on the ..... day of ....., A. D. ....., by virtue of the authority in him vested by law, at (an adjournment of) the sale begun and publicly held on the first Monday of June, A. D. ....., exposed to public sale at the office of the county treasurer in the county aforesaid, in substantial conformity with all the requirements of the statute, the real property above described, for the payment of the taxes, interest and costs then due and remaining unpaid on said property, and at the time and place aforesaid A. ..... B. ....., of the county of ..... and state of ....., having offered to pay the sum of ..... dollars and ..... cents, being the whole amount of taxes, interest and costs then due and remaining unpaid on said property, for (here follows the description of the property sold) which was the least quantity bid for, and payment of said sum having been made by him to said treasurer, the property was stricken off to him at that price; and the said A..... B..... did, on the ..... day of ....., A. D. ....., duly assign the certificate of the sale of the property as aforesaid and all his right, title and interest to said property to E..... F..... of the county of ..... and state of .....; and by the affidavit of ....., filed in said treasurer's office on the .... day of ....., A. D....., it appears that notice has been given more than ninety days before the execution of these presents to..... and ..... of the expiration of the time of redemption allowed by law; and three years having elapsed since the date of said sale, and said property having not been redeemed therefrom:

Now, I, C..... D....., treasurer of said county, for the consideration of said sum to the treasurer paid as aforesaid and by virtue of law, have granted, bargained and sold, and by these presents do grant, bargain and sell to the said A..... B..... (or E..... F.....), his heirs and assigns, the real property hereinbefore described, to have and to hold unto him (or E..... F .....), his heirs and assigns, forever; subject, however, to all the rights of redemption provided by law. In witness whereof, I, C..... D....., treasurer as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name on this .... day of ....., A. D.....

.....

State of Iowa, }
.....County. } ss.

I hereby certify that before me, ..., in and for said county, personally appeared the above named C..... D....., treasurer of said county, personally known to me to be the treasurer of said county at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to and who executed the above conveyance as treasurer of said county, and acknowledged the execution of the same to be his voluntary act and deed as treasurer of said county, for the purposes therein expressed.

Given under my hand (and seal) this ..... day of ....., A. D.....

.....

[R60,§783; C73,§896; C97,§1443; C24, 27, 31, 35, 39,§7285; C46, 50, 54, 58, 62, 66, 71, 73, 75,§448.2]

Referred to in §420.243

448.3 Execution and effect of deed. The deed shall be signed by the treasurer as such, and acknowledged by him before some officer authorized to take acknowledgments, and when substantially thus executed and recorded in the proper record in the office of the recorder of the county in which the property is situated, shall vest in the purchaser all the right, title, interest, and estate of the former owner in and to the land conveyed, subject to all restrictive covenants, resulting from prior conveyances in the chain of title to the former owner, and all the right, title, interest, and claim of the state and county thereto. [C51, §503; R60,§784; C73,§897; C97,§1444; C24, 27, 31, 35, 39,§7286; C46, 50, 54, 58, 62, 66, 71, 73, 75, §448.3]

Referred to in §420.244
C97,§1444, editorially divided

448.4 Presumptive evidence. The deed shall be presumptive evidence in all the courts of this state in all controversies and actions in relation to the rights of the purchaser, his heirs or assigns, to the land thereby conveyed, of the following facts:

1. That the real property conveyed was subject to taxation for the year or years stated in the deed.

2. That the taxes were not paid at any time before the sale.

3. That the real property conveyed had not been redeemed from the sale at the date of the deed.

4. That the property had been listed and assessed.

5. That the taxes were levied according to law.

6. That the property was duly advertised for sale.

7. That the property was sold for taxes as stated in the deed. [C51,§503; R60,§784; C73, §897; C97,§1444; C24, 27, 31, 35, 39,§7287; C46, 50, 54, 58, 62, 66, 71, 73, 75,§448.4]

Referred to in §§420.244, 448.5(3)

448.5 Conclusive evidence. The deed shall be conclusive evidence of the following facts:

1. That the manner in which the listing, assessment, levy, notice and sale were conducted was in all respects as the law directed.

2. That the grantee named in the deed was the purchaser.

3. That all the prerequisites of the law were complied with by all the officers who had, or whose duty it was to have had, any part or

action in any transaction relating to or affecting the title conveyed or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law to make a good and valid sale and to vest the title in the purchaser were done, except in regard to the points named in section 448.4 wherein the deed shall be presumptive evidence only. [C51, §503; R60,§784; C73,§897; C97,§1444; C24, 27, 31, 35, 39,§**7288**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §448.5]

Referred to in §420.244

448.6 Facts necessary to defeat deed. In all actions involving the title to real estate claimed and held under a deed executed substantially as aforesaid by the treasurer, the person claiming title adverse to the title conveyed thereby shall be required to prove, in order to defeat the title, either:

1. That the real property was not subject to taxation for the year or years named in the deed,

2. That the taxes had been paid before the sale,

3. That the property had been redeemed from the sale and that such redemption was had or made for the use and benefit of persons having the right of redemption, or

4. That there had been an entire omission to list or assess the property, or to levy the taxes, or to give notice of the sale, or to sell the property. [C51,§503; R60,§784; C73,§897; C97, §1445; C24, 27, 31, 35, 39,§**7289**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§448.6]

Referred to in §420.245
C97,§1445, editorially divided

448.7 Additional facts necessary. No person shall be permitted to question the title acquired by a treasurer's deed without first showing that he, or the person under whom he claims title, had title to the property at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all taxes due upon the property have been paid by such person, or the person under whom he claims title. [R60,§784; C73, §897; C97,§1445; C24, 27, 31, 35, 39,§**7290**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§448.7]

Referred to in §420.245

448.8 Sale made by mistake. In any case where a person had paid his taxes, and through mistake in the entry made in the treasurer's books, or in the receipt, the land upon which the taxes were paid was afterward sold, the treasurer's deed shall not convey the title. [R60,§784; C73,§897; C97,§1445; C24, 27, 31, 35, 39,§**7291**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§448.8]

Referred to in §420.245

448.9 Fraudulent sale. In all cases where the owner of the lands sold for taxes shall resist the validity of the tax title, he may prove fraud committed by the officer selling the same, or in the purchaser, to defeat the same, and, if fraud is established, the sale and title shall be void. [R60,§784; C73,§897; C97,§1445; C24, 27, 31, 35, 39,§**7292**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §448.9]

Referred to in §420.245

448.10 Wrongful sales—purchaser indemnified. When, by mistake or wrongful act of the treasurer, land has been sold on which no tax was due at the time, or when land is sold in consequence of error in describing it in the tax receipt, the county shall hold the purchaser harmless by paying him the amount of principal, interest, and costs to which he would have been entitled had the land been rightfully sold, and the treasurer and his bondsmen shall be liable to the county therefor to the amount of his official bond; or the purchaser, or his assignee, may recover the same directly of him and his bondsmen. [C51,§509; R60,§785; C73, §899; C97,§1446; C24, 27, 31, 35, 39,§**7293**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§448.10]

Referred to in §§420.245, 420.246

448.11 Correcting wrongful sale. When it shall be made to appear to the treasurer, before the execution of a deed for real estate sold for taxes, or if the deed be returned by the purchaser, that any tract or lot was sold which was not subject to taxation, or upon which the taxes had been paid, he shall make an entry opposite such tract or lot on the sale book that the same was erroneously sold, and such entry shall be evidence of the fact therein stated, and the purchase money shall be refunded to the purchaser. [R60,§789; C73,§901; C97,§1447; C24, 27, 31, 35, 39,§**7294**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§448.11]

Referred to in §§420.245, 420.246

448.12 Limitation of actions. No action for the recovery of real estate sold for the nonpayment of taxes shall be brought after five years from the execution and recording of the treasurer's deed, unless the owner is, at the time of the sale, a minor, mentally ill person, or convict in the penitentiary, in which case such action must be brought within five years after such disability is removed. [R60,§790; C73,§902; C97,§1448; C24, 27, 31, 35, 39,§**7295**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§448.12]

Referred to in §§420.245, 420.246

448.13 Limitation of action on tax sales and deeds. From and after November 1, 1939, no action shall be brought or defense made attacking the validity of a tax sale or a deed issued pursuant thereto which said tax sale was held prior to January 1, 1936, and in accordance with section 7259 or section 7262, both of the Code, 1935, on the grounds of the failure of the county treasurer to comply with section 7193 or section 7259, both of the Code, 1935, unless the owner thereof was at the time of the said sale a minor, mentally ill person or convict in the penitentiary; in which case such action must be brought within six months after such disability is removed. Provided, however, that nothing herein contained shall

be applicable to actions brought or defenses made by a holder of a special assessment, if the same continues to remain a lien notwithstanding a tax deed now or hereafter issued pursuant to such tax sale. [C39,§**7295.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§448.13]

Referred to in §§420.245, 420.246

448.14 Officers de facto. In all actions and controversies involving the question of title to real property held under a treasurer's deed, all acts of assessors, treasurers, auditors, supervisors and other officers de facto shall be of the same validity as acts of officers de jure. [R60,§786; C73,§903; C97,§1449; C24, 27, 31, 35, 39,§**7296**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§448.14]

Referred to in §420.245

448.15 Affidavit by tax-title holder. After two years from the issuance and recording of a tax deed or an instrument purporting to be a tax deed issued by a county treasurer of this state, the then owner or holder of such title or purported title may file with the county recorder of the county in which such real estate is located an affidavit substantially in the following form:

State of Iowa, }
..... County. } ss.

I, ..., being first duly sworn, on oath depose and say that on ..... (date) the county treasurer issued a tax deed to ..... (grantee) for the following described real estate:

.....
.....;

that said tax deed was filed for record in the office of the county recorder of ..... county, Iowa, on ..... (date), and appears in the records of that office in ..... county as recorded in Book .... Page .... of the ..... Records; and that ..... is now in possession of such real estate and claims title to the same by virtue of such tax deed, or such purported tax title.

Any person claiming any right, title, or interest in or to such real estate adverse to the title or purported title by virtue of such tax deed referred to herein shall file a claim of the same with the recorder of the county wherein such real estate is located, within one hundred twenty days after the filing of this affidavit, such claim to set forth the nature thereof, also the time and manner in which such interest was acquired.

.....

Subscribed and sworn to before me this .... day of ....., 19.....

.....
Notary Public in and for
.....County, Iowa.

[C46, 50, 54, 58, 62, 66, 71, 73, 75,§448.15]

Referred to in §448.17

448.16 Claims adverse to tax title barred. When such affidavit is filed it shall be notice to all persons, and any person claiming any right, title, or interest in or to such real estate adverse to the title or purported title by virtue of such tax deed hereinabove referred to, shall file a claim of the same with the county recorder of the county in which such real estate is located within one hundred twenty days after the filing of such affidavit, which claim shall set forth the nature thereof, the time when and the manner in which such interest was acquired.

At the expiration of said period of one hundred twenty days, if no such claim has been filed, all persons shall thereafter be forever barred and estopped from having or claiming any right, title, or interest in such real estate adverse to the tax title or purported tax title, and no action shall thereafter be brought to recover such real estate, and the then tax-title owner or owner of the purported tax title shall also have acquired title to such real estate by adverse possession. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§448.16]

Referred to in §448.17

448.17 Indexing and recording of affidavits and claims. All affidavits and claims as provided for in sections 448.15 and 448.16, filed with the county recorder, shall be indexed in the claimant's book under the description of the real estate involved, and shall be recorded as other instruments affecting real estate. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§448.17]

Saving clause, 49GA, ch 257,§4

CHAPTER 449

APPORTIONMENT OF TAXES

449.1 Application.
449.2 Notice.
449.3 Order—record.
449.4 Correction of books or records.
449.5 Effect of order.
449.6 Appeal.
449.7 Trial on appeal.
449.8 Interpretative clause.

449.1 Application. When a tract of real estate has been assessed and taxed as one item of property, and thereafter and before the tax is paid, the title to different portions of said real estate becomes vested in different parties in severalty, and the said owners are unable to agree as to what portion of the total tax each portion of the real estate should bear, any

of said parties may file with the board of supervisors a written application for the apportionment of said tax. [C24, 27, 31. 35, 39,§**7297**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§449.1]

449.2 Notice. In the absence of the appearance of all interested parties, the board shall prescribe the notice which nonappearing parties shall receive, and the time and manner of the service thereof. [C24, 27, 31. 35, 39,§**7298**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§449.2]

449.3 Order—record. On the hearing, the board shall apportion said tax to the different portions of the real estate owned in severalty, in accordance with the values thereof. All orders and determinations of the board shall be entered of record in its minutes. An order of apportionment shall definitely identify each portion of said real estate so owned in severalty. [C24, 27, 31, 35, 39,§**7299**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§449.3]

449.4 Correction of books or records. The county auditor shall, upon the making of an order of apportionment, at once correct the tax books or records in his possession, in accordance with said order, and if said books or other records have been delivered to the county treasurer, the said auditor shall at once certify said order of apportionment to the said treasurer who shall make said correction. [C24, 27, 31, 35, 39,§**7300**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§449.4]

449.5 Effect of order. An order of apportionment, when followed by a correction of the tax book or other record in accordance therewith, shall have the same effect as though the original assessment had been made in the same manner. [C24, 27, 31, 35, 39,§**7301**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§449.5]

449.6 Appeal. A party aggrieved by an order of apportionment may appeal therefrom to the district court at any time within ten days from the date of said order, by serving written notice of said appeal on all other parties to said proceeding. Should personal service of said notice within the county be impossible as to any party, any judge of the district court may prescribe the manner of such service. [C24, 27, 31, 35, 39,§**7302**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§449.6]

449.7 Trial on appeal. The district court shall try said appeal anew and in equity. The final order of the court shall be certified by the clerk of the district court to the county auditor and shall be treated in the same manner as though originally made by the board of supervisors. [C24, 27, 31, 35, 39,§**7303**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§449.7]

449.8 Interpretative clause. This chapter shall not be construed as exclusive of other legal remedies. [C24, 27, 31, 35, 39,§**7304**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§449.8]

CHAPTER 450

INHERITANCE TAX

Referred to in §§321.47, 451.2, 451.12, 633.361(13)
Amendments by 65GA, effective on estates after July 1, 1973

450.1 "Person" defined—authority of county attorney.
450.2 Estates taxable.
450.3 Property included.
450.4 Exemptions.
450.5 Liability for tax.
450.6 Accrual of tax—maturity—extension of time.
450.7 Lien of tax.
450.8 Transfers in contemplation of death.
450.9 Individual exemptions.
450.10 Rate of tax.
450.11 Repealed by 61GA, ch 366,§6.
450.12 Deduction of debts.
450.13 Inheritance tax and lien book.
450.14 Report required—blanks.
450.15 Copy for department of revenue.
450.16 Repealed by 66GA, ch 1056,§45.
450.17 Conveyance—effect.
450.18 Acceptance of final report.
450.19 Record of estates by department.
450.20 Record of deferred estates.
450.21 Administration on application of director.
450.22 Administration avoided.
450.23 Repealed by 64GA, ch 218,§13.
450.24 Appraisers.
450.25 and 450.26 Repealed by 64GA, ch 218,§13.
450.27 Commission to appraisers.
450.28 Notice of appraisement.
450.29 Returns required.
450.30 Property in different counties.
450.31 Objections.
450.32 Hearing—order.
450.33 Appeal and notice.
450.34 Bond on appeal.
450.35 Repealed by 66GA, ch 1056,§45.
450.36 Appraisal of other property.
450.37 Market value.
450.38 Deduction of debts.
450.39 Valuation established by inventory.
450.40 to 450.43 Repealed by 64GA, ch 218,§13.
450.44 Remainders—appraisement.
450.45 Life and term estates—appraisement.
450.46 Deferred estate—appraisement.
450.47 Life and term estates in personal property.
450.48 Payment deferred—bond.
450.49 Bonds—conditions.
450.50 Removal of property from state—bond.
450.51 Annuities—life and term estates.
450.52 Deferred estates—removal of lien.

450.53 Duty of fiduciaries to pay tax.
450.54 Sale to pay tax.
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450.57 Tax deducted from legacy or collected.
450.58 Final settlement to show payment.
450.59 Judicial review.
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450.61 Bequests to executors or trustees.
450.62 Legacies charged upon real estate.
450.63 Maturity of tax—interest.
450.64 Clerk furnished receipt showing payment.
450.65 Director to enforce collection.
450.66 Investigation by director.
450.67 Inspection of books, records.
450.68 Information confidential.
450.69 Contempt.
450.70 Fees.
450.71 Proof of amount of tax due.
450.72 Extension of time of appraisement.
450.73 Heirs at law to make report.
450.74 to 450.80 Repealed by 66GA, ch 1056, §45.
450.81 Duty of recorder.
450.82 and 480.83 Repealed by 66GA, ch 1056, §45.
450.84 Costs charged against estate—exceptions.
450.85 Appropriation.
450.86 Securities and assets held by bank, etc.
450.87 Transfer of corporation stock.
450.88 Corporations to report transfers.
450.89 Foreign estates—deduction of debts.
450.90 Property in this state belonging to foreign estate.
450.91 Foreign estates—reciprocity—personal property.
450.92 Compromise settlement.
450.93 Unknown heirs.
450.94 Final return—determination—appeal.
450.95 Appropriation.
450.96 Contingent estates.
450.97 Joint owners of bank accounts—duty to notify department of revenue.

450.1 "Person" defined—authority of county attorney. In the construction of this chapter the word "person" shall include plural as well as singular, and artificial as well as natural persons. This chapter shall not be construed to confer upon a county attorney authority to represent the state in any case, and he shall represent the department of revenue only when especially authorized by it to do so. [S13,§1481-a45; C24, 27, 31, 35, 39,§7305; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.1]

450.2 Estates taxable. The estates of all deceased persons in any property whether the decedents be inhabitants of this state or not, and whether such estates consist of real, personal, or mixed property, tangible or intangible, and any interest in, or income from, any such estate or property which estate or property is, at the death of the decedent owner within this state, or is subject to the jurisdiction of the courts of this state, or thereafter is brought within this state and becomes subject to the jurisdiction of the courts of this state; or the property of any decedent, domiciled within this state at the time of the death of such decedent, even though the property of such decedent so domiciled was situated outside of the state, except real estate located outside of the state, passing in fee from the decedent owner, which shall pass in any manner herein described shall be subject to tax as herein provided. [C97,§1467; S13,§1481-a; C24, 27, 31, 35, 39,§7306; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.2]

39GA, ch 38,§2, editorially divided

450.3 Property included. The tax hereby imposed shall be collected upon the net market value and shall go into the general fund of the state to be determined as herein provided, of any property passing:

1. By will or under the statutes of inheritance of this or any other state or country.

2. By deed, grant, sale, gift or transfer made in contemplation of the death of the grantor or donor, and any such transfer of property made by any person within three years prior to the death of the grantor or donor shall, unless shown to the contrary, be deemed to have been made in contemplation of death.

3. By deed, grant, sale, gift or transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor. A transfer of property in respect of which the transferor reserves to himself a life income or interest shall be deemed to have been intended to take effect in possession or enjoyment at death, provided, that if the transferor reserves to himself less than the entire income or interest, the transfer shall be deemed taxable thereunder only to the extent of a like proportion of the value of the property transferred.

4. Under power of appointment hereafter exercised whether the power was created before or after the taking effect of this chapter. Any transfer involving creation of a general power of appointment shall be treated as a transfer of a fee or equivalent interest in the property subject thereto to the donee of the power. Any transfer involving creation of any other power of appointment shall be treated as the transfer of a life estate or term of years in the property subject thereto to the donee of the power and as the transfer of the remainder interests therein to those who would take if the power is not exercised.

5. Property which is held in joint tenancy by the decedent and any other person or persons or any deposit in banks, or other institution in their joint names and payable to either or to the survivor, except such part as may be proven to have belonged to the survivor; or

any interest of a decedent in property owned by a joint stock or other corporate body whereby the survivor or survivors become beneficially entitled to the decedent's interest upon the death of a shareholder. However, if such property is so held by the decedent and the surviving spouse as the only co-owners, one half of such property is not subject to taxation under the provisions of this chapter, but if the surviving spouse proves that he or she contributed to acquisition of such property an amount, in money or other property, greater than one half of the cost of the property held in joint tenancy, the portion of such property which is not subject to taxation under the provisions of this chapter shall be the proportion which the actual contribution by the surviving spouse is of the total contribution to acquisition of such property. The tax imposed upon the passing of property under the provisions of this subsection shall apply to property held under all such contracts or agreements whether made before or after the taking effect of this chapter.

6. When the decedent shall have disposed of his estate in any manner to take effect at his death with a request secret or otherwise that the beneficiary give, pay to, or share the property or any interest therein received from the decedent, with other person or persons, or to so dispose of beneficial interests conferred by the decedent upon the beneficiaries as that the property so passing would be taxable under the provisions of this chapter if passing directly by will or deed from the decedent owner to those to receive the gift from the beneficiary, compliance with such request shall constitute a transfer taxable under the provisions of this chapter, at the highest rate possible in like cases of transfers by will or deed. [C97,§1467; S13,§1481-a; C24, 27, 31, 35, 39,§7307; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.3]

Amendments effective on estates occurring on or after July 1, 1974, 65GA, ch 1221,§5.

450.4 Exemptions. The tax imposed by this chapter shall not be collected:

1. When the entire estate of the decedent does not exceed the sum of one thousand dollars after deducting the debts, as defined in this chapter.

2. When the property passes in any manner to societies, institutions or associations incorporated or organized under the laws of this state for charitable, educational, or religious purposes, and which are not operated for pecuniary profit, or to cemetery associations, including humane societies or to resident trustees for such uses within this state, or to organizations composed wholly of veterans of any war of the United States of America; provided, however, that this exemption shall also include property passing to any society, institution or association incorporated or organized under the laws of any other state for charitable, educational or religious purposes, and which are not operated for pecuniary profit or to trustees for such uses in such other state if under the laws of such state no tax would be imposed upon the passing of property to such institutions, societies or associations incorporated or organized under the laws of this state or to trustees for such uses in this state or to any organization composed wholly of veterans of any war of the United States of America.

3. When the property passes to public libraries or public art galleries within this state, open to the use of the public and not operated for gain, or to hospitals within this state, or to trustees for such uses within this state, or to municipal corporations for purely public purposes.

4. Bequests for the care and maintenance of the cemetery or burial lot of the decedent or his family, and bequests not to exceed five hundred dollars in any estate of a decedent for the performance of a religious service or services by some person regularly ordained, authorized, or licensed by some religious society to perform such service, which service or services are to be performed for or in behalf of the testator or some person named in his last will.

5. On the value of that portion of installment payments which will be includable as net income as defined in section 422.7 as received by a beneficiary under an annuity which was purchased under an employees pension or retirement plan. [S13,§1481-a1; C24, 27, 31, 35, 39, §7308; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.4]

450.5 Liability for tax. Any person becoming beneficially entitled to any property or interest therein by any method of transfer as herein specified, and all administrators, executors, referees, and trustees of estates or transfers taxable under the provisions of this chapter, shall be respectively liable for all such taxes to be paid by them respectively. [C97, §1467; S13,§1481-a; C24, 27, 31, 35, 39,§7309; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.5]

Referred to in §450.94

450.6 Accrual of tax—maturity—extension of time. The tax hereby imposed shall be for the use of the state, shall accrue at the death of the decedent owner, and shall be paid to the department of revenue within twelve months after the death of the decedent owner except when otherwise provided in this chapter. When in the opinion of the director of revenue additional time should be granted for payment to avoid hardship, the director may extend the period to a date not exceeding three years from date of death of decedent, but in case of any such extension the tax shall bear six percent interest from the expiration of twelve months from decedent's death. [S13,§1481-a; C24, 27, 31, 35, 39,§7310; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.6; 66GA, ch 1106,§7]

Interest on delinquent taxes, §450.63

450.7 Lien of tax.

1. The tax is a charge against and a lien upon the estate subject to tax under this chap-

ter, and all property of the estate or owned by the decedent from the death of the decedent until paid, subject to the following limitations:

a. Inheritance taxes owing with respect to a passing of property of a deceased person whose estate has not been administered in this state are no longer a lien against the property twenty years from the date of death of the decedent owner, except to the extent taxes are attributable to remainder or deferred interests which have not been finally vested in possession for at least ten years.

b. Inheritance taxes owing with respect to a passing of property of a deceased person whose estate has been administered in this state are no longer a lien against the property ten years from the date of death of the decedent owner, except to the extent taxes are attributable to remainder or deferred interests and are deferred in accordance with the provisions of this chapter.

2. Notice of the lien is not required to be recorded. The rights of the state under the lien have priority over all subsequent mortgages, purchases, or judgment creditors; and a conveyance after the decedent's death of the property subject to a lien does not discharge the property except as otherwise provided in this chapter. The department of revenue may release the lien by filing in the office of the clerk of the court in the county where the property is located, the decedent owner died, or the estate is pending or was administered, one of the following:

a. A receipt in full payment of the tax.

b. A certificate of nonliability for the tax as to all property reported in the estate.

c. A release or waiver of the lien as to all or any part of the property reported in the estate, which shall release the lien as to the property designated in the release or waiver.

3. The sale, exchange, mortgage, or pledge of property by the personal representative pursuant to a testamentary direction or power, or under order of court, divests the property from the lien of the tax. The proceeds from such a sale, exchange, mortgage, or pledge shall be held by the personal representative subject to the same priorities for the payment of the tax as existed with respect to the property before the transaction, and the personal representative is personally liable for payment of the tax to the extent of the proceeds. Whenever there is a change in the status, type, or nature of the assets reported in the preliminary inventory, the change shall be reported on or before the filing of the final report when required by the department of revenue. [C97,§1467; S13,§1481-a; C24, 27, 31, 35, 39,§**7311**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.7]

450.8 Transfers in contemplation of death. If the decedent makes transfer of, or creates a trust with respect to, any property in contemplation of his death, or intended to take effect after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth), and if the tax in respect thereto is not paid when due, the transferee or trustee shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of his death, shall be subject to a lien for the payment of such tax. [C97,§1467; S13,§1481-a; C24, 27, 31, 35, 39,§**7312**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §450.8]

450.9 Individual exemptions. In computing the tax on the net estate passing to the surviving spouse, heirs or beneficiaries of the deceased the following credits or exemptions shall be allowed:

1. Surviving spouse, eighty thousand dollars.

2. Each son and daughter, including legally adopted sons and daughters, or illegitimate sons and daughters entitled to inherit under the law of this state, thirty thousand dollars.

3. Father or mother, ten thousand dollars.

4. Any other lineal descendant of the deceased, ten thousand dollars. [C31, 35,§7312-d1; C39,§**7312.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §450.9; 66GA, ch 1106,§8]

Amendment effective on estates occurring on or after July 1, 1974, 65GA, ch 1221,§5

450.10 Rate of tax. The property or any interest therein or income therefrom, subject to the provisions of this chapter, shall be taxed as herein provided:

1. When such property, interest, or income passes to the wife or the husband of the deceased, grantor, donor, or vendor, or to the father or mother, or to any child or lineal descendant of such decedent, grantor, donor or vendor, including a legally adopted child or illegitimate child entitled to inherit under the laws of this state, the tax imposed shall be on the individual share so passing in excess of the exemptions herein allowed and shall be as follows:

One percent of the first five thousand dollars.

Two percent of any amount in excess of five thousand dollars and up to twelve thousand five hundred dollars.

Three percent on any amount in excess of twelve thousand five hundred dollars and up to twenty-five thousand dollars.

Four percent on any amount in excess of twenty-five thousand dollars and up to fifty thousand dollars.

Five percent on any amount in excess of fifty thousand dollars and up to seventy-five thousand dollars.

Six percent on any amount in excess of seventy-five thousand dollars and up to one hundred thousand dollars.

Seven percent on any amount in excess of one hundred thousand dollars and up to one hundred fifty thousand dollars.

Eight percent on all sums in excess of one hundred fifty thousand dollars.

Referred to in subsections 3, 6

2. When the property or any interest therein or income therefrom taxable under the provisions of this chapter passes to the brother or sister, son-in-law, or daughter-in-law, or stepchildren, the rate of tax imposed on the individual share so passing shall be as follows:

Five percent on any amount up to twelve thousand five hundred dollars.

Six percent on any amount in excess of twelve thousand five hundred dollars and up to twenty-five thousand dollars.

Seven percent on any amount in excess of twenty-five thousand dollars and up to seventy-five thousand dollars.

Eight percent on any amount in excess of seventy-five thousand dollars and up to one hundred thousand dollars.

Nine percent on any amount in excess of one hundred thousand dollars and up to one hundred fifty thousand dollars.

Ten percent on all sums in excess of one hundred fifty thousand dollars.

Referred to in subsections 3, 6

3. When the property or any interest therein or income therefrom, taxable under the provisions of this chapter, passes to any person not included in subsections 1 and 2 hereof, the rate of tax imposed on the individual share so passing shall be as follows:

Ten percent on any amount up to fifty thousand dollars.

Twelve percent on any amount in excess of fifty thousand dollars and up to one hundred thousand dollars.

Fifteen percent on all sums in excess of one hundred thousand dollars.

4. When the property or any interest therein or income therefrom, taxable under the provisions of this chapter, passes in any manner to societies, institutions or associations incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to cemetery associations, including humane societies not organized under the laws of this state, or to resident trustees for uses without this state, the rate of tax imposed shall be as follows:

Ten percent on the entire amount so passing.

5. When the property or any interest therein or income therefrom, taxable under the provisions of this chapter, passes to any firm, corporation, or society organized for profit either under the laws of this state or of any other state, territory, province or country, the rate of tax imposed shall be as follows:

Fifteen percent on the entire amount so passing.

6. When the property or any interest therein, or income therefrom, taxable under the provisions of this chapter passes to any person included under subsections 1 or 2 hereof, there shall be credited to the tax imposed on the individual share so passing an amount equal to the tax imposed in this state on the decedent on any property, real, personal or mixed, or the proportionate share thereof on property passing to the person taxed hereunder, which can be identified as having been received by the decedent as a share in the estate of any person who died within two years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received. The credit shall not be applicable to taxes on property of the decedent which was not acquired from the prior estate. [C97,§1467; S13,§1481-a; C24, 27, 31, 35, 39,§**7313**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.10]

39GA, ch 38,§4, editorially divided

450.11 Repealed by 61GA, ch 366,§6.

450.12 Deduction of debts. There shall be deducted from the gross value of the estate as fixed by the inheritance tax appraisers appointed under the provisions of this chapter, or as fixed by the court, the debts defined as follows:

1. From the estate of such decedent who at the time of his death was domiciled within this state, there shall be deducted the debts owing by the decedent at the time of his death, the local and state taxes due from the estate in January of the year of his death, and federal taxes owing by the decedent or paid from the estate on Iowa property, a reasonable sum for funeral expenses, temporary allowances as provided in sections 633.374 to 633.377, and as granted by the probate court or judge thereof, court costs, the costs of appraisement made for the purpose of assessing the inheritance tax, the fee of executors, administrators, or trustees as allowed by order of court, the amount paid by the executor or administrator for a bond, the attorney fee in a reasonable amount to be approved by the court for the probate proceedings in said estate the costs of the sale of real estate or personal property in the estate, including the real estate agent's commission, and expenses for abstracting, documentary stamps, and title correction expenses, and no other sum; provided, however, that the debt of such decedent owing for or secured by property outside of this state, shall not be deducted before estimating the tax, except when the property for which the debt is owing or by which it is secured is subject to the tax imposed by this chapter, or when the foreign debt exceeds the value of the property securing it or for which it was contracted, when the excess may be deducted, provided that satisfactory proof of the value of the foreign property and the amount of such debt is furnished to the director of revenue.

Said debts shall not be deducted unless the same are approved and allowed by the court within eighteen months from the death of the decedent, unless otherwise ordered by the judge or court of the proper county.

2. From the estate of such decedent who at the time of his death is domiciled outside of

this state, the director of revenue shall deduct such debts and expenses as are chargeable to the property under the laws of this state, provided that in the event that the executor, administrator, or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction and with the department of revenue, or with the department of revenue in case there is no administration of the estate within this state, a duly certified statement exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statement shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of the said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate. [S13,§1481-a2; C24, 27, 31, 35, 39,§7317; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.12; 66GA, ch 220,§1]

450.13 Inheritance tax and lien book. The clerk of the district court shall provide and keep a suitable book to be known as the inheritance tax and lien book to show the following:

1. A complete copy of the inventory and any amendments.
2. A complete copy of any appraisal.
3. A record of waivers, releases, or payment of the tax and the amount and date. [S13, §1481-a25; C24, 27, 31, 35, 39,§7318; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.13; 66GA, ch 1056,§26]

450.14 Report required — blanks. The department of revenue shall furnish the clerk of the court with blanks upon which to make the report and inventory required by section 633.361. [S13,§1481-a26; C24, 27, 31, 35, 39,§7320; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.14]

450.15 Copy for department of revenue. Upon the filing of such report the clerk of the district court shall immediately forward a true copy of such report and findings to the department of revenue. [S13,§1481-a26; C24, 27, 31, 35, 39,§7321; C46, 50, 54, 58, 62, 66, 71, 73, 75, §450.15; 66GA, ch 1056,§27]

450.16 Repealed by 66GA, ch 1056,§45.

450.17 Conveyance—effect. When said real estate or any interest therein, is subject to such tax, no conveyance either before or after the entering of said lien, shall discharge the real estate so conveyed from said lien. [S13,§1481-a26; C24, 27, 31, 35, 39,§7323; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.17]

450.18 Acceptance of final report. No final settlement of the account of any executor, administrator, or trustee shall be accepted or allowed unless a strict compliance has been had by such person with the provision relative to the making and filing of said report, and with section 450.16.* [S13,§1481-a26; C24, 27, 31, 35, 39,§7324; C46, 50, 54, 58, 62, 66, 71, 73, 75, §450.18]

*Repealed by 66GA, ch 1056,§45

450.19 Record of estates by department. The director of revenue shall record all estates reported to the department of revenue as liable for a tax under the provisions of this chapter, showing:

1. The name of the decedent.
2. The place of his residence or county from which such estate was reported.
3. The date of his death.
4. The name of the administrator, executor, or trustee.
5. The appraised value of the property, or the value of any taxable pecuniary legacy.
6. The amount of indebtedness that was deducted before estimating the tax.
7. The amount of tax collected.
8. The amount of fees paid for reporting and collecting such tax.
9. The amount of tax, if any, refunded. [S13, §1481-a46; C24, 27, 31, 35, 39,§7325; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.19]

S13,§1481-a46, editorially divided

450.20 Record of deferred estates. It shall also keep a separate record of any deferred estate upon which the tax due is not paid within fifteen months from the death of the decedent, showing substantially the same facts as are required in other cases, and also showing:

1. The date and amount of all bonds given to secure the payment of the tax with a list of the sureties thereon.
2. The name of the person beneficially entitled to such estate or interest, with place of residence.
3. A description of the property or a statement of conditions upon which such deferred estate is based or limited. [S13,§1481-a46; C24, 27, 31, 35, 39,§7326; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.20]

450.21 Administration on application of director. If, upon the death of any person leaving an estate that may be liable to a tax under the provisions of this chapter, a will disposing of such estate is not offered for probate, or an application for administration made within four months from the time of such decease, the director of revenue may, at any time thereafter, make application to the proper court, setting forth such fact and praying that an administrator may be appointed, and thereupon said court shall appoint an administrator to administer upon such estate. [S13,§1481-a3; C24, 27, 31, 35, 39,§7327; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.21]

Referred to in §450.22
S13,§1481-a3, editorially divided

450.22 Administration avoided. When the heirs or persons entitled to inherit the property of an estate subject to the tax hereby im-

posed, desire to avoid the appointment of an administrator as provided in section 450.21, and in all instances where real estate is involved and no regular probate proceedings are had, they or one of them shall file under oath the inventories and reports and perform all the duties required by this chapter, of administrators, including the filing of the lien. Proceedings for the collection of the tax when no administrator is appointed, shall conform as nearly as may be to the provisions of this chapter in other cases. [S13,§1481-a3; C24, 27, 31, 35, 39,§7328; C46, 50, 54, 58, 62, 66, 71, 73, 75, §450.22]

Referred to in §§633.31, 633.481, 635.7

450.23 Repealed by 64GA, ch 218,§13.

450.24 Appraisers. In each county the court shall, on or before January 15 of each year, appoint three competent residents and freeholders of said county to act as appraisers of all property within its jurisdiction which is charged or sought to be charged with an inheritance tax. Said appraisers shall serve for one year, and until their successors are appointed and qualified. They shall each take an oath to faithfully and impartially perform the duties of the office, but shall not be required to give bond. They shall be subject to removal at any time at the discretion of the court. The court may also in its discretion, either before or after the appointment of the regular appraisers, appoint other appraisers to act in any given case. Vacancies occurring otherwise than by expiration of term shall be filled by appointment of the court. No person interested in any manner in the estate to be appraised may serve as an appraiser of such estate. [S13, §1481-a4; C24, 27, 31, 35, 39,§7330; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.24]

450.25 and 450.26 Repealed by 64GA, ch 218, §13.

450.27 Commission to appraisers. When an appraisal of any part of an estate is requested by the department of revenue, as provided in section 450.39, or is otherwise required by this chapter, the clerk shall issue a commission to the appraisers, who shall fix a time and place for appraisement, except that if the only interest that is subject to tax is a remainder or deferred interest upon which the tax is not payable until the determination of a prior estate or interest for life or term of years, he shall not issue the commission until the determination of the prior estate, except at the request of parties in interest who desire to remove an inheritance tax lien. [S13,§1481-a5; C24, 27, 31, 35, 39,§7331; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.27]

450.28 Notice of appraisement. It shall be the duty of all appraisers appointed under the provisions of this chapter, upon receiving a commission as herein provided, to forthwith give notice to the director of revenue and other persons known to be interested in the property to be appraised, of the time and place at which they will appraise such property, which time shall not be less than ten days from the date of such notice. The notice shall be served in the same manner as is prescribed for the commencement of civil actions, or in such other manner as the court in its discretion, may prescribe upon application of any appraiser or any interested party. [S13,§1481-a6; C24, 27, 31, 35, 39,§7332; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.28]

S13,§1481-a6, editorially divided
Manner of service, R.C.P. 56(a)

450.29 Returns required. Upon service of such notice and the making of such appraisement, the said notice, return thereon and appraisement shall be filed with the clerk, and a copy of such appraisement shall at once be filed by the clerk with the director of revenue. [C97,§1476; S13,§1481-a6; C24, 27, 31, 35, 39, §7333; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.29]

450.30 Property in different counties. When property is located in more than one county, the appraisers of the county in which the estate is being administered may appraise the whole estate, or those of the several counties may serve for the property within their respective counties or other appraisers be appointed as the district court may direct. [C97, §1476; S13,§1481-a6; C24, 27, 31, 35, 39,§7334; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.30]

450.31 Objections. The director of revenue or any person interested in the estate or property appraised may, within forty-five days thereafter, file objections to said appraisement and give notice thereof as in beginning civil actions, to the director of revenue or the representative of the estate or trust, if any, otherwise to the person interested as heir, legatee, or transferee, on the hearing of which as an action in equity either party may produce evidence competent or material to the matters therein involved. [S13,§1481-a7; C24, 27, 31, 35, 39,§7335; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.31]

S13,§1481-a7, editorially divided
Manner of service, R.C.P. 56(a)

450.32 Hearing—order. If upon such hearing the court finds the amount at which the property is appraised is its value on the market in the ordinary course of trade, and the appraisement was fairly and in good faith made, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the value of the property in the ordinary course of trade, or that the same was not fairly or in good faith made, it shall set aside the appraisement. Upon said appraisement being set aside, the court shall fix the value of the property of said estate for inheritance tax purposes and the valuation so fixed shall be that upon which the tax shall be paid, unless an appeal is taken from the order of said court as hereinafter provided for. [S13,§1481-a7; C24, 27, 31, 35, 39,§7336; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.32]

450.33 Appeal and notice. The director of revenue or anyone interested in the property appraised may appeal to the supreme court from the order of the district court fixing the value of the property of said estate. Notice of appeal shall be served within sixty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in equitable actions. [S13, §1481-a7; C24, 27, 31, 35, 39,§**7337**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.33]

Perfecting appeal, R.C.P. 335, 336 and 353 et seq.

450.34 Bond on appeal. In case of appeal the appellant, if not the director of revenue, shall give bond to be approved by the clerk of the court, which bond shall provide that the said appellant and sureties shall pay the tax for which the property may be liable with cost of appeal. [S13,§1481-a7; C24, 27, 31, 35, 39, §**7338**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.34]

Presumption of approval, §682.10

450.35 Repealed by 66GA, ch 1056,§45.

450.36 Appraisal of other property. If there be an estate or property subject to said tax wherein the records in the clerk's office do not disclose that there may be a tax due under the provisions of this chapter, the person or persons interested in the property shall report the matter to the clerk with an application that the property be appraised. [S13,§1481-a8; C24, 27, 31, 35, 39,§**7341**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.36]

S13,§1481-a8, editorially divided

450.37 Market value. The appraised value of the property shall in all cases be its market value in the ordinary course of trade, and in domestic estates the tax shall be calculated thereon after deducting the debts as defined herein. [S13,§1481-a8; C24, 27, 31, 35, 39,§**7342**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.37]

450.38 Deduction of debts. The debt of a domestic estate owing for or secured by property outside of the state, shall not be deducted before estimating the tax, except when the property for which the debt is owing or by which it is secured is subject to the tax imposed by this chapter, or when the foreign debt exceeds the value of the property securing it or for which it was contracted, when the excess may be deducted provided that satisfactory proof of the value of the foreign property and the amount of such debt is furnished to the director of revenue. [S13,§1481-a8; C24, 27, 31, 35, 39,§**7343**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §450.38]

450.39 Valuation established by inventory. 1. An appraisal is not required for an item of property in an estate if the item is listed on an inventory or report filed in the estate or an amendment thereto, unless the department of revenue requests appraisal by filing a written request with the clerk where the inventory or report is filed, within sixty days after the filing. When a request is filed, the clerk shall notify the personal representative and his attorney of the request. The department of revenue may waive an appraisal which has been previously requested.

2. If appraisal of an item of property is not required or is waived, the personal representative, trustee, or the persons entitled to or claiming the item of property shall be charged, for the purpose of computing the tax, with the full value of the item as reported in the inventory or report. [S13,§1481-a9; C24, 27, 31, 35, 39, §**7344**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.39]

Referred to in §§450.27, 450.45, 450.47

450.40 to 450.43 Repealed by 64GA, ch 218, §13.

450.44 Remainders — appraisement. When any person, whose estate over and above the amount of his debts, as defined in this chapter, exceeds the sum of one thousand dollars, shall bequeath or devise or otherwise transfer any real property to or for the use of persons exempt from the tax imposed by this chapter, during life or for a term of years, and the remainder to a person or persons not thus exempt, said property, upon the determination of such estate for life or years, shall be appraised at its then actual market value from which shall be deducted the value of any improvements thereon, or betterments thereto, if any, made by the remainderman during the time of the prior estate, to be ascertained and determined by the appraisers and the tax on the remainder shall be paid by such remainderman as provided in section 450.46. [S13, §1481-a10; C24, 27, 31, 35, 39,§**7349**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.44]

Referred to in §§450.46, 633.31

450.45 Life and term estates — appraisement. Subject to the provisions of section 450.39 when an estate or interest for life or term of years in real property is given to a party other than those especially exempt by this chapter, the clerk shall cause the property to be appraised at the actual market value thereof, as is provided in ordinary cases, and the party entitled to the estate or interest shall, within fifteen months from the death of decedent owner, pay the tax, and in default thereof the court shall order the estate or interest, or so much thereof as necessary to pay the tax and interest, to be sold. [S13,§1481-a11; C24, 27, 31, 35, 39,§**7350**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.45]

S13,§1481-a11, editorially divided

450.46 Deferred estate — appraisement. Upon the determination of any prior estate or interest, when the remainder or deferred estate or interest or any part thereof is subject to such tax and the tax upon such remainder or deferred interest has not been paid, the person or persons entitled to such remainder or deferred interest shall immediately report to the clerk of the proper court the fact of the determination of the prior estate, and upon receipt of such report, or upon in-

formation from any source, of the determination of any such prior estate when the remainder interest has not been appraised for the purpose of assessing such tax, the clerk shall forthwith issue a commission to the inheritance tax appraisers, who shall immediately proceed to appraise the property as provided in like cases in section 450.44 and the tax upon such remainder interest shall be paid by the remainderman within one year next after the determination of the prior estate. If such tax is not paid within said time the court shall then order said property, or so much thereof as may be necessary to pay such tax and interest, to be sold. [S13,§1481-a11; C24, 27, 31, 35, 39,§7351; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.46]

Referred to in §450.44

450.47 Life and term estates in personal property. Subject to the provisions of section 450.39, when an estate or interest for life or term of years in personal property is given to one or more persons other than those especially exempt by this chapter and the remainder or deferred estate to others, the clerk shall cause the property devised or conveyed to be appraised as provided herein in ordinary estates and the value of the several estates or interests devised or conveyed shall be determined as provided in section 450.51, and the tax upon such estates or interests as are liable for the tax imposed by this chapter shall be paid to the department of revenue from the property appraised or by the persons entitled to the estate or interest within fifteen months from the death of the testator, grantor, or donor; provided, however, that payment of the tax upon any deferred estate or remainder interest may be deferred until the determination of the prior estate by the giving of a good and sufficient bond as provided in section 450.48. [S13,§1481-a12; C24, 27, 31, 35, 39,§7352; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.47]

450.48 Payment deferred—bond. When in case of deferred estates or remainder interests in personal property or in the proceeds of any real estate that may be sold during the time of a life, term, or prior estate, the persons interested who may desire to defer the payment of the tax until the determination of the prior estate, shall file with the clerk of the proper district court a bond as provided herein in other cases, such bond to be renewed every two years until the tax upon such deferred estate is paid. If at the end of any two-year period the bond is not promptly renewed as herein provided and the tax has not been paid, the bond shall be declared forfeited, and the amount thereof forthwith collected. When the estate of a decedent consists in part of real and in part of personal property, and there be an estate for life or for a term of years to one or more persons and a deferred or remainder estate to others, and such deferred or remainder estate is in whole or in part subject to the tax imposed by this chapter, if the deferred or remainder estates or interests are so disposed that good and sufficient security for the payment of the tax for which such deferred or remainder estates may be liable can be had because of the lien imposed by this chapter upon the real property of such estate, then payment of the tax upon such deferred or remainder estates may be postponed until the determination of the prior estate without giving bond as herein required to secure payment of such tax, and the tax shall remain a lien upon such real estate until the tax upon such deferred estate or interest is paid. [S13,§1481-a13; C24, 27, 31, 35, 39,§7353; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.48]

Referred to in §450.47

450.49 Bonds — conditions. All bonds required by this chapter shall be payable to the department of revenue and shall be conditioned upon the payment of the tax, interest, and costs for which the estate may be liable, and for the faithful performance of all the duties hereby imposed upon and required of the person whose acts are by such bond to be guaranteed, and shall be in an amount equal to twice the amount of the tax, interest, and costs that may be due, but in no case less than five hundred dollars, and must be secured by not less than two resident freeholders or by a fidelity or surety company authorized by the commissioner of insurance to do business in this state. [S13,§1481-a14; C24, 27, 31, 35, 39, §7354; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.49]

Referred to in §450.50

450.50 Removal of property from state—bond. It shall be unlawful for any person to remove from this state any property, or the proceeds thereof, that may be subject to the tax imposed by this chapter, without paying the said tax to the department of revenue. Any person violating the provisions of this section shall be guilty of a felony and upon conviction shall be fined an amount equal to twice the amount of tax, interest, and costs for which the estate may be liable, but in no case less than two hundred dollars, and imprisoned as the court shall direct, until the fine is paid; provided, however, that the penalty hereby imposed shall not be enforced if, prior to the removal of such property or the proceeds thereof, the person desiring to effect such removal files with the clerk a bond conditioned upon the payment of the tax, interest, and costs, as is provided in section 450.49 hereof. [S13,§1481-a15; C24, 27, 31, 35, 39, §7355; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.50]

Duration of imprisonment, §789.17

450.51 Annuities—life and term estates. The value of any annuity, deferred estate, or interest, or any estate for life or term of years, subject to inheritance tax shall be determined for the purpose of computing said tax by the use of current, commonly used tables of mortality and actuarial principles pursuant to regulations prescribed by the director of revenue. The taxable value of annuities, life or term, deferred, or future estates, shall be

computed at the rate of four percent per annum of the appraised value of the property in which such estate or interest exists or is founded. [S13,§1481-a16; C24, 27, 31, 35, 39, §7356; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.51]

Referred to in §450.47
S13,§1481-a16, editorially divided
Mortality table, §512.43
See also mortality table at end of Vol. II

450.52 Deferred estates — removal of lien. Whenever it is desired to remove the lien of the inheritance tax on remainders, reversions, or deferred estates, parties owning the beneficial interest may pay at any time the said tax on the present worth of such interests determined according to the rules herein fixed. [S13,§1481-a16; C24, 27, 31, 35, 39,§7357; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.52]

450.53 Duty of fiduciaries to pay tax. It is the duty of all fiduciaries except guardians and conservators or other persons charged with the management or settlement of any estate or trust from which a tax is due under this chapter, to file a final inheritance tax return with a copy of any federal estate tax return and other documents required by the director which may reasonably tend to prove the amount of tax due, and pay to the department of revenue the amount of the tax due from any devisee, grantee, donee, heir, or beneficiary of the decedent, except in cases where payment of the tax is deferred until the determination of a prior estate, in which cases the owner of the future interest shall file a supplemental final inheritance tax return and pay to the department of revenue the tax due. The final inheritance tax returns shall be in the form prescribed by the director. [S13, §1481-a17; C24, 27, 31, 35, 39,§7358; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.53; 66GA, ch 222,§1]

S13,§1481-a17, editorially divided

450.54 Sale to pay tax. Executors, administrators, trustees, or the director of revenue, shall have power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as is now provided by law for the sale of such property for the payment of debts of testators or intestates. [S13,§1481-a17; C24, 27, 31, 35, 39,§7359; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.54]

450.55 Action to collect. The director of revenue may bring, or cause to be brought in the director's name of office, suit, for the collection of said tax, interest, and costs, against the executor, administrator, or trustee, or against the person entitled to property subject to said tax, or upon any bond given to secure payment thereof, either jointly or severally, and obtaining judgment may cause execution to be issued thereon as is provided by statute in other cases. The proceedings shall conform as nearly as may be to those for the collection of ordinary debt by suit. [S13,§1481-a17; C24, 27, 31, 35, 39,§7360; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.55]

450.56 Time of payment extended. If because of necessary litigation or other unavoidable cause of delay enforced payment of the tax hereby imposed, by suit and execution, would result in loss or be to the detriment of the best interests of the estate, the court may extend the time for the payment of the tax. Such extensions of time shall not be granted except in cases where security is given for payment of the tax, interest, and costs and the application for such extension is made before the tax is delinquent. [S13,§1481-a17; C24, 27, 31, 35, 39,§7361; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.56]

450.57 Tax deducted from legacy or collected. Every executor, administrator, referee, or trustee having in charge or trust any property of an estate subject to said tax, and which is made payable by him, shall deduct the tax therefrom or shall collect the tax thereon from the legatee or person entitled to said property and pay the same to the department of revenue, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon. [S13,§1481-a18; C24, 27, 31, 35, 39,§7362; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.57]

450.58 Final settlement to show payment. No final settlement of the account of any executor, administrator, or trustee shall be accepted or allowed unless it shall show, and the court shall find, that all taxes imposed by the provisions of this chapter upon any property or interest therein, that is hereby made payable by such executors, administrators, or trustees, and to be settled by said account, shall have been paid, and that the receipt of the department of revenue for such tax shall have been filed with the clerk showing such payment. Any order contravening the provision of this section shall be void. Upon the filing of such receipt showing payment of the tax, the clerk shall record the same upon the inheritance tax lien book in his office. [S13, §1481-a19; C24, 27, 31, 35, 39,§7363; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.58]

Similar provision, §422.27

450.59 Judicial review. Judicial review of a decision of the director may be sought under the Iowa Administrative Procedure Act, except that the petition may be filed in the district court in the county in which some part of the property is situated, if the decedent was not a resident, or such court in the county of which the deceased was a resident at the time of his death or where such estate is administered. [S13,§1481-a20; C24, 27, 31, 35, 39,§7364; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.59; 66GA, ch 224,§2]

Referred to in §450.94
S13,§1481-a20, editorially divided

450.60 Director to represent state. The director of revenue shall, with all the rights and privileges of a party in interest, represent the

state in any such proceedings. [S13,§1481-a20; C24, 27, 31, 35, 39,§7365; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.60]

450.61 Bequests to executors or trustees. Whenever a decedent appoints one or more executors or trustees and, in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed the statutory fees as compensation for their services, such excess shall be liable to such tax. [S13,§1481-a21; C24, 27, 31, 35, 39,§7366; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.61]

450.62 Legacies charged upon real estate. Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator, trustee, or department of revenue, and the same shall remain a charge against and be a lien upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee, or director of revenue as herein provided. [S13,§1481-a22; C24, 27, 31, 35, 39,§7367; C46, 50, 54, 58, 62, 66, 71, 73, 75, §450.62]

450.63 Maturity of tax—interest. All taxes imposed by this chapter shall be payable to the department of revenue and, except when otherwise provided in this chapter, shall be paid within twelve months from the death of the testator or intestate. All taxes not paid within the time prescribed in this chapter shall draw interest at the rate of eight percent per annum thereafter until paid. [S13,§1481-a23; C24, 27, 31, 35, 39,§7368; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.63; 66GA, ch 1106,§9]

S13,§1481-a23, editorially divided
Interest on extension of time, §450.6
Amendment effective July 1, 1976

450.64 Clerk furnished receipt showing payment. Upon payment of such tax the department of revenue shall forthwith transmit a duplicate receipt, to the clerk of the court of the county in which the estate is being settled, showing the payment of such tax. [S13,§1481-a23; C24, 27, 31, 35, 39,§7369; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.64]

450.65 Director to enforce collection. It shall be the duty of the director of revenue to enforce the collection of the delinquent inheritance tax, and the provisions of law with reference thereto. [C24, 27, 31, 35, 39,§7370; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.65]

450.66 Investigation by director. The director of revenue may issue a citation to any person who the director may believe or has reason to believe has any knowledge or information concerning any property which the director believes or has reason to believe has been transferred by any person and as to which there is or may be a tax due to the state under the provisions of the inheritance tax laws of this state, and by such citation require such person to appear before the director or anyone designated by the director at the county seat of the county where said person resides and at a time to be designated in such citation, and testify under oath as to any fact or information within his knowledge touching the quantity, value, and description of any such property and the disposition thereof which may have been made by any person, and to produce and submit to the inspection of the director of revenue, any books, records, accounts, or documents in the possession of or under the control of any person so cited. [C24, 27, 31, 35, 39,§7371; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.66]

Referred to in §450.68
39GA, ch 38,§15, editorially divided

450.67 Inspection of books, records, etc. The director of revenue may also inspect and examine the books, records, and accounts of any person, firm, or corporation, including the stock transfer books of any corporation, for the purpose of acquiring any information deemed necessary or desirable by the director for the proper enforcement of the inheritance tax laws of this state, and the collection of the full amount of the tax which may be due to the state thereunder. [C24, 27, 31, 35, 39,§7372; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.67]

Referred to in §450.68

450.68 Information confidential. Any and all information acquired by the department of revenue under and by virtue of the means and methods provided for by sections 450.66 and 450.67 shall be deemed and held as confidential and shall not be disclosed by the department except so far as the same may be necessary for the enforcement and collection of the inheritance tax provided for by the laws of this state; provided, however, that the director of revenue may authorize the examination of the information by other state officers, or, if a reciprocal arrangement exists, by tax officers of another state or of the federal government. [C24, 27, 31, 35, 39,§7373; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.68]

450.69 Contempt. Refusal of any person to attend before the director of revenue in obedience to any such citation, or to testify, or produce any books, accounts, records, or documents in his possession or under his control and submit the same to inspection of the department of revenue when so required, may, upon application of the director of revenue, be punished by any district court in the same manner as if the proceedings were pending in such court. [C24, 27, 31, 35, 39,§7374; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.69]

Contempts, ch 665

450.70 Fees. Witnesses so cited before the director of revenue, and any sheriff or other officer serving such citation shall receive the same fees as are allowed in civil actions; to be audited by the state comptroller and paid

upon the certificate of the director of revenue out of funds not otherwise appropriated. [C24, 27, 31, 35, 39,§7375; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.70]

Sheriff's fees, §337.11; witness fees, §622.69

450.71 Proof of amount of tax due. Before issuing a receipt for the tax, the director of revenue may demand from administrators, executors, trustees, or beneficiaries such information as may be necessary to verify the correctness of the amount of the tax and interest, and when such demand is made they shall send to the director of revenue certified copies of wills, deeds, or other papers, or of such parts of their reports as the director may demand, and upon the refusal or neglect of said parties to comply with the demand of the director, it is the duty of the clerk of the court to comply with such demand, and the expenses of making such copies and transcripts shall be charged against the estate, as are other costs in probate, or the tax may be assessed without deducting debts for which the estate may be liable. [S13,§1481-a24; C24, 27, 31, 35, 39,§7376; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.71]

450.72 Extension of time of appraisement. Whenever, by reason of the complicated nature of an estate, or by reason of the confused condition of the decedent's affairs, it is impracticable for the executor, administrator, trustee, or beneficiary of said estate to file with the clerk of the court a full, complete, and itemized inventory of the personal assets belonging to the estate, within the time required by statute for filing inventories of the estates, the court may, upon the application of such representatives or parties in interest, extend the time for making the inheritance appraisement for a period not to exceed three months beyond the time fixed by this chapter. [S13,§1481-a27; C24, 27, 31, 35, 39,§7377; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.72]

450.73 Heirs at law to make report. Whenever any property passing under the intestate laws may be subject to the tax imposed by this chapter, the person or persons entitled to such property shall make or cause to be made to the clerk of the courts of the county wherein such property is located, within ninety days next following the death of such intestate, a report in writing embodying therein substantially the information required by section 633.361. Failure to furnish such report or to probate the will in a testate estate shall not relieve the estate from the lien created hereby or the persons entitled to the property of such decedent from payment of the tax, interest, or other penalties imposed by this chapter. [S13, §1481-a28; C24, 27, 31, 35, 39,§7378; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.73]

450.74 to 450.80 Repealed by 66GA, ch 1056, §45.

450.81 Duty of recorder. Each county recorder shall, upon the filing in his office of any deed, bill of sale, or other transfer of any description whatsoever which shows upon its face that it was made or intended to take effect in possession or enjoyment at or after the death of the maker of such instrument, forward to the department of revenue a certified copy thereof. [C24, 27, 31, 35, 39,§7385; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.81]

450.82 and 450.83 Repealed by 66GA, ch 1056,§45.

450.84 Costs charged against estate—exceptions. In all cases where an estate or interest therein so passes as to be liable to taxation under this chapter, all costs of the proceedings had for the assessment of such tax shall be chargeable to such estate as other costs in probate proceedings and, to discharge the lien, all costs as well as the taxes must be paid. In all other cases the costs are to be paid as ordered by the court. When a decision adverse to the state has been rendered, with an order that the state pay the costs, it shall be the duty of the clerk of the court in which such action was pending to certify the amount of such costs to the director of revenue, who shall, if said costs be correctly certified and the case has been finally terminated and the tax if any due has been paid, present the claim to the state comptroller to audit and, said claim being allowed by said comptroller, the comptroller is directed to issue a warrant on the treasurer of state in payment of such costs. [S13,§1481-a35; C24, 27, 31, 35, 39,§7388; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.84]

Referred to in §450.85

450.85 Appropriation. There is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to carry out the provisions of section 450.84. [C27, 31, 35,§7388-a1; C39,§7388.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.85]

450.86 Securities and assets held by bank, etc. No safe deposit company, trust company, bank, or other institution, person or persons holding securities or assets, exclusive of life insurance policies payable to named beneficiaries, which securities or other assets are located in a safety deposit box or other security enclosure of the decedent after receiving knowledge of the death shall deliver or transfer the same to the transferee, joint owner, or beneficiary of the decedent unless the tax for which the securities or assets are liable under this chapter is first paid, or the payment thereof is secured by bond as herein provided. However, all the contents shall be reported in writing to the department of revenue, and thereafter may be delivered to the executor, administrator, or legal representative. It is lawful for and the duty of the director of revenue personally, or by any person by him duly authorized, to examine the securities or assets at the time of any proposed delivery or transfer. Failure to give written notice of the contents of the safety deposit box or other security enclosure to the depart-

ment of revenue at the time of or prior to the delivery of the securities or assets to the executor, administrator, or legal representative or transferee, joint owner, or beneficiary shall render the safe deposit company, trust company, bank, or other institution, person or persons liable for the payment of the tax upon the securities or assets as provided in this chapter. [S13,§1481-a36; C24, 27, 31, 35, 39, §7389; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.86]

450.87 Transfer of corporation stock. If a foreign executor, administrator, or trustee shall assign or transfer any corporate stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the department of revenue on or before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax, interest, and costs, and it is the duty of the director of revenue to enforce the payment thereof. [S13,§1481-a37; C24, 27, 31, 35, 39,§7390; C46, 50, 54, 58, 62, 66, 71, 73, 75, §450.87]

450.88 Corporations to report transfers. Every Iowa corporation organized for pecuniary profit shall, on July 1 of each year, by its proper officers under oath, make a full and correct report to the director of revenue of all transfers of its stocks made during the preceding year by any person who appears on the books of such corporation as the owner of such stock, when such transfer is made to take effect at or after the death of the owner or transferor, and all transfers which are made by an administrator, executor, trustee, referee, or any person other than the owner or person in whose name the stocks appeared of record on the books of such corporation, prior to the transfer thereof. Such report shall show the name of the owner of such stocks and his place of residence, the name of the person at whose request the stock was transferred, his place of residence and the authority by virtue of which he acted in making such transfer, the name of the person to whom the transfer was made, and the residence of such person, together with such other information as the officers reporting may have relating to estates of persons deceased who may have been owners of stock in such corporation. If it appears that any such stock so transferred is subject to tax under the provisions of this chapter, and the tax has not been paid, the director of revenue shall notify the corporation in writing of its liability for the payment thereof, and shall bring suit against such corporation as in other cases herein provided unless payment of the tax is made within sixty days from the date of such notice. [S13, §1481-a38; C24, 27, 31, 35, 39,§7391; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.88]

450.89 Foreign estates—deduction of debts. Whenever any property belongs to a foreign estate, which estate in whole or in part passes to persons not exempt herein from such tax, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator, or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction, and with the director of revenue, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate. [S13,§1481-a39; C24, 27, 31, 35, 39,§7392; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.89]

Referred to in §450.90

450.90 Property in this state belonging to foreign estate. Whenever any property, real or personal, within this state belongs to a foreign estate and said foreign estate passes in part exempt from the tax imposed by this chapter and in part subject to said tax and there is no specific devise of the property within this state to exempt persons or if it is within the authority or discretion of the foreign executor, administrator, or trustee administering the estate to dispose of the property not specifically devised to exempt persons in the payment of debts owing by the decedent at the time of his death, or in the satisfaction of legacies, devises, or trusts given to direct or collateral legatees or devisees or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of this state belonging to such foreign estate shall be subject to the tax imposed by this chapter, and the tax due thereon shall be assessed as provided in section 450.89 relating to the deduction of the proportionate share of indebtedness; provided, however, that if the value of the property so situated exceeds the total amount of the estate passing to other persons than those exempt hereby from the tax imposed by this chapter, such excess shall not be subject to said tax. [S13,§1481-a40; C24, 27, 31, 35, 39,§7393; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.90]

450.91 Foreign estates — reciprocity — personal property. The tax imposed by this chapter in respect to personal property of nonresidents (other than tangible personal property having an actual situs in this state) shall not be payable (1) if the decedent at the time of his death was a resident of a state or territory of the United States which at the time of his death did not impose a transfer tax or death tax of any character in respect to personal property of residents of this state (other than tangible personal property having an actual situs in such state or territory), or (2) if the laws of the state or territory of residence of

the decedent at the time of his death contained a reciprocal provision under which nonresidents were exempted from transfer taxes or death taxes of every character in respect of personal property (other than tangible personal property having an actual situs therein) provided the state or territory of residence of such nonresidents allowed a similar exemption to residents of the state or territory of residence of such decedent.

In no case shall the provisions of this section apply to the intangible personal property of nonresident decedents unless such intangible personal property shall have been subjected to a tax or submitted for purposes of taxation in the state of the decedent's residence.

This section shall apply only to estates of decedents dying subsequent to July 4, 1929.

For the purpose of this section the District of Columbia and possessions of the United States shall be considered territories of the United States. [C31, 35,§7393-c1; C39,§**7393.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.91]

450.92 Compromise settlement. Whenever an estate charged or sought to be charged with the inheritance tax is of such a nature, or is so disposed, that the liability of the estate is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the director of revenue may, with the written approval of the attorney general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the district court or judge of the proper court, and after such approval the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate. [S13, §1481-a41; C24, 27, 31, 35, 39,§**7394**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.92]

450.93 Unknown heirs. Whenever the heirs or persons entitled to any estate or any interest therein are unknown or their place of residence cannot with reasonable certainty be ascertained, a tax of five percent shall be paid to the department of revenue upon all such estates or interests, subject to refund as provided herein in other cases; provided, however, that if it be afterwards determined that any estate or interest passes to aliens, there shall be paid within sixty days after such determination and before delivery of such estate or property, an amount equal to the difference between five percent, the amount paid, and the amount which such person should pay under the provisions of this chapter. [S13, §1481-a42; C24, 27, 31, 35, 39,§**7395**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.93]

450.94 Final return — determination — appeal.

1. "Taxpayer" as used in this section means a person liable for the payment of tax as stated in section 450.5.

2. The taxpayer shall file a final inheritance tax return on forms to be prescribed by the director of revenue. When a final inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department shall notify the taxpayer of the total amount due together with any interest thereon, which shall be a sum certain if paid on or before the last day of the month in which the notice is postmarked, or on or before the last day of the following month if the notice is postmarked after the twentieth day of a month and before the first day of the following month.

3. If the amount paid is greater than the correct tax and interest due, the department shall refund the excess, with interest after sixty days from the date of payment at six percent per annum, under the provisions of rules as may be prescribed by the director. However, the director shall not allow a claim for refund or credit that has not been filed with the department within five years after the tax payment upon which a refund or credit is claimed becomes due, or one year after the tax payment was made, whichever time is the later. A determination by the department of the amount of tax due, or the amount of refund for excess tax paid, shall be final unless the estate, trust, heir, beneficiary, transferee or other person aggrieved by the determination appeals to the director for a revision of the determination within ninety days from the postmark date of the notice of determination of tax due or refund owing. The director shall grant a hearing, and upon the hearing the director shall determine the correct tax or refund due, and notify the appellant of the decision by certified mail. The decision of the director shall be final unless the appellant seeks judicial review of the director's decision under section 450.59 within sixty days after the postmark date of the notice of the director's decision. [S13,§1481-a43; C24, 27, 31, 35, 39,§**7396**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §450.94; 66GA, ch 224,§1]

Referred to in §§450.95, 450.96
Manner of service, R.C.P. 56 (*a*)

450.95 Appropriation. There is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to carry out the provisions of section 450.94. [C27, 31, 35,§7396-a1; C39,§**7396.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.95]

Referred to in §450.96

450.96 Contingent estates. Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of

the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited. When an estate, devise, or legacy can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting. When a devise, bequest, or transfer is one in part contingent, and in part vested so that the beneficiary will come into possession and enjoyment of a portion of his inheritance on or before the happening of the event upon which the possible defeating contingency is based, a tax shall be imposed and collected upon such bequest or transfer as upon a vested interest, at the highest rate possible under the terms of this chapter if no such contingency existed; provided that in the event such contingency reduces the value of the estate or interest so taxed, and the amount of tax so paid is in excess of the tax for which such bequest or transfer is liable upon the removal of such contingency, such excess shall be refunded as is provided in sections 450.94 and 450.95 in other cases. [S13,§1481-a44; C24, 27, 31, 35, 39, §7397; C46, 50, 54, 58, 62, 66, 71, 73, 75,§450.96]

450.97 Joint owners of bank accounts—duty to notify department of revenue. No person, bank, credit union, or savings and loan association shall permit the withdrawal of funds from a joint account by a surviving joint owner without first notifying the department of revenue of the balance in such account at the date of decedent's death and the name and address of the surviving joint owner. Such notification may be accomplished by mailing the required information to the department of revenue and withdrawal or payment of such funds may be made immediately thereafter as long as such mailing is accomplished by ordinary mail no later than the date of withdrawal or earlier if knowledge of the decedent's death is known by the depository. A person, bank, credit union, or savings and loan association shall only be liable for any inheritance tax due by the surviving joint owner for willful failure to report to the department of revenue as herein provided. [C66, 71, 73, 75,§450.97]

DEPARTMENT OF REVENUE MORTALITY TABLE

The two factors across the page equal one hundred percent. Multiply the corpus of the estate by the first factor to obtain value of the life estate.

Use the second factor to obtain the remainder interest if the tax is to be paid at the time of probate, or to determine if there would be any tax due.

All figures are based on the 1958 CSO Mortality Table with interest at four percent.

This table to be used for estates of decedents where death occurs on or after July 4, 1965.

Age of Life Tenant	Life Estate	Remainder
0	.90164	.09836
1	.89936	.10064
2	.89900	.10100
3	.89676	.10324
4	.89396	.10604
5	.89104	.10896
6	.88792	.11208
7	.88464	.11536
8	.88120	.11880
9	.87756	.12244
10	.87380	.12620
11	.86984	.13016
12	.86576	.13424
13	.86152	.13848
14	.85716	.14284
15	.85268	.14732
16	.84808	.15192
17	.84336	.15664
18	.83852	.16148
19	.83356	.16644
20	.82840	.17160
21	.82308	.17692
22	.81756	.18244
23	.81184	.18816
24	.80592	.19408
25	.79976	.20024
26	.79336	.20664
27	.78672	.21328
28	.77984	.22016
29	.77268	.22732
30	.76524	.23476
31	.75756	.24244
32	.74960	.25040
33	.74132	.25868
34	.73280	.26720
35	.72392	.27608
36	.71476	.28524
37	.70532	.29468
38	.69560	.30440
39	.68560	.31440
40	.67536	.32464
41	.66488	.33512
42	.65412	.34588
43	.64316	.35684
44	.63192	.36808
45	.62044	.37956
46	.60872	.39128
47	.59680	.40320
48	.58464	.41536
49	.57228	.42772
50	.55972	.44028
51	.54700	.45300
52	.53412	.46588
53	.52104	.47896
54	.50788	.49212
55	.49452	.50548
56	.48108	.51892
57	.46756	.53244
58	.45392	.54608
59	.44024	.55976
60	.42652	.57348
61	.41280	.58720
62	.39908	.60092
63	.38538	.61462
64	.37174	.62826
65	.35817	.64183

Age of Life Tenant	Life Estate	Remainder
66	.34471	.65529
67	.33140	.66860
68	.31829	.68171
69	.30542	.69458
70	.29282	.70718
71	.28048	.71952
72	.26840	.73160
73	.25653	.74347
74	.24481	.75519
75	.23322	.76678
76	.22175	.77825
77	.21045	.78955
78	.19938	.80062
79	.18863	.81137
80	.17826	.82174
81	.16830	.83170
82	.15876	.84124
83	.14960	.85040
84	.14078	.85922
85	.13224	.86776
86	.12395	.87605
87	.11584	.88416
88	.10785	.89215
89	.09990	.90010
90	.09192	.90808
91	.08386	.91614
92	.07563	.92437
93	.06715	.93285
94	.05826	.94174
95	.04866	.95134
96	.03801	.96199
97	.02595	.97405
98	.01275	.98725
99	.00000	.00000

To find the present value of an Annuity or a given amount (specified sum) for life, multiply the Annuity by the Annuity Factor opposite the age at the nearest birthday of the person receiving the Annuity.

Age in Years	Life Expectancy In Years	4% Annuities $1.00
0	68.30	22.541
1	67.78	22.484
2	66.90	22.475
3	66.00	22.419
4	65.10	22.349
5	64.19	22.276
6	63.27	22.198
7	62.35	22.116
8	61.43	22.030
9	60.51	21.939
10	59.58	21.845
11	58.65	21.746
12	57.72	21.644
13	56.80	21.538
14	55.87	21.429
15	54.95	21.317
16	54.03	21.202
17	53.11	21.084
18	52.19	20.963
19	51.28	20.839
20	50.37	20.710
21	49.46	20.577
22	48.55	20.439
23	47.64	20.296
24	46.73	20.148
25	45.82	19.994
26	44.90	19.834
27	43.99	19.668
28	43.08	19.496
29	42.16	19.317
30	41.25	19.131
31	40.34	18.939
32	39.43	18.740
33	38.51	18.533
34	37.60	18.320
35	36.69	18.098
36	35.78	17.869
37	34.88	17.633
38	33.97	17.390
39	33.07	17.140
40	32.18	16.884
41	31.29	16.622
42	30.41	16.353
43	29.54	16.079
44	28.67	15.798
45	27.81	15.511
46	26.95	15.218
47	26.11	14.920
48	25.27	14.616
49	24.45	14.307
50	23.63	13.993
51	22.82	13.675
52	22.03	13.353
53	21.25	13.026
54	20.47	12.697
55	19.71	12.363
56	18.97	12.027
57	18.23	11.689
58	17.51	11.348
59	16.81	11.006
60	16.12	10.663
61	15.44	10.320
62	14.78	9.9770
63	14.14	9.6346
64	13.51	9.2935
65	12.90	8.9543
66	12.31	8.6178
67	11.73	8.2851
68	11.17	7.9572
69	10.64	7.6355
70	10.12	7.3204
71	9.63	7.0121
72	9.15	6.7101
73	8.69	6.4133
74	8.24	6.1203
75	7.81	5.8304
76	7.39	5.5437
77	6.98	5.2612
78	6.59	4.9845
79	6.21	4.7158
80	5.85	4.4566
81	5.51	4.2076
82	5.19	3.9689
83	4.89	3.7399
84	4.60	3.5194
85	4.32	3.3061

Age in Years	Life Expectancy In Years	4% Annuities $1.00
86	4.06	3.0988
87	3.80	2.8961
88	3.55	2.6963
89	3.31	2.4975
90	3.06	2.2981
91	2.82	2.0965
92	2.58	1.8907
93	2.33	1.6787
94	2.07	1.4564
95	1.80	1.2166
96	1.51	.9503
97	1.18	.6487
98	.83	.3189
99	.50	.0000

See also Mortality Table, §512.43 and next preceding Tables of Corresponding Sections

CHAPTER 451

IOWA ESTATE TAX

Referred to in §321.47

451.1 Definitions.
451.2 Additional tax.
451.3 Gross and net estate.
451.4 Tax on net estate.
451.5 Duty of executor.
451.6 Payment of tax.
451.7 Disposal of tax.
451.8 Claim for credit or refund.
451.9 Appeal.
451.10 Effect of allowance.
451.11 Effect of disallowance.
451.12 Applicable statutes.
451.13 Invalidation.

451.1 Definitions. When used in this chapter:

1. The term *"executor"* means the executor of the will or administrator of the estate of the decedent, or if there is no such executor or administrator appointed, qualified and acting, then any person in actual or constructive possession of any property included in the gross estate of the decedent.

2. The term *"gross estate"* means the gross estate as determined under the provisions of section 451.3.

3. The term *"net estate"* means the net estate as determined under the provisions of section 451.3.

4. The term *"month"* means a calendar month.

5. The term *"Federal Estate Tax Act"* means Title III of chapter 27 of the Acts of the Sixty-ninth Congress of the United States, first session, appearing in 44 Statutes at Large, chapter 27, or any amendments thereof.

6. The term *"federal estate tax"* means the tax imposed by the provisions of said federal estate tax Act referred to in subsection 5 of this section.

7. The term *"Iowa estate tax"* means the tax imposed by this chapter.

8. The term *"Internal Revenue Code of 1954"* shall have the same meaning as ascribed to it in section 422.4. [C31, 35,§7397-c1; C39, §7397.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§451.1]

451.2 Additional tax. An amount equal to the federal estate tax credit for state death taxes as allowed in the Internal Revenue Code of 1954 is hereby imposed upon every transfer of the net estate of every decedent, being a resident of, or owning property in this state, as herein provided.

1. Where decedent is a resident of Iowa and all property is located in Iowa, or is subject to the jurisdiction of the courts of Iowa, an amount equal to the total credit as allowed under federal statute shall be paid to the state of Iowa. Where decedent is a nonresident or where property is located outside the state of Iowa and not subject to jurisdiction of Iowa courts, the tax shall be prorated on the basis that the Iowa property bears to the total gross estate for federal tax purposes.

2. The total tax or the Iowa share of said tax shall be credited with the amount of any inheritance tax due the state of Iowa as provided in chapter 450. [C31, 35,§7397-c2; C39, §7397.02; C46, 50, 54, 58, 62, 68, 71, 73, 75,§451.2]

451.3 Gross and net estate. The gross estate shall be the same as finally determined for federal estate tax and the net estate shall be the gross estate less deductions as permitted by federal law, in arriving at the net taxable federal estate, all determined as provided in the Internal Revenue Code of 1954. [C31, 35,§7397-c3; C39,§7397.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§451.3]

Referred to in §451.1(2, 3)

451.4 Tax on net estate. The tax hereby imposed shall be upon the transfer of:

1. The total net estate of every decedent dying after April 12, 1929.

2. The net personal estate of every decedent dying after the twenty-sixth day of February, 1926, whose estate shall be open and pending in the courts of this state, or subject to the

jurisdiction of such courts, at the effective date of this chapter, or whose estate shall or may become subject to administration in, or to the jurisdiction of, the courts of this state after the effective date of this chapter. [C31, 35, §7397-c4; C39,**§7397.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§451.4]

451.5 Duty of executor. It shall be the duty of the executor of every decedent whose estate may be subject to the tax imposed by this chapter, to file in the office of the director of revenue, within twelve months after the death of such decedent, duplicate copies of the estate tax return provided for in the federal estate tax Act, and in like manner, duplicate copies of all supplemental or amended returns; and the value of all items included in the gross estate, as shown by such returns, or supplemental or amended returns, shall be taken and considered as the values of such items for the purposes of this chapter; and in case of any revaluation or correction of valuation of any such items, either by such supplemental or amended returns, or by the commissioner of internal revenue, or by any appellate tribunal by which the same may be finally determined, such corrected values shall be taken and considered as the values of such items for the purposes of this chapter. [C31, 35,§7397-c5; C39,**§7397.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§451.5]

451.6 Payment of tax. The tax imposed by this chapter shall be paid by the executor to the department of revenue within twelve months from the date of the death of such decedent, or in case such decedent died more than twelve months prior to April 12, 1929, then within six months after the effective date hereof. [C31, 35,§7397-c6; C39,**§7397.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§451.6; 66GA, ch 221,§2, ch 1106,§10]

43GA, ch 204,§6, editorially divided

451.7 Disposal of tax. The proceeds of this tax shall be paid into the general fund of the state. [C31, 35,§7397-c7; C39,**§7397.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§451.7]

451.8 Claim for credit or refund. If the executor of a resident decedent shall have paid to the treasurer of the United States or to a collector of internal revenue an estate tax under the provisions of said federal estate tax Act in respect of property included in the gross estate, determined as herein provided, and shall have claimed as credits against said federal estate tax a sum less than the maximum credits allowed by the provisions of said federal estate tax Act for any estate, inheritance, legacy or succession taxes actually paid to any state or territory of the United States, or to the District of Columbia, it shall be his duty, with due diligence, to file in the bureau of internal revenue a claim for credit or refund for such amount, if any, as such estate shall be properly entitled to receive under the provisions of said federal estate tax Act and of this chapter. [C31, 35,§7397-c8; C39,**§7397.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§451.8]

451.9 Appeal. If any claim for refund or credit, or any part thereof, shall be denied or disallowed by the commissioner of internal revenue, the executor, the director of revenue, or any person having an interest in said estate which may be adversely affected by such denial or disallowance, may apply to the judge of the court having jurisdiction of such estate, for an order directing such executor to take, perfect, and prosecute an appeal from the decision of the commissioner of internal revenue to such court or tribunal as may have jurisdiction of such matter, and, upon the granting of such order, the director of revenue may assist in the prosecution of such appeal. The judge of the court granting such order may make a reasonable allowance for attorneys' fees for the prosecution of such appeal, and direct the manner in which the same, together with any other costs or expenses which may be allowed by said court in connection therewith, shall be paid. [C31, 35,§7397-c9; C39, **§7397.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§451.9]

451.10 Effect of allowance. If any claim for credit or refund, or any part thereof, shall be finally determined in favor of such executor, any amount refunded or credited thereon shall inure to the benefit of such estate. [C31, 35, §7397-c10; C39.**§7397.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§451.10]

43GA, ch 204,§9, editorially divided

451.11 Effect of disallowance. If any claim for credit or refund or any part thereof, shall be finally determined adversely to such executor, for any reason other than lack of diligence or other failure of duty on his part, the amount so denied or disallowed, or so much thereof as shall have been paid to the department of revenue under the provisions of this chapter, shall, upon a claim duly filed with, and proper showing made to, the director of revenue, be refunded by the department of revenue to such executor, and shall inure to the benefit of such estate. [C31, 35,§7397-c11; C39,**§7397.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§451.11]

451.12 Applicable statutes. All the provisions of the law as it appears in chapter 450 with respect to the determination, imposition, payment and collection of the tax thereby imposed, including interest upon delinquent taxes, are hereby made applicable to the provisions of this chapter, except as the same may be in conflict with the provisions hereof. The director of revenue shall adopt and promulgate all rules necessary for the enforcement of this chapter. [C31, 35,§7397-c12; C39,**§7397.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§451.12]

451.13 Invalidation. This chapter shall become void and of no effect in respect to the estates of persons who die after the effective date of the repeal of the federal estate tax Act, or of the provisions thereof providing for a credit of the taxes paid to the several states of

the United States not exceeding eighty percent of the tax imposed by said federal estate tax Act, or after such federal estate tax Act, or the eighty percent credit provision thereof, may be declared, by the supreme court of the United States, to be void by reason of any contravention of the Constitution of the United States. [C31, 35,§7397-c13; C39,§**7397.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§451.13]

Constitutionality, 43GA, ch 204,§12

CHAPTER 452

SECURITY OF THE REVENUE

Referred to in §220.5

452.1 County responsible to state.
452.2 Interest on warrants.
452.3 Discounting warrants.
452.4 Loans by county treasurer.
452.5 Loans by state treasurer.
452.6 Settlement with treasurer.
452.7 Settlement by retiring treasurer.
452.8 Supervisors to report to state auditor.
452.9 Correct balances.
452.10 Custody of public funds—investment or deposit.
452.11 Manner and details of settlement.
452.12 Duty of examining officer.
452.13 Report of settlement filed.
452.14 False statements or reports.
452.15 Official delinquency.
452.16 Refund to counties.
452.17 Warrant for excess.
452.18 Delivery to treasurer.

452.1 County responsible to state. Each county is responsible to the state for the full amount of tax levied for state purposes, excepting such amounts as are certified to be unavailable, double, or erroneous assessments. [R60,§793; C73,§908; C97,§1453; C24, 27, 31, 35, 39,§**7398**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §452.1]

452.2 Interest on warrants. When interest is due and allowed by the treasurer of state on the redemption of state warrants, or by the county treasurer on the redemption of county warrants, the same shall be receipted on the warrants by the holder, with the date of the payment, and no interest shall be allowed by the state comptroller or board of supervisors except such as is thus receipted. [R60,§795; C73,§910; C97,§1455; C24, 27, 31, 35, 39,§**7400**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.2]

Analogous section, §74.7

452.3 Discounting warrants. If the state treasurer or any county treasurer, by himself or through another, discounts state comptroller's or auditor's warrants, either directly or indirectly, he shall upon conviction be fined in any sum not exceeding one thousand dollars. [R60,§796; C73,§911; C97,§1456; C24, 27, 31, 35, 39,§**7401**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.3]

452.4 Loans by county treasurer. A county treasurer shall be liable to a like fine for loaning out, or in any manner using for private purposes, state, county, or other funds in his hands. [R60,§797; C73,§912; C97,§1457; S13, §1457; C24, 27, 31, 35, 39,§**7402**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.4]

452.5 Loans by state treasurer. The state treasurer shall be liable to a fine of not more than ten thousand dollars for a like misdemeanor. [R60,§797; C73,§912; C97,§1457; S13, §1457; C24, 27, 31, 35, 39,§**7403**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.5]

452.6 Settlement with treasurer. At the meetings in July and January of each year, the board of supervisors shall make a full and complete settlement with the treasurer, and shall certify to the state comptroller all credits to him for double or erroneous assessments and unavailable taxes, and all dues for state revenue, interest, or delinquent taxes, sales of land, peddlers' licenses, and other dues, the amounts collected therefor, and revenues still delinquent, each year to itself, which reports shall be forwarded by mail. [C51,§§157, 158; R60,§798; C73,§913; C97,§1458; C24, 27, 31, 35, 39,§**7408**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.6]

452.7 Settlement by retiring treasurer. When a county treasurer goes out of office, he shall make a full and complete settlement with the board of supervisors, and deliver up all books, papers, moneys, and all other property pertaining to the office, to his successor, taking his receipt therefor. [R60,§802; C73, §917; C97,§1461; C24, 27, 31, 35, 39,§**7409**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.7]

C97,§1461, editorially divided

452.8 Supervisors to report to state auditor. The board of supervisors shall make a statement of state dues to the auditor of state, showing all charges against the treasurer during his term of office, and all credits made, the delinquent taxes and other unfinished business charged over to his successor, and the amount of money paid over to his successor, showing to what year and to what account the amount so paid over belongs. [R60,§802; C73,§917; C97,§1461; C24, 27, 31, 35, 39,§**7410**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.8]

452.9 Correct balances. The board of supervisors shall also see that the books of the

treasurer are correctly balanced before passing into the possession and control of the treasurer-elect. [R60,§802; C73,§917; C97,§1461; C24, 27, 31, 35, 39,§7411; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.9]

452.10 Custody of public funds — investment or deposit. The treasurer of state and the treasurer of each political subdivision shall at all times keep all funds coming into their possession as public money, in a vault or safe, to be provided for that purpose, or in some bank legally designated as a depository for such funds. However, the treasurer of state and the treasurer of each political subdivision shall invest, unless otherwise provided, any of the public funds not currently needed for operating expenses in notes, certificates, bonds, or other evidences of indebtedness which are obligations of or guaranteed by the United States of America or any of its agencies; or make time deposits of such funds in banks as provided in chapter 453 and receive time certificates of deposit therefor; or in savings accounts in banks. The treasurer of state may invest any of the funds in his custody in any of the investments authorized for the Iowa public employees' retirement system in section 97B.7, subsection 2, paragraph "*b*" except that investment in common stocks shall not be permitted. [R60,§804; C73,§918; C97,§1462; S13, §1462; C24, 27, 31, 35, 39,§7412; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.10]

Referred to in §§452.14, 453.1, 453.5, 453.7(2)
S13,§1462, editorially divided

452.11 Manner and details of settlement. At the time of any examination of any such office, or at the time of any settlement with the treasurer in charge of any such public funds, the treasurer shall produce and count in the presence of the officer or officers making such examination or settlement, all moneys or funds then on deposit in the safe or vault in his office, and shall produce a statement of all money or funds on deposit with any depository wherein he is authorized to deposit such funds, which statement shall be certified by one or more officers of such depository, and shall correctly show the balance remaining on deposit in such depository at the close of business on the day preceding the day of such settlement. The treasurer shall also file a statement setting forth the numbers, dates, and amounts of all outstanding checks, or other items of difference, reconciling the balance as shown by the treasurer's books with those of the depositories. The state treasurer shall also file a statement showing the numbers, dates and amounts of all United States government bonds held as part of said public fund. [R60, §804; C73,§918; C97,§1462; S13,§1462; C24, 27, 31, 35, 39,§7413; C46, 50, 54, 58, 62, 66, 71, 73, 75, §452.11]

Referred to in §452.14

452.12 Duty of examining officer. It shall be the duty of the officer or officers making such settlement to see that the amount of securities and money produced and counted, together with the amounts so certified by the legally designated depositories, agrees with the balance with which such treasurer should be charged, and he shall make a report in writing of any such settlement or examination, and attach thereto the certified statement of all such depositories. [S13,§1462; C24, 27, 31, 35, 39,§7414; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.12]

Referred to in §452.14

452.13 Report of settlement filed. The report of any such settlement with the treasurer of state shall be filed in the office of the state comptroller, and the report of a settlement with a county treasurer with the auditor of the county. [S13,§1462; C24, 27, 31, 35, 39,§7415; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.13]

Referred to in §452.14

452.14 False statements or reports. Any officer or other person making a false statement or report or in any manner violating any of the provisions of sections 452.10 to 452.13 shall be guilty of a misdemeanor and shall be liable to a fine of not less than five hundred dollars. [S13,§1462-a; C24, 27, 31, 35, 39,§7416; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.14]

452.15 Official delinquency. If any auditor or treasurer or other officer shall neglect or refuse to perform any act or duty specifically required of him, such officer shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding one thousand dollars, and he and his bondsmen shall be liable on his official bond for such fine, and for the damages sustained by any person through such neglect or refusal. [R60,§§744, 749, 805; C73,§919; C97,§1463; C24, 27, 31, 35, 39,§7417; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.15]

452.16 Refund to counties. The state comptroller shall draw his warrant on the state treasury in favor of any county in the state for the amount of any excess in any fund or tax due the state from said county, excepting the state taxes. [C97,§1464; C24, 27, 31, 35, 39, §7418; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.16]

452.17 Warrant for excess. When it shall appear from the books in the office of the state comptroller that there is a balance due any county in excess of any revenue due the state, except state taxes, he shall draw his warrant for such excess in favor of the county entitled thereto, and forward the same by mail, or otherwise, to the county auditor of the county to which it belongs, and charge the amount so sent to such county. [C97,§1465; C24, 27, 31, 35, 39,§7419; C46, 50, 54, 58, 62, 66, 71, 73, 75, §452.17]

452.18 Delivery to treasurer. The auditor to whom said warrant is sent shall immediately, upon receipt thereof, deliver it to the treasurer of his county, and charge the amount thereof to the treasurer, and shall acknowledge the receipt of the amount to the state comptroller. [C97,§1466; C24, 27, 31, 35, 39,§7420; C46, 50, 54, 58, 62, 66, 71, 73, 75,§452.18]

See §682.28

CHAPTER 453

DEPOSIT OF PUBLIC FUNDS

Referred to in §220.5, 411.7, 452.10, 455.61

453.1 Deposits in general.
453.2 Approval—requirements.
453.3 Increase conditionally prohibited.
453.4 Location of depositories.
453.5 Refusal of deposits—procedure.
453.6 Interest rate.
453.7 Interest—where credited.
453.8 Liability of public officers.
453.9 Investment of sinking funds.
453.10 Investment of funds created by election.
453.11 Investment officer.
453.12 Service charge by bank.
453.13 Investment report to state auditor.
453.14 School bonds and earnings.

453.1 Deposits in general. All funds held in the hands of the following officers or institutions shall be deposited in banks as are first approved by the appropriate governing body as indicated: For the treasurer of state, by the executive council; for the county treasurer, recorder, auditor, sheriff, township clerk, clerk of the district court, and judicial magistrate, by the board of supervisors; for the city treasurer, by the city council; for the county public hospital or merged area hospital, by the board of hospital trustees; for a memorial hospital, by the memorial hospital commission; for a school corporation, by the board of school directors; provided, however, that the treasurer of state and the treasurer of each political subdivision shall invest all funds not needed for current operating expenses in time certificates of deposit in banks listed as approved depositories pursuant to this chapter or in investments permitted by section 452.10. The list of public depositories and the amounts severally deposited therein shall be a matter of public record. The term "bank" means a bank or a private bank, as defined in section 524.103. [C24, 27,§§139, 4319, 5548, 5651, 7404; C31, 35, §7420-d1; C39,§**7420.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§453.1]

Referred to in §§453.7, 453.8

453.2 Approval — requirements. The approval of a bank as a depository shall be by written resolution or order which shall be entered of record in the minutes of the approving board, and which shall distinctly name each bank approved, and specify the maximum amount which may be kept on deposit in each such bank. [C24, 27,§139; C31, 35,§7420-d2; C39, §**7420.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§453.2]

453.3 Increase conditionally prohibited. The maximum amount so permitted to be deposited in a named bank shall not be increased except with the approval of the treasurer of state. [C27,§1090-b2; C31, 35,§7420-d3; C39,§**7420.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§453.3]

453.4 Location of depositories. Deposits by the treasurer of state shall be in banks located in this state; by a county officer or county public hospital officer or merged area hospital officer, in banks located in his county or in an adjoining county within this state; by a memorial hospital treasurer, in a bank located within this state which shall be selected by such memorial hospital treasurer and approved by the memorial hospital commission; by a city treasurer or other city financial officer, in banks located in the city, but in the event there is no bank in such city then in any other bank located in this state which shall be selected as such depository by the city council; by a school treasurer or by a school secretary in a bank within this state which shall be selected by the board of directors or the trustees of such school district; by a township clerk in a bank located within this state which shall be selected by such township clerk and approved by the trustees of such township. Provided, that deposits may be made in banks outside of Iowa for the purpose of paying principal and interest on bonded indebtedness of any municipality when such deposit is made not more than ten days before the date such principal or interest becomes due. [C24, 27,§§139, 4319, 5548, 5651, 7404; C31, 35,§7420-d4; C39,§**7420.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §453.4]

453.5 Refusal of deposits — procedure. If none of the duly approved banks will accept said deposits under the conditions herein prescribed or authorized, said funds may be deposited in any approved bank or banks conveniently located within the state.

If a governmental unit makes in writing to all qualified, approved depositories a bona fide proffer to deposit public funds either in a savings account, or in a time certificate of deposit, and such proffer is not then accepted, then and only then may such governmental unit invest such funds so declined in bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America or by any agency or instrumentality thereof, but these provisions shall not affect the investment of funds as provided in sections 453.9 and 453.10.

Public funds which cannot be deposited for periods of at least ninety days may be invested in notes, certificates, bonds, or other obligations of the United States or any of its agencies, as provided in section 452.10. In addition to the investments herein authorized, the treasurer of state may invest in any of

the investments authorized for the Iowa public employees' retirement system in section 97B.7, subsection 2, paragraph "*b*" except that investment in common stocks shall not be permitted. [C24, 27,§5653; C31, 35,§7420-d5; C39, §**7420.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§453.5]

453.6 Interest rate. Henceforth public deposits shall be deposited with reasonable promptness and shall except for time certificates of deposit be evidenced by passbook entry by the depository legally designated as depository for such funds. A committee composed of the superintendent of banking, the commissioner of insurance, and the treasurer of state shall meet on or about the first of each month and by majority action shall establish the rate to be earned on state funds placed in time deposits during the period until the next meeting of the committee. State funds invested by the treasurer of state in bank time certificates of deposit shall draw interest at the rate so determined, effective on the date of investment.

Public funds invested in bank time certificates of deposit by a public body or officer other than the treasurer of state shall draw interest at rates to be determined by the public body or officer and the bank, which rates shall not be greater than the rate set under this section for state funds nor more than one percent of interest below that rate. [C24, 27, §§140, 4319, 5548, 5651, 7404; C31, 35,§7420-d6; C39,§**7420.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §453.6]

Referred to in §453.7(2)

453.7 Interest—where credited.

1. No bank or trust company shall, directly or indirectly, by any device whatsoever, pay any interest to any public officer on any demand deposit of public funds, and no public officer shall take or receive any interest whatsoever on demand deposits of public funds. This provision shall not apply to interest on time certificates of deposit for public funds.

2. Interest or earnings on investments and time deposits made in accordance with the provisions of sections 12.8, 452.10, 453.1 and 453.6 shall be credited to the general fund of the governmental body making the investment or deposit, with the exception of specific funds for which investments are otherwise provided by law, constitutional funds, or when legally diverted to the state sinking fund for public deposits. Funds so excepted shall receive credit for interest or earnings derived from such investments or time deposits made from such funds. Such interest or earnings on any fund created by direct vote of the people shall be credited to the fund to retire any such indebtedness after which the fund itself shall be credited. [C31, 35,§7420-d7; C39,§**7420.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§453.7]

Referred to in §453.10

453.8 Liability of public officers. No officer referred to in section 453.1 shall be liable for loss of funds by reason of the insolvency of the depository bank when said funds have been deposited or invested as herein provided. Any deposit or investment in a lawful depository upon which interest is paid to a governmental unit under the provisions of this chapter shall be considered legal deposits for the purposes of chapter 454. [C27,§1090-a20; C31, 35,§7420-d8; C39,§**7420.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§453.8]

453.9 Investment of sinking funds. The governing council or board who by law are authorized to direct the depositing of funds shall be authorized to direct the treasurer or other designated financial officer to invest any fund not an active fund needed for current use and which is being accumulated as a sinking fund for a definite purpose, the interest on which is used for the same purpose, in savings accounts in banks, in the certificates or warrants provided by section 454.19, or make time deposits of such funds as provided in this chapter and receive time certificates of deposit therefor, or in bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality thereof, or in local certificates or warrants issued by any municipality or school district within the county, or in municipal or school district bonds which constitute a general liability, and the treasurer or other officer when so directed shall so invest such fund.

The treasurer of state may invest in any of the investments authorized for the Iowa public employees' retirement system in section 97B.7, subsection 2, paragraph "*b*" except that investment in common stocks shall not be permitted. [C27, 31, 35,§12775-b1; C39,§**7420.43**; C46, 50, 54,§454.35; C58, 62, 66, 71, 73, 75,§453.9]

Referred to in §453.5

453.10 Investment of funds created by election. The governing council or board, who by law have control of any fund created by direct vote of the people, may invest any portion thereof not currently needed, in bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality thereof, or make time deposits of such funds and receive time certificates of deposit therefor, or in savings accounts. The treasurer of state may invest in any of the investments authorized for the Iowa public employees' retirement system in section 97B.7, subsection 2, paragraph "*b*" except that investment in common stocks shall not be permitted. Interest or earnings on such funds shall be credited as provided in section 453.7, subsection 2. [C58, 62, 66, 71, 73, 75, §453.10]

Referred to in §453.5

453.11 Investment officer. A county, city, county public hospital, merged area hospital, memorial hospital or school corporation governing body may delegate its investment authority, under the provisions of this chapter, to the treasurer or other financial officer of

the governmental unit, who shall thereafter be responsible for handling investment transactions until such delegation of authority is revoked. [C66, 71, 73, 75,§453.11]

453.12 Service charge by bank. A bank may make reasonable service charges with respect to the handling of any public funds, but such service charges shall not be greater than said bank customarily requires from other patrons for similar services. [C66, 71, 73, 75,§453.12]

453.13 Investment report to state auditor. The treasurer, or other financial officer designated by the governing body, of each political subdivision except townships shall submit an investment report to the auditor of state on forms provided within thirty days following the close of each fiscal year of the political subdivision. The report shall be comprised of the following information, all of which shall relate to the previous fiscal year: Total demand deposits placed in depositories; total funds invested; description and disposition of investments; dates of investment; rates of interest earned or return on the investments; and such other information as the auditor of state may reasonably require pertaining to public funds. [C71, 73, 75,§453.13; 66GA, ch 225,§1, ch 1071,§3]

453.14 School bonds and earnings. The board of directors of a school corporation may invest any portion of the proceeds of bonds issued and not currently needed in United States government bonds or make time deposits as provided in this chapter.

Earnings and interest from investments authorized by this section shall be used either to retire the bonded indebtedness or to be credited to the schoolhouse fund for the purpose of financing the construction or equipping of the school building for which the bonds were sold.

This section shall apply to the use and crediting of earnings and investments of the proceeds from bonds issued prior to July 1, 1971. [C73, 75,§453.14]

CHAPTER 453A

PUBLIC DEPOSITS IN BANKS REPORTED

Repealed by 65GA, ch 260,§1

CHAPTER 454

STATE SINKING FUND FOR PUBLIC DEPOSITS

Referred to in §§220.5, 453.8

454.1 State sinking fund.
454.2 Purpose of fund.
454.3 How constituted.
454.4 Availability of funds.
454.5 Investment of funds.
454.6 Duty of treasurers.
454.7 Certification of deposits.
454.8 Duty of treasurer of state.
454.9 Assessment rate.
454.10 Depositories' and treasurers' duties.
454.11 Acceptance by depositories.
454.12 Liability of depository.
454.13 Liability of public officers.
454.14 Amount of deposit — determination — effect—objections.
454.15 Order of payment.
454.16 Certification of claims.
454.17 Warrant—payment—subrogation.
454.18 Bonds—subrogation.

ANTICIPATORY WARRANTS

454.19 Anticipatory warrants.
454.20 Interest.
454.21 Form of warrants.
454.22 Public sale—interest.
454.23 Advertisement.
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454.27 Misdemeanor.
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454.29 Record of sales.
454.30 Change in addresses.
454.31 Payment.
454.32 Application of funds.
454.33 Termination of interest.
454.34 Applicability.
454.35 Repealed by 57GA, ch 54,§8.

454.1 State sinking fund. There is hereby created in the office of the treasurer of state a separate fund to be known as the state sinking fund for public deposits. [C27,§1090-a1; C31, 35, §7420-a1; C39,§**7420.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.1]

Referred to in §454.8

41GA, ch 173,§1, editorially divided

454.2 Purpose of fund. The purpose of said fund shall be to secure the payment of their deposits to state, county, township, municipal, and school corporations having public funds deposited in demand or time deposits in any bank in this state, when such deposits have been made by authority of and in conformity

with the direction of the local governing council or board which is by law charged with the duty of selecting depository banks for said funds. [C27,§1090-a2; C31, 35,§7420-a2; C39, §**7420.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.2]

454.3 How constituted. There shall be paid into said sinking fund by the treasurer of state all collections either from assessments as hereinafter provided, or from receipts received from the collection of claims assigned or paid whether from security, bonds, or other sources. [C27,§1090-a3; C31, 35,§7420-a3; C39,§**7420.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.3]

41GA, ch 174,§1, editorially divided

454.4 Availability of funds. Any sums in the sinking fund shall be available for the payment of claims. [C27,§1090-a4; C31, 35, §7420-a4; C39,§**7420.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.4]

454.5 Investment of funds. All above a necessary working balance shall be invested by the treasurer of state in bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America or by any agency or instrumentality thereof, or in any of the investments authorized for the Iowa public employees' retirement system in section 97B.7, subsection 2, paragraph "*b*" except that investment in common stocks shall not be permitted. [C27,§1090-a5; C31, 35,§7420-a5; C39,§**7420.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.5]

454.6 Duty of treasurers. It shall be the duty of all school treasurers, city treasurers or other financial officers designated by the city council, and township clerks of the county to keep on file with the county treasurer a list of such depositories. [C27,§1090-a8; C31, 35, §7420-a8; C39,§**7420.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.6]

454.7 Certification of deposits. Whenever any such depository bank is hereafter closed and placed in the hands of a receiver or a trustee in bankruptcy or has been heretofore or is hereafter reorganized, either by reopening, sale to another bank of all or part of its assets with assumption of all or part of deposit liability, consolidation with another bank, purchase of part or all of assets of another bank, or merger with another bank or banks, or in any manner authorized by the National Bank Conservation Act, and especially section 207 of Title II thereof, or whenever any bank that has assumed all or part of the deposit liability of a depository bank, has heretofore or is hereafter reorganized in any manner authorized by the National Bank Conservation Act, and especially section 207 of Title II thereof, and the amount of the several deposits of public funds deposited therein by authority of and in conformity with the direction of the legal governing council or board which is by law charged with the duty of selecting depository banks for said funds and fixing the amount thereof has been ascertained and fixed by an order of court or by the treasurer of state if the matter is not pending in court, the superintendent of banking shall then certify such list of public deposits so approved by the court to the treasurer of state and the state comptroller. [C27,§1090-a9; C31, 35,§7420-a9; C39,§**7420.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §454.7]

41GA, ch 173,§4, editorially divided

454.8 Duty of treasurer of state. Every depository shall pay for the benefit of said state sinking fund, created by section 454.1, the assessments hereinafter set out. The treasurer of state, with the approval of the executive council, may and is hereby authorized to fix the assessment rate applicable to and for the purpose of providing insurance for public funds on deposit in depositories. On or before the first day of July and the first day of January in each year the state treasurer, with the approval of the executive council, shall determine and fix a fair and reasonable assessment rate to be used in determining the assessments payable by depositories during the succeeding six months' period. [C27,§1090-a10; C31, 35, §7420-a10; C39,§**7420.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.8]

454.9 Assessment rate. In fixing such rate the state treasurer shall give due regard to the amount of public funds currently on deposit and the liabilities of the state sinking fund contingent and accrued. For any six months' period the assessment rate shall not be more than two percent and not less than one-half of one percent per annum on ninety percent of the collected daily balances, provided that said assessment rate shall not exceed one percent per annum on ninety percent of the daily collected balances for the months of April and October of each year. If, at the beginning of any six months' period, no assessment rate on public funds has been fixed, and the amount in the state sinking fund over and above accrued and contingent liabilities does not exceed one hundred thousand dollars, the assessment rate shall be one-half of one percent per annum during such period. No assessment rate shall be fixed, and no assessments paid for any six months' period after the amount in the state sinking fund over and above accrued and contingent liabilities has reached five hundred thousand dollars until the amount in said sinking fund has been reduced to less than one hundred thousand dollars, in which event assessment rates shall again be fixed and assessments paid commencing at the next six months' period; provided that, if in the opinion of the treasurer the amount in said sinking fund will not be adequate to meet the demands upon the sinking fund the treasurer may, with the approval of the executive council, fix an assessment rate and require the payment of assessments for the balance of any six months' period after the amount in the sinking fund becomes less than one hundred thousand dollars. [C27, §1090-a11; C31, 35,§7420-a11; C39,§**7420.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.9]

454.10 Depositories' and treasurers' duties. On or before the tenth day of each month each depository shall compute, upon the basis of the assessment rate so fixed, and shall pay to the county treasurer of the county in which the depository is located, the amount of assessment so fixed and determined for the benefit of the state sinking fund for the preceding calendar month. Such amount shall be transmitted by the county treasurer to the state treasurer on or before the twentieth day of each month, and credited by the state treasurer to the state sinking fund for public deposits. [C27,§1090-a12; C31, 35,§7420-a12; C39, §**7420.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.10]

454.11 Acceptance by depositories. Any bank or trust company which does not desire to serve as a depository under this Act* for public funds of any public body may decline to do so by giving written notice to such public body prior to June 15, 1937. Failure to give such written notice shall constitute an acceptance of the obligations imposed by this Act with regard to all public funds on deposit July 1, 1937. The acceptance by any bank or trust company of any public funds for deposit on or after July 1, 1937, shall constitute an acceptance of the obligations imposed by this Act with regard to all such funds so accepted. [C39,§**7420.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §454.11]

*47GA, ch 194

454.12 Liability of depository. The failure on the part of any depository bank to pay to the county treasurer or the state treasurer any such assessments on or before the tenth day of the month same becomes due, shall render such bank liable for a ten percent penalty on the amount of assessments due and the same may be recovered by the state treasurer or the county treasurer. [C27,§1090-a13; C31, 35,§7420-a13; C39,§**7420.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.12]

41GA, ch 174,§4, editorially divided

454.13 Liability of public officers. The fiscal governing officers of every county, township, school district or city shall be personally liable to the sinking fund for any misappropriation of such assessments on public balances or for withholding the same when proper demand has been made therefor by the the county treasurer or state treasurer. [C27, §1090-a14; C31, 35,§7420-a14; C39,§**7420.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.13]

454.14 Amount of deposit—determination—effect—objections. Whenever or wherever any depository bank or any bank which has assumed the whole or any part of the deposit liability of a depository bank, has been heretofore or is hereafter closed and placed in the hands of a receiver or trustee in bankruptcy, or has been heretofore or is hereafter reorganized, either by reopening, sale to another bank of a part or all of its assets with the assumption of all or part of deposit liability, consolidation with another bank, purchase of part or all of the assets of another bank, or merger with another bank or banks, or in any manner authorized by the National Bank Conservation Act and especially section 207 of Title II thereof, the state of Iowa or any county, city, school district or township, having public funds on deposit therein, may by its governing board at such board's discretion, by written resolution or order, entered of record in the minutes of such board, or executive council, as the case may be, order and direct its treasurer or other officer to file with and furnish to the treasurer of state a statement of the amount of the deposit, a certified copy of the resolution under which the deposit was made, and any other information demanded by him. Unless either the bank liable therefor, or claimant has paid all assessments due the state sinking fund for public deposits to the date of its reorganization, on that part of claimant's deposit left in the bank the treasurer of state may refuse to file the claim of such claimant.

But where deposits of state funds in national banks only for which claims are on file, the payment of interest or assessments on said deposits, as provided in this chapter, from the time of the closing of said bank to the date of its reorganization, shall not be required, and the claim may be paid without interest or assessment for that period; and all claims heretofore filed, payment of which has been denied because of failure to pay the interest or assessments for the time between the date of the closing of said bank and its reopening, as in this chapter provided, shall be reconsidered and, if approved, shall be paid without the payment of such interest or assessments.

With the advice of the attorney general, the treasurer of state shall determine the amount thereof deposited by authority of and in conformity with the direction of the legal governing council or board and send a copy of his decision by certified mail to the claimant and to the bank and deliver a copy to the superintendent of banking, which decision shall be final except as to such depositors as within ten days after the mailing of such decision make objections to such decision in writing to the treasurer of state, and shall have the same force and effect as the court order and certificate of the superintendent of banking, as provided in this chapter.

If objections are made within the time and as above provided, the same shall be forwarded to the receiver, and shall be presented and heard and determined by the court as otherwise provided. In the event a receiver or trustee in bankruptcy has not been appointed, the claimant may present the objections, if made within the manner and time provided, to any court of competent jurisdiction by any appropriate action. If objections are not made as above provided, the decision of the treasurer of state shall be final. [C27,§1090-b1; C31, 35,§7420-b1; C39,§**7420.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.14]

454.15 Order of payment. It shall be the duty of the superintendent of banking to direct the order in which such deposits shall be paid. [C27,§1090-a16; C31, 35,§7420-a16; C39,§**7420.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.15]

41GA, ch 173,§5, editorially divided

454.16 Certification of claims. As soon as the money is available in such sinking fund the superintendent of banking shall certify to the state comptroller the amount due the several depositors of public funds as shown by such certified list and showing the order in which they shall be paid. [C27,§1090-a17; C31, 35,§7420-a17; C39,§**7420.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.16]

454.17 Warrant — payment — subrogation. Upon such certification the state comptroller shall issue his warrant upon such sinking fund in the hands of the treasurer of state payable to such depositor of public funds in the order certified by the superintendent of banking, and the same shall be paid to such depositor of public funds, and the treasurer of state shall thereupon be subrogated to all of the title, interest, and rights of the depositor in such deposit of public funds or segregated trust fund and shall share in the distribution of the assets of such bank or trust fund ratably with the other depositors and the sum received from such distribution shall be paid by the receiver or trustees to the treasurer of state and deposited in said sinking fund. Until the depositor has been paid in full from the sinking fund, it may share in the distribution of the assets of the bank or trust fund. [C27, §1090-a18; C31, 35,§7420-a18; C39,§**7420.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.17]

454.18 Bonds — subrogation. Where public funds are secured by bond and the same are paid or advanced by the treasurer of state as herein provided, said treasurer shall be subrogated to all of the rights of the holder of such bond and is hereby authorized to enforce and collect the same and shall deposit the same in said sinking fund. However, no suit shall be maintained upon any such bond if the money was legally deposited by authority of the governing council or board, and no premium has been paid for the bond. [C27,§1090-a19; C31, 35,§7420-a19; C39,§**7420.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.18]

Constitutionality, 41GA, ch 173,§12; 47GA, ch 194,§13
Omnibus repeal, see 41GA, ch 173,§11; 47GA, ch 194,§12

ANTICIPATORY WARRANTS

454.19 Anticipatory warrants. Whenever duly allowed and certified claims are on file with the treasurer of state to the amount of fifty thousand dollars or more and the state sinking fund for public deposits contains insufficient funds for immediate payment of said claims the treasurer of state with the written approval of the executive council of the state may issue anticipatory warrants for the purpose of raising funds for the immediate payment of said claims but said warrants outstanding and unpaid shall not exceed at any one time the sum of three million five hundred thousand dollars provided, however, that the treasurer of state by and with the approval of the executive council may issue such additional anticipatory warrants as may be necessary or required to refund existing warrants and the issuance of additional anticipatory warrants for the purpose of refunding anticipatory warrants shall not be considered to be a violation of the prohibition hereinbefore contained fixing the amount of said warrants to be outstanding at any one time in an amount not to exceed three million five hundred thousand dollars. [C27,§1090-b3; C31, 35, §7420-b3; C39,§**7420.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.19]

Referred to in §§453.9, 454.34

454.20 Interest. Said warrants shall bear interest from date at a rate not to exceed four percent, which interest shall be payable at the end of each year, or for such shorter period as said warrants may remain unpaid. [C27, §1090-b4; C31, 35,§7420-b4; C39,§**7420.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.20]

Referred to in §454.34

454.21 Form of warrants. Said warrants shall, subject to the foregoing limitations, be issued in such individual and gross amounts and in such form and at such rate of interest as the executive council shall approve.

Each certificate or warrant issued under the provisions of this division shall have printed on the face thereof the words: "This warrant is an obligation of the state sinking fund for public deposits only." [C27,§1090-b5; C31, 35, §7420-b5; C39,§**7420.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.21]

Referred to in §454.34

454.22 Public sale—interest. Said warrants shall be offered by the treasurer of state at public sale and shall be sold at a price not less than par plus accrued interest to the date when the treasurer of state shall actually receive payment for said warrants and make delivery of the same to the purchaser. [C27,§1090-b6; C31,§7420-b6; C35,§7420-g1; C39, §**7420.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.22]

Referred to in §454.34

454.23 Advertisement. When said anticipatory warrants are to be offered for sale, the treasurer of state shall by advertisement published for two or more successive weeks in at least two daily newspapers in the state, one of which shall be in Des Moines, give ten days' notice of the time and place of the sale of said warrants which notice shall contain a statement of the amount of such warrants to be offered for sale, the time and place of sale, and any further information which may be deemed pertinent. [C35,§7420-g2; C39, §**7420.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.23]

Referred to in §454.34

454.24 Bids. Sealed bids may be received at any time prior to the call for open bids.

After the sealed bids are on file, the executive council shall call for open bids. After all of the open bids have been received the substance of the best bid shall be recorded in the minutes of the secretary of the executive council. The secretary of the executive council shall then in the presence of the executive council open all sealed bids that may have been filed and shall note the substance of the best sealed bids. [C35,§7420-g3; C39,§**7420.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.24]

Referred to in §454.34

454.25 Private sale—preference. Any or all bids may be rejected and the sale may be advertised anew, in the same manner, or the anticipatory warrants or any portion thereof may thereafter be sold at private sale to any one or more of such bidders or other person providing, however, that preference shall be given to individuals residing in Iowa, corporations organized under the laws of the state of Iowa and resident partnerships insofar as possible to do so. In case of a private sale, the said warrants shall be sold upon terms not less favorable to the public than the most favorable bid made by a bona fide and responsible bidder at the last advertised sale. [C27, §1090-b6; C31,§7420-b6; C35,§7420-g4; C39, §**7420.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.25]

Referred to in §454.34

454.26 Commission and expense. No commission shall be paid directly or indirectly in connection with the sale of any anticipatory warrant. No expense shall be contracted or paid in connection with such sale other than the expenses incurred in advertising such anticipatory warrants for sale. [C35,§7420-g5; C39,§**7420.34**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §454.26]

Referred to in §454.34

454.27 Misdemeanor. Any public officer or employee who fails to perform any duty required by this division or who does any act prohibited by this division shall be guilty of an indictable misdemeanor. [C35,§7420-g6; C39, §**7420.35**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.27]

Referred to in §454.34
Punishment, §687.7

454.28 Construction. Nothing contained in this chapter, as amended by this division, shall be deemed to prevent the refunding of any warrants heretofore or hereafter issued under the provisions of this chapter. [C35,§7420-g7; C39,§**7420.36**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §454.28]

Referred to in §454.34
Constitutionality, 46GA, ch 87,§10
Omnibus repeal, 46GA, ch 87,§9

454.29 Record of sales. Said treasurer shall make and retain in his office a complete record of all warrants sold to each purchaser and of the post-office address of such purchaser. [C27, §1090-b7; C31, 35,§7420-b7; C39,§**7420.37**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.29]

Referred to in §454.34

454.30 Change in addresses. Purchasers of warrants may at any time notify said treasurer of their post-office addresses, or of any change in said addresses, and of the warrants owned or held by them, and said treasurer shall change his sale record accordingly. [C27, §1090-b8; C31, 35,§7420-b8; C39,§**7420.38**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.30]

Referred to in §454.34

454.31 Payment. Said warrants and all interest thereon shall be payable by the treasurer of state solely from the funds paid into said state sinking fund for public deposits, and said funds are hereby exclusively and irrevocably pledged to such payment in the consecutive order in which said warrants are issued. [C27,§1090-b9; C31, 35,§7420-b9; C39,§**7420.39**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.31]

Referred to in §454.34

454.32 Application of funds. All funds which are derived from the sale of said warrants shall be applied exclusively to the payment of the allowed and certified claims on account of which such warrants were issued. [C27,§1090-b10; C31, 35,§7420-b10; C39,§**7420.40**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.32]

Referred to in §454.34

454.33 Termination of interest. After the sale of any series of warrants, the treasurer of state shall, at least by the twentieth day of each month thereafter, if he has funds in the state sinking fund for public deposits sufficient to pay one or more of said outstanding warrants, mail to the purchaser or holder of said warrant or warrants at his post-office address as shown by the record of sale, a notice that said warrant or warrants will be paid on presentation and that interest thereon will cease after the expiration of ten days from the mailing of said notice. Upon the expiration of ten days from the mailing of said notice interest shall cease on said warrant or warrants. [C27,§1090-b11; C31, 35,§7420-b11; C39, §**7420.41**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.33]

Referred to in §454.34

454.34 Applicability. Sections 454.19 to 454.33 shall apply to all unpaid claims allowed and certified either before or after said sections take effect. [C27,§1090-b12; C31, 35,§7420-b12; C39,§**7420.42**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§454.34]

454.35 Repealed by 57GA, ch 54,§8. See §453.9.

TITLE XVII

CERTAIN INTERNAL IMPROVEMENTS

CHAPTER 455

LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS ON PETITION OR BY MUTUAL AGREEMENT

Referred to in §§111.76, 111A.4(9), 358.23, 455.22, 457.4, 457.14, 457.15, 457.19, 457.23, 457.28, 458.4, 460.1, 460.11, 462.30, 466.4, 466.8, 467.6, 467C.6

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COUNTY-CITY DRAINAGE DISTRICT

455.225 Supervisors of county over two hundred thousand may establish.

455.1 Jurisdiction to establish. The board of supervisors of any county shall have jurisdiction, power, and authority at any regular, special, or adjourned session, to establish a drainage district or districts, and to locate and establish levees, and cause to be constructed as hereinafter provided any levee, ditch, drain, or watercourse, or settling basins in connection therewith, or to straighten, widen, deepen, or change any natural watercourse, in such county, whenever the same will be of public utility or conducive to the public health, convenience or welfare. [C73,§1207; C97,§1939; S13,§1989-a1; C24, 27, 31, 35, 39,§**7421**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§**455.1**]

455.2 Presumption. The drainage of surface waters from agricultural lands and all other lands or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience, and welfare. [S13,§1989-a1; C24, 27, 31, 35, 39,§**7422**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.2]

455.3 "Levee" defined—bank protection. For the purpose of this chapter and with reference to improvements along or adjacent to the Missouri river the word "levee" shall be construed to include, in addition to its ordinary and accepted meaning, embankments, revetments, retards, or any other approved system of construction which may be deemed necessary to adequately protect the banks of any river or stream, within or adjacent to any county, from wash, cutting, or erosion. [C24, 27, 31, 35, 39,§**7423**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.3]

455.4 Definition of terms. Within the meaning of this chapter and chapter 457, the term "board" shall embrace the board of supervisors, the joint boards of supervisors in case of intercounty levee or drainage districts, and the board of trustees in case of a district under trustee management.

The term "commissioners" shall mean the persons appointed and qualified to classify lands, fix percentages of benefits, apportion and assess costs and expenses in any levee or drainage district, unless otherwise specifically indicated by law.

The term "appraisers" shall mean the persons appointed and qualified to ascertain the value of all land taken and the amount of damage arising from the construction of levee or drainage improvements.

The term "engineer" and the term "civil engineer", within the meaning of this chapter and chapters 457, 460, 461, 465, and 466, shall mean a person registered as a professional engineer under the provisions of chapter 114.

The term "cost of improvements" means the costs of any improvement which is subject to assessment, including but not limited to, the costs of engineering, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of land, easements, rights of way, construction, repair, supervision, inspection, testing, notices and publication, interest during construction and for a reasonable period following the completion of construction, and may include the default fund which shall amount to not more than ten percent of the total cost of an improvement assessed against benefited property. [C24, 27, 31, 35, 39,§**7424**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.4; 66GA, ch 1203,§2]

Referred to in §455.139
Omnibus repeal, 52GA, ch 243,§3

455.5 General rule for location. The levees, ditches, or drains herein provided for shall, so far as practicable, be surveyed and located along the general course of the natural streams and watercourses or in the general course of natural drainage of the lands of said district; but where it will be more economical or practicable such ditch or drain need not follow the course of such natural streams, watercourses, or course of natural drainage, but may straighten, shorten, or change the course of any natural stream, watercourse, or general course of drainage. [S13,§1989-a2; C24, 27, 31, 35, 39,§**7425**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.5]

455.6 Location across railroad. When any such ditch or drain crosses any railroad right of way, it shall when practicable be located at the place of the natural waterway across such right of way, unless said railroad company shall have provided another place in the con-

struction of the roadbed for the flow of the water; and if located at the place provided by the railroad company, such company shall be estopped from afterward objecting to such location on the ground that it is not at the place of the natural waterway. [S13,§1989-a2; C24, 27, 31, 35, 39,§**7426**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.6]

455.7 Number of petitioners required. Two or more owners of lands named in the petition described in section 455.9, may file in the office of the county auditor a petition for the establishment of a levee or drainage district, including a district which involves only the straightening of a creek or river. If the district described in the petition is a subdistrict, one or more owners of land affected by the proposed improvement may petition for such district. [S13,§§1989-a2,-a23; C24, 27, 31, 35, 39,§§**7427, 7428**; C46,§§455.7, 455.8; C50, 54, 58, 62, 66, 71, 73, 75,§455.7]

40ExGA, HF 185,§6, editorially divided

455.8 Request by nonpetitioners. In the event two or more landowners included in the proposed district other than the petitioners request a classification prior to the establishment of said district, they shall file in writing their request and execute a bond as required in sections 455.10 and 455.11 to cover the expense of such classification if the district is not established. Such written request and the bond shall be filed before the board establishes a district. [C58, 62, 66, 71, 73, 75,§455.8]

455.9 Petition. The petition shall set forth:

1. An intelligible description, by congressional subdivsion or otherwise, of the lands suggested for inclusion in the district.

2. That said lands are subject to overflow or are too wet for cultivation or subject to erosion or flood danger.

3. That the public benefit, utility, health, convenience, or welfare will be promoted by the suggested improvements.

4. The suggested starting point, route, terminus and lateral branches of the proposed improvements.

5. In the event the petitioners request a classification before the establishment of the district, the petition shall include a request that the district be classified as provided in sections 455.45 to 455.51 after the board has approved the report of the engineer as a tentative plan but before the district is finally established. [S13,§§1989-a2,-a23; C24, 27, 31, 35, 39, §**7429**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.9]

Referred to in §455.7

455.10 Bond. There shall be filed with the petition a bond in an amount fixed and with sureties approved by the auditor, conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not finally established. [S13,§1989-a2; C24, 27, 31, 35, 39,§**7430**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.10]

Referred to in §§357.1, 455.8

455.11 Additional bond. No preliminary expense shall be incurred before the establishment of such proposed improvement district by the board in excess of the amount of bond filed by the petitioners. In case it is necessary to incur any expense in addition to the amount of such bond, the board of supervisors shall require the filing of an additional bond by the petitioners and shall not proceed with the preliminary survey or authorize any additional expense until the additional bond is filed in a sufficient amount to cover such expense. [C24, 27, 31, 35, 39,§**7431**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.11]

Referred to in §455.8

455.12 Engineer—bond. The board shall at its first session thereafter, regular, special, or adjourned, examine the petition and if it be found sufficient in form and substance, shall appoint a disinterested and competent civil engineer who shall give bond to the county for the use of the proposed levee or drainage district, if it be established, and if not established, for the use of the petitioners, in amount and with sureties to be approved by the auditor, and conditioned for the faithful and competent performance of his duties. [S13,§1989-a2; C24, 27, 31, 35, 39,§**7432**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.12]

455.13 Compensation. Any engineer employed under the provisions of this chapter shall receive such compensation per diem as shall be fixed and determined by the board of supervisors. [S13,§1989-a41; C24, 27, 31, 35, 39, §**7433**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.13]

455.14 Discharge. The board may at any time terminate the contract with, and discharge the engineer. [S13,§1989-a2; C24, 27, 31, 35, 39,§**7434**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.14]

455.15 Assistants. Assistants may be employed by the engineer only with the approval of the board, which shall fix their compensation. [S13,§1989-a42; C24, 27, 31, 35, 39,§**7435**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.15]

40ExGA, HF 185,§12, editorially divided

455.16 Record of work. The engineer shall keep an accurate record of the kind of work done by himself and each assistant, the place where done, and the time engaged therein, and shall file an itemized statement thereof with the auditor. No expenses shall be incurred by the engineer except upon authority of the board, and vouchers shall be filed with the claims therefor. [S13,§1989-a42; SS15,§1527-s21b; C24, 27, 31, 35, 39,§**7436**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.16]

455.17 Survey. The engineer shall examine the lands described in the petition and any other lands which would be benefited by said improvement or necessary in carrying out the same.

He shall locate and survey such ditches, drains, levees, settling basins, pumping sta-

tions, and other improvements as will be necessary, practicable, and feasible in carrying out the purposes of the petition and which will be of public benefit or utility, or conducive to public health, convenience, or welfare. [S13,§1989-a2; C24, 27, 31, 35, 39,§7437; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.17]

Referred to in §§455.19, 455.28, 460.5

455.18 Report. The engineer shall make full written report to the county auditor, setting forth:

1. The starting point, route, and terminus of each ditch, drain, and levee and the character and location of all other improvements.

2. A plat and profile, showing all ditches, drains, levees, settling basins, and other improvements, the course, length, and depth of each ditch, the length, size, and depth of each drain, and the length, width, and height of each levee, through each tract of land, and the particular descriptions and acreage of the land required from each forty-acre tract or fraction thereof as right of way, or for settling basin or basins, together with the congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor. Said plat shall describe the width of the right of way to be taken from each forty-acre tract or fraction thereof.

3. The boundary of the proposed district, including therein by color or other designation other lands that will be benefited or otherwise affected by the proposed improvements, together with the location, size, and elevation of all lakes, ponds, and deep depressions therein.

4. Plans for the most practicable and economic place and method for passing machinery, equipment, and material required in the construction of said improvements across any highways, railroads, and other utilities within the proposed district.

5. The probable cost of the proposed improvements, together with such other facts and recommendations as he shall deem material.

Where the proposed district contemplates as its object flood control or soil conservance the engineer shall include in his report data describing any soil conservance or flood control improvements, the nature thereof, and such other additional data as shall be prescribed by the Iowa natural resources council. [S13,§1989-a2; C24, 27, 31, 35, 39,§7438; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.18]

Referred to in §§455.19, 455.28, 460.5

455.19 Procedure on report — classification. Upon the filing of the report of the engineer recommending the establishment of the levee or drainage district, the board shall at its first regular, adjourned, or special meeting examine and consider the same, and, if the plan is not approved the board may employ said engineer or another disinterested engineer to report another plan or make additional examination and surveys and file an additional report covering such matters as the board may direct. Additional surveys and reports must be made in accordance with the provisions of sections 455.17 and 455.18. At any time prior to the final adoption of the plans they may be amended, and as finally adopted by the board shall be conclusive unless the action of the board in finally adopting them shall be appealed from as hereinafter provided.

If the petition or other landowners requested a classification of the district prior to establishment, the board shall order a classification as provided by sections 455.45 to 455.51 after they have approved the report of the engineer as a tentative plan. The notice of hearing provided by section 455.20 shall also include the requirements of the notice of hearing provided in section 455.52 as to this classification, and the hearing on the petition provided in section 455.27 shall also include the matters to be heard as provided in section 455.53. If the board establishes the district as provided in section 455.28, the classification which is finally approved at said hearing by the board shall remain the basis of all future assessments for the purposes of said district as provided in section 455.56. The landowners shall have the same right of appeal from this classification as they would have if the petition had not requested a classification prior to establishment and the classification had been made after establishment. [S13,§1989-a3; C24, 27, 31, 35, 39,§7439; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.19]

455.20 Notice of hearing. When any plan and report of the engineer has been approved by the board, such approval shall be entered of record in its proceedings as a tentative plan only for the establishment of said improvement. Thereupon it shall enter an order fixing a date for the hearing upon the petition not less than forty days from the date of the order of approval, and directing the auditor immediately to cause notice to be given to the owner of each tract of land or lot within the proposed levee or drainage district as shown by the transfer books of the auditor's office, including railway companies having right of way in the proposed district and to all lienholders or encumbrancers of any land within the proposed district without naming them, and also to all other persons whom it may concern, and without naming individuals all actual occupants of the land in the proposed district, of the pendency and prayer of the said petition, the favorable report thereon by the engineer, and that such report may be amended before final action, the approval thereof by the board as a tentative plan, and the day and the hour set for hearing on said petition and report, and that all claims for damages except claims for land required for right of way, and all objections to the establishment of said district for any reason must be made in writing and filed in the office of the auditor at or before the time set for such hearing. [S13,§1989-a3; C24, 27, 31, 35, 39, §7440; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.20]

Referred to in §§455.19, 455.21, 455.72(4), 455.135(1, 4), 455.142, 455.144

455.21 Service by publication—copy mailed —proof. The notice provided in section 455.20 shall be served, except as otherwise hereinafter provided, by publication thereof once in some newspaper of general circulation published in the county, which publication shall be not less than twenty days prior to the day set for hearing. Proof of such service shall be made by affidavit of the publisher. Copy of such notice shall also be sent by ordinary mail to each person and to the clerk or recorder of each city named therein at his last known mailing address unless there is on file an affidavit of the auditor, or of a person designated by the board to make the necessary investigation, stating that no mailing address is known and that diligent inquiry has been made to ascertain it. Such copy of notice shall be mailed not less than twenty days before the day set for hearing and proof of such service shall be by affidavit of the auditor. Proofs of service required by this section shall be on file at the time the hearing begins. [S13,§1989-a3; C24, 27, 31, 35, 39,§7441; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.21]

Referred to in §§455.55, 455.72(4), 455.81, 455.135(1, 4), 455.142, 455.144, 455.208, 457.15, 465.3

455.22 Service on agent. If any person, corporation, or company owning or having interest in any land or other property affected by any proposed improvement under chapters 455 to 468* shall file with the auditor an instrument in writing designating the name and post-office address of his or its agent upon whom service of notice of said proceeding shall be made, the auditor shall, not less than twenty days prior to the date set for hearing upon said petition, send a copy of said notice by certified mail addressed to the agent so designated. Proof of such service shall be made by affidavit of the auditor filed by him in said proceeding at or before the date of the hearing upon the petition, and such service shall be in lieu of all other service of notice to such persons, corporations, or companies.

This designation when filed shall be in force for a period of five years thereafter and shall apply to all proceedings under said chapters during such period. The person, company, or corporation making such designation shall have the right to change the agent appointed therein or to amend it in any other particular. [S13,§1989-a3; C24, 27, 31, 35, 39,§7442; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.22]

Referred to in §§455.55, 455.72(4), 455.135(1, 4), 455.142, 455.144, 455.208

*Chapters 455A, 455B, 456, 463, 464, 467A, 467B, 467C, 467D enacted after this section was enacted; chapter 458 was enacted as an amendment to chapter 457, see 41GA, ch 155; chapter 468 repealed by 66GA, ch 1056,§45

455.23 Personal service. In lieu of publication, personal service of said notice may be made upon any owner of land in the proposed district, or upon any lienholder or other person interested in the proposed improvement, in the manner and for the time required for service of original notices in the district court. Proof of such service shall be on file with the auditor on the date of said hearing. [S13, §1989-a3; C24, 27, 31, 35, 39,§7443; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.23]

Referred to in §§455.72(4), 455.135(1, 4), 455.142, 455.144, 455.208

Time and manner of service, R.C.P. 53 and 56(a)

455.24 Waiver of notice. No service of notice shall be required upon any person who shall file with the auditor a statement in writing, signed by him, waiving notice, or who enters an appearance in the proceedings. The filing of a claim for damages or objections to the establishment of said district or other pleading shall be deemed an appearance. [S13, §1989-a3; C24, 27, 31, 35, 39,§7444; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.24]

Referred to in §§455.72(4), 455.135(1, 4), 455.142, 455.144, 455.208

455.25 Waiver of objections and damages. Any person, company, or corporation failing to file any claim for damages or objections to the establishment of the district at or before the time fixed for said hearing, except claims for land required for right of way, or for settling basins, shall be held to have waived all objections and claims for damages. [S13, §1989-a4; C24, 27, 31, 35, 39,§7445; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.25]

Referred to in §455.208

455.26 Adjournment for service — jurisdiction retained. If at the date set for hearing, it shall appear that any person entitled to notice has not been properly served with notice, the board may postpone said hearing and set another time for the same not less than thirty days from said date, and notice of such hearing as hereinbefore provided shall be served on such omitted parties. By fixing such new date for hearing and the adjournment of said proceeding to said date, the board shall not lose jurisdiction of the subject matter of said proceeding nor of any parties already served with notice. [S13,§1989-a3; C24, 27, 31, 35, 39,§7446; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.26]

Referred to in §455.208

455.27 Hearing of petition—dismissal. At the time set for hearing on said petition the board shall hear and determine the sufficiency of the petition in form and substance (which petition may be amended at any time before final action thereon), and all objections filed against the establishment of such district, and the board may view the premises included in the said district. If it shall find that the construction of the proposed improvement will not materially benefit said lands or would not be for the public benefit or utility nor conducive to the public health, convenience, or welfare, or that the cost thereof is excessive it shall dismiss the proceedings. [S13,§1989-a5; C24, 27, 31, 35, 39,§7447; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.27]

Referred to in §455.19

455.28 Establishment — further investigation. If the board shall find that such petition complies with the requirements of law in form

and substance, and that such improvement would be conducive to the public health, convenience, welfare, benefit, or utility, and that the cost thereof is not excessive, and no claim shall have been filed for damages, it may locate and establish the said district in accordance with the recommendation of the engineer and the report and plans on file; or it may refuse to establish the proposed district if it deem best, or it may direct the engineer or another one employed for that purpose to make further examination, surveys, plats, profiles, and reports for the modification of said plans, or for new plans in accordance with sections 455.17 and 455.18, and continue further hearing to a fixed date. All parties over whom the board then has jurisdiction shall take notice of such further hearing; but any new parties rendered necessary by any modification or change of plans shall be served with notice as for the original establishment of a district. The county auditor shall appoint three appraisers as provided for in section 455.30 to assess the value of the right of way required for open ditches or other improvements. [S13,§1989-a5; C24, 27, 31, 35, 39,§7448; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.28]

Referred to in §455.19

455.29 Settling basins—purchase or lease of lands. If a settling basin or basins are provided as a part of a drainage improvement, the board of supervisors may buy or lease the necessary lands in lieu of condemning said lands. The board may by purchase acquire the necessary lands required for right of way for open ditches or other improvements in lieu of condemning said lands. [C27, 31, 35, §7448-a1; C39,§7448.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.29]

455.30 Appraisers. If the board shall find that such improvement will materially benefit said lands, will be conducive to the public health, convenience, welfare, benefit, or utility, and that the law has been complied with as to form and substance of the petition, the service of notice, and the survey and report of the engineer, and that said improvement should be made, then if any claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date of which shall be fixed at the time of adjournment, and of which all interested parties shall take notice, and the auditor shall appoint three appraisers to assess damages, one of whom shall be an engineer, and two freeholders of the county who shall not be interested in nor related to any person interested in the proposed improvement, and the said appraisers shall take and subscribe an oath to examine the said premises, ascertain and impartially assess all damages according to their best judgment, skill, and ability. [S13,§1989-a5; C24, 27, 31, 35, 39,§7449; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.30]

Referred to in §§455.28, 455.211

455.31 Assessment — report — adjournment —other appraisers. The appraisers appointed to assess damages shall view the premises and determine and fix the amount of damages to which each claimant is entitled, and shall place a separate valuation upon the acreage of each owner taken for right of way for open ditches or for settling basins, as shown by plat of engineer, and shall, at least five days before the date fixed by the board to hear and determine the same, file with the county auditor reports in writing, showing the amount of damage sustained by each claimant. Should the report not be filed in time, or should any good cause for delay exist, the board may postpone the time of final action on the subject, and, if necessary, the auditor may appoint other appraisers. [S13,§1989-a6; C24, 27, 31, 35, 39,§7450; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.31]

455.32 Award by board. At the time fixed for hearing and after the filing of the report of the appraisers, the board shall examine said report, and may hear evidence thereon, both for and against each claim for damages and compensation, and shall determine the amount of damages and compensation due each claimant, and may affirm, increase, or diminish the amount awarded by the appraisers. [S13,§1989-a6; C24, 27, 31, 35, 39, §7451; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.32]

Referred to in §455.211
40ExGA, HF 185,§27, editorially divided

455.33 Dismissal or establishment. The board shall at said meeting, or at an adjourned session thereof, consider the costs of construction of said improvement as shown by the reports of the engineer and the amount of damages and compensation awarded to all claimants, and if, in its opinion, such costs of construction and amount of damages awarded create a greater burden than should justly be borne by the lands benefited by the improvement, it shall then dismiss the petition and assess the costs and expenses to the petitioners and their bondsmen, but if it finds that such cost and expense is not a greater burden than should be justly borne by the land benefited by the improvement, it shall finally and permanently locate and establish said district and improvement. [S13,§1989-a6; C24, 27, 31, 35, 39,§7452; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.33]

455.34 Dismissal on remonstrance. If, at or before the time set for final hearing as to the establishment of a proposed levee, drainage, or improvement district, except subdrainage district, there shall have been filed with the county auditor, or auditors, in case the district extends into more than one county, a remonstrance signed by a majority of the landowners in the district, and these remonstrants must in the aggregate own seventy percent or more of the lands to be assessed for benefits or taxed for said improvements, remonstrating against the establishment of said levee, drainage, or improvement district, setting forth the reasons therefor, the board or boards as the case may be, shall assess to the petitioners and their bondsmen or apportion the costs among them

as the board or boards may deem just or as said parties may agree upon. When all such costs have been paid, the board or boards of supervisors shall dismiss said proceedings and cause to be filed with the county auditor all surveys, plats, reports, and records in relation to the proposed district. [C24, 27, 31, 35, 39, §7453; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.34]

455.35 Dissolution. When for a period of two years from and after the date of the establishment of a drainage district, or when an appeal is taken or litigation brought against said district within two years from the date such appeal or litigation is finally determined, no contract shall have been let or work done or drainage certificates or bonds issued for the construction of the improvements in such district, a petition may be filed in the office of the auditor, addressed to the board of supervisors, signed by a majority of the persons owning land in such district and who, in the aggregate, own sixty percent or more of all the land embraced in said district, setting forth the above facts and reciting that provision has been made by the petitioners for the payment of all costs and expenses incurred on account of such district. The board shall examine such petition at its next meeting after the filing thereof, and if found to comply with the above requirements, shall dissolve and vacate said district by resolution entered upon its records, to become effective upon the payment of all the costs and expenses incurred in relation to said district. In case of such vacation and dissolution and upon payment of all costs as herein provided, the auditor shall note the same on the drainage record, showing the date when such dissolution became effective. [C24, 27, 31, 35, 39,§7454; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.35]

455.36 Permanent survey, plat and profile. When the improvement has been finally located and established, the board may if necessary appoint the said engineer or a new one to make a permanent survey of said improvement as so located, showing the levels and elevations of each forty-acre tract of land and file a report of the same with the county auditor together with a plat and profile thereof. [S13,§1989-a6; C24, 27, 31, 35, 39,§7455; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.36]

Referred to in §455.69

455.37 Paying or securing damages. The amount of damages or compensation finally determined in favor of any claimant shall be paid in the first instance by the parties benefited by the said improvement, or secured by bond in the amount of such damages and compensation with sureties approved by the auditor. [S13,§1989-a7; C24, 27, 31, 35, 39,§7456; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.37]

455.38 Division of improvement. After the damages as finally fixed, shall have been paid or secured, the board may divide said improvement into suitable sections, having regard to the kind of work to be done, numbering the same consecutively from outlets to the beginning, and prescribing the time within which the improvement shall be completed. A settling basin, if provided for, may be embraced in a section by itself. [S13,§1989-a7; C24, 27, 31, 35, 39,§7457; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.38]

455.39 Supervising engineer — bond. Upon the payment or securing of damages, the board shall appoint a competent engineer to have charge of the work of construction thereof, who shall be required before entering upon the work to give a bond to the county for the use and benefit of the levee or drainage district, to be approved by the auditor in such sum as the board may fix, conditioned for the faithful discharge of his duties. [S13,§1989-a7; C24, 27, 31, 35, 39,§7458; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.39]

455.40 Advertisement for bids. The board shall cause notice to be given by publication once each week for two consecutive weeks in some newspaper published in the county wherein such improvement is located, and such additional advertisement and publication elsewhere as it may direct, of the time and place of letting the work of construction of said improvement, specifying the approximate amount of work to be done in each numbered section of the district, the time fixed for the commencement, and the time of the completion thereof, that bids will be received on the entire work and in sections or divisions thereof, and that each bidder will be required to deposit with his bid cash or certified check on and certified by a bank in Iowa, payable to the auditor or his order, at his office, in an amount equal to ten percent of his bid, in no case to exceed ten thousand dollars. When the estimated cost of the improvement exceeds fifteen thousand dollars, the board may make additional publication for two consecutive weeks in some contractors journal of general circulation, giving only the type of proposed construction or repairs, estimated amount, date of letting, amount of bidder's bond, and the name and address of the county auditor. All notices shall fix the date to which bids will be received and upon which said work will be let. Except, however, when the estimated cost of the improvement is less than twenty-five hundred dollars, the board may let the contract for such construction without taking bids therefor and without publishing any notice as above provided. [C73,§1212; C97,§1944; S13, §1944; SS15,§1989-a8; C24, 27, 31, 35, 39,§7459; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.40]

See §455.73

455.41 Bids—letting of work. The board shall award contract or contracts for each section of the work to the lowest responsible bidder or bidders therefor, bids to be submitted, received and acted upon separately as to the main drain and each of the laterals, and each settling basin, if any, exercising their own discretion as to letting such work as to

the main drain as a whole, or as to each lateral as a whole, or by sections as to both main drain and laterals, and reserving the right to reject any and all bids and readvertise the letting of the work. [SS15,§1989-a8; C24, 27, 31, 35, 39,§7460; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.41]

See §455.73

455.42 Manner of making bids — deposit. Each bid shall be in writing, specifying the portion of the work upon which the bid is made, and filed with the auditor, accompanied with a deposit of cash or a certified check on and certified by a bank in Iowa, payable to the auditor or his order at his office in a sum equal to ten percent of the amount of the bid, but in any event not to exceed ten thousand dollars. However, if the maximum limit on bid deposits would cause a denial of funds or services from the federal government which would otherwise be available, or if the maximum limit would otherwise be inconsistent with the requirements of federal law, the maximum limit may be suspended to the extent necessary to prevent denial of federal funds or services or to eliminate the inconsistency with federal requirements. The checks of unsuccessful bidders shall be returned to them, but the checks of successful bidders shall be held as a guarantee that they will enter into contract in accordance with their bids. [SS15,§1989-a8; C24, 27, 31, 35, 39, §7461; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.42; 66GA, ch 226,§1]

455.43 Performance bond—return of check. Each successful bidder shall be required to execute a bond with sureties approved by the auditor in favor of the county for the use and benefit of the levee or drainage district and all persons entitled to liens for labor or material in an amount not less than seventy-five percent of the contract price of the work to be done, conditioned for the timely, efficient, and complete performance of his contract, and the payment, as they become due, of all just claims for labor performed and material used in carrying out said contract. When such contract is executed and bond approved by the board, the certified check deposited with the bid shall be returned to the bidder. [SS15, §1989-a8; C24, 27, 31, 35, 39,§7462; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.43]

455.44 Contracts. All agreements and contracts for work or materials in constructing the improvements of such district shall be in writing, signed by the chairman of the board of supervisors for and on behalf of the district and the parties who are to perform the work or furnish the materials specified in such contract. Such contract shall specify the particular work to be done or materials to be furnished, the time when it shall begin and when it shall be completed, the amount to be paid and the times of payment, with such other terms and conditions as to details necessary to a clear understanding of the terms thereof. [C24, 27, 31, 35, 39,§7463; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.44]

455.45 Commissioners to classify and assess. When a levee or drainage district shall have been located and finally established or, unless otherwise provided by law, when the required proceedings have been taken to enlarge, deepen, widen, change, or extend any of the ditches, laterals, settling basins, or drains of such district, or the required proceedings have been had to annex additional lands to such district, or a plan of the United States government for original construction of the improvements in such district has been heretofore or hereafter adopted by such district under the provisions of sections 455.202 to 455.217, the board shall appoint three commissioners to assess benefits and classify the lands affected by such improvement. One of such commissioners shall be a competent civil engineer and two of them shall be resident freeholders of the county in which the district is located, but not living within, nor interested in any lands included in said district, nor related to any party whose land is affected thereby. The commissioners shall take and subscribe an oath of their qualifications and to perform the duties of classification of said lands, fix the percentages of benefits and apportion and assess the costs and expenses of constructing the said improvement according to law and their best judgment, skill, and ability. If said commissioners or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the board shall appoint others with like qualifications to take their places and perform said duties. [SS15,§1989-a12; C24, 27, 31, 35, 39,§7464; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.45]

Referred to in §§455.9(5), 455.19, 455.56, 455.72, 455.135(4), 455.197(3, 4)
See §455.74

455.46 Duties—time for performance—scale of benefits. At the time of appointing said commissioners, the board shall fix the time within which said assessment, classification, and apportionment shall be made, which may be extended for good cause shown. Within twenty days after their appointment, they shall begin to inspect and classify all the lands within said district, or any change, extension, enlargement, or relocation thereof in tracts of forty acres or less according to the legal or recognized subdivisions, in a graduated scale of benefits to be numbered according to the benefit to be received by each of such tracts from such improvement, and pursue said work continuously until completed and, when completed, shall make a full, accurate, and detailed report thereof and file the same with the auditor. The lands receiving the greatest benefit shall be marked on a scale of one hundred, and those benefited in a less degree with such percentage of one hundred as the benefits received bear in proportion thereto. They shall also make an equitable apportionment of the

costs, expenses, fees, and damages computed on the basis of the percentages fixed. [SS15, §1989-a12; C24, 27, 31, 35, 39,§7465; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.46]

Referred to in §§455.9(5), 455.19, 455.197(3, 4, 8)

455.47 Rules of classification. In the report of the appraisers so appointed they shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office.

In estimating the benefits as to the lands not traversed by said improvement, they shall not consider what benefits such land shall receive after some other improvements shall have been constructed, but only the benefits which will be received by reason of the construction of the improvement in question as it affords an outlet to the drainage of such lands, or brings an outlet nearer to said lands or relieves the same from overflow and relieves and protects the same from damage by erosion. [S13,§1989-a13; SS15,§1989-a12; C24, 27, 31, 35, 39,§7467; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.47]

Referred to in §§455.9(5), 455.19, 455.197(3, 4, 8)

455.48 Assessment for lateral ditches — reclassification of benefited lands.

1. In fixing the percentages and assessments of benefits and apportionment of costs of construction to lands benefited by lateral ditches and drains as a part of the entire improvement to be made in a drainage district, the commissioners shall ascertain and fix the percentage of benefits and apportionment of costs to the lands benefited by such lateral ditches on the same basis and in the same manner as if said lateral was, with its sublaterals, being constructed as a subdistrict as provided in this chapter, reporting separately:

a. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of the main ditch, drain, or watercourse including pumping plant, if any.

b. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of such lateral improvement.

2. When there has been a repair or improvement to a lateral ditch or drain as provided in section 455.135 and the lands benefited by the lateral have not been classified as provided in this section, then the board may order a classification of said lands and the commission shall ascertain and fix the percentage of benefits and apportionment of costs to the lands benefited by such lateral ditches or drains on the same basis and in the same manner as if said lateral was with its sublaterals being constructed as a subdistrict as provided in this chapter. Whenever this procedure is followed for the classification of any lateral ditch or drain in a given district, the board shall simultaneously follow the same procedure for the main drains and all other lateral ditches or drains in the district which have not been classified as prescribed in this section. [S13, §1989-a23; SS15,§1989-a12; C24, 27, 31, 35, 39, §7468; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.48]

Referred to in §§455.9(5), 455.19, 455.141, 455.197(3, 4, 8)

455.49 Railroad property — collection. The commissioners to assess benefits and make apportionment of costs and expenses shall determine and assess the benefits to the property of any railroad company extending into or through the levee or drainage district, and make return thereof showing the benefit and the apportionment of costs and expenses of construction. Such assessment when finally fixed by the board shall constitute a debt due from the railroad company to the district, and unless paid it may be collected by ordinary proceedings for the district in the name of the county in any court having jurisdiction. All other proceedings in relation to railroads, except as otherwise provided, shall be the same as provided for individual property owners within the levee or drainage district. [S13, §1989-a18; C24, 27, 31, 35, 39,§7469; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.49]

Referred to in §§455.9(5), 455.19, 455.72(2), 455.197(3, 4)

455.50 Public highways and state-owned lands. When any public highway or other public land extends into or through a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such highway or other public land, and the board of supervisors shall assess the same against such highway and land.

Such assessments against primary highways and other state-owned lands under the jurisdiction of the state department of transportation shall be paid by the state department from the primary road fund on due certification of the amount by the county treasurer to said department, and against all secondary roads and other county owned lands under the jurisdiction of the board of supervisors, from the secondary road construction fund or from the secondary road maintenance fund, or from both of said funds.

When any state-owned lands under the jurisdiction of the state conservation commission are situated within a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such lands and the board of supervisors shall assess the same against such lands.

Such assessments against lands used by the fish and game division of the state conservation commission shall be paid by the state conservation commission from the state fish and game protection fund on due certification of the amount by the county treasurer to said commission, and against lands used by the division of lands and waters from the state conservation funds. [S13,§§1989-a19,-a26; C24, 27, 31, 35, 39,§7470; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.50; 66GA, ch 67,§69]

Referred to in §§455.9(5), 455.19, 455.72(2), 455.197(3, 4)

455.51 Report of commissioners. The commissioners, within the time fixed or as extended, shall make and file in the auditor's office a written verified report in tabulated form as to each forty-acre tract, and each tract of less than forty acres, setting forth:

1. The names of the owners thereof as shown by the transfer books of the auditor's office or the reports of the engineer on file, showing said entire classification of lands in said district.
2. The amount of benefits to highway and railroad property and the percentage of benefits to each of said other tracts and the apportionment and amount of assessment of cost and expense, or estimated costs or expense, against each:
   a. For main ditches, and settling basins.
   b. For laterals.
   c. For levees and pumping station.
   d. For erosion protection and control or flood control*.
3. The aggregate amount of all assessments.
4. Any specific benefits other than those derived from the drainage of agricultural lands shall be separately stated. [SS15,§1989-a12; C24, 27, 31, 35, 39,§**7471**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.51]

Referred to in §§455.9(5), 455.19, 455.197(3, 4)
See §455.74
*See 53GA, ch 204,§10

455.52 Notice of hearing. The board shall fix a time for a hearing upon the report of the commissioners, and the auditor shall cause notice to be served upon each person whose name appears as owner, naming him, and also upon the person or persons in actual occupancy of any tract of land without naming him, of the day and hour of such hearing, which notice shall be for the same time and served in the same manner as is provided for the establishment of a levee or drainage district, and shall state the amount of assessment of costs and expenses of construction apportioned to each owner upon each forty-acre tract or less, and that all objections thereto must be in writing and filed with the auditor at or before the time set for such hearing. [SS15,§1989-a12; C24, 27, 31, 35, 39,§**7472**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.52]

Referred to in §455.19
40ExGA, HF 185,§45, editorially divided

455.53 Hearing and determination. At the time fixed or at an adjourned hearing, the board shall hear and determine all objections filed to said report and shall fully consider the said report, and may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses made in said report against any body or tract of land in said district as may appear to the board to be just and equitable. [SS15,§1989-a12; C24, 27, 31, 35, 39,§**7473**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.53]

Referred to in §455.19

455.54 Evidence — conclusive presumption. At such hearing, the board may hear evidence both for and against the approval of said report or any portion thereof, but it shall not be competent to show that any of the lands in said district assessed for benefits or against which an apportionment of costs and expenses has been made will not be benefited by such improvement in some degree. Any interested party may be heard in argument by himself or counsel. [SS15,§1989-a12; C24, 27, 31, 35, 39, §**7474**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.54]

40ExGA, HF 185,§46, editorially divided
Similar provision, §455.102

455.55 Notice of increased assessment. The board shall cause notice to be served upon the owner of any tract of land or easement against which it is proposed to increase the assessment, requiring him to appear at a fixed date and show cause why such assessment should not be so increased. Such notice shall be served for the time and in the manner prescribed in section 455.21 or section 455.22, as the case may be, except that personal service in the same manner as an original notice may be made in lieu of the other methods. [SS15, §1989-a12; C24, 27, 31, 35, 39,§**7475**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.55]

Service of notice, R.C.P. 56(*a*) et seq.

455.56 Classification as basis for future assessments. A classification of land for drainage, erosion or flood control purposes, when finally adopted, shall remain the basis of all future assessments for the purpose of said district unless revised by the board in the manner provided for reclassification, except that where land included in said classification has been destroyed, in whole or in part, by the erosion of a river, or where additional right of way has been subsequently taken for drainage purposes, said land which has been so eroded and carried away by the action of a river or which has been taken for additional right of way, may be removed by said board from said district as classified, without any reclassification, and no assessment shall thereafter be made on the land so removed. Any deficiency in assessment existing as the result of said action of the board shall be spread by it over the balance of lands remaining in said district in the same ratio as was fixed in the classification of the lands, payable at the next taxpaying period.

Except districts established by mutual agreement in accordance with section 455.152 in the event any forty-acre tract or less, or any lot, tract, or parcel, as set forth in the existing classification or reclassification of any drainage district now or hereafter established, is divided into two or more tracts, whether such division is by sale or condemnation or platted as a subdivision, the classification of the original tract shall be apportioned to the resulting parcels, regardless of use, except for land taken for additional drainage right of way. The classification of the original tract may be apportioned between the resulting parcels by agreement between the parties to such division. The parties shall file with the county auditor a written

agreement setting forth the original description and the description of the tracts as subdivided and the percentage of the original classification apportioned to each. This agreement shall bear the signature of all of the parties to such subdivision. The agreement contemplated herein may be contained in the deed or other instrument effecting the division of the land, which agreement shall be binding upon the grantee or grantees by their acceptance of such instrument and their signatures shall not be necessary. The auditor shall enter this agreement in the drainage record and amend the current classification of the district in accordance with such agreement.

In the event the parties to such subdivision cannot agree as to the apportionment of the percentage classification, the board of supervisors shall, upon application of either party, appoint a commission having the qualifications of commissioners, in accordance with section 455.45. The commissioners shall inspect the lands involved and apportion the existing classification of the original tract equitably and fairly to each of the several tracts as subdivided and shall make a full, accurate and detailed report thereof and file the same with the county auditor within the time set by the board. The report of the commissioners shall set forth the names of the owners thereof, the description of each of the tracts and the percentage of the original classification that each such tract shall bear (1) for main ditches and settling basins, (2) for laterals, (3) for levees and pumping station. Thereafter all the proceedings in relation thereto as to notice of hearing and fixing of percentage benefits shall be as in this chapter provided in relation to original classification and assessments, and at such hearing, the board may affirm, increase or diminish the percentage of benefits so as to make them just and equitable, and cause the record of the existing classification, percentage of benefits or assessments, or both, to be modified accordingly. In the event the parties neither agree as to the apportionment of classification nor make application for the appointment of commissioners, then the auditor of the county in which the land is situated shall make such apportionment upon an equitable basis and enter the same of record as herein provided. No tract of land included within the boundary of any drainage district shall be exempt from drainage assessments or reassessments, except as herein provided. [SS15,§1989-a12; C24, 27,§§7466, 7476; C31, 35, 39,§**7476**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.56]

Referred to in §§455.19, 455.201

455.57 Levy—interest. When the board has finally determined the matter of assessments of benefits and apportionment, it shall levy such assessments as fixed by it upon the lands within such district, but any assessment on any tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars. All assessments shall be levied at that time as a tax and shall bear interest at not to exceed seven percent per annum from that date, payable annually, except as hereinafter provided as to cash payments thereof within a specified time. [SS15,§1989-a12; C24, 27, 31, 35, 39,§**7477**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.57]

Referred to in §455.83

455.58 Lien of tax. Such taxes shall be a lien upon all premises against which they are assessed as fully as taxes levied for state and county purposes. [S13,§1989-a45; C24, 27, 31, 35, 39,§**7478**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.58]

455.59 Levy for deficiency. If the first assessment made by the board for the original cost or for repairs of any improvement is insufficient, the board shall make an additional assessment and levy in the same ratio as the first for either purpose, payable at the next taxpaying period after such indebtedness is incurred subject, however, to the provisions of section 455.64. Any assessment made under this section on any tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars. [S13,§1989-a26; C24, 27, 31, 35, 39,§**7479**;C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.59]

455.60 Record of drainage taxes. All drainage or levee tax assessments shall be entered in the drainage record of the district to which they apply, and also upon the tax records of each county. [C24, 27, 31, 35, 39,§**7480**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.60]

40ExGA, HF 185,§47, editorially divided

455.61 Funds—disbursement—interest. Such taxes when collected shall be kept in a separate fund known as the county drainage or levee fund and shall be paid out only for purposes properly connected with and growing out of the county drainage and levee districts on order of the board. The auditor shall continue to keep a record of each of the drainage and levee district's funds so as to accurately reflect the financial condition of each such district account. The treasurer, on order of the board of supervisors, shall invest such funds not immediately needed for current operating expenses in United States government bonds, in time certificates of deposit, in savings accounts in such banks as the board shall approve, in the interest bearing obligations of the drainage and levee districts of the county, or as provided by chapter 453. Interest collected by the treasurer on the funds so invested shall be deposited in the county drainage or levee fund, and on July 1 of each year the auditor shall apportion and credit such interest to each drainage or levee district account in the proportion which the average credit balance of each district bears to the average balance of the county drainage or levee fund. The averages to be ascertained shall be the averages of the balances existing on the first of each month during the fiscal year immediately preceding. Interest and pen-

alties collected on drainage or levee district taxes shall be credited to the district for which the taxes are being collected. This section shall not be construed so as to permit expenditures in behalf of any district in excess of its share of the county drainage or levee fund. The provisions of this section shall not apply to drainage and levee districts under trustee management unless the trustees consent thereto, and in the absence of such consent, section 462.29 shall apply. [S13,§1989-a13; C24, 27, 31, 35, 39, §7481; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.61]

455.62 Assessments — maturity and collection. All drainage or levee tax assessments shall become due and payable at the same time as other taxes, and shall be collected in the same manner with the same penalties for delinquency and the same manner of enforcing collection by tax sales. [S13,§1989-a26; C24, 27, 31, 35, 39,§7482; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.62]

Collection of taxes, ch 445

455.63 Payment before bonds or certificates issued. All assessments for benefits, as corrected and approved by the board, shall be levied at one time against the property benefited, and when levied and certified by the board, shall be payable at the office of the county treasurer. Each person or corporation shall have the right, within twenty days after the levy of assessments, to pay his or its assessment in full without interest, and before any warrants against assessments, improvement certificate or drainage bond is issued therefor, and any certificate at any time after issue, with accrued interest. [S13,§1989-a26; C24, 27, 31, 35, 39,§7483; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.63]

455.64 Installment payments — waiver. If the owner of any land against which a levy exceeding one hundred dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing endorsed upon any improvement certificate referred to in section 455.77, or in a separate agreement, that in consideration of having a right to pay his assessment in installments, he will not make any objection as to the legality of his assessment for benefit, or the levy of the taxes against his property, then such owner shall have the following options:

1. To pay one-third of the amount of such assessment at the time of filing such agreement; one-third within twenty days after the engineer in charge shall certify to the auditor that the improvement is one-half completed; and the remaining one-third within twenty days after the improvement has been completed and accepted by the board. All such installments shall be without interest if paid at said times, otherwise said assessments shall bear interest from the date of the levy at the rate of not to exceed seven percent per annum, payable annually, and be collected as other taxes on real estate, with like penalty for delinquency.

2. To pay such assessments in not less than ten nor more than twenty equal installments, the number to be fixed by the board and interest at the rate fixed by the board, not exceeding seven percent per annum. One such installment shall be payable at the September semiannual taxpaying date in each year; provided, however, that the county treasurer shall, at the September semiannual taxpaying date, require only the payment of a sufficient portion of the assessments to meet the interest and the amount maturing on bonds or certificates prior to the regular time for the payment of the second installment of taxes and the balance shall be collected with such second installment and without penalty.

The provisions of this section and of sections 455.65 to 455.68 may within the discretion of the board, also be made applicable to repairs and improvements made under the provisions of section 455.135. [S13,§§1989-a26,-a27; SS15, §1989-a12; C24, 27, 31, 35, 39,§7484; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.64]

Referred to in §§455.59, 455.66, 455.83, 455.136

455.65 Installment payments after appeal. When an owner takes an appeal from the assessment against any of his land, the option to pay in installments whatever assessment is finally established against such land in said appeal shall continue, if within twenty days after the final determination of said appeal he shall file in the office of the auditor his written election to pay in installments, and within said period pay such installments as would have matured prior to that time if no appeal had been taken, together with all accrued interest on said assessment to the last preceding interest-paying date. [C24, 27, 31, 35, 39,§7486; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.65]

Referred to in §§455.64, 455.136

455.66 Notice of half and full completion. Within two days after the engineer has filed a certificate that the work is half completed and within two days after the board of supervisors has accepted the completed improvement as in this chapter provided, the county auditor shall notify the owner of each lot or parcel of land who has signed an agreement of waiver as provided in section 455.64, of such fact. Such notice shall be given by certified mail sent to such owners, respectively, at the addresses filed with the auditor at the time of making such agreement of waiver. [C24, 27, 31, 35, 39,§7487; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.66]

Referred to in §§455.64, 455.136

455.67 Lien of deferred installments. No deferred installment of the amount assessed as between vendor and vendee, mortgagor and mortgagee shall become a lien upon the property against which it is assessed and levied until June 30 of the preceding fiscal year in which it is due and payable. [SS15,§1989-a12; C24, 27, 31, 35, 39,§7488; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.67]

Referred to in §§455.64, 455.136

455.68 Surplus funds—application of. When one-half or more of all assessments for a drainage or levee district have been paid and it is ascertained that there will be a surplus in the district fund after all assessments have been paid, the board may refund to the owner of each tract of land, not more than fifty percent of his proportionate part of such surplus. When all construction work has been completed and all cost paid, and all assessments have been paid in full, the board may refund, to the owner of each tract of land, his proportionate part of any surplus funds except such portion of the surplus as the board considers should be retained for a sinking fund to pay future maintenance and repair costs. [C24, 27, 31,§7489; C35,§§7488-e1, 7489; C39,§§**7488.1, 7489**; C46,§§455.68, 455.69; C50, 54, 58, 62, 66, 71, 73, 75,§455.68]

Referred to in §§455.64, 455.136

455.69 Change of conditions — modification of plan. If, after the improvement has been finally located and before construction thereof has been completed, there has been a change of conditions of such nature that the plan of improvement as adopted should be modified or amended, the board may direct the engineer appointed under section 455.36 or another engineer, to make a report showing such changes or modifications of the plan of improvement as may be necessary to meet the change of conditions. Upon the filing of such report, the board shall have jurisdiction to adopt said modified or amended plan of improvement or may further modify or amend and adopt the same by following the procedure provided in sections 455.202, 455.206 to 455.210 so far as same are applicable, except that awards for damages shall not be canceled where there has been no change made in the improvement which would increase or decrease the damages awarded. However, modifications and changes may be made in the plan on which hearing was held without further notice or hearing, provided the same do not increase or decrease the estimated cost to the district by more than twenty-five percent. [C54, 58, 62, 66, 71, 73, 75,§455.69]

Referred to in §455.73

455.70 Subdrainage district. After the establishment of a drainage district, any person, company, or corporation owning land within such district which has been assessed for benefits, but which is separated from the main ditch, drain, or watercourse for which it has been so assessed, by the land of others, who desires a ditch or drain constructed from his land across the land of such others in order to connect with the main ditch, drain, or watercourse, and shall be unable to agree with such intervening owners on the terms and conditions on which he may enter upon their lands and cause to be constructed such connecting drain or ditch, may file a petition for the establishment of a subdistrict and thereafter the proceedings shall be the same as provided for the establishment of an original district. [S13, §1989-a23; C24, 27, 31, 35, 39,§**7490**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.70]

Referred to in §455.151
40ExGA, HF 185,§52, editorially divided

455.71 Presumption—jurisdiction. Such connecting ditch or drain which he shall cause to be constructed shall be presumed conducive to the public health, welfare, convenience, and utility the same as if it had been so constructed as a part of the original improvement of said district. When such subdistrict has been established and constructed it shall become and be a part of the improvement of such drainage district as a whole and be under the control and supervision of the board to the same extent and in every way as if it had been a part of the original improvement of such district. [S13,§1989-a23; C24, 27, 31, 35, 39, §**7491**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.71]

455.72 Reclassification. When, after a drainage or levee district has been established, except districts established by mutual agreement in accordance with section 455.152, and the improvements thereof constructed and put in operation, there has been a material change as to lands occupied by highway or railroad right of way or in the character of the lands benefited by the improvement, or when a repair, improvement, or extension has become necessary, the board may consider whether the existing assessments are equitable as a basis for payment of the expense of maintaining the district and of making the repair, improvement or extension. If they find the same to be inequitable in any particular, they shall by resolution express such finding, appoint three commissioners possessing the qualifications prescribed in section 455.45 and order a reclassification as follows:

1. If they find the assessments to be generally inequitable they shall order a reclassification of all property subject to assessment, such as lands, highways, and railroads in said district.

2. If the inequity ascertained by the board is limited to the proportion paid by highways or railroads, a general reclassification of all lands shall not be necessary but the commissioners may evaluate and determine the fair proportion to be paid by such highways or railroads or both as provided in sections 455.49 and 455.50.

3. Any benefits of a character for which levee or drainage districts may be established and which are attributable to or enhanced by the improvement or by the repair, improvement, or extension thereof, shall be a proper subject of consideration in a reclassification notwithstanding the district may have been originally established for a limited purpose.

4. If after a district has been reclassified, the board in its judgment concludes there were errors in the reclassification or there is an inequitable assessment of benefits, the board may on its own motion, after notice to the landowners involved as provided in sections 455.20 to 455.24 and by resolution, order the

district or any portion of the district to again be reclassified as prescribed in this section and in section 455.74.

Such reclassification when finally adopted shall remain the basis for all future assessments unless revised as provided in this chapter. [C24, 27, 31, 35, 39,§7492; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.72]

Referred to in §455.197[1(e), 3, 4, 8, 9]
Commissioners, appointment and oath, §455.45

455.73 Bids required. In case the board shall finally determine that any such changes as defined in section 455.69 shall be made involving an expenditure of five thousand dollars or more, said work shall be let by bids in the same manner as is provided for the original construction of such improvements. [C24, 27, 31, 35, 39,§7493; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.73]

See §§455.40, 455.41

455.74 Procedure governing reclassification. The proceedings for such reclassification shall in all particulars be governed by the same rules as for original classification. The commissioners shall fix the percentage of actual benefits and make an equitable apportionment of the costs and expenses of such repairs, improvements or extensions and file a report thereof with the auditor in the same form and manner as for original classification. Thereafter, all the proceedings in relation thereto as to notice, hearing, and fixing of percentage of benefits and amount of assessments shall be as in this chapter provided in relation to original classification and assessments, and at such hearing the board may affirm, increase, or diminish the percentage and assessment of benefits and apportionment of costs and expenses so as to make them just and equitable, and cause the record of the original classification, percentage of benefits, and assessments to be modified accordingly. [C24, 27, 31, 35, 39, §7494; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.74]

Referred to in §455.72(4)
See §§455.45, 455.51

455.75 Drainage warrants received for assessments. Warrants drawn upon the construction or maintenance funds of any district for which an assessment has been or must be levied, shall be transferable by endorsement, and may be acquired by any taxpayer of such district and applied at their accrued face value upon the assessment levied to create the fund against which the warrant was drawn; when the amount of the warrant exceeds the amount of the assessment, the treasurer shall cancel the said warrant, and give the holder thereof a certificate for the amount of such excess, which certificate shall be filed with the auditor, who shall issue a warrant for the amount of such excess, and charge the treasurer therewith. Such certificate is transferable by endorsement, and will entitle the holder to the new warrant, made payable to his order, and bearing the original number, preceded by the words, "Issued as unpaid balance due on warrant number ....." [S13,§1989-a13; C24, 27, 31, 35, 39,§7495; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.75]

455.76 Bonds received for assessments. Bonds issued for the cost of construction, maintenance or repair of any drainage or levee district, or for the refunding of any obligation of such district, may be acquired by any taxpayer or group of taxpayers of such district, and applied at their face value in the order of their priority, if any priority exists between bonds of the same issue, upon the payment of the delinquent and/or future assessments levied against the property of such taxpayers to pay off the bonds so acquired; the interest coupons attached to such bonds, may likewise be applied at their face value to the payment of assessments for interest accounts, delinquent or future. [C35,§7495-e1; C39,§7495.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.76]

See §74.1 et seq.

455.77 Installment assessments — interest-bearing warrants — improvement certificates. The board may provide by resolution for the payment of assessments in not more than twenty annual installments with interest at not to exceed seven percent per annum. The board may issue warrants bearing interest at the same rate, which warrants shall be numbered and state a maturity date in which event they shall bear interest from the date of issuance without being presented for payment and marked unpaid for want of funds. The warrants may be sold by the board for cash in an amount not less than the face value thereof, together with accrued interest, if any.

The board may provide by resolution for the issuance of improvement certificates payable to bearer or to the contractors, naming them, who have constructed the said improvement or completed any part thereof, in payment or part payment of such work. [S13,§1989-a26; C24, 27, 31, 35, 39,§7499; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.77]

Referred to in §§455.64, 455.81

455.78 Form, negotiability and effect. Each of such certificates shall state the amount of one or more drainage assessments or part thereof made against the property, designating it and the owner thereof liable for the payment of such assessments. Said certificates shall be negotiable and transfer to the bearer all right and interest in and to the tax in every such assessment or part thereof described in such certificates, and shall authorize such bearer to collect and receive every assessment embraced in said certificate by or through any of the methods provided by law for their collection as the same mature. [S13,§1989-a26; C24, 27, 31, 35, 39,§7500; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.78]

Referred to in §455.81

455.79 Interest — place of payment. Such certificates shall bear interest not to exceed seven percent per annum, payable annually,

and shall be paid by the taxpayer to the county treasurer, who shall receipt for the same and cause the amount to be credited on the certificates issued therefor. [S13,§1989-a26; C24, 27, 31, 35, 39,§7501; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.79]

Referred to in §455.81

455.80 Sale at par—right to pay. Any person shall have the right to pay the amount of his assessment represented by any outstanding improvement certificate, with the interest thereon to the date of such payment, at any time. No improvement certificate shall be issued or negotiated for the use of the drainage district for less than par value with accrued interest up to the delivery or transfer thereof. Every such certificate, when paid, shall be delivered to the treasurer and by him surrendered to the party to whose assessment it relates. [S13,§§1989-a26,-a27; C24, 27, 31, 35, 39, §7502; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.80]

Referred to in §455.81

455.81 Drainage bonds. When a drainage district has been established or the making of any subsequent repair or improvement determined upon, if the board of supervisors shall find that the cost of such improvement will create assessments against the land included therein greater than should be levied in a single year upon the lands benefited by such improvement, then, instead of issuing improvement certificates, as provided in sections 455.77 to 455.80 the board may fix the amount that shall be levied and collected each year until such cost and expenses are paid, and may issue drainage bonds of the county covering all assessments exclusive of assessments of one hundred dollars and less.

Before such bonds shall be issued, the governing body of the district shall cause an action for declaratory judgment to be brought in the district court of the county in which the bonds are to be issued, asking that their legality be confirmed. The court shall fix a date for hearing thereon and notice thereof shall be given to the owners of each lot or tract of land within the district, which shall be affected by an assessment to pay the proposed bonds, as shown by the transfer books in the auditor's office; also to the holders of liens of record upon said lands; and to all persons to whom it may concern without naming them specifically. Such notice shall be given by publication and by mailing for the same time in advance of hearing and in the same manner prescribed in section 455.21. After the entry of the declaratory judgment adjudicating the validity of such bonds, the approval of the district court shall be endorsed on the bonds before their issuance. [C97,§1953; S13,§1989-a27; C24, 27, 31, 35, 39,§7503; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.81]

455.82 Form. Each of such bonds shall be numbered and have printed upon its face that it is a "Drainage Bond", stating the county and number of the district for which it is issued, the date and maturity thereof, that it is in pursuance of a resolution of the board of supervisors, that it is to be paid only from taxes for levee and drainage improvement purposes levied and collected on the lands assessed for benefits within the district for which the bond is issued. [S13,§1989-a27; C24, 27, 31, 35, 39,§7504; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.82]

40ExGA, HF 185,§69, editorially divided

455.83 Amount—interest—maturity. In no case shall the aggregate amount of all bonds issued exceed the benefits assessed. Such bonds shall not be issued for a greater amount than the aggregate amount of assessments for the payment of which they are issued, nor for a longer period of maturity than twenty years, and bear a rate of interest not to exceed seven percent per annum, payable semiannually, on June 1 and December 1 of each year. Whenever the interest on bonds issued pursuant to the provisions of this chapter exceeds four percent per annum the interest on unpaid assessments shall equal the interest on such bonds but not to exceed seven percent per annum, the provisions of sections 455.57 and 455.64 to the contrary notwithstanding. [C97,§1953; S13, §1989-a27; C24, 27, 31, 35, 39,§7505; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.83]

Referred to in §357.21

455.84 Maturity — interest — highway benefits. The board shall fix the amount, maturity, and interest of all bonds to be issued. It shall determine the amount of assessments to highways for benefits within the district to be covered by each bond issue. The taxes levied for benefits to highways and other public lands within any drainage or levee district shall be paid at the same times and in the same proportion as assessments against the lands of private owners. [S13,§1989-a27; C24, 27, 31, 35, 39,§7506; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.84]

455.85 Repealed by 55GA, ch 211,§2.

455.86 Sale or application at par—premium. Such bonds may be applied at par with accrued interest to the payment of work as it progresses upon the improvements of the district, or, the board may sell, through the county treasurer, said bonds at not less than par with accrued interest and devote the proceeds to such payment. Any premium derived from the sale of said bonds shall be credited to the drainage fund of the district. [C97,§1953; S13,§1989-a27; C24, 27, 31, 35, 39,§7508; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.86]

Referred to in §357.21

40ExGA, HF 185,§67, editorially divided

455.87 Deficiency levy—additional bonds. If any levy of assessments is not sufficient to meet the interest and principal of outstanding bonds, or if default shall occur by reason of nonpayment of assessments, additional assessments may be made on the same classification as the previous ones. Additional bond issues

may be made when necessary to complete full payment for improvements, by the same proceedings as previous issues. [C97,§1953; S13, §1989-a27; C24, 27, 31, 35, 39,§**7509**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.87]

455.88 Funding or refunding indebtedness. Drainage districts may settle, adjust, renew, or extend the time of payment of the legal indebtedness they may have, or any part thereof, in the sum of one thousand dollars or upwards, whether evidenced by bonds, warrants, certificates, or judgments, and may fund or refund the same and issue bonds therefor in the manner provided in section 461.13. [C27, 31, 35,§7509-a1; C39,§**7509.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.88]

Additional provisions, ch 463

455.89 Record of bonds. A record of the numbers, amounts, and maturities of all such bonds shall be kept by the auditor showing specifically the lands embraced in the district upon which the tax has not been previously paid in full. [S13,§1989-a27; C24, 27, 31, 35, 39, §**7510**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.89]

455.90 Assessments payable in cash. All assessments of twenty dollars and less shall be paid in cash. [C24, 27, 31, 35, 39,§**7511**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.90]

40ExGA, HF 185,§68, editorially divided

455.91 Payment before bonds issued. The board at the time of making the levy, shall fix a time within which all assessments in excess of one hundred dollars may be paid in cash, and before any bonds are issued, publish notice in an official newspaper in the county where the district is located, of such time. After the expiration of such time, no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issue of the bonds. [C24, 27, 31, 35, 39,§**7512**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.91]

455.92 Appeals. Any person aggrieved may appeal from any final action of the board in relation to any matter involving his rights, to the district court of the county in which the proceeding was held. [S13,§§1989-a6,-a11,-a14; C24, 27, 31, 35, 39,§**7513**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.92]

Referred to in §455.145

455.93 Appeals in intercounty districts. In districts extending into two or more counties, appeals from final orders resulting from the joint action of the several boards or the board of trustees of such district may be taken to the district court of any county into which the district extends. [S13,§1989-a35; C24, 27, 31, 35, 39,§**7514**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.93]

455.94 Time and manner. All appeals shall be taken within twenty days after the date of final action or order of the board from which such appeal is taken by filing with the auditor a notice of appeal, designating the court to which the appeal is taken and the order or action appealed from, and stating that the appeal will come on for hearing thirty days following perfection of the appeal with allowances of additional time for good cause shown. This notice shall be accompanied by an appeal bond with sureties to be approved by the auditor conditioned to pay all costs adjudged against the appellant and to abide the orders of the court. [S13,§§1989-a6,-a14,-a35; C24, 27, 31, 35, 39,§**7515**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.94]

Referred to in §§357.33, 455.95, 455.145, 463.8
Presumption of approval of bond, §682.10

455.95 Transcript. When notice of any appeal with the bond as required by section 455.94 shall be filed with the auditor, he shall forthwith make and certify a transcript of the notice of appeal and appeal bond, and file the same with the clerk. [S13,§1989-a14; C24, 27, 31, 35, 39,§**7516**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.95]

Referred to in §§357.33, 455.145

455.96 Petition — docket fee — waiver — dismissal. Within twenty days after perfection of the appeal the appellant shall file a petition setting forth the order or final action of the board appealed from and the grounds of his objections and his complaint, with a copy of his claim for damages or objections filed by him with the auditor. He shall pay to the clerk the filing fee as provided by law in other cases. A failure to pay the filing fee or to file such petition shall be deemed a waiver of the appeal and in such case the court shall dismiss the same. [S13,§1989-a14; C24, 27, 31, 35, 39, §**7517**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.96]

Referred to in §§357.33, 455.145
40ExGA, HF 185,§76, editorially divided
Fee, §606.15(1)

455.97 Pleadings on appeal. It shall not be necessary for the appellees to file an answer to the petition unless some affirmative defense is made thereto, but they may do so. [S13, §1989-a14; C24, 27, 31, 35, 39,§**7518**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.97]

Referred to in §§357.33, 455.145

455.98 Proper parties—employment of counsel. In all actions or appeals affecting the district, the board of supervisors shall be a proper party for the purpose of representing the district and all interested parties therein, other than the adversary parties, and the employment of counsel by the board shall be for the purpose of protecting the rights of the district and interested parties therein other than the adversary parties. [S13,§1989-a14; C24, 27, 31, 35, 39,§**7519**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.98]

Referred to in §§357.33, 455.145
40ExGA, HF 185,§77, editorially divided

455.99 Plaintiffs and defendants. In all appeals or actions adversary to the district, the appellant or complaining party shall be entitled the plaintiff, and the board of supervisors and drainage district it represents, the

defendants. [S13,§1989-a14; C24, 27, 31, 35, 39, §7520; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.99]
Referred to in §357.33

455.100 Right of board and district to sue. In all appeals or actions for or in behalf of the district, the board and the drainage district it represents may sue as the plaintiffs. [S13,§1989-a14; C24, 27, 31, 35, 39,§7521; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.100]
Referred to in §357.33

455.101 Trial on appeal—consolidation. Appeals from orders or actions of the board fixing the amount of compensation for lands taken for right of way or the amount of damages to which any claimant is entitled shall be tried as ordinary proceedings. All other appeals shall be triable in equity. The court may, in its discretion, order the consolidation for trial of two or more of such equitable cases. [S13, §§1989-a6,-a14,-a35; C24, 27, 31, 35, 39,§7522; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.101]
Referred to in §357.33

455.102 Conclusive presumption on appeal. On the trial of an appeal from the action of the board in fixing and assessing the amount of benefits to any land within the district as established, it shall not be competent to show that any lands assessed for benefits within said district as established are not benefited in some degree by the construction of the said improvement.

An exception to the conclusiveness of an assessment under this section shall be in those cases where it has been determined under section 455.201 that land has later been deprived of benefits received by a division of the district by some other improvement. [SS15, §1989-a12; C24, 27, 31, 35, 39,§7523; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.102]
Referred to in §357.33
Similar provision, §455.54

455.103 Order as to damages—duty of clerk. If the appeal is from the action of the board as to the amount of damages or compensation awarded, the amount found by the court shall be entered of record, but no judgment shall be rendered therefor. The amount thus ascertained shall be certified by the clerk of said court to the board of supervisors who shall thereafter proceed as if such amount had been by it allowed to the claimant. [S13,§1989-a6; C24, 27, 31, 35, 39,§7524; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.103]
Referred to in §357.33
40ExGA, HF 185,§81, editorially divided

455.104 Costs. Unless the result on the appeal is more favorable to the appellant than the action of the board, all costs of the appeal shall be taxed to the appellant, but if more favorable, the cost shall be taxed to the appellees. [S13,§1989-a6; C24, 27, 31, 35, 39,§7525; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.104]
Referred to in §357.33

455.105 Decree as to establishing district or including lands. On appeal from the action of the board in establishing or refusing to establish said district, or in including land within the district, the court may enter such order or decree as may be equitable and just in the premises, and the clerk of said court shall certify the decree or order to the board of supervisors which shall proceed thereafter in said matter as if such order had been made by the board. The taxation of costs among the litigants shall be in the discretion of the court. [S13,§1989-a6; C24, 27, 31, 35, 39,§7526; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.105]
Referred to in §357.33

455.106 Appeal as exclusive remedy—non-appellants. Upon appeal the decision of the court shall in no manner affect the rights or liabilities of any person who did not appeal. The remedy by appeal provided for in this chapter shall be exclusive of all other remedies. [S13,§1989-a46; C24, 27, 31, 35, 39,§7527; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.106]
Referred to in §357.33

455.107 Reversal by court—rescission by board. In any case where the decree has been entered setting aside the establishment of a drainage district for errors in the proceedings, and such decree becomes final, the board shall rescind its order establishing the drainage district, assessing benefits, and levying the tax based thereon, and shall also cancel any contract made for construction work or material, and shall refund any and all assessments paid. [S13,§1989-a14; C24, 27, 31, 35, 39,§7528; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.107]
Referred to in §357.33

455.108 Setting aside establishment—procedure. After the court on appeal has entered a decree revising or modifying the action of the board, the board shall fix a new date for hearing, and proceed in all particulars in the manner provided for the original establishment of the district, avoiding the errors and irregularities for which the original establishment was set aside, and after a valid establishment thereof, proceed in all particulars as provided by law in relation to the original establishment of such districts. [S13,§1989-a14; C24, 27, 31, 35, 39,§7529; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.108]
Referred to in §357.33

455.109 Reassessment to cure illegality. Whenever any special assessment upon any lands within any drainage district shall have been heretofore adjudged to be void for any jurisdictional defect or for any illegality or uncertainty as to the terms of any contract and the improvement shall have been wholly completed, the board or boards of supervisors shall have power to remedy such illegality or uncertainty as to the terms of any such contract with the consent of the person with whom such contract shall have been entered into and make certain the terms of such contract and shall then cause a reassessment of such land to be made on an equitable basis with the other land in the district by taking

the steps required by law in the making of an original assessment and relevying the tax in accordance with such assessment, and such tax shall have the same force and effect as though the board or boards of supervisors had jurisdiction in the first instance and no illegality or uncertainty existed in the contract. [C24, 27, 31, 35, 39,§7530; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.109]

Referred to in §357.33

455.110 Monthly estimate — payment. The supervising engineer shall, on or before the tenth day of each calendar month, furnish the contractor and file with the auditor estimates for work done during the preceding calendar month under the contract on each section, and the auditor shall at once draw warrants in favor of such contractor on the drainage funds of the district or give him an order directing the county treasurer to deliver to him or them improvement certificates, or drainage bonds as the case may be, for ninety percent of the estimate on work done. Such monthly estimates shall remain on file in the office of the auditor as a part of the permanent records of the district to which they relate. Drainage warrants, bonds or improvement certificates when so issued shall be in such amounts as the auditor determines, not however, in amounts in excess of one thousand dollars.

All of the provisions of this section shall, when applicable, apply to repair work and improvement work in the same force and effect as to original construction. [C97,§1944; S13, §§1944, 1989-a9; C24, 27, 31, 35, 39,§7531; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.110]

455.111 Completion of work — report — notice. When the work to be done under any contract is completed to the satisfaction of the engineer in charge of construction, he shall so report and certify to the board, which shall fix a day to consider said report and shall give notice of the time and purpose of such meeting by one publication in a newspaper of general circulation published in said county and the date fixed for considering said report shall be not less than five days after the date of such publication. [S13,§1989-a9; C24, 27, 31, 35, 39, §7532; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.111]

Referred to in §357.18

455.112 Objections. Any party interested in the said district or the improvement thereof may file objections to said report and submit any evidence tending to show said report should not be accepted. Any interested party having a claim for damages arising out of the construction of the improvement or repair shall file said claim with the board at or before the time fixed for hearing on the completion of the contract, which claim shall not include any claim for land taken for right of way or for severance of land. [C24, 27, 31, 35, 39,§7533; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.112]

Referred to in §§357.18, 455.113

455.113 Final settlement—claims for damages. If it finds the work under any contract has been completed and accepted, the board shall compute the balance due, and if there are no liens on file against such balance, it shall enter of record an order directing the auditor to draw a warrant in favor of said contractor upon the levee or drainage fund of said district or give him an order directing the county treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, for such balance found to be due, but such warrants, improvement certificates or bonds shall not be delivered to the contractor until the expiration of thirty days after the acceptance of the work.

If any claims for damages have been filed as provided in section 455.112, the board shall review said claims and determine said claims. If the determination by the board on any claim for damages results in a finding by the board that the damages resulting to the claimant were due to the negligence of the contractor, then the board shall provide for payment of said claim out of the remaining funds owing to the contractor. If the determination by the board results in a finding that the damages resulting to the claimant were not due to the negligence of the contractor but resulted from unavoidable necessity in the performance of the contract, then the board shall allow for payment of said claim in the amount fixed by the board out of the funds in said drainage district. [C73,§1212; C97,§1944; S13, §§1944, 1989-a9; C24, 27, 31, 35, 39,§7534; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.113]

Filing of claims, §573.10

455.114 Abandonment of work. In case any contractor abandons or fails to proceed diligently and properly with the work before completion, or in case he fails to complete the same in the time and according to the terms of the contract, the board shall make written demand on him and his surety to proceed with the work within ten days. Service of said demand may be personal, or by certified mail addressed to the contractor and the surety, respectively, at their places of residence or business, as shown by the records in the auditor's office. [S13,§§1944, 1989-a10; C24, 27, 31, 35, 39,§7535; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.114]

Referred to in §357.17

455.115 New contract—suit on bond. Unless the contractor or the surety on his bond shall appear and in good faith proceed to comply with the demand, and resume work under the contract within the time fixed, the board shall proceed to let contracts for the unfinished work in the same manner as original contracts, and apply all funds not paid to the original contractor toward the completion of the work, and if not sufficient for such purpose, may cause suit to be brought upon the bond of the defaulting contractor for the benefit of the district, and the amount of recovery thereon shall be credited to the district. [C73,

§1212; C97,§1944; S13,§§1944, 1989-a10; C24, 27, 31, 35, 39,§**7536**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.115]

Referred to in §357.17

455.116 Construction on or along highway. When a levee or drainage district shall have been established by the board and it shall become necessary or desirable that the levee, ditch, drain, or improvement shall be located and constructed within the limits of any public highway, it shall be so built as not materially to interfere with the public travel thereon. [S13,§1989-a20; C24, 27, 31, 35, 39,§**7537**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.116]

40ExGA, HF 185,§94, editorially divided

455.117 Establishment of highways. The board shall have power to establish public highways along and upon any levee or embankment along any such ditch or drain, but when so established the same shall be worked and maintained as other highways and so as not to obstruct or impair the levee, ditch, or drain. [S13,§1989-a20; C24, 27, 31, 35, 39,§**7538**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.117]

455.118 Bridges. When such levee, ditch, drain, or change of any natural watercourse crosses a public highway, necessitating moving or building or rebuilding any secondary road bridge upon, or ditch or drain crossing such road, the board of supervisors shall move, build, or rebuild the same, paying the costs and expenses thereof, including construction, maintenance, repair and improvement costs, from the secondary road fund.

If the bridge or crossing be upon or across a primary or interstate road, the work aforesaid shall be done by the state department of transportation and paid for out of the primary road fund. [S13,§1989-a19; C24, 27, 31, 35, 39, §**7539**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.118]

Primary and secondary roads, chs 309—314

455.119 Construction across railroad. Whenever the board of supervisors shall have established any levee, or drainage district, or change of any natural watercourse and the levee, ditch, drain, or watercourse as surveyed and located crosses the right of way of any railroad company, the county auditor shall immediately cause to be served upon such railroad company, in the manner provided for the service of original notices, a notice in writing stating the nature of the improvement to be constructed, the place where it will cross the right of way of such company, and the full requirements for its complete construction across such right of way as shown by the plans, specifications, plat, and profile of the engineer appointed by the board, and directing such company to construct such improvement according to said plans and specifications at the place designated, across its right of way, and to build and construct or rebuild and reconstruct the necessary culvert or bridge where any ditch, drain, or watercourse crosses its right of way, so as not to obstruct, impede, or interfere with the free flow of the water therein, within thirty days from the time of the service of such notice upon it. [S13,§1989-a18; C24, 27, 31, 35, 39,§**7540**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.119]

Referred to in §455.120
Manner of service, R.C.P. 56(*a*) et seq.

455.120 Duty to construct. Upon receiving the notice provided in section 455.119, such railroad company shall construct the improvement across its right of way according to the plans and specifications prepared by the engineer for said district, and build or rebuild the necessary culvert or bridge and complete the same within the time specified. [S13,§1989-a18; C24, 27, 31, 35, 39,§**7541**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.120]

40ExGA, HF 185,§97, editorially divided

455.121 Bridges at natural waterway—costs. The cost of building, rebuilding, constructing, reconstructing, changing, or repairing, as the case may be, any culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be borne by such railroad company without reimbursement therefor. [S13,§1989-a18; C24, 27, 31, 35, 39,§**7542**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.121]

455.122 Construction when company refuses. If the railroad company shall fail, neglect, or refuse to comply with said notice, the board shall cause the same to be done under the supervision of the engineer in charge of the improvement, and such railroad company shall be liable for the cost thereof to be collected by the county for said district in any court having jurisdiction. [S13,§1989-a18; C24, 27, 31, 35, 39,§**7543**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.122]

40ExGA, HF 185,§98, editorially divided

455.123 Cost of construction across railway. The cost of constructing the improvement across the right of way of such company, not including the cost of building or rebuilding and constructing or reconstructing any necessary culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be considered as an element of such company's damages by the appraiser to appraise damages. [S13,§1989-a18; C24, 27, 31, 35, 39,§**7544**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.123]

455.124 Passing drainage equipment across railway. It shall be the duty of any steam or electric railway company to furnish the contractor unrestricted passage across its right of way, telegraph, telephone, and signal lines for his machines and equipment, whenever recommended by the engineer and approved by the board of supervisors, and the cost thereof shall be considered as an element of such company's damages by the appraisers thereof;

provided that if such company shall fail to do so within thirty days after written notice from the auditor, the engineer shall cause the same to be done under his direction and the company shall be liable for the cost thereof to be collected by the county in any court having jurisdiction. Provided, further, that the railway company shall have the right to designate the day and hours thereof within said period of thirty days above mentioned when such crossing shall be made. [C24, 27, 31, 35, 39,§**7545**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.124]

455.125 Passage across other public utilities. The owner or operator of a public utility, whether operated publicly or privately other than steam and electric railways shall afford the contractor of any drainage project under this chapter unrestricted passage for his machines and equipment across the right of way lines or other equipment of such utility whenever recommended by the engineer and approved by the board of supervisors. [C24, 27, 31, 35, 39,§**7546**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.125]

455.126 Failure to comply. If the owner or operator of the utility fails to afford such passage within fifteen days after written notice from the drainage engineer so to do, the contractor, under the supervision of the engineer, may proceed to do the necessary work to afford such passage and to place said utility in the same condition as before said passage; but the owner or operator shall have the right to designate the hours of the day when such crossing or passage shall be made. [C24, 27, 31, 35, 39,§**7547**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.126]

455.127 Expenses attending passage. The work necessary to afford such passage shall be deemed to be covered by and included in the contract with the district under which the contractor is operating, and if the work is done by the owner or operator of such utility the reasonable expense thereof shall be paid out of the drainage funds of the district and charged to the account of the contractor. [C24, 27, 31, 35, 39,§**7548**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.127]

455.128 Annexation of additional lands. After the establishment of a levee or drainage district, if the board becomes convinced that additional lands contiguous to the district, and without regard to county boundaries, are benefited by the improvement or that the same are then receiving benefit or will be benefited by a repair or improvement to said district as contemplated in section 455.135, it may adopt, with or without a petition from owners of the proposed annexed lands, a resolution of necessity for the annexation of such additional land and appoint an engineer with the qualifications provided in this chapter to examine such additional lands, to make a survey and plat thereof showing their relation, elevation, and condition of drainage with reference to such established district, and to make and file with the auditor a report as in this chapter provided for the original establishment of such district, said report to specify the character of the benefits received.

In the event the additional lands are a part of an existing drainage district, as an alternative procedure to that established by the foregoing provisions of this section, the lands may be annexed in either of the following methods:

1. A petition, proposing that the lands be included in a contiguous drainage district and signed by at least twenty percent of the landowners of those lands to be annexed, shall be filed with the governing board of each affected district.

The board of the district in which the lands are presently included may, at its next regular meeting or at a special meeting called for that purpose, adopt a resolution approving and consenting to the annexation; or

2. Whenever the owners of all of the land proposed to be annexed file a petition with the governing boards of the affected districts, the consent of the board in which the lands are then located shall not be required to consent to the annexation, and the board of the annexing district may proceed as provided in this section.

3. If either method of annexation provided for in subsections 1 and 2 of this section is completed, the board of the district to which the lands are to be annexed may adopt a resolution of necessity for the annexation of the additional lands, as provided in this section. [S13,§1989-a54; C24, 27, 31, 35, 39,§**7549**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.128]

Referred to in §455.130

455.129 Proceedings on report. If such report recommends the annexation of such lands or any portion thereof, the board shall consider such report, plats, and profiles and if satisfied that any of such lands are materially benefited by the district and that such annexation is feasible, expedient, and for the public good, it shall proceed in all respects as to notice, hearing, appointment of appraisers to fix damages and as to hearing thereon; and (if such annexation is finally made), as to classification and assessment of benefits to the annexed lands only, to the same extent and in the same manner as provided in the establishment of an original district. Those parties having an interest in the lands proposed to be annexed shall have the right to receive notice, to make objections, to file claims for damages, to have hearing, to take appeals and to do all other things to the same extent and in the same manner as provided in the establishment of an original district. [S13,§1989-a54; C24, 27, 31, 35, 39,§**7550**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.129]

455.130 Levy on annexed lands. After such annexation is made the board shall levy upon the annexed lands an assessment sufficient to

equal the assessments for benefit originally paid by the lands of equal classification if the finding by the board as provided by section 455.128 was that said lands should have been included in the district when originally established, plus their proportionate share of the costs of any enlargement or extension of drains required to serve the annexed lands. If the finding of the board as provided in section 455.128 was based on the fact that additional lands are now benefited by virtue of the repair or improvement made to said district and were not benefited by the district as originally established, then the board shall levy upon said annexed lands an assessment sufficient to pay their proportionate share of the costs of said repair or improvement which was the basis for the lands being annexed. [S13,§1989-a54; C24, 27, 31, 35, 39,§**7551**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.130]

455.131 Use of former and abandoned surveys. In cases where proceedings have been taken for the establishment of a levee or drainage district and an engineer has been appointed who has made a survey, return, and plat thereof and for any reason the improvement has been abandoned and the proceedings dismissed, and afterward proceedings are instituted for the establishment of a levee or drainage district which will benefit any territory surveyed in said former proceedings, the engineer shall use so much of the return, levels, surveys, plat, and profile made in the former proceedings as may be applicable. He shall specify in his reports the parts thereof so used, and in case the cost of said returns, levels, surveys, plat, and profile made in said former proceedings has been paid by the former petitioners or their bondsmen, then a reasonable amount shall be allowed said petitioners or bondsmen for the use of the same. [S13,§1989-a16; C24, 27, 31, 35, 39,§**7552**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.131]

455.132 Unsuccessful procedure — re-establishment. When proceedings have been instituted for the establishment of a drainage district or for any change or repair thereof, or the change of a natural watercourse, and the establishment thereof has failed for any reason either before or after the improvement is completed, the board shall have power to re-establish such district or improvement and any new improvement in connection therewith as recommended by the report of the engineer. As to all lands benefited by such re-establishment, repair, or improvement, the board shall proceed in the same manner as in the establishment of an original district, using as a basis for assessment the entire cost of the proceedings, improvement, and maintenance from the beginning; but in awarding damages and in the assessment of benefits account shall be taken of the amount of damages and taxes, if any, theretofore paid by those benefited, and credit therefor given accordingly. All other proceedings shall be the same as for the original establishment of the district, making of improvements, and assessment of benefits. [S13,§§1989-a17,-a50; C24, 27, 31, 35, 39, §**7553**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.132]

455.133 New district including old district. If any levee or drainage district or improvement established either by legal proceedings or by private parties shall be insufficient to properly drain all of the lands tributary thereto, the board upon petition as for the establishment of an original levee or drainage district, shall have power to establish a new district covering and including such old district or improvement together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein. [S13,§1989-a25; C24, 27, 31, 35, 39,§**7554**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.123]

Referred to in §455.134

455.134 Credit for old improvement. When such district as contemplated in section 455.133 and the new improvement therein shall include the whole or any part of the former improvement, the commissioners, for classification of lands for assessment of benefits and apportionment of costs and expenses of such new improvement, shall take into consideration the value of such old improvement in the construction of the new one and allow proper credit therefor to the parties owning the old improvement as their interests may appear. In all other respects the same proceedings shall obtain as are provided for the original establishment of levee and drainage districts. [S13,§1989-a25; C24, 27, 31, 35, 39,§**7555**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.134]

455.135 Repair.

1. When any levee or drainage district shall have been established and the improvement constructed, the same shall be at all times under the supervision of the board of supervisors except as otherwise provided for control and management by a board of trustees and it shall be the duty of the board to keep the same in repair as provided herein. The board at any time on its own motion, without notice, may order done whatever is necessary to restore or maintain a drainage or levee improvement in its original efficiency or capacity, and for that purpose may remove silt and debris, repair any damaged structures, remove weeds and other vegetable growth, and whatever else may be needed to restore or maintain such efficiency or capacity. In the event permanent restoration of a damaged structure is not feasible at the time, the board may order such temporary construction as it deems necessary to the continued functioning of the improvement. If in maintaining and repairing tile lines the board finds from the engineer's report it is more economical to construct a new line than to repair the existing line, such new line may be considered to be a repair. If the estimated cost of any repair exceeds seventy-five percent of the original total cost of the district and

subsequent improvements therein, the board shall set a date for a hearing on the matter of making such repairs, and shall give notice as provided in sections 455.20 to 455.24. At such hearing the board shall hear objections to the feasibility of such repairs, and following the hearing the board shall order made such repairs as it deems desirable and feasible. Any interested party shall have the right of appeal from such orders in the manner provided in this chapter. The right of remonstrance shall not apply to repairs as defined in this section.

2. In the case of minor repairs, or in the eradication of brush and weeds along the open ditches, not in excess of one thousand dollars where the board finds that the same will result in a saving to the district it may cause the same to be done by secondary road equipment, or weed fund equipment, and labor of the county and then reimburse the secondary road fund or the weed fund from the fund of the drainage district thus benefited.

3. When the board deems it necessary it may repair or reconstruct the outlet of any private tile line which empties into a drainage ditch of any district and assess the costs in each case against the land served by the private tile line.

4. When the board determines that improvements, which differ from the repairs referred to in the preceding paragraphs, are necessary or desirable, it shall appoint an engineer to make such surveys as seem appropriate to determine the nature and extent of such improvements, and to file a report showing what improvements are recommended and their estimated costs, which report may be amended before final action. If the estimated cost of the improvements does not exceed twenty-five percent of the original cost of the district and subsequent improvements therein, the board may order the work done without notice. The board shall not divide proposed improvements into separate programs in order to avoid the twenty-five percent limitation herein fixed for making improvements without notice. If the board deems it desirable to make improvements where the estimated cost exceeds twenty-five percent of the original total cost of the district and subsequent improvements therein, it shall set a date for a hearing on the matter of constructing such improvements and also on the matter of whether there shall be a reclassification of benefits for the cost of such improvements, and shall give notice as provided in sections 455.20 to 455.24. At such hearing the board shall hear objections to the feasibility of such improvements and such arguments for or against a reclassification as may be presented by or for any taxpayer of the district. Following the hearing the board shall order made such improvements as it deems desirable and feasible, and shall also determine whether there should be a reclassification of benefits for the cost of such improvement. If it is determined that such reclassification of benefits should be made the board shall proceed as provided in section 455.45.

In the event that the estimated cost of the improvements as contemplated in this section should exceed the original cost of the district plus the cost of subsequent improvements in the district, a majority of the landowners, owning in the aggregate more than seventy percent of the total land in said district, may file a written remonstrance against said improvement, at or before the time fixed for hearing on said improvement, with the county auditor, or auditors in case the district extends into more than one county. If such remonstrance is filed, the board shall discontinue and dismiss all further proceedings on said improvement and charge the costs incurred to date for said proposed improvement to the district. Any interested party shall have the right of appeal from such orders in the manner provided in this chapter. Provided, however, that the provisions of this section shall not affect the procedures of section 455.142 covering the common outlet.

Referred to in §455.202(2)

5. Where under the laws in force prior to 1904, drainage ditches and levees were established and constructed without fixing at the time of establishment a definite boundary line for the body of land to be assessed for the cost thereof, the body of land which was last assessed to pay for the repair thereof shall also be considered as the established district for the purpose of this section.

6. The governing body of the district may, by contract or conveyance, acquire, within or without the district, the necessary lands or easements for making repairs or improvements under this section, including easements for borrow and easements for meander, and in addition thereto, the same may be obtained in the manner provided in the original establishment of the district, or by exercise of the power of eminent domain as provided for in chapter 472. If additional right of way is required for any repair or improvement under this section, the same may be acquired in the same manner as provided for the acquisition of right of way in the original establishment of a district, except that where notice and hearing are not otherwise required under this section notice as provided in this chapter to owners, lienholder of record, and occupants of the land from which right of way is to be acquired shall suffice.

7. In existing districts where the stream has by erosion appropriated lands beyond its original right of way and it is more economical and feasible to acquire an easement for such erosion and meander than to undertake containment of the stream in its existing right of way, the board may, in the discharge of the duties enjoined upon it by this section, effect such acquisition as to the whole or part of the course. Right of way so taken shall be classed an improvement for the purpose of procedure under this section.

8. If the drainage records on file in the auditor's office for a particular district do not define specifically the land taken for right of way for drainage purposes, the board may at any time upon its own motion employ a land surveyor to make a survey and report of said district and to actually define the right of way taken for drainage purposes. After the land surveyor has filed his survey and report with the board, the board shall fix a date for hearing on said report and shall serve notice of said hearing upon all landowners and lienholders of record and occupants of the lands traversed by said right of way in the manner and for the time required for service of original notices in the district court. [S13,§1989-a21; C24, 27, 31, 35, 39,§§**7556, 7558–7561**; C46,§§455.135, 455.137–455.140; C50, 54, 58, 62, 66, 71, 73, 75,§455.135]

Referred to in §§111.76, 455.48, 455.64, 455.128, 455.136, 455.141, 455.142, 455.202, 461.5(2), 466.7
40ExGA, HF 185,§116, editorially divided

455.136 Payment. The costs of the repair or improvements provided for in section 455.135 shall be paid for out of the funds of the levee or drainage district. If the funds on hand are not sufficient to pay such expenses, the board within two years shall levy an assessment sufficient to pay the outstanding indebtedness and leave the balance which the board determines is desirable as a sinking fund to pay maintenance and repair expenses. Any assessment made under this section on any tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars.

If the board deems that the costs of the repairs or improvements will create assessments against the lands in the district greater than should be borne in one year, it may levy the same at one time and provide for the payment of said costs and assessments in the manner provided in sections 455.64 to 455.68; provided that assessments may be collected in less than ten installments as the board may determine. [S13,§1989-a21; C24, 27, 31, 35, 39,§**7557**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.136]

455.137 Impounding areas and erosion control devices. Levee and drainage districts are empowered to construct impounding areas and other flood and erosion control devices to protect lands of the district and drainage structures and may provide ways for access to improvements for the operation or protection thereof, where the cost is not excessive in consideration of the value to the district. Necessary lands or easements may be acquired within or without the district by purchase, lease or agreement, or by exercise of the right of eminent domain and may be procured and construction undertaken either independently or in co-operation with other districts, individuals, or any federal or state agency or political subdivision. [C54, 58, 62, 66, 71, 73, 75, §455.137]

455.138 Revenues used for operation, maintenance and construction. Levee and drainage districts may realize income from incidental uses of their improvements and rights of way which are not injurious to same or incompatible with the purposes of the district. Revenues derived therefrom may be expended for operating, maintenance or construction costs of the district as its governing body may elect. [C54, 58, 62, 66, 71, 73, 75,§455.138]

455.139 City may discharge treated sewage. Any board, as defined in section 455.4, may by contract permit any city to discharge adequately treated sewage into drainage ditches. The contract shall fix the rental, make provision for termination, and shall provide that no nuisance shall be created. [C58, 62, 66, 71, 73, §393.12; C75,§455.139]

455.140 Repealed by 53GA, ch 202,§§23–26.

455.141 Reclassification required. When an assessment for improvements as provided in section 455.135, exceeds twenty-five percent of the original assessment and the original or subsequent assessment or report of the benefit commission as confirmed did not designate separately the amount each tract should pay for the main ditch and tile lateral drains then the board shall order a reclassification in accordance with the principles and rules set forth in section 455.48. [C24, 27, 31, 35, 39, §**7562**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.141]

455.142 Improvement of common outlet—notice of hearing. When two or more drainage districts outlet into the same ditch, drain, or natural watercourse and the board determines that it is necessary to clean out, deepen, enlarge, extend, or straighten said ditch, drain, or natural watercourse in order to expeditiously carry off the combined waters of such districts, the board may proceed as provided in section 455.135. After said board has decided that such work should be done, it shall fix a date for hearing on its decision, and it shall give two weeks' notice thereof by certified mail to the auditor of the county wherein the land to be assessed for such work is located, and said county auditor shall thereupon immediately notify by certified mail the board or boards of trustees of the districts having supervision thereof, as to said hearing on said contemplated work. In those instances where two or more districts involved are under the supervision of the same board, or joint board if the district is intercounty, the notice shall be given to all landowners affected as prescribed for in sections 455.20 to 455.24. Each district shall be assessed for the cost of such work in proportion to the benefits derived. Common outlet for the purpose of this section shall mean an outlet where two adjacent districts have an outlet common to both of said districts and which districts are also contiguous, one to the other. [S13,§1989-a24; C24, 27, 31, 35, 39,§**7563**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.142]

Referred to in §455.135(4)

455.143 Commissioners to apportion benefits—interest prohibited. For the purpose of

ascertaining the proportionate benefits, the board shall appoint commissioners having the qualifications of benefit commissioners, one of whom shall be an engineer. Such commissioners appointed shall not be residents of any of the districts affected, nor shall any member thereof have any interest in land in any districts affected by the contemplated work. Such commission shall determine the percentage of benefits and the sum total to be assessed to each district for the improvement.

In the event that one of the districts to be assessed under this statute shall have any improvement such as a settling basin which reduces the quality and quantity of flow or sediment, such commission may give consideration to the existence of such an improvement when they determine the percentage of benefits and the sum total to be assessed to each district for the improvement. [C24, 27, 31, 35, 39,§**7564**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.143]

Referred to in §455.145

455.144 Time of report—notice of hearing. When said commissioners are appointed, the board shall, by proper order, fix the time when the commissioners shall report their findings, but a report filed within thirty days of the time so fixed shall be deemed a compliance with said order. On the filing of said report, the board shall fix a time for hearing thereon, and it shall give notice thereof to the auditor of the county in which the land to be assessed for such work is located by certified mail; said county auditor shall thereupon immediately notify by certified mail the board of supervisors, and board or boards of trustees of the districts having supervision thereof, as to said hearing on said commissioner's report. In those instances where two or more districts are under the supervision of the same board, or joint board if the district is intercounty, the notice shall be given to all landowners affected as prescribed in sections 455.20 to 455.24. [C24, 27, 31, 35, 39,§**7565**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.144]

Referred to in §455.145

455.145 Report and review — appeal. The commissioners shall file with the board a detailed report of their findings. Said board shall review said report and may, by proper order, increase or decrease the amount which shall be charged to each district. After the final order of the board herein has been made, said board shall notify the county auditor, in the time and manner as provided in sections 455.143 and 455.144, of said order, and said county auditor shall notify by certified mail the board of supervisors, and said board or boards of trustees, of said final order. Said board of supervisors and said board or boards of trustees, if aggrieved by said final order, may appeal therefrom to the district court of the county in which any of the improvement proposed or done is located.

Any such appeal shall be taken, perfected and conducted in the time and manner provided in sections 455.92, 455.94 to 455.98, for appeals contemplated by said sections. [C24, 27, 31, 35, 39,§**7566**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.145]

40ExGA, HF 185,§116-a6, editorially divided

455.146 Levy under original classification. If the amount finally charged against a district does not exceed twenty-five percent of the original cost of the improvement in said district, the board shall proceed to levy said amount against all lands, highways, and railway rights of way and property within the district, in accordance with the original classification and apportionment. Any assessment made under this section on any tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars. [C24, 27, 31, 35, 39,§**7567**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.146]

455.147 Levy under reclassification. If the amount finally charged against a district exceeds twenty-five percent of the original cost of the improvement, the board shall order a reclassification as provided for the original classification of a district and upon the final adoption of the new classification and apportionment shall proceed to levy said amount upon all lands, highways, and railway rights of way and property within the district, in accordance with said new classification and apportionment. Any assessment made under this section on any tract, parcel or lot within the district which is computed at less than two dollars shall be fixed at the sum of two dollars. [C24, 27, 31, 35, 39,§**7568**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.147]

455.148 Removal of obstructions. The board shall cause to be removed from the ditches, drains, and laterals of any district any obstructions which interfere with the flow of the water, including trees, hedges, or shrubbery and the roots thereof, and may cause any tile drain so obstructed to be relaid in concrete or any other adequate protection, such work to be paid for from the drainage funds of the district. [C24, 27, 31, 35, 39,§**7569**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.148]

455.149 Trees and hedges. When it becomes necessary to destroy any trees or hedges outside the right of way of any ditch, lateral, or drain in order to prevent obstruction by the roots thereof, if the board and the owners of such trees or hedges cannot agree upon the damage for the destruction thereof, the board may proceed to acquire the right to destroy and remove such trees or hedges by the same proceedings provided for acquiring right of way for said drainage improvement in the first instance. [C24, 27, 31, 35, 39,§**7570**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.149]

Similar provision, §460.13

455.150 Outlet for lateral drains—specifications. The owner of any premises assessed for the payment of the costs of location and construction of any ditch, drain, or watercourse as in this chapter provided, shall have the

right to use the same as an outlet for lateral drains from his premises. The board of supervisors shall make specifications covering the manner in which such lateral drains shall be connected with the main ditches or other laterals and be maintained, and the owner shall follow such specifications in making and maintaining any such connection. [S13,§1989-a22; C24, 27, 31, 35, 39,§7571; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.150]

455.151 Subdistricts in intercounty districts. The board of supervisors of any county shall have jurisdiction to establish subdrainage districts of lands included within a district extending into two or more counties when the lands to compose such subdistricts lie wholly within such county, and to make improvements therein, repair and maintain the same, fix and levy assessments for the payment thereof, and the provisions of this section shall apply to all such drainage subdistricts, the lands of which lie wholly within one county. The proceedings for all such purposes shall be the same as for the establishment, construction, and maintenance of an original levee or drainage district the lands of which lie wholly within one county, so far as applicable, except that one or more persons may petition for a subdistrict as provided in section 455.70. [S13, §1989-a37; C24, 27, 31, 35, 39,§7572; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.151]

455.152 District by mutual agreement—presumption. The owners of lands may provide by mutual agreement in writing duly signed, acknowledged, and filed with the auditor for combined drainage of their lands by the location and establishment of a drainage district for such purposes and the construction of drains, ditches, settling basins, and watercourses upon and through their said lands. Such drainage district shall be presumed to be conducive to the public welfare, health, convenience, or utility. [S13,§1989-a28; C24, 27, 31, 35, 39,§7573; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.152]

Referred to in §§455.56, 455.72

455.153 What the agreement shall contain. Such agreements shall contain the following:

1. A description of the lands by congressional divisions, metes and bounds, or other intelligible manner, together with the names of the owners of all said lands.

2. The location of the drains and ditches to be constructed, describing their sources and outlets and the courses thereof.

3. The character and extent of drainage improvement to be constructed, including settling basins, if any.

4. The assessment of damages, if any.

5. The classification of the lands included in such district, the amount of drainage taxes or special assessments to be levied upon and against the several tracts, and when the same shall be levied and paid.

6. Such other provisions as the board deems necessary. [S13,§1989-a28; C24, 27, 31, 35, 39, §7574; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.153]

455.154 Board to establish. When such agreement is filed with the auditor he shall record it in the drainage record. The board shall at a regular, special, or adjourned session thereafter locate and establish a drainage district and locate the ditches, drains, settling basins, and watercourses thereof as provided in said agreement, and enter of record an order accordingly. The board thereafter shall carry out the object, purpose, and intent of such agreement and cause to be completed and constructed the said improvement and shall retain jurisdiction of the same as fully as in districts established in any other manner. It shall cause to be levied upon and against the lands of such district, the drainage taxes and assessments according to said agreement and when collected said taxes and assessments shall constitute the drainage funds of said district to be applied upon order of the board as in said agreement provided. [S13,§1989-a28; C24, 27, 31, 35, 39,§7575; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.154]

455.155 Procedure. The board shall proceed to carry out the provisions of the agreement, advertising for and receiving bids, letting the work, making contracts, levying assessments, paying on estimates, issuing warrants, improvement certificates, or drainage bonds as the case may be, in the same manner as in districts established on petition, except as in said mutual agreement otherwise provided. [S13,§1989-a28; C24, 27, 31, 35, 39,§7576; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.155]

455.156 Outlet in adjoining county. When a drainage district is established and a satisfactory outlet cannot be obtained except through lands in an adjoining county, or when an improved outlet cannot be obtained except through lands downstream from the district boundary, the board shall have the power to purchase a right of way, to construct and maintain such outlets, and to pay all necessary costs and expenses out of the district funds. The board shall have similar authority relative to the construction and maintenance of silt basins upstream from the district boundary. In case the board and the owners of the land required for such outlet or silt basin cannot agree upon the price to be paid as compensation for the land taken or used, the board is hereby empowered to exercise the right of eminent domain in order to procure such necessary right of way. [S13,§1989-a55; C24, 27, 31, 35, 39,§7577; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.156]

Condemnation procedure, ch 472

455.157 Outlet in another state. When a district is, or has been established in this state and no practicable outlet therefor can be obtained except through lands in an adjoining state, the board of supervisors of the

county where said district is situated shall, as drainage commissioners, have power to purchase a right of way and to construct a ditch for such outlet in an adjoining state or to contribute to the construction of such a ditch, in an adjoining state and to pay for the same out of the funds of such district. Provided, however, that no drainage district or districts shall be charged or assessed any of the cost for land or work done unless previously agreed to by the board of supervisors or trustees of all of the drainage districts which will be assessed. [S13,§1989-a39; C24, 27, 31, 35, 39,§7578; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.157]

Referred to in §455.158

455.158 Tax. The board of supervisors shall have authority to levy a tax on the lands in said drainage district established in this state to provide funds from which to pay for the improvement referred to in section 455.157 should such levy be necessary. [C31, 35,§7578-c1; C39,§7578.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.158]

455.159 Injuring or diverting — damages. Any person who shall willfully break down or through or injure any levee or bank of a settling basin, or who shall dam up, divert, obstruct, or willfully injure any ditch, drain, or other drainage improvement authorized by law shall be liable to the person or persons owning or possessing the lands for which such improvements were constructed in double the amount of damages sustained by such owner or person in possession; and in case of a subsequent offense by the same person he shall be liable in treble the amount of such damages. [C73,§1227; C97,§1961; C24, 27, 31, 35, 39, §7579; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.159]

455.160 Obstructing or damaging. Any person or persons willfully diverting, obstructing, impeding, or filling up, without legal authority, any ditch, drain, or watercourse or breaking down or injuring any levee or the bank of any settling basin, established, constructed, and maintained under any provision of law, or obstructing, or engaging in travel or agricultural practices upon the improvement or rights of way of a levee or drainage district which the governing body thereof has, by resolution, determined to be injurious to such improvement or to interfere with its proper preservation, operation or maintenance, and has prohibited, shall be deemed guilty of a misdemeanor and punished accordingly and any such unlawful act as above described is hereby declared to be a nuisance and may be abated as such.

Said governing body shall also have the power to repair any ditch, drain or watercourse, or any levee or bank of any settling basin damaged by any person or persons in violation of the resolution of said governing body, after three days' notice to such person or persons to make such repair, in the event that there is a failure to do so, and the expense thereof shall be assessed to such person or persons and shall be certified and collected as other taxes. [C24, 27, 31, 35, 39,§7580; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.160]

Punishment, §687.7

455.161 Nuisance — abatement. Any ditch, drain, or watercourse which is now or hereafter may be constructed so as to prevent the surface and overflow water from the adjacent lands from entering and draining into and through the same is hereby declared a nuisance and may be abated as such. [S13,§1989-a15; C24, 27, 31, 35, 39,§7581; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.161]

Nuisances, ch 657

455.162 Actions — settlement — counsel. Levee or drainage districts through their governing bodies are authorized to maintain actions in law or equity for the purposes of preventing or recovering damages that may accrue to such districts on account of the impairment of their functions, or the increase in the cost of maintenance or operation of such districts, or on account of damages to property owned by such districts, resulting from the construction or operation of locks, dams and pools in the Mississippi or Missouri rivers; they may make settlements and adjustments of such damages and written contracts with relation thereto, and receive any appropriations that may be made by the Congress of the United States for the increased cost to drainage or levee districts and may agree to the construction and maintenance of present equipment and of new or remedial works, improvements and equipment as a part of such damages, or as a means of lessening the damages which will be suffered by the said districts. Said districts are further authorized to employ legal and engineering counsel for such purposes and to pay for the same out of the award of damages or out of the maintenance funds of the district.

If a lump sum settlement is made between the United States and the district to provide an annual payment of income therefrom, the county treasurer of the county in which the greater portion of the district is situated shall be custodian of such principal fund. The governing body of the district shall apply to the district court for authority to invest said fund as provided by section 682.23, in addition to the investments therein approved the court may authorize investment of said fund in interest-bearing bonds or warrants of said district. The income from said fund shall be disbursed by direction of the governing body of the district. [C39,§7581.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.162]

Membership in associations, §455.189

455.163 Waste banks — private use. The landowner may have any beneficial use of the land to which he has fee title and which is occupied by the waste banks of an open ditch when such use does not interfere in any way with the easement or rights of the

drainage district as contemplated by this chapter. For the purpose of gaining such use the landowner may smooth said waste banks, but in doing so he must preserve the berms of such open ditch without depositing any additional dirt upon them. [C24, 27, 31, 35, 39, §7582; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.163]

455.164 Preliminary expenses — how paid. If the proposed district is all in one county, the board of supervisors is authorized to pay all necessary preliminary expenses in connection therewith from the general fund of the county. If it extends into other counties, the boards of the respective counties are authorized to pay from the general fund thereof, such proportion of said expenses as the work done or expenses created in each county bears to the whole amount of work done or expenses created. Said amounts shall be ascertained and reported by the engineer in charge of the work and be approved by the respective boards which shall, as soon as paid, charge the amount to said district in favor of the general fund of the counties, as their interest may appear, as soon as the said district is established. If said district shall not be established, the said amounts shall be collected upon the bond or bonds of the petitioners. [S13,§1989-a48; C24, 27, 31, 35, 39,§7583; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.164]

455.165 Additional help for auditor. If the work in the office of the auditor by reason of the existence of drainage districts is so increased that the regular officer is unable by diligence to do the same, the board of supervisors may employ such additional help as may be necessary to keep the records and transact the business of the drainage districts. The expense of such help shall be paid by the districts in proportion to the amount of work done therefor. [S13,§1989-a42; C24, 27, 31, 35, 39,§7584; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.165]

455.166 Employment of counsel. The board is authorized to employ counsel to advise and represent it and drainage districts in any matter in which they are interested. Attorney's fees and expenses shall be paid out of the drainage fund of the district for which the services are rendered, or may be apportioned equitably among two or more districts. Such attorneys shall be allowed reasonable compensation for their services, also necessary traveling expenses while engaged in such business. Attorneys rendering such services shall file with the auditor an itemized, verified account of all claims therefor, and statement of expenses, and the same shall be audited and allowed by the board in the amount found to be due. [S13,§1989-a14; C24, 27, 31, 35, 39,§7585; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.166]

455.167 Compensation of appraisers. Persons appointed to appraise and award damages and make classification of lands and assess benefits, other than the engineer, shall receive such compensation as the board may fix and in addition thereto, the necessary expense of transportation of said persons while engaged upon their work. They shall file with the auditor an itemized, verified account of the amount of time employed upon said work and their expenses. [S13,§1989-a41; C24, 27, 31, 35, 39,§7586; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.167]

455.168 Repealed by 53GA, ch 202,§38.

455.169 Payment. All compensation for services rendered, fees, costs, and expenses when properly shown by itemized and verified statement shall be filed with the auditor and allowed by the board in such amounts as shall be just and true, and when so allowed shall be paid on order of the board from the levee or drainage funds of the district for which such services were rendered or expenses incurred, by warrants drawn on the treasurer by the auditor. [S13,§1989-a41; C24, 27, 31, 35, 39,§7588; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.169]

455.170 Purchase at tax sale. When land in a levee, drainage, or improvement district is being sold at a tax sale for delinquent taxes or assessment, the board of supervisors or the district trustees, as the case may be, shall have authority to bid in such land or any part of it, paying the amount of the bid from the funds of the district, and taking the certificate of sale in their names as trustees for such district, and may thereafter pay any assessments for taxes or benefits levied against said premises from the district funds. The amount paid for redemption which shall include such additional payment, shall be credited to the district. [C24, 27, 31, 35, 39,§7589; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.170]

40ExGA, HF 185,§141, editorially divided
Similar provisions, ch 569

455.171 Tax deed—sale or lease. If no redemption shall be made the board of supervisors or trustees, as the case may be, shall receive the tax deed as trustees for the district. They shall credit the district with all income from said property. They may lease or sell and convey said property as trustees for such district and shall deposit all money received therefrom to the credit of such district. The board of trustees may also lease or sell and convey such other property of the district, both real and personal, as is no longer needed for the purposes for which the district was established, and any such leases, sales and conveyances prior to July 4, 1963, are hereby legalized and declared to be valid and binding. [C24, 27, 31, 35, 39,§7590; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.171]

455.172 Purchase of tax certificate. When land in a drainage or levee district, or subdistrict, is subject to an unpaid assessment and levy for drainage purposes and has been sold for taxes the board of supervisors of that county, or if control of the district has

passed to trustees then such trustees, may purchase the certificate of sale issued by the county treasurer by depositing with the county auditor the amount of money to which the holder of the certificate would be entitled if redemption was made at that time, and thereupon the rights of the holder of the certificate and the ownership thereof shall vest in the board of supervisors, or the trustees of that district, as the case may be, in trust for said drainage district or subdistrict. [C31, 35, §7590-c1; C39,§**7590.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.172]

Referred to in §455.178

455.173 Terms of redemption. Redemption from said tax sale shall be made on such terms as may be agreed upon between such board of supervisors or such trustees and the owner of the land involved; but in any case in which the owner of said land will pay as much as fifty percent of the value of the land at the time of redemption he shall be permitted to redeem. If the parties cannot agree upon such value, either of them may bring an action against the other in the district court of the county where the land is situated, and the court shall determine the matter. The proceeding shall be triable in equity. [C31, 35, §7590-c2; C39,§**7590.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.173]

455.174 Payment—assignment of certificate. When such money is deposited with the county auditor he shall by mail notify the purchaser at said tax sale, or the latter's assignee if of record, and shall pay to the holder of such certificate the sum of money deposited with him for that purpose on surrender of the certificate with proper assignment thereon to the board of supervisors, or to the trustees of said district, as the case may be, as trustee for said district. [C31, 35,§7590-c3; C39,§**7590.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.174]

455.175 Funds. Payment to the county auditor for such certificate shall be from the fund of said drainage or levee district, or subdistrict, on a warrant issued against that fund which shall have precedence over all other outstanding warrants drawn against that fund in the order of their payment. Should there not be a sufficient amount in the fund of said district, or subdistrict, to pay said warrant then the board of supervisors, or the trustees of the district, as the case may be, are authorized to borrow a sum of money sufficient for that purpose on a warrant for that amount on the fund of the district, or subdistrict, which warrant shall bear interest from date at six percent per annum and shall have preference in payment over all other unpaid warrants on said fund, and the county treasurer shall so enter the same on the list of warrants in his office and call the same for payment as soon as there is sufficient money in said fund. [C31, 35,§7590-c4; C39,§**7590.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.175]

455.176 Lease or sale of land. If said certificate goes to deed to the board or to the trustees, all leases and sales of the land shall be effected and record thereof made in the same manner in which leases and sales are effected and record thereof made when the county acquires title as a purchaser under execution sale. [C31, 35,§7590-c5; C39,§**7590.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.176]

455.177 Duty of treasurer. When any lands in a drainage or levee district, or subdistrict, are subject to an unpaid assessment and levy for drainage purposes and are sold for a less sum of money than the amount of delinquent taxes thereon the county treasurer shall immediately report that fact to the board of supervisors, or to the trustees for the district, as the case may be. [C31, 35,§7590-c6; C39, §**7590.6**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.177]

455.178 Purchase by bondholder. In any event where upon the request of the holder of any bond or bonds issued by any drainage district the board of supervisors shall fail, neglect or refuse to purchase the certificate of sale issued by the county treasurer and referred to in section 455.172 in manner and form as permitted by said section, the holder of such bond or bonds may, upon filing with the county auditor a sworn statement as to the making of such written request upon the board of supervisors and a recital of the failure of such board to act in the premises by complying with the provisions of said section, in the same manner and form purchase such certificate and the ownership thereof shall thereupon vest in such holder of such bond or bonds in trust for said drainage district or subdistrict, provided, however, that the holder shall have a lien upon said certificate and any beneficial interest arising therefrom for his actual outlays including his reasonable expenses and attorney's fees, if any, incurred in the premises. In the event any such holder of any bond or bonds shall acquire title he shall have a right to lease or convey said premises, upon giving thirty days' written notice to the board of supervisors by filing the same with the county auditor and in the event said board shall not approve said lease or sale, the same shall be referred to the district court of the county where the land is situated and there tried and determined in the manner prescribed in section 455.172. Any funds realized from the lease or sale of said land shall be first applied in extinguishing the lien of the holder of the certificate herein provided for and the balance shall be paid to the said drainage bond fund of said district. [C35,§7590-g1; C39,§**7590.7**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.178]

455.179 Voting power. In case any proposition arises in said district to be determined by the vote of parties owning land therein, notice of such hearing shall be given and the board of supervisors or trustees, as the case

may be, while holding title in trust to any such land, shall have the same right to vote for or against such proposition as the former owner would have had if he had not been divested of the title to said land. [C24, 27, 31, 35, 39,§7591; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.179]

455.180 Inspection of improvements. The board of any county into which a levee or drainage improvement extends shall cause a competent engineer to inspect such levee or drainage improvement as often as it deems necessary for the proper maintenance and efficient service thereof. The engineer shall make report to the board of the condition of the improvement, together with such recommendations as he deems necessary. For any claim for services and expenses of inspection, the engineer shall file with the auditor an itemized and verified account of such service and expense to be allowed by the board in such amount as it shall find due and paid out of the drainage funds of the district. If the district extends into two or more counties, such action shall be had jointly by the several boards, and the expenses equitably apportioned among the lands in the different counties. [S13,§1989-a44; C24, 27, 31, 35, 39, §7592; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.180]

455.181 Watchmen. When a levee has been established and constructed in any county, the board shall be empowered to employ one or more watchmen, and fix their compensation, whose duty it shall be to watch such levee and make repairs thereon in case of emergency. Such employee shall file with the auditor an itemized, verified account for services rendered, and cost and expense incurred in watching or repairing such levee, and the same shall be audited and allowed by the board as other claims and paid by the county from funds belonging to such district. [S13, §1989-a40; C24, 27, 31, 35, 39,§7593; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.181]

455.182 Construction of drainage laws. The provisions of this chapter and all other laws for the drainage and protection from overflow of agricultural or overflow lands shall be liberally construed to promote leveeing, ditching, draining, and reclamation of wet, swampy, and overflow lands. [S13,§1989-a46; C24, 27, 31, 35, 39,§7594; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.182]

40ExGA, HF 185,§144, editorially divided

455.183 Technical defects. The collection of drainage taxes and assessments shall not be defeated where the board has acquired jurisdiction of the interested parties and the subject matter, on account of technical defects and irregularities in the proceedings occurring prior to the order of the board locating and establishing the district and the improvements therein. [S13,§1989-a46; C24, 27, 31, 35, 39,§7595; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.183]

455.184 Conclusive presumption of legality. The final order establishing such district when not appealed from, shall be conclusive that all prior proceedings were regular and according to law. [S13,§1989-a46; C24, 27, 31, 35, 39,§7596; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.184]

455.185 Drainage record. The board shall provide a drainage record book, which shall be in the custody of the auditor, who shall keep a full and complete record therein of all proceedings relating to drainage districts, so arranged and indexed as to enable any proceedings relative to any particular district to be examined readily. [S13,§§1989-a14,-a42; C24, 27, 31, 35, 39,§7597; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.185]

Referred to in §457.29

455.186 Records belong to district. All reports, maps, plats, profiles, field notes, and other documents pertaining to said matters, including all schedules, and memoranda relating to assessment of damages and benefits, shall belong to the district to which they relate, remain on file in the office of the county auditor, and be matters of permanent record of drainage proceedings. [C24, 27, 31, 35, 39, §7598; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.186]

Referred to in §457.29

455.187 Membership in National Drainage Association. Any drainage district may join and become a member of the National Drainage Association. A drainage district may pay a membership fee and annual dues upon the approval of the drainage board of such district, but not in excess of the following:

One hundred dollars for drainage districts having indebtedness in excess of one million dollars.

Fifty dollars for drainage districts having an indebtedness of five hundred thousand dollars and less than one million dollars.

Twenty-five dollars for drainage districts having an indebtedness of two hundred fifty thousand dollars and less than five hundred thousand dollars.

Ten dollars for drainage districts having an indebtedness less than two hundred fifty thousand dollars.

The annual dues for any district shall not exceed one-twentieth of one percent of the outstanding indebtedness of the district. [C31, 35,§7598-c1; C39,§7598.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.187]

455.188 Membership fee. The cost of membership fees and dues shall be assessed against the land in the drainage district and collected in the same manner and in the same ratio as assessments for the cost and maintenance of the drainage district. [C31, 35,§7598-c2; C39, §7598.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.188]

455.189 Other associations. Levee or drainage districts are authorized to become mem-

bers of drainage associations for their mutual protection and benefit, and may pay dues and membership fees therein out of the maintenance funds. [C39,§7598.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.189]

455.190 Receiver authorized. Whenever the governing board of any drainage or levee district becomes the owner of a tax sale certificate, for any tract of land within the district, and one or more year's taxes subsequent to the tax certificate have gone delinquent, the said governing board may, on behalf of such district, make application to the district court of the county within which such real estate or a part thereof is situated, for the appointment of a receiver to take charge of said delinquent real estate. [C35,§7598-e1; C39,§7598.04; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.190]

455.191 Hearing and notice thereof. Upon the filing of the petition for such appointment, the court shall fix a time and place of hearing thereon, and shall prescribe and direct the manner for the service of notice upon the owner, lienholders and persons in possession of said real estate, of the pendency of said application. [C35,§7598-e2; C39,§7598.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.191]

455.192 Appointment—grounds. Said application shall be heard by the court, at the time and place so designated, and after hearing thereon the court may appoint one of the members of the governing board of said drainage or levee district as receiver for said real estate, on the grounds that the said real estate is producing returns, and that the general and special taxes against the same are not being paid, and direct him to forthwith take possession of the same and to collect the rents, issues and profits therefrom. [C35,§7598-e3; C39,§7598.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.192]

45GA, ch 142,§3, editorially divided

455.193 Bond. The cost of the premium of the bond of such receiver shall be paid for out of the general funds of the drainage or levee district, and no charge shall be made by the receiver for compensation in said cause. [C35, §7598-e4; C39,§7598.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.193]

455.194 Avoidance of receivership. The owner of any such tract of real estate may avoid the appointment of such receiver, either before or after the action is commenced, by entering into a good and sufficient written instrument with the governing board of such district, agreeing to apply the rent share of the products of said land, or its equivalent to the payment of taxes thereon. [C35,§7598-e5; C39,§7598.08; C46, 50, 54, 58, 62, 66, 71, 73, 75, §455.194]

45GA, ch 142,§4, editorially divided

455.195 Preference in leasing. In the event a receiver is appointed for any tract of land, the owner if he is actually in possession thereof, shall have the preference to rent the same. [C35,§7598-e6; C39,§7598.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.195]

455.196 Rents — application of. The rents, issues and profits of the real estate when collected by the receiver, shall be applied as follows:

1. To the payment of the costs and expenses of the receivership.
2. To the payment of current general taxes against said real estate.
3. To the payment of any current special taxes against said real estate.
4. The surplus shall be applied upon any delinquent taxes or tax certificates, and the remainder, if any, shall be paid to the owner of said real estate. [C35,§7598-e7; C39,§7598.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§455.196]

455.197 Land classification and assessment in district.

1. *a.* When a levee district shall have been located and finally established; or

b. When the required proceedings have been taken to enlarge, extend, strengthen, raise, relocate, reconstruct, or improve any existing levee; or

c. When the required proceedings have been held to annex additional lands to said levee district or to exclude or eliminate lands from said levee district; or

d. When a plan of the United States government for the construction of any levee, or a portion of a levee, in said levee district, or for the enlarging, extending, strengthening, raising, relocating, reconstructing, or improving any existing levee, or a portion thereof, in accordance with any such plan in said levee district, has been heretofore or hereafter adopted by such levee district under the provisions of sections 455.202 to 455.217; or

e. When the board shall, as authorized by section 455.72, determine that the assessments of benefits of said levee district against the lands in said levee district are generally inequitable the board may by resolution, or if a petition is filed by more than one-third of the owners, including corporations, of land within said levee district and who in the aggregate own more than one-third of the value of the land and land improvements in said levee district as the value thereof is then shown by the general tax records of the county or counties in which such land and land improvements are located, requesting the board to do so, the board shall order the lands in said levee district and the improvements on the land in said levee district classified or reclassified in accordance with the assessed taxable value of said land and land improvements as the same are then shown and as the same may be thereafter shown by the assessment roll of the county or counties in which said land and land improvements are located.

The assessed taxable value of any land, including land improvements exempt from gen-

eral taxation but subject to assessment for levee purposes, shall be determined by the county assessor who shall make such determination in accordance with the rules of assessment applicable to adjacent lands and without any additional compensation therefor.

Referred to in subsection 2

2. If the board orders classification or reclassification of lands as authorized in subsection 1 of this section, the board shall fix a time and place for a hearing to be held upon the action of the board in ordering such classification or reclassification, which hearing shall be held at the county seat of the county having the largest acreage in said levee district. The board shall cause notice of the time and place of such hearing to be served by the county auditor or auditors upon each person whose name appears as owner of lands or land improvements within the levee district in the transfer books of the auditor's office in the county or counties in which said levee district is located, naming him, and also upon the person or persons in actual occupancy of any tract of land or land improvements located in said levee district, without naming him. Such notice shall be for the same time and served in the same manner as is provided for the establishment of a levee district, and such notice shall state:

a. The aggregate estimated costs and expenses which the board proposes to assess under such classification or reclassification;

b. The total aggregate assessed taxable value of all lands and land improvements in said levee district;

c. That the said classification or reclassification of benefits will be based on the assessed taxable value of all lands and improvements to lands located in said levee district;

d. That each tract of land and each land improvement in said levee district will be assessed for its pro rata share of said costs and expenses based upon the ratio that the assessed value of each tract of land and the assessed value of each land improvement bears to the total assessed taxable value of all lands and all land improvements in said district; and

e. That all objections to said method of classification or reclassification shall be in writing and filed with the auditor of the county in which said land or land improvements are located before the time set for said hearing or with the board of trustees of said district at or before the time set for such hearing.

The notice need not show the amount of such costs and expenses to be apportioned to each such owner or to any particular tract of land or land improvement within such levee district.

3. If at or before the time set for said hearing as to such classification or reclassification, there shall have been filed with the county auditor, or auditors in case the district extends into more than one county, or with said board, a remonstrance or remonstrances or objections to such method of classification or reclassification signed by owners of land and land improvements in the levee district aggregating sixty percent of the total assessed value of the lands plus land improvements in said district as shown by the taxing records in said county or counties in which said district is located, the board shall abandon the alternative method of classification or reclassification herein authorized. The board may then proceed to classify the lands in said levee district as authorized under sections 455.45 to 455.51 or may proceed to reclassify the same as authorized under section 455.72 unless said remonstrances and objections filed as above provided are filed by a majority of the landowners in the levee district and these remonstrants and objectors in the aggregate own seventy percent or more of the acreage of lands in the levee district and, in writing, object to any reclassification of any kind, then the board shall not reclassify the lands within the district under the provision of this section nor shall the same be reclassified under the provisions of section 455.72.

4. At the time fixed or at any adjourned hearing if the remonstrances and objections filed at or before the hearing are not signed by sufficient number of owners, or the owners signing such remonstrances and objections do not meet the requirements hereinabove provided, then the board shall fully consider all objections and remonstrances and shall make a determination as to whether or not the costs and expenses shall be assessed:

a. By the alternative method hereinabove set forth; or

b. As provided by sections 455.45 to 455.51; or

c. That the land should be reclassified as provided in section 455.72; or

d. On the basis of a then existing classification of lands.

5. If the board shall determine that the cost and expenses shall be assessed on the basis of assessed taxable value as hereinabove provided, then such basis shall be used for all future assessments made for the purposes of said levee district except if said assessed taxable value of lands and land improvements in said levee district may be changed or revised by the county assessor in the county or counties in which the same are located for general tax purposes, then any such revision made in the assessed taxable value by any such county assessor shall automatically constitute a revision of the classification of such land or land improvements for future assessments made by the board for the purpose of said levee district.

6. In lieu of the hearing provided for in the preceding subsections, the board may, and if the petition of owners provided for in the preceding subsections so asks, the board shall call for an election for the purpose of determining the question of classification on the basis of assessed value of lands and land im-

provements. The question may be submitted at a regular election of the district or at a special election called for that purpose. It shall not be mandatory for the county commissioner of elections to conduct the elections, however provisions of sections 49.43 through 49.47 and of chapter 462, insofar as the same are applicable, shall govern all such elections, and the question to be submitted shall be set forth in the notice of election. If sixty percent of the votes cast be in favor of the proposed change in assessment, it shall become effective for all future assessments as heretofore provided in this section. If the question should fail, no new election on the subject may be called for a period of one year.

7. When a levee district has been established and constructed, as an alternative to the other methods prescribed by law, upon reclassification, the levee district may adopt a method of classification and assessment uniform as to all land in the district, including railroad land, public highways and other public land and land exempt from general taxation, based on the total amount to be assessed divided by the total acres within the district. This method of classification and assessment may be adopted either by hearing or by election and shall become effective as heretofore provided in this section.

8. When a drainage district or drainage and levee district has been established and constructed, and after the lands therein have been classified in accordance with the provisions of sections 455.46, 455.47, and 455.48 or reclassified in accordance with section 455.72, the district may adopt methods of assessment for maintenance, repair, and operation of said district uniform as to all land in the district in the same manner and by the same procedures as prescribed in subsections 1 through 7 of this section. Provided, however, that only those lands drained by respective mains and laterals shall be assessed for maintenance, repair, and operation of said mains and laterals, and provided further that this alternate method of assessment shall not be applied to making improvements in the drainage system.

9. Following the adoption of any alternative method of classification or assessment as provided in this section, the same shall continue in effect until such time as the method is changed pursuant to this section or to section 455.72.

10. All proceedings taken prior to July 1, 1968, purporting to establish or re-establish a drainage or levee district or districts, or to enlarge or change the boundaries of any drainage or levee district, and any assessments not heretofore declared invalid by any court, are hereby legalized, validated, and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this section becomes effective involving the establishment, re-establishment, enlargement, or change in boundaries or any assessments of drainage or levee districts. [C71, 73, 75,§455.197]

455.198 Warrants not paid for want of funds. Chapter 74 shall be applicable to all warrants which are legally drawn on levee and drainage district funds and are not paid for want of funds, except that such warrants shall bear interest at not to exceed seven percent per annum. [C71, 73, 75,§455.198]

455.199 Easements through a drainage district. As used in this section, "person" shall mean any individual or group of individuals, corporation, firm, company, or association, except a railroad company.

1. When any person proposes to construct a pipe line, electric transmission line, communication line, underground service line, or other similar installations on, over, across, or beneath the right of way of any drainage or levee district, such person shall, before beginning construction, obtain from the drainage or levee district an easement to cross the district's right of way. The governing body of the district shall require such person to agree to comply with subsection 3 of this section and may, as a condition of granting such easement, attach thereto such additional conditions as they deem necessary. When the necessary easement has been obtained, such person shall construct the installation at his own expense and shall pay all costs of any reconstruction, relocation, modification, or reinstallation of the drainage or levee district's facility which may be necessary as a result of construction of the installation for which the easement was granted.

2. After construction of the installation has been completed in accordance with all conditions under which the easement is granted, the drainage or levee district shall maintain its facility at its own expense, and the person who constructed the installation, or his successors in interest, shall maintain the installation at his own expense. If the drainage or levee district subsequently undertakes any maintenance, improvement, or reconstruction of its facility which requires the modification, relocation, or reconstruction of the installation, the expense of such modification, relocation, or reconstruction shall be borne by the person who constructed the installation or his successors in interest.

3. When the construction of a public highway, or any installation for which an easement has been obtained under subsection 1 of this section, on, over, across, or beneath the right of way of any drainage or levee district disturbs or requires replacement of any portion of a tile drain less than twenty inches in diameter, and a portion of such drain will remain wholly or partially exposed after the construction project has been completed, the portion which is to remain exposed and not less than three feet of such drain immediately on either side of the portion which is to remain exposed, shall be replaced either with steel

pipe of not less than sixteen gauge or polyvinyl chloride pipe conforming to current industry standards regarding diameter and wall thickness. [C71, 73, 75,§455.199]

455.200 Agreements with outside owners or other districts. Levee and drainage districts are empowered to enter into agreements with the owners of lands lying outside of said districts, or with other levee and drainage districts or municipalities, to provide levee protection or drainage for such lands on such terms as the board may agree and subject to the following terms and conditions:

1. The facilities of the district furnishing the service shall not be overburdened.

2. There shall be no additional cost to the district furnishing the service.

3. The agreement shall be in writing, be made a part of the drainage records and shall include the following:

a. The description of the lands to be served;

b. The location of tile lines constructed or to be constructed;

c. The consideration to be paid to the district furnishing the service and the classification of the lands to be served; and

d. Such other provisions as the board deems necessary. [C71, 73, 75,§455.200]

455.201 Public improvements which divide a district—procedure. If it should develop that any type of public improvement, other than the forces of nature, has caused such a change in the district as to effectively sever and cut off some of the land in the district from other lands in the district and from the improvements in the district in such a way as to deprive the land of any further benefits from the improvement, or in some manner to divide the benefits that may be derived from two separated portions of the improvement, then the board of supervisors or the board of trustees in charge may upon notice to interested parties and hearing as provided by this chapter for the original establishment of a district make an order to remove lands so deprived of benefits from the district without any reclassification, or may subdivide the district into two separate entities if the public improvement splits the district into two separate units, each of which may still derive some separate benefits from the separated portions of the district.

If the public improvement is such as to leave two separate portions of the improvement that are still operable and of benefit to the land on each side of the division made by the public improvement, then the board may divide the district into two separate units so that each may perform further work on the improvements in their respective parts, but neither shall be charged for work completed on the opposite side of the new improvement that divides them and may only be charged for the work done in that portion of the district remaining on their side of the division.

The same authority provided in this section shall vest in the board of supervisors or the board of trustees in the event a drainage district in any manner relinquishes its control over any portion of its improvements or its obligation to maintain same to another district and lands may be removed from the district or the district may be divided as provided in this section.

The board may further in dividing the district award to each of the separated portions of the district the improvement remaining in each portion, determine the value of the improvement so remaining on each side and secondly determine the contributions of the lands in the separated portions to the improvements and the upkeep of the earlier district, and if the contribution is proportionate neither side shall owe the other portion of the district any money, but if contribution is disproportionate, the board shall determine an equitable adjustment and the amount of payment required for one portion to pay to the other to buy the existing improvement.

If land is eliminated from any further benefits, there need not be any reclassification and the board may remove the same from the district in the same manner as if the land has been destroyed in whole by the erosion of a river and spread any deficiency in assessment among the remaining lands as provided by section 455.56.

"Type of public improvement" for the purpose of this section includes drainage or levee improvements or new highways. [C71, 73, 75, §455.201]

Referred to in §§455.102, 456.1, 466.7

FEDERAL FLOOD CONTROL CO-OPERATION

455.202 Plan of improvement.

1. Whenever the government of the United States acting through its proper agencies or instrumentalities will undertake the original construction of improvements or the repair or alteration of existing improvements which will accomplish the purposes for which the district was established or aid in the accomplishment thereof and shall cause to be filed in the office of the auditor of the county in which said district is located a plan of such improvement or for the repair or alteration of existing improvements, the board shall have jurisdiction, power and authority, upon the notice, hearing and determination hereinafter provided, to adopt such plan of improvement or of repair or alteration of existing improvements and to provide necessary right of way therefor; and to pay such portion of all costs and damages incident to the adoption of such plan, the construction thereunder and the maintenance and operation of the works as will not be discharged by the federal government under legislation existing at the time of adoption; also to enter into such agreements with the United States government as may be necessary to meet federal requirements including

the taking over, repair and maintenance of the works and to perform under such agreements.

2. If the cost to the district of the repair or alteration of existing improvements contemplated by this section does not exceed twenty-five percent of the sum of the original cost to the district and the cost of subsequent improvements, including all federal contributions, the board may proceed under the provisions of section 455.135, without notice and hearing, and without appraisement as contemplated by section 455.211, but the remaining provisions of section 455.202 through section 455.217 that are not in conflict with section 455.135 shall remain applicable.

If the federal program divides a project into separate phases, each phase shall be considered a separate program as described in section 455.135, subsection 4, and shall in no event be construed as an unauthorized division into separate programs to avoid the twenty-five percent limitation prescribed for making improvements under said section 455.135, subsection 4, without notice and hearing. [C50, 54, 58, 62, 66,§455.201; C71, 73, 75,§455.202]

Referred to in §§455.45, 455.69, 455.197(1,*d*), 455.203, 455.204, 455.213

455.203 Agreement in advance. The agreement with the federal government contemplated in section 455.202 may be entered into by the board in advance of the filing of the plan—such agreement to be effective if the plan is finally adopted. If the plan is approved the board shall make a record of any such cooperative agreement. [C50, 54, 58, 62, 66, §455.202; C71, 73, 75,§455.203]

Referred to in §§455.45, 455.197(1,*d*), 455.202

455.204 Engineer appointed. After the filing of the plan contemplated in section 455.202 the board shall, at its first session thereafter, regular, special or adjourned, appoint a disinterested and competent civil or drainage engineer who shall give bond in an amount to be fixed by the board conditioned for the faithful and competent performance of his duties. [C50, 54, 58, 62, 66,§455.203; C71, 73, 75, §455.204]

Referred to in §§455.45, 455.197(1,*d*), 455.202

455.205 Engineer's report. The engineer shall examine the plan filed by the federal agency and the lands affected thereby and shall make and file with the county auditor a full written report which, together with the federal plan, will show the following:

1. The character and location of all contemplated improvements, and the plats, profiles and specifications thereof.

2. The particular description and acreage of land required from each forty-acre tract or fraction thereof for right of way, borrow pits or other purposes together with congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor.

3. A particular description of each forty-acre tract or fraction thereof that will be excluded from benefit by adoption of the plan as filed, together with the name of the owners thereof as shown by the transfer books in the office of the auditor.

4. A particular description of each forty-acre tract or fraction thereof outside the district which will benefit from adoption of the plan as filed and the name of the owner thereof as shown by the transfer books in the office of the auditor.

5. Such rights of way or portions thereof previously established or acquired as will be rendered unnecessary by adoption of the federal plan and any unpaid damages awarded therefor.

6. Such other damages previously awarded as will be affected by adoption of the federal plan.

7. The recommendation of the engineer with respect to the adoption of the plan. [C50, 54, 58, 62, 66,§455.204; C71, 73, 75,§455.205]

Referred to in §§455.45, 455.197(1,*d*), 455.202

455.206 Supplemental reports. Upon the filing of such report the board shall examine and consider the same together with the plan and the commitments involved in its adoption and may require supplemental reports of the engineer or of another disinterested engineer with such data as they may deem necessary or desirable including recommendations for any change or modification, negotiate with the federal agency involved and amend the plan in such manner as may be mutually agreed upon. The engineer shall make such supplemental reports as may be required by the board or necessitated by amendment of plan. [C50, 54, 58, 62, 66,§455.205; C71, 73, 75,§455.206]

Referred to in §§455.45, 455.69, 455.197(1,*d*), 455.202

455.207 Notice and hearing. If upon consideration of the plan or amended plan and the report or reports of the engineer and the commitments involved in the adoption of the plan the board finds that the district will benefit therefrom or the purposes for which the district was established will be promoted thereby, the board shall adopt the same as a tentative plan, entering order to that effect and fixing a date for hearing thereon not less than thirty days thereafter and directing the auditor to cause notice to be given of such hearing as hereinafter provided. [C50, 54, 58, 62, 66, §455.206; C71, 73, 75,§455.207]

Referred to in §§455.45, 455.69, 455.197(1,*d*), 455.202

455.208 Form of notice. Such notice shall be captioned in the name of the district and shall be directed to the owners of each tract or lot within said levee or drainage district, including railroad companies having rights of way, lienholders and encumbrances, and to all owners, lienholders or encumbrancers of lands which an adoption of the plan would exclude from benefits and of lands outside the district which will benefit therefrom and to all other persons whom it may concern and, without naming them, to the occupants of all lands

affected and shall set forth that there is on file in the office of the auditor a plan of construction of the federal agency (naming it), together with reports of an engineer thereon, which the board has tentatively approved, and that such plan may be amended before final action; also the day and hour set for hearing on the adoption of said plan, and that all claims for damages, except claims for land required for right of way or construction, and all objections to the adoption of said plan for any reason must be made in writing and filed in the office of the auditor at or before the time set for hearing. Provisions of this chapter for giving notice, waiver of notice, waiver of objection and damages and adjournment for service contained in sections 455.21 to 455.26 shall apply. [C50, 54, 58, 62, 66,§455.207; C71, 73, 75, §455.208]

Referred to in §§455.45, 455.69, 455.197(1,*d*), 455.202

455.209 Amendment — new parties. The board may continue the hearing pending decision and may amend the plan but in the event of amendment the board shall continue further hearing to a fixed date. All parties over whom the board then has jurisdiction shall take notice of such further hearing but any new parties rendered necessary by the modification or change of plans shall be served with notice as for the original hearing. [C50, 54, 58, 62, 66,§455.208; C71, 73, 75,§455.209]

Referred to in §§455.45, 455.69, 455.197(1,*d*), 455.202

455.210 Entry of order—effect. If the board, after consideration of the subject matter, including all objections filed to the adoption of the plan and all claims for damages, shall find that the district will be benefited by adoption of the plan or the purposes for which the district was established is furthered thereby, they shall enter order approving and adopting such final plan. Such order shall have the effect of:

1. Altering the boundaries of the district to conform to the changes effected by the plan adopted.

2. Canceling all existing awards for damages for property not appropriated for right of way or construction and rendered unnecessary by the plan so adopted.

3. Canceling all awards previously made for damages other than for right of way or construction but reinstating the claims for such damages which said claims may be amended by the claimants within ten days thereafter.

4. Canceling all unpaid assessments for benefits on lands excluded from the district by adoption of the plan. The assessments so canceled shall become part of the costs of the improvement.

5. Establishing as benefited thereby the lands added to the district by adoption of the plan and rendering same subject to classification and assessment.

6. Whenever a plan has been adopted as contemplated by this section, modification and changes can be made therein without further notice or hearing, provided the same do not increase or decrease the estimated cost of the plan to the district by more than twenty-five percent. [C50, 54, 58, 62, 66,§455.209; C71, 73, 75, §455.210]

Referred to in §§455.45, 455.69, 455.197(1,*d*), 455.202

455.211 Appraisement. The board shall thereupon appoint three appraisers of the qualifications prescribed in section 455.30, who shall qualify in the manner therein provided, and shall fix a time for hearing on their report of which all interested parties shall take notice. The appraisers shall view the premises and fix and determine the damages to which each claimant is entitled, including claimants whose awards for damages were canceled by the order of adoption, and shall place a separate valuation upon the acreage of each owner taken for right of way or other purposes necessitated by adoption of the plan and shall file a report thereof in writing in the office of the auditor at least five days before the date fixed by the board for hearing thereon. Should the report not be filed on time or should good cause for delay exist the board may postpone the time for final action on the subject and, if necessary, may appoint other appraisers. Thereafter the provisions of section 455.32 shall apply. [C50, 54, 58, 62, 66, §455.210; C71, 73, 75,§455.211]

Referred to in §§455.45, 455.197(1,*d*), 455.202

455.212 Assessment of benefits. Appointment of commissioners to assess benefits and classify lands within the district and all proceedings relative to such assessment and classification shall be as otherwise provided in this chapter except that when the lands of the district have previously been classified, the commissioners shall classify and assess only such lands as have been added to the district by adoption of the plan and recommend such changes in existing classifications as are materially affected by the plan so adopted. The board may, upon hearing, adjust the classification of lands affected by the plan. [C50, 54, 58, 62, 66,§455.211; C71, 73, 75,§455.212]

Referred to in §§455.45, 455.197(1,*d*), 455.202

455.213 Installments—warrants. The board shall levy the costs contemplated in section 455.202 upon all of the lands of the district on the basis of the classification for benefits as finally established and the assessments so levied shall be paid in one installment unless the board in its discretion shall provide for the payment thereof in not more than twenty equal installments with interest at not to exceed seven percent per annum. The board may issue warrants bearing interest at not to exceed seven percent per annum against assessments. The warrants may be numbered and state a maturity date in which event they shall bear interest from the date of issue without being presented for payment and marked unpaid for want of funds. The warrants may be sold by the board for cash in an

amount not less than the face value thereof, together with accrued interest, if any. [C50, 54, 58, 62, 66,§455.212; C71, 73, 75,§455.213]

Referred to in §§455.45, 455.197(1,*d*), 455.202

455.214 Subsequent levies. The board shall make such subsequent levies as may be necessary to meet the expenses of the district including costs of maintenance, repair and operation of the works. [C50, 54, 58, 62, 66,§455.213; C71, 73, 75,§455.214]

Referred to in §§455.45, 455.197(1,*d*), 455.202

455.215 Applicable statutes. Except as otherwise provided herein all provisions of this chapter and chapters 456 to 467 relative to assessment of damages, appointment of an engineer, employment of counsel, payment for work, levy and collection of drainage and levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial thereof and all other proceedings relating thereto shall apply. [C50, 54, 58, 62, 66,§455.214; C71, 73, 75,§455.215]

Referred to in §§455.45, 455.197(1,*d*), 455.202

455.216 Scope of plan. The provisions of this division shall be applicable to districts organized or established under the provisions of chapters 457 to 462, 466 and 467. [C50, 54, 58, 62, 66,§455.215; C71, 73, 75,§455.216]

Referred to in §§455.45, 455.197(1,*d*), 455.202

455.217 Districts under trustees. When a district is in the management of trustees as provided in chapter 462 the board of trustees shall have the jurisdiction to adopt the federal plan as provided herein and to exercise all other powers herein granted except that any levy shall be made by the board of supervisors upon certificate of the amount necessary by the trustees as provided in section 462.28. [C50, 54, 58, 62, 66,§455.216; C71, 73, 75,§455.217]

Referred to in §§455.45, 455.197(1,*d*), 455.202
Constitutionality, 52GA, ch 245,§18

STATE LANDS

455.218 Occupancy and use permitted — assessments paid. Any levee or drainage district organized, or in the process of being organized, under the laws of this state may occupy and use for any lawful levee or drainage purpose land owned by the state of Iowa, upon first obtaining permission to do so from the state or state agency controlling the same.

In the case of lands lying within the beds of meandered streams and border streams the permission shall be obtained from the state conservation commission, or its successor. In the case of lands that are under the control of no office or agency of the state, then the permission shall be obtained from the executive council.

Such permission shall not be unreasonably withheld and shall be in the form of an easement executed by the governor or in the case of an agency, by the chairman or presiding officer thereof, and when once granted shall be perpetual, except that if no use is made of the same for a period of five years such permission shall immediately thereafter expire.

All uses and occupancies as contemplated by this section existing on July 4, 1961, are hereby legalized.

The state of Iowa, its agencies and subdivisions shall be financially responsible for drainage and special assessments against land which they own, or hold title to, within existing drainage districts. [C62, 66,§455.217; C71, 73, 75, §455.218]

BOARD OF COUNTY DRAINAGE ADMINISTRATORS

455.219 Administrators appointed. The county board of supervisors of any county of this state in which one or more drainage districts are established may by resolution establish a board of county drainage administrators. All of the powers, duties, and responsibilities now or hereafter conferred on county boards of supervisors in this chapter and chapters 456 to 467 shall thereupon be transferred to and thereafter exercised by the board of county drainage administrators. A drainage or levee district may be established pursuant to chapter 462. [C71, 73, 75,§455.219]

455.220 Administrator areas. When establishing a board of county drainage administrators, the board of supervisors shall divide the county, along township lines, into three drainage administrator areas of approximately equal territory. The board of county drainage administrators shall consist of one resident freeholder appointed by the county board of supervisors from each area, and at least two of the administrators shall be agricultural landowners. The members first appointed shall hold office for terms of one, two, and three years respectively, as indicated and fixed by the county board of supervisors. Thereafter, succeeding members shall be appointed for a term of three years, except that vacancies occurring otherwise than by expiration of a term shall be filled by appointment for the unexpired term. Any member of the board of county drainage administrators who shall cease to have any of the qualifications prescribed by this section shall thereupon be disqualified as a member of the board and his office shall be deemed vacant. Members of the board of county drainage administrators may be removed by the county board of supervisors for cause, but every such removal shall be by written order which shall be filed with the county auditor. [C71, 73, 75,§455.220]

455.221 Compensation. The members of the board of county drainage administrators shall each receive seventeen dollars and fifty cents per day for each day actually devoted to the duties of their office, ten cents for every mile traveled in going to and from meetings of, or other places of performing the duties of, said board, and other actual and necessary expenses incurred in the performance of their duties. [C71, 73, 75,§455.221]

455.222 How paid. The compensation and expenses of the county board of drainage administrators, for each day or portion thereof necessarily expended in the transaction of the business of a drainage or levee district, shall be paid out of the funds of the district served. The administrators shall file with the auditor or auditors, as the case may be, itemized, verified statements of their time devoted to the business of the district and the expenses incurred. If the administrators transact business of more than one district on a given day, they shall prorate their claims for compensation proportionately among the districts served on that day, but in no case shall a member of the board of county drainage administrators claim or receive a sum in excess of seventeen dollars and fifty cents, plus actual and necessary expenses, for a single day. [C71, 73, 75, §455.222]

455.223 Conservancy districts. The governing board of every drainage or levee district organized under the laws of this state shall take notice of the district plan, and shall conform to the duly promulgated rules, of the conservancy district or districts in which the drainage or levee district is located; provided that this section shall not be construed to grant any authority not otherwise granted by law to the governing boards of drainage or levee districts. [C73, 75,§455.223]

455.224 Reserved.

COUNTY-CITY DRAINAGE DISTRICT

455.225 Supervisors of county over two hundred thousand may establish. The board of a county with a population of two hundred thousand persons or more that has established a drainage district located partly within the corporate limits of a city may expend federal grants or revenue sharing money or other funds not derived from local tax levies in amounts as the board deems proper to pay any part of the cost of improvements authorized in this chapter. The board may issue general obligation bonds to pay any part of the cost of improvements authorized in this chapter. The bonds shall be issued according to the provisions of chapter 384 division III, relating to general obligation bonds for essential corporate purposes. [66GA, ch 1203,§1]

CHAPTER 455A

IOWA NATURAL RESOURCES COUNCIL

Referred to in §§84.2(16), 111.62, 306.27

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455A.1 Definitions. As used in this chapter, *"council"* means "Iowa Natural Resources Council";

"Flood plains" means the area adjoining the river or stream, which has been or may be hereafter covered by flood water;

"Floodway" means the channel of a river or stream and those portions of the flood plains adjoining the channel, which are reasonably required to carry and discharge the flood water or flood flow of any river or stream;

"Person" means any natural person, firm, partnership, association, corporation, state of Iowa, any agency of the state, municipal corporation, political subdivision of the state of Iowa, legal entity, drainage district, levee

district, public body, or other district or units maintained or to be constructed by assessments, or the petitioners of a proceeding, pending in any court of the state affecting the subject matter of this chapter;

"Due notice" means a notice published once each week for two consecutive weeks in a newspaper of general circulation in each county in which the property affected is located with the date of last publication not less than ten nor more than thirty days prior to the date of hearing;

"Surface water" means the water occurring on the surface of the ground;

"Ground water" means that water occurring beneath the surface of the ground;

"Diffused waters" means waters arising by precipitation and snowmelt, and not yet a part of any watercourse or basin and shall include capillary soil water;

"Depleting use" means the storage, diversion, conveyance, or use of any supply of water which might impair rights of lower or surrounding users, or might impair the natural resources of the state or might injure the public welfare if not controlled;

"Beneficial use" means the application of water to a useful purpose that inures to the benefit of the water user and subject to his dominion and control but does not include the waste or pollution of water;

"Nonregulated use" means the use of water for ordinary household purposes, use of water for poultry, livestock and domestic animals, any beneficial use of surface flow from rivers bordering the state of Iowa, existing beneficial uses of water within the territorial boundaries of municipal corporations on May 16, 1957, except that industrial users of water, having their own water supply, within the territorial boundaries of municipal corporations, shall be regulated when such water use exceeds three percent more than the highest per day beneficial use prior to May 16, 1957, and any other beneficial use of water by any person of less than five thousand gallons per day;

"Regulated use" means any depleting use except a use specifically designated as a nonregulated use;

"Permit" means the written authorization issued by the water commissioner or council to a permittee which shall be limited as to quantity, time, place, and rate of diversion, storage or withdrawal in accordance with the declared policies and principles of beneficial use set forth in this chapter;

"Permittee" means the person who obtains a permit from the council authorizing such person to take possession by diversion or otherwise and to use and apply an allotted quantity of water for a designated beneficial use, and who makes actual use of the water for such purpose;

"Waste" means (*a*) permitting ground water or surface water to flow, taking it or using it in any manner so that it is not put to its full beneficial use, (*b*) transporting ground water from its source to its place of use in such a manner that there is an excessive loss in transit, (*c*) permitting or causing the pollution of a water-bearing strata through any act which will cause salt water, highly mineralized water, or otherwise contaminated water to enter it;

"Watercourse" means any lake, river, creek, ditch or other body of water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except such lakes or ponds without outlet to which only one landowner is riparian;

"Basin" means a specific subsurface water-bearing reservoir having reasonably ascertainable boundaries;

"Established average minimum flow" means when reasonably required for the purpose of this chapter, the council shall determine and establish the average minimum flow for a given watercourse at a given point thereon. The "average minimum flow" for a given watercourse as used in this chapter shall be determined by the following factors: (*a*) Average of minimum daily flows occurring during the preceding years chosen by the council as more nearly representative of changing conditions and needs of a given drainage area at a particular time; (*b*) minimum daily flows shown by experience to be the limit at which further withdrawals would be harmful to the public interest in any particular drainage area; and (*c*) those minimum daily flows shown by established discharge records and experiences to be definitely harmful to the public interest. Such determination shall be based upon available flow data, supplemented, when available data are incomplete, by whatever evidence is available;

"Impounded or stored water" means that water captured and stored on the land by anyone taking it pursuant to the provisions of this chapter, and the party impounding the water shall become the absolute owner thereof. [C50, 54, 58, 62, 66, 71, 73, 75,§455A.1]

455A.2 Declaration of policy. It is hereby recognized that the protection of life and property from floods, the prevention of damage to lands therefrom and the orderly development, wise use, protection and conservation of the water resources of the state by the considered and proper use thereof, is of paramount importance to the welfare and prosperity of the people of the state, and, to realize these objectives it is hereby declared to be the policy of the state to correlate and vest the powers of the state in a single agency, the Iowa natural resources council, with the duty and authority to establish and enforce an appropriate comprehensive state-wide program for the control, utilization, and protection of the surface and ground-water resources of the state. It is hereby declared that the general welfare of the people of the state of Iowa requires that the water resources of the state

be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use, or unreasonable methods of use, of water be prevented, and that the conservation of such water be exercised with the view to the reasonable and beneficial use thereof in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources shall be invested to the end that the best interests and welfare of the people are served.

Water occurring in any basin or in any watercourse, or other natural body of water of the state, is hereby declared to be public waters and public wealth of the people of the state of Iowa and subject to use in accordance with the provisions of this chapter, and the control and development and use of water for all beneficial purposes shall be in the state, which, in the exercise of its police powers, shall take such measures as shall effectuate full utilization and protection of the water resources of the state of Iowa. [C50, 54, 58, 62, 66, 71, 73, 75,§455A.2]

455A.3 Creation. There is hereby created and established an Iowa natural resources council. The council is established as an agency of the state government to promote the policies set forth in this chapter and shall represent the state of Iowa in all matters within the scope of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§455A.3]

455A.4 Appointment. The council shall consist of ten members, nine of whom shall be electors of the state of Iowa and shall be selected from the state at large solely with regard to their qualifications and fitness to discharge the duties of office without regard to their political affiliation. The tenth member shall be the executive director of the department of environmental quality or his designee, who shall be a nonvoting member. The appointive members of the council shall be appointed by the governor with the approval of two-thirds of the members of the senate and shall be appointed for overlapping terms of six years. The terms of three members of the council shall expire on July 1 of each odd-numbered year. Within sixty days following the organization of each regular session of the general assembly held during an odd-numbered year, appointments shall be made of successors to members of the council whose terms of office shall expire on the first of July next thereafter and of members to fill the unexpired portion of vacant terms. [C50, 54, 58, 62, 66, 71, 73, 75,§455A.4; 66GA, ch 67,§42]

See 57GA, ch 229,§4 for temporary provisions

455A.5 Vacancies. Vacancies occurring while the general assembly is in session shall be filled for the unexpired portion of the term as full-term appointments are filled. Vacancies occurring while the general assembly is not in session shall be filled by the governor, but such appointments shall terminate at the end of thirty days after the convening of the next general assembly. [C50, 54, 58, 62, 66, 71, 73, 75, §455A.5]

455A.6 Removal. The governor may, with the approval of the senate, during a session of the general assembly, remove any member of the council for malfeasance in office or for any cause that renders him ineligible for membership or incapable or unfit to discharge the duties of his office and his removal when so made shall be final. [C50, 54, 58, 62, 66, 71, 73, 75,§455A.6]

455A.7 Compensation and expenses. The members of the council, except those members who are employees of the state or any political subdivision, shall be paid a forty-dollar per diem and shall be reimbursed for actual and necessary expenses incurred under the provisions of this chapter; however, a member shall not receive more than three thousand two hundred dollars per diem for each fiscal year. All per diem and expense moneys paid to members shall be paid from funds appropriated to the council. A member of the council shall not have a direct financial interest in, or profit by any of the operations of the council. [C50, 54, 58, 62, 66, 71, 73, 75,§455A.7]

455A.8 Organization, meetings and rules. The council shall organize by the election of a chairman and shall meet at the seat of government on the first Monday in the months of January, April, July and October, and at such other times and places as it may deem necessary. The chairman shall be elected annually at the meeting of the council in July. Meetings may be called by the chairman and shall be called by the chairman on the request of four members of the council. The majority of the council shall constitute a quorum and the concurrence of a majority of the council in any matter within their duties shall be required for its determination, provided that the public hearing on any matter within council duties may be conducted by less than a majority of the council or by an employee so designated by the council. The council shall adopt such rules as it may deem necessary to transact its business and for the administration and exercise of its powers and duties. [C50, 54, 58, 62, 66, 71, 73, 75,§455A.8]

455A.9 Director and water commissioners.

1. The council shall choose a director who shall not be a member of the council and shall fix the compensation of such director, which shall be payable out of the funds appropriated to the council. The director shall be qualified by training and experience. The term of office of the director shall be during the pleasure of the council. The director shall serve as the executive officer of the council and shall have charge of the work of the council subject to its orders and directions.

2. The council shall choose a water commissioner who shall not be a member of the coun-

cil and shall fix the compensation of such commissioner, which shall be payable out of the funds appropriated to the council. The water commissioner shall be qualified by training and experience. The term of office of the water commissioner shall be during the pleasure of the council. The water commissioner shall serve in a quasi-judicial capacity as the trier of fact questions in the processing of all applications for appropriation permits. He shall conduct hearings on any applications for permits as provided by law and the rules of the council, and he shall perform such other duties as the council may prescribe.

3. The council may choose one or more deputy water commissioners who shall not be members of the council. The council shall fix the compensation of such deputy commissioners, which shall be payable out of the funds appropriated to the council. The deputy commissioners shall be qualified by training and experience. The term of office of the deputy commissioners shall be during the pleasure of the council. A deputy commissioner shall have all of the duties, responsibilities, and powers of the water commissioner when acting in his stead. The deputy commissioners shall be assigned hearings on applications for permits by the water commissioner. [C50, 54, 58, 62, 66, 71, 73, 75,§455A.9]

See appropriations Act

455A.10 Employees. The director, with the approval of the council is empowered to employ, discharge, and fix the salaries of such technical, clerical, stenographic and such other employees and assistants as may be required. All of such employees shall be paid from funds appropriated to the council. [C50, 54, 58, 62, 66, 71, 73, 75,§455A.10]

See appropriations Act

455A.11 Bonds. The council shall provide for the execution of surety bonds for all members and employees who shall be entrusted with funds and property and the premiums on all such surety bonds shall be paid from the funds appropriated to the council. [C50, 54, 58, 62, 66, 71, 73, 75,§455A.11]

455A.12 Warrants. The comptroller is directed to draw warrants on the treasurer of the state for all disbursements authorized by this chapter upon duly itemized and verified vouchers bearing the approval of the director of the council. [C50, 54, 58, 62, 66, 71, 73, 75, §455A.12]

455A.13 Reports, accounting and recommendations. The council shall make a report to the governor of its activities for the preceding biennial period, including therein an itemized statement of all receipts and disbursements and such other information pertaining to its work as may be of value.

The council in its biennial report shall make such recommendations for amendments to this chapter, or for other legislation as it deems appropriate.

The council shall report to the governor at any time required, the results accomplished since its last report, pending plans and the status of any work or plans in progress. [C50, 54, 58, 62, 66, 71, 73, 75,§455A.13]

455A.14 Departmental co-operation. The council may request and receive from any department, division, board, bureau, commission, public body, or agency of the state, or of any political subdivision thereof, or from any organization, incorporated or unincorporated, which has for its object the control or use of any of the water resources of the state, such assistance and data as will enable the council to properly carry out its activities and effectuate its purposes hereunder. The council shall reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.

The council, its agents and other employees may enter upon any lands or waters in the state for the purpose of making any investigation, examination, or survey contemplated by this chapter. [C50, 54, 58, 62, 66, 71, 73, 75, §455A.14]

455A.15 Eminent domain. The council shall have the right to exercise the power of eminent domain. All the provisions of law relating to condemnation of lands for public state purposes shall apply to the provisions hereof in and so far as applicable. The executive council shall institute and maintain such proceedings.

The council may accept gifts, contributions, donations and grants, and use the same for any purpose within the scope of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§455A.15]

455A.16 Title to lands and other property. The title to all lands, easements, or other interest therein, or other property or rights acquired by the council shall be approved by the attorney general and taken in the name of the state of Iowa. [C50, 54, 58, 62, 66, 71, 73, 75,§455A.16]

455A.17 Functions and duties. The council shall establish and enforce a comprehensive state-wide plan for the control, utilization and protection of the water resources of the state, which plan shall include all uses and developments of water resources and shall provide for the optimum control, protection, development, allocation and utilization thereof. All uses and developments of water resources regulated under provisions of this chapter must be found to be compatible with the state comprehensive plan prior to the granting of a permit by the water commissioner or an approval order by the council. In making and formulating such state comprehensive plan for the further control, development, protection, allocation, and utilization of the water resources of the state, the council shall make surveys and investigations of the water resources of the state and shall give consideration to the needs of agri-

culture, industry, health, fish and wildlife, recreation, pollution and allied matters as they relate to flood control and water resources. Before implementation of the statewide plan, the council shall submit the plan to the general assembly which shall approve or disapprove the plan pursuant to a concurrent resolution. Approval of the plan shall require the affirmative vote of a majority of the members of each house of the general assembly.

The council shall be the official representative of the state of Iowa on all comprehensive water resources planning groups for which state participation is provided. The council shall co-ordinate state planning with local and national planning and, in safeguarding the interests of the state and its people, shall undertake the resolution of any conflicts that may arise between the water resources policies, plans, and projects of the federal government and the water resources policies, plans, and projects of the state, its agencies, and its people. Nothing in this section assigning the overall responsibility for comprehensive planning of water resources to the council shall be construed as limiting or supplanting the functions, duties and responsibilities of the several state or local agencies or institutions with regard to planning of water associated projects within the particular area of responsibility of such state or local agency or institution.

The council shall enter into negotiations and agreements with the federal government relative to the operation of, or the release of water from, any project that has been authorized or constructed by the federal government when the council shall deem such negotiations and agreements to be necessary for the achievement of the policies of the state of Iowa relative to its water resources.

The council, on behalf of the state, shall enter into negotiations with the federal government relative to the inclusion of conservation storage features for water supply in any project that has been authorized by the federal government when the council shall deem such negotiations to be necessary for the achievement of the policies of the state of Iowa and the state comprehensive plan for water resources; provided, however, that any agreements reached pursuant to such negotiations shall not bind the state until enacted into law by the legislature.

Water users who will benefit from the development by the federal government of conservation storage for water supply shall be encouraged to assume the responsibility for repaying to the federal government any reimbursable costs incurred in such development and such users who will accept benefits from such developments financed in whole or in part by the state shall assume by contract the responsibility of repaying to the state their reasonable share of the state's obligations in accordance with such basis as will assure payment within the life of the development. No appropriations, diversion, or use shall be made by any person of any of the waters of the state that have been stored or released from storage either under the authority of the state or pursuant to an agreement between the state and the federal government until such time as he shall have assumed by contract his repayment responsibility; provided, however, that the application of this provision shall in no way infringe upon any vested property interests.

In its contracts with water users for the payment of state obligations incurred in the development of conservation storage for water supply, the council shall include (1) such terms as it shall find reasonable and necessary for the protection of the health, safety, and general welfare of the people of the state, (2) such terms as it shall find reasonable and necessary for the achievement of the purposes of this chapter and acts amendatory thereof or supplemental thereto, and, (3) such terms as shall make clear that the state of Iowa shall not be responsible to any person in the event the waters involved are insufficient for performance. The council may designate and describe any such contract, and describe the relationships to which it relates, as a sale of storage capacity, a sale of water release services, a contract for the storage or sale of water, or any similar terms suggestive of the creation of a property interest. The term of such contracts shall be commensurate with the investment and use concerned but in no event shall the council enter into any such contract for a term in excess of the maximum period provided for water use permits.

The council shall procure and obtain flood control works and water resources projects from and through or by co-operation with the United States, or any agency of the United States, by co-operation with and action of the cities and other subdivisions of the state, under the laws of the state relating to flood control and use of water resources, and by co-operation with the action of landowners in areas affected thereby when the council shall deem such projects to be necessary for the achievement of the policies of the state of Iowa and the state comprehensive plan for water resources. [C50, 54, 58, 62, 66, 71, 73, 75, §455A.17; 66GA, ch 38,§3]

Referred to in §§455A.40, 467D.16, 467D.17
For provision of exception to statewide plan, 66GA, ch 28,§1(4, c)
See §358.9

455A.18 Jurisdiction — diversion of water. The council shall have jurisdiction over the public and private waters in the state and the lands adjacent thereto necessary for the purposes of carrying out the provisions of this chapter. The council may construct flood control works or any part thereof. In the construction of such works or in making surveys and investigations or in formulating plans and programs relating to the water resources of the state, the council may co-operate with other states or any agency thereof or with the United States or any agency of the United

States, or with any person as defined in this chapter.

Upon application by any person for permission to divert, pump, or otherwise take waters from any watercourse, underground basin or watercourse, drainage ditch or settling basin within the state of Iowa for any purpose other than a nonregulated use, the council shall cause to be made an investigation of the effect of such use upon the natural flow of such watercourse, the effect of any such use upon the owners of any land which might be affected by such use, and the effect of any such use upon the state comprehensive plan for water resources, and shall hold a hearing thereon. Upon application by any person for approval of the construction or maintenance of any structure, dam, obstruction, deposit or excavation to be erected, used, or maintained in or on the flood plains of any river or stream, the council shall cause an investigation to be made of the effect thereof on the efficiency and capacity of the floodway and on the state comprehensive plan for water resources. In determining the effect of any such proposal the council shall consider fully its effect on flooding or flood control both to any proposed works and to adjacent lands and property, on the wise use and protection of water resources, on the quality of water, on fish, wildlife and recreational facilities or uses, and on all other public rights and requirements. [C50, 54, 58, 62, 66, 71, 73, 75,§455A.18]

455A.19 Procedure to secure permit. The procedure for securing a permit to divert, store or withdraw waters shall be as follows:

1. The application for a permit shall be made in writing to the council and shall set forth the designated beneficial use for which the permit is sought, the specific limits as to quantity, time, place, and rate of diversion, storage or withdrawal of waters.

2. Upon receipt of an application for a permit, the water commissioner shall set a time and place for hearing. The hearing shall be in the county where the permit is sought, but may be held at any other place in the state unless objection is raised by the applicant. The hearing shall be to the water commissioner.

3. The water commissioner shall cause due notice of the hearing to be published. Said notice shall specify the date, time and place of hearing and shall include a concise statement of the designated beneficial purposes for which diversion is sought, the specific limits as to quantity, time, place, and rate of diversion, storage or withdrawal of waters, the name of the applicant and the description of the land upon which waters are to be diverted, stored or withdrawn. In addition to the foregoing, the water commissioner shall cause a copy of the notice to be sent to the director of the conservation commission, commissioner of public health, the secretary of the soil conservation committee, secretary of agriculture, director of the Iowa geological survey, the director of the Iowa development commission, and to any other person who has filed a written request for a notification of any hearings affecting a designated area, by ordinary mail, prior to the date of last publication.

Referred to in §455A.20

4. Any interested person may appear and present evidence at the hearing, and may be represented by counsel, who shall have the right to question others who present evidence.

5. The applicant for a permit shall pay a fee to the council in the amount of twenty-five dollars at the time of filing his application which fee shall include the cost of publishing notice and which publication shall then be paid for by the council. Such fee shall be used by the council for administering this chapter, including the payment of expenses incurred in publishing legal notice.

Referred to in §455A.20

6. The council shall prescribe the rules of procedure for the conduct of the hearings.

7. The determination of the water commissioner on any application before him shall be in writing, filed with the council and shall set forth his findings. A copy of the determination shall be mailed to the applicant and to any person appearing who in writing requests a copy of the determination.

8. Any party aggrieved by the determination of the water commissioner may, within thirty days from the date such determination is filed, appeal therefrom to the council setting forth in general terms the determination appealed from and the grounds of the appeal. The director shall set a time and place for hearing before the council and shall then send a notice by ordinary mail to all persons who appeared at the hearing before the water commissioner.

Referred to in §455A.28(2)

9. The council shall adopt rules for the conduct of the hearing on appeal and shall file a determination in writing, setting forth findings. A copy of the determination shall be mailed to the applicant or to any person appearing who in writing requests a copy of the determination.

10. The water commissioner or the council or other employee so authorized by the council at any hearing or other proceeding authorized by this chapter, shall have the power to administer oaths; take testimony; issue subpoenas and compel the attendance of witnesses, the subpoenas shall be served in the same manner as subpoenas issued by the courts of the state; and to order the taking of depositions in the same manner as depositions are taken under the Iowa Rules of Civil Procedure. [C58, 62, 66, 71, 73, 75,§455A.19]

Referred to in §§455A.20, 455A.21, 455A.25, 455A.26, 455A.27, 455A.28, 455A.40

455A.20 Hearing—appeal. If the water commissioner at the first hearing or the council at the hearing on appeal shall determine after due investigation that such diversion, storage or withdrawal will not be detrimental to the public interests, including drainage and levee

districts, or to the interests of property owners with prior or superior rights who might be affected, the water commissioner following the first hearing, or the council following the hearing on appeal shall grant a permit for such diversion, storage or withdrawal. Judicial review of such action is available in accordance with the terms of the Iowa administrative procedure Act and section 455A.37. Permits may be granted for any period of time but not to exceed ten years. Permits may be granted which provide for less diversion, storage, or withdrawal of waters than set forth in the application. Permits may be extended by the water commissioner for a period of not more than ninety days during the pendency of an application for renewal. Any permit granted shall remain as an appurtenance of the land described therein through the date specified in such permit and any extension thereof or such earlier date as the permit or any extension thereof is revoked or canceled under the provisions of section 455A.28.

Upon application therefor prior to the termination date specified therein, permits may be renewed by the water commissioner for any period of time not to exceed ten years. Permits may be renewed without hearing or fee if no objection is filed and no change in the conditions of the permit is sought. The water commissioner shall cause notice of receipt of an application for renewal to be sent by ordinary mail to any person who appeared at the next previous proceeding on the permit and to any person who has filed a written request for notification of any hearings affecting a designated area. If written objection is filed not more than thirty days after the date of the notice by any person shown to have an interest, a hearing shall be held thereon with notice thereof to be sent not less than ten nor more than thirty days prior thereto by ordinary mail to such objector, to any person who appeared at the next previous proceeding on the permit, and to any person who has filed written request for notification of any hearings affecting a designated area.

If a change in the terms of a permit is requested which involves a change in the designated beneficial purposes for which the diversion is sought, a change in the place of such diversion, or an increase in the quantity, time, or rate of diversion, storage or withdrawal of waters, the applicant therefor shall pay a fee as required by section 455A.19, subsection 5, and a hearing shall be held thereon with notice thereof as required by section 455A.19, subsection 3. [C58, 62, 66, 71, 73, 75,§455A.20]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27, 455A.40

455A.21 Priority of permits. In the consideration of applications for permits, priority will be given to persons in the order applications are received. However, persons who have made diversion or withdrawal of water for a beneficial use prior to May 16, 1957, will be accorded priority according to the actual date of said diversion or withdrawal. The water commissioner or the council on appeal shall exercise their judgment on the quantity of water for which a permit may be granted. The use of water for ordinary household purposes, for poultry, livestock and domestic animals shall have priority over other uses. Any person with an existing irrigation system in use prior to May 16, 1957, shall be issued a permit to continue, unless by the use thereof some other riparian user is damaged. In the consideration of applications for permits by regulated users, the declared policies and principles of beneficial use, as set forth in this chapter, shall be the standard for the determination of the disposition of the applications for said permits. Nothing in this chapter shall impair the vested right of any person. Prior orders of the council shall not be invalidated by the provisions of sections 455A.19 to 455A.32. [C58, 62, 66, 71, 73, 75,§455A.21]

Referred to in §§455A.25, 455A.26, 455A.27, 455A.40

455A.22 Permits for beneficial use. The water commissioner and the council shall have the authority to issue a permit for beneficial use of water in a watercourse provided the established average minimum flow is preserved. [C58, 62, 66, 71, 73, 75,§455A.22]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27, 455A.40

455A.23 Pollution control protected. No use of water shall be authorized that will impair the effect of pollution control laws of this state. [C58, 62, 66, 71, 73, 75,§455A.23]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27, 455A.40

455A.24 Navigability preserved. No permit shall be issued or continued that will impair the navigability of any navigable watercourse. [C58, 62, 66, 71, 73, 75,§455A.24]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27, 455A.40

455A.25 When permit required. For the purpose of administering sections 455A.19 to 455A.32, a permit as herein provided shall be required for the following:

1. Any municipal corporation or person supplying a municipal corporation which increases its water use in excess of one hundred thousand gallons, or three percent, whichever is the greater, per day more than its highest per day beneficial use prior to May 16, 1957. Such corporation or person shall make reasonable provision for the storage of water at such time or times when the daily use of such water by such corporation or person is less than the amount specified herein.

2. Except for a nonregulated use, any person using in excess of five thousand gallons of water per day, diverted, stored, or withdrawn from any source of supply except a municipal water system or any other source specifically exempted under the provisions of sections 455A.19 to 455A.32.

3. Any person who diverts water or any material from the surface directly into any underground watercourse or basin. Provided,

however, that any diversion of water or material from the surface directly into any underground watercourse or basin existing upon May 16, 1957, shall not require a permit if said diversion does not create waste or pollution. No permit shall be issued under this subsection until the approval of the Iowa water pollution control commission has been obtained.

4. Industrial users of water having their own water supply, within the territorial boundaries of municipal corporations, shall be regulated when such water use exceeds three percent more than the highest per day beneficial use prior to May 16, 1957. [C58, 62, 66, 71, 73, 75,§455A.25]

Referred to in §§455A.21, 455A.26, 455A.27, 455A.40

455A.26 Taking water prohibited. No person shall take water from any natural watercourse, underground basin or watercourse, drainage ditch, or settling basin within the state of Iowa for any purpose other than a nonregulated use except upon compliance with sections 455A.19 to 455A.32, provided that existing uses may be continued during the period of the pendency of an application for a permit. [C58, 62, 66, 71, 73, 75,§455A.26]

Referred to in §§455A.21, 455A.25, 455A.27, 455A.40

455A.27 Rights preserved. Nothing in sections 455A.19 to 455A.32 shall operate to deprive any person of the right to use diffused waters, or to drain land by use of tile, open ditch or surface drainage, or to construct an impoundment on said person's property or across a stream that originates on said person's property so long as provision is made for safe construction and for continued established average minimum flow, if and when such flow is required to protect the rights of water users below. [C58, 62, 66, 71, 73, 75, §455A.27]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.40

455A.28 Modification or cancellation of permits. Every permit issued hereunder shall be irrevocable for the term therefor, and for any extension of such term except as follows:

1. A permit may be modified or canceled by the water commissioner, with the consent of the permittee.

2. Subject to appeal in the manner provided by section 455A.19, subsection 8, a permit may be modified or canceled by the water commissioner in case of any breach of the terms or conditions thereof or in case of any violation of the law pertaining thereto by the permittee, his agents or servants, in case of nonuse as provided hereinafter, or in case the water commissioner finds such modification or cancellation necessary to protect the public health or safety or to protect the public interests in lands or waters, or to prevent substantial injury to persons or property in any manner, upon at least thirty days' written notice mailed to the permittee at his last known address, stating the grounds of the proposed modification or cancellation and giving the permittee an opportunity to be heard thereon.

3. By written order to the permittee, the water commissioner may forthwith suspend operations under a permit if he finds it necessary in an emergency to protect the public health or safety or to protect the public interests in lands or waters against imminent danger of substantial injury in any manner or to any extent not expressly authorized by the permit, or to protect persons or property against such danger, may require the permittee to take any measures necessary to prevent or remedy such injury; provided, that no such order shall be in effect for more than thirty days from the date thereof, without giving the permittee at least ten days' written notice of such order and an opportunity to be heard thereon. [C58, 62, 66, 71, 73, 75,§455A.28]

Referred to in §§455A.20, 455A.21, 455A.25, 455A.26, 455A.27, 455A.40

455A.29 Termination of permit. The right of the permittee and his successors to the use of water shall terminate when he ceases for three consecutive years to use it for the specific beneficial purpose authorized in his permit and the permittee has been notified by the water commission that unless written application as set forth as follows, that the permit will cease; provided, however, that upon his written application prior to the expiration of said three-year period for extension of said permit, the council may grant such extension without loss of priority. [C58, 62, 66, 71, 73, 75, §455A.29]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27, 455A.40

455A.30 Disposal of permit. A permittee may sell, transfer, or assign his permit by conveying, leasing, or otherwise transferring the ownership of the land described in the permit, but such permit shall not constitute ownership or absolute rights of use of such waters, but such waters shall remain subject to the principle of beneficial use and the orders of the council. [C58, 62, 66, 71, 73, 75,§455A.30]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27, 455A.40

455A.31 Power of eminent domain. The state of Iowa, any subdivision thereof, or municipal corporation, for the purpose of carrying out any permission granted, as hereinbefore provided, shall have and exercise the power of eminent domain. [C58, 62, 66, 71, 73, 75,§455A.31]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27, 455A.40

455A.32 Unauthorized depleting uses. In the event that any person shall file a complaint with the council that any other person is making a depleting use of water not expressly exempted as a nonregulated use under the provisions of this chapter and without a permit to do so, the council shall cause an investigation to be made and if the facts stated in the complaint are verified the council shall order the discontinuance of the use. [C58, 62, 66, 71, 73, 75,§455A.32]

Referred to in §§455A.21, 455A.25, 455A.26, 455A.27, 455A.40

455A.33 Unlawful acts—powers of council. It shall be unlawful to suffer or permit any structure, dam, obstruction, deposit or excavation to be erected, used, or maintained in or on any floodway or flood plains, which will adversely affect the efficiency of or unduly restrict the capacity of the floodway, adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, or adversely affect or interfere with the state comprehensive plan for water resources, or an approved local water resources plan, and the same are declared to be and to constitute public nuisances, provided, however, that this provision shall not apply to dams constructed and operated under the authority of chapter 469 as amended.

The council shall have the power to commence, maintain and prosecute any appropriate action to enjoin or abate a nuisance, including any of the foregoing nuisances and any other nuisance which adversely affects flood control.

In the event any person desires to erect or make, or to suffer or permit, a structure, dam, obstruction, deposit or excavation, other than a dam, constructed and operated under the authority of chapter 469 as amended, to be erected, made, used or maintained in or on any floodway or flood plains, such person shall file a verified written application with the council, setting forth the material facts, and the council after an investigation or hearing, shall enter an order, determining the fact and permitting or prohibiting the same, upon such terms and conditions as it may prescribe.

The council shall have the authority to maintain an action in equity to enjoin any such person from erecting or making or suffering or permitting to be made any structure, dam, obstruction, deposit, or excavation other than a dam constructed and operated under the authority of chapter 469, for which a permit has not been granted.

The council shall have the power to remove or eliminate any structure, dam, obstruction, deposit or excavation in any floodway which adversely affects the efficiency of or unduly restricts the capacity of the floodway, by an action in condemnation, and in assessing the damages in such proceeding, the appraisers and the court shall take into consideration whether the structure, dam, obstruction, deposit or excavation is lawfully in or on the floodway. [C50, 54,§455A.19; C58, 62, 66, 71, 73, 75,§455A.33]

Referred to in §455A.40

455A.34 Additional powers — licensing of dams. After April 17, 1949, the term "council", as used in chapter 469, shall be construed to refer to the Iowa natural resources council unless specifically otherwise provided. [C50, 54,§455A.20; C58, 62, 66, 71, 73, 75,§455A.34]

455A.35 Council—established flood plains—encroachment limits. The council may establish and enforce regulations for the orderly development and wise use of the flood plains of any river or stream within the state and alter, change, or revoke and terminate the same. The council shall determine the characteristics of floods which reasonably may be expected to occur and may by order establish encroachment limits, protection methods and minimum protection levels appropriate to the flooding characteristics of the stream and to reasonable use of the flood plains. The order shall fix the length of flood plains to be regulated at any practical distance; shall fix the width of the zone between the encroachment limits so as to include portions of the flood plains adjoining the channel, which with the channel, are required to carry and discharge the flood waters or flood flow of such river or stream; and shall fix the design discharge and water surface elevations for which protection shall be provided for projects outside the encroachment limits but within the limits of inundation. Plans for the protection of projects proposed for areas subject to inundation shall be reviewed as plans for flood control works within the purview of section 455A.36. No order establishing encroachment limits and flood plain regulations shall be issued until due notice of the proposed establishment thereof shall have been given and public hearings held and opportunity given for the presentation of all protests against the establishment thereof. In establishing any such limits or regulations, the council shall avoid to the greatest possible degree the evacuation of persons residing in the area of any floodway, the removal of any residential structures occupied by such persons in the area of any floodway, and the removal of any structures erected or made prior to July 4, 1965, which are located on the flood plains of any river or stream but not within the area of any floodway.

The council may co-operate with and assist local units of government in the establishment of encroachment limits, flood plain regulations and zoning ordinances relating to flood plain areas within their jurisdiction. Encroachment limits, flood plain regulations, or flood plain zoning ordinances proposed by local units of government shall be submitted to the council for review and approval prior to adoption by such local units of government. Changes or variations from an approved regulation or ordinance as it relates to flood plain use shall be approved by the council prior to adoption. Individual applications, plans and specifications and individual council approval orders shall not be required for works on the flood plains constructed in conformity with encroachment limits, flood plain regulations, or zoning ordinances adopted by the local units of government and approved by the council. [C50, 54,§455A.21; C58, 62, 66, 71, 73, 75, §455A.35]

Referred to in §455A.40

455A.36 Flood control works co-ordinated. All works of any nature for flood control in the state, which are hereafter established and

constructed, shall be co-ordinated in design, construction and operation, according to sound and accepted engineering practice so as to effect the best flood control obtainable throughout the state. No person shall construct or install any works of any nature for flood control unless and until the proposed works and the plans and specifications therefor are approved by the council. The interested persons shall file a verified written application with the council therefor, and the council after an investigation or hearing shall consider all the pertinent facts relating to the proposed works which will affect flood control and water resources in the state and shall determine whether the proposed works in the plans and specifications will be in aid of and acceptable as part of, or will adversely affect and interfere with flood control in the state, adversely affect the control, development, protection, allocation or utilization of the water resources of the state, or adversely affect or interfere with the state comprehensive plan for water resources or an approved local water resources plan, and shall enter an order approving or disapproving the application, plans and specifications. In the event of disapproval, the order shall set forth the objectionable features so that the proposed works and the plans and specifications therefor may be corrected or adjusted to obtain the approval of the council.

The provisions of this section shall apply to all drainage districts, soil conservation districts, projects undertaken by the state conservation commission, all public agencies including counties, cities and all political subdivisions of the state and to all privately undertaken projects relating to or affecting flood control. [C50, 54,§455A.22; C58, 62, 66, 71, 73, 75,§455A.36]

Referred to in §§455A.35, 455A.40

455A.37 Judicial review. Judicial review of action of the council may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the provisions of said Act, petitions for judicial review may be filed in the district court of Polk county or of any county in which the property affected is located. If the council, the district court, or the supreme court shall determine that the order of the council be stayed, the petitioner shall file an appropriate bond approved by the court. [C50, 54,§455A.23; C58, 62, 66, 71, 73, 75,§455A.37]

Referred to in §455A.20

455A.38 Executive prerogatives. The council shall have no executive prerogatives outside of its own duties and functions as set out by this chapter and shall not disturb the work, functions or authority of any of the several state or local agencies and institutions, provided the powers conferred upon the council by this chapter shall not be exercised by any other of the agencies or institutions. [C50, 54, §455A.24; C58, 62, 66, 71, 73, 75,§455A.38]

455A.39 Penalties. Whoever is convicted of erecting, causing or continuing a common or public nuisance, as provided in this chapter, or whoever diverts or withdraws water in violation of the provisions of this chapter, upon conviction, shall be fined not exceeding one hundred dollars or be imprisoned in the county jail not exceeding thirty days and each day that such violation continues after conviction shall be considered a separate offense. [C50, 54,§455A.26; C58, 62, 66, 71, 73, 75, §455A.39]

Constitutionality, 53GA, ch 203,§43
Constitutionality, 57GA, ch 229,§26

455A.40 Co-ordination with conservancy districts. The council and the boards of the several conservancy districts established by chapter 467D shall co-ordinate their efforts in carrying out the purposes of this chapter and chapter 467D. In addition to other powers and duties conferred by law upon the council, it shall:

1. Offer such advice and assistance as may be appropriate to the boards of the several conservancy districts in the state in discharging their powers and duties.

2. Review and make such recommendations as it deems necessary to bring the plan of each of the conservancy districts, and any subsequent changes therein, into conformity with the state-wide water resources plan established by the council pursuant to section 455A.17.

3. Inform the board of any conservancy district:

a. Of the receipt of each application for a permit to divert, store, or withdraw either surface or underground waters at any place within the district, filed with the council pursuant to section 455A.19 to section 455A.32.

b. Of the receipt of each application for approval of a proposed dam, obstruction, deposit or excavation in or on any floodway or flood plain in the district, filed with the council pursuant to section 455A.33.

c. Of any proposed order which would establish encroachment limits and zoning regulations on any flood plain in the district, filed with the council pursuant to section 455A.35.

d. Of the receipt of each application for approval of any proposed flood control structure or works, filed with the council pursuant to section 455A.36. [C73, 75,§455A.40]

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DIVISION I
EXECUTIVE COMMITTEE

455B.1 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of environmental quality.

2. *"Executive director"* means the executive director of the department of environmental quality or his designee.

3. *"Executive committee"* means the executive committee of the department of environmental quality. [C73, 75,§455B.1]

455B.2 Department created. There is created a department of environmental quality. The chief administrative officer of the department shall be the executive director of environmental quality, who shall be appointed by the governor, with the approval of two-thirds of the members of the senate, and serve at his pleasure.

The executive director shall be selected on the basis of his administrative abilities. The salary of the executive director shall be initially established by the governor, but it shall not exceed twenty-five thousand dollars per annum and, thereafter, it shall be determined by the general assembly. The appointment or removal of the executive director shall not be subject to the provisions of chapter 19A. [C73, 75,§455B.2]

Referred to in §467A.42

455B.3 Executive director's duties. The executive director shall:

1. Recommend to the executive committee the adoption of rules that are necessary for the effective administration of the department.

2. Recommend to the appropriate commission within the department the adoption of rules to implement the programs and services assigned to them.

3. Direct and administer the programs and services of the department in compliance with the rules adopted by the executive committee and the commissions.

4. Perform other duties assigned by the executive committee.

5. Establish or reorganize, with the approval of the executive committee, the administrative structure of the department.

6. Contract, with the approval of the executive committee, with public agencies of this state to provide all laboratory, scientific field measurement and environmental quality evaluation services necessary to implement the provisions of this chapter. If the executive director finds that public agencies of this state cannot provide the laboratory, scientific field measurement and environmental evaluation services required by the department, he may contract, with the approval of the executive committee, with any other public or private persons or agencies for such services.

7. Prepare, on or before the first of September of each even-numbered year, the departmental budget request for each fiscal year of the ensuing biennium on the forms furnished, and including the information required, by the state comptroller.

8. Conduct investigations of complaints received directly or referred by any of the commissions created in section 455B.4 or such other investigations deemed necessary. While conducting an investigation, the executive director may enter at any reasonable time in and upon any private or public property, except private dwellings, to investigate any actual or possible violation of the provisions of this chapter or the rules or standards adopted under this chapter.

a. If the owner or occupant of any property refuses admittance thereto, or if prior to such refusal the executive director demonstrates the necessity for a warrant, the executive director may make application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

b. In the application the executive director shall state that an inspection of the premises is mandated by the laws of this state or that a search of certain premises, areas, or things designated in the application may result in evidence tending to reveal the existence of violations of public health, safety, or welfare requirements imposed by statutes, rules or ordinances established by the state or a political subdivision thereof. The application shall describe the area, premises, or thing to be searched, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, ordinance, or regulation pursuant to which inspection is to be made. If an item of property is sought by the executive director it shall be identified in the application.

c. If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe

their existence, he may issue such search warrant.

d. In making inspections and searches pursuant to the authority of this division, the executive director must execute the warrant:

(1) Within ten days after its date.

(2) In a reasonable manner, and any property seized shall be treated in accordance with the provisions of chapter 751.

(3) Subject to any restrictions imposed by the statute, ordinance or regulation pursuant to which inspection is made.

The executive director may appoint, with the approval of the executive committee, the technical, professional, secretarial, and clerical staff necessary to accomplish the purposes of this chapter, subject to the provisions of chapter 19A.

The executive director may appoint a member of his staff to be acting director in his absence. Such acting executive director shall have the powers delegated to him by the executive director.

The executive director and other employees of the department shall receive, in addition to salary, their necessary traveling and related expenses when engaged in the performance of official business. [C66,§455B.14; C71,§§136B.5, 455B.14; C73,§§455B.3, 455B.13(3), 455B.36, 455B.89(4); C75,§455B.3]

455B.4 Commissions within department. There are created within the department the air quality commission, the water quality commission, the chemical technology commission, and the solid waste disposal commission. Each commission shall establish policy for the programs and services assigned to it. The membership of the commissions shall be as follows:

1. The air quality commission shall consist of the president of the Iowa medical society or his designee and the following four members appointed by the governor with the consent of two-thirds of the senate:

a. A member actively engaged in diversified farming.

b. A member actively engaged in the management of a privately owned manufacturing company.

c. Two members who are electors of the state.

2. The water quality commission shall consist of the chairman of the Iowa development commission or his designee and the following four members appointed by the governor with the consent of two-thirds of the senate:

a. A member actively engaged in diversified farming.

b. A member actively engaged in the management of a privately owned manufacturing company.

c. Two members who are electors of the state.

3. The solid waste disposal commission shall consist of the president of the Iowa engineering society or his designee and the following four members appointed by the governor with the consent of two-thirds of the senate:

a. A member actively engaged in diversified farming.

b. A member actively engaged in the management of a privately owned manufacturing company.

c. Two members who are electors of the state.

4. The chemical technology commission shall consist of the secretary of agriculture, the commissioner of public health, the director of the Iowa natural resources council, the chairman of the state soil conservation committee, the chief executive of the league of Iowa municipalities, the state conservation director, and the dean, college of agriculture of Iowa State University of science and technology, or their designees, a representative of a firm in Iowa actively engaged in the manufacture or formulation of agricultural chemicals, and a farmer experienced in the application of agricultural chemicals to be appointed by the governor with the consent of two-thirds of the senate. The members appointed by the governor shall serve four-year terms, except that of the membership of the initial commission, the members appointed by the governor shall be the appointed members of the chemical technology review board abolished by this chapter, whose terms expired on the thirtieth of June, 1974. The terms of these two members shall expire on the thirtieth of June, 1974.

Any commission member appointed by the governor may be removed by him for cause. The members of each commission shall be electors of the state. The term of office of each appointed member shall be four years, except that of the initial membership of the air quality commission, the water quality commission, and the solid waste disposal commission, the two members appointed to represent the general public shall be appointed to two-year terms. The term of office of each member shall commence on the first day of July of the year of the appointment except that the term of office of the initial membership of the air quality commission, the water quality commission, and the solid waste disposal commission shall be computed as if such appointments were made effective July 1, 1972. Vacancies occurring during a term of office shall be filled by appointment for the balance of the unexpired term subject to the consent of two-thirds of the senate. No appointive member shall be appointed to serve more than two consecutive four-year terms.

Each commission shall meet at least four times a year. Other meetings shall be called by the chairman or upon written request of a majority of the members of the commission. The chairman shall preside at all meetings or in his absence the vice chairman shall preside. The executive director shall attend the meetings of the commissions and act as secretary for them. The members of each commission

shall be paid a forty-dollar per diem while in session, and their actual and necessary expenses while attending such meetings. All per diem and expense moneys paid to members shall be paid from funds appropriated to the commission of which they are members.

A majority of each commission shall constitute a quorum and the concurrence of a majority of a commission shall be required to determine any matter relating to its duties. [C71,§§136B.3, 206A.1, 455B.4; C73, 75,§455B.4; 66GA, ch 67,§43]

Referred to in §455B.3

455B.5 Duties of commissions. Each commission shall:

1. Organize annually and select a chairman and vice chairman.

2. Establish policy for the implementation of all programs under its jurisdiction.

3. Advise, consult, and co-operate with other commissions within the department, other agencies of the state, political subdivisions, and any other public or private agency to promote the orderly, efficient, and effective accomplishment of its responsibilities. Each commission may request the assistance or advice of any public or private person in carrying out its assigned duties under this chapter.

4. Adopt, modify, or repeal rules necessary to implement the programs assigned to it, subject to the provisions of section 455B.7, subsection 3, and chapter 17A. [C73, 75,§455B.5]

455B.6 Executive committee. The executive committee of the department shall consist of the chairmen of the four commissions within the department. When a member of the executive committee is unable to attend a meeting, the vice chairman of the respective commission shall serve in his or her place. The director of the state conservation commission, the administrative officer of the department of soil conservation, the director of the bacteriological laboratory at the state University of Iowa, the secretary of agriculture, the commissioner of public health, and the state geologist, or their designees shall be ex officio, nonvoting members of the executive committee. The executive committee shall organize annually during the month of July and select a chairman and vice chairman. The executive director shall act as the secretary of the executive committee. Meetings shall be called by the chairman or upon written request of any two voting members. A majority of the executive committee shall constitute a quorum and the concurrence of a majority of the executive committee shall be required to determine any matter relating to its duties. The voting members of the executive committee shall be paid a forty-dollar per diem while in session, and shall be reimbursed for their actual and necessary expenses while engaged in the performance of their official duties as members of the executive committee. All per diem and expense moneys paid to members shall be paid from funds appropriated to the commission of which they are members. [C73, 75,§455B.6]

455B.7 Duties of executive committee. The executive committee shall:

1. Review the rules recommended by the executive director and adopt, amend or repeal, subject to the provisions of chapter 17A, the rules deemed necessary for the effective administration of the department. The rules shall include departmental policy relating to the disclosure of information on any violation or alleged violation of the rules, standards or orders issued by the department and keeping of confidential information obtained by the department in the administration and enforcement of the provisions of this chapter.

2. Approve the departmental budget request prior to submission to the state comptroller. The executive committee may increase, decrease, or strike any proposed expenditure within the departmental budget request before granting approval.

3. Issue orders and directives necessary to insure integration and co-ordination of the programs administered by the department. Notwithstanding any other provision of this chapter to the contrary, each commission within the department shall submit all of its proposed rules to the executive committee for review to insure that no conflict exists between such proposed rules and the existing rules of another commission within the department. If a conflict does exist, the executive committee shall direct the commissions involved to resolve the conflict before the proposed rules are submitted to the legislative departmental rules review committee as provided in chapter 17A.

4. Make a concise annual report to the governor and the general assembly, which report shall contain information relating to the accomplishments and status of the programs administered by the department and include recommendations for legislative action. The annual report shall conform to the provisions of section 17.3.

5. Approve all contracts and agreements between the department and other public or private persons or agencies.

6. Obtain an adequate public employees fidelity bond to cover those officers and employees of the department accountable for property or funds of this state. [C73, 75,§455B.7]

Referred to in §§455B.5, 455B.12, 455B.32(10), 455B.62, 455B.78, 455B.87, 455B.88, 455B.103
Time of report, §17.4

455B.8 Warrants by comptroller. The state comptroller shall draw warrants on the treasurer of state for all disbursements authorized by the provisions of this chapter upon itemized and verified vouchers bearing the approval of the executive director. [C73, 75,§455B.8]

455B.9 Office facilities. The executive council shall provide the department with appropriate office facilities. [C73, 75,§455B.9]

DIVISION II
AIR QUALITY COMMISSION

455B.10 Definitions. When used in this division II, unless the context otherwise requires:

1. *"Air contaminant"* means dust, fume, mist, smoke, other particulate matter, gas, vapor (except water vapor), odorous substance, radioactive substance, or any combination thereof.

2. *"Air contaminant source"* means any and all sources of emission of air contaminants whether privately or publicly owned or operated.

Air contaminant source includes, but is not limited to, all types of businesses, commercial and industrial plants, works, shops, and stores, heating and power plants and stations, buildings and other structures of all types including single and multiple family residences, office buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings, automobiles, trucks, tractors, buses, aircraft, and other motor vehicles, garages, vending and service locations and stations, railroad locomotives, ships, boats, and other water-borne craft, portable fuel-burning equipment, indoor and outdoor incinerators of all types, refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing.

3. *"Air pollution"* means presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property.

4. *"Atmosphere"* means all space outside of buildings, stacks or exterior ducts.

5. *"Emission"* means a release of one or more air contaminants into the outside atmosphere.

6. *"Commission"* means the air quality commission of the department.

7. *"Person"* means an individual, partnership, copartnership, co-operative, firm, company, public or private corporation, political subdivision, agency of the state, trust, estate, joint stock company, or any other legal entity, or their legal representative, agent or assigns.

8. *"Political subdivision"* means any municipality, township, or county, or district, or authority, or any portion, or combination of two or more thereof. [C71,§136B.2; C73, 75,§455B.10]

Referred to in §427.1

455B.11 Executive agency. The department shall be the agency of the state to prevent, abate, or control air pollution. [C73, 75, §455B.11]

455B.12 Duties. The commission shall:

1. Direct the development of a comprehensive plan for the abatement, control, and prevention of air pollution in this state, recognizing varying requirements for different areas in the state.

2. Establish, modify, or repeal rules pertaining to the evaluation, abatement, control, and prevention of air pollution after at least sixty days' public notice and public hearings.

3. Establish, modify, or repeal air quality standards for the atmosphere of this state on the basis of providing air quality necessary to minimize air pollution after at least sixty days' public notice and public hearings.

4. Establish, modify, or repeal emission standards relating to the maximum quantities of air contamination that may be emitted from any air contaminant source after at least sixty days' public notice and public hearings.

5. Consider complaints of conditions reported to, or considered likely to, constitute air pollution; and instruct the department to investigate such complaints upon receipt of the written petition of any state agency, the governing body of any political subdivision, a local board of health, or twenty-five affected residents of the state.

6. Hold public hearings, except when the evidence to be received is confidential pursuant to section 455B.16, necessary to accomplish the purposes of this division II. The commission may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to such hearings. If any person refuses to obey a subpoena issued by the commission, the district court of the county where the proceeding is pending shall have jurisdiction, upon application of the commission or its authorized representative, to issue such person an order to appear and testify or produce evidence, and any failure to obey such court order may be punished by the court as contempt.

7. Issue orders necessary to cause the abatement or control of air pollution. In making such orders, the commission shall consider the facts and circumstances bearing upon the reasonableness of the emissions involved, including but not limited to, the character and degree of injury to, or interference with, the protection of health and the physical property of the public; the practicability of reducing or limiting the emissions from such air pollution source; and the suitability or unsuitability of the air pollution source to the area where it is located. Any such order may include advisory recommendations for the control of emissions from any air contaminant source and the reduction of the emission of air contaminants.

8. Cause to be instituted by the attorney general, in the name of the state, legal proceedings to compel compliance with any of its orders.

9. Classify air contaminant sources according to levels and types of emissions, and other characteristics which relate to air pollution. The commission may require, by rule, the owner or operator of any air contaminant source to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods, sample such emissions in accordance with such methods at such locations and intervals, and

using such procedures as the commission shall prescribe, and provide such other information as the commission may reasonably require. Such classifications may be for application to the state as a whole, or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

10. Require, by rules, notice of the construction or the installation of any equipment which may cause or contribute to air pollution, and the submission of plans and specifications to the department, or such other information deemed necessary, for the installation of equipment from which air contaminants may be emitted to the atmosphere and related control equipment. Such rules shall not specify any particular method to be used to reduce undesirable levels of emissions, nor type, design, or method of installation of any equipment to be used to reduce such levels of emissions, nor the type, design, or method of installation or type of construction of any manufacturing processes or kinds of equipment, nor specify the kind or composition of fuels permitted to be sold, stored, or used.

The commission may give technical advice pertaining to the construction or installation of such equipment or any other recommendation.

11. Review and evaluate air pollution control programs conducted by political subdivisions of the state with respect to whether such programs are consistent with the provisions of this division II and any rules adopted by the commission.

12. Represent the state in all matters pertaining to plans, procedures, negotiations, and agreements for interstate compacts relating to the control of air pollution, subject to the provisions of section 455B.7, subsection 5.

13. Encourage voluntary co-operation by persons or affected groups in restoring and preserving a reasonable quality of air within the state.

14. Encourage political subdivisions to handle air pollution problems within their respective jurisdictions. [C71,§136B.4; C73, 75, §455B.12]

Referred to in §§455B.13, 455B.24

455B.13 Executive director. The executive director shall:

1. Publish and administer the rules and standards established by the commission. The department shall furnish a copy of such rules or standards to any person upon request.

2. Provide technical, scientific, and other services required by the commission or for the effective administration of this division II.

3. Grant, modify, or deny permits for the installation of new equipment capable of emitting air contaminants to produce air pollution and for related control equipment, subject to the rules adopted by the commission. The department shall furnish necessary application forms for such permits.

a. No equipment which may cause or contribute to air pollution or which is intended primarily to prevent or to control the emission of air contaminants shall be installed, altered so that it significantly affects operation efficiency, or placed in use unless a permit has been issued for such equipment.

b. The condition of expected performance must be reasonably detailed in the permit unless it is agreed between the department and the permit holder that a condition of development and adjustment exists.

c. Upon denial of such a permit, the applicant shall be notified of such denial and informed of the reason or reasons therefor, and such applicant shall be entitled to a hearing before the commission as provided in section 455B.12, subsection 6.

4. Determine by field studies and sampling the quality of atmosphere and the degree of air pollution in this state or any part thereof.

5. Conduct and encourage studies, investigations, and research relating to air pollution and its causes, effects, abatement, control, and prevention.

6. Accept, receive and administer grants or other funds or gifts from public or private agencies, including the federal government, for the abatement, prevention, or control of air pollution, subject to the approval of the executive committee.

7. Provide technical assistance to political subdivisions of this state requesting such aid for the furtherance of air pollution control.

8. Collect and disseminate information, and conduct educational and training programs, relating to air pollution and its abatement, prevention, and control. [C71,§§136B.4(17, 18), 136B.5; C73, 75,§455B.13]

455B.14 Limit on authority. Nothing contained in this division II shall be deemed to grant to the commission or the executive director any authority or jurisdiction with respect to air pollution existing solely within residences; or solely within commercial and industrial plants, works, or shops under the jurisdiction of chapters 88 and 91; or to affect the relations between employers and employees with respect to, or arising out of, any condition of air pollution. [C71,§136B.6; C73, 75,§455B.14]

455B.15 Assistance on demand. The commission and the executive director may request and receive assistance from any other agency, department, or educational institution of the state, or political subdivision thereof, when it is deemed necessary or beneficial by the commission or the executive director. The department may reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency. [C71,§136B.7; C73, 75, §455B.15]

455B.16 Privileged information. Information received by the commission or any employees of the department through filed reports, inspections, or as otherwise authorized in this division II concerning trade secrets, secret industrial processes, or other privileged communications, except emission data, shall not be disclosed or opened to public inspection, except as may be necessary in a proceeding concerning a violation of said division or of any rules promulgated thereunder, or as otherwise authorized or ordered by appropriate court action or proceedings. Nothing herein shall be construed to prevent the executive director from compiling or publishing analyses or summaries relating to the general condition of the atmosphere; provided that such analyses or summaries do not reveal any information otherwise confidential under this section. [C71,§136B.8; C73, 75,§455B.16]

Referred to in §§455B.12, 455B.17, 455B.22

455B.17 Notice to offenders. Whenever the commission or the executive director has evidence that a violation of any provision of this division II, or rule or standard established by the commission has occurred, the executive director shall notify the alleged violator and, by informal negotiation, attempt to resolve the problem. If such negotiations fail to resolve the problem within a reasonable period of time, the commission shall hold a public hearing, subject to the provisions of section 455B.16.

1. Notice of the time and place of the public hearing shall be served upon each alleged violator at least ten days prior to such hearing. Such notice shall be served in the manner required for the service of notice of the commencement of a civil action in a district court.

2. After such hearing, if the commission finds that a violation has occurred, it shall issue an appropriate order directing the violator to prevent, abate, or control the emissions or air pollution involved. The order shall prescribe the date by which the violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the emissions of air pollution.

3. The executive director shall keep a complete record of the public hearings and such record shall be open to public inspection, subject to section 455B.16. A copy of the transcript shall be furnished to the violator or alleged violator at his request and at his expense. [C71,§136B.9; C73, 75,§455B.17]

Referred to in §§455B.18, 455B.24

455B.18 Emergency orders. If the commission or the executive director has evidence that any person is causing air pollution and that such pollution creates an emergency requiring immediate action to protect the public health and safety, or property, either may, without notice or hearing, issue an emergency order requiring such person to reduce or discontinue immediately the emission of air contaminants. A copy of the emergency order shall be served as provided in section 455B.17, subsection 1. An emergency order issued by the commission or the executive director shall be effective immediately and binding until reviewed by the commission at a public hearing or modified or rescinded by a district court. [C71,§136B.9(5); C73, 75,§455B.18]

Referred to in §455B.24

455B.19 Judicial review. Judicial review of actions of the commission or of the executive director may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed. [C71,§136B.10; C73, 75,§455B.19]

Referred to in §427.1

455B.20 Legal action. If action to prevent, control, or abate air pollution is not taken in accordance with the rules established, or orders issued by the commission, or if the commission or the executive director has evidence that an emergency exists by reason of air pollution which requires immediate action to protect the public health or property, the attorney general, at the request of the commission or the executive director, shall commence legal action, in the name of the state, for an injunction to prevent any further or continued violation of such rule or order. In an action for an injunction, any previous findings of the commission, after due notice and hearing, shall be prima-facie evidence of the fact or facts found therein. [C71,§136B.11; C73, 75,§455B.20]

Referred to in §§455B.21, 455B.24

455B.21 Burden of proof. In all proceedings with respect to any alleged violation of the provisions of this division II or any rule established by the commission, the burden of proof shall be upon the commission except in an action for an injunction as provided in section 455B.20. [C71,§136B.12; C73, 75,§455B.21]

455B.22 Variance. Any person who owns or operates any plant, building, structure, process, or equipment may apply for a variance from the rules or standards governing the quality, nature, duration, or extent of emissions by filing an application with the department. The application shall be accompanied by such information and data required by the commission.

1. The executive director shall promptly investigate the application and recommend to the commission the disposition of such application. The commission may grant a variance if it finds that:

a. The emissions occurring or proposed to occur do not endanger or tend to endanger human health or safety or property; and

b. Compliance with the rules or standards from which the variance is sought will produce serious hardship without equal or greater benefits to the public.

2. A public hearing, subject to the provisions of section 455B.16, shall be held if the commis-

sion concludes that a hearing is advisable. The applicant may request a review hearing before the commission if his application is denied.

3. In determining under what conditions and to what extent a variance may be granted, the commission shall give due recognition to the progress which the applicant has made toward eliminating or preventing air pollution. In such a case, the commission shall consider the reasonableness of the request, conditioned upon such applicant effecting a partial abatement of the particular air pollution within a reasonable period of time, or the commission may prescribe other requirements with which such applicant shall comply.

4. The commission may grant a variance for a specified period of time, not exceeding one year, and the commission may further specify that the applicant make periodic reports specifying the progress that has been made toward compliance with any rule for which the variance was granted. A variance may be extended from year to year by affirmative action of the commission. [C71,§136B.13; C73, 75, §455B.22]

455B.23 Local control program.

1. Any political subdivision may conduct an air pollution control program within the boundaries of its jurisdiction, or may jointly conduct an air pollution control program with other political subdivisions of this state or of other states, except that every joint program shall be established and administered as provided in chapter 28E. In conducting such programs, political subdivisions may adopt and enforce rules or standards to secure and maintain adequate air quality within their respective jurisdictions.

2. If the board of supervisors in any county establishes an air pollution control program and has obtained a certificate of acceptance, the agency implementing the program may regulate air pollution within the county including any incorporated areas therein until such incorporated areas obtain a certificate of acceptance as a joint or separate agency. [C71, §136B.14; C73, 75,§455B.23]

455B.24 Acceptance of local program. When an air pollution control program conducted by a political subdivision, or a combination thereof, is deemed upon review as provided in section 455B.12, subsection 11, to be consistent with the provisions of this division II or the rules established thereunder, the commission shall accept such program in lieu of state administration and regulation of air pollution within the political subdivisions involved. Nothing contained in this section shall be construed to limit the power of the commission or the executive director to take emergency action under the provisions of sections 455B.18 and 455B.20.

1. In evaluting an air pollution control program, consideration shall be given to whether such program provides for the following:

a. Ordinances, rules and standards establishing requirements consistent with, or more strict than, those imposed by this division II or rules and standards adopted by the commission.

b. Enforcement of such requirements by appropriate administrative and judicial process.

c. Administrative organization, staff, financial and other resources necessary to administer an efficient and effective program.

2. Upon acceptance of a local air pollution control program, the commission shall issue a certificate of acceptance to the appropriate local agency.

a. Any political subdivision desiring a certificate of acceptance shall apply to the department on forms prescribed by the commission.

b. The executive director shall promptly investigate the application and recommend the disposition of such application to the commission. The commission may conduct a public hearing before action is taken on the recommendation. If the recommendation is against issuing a certificate, the political subdivision shall be entitled to a public hearing as provided in section 455B.17. At the public hearing, the commission shall decide whether the local program is substantially consistent with the provisions of this division II, or rules adopted thereunder, and whether the local program is being enforced. The burden of proof shall be upon the political subdivision.

c. If the commission determines at any time that a local air pollution program is being conducted in a manner inconsistent with the substantive provisions of this division II or the rules adopted thereunder, the commission shall notify the political subdivision, citing the deviations from the acceptable standards and the corrective measures to be completed within a reasonable amount of time. If the corrective measures are not implemented as prescribed, the commission shall suspend the certificate of acceptance of such political subdivision and shall administer the regulatory provisions of said division within the political subdivision until the appropriate standards are met. Upon receipt of evidence that necessary corrective action has been taken, the commission shall reinstate the suspended certificate of acceptance, and the political subdivision shall resume the administration of the local air pollution control program within its jurisdiction. In cases where the certificate of acceptance is suspended. the political subdivision is entitled to a public hearing as provided in section 455B.17.

d. Nothing in this division II shall be construed to supersede the jurisdiction of any local air pollution control program in operation on the first of January, 1973, except that any such program shall meet all requirements of said division. [C71,§136B.15; C73, 75,§455B.24]

455B.25 Civil action for compliance. If any order or rule of the commission is being violated, the attorney general shall, at the request

of the commission or the executive director, institute a civil action in any district court for injunctive relief to prevent any further violation of such order or rule, or for the assessment of a fine as determined by the court, not to exceed five hundred dollars per day for each day such violation continues, or both such injunctive relief and fine. [C71,§136B.16; C73, 75, §455B.25]

455B.26 Failure—procedure. Upon failure of the executive director to take action within sixty days after an application for installation permit or variance, or upon failure of the commission to enter a final order or determination within sixty days after the final argument in a public hearing, the person seeking such action shall be entitled to treat such failure to act as a grant of the requested permit or variance, or of a finding favorable to the respondent in a public hearing, as the case may be. [C71,§136B.17; C73, 75,§455B.26]

455B.27 Fees prohibited. No fees shall be charged by the executive director or the commission for the performance of their respective functions as provided in this division II. [C71, §136B.18; C73, 75,§455B.27]

455B.28 Other provisions not affected. The powers, duties, and functions vested in the air quality commission under the provisions of this division II shall not be construed to affect the powers, duties and functions vested in the department under any other provisions of this chapter of the Code. [C71,§136B.19; C73, 75,§455B.28]

455B.29 Prior rules. Any rule adopted or order or variance issued under chapter 136B* of prior Codes by the Iowa air pollution control commission or by the state department of health, shall remain effective until modified or rescinded by action of the air quality commission unless such rule is inconsistent or contrary to this division II. [C73, 75,§455B.29]

*Repealed by §112 of this Act [64GA, ch 1119]

DIVISION III
WATER QUALITY COMMISSION
PART 1
GENERAL

455B.30 Definitions. When used in this part 1 of division III, unless the context otherwise requires:

1. *"Sewage"* means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such ground water infiltration and surface water as may be present.

2. *"Industrial waste"* means any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade or business or from the development of any natural resource.

3. *"Other waste"* means heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals and all other wastes which are not sewage or industrial waste.

4. *"Water pollution"* means the contamination of any water of the state so as to create a nuisance or render such water unclean, noxious or impure so as to be actually harmful, detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, agricultural or recreational use or to livestock, wild animals, birds, fish or other aquatic life.

5. *"Sewer system"* means pipelines or conduits, pumping stations, force mains, vehicles, vessels, conveyances, injection wells, and all other constructions, devices and appliances appurtenant thereto used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal or disposal to any water of the state. To the extent that they are not subject to section 402 of the federal Water Pollution Control Act as amended ditches, pipes, and drains that serve only to collect, channel, direct, and convey nonpoint runoff from precipitation are not considered as sewer systems for the purposes of this Act. [66GA, ch 1204]

6. *"Treatment works"* means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing or disposing of sewage, industrial waste or other wastes.

7. *"Disposal system"* means a system for disposing of sewage, industrial waste and other wastes and includes sewer systems, treatment works, point sources and dispersal systems.

8. *"Detergent"* means a cleaning compound composed of inorganic components, including surface active agents, soaps, water softening agents, builders, dispersing agents, corrosion inhibitors, foaming agents, buffering agents, brighteners, fabric softeners, dyes, perfumes, enzymes, and fillers, which are available for household, personal, laundry, industrial, and other uses in liquid, bar, spray, tablet, flake, powder, or other form.

9. *"Water of the state"* means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

10. *"Person"* means any agency of the state or federal government or institution thereof, any municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity and includes any officer or governing or managing body of any municipality, governmental subdivision, interstate body, or public or private corporation.

11. *"Commission"* means the water quality commission of the department.

12. *"Effluent standard"* means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, radiological and other constituents which are discharged from point sources into any water of the state including an effluent limitation, a water quality related effluent limitation, a standard of performance for a new source, a toxic effluent standard or other limitation.

13. *"Point source"* means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

14. *"Pollutant"* means sewage, industrial waste or other waste.

15. *"New source"* means any building, structure, facility or installation, from which there is or may be the discharge of a pollutant, the construction of which is commenced after the publication of proposed federal rules prescribing a standard of performance which will be applicable to such source, if such standard is promulgated.

16. *"Schedule of compliance"* means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with any effluent standard, water quality standard, or any other requirement of this part of this division or any rule promulgated pursuant thereto.

17. *"Sewer extension"* means pipelines or conduits constituting main sewers, lateral sewers or trunk* sewers used for conducting pollutants to a larger interceptor sewer or to a point of ultimate disposal.

18. *"Water supply distribution system extension"* means any extension to the pipelines or conduits which carry water directly from the treatment facility, source or storage facility to the consumer's service connection.

19. *"Production capacity"* means the amount of potable water which can be supplied to the distribution system in a twenty-four-hour period.

20. *"Public water supply system"* means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes any source of water and any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

21. *"Maximum contaminant level"* means the maximum permissible level of any physical, chemical, biological or radiological substance in water which is delivered to any user of a public water supply system. [C66, 71, §455B.2; C73, 75,§455B.30; 66GA, ch 1204,§§2–4]

Referred to in §427.1
*"Truck" in enrolled Act

455B.31 Administrative agency. The department shall be the agency of the state to prevent, abate, or control water pollution and to conduct the public water supply program. [C66, 71,§455B.3; C73, 75,§455B.31; 66GA, ch 1204,§5]

455B.32 Duties. The commission shall:

1. Develop comprehensive plans and programs for the prevention, control and abatement of water pollution.

2. Establish, modify, or repeal water quality standards, pretreatment standards and effluent standards. The effluent standards may provide for maintaining the existing quality of the water of the state where the quality thereof exceeds the requirements of the water quality standards.

3. If the federal environmental protection agency has promulgated an effluent standard or pretreatment standard pursuant to section 301, 306 or 307 of the federal Water Pollution Control Act, a pretreatment or effluent standard adopted pursuant to this section shall not be more stringent than the federal effluent or pretreatment standard for such source. This section may not preclude the establishment of a more restrictive effluent limitation in the permit for a particular point source if the more restrictive effluent limitation is necessary to meet water quality standards, the establishment of an effluent standard for a source or class of sources for which the federal environmental protection agency has not promulgated standards pursuant to section 301, 306 or 307 of the federal Water Pollution Control Act. Except as required by federal law or regulation, the commission shall not adopt an effluent standard more stringent with respect to any pollutant than is necessary to reduce the concentration of that pollutant in the effluent to the level due to natural causes, including the mineral and chemical characteristics of the land, existing in the water of the state to which the effluent is discharged. Notwithstanding any other provision of this part of this division, any new source, the construction of which was commenced after October 18, 1972, and which was constructed as to meet all applicable standards of performance for the new source or any more stringent effluent limitation required to meet water quality standards, shall not be subject to any more stringent effluent limitations during a ten-year period beginning on the date of completion of construction or during the period of depreciation or amortization of the pollution control equipment for the facility for the purposes of section 167 or 169 or both sections of the Internal Revenue Code of 1954, whichever period ends first.

Establish, modify or repeal rules relating to the location, construction, operation, and maintenance of disposal systems and public water supply systems and specifying the conditions under which the executive director shall issue, revoke, suspend, modify or deny permits for the operation, installation, construction, addition to or modification of any disposal system or public water supply system, or for the discharge of any pollutant or for the disposal of water wastes resulting from poultry and livestock operations.

No rules shall be adopted which regulate the hiring or firing of operators of disposal systems or public water supply systems except rules which regulate the certification of operators as to their technical competency.

4. Establish, modify or repeal rules governing the labeling of detergents which contain phosphorus. Any rules shall be formulated to provide potential purchasers with accurate information concerning the percent of phosphorus in the formula and the weight in grams of phosphorus per recommended use level.

5. Co-operate with other state or interstate water pollution control agencies in establishing standards, objectives, or criteria for the quality of interstate waters originating or flowing through this state.

6. Conduct public hearings necessary for the discharge of its duties. The commission may authorize the executive director to conduct such hearings.

7. Adopt by rule a fee schedule for applications for permits required under part 1 of this division. The fee schedule shall be based on the reasonable cost of reviewing, issuing and enforcing such permits. The fee schedule may be amended periodically by rule of the commission.

8. Establish, modify or repeal rules relating to drinking water standards for public water supply systems. Such standards shall specify maximum contaminant levels or treatment techniques necessary to protect the public health and welfare. The drinking water standards must assure compliance with federal drinking water standards adopted pursuant to the federal Safe Drinking Water Act.

9. Establish, modify or repeal rules relating to inspection, monitoring, record keeping and reporting requirements for the owner or operator of any public water supply or any disposal system or of any source which is an industrial user of a publicly or privately owned disposal system.

10. Adopt a statewide plan for the provision of safe drinking water under emergency circumstances. All public agencies, as defined in chapter 28E, shall co-operate in the development and implementation of the plan. The plan shall detail the manner in which the various state and local agencies shall participate in the response to an emergency. The department may enter into any agreement, subject to section 455B.7, with any state agency or unit of local government or with the federal government which may be necessary to establish the role of such agencies in regard to the plan. This plan shall be co-ordinated with civil defense plans.

11. Formulate and adopt specific and detailed statewide standards pursuant to chapter 17A for review of plans and specifications and the construction of sewer systems and water supply distribution systems and extensions to such systems not later than October 1, 1977. The standards shall be based on criteria contained in the "Recommended Standards for Sewage Works" and "Recommended Standards for Water Works" (Ten States Standards) as adopted by the Great Lakes-Upper Mississippi River board of state sanitary engineers, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. The rules adopted which directly pertain to the construction of sewer systems and water supply distribution systems and the review of plans and specifications for such construction shall be known respectively as the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems and shall be applicable in each governmental subdivision of the state. Exceptions shall be made to the standards so formulated only upon special request to and receipt of permission from the department. The department shall publish the standards and make copies of such standards available to governmental subdivisions and to the public. [C97,§2565; C24, 27, 31, 35, 39,§**2220**; C46, 50, 54, 58, 62,§136.3(2,*c*); C66, 71,§§136.3(2,*c*), 455B.9; C73, 75,§§455B.32, 455B.65; 66GA, ch 1204, §§6–8, 23]

Referred to in §455B.45

455B.33 Executive director's duties. The executive director shall:

1. Conduct investigations of alleged water pollution or of alleged violations of this part of this division or any rule adopted or any permit issued pursuant thereto upon written request of any state agency, political subdivision, local board of health, twenty-five residents of the state, as directed by the commission, or as may be necessary to accomplish the purposes of this part of this division.

2. Conduct periodic surveys and inspection of the construction, operation, self-monitoring, record keeping and reporting of all public water supply systems and all disposal systems except as provided in section 455B.45.

3. Take any action or actions allowed by law which, in the executive director's judgment, are necessary to enforce or secure compliance with the provisions of this part of this division or of any rule or standard established or permit issued pursuant thereto.

4. Approve or disapprove the plans and specifications for the construction of disposal sys-

tems or water supply distribution systems except for those sewer extensions and water supply distribution system extensions which are reviewed by a city or county public works department as set forth in section 455B.45. The director shall issue, revoke, suspend, modify or deny permits for the operation, installation, construction, addition to or modification of any disposal system or water supply distribution system except for sewer extensions and water supply distribution system extensions which are reviewed by a city or county public works department as set forth in section 455B.45. The director shall also issue, revoke, suspend, modify or deny permits for the discharge of any pollutant. Such permits shall contain such conditions and schedules of compliance as are necessary to meet the requirements of this part of this division and the federal Water Pollution Control Act amendments of 1972. A permit shall not be issued to operate or discharge from any disposal system unless the conditions of the permit assure that any discharge from the disposal system meets or will meet all applicable state and federal water quality standards and effluent standards and the issuance of the permit is not otherwise prohibited by the federal Water Pollution Control Act amendments of 1972. All applications for discharge permits shall be subject to public notice and opportunity for public participation including public hearing as the commission may by rule require. The executive director shall promptly notify the applicant in writing of his action and, if the permit is denied, state the reasons for denial. The applicant may appeal to the commission from the denial of a permit or from any condition in any permit if he or she files notice of appeal with the executive director within thirty days of the notice of denial or issuance of the permit. The executive director shall notify the applicant within thirty days of the time and place of the hearing.

Copies of all forms or other paper instruments required to be filed during on-site inspections or investigations shall be given to the owner or operator of the disposal system or public water supply system being investigated or inspected before the inspector or investigator leaves the site. Any other report, statement, or instrument shall not be filed with the department unless a copy is sent by ordinary mail to the owner or operator of the disposal system or public water supply system within ten working days of the filing. If an inspection or investigation is done in cooperation with another state department, the department involved and the areas inspected shall be stated.

5. Conduct random inspections of work done by city and county public works departments to ensure such public works departments are complying with this Act [66GA, ch 1204]. If a city or county public works department is not complying with section 455B.45 in reviewing plans and specifications or in granting permits or both, the department shall perform these functions in that jurisdiction until the city or county public works department is able to perform them. Performance of these functions in a jurisdiction by a local public works department shall not be suspended or revoked until after notice and opportunity for hearing as provided in chapter 17A.

The department shall give technical assistance to city and county public works departments upon request of such local public works departments. [C97,§2565; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62,§135.11(7); C66, 71, §§135.11(7), 455B.9–455B.11, 455B.15, 455B.17; C73, 75,§§455B.33, 455B.37, 455B.66; 66GA, ch 1204,§9]

455B.34 Violations. If there is conclusive evidence that any person has violated or is violating any provision of this part of this division, or of any rule or standard established or permit issued pursuant thereto; then:

1. The executive director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease. The person to whom such order is issued may cause to be commenced a contested case within the meaning of the Iowa administrative procedure Act by filing with the executive director within thirty days a notice of appeal to the commission. On appeal the commission may affirm, modify or vacate the order of the executive director; or

2. If it is determined by the executive director that an emergency exists respecting any matter affecting or likely to affect the public health, the executive director may issue any order necessary to terminate the emergency without notice and without hearing. Any such order shall be binding and effective immediately and until such order is modified or vacated at a hearing before the commission or by a court; or

3. The executive director or the commission may request the attorney general to institute legal proceedings pursuant to section 455B.49. [C66, 71,§§455B.12, 455B.15, 455B.17; C73, 75,§§455B.34, 455B.37; 66GA, ch 1204,§10]

455B.35 Criteria considered. In establishing, modifying, or repealing water quality standards the commission shall base its decision upon data gathered from sources within the state regarding the following:

1. The protection of the public health;

2. The size, depth, surface area covered, volume, direction and rate of flow, stream gradient, and temperature of the affected water of the state;

3. The character and uses of the land area bordering the affected water of the state;

4. The uses which have been made, are being made, or may be made of the affected water of the state for public, private, or domestic water supplies, irrigation; livestock watering; propagation of wildlife, fish, and other aquatic life; bathing, swimming, boating, or other recreational activity; transportation; and disposal of sewage and wastes;

5. The extent of contamination resulting from natural causes including the mineral and chemical characteristics;

6. The extent to which floatable or settleable solids may be permitted;

7. The extent to which suspended solids, colloids, or a combination of solids with other suspended substances may be permitted;

8. The extent to which bacteria and other biological organisms may be permitted;

9. The amount of dissolved oxygen that is to be present and the extent of the oxygen demanding substances which may be permitted;

10. The extent to which toxic substances, chemicals or deleterious conditions may be permitted.

11. The economic costs and benefits. The goal shall be a reasonable balance between total costs to the people and to the economy, and the resultant benefits to the people of Iowa. [C66, 71,§455B.13; C73, 75,§455B.35; 66GA, ch 1204,§§11, 12]

455B.36 Declaration of policy.

1. The general assembly finds and declares that because the federal Water Pollution Control Act amendments of 1972, Public Law 92-500, provide for a permit system to regulate the discharge of pollutants into the waters of the United States and provide that permits may be issued by states which are authorized to implement the provisions of that Act, it is in the interest of the people of Iowa to enact the provisions of this Act [66GA, ch 1204] in order to authorize the state to implement the provisions of the federal Water Pollution Control Act amendments of 1972 and Acts amendatory or supplementary thereto, and federal regulations and guidelines issued pursuant to that Act.

2. The general assembly further finds and declares that because the federal Safe Drinking Water Act, Public Law 93-523, provides for the implementation of said Act by states which have adequate authority to do so, it is in the interest of the people of Iowa to implement the provisions of the federal Safe Drinking Water Act and federal regulations and guidelines issued pursuant thereto. [66GA, ch 1204,§1]

455B.37 and 455B.38 Repealed by 66GA, ch 1204,§23.

455B.39 Judicial review. Except as provided in section 455B.49, subsection 6, judicial review of any order or other action of the commission or of the executive director may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or such final order was entered. [C66, 71,§455B.18; C73, 75,§455B.39; 66GA, ch 1204,§14]

Referred to in §§427.1, 455B.49

455B.40 Trade secrets protected. Upon a satisfactory showing by any person to the executive director that public disclosure of any record, report, permit, permit application or other document or information or part thereof would divulge methods or processes entitled to protection as a trade secret, any such record, report, permit, permit application or other document or part thereof other than effluent data and analytical results of monitoring or public water supply systems, shall be accorded confidential treatment. Notwithstanding the provisions of chapter 68A, a person in connection with duties or employment by the department shall not make public any information accorded confidential status, however any such record or other information accorded confidential status may be disclosed or transmitted to other officers, employees or authorized representatives of this state or the United States concerned with carrying out this part of this division or when relevant in any proceeding under this Act [66GA, ch 1204]. [C66, 71,§455B.17; C73, 75,§455B.37; 66GA, ch 1204,§13]

455B.41 Stay order. The granting of a stay may be conditioned upon the furnishing by the appellant of such reasonable security as the court may direct. A stay may be vacated on application of the department or any other party after hearing by the court. [C66, 71, §455B.20; C73, 75,§455B.41]

455B.42 Variances and exemptions. The commission may, after public notice and hearing, grant exemptions from a maximum contaminant level or treatment technique, or both. The commission may also grant a variance from drinking water standards for public water supply systems when the characteristics of the raw water sources, which are available to a system, cannot meet the requirements with respect to maximum contaminant level of such standards despite application of the best treatment techniques which are generally available and provided that the commission determines that the variance will not result in an unreasonable risk to the public health. A schedule of compliance may be prescribed by the commission, at the time the variance or exemption is granted. The commission shall also require such interim measures to minimize the contaminant levels of systems subject to the variance or exemption as may reasonably be implemented. [66GA, ch 1204,§21]

455B.43 Repealed by 66GA, ch 1204,§23.

455B.44 Failure constitutes contempt. Failure to obey any order issued by the department with reference to a violation of this part of this division or any rule promulgated or permit issued pursuant thereto shall constitute prima-facie evidence of contempt. In such event the department may certify to the district court of the county in which such alleged disobedience occurred the fact of such failure. The district court after notice, as prescribed by the court, to the parties in interest shall then proceed to hear the matter and if it finds that the order was lawful and reasonable it shall order the party to comply with the order. If the person fails to comply with the court order, that person shall be guilty of contempt and shall be fined not to exceed five hundred dollars for each day that he or she fails to comply with the court order. The penalties provided in this section shall be considered as additional to any penalty which may be imposed under the law relative to nuisances or any other statute relating to the pollution of any waters of the state or related to public water supply systems and a conviction under this section shall not be a bar to prosecution under any other penal statute. [C66, 71, §455B.24; C73, 75,§455B.44; 66GA, ch 1204,§15]

Referred to in §455B.49

455B.45 Written permits required. It shall be unlawful to carry on any of the following activities without first securing a written permit from the executive director, or from a city or county public works department if such local public works department reviews the activity under this section, as required by the commission:

1. The construction, installation or modification of any disposal system or water supply distribution system or part thereof or any extension or addition thereto except those sewer extensions and water supply distribution system extensions that are subject to review and approval by a city or county public works department pursuant to this section.

2. The construction or use of any new point source for the discharge of any pollutant into any water of the state.

3. The operation of any waste disposal system or water supply distribution system or any part of or extension or addition to such system. This provision shall not apply to any pretreatment system the effluent of which is to be discharged directly to another disposal system for final treatment and disposal.

Upon adoption of standards by the commission pursuant to section 455B.32, subsections 8 to 11, plans and specifications for sewer extensions and water supply distribution system extensions covered by this secton shall be submitted to the city or county public works department for approval if the local public works department employs a qualified, registered engineer who reviews the plans and specifications using the specific state standards known as the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems that have been formulated and adopted by the commission pursuant to section 455B.32, subsections 8 to 11. The reviewing engineer shall be a full-time employee of the governmental subdivision and the qualifications of that engineer shall be submitted to the executive director or his designee for approval prior to issuing written permits. The local agency shall issue a written permit to construct if:

a. The submitted plans and specifications are in substantial compliance with departmental rules and the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems.

b. The extensions primarily serve residential consumers and will not result in an increase greater than five percent of the capacity of the treatment works or serve more than two hundred fifty dwelling units or, in the case of an extension to a water supply distribution system, such extension will have a capacity of less than five percent of such system or will serve fewer than two hundred fifty dwelling units; and

c. The proposed sewer extension will not exceed the capacity of any treatment works which received a state or federal monetary grant after 1972; and

d. The proposed water supply distribution system extension will not exceed the production capacity of any water supply distribution system constructed after 1972.

After issuing a permit, the city or county public works department shall notify the director of such issuance by forwarding a copy of the permit to the director. In addition, the local agency shall submit quarterly reports to the director including such information as capacity of local treatment plants and production capacity of water supply distribution systems as well as other necessary information requested by the director for the purpose of implementing this chapter.

Plans and specifications for all other waste disposal systems and water supply distribution systems, including sewer extensions and water supply distribution system extensions not reviewed by a city or county public works department under this section, shall be submitted to the department before a written permit may be issued. The construction of any such waste disposal system or water supply distribution system shall be in accordance with standards formulated and adopted by the commission pursuant to section 455B.32, subsections 8 to 11, or otherwise approved by the department. If it is necessary or desirable to make material changes in such plans or specifications, revised plans or specifications together with reasons for the proposed changes must be submitted to the department for a supplemental written permit.

Prior to the adoption of statewide standards, the department may delegate the authority to review plans and specifications to those governmental subdivisions if in addition to compliance with subsection 3 that governmental subdivision agrees to comply with all state and federal regulations and submits a plan for the review of plans and specifications including a complete set of local standard specifications for such improvements.

The director may suspend or revoke delegation of review and permit authority after notice and hearing as set forth in chapter 17A if the director determines that a city or county public works department has approved extensions which do not comply with design criteria, which exceed the capacity of waste treatment plants or the production capacity of water supply distribution systems or which otherwise violate state or federal requirements.

The department shall exempt any public water system from any requirement respecting a maximum contaminant level or any treatment technique requirement of an applicable national drinking water regulation insofar as these regulations apply to contaminants which the commission determines are harmless or beneficial to the health of consumers, when the owner of a public water supply system determines that funds are not reasonably available to provide for controlling amounts of those contaminants which are harmless or beneficial to the health of consumers. [C66, 71,§455B.25; C73, 75,§455B.45; 66GA, ch 1204, §16]

Referred to in §§455B.33, 455B.49

455B.46 Disposal system plans. The department may also require the owner of a disposal system, discharging pollutants into any water of the state, or of a public water supply system to file with it complete plans of the whole or any part of such system and any other information and records concerning the installation and operation of such system. [C66, 71, §455B.26; C73, 75,§455B.46; 66GA, ch 1204,§17]

455B.47 Data from departments. The commission and the executive director may request and receive from any department, division, board, bureau, commission, public body, or agency of the state, or of any political subdivision thereof, or from any organization, incorporated or unincorporated, which has for its object the control or use of any of the water resources of the state, such assistance and data as will enable the commission or the executive director to properly carry out their activities and effectuate the purposes of this part 1 of division III. The department shall reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency. [C66, 71,§455B.27; C73, 75,§455B.47]

455B.48 Prohibited discharges. A pollutant shall not be disposed of by dumping, depositing or discharging such pollutant into any water of the state except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the executive director. A pollutant whether treated or untreated shall not be discharged into any state-owned natural or artificial lake. [C66, 71,§455B.28; C73, 75, §455B.48; 66GA, ch 1204,§18]

Referred to in §455B.49

455B.49 Penalties—burden of proof.

1. Any person who violates any provision of part 1 of division III of this chapter or any permit, rule, standard, or order issued under part 1 of division III of this chapter shall be subject to a civil penalty not to exceed five thousand dollars for each day of such violation. The civil penalty shall be an alternative to any criminal penalty provided under part 1 of division III of this chapter.

2. Any person who willfully or negligently discharges any pollutants in violation of section 455B.45 or 455B.48 or in violation of any condition or limitation included in any permit issued under section 455B.45 or in violation of any water quality standard or effluent standard or, with respect to the introduction of pollutants into publicly owned treatment works, violates a pretreatment standard or toxic effluent standard, shall be punished by a fine not to exceed ten thousand dollars for each day of violation. If the conviction is for a violation committed by a person after the person's first conviction under this section, the punishment shall be a fine not to exceed twenty thousand dollars for each day of violation.

3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under part 1 of division III of this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under part 1 of division III of this chapter or by any permit, rule, regulation, or order issued under part 1 of division III of this chapter, shall upon conviction be punished by a fine of not more than ten thousand dollars or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment.

4. The attorney general shall, at the request of the commission or the executive director, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of this chapter or to obtain compliance with the provisions of part 1 of division III of this chapter or any rules promulgated or any provision of any permit issued under part 1 of division III of this chapter. In any such action, any previous findings of fact of the executive director or the commission after notice and hearing

shall be conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

5. In all proceedings with respect to any alleged violation of the provisions of this part 1 of division III or any rule established by the commission or the department, the burden of proof shall be upon the commission or the department except in an action for contempt as provided in section 455B.44.

6. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.39 shall be raised in the legal proceedings instituted in accordance with this section. [C66, 71, §§455B.23, 455B.25; C73,§§455B.43, 455B.45, 455B.49; C75,§§455B.43, 455B.49; 66GA, ch 1204, §§19, 20]

Referred to in §§455B.34, 455B.39

PART 2
WATER TREATMENT

455B.50 Definitions. When used in this part 2 of division III, unless the context otherwise requires:

1. *"Board"* means the board of certification.

2. *"Commission"* means the water quality commission of the department.

3. *"Certificate"* means the certificate of competence issued by the executive director stating that the operator has met the requirements for the specified operator classification of the certification program.

4. *"Water supply system"* means the system of pipes, structures, and facilities through which a public water supply is obtained, treated and sold or distributed for human consumption or household use.

5. *"Water treatment plant"* means that portion of the water supply system which in some way alters the physical, chemical, or bacteriological quality of the water.

6. *"Waste water treatment plant"* means the facility or group of units used for the treatment of waste water from public sewer systems and for the reduction and handling of solids removed from such wastes.

7. *"Water distribution system"* means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer.

8. *"Operator"* means a person who has direct responsibility for the operation of a water treatment plant, water distribution system, or waste water treatment plant. [C66, 71,§136A.1; C73, 75,§455B.50]

455B.51 Director's duties. The executive director shall classify all water treatment plants, water distribution systems, and waste water treatment plants affecting the public welfare with regard to the size, type, character of water and waste water to be treated and other physical conditions affecting such treatment plants and distribution systems, and according to the skill, knowledge, and experience that an operator must have to supervise the operation of such facilities to protect the public health and prevent pollution. [C66, 71, §136A.2; C73, 75,§455B.51]

455B.52 Certification of persons.

1. *By director.* The executive director shall certify persons as to their qualifications to supervise the operation of such treatment plants and water distribution systems after considering the recommendations of the board submitted through the commission.

2. *Applications.* Applications for certification shall be on forms prescribed and furnished by the board and shall not contain a recent photograph of the applicant. An applicant shall not be ineligible for certification because of age, citizenship, sex, race, religion, marital status or national origin although the application may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of operation of waterworks or waste waterworks. Character references may be required, but shall not be obtained from certificate holders.

3. *Disclosure of confidential information.* A member of the board shall not disclose information relating to the following:

a. Criminal history or prior misconduct of the applicant.

b. Information relating to the contents of the examination.

c. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C66, 71, §136A.3; C73, 75,§455B.52]

455B.53 Board. The governor shall appoint, subject to the approval of two-thirds of the members of the senate, a board of certification consisting of the following five members:

1. One member who is a waterworks operator holding a valid certificate of the highest classification issued by the department.

2. One member who is a waste waterworks operator holding a valid certificate of the highest classification issued by the department.

3. One member employed by the department who is qualified in water and waste waterworks operation.

4. Two members who shall not be certificated waterworks operators or certificated

waste waterworks operators, but who shall be interested and knowledgeable in water supply or waste water collection and treatment, and who shall represent the general public.

The members prescribed in subsections 1 to 3 shall have been engaged in the practice of their professions for five years preceding their appointments, the last two years of which shall have been in Iowa.

Professional associations or societies composed of waterworks operators or waste waterworks operators may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations. Members of the board shall not be required to be members of any such associations or societies.

The members of the board shall be appointed for three-year terms. Any vacancy shall be filled by appointment for the unexpired term. Members shall be limited to serving three terms or nine years, whichever is less. [C66, 71,§§136A.4, 136A.5; C73, 75,§455B.53]

Terms of members, see 65GA, ch 1086,§200

455B.54 Repealed by 65GA, ch 1086,§198.

455B.55 Organization — compensation and expenses. The initial board of certification shall organize and elect a chairman from its membership. Thereafter, a chairman shall be elected at the last meeting of the fiscal year which shall be the annual meeting of the board. The member of the board employed by the department shall serve as secretary and maintain its records. The cost of such assistance shall be paid by the board to the department from funds appropriated to the board. At least one meeting of the board per year shall be held at the seat of government. Additional meetings may be held at the call of the chairman. A majority of members shall constitute a quorum. The members of the board shall set their own per diem compensation at a rate not exceeding forty dollars per day and shall be reimbursed for actual and necessary expenses and travel incurred while discharging their official duties. All per diem and expense moneys paid to the members shall be paid from funds appropriated to the board. A member of the board who is employed by this state shall not receive per diem compensation. [C66, 71,§§136A.6–136A.8; C73, 75,§455B.55]

455B.56 Examination. The board shall hold at least one examination each year for the purpose of examining candidates for certification at a time and place designated by the board. Any written examination may be given by representatives of the board. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible. Those applicants whose competency is acceptable to the board shall be recommended to the executive director for certification. Applicants who fail the examination shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the board concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board. [C66, 71, §136A.7; C73, 75,§455B.56]

455B.57 Certificate issued. When the executive director is satisfied that an applicant is qualified by examination or otherwise, and upon recommendation of the board, the executive director shall issue a certificate attesting to the competency of the applicant as an operator. The certificate shall indicate the classification of works which the operator is qualified to supervise. [C66, 71,§136A.9; C73, 75,§455B.57]

455B.58 Duration. Certificates shall continue in effect for one year from the date of issuance unless sooner revoked by the executive director, but such certificates shall remain the property of the department and the certificate shall so state. A person who fails to renew his certificate by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. [C66, 71,§136A.10; C73, 75,§455B.58]

455B.59 Revocation. The executive director may revoke the certificate of an operator, following a hearing before the executive director when it is found that the operator has practiced fraud or deception in obtaining the certificate or in the performance of his duties as an operator; when it is found that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or when it is found that the operator is incompetent or unable properly to perform his duties as an operator. [C66, 71, §136A.11; C73, 75,§455B.59]

Referred to in §455B.60

455B.60 Certificate without examination.

1. A certificate in appropriate classification shall be issued without examination to any operator who, prior to January 1, 1973, held a valid certificate attained by examination and issued by the commissioner of public health.

2. A certificate of proper classification shall be issued without examination to any operator who, prior to January 1, 1973, held a valid certificate to operate a particular treatment plant or water distribution system. The certificate so issued shall be valid only for that

particular treatment plant or system and shall remain in effect indefinitely unless revoked by the executive director as provided in section 455B.59. [C66, 71,§§136A.12, 136A.13; C73, 75, §455B.60]

455B.61 Fee. The executive director, with the approval of the board submitted through the commission, is authorized to charge a fee for certificates issued under the provisions of this part 2 of division III. The fee for the certificates and for renewal shall be based on the costs of administering and enforcing the provisions of part 2 of division III and to pay the expenses of the board. The department shall be reimbursed by the board for all costs incurred. The board shall set a fee for the examination which shall be based upon the annual cost of administering the examinations. All such fees collected shall be remitted to the treasurer of state, who shall deposit the funds in the general fund of the state. Funds shall be appropriated from the general fund to the board. [C66, 71,§136A.14; C73, 75,§455B.61]

455B.62 Rules. The commission, with the advice of the board, may promulgate such rules as are necessary to carry out the provisions of this part 2 of division III. The rules established shall be subject to the provisions of section 455B.7, subsection 3. [C66, 71, §136A.15; C73, 75,§455B.62]

455B.63 Competent operator required. It shall be unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency, operating a water treatment plant, water distribution system or waste water treatment plant to operate same unless the competency of the operator to operate such plant or system is duly certified to by the executive director under the provisions of this part 2 of division III. It shall also be unlawful for any person to perform the duties of an operator, as defined herein, without being duly certified under the provisions of said part. [C66, 71,§136A.16; C73, 75, §455B.63]

455B.64 Misdemeanor. Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency, violating any provisions of this part 2 of division III or the rules adopted thereunder after written notice thereof by the executive director is guilty of a misdemeanor. Each day of operation in such violation of said part or any rules adopted thereunder shall constitute a separate offense. Upon conviction, such persons shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail for not more than thirty days, or by both* such fine and imprisonment. It shall be the duty of the appropriate county attorney to secure injunctions of continuing violations of any provisions of said part or the rules adopted thereunder. [C66, 71,§136A.17; C73, 75,§455B.64]

*Indictment, see ch 773

455B.65 and 455B.66 Repealed by 66GA, ch 1204,§23.

PART 3

SEWAGE WORKS CONSTRUCTION

455B.67 Fund. There is established a fund to be known as the "sewage works construction fund". All moneys appropriated to and deposited in the sewage works construction fund are hereby appropriated for and shall be used by the department in carrying out the purposes of this part 3 of division III.

When used in said part, and unless the context requires otherwise:

1. *"Treatment works"* means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, interceptor sewer, or other works installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes, which qualify for federal grants pursuant to the federal water pollution Act of 1956, as amended, or any other federal Act or program.

2. *"Commission"* means the water quality commission of the department.

3. *"Construction"* means the erection, building, acquisition, alteration, reconstruction, improvement, or extension of treatment works; preliminary planning to determine the economic and engineering feasibility of treatment works; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, inspection, and supervision, and other action necessary in the construction of treatment works.

4. *"Eligible project"* means a project for construction of sewage treatment works:

a. For which approval of the commission is required under this part 3 of division III.

b. Which is, in the judgment of the commission, eligible for federal pollution abatement assistance, whether or not federal funds are then available for such purpose. Eligible projects shall be those which the construction contract therefor shall have been entered into subsequent to July 1, 1966.

c. Which conforms with applicable rules of the commission.

d. Which is, in the judgment of the commission, necessary for the accomplishment of the state's policy of water purity.

5. *"Municipality"* means the city, sanitary district, or other governmental body or corporation empowered to provide sewage collection and treatment services, or any combination of two or more of such governmental bodies or corporations acting jointly, in connection with an eligible project.

6. *"Federal pollution abatement assistance"* means funds available to a municipality, either directly or through allocation by the state, from the federal government as grants for construction of sewage treatment works pursuant to the federal water pollution Act of

1956 as amended. [C71,§455C.1; C73, 75, §455B.67]

See 65GA, ch 76; ch 1072 also 66GA, chs 62,§1(9) and 227, for state aid and 66GA, ch 227 for legislative intent

455B.68 Grants of assistance. The commission may make grants as funds are available to any municipality to assist such municipality in the construction of sewage treatment works. [C71,§455C.2; C73, 75,§455B.68]

455B.69 Acceptance of grants. The commission shall accept and administer all funds granted by the state pursuant to this part 3 of division III.

In allocating state grants under said part, the commission shall give consideration to:

1. The public benefits to be derived by the construction.
2. The ultimate cost of constructing and maintaining the works.
3. The public interest and public necessity for the works.
4. The adequacy of the provisions made or proposed by the municipality for assuring proper and efficient operation and maintenance of the treatment works after the completion of construction thereof.
5. The applicant's readiness to start construction, including financing and planning. [C71, §455C.3; C73, 75,§455B.69]

455B.70 Contracts. The commission may, in the name of the state, contract with any municipality concerning eligible projects, subject to the approval of the executive committee. Any such contract may include such provisions as may be agreed upon by the parties, and shall include, in substance, the following provisions:

1. An estimate of the reasonable cost of the project as determined by the commission.
2. An agreement by the commission to pay to the municipality, during the progress of construction or following completion of the construction as may be agreed upon by the parties, an amount as determined by appropriation of the general assembly.
3. An agreement by the municipality:

a. To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to this part 3 of division III and pursuant to part 1 of this division III.

b. To commence operation of the sewage treatment works on completion of the project, and not to discontinue operation or dispose of the sewage treatment works without the approval of the commission.

c. To operate and maintain the sewage treatment works in accordance with applicable provisions of part 1 of this division III and rules of the commission.

d. To obtain approval of the commission before applying for federal assistance for pollution abatement, in order to maximize the amounts of such assistance received or to be received for all projects in Iowa.

e. To provide for the payment by the municipality of its share of the cost of the project.

4. A provision that, in the event federal assistance which was not included in the calculation of the state payment pursuant to subsection 2 becomes available to the municipality, the amount of the state payment shall be recalculated with the inclusion of such additional federal assistance and the municipality shall pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation. [C71,§455C.4; C73, 75,§455B.70]

455B.71 Rules. The commission may adopt such rules as are necessary for the effective administration of this part 3 of this division III. [C71,§455C.5; C73, 75,§455B.71]

455B.72 Review of contracts by attorney general. All contracts entered into pursuant to this part 3 of division III shall be subject to approval of the attorney general as to form. All payments by the state pursuant to such contracts shall be made after review and by warrant of the state comptroller to the credit of the municipality and shall be used for the payment of costs of construction of an eligible project. However, if such costs have been paid by the municipality, then such payment may be used by the municipality for:

1. The payment of outstanding bonds or obligations incurred for any such eligible project.
2. Any improvement or extension of an eligible project.
3. Any other lawful municipal purpose determined to be necessary, reasonable, and in the interest of the public welfare. [C71, §455C.6; C73, 75,§455B.72]

455B.73 Other powers not affected. The powers, duties, and functions vested in the commission under the provisions of this division III shall not be construed to affect the powers, duties and functions vested in the department under any other provisions of this chapter or the Code. [C73, 75,§455B.73]

455B.74 Prior rules. Any rule adopted or order issued under chapters 136A*, 455B* and 455C* of prior Codes, by the Iowa water pollution control commission or by the state department of health, shall remain effective until modified or rescinded by action of the water quality commission unless such rule is inconsistent or contrary to this division. Any permit issued under chapter 455B of prior Codes** shall remain effective until modified or revoked by the executive director. [C73, 75, §455B.74; 66GA, ch 1204,§22]

*Repealed by §112 of this Act [64GA, ch 1119]
**See 66GA, ch 1204,§22

DIVISION IV
SOLID WASTE DISPOSAL COMMISSION

PART 1
SOLID WASTE

455B.75 Definitions. As used in this part 1 of division IV, unless the context clearly indicates a contrary intent:

1. *"Public agency"* means a public agency as defined in section 28E.2.

2. *"Private agency"* means a private agency as defined in section 28E.2.

3. *"Sanitary disposal project"* means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.

4. *"Solid waste"* means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles, as defined by section 321.1, subsection 1. Nothing herein shall be construed as prohibiting the use of dirt, stone, brick, or similar inorganic material for fill, landscaping, excavation or grading at places other than a sanitary disposal.

5. *"Commission"* means the solid waste disposal commission of the department.

6. *"Resource recovery system"* means the recovery and separation of ferrous metals and nonferrous metals and glass and aluminum and the preparation and burning of solid waste as fuel for the production of electricity. [C71, §406.2; C73, 75,§455B.75; 66GA, ch 228,§1]

Referred to in §§332.44, 346.23

455B.76 Duty of cities and counties. Every city and county of this state shall provide for the establishment and operation of a sanitary disposal project for final disposal of solid waste by its residents not later than July 1, 1975. Sanitary disposal projects may be established either separately or through co-operation efforts for the joint use of the participating public agencies as provided by law.

Cities and counties may execute with public and private agencies contracts, leases, or other necessary instruments, purchase land and do all things necessary not prohibited by law for the collection of solid waste, establishment and operation of sanitary disposal projects, and general administration of the same. Any agreement executed with a private agency for the operation of a sanitary disposal project shall provide for the posting of a sufficient surety bond by the private agency conditioned upon the faithful performance of the agreement. [C71,§406.3; C73, 75,§455B.76]

455B.77 Administrator's duties. The executive director shall administer the provisions of this part 1 of division IV subject to the rules established by the commission.

Local boards of health shall co-operate in the enforcement of the provisions of said part and the executive director may seek their aid and delegate administrative duties of the department to the local boards of health in matters relating to solid waste, refuse disposal plants, and sanitary disposal projects. [C71, §406.4; C73, 75,§455B.77]

455B.78 Rules established. The commission shall establish rules for the proper administration of the provisions of this part 1 of division IV which shall reflect and accommodate insofar as is reasonably possible those current and generally accepted methods and techniques for treatment and disposition of solid waste which will serve the purposes of said part which shall take into consideration such factors, including others which it may deem proper, as existing physical conditions, topography, soils and geology, climate, transportation, and land use, such rules including but not limited to rules relating to the establishment and location of sanitary disposal projects, sanitary practices, inspection of sanitary disposal projects, collection of solid waste, disposal of solid waste, pollution controls, the issuance of permits, approved methods of private disposition of solid waste, the general operation and maintenance of sanitary disposal projects, and the implementation of said part. Prior to issuance of rules or amendments thereto, the commission shall hold at least one public hearing on the proposed rules or amendments, and shall give notice of such hearing at least thirty days in advance by publishing notice in a newspaper of general circulation in the state. The air quality commission and the water quality commission of the department shall co-operate with the commission in the establishment of such rules. All rules promulgated shall be subject to the provisions of chapter 17A and section 455B.7, subsection 3. [C71,§406.5; C73, 75, §455B.78]

455B.79 Certification of plans by director. The executive director shall certify if disposal projects operated or planned to be operated by or for cities, counties and those operated by private agencies meet the standards provided for by this part 1 of division IV and the rules of the commission, by issuing a permit for existing disposal projects which fully comply, and for planned sanitary disposal projects whose plans fully comply, with all provisions of said part and rules issued pursuant thereto. Permits shall be issued for existing disposal sites which have not met all the provisions of said part and rules issued pursuant thereto, if a comprehensive plan for compliance within the time limitations required by said part is developed by a city, county or private agency and is approved by the executive director. Every city or county of this state and every private agency involved in the final disposal of solid waste shall qualify for a permit by the first of July 1975 or be subject to such legal actions authorized by section 455B.82.

Permits shall be issued without fee by the executive director or at his direction, by a

local board of health, for each sanitary disposal project operated in this state. Such permits shall be issued in the name of the city or county or, where applicable, in the name of the public or private agency operating such project. Each sanitary disposal project shall be inspected annually by the department or a local board of health. The permits issued pursuant to this section shall be in addition to any other licenses, permits or variances authorized or required by law, including, but not limited to, the provisions of chapter 358A. A permit may be suspended or revoked after notice and hearing before the commission or its designee if a sanitary disposal project is found not to meet the requirements of the provisions of said part or rules issued pursuant thereto. [C71,§406.6; C73, 75,§455B.79]

455B.80 Plans filed. Every city, county and every private agency operating or planning to operate a sanitary disposal project shall file with the executive director a plan detailing the method by which the city, county or private agency will comply with the provisions of this part 1 of division IV. The executive director shall review each plan submitted and may reject, suggest modification, or approve the proposed plan. The executive director shall aid in the development of plans for compliance with the provisions of said part. The executive director shall make available to each city, county and private agency appropriate forms for the submission of plans and may hold hearings for the purpose of implementing the provisions of said part. The executive director and governmental agencies with primary responsibility for the development and conservation of energy resources shall provide research and assistance, when cities and counties operating or planning to operate sanitary disposal projects request aid in planning and implementing resource recovery systems. [C71,§406.7; C73, 75,§455B.80; 66GA, ch 228,§2]

455B.81 Tax levy. The board of supervisors of any county may, in lieu of the levy authorized by section 332.32, annually levy a tax not to exceed six and three-fourths cents per thousand dollars of assessed value of taxable property in the county outside the incorporated limits of any city for the purpose of planning a sanitary disposal project or of paying the interest and principal of bonds issued pursuant to the provisions of section 346.23 as they become due. The levy authorized by this section shall be the only levy that the board of supervisors may authorize for the purposes of this section, notwithstanding the provisions of section 346.11 or any other provision of law. [C71,§406.8; C73, 75, §455B.81]

Referred to in §§24.37, 346.23

455B.82 Dumping—where prohibited.

1. It shall be unlawful for any private agency or public agency to dump or deposit or permit the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the executive director. This section shall not prohibit a private agency or public agency from dumping or depositing solid waste resulting from its own residential, farming, manufacturing, mining or commercial activities on land owned or leased by it if such action does not violate any statute of this state or rules promulgated by the commission or local boards of health, or local ordinances, or rules issued by the air quality commission or water quality commission of the department. The executive director may issue temporary permits for dumping or disposal of solid waste at disposal sites for which an application for a permit to operate a sanitary disposal project has been made and which have not met all of the requirements of part 1 of this division and the rules adopted by the commission if a compliance schedule has been submitted by the applicant specifying how and when the applicant will meet the requirements for an operational sanitary disposal project and the executive director determines the public interest will be best served by granting such temporary permit.

2. The executive director may issue any order necessary to secure compliance with or prevent a violation of the provisions of this part 1 of division IV or the rules promulgated pursuant thereto. The attorney general shall, on request of the department, institute any legal proceedings necessary in obtaining compliance with an order of the commission or the executive director or prosecuting any person for a violation of the provisions of said part or rules issued pursuant thereto.

3. Any person who violates any provision of part 1 of this division or any rule or any order promulgated or the conditions of any permit or order issued pursuant to part 1 of this division shall be subject to a civil penalty not to exceed five hundred dollars for each day of such violation. [C71,§406.9; C73, 75,§455B.82; 66GA, ch 59,§§5, 6]

Referred to in §455B.79

455B.83 Appeal from order. Any person aggrieved by an order of the commission or the executive director may appeal the same by filing a written notice of appeal with the executive director within thirty days of the issuance of the order. The executive director shall schedule a hearing for the purpose of hearing the arguments of the aggrieved person within thirty days of the filing of the notice of appeal. The hearing may be held before the commission or its designee. A complete record shall be made of the proceedings. The executive director shall issue the findings in writing to the aggrieved person within thirty days of the conclusion of such hearing. Judicial review may be sought of actions of the commission or executive director in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in

the district court of the county wherein the acts in issue occurred. [C71,§406.10; C73, 75, §455B.83]

455B.84 Modification of rules. Any rule adopted or order issued under chapter 406 of prior Codes by the commissioner of public health shall remain effective until modified or rescinded by action of the solid waste disposal commission unless such rule is inconsistent or contrary to this part 1 of division IV. [C73, 75,§455B.84]

PART 2

RADIOACTIVE WASTE

455B.85 Definitions. As used in this part 2 of division IV, unless the context otherwise requires:

1. *"Radiation"* means any ionizing radiation including, but not limited to, high-speed electrons, neutrons, protons and other nuclear particles, but not sound waves.

2. *"Radioactive material"* means any solid, liquid, or gaseous material which emits radiation spontaneously.

3. *"Nuclear waste disposal site"* means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, leased, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of radioactive waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.

4. *"Commission"* means solid waste disposal commission of the department. [C73, 75, §455B.85]

455B.86 Policy. The department shall be the agency of the state to establish policy for the transportation, storage, handling, and disposal of radioactive material for the purpose of protecting the public health and safety. [C73, 75,§455B.86]

455B.87 Rules for transporting. The commission shall provide, by rule, for the proper methods of transporting, storage, and handling of radioactive material except that the provisions of this section shall not apply to the transportation, handling, or storage of radioactive material by licensed physicians and surgeons or licensed osteopathic physicians and surgeons within the scope of their practice or by qualified employees of licensed hospitals within the scope of their duties. In adopting such rules, the commission shall consider the methods and techniques used by the United States atomic energy commission and radiation control agencies of other states for the regulation of the transporting, handling, and storage of radioactive material. The commission shall also consult with the department of public safety in the development of rules for the transporting of radioactive material on the public roads of this state. All rules adopted by the commission under this section shall be subject to the provisions of chapter 17A and section 455B.7, subsection 3. [C73, 75,§455B.87]

455B.88 Waste disposal site. The commission may approve or prohibit the establishment and operation of a nuclear waste disposal site in this state by a private person. In determining whether to grant or deny a license to establish and operate a nuclear waste disposal site, the commission shall consider the need for a nuclear waste disposal site and the existing physical conditions, topography, soils and geology, climate, transportation, and land use at the proposed site. If the commission decides to issue a license to establish and operate a nuclear waste disposal site, it shall establish, by rule, standards and procedures for the safe operation and maintenance of the proposed site. The commission shall also require the licensee to provide a sufficient surety bond or other financial commitment to insure the perpetual maintenance and monitoring of the nuclear waste disposal site.

All rules adopted by the commission under this section shall be subject to the provisions of chapter 17A and section 455B.7, subsection 3. [C73, 75,§455B.88]

455B.89 Duty of executive director.

The executive director:

1. Shall enforce any rules adopted under the provisions of this part 2 of division IV and furnish a copy of such rules to each applicant for any license required under said part.

2. May license any person transporting, handling, or storing any radioactive material under rules adopted by the commission.

3. May require the maintenance of records relating to the receipt, storage, transfer, or disposal of radioactive material.

4. May issue, modify, or revoke orders in accordance with the provisions of this part 2 of division IV or the rules adopted under said part.

5. May require the submission of plans and specifications for the design, construction, maintenance, and monitoring of nuclear waste disposal sites for review and appraisal. [C73, 75,§455B.89]

455B.90 Notice to violators. If the executive director determines that there are reasonable grounds to believe a violation of this part 2 of division IV or of the rules issued under said part has occurred, he shall give written notice by certified mail to the alleged violator specifying the alleged violations involved and specifying a period of time in which to eliminate the violation. If the alleged violator fails to comply within such specified time, the executive director shall schedule a hearing and give written notice to the alleged violator by certified mail. In connection with the hearings, the executive director may issue subpoenas requiring the attendance of witnesses and the production of records pertinent to such hearing. On the basis of the findings, the executive director shall issue a final order which shall be

forwarded to the alleged violator by certified mail. [C73, 75,§455B.90]

455B.91 Emergency action. Whenever the executive director finds that an emergency exists requiring immediate action to protect the public health and safety, he may, without notice or hearing, issue an emergency order reciting that an emergency exists and requiring that such action be taken as he deems necessary to meet the emergency. The order may be issued orally to the person whose operation constitutes the emergency by the executive director and confirmed by a copy of such order to be sent by certified mail within twenty-four hours after the issuance of the oral order. The emergency order shall be effective immediately. Any person receiving an emergency order may request a hearing before the commission within thirty days following the receipt of the order. The commission shall schedule a hearing within fourteen days after receipt of the request for a hearing and give written notice to the alleged violator by certified mail. The commission may also schedule a hearing in the absence of a request by the alleged violator. On the basis of the findings, the commission shall issue a final order which shall be forwarded to the alleged violator by certified mail.

The executive director may, if an emergency exists, impound or order the impounding of any radioactive material in the possession of any person who is not equipped to observe, or fails to observe, the provisions of this part 2 of division IV or any rules adopted under said part. [C73, 75,§455B.91]

455B.92 Judicial review. Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, a petition for judicial review may be filed in the district court of the county in which the alleged violation was committed or in which a final order was entered. [C73, 75,§455B.92]

455B.93 Injunction. Whenever, in the judgment of the executive director, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this part 2 of division IV or any rule or order promulgated under said part, he may request the attorney general to make application in the name of the state to the district court of the county in which such acts or practices may be performed, for an order enjoining such acts or practices notwithstanding the existence or pursuit of any other remedy, and the attorney general shall make such application. [C73, 75, §455B.93]

455B.94 Penalty. Any person who violates any provisions of this part 2 of division IV or rules adopted under said part, or any order of the commission or executive director issued pursuant to said part, shall be punished by a fine of not more than five hundred dollars or by imprisonment not to exceed six months or punished by both such fine and imprisonment and, in addition, he may be enjoined from continuing such violation. Each day of continued violation after notice that a violation is being committed shall constitute a separate violation. [C73, 75,§455B.94]

PART 3

DEBRIS

455B.95 Definitions. As used in this part 3 of division IV, unless the context otherwise requires:

1. *"Litter"* means any garbage, rubbish, trash, refuse, waste materials, or debris.
2. *"Discard"* means to place, cause to be placed, throw, deposit or drop.
3. *"Commission"* means the solid waste disposal commission of the department. [C73, 75, §455B.95]

455B.96 Executive director's duties. The executive director, at the direction of the commission, shall establish programs to encourage the active support of business, industry and the general public for litter control.

The executive director, at the direction of the commission, shall co-ordinate and encourage the co-operation of state and local public agencies in the administration of this part 3 of division IV. [C73, 75,§455B.96]

455B.97 Litter. No person shall discard any litter onto or in any water or land of this state, except that nothing in this section shall be construed to affect the authorized collection and discarding of such litter in or on areas or receptacles provided for such purpose.

When litter is discarded from a motor vehicle, the driver of the motor vehicle shall be responsible for the act in any case where doubt exists as to which occupant of the motor vehicle actually discarded the litter. [C73, 75, §455B.97]

Referred to in §455B.98
See §321.369

455B.98 Penalty. Any person violating the provisions of section 455B.97, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than fifteen dollars nor more than one hundred dollars or be imprisoned in the county jail not to exceed thirty days. The court, in lieu of or in addition to any other sentence imposed, may direct and supervise a labor of litter gathering. [C73, 75,§455B.98]

455B.99 Other powers not affected. The powers, duties and functions vested in the commission under the provisions of this division IV shall not be construed to affect the powers, duties and functions vested in the department under any other provisions of this chapter or the Code. [C73, 75,§455B.99]

DIVISION V

CHEMICAL TECHNOLOGY COMMISSION

455B.100 Definitions. As used in this division V, unless the context otherwise requires:

1. *"Commission"* means the chemical technology commission of the department.

2. *"Agricultural chemical"* means a pesticide as defined in subsection 3 and also means any feed or soil additive, other than a pesticide, which is designed for and used to promote the growth of plants or animals.

3. *"Pesticide"* means (*a*) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating directly or indirectly any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man, which the executive director shall declare to be a pest, and (*b*) any substances intended for use as a plant growth regulator, defoliant or desiccant.

4. *"Plant growth regulator"* means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. [C71,§206A.2; 73, 75,§455B.100]

Referred to in §§455B.104, 455B.105

455B.101 Agricultural chemicals. The commission shall collect, analyze, and interpret information relating to agricultural chemicals and their use. The commission shall co-ordinate the regulation and information responsibilities of state agencies on matters relating to the sale and use of agricultural chemicals. It shall adopt rules relating to the sale, use and disuse of agricultural chemicals and may, by rule, restrict or prohibit the sale, distribution, or use of any agricultural chemical. In determining whether to restrict or prohibit the sale, distribution, or use of any agricultural chemical, the board shall consider any official reports, academic studies, expert opinions or testimony, or other matter deemed to have probative value. Any such evidence shall be received at a public hearing held for such purpose.

The commission shall consider the toxicity, hazard, effectiveness and public need for the agricultural chemicals, and the availability of less toxic or less hazardous agricultural chemicals and substances or other means of control. [C71,§206A.2; C73, 75,§455B.101]

Referred to in §§206.2(26), 455B.104, 455B.105

455B.102 Pests determined. The commission shall, by rule, after a public hearing following due notice:

1. Declare as a pest any form of plant or animal life or virus which is unduly injurious to plants, man, domestic animals, articles, or substances.

2. Specify the conditions under which containers of pesticides may be transported, stored, or disposed.

3. Determine the proper use of pesticides, including their formulations, and the times and methods of application and other conditions of use.

4. Require that all veterinarians licensed and practicing veterinary medicine in the state promptly report any case of domestic livestock poisoning or suspected poisoning to the executive director and the veterinary medical diagnostic laboratory at Iowa State University of science and technology. [C66, 71, §206.6; C73, 75,§455B.102]

Referred to in §§455B.104, 455B.105

455B.103 Rules. The rules promulgated by the commission shall be subject to the provisions of chapter 17A and section 455B.7, subsection 3. [C73, 75,§455B.103]

Referred to in §§455B.104, 455B.105

455B.104 Chemicals condemned. The attorney general shall institute, at the request of the executive director, legal action to condemn any agricultural chemical sold, offered for sale, used, transported, or stored in this state in violation of sections 455B.100 to 455B.103 or any rules adopted by the commission under said sections. [C73, 75,§455B.104]

455B.105 Penalty. Any person violating the provisions of sections 455B.100 to 455B.103 or the rules adopted by the commission under said sections is guilty of a misdemeanor.* [C73, 75,§455B.105]

*Punishment, §687.7

455B.106 Other powers not affected. The powers, duties and functions vested in the chemical technology commission under the provisions of this division V shall not be construed to affect the powers, duties, and functions vested in the department under any other provisions of this chapter or the Code. [C73, 75,§455B.106]

455B.107 Prior rules continued. Any rule adopted or order issued under chapter 206A* of prior Codes by the chemical technology review board shall remain effective until modified or rescinded by action of the chemical technology commission unless such rule is inconsistent or contrary to this division V. [C73, 75, §455B.107]

*Repealed by §112 of this Act [64GA, ch 1119]

CHAPTER 455C

SEWAGE WORKS CONSTRUCTION PROJECTS

Repealed by 64GA, ch 1119,§112
See ch 455B

CHAPTER 456

DISSOLUTION OF DRAINAGE DISTRICTS

Referred to in §§455.215, 455.219, 467C.6

456.1 Jurisdiction to abandon and dissolve.
456.2 Notice of hearing.
456.3 Hearing on petition.
456.4 Appeal.
456.5 Expense—refund.
456.6 Abandonment of rights of way.

456.1 Jurisdiction to abandon and dissolve. When any drainage or levee district is free from indebtedness and it shall appear that the necessity therefor no longer exists or that the expense of the continued maintenance of the ditch or levee is in excess of the benefits to be derived therefrom, the board of supervisors or board of trustees, as the case may be, shall have power and jurisdiction, upon petition of a majority of the landowners, who, in the aggregate, own sixty percent of all land in such district, to abandon the same and dissolve and discontinue such districts. Nothing in this section shall prevent the board from eliminating land from a drainage district as permitted under section 455.201. [C35,§7598-g1; C39,§**7598.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§456.1]

456.2 Notice of hearing. Upon the filing of such petition the board shall enter an order fixing the date for hearing thereon not less than forty days from the date of the filing thereof and shall enter an order directing the county auditor, if such district is under the control of the board of supervisors, or the clerk of the board, if under the control of a board of trustees, to immediately cause notice of hearing thereon to be served on the owners of lands in such district as may then be provided by law in proceedings for the establishment of a drainage or levee district. [C35, §7598-g2; C39,§**7598.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§456.2]

456.3 Hearing on petition. At the time set for hearing on said petition the board shall hear and determine the sufficiency of the petition as to form and substance (which petition may be amended at any time before final action thereon), and all objections filed against the abandonment and dissolution of such district. If it shall find that such district is free from indebtedness and that the necessity for the continued maintenance thereof no longer exists or that the expense of the continued maintenance of such district is not commensurate with the benefits derived therefrom, it shall enter an order abandoning and dissolving such district, which order shall be filed with the county auditor of the county or counties in which such district is situated and noted on the drainage record. [C35,§7598-g3; C39,§**7598.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §456.3]

456.4 Appeal. Appeal may be taken from the order of the board to the district court of the county in which such district or a part thereof is situated, in the same time and manner as appeal may be taken from an order of the board of supervisors establishing a district. [C35,§7598-g4; C39,§**7598.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§456.4]

Appeals, §455.92 et seq.

456.5 Expense—refund. In case there are sufficient funds on hand in such district, or there are unpaid assessments outstanding or other property belonging to such district in an amount sufficient to pay such expense, the expense of abandonment and dissolution shall be paid out of such funds or out of funds realized by the sale of such property. Where such district is free of indebtedness but there are not sufficient funds on hand or unpaid assessments outstanding or other assets to pay such expense the board shall assess such expense against the property in the district in the same proportions as the last preceding assessments of benefits. Any excess remaining to the credit of such district after sale of its assets and after payment of such expenses shall be prorated back to the property owners in the district in the proportions according to class and benefits as last assessed. If the petition is denied, the costs of said proceedings shall be paid by the petitioning owners. [C35,§7598-g5; C39, §**7598.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§456.5]

456.6 Abandonment of rights of way. If such a dissolution is effected, the rights of way of the district for all purposes of the district shall be deemed abandoned. [C35,§7598-g6; C39,§**7598.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §456.6]

CHAPTER 457

INTERCOUNTY LEVEE OR DRAINAGE DISTRICTS

Referred to in §§111A.4(9), 455.4, 455.22, 455.215, 455.216, 455.219, 458.1, 460.11, 466.8, 467C.6

457.1 Petition and bond.
457.2 Commissioners.
457.3 Examination and report
457.4 Duty of engineer.

457.5 Notice.
457.6 Contents of notice—service.
457.7 Claims for damages—filing—waiver.
457.8 Organization and procedure — adjournments.
457.9 Tentative adoption of plans.
457.10 Appraisers.
457.11 Duty of appraisers—procedure.
457.12 Meetings of joint boards.
457.13 Equalizing voting power.
457.14 Commissioners to classify and assess.
457.15 Notice and service thereof—objections.
457.16 Levies—certificates and bonds.
457.17 Bonds or proceeds made available.
457.18 Supervising engineer.
457.19 Duty of engineer.
457.20 Notice of letting work—applicable procedure.
457.21 Contracts.
457.22 Monthly estimate—payment.
457.23 Final settlement.
457.24 Failure of board to act.
457.25 Transfer to district court.
457.26 Transcript, docket and trial.
457.27 Decree.
457.28 Law applicable.
457.29 Records of intercounty districts.
457.30 County with largest acreage to keep funds.

457.1 Petition and bond. When the levee or drainage district embraces land in two or more counties, a duplicate of the petition of any owner of land to be affected or benefited by such improvement shall be filed with the county auditor of each county into which said levee or drainage district will extend, accompanied by a duplicate bond to be filed with the auditor of each of the said counties as provided when the district is wholly within one county, in an amount and with sureties approved by the auditor of the county in which the largest acreage of the district is situated, which bond shall run in favor of the several counties in which it is filed. [S13, §1989-a29; C24, 27, 31, 35, 39,§**7599**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.1]

Referred to in §458.1
Procedure for converting several intracounty districts into one intercounty district, ch 458

457.2 Commissioners. Upon the filing of such petition in each county and the approval of such duplicate bond by the proper auditor, the board of each of such counties shall appoint a commissioner and the joint boards shall appoint a competent engineer who shall also act as a commissioner. [S13,§1989-a29; C24, 27, 31, 35, 39,§**7600**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.2]

Referred to in §458.1
40ExGA, HF 185,§147, editorially divided

457.3 Examination and report. The commissioners thus appointed shall examine the application and make an inspection of all the lands embraced in the proposed district and shall determine what improvements in the way of levees, ditches, drains, settling basins, or change of natural watercourse are necessary for the drainage of the lands described in the petition. Such commissioners, including the engineer, shall file a detailed report of their examination and their findings and file a duplicate thereof in the office of the auditor of each of said counties. [S13,§1989-a29; C24, 27, 31, 35, 39,§**7601**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.3]

457.4 Duty of engineer. In addition to the report of the commissioners as a whole, the engineer so appointed shall perform the same duties and in the same manner required of the engineer by chapter 455 when the proposed district is located wholly within one county, and his surveys, plats, profiles, field notes, and reports of his surveys shall be made and filed in duplicate in each county. [S13,§1989-a29; C24, 27, 31, 35, 39,§**7602**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.4]

457.5 Notice. Immediately upon the filing of the report of the commissioners and the engineer, if the same recommends the establishment of such district, notice shall be given by the auditor of each county to the owners of all the lots and tracts of land in his own county respectively embraced within such district as recommended by the commissioners as shown by the transfer books in the office of the auditor of each of said counties, and also to the persons in actual occupancy of all the lots or tracts of land in such district, and also to each lienholder or encumbrancer of any of such lots or tracts as shown by the records of the respective counties. [S13,§1989-a29; C24, 27, 31, 35, 39,§**7603**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.5]

40ExGA, HF 185,§149, editorially divided

457.6 Contents of notice — service. Such notice shall state the time and place, when and where the boards of the several counties will meet in joint session for the consideration of said petition and the report of the commissioners and engineer thereon, and shall in other respects be the same and served in the same time and manner as required when the district is wholly within one county, except that the auditor of each county shall give notice only to the owners, occupants, encumbrancers, and lienholders of the lots and tracts of land embraced within the proposed district in his own county as shown by the records of such county. [S13,§1989-a29; C24, 27, 31, 35, 39,§**7604**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.6]

Notice and service, §455.20 et seq.

457.7 Claims for damages — filing — waiver. Any person filing objections or claiming damages or compensation on account of the construction of such improvement shall file the same in writing in the office of the auditor of the county in which his land is situated, at or before the time set for hearing. He may, however, file it at the time and place of hearing. If he shall fail to file such claim at the time specified he shall be held to have waived his right thereto, but claims for land taken for right of way for any open ditch or for settling basins need not be filed. [S13,§1989-a30; C24, 27, 31, 35, 39,§**7605**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.7]

457.8 Organization and procedure—adjournments. At the time set for hearing such petition, the boards of the several counties shall meet at the place designated in said notice. They shall organize by electing a chairman and a secretary, and when deemed advisable may adjourn to meet at the call of such chairman at such time and place as he may designate, or may adjourn to a time and place fixed by said joint boards. They shall sit jointly in considering the petition, the report and the recommendations of the engineer, in the same manner as if the district were wholly within one county. [S13,§1989-a31; C24, 27, 31, 35, 39, §**7606**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.8]

40ExGA, HF 185,§151, editorially divided

457.9 Tentative adoption of plans. The said boards by their joint action may dismiss the petition and refuse to establish such district, or they may approve and tentatively adopt the plans and recommendations of the engineer for the said district. [C24, 27, 31, 35, 39,§**7607**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.9]

457.10 Appraisers. If the said boards shall adopt a tentative plan for the district, the board of each county shall select an appraiser and the several boards by joint action shall employ an engineer, and the said appraisers and engineer shall constitute the appraisers to appraise the damages and value of all right of way required for open ditches and of all lands required for settling basins. [S13,§1989-a31; C24, 27, 31, 35, 39,§**7608**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.10]

457.11 Duty of appraisers—procedure. The appraisers shall proceed in the same manner and make return of their findings and appraisement the same as when the district is wholly within one county, except that a duplicate thereof shall be filed in the auditor's office of each of the several counties. After the filing of the report of the appraisers, all further proceedings shall be the same as where the district is wholly within one county, except as otherwise provided. [S13,§1989-a31; C24, 27, 31, 35, 39,§**7609**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §457.11]

Procedure, §455.30 et seq.

457.12 Meetings of joint boards. The board of supervisors of any county in which a petition for the establishment of a levee or drainage district to extend into or through two or more counties is on file, may meet with the board or boards of any other county or counties in which such petition is on file, for the purpose of acting jointly with such other board or boards in reference to said petition or any business relating to such district. Any such joint meetings held in either of the counties in which such petition is on file shall constitute a valid and legal meeting of said joint boards for the transaction of any business pertaining to said petition or to the business of such district. [S13,§1989-a37; C24, 27, 31, 35, 39,§**7610**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §457.12]

457.13 Equalizing voting power. When the boards are of unequal membership, for the purpose of equalizing their voting power each member of the smallest board shall cast a full vote and each member of a larger board shall cast such fractional part of a vote as results from dividing the smallest number by such larger number. [S13,§1989-a29; C24, 27, 31, 35, 39,§**7611**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.13]

457.14 Commissioners to classify and assess. If the boards of the several counties acting jointly shall establish the district, they shall appoint a commission consisting of one from each county, and in addition thereto a competent engineer who shall within twenty days begin to inspect the premises and classify the lands in said district fixing the percentages and assessments of benefits and the apportionment of costs and expenses and shall complete said work within the time fixed by the boards. The qualifications of said commissioners, their classification of lands, fixing percentages and assessments of benefits and apportionment of costs and the report thereof in all details shall be governed in all respects by the provisions of chapter 455 for districts wholly within one county. [S13,§1989-a32; C24, 27, 31, 35, 39,§**7612**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.14]

457.15 Notice and service thereof—objections. Upon the filing of the report of the commissioners to classify lands, fix and assess benefits and apportion costs and expenses, the auditors of the several counties, acting jointly, shall cause notice to be served upon all interested parties of the time when and the place where the boards will meet and consider such report and make a final assessment of benefits and apportionment of costs, which notice shall be the same and served for the time and in the manner and all proceedings thereon shall be the same as provided in chapter 455 in districts wholly within one county, except publication of notice as provided in section 455.21 shall be in each of the counties into which the district extends, and also except that said notice to be published in each of the several counties shall contain only the names of the owners of each tract of land or lot in the district located within the respective coun-

ty in which said notice is to be published and the total amount of all proposed assessments on the lands located in each of the other counties into which the district extends, and except further that the objections not filed prior to the date of the hearing shall be filed with the boards at the time and place of such hearing. [S13,§1989-a32; C24, 27, 31, 35, 39, §7613; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.15]

457.16 Levies—certificates and bonds. After the amount to be assessed and levied against the several tracts of land shall have been finally determined, the several boards, acting separately, and within their own counties, shall levy and collect the taxes apportioned and levied in their respective counties. They may issue warrants, improvement certificates, or bonds for the payment of the cost of such improvement within their respective counties, with the same right of landowners to pay without interest or in installments all as provided where the district is wholly within one county. [S13,§1989-a32; C24, 27, 31, 35, 39,§7614; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.16]

Referred to in §457.17
Payment, §455.63 et seq.

457.17 Bonds or proceeds made available. When drainage bonds are to be issued under the provisions of section 457.16 they shall be issued at such time that they or the proceeds thereof shall be available for the use of the district at a date not later than ninety days after the actual commencement of the work on the improvement as provided in relation to districts wholly within one county. [C24, 27, 31, 35, 39,§7615; C46, 50, 54, 58, 62, 66, 71, 73, 75, §457.17]

457.18 Supervising engineer. At the time of finally establishing the district, the boards of the several counties, acting jointly, shall employ a competent engineer to have charge and supervision of the construction of the improvement and they shall fix his compensation and he shall, before entering upon said work, give a bond running to the several counties for the use and benefit of the district in the same amounts and of like tenor and effect as is provided in districts wholly within one county. A duplicate of such bond shall be filed with the auditor of each of said counties. [S13,§1989-a34; C24, 27, 31, 35, 39,§7616; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.18]

Bond, §455.89

457.19 Duty of engineer. The duties of the supervising engineer shall be the same in all respects as is provided by chapter 455 for districts wholly within one county. [S13,§1989-a34; C24, 27, 31, 35, 39,§7617; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.19]

457.20 Notice of letting work — applicable procedure. If the boards, acting jointly, shall establish such district, the auditors of the several counties shall immediately thereafter, acting jointly, cause notice to be given of the time and place of the meeting of the boards for letting contracts for the construction of the improvement. The notices, bids, bonds, and all other proceedings in relation to letting contracts shall be the same as provided where the district is wholly within one county, but duplicates of contractors' bonds shall be filed with the auditor of each county. [S13,§1989-a33; C24, 27, 31, 35, 39,§7618; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.20]

457.21 Contracts. All contracts made for engineering work and the work of constructing improvements of an intercounty district shall be made by written contract executed by the contractor and such person as may be authorized by the boards of the several counties and by joint resolution and shall specify the work to be done, the amount of compensation therefor and the times and manner of payment, all as provided in relation to districts wholly within one county. [S13,§1989-a33; C24, 27, 31, 35, 39,§7619; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.21]

457.22 Monthly estimate—payment. The engineer in charge of the work shall furnish the contractor monthly estimates of the amount of work done on each section and the amount thereof done in each county, a duplicate of which shall be filed with the auditor of each of the several counties. Upon the filing of such statement, each auditor shall draw a warrant for the contractor or give him an order directing the treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, in favor of the contractor for eighty percent of the amount due from his county. Drainage warrants, bonds or improvement certificates when so issued shall be in such amounts as the auditor determines not however in amounts in excess of one thousand dollars. [S13,§1989-a34; C24, 27, 31, 35, 39,§7620; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.22]

457.23 Final settlement. When the work to be done on any contract is completed to the satisfaction of the supervising engineer he shall so report and certify to the boards of the several counties, and the auditors of the county shall fix a day to consider said report, and all the provisions shall apply in relation to objections to said report and the approval of the same and the completion of any unfinished or abandoned work as is provided in chapter 455 relating to completion of work and final settlement in districts wholly within one county, except that, when the completed work is accepted by the joint action of the boards of supervisors of the several counties into which the district extends such acceptance shall be certified to the auditor of each county who shall draw a warrant for the contractor or give him an order directing the treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, for the balance due from the portion of the district in such county. [S13,§1989-a34; C24, 27, 31, 35, 39,§7621; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.23]

Referred to in §457.30

457.24 Failure of board to act. When the establishment of a district, extending into two or more counties, is petitioned for as hereinbefore provided and one or more of such boards fails to take action thereon, the petitioners may cause notice in writing to be served upon the chairman of each board demanding that action be taken upon the petition within twenty days from and after the service of such notice. [S13,§1989-a36; C24, 27, 31, 35, 39,§**7622**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.24]

457.25 Transfer to district court. If such boards shall fail to take action thereon within the time named, or fail to agree, the petitioners may cause such proceedings to be transferred to the district court of any of the counties into which such proposed district extends by serving notice upon the auditors of the several counties within ten days after the expiration of said twenty days' notice, or after the failure of such boards to agree. [S13, §1989-a36; C24, 27, 31, 35, 39,§**7623**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.25]

457.26 Transcript, docket and trial. Within thirty days after completion of notice, the auditor shall, acting jointly, prepare and certify to the clerk of the district court a full and complete transcript of all proceedings had in such case. The clerk of the district court shall thereupon docket the case and same shall be triable in equity at any time after the expiration of twenty days thereafter. [S13,§1989-a36; C24, 27, 31, 35, 39,§**7624**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.26]

40ExGA, HF 185,§166, editorially divided

457.27 Decree. The court shall enter judgment and decree dismissing the case or establishing such district and may by proper orders and writs enforce the same. [S13,§1989-a36; C24, 27, 31, 35, 39,§**7625**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.27]

457.28 Law applicable. Except as otherwise stipulated in this chapter the provisions and procedure set forth in chapter 455 shall govern and apply to the formation, establishment, and conduct of every levee or drainage district extending into two or more counties, the petition therefor, the giving or publication or service of notice therein, the appointment and duties of all officers or appraisers or commissioners, the making or filing of waivers, reports, plats, profiles, recommendations, notices, contracts, and papers, the classification and apportionment and assessment of lands and all other property, the taking and hearing of appeals, the issuance and delivery of warrants, bonds and assessment certificates, the payment of taxes and assessments, the making of improvements, ditches, drains, settling basins, changes, enlargements, extensions, and repairs, the inclusion of lands, and the making or performance of every other matter or thing whatsoever relevant to or in any wise connected with such joint drainage or levee district, and the rights, privileges, and duties of all persons, landowners, officers, appellants, and courts. [S13,§1989-a37; C24, 27, 31, 35, 39, §**7626**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§457.28]

457.29 Records of intercounty districts. A record of all proceedings of an intercounty levee or drainage district shall be maintained by the auditor of each county in which a portion of the district lies, as provided by sections 455.185 and 455.186, but the records in the office of the auditor of the county having the largest acreage in the district shall be the official records of said district. [C71, 73, 75, §457.29]

457.30 County with largest acreage to keep funds. When an intercounty district has been finally established and original construction completed and final settlement made with the contractor, as provided by section 457.23, the treasurer of the county having the largest acreage of the district shall be the depository for all funds of the district and the treasurer of the other counties in which the district is situated shall periodically, at least annually, pay over all district funds received within said period to the treasurer of the county with the largest acreage, except that funds payable on improvement certificates or bonds shall be disbursed to the holders of the certificates or bonds by the treasurer of the county in which the land encumbered is located. [C71, 73, 75, §457.30]

CHAPTER 458

CONVERTING INTRACOUNTY DISTRICTS INTO INTERCOUNTY DISTRICT

Referred to in §§455.22, 455.215, 455.216, 455.219, 460.11, 466.8, 467C.6

458.1 Intracounty districts converted into intercounty district.
458.2 Benefited land only included.
458.3 Appeal by landowner.
458.4 Procedure on appeal.
458.5 Appeal by trustees or boards.

458.1 Intracounty districts converted into intercounty district. Whenever one or more drainage districts in one county outlet into a ditch, drain, or natural watercourse, which ditch, drain, or natural watercourse is the common carrying outlet for one or more drainage districts in another county, the boards of supervisors of such counties acting jointly may by resolution, and on petition of the trustees of any one of such districts or one or

more landowners therein, in either case such petition to be accompanied by a bond as provided in section 457.1, must initiate proceedings for the establishment of an intercounty drainage district by appointing commissioners as provided in section 457.2 and by requiring a bond as provided in section 457.1 and by proceeding as provided by chapter 457, and all powers, duties, limitations, and provisions of this chapter and chapter 457, shall be applicable thereto. [C27, 31, 35,§7626-a1; C39,§7626.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§458.1]

41GA, ch 155,§1, editorially divided

458.2 Benefited land only included. Neither any land nor any previously organized drainage district shall be included within, or assessed for, the proposed new intercounty district unless such land or unless such previously organized district shall receive special benefits from the improvements in the proposed new intercounty district. [C27, 31, 35, §7626-a2; C39,§7626.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§458.2]

458.3 Appeal by landowner. Any landowner affected by the establishment of the new intercounty district may appeal to the district court of the county where his land lies from the action of the joint boards in establishing the new district or in including his land within it. [C27, 31, 35,§7626-a3; C39,§7626.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§458.3]

458.4 Procedure on appeal. The procedure for taking such appeal and for hearing and determining it shall be that provided for similar appeals in chapter 455. [C27, 31, 35,§7626-a4; C39,§7626.4; C46, 50, 54, 58, 62, 66, 71, 73, 75, §458.4]

458.5 Appeal by trustees or boards. Trustees or boards of supervisors having charge of any previously organized district which is proposed to be included (either in whole or in part) within the new intercounty district may, in the same manner and under the same procedure appeal to the district court from the action of the joint boards in establishing the new district or in including therein the previously organized district or any part thereof. [C27, 31, 35,§7626-a5; C39,§7626.5; C46, 50, 54, 58, 62, 66, 71, 73, 75,§458.5]

CHAPTER 459

DRAINAGE DISTRICTS EMBRACING PART OR WHOLE OF CITY

Referred to in §§455.22, 455.215, 455.216, 455.219, 460.11, 466.8, 467C.6

459.1 Authority to include city.
459.2 Inclusion of city—notice.
459.3 Assessments—notice.
459.4 Objections—appeal.
459.5 Assessments—interest.
459.6 Bonds, certificates and waivers.
459.7 Funding bonds.
459.8 Jurisdiction relinquished.
459.9 Request for relinquishment.
459.10 Duty to relinquish.
459.11 Jurisdiction of municipality.
459.12 City council to control district.

459.1 Authority to include city. The board of any county shall have the same power to establish a drainage district that includes the whole or any part of any city as they have to establish districts wholly outside of such cities, including assessment of damages and benefits within such cities, but no board of supervisors shall have power or authority to establish a drainage or levee district which lies wholly within the corporate limits of any city, nor in any case to establish any district for sewer purposes. [S13,§1989-a38; C24, 27, 31, 35, 39,§7627; C46, 50, 54, 58, 62, 66, 71, 73, 75,§459.1]

40ExGA, HF 185,§168, editorially divided

459.2 Inclusion of city—notice. Notice of the filing of the petition for such district and the time of hearing thereon, shall set forth the boundaries of the territory included within such city and directed to the city clerk and the owners and lienholders of the property within such boundaries without naming individuals, to be served in the same manner as notices where the district is wholly outside of such city. [S13,§1989-a38; C24, 27, 31, 35, 39, §7628; C46, 50, 54, 58, 62, 66, 71, 73, 75,§459.2]

Service of notice, §455.21 et seq.

459.3 Assessments — notice. When the streets, alleys, public ways, or parks or lots or parcels including railroad rights of way of any city, or city under special charter, so included within a levee or drainage district, will be beneficially affected by the construction of any improvement in such district, it shall be the duty of the commissioners appointed to classify and assess benefits to estimate and return in their report the percentage and assessment of benefits to such streets, alleys, public ways, and parks, or lots or parcels including railroad rights of way and notice thereof shall be served upon the clerk of such city, irrespective of the form of government, and upon owners of lots, parcels, and railroad rights of way so assessed. [S13,§1989-a38; C24, 27, 31, 35, 39, §7629; C46, 50, 54, 58, 62, 66, 71, 73, 75,§459.3]

459.4 Objections — appeal. The council or clerk of such city or individual owners may file objections to such percentage and assessment of benefits in the time and manner provided in case of landowners outside such city, and they shall have the same right to appeal from the finding of the board with reference to such assessment. [S13,§1989-a38; C24, 27, 31, 35, 39,§**7630**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §459.4]

40 Ex GA, HF 185,§170, editorially divided
Objections, §455.52; appeals, §455.92 et seq.

459.5 Assessments—interest. Such assessment as finally made shall draw interest at the same rate and from the same time as assessment against lands. [S13,§1989-a38; C24, 27, 31, 35, 39,§**7631**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §459.5]

459.6 Bonds, certificates and waivers. The board of supervisors and the city council shall have the same power in reference to issuing improvement certificates or drainage bonds and executing waivers on account of such assessment for benefits to streets, alleys, public ways, parks, and other lands as is herein conferred upon the board of supervisors in reference to assessment for benefits to highways. [S13,§1989-a38; C24, 27, 31, 35, 39,§**7632**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§459.6]

Certificates and bonds, §455.77 et seq.

459.7 Funding bonds. Such cities may issue their funding bonds for the purpose of securing money to pay any assessment against it as provided by law. [C24, 27, 31, 35, 39,§**7633**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§459.7]

Funding bonds, ch 408

459.8 Jurisdiction relinquished. If the board of supervisors of any county at any time finds that twenty-five percent or more of the total area of any established drainage district is located within the corporate limits of any city, that the district's drains are wholly or partially constructed of sewer tile, and that the district's drain or drains are needed or being used by the city for storm sewer or drainage purposes, the board may by resolution transfer to the city control of the entire drainage district, including the portion outside the corporate limits of the city. [C24, 27, 31, 35, 39, §**7634**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§459.8]

Referred to in §459.9

459.9 Request for relinquishment. When a county board of supervisors elects to transfer control of a drainage district to a city, as provided in section 459.8, the resolution effecting the transfer shall state a time not less than thirty nor more than ninety days after adoption of the resolution when the transfer of control shall take effect. The resolution shall be certified to the governing body of the city and a copy thereof filed by the county auditor, who shall spread the same upon the records of the drainage district. [C24, 27, 31, 35, 39, §**7635**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§459.9]

Referred to in §459.10

459.10 Duty to relinquish. It shall be the duty of the governing body of any city to accept control of and thereafter to administer a drainage district properly transferred to the city, commencing on the date specified in the resolution of the county board of supervisors certified to the governing body as provided in section 459.9, or at such later date as may be agreed to by the county board upon request of the governing body. [C24, 27, 31, 35, 39,§**7636**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§459.10]

459.11 Jurisdiction of municipality. After the drainage district has been taken over by the city, it shall have complete control thereof, and may use the same for any purpose that said city through its city council deems proper and necessary for the advancement of the city or its health or welfare, and the city shall be responsible for the maintenance and upkeep of said drainage district only from and after its relinquishment by the board of supervisors to the city. [C24, 27, 31, 35, 39,§**7637**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§459.11]

459.12 City council to control district. The council of any city acting under the provisions of this chapter shall have control, supervision and management of the district, and shall be vested with all of the powers which are now or may hereafter be conferred on the board of supervisors for the control, supervision and management of drainage districts under the laws of this state within the said district unless otherwise specifically provided. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§459.12]

CHAPTER 460

HIGHWAY DRAINAGE DISTRICTS

Referred to in §§455.4, 455.22, 455.215, 455.216, 455.219, 466.8, 467C.6

460.1 Establishment.
460.2 Powers.
460.3 Initiation without petition.
460.4 Engineer.
460.5 Survey and report.
460.6 Assessment—report.
460.7 Advanced payments.
460.8 Payment from road funds.
460.9 Dismissal—costs.
460.10 Condemnation of right of way.
460.11 Laws applicable.
460.12 Removal of trees from highway.
460.13 Trees outside of highways.

460.1 Establishment. Whenever, in the opinion of the board of supervisors, it is necessary to drain any part of any public highway under its jurisdiction, and any land abutting upon or adjacent thereto, it may proceed without petition or bond to establish a highway drainage district by proceeding in all other respects as provided in chapter 455. [SS15,§§1989-b,-b2–b6,-b8,-b12,-b13; C24, 27, 31, 35, 39,§**7638**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §460.1]

40ExGA, HF 185,§175-a1, editorially divided

460.2 Powers. Such district, when established, shall have the powers granted to drainage and levee districts, and all parties interested shall have the same rights so far as applicable. [SS15,§§1989-b,-b2–b6,-b8,-b12,-b13; C24, 27, 31, 35, 39,§**7639**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§460.2]

460.3 Initiation without petition. When the board of supervisors determines on its own action to proceed to the establishment of a highway drainage district, it shall do so by the adoption of a resolution of necessity to be placed upon its records, in which it shall describe in a general way the portion of any highway or highways to be included in such district, together with the description of abutting or adjacent land and railroad rights of way to be included in such district and made subject to assessment for such improvement. [SS15,§1989-b; C24, 27, 31, 35, 39,§**7640**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§460.3]

460.4 Engineer. The board shall appoint a competent engineer for the district. If the county engineer is appointed, he shall serve without additional compensation. In no case shall the county engineer act as a member of the assessment commission in a drainage district provided for in this chapter. [SS15, §§1989-b,-b11; C24, 27, 31, 35, 39,§**7641**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§460.4]

460.5 Survey and report. The engineer shall make a survey of the proposed district and report the same to the board, being governed in all respects as provided by sections 455.17 and 455.18 and designate particularly any portion of the secondary road system, or the primary road system, or any portion of either or both of said systems, as well as all lands adjoining and adjacent thereto, including lands and rights of way of railway companies which in his judgment will be benefited by drainage of highways in such district, and which should be embraced within the boundaries of such district. [SS15,§1989-b1; C24, 27, 31, 35, 39, §**7642**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§460.5]

460.6 Assessment—report. The commission for assessment of benefits and classification of the property assessed shall determine and report:

1. The separate amount which shall be paid by the county on account of the secondary road system.

2. The separate amount which shall be paid by the state on account of the primary road system.

3. The amounts which shall be assessed against the right of way or other real estate of each railway company within such district.

4. The amounts which shall be assessed against each forty-acre tract or less within such district. [SS15,§1989-b5; C24, 27, 31, 35, 39,§**7643**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§460.6]

Primary and secondary roads, chs 309—314

460.7 Advanced payments. The board on construction of such improvement may advance out of the secondary road construction fund or the secondary road maintenance fund, or out of both of said funds that portion to be collected by special assessment, the amount so advanced to be replaced in said road funds as the first special assessments are collected. The board may in lieu of making such advancements, issue warrants to be known as "Drainage Warrants", said warrants to draw not to exceed four percent interest per annum payable annually from the date of issue and to be paid out of the special assessments levied therefor, when the same are collected. [SS15, §1989-b7; C24, 27, 31, 35, 39,§**7644**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§460.7]

460.8 Payment from road funds. The amount fixed by the final order of the board of supervisors to be paid:

1. On account of the primary road system, shall be payable by the state department of transportation on due certification of the amount by the county treasurer to the state department of transportation out of the primary road fund.

2. On account of the secondary road system, may be payable from the secondary road construction fund, or from the secondary road maintenance fund, or from both of said funds. [SS15,§1989-b5; C24, 27, 31, 35, 39,§**7645**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§460.8]

460.9 Dismissal—costs. If such proceedings are dismissed or said improvement abandoned, all costs of such proceedings shall be paid out of the fund of the road system for the benefit of which said proceeding was initiated. [SS15, §1989-b10; C24, 27, 31, 35, 39,§**7646**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§460.9]

460.10 Condemnation of right of way. When in the judgment of the board of supervisors, it is inadvisable to establish a drainage district but necessary to acquire right of way through private lands for the construction of ditches or drains as outlets for the drainage of highways, the board of supervisors may cause such right of way to be condemned by proceedings in the manner required for the exercise of the right of eminent domain as for works of internal improvement, except that no attorney fee shall be taxed, and pay the costs and expense of such condemnation from either or both of said secondary road

funds. [S13,§1989-a43; C24, 27, 31, 35, 39,§**7647**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§460.10]

Condemnation procedure, ch 472

460.11 Laws applicable. All proceedings for the construction and maintenance of highway drainage districts except as provided for in this chapter shall be as provided for in chapters 455 to 459.* [C24, 27, 31, 35, 39,§**7648**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§460.11]

*Chapters 455A, 455B, 456 enacted after this section was enacted; chapter 458 was enacted as an amendment to chapter 457, see 41GA, ch 155

460.12 Removal of trees from highway. When the roots of trees located within a highway obstruct the ditches or tile drains of such highway, the board of supervisors shall remove such trees from highways, except shade or ornamental trees adjacent to a dwelling house or other farm buildings or feed lots, or any tree or trees for windbreaks upon cultivated lands consisting of sandy or other light soils. [C24, 27, 31, 35, 39,§**7649**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§460.12]

460.13 Trees outside of highways. When the roots of trees and hedges growing outside a highway obstruct the ditches or tile drains of any highway, the board of supervisors may acquire the right to destroy such trees in the manner provided for taking private property for public use. Ornamental trees adjacent to any dwelling, orchard trees and trees used as windbreaks for a dwelling house, outbuildings, barn or feed lots, shall be exempt from the provisions of this section. [C24, 27, 31, 35, 39, §**7650**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§460.13]

Condemnation procedure, ch 472
Similar provision, §455.149

CHAPTER 461

DRAINAGE AND LEVEE DISTRICTS WITH PUMPING STATIONS

Referred to in §§111A.4(9), 455.4, 455.22, 455.215, 455.216, 455.219, 466.8, 467C.6

461.1 Authorization.
461.2 Petition—procedure.
461.3 Additional pumping station.
461.4 Transfer of pumps.
461.5 Costs.
461.6 Dividing districts.
461.7 Notice—publication.
461.8 Hearing — jurisdiction of divided districts.
461.9 Division in other cases.
461.10 Assessments not affected—maintenance tax.
461.11 Election and apportionment of trustees.
461.12 Settling basin—condemnation.
461.13 Funding bonds.
461.14 Form of bonds.
461.15 Formal execution.
461.16 Resolution—requisites—record.
461.17 Registration.
461.18 Liability of treasurer—reports.
461.19 Sale—application of proceeds.
461.20 Levy.
461.21 Scope of Act.
461.22 Funds available to pay bonds.
461.23 Limitation of actions.
461.24 Bankruptcy proceedings.
461.25 Chapter applicable to districts with pumping stations.
461.26 Construction near levee prohibited.
461.27 Penalty.
461.28 Action to restrain or abate.
461.29 Liability for damage.

461.1 Authorization. The board of supervisors of any county or counties in which a drainage or levee district has been organized as by law provided, may establish and maintain a pumping station or stations, when and where the same may be necessary to secure a proper outlet for the drainage of the land comprising the district or any portion thereof, and the cost of construction and maintenance of said pumping station or stations shall be levied upon and collected from the lands in the district benefited by such pumping station or stations, in the same manner as provided for in the construction and maintenance of said districts. [S13,§§1989-a49,-a52; C24, 27, 31, 35, 39,§**7651**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §461.1]

461.2 Petition — procedure. Such pumping station shall not be established or maintained unless a petition therefor shall be presented to the board signed by not less than one-third of the owners of lands benefited thereby. The lands benefited by such pumping station shall be determined by the board on said petition and report of the engineer, and such other evidence as it may hear. No additional land shall be taken into any such drainage district after the improvements therein have been substantially completed, unless one-third of the owners of the land proposed to be annexed have petitioned therefor or consented in writing thereto. [S13,§1989-a49; C24, 27, 31, 35, 39, §**7652**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.2]

461.3 Additional pumping station. After the establishment of a drainage district, including a pumping plant, and before the completion of the improvement therein, the board or boards may, if deemed necessary to fully accomplish the purposes of said improvement, by resolution authorize the establishment and mainte-

nance of such additional pumping station or stations as the engineer may recommend, and if a petition is filed by one-third of the owners of land within such district asking the establishment of such pumping plant or plants, the board or boards must direct the engineer to investigate the advisability of the establishment thereof and upon the report of said engineer the board or boards shall determine whether such additional pumping plant or plants shall be established. [C24, 27, 31, 35, 39, §7653; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.3]

40ExGA, HF 185,§178, editorially divided

461.4 Transfer of pumps. If the board or boards determine that additional pumping plant or plants shall be established and maintained, a pump or pumps may be removed from any pumping station already established and may be installed in any such additional plant, if such removal can be made without injuring the efficient operation of the plant from which removed. [C24, 27, 31, 35, 39,§7654; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.4]

461.5 Costs.

1. The cost of the establishment of such additional pumping plant or plants shall be paid in the same manner and upon the same basis as is provided for the cost of the original improvement.

2. The board of supervisors or the board of trustees, as the case may be, where the district has been established and the original improvement constructed, may proceed with the further improvement of the original project in the manner provided in section 455.135, provided, however, that the cost of such further improvement does not exceed twenty-five percent of the sum of the original cost to the district and the cost of subsequent improvements, including all federal contributions.

For the purpose of this section the word "improvement" shall include the construction, reconstruction, enlargement and relocation of levees and acquisition of rights of way therefor. [C24, 27, 31, 35, 39,§7655; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.5]

461.6 Dividing districts. When a drainage district has been created and more than one pumping plant is established therein, the board or boards of supervisors may, and upon petition of one-third of the owners of land within said district shall, appoint an engineer to investigate the advisability of dividing said district into two or more districts so as to include at least one pumping plant in each of such districts. [C24, 27, 31, 35, 39,§7656; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.6]

40ExGA, HF 185,§179, editorially divided

461.7 Notice—publication. If the engineer recommends such division the board of supervisors shall fix a time for hearing upon the question of such division and shall publish notice directed to all whom it may concern of the time and place of such hearing, for the time and in the manner as is required for the publication of notice of the establishment of said district, except that said notice need not name the owners and lienholders. [C24, 27, 31, 35, 39,§7657; C46, 50, 54, 58, 62, 66, 71, 73, 75, §461.7]

461.8 Hearing—jurisdiction of divided districts. At the time fixed, the board shall determine the advisability of such division and shall make such order with reference thereto as shall be deemed proper, having consideration for the interests of all concerned. If such division is made, the board or boards having jurisdiction of the original district shall retain jurisdiction of the new districts created by such division for the purpose of collecting assessments theretofore made and making such additional assessments as are necessary to pay the obligations theretofore contracted. For all other purposes, each division shall be under the jurisdiction of the board or boards of supervisors which would have had jurisdiction thereof if originally established as an independent district. [C24, 27, 31, 35, 39,§7658; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.8]

461.9 Division in other cases. After a levee or drainage district operating a pumping plant shall have been established and the improvement constructed and accepted, if it shall become apparent that the lands can be more effectually drained, managed, or controlled by a division thereof, then the said board or boards, or trustees, may, and if the district is divided by a stream, they shall, divide the district. [C24, 27, 31, 35, 39,§7659; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.9]

461.10 Assessments not affected — maintenance tax. Each district after the division shall be conducted as though established originally as a district. Nothing herein shall affect the legality or collection of any assessments levied before the division; but the maintenance tax, if any, shall be divided in proportion to the amount paid in by each district. [C24, 27, 31, 35, 39,§7660; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.10]

461.11 Election and apportionment of trustees. If said district, before the division was made, was under the control and management of trustees, then each trustee shall continue to serve in the district in which he is situated, and other trustees shall be elected in each new district. The election for said new trustees shall be called by the old board of trustees in each district within ten days after said division is made and shall be conducted as provided for the election of trustees. [C24, 27, 31, 35, 39,§7661; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.11]

Election of trustees, ch 462

461.12 Settling basin—condemnation. If, before a district operating a pumping plant is completed and accepted, it appears that portions of the lands within said district are wet or nonproductive by reason of the floods or overflow waters from one or more streams

running into, through, or along said district and that said district or some other district of which such district shall have formed a part, shall have provided a settling basin to care for the said floods and overflow waters of said stream or watercourse, but no channel to said settling basin has been provided, said board or boards are hereby empowered to lease, buy, or condemn the necessary lands within or without the district for such channel. Proceedings to condemn shall be as provided for the exercise of the right of eminent domain. [C24, 27, 31, 35, 39,§7662; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.12]

Condemnation procedure, ch 472

461.13 Funding bonds. When the owners of ten percent of the land in a drainage or levee district having and operating a pumping station shall petition the board of supervisors to extend the time of payment of the taxes assessed against the lands within said district for a period not exceeding twenty years, under such rules and regulations as said board may direct, the interest on such assessments to be paid annually the same as other taxes levied against the property, not less than one-twentieth of the principal of said extended tax to be paid each year until the entire tax is paid, and the lien of such tax to continue until fully paid, the board of supervisors may settle, adjust, renew, or extend the legal indebtedness of such district as shown by the assessments levied against the lands therein whether evidenced by certificates, warrants, bonds, or judgments by refunding all such indebtedness and issuing coupon bonds therefor when such indebtedness amounts to one thousand dollars or upwards, but for no other purpose. [C24, 27, 31, 35, 39,§7663; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.13]

Referred to in §455.88
Refunding bonds, ch 463
Similar provision, §463.1

461.14 Form of bonds. Such bonds shall be issued in sums of not less than one hundred dollars or more than one thousand dollars each, running not more than twenty years, bearing interest not exceeding six percent per annum, payable annually or semiannually, and shall be substantially in the form provided by law for funding bonds issued for drainage purposes. [C24, 27, 31, 35, 39,§7664; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.14]

Form of bond, §455.82

461.15 Formal execution. Such bonds shall be numbered consecutively, signed by the chairman of the board of supervisors, attested by the county auditor. The interest coupons attached thereto shall be executed in the same manner. [C24, 27, 31, 35, 39,§7665; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.15]

461.16 Resolution—requisites—record. All bonds issued under the provisions of this chapter shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors, which shall specify the amount authorized to be issued, the purpose for which issued, the rate of interest they shall bear and whether payable annually or semiannually, the place where the principal and interest shall be payable and when it becomes due, and such other provisions not inconsistent with law in reference thereto as the board of supervisors shall think proper, which resolution shall be entered of record upon the minutes of the proceedings of the said board and a complete copy thereof printed on the back of each bond, which resolution shall constitute a contract between the drainage district and the purchasers or holders of said bonds. [C24, 27, 31, 35, 39,§7666; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.16]

461.17 Registration. When bonds have been executed as aforesaid they shall be delivered to the county treasurer and his receipt taken therefor. He shall register the same in a book provided for that purpose, which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of debt were received therefor, which record shall at all times be open to the inspection of the owners of property within the district. The treasurer shall thereupon certify on the back of each bond as follows:

"This bond duly and properly registered in my office this ..... day of ....., 19....

.....

Treasurer of the county of

....."

[C24, 27, 31, 35, 39,§7667; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.17]

40ExGA, HF 185,§184-a5, editorially divided

461.18 Liability of treasurer—reports. The treasurer shall stand charged on his official bond with all bonds so delivered to him and the proceeds thereof. He shall report under oath to the board of supervisors, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by him since his last report and the date of such sale or exchange and when exchanged a description of the indebtedness for which exchanged. [C24, 27, 31, 35, 39,§7668; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.18]

461.19 Sale — application of proceeds. He shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for a legal indebtedness of the said district evidenced by bonds, warrants, or judgments outstanding at the date of the passage of the resolution authorizing the issue thereof, and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued at the date of sale or exchange. After registration the treasurer shall deliver said bonds to the purchaser thereof and when exchanged for indebtedness of said district

shall at once cancel all warrants or bonds or secure proper credits therefor on judgments. [C24, 27, 31, 35, 39,§**7669**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.19]

461.20 Levy. Drainage districts issuing funding or refunding bonds under this chapter shall levy taxes for the payment of the principal and interest thereof, where there has not been a prior levy covering same, in accordance with the provisions of the law relating to taxation. [C24, 27, 31, 35, 39,§**7670**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.20]

461.21 Scope of Act. Refunding bonds for the purposes set out in this chapter may be issued to pay off and take up bonds issued in payment for drainage improvements under prior laws or to refund any part thereof. Bonds thus issued shall substantially conform to the provisions of the law relating to drainage bonds and the face amount thereof shall be limited to the amount of the unpaid assessments, with interest thereon, applicable to the payment of the bonds so taken up. [C24, 27, 31, 35, 39,§**7671**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §461.21]

461.22 Funds available to pay bonds. When refunding bonds shall be issued to pay for drainage improvements under the provisions of this chapter, all special assessments, taxes, and sinking funds applicable to the payment of such bonds previously issued shall be applicable in the same manner and the same extent to the payment of the refunding bonds issued hereunder, and all the powers and duties to levy and collect special assessments and taxes or create liens upon property shall continue until all refunding bonds shall be paid.

The drainage district shall collect the special assessments out of which the said bonds are payable and hold the same separate and apart in trust for the payment of said refunding bonds but the provisions of this chapter shall not apply to assessments or bonds adjudicated to be void. [C24, 27, 31, 35, 39,§**7672**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.22]

461.23 Limitation of actions. No action shall be brought questioning the validity of any of the bonds authorized by this chapter from and after three months from the time the same are ordered issued by the proper authorities. [C24, 27, 31, 35, 39,§**7673**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.23]

Similar provisions, §§463.23, 464.12

461.24 Bankruptcy proceedings. All drainage districts with pumping plant and levee, which have power to incur indebtedness, through action of their own governing bodies are hereby authorized to proceed under and take advantage of all laws enacted by the Congress of the United States under the federal bankruptcy powers, which laws have for their object the relief of municipal indebtedness, including 48 Stat. L. ch 345, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto", approved May 24, 1934, and the officials and governing bodies of such drainage, pumping plant and levee districts, are authorized to adopt all proceedings and to do any and all acts necessary or convenient to fully avail such drainage, pumping plant, and levee districts, of the provisions of such Acts of Congress. [C35,§7673-g1; C39,§**7673.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§461.24]

461.25 Chapter applicable to districts with pumping stations. The provisions of this chapter so far as applicable shall apply to all levee districts maintaining levees for the protection of any drainage district or districts having pumping stations. [C58, 62, 66, 71, 73, 75, §461.25]

461.26 Construction near levee prohibited. No person, firm or corporation shall hereafter erect, alter, or maintain any building or other structure, except necessary public utility structures, or construct, alter, or maintain any ditch, or remove any earth within three hundred feet of the center line of any levee maintained by a drainage or levee district with pumping stations without first securing permission to so do from the governing board of said drainage or levee district with pumping stations. Such permission may be granted at any regular meeting thereof, and after written application is made therefor upon the form prescribed by said governing board. [C62, 66, 71, 73, 75,§461.26]

461.27 Penalty. Every person who shall violate any provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of not more than one hundred dollars, and in default of payment thereof, by imprisonment in the county jail for not more than thirty days. [C62, 66, 71, 73, 75,§461.27]

461.28 Action to restrain or abate. In the event that any building or other structure, or any ditch is constructed, altered or maintained, or any earth removed in violation of any provisions of this chapter, the governing board of said drainage or levee district with pumping stations maintaining said levee, may institute an appropriate action or proceeding to prevent such unlawful construction, alteration, or maintenance, or earth removal and to restrain, correct, or abate such violation, and may by petition duly verified, setting forth the facts, apply to the district court for an order enjoining all persons, firms or corporations from such construction, alteration, maintenance, or earth removal, until the entry of the final judgment or order. [C62, 66, 71, 73, 75,§461.28]

461.29 Liability for damage. In addition to all other penalties contained herein, any person, firm or corporation who shall construct, alter or maintain any building, other structure, or any ditch, or remove earth, in violation of

this chapter, shall be liable to the drainage or levee district with pumping stations maintaining said levee, for all damage sustained by the drainage or levee district resulting from the violation, and in the event of flood, or other emergency so declared by resolution of the governing body, any building or other structure, or ditch so constructed without permission of the governing board, as required herein, and within three hundred feet of the center line of any levee, may be removed, or the ditch filled in, without prior notice thereof to the owner. [C62, 66, 71, 73, 75,§461.29]

CHAPTER 462

MANAGEMENT OF DRAINAGE OR LEVEE DISTRICTS BY TRUSTEES

Referred to in §§332.3, 455.22, 455.197(6), 455.215, 455.216, 455.217, 455.219, 466.8, 467C.6

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462.37 Petition—canvass.
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462.40 Final report of trustees.
462.41 Management by supervisors.

462.1 Trustees authorized. In the manner provided in this chapter, any drainage or levee district in which the original construction has been completed and paid for by bond issue or otherwise, may be placed under the control and management of a board of three trustees to be elected by the persons owning land in the district that has been assessed for benefits. [SS15,§§1989-a52a,-a61; C24, 27, 31, 35, 39,§7674; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.1]

462.2 Petition. A petition shall be filed in the office of the auditor signed by a majority of the persons including corporations owning land within the district assessed for benefits. [S13,§1989-a52b; SS15,§1989-a52a; C24, 27, 31, 35, 39,§7675; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.2]

40ExGA, HF 185,§186, editorially divided

462.3 Election. The board, at the next regular, adjourned, or special session shall canvass the petition and if signed by the requisite number of landowners, it shall order an election to be held at some convenient place in the district not less than forty nor more than sixty days from the date of such order, for the election of three trustees of such district. It shall appoint from the freeholders of the district who reside in the county or counties, three judges and two clerks of election. It shall not be mandatory for the county commissioner of elections to conduct elections held pursuant to this chapter, but they shall be conducted in accordance with the provisions of chapter 49 where not in conflict with this chapter. [S13,§1989-a52b; SS15, §1989-a63; C24, 27, 31, 35, 39,§7676; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.3]

Referred to in §462.4

462.4 Intercounty district. If the district extends into two or more counties, a duplicate of the petition shall be filed in the office of the auditor of each county. The boards of supervisors shall, within thirty days after the filing of such petition, meet in joint session and canvass the same, and if found to be signed by a majority of the owners of land in the district assessed for benefits, they shall by joint action order such election and appoint judges and clerks of election as provided in section 462.3. [S13,§1989-a52b; SS15,§1989-a62-a63; C24, 27, 31, 35, 39,§7677; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.4]

462.5 Election districts. When a petition has been filed for the election of trustees to manage a district containing three thousand acres or more, the board, or, if the district extends into more than one county, the boards

of such counties by joint action, shall, before the election, divide the district into three election districts for the purpose of securing a proper distribution of trustees in such district, and such division shall be so made that each election district will have substantially equal voting power and acreage, as nearly as may be. After such division is made there shall be elected one trustee for each of said election districts, but at such election all the qualified voters for the entire district shall be entitled to vote for each trustee. The division here provided for shall be for the purposes only of a proper distribution of trustees in the district and shall not otherwise affect said district or its management and control. [C24, 27, 31, 35, 39,§**7678**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.5]

Referred to in §462.6

462.6 Record and plat of election districts. At the time of making a division into election districts, as provided in section 462.5, the board or boards shall designate by congressional divisions, subdivisions, metes and bounds, or other intelligible description, the lands embraced in each election district, and the auditor, or auditors if more than one county shall make a plat thereof in the drainage record of the district indicating thereon the boundary lines of each election district, numbering them, one, two, and three, respectively. [C24, 27, 31, 35, 39,§**7679**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §462.6]

462.7 Eligibility of trustees. Each trustee shall be a citizen of the United States not less than eighteen years of age, a resident of the county, and the bona fide owner of agricultural land in the election district for which he is elected. [C24, 27, 31, 35, 39,§**7680**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.7]

462.8 Notice of election. The board, or, if in more than one county, the boards acting jointly, shall cause notice of said election to be given, setting forth the time and place of holding the same and the hours when the polls will open and close. Such notice shall be published for two consecutive weeks in a newspaper in which the official proceedings of the board are published in the county, or if the district extends into more than one county, then in such newspaper of each county. The last of such publications shall not be less than ten days before the date of said election. [S13, §1989-a52b; SS15,§1989-a63; C24, 27, 31, 35, 39, §**7681**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.8]

462.9 Assessment to determine right to vote. Before any election is held, the election board shall obtain from the county auditor or auditors a certified copy of so much of the record of the establishment of such district as will show the lands embraced therein, the assessment and classification of each tract, and the name of the person against whom the same was assessed for benefits, and the present record owner, and such certified record shall be kept by the trustees after they are elected, for use in subsequent elections. They shall, preceding each subsequent election, procure from the county auditor or auditors additional certificates showing changes of title of land assessed for benefits and the names of the new owners. [SS15,§1989-a75; C24, 27, 31, 35, 39, §**7682**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.9]

462.10 New owner entitled to vote. Anyone who has acquired ownership of assessed lands since the latest certificate from the auditor shall be entitled to vote at any election if he presents to the election board for its inspection at the time he demands the right to vote evidence showing that he has title. [SS15, §1989-a75; C24, 27, 31, 35, 39,§**7683**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.10]

462.11 Qualifications of voters. Each landowner eighteen years of age or over without regard to sex and any railway or other corporation owning land in said district assessed for benefits shall be entitled to one vote only, except as provided in section 462.12. [SS15, §1989-a73; C24, 27, 31, 35, 39,§**7684**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.11]

462.12 Votes determined by assessment. 1. When a petition asking for the right to vote in proportion to assessment of benefits at all elections for any purpose thereafter to be held within said district, signed by a majority of the landowners owning land within said district assessed for benefits, is filed with the board of trustees, then, in all elections of trustees thereafter held within said district, any person whose land is assessed for benefits without regard to age, sex, or condition shall be entitled to one vote for each ten dollars or fraction thereof of the original assessment under the current classification against the land actually owned by him in said district at the time of the election, but in order to have such ballot counted for more than one vote the voter shall write his name upon the ballot. The vote of any landowner of the district may be cast by absent voters ballot as provided in chapter 53 except that the form of the applications for ballots, the voters' affidavits on the envelopes, and the endorsement of the carrier envelope for preserving the ballot shall be substantially in the form provided in subsections 2, 3 and 4, below. Application blanks, envelopes and ballots shall be provided by and submitted to the office of the county auditor in which the election is held. The cost of such blanks, envelopes, ballots and postage shall be paid by the district. For the purpose of this chapter all landowners of the district shall be considered qualified voters, regardless of their place of residence.

2. For the purpose of this chapter, applications for ballots shall be made on blanks substantially in the following form:

Application for ballot to be voted at the ..... District Election on
(Name of District)
.....
(Date)
State of ..... }
.....County }ss.

I, ..., do solemnly swear
(Applicant)
that I am a landowner in the .....
(Name of District)
District and that I am a duly qualified voter entitled to vote in said election, and that on account of .....
(business, illness, residence outside of the county, etc.)
I cannot be at the polls on election day, and I hereby make application for an official ballot or ballots to be voted by me at such election, and that I will return said ballot or ballots to the officer issuing same before the day of said election.

Signed.....

Date .....
Residence (street number if any) .....
City ..... State .....

Subscribed and sworn to before me this.....
day of ....., A.D. 19.....

3. For the purpose of this chapter, the affidavit on the reverse side of the envelopes used for enclosing the marked ballots shall be substantially as follows:

State of..... }
.....County } ss.

I, ..., do solemnly swear
(Applicant)
that I am a landowner in the .....
(Name of District)
District and that I am a duly qualified voter to vote in the election of trustees of said district and that I shall be prevented from attending the polls on the day of election because of .....
(business, illness, residence outside of the county, etc.)
and that I have marked the enclosed ballot in secret.

Signed.....

Subscribed and sworn to before me this ....
day of ....., A.D. 19...., and that I hereby certify that the affiant exhibited the enclosed ballot to me unmarked; that he then in my presence and in the presence of no other person and in such manner that I could not see his vote, marked such ballot, enclosed and sealed the same in this envelope; and that the affiant was not solicited or advertised by me for or against any candidate or measure.

.....
.....
(Official Title)

4. For the purposes of this chapter, upon receipt of the ballot, the auditor shall at once enclose the same, unopened, together with the application made by the voter in a large carrier envelope, securely seal the same, and endorse thereon over his official signature, the following:

a. Name of the district in which the voter is a landowner.

b. Date of the election for which the ballot is cast.

c. Location of the polling place at which the ballot would be legally and properly cast if voted in person.

d. Names of the judges of the election of that polling place, and the statement that this envelope contains an absent voters ballot and must be opened only at the polls on election day while said polls are open. [SS15,§1989-a73; C24, 27, 31, 35, 39,§**7685**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.12]

Referred to in §§462.11, 462.13

462.13 Vote by agent. Except where the provisions of section 462.12, providing for vote in proportion to assessment are invoked, any person or corporation owning land or right of way within the district and assessed for benefits may have his or its vote cast by his or its agent or proxy authorized to cast such vote by a power of attorney signed and acknowledged by such person or corporation, and filed before such vote is cast in the auditor's office of the county in which such election is held. Every such power of attorney shall specify the particular election for which it is to be used, indicating the day, month, and year of such election, and shall be void for all elections subsequently held. The vote of the owner of any land in a drainage or levee district in any election, where the vote is not determined by assessment, may be cast by absent voters ballot in the same manner and form and subject to the same rights and restrictions as is provided in section 462.12 relating to vote by absentee ballot when votes are determined by assessment. [SS15,§1989-a73; C24, 27, 31, 35, 39,§**7686**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.13]

462.14 Vote of minor or mentally ill. The vote of any person who is a minor, mentally ill, or under other legal incompetency shall be cast by the parent, guardian, or other legal representative of such minor, mentally ill, or other incompetent person. The person casting such vote shall deliver to the judges and clerks of election a written sworn statement giving the name, age, and place of residence of such minor, mentally ill, or other incompetent person, and any false statement knowingly made to secure permission to cast such vote shall render the party so making it guilty of the crime of perjury. [C24, 27, 31, 35, 39,§**7687**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.14]

Perjury, punishment, §721.1

462.15 Ballots—petition for printed ballots. Candidates for drainage district trustee shall have their names placed on printed ballots provided a petition therefor is signed by ten qualified electors of the district and filed with the clerk of the board at least fourteen days before the election. Space shall also be provided on the ballot for write-in votes. [C24, 27, 31, 35, 39,§**7688**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §462.15]

40ExGA, HF 185,§198, editorially divided

462.16 Candidates voted for. Each qualified voter for the whole district shall be entitled

to vote for one candidate for each district for which a trustee is to be elected. [C24, 27, 31, 35, 39,§**7689**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §462.16]

462.17 Election—canvass of votes—returns. On the day designated for said election the polls shall open at one o'clock p.m. and remain open until five o'clock p.m. If no convenient polling place is to be found within the district, the election may be held at some convenient place outside the district. The judges of election shall canvass the vote and certify the result, and deposit with the auditor the ballots cast, together with the pollbooks showing the names of the voters; but if there is more than one county in the district, the returns shall be filed with the auditor of the county having the greatest acreage of said district. [S13,§1989-a52c; SS15,§1989-a64; C24, 27, 31, 35, 39,§**7690**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §462.17]

462.18 Canvass — certificates of election. The canvass of the returns by the board or boards of supervisors shall be on the next Monday following said election and it or they shall make a return of the results of such canvass to the auditor, who shall issue certificates to the trustees elected, and when the district extends into more than one county, then the auditor with whom the election returns were filed shall issue such certificates. [S13,§1989-a52c; SS15,§1989-a64; C24, 27, 31, 35, 39,§**7691**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.18]

462.19 Tenure of office. The trustees so elected shall hold office until the fourth Saturday in January next succeeding their election and until their successors are elected and qualify. On the third Saturday in the January next succeeding their original election, an election shall be held at which three trustees shall be chosen, one for one year, one for two years, and one for three years, and each shall qualify and enter upon the duties of his office on the fourth Saturday of the same January. On the third Saturday in each succeeding January, an election shall be held to choose a successor to the trustee whose term is about to expire, and the term of his office shall be for three years and until his successor has qualified. [SS15, §§1989-a52d,-a65–a67; C24, 27, 31, 35, 39,§**7692**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.19]

462.20 Levee and pumping station districts. The presently acting de facto members of the boards of trustees of drainage or levee districts having pumping stations are hereby declared to be the legally constituted members of such boards; the terms of such present trustees shall expire on the fourth Saturday of January, 1958, 1959 and 1960 respectively and the length of the term of each present trustee shall be determined by lot at a meeting to be held on the third Saturday of August, 1957. Thereafter, in levee and drainage districts having pumping stations trustees shall hold office until the fourth Saturday in January three years after election. At an election to be held on the third Saturday in January, 1958 and on the third Saturday in January of each year thereafter a trustee shall be elected for a term of three years to succeed the member of the board whose term will expire on the following Saturday. At such election there shall also be elected, if necessary, a trustee or trustees to fill any vacancy or vacancies which may have occurred before such election. [S13, §1989-a52e; SS15,§1989-a52d; C24, 27, 31, 35, 39, §**7693**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.20]

462.21 Division of districts under trustees. In all districts already under trustee management, the board of trustees shall, prior to the election of trustees in the year 1925, divide the district for which they are trustees, into election districts, and at the election for that and each succeeding year, when a trustee is to be elected, it shall be for a specified election district within such district. [C24, 27, 31, 35, 39,§**7694**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §462.21]

462.22 Elections — how conducted. After the first election of trustees, the trustees shall act as judges of election; the clerk of the board shall act as one of the clerks; and some owner of land in the district shall be appointed by the board to act as another clerk. The trustees shall fill all vacancies in the election board. The result of each election shall be certified to the auditor or the several county auditors if the district is located in more than one county. [SS15,§1989-a69; C24, 27, 31, 35, 39,§**7695**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.22]

462.23 Change of time. The date on which said annual election shall be held may be changed by the choice of a majority of electors of such district expressed by ballot at any such annual election, and the return of such vote shall be certified in the same manner as the returns for election of trustees. [S13,§1989-a52e; C24, 27, 31, 35, 39,§**7696**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.23]

462.24 Vacancies. If any vacancy occurs in the membership of the board of trustees between the annual elections, the remaining members of the board shall have power to fill such vacancies by appointment of persons having the same qualifications as themselves. The persons so appointed shall qualify in the same manner and hold office until the next annual election when their successors shall be elected. In the event that all places on the board become vacant, then a new board shall be appointed by the auditor, or if more than one county, then by the auditor of the county in which the greater acreage of the district is located. The persons so appointed shall hold office until the next annual election and until their successors are elected and qualify. [SS15,§1989-a68; C24, 27, 31, 35, 39,§**7697**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.24]

462.25 Bonds. The trustees shall qualify by giving a bond in the sum of not less than one thousand dollars or more than five thousand dollars each, conditioned for the faithful discharge of their duties, said bond to be fixed and approved by the auditor of the county, and if more than one, then of the county in which the greater acreage of the district is located. [SS15,§§1989-a52f,-a71; C24, 27, 31, 35, 39,§**7698**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.25]

462.26 Organization. As soon as the trustees have qualified, they shall organize by electing one of their own number as chairman and may select some other competent person as clerk of the board who shall serve during the pleasure of the board of trustees. [SS15,§1989-a70; C24, 27, 31, 35, 39,§**7699**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.26]

462.27 Powers and duties of trustees. Trustees shall have control, supervision, and management of the district for which they are elected and shall be clothed with all of the powers now conferred on the board or boards of supervisors for the control, management, and supervision of drainage and levee districts under the laws of the state, including the power to acquire lands by conveyance, lease, or by the exercise of the power of eminent domain as provided for in chapter 472 for right of way for levees, ditches and settling basins within or without the district and to annex lands to the district, except as provided in section 462.28. Such authority shall extend only to the district for which they are elected. [SS15,§§1989-a52f,-a71; C24, 27, 31, 35, 39,§**7700**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.27]

462.28 Costs and expenses. All costs and expenses necessary to discharge the duties by this chapter conferred upon trustees shall be levied and collected as provided by law and such levy shall be upon certificate by the trustees to the board or boards of supervisors of the amount necessary for such levy. [SS15,§§1989-a52f,-a71; C24, 27, 31, 35, 39,§**7701**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.28]

Referred to in §§455.217, 462.27
40ExGA, HF 185,§209, editorially divided

462.29 Disbursement of funds. Drainage and levee taxes when so levied and collected shall be kept by the treasurer of the county in a separate fund to the credit of the district for which it is collected, shall be expended only upon the orders of trustees, signed by the president of the board, upon which warrants shall be drawn by the auditor upon the treasurer. [SS15,§1989-a52f; C24, 27, 31, 35, 39, §**7702**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.29]

Referred to in §455.61

462.30 Certificates and bonds. The board of trustees of any district shall have the same power to issue improvement certificates and levee and drainage bonds under the same conditions and with like tenor and effect as is provided by chapter 455 for such issuance by the board of supervisors, except that in case of the issue of levee or drainage bonds, the same shall be approved by a judge of the district court in and for the county or counties in which such district lies, which approval shall be printed upon such bonds before the same are negotiated. [SS15,§1989-a52f; C24, 27, 31, 35, 39,§**7703**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.30]

462.31 to 462.33 Repealed by 53GA, ch 205, §§4, 5.

462.34 Report to auditor. Such trustees shall, from time to time, and with reasonable promptness, furnish the auditor of each county in which any part of said district is situated, with a correct report of their acts and proceedings, which report shall be signed by the chairman and the clerk of the board and shall be recorded by the auditor in the drainage record, and shall be published in one official paper in the county having a general circulation in the district. [S13,§1989-a52g; SS15, §1989-a72; C24, 27, 31, 35, 39,§**7707**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.34]

462.35 Compensation—statements required. The compensation of the trustees and the clerk of the board is hereby fixed at seventeen dollars and fifty cents per day and necessary expenses, to be paid out of the funds of the drainage or levee district for each day necessarily expended in the transaction of the business of the district, but no one shall draw compensation for services as trustee and as clerk at the same time. They shall file with the auditor or auditors, if more than one county, itemized, verified statements of their time devoted to the business of the district and of the expenses incurred. [SS15,§§1989-a52f,-a74; C24, 27, 31, 35, 39,§**7708**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.35]

462.36 Change to supervisor management. Any district which has been placed under the management of trustees may be placed back under the management of the board or boards of supervisors in the manner provided in section 462.37. [C24, 27, 31, 35, 39,§**7709**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.36]

462.37 Petition — canvass. For such purposes a petition signed by a majority of persons, including corporations, owning land within the district assessed for benefits and who in the aggregate own more than one-half the acreage of such lands, may be filed in the office of the auditor and if more than one county, then a duplicate shall be filed in the office of the auditor of each county.

The trustees shall fix a date not less than ten nor more than thirty days from the date such petition is filed for the canvass of such petition, and the trustees and auditor or auditors shall canvass said petition and certify and record in the drainage record the result. [C24, 27, 31, 35, 39,§**7710**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.37]

Referred to in §462.36

462.38 Remonstrance. Remonstrances signed by the same persons who are qualified to sign the petition may be filed in the office of the auditor and if the same persons petition and remonstrate they shall be counted on the remonstrance only. Such remonstrances shall be filed not less than five days before the time set for hearing. [C24, 27, 31, 35, 39,§**7711**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.38]

462.39 When change effective. If the result of the canvass shows a majority in favor of such change, then it shall become effectual on the date at which the next annual election of trustees would be held, and on such date the trustees shall surrender and turn over to the board or boards of supervisors the full and complete management and control of such district, together with all books, contracts, and other documents relating thereto. [C24, 27, 31, 35, 39,§**7712**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.39]

462.40 Final report of trustees. On or before the date such change becomes effective, the said trustees shall make and file with the auditor, or if more than one county, a duplicate with each auditor, a final report setting forth:

1. The amount of cash funds on hand or to the credit of the district.

2. The amount of outstanding indebtedness of the district, and the form thereof, whether in warrants, improvement certificates, or bonds and the amount of each.

3. Any outstanding contracts for repairs or other work to be done.

4. A statement showing the condition of the improvements of the district, and specifying any portion thereof in need of repair. [C24, 27, 31, 35, 39,§**7713**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.40]

462.41 Management by supervisors. After such change is made it shall be the duty of the board or boards of supervisors to manage and control the affairs of said district as fully and to the same extent as if it had never been under trustee management. They shall carry out any pending contracts lawfully made by the trustees as fully as if made by the board. [C24, 27, 31, 35, 39,§**7714**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§462.41]

CHAPTER 463

DRAINAGE REFUNDING BONDS

Referred to in §§455.215, 455.219, 467C.6
Additional provision, §455.88

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463.1 Refunding bonds. The board of supervisors of any county may extend the time of the payment of any of its outstanding drainage bonds issued in anticipation of the collection of drainage assessments levied upon property within a drainage district, and may extend the time of payment of any unpaid assessment, or any installment or installments thereof, and may renew or extend the time of payment of such legal bonded indebtedness, or any part thereof, for account of such drainage district, and may refund the same and issue drainage refunding bonds therefor subject to the limitation and in the manner hereinafter provided. [C27, 31, 35,§7714-b1; C39,§**7714.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §463.1]

Similar provision, §461.13

463.2 Petition for refunding. Before the time of payment of said assessments or any installment or installments thereof shall be extended and before the board shall institute proceedings for the issuance of drainage refunding bonds, the owners of not less than fifteen percent of the land within a drainage

district as shown by the transfer books in the auditor's office upon which drainage assessments are unpaid, shall file a petition with the board requesting the extension of the time of payment of assessments levied in said drainage district or of any installment or installments thereof, setting forth the date said assessments to be extended were levied, the aggregate amount thereof unpaid, and requesting the issuance of drainage refunding bonds, stating the amount and purpose of said bonds. [C27, 31, 35,§7714-b2; C39,**§7714.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.2]

463.3 Sufficiency of petition—hearing. Upon the receipt of any such petition the board shall, at the next regular meeting or regular adjourned meeting, determine the sufficiency thereof and fix a date of meeting of the board at which it is proposed to extend the time of payment of said unpaid assessments and to take action for the issuance of drainage refunding bonds. [C27, 31, 35,§7714-b3; C39, **§7714.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.3]

463.4 Notice. The board shall give ten days' notice of said meeting as required in relation to the issuance of bonds under chapter 23. [C27, 31, 35,§7714-b4; C39,**§7714.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.4]

Referred to in §463.28

463.5 Requirements of notice. Said notice shall be directed to each person whose name appears upon the transfer books in the auditor's office as owner of lands within said drainage district upon which said drainage assessments are unpaid, naming him, and also to the person or persons in actual occupancy of any of said tracts of land without naming them, and shall state the amount of unpaid assessments upon each forty-acre tract of land or less, and that all of said unpaid assessments, installment or installments thereof as proposed to be extended, may be paid in cash on or before the time fixed for said hearing, and that after the expiration of such time no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issuance of said drainage refunding bonds. [C27, 31, 35,§7714-b5; C39,**§7714.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.5]

Referred to in §463.28

463.6 Extending payment of assessments. In case no appeal is taken to the issuance of said bonds as provided by chapter 23, the board may extend the time of payment of said unpaid assessment or any installment or installments thereof as requested in the petition and may issue drainage refunding bonds, or, in case of an appeal, the board may issue such bonds in accordance with the decision of the state comptroller provided said assessments, installment or installments thereof have not been entered on the delinquent tax lists and have not been previously extended. [C27, 31, 35,§7714-b6; C39,**§7714.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.6]

Referred to in §463.28

463.7 Appeal. Any person aggrieved by the final action of the board extending the time of payment of said unpaid assessment, installment or installments thereof may appeal therefrom to the district court of the county in which such action was taken. [C27, 31, 35,§7714-b7; C39,**§7714.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.7]

463.8 Time and manner of appeal. All appeals shall be taken in the manner provided in section 455.94 except that said appeal shall be taken within ten days after the date of the final action of the board. [C27, 31, 35, §7714-b8; C39,**§7714.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.8]

463.9 Maximum extension. The unpaid assessments against said lands within said drainage district shall not be extended for a period exceeding forty years from the time any assessment, installment or installments thereof to be extended become due. The board shall fix the amount that shall be levied and collected each year and may issue drainage refunding bonds covering all said unpaid assessments. [C27, 31, 35,§7714-b9; C39,**§7714.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.9]

463.10 Form of bonds. Drainage refunding bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars, each, running not more than forty years, bearing interest not exceeding six percent per annum, payable semiannually, and shall be substantially in the form provided by law relating to drainage bonds, with such changes as shall be necessary to conform with this chapter. [C27, 31, 35, §7714-b10; C39,**§7714.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.10]

463.11 Numbering, signing and attestation. Said bonds shall be numbered consecutively, signed by the chairman of the board and attested by the county auditor with the seal of the county affixed. The interest coupons attached thereto shall be executed by the county auditor. [C27, 31, 35,§7714-b11; C39,**§7714.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.11]

463.12 Resolution required. All bonds issued under the provisions of this chapter shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors which shall specify the amount of unpaid assessments to be extended, the times when the installment or installments of extended assessments shall become due, the amount of drainage refunding bonds authorized to be issued, the purpose for which issued, the rate of interest they shall bear, the place where the principal and interest shall be payable and the time or times when they shall become due, and such other provisions not inconsistent with law in reference thereto,

as the board shall deem proper. [C27, 31, 35, §7714-b12; C39,§**7714.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.12]

463.13 Record of resolution. Said resolution shall be entered of record upon the minutes of proceedings of said board and shall constitute a contract between the drainage district and the purchasers or holders of said bonds and shall be full authority for the revision of the tax rolls to accord therewith. [C27, 31, 35,§7714-b13; C39,§**7714.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.13]

463.14 Record of bonds. When the bonds have been executed as aforesaid they shall be delivered to the county treasurer and his receipt taken therefor. He shall register said bonds in a book provided for that purpose which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of indebtedness were received therefor, which record shall at all times be open to the inspection of the owners of property within said drainage district. The treasurer shall thereupon certify on the back of each bond as follows:

"This bond duly and properly registered in my office this ..... day of ....., 19....

.....

Treasurer of the County of ....."

[C27, 31, 35,§7714-b14; C39,§**7714.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.14]

463.15 Liability of treasurer—reports. The treasurer shall stand charged on his official bond with all bonds so delivered to him and the proceeds thereof. He shall report under oath to the board, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by him since his last report and the date of such sale or exchange and when exchanged a description of the indebtedness for which exchanged. [C27, 31, 35,§7714-b15; C39,§**7714.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.15]

463.16 Sale, exchange and cancellation. He shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for the legal indebtedness of the said drainage district evidenced by the outstanding drainage bonds, authorized to be refunded by the resolution authorizing the issue of said refunding bonds, and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued. After registration the treasurer shall deliver said refunding bonds to the purchaser thereof and when exchanged for said bonded indebtedness of said district, shall at once cancel a like amount of said drainage bonds. [C27, 31, 35, §7714-b16; C39,§**7714.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.16]

463.17 Redemption from tax sale. In case any land within such drainage district shall have been sold at tax sale for failure of the owner thereof to pay any drainage assessments levied thereon, and before any tax deed has been issued, then on application of the owner of such land, the board of supervisors may effect a redemption thereof for such owner out of the proceeds of any refunding bond issue and add the cost of such redemption to the amount of the unpaid assessments against such land, payment thereof to be extended in manner and as a part of the remaining unpaid assessments thereon. [C35,§7714-f1; C39, §**7714.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.17]

463.18 Effect of extension. The extension of the time of payment of any unpaid assessments or installment or installments thereof, in the manner aforesaid shall in no way impair the lien of said assessments as originally levied or the priority thereof, nor the right, duty, and power of the officers authorized by law to levy, collect, and apply the proceeds thereof to the payment of said drainage refunding bonds. [C27, 31, 35,§7714-b17; C39,§**7714.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.18]

463.19 Additional assessments. If said assessments should for any reason be insufficient to meet the interest and principal of said drainage refunding bonds additional assessments shall be made to provide for such deficiency. [C27, 31, 35,§7714-b18; C39,§**7714.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.19]

463.20 Applicability of funds. All special assessments, taxes, and sinking funds applicable to the payment of the indebtedness refunded by said drainage bonds shall be applicable in the same manner and to the same extent to the payment of such refunding bonds issued hereunder, and the powers, rights, and duties to levy and collect special assessments or taxes, or create liens upon property shall continue until all refunding bonds shall be paid. [C27, 31, 35,§7714-b19; C39,§**7714.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.20]

463.21 Trust fund. The special assessments out of which said bonds are payable shall be collected and held separate and apart in trust for the payment of said refunding bonds. [C27, 31, 35,§7714-b20; C39,§**7714.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.21]

463.22 Liens unimpaired. When drainage refunding bonds are issued hereunder, nothing in this chapter shall be construed as impairing the lien of any unpaid drainage assessments or installments in such drainage district, the time of payment of which is not extended, nor shall this chapter be construed as impairing the priority of the lien thereof nor the right, duty, and power of the officers authorized by law to levy, collect, and apply the proceeds thereof to the payment of outstanding drainage bonds issued in anticipation of the collection thereof. [C27, 31, 35,§7714-b21;

C39,§7714.22; C46, 50, 54, 58, 62, 66, 71, 73, 75, §463.22]

463.23 Limitation of action. No action shall be brought questioning the validity of any of the bonds authorized by this chapter from and after three months from the time the same are ordered issued by the proper authorities. [C27, 31, 35,§7714-b22; C39,§7714.23; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.23]

Similar provisions, §§461.23, 464.12

463.24 Void bonds or assessments. The provisions of this chapter shall not apply to bonds or assessments adjudicated to be void. [C27, 31, 35,§7714-b23; C39,§7714.24; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.24]

463.25 Interpretative clause. This chapter shall be construed as granting additional power without limiting the power already existing for the extension of the time of payment of drainage assessments and the issuance of drainage bonds. [C27, 31, 35,§7714-b24; C39, §7714.25; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.25]

463.26 Composition with creditors—federal loans. For the purpose of refinancing, adjusting, composing and refunding in such adjusted amount the indebtedness of any drainage districts or levee districts, found to be in financial distress, the governing body thereof, or board of supervisors as the case may be, upon its own motion, is authorized to enter into agreements with the creditors of said district, for the reduction and composition of its outstanding indebtedness, and to make application for and negotiate with the Reconstruction Finance Corporation, or any other loaning agency, for the borrowing of funds for such purposes. [C35,§7714-g1; C39,§7714.26; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.26]

463.27 Refinancing powers. In order to effect such loan, the governing body of such district, or board of supervisors, is authorized to execute such agreements and contracts, and to fulfill such requirements of the loaning agency as are not inconsistent with this chapter; and to issue, and pledge or sell such bonds at their face value to the said Reconstruction Finance Corporation, or other loaning agency, furnishing the funds for such debt readjustment, in the amount required for such adjustment.

The governing body, or board of supervisors, shall also have the authority as a part of such plan of refinancing, adjusting, composing, and refunding its indebtedness, to cancel the old assessments collectible against the land within the district, pledged to the payment of its outstanding indebtedness and proportionately and equitably relevy the same, with interest, over the period covered by the new bonds, in an amount sufficient to pay said new bonds and interest thereon, provided, however, that the new assessments thereby created against any tract of land within the district shall not be in excess of the unpaid assessments against such tract before the readjustment or composition is made, and provided further, that such new and extended assessment against such tract shall fully replace the old assessment. [C35,§7714-g2; C39, §7714.27; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.27]

463.28 Report and hearing—appeal. At the direction of the governing board of such district, or board of supervisors, the county auditor of the county within which the land on which the indebtedness is being adjusted is situated, shall compile a tabulated report as to the lands within the said district, setting forth:

1. The name of the owner of each assessed tract as shown by the transfer books in his office.

2. The amount of the unpaid old assessments against each of said tracts.

3. The amount of the new assessment required to pay the new bonds to be issued, together with the installments to be paid thereon annually of principal and interest, and the maximum period of time over which such assessments shall be paid.

After such report is tabulated and filed, a hearing upon the contemplated action of the governing body of such district, or board of supervisors, to make the proposed adjustment, composition, renewal and refunding in such adjusted amount of its outstanding indebtedness, together with the issuance of bonds and the levying of assessments therefor, shall be had in the manner and upon the same notice as is prescribed in sections 463.4 to 463.6 and appeal may be made therefrom as provided in this chapter. [C35,§7714-g3; C39,§7714.28; C46, 50, 54, 58, 62, 66, 71, 73, 75,§463.28]

CHAPTER 464

DEFAULTED DRAINAGE BONDS

Referred to in §§455.215, 455.219, 467C.6

464.1 Extension of payment—application.
464.2 Petition.
464.3 Hearing.
464.4 Parties—notice—service.
464.5 Jurisdiction of court.
464.6 Conservator appointed.
464.7 Report—hearing thereon.
464.8 Adjudication on report.
464.9 Refunding bonds.
464.10 Lien.
464.11 Trustees as parties.
464.12 Limitation of action.

464.1 Extension of payment — application. When drainage district bonds have been issued in anticipation of the collection of drainage district assessments levied on real estate within such drainage district are in default, either for failure to pay principal installments or accrued interest thereon, and funds are not on hand within thirty days after such default, ten owners of real estate in such district or the owners of not less than ten percent in amount of the outstanding drainage bonds of such district may make application to the district court of the county wherein said drainage district is located, asking for an extension of time of payment, and a reamortization of the assessments on the real estate within such drainage district, which was in default, and a new schedule of payments of the bonds and other indebtedness, and the issuance of new bonds as provided by this chapter. [C35,§7714-f2; C39,§**7714.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§464.1]

Referred to in §464.2

464.2 Petition. Ten owners of real estate in such district, or the owners of not less than ten percent in amount of the outstanding drainage bonds of such drainage district, may institute proceedings in the district court of the county issuing such bonds wherein the drainage district is located, by filing a petition which shall set forth the names and addresses of the ten petitioning real estate owners or the names and addresses of the petitioning owners of ten percent in amount of the drainage bonds of said district, that said bonds are in default as defined in section 464.1, that the petitioners have good reason to believe that said default cannot, or will not, be removed by payment under the present schedule of said district, and asking that the matters herein presented be reviewed by the court, and determined as provided by this chapter. [C35, §7714-f3; C39,§**7714.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§464.2]

464.3 Hearing. On the filing of such petition the court shall enter an order fixing the date for hearing, which date shall be at least four weeks subsequent to the date of the filing of the order. [C35,§7714-f4; C39,§**7714.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§464.3]

464.4 Parties—notice—service. The board of supervisors of such county or counties wherein the drainage district is located, shall be notified of the proceeding and hearing by original notice served in the same manner as in civil actions; notice of said hearing shall be served upon all owners of each tract of land or lot within such drainage district, as shown by the transfer books in the county auditor's office, upon each lienholder or encumbrancer of any land within the said drainage district as shown by the county records, and upon all persons holding claims against said drainage district, as shown by the county records, and also upon all other persons whom it may concern, including bondholders and actual occupants of the land within said drainage district, without naming individuals, by publication thereof, once each week for two consecutive weeks, in some newspaper of general circulation in the county or counties where said drainage district is located, the last of which publications shall be not less than twenty days prior to the date set for hearing on the said petition and a copy of such notice shall also be sent by ordinary mail to his last known address unless there is on file an affidavit of one of the petitioners or his attorney stating that no mailing address is known and that diligent inquiry has been made to ascertain it. Such copy of notice shall be mailed not less than twenty days prior to the date set for hearing. Proof of publication and mailing shall be by affidavit and shall be included in the records of the proceedings. [C35,§7714-f5; C39,§**7714.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §464.4]

Service of original notice, R.C.P. 48, 50, and 53 et seq.

464.5 Jurisdiction of court. The district court shall have jurisdiction and power to adjudicate all the rights and issues between the drainage district, and the landowners, bondholders, lienholders, encumbrancers, claimants and creditors of the drainage district, and in determining the rights of the parties, shall take into consideration, the maturity of the bonds, the interest rate of the bonds, the present schedule and classification of assessments on the real estate, the ratio between the amount in default, and the amount of unpaid assessments in the drainage district, the gross amount needed to retire the bonds now outstanding and in default, the current retirement schedule on other indebtedness of the drainage district, the general tax structure of the drainage district, the unpaid taxes in the drainage district, the default by the drainage district in the payment of its bonded indebtedness, and the current financial condition of the taxpayers. [C35,§7714-f6; C39,§**7714.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§464.5]

464.6 Conservator appointed. If the court finds that the necessary parties have instituted the proceedings, and that all necessary parties have been properly served with notice, and the order of the court, and that the drainage district is in default in the payment of its installment assessments, or the interest thereon, the court shall enter an order appointing the county auditor of the county in which such drainage district is located, or if such drainage district is located in more than one county, the county auditor of the county wherein the greater portion of the lands within said drainage district are located, receiver for the said drainage district, said receiver being hereafter called "conservator", and the said conservator shall be under the court's direction. The conservator shall be allowed such compensation as may be determined by the court, and said conservator may employ, under the direction and approval of the court,

an attorney, and such assistants as may be necessary to perform the duties required by him under the law, and orders of court. [C35, §7714-f7; C39,§**7714.34**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§464.6]

464.7 Report—hearing thereon. The conservator shall, within thirty days from the date of his appointment, prepare and file with the clerk of the district court, a full report, giving in detail, the bonded indebtedness of said drainage district, the accrued interest thereon, and any and all other indebtedness owing by said drainage district; a full and complete schedule of all lands sold at tax sale, including the amount of drainage assessments thereon; a list of all real estate within the drainage district, showing the unpaid assessments thereon; also said conservator shall set forth a schedule, under which the bonded indebtedness of said drainage district may be reamortized; also a schedule under which all other indebtedness of said drainage district may be paid or reamortized. Upon the filing of the report by the conservator, the court shall set a date for hearing thereon, which date shall not be less than ten or more than fifteen days, from the filing thereof. [C35, §7714-f8; C39,§**7714.35**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§464.7]

464.8 Adjudication on report. At the hearing of the conservator's report, the court shall fix and determine the amount of money in the hands of the county treasurer belonging to said drainage district; the amount of the indebtedness of said drainage district; to whom said indebtedness is due, and fix and determine the time, manner and priority of payment of said indebtedness; also the court shall fix and determine the amount of unpaid assessment or assessments against each tract of land within said drainage district, and may extend the time of payment, reamortize and reallocate the said assessments upon each tract of land within said drainage district; also, if the court finds that the assessments as levied against each tract of land within said drainage district, are not sufficient to pay the indebtedness due and owing by said drainage district, the court may order the board of supervisors of the county within which the said drainage district is located, to levy an assessment against the lands within said drainage district, in an amount to pay the deficit; provided, however, that no assessment for the payment of drainage bonds or improvement certificates shall be levied against any tract of land where the owner of said land is not delinquent in payment of any assessment and provided, further, that the amount of the reassessment on a particular piece of land shall be in direct proportion to the amount of unpaid assessments on said land and provided, further, that no assessment or expenses incidental thereto, for the payment of drainage bonds or improvement certificates under this chapter, shall be levied against any tract of land where the owner of said land had previously paid all of his assessment. Said assessment to be assessed and levied by the board of supervisors upon the lands within said drainage district, in the same proportion as the original assessment. A copy of said order entered by the court, shall be filed by the clerk of the district court with the county auditor, and the schedule of payments of the indebtedness of said drainage district as fixed and determined by the court, shall be entered upon the drainage records of the drainage district and also spread upon the tax records of the county, and shall become due and payable at the same time as ordinary taxes, and shall be collected in the same manner with the same penalties for delinquency, and the same manner of enforcing collection by tax sale. Also the court may apportion the costs between the creditors of the drainage district, and the drainage district. [C35, §7714-f9; C39,§**7714.36**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§464.8]

Referred to in §464.9

464.9 Refunding bonds. The court shall direct the board of supervisors to issue bonds in lieu of the outstanding drainage bonds for said drainage district, and additional bonds for the accrued interest and other indebtedness of said drainage district. Said bonds shall be payable in amounts, and at the time and manner, and with priority of payments as has been determined by order of court, as provided by section 464.8, and shall be called "conservator's drainage district bonds". Each bond shall be numbered and shall state on its face that it is a conservator's drainage district bond; that it is issued in pursuance of a resolution adopted by the board of supervisors, under order of court, and giving the name of the court and the county where such court is held; that it is issued to pay indebtedness of the drainage district; shall state the county where such district is located, and the number of the drainage district for which it is issued; shall state the date of maturity of the bond, the rate of interest thereon, which rate shall not be less than three and one-half percent per annum, and that the bond is to be paid only from taxes assessed, levied and collected on the lands within the drainage district for which the bond is issued subject to the provisions of section 464.8. All bonds shall be signed by the chairman of the board of supervisors and countersigned by the conservator designated as such. The interest coupons attached to said bonds shall be attested by the signature of the conservator or a facsimile thereof. When the bonds have been executed as herein required, the conservator may sell said bonds at not less than par with accrued interest thereon, and pay the indebtedness of said drainage district, or may exchange said bonds with the creditors of said drainage district in amounts as have been fixed and determined by the court, and the conservator shall cancel all drainage bonds, improvement certificates, warrants or other evidence of in-

debtedness received by him in lieu of the conservator's bonds. [C35,§7714-f10; C39,§**7714.37**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§464.9]

464.10 Lien. When conservator's drainage district bonds are issued hereunder, nothing herein shall be construed as impairing the lien of all unpaid assessments upon the real estate within said drainage district, nor shall this chapter be construed as impairing the priority of the lien thereof, nor the right, duty and power of the officer authorized by law, to levy, collect and apply the proceeds thereof, to the payment of outstanding drainage bonds issued in anticipation of the collection thereof. [C35,§7714-f11; C39,§**7714.38**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§464.10]

464.11 Trustees as parties. Should a drainage district in default be managed by drainage district trustees, said trustees shall also be named as proper and necessary parties defendant. [C35,§7714-f12; C39,§**7714.39**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§464.11]

464.12 Limitation of action. No action shall be brought, questioning the validity of any conservator's drainage district bond issued under this chapter from and after three months from the date of the order causing the said bonds to be issued. [C35,§7714-f13; C39, §**7714.40**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§464.12]

Similar provisions, §§461.23, 463.23

CHAPTER 465

INDIVIDUAL DRAINAGE RIGHTS

Referred to in §§455.4, 455.22, 455.215, 455.219, 466.8, 467C.6

465.1 Drainage through land of others—application.
465.2 Notice of hearing—service.
465.3 Service upon nonresident.
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465.5 Claims for damages—waiver.
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465.7 Shall locate when—specifications.
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465.11 Appeal—how tried—costs.
465.12 Parties—judgment—orders.
465.13 Costs and damages—payment.
465.14 Construction.
465.15 Construction through railroad property.
465.16 Deposit.
465.17 Failure to construct.
465.18 Repairs.
465.19 Obstruction.
465.20 Drains on abutting boundary lines.
465.21 Boundary between two counties.
465.22 Drainage in course of natural drainage —reconstruction—damages.
465.23 Drainage connection with highway.
465.24 Private drainage system—record.
465.25 Drainage plat book.
465.26 Record book and index.
465.27 Original plat filed.
465.28 Record not part of title.
465.29 Fees for record and copies.
465.30 Lost records—hearing.
465.31 Mutual drains — establishment as district.
465.32 Appeal.
465.33 Record filed with established district.
465.34 Lost or incomplete records.
465.35 Petition to combine with established district.

465.1 Drainage through land of others—application. When the owner of any land desires to construct any levee, open ditch, tile or other underground drain, for agricultural or mining purposes, or for the purposes of securing more complete drainage or a better outlet, across the lands of others or across the right of way of a railroad or highway, or when two or more landowners desire to construct a drain to serve their lands, he or they may file with the auditor of the county in which any such land or right of way is situated, an application in writing, setting forth a description of the land or other property through which he is desirous of constructing any such levee, ditch, or drain, the starting point, route, terminus, character, size, and depth thereof. The auditor shall collect a fee of one dollar for filing each application for a ditch or drain. [C73,§1217; C97, §1955; S13,§1955; C24, 27, 31, 35, 39,§**7715**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.1]

465.2 Notice of hearing—service. Upon the filing of any such application, the auditor shall forthwith fix a time and place for hearing thereon before the county board of supervisors, which hearing shall be not more than ninety days nor less than thirty days from the time of the filing of such application, and cause notice in writing to be served upon the owner of each tract of land across which any such levee, ditch, or drain is proposed to be located, as shown by the transfer books in the office of the county auditor, and also upon the person in actual occupancy of any such lands, of the pendency and prayer of such application and the time and place set for hearing on the same before the board of su-

pervisors, which notice, as to residents of the county and railroad companies, shall be served not less than ten days before the time set for such hearing, in the manner that original notices are required to be served. Notice to a railroad company may be served upon any station agent. [C73,§1218; C97,§1955; S13,§1955; C24, 27, 31, 35, 39,§**7716**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.2]

Manner of service, R.C.P. 56(*a*)

465.3 Service upon nonresident. In case any such owner is a nonresident of the county he may be personally served in the manner required for original notices or, in lieu thereof, he may be given notice as provided in section 455.21. [C73,§1218; C97,§1955; S13,§1955; C24, 27, 31, 35, 39,§**7717**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.3]

465.4 Service on omitted parties—adjournment. If at the hearing it should appear that any person entitled to notice has not been served with notice, the board may postpone such hearing and fix a new time for the same, and notice of such new time of hearing may be served on such omitted persons in the manner and for the time provided by law and by fixing such new time for hearing and by adjournment to such time, the board shall not lose jurisdiction of the subject matter of such proceeding nor of any persons previously served with notice. [S13,§1955; C24, 27, 31, 35, 39,§**7718**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.4]

465.5 Claims for damages — waiver. Any person or corporation claiming damages or compensation for or on account of the construction of any such improvement, shall file a claim in writing therefor with the auditor at or before the time fixed for hearing on the application. A failure to file such claim at the time specified shall be deemed to be a waiver of the right to claim or recover such damage. [S13,§1955; C24, 27, 31, 35, 39,§**7719**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.5]

465.6 Hearing—sufficiency of application—damages. At the time set for hearing on the application, if the board shall find that all necessary parties have been served with notice as required, they shall proceed to hear and determine the sufficiency of the application as to form and substance, which application may be amended both as to form and substance before final action thereon. They shall also determine the merits of the application, all objections thereto, and all claims filed for damages or compensation, and may view the premises. The board may adjourn the proceedings from day to day, but no adjournment shall be for a longer period than ten days. [C73,§1219; C97,§1956; S13,§1956; C24, 27, 31, 35, 39,§**7720**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.6]

465.7 Shall locate when — specifications. If the supervisors find that the levee, ditch, or drain petitioned for will be beneficial for sanitary, agricultural, or mining purposes, they shall locate the same and fix the points of entrance and exit on such land or property, the course of the same through each tract of land, the size, character, and depth thereof, when and in what manner the same shall be constructed, how kept in repair, what connections may be made therewith, what compensation, if any, shall be made to the owners of such land or property for damages by reason of the construction of any such improvements, and any other question arising in connection therewith. [C73,§1220; C97,§1956; S13,§1956; C24, 27, 31, 35, 39,§**7721**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §465.7]

465.8 Findings—record. The board shall reduce its findings, decision, and determination to writing, which shall be filed with the auditor, who shall record it in the official record of the board's proceedings, together with the application and all other papers filed in connection therewith, and he shall cause the findings and decision of the board to be recorded in the office of the recorder of the county in which such land is situated and said decision shall be final unless appealed from as provided in section 465.9. [C73,§1220; C97,§1956; S13,§1956; C24, 27, 31, 35, 39,§**7722**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.8]

465.9 Appeal—notice. Either party may appeal to the district court from any such decision by causing to be served, within ten days from the time it was filed with the auditor, a notice in writing upon the opposite party of the taking of such appeal, which notice shall be served in the same manner as is provided for the service of original notices. If the appellant is the party petitioning for the drain, he shall also file a bond, conditioned to pay all costs of appeal that may be assessed against him, which bond, if good and sufficient, shall be approved by the auditor. [C73,§1223; C97,§1957; C24, 27, 31, 35, 39,§**7723**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.9]

Referred to in §§465.8, 465.32
Manner of service, R.C.P. 56(*a*)
Presumption of approval of bond, §682.10

465.10 Transcript. In case of appeal, the auditor shall certify to the district court a transcript of the proceedings before the board, which shall be filed in said court with the appeal bond, the party appealing paying for said transcript and the docketing of said appeal, as in other cases. [C97,§1958; C24, 27, 31, 35, 39,§**7724**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §465.10]

Referred to in §465.32
Docketing appeal, R.C.P. 181 and 356

465.11 Appeal—how tried—costs. The cause shall be tried in the district court by ordinary proceedings, upon such pleading as the court may direct, each party having the right to offer such testimony as shall be admissible under the rules of law. If the appellant does not recover a more favorable judgment in the district court than he received in the decision of the board, he shall pay all the costs of

appeal. [C97,§1957; C24, 27, 31, 35, 39,§7725; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.11]

Referred to in §465.32

465.12 Parties — judgment — orders. The party claiming damages shall be the plaintiff and the applicant shall be the defendant; and the court shall render such judgment as shall be warranted by the verdict, the facts, and the law upon all the matters involved, and make such orders as will cause the same to be carried into effect. [C73,§1224; C97,§1958; C24, 27, 31, 35, 39,§7726; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.12]

465.13 Costs and damages—payment. The applicant shall pay the costs of the board and auditor and for the serving of notices for hearing, the fees of witnesses summoned by the board on said hearing, and the recording of the finding of the board by the county recorder. [C73,§1221; C97,§1959; S13,§1959; C24, 27, 31, 35, 39,§7727; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.13]

40ExGA, HF 185,§233, editorially divided
Compensation, §§359.17, 359.46
Recorder fee, §335.14
Service of notice, §337.11
Witness fees, §622.69 et seq.

465.14 Construction. Before entering on the construction of the drain, the party applying therefor shall pay to the party through whose land said drain is to be constructed the damages awarded to him, or shall pay the same to the board for his use. The applicant may proceed to construct said drain in accordance with the decision of the board, and the taking of an appeal shall not delay such work. [C97,§1959; S13,§1959; C24, 27, 31, 35, 39,§7728; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.14]

465.15 Construction through railroad property. If any such ditch or drain shall be located through or across the right of way or other land of a railroad company, the board shall determine the cost of constructing the same and the railroad company shall have the privilege of constructing such improvement through its property in accordance with the specifications made by the board and recover the costs thereof as fixed by the board. Such railroad company before it may exercise such privilege shall file its election to that effect with the auditor within five days after the decision of the board is filed. [S13,§1959; C24, 27, 31, 35, 39,§7729; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.15]

40ExGA, HF 185,§234, editorially divided

465.16 Deposit. In case such election is filed the applicant shall within ten days thereafter pay to the auditor, for the use of the railroad company, the cost of constructing the drainage improvement through its property, in addition to the amount that may be allowed as damages, and when the railroad company shall have completed the improvement through its property in accordance with such specifications it shall be entitled to demand and receive from the auditor such cost. [S13,§1959; C24, 27, 31, 35, 39,§7730; C46, 50, 54, 58, 62, 66, 71, 73, 75, §465.16]

465.17 Failure to construct. If the railroad company shall fail to so construct the improvement for a period of thirty days after filing its election so to do, the applicant may proceed to do so and may have returned to him the cost thereof deposited with the auditor. [S13,§1959; C24, 27, 31, 35, 39,§7731; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.17]

465.18 Repairs. In case any dispute shall thereafter arise as to the repair of any such drain, the same shall be determined by the county board of supervisors upon application in substantially the same manner as in the original construction thereof. [C73,§1226; C97, §1960; C24, 27, 31, 35, 39,§7732; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.18]

465.19 Obstruction. Any person who shall dam up, obstruct, or in any way injure any ditch or drain so constructed, shall be liable to pay to the person owning or possessing the swamp, marsh, or other lowlands, for the draining of which such ditch or ditches have been opened, double the damages that shall be sustained by the owner, and, in case of a second or subsequent offense by the same person, treble such damages. [C73,§1227; C97, §1961; C24, 27, 31, 35, 39,§7733; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.19]

465.20 Drains on abutting boundary lines. When any watercourse or natural drainage line crosses the boundary line between two adjoining landowners and both parties desire to drain their land along such watercourse or natural drainage line, but are unable to agree as to the junction of the lines of drainage at such boundary line, the board of supervisors of the county in which said land is located shall have full power and authority upon the application of either party to hear and determine all questions arising between such parties after giving due notice to each of the time and place of such hearing, and may render such decision thereon as to said board shall seem just and equitable. [C97, §1962; C24, 27, 31, 35, 39,§7734; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.20]

Referred to in §465.21

465.21 Boundary between two counties. If any controversy referred to in section 465.20 relates to a boundary line between adjoining owners which is also the boundary line between two counties, then such controversy shall be determined by the joint action of the boards of supervisors in said two adjoining counties, and all the proceedings shall be the same as provided in section 465.20 except that it shall be by the joint action of the boards of the two counties. [C24, 27, 31, 35, 39,§7735; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.21]

465.22 Drainage in course of natural drainage—reconstruction—damages. Owners of land may drain the same in the general course of

natural drainage by constructing or reconstructing open or covered drains, discharging the same in any natural watercourse or depression whereby the water will be carried into some other natural watercourse, and when such drainage is wholly upon the owner's land he shall not be liable in damages therefor, nor shall any such owner in constructing a replacement drain, wholly on his own land, and in the exercise of due care be liable in damages to another in case a previously constructed drain on his own land is rendered inoperative or less efficient by such new drain, unless in violation of the terms of a written contract. Nothing in this section shall in any manner be construed to affect the rights or liabilities of proprietors in respect to running streams. [S13,§1989-a53; C24, 27, 31, 35, 39,§**7736**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.22]

465.23 Drainage connection with highway. When the course of natural drainage of any land runs to a public highway, the owner of such land shall have the right to enter upon such highway for the purpose of connecting his drain or ditch with any drain or ditch constructed along or across the said highway, but in making such connections, he shall do so in accordance with specifications furnished by the highway authorities having jurisdiction thereof, which specifications shall be furnished to him on application. He shall leave the highway in as good condition in every way as it was before the said work was done.

If a tile line or drainage ditch must be projected across the right of way to a suitable outlet, the expense of both material and labor used in installing the tile line or drainage ditch across the highway and any subsequent repair thereof shall be paid from funds available for the highways affected. [C97,§1963; C24, 27, 31, 35, 39,§**7737**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.23]

465.24 Private drainage system — record. Any person who has provided a system of drainage on land owned by him may have the same made a matter of record in the office of the county recorder of the county in which the drainage system is located, provided any drainage system constructed after July 1, 1969, shall be made a matter of record, as is hereinafter provided. [C24, 27, 31, 35, 39,§**7738**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.24]

465.25 Drainage plat book. The county recorder shall be provided with a loose leaf plat book, made to scale, for each section of the land within the county in which such records shall be made. Such plat book shall consist of sheets of paper interbound by sheets of tracing cloth with proper heading, margin, and binding edge. Said plat book shall be used for keeping a record of drainage systems filed by any landowner. Plats so offered for record shall be drawn to scale on paper measuring eight and one-half by eleven inches, giving distances in feet and indicating the size of tile used, length and location of tile lines as installed with reference to government corners and subdivisions. [C24, 27, 31, 35, 39,§**7739**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.25]

Referred to in §465.26

465.26 Record book and index. The county recorder shall also be provided with a record book and index referring to the plats provided for in section 465.25, and which may be used to give the owner's name, description of tracts of land drained, stating the time when drainage system was established, the kind, quality, and brand of tile used, the name and place of manufacturing plant, the name of contractors who laid the tile, the name of the engineer in charge of the survey and installation, the cost of tile, delivery, installation, and engineering expense, depths, grades, outlets, connections, contracts for agreements with adjoining landowners as to connections, and any other matters or information that may be considered of value, all of said information to be furnished by the landowner or the engineer having charge of the installation of the same and certified to under oath. [C24, 27, 31, 35, 39,§**7740**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.26]

40ExGA, HF 185,§244, editorially divided

465.27 Original plat filed. In lieu of making the record as herein provided any landowner may file with the county recorder the original plat used in the establishment of said drainage system, or a copy thereof, which shall be certified by the engineer having made the same. [C24, 27, 31, 35, 39,§**7741**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.27]

465.28 Record not part of title. The drainage records herein provided for shall not be construed as an essential part of the title to said lands, but may upon request be set out by abstracters as part of the record title of said lands. [C24, 27, 31, 35, 39,§**7742**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.28]

465.29 Fees for record and copies. The county recorder shall be entitled to collect fees for the filing and information heretofore provided for, and for the making of copies of such records the same as is provided for other work of a similar nature. [C24, 27, 31, 35, 39, §**7743**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§465.29]

Recorder fee, §335.14

465.30 Lost records — hearing. When the records of any mutual drain are incomplete or have been lost, or when the owner of any land affected by such mutual drain believes that the apportionment of costs or damages is inequitable or that repair or reconstruction is needed, such owner may petition the board of supervisors for relief. The board shall notify all affected parties of such petition, and set a date for a hearing on the petition. The board may adjourn the proceedings from day to day, but no adjournment shall be for more than ten days, and may order such engineering examinations, reclassifications of lands and apprais-

als of damages as they deem necessary. At the completion of the hearing the supervisors shall re-establish the original records or establish a revised record and basis for apportionment of costs and damages as they find equitable and advisable, and may order such repairs or reconstruction as they find to be needed. All cost of such re-establishment or revisions of records, and of the needed repair or reconstruction shall be apportioned in accordance with the basis established. [C50, 54, 58, 62, 66, 71, 73, 75,§465.30]

Referred to in §465.31

465.31 Mutual drains—establishment as district. Whenever a landowner fails to pay the cost apportioned as provided in section 465.30, or whenever a repair or reconstruction ordered as provided in said section is not made within reasonable time, and in such other instances as the board of supervisors desires, the board by resolution shall establish such mutual drain as a drainage district; all proceedings thereafter shall be as provided for other legally established districts. [C50, 54, 58, 62, 66, 71, 73, 75,§465.31]

Referred to in §465.32

465.32 Appeal. The decisions and actions of the board of supervisors under section 465.31 may be appealed as provided in sections 465.9, 465.10 and 465.11. [C50, 54, 58, 62, 66, 71, 73, 75,§465.32]

465.33 Record filed with established district. When the lands served by a mutual drain are within the boundary of an established drainage district, a complete record of the proceeding relating to such mutual drain shall be filed with and as a part of, the records of such established district. [C50, 54, 58, 62, 66, 71, 73, 75,§465.33]

Referred to in §465.34

465.34 Lost or incomplete records. If the records referred to in section 465.33 are incomplete or have been lost, the board may re-establish such records so as to proportion future costs and damages in proportion to the benefits and damages received because of the construction of such mutual drains and improvements thereof, and may order such surveys, engineering reports, reclassification of lands and appraisal of damages as they deem necessary. All costs of such proceedings shall be assessed against the benefited lands. [C50, 54, 58, 62, 66, 71, 73, 75,§465.34]

Referred to in §465.35

465.35 Petition to combine with established district. Upon receipt of a petition, signed by the owners of the lands served by a mutual drain, requesting that such drain be combined with an established drainage district, the board shall hold a hearing with due notice to the owners of all lands affected by said mutual drain, and if the board finds it desirable it may by resolution make such mutual drains a part of the established district. Such hearing and resolution may be continued as the board deems necessary for the collection of additional information as provided in section 465.34. Such combination with an established district shall constitute dissolution of the mutual drain, and shall be so recorded, after which such mutual drain shall be a part of the district drain in all respects. [C50, 54, 58, 62, 66, 71, 73, 75,§465.35]

CHAPTER 466

DRAINAGE DISTRICTS IN CONNECTION WITH UNITED STATES LEVEES

Referred to in §§111A.4(9), 455.4, 455.22, 455.215, 455.216, 455.219, 467C.6

466.1 United States levees — co-operation of board.
466.2 Manner of co-operation.
466.3 Report of engineer—payment authorized.
466.4 Costs assessed.
466.5 Annual installments.
466.6 Collection of tax.
466.7 Cost of maintaining.
466.8 Laws applicable.

466.1 United States levees—co-operation of board. In any case where the United States has built or shall build a levee along or near the bank of a navigable stream forming a part of the boundary of this state, the board of supervisors of any county through which the same may pass shall have the power to aid in procuring the right of way for and maintaining said levee, and providing a system of internal drainage made necessary or advisable by the construction thereof. Such improvement shall be presumed to be conducive to the public health, convenience, welfare, or utility. [C97,§1975; C24, 27, 31, 35, 39,§7744; C46, 50, 54, 58, 62, 66, 71, 73, 75,§466.1]

Referred to in §§466.2, 466.7

466.2 Manner of co-operation. Any United States government levee under the conditions mentioned in section 466.1 may be taken into consideration by the board as a part of the plan of any levee or drainage district and improvements therein, and such board may, by agreement with the proper authorities of

the United States government, provide for payment of such just and equitable portion of the costs of procuring the right of way and maintenance of such levee as shall be conducive to the public welfare, health, convenience, or utility. [C97,§1975; C24, 27, 31, 35, 39,§**7745**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§466.2]

Referred to in §466.7

466.3 Report of engineer—payment authorized. In the proceedings to establish such a district the engineer shall set forth in his report, separately from other items, the amount of the cost for the right of way of such levee, of constructing and maintaining the same; and if the plan is approved and the district finally established in connection with such levee, the board shall make a record of any such co-operative arrangement and may use such part of the funds of the district as may be necessary to pay the amount so agreed upon toward the right of way and maintenance of such levee. [C97,§1976; C24, 27, 31, 35, 39,§**7746**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§466.3]

Referred to in §466.7

466.4 Costs assessed. If said district is established, the entire costs and expenses incurred under this chapter shall be assessed against and collected from the lands lying within such district, by the levy of a rate upon the assessable value of the land and improvements within such district, sufficient to raise the required sum; provided the board may, in their discretion, classify the land within such district and graduate the tax thereon, as provided in chapter 455. [C97,§1982; S13,§1982; C24, 27, 31, 35, 39,§**7747**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§466.4]

Referred to in §§466.6, 466.7

466.5 Annual installments. If the proposed improvement is the maintenance of a levee, the amount collected in any one year shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of the assessment valuation, which said assessment shall be levied at a level rate on the assessable value of the said lands, improvements, easements, and railroads within the district. If the amount necessary to pay for the improvement exceeds said sum, it shall be levied and collected in annual installments of twenty or less. For all other improvements, the board shall levy a rate sufficient to pay for the same, and may, at their discretion, make the same payable in annual installments of twenty or less. [C97, §1984; C24, 27, 31, 35, 39,§**7748**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§466.5]

Referred to in §§466.6, 466.7

466.6 Collection of tax. The assessment required under sections 466.4 and 466.5 shall be made by the board of supervisors at the time of levying general taxes, after the work has been authorized, and the same shall be entered on the records of the board of supervisors, then entered on the tax books by the county auditor as drainage taxes, and shall be collected by the county treasurer at the same time, in the same manner, and with the same penalties, as general taxes; and if the same is not paid he shall sell all such lands upon which such assessment remains unpaid, at the same time, and in the same manner, as is now by law provided for the sale of lands for delinquent taxes, including all steps up to the execution and delivery of the tax deed for the same. The landowners shall take notice of and pay such assessments without other or further notice than such as is provided for in this chapter. The funds realized from such assessments shall constitute the drainage fund, as contemplated in this chapter, and shall be disbursed on warrants drawn against that fund by the county auditor, on the order of the board of supervisors. [C97,§1983; C24, 27, 31, 35, 39,§**7749**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§466.6]

Referred to in §466.7

466.7 Cost of maintaining. The board of supervisors shall have the right and power to keep and maintain any such levee, ditches, drains, or system of drainage, either in whole or in part, established under sections 466.1 to 466.6, as may in their judgment be required, and to levy the expense thereof upon the real estate within such drainage district as herein provided for, and collect and expend the same; provided, however, that no such work which shall impose a tax exceeding three dollars and thirty-seven and one-half cents per thousand dollars on the assessable value of the lands and improvements within the district shall be authorized by them, unless the same is first petitioned for and authorized in substantially the manner required by this chapter for the inauguration of new work except that if such work is of the kinds contemplated by section 455.135, and the cost thereof is within the limitations of said section, or is of the kinds contemplated by section 455.201, and the cost thereof is within the limitations of said section, then the provisions of section 455.135 or section 455.201 shall supersede the limitations of this section. [C97,§1986; C24, 27, 31, 35, 39, §**7750**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§466.7]

466.8 Laws applicable. In the establishment and maintenance of levee and drainage districts in co-operation with the United States as in this chapter provided, all the proceedings for said purpose in the filing and the form and substance of the petition, assessment of damages, appointment of an engineer, his surveys, plats, profiles, and report, notice of hearings, filing of claims and objections, hearings thereon, appointment of commissioners to classify lands, assess benefits, and apportion costs and expenses, report, notice and hearing thereon, the appointment of a supervising engineer, his duties, the letting of work and making contracts, payment for work, levy and collection of drainage or levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial

thereof, and all other proceedings relating to such district shall be as provided in chapters 455 to 465* except as otherwise in this chapter provided. [C97,§§1976–1989; S13,§§1976, 1977, 1979, 1981, 1982, 1984, 1985, 1985-a, 1986, 1989; C24, 27, 31, 35, 39,§7751; C46, 50, 54, 58, 62, 66, 71, 73, 75,§466.8]

*Chapters 455A, 455B, 456, 463, and 464 enacted after this section was enacted; chapter 458 was enacted as an amendment to chapter 457, see 41GA, ch 155

CHAPTER 467

INTERSTATE DRAINAGE DISTRICTS

Referred to in §§455.22, 455.215, 455.216, 455.219, 467C.6

467.1 Co-operation—procedure.
467.2 Agreement as to costs.
467.3 Contracts let by joint agreement.
467.4 Separate contracts.
467.5 Conditions precedent.
467.6 Assessments, bonds and costs — limitation.

467.1 Co-operation—procedure. When proceedings for the drainage of lands bordering upon the state line are had and the total cost of constructing the improvement in this state, including all damage, has been ascertained, and the engineer in charge, before the final establishment of the district, reports that the establishment and construction of such improvement ought to be jointly done with like proceedings for the drainage of lands in the same drainage area in such an adjoining state and that drainage proceedings are pending in such state for the drainage of such lands, the said authorities of this state may enter an order continuing the hearing on the establishment of such district to a fixed date, of which all parties shall take notice. [SS15,§1989-a77; C24, 27, 31, 35, 39,§7752; C46, 50, 54, 58, 62, 66, 71, 73, 75,§467.1]

467.2 Agreement as to costs. The board shall have power, when the total cost, including damages, of constructing the improvement in such other state has been ascertained by the authorities of such other state, to enter into an agreement as to the separate amounts which the property owners of each state should in equity pay toward the construction of the joint undertaking. When such amount is thus determined, the board or boards having jurisdiction in this state shall enter the same in the minutes of their proceedings and shall proceed therewith as though such amount to be paid by the portion of the district in this state had been originally determined by them as the cost of constructing the improvement in this state. [SS15,§1989-a77; C24, 27, 31, 35, 39,§7753; C46, 50, 54, 58, 62, 66, 71, 73, 75,§467.2]

467.3 Contracts let by joint agreement. When the bids for construction are opened, unless the construction work on each side of the line can go forward independently, no contract shall be let by the authorities in this state, unless the acceptance of a bid or bids for the construction of the whole project is first jointly agreed upon by the authorities of both states. [SS15,§1989-a77; C24, 27, 31, 35, 39, §7754; C46, 50, 54, 58, 62, 66, 71, 73, 75,§467.3]

467.4 Separate contracts. The contract or contracts for the construction of that portion of the improvement within this state shall be entirely distinct and separate from the contract or contracts let by the authorities of the neighboring state; but the aggregate amount of the contract or contracts for the construction of the work within this state shall not exceed an amount equal to the amount of the benefits assessed in this state including damages and other expenses. [SS15,§1989-a77; C24, 27, 31, 35, 39,§7755; C46, 50, 54, 58, 62, 66, 71, 73, 75,§467.4]

467.5 Conditions precedent. No contract shall be let until the improvement shall be finally established in both states, and after the final adjustment in both states of damages and benefits. No bonds shall be issued until all litigation in both states arising out of said proceedings has been finally terminated by actual trial or agreements, or the expiration of all right of appeal. [SS15,§1989-a78; C24, 27, 31, 35, 39,§7756; C46, 50, 54, 58, 62, 66, 71, 73, 75, §467.5]

467.6 Assessments, bonds and costs—limitation. All proceedings except as provided in this chapter in relation to the establishment, construction, and management of interstate drainage districts shall be as provided for the establishment and construction of districts wholly within this state as provided in chapter 455. All such proceedings shall relate only to the lands of such district which are located wholly within this state. Boards having jurisdiction in this state may make just and equitable agreements with like authorities in such adjoining state for the joint management, repair, and maintenance of the entire improvement, after the establishment and completed construction thereof. [SS15,§1989-a77; C24, 27, 31, 35, 39,§7757; C46, 50, 54, 58, 62, 66, 71, 73, 75,§467.6]

CHAPTER 467A

SOIL CONSERVATION

Referred to in §467C.5
Federal funds appropriated, 65GA, ch 33,§2, ch 103,§2, ch 139,§33

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467A.53 Co-operation with other agencies.

467A.1 Short title. This chapter may be known and cited as the "Soil Conservation Districts Law". [C39,§2603.02; C46,§160.1; C50, 54, 58, 62, 66, 71, 73, 75,§467A.1]

467A.2 Declaration of policy. It is hereby declared to be the policy of the legislature to provide for the restoration and conservation of the soil and soil resources of this state and for the control and prevention of soil erosion and for the prevention of erosion, floodwater, and sediment damages, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist and maintain the navigability of rivers and harbors, preserve wild life, protect the tax base, protect public lands and promote the health, safety and public welfare of the people of this state. [C39,§2603.03; C46,§160.2; C50, 54, 58, 62, 66, 71, 73, 75,§467A.2]
Referred to in §467A.7(3)

467A.3 Definitions. Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. *"District"* or *"soil conservation district"* means a governmental subdivision of this state, and a public body corporate and politic, organized for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

2. *"Commissioner"* means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.

3. *"Department"* or *"department of soil conservation"* means the agency created by section 467A.4.

4. *"Committee"* or *"state soil conservation committee"* means the committee established by section 467A.4.

5. *"Petition"* means a petition filed under the provisions of subsection 1 of section 467A.5 for the creation of a district.

6. *"Nominating petition"* means a petition filed under the provisions of section 467A.5 to nominate candidates for the office of commissioner of a soil conservation district.

7. *"State"* means the state of Iowa.

8. *"Agency of this state"* includes the government of this state and any subdivision,

agency, or instrumentality, corporate or otherwise, of the government of this state.

9. *"United States"* or *"agencies of the United States"* includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States.

10. *"Government"* or *"governmental"* includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, or either of them.

11. *"Landowner"* includes any person, firm, or corporation or any federal agency, this state or any of its political subdivisions, who shall hold title to land lying within a proposed district or a district organized under the provisions of this chapter.

12. *"Due notice"* means notice published at least twice, with an interval of at least six days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area; or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

13. *"Conservancy district"* means one of the six conservancy districts established by section 467D.3.

14. *"Board"* means the body designated by section 467D.4 to administer each of the conservancy districts.

15. *"Council"* means the Iowa natural resources council. [C39,§**2603.04**; C46,§160.3; C50, 54, 58, 62, 66, 71, 73, 75,§467A.3; 66GA, ch 229,§1]

Referred to in §467A.42

467A.4 State soil conservation committee.

1. There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this chapter, the department of soil conservation. The department shall be administered in accordance with the policies of the state soil conservation committee, which shall consist of a chairman and twelve members. The following shall serve as ex officio nonvoting members of the committee: The director of the state agricultural extension service, or his designee, the secretary of agriculture, or his designee, the director of the state conservation commission or his designee, and the director of the Iowa natural resources council or his designee. Eight voting members shall be appointed by the governor and confirmed by the senate. Six of the appointive members shall be persons engaged in actual farming operations, one of whom shall be a resident of each of the six conservancy districts established by section 467D.3, and no more than one of whom shall be a resident of any one county. The seventh and eighth appointive members shall be chosen by the governor from the state at large with one appointed to be a representative of cities and one appointed to be a representative of the mining industry. The committee may invite the secretary of agriculture of the United States to appoint one person to serve with the above-mentioned members, and the president of the Iowa county engineers association may designate a member of the association to serve in the same manner, but these persons shall have no vote and shall serve in an advisory capacity only. The director of the department of environmental quality shall be an ex officio nonvoting member. The committee shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules as provided in chapter 17A as may be necessary for the execution of its functions under this chapter.

2. The state soil conservation committee may employ an administrative officer and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee or department may call upon the attorney general of the state for such legal services as either may require. The committee shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. Upon request of the committee, for the purpose of carrying out any of the functions assigned the committee or the department by law, the supervising officer of any state agency, or of any state institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the department members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the committee may request.

3. The committee shall designate its chairman, and may, from time to time, change such designation. The director of the state agricultural extension service shall hold office so long as he shall retain the office by virtue of which he shall be serving on the committee. The members appointed by the governor shall serve for a period of six years. Members shall be appointed in each odd-numbered year to succeed members whose terms expire on June 30 of that year. Appointments may be made at such other times and for such other periods as are necessary to fill vacancies on the committee, and any appointment so made while the general assembly is not in session shall be subject to confirmation by the senate at the next session of the general assembly

thereafter. No members shall be appointed to serve more than two complete six-year terms. Members designated to represent the secretary of agriculture, director of the state conservation commission, or the director of the Iowa natural resources council shall serve at the pleasure of the officer making such designation. A majority of the voting members of the committee shall constitute a quorum, and the concurrence of a majority of the voting members of the committee in any matter within their duties shall be required for its determination. The chairman and members of the committee, not otherwise in the employ of the state, or any political subdivision, shall receive forty dollars per diem as compensation for their services in the discharge of their duties as members of the committee. The committee shall determine the number of days for which any committee member may draw per diem compensation, but the total number of days for which per diem compensation is allowed for the entire committee shall not exceed four hundred days per year. They shall also be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties as members of such committee. The per diem and expenses paid to the committee members shall be paid from funds appropriated to the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted, and shall provide for an annual audit of the accounts of receipts and disbursements.

4. In addition to the duties and powers hereinafter conferred upon the department of soil conservation, it shall have the following duties and powers:

a. To offer such assistance as may be appropriate to the commissioners of soil conservation districts in carrying out any of their powers and programs.

b. To keep the commissioners of each of the several districts informed of the activities and experience of all other districts and to facilitate an interchange of advice and experience between such districts and co-operation between them.

c. To co-ordinate the programs of the several soil conservation districts so far as this may be done by advice and consultation.

d. To secure the co-operation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

e. To disseminate information throughout the state concerning the activities and program of the soil conservation districts.

f. To render financial aid and assistance to soil conservation districts for the purpose of carrying out the policy stated in this chapter.

g. To offer such assistance as may be appropriate to the conservancy districts established by section 467D.3, and in the carrying out of any of their powers and programs.

h. Review, amend, and give final approval to the plan of each of the conservancy districts, and to any subsequent changes therein, in the manner provided by chapter 467D.

i. Maintain files of such proceedings, rules, and orders, of each of the conservancy districts in the state as the department may request from the conservancy districts pursuant to section 467D.6, subsection 11.

j. To keep the boards of each of the six conservancy districts established by section 467D.3 informed of the activities and experience of the other conservancy districts and to facilitate an interchange of advice and experience between conservancy districts and co-operation between them.

k. To co-ordinate the programs of the conservancy districts so far as this may be done by advice and consultation.

l. To disseminate information throughout the state concerning the activities and programs of the conservancy districts established by section 467D.3.

m. To render financial aid and assistance to the six conservancy districts established by section 467D.3 for the purpose of carrying out the policy stated in chapter 467D. [C39,§**2603.05**; C46,§160.4; C50, 54, 58, 62, 66, 71,§467A.4; C73, §§455A.40(3), 467A.4; C75,§467A.4; 66GA, ch 229, §2]

Referred to in §§467A.3(3, 4), 467D.2, 467D.4
Initial terms, see 64GA, ch 227,§27(3)

467A.5 Soil conservation districts.

1. The one hundred soil conservation districts established in the manner which was prescribed by law prior to July 1, 1975 shall continue in existence with the boundaries and the names in effect on July 1, 1975. If the existence of any district so established is discontinued pursuant to section 467A.10, a petition for re-establishment of the district or for annexation of the former district's territory to any other abutting district may be submitted to, and shall be acted upon by, the state soil conservation committee in substantially the manner provided by section 467A.5, Code 1975.

2. The governing body of each district shall consist of five commissioners elected on a nonpartisan basis for staggered six-year terms commencing on the first day of January that is not a Sunday or holiday following their election. Any eligible elector residing in the district is eligible to the office of commissioner, except that no more than one commissioner shall at any one time be a resident of any one township. A vacancy is created in the office of any commissioner who changes his residence into a township where another commissioner then resides. A vacancy in the office of commissioner shall be filled by appointment of the state soil conservation committee until the next succeeding general election, at which time the balance of the unexpired term shall be filled as provided by section 69.12.

3. At each general election a successor shall be chosen for each commissioner whose term will expire in the succeeding January. Nomination of candidates for the office of commissioner shall be made by petition in accordance with chapter 45, except that each candidate's nominating petition shall be signed by at least twenty-five eligible electors of the district. The petition form shall be furnished by the county commissioner of elections. Every candidate shall file with the nomination papers an affidavit stating his name, his residence, that he is a candidate and is eligible for the office of commissioner, and that if elected he will qualify for the office. An eligible elector shall not in any one year sign the nominating petitions of a number of candidates greater than the number of commissioners to be elected in that year. The signed petitions shall be filed with the county commissioner of elections not later than five o'clock p.m. on the fifty-fifth day prior to the general election. The votes for the office of district commissioner shall be canvassed in the same manner as the votes for county officers, and the returns shall be certified to the commissioners of the district. A plurality shall be sufficient to elect commissioners, and no primary election for the office shall be held. If the canvass shows that the two candidates receiving the highest and the second highest number of votes for the office of district commissioner are both residents of the same township, the board shall certify as elected the candidate who received the highest number of votes for the office and the candidate receiving the next highest number of votes for the office who is not a resident of the same township as the candidate receiving the highest number of votes.

4. This subsection shall apply during the period of transition from the former method of electing district commissioners to that prescribed by 66GA, ch 229, which is the period from July 1, 1975 until December 31, 1982, and the subsection shall not appear in any edition of the Code published after July 1, 1982.

a. Each commissioner elected to office for a term of six years which commenced after January 1, 1975, or who is serving a term which, except for 66GA, ch 229, would have expired after July 1, 1975 but not later than December 31, 1976 shall hold office until noon on the first day of January, 1977 that is not a Sunday or holiday, and a successor shall be elected at the general election in 1976. However, if a commissioner elected for a term of six years which commenced after January 1, 1975 certifies in writing to the state soil conservation committee that he is willing and anticipates being able to serve until noon on the first day of January, 1983 that is not a Sunday or holiday, his term shall be extended to that date and a successor shall be elected at the general election in 1982.

b. Each commissioner serving a term which, except for 66GA, ch 229, would have expired after January 1, 1977 but not later than December 31, 1978 shall hold office until noon on the first day of January, 1979 that is not a Sunday or holiday, and a successor shall be elected at the general election in 1978.

c. Each commissioner serving a term which, except for 66GA, ch 229, would have expired after January 1, 1979 but not later than December 31, 1980 shall hold office until noon on the first day of January, 1981 that is not a Sunday or holiday, and a successor shall be elected at the general election in 1980. [C39, §2603.06; C46,§160.5; C50, 54, 58, 62, 66, 71, 73, 75,§467A.5; 66GA, ch 229,§3]

Referred to in §§39.21, 467A.3(5, 6), 467A.15
Subsection 4 hereof shall not appear in any edition of the Code published after July 1, 1982; 66GA, ch 229,§3(4)

467A.6 Appointment, qualifications and tenure of commissioners. The commissioners of each soil conservation district shall convene on the first day of January that is not a Sunday or holiday in each odd-numbered year. Those commissioners whose term of office begins on that day shall take the oath of office prescribed by section 63.10. The commissioners shall then organize by election of a chairman and a vice chairman.

The commissioners of the respective districts shall submit to the department such statements, estimates, budgets, and other information at such times and in such manner as the department may require.

A commissioner shall receive no compensation for his services but he may be paid expenses, including traveling expenses, necessarily incurred in the discharge of his duties, if funds are available for that purpose.

The commissioners may call upon the attorney general of the state for such legal services as they may require. The commissioners may delegate to their chairman, to one or more commissioners or to one or more agents, or employees, such powers and duties as they may deem proper. The commissioners shall furnish to the department of soil conservation, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The commissioners shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for a biennial audit of the accounts of receipts and disbursements.

The commissioners may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the commissioners of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. [C39,

§2603.08; C46,§160.6; C50, 54, 58, 62, 66, 71, 73, 75,§467A.6; 66GA, ch 229,§4]

467A.7 Powers of districts and commissioners. A soil conservation district organized under the provisions of this chapter shall have the following powers, in addition to others granted in other sections of this chapter:

1. To conduct surveys, investigations, and research relating to the character of soil erosion and erosion, floodwater, and sediment damages, and the preventive and control measures needed, to publish the results of such surveys, investigations or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in co-operation with the Iowa agricultural experiment station located at Ames, Iowa, and pursuant to a co-operative agreement entered into between the Iowa agricultural experiment station and such district.

2. To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled; provided, however, that in order to avoid duplication of agricultural extension activities, no district shall initiate any demonstrational projects, except in co-operation with the Iowa agricultural extension service whose offices are located at Ames, Iowa, and pursuant to a co-operative agreement entered into between the Iowa agricultural extension service and such district.

3. To carry out preventive and control measures within the district, including, but not limited to, crop rotations, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in section 467A.2, on lands owned or controlled by this state or any of its agencies, with the consent and co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

4. To co-operate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion-control and watershed protection and flood prevention operations within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this chapter.

5. To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

6. To make available on such terms as it shall prescribe, to landowners or occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, lime, and such other material or equipment as will assist such landowners or occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for the prevention of erosion, floodwater, and sediment damages.

7. To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

8. To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for the prevention of erosion, floodwater, and sediment damages within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district.

9. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules not inconsistent with this chapter, to carry into effect its purposes and powers.

10. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, serv-

ices, materials, or other contributions in carrying on its operations.

11. As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the commissioners may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

12. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

13. After the formation of any district under the provisions of this chapter, all participation hereunder shall be purely voluntary, except as specifically stated herein.

14. Subject to the approval of the state soil conservation committee, to change the name of such soil conservation district.

15. To take notice of the conservancy district plan, and conform to the duly promulgated rules of the conservancy district or conservancy districts in which the soil conservation district is located; provided that this subsection shall not be construed to grant any authority not otherwise granted by law to the commissioners of soil conservation districts.

16. The commissioners shall, as a condition for the receipt of any cost share funds for permanent soil conservation practices, require the landowner to covenant an agreement that if the project is removed, altered, or modified so as to lessen its effectiveness without the consent of the state soil conservation committee for a period of ten years after the date of receiving payment the landowner shall refund to the department of soil conservation the public funds used for the project. Such refunds shall be reallocated to the district from which they were refunded to be used for conservation cost sharing. It shall be the duty of the commissioners to assist the state soil conservation committee in the enforcement of this subsection. [C39,§**2603.09**; C46, §160.7; C50, 54, 58, 62, 66, 71, 73, 75,§467A.7; 66GA, ch 1205,§2]

467A.8 Co-operation between districts. The commissioners of any two or more districts organized under the provisions of this chapter may co-operate with one another in the exercise of any or all powers conferred in this chapter. [C39,§**2603.10**; C46,§160.8; C50, 54, 58, 62, 66, 71, 73, 75,§467A.8]

467A.9 State agencies to co-operate. Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, may co-operate to the fullest extent with the commissioners of such districts in the effectuation of programs and operations undertaken by the commissioners under the provisions of this chapter. [C39, §**2603.11**; C46,§160.9; C50, 54, 58, 62, 66, 71, 73, 75,§467A.9]

467A.10 Discontinuance of districts. At any time after five years after the organization of a district under the provisions of this chapter, any twenty-five owners of land lying within the boundaries of such district, but in no case less than twenty percent of the owners of land lying within such district, may file a petition with the state soil conservation committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist in the consideration thereof. Within sixty days after such a petition has been received by the committee, the department shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the ..... (name of the soil conservation district to be here inserted)" and "Against terminating the existence of the ..... (name of the soil conservation district to be here inserted)" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All owners of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

When sixty-five percent of the landowners vote to terminate the existence of such district, the state soil conservation committee shall advise the commissioners to terminate the affairs of the district. The commissioners shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The commissioners shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state soil conservation committee setting forth the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has

been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the commissioners a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or commissioners are parties, shall remain in force and effect for the period provided in such contracts. The state soil conservation committee shall be substituted for the district or commissioners as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, and sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the commissioners of the district would have had.

The state soil conservation committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this chapter, more often than once in five years. [C39,§2603.12; C46,§160.10; C50, 54, 58, 62, 66, 71, 73, 75,§467A.10]

Referred to in §467A.5

467A.11 Report to governor. The committee shall submit to the governor, no later than January 1 next preceding each biennial legislative session, a report which shall state the following: The number and acreage of districts in existence or in process of organization, together with an estimate of the number and probable acreage of the districts which may be organized during the ensuing biennial fiscal period; a statement of the balances of funds, if any, available to the committee as to the sums needed for its administrative and other expenses, and for allocation among the several districts during the ensuing biennial fiscal period. [C46,§160.11; C50, 54, 58, 62, 66, 71, 73, 75,§467A.11]

Biennial report, §17.3

467A.12 Statement to comptroller. On or before September 1 next preceding each biennial legislative session, the state soil conservation committee shall submit to the state comptroller, on official estimate blanks furnished for such purposes, statements and estimates of the expenditure requirements for each fiscal year of the ensuing biennium, and a statement of the balance of funds, if any, available to the committee, and the estimates of the committee as to the sums needed for the administrative and other expenses of the committee and department. [C46,§160.12; C50, 54, 58, 62, 66, 71, 73, 75,§467A.12]

SUBDISTRICTS

467A.13 Purpose of subdistricts. Subdistricts of a soil conservation district may be formed as hereinafter provided for the purpose of carrying out watershed protection and flood prevention programs within the subdistrict but may not be formed solely for the purpose of establishing or taking over the operation of an existing drainage district. [C58, 62, 66, 71, 73, 75,§467A.13]

467A.14 Petition to form. When the landowners in a proposed subdistrict desire that a subdistrict be organized, they shall file a petition with the commissioners of the soil conservation district. The area must be contiguous and in the same watershed but in no event shall it include any area located within the boundaries of an incorporated city. The petition shall set forth an intelligible description by congressional subdivision, or otherwise, of the land suggested for inclusion in the subdistrict and shall state whether the special annual tax or special benefit assessments will be used, or whether the use of both is contemplated. The petition shall contain a brief statement giving the reasons for organization, requesting that the proposed area be organized as a subdistrict and must be signed by sixty-five percent of the landowners in the proposed subdistrict. Land already in one subdistrict cannot be included in another. The soil conservation district commissioners shall review such petition and if found adequate shall arrange for a hearing thereon. [C58, 62, 66, 71, 73, 75,§467A.14]

467A.15 Notice and hearing. Within thirty days after such petition has been filed with the soil district commissioners, they shall fix a date, hour, and place for a hearing thereon and direct the secretary to cause notice to be given to the owners of each tract of land, or lot, within the proposed subdistrict as shown by the transfer books of the auditor's office, and to each lienholder, or encumbrancer, of any such lands as shown by the county records, and to all other persons whom it may concern, and without naming individuals all actual occupants of land in the proposed subdistrict, of the pendency and prayer of said petition and that all objections to establishment of said subdistrict for any reason must be made in writing and filed with the secretary of the soil conservation district at, or before, the time set for hearing. The soil conservation district commissioners shall consider and determine whether the operation of the subdistrict within the defined boundaries as proposed is desirable, practicable, feasible, and of necessity in the interest of health, safety, and public welfare. All interested parties shall have a right to attend such hearing and to be heard. The soil district commissioners may for good cause adjourn the hearing to a day certain which shall be announced at the time of adjournment and made a matter of record. If the soil district commissioners determine

that the petition meets the requirements set forth herein and in section 467A.5, they shall declare that the subdistrict is duly organized and shall record such action in their official minutes together with an appropriate official name, or designation for the subdistrict. [C58, 62, 66, 71 73, 75,§467A.15]

467A.16 Publication of notice. The notice of hearing on the formation of a subdistrict shall be by publication once each week for two consecutive weeks in some newspaper of general circulation published in the county (or district) the last of which shall be not less than ten days prior to the day set for the hearing on the petition. Proof of such service shall be made by affidavit of the publisher, and be on file with [the] secretary of the district at the time the hearing begins. [C58, 62, 66, 71, 73, 75,§467A.16]

467A.17 Subdistrict in more than one district. If the proposed subdistrict lies in more than one soil conservation district, the petition may be presented to the commissioners of any one of such districts, and the commissioners of all such districts shall act jointly as a board of commissioners with respect to all matters concerning such subdistrict, including its formation. They shall organize as a single board for such purposes and shall designate its chairman, vice chairman, and secretary-treasurer to serve for terms of one year. Such a subdistrict shall be formed in the same manner and shall have the same powers and duties as a subdistrict formed in one soil conservation district. [C58, 62, 66, 71, 73, 75,§467A.17]

467A.18 Authentication. Following the entry in the official minutes of the soil district commissioners of the creation of the subdistrict, the commissioners shall certify this fact on a separate form, authentic copies of which shall be recorded with the county recorder of each county in which any portion of the subdistrict lies, and with the department of soil conservation. [C58, 62, 66, 71, 73, 75,§467A.18]

467A.19 Governing body. The commissioners of a soil conservation district in which the subdistrict is formed shall be the governing body of the subdistrict. When a subdistrict lies in more than one soil conservation district, the combined board of commissioners shall be the governing body. The governing body of the subdistrict shall appoint three trustees living within the subdistrict to assist with the administration of the subdistrict. [C58, 62, 66, 71, 73, 75,§467A.19]

467A.20 Special annual tax. After obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than fifty percent of the lands situated in the subdistrict, a subdistrict shall have the authority to impose a special annual tax, the proceeds of which shall be used for the repayment of actual and necessary expenses incurred to organize the subdistrict, to acquire land or rights or interests therein by purchase or condemnation, repair, alteration, maintenance and operation of the present and future works of improvement within its boundaries.

On or before January 10 of each year its governing body shall make an estimate of the amount it deems necessary to be raised by such special tax for the ensuing year and transmit said estimate in dollars to the board of supervisors of the county in which the subdistrict lies.

If portions of the subdistrict are in more than one county, then the governing body, as hereinbefore designated in such event, after arriving at the estimate in dollars deemed necessary for the entire subdistrict shall ratably apportion such amount between the counties and transmit and certify the prorated portion to the respective boards of supervisors of each of the counties.

The board or boards of supervisors shall upon receipt of certification from the governing body of the district make the necessary levy on the assessed valuation of all real estate within the boundaries of the subdistrict lying within their respective county to raise said amounts, but in no event to exceed one dollar and eight cents per thousand dollars of assessed value.

The special tax so levied shall be collected in the same manner as other taxes with like penalty for delinquency, with the proceeds therefrom to be kept in a separate account by the appropriate county treasurer or treasurers identified by the official name of the subdistrict and expenditures therefrom shall be made on requisition of the chairman and secretary of the governing body of the subdistrict. [C58, 62, 66, 71, 73, 75,§467A.20]

Referred to in §§467A.22, 467A.41

467A.21 Condemnation by subdistrict. A subdistrict of a soil conservation district may condemn land or rights or interests therein to carry out the authorized purposes of the subdistrict. [C62, 66, 71, 73, 75,§467A.21]

467A.22 General powers applicable — warrants or bonds. A subdistrict organized under the provisions of this chapter shall have all of the powers of a soil conservation district in addition to other powers granted to the subdistrict in other sections of this chapter.

The governing body of the subdistrict, upon determination that benefits from works of improvement as set forth in the watershed work plan to be installed will exceed costs thereof, and that funds needed for purposes of the subdistrict require levy of a special benefit assessment as provided in section 467A.23, in lieu of the special annual tax as provided in section 467A.20, shall record its decision to use said taxing authority and shall have authority, upon majority vote of said governing body and with the approval of the state soil conservation committee, to issue warrants or bonds payable in not more than forty semiannual

installments in connection therewith, and to pledge and assign the proceeds of the special benefit assessment and other revenues of the subdistrict as security therefor. Such warrants and bonds of indebtedness shall be general obligations of the subdistrict, exempt from all taxes, state and local, and in no event shall such warrants and bonds constitute an indebtedness of the soil conservation district or the state of Iowa. [C62, 66, 71, 73, 75,§467A.22]

ALTERNATE METHOD OF TAXATION FOR WATERSHED PROTECTION AND FLOOD PREVENTION

467A.23 Agreement by fifty percent of landowners. After obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than fifty percent of the lands situated in the subdistrict, the governing body of the subdistrict shall have the authority to establish a special tax for the purpose of organization, construction, repair, alteration, enlargement, extension and operation of present and future works of improvement within the boundaries of said subdistrict. The governing body shall appoint three appraisers to assess benefits and classify the land affected by such improvements. One of such appraisers shall be a competent registered professional engineer and two of them shall be resident landowners of the county or counties in which the subdistrict is located but not living within nor owning or operating any lands included in said subdistrict.

The appraisers shall take and subscribe an oath of their qualifications and to perform the duties of classification of said lands, fix the percentages, benefits and apportion and assess the costs and expenses of construction of the said improvement according to law and their best judgment, skill, and ability. If said appraisers or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the governing body of the subdistrict shall appoint others with like qualifications to take their places and perform said duties. [C62, 66, 71, 73, 75,§467A.23]

Referred to in §§467A.22, 467A.38, 467A.41

467A.24 Assessment for improvements. At the time of appointing said appraisers, the governing body shall fix the time within which said assessment, classification, and apportionment shall be made, which may be extended for good cause shown. Within twenty days after their appointment, they shall begin to inspect and classify all the lands within said district, or any change, extension, enlargement, or relocation thereof in tracts of forty acres or less according to the legal or recognized subdivisions, in a graduated scale of benefits to be numbered according to the benefit to be received by each of such tracts from such improvement, and pursue said work continuously until completed and, when completed, shall make a full, accurate, and detailed report thereof and file the same with the governing body. The lands receiving the greatest benefit shall be marked on a scale of one hundred, and those benefited in a less degree with such percentage of one hundred as the benefits received bear in proportion thereto.

The amount of benefit appraised to each forty acres of land within the subdistrict shall be determined by the improvements within said subdistrict based upon the work plan as agreed upon by the subdistrict and furnished by the United States soil conservation service. [C62, 66, 71, 73, 75,§467A.24]

Referred to in §467A.41

467A.25 Report of appraisers. In the report of the appraisers so appointed they shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office. [C62, 66, 71, 73, 75,§467A.25]

Referred to in §467A.41

467A.26 Hearing. The governing body shall fix a time for a hearing within sixty days upon receiving the report of the appraisers, and the governing body shall cause notice to be served upon each person not less than ten days before said hearing whose name appears as owner, naming him, and also upon the person or persons in actual occupancy of any tract of land without naming him of the day and hour of such hearing, which notice shall be for the same time and served in the same manner as is provided for the establishment of a subdistrict, and shall state the amount of assessment of costs and expenses of organizing and construction apportioned to each owner upon each forty-acre tract or less, and that all objections thereto must be in writing and filed with the governing body at or before the time set for such hearing. [C62, 66, 71, 73, 75,§467A.26]

Referred to in §467A.41

467A.27 Determination by board. At the time fixed or at an adjourned hearing, the governing body shall hear and determine all objections filed to said report and shall fully consider the said report, and may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses made in said report against any body or tract of land in said subdistrict as may appear to the board to be just and equitable. [C62, 66, 71, 73, 75,§467A.27]

Referred to in §467A.41

467A.28 Appeal. Any person aggrieved may appeal from any final action of the governing body in relation to any matter involving his rights, to the district court of the county in which the proceeding was held. [C62, 66, 71, 73, 75,§467A.28]

Referred to in §467A.41

467A.29 Intercounty subdistricts. In subdistricts extending into two or more counties, appeals from final orders resulting from the joint action of the several governing bodies of such subdistrict may be taken to the district court of any county into which the district extends. [C62, 66, 71, 73, 75,§467A.29]

Referred to in §467A.41

467A.30 Notice of appeal. All appeals shall be taken within twenty days after the date of final action or order of the governing body from which such appeal is taken by filing with the auditor a notice of appeal, designating the court to which the appeal is taken, the order or action appealed from, and stating that the appeal will come on for hearing thirty days following perfection of the appeal with allowances of additional time for good cause shown. This notice shall be accompanied by an appeal bond with sureties to be approved by the auditor conditioned to pay all costs adjudged against the appellant and to abide the orders of the court. [C62, 66, 71, 73, 75,§467A.30]

Referred to in §467A.41

467A.31 Petition filed. Within twenty days after perfection of notice, the appellant shall file a petition setting forth the order or final action of the governing body appealed from and the grounds of his objections and his complaint, with a copy of his claim for damages or objections filed by him with the auditor. He shall pay to the clerk the filing fee as provided by law in other cases. A failure to pay the filing fee or to file such petition shall be deemed a waiver of the appeal and in such case the court shall dismiss the same. [C62, 66, 71, 73, 75,§467A.31]

Referred to in §467A.41

467A.32 Assessment certified. When the board or boards of supervisors shall receive a certification from the governing body of the district to make the necessary assessment on the real estate within the boundaries of the subdistrict lying within their respective county, this shall be construed as final action by the governing body. [C62, 66, 71, 73, 75, §467A.32]

Referred to in §467A.41

467A.33 Assessments transmitted. The governing body upon receiving the reports from three appointed appraisers and after holding the hearings shall transmit and certify the amounts of assessments to the respective boards of supervisors which upon receipt of certification from the governing body of the district, make the necessary levy of such assessments as fixed by the governing body upon the land within such subdistrict and all assessments shall be levied at that time as a tax and shall bear interest at not more than four percent per annum from that date payable annually except as hereafter provided as to cash payments therefor within a specified time. The assessment so levied shall be kept in a separate account by the appropriate county treasurer or treasurers, identified by the official name of the subdistrict and expenditures therefrom shall be made on requisition of the chairman and secretary of the governing body of the subdistrict.

At no time will an assessment be made where the benefits accrued to the subdistrict do not exceed the cost of the improvements within the said subdistrict. [C62, 66, 71, 73, 75,§467A.33]

Referred to in §467A.41

467A.34 Payment to county treasurer. All assessments for benefits shall be levied at one time against the property benefited and when levied and certified by the board or boards of supervisors shall be paid at the office of the county treasurer. Each person or corporation shall have the right within twenty days after the levy of assessments to pay his or its assessment in full without interest.

If any levy of assessments is not sufficient to meet the cost and expenses of organizing and construction apportioned to each owner upon each forty-acre tract or less, additional assessments may be made on the same classification as the previous ones. [C62, 66, 71, 73, 75,§467A.34]

Referred to in §467A.41

467A.35 Installments. If the owner of any premises against which a levy exceeding twenty dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing in a separate agreement, that in consideration of having a right to pay his assessment in installments, he will not make any objection as to the legality of his assessment for benefit, or the levy of the taxes against his property, then such owner shall have the following options:

1. To pay one half of the amount of such assessment at the time of filing such agreement and the remaining one half shall become due and payable one year from the date of filing such agreement. All such installments shall be without interest if paid at said times, otherwise said assessments shall bear interest from the date of the levy at the rate of four percent per annum, payable annually, and be collected as other taxes on real estate, with like penalty for delinquency.

2. To pay such assessments in not less than ten nor more than forty equal installments, the number to be fixed by the governing body of the subdistrict and interest at the rate fixed by the governing body of the subdistrict, not exceeding four percent per annum. The first installment of each assessment shall become due and payable at the October semiannual tax paying date after the date of filing such agreement, unless the agreement is filed with the county auditor less than thirty days prior to such October semiannual tax paying date, in that event, the first installment shall become due and payable at the next succeeding October semiannual tax paying date. The second and each subsequent installment shall become due and payable at the October semiannual tax paying date each year thereafter. All such installments shall be collected with interest accrued on the unpaid balance to the October semiannual tax paying date and as other taxes on real estate, with like penalty for delinquency. [C62, 66, 71, 73, 75,§467A.35]

Referred to in §467A.41

467A.36 Option by appellant. When an owner takes an appeal from the assessment against any of his land, the option to pay in installments whatever assessment is finally established against such land in said appeal shall continue, if within twenty days after the final determination of said appeal he shall file in the office of the auditor his written election to pay in installments, and within said period pay such installments as would have matured prior to that time if no appeal had been taken, together with all accrued interest on said assessment to the last preceding interest-paying date. [C62, 66, 71, 73, 75,§467A.36]

Referred to in §467A.41

467A.37 Status of classification. A classification of land for watershed purposes, when finally adopted, shall remain the basis of all future assessments for the purpose of said subdistrict, except as provided in section 467A.38. C62, 66, 71, 73, 75,§ 467A.37]

Referred to in §467A.41

467A.38 New classification. After a subdistrict has been established and the improvements thereof constructed and put in operation, if the governing body shall find that the original assessments are not equitable as a basis for the expenses of any enlargement or extension thereof which may have become necessary, they shall order a new classification of all lands in said subdistrict by resolution, and appoint three appraisers, which shall meet the same requirements as set forth in section 467A.23.

Upon the completion of the reclassification, those affected by such reclassification shall have the right to appeal as hereinabove set forth. [C62, 66, 71, 73, 75,§467A.38]

Referred to in §§467A.37, 467A.41

467A.39 Benefit of whole subdistrict. Assessments for repair, alteration, enlargement, extension, and operation of works of improvement within the watershed district shall be a benefit to the entire subdistrict and levied as such. [C62, 66, 71, 73, 75,§467A.39]

Referred to in §467A.41

467A.40 Compensation of appraisers. Persons appointed to appraise and make classifications of lands shall receive such compensation as the governing body may fix and in addition thereto, the necessary expenses of transportation of said persons while engaged in their work; such compensation and expenses shall be construed as part of the cost of the subdistrict which shall be included when considering classifications of lands within a subdistrict. [C62, 66, 71, 73, 75,§467A.40]

Referred to in §467A.41

467A.41 Election of taxing methods. Subdistricts organized under the provisions of this chapter shall designate in the petition which of the taxing methods will be used or may stipulate that both methods are contemplated for use. Should the governing body of the subdistrict find it desirable to change from a special annual tax to special benefit assessments it may elect to do so and shall institute proceedings described in sections 467A.23 through 467A.40 and may divert any moneys already collected under section 467A.20, for the purposes authorized in this chapter. [C62, 66, 71, 73, 75,§467A.41]

467A.42 Soil and water conservation practices. In addition to the definitions established by section 467A.3, as used in sections 467A.43 to 467A.53, unless the context otherwise requires:

1. *"Soil loss limit"* means the maximum amount of soil loss due to erosion by water or wind, expressed in terms of tons per acre per year, which the commissioners of the respective soil conservation districts shall determine is acceptable in order to meet the objectives expressed in section 467D.1.

2. *"Soil and water conservation practices"* means any of the practices designated in or pursuant to this subsection which serve to prevent erosion of soil by wind or water, in excess of applicable soil loss limits, from land used for agricultural or horticultural purposes only.

a. "Permanent soil and water conservation practices" means planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, and the construction of terraces, or other permanent soil and water practices approved by the state soil conservation committee.

b. "Temporary soil and water conservation practices" means planting of annual or biennial crops, use of strip-cropping, contour planting, minimum or mulch tillage, and any other cultural practices approved by the state soil conservation committee.

3. *"Erosion control practices"* means:

a. The construction or installation, and maintenance, of such structures or devices as are necessary to carry to a suitable outlet from the site of any building housing four or more residential units, any commercial or industrial development or any publicly or privately owned recreational or service facility of any kind, not served by a central storm sewer system, any water which:

(1) Would otherwise cause erosion in excess of the applicable soil loss limit; and

(2) Does not carry nor constitute sewage, industrial waste, or other waste as defined by section 455B.2.

b. The employment of temporary devices or structures, temporary seeding, fibre mats, plastic, straw, or other measures adequate to prevent erosion in excess of the applicable soil loss limits from the site of, or land directly affected by, the construction of any public or private street, road or highway, any residential, commercial, or industrial building or development, or any publicly or privately owned recreational or service facility of any kind, at all times prior to completion of such construction.

c. The establishment and maintenance of vegetation upon the right of way of any completed portion of any public street, road, or highway, or the construction or installation thereon of structures or devices, or other measures adequate to prevent erosion from the right of way in excess of the applicable soil loss limits. [C73, 75,§467A.42]

Referred to in §467A.44

467A.43 Duty of property owners. To conserve the fertility, general usefulness, and value of the soil and soil resources of this state, and to prevent the injurious effects of soil erosion, it is hereby made the duty of the owners of real property in this state to establish and maintain soil and water conservation practices or erosion control practices, as required by the regulations of the commissioners of the respective soil conservation districts. [C73, 75,§467A.43]

Referred to in §§467A.42, 467A.48

467A.44 Rules by commissioners — scope. The commissioners of each soil conservation district shall, with approval of and within time limits set by administrative order of the state soil conservation committee, adopt such reasonable regulations as are deemed necessary to establish a soil loss limit or limits for the district and provide for the implementation of the limit or limits, and may subsequently amend or repeal their regulations as they deem necessary. The commissioners may:

1. Classify land in the district on the basis of topography, soil characteristics, current use, and other factors affecting propensity to soil erosion.

2. Establish different soil loss limits for different classes of land in the district if in their judgment and that of the state soil conservation committee a lower soil loss limit should be applied to some land than can reasonably be applied to other land in the district, it being the intent of the general assembly that no land in the state be assigned a soil loss limit that cannot reasonably be applied to such land.

3. Require the owners of real property in the district to employ either soil and water conservation practices or erosion control practices, and:

a. May not specify the particular practices to be employed so long as such owners voluntarily comply with the applicable soil loss limits established for the district.

b. May specify two or more approved soil and water conservation practices or erosion control practices, one of which shall be employed by the landowner to bring erosion from land under his control within the applicable soil loss limit of the district when an administrative order is issued to the landowner.

c. In no case may the commissioners require:

(1) The employment of erosion control practices as defined in section 467A.42, subsection 3, on land used in good faith for agricultural or horticultural purposes only.

(2) The employment of soil and water conservation practices or erosion control practices on that portion of any public street, road or highway completed or under construction within the corporate limits of any city, which is or will become the traveled or surfaced portion of such street, road, or highway.

(3) That any owner or operator of agricultural land refrain from fall plowing of land on which he intends to raise a crop during the next succeeding growing season, however on those lands which are prone to excessive wind erosion the commissioners may require that reasonable temporary measures be taken to minimize the likelihood of wind erosion so long as such measures do not unduly increase the cost of operation of the farm on which the land is located. However, fall plowing of soil which is commonly known as gumbo shall always be permitted. [C73, 75,§467A.44]

Referred to in §§467A.42, 467A.48

467A.45 Submission of rules to committee—hearing. Regulations which the commissioners propose to adopt, amend, or repeal shall be submitted to the state soil conservation committee, in such form as the committee shall prescribe, for its approval. The committee may approve the regulations as submitted, or with such amendments as it deems necessary. The commissioners shall thereafter publish notice of hearing on the proposed regulations, as approved, in a newspaper of general circulation in the district, setting a date and time not less than ten nor more than thirty days after such publication when a hearing on the proposed regulations will be held at a specified place. The notice shall include the full text of the proposed regulations or shall state that the proposed regulations are on file and available for review at the office of the affected soil conservation district. [C73, 75,§467A.45]

Referred to in §§467A.42, 467A.48

467A.46 Conduct of hearing. At the hearing, the commissioners or their designees shall explain, in reasonable detail, the reasons why adoption, amendment, or repeal of the regulations is deemed necessary or advisable. Any landowner, or any occupant of land who would be affected by the regulations, shall be afforded an opportunity to be heard for or against the proposed regulations. At the conclusion of the hearing, the commissioners shall announce and enter of record their decision whether to adopt or modify the proposed regulations. Any modification must be approved by the state soil conservation committee, which may at its discretion order the commissioners to republish the regulations and hold another hearing in the manner prescribed by this chapter. [C73, 75,§467A.46]

Referred to in §§467A.42, 467A.48

467A.47 Inspection of land on complaint. The commissioners of any soil conservation

district shall inspect or cause to be inspected any land within the district, upon receipt of a written and signed complaint, from an owner or occupant of land being damaged by sediment, that soil erosion is occurring thereon in excess of the limits established by the district's soil erosion control regulations. If they find that sediment damages are occurring to property owned or occupied by the person filing the complaint and that such excess soil erosion is so occurring on the land inspected, they shall issue an administrative order to the landowner or landowners of record, and to the occupant of the land if known to the commissioners, describing said land and stating as nearly as possible the extent to which soil erosion thereon exceeds the limits established by the district's regulations. The order shall be delivered either by personal service or by restricted certified mail to each of the persons to whom it is directed, and shall:

1. In the case of erosion occurring on the site of any construction project or similar undertaking involving the removal of all or a major portion of the vegetation or other natural or man-made cover, exposing bare soil directly to water or wind, state a time not more than five days after service or mailing of the notice of the order when work necessary to establish or maintain erosion control practices must be commenced, and a time not more than thirty days after service or mailing of the notice of the order when the work is to be satisfactorily completed.

2. In all other cases, state a time not more than six months after service or mailing of the notice of the order, by which work needed to establish or maintain the necessary soil and water conservation practices or erosion control measures must be commenced, and a time not more than one year after the service or mailing of the notice of the order when the work is to be satisfactorily completed, unless the requirements of the order are superseded by the provisions of section 467A.48. [C73, 75,§467A.47]

Referred to in §§467A.42, 467A.48, 467A.49, 467A.52

467A.48 Application for public cost-sharing funds. No owner or occupant of land in this state shall be required to establish any new permanent or temporary soil and water conservation practice unless public or other cost-sharing funds have been specifically approved for such land and actually made available to the owner or occupant in an amount equal to at least seventy-five percent of the cost of any permanent soil and water conservation practice, or an amount set by the state soil conservation committee for any temporary soil and water conservation practice. The state soil conservation committee shall review these requirements at least once each year, and may authorize soil conservation district commissioners to make the mandatory establishment of any specified soil and water conservation practice in any particular case conditional on a higher proportion of public cost-sharing than is required by this section. When the commissioners have been so authorized, they shall, in determining the amount of cost-sharing for establishment of a specified soil and water conservation practice to comply with an administrative order issued pursuant to section 467A.47, consider the extent to which the practice will contribute benefits to the public in relation to the benefits that will accrue to the individual owner or occupant of the land on which the practice is to be established. Evidence that an application for public or other cost-sharing funds, from a source or sources having authority to pay a portion of the cost of work needed to comply with an administrative order issued pursuant to section 467A.47, has been submitted to the proper officer or agency shall constitute commencement of such work within the meaning of sections 467A.43 to 467A.53. Upon receiving evidence of the submission of such application, the commissioners shall forward to the officer or agency to which the application was made a written request to receive notification of the disposition of such application. When notified of the approval of such application, the commissioners shall issue to the same parties who received the original administrative order, or their successors in interest, a supplementary order, to be delivered in the same manner as provided by sections 467A.43 to 467A.53 for delivery of original administrative orders. The supplementary order shall state a time, not more than six months after approval of the application for public cost-sharing funds, by which the work needed to comply with the original administrative order shall actually be commenced, and a time not more than one year thereafter when such work is to be satisfactorily completed. [C73, 75,§467A.48]

Referred to in §§467A.42, 467A.47, 467A.49, 467D.23

467A.49 Petition for court order. The commissioners shall petition the district court for a court order requiring immediate compliance with an administrative order previously issued by the commissioners as provided in section 467A.47, if:

1. The work necessary to comply with the administrative order is not commenced on or before the date specified in such order, or in any supplementary order subsequently issued as provided in section 467A.48, unless in the judgment of the commissioners the failure to commence or complete the work as required by the administrative order is due to factors beyond the control of the person or persons to whom such order is directed and the person or persons can be relied upon to commence and complete the necessary work at the earliest possible time.

2. Such work is not being performed with due diligence, or is not satisfactorily completed by the date specified in the administrative order, or when completed does not reduce soil erosion from such land below the limits established by the soil conservation district's regulations.

3. The person or persons to whom the administrative order is directed advise the commissioners that they do not intend to commence or complete such work. [C73, 75, §467A.49]

Referred to in §§467A.42, 467A.48, 467A.50

467A.50 Burden—court order. In any action brought under section 467A.49, the burden of proof shall be upon the commissioners to show that soil erosion is in fact occurring in excess of the applicable soil loss limits and that the defendant has not established or maintained soil and water conservation practices or erosion control practices in compliance with the soil conservation district's regulations. With respect to construction, repair, or maintenance of any public street, road, or highway, evidence that soil erosion control standards equivalent to or in excess of those currently imposed by the United States government on the project or like projects involving use of federal funds shall create a presumption of compliance with the applicable soil loss limit. Upon receiving satisfactory proof, the court shall issue an order directing the landowner or landowners to comply with the administrative order previously issued by the commissioners. The court may modify such administrative order if deemed necessary. Notice of the court order shall be given either by personal service or by restricted certified mail to each of the persons to whom the order is directed, who may within thirty days from the date of the court order appeal to the supreme court. Any person who fails to comply with a court order issued pursuant to this section within the time specified in such order, unless the order has been stayed pending an appeal, shall be deemed in contempt of court and may be punished accordingly. [C73, 75,§467A.50]

Referred to in §§467A.42, 467A.48

467A.51 Entering on land. The commissioners and their authorized agents or employees shall have authority after ten days' written notice by restricted certified mail addressed to the owner and also to the occupant to enter upon any land in the district without the consent of the landowner or person in possession or control of the land, to determine whether soil erosion is occurring thereon in violation of the district's regulations. Such entry, after notice, shall not be deemed a trespass, and the commissioners may be aided by injunction to insure peaceful entry, when necessary in order to properly discharge their duties under this chapter. [C73, 75,§467A.51]

Referred to in §§467A.42, 467A.48

467A.52 Information on siltation by district board. When the board of any conservancy district informs the commissioners of a soil conservation district that the conservancy district is unable to proceed with construction of a planned internal improvement, because it has been found that the internal improvement would not be adequately protected against siltation due entirely or partially to failure to establish or maintain soil and water conservation practices or erosion control practices within the soil conservation district, the commissioners of the soil conservation district shall determine as far as possible the particular lands where soil erosion which prevents the conservancy district from constructing the internal improvement is occurring and proceed in the same manner as when a complaint is received under section 467A.47. If after six months, the commissioners of the soil conservation district fail or refuse to control the soil erosion which prevents the conservancy district from constructing the internal improvement, the conservancy district directors may petition the district court of the county in which such soil conservation district is located for a court order directing the commissioners to proceed at once to control such erosion. The court shall afford the commissioners or their representative an opportunity to appear and show cause why such order should not be issued. [C73, 75,§467A.52]

Referred to in §§467A.42, 467A.48

467A.53 Co-operation with other agencies. Soil conservation districts are hereby authorized to enter into agreements with the federal government or any agency thereof, as provided by state law, or with the state of Iowa or any agency thereof, any other soil conservation district or conservancy district, or other political subdivision of this state, for co-operation in preventing, controlling, or attempting to prevent or control, soil erosion. Soil conservation districts may accept, as provided by state law, any money disbursed for soil erosion control purposes by the federal government or any agency thereof, and expend such money for the purposes for which it was received. [C73, 75,§467A.53]

Referred to in §§467A.42, 467A.48

CHAPTER 467B

FLOOD AND EROSION CONTROL

Referred to in §471.4

467B.1 Authority of board.
467B.2 Federal aid.
467B.3 Co-operation.
467B.4 Structures or levees.
467B.5 Maintenance cost.
467B.6 Estimate.
467B.7 Projects on private land.
467B.8 Conservation commissioners.

467B.9 Tax.
467B.10 Assumption of obligations.
467B.11 Highway law applicable.
467B.12 Payments from federal government.
467B.13 Allocation to secondary road funds.
467B.14 Allocation.
467B.15 Taxes canceled.

467B.1 Authority of board. Whenever any county, soil conservation district, subdistrict of a soil conservation district, conservancy district, political subdivision of the state, or other local agency shall engage or participate in any project for flood or erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, in co-operation with the federal government, or any department or agency thereof, the counties in which said project shall be carried on shall have the jurisdiction, power, and authority through the board of supervisors to construct, operate and maintain said project on lands under the control or jurisdiction of the county whenever dedicated to county use, or to furnish financial and other assistance in connection with said projects. Such flood, soil erosion control, and watershed improvement projects shall be presumed to be for the protection of the tax base of the county, for the protection of public roads and lands, and for the protection of the public health, sanitation, safety, and general welfare. [C50, 54, 58, 62, 66, 71, 73, 75,§467B.1]

467B.2 Federal aid. Any county may, in accordance with provisions of this chapter, accept federal funds for aid in any project for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, and may co-operate with the federal government or any department or agency thereof, soil conservation districts, subdistrict of a soil conservation district, conservancy district, political subdivision of the state, or other local agency, and the county may assume such proportion of the cost of the project as deemed appropriate, and may assume the maintenance cost of the same on lands under the control or jurisdiction of the county as will not be discharged by federal aid or grant. [C50, 54, 58, 62, 66, 71, 73, 75,§467B.2]

See also §467B.12

467B.3 Co-operation. The counties and soil conservation districts, subdistricts of soil conservation districts concerned, and conservancy districts, shall advise and consult with each other, upon the request of any of them or any affected landowners, and shall be authorized to co-operate with each other or with other state subdivisions, or instrumentalities, and affected landowners, as well as with the federal government or any department or agency thereof, to construct, operate, and maintain suitable projects for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water on public roads or other public lands or other land granted county use. [C50, 54, 58, 62, 66, 71, 73, 75,§467B.3]

467B.4 Structures or levees. When structures or levees necessary for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, are constructed on county roads, the cost in total or in part shall be considered a part of the cost of road construction. [C50, 54, 58, 62, 66, 71, 73, 75,§467B.4]

467B.5 Maintenance cost. Where construction of projects has been completed by the soil conservation district, subdistricts of soil conservation districts, conservancy districts, political subdivisions of the state, or other local agencies, or the federal government, or any department or agency thereof on private lands under the easement granted to the county, only the cost of maintenance may be assumed by the county. [C50, 54, 58, 62, 66, 71, 73, 75,§467B.5]

467B.6 Estimate. In the proceedings to establish such a project the government engineer shall set forth in his report separately from other items, the amount of the cost of construction on county property and on private lands, and his estimate of the cost of the maintenance of the same.

If the plan is approved by all co-operating agencies and the project established as a flood or erosion control project the board of supervisors shall make a written record of any such co-operative arrangement and may use such part of the funds of the county now authorized by law and by this chapter as may be necessary to pay the amount agreed upon toward the construction, maintenance and cost of such project. [C50, 54, 58, 62, 66, 71, 73, 75,§467B.6]

467B.7 Projects on private land. Any flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, projects built on private land with federal or other funds when dedicated to the county use, shall be maintained in the same manner as its own county-owned or controlled property. [C50, 54, 58, 62, 66, 71, 73, 75,§467B.7]

467B.8 Conservation commissioners. In counties where soil conservation districts exist the commissioners in said county shall be responsible for the inspection of all flood and erosion control structures built on private land under easement to the county; shall furnish such technical assistance as they may have available in making estimates of needed repairs without cost to the county, and shall report any needed repair and the nature thereof to the county board of supervisors. [C50, 54, 58, 62 66, 71, 73, 75,§467B.8]

467B.9 Tax. The county board of supervisors may annually levy a tax not to exceed six and three-fourths cents per thousand dollars of assessed value of all agricultural lands in the county, the same to be used to acquire land or rights or interests therein by purchase or condemnation, and for repair, alteration, maintenance, and operation of the present and future works of improvement built on lands under the control or jurisdiction of the county, as provided for in this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§467B.9]

Referred to in §24.37

467B.10 Assumption of obligations. This chapter contemplates that actual direction of the project, or projects, and the actual work done in connection therewith, will be assumed by the soil conservation district, subdistrict of a soil conservation district, conservancy district, or by the federal government and that the county or other state subdivisions or instrumentalities jointly will meet the obligation required for federal co-operation and may make proper commitment for the care and maintenance of the project after its completion for the general welfare of the public and residents of the respective counties. [C50, 54, 58, 62, 66, 71, 73, 75,§467B.10]

467B.11 Highway law applicable. The counties in maintaining the structures or improvements made under such a project shall do so in a like manner and under like procedure as that used in the maintenance of its highways. Any co-operative agreements with other state subdivisions or instrumentalities shall conform with such an agreement as to the proportion of maintenance cost. [C50, 54, 58, 62, 66, 71, 73, 75,§467B.11]

Constitutionality, 52GA, ch 102,§12

467B.12 Payments from federal government. Whenever there shall be payable by the federal government to counties or school districts of the state any sums of money because of the fact that such school districts or counties are entitled to a share of the receipts from the operation of the federal government of flood control projects within any county of the state, such payments shall be payable to the county treasurer of any county in which such payments become due. [C50, 54, 58, 62, 66, 71, 73, 75,§467B.12]

See also §467B.2

467B.13 Allocation to secondary road funds. Upon receipt of any such payments or payment by the county treasurer twenty-five percent of such amount shall be credited to the secondary road funds of the counties which are principally affected by the construction of such federal flood control projects, and the board of supervisors shall determine which roads of the county are deemed to be principally affected and the amounts which shall be expended from these funds derived from the federal government on such roads. [C50, 54, 58, 62, 66 71, 73, 75,§467B.13]

467B.14 Allocation. Sixty-five percent of any such payments or payment received from the federal government shall be distributed to the general fund of the school districts of the county after the county auditor has determined the districts which are principally affected by the federal flood control project involved in an amount deemed to be the equitable share of each such district and the amount allocated to each school district shall be paid over to the treasurer of such school district.

The county auditor shall certify to the executive council of the state the amounts allocated to each school district in the previous year, on January 2 of the following year. The executive council of the state shall deduct this amount from any tax free land reimbursement claim filed that year under section 284.4*; except that in no case shall the deduction result in an amount less than the total of the tax free land reimbursement plus any benefits payable to the school district other than the amounts specified in this paragraph. The remaining ten percent of any such payment received by the county treasurer from the federal government, or so much thereof as may be deemed necessary by the board of supervisors, shall be allocated to the local fire departments of the unincorporated villages, townships and cities of the county which are principally affected by the federal flood control project involved, to be paid and prorated among them as determined by the board of supervisors. If the funds prorated to local fire departments in any county are less than ten percent of the total county share of such federal payments for any year, the amount which exceeds such prorations shall revert back to and be divided equally between the secondary road fund and the local school district fund. [C50, 54, 58, 62, 66, 71, 73, 75, §467B.14]

*Ch 284, Code 1973, repealed by 65GA, ch 258,§16

467B.15 Taxes canceled. The treasurer of any county wherein is situated any land acquired by the federal government for flood control projects is hereby authorized to cancel any taxes or tax assessments against any such land so acquired where the tax has been extended but has not become a lien thereon at the time of the acquisition thereof. [C58, 62, 66, 71, 73, 75,§467B.15]

CHAPTER 467C

SOIL CONSERVATION AND FLOOD CONTROL DISTRICTS

Referred to in §111A.4(9)

467C.1 Presumption of benefit.
467C.2 Board of supervisors to establish districts—strip coal mining.
467C.3 Combination of functions.
467C.4 Old districts combined.
467C.5 Approval of commissioners.
467C.6 Chapters made applicable.

467C.1 Presumption of benefit. The conservation of the soil resources of the state of Iowa, the proper control of water resources of the state and the prevention of damage to property and lands through the control of floods, the drainage of surface waters or the protection of lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience and welfare and essential to the economic well-being of the state. [C50, 54 58, 62, 66, 71, 73, 75,§467C.1]

467C.2 Board of supervisors to establish districts—strip coal mining. The board of supervisors of any county shall have jurisdiction, power and authority at any regular, special or adjourned session to establish, subject to the provisions of this chapter, districts having for their purpose soil conservation and the control of flood waters and to cause to be constructed as hereinafter provided, such improvements and facilities as shall be deemed essential for the accomplishment of the purpose of soil conservation and flood control. Such board shall also have jurisdiction, power and authority at any regular, special or adjourned session to establish, in the same manner that the districts hereinabove referred to are established, districts having for their purpose soil conservation in mining areas within the county, and provide that anyone engaged in removing the surface soil over any bed or strata of coal in such district for the purpose of obtaining such coal shall replace the surface soil as nearly as practicable to its original position, and provide that, upon abandonment of such removal operation, all surface soil shall be so replaced. This section shall apply only to surface soil so removed after July 4, 1949, and then only if it is essential for the accomplishment of the purpose of soil conservation and flood control within the purview of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§467C.2]

467C.3 Combination of functions. Such districts shall have the power to combine in their functions activities affecting soil conservation, flood control and drainage, or any of these objects, singly or in combination with another. [C50, 54, 58, 62, 66, 71, 73, 75,§467C.3]

467C.4 Old districts combined. If any levee or drainage district or improvement established either by legal proceedings or by private parties shall desire to include in the activities of such district soil conservation or flood control projects, the board upon petition, as for the establishment of an original levee or drainage district, shall establish a new district covering and including such old district and improvement together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein. [C50, 54, 58, 62, 66, 71, 73, 75,§467C.4]

467C.5 Approval of commissioners. No district shall be established by any board of supervisors under this chapter unless the organization of such district is approved by the commissioners of any soil conservation district established under the provisions of chapter 467A and which is included all or in part within such district, nor shall any such district be established without the approval of the state conservation commission and the Iowa natural resources council. [C50, 54, 58, 62, 66, 71, 73, 75,§467C.5]

467C.6 Chapters made applicable. In the organization, operation and financing of districts established under this chapter, the provisions of chapters 455 and 456 to 467 shall apply.

Wherever any of the provisions of said chapters refer to the word "drainage", the word shall be deemed to include in its meaning soil erosion and flood control or any combination of drainage, flood control and soil erosion control. The term "drainage district" shall be considered to include districts having as their purpose soil conservancy or flood control or any combination thereof, and the words "drainage certificates" or "drainage bonds" shall be deemed to include certificates or bonds issued in behalf of any district organized under the provisions of this chapter; and any procedure provided by these chapters in connection with the organization, financing and operation of any drainage district shall be applicable to the organization, financing and operation of districts organized under this chapter. [C50, 54, 58, 62, 66, 71, 73, 75, §467C.6]

Constitutionality, 53GA, ch 204,§13

CHAPTER 467D

CONSERVANCY DISTRICTS

Referred to in §§455A.40, 467A.4

467D.1 Policy.
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467D.24 Surveys—soundings—drillings.

467D.1 Policy. It is hereby declared to be the policy of the state of Iowa and the objectives of this chapter to preserve and protect the public interest in the soil and water resources of this state for future generations, and for this purpose to encourage, promote, facilitate, and where such public interest requires, to mandate the conservation and proper control and use of the soil and water resources of this state, by measures including but not limited to the control of floods, the control of erosion by water or by wind, the preservation of the quantity and quality of water for its optimum use for agricultural, irrigation, recreational, industrial, and domestic purposes, all of which shall be presumed conducive to the public health, convenience and welfare, both present and prospective. [C73, 75,§467D.1]

Referred to in §§467A.42, 467D.3, 467D.6

467D.2 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Conservancy district"* means one of the six conservancy districts established by section 467D.3.

2. *"Board"* means the body designated by section 467D.4 to administer each of the conservancy districts.

3. *"Council"* means the Iowa natural resources council.

4. *"Internal improvement"* includes, but it is not limited to, dams or other water impoundment structures, levees, ditches, or other artificial watercourses, tile lines, or any other physical structure constructed or improved by a conservancy district in furtherance of the objectives of this chapter.

5. *"Department"* or *"department of soil conservation"* means the agency established by section 467A.4.

6. *"Committee"* or *"state soil conservation committee"* means the committee established by section 467A.4. [C73, 75,§467D.2]

467D.3 Districts established.* In furtherance of the policy set forth in section 467D.1, the entire area of the state of Iowa shall be divided into six conservancy districts, and the same are hereby established as political subdivisions of the state of Iowa, as follows:

1. The northeast Iowa conservancy district shall include all of Allamakee, Winneshiek, Howard, Fayette, Clayton, Delaware, Dubuque, Jackson, and Clinton counties, and the designated portions of each of the following counties:

a. In Mitchell county:

Twp. N.	Range West	Sections
100	15	7 to 18 inclusive, 20 to 29 inclusive, 32 to 36 inclusive.
	16	12.
99	15	1 to 4 inclusive, 9 to 15 inclusive, 22 to 26 inclusive, 35, 36.
98	15	1, 2, 11 to 14 inclusive, 23 to 26 inclusive, 36.
97	15	1, 12, 13.

b. In Floyd county:

Twp. N.	Range West	Sections
97	15	24, 25, 36.

*References to cities in this section include towns as they existed before enactment of the "City Code of Iowa."

c. In Chickasaw county:

Twp. N.	Range West	Sections
97	11, 12, 13, 14	All.
96	11, 12, 13	All.
	14	1 to 6 inclusive, 8 to 17 inclusive, 21 to 28 inclusive, 34, 35, 36.
95	11, 12, 13	All.
	14	1, 2, 3, 11 to 14 inclusive, 23, 24.
94	11, 12	All.
	13	1 to 5 inclusive, 8 to 16 inclusive, 21 to 28 inclusive, 33 to 36 inclusive.

d. In Bremer county:

Twp. N.	Range West	Sections
93	11, 12	All.
	13	1 to 4 inclusive, 9 to 16 inclusive, 21 to 27 inclusive, 34 to 36 inclusive.
92	11, 12	All.
	13	1, 2, 11 to 13 inclusive.
91	11	All.
	12	1 to 5 inclusive, 8 to 17 inclusive, 20 to 29 inclusive, 31 to 36 inclusive.

e. In Black Hawk county:

Twp. N.	Range West	Sections
90	11	1 to 30 inclusive, 32 to 36 inclusive.
	12	1 to 5 inclusive, 8 to 17 inclusive, 20, 21, 23, 24, 25.
89	11	1 to 4 inclusive, 11 to 15 inclusive, 22, 23, 27.

f. In Buchanan county:

Twp. N.	Range West	Sections
90	7, 8, 9, 10	All.
89	7, 8, 9	All.
	10	1 to 18 inclusive, 20 to 28 inclusive.
88	7, 8	All.
	9	1 to 5 inclusive, 8 to 15 inclusive, 23, 24, 25.
87	7	All.
	8	1 to 30 inclusive, 34 to 36 inclusive.
	9	12, 13, 24, 25.

All territory within the corporate limits of the city of Rowley, as such limits existed on January 1, 1969, shall be within the northeast Iowa conservancy district, including the portion of such city not within any of the sections of land previously listed in this paragraph.

g. In Linn county:

Twp. N.	Range West	Sections
86	5, 6	All.
	7	1 to 17 inclusive, 22 to 26 inclusive, 36.
	8	1, 12.
85	5	1 to 30 inclusive, 32 to 36 inclusive.
	6	1 to 4 inclusive, 8 to 16 inclusive, 23, 24.
	7	1.
84	5	1 to 4 inclusive, 10 to 14 inclusive, 24.

h. In Jones county:

Twp. N.	Range West	Sections
86	1, 2, 3, 4	All.
85	1, 2, 3, 4	All.
84	1, 2, 3	All.
	4	1 to 30 inclusive, 32 to 36 inclusive.
83	1, 2, 3	All.
	4	1 to 5 inclusive, 7 to 30 inclusive, 32 to 36 inclusive.

i. In Cedar county:

Twp. N.	Range West	Sections
82	1	All.
	2	1 to 17 inclusive, 20 to 29 inclusive, 35, 36.
	3	1 to 11 inclusive, 17, 18.
	4	1, 2, 3, 10 to 13 inclusive.
81	1	1 to 30 inclusive, 32 to 36 inclusive.
	2	1, 2, 11 to 14 inclusive, 23, 24, 25.
80	1	1, 2, 3, 11, 12, 13, 24 to 27 inclusive, 34, 35, 36.
79	1	1, 12, 13.

All territory within the corporate limits of the city of Mechanicsville, as such limits existed on January 1, 1969, shall be within the northeast Iowa conservancy district, including the portion of such city not within any of the sections of land previously listed in this paragraph.

j. In Scott county:

Twp. N.	Range East	Sections
80	1, 2, 3, 4, 5	All.
79	1	1 to 18 inclusive, 23, 24.
	2	1 to 30 inclusive, 33 to 36 inclusive.
	3, 4, 5	All.
78	2	1, 2, 10 to 17 inclusive, 20 to 36 inclusive.
	3, 4, 5	All.
77	2, 3	All.

k. In Muscatine county:

Twp. N.	Range East	Sections
78	1	19, 28 to 36 inclusive.
77	1	All.
Twp. N.	Range West	Sections
78	1	13, 22 to 27 inclusive, 34, 35, 36.
77	1	All.
	2	1, 12 to 15 inclusive, 21 to 29 inclusive, 31 to 36 inclusive.
	3	36.
76	2	All.
	3	1, 11 to 15 inclusive, 22 to 27 inclusive, 34, 35, 36.

l. In Louisa county:

Twp. N.	Range West	Sections
75	2	All.
	3	1, 2, 3, 10 to 15 inclusive, 23 to 26 inclusive, 35, 36.
74	2	5 to 9 inclusive, 16, 17, 20, 21, 22, 26, 27, 28, 33, 34, 35.
	3	1.
73	2	2, 3.

2. The Iowa-Cedar river conservancy district shall include all of Worth, Cerro Gordo, Butler, Franklin, Grundy, Benton, Tama, Johnson, and Iowa counties, those portions of Mitchell, Floyd, Chickasaw, Bremer, Black Hawk, Buchanan, Linn, Cedar, Scott, and Muscatine counties not included in the northeast Iowa conservancy district, that portion of Jones county not so included in the northeast Iowa conservancy district and also all territory within the corporate limits of the city of Martelle in Jones county, as such limits existed on January 1, 1969, including that portion of such city within any of the sections of land listed in paragraph "*h*" of subsection 1 of this section, and the designated portions of each of the following counties:

a. In Winnebago county:

Twp. N.	Range West	Sections
100	23	All.
	24	11 to 16 inclusive, 20 to 29 inclusive, 33 to 36 inclusive.
99	23	All.
	24	1 to 5 inclusive, 7 to 36 inclusive.
	25	12, 13, 23 to 26 inclusive, 34, 35, 36.
98	23, 24	All.
	25	1, 2, 3, 11 to 14 inclusive, 24, 25, 26, 34, 35, 36.

b. In Hancock county:

Twp. N.	Range West	Sections
97	23, 24	All.
	25	1, 2, 3, 9 to 16 inclusive, 19 to 36 inclusive.
	26	24, 25, 36.
96	23, 24	All.
	25	1 to 18 inclusive, 20 to 28 inclusive, 34, 35, 36.
	26	1, 12.
95	23, 24	All.
	25	1, 2, 3, 11 to 14 inclusive, 24, 25, 36.
94	23	All.
	24	1 to 30 inclusive, 32 to 36 inclusive.
	25	1.

c. In Wright county:

Twp. N.	Range West	Sections
93	23	All.
	24	1 to 5 inclusive, 9 to 16 inclusive, 21 to 27 inclusive, 33 to 36 inclusive.
92	23	All.
	24	1 to 4 inclusive, 10 to 15 inclusive, 21 to 28 inclusive, 34, 35, 36.
91	23	All.
	24	1, 2, 11 to 15 inclusive, 22 to 26 inclusive, 36.
90	23	All.
	24	1, 12, 13, 23 to 26 inclusive, 35, 36.

d. In Hamilton county:

Twp. N.	Range West	Sections
89	23	1 to 18 inclusive, 22 to 27 inclusive, 34, 35, 36.
	24	1, 2, 11 to 14 inclusive, 23 to 26 inclusive.
88	23	1 to 5 inclusive, 8 to 17 inclusive, 20 to 29 inclusive, 32 to 36 inclusive.
87	23	1 to 4 inclusive, 10 to 14 inclusive, 23 to 26 inclusive.

e. In Hardin county:

Twp. N.	Range West	Sections
89	19, 20, 21, 22	All.
88	19, 20, 21, 22	All.
87	19, 20, 21, 22	All.
86	19, 20, 21	All.
	22	1 to 16 inclusive, 22 to 27 inclusive, 34, 35, 36.

f. In Story county:

Twp. N.	Range West	Sections
85	21	1 to 30 inclusive, 33 to 36 inclusive.
	22	1, 2, 3, 10 to 15 inclusive, 24, 25.
84	21	1 to 4 inclusive, 9 to 14 inclusive, 23 to 26 inclusive, 35, 36.
83	21	1, 2, 11.

All territory within the corporate limits of the city of McCallsburg, as such limits existed on January 1, 1969, shall be within the Iowa-Cedar river conservancy district, including the portion of such city not within any of the sections of land listed in this paragraph.

g. In Marshall county:

Twp. N.	Range West	Sections
85	17, 18, 19, 20	All.
84	17, 18, 19, 20	All.
83	17, 18	All.
	19	1 to 30 inclusive, 33 to 36 inclusive.
	20	1 to 6 inclusive, 9 to 16 inclusive, 23, 24.
82	17	All.
	18	1 to 18 inclusive, 20 to 27 inclusive.
	19	1, 2, 3, 12.

h. In Jasper county:

Twp. N.	Range West	Sections
81	17	1, 2, 3, 10 to 14 inclusive, 24.

i. In Poweshiek county:

Twp. N.	Range West	Sections
81	13, 14, 15	All.
	16	1 to 30 inclusive, 33 to 36 inclusive.
80	13, 14, 15	All.
	16	1, 2, 3, 10 to 15 inclusive, 21 to 28 inclusive, 33 to 36 inclusive.
79	13, 14	All.
	15	1 to 17 inclusive, 22 to 27 inclusive.
	16	1, 2, 3, 12.
78	13	All.
	14	1 to 17 inclusive, 20 to 29 inclusive, 33 to 36 inclusive.

j. In Mahaska county:

Twp. N.	Range West	Sections
77	14	1, 2.

k. In Keokuk county:

Twp. N.	Range West	Sections
77	10	1 to 30 inclusive, 36.
	11	1 to 25 inclusive, 30.
	12	1 to 25 inclusive.
	13	1 to 6 inclusive, 8 to 15 inclusive.

All territory within the corporate limits of the city of Keswick, as such limits existed on January 1, 1969, shall be within the Iowa-Cedar river conservancy district, including the portion of such city not within any of the sections of land listed in this paragraph.

l. In Washington county:

Twp. N.	Range West	Sections
77	6, 7, 8, 9	All.
76	6, 7	All.
	8	1 to 5 inclusive, 11 to 14 inclusive, 22 to 26 inclusive.
75	6	All.
	7	1 to 6 inclusive, 8 to 16 inclusive, 21 to 27 inclusive, 36.
74	6	1 to 5 inclusive, 11, 12, 13.

m. In Louisa county:

Twp. N.	Range West	Sections
76	5	All.
75	3	4 to 9 inclusive, 16 to 22 inclusive, 27 to 34 inclusive.
	4, 5	All.
74	1	All.
	2	18, 19, 29 to 32 inclusive, 36.
	3	2 to 36 inclusive.
	4	1 to 30 inclusive, 32 to 36 inclusive.
	5	1 to 29 inclusive, 34.
73	1	All.
	2	1, 4 to 36 inclusive.
	3	All.
	4	1 to 5 inclusive, 9 to 16 inclusive, 23 to 26 inclusive, 35, 36.

All territory within the corporate limits of the city of Grandview, as such limits existed on January 1, 1969, shall be within the Iowa-Cedar river conservancy district, including the portion of the city not within any of the sections of land listed in this paragraph.

n. In Des Moines county:

Twp. N.	Range West	Sections
72	1, 2, 3	All.
	4	1, 2, 11 to 15 inclusive, 22 to 27 inclusive, 33 to 36 inclusive.
71	1, 2, 3	All.
	4	1 to 5 inclusive, 7 to 30 inclusive, 32 to 36 inclusive.
70	1, 2	All.
	3	1 to 30 inclusive, 33 to 36 inclusive.
	4	1 to 4 inclusive, 10 to 14 inclusive, 23, 24, 25.
69	2	All.
	3	1 to 4 inclusive, 9 to 15 inclusive, 23, 24, 25.
68	2	5, 6, 8.

All territory within the corporate limits of the city of Middletown, as such limits existed on January 1, 1969, shall be within the Iowa-Cedar river conservancy district, including the portion of the city not within any of the sections of land listed in this paragraph.

o. In Henry county:

Twp. N.	Range West	Sections
71	5	12, 13, 23, 24, 25.

3. The Skunk river conservancy district shall include those portions of Hardin and Marshall counties not included in the Iowa-Cedar river conservancy district by subsection 2 of this section, that portion of Louisa county not included in the northeast Iowa conservancy district by subsection 1 of this section nor in the Iowa-Cedar river conservancy district by subsection 2 of this section, and the designated portions of each of the following counties:

a. In Hamilton county:

Twp. N.	Range West	Sections
89	23	19, 20, 21, 28 to 33 inclusive.
	24	15, 22, 27, 28, 33, 34, 35, 36.
88	23	6, 7, 18, 19, 30, 31.
	24	All.
	25	1, 12, 13, 24, 25, 26, 34, 35, 36.
87	23	5 to 9 inclusive, 15 to 22 inclusive, 27 to 36 inclusive.
	24	All.
	25	1, 2, 3, 10 to 16 inclusive, 21 to 36 inclusive.
	26	25, 26, 27, 33 to 36 inclusive.
86	23, 24, 25	All.
	26	1 to 5 inclusive, 7 to 36 inclusive.

All territory within the corporate limits of the cities of Blairsburg and Kamrar, and of that portion of the city of Stratford which is located in Hamilton county, as such limits existed on January 1, 1969, shall be within the Skunk river conservancy district, including the portions of the cities of Blairsburg and Kamrar and that portion of the city of Stratford which is within Hamilton county which are not within any of the sections of land listed in this paragraph.

b. In Webster county:

Twp. N.	Range West	Sections
86	27	24, 25, 36.

All territory within the corporate limits of that portion of the city of Stratford which is located in Webster county, as such limits existed on January 1, 1969, shall be within the Skunk river conservancy district, including that portion of the city which is within Webster county but is not within any of the sections of land listed in this paragraph.

c. In Boone county:

Twp. N.	Range West	Sections
85	25	All.
	26	1 to 6 inclusive, 8 to 16 inclusive, 21 to 27 inclusive, 33 to 36 inclusive.
84	25	All.
	26	1, 2, 11 to 14 inclusive, 24.
83	25	1 to 5 inclusive, 9 to 16 inclusive, 23, 24, 25, 36.
82	25	12, 13.

d. In Story county:

Twp. N.	Range West	Sections
85	21	31, 32.
	22	4 to 9 inclusive, 16 to 23 inclusive, 26 to 36 inclusive.
	23, 24	All.
84	21	5 to 8 inclusive, 15 to 22 inclusive, 27 to 34 inclusive.
	22, 23, 24	All.
83	21	3 to 10 inclusive, 12 to 36 inclusive.
	22, 23, 24	All.
82	21, 22, 23	All.
	24	1 to 18 inclusive, 20 to 27 inclusive, 36.

e. In Polk county:

Twp. N.	Range West	Sections
81	22	All.
	23	1 to 18 inclusive, 20 to 28 inclusive, 34, 35, 36.
	24	1, 12.
80	22	1 to 29 inclusive, 32 to 36 inclusive.
	23	1, 2, 11, 12.
79	22	1.

All territory within the corporate limits of the city of Elkhart, as such limits existed on January 1, 1969, shall be within the Skunk river conservancy district, including the portion of the city not within any of the sections of land listed in this paragraph.

f. In Jasper county:

Twp. N.	Range West	Sections
81	17	4 to 9 inclusive, 15 to 23 inclusive, 25 to 36 inclusive.
	18, 19, 20, 21	All.
80	17, 18, 19, 20, 21	All.
79	17, 18, 19, 20	All.
	21	1 to 18 inclusive, 21 to 26 inclusive, 35, 36.
78	17, 18	All.
	19	1 to 30 inclusive, 32 to 36 inclusive.
	20	1 to 5 inclusive, 10 to 14 inclusive, 24, 25.

All territory within the corporate limits of the cities of Monroe and Prairie City, as such limits existed on January 1, 1969, shall be within the Skunk river conservancy district, including the portions of such cities not within any of the sections of land listed in this paragraph.

g. That portion of Poweshiek county not included in the Iowa-Cedar river conservancy district and also all territory within the corporate limits of the city of Grinnell, the city of Montezuma, and that portion of the city of Barnes City which is located within Poweshiek county, as such limits existed on January 1, 1969, including those portions of the city of Grinnell and the city of Montezuma, and that portion of the city of Barnes City which is located within Poweshiek county, within any of the sections listed in paragraph "*i*" of subsection 2 of this section.

h. In Marion county:

Twp. N.	Range West	Sections
77	18	All.
	19	1 to 5 inclusive, 9 to 15 inclusive, 23, 24, 25.
76	18	2 to 5 inclusive, 10, 11.

All territory within the corporate limits of the city of Pella, as such limits existed on January 1, 1969, shall be within the Skunk river conservancy district, including the portion of the city not within any of the sections of land previously listed in this paragraph.

i. In Mahaska county:

Twp. N.	Range West	Sections
77	14	3 to 36 inclusive.
	15, 16, 17	All.
76	14, 15, 16	All.
	17	1 to 5 inclusive, 9 to 16 inclusive, 23, 24, 25.
75	14	All.
	15	1 to 28 inclusive, 34, 35, 36.
	16	1, 2, 3, 11, 12, 13.
74	14	All.
	15	1, 2, 11 to 15 inclusive, 22 to 26 inclusive.

All territory within the corporate limits of the city of Oskaloosa and the city of University Park, and that portion of the city of Barnes City which is located in Mahaska county, as such limits existed on January 1, 1969, including the portions of the city of Oskaloosa and the city of University Park, and that portion of the city of Barnes City located in Mahaska county, not within any of the sections of land listed in this paragraph.

j. That portion of Keokuk county not included in the Iowa-Cedar river conservancy district and also all territory within the corporate limits of the cities of Gibson, South English, and Webster, as such limits existed on January 1, 1969, including the portions of such cities within any of the sections of land listed in paragraph "*e*" of subsection 2 of this section.

k. That portion of Washington county not included in the Iowa-Cedar river conservancy district and also all territory within the corporate limits of the city of Washington and the city of Crawfordsville, as such limits existed on January 1, 1969, including the portions of such cities within any of the sections of land listed in paragraph "*m*" of subsection 2 of this section.

l. In Wapello county:

Twp. N.	Range West	Sections
73	12, 13	All.
	14	1 to 5 inclusive, 9 to 15 inclusive, 23 to 26 inclusive, 36.
72	12	All.
	13	1 to 6 inclusive, 10 to 14 inclusive, 24, 25.
	14	1.
71	12	1 to 5 inclusive, 9 to 12 inclusive, 14, 15.

m. In Jefferson county:

Twp. N.	Range West	Sections
73	8, 9, 10, 11	All.
72	8, 9, 10, 11	All.
71	8, 9	All.
	10	1 to 17 inclusive, 22 to 27 inclusive, 35, 36.
	11	1 to 12 inclusive, 16, 17.

All territory within the corporate limits of the city of Libertyville, as such limits existed on January 1, 1969, shall be within the Skunk river conservancy district, including the portion of such city not within any of the sections of land listed in this paragraph.

n. That portion of Henry county not included in the Iowa-Cedar river conservancy district and also all territory within the corporate limits of the city of New London, as such limits existed on January 1, 1969, including the portion of such city within any of the sections of land listed in paragraph "*p*" of subsection 2 of this section.

o. That portion of Des Moines county not included in the Iowa-Cedar river conservancy district and also all territory within the corporate limits of the city of Danville, as such limits existed on January 1, 1969, including the portion of such city within any of the sections of land listed in paragraph "*o*" of subsection 2 of this section.

p. In Van Buren county:

Twp. N.	Range West	Sections
70	8	All.
	9	1 to 12 inclusive, 16, 36.
69	8	1 to 5 inclusive, 11, 12, 13.

All territory within the corporate limits of the city of Birmingham, as such limits existed on January 1, 1969, shall be within the Skunk river conservancy district, including the portion of such city not within any of the sections of land listed in this paragraph.

q. In Lee county:

Twp. N.	Range West	Sections
69	3, 4, 5, 6	All.
	7	1 to 25 inclusive, 36.
68	2, 3, 4, 5	All.
	6	1 to 6 inclusive, 8 to 17 inclusive, 20 to 28 inclusive, 33 to 36 inclusive.
67	4, 5	All.
	6	1, 2, 3, 10 to 15 inclusive, 23 to 26 inclusive, 36.
66	4	All.
	5	3 to 6 inclusive, 8 to 16 inclusive, 21 to 28 inclusive, 33 to 36 inclusive.
65	4	All.
	5	1 to 4 inclusive, 10 to 15 inclusive, 22 to 27 inclusive, 34, 35, 36.

All territory within the corporate limits of the city of Keokuk, as such limits existed on January 1, 1969, shall be within the Skunk river conservancy district, including the portion of such city not within any of the sections of land listed in this paragraph.

4. The Des Moines river conservancy district shall include all of Kossuth, Humboldt, Pocahontas, Calhoun, Greene, Dallas, and Warren counties, those portions of Wright, Webster, Hamilton, Boone, Story, Jasper, Marion, Mahaska, Jefferson, and Henry counties not included in either the Iowa-Cedar river conservancy district or the Skunk river conservancy district, or both, by subsections 2 and 3 of this section, and the designated portions of each of the following counties:

a. In Dickinson county:

Twp. N.	Range West	Sections
100	35	7 to 17 inclusive, 20 to 28 inclusive, 33 to 36 inclusive.
99	35	1, 12, 13, 24.

All territory within the corporate limits of the city of Superior, as such limits existed on January 1, 1969, shall be within the Des Moines river conservancy district, including the portion of such city not within any of the sections of land listed in this paragraph.

b. In Emmet county:

Twp. N.	Range West	Sections
100	31, 32, 33, 34	All.
99	31, 32, 33	All.
	34	1 to 30 inclusive, 32 to 36 inclusive.
98	31, 32, 33	All.
	34	1 to 4 inclusive, 9 to 16 inclusive, 22 to 27 inclusive, 34, 35, 36.

c. That portion of Winnebago county not included in the Iowa-Cedar river conservancy district and also all territory within the corporate limits of the city of Thompson, as such limits existed on January 1, 1969, including the portion of such city within any of the sections of land listed in paragraph "*a*" of subsection 2 of this section.

d. That portion of Hancock county not included in the Iowa-Cedar river conservancy district and also all territory within the corporate limits of the city of Britt, as such limits existed on January 1, 1969, including the portion of such city within any of the sections of land listed in paragraph "*b*" of subsection 2 of this section.

e. In Palo Alto county:

Twp. N.	Range West	Sections
97	31, 32, 33	All.
	34	1, 2, 3, 10 to 15 inclusive, 23 to 27 inclusive, 35, 36.
96	31, 32, 33	All.
	34	1, 2, 10 to 15 inclusive, 22 to 28 inclusive, 33 to 36 inclusive.
95	31, 32, 33	All.
	34	1 to 5 inclusive, 8 to 36 inclusive.
94	31, 32, 33, 34	All.

f. In Clay county:

Twp. N.	Range West	Sections
95	35	13, 24, 25, 34, 35, 36.
94	35	1, 2, 3, 10 to 15 inclusive, 22 to 28 inclusive, 33 to 36 inclusive.

g. In Buena Vista county:

Twp. N.	Range West	Sections
93	35	1 to 5 inclusive, 7 to 36 inclusive.
	36	13 to 16 inclusive, 19 to 36 inclusive.
	37	24 to 27 inclusive, 34, 35, 36.
92	35, 36	All.
	37	1 to 4 inclusive, 9 to 16 inclusive, 22 to 29 inclusive, 32 to 36 inclusive.
91	35, 36	All.
	37	1, 2, 3, 9 to 16 inclusive, 21 to 36 inclusive.
	38	11, 13, 14, 23, 24, 25, 26, 36.
90	35	All.
	36	1 to 30 inclusive, 32 to 36 inclusive.
	37	1 to 18 inclusive, 22, 23, 24.
	38	1.

All territory within the corporate limits of the city of Alta, as such limits existed on January 1, 1969, shall be within the Des Moines river conservancy district, including the portion of such city not within any of the sections of land listed in this paragraph.

h. In Sac county:

Twp. N.	Range West	Sections
89	35	All.
	36	1 to 17 inclusive, 20 to 29 inclusive, 32 to 36 inclusive.
88	35, 36	All.
	37	1, 2, 11 to 14 inclusive, 24, 25, 36.
87	35	All.
	36	1 to 30 inclusive, 32 to 36 inclusive.
	37	1, 12.
86	35	All.
	36	1 to 5 inclusive, 8 to 17 inclusive, 21 to 28 inclusive, 34, 35, 36.

All territory within the corporate limits of the city of Lake View, as such limits existed on January 1, 1969, shall be within the Des Moines river conservancy district, including the portions of such city not within any of the sections of land listed in this paragraph.

i. In Carroll county:

Twp. N.	Range West	Sections
85	33, 34, 35	All.
	36	1, 11 to 15 inclusive, 21 to 28 inclusive, 34, 35, 36.
84	33, 34, 35	All.
	36	1, 2, 3, 10 to 15 inclusive, 22 to 28 inclusive, 33 to 36 inclusive.
83	33, 34, 35	All.
	36	1, 2, 11 to 14 inclusive, 24.
82	33	All.
	34	1 to 30 inclusive, 32 to 36 inclusive.
	35	1 to 5 inclusive, 8 to 14 inclusive, 24.

j. In Audubon county:

Twp. N.	Range West	Sections
81	34	1 to 4 inclusive, 9 to 16 inclusive, 22 to 26 inclusive, 36.

k. In Guthrie county:

Twp. N.	Range West	Sections
81	30, 31, 32, 33	All.
80	30, 31, 32	All.
	33	1 to 18 inclusive, 20 to 29 inclusive, 33 to 36 inclusive.
79	30, 31, 32	All.
	33	1, 2, 3, 10 to 15 inclusive, 23, 24, 25, 35, 36.
78	30, 31, 32	All.
	33	1 to 6 inclusive, 8 to 16 inclusive, 21 to 28 inclusive, 34, 35, 36.

l. That portion of Polk county not included in the Skunk river conservancy district and also all territory within the corporate limits of the cities of Bondurant and Mitchellville, as such limits existed on January 1, 1969, including the portions of such cities within any of the sections of land listed in paragraph "*e*" of subsection 3 of this section.

m. In Adair county:

Twp. N.	Range West	Sections
77	30, 31	All.
	32	1 to 27 inclusive, 34, 35, 36.
	33	1, 2, 11, 12, 13, 24.
76	30	1 to 30 inclusive, 32 to 36 inclusive.
	31	1 to 24 inclusive.
	32	1, 2, 11, 12, 13, 24.
75	30	1 to 4 inclusive, 9 to 15 inclusive, 23 to 26 inclusive.

n. In Madison county:

Twp. N.	Range West	Sections
77	26, 27, 28, 29	All.
76	26, 27, 28, 29	All.
75	26, 27, 28	All.
	29	1 to 29 inclusive, 33 to 36 inclusive.
74	26, 27	All.
	28	1 to 29 inclusive, 32 to 36 inclusive.
	29	1 to 4 inclusive, 10 to 15 inclusive, 23, 24.

o. In Union county:

Twp. N.	Range West	Sections
73	28	1 to 4 inclusive, 10 to 13 inclusive.

p. In Clarke county:

Twp. N.	Range West	Sections
73	24, 25, 26	All.
	27	1 to 18 inclusive, 20 to 29 inclusive, 33 to 36 inclusive.
72	24, 25	All.
	26	1 to 18 inclusive, 20 to 29 inclusive, 32 to 36 inclusive.
	27	1, 2, 3, 10.
71	24	1 to 12 inclusive, 14 to 20 inclusive.
	25	1 to 24 inclusive, 28, 29, 30.
	26	1, 12, 13, 24, 25.

q. In Lucas county:

Twp. N.	Range West	Sections
73	20, 21, 22, 23	All.
72	20	All.
	21	1 to 29 inclusive, 33 to 36 inclusive.
	22	1 to 12 inclusive, 15 to 22 inclusive, 27 to 33 inclusive.
	23	All.
71	20	1, 2, 3, 12.
	21	1, 2, 3.
	22	6.
	23	1 to 7 inclusive.

All territory within the corporate limits of the city of Chariton, as such limits existed on January 1, 1969, shall be within the Des Moines river conservancy district, including the portion of the city not within any of the sections of land listed in this paragraph.

r. In Monroe county:

Twp. N.	Range West	Sections
73	16, 17, 18, 19	All.
72	16, 17, 18, 19	All.
71	16, 17, 18	All.
	19	1 to 25 inclusive, 28, 30.

s. That portion of Wapello county not included in the Skunk river conservancy district and also all territory within the corporate limits of the cities of Agency, Kirkville and Ottumwa, as such limits existed on January 1, 1969, including the portions of such cities within any of the sections of land listed in paragraph *"l"* of subsection 3 of this section.

t. In Appanoose county:

Twp. N.	Range West	Sections
70	16	All.
	17	1 to 5 inclusive, 9 to 15 inclusive, 22 to 27 inclusive, 35, 36.
69	16	6, 7.
	17	1, 2.

All territory within the corporate limits of the cities of Moravia and Unionville, as such limits existed on January 1, 1969, shall be within the Des Moines river conservancy district, including the portion of such cities not within any of the sections of land listed in this paragraph.

u. In Davis county:

Twp. N.	Range West	Sections
70	12, 13, 14, 15	All.
69	12	1 to 24 inclusive, 28, 29, 30.
	13	1 to 17 inclusive, 23, 24, 25.
	14	1 to 6 inclusive, 12.
	15	2 to 6 inclusive, 8, 9.

v. In Van Buren county:

Twp. N.	Range West	Sections
70	9	13, 14, 15, 17 to 35 inclusive.
	10, 11	All.
69	8	6 to 10 inclusive, 14 to 36 inclusive.
	9, 10	All.
	11	1 to 30 inclusive, 32 to 36 inclusive.
68	8, 9	All.
	10	1 to 18 inclusive, 20 to 27 inclusive, 36.
	11	1 to 4 inclusive, 11, 12, 13.
67	8	All.
	9	1 to 6 inclusive, 9 to 16 inclusive.

All territory within the corporate limits of the city of Stockport, as such limits existed on January 1, 1969, shall be within the Des Moines river conservancy district, including the portion of the city not within any of the sections of land listed in this paragraph.

w. That portion of Lee county not included in the Skunk river conservancy district and also all territory within the corporate limits of the city of Donnellson, as such limits existed on January 1, 1969, including the portion of such city within any of the sections of land listed in paragraph "*q*" of subsection 3 of this section.

5. The southern Iowa conservancy district shall include all of Wayne, Decatur, Ringgold, Adams, Taylor, Cass, Montgomery, and Page counties, those portions of Audubon and Monroe counties not included in the Des Moines river conservancy district, and the designated portions of each of the following counties:

a. That portion of Van Buren county not included in either the Skunk river conservancy district or the Des Moines river conservancy district and also all territory within the corporate limits of the city of Mount Sterling, as such limits existed on January 1, 1969, including the portion of such city within any of the sections of land listed in paragraph "*v*" of subsection 4 of this section.

b. That portion of Davis county not included in the Des Moines river conservancy district and also all territory within the corporate limits of the city of Drakesville, as such limits existed on January 1, 1969, including the portion of such city within any of the sections of land listed in paragraph "*u*" of subsection 4 of this section.

c. That portion of Appanoose county not included in the Des Moines river conservancy district and also all territory within the corporate limits of the city of Udell, as such limits existed on January 1, 1969, including the portion of such city within any of the sections of land listed in paragraph "*t*" of subsection 4 of this section.

d. That portion of Lucas county not included in the Des Moines river conservancy district and also all territory within the corporate limits of the city of Russell, as such limits existed on January 1, 1969, including the portion of such city within any of the sections of land listed in paragraph "*q*" of subsection 4 of this section.

e. That portion of Clarke county not included in the Des Moines river conservancy district and also all territory within the corporate limits of the city of Murray, as such limits existed on January 1, 1969, including the portion of such city within any of the sections of land listed in paragraph "*p*" of subsection 4 of this section.

f. That portion of Union county not included in the Des Moines river conservancy district and also all territory within the corporate limits of the city of Lorimor, as such limits existed on January 1, 1969, including the portion of such city within any of the sections of land listed in paragraph "*o*" of subsection 4 of this section.

g. That portion of Madison county not included in the Des Moines river conservancy district and also all territory within the corporate limits of the city of Macksburg, as such limits existed on January 1, 1969, including the portion of such city within any of the sections of land listed in paragraph "*n*" of subsection 4 of this section.

h. That portion of Adair county not included in the Des Moines river conservancy district and also all territory within the corporate limits of that portion of the city of Adair which is located in Adair county, as such limits existed on January 1, 1969, including that portion of the city of Adair which is located in Adair county within any of the sections of land listed in paragraph "*m*" of subsection 4 of this section.

i. That portion of Guthrie county not included in the Des Moines river conservancy district and also all territory within the corporate limits of that portion of the city of Adair which is located in Guthrie county, as such limits existed on January 1, 1969, including that portion of the city of Adair which is located in Guthrie county within any of the sections of land listed in paragraph "*k*" of subsection 4 of this section.

j. In Carroll county:

Twp. N.	Range West	Sections
83	36	3, 4, 5, 7 to 10 inclusive, 15 to 23 inclusive, 25 to 36 inclusive.
82	34	31.
	35	6, 7, 15 to 23 inclusive, 25 to 36 inclusive.
	36	All.

All territory within the corporate limits of the city of Templeton, as such limits existed on January 1, 1969, shall be within the southern Iowa conservancy district, including the portion of the city not within any of the sections of land previously listed in this paragraph.

k. In Crawford county:

Twp. N.	Range West	Sections
83	37	11 to 36 inclusive.
	38	23 to 26 inclusive, 34, 35, 36.
82	37	All.
	38	1 to 5 inclusive, 9 to 36 inclusive.
	39	13, 23 to 28 inclusive, 33 to 36 inclusive.

l. In Shelby county:

Twp. N.	Range West	Sections
81	37, 38	All.
	39	1, 2, 3, 10 to 15 inclusive, 22 to 27 inclusive, 34, 35, 36.
80	37, 38	All.
	39	1, 2, 3, 10 to 16 inclusive, 21 to 28 inclusive, 34, 35, 36.
79	37, 38	All.
	39	1, 2, 3, 10 to 16 inclusive, 21 to 29 inclusive, 32 to 36 inclusive.
78	37, 38, 39	All.
	40	1, 2, 3, 10 to 15 inclusive, 21 to 28 inclusive, 32 to 36 inclusive.

All territory within the corporate limits of the cities of Shelby, Tennant, and Westphalia, as such limits existed on January 1, 1969, shall be within the southern Iowa conservancy district, including the portions of such cities not within any of the sections of land listed in this paragraph.

m. In Pottawattamie county:

Twp. N.	Range West	Sections
77	38, 39, 40	All.
	41	25, 36.
76	38, 39, 40	All.
	41	1, 11 to 15 inclusive, 21 to 29 inclusive, 32 to 36 inclusive.
75	38, 39, 40, 41	All.
	42	13, 24, 25, 26, 35, 36.
74	38, 39, 40, 41	All.
	42	1, 2, 11 to 14 inclusive, 23, 24, 25, 35, 36.

n. In Mills county:

Twp. N.	Range West	Sections
73	40, 41	All.
	42	1, 2, 11 to 15 inclusive, 22 to 27 inclusive, 34, 35, 36.
72	40, 41	All.
	42	1, 2, 3, 10 to 15 inclusive, 22 to 27 inclusive, 34, 35, 36.
71	40, 41	All.
	42	1, 2, 3, 10 to 15 inclusive, 22 to 27 inclusive, 34, 35, 36.

o. In Fremont county:

Twp. N.	Range West	Sections
70	40, 41	All.
	42	1, 2, 3, 10 to 14 inclusive, 23 to 27 inclusive, 34, 35, 36.
69	40, 41	All.
	42	1 to 4 inclusive, 9 to 16 inclusive, 19 to 36 inclusive.
	43	25, 36.
68	40, 41, 42	All.
	43	9 to 16 inclusive, 21 to 27 inclusive, 35, 36.
67	40, 41, 42	All.
	43	1, 2, 12, 13, 24, 25, 26, 35, 36.

6. The western Iowa conservancy district shall include all of Lyon, Osceola, Sioux, O'Brien, Plymouth, Cherokee, Woodbury, Ida, Monona, and Harrison counties, those portions of Dickinson, Emmet, Palo Alto, Clay, and Buena Vista counties not included in the Des Moines river conservancy district, those portions of Crawford, Shelby, and Pottawattamie counties not included in the southern Iowa conservancy district, and the designated portions of each of the following counties:

a. That portion of Sac county not included in the Des Moines river conservancy district and also all territory within the corporate limits of the city of Wall Lake, as such limits existed on January 1, 1969, including the portion of such city within any of the sections of land listed in paragraph "*h*" of subsection 4 of this section.

b. That portion of Carroll county not included in either the Des Moines river conservancy district or the southern Iowa conservancy district and also all territory within the corporate limits of the city of Arcadia, as such limits existed on January 1, 1969, including the portion of such city within any of the sections of land listed in paragraph "*i*" of subsection 4 of this section.

c. That portion of Mills county not included in the southern Iowa conservancy district and also all territory within the corporate limits of that portion of the city of Tabor which is located in Mills county, as such limits existed on January 1, 1969, including that portion of the city of Tabor which is located in Mills county within any of the sections of land listed in paragraph "*n*" of subsection 5 of this section.

d. That portion of Fremont county not included in the southern Iowa conservancy district and also all territory within the corporate limits of that portion of the city of Tabor which is located in Fremont county, as such limits existed on January 1, 1969, including that portion of the city of Tabor which is located in Fremont county within any of the sections of land listed in paragraph "*o*" of subsection 5 of this section. [C73, 75,§467D.3]

Referred to in §§467A.3, 467A.4, 467D.2

467D.4 Governing body. The governing body of each conservancy district shall be the state soil conservation committee established by section 467A.4. [C73, 75,§467D.4]

Referred to in §§467A.3, 467D.2

467D.5 Officially as board of conservancy districts. When officially conducting the business of any conservancy district, the committee shall formally convene as the board of that conservancy district and shall keep minutes as such. The chairman of the committee shall be the chairman of the board of each conservancy district. [C73, 75,§467D.5]

467D.6 Powers and duties of board. The board of each conservancy district shall:

1. Exercise such supervision over the water resources of the conservancy district, including water in any basin, watercourse, or other body of water in the conservancy district, and have authority to promulgate and repeal, with approval of the department, and enforce such

rules, except those rules relating to water resources under the authority of the council and the Iowa water quality commission, as necessary to achieve the objectives of this chapter as set forth in section 467D.1.

2. Have authority to employ, appoint, or retain attorneys, engineers, other professional and technical employees, and such other personnel as are deemed necessary, and approve bonds of conservancy district employees.

3. Prepare, adopt, and implement a plan, and review and revise the same, in the manner prescribed by this chapter.

4. Encourage, foster, and promote establishment, enlargement, or consolidation of drainage, levee, soil conservation, flood control, and sanitation districts where desirable, provided that this subsection shall not be construed to vest the board with authority to directly establish, enlarge, or consolidate any such districts by any procedure not otherwise prescribed by law.

5. Review the plans and co-ordinate the programs and activities between counties, cities and any of the entities listed in subsection 4 of this section, and otherwise advise and assist the governing bodies of such entities in any appropriate manner, in all cases which relate to any matter within the jurisdiction of the conservancy district, provided that the board shall have only advisory and consultative powers with respect to any such entities except as otherwise specifically provided in this chapter.

6. Have authority to enter into binding agreements, with respect to any matter within the jurisdiction of the conservancy district, with:

a. Any person, firm, corporation or association, the state of Iowa, or any of its political subdivisions.

b. The federal government, or any of the agencies thereof.

c. Other states or agencies or subdivisions thereof comparable in purpose to the district, provided all such agreements are entered into jointly with the department in accordance with other provisions of law.

7. Have authority to expend funds outside the state of Iowa, or in adjoining conservancy districts, pursuant to agreements made under subsection 6 of this section, where necessary in order to more effectively or efficiently achieve the objectives of this chapter, and to receive funds from other states for expenditure in Iowa, or from other conservancy districts for expenditure in the district receiving such funds.

8. Have authority to acquire by gift, lease, purchase, grant, or inheritance any property, real or personal, in fee or a lesser interest, needed to achieve the objectives of this chapter, and to sell and convey property owned but no longer needed by the conservancy district. The board shall also have authority to acquire by condemnation proceedings any real property, in fee or a lesser interest, needed to achieve the objectives of this chapter, but no condemnation proceedings shall be instituted by the board less than fifteen days after a letter has been sent by restricted certified mail to the owner or owners of the property sought, setting forth in detail the reasons why the property is needed and the board's best offer for the property.

9. Construct, operate, maintain, repair, enlarge, and make such internal improvements as are necessary to implement the conservancy district's overall plan.

10. Have authority to sue and be sued in the name of the conservancy district, and bring action to abate soil erosion nuisances in the manner prescribed by section 467D.23.

11. Maintain at its office a record of all the conservancy district's proceedings, rules and orders, and furnish copies thereof to the department and the council upon request. [C73, 75,§467D.6]

Referred to in §467A.4

467D.7 Secretary and treasurer. The state soil conservation committee, in its respective capacities as the board of each of the several conservancy districts, shall appoint a secretary and a treasurer for each conservancy district. [C73, 75,§467D.7]

467D.8 Dual capacity—limitation. The state soil conservation committee may at its discretion appoint the same individual as secretary for two or more conservancy districts, or as the treasurer for two or more conservancy districts. No person shall simultaneously serve as both a conservancy board secretary and a conservancy board treasurer, either for the same conservancy district or for different conservancy districts. [C73, 75,§467D.8]

467D.9 Compensation. Any person appointed by the state soil conservation committee as secretary or treasurer of one or more conservancy districts, who is not otherwise employed by the state or any of its political subdivisions, shall receive such compensation as the committee shall determine. [C73, 75,§467D.9]

467D.10 Duties. The secretary of each conservancy district shall:

1. Keep a complete record of the proceedings at each meeting of the board.

2. File and preserve copies of all rules promulgated and all orders adopted by the board, and of all correspondence and other papers transmitted to him pertaining to the business of the conservancy district.

3. Keep an accurate account of the conservancy district's funds with the treasurer, charge him with all warrants and drafts drawn in his favor, and credit him with all orders drawn on the conservancy district's funds.

4. Keep an accurate account of all expenses incurred by the conservancy district, and pre-

sent all claims to the board for audit and payment. [C73, 75,§467D.10]

467D.11 Verified claims. Conservancy district funds shall not be expended, other than for salaries and administrative expenses, except upon verified claims submitted to and approved by the board. Warrants drawn on conservancy district funds shall be signed by the board chairman and the secretary. [C73, 75,§467D.11]

467D.12 Budget. In each even-numbered year the board shall prepare a budget for the biennium beginning July 1 of the succeeding calendar year, setting forth all proposed expenditures by the conservancy district during such biennium, and stating the amounts which it is anticipated will be available to the conservancy district during such biennium from sources other than state appropriations. The board shall submit its budget to the state soil conservation committee on or before August 1 of each even-numbered year. [C73, 75, §467D.12]

467D.13 Review by state committee. The committee shall review the proposed biennial budget of each of the conservancy districts, and may revise any such budget. The committee shall prepare a consolidated list of the appropriations requested for administration, operation, and maintenance of each conservancy district for each year of the ensuing biennium, and of capital appropriations requested, if any, for each conservancy district, and shall forward the consolidated list to the state comptroller as a part of the committee's estimates of expenditure requirements submitted pursuant to section 8.23. [C73, 75, §467D.13]

467D.14 Other funds accepted. In addition to funds appropriated to the conservancy district by the general assembly, the board shall be authorized to receive and expend:

1. Federal funds available to the conservancy district for such purposes as may be provided by federal laws, rules, and regulations, to the extent consistent with the laws of this state.

2. Donations and gifts, which may be accepted by the board and expended in accordance with the terms of the gift. [C73, 75, §467D.14]

Referred to in §467D.15

467D.15 Budget law applicable. The conservancy districts shall be subject to chapter 8, but expenditure by a conservancy district of funds available to it as provided in section 467D.14, subsections 1 and 2, shall not be deemed a violation of section 8.38. [C73, 75,§467D.15]

467D.16 Plan — priorities — aid. The board shall prepare a plan for accomplishment of the objectives of this chapter within the conservancy district. For this purpose the board may request and shall obtain from any state agency or political subdivision information which the agency or subdivision may have already collected which is pertinent to preparation of the plan, and may conduct such hearings as it deems necessary. The plan shall establish an order of priorities for carrying out projects necessary to accomplish the objectives of this chapter, shall conform as nearly as practicable to the comprehensive state-wide water resources plan established by the council pursuant to section 455A.17 and shall reflect the following general policies:

1. First consideration shall be given to work needed at or near the source of the streams in the district, and on or along the tributaries thereto, to the greatest extent practicable.

2. Conservancy district funds shall not be expended for functions or improvements which are:

a. The responsibility of other political subdivisions and are within their abilities, reasonable consideration being given to their other duties and obligations.

b. Constructed or implemented, or planned for construction or implementation, on one or more tracts of privately owned land and primarily benefit those lands rather than other lands in the conservancy district. [C73, 75,§467D.16]

467D.17 Plan presented to department and council. The board shall tentatively adopt the plan by resolution and shall present the plan to the department and the council for review. The council shall within ninety days review the plan as presented and make such recommendations as, in its discretion, it deems necessary to bring the conservancy district's plan into conformity with the comprehensive state-wide water resources plan established by the council pursuant to section 455A.17. The department shall review the plan as presented and, with such amendments as are necessary to bring the plan into conformity with the state-wide water resources plan, give final approval within one hundred twenty days. [C73, 75,§467D.17]

467D.18 Working program. The plan and the order of priorities established thereby shall constitute the working program of the conservancy district. The plan shall be reviewed from time to time and shall be changed as deemed necessary as the result of experience gained in construction and maintenance of internal improvements by the conservancy district, and in operation of the conservancy district, or as the result of changed conditions. The board may initiate changes in the conservancy district plan on its own motion or at the direction of the department. [C73, 75,§467D.18]

467D.19 Implementation. After final approval of the plan, the board shall begin to implement the plan as expeditiously as possible, within the limitations of available appro-

priations and other financial resources. When implementation of the plan involves construction or improvement of any internal improvement by the conservancy district, the board may order the preparation of detailed plans and specifications, and a refined cost estimate. Upon completion of such plans, specifications and cost estimate to their satisfaction, the board shall adopt the same, subject to the approval of the department, and shall let the contract or contracts therefor in accordance with section 467D.20. Any approval or permits from the council required under other provisions of law shall be obtained by the conservancy district prior to initiation of any construction activity. [C73, 75,§467D.19]

467D.20 Bids on work. When the estimated total cost of construction, enlargement, alteration or repair of any internal improvement exceeds five thousand dollars, the conservancy district shall advertise for bids on the proposed improvement by two publications in at least one newspaper of general circulation in the conservancy district, the first of which shall be not less than fifteen days prior to the date set for receiving bids, and shall let the work to the lowest responsible bidder submitting a sealed proposal; provided that if, in the judgment of the board, the bids received are not acceptable, all bids may be rejected and new bids requested. All bids must be accompanied, in a separate envelope, by a deposit of money or certified check, in an amount to be named in the advertisement for bids, as security that the bidder will enter into a contract in accordance with the terms of his bid. The board shall fix the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The checks or deposits of money of the unsuccessful bidders shall be returned as soon as the successful bidder is determined, and the check or deposit of money of the successful bidder shall be returned upon execution of the contract documents. [C73, 75, §467D.20]

Referred to in §467D.19

467D.21 Protection against siltation. Any other provision of this chapter notwithstanding, no conservancy district shall let a contract for any internal improvement of any kind unless its engineer shall recommend, and the board shall find, that the proposed internal improvement would be adequately protected against siltation by soil and water conservation practices existing within the watershed of the internal improvement, or which would be developed as a part of the internal improvement, or that the nature of the internal improvement precludes the probability of damage due to siltation. [C73, 75,§467D.21]

467D.22 Procedure after finding. When the conservancy district's plan calls for an internal improvement which cannot be undertaken due to a finding that the internal improvement would not be adequately protected against siltation, the board shall undertake to effect the development of the needed soil and water conservation practices in the watershed of the proposed internal improvement by:

1. Consultation and co-operation with, and appropriate assistance to, the commissioners of any soil conservation district in the state.
2. Securing the establishment of, or repair or maintenance within, a subdistrict of a soil conservation district, a soil conservation and flood control district, a drainage district, a levee district, a sanitary district, or other appropriate special district, in the manner prescribed by law. [C73, 75,§467D.22]

467D.23 Erosion as nuisance—injunction. Soil erosion resulting in or contributing to damage by siltation to any internal improvement of a conservancy district, or resulting in or contributing to damage to property not owned by the owner or occupant of the land on which such erosion is occurring, is hereby declared to be a nuisance. The board of the conservancy district whose internal improvement is so damaged, the commissioners of the soil conservation district within which such erosion is occurring, or the owner or owners of any property so damaged, may bring action to enjoin and abate any such nuisance as provided by chapter 657. It shall be an adequate defense to such an action that any defendant, prior to the time the cause of action arose, had submitted application for public cost-sharing funds pursuant to section 467A.48, or had established or maintained soil and water conservation practices or erosion control practices approved by the commissioners of the soil conservation district in which the erosion complained of occurred, or had taken other reasonable and prudent measures to prevent excessive soil erosion, and that the erosion complained of was an isolated occurrence caused by a single prolonged or unusually heavy rainfall, unusually rapid melting of accumulated snow, severe windstorm, or other similar event beyond the control of the defendant. The remedy for any soil erosion which constitutes a nuisance under this section shall be limited to requiring that the owner or occupant of the land on which the erosion is occurring take such measures as are necessary to comply with the regulations of the soil conservation district in which the land is located, and the fine and jail sentence provided by section 657.3 shall not apply in any action arising under this section. [C73, 75,§467D.23]

Referred to in §§467D.6(10), 467D.24

467D.24 Surveys—soundings—drillings. The board, the commissioners of a soil conservation district, or an engineer or any other authorized person employed by the board or commissioners, may after thirty days' written notice by restricted certified mail addressed to the owner and also to the occupant, enter upon private land for the purpose of making surveys, soundings, drillings, appraisals, and examinations as deemed appropriate or necessary to determine the advisability or prac-

ticability of locating an internal improvement on said land or part thereof, or to determine whether soil erosion is occurring thereon which constitutes a nuisance under section 467D.23 or is in violation of the soil conservation district's regulations; provided, no soundings or drillings shall be made within twenty rods of the dwelling house or buildings on said land without the written consent of the owner. Such entry, after notice, shall not be deemed a trespass, and the board or commissioners may be aided by injunction to insure peaceful entry. The board shall pay actual damages caused by such entry, surveys, soundings, drillings, appraisals, or examinations. The amount of such damages, if any, shall be determined by agreement or in the manner provided for the award of damages in condemnation of land for conservancy district purposes. [C73, 75,§467D.24]

CHAPTER 468

DRAINAGE OF MINERAL LANDS AND MINES

Repealed by 66GA, ch 1056,§45

CHAPTER 469

MILLDAMS AND RACES

Referred to in §§111.4, 455A.33, 455A.34

469.1 Prohibition—permit.
469.2 Application for permit.
469.3 Notice of hearing.
469.4 Hearing.
469.5 When permit granted.
469.6 Certificate of approval.
469.7 Application for certificate.
469.8 Granting or refusing.
469.9 Permit fee—annual license.
469.10 Construction and operation.
469.11 Access to works.
469.12 Duty to enforce statutes.
469.13 Violations.
469.14 Action to collect fees.
469.15 Unlawful combination—receivership.
469.16 Nuisance.
469.17 to 469.22 Repealed by 64GA, ch 228,§1.
469.23 Protection of banks.
469.24 Embankments—damages.
469.25 Right to utilize fall.
469.26 Revocation or forfeiture of permit.
469.27 Legislative control.
469.28 Repealed by 53GA, ch 203,§28.
469.29 Permits for existing dams.
469.30 State lands.
469.31 Repealed by 64GA, ch 1088,§327.

469.1 Prohibition—permit. No dam shall be constructed, maintained, or operated in this state in any navigable or meandered stream for any purpose, or in any other stream for manufacturing or power purposes, nor shall any water be taken from such streams for industrial purposes, unless a permit has been granted by the Iowa natural resources council to the person, firm, corporation, or municipality constructing, maintaining, or operating the same. [R60,§1264; C73,§1188; C97,§1921; C24, 27, 31, 35, 39,§7767; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.1]

469.2 Application for permit. Any person, firm, corporation, or municipality making application for a permit to construct, maintain, or operate a dam in any of the waters, including canals, raceways, and other constructions necessary or useful in connection with the development and utilization of the water or water power, shall file with the Iowa natural resources council a written application, which shall contain the following information:

1. The name of the navigable, meandered, or other stream in or across which a dam is maintained or it is proposed to construct a dam or other obstruction, and a description of the site for such dam, including the name or names of the riparian owners of the site.

2. The purpose for which the dam is maintained or for which it is proposed to maintain the same, including the use to which the water is to be put.

3. A general description of the dam, raceways, canals, and other constructions, including the specifications as to the material and plan of construction and a general description of all booms, piers, and other protection works which are constructed in connection therewith, or which it is proposed to erect in connection therewith.

4. The approximate amount of hydraulic power that the dam is capable of developing and the amount of power to be used.

5. A map or blueprint on a scale of not less than four inches to the mile, showing the lands that are or may be affected by the construction, operation, or maintenance of the dam, and the ownership of each tract of land within the affected area.

6. Such additional information as may be required by the Iowa natural resources council. [R60,§1265; C73,§§1188, 1189; C97,§1921; C24, 27, 31, 35, 39,§7768; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.2]

469.3 Notice of hearing. When any application for a permit to construct, maintain, or operate a dam from and after the passage of this chapter is received, the Iowa natural resources council shall fix a time for hearing, and it shall give notice of the time and place of such hearing by publication once each week for two successive weeks in at least one newspaper in each county in which riparian lands will be affected by the dam. [R60,§§1266, 1270; C73,§1190; C97,§1922; C24, 27, 31, 35, 39,§7769; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.3]

40ExGA, SF 186,§3, editorially divided

469.4 Hearing. At the time fixed for such hearing or at any adjournment thereof, the council shall take evidence offered by the applicant and any other person, either in support of or in opposition to the proposed construction. [R60,§§1267, 1268; C73,§§1192, 1193; C97,§§1924, 1925; C24, 27, 31, 35, 39,§7770; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.4]

469.5 When permit granted. If it shall appear to the council that the construction, operation, or maintenance of the dam will not materially obstruct existing navigation, or materially affect other public rights, will not endanger life or public health, and any water taken from the stream in connection with the project, excepting water taken by a municipality for distribution in its water mains, is returned thereto at the nearest practicable place without being materially diminished in quantity or polluted or rendered deleterious to fish life, it shall grant the permit, upon such terms and conditions as it may prescribe. [R60,§1269; C73,§§1193, 1198; C97,§1930; C24, 27, 31, 35, 39, §7771; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.5]

469.6 Certificate of approval. No permit shall be granted for the construction or operation of a dam where the water is to be used for manufacturing purposes, except to develop power, until a certificate of the Iowa water pollution control commission has been filed with the council showing its approval of the use of the water for the purposes specified in the application. [C24, 27, 31, 35, 39,§7772; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.6]

See also ch 455B

469.7 Application for certificate. When it is proposed to use the water for manufacturing purposes, except to develop power, or for condensation purposes, application must be made to the Iowa water pollution control commission, accompanied by a description of the proposed use of the water and what, if any, substances are to be deposited in such water and chemical changes made in the same, and such other information as the department of health may require to enable it to determine the advisability of the issuance of such certificate. [C24, 27, 31, 35, 39,§7773; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.7]

40ExGA, SF 186,§4, editorially divided
See also ch 455B

469.8 Granting or refusing. If the Iowa water pollution control commission is satisfied that the use of the water in any such project will not cause pollution of the same or render it materially unwholesome or impure, or deleterious to fish life, it may issue a certificate, and if it is not so satisfied, it shall refuse to issue same. [C24, 27, 31, 35, 39,§7774; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.8]

See also ch 455B

469.9 Permit fee — annual license. Every person, firm, or corporation, excepting a municipality, to whom a permit is granted to construct or to maintain and operate a dam already constructed in or across any stream for the purpose herein specified, shall pay to the Iowa natural resources council a permit fee of one hundred dollars and shall pay an annual inspection and license fee, to be fixed by the Iowa natural resources council, on or before the first day of January, 1925, and annually thereafter, but in no case shall the annual inspection and license fee be less than twenty-five dollars. All fees shall be paid into the general fund of the state treasury.

The provisions of this section shall not apply to dams already constructed for power production, having less than twenty-five horsepower capacity, nor shall they apply to dams developed solely for recreational use where the recreational facilities thus created are open to the public without charge. [C24, 27, 31, 35, 39, §7775; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.9]

469.10 Construction and operation. The Iowa natural resources council shall investigate methods of construction, reconstruction, operation, maintenance, and equipment of dams, so as to determine the best methods to conserve and protect as far as possible all public and riparian rights in the waters of the state and so as to protect the life, health, and property of the general public; and the method of construction, operation, maintenance, and equipment of any and all dams of any character or for any purpose in such waters shall be subject to the approval of the Iowa natural resources council. [C24, 27, 31, 35, 39,§7776; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.10]

40ExGA, SF 186,§6, editorially divided

469.11 Access to works. Such council or any member, agent, or employee thereof shall at all times be accorded full access to all parts of any dam and its appurtenances being constructed, operated, or maintained in such waters. [C24, 27, 31, 35, 39,§7777; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.11]

469.12 Duty to enforce statutes. It shall be the duty of the council to require that all existing statutes of the state, including the

provisions of this chapter, with reference to the construction of dams, shall be enforced. [C24, 27, 31, 35, 39,§7778; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.12]

469.13 Violations. The construction, maintenance, or operation of a dam for the purpose specified herein without a permit first being issued, as in this chapter provided, shall constitute a misdemeanor, and shall be punishable by a fine of not less than one hundred dollars nor more than five hundred dollars. [C24, 27, 31, 35, 39,§7779; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.13]

40ExGA, SF 186,§7, editorially divided

469.14 Action to collect fees. If any dam is constructed, operated, or maintained without the provisions of this chapter having been first complied with, including the payment of the permit fee and the annual inspection and license fee, the permit fee and the inspection and license fee may be recovered in an action brought in the name of the state, and in addition to the recovery of the amount due, there shall be collected a penalty of one thousand dollars. [C24, 27, 31, 35, 39,§7780; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.14]

469.15 Unlawful combination—receivership. If any dam for which a permit has been issued becomes owned, leased, trusteed, possessed, or controlled in such manner as to be controlled by any unlawful combination or trust, or forms the subject or part of the subject of any contract or agreement to limit the output of any hydraulic or hydroelectric power derived therefrom for the purpose of price fixing as to such output, the state may take possession thereof by receivership proceedings instituted by the state executive council, and such proceedings shall be conducted for the purpose of disposing of said property for lawful use and the proceeds shall be turned over to the persons found by the court to be entitled thereto, after the payment of all expenses of the receivership. [C24, 27, 31, 35, 39,§7781; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.15]

469.16 Nuisance. If any dam is constructed, maintained, or operated for any of the purposes specified herein, in waters of this state in violation of any of the provisions of this chapter or in violation of any provisions of the law, the state may, in addition to the remedies herein prescribed, have such dam abated as a nuisance. [C24, 27, 31, 35, 39,§7782; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.16]

Nuisances, ch 657

469.17 to 469.22 Repealed by 64GA, ch 228, §1.

469.23 Protection of banks. Where the water backed up by any dam belonging to any mill or machinery is about to break through or over the banks of the stream or raceway, or to wash a channel, so as to turn the water of such stream or raceway, or any part thereof, out of its ordinary channel, whereby such mill or machinery will be materially injured or affected, the owner or occupant of such mill or machinery, if he does not own such banks or the land lying contiguous thereto, may, if necessary, enter thereon and erect and keep in repair such embankments and other works as may be necessary to prevent such water from breaking through or over the banks, or washing a channel as aforesaid; such owner or occupier committing thereon no unnecessary waste or damage, and being liable to pay all damages which the owner of the lands may actually sustain by reason thereof. [R60, §§1275, 1276; C73,§1204; C97,§1936; C24, 27, 31, 35, 39,§7789; C46, 50, 54, 58, 62, 66, 71, 73, 75, §469.23]

469.24 Embankments—damages. If any person shall injure, destroy, or remove any such embankment or other works, the owner or occupier of such mill or machinery may recover of such person all damages he may sustain by reason thereof. [R60,§1277; C73,§1205; C97,§1937; C24, 27, 31, 35, 39,§7790; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.24]

469.25 Right to utilize fall. Any person owning and using a water power for the purpose of propelling machinery shall have the right to acquire, maintain, and utilize the fall below such power for the purpose of improving the same, in like manner and to the same extent as provided in this chapter for the erection or heightening of milldams. After such right has been acquired, the fall shall be considered part and parcel of said water power or privilege, and the deepening or excavating of the stream, tail, or raceway, as herein contemplated, shall in no way affect any rights relating to such water power acquired by the owner thereof prior to such change. [C73,§1206; C97,§1938; C24, 27, 31, 35, 39,§7791; C46, 50, 54, 58, 62, 66, 71, 73, 75, §469.25]

469.26 Revocation or forfeiture of permit. If the person to whom a permit is issued under the provisions of this chapter does not begin the construction or the improvement of the dam or raceway within one year from the date of the granting of the permit, his permit may be revoked by the Iowa natural resources council, and if any permit holder does not finish and have in operation the plant for which the dam is constructed within three years after the granting of the permit, unless for good cause shown the council has extended the time for completion, such permit shall be forfeited. [R60,§1269; C73,§1199; C97,§1931; C24, 27, 31, 35, 39,§7792; C46, 50, 54, 58, 62, 66, 71, 73, 75, §469.26]

469.27 Legislative control. No permit granted or rights acquired hereunder shall be perpetual, but they shall be subject to restriction, cancellation, and regulation by legislative action, and subject to all the provisions of this chapter. [C24, 27, 31, 35, 39,§7793; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.27]

469.28 Repealed by 53GA, ch 203,§28. See §469.29.

469.29 Permits for existing dams. All licenses and permits issued by the state executive council prior to April 17, 1949, are hereby declared to be in full force and effect and all of the powers of administration relating to licenses or permits heretofore issued are hereby vested in the Iowa natural resources council. [C24, 27, 31, 35, 39,§§**7794, 7795**; C46,§§469.28, 469.29; C50, 54, 58, 62, 66, 71, 73, 75,§469.29]

469.30 State lands. Whenever the erection of any such dam will affect highways or state-owned lands, the applicant shall as a condition precedent secure a permit from the board, commission, or other official body charged with jurisdiction over and control of said highways or state-owned lands. [C24, 27, 31, 35, 39,§**7796**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§469.30]

469.31 Repealed by 64GA, ch 1088,§327.

CHAPTER 469A

HYDROELECTRIC PLANTS

469A.1 Certificate of convenience and necessity.
469A.2 Public hearing.
469A.3 Public welfare promoted.
469A.4 Rules imposed.
469A.5 Costs advanced.
469A.6 Amendment or revocation.
469A.7 Penalty.

469A.1 Certificate of convenience and necessity. It shall be unlawful for any person, firm, association or corporation to engage in the business of constructing, maintaining or operating within this state any hydroelectric generating plant or project without first having obtained from the executive council of Iowa a certificate of convenience and necessity declaring that the public convenience and necessity require such construction, maintenance or operation. [C50, 54, 58, 62, 66, 71, 73, 75,§469A.1]

Referred to in §469A.7

469A.2 Public hearing. No certificate of convenience and necessity shall be issued by the executive council except after a public hearing thereon. The executive council shall, upon the filing of an application for such a certificate, fix the time of the public hearing thereon and shall prescribe the notice which shall be given by the applicant. Any interested person, firm, association, corporation, municipality, state board or commission may intervene and participate in such proceeding and at such hearing. [C50, 54, 58, 62, 66, 71, 73, 75,§469A.2]

469A.3 Public welfare promoted. Before the executive council shall issue a certificate of convenience and necessity, it shall first be satisfied that the public convenience and necessity will be promoted thereby, that the applicant has the financial ability to carry out the terms and conditions imposed, and the applicant has in writing agreed to accept, abide by and comply with such reasonable terms and conditions as the executive council may require and impose. [C50, 54, 58, 62, 66, 71, 73, 75,§469A.3]

469A.4 Rules imposed. The executive council shall prescribe such rules as it may determine necessary for the administration of the provisions of this chapter and may amend such rules at any time. [C50, 54, 58, 62, 66, 71, 73, 75,§469A.4]

469A.5 Costs advanced. The executive council shall, upon the filing of an application, require the applicant to deposit with the secretary of the executive council such amount as the council shall determine, to pay the expenses to be incurred by the executive council in its investigations and in conducting the proceedings, and the executive council may, from time to time as it deems necessary, require the deposit of additional amounts for such purpose. [C50, 54, 58, 62, 66, 71, 73, 75,§469A.5]

469A.6 Amendment or revocation. The executive council may at any time for just cause or upon the failure of the applicant to comply with and to obey the terms and conditions attached to the issuance of any certificate, or when the public convenience and necessity demands, alter, amend or revoke any certificate issued under the provisions of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§469A.6]

469A.7 Penalty. Any person, firm, association or corporation who shall violate the provisions of section 469A.1, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or shall be imprisoned in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. Each separate day that a violation occurs shall constitute a separate offense. [C50, 54, 58, 62, 66, 71, 73, 75,§469A.7]

Constitutionality, 52GA, ch 246,§9
Prior existing plants, 52GA, ch 246,§8

CHAPTER 470

WATER-POWER IMPROVEMENTS

Repealed by 63GA, ch 1030,§8

CHAPTER 471

EMINENT DOMAIN

Referred to in §§306.19, 306B.4, 306C.17, 313A.10, 327G.17

471.1 Exercise of power by state.
471.2 On behalf of federal government.
471.3 Conveyance by state to federal government.
471.4 Right conferred.
471.5 Right to purchase.
471.6 Railways.
471.7 Cemetery lands.
471.8 Limitation on right of way.
471.9 Additional purposes.
471.10 Finding by transportation regulation board.
471.11 Lands for water stations — how set aside.
471.12 Access to water—overflow limited.
471.13 Change in streams.
471.14 Unlawful diversion prohibited.
471.15 Abandonment of right of way.
471.16 Right to condemn abandoned right of way.
471.17 Procedure to condemn.
471.18 Parties entitled to damages.
471.19 Interpretative clause.
471.20 Description of land furnished.

471.1 Exercise of power by state. Proceedings may be instituted and maintained by the state of Iowa, or for the use and benefit thereof, for the condemnation of such private property as may be necessary for any public improvement which the general assembly has authorized to be undertaken by the state, and for which an available appropriation has been made. The executive council shall institute and maintain such proceedings in case authority to so do be not otherwise delegated. [C73,§1271; C97,§2024; S13,§2024-d; C24, 27, 31, 35, 39,§7803; C46, 50, 54, 58, 62, 66, 71, 73, 75, §471.1]

State parks and highways connecting therewith, §§111.7, 111.8

471.2 On behalf of federal government. The executive council may institute and maintain such proceedings when private property is necessary for any use of the government of the United States. [S13,§2024-a; C24, 27, 31, 35, 39,§7804; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.2]

Condemnation by federal government, §1.4

471.3 Conveyance by state to federal government. When land or any easement therein is condemned by the state for the use and benefit of the United States, the governor, after the land has been finally acquired, shall have power to convey, to the United States, the easement or lands so acquired and all rights of the state therein. [S13,§2024-b; C24, 27, 31, 35, 39,§7805; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.3]

471.4 Right conferred. The right to take private property for public use is hereby conferred:

1. *Counties.* Upon all counties for such lands as are reasonable and necessary for the erection of courthouses or jails or any other buildings or additions to buildings which the county has statutory power to erect, construct or make additions, for projects provided for in chapter 467B and the construction, improvement or maintenance of highways, and for the carrying out of plans for the acquisition of land advanced by a county conservation board, and approved by the state conservation commission as provided in section 111A.4; providing further, it would not completely prevent development of the conservation project, this authority shall not apply to any improved private property used as a residence or living quarters for a period of one year, not to exceed two acres, or if jointly owned, not to exceed two acres per residential unit, unless subsequently abandoned for use for such purposes. Temporary unoccupancy shall not be construed as abandonment. Wherever the county has the right to take private property for public use, it also has the right to contract for options for the purchase of said land.

2. *Owners of land without way thereto.* Upon the owner or lessee of lands, which have no public or private way thereto, for the purpose of providing a public way, not exceeding forty feet in width, which will connect with some existing public road. Such condemned roadway shall be located on a division, subdivision or "forty" line (or immediately adjacent thereto), and along the line which is the nearest feasible route to an existing public road. Such road shall not interfere with buildings, orchards, or cemeteries. When passing through enclosed lands, such roads shall be fenced on both sides thereof by the condemner.

3. *Owners of mineral lands.* Upon all owners, lessees, or possessors of land, for a railway

right of way thereto not exceeding one hundred feet in width and located wherever necessary or practical, when such lands have no railway thereto and contain coal, stone, gravel, lead, or other minerals and such railway is necessary in order to reach and operate any mine, quarry, or gravel bed on said land and transport the products thereof to market. Such right of way shall not interfere with buildings, orchards, or cemeteries, and when passing through enclosed lands, fences shall be built and maintained on both sides thereof by the party condemning the land and by his assignees. The jury, in the assessment of damages, shall consider the fact that a railway is to be constructed thereon.

4. *Cemetery associations.* Upon any private cemetery or cemetery association which is incorporated under the laws of this state relating to corporations not for pecuniary profit, and having its cemetery located outside the limits of a city, for the purpose of acquiring necessary grounds for cemetery use or reasonable additions thereto. The right granted in this subsection shall not be exercised until the board of supervisors, of the county in which the land sought to be condemned is located, has, on written application and hearing, on such reasonable notice to all interested parties as it may fix, found that the land, describing it, sought to be condemned, is necessary for cemetery purposes. The association shall pay all costs attending such hearing.

5. *Subdistricts of soil conservation districts.* Upon a subdistrict of a soil conservation district for such land or rights or interests therein as are reasonable and necessary to carry out the purposes of the subdistrict.

6. *Cities.* Upon all cities for public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon cities.

1. [S13,§2024-f; C24, 27, 31, 35, 39,§**7806**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.4]

2. [C97,§2028; S13,§2028; C24, 27, 31, 35, 39, §**7806**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.4]

3. [C97,§§2028, 2031; S13,§2028; C24, 27, 31, 35, 39,§**7806**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §471.4]

4. [S13,§§1644-a–e; C24, 27, 31, 35, 39,§**7806**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.4]

5. [C62, 66, 71, 73, 75 §471.4]

6. [R60,§1064; C73,§§464, 470, 474; C97,§§722, 880, 881; S13,§§722, 729-b, 741-s; SS15,§§741-d, 879-t, 880, 881; C24, 27, 31, 35, 39,§§**6134, 6195–6197, 6740**; C46,§§397.8, 403.1–403.3; C50,§§391A.3, 397.8, 403.1–403.3, 420.51; C54, 62, 66, 71, 73, §§368.37, 397.8; C75,§471.4]

471.5 Right to purchase. Whenever the power to condemn private property for a public use is granted to any officer, board, commission, or other official, or to any county, township, or municipality, such grant shall, unless otherwise declared, be construed as granting authority to the officer, board, or official body having jurisdiction over the matter, to acquire, at its fair market value, and from the parties having legal authority to convey, such right as would be acquired by condemnation. [R60,§1317; C73,§§1244, 1247; C97,§§1999, 2002, 2014, 2029; S13,§1644-a; C24, 27, 31, 35, 39,§**7807**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.5]

471.6 Railways. Any railway, incorporated under the laws of the United States or of any state thereof, may acquire by condemnation or otherwise so much real estate as may be necessary for the location, construction, and convenient use of its railway. Such acquisition shall carry the right to use for the construction and repair of said railway and its appurtenances any earth, gravel, stone, timber, or other material, on or from the land so taken. [R60,§1314; C73,§1241; C97,§1995; S13, §1995; C24, 27, 31, 35, 39,§**7808**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.6]

471.7 Cemetery lands. No lands actually platted, used, and devoted to cemetery purposes shall be taken for any railway purpose without the consent of the proper officers or owners thereof. [S13,§1995; C24, 27, 31, 35, 39, §**7809**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.7]

471.8 Limitation on right of way. Land taken for railway right of way, otherwise than by consent of the owner, shall not exceed one hundred feet in width unless greater width is necessary for excavation, embankment, or depositing waste earth. [R60,§1314; C73,§1241; C97,§1995; S13,§1995; C24, 27, 31, 35, 39,§**7810**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.8]

471.9 Additional purposes. Any such corporation owning, operating, or constructing a railway may, by condemnation or otherwise, acquire lands for the following additional purposes:

1. For necessary additional depot grounds or yards.

2. For the purpose of constructing a track or tracks to any mine, quarry, gravel pit, manufactory, warehouse, or mercantile establishment.

3. For additional or new right of way for constructing double track, reducing or straightening curves, changing grades, shortening or relocating portions of the line, and for excavations, embankments, or places for depositing waste earth.

4. For the purpose of constructing water stations, dams or reservoirs for supplying its engines with water. [R60,§1314; C73,§§1241, 1242; C97,§§1995, 1996, 1998; S13,§§1995, 1998; C24, 27, 31, 35, 39,§**7811**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.9]

Referred to in §471.10

471.10 Finding by transportation regulation board. The company, before instituting condemnation proceedings under section 471.9, shall apply in writing to the transportation regulation board for permission to so condemn.

The board shall give notice to the landowner, and examine into the matter, and report by certificate to the clerk of the district court in the county in which the land is situated, the amount and description of the additional lands necessary for such purposes, present and prospective, of such company; whereupon the company shall have power to condemn the lands so certified by the board. [C97,§1998; S13,§1998; C24, 27, 31, 35, 39,§7812; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.10]

471.11 Lands for water stations—how set aside. Lands which are sought to be condemned for water stations, dams, or reservoirs, including all the overflowed lands, if any, shall, if requested by the owner, be set aside in a square or rectangular shape by the transportation regulation board. [C73,§1242; C97,§1996; C24, 27, 31, 35, 39,§7813; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.11]

471.12 Access to water—overflow limited. An owner of land, which has in part been condemned for water stations, dams, or reservoirs, shall not be deprived, without his consent, of access to the water, or the use thereof, in common with the company, on his own land, nor, without his consent, shall his dwelling, outhouses, or orchards be overflowed, or otherwise injuriously affected by such condemnation. [C73,§1242; C97,§1996; C24, 27, 31, 35, 39,§7814; C46, 50, 54, 58, 62, 66, 71, 73, 75, §471.12]

471.13 Change in streams. When a railway company would have the right to excavate a channel or ditch and thereby change and straighten the course of a stream or watercourse, which is too frequently crossed by such railway, and thereby protect the right of way and roadbed, or promote safety and convenience in the operation of the railway, it may, by condemnation or otherwise, acquire sufficient land on which to excavate such ditch or channel. [C97,§2014; C24, 27, 31, 35, 39,§7815; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.13]

Referred to in §471.14

471.14 Unlawful diversion prohibited. Nothing in section 471.13 shall give such corporation the right to change the course of any stream or watercourse where such right does not otherwise exist, nor, without the owner's consent, to divert such stream or watercourse from any cultivated meadow or pasture land, when it only touches such lands at one point. [C97,§2014; C24, 27, 31, 35, 39,§7816; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.14]

471.15 Abandonment of right of way. Where a railway constructed in whole or in part has ceased to be operated for more than five years; or where the construction of a railway has been commenced and work on the same has ceased and has not, in good faith, been resumed for more than five years, and remains unfinished; or where any portion of any such railway has not been operated for four consecutive years, and the rails and rolling stock have been wholly removed therefrom it shall be treated as abandoned. [C73, §1260; C97,§2015; C24, 27, 31, 35, 39,§7817; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.15]

Referred to in §§471.16, 471.17

471.16 Right to condemn abandoned right of way. All rights of the person or corporation which constructed or operated any such railway, as is mentioned in section 471.15, over so much as remains unfinished or from which the rails and rolling stock have been wholly removed, may be entered upon and appropriated as provided in section 471.17. [C73, §1260; C97,§2015; C24, 27, 31, 35, 39,§7818; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.16]

Referred to in §471.17

471.17 Procedure to condemn. In case of abandonment, as provided in sections 471.15 and 471.16, any other corporation may enter upon such abandoned work, or any part thereof, and acquire the right of way over the same, and the right to any unfinished work or grading found thereon, and the title thereto, by proceeding as near as may be in the manner provided for an original condemnation. [C73,§1261; C97,§2016; C24, 27, 31, 35, 39,§7819; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.17]

Referred to in §471.16

471.18 Parties entitled to damages. Parties who have previously received compensation in any form for the right of way on the line of such abandoned railway, which has not been refunded by them, shall not be permitted to recover the second time. The value of such roadbed and right of way, excluding the work done thereon, when taken for a new company, shall be assessed in the condemnation proceedings for the benefit of the former company or its legal representative. [C73, §1261; C97,§2016; C24, 27, 31, 35, 39,§7820; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.18]

471.19 Interpretative clause. A grant in this chapter of right to take private property for a public use shall not be construed as limiting a like grant elsewhere in the Code for another and different use. [C24, 27, 31, 35, 39,§7821; C46, 50, 54, 58, 62, 66, 71, 73, 75,§471.19]

471.20 Description of land furnished. Whenever any person, state department, or political subdivision takes title to land in fee simple for a public use by condemnation or by purchase in lieu of condemnation, the purchaser shall furnish to the owner of the land a legal description of the part taken and a legal description of the remainder which is compatible with the existing abstract description of the entire tract of land. For the purposes of this section a center line description is compatible only when it contains reference points which are a part of and tied to the abstract description. [C71, 73, 75,§471.20]

CHAPTER 472

PROCEDURE UNDER POWER OF EMINENT DOMAIN

Referred to in §§111.75, 297.6, 306.17, 306.19, 306.27, 306B.4, 306C.9, 306C.17, 313A.10, 327G.17, 364.8, 403.7, 403A.20, 455.135(6), 462.27, 476.23, 476A.7, 589.27

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472.50 Powers of court—duty of clerk—vacancy.
472.51 Costs—expenses.
472.52 Renegotiation of damages.
472.53 Procedure for homesteading projects.

472.1 Procedure provided. The procedure for the condemnation of private property for works of internal improvement, and for other public uses and purposes, unless and except as otherwise provided by law, shall be in accordance with the provisions of this chapter. [C24, 27, 31, 35, 39,§7822; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.1]

472.2 By whom conducted. Such proceedings shall be conducted:

1. By the attorney general when the damages are payable from the state treasury.

2. By the county attorney, when the damages are payable from funds disbursed by the county, or by any township, or school corporation.

3. By the city attorney, when the damages are payable from funds disbursed by the city.

This section shall not be construed as prohibiting any other authorized representative from conducting such proceedings. [C73,§1271; C97,§2024; S13,§§2024-a,-d,-f; C24, 27, 31, 35, 39, §7823; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.2]

Referred to in §474.1

472.3 Application for condemnation. Such proceedings shall be instituted by a written application filed with the chief judge of the judicial district of the county in which the land sought to be condemned is located. Said application shall set forth:

1. A description of all the property in the county, affected or sought to be condemned, by its congressional numbers, in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots in a city, by the numbers of the lot and block, and plat designation.

2. A plat showing the location of the right of way or other property sought to be condemned with reference to such description.

3. The names of all record owners of the different tracts of land sought to be condemned, or otherwise affected by such proceedings, and of all record holders of liens and encumbrances on such lands; also the place of residence of all such persons so far as known to the applicant.

4. The purpose for which condemnation is sought.

5. A request for the appointment of a commission to appraise the damages. [R60,§1230; C73,§1247; C97,§2002; C24, 27, 31, 35, 39,§7824; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.3]

Referred to in §§474.1, 472.53

472.4 Commission to assess damages. Annually the board of supervisors of a county

shall appoint not less than twenty-eight residents of the county and the names of such persons shall be placed on a list and they shall be eligible to serve as members of a compensation commission. One-fourth of the persons appointed shall be owner-operators of agricultural property, one-fourth of the persons appointed shall be owners of city property, one-fourth shall be licensed real estate salesmen or real estate brokers, and one-fourth shall be persons having knowledge of property values in the county by reason of their occupation, such as bankers, auctioneers, property managers, property appraisers, and persons responsible for making loans on property.

The chief judge of the judicial district shall select by lot six persons from the list, two persons who are owner-operators of agricultural property when the property to be condemned is agricultural property; two persons who are owners of city property when the property to be condemned is other than agricultural property; and two persons from each of the remaining two representative groups, who shall constitute a compensation commission to assess the damages to all property to be taken by the applicant and located in the county, and shall name a chairman from the persons selected. No member of the compensation commission selected shall possess any interest in the proceeding which would cause such person to render a biased decision. [R60,§§1317, 1318; C73,§§1244, 1245; C97,§§1999, 2029; C24, 27, 31, 35, 39,§7825; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.4]

Referred to in §§472.5, 474.1

472.5 Vacancies. In case any appointee under section 472.4 fails to act, the chief judge of the judicial district shall appoint another person from the list, possessing the same qualifications as the person who is being replaced to complete the membership of the commission. [R60,§1319; C73,§1251; C97,§2006; C24, 27, 31, 35, 39,§7826; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.5]

Referred to in §474.1

472.6 Repealed by 63GA, ch 1225,§3.

472.7 Commissioners to qualify. Before proceeding with the assessment all commissioners shall qualify by filing with the sheriff a written oath that they will to the best of their ability faithfully and impartially assess said damages and make written report to the sheriff. [C24, 27, 31, 35, 39,§7828; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.7]

Referred to in §474.1

472.8 Notice of assessment. The applicant, or the owner or any lienholder or encumbrancer of any land described in the application, may, at any time after the appointment of the commissioners, have the damages to the lands of any such owner assessed by giving the other party, if a resident of this state, ten days' notice, in writing. Such notice shall specify the day and the hour when the commissioners will view the premises, and be served in the same manner as original notices. [R60,§1318; C73,§1245; C97,§2000; C24, 27, 31, 35, 39 §7829; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.8]

Referred to in §474.1
Manner of service, R.C.P. 56(*a*)

472.9 Form of notice. Said notice shall be in substantially the following form, with such changes therein as will render it applicable to the party giving and receiving the notice, and to the particular case pending, to wit:

"To ..... (here name each person whose land is to be taken or affected and each record lienholder or encumbrancer thereof) and all other persons, companies, or corporations having any interest in or owning any of the following described real estate:

(Here describe the land as in the application.)

You are hereby notified that ..... (here enter the name of the applicant) desires the condemnation of the following described land: (Here describe the particular land or portion thereof sought to be condemned, in such manner that it will be clearly identified.)

That such condemnation is sought for the following purpose: (Here clearly specify the purpose.)

That a commission has been appointed as provided by law for the purpose of appraising the damages which will be caused by said condemnation.

That said commissioners will, on the ..... day of ....., 19...., at .... o'clock ....m., view said premises and proceed to appraise said damages, at which time you may appear before the commissioners if you care to do so.

.....
Applicant."

[R60,§1320; C73,§1247; C97,§2002; C24, 27, 31, 35, 39,§7830; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.9]

Referred to in §474.1

472.10 Signing of notice. The notice may be signed by the applicant, by his attorney, or by any other authorized representative. [R60, §1320; C73,§1247; C97,§2002; C24, 27, 31, 35, 39, §7831; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.10]

472.11 Filing of notices and return of service. Notices, immediately after the service thereof, shall, with proper return of service endorsed thereon or attached thereto, be filed with the sheriff. The sheriff shall at once cause the commissioners to be notified of the day and hour when they will be required to proceed with the appraisement. [C24, 27, 31, 35, 39,§7832; C46, 50, 54, 58, 62, 66, 71, 73, 75, §472.11]

472.12 Notice to nonresidents. If the owner of such lands or any person interested therein is a nonresident of this state, or if his residence is unknown, no demand for the land for the purposes sought shall be necessary, but the notice aforesaid shall be published in some newspaper of the county and of general circu-

lation therein, once each week for at least four successive weeks prior to the day fixed for the appraisement, which day shall be at least thirty days after the first publication of the notice. [R60,§1320; C73,§§1247, 1248; C97,§§2002, 2003; S13,§2003; C24, 27, 31, 35, 39,§7833; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.12]

472.13 Service outside state. Personal service outside the state on nonresidents in the time and manner provided for the service of original notices shall have the same force and effect as publication service within the state. [C24, 27, 31, 35, 39,§7834; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.13]

472.14 Appraisement—report. The commissioners shall, at the time fixed in the aforesaid notices, view the land sought to be condemned and assess the damages which the owner will sustain by reason of the appropriation; and they shall file their written report with the sheriff. At the request of the condemner or the condemnee, the commission shall divide the damages into parts to indicate the value of any dwelling, the value of the land and improvements other than a dwelling, and the value of any additional damages. The appraisement and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or attorney of the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record; and in case of such knowledge, the appraisement shall be made of the different portions as they are known to be owned.

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

In addition to all other damages provided by law, except moving expenses paid or required to be paid under relocation assistance programs, an owner or tenant occupying land which is proposed to be acquired by condemnation shall be awarded a sum sufficient to remove such owner's or tenant's personal property from the land to be acquired, which sum shall represent reasonable costs of moving said personal property from the said land to be acquired to a point no greater than twenty-five miles therefrom; but in any event, said damages for moving shall not exceed five hundred dollars for each owner or tenant occupying land so proposed to be condemned. [C73,§1249; C97,§§2004, 2029; C24, 27, 31, 35, 39, §7835; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.14]

472.15 Guardianship. In all cases where any interest in lands sought to be condemned is owned by a person who is under legal disability and has no guardian of his property, the applicant shall, prior to the filing of the application with the sheriff, apply to the district court for the appointment of a guardian of the property of such person. [C24, 27, 31, 35, 39,§7836; C46, 50, 54, 58, 62, 66, 71, 73, 75, §472.15]

Referred to in §229.27

472.16 Power of guardian. If the owner of any lands is under guardianship, such guardian may, under the direction of the district court, or judge thereof, agree and settle with the applicant for all damages resulting from the taking of such lands, and give valid conveyances thereof. [R60,§1316; C73,§1246; C97, §2001; C24, 27, 31, 35, 39,§7837; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.16]

472.17 When appraisement final. The appraisement of damages returned by the commissioners shall be final unless appealed from. [C24, 27, 31, 35, 39,§7838; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.17]

472.18 Notice of appraisement — appeal of award. After the appraisement of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice, by ordinary mail, to the condemner and the condemnee of the date on which the appraisement of damages was made, the amount of the appraisement, and that any interested party may, within thirty days from the date of mailing the notice of the appraisement of damages, appeal to the district court. The sheriff shall endorse the date of mailing of notice upon the original appraisement of damages. At the time of appeal, the appellant shall give written notice that the appeal has been taken to the adverse party, or his agent or attorney, lienholders, and the sheriff. [R60, §1317; C73,§1254; C97,§2009; S13,§2009; C24, 27, 31, 35, 39,§7839; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.18]

Referred to in §§472.19, 472.34, 589.27
Condemnation proceedings pending on May 20, 1969, legalized; 63GA, ch 266,§2

472.19 Service of notice—highway matters.

1. Such notice of appeal shall be served in the same manner as an original notice. In case of condemnation proceedings instituted by the state department of transportation, when the owner appeals from the assessment made, such notice of appeal shall be served upon the attorney general, or the department general counsel to the state department of transportation, or the chief highway engineer for the department. When service of notice of appeal cannot be made as provided in this section, the district court of the county in which the real estate is situated, on application, shall direct what notice shall be sufficient.

2. In any condemnation proceedings instituted under this chapter by the state department of transportation in any court of the state wherein the property owner has delivered proper notice of appeal to the sheriff of the proper county with the intent that it be served immediately upon the person selected by the owner from among those persons designated for such service in subsection 1, the delivery of the notice of appeal to the

sheriff shall be deemed a commencement of the appeal proceedings. If the sheriff, after delivery to him of notice of appeal, fails or is unable to serve the notice of appeal upon such designated person within the statutory period required under section 472.18, such inability or failure shall not deprive the court of jurisdiction of the appeal if the property owner shall, within twenty days after delivery of notice of appeal to the sheriff, make application for further direction as to service to the proper district court as provided by this section. [C39,§**7839.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.19; 66GA, ch 67,§69]

Certain dismissed suits reinstated, 65GA, ch 264,§2
Service of original notice, R.C.P. 56(a)

472.20 Sheriff to file certified copy. The sheriff, when an appeal is taken, shall at once file with the clerk of the district court a certified copy of so much of the assessment as applies to the part appealed from. In case of such appeal the sheriff shall, as soon as all other unappealed assessments are disposed of, file with the clerk all papers pertaining to the proceedings and remaining in his hands. [R60, §1317; C73,§1254; C97,§2009; S13,§2009; C24, 27, 31, 35, 39,§**7840**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.20]

472.21 Appeals — how docketed and tried. The appeal shall be docketed in the name of the person appealing and all other interested parties to the action shall be defendants. In the event the condemner and the condemnee appeal, the appeal shall be docketed in the name of the appellant which filed the application for condemnation and all other parties to the action shall be defendants. The appeal shall be tried as in an action by ordinary proceedings. [R60,§1317; C73,§1254; C97,§2009; S13, §§2009, 2024-h; C24, 27, 31, 35, 39,§**7841**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.21]

Docketing appeals, R.C.P. 181, 356

472.22 Pleadings on appeal. A written petition shall be filed by the plaintiff within twenty days after perfection of the appeal, stating specifically the items of damage and the amount thereof. The court may for good cause shown grant additional time for the filing of the petition. The defendant shall file a written answer to plaintiff's petition, or such other pleadings as may be proper. [C31, 35, §7841-c1; C39,§**7841.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.22]

472.23 Question determined. On the trial of the appeal, no judgment shall be rendered except for costs, but the amount of damages shall be ascertained and entered of record. [C73,§1257; C97,§2011; C24, 27, 31, 35, 39,§**7842**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.23]

472.24 Reduction of damages. If the amount of damages awarded by the commissioners is decreased on the trial of the appeal, the reduced amount only shall be paid to the landowner. [C73,§1259; C97,§2013; C24, 27, 31, 35, 39, §**7843**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.24]

472.25 Right to take possession of lands. Upon the filing of the commissioners' report with the sheriff, the applicant may deposit with the sheriff the amount assessed in favor of a claimant, and thereupon the applicant shall, except as otherwise provided, have the right to take possession of the land condemned and proceed with the improvement. No appeal from said assessment shall affect such right, except as otherwise provided. Upon appeal from the commissioners' award of damages the district court, wherein said appeal is pending, may direct that such part of the amount of damages deposited with the sheriff, as it finds just and proper, be paid to persons entitled thereto. If upon trial of said appeal a lesser amount is awarded the difference between the amount so awarded and the amount paid as above provided shall be repaid by the person or persons to whom the same was paid and upon failure to make such repayment the party entitled thereto shall have judgment entered against the person or persons who received such excess payment. [R60,§1317; C73, §§1244, 1255, 1256, 1272; C97,§§1999, 2010, 2025, 2029; S13,§§2024-e,-g,-h; C24, 27, 31, 35, 39,§§**7844, 7847, 7848**; C46, 50, 54, 58,§§472.25, 472.28, 472.29; C62, 66, 71, 73, 75,§472.25]

Referred to in §§306B.4, 306C.17, 472.53

472.26 Dispossession of owner. A landowner shall not be dispossessed, under condemnation proceedings, of his residence, dwelling house, outhouse, orchard, or garden, until the damages thereto have been finally determined and paid. However, if the property described in this section is condemned for highway purposes by the state department of transportation, the condemning authority may take possession of the property either after the damages have been finally determined and paid or one hundred eighty days after the compensation commission has determined and filed its award, in which event all of the appraisement of damages shall be paid to the property owner before the dispossession can take place. This section shall not apply to condemnation proceedings for drainage or levee improvements, or for public school purposes. [C24, 27, 31, 35, 39,§**7845**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.26]

40ExGA, SF 187,§42, editorially divided

472.27 Erection of dam — limitation. If it appears from the finding of the commissioners that the dwelling house, outhouse, orchard, or garden of the owner of any land taken will be overflowed or otherwise injuriously affected by any dam or reservoir to be constructed as authorized by this chapter, such dam shall not be erected until the question of such overflowing or other injury has been determined in favor of the corporation upon appeal. [C73, §1250; C97,§2005; C24, 27, 31, 35, 39,§**7846**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.27]

472.28 and 472.29 Repealed by 58GA, ch 318,§2. See §472.25.

472.30 Additional deposit. If, on the trial of the appeal, the damages awarded by the

commissioners are increased, the condemner shall, if he is already in possession of the property, make such additional deposit with the sheriff, as will, with the deposit already made, equal the entire damages allowed. If the condemner be not already in possession, he shall deposit with the sheriff the entire damages awarded, before entering on, using, or controlling the premises. [C73,§1258; C97, §2012; C24, 27, 31, 35, 39,§7849; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.30]

472.31 Payment by public authorities. When damages, by reason of condemnation, are payable from public funds, the sheriff, or clerk of the district court, as the case may be, shall certify to the officer, board, or commission having power to audit claims for the purchase price of said lands, the amount legally payable to each claimant, and, separately, a detailed statement of the cost legally payable from such public funds. Said officer, board, or commission shall audit said claims, and the warrant-issuing officer shall issue warrants therefor on any funds appropriated therefor, or otherwise legally available for the payment of the same. Warrants shall be drawn in favor of each claimant to whom damages are payable. The warrant in payment of costs shall be issued in favor of the officer certifying thereto. [C73,§1272; C97,§2025; S13,§§2024-b,-e,-g; C24, 27, 31, 35, 39,§7850; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.31]

472.32 Removal of condemner. The sheriff, upon being furnished with a copy of the assessment as determined on appeal, certified to by the clerk of the district court, may remove from said premises the condemner and all persons acting for or under him, unless the amount of the assessment is forthwith paid or deposited as hereinbefore provided. [C73,§1258; C97,§2012; C24, 27, 31, 35, 39,§7851; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.32]

472.33 Costs and attorney fees. The applicant shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the condemnee as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the applicant prior to condemnation. The applicant shall file with the sheriff an affidavit setting forth the most recent offer made to the person whose property is sought to be condemned. Members of such commissions shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The applicant shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial thereof the same or a less amount of damages is awarded than was allowed by the tribunal from which the appeal was taken. [R60,§1317; C73,§1252; C97,§2007; C24, 27, 31, 35, 39,§7852; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.33]

Referred to in §111.75

472.34 Refusal to pay final award. Should the applicant decline, at any time after an appeal is taken as provided in section 472.18, to take the property and pay the damages awarded, he shall pay, in addition to the costs and damages actually suffered by the landowner, reasonable attorney fees to be taxed by the court. [C97,§2011; C24, 27, 31, 35, 39, §7853; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.34]

472.35 Sheriff to file record. The sheriff, in case no appeal is taken, shall, immediately after the final determination of condemnation proceedings, and after the acquiring of the property by the condemner, file, with the county recorder of the county in which the condemned land is situated, the following papers:

1. The application for condemnation.
2. All notices, together with all returns of service endorsed thereon or attached thereto.
3. The report of the commissioners.
4. All other papers filed in said proceedings.
5. A written statement by the sheriff of all money received in payment of damages, from whom received, to whom paid, and the amount paid to each claimant. [C73,§1253; C97,§2008; C24, 27, 31, 35, 39,§7854; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.35]

472.36 Clerk to file record. The clerk of the district court, in case an appeal is taken in condemnation proceedings, shall file with the county recorder the records which the sheriff is required to file in case no appeal is taken, and in addition thereto the following:

1. A copy of the record entry of the court showing the amount of damages determined on appeal.
2. A written statement by the clerk of all money received by him in payment of damages, from whom received, to whom paid, and the amount paid to each claimant. [C24, 27, 31, 35, 39,§7855; C46, 50, 54, 58, 62, 66, 71, 73, 75, §472.36]

472.37 Form of record — certificate. Said papers shall be securely fastened together, arranged in the order named above, and be accompanied by a certificate of the officer filing the same that said papers are the original files in the proceedings and that the statements accompanying the same are true. [C24, 27, 31, 35, 39,§7856; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.37]

472.38 Record of proceedings. The county recorder shall record said papers, statements, and certificate in the record of deeds, properly index the same, and carefully preserve the originals as files of his office. [C73,§1253; C97,§2008; C24, 27, 31, 35, 39,§7857; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.38]

472.39 Fee for recording. The sheriff or clerk, as the case may be, shall collect from the condemner such fee as the county recorder would have legal right to demand for making

such record, and pay such fee to the recorder upon presenting the papers for record. [C24, 27, 31, 35, 39,§7858; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.39]

Recorder fee, §335.14

472.40 Failure to record — liability. Any sheriff, or clerk of the district court, as the case may be, who fails to present said papers, statements, and certificate for record, and any recorder who fails to record the same as above provided shall be liable for all damages caused by such failure. [C24, 27, 31, 35, 39,§7859; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.40

472.41 Presumption. The said original papers, statements, and certificate, or the record thereof shall be presumptive evidence of title in the condemner, and shall constitute constructive notice of the right of such condemner to the lands condemned. [C73,§1253; C97, §2008; C24, 27, 31, 35, 39,§7860; C46, 50, 54, 58, 62, 66, 71, 73, 75,§472.41]

472.42 Eminent domain — payment to displaced persons.

1. Any utility or railroad subject to section 327C.2, chapter 479, or chapter 476, authorized by law to acquire property by condemnation that does acquire the property of any person who is displaced thereby after July 1, 1971, shall pay to such person in addition to all other sums of money required by law a displacement allowance in accordance with and in the same manner as provided for acquisition for highway projects in sections 316.4, 316.5, 316.6 and 316.8.

2. The displacement allowance to be paid by a utility subject to the provisions of chapters 479 or 476, shall be paid in the manner provided in sections 316.4, 316.5, 316.6, and 316.8 and pursuant to rules promulgated by the Iowa state commerce commission. Any person aggrieved by a determination as to eligibility for a payment or the amount of the payment may, upon application, have the matter reviewed by the Iowa state commerce commission. The decision of the Iowa state commerce commission upon review shall be final as to all parties.

3. The displacement allowance to be paid by a railroad subject to the provisions of section 327C.2, shall be paid in the manner provided in sections 316.4, 316.5, 316.6, and 316.8 and pursuant to rules promulgated by the transportation regulation board. Any person aggrieved by a determination as to eligibility for a payment or the amount of the payment may, upon application, have the matter reviewed by the transportation regulation board. The decision of the transportation regulation board upon review shall be final as to all parties.

4. Any utility or railroad subject to the provisions of this section that proposes to acquire the property of any person who will be displaced by such acquisition shall inform the person of his right to receive a displacement allowance and, if his right to the displacement allowance or the amount of the allowance is in dispute, his right to appeal to the Iowa state commerce commission or the transportation regulation board. [C71, 73, 75,§472.42]

472.43 Chief justice to prepare instructions. Written instructions for members of compensation commissions shall be prepared under the direction of the chief justice of the supreme court and distributed to the sheriff in each county. The sheriff shall transmit copies of the instructions to each member of a compensation commission, and such instructions shall be read aloud to each commission before it commences its duties. [C71, 73, 75,§472.43]

472.44 Taking property for highway—buildings and fences moved. When real property or an interest therein is purchased or condemned for highway purposes and a fence or building is located on such property, the governmental agency shall be responsible for all costs incurred by the property owner in replacing or moving the fence or moving the building onto property owned by the landowner and abutting the property purchased or condemned for highway purposes, or the governmental agency may replace or move the fence or move the building. Such costs shall not constitute an additional element of damages which would permit unjust enrichment or a duplication of payments to any condemnee. [C71, 73, 75,§472.44]

472.45 Condemnation for road or street—mailing copy of appraisal. When any real property or interest therein is to be purchased, or in lieu thereof to be condemned for highway, street or road purposes, the purchasing state agency, county or city or their agent shall submit to the person, corporation or entity whose property or interest therein is to be taken, by ordinary mail, at least ten days prior to the date of contact, a copy of the appraisal upon such real property or interest therein which shall include, at least, an itemization of the appraised value of the real property or interest therein, any buildings thereon, all other improvements including fences, severance damages and loss of access. [C71, 73, 75,§472.45]

472.46 Special proceedings to condemn existing utility. When any city has voted at an election to purchase, establish, erect, maintain and operate heating plants, waterworks, gasworks or electric light or power plants, or when it has voted to contract an indebtedness and issue bonds for such purposes, and in such city there exists any such utility, or incomplete parts thereof or more than one, not publicly owned, and the contract or franchise of the owner of the utility has expired or been surrendered, and the owner and the city cannot agree upon terms of purchase, it may, by resolution, proceed to acquire by condemnation any one or more of the utilities or incomplete parts thereof. When so acquired it may apply the proceeds of the bonds in payment therefor and in making extensions

and improvements to such works or plants so acquired, but not more than one utility may be so acquired when the municipality is indebted in excess of the statutory limitation of indebtedness for such purposes for any such acquired property. [C73,§474; C97,§722; S13,§722; C24, 27, 31, 35, 39,§**6135**; C46, 50, 54, 58, 62, 66, 71, §397.20; C73, 75,§472.46]

Referred to in §472.47

472.47 Court of condemnation. Upon the passage of the resolution as provided in section 472.46 and the presentation of a certified copy thereof to the supreme court while in session, or to the chief justice of the supreme court, the court or chief justice shall within five days appoint as a court of condemnation three district court judges from three judicial districts, one of whom shall be from the district in which the city is located, if not a resident of the city, and shall enter an order requiring the judges to attend as such court of condemnation at the county seat of the county in which the city is located within ten days. The district court judges shall attend and constitute a court of condemnation. [SS15,§722-a; C24, 27, 31, 35, 39,§**6136**; C46, 50, 54, 58, 62, 66, 71,§397.21; C73, 75,§472.47]

472.48 Procedure. Said court when it meets to organize or at any time during the proceedings, which may be adjourned from time to time for any purpose, may fix the time for the appearance of any person that any party desires to have joined in the proceedings, and whom the court deems necessary. The time for appearance shall be sufficiently remote to serve notice upon the parties, but if the time for appearance occurs after the proceedings are begun, the proceedings may be reviewed by the court to give all parties a full opportunity to be heard. [SS15,§722-a; C24, 27, 31, 35, 39,§**6137**; C46, 50, 54, 58, 62, 66, 71,§397.22; C73, 75,§472.48]

472.49 Notice—service. Persons not voluntarily appearing, but having any right, title, or interest in or to the property which is the subject of condemnation, or any part thereof, including all leaseholders, mortgagees and trustees of bondholders, who are to be made parties to the proceedings shall be served with notice of the proceedings and the time and place of meeting of the court in the same manner and for the same length of time as for the service of original notice, either by personal service, or by service by publication, the time so set being the time at which the parties so served are required to appear, and actual personal service of the notice within or without the state shall supersede the necessity for publication. [SS15,§722-a; C24, 27, 31, 35, 39,§**6138**; C46, 50, 54, 58, 62, 66, 71,§397.23; C73, 75, §472.49]

Time and manner of service, R.C.P. 53, 56(*a*), and 60

472.50 Powers of court—duty of clerk—vacancy. The court of condemnation shall have power to summon and swear witnesses, take evidence, order the taking of depositions, require the production of any books or papers, and may appoint a shorthand reporter. It shall perform all the duties of commissioners in the condemnation of property. The duties and the method of procedure and condemnation, including provisions for appeal shall be except as otherwise specifically provided, as provided for the taking of private property for works of internal improvement. The clerk of the district court of the county where the city is located shall perform all of the duties required of the sheriff in the condemnation; and in case of a vacancy in the court, the vacancy shall be filled in the manner in which the original appointment was made. When necessary by reason of a vacancy, the court may review any evidence in its record. [SS15, §722-a; C24, 27, 31, 35, 39,§**6139**; C46, 50, 54, 58, 62, 66, 71,§397.24; C73, 75,§472.50]

472.51 Costs — expenses. The costs of the proceedings shall be the same and paid in the same manner as in proceedings in the district court, and the district court judges of the court of condemnation shall receive, while engaged in such service, their actual expenses, which expenses shall be taxed as costs in the case. [S13,§722-b; C24, 27, 31, 35, 39,§**6140**; C46, 50, 54, 58, 62, 66, 71,§397.25; C73, 75,§472.51]

Costs generally, ch 625

472.52 Renegotiation of damages. Whenever property or an interest therein has been taken by condemnation or has been purchased for a public use and a settlement for construction or maintenance damages has been thereafter entered into pursuant to said condemnation or purchase, the owner shall have five years from the date of said settlement to renegotiate construction or maintenance damages not apparent at the time of said settlement. The condemner or purchaser shall give written notice to the owner of such right of renegotiation at the time said settlement is entered into. [C73, 75,§472.52]

472.53 Procedure for homesteading projects. If the purpose of condemnation is to obtain property for use as part of an Iowa homesteading project under section 220.14, the application required under section 472.3 may contain a verified statement that the property sought to be condemned is abandoned and deteriorating in condition, or is inhabited but is not safe for human habitation, or is or is likely to become a public nuisance, and that the property is suitable for use and is to be used in an Iowa homesteading project. Other information may be included. The statement must be verified by the Iowa housing finance authority or by a local agency authorized under rules of the authority. Upon proper filing of the statement and the report of the condemnation commission assessing damages, and deposit of the amount assessed with the sheriff, the applicant for condemnation may take posses-

sion as provided in section 472.25 if the property is abandoned, or may take steps to obtain possession after ninety days from the date of the filing of the statement, report, and deposit, if the property is inhabited. [66GA, ch 138,§45]

CHAPTER 473

REVERSION TO OWNERS UPON ABANDONMENT

Applicable to railroads
Transferred to chapter 327G, division III

CHAPTER 473A

METROPOLITAN OR REGIONAL PLANNING COMMISSIONS

Referred to in §97B.41(8)

473A.1 Authority of governing bodies—joint commission.
473A.2 Membership.
473A.3 Organization.
473A.4 Powers and duties.
473A.5 Plans distributed.
473A.6 Filing documents with commission.
473A.7 Construction of provisions.
473A.8 Contracts for planning.

473A.1 Authority of governing bodies — joint commission. The governing bodies of two or more adjoining cities, independently or together with the governing body or bodies of the county or counties within which such cities are located, or the governing bodies of two or more adjoining counties, or a county and its major city or cities, or the governing bodies of one or more counties together with the governing bodies of one or more cities adjoining such county or counties, or any of the above together with a school district, benefited water district, benefited fire district, sanitary district or any other similar district which may be formed under an Act of the legislature may co-operate in the creation of a joint planning commission which may be designated to be a regional or metropolitan planning commission, as agreed among the governing bodies. The governing bodies of cities, counties, school districts or other governmental units may co-operate with the governing bodies of the cities and counties or other authorized governing bodies of any adjoining state or states in the creation of such a joint planning commission where such co-operation has been authorized by law by the adjoining state or states.

The joint planning commission shall be separate and apart from the governmental units creating it, may sue and be sued, contract for the purchase and sale of real and personal property necessary for its purposes, and shall be a juristic entity as the term is used in section 97C.2, subsection 6. [C66, 71, 73, 75,§473A.1]

473A.2 Membership. The commission shall have not less than five members, appointed by the governing bodies of the area served by the commission. A majority of the members of the commission may be citizens who hold no other public office or position except appointive membership on a city plan commission or other planning commission, board or agency. Citizen members shall be appointed for overlapping terms of not less than three nor more than five years or thereafter until their successors are appointed. The appointing governing bodies shall determine the amount of compensation, if any, to be paid to the members of a commission. Any vacancy in the membership of a commission shall be filled for the unexpired term in the same manner as the initial appointment. The governing bodies shall have authority to remove any member for cause stated in writing and after a public hearing. [C66, 71, 73, 75, §473A.2]

473A.3 Organization. The joint planning commission shall elect one of its members as chairman who shall serve for one year or until he is re-elected or his successor is elected. The commission shall appoint a secretary who may be an officer or an employee of a governing body or of the commission. The members of the commission shall meet not less than four times a year at the call of the chairman and at such other times as the chairman or the members of the commission shall determine, shall adopt rules for the transaction of business, and shall keep a record of their resolutions, transactions, findings and determinations, which record shall be a public record. The commission may employ such employees and staff as it may deem necessary for its work, including a director of

planning and consultants. In the performance of its duties, the commission may co-operate with, contract with, and accept and expend funds from federal, state, or local agencies, public or semipublic agencies, or private individuals or corporations, and may carry out such co-operative undertakings and contract. It may enter into other contracts and make expenditures for the purchase of required equipment and supplies, and exercise all other powers necessary to carry out the purposes of this chapter. The expenditures of the commission, exclusive of gifts or grants to the commission or its contract receipts, shall be within the amounts appropriated or provided to the commission by the governing bodies of the area served by the commission, who are empowered to determine, agree upon, and appropriate funds for the payment of the expenses of the commission of their respective shares thereof. The governing bodies of the area served by the commission shall co-operate with the commission and may aid the commission by furnishing staff, services and property. [C66, 71, 73, 75,§473A.3]

473A.4 Powers and duties. The commission shall have the power and duty to make comprehensive studies and plans for the development of the area it serves which will guide the unified development of the area and which will eliminate planning duplication and promote economy and efficiency in the co-ordinated development of the area and the general welfare, convenience, safety, and prosperity of its people. The plan or plans collectively shall be known as the regional or metropolitan development plan. The plans for the development of the area may include, but shall not be limited to, recommendations with respect to existing and proposed highways, bridges, airports, streets, parks and recreational areas, schools and public institutions and public utilities, public open spaces, and sites for public buildings and structures; districts for residence, business, industry, recreation, agriculture, and forestry; water supply, sanitation, drainage, protection against floods and other disasters; areas for housing developments, slum clearance and urban renewal and redevelopment; location of private and public utilities, including but not limited to sewerage and water supply systems; and such other recommendations concerning current and impending problems as may affect the area served by the commission. Time and priority schedules and cost estimates for the accomplishment of the recommendations may also be included in the plans. The plans shall be based upon and include appropriate studies of the location and extent of present and anticipated populations; social, physical, and economic resources, problems and trends; and governmental conditions and trends. The commission is also authorized to make surveys, land-use studies, and urban renewal plans, provide technical services and other planning work for the area it serves and for cities, counties, and other political subdivisions in the area. A plan or plans of the commission may be adopted, added to, and changed from time to time by a majority vote of the planning commission. The plan or plans may in whole or in part be adopted by the governing bodies of the co-operating cities and counties as the general plans of such cities and counties. The commission may also assist the governing bodies and other public authorities or agencies within the area it serves in carrying out any regional plan or plans, and assist any planning commission, board or agency of the cities and counties and political subdivisions in the preparation or effectuation of local plans and planning consistent with the program of the commission. The commission may co-operate and confer, as far as possible, with planning agencies of other states or of regional groups of states adjoining its area.

A planning commission formed under the provisions of this chapter shall, upon designation as such by the governor, serve as a district, regional or metropolitan agency for comprehensive planning for its area for the purpose of carrying out the functions as defined for such an agency by federal, state and local laws and regulations. [C66, 71, 73, 75,§473A.4]

473A.5 Plans distributed. Copies of the plan or plans and amendments or revisions of a plan or plans prepared by a commission may be transmitted by the commission to the chief administrative officers, the legislative bodies, the planning commissions, boards or agencies of the counties and cities, within its area, and to regional or metropolitan planning commissions established for adjoining areas. A commission may make copies of its plan or plans or parts of plans available for general distribution or sale, and may advise and supply information, as far as available, to persons and organizations who may request such advice and information and who are concerned with the area's development problems. It may also provide information to state and local agencies and to the public at large, in order to foster public awareness and understanding of the objectives of regional or metropolitan planning, and in order to stimulate public interest and participation in the orderly, integrated development of the area served by the commission. [C66, 71, 73, 75,§473A.5]

473A.6 Filing documents with commission. To facilitate effective and harmonious planning of the region or metropolitan area, all governing bodies in the area served by a commission, and all county and city planning commissions, boards or agencies in the area may file with the commission, for its information, all county or city plans, zoning ordinances, official maps, building codes, subdivision regulations, or amendments or revisions of them, as well as copies of their regular and special reports dealing in whole or in part with planning matters. County or city governing bodies, or

county or city local planning commissions, boards or agencies may also submit proposals to a commission for such plans, ordinances, maps, codes, regulations, amendments or revisions prior to their adoption, in order to afford an opportunity to the commission to study such proposals and to render advice thereon. [C66, 71, 73, 75,§473A.6]

473A.7 Construction of provisions. Nothing in this chapter shall be construed to remove or limit the powers of the co-operating cities, counties, school districts, benefited water districts, benefited fire districts, sanitary districts, or similar districts as provided by state law. All legislative power with respect to zoning and other planning legislation shall remain with the governing body of the co-operative cities and counties. Each participating city or county may continue to have its own planning commission or board but may under the joint agreement and in the interest of economy and efficiency and in the interest of uniform standards and procedures, request the metropolitan or regional planning commission to assume duties and functions of local planning agencies in whole or in part. The metropolitan or regional planning commission shall have the duty and function of promoting public interest and understanding of the economic and social necessity for long-term co-ordinated planning for the metropolitan or regional area, but its official recommendations shall be made to the governing bodies of the co-operating cities, counties, school districts, benefited water districts, benefited fire districts, sanitary districts, or similar districts. [C66, 71, 73, 75,§473A.7]

Constitutionality, 60 GA, ch 110,§8

473A.8 Contracts for planning. A metropolitan planning commission may contract with professional consultants, the Iowa development commission or the federal government, for local planning assistance. [C62, 66, 71, 73, §373.21; C75,§473A.8]

TITLE XVIII

PUBLIC UTILITIES

TRANSFERRED CHAPTERS

CODE 1975	CODE 1977
473	327G(III)
474*	327C
476	327E
477	327F
478	327G(I)
479	327D
480	Repealed
481	327G(II)
482	Repealed
483	327H
484	Repealed
485	Repealed
486	Repealed
488	477
489	478
490	479
490A	476

*All but the first nine sections

CHAPTER 474

IOWA STATE COMMERCE COMMISSION

Referred to in §307.26

All rules, forms, orders and directives promulgated by and in effect for the Iowa state commerce commission pursuant to the provisions of chapters 322A, 325, 327, 327A, and 327B and chapters 474 to 486 shall continue in full force and effect as rules of the state department of transportation until amended or supplemented by affirmative action of the state transportation commission, see 65GA, ch 1180,§198. Federal funds appropriated, 65GA, ch 36,§2

Transfer of employees to department of transportation, see 65GA, ch 1180,§199

474.1 Members—organization.
474.2 Certain persons barred from office.
474.3 Proceedings.
474.4 Quorum—personal interest.
474.5 Rules, forms and service.
474.6 Appearances—record of votes—public hearings.
474.7 Seal.
474.8 Office—time employed—expenses.
474.9 General jurisdiction of commerce commission.

474.1 Members — organization. The Iowa state commerce commission shall be composed of three members, not more than two of whom shall be from the same political party, and each commissioner appointed shall serve for six years from July 1 of the year of his appointment. Within sixty days after the convening of each regular session of the general assembly, the governor shall appoint, with the approval of two-thirds of the senate, a successor to the member of the Iowa state commerce commission whose term will expire on July 1 following. Vacancies occurring while the general assembly is in session shall be filled for the unexpired portion of the term as full-term appointments are filled. Vacancies occurring while the general assembly is not in session shall be filled by the governor, but such appointments shall terminate at the end of thirty days after the convening of the next regular session of the general assembly and the vacancy shall be filled for the unexpired portion of the term as full-term appointments are filled.

On the second Tuesday of July of each year, the Iowa state commerce commission shall organize by electing one of its members as chairman, and appointing a secretary, who shall take the same oath as the commissioners. The commission may employ such additional personnel as it may find necessary.

As used in this section and sections 474.2 to 474.9, the words "commerce commission" mean the Iowa state commerce commission. [C97, §2111; C24, 27, 31, 35, 39,§7866; C46, 50, 54, 58, 62, 66, 71, 73,§474.2; C75,§474.1]

474.2 Certain persons barred from office. No person in the employ of any common carrier or other public utility, or owning any bonds, stock or property in any railroad company or other public utility shall be eligible to the office of Iowa state commerce commissioner or secretary of the commerce commission; and the entering into the employ of any common carrier or other public utility or the acquiring of any stock or other interest in any common carrier or other public utility by such commissioner or secretary after his appointment shall disqualify him to hold the office or perform the duties thereof. [C97,§2111; C24,

27, 31, 35, 39,§7865; C46, 50, 54, 58, 62, 66, 71, 73, §474.1; C75,§474.2]

474.3 Proceedings. The commerce commission may in all cases conduct its proceedings, when not otherwise prescribed by law, in such manner as will best conduce to the proper dispatch of business and the attainment of justice. [C97,§2142; C24, 27, 31, 35, 39,§7867; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.3]

474.4 Quorum—personal interest. A majority of the commerce commission shall constitute a quorum for the transaction of business, but no commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. [C97,§2142; C24, 27, 31, 35, 39,§7868; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.4]

474.5 Rules, forms and service. The commerce commission may from time to time make or amend such general rules or orders as may be necessary for the preservation of order and the regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as nearly as may be to those in use in the courts of the state. [C97, §2142; C24, 27, 31, 35, 39,§7869; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.5]

Manner of commencing actions, ch 617

474.6 Appearances—record of votes—public hearings. Any party may appear before the commerce commission and be heard in person or by attorney. Every vote and official action thereof shall be entered of record, and, upon the request of either party or person interested, its proceedings shall be public. [C97, §2142; C24, 27, 31, 35, 39,§7870; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.6]

474.7 Seal. The commerce commission shall have a seal, of which courts shall take judicial notice. [C97,§2142; C24, 27, 31, 35, 39, §7871; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.7]

474.8 Office—time employed—expenses. The commerce commission shall have an office at the seat of government and each member shall devote his whole time to the duties of the office, and the members and secretary and other employees shall receive their actual necessary traveling expenses while in the discharge of their official duties away from the general offices. [C97,§2121; SS15,§2121; C24, 27, 31, 35, 39,§7872; C46, 50, 54, 58, 62, 66, 71, 73, 75,§474.8]

474.9 General jurisdiction of commerce commission. The commerce commission shall have general supervision of all pipelines and all lines for the transmission, sale, and distribution of electrical current for light, heat, and power pursuant to the provisions of chapters 476, 478, 479 and 543 and such other duties as may be provided by law. [S13,§2120-n; C24, 27, 31, 35, 39,§7874; C46, 50, 54, 58, 62, 66, 71, 73,§474.10; C75,§474.9]

Sections 474.10 to 474.54 transferred to 327C

CHAPTER 475

COMMERCE COUNSEL

475.1 Appointment—term.
475.2 Vacancy.
475.3 Disqualification.
475.4 Political activity.
475.5 Removal.
475.6 Office—assistants—expenses.
475.7 Duties.

475.1 Appointment — term. Within sixty days after the general assembly convenes in 1927, and every four years thereafter, the state commerce commission shall appoint a competent attorney to the office of commerce counsel, subject to the approval of two-thirds of the members of the senate. His term of office shall be for four years and till his successor is appointed, and shall begin on the first day of July of the year he is appointed. [S13,§2121-h; C24, 27, 31, 35, 39,§7913; C46, 50, 54, 58, 62, 66, 71, 73, 75,§475.1]

475.2 Vacancy. A vacancy in said office occurring while the general assembly is in session, shall be filled for the unexpired term in the same manner as original appointments. If the general assembly is not in session, a vacancy shall be filled by an appointment made by the commission, which appointment shall expire thirty days from the time the next general assembly convenes. [S13,§2121-h; C24, 27, 31, 35, 39,§7914; C46, 50, 54, 58, 62, 66, 71, 73, 75,§475.2]

475.3 Disqualification. The existence of any fact which would disqualify a person from election or acting as state commerce commissioner shall disqualify such person from appointment or acting as commerce counsel. [S13,§2121-i; C24, 27, 31, 35, 39,§7915; C46, 50, 54, 58, 62, 66, 71, 73, 75,§475.3]

Eligibility, §474.2

475.4 Political activity. The commerce counsel shall devote his entire time to the duties of his office; and during his term of office he shall not be a member of any political committee or contribute to any political campaign fund or

take any part in political campaigns or be a candidate for any political office. [S13,§2121-i; C24, 27, 31, 35, 39,§7916; C46, 50, 54, 58, 62, 66, 71, 73, 75,§475.4]

475.5 Removal. The commission may, with the approval of the senate, during a session of the general assembly, remove said counsel for malfeasance or nonfeasance in office, or for any cause which renders him ineligible for appointment, or incapable or unfit to discharge the duties of his office; and his removal, when so made, shall be final. [S13,§2121-h; C24, 27, 31, 35, 39,§7917; C46, 50, 54, 58, 62, 66, 71, 73, 75, §475.5]

General removal statutes, ch 66

475.6 Office—assistants—expenses. The office of commerce counsel shall be at the seat of government and he shall have free access to all the files, records, and documents in the office of the commission. The commerce counsel, his assistants and office help shall be paid their actual necessary traveling expenses and other disbursements incurred in the discharge of official duties; such expenditures are to be approved by the state commerce commission. [S13,§2121-j; C24, 27, 31, 35, 39,§7918; C46, 50, 54, 58, 62, 66, 71, 73, 75,§475.6]

475.7 Duties. The commerce counsel shall:

1. Act as attorney for, and legal advisor of, the Iowa state commerce commission.

2. Investigate the legality of all rates, charges, rules, regulations, and practices of all persons under the jurisdiction of the commission, and institute civil proceedings before the commission or any court to correct any illegality on the part of any such person and prosecute the same to final determination.

3. Appear for the commission or for the state and its citizens and industries in all actions instituted in any state or federal court which involves the validity of any rule, regulation, or order of the commission, and prosecute in any state or federal court in the name of the state, all actions necessary to enforce or to restrain the violation of any rule or order of the commission. [S13,§2121-l; C24, 27, 31, 35, 39,§7919; C46, 50, 54, 58, 62, 66, 71, 73, 75,§475.7]

CHAPTER 476

PUBLIC UTILITY REGULATION

Referred to in §§472.42, 474.9

Chapter 476, Code 1975, GENERAL POWERS of RAILWAY CORPORATIONS, transferred to chapter 327E

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476.22 Definition.
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476.1 Applicability of authority. The Iowa state commerce commission shall regulate the rates and services of public utilities to the extent and in the manner hereinafter provided.

As used in this chapter, "public utility" shall include any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for:

1. Furnishing gas by piped distribution system or electricity to the public for compensation.

2. Furnishing communications services to the public for compensation.

3. Furnishing water by piped distribution system to the public for compensation.

Mutual telephone companies in which at least fifty percent of the users are owners, co-operative telephone corporations or associations, telephone companies having less than two thousand stations, municipally owned utilities, and unincorporated villages which own their own distribution system shall not be subject to the rate regulation provided for in this chapter; provided, however, that nothing contained in this chapter shall be construed to apply to municipally owned water works or rural water districts incorporated and organ-

ized pursuant to chapters 357A and 504A. Telephone companies otherwise exempt from rate regulation and having telephone exchange facilities which cross state lines may elect, in writing, filed with the commission, to have their rates regulated by the commission. When such election, in writing, has been filed with the commission, the commission shall assume rate regulation jurisdiction over said companies. [C66, 71, 73, 75,§490A.1; 66GA, ch 1200,§2]

Referred to in §§476.6, 476.22

476.2 Powers—rules. The commission shall have broad general powers to effect the purposes of this chapter notwithstanding the fact that certain specific powers are hereinafter set forth. The commission shall have authority to issue subpoenas and to pay the same fees and mileage as are payable to witnesses in the courts of record of general jurisdiction and shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, contents and filing of reports, documents and other papers provided for in this chapter or in the commission's rules. In the establishment, amendment, alteration or repeal of any of such rules, the commission shall be subject to the provisions of chapter 17A.

The commission shall employ at rates of compensation consistent with current standards in industry such professionally trained engineers, accountants, attorneys, and skilled examiners and inspectors, secretaries, clerks, and other employees as it may find necessary for the full and efficient discharge of its duties and responsibilities as required by this chapter.

The commission is hereby authorized and empowered to intervene in any proceedings before the federal power commission or any other federal or state regulatory body when it finds that any decision of such tribunal would adversely affect the costs of any public utility service within the state of Iowa.

The commission shall have authority to inquire into the management of the business of all public utilities, and shall keep itself informed as to the manner and method in which the same is conducted, and may obtain from any public utility all necessary information to enable the commission to perform its duties. [C66, 71, 73, 75,§490A.2]

Referred to in §476.12

476.3 Complaints — investigation. Every public utility shall furnish reasonably adequate service at rates and charges in accordance with tariffs filed with the commission. Whenever there is filed with the commission by any person or body politic, or filed by the commission upon its own motion, a written complaint requesting the commission to determine the reasonableness of the rates, charges, schedules, service, regulations, or anything done or omitted to be done by any public utility subject to this chapter, in contravention of the provisions thereof, such written complaint thus made shall be forwarded by the commission to such public utility, which shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the commission. If such public utility shall not satisfy the commission with respect to the complaint within the time specified and there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the commission to promptly initiate a formal proceeding. Such a formal proceeding may be initiated at any time by the commission on its own motion. Whenever such a proceeding has been initiated upon application or motion, the commission shall set the case for hearing and give such notice thereof as it deems appropriate. Whenever the commission, after a hearing held after reasonable notice, finds any public utility's rates, charges, schedules, service or regulations are unjust, unreasonable, discriminatory or otherwise in violation of any provision of law, the commission shall determine just, reasonable and nondiscriminatory rates, charges, schedules, service or regulations to be thereafter observed and enforced. [C66, 71, 73, 75,§490A.3]

Referred to in §476.4

476.4 Tariffs filed. Every public utility shall file with the commission tariffs showing the rates and charges for its public utility services and the rules and regulations under which such services were furnished, on April 1, 1963, which rates and charges shall be subject to investigation by the commission as provided in section 476.3, and upon such investigation the burden of establishing the reasonableness of such rates and charges shall be upon the public utility filing the same. These filings shall be made under such rules as the commission may prescribe within such time and in such form as the commission may designate. In prescribing rules and regulations with respect to the form of tariffs, the commission shall, in the case of public utilities subject to regulation by any federal agency, give due regard to any corresponding rules and regulations of such federal agency, to the end that unnecessary duplication of effort and expense may be avoided so far as reasonably possible. Each public utility shall keep copies of its tariffs open to public inspection under such rules as the commission may prescribe.

Every rate, charge, rule and regulation contained in any filing made with the commission on or prior to July 4, 1963, shall be effective as of such date, subject, however, to investigation as herein provided. If any such filing is made prior to the time the commission prescribes rules as aforesaid, and if such filing does not comply as to form or substance with such rules, then the public utility which filed the same shall within a reasonable time after the adoption of such rules make a new filing

or filings complying with such rules, which new filing or filings shall be deemed effective as of July 4, 1963. [C66, 71, 73, 75,§490A.4]

476.5 Adherence to schedules — discounts. No public utility subject to rate regulation shall directly or indirectly charge a greater or less compensation for its services than that prescribed in its tariffs, and no such public utility shall make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage.

Nothing in this section shall be construed to prohibit any public utility furnishing communications services from providing any service rendered by it without charge or at reduced rate to any of its active or retired officers, directors, or employees, or such officers, directors or employees of other public utilities furnishing communications services. Provided, however, said service is for personal use, and not for engaging in a business for profit. [C66, 71, 73, 75,§490A.5]

476.6 Change of rates—hearing. No public utility subject to rate regulation shall make effective any new or changed rate, charge, schedule or regulation except by filing the same with the commission at least thirty days prior to the effective date thereof. The commission, for good cause shown, may allow changes in rates, charges, schedules or regulations to become effective on less than thirty days' notice.

All public utilities, including those exempted from rate regulation by the provisions of section 476.1, shall give written notice of any proposed increase of any rate or charge to all affected customers served by the public utility at least thirty days prior to the effective date thereof. If the public utility is subject to rate regulation, the notice to affected customers shall also state that the customer has a right to file a written objection to such rate increase and that he may request the commission to hold a public hearing to determine if such rate increase should be allowed. The commission shall prescribe the manner and method that the written notice to each affected customer of the public utility shall be served.

Nothing in this chapter shall be taken to prohibit a public utility from establishing a sliding scale of rates and charges or from making provision for the automatic adjustment of rates and charges for public utility service provided that a schedule showing such sliding scale or automatic adjustment of rates and charges is first filed with the commission.

Whenever there is filed with the commission by any public utility subject to rate regulation any new or changed rates, charges, schedules or regulations, the commission may, prior to the effective date thereof, docket the case as a formal proceeding and set the case for hearing. The commission shall give such notice of such formal proceedings as it deems appropriate.

After the initiation of such formal proceedings and pending the final decision thereon, the commission may, at any time before they become effective, suspend the operation of such new or changed rates, charges, schedules or regulations, but not for a period longer than twelve months from the date when they would have become effective if not suspended.

However, a public utility shall have the right at any time after said rates, charges, schedules or regulations have been suspended for ninety days to place in effect any or all of such suspended rates, charges, schedules or regulations by filing with the commission a bond or other undertaking approved by the commission conditioned upon the refund in a manner to be prescribed by the commission of any amounts collected thereunder in excess of the amounts which would have been collected under rates, charges, schedules or regulations finally approved by the commission. The commission shall establish a rate of interest to be paid by a public utility to persons receiving refunds. Such rate of interest shall be not less than five percent per annum, nor more than nine percent per annum.

If, after hearing and decision on all issues presented for determination in such rate proceeding, the commission shall find the rates, charges, schedules or rules of the utility to be unlawful, the same shall be set aside and the commission shall by order authorize and direct the utility to file rates, charges, schedules or rules which, when approved by the commission and placed in effect, will satisfy the requirements of this chapter. The rates, charges, schedules or rules so approved shall be lawful and effective unless changed as herein provided. In the event a petition for rehearing is filed or a petition for judicial review is sought from an order concerning rates, charges, schedules or rules which are in effect under bond, those rates, charges, schedules or rules may, notwithstanding the terms of the Iowa administrative procedure Act, be continued in effect by the utility under the terms of a bond or other undertaking pending final determination of the application for rehearing or proceeding for judicial review of an order of the commission. [C66, 71, 73, 75,§490A.6]

476.7 Application by utility for review. If there shall be filed with the commission by any public utility an application requesting the commission to determine the reasonableness of the utility's rates, charges, schedules, service or regulations, the commission shall promptly initiate a formal proceeding. Such a formal proceeding may be initiated at any time by the commission on its own motion. Whenever such a proceeding has been initiated upon application or motion, the commission shall set the case for hearing and give such notice thereof as it deems appropriate. Whenever the commission, after a hearing held

after reasonable notice, finds any public utility's rates, charges, schedules, service or regulations are unjust, unreasonable, insufficient, discriminatory or otherwise in violation of any provision of law, the commission shall determine just, reasonable, sufficient and nondiscriminatory rates, charges, schedules, service or regulations to be thereafter observed and enforced. [C66, 71, 73, 75,§490A.7]

476.8 Utility charges and service. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, gas, water or power produced, transmitted, delivered or furnished, or communications services, or for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful. In determining reasonable and just rates, the commission shall consider all factors relating to value and shall not be bound by rate base decisions or rulings made prior to the adoption of this chapter.

The commission, in determining the value of materials or services to be included in valuations or costs of operations for rate-making purposes, may disallow any unreasonable profit made in the sale of materials to or services supplied for any public utility by any firm or corporation owned or controlled directly or indirectly by such utility or any affiliate, subsidiary, parent company, associate or any corporation whose controlling stockholders are also controlling stockholders of such utility. The burden of proof shall be on the public utility to prove that no unreasonable profit is made. [C66, 71, 73, 75,§490A.8]

476.9 Accounts rendered to commission.

1. Every public utility shall keep and render to the commission in the manner and form prescribed by the commission uniform accounts of all business transacted.

2. Every public utility engaged directly or indirectly in any other business than that of the production, transmission or furnishing of heat, light, water or power or furnishing communications services to the public shall, if required by the commission, keep and render separately to the commission in like manner and form the accounts of all such other business, in which case all the provisions of this chapter shall apply to the books, accounts, papers and records of such other business and all profits and losses may be taken into consideration by the commission if deemed relevant to the general fiscal condition of the public utility.

3. Every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commission, and to comply with all directions of the commission relating to such books, accounts, papers and records.

4. The commission shall consult with other state and federal regulatory bodies for the purpose of eliminating accounting discrepancies with regard to the keeping of public utility accounts before prescribing any system of accounts to be kept by the public utility. [C66, 71, 73, 75,§490A.9]

476.10 Investigations—expense. Whenever the commission shall deem it necessary in order to carry out the duties imposed upon it by this chapter for the purpose of determining rate matters to investigate the books, accounts, practices, and activities of, or make appraisals of the property of any public utility, or to render any engineering or accounting services to any public utility, such public utility shall pay the expense reasonably attributable to such investigation, appraisal, or service. The commission shall ascertain such expenses, and shall render a bill therefor, by certified mail, to the public utility, either at the conclusion of the investigation, appraisal, or services, or from time to time during its progress, which bill shall constitute notice of said assessment and demand payment thereof. The total amount of such expense in any one calendar year, for which any public utility shall become liable, shall not exceed two-tenths of one percent of its gross operating revenues derived from intrastate public utility operations in the last preceding calendar year.

The commission shall annually, within ninety days after the close of each fiscal year, ascertain the total of its expenditures during each year which are reasonably attributable to the performance of its duties under this chapter and shall deduct therefrom all amounts chargeable directly to any specific utility under any law. The remainder shall be assessed by the commission to the several public utilities in proportion to their respective gross operating revenues during the last calendar year derived from intrastate public utility operations. The total amount which may be assessed to the public utilities under authority of this paragraph shall not exceed one-tenth of one percent of the total gross operating revenues of such public utilities during such calendar year derived from intrastate public utility operations. For public utilities exempted from rate regulation under this chapter, the assessments under this paragraph shall be computed at one-half the rate used in computing the assessment for other utilities.

Each utility shall pay the commission the amount assessed against it within thirty days from the time the commission mails notice to it of the amount due unless it shall file with the commission objections in writing setting out the grounds upon which it claims that such assessment is excessive, erroneous, unlawful, or invalid. Upon the filing of such objections the commission shall set the matter down for hearing and issue its order in accordance with its findings in such proceeding, which order shall be subject to review in the manner provided in this chapter. All amounts

collected by the commission pursuant to the provisions of this section shall be deposited with the state treasurer and credited to the general fund of the state. Such amounts shall be spent in accordance with the provisions of chapter 8. [C66, 71, 73, 75,§490A.10]

476.11 Telephone tolls determined. Whenever toll connection between the lines or facilities of two or more telephone companies has been made, or is demanded under the statutes of this state and the companies concerned cannot agree as to the terms and procedures under which toll communications shall be interchanged, the commission upon complaint in writing, after hearing had upon reasonable notice, shall determine such terms and procedures. [C66, 71, 73, 75,§490A.11]

476.12 Rehearings before commission. Any party, as defined in the rules and regulations promulgated by the commission as provided in section 476.2 hereof, to a proceeding before the commission may within twenty days after the entry of the order apply for a rehearing. The commission shall either grant or refuse an application for rehearing within twenty days after the filing of the application, or may after giving the interested parties notice and opportunity to be heard and after consideration of all the facts, including those arising since the making of the order, abrogate or modify its order. A failure by the commission to act upon such application for rehearing within the above period shall be deemed a refusal thereof. Neither the filing of an application for rehearing nor the granting thereof shall stay the effectiveness of an order unless the commission so directs. [C66, 71, 73, 75,§490A.12]

Referred to in §§478.32, 479.30

476.13 Judicial review. Judicial review of actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petition for judicial review may be filed in the district court of any county wherein the order of the commission or some part thereof is to take effect. [C66, 71, 73, 75,§490A.13]

See §§478.32, 479.30
Sections 490A.14 to 490A.19 repealed by 65GA, ch 1090, §211

476.14 Violations stopped. Whenever the commission shall be of the opinion that any public utility or any other person is violating this chapter or any order of the commission, the commission may commence an action in the district court for the county in which such violation is alleged to have occurred, to have such violation stopped and prevented by injunction, mandamus or other appropriate remedy. [C66, 71, 73, 75,§490A.20]

476.15 Extent of jurisdiction. The jurisdiction and powers of the commission shall extend as hereinbefore provided to the utility business of public utilities operating within this state to the full extent permitted by the Constitution and laws of the United States. [C66, 71, 73, 75,§490A.21]

476.16 Annual report. The Iowa state commerce commission shall include in its annual report required under sections 17.1 and 17.10 among other matters, to the extent such regulation is conferred upon the commission by this chapter, the following:

1. A complete financial report of receipts and expenditures, including list of public utilities and separately the amount of total fees and assessments paid by each.

2. A list of the applications, subject and disposition of each docket number under this chapter, including commission fees for such docket assessed by the commission. [C66, 71, 73, 75,§490A.22]

Annual report, §17.10
Sections 490A.23 and 490A.24, Code 1975, repealed by 66GA, ch 1200,§9

476.17 and 476.18 Reserved.

476.19 Construction of statutes. Nothing herein contained shall be construed to invalidate any proceedings under statutes existing prior to the enactment of this chapter; nor shall any action, litigation or appeal pending prior to the effective date of rate regulation of this chapter be affected hereby. [C66, 71, 73, 75,§490A.25]

476.20 Abandonment of service. No utility shall, except in cases of emergency, discontinue, reduce, or impair service to a community, or a part of a community, except for nonpayment of account or violation of rules and regulations, unless and until there shall have been first obtained from the commission permission to do so. [C66, 71, 73, 75,§490A.26]

Section 490A.27, Code 1975, repealed by 66GA, ch 1206,§16

476.21 Reserved.

ASSIGNED AREA OF SERVICE

476.22 Definition. As used in sections 476.23 to 476.26, unless the context otherwise requires, *"electric utility"* includes a public utility furnishing electrictiy as defined in section 476.1 and a city utility as defined in section 390.1. [66GA, ch 1200,§4]

476.23 Electric service conflicts—certificates of authority.

1. An electric utility shall not construct or extend facilities or furnish or offer to furnish electric service to the existing point of delivery of any customer already receiving electric service from another electric utility without having first filed with the commission the express written agreement of the electric utility presently serving this customer, except as otherwise provided in this section. Any municipal corporation, after being authorized by a vote of the people, or any electric utility may file a petition with the commission requesting a certificate of authority to furnish electric service to the existing point of delivery of any

customer already receiving electric service from another electric utility. If, after notice by the commission to the electric utility currently serving the customer, objection to the petition is not filed and investigation is not deemed necessary, the commission shall issue a certificate within thirty days of the filing of the petition. When an objection is filed, if the commission, after notice and opportunity for hearing, determines that service to the customer by the petitioner is in the public interest, including consideration of any unnecessary duplication of facilities, it shall grant this certificate in whole or in part, upon such terms, conditions, and restrictions as may be justified. Whether or not an objection is filed, any certificate issued shall require that the petitioner pay to the electric utility presently serving the customer, the reasonable price for facilities serving the customer. This price determination by the commission shall include due consideration of the cost of the facilities being acquired, any necessary generating capacity and transmission capacity dedicated to the customer, depreciation, loss of revenue, and the cost of facilities necessary to reintegrate the system of the utility after detaching the portion sold.

2. An electric utility shall not construct or extend facilities or furnish electric service to a prospective customer not presently being served, unless its existing service facilities are nearer the proposed point of delivery than the service facilities of any other utility. However, an electric utility may extend electric service and transmission lines if the electric utility closest to the delivery point consents to this extension in writing and a copy of the agreement is filed with the commission or, if the commission, after notice and opportunity for hearing and after giving due consideration to the prevention of unnecessary duplication of facilities, finds that service from an electric utility, other than the closest utility, is in the public interest. This subsection shall not apply if the prospective customers are within an exclusive service area assigned to an electric utility as provided in this division.

3. Notwithstanding subsections 1 and 2 of this section, any electric utility may extend electric service and transmission lines to its own utility property and facilities.

4. If not inconsistent with the provisions of this division:

a. All rights of municipal corporations under chapter 364 to grant a person a franchise to erect, maintain, and operate plants and systems for electric light and power within the corporate boundaries, and rights acquired by franchise or agreement shall be preserved in these municipal corporations;

b. All rights of city utilities under the city code shall be preserved in these city utilities;

c. All rights of city utilities and joint electric utilities under chapter 390 shall be preserved in these city utilities and joint electric utilities; and

d. All rights of cities under chapter 472 are preserved. However, prior to the institution of condemnation proceedings, the city shall obtain a certificate of authority from the commission in accordance with this division and the commission's determination of price under this division shall be conclusive evidence of damages in these condemnation proceedings. [C66, 71, 73, 75,§§490A.23, 490A.24; 66GA, ch 1200,§5]

Referred to in §476.22

476.24 Electric utility service area maps.

1. On or before July 1, 1977, and subsequently whenever requested by the commission, electric utilities furnishing electricity to the public for compensation in this state shall file, jointly or severally, with the commission detailed maps of their service area drawn to a scale of not less than one inch per mile or drawn to a larger scale if required for clarity showing all of the following:

a. The locations of an electric utility's generation, franchised transmission lines, distribution lines, and related facilities as of January 1, 1976.

b. All state and federal highways and other public roads within the electric utility's service area.

c. All section lines and numbers and township and range numbers within the electric utility's service area.

d. The corporate boundaries of all cities within the electric utility's service area.

e. All lakes and rivers within the electric utility's service area.

f. All railroads within the electric utility's service area.

g. Any additional information requested by the commission.

2. On or before July 1, 1978, and subsequently when deemed by the commission to be necessary, the commission shall prepare or cause to have prepared a composite map of this state showing the service areas of electric utilities as submitted by the electric utilities. The form and detail of all maps shall be determined by the commission. [66GA, ch 1200,§6]

Referred to in §476.22

476.25 Assigned service areas — electric utilities—legislative policy. It is declared to be in the public interest to encourage the development of co-ordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public. In order to effect that public interest, the commission may establish service areas within which specified electric utilities shall provide electric service to customers on an exclusive basis. Except for good cause expressed through formal public statement, the commission shall establish these exclusive service areas on or before July 1, 1979. These exclusive service

area boundaries shall be established by the commission upon the following basis:

1. The service area boundaries shall be in a line approximately equidistant between the electric distribution lines of adjacent electric utilities as they existed on January 1, 1976, and as shown by the maps filed in accordance with this division. However, those boundaries may be modified by the commission to promote the public interest, to preserve existing service areas and electric utilities' rights to serve existing customers, and to prevent unnecessary duplication of facilities, to take account of natural and physical barriers which would make electric service beyond these barriers uneconomic and impractical and those boundaries shall be modified by the commission to take account of the contracts between electric utilities which have been approved by the commission pursuant to subsection 2 of this section. When an electric utility's exclusive service area is established by the commission to include existing customers presently served by the facilities of another electric utility, unless a voluntary exchange of facilities is agreed upon by the electric utilities involved and approved by the commission, the commission after notice and opportunity for hearing, shall require the purchase of those facilities presently serving these customers at a reasonable price to be determined by the commission. The commission, on its own motion or at the request of an electric utility or municipal corporation, after notice and opportunity for hearing, may modify the boundaries of an electric utility exclusive service area which it has previously established if this modification, including consideration of the factors noted in this subsection, is found to be in the public interest.

2. Contracts between electric utilities to designate service areas and customers to be served by the electric utilities or for the exchange of customers between electric utilities, when approved by the commission, shall be valid and enforceable and shall be incorporated into the appropriate exclusive service areas established pursuant to subsection 1 of this section. The commission shall approve a contract if it finds that the contract will eliminate or avoid unnecessary duplication of facilities, will provide adequate electric service to all areas and customers affected, will promote the efficient and economical use and development of the electric systems of the contracting electric utilities, and is in the public interest. [66GA, ch 1200,§7]

Referred to in 476.22

476.26 Effect of incorporation, annexation or consolidation. The inclusion by incorporation, consolidation, or annexation of any facilities or service area of an electric utility within the boundaries of any city shall not by such inclusion impair or affect in any respect the rights of the electric utility to continue to provide electric utility service and to extend service to prospective customers in accordance with the provisions of this division. [C66, 71, 73, 75,§490A.23; 66GA, ch 1200,§8]

Referred to in §476.22

CHAPTER 476A

ELECTRIC POWER GENERATORS

476A.1 Definitions.
476A.2 Certificate required.
476A.3 Application submitted—review.
476A.4 Hearing scheduled—notice.
476A.5 Proceeding—role of regulatory agencies and local authorities.
476A.6 Decision—criteria.
476A.7 Issuance of certificate—effect.
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476A.9 Advance site preparation.
476A.10 Costs of proceeding.
476A.11 Single hearing—judicial review.
476A.12 Rules.
476A.13 Staff assistance—federal preemption.
476A.14 Penalties.

476A.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Facility"* means any electric power generating plant or a combination of plants at a single site with a total capacity of one hundred megawatts of electricity or more and those associated transmission lines connecting the generating plant to either a power transmission system or an interconnected primary transmission system or both. Transmission lines subject to the provisions of this chapter shall not require a franchise under chapter 478.

2. *"Certificate"* means a certificate of public convenience, use and necessity issued pursuant to section 476A.6.

3. *"Commence to construct"* means significant alteration of a site to install permanent equipment or structures but does not include activities incident to preliminary engineering, environmental studies or acquistion of a site for a facility.

4. *"Agency"* means an agency as defined in section 17A.2, subsection 1.

5. *"Regulatory agency"* means an agency which issues licenses or permits required for the construction, operation or maintenance of a facility pursuant to statutes or rules in effect on the date on which an application for a certificate is accepted by the commission.

6. *"Commission"* means the Iowa state commerce commission. [66GA, ch 1206,§1]

476A.2 Certificate required.

1. Commencing January 1, 1977, a person shall not commence to construct a facility except as provided in section 476A.9 unless a certificate for the facility has been issued by the commission. This chapter shall not apply to persons who prior to July 1, 1976:

a. Have acquired a site for a facility; and,

b. Have publicly announced the intention to construct a facility; and,

c. Have let contracts for major components of a facility.

2. Any significant alteration, as determined by the commission, in the location, construction, maintenance, or operation of a facility whether constructed before or after July 1, 1976 shall require an application for an amendment to a certificate or a certificate, whichever is appropriate. "Significant alteration" shall include but shall not be limited to a change in the type of fuel used by the major electric generating facility.

3. Any person required to obtain a certificate or an amendment to a certificate shall construct, operate and maintain the facility according to the terms of the certificate and any amendments to the certificate. A certificate shall only be issued pursuant to this chapter. [66GA, ch 1206,§2]

476A.3 Application submitted—review. An application for a certificate or an amendment to a certificate shall be submitted to the commission on such forms as the commission may prescribe. Copies of the application shall be forwarded to regulatory agencies. Regulatory agencies receiving a copy of the application shall conduct a preliminary review of the contents and shall evaluate the application for completeness and compliance with the regulatory agency's permit and licensing requirements within a reasonable amount of time. [66GA, ch 1206,§3]

476A.4 Hearing scheduled—notice.

1. The proceeding for the issuance of a certificate or an amendment to a certificate shall be treated in the same manner as a contested case pursuant to the provisions of chapter 17A. Upon acceptance of an application by the commission, a public hearing shall be scheduled.

2. The commission shall serve notice of the proceeding on the following:

a. Interested agencies, as determined by the commission, and regulatory agencies.

b. County and city zoning authorities from the area in which the proposed site is located.

c. Owners of record of real property located within one thousand linear feet of the proposed site.

3. Notice of the proceeding in the form provided in section 17A.12, subsection 2, shall be published in a newspaper of general circulation in each county in which the proposed site is located once a week for two consecutive weeks with the second publication being at least twenty days prior to the date of the hearing. The commission shall be responsible for publication and delivery of notices required by this section.

4. The commission shall conduct the hearing, as described in subsection 1, in the county in which the construction of the greater portion of the facility is being proposed. [66GA, ch 1206,§4]

Referred to in §476A.5

476A.5 Proceeding—role of regulatory agencies and local authorities.

1. The commission shall conduct the contested case proceeding. Regulatory agencies which appear on record at the proceeding shall state whether the application meets their permit and licensing requirements. If the application does not meet such requirements, the regulatory agency shall recommend amendments to the application which outline actions necessary to bring the applicant in compliance with the regulatory agency's permit and licensing requirements. The commission shall not issue a certificate for a facility which does not meet the permit and licensing requirements of a regulatory agency.

2. If a regulatory agency which received notice pursuant to section 476A.4 fails to appear of record in the contested case proceeding, the commission shall conclusively presume that the facility meets the regulatory agency's permit and licensing requirements and the regulatory agency shall immediately issue any license or permit required for the construction, operation or maintenance of the facility.

3. City and county zoning authorities designated as parties to the proceeding may appear on record and may state whether the facility meets city, county and airport zoning requirements. The failure of a facility to meet zoning requirements established pursuant to chapters 329, 358A and 414 shall not preclude the commission from issuing the certificate and to that extent the provisions of this subsection shall supersede the provisions of chapters 329, 358A and 414. [66GA, ch 1206,§5]

Referred to in §476A.9

476A.6 Decision—criteria. The commission shall render a decision on the application in an expeditious manner. A certificate shall be

issued to the applicant if the commission finds that:

1. The services and operations resulting from the construction of the facility are required by the present or future public convenience, use and necessity; and,

2. The applicant is willing to perform such services and construct, maintain, and operate the facility pursuant to the provisions of the certificate and this chapter; and,

3. The construction, maintenance, and operation of the facility will cause minimum adverse land use, environmental, and aesthetic impact and are consonant with reasonable utilization of air, land and water resources for beneficial purposes considering available technology and the economics of available alternatives. [66GA, ch 1206,§6]

Referred to in §476A.1

476A.7 Issuance of certificate—effect.

1. Issuance of a certificate by the commission:

a. Authorizes construction of the facility on the site designated in the certificate according to the terms and conditions stated in the certificate and licenses and permits issued by regulatory agencies during the proceeding; and,

b. Gives the applicant the power of eminent domain to the extent and under such conditions as the commission may approve, prescribe and find necessary for the public convenience, use and necessity, proceeding in the manner of works of internal improvement under chapter 472. The burden of proving the necessity for the exercise of the power of eminent domain shall be on the person issued the certificate.

2. A certificate may be transferred, subject to the approval of the commission, to a person who agrees to comply with the terms of the certificate including any amendments to the certificate. Certificates shall be transferable by operation of law to any receiver, trustee or similar assignee under a mortgage, deed of trust or similar instrument. [66GA, ch 1206,§7]

476A.8 Further approvals prohibited—exception. Upon issuance of a certificate, notwithstanding any provision of law except statutory requirements relating to the protection of employees engaged in the construction of the facility, a regulatory agency, city or county shall not require any further approval, permit or license for the construction of the facility. [66GA, ch 1206,§8]

476A.9 Advance site preparation. Subsequent to the hearing held pursuant to section 476A.5 and in the event of extensive delay in the issuance of a certificate, the commission may permit an applicant having an application docketed for hearing to begin work to prepare the site for construction of the facility. Any activities conducted pursuant to this section shall have no probative value in the commission's decision concerning the actual issuance of a certificate. [66GA, ch 1206,§9]

Referred to in 476A.2

476A.10 Costs of proceeding. The applicant for a certificate, or an amendment to certificate, shall pay all the costs and expenses incurred by the commission in reaching a decision on the application including the costs of examinations of the site, the hearing, publishing of notice, commission staff salaries, the cost of consultants employed by the commission, and other expenses reasonably attributable to the proceeding. [66GA, ch 1206,§10]

476A.11 Single hearing — judicial review. Notwithstanding the provisions of chapter 17A:

1. Any proceeding or oral presentation held on an application for a certificate or an amendment to a certificate shall be held in lieu of any other proceeding or oral presentation required for a license or permit necessary for the construction, maintenance or operation of a facility.

2. The decision of the commission shall be considered a single agency action. The agency action shall be subject to judicial review in the manner provided in chapter 17A.

3. Only parties to the proceeding before the commission may seek judicial review of the final order of the commission. [66GA, ch 1206,§11]

476A.12 Rules. The commission shall adopt rules pursuant to chapter 17A necessary to implement the provisions of this chapter including but not limited to the promulgation of facility siting criteria, the form for an application for a certificate and an amendment to a certificate, the description of information to be furnished by the applicant, the determination of what constitutes a significant alteration to a facility, and the establishment of minimum guidelines for public participation in the proceeding. [66GA, ch 1206,§12]

476A.13 Staff assistance — federal preemption.

1. The commission may request staff assistance from other federal, state and local agencies, pursuant to chapter 28D, to assist in discharging the responsibilities assigned to the commission pursuant to this chapter. The commission may exercise the powers and responsibilities assigned to the commission under this chapter jointly with other governmental agencies pursuant to chapter 28E.

2. This chapter shall not apply to any facility over which an agency of the federal government has exclusive jurisdiction. When concurrent jurisdiction exists with certain powers reserved to the state, the state shall exercise those powers with respect to facilities operating within this state to the full extent permitted by the Constitution and the laws of the United States. [66GA, ch 1206,§13]

476A.14 Penalties.

1. Any person who commences to construct a facility as provided in this chapter without having first obtained a certificate, or who constructs, operates or maintains any facility other than in compliance with a certificate issued by the commission or a certificate amended pursuant to this chapter, or who causes any of these acts to occur, shall be liable for a civil penalty of not more than ten thousand dollars for each violation or for each day of continuing violation. Civil penalties collected pursuant to this subsection shall be forwarded by the clerk of court to the treasurer of state for deposit in the general fund of the state.

2. The district court shall have exclusive jurisdiction to grant restraining orders and temporary or permanent injunctive relief as may be necessary to obtain compliance with this chapter.

3. Persons convicted of violating any provision of this chapter shall be guilty of a misdemeanor and shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days. [66GA, ch 1206,§14]

CHAPTER 477

TELEGRAPH AND TELEPHONE LINES AND COMPANIES

Chapter 477, Code 1975, (CONSTRUCTION AND OPERATION OF RAILWAYS) transferred to chapter 327F

477.1 Right of way.
477.2 Removal of lines.
477.3 Construction—damages.
477.4 Condemnation.
477.5 Equal facilities—delay.
477.6 Delay—willful error—revealing contents.
477.7 Mistakes and delays.
477.8 Negligence presumed.
477.9 Presentation of claim.

RECIPROCAL SERVICE

477.10 Definitions.
477.11 Facilities to local exchange.
477.12 Transmission of messages.
477.13 Facilities to long distance companies.
477.14 Violations—effect.

477.1 Right of way. Any person or firm, and any corporation organized for such purpose, within or without the state, may construct a telegraph or telephone line along the public roads of the state, or across the rivers or over any lands belonging to the state or any private individual, and may erect the necessary fixtures therefor. [C51,§780; R60,§1348; C73,§1324; C97,§2158; C24, 27, 31, 35, 39,§**8300**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§488.1]

C97,§2158, editorially divided
Authorization in cities, §364.2
Removal, ch 319

477.2 Removal of lines. When any road along which said line has been constructed shall be changed, the person, firm or corporation shall, upon ninety days' notice in writing, remove said lines to said road as established. The notice may be served upon any agent or operator in the employ of such person, firm or corporation. [C73,§1324; C97,§2158; C24, 27, 31, 35, 39,§**8301**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.2]

477.3 Construction — damages. Such fixtures shall not be so constructed as to inconvenience the public in the use of any road or the navigation of any stream; nor shall they be set up on the private grounds of any individual without paying him a just equivalent for the damage he thereby sustains. [C51, §781; R60,§1349; C73,§1325; C97,§2159; C24, 27, 31, 35, 39,§**8302**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.3]

477.4 Condemnation. If the person over whose lands such telegraph or telephone line passes claims more damages therefor than the proprietor of such line is willing to pay, the amount thereof may be determined in the same manner as provided for taking private property for works of internal improvement. [C51,§782; R60,§1350; C73,§1326; C97,§2160; C24, 27, 31, 35, 39,§**8303**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§488.4]

Condemnation procedure, ch 472

477.5 Equal facilities—delay. If the proprietor of any telegraph or telephone line within the state, or the person having the control and management thereof, refuses to furnish equal facilities to the public and to all connecting lines for the transmission of communications in accordance with the nature of the business which it undertakes to carry on, or to transmit the same with fidelity and without unreasonable delay, the law in relation to limited partnerships, corporations, and to the taking of private property for works of internal improvement, shall not longer apply to them, and property taken for the use thereof without the consent of the owner may be recovered by him. [C51,§783; R60,§1351; C73,§1327; C97, §2161; C24, 27, 31, 35, 39,§**8304**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§488.5]

Eminent domain, ch 471
Limited partnerships, ch 545

477.6 Delay — willful error—revealing contents. Any person employed in transmitting

messages by telegraph or telephone must do so with fidelity and without unreasonable delay, and if anyone willfully fails thus to transmit them, or intentionally transmits a message erroneously, or makes known the contents of any message sent or received to any person except him to whom it is addressed, or his agent or attorney, or willfully and wrongfully takes or receives any telegraph or telephone message, he is guilty of a misdemeanor. [C51,§784; R60,§1352; C73,§1328; C97,§2162; C24, 27, 31, 35, 39,§**8305**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§488.6]

Punishment, §687.7

477.7 Mistakes and delays. The proprietor of a telegraph or telephone line is liable for all mistakes in transmitting or receiving messages made by any person in his employment, or for any unreasonable delay in their transmission or delivery, and for all damages resulting from failure to perform the foregoing or any other duty required by law, the provisions of any contract to the contrary notwithstanding. [C51, §785; R60,§1353; C73,§1329; C97,§2163; C24, 27, 31, 35, 39,§**8306**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.7]

477.8 Negligence presumed. In any action against any telegraph or telephone company for damages caused by erroneous transmission of a message, or by unreasonable delay in delivery of a message, negligence on the part of the telegraph or telephone company shall be presumed upon proof of erroneous transmission or of unreasonable delay in delivery, and the burden of proof that such error or delay was not due to negligence upon its part shall rest upon such company. [C97,§2164; C24, 27, 31, 35, 39,§**8307**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.8]

C97,§2164, editorially divided

477.9 Presentation of claim. No action for the recovery of such damages shall be maintained unless a claim therefor is presented in writing to such company, officer or agent thereof within sixty days from time cause of action accrues. [C97,§2164; C24, 27, 31, 35, 39, §**8308**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§488.9]

RECIPROCAL SERVICE

477.10 Definitions.

1. *"Local exchange"*, within the meaning of this Act*, shall refer to a telephone line or lines or to a telephone switchboard or switchboards operating by virtue of a franchise granted by a city furnishing telephonic communication between two or more members of the public within the same city, village, community, locality or neighborhood, which said line or lines or switchboard or switchboards shall be under the same management and control.

"Local exchange" within the meaning of this Act shall not include or refer to privately owned or leased lines or switchboards, operated and used by members of the public other than telephone or telegraph companies as a public utility by which the public is offered telephonic service.

2. *"Local exchange company"* within the meaning of this Act, shall refer to any one or more individuals, firms or corporations operating one or more local exchanges as herein defined.

3. *"Long distance company"* within the meaning of this Act shall refer to and include one or more persons, firms or corporations operating connecting lines between two or more local exchanges, one or more of which local exchanges are owned by a local telephone company other than such person, firm or corporation, over which line or lines telephonic communication is had between members of the public connected with said local exchanges. [C35,§8308-f1; C39,§**8308.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§488.10]

*45ExGA, ch 102

477.11 Facilities to local exchange. Long distance companies shall furnish equal facilities to any local exchange within the state desiring same, and to that end shall immediately make, or at the option of the long distance company, shall immediately permit to be made under its direction and at reasonably accessible places to be designated by such long distance company, the necessary connections between said local exchange and said long distance company telephone system to effect the furnishing of equal facilities to such local exchange. [C35,§8308-f2; C39,§**8308.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§488.11]

477.12 Transmission of messages. After such connection has been made said long distance company shall transmit communications and messages to, from and through all local exchanges connected with its system when requested, with fidelity and equality and without discrimination or unreasonable delay. [C35,§8308-f3; C39,§**8308.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§488.12]

477.13 Facilities to long distance companies. A connected local exchange company shall accept and furnish telephonic connection for all messages offered over the lines or through the system of any long distance company without discrimination or unreasonable delay, and with equality. [C35,§8308-f4; C39,§**8308.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§488.13]

477.14 Violations—effect. Should any local exchange company or long distance company refuse or fail to furnish the connection or service above required, the law in relation to limited partnerships, corporations, or the taking of private property for works of internal improvement shall no longer apply to them and property taken for the use thereof without the consent of the owner may be recovered by him. [C35,§8308-f5; C39,§**8308.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§488.14]

Eminent domain, ch 471
Limited partnerships, ch 545

CHAPTER 478

ELECTRIC TRANSMISSION LINES

Referred to in 467A.1
Chapter 478, Code 1975, (FENCES, CROSSINGS AND INTERLOCKING SWITCHES) transferred to chapter 327G, Div. I

478.1 Franchise.
478.2 Petition for franchise — informational meetings held.
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478.12 Acceptance of franchise.
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478.15 Eminent domain—procedure—entering on land—reversion on nonuse.
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478.23 Prior franchises—legislative control.
478.24 Violations.
478.25 Wire crossing railroads—supervision.
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478.27 Wires—how strung.
478.28 Examination of existing wires.
478.29 Penalty—enforcement.
478.30 Crossing highway.
478.31 Temporary permits for lines less than one mile.
478.32 Rehearing—judicial review.

478.1 Franchise. No individual, company, or corporation shall construct, erect, maintain, or operate any transmission line, wire, or cable along, over, or across any public highway or grounds outside of cities for the transmission, distribution, or sale of electric current, without first procuring from the state commerce commission a franchise granting authority so to do as in this chapter provided. [S13,§§1527-c, 2120-n; C24, 27, 31, 35, 39,§8309; C46, 50, 54, 58, 62, 66, 71, 73, 75,§489.1]

Referred to in §478.31
Authorization in cities, §364.2

478.2 Petition for franchise—informational meetings held. Any person, corporation, or company authorized to transact business in the state including cities may file a verified petition asking for a franchise to erect, maintain, and operate a line or lines for the transmission, distribution, use, and sale of electric current outside cities and for such purpose to erect, use, and maintain poles, wires, guy wires, towers, cables, conduits, and other fixtures and appliances necessary for conducting electric current for light, heat, or power over, along, and across any public lands, highways, streams, or the lands of any person, company, or corporation, and to acquire necessary interests in real estate for such purposes.

As conditions precedent to the filing of a petition with the commission requesting a franchise for a new transmission line, and not less than thirty days prior to the filing of such petition, the person, company, or corporation shall hold informational meetings in each county in which real property or rights therein will be affected. A member of the commission, the counsel of the commission, or a hearing examiner designated by the commission shall serve as the presiding officer at each meeting and present an agenda for such meeting which shall include a summary of the legal rights of the affected landowners. No formal record of the meeting shall be required.

The meeting shall be held at a location reasonably accessible to all persons, companies, or corporations which may be affected by the granting of the franchise.

The person, company, or corporation seeking the franchise for a new transmission line shall give notice of the informational meeting to each person, company, or corporation determined to be the landowner affected by the proposed project and any person, company or corporation in possession of or residing on the property. For the purposes of this section, "landowner" means a person, company, or corporation listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and "transmission line" means any line carrying thirty-four point five kilovolts or more and extending a distance of not less than one mile across privately owned real estate.

The notice shall set forth the name of the applicant; state the applicant's principal place of business; state the general description and purpose of the proposed project; state the general nature of the right of way desired; provide a map showing the route of the proposed project; advise that the landowner has the right to be present at such meetings and to file objections with the commerce commission; designate the place and time of the meeting; be served not less than thirty days prior to the time set for the meeting by certified mail with return receipt requested; and be published once in a newspaper of general circulation in

the county at least one week and not more than three weeks before the time of the meeting and such publication shall be considered notice to landowners whose residence is not known.

No person, company, or corporation seeking rights under this chapter shall negotiate or purchase any easements or other interests in land in any county known to be affected by the proposed project prior to the informational meeting. [S13,§2120-n; C24, 27, 31, 35, 39,§**8310**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§489.2]

478.3 Petition—requirements.

1. All petitions shall set forth:

a. The name of the individual, company, or corporation asking for the franchise.

b. The principal office or place of business.

c. The starting points, routes, and termini of the proposed lines, accompanied with a map or plat showing such details.

d. A general description of the public or private lands, highways, and streams over, across, or along which any proposed line will pass.

e. General specifications as to materials and manner of construction.

f. The maximum voltage to be carried over each line.

g. Whether or not the exercise of the right of eminent domain will be used and, if so, a specific reference to the lands described in paragraph "*d*" which are sought to be subject thereto.

h. An allegation that the proposed construction is necessary to serve a public use.

2. Petitions for transmission lines carrying thirty-four point five kilovolts or more and extending a distance of not less than one mile across privately owned real estate shall also set forth an allegation that the proposed construction represents a reasonable relationship to an overall plan of transmitting electricity in the public interest and substantiation of such allegations, including but not limited to, a showing of the following:

a. The relationship of the proposed project to present and future economic development of the area.

b. The relationship of the proposed project to comprehensive electric utility planning.

c. The relationship of the proposed project to the needs of the public presently served and future projections based on population trends.

d. The relationship of the proposed project to the existing electric utility system and parallel existing utility routes.

e. The relationship of the proposed project to any other power system planned for the future.

f. The possible use of alternative routes and methods of supply.

g. The relationship of the proposed project to the present and future land use and zoning ordinances.

h. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

The commission may waive the proof required for such allegations which are not applicable to a particular proposed project.

The petition shall contain an affidavit stating that informational meetings were held in each county which the proposed project will affect and the time and place of each meeting. [S13, §2120-n; C24, 27, 31, 35, 39,§**8311**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§489.3]

Referred to in §478.31

478.4 Franchise—hearing. The commission shall consider said petition and any objections filed thereto in the manner hereinafter provided. It shall examine the proposed route or cause any engineer selected by it to do so. If a hearing is held on the petition it may hear such testimony as may aid it in determining the propriety of granting such franchise. It may grant such franchise in whole or in part upon such terms, conditions, and restrictions, and with such modifications as to location and route as may seem to it just and proper. Before granting such franchise, the commission shall make a finding that the proposed line or lines are necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. No franchise shall become effective until the petitioners shall pay, or file an agreement to pay, all costs and expenses of the franchise proceeding, whether or not objections are filed, including costs of inspections or examinations of the route, hearing, salaries, publishing of notice, and any other expenses reasonably attributable thereto. The funds received for the costs and the expenses of the franchise proceeding shall be remitted to the treasurer of state for deposit in the general fund of the state. [S13,§2120-n; C24, 27, 31, 35, 39,§§**8312, 8313**; C46, 50, 54, 58, 62, §§489.4, 489.5; C66, 71, 73, 75,§489.4, 66GA, ch 16,§4]

Referred to in §478.13

478.5 Notice — objections filed. Upon the filing of such petition, the commission shall cause a notice, addressed to the citizens of each county through which the proposed line or lines will extend, to be published in a newspaper located in each such county for two consecutive weeks. Said notice shall contain a general statement of the contents and purpose of the petition, a general description of the lands and highways to be traversed by the proposed line or lines, and shall state that any objections thereto must be filed in writing with the commission not later than twenty days after the date of last publication of the notice. Any person, company, city or corporation whose rights may be affected, shall have the right to file written objections to the proposed improvement or to the granting of such franchise; such objections shall be filed with the commission not later than twenty days after the date of last publication and shall state the grounds therefor. The commission may allow objections to be filed later in which event the applicant must be given

reasonable time to meet such late objections. [S13,§2120-n; C24, 27, 31, 35, 39,§§8312, 8313; C46, 50, 54, 58, 62,§§489.4, 489.5; C66, 71, 73, 75,§489.5]

Referred to in §478.31

478.6 Taking under eminent domain. Upon the filing of such objections or when a petition involves the taking of property under the right of eminent domain the commission shall set the matter for hearing and fix a time and place therefor. Said hearing shall be not less than thirty days from the date of last publication and at the offices of the commission before which said matter is pending, unless a different place is specified in the notice thereof. Written notice of the time and place of such hearing shall be served by the commission, by ordinary mail, on the applicant, and those having filed objections. If no objections are filed as hereinbefore provided and the petition does not involve the taking of property under the right of eminent domain the commission may grant a franchise without hearing thereon, however, nothing herein shall be construed as prohibiting the commission from conducting a hearing if it deems it necessary.

Where a petition seeks the use of the right of eminent domain over specific parcels of real property, the commission shall prescribe the notice to be served upon the owners of record and parties in possession of said property over which the use of the right of eminent domain is sought.

When the commission grants a franchise to any person, company, or corporation for the construction, erection, maintenance, and operation of transmission lines, wires, and cables for the transmission of electricity, such person, company, or corporation shall be vested with the power of condemnation to such extent as the commission may approve and find necessary for public use. [C66, 71, 73, 75, §489.6]

478.7 Form of franchise. The commerce counsel shall prepare a blank form of franchise for such purposes, which shall provide space for a general description of the improvement authorized thereby, the name and address of the person or corporation to whom granted, the general terms and conditions upon which it is granted, and such other things as may be necessary. This blank form shall be filled out and signed by the chairman of the commission which grants the franchise, and the official seal shall be attached. Such franchise shall be subject to such regulations and restrictions as the general assembly from time to time may prescribe, and to such rules, not inconsistent with statutes, as the state commerce commission may establish from time to time. [S13,§2120-n; C24, 27, 31, 35, 39, §8314; C46, 50, 54, 58, 62,§489.6; C66, 71, 73, 75,§489.7]

Legislative control in general, §491.39

478.8 Valuation of franchise. No financial consideration shall be charged for such franchise. In fixing the value for rate-making purposes of the property of any person, company, or corporation owning it or operating under it no account shall be taken of, and no increased value shall be allowed for, any such franchise, except that the reasonable cost to the petitioners of obtaining said franchise may be included in the cost of constructing said line. [C24, 27, 31, 35, 39,§8315; C46, 50, 54, 58, 62,§489.7; C66, 71, 73, 75,§489.8]

478.9 Exclusive rights—duration of franchise. No exclusive right shall ever be given by franchise or otherwise to any person, company, corporation or city to conduct electrical energy, or to place electric wires, along or over or across any public highway or public place or ground; and no franchise or privilege shall ever be granted for any such purpose for a longer period than twenty-five years. [C24, 27, 31, 35, 39,§8316; C46, 50, 54, 58, 62,§489.8; C66, 71, 73, 75,§489.9]

478.10 Franchise transferable—notice. When any such electric transmission line or lines are sold and transferred either by voluntary or judicial sale, such transfer shall carry with it the franchise under which the said improvement is owned, maintained, or operated. If a transfer of such franchise is made before the improvement for which it was issued is constructed, in whole or in part, such transfer shall not be effective till the person, company, or corporation to whom it was issued shall file in the office of the commission granting the franchise a notice in writing stating the date of such transfer and the name and address of the transferee. [C24, 27, 31, 35, 39,§8317; C46, 50, 54, 58, 62,§489.9; C66, 71, 73, 75,§489.10]

478.11 Record of franchises. The commission shall keep a record of all such franchises granted and issued by it, when and to whom issued, with a general statement of the location, route, and termini of the transmission line or lines covered thereby. When any transfer of such franchise has been made as provided in this chapter, the commission shall also make note upon its record of the date of such transfer and the name and address of the transferee. [C24, 27, 31, 35, 39,§8318; C46, 50, 54, 58, 62,§489.10; C66, 71, 73, 75,§489.11]

478.12 Acceptance of franchise. Any person, company, or corporation obtaining a franchise as in this chapter provided, or owning or operating under one, shall be conclusively held to an acceptance of the provisions thereof and of all laws relating to the regulation, supervision, or control thereof which are now in force or which may be hereafter enacted, and to have consented to such reasonable regulation as the commission may, from time to time, prescribe. The provisions of this chapter shall apply equally to assignees as well as to original owners. [S13,§2120-p; C24, 27, 31, 35, 39,§8319; C46, 50, 54, 58, 62,§489.11; C66, 71, 73, 75,§489.12]

478.13 Extension of franchise—public notice. Any person, firm, or corporation owning

a franchise granted under this chapter or previously existing law, desiring to acquire extensions of such franchise, may petition the commission in the manner provided for the granting of a franchise and the same proceeding shall be had as on an original application, including the assessing of costs provided by section 478.4 except that in the event the extension of franchise is sought for all lines in a given county or counties the published notice need not contain a general description of the lands and highways traversed by the lines, but in lieu thereof the petitioner may have on file at its offices in the county or counties affected a current, accurate map showing the location of the lines for which the franchise extension is sought, said map to be available for examination by any interested party, and the public notice shall advise the citizens of the county or counties affected of the location and availability of such map. If this alternate procedure is not followed then the publication of the description of the lands and highways traversed by the lines shall be done in the manner as in an original application for franchise. In any event an extension under this section will be granted only for a valid, existing franchise and the lands, roads or streams covered thereby over, through or upon which electric transmission lines have in fact been erected or constructed and are in use or operation at the time of the application for extension of franchise. Such petition shall be accompanied by the written consent of the applicant that the provisions of all laws relating to public utilities, franchises, and transmission lines, or to the regulation, supervision, or control thereof which are then in force or which may be thereafter enacted shall apply to its existing line or lines, franchises, and rights with the same force and effect as if such franchise had been granted or such lines had been constructed or rights had been obtained under the provisions of this chapter. [S13, §2120-o; C24, 27, 31, 35, 39,§**8320**; C46, 50, 54, 58, 62,§489.12; C66, 71, 73, 75,§489.13]

478.14 Service furnished. Any city which owns or operates a system for the distribution of electric light or power, and which has obtained electric energy for such distribution from any person or firm or corporation owning or operating an electric light and power plant or transmission line, shall be entitled to have the service reasonably needed by such municipality and its patrons continued at and for a reasonable rate and charge and under reasonable rules of service.

It shall be unlawful for the owner or operator of such light and power plant or transmission line to disconnect or discontinue such service (except during nonpayment of reasonable charges) so long as such operator holds or enjoys any franchise to go upon or use any public streets, highways, or grounds.

Until the municipality and the operator shall agree upon a rate or charge for such service the municipality shall pay and the operator shall accept the rate provided in the expired contract if any existed, and if none existed then the rate before paid. This shall be without prejudice, however, to the right of either party to test in court or before any lawfully constituted rate-making tribunal the reasonableness of such rate.

This section shall not apply if the original service to the municipality was given in case of emergency or for any other temporary purpose. [C24, 27, 31, 35, 39,§**8321**; C46, 50, 54, 58, 62,§489.13; C66, 71, 73, 75,§489.14]

478.15 Eminent domain—procedure—entering on land—reversion on nonuse. Any person, company, or corporation having secured a franchise as provided in this chapter, shall thereupon be vested with the right of eminent domain to such extent as the commission may approve, prescribe and find to be necessary for public use, not exceeding one hundred feet in width for right of way and not exceeding one hundred sixty acres in any one location, in addition to right of way, for the location of electric substations to carry out the purposes of said franchise; provided however, that where two hundred K V lines or higher voltage lines are to be constructed, the person, company, or corporation may apply to the commerce commission for a wider right of way not to exceed two hundred feet, and the commission may for good cause extend the width of such right of way for such lines to the person, company, or corporation applying for the same. The burden of proving the necessity for public use shall be on the person, company or corporation seeking the franchise. A homestead site, cemetery, orchard or schoolhouse location shall not be condemned for the purpose of erecting an electric substation. If agreement cannot be made with the private owner of lands as to damages caused by the construction of said transmission line, or electric substations, the same proceedings shall be taken as provided for taking private property for works of internal improvement.

Any person, company or corporation proposing to construct a transmission line or other facility which involves the taking of property under the right of eminent domain and desiring to enter upon the land, which it proposes to appropriate, for the purpose of examining or surveying the same, shall first file with the Iowa state commerce commission, a written statement under oath setting forth the proposed routing of the line or facility including a description of the lands to be crossed, the names and addresses of owners, together with request that a permit be issued by said commission authorizing said person, company or corporation or its duly appointed representative to enter upon the land for the purpose of examining and surveying and to take and use thereon any vehicle and surveying equipment necessary in making the survey. Said commission shall within ten days after said request issue a permit, accompanied by such

bond in such amount as the commission shall approve, to the person, company or corporation making said application, if in its opinion the application is made in good faith and not for the purpose of harassing the owner of the land. If the commission is of the opinion that the application is not made in good faith or made for the purpose of harassment to the owner of said land it shall set the matter for hearing and it shall be heard not more than twenty days after filing said application. Notice of the time and place of hearing shall be given by said commission, to the owner of said land by registered mail with a return receipt requested, not less than ten days preceding date of hearing.

Any person, company or corporation that has obtained a permit in the manner herein prescribed may enter upon said land or lands, as above provided, and shall be liable for actual damages sustained in connection with such entry. An action in damages shall be the exclusive remedy.

If an electric transmission line right of way, or any part thereof, is wholly abandoned for public utility purposes by the relocation of the transmission lines, is not used or operated for a period of five years, or if its construction has been commenced and work has ceased and has not in good faith been resumed for five years, the right of way shall revert to the person or persons who, at the time of the abandonment or reversion, are the owners of the tract from which such right of way was taken. Following such abandonment of right of way, the owner or holder of purported fee title to such real estate may serve notice upon the owner of such right of way easement, or his successor in interest, and upon any party in possession of said real estate, a written notice which shall (1) accurately describe the real estate in question, (2) set out the facts concerning ownership of the fee, ownership of the right of way easement, and the period of abandonment, and (3) notify said parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless said parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in said notice.

Said notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication no affidavit therefor shall be required before publication. If no affidavit disputing the facts contained in the notice is filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached thereto or endorsed thereon, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right of way. [S13,§2120-q; C24, 27, 31, 35, 39,§**8322**; C46, 50, 54, 58, 62,§489.14; C66, 71, 73, 75,§489.15; 66GA, ch 1206,§15]

Condemnation procedure, ch 472

478.16 Injury to person or property. In case of injury to any person or property by any such transmission line, negligence will be presumed on the part of the person or corporation operating said line in causing said injury, but this presumption may be rebutted by proof. Such presumption shall not exist in favor of employees of the person or corporation operating said transmission line who are charged with or engaged in the construction, reconstruction, repair, or maintenance thereof, unless otherwise provided by the employers liability and workers' compensation laws of the state. [S13,§2120-s; C24, 27, 31, 35, 39,§**8323**; C46, 50, 54, 58, 62,§489.15; C66, 71, 73, 75,§489.16; 66GA, ch 1084,§43]

478.17 Access to lines—damages. Individuals or corporations operating such transmission lines shall have reasonable access to the same for the purpose of constructing, reconstructing, enlarging, repairing, or locating the poles, wires, or construction and other devices used in or upon such line, but shall pay to the owner of such lands and of crops thereon all damages to said lands or crops caused by entering, using, and occupying said lands for said purposes. Nothing herein contained shall prevent the execution of an agreement between the person or company owning or operating such line and the owner of said land or crops with reference to the use thereof. [S13,§2120-t; C24, 27, 31, 35, 39,§**8324**; C46, 50, 54, 58, 62,§489.16; C66, 71, 73, 75,§489.17]

478.18 Supervision of construction — location. The state commerce commission shall have power of supervision over the construction of said transmission line and over its future operation and maintenance. Said transmission line shall be constructed near and parallel to the right of way of the railways of the state or along the division lines of the lands, according to the government survey thereof, wherever the same is practicable and reasonable, and so as not to interfere with the use by the public of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant thereof. [S13,§2120-r; C24, 27, 31, 35, 39,§**8325**; C46, 50, 54, 58, 62,§489.17; C66, 71, 73, 75,§489.18]

Removal from highway, ch 319

478.19 Manner of construction. Such lines shall be built of strong and proper wires attached to strong and sufficient supports properly insulated at all points of attachment; all wires, poles, and other devices which by ordinary wear or other causes are no longer safe shall be removed and replaced by new wires, poles, or other devices, as the case may be, and all abandoned wires, poles, or other devices shall be at once removed. Where wires carrying current are carried across, either above or below wires used for other service, the said

transmission line shall be constructed in such manner as to eliminate, so far as practicable, damages to persons or property by reason of said crossing. There shall also be installed sufficient devices to automatically shut off electric current through said transmission line whenever connection is made whereby current is transmitted from the wires of said transmission line to the ground, and there shall also be provided a safe and modern improved device for the protection of said line against lightning. The state commerce commission shall have power to make and enforce such further and additional rules relating to location, construction, operation and maintenance of said transmission line as may be reasonable. [S13,§2120-r; C24, 27, 31, 35, 39, §8326; C46, 50, 54, 58, 62,§489.18; C66, 71, 73, 75, §489.19]

478.20 Distance from buildings. No transmission line shall be constructed, except by agreement, within one hundred feet of any dwelling house or other building, except where said line crosses or passes along a public highway or is located alongside or parallel with the right of way of any railway company. In addition to the foregoing, each person, company, or corporation shall conform to any other rules, regulations, or specifications established by the state commerce commission, in the construction, operation, or maintenance of such lines. [S13,§2120-r; C24, 27, 31, 35, 39,§8327; C46, 50, 54, 58, 62, §489.19; C66, 71, 73, 75,§489.20]

478.21 Nonuser. Unless the improvement for which a franchise is granted is constructed in whole or in part within two years from the granting thereof, it shall be forfeited and the commission which granted the franchise shall cancel and revoke the same and make record thereof. [C24, 27, 31, 35, 39,§8329; C46, 50, 54, 58, 62,§489.20; C66, 71, 73, 75,§489.21]

478.22 Forfeiture for violations. If any person, company, or corporation shall violate the provisions of this chapter or any rule established for the construction, maintenance, or operation of such electric transmission line, and shall fail for ninety days after notice from the commission to comply therewith, such commission shall have power to cancel and annul such franchise and order the removal of such line.

Provided, however, that if proceedings are commenced within said ninety days in any court of competent jurisdiction to determine whether the provisions of this chapter, or whether any rule established for the construction or maintenance or operation of an electrical transmission line, have been violated, or are legal and enforceable rules or provisions, no forfeiture shall be declared or become effective if within sixty days from the date of the final decree or judgment in such proceedings the said rule or provisions have been fully complied with and the cause of forfeiture removed. [C24, 27, 31, 35, 39,§8330; C46, 50, 54, 58, 62,§489.21; C66, 71, 73, 75,§489.22]

478.23 Prior franchises—legislative control. Any such franchise heretofore granted under previously existing law shall not be abrogated by the provisions of this chapter, but all such franchises and all franchises granted under the provisions of this chapter shall be subject to further legislative control. [C24, 27, 31, 35, 39,§8331; C46, 50, 54, 58, 62,§489.22; C66, 71, 73, 75,§489.23]

478.24 Violations. Any person, company or corporation constructing or undertaking to construct or maintain any electric transmission line, without first procuring a franchise for such purpose in accordance with the provisions of this chapter, shall be fined in the sum of not less than one hundred dollars nor more than one thousand dollars; and for violating any of the other provisions of this chapter relating to electric transmission lines or disobeying any order or rule made by the state commerce commission in relation thereto, shall be fined not exceeding one hundred dollars. [S13,§1527-d; C24, 27, 31, 35, 39,§8332; C46, 50, 54, 58, 62,§489.23; C66, 71, 73, 75,§489.24]

478.25 Wire crossing railroads—supervision. The state commerce commission shall have general supervision over any and all wires whatsoever crossing under or over any railway track and shall make rules prescribing the manner in which such wires shall cross such track; but in no case shall the state commerce commission prescribe a less height for any wire than twenty-two feet above the top of the rails of any railroad track. [S13,§§2120-d,-e,-h; C24, 27, 31, 35, 39,§8333; C46, 50, 54, 58, 62,§489.24; C66, 71, 73, 75,§489.25]

478.26 Wires across railroad right of way at highways. The state commerce commission shall prescribe the manner for the crossing of wires over and across railroad rights of way at highways and other places within the state. [S13,§2120-i; C24, 27, 31, 35, 39,§8334; C46, 50, 54, 58, 62,§489.25; C66, 71, 73, 75,§489.26]

478.27 Wires—how strung. No corporation or person shall place or string any such wire for transmitting electric current or any wire whatsoever across any track of a railroad except in the manner prescribed by the state commerce commission. [S13,§2120-f; C24, 27, 31, 35, 39,§8335; C46, 50, 54, 58, 62,§489.26; C66, 71, 73, 75,§489.27]

478.28 Examination of existing wires. The state commerce commission shall, either by personal examination or otherwise, obtain information where railroad tracks are crossed by wires contrary to, or not in compliance with, the rules prescribed by it. It shall order such change or changes to be made by the persons or corporations owning or operating such wires as may be necessary to make the same comply with said rules and within such

reasonable time as it may prescribe. [S13, §2120-g; C24, 27, 31, 35, 39,§8336; C46, 50, 54, 58, 62,§489.27; C66, 71, 73, 75,§489.28]

478.29 Penalty — enforcement. Any person or corporation who shall string or maintain any wire across any railroad track in this state at a different height or in a different manner from that prescribed by the state commerce commission shall forfeit and pay to the state the sum of one hundred dollars for each separate period of ten days during which such wire is so maintained. Such forfeiture shall be recovered in a civil action in the name of the state by the commerce counsel, or by the county attorney of the county in which such wire is situated, at the request of the state commerce commission. [S13, §2120-j; C24, 27, 31, 35, 39,§8337; C46, 50, 54, 58, 62,§489.28; C66, 71, 73, 75,§489.29]

478.30 Crossing highway. Nothing in this chapter shall prevent any such individual or corporation having its high tension line on its own private right of way on both sides of any highway, from crossing such public highway under such rules and regulations as the state commerce commission may prescribe, and subject from time to time to legislative control as to duration and use. [C24, 27, 31, 35, 39, §8338; C46, 50, 54, 58, 62,§489.29; C66, 71, 73, 75, §489.30]

478.31 Temporary permits for lines less than one mile. Notwithstanding the provisions of section 478.1 any person, company or corporation proposing to construct an electric transmission line not exceeding one mile in length and which does not involve the taking of property under the right of eminent domain may obtain a temporary construction permit from the state commerce commission by proceeding in the manner hereinafter set forth. Said person, company or corporation shall first file with the state commerce commission a verified petition setting forth the requirements of section 478.3 subsection 1, paragraphs *"a"* through *"h"* with the further allegation that the petitioner is the nearest electric utility to the proposed point of service.

The petition shall also state that the filing thereof constitutes an application for a temporary construction permit and shall also have endorsed thereon the approval of the appropriate highway authority or railroad concerned if such line is to be constructed over, across or along a public highway or railroad.

Upon receipt of such petition the commission shall consider same and may grant a temporary construction permit in whole or in part or upon such terms, conditions and restrictions, and with such modifications as to location as may seem to it just and proper, however, no finding of public use will be made at the time of the issuance of the permit, such finding to be made, if substantiated by petitioner, at the subsequent consideration of the propriety of granting a franchise for the line subject to the permit. The signature of one commissioner on such permit shall be sufficient. The issuance of such permit shall constitute temporary authority for the permit holder to construct the line for which the permit is granted.

Upon the granting of such temporary construction permit the commission shall cause the publication of notice required by section 478.5 and all other requirements shall be complied with as in the manner provided for the granting of a franchise. If a hearing is required then the petitioner shall make a sufficient and proper showing thereat before a franchise will be issued for the line. Any franchise issued will be subject to all applicable provisions of this chapter.

Notwithstanding anything foregoing, if the commission shall determine that a franchise should not be granted, or that further restrictions, conditions or modifications are required, or if the petitioner shall fail to make a sufficient and proper showing of the necessity for the granting of a franchise within six months of the granting of the temporary construction permit, the permit issued hereunder shall become null and void and the permit holder may be required to take such action deemed necessary by the commission to remove, modify or relocate the construction undertaken by virtue of the temporary permit issued hereunder. [C66, 71, 73, 75,§489.31]

478.32 Rehearing — judicial review. Any person, company, or corporation aggrieved by the action of the commission in granting or failing to grant a franchise under the provisions of this chapter, shall be entitled to the rehearing procedure provided in section 476.12. Judicial review of actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act. [C71, 73, 75,§489.32]

See §476.13

CHAPTER 479

PIPELINES AND UNDERGROUND GAS STORAGE

Chapter 479, Code 1975, (REGULATION OF CARRIERS) transferred to chapter 327D
Referred to in §§472.42, 474.9

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479.1 Purpose and policy. It is hereby declared to be the purpose and policy of the legislature in enacting this law to confer upon the commerce commission the power and authority to supervise the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state by pipeline, whether specifically mentioned herein or not, and the power and authority to supervise the underground storage of gas, so as to protect the safety and welfare of the public in its use of any public or private highways, grounds, waters and streams of any kind in this state. [C35,§8338-f14; C39,§8338.22; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.1]

45ExGA, ch 105,§1, editorially divided

479.2 Definitions. The term "pipeline" insofar as this chapter is concerned shall include and mean any pipe, pipes or pipelines used for the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state.

The term "pipeline company", insofar as this chapter is concerned shall include and mean any person, firm, copartnership, association, corporation or syndicate engaged in or organized for the purpose of owning, operating or controlling pipelines for the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state.

The term "commission" when used in this chapter means the state commerce commission.

The term "underground storage" insofar as this chapter is concerned shall include and mean storage of gas in a subsurface stratum or formation of the earth. [C31,§8338-d1; C35, §8338-f15; C39,§8338.23; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.2]

Referred to in §307.26

479.3 Conditions attending operation. No pipeline company shall construct, maintain or operate any pipeline or lines under, along, over or across any public or private highways, grounds, waters or streams of any kind in this state except in accordance with the provisions of this chapter. [C31,§8338-d2; C35,§8338-f16; C39,§8338.24; C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.3]

479.4 Dangerous construction — inspection. The commission is vested with power and authority and it shall be its duty to supervise all pipelines and underground storage and pipeline companies and shall from time to time inspect and examine the construction, maintenance and the condition of said pipe lines and underground storage facilities and whenever said commission shall determine that any pipeline and underground storage facilities or any apparatus, device or equipment used in connection therewith is unsafe and dangerous it shall immediately in writing notify said pipeline company, constructing or operating said pipeline and underground storage facilities, device, apparatus or other equipment to repair or replace any defective or unsafe part or portion of said pipeline and underground storage facilities, device, apparatus or equipment.

A board of supervisors may, by majority vote, submit a request in writing to the commission requesting that the services of a qualified inspector be provided to adequately inspect pipeline construction within that county. Upon receipt of the request, the commission shall make such inspector available. All costs of inspection shall be paid pursuant to section 479.14.

As a part of the inspection process, the inspector shall, if provided by the easement contract, ascertain that the trench excavation has been filled in such a manner as to provide that the top soil has been replaced on top and all rocks and debris have been removed from the top soil.

Adequate inspection of underground improvements altered during construction of pipeline shall be conducted at the time of the replacement or repair of such underground improvements.

All faulty construction, as determined by the inspector, shall be repaired immediately by the contractor operating for the pipeline company and the cost of such repairs shall be paid by said contractor. If such repairs are not made by contractor, the commission shall proceed to collect under the provisions of section 479.26. [C31,§8338-d29; C35,§8338-f17; C39, §8338.25; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.4]

479.5 Application for permit. Any pipeline company engaging in its said business in this state shall file with the state commerce commission its verified petition asking for a permit to construct, maintain and operate its pipeline or lines along, over or across the public or private highways, grounds, waters and streams of any kind of this state. Any pipeline company now owning or operating a pipeline in this state shall be issued a permit by the commission upon supplying the information as provided for in section 479.6.

Any pipeline company engaging in its said business in this state and proposing to engage in underground storage of gas within this state shall file with the state commerce commission its verified petition asking for a permit to construct, maintain and operate facilities for the underground storage of gas to include the construction, placement, maintenance and operation of machinery, appliances, fixtures, wells, pipelines, and stations necessary for the construction, maintenance and operation of such gas underground storage facilities.

As conditions precedent to the filing of a petition with the commission requesting a permit, and not less than thirty days prior to the filing of such petition, the person, company, or corporation shall hold informational meetings in each county in which real property or rights therein will be affected. A member of the commission, the counsel of the commission, or a hearing examiner designated by the commission shall serve as the presiding officer at each meeting and present an agenda for such meeting which shall include a summary of the legal rights of the affected landowners. No formal record of the meeting shall be required.

The meeting shall be held at a location reasonably accessible to all persons, companies, or corporations which may be affected by the granting of the permit.

The person, company, or corporation seeking the permit shall give notice of the informational meeting to each person, company, or corporation determined to be the landowner affected by the proposed project and any person, company or corporation in possession of or residing on the property. For the purposes of this section, "landowner" means a person, company, or corporation listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and "pipeline" means any line transporting any solid, liquid, or gaseous substance, except water, under pressure in excess of one hundred fifty pounds per square inch and extending a distance of not less than five miles or future anticipated extension of an overall distance of five miles.

The notice shall set forth the name of applicant; the applicant's principal place of business; the general description and purpose of the proposed project; the general nature of the right of way desired; a map showing the route of the proposed project; that the landowner has a right to be present at such meeting and to file objections with the commerce commission; and a designation of the time and place of the meeting; and shall be served by certified mail with return requested not less than thirty days previous to the time set for the meeting; and shall be published once in a newspaper of general circulation in the county. Such publication shall be considered notice to landowners whose residence is not known.

No person, company, or corporation seeking rights under this chapter shall negotiate or purchase any easements or other interests in land in any county known to be affected by the proposed project prior to the informational meeting. [C31,§8338-d3; C35,§8338-f18; C39, §8338.26; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.5]

479.6 Petition. Said petition shall state.

1. The name of the individual, firm, corporation, company, or association asking for said permit.

2. The applicant's principal office and place of business.

3. A legal description of the route of said proposed line or lines, together with a map thereof.

4. A general description of the public or private highways, grounds and waters, streams and private lands of any kind along, over or across which said proposed line or lines will pass.

5. The specifications of material and manner of construction.

6. The maximum and normal operating pressure under which it is proposed to transport any solid, liquid, or gaseous substance, except water.

7. If permission is sought to construct, maintain and operate facilities for the underground storage of gas said petition shall include the following information in addition to that stated above:

a. A description of the public or private highways, grounds and waters, streams and private lands of any kind under which such storage is proposed, together with a map thereof.

b. Maps showing the location of proposed machinery, appliances, fixtures, wells and stations necessary for the construction, maintenance and operation of such gas underground storage facilities.

8. The possible use of alternative routes.

9. The relationship of the proposed project to the present and future land use and zoning ordinances.

10. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

11. By affidavit, that informational meetings were held in each county which the proposed

project will affect and the time and place of each meeting. [C31,§8338-d4; C35,§8338-f19; C39, §8338.27; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.6]
Referred to in §479.5

479.7 Hearing—notice. Upon the filing of said petition the state commerce commission shall fix a date for hearing thereon and shall cause notice thereof to be published in some newspaper of general circulation in each county through which said proposed line or lines or gas storage facilities will extend; said notice to be published for two consecutive weeks. [C31,§8338-d5; C35,§8338-f20; C39, §8338.28; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.7]

479.8 Time and place. Said hearing shall not be less than ten days nor more than thirty days from the date of the last publication and shall be held in the office of said state commerce commission, or such place as the commission shall designate. [C31,§8338-d6; C35, §8338-f21; C39,§8338.29; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.8]

479.9 Objections. Any person, corporation, company or city whose rights or interests may be affected by said pipeline or lines or gas storage facilities may file written objections to said proposed pipeline or lines or gas storage facilities or to the granting of said permit. [C31,§8338-d7; C35,§8338-f22; C39,§8338.30; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.9]

479.10 Filing. All such objections shall be on file in the office of said state commerce commission not less than five days before the date of hearing on said application but said state commerce commission may permit the filing of said objections later than five days before said hearing, in which event the applicant must be granted a reasonable time to meet said objections. [C31,§8338-d8; C35,§8338-f23; C39,§8338.31; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.10]

479.11 Examination — testimony. The said state commerce commission may examine the proposed route of said pipeline or lines and location of said gas storage area, or may cause such examination to be made by an engineer selected by it. At said hearing the said state commerce commission shall consider said petition and any objections filed thereto and may in its discretion hear such testimony as may aid it in determining the propriety of granting such permit. [C31,§8338-d9; C35, §8338-f24; C39,§8338.32; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.11]

479.12 Final order—condition. It may grant such permit in whole or in part upon such terms, conditions and restrictions as to safety requirements and as to location and route as may be determined by it to be just and proper. Provided, however, that before any permit shall be granted to any pipeline company proposing to engage in intrastate commerce, the commission shall, after a public hearing as provided in this chapter, determine whether the services proposed to be rendered will promote the public convenience and necessity, and an affirmative finding to such effect shall be a condition precedent to the granting of such permit. [C31,§8338-d10; C35,§8338-f25; C39, §8338.33; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.12]
Referred to in §479.18

479.13 Costs and fees. Applicant shall pay all costs and expenses of the informational meetings, hearing and necessary preliminary investigation in connection therewith including the cost of publishing notice of hearing and shall pay a construction inspection fee in the sum of fifty cents per mile of pipeline or fraction thereof for each inch of diameter of such pipeline located in the state. [C31, §§8338-d11,-d12; C35,§8338-f26; C39,§8338.34; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.13]

479.14 Inspection fee. Every pipeline company shall pay an annual inspection fee in the sum of twenty-five cents per mile of pipeline or fraction thereof for each inch of diameter of such pipeline located in the state and said inspection fee to be paid for the calendar year in advance between January 1 and February 1 of each year to the state commerce commission. [C31,§8338-d13; C35,§8338-f27; C39,§8338.35; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.14]
Referred to in §479.4

479.15 Failure to pay. It shall be the duty of the commission to collect all inspection fees provided in this chapter, and failure to pay any such inspection fee within thirty days after the time the same shall become due shall be cause for revocation of the permit. [C35,§8338-f28; C39,§8338.36; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.15]
Section 490.16 repealed by 64GA, ch 1079,§6

479.16 Use of funds. All moneys received under the provisions of this chapter shall be remitted monthly to the treasurer of state and credited to the general fund of the state. [C31, §8338-d14; C35,§§8338-f29,-f30; C39,§§8338.37, 8338.38; C46, 50, 54, 58, 62, 66, 71,§§490.16, 490.17; C73, 75,§490.17]

479.17 Rules. The said state commerce commission shall have full authority and power to promulgate such rules as it deems proper and expedient to insure the orderly conduct of the hearings herein provided for and also to prescribe rules for the enforcement of this chapter. [C31,§8338-d15; C35, §8338-f31; C39,§8338.39; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.18]

479.18 Permit. The commission shall prepare and issue any permit granted in accordance with section 479.12. Said permit shall show the name and address of the pipeline company to which it is issued and identify by reference thereto the decision and order of the commission under which said permit is issued. It shall be signed by the chairman of the state commerce commission and the official seal of the commission shall be affixed thereto. [C31,

§8338-d16; C35,§8338-f32; C39,§**8338.40**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.19]

479.19 Limitation on grant. No exclusive right shall ever be granted to any pipeline company to construct, maintain and operate its pipeline or lines along, over or across any public highway, grounds or waters and no such permit shall ever be granted for a longer period than twenty-five years. [C31,§8338-d17; C35,§8338-f33; C39,§**8338.41**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.20]

479.20 Sale of permit. No permit shall be sold until the sale is approved by the commission. [C35,§8338-f34; C39,§**8338.42**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.21]

479.21 Transfer of permit. If a transfer of such permit is made before the construction for which it was issued is completed in whole or in part such transfer shall not be effective until the person, company or corporation to whom it was issued shall file in the office of said state commerce commission a notice in writing stating the date of such transfer and the name and address of said transferee. [C31, §8338-d11; C35,§8338-f35; C39,§**8338.43**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.22]

479.22 Records. The state commerce commission shall keep a record of all permits granted and issued by it, showing when and to whom issued and the location and route of said pipeline or lines or gas storage area covered thereby. When any transfer of such permit has been made as provided in this chapter the said commission shall also note upon its record the date of such transfer and the name and address of such transferee. [C31,§8338-d20; C35,§8338-f36; C39,§**8338.44**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.23]

479.23 Extension of permit. Any pipeline company owning a permit granted under this chapter desiring to acquire an extension of such permit may petition the commission in the same manner provided for the granting of such permit and the same proceeding shall be had as on an original application. [C31,§8338-d22; C35,§8338-f37; C39,§**8338.45**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.24]

479.24 Eminent domain. Any pipeline company having secured a permit for pipelines as in this chapter provided shall thereupon be vested with the right of eminent domain* to such extent as may be necessary and as prescribed and approved by said state commerce commission, not exceeding seventy-five feet in width for right of way and not exceeding one acre in any one location in addition to right of way for the location of pumps, pressure apparatus or other stations or equipment necessary to the proper operation of its said pipeline or lines.

Any pipeline company having secured a permit for underground storage of gas as in this chapter provided shall be vested with the right of eminent domain to such extent as may be necessary and as prescribed and approved by said state commerce commission in order to appropriate for its use for the underground storage of gas any subsurface stratum or formation in any land which the commission shall have found to be suitable and in the public interest for the underground storage of gas, and in connection therewith may appropriate such other interests in property, as may be required adequately to examine, prepare, maintain and operate such underground gas storage facilities. The right of appropriation hereby granted shall be without prejudice to the rights of the owner of said lands or of other rights or interests therein to drill or bore through the underground stratum or formation so appropriated in such manner as shall comply with orders, rules of the commission issued for the purpose of protecting underground storage strata or formations against pollution and against the escape of gas therefrom and shall be without prejudice to the rights of the owner of said lands or other rights or interests therein as to all other uses thereof.

If agreement cannot be made with the private owner of lands as to damages caused by the construction of said pipeline or gas storage facilities, the same proceedings shall be taken as provided for taking private property for works of internal improvement.

Nothing in this chapter shall authorize the construction of a pipeline longitudinally on, over or under any railroad right of way or public highway, or at other than an approximate right angle to such railroad track or public highway without the consent of such railroad company, the state department of transportation or board of supervisors, as the case may be, nor shall any provision of this chapter authorize or give the right of condemnation or eminent domain for such purposes. [C31,§8338-d23; C35,§8338-f38; C39,§**8338.46**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.25]

*See 253 Iowa 1143
Condemnation procedure, ch 472
Eminent domain, ch 471

479.25 Damages. Pipeline companies operating pipelines or a gas storage area shall have reasonable access to the same for the purpose of constructing, reconstructing, enlarging, repairing or locating their pipes, pumps, pressure apparatus or other stations, wells, devices or equipment used in or upon such line or gas storage area, but shall pay to the owner of such lands for the right of entry thereon and the owner of crops thereon all damages caused by entering, using or occupying said lands for said purposes; and shall pay to the owner or owners of such lands all damages caused after the completion of construction of said pipeline on account of wash or erosion of the soil at or along the location of said pipeline by reason of the construction thereof upon said lands on account of the settling of the soil along and above said pipeline, provided, that nothing herein contained shall prevent the execution of an agreement

between the pipeline company and the owner of said land or crops with reference to the use thereof. [C31,§8338-d26; C35,§8338-f39; C39, §8338.47; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.26]

479.26 Financial condition of permittee — bond. Before any permit is granted under the provisions of this chapter the applicant must satisfy the state commerce commission that the applicant has property within this state other than pipelines, subject to execution of a value in excess of fifty thousand dollars, or said applicant must file and maintain with said commission a surety bond in the penal sum of fifty thousand dollars with surety approved by the commission, conditioned that said applicant will pay any and all damages legally recovered against it growing out of the construction or operation of its said pipeline and gas storage facilities in the state of Iowa. When such pipeline company deposits with said state commerce commission security satisfactory to said commission as a guaranty for the payment of said damages, or furnishes to said commission satisfactory proofs of its solvency and financial ability to pay said damages, the said pipeline company shall be relieved of the said provisions requiring bond. [C31,§8338-d27; C35,§8338-f40; C39, §8338.48; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.27]

Referred to in §479.4

479.27 Venue—service of original notice. In all cases arising under this chapter the district court of any county, through which said pipeline company is located, shall have jurisdiction; and service of original notice on the pipeline company therein shall be had and made upon the chairman of the state commerce commission. [C31,§8338-d28; C35,§8338-f41; C39,§8338.49; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.28]

479.28 Orders—enforcement. If said pipeline company fails to obey an order within a time prescribed by the said state commerce commission the said commission may commence an equitable action in the district court of the county where said defective, unsafe, or dangerous portion of said pipeline, device, apparatus or equipment is located to compel compliance with its said order. If, after due trial of said action the court finds that said order is reasonable, equitable and just, it shall decree a mandatory injunction compelling obedience to and compliance with said order and may grant such other relief as may be just and proper. Appeal from said decree may be taken in the same manner as in other actions. [C31, §8338-d30; C35,§8338-f42; C39,§8338.50; C46, 50, 54, 58, 62, 66, 71, 73, 75,§490.29]

Appeal in civil actions, ch 686
Section 490.30 repealed by 63GA, ch 1234,§1.

479.29 Civil penalty. Any person who violates any provision of this chapter or any regulation issued pursuant to this chapter shall be subject to a civil penalty of not to exceed one thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations.

Any civil penalty may be compromised by the state commerce commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action. [C71, 73, 75,§490.31]

479.30 Rehearing—judicial review. Rehearing procedure for any person, company or corporation aggrieved by the action of the commission in granting or failing to grant a permit under the provisions of this chapter shall be as provided in section 476.12. Judicial review may be sought in accordance with the terms of the Iowa administrative procedure Act. [C71, 73, 75,§490.32]

See §476.13

479.31 Authorized federal aid. The state commerce commission may enter into agreements with and receive moneys from the United States department of transportation for the enforcement of the applicable standards of pipeline safety as provided by Public Law 90-481, the Natural Gas Pipeline Safety Act of 1968 (49 United States Code 1671-1684). [C71, 73, 75,§490.33]

CHAPTER 480

RELOCATION OF LINE

Repealed by 66GA, ch 1164,§97

CHAPTER 481

PRIVATE BUILDINGS AND SPUR TRACKS

Transferred to chapter 327G, Div. II

CHAPTER 482

UNION DEPOTS

Repealed by 66GA, ch 170,§34

CHAPTER 483

TAX AID FOR RAILROADS

Transferred to chapter 327H

CHAPTER 484

INTERURBAN RAILWAYS

Repealed by 66GA, ch 170,§34

CHAPTER 485

INTERURBAN RAILWAYS IN CERTAIN CITIES

Repealed by 66GA, ch 170,§34

CHAPTER 486

EXPRESS COMPANIES

Repealed by 66GA, ch 170,§34

CHAPTER 487

UNIFORM BILLS OF LADING LAW

Repealed by 61GA, ch 413,§10102

CHAPTER 488

TELEGRAPH AND TELEPHONE LINES AND COMPANIES

Transferred to chapter 477

CHAPTER 489

ELECTRIC TRANSMISSION LINES

Transferred to chapter 478

CHAPTER 490

PIPELINES AND UNDERGROUND GAS STORAGE

Transferred to chapter 479

CHAPTER 490A

PUBLIC UTILITY REGULATION

Transferred to chapter 476

TITLE XIX

CORPORATIONS

Referred to in §491.39

CHAPTER 491

CORPORATIONS FOR PECUNIARY PROFIT

Applicable to domestic corporations organized prior to July 1, 1971
Referred to in §§172C.1, 172C.4, 312.8, 496.4, 496A.142[2, 3, (3e), 4, 5, 9, 10, 11], 504A.100(1), 515.1, 515.62, 518.1, 518A.1, 519.2, 524.1902

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491.1 Who may incorporate. Any number of persons may become incorporated under this chapter prior to July 1, 1971 for the transaction of any lawful business, but such incorporation confers no power or privilege not possessed by natural persons, except as hereinafter provided. All domestic corporations shall be organized* under chapter 496A only, except for corporations which are to become subject to the provisions of one or more of the following chapters: 174, 176, 482, 499, 499A, 504A, 506, 508, 510, 512, 514, 515, 515A, 518, 518A, 519, 524, 533, and 534. [C51,§673; R60, §1150; C73,§1058; C97,§1607; C24, 27, 31, 35, 39, §8339; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.1]

*After July 1, 1971

491.2 Single person. Except as otherwise provided by law, a single person may incorporate under the provisions of this chapter, thereby entitling himself to all the privileges and immunities provided herein, but if he adopts the name of an individual or individuals as that of the corporation, he must add thereto the word "incorporated". [C51,§702; R60,§1179; C73,§1088; C97,§1608; C24, 27, 31, 35, 39,§8340; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.2]

491.3 Powers. Among the powers of such corporations are the following:

1. To have perpetual succession.

2. To sue and be sued by its corporate name.

3. To have a common seal, which it may alter at pleasure.

4. To render the interests of the stockholders transferable.

5. To exempt the private property of its members from liability for corporate debts, except as otherwise declared.

6. To make contracts, acquire and transfer property—possessing the same powers in such respects as natural persons.

7. To establish bylaws, and make all rules and regulations necessary for the management of its affairs.

8. A corporation organized under or subject to this chapter may make indemnification as provided in section 496A.4. [C51,§674; R60, §1151; C73,§1059; C97,§1609; C24, 27, 31, 35, 39, §8341; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.3]

491.4 Index book. The county recorder shall keep in his office an index book for articles of incorporation, which shall be ruled and headed substantially after the following form, and shall make entries therein in the order in which they are filed in his office. [S13,§1610; C24, 27, 31, 35, 39,§8342; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.4]

S13,§1610, editorially divided

INDEX TO ARTICLES OF INCORPORATION

Name	Place of Business	Date of Filing			Date of Inst.			Where Recorded		Capital Stock	Remarks
		Mo.	Day	Yr.	Mo.	Day	Yr.	Bk.	Pg.		

491.5 Articles adopted and recorded. Before commencing any business except their own organization, they must adopt articles of incorporation, which must be signed and acknowledged by the incorporators. Said articles shall then be forwarded to the secretary of state. Upon the filing of such articles, the secretary of state shall issue a certificate of incorporation and record said articles in a book kept for that purpose. The secretary of state shall then forward said articles to the county recorder of deeds of the county where the principal place of business is to be located, there to be recorded in a book kept therefor, and the recorder shall endorse thereon the book and page where the record will be found.

Such articles shall contain:

1. Name of corporation and its principal place of business.

2. The objects for which it is formed.

3. The amount of authorized capital stock, the classes of stock and number of shares authorized, with the par value and conditions of each class of such shares, and the time when and conditions under which it is to be paid in.

4. The time of commencement and existence of the corporation.

5. The names and addresses of the incorporators and the officers or persons its affairs are to be conducted by, and the times when and manner in which such officers will be elected.

6. Whether private property is to be exempt from corporate debts.

7. The manner in which the articles may be amended. [C51,§675; R60,§1152; C73,§1060; C97, §1610; S13,§1610; C24, 27, 31, 35, 39,§8343; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.5]

Referred to in §§491.10, 491.107

491.6 Filing or refusal to file. When articles of incorporation are presented to the secretary of state for the purpose of being filed, if he is satisfied that they are in proper form to meet the requirements of law, that their object is a lawful one and not against public policy, that their plan for doing business, if any be provided for, is honest and lawful, he shall file them; but if he is of the opinion that they are not in proper form to meet the requirements of the law, or that their object is an unlawful one, or against public policy, or that their plan for doing business is dishonest or unlawful, he shall refuse to file them. [S13,§1610; C24, 27, 31, 35, 39,§8344; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.6]

Referred to in §§491.10, 491.107

491.7 Question of legality submitted. Should a question of doubt arise as to the legality of the articles, he shall submit them to the attorney general whose duty it shall be to forthwith examine and return them with an opinion in writing touching the point or points concerning which inquiry has been made of him. [S13, §1610; C24, 27, 31, 35, 39,§8345; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.7]

Referred to in §§491.10, 491.107

491.8 Action on opinion. If such opinion is in favor of the legality of the articles, and no other objections are apparent, they shall then, upon payment of the proper fee, be filed and otherwise dealt with as the law provides. If, however, such opinion be against their legality they shall not be filed. [S13,§1610; C24, 27, 31, 35, 39,§8346: C46, 50, 54, 58, 62, 66, 71, 73, 75, §491.8]

Referred to in §§491.10, 491.107

491.9 Submission to executive council. Upon the rejection of any articles of incorporation by the secretary of state, except for the reason that they have been held by the attorney general to be illegal, they shall, if the person or persons presenting them so request, be submitted to the executive council, which shall, as soon as practicable, consider the said articles and if the council determines that the articles are in proper form, of honest purpose, not against public policy, nor otherwise objectionable, it shall so advise the secretary of state in writing, whereupon he shall, upon the payment of the proper fees, file the same and proceed otherwise as the law directs; but if the council sustains the previous action of the secretary of state in rejecting said articles, such decision by the council shall be reported to the secretary of state in writing, and he shall then return said articles to the person or persons presenting them with such explanation as shall be proper in the case. [C13,§1610; C24, 27, 31, 35, 39,§8347; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.9]

Referred to in §§491.10, 491.107

491.10 Interpretative clause. Nothing in sections 491.5 to 491.9 shall be construed as repealing or modifying any statute now in force in respect to the approval of articles of incorporation relating to insurance companies, building and loan associations or investment companies. [S13,§1610; C24, 27, 31, 35, 39,§8348; C46, 50, 54, 58, 62, 66, 71, 73, 75, §491.10]

491.11 Incorporation fee. Corporations organized for a period of years shall pay the secretary of state, before a certificate of incorporation is issued, a fee of twenty-five dollars together with a recording fee of fifty cents per page, and, for all authorized stock in excess of ten thousand dollars, an additional fee of one dollar per thousand. Corporations organized to exist perpetually shall pay to the secretary of state, before a certificate of incorporation is issued, a fee of one hundred dollars together with a recording fee of fifty cents per page, and, for all authorized stock in excess of ten thousand dollars, an additional fee of one dollar ten cents per thousand. Should any corporation increase its capital stock, it shall pay to the secretary of state a recording fee of fifty cents per page and in addition a fee which in case of corporations existing for a period of years shall be one dollar per thousand of such increase and in case of corporations empowered to exist perpetually shall be one dollar and ten cents per thousand of such increase. The fees, except the recording fees, required by this section to be paid, shall not be collected from a corporation organized for the purpose of carrying into effect a plan of reorganization approved in bankruptcy proceedings under the laws of the United States or in a general equity receivership in a court of competent jurisdiction, for the period until the termination of the time for which such fees were paid by the corporation so reorganized. [C97,§1610; S13,§1610; C24, 27, 31, 35, 39,§8349; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.11]

Referred to in §§491.28, 491.107, 496A.129(1,a)
Foreign corporations, §494.14
See §491.30
See also §491.28

491.12 Exemption from fee. Farmers mutual co-operative creamery associations, whose articles of incorporation provide that the business of the association be conducted on a purely mutual and co-operative plan, without capital stock, and whose patrons shall share equally in expense and profits, domestic and domestic local building and loan associations and incorporations organized for the manufacture of sugar from beets grown in the state, shall be exempt from the payment of the in-

corporation filing fee provided herein in excess of twenty-five dollars. [C97,§1610; S13, §1610; C24, 27, 31, 35, 39,§8350; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.12]

Similar provisions, §491.31

491.13 Place of business. Any corporation organized under the laws of this state shall fix upon and designate in its articles of incorporation its principal place of business which must be in this state, and if outside the limits of a city then its post-office address must be given. The place of business so designated shall not be changed except through an amendment to its articles of incorporation.

When a corporation changes its principal place of business from one county to another, an amendment for this purpose shall be filed with the secretary of state, recorded in the office of the recorder of deeds of the county of the previous place of business, and then said amendment together with the articles of incorporation and all amendments thereto shall be filed with the recorder of deeds of the county to which said corporation's principal place of business is changed. [C97,§1612; S13,§1612; C24, 27, 31, 35, 39,§8353; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.13]

S13,§1612, editorially divided

491.14 Custody of office — business maintained. Its place of business shall be in charge of an agent of the corporation and shall be the place where it shall hold its stockholders' meetings, keep a record of its proceedings and its stock and transfer books. The board of directors may designate by resolution some other place in the county where business of the corporation is transacted as the place for holding a stockholders' meeting if notice is mailed to the stockholders at least twenty days prior to each meeting informing the stockholders of the place, date, and hour of the stockholders' meeting. [C97,§1612; S13, §1612; C24, 27, 31, 35, 39,§8354; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.14]

491.15 Service of original notice—secretary of state. Any corporation organized under the laws of this state that does not maintain an office in the county of its organization may file with the secretary of state a certified copy of a resolution of the board of directors of said corporation giving name and address in Iowa of a resident agent on whom the service of original notice of civil suit in the courts of this state may be served, or file with the secretary of state a written instrument duly signed and acknowledged authorizing the secretary of state to acknowledge service of notice or process for and in behalf of such corporation in this state and consenting that service of notice or process may be made upon the secretary of state. Failing which, or in the event such agent may not be found within the state, service of such process may then be made upon said corporation through the secretary of state by sending the original and two copies thereof to him, and he shall immediately upon its receipt acknowledge service thereon in behalf of the defendant corporation by writing thereon, giving the date thereof, and shall immediately return such notice or process by certified mail to the clerk of the court in which the suit is pending, addressed by his official title, and shall also forthwith mail a copy with a copy of his acknowledgment of service written thereon, by certified mail addressed to the corporation at the address of its principal place of business as shown by the records in his office, and shall retain the second copy for his files. [C97,§1612; S13,§1612; C24, 27, 31, 35, 39,§§8355, 8356; C46, 50,§§491.15, 491.16; C54, 58, 62, 66, 71, 73, 75,§491.15]

See also §502.9

Similar provisions, §§494.2, 511.27, 512.22, 515.73, 520.5, §34.53

491.16 Indemnification of officers, directors, employees and agents—insurance. The provisions of section 496A.4, subsection 19, shall apply to corporations organized under or subject to this chapter. [C71, 73, 75,§491.16]

491.17 Notice of incorporation. A notice must be published once each week for four weeks in succession in some newspaper as convenient as practicable to the principal place of business, which must contain:

1. The name of the corporation and its principal place of business.

2. The general nature of the business to be transacted.

3. The amount of capital stock authorized, and the times and conditions on which it is to be paid in.

4. The time of the commencement and existence of the corporation.

5. By what officers or persons its affairs are to be conducted, and the times when and manner in which they will be elected.

6. Whether private property is to be exempt from corporate debts. [C51,§§677, 678; R60, §§1154, 1155; C73,§§1062, 1063; C97,§1613; S13, §1613; C24, 27, 31, 35, 39,§8357; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.17]

S13,§1613, editorially divided
Referred to in §§491.20, 491.32, 491.109
Legalizing Acts, ch 591

491.18 Proof of publication—filing. Proof of such publication, by affidavit of the publisher of the newspaper in which it is made, shall be filed with the secretary of state, and shall be evidence of the fact. [C97,§1613; S13,§1613; C24, 27, 31, 35, 39,§8358; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.18]

491.19 Commencement of business. The corporation may commence business as soon as the certificate is issued by the secretary of state, and its acts shall be valid if the publication in a newspaper is made within three months from the date of such certificate; providing that when the notice is not published within the time herein prescribed, but is subsequently published for the required time, and proof of the publication thereof filed with the

secretary of state, the acts of such corporation after such publication shall be valid. [C51, §679; R60,§1156; C73,§1064; C97,§1614; C24, 27, 31, 35, 39,§8359; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.19]

491.20 Amendments—fees. Amendments to articles of incorporation making changes in any of the provisions of the articles may be made at any annual meeting of the stockholders or special meeting called for that purpose, and they shall be valid only when recorded, approved and published as the original articles are required to be, except where the amendment provides for changing the principal place of business from one county to another, in which event said amendment shall be published in both the counties of the former and new place of business. Publication shall be by notice setting out the substance of the amendment and, in the case of amended and substituted articles, said notice shall contain the matters and things required to be published by section 491.17, relating to original incorporations. If no increase is made in the amount of capital stock, a certificate fee of one dollar and a recording fee of fifty cents per page must be paid. Where capital stock is increased the certificate fee shall be omitted but there shall be paid a recording fee of fifty cents per page and in addition a filing fee which in case of corporations existing for a period of years shall be one dollar per thousand of such increase and in case of corporations empowered to exist perpetually shall be one dollar and ten cents per thousand of such increase. Corporations providing for perpetual existence by amendment to its articles shall, at the time of filing such amendment, pay to the secretary of state a fee of one hundred dollars together with a recording fee of fifty cents per page, and, for all authorized capital stock in excess of ten thousand dollars, an additional fee of one dollar ten cents per thousand.

Its articles of incorporation to the contrary notwithstanding, if three-fourths of the voting stock of any corporation organized under the provisions of this chapter, with assets of the value of one million dollars or more, is owned by individuals owning not more than one share each of the voting stock thereof, said articles may be amended at any regular or special meeting of stockholders, when a notice in writing of the substance of the proposed amendment has been mailed by ordinary mail to each voting stockholder of such corporation not more than ninety nor less than sixty days prior to said meeting, by the affirmative vote of two-thirds of the voting stock represented at said meeting when said amendment is approved by the affirmative vote of two-thirds of the members of the board of directors at a meeting prior to the mailing of said notice.

If such corporation is renewed under the provisions of section 491.25, the voting stock of dissenting stockholders or any portion thereof may be purchased by the corporation at its option as provided in said section. [C51, §680; R60,§1157; C73,§1065; C97,§1615; S13,§1615; C24, 27, 31, 35, 39,§8360; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.20]

Referred to in §§491.24, 491.26, 491.107, 496A.129(1,b,c)
S13,§1615, editorially divided
Notice of amendment legalized, §591.11
Section 491.20, Code 1954, referred to in §591.11

491.21 Signing and acknowledging of amendments. Such amendments need only be signed and acknowledged by such officers of the corporation as may be designated by the stockholders to perform such act. [C97,§1615; S13,§1615; C24, 27, 31, 35, 39,§8361; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.21]

491.22 Individual property liable. A failure to substantially comply with the foregoing requirements in relation to organization and publicity shall render the individual property of the stockholders liable for the corporate debts; but corporators and stockholders in railway and street railway companies shall be liable only for the amount of stock held by them therein. [C51,§689; R60,§§1166, 1338; C73, §1068; C97,§1616; C24, 27, 31, 35, 39,§8362; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.22]

491.23 Dissolution — notice of — filing with secretary of state. A corporation may be dissolved prior to the period fixed in the articles of incorporation, by unanimous consent, or in accordance with the provisions of its articles, and notice thereof must be given in the same manner and for the same time as is required for its organization; provided, however, that the notice of such dissolution shall be deemed sufficient if signed by the officers of such corporation and published as required by law. Notice thereof shall also be given by the filing in the office of the secretary of state the proof of publication of notice of dissolution and said proof shall be recorded by the secretary of state in the same manner as the recording of amendments, and a recording fee of one dollar shall apply thereto, and the secretary of state shall forward said proof of publication to the county recorder of the county wherein the corporation maintains its place of business, there to be recorded in a book kept therefor. [C51,§§682, 683; R60,§§1159, 1160; C73,§§1066, 1067; C97, §1617; C24, 27, 31, 35, 39,§8363; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.23]

Referred to in §§496.7, 496.10

491.24 Duration. Corporations for the construction and operation, or the operation alone, of steam railways, interurban railways, and street railways, or for the transaction of the business of life insurance, may be formed to endure fifty years; those for other purposes, not to exceed twenty years; provided, however, that in addition to the power herein granted to incorporate for a period of years, corporations hereafter organized or now existing may have perpetual existence by so providing in the articles of incorporation or by amendment thereto pursuant to section 491.20. [C51,§681; R60,§1158; C73,§1069; C97,§1618; S13,

§1618; C24, 27, 31, 35, 39,§8364; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.24]

Referred to in §494.7
S13,§1618, editorially divided

491.25 Renewal — conditions. Corporations existing for a period of years may be renewed from time to time for the same or shorter periods, or may be renewed to exist perpetually, upon compliance with the provisions of this section and other applicable statutes.

The right of renewal is vested in the stockholders and shall be exercised by a resolution thereof adopted at any regular meeting or at any special meeting called for that purpose. Such resolution must be adopted by a majority of all the votes cast at such meeting, or by such other vote as is authorized or required in the company's existing articles of incorporation.

If the renewal instrument in proper form and the necessary fees are tendered to the secretary of state for filing three months or less either prior or subsequent to the corporation's expiration date, such renewal shall take effect immediately upon the expiration of the corporation's previous period of existence, and in such case, the corporate existence shall be considered as having been extended without interruption. If the renewal is filed more than three months before or after the expiration date, such renewal shall take effect upon the date such renewal with necessary fees is accepted and filed by the secretary of state; and in cases where filed more than three months after the expiration date, shall not be in legal effect a renewal unless the procedure provided for and the additional fees provided for in section 491.28 are fully complied with and paid.

In all cases of renewal, those stockholders voting for such renewal must purchase at its real value the stock voted against such renewal, and shall have three years from the date such action for renewal was taken in which to purchase and pay for the stock voting against such renewal, which purchase price shall bear interest at the rate of five percent per annum from the date of such renewal action until paid. [C51,§681; R60,§1158; C73, §1069; C97,§1618; S13,§1618; C24, 27, 31, 35, 39, §§8365, 8366; C46, 50,§§491.25, 491.26; C54, 58, 62, 66, 71, 73, 75,§491.25]

Referred to in §§491.20, 491.26, 496A.129[(1,e),(3,a,c)]

491.26 Stock of dissenting holders. The provisions of section 491.25 shall not apply to any renewal voted before July 4, 1951, but all rights of any corporation described or referred to in the last two paragraphs of section 491.20 to purchase stock of dissenting stockholders or any portion thereof are preserved to said corporation both before and after this section becomes operative. [S13,§1618; C24, 27, 31, 35, 39,§8366; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.26]

491.27 Execution of renewal — record required. After the said action of the stockholders for the renewal of any corporation, a certificate, showing the proceedings resulting in such renewal, sworn to by the president and secretary of the corporation, or by such other officers as may be designated by the stockholders, together with the articles of incorporation, which may be the original articles of incorporation or amended and substituted articles, shall be filed with the secretary of state and be by him recorded in a book kept for that purpose. The secretary of state shall then forward said renewal articles to the recorder of deeds of the county where the principal place of business is located, and the recorder shall record said renewal articles and endorse thereon the book and page where the record will be found. [S13,§1618; C24, 27, 31, 35, 39,§8367; C46, 50, 54, 58, 62, 66, 71, 73, 75, §491.27]

491.28 Filing with secretary of state—fees—certificate of renewal. Upon filing with the secretary of state the said certificate and articles of incorporation, and upon the payment to the secretary of state of the fees prescribed by section 491.11 for newly organized corporations, the secretary of state shall issue a proper certificate for the renewal of the corporation.

Whenever, after timely notice has been received that its articles of incorporation will expire and the corporate existence of any corporation has expired and not been renewed within the period prescribed by statute, said corporation thereafter files with the secretary of state amended and substituted articles of incorporation for the purpose of renewing and extending its corporate existence, the secretary of state shall cause said corporation to file satisfactory proof that no judgments against said corporation or the stockholders thereof are outstanding which may be liens against said corporation and that there is no pending litigation involving said corporation or the corporate existence of said corporation. Upon the filing of said proof the secretary of state may acknowledge and file for record the amended and substituted articles of said corporation and issue a certificate of renewal upon the payment of the renewal fees required by statute, however, the secretary of state shall charge and collect an additional ten percent of said renewal fees for each month or major fraction thereof said corporation was delinquent in renewal of its corporate existence as a penalty, but in no instance shall such additional delinquency fee be less than one hundred dollars and not more than one thousand dollars. Said certificate of renewal when issued shall have the same force and effect as though issued upon proper and timely application by said corporation and it shall date from the expiration of the corporate period which it succeeds. [S13,§1618; C24, 27, 31, 35, 39,§8368; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.28]

Referred to in §§491.25, 491.31, 496A.129(1,e,i)

491.29 Erroneous certificate—correction. In all cases wherein the secretary of state has heretofore* issued to a corporation organized or purporting to have been organized under

the laws of this state a certificate renewing and extending its corporate existence from an erroneous date or for a period of time in excess of that provided by law, the secretary of state shall, upon the surrender of such certificate, issue to such corporation a new certificate, extending and renewing the corporate existence thereof from the correct date or for the period of time provided by law. [C31, 35,§8368-d1; C39,§**8368.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.29]

*Act effective April 10, 1931

491.30 Perpetual corporations—periodic fees. Corporations having the right of perpetual existence shall periodically pay the fees herein provided. Fifty years from the date of incorporation or last renewal of such corporations for the construction and operation, or the operation alone, of steam railways, interurban railways and street railways, or for the transaction of the business of life insurance, and each fifty years thereafter, and twenty years from the date of incorporation or last renewal of such corporations for other purposes, and each twenty years thereafter, there shall be paid to the secretary of state a fee of one hundred dollars and an additional fee of one dollar ten cents per thousand for all authorized stock in excess of ten thousand dollars; and upon such payment being made the secretary of state shall issue a certificate showing such payment. The period of existence of any such corporation failing to pay such fees at the time they are due shall thereupon terminate, provided, however, that any such corporation may be renewed at any time within three months thereafter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.30]

Referred to in §496A.129[(1,*d*), (3,*a*, *c*)]
Constitutionality, 50GA, ch 225,§9

491.31 Exemption from fee. Farmers mutual co-operative creamery associations, domestic and domestic local building and loan associations, and corporations organized for the manufacture of sugar from beets grown in the state of Iowa, shall be exempt from the payment of the incorporation fee, provided in section 491.28, in excess of twenty-five dollars. [S13,§1618; C24, 27, 31, 35, 39,§**8369**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.31]

Similar provision, §491.12

491.32 Notice of renewal—publication. Within three months after the filing of the certificate and articles of incorporation with the secretary of state, the corporation so renewed shall publish a notice of renewal. Said notice shall be published once each week for four weeks in succession in a newspaper as convenient as practicable to the principal place of business of the corporation, and proof of publication filed in the office of the secretary of state, and shall contain the matters and things required to be published by section 491.17, relating to original incorporations. [S13,§1618; C24, 27, 31, 35, 39,§**8370**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.32]

Section 491.32, Code 1954, referred to in §591.10
Notice of renewal legalized, §591.10

491.33 Foreign life insurance companies becoming domestic. The secretary of state upon a corporation complying with the provisions of this section and upon the filing of articles of incorporation and upon receipt of the fees as provided in this chapter shall issue a certificate of incorporation as of the date of the corporation's original incorporation in its state of original incorporation. The certificate of incorporation shall state on its face that it is issued in accordance with the provisions of this section. The secretary of state shall forward said articles as provided in this chapter to the county recorder where the principal place of business of the corporation is to be located. The secretary of state shall then notify the appropriate officer of the state or country of the corporation's last domicile that the corporation is now a domestic corporation domiciled in this state. [C75,§491.33]

491.34 and 491.35 Repealed by 63GA, ch 273, §§1827–1829; see §524.106.

491.36 Repealed by 52GA, ch 251,§2.

491.37 Repealed by 63GA, ch 273,§1830; see §524.106.

491.38 Consolidation of interstate bridge companies. Any corporation heretofore or hereafter organized under the laws of this state for the purpose of constructing and/or operating a bridge, one extremity of which shall rest in an adjacent state, may merge and/or consolidate the stock, property, rights, franchises, privileges, assets and liabilities of such corporation with the stock, property, rights, franchises, privileges, assets and liabilities of a corporation organized for a similar purpose under the laws of such adjacent state, upon such terms not in conflict with law as may be mutually agreed upon, and thereafter such merged and/or consolidated corporations shall be one corporation with such name as may be agreed upon, and shall have all of the property, rights, privileges, assets and franchises, and be subject to all of the liabilities, of the merging or consolidating corporations. [C31, 35,§8375-d1; C39,§**8375.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.38]

491.39 Legislative control. The articles of incorporation, bylaws, rules and regulations of corporations hereafter organized under the provisions of either title XIX, XX, XXI, or XXII or whose organization may be adopted or amended thereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, and every franchise obtained, used, or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good. [C73,§1090; C97, §1619; C24, 27, 31, 35, 39,§**8376**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.39]

Constitution, Iowa, Art. I,§21; Art. VIII,§12
Constitution, U. S., Art. I,§10

491.40 Fraud — penalty for. Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their means or their liabilities, shall be a misdemeanor, and shall subject those guilty thereof to fine and imprisonment, or both, at the discretion of the court. Any person who has sustained injury from such fraud may also recover damages therefor against those guilty of participating in such fraud. [C51,§686; R60, §1163; C73,§1071; C97,§1620; C24, 27, 31, 35, 39, §8377; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.40]

Referred to in §§491.41, 491.42
Punishment, §687.7

491.41 Diversion of funds — unlawful dividends. The diversion of the funds of the corporation to other objects than those mentioned in its articles and in the notice published, if any person be injured thereby, and the payment of dividends which leaves insufficient funds to meet the liabilities thereof, shall be such fraud as will subject those guilty thereof to the penalties of section 491.40; and such dividends, or their equivalent, in the hands of stockholders, shall be subject to such liabilities. If the directors or other officers or agents of any corporation shall declare and pay any dividend when such corporation is known by them to be insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, all directors, officers, or agents knowingly consenting thereto shall be jointly and severally liable for all the debts of such corporation then existing, but dividends made in good faith before knowledge of the occurring of losses shall not come within the provisions of this section. [C51,§§687, 688; R60,§§1164, 1165; C73,§§1072, 1073; C97,§1621; C24, 27, 31, 35, 39,§8378; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.41]

Referred to in §491.42

491.42 Forfeiture. Any intentional violation by the board of directors or the managing officers of the corporation of the provisions of sections 491.40 and 491.41 shall work a forfeiture of the corporate privileges, to be enforced as provided by law. [C51,§690; R60,§1167; C73, §1074; C97,§1622; C24, 27, 31, 35, 39,§8379; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.42]

491.43 Keeping false accounts. The intentional keeping of false books or accounts shall be a misdemeanor on the part of any officer, agent, or employee of the corporation guilty thereof, or of anyone whose duty it is to see that such books or accounts are correctly kept. [C51,§691; R60,§1168; C73,§1075; C97,§1623; C24, 27, 31, 35, 39,§8381; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.43]

Punishment, §687.7
Similar criminal provision, §713.26

491.44 and 491.45 Repealed by 54GA, ch 180,§1.

491.46 Books to show names of stockholders. The books of the corporation shall be kept to show the amount of capital stock actually paid in, the number of shares of stock issued, the original stockholders, and all transfers of shares of stock, and there shall be entered upon the books of the corporation the name of the person by and to whom stock is transferred, the numbers or other designations of the shares of stock and the date of transfer. Nothing herein contained shall create any rights or impose any duties inconsistent with the provisions of chapter 493A.* [C51,§692; R60,§1169; C73,§1078; C97,§1626; C24, 27, 31, 35, 39,§8385; C46, 50,§491.47; C54, 58, 62, 66, 71, 73, 75,§491.46]

Referred to in §491.50
*Chapter 493A repealed by 61GA, ch 413,§10102

491.47 Names exhibited at meetings. It shall be the duty of the officer or agent of any corporation organized under the laws of the state of Iowa, or any foreign corporation qualified to do business in the state of Iowa and holding a meeting of its stockholders in the state of Iowa, who has charge of the stock records of such corporation to prepare and make, at least ten days before the holding of such meeting, a complete list of the stockholders entitled to vote thereat, arranged in alphabetical order. Such list shall be open and available at the place where said meeting is to be held for said ten days to the examination of any stockholder, and shall be kept at the time and place of meeting during the whole time thereof, and subject to the inspection of any stockholder who may be present at said meeting. The original or duplicate stock ledger of the corporation shall be the only evidence as to who are the stockholders entitled to examine such list or the books of the corporation or to vote in person or by proxy at such meeting. Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting. An officer or agent having charge of the transfer books who shall fail to prepare the list of stockholders, or keep the same on file for a period of ten days, or produce and keep the same open for inspection at the meeting, as provided in this section, shall be liable to any stockholder suffering damage on account of such failure, to the extent of such damage. [C24, 27, 31, 35, 39, §8384; C46, 50,§491.46; C54, 58, 62, 66, 71, 73, 75,§491.47]

Referred to in §491.50

491.48 Stock certificates—signing. A corporation organized and existing under the laws, either general or special, of this state, may designate in its articles or bylaws the officer or officers who shall be empowered to sign stock certificates issued by the corporation. If the articles or bylaws provide for the signature of a registrar or the signature or countersignature of a transfer agent on stock certificates issued by it, the corporation may likewise provide in the articles or bylaws that in lieu of the actual signature of the officer or officers authorized to sign stock certificates,

the facsimile thereof may be either engraved or printed thereon. [C31, 35,§8385-d1; C39, §8385.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.48]

491.49 Repealed by 61GA, ch 413,§10102.

491.50 Examination by stockholder. Any person who shall be a stockholder of record of any corporation organized under the laws of the state of Iowa or any foreign corporation authorized to transact business in the state of Iowa and maintaining its books and records in the state of Iowa shall have the right to examine in person or by duly authorized agent or attorney at any reasonable time or times and for any proper purpose the stock records, minutes and records of stockholders' meetings, and the books and records of account and to make extracts therefrom.

The provisions of sections 491.46 and 491.47 and this section shall not apply to building and loan associations, savings and loan associations, deposit, loan and investment records of banks and trust companies, or insurance companies organized under the laws of the state of Iowa, and to whom the provisions of this chapter would otherwise be applicable. [C51,§692; R60,§1169; C73,§1078; C97,§1626; C24, 27, 31, 35, 39,§§8385, 8386; C46, 50,§§491.47, 491.50; C54, 58, 62, 66, 71, 73, 75,§491.50]

491.51 to 491.53 Repealed by 61GA, ch 413, §10102.

491.54 Liability of collateral holder. No holder of stock as collateral security shall be liable for assessments on the same. [C97,§1626; C24, 27, 31, 35, 39,§8390; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.54]

491.55 Right to vote stock — attachment. Every executor, administrator, guardian, or trustee shall represent the stock in his hands at all corporate meetings, and may vote the same as a stockholder.

Every person who shall pledge his stock, in the absence of a written agreement to the contrary, may represent the same at all such meetings and vote accordingly.

The owner of corporate stock levied upon by attachment or other proceeding shall have the right to vote the same at all corporate meetings, until such time as he shall have been divested of his title thereto by execution sale.

Nothing contained in this section shall in any manner conflict with any provision in the articles of incorporation, or the bylaws of the corporation issuing the stock. [S13,§1641-a; C24, 27, 31, 35, 39,§8391; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.55]

491.56 Expiration and closing of business. Corporations whose charters expire by limitation or the voluntary act of the stockholders may nevertheless continue to act for the purpose of winding up their affairs. [C51,§694; R60,§1171; C73,§1080; C97,§1629; C24, 27, 31, 35, 39,§8392; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.56]

491.57 Sinking fund and loaning thereof. For the purpose of repairs, rebuilding, enlarging, or to meet contingencies, or for the purpose of creating a sinking fund, the corporation may set apart a sum which it may loan, and take proper securities therefor. [C51,§699; R60,§1176; C73,§1081; C97,§1630; C24, 27, 31, 35, 39,§8393; C46, 50, 54, 58, 62, 66, 71, 73, 75, §491.57]

491.58 Liability of stockholders. Neither anything in this chapter contained, nor any provisions in the articles of corporation, shall exempt the stockholders from individual liability to the amount of the unpaid installments on the stock owned by them, or transferred by them for the purpose of defrauding creditors; and execution against the company may, to that extent, be levied upon the private property of any such individual. The foregoing provisions shall not apply to building and loan associations, and savings and loan associations. [C51,§695; R60,§1172; C73,§1082; C97,§1631; C24, 27, 31, 35, 39,§8394; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.58]

C97,§1631, editorially divided

491.59 Levy on private property. In none of the cases contemplated in this chapter can the private property of the stockholders be levied upon for the payment of corporate debts while corporate property can be found with which to satisfy the same; but it will be sufficient proof that no property can be found, if an execution has issued on a judgment against the corporation, and a demand has been thereon made of some one of the last acting officers of the body for property on which to levy, and he neglects to point out any such property. [C97,§1631; C24, 27, 31, 35, 39,§8395; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.59]

Referred to in §491.61

491.60 Suit by creditor—measure of recovery. In suits by creditors to recover unpaid installments upon shares of stock against any person who has in any manner obtained such stock of the corporation, the stockholder shall be liable for the difference between the amount paid by him to the corporation for said stock and the face value thereof. [C97,§1631; C24, 27, 31, 35, 39,§8396; C46, 50, 54, 58, 62, 66, 71, 73, 75, §491.60]

491.61 Corporate property exhausted. Before any stockholder can be charged with the payment of a judgment rendered for a corporate debt, an action shall be brought against him, in any stage of which he may point out corporate property subject to levy; and, upon his satisfying the court of the existence of such property, by affidavit or otherwise, the cause may be continued, or execution against him stayed, until the property can be levied upon and sold, and the court may subsequently render judgment for any balance which there may be after disposing of the corporate property; but if a demand of property has been made as contemplated in section 491.59, the

costs of said action shall, in any event, be paid by the company or the defendant therein, but he shall not be permitted to controvert the validity of the judgment rendered against the corporation, unless it was rendered through fraud and collusion. [C51,§§696, 697; R60,§§1173, 1174; C73,§§1083, 1084; C97,§1632; C24, 27, 31, 35, 39,§8397; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.61]

491.62 Indemnity—contribution. When the property of a stockholder is taken for a corporate debt, he may maintain an action against the corporation for indemnity, and against any of the other stockholders for contribution. [C51,§698; R60,§1175; C73,§1085; C97,§1633; C24, 27, 31, 35, 39,§8398; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.62]

491.63 Franchise sold on execution. The franchise of a corporation may be levied upon under execution and sold, but the corporation shall not become thereby dissolved, and no dissolution of the original corporation shall affect the franchise, and the purchaser becomes vested with all the powers of the corporation therefor. Such franchise shall be sold without appraisement. [C51,§700; R60,§1177; C73,§1086; C97,§1634; C24, 27, 31, 35, 39,§8399; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.63]

491.64 Production of books. In proceedings by or against a corporation or a stockholder to charge his private property, or the dividends received by him, the court may, upon motion of either party, upon cause shown for that purpose, compel the officers or agents of the corporation to produce the books and records of the corporation. [C51,§701; R60,§1178; C73, §1087; C97,§1635; C24, 27, 31, 35, 39,§8400; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.64]

Similar provision, R.C.P. 129 et seq.

491.65 Estoppel. No person or persons acting as a corporation shall be permitted to set up the want of a legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with such an acting corporation, or sued for an injury to its property, or a wrong done to its interests, be permitted to set up a want of such legal organization in his defense. [C51, §704; R60,§1181; C73,§1089; C97,§1636; C24, 27, 31, 35, 39,§8401; C46, 50, 54, 58, 62, 66, 71, 73, 75, §491.65]

491.66 Dissolution—receivership. Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the state of Iowa. An action therefor may be instituted by the attorney general in the name of the state, reserving, however, to the stockholders and creditors all rights now possessed by them. [C97,§1640; C24, 27, 31, 35, 39,§8402; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.66]

491.67 Ownership of alien property. Corporations organized in any foreign country or corporations organized in this country, the stock of which is owned in whole or in part by nonresident aliens, shall have the same rights, powers, and privileges with regard to the purchase and ownership of real estate in this state as are granted to nonresident aliens in section 567.2. [C97,§1641; S13,§1641; C24, 27, 31, 35, 39,§8403; C46, 50, 54, 58, 62, 66, 71, 73, 75, §491.67]

491.68 False statements or pretenses. Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting, either generally or privately to the stockholders or other persons, any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or willfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary not to exceed one year, or by imprisonment in the county jail not to exceed six months or a fine not exceeding five hundred dollars. [S13, §1641-g; C24, 27, 31, 35, 39,§8404; C46, 50, 54, 58, 62, 66, 71, 73, 75,§491.68]

491.69 to 491.71 Repealed by 66GA, ch 57, §17.

491.72 to 491.100 Reserved.

CORPORATION MERGER OR CONSOLIDATION

491.101 Definitions.

1. "Merger" means the uniting of two or more corporations into one corporation in such manner that the corporation resulting from the merger retains its corporate existence and absorbs the other constituent corporation or corporations which thereby lose their or its corporate existence.

2. "Consolidation" means the uniting of two or more corporations into a single new corporation, all of the constituent corporations thereby ceasing to exist as separate entities. [C50, 54, 58, 62, 66, 71, 73, 75,§491.101]

491.102 Procedure for merger. Any two or more corporations whether heretofore or hereafter organized may merge into one of such corporations in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of mergers setting forth:

1. The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

2. The terms and conditions of the proposed merger.

3. The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation.

4. A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

5. Such other provisions with respect to the proposed merger as are deemed necessary or desirable. [C50, 54, 58, 62, 66, 71, 73, 75, §491.102]

491.103 Procedure for consolidation. Any two or more corporations whether heretofore or hereafter organized may consolidate into a new corporation in the following manner:

The board of directors of each corporation, shall, by a resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth:

1. The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

2. The terms and conditions of the proposed consolidation.

3. The manner and basis of converting the shares of each corporation into shares, or other securities, or obligations of the new corporation.

4. With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

5. Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. [C50, 54, 58, 62, 66, 71, 73, 75, §491.103]

491.104 Meetings of shareholders. The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be delivered not less than twenty days before such meeting, either personally or by mail, to each shareholder of record entitled to vote at such meeting. Such notice shall state the place, day, hour and purpose of the meeting, and a copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice. [C50, 54, 58, 62, 66, 71, 73, 75, §491.104]

491.105 Approval by shareholders. At each such meeting, a vote of the shareholders entitled to vote thereat shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote at such meeting, of each of such corporations, unless any class of shares of any such corporations is entitled to vote as a class in respect thereof in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least a majority of the outstanding shares of each such class of shares entitled to vote as a class in respect thereof and two-thirds of the total outstanding shares entitled to vote at such meeting. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class. [C50, 54, 58, 62, 66, 71, 73, 75,§491.105]

491.106 Articles of merger or consolidation. Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice-president, and verified by him, attested by its secretary or an assistant secretary, and shall be acknowledged and shall set forth:

1. The plan of merger or the plan of consolidation.

2. As to each corporation, the number of shares outstanding, and the number of shares entitled to vote, and, if the shares of any class are entitled to vote as a class, the designation of each such class and the number of outstanding shares thereof entitled to vote.

3. As to each corporation, the number of shares voted for and against such plan respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively. [C50, 54, 58, 62, 66, 71, 73, 75,§491.106]

491.107 Filing articles of merger or consolidation. A duly executed and acknowledged copy of the articles of merger or consolidation shall be forwarded to the secretary of state for filing and recording as provided in section 491.5, and if a new corporation is created under the provisions of this chapter as the result of consolidation or if an existing Iowa corporation becomes the survivor corporation as the result of a merger the secretary of state shall then forward said articles to the county recorder of deeds of the county where the principal place of business of the new corporation or the existing Iowa corporation is located as provided in section 491.5.

The procedure set forth in sections 491.6 to 491.9 of this chapter shall be applicable to the filing of articles of consolidation or merger.

If as the result of a consolidation a new Iowa corporation is formed then the fees provided for in section 491.11 shall be applicable. If as the result of a merger an existing Iowa corporation becomes the survivor the articles of merger shall be deemed an amendment to its articles of incorporation and section 491.20 shall be applicable. [C50, 54, 58, 62, 66, 71, 73, 75,§491.107]

491.108 Effective date of merger or consolidation. Upon the payment of all fees and charges and upon the filing of the articles of consolidation or merger with the secretary of state the secretary of state shall issue to the corporation or its representative a certificate of consolidation or a certificate of merger and upon the issuance of said certificate the merger or consolidation shall be effected. [C50, 54, 58, 62, 66, 71, 73, 75,§491.108]

491.109 Notice. Notice of the articles of consolidation or merger shall be given as provided in section 491.17. [C50, 54, 58, 62, 66, 71, 73, 75,§491.109]

491.110 Effect of merger or consolidation. When such merger or consolidation has been effected:

1. The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

2. The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

3. Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

4. Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

5. Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

6. In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

7. The aggregate amount of the net assets of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that the amount thereof is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation. [C50, 54, 58, 62, 66, 71, 73, 75,§491.110]

491.111 Merger or consolidation of domestic and foreign corporations. One or more foreign corporations and one or more domestic corporations whether heretofore or hereafter organized may be merged or consolidated in the following manner, provided such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

1. Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

2. If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of the statutes of the state of Iowa with respect to foreign corporations if it is to do business in this state, and in every case it shall file with the secretary of state of this state:

a. An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation.

b. The appointment of a resident agent as provided for in section 494.2, subsection 6.

c. An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this division with respect to the rights of dissenting shareholders.

Insofar as the state of Iowa is concerned, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the sur-

viving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise. [C50, 54, 58, 62, 66, 71, 73, 75,§491.111]

491.112 Rights of dissenting shareholders. If a shareholder of a corporation which is a party to a merger or consolidation shall file with such corporation, prior to or at the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, and such shareholder, within twenty days after the merger or consolidation is effected, shall make written demand on the surviving or new corporation for payment of the fair value of his shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new corporation shall pay to such shareholder, upon surrender of his certificate or certificates representing said shares, such fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the twenty-day period shall be conclusively presumed to have consented to the merger or consolidation and shall be bound by the terms thereof.

If within thirty days after the date on which such merger or consolidation was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving or new corporation payment therefor shall be made within ninety days after the date on which such merger or consolidation was effected, upon the surrender of his certificate or certificates representing said shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

If within such period of thirty days the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in any court of competent jurisdiction within the state and judicial subdivision thereof in which the registered office or the principal place of business of the surviving or new corporation is situated, asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the surviving or new corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such merger or consolidation, together with interest thereon at the rate of five percent per annum to the date of such judgment. The action shall be prosecuted as an equitable action and the practice and procedure shall conform to the practice and procedure in equity cases. The judgment shall be payable only upon and simultaneously with the surrender to the surviving or new corporation of the certificate or certificates representing said shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares, or in the surviving or new corporation. Such shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him shall be conclusively presumed to have approved and ratified the merger or consolidation and shall be bound by the terms thereof.

The right of a dissenting shareholder to be paid the fair value of his shares as herein provided shall cease if and when the corporation shall abandon the merger or consolidation.

Shares acquired by the corporation pursuant to the payment of the agreed value thereof or to the payment of judgment entered therefor as in this section provided may be held and disposed of by the corporation as it shall see fit. [C50, 54, 58, 62, 66, 71, 73, 75,§491.112]

491.113 Issuance of stock. All stock issued in connection with such merger or consolidation shall be issued pursuant to the provisions of chapter 492 and nothing in this amendment shall be construed as eliminating the requirements of said chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§491.113]

Constitutionality, 52GA, ch 249,§14

491.114 Amana stock. Anything contained in this chapter and chapters 492, 501, and 502 to the contrary notwithstanding, any corporation organized under the laws of the state of Iowa having assets of the value of one million dollars or more, the articles of the corporation of which provide that no individual may vote more than one share of the common voting shares of stock of said corporation, the articles of incorporation of which give to children of the owner or owners of shares of the common voting stock of such corporations the right to purchase one common voting share of stock therein upon attaining majority or within a fixed period thereafter and the articles of incorporation of which whether now in effect or hereafter adopted, authorize the issuance, sale and delivery of not to exceed one share of said common voting stock to any one individual, shall have the power to issue, sell and deliver its shares of common voting stock, whether held by it as treasury stock or whether issued as an original issue, for the following considerations and upon the following terms and conditions, and with the following limitations:

1. Such common voting stock may be issued, sold and delivered by the corporation either for cash or upon credit or time payments or installment payments or for a consideration evidenced in part or in whole by the written agreement of the purchaser thereof to pay for

the same, payment of said purchase price to be secured by a lien on said stock.

2. No such stock shall be issued, sold and delivered for a price less than the par value thereof at the time of such issuance, sale and delivery.

3. Not more than one share of said stock shall be so issued, sold and delivered to any one individual, but when issued, sold and delivered, said stock may be voted by the owner thereof, if the articles of incorporation or bylaws of such corporation, whether now in effect or hereafter adopted or amended, so provide, although a part or all of the price to be paid therefor may be owing to the corporation under said written agreement of the purchaser to pay for the same. [C54, 58, 62, 66, 71, 73, 75,§491.114]

CHAPTER 492

CAPITAL STOCK

Referred to in §§491.113, 491.114, 496A.142(9), 515.62, 524.1902

492.1 Endorsement of amount paid.
492.2 Effect of violation.
492.3 Penalties.
492.4 Certain corporations excepted.
492.5 Par value required.
492.6 Payment in property other than cash.
492.7 Executive council to fix amount.
492.8 Elements considered in fixing amount.
492.9 Certificate of issuance of stock.
492.10 Cancellation of stock—reimbursement.
492.11 Dissolution—distribution of assets.
492.12 Violations.

492.1 Endorsement of amount paid. No certificate or shares of stock shall be issued, delivered, or transferred by any corporation, officer or agent thereof, or by the owner of such certificate or shares without having endorsed on the face thereof what amount or portion of the par value has been paid to the corporation issuing the same, and whether such payment has been in money or property. [C97,§1627; S13,§1627; C24, 27, 31, 35, 39,§8408; C46, 50, 54, 58, 62, 66, 71, 73, 75,§492.1]

40ExGA, HF 202,§1, editorially divided
Referred to in §§492.2, 492.3, 492.4

492.2 Effect of violation. Any certificate of stock issued, delivered, or transferred in violation of section 492.1 when the corporation has not received payment therefor at par in money or property at a valuation approved by the executive council, shall be void, and the issuance, delivery, or transfer of each certificate shall be considered a separate transaction. [C24, 27, 31, 35, 39,§8409; C46, 50, 54, 58, 62, 66, 71, 73, 75,§492.2]

Referred to in §§492.3, 492.4

492.3 Penalties. Any person violating the provisions of sections 492.1 and 492.2, or knowingly making a false statement on such certificate, shall be fined not less than one hundred dollars nor more than five hundred dollars, and shall stand committed to the county jail until such fine and costs are paid. [C97,§1627; S13,§1627; C24, 27, 31, 35, 39,§8410; C46, 50, 54, 58, 62, 66, 71, 73, 75,§492.3]

Referred to in §492.4
See §789.17

492.4 Certain corporations excepted. Sections 492.1 to 492.3 shall not apply to railway or quasi-public corporations organized before October 1, 1897. [S13,§1627; C24, 27, 31, 35, 39,§8411; C46, 50, 54, 58, 62, 66, 71, 73, 75, §492.4]

492.5 Par value required. No corporation organized under the laws of this state, except building and loan associations, shall issue any certificate of a share of capital stock, or any substitute therefor, until the corporation has received the par value thereof. [S13,§1641-b; C24, 27, 31, 35, 39,§8412; C46, 50, 54, 58, 62, 66, 71, 73, 75,§492.5]

Referred to in §§492.10–492.12, 495.1

492.6 Payment in property other than cash. If it is proposed to pay for said capital stock in property or in any other thing than money, the corporation proposing the same must, before issuing capital stock in any form, apply to the executive council of the state for leave so to do. Such application shall state the amount of capital stock proposed to be issued for a consideration other than money, and set forth specifically the property or other thing to be received in payment for such stock, providing that the foregoing provision shall not apply to trust companies or insurance companies organized under the laws of this state.

Any insurance company proposing to issue capital stock for property or any thing other than money, before issuing the capital stock in any form, shall apply to the commissioner of insurance for leave so to do. Such application to the commissioner of insurance shall state the amount of capital stock proposed to be issued for a consideration other than money and set forth specifically the property or other thing to be received in payment for such stock. [S13,§1641-b; C24, 27, 31, 35, 39,§8413; C46, 50, 54, 58, 62, 66, 71, 73, 75,§492.6]

Referred to in §§492.10–492.12, 493.4, 495.1, 499.25
Legalizing stock issued, 56GA, ch 231,§1; 57GA, ch 48,§1

492.7 Executive council to fix amount. The executive council or the commissioner of insurance as the case may be, shall make investigation, under such rules as it may prescribe, and ascertain the real value of the property or other thing which the corporation is to receive for the stock. It shall enter its finding, fixing the value at which the corporation may receive the same in payment for capital stock; and no corporation shall issue capital stock for the said property or thing in a greater amount than the value so fixed. [S13,§1641-b; C24, 27, 31, 35, 39,§**8414**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§492.7]

Referred to in §492.10, 492.11, 492.12, 493.4, 495.1, 499.25

492.8 Elements considered in fixing amount. For the purpose of encouraging the construction of new steam or electric railways, and manufacturing industries within this state, the labor performed in effecting the organization and promotion of such corporation, and the reasonable discount allowed or reasonable commission paid in negotiating and effecting the sale of bonds for the construction and equipment of such railroad or manufacturing plant, shall be taken into consideration by said council as elements of value in fixing the amount of capital stock that may be issued. [S13,§1641-b; C24, 27, 31, 35, 39,§**8415**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§492.8]

Referred to in §§492.10, 492.11, 492.12, 493.4, 495.1

492.9 Certificate of issuance of stock. It shall be the duty of every corporation, except corporations qualified under chapter 494 or chapter 534, to file a certificate under oath with the secretary of state, within thirty days after the issuance of any capital stock, stating the date of issue, the amount issued, the sum received therefor, if payment be made in money, or the property or thing taken, if such be the method of payment. If the corporation fails to file said certificate of issuance of stock within the thirty-day period herein provided, it may thereafter file the same upon first paying to the secretary of state a penalty of ten dollars when the said certificate is offered for filing. Provided further that the penalty herein provided for is first paid and provided the said report contains the specific information required by this section as to the issuance of any capital stock not previously reported, then the first annual report filed by such corporation following such failure to comply with the provisions of this section, shall be received by the secretary of state as a compliance with this section. [S13,§1641-c; C24, 27, 31, 35, 39, §**8416**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§492.9]

Referred to in §§495.1, 591.14

492.10 Cancellation of stock — reimbursement. The capital stock of any corporation issued in violation of the terms and provisions of sections 492.5 to 492.8 shall be void, and in a suit brought by the attorney general on behalf of the state in any court having jurisdiction, a decree of cancellation shall be entered; and if the corporation has received any money or thing of value for the said stock, such money or thing of value shall be returned to the individual, firm, company, or corporation from whom it was received, and if represented by labor or other service of intangible nature, the value thereof shall constitute a claim against the corporation issuing stock in exchange therefor. [S13,§1641-d; C24, 27, 31, 35, 39,§**8417**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§492.10]

492.11 Dissolution — distribution of assets. Any corporation violating the provisions of sections 492.5 to 492.8 shall, upon the application of the attorney general, in behalf of the state, made to any court of competent jurisdiction, be dissolved, its affairs wound up, and its assets distributed among the stockholders other than those who have received the stock so unlawfully issued. [S13,§1641-e; C24, 27, 31, 35, 39,§**8418**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §492.11]

492.12 Violations. Any officer, agent or representative of a corporation who violates any of the provisions of sections 492.5 to 492.8 shall, upon conviction, be fined not less than two hundred dollars nor more than ten hundred dollars, and be imprisoned in the county jail for not less than thirty days nor more than six months. [S13,§1641-f; C24, 27, 31, 35, 39, §**8419**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§492.12]

CHAPTER 493

CORPORATION STOCK WITHOUT PAR VALUE

Referred to in §§496A.142(9), 524.1902

493.1 Authorization.
493.2 Par value—method of stating.
493.3 Amount of stock.
493.4 Sale value.
493.5 Liability of holder.
493.6 Status of stock.
493.7 Certificates of stock.
493.8 Number of shares.
493.9 Change in stock.
493.10 Convertibility.
493.11 Incorporation fee—computation.
493.12 Applicability of statutes.

493.1 Authorization. Any corporation, heretofore or hereafter organized for pecuniary profit under the laws of this state, except state banks, trust companies, building and loan associations and insurance companies, may create one or more classes of stock without any nominal or par value, with such rights, preferences, privileges, voting powers,

limitations, restrictions and qualifications thereon not inconsistent with law as shall be expressed in its articles of incorporation, or any amendment thereto. Stock without par value which is preferred as to dividends, or as to its distributive share of the assets of the corporation upon dissolution, may be made subject to redemption at such times and prices as may be determined in such articles of incorporation, or any amendment thereto. In the case of stock without par value which is preferred as to its distributive share of the assets of the corporation upon dissolution, the amount of such preference shall be stated in the articles of incorporation, or any amendment thereto. [C31, 35,§8419-c1; C39,§**8419.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§493.1]

493.2 Par value—method of stating. In any case in which the par value of the shares of stock of a corporation shall be required to be stated in the articles of incorporation, or any amendment thereto, or in any other place, it shall be stated in respect to shares without par value that such shares are without par value, and when the amount of such stock authorized, issued or outstanding shall be required to be stated, the number of shares thereof authorized, issued or outstanding, as the case may be, shall be stated, and it shall also be stated that such shares are without par value. [C31, 35,§8419-c2; C39,§**8419.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§493.2]

493.3 Amount of stock. For the purpose of any rule of law or of any statutory provision relating to the amount of capital stock issued and represented by shares of stock without par value except as otherwise provided in this chapter such amounts shall be taken to be the amount of money or the actual value of the consideration, as fixed by the directors or otherwise, in accordance with law, as the case may be, for which such shares of stock shall have been issued. In any such case in which stock having a par value shall have been issued with stock without par value for a specified combined consideration, in determining the amount of the capital stock issued and represented by shares of stock without par value the then book value of such stock having a par value shall first be deducted from the amount of the money or actual value of the consideration determined as aforesaid, and the excess thereof, if any, shall be taken to be the amount of capital stock represented by the shares of stock without par value so issued. [C31, 35,§8419-c3; C39,§**8419.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§493.3]

493.4 Sale value. Subject to any limitations and restrictions set forth in the articles of incorporation, or amendment thereto, any such corporation may issue its authorized capital stock without par value for such consideration as may be prescribed in the articles of incorporation, or amendment thereto, or, if not prescribed, then for such consideration as may be fixed by resolution passed by the stockholders of such corporation at any annual meeting thereof, or at any special meeting thereof duly called for that purpose, or by the board of directors acting under authority of such stockholders given in like manner. In the absence of fraud in the transaction, the judgment of the board of directors in fixing and determining such sale value shall be conclusive as to the creditors and stockholders. Nothing in this chapter shall be so construed as to repeal the law as it now appears in sections 492.6, 492.7, and 492.8. [C31, 35,§8419-c4; C39,§**8419.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§493.4]

Referred to in §493.5

493.5 Liability of holder. Any and all shares without par value issued for the consideration as prescribed or fixed in section 493.4 shall be deemed fully paid and nonassessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto. [C31, 35,§8419-c5; C39,§**8419.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§493.5]

493.6 Status of stock. Except as to any preferences, rights, limitations, privileges and restrictions, lawfully granted or imposed with respect to any stock or class thereof, shares of stock without nominal or par value shall be deemed to be an aliquot part of the aggregate capital of the corporation issuing the same and equal to every other share of stock of the same class. [C31, 35,§8419-c6; C39,§**8419.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§493.6]

493.7 Certificates of stock. Each stock certificate issued for shares without nominal or par value shall have plainly written or printed upon its face the number of shares which it represents, and the number of such shares the corporation is authorized to issue, and no such certificate shall state any nominal or par value of such shares or express any rate of dividend to which it shall be entitled in terms of percentage of any par or other value. [C31, 35, §8419-c7; C39,§**8419.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§493.7]

493.8 Number of shares. The number of authorized shares of stock without par value may be increased or reduced in the manner and subject to the conditions provided by law for the increase or reduction of the capital stock of a similar corporation having shares with par value. All other statutory provisions relating to stock having a par value shall also apply to stock without par value, so far as the same may be legally, necessarily or practically applicable to, and not inconsistent with, the provisions of this chapter. [C31, 35, §8419-c8; C39,§**8419.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§493.8]

493.9 Change in stock. Any such corporation may, by appropriate amendments to its articles of incorporation, adopted by a two-third affirmative vote of each class of stock then issued and outstanding and affected by such amendment, change its stock (common or preferred) having a par value to an equal,

greater or less number of shares of stock having no par value, and, in connection therewith, may fix the amount of capital represented by such shares of stock without par value. [C31, 35,§8419-c9; C39,§8419.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§493.9]

493.10 Convertibility. The articles of incorporation, or any amendment thereto, of any such corporation may provide that shares of stock of any class shall be convertible into shares of stock of any other class upon such terms and conditions as may be therein stated. [C31, 35,§8419-c10; C39,§8419.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§493.10]

493.11 Incorporation fee—computation. For the purpose of computing the statutory fee for incorporating or for any other statutory provision based on the par value of shares of stock, but for no other purpose, each share of stock without par value shall be considered equivalent to a share having a nominal or par value of one hundred dollars. [C31, 35,§8419-c11; C39,§8419.11; C46, 50, 54, 58, 62, 66, 71, 73, 75,§493.11]

493.12 Applicability of statutes. Except as otherwise provided by this chapter, such corporations issuing shares without par value, under the provisions hereof, shall be and remain subject to the laws of this state, now or hereafter in force, relating to the formation, regulation, consolidation, or merger, rights, powers and privileges of corporations organized for pecuniary profit, and all other laws applicable thereto.

All acts or parts of acts providing for the incorporation, organization, administration and management of the affairs of corporations organized for pecuniary profit and having shares of stock with a par value are hereby made applicable to corporations having shares of stock without par value, except where the same are inconsistent with the provisions of this chapter. [C31, 35,§8419-c12; C39,§8419.12; C46, 50, 54, 58, 62, 66, 71, 73, 75,§493.12]

CHAPTER 493A

UNIFORM STOCK TRANSFER ACT

Repealed by 61GA, ch 413,§10102; see ch 554

CHAPTER 494

PERMITS TO FOREIGN CORPORATIONS

Referred to in §§86.36(6), 423.1, 423.22, 492.9, 496.4, 496A.142(2, 3, 4, 5, 9), 499.54, 504A.100(1)

494.1 Application for permit.
494.2 Details of application — secretary of state as process agent.
494.3 Secretary of state to determine values.
494.4 Fees.
494.5 Increase or decrease of capital—fees.
494.6 Exemption.
494.7 Issuance of permit—effect.
494.8 Foreign corporations—requalification.
494.9 Denial of right to sue.
494.10 Alphabetical records required.
494.11 Powers denied.
494.12 Violations by corporation.
494.13 Violations by officers.
494.14 Status of corporation and officers.

494.1 Application for permit. Any corporation for pecuniary profit organized under the laws of another state, or of any territory of the United States, or of any foreign country, which has transacted business in the state of Iowa since September 1, 1886, or desires hereafter to transact business in this state, and which has not a permit to do such business, shall file with the secretary of state a certified copy of its articles of incorporation, duly attested by the secretary of state or other state officer in whose office the original articles were filed, accompanied by a resolution of its board of directors or stockholders authorizing the filing thereof, and also authorizing service of process to be made upon any of its officers or agents in this state engaged in transacting its business, and requesting the issuance to such corporation of a permit to transact business in this state; said application to contain a stipulation that such permit shall be subject to the provisions of this chapter. The secretary of state may accept duly certified restated articles, substituted articles, and articles or certificates of merger, or similar instruments which purport to be a complete restatement of the corporate articles in lieu of the original articles and amendments which they purport to supersede, if satisfied that such instruments in fact contain a complete restatement to the date thereof of all articles and amendments. [C97,§1637; S13,§1637; C24, 27, 31, 35, 39,§8420; C46, 50, 54, 58, 62, 66, 71, 73, 75,§494.1]

Referred to in §§494.7, 495.1
40ExGA, ch 6,§6, editorially divided

494.2 Details of application — secretary of state as process agent. Said application shall also contain a statement subscribed and sworn

to by at least two of the prinicpal officers of the corporation, setting forth the following facts, to wit:

1. The total authorized capital of the corporation.

2. The total paid-up capital of the corporation.

3. The total value of all assets of the corporation, including money and property other than money represented by capital, surplus, undivided profits, bonds, promissory notes, certificates of indebtedness or other designation, whether carried as money on hand or in bank, real estate or personal property of any description.

4. The total value of money and all other property the corporation has in use or held as investment in the state, at the time the statement is made (if any).

5. The total value of money and all other property the corporation proposes or expects to make use of in the state, during the ensuing year.

6. Certified copy of the resolution of the board of directors of said corporation giving name and address in Iowa of a resident agent on whom the service of original notice of civil suit in the courts of this state may be served. Failing which, or in the event such agent may not be found within the state, service of such process may then be made upon said corporation through the secretary of state by sending the original and two copies thereof to him, and on the original of which he shall accept service on behalf of said corporation, retain one copy for his files and send the other by certified mail to the corporation at the address of its home office as shown by the records in his office, which service shall have the same force and effect as if lawfully made upon said corporation within the county where such civil suit could be maintained against it under the laws of this state. [S13,§1637; C24, 27, 31, 35, 39,§8421; C46, 50, 54, 58, 62, 66, 71, 73, 75,§494.2]

Referred to in §§491.111(2,b), 494.7, 495.1
Similar provisions, §§491.15, 511.27, 512.22, 515.73, 520.5, 534.53

494.3 Secretary of state to determine values. The secretary of state can make such independent and further investigation as to the property within this state owned by any such corporation as he may desire, and upon the true facts determine the value thereof, and fix the fee to be paid by such company. [S13, §1637; C24, 27, 31, 35, 39,§8422; C46, 50, 54, 58, 62, 66, 71, 73, 75,§494.3]

Referred to in §§494.7, 495.1

494.4 Fees. Before a permit is issued authorizing such corporation to transact business in the state, said corporation shall file with the secretary of state a certified copy of the articles, with resolution and statement as previously set forth, and pay a filing fee of twenty-five dollars upon ten thousand dollars or less of money and property of such company actually within the state, and of one dollar for each one thousand dollars of such money or property within this state in excess of ten thousand dollars if said corporation has existence for a period of years. If the corporation has perpetual existence under its articles or charter it shall make the filings as hereinbefore provided for and shall pay a filing fee of one hundred dollars and a further fee of one dollar and ten cents for each one thousand dollars of such money or property within this state in excess of ten thousand dollars, and thereafter shall periodically pay the said fee as follows: In the case of a corporation for the construction and operation, or the operation alone, of steam railways, interurban railways, and street railways, every fifty years from the date of qualification and in the case of all other corporations, every twenty years from the date of qualification, and upon the failure to make such payments within three months from the date same are due, the secretary of state shall cancel the permit of said corporation. The fees required by this section to be paid shall not be collected from a corporation organized for the purpose of carrying into effect a plan of reorganization approved in bankruptcy proceedings under the laws of the United States or in a general equity receivership in a court of competent jurisdiction, until the period of time for which a permit to transact business within this state has previously been issued to the corporation so reorganized has elapsed. [C97,§1637; S13, §1637; C24, 27, 31, 35, 39,§8423; C46, 50, 54, 58, 62, 66, 71, 73, 75,§494.4]

Referred to in §§494.6, 494.7, 494.8, 495.1, 496A.129(2,a,d), 499.54

494.5 Increase or decrease of capital—fees. If from time to time the amount of money or other property in use in the state by said foreign corporation is increased, said corporation shall at the time of said increase, or at the time of making annual report to the secretary of state, in July of each year, file with the secretary of state a sworn statement showing the amount of such increase, and shall pay a filing fee thereon of one dollar for each one thousand dollars or fraction thereof of such increase if such corporation has duration in its home state for a period of years; if said corporation has a perpetual duration in its home state, said filing fee thereon shall be one dollar and ten cents for each one thousand dollars or fraction thereof of such increase. The secretary of state shall upon request furnish a blank upon which to make report of such increase of capital in use within the state.

If said foreign corporation amends its articles of incorporation or files with the corporation official in the state of its incorporation any certificate of increase or decrease in its capital stock, or any instrument which affects its articles of incorporation, said corporation shall file with the secretary of state a copy of said amendment, certificate, or other instrument, certified by the official of the state of incorporation with whom it is filed.

The fee for filing such copies shall be one dollar for each instrument separately certified by the official of the state of incorporation. The secretary of state shall issue to said corporation a certificate for each such instrument, stating that said instrument has been filed with him. [C97,§1637; S13,§1637; C24, 27, 31, 35, 39, §8424; C46, 50, 54, 58, 62, 66, 71, 73, 75,§494.5]

Referred to in §§494.6, 494.7, 495.1, 496A.129(2,c,d), 499.54

494.6 Exemption. Any corporation transacting business in this state prior to September 1, 1886, shall be exempt from the payment of the fees required under the provisions of sections 494.4 and 494.5. [C97,§1637; S13,§1637; C24, 27, 31, 35, 39,§8425; C46, 50, 54, 58, 62, 66, 71, 73, 75,§494.6]

Referred to in §495.1

494.7 Issuance of permit—effect. Upon complying with the provisions of sections 494.1 to 494.5 the secretary of state shall issue to such corporation a permit in such form as he may prescribe, for the transaction of the business of such corporation within the state which permit shall authorize the transaction of business in the state from the date thereof for the period that is permitted by the provisions of section 491.24 unless by the terms of its articles or charter its corporate life expires prior thereto, in which case the permit shall expire with the life of the corporation. [C97,§1637; S13,§1637; C24, 27, 31, 35, 39,§8426; C46, 50, 54, 58, 62, 66, 71, 73, 75,§494.7]

Referred to in §495.1

494.8 Foreign corporations—requalification. A foreign corporation which has a permit under this chapter may requalify or renew its permit hereunder by fully completing the proceedings therefor at any time within three months before or after the date upon which its permit expires by filing a list duly attested to by the secretary of state of the home state of the corporate documents filed therein together with the dates of said filing accompanied by a resolution of its board of directors or stockholders authorizing the filing thereof and by paying fees as set forth in section 494.4. The renewal papers shall include a duly certified copy of any corporate document on file in the home state as indicated by the above list which is not already on file in the office of the secretary of state. The permit of a foreign corporation shall not be canceled by the secretary of state for failure to renew or requalify until three months after the expiration date of its permit and no penalty or forfeiture under the provisions of sections 494.12 and 494.13 shall be effected or collected for any business transacted by the corporation, its agents, officers, or employees, during the three-month period following the expiration date of its permit. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§494.8]

Referred to in §§495.1, 496A.129[(2,b,d), (3,a)]

494.9 Denial of right to sue. No foreign stock corporation doing business in this state shall maintain any action in this state upon any contract made by it in this state unless prior to the making of such contract it shall have procured such permit. This prohibition shall also apply to any assignee of such foreign stock corporation and to any person claiming under such assignee of such foreign corporation or under either of them. [C24, 27, 31, 35, 39,§8427; C46, 50, 54, 58, 62, 66, 71, 73, 75,§494.9]

Referred to in §495.1

494.10 Alphabetical records required. The secretary of state shall number consecutively all such certified copies heretofore and hereafter filed in his office and shall maintain a card index thereof alphabetically arranged and shall preserve the same and the originals of said certified copies as permanent records of his office. [C24, 27, 31, 35, 39,§8428; C46, 50, 54, 58, 62, 66, 71, 73, 75,§494.10]

Referred to in §495.1

494.11 Powers denied. No foreign corporation which has not in good faith complied with the provisions of this chapter and taken out a permit shall possess the right to exercise the power of eminent domain, or exercise any of the rights and privileges conferred upon corporations, until it has so complied herewith and taken out such permit. [C97,§1638; C24, 27, 31, 35, 39,§8429; C46, 50, 54, 58, 62, 66, 71, 73, 75,§494.11]

494.12 Violations by corporation. Any foreign corporation that shall carry on its business in violation of the provisions of this chapter in the state of Iowa, by its officers, agents, or otherwise, without having complied with the preceding sections of this chapter and taken out and having a valid permit, shall forfeit and pay to the state, for each and every day in which such business is transacted and carried on, the sum of one hundred dollars, to be recovered by suit in any court having jurisdiction. [C97,§1639; C24, 27, 31, 35, 39,§8430; C46, 50, 54, 58, 62, 66, 71, 73, 75,§494.12]

C97,§1639, editorially divided
Referred to in §§494.8, 495.5

494.13 Violations by officers. Any agent, officer, or employee who shall knowingly act or transact such business for such corporation, when it has no valid permit as provided herein, shall be guilty of a misdemeanor, and for such offense shall be fined not to exceed one hundred dollars, or be imprisoned in the county jail not to exceed thirty days, or be punished by both such fine and imprisonment, and pay all costs of prosecution. [C97,§1639; C24, 27, 31, 35, 39,§8431; C46, 50, 54, 58, 62, 66, 71, 73, 75,§494.13]

Referred to in §§494.8, 495.5

494.14 Status of corporation and officers. Nothing contained in this chapter shall relieve any person, company, corporation, association, or partnership from the performance of any duty or obligation now enjoined upon or required of it, or from the payment of any pen-

alty or liability created by the statutes heretofore in force, and all foreign corporations, and the officers and agents thereof, doing business in this state shall be subject to all the liabilities, restrictions and duties that are or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers. [C97,§1639; C24, 27, 31, 35, 39,§**8432**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§494.14]

Referred to in §495.5

CHAPTER 495

FOREIGN PUBLIC UTILITY CORPORATIONS

Referred to in §§496A.142(2-5, 9), 504A.100(1)

495.1 Capital stock and permit.
495.2 Holding companies.
495.3 Annual report—fee.
495.4 Sale of capital stock.
495.5 Violations—stock void.
495.6 Dissolution—receiver.

495.1 Capital stock and permit. Sections 492.5 to 492.9 and 494.1 to 494.10 are hereby made applicable to any foreign corporation which directly or indirectly owns, uses, operates, controls, or is concerned in the operation of any public gasworks, electric light plant, heating plant, waterworks, interurban or street railway located within the state, or the carrying on of any gas, electric light, electric power, heating business, waterworks, interurban or street railway business within the state, or that owns or controls, directly or indirectly, any of the capital stock of any corporation which owns, uses, operates or is concerned in the operation of any public gasworks, electric light plant, electric power plant, heating plant, waterworks, interurban or street railway located within the state, or any foreign corporation that exercises any control in any way or in any manner over any of said works, plants, interurban or street railways or the business carried on by said works, plants, interurban or street railways by or through the ownership of the capital stock of any corporation or corporations or in any other manner whatsoever, and the ownership, operation, or control of any such works, plants, interurban or street railways or the business carried on by any of such works or plants or the ownership or control of the capital stock in any corporation owning or operating any of such works, plants, interurban or street railways by any foreign corporation in violation of the provisions of this chapter is hereby declared to be unlawful. [S13,§1641-l; C24, 27, 31, 35, 39,§**8433**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §495.1]

495.2 Holding companies. The provisions of this chapter are hereby made applicable to all corporations, including so-called "holding companies" which by or through the ownership of the capital stock in any other corporation or corporations or a series of corporations owning or controlling the capital stock of each other can or may exercise control over the capital stock of any corporation which owns, uses, operates, or is concerned in the operation of any public gasworks, electric light plant, electric power plant, heating plant, waterworks, interurban or street railway located in the state, or the business carried on by such works or plants. [S13,§1641-m; C24, 27, 31, 35, 39,§**8434**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§495.2]

495.3 Annual report—fee. All corporations subject to the provisions of this chapter are hereby required to pay the annual fee and to make the annual report in the form and manner and at the time as specified in chapter 496. [S13,§1641-n; C24, 27, 31, 35, 39,§**8435**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§495.3]

495.4 Sale of capital stock. The provisions of this chapter are hereby made applicable to the sale of its own capital stock by any corporation subject to the provisions of this chapter, whether said capital stock has been heretofore issued by said corporation or not, including the sale of so-called "treasury stock" or stock of the corporation in the hands of a trustee or where the corporation participates in any way or manner in the benefits of said sales, and also to the sale of any of the obligations of any corporation subject to the provisions of this chapter, the payment of which is secured by the deposit or pledge of any of the capital stock of said corporation. [S13, §1641-o; C24, 27, 31, 35, 39,§**8436**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§495.4]

495.5 Violations—stock void. Shares of capital stock of any corporation owned or controlled in violation of the provisions of this chapter shall be void and the holder thereof shall not be entitled to exercise the powers of a shareholder of said corporation or permitted to participate in or be entitled to any of the benefits accruing to shareholders of said corporation, and sections 494.12 to 494.14 are hereby made applicable to violations of the provisions of this chapter; and courts and juries shall construe this chapter so as to prevent evasion and to accomplish the intents and purposes thereof. [S13,§1641-p; C24, 27, 31, 35, 39,§**8437**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§495.5]

495.6 Dissolution—receiver. Courts of equity shall have full power to dissolve, close up, or dispose of any business or property owned, operated, or controlled in violation of the provisions of this chapter; to dissolve any corporation owning or controlling the capital stock of any other corporation in violation of the provisions of this chapter and to close up or dispose of the business or property of said corporation; and if the court finds that, in order to carry out the purposes of this chapter, it is necessary so to do, it may dissolve the corporation issuing the stock which is owned in violation of the provisions of this chapter, close up the business of said corporation and dispose of its property, and the court may also appoint a receiver who shall be a resident of Iowa for any business or for any corporation which has violated the provisions thereof or of the corporation issuing the stock which is held in violation thereof. Any action to enforce the provisions of this chapter may be instituted by the attorney general in the name of the state of Iowa or by a citizen in the name of the state of Iowa at his own proper cost and expense, reserving, however, to the stockholders owning capital stock not held in violation of this chapter all rights possessed by them. [S13,§1641-q; C24, 27, 31, 35, 39,§8438; C46, 50, 54, 58, 62, 66, 71, 73, 75,§495.6]

CHAPTER 496

ANNUAL REPORTS OF CORPORATIONS

Referred to in §§495.3, 496A.142(9)

496.1 Time of report—requirements.
496.2 Signature.
496.3 Exemption.
496.4 Annual fee.
496.5 Schedule of penalties.
496.6 Collection.
496.7 Dissolution—effect.
496.8 Forfeiture of right to do business.
496.9 Notice of delinquency—recommendation of attorney general.
496.10 Notice of recommendations.
496.11 Service of notice.
496.12 Forfeiture of right to do business.
496.13 Compromise.
496.14 Effect of forfeiture.
496.15 Corporate rights canceled.
496.16 Lien.
496.17 Annual notice of requirements.
496.18 Service of notice.
496.19 Corporations exempted.

496.1 Time of report—requirements. Any corporation, organized under the laws of this state or under the laws of any other state, territory, or any foreign country, which has complied with the laws of this state relating to the organization of corporations and secured a certificate of incorporation or permit to transact business in this state, and any corporation that may hereafter organize and become incorporated under the laws of this state, and shall secure a certificate of incorporation or permit to transact business in this state, and any foreign corporation that may hereafter comply with the laws of this state relating to foreign corporations and secure a permit to transact business within this state, shall, between the first day of July and the first day of August of each year, make an annual report to the secretary of state, said report to be in such form as he may prescribe, upon a blank to be prepared by him for that purpose, and such report shall contain the following information:

1. Name and post-office address of the corporation.

2. The amount of capital stock authorized.

3. The amount of capital stock actually issued and outstanding.

4. Par value of such stock, designating whether preferred or common stock, and the amount of each kind.

5. The names and post-office addresses of its officers and directors and whether any change of place of business has been made during the year previous to making said report. [S13, §1614-c; C24, 27, 31, 35, 39,§8439; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.1]

Referred to in §§496.2, 496.5

496.2 Signature. The report required by section 496.1 shall be signed by an officer of the corporation and when filed with the secretary of state shall be accompanied by the fee required in section 496.4. [S13,§1614-d; C24, 27, 31, 35, 39,§8440; C46, 50, 54, 58, 62, 66, 71, 73, 75, §496.2]

S13,§1614-d, editorially divided

496.3 Exemption. Any corporation organized under the laws of this state, and any foreign corporation filing a certified copy of its articles of incorporation after the first day of April of any year, shall be exempt from the provisions of this chapter, for the period ending one year from the first day of July following, after which it shall be subject to all the provisions of this chapter. [S13,§1614-d; C24, 27, 31, 35, 39,§8441; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.3]

496.4 Annual fee. Every corporation whose corporate period has not expired, which has heretofore obtained, or may hereafter obtain, a certificate of incorporation or permit under

the provisions of chapters 491 or 494, to transact business in this state as a corporation, whether the same be a domestic or a foreign corporation, shall pay to the secretary of state an annual fee in the sum of one dollar. [S13, §1614-e; C24, 27, 31, 35, 39,§8442; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.4]

Referred to in §496.2

496.5 Schedule of penalties. Any corporation organized under the laws of this state, and any foreign corporation authorized to do business in this state, which shall fail to make the report and pay the annual fee provided for in this chapter, and within the time required in section 496.1, shall, in addition to the annual fee of one dollar required, incur the following penalties beginning with the month of September and dating from the first day thereof, to wit: For the month of September the sum of one dollar, for the month of October the sum of two dollars, for the month of November the sum of three dollars, for the month of December the sum of four dollars, and for each month thereafter the sum of five dollars. [S13,§1614-f; C24, 27, 31, 35, 39,§8443; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.5]

Referred to in §496.9
S13,§1614-f, editorially divided

496.6 Collection. If on the first day of January following, such corporation shall not have filed the annual report and paid the annual fee, together with all monthly penalties due at the time of filing said report and paying said fee, the secretary of state shall furnish to the attorney general a list of delinquent domestic corporations and he may direct the county attorney of the county in which the corporation has its principal place of business to bring suit for the collection of the fee and penalties then due, or may bring such action himself. [S13,§1614-f; C24, 27, 31, 35, 39,§8444; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.6]

496.7 Dissolution—effect. Any domestic corporation may, prior to the first day of February of any subsequent year, escape the payment of fee and penalty by dissolving the corporation in the manner provided by section 491.23 and filing with the secretary of state a proof of publication of notice of dissolution. [S13,§1614-f; C24, 27, 31, 35, 39,§8445; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.7]

496.8 Forfeiture of right to do business. Any foreign corporation that shall fail to make the annual report and pay the annual fee and penalties that may be due shall thereby forfeit its right to do business within this state. [S13, §1614-f; C24, 27, 31, 35, 39,§8446; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.8]

496.9 Notice of delinquency — recommendation of attorney general. During the month of August of each year the secretary of state shall prepare a list of all delinquent corporations and file the same in his office, and on or before the first day of September he shall send by certified mail to each delinquent a notice of such delinquency and of the penalties provided in section 496.5 and if the annual report required is not filed and the annual fee paid, together with penalties due, on or before the last day of January, on the first day of February following, notice of such delinquency will be filed with the attorney general, who may cause action to be brought for the collection of the fee and penalties due the state; or, at his discretion, the attorney general may recommend that the secretary of state cancel the name of any delinquent corporation from the list of live corporations in his office, and enter such cancellation on the proper records, and when so canceled by the secretary of state the corporate rights of any such corporation shall be forfeited and its corporate period terminated on the date such cancellation shall have been entered on the records of his office. [S13,§1614-g; C24, 27, 31, 35, 39,§8447; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.9]

Referred to in §§496.10, 496.15
38GA, ch 205,§2, editorially divided

496.10 Notice of recommendations. The secretary of state shall forward to such corporation, a written notice of the recommendations of the attorney general, such notice to state that unless said corporation shall within sixty days of the date of such notice fully comply with the provisions of section 496.9 by filing in the office of the secretary of state any report that may be due and pay all fees and penalties that have accrued, or, in lieu thereof file a proof of publication of notice of dissolution as required by section 491.23, a declaration of forfeiture and cancellation will be entered on the records of his office. [C24, 27, 31, 35, 39,§8448; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.10]

Referred to in §496.11

496.11 Service of notice. The notice herein provided for, when enclosed in a sealed envelope with legal postage affixed thereon, and addressed to the corporation, shall constitute a legal notice for the purpose of section 496.10. [C24, 27, 31, 35, 39,§8449; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.11]

496.12 Forfeiture of right to do business. After such declaration and forfeiture shall have been entered by the secretary of state on the records of his office such corporation shall not be entitled to exercise the rights of a corporate body, except, it may be allowed a reasonable time to close up its business and wind up its affairs, but no new business shall be transacted. [C24, 27, 31, 35, 39,§8450; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.12]

496.13 Compromise. Any corporation whose corporate rights shall have been canceled and forfeited in the manner provided herein, or any stockholders or creditor of such corporation may, however, make an application to the secretary of state for a compromise of the claim of the state for the fee and penalties that may have accrued under the provisions of this chapter, and upon payment to the secretary of state the fee or fees that may have accrued,

and such amount in addition thereto as penalties as may be fixed by the secretary of state, and also, upon filing such annual reports as may be delinquent, the secretary of state shall reinstate said corporation and the decree of cancellation and forfeiture previously entered shall be annulled and the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period, as fixed by its articles of incorporation and the limitations prescribed by law. [C24, 27, 31, 35, 39,§8451; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.13]

496.14 Effect of forfeiture. No corporation shall be permitted to waive any duty or obligation required of corporations or the payment of any just claim or claims by reason of such cancellation, forfeiture, and reinstatement as herein provided. [C24, 27, 31, 35, 39,§8452; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.14]

496.15 Corporate rights canceled. On the first day of February following the date of the notice provided for in section 496.9, all foreign corporations that have not complied with the provisions of this chapter shall forfeit the right to transact business in this state and a declaration of forfeiture and cancellation shall be entered upon the margin of the record of the certified copy of the articles of incorporation of such company in the office of the secretary of state or in such other record as the secretary of state may provide. [S13,§1614-h; C24, 27, 31, 35, 39,§8453; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.15]

496.16 Lien. The fees and penalty provided for in this chapter shall be a prior lien on any property of the corporation against all persons, whether said property is in the possession of said corporation or otherwise. [C24, 27, 31, 35, 39,§8454; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.16]

496.17 Annual notice of requirements. It shall be the duty of the secretary of state between the first day of May and the first day of July of each year to notify all corporations whose corporate period has not expired, or that have not dissolved according to law, that are subject to the provisions of this chapter, of the requirements herein made, enclosing therewith a blank form of report and application as provided. [S13,§1614-k; C24, 27, 31, 35, 39,§8455; C46, 50, 54, 58, 62, 66, 71, 73, 75, §496.17]

S13,§1614-k, editorially divided

496.18 Service of notice. The mailing of said notice at Des Moines, Iowa, addressed to the corporation at its post-office address as shown by the records of his office shall be deemed a full, complete, and legal notice for the purpose of this chapter. [S13,§1614-k; C24, 27, 31, 35, 39,§8456; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.18]

496.19 Corporations exempted. Nothing in this chapter shall be construed as imposing an annual fee or requiring a report from any corporation organized for religious, educational, scientific, or charitable purposes or other corporations not organized for pecuniary profit, or from any corporation engaged in the banking and trust business, nor from insurance companies or associations who have paid or have been exempted from the taxes provided in sections 432.1 to 432.4 and received a certificate of authority from the commissioner of insurance. [S13,§1614-i; SS15,§1920-u4; C24, 27, 31, 35, 39,§8458; C46, 50, 54, 58, 62, 66, 71, 73, 75,§496.19]

CHAPTER 496A

BUSINESS CORPORATIONS

Referred to in §§86.36, 172C.1, 491.1, 496C.2, 504A.100(1), 524.1309, 524.1902

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496A.1 Short title. This chapter shall be known and may be cited as the "Iowa Business Corporation Act". [C62, 66, 71, 73, 75, §496A.1]

496A.2 Definitions. As used in this chapter, unless the context otherwise requires, the term:

1. *"Person"* means an individual, a corporation (domestic or foreign), a partnership, an association, a trust or a fiduciary.

2. *"Corporation"* or *"domestic corporation"* means a corporation for profit subject to the provisions of this chapter, except a foreign corporation.

3. *"Foreign corporation"* means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this chapter.

4. *"Articles of incorporation"* means the original or restated articles of incorporation and all amendments thereto and includes articles of merger.

5. *"Shares"* means the units into which the proprietary interests in a corporation are divided.

6. *"Subscriber"* means one who subscribes for shares in a corporation, whether before or after incorporation.

7. *"Shareholder"* means one who is a holder of record of shares in a corporation.

8. *"Authorized shares"* means the shares of all classes which the corporation is authorized to issue.

9. *"Treasury shares"* means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares, but not "outstanding" shares.

10. *"Net assets"* means the amount by which the total assets of a corporation, excluding treasury shares, exceed the total debts of the corporation.

11. *"Stated capital"* means, at any particular time, the sum of (*a*) the par value of all shares of the corporation having a par value that have been issued, (*b*) the amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to surplus in a manner permitted by law, and (*c*) such amounts not included in clauses (*a*) and (*b*) of this subsection as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purposes of computing fees and other charges now or hereafter imposed by this chapter.

12. *"Surplus"* means the excess of the net assets of a corporation over its stated capital.

13. *"Insolvent"* means inability of a corporation to pay its debts as they become due in the usual course of its business.

14. *"Nonadmitted organization"* means any corporation, bank, trust company, mutual savings bank, savings and loan association, national banking association or insurance company which is organized under the laws of another state and which is not entitled under this chapter to procure a certificate of authority to transact business in this state. [C62, 66, 71, 73, 75,§496A.2; 66GA, ch 1207,§1]

Referred to in §496A.142(1)

496A.3 Purposes. Subject to the provisions of section 496A.142, subsection 1, corporations

may be organized under this chapter for any lawful purpose or purposes. [C62, 66, 71, 73, 75,§496A.3]

496A.4 General powers. Each corporation, unless otherwise stated in its articles of incorporation, shall have power:

1. To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

2. To sue and be sued, complain and defend, in its corporate name.

3. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

4. To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

5. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

6. To lend money and use its credit to assist its employees. A corporation shall not lend money to or use its credit to assist its directors without authorization in the particular case by its shareholders, but may lend money to and use its credit to assist any employee of the corporation or of a subsidiary including any such employee who is a director of the corporation, if the board of directors decides that such loan or assistance may benefit the corporation.

7. To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

8. To make contracts and guaranties and incur liabilities, borrow money at such lawful rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income, and to guarantee the obligations of other persons.

9. To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

10. To conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter within or without this state.

11. To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

12. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

13. To make donations for the public welfare, or for religious, charitable, scientific or educational purposes.

14. To transact any lawful business which the board of directors shall find will be in aid of governmental authority.

15. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock-bonus plans, stock-option plans and other incentive, insurance and welfare plans for any or all of its directors, officers and employees.

16. To cease its corporate activities and surrender its corporate franchise.

17. To have and exercise all powers necessary or convenient to effect its purposes.

18. To enter into general partnerships, limited partnerships, whether the corporation be a limited or general partner, joint ventures, syndicates, pools, associations and other arrangements for carrying on of any or all of the purposes for which the corporation is organized, jointly or in common with others.

19. To make indemnification to the following extent and under the following circumstances:

a. To indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

b. To indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the corporation

to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or another enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

c. To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in paragraphs "*a*" and "*b*", or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

d. Any indemnification under paragraphs "*a*" and "*b*" (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that the indemnification of the director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs "*a*" and "*b*". Such determination shall be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the shareholders.

e. Expenses, including attorney fees, incurred in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of such action, suit, or proceeding as authorized in the manner provided in paragraph "*d*" upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

f. The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

g. A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section. [C62, 66, 71, 73, 75,§496A.4]

Referred to in §§491.3(8), 491.16, 524.801, 534.8

496A.5 Right of corporation to acquire and dispose of its own shares. A corporation shall have the right to purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of surplus.

Notwithstanding the foregoing limitation, a corporation may purchase or otherwise acquire its own shares for the purpose of:

1. Eliminating fractional shares.

2. Collecting or compromising indebtedness to the corporation.

3. Paying dissenting shareholders entitled to payment for their shares under the provisions of this chapter.

4. Effecting, subject to the other provisions of this chapter, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.

No purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when such purchase or payment would make it insolvent. [C62, 66, 71, 73, 75,§496A.5]

496A.6 Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

1. In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if it deems the same to be equitable, set aside and enjoin

the performance of such contract, without prejudice to the rights of persons not parties to the proceeding, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

2. In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

3. In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business. [C62, 66, 71, 73, 75,§496A.6]

496A.7 Corporate name. The corporate name:

1. Shall contain the word "corporation", "company", "incorporated" or "limited" or shall contain an abbreviation of one of such words.

2. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

3. Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, or an assumed name which has been adopted by a domestic or a foreign corporation for use in this state in the manner provided by this chapter except that this provision shall not apply if the applicant files with the secretary of state either of the following:

a. The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from the other name.

b. A certified copy of final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state. A corporation with which another domestic or foreign corporation is merged, or which is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease or other disposition to or exchange with a domestic corporation of all or substantially all the assets of another domestic or foreign corporation, including its name or assumed name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of or is authorized to transact business in this state.

4. Shall be the name under which the corporation shall transact business in this state unless the corporation also shall elect to adopt one or more assumed names as provided in this chapter.

5. A corporation may elect to adopt an assumed name that is not the same as or deceptively similar to the corporate name of any other domestic corporation existing under the laws of this state or of any foreign corporation authorized to transact business in this state, or the same as or deceptively similar to any name registered or reserved under the provisions of this chapter.

Such election shall be made by filing with the secretary of state an application executed by an officer of the corporation, setting forth such assumed name and paying to the secretary of state a filing fee of twenty dollars.

If such assumed name complies with the provisions of this chapter the secretary of state shall issue a certificate authorizing the use of said name, but such certificate shall not confer any right to the use of said name as against any person having any prior right to the use thereof.

At the time annual license fees are payable under this chapter, a corporation which has elected to adopt an assumed name shall pay to the secretary of state an annual fee of five dollars for such assumed name. However, if the assumed name was filed and became effective in December of any year, the first annual fee of five dollars shall be paid at the time of filing of the annual report in the second year following such December.

If the corporation fails to pay the annual fee when due and payable, the secretary of state shall give notice to the corporation of such nonpayment by registered or certified mail; and if such fee together with a penalty of five dollars is not paid within sixty days after such notice is mailed, the right to use such assumed name shall cease.

A separate application and annual fee shall be filed and paid for each assumed name adopted by the corporation. [C62, 66, 71, 73, 75,§496A.7]

496A.8 Reserved name. The exclusive right to the use of a corporate name may be reserved by:

1. Any person intending to organize a corporation under this chapter.

2. Any domestic corporation intending to change its name.

3. Any foreign corporation intending to make application for a certificate of authority to transact business in this state.

4. Any foreign corporation authorized to transact business in this state and intending to change its name.

5. Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of ninety days.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee. [C62, 66, 71, 73, 75,§496A.8]

496A.9 Registered name. Any corporation organized and existing under the laws of any state or territory of the United States or the District of Columbia may register its corporate name under this chapter, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered under this chapter.

Such registration shall be made by:

1. Filing with the secretary of state (*a*) an application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged, and (*b*) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations, and

2. Paying to the secretary of state a registration fee in the amount of two dollars for each month, or fraction thereof, between the date of filing such application and December 31 of the calendar year in which such application is filed.

Such registration shall be effective until the close of the calendar year in which the application for registration is filed. [C62, 66, 71, 73, 75,§496A.9]

496A.10 Renewal of registered name. A corporation which has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of twenty dollars. A renewal application may be filed between the first day of October and the thirty-first day of December in each year, and shall extend the registration for the following calendar year. [C62, 66, 71, 73, 75,§496A.10]

496A.11 Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

1. A registered office which may be, but need not be, the same as its place of business.

2. A registered agent or agents who may be either an individual or individuals resident in this state, the business office of whom shall be identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

In addition to all other statutory provisions relating to venue, an action may be brought against any corporation in the county where its registered office is maintained or, if a corporation fails to maintain a registered office in this state, then in any county within the state. [C62, 66, 71, 73, 75,§496A.11]

496A.12 Change of registered office or registered agent. A corporation may change its registered office or change its registered agent or agents, or both office and agent or agents upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.

2. The address of its then registered office.

3. If the address of its registered office be changed, the address to which the registered office is to be changed.

4. The name of its then registered agent or agents.

5. If its registered agent or agents be changed, the name of its successor registered agent or agents.

6. That the address of its registered office and the address of the business office of its registered agent or agents, as changed, will be identical.

7. That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by its president or a vice-president, and verified by him. If the registered office is changed from one county to another, such statement shall be executed in duplicate. Such statement shall be delivered to the secretary of state for filing and recording in his office, and the statement shall be filed and recorded in the office of the county recorder; and if the registered office is changed from one county to another, the same shall be filed and recorded in the office of the recorder of the county in which the registered office was located prior to the filing of such statement in the office of the secretary of state, and in the office of the recorder of the county to which the registered office is changed.

If the registered office is changed from one county to another, the corporation shall also cause to be filed and recorded forthwith in the office of the recorder of the county to which such registered office is changed, its original articles of incorporation and all amendments thereto, or copies thereof certified by the secretary of state, or its restated articles and all amendments thereto, or copies thereof certified by the secretary of state.

The change of address of registered office or the change of registered agent or agents or both registered office and agent or agents, as the case may be, shall become effective upon the filing of such statement by the secretary of state, but until such statement is recorded in the office of the recorder as above prescribed, service of process, notice or demand required or permitted by law to be served upon the corporation may be served upon the person who was its registered agent at its registered office prior to the filing of such statement with the same force and effect as if no change in registered office or registered agent had been made.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall record one copy and forthwith mail the other copy thereof to the corporation at its registered office. The copy recorded by the secretary of state shall be sent by him to the county recorder of the county in which the registered office is located for recording in his office. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporation of which he or it is a registered agent by filing a statement as required above for each corporation, or a single statement for all corporations named therein, except that it need be signed only by the registered agent or agents and need not be responsive to subsections 5 and 7 of this section, and must recite that a copy of the statement has been mailed to each such corporation. [C62, 66, 71, 73, 75, §496A.12]

496A.13 Service of process on corporation. The registered agent so appointed by a corporation, or if more than one registered agent has been appointed by the corporation then any one of such agents, shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, his deputy, or with any person having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office. No corporation served in accordance with the procedure provided for by this paragraph shall be in default until thirty days have elapsed following such service on the secretary of state.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [C62, 66, 71, 73, 75,§496A.13]

496A.14 Authorized shares. Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of, or provide special voting rights for, the shares of any class to the extent not inconsistent with the provisions of this chapter.

Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

1. Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

2. Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends.

3. Having preference over any other class or classes of shares as to the payment of dividends.

4. Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

5. Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value

is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted or the amount of any such deficiency is transferred from surplus to stated capital. [C62, 66, 71, 73, 75,§496A.14]

496A.15 Issuance of shares of preferred or special classes in series.

1. If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

a. The rate of dividend.

b. The price at and the terms and conditions on which shares may be redeemed.

c. The amount payable upon shares in event of involuntary liquidation.

d. The amount payable upon shares in event of voluntary liquidation.

e. Sinking fund provisions for the redemption or purchase of shares.

f. The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion.

g. Voting rights, if any.

2. If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the secretary of state a statement setting forth:

a. The name of the corporation.

b. A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof.

c. The date of adoption of such resolution.

d. That such resolution was duly adopted by the board of directors.

Such statement shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and acknowledged by one of the officers signing such statement, and shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder.

Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation. [C62, 66, 71, 73, 75,§496A.15]

496A.16 Subscriptions for shares. A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. [C62, 66, 71, 73, 75,§496A.16]

496A.17 Consideration for shares. Shares having a par value may be issued for such consideration expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

Shares without par value may be issued for such consideration expressed in dollars as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares, by a vote of the holders of a majority of all shares entitled to vote thereon.

Treasury shares may be disposed of by the corporation for such consideration expressed in dollars as may be fixed from time to time by the board of directors.

That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

In the event of the issuance of shares upon the conversion or exchange of indebtedness or shares, the consideration for the shares so issued shall be (1) the principal sum of, and

accrued interest on, the indebtedness so exchanged or converted, or the stated capital then represented by the shares so exchanged or converted, (2) that part of the surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted, and (3) any additional consideration paid to the corporation upon the issuance of shares for the indebtedness or shares so exchanged or converted. [C62, 66, 71, 73, 75, §496A.17]

496A.18 Payment for shares. The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and nonassessable.

Neither promissory notes of the subscriber nor future services shall constitute payment or part payment, for shares of a corporation.

In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive. [C62, 66, 71, 73, 75, §496A.18]

496A.19 Stock rights and options. Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option. If such rights or options are to be issued to the directors, officers or employees, as such, of the corporation, or of any subsidiary thereof, their issuance shall be approved by a majority of the outstanding shares entitled to vote thereon, at a duly constituted meeting or authorized by, and consistent with, a plan approved by such a vote of shareholders and, in every instance, such approval or plan shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. The price or prices to be received for any shares having a par value shall not be less than the par value thereof. The provisions of this section shall not limit the right of the corporation to grant rights and options with respect to treasury shares. [C62, 66, 71, 73, 75,§496A.19]

496A.20 Determination of amount of stated capital. In case of the issuance by a corporation of shares having a par value, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute surplus.

In case of the issuance by a corporation of shares without par value, the entire consideration received therefor shall constitute stated capital unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. Within a period of sixty days after the issuance of any shares without par value, the board of directors may allocate to surplus any portion of the consideration received for the issuance of such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation in the event of involuntary liquidation except the amount, if any, of such consideration in excess of such preference.

The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares. [C62, 66, 71, 73, 75,§496A.20]

496A.21 Expenses of organization, reorganization and financing. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid and nonassessable. [C62, 66, 71, 73, 75,§496A.21]

496A.22 Certificates representing shares. The shares of a corporation shall be represented by certificates signed by such officers, employees or agents as are authorized by the articles of incorporation or bylaws to sign. If no contrary provision is made in the articles or bylaws, such certificates shall be signed by the president or a vice-president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice-president and the secretary or assistant secretary or other persons signing for the corporation upon a certificate may be facsimiles. If the certificate is countersigned by a transfer agent, or registered by a registrar, the signatures of the persons signing for such transfer agent or registrar also may be facsimiles. In case any officer or other authorized person who has signed or whose facsimile signature has been placed upon such certificate for the corporation shall have ceased to be such officer or

employee or agent before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer or employee or agent at the date of its issue.

Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

Each certificate representing shares shall state upon the face thereof:

1. That the corporation is organized under the laws of this state.

2. The name of the person to whom issued.

3. The number and class of shares, and the designation of the series, if any, which such certificate represents.

4. The par value of each share represented by such certificate, or a statement that the shares are without par value.

No certificate shall be issued for any share until such share is fully paid. [C62, 66, 71, 73, 75,§496A.22]

496A.23 Issuance of fractional shares or scrip. A corporation may, (1) issue fractions of a share, (2) arrange for the disposition of fractional interests by those entitled thereto, (3) pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or (4) issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip, or subject to any other conditions which the board of directors may deem advisable. [C62, 66, 71, 73, 75,§496A.23]

496A.24 Liability of subscribers and shareholders. A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable.

No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder. [C62, 66, 71, 73, 75,§496A.24]

496A.25 Shareholders' pre-emptive rights. Except to the extent limited or denied by this section or by the articles of incorporation, shareholders shall have a pre-emptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

Unless otherwise provided in the articles of incorporation:

1. No pre-emptive right shall exist:

a. To acquire any shares issued to directors, officers or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan approved by such a vote of shareholders.

b. To acquire any shares sold otherwise than for cash.

c. To acquire treasury shares of the corporation.

2. Holders of shares of any class that is preferred or limited as to dividends or assets shall not be entitled to any pre-emptive right.

3. Holders of shares of common stock shall not be entitled to any pre-emptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock.

4. Holders of common stock without voting power shall have no pre-emptive right to shares of common stock with voting power.

5. The pre-emptive right shall be only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of such right. [C62, 66, 71, 73, 75,§496A.25; 66GA, ch 67,§45, ch 1207,§2]

496A.26 Bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless reserved to the shareholders by the articles of

incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation. If the articles of incorporation so provide, the bylaws may contain any provisions restricting the transfer of shares.

The board of directors of any corporation may adopt emergency bylaws, subject to repeal or change by action of the shareholders, which shall, notwithstanding any different provision elsewhere in this chapter or in the articles of incorporation or bylaws, be operative during any emergency in the conduct of the business of the corporation resulting from an attack on the United States or any nuclear or atomic disaster. The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency, including provisions that:

1. A meeting of the board of directors may be called by any officer or director in such manner and under such conditions as shall be prescribed in the emergency bylaws;

2. The director or directors in attendance at the meeting, or any greater number fixed by the emergency bylaws, shall constitute a quorum; and

3. The officers or other persons designated on a list approved by the board of directors before the emergency, all in such order of priority and subject to such conditions and for such period of time (not longer than reasonably necessary after the termination of the emergency) as may be provided in the emergency bylaws or in the resolution approving the list, shall, to the extent required to provide a quorum at any meeting of the board of directors, be deemed directors for such meeting.

The board of directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such an emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

The board of directors, either before or during any such emergency, may, effective in the emergency, change the head office or designate several alternative head offices or regional offices, or authorize the officers so to do.

To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any such emergency and upon its termination the emergency bylaws shall cease to be operative.

Unless otherwise provided in emergency bylaws, notice of any meeting of the board of directors during any such emergency may be given only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication or radio.

To the extent required to constitute a quorum at any meeting of the board of directors during any such emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

No officer, director or employee acting in accordance with any emergency bylaws shall be liable except for willful misconduct. No officer, director or employee shall be liable for any action taken by him in good faith in such an emergency in furtherance of the ordinary business affairs of the corporation even though not authorized by the bylaws then in effect. [C62, 66, 71, 73, 75,§496A.26]

496A.27 Meetings of shareholders. Meetings of shareholders may be held at such place within or without this state as may be stated in or fixed in accordance with the bylaws. If no other place is stated or fixed, meetings shall be held at the registered office of the corporation.

An annual meeting of the shareholders shall be held at such time as may be stated in or fixed in accordance with the bylaws. If the annual meeting is not held within any eighteen-month period the district court of the county wherein the registered office of the corporation is located may, upon the written application of any shareholder, order an annual meeting to be held.

Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws. [C62, 66, 71, 73, 75,§496A.27]

496A.28 Notice of shareholders' meetings. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid. [C62, 66, 71, 73, 75,§496A.28]

496A.29 Closing of transfer books and fixing record date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, sixty days. If

the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than sixty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted. as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section. such determination shall apply to any adjournment thereof. [C62, 66, 71, 73, 75, §496A.29]

496A.30 Voting list. The officer or agent having charge of the stock transfer books for shares of a corporation shall make, at least ten days before each meeting of shareholders, a complete record of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each. which record, for a period of ten days prior to such meeting, shall be kept on file at the registered office of the corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Such record shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer books shall be prima-facie evidence as to who are the shareholders entitled to examine such record or transfer books or to vote at any meeting of shareholders.

Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting. [C62, 66, 71, 73, 75,§496A.30]

496A.31 Quorum of shareholders. Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this chapter or the articles of incorporation or bylaws. [C62, 66, 71, 73, 75,§496A.31]

496A.32 Voting of shares. Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as may be otherwise provided in the articles of incorporation.

If the articles of incorporation provide for more or less than one vote for any share on any matter, every reference in this chapter to a majority or other proportion of shares shall refer to such majority or other proportion of votes.

Neither treasury shares nor, unless the articles of incorporation otherwise provide, shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or, if the articles of incorporation specifically permit cumulative voting, to cumulate his vote either by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal or by distributing such votes on the same principle among any number of such candidates.

Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the

shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

Nothing in this chapter shall prohibit a corporation in its articles of incorporation from limiting or denying the right to vote by proxy. [C62, 66, 71, 73, 75,§496A.32]

496A.33 Voting trust. Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed twenty years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares in respect of which the voting trust certificates held by each are issued, and shall deposit a copy of such record with the corporation at its registered office. The counterpart of the voting trust agreement and the copy of such record so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and such counterpart and such copy of such record shall be subject to examination by any holder of record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose.

Agreements among shareholders regarding the voting of their shares shall be valid and enforceable in accordance with their terms. Such agreements shall not be subject to the provisions of this section regarding voting trusts. [C62, 66, 71, 73, 75,§496A.33]

496A.34 Board of directors—relationship or interest in contracts. All corporate powers shall be exercised by or under the authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors consisting of one or more members, except as may be otherwise provided in this chapter or in the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

A director shall perform the duties of a director, including the duties as a member of any committee of the board upon which such director may serve, in good faith, in a manner such director reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing such duties, a director shall be entitled to rely on such information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by: (1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented; (2) Counsel, public accountants or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence; or, (3) A committee of the board upon which such director does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence. However, such director shall not be considered to be acting in good faith if such director has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs such duties shall not have liability by reason of being or having been a director of the corporation.

A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless the dissent of such director is entered in the minutes of the meeting, such director files a written dissent to such action with the secretary of the meeting before the meeting's adjournment, or such director forwards such dissent by registered or certified mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or

because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if any of the following occur:

1. The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested director.

2. The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent.

3. The contract or transaction is fair and reasonable to the corporation.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction. [C62, 66, 71, 73, 75,§496A.34; 66GA, ch 1207,§3]

496A.35 Number and election of directors. The number of directors shall be fixed by or in the manner provided in the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw providing for the number of directors and in the absence of a provision adopted in the manner provided in the articles of incorporation or the bylaws, the number shall be the same as that provided for in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualify. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualifies, unless removed in accordance with provisions of this chapter.

Except as otherwise provided in articles of incorporation, any or all directors may be removed, with or without cause, at a meeting called expressly for that purpose by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he is a part. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect of the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole. [C62, 66, 71, 73, 75,§496A.35; 66GA, ch 1207,§4]

496A.36 Classification of directors. In lieu of electing the whole number of directors annually, the articles of incorporation may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders. [C62, 66, 71, 73, 75,§496A.36]

496A.37 Vacancies. Unless otherwise provided in the articles of incorporation or the bylaws, any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the directors then in office, even if less than a quorum of the board of directors. Unless otherwise provided in the articles of incorporation or the bylaws, a director so elected shall be elected for the unexpired term of his predecessor in office or the full term of such new directorship. [C62, 66, 71, 73, 75,§496A.37]

496A.38 Quorum of directors. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall

be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws. [C62, 66, 71, 73, 75,§496A.38]

496A.39 Executive and other committees. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, except that no such committee shall have the authority to: (1) declare dividends or distributions; (2) approve or recommend to shareholders actions or proposals required by this chapter to be approved by shareholders; (3) designate candidates for the office of director, for purposes of proxy solicitation or otherwise, or fill vacancies on the board of directors or any committee thereof; (4) amend the bylaws; (5) approve a plan of merger not requiring shareholder approval; (6) reduce surplus; (7) authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors; or, (8) authorize or approve the issuance or sale of, or any contract to issue or sell, shares or designate the terms of a series of a class of shares; however, the board of directors, having acted regarding general authorization for the issuance or sale of shares, or any contract for issuance or sale, and, in the case of a series, the designation of the series, may, pursuant to a general formula or method specified by the board by resolution or by adoption of a stock option or other plan, authorize a committee to fix the terms of any contract for the sale of the shares and to fix the terms upon which such shares may be issued or sold, including, without limitation, the price, the dividend rate, provisions for redemption, sinking fund, conversion, voting or preferential rights, and provisions for other features of a class of shares, or a series of a class of shares, with full power in such committee to adopt any final resolution setting forth all the terms and to authorize the statement of the terms of a series for filing with the secretary of state under this chapter.

Neither the designation of any such committee, the delegation to it of authority, nor action by such committee pursuant to such authority shall alone constitute compliance by any member of the board of directors, not a member of the committee in question, with such director's responsibility to act in good faith, in a manner such director reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. [C62, 66, 71, 73, 75,§496A.39; 66GA, ch 1207,§5]

496A.40 Place and notice of directors' meetings—telephone conference. Meetings of the board of directors, regular or special, may be held either within or without this state.

Regular meetings of the board of directors or any committee designated by the board may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors or any committee designated by the board shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors or any committee designated by the board need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

Unless otherwise restricted by the articles of incorporation or bylaws, members of the board of directors of any corporation, or any committee designated by such board, may participate in a meeting of such board or committee by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting. [C62, 66, 71, 73, 75,§496A.40; 66GA, ch 1207,§6]

496A.41 Dividends. The board of directors of a corporation may, from time to time, declare and the corporation may pay dividends on its outstanding shares in cash, property, or in its own shares, out of unreserved surplus, subject to the following provisions:

1. No dividend shall be declared or paid at a time when the corporation is insolvent or its net assets are less than its stated capital, or when the payment thereof would render the corporation insolvent or reduce its net assets below its stated capital, or when the declaration or payment thereof would be contrary to any restrictions contained in its articles of incorporation.

2. If the articles of incorporation of a corporation engaged in the business of exploiting natural resources so provide, dividends may be declared and paid in cash out of the depletion reserves, but each such dividend shall be identified as a distribution of such reserves and the amount per share paid from such reserves shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof.

3. No dividend, except a dividend payable in its own shares, shall be declared or paid out of surplus arising from unrealized appreciation in value, or revaluation, of assets. [C62, 66, 71, 73, 75,§496A.41]

496A.42 Distributions in partial liquidation. A corporation, from time to time, may distrib-

ute a portion of its assets, in cash or kind, to its shareholders as a liquidating dividend, in the following manner and subject to the following restrictions:

1. The board of directors shall adopt a resolution recommending the payment of a liquidating dividend, specifying the class or classes of shareholders entitled thereto and the amount thereof, and directing that the question of such distribution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

2. Written or printed notice stating that the purpose or one of the purposes of such meeting is to consider the question of such distribution shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If such meeting be an annual meeting, such purpose shall be included in the notice of such meeting.

3. At such meeting a vote of the shareholders entitled to vote thereat shall be taken by classes on the question of the proposed distribution. The affirmative vote of the holders of at least two-thirds of the outstanding shares of each class shall be required for the authorization of such distribution.

4. No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent.

5. No such distribution shall be made to any class of shareholders unless all cumulative dividends accrued on preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

6. No such distribution shall be made to any class of shareholders which will reduce the remaining net assets below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

7. Each such distribution, when made, shall be identified as a liquidating dividend and the amount per share shall be disclosed to the shareholders receiving the same, concurrently with the payment thereof. [C62, 66, 71, 73, 75,§496A.42]

496A.43 Provisions relating to actions by shareholders. No action shall be brought in this state by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of shares or of voting trust certificates therefor at the time of the transaction of which he complains, or his shares or voting trust certificates thereafter devolved upon him by operation of law from a person who was a holder at such time. [C62, 66, 71, 73, 75,§496A.43]

496A.44 Liability of directors and officers in certain cases. In addition to any other liabilities imposed by law upon directors and officers of a corporation, a director shall be liable in the following circumstances, unless the director complies with the standard provided in this chapter for performance of the duties of directors:

1. A director who votes for or assents to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this chapter or to any restrictions contained in the articles of incorporation, shall be liable to the corporation jointly and severally with all other directors so voting or assenting for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or of the restrictions in the articles of incorporation.

2. A director who votes for or assents to the purchase of the corporation's own shares contrary to the provisions of this chapter or to any restrictions contained in the articles of incorporation, shall be liable to the corporation jointly and severally with all other directors so voting or assenting for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this chapter or of the restrictions in the articles of incorporation.

3. A director who votes for or assents to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be liable to the corporation jointly and severally with all other directors so voting or assenting for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

If an officer willfully or negligently submits an incorrect financial statement to a director or directors, and board of directors action, contrary to the provisions of this chapter or of any restrictions in the articles of incorporation, is taken in reliance thereon, the officer shall be liable to the same extent as if the officer were a director voting for or assenting to such action. No officer shall be deemed to be negligent within the meaning of this section if the officer exercised that diligence, care and skill which an ordinarily prudent person in a like position would use under similar circumstances.

Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been

made in violation of the provisions of this chapter or of any restrictions in the articles of incorporation, in proportion to the amounts received by them respectively, and to contribution from any other director found to be similarly liable.

Any action seeking to impose liability under this section, other than liability for contribution, shall be commenced only within five years of the action complained of and not thereafter. [C62, 66, 71, 73, 75,§496A.44; 66GA, ch 1207,§7]

496A.45 Officers. The officers of a corporation shall consist of a president, one or more vice-presidents as may be prescribed by the bylaws, a secretary and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the same person.

All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

Subject to any restrictions contained in its articles of incorporation or bylaws, the signatures of the officers of any corporation organized under this chapter, on the bonds, notes, debentures or other evidences of indebtedness of any such corporation may be facsimiles and such facsimiles on such instruments shall be deemed the equivalent of and constitute the written signatures of such officers for all purposes including, but not limited to, the full satisfaction of any signature requirements of the laws of this state on the bonds, notes, debentures and other evidence of indebtedness of any such corporation. [C62, 66, 71, 73, 75,§496A.45]

496A.46 Removal of officers. Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights. [C62, 66, 71, 73, 75,§496A.46]

496A.47 Books and records. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors; and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the name and addresses of all shareholders and the number and class of the shares held by each. The office of any transfer agent or registrar may be maintained within or without the state of Iowa. Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

Any person who shall have been a holder of record of shares or of voting trust certificates therefor at least six months immediately preceding his demand, or shall be the holder of record of, or the holder of record of voting trust certificates for, at least five percent of all of the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose its relevant books and records of account, minutes, and record of shareholders and make extracts therefrom.

Any officer or agent who, or a corporation which, arbitrarily or in bad faith shall refuse to allow any such shareholder or holder of voting trust certificates, or his agent or attorney, so to examine and make extracts from its books and records of account, minutes and record of shareholders, for any proper purpose, shall be liable to such shareholder or holder of voting trust certificates in a penalty of ten percent of the value of the shares owned by such shareholder, or in respect of which such voting trust certificates are issued, but not to exceed five hundred dollars, in addition to any other damages or remedy afforded him by law, but the court may decrease the amount of such penalty on a finding of mitigating circumstances. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders or of holders of voting trust certificates for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation, or was not acting in good faith or for a proper purpose in making his demand.

Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder or holder of voting trust certificates of proper purpose, irrespective of the period of time during which such shareholder or holder of voting trust certificates shall have been a shareholder of record or a holder of record of voting trust certificates, and irrespective of the number of shares held by him or represented by voting trust certificates held by him, to compel the production for examination by such shareholder or holder of voting trust certificates of the books and records of account, minutes and record of shareholders of a corporation.

Upon the written request of any shareholder or holder of voting trust certificates for shares of a corporation, the corporation shall mail to such shareholder or holder of voting trust certificates its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations. [C62, 66, 71, 73, 75,§496A.47]

496A.48 Who may incorporate. One or more persons as defined in this chapter having capacity to contract, may act as incorporators of a corporation by signing, acknowledging and delivering to the secretary of state articles of incorporation for such corporation. [C62, 66, 71, 73, 75,§496A.48]

496A.49 Articles of incorporation. The articles of incorporation shall set forth:

1. The name of the corporation and the chapter of the Code or session laws under which incorporated.

2. The period of duration if for a limited period, but in the absence of any statement in the articles all corporations organized hereunder shall have perpetual duration.

3. The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this chapter.

4. The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value.

5. If the shares are to be divided into classes, the designation of each class and a statement of the preferences, voting rights, if any, limitations and relative rights in respect of the shares of each class.

6. If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

7. Any provision limiting or denying to shareholders the pre-emptive right to acquire additional shares of the corporation and any provision giving to shareholders the pre-emptive right to acquire treasury shares of the corporation.

8. Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this chapter is required or permitted to be set forth in the bylaws.

9. The address of its initial registered office including street and number, if any, the name of the county in which the registered office is located, and the name of its initial registered agent or agents at such address.

10. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.

11. The name and address of each incorporator.

12. The date on which the corporate existence shall begin, which may be any date identified by year, month and day not more than ninety days in the future. In the absence of any statement in the articles as to date of beginning of corporate existence, such existence shall commence on the date on which the secretary of state issues the certificate of incorporation.

13. Any provision not inconsistent with law or the purposes for which the corporation is organized, which the incorporators elect to set forth; or any provision limiting any of the corporate powers enumerated in this chapter.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter. [C62, 66, 71, 73, 75,§496A.49]

Referred to in §524.1309

496A.50 Filing and recording of articles of incorporation. The articles of incorporation shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder. The secretary of state upon the filing of such articles shall issue a certificate of incorporation and send the same to the corporation or its representative. [C62, 66, 71, 73, 75,§496A.50]

496A.51 Effect of issuance of certificate of incorporation. Upon the issuance of the certificate of incorporation, the corporate existence shall begin unless the certificate in conformity with a provision in the articles provides that it shall begin on a stated day in the future in which event the corporate existence shall without further action by either the incorporators or the secretary of state begin on the day so stated. Such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation. [C62, 66, 71, 73, 75,§496A.51]

496A.52 Notice of incorporation. A corporation shall cause to be published within three months from the date its corporate existence begins, one publication in some newspaper published within the county wherein the registered office of the corporation is located, a notice of incorporation which shall state:

1. The name of the corporation and the chapter of the Code or session laws under which incorporated;

2. The date of the beginning of its corporate existence and the period of its duration;

3. The purpose or purposes for which it is organized as stated in its articles of incorporation;

4. The aggregate number of shares which it shall have authority to issue, the classes, if any, thereof, and the par value, if any, thereof;

5. The address of its registered office, the name of the county in which the registered office is located and the name of its registered agent or agents at such address; and

6. The names and addresses of its directors as designated in its articles of incorporation.

Proof of such publication, by affidavit of the publisher of the newspaper in which it is made, shall be filed with the secretary of state, and shall be conclusive evidence of the fact. If the notice of incorporation is not published within the time herein prescribed, but is subsequently published for the required time, and proof of the publication thereof is filed with the secretary of state, the acts of such corporation prior to as well as after such publication shall be valid. [C62, 66, 71, 73, 75,§496A.52]

496A.53 Procedure for filing and recording of documents. If in this chapter, it is required that any document be:

1. Filed in the office of the secretary of state, the secretary of state, when he finds that such document conforms to law and when all fees and taxes due him have been paid as in this chapter prescribed, shall endorse on such document, the word "Filed", and the month, day and year of the filing thereof and file the same in his office;

2. Recorded in the office of the secretary of state, the secretary of state, upon filing thereof, shall record the same;

3. Filed and recorded in the office of the county recorder, the secretary of state upon recording such document in his office shall forward the same to the county recorder of the county wherein the registered office of the corporation is located, and shall forward a copy certified by him as a true copy of the filed original to such other county recorder, if any, as is required by this chapter. Upon receipt thereof and upon receipt of recording fees due him, such county recorder shall record and index such instrument and endorse thereon the date of filing in such county and the book and page in which recorded. The recorder of each county shall keep in his office an alphabetically subdivided index book for articles of incorporation and other instruments the recording of which in his office is provided for by this chapter, which book shall have as a minimum, columns headed with "Name of Corporation," "Place of Registered Office," "Day, Month and Year of Filing" and the reference to the book and page or other record where recorded and shall make appropriate entries in said index for each such instrument recorded by him.

Any instrument required to be filed and recorded in the office of the secretary of state only, shall be returned by him to the corporation or its representative. Any instrument required to be filed and recorded in the office of the county recorder shall be returned by him to the corporation or its representative. [C62, 66, 71, 73, 75,§496A.53]

Referred to in §524.306

496A.54 Organization meeting of directors. After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation may be held, either within or without this state, at the call of a majority of the directors named in the articles of incorporation for the purpose of adopting bylaws, electing officers, if necessary, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting. [C62, 66, 71, 73, 75,§496A.54]

496A.55 Right to amend articles of incorporation. A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation.

In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

1. To change its corporate name.

2. To change its period of duration.

3. To change, enlarge or diminish its corporate purposes.

4. To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue.

5. To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.

6. To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued.

7. To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued.

8. To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.

9. To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.

10. To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.

11. To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared.

12. To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

13. To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

14. To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

15. To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

16. To limit, deny or grant to shareholders of any class the pre-emptive right to acquire additional shares or treasury shares of the corporation, or obligations of the corporation convertible into such shares, whether then or thereafter authorized. [C62, 66, 71, 73, 75,§496A.55]

496A.56 Procedure to amend articles of incorporation. Amendments to the articles of incorporation shall be made in the following manner:

1. The board of directors shall adopt a resolution setting forth the proposed amendment and, if shares have been issued, directing that it be submitted to a vote of a meeting of shareholders, which may be either the annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. The resolution may incorporate the proposed amendment in restated articles of incorporation which contain a statement that except for the designated amendment the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as amended, and that the restated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all prior amendments. Unless otherwise provided in the articles of incorporation, upon the written request of the holders of at least five percent of the shares entitled to vote on amendments to articles of incorporation, the board of directors shall adopt a resolution setting forth the amendment proposed by such shareholders and directing that it be submitted to the next meeting of the shareholders held not less than ninety days after the date of the filing of the request of the shareholders with the secretary of the corporation.

2. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

3. At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment or, to the extent permitted by the articles of incorporation, any modification or revision thereof which shall be proposed at the meeting, and shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event it shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

Any number of amendments may be submitted to the shareholders, and voted upon by them at one meeting. [C62, 66, 71, 73, 75,§496A.56]

496A.57 Class voting on amendments. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

1. Increase or decrease the aggregate number of authorized shares of such class.

2. Increase or decrease the par value of the shares of such class.

3. Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.

4. Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

5. Change the designations, preferences, limitations or relative rights of the shares of such class.

6. Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes.

7. Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences, or the number of authorized shares of any class having rights and preferences prior or superior to the shares of such class.

8. In the case of a preferred or special class of shares, divide the unissued shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to do so.

9. Limit or deny the existing pre-emptive rights, if any, of the shares of such class.

10. Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared. [C62, 66, 71, 73, 75,§496A.57]

496A.58 Articles of amendment. The articles of amendment shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and acknowledged by one of the officers signing such articles, and shall set forth:

1. The name of the corporation and the effective date of its incorporation; and its original name if different from the present name.

2. The amendment so adopted.

3. The date of the adoption of the amendment by the shareholders or by the board of directors where no shares have been issued.

4. The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

5. The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or if no shares have been issued, a statement to that effect.

6. If such amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.

7. If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.

8. The date on which the amendment shall become effective, which may be any date identified by year, month and day not more than ninety days in the future. In the absence of any statement in the articles of amendment as to the date on which the amendment shall become effective, such amendment shall become effective on the date on which the secretary of state issues the certificate of amendment. [C62, 66, 71, 73, 75,§496A.58]

496A.59 Filing of articles of amendment. The articles of amendment shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder. The secretary of state upon the filing of the articles of amendment shall issue a certificate of amendment and send the same to the corporation or its representative. [C62, 66, 71, 73, 75,§496A.59]

496A.60 Effect of certificate of amendment. Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly unless the certificate in conformity with the provisions in the articles of amendment provides that it shall become effective on a stated day not more than ninety days in the future in which event the amendment shall without further action by either the corporation or the secretary of state become effective on the day so stated.

No amendment shall affect the existing rights of persons other than shareholders, or any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason. [C62, 66, 71, 73, 75,§496A.60]

496A.61 Restated articles of incorporation. A domestic corporation may at any time restate its articles of incorporation, which may be amended by such restatement, so long as its articles of incorporation as so restated contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such restatement, by the adoption of restated articles of incorpora-

tion, including any amendments to its articles of incorporation to be made thereby, in the following manner:

1. The board of directors shall adopt a resolution setting forth the proposed restated articles of incorporation, which may include an amendment or amendments to the corporation's articles of incorporation to be made thereby, and directing that such restated articles, including such amendment or amendments, be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

2. Written or printed notice setting forth the proposed restated articles or a summary of the provisions thereof shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed restated articles may be included in the notice of such annual meeting. If the restated articles include an amendment or amendments to the articles of incorporation to be made thereby, the notice shall separately set forth such amendment or amendments or a summary of the changes to be effected thereby.

3. At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed restated articles. The proposed restated articles shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless such restated articles include an amendment to the articles of incorporation to be made thereby which, if contained in a proposed amendment to articles of incorporation to be made without restatement of the articles of incorporation, would entitle a class of shares to vote as a class thereon, in which event the proposed restated articles shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class, and of the total shares entitled to vote thereon.

Upon such approval, restated articles of incorporation shall be executed by the corporation by its president or vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing the same, and shall set forth, as then stated in the corporation's articles of incorporation and, if the restated articles of incorporation include an amendment or amendments to the articles of incorporation to be made thereby, as so amended:

a. The name of the corporation;

b. If its duration is for a limited period, the date of expiration;

c. The purpose which the corporation is authorized to pursue, or that the purpose which the corporation is authorized to pursue is, or include, the transaction of any or all lawful business for which the corporation may be incorporated under this chapter;

d. The aggregate number of shares which the corporation has authority to issue; if such shares consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are without par value;

e. If the shares are divided into classes, the designation of each class and a statement of the preferences, voting rights, if any, limitations and relative rights in respect of the shares of each class;

f. If the shares of any preferred or special class are issuable in series, the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are fixed in the restated articles of incorporation, and a statement of any authority vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

g. Any provisions limiting or denying to shareholders the pre-emptive right to acquire additional shares of the corporation or giving to shareholders the pre-emptive right to acquire treasury shares of the corporation;

h. The date on which the restated articles of incorporation shall become effective, which may be any date identified by year, month and day not more than ninety days in the future. In the absence of any statement in the restated articles of incorporation as to the date on which the restated articles of incorporation shall become effective, such restated articles of incorporation shall become effective on the date on which the secretary of state issues the restated certificate of incorporation;

i. Any other provisions, not inconsistent with law or the purposes which the corporation is authorized to pursue, which are set forth in the articles of incorporation; except that it shall not be necessary to set forth any statement with respect to the chapter of the Code or session laws under which the corporation was incorporated, its registered office, registered agent, directors, or incorporators, or the date on which its corporate existence began.

The restated articles of incorporation shall set forth also a statement that they correctly set forth the provisions of the articles of incorporation as theretofore or thereby amended, that they have been duly adopted as required by law and that they supersede the original articles of incorporation and all amendments thereto.

The restated articles of incorporation shall be delivered to the secretary of state for filing and recording in his office and the same shall be filed and recorded in the office of the county recorder.

The secretary of state upon filing the restated articles of incorporation shall issue a restated certificate of incorporation and send

the same to the corporation or its representative.

Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation including any amendment or amendments to the articles of incorporation made thereby, shall become effective unless the certificate in conformity with a provision in the restated articles of incorporation provides that it shall become effective on a stated day not more than ninety days in the future in which event the restated articles of incorporation shall without further action by either the corporation or the secretary of state become effective on the day so stated and shall supersede the original articles of incorporation and all amendments thereto.

No amendment shall affect the existing rights of persons other than shareholders, or any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason. [C62, 66, 71, 73, 75,§496A.61]

496A.62 Amendment of articles of incorporation in reorganization proceedings. Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

1. Change the corporate name, period of duration or corporate purposes of the corporation;

2. Repeal, alter or amend the bylaws of the corporation;

3. Change the aggregate number of shares, or shares of any class, which the corporation has authority to issue;

4. Change the preferences, limitations and relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify or cancel all or any part thereof, whether issued or unissued;

5. Authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

6. Constitute or reconstitute and classify or reclassify the board of directors of the corporation, and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

7. Articles of amendment approved by decree or order of such court shall be executed and verified in duplicate by such person or persons as the court shall designate or appoint for the purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

8. The articles of amendment shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder. The secretary of state upon the filing of the articles of amendment shall issue a certificate of amendment and send the same to the corporation or its representative.

Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation. [C62, 66, 71, 73, 75,§496A.62]

496A.63 Restriction on redemption or purchase of redeemable shares. No redemption or purchase of redeemable shares shall be made by a corporation when it is insolvent or when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon involuntary dissolution. [C62, 66, 71, 73, 75,§496A.63]

496A.64 Cancellation of redeemable shares by redemption. When redeemable shares of a corporation are redeemed by the corporation, the redemption shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this section. Thereupon such shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that such shares when redeemed shall not be reissued, in which case the filing of the statement of cancellation shall constitute an amend-

ment to the articles of incorporation and shall reduce the number of shares of the class so canceled which the corporation is authorized to issue by the number of shares so canceled.

The statement of cancellation shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and acknowledged by one of the officers signing such statement, and shall set forth:

1. The name of the corporation and the effective date of its incorporation; and its original name if different from the present name.

2. The number of redeemable shares canceled through redemption, itemized by classes and series.

3. The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.

4. The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

5. If the articles of incorporation provide that the canceled shares shall not be reissued, then the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation.

Such statement shall be delivered to the secretary of state for filing and recording in his office, and if the same effects a reduction in its authorized shares the same shall be filed and recorded in the office of the county recorder.

Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled.

Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter. [C62, 66, 71, 73, 75,§496A.64]

496A.65 Cancellation of other reacquired shares. A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it, other than redeemable shares redeemed, and in such event a statement of cancellation shall be filed as provided in this section.

The statement of cancellation shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and acknowledged by one of the officers signing such statement, and shall set forth:

1. The name of the corporation and the effective date of its incorporation; and its original name if different from the present name.

2. The number of reacquired shares canceled by resolution duly adopted by the board of directors, itemized by classes and series, and the date of its adoption.

3. The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.

4. The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

Such statement shall be delivered to the secretary of state for filing and recording in his office.

Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled, and the shares so canceled shall be restored to the status of authorized but unissued shares.

Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter. [C62, 66, 71, 73, 75,§496A.65]

496A.66 Reduction of stated capital in certain cases. A reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring an amendment of the articles of incorporation and not accompanied by a cancellation of shares, may be made in the following manner:

1. The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

2. Written or printed notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

3. At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of at least a majority of the shares entitled to vote thereon.

When a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and acknowledged by one of the officers signing such statement, and shall set forth:

4. The name of the corporation.

5. A copy of the resolution of the shareholders approving such reduction, and the date of its adoption.

6. The number of shares outstanding, and the number of shares entitled to vote.

7. The number of shares voted for and against such reduction, respectively.

8. A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction.

Such statement shall be delivered to the secretary of state for filing and recording in his office.

Upon the filing of such statement, the stated capital of the corporation shall be reduced as therein set forth.

No reduction of stated capital shall be made under the provisions of this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation. [C62, 66, 71, 73, 75,§496A.66]

496A.67 Special provisions relating to surplus and reserves. A corporation may, by resolution of its board of directors, create a reserve or reserves out of its surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this chapter. [C62, 66, 71, 73, 75,§496A.67]

496A.68 Procedure for merger. Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

1. The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

2. The terms and conditions of the proposed merger.

3. The manner and basis of converting the shares of each corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

4. The date on which the merger shall become effective which may be any date identified by year, month and day not more than ninety days in the future. In the absence of any statement in the plan of merger as to the date on which the merger shall become effective, such merger shall become effective on the date on which the secretary of state issues the certificate of merger.

5. A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

6. Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

The purchase by a corporation of all, or substantially all, of the assets of another corporation, domestic or foreign, followed by dissolution of the selling corporation, shall not, by itself, constitute a merger of such corporations. [C62, 66, 71, 73, 75,§496A.68]

496A.69 Procedure for consolidation. Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

1. The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

2. The terms and conditions of the proposed consolidation.

3. The manner and basis of converting the shares of each corporation into shares, obligations or other securities of the new corporation or of any other corporation, in whole or in part, into cash or other property.

4. The date on which the consolidation shall become effective which may be any date identified by year, month and day not more than ninety days in the future. In the absence of any statement in the plan of consolidation as to the date on which the consolidation shall become effective, such consolidation shall become effective on the date on which the secretary of state issues the certificate of consolidation.

5. With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

6. Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. [C62, 66, 71, 73, 75,§496A.69]

496A.70 Approval by shareholders. The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting, not less than twenty days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders, and shall state the purpose of the meeting, whether the meeting be an annual or a special meeting. A copy or a summary of the plan of merger or plan of consolidation, as the case

may be, shall be included in or enclosed with such notice.

At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. Each outstanding share of each such corporation shall be entitled to vote on the proposed plan of merger or consolidation, whether or not such share has voting rights under the provisions of the articles of incorporation of such corporation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of each such corporation, unless any class of shares of any such corporation is entitled to vote as a class thereon, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class thereon and of the total outstanding shares. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

After such approval by a vote of the shareholders of each corporation, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

Notwithstanding the voting requirements set forth in this section, unless otherwise provided in the articles of incorporation, no vote of the shareholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if (1) the plan of merger does not effect any amendment to the articles of incorporation of the surviving corporation, and (2) the number of authorized unissued shares or treasury shares of any class of the surviving corporation to be issued or delivered under the plan of merger does not exceed fifteen percent of the shares of the surviving corporation of the same class outstanding immediately prior to the effective date of the merger. [C62, 66, 71, 73, 75,§496A.70]

Referred to in §§496A.71, 524.1402

496A.71 Articles of merger or consolidation. Upon such approval, articles of merger or articles of consolidation shall be executed by each corporation by its president or a vice-president and by its secretary or an assistant secretary, and acknowledged by one of the officers of each corporation signing such articles, and shall set forth:

1. The plan of merger or the plan of consolidation.

2. As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

3. As to each corporation, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively. If a plan of merger is adopted by the constituent corporation surviving the merger, by action of its board of directors and without the vote of its shareholders pursuant to the provisions of section 496A.70, then that fact shall be stated in the articles of merger in lieu of the information as to voting of shares which would otherwise be required by this subsection.

The articles of merger or articles of consolidation shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the recorder of each county in which the registered office of each domestic merging or consolidating corporation was located prior to the merger or consolidation and, if the new corporation into which the corporations have consolidated is a domestic corporation, in the office of the recorder of the county in which the registered office of the new corporation is located.

The secretary of state upon the filing of the articles of merger or articles of consolidation shall issue a certificate of merger or a certificate of consolidation and send the same to the surviving or new corporation as the case may be, or to its representative. [C62, 66, 71, 73, 75,§496A.71]

496A.72 Merger of subsidiary corporation.

1. Any corporation owning at least ninety percent of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

a. The name of the subsidiary corporation and the name of the corporation owning at least ninety percent of its shares, which is hereinafter designated as the surviving corporation.

b. The manner and basis of converting the shares of the subsidiary corporation into shares, obligations or other securities of the surviving corporation or of any other corporation, or in whole or in part, into cash or other property. A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation other than the surviving corporation.

2. Articles of merger shall be executed by the surviving corporation by its president or a vice-president and by its secretary or an assistant secretary, and acknowledged by one of its officers signing such articles, and shall set forth:

a. The plan of merger;

b. The number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

c. The date of the mailing to shareholders of the subsidiary corporation other than the surviving corporation of a copy of the plan of merger. If the surviving corporation is the owner of all of the issued shares of the other corporation, the plan of merger may contain in lieu of such statement as to mailing, a statement that the surviving corporation is the owner of all such issued shares and that the surviving corporation waived the mailing of a copy of the plan of merger.

The articles of merger shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder.

The secretary of state upon filing the articles of merger shall issue a certificate of merger, and send the same to the surviving corporation or its representative. [C62, 66, 71, 73, 75,§496A.72]

Referred to in §524.1408

496A.73 Effect of merger or consolidation. Upon the issuance of the certificate of merger or the certificate of consolidation by the secretary of state, the merger or consolidation shall become effective unless the certificate in conformity with a provision in the articles of merger or articles of consolidation provides that it shall become effective on a stated day not more than ninety days in the future in which event the merger or consolidation shall without further action by either the corporation or the secretary of state become effective on the day so stated.

When such merger or consolidation has been effected:

1. The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of consolidation, shall be the new corporation provided for in the plan of consolidation.

2. The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

3. Such surviving or new corporation, if to exist under the laws of this state, shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

4. Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

5. Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

6. In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

7. The aggregate amount of the net assets of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that the amount thereof is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation. [C62, 66, 71, 73, 75,§496A.73]

496A.74 Merger or consolidation of domestic and foreign corporations. One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

1. Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

2. If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of the laws of this state with respect to qualifications of foreign corporations if it is to transact business in this

state, and in every case it shall file with the secretary of state of this state:

a. An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

b. An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and

c. An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders.

The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.

At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to the provisions therefor, if any, set forth in the plan of merger or consolidation.

The purchase by a corporation, domestic or foreign, of all, or substantially all, of the assets of another corporation, domestic or foreign, followed by dissolution of the selling corporation, shall not, by itself, constitute a merger of such corporations. [C62, 66, 71, 73, 75, §496A.74]

496A.75 Sale or other disposition of assets in regular course of business and mortgage or pledge of assets. The sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, and the mortgage or pledge of any or all of the property and assets of the corporation may be made upon such terms and conditions and for such considerations, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and in such case no authorization or consent of the shareholders shall be required. [C62, 66, 71, 73, 75,§496A.75]

496A.76 Sale or other disposition of assets other than in regular course of business. A sale, lease, exchange or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not made in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

1. The board of directors shall adopt a resolution recommending such sale, lease, exchange or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

2. Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the proposed sale, lease, exchange or other disposition.

3. At such meeting the shareholders may authorize such sale, lease, exchange or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of at least a majority of the outstanding shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote as a class thereon, in which event such authorization shall require the affirmative vote of the holders of at least a majority of the outstanding shares of each class of shares entitled to vote as a class thereon and of the total outstanding shares entitled to vote thereon.

4. After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders. [C62, 66, 71, 73, 75,§496A.76]

496A.77 Right of shareholders to dissent. Any shareholder of a corporation shall have the right to dissent from any of the following corporate actions:

1. Any plan of merger or consolidation to which the corporation is a party; or

2. Any sale or exchange of all or substantially all of the property and assets of the corporation, otherwise than in the usual and regular course of its business.

A shareholder may dissent as to less than all of the shares registered in his name. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

This section shall not apply to the shareholders of the surviving corporation in a merger

if such corporation is on the date of the filing of the articles of merger the owner of all outstanding shares of the other corporations, domestic or foreign, which are parties to the merger or if a vote of the shareholders of such corporation is not necessary to authorize such merger. Nor shall it apply to the holders of shares of any class or series if the shares of such class or series were registered on a national securities exchange on the date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders at which a plan of merger or consolidation or a proposed sale or exchange of property and assets is to be acted upon unless the articles of incorporation of the corporation shall otherwise provide. [C62, 66, 71, 73, 75,§496A.77]

496A.78 Rights of dissenting shareholders. Any shareholder electing to exercise such right of dissent shall file with the corporation, prior to or at the meeting of shareholders at which such proposed corporate action is submitted to a vote, a written objection to such proposed corporate action. If such proposed corporate action be approved by the required vote and such shareholder shall not have voted in favor thereof, such shareholder may, within ten days after the date on which the vote was taken, or if a corporation is to be merged without a vote of its shareholders into another corporation, any of its shareholders may, within ten days after the plan of such merger shall have been mailed to such shareholders make written demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholder's shares, and, if such proposed corporate action is effected, such corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. Any shareholder failing to make demand within the ten-day period shall be bound by the terms of the proposed corporate action. If the proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action, then the right of such shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim.

Within twenty days after such corporate action is effected, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided, and shall make a written offer to each such shareholder to pay for such shares at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the corporation the shares of which the dissenting shareholder holds, as of the latest available date and not more than twelve months prior to the making of such offer, and a profit and loss statement of such corporation for the twelve months' period ended on the date of such balance sheet.

If within thirty days after the date on which such corporate action was effected the fair value of such shares is agreed upon between any such dissenting shareholder and the corporation, payment therefor shall be made within ninety days after the date on which such corporate action was effected, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares.

If within such period of thirty days the dissenting shareholder and the corporation do not agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in any court of competent jurisdiction within the state and county thereof in which the registered office or principal place of business of the corporation is situated asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such corporate action, together with interest thereon at the rate of five percent per annum to the date of such judgment. The action shall be prosecuted as an equitable action and the practice and procedure shall conform to the practice and procedure in equity cases. The judgment shall be payable only upon and simultaneously with the surrender to the corporation of the certificate or certificates representing such shares.

Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him shall be conclusively presumed to have approved and ratified the corporate action and shall be bound by the terms thereof.

Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by such corporation as in the case of other treasury shares, except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide. [C62, 66, 71, 73, 75,§496A.78]

Referred to in §§524.1309, 524.1406

496A.79 Voluntary dissolution by incorporators. A corporation which has not com-

menced business and which has not issued any shares, may be voluntarily dissolved by its incorporators at any time after the date of the issuance of its certificate of incorporation, in the following manner:

1. Articles of dissolution shall be executed by a majority of the incorporators, and verified by them, and shall set forth:

a. The name of the corporation.

b. The date of issuance of its certificate of incorporation.

c. That none of its shares has been issued.

d. That the corporation has not commenced business.

e. That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.

f. That no debts of the corporation remain unpaid.

g. That they elect that the corporation be dissolved.

2. The articles of dissolution shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder.

The secretary of state upon filing the articles of dissolution shall issue a certificate of dissolution and send the same to the incorporators or their representatives. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the corporation shall cease. [C62, 66, 71, 73, 75,§496A.79]

Referred to in §524.1301

496A.80 Voluntary dissolution by consent of shareholders. A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

Upon the execution of such written consent, a statement of intent to dissolve shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

1. The name of the corporation.

2. The names and respective addresses of its officers.

3. The names and respective addresses of its directors.

4. A copy of the written consent signed by all shareholders of the corporation.

5. A statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized. [C62, 66, 71, 73, 75,§496A.80]

496A.81 Voluntary dissolution by act of corporation. A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

1. The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

2. Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation.

3. At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the outstanding shares of the corporation entitled to vote upon the question of dissolution, unless any class of shares is entitled to vote as a class thereon, in which event the resolution shall require for its adoption the affirmative vote of the holders of a majority of the outstanding shares of each class of shares entitled to vote as a class thereon, and of the total outstanding shares entitled to vote upon the question of dissolution.

4. Upon the adoption of such resolution, a statement of intent to dissolve shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

a. The name of the corporation.

b. The names and respective addresses of its officers.

c. The names and respective addresses of its directors.

d. A copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation.

e. The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

f. The number of shares voted for and against the resolution, respectively, and if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively. [C62, 66, 71, 73, 75,§496A.81]

496A.82 Filing of statement of intent to dissolve. The statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder. [C62, 66, 71, 73, 75,§496A.82]

496A.83 Effect of statement of intent to dissolve. Upon the filing by the secretary of state of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until

a certificate of dissolution has been issued by the secretary of state or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as in this chapter provided. [C62, 66, 71, 73, 75,§496A.83]

496A.84 Procedure after filing of statement of intent to dissolve. After the filing by the secretary of state of a statement of intent to dissolve:

1. The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

2. The corporation, at any time during the liquidation of its business and affairs, may make application to the district court in and for the county in which the registered office or principal place of business of the corporation is situated, to have the liquidation continued under the supervision of the court as provided in this chapter. [C62, 66, 71, 73, 75,§496A.84]

496A.85 Revocation of voluntary dissolution proceedings by consent of shareholders. By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and acknowledged by one of the officers signing such statement, which statement shall set forth:

1. The name of the corporation.

2. The names and respective addresses of its officers.

3. The names and respective addresses of its directors.

4. A copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings.

5. That such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized. [C62, 66, 71, 73, 75,§496A.85]

Referred to in §524.1306

496A.86 Revocation of voluntary dissolution proceedings by act of corporation. By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

1. The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.

2. Written or printed notice, stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders.

3. At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings. Such resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the outstanding shares of the corporation then entitled to vote upon the question of dissolution, unless any class of shares is entitled to vote as a class thereon, in which event the resolution shall require for its adoption the affirmative vote of the holders of a majority of the outstanding shares of each class of shares entitled to vote as a class thereon, and of the total outstanding shares entitled to vote upon the question of dissolution.

4. Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and acknowledged by one of the officers signing such statement, which statement shall set forth:

a. The name of the corporation.

b. The names and respective addresses of its officers.

c. The names and respective addresses of its directors.

d. A copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings.

e. The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

f. The number of shares voted for and against the resolution, respectively, and if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively. [C62, 66, 71, 73, 75,§496A.86]

Referred to in §524.1306

496A.87 Filing of statement of revocation of voluntary dissolution proceedings. The statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder. [C62, 66, 71, 73, 75,§496A.87]

496A.88 Effect of statement of revocation of voluntary dissolution proceedings. Upon the filing by the secretary of state of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business. [C62, 66, 71, 73, 75,§496A.88]

496A.89 Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid or otherwise discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

1. The name of the corporation.

2. That the secretary of state has theretofore filed a statement of intent to dissolve the corporation, and the date on which such statement was filed.

3. That all debts, obligations and liabilities of the corporation have been paid or otherwise discharged or that adequate provision has been made therefor.

4. That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.

5. That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit. [C62, 66, 71, 73, 75,§496A.89]

496A.90 Filing of articles of dissolution. Such articles of dissolution shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder.

The secretary of state upon filing the articles of dissolution shall issue a certificate of dissolution, and send the same to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this chapter. [C62, 66, 71, 73, 75,§496A.90]

496A.91 Involuntary dissolution. A corporation may be dissolved involuntarily by a decree of the district court in a suit filed by the attorney general when it is established that it is in default in any of the following particulars:

1. The corporation has failed to file its annual report within the time required by law, or has failed to pay any fees, or penalties prescribed by this chapter when the same have become due and payable; or

2. The corporation has failed to maintain a record in the secretary of state's office of its registered office and agent in this state as required by law.

3. The corporation has failed or refused to file a statement or report, or obey a subpoena issued by the attorney general, as provided in section 713.24.

A corporation may be dissolved involuntarily by order of the secretary of state if all notices have been sent to the corporation by the secretary of state as required by section 496A.92 and the corporation shall have failed to file an annual report or pay an annual license fee as required by this chapter for three consecutive years and shall not have been otherwise dissolved. The order of the secretary of state for the dissolution of such a corporation shall be entered in a permanent journal therefor maintained by him in his office and may be entered therein by him at any time after the last day for the filing of such third annual report. Upon the entry of such an order of dissolution of a corporation, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this chapter and the corporation shall proceed to liquidate its business and affairs as provided by this chapter in cases of dissolution by consent of shareholders or by act of the corporation, provided, however, that the district court in a suit in equity shall have full power to liquidate the assets and business of such a corporation upon application by such corporation or in a suit by a shareholder or creditor of such corporation when such corporation fails to proceed promptly with such liquidation or to make application to court therefor. Such an order of dissolution of a corporation certified by the secretary of state shall be taken and received in all courts as prima-facie evidence of the facts therein stated. [C62, 66, 71, 73, 75,§496A.91]

496A.92 Notification and action by the attorney general. The secretary of state, on or before the first day of November of each year, shall certify to the attorney general the names of all corporations which have failed to file their annual reports or to pay annual license fees in accordance with the provisions of this chapter, together with the facts pertinent thereto. He shall also certify, from time to time, the names of all corporations which have given other cause for dissolution as provided in this chapter, together with the facts pertinent thereto. Whenever the secretary of state shall certify the name of a corporation to the attorney general as having given any cause for dissolution the secretary of state shall by registered or certified mail concurrently send to the corporation at its registered office, a notice that such certification has been made

and the grounds therefor. Upon the expiration of thirty days from the receipt of such certification, the attorney general, if he believes one or more probable grounds for dissolution exist, shall file suit in equity in the name of the state against such corporation for its dissolution. Every such certificate from the secretary of state to the attorney general pertaining to the failure of a corporation to file an annual report or pay an annual license fee shall be taken and received in all courts as prima-facie evidence of the facts therein stated. If, before suit is filed, the corporation shall cure the default constituting the cause for dissolution, such fact shall be forthwith certified by the secretary of state to the attorney general and he shall not file suit against such corporation for such cause. If, after suit is filed, the corporation shall cure the default constituting the cause for dissolution and shall pay the costs of such suit, the suit for such cause shall be dismissed.

In addition to any other remedies provided by law, a corporation may be dissolved involuntarily by a decree of the district court in a suit filed by the attorney general when it is established that the franchise of the corporation was procured through fraud or that the corporation has continued to exceed or abuse the authority conferred upon it by law. [C62, 66, 71, 73, 75,§496A.92]

Referred to in §§496A.91, 496A.130

496A.93 Venue and process. A suit in equity commenced by the attorney general for the involuntary dissolution of a corporation shall be brought in the district court of the county in which the registered office or principal office of the corporation is situated. Original notice shall be served as in other civil actions. [C62, 66, 71, 73, 75,§496A.93]

496A.94 Jurisdiction of court to liquidate assets and business of corporation. The district court in a suit in equity shall have full power to liquidate the assets and business of a corporation:

1. In a suit by a shareholder when it is established:

a. That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

b. That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose term has expired or would have expired upon the election of their successors; or

c. That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

d. That as shown by the proceedings at any meeting of the shareholders the shareholders are deadlocked in voting power and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

e. That the corporate assets are being misapplied or wasted.

2. In a suit by a creditor:

a. When the claim of the creditor has been reduced to judgment which has become final, and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or

b. When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

3. Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court.

4. When a suit has been filed by the attorney general to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

5. Upon application by the board of directors when it is established that circumstances make it impossible to obtain a representative vote by shareholders on the question of dissolution and that the continuation of the business of the corporation is not in the interest of the shareholders but it is desirable in their interest that the assets and business be liquidated.

Proceedings under this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make shareholders parties to any such suit or proceeding unless relief is sought against them personally. [C62, 66, 71, 73, 75,§496A.94]

496A.95 Procedure in liquidation of corporation by court. In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at

public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

The court shall have power to allow from time to time as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceedings, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated. [C62, 66, 71, 73, 75,§496A.95]

496A.96 Qualifications of receivers. A receiver shall in all cases be a natural person or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require. [C62, 66, 71, 73, 75,§496A.96]

496A.97 Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall not be less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. [C62, 66, 71, 73, 75,§496A.97]

496A.98 Discontinuance of liquidation proceedings. The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. [C62, 66, 71, 73, 75,§496A.98]

496A.99 Decree of dissolution. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. [C62, 66, 71, 73, 75,§496A.99]

496A.100 Filing of decree dissolution. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause certified copies of the decree to be filed with and recorded by the secretary of state and the county recorder of the county in which is located the corporation's registered office. No fee shall be charged by the secretary of state or said county recorder for the filing or recording thereof. [C62, 66, 71, 73, 75,§496A.100]

496A.101 Deposit with state treasurer of amount due certain shareholders and creditors.

1. Upon the voluntary or involuntary dissolution of a corporation the portion of the assets distributable to a creditor or shareholder who is unknown, or who is under disability and there is no person legally competent to receive such distributive portion, or who cannot be found after the exercise of reasonable diligence by the person or persons responsible for the distribution in liquidation of the corporation's assets, shall be reduced to cash and deposited with the state treasurer, together with a statement giving the name of the person, if known, entitled to such fund, his last known address, the amount of his distributive portion, and such other information about such person as the state treasurer may reasonably require, whereupon the person or persons responsible for the distribution in liquidation of the corporation's assets shall be released and discharged from any further liability with respect to the funds so deposited. The state treasurer shall issue his receipt for such fund and shall deposit same in a special account to be maintained by him.

2. On receipt of satisfactory written and verified proof of ownership of or right to such fund within twenty years from the date such fund was so deposited, the state treasurer shall certify such fact to the state comptroller, who shall issue proper warrant therefor drawn on the state treasurer in favor of the person or persons then entitled thereto. If no claimant has made satisfactory proof of right to such fund within twenty years from the time of such deposit, the state treasurer shall then cause to be published in one issue of a news-

paper of general circulation in the county of the last registered office of the corporation, as shown by the records of the secretary of state, a notice of the proposed escheat of such fund, giving the name of the creditor or shareholder apparently entitled thereto, his last known address, if any, the amount of the fund so deposited, and the name of the dissolved corporation from whose assets such fund was derived. If no claimant makes satisfactory proof of right to such fund within two months from the time of such publication, the fund so unclaimed shall thereupon automatically escheat to and become the property of the general fund of the state. [C62, 66, 71, 73, 75,§496A.101]

Referred to in §§524.1305, 524.1310, 533.22, 556.6

496A.102 Survival of rights and remedies after dissolution or expiration. The dissolution of a corporation or the expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution or expiration, if action or other proceeding thereon is commenced within two years after the date of such dissolution or expiration. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If the period of duration of a corporation has expired, it may, subject to the provisions of subsection 11 of section 496A.142, amend its articles of incorporation at any time within five years after the date of such expiration so as to extend its period of duration.

A corporation which has been dissolved or the period of duration of which has expired by limitation or otherwise, may nevertheless continue to act for the purpose of conveying title to its property, real and personal, and otherwise winding up its affairs. [C62, 66, 71, 73, 75,§496A.102]

496A.103 Admission of foreign corporation—nonadmitted organization.

1. No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in this state any business which a corporation organized under this chapter is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

2. Without excluding other activities which may not constitute transacting business in this state, a foreign corporation or nonadmitted organization shall not be considered to be transacting business in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

a. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

b. Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

c. Maintaining bank accounts.

d. Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

e. Effecting sales through independent contractors.

f. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

g. Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property.

h. Securing or collecting debts due it or enforcing any rights in property securing the same.

i. Transacting any business in interstate commerce.

j. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature. [C62, 66, 71, 73, 75, §496A.103; 66GA, ch 1207,§8]

Referred to in §496A.142(1)

496A.104 Powers of foreign corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character. [C62, 66, 71, 73, 75,§496A.104]

496A.105 Corporate name or trade of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

1. Shall contain the word "corporation", "company", "incorporated", or "limited", or shall contain an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

2. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

3. Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or the name of a corporation which has in effect a registration of its name as provided in this chapter, or an assumed name which has been adopted by a domestic or a foreign corporation for use in this state in the manner provided by this chapter except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the secretary of state any one of the following:

a. A resolution of its board of directors adopting an assumed name for use in transacting business in this state which assumed name is not deceptively similar to the name of any domestic corporation or of any foreign corporation authorized to transact business in this state or to any name reserved or registered as provided in this chapter.

b. The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name.

c. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such foreign corporation to the use of such name in this state.

The corporate name of such foreign corporation shall be the name under which the corporation shall transact its business in this state unless the corporation also shall elect to adopt one or more assumed names as provided in this chapter.

A foreign corporation authorized to transact business in this state may elect to adopt an assumed name that is not the same as or deceptively similar to the corporate name of any domestic corporation existing under the laws of this state or of any other foreign corporation authorized to transact business in this state, or the same as or deceptively similar to any name registered or reserved under the provisions of this chapter.

Such election shall be made by filing with the secretary of state an application executed by an officer of the corporation, setting forth such assumed name and paying to the secretary of state a filing fee of twenty dollars.

If such assumed name complies with the provisions of this chapter, the secretary of state shall issue a certificate authorizing the use of said name, but such certificate shall not confer any right to the use of said name as against any person having any prior right to the use thereof.

At the time annual license fees are payable under this chapter, a foreign corporation which has elected to adopt an assumed name shall pay to the secretary of state an annual fee of five dollars for such assumed name. However, if the assumed name was filed and became effective in December of any year, the first annual fee of five dollars shall be paid at the time of filing of the annual report in the second year following such December.

If such corporation fails to pay the annual fee when due and payable, the secretary of state shall give notice to the corporation of such nonpayment by registered or certified mail; and if such fee together with a penalty of five dollars is not paid within sixty days after such notice is mailed, the right to use such assumed name shall cease.

A separate application and annual fee shall be filed and paid for each assumed name adopted by a foreign corporation. [C62, 66, 71, 73, 75,§496A.105]

496A.106 Change of name by foreign corporation. Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state. [C62, 66, 71, 73, 75, §496A.106]

496A.107 Application for certificate of authority. A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.

2. If the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited", or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state.

3. The date of incorporation and the period of duration of the corporation.

4. The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

5. The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent or agents in this state at such address.

6. The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state.

7. The names and respective addresses of the directors and officers of the corporation.

8. A statement of the aggregate number of shares which the corporation has authority

to issue, itemize by classes, par value of shares, shares without par value, and series, if any, within a class.

9. A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

10. A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this chapter.

11. An estimate, expressed in dollars, of the fair and reasonable value of all property to be employed and used in Iowa by the corporation during the year.

12. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine the fees payable as in this chapter prescribed.

Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such application. [C62, 66, 71, 73, 75,§496A.107]

496A.108 Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority, together with a copy of its articles of incorporation and all amendments thereto, duly certified by the proper officer of the state or country under the laws of which it is incorporated, shall be delivered to the secretary of state for filing in his office.

Upon the filing of the application the secretary of state shall issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application, and send the same to the corporation or its representatives. [C62, 66, 71, 73, 75,§496A.108]

496A.109 Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this chapter. [C62, 66, 71, 73, 75, §496A.109]

496A.110 Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

1. A registered office which may be, but need not be, the same as its place of business in this state.

2. A registered agent or agents which may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office. [C62, 66, 71, 73, 75,§496A.110]

496A.111 Change of registered office or registered agent of foreign corporation. A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent or agents, or both office and agent or agents, upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.

2. The address of its then registered office.

3. If the address of its registered office be changed, the address to which the registered office is to be changed.

4. The name of its then registered agent or agents.

5. If its registered agent or agents be changed, the name of its successor registered agent or agents.

6. That the address of its registered office and the address of the business office of its registered agent or agents, as changed, will be identical.

7. That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by its president or a vice-president, and verified by him, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent or agents, or both, as the case may be, shall become effective.

Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

If a registered agent of a corporation subject to this section changes its business address to another address within this state, this agent may change the address of the registered office of the agent's corporation by filing a statement for each corporation as required by this section or by filing a single statement covering all corporations named in such statement. However, such statement may be signed by the registered agent alone, must recite that a copy of the statement has been mailed to each corporation, and shall not be supject to the provisions of subsections 5 and 7 of this section. [C62, 66, 71, 73, 75,§496A.111; 66GA, ch 1207, §9]

496A.112 Service of process on foreign corporation. Each registered agent so appointed

by a foreign corporation authorized to transact business in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a foreign corporation authorized to transact business in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice or demand may be served. Service on the secretary of state of any such process, notice or demand shall be made by delivering to and leaving with him, his deputy or with any person having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Process, notice or demand served on the secretary of state upon a foreign corporation which has withdrawn from this state shall be mailed in the manner provided by this section to the corporation at the address set forth in its application for withdrawal. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law. [C62, 66, 71, 73, 75,§496A.112]

496A.113 Amendment to articles of incorporation of foreign corporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state, nor authorize such corporation to transact business in this state under any other name than the name set forth in its certificate of authority. [C62, 66, 71, 73, 75,§496A.113]

496A.114 Merger of foreign corporation authorized to transact business in this state. Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state. [C62, 66, 71, 73, 75,§496A.114]

496A.115 Amended certificate of authority. A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority. [C62, 66, 71, 73, 75,§496A.115]

496A.116 Withdrawal of foreign corporation. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of the state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
2. That the corporation is not transacting business in this state.
3. That the corporation surrenders its authority to transact business in this state.
4. That the corporation revokes the authority of its registered agent or agents in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state.
5. A post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on him.

6. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of such application.

7. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of such application.

8. A statement, expressed in dollars, of the amount of stated capital of the corporation, as of the date of such application.

9. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess any unpaid fees payable by such foreign corporation as in this chapter prescribed.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him. [C62, 66, 71, 73, 75,§496A.116]

496A.117 Filing of application for withdrawal. Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, he shall, when all fees due him have been paid as in this chapter prescribed:

1. Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof.

2. File one of such duplicate originals in his office.

3. Issue a certificate of withdrawal to which he shall affix the other duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease. [C62, 66, 71, 73, 75,§496A.117]

496A.118 Revocation of certificate of authority. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

1. The corporation has failed to file its annual report within the time required by this chapter, or has failed to pay any fees or penalties prescribed by this chapter when the same have become due and payable; or

2. The corporation has failed to appoint and maintain a registered agent in this state as required by this chapter; or

3. The corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by this chapter; or

4. The corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this chapter; or

5. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless (*a*) he shall have given the corporation not less than sixty days' notice thereof by mail addressed to the principal office of the corporation in the state or country under the laws of which it is incorporated, and (*b*) the corporation shall fail prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement of change of registered agent or registered office, or file such articles of amendment or articles of merger, or correct such misrepresentation. [C62, 66, 71, 73, 75,§496A.118]

496A.119 Issuance of certificate of revocation. Upon revoking any such certificate of authority, the secretary of state shall:

1. Issue a certificate of revocation in duplicate.

2. File one of such certificates in his office.

3. Mail to such corporation at the principal office of the corporation in the state or country under the laws of which it is incorporated a notice of such revocation accompanied by one of such certificates.

Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this state shall cease. [C62, 66, 71, 73, 75,§496A.119]

496A.120 Transacting business without certificate of authority. No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority, nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets; provided, however, that no foreign corporation transacting business in this state shall maintain any action, suit or proceeding in this state upon any contract made by it in this state prior to the effective date of this chapter unless prior to the making of such contract it shall have procured a permit to transact business in this state as re-

quired by the laws in force at the time of making such contract, which prohibition shall also apply to any assignee of such foreign corporation and to any person claiming under such assignee of such foreign corporation or under either of them.

The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state.

A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section. [C62, 66, 71, 73, 75,§496A.120]

496A.121 Annual report of domestic and foreign corporations. Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall file, within the time prescribed by this chapter, an annual report setting forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.

2. The address of the registered office of the corporation in this state, and the name of its registered agent or agents in this state at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

3. A brief statement of the character of the business in which the corporation is actually engaged in this state.

4. The names and respective addresses of the directors and officers of the corporation.

5. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

6. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

7. A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this chapter.

8. In the case of a foreign corporation, a statement, expressed in dollars, of the fair and reasonable value of all property employed and used in Iowa by the corporation. If the foreign corporation elects to pay the annual license fee on the basis of its entire stated capital, then the information required by this subparagraph need not be set forth in such report.

9. Such additional information as may be necessary or appropriate to enable the secretary of state to determine the proper amount of license fees payable by such corporation.

Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the first day of January of the year in which the report is due. It shall be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or treasurer, or, if the corporation is in the hands of a receiver, trustee, or assignee for benefit of creditors, it shall be executed on behalf of the corporation by such receiver, trustee or assignee. [C62, 66, 71, 73, 75,§496A.121]

496A.122 Filing of annual report of domestic and foreign corporations. Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state for filing in his office between the first day of January and the thirty-first day of March of each year, except as otherwise provided in this section. The first annual report of a domestic corporation shall be filed between the first day of January and the thirty-first day of March of the year next succeeding the calendar year in which its corporate existence began, or in which, by voluntary election to adopt the provisions of this chapter, it first became subject to the provisions of this chapter, except that if such existence began in December of any year, or by such adoption it first became subject to the provisions of this chapter in December of any year, its first annual report shall be filed between the first day of January and the thirty-first day of March of the second year succeeding the calendar year in which its corporate existence began, or in which, by such adoption, it first became subject to the provisions of this chapter. The first annual report of a foreign corporation shall be filed between the first day of January and the thirty-first day of March of the year next succeeding the calendar year in which its certificate of authority was issued by the secretary of state except that if such certificate was issued in December of any year, its first annual report shall be filed between the first day of January and the thirty-first day of March of the second year succeeding the calendar year in which such certificate was issued by the secretary of state. Such report shall be deemed filed within the required time if deposited in the United States mail with postage prepaid in a sealed envelope, properly addressed and postmarked on or prior to the thirty-first day of March. If the secretary of state finds that such report conforms to the requirements of this chapter, and that all prior annual reports required by this chapter to be filed by such

corporation or foreign corporation have been filed and that all annual license fees and penalties, if any, required by this chapter to have been theretofore paid by such corporation or foreign corporation have been paid he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this chapter, and is resubmitted to the secretary of state within thirty days from the date on which it was mailed to the corporation by the secretary of state, but not later than July 1 of the year in which it is due. [C62, 66, 71, 73, 75,§496A.122; 66GA, ch 1207,§10]

496A.123 Fees and charges to be collected by secretary of state. The secretary of state shall charge and collect in accordance with the provisions of this chapter:

1. Fees for filing documents and issuing certificates.
2. Miscellaneous charges.
3. License fees. [C62, 66, 71, 73, 75,§496A.123]

496A.124 Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, twenty dollars.
2. Filing articles of amendment and issuing a certificate of amendment, twenty dollars.
3. Filing restated articles of incorporation, twenty dollars.
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, twenty dollars.
5. Filing an application to reserve a corporate name, five dollars.
6. Filing a notice of transfer of a reserved corporate name, five dollars.
7. Filing a statement of change of address of registered office or change of registered agent, or both, one dollar. If a single statement of change changes the address of the registered office of more than one corporation, the fee shall be one dollar for each corporation the address of whose registered office is changed thereby.
8. Filing a statement of the establishment of a series of shares, five dollars.
9. Filing a statement of cancellation of shares, five dollars.
10. Filing a statement of reduction of stated capital, five dollars.
11. Filing a statement of intent to dissolve, one dollar.
12. Filing a statement of revocation of voluntary dissolution proceedings, one dollar.
13. Filing articles of dissolution, one dollar.
14. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, twenty dollars.
15. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, twenty dollars.
16. Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, ten dollars.
17. Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, twenty dollars.
18. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, five dollars.
19. Filing any other statement or report, except an annual report, of a domestic or foreign corporation, one dollar.
20. Recording any instrument, document, or paper, fifty cents per page. [C62, 66, 71, 73, 75,§496A.124]

Referred to in §§524.303, 524.1402, 524.1410

496A.125 Miscellaneous charges. The secretary of state shall charge and collect:

1. For furnishing a certified copy of any document, instrument, or paper relating to a corporation, fifty cents per page and two dollars for the certificate and affixing the seal thereto; and for furnishing an uncertified copy, fifty cents per page.
2. At the time of any service of process on him as resident agent of a corporation, five dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action. [C62, 66, 71, 73, 75,§496A.125]

496A.126 Annual license fees payable by domestic corporations. At the time of filing its annual report, each domestic corporation shall pay to the secretary of state an annual license fee for the calendar year, which shall be due on January 1, payable March 31, to be based on its stated capital, as follows:

STATED CAPITAL			FEE
Over	Not over $	20,000 $	5
$ 20,000	but not over	40,000	10
40,000	but not over	60,000	15
60,000	but not over	80,000	20
80,000	but not over	100,000	25
100,000	but not over	150,000	30
150,000	but not over	200,000	35
200,000	but not over	250,000	40
250,000	but not over	300,000	45
300,000	but not over	350,000	50
350,000	but not over	400,000	55
400,000	but not over	500,000	60
500,000	but not over	600,000	70
600,000	but not over	700,000	80
700,000	but not over	800,000	90
800,000	but not over	900,000	100
900,000	but not over	1,000,000	110
1,000,000	but not over	2,500,000	175
2,500,000	but not over	5,000,000	250

5,000,000	but not over	10,000,000	350
10,000,000	but not over	50,000,000	800
50,000,000	but not over	100,000,000	1,200
100,000,000	but not over	200,000,000	1,600
200,000,000	but not over	300,000,000	2,000
300,000,000	but not over	500,000,000	2,500
500,000,000			3,000

Provided, that a domestic corporation having no stated capital, or a foreign corporation having no stated capital or no property in Iowa, shall pay an annual license fee of five dollars. [C62, 66, 71, 73, 75,§496A.126]

496A.127 Annual license fees payable by foreign corporations. At the time of filing its annual report, each foreign corporation having a permit to transact business in this state shall pay to the secretary of state an annual license fee for the calendar year, which shall be due on January 1, payable March 31, to be based on the sum total of the fair and reasonable value of all property employed and used in Iowa as of January 1 of the year in which the report is due, without deductions of sums due and owing by said foreign corporation. The annual license fee to be paid by said foreign corporation shall be based upon the sum so computed which shall be considered the stated capital in this state for the purpose of said annual license fee, and the fees to be paid thereon shall be computed by applying the schedule of annual license fees as in this chapter prescribed for domestic corporations.

A foreign corporation shall have the option, if it so elects, to pay its annual license fee upon its total stated capital, and said fee shall be computed by applying the schedule of annual license fees as in this chapter prescribed for domestic corporations.

The minimum annual license fee shall be five dollars. [C62, 66, 71, 73, 75,§496A.127]

496A.128 Collection of annual license fees. It shall be the duty of the secretary of state to collect all annual license fees and penalties imposed by, or assessed in accordance with, this chapter.

Between the thirty-first day of March and the first day of June of each year, the secretary of state shall determine the annual license fee payable by each corporation, domestic and foreign, required to file an annual report in such year, and if any such corporation has failed to file its annual report within the time prescribed by this chapter, or has failed to pay the amount of the annual license fee so determined, shall assess against such corporation the unpaid annual license fee and the penalty or penalties prescribed by this chapter; and mail a written notice to each corporation against which such an assessment is made, addressed to such corporation at its registered office in this state, notifying the corporation (1) of the amount of additional license fee and penalty assessed against it; (2) that objections, if any, to such assessment shall be filed on or before the fifteenth day of June of such year; and (3) that such license fee and penalty shall be payable to the secretary of state on the first day of July next succeeding the date of the notice. Failure to receive such notice shall not relieve the corporation of its obligations to pay the license fee and penalty assessed, or invalidate the assessment thereof. The secretary of state shall have the power to hear and determine objections to any such assessment and, after hearing to change and modify the same. In the event of any adjustment, the penalty shall be adjusted in accordance with the provisions of this chapter imposing such penalty. If the annual license fee determined to be payable shall be less than the amount theretofore paid by the corporation thereon, the excess shall be refunded, without interest by the secretary of state.

All annual license fees shall be due and payable on the thirty-first day of March of each year, and all assessments of annual license fees and penalties made by the secretary of state shall be due and payable on the first day of July. If the annual license fee payable by any corporation under the provisions of this chapter, together with all penalties assessed thereon, shall not be paid to the secretary of state on or before the thirty-first day of July of the year in which such fee is due and payable, the secretary of state shall certify such fact to the attorney general on or before the first day of November of such year, whereupon the attorney general may institute an action against such corporation in the name of this state, in any court of competent jurisdiction, for the recovery of the amount of such license fee and penalties, together with the cost of suit, and prosecute the same to final judgment. [C62, 66, 71, 73, 75,§496A.128]

496A.129 Credit against annual license fees. Each domestic and foreign corporation which within twenty years prior to July 4, 1959, has paid a fee or fees to the secretary of state for the purposes hereinafter mentioned shall be entitled to a credit against annual license fees becoming due from such corporation pursuant to the provisions of this chapter, to be allowed and made available as hereinafter provided.

1. The fees on which said credit is based shall be, for each domestic corporation including each such corporation organized with a term of fifty years for the construction and operation or the operation alone of a steam railway, interurban railway or a street railway, the total of all fees set forth in paragraphs "*a*" to "*e*" below, inclusive, excluding therefrom those set forth in paragraphs "*f*" to "*i*" below, inclusive:

a. All fees paid to the secretary of state within twenty years prior to July 4, 1959, by each such corporation as incorporation fees and fees for increase of capital stock paid pursuant to section 491.11 of the Code;

b. Filing fees for the filing of amendments increasing capital stock which fees were computed on the basis of the amount of increase

of capital stock and which were paid pursuant to section 491.20;

c. Fees paid pursuant to section 491.20 by a corporation which was organized for a term of years and which became entitled to perpetual existence by an amendment to its articles of incorporation which amendment was filed under the authority of said section 491.20;

d. Periodic fees paid pursuant to section 491.30; and

e. Renewal fees referred to in section 491.25 and in section 491.28 which were paid in connection with the filing of an instrument or certificate which extended or renewed, for a term of years or perpetually, the existence of a corporation which previously had existence for a term of years, excluding, however, those fees mentioned in paragraph "*i*" below.

The following fees shall be excluded from those on which said credit is based:

f. That portion of all fees paid to the secretary of state as recording fees or certificate fees;

g. Fees paid for renewal pursuant to the provisions of section 2 of chapter 47 of the laws of the Fifty-seventh General Assembly;

h. All incorporation fees and other fees paid to the secretary of state prior to the last renewal or extension of corporate existence by a domestic corporation which both incorporated and renewed or extended its corporate existence within twenty years prior to July 4, 1959; and

i. That portion of all fees paid pursuant to section 491.28 constituting the penalty of ten percent required to be paid by a corporation, the existence of which has expired, and which has failed to renew its existence within the period prescribed by statute.

Referred to in subsection 3(*a*)

2. The fees on which said credit is based shall be, for each foreign corporation including those having a permit in this state for a term of fifty years for the construction and operation or the operation alone of a steam railway, interurban railway or street railway, the total of all fees set forth in paragraphs "*a*" to "*c*" below, inclusive, excluding therefrom those set forth in paragraphs "*d*" and "*e*" below:

a. All fees paid to the secretary of state pursuant to section 494.4 within twenty years prior to July 4, 1959, by each such corporation as filing fees in connection with the qualification in this state of such corporation;

b. Renewal fees referred to in section 494.8 which were paid to the secretary of state within twenty years prior to July 4, 1959, in connection with the requalification of a foreign corporation; and

c. All fees paid to the secretary of state pursuant to section 494.5 within twenty years prior to July 4, 1959, by each such corporation for increase of money or property in use in this state.

The following fees shall be excluded from those on which said credit is based:

d. All qualification fees paid pursuant to section 494.4, all requalification fees paid pursuant to section 494.8 and all fees for increase of money or property in use in this state paid to the secretary of state pursuant to section 494.5, prior to the last qualification or prior to the last requalification as the case may be, by a foreign corporation which has qualified or requalified more than once in the last twenty years prior to July 4, 1959, or which has both qualified and requalified within the last twenty years prior to July 4, 1959; and

e. Fees paid for renewal pursuant to the provisions of section 3 of chapter 47 of the laws of the Fifty-seventh General Assembly.

Referred to in subsection 3(*a*)

3. The credit shall be computed as follows:

a. As to each domestic corporation having existence for a term of years and as to each domestic corporation having perpetual existence but required by section 491.30 to pay periodic fees every twenty years or every fifty years, and as to each foreign corporation the total amount of said credit shall be one-twentieth of the fees upon which said credit is based, as defined in subsection 1 or 2 above, as the case may be, multiplied by the number of full calendar years remaining between the year in which this chapter became effective and the year in which but for the adoption of this chapter, the corporation would again be required, if a domestic corporation organized for a term of years, to renew its existence and pay renewal fees under section 491.25 or if a domestic corporation having perpetual existence be required to pay periodic fees under section 491.30 or if a foreign corporation be required to requalify and pay fees therefor under section 494.8, subject to the limitation, however, that as to each domestic and foreign corporation organized for the construction and operation or the operation alone of a steam railway, interurban railway or street railway having a term of fifty years in this state or having a permit to transact business in this state for fifty years as the case may be, the amount of said credit shall not in any case be more than one-twentieth of the fees upon which said credit is based as defined in subsection 1 or 2 above multiplied by twenty.

b. Upon this chapter becoming effective, the secretary of state shall compute for each domestic and foreign corporation the total amount of said credit to which it is entitled under this section and shall enter the amount thereof on the records in his office relating to each such corporation.

c. Each year the secretary of state in determining the annual license fee payable by each corporation, domestic and foreign, without request by said corporation, shall apply against such annual license fee the remaining unused total credit to which such corporation is entitled or a portion thereof subject to the following limitations:

(1) The maximum amount of any such credit that may be applied against such annual license fee becoming due in any one year shall be an amount equal to fifty percent of the

annual license fee becoming due from such domestic or foreign corporation in said year.

(2) The credit herein provided for may not be applied to the extent that it would reduce the annual license fee below the minimum of five dollars.

(3) The credit herein provided for shall be allowed only against annual license fees coming due under this chapter and paid to the secretary of state within twenty years after July 4, 1959.

(4) The credit herein provided for shall not be allowed against any portion of an annual license fee representing a penalty, whether the same be a penalty for failure to file annual report within the time prescribed by this chapter or a penalty for failure to pay annual license fee prior to delinquency thereof.

(5) The maximum amount of any such credit for any domestic corporation which adopts this chapter after July 4, 1963, shall be an amount equal to one-twentieth of the fees upon which said credit is based, as defined in subparagraph (1) above, multiplied by the number of full calendar years remaining between the year in which this chapter is adopted by such corporation and the year in which, but for the adoption of this chapter, the corporation would again be required to renew its existence and pay renewal fees under section 491.25 or to pay periodic fees under section 491.30. [C62, 66, 71, 73, 75,§496A.129]

496A.130 Penalties imposed upon corporations. Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this chapter, shall be subject to a penalty of ten percent of the amount of the annual license fee determined by the secretary of state to be due and payable by such corporation for the period beginning January first of the year in which such report should have been filed. If the amount of the annual license fee originally determined by the secretary of state shall thereafter be adjusted in accordance with the provisions of this chapter, the amount of the penalty shall be likewise adjusted to ten percent of the amount of the adjusted license fee. In no event shall such penalty be less than five dollars. The amount of the license fee and the amount of the penalty shall be separately stated in any notice to the corporation with respect thereto.

If any portion of the annual license fee determined to be payable in accordance with the provisions of this chapter, shall not have been paid on or before the thirty-first day of March, the same shall be deemed to be delinquent.

Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this chapter interrogatories propounded by the secretary of state in accordance with the provisions of this chapter, shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding five hundred dollars.

The secretary of state may cancel the certificate of incorporation of any corporation that fails or refuses to file its annual report for any year prior to the first day of October of the year in which it is due or fails to pay prior to the first day of October any fees or penalties prescribed by this chapter by issuing a certificate of such cancellation at any time after the expiration of thirty days following the mailing to the corporation of notice of the certification to the attorney general of the failure of the corporation to file such annual report or pay such fees and penalties as required by section 496A.92, provided the corporation has not filed such annual report or paid such fees and penalties prior to the issuance of the certificate of cancellation. Upon the issuance of the certificate of cancellation, the secretary of state shall send the certificate to the corporation at its registered office and shall retain a copy thereof in the permanent records of his office.

Upon the issuance of the certificate of cancellation, the corporate existence of the corporation shall terminate, subject to right of reinstatement as herein provided, and the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof or for securing reinstatement and the right of the corporation to the use of its name shall cease and such name shall thereupon be available to any other corporation or foreign corporation or for reservation, registration or use as a trade name as provided in this chapter. The cancellation of the certificate of incorporation of a corporation shall not take away or impair any remedy available to or against such corporation, its directors, officers or shareholders for any right or claim existing or any liability incurred prior to such cancellation, but no action or proceeding thereon may be prosecuted by such corporation until it shall have been reinstated. Any such action or proceeding against such corporation may be defended by the corporation, if it has not been reinstated, in its corporate name to which there shall be appended the word "Canceled" followed by the date of the issuance of the certificate of cancellation. Unless the corporation is reinstated, the corporation, upon the issuance of the certificate of cancellation, shall proceed to liquidate its business and affairs as provided by this chapter in cases of dissolution by consent of shareholders or by act of the corporation, provided, however, that the district court in a suit in equity shall have full power to liquidate the assets and business of such a corporation upon application by such corporation or in a suit by a shareholder or creditor of such corporation when such corporation fails to proceed promptly with such liquidation or to make application to the court therefor. A copy of the certificate of cancellation, certified by the secretary of state, shall be taken and received in all courts as prima-facie evidence of the cancellation of the certificate of incorporation as stated therein.

If the certificate of incorporation of a corporation has been canceled by the secretary of state as provided in this section for failure to file an annual report, or failure to pay fees or penalties, such corporation shall be reinstated by the secretary of state at any time within five years following the date of the issuance by the secretary of state of the certificate of cancellation upon:

1. The delivery by the corporation to the secretary of state for filing in his office of an application for reinstatement, executed by its president or vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such application, which shall set forth:

a. The date of the issuance by the secretary of state of the certificate of cancellation;

b. The name of the corporation at the time of the issuance of the certificate of cancellation and, if, at the time of the filing of the application for reinstatement, another corporation or foreign corporation is entitled to use such name or such name is then reserved or registered as provided in this chapter, the name of the corporation as changed, which shall be a name then available under the laws of this state; and

c. The address, including street and number, if any, of the registered office of the corporation upon the reinstatement thereof, which shall be located in the same county as the county in which the registered office of the corporation was located at the time of the issuance of the certificate of cancellation, and the name of its registered agent or agents at such address upon the reinstatement of the corporation;

2. The filing with the secretary of state by the corporation of all annual reports then due and theretofore becoming due;

3. The payment to the secretary of state by the corporation of all annual license fees and penalties then due and theretofore becoming due and an additional penalty of one hundred dollars.

The secretary of state, upon filing the application for reinstatement, shall issue a certificate of reinstatement and file and record the same in his office and, if the application for reinstatement shall set forth a change in the name of the corporation, as required by this section, the same shall constitute an amendment to the articles of incorporation of the corporation and the certificate of reinstatement shall set forth such fact and shall be filed and recorded in the office of the county recorder. Upon the issuance of the certificate of reinstatement, the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period as fixed by its articles of incorporation, provided, however, that the corporation shall not be entitled to use the name of the corporation at the time of the issuance of the certificate of cancellation if another corporation or foreign corporation is entitled to use such name or such name is then reserved or registered as provided in this chapter. [C62, 66, 71, 73, 75,§496A.130]

496A.131 Penalties imposed upon officers and directors. Each officer and director of a corporation, domestic or foreign, who willfully fails or refuses within the time prescribed by this chapter to answer truthfully and fully reasonable and proper interrogatories propounded to him by the secretary of state in accordance with the provisions of this chapter, or who signs any articles, statement, report, application or other document filed with the secretary of state which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof may be fined in any amount not exceeding five hundred dollars. [C62, 66, 71, 73, 75, §496A.131]

496A.132 Interrogatories by secretary of state. The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of this chapter, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this chapter applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the secretary of state, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary thereof. The secretary of state need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this chapter. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter. [C62, 66, 71. 73, 75,§496A.132]

496A.133 Information disclosed by interrogatories. Interrogatories propounded by the secretary of state and the answers thereto shall not be open to public inspection nor shall the secretary of state disclose any facts or information obtained therefrom except insofar as required in the performance of his official duties. [C62, 66, 71, 73, 75,§496A.133]

496A.134 Powers of secretary of state. The secretary of state shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him. [C62, 66, 71, 73, 75,§496A.134]

496A.135 Judicial review. If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by this chapter to be approved by the secretary of state before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. Judicial review of the acts of the secretary of state may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the registered office of such corporation is, or is proposed to be, situated.

If the secretary of state shall revoke the certificate of authority to transact business in this state of any foreign corporation, pursuant to the provisions of this chapter, judicial review of such action of the secretary of state may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county where the registered office of such corporation in this state is situated. [C62, 66, 71, 73, 75,§496A.135]

496A.136 Certificates and certified copies to be received in evidence. All certificates issued by the secretary of state in accordance with the provisions of this chapter, and copies of all documents filed or recorded in his office in accordance with the provisions of this chapter when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima-facie evidence of the facts therein stated. A certificate by the secretary of state under the seal of his office, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima-facie evidence of the existence or nonexistence of the facts therein stated. [C62, 66, 71, 73, 75,§496A.136]

496A.137 Forms to be furnished by secretary of state. All reports required by this chapter to be filed in the office of the secretary of state shall be made on forms which shall be prescribed and furnished by the secretary of state. Forms for other documents to be filed in the office of the secretary of state may be furnished by the secretary of state on request therefor, but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory. [C62, 66, 71, 73, 75,§496A.137]

496A.138 Voting requirements. Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater or lesser proportion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. [C62, 66, 71, 73, 75,§496A.138]

496A.139 Waiver of notice. Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. [C62, 66, 71, 73, 75, §496A.139]

Referred to in §496A.142(13)

496A.140 Informal action by shareholders or directors. Any action required by this chapter to be taken at a meeting of the shareholders or directors of a corporation, or any action which may be taken at a meeting of the shareholders or directors or of a committee of directors, may be taken without a meeting if a consent in writing setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof or all of the directors or all of the members of the committee of directors, as the case may be. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this chapter. The provisions of this section shall be applicable whether or not this chapter requires that an action be taken by resolution. [C62, 66, 71, 73, 75,§496A.140]

Referred to in §496A.142(13)

496A.141 Unauthorized assumption of corporate powers. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. [C62, 66, 71, 73, 75,§496A.141]

496A.142 Application to existing corporations.

1. Except as provided in section 496A.2, in section 496A.103, subsection 2 and in this subsection, this chapter shall not apply to or affect corporations subject to the provisions of chapters 174, 176, 482, 497, 498, 499, 499A, 504, 506, 508, 510, 512, 514, 515, 518A, 519, 533, 534 of the Code and state banks organized under chapter 524. Such corporations shall continue to be governed by all laws of this state heretofore applicable thereto and as the same may hereafter be amended. This chapter shall not be construed as in derogation of or as limitation on the powers to which such corporations may be entitled.

Referred to in subsections 5 and 6
Referred to in §496A.3

2. This chapter shall not apply to any domestic corporation organized under the pro-

visions of chapter 491 nor, for a period of two years from and after July 4, 1959, to any foreign corporation holding a permit under the provisions of chapter 494 or pursuant to the provisions of chapter 495 on July 4, 1959, unless such domestic corporation or such foreign corporation shall voluntarily elect to adopt the provisions of this chapter and shall comply with the procedure prescribed by the provision of subsection 3 of this section.

3. Any domestic corporation existing as of July 4, 1959, or thereafter organized under the provisions of chapter 491 may voluntarily elect to adopt the provisions of this chapter and thereby become subject to its provisions and, during the period of two years from and after July 4, 1959, any foreign corporation holding a permit under the provisions of chapter 494 or pursuant to the provisions of chapter 495 on said date may voluntarily elect to adopt the provisions of this chapter and thereby become subject to the provisions of this chapter. The procedure for electing to adopt the provisions of this chapter shall be as follows:

a. As to domestic corporations, a resolution reciting that the corporation voluntarily adopts this chapter and designating the address of its initial registered office and the name of its registered agent or agents at such address and, if the name of the corporation does not contain such a word or abbreviation as is required by this chapter, amending the articles of incorporation of the corporation to change the name of the corporation to one complying with the requirements of this chapter, shall be adopted by the board of directors and shareholders by the procedure prescribed by this chapter for the amendment of articles of incorporation. As to foreign corporations, a resolution shall be adopted by the board of directors, reciting that the corporation voluntarily adopts this chapter, and designating the address of its registered office in this state and the name of its registered agent or agents at such address and, if the name of the corporation does not contain such a word or abbreviation as is required by this chapter, setting forth the name of the corporation with the word or abbreviation conforming to the requirements of this chapter which it elects to add thereto for use in this state.

b. Upon adoption of the required resolution or resolutions, an instrument shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing the instrument, which shall set forth:

(1) The name of the corporation;

(2) Each such resolution adopted by the corporation and the date of adoption thereof.

c. As to domestic corporations such instrument shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder. The corporation shall at the time it files such instrument with the secretary of state deliver also to the secretary of state for filing in his office any annual report which is then due.

If the county of the initial registered office as stated in such instrument is one which is other than the county wherein the principal place of business of such corporation, as theretofore designated in its articles of incorporation, was located, the secretary of state shall forward also to the county recorder of the county in which the said principal place of business of said corporation was located a copy of such instrument and he shall forward to the recorder of the county in which the initial registered office of such corporation is located, in addition to the original of such instrument, a copy of the articles of incorporation of said corporation together with all amendments thereto as then on file in his office.

d. As to foreign corporations, such instrument shall be delivered to the secretary of state for filing in his office and the corporation shall at the same time deliver also to the secretary of state for filing in his office any annual report which is then due.

e. Upon the filing of such instrument by a domestic or foreign corporation:

(1) All of the provisions of this chapter shall thereafter apply to the corporation, and thereupon every such foreign corporation subject to the limitations set forth in its certificate of authority, shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under this chapter, and shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under this chapter.

(2) The secretary of state shall issue a certificate as to the filing of such instrument and deliver such certificate to the corporation or its representative.

(3) The secretary of state shall not file such instrument with respect to a domestic corporation unless at the time thereof such corporation is validly existing and in good standing in that office under the provisions of chapter 491. Such corporation shall be considered validly existing and in good standing for the purpose of this section for a period of three months following the expiration date of the corporation, provided all annual reports due have been filed and all fees due in connection therewith have been paid.

Referred to in subsections 2, 4, 5, 6, 10, 12

4. The provisions of this chapter becoming applicable to any domestic or foreign corporation shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of chapters 491, 494 or 495 prior to the filing by the secretary of state in his office of the instrument manifesting the election by such corporation to adopt the provisions of this chapter as provided in subsection 3 of this section.

5. Except for the exceptions and limitations of subsection 1 of this section, this chapter shall apply only to domestic corporations organized under this chapter; domestic corporations existing as of July 4, 1959, or thereafter organized under chapter 491 which voluntarily elect to adopt the provisions of this chapter and comply with the provisions of subsection 3 of this section; all foreign corporations transacting or seeking to transact business within this state and not holding, on July 4, 1959, a valid permit so to do; foreign corporations holding, on July 4, 1959, a valid permit under the provisions of chapter 494 or pursuant to the provisions of chapter 495 which, during the period of two years from and after July 4, 1959, voluntarily elect to adopt the provisions of this chapter and comply with the provisions of subsection 3 of this section; and, upon the expiration of the period of two years from and after July 4, 1959, all foreign corporations holding such a permit on July 4, 1959.

6. Upon the expiration of a period of two years from and after July 4, 1959, except for the exceptions and limitations of subsection 1 of this section, this chapter shall apply to all foreign corporations transacting or seeking to transact business within this state. Those foreign corporations holding a valid permit to do business in this state on July 4, 1959, which have not meanwhile adopted this chapter by complying with the provisions of subsection 3 of this section, shall at the expiration of two years from and after July 4, 1959, be deemed to have elected to adopt this chapter by not voluntarily withdrawing from the state, and thereupon, every such foreign corporation, subject to the limitations set forth in its certificate of authority, shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under this chapter, and shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under this chapter.

Referred to in subsection 7

7. Within eight months after this chapter becomes applicable to any foreign corporation pursuant to the provisions of subsection 6 of this section, the board of directors of such foreign corporation shall adopt a resolution designating the address of its registered office in this state and the name of its registered agent or agents at such address and, if the name of such corporation does not contain such a word or abbreviation as is required by this chapter, setting forth the name of the corporation with the word or abbreviation conforming to the requirements of this chapter which it elects to add thereto for use in this state.

Upon adoption of the required resolution or resolutions, an instrument or instruments shall be executed by the foreign corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such instrument, which shall set forth the name of the corporation, each resolution adopted as required by the provisions of this subsection, and the date of the adoption thereof. Such instrument shall be delivered to the secretary of state for filing in his office. Upon the filing of such instrument by a foreign corporation the secretary of state shall issue a certificate as to the filing of such instrument and deliver such certificate to the corporation or its representative. The secretary of state shall not file any annual report of any foreign corporation subject to the provisions of this subsection unless and until said corporation has fully complied with the provisions of this paragraph and, in such event, such foreign corporation shall be subject to the penalties prescribed in this chapter for failure to file such report within the time as provided therefor in this chapter.

8. The first annual report required to be filed by a domestic or foreign corporation under the provisions of this chapter shall be filed between January 1 and March 31 of the year next succeeding the calendar year in which it becomes subject to this chapter.

9. No corporation to which the provisions of this chapter apply shall be subject to the provisions of chapters 491, 492, 493, 494, 495, or 496.

10. Except as otherwise provided in this section, existing corporations shall continue to be governed by the laws of this state heretofore applicable thereto and each domestic corporation organized under the provisions of chapter 491 shall be governed by the provisions thereof unless and until such corporation shall have elected to adopt the provisions of this chapter and shall have complied with the provisions of subsection 3 of this section.

11. If any corporation, organized under the provisions of chapter 491 and existing for a period of years, shall elect to adopt the provisions of this chapter and shall at the same time or thereafter amend its articles of incorporation to extend its period of duration, then upon the amendment becoming effective, the shares voted against the amendment shall be purchased in accordance with the following provisions:

a. The purchase shall be made by the corporation, if the resolution setting forth the amendment provides for the purchase by the corporation; if the resolution does not so provide, the purchase shall be made by the holders of the shares voted for the amendment.

b. The purchase price shall be the real value of the shares, as of the day on which the vote was taken approving the amendment.

c. The purchase price, together with interest thereon at five percent per annum from the effective date of the amendment, shall be paid within three years from such date.

d. This subsection shall not apply to any subsequent amendment to the articles of in-

corporation further extending the period of duration of said corporation.

Referred to in §496A.102

12. Any domestic corporation which elects to adopt the provisions of this chapter by complying with the provisions of subsection 3 may, at the same time:

a. Amend or restate its articles of incorporation by complying with the provisions of this chapter with respect to amending articles of incorporation or restating articles of incorporation, as the case may be.

b. Take action to enter into a merger or consolidation or to dissolve by complying with the provisions of this chapter with respect to merger, consolidation or dissolution, as the case may be.

13. The provisions of sections 496A.139 and 496A.140 shall apply to any action required or permitted to be taken under this section. [C62, 66, 71, 73, 75,§496A.142; 66GA, ch 1207,§§11, 12]

Referred to in §§496A.3, 496A.102

496A.143 Application to foreign and interstate commerce. The provisions of this chapter shall apply to commerce with foreign nations and among the several states only insofar as the same may be permitted under the provisions of the Constitution of the United States. [C62, 66, 71, 73, 75,§496A.143]

496A.144 Reservation of power. The general assembly shall at all times have power to prescribe such regulations, provisions and limitations as it may deem advisable, which regulations, provisions and limitations shall be binding upon any and all corporations subject to the provisions of this chapter, and the general assembly shall have power to amend, repeal or modify this chapter at pleasure. [C62, 66, 71, 73, 75,§496A.144]

496A.145 Repealed by 66GA, ch 57,§17.

CHAPTER 496B

ECONOMIC DEVELOPMENT CORPORATIONS

Referred to in §524.901

496B.1 Title of Act.
496B.2 Definitions.
496B.3 Authorized corporations.
496B.4 Offices.
496B.5 Purposes.
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496B.7 Stock—limitations.
496B.8 Stockholders privileges.
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496B.10 Duration of membership.
496B.11 Powers of shareholders.
496B.12 Articles amended.
496B.13 Board of directors.
496B.14 Earned surplus set aside.
496B.15 Deposit of funds.
496B.16 Reports to development commission.
496B.17 Certificate to do business.
496B.18 Securities law not applicable.
496B.19 Dissolution.
496B.20 State credit not available.

496B.1 Title of Act. This chapter shall be known and may be cited as the "Iowa Economic Development Act." [C66, 71, 73, 75, 496B.1]

496B.2 Definitions. As used in this chapter, unless the context otherwise requires, the term:

1. "Development corporation" means any corporation organized pursuant to this chapter and for the purpose of developing businesses, industries, and enterprises in the state of Iowa by the loaning of money thereto and investing money therein, and otherwise organizing for the purposes in section 496B.5.

2. "Financial institution" means any bank, trust company, savings and loan association, insurance company or related corporation, partnership, foundation or other institution licensed to do business in the state of Iowa and engaged primarily in lending or investing funds.

3. "Member" means any financial institution which shall undertake to lend money to a development corporation upon its call and in accordance with the provision of section 496B.9.

4. "Board of directors" means members of the board of directors of a development corporation constituted under section 496B.13 in office from time to time.

5. "Loan limit" means, for any member, the maximum amount permitted to be outstanding at any one time on loans made by any such member to a development corporation, as determined herein.

6. "Commission" means the Iowa development commission of the state of Iowa, or any agency which succeeds to the functions of the Iowa development commission. [C66, 71, 73, 75,§496B.2]

496B.3 Authorized corporations. There is hereby authorized to be incorporated under the Iowa business corporation Act,* development corporations which meet and comply with the requirements of this chapter. Such corporations shall be subject to and have the

powers and privileges conferred by the provisions of this chapter and those provisions of the Iowa business corporation Act which are not inconsistent with and to the extent not restricted or limited by the provisions of this chapter. No corporation shall be deemed incorporated pursuant to and under the provisions of this chapter unless the same is approved by the commission and unless its articles of incorporation provides that it is incorporated pursuant to this chapter. To assure a broad base from which development corporations may obtain loans from members, the commission at its discretion may limit the number of development corporations organized and existing pursuant to this chapter to one or more such corporations. [C66, 71, 73, 75, §496B.3]

*Ch 496A

496B.4 Offices. A development corporation may have offices in such places within the state of Iowa as may be fixed by the board of directors. [C66, 71, 73, 75,§496B.4]

496B.5 Purposes. The purposes of a development corporation shall be limited to those provided in this section and shall be to promote, stimulate, develop and advance the business prosperity and economic welfare of the state of Iowa and its citizens; to encourage and assist through loans, investments, or other business transactions, the location of new business and industry in the state; to rehabilitate and assist existing business and industry in this state; to stimulate and assist in the expansion of any kind of business activity which would tend to promote business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; to co-operate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational development in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state. [C66, 71, 73, 75,§496B.5]

Referred to in §496B.2(1)

496B.6 Powers. Any development corporation shall, subject to the restrictions and limits herein contained, have the following powers:

1. To make contracts and incur liabilities for any of the purposes of the development corporation; provided that no development corporation shall incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint stock company, association or trust, or in any other manner.

2. To borrow money either from its members or pursuant to lending arrangements entered into under the authority granted in subsection 7 of this section, or both from its members and pursuant to said lending arrangements, and to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and when necessary to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights and privileges of every kind and nature, or any part thereof or interest therein, without securing shareholder or member approval; provided, that no loan to a development corporation shall be secured in any manner unless all outstanding loans to such corporation, and for which loan or loans no subordination agreement has been entered into between the respective loan maker and the development corporation, shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

3. To make loans to any person, firm, corporation, joint stock company, association or trust and to establish and regulate the terms and conditions with respect to any such loans, and the charges for interest and service connected therewith.

4. To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, association or trust; to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants and business establishments.

5. To co-operate with and avail itself of the facilities of the commission and to co-operate with and assist and otherwise encourage organizations in the various communities of the state of Iowa in the promotion, assistance and development of business prosperity and economic welfare of such communities or of this state or any part thereof.

6. To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter and such other powers not in conflict herewith granted under the Iowa business corporation Act.

7. To enter into lending arrangements with state and federal agencies or instrumentalities whereby the development corporation may participate in lending operations or secure guarantees or qualify under applicable laws to further state or federal lending programs by becoming a participant therein. [C66, 71, 73, 75,§496B.6]

496B.7 Stock — limitations. Capital stock shall be issued only on receipt by each development corporation of cash in such amount not less than the par value thereof as may be determined by the board of directors. No shareholder of any development corporation shall be entitled as of right to purchase or subscribe for any unissued or treasury shares of the corporation, and no such shareholder shall be entitled as of right to purchase or subscribe for any bonds, notes, certificates of indebtedness, debentures, or other obligations

convertible into shares of the development corporation. [C66, 71, 73, 75,§496B.7]

496B.8 Stockholders privileges. Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective articles of incorporation, agreements of association, or trust indentures:

1. Any person, as defined in the Iowa business corporation Act, is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bond, security or other evidences of indebtedness created by, or the shares of the capital stock of, development corporations, and while owners of said shares to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state.

2. Any financial institution is hereby authorized to become a member of a development corporation and to make loans to such corporation.

3. Any financial institution which does not become a member of a development corporation shall not be permitted to acquire any shares of the capital stock of such development corporation.

4. Each financial institution which becomes a member of a development corporation is hereby authorized to acquire, purchase, hold, sell, assign, mortgage, pledge, or otherwise dispose of, any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the development corporation, of which it is a member and while owners of such shares to exercise all rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state; provided that the amount of the capital stock of any development corporation which may be acquired by any member pursuant to the authority granted herein, shall not exceed ten percent of the loan limit of such member. The amount of capital stock of a development corporation which any member is authorized to acquire pursuant to the authority granted herein, is in addition to the amount of capital stock in other corporations which such member may otherwise be authorized to acquire, provided, however, that no financial institution shall become a shareholder or member of more than one development corporation. [C66, 71, 73, 75, §496B.8]

496B.9 Loan procedures. A financial institution may request membership in a development corporation by making application to the board of directors thereof on such form and in such manner as such board of directors may require, and membership shall become effective upon acceptance of such application by said board. Each member of any development corporation shall make loans to such development corporation as and when called upon by that corporation to do so on such terms and conditions as shall be approved from time to time by the board of directors subject to the following:

1. All loan limits shall be established at the thousand dollar amount nearest the amount computed in accordance with the provisions of this section.

2. No loan to a development corporation shall be made if immediately thereafter the total amount of the obligations of the development corporation calling for the loan would exceed ten times the amount then paid in on the outstanding capital stock of such corporation.

3. The total amount outstanding at any one time on loans to a development corporation made by a member thereof when added to the amount of the investment in the capital stock of such corporation and held by such member, shall not exceed the lesser of:

a. Twenty percent of the total amount then outstanding on loans to such development corporation by all members thereof, including in said total amount outstanding amounts validly called for loan but not yet loaned.

b. The limit, to be determined as of the time such member becomes a member, on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, as follows:

(1) Banks and trust companies—two percent of the paid-in capital, surplus, and undivided profits.

(2) Savings and loan associations—two percent of the general reserve account, surplus and undivided profits.

(3) Stock life insurance companies—one percent of capital and unassigned surplus.

(4) Mutual life insurance companies—one percent of the unassigned surplus.

(5) All other insurance companies—one-tenth of one percent of the assets.

(6) Other financial institutions—such limits as may be approved by the board of directors of the development corporation.

Provided that the lending limit of any one member shall not exceed two hundred fifty thousand dollars.

4. Each call for loan shall be prorated among the members in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding obligations of the corporation to such member and the investment in capital stock of the corporation held by such member at the time of such call.

5. All loans to a development corporation by a member shall be evidenced by registered bonds, debentures, notes, or other evidences of indebtedness of the development corporation, which shall be freely transferable by the reg-

istered holder thereof on the books of the corporation. [C66, 71, 73, 75,§496B.9]

Referred to in §496B.2(3)

496B.10 Duration of membership. Membership in any development corporation shall be for the duration of the respective development corporation; provided, however, that upon written notice given to the development corporation five years in advance a member thereof may withdraw from membership in such corporation at the expiration date of such notice. Provided that a financial institution may at any time withdraw from membership without such notice in the event of its merger with another financial institution, after commencement of proceedings for voluntary or involuntary dissolution, receivership, or reorganization pursuant to or by operation of federal or state law or in the event of conversion from a state financial institution to a federal financial institution or the reverse. If there shall be a legislative amendment of this chapter affecting the rights and obligations of the members and shareholders or otherwise affecting the articles of incorporation of such corporation which shall not have been approved by the members and shareholders within the time set forth and in the manner provided in this chapter, any member not approving such amendment may immediately withdraw from membership upon giving written notice to the corporation not later than ninety days from the effective date of the amendment. A member shall not be obligated to make any loans to a development corporation pursuant to calls made subsequent to the withdrawal of said member therefrom. [C66, 71, 73, 75,§496B.10]

496B.11 Powers of shareholders. The shareholders and the members of the development corporation shall have the following powers of such corporation:

1. Those powers granted in the Iowa business corporation Act which are not inconsistent with the provisions of this chapter.

2. To determine the number and elect directors as provided herein.

3. To amend the articles of incorporation as provided herein.

4. To dissolve the corporation as provided herein.

5. To exercise such other of the powers of the corporation as may be conferred on the shareholders and the members by the bylaws. As to all matters requiring action by the shareholders and the members of the corporation, such shareholders and such members shall vote separately thereon by classes and, except as may be otherwise herein provided, approval of such matters shall require the affirmative vote of a majority of the votes to which the shareholders present or represented at the meeting are entitled, and the affirmative vote of a majority of the votes to which the members present or represented at the meeting are entitled. Each shareholder shall have one vote, in person or by proxy, for each share of capital stock held by him, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars shall have one additional vote, in person or by proxy, for each additional one thousand dollars which such member is authorized to have outstanding on loans to the corporation at any one time as determined herein. [C66, 71, 73, 75,§496B.11]

496B.12 Articles amended. The articles of incorporation of any development corporation may be amended by the votes of the shareholders and the members thereof voting separately by classes. Any amendment shall require approval by the affirmative vote of two-thirds of the votes to which the shareholders shall be entitled and two-thirds of the votes to which the members shall be entitled. No amendment, however, shall be made which: (1) is inconsistent with this chapter; (2) authorizes any additional class or classes of shares of capital stock; (3) eliminates or curtails the authority of the commission with respect to the corporation. Without the consent of each of the members affected, no amendment shall be made which: (1) increases the obligation of a member to make loans to the corporation; (2) makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation; (3) affects a member's right to withdraw from membership, as provided herein, or (4) affects a member's voting rights in the corporation. Within thirty days after any meeting at which amendment of any such articles has been adopted, articles of amendment signed and sworn to by the president, secretary and majority of the directors, setting forth such amendment and the due adoption thereof, shall be submitted to the chairman of the commission who shall examine them, and if he finds that they conform to the requirements of this chapter, shall so certify and endorse his approval thereof. Thereupon, the articles of amendment shall be filed in the office of the secretary of state in the manner set forth and as provided in the Iowa business corporation Act and no such amendment shall take effect until such articles of amendment shall have been approved and filed as aforesaid. Within sixty days after the effective date of any legislative amendment affecting the rights and obligations of the members and shareholders or otherwise affecting the articles of incorporation, the approval of such legislative amendment shall be voted on by the shareholders and the members of the development corporation at a meeting duly called for that purpose. If such legislative amendment is not approved by the affirmative vote of two-thirds of the votes to which such shareholders shall be entitled and two-thirds of the votes to which such members shall be entitled, any such member voting against the approval of such legislative amendment shall

have the right to withdraw from membership as provided in this chapter. Within thirty days after any meeting at which a legislative amendment affecting the articles of incorporation of a development corporation has been voted on, a certificate filed and sworn to by the secretary or other recording officer of such corporation setting forth the action taken at such meeting with respect to such amendment shall be submitted to the chairman of the commission and upon receipt of such approval shall be filed in the office of the secretary of state. [C66, 71, 73, 75,§496B.12]

496B.13 Board of directors. The board of directors shall consist of such number not less than fifteen as shall be determined in the first instance by the incorporators and thereafter annually by the members and the shareholders at each annual meeting or at any special meeting held in lieu of the annual meeting. At each annual meeting or at any special meeting held in lieu of the annual meeting, the members of each corporation shall elect two-thirds of the board of directors and the shareholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election, and until their successors are elected and qualify unless sooner removed in accordance with the provisions of the bylaws. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the shareholders shall be filled by the directors elected by the shareholders.

Notwithstanding any provisions of law to the contrary, officers and directors of insurance companies and other financial institutions may be members of the board of directors of any corporation organized for the purposes of this chapter to which the insurance company or other financial institution may make a loan or may make an investment. [C66, 71, 73, 75, §496B.13]

Referred to in §496B.2(4)

496B.14 Earned surplus set aside. Each year each development corporation shall set apart as earned surplus not less than ten percent of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one-half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons. [C66, 71, 73, 75, §496B.14]

496B.15 Deposit of funds. No development corporation shall deposit any of its funds in any financial institution unless such institution has been designated as a depository by a vote of a majority of the directors present at any authorized meeting of the board of directors exclusive of any director who is an officer or director of the depository so designated. No development corporation shall receive money on deposit. [C66, 71, 73, 75,§496B.15]

496B.16 Reports to development commission. Each development corporation shall be subject to the examination of the commission and shall make reports of its condition not less than annually to the commission, which in turn shall make copies of such reports available to the commissioner of insurance and the superintendent of banking, and each development corporation shall also furnish such other information as may from time to time be required by the commission. [C66, 71, 73, 75, §496B.16]

496B.17 Certificate to do business. Upon the approval of the commission as required in this chapter and the issuance of a certificate as provided in the Iowa business corporation Act, a development corporation shall then be authorized to commence business and to issue stock thereof to the extent authorized in its articles of incorporation. [C66, 71, 73, 75, §496B.17]

496B.18 Securities law not applicable. No provision of chapter 502 shall apply to the shares of capital stock, bonds, debentures, notes, evidences of indebtedness, or any other securities of development corporations. [C66, 71, 73, 75,§496B.18]

496B.19 Dissolution. A development corporation may be dissolved upon the affirmative vote of two-thirds of the votes to which the shareholders thereof shall be entitled and two-thirds of the votes to which the members shall be entitled. Upon any dissolution of a development corporation, none of the corporation's assets shall be distributed to the shareholders until all sums due the members of the corporation as creditors thereof have been paid in full. [C66, 71, 73, 75,§496B.19]

496B.20 State credit not available. Under no circumstances is the credit of the state of Iowa pledged herein. [C66, 71, 73, 75,§496B.20]

Constitutionality, 60GA, ch 290,§21

CHAPTER 496C

PROFESSIONAL CORPORATIONS

Referred to in §§116.3, 514B.32

496C.1 Short title.
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496C.3 Applicability of Iowa business corporation Act.
496C.4 Purposes and powers.
496C.5 Corporate name.
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496C.9 Relationship and liability to persons served.
496C.10 Issuance of shares.
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496C.18 Merger or consolidation.
496C.19 Dissolution or liquidation.
496C.20 Foreign professional corporation.
496C.21 Annual report.
496C.22 Corporations organized under other laws.

496C.1 Short title. This chapter shall be known and may be cited as the "Iowa Professional Corporation Act". [C71, 73, 75, §496C.1]

496C.2 Definitions. As used in this chapter, unless the context otherwise requires, the definitions contained in the Iowa business corporation Act [chapter 496A] apply, and:

1. *"Profession"* means the profession of certified public accountancy, architecture, chiropractic, dentistry, physical therapy, psychology, professional engineering, land surveying, landscape architecture, law, medicine and surgery, optometry, osteopathy, osteopathic medicine and surgery, accounting practitioner, podiatry, speech pathology, audiology, veterinary medicine, pharmacy and the practice of nursing.

2. *"Professional corporation"* means a corporation subject to this Act, except a foreign professional corporation.

3. *"Foreign professional corporation"* means a corporation organized under laws other than the laws of this state for a purpose for which a professional corporation may be organized under this chapter.

4. *"Licensed"* includes registered, certified, admitted to practice, or otherwise legally authorized under the laws of this state.

5. *"Regulating board"* means any board, commission, court, or governmental authority which, under the laws of this state, is charged with the licensing, registration, certification, admission to practice, or other legal authorization of the practitioners of any profession.

6. *"Voluntary transfer"* includes any sale, voluntary assignment, gift, pledge, or encumbrance; any voluntary change of legal or equitable ownership or beneficial interest; or any voluntary change of persons having voting rights with respect to any shares, except as proxies; but does not include any transfer of an individual's shares or other property to a guardian or conservator appointed for such individual or his property.

7. *"Employees"* or *"agents"* does not include clerks, stenographers, secretaries, bookkeepers, technicians, or other persons who are not usually and ordinarily considered by custom and practice to be practicing a profession, nor any other person who performs all his duties for the professional corporation under the direct supervision and control of one or more officers, employees, or agents of the professional corporation who are duly licensed in this state to practice a profession which the corporation is authorized to practice in this state. This chapter shall not be construed to require any such persons to be licensed to practice a profession if they are not required to be licensed under any other law of this state. [C71, 73, 75,§496C.2; 66GA, ch 233,§1, ch 1208,§1]

496C.3 Applicability of Iowa business corporation Act. The Iowa business corporation Act shall be construed as part of this chapter and shall apply to professional corporations, including, but not limited to, their organization, reports, fees, authority, powers, rights, and the regulation and conduct of their affairs. The provisions of the Iowa business corporation Act on foreign corporations shall apply to foreign professional corporations. The provisions of this chapter shall prevail over any inconsistent provisions of the Iowa business corporation Act or any other law. [C71, 73, 75, §496C.3]

496C.4 Purposes and powers. A professional corporation shall be organized only for the purpose of engaging in the practice of one specific profession, or two or more specific professions which could lawfully be practiced in combination by a licensed individual or a partnership of licensed individuals, and for the additional purpose of doing all lawful things which may be incidental to or necessary or convenient in connection with the

practice of the profession or professions. The articles of incorporation shall state in substance that the purposes for which the corporation is organized are to engage in the general practice of a specified profession or professions, or one or more specified branches or divisions thereof, and to do all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions. Each professional corporation, unless otherwise provided in its articles of incorporation or unless expressly prohibited by this chapter, shall have all powers granted to corporations by the Iowa business corporation Act. [C71, 73, 75,§496C.4]

496C.5 Corporate name. The corporate name of a professional corporation, the corporate name of a foreign professional corporation or its name as modified for use in this state, and any assumed name or trade name adopted by a professional corporation or foreign professional corporation shall contain the words "professional corporation" or the abbreviation "P.C.", and except for the addition of such words or abbreviation, shall be a name which could lawfully be used by a licensed individual or by a partnership of licensed individuals in the practice in this state of a profession which the corporation is authorized to practice. Each regulating board may by rule or regulation adopt additional requirements as to the corporate names and assumed or trade names of professional corporations and foreign professional corporations which are authorized to practice a profession which is within the jurisdiction of the regulating board. [C71, 73, 75, §496C.5]

496C.6 Who may incorporate. One or more individuals having capacity to contract, each of whom is licensed to practice in this state a profession which the professional corporation is to be authorized to practice, may act as incorporators of a professional corporation. [C71, 73, 75,§496C.6]

496C.7 Practice by professional corporation. Notwithstanding any other statute or rule of law, a professional corporation may practice a profession, but may do so in this state only through shareholders, directors, officers, employees, and agents who are licensed to practice the same profession in this state.

In its practice of a profession, no professional corporation shall do any act which could not lawfully be done by individuals licensed to practice the profession which the professional corporation is authorized to practice. [C71, 73, 75,§496C.7]

496C.8 Professional regulation. No professional corporation shall be required to register with or to obtain any license, registration, certificate, or other legal authorization from any regulating board in order to practice a profession. Except as provided in this section, nothing in this chapter shall restrict or limit in any manner the authority or duties of any regulating board with respect to individuals practicing any profession which is within the jurisdiction of the regulating board, even if the individual is a shareholder, director, officer, employee, or agent of a professional corporation or foreign professional corporation and practices his profession through such corporation. [C71, 73, 75,§496C.8]

496C.9 Relationship and liability to persons served. This chapter does not modify any law applicable to the relationship between an individual practicing a profession and a person receiving professional services, including, but not limited to, any liability arising out of such practice and any law respecting privileged communications.

This chapter does not modify or affect the ethical standards or standards of conduct of any profession, including, but not limited to, any standards prohibiting or limiting the practice of the profession by a corporation or prohibiting or limiting the practice of two or more professions in combination. All such standards shall apply to the shareholders, directors, officers, employees, and agents through whom a professional corporation practices any profession in this state, to the same extent that the standards apply to an individual practitioner.

Unless otherwise provided in the articles of incorporation, the liability of the shareholders of a professional corporation, as shareholders, shall be limited in the same manner and to the same extent as in the case of a corporation organized under the Iowa business corporation Act. [C71, 73, 75,§496C.9]

496C.10 Issuance of shares. Shares of a professional corporation may be issued, and treasury shares may be disposed of, only to individuals who are licensed to practice in this state a profession which the corporation is authorized to practice.

Unless otherwise provided in the articles of incorporation or bylaws, the affirmative vote or consent in writing of all of the outstanding shareholders entitled to vote, or such lesser proportion as may be provided in the articles or bylaws, is necessary in order to authorize the issuance of any shares or the disposal of any treasury shares, and to fix the consideration for shares or treasury shares.

No shares of a professional corporation shall at any time be issued in, tranferred into, or held in joint tenancy, tenancy in common, or any other form of joint ownership or coownership.

The Iowa securities law shall not be applicable to nor govern any transaction relating to any shares of a professional corporation. [C71, 73, 75,§496C.10]

496C.11 Transfer of shares. No shareholder or other person shall make any voluntary transfer of any shares in a professional corporation to any person, except to the professional corporation or to an individual who is licensed to practice in this state a profession which the corporation is authorized to practice.

Unless otherwise provided in the articles of incorporation or bylaws, the affirmative vote or consent in writing of all of the outstanding shareholders entitled to vote, or such lesser proportion as may be provided in the articles or bylaws, is necessary in order to authorize any voluntary transfer of any shares of a professional corporation.

The articles of incorporation or bylaws may contain any additional provisions restricting the transfer of shares. [C71, 73, 75,§496C.11]

496C.12 Convertible securities—stock rights and options. No professional corporation shall create or issue any securities convertible into shares of the professional corporation. The provisions of this chapter with respect to the issuance and transfer of shares and disposal of treasury shares apply to the creation, issuance, and transfer of any rights or options entitling the holder to purchase from a professional corporation any shares of the corporation, including treasury shares. Rights or options shall not be transferable, whether voluntarily, involuntarily, by operation of law, or in any other manner. Upon the death of the holder, or whenever the holder ceases to be licensed to practice in this state a profession which the corporation is authorized to practice, the rights or options shall expire. [C71, 73, 75,§496C.12]

496C.13 Voting trust—proxy. No shareholder of a professional corporation shall create or enter into a voting trust or any other agreement conferring upon any other person the right to vote or otherwise represent any shares of a professional corporation, and no such voting trust or agreement is valid or effective. Any proxy of a shareholder of a professional corporation shall be an individual licensed to practice in this state a profession which the corporation is authorized to practice. Any provision in any proxy instrument denying the right of the shareholder to revoke the proxy at any time or for any period of time is not valid or effective. This section does not otherwise limit the right of a shareholder to vote by proxy, but the articles of incorporation or bylaws may further limit or deny the right to vote by proxy. [C71, 73, 75,§496C.13]

496C.14 Required purchase by professional corporation of its own shares. Notwithstanding any other statute or rule of law, a professional corporation shall purchase its own shares as provided in this section; and the shareholders of a professional corporation and their executors, administrators, legal representatives, and successors in interest, shall sell and transfer the shares held by them as provided in this section.

The corporation may validly purchase its own shares even though its net assets are less than its stated capital, or even though by so doing its net assets would be reduced below its stated capital.

Upon the death of a shareholder, the professional corporation shall immediately purchase all shares held by the deceased shareholder.

In order to remain a shareholder of a professional corporation, a shareholder shall at all times be licensed to practice in this state a profession which the corporation is authorized to practice. Whenever any shareholder does not have or ceases to have this qualification, the corporation shall immediately purchase all shares held by that shareholder.

Whenever any person other than the shareholder of record becomes entitled to have shares of a corporation transferred into his name or to exercise voting rights, except as a proxy, with respect to shares of the corporation, the corporation shall immediately purchase such shares. Without limiting the generality of the foregoing, this section shall be applicable whether the event occurs as a result of the appointment of a guardian or conservator for a shareholder or his property, transfer of shares by operation of law, involuntary transfer of shares, judicial proceedings, execution, levy, bankruptcy proceedings, receivership proceedings, foreclosure or enforcement of a pledge or encumbrance, or any other situation or occurrence. However, this section does not apply to any voluntary transfer of shares as defined in this chapter.

Shares purchased by the corporation under the provisions of this section shall be transferred to the corporation as of the close of business on the date of the death or other event which requires purchase. The shareholder and his executors, administrators, legal representatives, or successors in interest, shall promptly do all things which may be necessary or convenient to cause transfer to be made as of the transfer date. However, the shares shall promptly be transferred on the stock transfer books of the corporation as of the transfer date, notwithstanding any delay in transferring or surrendering the shares or certificates representing the shares, and the transfer shall be valid and effective for all purposes as of the close of business on the transfer date. The purchase price for such shares shall be paid as provided in this chapter, but the transfer of shares to the corporation as provided in this section shall not be delayed or affected by any delay or default in making payment.

Notwithstanding the foregoing provisions of this section, purchase by the corporation is not required upon the occurrence of any event other than death of a shareholder, if the corporation is dissolved within sixty days after the occurrence of the event. The articles of incorporation or bylaws may provide that purchase is not required upon the death of a shareholder, if the corporation is dissolved within sixty days after the death.

Unless otherwise provided in the articles of incorporation or bylaws or in an agreement among all shareholders of the professional corporation:

1. The purchase price for shares shall be their book value as of the end of the month

immediately preceding the death or other event which requires purchase. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by the corporation, uniformly and consistently applied. Adjustments to book value shall be made, if necessary, to take into account work in process and accounts receivable. Any final determination of book value made in good faith by any independent certified public accountant or firm of certified public accountants employed by the corporation for the purpose shall be conclusive on all persons.

2. The purchase price shall be paid in cash as follows: Upon the death of a shareholder, thirty percent of the purchase price shall be paid within ninety days after death, and the balance shall be paid in three equal annual installments on the first three anniversaries of the death. Upon the happening of any other event referred to in this section, one-tenth of the purchase price shall be paid within ninety days after the date of such event, and the balance shall be paid in three equal annual installments on the first three anniversaries of the date of the event.

3. Interest from the date of death or other event shall be payable annually on principal payment dates, at the rate of six percent per annum on the unpaid balance of the purchase price.

4. All persons who are shareholders of the professional corporation on the date of death or other event, and their executors, administrators, and legal representatives, shall, to the extent the corporation fails to meet its obligations hereunder, be jointly liable for the payment of the purchase price and interest in proportion to their percentage of ownership of the corporation's shares, disregarding shares of the deceased or withdrawing shareholder.

5. The part of the purchase price remaining unpaid after the initial payment shall be evidenced by a negotiable promissory note, which shall be executed by the corporation and all shareholders liable for payment. Any person liable on the note shall have the right to prepay the note in full or in part at any time.

6. If the person making any payment is not reasonably able to determine which of two or more persons is entitled to receive a payment, or if the payment is payable to a person who is unknown, or who is under disability and there is no person legally competent to receive the payment, or who cannot be found after the exercise of reasonable diligence by the person making the payment, it shall be deposited with the treasurer of state and shall be subject to the provisions of the Iowa business corporation Act with respect to funds deposited with the treasurer of state upon the voluntary or involuntary dissolution of a corporation.

7. Notwithstanding the provisions of this section, no part of the purchase price shall be required to be paid until the certificates representing such shares have been surrendered to the corporation.

8. Notwithstanding the provisions of this section, payment of any part of the purchase price for shares of a deceased shareholder shall not be required until the executor or administrator of the deceased shareholder provides any indemnity, release, or other document from any taxing authority, which is reasonably necessary to protect the corporation against liability for estate, inheritance, and death taxes.

The articles of incorporation or bylaws or an agreement among all shareholders of a professional corporation may provide for a different purchase price, a different method of determining the purchase price, a different interest rate or no interest, and other terms, conditions, and schedules of payment.

The articles of incorporation or bylaws or an agreement among all shareholders of a professional corporation may provide for the optional or mandatory purchase of its own shares by the corporation in other situations, subject to any applicable law regarding such purchase. [C71, 73, 75,§496C.14]

496C.15 Certificates representing shares. Each certificate representing shares of a professional corporation shall state in substance that the certificate represents shares in a professional corporation and is not transferable except as expressly provided in this chapter and in the articles of incorporation and bylaws of the corporation. [C71, 73, 75,§496C.15]

496C.16 Management. All directors of a professional corporation and all officers of a professional corporation except assistant officers, shall at all times be individuals who are licensed to practice in this state a profession which the corporation is authorized to practice. No person who is not licensed shall have any authority or duties in the management or control of the corporation. If any director or any officer ceases to have this qualification, he shall immediately and automatically cease to hold the directorship or office. [C71, 73, 75,§496C.16]

496C.17 Bylaws. The initial bylaws of a professional corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws is reserved to and vested in the shareholders unless granted to the board of directors by the articles of incorporation. [C71, 73, 75,§496C.17]

496C.18 Merger or consolidation. No professional corporation shall merge or consolidate with any other corporation except another professional corporation subject to this chapter. Merger or consolidation shall not be permitted unless the surviving or new corporation is a professional corporation which complies

with all requirements of this chapter. [C71, 73, 75,§496C.18]

496C.19 Dissolution or liquidation. Violation of any provision of this chapter by a professional corporation or any of its shareholders, directors, or officers, shall be cause for its involuntary dissolution, or liquidation of its assets and business by the district court, as provided in the Iowa business corporation Act. Upon the death of the last remaining shareholder of a professional corporation, or whenever the last remaining shareholder is not licensed or ceases to be licensed to practice in this state a profession which the corporation is authorized to practice, or whenever any person other than the shareholder of record becomes entitled to have all shares of the last remaining shareholder of the corporation transferred into his name or to exercise voting rights, except as a proxy, with respect to such shares, the corporation shall not practice any profession and it shall be promptly dissolved. However, if prior to such dissolution all outstanding shares of the corporation are acquired by one or more persons licensed to practice in this state a profession which the corporation is authorized to practice, the corporation need not be dissolved and may practice the profession as provided in this chapter. [C71, 73, 75,§496C.19]

496C.20 Foreign professional corporation. A foreign professional corporation may practice a profession in this state if it complies with the provisions of the Iowa business corporation Act on foreign corporations. The secretary of state may prescribe forms for such purpose.

A foreign professional corporation may practice a profession in this state only through shareholders, directors, officers, employees, and agents who are licensed to practice the profession in this state. The provisions of this chapter with respect to the practice of a profession by a professional corporation apply to a foreign professional corporation.

The certificate of authority of a foreign professional corporation may be revoked by the secretary of state as provided in the Iowa business corporation Act, if the foreign professional corporation fails to comply with any provision of this chapter.

This chapter shall not be construed to prohibit the practice of a profession in this state by an individual who is a shareholder, director, officer, employee, or agent of a foreign professional corporation, if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional corporation. The preceding sentence shall apply regardless of whether or not the foreign professional corporation is authorized to practice a profession in this state. [C71, 73, 75,§496C.20]

496C.21 Annual report. Each annual report of a professional corporation or foreign professional corporation shall, in addition to the information required by the Iowa business corporation Act, set forth:

1. The name and address of each shareholder.

2. In the case of a professional corporation, a statement under oath whether or not all shareholders, directors, and officers, except assistant officers, of the corporation are licensed to practice in this state a profession which the corporation is authorized to practice, and whether or not all employees and agents of the corporation who practice a profession in this state on behalf of the corporation are licensed to practice the profession in this state.

3. In the case of a foreign professional corporation, a statement under oath whether or not all shareholders, directors, officers, employees, and agents who practice a profession in this state on behalf of the corporation are licensed to practice the profession in this state.

4. Additional information necessary or appropriate to enable the secretary of state or regulating board to determine whether the professional corporation or foreign professional corporation is complying with this chapter.

Information shall be set forth on forms prescribed and furnished by the secretary of state.

Duplicate originals of each annual report of a professional corporation or foreign professional corporation shall be delivered to the secretary of state for filing, and the secretary of state shall promptly deliver one of the duplicate originals to the regulating board having jurisdiction of the profession or professions which the corporation is authorized to practice. The provisions of the Iowa business corporation Act relating to annual license fee shall apply to professional corporations. [C71, 73, 75,§496C.21]

496C.22 Corporations organized under other laws. This chapter shall not apply to or interfere with the practice of any profession by or through any corporation hereafter organized under any other law of this state or any other state or country, if such practice is lawful under any other statute or rule of law of this state.

Any corporation subject to the provisions of the Iowa business corporation Act may voluntarily elect to adopt this chapter and become subject to its provisions, by amending its articles of incorporation to be consistent with all provisions of this chapter and by stating in its amended articles of incorporation that the corporation has voluntarily elected to adopt this chapter.

Any corporation organized under any law of any other state or country may become subject to the provisions of this chapter by complying with all provisions of this chapter with respect to foreign professional corporations. [C71, 73, 75,§496C.22]

CHAPTER 497

CO-OPERATIVE ASSOCIATIONS

Referred to in §§172C.1, 496A.142(1), 498.32, 499.60, 499.71, 500.3, 502.202, 503.2, 504A.100(1)
Applicable only to associations originally chartered before July 4, 1935. See ch 499
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497.1 Plan authorized. Any number of persons, not less than five, may associate themselves as a co-operative association, society, company or exchange, for the purpose of conducting any agricultural, dairy, mercantile, mining, manufacturing or mechanical business on the co-operative plan. For the purposes of this chapter, the words "association", "company", "corporation", "exchange", "society", or "union", shall be construed to mean the same. [SS15,§1641-r1; C24, 27, 31, 35, 39,§8459; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.1]

Referred to in §497.3

497.2 Articles of incorporation. They shall sign and acknowledge written articles which shall contain the name of said association and the names and residences of the persons forming the same. Such articles shall also contain a statement of the purposes of the association, and shall designate the city or village where its principal place of business shall be located. Such articles shall also state the amount of capital stock, the number of shares, and the par value of each. [SS15,§1641-r2; C24, 27, 31, 35, 39,§8460; C46, 50, 54, 58, 62, 66, 71, 73, 75, §497.2]

Referred to in §497.3

497.3 Filing — certificate of incorporation. The original articles of incorporation of associations organized under this chapter shall be filed with the secretary of state, and be by him recorded in a book kept for that purpose; and if such articles comply with the provisions of sections 497.1 and 497.2, he shall issue a certificate of incorporation to the association. The secretary of state shall then forward said articles of incorporation to the recorder of deeds of the county where the principal place of business is to be located, and the same shall be there recorded by such recorder who shall endorse thereon the book and page where the record will be found and the date of the record. No publication of notice of the incorporation of such an association shall be required. [SS15, §1641-r3; C24, 27, 31, 35, 39,§8461; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.3]

497.4 Fee. For filing the articles of incorporation of associations organized under this chapter, there shall be paid to the secretary of state ten dollars, and for the filing of an amendment to such articles, five dollars; provided that when the capital stock of such corporation shall be less than five hundred dollars, such fee for filing either the articles of incorporation or amendments thereto shall be one dollar. In all cases there shall be paid a recording fee of fifty cents per page. For recording copy of such articles, the recorder of deeds shall receive the usual fee for recording. [SS15,§1641-r4; C24, 27, 31, 35, 39,§8462; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.4]

Recorder's fee, §335.14

497.5 Board of directors. Every such association shall be managed by a board of not less than five directors, who shall be elected by and from the stockholders at such time and for such term of office as the bylaws may prescribe, and shall hold office for the time for which elected and until their successors are elected and qualify. [SS15,§1641-r5; C24, 27, 31, 35, 39,§8463; C46, 50, 54, 58, 62, 66, 71, 73, 75, §497.5]

SS15,§1641-r5, editorially divided

497.6 Removal. A majority of the stockholders shall have the power at any regular or special stockholders' meeting, legally called, to remove any director or officer for cause, and fill the vacancy, and thereupon the director or officer so removed, shall cease to be

a director or officer of said corporation. [SS15, §1641-r5; C24, 27, 31, 35, 39,§8464; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.6]

497.7 Officers. The officers of every such association shall be a president, one or more vice-presidents, a secretary, and a treasurer, who shall be elected annually by the directors, and each of said officers must be a director of the association. The offices of secretary and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer. [SS15,§1641-r5; C24, 27, 31, 35, 39,§8465; C46, 50, 54, 58, 62, 66, 71, 73, 75, §497.7]

497.8 Amending articles. The association may amend its articles of incorporation by a majority vote of its stockholders at any regular stockholders' meeting, or at any special stockholders' meeting called for that purpose, on ten days' notice to all stockholders. Said power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares; provided the amount of the capital stock shall not be diminished below the amount of paid-up capital at the time the amendment is adopted. [SS15, §1641-r6; C24, 27, 31, 35, 39,§8466; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.8]

SS15,§1641-r6, editorially divided

497.9 Record of amendments. Within thirty days after the adoption of an amendment to its articles of incorporation, an association shall cause a copy of such amendment adopted to be recorded in the office of the secretary of state and of the recorder of deeds of the county where its principal place of business is located. [SS15,§1641-r6; C24, 27, 31, 35, 39,§8467; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.9]

497.10 Powers. An association created under this chapter shall have power to conduct any agricultural, dairy, mercantile, mining, manufacturing, or mechanical business, on the co-operative plan, and may buy, sell, and deal in the products of any other co-operative company heretofore or hereafter organized under the provisions hereof. [SS15,§1641-r7; C24, 27, 31, 35, 39,§8468; C46, 50, 54, 58, 62, 66, 71, 73, 75, §497.10]

497.11 Ownership of shares and voting power limited. No stockholder in any such association shall own shares of a greater aggregate par value than five thousand dollars, except as hereinafter provided, nor shall he be entitled to more than one vote. [SS15,§1641-r8; C24, 27, 31, 35, 39,§8469; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.11]

497.12 Stockholding. At any regular meeting, or any regularly called special meeting, at which at least a majority of all of its stockholders shall be present, or represented, an association organized under this chapter, may by a majority vote of the stockholders present or represented, subscribe for shares and invest its reserve fund, not to exceed twenty-five percent of its capital, in the capital stock of any other co-operative association. [SS15, §1641-r9; C24, 27, 31, 35, 39,§8470; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.12]

497.13 Issue of shares as payment. Whenever an association created under this chapter shall purchase the business of another association, person, or persons, it may pay for the same in whole or in part by issuing to the selling association or person shares of its capital stock to an amount, which at fair market value as determined by the executive council, would equal the fair market value of the business so purchased as determined by the executive council as in cases of other corporations. [SS15,§1641-r10; C24, 27, 31, 35, 39,§8471; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.13]

Payment in property other than money, §492.6 et seq.

497.14 May act as trustee. In case the cash value of such purchased business exceeds one thousand dollars, the directors of the association are authorized to hold the shares in excess of one thousand dollars in trust for the vendor, and dispose of the same to such persons, and within such times, as may be mutually satisfactory to the parties in interest, and to pay the proceeds thereof as currently received to the former owner of said business. [SS15,§1641-r11; C24, 27, 31, 35, 39,§8472; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.14]

40ExGA, SF 312,§1, editorially divided

497.15 Paid-up stock—right to vote. Certificates of stock shall not be issued to any subscriber until fully paid, but the bylaws of the association may allow subscribers to vote as stockholders; provided part of the stock subscribed for has been paid in cash. [SS15, §1641-r11; C24, 27, 31, 35, 39,§8473; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.15]

497.16 Voting by mail. At any regularly called general or special meeting of the stockholders, a written vote received by mail from any absent stockholder, and signed by him, may be read in such meeting, and shall be equivalent to a vote of each of the stockholders so signing, provided he has been previously notified in writing by the secretary of the exact motion or resolution upon which such vote is taken, and a copy of same is forwarded with and attached to the vote so mailed by him. [SS15,§1641-r12; C24, 27, 31, 35, 39,§8474; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.16]

497.17 Reserve fund. The board of directors, subject to revision by the association at any general or special meeting, shall each year set aside not less than ten percent of the net profits for a reserve fund, until an amount has accumulated therein equal to fifty percent of the paid-up capital stock. [SS15,§1641-r13; C24, 27, 31, 35, 39,§8475; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.17]

497.18 Educational fund—dividends. The board may each year, out of remaining net

profits, subject to the approval of the association at any general or special meeting:

1. Provide an educational fund to be used in teaching co-operation, not exceeding five percent of the net profits.

2. Declare and pay a dividend on the stock, not exceeding ten percent. [SS15,§1641-r13; C24, 27, 31, 35, 39,§8476; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.18]

497.19 Additional dividends. The remainder of said net profits shall be distributed by uniform dividends upon the amount of purchases of shareholders, and upon the wages and salaries of employees. In producing associations, such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a producing concern, the dividends may be on both raw material delivered and goods purchased by patrons. [SS15,§1641-r13; C24, 27, 31, 35, 39,§8477; C46, 50, 54, 58, 62, 66, 71, 73, 75, §497.19]

497.20 When dividends distributed. The profits or net earnings of such associations shall be distributed to those entitled thereto, at such times as the bylaws shall prescribe, which shall be as often as once in twelve months. [SS15,§1641-r14; C24, 27, 31, 35, 39, §8478; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.20]

SS15,§1641-r14, editorially divided

497.21 Dissolution. If such association, for five consecutive years, shall fail to declare a dividend upon the shares of its paid-up capital, five or more stockholders, by petition, setting forth such fact, may apply to the district court of the county wherein is situated its principal place of business in this state, for its dissolution. If, upon hearing, the allegations of the petition are found to be true, the court may adjudge a dissolution of the association. [SS15,§1641-r14; C24, 27, 31, 35, 39,§8479; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.21]

497.22 Annual report—penalty. Every association organized under the terms of this chapter shall annually, on or before the first day of March of each year, make a report to the secretary of state; such report shall contain the name of the company, its principal place of business in this state, and generally a statement as to its business, showing total amount of business transacted, amount of capital stock subscribed for and paid in, number of stockholders, total expense of operation, amount of indebtedness for liabilities, and its profits and losses. Such reports shall be for the calendar or fiscal year immediately preceding the said first day of March, provided that a calendar or fiscal year has been completed upon said date.

Failure to comply with this section before the first day of April shall subject the delinquent association to a penalty of ten dollars. [SS15,§1641-r15; C24, 27, 31, 35, 39,§8480; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.22]

Referred to in §§497.23, 497.25

497.23 Exemption from report. Any corporation organized under the provisions of this chapter after the first day of January shall be exempt from the provisions of section 497.22 for the year in which incorporated, after which it shall, however, be subject to all of the provisions of said section. [C27, 31, 35, §8480-a1; C39,§8480.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.23]

497.24 List of delinquents. In the month of April of each year the secretary of state shall prepare a list of all delinquent corporations and file the same in his office. [C27, 31, 35, §8480-a2; C39,§8480.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.24]

41GA, ch 160,§2, editorially divided

497.25 Notice to delinquents. On or before the first day of May he shall send by registered mail to each delinquent and to each of its officers, as may be disclosed by the latest records on file in the office of the secretary of state, a notice of such delinquency and of the penalties provided in section 497.22. [C27, 31, 35,§8480-a3; C39,§8480.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.25]

497.26 Cancellation. If the annual report required is not filed and penalties paid on or before the last day of June the secretary of state shall, on the first day of July following, cancel the name of any delinquent corporation from the list of live corporations in his office, and enter such cancellation on the proper records. [C27, 31, 35,§8480-a4; C39,§8480.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.26]

497.27 Effect of cancellation. When so canceled the corporate rights of any such corporation shall be forfeited and its corporate period terminated on the date such cancellation shall have been entered on the records of his office. [C27, 31, 35,§8480-a5; C39,§8480.5; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.27]

497.28 Reinstatement of corporation. Any corporation whose corporate rights have been canceled and forfeited in the manner provided herein may, however, before September 1 following such cancellation, make application to the secretary of state for reinstatement and upon being furnished good and sufficient reasons for not having filed its report he shall, upon the filing of such report and the payment of the penalty, reinstate said corporation and the decree of cancellation shall be annulled and the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period as fixed by its articles of incorporation and the limitations prescribed by law. [C27, 31, 35,§8480-a6; C39, §8480.6; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.28]

497.29 Chapter extended to former companies. All co-operative corporations, companies, or associations heretofore organized and doing

business under prior statutes, or which have attempted to so organize and do business, shall have the benefit of all the provisions of this chapter and be bound thereby, on filing with the secretary of state and the county recorder of the county in which the principal place of business is located, amended and substituted articles of incorporation drawn in accordance with the provisions of this chapter and a written declaration, signed and sworn to by the president and secretary to the effect that said co-operative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by the provisions hereof. [SS15,§1641-r16; C24, 27, 31, 35, 39,§8481; C46, 50, 54, 58, 62, 66, 71, 73, 75, §497.29]

497.30 Use of term "co-operative" restricted. No corporation or association organized after July 4, 1915, shall be entitled to use the term "co-operative" as part of its corporate or other business name or title, unless it has complied with the provisions of this chapter, and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any stockholder of any association legally organized under the provisions of this chapter. [SS15,§1641-r17; C24, 27, 31, 35, 39, §8482; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.30]

497.31 Use of funds. None of the funds of any association organized under the provisions of this chapter shall be used in the payment of any promotion; as commissions, salaries or expenses of any kind, character, or nature whatsoever. [SS15,§1641-r18; C24, 27, 31, 35, 39, §8483; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.31]

497.32 Private property exempt. The private property of the stockholders shall be exempt from execution for the debts of the corporation. [SS15,§1641-r19; C24, 27, 31, 35, 39, §8484; C46, 50, 54, 58, 62, 66, 71, 73, 75,§497.32]

CHAPTER 498

NONPROFIT-SHARING CO-OPERATIVE ASSOCIATIONS

Referred to in §§172C.1, 496A.142(1),499.60, 499.71, 502.202, 503.2, 504A.100(1)
Applicable only to associations originally chartered before July 4, 1935. See ch 499
Permissible reorganization under later law, §499.43

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498.1 Nature. Associations organized under the provisions of this chapter are declared to be not for pecuniary profit. [C27, 31, 35, §8485-b1; C39,§8485.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.1]

42GA, ch 192,§2, editorially divided

498.2 Organization. Any number of persons, not less than five, may associate themselves as a co-operative association, without capital stock, for the purpose of conducting any agricultural, livestock, horticultural, dairy, mercantile, mining, manufacturing, or mechanical business, or the constructing and operating of telephone and high tension electric transmission lines on the co-operative plan and of acting as a co-operative selling agency. Co-operative livestock shipping associations organized under this chapter shall do business with members only. [C24, 27, 31, 35, 39,§8486; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.2]

498.3 Terms defined—products of nonmembers. For the purpose of this chapter, the words "association", "exchange", "society", or "union", shall be construed to mean the same

and are defined to mean a corporate body composed of actual producers or consumers of the given commodity handled by the association, whose business is conducted for the mutual benefit of its members and not for the profit of stockholders, and control of which is vested in its members upon the basis of one vote to each member. Associations shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members. [C24, 27, 31, 35, 39,§8487; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.3]

498.4 Articles — personal liability. They shall sign and acknowledge written articles, which shall contain the name of the association and the names and residences of the incorporators. Such articles shall also contain a statement of the purposes of the association, the amount of the membership fee, and shall designate the city or village where its principal place of business shall be located, and the manner in which such articles may be amended, and any limitation which the members propose to place upon their personal liability for the debts of the association. [C24, 27, 31, 35, 39,§8488; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.4]

498.5 Filing — certificate of incorporation. The original articles of incorporation shall be filed for record with the secretary of state. Upon approval of such articles, the secretary of state shall issue a certificate of incorporation. [C24, 27, 31, 35, 39,§8489; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.5]

498.6 Fees. For filing the articles of incorporation of associations organized under this chapter, there shall be paid to the secretary of state five dollars, and for the filing of an amendment to such articles, two dollars. In all cases there shall be paid a recording fee of fifty cents per page. [C24, 27, 31, 35, 39,§8490; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.6]

498.7 Amendments. Within thirty days after the adoption of any amendment to its articles of incorporation, the association shall cause a copy of such amendment to be recorded in the office of the secretary of state. [C24, 27, 31, 35, 39,§8491; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.7]

498.8 Board of directors—removals. Every such association shall be managed by a board of not less than five directors, who shall be elected by and from the members at such time and for such term of office as the articles may prescribe. They shall hold office until their successors are elected and qualify; but a majority of the members shall have the power at any regular or special meeting of the association legally called, to remove any director or officer for cause, and fill the vacancy. [C24, 27, 31, 35, 39,§8492; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.8]

498.9 Officers. The officers of every such association shall be a president, one or more vice-presidents, a secretary, and treasurer, who shall be elected annually by the directors, from amongst their own number. The offices of secretary and treasurer may be held by the same person. [C24, 27, 31, 35, 39,§8493; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.9]

498.10 Admission of members. Under the terms and conditions prescribed in its bylaws, an association may admit as members persons engaged in the production of the products, or in the use or consumption of the supplies, to be handled by or through the association, including the lessors and landlords of lands used for the production of such products, who receive as rent part of the crop raised on the leased premises. [C24, 27, 31, 35, 39,§8494; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.10]

39GA, ch 122,§9, editorially divided

498.11 Membership certificates. Membership certificates in due form shall be issued to all charter members and to such others as shall subsequently be admitted by the association in accordance with its articles and bylaws. [C24, 27, 31, 35, 39,§8495; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.11]

498.12 Certificates nontransferable — surrender. No such certificate shall be transferable by the member to any other person, but shall be surrendered to the association in case of his voluntary withdrawal. [C24, 27, 31, 35, 39,§8496; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.12]

Referred to in §498.14

498.13 Automatic cancellation—revocation. It shall become void upon his death, or may be revoked by the directors upon proof duly made that he has ceased to be a producer of products handled by or through the association, in the case of producing or selling associations or has ceased to be the user of products handled by or through the association in case of stores and supply associations, or for failure to observe its bylaws or his contractual obligations to it. [C24, 27, 31, 35, 39,§8497; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.13]

Referred to in §498.14

498.14 Conditions printed on certificates. The conditions of membership specified in sections 498.12 and 498.13 shall be printed upon the face of every membership certificate. [C24, 27, 31, 35, 39,§8498; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.14]

498.15 Combinations of local associations. Likewise, associations may be formed under this chapter whose membership shall consist of other associations formed under the provisions of this chapter, the purpose being to federate local associations into central co-operative associations for the more economical and efficient performance of their marketing or other operations. [C24, 27, 31, 35, 39,§8499; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.15]

498.16 Powers of central associations. Such central associations may enter into contracts, agreements and arrangements with their

member associations. Each member association in such federated associations shall have an official representative chosen by its own board of directors, who shall cast one vote and no more at all business meetings of the federated association. [C24, 27, 31, 35, 39,§**8500**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.16]

498.17 Voting power. Each member of an association shall be entitled to one vote and no more upon all questions affecting the control and management of the affairs of the association and in the selection of its board of directors. [C24, 27, 31, 35, 39,§**8501**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.17]

39GA, ch 122,§10, editorially divided

498.18 Proxies—voting by mail. No vote by proxy shall be permitted, but a written vote received by mail from any absent member, and signed by him, may be read and counted at any regular or special meeting of the association, provided that the secretary shall notify all members in writing of the exact motion or resolution upon which such vote is to be taken, and a copy of same shall be forwarded with and attached to the vote so mailed by the member. [C24, 27, 31, 35, 39,§**8502**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.18]

498.19 Power to compel sales and purchases —liquidated damages. The association may require members to sell all or a stipulated part of their specifically enumerated products exclusively through the association or to buy specifically enumerated supplies exclusively through the association, but in such case, a reasonable period during each year shall be specified during which any member, by giving notice in prescribed form, may be released from such obligation thereafter. Where it is desired to enter into the exclusive arrangement provided in this section, the association shall execute a contract with each such member setting forth what goods or wares are to be handled and upon what terms. In order to protect itself in the necessary outlay, which it may make for the maintenance of its services, the association may stipulate that some regular charge shall be paid by the member for each unit of goods covered by such contract whether actually handled by the association or not, and in order to reimburse the association for any loss or damage which it or its members may sustain through the member's failure to deliver his products to or to procure his supplies from the association.

In case it is difficult or impracticable to determine the actual amount of damage suffered by the association or its members through such failure to comply with the terms of such a contract, the association and the member may agree upon a sum to be paid as liquidated damages for the breach of his contract, said amount to be stated in the contract. [C24, 27, 31, 35, 39,§**8503**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §498.19]

498.20 Financial power. Every association may borrow money necessary for the conduct of its business, and may issue notes, bonds, or debentures therefor, and may give security in the form of mortgage or otherwise for the repayment thereof. [C24, 27, 31, 35, 39,§**8504**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.20]

498.21 Personal liability. Members of such association may limit their personal liability to the amount of their membership fee as provided in their articles of incorporation. [C24, 27, 31, 35, 39,§**8505**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.21]

498.22 Cost of service — dues. Associations formed under this chapter shall perform services on a basis of the lowest practicable cost, and may provide for meeting the cost thereof through dues, assessments, or service charges, which shall be prescribed in the by-laws. Such charges shall be set high enough to provide a margin of safety above current operating costs and fixed charges upon borrowed capital. [C24, 27, 31, 35, 39,§**8506**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.22]

39GA, ch 122,§14, editorially divided

498.23 Reserve and educational funds—patronage dividends. Out of any surplus remaining in any given year, the directors shall each year set aside not less than ten percent of such savings for the accumulation of a reserve fund until such reserve shall equal at least forty percent of the invested capital of the association, not less than one percent nor more than five percent for a permanent educational fund from which expenditures shall be made annually at the discretion of the directors for the purpose of teaching co-operation, and the remainder to be returned to the members as a patronage dividend prorated on a uniform basis to each member upon the value of business done by him through the association. [C24, 27, 31, 35, 39,§**8507**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.23]

498.24 Annual report—penalty. Every association organized under the terms of this chapter shall annually, on or before the first day of March of each year, make a report to the secretary of state; such report shall contain the name of the company, its principal place of business in this state, and generally a statement as to its business, showing total amount of business transacted, number of members, total expense of operation, amount of indebtedness, and its profits or losses. Such reports shall be for the calendar or fiscal year immediately preceding the said first day of March, provided that a calendar or fiscal year has been completed upon said date.

Failure to comply with this section before April 1 of each year shall subject the delinquent association to a penalty of ten dollars. [C24, 27, 31, 35, 39,§**8508**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.24]

Referred to in §§498.25, 498.27

498.25 Exemption from report. Any corporation organized under the provisions of this chapter after the first day of January shall be exempt from the provisions of section 498.24 for the year in which incorporated, after which it shall, however, be subject to all of the provisions of said section. [C27, 31, 35,§8508-a1; C39,§**8508.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §498.25]

498.26 List of delinquents. In the month of April of each year the secretary of state shall prepare a list of all delinquent corporations and file the same in his office. [C27, 31, 35, §8508-a2; C39,§**8508.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.26]

41GA, ch 160,§4, editorially divided

498.27 Notice to delinquents. On or before the first day of May he shall send by certified mail to each delinquent and to each of its officers, as may be disclosed by the latest records on file in the office of the secretary of state, a notice of such delinquency and of the penalties provided in section 498.24. [C27, 31, 35,§8508-a3; C39,§**8508.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.27]

498.28 Cancellation. If the annual report required is not filed and penalties paid on or before the last day of June the secretary of state shall, on the first day of July following, cancel the name of any delinquent corporation from the list of live corporations in his office, and enter such cancellation on the proper records. [C27, 31, 35,§8508-a4; C39,§**8508.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.28]

498.29 Effect of cancellation. When so canceled the corporate rights of any such corporation shall be forfeited and its corporate period terminated on the date such cancellation shall have been entered on the records of his office. [C27, 31, 35,§8508-a5; C39,§**8508.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.29]

498.30 Reinstatement of corporation. Any corporation whose corporate rights have been canceled and forfeited in the manner provided herein may, however, before September 1 following such cancellation, make application to the secretary of state for reinstatement and upon being furnished good and sufficient reasons for not having filed its report he shall, upon the filing of such report and the payment of the penalty, reinstate said corporation and the decree of cancellation shall be annulled and the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period as fixed by its articles of incorporation and the limitations prescribed by law. [C27, 31, 35,§8508-a6; C39, §**8508.6**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.30]

498.31 Chapter extended to former associations. All corporations, or associations heretofore organized and doing business under prior statutes, or which have attempted so to organize and do business co-operatively, shall have the benefit of all the provisions of this chapter and be bound thereby, on filing with the secretary of state amended and substituted articles of incorporation drawn in accordance with the provisions of this chapter and a written declaration signed and sworn to by the president and secretary, to the effect that said company or association has, by a majority vote of its stockholders, decided to accept the benefits of and to be bound by the provisions of this chapter. [C24, 27, 31, 35, 39,§**8509**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.31]

498.32 Use of term "co-operative"—injunction. No corporation or association hereafter organized shall be entitled to use the term "co-operative" as part of its corporate or other business name or title, unless it has complied with the provisions of this chapter or of chapter 497, and any corporation or association violating the provisions of this chapter may be enjoined from doing business under such name at the instance of any stockholder of any association legally organized under the provisions of this chapter. [C24, 27, 31, 35, 39, §**8510**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.32]

498.33 Use of funds—promotion expenses. None of the funds of any association shall be used for purposes of any promotion as commissions, salaries, or expenses of any kind, character, or nature whatsoever, except that in the case of associations operating in more than one county, if the par value of securities to be sold is in excess of one hundred thousand dollars, a sum not to exceed five percent of the par value of bonds or debentures sold may be used by committees elected by the members for selling or soliciting for the sale of such securities or for hiring responsible salaried solictors for that purpose. [C24, 27, 31, 35, 39, §**8511**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§498.33]

498.34 Duration of incorporation—renewal. Associations formed under the provisions of this chapter shall continue for a period of twenty-five years, unless earlier dissolved by order of its members or by other processes as by law provided, and the term of its existence may be renewed by the filing of new articles of association, as by law provided. [C24, 27, 31, 35, 39,§**8512**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §498.34]

CHAPTER 499

CO-OPERATIVE ASSOCIATIONS

(ORGANIZED AFTER JULY 4, 1935)

Referred to in §§172C.1, 491.1, 496A.142(1), 502.202, 504A.100(1)

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499.1 Applicable. This chapter applies only to co-operative associations as defined in section 499.2. All such associations hereafter* formed must be organized under this chapter. [C35,§8512-g1; C39,**§8512.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.1]

*Effective July 4, 1935

499.2 Definitions. A "co-operative association" is one which, in serving some purpose enumerated in section 499.6, deals with or functions for its members at least to the extent required by section 499.3, and which distributes its net earnings among its members in proportion to their dealings with it, except for limited dividends or other items permitted in this chapter; and in which each voting member has one vote and no more.

"Association" means a corporation formed under this chapter.

"Agricultural products" include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any other farm products.

"Agricultural associations" are those formed for a purpose specified in subsection 2, section 499.6.

"Member" refers not only to members of nonstock associations but also to common stockholders of stock associations, unless the context of a particular provision otherwise indicates. [C35,§8512-g2; C39,**§8512.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.2]

Referred to in §499.1

499.3 Dealing with nonmembers. A nonstock livestock shipping association shall not handle livestock of any nonmembers.

Any association may limit its dealings or any class thereof to members only.

No association shall, during any year, deal or function with or for nonmembers to an extent exceeding one-half of the value of **business done. This provision shall not apply to** its sales or services to municipal or **governmental bodies; nor to** agricultural associations' purchases from or sales to corporate landowners who are not primarily engaged in the business of farming. [C35,§8512-g3; C39, §8512.03; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.3]

Referred to in §§499.2, 499.49(5)

499.4 Use of term "co-operative" restricted. No person or firm, and no corporation hereafter organized, which is not an association defined herein, shall use the word "co-operative" or any abbreviation thereof in its **name or advertising or in** any connection with its business, except foreign associations admitted under section 499.54. The attorney general or any association or any member thereof may sue and enjoin such use. [C35, §8512-g4; C39,§8512.04; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.4]

499.5 Permissible organizers. Five or more individuals, or two or more associations, may organize an association. All individual incorporators of agricultural associations must be engaged in producing agricultural products, which term shall include landlords and tenants as specified in section 499.13. [C35,§8512-g5; C39,§8512.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, §499.5]

499.6 Objects. Associations may be formed either:

1. To conduct a mercantile, manufacturing, mechanical or mining business, or to construct or operate telephone or electric transmission lines; or

2. To produce, grade, blend, preserve, process, store, warehouse, market, sell or handle any agricultural product, or any by-product thereof; or to purchase, produce, sell or supply machinery, petroleum products, equipment, fertilizer, supplies, business or educational service to or for those engaged as bona fide producers of agricultural products; or to finance any such activities; or to engage in any co-operative activity connected with any of said purposes; or for any number of these purposes. [C35,§8512-g6; C39,§8512.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.6]

Referred to in §§499.2, 499.7(1)

499.7 Powers. Except as expressly limited in its articles, each association shall have power to do anything permitted anywhere in this chapter, and also:

1. To conduct any business enumerated in section 499.6 which its articles specify; and to conduct such business either as principal or as agent for its members.

2. To borrow any amounts of money, and give any form of obligation or security therefor.

3. To make advances to patrons or members, or members of member-associations, and take any form of obligation or security therefor.

4. To acquire, hold, transfer or pledge any obligation or security representing funds actually advanced or used for any co-operative activity; or stock, memberships, bonds or obligations of any co-operative organization dealing in any product handled by the association, or any by-product thereof.

5. To make any contract, endorsement or guaranty it deems desirable incident to its transfer or pledge of any obligation or security.

6. To acquire, own or dispose of any real or personal property deemed convenient for its business, including patents, trade-marks and copyrights.

7. To exercise any power, right or privilege suitable or necessary for, or incident to, promoting or accomplishing any of its powers, purposes or activities, or granted to ordinary corporations, save such as are inconsistent with this chapter.

8. To exercise any of its powers anywhere. No association organized under this chapter shall engage in the business of banking. [C35, §8512-g7; C39,§8512.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.7]

499.8 Contracts authorized. An agricultural association may contract with any member for his exclusive sale to or through it, of all or any part of his agricultural products or other designated commodities. Such contracts may permit the association to take and sell the property without acquiring title thereto, and pay the member the sale price less costs and expenses of selling, which may include the member's pro rata portion of the association's annual outlay for overhead, interest, preferred dividends, reserves or other specified charges. Such contracts must be for a specified time, not less than one year. Each contract shall fix a period of at least ten days during each year after the first, within which either party may terminate it without affecting any liability previously accrued. [C35,§8512-g8; C39,§8512.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.8]

Referred to in §499.9

499.9 Penalties—performance—injunction—arbitration. Contracts permitted by section 499.8 may provide that the member pay the association any sum, fixed in amount or by a specified method of computation, for each violation thereof; also all the association's expenses of any suit thereon, including bond premiums and attorney's fees. All such provisions shall be enforced as written, whether at law or in equity, and shall be deemed proper measurement of actual damages, and not penalties or forfeitures.

The association may obtain specific performance of any such contract, or enjoin its threatened or continued breach, despite the adequacy of any legal or other remedy.

If the association files a verified petition, showing an actual or threatened breach of

any such contract and seeking any remedy therefor, the court shall, without notice or delay but on such bond as it deems proper, issue a temporary injunction against such breach or its continuance.

The parties to such contracts may agree to arbitrate any controversy subsequently arising thereunder, and fix the number of arbitrators and method of their appointment. Such agreements shall be valid and irrevocable, except on such grounds as invalidate contracts generally. If they specify no method for appointing arbitrators, or if either party fails to follow such method, or if for any reason arbitrators are not named or vacancies filled, either party may apply to the district court to designate the necessary arbitrator, who shall then act under the agreement with the same authority as if named in it. Unless otherwise agreed, there shall be but one arbitrator. [C35, §8512-g9; C39,§**8512.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.9]

499.10 Co-operative agreements. Any association may make any agreement or arrangement with any other association or co-operative organization for the co-operative or more economical carrying on of any of its business. Any number of such associations or organizations may unite to employ or use, or may separately employ or use, the same methods, means or agencies for conducting their respective businesses. [C35,§8512-g10; C39,§**8512.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.10]

499.11 Legality declared. No association, contract, method or act which complies with this chapter shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen business or fix prices arbitrarily, or to accomplish any improper or illegal purpose. [C35,§8512-g11; C39,§**8512.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §499.11]

499.12 Exemption of private property. The private property of the members or stockholders shall be exempt from execution for the debts of the corporation. [C35,§8512-g12; C39, §**8512.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.12]

499.13 Membership — eligibility. No membership or share of common stock shall ever be issued to, or held by, any party not eligible to membership in the association under its articles. Individuals may be made eligible only if they are engaged in producing products marketed by the association, or if they customarily consume or use the supplies or commodities it handles, or use the services it renders. Farm tenants, and landlords who receive a share of agricultural products as rent, may be made eligible to membership in agricultural associations as producers. Other associations engaged in any directly or indirectly related activity may be made eligible to membership. Federated associations may be formed whose membership is restricted to co-operative associations. [C35,§8512-g13; C39,§**8512.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.13]

Referred to in §499.5

499.14 Membership in nonstock associations. Membership in associations without capital stock may be acquired by eligible parties in the manner provided in the articles, which shall specify the rights of members, the issuing price of memberships, and what, if any, fixed dividends accrue thereon. If the articles so provide, membership shall be of two classes, voting and nonvoting. Voting members shall be agricultural producers, and all other members shall be nonvoting members. Nonvoting members shall have all the rights of membership except the right to vote. [C35, §8512-g14; C39,§**8512.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.14]

499.15 Contents of certificates. The association shall issue certificates of membership or stock, each of which state the fixed dividend, if any, and the restrictions or limitations upon its ownership, voting, transfer, redemption or cancellation. [C35,§8512-g15; C39,§**8512.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.15]

499.16 Subscriptions — issuing certificates. If the articles permit, any eligible subscriber for common stock or membership may vote and be treated as a member, after making part payment therefor in cash and giving his note for the balance. Such subscriptions may be forfeited as provided in section 499.32. No stock or membership certificate shall be issued until fully paid for. No subscriber shall hold office until his certificate has been issued. [C35,§8512-g16; C39,§**8512.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.16]

Referred to in §499.30

499.17 Transfer of stock or membership. No common stock shall be transferable, unless the articles expressly provide for transfer to others eligible for membership. Such provision may require that the transfer be preceded by an offer to the association, or be otherwise restricted. No nonstock membership shall be transferable, and all certificates thereof shall be surrendered to the association on the member's voluntary withdrawal. [C35,§8512-g17; C39,§**8512.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §499.17]

499.18 Expulsion of members. The directors may expel any member if he has attempted to transfer his membership or stock in violation of its terms, or has willfully violated any article or bylaw which provides for such penalty. [C35,§8512-g18; C39,§**8512.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.18]

499.19 Cancellation of membership or stock. If a common stockholder or member dies, or becomes ineligible, or is expelled, his stock or membership shall forthwith be canceled. In cases of expulsion the association shall pay him its value as shown by the books on the date of cancellation, but not more than its

original issuing price, within sixty days thereafter. In cases of death or ineligibility, it shall pay such value to him or his personal representative within two years thereafter, without interest. [C35,§8512-g19; C39,§**8512.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.19]

499.20 Withdrawal of members. The articles may permit and regulate voluntary withdrawal of members and the resulting cancellation of their common stock and memberships. [C35,§8512-g20; C39,§**8512.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.20]

499.21 Obligations not affected. The death, expulsion or withdrawal of a member shall not impair his contracts, debts, or obligations to the association. [C35,§8512-g21; C39,§**8512.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.21]

499.22 Capital stock. Associations with capital stock may divide the shares into common and preferred stock. Par value stock shall not be issued for less than par. The general corporation laws shall govern the consideration for which no-par stock is issued. If the articles so provide, common stock may be issued in two classes, voting and nonvoting. Voting stock shall be issued to all agricultural producers and nonvoting stock to all other members. Nonvoting stock shall have all privileges of membership except the right to vote. Preferred stock held by nonmembers shall not exceed in amount that held by members. [C35, §8512-g22; C39,§**8512.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.22]

499.23 Dividends on common stock. Unless the articles provide that common stock shall receive no dividends, the directors may declare noncumulative dividends thereon at such rate as they may fix, not exceeding eight percent per annum. [C35,§8512-g23; C39,§**8512.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.23]

499.24 Preferred stock. Preferred stock shall bear cumulative or noncumulative dividends as fixed by the articles, not exceeding eight percent per annum. It shall have no vote. It shall be issued and be transferable without regard to eligibility or membership, and be redeemable on terms specified in the articles. The directors shall determine the time and amount of its issue. [C35,§8512-g24; C39,§**8512.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §499.24]

499.25 Issuing preferred stock in purchases. An association may discharge all or any part of obligations incurred in purchasing any business, property or stock, or an interest therein, by issuing its authorized preferred stock in an amount not exceeding the fair market value of the thing purchased. Issuance of such stock in an amount exceeding twenty-five thousand dollars shall be governed by the law as found in sections 492.6 and 492.7. Issuance of such stock in amounts smaller than twenty-five thousand dollars shall be upon the fair market value of the property purchased, as determined through an appraisal made by the directors or a competent appraiser employed by the directors. Within thirty days after such issue, the association shall file with the secretary of state a verified report containing an accurate detailed description of the thing purchased, the valuation thereof by the directors, and the amount of preferred stock thus issued. Such preferred stock shall be valid as though paid for in cash. [C35,§8512-g25; C39,§**8512.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.25]

499.26 Service charges. Unless the articles otherwise provide, the bylaws or the directors may prescribe charges to be made to each member for services rendered him or upon products bought from or sold to him, and the time and manner of their collection. [C35, §8512-g26; C39,§**8512.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.26]

499.27 Meetings. Regular meetings of members shall be held at least once each year, the first of which shall be on the date specified in its articles. Unless otherwise provided in the articles or bylaws, subsequent meetings shall be on the same date in each succeeding year.

Unless otherwise provided in the articles, the directors may call special meetings of members, and must do so upon written demand of twenty percent of the members.

Unless he waives it in writing, each member shall have ten days' written notice of the time and place of all meetings, and of the purpose of all special meetings. Such notice shall be given to him in person or by mail directed to his address as shown on the books of the association, or if the articles so provide, by publication in a regular publication of general circulation among its members, or a newspaper of general circulation published at the principal place of business of the association. [C35, §8512-g27; C39,§**8512.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.27]

Articles of incorporation, §499.40

499.28 Number of votes. No member may own more than one membership or share of common stock. Each voting member shall be entitled to one vote and no more at all corporate meetings. [C35,§8512-g28; C39,§**8512.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.28]

499.29 Manner of voting. Votes shall be cast in person, and not by proxy. The vote of a member-association shall be cast only by its representative duly authorized in writing. If the articles or bylaws permit, an absent member may cast his signed written vote upon any proposition of which he has been previously notified in writing, and of which a copy accompanies his vote. [C35,§8512-g29; C39, §**8512.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.29]

499.30 Distribution of earnings. The directors shall annually dispose of the earnings of the association in excess of its operating expenses as follows:

To provide a reasonable reserve for depreciation, obsolescence, bad debts, or contingent losses or expenses.

At least ten percent of the remaining earnings must be added to surplus until surplus equals either thirty percent of the total of all capital paid in for stock or memberships, plus all unpaid patronage dividends, plus certificates of indebtedness payable upon liquidation, or one thousand dollars, whichever is greater. No additions shall be made to surplus whenever it exceeds either fifty percent of such total, or one thousand dollars, whichever is greater.

Not less than one percent nor more than five percent of such earnings in excess of reserves may be placed in an educational fund, to be used as the directors deem suitable for teaching or promoting co-operation.

After the foregoing, to pay fixed dividends on stock or memberships, if any.

Notwithstanding the articles of incorporation of any association now in effect, for each taxable year of the association beginning after December 31, 1962, all remaining net earnings shall be allocated to the account of each member, including subscribers described in section 499.16 ratably in proportion to the business he had done with the association during such year. The directors shall determine, or the articles of incorporation or bylaws of the association may specify, the percentage or the amount of said allocation that currently shall be paid in cash, provided that so long as there are unpaid deferred patronage dividends for prior years the amount currently payable in cash shall not exceed twenty percent of said allocation. All said remaining allocation not so paid in cash shall be transferred to a revolving fund and credited to said members and subscribers. Such credits in the revolving fund are herein referred to as deferred patronage dividends. [C35,§8512-g30; C39,§**8512.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.30]

Referred to in §499.31

499.31 Control of allocation by members. The members may at any meeting control the amount to be allocated to surplus or educational fund, within the limits specified in section 499.30, or the amount to be allocated to reserves. [C35,§8512-g31; C39,§**8512.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.31]

499.32 Patronage dividends of subscribers. Patronage dividends to subscribers whose stock or membership is not fully paid in cash shall be applied toward such payment until it is completed. If the articles or bylaws so provide, subscriptions not fully paid within two years may be canceled and all payments or patronage dividends thereon forfeited. [C35, §8512-g32; C39,§**8512.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.32]

Referred to in §499.16

499.33 Use of revolving fund. The directors may use the revolving fund to pay the obligations or add to the capital of the association or retire its preferred stock. In such event the deferred patronage dividends credited to members shall constitute a charge on the revolving fund and future additions thereto, and on the corporate assets, subordinate to creditors and preferred stockholders then or thereafter existing. Deferred patronage dividends for any year shall have priority over those for any subsequent year, except that the directors may, at their discretion, pay deferred patronage dividends of deceased members or patrons, and members who become ineligible without reference to the order of priority herein prescribed. [C35,§8512-g33; C39,§**8512.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.33]

Referred to in §§499.35, 499.48

499.34 Patronage dividend certificates. If its articles or bylaws so provide, an association may issue transferable or nontransferable certificates for deferred patronage dividends. [C35,§8512-g34; C39,§**8512.34**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.34]

Referred to in §499.35

499.35 Time of payment. Credits or certificates referred to in sections 499.33 and 499.34 shall not mature until the dissolution or liquidation of the association, but shall be callable by the association at any time in the order of priority specified in section 499.33. [C35,§8512-g35; C39,§**8512.35**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.35]

Referred to in §499.48

499.36 Directors.

1. The affairs of each association shall be managed by a board of not less than five directors, who must be members of the association or officers or members of a member-association. They shall be elected by the members as the articles prescribe.

2. Unless the articles or bylaws otherwise provide, vacancies in the board shall be filled by the remaining directors, the director thus selected to serve for the remainder of the vacant term.

3. The articles or bylaws may permit the directors to select an executive committee from their own number; and may prescribe its authority, which may be coextensive with that of the whole board.

4. Directors shall be elected by districts, if the articles specify the districts, the number of directors from each, the manner of nomination, redistricting or reapportionment, and whether directors shall be directly elected by the members or by delegates chosen by them. Districts shall be so formed and redistricting shall be ordered, from time to time, so that the districts contain as nearly as possible an equal number of members. [C35,§8512-g36; C39, §**8512.36**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.36]

Referred to in §499.38

499.37 Officers and employees. The directors shall select from their own number a president, one or more vice-presidents, a secretary-treasurer or a secretary and a treas-

urer, and shall fill vacancies in such offices. Unless the articles or bylaws otherwise provide, said officers shall be chosen for annual terms at the close of the first regular meeting of members in each year.

The directors shall also choose and may remove such other officers and employees as they deem proper, or as the articles or bylaws may prescribe. [C35,§8512-g37; C39, §**8512.37**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.37]

499.38 Removal of officers and directors. At any meeting called for that purpose, any officer or director may be removed by vote of a majority of all voting members of the association. A director chosen under section 499.36, subsection 4, may likewise be removed by vote of a majority of all members in his district. [C35,§8512-g38; C39,§**8512.38**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.38]

499.39 Referendum. If provided for in the articles of incorporation, any action of directors shall, on demand of one-third of the directors made and recorded at the same meeting, be referred to a regular or special meeting of members called for such purpose. Such action shall stand until and unless annulled by a majority of the votes cast at such meeting, which vote shall not impair rights of third parties previously acquired. [C35,§8512-g39; C39,§**8512.39**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §499.39]

499.40 Articles. Articles of incorporation must be signed and acknowledged by each incorporator. They may deal with any fiscal or internal affair of the association or any subject hereof in any manner not inconsistent with this chapter. All articles must state in the English language:

1. The name of the association, which must include the word "co-operative"; and the address of its principal office.

2. The purposes for which it is formed, and a statement that it is organized under this chapter.

3. Its duration, which may be perpetual.

4. The name, occupation and post-office address of each incorporator.

5. The number of directors, their qualifications and terms of office and how they shall be chosen and removed.

6. Who are eligible for membership, how members shall be admitted and membership lost, how earnings shall be distributed among members, how assets shall be distributed in liquidation, and, in addition, either:

a. That the association shall have capital stock; the classes, par value and authorized number of shares of each class thereof; how shares shall be issued and paid for; and what rights, limitations, conditions and restrictions pertain to the stock, which shall be alike as to all stock of the same class; or

b. That the association shall have no capital stock, and what limitations, conditions, restrictions and rights pertain to membership; and if the rights are unequal, the rules respecting them shall be specifically stated.

7. The date of the first regular meeting of members. [C35,§8512-g40; C39,§**8512.40**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.40]

Referred to in §§499.42, 499.43

499.41 Amendments. Notwithstanding the provisions of the articles of incorporation of any association pertaining to amendment thereto now in effect, any association may amend its articles of incorporation by a vote of sixty-six and two-thirds percent of the members present, or represented by mailed ballots, and having voting privileges, at any annual meeting or any special meeting called for that purpose, provided that at least ten days before said annual meeting or special meeting a copy of the proposed amendment or summary thereof be sent to all members having voting rights; or said articles of incorporation may be amended in accordance with the amendment requirements contained in the articles or bylaws of said association that are adopted subsequent to July 4, 1963, or are in effect on or after July 4, 1964, provided said amendment requirements in the articles or bylaws are not less than established in this section.

Amendments, signed and acknowledged by officers designated for such purpose, shall be filed and recorded as provided in section 499.44. [C35,§8512-g41; C39,§**8512.41**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.41]

Referred to in §499.42

499.42 Renewal. An association may extend its duration perpetually, or for any definite time, by resolution adopted by a majority of all its members, or any different vote for which the articles may provide, at a meeting called for that purpose and held before its original expiration.

Unless the association has meanwhile wound up, its duration may be extended in like manner within three years after its original expiration, with the same effect as if done prior thereto, by a vote of two-thirds of all its members.

The resolution must state the name of the association, its original expiration date, and for how long thereafter its duration is extended, and must also adopt, and designate officers to execute, renewal articles of incorporation containing the things required in section 499.40.

The renewal articles shall be signed, filed and recorded as required by section 499.41. Renewal shall not relieve the association from fees, charges or penalties which may have accrued against it. [C35,§8512-g42; C39,§**8512.42**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.42]

499.43 Existing corporations—option. Any existing Iowa co-operative corporation may, by a majority vote of all its members, at a meeting called for that purpose and held before its present articles expire, amend its articles so as

to comply with this chapter and section 499.40, which may extend its corporate duration. Such amended articles, signed and acknowledged by officers designated for that purpose, shall be filed and recorded, and a certificate of incorporation issued, as required by section 499.44, whereupon such corporation shall be deemed an association under this chapter.

Any such existing corporation whose present articles have now expired, or will expire before January 1, 1938, may adopt this chapter as above provided at any time before that date, with the same effect as though done before such articles expired.

If any shareholder or member of such corporation vote against such amendment, those voting for it shall purchase his stock or interest at its real value, within two years from the date of such vote, paying interest thereon at the rate of six percent until paid. The association may retire the stock or interest thus purchased.

If any shareholder or member of such corporation shall not be eligible to continue membership under such amendment, the association shall within two years after the amendment is filed purchase and retire his stock or membership for its real value.

It shall be presumed that the real value of such stock or interest is its proportionate share of the corporate assets at book value less liabilities as shown by its books. [C35, §8512-g43; C39,§8512.43; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.43]

499.44 Filing and recording—certificate of incorporation. Articles, amendments, and renewals shall be filed with and approved and recorded by the secretary of state; and recorded in the county where the association has its principal place of business, as required by the general corporation laws.

Upon approving the articles, the secretary of state shall issue a certificate of incorporation, whereupon corporate existence shall begin. [C35,§8512-g44; C39,§8512.44; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.44]

Referred to in §§499.41, 499.43
Filing and recording, §491.5

499.45 Fees. The following fees shall be paid to the secretary of state:

1. Upon filing articles of incorporation or renewals thereof, ten dollars for authorized capital stock up to twenty-five thousand dollars, and one dollar per one thousand dollars or fraction in excess thereof; or ten dollars if there be no capital stock.

2. Upon filing amendments, one dollar, and if authorized capital stock is increased to an amount exceeding twenty-five thousand dollars, an additional fee of one dollar per thousand dollars or fraction of such excess.

3. Upon filing all articles, renewals, or amendments, a recording fee of fifty cents per page.

4. An annual license fee of one dollar shall be paid by each domestic or foreign association on or before the first day of April in each year, with its annual report. [C35,§8512-g45; C39,§8512.45; C46, 50, 54, 58, 62, 66, 71, 73, 75, §499.45]

Referred to in §499.49

499.46 Bylaws. The directors, by a vote of seventy-five percent of the directors, may adopt, alter, amend, or repeal bylaws for the association, which shall remain in force until altered, amended, or repealed by a vote of seventy-five percent of the members present or represented having voting privileges, at any annual meeting or special meeting of the membership, or as otherwise provided in the articles of incorporation or bylaws. Bylaws shall be kept by the secretary subject to inspection by any member at anytime. Bylaws may deal with the fiscal or internal affairs of the association or any subject of this chapter in any manner not inconsistent with this chapter or the articles. [C35,§8512-g46; C39, §8512.46; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.46]

499.47 Dissolution.

1. An association whose duration has expired, or which is sooner dissolved by voluntary act of its members, shall continue to exist for the purpose of winding up its affairs until its complete liquidation under subsection 3 hereof.

2. An association may be dissolved by two-thirds of all votes cast at any meeting called for that purpose at which a majority of all voting members vote.

3. Upon the expiration or voluntary dissolution of an association, the members shall designate three of their number as trustees to replace the officers and directors and wind up its affairs. Such trustees shall thereupon have all the powers of the board, including the power to sell and convey all real or personal property and execute conveyances thereof. Within the time fixed in their designation, or any extension thereof, they shall liquidate its assets, pay its debts and expenses, and distribute any remaining funds among the members, and thereupon the association shall stand dissolved and cease to exist. The trustees shall make, sign, and acknowledge a duplicate report of such dissolution, filing one with the secretary of state and one with the recorder of the county where the articles were recorded.

Referred to in subsection 1

4. The trustees and their successors in office shall be chosen, and the time for their action fixed and extended, by a majority of all votes cast at any meeting called for such purpose. [C35,§8512-g47; C39,§8512.47; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.47]

499.48 Distribution in liquidation. On dissolution or liquidation, the assets of the association shall first pay liquidation expenses, next its obligations other than patronage dividends or certificates issued therefor; and the remainder shall be distributed in the following priority:

1. To pay preferred stock and any dividends accrued thereon.

2. To pay any deferred patronage dividends or certificates issued therefor. If the fund is insufficient to pay them all, it shall be prorated regardless of the priority specified in sections 499.33 and 499.35.

3. To pay to members or common stockholders the amounts for which their memberships or shares were originally issued, together with such accrued dividends, if any, as the articles provide.

4. Any remaining assets shall be distributed among the members at the date of dissolution or liquidation in proportion to their deferred patronage dividends. [C35,§8512-g48; C39, §**8512.48**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.48]

499.49 Annual reports. Each association shall, before April 1 of each year, file a report with the secretary of state on forms prescribed by him, to be accompanied by the annual fee required by section 499.45, subsection 4. Such report shall be signed by an officer of the association, or a receiver or trustee liquidating its affairs, and shall state:

1. Its name and address.

2. The names, addresses and occupations of its officers and directors.

3. The number of shares of each class of stock authorized and outstanding and the par value thereof; or, if there be none, the number of members and the amount of membership fees paid in.

4. The nature and character of its business.

5. What percentage of its business was done with or for its own members during the preceding fiscal or calendar year, and what percentage thereof was done with or for each class of nonmembers specified in section 499.3.

6. Any other information deemed necessary by the secretary to advise him whether the association is actually functioning as a co-operative. [C35,§8512-g49; C39,§**8512.49**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.49]

499.50 Notice of delinquent reports. Before May 15 the secretary shall send to each association failing to report or pay the fee, a notice by certified mail directed to its principal office specified in its articles, stating the delinquency and its consequences. [C35,§8512-g50; C39,§**8512.50**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.50]

499.51 Forfeiture. If an association fails to file such report or pay such fee before July 1, its corporate rights shall stand forfeited. The secretary shall notify it thereof by mail, remove its name from his list of live corporations, and notify the attorney general who shall cause its affairs to be wound up. [C35, §8512-g51; C39,§**8512.51**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.51]

499.52 Reinstatement. If, following such forfeiture, the association shall file the report and pay the annual fee plus a penalty of ten dollars and all actual expenses of any suit begun to wind it up, and shall make a showing of good cause for its delinquency which is satisfactory to the secretary of state, the secretary shall set aside such forfeiture and any such suit shall be dismissed. [C35,§8512-g52; C39,§**8512.52**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §499.52]

499.53 Quo warranto. The right of an association to exist or continue under this chapter may be inquired into by the attorney general, but not otherwise. If from its annual report or otherwise, the secretary of state is informed that it is not functioning as a co-operative, he shall so notify the attorney general, who, if he finds reasonable cause so to believe, shall bring action to oust it and wind up its affairs. [C35,§8512-g53; C39,§**8512.53**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.53]

499.54 Foreign associations. Any foreign corporation now or hereafter organized under generally similar laws of any other state shall be admitted to do business in Iowa upon compliance with the general laws relating to foreign corporations and payment of the same fees as would be required under section 494.4 were said foreign co-operative corporation a foreign corporation for profit seeking authority to transact business in Iowa under chapter 494. Upon the secretary of state being satisfied that such foreign corporation is so organized and has so complied, he shall issue it a certificate authorizing it to do business in Iowa.

Such foreign associations thus admitted shall be entitled to all remedies provided in this chapter, and to enforce all contracts theretofore or thereafter made by it which any association might make under this chapter.

If such foreign corporation amends its articles it shall forthwith file a copy thereof with the secretary of state, certified by the secretary or other proper official of the state under whose laws it is formed, and shall pay the fees prescribed for amendments by section 494.5. Foreign corporations shall also file statements and pay fees otherwise prescribed by said section 494.5. [C35,§8512-g54; C39,§**8512.54**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.54]

Referred to in §499.4
Foreign corporations, ch 494
Foreign public utility corporations, ch 495

499.55 Individual exemptions applicable. All exemptions or privileges applying to agricultural products in the possession or control of the individual producer shall apply to such products in the possession or control of any association which have been delivered to it by its members. [C35,§8512-g55; C39,§**8512.55**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.55]

499.56 Conflicting laws. Any law conflicting with any part of this chapter shall be construed as not applicable to associations formed hereunder. [C35,§8512-g56; C39,§**8512.56**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.56]

499.57 Reserved powers. The state reserves the right to modify, amend or repeal this chapter, or any part hereof, and to cancel, modify, repeal or extend any grant, power, permit or franchise obtained or secured under this chapter, at any future time. [C35,§8512-g57; C39, §8512.57; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.57]

499.58 Limitation of promotion expense. No funds of the association shall be used, nor any of its stock or memberships issued for any promotion expenses, either in the form of commissions, fees, salaries or otherwise. [C35, §8512-g58; C39,§8512.58; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.58]

499.59 Exemptions from Iowa uniform securities Act. None of the exemptions contained in sections 502.202 and 502.203 shall apply to any security issued by any association formed hereunder, when the total amount thereof exceeds twenty-five thousand dollars.

This section shall not apply to certificates of interest or indebtedness issued to members or patrons for revolving fund deductions or for deferred patronage dividends. [C35,§8512-g59; C39,§8512.59; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.59; 66GA, ch 234,§§614, 616]

Constitutionality, 46GA, ch 94,§60

499.60 Chapters inapplicable. The provisions of chapters 497 and 498 are hereby declared inoperative as to corporations chartered from and after July 4, 1935, but said chapters shall continue in force and effect as to corporations organized or operating thereunder prior to July 4, 1935, so long as any such corporations elect to operate under or renew their charters under said chapters. [C35,§8512-g61; C39,§8512.60; C46, 50, 54, 58, 62, 66, 71, 73, 75,§499.60]

MERGER AND CONSOLIDATION

499.61 Definitions. When used in this division, unless the context otherwise requires:

1. "Merger" means the uniting of two or more co-operative associations into one co-operative association, in such manner that one of the merging associations retains its corporate existence and absorbs the others, which cease to exist as corporate entities. "Merger" does not include the mere acquisition, by purchase or otherwise, of the assets of one co-operative association by another.

2. "Consolidation" means the uniting of two or more co-operative associations into one co-operative association, in such manner that a new co-operative association is formed, and the new co-operative association absorbs the others, which cease to exist as separate entities.

3. "Surviving association" is the co-operative association resulting from the merger of two or more co-operative associations.

4. "New association" is the co-operative association resulting from the consolidation of two or more co-operative associations. [C71, 73, 75,§499.61]

499.62 Merger. Any two or more co-operative associations may merge into one co-operative association in the following manner:

The board of directors of each co-operative association shall, by resolution adopted by a majority vote of all members of each board, approve a plan of merger which shall set forth:

1. The names of the co-operative associations proposing to merge and the name of the surviving association.

2. The terms and conditions of the proposed merger.

3. A statement of any changes in the articles of incorporation of the surviving association.

4. Other provisions deemed necessary or desirable. [C71, 73, 75,§499.62]

499.63 Consolidation. Any two or more co-operative associations may be consolidated into a new co-operative association in the following manner:

The board of directors of each co-operative association shall, by resolution adopted by a majority vote of all members of each board, approve a plan of consolidation setting forth:

1. The names of the co-operative associations proposing to consolidate and the name of the new association.

2. The terms and conditions of the proposed consolidation.

3. With respect to the new association, all of the statements required to be set forth in articles of incorporation for co-operative associations.

4. Other provisions deemed necessary or desirable. [C71, 73, 75,§499.63]

499.64 Vote of members. The board of directors of each co-operative association, upon approving a plan of merger or consolidation, shall, by motion or resolution, direct that the plan be submitted to a vote at a meeting of members, which may be either an annual or special meeting. Written notice shall be given not less than twenty days prior to the meeting, either personally or by mail to each member and shareholder of record. The notice shall state the time, place, and the purpose of the meeting, and a summary of the plan of merger or consolidation shall be included in or enclosed with the notice.

At the meeting, a ballot of the members who are entitled to vote in the affairs of the association shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved if two-thirds of the members vote affirmatively on a ballot in which a majority of all voting members participate. Voting may be by mail ballot notwithstanding any contrary provision in the articles of incorporation or bylaws. [C71, 73, 75,§499.64]

499.65 Objection of members—purchase of share. If a member or shareholder of a co-

operative association which is a party to a merger or consolidation files with the co-operative association, prior to or at the meeting of members at which the plan is submitted to a vote, a written objection to the plan of merger or consolidation, and does not vote in favor of the plan, and such member or shareholder, within twenty days after the merger or consolidation is approved by the other members, makes written demand on the surviving or new association for payment of the fair value of his interest as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new association shall pay to such member or shareholder, upon surrender of his certificate of membership or shares of stock, the fair value of his interest. Any member or shareholder failing to make demand within the twenty-day period shall be conclusively presumed to have consented to the merger or consolidation and shall be bound by its terms.

In the event any dissenting member or shareholder shall apply for membership in the surviving or new association, before payment has been made for his membership or stock, the dissenting member or shareholder shall be deemed to have consented to the merger or consolidation and to have waived all further rights as a dissenting member or shareholder. [C71, 73, 75,§499.65]

499.66 Value determined. The fair value of the interest of a member or shareholder shall include the issue price of his membership or capital stock, his deferred patronage dividends, his portion of patronage dividends not previously allocated and available for allocation on the day preceding the vote on merger or consolidation, deferred dividends on his common or preferred stock, and his proportionate share based upon unpaid deferred patronage dividends of any surplus and educational fund reserve of the co-operative association. Payment shall be made as follows:

1. The issue price of his membership or capital stock shall be paid within ninety days from date of demand.

2. Deferred patronage dividends not otherwise paid in cash, and however evidenced, shall be paid at the same time and proportioned the same as the deferred patronage dividends and current dividends of nondissenting members or shareholders, but in any event within seven years from date of demand.

3. At least twenty percent of his proportionate share in the surplus and educational fund reserve shall be paid within one year after date of merger or consolidation, and at least twenty percent each year thereafter until fully paid.

Each dissenting member, promptly following the vote on merger or consolidation, shall be furnished a balance sheet of the co-operative association, a profit and loss statement covering the period since the close of the last fiscal year, and a list of his deferred dividends. [C71, 73, 75,§499.66]

499.67 Articles of merger or consolidation. Upon approval, articles of merger or articles of consolidation shall be executed by each co-operative association by its president or a vice-president and by its secretary or an assistant secretary, and acknowledged by one of the officers of each co-operative association signing the articles, and shall set forth:

1. The plan of merger or the plan of consolidation.

2. As to each co-operative association, the number of individuals or co-operative associations entitled to vote.

3. As to each co-operative association, the number of individuals or co-operative associations who voted for and against the plan at the meeting called for that purpose.

The articles of merger or articles of consolidation shall be delivered to the secretary of state for filing and recording in his office, and shall be filed and recorded in the office of the county recorder.

The secretary of state, upon the filing of articles of merger or articles of consolidation, shall issue a certificate of merger or a certificate of consolidation, and send the certificate to the surviving or new association, or to its representative. [C71, 73, 75,§499.67]

499.68 When effective — effect. Upon the issuance of the certificate of merger or the certificate of consolidation by the secretary of state, the merger or consolidation shall become effective.

When a merger or consolidation has become effective:

1. The several co-operative associations which are parties to the plan of merger or consolidation shall be a single co-operative association, which, in the case of a merger, shall be that co-operative association designated in the plan of merger as the surviving association, and, in the case of consolidation, shall be that co-operative association designated in the plan of consolidation as the new association.

2. The separate existence of all co-operative associations which are parties to the plan of merger or consolidation, except the surviving or new association, shall cease.

3. The surviving or new association shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a co-operative association organized under the laws of this state.

4. The surviving or new association shall possess all the rights, privileges, immunities, and franchises, public as well as private, of each of the merging or consolidating co-operative associations.

5. All property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the

co-operative associations merged or consolidated, shall be transferred to and vested in the surviving or new association without further act or deed. The title to any real estate, or any interest in real estate vested in any of the co-operative associations merged or consolidated, shall not revert or be in any way impaired by reason of the merger or consolidation.

6. A surviving or new association shall be responsible and liable for all obligations and liabilities of each of the co-operative associations merged or consolidated.

7. Any claim existing or action or proceeding pending by or against any of the co-operative associations merged or consolidated may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new association may be substituted for the merged or consolidated association. Neither the rights of creditors nor any liens upon the property of any co-operative association shall be impaired by a merger or consolidation.

8. In the case of a merger, the articles of incorporation of the surviving association shall be deemed to be amended to the extent that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation which are required or permitted to be set forth in the articles of incorporation of co-operative associations organized under the laws of the state of Iowa shall be deemed to be the original articles of incorporation of the new co-operative association.

9. The aggregate amount of the net assets of the merging or consolidating co-operative associations which was available for the payment of dividends immediately prior to the merger or consolidation, to the extent that the amount is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by the surviving or new association. [C71, 73, 75,§499.68]

499.69 Foreign and domestic mergers or consolidations. One or more foreign co-operative associations and one or more domestic co-operative associations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each foreign co-operative association is organized:

1. Each domestic co-operative association shall comply with the provisions of this division with respect to the merger or consolidation of domestic co-operative associations, and each foreign co-operative association shall comply with the applicable provisions of the laws of the state under which it is organized.

2. If the surviving or new association is to be governed by the laws of any state other than this state, it shall comply with the provisions of the laws of this state with respect to the qualification of foreign co-operative associations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

a. An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic co-operative association which is a party to the merger or consolidation, and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic co-operative association, against the surviving or new association.

b. An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any proceeding.

c. An agreement that it will promptly pay to the dissenting shareholders of any domestic co-operative association the amount to which they are entitled under the provisions of this division with respect to the rights of dissenters.

The effect of such merger or consolidation shall be the same as the effect of the merger or consolidation of domestic co-operative associations, if the surviving or new association is to be governed by the laws of this state. If the surviving or new association is to be governed by the laws of any other state, the effect of merger or consolidation shall be the same as in the case of the merger or consolidation of domestic co-operative associations, except as the laws of the other state otherwise provide. [C71, 73, 75,§499.69]

499.70 Abandonment before filing. At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions set forth in the plan of merger or consolidation. [C71, 73, 75,§499.70]

499.71 Other laws applicable. The provisions of this division shall also apply to co-operative associations organized under chapters 497 and 498. [C71, 73, 75,§499.71]

CHAPTER 499A

MULTIPLE HOUSING ACT

Referred to in §§491.1, 496A.142(1), 504A.100(1)

499A.1 Articles.
499A.2 Powers—duration.
499A.3 Members.
499A.4 Dividends.
499A.5 Trustees or managers.
499A.6 Election of officers.

499A.7 Reorganizing prior to expiration of term.
499A.8 Reorganizing after expiration of term.
499A.9 Amendments of articles.
499A.10 Record—effect.
499A.11 Certificate of ownership.
499A.12 Title in trustees.
499A.13 Sale and encumbrance of the premises.
499A.14 Taxation.
499A.15 Rules.
499A.16 Board of directors.
499A.17 Contracts for utilities.
499A.18 Homestead.
499A.19 Election of directors.
499A.20 Title of Act.
499A.21 Execution exemption.

499A.1 Articles. Any two or more persons of full age, a majority of whom shall be citizens of the state, may organize themselves for the following or similar purposes: Ownership of residential, business property on a co-operative basis. A corporation is a person within the meaning of this chapter. The organizers shall adopt, and sign and acknowledge the articles of co-operation, stating the name by which the co-operation shall be known, the location of its principal place of business, its business or objects, the number of trustees, directors, managers or other officers to conduct the same, the names thereof for the first year, the time of its annual meeting, and of annual meeting of its trustees, or directors and the manner in which the articles may be amended. Said articles of co-operation shall be filed with the secretary of state who shall, if he approves the same endorse his approval thereon, record the same, and thereafter forward the same to the county recorder of the county where the principal place of business is to be located, and there it shall be recorded, and upon recording be returned to the co-operation. The said articles shall not be filed by the secretary of state until a filing fee of five dollars together with a recording fee of fifty cents per page is paid, and upon the payment of said fees and the approval of the articles by the secretary of state, he shall issue to said co-operation a certificate of co-operation as a co-operation not for pecuniary profit.

Amendments to the articles may be filed and receive approval as provided herein for articles, and the fee therefor shall be five dollars in each instance, and no amendment shall be effective until the same is approved and the fee therefor is paid. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.1]

499A.2 Powers—duration. Upon filing such articles the persons signing and acknowledging the same and their associates and successors shall become a body co-operative with the name therein stated and shall have power:

1. To have perpetual succession by its name, unless a limited period of duration is stated in its articles of co-operation, or they are sooner dissolved by three-fourths vote of all the members thereof, or by act of the general assembly or by operations of law.

2. To sue and be sued in its co-operative name.

3. To build and construct apartment houses or dwellings.

4. To purchase, take, receive, lease as lessee, take by gift, devise or bequest, or otherwise acquire, and to own, hold, use and otherwise deal in and with any real or personal property or any interest therein.

5. To sell, convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets.

6. To make contracts and incur liabilities which may be appropriate to enable it to accomplish any or all of its purposes; to borrow money for its co-operative purposes at such rates of interest as the co-operation may determine, to issue its notes, bonds and other obligations; and to secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property.

7. To elect or appoint officers and agents of the co-operation, and to define their duties and fix their compensation.

8. To make and alter bylaws not inconsistent with its articles of co-operation or with the laws of this state, for the administration and the regulation of the affairs of the co-operation.

9. To cease its co-operate activities and surrender its co-operate franchise.

10. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the co-operation is organized. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.2]

499A.3 Members. A co-operation may have one or more classes of members. The designation of such class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of co-operation or the bylaws. The co-operation must issue certificates or deeds evidencing membership or ownership of a particular interest therein. [C50, 54, 58, 62, 66, 71, 73, 75, §499A.3]

499A.4 Dividends. No dividend or distribution of property among the stockholders shall be made until dissolution of the co-operation. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.4]

499A.5 Trustees or managers. Such co-operation may, annually or oftener, elect from its members its directors, or managers, at such time and place and in such manner as may be specified in its bylaws, or articles of co-operation, who shall have the control and management of its affairs and funds, a majority of whom shall constitute a quorum for the trans-

action of business. When a vacancy occurs in its governing body, it shall be filled in such manner as shall be provided in the bylaws, or article of co-operation.

The trustee may be one or more persons, or may be a corporation and need not be a member and shall be selected by the directors. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.5]

499A.6 Election of officers. If an election of trustees, directors or managers shall not be made on the day designated by the bylaws, the society for that cause shall not be dissolved, but such election may take place on any other day directed in the bylaws. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.6]

499A.7 Reorganizing prior to expiration of term. The trustees, directors, or members of any co-operation organized under this chapter may reorganize the same, and all the property and rights thereof shall vest in the co-operation as reorganized. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.7]

499A.8 Reorganizing after expiration of term. When the term of a co-operation organized under this chapter has expired, but the organization has continued to act as such co-operation, the directors or members thereof may reorganize, and the property and rights therein shall vest in the reorganized co-operation for the use and benefit of all of the members in the original co-operation. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.8]

499A.9 Amendments of articles. Any co-operation organized under this chapter may change its name or amend its articles of co-operation by a vote of a majority of the members, in such manner as may be provided in its articles; but if no such provision is made in the articles the same may be amended at any regular meeting or special meeting called for that purpose by the president or secretary or a majority of the board of directors. Notice of any meeting at which it is proposed to amend the articles of co-operation, shall be given by mailing to each member at his last known post-office address at least ten days prior to such meeting, a notice signed by the secretary setting forth the proposed amendments in substance, or by two publications of said notice in some daily or weekly newspaper in general circulation in the county wherein said co-operation has its principal place of business. The last publication of said notice shall be not less than ten days prior to the date of said meeting. There shall be paid to the secretary of state at the time of the filing of such change or amendment a recording fee of fifty cents per page. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.9]

Referred to in §499A.10

499A.10 Record — effect. The change or amendment provided for in section 499A.9 shall be recorded as the original articles are recorded. From the date of filing such change or amendment for record, the provisions of said section having been complied with, the change or amendment shall take effect as a part of the original articles, and the co-operation thus constituted shall have the same rights, powers and franchises, be entitled to the same immunities, and liable upon all contracts to the same extent, as before such change or amendment. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.10]

499A.11 Certificate of ownership. The co-operative association shall have the right to purchase real estate for the purpose of erecting apartment houses or apartment buildings and the members shall be the owners thereof. The interest of each individual member shall be evidenced by the issuance of a certificate of ownership or deed to a particular apartment or room therein. Such certificate of ownership or deed shall be executed by the president of the co-operation and attested by its secretary in the name and in the behalf of the co-operation. [C50, 54, 58, 62, 66, 71, 73, 75, §499A.11]

499A.12 Title in trustees. The title to the real estate upon which the apartment or other buildings is constructed shall be conveyed to the trustees or trustee who shall hold the said title for the use and benefit of the owners of such apartments or rooms. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.12]

499A.13 Sale and encumbrance of the premises. Neither the premises nor the real estate shall be sold by the trustees unless a three-fourths majority of the owners and the board of directors authorize such sale. No mortgage shall be given by the trustees unless such mortgage is authorized by a resolution of three-fourths of the owners and the board of directors of the apartments or rooms in said building, and no such mortgage shall be given unless it is given for the purchase of, or repair and maintenance of, such building. Any mortgage executed by the trustees as above provided shall be prior and superior to any mortgage, lien or encumbrance of any individual against any individual apartment or room or the owners interest therein. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.13]

499A.14 Taxation. The real estate shall be taxed in the name of the co-operation, and each person owning an apartment or room shall pay his proportionate share of such tax, and each person owning an apartment as a residence and under the qualifications of the laws of the state of Iowa as such shall receive his proportionate homestead tax credit and each veteran of the military services of the United States identified as such under the laws of the state of Iowa or the United States shall receive as a credit his veterans tax benefit as prescribed by the laws of the state of Iowa. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.14]

Homestead credit, ch 425
Veterans exemption, §427.3

499A.15 Rules. The members of the co-operation may adopt house rules and bylaws

governing the regulation of the premises generally and may adopt rules as to the maintenance of the individual apartments or rooms as to whether or not said apartments or rooms:

1. Shall be used exclusively as a residence.
2. As to the sale and lease of the individual apartments or rooms.
3. As to the payment of all public services rendered to the apartments or rooms.
4. As to any other item or regulation concerning or pertaining to the building, constructing, repair or regulation of the premises or its occupants.

The members of the co-operation may, by agreement, contract among themselves as to any regulations, house rules, repairs of premises, addition, construction or any other thing in the conducting of the affairs of the co-operation, but such agreement shall not be binding upon innocent purchasers or encumbrances unless it be recorded in the office of the county recorder in the county in which the co-operation is organized. [C50, 54, 58, 62, 66, 71, 73, 75, §499A.15]

499A.16 Board of directors. Unless otherwise provided in the agreement, it shall be the duty of the board of directors to maintain generally the building and the grounds. They shall keep in repair as far as practical, the outside wall, stairways, roof, halls, and the structure of the building, and the cost thereof shall be contributed to by each of the apartment owners in proportion as their interest appears. And any default in payment thereof by any owner of any apartment may be assessed against such apartment by the board of directors and such apartment shall be liable therefor. The said sums so unpaid shall be a lien against the said apartment, but shall not be a personal liability of the apartment owners, and shall be prior to any existing lien against the owner but shall be subsequent to any lien placed thereon by the trustee, and upon nonpayment upon demand may be enforced as a mortgage against said apartment by the co-operation. [C50, 54, 58, 62, 66, 71, 73, 75, §499A.16]

Referred to in §499A.17

499A.17 Contracts for utilities. The members of the co-operative may contract among themselves with reference to all public service requirements, including heat, light and water supplies, of said building, and unless otherwise provided in the agreement it shall be the duty of the board of directors to furnish such public service requirements and the cost thereof shall be divided proportionately among the apartment owners, and upon nonpayment upon demand, may be enforced as provided by section 499A.16.

In the event that the heating plant and the water supply of such apartment is a general heating plant, then the board of directors may furnish fuel and water to said premises, and each apartment without discrimination, and the cost thereof shall be paid by the several apartment owners in proportion to their interest. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.17]

499A.18 Homestead. The ownership of an individual apartment shall constitute a homestead and be exempt from execution, provided the owner otherwise qualifies within the laws of the state of Iowa for such exemption. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.18]

499A.19 Election of directors. The directors authorized under this chapter shall be elected by the members of the co-operation. If one member owns more than one apartment he may nevertheless have but one vote at such election. If any apartment or room is owned by more than one member they may, nevertheless, have but one vote at such election. The election of officers shall be made by the board of directors. The officers and board of directors may hire a custodian or janitor for reasonable compensation to generally serve and oversee the apartment building. The annual election of the directors shall be held during the month of January of each year, and they shall serve until their successors are elected and qualified.

The board of directors shall elect as officers, a president and a secretary.

It shall be the duty of the secretary to keep the records of the co-operation, a correct list of the owners and lessees of each apartment, and all such records shall be submitted to any apartment or room owner upon demand at any reasonable time. [C50, 54, 58, 62, 66, 71, 73, 75§499A.19]

499A.20 Title of Act. This chapter shall be known and cited as "The Multiple Housing Act of 1947." [C50, 54, 58, 62, 66, 71, 73, 75, §499A.20]

499A.21 Execution exemption. Private property of the members shall be exempt from execution for the debts of the co-operation. [C50, 54, 58, 62, 66, 71, 73, 75,§499A.21]

CHAPTER 499B

HORIZONTAL PROPERTY ACT

(CONDOMINIUMS)

Referred to in §§427A.1, 524.905(7)

499B.1 Short title.
499B.2 Definitions.
499B.3 Recording of declaration to submit property to regime.

499B.4 Contents of declaration.
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499B.6 Copy of the floor plans to be filed.
499B.7 Interest in common elements—reference to them in instrument.
499B.8 Removal from provisions of this chapter.
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499B.11 Real property tax and special assessments—levy on each apartment.
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499B.14 Bylaws.
499B.15 Contents of bylaws.
499B.16 Disposition of property — destruction or damage.
499B.17 Lien against owner of unit.
499B.18 Common expenses before foreclosure.
499B.19 Common expenses after voluntary conveyance.

499B.1 Short title. This chapter shall be known as the "Horizontal Property Act." [C66, 71, 73, 75,§499B.1]

499B.2 Definitions. Unless it is plainly evident from the context that a different meaning is intended, as used herein:

1. *"Apartment"* means one or more rooms occupying all or a part of a floor or floors in a building of one or more floors or stories and notwithstanding whether the apartment be intended for use or used as a residence, office, for the operation of any industry or business or for any other use not prohibited by law.

2. *"Co-owner"* means a person, corporation, or other legal entity capable of holding or owning any interest in real property who owns all or an interest in an apartment within the building.

3. *"Council of co-owners"* means all the co-owners of the building. The business and affairs of the council of co-owners may be conducted by organizing a corporation not for pecuniary profit of which the co-owners are members.

4. *"General common elements"*, unless otherwise provided in the declaration or lawful amendments thereto means and includes:

a. The land on which the building is erected.

b. The foundations, basements, floors, exterior walls of each apartment and of the building, ceilings and roofs, halls, lobbies, stairways, and entrances and exits or communication ways, elevators, garbage incinerators and in general all devices or installations existing for common use.

c. Compartments or installations of central services for public utilities, common heating and refrigeration units, reservoirs, water tanks and pumps servicing other than one apartment.

d. Premises for lodging of service personnel engaged in performing services other than services within a single apartment.

5. *"Limited common elements"* means and includes those common elements which are specified in or determined under the declaration to be reserved for the use of one or more apartments to the exclusion of the other apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and the like.

6. *"Majority of co-owners"* or "percent of co-owners" means the owners of more than one-half or owners of that percent of interest in the building irrespective of the total number of co-owners.

7. *"Property"* includes the land whether committed to the horizontal property regime in fee or as a leasehold interest, the building, all other improvements located thereon, and all easements, rights and appurtenances belonging thereto.

8. All pronouns used herein include the male, female and neuter genders and include the singular or plural numbers, as the case may be.

9. *"Building"* means and includes one or more buildings, whether attached to one or more buildings or unattached; provided, however, that if there is more than one building, all such buildings shall be described and included in the declaration, or an amendment thereto, and comprise an integral part of a single horizontal property regime. [C66, 71, 73, 75,§499B.2]

499B.3 Recording of declaration to submit property to regime. When the sole owner or all of the owners, or the sole lessee or all of the lessees of a lease desire to submit a parcel of real property upon which a building is located or to be constructed to the horizontal property regime established by this chapter, a declaration to that effect shall be executed and acknowledged by the sole owner or lessee or all of such owners or lessees and shall be recorded in the office of the county recorder of the county in which such property lies. [C66, 71, 73, 75,§499B.3]

Referred to in §§499B.4, 499B.12

499B.4 Contents of declaration. The declaration provided for in section 499B.3 shall contain:

1. A description of the land.

2. A description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed.

3. The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, an immediate common area to which it has access, and any other data necessary for its proper identification.

4. A description of the general common elements and facilities.

Referred to in §499B.7

5. A description of the limited common elements and facilities, if any, stating to which apartments their use is reserved.

Referred to in §499B.7

6. The fractional or percentage interest which each apartment bears to the entire horizontal property regime. The sum of such shall be one if expressed in fractions and one hundred if expressed in percentage.

Referred to in §§499B.7, 499B.12

7. The provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or part of the property.

8. Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter.

9. The method by which the declaration may be amended, consistent with the provisions of this chapter. [C66, 71, 73, 75,§499B.4]

Referred to in §§499B.5, 499B.7, 499B.12

499B.5 Contents of deeds of apartments. Deeds of apartments shall include the following particulars.

1. Description of the land as provided in section 499B.4, including the book, page and date of recording of the declaration.

2. The apartment number of the apartment in the declaration and any other data necessary for its proper identification.

3. The percentage of undivided interest appertaining to the apartment in the common areas and facilities.

4. Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and this chapter. [C66, 71, 73, 75,§499B.5]

499B.6 Copy of the floor plans to be filed. There shall be attached to the declaration, at the time it is filed, a full and an exact copy of the plans of the building, which copy of the plans shall be entered of record along with the declaration. Said plans shall show graphically all particulars of the building including, but not limited to, the dimensions, area and location of common elements affording access to each apartment. Other common elements, both limited and general, shall be shown graphically insofar as possible and shall be certified to by an engineer or architect authorized and licensed to practice his profession in this state. [C66, 71, 73, 75,§499B.6]

499B.7 Interest in common elements — reference to them in instrument.

1. The fractional or percentage interest in the general common elements and the fractional or percentage interest in the limited common elements where such exist are hereby declared to be appurtenant to each of the separate apartments.

2. Any conveyance, encumbrance, lien, alienation or devise of an apartment under a horizontal property regime by any instrument which describes the land and apartment as set forth in section 499B.4, shall also convey, encumber, alienate, devise or be a lien upon the fractional or percentage interest appurtenant to each such apartment under section 499B.4, subsection 6, to the general common elements, and the respective share or percentage interest to limited common elements where applicable, whether such general common elements or limited common elements are described as in section 499B.4, subsections 4 and 5, by general reference only, or not at all. [C66, 71, 73, 75,§499B.7]

499B.8 Removal from provisions of this chapter.

1. All of the apartment owners may remove a property from the provisions of this chapter by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the apartments consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided.

2. Upon removal of the property from the provisions of this chapter, the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common area and facilities. [C66, 71, 73, 75,§499B.8]

Referred to in §499B.9

499B.9 Removal no bar to subsequent resubmission. The removal provided for in section 499B.8 shall in no way bar the subsequent resubmission of the property to the provisions of this chapter. [C66, 71, 73, 75,§499B.9]

499B.10 Individual apartments and interest in common elements are alienable. When real property containing a building is committed to a horizontal property regime, each individual apartment located therein and the interests in the general common elements and limited common elements if any, appurtenant thereto, shall be vested as, and shall be as completely and freely alienable as any separate parcel of real property is or may be under the laws of this state, except as limited by the provisions of this chapter. [C66, 71, 73, 75, §499B.10]

499B.11 Real property tax and special assessments—levy on each apartment.

1. All real property taxes and special assessments shall be levied on each apartment and its respective appurtenant fractional share or percentage of the land, general common elements and limited common elements where applicable as such apartments and appurtenances are separately owned, and not on the entire horizontal property regime.

2. Any exemption from taxes that may exist on real property or the ownership thereof shall not be denied by virtue of the registration of the property under the provisions of this chapter. [C66, 71, 73, 75,§499B.11]

499B.12 Liens against apartments—removal from lien—effect of part payment.

1. Subsequent to recording the declaration provided for in section 499B.3, and while the property remains enrolled in a horizontal property regime, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against the individual apartment and the general common elements and limited common elements where applicable, appurtenant to such apartment, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

2. In the event a lien against two or more apartments becomes effective, the owners of the separate apartments may remove their apartment and the general common elements and limited common elements where applicable appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payments shall be computed by reference to the fractions or percentages appearing on the declaration provided for in section 499B.4, subsection 6. Subsequent to any such payment, discharge or other satisfaction the individual apartment and the general common elements and limited common elements applicable appurtenant thereto shall thereafter be free and clear of the lien so paid, satisfied or discharged. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any apartment and the general common elements, limited common elements where applicable appurtenant thereto not so paid, satisfied or discharged. [C66, 71, 73, 75,§499B.12]

499B.13 Limitation upon availability of partition—exception as to limitation of partition by joint ownership.

1. The provisions of chapter 651, relating to partition of real property shall not be available to any owner of any interest in real property included within a regime established under this chapter as against any other owner or owners of any interest or interests in the same regime, so as to terminate the regime.

2. Nothing contained in the chapter shall be construed as a limitation on partition by joint owners of one or more apartments in a regime as to individual ownership of such apartment or apartments without terminating the regime, or as to ownership of such apartment or apartments and lands outside the limits of the regime. [C66, 71, 73, 75,§499B.13]

499B.14 Bylaws. The administration of every property shall be governed by bylaws, a true copy of which shall be annexed to the declaration and made a part thereof. No modification of or amendment to the bylaws shall be valid unless set forth in an amendment to the declaration and such amendment is duly recorded. [C66, 71, 73, 75,§499B.14]

499B.15 Contents of bylaws. The bylaws must provide for at least the following:

1. The form of administration, indicating whether this shall be in charge of an administrator or of a board of administration, or otherwise, and specifying the powers, manner of removal, and, where proper, the compensation thereof.

2. Method of calling or summoning the co-owners to assemble; what percentage, if other than a majority of apartment owners, shall constitute a quorum; who is to preside over the meeting and who will keep the minute book wherein the resolutions shall be recorded.

3. Maintenance, repair and replacement of the common areas and facilities and payments therefor including the method of approving payment vouchers.

4. Manner of collecting from the apartment owners their share of the common expenses.

5. Designation and removal of personnel necessary for the maintenance, repair and replacement of the common areas and facilities.

6. The percentage of votes required to amend the bylaws. [C66, 71, 73, 75,§499B.15]

499B.16 Disposition of property — destruction or damage. If within thirty days of the date of the damage or destruction to all or part of the property, it is not determined by the council of co-owners to repair, reconstruct or rebuild, then and in that event:

1. The property shall be deemed to be owned in common by the apartment owners;

2. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

3. Any liens affecting any of the apartments shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property as provided herein; and

4. The property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be con-

sidered as one fund and shall be divided among all the apartment owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the apartment owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each apartment owner. [C66, 71, 73, 75,§499B.16]

Constitutionality, 60GA, ch 293,§17

499B.17 Lien against owner of unit. All sums assessed by the council of co-owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (1) tax liens on the apartment in favor of any assessing unit and special district, and (2) all sums unpaid on a first mortgage of record. Such lien may be foreclosed by suit by the council of co-owners or the representatives thereof, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In the event of any such foreclosure, the apartment owner shall be required to pay a reasonable rental for the apartment if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The council of co-owners or the representatives thereof, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid in the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. [C66, 71, 73, 75,§499B.17]

499B.18 Common expenses before foreclosure. Where the mortgagee of a first mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the council of co-owners chargeable to such apartment which became due prior to the acquisition of title to such apartment by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners including such acquirer, his successors and assigns. [C66, 71, 73, 75,§499B.18]

499B.19 Common expenses after voluntary conveyance. In a voluntary conveyance the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the council of co-owners or its representatives, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth. [C66, 71, 73, 75,§499B.19]

CHAPTER 500

COLLECTIVE MARKETING

Referred to in §504A.100(1)

500.1 Authorization.
500.2 Liquidated damages.
500.3 Applicability of chapter.

500.1 Authorization. Persons engaged in the conduct of any agricultural, horticultural, dairy, livestock, mercantile, mining, or manufacturing business in the manner provided in section 500.3 may act together in associations, corporate or otherwise, for the purpose of collectively producing, processing, preparing for market, handling, and marketing the products of their members. Such persons may organize and operate such associations, and such associations may make the necessary contracts and agreements to effect that purpose, any law to the contrary notwithstanding. [C24, 27, 31, 35, 39,§8513; C46, 50, 54, 58, 62, 66, 71, 73, 75,§500.1]

500.2 Liquidated damages. Contracts and agreements entered into between associations and the members thereof may, where damages that may be sustained for the breach thereof are difficult of ascertainment, provide for such penalties as may be agreed upon, which penalties, if the parties thereto so agree, shall be construed as liquidated damages and be enforceable in the full amount thereof both at law and in equity. [C24, 27, 31, 35, 39,§8514; C46, 50, 54, 58, 62, 66, 71, 73, 75,§500.2]

500.3 Applicability of chapter. The provisions of this chapter shall apply:

1. To corporations organized under the provisions of chapter 497.

2. To other incorporated associations or companies organized without capital stock, not for pecuniary profit and for the mutual benefit of their members. [C24, 27, 31, 35, 39,§8515; C46, 50, 54, 58, 62, 66, 71, 73, 75§500.3]

Referred to in §500.1

CHAPTER 501

SALE OF STOCK ON INSTALLMENT PLAN

Referred to in §§422.34(1), 491.114, 503.2

501.1 Terms defined.
501.2 Certificate—how obtained.
501.3 Approval by commissioner.
501.4 Annual report.
501.5 Bonds or securities deposited.
501.6 Unauthorized companies—penalty.
501.7 Fee.
501.8 Examination.

501.1 Terms defined. The term "association" when used in this chapter shall mean any person, firm, company, partnership, association, or corporation, other than building and loan associations and insurance companies and associations, which issue stocks on the partial payment or installment plan. The term "issue" shall mean issue, sell, place, engage in or otherwise dispose of or handle. The term "stock" shall mean certificates, memberships, shares, bonds, contracts, debentures, stocks, tontine contracts, or other investment securities or agreements of any kind or character issued upon the partial payment or installment plan. [S13,§1920-k; C24, 27, 31, 35, 39,§**8517**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§501.1]

501.2 Certificate—how obtained. No association contemplated by this chapter shall issue any stock until it shall have procured from the commissioner of insurance a certificate of authority authorizing it to engage in such business. To procure such certificate of authority it shall be necessary for such association to file with the commissioner of insurance a statement, under oath, showing the name and location of such association, the name and post-office address of its officers, the date of organization, and if incorporated a copy of its articles of incorporation, also, a copy of its bylaws or rules by which it is to be governed, the form of its certificates, stocks, or contracts, all printed matter issued by it, together with a detailed statement of its financial condition and such other information concerning its affairs or plan of business as the commissioner of insurance may require. [S13, §1920-l; C24, 27, 31, 35, 39,§**8518**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§501.2]

501.3 Approval by commissioner. If the commissioner of insurance is satisfied that the business is not in violation of law or of public policy, and is safe, reliable, and entitled to public confidence, and shall approve the form of certificate of stock or contract, he shall issue to such association a certificate of authority authorizing it to transact business within this state until the first day of March next succeeding the date of such authorization. [S13,§1920-m; C24, 27, 31, 35, 39,§**8519**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§501.3]

501.4 Annual report. During the month of January of each year, every association transacting the business contemplated by this chapter, shall file with the commissioner of insurance a statement showing its condition on the thirty-first day of December preceding. Said statement shall be in such form as shall be prescribed by the commissioner of insurance. If it appears from such statement that such association is doing a safe business and is solvent, the commissioner of insurance may renew its certificate of authority authorizing it to transact business within the state until the first day of March of the following year. If at any time it shall appear that such association is doing an unsafe business or is insolvent the commissioner of insurance may revoke its certificate of authority authorizing it to transact business within the state until the first day of March of the following year. If at any time it shall appear that such association is doing an unsafe business or is insolvent the commissioner of insurance may revoke its certificate of authority to transact business and having revoked the certificate of authority of an association organized under the laws of this state, he shall report his action to the attorney general who shall at once apply to the district court or a judge thereof for the appointment of a receiver to close up the affairs of such association, and an injunction may issue in the same proceeding enjoining and restraining the association from transacting business in this state. [S13, §1920-o; C24, 27, 31, 35, 39,§**8520**; C46, 50, 54, 58, 62, 66, 71, 73 ,75,§501.4]

Referred to in §501.8
Injunctions, ch 664

501.5 Bonds or securities deposited. Before any association shall be authorized to transact business contemplated by this chapter, it shall deposit with the commissioner of insurance a bond approved by the commissioner of insurance, guaranteeing the faithful performance of all contracts entered into by such association or securities of the kind designated in section 511.8, subsections 1 to 4, or such other securities as shall be approved by the commissioner of insurance in the amount of twenty-five thousand dollars, which amount shall remain in possession of the commissioner of insurance until the end of the calendar year in which the association shall first be authorized to transact business. At the end of such calendar year, such association shall deposit with the commissioner of insurance securities of the kind above provided in an amount equal to all its liabilities to persons residing within this state and shall keep such deposit at all

times equal to such liability; provided that at no time shall such deposit be reduced below twenty-five thousand dollars except at such time as such association shall be by law closing out its business and its liabilities shall have been reduced below twenty-five thousand dollars. [S13,§1920-p; C24, 27, 31, 35, 39,§**8521**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§501.5]

Since the enactment of section 501.5, section 511.8 has undergone material changes. See 42GA, ch 199; 43GA, chs 222-224; 45GA, ch 117; 45ExGA, ch 107; repeal and reenactment by 47GA, ch 213; also repeal and enactment by 51GA, ch 206

501.6 Unauthorized companies — penalty. Any member or representative of any association who shall attempt to issue or sell any stock as contemplated by this chapter or to transact any business whatsoever in the name of or on behalf of such association, not authorized to do business within this state, or which has failed or refused to comply with the provisions of this chapter, or has violated any of its provisions shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in the county jail not to exceed one year, or by a fine of not less than one hundred nor more than ten hundred dollars or by both such fine and imprisonment in the discretion of the court. [S13,§1920-q; C24, 27, 31, 35, 39,§**8522**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§501.6]

501.7 Fee. Such association shall pay to the commissioner of insurance for its certificate of authority to transact business, a fee of twenty-five dollars, and for each annual renewal thereof at the time of filing the annual statement ten dollars, which fee shall be by the commissioner of insurance turned into the state treasury as are other fees of his office. [S13,§1920-r; C24, 27, 31, 35, 39,§**8523**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§501.7]

501.8 Examination. Every such association doing business within this state, shall be subject to examination in the same manner as is provided for the examination of insurance companies and shall pay the same fees and costs therefor, and shall so far as is consistent with the plan of business, be subject to the same restrictions and regulations. Such examinations shall be full and complete and in making the same the commissioner of insurance or examiner shall have full access to and may demand the production of all books, securities, papers, moneys, etc., of the association under examination, and may administer oaths, summon and compel the attendance and testimony of any persons connected with such association. If upon such examination, it shall appear that such association does not conduct its business in accordance with law, or if it permits forfeiture of payments by persons holding its stock, after three years from the issuance of said stock or provides for the payment of its expenses other than from earnings, or that any profits, advantage, or compensation of any form or description is given to any member or investor over any other member or investor of the same class, or if beneficiaries are selected or determined or advantages given one over another by any form of chance, lottery, or hazard, or if certificates of stock are by their terms or by any other provision to be redeemed in numerical order or by any arbitrary order or precedence, without reference to the amount previously paid thereon by the holder thereof, or that the affairs are in an unsound condition, or if such association refuses such examination to be made, the commissioner of insurance may revoke its certificate of authority to do business in this state, and having revoked the certificate of authority of an association organized under the laws of this state, he shall report the same to the attorney general, who shall proceed as provided in section 501.4. [S13,§1920-s; C24, 27, 31, 35, 39, §**8524**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§501.8]

Examination, ch 507

CHAPTER 502

IOWA UNIFORM SECURITIES ACT

(Blue Sky Law)

Referred to in §§535.2, 536A.22

Effective January 1, 1976; 66GA, ch 234,§614

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PART I
SHORT TITLE AND DEFINITIONS

502.101 Short title. This chapter may be cited as the "Iowa Uniform Securities Act". [C31, 35,§8581-c1; C39,**§8581.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.1; 66GA, ch 234,§§101, 621]

502.102 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Administrator"* means the commissioner of insurance or the deputy appointed pursuant to section 502.601.

2. *"Agent"* means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in

a. Effecting transactions in a security exempted by section 502.202, subsections 1, 2, 3, 10 or 11;

b. Effecting transactions exempted by section 502.203; or

c. Effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

3. An *"affiliate"* of, or a person *"affiliated"* with, a specified person, means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

4. *"Broker-dealer"* means any person engaged in the business of effecting transactions in securities for the account of others or for such person's own account. "Broker-dealer" does not include:

a. An agent.

b. An issuer.

c. An institutional investor, including an insurance company or bank, except where the insurance company or bank is engaged in the business of selling interests (other than through a subsidiary) in a separate account that are securities.

d. A person who has no place of business in this state if such person:

(1) Effects transactions in this state exclusively with or through the issuers of the securities involved in the transaction; other broker-dealers; or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(2) During any period of twelve consecutive months does not direct more than fifteen offers to sell or buy into this state in any manner to persons other than those specified in subparagraph (1) of this paragraph, whether or not the offeror or any of the offerees is then present in this state.

e. Other persons not within the intent of this subsection whom the administrator by rule or order designates.

5. *"Fraud"*, *"deceit"* and *"defraud"* are not limited to common law deceit.

6. *"Guaranteed"* means guaranteed as to payment of principal, interest or dividends.

7. *"Issuer"* means any person who issues or proposes to issue any security, except that

a. With respect to certificates of deposit, voting trust certificates, or collateral trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or in-

strument under which the security is issued; and

b. With respect to certificates of interest or participation in oil, gas or mining titles or leases, or in payments out of production under such titles or leases, there is not considered to be any "issuer".

8. *"Nonissuer"* means not directly or indirectly for the benefit of the issuer.

9. *"Person"* means an individual, a corporation, a partnership, an association, a joint stock company, a trust, a fiduciary, an unincorporated organization, a government, or a political subdivision of a government.

10. *a. "Sale"* or *"sell"* includes every contract of sale of, contract to sell, or disposition or exchange of, a security or interest in a security for value.

b. "Offer" or *"offer to sell"* includes every attempt or offer to exchange or dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

c. A security given or delivered with, or as a bonus on account of, a purchase of a security or any other thing is offered and sold for value as part of the subject of the purchase.

d. A purported gift of assessable stock is considered to involve an offer and sale.

e. Except to the extent that the administrator provides otherwise by rule or order, an offer or sale of a security that is convertible into or entitles its holder to acquire another security of the same or another issuer is an offer also of the other security, whether the right to convert or acquire is exercisable immediately or in the future.

f. The terms defined in this subsection do not include:

(1) Any bona fide pledge or loan; or

(2) Any stock split, reverse stock split, or security dividend payable with respect to the securities of a corporation in the same or any other class of securities of such corporation, provided nothing of value, including the surrender of a right or an option to receive a cash or property dividend, is given by security holders for the security dividend.

11. "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Company Act of 1940", "Internal Revenue Code of 1954" and "Agricultural Marketing Act" mean the federal statutes of those names, as amended before January 1, 1976.

12. *"Security"* means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

13. *"State"* means any state, territory or possession of the United States, the District of Columbia and Puerto Rico. [C31, 35,§8581-c3; C39,§**8581.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.3; 66GA, ch 234,§102, ch 1056,§40]

This chapter effective January 1, 1976; 66GA, ch 234,§614

PART II
REGISTRATION OF SECURITIES

502.201 Registration requirement. It is unlawful for any person to offer or sell any security in this state unless

1. It is registered under this chapter; or

2. The security or transaction is exempted under sections 502.202 or 502.203. [C31, 35, §8581-c6; C39,§**8581.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.6; 66GA, ch 234, §201]

Referred to in §§502.202–502.204, 502.501, 502.610, 536A.22

502.202 Exempt securities. The following securities are exempted from sections 502.201 and 502.602:

1. Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; but this exemption shall not include any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such payments are or will be made or unconditionally guaranteed by a person whose securities are exempt from registration under this chapter by section 502.202, subsection 7 or subsection 8.

2. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

3. Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of this state.

4. Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any savings and loan or similar association

organized and supervised under the laws of this state.

5. Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of this state and authorized to do business in this state.

6. Any security issued or guaranteed by any federal credit union or any credit union or similar association organized and supervised under the laws of this state.

7. Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is

a. Subject to the jurisdiction of the interstate commerce commission;

b. A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act; or

c. Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province.

8. Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange, or any other national securities exchange registered under the Securities Exchange Act of 1934 and designated by rule of the administrator; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

9. Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association; provided the issuer first files with the administrator a written notice specifying the terms of the offer and the administrator does not by order disallow the exemption within fifteen days thereafter.

10. Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal; except where such paper is proposed to be sold or offered to the public in units of less than five thousand dollars to any single person.

11. Any security issued in connection with an employee stock purchase, option, savings, pension, profit sharing or similar benefit plan, provided, in the case of plans which are not qualified under section 401 of the Internal Revenue Code of 1954 and which provide for contribution by employees, the administrator is notified in writing thirty days before the inception of the plan of the terms of the plan.

12. A stock or similar security, including a patronage refund certificate, issued by:

a. A co-operative association as defined in the Agricultural Marketing Act, or a federation of such co-operative associations that possesses no greater powers or purposes than co-operative associations so defined, if such stock or similar security

(1) Qualifies its holder for membership in the co-operative association or federation, or in the case of patronage refund certificate, is issuable only to members; and

(2) Is transferable only to the issuer or to a successor in interest of the transferor that qualifies for membership in the co-operative association or federation.

b. A co-operative housing corporation described in paragraph 1 of subsection "b" of section 216, of the Internal Revenue Code of 1954, if its activities are limited to the ownership, leasing, management, or construction of residential properties for its members, and activities incidental thereto.

c. A mutual or co-operative organization, including a co-operative association organized in good faith under and for any of the purposes enumerated in chapters 497, 498, and 499, that deals in commodities or supplies goods or services in transactions primarily with and for the benefit of its members, if:

(1) Such stock or similar security is part of a class issuable only to persons who deal in commodities with, or obtain goods or services from, the issuer;

(2) Such stock or similar security is transferable only to the issuer or a successor in interest of the transferor who qualifies for membership in such mutual or co-operative organization; and

(3) No dividends other than patronage refunds are payable to holders of such stock or similar security except on a complete or partial liquidation. [SS15,§1920-ul; C24, 27,§8526; C31, 35,§8581-c4; C39,**§8581.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.4; 66GA, ch 234,§202]

Referred to in §§499.59, 502.102, 502.201, 502.204, 502.302, 502.602, 536A.22

502.203 Exempt transactions. The following transactions are exempted from sections 502.201 and 502.602:

1. Any isolated nonissuer transaction, whether effected through a broker-dealer or not.

2. Any nonissuer distribution of an outstanding security if:

a. A recognized securities manual approved by the administrator contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations.

b. The security was issued by an issuer which has a class of securities currently registered under the Securities Exchange Act of 1934.

c. The security was issued by an issuer which has a class of securities currently registered under section 502.201.

d. The security was issued by an issuer which is registered under the Investment Company Act of 1940.

3. Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the administrator may by rule require that the customer acknowledge that the sale was unsolicited in accordance with provisions of such rule.

4. Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

5. A sale of bonds or notes directly secured by a real estate mortgage, security interest, deed of trust, or agreement for the sale of real estate or chattels, if the entire mortgage, security interest, deed of trust, or agreement, together with all the bonds or notes secured thereby, is offered and sold as a unit; provided that the entire mortgage, security interest, deed of trust or agreement, together with all of the bonds or notes secured thereby, shall not be deemed to be sold as a unit if:

a. Such bonds or notes are part of a single issue including other bonds or notes secured by interests in real estate or chattels owned or developed by the same person or by persons affiliated with such person; or

b. Such bonds or notes are offered or sold with any right to have substitution by or recourse against, or with guarantee by, the real estate developer or any person other than the person primarily obligated on the bond or note.

6. Any judicial sale or any transaction executed by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, custodian or conservator without any purpose of evading this chapter.

7. Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

8. Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity.

9. *a.* The sale, as part of a single issue, of securities other than fractional undivided interests in oil, gas or other mineral leases, rights or royalties, and interests in a limited or general partnership organized under the laws of or having its principal place of business in a foreign jurisdiction, by the issuer thereof within any period of twelve consecutive months to not more than thirty-five purchasers in this state, exclusive of purchases by bona fide institutional investors for their own account for investment, provided that the issuer reasonably believes that all the buyers in this state are purchasing for investment, and that both of the following are complied with:

(1) No commission or other remuneration is paid or given directly or indirectly for or on account of such sale except as may be permitted by the administrator by rule, or by order issued upon written application showing good cause for allowance of commission or other remuneration; and

(2) The issuer files with the administrator a report of sale within thirty days after each sale, setting forth the name and address of the issuer, the total amount of securities sold for which the exemption is claimed under this subsection, and the names and addresses of the purchasers thereof to whom such securities have been or are to be issued who are to be counted against the thirty-five purchaser limitation specified in this paragraph. A filing of a report of sale shall not be required to be made, however, until the number of purchasers who are to be counted against the thirty-five purchaser limitation specified in this paragraph exceeds ten.

b. The issuer must, additionally, pursuant to the request of the administrator made at any time, submit a report listing the names and addresses of purchasers claimed to have been bona fide institutional investors purchasing for their own account for investment, and a justification of each such purchaser's characterization as a bona fide institutional investor purchasing for its own account for investment.

10. Any offer or sale of a preorganization certificate or subscription if:

a. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

b. The number of subscribers does not exceed ten;

c. No payment is made by any subscriber; and

d. No public advertisement of the offer is made.

11. Any transaction pursuant to an offer of its securities by an issuer to its existing security holders in connection with

a. The conversion of convertible securities;

b. The exercise of nontransferable rights or warrants or the exercise of transferable rights or warrants exercisable within not more than ninety days of their issuance; or

c. The purchase of securities pursuant to pre-emptive rights; provided that no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any security holder in this state.

12. Any offer, but not a sale, of a security for which registration statements have been

filed under both this chapter and the Securities Act of 1933 if no stop order or denial order is in effect and no proceeding is pending under either law.

13. Any transaction incident to a vote by security holders of an issuer or incident to a written consent or resolution of some or all security holders of an issuer, pursuant to the articles of incorporation of such issuer, or pursuant to the applicable corporate statute or other statute governing such issuer, or pursuant to such issuer's partnership agreement, declaration of trust, or trust indenture, or pursuant to any agreement among security holders of such issuer, on a reclassification of securities, reorganization involving the exchange of securities, merger, consolidation, or sale of assets, in consideration, in whole or in part, of the issuance of securities of the issuer or of any other person, if:

a. A party to such transaction files proxy or informational materials pursuant to subsection "a" of section 14, or subsection "c" of section 14 of the Securities Exchange Act of 1934, or pursuant to section 20 of the Investment Company Act of 1940, provided that such materials are, at least ten days prior to the meeting of security holders called for the purpose of approving such transaction.

(1) Filed with the administrator, and

(2) Distributed to each of the security holders of each party to such transaction.

b. A party to such transaction is excused from registration under section 12 of the Securities Exchange Act of 1934 pursuant to subparagraph (G) of paragraph 2 of subsection "g" of section 12 of that Act, and such party is required by the laws of its domiciliary state to file proxy materials with an agency of said state provided that such proxy materials are, at least ten days prior to the meeting of security holders called for the purpose of approving such transaction.

(1) Filed with the administrator, and

(2) Distributed to each of the security holders of each party to such transaction.

c. One party to a merger owns not less than ninety percent of the outstanding shares of each class of stock of each other party to the merger.

d. A party to such transaction files with the administrator and distributes to the security holders of each party to the transaction, such materials, within such time limits, as may be specified by rule or order of the administrator.

14. Any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

15. The distribution of securities as a dividend, where the corporation distributing the dividend is the issuer of the securities distributed, if the only value given by shareholders for the dividend is the surrender of a right to a cash or property dividend when each shareholder may elect to take the dividend.

a. In cash or property, or

b. In such securities. [SS15,§§1920-ul,-u13; C24, 27,§§8526, 8554; C31, 35,§8581-c5; C39, §8581.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.5; 66GA, ch 234,§203]

Referred to in §§499.59, 502.102, 502.201, 502.204, 502.302, 502.602

502.204 Denial and suspension of exemptions. The administrator may by order deny or revoke any exemption specified in sections 502.202 and 502.203 with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this section may operate retroactively. No person may be considered to have violated sections 502.201 or 502.602 by reason of any offer or sale effected after the entry of an order under this section if such person sustains the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the order. [C31, 35,§8581-c4; C39, §8581.04; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.4 (5); 66GA, ch 234,§204]

502.205 Burden of proof. In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it. [C31, 35, §8581-c15; C39,§8581.19; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.19; 66GA, ch 234,§205]

502.206 Registration by co-ordination.

1. Registration by co-ordination may be used for any offering for which a registration statement has been filed under the Securities Act of 1933, or for any proposed sale pursuant to the exemption contained in subsection "b" of section 3 of such Act where such registration statement or notification of proposed sale has not become effective.

2. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 502.208, subsection 3, and the consent to service of process required by section 502.609:

a. Two copies of the most recent preliminary prospectus or offering circular filed under the Securities Act of 1933.

b. If the administrator by rule requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security.

c. If the administrator requests, any other information, or copies of any documents, filed under the Securities Act of 1933.

d. An undertaking to forward to the administrator all future amendments to the federal prospectus or offering circular, other than an amendment which merely delays the effective date of the registration statement, not later than the first business day after they are forwarded to or filed with the securities and exchange commission, or such longer period as the administrator permits.

3. A registration statement under this section automatically becomes effective at the moment the federal registration statement or notification becomes effective if

a. No stop order is in effect in this state and no proceeding is pending under section 502.209,

b. The registration statement has been on file with the administrator for at least twenty days;

c. A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for not less than two full business days, or such shorter period as the administrator permits; and

d. The offering is made within these limitations.

4. The registrant shall notify the administrator promptly by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall file a post-effective amendment promptly containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the administrator may enter a stop order, without notice or hearing, retroactively denying the effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection is effected, if the administrator promptly notifies the registrant by telephone or telegram of the issuance of such order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment the stop order shall be vacated as of the time of its entry. The administrator may by rule or order waive any of the conditions specified in subsection 2 or 3.

5. If the federal registration statement becomes effective before all conditions in this section are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether the administrator then contemplates the institution of a proceeding under section 502.209 but this advice by the administrator does not preclude the institution of such a proceeding at any time. [C62, 66, 71, 73, 75,§5027; 66GA, ch 234,§206]

Referred to in §502.208

502.207 Registration by qualification.

1. Any security may be registered by qualification.

2. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 502.208, subsection 3 and the consent to service of process required by section 502.609:

a. With respect to the issuer and any significant subsidiary: Its name, address and form of organization; the state or foreign jurisdiction under which it is organized; the date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

b. With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: Such person's name, address, and principal occupation for the past five years; the amount of securities of the issuer held by such person as of a specified date within thirty days of the filing of the registration statement; the amount of the securities covered by the registration statement to which such person has indicated an intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected.

c. With respect to persons covered by paragraph *"b"*: the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer together with all predecessors, parents, subsidiaries and affiliates to all those persons in the aggregate.

d. With respect to any person owning of record, or beneficially if known, five percent or more of the outstanding shares of any class

of equity security of the issuer: The information specified in paragraph *"b"* of this subsection other than occupation.

e. With respect to every promoter if the issuer was organized within the past three years: the information specified in paragraph *"b"* of this subsection, any amount paid within that period, or intended to be paid, to such person, and the consideration for any such payment.

f. With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: Such person's name and address; the amount of securities of the issuer held as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of reasons for making the offering.

g. The capitalization and long-term debt (on both a current and pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, good will, or anything else, for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.

h. The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

i. The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property including good will otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition).

j. A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraphs *"b"*, *"d"*, *"e"*, *"f"*, or *"h"* of this subsection, and by any person who holds or will hold ten percent or more in the aggregate of any such options.

k. The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated by governmental authorities.

l. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering.

m. A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture, or other instrument covering the security to be registered.

n. A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer.

o. The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by such person, if any of the foregoing persons is named as having prepared or certified a report or valuation, other than a public and official document or statement, which is used in connection with the registration statement.

p. A balance sheet of the issuer as of a date within four months prior to the filing of the

registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant, or such other financial statements as may be required pursuant to section 502.607, subsection 3.

q. Such other additional information as the administrator requires by rule or order.

3. Except as provided in this subsection, registration under this section shall become effective when the administrator so orders. If a registration statement has been on file for at least thirty days and all information required by the administrator has been furnished, the person filing the statement may at any time file a written request that the administrator, within ten days following the filing of such request, order that the registration statement become effective or deny or postpone effectiveness pursuant to section 502.209. If a request is filed, and the administrator fails to act thereon within such period, the registration shall become effective at the end of the ten-day period. [SS15,§§1920-u2, -u3, -u6, -u8; C24, 27,§§8527, 8528, 8531, 8536, 8543; C31, 35,§8581-c8; C39,**§8581.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.7; 66GA, ch 234,§207]

Referred to in §§502.208, 502.10

502.208 Provisions applicable to registration generally.

1. A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

2. Every person filing a registration statement shall pay a filing fee of one-tenth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be less than fifty dollars or more than one thousand dollars. When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under section 502.209, the administrator shall retain the fee.

3. Every registration statement shall specify:

a. The amount of securities to be offered in this state;

b. The states in which a registration statement or application in connection with the offering has been or is to be filed; and

c. Any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in any state or by any court or the securities and exchange commission, or any withdrawal of a registration statement or application relating to the offering.

4. Any document filed under this chapter or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

5. The administrator may by rule or otherwise permit the omission of any item of information or document from any registration statement.

6. In the case of a nonissuer distribution, information may not be required under section 502.207, or subsection 9, paragraph *"b"* of this section, unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

7. The administrator may by rule or order require as a condition of registration that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; or that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elswhere; or he may impose both such requirements. The administrator may by rule or order determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

8. The administrator may by rule require that securities of designated classes shall be issued under a trust indenture containing such provisions as he determines.

9. *a.* Every registration statement shall remain effective until withdrawal, suspension or revocation, during which time all outstanding securities of the same class as the registered security are considered registered for the purposes of any nonissuer transaction. A registration statement may not be withdrawn for one year from its effective date if securities of the same class are outstanding. A registration statement may be withdrawn otherwise only at the discretion of the administrator, by order.

b. While the registration is effective, the issuer shall:

(1) During the period while the security is being offered or distributed in a nonexempt transaction by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken as a participant in the distribution, amend the registration statement from time to time in such respects as may be necessary to keep reasonably current the information contained therein and to disclose the progress of the offering; and

(2) File with the administrator, and distribute to holders in this state of securities of the registered class, within one hundred twenty days following the close of each fiscal year an annual report containing financial statements of the issuer in such form and meeting such requirements as the administrator may by rule or order prescribe, and, not more frequently than semiannually, such additional financial statements or information as such rule or order may prescribe.

10. The administrator may by rule or order require as a condition of registration by qualification, and at the expense of the applicant or registrant, that a report by an accountant, engineer, appraiser or other professional person be filed. The administrator may also designate one or more employees of the securities department to make an examination of the business and records of an issuer of securities for which a registration statement has been filed by qualification, at the expense of the applicant or registrant.

11. A registration statement relating to any continuous offering of securities may be amended after its effective date so as to increase the specified amount of securities proposed to be offered. The amendment becomes effective when the administrator so orders. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in subsection 2, with respect to the additional securities proposed to be offered.

12. The administrator may by rule or order require as a condition of registration under this chapter that a prospectus containing any designated part of the information specified in section 502.207, subsection 2, or the final prospectus or offering circular required by section 502.206, subsection 2, be delivered to each person to whom an offer is made before or concurrently with

a. The first written offer made to the offeree otherwise than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken as a participant in the distribution;

b. The confirmation of any sale made by or for the account of any such person;

c. Payment pursuant to any such sale; or

d. Delivery of the security pursuant to any such sale, whichever first occurs. [SS15, §§1920-u2, -u3, -u6, -u8; C24, 27,§8527, 8528, 8531, 8536, 8543; C31, 35,§§8581-c8, -c12, -c16; C39, §§**8581.07, 8581.12, 8581.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§502.7(3), 502.12, 502.20; 66GA, ch 234,§208]

Referred to in §§502.206, 502.207, 502.209, 502.501, 503.10

502.209 Denial, suspension and revocation of registration.

1. The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the administrator finds that the order is in the public interest and that:

a. The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment filed under either subsection 9 or subsection 11 of section 502.208 as of its effective date, or any financial statement or report required under section 502.208, subsection 9 is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact.

b. Any provision of this chapter or any rule, order or condition lawfully imposed under this chapter has been willfully violated, in connection with the offering, by

(1) The person filing the registration statement;

(2) The issuer;

(3) Any partner, officer or director of the issuer, or any person occupying a similar status or performing similar functions;

(4) Any affiliate of the issuer, but only if the person filing the registration statement is an affiliate of the issuer; or

(5) Any broker-dealer.

c. The securities registered or sought to be registered are the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state Act applicable to the offering; but the administrator may not institute a proceeding against an effective registration statement under this section more than one year from the date of the order or injunction relied on, and the administrator may not enter an order under this section on the basis of an order or injunction entered under any other state Act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section.

d. The issuer's enterprise or method of business includes or would include activities which are illegal where performed.

e. The issuance or sale of the securities is or would be unfair or inequitable to purchasers or has worked or tended to work a fraud upon purchasers or would so operate.

f. The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options.

g. Advertising has been used in connection with the offering contrary to the provisions of section 502.602.

h. The financial condition of the issuer affects or would affect the soundness of the securities.

i. The applicant or registrant has failed to pay the proper filing fee; but the administrator

may enter only a denial order under this subsection, and shall vacate any such order when the deficiency has been corrected.

2. The administrator may not institute a stop order proceeding against an effective registration statement on the basis of a fact known to the administrator when the registration statement became effective unless the proceeding is instituted within thirty days after effectiveness.

3. The administrator may issue a summary order postponing, suspending or denying the effectiveness of a registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered that the order has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each of the aforementioned persons, may modify or vacate the order or extend it until final determination.

4. No stop order may be entered under any part of this section except the first sentence of subsection 3 without compliance with the Iowa administrative procedure Act.

5. The administrator may vacate or modify a stop order upon a finding that the conditions which promoted its entry have changed or that it is otherwise in the public interest to do so. [SS15,§1920-u7; C24, 27,§§8539, 8540; C31, 35,§8581-c10; C39,**§8581.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.10; 66GA, ch 234,§209]

Referred to in §§502.206–502.208

502.210 Limits on securities registered by qualification.

1. The aggregate offering price of all securities of the issuer which may be registered for sale in this state under section 502.207, as part of a single issue of equity securities, shall not exceed the following amounts:

a. Two million dollars if the securities are to be offered or sold by or on behalf of the issuer or affiliates of the issuer, or by the estate of a decedent who owned the securities at death, provided that the aggregate offering price of securities to be offered or sold by or on behalf of any one affiliate, other than an estate, shall not exceed five hundred thousand dollars.

b. Seven hundred fifty thousand dollars if the securities are to be offered or sold by or on behalf of any person other than a person specified in subsection 1, paragraph *"a"*, provided that the aggregate offering price of the securities to be offered or sold by or on behalf of any one such other person shall not exceed five hundred thousand dollars.

2. The following definitions shall apply for the purposes of this section:

a. The term *"securities of the issuer"* shall include securities issued by any predecessor of the issuer or by any affiliate of the issuer which was organized or became such an affiliate within three years prior to the effectiveness of the registration of those securities sought to be registered in this state.

b. The term *"person"* includes, in addition to such person, all of the following:

(1) When having the same home as that person, any relative or spouse or relative of the spouse.

(2) Any trust or estate in which that person and any of the persons specified in subparagraph 1 collectively own ten percent or more of the total beneficial interest, or of which any of such persons serves as trustee or executor, or in any similar capacity.

(3) Any corporation or other organization other than the issuer in which that person and any of the persons specified in subparagraph 1 are the beneficial owners collectively of ten percent or more of any class of equity securities, or ten percent or more of the equity interest.

c. The term *"predecessor of the issuer"* is

(1) A person the major portion of whose assets have been acquired directly or indirectly by the issuer; or

(2) A person from which the issuer acquired directly or indirectly the major portion of its assets. [C75,§§502.3(13), 502.7(4); 66GA, ch 234,§210]

PART III
REGISTRATION OF BROKER-DEALERS AND AGENTS

502.301 Registration requirement.

1. It is unlawful for any person to transact business in this state as a broker-dealer or agent unless registered under this chapter.

2. It is unlawful for any broker-dealer or issuer to employ an agent in this state unless the agent is registered. The registration of an agent is not effective during any period when the agent is not associated with a specified broker-dealer registered under this chapter or a specified issuer. Unless permitted by order of the administrator, no agent shall at any time represent more than one broker-dealer or issuer, except that where organizations affiliated by direct or indirect common control are registered as broker-dealers or are issuers of securities registered under this chapter, an agent may represent any such organization. When an agent begins or terminates employment with a broker-dealer or issuer or begins or terminates the activities which makes such person an agent, the agent as well as the broker-dealer or issuer shall promptly notify the administrator.

3. Every registration shall expire on the last day of September in each year. [SS15, §1920-u15; C24, 27,§§8561, 8563; C31, 35,§8581-c11;

C39,§8581.11; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.11; C66GA, ch 234,§301]

Referred to in §§502.303, 502.501, 503.12

502.302 Registration procedures.

1. A broker-dealer or agent may obtain an initial or renewal license by filing with the administrator an application together with a consent to service of process pursuant to section 502.609 and the appropriate filing fee. The application shall contain whatever information the administrator by rule requires concerning the applicant's form and place of organization, proposed method of doing business and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer, the qualifications and experience of any partner, officer, director or controlling person, any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony, and any other matters which the administrator determines are relevant to the application. If no denial order is in effect and no proceeding is pending under section 502.304, registration becomes effective at noon of the thirtieth day after an application is filed. The administrator may by rule or order specify an earlier effective date and may by order defer the effective date until noon of the thirtieth day after the filing of any amendment. Registration of a broker-dealer automatically constitutes registration of any agent named in the application or amendments thereto who is a partner, officer or director, or who is a person occupying a similar status or performing similar functions.

2. Every applicant for initial or renewal registration shall pay a filing fee of one hundred dollars in the case of a broker-dealer, and ten dollars in the case of an agent. When an application is denied or withdrawn, the administrator shall retain the fee.

3. A registered broker-dealer may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

4. The administrator may by rule require a minimum capital for broker-dealers and establish limitations on aggregate indebtedness of broker-dealers in relation to net capital and may classify broker-dealers for purposes of such requirements. The administrator may not, however, with respect to any broker-dealer who is a member of the National Association of Securities Dealers, Inc., or who is registered with the securities and exchange commission, require a higher minimum capital or lower ratio of aggregate indebtedness to net capital than is contained in the rules and regulations adopted by such association or commission.

5. Every broker-dealer and every issuer who employs agents in connection with any security or transaction not exempted either by section 502.202 or section 502.203, shall file and maintain with the administrator a bond conditioned that the broker-dealer or issuer shall properly account for any moneys or securities received from or belonging to another and shall pay, satisfy, and discharge any judgment or decree that may be rendered against such broker-dealer or issuer in a court of competent jurisdiction in a suit or action brought by a purchaser or seller of securities against such broker-dealer or issuer in which it shall be found or adjudged that such securities were sold or purchased by the broker-dealer or issuer in violation of this chapter. Such bond may be drawn to cover the original license and any renewals thereof, and may contain a provision authorizing the surety therein to cancel upon thirty days' notice to the principal and the administrator.

Every such bond shall run in favor of the state of Iowa for the use and benefit of any person who sustains damages as a result of any breach of the conditions thereof, in the sum of fifteen thousand dollars and shall be in such form consistent with the provisions hereof as the administrator may prescribe, and shall be executed with surety or sureties satisfactory to the administrator. In suits against the surety upon such bond it shall not be necessary to join such broker-dealer or issuer as a party.

Banks or trust companies under the supervision of this state or of the United States which would otherwise be required under the provisions of this chapter to file and maintain the bond required herein may execute said bond without surety.

One or more recoveries upon any such bond shall not vitiate the same but it shall remain in full force and effect, but the aggregate recoveries from the surety upon any such bond shall not exceed the full amount of the penal sum of the bond, and upon suits being commenced in excess of the amount of same the administrator may require additional bond, and if not given within ten days the administrator may revoke the registration of such broker-dealer or issuer.

6. The administrator may by rule or order impose such other conditions in connection with registration under this chapter as are deemed appropriate, in the public interest or for the protection of investors. [SS15, §§1920-u15,-u16; C24, 27,§§8561, 8563, 8571; C31, 35,§§8581-c11,-c14; C39,**§8581.11, 8581.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§502.11, 502.18; 66GA, ch 234,§302]

Referred to in §503.12

502.303 Post-registration provisions.

1. Every registered broker-dealer shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the administrator by rule prescribes. All records so required shall be preserved for three years unless the administrator by rule prescribes otherwise for particular types of

records. All required records shall be kept within this state or shall, at the request of the administrator, be made available at any time for examination at the administrator's option either in the principal office of the registrant or by production of exact copies thereof in this state.

2. Every registered broker-dealer shall file such financial reports as the administrator by rule prescribes.

3. If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under section 502.301, subsection 2.

4. The administrator shall make periodic examinations, within or without this state, of the business and records of each registered broker-dealer, at such times and in such scope as the administrator determines. The examinations may be made without prior notice to the broker-dealer. The expense reasonably attributable to any such examination shall be paid by the broker-dealer whose business is examined, but the expense so payable shall not exceed an amount which the administrator by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the administrator may co-operate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. The administrator shall not make public the information obtained in the course of examinations, except when any duty under this chapter requires the administrator to take action regarding any broker-dealer or to make the information available to one of the agencies specified herein, or except when called as a witness in any criminal or civil proceeding. [C31,§§8581-c11,-c12; C35,§§8581-c11,c-12,-f3; C39,§§**8581.11, 8581.12, 8581.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.11, 502.12, 502.15; 66GA, ch 234,§303]

Referred to in §503.10

502.304 Denial, revocation, suspension, cancellation and withdrawal of registration.

1. The administrator may by order deny, suspend or revoke any registration or may censure any applicant or registrant, if the order is found to be in the public interest and that the applicant or registrant or, in the case of a broker-dealer, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer:

a. Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

b. Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

c. Has been convicted within the past ten years of

(1) Any misdemeanor involving a security or any aspect of the securities business, or

(2) Any felony;

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

e. Is the subject of an order of the administrator denying, suspending, or revoking registration as a broker-dealer or agent;

f. Is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a broker-dealer, agent, or investment adviser, or is the subject of an order of the securities and exchange commission suspending or expelling such person from a national securities exchange or national securities association, registered under the Securities Exchange Act of 1934, or is the subject of a United States Post Office fraud order; but the administrator

(1) May not institute a revocation or suspension proceeding under this paragraph more than one year from the date of the order relied on, and

(2) May not enter an order under this paragraph on the basis of an order under another state Act unless that order was based on facts which would currently constitute a ground for an order under this section;

g. Has engaged in dishonest or unethical practices in the securities business;

h. Is insolvent, either in the equity or bankruptcy sense; but the administrator may not enter an order against a broker-dealer under this paragraph without a finding of insolvency as to the broker-dealer;

i. Is not qualified on the basis of such factors as training, experience and knowledge of the securities business; or

j. If a broker-dealer, it has failed reasonably to supervise its agents.

2. The administrator may not institute a suspension or revocation proceeding under subsection 1 on the basis of a fact known to him when registration became effective unless the proceeding is instituted within thirty days after the effective date.

3. The administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, as well as the em-

ployer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

4. If the administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, or agent, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after search, the administrator may by order revoke the registration or application.

5. Withdrawal from registration as a broker-dealer or agent becomes effective thirty days after receipt of an application to withdraw or within such shorter period of time as the administrator may by order determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the administrator may nevertheless institute a revocation or suspension proceeding under subsection 1 paragraph *"b"* within one year after witdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

6. No order may be entered under any part of this section except the first sentence of subsection 3 without compliance with the Iowa administrative procedure Act. [SS15,§1920-u15; C24, 27,§8562; C31, 35,§8581-c13; C39,**§8581.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.14; 66GA, ch 234,§304]

Referred to in §§502.302, 503.12

PART IV
PROHIBITION OF FRAUDULENT PRACTICES

502.401 Offers, sales and purchases. It is unlawful for any person, in connection with the offer to sell, offer to purchase, sale or purchase of any security in this state, directly or indirectly:

1. To employ any device, scheme, or artifice to defraud;

2. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

3. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. [C31, 35,§8581-c17; C39,**§8581.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.21; 66GA, ch 234,§401]

Referred to in §502.502

502.402 Trading on inside information. It is unlawful for any person who is or was an officer, director or affiliate of an issuer or any other person whose relationship to the issuer or to any of the foregoing persons gives or gave such person access, directly or indirectly, to material information which is of decisive importance about the issuer or the security not generally available to the public, to purchase or sell any security of the issuer in this state at a time when he knows such information about the issuer or the security gained from such relationship, which information

1. Would significantly affect the market price of that security;

2. Is not generally available to the public; and

3. Such person knows is not intended to be so available, unless that person has reason to believe that the other party to such transaction is also in possession of such information. [66GA, ch 234,§402]

Referred to in §502.502

502.403 Market manipulation. It is unlawful for any person, directly or indirectly, in this state:

1. For the purpose of creating a false or misleading appearance of active trading in a security or a false or misleading appearance with respect to the market for a security:

a. To effect any transaction in the security which involves no change in the beneficial ownership thereof; or

b. To enter any order or orders for the purchase (or sale) of the security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price for the sale (or purchase) of the security have been or will be entered by or for the same or affiliated persons.

2. To effect, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others.

3. To induce the purchase or sale of any security by the circulation or dissemination of information to the effect that the price of the security will or is likely to rise or fall because of market operations of one or more persons conducted for the purpose of raising or depressing the price of the security, if that

person is receiving a consideration, directly or indirectly, from any such person, or is selling or offering to sell or purchasing or offering to purchase the security. [66GA, ch 234, §403]

Referred to in §502.502

502.404 Prohibitied transactions of broker-dealers and agents. No broker-dealer or agent shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state by means of any manipulative, deceptive or other fraudulent scheme, device, or contrivance, fictitious quotation, or in violation of this Act or any rule or order hereunder. [66GA, ch 234,§404]

Referred to in §502.505

502.405 Misleading filings. It is unlawful for any person to make or cause to be made, in any document filed with the administrator or in any proceeding under this chapter, any statement of a material fact which is, at the time and in the light of the circumstances under which it is made, false or misleading, or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. [SS15,§1920-u19; C24, 27,§8577; C31, 35,§8581-c21; C39,**§8581.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.26; 66GA, ch 234,§405]

Referred to in §502.502

502.406 Misrepresentations of government approval.

1. It is unlawful for any person registered as a broker-dealer or agent under this chapter to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved or that the person's abilities or qualifications have in any respect been passed upon by the administrator. Nothing in this subsection prohibits a statement other than in a paid advertisement that a person is registered under this chapter, if such statement is true in fact and if the effect of such registration is not misrepresented.

2. *a.* Neither the fact that a registration statement has been filed under this chapter nor the fact that such statement has become effective constitutes a finding by the administrator that any document filed under this chapter is true, complete or not misleading. Neither any such fact nor the fact that an exemption is available for a security or a transaction means that the administrator has passed in any way upon the merits or qualifications of, or has recommended or given approval to, any person, security or transaction.

b. It is unlawful to make, or cause to be made, to any prospective purchaser or any other person, any representation inconsistent with paragraph *"a"* of this subsection.

3. No state official or employee of the state shall use such person's name in an official capacity in connection with the endorsement or recommendation of the organization or the promotion of any issuer or in the sale to the public of its securities, nor shall anyone use the stationery of the state or of any official thereof in connection with any such transaction. [C24, 27,§8580; C31, 35,§8581-c24; C39,**§8581.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.29; 66GA, ch 234,§406]

Referred to in §502.501

502.407 Misstatements in publicity. It is unlawful for any person to make or cause to be made, in any public report or press release, or in other information which is made generally available to the public, any statement of a material fact relating to an issuer which is, at the time and in the light of the circumstances under which it is made, false or misleading, if it is reasonably foreseeable that such statement will induce other persons to buy, sell or hold securities of the issuer. [SS15,§1920-u21; C24, 27,§8579; C31, 35,§8581-c23; C39,**§8581.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.28; 66GA, ch 234,§407]

Referred to in §502.502

PART V
CIVIL LIABILITY

502.501 Violation of registration and related requirements. Any person who

1. Violates section 502.201, section 502.208, subsection 12 or section 502.406, subsection 2, paragraph *"b"*, or

2. Violates any material condition imposed under section 502.208, or

3. Offers or sells a security at any time when such person has committed a material violation of section 502.301, or

4. Commits a material violation of any order issued by the administrator under this chapter, shall be liable to the person purchasing the security offered or sold in connection with such violation, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs and reasonable attorneys' fees, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if the purchaser no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less

a. The value of the security when the purchaser disposed of it and

b. Interest on said value at the legal rate from the date of disposition. Any person on whose behalf an offering is made and any underwriter of the offering, whether on a best efforts or a firm commitment basis, shall be jointly and severally liable under this section, but in no event shall any underwriter be liable in any suit or suits authorized under this section for damages in excess of the total price at which the securities underwritten by it and distributed to the public were offered to the public. Tender requires only notice of

willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable. [66GA, ch 234,§501]

Referred to in §§502.503, 502.504, 502.507

502.502 Fraudulent practices.

1. Any person who offers or sells a security in violation of sections 502.401 or 502.404, the purchaser not knowing of the violation, and who falis to sustain the burden of proof that he, she or it did not know and in the exercise of reasonable care could not have known of the violation, shall be liable to the purchaser, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs and reasonable attorneys' fees, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if the purchaser no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less

a. The value of the security when the purchaser disposed of it and

b. Interest on said value at the legal rate from the date of disposition. Any person on whose behalf an offering is made and any underwriter of the offering, whether on a best efforts or a firm commitment basis, shall be jointly and severally liable under this section, but in no event shall any underwriter be liable in any suit or suits authorized under this section for damages in excess of the total price at which the securities underwritten by it and distributed to the public were offered to the public. Tender requires only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

2. Any person who offers to purchase or purchases a security in violation of sections 502.401 or 502.404, the seller not knowing of the violation, and who fails to sustain the burden of proof that he, she or it did not know and in the exercise of reasonable care could not have known of the violation, shall be liable to the seller, who may sue either at law or in equity to recover the security, plus any income or distributions, in cash or in kind, received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages shall be the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

3. Any person who willfully and knowingly participates in any act or transaction in violation of sections 502.403, 502.405 or 502.407 shall be liable to any other person who purchases or sells any security (but not a mere holder thereof) at a price which was affected by the act or transaction for the damages sustained as a result of such act or transaction. Damages shall not exceed the difference between the price at which the other person purchased or sold securities and the market value which the securities would have had at the time of such purchase or sale in the absence of the act or transaction, plus interest at the legal rate, costs and reasonable attorneys' fees.

4. Any person, referred to in this subsection as the "defendant", who violates section 502.402 shall be deemed to be unjustly enriched and liable to any person, referred to in this subsection as the "plaintiff", who purchased or may have purchased a security from, or sold or may have sold a security to, the defendant in connection with such violation, for damages equal to the difference between the price at which such security was purchased or sold and the market value which such security would have had at the time of the purchase or sale if the information known to the defendant had been publicly disseminated prior to that time and a reasonable time had elapsed for the market to absorb the information, plus interest at the legal rate, costs and reasonable attorneys' fees, unless the defendant proves that the plaintiff knew the information or that the plaintiff would have purchased or sold at the same price even if the information had been revealed to the plaintiff. [C31, 35,§8581-c18; C39,§8581.23; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.23; 66GA, ch 234,§502]

Referred to in §§502.503, 502.504, 502.507

502.503 Joint and several liability; contribution; indemnity.

1. Affiliates of a person liable under either section 502.501 or 502.502, partners, principal executive officers or directors of such person, persons occupying a similar status or performing similar functions for such person, employees of such person who materially aid in the act or transaction constituting the violation, and broker-dealers or agents who materially aid in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless any person liable hereunder proves that he, she or it did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

2. Any person liable under this chapter shall have a right of indemnification against any affiliate whose willful violation of any provision of this chapter gave rise to such liability. Any person liable under this chapter shall

have a right of contribution against all other persons similarly liable, except that no person whose willful violation of any provision of this chapter has given rise to any civil liability shall have any right of contribution against any other person guilty merely of a negligent violation. [66GA, ch 234,§503]

Referred to in §§502.504, 502.507

502.504 Time limitations on rights of action.

1. No action shall be maintained to enforce any liability created under either section 502.501 or section 502.503, subsection 1 insofar as it relates to section 502.501 unless brought within two years after the violation upon which it is based.

2. No action shall be maintained to enforce any liability created under either section 502.502 or section 502.503, subsection 1, insofar as it relates to section 502.502, unless brought within the shorter of the following two periods:

a. Five years after the act or transaction constituting the violation; or

b. Two years after the plaintiff receives actual notice of, or upon the exercise of reasonable diligence should have known of, the facts constituting the violation.

3. No action shall be maintained to enforce any right of indemnification or contribution created by section 502.503, subsection 2 unless brought within one year after final judgment based upon the liability for which the right of indemnification or contribution exists.

4. No purchaser may commence an action under sections 502.501, 502.502 or 502.503 if:

a. Before suit is commenced, the purchaser has received a written offer:

(1) Stating in reasonable detail why liability under such section may have arisen and fairly advising the purchaser of the purchaser's rights;

(2) Offering to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, together with interest at the legal rate from the date of payment, less the amount of any income or distributions, in cash or in kind, received thereon or, if the purchaser no longer owns the security, offering to pay the purchaser upon acceptance of the offer an amount in cash equal to the damages computed in accordance with section 502.502, subsection 1; and

(3) Stating that the offer may be accepted by the purchaser at any time within a specified period of not less than thirty days after the date of receipt thereof, or such shorter period as the administrator may by rule prescribe; and

b. The purchaser has failed to accept such offer in writing within the specified period.

5. No seller may commence an action under sections 502.501, 502.502 or 502.503 if:

a. Before suit is commenced, the seller has received a written offer:

(1) Stating in reasonable detail why liability under such section may have arisen and fairly advising the seller of the seller's rights;

(2) Offering to return the security plus the amount of any income or distributions, in cash or in kind, received thereon upon payment of the consideration received, or, if the purchaser no longer owns the security, offering to pay the seller upon acceptance of the offer an amount in cash equal to the damages computed in accordance with section 502.502, subsection 2; and

(3) Stating that the offer may be accepted by the seller at any time within a specified period of not less than thirty days after the date of receipt thereof, or such shorter period as the administrator may by rule prescribe; and

b. The seller has failed to accept the offer in writing within the specified period.

6. Offers under subsections 4 or 5 shall be in the form and contain the information the administrator by rule prescribes. Every offer under either subsection shall be delivered to the offeree personally or sent by certified mail addressed to the offeree at the offeree's last known address. If an offer is not performed in accordance with its terms, suit by the offeree under section 502.501, 502.502 or 502.503 shall be permitted without regard to subsections 4 and 5 of this section. [66GA, ch 234,§504]

502.505 Limitation on implied liability. Except as explicitly provided in this chapter, no civil liability in favor of any person shall arise against any person by implication from or as a result of the violation of any provision of this chapter or any rule or order hereunder. Nothing in this chapter shall limit any liability which might exist by virtue of any other statute or under common law if this chapter were not in effect. [66GA, ch 234,§505]

502.506 No waiver of right of action. Any condition, stipulation or provision binding any person to waive compliance with any provision of this chapter or any rule or order hereunder is void. [66GA, ch 234,§506]

502.507 Enforceability of illegal contracts. It shall be a defense to an action based on a contract for the purchase or sale of a security that the plaintiff or the plaintiff's assignor entered into the transaction which gave rise to the contract under circumstances which would subject the plaintiff or the assignor to liability under sections 502.501, 502.502, or 502.503. [66GA, ch 234,§507]

PART VI
ADMINISTRATION AND ENFORCEMENT

502.601 Administration.

1. The provisions of this chapter shall be administered by the commissioner of insurance of the state of Iowa. The administrator shall appoint a deputy administrator who shall be subject to the merit system provided for in

chapter 19A. The deputy administrator shall be the principal operations officer of the securities department and shall be responsible to the administrator for the routine administration of the chapter and the management of the securities department. In the absence of the administrator, whether because of vacancy in the office, by reason of absence, physical disability or other cause, the deputy administrator shall be the acting administrator and shall, for the time being, have and exercise the authority conferred upon the administrator. The administrator may by order from time to time delegate to the deputy administrator any or all of the functions assigned to the administrator in this chapter. The administrator shall employ such officers, attorneys, accountants and other employees as shall be needed for the administration of the chapter.

2. It is unlawful for the administrator or any officer or employee of the securities department to use for personal benefit any information which is filed with or obtained by the administrator and which is not made public. No provision of this chapter authorizes the administrator or any such officer or employee to disclose any such information except among themselves or to other securities administrators, regulatory authorities or governmental agencies, or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from any privileges which exist at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the administrator or any officer or employee of the securities department. [SS15, §§1920-u,-u10; C24, 27,§§8525, 8550; C31, 35, §8581-c2; C39,**§8581.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.2; 66GA, ch 234,§601]

Referred to in §502.102

502.602 Filing of sales and advertising literature. The administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, unless the security or transaction is exempted by sections 502.202 or 502.203. The administrator may by rule or order prohibit the publication, circulation or use of any advertising deemed false or misleading. [SS15,§1590-u2; C24, 27,§8527; C31, 35,§8581-c8; C39,**§8581.07(4)**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.7(2,d); 66GA, ch 234,§602]

Referred to in §§502.202–502.204, 502.209, 536A.22

502.603 Investigations and subpoenas.

1. The administrator may

a. Make such public or private investigations within or outside of this state as the administrator deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder;

b. Require or permit any person to file a statement in writing, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning the matter to be investigated; and

c. Publish information concerning any violation of this chapter or any rule or order hereunder.

2. For the purpose of any investigation or proceeding under this chapter, the administrator or any officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the administrator deems relevant or material to the inquiry, all of which may be enforced in accordance with the Iowa administrative procedure Act.

3. No person is excused from attending and testifying or from producing any document or record before the administrator, or in obedience to the subpoena of the administrator or any officer designated by the administrator, or in any proceeding instituted by the administrator, on the ground that the testimony or evidence required, whether documentary or otherwise, may tend to incriminate such person or subject such person to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which such person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, whether documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying. [C31, 35,§8581-c17; C39,**§8581.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.21(1–4); 66GA, ch 234, §603]

502.604 Cease and desist orders—injunctions. Whenever it appears to the administrator that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the administrator may:

1. Issue an order directed at any such person requiring such person to cease and desist from engaging in such act or practice.

2. Bring an action in the district court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The administrator shall not be re-

quired to post a bond. [C31, 35, §8581-c17; C39, §8581.21; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.21(5); 66GA, ch 234,§604]

502.605 Criminal Penalties.

1. Any person who willfully and knowingly violates any provision of this chapter, or any rule or order under this chapter, shall upon conviction be fined not more than five thousand dollars or imprisoned not more than three years, or both.

2. The administrator may refer such evidence as is available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper county attorney who may, with or without such a reference, institute the appropriate criminal proceedings under this chapter.

3. Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute. [SS15,§§1920-u19,-u20,-u21; C24, 27,§§8577–8579; C31, 35,§§8581-c21,-c22,-c23; C39, §§8581.26–8581.28; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§502.26–502.28; 66GA, ch 234,§605]

502.606 Judicial review of orders. Judicial review of actions of the administrator may be sought pursuant to the Iowa administrative procedure Act, upon execution of a bond in the penal sum of one thousand dollars to the state of Iowa, with sufficient surety, to be approved by the clerk of the court conditioned upon the faithful prosecution of such petition for judicial review, and the payment of all costs adjudged against the petitioner. [SS15,§1920-u17; C24, 27,§8575; C31, 35,§8581-c19; C39,§8581.24; C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.24; 66GA, ch 234,§606]

Referred to in §502.612

502.607 Rules, forms, orders and hearings.

1. Pursuant to the Iowa administrative procedure Act, the administrator may from time to time make, amend and rescind such rules, forms and orders as are necessary to carry out the provisions of this chapter, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of rules and forms, the administrator may classify securities, persons, and other relevant matters, and prescribe different requirements for different classes.

2. No rule, form or order may be made, amended or rescinded unless the administrator finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter. In prescribing rules and forms the administrator may co-operate with the securities administrators of the other states, the securities and exchange commission, and national securities exchanges and national securities associations registered under the Securities and Exchange Act of 1934, with a view to effectuating the policy of this statute to achieve maximum uniformity in form and content of registration statements, applications, and reports wherever practicable.

3. The administrator may by rule or order prescribe

a. The form and content of financial statements required under this chapter,

b. The circumstances under which consolidated financial statements shall be filed, and

c. Whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting principles.

4. No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form or order of the administrator, notwithstanding that the rule, form or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

5. Every hearing in an administrative proceeding shall be public unless, in the exercise of discretion, the administrator grants a request joined in by all the respondents that the hearing be conducted privately. [C35,§8581-f6; C39,§8581.22; C46, 50, 54, 58, 62,§502.22; C66, 71, 73, 75,§§502.2, 502.22; 66GA, ch 234,§607]

Referred to in §502.207

502.608 Administrative files and opinions.

1. A document is filed when it is received by the administrator.

2. The administrator shall keep a register of all applications for registration and registration statements which are or have been effective under this chapter and predecessor laws, and all censure, denial, suspension or revocation orders which have been entered under this chapter and predecessor laws. The register shall be open for public inspection.

3. The information contained in or filed with any registration statement, application or report may be made available to the public under such rules as the administrator prescribes.

4. Upon request and at such reasonable charges as may be prescribed, the administrator shall furnish to any person photostatic or other copies, certified if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

5. The administrator may honor requests from interested persons for interpretative opinions. [C31, 35,§§8581-c11,-c26; C39,§8581.11, 8581.31; C46, 50, 54, 58, 62, 66, 71, 73, 75, §§502.11, 502.31; 66GA, ch 234,§608]

502.609 Service of process.

1. Every applicant for registration under this chapter, and every issuer which proposes to offer a security in this state through any person acting as agent, shall file with the administrator, in such form as the administrator by rule prescribes, an irrevocable consent appointing the administrator or the administrator's successor in office to be such person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against such person or the successor, executor or administrator of such person which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same validity as if served personally on the person filing the consent. The consent need not be filed by a person who has filed a consent in connection with a previous registration which is then in effect. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless the plaintiff, including the administrator when acting as such,

a. Promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at such person's last known address or takes other steps which are reasonably calculated to give actual notice; and

b. Files an affidavit of compliance with this subsection in the case on or before the return day of the process, or within such time as the court allows.

2. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, has not filed a consent to service of process under subsection 1, and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the appointment by such person of the administrator or the administrator's successor in office to be that person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against that person or the successor, executor or administrator of that person which arises out of that conduct and which is brought under this chapter or by any rule or order hereunder, with the same validity as if served personally. Service may be made by leaving a copy of the process in the office of the administrator, and it is not effective unless the plaintiff, including the administrator when acting as such,

a. Promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at such person's last known address or takes other steps which are reasonably calculated to give actual notice; and

b. Files an affidavit of compliance with this subsection in the case on or before the return day of the process or within such time as the court allows.

3. When process is served under this section, the court, or the administrator in a proceeding before the administrator, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend. [SS15,§1920-u5; C24, 27, §§8534, 8535; C31, 35,§8581-c9; C39,§**8581.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§502.9; 66GA, ch 234, §609]

Referred to in §§502.206, 502.207, 502.302

502.610 Scope.

1. The provisions of this chapter concerning sales and offers to sell apply when a sale or an offer to sell is made in this state or when an offer to purchase is made and accepted in this state. The provisions concerning purchases and offers to purchase apply when a purchase or an offer to purchase is made in this state or an offer to sell is made and accepted in this state.

2. For the purpose of this section, an offer to sell or an offer to purchase is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state, but for the purpose of section 502.201 an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

3. For the purpose of this section, an offer to purchase or to sell is accepted in this state when acceptance is communicated to the offeror in this state, and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received by the offeror in this state.

4. An offer to sell or to purchase is not made in this state when made by means of

a. Any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or

b. A radio or television program originating outside this state which is received in this state. [66GA, ch 234,§610]

502.611 Statutory policy. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact the "Uniform Securities Act" and to co-ordinate the interpretation and administration of this chapter with the related federal regulation. [66GA, ch 234,§611]

Severability; See §4.12 of the Code and 66GA, ch 234,§612

502.612 Prior law.

1. Chapter 502, Code 1973, as amended by chapters 1090 and 1238, Laws of the Sixty-fifth General Assembly, 1974 Session, referred to in this section as "prior law", exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be

initiated on the basis of facts or circumstances occurring before the effective date of this chapter, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued.

2. All effective registrations under prior law, all administrative orders relating to such registrations, and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if this chapter had not been passed. They are considered to have been filed, entered, or imposed under this chapter, but are governed by prior law.

3. Prior law applies in respect of any offer or sale made within six months after the effective date of this chapter pursuant to an offering begun in good faith before its effective date on the basis of an examination available under prior law.

4. Judicial review of all administrative orders as to which review proceedings have not been instituted by the effective date of this chapter are governed by section 502.606, except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within sixty days after the effective date of this chapter. [66GA, ch 234,§613]

This chapter effective January 1, 1976; 66GA, ch 234,§614

CHAPTER 503

MEMBERSHIP SALES

Referred to in §504A.100(1)

503.1 Administration.
503.2 Definitions.
503.3 Nonapplicability.
503.4 Application for authority.
503.5 Certificate of authority.
503.6 Bond.
503.7 Deposit of securities.
503.8 Tenure of license—fees.
503.9 Financial report.
503.10 Examination.
503.11 Revocation of certificate—receiver—injunction.
503.12 Salesmen—license—revocation.
503.13 Misdemeanor.
503.14 Commissioner as process agent.

503.1 Administration. The administration of the provisions of this chapter shall be vested in the commissioner of insurance, to be administered in the same manner as is provided for in chapter 502. [C35,§8581-e1; C39, §8581.32; C46, 50, 54, 58, 62, 66, 71, 73, 75,§503.1]

503.2 Definitions. The term "association" when used in this chapter shall mean any person, firm, company, partnership, association, or corporation other than building and loan associations, state and national banks, insurance companies and associations, and corporations and co-operative associations subject to the provisons of chapters 497, 498 and 501,* which sell, offer for sale or issue to the public generally memberships or certificates of membership entitling the holder thereof to purchase merchandise, materials, equipment or services on a discount or cost-plus basis.

The term "issue" when used in this chapter shall mean issue, sell, place, engage in or otherwise dispose of or handle.

The term "membership" when used in this chapter shall mean certificates, memberships, shares, bonds, contracts, stocks, or agreements of any kind or character issued upon any plan offered generally to the public entitling the holder thereof to purchase merchandise, materials, equipment or service, either from the issuer or someone designated by the issuer, either under a franchise or otherwise, whether it be at a discount, cost plus a percentage, cost plus a fixed amount, at a fixed price, or on any other basis. [C35,§8581-e2; C39,§8581.33; C46, 50, 54, 58, 62, 66, 71, 73, 75,§503.2; 66GA, ch 1209,§1]

*See also ch 499
45GA, ch 47,§2, editorially divided

503.3 Nonapplicability. This chapter shall not apply to any corporation or association organized upon the assessment plan, for the purpose of insuring the lives of individuals or furnishing benefits to the widows, heirs, orphans, or legatees of deceased members, or insuring the health of persons, or furnishing accident indemnity, nor to any benevolent associations or societies. [C35,§8581-e3; C39, §8581.34; C46, 50, 54, 58, 62, 66, 71, 73, 75,§503.3]

503.4 Application for authority. No association contemplated by this chapter shall issue any membership until it shall have procured from the commissioner of insurance a certificate of authority authorizing it to engage in such business.

To secure such certificate of authority it shall be necessary for such association to file with the commissioner of insurance an application under oath, showing the name and location of such association, the name and

post-office address of its officers, the date of organization, and if incorporated, a certified copy of its articles of incorporation, a copy of its bylaws or rules by which it is to be governed, the form of its certificates or contracts, all printed matter issued by it, together with a detailed statement of its financial condition and such other information concerning its affairs or plan of business as the commissioner of insurance may require. [C35,§8581-e4; C39, §**8581.35**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§503.4]

Referred to in §503.5

503.5 Certificate of authority. Upon the filing of the application referred to in section 503.4, if the commissioner of insurance is satisfied that the business is not in violation of law, or against public policy, and is safe, reliable, and entitled to public confidence, and that the certificate or contract is in proper form, he may issue a certificate of authority authorizing it to transact business within this state for the period of one year from the date of the issuance thereof. [C35,§8581-e5; C39,§**8581.36**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §503.5]

503.6 Bond. Before any association shall be authorized to transact the business contemplated by this chapter, it shall file and deposit with the commissioner of insurance a bond in the penal sum of twenty-five thousand dollars, running to the state of Iowa, for the use and benefit of any purchaser of a membership or contract, conditioned upon the faithful performance of all contracts entered into by such association, to be performed by it or someone designated by it, for whose benefit the same may be made, and providing for the refunding of the amount of the membership fee in the event of the failure of the association, or someone designated by it, to perform its contract or contracts in accordance with the terms and conditions thereof, and the payment of any and all damages sustained as a result of any breach of the conditions of said bond. Said bond shall be in such form, consistent with the provisions hereof, as the commissioner of insurance may prescribe, and shall be executed with surety by a surety company authorized to do business in this state. In suits against the surety company upon such bond it shall not be necessary to join the issuer as a party. [C35, §8581-e6; C39,§**8581.37**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§503.6]

503.7 Deposit of securities. In addition to the filing of the bond as hereinbefore provided, every such association shall on the tenth day of each month deposit with the commissioner of insurance, securities of the kind provided for in section 511.8, in an amount equal to fifty percent of the amount of the sale price of the memberships sold by said association during the previous month, and said association shall keep such deposit at all times equal to fifty percent of the sale price of all outstanding and unredeemed memberships.

For the purpose of determining the amount of such deposit liability, every such association shall file with its deposit on the tenth of each month, a sworn statement showing the names and addresses of all persons to whom memberships were sold during the previous month, together with the selling price, the amount received from each person, and the amount, if any, due from each person.

Said sworn statement shall also show the names and addresses of all persons whose memberships were redeemed and canceled during the previous month, and by whom.

The deposit herein provided for shall be for the protection of all purchasers or holders of memberships in the association making said deposit. [C35,§8581-e7; C39,§**8581.38**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§503.7]

503.8 Tenure of license—fees. The license period for each such association shall be one year, and renewable annually thereafter on the same terms and conditions as provided for in the original qualification.

Such association shall pay to the commissioner of insurance for its certificate of authority to transact business in accordance with this chapter, a fee of one hundred dollars and an annual renewal fee of one hundred dollars to be paid on or before the date of the expiration of the license period both of which fees shall be by the commissioner of insurance turned into the state treasury as are other fees of his office. [C35,§8581-e8; C39, §**8581.39**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§503.8]

503.9 Financial report. During the month of January of each year, or at such other time as the commissioner of insurance may require, every association transacting the business contemplated herein shall file with the commissioner of insurance in such form as he prescribes, a statement showing its financial condition on December 31 preceding. [C35,§8581-e9; C39,§**8581.40**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§503.9]

45GA, ch 47,§8, editorially divided

503.10 Examination. Every such association shall be subject to examination by the commissioner of insurance or his representatives, the expense of which shall be paid by the association in the same manner and on the same basis and under the same terms and conditions as is now provided for in section 502.208, subsection 10 and section 502.303, subsection 4. In making such examination the commissioner of insurance or his representatives, shall have full access to and may demand the production of all books, securities, papers, contracts, moneys and other relevant documents of said association, and may administer oaths, summon and compel the attendance of witnesses and the giving of testimony thereby. [C35,§8581-e10; C39,§**8581.41**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§503.10; 66GA, ch 234,§§614, 617]

503.11 Revocation of certificate — receiver —injunction. If upon such examination, or at any other time after reasonable notice and a hearing, it shall appear that such association does not conduct its business in accordance with law, or is insolvent, or is doing an unsafe and unsound business, or is conducting its business contrary to public policy, or that the further continuance of its business is hazardous and against the public interest, or if such association upon request refuses to be examined, or fails to make the deposit and reports as herein required, he shall revoke its certificate of authority, and having revoked the certificate of authority of such association he shall report this fact to the attorney general, who shall at once apply to the district court or a judge thereof, for the appointment of a receiver to close up the affairs of such association, and an injunction may issue in the same proceeding enjoining and restraining the association from transacting business in this state. [C35,§8581-e11; C39,**§8581.42**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§503.11]

503.12 Salesmen—license—revocation. The salesmen or agents of every association qualified under this chapter, shall be licensed or registered in the same manner and under the same terms and conditions as are provided for in sections 502.301 and 502.302, and the license or registration of such salesmen or agents shall be subject to suspension and revocation in the same manner and under the same terms and conditions as is provided for in section 502.304. [C35,§8581-e12; C39,**§8581.43**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§503.12; 66GA, ch 234,§§614, 618]

503.13 Misdemeanor. Any member, salesman, agent, or representative of any association, who shall attempt to issue any membership as contemplated by this chapter, or to transact any business whatsoever, in the name of or on behalf of such association not authorized to do business in this state, or which has failed or refused to comply with the provisions of this chapter, or has violated any of its provisions, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the penitentiary not to exceed five years, or fined not less than one thousand dollars nor more than five thousand dollars, or by both such fine and imprisonment. [C35,§8581-e13; C39, §**8581.44**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§503.13]

503.14 Commissioner as process agent. Every association as defined herein shall, before receiving a certificate of authority to do business in this state, or any renewal thereof, file in the office of the commissioner of insurance an agreement in writing that thereafter service of notice or process of any kind may be made on the commissioner of insurance, and when so made shall be as valid, binding, and effective for all purposes as if served upon the association according to the laws of this or any other state, and waiving all claim or right of error by reason of such acknowledgement of service.

The service of such notice or process on any association shall be in the same manner as is provided for in section 511.28. [C35,§8581-e14; C39,§**8581.45**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §503.14]

Constitutionality, 45GA, ch 47,§12

CHAPTER 504

CORPORATIONS NOT FOR PECUNIARY PROFIT

Referred to in §§28.11, 111A.4, 172C.1, 172.4, 172C.5, 230A.12, 332.3(24), 496A.142(1), 504A.100, [2,3,3(*e*),5,6,10], 504B.1, 504B.6, 514.1, 514.2, 616.10

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GENERAL PROVISIONS

504.1 Articles. Except as may be otherwise specifically provided in this chapter, any three or more persons of full age, a majority of whom shall be citizens of the state, may incorporate themselves for the establishment of churches, colleges, seminaries, lyceums, libraries, fraternal lodges or societies, temperance societies, trades unions or other labor organizations, commercial clubs, associations of business persons, agricultural societies, farmers granges, or organizations of a benevolent, charitable, scientific, political, athletic, military, or religious character, or for the acquisition and ownership of rural fire fighting equipment or for the promotion of the establishment and expansion of industries and the doing of all things necessary thereto. The incorporators shall adopt, and sign and acknowledge the articles of incorporation, stating the name by which the corporation or association shall be known, the location of its principal office or place of business, its business or objects, the number of trustees, directors, managers, or other officers to conduct the same, the names thereof for the first year, the time of its annual meeting and of annual meeting of its trustees or directors and the manner in which the articles may be amended. Said articles of incorporation shall be filed with the secretary of state who shall, if the secretary of state approves the same, endorse approval thereon, record same, and thereafter forward the same to the county recorder of the county where the principal place of business is to be located and there it shall be recorded and, upon recording, be returned to the corporation. The said articles shall not be filed by the secretary of state until a filing fee of five dollars is paid and upon the payment of said fee and the approval of the articles by the secretary of state, the secretary of state shall issue to said corporation a certificate of incorporation as a corporation not for pecuniary profit. Amendments to articles may be filed and receive approval as provided herein for articles, and the fee therefor shall be five dollars in each instance, and no amendment shall be effective until the same is approved and the fee therefor is paid. [C51,§§708, 709; R60,§§1187, 1188, 1190, 1191, 1193, 1197; C73,§§1091, 1092, 1095, 1100; C97,§1642; C24, 27, 31, 35, 39,§8582; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.1]

Referred to in §§504.3, 504.28, 591.17

504.2 Powers—duration. Upon filing such articles, the persons signing and acknowledging the same, and their associates and successors, shall become a body corporate, with the name therein stated, and may sue and be sued. It may have a corporate seal, alterable at its pleasure, and may take by gift, purchase, devise, or bequest real and personal property for purposes appropriate to its creation, and may make bylaws. It may make contracts, borrow money and transfer property, possessing the same powers in such respects as natural persons. Corporations so organized shall endure for fifty years, unless a shorter period is fixed in the articles, or they are sooner dissolved by three-fourths vote of all the members thereof, or by act of the general assembly, or by operation of law. [R60, §§1185, 1194, 1198; C73,§§1070, 1096, 1101; C97, §1643; S13,§1643; C24, 27, 31, 35, 39,§8583; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.2]

S13,§1643, editorially divided

504.3 Existing corporations — reincorporation. Any corporation not for pecuniary profit, incorporated in the state prior to July 4, 1943, which may seek to reincorporate or renew its corporate existence, shall proceed in the same manner as provided in section 504.1. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.3]

504.4 County records preserved. On or before the first day of October, 1943, the county recorder in each county shall prepare and file in the office of the secretary of state a complete alphabetical record, duly certified to by the recorder, showing the name of the corporation, its place of business, date of filing its articles of incorporation, and the book and page where same are recorded in his office, of every corporation not for pecuniary profit having filed articles of incorporation in the office of the recorder of said county since July 4, 1893, together with the same information as to any amendments to articles. The secretary of state shall preserve the said records so filed by him as a part of the permanent records of his office. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.4]

504.5 Specific organizations. Each grand lodge, state, supreme, or national, and all secret, fraternal, benevolent, or charitable orders, lodges, organizations, societies, or other bodies issuing charters to, and having subordinate or auxiliary orders, lodges, organizations, societies, or other bodies within this state, which may have been heretofore or may hereafter be regularly established and chartered therefrom or thereby, together with each and every subordinate or auxiliary lodge, encampment, tribe, company, council, post, corps, department, society, or other designated organization or body within this state under its properly designated or chartered name as has heretofore been or may hereafter be established and chartered within or for the state by its respective grand lodge, state, supreme, or national, or other governing body, and working under a charter or constitution from its respective grand lodge, state, supreme, or national lodge, organization, or other governing body which may have been heretofore or may hereafter be established therefrom or thereby, including the following: National TTT Society, Grand Lodge of Iowa of Ancient, Free and Accepted Masons; The Grand Chapter of Royal Arch Masons of Iowa; The Grand Council of Royal and Select Masters of Iowa; The Grand Commandery of Knights Templar of Iowa; Supreme Council of the An-

cient and Accepted Scottish Rite of Freemasonry for the Southern Jurisdiction of the United States; Imperial Council of the Ancient Arabic Order of the Nobles of the Mystic Shrine for North America; Grand Chapter of the Order of the Eastern Star of Iowa; Supreme White Shrine; Mystic Order Veiled Prophets of the Enchanted Realm; Daughters of Meokanna; Order of DeMolay; Rainbow Girls; The Grand Lodge of Independent Order of Odd Fellows; The Grand Encampment, I.O.O.F.; The Rebekah State Assembly, I.O.O.F.; The Department Council Patriarch Militant, I.O.O.F.; The Farmers' Alliance; The Grand Lodge Knights of Pythias of Iowa; Pythian Sisterhood; Grand Army of the Republic; Women's Relief Corps Department of Iowa; United War Workers; The Benevolent and Protective Order of Elks of the United States of America; The Western Bohemian Fraternal Association, Z.C.B.J.; The Bohemian Ladies Society, J.C.D.; The Bohemian Benevolent Society, C.S.P.S.; The Bohemian Roman Catholic Benevolent Society, C.R.K.J.P. of Iowa; The Women's Christian Temperance Union; The Grand Lodge Fraternal Order of Eagles; The Knights of Columbus; The Modern Woodmen of America; The Woodmen of the World; The Ancient Order of United Workmen; The American Legion; Catholic Workmen; The Western Bohemian Catholic Union, Z.C.K.J.; The American Legion Auxiliary; Supreme Court of the Independent Order of Foresters; Great Council of the Improved Order of Red Men of the State of Iowa; The Loyal Order of Moose; Home Nest of the Order of Owls; Catholic Daughters of America; Ancient Order of Hibernians; Veterans of Foreign Wars of the United States; Disabled American Veterans; United Spanish War Veterans; the following college societies: Phi Beta Kappa, Delta Theta Phi, Alpha Zeta, Delta Sigma Rho, Acacia, Alpha Gamma Rho, Alpha Sigma Phi, Alpha Tau Omega, Alpha Theta Chi, Chi Phi, Beta Theta Pi, Delta Chi, Delta Tau Delta, Delta Upsilon, Kappa Delta Phi, Kappa Sigma, Lambda Chi Alpha, Phi Delta Theta, Phi Kappa Psi, Pi Kappa Phi, Pi Phi Chi, Sigma Alpha Epsilon, Sigma Chi, Sigma Nu, Sigma Phi Epsilon, Phi Gamma Delta, Phi Alpha Delta, Phi Delta Phi, Phi Delta Chi, Delta Sigma Delta, Xi Psi Phi, Nu Sigma Nu, Phi Chi, Phi Rho Sigma, Achoth, Alpha Chi Omega, Alpha Delta Pi, Alpha Omicron Pi, Alpha Phi, Alpha Xi Delta, Chi Omega, Delta Delta Delta, Delta Gamma, Delta Zeta, Gamma Phi Beta, Kappa Alpha Theta, Kappa Delta, Kappa Kappa Gamma, Pi Beta Phi, Kappa Alpha Psi, Gamma Eta Gamma, Bushnell Guild, Farm House, Silver Lynx, Delta Sigma Pi; The Iowa Press Association; Boy Scouts of America; Boy Scouts of America Local Councils; The Girl Scouts of America; Camp Fire Girls of America; Camp Fire Girls of America Local Councils; and Pathfinder Club International; Firemen's Relief Association of Iowa; Rotary International; Kiwanis International; Katolicky Sokol of America; International Association of Lions Clubs; Chambers of Commerce; Junior Chambers of Commerce; Iowa State Chapter of the P.E.O. Sisterhood; and United Commercial Travelers of America; shall, upon compliance with the provisions of section 504.6 be and the same are hereby made and declared corporations not for pecuniary profit, within the state, under the name and title designated in the respective charters or constitutions by which name they shall be capable of suing, and being sued, of pleading and being impleaded in the several courts of this state, the same as natural persons. And each of said organizations shall have power to receive bequests of real and personal property, to hold and to convey both real and personal property, to lease property, and do all other things usually done by corporations for the purpose for which organized, and in the absence of fraud or bad faith, the members, officers, and trustees of any of the above-named organizations shall not be personally liable for its debts, obligations, or liabilities.

Directors, officers, members or other volunteers shall not be personally liable for any claim based upon an act or omission of such persons performed in the reasonable discharge of their lawful corporate duties. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.5; 66GA, ch 235,§2]

Referred to in §504.6

504.6 Filing charter—fee. Before any grand lodge, state, national, or supreme, or any secret, fraternal, benevolent, or charitable order, lodge, or organization, society, or other body having subordinate or auxiliary orders, lodges, organizations, societies, or other bodies within this state, or any subordinate or auxiliary order, lodge, organization, society, or other body within this state, working under a grand lodge, state, national, or supreme organization, can become a corporation not for pecuniary profit, as provided in section 504.5, it must file with the secretary of state a copy of its charter or constitution duly certified as a true copy thereof by its secretary or other like officer, as the case may be, under the official seal thereof, if any, and such organization, before a certificate of incorporation is issued by the secretary of state, shall pay to that office a fee of five dollars together with a recording fee of fifty cents per page. The secretary of state shall record same and forward same to the county recorder of the county where the corporation headquarters or principal place of business is located, and there it shall be recorded, and upon recording, returned to the corporation. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.6]

Referred to in §504.5

504.7 Property of extinct religious society —rules. State, diocesan, or district religious organizations incorporated under this chapter, or those existing by voluntary association and having permanent funds, shall have the power to adopt and enforce rules as to the

property of extinct local societies which at any time have been or which may be connected therewith and defining when such a local society shall be considered extinct, and to take charge of and to control the real and personal property of such extinct society. [S13, §1643; C24, 27, 31, 35, 39,§8584; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.7]

Referred to in §504.25

504.8 For agricultural, horticultural, and cemetery purposes. Corporations organized for agricultural or horticultural purposes, and cemetery associations, shall not own to exceed nine sections of land, and the improvements and necessary personal property for the proper management thereof; and the articles of incorporation shall provide a mode by which any member may at any time withdraw therefrom, and also the mode of determining the amount to be received by such member upon withdrawal, and for the payment thereof to him, subject to the right of creditors of the corporation; and their duration shall be without limit, unless terminated by act of the general assembly. [R60,§1185; C73,§1070; C97, §1644; C24, 27, 31, 35, 39,§8585; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.8]

Referred to in §504.9

504.9 Territorial associations. The power and right to acquire lands to the extent granted by section 504.8 shall be possessed by any association incorporated for cemetery purposes by any territorial legislature of Iowa and now existing even though said incorporation act contains a lesser limitation on such power and right. [C27, 31, 35,§8585-b1; C39, §8585.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.9]

504.10 Dividend. No dividend or distribution of property among the stockholders shall be made until the dissolution of the corporation. [C51,§710; R60,§1188; C73,§1093; C97, §1645; S13,§1645; C24, 27, 31, 35, 39,§8586; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.10]

S13,§1645, editorially divided

504.11 When society deemed extinct. When a local religious society shall have ceased to support a minister or leader or regular services and work for two years or more, or as defined by the rules of any incorporated state, diocesan, or district society with which it has been connected, it shall be deemed extinct, and its property may be taken charge of and controlled by such state or similar society of that denomination with which it had been connected. [S13,§1645; C24, 27, 31, 35, 39,§8587; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.11]

Referred to in §504.25

504.12 Power to confer degree. Any corporation of an academical character may confer the degrees usually conferred by such an institution. No academic degree for which compensation is to be paid shall be issued or conferred by such corporation or by any individual conducting an academic course unless the person obtaining the said degree shall have completed at least one academic year of resident work at the institution which grants the degree.

Where academic corporations are merged and the surviving academic corporation is located in Iowa, then the work of comparable academic status, taken in the other academic corporation or corporations, shall be considered as suitable for inclusion in the year of resident work required for a degree. This shall include academic corporations outside the state of Iowa that may be merged with Iowa academic corporations. [C51,§711; R60,§1189; C73, §1094; C97,§1646; C24, 27, 31, 35, 39,§8588; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.12]

Referred to in §504.13

504.13 Penalty. A violation of section 504.12 by a corporation shall be punished by a fine of not more than one thousand dollars. A violation of section 504.12 by an individual conducting an academic course or by an officer or managing head of a corporation shall be punished by imprisonment in the penitentiary or men's or women's reformatory not more than seven years; or by fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. [C27, 31, 35,§8588-b1; C39,§8588.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.13]

504.14 Trustees or managers. Such corporation may, annually or oftener, elect from its members its trustees, directors, or managers, at such time and place and in such manner as may be specified in its bylaws, who shall have the control and management of its affairs and funds, a majority of whom shall constitute a quorum for the transaction of business. When a vacancy occurs in its governing body, it shall be filled in such manner as shall be provided by the bylaws. When the corporation consists of the trustees, directors, or managers of any benevolent, charitable, scientific, or religious institution which is or may be established in the state, and which is or may be under the patronage, control, direction, or supervision of any synod, conference, association, or other ecclesiastical body in any state established agreeably to the laws thereof, such ecclesiastical body may nominate and appoint such trustees, directors, or managers, according to the usages of the appointing body, and may fill any vacancy which may occur among them; and when any such institution may be under the patronage, control, direction, or supervision of two or more of such synods, conferences, associations, or other ecclesiastical bodies, they may severally nominate and appoint such proportion of such trustees, directors, or managers as shall be agreed upon by the bodies immediately concerned, and any vacancy occurring among such appointees last named shall be filled by the synod, conference, association, or body having appointed the last incumbent. [R60,§1195; C73, §1097; C97,§1647; C24, 27, 31, 35, 39,§8589; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.14]

504.15 Academical—meetings. Any corporation of an academical character, the membership of which shall consist of lay members and pastors of churches, delegates to any synod, conference, or council holding annual meetings in states other than Iowa, may hold its annual meetings for the elections of officers and the transaction of business in any such state, at the place where such synod, conference, or council holds its annual meeting; and the election and business transacted shall be of the same effect as if held and transacted at its place of business in this state. [C73,§1098; C97,§1648; C24, 27, 31, 35, 39,§8590; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.15]

504.16 Election of officers. If an election of trustees, directors, or managers shall not be made on the day designated by the bylaws, the society for that cause shall not be dissolved, but such election may take place on any other day directed in the bylaws. [R60, §1196; C73,§1099; C97,§1649; C24, 27, 31, 35, 39, §8591; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.16]

504.17 Reincorporation prior to expiration of term. The trustees, directors, or members of any corporation organized under this chapter may reincorporate the same, and all the property and rights thereof shall vest in the corporation as reincorporated. [R60,§1199; C73, §1102; C97,§1650; S13,§1650; C24, 27, 31, 35, 39, §8592; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.17]

504.18 Reincorporation after expiration of term. When the term of incorporation of a corporation organized under this chapter has expired, but the organization has continued to act as such corporation, the trustees, directors, or members thereof may reincorporate, and the property and rights therein shall vest in the reincorporation for the use and benefit of all of the shareholders in the original corporation. [C27, 31, 35,§8592-a1; C39,§8592.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.18]

504.19 Amendment of articles. Any corporation organized under this chapter may change its name or amend its articles of incorporation by a vote of a majority of the members, in such manner as may be provided in its articles; but if no such provision is made in the articles the same may be amended at any regular meeting or special meeting called for that purpose by the president or secretary or a majority of the board of directors. Notice of any meeting at which it is proposed to amend the articles of incorporation, shall be given by mailing to each member at his last known post-office address at least ten days prior to such meeting, a notice signed by the secretary setting forth the proposed amendments in substance, or by two publications of said notice in some daily or weekly newspaper in general circulation in the county wherein said corporation has its principal place of business. The last publication of said notice shall be not less than ten days prior to the date of said meeting. If the trustees, directors, or managers of such corporation are appointed by two or more synods, conferences, associations, or other ecclesiastical bodies, such change or amendment shall not be made without the concurrence of a majority of those appointed by each such body. [C97,§1651; C24, 27, 31, 35, 39,§8593; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.19]

Referred to in §504.20
Amendments legalized, §591.6

504.20 Record — effect. The change or amendment provided for in section 504.19 shall be recorded as the original articles are recorded. From the date of filing such change or amendment for record, the provisions of the previous section having been complied with, the change or amendment shall take effect as a part of the original articles, and the corporation thus constituted shall have the same rights, powers, and franchises, be entitled to the same immunities, and liable upon all contracts to the same extent, as before such change or amendment. [C97,§1652; C24, 27, 31, 35, 39,§8594; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.20]

504.21 Endowment fund — trustees. Any presbytery, synod, conference, state or diocesan convention, or other state or district representative body of any religious denomination in this state, now or hereafter incorporated under this chapter, or any assembly, synod, conference, convention, or other general ecclesiastical body of any religious denomination in the United States having local societies in this state and wherever incorporated, may in its articles of incorporation or by amendment thereto create a board, committee, or commission of three or more members for any endowment fund or other fund or property of the denomination represented by such body, and at any regular meeting of such presbytery, synod, conference, state or diocesan convention, or other representative assembly of such denomination in this state, or of such assembly, synod, conference, convention, or other general ecclesiastical body in the United States, may elect not less than three members of such denomination, one of whom shall be a resident freeholder in this state, to serve as trustees of such fund or property; and a copy of such articles of incorporation and amendment, duly certified to by the officer with whom the same have been filed for record, shall be evidence in the courts of this state of the existence of such trust and of the powers of such trustees. [S13,§1652-a; C24, 27, 31, 35, 39,§8595; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.21]

Referred to in §504.25

504.22 Powers of trustees. Such trustees, if chosen to take charge of any endowment or other like fund, may invest, manage, and dispose of the same in accordance with the purpose for which it was created, subject to such regulations as the body by which they were elected may from time to time prescribe; and shall have power to make contracts re-

garding, and to collect and sue for, and in all ways to control and protect, any property belonging or which should belong to any such funds. [S13,§1652-b; C24, 27, 31, 35, 39,§8596; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.22]

Referred to in §504.25

504.23 Extinct religious societies—disposition of property. When any local religious society shall have become extinct, such trustees of the denomination with which it shall have been at any time connected shall take charge of its property, whether real or personal, and control, dispose of, and use the same in trust, as part of the endowment or other like funds of such denomination within the territorial limits represented by such trustees and the corporation by which they were elected and especially for the work of such denomination at the place where such extinct local society shall have been situated. A transfer of such property by resolution or act of the remaining member or members, representative or representatives, of such extinct local society to such trustees shall operate to pass complete title. If on demand therefor there is a failure or refusal to transfer such property to such trustees, or if such trustees think proper so to do, they may commence action in equity in the district court of the county where such extinct local society was situated, making parties defendant thereto all persons known to have any interest in or claim upon such property; notice shall be given as in other equitable actions, and said court shall have jurisdiction to enter a decree whereby the title to all the property of such extinct society shall be transferred to such trustees, or for the sale thereof and transfer of the proceeds of such sale to such trustees. Such decree or sale thereunder shall pass good title to such property. Provisions shall be made for the protection of all having claims against such local society or its property. [S13,§1652-c; C24, 27, 31, 35, 39,§8597; C46, 50, 54, 58, 62, 66, 71, 73, 75, §504.23]

Referred to in §504.25

504.24 Property in trust—use of principal. The property of any such extinct religious society shall be held and disposed of by such trustees in trust for the work of the denomination in the territorial limits represented by such trustees, and especially in trust for such work at the place where such extinct society was situated or its immediate vicinity within the judgment of the religious body by which such trustees were elected. Only income therefrom shall be used for the general work of such denomination in such territorial limits, but the principal shall be kept as a permanent fund for not less than five years, except that it may be used in the locality where such extinct local society was situated or its immediate vicinity if thought best by such body. No local society of such denomination at such place shall be allowed to demand the use of such principal for its benefit until it has been recognized and approved by and has complied with the reasonable requirements of the body so electing such trustees. If the principal or income in the hands of such trustees is not used in the locality where the extinct local society was situated within the term of five years from the time of the sale or disposition of its property, then the said principal and income, if any, may be used for building or improving other property of the denomination within the territorial limits in which such extinct society was located. [S13,§1652-d; C24, 27, 31, 35, 39,§8598; C46, 50, 54, 58, 62, 66, 71, 73, 75,§504.24]

Referred to in §504.25

504.25 Contract and rights not affected. Existing contract and property rights arising under the organization, rules, laws, or canons heretofore adopted by any corporation or organization of a religious character, shall not be affected by the provisions of sections 504.7, 504.11 and 504.21 to 504.24 except by consent of the interested parties. [S13,§1652-e; C24, 27, 31, 35, 39,§8599; C46, 50, 54, 58, 62, 66, 71, 73, 75, §504.25]

504.26 Corporation organized for promotion. Any corporation may be organized hereunder for the purpose of promoting the development, establishment and expansion of industries in an area which adjoins or borders (except for any intervening natural watercourse) an area located in an adjoining state intended to be included in such promotion and may join with any corporation not for pecuniary profit created by an adjoining state and having an identical purpose. [C62, 66, 71, 73, 75,§504.26]

Referred to in §504.27

504.27 Joining with foreign corporation. Whenever, pursuant to section 504.26, any corporation organized under this chapter for the purpose of promoting the development, establishment and expansion of industries joins with a foreign corporation having an identical purpose, such corporations shall be permitted to do business in Iowa as one corporation; provided: (1) that the name, bylaw provisions, officers and directors of each corporation are identical, (2) that the foreign corporation complies with the provisions of sections 504.28 to 504.31, relating to foreign nonpecuniary corporations, and (3) that the Iowa corporation file a statement with the secretary of state indicating that it has joined with a foreign corporation setting forth the name thereof and the state of its incorporation. [C62, 66, 71, 73, 75, §504.27]

FOREIGN NONPECUNIARY CORPORATIONS

504.28 Permits. Any corporation organized under the laws of another state, or of any territory of the United States, for any of the purposes mentioned in section 504.1, desiring a permit to do business in the state, shall file with the secretary of state a certified copy of its articles of incorporation duly attested by the secretary of state, or other state officer in whose office the original articles were filed, accompanied by a resolution of its board of directors or stockholders authorizing the

filing thereof, and also authorizing service of process to be made upon any of its officers or agents in this state engaged in transacting its business, and requesting the issuance to such corporation of a permit to transact business in the state. [C24, 27, 31, 35, 39,§8600; C46, 50, 54, 58,§504.26; C62, 66, 71, 73, 75,§504.28]

Referred to in §§504.27, 504.30, 504.31
37GA, ch 354,§1, editorially divided

504.29 Record and permit. If it appears that said foreign corporation is, in fact, organized not for pecuniary profit, the secretary of state shall file said articles of incorporation and issue a permit to such corporation to do business in the state, for which permit the secretary of state shall charge, and receive, a fee of five dollars. Upon the issuance of such permit the corporation shall be entitled to carry on its business in the state. The secretary of state shall number consecutively all such certified copies filed in his office and shall maintain a card index thereof alphabetically arranged and shall preserve the same as permanent records of his office. [C24, 27, 31, 35, 39,§8601; C46, 50, 54, 58,§504.27; C62, 66, 71, 73, 75,§504.29]

Referred to in §§504.27, 504.30, 504.31

504.30 Annual reports. Any corporation, organized as provided in sections 504.28 and 504.29 shall, between the first day of July and the first day of August of each year, make an annual report to the secretary of state, said report to be in such form as he may prescribe and upon a blank to be prepared by him for that purpose. [C24, 27, 31, 35, 39,§8602; C46, 50, 54, 58,§504.28; C62, 66, 71, 73, 75,§504.30]

Referred to in §504.27

504.31 Forfeiture. Should any corporation referred to in sections 504.28 and 504.29 fail to comply with the provisions of this chapter, notice of such failure shall be called to its attention by the secretary of state by registered letter and, if such delinquent corporation fails or neglects to comply with this chapter within sixty days from the receipt of such letter from the secretary of state, then and in such case said corporation shall forfeit its right to do business in this state. [C24, 27, 31, 35, 39,§8603; C46, 50, 54, 58,§504.29; C62, 66, 71, 73, 75,§504.31]

Referred to in §504.27

IOWA CENTENNIAL MEMORIAL FOUNDATION

504.32 Centennial fund. The Iowa centennial memorial foundation established on the fifth day of January, 1949, shall have perpetual existence, and the certificate of incorporation heretofore issued to the Iowa centennial memorial foundation by the secretary of state shall be deemed a valid certificate of perpetual existence, and no corporation fees shall hereafter be required to renew or continue its existence.

It shall be the duty of the governor to serve as president of the Iowa centennial memorial foundation, and it shall be the duty of the treasurer to serve as treasurer of the Iowa centennial memorial foundation, and it shall be the duty of the attorney general to serve as legal counsel for the Iowa centennial memorial foundation, and it shall be the duty of the president of the state board of regents to serve as secretary of the Iowa centennial memorial foundation.

The duties of the state officials hereinbefore provided with respect to the Iowa centennial memorial foundation shall be a part of their official duties pertaining to their respective offices. [C54, 58,§504.30; C62, 66, 71, 73, 75, §504.32]

Constitutionality, 54GA, ch 186,§4
See legalizing Act, 54GA, ch 238,§1

CHAPTER 504A

IOWA NONPROFIT CORPORATION ACT

Referred to in §§111A.4, 125.22, 172C.1, 172C.4, 230A.12, 332.3(24, 27), 476.1, 491.1, 504B.1, 504B.6, 514.1, 514.2

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504A.1 Short title. This chapter shall be known and may be cited as the "Iowa Nonprofit Corporation Act." [C66, 71, 73, 75, §504A.1]

504A.2 Definitions. As used in this chapter, unless the context otherwise requires, the term:

1. *"Person"* means an individual, a corporation (domestic or foreign, whether nonprofit or for profit), a partnership, an association, a trust or a fiduciary.

2. *"Corporation"* or *"domestic corporation"* means a nonprofit corporation subject to the provisions of this chapter, except a foreign corporation.

3. *"Foreign corporation"* means a nonprofit corporation organized under laws other than the laws of this state.

4. *"Nonprofit corporation"* means a corporation no part of the income or profit of which is distributable to its members, directors or officers except as provided in this chapter.

5. *"Articles of incorporation"* means the original or restated articles of incorporation and all amendments thereto, and includes articles of merger.

6. *"Bylaws"* means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

7. *"Member"* means a person as herein defined having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

8. *"Board of directors"* means the person or group of persons vested with the management of the affairs of the corporation irrespective of the name by which such person or group is designated.

9. *"Insolvent"* means inability of a corporation to pay its debts as they become due in the usual course of its affairs. [C66, 71, 73, 75, §504A.2]

504A.3 Purposes. Subject to the provisions of section 504A.100, subsection 1, corporations may be organized under this chapter for any lawful purpose or purposes not for pecuniary profit. [C66, 71, 73, 75,§504A.3]

504A.4 General powers. Each corporation, unless otherwise stated in its articles of incorporation, shall have power:

1. To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

2. To sue and be sued, complain and defend, in its corporate name.

3. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

4. To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

5. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

6. To lend money to its employees other than its officers and directors, and otherwise assist its employees, officers and directors.

7. To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

8. To make contracts and guaranties and incur liabilities, borrow money at such lawful rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income, and to guarantee the obligations of other persons.

9. To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

10. To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country.

11. To elect or appoint officers and agents of the corporation who may be directors or members, and define their duties and fix their compensation, and to pay pensions and establish pension plans, pension trusts, and other incentive, insurance and welfare plans for any or all of its directors, officers and employees.

12. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

13. Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, eleemosynary, benevolent, scientific or educational purposes; and in time of war to make donations in aid of war activities.

14. To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation, whether nonprofit or for profit, against expenses actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; and to make any other indemnification that shall be authorized by the articles of incorporation or bylaws, or resolution adopted after notice by the members entitled to vote.

15. To cease its corporate activities and surrender its corporate franchise.

16. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized. [C66, 71, 73, 75,§504A.4]

504A.5 Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

1. In a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the

corporation. If the unauthorized acts or transfers sought to be enjoined are being or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

2. In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative or through members in a representative suit, against the incumbent or former officers or directors of the corporation for exceeding their authority.

3. In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from performing unauthorized acts, or in any other proceeding by the attorney general. [C66, 71, 73, 75,§504A.5]

504A.6 Corporate name. The corporate name:

1. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

2. Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under the laws of this state, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate name reserved or registered as permitted by the laws of this state.

3. Shall be transliterated into letters of the English alphabet, if it is not in English. [C66, 71, 73, 75,§504A.6]

504A.7 Reserved name. The exclusive right to the use of a corporate name may be reserved by filing in the office of the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that such name is available for corporate use, he shall reserve the same for the exclusive use of such applicant for a period of one hundred twenty days.

The right to the exclusive use of a specified corporate name so reserved may be assigned by filing in the office of the secretary of state a notice of such assignment, executed by the person for whom such name was reserved and specifying the name and address of the transferee. [C66, 71, 73, 75,§504A.7]

504A.8 Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

1. A registered office which may be, but need not be, the same as its principal office.

2. A registered agent or agents who may be either an individual or individuals resident in this state, the business office of whom shall be identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with such registered office. [C66, 71, 73, 75,§504A.8]

504A.9 Change of registered office or registered agent. A corporation may change its registered office or change its registered agent or agents, or both office and agent or agents upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. The address of its then registered office.
3. If the address of its registered office be changed, the address to which the registered office is to be changed.
4. The name of its then registered agent or agents.
5. If its registered agent or agents be changed, the name of its successor registered agent or agents.
6. That the address of its registered office and the address of the business office of its registered agent or agents, as changed, will be identical.
7. That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by its president or a vice-president. If the registered office is changed from one county to another, such statement shall be executed in duplicate. Such statement shall be delivered to the secretary of state for filing and recording in his office, and the statement shall be filed and recorded in the office of the county recorder; and if the registered office is changed from one county to another, the same shall be filed and recorded in the office of the recorder of the county in which the registered office was located prior to the filing of such statement in the office of the secretary of state, and in the office of the recorder of the county to which the registered office is changed.

If the registered office is changed from one county to another, the corporation shall also cause to be filed and recorded forthwith in the office of the recorder of the county to which such registered office is changed, its original articles of incorporation and all amendments thereto, or copies thereof certified by the secretary of state, or its restated articles and all amendments thereto, or copies thereof certified by the secretary of state.

If a registered agent or agents change his, their or its business address to another place within the same county, he, they or it may

change the address of the registered office of any corporations of which he, they or its registered agent by filing a statement as required above for each corporation, or a single statement for all corporations named therein, except that it need be signed only by the registered agent or agents and need not be responsive to subsections 5 and 7 above, and must recite that notification of such change has been mailed to each such corporation.

The change of address of registered office or the change of registered agent or agents or both registered office and agent or agents, as the case may be, shall become effective upon the filing of such statement by the secretary of state, but until such statement is recorded in the office of the recorder as above prescribed, service of process, notice or demand required or permitted by law to be served upon the corporation may be served upon the person who was its registered agent at its registered office prior to the filing of such statement with the same force and effect as if no change in registered office or registered agent had been made.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall record one copy and forthwith mail the other copy thereof to the corporation in care of an officer, who is not the resigning registered agent, at the address of such officer as shown by the most recent annual report of the corporation. The copy recorded by the secretary of state shall be sent by him to the county recorder of the county in which the registered office is located for recording in his office. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state. [C66, 71, 73, 75,§504A.9]

504A.10 Service of process on corporation. The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, his deputy, or with any person having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office. No corporation served in accordance with the procedure provided for by this paragraph shall be in default until thirty days have elapsed following such service on the secretary of state.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [C66, 71, 73, 75,§504A.10]

504A.11 Members. A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein. [C66, 71, 73, 75,§504A.11]

504A.12 Bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

The board of directors of any corporation may adopt emergency bylaws, subject to repeal or change by action of the members, which shall, notwithstanding any different provision elsewhere in this chapter or in the articles of incorporation or bylaws, be operative during any emergency, in the conduct of the affairs of the corporation resulting from an attack on the United States or any nuclear or atomic disaster. The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency including provisions that:

1. A meeting of the board of directors may be called by any officer or director in such manner and under such conditions as shall be prescribed in the emergency bylaws;

2. The director or directors in attendance at the meeting, or any greater number fixed by the emergency bylaws, shall constitute a quorum; and

3. The officers or other persons designated on a list approved by the board of directors before the emergency, all in such order of priority and subject to such conditions and for such period of time (not longer than reasonably necessary after the termination of the emergency) as may be provided in the emer-

gency bylaws or in the resolution approving the list, shall, to the extent required to provide a quorum at any meeting of the board of directors, be deemed directors for such meeting.

The board of directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such an emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any such emergency and upon its termination the emergency bylaws shall cease to be operative.

Unless otherwise provided in emergency bylaws, notice of any meeting of the board of directors during any such emergency may be given only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication or radio.

To the extent required to constitute a quorum at any meeting of the board of directors during any such emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

No officer, director or employee acting in accordance with any emergency bylaws shall be liable except for willful misconduct. No officer, director or employee shall be liable for any action taken by him in good faith in such an emergency in furtherance of the ordinary affairs of the corporation, even though not authorized by the bylaws then in effect. [C66, 71, 73, 75,§504A.12]

504A.13 Meetings of members. Meetings of members may be held at such places, either within or without this state, as may be provided in the articles of incorporation or the bylaws, or as may be fixed from time to time in accordance with the provisions thereof. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

An annual meeting of the members shall be held at such time as may be provided in the articles of incorporation or the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting. [C66, 71, 73, 75, §504A.13]

504A.14 Notice of members' meetings. Unless the articles of incorporation or the bylaws otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. [C66, 71, 73, 75, §504A.14]

504A.15 Voting. The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or, if the articles of incorporation so provide, by the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members the bylaws may provide that such elections may be conducted by mail.

The articles of incorporation may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates.

If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power. [C66, 71, 73, 75, §504A.15]

504A.16 Quorum. The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast on the matter to be voted upon represented in person or by proxy shall constitute a quorum. A majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present shall

be necessary for the adoption thereof unless a greater proportion is required by this chapter, the articles of incorporation or the bylaws. [C66, 71, 73, 75,§504A.16]

504A.17 Board of directors. The affairs of a corporation shall be managed by a board of one or more directors. Directors need not be residents of this state or members of the corporation unless the articles of incorporation so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors. [C66, 71, 73, 75,§504A.17]

504A.18 Number and election of directors. The number of directors shall be fixed by the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in a manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation. [C66, 71, 73, 75, §504A.18]

504A.19 Vacancies. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

Unless otherwise provided in the articles of incorporation or the bylaws, a director so elected or appointed shall be elected or appointed for the unexpired term of his predecessor in office or the full term of such new directorship. [C66, 71, 73, 75,§504A.19]

504A.20 Quorum of directors. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter, the articles of incorporation or the bylaws. [C66, 71, 73, 75,§504A.20]

504A.21 Committees. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors; but no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the members the sale, lease, exchange or other disposition of all or substantially all the property and assets of the corporation, recommending to the members a voluntary dissolution of the corporation or a revocation thereof, or amending the bylaws of the corporation. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law. [C66, 71, 73, 75,§504A.21]

504A.22 Place and notice of directors' meetings. Meetings of the board of directors, regular or special, may be held either within or without this state, and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws. [C66, 71, 73, 75,§504A.22]

504A.23 Officers. The officers of a corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be

elected or appointed at such time and in such manner and for such terms as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. Any two or more offices may be held by the same person.

The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws. [C66, 71, 73, 75,§504A.23]

504A.24 Removal of officers. Unless otherwise provided in the articles of incorporation, any officers elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights. [C66, 71, 73, 75,§504A.24]

504A.25 Books and records. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in this state a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time. [C66, 71, 73, 75,§504A.25]

504A.26 Shares of stock and dividends prohibited. A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income or profit. [C66, 71, 73, 75,§504A.26]

504A.27 Loans to directors and officers prohibited. No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof. [C66, 71, 73, 75, §504A.27]

504A.28 Incorporators. One or more persons as defined in this chapter having capacity to contract, may act as incorporators of a corporation by signing, acknowledging and delivering to the secretary of state articles of incorporation for such corporation. [C66, 71, 73, 75,§504A.28]

504A.29 Articles of incorporation. The articles of incorporation shall set forth:

1. The name of the corporation and the chapter of the Code or session laws under which incorporated.

2. The period of duration if for a limited period, but in the absence of any statement in the articles all corporations organized hereunder shall have perpetual duration.

3. The purpose or purposes for which the corporation is organized.

4. Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation.

5. The address of its initial registered office including street and number, if any, the name of the county in which the registered office is located, and the name of its initial registered agent or agents at such address.

6. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors.

7. Any provision not inconsistent with law or the purposes for which the corporation is organized, which the incorporators elect to set forth; or any provision limiting any of the corporate powers enumerated in this chapter.

8. The date on which the corporate existence shall begin, which may be any date identified by year, month and day not more than ninety days in the future. In the absence of any statement in the articles as to date of beginning of corporate existence, such existence shall commence on the date on which the secretary of state issues the certificate of incorporation.

9. The name and address of each incorporator.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling. [C66, 71, 73, 75,§504A.29]

504A.30 Filing and recording of articles of incorporation. The articles of incorporation shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the

county recorder. The secretary of state upon the filing of such articles shall issue a certificate of incorporation and send the same to the corporation or its representative. [C66, 71, 73, 75,§504A.30]

504A.31 Effect of issuance of certificate of incorporation. Upon the issuance of the certificate of incorporation, the corporate existence shall begin unless the certificate in conformity with a provision in the articles provides that it shall begin on a stated day in the future in which event the corporate existence shall without further action by either the incorporators or the secretary of state begin on the day so stated. Such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation. [C66, 71, 73, 75, §504A.31]

504A.32 Procedure for filing and recording of documents. If in this chapter, it is required that any document be:

1. Filed in the office of the secretary of state, the secretary of state, when he finds that such document conforms to law and when all fees and taxes due him have been paid as in this chapter prescribed, shall endorse on such document, the word "Filed", and the month, day and year of the filing thereof and file the same in his office;

2. Recorded in the office of the secretary of state, the secretary of state, upon filing thereof, shall record the same;

3. Filed and recorded in the office of the county recorder, the secretary of state upon recording such document in his office shall forward the same to the county recorder of the county wherein the registered office of the corporation is located, and shall forward a duplicate executed copy certified by him as a true copy of the filed original to such other county recorder, if any, as is required by this chapter. Upon receipt thereof and upon receipt of recording fees due him, such county recorder shall record and index such instrument and endorse thereon the date of filing in such county and the book and page in which recorded. The recorder of each county shall keep in his office an alphabetically subdivided index book for articles of incorporation and other instruments the recording of which in his office is provided for by this chapter, which book shall have as a minimum, columns headed with "Name of Corporation", "Place of Registered Office", "Day, Month and Year of Filing" and the reference to the book and page or other record where recorded and shall make appropriate entries in said index for each such instrument recorded by him.

Any instrument required to be filed and recorded in the office of the secretary of state only, shall be returned by him to the corporation or its representative. Any instrument required to be filed and recorded in the office of the county recorder shall be returned by him to the corporation or its representative. [C66, 71, 73, 75,§504A.32]

504A.33 Organization meetings. After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation may be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers, if necessary, and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least three days' notice, for such purposes as shall be stated in the notice of the meeting. [C66, 71, 73, 75,§504A.33]

504A.34 Right to amend articles of incorporation. A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this chapter. [C66, 71, 73, 75, §504A.34]

504A.35 Procedure to amend articles of incorporation. Amendments to the articles of incorporation shall be made in the following manner:

1. Where there are members entitled to vote thereon, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote thereon which may be either an annual or a special meeting. Unless otherwise provided in the articles of incorporation, upon the written request of at least five percent of the members entitled to vote on amendments to articles of incorporation, the board of directors shall adopt a resolution setting forth the amendment proposed by such members and directing that it be submitted to the next meeting of the members entitled to vote thereon held not less than ninety days after the date of the filing of the request of the members with the secretary of the corporation. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

2. Where there are no members, or no members entitled to vote thereon, an amendment

shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Any number of amendments may be submitted and voted upon at any one meeting. [C66, 71, 73, 75,§504A.35]

504A.36 Articles of amendment. The articles of amendment shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and acknowledged by one of the officers signing such articles, and shall set forth:

1. The name of the corporation and the effective date of its incorporation; and its original name if different from the present name.

2. The amendment so adopted.

3. Where there are members entitled to vote thereon, (*a*) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (*b*) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

4. Where there are no members, or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office. [C66, 71, 73, 75,§504A.36]

504A.37 Filing of articles of amendment. The articles of amendment shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder. The secretary of state upon the filing of the articles of amendment shall issue a certificate of amendment and send the same to the corporation or its representative. [C66, 71, 73, 75,§504A.37]

504A.38 Effect of certificate of amendment. Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending action to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason. [C66, 71, 73, 75,§504A.38]

504A.39 Restated articles of incorporation. A domestic corporation may at any time restate its articles of incorporation, which may be amended by such restatement, so long as its articles of incorporation as so restated contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such restatement, by the adoption of restated articles of incorporation, including any amendments to its articles of incorporation to be made thereby, in the following manner:

1. Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed restated articles of incorporation, which may include an amendment or amendments to the corporation's articles of incorporation to be made thereby and directing that such restated articles, including such amendment or amendments be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

2. Written or printed notice setting forth the proposed restated articles or a summary of the provisions thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. If the restated articles include an amendment or amendments to the articles of incorporation to be made thereby, the notice shall separately set forth such amendment or amendments or a summary of the changes to be effected thereby.

3. The proposed restated articles shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast, unless such restated articles include an amendment to the articles of incorporation to be made thereby which, if contained in a proposed amendment to the articles of incorporation to be made without restatement of the articles of incorporation, would entitle a class of members to vote as a class thereon, in which event the proposed restated articles shall be adopted upon receiving the affirmative vote of at least two-thirds of the members of each class entitled to vote thereon as a class, and of the total members entitled to vote thereon.

4. Where there are no members, or no members having voting rights, proposed restated articles of incorporation, which may include an amendment or amendments to the corporation's articles of incorporation to be made thereby shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Upon such approval, restated articles of incorporation shall be executed by the corporation by its president or vice-president and by its secretary or assistant secretary, and verified by one of the officers signing the same, and shall set forth, as then stated in the corporation's articles of incorporation and, if the restated articles of incorporation include an amendment or amendments to the articles of incorporation to be made thereby, as so amended:

a. The name of the corporation;

b. If its duration is for a limited period, the date of expiration;

c. The purpose or purposes for which the corporation is organized;

d. If the members are divided into classes, the designation of each class and a statement of the preferences, voting rights, if any, limitations and relative rights in respect of the members of each class;

e. Any other provisions, not inconsistent with law or the purposes which the corporation is authorized to pursue, which are to be set forth in articles of incorporation; except that it shall not be necessary to set forth in the restated articles of incorporation any of the corporate powers enumerated in this chapter nor any statement with respect to the chapter of the Code or session laws under which the corporation was incorporated, its registered office, registered agent, directors, or incorporators, or the date on which its corporate existence began.

The restated articles of incorporation shall also set forth a statement that they correctly set forth the provisions of the articles of incorporation as theretofore or thereby amended, that they have been duly adopted as required by law and that they supersede the original articles of incorporation and all amendments thereto.

The restated articles of incorporation shall be delivered to the secretary of state for filing and recording in his office and the same shall be filed and recorded in the office of the county recorder.

The secretary of state upon filing the restated articles of incorporation shall issue a restated certificate of incorporation and send the same to the corporation or its representative.

Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation, including any amendment or amendments to the articles of incorporation made thereby, shall become effective and shall supersede the original articles of incorporation and all amendments thereto. [C66, 71, 73, 75,§504A.39]

504A.40 Procedure for merger. Any two or more domestic corporations may merge into one of such corporations, pursuant to a plan of merger approved in the manner prescribed by this chapter.

Each corporation shall adopt a plan of merger setting forth:

1. The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

2. The terms and conditions of the proposed merger.

3. A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

4. Such other provisions with respect to the proposed merger as are deemed necessary or desirable. [C66, 71, 73, 75,§504A.40]

504A.41 Procedure for consolidation. Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner prescribed by this chapter.

Each such corporation shall adopt a plan of consolidation setting forth:

1. The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

2. The terms and conditions of the proposed consolidation.

3. With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

4. Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. [C66, 71, 73, 75,§504A.41]

504A.42 Approval of merger or consolidation. A plan of merger or consolidation shall be adopted by each domestic corporation in the following manner:

1. Where the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote thereon at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast.

2. Where any merging or consolidating corporation has no members, or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions thereof, if any, set forth in the plan of merger or consolidation. [C66, 71, 73, 75,§504A.42]

504A.43 Articles of merger or consolidation. Upon such approval, articles of merger or articles of consolidation shall be executed by each corporation by its president or a vice-president and by its secretary or an assistant secretary, and acknowledged by one of the

officers of each corporation signing such articles, and shall set forth:

1. The plan of merger or the plan of consolidation.

2. Where the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation (*a*) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (*b*) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

3. Where any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

The articles of merger or articles of consolidation shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the recorder of each county in which the registered office of each domestic merging or consolidating corporation was located prior to the merger or consolidation and, if the new corporation into which the corporations have consolidated is a domestic corporation, in the office of the recorder of the county in which the registered office of the new corporation is located.

The secretary of state upon the filing of the articles of merger or articles of consolidation shall issue a certificate of merger or a certificate of consolidation and send the same to the surviving or new corporation as the case may be, or to its representative. [C66, 71, 73, 75,§504A.43]

504A.44 Effect of merger or consolidation. Upon the issuance of the certificate of merger or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected.

When such merger or consolidation has been effected:

1. The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of consolidation, shall be the new corporation provided for in the plan of consolidation.

2. The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

3. Such surviving or new corporation, if to exist under the laws of this state, shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

4. Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

5. Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

6. In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation. [C66, 71, 73, 75, §504A.44]

504A.45 Merger or consolidation of domestic and foreign corporations. One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

1. Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

2. If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of this chapter with respect to qualification of foreign corporations if it is to conduct affairs in this state, and in

every case it shall file with the secretary of state of this state:

a. An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation; and

b. An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding.

The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of the other state provide otherwise.

At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. [C66, 71, 73, 75, §504A.45]

504A.46 Sale, lease, exchange, or mortgage of assets. A sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

1. Where there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending such sale, lease, exchange or other disposition and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this chapter for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

2. Where there are no members, or no members entitled to vote thereon, a sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

3. Unless otherwise provided in the articles of incorporation a mortgage or pledge of any or all property and assets of the corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and in such case no authorization or consent of the members shall be required. [C66, 71, 73, 75, §504A.46]

504A.47 Voluntary dissolution. A corporation may dissolve and wind up its affairs in the following manner:

1. Where there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

2. Where there are no members, or no members entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter. [C66, 71, 73, 75, §504A.47]

504A.48 Distribution of assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

1. All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made therefor;

2. Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

3. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter;

4. Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

5. Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted as provided in this chapter. [C66, 71, 73, 75,§504A.48]

504A.49 Plan of distribution. A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

1. Where there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

2. Where there are no members, or no members entitled to vote thereon, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office. [C66, 71, 73, 75,§504A.49]

504A.50 Revocation of voluntary dissolution proceedings. A corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke the action theretofore taken to dissolve the corporation, in the following manner:

1. Where there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

2. Where there are no members, or no members entitled to vote thereon, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may thereupon again conduct its affairs. [C66, 71, 73, 75, §504A.50]

504A.51 Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation shall have been paid and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed by the corporation by its president or a vice president, and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

1. The name of the corporation.

2. Where there are members entitled to vote thereon, (*a*) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (*b*) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

3. Where there are no members, or no members entitled to vote thereon, a statement of

such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office.

4. That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.

5. A copy of the plan of distribution, if any, as adopted by the corporation, or a statement that no plan was so adopted.

6. That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter.

7. That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit. [C66, 71, 73, 75,§504A.51]

504A.52 Filing of articles of dissolution. Such articles of dissolution shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder.

The secretary of state upon filing the articles of dissolution shall issue a certificate of dissolution, and send the same to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this chapter. [C66, 71, 73, 75,§504A.52]

504A.53 Involuntary dissolution. A corporation may be dissolved involuntarily by a decree of the district court in an action filed by the attorney general when it is established that:

1. The corporation has failed to file its annual report within the time required by this chapter; or

2. The corporation procured its articles of incorporation through fraud; or

3. The corporation has continued to exceed or abuse the authority conferred upon it by law; or

4. The corporation has failed for ninety days to appoint and maintain a registered agent in this state; or

5. The corporation has failed for ninety days after change of its registered agent to file in the office of the secretary of state a statement of such change. [C66, 71, 73, 75,§504A.53]

504A.54 Notification to attorney general. The secretary of state, on or before the first day of July of each year, shall certify to the attorney general the names of all corporations which have failed to file their annual reports in accordance with the provisions of this chapter. He shall also certify, from time to time, the names of all corporations which have given other cause for dissolution as provided in this chapter, together with the facts pertinent thereto. Whenever the secretary of state shall certify the name of a corporation to the attorney general as having given any cause for dissolution, the secretary of state shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the attorney general shall file an action in the name of the state against such corporation for its dissolution. Every such certificate from the secretary of state to the attorney general pertaining to the failure of a corporation to file an annual report shall be taken and received in all courts as prima-facie evidence of the facts therein stated. If, before action is filed, the corporation shall file its annual report, or shall appoint or maintain a registered agent as provided in this chapter, or shall file with the secretary of state the required statement of change of registered agent, such fact shall be forthwith certified by the secretary of state to the attorney general and he shall not file an action against such corporation for such cause. If, after action is filed, the corporation shall file its annual report, or shall appoint or maintain a registered agent as provided in this chapter, or shall file with the secretary of state the required statement of change of registered agent, and shall pay the costs of such action, the action for such cause shall abate. [C66, 71, 73, 75, §504A.54]

Referred to in §504A.87

504A.55 Venue and process. Every action for the involuntary dissolution of a corporation shall be commenced by the attorney general in the district court of the county in which the registered office of the corporation is situated. Original notice shall be served as in other civil actions. If process is returned not found, the attorney general shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. The attorney general may include in one notice and in one petition the names of any number of corporations against which actions are then pending in the same county. The attorney general shall cause a copy of such notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the attorney general of the mailing of such notice shall be prima-facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the original notice has been returned. Unless a corporation shall have been served with original notice, no default shall be taken against it earlier than thirty days after the last publication of such notice. [C66, 71, 73, 75,§504A.55]

504A.56 Jurisdiction of court to liquidate assets and affairs of corporation. Courts of equity shall have full power to liquidate the assets and affairs of a corporation:

1. In a suit by a member or director when it is established:

a. That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

b. That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

c. That the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least two years to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

d. That the corporate assets are being misapplied or wasted; or

e. That the corporation is unable to carry out its purposes.

2. In an action by a creditor:

a. When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

b. When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

3. Upon application by a corporation to have its dissolution continued under the supervision of the court.

4. When an action has been filed by the attorney general to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

Proceedings under this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors or members parties to any such suit or proceedings unless relief is sought against them personally. [C66, 71, 73, 75,§504A.56]

504A.57 Procedure in liquidation of corporation by court. In proceedings to liquidate the assets and affairs of a corporation the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

1. All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

2. Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

3. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

4. Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

5. Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, as the court may direct.

The court shall have power to allow, from time to time, as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his

own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated. [C66, 71, 73, 75,§504A.57]

504A.58 Qualification of receivers. A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require. [C66, 71, 73, 75, §504A.58]

504A.59 Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and affairs of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. [C66, 71, 73, 75,§504A.59]

504A.60 Discontinuance of liquidation proceedings. The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. [C66, 71, 73, 75,§504A.60]

504A.61 Decree of dissolution. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. [C66, 71, 73, 75,§504A.61]

504A.62 Filing of decree of dissolution. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause certified copies of the decree to be filed with and recorded by the secretary of state and the county recorder of the county in which is located the corporation's registered office. No fee shall be charged by the secretary of state or said county recorder for the filing or recording thereof. [C66, 71, 73, 75,§504A.62]

504A.63 Deposit with state treasurer.

1. Upon the voluntary or involuntary dissolution of a corporation the portion of the assets distributable to any person who is known, or who is under disability and there is no person legally competent to receive such distributive portion, or who cannot be found after the exercise of reasonable diligence by the person or persons responsible for the distribution in liquidation of the corporation's assets, shall be reduced to cash and deposited with the state treasurer, together with a statement giving the name of the person, if known, entitled to such fund, his last known address, the amount of his distributive portion, and such other information about such person as the state treasurer may reasonably require, whereupon the person or persons responsible for the distribution in liquidation of the corporation's assets shall be released and discharged from any further liability with respect to the funds so deposited. The state treasurer shall issue his receipt for such fund and shall deposit same in a special account to be maintained by him.

2. On receipt of satisfactory written and verified proof of ownership of or right to such fund within twenty years from the date such fund was so deposited, the state treasurer shall certify such fact to the state comptroller, who shall issue proper warrant therefor drawn on the state treasurer in favor of the person or persons then entitled thereto. If no claimant has made satisfactory proof of right to such fund within twenty years from the time of such deposit, the state treasurer shall then cause to be published in one issue of a newspaper of general circulation in the county of the last registered office of the corporation, as shown by the records of the secretary of state, a notice of the proposed escheat of such fund, giving the name of the person apparently entitled thereto, his last known address, if any, the amount of the fund so deposited, and the name of the dissolved corporation from whose assets such fund was derived. If no claimant makes satisfactory proof of right to such fund within two months from the time of such publication, the fund so unclaimed shall thereupon automatically escheat to and become the property of the general fund of the state. [C66, 71, 73, 75,§504A.63]

504A.64 Survival of rights and remedies after dissolution or expiration. The dissolution of a corporation or the expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or

members, for any right or claim existing, or any liability incurred, prior to such dissolution or expiration, if action or other proceeding thereon is commenced within two years after the date of such dissolution or expiration. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If the period of duration of a corporation has expired, it may amend its articles of incorporation at any time within five years after the date of such expiration so as to extend its period of duration.

A corporation which has been dissolved or the period of duration of which has expired by limitation or otherwise, may nevertheless continue to act for the purpose of conveying title to its property, real and personal, and otherwise winding up its affairs. [C66, 71, 73, 75,§504A.64]

504A.65 Admission of foreign corporation. No foreign corporation shall have the right to conduct affairs in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in this state any affairs which a corporation organized under this chapter is prohibited from conducting. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

Without excluding other activities which may not constitute conducting affairs in this state, a foreign corporation shall not be considered to be conducting affairs in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

2. Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.

3. Maintaining bank accounts.

4. Creating evidences of debt, mortgages or liens on real or personal property.

5. Securing or collecting debts due to it or enforcing any rights in property securing the same.

6. Soliciting funds.

7. Conducting its affairs in interstate commerce.

8. Granting funds.

9. Distributing information to its members.

10. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature. [C66, 71, 73, 75, §504A.65]

504A.66 Powers of foreign corporation. A foreign corporation which shall have received a certificate of authority under this chapter, shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authorization is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character. [C66, 71, 73, 75,§504A.66]

504A.67 Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

1. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

2. Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under the laws of this state, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate name reserved or registered as permitted by the laws of this state.

3. Shall be transliterated into letters of the English alphabet, if it is not in English. [C66, 71, 73, 75,§504A.67]

504A.68 Change of name by foreign corporation. Whenever a foreign corporation which is authorized to conduct affairs in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in this state until it has changed its name to a name which is available to it under the laws of this state. [C66, 71, 73, 75, §504A.68]

504A.69 Application for certificate of authority. A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, shall make application therefor to the secretary of state, which application shall set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.

2. The date of incorporation and the period of duration of the corporation.

3. The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

4. The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent or agents in this state at such address.

5. The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state.

6. The names and respective addresses of the directors and officers of the corporation.

7. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this state.

Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such application. [C66, 71, 73, 75,§504A.69]

504A.70 Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority, together with a copy of its articles of incorporation and all amendments thereto, duly certified by the proper officer of the state or country under the laws of which it is incorporated, shall be delivered to the secretary of state for filing in his office.

Upon the filing of the application the secretary of state shall issue a certificate of authority to conduct affairs in this state to which he shall affix the other duplicate original application, and send the same to the corporation or its representative. [C66, 71, 73, 75,§504A.70]

504A.71 Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to conduct affairs in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this chapter. [C66, 71, 73, 75,§504A.71]

504A.72 Registered office and registered agent of foreign corporation. Each foreign corporation authorized to conduct affairs in this state shall have and continuously maintain in this state:

1. A registered office which may be, but need not be, the same as its principal office.

2. A registered agent or agents which may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with such registered office. [C66, 71, 73, 75,§504A.72]

504A.73 Change of registered office or registered agent of foreign corporation. A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent or agents, or both office and agent or agents, upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.

2. The address of its then registered office.

3. If the address of its registered office be changed, the address to which the registered office is to be changed.

4. The name of its then registered agent or agents.

5. If its registered agent or agents be changed, the name of its successor registered agent or agents.

6. That the address of its registered office and the address of the business office of its registered agent or agents, as changed, will be identical.

7. That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by its president or a vice-president, and verified by him, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent or agents, or both, as the case may be, shall become effective.

If a registered agent or agents change his, their or its business address to another place within the same county, he, they or it may change such address and the address of the registered office of any corporations of which he, they or it is registered agent by filing a statement as required above for each corporation, or a single statement for all corporations named therein, except that it need be signed only by the registered agent or agents and need not be responsive to subsections 5 and 7 above, and must recite that notification of such change has been mailed to each such corporation. Such statement executed and filed by a registered agent shall become effective upon the filing thereof in the manner as required above for statements executed by the foreign corporation.

Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state. [C66, 71, 73, 75,§504A.73]

504A.74 Service of process on foreign corporation. Each registered agent so appointed by a foreign corporation authorized to conduct affairs in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a foreign corporation authorized to conduct affairs in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice or demand may be served. Service on the secretary of state of any such process, notice or demand shall be made by delivering to and leaving with him, his deputy, or with any person having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Process, notice or demand served on the secretary of state upon a foreign corporation which has withdrawn from this state shall be mailed in the manner provided by this section to the corporation at the address set forth in its application for withdrawal. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [C66, 71, 73, 75,§504A.74]

504A.75 Amendment to articles of incorporation of foreign corporation. Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this state are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting its affairs in this state, nor authorize such corporation to conduct affairs in this state under any other name than the name set forth in its certificate of authority. [C66, 71, 73, 75,§504A.75]

504A.76 Merger of foreign corporation authorized to conduct affairs in this state. Whenever a foreign corporation authorized to conduct affairs in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state. [C66, 71, 73, 75,§504A.76]

504A.77 Amended certificate of authority. A foreign corporation authorized to conduct affairs in this state shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority. [C66, 71, 73, 75,§504A.77]

504A.78 Withdrawal of foreign corporation. A foreign corporation authorized to conduct affairs in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.

2. That the corporation is not conducting affairs in this state.

3. That the corporation surrenders its authority to conduct affairs in this state.

4. That the corporation revokes the authority of its registered agent or agents in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state may thereafter be made on such corporation by service thereof on the secretary of state.

5. A post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on him.

6. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess any unpaid fees payable by such foreign corporation as in this chapter prescribed.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him. [C66, 71, 73, 75,§504A.78]

504A.79 Filing of application for withdrawal. Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, he shall, when all fees due him have been paid as in this chapter prescribed:

1. Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof.

2. File one of such duplicate originals in his office.

3. Issue a certificate of withdrawal to which he shall affix the other duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this state shall cease. [C66, 71, 73, 75,§504A.79]

504A.80 Revocation of certificate of authority. The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

1. The corporation has failed to file its annual report within the time required by this chapter, or has failed to pay any fees or penalties prescribed by this chapter when the same have become due and payable; or

2. The corporation has failed to appoint and maintain a registered agent in this state as required by this chapter; or

3. The corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by this chapter; or

4. The corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this chapter; or

5. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless (*a*) he shall have given the corporation not less than sixty days' notice thereof by mail addressed to the principal office of the corporation in the state or country under the laws of which it is incorporated, and (*b*) the corporation shall fail prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement of change of registered agent or registered office or file such articles of amendment or articles of merger, or correct such misrepresentation. [C66, 71, 73, 75,§504A.80]

504A.81 Issuance of certificate of revocation. Upon revoking any such certificate of authority, the secretary of state shall:

1. Issue a certificate of revocation in duplicate.

2. File one of such certificates in his office.

3. Mail to such corporation at the principal office of the corporation in the state or country under the laws of which it is incorporated a notice of such revocation accompanied by one of such certificates.

Upon the issuance of such certificate of revocation, the authority of the corporation to conduct affairs in this state shall cease. [C66, 71, 73, 75,§504A.81]

504A.82 Conducting affairs without certificate of authority. No foreign corporation which is conducting affairs in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the conduct of affairs by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state.

A foreign corporation which conducts affairs in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it conducted affairs in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and re-

ceived a certificate of authority to conduct affairs in this state as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section. If any foreign corporation shall conduct affairs in this state without a certificate of authority, it shall by conducting such affairs be deemed thereby to have appointed the secretary of state its attorney for service of process. [C66, 71, 73, 75, §504A.82]

504A.83 Annual report of domestic and foreign corporations. Each domestic corporation, and each foreign corporation authorized to conduct affairs in this state, shall file, within the time prescribed by this chapter, an annual report setting forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.

2. The address of the registered office of the corporation in this state, and the name of its registered agent or agents in this state at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

3. A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this state.

4. The names and respective addresses of the directors and officers of the corporation.

Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary, or treasurer, or, if the corporation is in the hands of a receiver, trustee, or assignee for benefit of creditors, it shall be executed on behalf of the corporation by such receiver, trustee or assignee. [C66, 71, 73, 75,§504A.83]

504A.84 Filing of annual report of domestic and foreign corporations. Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state for filing in his office between the first day of January and the thirty-first day of March of each year, except that the first annual report of a domestic or foreign corporation shall be filed between the first day of January and the thirty-first day of March of the year succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state, and except that if the existence of such domestic corporation or the authority of such foreign corporation to conduct affairs in this state began in December of any year, its first annual report shall be filed between the first day of January and the thirty-first day of March of the second year succeeding the calendar year in which such corporate existence or authority to conduct affairs began. Such report shall be deemed filed within the required time if deposited in the United States mail with postage prepaid in a sealed envelope, properly addressed and postmarked on or prior to the thirty-first day of March. If the secretary of state finds that such report conforms to the requirements of this chapter, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this chapter, and is resubmitted to the secretary of state within thirty days from the date on which it was mailed to the corporation by the secretary of state. [C66, 71, 73, 75,§504A.84]

504A.85 Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, ten dollars.

2. Filing statement of election to accept the chapter, one dollar.

3. Filing articles of amendment and issuing a certificate of amendment, five dollars.

4. Filing restated articles of incorporation, ten dollars.

5. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, five dollars.

6. Filing an application to reserve a corporate name, five dollars.

7. Filing a notice of transfer of a reserved corporate name, five dollars.

8. Filing a statement of change of address of registered office or change of registered agent, or both, one dollar. If a single statement of change changes the address of the registered office of more than one corporation, the fee shall be one dollar for each corporation the address of whose registered office is changed thereby.

9. Filing articles of dissolution, one dollar.

10. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, ten dollars.

11. Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, five dollars.

12. Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state, five dollars.

13. Filing a copy of articles of merger of a foreign corporation holding a certificate of au-

thority to conduct affairs in this state, five dollars.

14. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, one dollar.

15. Filing any other statement or report, including an annual report, of a domestic or foreign corporation, one dollar.

16. Recording any instrument, document, or paper, fifty cents per page. [C66, 71, 73, 75, §504A.85]

504A.86 Miscellaneous charges. The secretary of state shall charge and collect:

1. For furnishing a certified copy of any document, instrument, or paper relating to a corporation, fifty cents per page and two dollars for the certificate and affixing the seal thereto; and for furnishing an uncertified copy, fifty cents per page.

2. At the time of any service of process on him as resident agent of a corporation, five dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

3. For a certificate of good standing, two dollars. [C66, 71, 73, 75,§504A.86]

504A.87 Penalties imposed upon corporation. Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a penalty of five dollars to be assessed by the secretary of state.

Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this chapter reasonable and proper interrogatories propounded by the secretary of state in accordance with the provisions of this chapter, shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in an amount not exceeding five hundred dollars.

The secretary of state may cancel the certificate of incorporation of any corporation that fails or refuses to file its annual report for any year prior to the first day of June of the year in which it is due by issuing a certificate of such cancellation at any time after the expiration of thirty days following the mailing to the corporation of notice of the certification to the attorney general of the failure of the corporation to file such annual report as required by section 504A.54, provided the corporation has not filed such annual report prior to the issuance of the certificate of cancellation. Upon the issuance of the certificate of cancellation, the secretary of state shall send the certificate to the corporation at its registered office and shall retain a copy thereof in the permanent records of his office.

Upon the issuance of the certificate of cancellation, the corporate existence of the corporation shall terminate, subject to right of reinstatement as herein provided, and the corporation shall cease to conduct its affairs, except insofar as may be necessary for the "winding up" thereof or for securing reinstatement and the right of the corporation to the use of its name shall cease and such name shall thereupon be available to any other corporation or foreign corporation or for reservation as provided in this chapter. The cancellation of the certificate of incorporation of a corporation shall not take away or impair any remedy available to or against such corporation, its directors, officers or members for any right or claim existing or any liability incurred prior to such cancellation, but no action or proceeding thereon may be prosecuted by such corporation until it shall have been reinstated. Any such action or proceeding against such corporation may be defended by the corporation, if it has not been reinstated, in its corporate name to which there shall be appended the word "canceled" followed by the date of the issuance of the certificate of cancellation. Unless the corporation is reinstated, the corporation, upon the issuance of the certificate of cancellation, shall proceed to liquidate its affairs as provided by this chapter in cases of voluntary dissolution. However, the district court in a suit in equity shall have full power to liquidate the assets and affairs of such a corporation upon application by such corporation or in a suit by a member or director or creditor of such corporation when such corporation fails to proceed promptly with such liquidation or to make application to the court therefor. A copy of the certificate of cancellation, certified by the secretary of state, shall be taken and received in all courts as prima-facie evidence of the cancellation of the certificate of incorporation as stated therein.

If the certificate of incorporation of a corporation has been canceled by the secretary of state as provided in this section for failure to file an annual report, such corporation shall be reinstated by the secretary of state at any time within five years following the date of the issuance by the secretary of state of the certificate of cancellation upon:

1. The delivery by the corporation to the secretary of state for filing in his office of an application for reinstatement, executed by its president or vice president and by its secretary or an assistant secretary and verified by one of the officers signing such application, which shall set forth:

a. The date of the issuance by the secretary of state of the certificate of cancellation;

b. The name of the corporation at the time of the issuance of the certificate of cancellation and, if, at the time of the filing of the application for reinstatement, another corporation or foreign corporation is entitled to use such name or such name is then reserved or registered as provided in this chapter, the name of the corporation as changed, which shall be a name then available under the laws of this state; and

c. The address, including street and number, if any, of the registered office of the corporation upon the reinstatement thereof, which shall be located in the same county as the county in which the registered office of the corporation was located at the time of the issuance of the certificate of cancellation, and the name of its registered agent or agents at such address upon the reinstatement of the corporation;

2. The filing with the secretary of state by the corporation of all annual reports then due and theretofore becoming due;

3. The payment to the secretary of state by the corporation of all annual license fees and penalties then due and theretofore becoming due and an additional penalty of twenty-five dollars.

The secretary of state, upon filing the application for reinstatement, shall issue a certificate of reinstatement and file and record the same in his office and, if the application for reinstatement shall set forth a change in the name of the corporation, as required by this section, the same shall constitute an amendment to the articles of incorporation of the corporation and the certificate of reinstatement shall set forth such fact and shall be filed and recorded in the office of the county recorder. Upon the issuance of the certificate of reinstatement, the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period as fixed by its articles of incorporation, except, that the corporation shall not be entitled to use the name of the corporation at the time of the issuance of the certificate of cancellation if another corporation or foreign corporation is entitled to use such name or such name is then reserved as provided in this chapter. [C66, 71, 73, 75,§504A.87]

504A.88 Penalties imposed upon officers and directors. Each director and officer of a corporation, domestic or foreign, who willfully fails or refuses within the time prescribed by this chapter to answer truthfully and fully reasonable and proper interrogatories propounded to him by the secretary of state in accordance with the provisions of this chapter, or who signs any articles, statement, report, application or other document filed with the secretary of state which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof may be fined in any amount not exceeding five hundred dollars. [C66, 71, 73, 75,§504A.88]

504A.89 Interrogatories by secretary of state. The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of this chapter, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this chapter applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the secretary of state, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, treasurer, assistant treasurer, secretary or assistant secretary thereof. The secretary of state need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this chapter. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter. [C66, 71, 73, 75,§504A.89]

504A.90 Information disclosed by interrogatories. Interrogatories propounded by the secretary of state and the answers thereto shall not be open to public inspection nor shall the secretary of state disclose any facts or information obtained therefrom except insofar as required in the performance of his official duties. [C66, 71, 73, 75,§504A.90]

504A.91 Powers of secretary of state. The secretary of state shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him. [C66, 71, 73, 75,§504A.91]

504A.92 Judicial review. If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by this chapter to be approved by the secretary of state before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. Judicial review of the acts of the secretary of state may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the registered office of such corporation is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

If the secretary of state shall revoke the certificate of authority to conduct affairs in this state of any foreign corporation, pursuant to the provisions of this chapter, judicial review may be sought of such action in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county where the registered office of such corporation in this state is situated. [C66, 71, 73, 75,§504A.92]

504A.93 Certificates and certified copies to be received in evidence. All certificates issued by the secretary of state in accordance with the provisions of this chapter, and copies of all documents filed or recorded in his office in accordance with the provisions of this chapter when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima-facie evidence of the facts therein stated. A certificate by the secretary of state under the seal of his office, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima-facie evidence of the existence or nonexistence of the facts therein stated. [C66, 71, 73, 75,§504A.93]

504A.94 Forms to be furnished by secretary of state. All reports required by this chapter to be filed in the office of the secretary of state shall be made on forms which shall be prescribed and furnished by the secretary of state. Forms for other documents to be filed in the office of the secretary of state may be furnished by the secretary of state on request therefor, but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory. [C66, 71, 73, 75,§504A.94]

504A.95 Voting requirements. Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation or bylaws require voting by classes of members or the vote or concurrence of a greater or lesser proportion of the directors or members or any class of members, as the case may be, than required by this chapter with respect to such action, the provisions of the articles of incorporation or bylaws, as the case may be, shall control. [C66, 71, 73, 75,§504A.95]

504A.96 Waiver of notice. Whenever any notice is required to be given to any member or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. [C66, 71, 73, 75,§504A.96]

Referred to in §504A.100(11)

504A.97 Informal action by members or directors. Any action required by this chapter to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors or of a committee of directors, may be taken without a meeting if a consent in writing setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof or all of the directors or all of the members of the committee of directors, as the case may be. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this chapter. The provisions of this section shall be applicable whether or not this chapter requires that an action be taken by resolution. [C66, 71, 73, 75,§504A.97]

Referred to in §504A.100(11)

504A.98 Unauthorized assumption of corporate powers. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. [C66, 71, 73, 75,§504A.98]

504A.99 Reservation of power. The general assembly shall at all times have power to prescribe such regulations, provisions and limitations as it may deem advisable, which regulations, provisions and limitations shall be binding upon any and all corporations subject to the provisions of this chapter, and the general assembly shall have power to amend, repeal or modify this chapter at pleasure. [C66, 71, 73, 75,§504A.99]

504A.100 Application to existing corporations.

1. Except for this subsection, this chapter shall not apply to or affect corporations subject to the provisions of chapters 174, 176, 482, 491, 494, 495, 496A, 497, 498, 499, 499A, 500, 503, 506, 508, 510, 512, 514, 515, 518A, 519, 533 or 534 and state banks organized under chapter 524. Such corporations shall continue to be governed by all laws of this state heretofore applicable thereto and as the same may hereafter be amended. This chapter shall not be construed as in derogation of or as a limitation on the powers to which such corporations may be entitled.

Referred to in subsections 6, 7

2. This chapter shall not apply to any domestic corporation heretofore organized or existing under the provisions of chapter 504 of the Code nor, for a period of two years from and after July 4, 1965, to any foreign corporation holding a permit under the provisions of said chapter on the said date, unless such domestic or foreign corporation shall voluntarily elect to adopt the provisions of this chapter and shall comply with the procedure prescribed by the provisions of subsection 3 of this section.

3. Any domestic corporation organized or existing under the provisions of chapter 504 may voluntarily elect to adopt the provisions of this chapter and thereby become subject to its provisions and, during the period of two years from and after the effective date of this chapter, any foreign corporation holding a permit under the provisions of said chapter on said date may voluntarily elect to adopt the provisions of this chapter and thereby become subject to the provisions of this chapter. The procedure for electing to adopt the provisions of this chapter shall be as follows:

a. As to domestic corporations, a resolution reciting that the corporation voluntarily adopts this chapter and designating the address of its initial registered office and the name of its registered agent or agents at such address and, if the name of the corporation does not comply with this chapter, amending the articles of incorporation of the corporation to change the name of the corporation to one complying with the requirements of this chapter, shall be adopted by the procedure prescribed by this chapter for the amendment of articles of incorporation. If such corporation has theretofore issued shares of stock, said resolution shall contain a statement of such fact including the number of shares theretofore authorized, the number issued and outstanding, and a statement that all issued and outstanding shares of stock have been delivered to the corporation to be canceled upon the adoption of this chapter by the corporation becoming effective and that from and after the effective date of said adoption the authority of the corporation to issue shares of stock shall be thereby terminated. As to foreign corporations, a resolution shall be adopted by the board of directors, reciting that the corporation voluntarily adopts this chapter, and designating the address of its registered office in this state and the name of its registered agent or agents, at such address and, if the name of the corporation does not comply with this chapter, setting forth the name of the corporation with the changes which it elects to make therein conforming to the requirements of this chapter for use in this state.

b. Upon adoption of the required resolution or resolutions, an instrument shall be executed by the corporation by its president or vice president and by its secretary or an assistant secretary and verified by one of the officers signing the instrument, which shall set forth:

(1) The name of corporation;

(2) Each such resolution adopted by the corporation and the date of adoption thereof.

c. As to domestic corporations such instrument shall be delivered to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder.

If the county of the initial registered office as stated in such instrument is one which is other than the county wherein the principal office or place of business of such corporation, as theretofore designated in its articles of incorporation, was located, the secretary of state shall forward also to the county recorder of the county in which the said principal office or place of business of said corporation was located a copy of such instrument and he shall forward to the recorder of the county in which the initial registered office of such corporation is located, in addition to the original of such instrument, a copy of the articles of incorporation of said corporation together with all amendments thereto as then on file in his office.

d. As to foreign corporations, such instrument shall be delivered to the secretary of state for filing in his office and the corporation shall at the same time deliver also to the secretary of state for filing in his office any annual report which is then due.

e. The secretary of state shall not file such instrument with respect to a domestic corporation unless at the time thereof such corporation is validly existing and in good standing in that office under the provisions of chapter 504 of the Code. If the articles of incorporation of such corporation have not heretofore been filed in the office of the secretary of state, but are on file in the office of a county recorder, no such instrument of adoption shall be accepted by the secretary of state until the corporation shall have caused its articles of incorporation and all amendments duly certified by the proper county recorder to be recorded in the office of the secretary of state. Upon the filing of such instrument the secretary of state shall issue a certificate as to the filing of such instrument and deliver such certificate to the corporation or its representative.

Upon the issuance of such certificate by the secretary of state:

(1) All of the provisions of this chapter shall thereafter apply to the corporation and thereupon every such foreign corporation shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter, and shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter.

(2) In the case of any corporation with issued shares of stock, the holders of such issued shares who surrender them to the corporation to be canceled upon the adoption of this chapter by the corporation becoming effective, shall be and become members of the corporation with one vote for each share of stock so surrendered until such time as the corporation by proper corporate action relative to the election, qualification, terms and voting power of members shall otherwise prescribe.

Referred to in subsections 2, 4, 5, 6, 7

4. Any domestic corporation which elects to adopt the provisions of this chapter by complying with the provisions of subsection 3 of this section may, at the same time, amend or restate its articles of incorporation by comply-

ing with the provisions of this chapter with respect to amending articles of incorporation or restating articles of incorporation, as the case may be.

5. The provisions of this chapter becoming applicable to any domestic or foreign corporation shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of chapter 504 prior to the filing by the secretary of state in his office of the instrument manifesting the election of such corporation to adopt the provisions of this chapter as provided in subsection 3 of this section.

6. Except for the exceptions and limitations of subsection 1 of this section, this chapter shall apply to: All domestic corporations organized after the date on which this chapter became effective; domestic corporations organized or existing under chapter 504 which voluntarily elect to adopt the provisions of this chapter and comply with the provisions of subsection 3 of this section; all foreign corporations conducting or seeking to conduct affairs within this state and not holding, July 4, 1965, a valid permit so to do; foreign corporations holding, on the date the chapter becomes effective, a valid permit under the provisions of chapter 504 which, during the period of two years from and after said date, voluntarily elect to adopt the provisions of this chapter and comply with the provisions of subsection 3 of this section; and, upon the expiration of the period of two years from and after July 4, 1965, all foreign corporations holding such a permit on July 4, 1965.

7. Upon the expiration of a period of two years from and after the date on July 4, 1965, except for the exceptions and limitations of subsection 1 of this section, this chapter shall apply to every foreign corporation holding a valid permit to do business within this state or seeking to conduct affairs within this state. Every foreign corporation holding a valid permit to do business within this state on July 4, 1965, which has not meanwhile adopted this chapter by complying with the provisions of subsection 3 of this section, shall at the expiration of two years from and after said date be deemed to have elected to adopt this chapter by not voluntarily withdrawing from the state, and thereupon every such foreign corporation, subject to the limitations set forth in its certificate of authority, shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter, and shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter.

Referred to in subsection 8

8. Within eight months after this chapter becomes applicable to any foreign corporation pursuant to the provisions of subsection 7 of this section, the board of directors of such foreign corporation shall adopt a resolution designating the address of its registered office in this state and the name of its registered agent or agents at such address and, if the name of such corporation does not comply with this chapter, setting forth the name of the corporation with the changes which it elects to make therein conforming to the requirements of this chapter for use in this state.

Upon adoption of the required resolution or resolutions, an instrument or instruments shall be executed by the foreign corporation by its president or a vice-president and by its secretary or assistant secretary and verified by one of the officers signing such instrument, which shall set forth the name of the corporation, each resolution adopted as required by the provisions of this subsection, and the date of the adoption thereof. Such instrument shall be delivered to the secretary of state for filing in his office. Upon the filing of such instrument by a foreign corporation the secretary of state shall issue a certificate as to the filing of such instrument and deliver such certificate to the corporation or its representative. The secretary of state shall not file any annual report of any foreign corporation subject to the provisions of this subsection unless and until said corporation has fully complied with the provisions of this paragraph and, in such event, such foreign corporation shall be subject to the penalties prescribed in this chapter for failure to file such report within the time as provided therefor in this chapter.

9. The first annual report required to be filed by a domestic or foreign corporation under the provisions of this chapter shall be filed between January 1 and March 1 of the year next succeeding the calendar year in which it becomes subject to the chapter.

10. No corporation to which the provisions of this chapter apply shall be subject to the provisions of chapter 504.

11. The provisions of sections 504A.96 and 504A.97 shall apply to any action required or permitted to be taken under this section.

12. Except as otherwise provided in this section, existing corporations shall continue to be governed by the laws of this state heretofore applicable thereto. [C66, 71, 73, 75, §504A.100]

Referred to in §504A.3

504A.101 Personal liability. Except as otherwise provided in this chapter, the directors, officers, employees and members of the corporation shall not, as such, be liable on its debts or obligations and directors, officers, members or other volunteers shall not be personally liable for any claim based upon an act or omission of such person performed in the reasonable discharge of their lawful corporate duties. [C66, 71, 73, 75,§504A.101; 66GA, ch 235, §1]

Constitutionality, 61GA, ch 888,§102

CHAPTER 504B

NONPROFIT CORPORATIONS AND FEDERAL TAX LIABILITY

504B.1 Corporations applicable.
504B.2 Articles of incorporation—contents.
504B.3 Avoiding tax liability.
504B.4 Construction.
504B.5 Internal revenue code updated.
504B.6 Certain powers not limited.

504B.1 Corporations applicable. This chapter shall apply to every corporation organized under chapters 504 or 504A, which corporation is deemed to be a private foundation as defined in section 509 of the Internal Revenue Code of 1954, which is incorporated in the state of Iowa after December 31, 1969, and as to any such corporation organized in this state before January 1, 1970, it shall apply only for its federal taxable years beginning on or after January 1, 1972. [C73, 75,§504B.1]

504B.2 Articles of incorporation—contents. The articles of incorporation of every such corporation shall be deemed to contain provisions forbidding the corporation to:

1. Engage in any act of self-dealing, as defined in section 4941(d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954;

2. Retain any excess business holdings, as defined in section 4943(c) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954;

3. Make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954; and

4. Make any taxable expenditures, as defined in section 4945(d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954. [C73, 75,§504B.2]

Referred to in §504B.6

504B.3 Avoiding tax liability. The articles of incorporation of every such corporation shall be deemed to contain a provision requiring such corporation to distribute, for the purposes specified in its articles of incorporation, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954. [C73, 75,§504B.3]

Referred to in §504B.6

504B.4 Construction. Nothing in this chapter shall impair the rights and powers of the courts or the attorney general of this state with respect to any corporation. [C73, 75, §504B.4]

504B.5 Internal revenue code updated. All references to sections of the Internal Revenue Code of 1954 shall mean the Code as amended to and including January 1, 1971. [C73, 75, §504B.5]

504B.6 Certain powers not limited. Nothing in this chapter shall limit the power of any nonprofit corporation organized under chapter 504 or organized under chapter 504A:

1. To at any time amend its articles of incorporation or other instrument governing such corporation by any amendment process allowable under the laws of this state to provide that some or all provisions of sections 504B.2 and 504B.3 shall have no application to such corporation, or

2. In the case of any such corporation formed after July 1, 1971, to include any specific provisions in its original articles of incorporation, which provide that some or all provisions of sections 504B.2 and 504B.3 shall have no application to such corporation. [C73, 75,§504B.6]

TITLE XX

INSURANCE

Referred to in §§491.39, 601A.9

CHAPTER 505

INSURANCE DEPARTMENT

Federal funds appropriated, 65GA, ch 67,§2
Identification and use of publicly owned automobiles, etc., §740.20 et seq.

505.1 Location.
505.2 Appointment and term.
505.3 Vacancies.
505.4 Deputy—assistants—bond.
505.5 Expenses—salary.
505.6 Documents and records.
505.7 Fees.
505.8 General powers and duties.
505.9 Ex officio receiver.
505.10 Expenses attending liquidation.
505.11 Refunds.
505.12 Life insurance—annual report.
505.13 Other insurance—annual report.
505.14 Foreign insurers—reciprocal provisions.

505.1 Location. The insurance department of Iowa, as heretofore created and established, with the commissioner of insurance as head thereof, shall be located at the seat of government. [S13,§§1683-r,-r1; C24, 27, 31, 35, 39, §**8604**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§505.1]

505.2 Appointment and term. The governor shall, within sixty days following the organization of the regular session of the general assembly in 1927, and each four years thereafter, appoint, with the approval of two-thirds of the members of the senate, a commissioner of insurance, who shall be selected solely with regard to his qualifications and fitness to discharge the duties of this position, devote his entire time to such duties, and serve for four years from July 1 of the year of appointment. The governor with the approval of the executive council may remove said commissioner for malfeasance in office, or for any cause that renders him ineligible, incapable, or unfit to discharge the duties of his office. [S13,§1683-r; C24, 27, 31, 35, 39, §**8605**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§505.2]

Confirmation, §2.32

505.3 Vacancies. Vacancies that may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the time the general assembly next convenes. Prior to the expiration of said thirty days the governor shall transmit to the senate for its confirmation an appointment for the unexpired portion of the regular term. Vacancies occurring during a session of the general assembly shall be filled as regular appointments are made and before the end of said session, and for the unexpired portion of the regular term. [S13, §1683-r; C24, 27, 31, 35, 39,§**8607**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§505.3]

505.4 Deputy—assistants—bond. The commissioner of insurance shall appoint a first and second deputy commissioner and such other clerks and assistants as shall be needed to assist him in the performance of his duty, all of whom shall serve during the pleasure of the commissioner. Before entering upon the duties of their respective offices, deputy commissioners shall give a bond in the penal sum of ten thousand dollars. [S13,§1683-r2; C24, 27, 31, 35, 39,§**8608**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§505.4]

505.5 Expenses—salary. The commissioner shall be entitled to reimbursement of his actual necessary expenses in attending meetings of insurance commissioners of other states, and in the performance of the duties of his office. His salary shall be as fixed by the general assembly. [S13,§1683-r2; C24, 27, 31, 35, 39,§**8610**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§505.5]

See salary Act

505.6 Documents and records. All books, records, files, documents, reports, and securities, and all papers of every kind and character relating to the business of insurance shall be delivered to, and filed or deposited with, the said commissioner of insurance. [S13, §1683-r4; C24, 27, 31, 35, 39,§**8611**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§505.6]

505.7 Fees. All fees and charges of every character whatsoever which are required by law to be paid by insurance companies and associations shall be payable to the commissioner of insurance or department of revenue, as provided by law, whose duty it shall be to account for and pay over the same to the

treasurer of state at the time and in the manner provided by law. [S13,§1683-r5; C24, 27, 31, 35, 39,§8612; C46, 50, 54, 58, 62, 66, 71, 73, 75, §505.7]

Deposit of fees, §12.10

505.8 General powers and duties. The commissioner of insurance shall be the head of the insurance department, and shall have general control, supervision, and direction over all insurance business transacted in the state, and shall enforce all the laws of the state relating to such insurance.

He shall, subject to the provisions of chapter 17A, establish, publish and enforce rules not inconsistent with law for the enforcement of the provisions of this title and for the enforcement of the laws, the administration and supervision of which are imposed on the department.

He shall supervise all transactions relating to the organization, reorganization, liquidation, and dissolution of domestic insurance corporations, and all transactions leading up to the organization of such corporations.

He shall also supervise the sale in the state of all stock, certificates, or other evidences of interest, either by domestic or foreign insurance companies or organizations proposing to engage in any insurance business. [S13,§1683-r3; C24, 27, 31, 35, 39,§8613; C46, 50, 54,§505.8; C58, 62,§§505.8, 522.3; C66, 71, 73,§§505.8, 515.150, 522.3; C75,§505.8]

505.9 Ex officio receiver. The commissioner of insurance henceforth shall be the receiver and liquidating officer for any insurance company, association, or insurance carrier, and shall serve without compensation other than his stated compensation as commissioner of insurance, but he shall be allowed clerical and other expenses necessary for the conduct of such receivership. [C31, 35,§8613-c1; C39,§8613.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§505.9]

Referred to in §521A.11

505.10 Expenses attending liquidation. All expenses of supervision and liquidation shall be fixed by the commissioner of insurance, subject to approval by the court or a judge thereof, and shall, upon his order, be paid out of the funds of such company, association, or insurance carrier in his hands. [C31, 35, §8613-c2; C39,§8613.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§505.10]

505.11 Refunds. Whenever it appears to the satisfaction of the commissioner of insurance that because of error, mistake, or erroneous interpretation of statute that a foreign or domestic insurance corporation has paid to the state of Iowa taxes, fines, penalties, or license fees in excess of the amount legally chargeable against it, the commissioner of insurance shall have power to refund to such corporation any such excess by applying the amount thereof toward the payment of taxes, fines, penalties, or license fees already due or which may hereafter become due, until such excess payments have been fully refunded. The commissioner shall certify to the department of revenue the amount of any such credit to be applied to future taxes due and notify the insurance company affected of the amount thereof. [C31, 35,§8613-c3; C39,§8613.3; C46, 50, 54, 58, 62, 66, 71, 73 ,75,§505.11]

505.12 Life insurance—annual report. Before the first day of August the commissioner of insurance shall make an annual report to the governor of the general conduct and condition of the life insurance companies doing business in the state, and include therein an aggregate of the estimated value of all outstanding policies in each of the companies; and in connection therewith prepare a separate abstract thereof as to each company, and of all the returns and statements made to him by them. [C73,§1176; C97,§1781; C24, 27, 31, 35, 39, §8614; C46, 50, 54, 58, 62, 66, 71, 73, 75,§505.12]

Period covered by report, §17.4

505.13 Other insurance — annual report. The commissioner shall cause the information contained in the statements required of the companies, other than life insurance, organized or doing business in the state to be arranged in detail, and prepare the same for printing, which report shall be made to the governor on or before the first day of August of each year. [C73,§1158; C97,§1720; S13,§1720-a; C24, 27, 31, 35, 39,§8615; C46, 50, 54, 58, 62, 66, 71, 73, 75,§505.13]

Annual report, §17.4

505.14 Foreign insurers—reciprocal provisions. When by the laws of any other state any premium or income or other taxes, or any fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions are imposed upon Iowa insurance companies actually doing business in such other state, or upon the agents of said companies, which in the aggregate are in excess of the aggregate of such taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon insurance companies of such other state under the statutes of this state, so long as such laws continue in force the same obligations, prohibitions or restrictions of whatever kind shall in the same manner and for the same purpose be imposed upon insurance companies of such other state doing business in Iowa. For the purpose of this section, an alien insurer shall be deemed to be domiciled in a state designated by it wherein it has (1) established its principal office or agency in the United States, or (2) maintains the largest amount of its assets held in trust or on deposit for the security of its policyholders or policyholders and creditors in the United States, or (3) in which it was admitted to do business in the United States. The provisions of this section shall not apply to ad valorem taxes on real or personal property or to personal income taxes. [C46, 50, 54,§432.2; C58, 62, 66, 71, 73, 75,§505.14]

Referred to in §507.4

CHAPTER 506

ORGANIZATION OF DOMESTIC INSURANCE COMPANIES

Referred to in §§491.1, 496A.142(1), 504A.100(1)

506.1 Rules—limitations.
506.2 Sale of securities restricted.
506.3 Certificate of compliance.
506.4 Maximum promotion expense allowed.
506.5 Regulation by commissioner.
506.6 Promoters restricted.
506.7 Penalty.
506.8 Liability to stockholders.
506.9 Judicial review.
506.10 Sale of stock as inducement to insurance.
506.11 Securities law applicable.

506.1 Rules—limitations. The commissioner of insurance shall promulgate such reasonable rules and regulations as he deems necessary to assure the proper operation of newly organized insurance companies but in no event shall he:

1. Require that more than twenty percent of the original capital and surplus of a stock corporation subject to the provisions of this chapter be invested by the organizers; or

2. Restrict the alienation of securities issued to organizers for a period of more than:

a. Five years, or

b. Until the operation of the insurance company produces earned surplus for two successive years. [C66, 71, 73, 75,§506.1]

506.2 Sale of securities restricted. Neither the securities in an insurance company, nor securities in a holding company, one of the purposes of which is to organize, purchase, or otherwise acquire control of an insurance company, nor membership in an association in process of organization shall be sold or solicited until such company or association, and the promoters thereof, shall have first complied with all of the statutory provisions regulating the organization of such companies and associations, and also have secured from the commissioner of insurance a certificate indicating full compliance with the provisions of this chapter. [S13,§1683-r3; C24, 27, 31, 35, 39,§8616; C46, 50, 54, 58, 62,§506.1; C66, 71, 73, 75,§506.2]

506.3 Certificate of compliance. Before the commissioner of insurance shall issue such certificate of compliance, he shall first be satisfied with the general plan of such organization and the character of the advertising to be used; he shall also see that all rules and regulations promulgated under this chapter have been complied with and fix the time within which such organization shall be completed; he shall also prescribe the method of keeping books and accounts of insurance companies and those of fiscal agents of corporations subject to the provisions of this chapter. [S13,§1683-r3; C24, 27, 31, 35, 39,§8617; C46, 50, 54, 58, 62,§506.2; C66, 71, 73, 75,§506.3]

506.4 Maximum promotion expense allowed. The maximum promotion expense which may be incurred shall in no case exceed fifteen percent of the sale price of said stock, and no portion of such amount shall be used in the payment of salaries for officers and directors before the issuance, by the commissioner of insurance, of authority to transact an insurance business. Any amount paid to the company for stock above the par value of the stock shall constitute a contributed surplus but no dividends shall be paid by the company except from the earned profits arising from their business, which shall not include contributed capital or contributed surplus. [C24, 27, 31, 35, 39,§8618; C46, 50, 54, 58, 62,§506.3; C66, 71, 73, 75,§506.4]

Referred to in §§506.6, 515.25

506.5 Regulation by commissioner. The commissioner of insurance shall have power to regulate all other matters in connection with the organization of such domestic corporations, and the sale of stock or the issuing of certificates by all insurance corporations within the state, to the end that fraud may be prevented in the organization of such companies and the sale of their stocks and securities. [S13,§1683-r3; C24, 27, 31, 35, 39,§8619; C46, 50, 54, 58, 62,§506.4; C66, 71, 73, 75,§506.5]

Referred to in §515.25

506.6 Promoters restricted. No company shall enter into any contract with any promoter, officer, director, or agent of the company or any other person to pay his expenses or to pay him any commission or any compensation for his services in promoting or organizing such company, or in selling its stock in excess of the amount authorized in section 506.4; nor shall it contract with any such person to pay him any part of the premiums arising from the insurance it has written or may write as compensation, directly or indirectly, for aiding in the promotion or for aiding or effecting any consolidation of such company with any other company, without the approval of the commissioner of insurance. [C24, 27, 31, 35, 39,§8620; C46, 50, 54, 58, 62,§506.5; C66, 71, 73, 75,§506.6]

Referred to in §515.25

506.7 Penalty. Any person who violates any of the provisions of the preceding sections of this chapter, or who violates any order of the commissioner of insurance made by authority thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by

fine not to exceed one thousand dollars, and by imprisonment in the county jail not to exceed six months. [C24, 27, 31, 35, 39,§8621; C46, 50, 54, 58, 62,§506.6; C66, 71, 73, 75,§506.7]

506.8 Liability to stockholders. Any person, association, or corporation who sells or aids in selling or causes to be sold any stock, certificate of membership, or evidence of interest in any such corporation or association, in violation of law, shall be personally liable to any person to whom he may have sold any stock or certificate of membership or evidence of interest, in an amount equal to the price paid therefor by such person with legal interest, and suit to recover the same may be brought by such purchasers, jointly or severally, in any court of competent jurisdiction. [C24, 27, 31, 35, 39,§8622; C46, 50, 54, 58, 62, §506.7; C66, 71, 73, 75,§506.8]

506.9 Judicial review. Judicial review of the acts of commissioner of insurance may be sought in accordance with the terms of the Iowa administrative procedure Act. [C24, 27, 31, 35, 39,§8623; C46, 50, 54, 58, 62,§506.8; C66, 71, 73, 75,§506.9]

Docketing appeal, R.C.P. 181

506.10 Sale of stock as inducement to insurance. No insurance company shall issue in this state, or permit its agents, officers, or employees to issue in this state its own stock, agency company stock or other stock or securities, or any special or advisory board or other contract of any kind promising returns and profits as an inducement to insurance.

No insurance company shall be authorized to do business in this state which issues or permits its agents, officers, or employees to issue in this state or in any other state or territory, agency company stock or other stock or securities, or any special advisory board or other contract of any kind promising returns and profits as an inducement to insurance.

No corporation or stock company, acting as an agent of an insurance company, or any of its agents, officers, or employees, shall be permitted to agree to sell, offer to sell, or give or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds, or agreement of any form or nature, promising returns and profits as an inducement to insurance, or in connection therewith.

Nothing herein contained shall impair or affect in any manner any such contracts issued or made as an inducement to insurance prior to the enactment of this section, or prevent the payment of the dividends or returns therein stipulated to be paid.

It shall be the duty of the commissioner upon being satisfied that any insurance company, or any agent thereof, has violated any of the provisions of this section, to revoke the certificate of authority of the company or agent so offending. [C24, 27, 31, 35, 39,§8624; C46, 50, 54, 58, 62,§506.9; C66, 71, 73, 75,§506.10]

506.11 Securities law applicable. Nothing contained in this chapter shall be construed to exempt any corporation from the requirements of chapter 502. [C66, 71, 73, 75,§506.11]

CHAPTER 507

EXAMINATION OF INSURANCE COMPANIES

Referred to in §§514.10, 521A.6(1, 2)

507.1 "Company" defined.
507.2 Examination required.
507.3 Companies to assist—oaths.
507.4 Examiners—salaries.
507.5 Bond.
507.6 Employment of experts.
507.7 Expenses.
507.8 Payment by company.
507.9 Fees—accounting.
507.10 Suspension or revocation of certificate —receivership.
507.11 Procedure against nonlife companies.
507.12 Procedure against life companies.
507.13 Notice of application.
507.14 Publication of examination.
507.15 Transfer pending examination.
507.16 Unlawful solicitation of business.
507.17 Refusing to be examined.
507.18 Repealed by 53GA, ch 213,§1.

507.1 "Company" defined. The word "company" as used in this chapter shall mean all companies or associations organized under the provisions of chapters 508, 510, 511, 512, 514, 514B, 515, 515C, 518A, associations subject to the provisions of chapters 518 and 520, and all companies or associations admitted or seeking to be admitted to this state under the provisions of any of the chapters herein referred to. [S13,§1821-i; C24, 27, 31, 35, 39,§8625; C46, 50, 54, 58, 62, 66, 71, 73, 75,§507.1; 66GA, ch 1056,§28]

507.2 Examination required. The insurance commissioner may at any time examine or inquire into the affairs of any insurance company authorized or seeking to be authorized to transact business in the state of Iowa. Domestic companies shall be examined at least

once for each three-year period. [C97,§1753; S13,§§1821-a,-h; C24, 27, 31, 35, 39,§§**8626, 8642, 9009, 9061**; C46,§§507.2, 507.18, 515.130, 518.36; C50, 54, 58, 62, 66, 71, 73, 75,§507.2]

Referred to in §510.12

507.3 Companies to assist — oaths. When any company is being examined, the officers, employees, or agents thereof, shall produce for inspection all books, documents, papers, or other information concerning the affairs of such company, and shall otherwise assist in such examination so far as they can do. The commissioner of insurance, or his legally authorized representative in charge of the examination, shall have authority to administer oaths and take testimony bearing upon the affairs of any company under examination. [S13,§1821-b; C24, 27, 31, 35, 39,§**8627**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§507.3]

507.4 Examiners — salaries. The commissioner of insurance is hereby authorized to appoint insurance examiners, at least one of whom shall be an experienced actuary, and at least one of whom shall be an experienced and competent fire insurance accountant, and who, while conducting examinations, shall possess all the powers conferred upon the commissioner of insurance for such purposes. The entire time of the examiners shall be under the control of the said commissioner, and shall be employed as he may direct.

The said commissioner may, when in his judgment it is advisable, appoint assistants to aid in making examinations. Said examiners shall be compensated on the basis of the normal work week of the Iowa department of insurance at a salary to be fixed by the commissioner subject, however, to the provisions of section 505.14. Said compensation shall be paid from appropriations for such purposes upon certification of the commissioner, which shall be reimbursed as provided in sections 507.8 and 507.9. [S13,§1821-c; C24, 27, 31, 35, 39, §**8628**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§507.4]

S13,§1821-c, editorially divided

507.5 Bond. Said examiners shall give bond to the state conditioned upon the faithful performance of their duties, in the sum of five thousand dollars, which bond shall be filed with and approved by said commissioner. [S13,§1821-c; C24, 27, 31, 35, 39,§**8629**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§507.5]

507.6 Employment of experts. If in making any examination a situation develops which, in the judgment of the commissioner, requires the services of an expert examiner having special training and knowledge not possessed by the regular examiners of the department, he may also employ such an expert assistant examiner. [C24, 27, 31, 35, 39,§**8630**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§507.6]

507.7 Expenses. Said examiners and assistants and the said commissioner shall receive actual and necessary traveling, hotel, and other expenses while engaged in conducting examinations away from their respective places of residence. [S13,§1821-c; C24, 27, 31, 35, 39,§**8631**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §507.7]

Referred to in §521A.6(4)

507.8 Payment by company. The commissioner shall upon the completion of an examination prepare an account of the costs incurred in performing and preparing the report of such examinations which shall be charged to and paid by the companies examined, and upon failure or refusal of any company examined to pay such bill or bills, the same may be recovered in an action brought in the name of the state under the direction of the executive council, and the commissioner may also revoke the certificate of authority of such company to transact business within this state. [S13,§1821-c; C24, 27, 31, 35, 39,§**8632**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§507.8]

Referred to in §507.4

507.9 Fees—accounting. All fees collected under the provisions of this chapter shall be paid to the commissioner of insurance and shall be by him turned into the state treasury. [S13,§1821-c; C24, 27, 31, 35, 39,§**8633**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§507.9]

Referred to in §507.4
Deposit of fees, §12.10

507.10 Suspension or revocation of certificate—receivership. If upon investigation or examination it shall appear that any company is insolvent or in an unsound condition, or is doing an illegal or unauthorized business, or that it has refused or neglected for more than thirty days to pay final judgment rendered against it in the courts of this state, the commissioner of insurance may suspend its authority to transact business within this state until it shall have complied in all respects with the laws applicable to such company or has paid such judgment, or he may revoke its certificate of authority to transact business within this state and having revoked the certificate of any company organized under the laws of this state, he shall at once report the same to the attorney general, who shall apply to the district court for the appointment of a receiver to close up the affairs of said company. [S13,§1821-d; C24, 27, 31, 35, 39,§**8634**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §507.10]

Referred to in §511.23
S13,§1821-d, editorially divided

507.11 Procedure against nonlife companies. In the case of companies organized on the stock plan under the provisions of chapter 515, the above named officers shall proceed as provided in sections 515.85 and 515.86. [S13,§1821-d; C24, 27, 31, 35, 39,§**8635**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§507.11]

Referred to in §511.23

507.12 Procedure against life companies. In case of companies organized under the provisions of chapter 508, said officers shall

proceed as provided in sections 508.17 to 508.19. [S13,§1821-d; C24, 27, 31, 35, 39,§8636; C46, 50, 54, 58, 62, 66, 71, 73, 75,§507.12]

Referred to in §511.23

507.13 Notice of application. No receiver shall be appointed for any company contemplated by this chapter except upon application of the attorney general, unless five days' notice shall have been served upon the commissioner and attorney general, stating the time and place of the hearing of such application, at which time and place said officers shall have the right to appear and be heard as to such application and appointment. [S13, §1821-d; C24, 27, 31, 35, 39,§8637; C46, 50, 54, 58, 62, 66, 71, 73, 75,§507.13]

Referred to in §511.23

507.14 Publication of examination. The results of any examination shall be published in one or more newspapers of the state or in pamphlet form, when in the opinion of the commissioner of insurance the interests of the public require it. [S13,§1821-d; C24, 27, 31, 35, 39,§8638; C46, 50, 54, 58, 62, 66, 71, 73, 75, §507.14]

507.15 Transfer pending examination. Any transfer of stock of any company, pending an investigation, shall not release the party making the transfer from any liability for losses that may have occurred previous to such transfer. [S13,§1821-e; C24, 27, 31, 35, 39,§8639; C46, 50, 54, 58, 62, 66, 71, 73, 75,§507.15]

507.16 Unlawful solicitation of business. Any officer, manager, agent, or representative of any insurance company contemplated by this chapter, who, with knowledge that its certificate of authority has been suspended or revoked, or that it is insolvent, or is doing an unlawful or unauthorized business, solicits insurance for said company, or receives applications therefor, or does any other act or thing toward receiving or procuring any new business for said company, shall be deemed guilty of a misdemeanor and shall be subject to the penalties provided in sections 511.16 and 511.17, and the provisions of said sections are hereby extended to all companies contemplated by this chapter. [S13,§1821-f; C24, 27, 31, 35, 39,§8640; C46, 50, 54, 58, 62, 66, 71, 73, 75,§507.16]

507.17 Refusing to be examined. Should any company decline or refuse to submit to an examination as in this chapter provided, the commissioner of insurance shall at once revoke its certificate of authority, and if such company is organized under the laws of this state, he shall report his action to the attorney general, who shall at once apply to the district court for the appointment of a receiver to wind up the affairs of the company. [S13, §1821-g; C24, 27, 31, 35, 39,§8641; C46, 50, 54, 58, 62, 66, 71, 73, 75,§507.17]

507.18 Repealed by 53GA, ch 213,§1. See §507.2.

CHAPTER 507A

UNAUTHORIZED INSURERS ACT

507A.1 Title.
507A.2 Purpose.
507A.3 Definitions—scope.
507A.4 Transactions where law not applicable.
507A.5 Proscribed acts binding on insurer.
507A.6 Secretary of state as process agent.
507A.7 Proceedings before commissioner—indemnifying bond.
507A.8 Order by commissioner to produce contracts.
507A.9 Premium tax on unauthorized insurers.
507A.10 Penalties.
507A.11 Reciprocal enforcement of court orders.

507A.1 Title. This chapter may be cited as the "Iowa Unauthorized Insurers Act". [C50, 54, 58, 62, 66, 71, 73, 75,§507A.1]

507A.2 Purpose. The purpose of this chapter is to subject certain persons and insurers to the jurisdiction of the insurance commissioner and the courts of this state in suits by or on behalf of the state and insureds or beneficiaries under insurance contracts. The general assembly hereby declares that it is a subject of concern that many residents of this state hold policies of insurance issued by persons and insurers not authorized to do insurance business in this state, thus presenting to such residents the often insuperable obstacle of asserting their legal rights under such policies in forums foreign to them under laws and rules of practice with which they are not familiar. The general assembly further declares that it is also concerned with the protection of residents of this state against acts by persons and insurers not authorized to do an insurance business in this state, by the maintenance of fair and honest insurance markets, by protecting the premium tax revenues of this state, by protecting authorized persons and insurers which are subject to regulation from unfair competition by unauthorized persons and insurers, and by pro-

tecting against the evasion of the insurance regulatory laws of this state.

In furtherance of such state interest, the general assembly herein provides methods for substituted service of process upon such persons or insurers in any proceeding, suit or action in any court and substitute service of any notice, order, pleading or process upon such persons or insurers in any proceeding before the commissioner of insurance to enforce or effect full compliance with the insurance and tax laws of this state. In so doing, the state exercises its powers to protect residents of this state and to define what constitutes doing an insurance business in this state, and also exercises powers and privileges available to this state by virtue of Public Law 79-15, 79th Congress of the United States, Chapter 20, 1st Sess., S. 340, 59 Stat. L. 33; 15 U. S. C. 1011 to 1015, inclusive, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states. [C50, 54, 58, 62, 66, 71, 73, 75,§507A.2]

507A.3 Definitions — scope. Unless otherwise indicated, the term "insurer" as used in this section includes all corporations, associations, partnerships and individuals engaged in the business of insurance. Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer is defined to be doing an insurance business in this state.

1. The making of or proposing to make, as an insurer, an insurance contract.

2. The taking or receiving of any application for insurance.

3. The receiving or collection of any premiums, membership fees, assessments, dues or other considerations for any insurance.

4. The issuance or delivery of contracts of insurance to residents of this state or to corporations or persons authorized to do business in this state.

5. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.

6. The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the insurance laws of this state.

7. Any other transactions of business relating directly to insurance in this state by an insurer.

The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. [C50, 54, 58, 62, 66,§507A.3(1); C71, 73, 75,§507A.3]

Referred to in §507A.7(3)

507A.4 Transactions where law not applicable. The provisions of this chapter shall not apply to:

1. The lawful transaction of surplus lines insurance as permitted by sections 515.147 to 515.149.

2. The lawful transaction of reinsurance by insurers.

3. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.

4. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state, covering subjects of insurance not resident located, or expressly to be performed in this state at the time of issue, and which transactions are subsequent to the issuance of the policy.

5. Transactions in this state involving group or blanket insurance and group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business.

6. Transactions in this state involving any policy of insurance issued prior to July 1, 1967.

7. Any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or individual by issuing insurance and annuity contracts direct from the home office of the company and without agents or representatives in this state only to or for the benefit of such institutions and to individuals engaged in the services of such institutions; nor shall this chapter apply to any life, disability or annuity contracts issued by such life insurance company, provided such contracts otherwise comply with the statutes.

8. Insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk including strikes and war risks commonly insured under ocean or wet marine forms of policy.

9. Transactions involving risks located in this state where the policy or contract of insurance for such risk was principally negotiated and delivered outside this state and was lawfully issued in a state or foreign country in which the foreign or alien insurer was authorized to do an insurance business, and where such insurer has no contract with this state except in connection with inspections or losses required by virtue of the contract or policy of insurance covering the risk located in this state. [C71, 73, 75,§507A.4]

507A.5 Proscribed acts binding on insurer.

1. No person or insurer shall directly or indirectly perform any of the acts of doing an insurance business as defined in this chapter except as provided by and in accordance with the specific authorization by statute. However, should any unauthorized person or insurer perform any act of doing an insurance business as set forth in this chapter, it shall

be equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon him, his executor or administrator, or successor in interest if a corporation, of the commissioner of insurance or his successor in office, to be the true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding in any court arising out of doing an insurance business in this state or instituted by or on behalf of an insured or beneficiary arising out of any such acts of doing an insurance business, except in an action, suit or proceeding by the commissioner of insurance or by the state. Any act of doing an insurance business by any unauthorized person or insurer shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such person or insurer.

2. Service of process shall be made by delivering to and leaving with the commissioner of insurance or some person in apparent charge of his office two copies thereof and the payment to him of such fees as may be prescribed by law. The commissioner of insurance shall forthwith forward by certified mail one of the copies of such process to the defendant at the last known principal place of business and shall keep a record of all process so served. Such service of process shall be sufficient to provide notice if:

a. A copy of the process is sent within ten days thereafter by certified mail by plaintiff or plaintiff's attorney to the defendant at the last known principal place of business.

b. The defendant's receipt or receipt issued by the post office showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed and an affidavit by the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

3. Service of process in any such action, suit, or proceeding shall in addition to the manner as provided in this chapter be valid if served upon any person within this state who, in this state on behalf of such insurer, is soliciting insurance, making, issuing, or delivering any contract of insurance, or collecting or receiving any premium, membership fee, assessment, or other consideration for insurance, and if:

a. A copy of such process is sent within ten days thereafter by certified mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant.

b. The defendant's receipt, or the receipt issued by the post office showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and an affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

4. No plaintiff shall be entitled to a judgment by default under this chapter until the expiration of thirty days from date of the filing of the affidavit of compliance.

5. Nothing in this section shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or hereafter permitted by law. [C50, 54, 58, 62, 66,§507A.3; C71, 73, 75,§507A.5]

Referred to in §507A.7

507A.6 Secretary of state as process agent.

1. Any act of doing an insurance business as set forth in this chapter by any unauthorized person or insurer is equivalent to and shall constitute an irrevocable appointment by such person and insurer, binding upon him, his executor or administrator, or successor in interest if a corporation, of the secretary of state or his successor in office, to be the true and lawful attorney of such person or insurer upon whom may be served all legal process in any action, suit, or proceeding in any court by the commissioner of insurance or by the state and upon whom may be served any notice, order, pleading or process in any proceeding before the commissioner of insurance and which arises out of doing an insurance business in this state by such person or insurer. Any act of doing an insurance business in this state by any unauthorized person or insurer shall be signification of its agreement that any such legal process in such court action, suit, or proceeding and any such notice, order, pleading, or process in such administrative proceeding before the commissioner of insurance so served shall be of the same legal force and validity as personal service of process in this state upon such person or insurer.

2. Service of process in such action shall be made by delivering to and leaving with the secretary of state or some person in apparent charge of his office, two copies thereof. Service upon the secretary of state as such attorney shall be service upon the principal.

Referred to in §507A.7(2)

3. The secretary of state shall forthwith forward by certified mail one of the copies of such process or such notice, order, pleading, or process in proceedings before the commissioner to the defendant in such court proceeding or to whom the notice, order, pleading, or process in such administrative proceeding is addressed or directed at the last known principal place of business and shall keep a record of all process so served on him which shall show the day and hour of service. Such service is sufficient, provided:

a. Notice of such service and a copy of the court process or the notice, order, pleading,

or process in such administrative proceeding is sent within ten days thereafter by certified mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the commissioner of insurance in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading, or process in such administrative proceeding is addressed or directed at the last known principal place of business of the defendant in the court or administrative proceeding.

b. The defendant's receipt or receipts issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and an affidavit of the plaintiff or the plaintiff's attorney in court proceeding or of the commissioner of insurance in administrative proceeding, showing compliance therewith are filed with the clerk of the court in which such action, suit, or proceeding is pending or with the commissioner in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond thereto, or within such further time as the court or commissioner of insurance may allow.

Referred to in §507A.7(2)

4. No plaintiff shall be entitled to a judgment or a determination by default in any court or administrative proceeding in which court process or notice, order, pleading, or process in proceedings before the commissioner of insurance is served under this section until the expiration of forty-five days from the date of filing of the affidavit of compliance.

5. Nothing in this section shall limit or abridge the right to serve any process, notice, order, or demand upon any person or insurer in any other manner now or hereafter permitted by law. [C50, 54, 58, 62, 66,§507A.3; C71, 73, 75,§507A.6]

Referred to in §507A.7

507A.7 Proceedings before commissioner—indemnifying bond.

1. Before any unauthorized person or insurer files or causes to be filed any pleading or process in an administrative proceeding before the commissioner of insurance, instituted against such person or insurer, by service made as provided in this chapter, such person or insurer shall either:

a. Deposit with the clerk of the court in which such action, suit, or proceeding is pending, or with the commissioner of insurance in administrative proceedings before the commissioner, cash or securities, or file with such clerk or commissioner a bond with good and sufficient sureties, to be approved by the clerk or commissioner in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding.

b. Procure a certificate of authority to transact the business of insurance in this state.

Referred to in subsections 2, 3

2. The court in any action, suit, or proceeding in which service is made as provided in subsections 2 and 3 of section 507A.6, or the commissioner of insurance in any administrative proceeding before the commissioner in which service is made as provided in subsections 2 and 3 of section 507A.6, may in his discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection 1 of this section and to defend such action.

3. Nothing in subsection 1 of this section shall be construed to prevent an unauthorized person or foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in sections 507A.5 and 507A.6, on the ground that such unauthorized person or insurer has not done any of the acts enumerated in section 507A.3.

4. In an action against an unauthorized person or insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the person or insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Failure of the person or insurer to defend any such action shall be deemed prima-facie evidence that its failure to make payment was without reasonable cause. [C50, 54, 58, 62, 66,§§507A.4, 507A.5; C71, 73, 75,§507A.7]

507A.8 Order by commissioner to produce contracts.

1. Whenever the commissioner of insurance has reason to believe that insurance has been effectuated by or for any person in this state with an unauthorized insurer the commissioner shall in writing order such person to produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers and to disclose to the commissioner the amount of insurance, name and address of each insurer, gross amount of premium paid or to be paid and the name and address of the person or persons assisting or aiding in the solicitation, negotiation, or effectuation of such insurance.

2. Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall immediately report to the commissioner every insurance policy or contract which has been entered into by any insurer not authorized to transact such insurance in this state.

3. Every person who, for thirty days after receipt of written order pursuant to subsection 1 of this section, neglects to comply with the requirements of such order or who willfully makes a disclosure that is untrue, deceptive, or misleading shall forfeit fifty dollars. [C71, 73, 75,§507A.8]

507A.9 Premium tax on unauthorized insurers.

1. Effective with all premiums collected during the calendar year 1967, except premiums on lawfully procured surplus lines insurance, every unauthorized insurer shall pay to the commissioner of insurance before March 1, next succeeding the calendar year in which the insurance was so effectuated, continued, or renewed a premium tax of two percent of gross premiums charged for such insurance on subjects resident, located, or to be performed in this state. Such insurance whether procured through negotiation or an application, in whole or in part occurring or made within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured or continued in this state. The term "premium" includes all premiums, membership fees, assessments, dues, and any other consideration for insurance. If the tax prescribed by this section is not paid within the time stated, the tax shall be increased by a penalty of twenty-five percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid.

2. If the policy covers risks or exposures only partly in the state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in the state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

3. The attorney general, upon request of the commissioner of insurance, shall proceed in the courts of this state or any other state or in any federal court or agency to recover such tax not paid within the time prescribed in this section. [C71, 73, 75,§507A.9]

507A.10 Penalties. Any unauthorized foreign or alien insurer who does any unauthorized act of an insurance business as set forth in this chapter shall be fined not more than five thousand dollars. In addition to any other penalty provided for in this chapter or otherwise provided by law, any person or insurer violating this chapter shall forfeit to the state the sum of five hundred dollars for each offense and an additional sum of five hundred dollars for each month during which any such person or insurer continues such violation. [C71, 73, 75,§507A.10]

Constitutionality, 62GA, ch 365,§12

507A.11 Reciprocal enforcement of court orders. The attorney general upon request of the commissioner of insurance may proceed in the courts of this state or any reciprocal state to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner of insurance.

1. As used in this section, unless the context otherwise requires:

a. "Reciprocal state" means any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders in equity issued by courts located in other states or territories of the United States, against any insurer incorporated or authorized to do business in said state or territory.

b. "Foreign decree" means any decree or order in equity of a court located in a reciprocal state, including a court of the United States located therein, against any insurer incorporated or authorized to do business in this state.

c. "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

2. The commissioner of insurance shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

3. A copy of any foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any district court of this state. The clerk, upon verifying with the insurance commissioner that the decree or order qualifies as a foreign decree, shall treat the foreign decree in the same manner as a decree of a district court of this state. A foreign decree so filed has the same effect and shall be deemed as a decree of a district court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of a district court of this state and may be enforced or satisfied in like manner.

4. *a.* At the time of the filing of the foreign decree, the attorney general shall make and file with the clerk of the court an affidavit setting forth the name and last known post office address of the defendant.

b. Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given and to the insurance commissioner of this state and shall make a note of the mailing in the docket. In addition, the attorney general may mail a notice of the filing of the foreign decree to the defendant and to the insurance commissioner of this state and may file proof of mailing with

the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the attorney general has been filed.

c. No execution or other process for enforcement of a foreign decree filed under this section shall issue until thirty days after the date the decree is filed.

5. *a.* If the defendant shows the district court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

b. If the defendant shows the district court any ground upon which enforcement of a decree of any district court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state.

6. Any person filing a foreign decree shall pay to the clerk of court twenty-five dollars. Fees for docketing, transcription or other enforcement proceedings shall be as provided for decrees of the district court. [C71, 73, §507A.6(6); C75,§507A.11]

CHAPTER 507B

INSURANCE TRADE PRACTICES

Referred to in §514B.18

507B.1 Declaration of purpose.
507B.2 Definitions.
507B.3 Unfair competition or unfair and deceptive acts or practices prohibited.
507B.4 Unfair methods of competition and unfair or deceptive acts or practices defined.
507B.5 Favored agent or insurer—coercion of debtors.
507B.6 Hearings, witnesses appearances, production of books and service of process.
507B.7 Cease and desist orders and modifications thereof.
507B.8 Judicial review of cease and desist orders.
507B.9 Repealed by 64GA, ch 1111,§11.
507B.10 Repealed by 65GA, ch 1090,§211.
507B.11 Penalty.
507B.12 Rules.
507B.13 Immunity from prosecution.
507B.14 Transfer of insurance stock.

507B.1 Declaration of purpose. The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress) [59 Stat. L. 33; 15 U. S. C. §§1011 to 1015, inc.], by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined. [C58, 62, 66, 71, 73, 75,§507B.1]

507B.2 Definitions. When used in this chapter:

1. "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, interinsurer, fraternal beneficiary association, and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters. "Person" shall also mean any corporation operating under the provisions of chapter 514 and any benevolent association as defined and operated under chapter 512A. For purposes of this chapter, corporations operating under the provisions of chapter 514 and chapter 512A shall be deemed to be engaged in the business of insurance.

2. "Commissioner" shall mean the commissioner of insurance of this state.

3. "Insurance policy" or "insurance contract" shall mean any contract of insurance, indemnity, subscription, membership, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any person. [C58, 62, 66, 71, 73, 75,§507B.2]

Referred to in §507B.7

507B.3 Unfair competition or unfair and deceptive acts or practices prohibited. No person shall engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to section 507B.6 of this chapter to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance.

The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair

or deceptive act or practice prohibited by this section. [C58, 62, 66, 71,§§507B.3, 507B.5; C73, 75,§507B.3]

507B.4 Unfair methods of competition and unfair or deceptive acts or practices defined. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

1. *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which does any of the following:

a. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

b. Misrepresents the dividends or share of the surplus to be received on any insurance policy.

c. Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.

d. Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates.

e. Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.

f. Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

g. Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy.

h. Misrepresents any insurance policy as being shares of stock.

2. *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

3. *Defamation.* Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

4. *Boycott, coercion and intimidation.* Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

5. *False statements and entries.*

a. Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

b. Knowingly making any false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such person.

6. *Stock operations and advisory board contracts.* Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

7. *Unfair discrimination.*

a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

b. Making or permitting any unfair discrimination between insureds of the same class for essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance other than life or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

8. *Rebates.*

a. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or any thing of value whatsoever not specified in the contract.

b. Nothing in subsection 7 or paragraph "*a*" of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise rebating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or rebatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders.

(2) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

9. *Unfair claim settlement practices.* Committing or performing with such frequency as to indicate a general business practice any of the following:

a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages of issue.

b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

d. Refusing to pay claims without conducting a reasonable investigation based upon all available information.

e. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.

f. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear.

g. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.

h. Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application.

i. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured.

j. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made.

k. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

l. Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

m. Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

n. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

10. *Misrepresentation in insurance applications.* Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.

11. Any violation of section 515A.16. [C97, §1782; S13,§§1782, 1820-b; SS15,§1758-f; C24, 27, 31, 35, 39,§§8666, 8759, 9022; C46, 50, 54,§§508.23, 511.20, 515.144; C58, 62, 66, 71, 73, 75,§507B.4]

Referred to in §§507B.6, 507B.7, 507B.12

507B.5 Favored agent or insurer—coercion of debtors.

1. No person may do any of the following:

a. Require, as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation the creditor is to acquire or finance, negotiate any policy or contract of insurance through a particular insurer or group of insurers or agent or broker or group of agents or brokers.

b. Unreasonably disapprove the insurance policy provided by a borrower for the protection of the property securing the credit or lien.

c. Require directly or indirectly that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge, in connection with the handling of any insurance policy required as security for a loan on real estate, or pay a separate charge to substitute the insurance policy of one insurer for that of another.

d. Use or disclose information resulting from a requirement that a borrower, mortga-

gor or purchaser furnish insurance of any kind on real property being conveyed or used as collateral security to a loan, when such information is to the advantage of the mortgagee, vendor, or lender, or is to the detriment of the borrower, mortgagor, purchaser, insurer, or the agent or broker complying with such a requirement.

2. Subsection 1, paragraph *"c"* of this section does not include the interest which may be charged on premium loans or premium advancements in accordance with the security instrument.

3. For purposes of subsection 1, paragraph *"b"* of this section, such disapproval shall be deemed unreasonable if it is not based solely on reasonable standards uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for the disapproval of an insurance policy because such policy contains coverage in addition to that required.

4. If a violation of this section is found, the person in violation shall be subject to the same procedures and penalties as are applicable to other provisions of this chapter.

5. For purposes of this section, "person" includes any individual, corporation, association, partnership, or other legal entity. [C73, 75,§507B.5]

Referred to in §§507B.6, 507B.7, 507B.12

507B.6 Hearings, witnesses appearances, production of books and service of process.

1. Whenever the commissioner shall have reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice whether or not defined in section 507B.4 or 507B.5 and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than ten days after the date of the service thereof.

2. At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

3. Nothing contained in this chapter shall require the observance at any such hearing of formal rules of pleading or evidence.

4. The commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which he deems relevant to the inquiry. The commissioner, upon such hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the district court of Polk county or the county where such party resides, on application of the commissioner, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

5. Statements of charges, notices, orders, and other processes of the commissioner under this chapter may be served by anyone duly authorized by the commissioner, either in the manner provided by law for service of process in civil actions, or by mailing a copy thereof by restricted certified mail to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of such service, shall be proof of the same, and the return receipt for such statement, notice, order or other process, and mailed by restricted certified mail as aforesaid, shall be proof of the service of the same. [C58, 62, 66, 71, 73, 75,§507B.6]

Referred to in §§507B.3, 514B.26

507B.7 Cease and desist orders and modifications thereof.

1. If, after such hearing, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings, an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of section 507B.4 or 507B.5, the commissioner may at his discretion order any one or more of the following:

a. Payment of a monetary penalty of not more than one thousand dollars for each and every act or violation, but not to exceed an aggregate of ten thousand dollars, unless the person knew or reasonably should have known he was in violation of section 507B.4 or 507B.5, in which case the penalty shall be not more than five thousand dollars for each and every

act or violation, but not to exceed an aggregate penalty of fifty thousand dollars in any one six-month period. The commissioner shall, if he finds the violations of sections 507B.4 or 507B.5 were directed, encouraged, condoned, ignored, or ratified by the employer of such person, assess such fine to the employer and not such person.

b. Suspension or revocation of the license of a person as defined in section 507B.2, subsection 1, if he knew or reasonably should have known he was in violation of section 507B.4 or section 507B.5.

2. Until the expiration of the time allowed under section 507B.8 for filing a petition for review if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the district court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as he may deem proper, modify or set aside in whole or in part any order issued by him under this section.

3. After the expiration of the time allowed for filing such a petition for review if no such petition has been duly filed within such time, the commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by him under this section, whenever in his opinion conditions of fact or of law have so changed as to require such action, or if the public interest shall so require. [C58, 62, 66, 71, 73, 75,§507B.7; 66GA, ch 67,§46]

Referred to in §507B.11

507B.8 Judicial review of cease and desist orders. Judicial review of the actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act.* To the extent that an order of the commissioner is affirmed in any judicial review proceeding, the court shall thereupon issue its own order commanding obedience to the terms of such order of the commissioner.

No order of the commissioner under this chapter or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state. [C58, 62, 66, 71, 73, 75,§507B.8]

Referred to in §507B.7
*Ch 17A

507B.9 Repealed by 64GA, ch 1111,§11.

507B.10 Repealed by 65GA, ch 1090,§211.

507B.11 Penalty. Any person who violates a cease and desist order of the commissioner under section 507B.7, and while such order is in effect, may after notice and hearing and upon order of the commissioner be subject at the discretion of the commissioner to any one or more of the following:

1. A monetary penalty of not more than ten thousand dollars for each and every act or violation.

2. Suspension or revocation of such person's license. [C97,§1783; S13,§1820-c; SS15,§1758-f; C24, 27, 31, 35, 39,§§**8667, 8760, 9022**; C46, 50, 54, §§508.24, 511.21, 515.144; C58, 62, 66, 71, 73, 75, §507B.11]

507B.12 Rules. The commissioner may, after notice and hearing, promulgate reasonable rules, as are necessary or proper to identify specific methods of competition or acts or practices which are prohibited by section 507B.4 or 507B.5, but the rules shall not enlarge upon or extend the provisions of such sections. Such rules shall be subject to review in accordance with chapter 17A.

The powers vested in the commissioner by this chapter shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive. [C58, 62, 66, 71, 73, 75,§507B.12]

507B.13 Immunity from prosecution. If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence pursuant thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding, provided, however, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury, nor shall he be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the insurance law of this state. Any such individual may execute, acknowledge and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or

evidence so produced. [C58, 62, 66, 71, 73, 75, §507B.13]

Constitutionality, 56GA, ch 237,§21

507B.14 Transfer of insurance stock. When a controlling interest in two or more corporations, at least one of which is an insurance company domiciled in this state, is held by any person, group of persons, firm, or corporation, no exchange of stock, transfer or sale of securities, or loan based upon securities of any such corporation shall take place between such corporations, or between such person, group of persons, firm or corporation and such corporations, without first securing the approval of the insurance commissioner. If, in the opinion of the insurance commissioner, such sale, transfer, exchange, or loan would be improper and would work to the detriment of any such insurance company, he shall have the power to prohibit the transaction. Any person, firm or corporate officer or director aiding such transaction carried out without approval of the insurance commissioner shall be deemed guilty of a felony and upon conviction punished as provided in section 502.605.

For purposes of this section, controlling interest means actual control or the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a firm, partnership, corporation, association, or trust, whether through the ownership of voting securities, by contract, or otherwise. [C66, 71, 73, 75,§507B.14; 66GA, ch 234,§§614, 619]

This section is not a part of the uniform Act

CHAPTER 508

LIFE INSURANCE COMPANIES

Referred to in §§491.1, 496A.142(1), 504A.100(1), 507.1, 507.12, 508A.1, 508A.5, 509.5, 510.33, 511.5, 511.8, 511.26, 514A.1, 515B.2, 515B.9, 521.1, 521A.1(5)

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508.1 Level premium plan companies. Every life insurance company upon the level premium or the natural premium plan, created under the laws of this or any other state or country, shall, before issuing policies in the state, comply with the provisions of this chapter applicable to such companies. [C73,§1161; C97,§1768; S13,§1768; C24, 27, 31, 35, 39,§8643; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.1]

S13,§1768, editorially divided

508.2 Approval of articles. Before any such company shall be permitted to incorporate under the laws of this state, it shall present its articles of incorporation to the commissioner of insurance and the attorney general and have the same by them approved. [S13, §1768; C24, 27, 31, 35, 39,§8644; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.2]

508.3 Requirements of articles. Such articles shall show the name, location of principal place of business, object, amount of capital, if a stock company, and shall contain such other provisions as may be necessary to a full understanding of the nature of the business to be transacted and the plan upon which the same is to be conducted. [S13,§1768; C24, 27, 31, 35, 39,§8645; C46, 50, 54, 58, 62, 66, 71, 73, 75, §508.3]

508.4 Approval of amendments. All amendments to such articles and amendments hereafter made to the articles of incorporation of companies already organized under the laws of this state shall be approved in like manner. [C97,§1768; C24, 27, 31, 35, 39,§**8646**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.4]

508.5 Capital and surplus required. No stock life insurance company shall be authorized to transact business under the provisions of this chapter with less than three hundred fifty thousand dollars capital stock fully paid for in cash and four hundred thousand dollars of surplus paid in in cash or invested as provided by law. The stock shall be divided into shares of not less than one dollar par value each. Nothing herein contained shall affect companies now authorized to transact business under the provisions of this chapter. [C73,§1162; C97,§1769; C24, 27, 31, 35, 39,§**8647**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.5]

Referred to in §508.9

508.6 Deposit of securities — certificate. Such securities shall be deposited with the commissioner of insurance and when such deposit is made and evidence furnished, by affidavit or otherwise, satisfactory to the commissioner, that the capital stock is all fully paid and the company possessed of the surplus required and that the company is the actual and unqualified owner of the securities representing the paid-up capital stock or other funds of the company, and all laws have been complied with, he shall issue to such company the certificate hereinafter provided for. [C73,§1162; C97,§1769; C24, 27, 31, 35, 39,§**8648**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.6]

40GA, ch 263, editorially divided

508.7 Loans to officers. No part of the capital or other funds shall be loaned directly or indirectly to any officer, director, stockholder, or employee of the company or directly or indirectly to any relative of any officer or director of such company. [C73,§1162; C97,§1769; C24, 27, 31, 35, 39,§**8649**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.7]

508.8 Insurance company officers—conflicts of interest prohibited. No director or officer of any life insurance company shall receive, in addition to his fixed salary or compensation, any money or valuable thing, either directly or indirectly, or through any substantial interest in any other corporation or business unit, for negotiating, procuring, recommending or aiding in any purchase or sale of property, or loan, made by such insurer or any affiliate or subsidiary thereof; nor shall he be pecuniarily interested, either as principal, coprincipal, agent or beneficiary, either directly or indirectly, or through any substantial interest in any other corporation or business unit, in any such purchase, sale or loan. [C24, 27, 31, 35, 39,§**8650**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.8]

508.9 Mutual companies—conditions. Level premium and natural premium life insurance companies organized under the laws of this state upon the mutual plan shall, before issuing any policies, have actual applications on at least two hundred and fifty lives for an average amount of one thousand dollars each, a list of which, giving the name, age, residence, amount of insurance, and annual premium of each applicant shall be filed with the commissioner of insurance, and a deposit made with him of an amount equal to three-fifths of the whole annual premium on said applications, in cash or the securities required by section 508.5, and in addition thereto a deposit of cash or securities of the character provided by law for the investment of funds for life insurance companies in the sum of three hundred thousand dollars, which shall constitute a guaranty fund for the protection of policyholders. In no event shall the contribution to said guaranty fund give to any contributors thereof, or to any other persons any voting or other power in the management of the affairs of the company by reason of such contribution. Said guaranty fund may be repaid to the contributors thereto with interest at six percent from the date of contribution, at any time, in whole or in part, provided such repayment does not reduce the surplus of the company below the amount of three hundred thousand dollars and then only provided consent in writing for such repayment is obtained from the commissioner of insurance; and on compliance with the provisions of this section, the commissioner shall issue to such mutual company the certificate hereinafter prescribed. [C73, §1163; C97,§1770; C24, 27, 31, 35, 39,§**8651**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.9]

508.10 Foreign companies—capital or surplus—investments. No company incorporated by or organized under the laws of any other state or government shall transact business in this state unless it is possessed of the actual amount of capital and surplus required of any company organized by the laws of this state, or, if it be a mutual company, of surplus equal in amount thereto, and the same is invested in bonds of the United States or of this state, or in interest-paying bonds, when they are at or above par, of the state in which the company is located, or of some other state, or in notes or bonds secured by mortgages on unencumbered real estate within this or the state where such company is located, worth one and one-third times the amount loaned thereon, which securities shall, at the time, be on deposit with the superintendent of insurance, auditor, comptroller, or chief financial officer of the state by whose laws the company is incorporated, or of some other state, and the commissioner of insurance is furnished with a certificate of such officer, under his official seal, that he as such officer holds in trust and on deposit for the benefit of all the policyholders of such company, the securities above mentioned. This certificate

shall embrace the items of security so held, and show that such officer is satisfied that such securities are worth the amount stated in the certificate. Nothing herein contained shall invalidate the agency of any company incorporated in another state by reason of its having exchanged the bonds or securities so deposited with such officer for other bonds or securities authorized by this chapter, or by reason of its having drawn its interest and dividends on the same. [C73,§1164; C97,§1772; C24, 27, 31, 35, 39,§8652; C46, 50, 54, 58, 62, 66, 71, 73, 75, §508.10]

508.11 Annual statement. The president or vice-president and secretary or actuary, or a majority of the directors of each company organized under this chapter, shall annually, by the first day of March, prepare under oath and file in the office of the commissioner of insurance a statement of its affairs for the year terminating on the thirty-first day of December preceding, showing:

1. The name of the company and where located.
2. The names of officers.
3. The amount of capital, if a stock company.
4. The amount of capital paid in, if a stock company.
5. The value of real estate owned by the company.
6. The amount of cash on hand.
7. The amount of cash deposited in banks, giving the name of the bank or banks.
8. The amount of cash in the hands of agents, and in the course of transmission.
9. The amount of bank stock, with the name of each bank, giving par and market value of the same.
10. The amount of bonds of the United States, and all other bonds and securities, giving names and amounts, with the par and market value of each kind.
11. The amount of loans secured by first mortgage on real estate, and where such real estate is situated.
12. The amount of all other bonds, loans, how secured, and the rate of interest.
13. The amount of premium notes and their value on policies in force, if a mutual company.
14. The amount of notes given for unpaid stock, and their value in detail, if a stock company.
15. The amount of assessments unpaid on stock or premium notes.
16. The amount of interest due and unpaid.
17. The amount of all other securities.
18. The amount of losses due and unpaid.
19. The amount of losses adjusted but not due.
20. The amount of losses unadjusted.
21. The amount of claims for losses resisted.
22. The amount of money borrowed and evidences thereof.
23. The amount of dividends unpaid on stock.
24. The amount of dividends unpaid on policies.
25. The amount required to safely reinsure all outstanding risks.
26. The amount of all other claims against the company.
27. The amount of net cash premiums received.
28. The amount of notes received for premiums.
29. The amount of interest received from all sources.
30. The amount received from all other sources.
31. The amount paid for losses.
32. The amount of dividends paid to policyholders, and the amount to stockholders, if a stock company.
33. The amount of commissions and salaries paid to agents.
34. The amount paid to officers for salaries and other compensation.
35. The amount paid for taxes.
36. The amount of all other payments and expenditures.
37. The greatest amount insured on any one life.
38. The amount deposited in other states or territories as security for policyholders therein, stating the amount in each state or territory.
39. The amount of premiums received in this state during the year.
40. The amount paid for losses in this state during the year.
41. The whole number of policies issued during the year, with the amount of insurance effected thereby, and total amount of risk.
42. All other items of information necessary to enable the commissioner of insurance to correctly estimate the cash value of policies, or to judge of the correctness of the valuation thereof.
43. All other information as required by the national association of insurance commissioners' annual statement blank. [C73,§1167; C97, §1773; C24, 27, 31, 35, 39,§8653; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.11]

Referred to in §511.3

508.12 Foreign companies may become domestic. Any company organized under the laws of any other state or country, and which has been admitted to do business in this state for the purpose of writing insurance authorized by this chapter, upon complying with all of the requirements of law relative to the organization of domestic insurance companies and to the execution, filing, recording and publishing of notice of incorporation and payment of corporation fees by like domestic corporations, and designating its principal place of business at a place in this state, and upon payment to the commissioner of insurance of a transfer tax in a sum equal to twenty-five percent of the premium tax paid pursuant to the provisions of chapter 432 for the last calendar year immediately preceding its becoming a domestic

corporation or the sum of ten thousand dollars, whichever is the lesser but not less than one thousand dollars, may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof. [C75,§508.12]

508.13 Annual certificate of authority. On receipt of the deposit provided in section 511.8, subsection 16, and the statement, and the statement and evidence of investment of foreign companies, all of which shall be renewed annually, by the first day of March, the commissioner of insurance shall issue a certificate setting forth the corporate name of the company, its home office, that it has fully complied with the laws of the state and is authorized to transact the business of life insurance for the ensuing year, which certificate shall expire on the first day of May of the ensuing year, or sooner upon thirty days' notice given by the commissioner, of the next annual valuation of its policies. Such certificate shall be renewed annually, upon the renewal of the deposit and statement by a domestic company, or of the statement and evidence of investment by a foreign company, and compliance with the conditions above required, and be subject to revocation as the original certificate. [C73,§1170; C97,§1775; C24, 27, 31, 35, 39,§**8657**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.13; 66GA, ch 67,§47]

508.14 Violation by domestic company. Upon a failure of any company organized under the laws of this state to make the deposit provided in section 511.8, subsection 16, or file the statement in the time herein stated, the commissioner of insurance shall notify the attorney general of the default, who shall at once apply to the district court of the county where the home office of such company is located for an order requiring the company to show cause upon reasonable notice, to be fixed by the court why its business shall not be discontinued. If, upon the hearing, no sufficient cause is shown, the court shall decree its dissolution. [C73,§1171; C97,§1776; C24, 27, 31, 35, 39,§**8658**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.14; 66GA, ch 67,§48]

C97,§1776, editorially divided

508.15 Violation by foreign company. Companies organized and chartered by the laws of a foreign state or country, failing to file the evidence of investment and statement within the time fixed, shall forfeit and pay the sum of three hundred dollars, to be collected in an action in the name of the state for the use of the school fund, and their right to transact further new business in this state shall immediately cease until the requirements of this chapter have been fully complied with. [C73, §1171; C97,§1776; C24, 27, 31, 35, 39,§**8659**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.15]

508.16 Examination. The commissioner of insurance at any time may make a personal examination of the books, papers, securities, and business of any life insurance company doing business in this state, or authorize any other suitable person to make the same, and he or the person so authorized may examine under oath any officer or agent of the company, or others, relative to its business and management. [C73,§1172; C97,§1777; C24, 27, 31, 35, 39,§**8660**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.16]

C97,§1777, editorially divided

508.17 Injunction — receivership — dissolution. If upon such examination the commissioner is of the opinion that the company is insolvent, or that its condition is such as to render its further continuance in business hazardous to the public or holders of its policies, he shall advise and communicate the facts to the attorney general, who shall at once apply to the district court of the county where the home office of a domestic company or an agency of a foreign company is located, for an injunction to restrain the company from transacting further business except the payment of losses already ascertained and due, until further hearing, and for the appointment of a receiver, and, if a domestic company, for the dissolution of the corporation. The court may grant a preliminary injunction with or without notice, as he may direct. [C73,§1172; C97,§1777; C24, 27, 31, 35, 39,§**8661**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.17]

Referred to in §§507.12, 508.19, 511.8(16)

508.18 Decree. The court, on the final hearing, may make decree subject to the provisions of section 508.19 as to the appointment of a receiver, the disposition of the deposits of the company in the hands of the commissioner, and its dissolution, if a domestic company. [C73,§1172; C97,§1777; C24, 27, 31, 35, 39,§**8662**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.18]

Referred to in §§507.12, 508.19, 511.8(16)

508.19 Securities. The securities of a defaulting or insolvent company, or a company against which proceedings are pending under sections 508.17 and 508.18, on deposit shall vest in the state for the benefit of the policies on which such deposits were made, and the proceeds of the same shall, by the order of the court upon final hearing, be divided among the holders thereof in the proportion of the last annual valuation of the same, or at any time be applied to the purchase of reinsurance for their benefit. [C73,§1173; C97,§1778; C24, 27, 31, 35, 39,§**8663**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.19]

Referred to in §§507.12, 508.18

508.20 Reinsurance securities — title vested in commissioner. The title to all securities deposited with the commissioner of insurance by any domestic life insurance company or association which has been, or hereafter shall be, reinsured by a foreign life insurance company, shall be vested in the commissioner for

the use and benefit of only the policies of the company reinsured in force at the date of such reinsurance agreement. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.20]

Constitutionality, 49GA, ch 271,§5

508.21 Amount to be deposited. The reinsuring company shall at all times maintain such deposits in at least the amount of the net reserve, as determined by the commissioner of insurance, on all policies reinsured. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.21]

508.22 Insolvency of company — procedure. In the event of insolvency or receivership of such reinsuring company or its successors, the commissioner shall be appointed by the district court of the state in and for Polk county as receiver of said insolvent reinsuring company, and shall proceed, subject to the court's approval, to reinsure said policies in another life insurance company or to liquidate the deposits for the sole benefit of the reinsured policies, and pending liquidation or reinsurance, shall have the sole right to collect premiums due on such policies. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.22]

508.23 and 508.24 Repealed by 56GA, ch 237, §§14, 15.

See ch 507B

508.25 Policy forms—approval. It shall be unlawful for any insurance company transacting business within this state, under the provisions of this chapter, to write or use any form of policy or contract of insurance, on the life of any individual in this state, until a copy of such form of policy or contract has been filed with and approved by the commissioner of insurance. [S13,§1783-a; C24, 27, 31, 35, 39,§8668; C46, 50, 54, 58, 62, 66, 71, 73, 75, §508.25]

Referred to in §§508.27, 510.8

508.26 Failure to file copy. Should any company decline to file a copy of its form of policies or contracts, the commissioner of insurance shall suspend its authority to transact business within the state until such forms of policies or contracts have been so filed and approved. [S13,§1783-c; C24, 27, 31, 35, 39,§8669; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.26]

S13,§1783-c, editorially divided

508.27 Violations. Any company violating any of the provisions of section 508.25 shall, upon conviction thereof, be fined in a sum not less than one hundred nor more than one thousand dollars for each such offense, and the court may also revoke its authority to do business within this state. [S13,§1783-c; C24, 27, 31, 35, 39,§8670; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.27]

508.28 Approval by commissioner—contestability of policy. The commissioner of insurance shall decline to approve any such form of policy or contract of insurance unless the same shall, in all respects, conform to the laws of this state applicable thereto. The policy shall be incontestable after it shall have been in force during the lifetime of the insured for two years from its date, except for nonpayment of premiums. [SS15,§1783-b; C24, 27, 31, 35, 39,§8671; C46, 50, 54, 58, 62, 66, 71, 73, 75, §508.28]

508.29 Authority to write other insurance. Any life insurance company organized on the stock or mutual plan and authorized by its charter or articles of incorporation so to do, may in addition to such life insurance, insure, either individually or on the group plan, the health of persons and against personal injuries, disablement or death, resulting from traveling or general accidents by land or water, and insure employers against loss in consequence of accidents or casualties of any kind to employees or other persons, or to property resulting from any act of the employee or any accident or casualty to persons or property, or both, occurring in or connected with the transaction of their business, or from the operation of any machinery connected therewith, but nothing herein contained shall be construed to authorize any life insurance company to insure against loss or injury to person, or property, or both, growing out of explosion or rupture of steam boilers. [S13,§1783-d; C24, 27, 31, 35, 39,§8672; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.29]

Referred to in §508.30

508.30 Liability. Every life insurance company issuing a separate policy, or maintaining a separate department, for the purpose of writing any of the classes of insurance authorized by section 508.29 shall also be subject to all of the provisions applicable to companies authorized to write a similar kind of insurance under the provisions of chapter 515. [C24, 27, 31, 35, 39,§8673; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.30]

508.31 Annuities. Any life insurance company organized on the stock or mutual plan may grant and sell annuities. [C35,§8673-e1; C39,§8673.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §508.31]

508.32 Proceeds of policy held in trust. Any life insurance company organized under the provisions of this chapter and doing business in this state, shall have the power to hold in trust the premiums or consideration paid for, or the proceeds of any life insurance policy or annuity contract, either individual or group, issued by it, upon such terms and subject to such limitations as to revocation or control by the policyholder or beneficiary thereunder, as shall have been agreed to in writing by such company and the policyholder; provided that the trust provisions herein contemplated shall in no manner subject said corporation to any of the provisions of the laws of Iowa relating to banks or trust companies; and provided further, that the trust or trusts for premiums or considerations

may be invested by such company in the manner specified in the trust instruments or agreements and held in a separate or segregated account; and provided further, that the forms of such trust agreements for beneficiaries shall be first submitted to and approved by the commissioner of insurance. The word "trust" shall include, but not be limited to settlement options and contracts issued pursuant to policies or contracts, and funds held in a separate or segregated account in connection with pension or profit-sharing plans pursuant to agreements with the policyholders. [C24, 27, 31, 35, 39,§8674; C46, 50, 54, 58, 62, 66, 71, 73, 75,§508.32]

508.33 Subsidiary companies acquired. Any life insurance company incorporated in this state may organize, or acquire by purchase, in whole or in part subsidiary insurance and investment companies in which it owns not less than fifty-one percent of the common stock, and notwithstanding any other provisions of this title inconsistent herewith may (1) invest funds from surplus for such purpose, (2) make loans to such subsidiaries, and (3) permit all or part of its officers and directors to serve as officers or directors of such subsidiary companies. [C66, 71, 73, 75,§508.33]

508.34 Must be separate company. Any subsidiary company shall be a separate and distinct company, with neither the organizing or acquiring life company nor such subsidiary having any liability to the creditors, policyholders or stockholders, if any, of the other. The organizing or acquiring company may be either a mutual or stock company. [C66, 71, 73, 75,§508.34]

508.35 Qualifications to do business. Any such subsidiary company organized by any such life insurance company shall comply with all the laws of the state of its incorporation pertaining to the organization and qualification to do business of its class or kind, and if incorporated outside of the state of Iowa shall be admitted to do business in this state only upon qualification under the laws of the state of Iowa relating to such foreign corporations. [C66, 71, 73, 75,§508.35]

508.36 Standard valuations. This section shall be known as the "Standard Valuation Law."

1. The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, except that in the case of an alien company, such valuation shall be limited to its United States business, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. For the purpose of making such valuation the commissioner may employ a competent actuary who shall be paid by the company for which the service is rendered; but a domestic company may make such valuation and it shall be received by the commissioner upon satisfactory proof of its correctness. In lieu of the valuation of the reserves herein required of any foreign or alien company, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

2. This subsection shall apply to only those policies and contracts issued prior to the operative date of section 508.37 (the Standard Nonforfeiture Law).

Except as otherwise provided in subsection 3, paragraphs *"f"* and *"g"* for group annuity and pure endowment contracts, the minimum standard of valuation for all policies of domestic life insurance companies shall be the Commissioners Reserve Valuation Method defined in paragraph *"b"* of subsection 3 and the American Experience Table of Mortality and four and one-half percent interest or the Actuaries' (or Combined) Experience Table of Mortality and four percent interest.

Reserves for all such policies and contracts may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

3. This subsection shall apply to only those policies and contracts issued on or after the operative date of section 508.37 (the Standard Nonforfeiture Law), except as otherwise provided in paragraphs *"f"* and *"g"* for group annuity and pure endowment contracts issued prior to such operative date.

a. Except as otherwise provided in paragraphs *"f"* and *"g"*, the minimum standard for the valuation of all such policies and contracts shall be the Commissioners Reserve Valuation Method defined in paragraph *"b"* of this subsection 3, three and one-half percent interest, or in the case of policies and contracts, other than annuity and pure endowment contracts,

issued on or after July 1, 1974, and prior to January 1, 1986, four percent interest, and the following tables:

(1) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the Commissioners 1958 Standard Ordinary Mortality Table, provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this subsection 3 may be calculated according to an age not more than three years younger than the actual age of the insured.

(2) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 Standard Industrial Mortality Table; provided, however, that the Commissioners 1961 Standard Industrial Mortality Table shall be the table for the minimum standard when said table becomes applicable under the Standard Nonforfeiture Law in accordance with section 508.37, subsection 5.

(3) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies,—the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner.

(4) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies,—the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts,—the tables of "Period 2" disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit. Such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(6) For accidental death benefits in or supplementary to policies,—the 1959 Accidental Death Benefits Table combined with a mortality table permitted for calculating the reserves for life insurance policies.

(7) For group life insurance, life insurance issued on the substandard basis and other special benefits,—such tables as may be approved by the commissioner.

b. Reserves according to the Commissioners Reserve Valuation Method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (x) over (y), as follows:

(x) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one* per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

*According to enrolled Act

(y) A net one-year term premium for such benefits provided for in the first policy year.

Reserves according to the Commissioners Reserve Valuation Method for (1) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (2) annuity and pure endowment contracts, (3) disability and accidental death benefits in all policies and contracts, and (4) all other benefits, except life insurance and endowment benefits in life insurance policies, shall be calculated by a method consistent with the principles of this paragraph "*b*", except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

c. In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the method set forth in paragraph "*b*" above and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

d. Reserves for any category of policies, contracts or benefits as established by the commissioner, may be calculated at the option of the company according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided. Provided, however, that reserves for participating life insurance policies may, with the consent of the commissioner, be calculated according to a rate of interest lower than the rate of interest used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half percent

the company issuing such policies shall file with the commissioner a plan providing for such equitable increase, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

e. If the gross premium charged by any life insurance company on any policy or contract is less than the net premium for the policy or contract according to the mortality table, rate of interest and method used in calculating the reserve thereon, according to the minimum standard prescribed in this section, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period.

f. The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the Commissioners Reserve Valuation Method defined in paragraph "*b*" of this subsection and the following tables and interest rates:

(1) For individual annuity and pure endowment contracts issued prior to January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts.

(2) For individual annuity and pure endowment contracts issued on or after January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and three and one-half percent interest.

(3) For all annuities and pure endowments purchased prior to January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent interest.

(4) For all annuities and pure endowments purchased on or after January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the commissioner, and three and one-half percent interest.

g. After July 1, 1974, any company may file with the commissioner a written notice of its election to comply with the provisions of paragraph "*f*" after a specified date before January 1, 1979, which shall be the operative date of paragraph "*f*" for such company; provided, a company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of paragraph "*f*" for such company shall be January 1, 1979. [C73,§1169; C97,§1774; C24, 27, 31, 35, 39,§8654; C46, 50, 54, 58, 62,§508.12; C66, 71, 73, 75,§508.36]

508.37 Standard nonforfeitures. This section shall be known as the "Standard Nonforfeiture Law."

1. In the case of policies issued on or after the operative date of this section as defined in subsection 8, no policy of life insurance, except as stated in subsection 7, shall be issued or delivered in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder:

a. That, in the event of default in any premium payment, the company will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified.

b. That, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

c. That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default.

d. That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

e. A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary, either during the first twenty

policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

f. A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Referred to in subsections 2 and 3

2. Any of the provisions or portions thereof set forth in subsection 1 which are not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy. The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.

3. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection 1, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of (*a*) the then present value of the adjusted premiums as defined in subsection 5, corresponding to premiums which would have fallen due on and after such anniversary, and (*b*) the amount of any indebtedness to the company on the policy. Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection 1, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

Referred to in subsection 6

4. Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

Referred to in subsection 6

5. Except as provided in the third paragraph of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (*a*) the then present value of the future guaranteed benefits provided for by the policy; (*b*) two percent of the amount of the insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (*c*) forty percent of the adjusted premium for the first policy year; (*d*) twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in "*c*" and "*d*" above, no adjusted premium shall be deemed to exceed four percent of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this subsection 5 shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this subsection 5 shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy, provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal

to *(e)* the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased during the period for which premiums for such term insurance benefits are payable, by *(f)* the adjusted premiums for such term insurance, the foregoing items "*e*" and "*f*" being calculated separately and as specified in the first two paragraphs of this subsection except that, for the purposes of "*b*", "*c*" and "*d*" of the first paragraph of this subsection, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in "*f*" of this paragraph shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in "*e*" of this paragraph.

All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured. Such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table; provided, however, that any company may file with the commissioner a written notice of its election that such adjusted premiums and present values shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table, after a specified date before January 1, 1968; provided, further, that, whether or not any election has been made, such Commissioners 1961 Standard Industrial Mortality Table shall be the basis for such calculations as to all policies of industrial insurance issued on or after January 1, 1968. All calculations shall be made on the basis of the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits; provided, that such rate of interest shall not exceed three and one-half percent per annum, except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after July 1, 1974, and prior to January 1, 1986. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed in the case of policies of ordinary insurance, may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table, and, in the case of policies of industrial insurance, may be not more than one hundred thirty percent of the rates of mortality according to the 1941 Standard Industrial Mortality Table, except that when the Commissioners 1961 Standard Industrial Mortality Table becomes applicable, as hereinbefore provided, such rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table, provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

Referred to in subsections 3, 6 and 7 of this section
Referred to in §508.36[3, *a*,(2)]

6. Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections 3, 4 and 5 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection 3 above, additional benefits payable (*a*) in the event of death or dismemberment by accident or accidental means, (*b*) in the event of total and permanent disability, (*c*) as reversionary annuity or deferred reversionary annuity benefits, (*d*) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, (*e*) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and (*f*) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded as ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

7. This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen years or less expiring before age sixty-six, for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsection 5 above, is less than the adjusted premium so calculated, on such fifteen year term policy issued at the same age and for the same initial amount of insurance, nor to any policy which shall be delivered outside this state through an agent or other representative of the com-

pany issuing the policy.

Referred to in subsection 1

8. After July 4, 1963, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such company), this section shall become operative with respect to the policies thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1966. [C66, 71, 73, 75,§508.37]

Referred to in §§508.36(2, 3), 508A.5
Subsection 8 referred to in subsection 1

CHAPTER 508A

VARIABLE ANNUITIES AND LIFE INSURANCE

508A.1 Basic requirements.
508A.2 Statement of variables.
508A.3 License requirements.
508A.4 Authority of commissioner.
508A.5 Other provisions applicable.

508A.1 Basic requirements. A domestic life insurance company organized under chapter 508 may establish one or more separate accounts, and may allocate thereto amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities, and benefits incidental thereto, payable in fixed or variable amounts or both, subject to the following:

1. The income, gains and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains or losses of the company.

2. Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subsection 3:

a. Amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of such life insurance companies; and

b. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of such company.

3. Except with the approval of the commissioner of insurance and under such conditions as to investments and other matters as he may prescribe, which shall recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to dollar amount and duration and funds guaranteed as to principal amount or stated rate of interest shall not be maintained in a separate account.

4. Unless otherwise approved by the commissioner of insurance, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; however, unless otherwise approved by the commissioner of insurance, the portion, if any, of the assets of such separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in subsection 3 shall be valued in accordance with the rules otherwise applicable to the company's assets.

5. Amounts allocated to a separate account in the exercise of the power granted by this chapter shall be owned by the company, and the company shall not be, nor hold itself out to be, a trustee with respect to such amounts. Unless it is provided to the contrary under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

6. No sale, exchange or other transfer of assets may be made by such company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made by a transfer of cash, or by a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the commissioner of insurance. The commissioner of insurance may approve other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

7. To the extent such company deems it necessary to comply with any applicable federal or state laws, such company, with respect to any separate account, including without limitation any separate account which is a

management investment company or a unit investment trust, may provide for persons having an interest therein appropriate voting and other rights and special procedures for the conduct of the business of such account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account. [C75,§508A.1]

508A.2 Statement of variables. Any contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of such variable benefits. Any such contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis. [C75,§508A.2]

508A.3 License requirements. No company shall deliver or issue for delivery within this state variable contracts unless it is licensed or organized to do a life insurance or annuity business in this state, and the commissioner of insurance is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner of insurance shall consider among other things:

1. The history and financial condition of the company;

2. The character, responsibility and fitness of the officers and directors of the company; and

3. The law and regulation under which the company is authorized in the state of domicile to issue variable contracts. The state of entry of an alien company shall be deemed its place of domicile for that purpose. If the company is a subsidiary of an admitted life insurance company, or affiliated with such company through common management or ownership, it may be deemed by the commissioner of insurance to have met the provisions of this section if either it or the parent or the affiliated company meets the requirements hereof. [C75,§508A.3]

508A.4 Authority of commissioner. Notwithstanding any other provision of law, the commissioner of insurance shall have sole authority to regulate the issuance and sale of variable contracts, and to issue such reasonable rules and regulations as may be appropriate to carry out the purposes and provisions of this chapter. [C75,§508A.4]

508A.5 Other provisions applicable. Except for section 508.37 and section 509.2, subsection 1, and except as otherwise provided in this chapter, all pertinent provisions of chapters 508, 509, 511 and 522 shall apply to separate accounts and contracts relating thereto. Any individual variable life insurance contract, delivered or issued for delivery in this state, shall contain nonforfeiture provisions appropriate to such a contract. Any group variable life insurance contract, delivered or issued for delivery in this state, shall contain a grace provision appropriate to such a contract. The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees. [C75,§508A.5]

CHAPTER 509

GROUP INSURANCE

Referred to in §§508A.5, 514C.1

509.1 Form of policy.
509.2 Provisions as part of group life policy.
509.3 Provisions as part of accident or health policy.
509.4 Number insured.
509.5 Authorized companies.
509.6 Approval of commissioner.
509.7 Grounds for revocation of authority.
509.8 Foreign policies.
509.9 Foreign companies.
509.10 Other provisions in policies.
509.11 Voting by policyholders.
509.12 Proceeds exempt from execution.
509.13 Repealed by 57GA, ch 243,§1.
509.14 Group insurance on franchise plan.
509.15 Assignment of policy.
509.16 Premium rates approved.
509.17 Guidelines for rates.
509.18 Prohibited deposit in financial institution.

509.1 Form of policy. No policy of group life, accident or health insurance shall be delivered in this state unless it conforms to one of the following descriptions:

1. A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the

employer for the benefit of persons other than the employer, subject to the following requirements:

a. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. The policy may also provide that the term "employees" shall include the board of directors if the employer is a corporation.

b. The premium for the group life policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy, except accident and health, may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least ten employees at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

e. Group policies may include dependents of the employee, including the spouse.

Referred to in subsection 2

2. A policy issued to any one of the following to be considered the policyholder:

a. An advisory, supervisory, or governing body or bodies of a regularly organized religious denomination to insure its clergymen, priests, or ministers of the gospel.

b. A teachers' association, to insure its members.

c. A lawyers' association, to insure its members.

d. A volunteer fire company, to insure all of its members.

e. A fraternal society or association, or any subordinate lodge or branch thereof, to insure its members.

f. A common principal of any group of persons similarly engaged between whom there exists a contractual relationship, to insure the members of such group.

g. An association, the members of which are students, teachers, administrators or officials of any elementary or secondary school or of any college, to insure the members thereof. For the purpose of this paragraph the students, teachers, administrators or officials of or for any such school or college shall constitute an association.

Provided that the provisions and requirements of subsection 1 of this section shall apply to such policy and the policyholder and insured in like manner as said subsection 1 of this section applies to employers and employees, except that if a policy is issued to a volunteer fire company or an association, the members of which are students, teachers, administrators or officials of any elementary or secondary school or of any college, the requirement for twenty-five members shall not apply, and, if issued to a teachers' association or lawyers' association, not less than sixty-five percent of the members thereof may be insured.

3. A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

b. The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent of the new entrants become insured.

d. The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor, or the face amount of any loan or loan commitment, totally or partially executed, creating personal liability and made in good faith for general agricultural or horticultural purposes to a debtor with seasonal income; however, it shall not exceed thirty-five thousand dollars.

e. The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment. Provided that in the case of a debtor for agricultural or horticultural purposes of the type described in paragraph "*d*", the insurance in excess of indebtedness to the creditor, if any, shall be payable to a named beneficiary, to the estate of the debtor or under the provision of a facility of payment clause.

4. A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives, or agents, subject to the following requirements:

a. The members eligible for insurance under the policy shall be all of the members of the union or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

b. The premium for the group life policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy, except accident and health, may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least sixty-five percent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least ten members at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

e. Policies may include dependents of the insured, including the spouse.

5. A policy issued to the trustees of a fund established by two or more employers in the same industry or by two or more labor unions or by one or more employers and by one or more labor unions which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

a. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees. The policy may also provide that the term "employees" shall include the board of directors if the employer is a corporation.

b. The premium for the policy shall be paid by the trustees wholly from funds established by the employers of the insured persons. The policy must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer, if the funds are contributed wholly by the employer or unions.

c. The policy must cover at least one hundred persons at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

e. Policies may include dependents of the insured, including the spouse.

6. A policy issued to any nonprofit industrial association (to be deemed the policyholder) incorporated for a period of at least ten years and organized for purposes other than obtaining insurance, subject to the following requirements:

a. If two or more members of the association, or any class or classes of members thereof determined by conditions pertaining to insurance, elect to insure their employees or any class or classes of employees determined by conditions pertaining to employment; and

b. The total number of insured employees must not be less than one thousand, and of these not less than seventy-five percent must be employees of members with at least twenty insured employees each, and further, not more

than ten percent may be employees of members with less than ten insured employees each; and

c. The insurance premiums are paid by such members to the association; each member, insofar as applicable to his own employees, may collect part of the premium from insured employees, and the method of apportionment of the premium payment between himself and his employees may be varied as among individual members; and

d. Not less than seventy-five percent of the eligible employees of each participating member may be insured where the employees pay a part of the premium. The word "employees" as used in this subsection shall also include the individual members and employees of such association.

e. Policies may include dependents of the employees, including the spouse.

7. A policy issued to the department of social services, which shall be deemed the policyholder, to insure eligible persons for medical assistance, or for both medical assistance and additional medical assistance, as defined by chapter 249A as hereafter amended.* [C24, 27, 31,§§8675, 8676; C35,§§8684-e1–8684-e3; C39, §§8684.01–8684.03; C46,§§509.1–509.3; C50, 54, 58, 62, 66, 71, 73, 75,§509.1]

*See §4.3

509.2 Provisions as part of group life policy. No policy of group life insurance shall be delivered in this state unless it contains in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the persons insured or at least as favorable to the persons insured, and more favorable to the policyholder, provided, however, that provisions of subsections 6 to 10, inclusive, of this section shall not apply to policies issued to a creditor to insure debtors of such creditor; that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and that if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies:

1. A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except that first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

2. A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime, nor unless it is contained in a written instrument signed by him.

3. A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

4. A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

5. A provision specifying an equitable adjustment of premiums or benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

6. A provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of such sum, living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum, not exceeding five hundred dollars, to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

7. A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in subsections 8 to 10, inclusive, following if applicable.

8. A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance

without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, and provided further that,

a. The individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

b. The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, provided that any amount of insurance which matures on the date of such termination, or has matured prior thereto as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination, and

c. The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

Referred to in §§509.4, 509.14(2,*b*)

9. A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by subsection 8 above, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days after such termination, and two thousand dollars.

10. A provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with subsections 8 or 9 above and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made. [C24, 27, 31, §§8677, 8678; C35,§§8684-e4,-e5; C39,§§**8684.04, 8684.05**; C46,§§509.4, 509.5; C50, 54, 58, 62, 66, 71, 73, 75,§509.2]

Referred to in §§508A.5, 509.4, 509.10, 509.14 [2, *a,b*]

509.3 Provisions as part of accident or health policy. All policies of group accident or health insurance or combination thereof issued in this state shall contain in substance the following provisions:

1. The policy shall have a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person.

2. A provision that the company will issue to the policyholder for delivery to each person insured under such policy an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and such provisions of the policy as are, in the opinion of the commissioner of insurance, necessary to inform the holder thereof as to his rights under the policy.

3. A provision that to the group or class thereof originally insured shall be added, from time to time, all new persons eligible to insurance in such group or class.

4. A provision that if the insurance on a person or insurance on a person and the person's dependents covered by the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policies, such person, if enrolled under the group policy for ninety days, shall be entitled to have issued to him by the insurer without evidence of insurability an individual or family policy of hospital and medical expense insurance provided application for the individual or family policy is made and the first premium paid to the insurer, within thirty-one days after termination, and provided further that,

a. The individual or family policy shall provide insurance protection substantially similar both in type and level of coverage to that which ceases because of such termination, but the coverage shall not exceed that provided under the group policy.

b. The individual or family policy may, at the option of such person, be on any one of the forms then customarily issued by the insurer at the age and for the benefits applied for.

c. The premium on the individual or family policy shall be at the insurer's customary rate applicable to that policy for a standard class of risk at the insured's attained age on the effective date of the policy.

d. Such employee is not then covered by another policy of hospital or surgical expense insurance providing similar benefits or is not covered by or eligible to be covered by a group contract or policy providing similar benefits or is not provided with similar benefits required by any statute or provided by any welfare

plan or program, which together with the converted policy would result in overinsurance or duplication of benefits.

e. The individual or family converted policy may include a provision whereby the insurer may request information at any premium due date of the policy of any person covered thereunder as to whether he is then covered by another policy of hospital or surgical expense insurance or hospital service or medical expense indemnity corporation subscriber contract providing similar benefits or is then covered by a group contract or policy providing similar benefits or is then provided with similar benefits required by any statute or provided by any welfare plan or program. If any such person is so covered or so provided and fails to furnish the details of such coverage when requested, the benefits payable under the converted policy may be based on the hospital, surgical or medical expenses actually incurred after excluding expenses to the extent they are payable under such other coverage or provided under such statute, plan or program.

f. The conversion provision shall also be available (1) upon the death of the employee or member, as the case may be, to the surviving spouse with respect to such of the spouse and children as are then covered by the group policy, and shall be available to a child solely with respect to himself upon his attaining the limiting age of coverage under the group policy while covered as a dependent thereunder, and (2) upon the divorce or annulment of the marriage of the employee or member, as the case may be, to the divorced spouse, or former spouse in the event of annulment, of such employee or member.

g. The effective date of the individual or family policy shall be the date on which coverage under the group policy ceases. [C24, 27, 31,§§8677, 8678; C35,§§8684-e4,-e6; C39,§§**8684.04, 8684.06**; C46,§§509.4, 509.6; C50, 54, 58, 62, 66, 71, 73, 75,§509.3]

Referred to in §§509.10, 509.14(2,*d*)

509.4 Number insured. An insurer may issue policies of individual life, accident, health, hospital, medical or surgical insurance or any combination thereof at reduced rates to employees of a common employer including the state, a county, school district, city or institution supported in whole or in part by public funds, but the number of employees to be insured must be more than one. The premium for such policies may be paid wholly or in part by the employer. If such policies shall provide term life insurance renewable only during the continuance of employment with the employer they shall also provide for conversion to a level premium life policy substantially in accordance with the provisions of subsection 8 of section 509.2. [C24, 27, 31,§§8675, 8678; C35,§§8684-e1,-e5; C39, §§**8684.01, 8684.05**; C46,§§509.1, 509.5; C50, 54, 58, 62, 66, 71, 73, 75,§509.4]

509.5 Authorized companies.

1. Any level premium life insurance company, organized on the stock or mutual plan and authorized to transact business under the provisions of chapter 508 may, upon complying with the provisions of said chapter and of this chapter, issue contracts providing for group life, or health, or accident insurance, or combinations thereof as defined in this chapter.

2. Any casualty company organized on the stock or mutual plan, or accident and health association authorized to transact business under the provisions of chapter 510 or chapter 515, or a reciprocal or interinsurance exchange organized under the provisions of chapter 520, may, by complying with the provisions of said chapters and of this chapter, issue contracts providing for health or accident insurance, or combinations thereof, as defined in this chapter. [C24, 27, 31,§8677; C35,§8684-e4; C39, §**8684.04**; C46,§509.4; C50, 54, 58, 62, 66, 71, 73, 75,§509.5]

509.6 Approval of commissioner. No policy or certificate of group insurance shall be issued in this state until the form thereof has been filed with the commissioner of insurance and approved by him. [C24, 27, 31,§8678; C35, §8684-e7; C39,§**8684.07**; C46,§509.7; C50, 54, 58, 62, 66, 71, 73, 75,§509.6]

Referred to in §§509.7, 509.8

509.7 Grounds for revocation of authority. Failure to comply with section 509.6 shall be deemed sufficient grounds for revocation of the certificate of authority of any company so violating. [C35,§8684-e8; C39,§**8684.08**; C46,§509.8; C50, 54, 58, 62, 66, 71, 73, 75,§509.7]

509.8 Foreign policies. Policies of group insurance issued in other states or countries by companies organized in this state may contain any provision required by the laws of the state, territory, district, or country in which the same are issued, anything in section 509.6 to the contrary notwithstanding. [C24, 27, 31, §8679; C35,§8684-e9; C39,§**8684.09**; C46,§509.9; C50, 54, 58, 62, 66, 71, 73, 75,§509.8]

509.9 Foreign companies. Policies of group insurance, when issued in this state by any company not organized under the laws of this state, may contain when issued any provision required by the law of the state, territory, or district of the United States under which the company is organized. [C24, 27, 31,§8680; C35, §8684-e10; C39,§**8684.10**; C46,§509.10; C50, 54, 58, 62, 66, 71, 73, 75,§509.9]

509.10 Other provisions in policies. Any group policy may contain any other provisions which meet the approval of the commissioner of insurance, provided such provisions are not in conflict with the standard provisions of sections 509.2 or 509.3. [C24, 27, 31,§8681; C35, §8684-e11; C39,§**8684.11**; C46,§509.11; C50, 54, 58, 62, 66, 71, 73, 75,§509.10]

509.11 Voting by policyholders. If policyholders are entitled to vote at meetings of a domestic insurance company, each policyholder of a group policy shall be entitled to one vote. [C24, 27, 31,§8682; C35,§8684-e12; C39,**§8684.12**; C46,§509.12; C50, 54, 58, 62, 66, 71, 73, 75,§509.11]

509.12 Proceeds exempt from execution. No policy of group insurance, nor the proceeds thereof, when payable to any person insured thereunder, or any beneficiary, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law, to pay any debt or liability of such insured person, or beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the person insured for the payment of his debts. [C24, 27, 31,§8683; C35,§8684-e13; C39, **§8684.13**; C46,§509.13; C50, 54, 58, 62, 66, 71, 73, 75,§509.12]

Similar provisions, §§511.37, 512.17

509.13 Repealed by 57GA, ch 243,§1.

509.14 Group insurance on franchise plan. It shall be lawful for an authorized insurer to issue life, accident and sickness insurance policies on a franchise plan at reduced rates, covering the members of an association, subject to the following:

1. An "association" as referred to herein shall consist of a labor union, trade association, association of employees, industrial association or professional association, which has been organized and operating more than two years for purposes other than procuring insurance.

2. A "franchise plan" as referred to herein shall consist of an insurance policy or policies covering the insurable members of an association, but in no case less than ten. Such policies may be written in the name of the association or may be written individually for the insured members, subject to the following:

a. A life insurance policy written in the name of the association, shall conform to the provisions of section 509.2.

b. An individual policy on the life of a member of an association, providing for term insurance renewable only during the continuation of membership, shall also provide in the event of termination of membership the same provision for conversion as set out in subsection 8 of section 509.2.

c. An individual life policy written on any basis other than term shall provide that the policyholder may elect to continue it in force upon his termination of membership in the association by giving the insurer a notice in writing of such election within thirty days thereafter and paying therefor his renewal premium, which the insurer may increase to reflect the normal individual rate for the policyholder as determined by his age and class at the date of issue of his policy.

d. If an accident and sickness policy is written in the name of the association, it shall conform to the provisions of section 509.3.

e. An individual accident and sickness policy shall be subject to the provisions of chapter 514A.

f. Premiums for such policies may be paid entirely from the funds of the association, entirely from the funds of the members or partly from the funds of each.

g. Accident and sickness policies may include the spouse and dependents of the insured. C54, 58, 62, 66, 71, 73, 75,§509.14]

509.15 Assignment of policy. Any person insured under a group life insurance policy may assign the rights, benefits and all other incidents of ownership conferred on him by any provision of such policy or by law, including specifically and not by way of limitation the right, if any, to have issued to him an individual policy and the right to name a beneficiary. Subject to the terms of the policy or agreement between the insured, the group policyholder and the insurer, any such assignment, whether made before or after July 1, 1971, is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all rights, benefits and incidents of ownership conferred upon the insured under the policy and shall entitle the insurer to deal with the assignee as the owner of such rights, benefits and incidents of ownership, provided the insurer shall not be affected by any assignment until he has received written notice thereof. This section shall be construed as declaring the law as it existed prior to its enactment* and not modifying it. [C73, 75, §509.15]

***Enacted July 1, 1971**

509.16 Premium rates approved. No individual policy of credit life or credit accident and health insurance or certificate under a policy of group credit life or credit accident and health insurance shall be issued for delivery or delivered in this state unless the premium rates charged for the insurance are approved by the commissioner of insurance. [C75, §509.16]

Referred to in §509.17

509.17 Guidelines for rates. Rates shall be made in accordance with the following provisions:

1. Rates shall not be excessive, inadequate or unfairly discriminatory.

2. Due consideration shall be given to past and prospective loss experience within and outside this state, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses both countrywide and those especially applicable to this state, and to all other relevant factors within and outside this state, but rates shall be deemed reasonable under this section and section 509.16 if they reasonably may be expected to produce a ratio of fifty percent by dividing claims incurred by premiums earned.

3. The commissioner shall, after a public hearing, approve a reasonable charge or premium for credit accident and health insurance as he deems appropriate and necessary for the implementation of this section. A charge or premium of not more than seventy-five cents per annum per one hundred dollars of the initial amount of decreasing term credit life insurance, or its actuarial equivalent for credit life insurance written on other than the decreasing term basis, shall be conclusively presumed to meet the requirements of this section. [C71, 73,§535.2; C75,§509.17]

509.18 Prohibited deposit in financial institution. A company or its agent licensed to sell a policy of credit life or credit accident and health insurance or certificate under a policy of group credit life or credit accident and health insurance shall not deposit or offer to deposit funds in a financial institution of this state in exchange for the privilege of selling such insurance to or on behalf of the financial institution. Any person violating the provisions of this section shall be guilty of a misdemeanor. [C75,§509.18]

CHAPTER 509A

GROUP INSURANCE FOR PUBLIC EMPLOYEES

509A.1 Authority of governing body.
509A.2 Sources of funds.
509A.3 Assessment of employees.
509A.4 Participation optional.
509A.5 Fund under control of governing body.
509A.6 Contract with insurance carrier or health maintenance organization.
509A.7 Employee defined.
509A.8 Rules.
509A.9 Exemption from debts.
509A.10 Decisions of governing body final.
509A.11 Definitions.
509A.12 Deferred compensation program for governmental employees.

509A.1 Authority of governing body. The governing body of the state, county, school district or any institution supported in whole or in part by public funds may establish plans for and procure group insurance, health or medical service for the employees of the state, county, school district or tax-supported institution. The county board of supervisors may establish plans for and procure group insurance, health or medical service for the county auditor, the county treasurer, the county attorney, the county recorder, the clerk of the district court, the members of the board of supervisors and the sheriff. [C50, 54, 58, 62, §365A.1; C66,§509.15; C71, 73, 75,§509A.1]

509A.2 Sources of funds. The funds for such plans shall be created solely from the contributions of employees, or from contributions wholly or in part by the governing body. [C50, 54, 58, 62,§365A.2; C66,§509.16; C71, 73, 75,§509A.2]

Referred to in §509A.3

509A.3 Assessment of employees. All employees participating in any such plan the fund of which is created under the provisions of section 509A.2 shall be assessed and required to pay an amount to be fixed by the governing body not to exceed the two percent which shall be contributed by the public body according to the plan adopted, and the amount so assessed shall be deducted and retained out of the wages or salaries of such employees.

Any employee may authorize deductions from his wages or salary in payment for plans authorized in this division in the manner provided in section 514.16. [C50, 54, 58, 62,§365A.3; C66,§509.17; C71, 73, 75,§509A.3; 66GA, ch 67,§49]

509A.4 Participation optional. Participation in any such plan shall be optional with all employees eligible to the benefits thereof as provided by the rules adopted by the governing body pursuant thereto. Election to participate therein shall be in writing signed by the employee and filed with the governing body. [C50, 54, 58, 62,§365A.4; C66,§509.18; C71, 73, 75,§509A.4]

509A.5 Fund under control of governing body. The fund for each plan shall be under the control and shall be expended under the directions of the governing body and shall be used solely for the purpose of administering and carrying out the provisions of the plan adopted by the governing body. [C50, 54, 58, 62,§365A.5; C66,§509.19; C71, 73, 75,§509A.5]

509A.6 Contract with insurance carrier or health maintenance organization. The governing body may contract with a nonprofit corporation operating under the provisions of this chapter or chapter 514 or with any insurance company having a certificate of authority to transact an insurance business in this state with respect of a group insurance plan, which may include life, accident, health, hospitalization and disability insurance during period of active service of such employees, with the right of any employee to continue such life insurance in force after termination of active service at such employee's sole expense; may contract with a nonprofit corporation operating under and governed by the pro-

visions of this chapter or chapter 514 with respect of any hospital or medical service plan; and may contract with a health maintenance organization authorized to operate in this state with respect to health maintenance organization activities. [C50, 54, 58, 62,§365A.6; C66, §509.20; C71, 73, 75,§509A.6]

509A.7 Employee defined. The word "employee" as used in this division shall not include temporary or retired employees; however, nothing herein shall be construed as preventing a retired employee from voluntarily continuing in force, at his own expense, an existing contract. For purposes of group insurance, the word "employee" includes a full-time certified court reporter as an employee of each county within the judicial district which employs him, on a percentage basis as provided in section 605.9. However, group insurance for the certified court reporter may be obtained through only one of the counties within the district, at the reporter's option, with a percentage contribution from the other counties, on the basis provided in section 605.9, for the employer's share of the premium. [C50, 54, 58, 62,§365A.7; C66,§509.21; C71, 73, 75, §509A.7]

509A.8 Rules. The governing body of public bodies establishing any such plan under this chapter shall administer such plan and formulate and establish rules for the operation thereof, not inconsistent with the provisions of this division. [C50, 54, 58, 62,§365A.8; C66,§509.22; C71, 73, 75,§509A.8]

509A.9 Exemption from debts. All amounts payable to employees under and pursuant to the plan of group insurance established as herein provided shall be exempt from liability for debts of the person to or on account of whom the same is payable and shall not be subject to seizure upon execution or other process. [C50, 54, 58, 62,§365A.9; C66,§509.23; C71, 73, 75,§509A.9]

509A.10 Decisions of governing body final. The decisions of the governing body upon all matters upon which the said governing body is empowered to act, under and pursuant to the provisions hereof, shall be final and conclusive, in the absence of fraud, and no appeal shall be allowed therefrom nor shall such decisions of the governing body, in the absence of fraud, be reviewed, enjoined or set aside by any court. [C50, 54, 58, 62,§365A.10; C66,§509.24; C71, 73, 75,§509A.10]

509A.11 Definitions. For purposes of this chapter the following terms shall have the following meaning:

1. The words "governing body" mean the executive council of the state, the board of supervisors of counties, the school boards of school districts, and the superintendent or other person in charge of an institution supported in whole or in part by public funds.

2. The words "public body" mean the state, a county, school district or institution supported in whole or in part by public funds. [C58, 62,§365A.11; C66,§509.25; C71, 73, 75, §509A.11]

509A.12 Deferred compensation program for governmental employees. At the request of an employee the governing body shall by contractual agreement acquire an individual or group life insurance contract, annuity contract, security or any other deferred payment contract for the purpose of funding a deferred compensation program for an employee, from any company the employee may choose that is authorized to do business in this state and from any life underwriter duly licensed by this state or from any securities dealer or salesman registered in this state to contract business in this state. The deferred compensation program shall be administered so that the state comptroller or his designees may remit one sum for the entire program according to a single billing.

The provisions of this section shall be in addition to any benefit program provided by law for any employees of the state or any of its political subdivisions. [C73, 75,§509A.12]

Saving clause, see Code 1971, §509A.12

CHAPTER 510

ASSESSMENT LIFE INSURANCE

Referred to in §§491.1, 496A.142(1), 504A.100(1), 507.1, 509.5, 511.5, 511.8, 511.15, 511.26, 512.7, 514A.1, 515B.2, 521.1

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510.37 Valuation of policies.
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510.39 Accident or health associations.

510.1 Assessment plan. Every corporation organized upon the assessment plan, for the purpose of insuring the lives of individuals or furnishing benefits to the widows, heirs, orphans or legatees of deceased members, or insuring the health of persons, or furnishing accident indemnity, shall be styled an association. [C97,§1784; S13,§1784; C24, 27, 31, 35, 39,§8685; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.1]

S13,§1784, editorially divided

510.2 Assessment plan of life insurance defined. Any corporation doing business under this chapter which provides for the payment of policy claims, accumulation of a reserve or emergency fund, the expense of management and prosecution of the business, by payment of assessments as provided in its contracts, and wherein the liability of the insured to contribute to the payment of policy claims is not limited to a fixed amount, shall be deemed to be engaged in the business of life insurance upon the assessment plan, and shall be subject to the provisions of this chapter, and chapter 511. [C97,§1784; S13,§1784; C24, 27, 31, 35, 39,§8686; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.2]

510.3 "Certificate" defined. "Certificates of membership" or "certificate", when used in this chapter with respect to the insurance of the members, shall be taken to mean and include policy of insurance. [C97,§1785; C24, 27, 31, 35, 39,§8687; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.3]

C97,§1785, editorially divided

510.4 Articles — approval. The articles of incorporation and bylaws of any such association shall show its plan of business, and be submitted to the commissioner of insurance and the attorney general, and if they are found by those officers to comply with the provisions of this title, chapter, and of law, they shall approve the same. [C97,§1785; C24, 27, 31, 35, 39,§8688; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.4]

510.5 Record and publication. When the articles are thus approved, they shall be recorded in the office of the secretary of state, and a notice published within ninety days in the manner and for the time provided in the general incorporation laws. [C97,§1785; C24, 27, 31, 35, 39,§8689; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.5]

Publication of notice, §491.17 et seq.

510.6 Right of member to vote. Every member of any association organized under the provisions of this chapter shall be entitled to vote, either in person or by proxy, at every regular and special meeting of such association. No such association shall limit the right of any member to so vote, unless the proposal to limit shall have first been submitted to the entire membership for vote and shall have been approved by a majority of those voting. [C24, 27, 31, 35, 39,§8690; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.6]

510.7 Name. No such association shall take any name in use by another organization, or one so closely resembling it as to mislead the public as to its identity. [C97,§1786; C24, 27, 31, 35, 39,§8691; C46, 50, 54, 58, 62, 66, 71, 73, 75, §510.7]

510.8 Conditions for commencing business —approval of policy forms. Before issuing any policy or certificate of membership, if the association at the time has not a membership sufficient to pay the full amount of its certificate or policy on an assessment, it shall cause all applications for insurance to have printed in red ink, in a conspicuous manner along the margin thereof, the words: "It is understood that the amount of insurance to be paid under this application, and certificate or policy issued thereon, shall depend upon the amount collected from an assessment therefor." It must have actual applications upon at least two hundred fifty lives for at least one thousand dollars each; and it shall file with the commissioner of insurance satisfactory proof that the president, secretary, and treasurer have each given a good and sufficient bond for five thousand dollars for the faithful discharge of their duties as such officers, sworn copies of which shall be filed with him. It shall also file with him a list, verified by the president and secretary, of the applications, giving the name,

age, and residence of each applicant, the amount of insurance applied for by each, together with the annual dues and the proposed assessments thereon. Its policy forms shall be approved, as provided by section 508.25. [C97,§1787; S13,§1787; C24, 27, 31, 35, 39,§8692; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.8]

510.9 Assessments — diversion of funds. The articles and bylaws of each such association shall state the objects to which the money to be collected is to be devoted, and no part of the proceeds thereof shall be applied to any other purpose than as stated, and the excess, if any, beyond payment of the benefit, shall be set aside and applied only to like purposes, except that all sums collected for expenses and not used for that purpose may be transferred to the benefit, emergency, or reserve fund. [C97,§1788; S13,§1788; C24, 27, 31, 35, 39,§8693; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.9]

510.10 Insurable age — beneficiary and change thereof — assignment. No association organized or operating under this chapter shall issue a certificate of membership to any person under fifteen or over sixty-five years of age, or unless the beneficiary named in the certificate is the husband, wife, relative, legal representative, heir, creditor, or legatee of the insured member, nor shall any such certificate be assigned. Any certificate issued or assignment made in violation of this section shall be void.

The beneficiary named in the certificate may be changed at any time at the pleasure of the assured, as may be provided for in the articles or bylaws, but no certificate issued for the benefit of a wife or children shall be thus changed so as to become payable to the creditors; provided that the foregoing provisions of this section shall not be applicable except as to certificates issued prior to July 4, 1923, to life associations organized and operating under this chapter issuing life insurance policies or certificates of membership, and any member or policyholder in any such life association shall have the right to designate his beneficiary, and unless the policy is issued without the right of revocation, shall have the right to change the beneficiary in the manner authorized by the rules, laws, and regulations of the association, or as may be provided in the policy contract; and no beneficiary under any policy shall have or obtain any vested right or interest in the death benefits to be payable under said policy, until such benefits shall become due and payable after the death of the insured. [C97,§1789; C24, 27, 31, 35, 39,§8694; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.10]

Similar provisions, §§512.9, 512.10, 512.56, 512.60, 512.69

510.11 Business year—annual report—fees. The annual business of such association organized under the laws of this state shall close on the thirty-first day of December of each year, and it shall within sixty days thereafter prepare and file in the office of the commissioner of insurance a detailed statement, verified by its president and secretary, giving its assets, liabilities, receipts from each assessment and all other sources, expenditures, salaries of officers, number of contributing members, death losses paid and amount paid on each, death losses reported but not paid, and furnish such other information as the commissioner, who shall provide blanks for that purpose, may require, so that its true financial condition may be shown, and shall pay, upon filing each annual statement, the sum of three dollars, and such other fees as are required by the provisions of sections 511.24 to 511.26. [C97,§1790; C24, 27, 31, 35, 39,§8695; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.11]

Referred to in §511.3
C97,§1790, editorially divided

510.12 Publication of report—examination and expense. The commissioner of insurance shall publish such annual statement in detail in his report, and for the purpose of verifying it he may make or cause to be made an examination of the affairs of any such association at its expense, which shall be, if done by him or his clerk, necessary hotel and traveling expenses only, if, by a person not regularly employed in his office, the actual cost thereof for the time required and actual expenses, but the examination herein provided for shall be in addition to those authorized by the provisions of section 507.2. [C97,§1790; C24, 27, 31, 35, 39,§8696; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.12]

510.13 Bonds—supplemental reports. If the commissioner regards it necessary for the safety of the funds of the association, he may require the bonds of the officers to be increased to an amount not exceeding double the sum for which they are accountable, and he may also require supplemental reports from such association at such time and in such form as he may direct, and it shall be the duty of its officers to furnish the bonds and reports when thus required. [C97,§1790; C24, 27, 31, 35, 39,§8697; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.13]

Referred to in §511.3

510.14 Certificate of authority. Upon compliance with the provisions of this chapter by an association, the commissioner of insurance shall issue to it a certificate, setting forth that it has fully complied with the provisions of this chapter, and is authorized to transact business for a period of one year from May 1 of the year of its issue. [C97,§1796; C24, 27, 31, 35, 39,§8702; C46, 50, 54, 58, 62, 66, 71, 73, 75, §510.14]

510.15 Foreign companies. Any association organized under the laws of any other state to carry on the business of insuring the lives of persons, or of furnishing benefits to the widows, orphans, heirs, or legatees of deceased members, or of paying accident indemnity, or surrender value of certificates of insurance

upon the stipulated premium plan or assessment plan, may be permitted to do business in the state by complying with the requirements hereinafter made, but not otherwise. [C97,§1794; S13,§1794; C24, 27, 31, 35, 39,§8703; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.15]

Referred to in §510.23

S13,§1794, editorially divided

510.16 Articles — bylaws — applications and policy. It shall file with the commissioner of insurance a copy of its charter or articles of incorporation, duly certified by the proper officers of the state wherein it was organized, together with a copy of its bylaws, application and policy or certificate of membership. [C97, §1794; S13,§1794; C24, 27, 31, 35, 39,§8704; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.16]

Referred to in §§510.19, 510.23

510.17 Location — officers — financial showing. It shall also file with the commissioner a statement, signed and verified by its president and secretary, which shall show the name and location of the association, its principal place of business, the names of its president, secretary, and other principal officers, the number of certificates or policies in force, the aggregate amount insured thereby, the amount paid to beneficiaries in the event of death or accident, the amount paid on the last death loss and the date thereof, the amount of cash or other assets owned by the association and how invested, and any other information which the commissioner may require. [C97, §1794; S13,§1794; C24, 27, 31, 35, 39,§8705; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.17]

Referred to in §§510.19, 510.23

510.18 Adequacy of assessments and management. The statement, papers, and proofs thus filed shall show that the death loss or surrender value of the certificate of insurance or accident indemnity is in the main provided for by assessments upon or contributions by surviving members of such association, and that it is legally organized, honestly managed, and that an ordinary assessment upon its members or other regular contributions to its mortuary fund are sufficient to pay its maximum certificate to the full limit named therein. [C97,§1794; S13,§1794; C24, 27, 31, 35, 39, §8706; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.18]

Referred to in §§510.19, 510.23

510.19 Certificate of authority—fee. Upon its complying with the provisions of sections 510.16 to 510.18, and of section 511.27, and the payment of twenty-five dollars, the commissioner shall issue to it a certificate of authority to do business in this state, provided the same right is extended by the state in which said association is organized to associations of the same class in this state. [C97,§1794; S13,§1794; C24, 27, 31, 35, 39,§8707; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.19]

Referred to in §510.23

510.20 Examinations. When the commissioner doubts the solvency of any foreign association, and the failure to pay the full limit named in its certificate or policy shall be such evidence of its insolvency as to require the commissioner to investigate it, he shall for this or other good cause, at the expense of such association, cause an examination of its books, papers, and business to be made. [C97,§1794; S13,§1794; C24, 27, 31, 35, 39, §8708; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.20]

Referred to in §510.23

510.21 Examiner's fee — payment. If the commissioner appoints someone not receiving a regular salary in his office to make this examination, such examiner shall receive a per diem in an amount fixed by the commissioner for his services in addition to his actual traveling and hotel expenses, to be paid by the association examined, or by the state on the approval of the executive council, if the association fails to pay the same. [C97,§1794; S13, §1794; C24, 27, 31, 35, 39,§8709; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.21]

Referred to in §510.23

510.22 Revocation of certificate. If upon such examination he finds that the association is not financially sound, or is not paying its policies or certificates in full, or is conducting its business fraudulently, or if it shall fail to make the statement required by law, he may revoke its authority and prohibit it from doing business until it shall again comply with the provisions of this chapter. [C97, §1794; S13,§1794; C24, 27, 31, 35, 39,§8710; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.22]

Referred to in §510.23

510.23 Applicability of sections. The provisions of sections 510.15 to 510.22 shall apply to fraternal beneficiary associations doing exclusively an accident insurance business, and upon compliance with the provisions of this chapter, and the provisions of chapter 511, so far as the same are applicable, such associations may be authorized to transact business within this state. [S13,§1794; C24, 27, 31, 35, 39,§8711; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.23]

Referred to in §514A.1

510.24 Proceedings to control or wind up. When any association organized under this title and chapter fails to make its annual statement on or before the first day of March, or is conducting its business fraudulently or not in compliance with law, or is not carrying out its contracts with its members in good faith, the commissioner of insurance shall promptly communicate the fact to the attorney general, who shall at once commence action before the district court of the county in which such association has its principal place of business, giving it reasonable notice thereof. [C97,§1795; C24, 27, 31, 35, 39,§8712; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.24]

C97,§1795, editorially divided

510.25 Removal of officers. If upon a hearing it is found to be advantageous to the holders of certificates of membership therein, said court or judge may remove any officer or of-

ficers, and appoint others in their place until the next annual election. [C97,§1795; C24, 27, 31, 35, 39,§8713; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.25]

510.26 Receiver. If it is advantageous to the holders of certificates that the affairs of said corporation be wound up, the court or judge shall so direct, and for that purpose may appoint a receiver who shall treat all legal claims for death benefits as preferred. [C97, §1795; C24, 27, 31, 35, 39,§8714; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.26]

510.27 Transfer of membership — division of surplus. The receiver may also, with the approval of the court, transfer the members of such association who consent thereto to some like solvent association of the state, or divide the surplus accumulated in proportion to the share due each certificate at the time. [C97,§1795; C24, 27, 31, 35, 39,§8715; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.27]

510.28 Distribution of surplus. Any association which provides in the main for the payment of death losses or accident indemnity by assessments upon its members, or stipulated premium plan, may provide for the equitable distribution of any surplus or advance insurance fund accumulated in the course of its business, which may be paid in cash, or applied in the reduction or payment of future premiums, paid-up or extended insurance, as its rules or contracts may provide, and for an equitable surrender value upon the cancellation of a certificate or policy, provided the terms and conditions thereof are set forth in such policy or certificate of membership, and such surrender value shall in the main be accumulated during the term of such policy or certificate. [C97,§1797; C24, 27, 31, 35, 39,§8716; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.28]

510.29 Benevolent societies—process. Nothing in this chapter shall be construed to apply to any association organized solely for benevolent purposes and composed wholly of members of any one occupation, guild, profession, or religious denomination, but any such society may, by complying with the provisions hereof, become entitled to all the privileges thereof, in which event it shall be amenable to the provisions of this chapter so far as they are applicable; provided that if organized under the laws of another state or country, they shall file with the commissioner of insurance an agreement in writing authorizing service or notice of process to be made upon the said commissioner, and when so made shall be as valid and binding as if served upon the association within this state. [C97,§1798; S13,§1798; C24, 27, 31, 35, 39,§8717; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.29]

510.30 Assessment associations prohibited. No life, health, or accident insurance company or association, other than fraternal beneficiary associations, which issues contracts, the performance of which is contingent upon the payment of assessments of call made upon its members, shall do business within this state except such companies or associations as are now authorized to do business within this state and which, if a life insurance company or association, shall value their assessment policies or certificates of membership as yearly renewable term policies according to the standard of valuation of life insurance policies prescribed by the laws of this state. [S13,§1798-a; C24, 27, 31, 35, 39,§8718; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.30]

Referred to in §510.31

510.31 Exceptions. The provisions of section 510.30 shall not apply to unincorporated assessment associations now existing in this state, and having policyholders or certificates of membership numbering not less than two hundred fifty, and which were organized or in existence in this state as such unincorporated assessment associations prior to March 23, 1907; but any such unincorporated assessment association now existing in this state, having policyholders or certificates of membership numbering not less than two hundred fifty and which were organized or in existence in this state prior to March 23, 1907, may, by becoming hereafter incorporated in this state, and complying with the provisions of this chapter, become entitled to all of the privileges hereof, in which event it shall become amenable to the provisions of this chapter as far as they are applicable. [C24, 27, 31, 35, 39, §8719; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.31]

510.32 Reciprocal authorization. The commissioner of insurance of this state may authorize any health or accident insurance company or association organized under the laws of any other state or territory, to do business in this state, if, under the laws of such state or territory health and accident insurance companies or associations organized under the laws of this state are permitted to do business in such state. [C24, 27, 31, 35, 39,§8720; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.32]

510.33 Separate classes of policyholders. Any life insurance association, other than fraternal beneficiary associations, incorporated and doing business under the provisions of this chapter, may establish a separate class of members or policyholders to whom it may issue certificates or policies of insurance on the legal reserve or level premium plan, provided that all such policies on the legal reserve or level premium plan shall be valued on a basis not lower than the valuations required for insurance companies operating on the level premium or the natural premium plan under the provisions of chapter 508. [C24, 27, 31, 35, 39,§8721; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.33]

40GA, ch 171,§3, editorially divided

510.34 Cash value of policies. The net cash value of all policies in force on the legal re-

serve or level premium plan in any such association shall be ascertained in accordance with the basis of valuations which shall be adopted for said policies, and the amount of such ascertained valuation, and all other amounts which shall be accumulated and held in trust for the benefit of members or policyholders of any class or held for the purpose of fulfilling any contract in its policies or certificates, shall be invested in the securities provided in section 511.8, and deposited with the commissioner of insurance as provided in said section. [C24, 27, 31, 35, 39,§**8722**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.34]

510.35 Trust funds. An amount of the funds herein provided for, not less than the reserve valuation required to be maintained on all such policies on the legal reserve or level premium plan, shall be held at all times for the exclusive use and benefit of the class of policyholders having policies on said legal reserve or level premium plan. [C24, 27, 31, 35, 39,§**8723**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §510.35]

510.36 Reincorporation. Any existing domestic assessment company or association, or fraternal beneficiary society may, with the written consent of the commissioner of insurance, upon a majority vote of its trustees or directors, amend its articles of incorporation and bylaws in such manner as to transform itself into a legal reserve or level premium company, and upon so doing and upon procuring from the commissioner a certificate of authority, as prescribed by law, to transact business in this state as a legal reserve or level premium company, shall incur the obligations and enjoy the benefits thereof, the same as though originally thus incorporated, and such corporation, under its charter as thus amended, shall be a continuation of such original corporation. The officers thereof shall serve through their respective terms as provided in the original charter, but their successors shall be elected and serve as in such amended articles provided; but such amendment or reincorporation shall not affect existing suits, rights, or contracts. [SS15,§1798-b; C24, 27, 31, 35, 39,§**8724**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.36]

Referred to in §§510.38, 510.39
S13,§1798-b, editorially divided

510.37 Valuation of policies. Any assessment company or fraternal beneficiary society reincorporated to transact life insurance business, shall value its assessment policies or certificates or benefit certificates as yearly renewable term policies according to the standard of valuation of life insurance policies prescribed by the laws of this state. [SS15, §1798-b; C24, 27, 31, 35, 39,§**8725**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.37]

Referred to in §§510.38, 510.39

510.38 Reinsurance reserve required. No such company or association shall reorganize under the provisions of sections 510.36 and 510.37 unless it shall have accumulated sufficient surplus to constitute a reinsurance reserve equal to the unearned premium on all outstanding policies or certificates, as prescribed by the statutes of this state relating thereto. [SS15,§1798-b; C24, 27, 31, 35, 39,§**8726**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.38]

Referred to in §510.39

510.39 Accident or health associations. Accident or health associations may take advantage of all the provisions of sections 510.36 to 510.38 insofar as applicable, and may thereupon transform themselves into stock companies. [SS15,§1798-b; C24, 27, 31, 35, 39,§**8727**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§510.39]

CHAPTER 511

PROVISIONS APPLYING TO LIFE INSURANCE COMPANIES AND ASSOCIATIONS

Referred to in §§507.1, 508A.5, 510.2, 510.23, 521.1, 521A.2(3,c)

511.1 Annual statement of foreign companies.
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511.1 Annual statement of foreign companies. Every company or association organized under the laws of any other state or country and doing business in this state shall annually, by the first day of March, file with the commissioner of insurance a statement of its affairs for the year terminating on the thirty-first day of December preceding, in the same manner and form provided for similar companies or associations organized in this state. [C73,§1166; C97,§1799; C24, 27, 31, 35, 39,§**8728**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.1]

Referred to in §511.3
C97,§1799, editorially divided

511.2 Amended forms of statement. The commissioner may amend the form of the annual statement required to be made by companies or associations doing business in this state, and propose and require such additional matter to be covered therein as he may think necessary to elicit a full exhibit of the standing of any such company or association. [C73, §1168; C97,§1799; C24, 27, 31, 35, 39,§**8729**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.2]

Referred to in §511.3

511.3 Blanks for reports. All reports contemplated under sections 508.11, 510.11, 510.13, 511.1, 511.2, 512.42, 515.63, and 515.64 may be upon forms furnished by the commissioner of insurance who may, at his option upon authority of the director of the department of general services, purchase forms approved by the national convention of insurance commissioners. [S13,§1820-d; C24, 27, 31, 35, 39,§**8730**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.3]

511.4 Advertisements—who deemed agent. The provisions of sections 515.122 to 515.126 shall apply to life insurance companies and associations. [C97,§1815; C24, 27, 31, 35, 39, §**8731**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.4]

511.5 Agent's certificate to act. No person shall, directly or indirectly, act within this state as agent, or otherwise, in receiving or procuring applications for insurance, or in doing or transacting any kind of life insurance business, for any company or association contemplated in chapters 508 and 510, except for the purpose of taking applications for organizations, unless the company or association for which he is acting has received a certificate from the commissioner of insurance authorizing it to transact business therein, and unless he shall have received from said commissioner a certificate showing that such company or association has complied with the provisions of law, and that such person is authorized to act for it. [C73,§1166; C97,§1800; C24, 27, 31, 35, 39,§**8732**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.5]

Referred to in §511.6

511.6 Violations. Any such company or association that does or solicits new business without the certificates required by the said chapters shall forfeit five hundred dollars for every day's neglect to procure the same. Any person knowingly soliciting applications or making insurance for any company or association having no such certificate from the commissioner of insurance as required, shall forfeit and pay the sum of three hundred dollars, and any person acting for any company or association authorized to transact business without having the agent's certificate prescribed in section 511.5 in his possession, shall be liable to pay twenty-five dollars for each day's neglect to procure the same during the time he thus acts. [C73,§1177; C97,§1801; C24, 27, 31, 35, 39,§**8733**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.6]

511.7 Recovery of penalties. Actions brought to recover any of the penalties provided for in this chapter shall be instituted in the name of the state by the county attorney of the county, under the direction and authority of the commissioner of insurance, and may be brought in the district court of any county in which the company or association proceeded against is engaged in the transaction of business, or in which the offending person resides, if it is against him. The penalties, when recovered, shall be paid into the state treasury for the use of the school fund. [C73,§1178; C97,§1802; C24, 27, 31, 35, 39,§**8734**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.7]

511.8 Investment of funds. Any company, organized under chapter 508, shall, at all times, have invested in the securities provided in this section, funds equivalent to its legal reserve. Legal reserve shall be the net present value of all outstanding policies, and contracts involving life contingencies. Any association, organized under chapter 510, accumulating any moneys to be held in trust for the purpose of the fulfillment of its policies or certificates, contracts, or otherwise, shall invest such accumulations in the securities provided in this section. Wherever, in this section, reference is made to "legal reserve", it shall mean the total accumulations in the case of an association organized under chapter 510. Nothing herein contained shall prohibit a company or association from holding a portion of its legal reserve in cash.

1. *United States government obligations.* Bonds or other evidences of indebtedness is-

sued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality thereof.

Referred to in §501.5 and subsection 9"*f*" of this section

2. *State, District of Columbia, territorial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the District of Columbia, or by any state, insular or territorial possession of the United States of America, or by any county, city, town, school, road, drainage, or other district located within any state, or insular or territorial possession of the United States of America, or by any civil subdivision or governmental authority of any such state, or insular or territorial possession, or by any instrumentality of any such state, or insular or territorial possession, civil subdivision, or governmental authority; provided that the obligations are valid, legally authorized and issued.

Referred to in §501.5 and subsection 9"*f*" of this section

3. *Canadian government, provincial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or by any province thereof, or by any municipality or district therein, provided that the obligations are valid, legally authorized and issued.

Referred to in §501.5 and subsection 9"*f*" of this section

4. *International Bank bonds.* Bonds or other evidence of indebtedness issued, assumed or guaranteed by the International Bank for reconstruction and development, in an amount not to exceed two percent of its total assets as shown by the last annual report, or by the Inter-American Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report, or by the Asian Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report. However, the combined investment in bonds or evidences of indebtedness permitted by this subsection shall not exceed four percent of its total assets as shown by the last annual report.

Referred to in §501.5

5. *Corporate obligations.* Subject to the restrictions contained in subsection 8 hereof, bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. If fixed interest-bearing obligations, the net earnings of the issuing, assuming or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming or guaranteeing corporation applicable to such period, and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times its fixed charges for such year; or if, at the date of acquisition, the obligations are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant.

Referred to in subsections 6"*b*"(2), 9"*f*" of this section

b. If adjustment, income or other contingent interest obligations, the net earnings of the issuing, assuming or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming or guaranteeing corporation and its average annual maximum contingent interest applicable to such period and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year.

The term "net earnings available for fixed charges" as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes other than any income taxes, depreciation and depletion, but nonrecurring items of income or expense may be excluded.

The term "fixed charges" as used herein shall include interest on unfunded debt and funded debt on a parity with or having a priority to the obligation under consideration.

Referred to in subsections 6"*a*"(2), 8, 8"*b*"(2), 8"*c*" and 15 of this section

6. *Preferred and guaranteed stocks.* Subject to the restrictions contained in subsection 8 hereof, preferred stocks of, or stocks guaranteed by, a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. Preferred stocks.

(1) All of the obligations and preferred stocks of the issuing corporation, if any, prior to the preferred stock acquired must be eligible as investments under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges and preferred dividends of the issuing corporation shall have been, for each of the five fiscal years immediately preceding the date of acquisition, not less than one and one-half times the sum of the annual fixed charges and contingent interest, if any, and the annual preferred dividend requirements as of the date of acquisition.

The term "preferred dividend requirements" shall mean cumulative or noncumulative dividends whether paid or not.

The term "fixed charges" shall be construed in accordance with subsection 5 above. The

term "net earnings available for fixed charges and preferred dividends" as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes, including any income taxes, depreciation and depletion, but nonrecurring items may be excluded.

Referred to in subsection 8"*a*" of this section

b. Guaranteed stocks.

(1) All of the fixed interest-bearing obligations of the guaranteeing corporation, if any, must be eligible under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges of the guaranteeing corporation shall meet the requirements outlined in paragraph "*a*" of subsection 5 above, except that all guaranteed dividends shall be included in "fixed charges".

Any investments in preferred stocks or guaranteed stocks made under the provisions of this subsection shall be considered as moneys and credits for purposes of taxation and their assessment shall be subject to deductions for indebtedness as provided by law in the case of assessment of moneys and credits in general. This provision shall be effective as to assessments made during the year 1947 and thereafter.

Referred to in subsections 8, 8"*b*"(3), 8"*c*" of this section

7. *Equipment trust obligations.* Subject to the restrictions contained in subsection 8 hereof, bonds, certificates, or other evidences of indebtedness secured by any transportation equipment used in the United States of America or Canada, that provide a right to receive determined rental, purchase or other fixed obligatory payments adequate to retire the obligations within twenty years from date of issue, and also provide:

a. For vesting of title to such equipment free from encumbrance in a corporate trustee, or

b. For creation of a first lien on such equipment.

Referred to in subsections 8, 8"*b*"(4) of this section

8. *Further restrictions.* Securities included under subsections 5, 6 and 7 shall not be eligible:

a. If the corporation is in default on fixed obligations as of the date of acquisition. Securities provided in paragraph "*a*" of subsection 6 shall not be eligible if the issuing corporation is in arrears with respect to the payment of any preferred dividends as of the date of acquisition.

b. The investments of any company or association in such securities shall not be eligible in excess of the following percentages of the legal reserve of such company or association:

(1) With the exception of public securities, two percent of the legal reserve in the securities of any one corporation. Five percent of the legal reserve in the securities of any one public utility corporation.

(2) Fifty percent of the legal reserve in the securities described in subsection 5 issued by other than public utility corporations. Fifty percent of the legal reserve in the securities described in subsection 5 issued by public utility corporations.

(3) Ten percent of the legal reserve in the securities described in subsection 6.

(4) Ten percent of the legal reserve in securities described in subsection 7.

c. Statements adjusted to show the actual condition at the time of acquisition or the effect of new financing (known commercially as pro forma statements) may be used in determining whether investments under subsections 5 and 6 are in compliance with requirements. Statements so adjusted or consolidated statements may be used in order to include the earnings of all predecessor, merged, consolidated, or purchased companies.

Referred to in subsections 5, 6, 7, 13, 15 of this section

9. *Real estate bonds and mortgages.*

a. Bonds, notes, obligations, or other evidences of indebtedness secured by mortgages or deeds of trust which are a first lien upon unencumbered real property and appurtenances thereto within the United States of America, or any insular or territorial possession of the United States, or the Dominion of Canada, and upon leasehold estates in real property where fifty years or more of the term including renewals is unexpired, provided that at the date of acquisition the total indebtedness secured by such lien shall not exceed seventy-five percent of the value of the property upon which it is a lien. These limitations shall not apply to obligations described in paragraphs "*b*", "*c*", "*d*", "*e*" and "*f*" of this subsection.

Improvements and appurtenances to real property shall not be considered in estimating the value of the property unless the owner shall contract to keep the same adequately insured during the life of the loan in some reliable fire insurance company or companies, association or associations, the insurance to be made payable in case of loss to the mortgagee, trustee, or assigns as its interest may appear at the time of the loss.

Provided further that for the purpose of this subsection a mortgage or deed of trust shall not be deemed to be other than a first lien upon property within the meaning of this subsection by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights of way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

b. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and

provisions of an Act of Congress of the United States of America approved June 27, 1934, entitled the "National Housing Act"*, as heretofore and hereafter amended.

*48 Stat. L. 1246; 12 U. S. C., ch 13

c. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with the terms and provisions of Title III of an Act of Congress of the United States of America approved June 22, 1944, known as Public Law 346—Seventy-eighth Congress, Chapter 268—2nd Session, cited as the "Servicemen's Readjustment Act of 1944"**, as heretofore and hereafter amended.

**58 Stat. L. 291; Repealed by Pub. L. 85-857,§14(87), 72 Stat. L. 1273; now covered by 37 U. S. C. §§1801 to 1824, inc.

d. Contracts of sale, purchase money mortgages or deeds of trust secured by property obtained through foreclosure, or in settlement or satisfaction of any indebtedness, or in the acquisition or disposition of real property acquired pursuant to subsection 14.

e. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with Title I of the Bankhead-Jones Farm Tenant Act, an Act of the Congress of the United States, cited as the "Farmers Home Administration Act of 1946"***, as heretofore or hereafter amended.

***60 Stat. L. 1062; Repealed by Pub. L. 87-128,§341(*a*); now covered by 7 U. S. C. §§1921 to 1991, inc.

f. Bonds, notes, obligations or other evidences of indebtedness secured by mortgages or deeds of trust which are a first lien upon unencumbered personal or real property or both personal and real property, including a leasehold of real estate, within the United States of America, or any insular or territorial possession of the United States of America, or the Dominion of Canada, under lease, purchase contract, or lease purchase contract to any governmental body or instrumentality whose obligations qualify under subsections 1, 2 or 3 of this section, or to a corporation whose obligations qualify under paragraph "*a*" of subsection 5 of this section, if the terms of the bond, note or other evidence of indebtedness provide for the amortization during the initial, fixed period of the lease or contract of one hundred percent of the indebtedness and there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, ground rents and taxes other than the income taxes of the borrower; provided, however, that where the security consists of a first mortgage or deed of trust lien on a fee interest in real property only, the bond, note or other evidence of indebtedness may provide for the amortization during the initial, fixed period of the lease or contract of less than one hundred percent of the indebtedness if there is to be left unamortized at the end of such period an amount not greater than the appraised value of the land only, exclusive of all improvements, and if there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, and taxes other than the income taxes of the borrower. Investments made in accordance with the provisions of this paragraph shall not be eligible in excess of twenty-five percent of the legal reserve, nor shall any one such investment in excess of five percent of the legal reserve be eligible.

g. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of the federal Parliament of the Dominion of Canada approved March 18, 1954, cited as the "National Housing Act, 1954", as heretofore and hereafter amended.

Paragraphs "*b*", "*c*", "*d*", "*e*" and "*f*" referred to in subsection 9"*a*" of this section

10. *Real estate.*

a. Any such real estate in this state as is necessary for the accommodation of the company or association as a home office or in the transaction of its business. In the erection of any buildings for such purposes, there may be added thereto rooms for rent. Before the company or association shall invest any of its funds in accordance with the provisions of this paragraph it shall first obtain the consent of the executive council of this state. The maximum amount which any such company or association shall be permitted to invest in accordance with these provisions shall not exceed ten percent of the legal reserve; provided, however, that a stock company may invest such portion of its paid-up capital, in addition to said ten percent of the legal reserve as is not held to constitute a part of its legal reserve, under section 508.12*; provided, further, that the total legal reserve of such company shall be equal to or exceed the amount of its paid-up capital stock.

*Section 508.12, Code 1962, repealed by 60GA, ch 304,§3
Referred to in subsection 17"*b*"(2) of this section

b. Any real estate acquired through foreclosure, or in settlement or satisfaction of any indebtedness. Any company or association may improve real estate so acquired or remodel existing improvements and exchange such real estate for other real estate or securities, and real estate acquired by such exchange may be improved or the improvements remodeled. Any farm real estate acquired under this paragraph shall be sold within five years from the date of acquisition unless the commissioner of insurance shall extend the time for such period or periods as seem warranted by the circumstances.

11. *Certificates of sale.* Certificates of sale obtained through foreclosure of liens on real estate.

12. *Policy loans.* Loans upon the security of the policies of the company or association and constituting a lien thereon in an amount not exceeding the legal reserve thereon.

13. *Collateral loans.* Loans secured by collateral consisting of any securities qualified in this section, provided the amount of the loan is not in excess of ninety percent of the value of the securities.

Provided further that subsection 8 of this section shall apply to the collateral securities pledged to the payment of loans authorized in this subsection.

Referred to in §§508.13, 508.14

14. *Urban real estate and personal property.* Personal or real property or both personal or real property located within the United States or the Dominion of Canada, other than real property used or to be used primarily for agricultural, horticultural, ranching or mining purposes, which produces income or which by suitable improvement will produce income, provided, however, that personal property acquired under the provisions of this subsection is acquired for the purpose of entering into a contract for the sale or use thereof under which the contractual payments may reasonably be expected to result in the recovery of the investment and an investment return within the anticipated useful life of the property. Legal title to such real property may be acquired subject to a contract of sale. The term "real property" as used in this subsection shall include a leasehold of real estate. Investments made in accordance with the provisions of this subsection shall not be eligible in excess of ten percent of the legal reserve.

Referred to in subsection 9(*d*) of this section

15. *Railroad obligations.* Bonds or other evidences of indebtedness which carry a fixed rate of interest and are issued, assumed or guaranteed by any railroad company incorporated under the laws of the United States of America, or of any state, district, insular or territorial possessions thereof, not in reorganization or receivership at the time of such investment, provided that the railroad company:

a. Shall have had for the three-year period immediately preceding investment (for which the necessary data for the railroad company shall have been published) a balance of income available for fixed charges which shall have averaged per year not less than one and one-quarter times the fixed charges for the latest year of the period; and

b. Shall have had for the three-year period immediately preceding investment (for which the necessary data for both the railroad company and all class I railroads shall have been published):

(1) A balance of income available for the payment of fixed charges at least as many times greater than the fixed charges for the latest year of the period as the balance of income available for the payment of fixed charges of all class I railroads for the same three-year period is times greater than the amount of all fixed charges for such class I railroads for the latest year of the period; and

(2) An amount of railway operating revenues remaining after deduction of three times the fixed charges for the latest year of the period from the balance of income available for the payment of fixed charges for the three-year period, which amount is as great a proportion of its railway operating revenues for the same three-year period as is the proportion of railway operating revenues remaining for all class I railroads, determined in the same manner and for the same period as for the railroad.

The terms "class I railroads", "balance of income available for the payment of fixed charges", "fixed charges" and "railway operating revenues" when used in this subsection, are to be given the same meaning as in the accounting reports filed by a railroad company in accordance with the regulations for common carriers by rail of the Interstate Commerce Act; [24 Stat. L. 379; 49 U.S.C. §§1 to 40 inc., 1001 to 1100 inc.] provided that the "balance of income available for the payment of fixed charges" and "railway operating revenues remaining", as the terms are used in this subsection, shall be computed before deduction of federal income or excess profits taxes; and that in computing "fixed charges" there shall be excluded interest and amortization charges applicable to debt called for redemption or which will otherwise mature within six months from the time of investment and for the payment of which funds have been or currently are being specifically set aside.

The eligibility of railroad obligations described in the first sentence of this subsection shall be determined exclusively as provided herein, without regard to the provisions for qualification contained in subsections 5 and 8 of this section. Provisions for qualification contained in this section shall not be construed as applying to equipment trust obligations, guaranteed stocks, or contingent interest bonds of railroad companies. Investments made in accordance with the provisions of this subsection shall not be eligible in excess of ten percent of the legal reserve.

16. *Deposit of securities.* Securities in an amount not less than the legal reserve as defined in this section shall be deposited and such deposit maintained with the commissioner of insurance, and it shall be the duty of the commissioner to designate such places for the keeping of said deposits as will properly safeguard the same. There may be included in the deposit an amount of cash on hand not in excess of five percent of the deposit required, such deposit to be evidenced by a certified check, certificate of deposit or other evidence satisfactory to the commissioner of insurance. Deposits of securities may be made in excess of the amounts required hereby. No stock company organized under the laws of this state shall be required to make such de-

posit until the legal reserve, as ascertained by the commissioner, exceeds the amount deposited by it as capital. Real estate may be made a part of the deposit by furnishing evidence of ownership satisfactory to the commissioner and by conveying the real estate to the commissioner or his successors in office by warranty deed, said real estate to be held by the commissioner and his successors in office in trust for the benefit of the policyholders of the company or members of the association. Real estate mortgage loans and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement shall be subject to check at the discretion of the commissioner.

The securities comprising the deposit of any company or association against which proceedings are pending under sections 508.17 and 508.18 shall vest in the state for the benefit of the policies and contracts for which such deposits were made.

Securities or title to real estate on deposit may be withdrawn at any time and other eligible securities may be substituted, provided the amount maintained on deposit is equal to the sum of the legal reserve and twenty-five thousand dollars. In the case of real estate the commissioner shall execute and deliver to the company or association a quitclaim deed to the real estate. Any company or association shall, if requested by the commissioner, at the time of withdrawing any securities on deposit, designate for what purpose the same are being withdrawn.

Companies or associations having securities or title to real estate on deposit with the commissioner of insurance shall have the right to collect all dividends, interest, rent, or other income thereon unless proceedings against such company or association are pending under sections 508.17 and 508.18, in which event the commissioner shall collect such interest, dividends, rent, or other income and add the same to the deposit.

Any company or association receiving payments or partial payments of principal on any securities deposited with the commissioner of insurance shall notify him of such fact at such times and in such manner as the commissioner may prescribe, giving the amount and date of payment.

The commissioner of insurance may receive on deposit securities or title to real estate of alien companies authorized to do business in the state of Iowa, for the purpose of securing its policyholders in the state of Iowa and the United States. The provisions hereof not inconsistent with the deposit agreement shall apply to the deposits of such alien companies.

17. *Rules of valuation.*

a. All bonds or other evidences of debt having a fixed term and rate of interest, if amply secured and not in default as to principal or interest, may be valued as follows:

(1) If purchased at par, at the par value.

(2) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

In applying the above rule, the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

b. (1) Real estate acquired through foreclosure or in settlement or satisfaction of any indebtedness, shall be valued in an amount not greater than the amount of the unpaid principal of the defaulted indebtedness, plus any amounts actually expended for taxes, acquisition costs, (but not including any interest due or subsequently accrued thereon) and the cost of any additions or improvements.

(2) Real estate acquired and held under the provisions of paragraph "*a*" of subsection 10 hereof, shall be valued in an amount not greater than the original cost plus any subsequent additions or improvements.

c. Certificates of sale obtained by foreclosure of liens on real estate shall be valued in an amount not greater than the unpaid principal of the defaulted indebtedness plus any amounts actually expended for taxes and acquisition costs.

d. All investments, except those for which a specific rule is provided in this subsection, shall be valued at their market value, or at their appraised value, or at prices determined by the commissioner of insurance as representing their fair market value, or at a value as determined under rules adopted by the National Association of Insurance Commissioners.

The commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rules, but no company or association shall be prevented from valuing any asset at an amount less than that provided by this subsection.

18. *Common stocks or shares.* Common stock or shares issued by solvent corporations or institutions shall be eligible if the total investment in shares of such corporations or institutions does not exceed ten percent of legal reserves provided not more than one-half percent of the legal reserve is invested in the shares of any one corporation, and if the stock is listed or admitted to trading on a securities exchange located in the United States of America or is publicly held and has been traded in the "over-the-counter market" and market quotations are readily available, and if such investment does not create for any officer or director of the company a conflict of interest between the insurance company and the corporation whose stock is purchased. [C73,§§1179–1181; C97,§§1791–1793, 1803, 1804, 1806, 1807; SS15,§1806; C24, 27, 31, 35, 39,§§8698–8701, 8735–8739, 8741, 8742, 8744, 8747; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.8]

Referred to in §§411.7(2), 501.5, 503.7, 508.13, 508.14, 510.34, 511.9, 512.48, 514B.15
Similar provisions, §§512.48, 515.35

511.9 Violations. The commissioner shall have authority to suspend or revoke the certificate of authority of any company or association failing to comply with any of the provisions of section 511.8, or for violating the same. [SS15,§1806; C24, 27, 31, 35, 39,§8745; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.9]

511.10 Rule of valuation. All bonds or other evidences of debt having a fixed term and rate, held by any fraternal beneficiary association authorized to do business in this state may, if amply secured and not in default as to principal and interest, be valued as follows:

1. If purchased at par, at the par value.
2. If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

Provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

The commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rule. [C24, 27, 31, 35, 39,§8746; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.10]

511.11 Prohibited loans. No insurance company or association organized under the statutes of this state to transact an insurance business, shall invest its capital, surplus funds, or other assets, in or loan the same on property owned by any officer or director of such company or by any of the immediate members of the family of any such officer or director. [C24, 27, 31, 35, 39,§8748; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.11]

38GA, ch 348,§13, editorially divided

511.12 Officers not to profit by investments. No such officer or director shall gain through the investment of funds of any such company. [C24, 27, 31, 35, 39,§8749; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.12]

511.13 Disbursements—vouchers—affidavit. No domestic life insurance company shall make any disbursement of one hundred dollars or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm, or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements the voucher shall set forth the services rendered and an itemized statement of the disbursements made. When such voucher cannot be obtained the expenditure shall be evidenced by an affidavit of some officer or agent of said company describing the character and object of the expenditure and stating the reason for not obtaining such voucher. [S13,§1820-a; C24, 27, 31, 35, 39,§8750; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.13]

511.14 Taxes — from what funds payable. In case this or any other state shall impose or levy any tax on any company or association, the same may be paid from any surplus or emergency fund of such company or association. [C97,§1821; C24, 27, 31, 35, 39,§8751; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.14]

511.15 Discrimination against domestic company. It shall be unlawful for the commissioner of insurance to impose upon companies or associations organized under chapter 510 any rules or regulations, requirements or limitations, that shall not be imposed with equal force upon like companies or associations from other states doing a like business in this state. [C97,§1810; C24, 27, 31, 35, 39, §8754; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.15]

511.16 Illegal business. Any officer, manager, or agent of any life insurance company or association who, with knowledge that it is doing business in an unlawful manner or is insolvent, solicits insurance with said company or association, or receives applications therefor, or does any other act or thing towards procuring or receiving any new business for such company or association, shall be guilty of a misdemeanor, and for every such act, on conviction thereof, shall be adjudged to pay a fine of not less than one hundred nor more than one thousand dollars, or be imprisoned in the county jail not exceeding one year, or be punished by both such fine and imprisonment. [C97,§1814; C24, 27, 31, 35, 39, §8755; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.16]

Referred to in §507.16
C97,§1814, editorially divided

511.17 Contracts void—recovery—damages —attorney fees. All contracts, promises, and agreements made by any person to or with any such company or association concerning any premium, policy, or certificate of new business, after the revocation of its certificates or denial of authority to do business, shall be null and void, and all payments of premium or assessments advanced or made by any person on account of any such policy, certificate of new business, or upon any arrangement therefor, may be recovered from such company or association, or its agent to whom payment was advanced or made, or from both of them, and in addition thereto plaintiff may recover an equal amount as liquidated damages, together with a reasonable fee to plaintiff's attorney for services in the case. [C97, §1814; C24, 27, 31, 35, 39,§8756; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.17]

Referred to in §507.16

511.18 Fraud in procuring insurance. Any agent, physician, or other person who shall knowingly, by means of concealment of facts or false statements, procure or assist in procuring from any life insurance organization any policy or certificate of insurance, shall be punished by a fine of not to exceed one thousand dollars or by imprisonment in the county jail not to exceed one year, or by both, in the discretion of the court. [C97,§1816; C24, 27, 31, 35, 39,§8757; C46, 50, 54, 58, 62, 66, 71, 73, 75, §511.18]

511.19 Conspiracy to defraud. If two or more persons conspire to defraud or obtain any money from any life insurance company or association by means of false statements as to the death of any person insured, or the false appearance of the death of any such person, each shall be punished by imprisonment in the penitentiary not to exceed ten years. Any person who by such means obtains any money or property on the policy or certificate of the person so insured shall be punished by imprisonment in the penitentiary not to exceed fifteen years. Any person who thus attempts to obtain money from any such company or association shall be punished by like imprisonment not to exceed seven years. [C97,§1817; C24, 27, 31, 35, 39,§8758; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.19]

Conspiracy in general, §719.1

511.20 and 511.21 Repealed by 56GA, ch 237. §§16, 17. See ch 507B.

511.22 May not advertise authorized capital. No insurance company shall be permitted to advertise or publish an authorized capital, or to represent in any manner itself as possessed of any greater capital than that actually paid up and invested. [S13,§1783-g; C24, 27, 31, 35, 39,§8761; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.22]

Referred to in §511.23

511.23 Penalties. Any person, firm, or corporation violating any of the provisions of section 511.22, or sections 515.8 to 515.11 or failing to comply with any of the provisions therein, shall be subjected to the penalties provided in sections 507.10 to 507.13. [S13, §1783-h; C24, 27, 31, 35, 39,§8762; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.23]

511.24 Fees from foreign companies. When not otherwise provided, each life insurance company doing business in this state, except those organized under the laws thereof, shall pay to the commissioner of insurance the following fees:

1. Upon filing declaration or certified copy of the charter or articles of incorporation, twenty-five dollars.

2. Upon filing the annual statement, twenty dollars.

3. For each certificate of authority and certified copy thereof, two dollars.

4. For each agent's certificate, five dollars.

5. For every copy of any paper filed, the sum of twenty cents per folio, and for certifying and affixing the official seal thereto, one dollar.

6. For valuing policies, ten dollars for each million dollars of insurance or fraction thereof. [C73,§1183; C97,§1818; C24, 27, 31, 35, 39, §8763; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.24]

Referred to in §§510.11, 511.26
C97,§1818, editorially divided

511.25 Fees from domestic companies. Companies organized under the laws of the state shall pay the following fees:

1. For filing and examination of the first application and the issuance of certificate thereon, ten dollars.

2. For filing each annual statement and issuance of renewal certificate, three dollars.

3. For each agent's certificate, five dollars. [C73,§1183; C97,§1818; C24, 27, 31, 35, 39,§8764; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.25]

Referred to in §§510.11, 511.26

511.26 Fee statute—applicability. The provisions of the chapter on insurance other than life shall apply as to fees under this chapter and chapters 508 and 510, except as modified by sections 511.24 and 511.25. [C97,§1818; C24, 27, 31, 35, 39,§8765; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.26]

Referred to in §510.11
Insurance other than life, ch 515

511.27 Commissioner as process agent. Every life insurance company and association organized under the laws of another state or country shall, before receiving a certificate to do business in this state or any renewal thereof, file in the office of the commissioner of insurance an agreement in writing that thereafter service of notice or process of any kind may be made on the commissioner, and when so made shall be as valid, binding, and effective for all purposes as if served upon the company according to the laws of this or any other state, and waiving all claim or right of error by reason of such acknowledgment of service. [C73,§1165; C97,§1808; C24, 27, 31, 35, 39,§8766; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.27]

Referred to in §§510.19, 511.29
C97,§1808, editorially divided
Similar provisions, §§491.15, 494.2, 512.22, 515.73, 520.5, 534.53

511.28 Service of process. Such notice or process, with a copy thereof, may be mailed to the commissioner at Des Moines, Iowa, in a certified mail letter addressed to him by his official title, and he shall immediately upon its receipt acknowledge service thereon on behalf of the defendant foreign insurance company by writing thereon, giving the date thereof, and shall immediately return such notice or process in a certified mail letter to the clerk of the court in which the suit is pending, addressed to him by his official title, and shall also forthwith mail such copy, with a copy of his acknowledgment of service written thereon, in a certified mail letter addressed to the person or corporation who shall be named or designated by such company in such written instrument. [C73,§1165; C97,§1808; C24, 27, 31, 35, 39,§8767; C46, 50, 54, 58, 62, 66, 71, 73, 75, §511.28]

Referred to in §§503.14, 511.29

511.29 Interpretation. The provisions of sections 511.27 and 511.28 are merely additions to the general provisions of law on the subjects therein referred to, and are not to be construed to be exclusive. [C97,§1809; C24, 27, 31, 35, 39,§8768; C46, 50, 54, 58, 62, 66, 71, 73, 75, §511.29]

Service generally, ch 617

511.30 Intoxication as defense. In any action pending in any court of the state on any policy or certificate of life insurance, wherein the defendant seeks to avoid liability upon the alleged ground of the intemperate habits or habitual intoxication of the assured, it shall be a sufficient defense for the plaintiff to show that such habits or habitual intoxication of the assured were generally known in the community or neighborhood where the agent of the defendant resided or did business, if thereafter the company continued to receive the premiums falling due thereon. [C97,§1811; C24, 27, 31, 35, 39,§**8769**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.30]

511.31 Physician's certificate—estoppel. In any case where the medical examiner, or physician acting as such, of any life insurance company or association doing business in the state shall issue a certificate of health or declare the applicant a fit subject for insurance, or so report to the company or association or its agent under the rules and regulations of such company or association, it shall be thereby estopped from setting up in defense of the action on such policy or certificate that the assured was not in the condition of health required by the policy at the time of the issuance or delivery thereof, unless the same was procured by or through the fraud or deceit of the assured. [C97,§1812; C24, 27, 31, 35, 39,§**8770**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §511.31]

511.32 Misrepresentation of age. In all cases where it shall appear that the age of the person insured has been understated in the proposal, declaration or other instrument upon which a policy of life insurance has been founded or issued, then the amount payable under the policy shall be such as the premium paid would have purchased at the correct age; provided, however, that one who, by misstating his age, obtains life insurance not otherwise obtainable shall be entitled to recover from the insurer on account of such policy only the aggregate premiums paid. [C97,§1813; C24, 27, 31, 35, 39,§**8771**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.32]

511.33 Application for insurance—duty to attach to policy. All life insurance companies or associations organized or doing business in this state under the provisions of the preceding chapters shall, upon the issue of any policy, attach to such policy, or endorse thereon, a true copy of any application or representation of the assured which by the terms of such policy are made a part thereof, or of the contract of insurance, or referred to therein, or which may in any manner affect the validity of such policy, or, upon reinstatement of a lapsed policy, shall attach to the renewal receipt a true copy of all representations made by the assured upon which the renewal or reinstatement is made. [C97,§1819; C24, 27, 31, 35, 39,§**8772**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.33]

Referred to in §511.34
C97,§1819, editorially divided
Similar provisions, §§512.14, 515.94

511.34 Failure to attach—defenses—estoppel. The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of section 511.33, it shall forever be precluded from pleading, alleging, or proving such application or representations, or any part thereof, or the falsity thereof, or any part thereof, in any action upon such policy, and the plaintiff in any such action shall not be required, in order to recover against such company or association, either to plead or prove such application or representation, but may do so at his option. [C97,§1819; C24, 27, 31, 35, 39,§**8773**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.34]

Similar provisions, §§512.15, 515.95

511.35 Limitation on proofs of loss. No stipulation or condition in any policy or contract of insurance or beneficiary certificate issued by any company or association mentioned or referred to in this chapter, limiting the time to a period of less than one year after knowledge by the beneficiary within which notice or proofs of death or the occurrence of other contingency insured against must be given, shall be valid. [C97,§1820; S13, §1820; C24, 27, 31, 35, 39,§**8774**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.35]

S13,§1820, editorially divided
Similar provisions, §§514A.3, 515.98, 518A.19

511.36 Repealed by 54GA, ch 188,§11.

511.37 Policy exempt from execution. A policy of insurance on the life of an individual, in the absence of an agreement or assignment to the contrary, shall inure to the separate use of the husband or wife and children of said individual, independently of his creditors.

The proceeds of an endowment policy payable to the assured on attaining a certain age shall be exempt from liability for any of his debts.

Any benefit or indemnity paid under an accident, health or disability policy shall be exempt to the assured, or in case of his death to the husband or wife and children of the assured, from his debts.

The avails of all policies of life, accident, health or disability insurance payable to the surviving widow shall be exempt from liability for all debts of such beneficiary contracted prior to the death of the assured, but the amount thus exempted shall not exceed fifteen thousand dollars. [C51,§1330; R60,§2362; C73,§§1182, 2372; C97,§1805; C24, 27, 31, 35, 39, §**8776**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§511.37]

Similar provisions, §§509.12, 512.17

CHAPTER 512

FRATERNAL BENEFICIARY SOCIETIES, ORDERS OR ASSOCIATIONS

Referred to in §§491.1, 496A.142(1), 504A.100(1), 507.1, 514A.1, 515B.2

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GENERAL PROVISIONS

512.1 Definition. A fraternal beneficiary association is hereby declared to be a corporation, society, or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit, and having a lodge system, with ritualistic form of work and representative form of government. [C97,§1822; S13,§1822; C24, 27, 31, 35, 39,§8777; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.1]

Referred to in §514A.1
S13,§1822, editorially divided

512.2 Various benefits permitted. A society authorized to do business in this state may provide for the payment of: (1) Death benefits in any form; (2) endowment benefits; (3) annuity benefits; (4) temporary or permanent disability benefits as a result of disease or accident; (5) hospital, medical or nursing benefits due to sickness or bodily infirmity or accident; (6) monument or tombstone benefits to the memory of deceased members not exceeding in any case the sum of three hundred dollars, and such benefits may be provided on the lives of members or, upon application of a member, on the lives of the member's family, including the member, the member's spouse and minor children, in the same or separate certificates. [C97,§1822; S13,§1822; C24, 27, 31, 35, 39,§8778; C46, 50, 54, 58, 62, 66, 71, 73, 75, §512.2]

Referred to in §427.1(18)

512.3 Exclusive religious orders. Beneficiary societies or associations, whose membership is confined to the members of any one religious denomination, shall only be required to have a branch system and a representative form of government. Such beneficiary societies or associations shall be governed by the provisions of this chapter, and shall be exempt from the provisions of the statutes of this state, relating to life insurance companies, to the same extent as fraternal beneficiary associations. [S13,§1822; C24, 27, 31, 35, 39,§8779; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.3]

512.4 Sick and funeral benefits only. The provisions of this chapter shall not be construed to include fraternal orders which only provide for sick and funeral benefits. [C97, §1822; S13,§1822; C24, 27, 31, 35, 39,§8780; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.4]

512.5 Certificates permitted. Any fraternal beneficiary society issuing certificates, based upon rates not lower than those required by the mortality table set forth in section 512.43, may issue certificates providing for death benefits upon the term, whole life, or limited payment plan, in which event it shall maintain the required legal reserve on all such certificates, based on the standard adopted for the issuing of such certificates, which said reserve shall be set aside and held as a special reserve fund for the exclusive benefit of the members contributing thereto. [C24, 27, 31, 35, 39,§8781; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.5]

38GA, ch 343,§1, editorially divided

512.6 Benefits. Any such society may grant to its members extended and paid-up protection or such withdrawal equities as its constitution and laws may permit, provided that such grants shall in no case exceed in value the portion of the reserve to the credit of the members to whom they are made. [C24, 27, 31, 35, 39,§8782; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.6]

512.7 Exclusive membership in religious order. Any corporation heretofore organized under the laws of this or any other state, whose membership is confined to the members of any one religious denomination, and whose plan of business permits, may take advantage of the preceding sections of this chapter by amendment to its articles of incorporation, and by complying with the provisions of sections 512.27 to 512.32; provided that such corporations as on March 15, 1907, were and have since continuously been doing business under chapter 510, may take advantage of said sections without raising their mortuary assessment rates or showing that their said rates are such as are required by section 512.43. [SS15,§1822-a; C24, 27, 31, 35, 39,§8783; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.7]

512.8 Assessments. The fund from which the payment of such benefits shall be made and the expenses of such association defrayed shall be derived from beneficiary calls, assessments, or dues collected from its members. [C97,§1823; C24, 27, 31, 35, 39,§8784; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.8]

512.9 Qualifications for membership. A society may admit to benefit membership any person not less than fifteen years of age, nearest birthday, who has furnished evidence of insurability acceptable to the society. Any such member who shall apply for additional benefits more than six months after becoming a benefit member shall furnish additional evidence of insurability acceptable to the society.

Any person admitted prior to attaining the full age of eighteen years shall be bound by the terms of the application and certificate and by all the laws and rules of the society and shall be entitled to all the rights and privileges of membership therein to the same extent as though the age of majority had been attained at the time of application. A society may also admit general or social members who shall have no voice or vote in the management of its insurance affairs. [C97,§§1824, 1839; C24, 27, 31, 35,§§8785, 8821; C39,§8789.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.9]

Similar provisions, §§510.10, 512.56

512.10 Beneficiaries — vested interest. No beneficiary shall have or obtain any vested interest in the proceeds of any certificate until such certificate has become due and payable

in conformity with the provisions of the insurance contract. The insured member shall have the right at all times to change the beneficiary or beneficiaries in accordance with the constitution, bylaws, rules or regulations of the society. Every society may, by its constitution, bylaws, rules or regulations, limit the scope of beneficiaries. [C24, 27, 31, 35,§§8786–8789; C39,§**8789.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.10]

Similar provisions, §§510.10, 512.60

512.11 Association as beneficiary. Any association or society, whose articles of incorporation, or constitution, or rules, or bylaws, provide that at the time of the admission to membership into such society, every member, when joining shall belong to one occupation or guild, may become a beneficiary as may be provided in its articles of incorporation, or constitution, or rules, or bylaws. [C24, 27, 31, 35, 39,§**8790**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §512.11]

512.12 Statutes applicable. Such associations [dealt with in this chapter*] shall be governed by this chapter, and shall be exempt from the provisions of the statutes of this state relating to life insurance companies, except as hereinafter provided. [C97,§1825; C24, 27, 31, 35, 39,§**8791**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.12]

*See Homesteaders Life v. Murphy, 224 Iowa 173, 177

512.13 Change in beneficiary notwithstanding contract. No contract between a member and his beneficiary that the beneficiary or any person for him shall pay such member's assessments and dues, or either of them, shall deprive the member of the right to change the name of the beneficiary. [C97,§1834; C24, 27, 31, 35, 39,§**8792**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.13]

512.14 Duty to attach copy of application. All such associations shall, upon the issue or renewal of any beneficiary certificate, attach to such certificate or endorse thereon a true copy of any application or representation of the member which by the terms of such certificate are made a part thereof. [C97,§1826; C24, 27, 31, 35, 39,§**8793**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.14]

Referred to in §512.15
C97,§1826, editorially divided
Similar provisions, §§511.33, 515.94

512.15 Failure to attach. The omission so to do shall not render the certificate invalid, but if any such association neglects to comply with the requirements of section 512.14 it shall not plead or prove the falsity of any such certificate or representation or any part thereof in any action upon such certificate, and the plaintiff in any such action, in order to recover against such association, shall not be required to either plead or prove such application or representation. [C97,§1826; C24, 27, 31, 35, 39, §**8794**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.15]

Similar provisions, §§511.34, 515.95

512.16 Where suable. Such associations may be sued in any county in which is kept their principal place of business, or in which the beneficiary contract was made, or in which the death of the member occurred; but actions to recover old-age, sick, or accident benefits may, at the option of the beneficiary, be brought in the county of his residence. [C97, §1827; C24, 27, 31, 35, 39,§**8795**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.16]

512.17 Exemption of proceeds. The proceeds of any beneficiary certificate issued by any such association, and of any claims for benefits, shall be exempt from execution and attachment, to the same extent as the proceeds of any policy of life or endowment insurance, as is now or may hereafter be provided by the laws of this state. [C97,§1828; C24, 27, 31, 35, 39,§**8796**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.17]

Similar provisions, §§509.12, 511.37

512.18 Permit to foreign companies—conditions. Any such association organized under the laws of any other state shall be permitted to do business in this state, when it shall have filed with the commissioner of insurance a duly certified copy of its charter and articles of association, and a copy of its constitution or laws, certified to by its secretary or corresponding officer, together with an appointment of the commissioner as a person upon whom process may be served as hereinafter provided, if such association shall be shown to be authorized to do business in the state in which it is incorporated or organized. [C97,§1829; C24, 27, 31, 35, 39,§**8797**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.18]

Referred to in §512.32
C97,§1829, editorially divided

512.19 Examination. The commissioner may personally, or by some person to be designated by him, examine into the conditions, affairs, character, and business methods, accounts, books, and investments of such association at its home office, which examination shall be at the expense of such association, and shall be made within thirty days after demand therefor. [C97,§1829; C24, 27, 31, 35, 39,§**8798**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §512.19]

512.20 Expense. The expense of such examination shall be fixed by the commissioner and shall include a per diem charge for the examiners and the necessary expenses of travel and for hotel bills. [C97,§1829; C24, 27, 31, 35, 39,§**8799**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.20]

512.21 Refusal of permit. If the commissioner, after such examination, is of the opinion that no permit should be granted to such association, he may refuse to issue the same. [C97,§1829; C24, 27, 31, 35, 39,§**8800**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.21]

512.22 Commissioner as process agent. Any such association permitted to do business

within this state, and not having its principal office within this state, and not organized under the laws of this state, shall appoint, in writing, the commissioner of insurance to be attorney in fact, on whom all process in any action or proceeding against it shall be served, and in such writing shall agree that any process against it which is served on said attorney in fact shall be of the same validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in this state. [C97,§1831; C24, 27, 31, 35, 39,§8801; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.22]

C97,§1831, editorially divided
Similar provisions, §§491.15, 494.2, 511.27, 515.73, 520.5, 534.53

512.23 Copies. Copies of such certificate, certified by said commissioner, shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original. [C97,§1831; C24, 27, 31, 35, 39,§8802; C46, 50, 54, 58, 62, 66, 71, 73, 75, §512.23]

512.24 Service—notice to association. When legal process against any such association is served upon said commissioner, he shall immediately notify the association of such service by letter, postage prepaid, directed and mailed to its secretary or corresponding officer, and shall within two days after such service forward in the same manner a copy of the process served on him to such officer. [C97, §1831; C24, 27, 31, 35, 39,§8803; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.24]

512.25 Service deemed sufficient. Service upon such attorney shall be deemed sufficient service upon such association. [C97,§1831; C24, 27, 31, 35, 39,§8804; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.25]

512.26 Record of service of process. The commissioner shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made. [C97,§1831; C24, 27, 31, 35, 39,§8805; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.26]

512.27 Commencement of business—conditions. Before any beneficiary society, order, or association shall be authorized to commence business within this state, it shall submit to the commissioner of insurance its bylaws or rules by which it is to be governed, and also its articles of incorporation, if a corporation, which shall include its plan of business. [S13, §1832; C24, 27, 31, 35, 39,§8806; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.27]

Referred to in §512.7
S13,§1832, editorially divided

512.28 Opinion of attorney general. The commissioner shall thereupon submit its articles of incorporation to the attorney general for examination, and if found by him to be in harmony with this title, chapter, and with law, he shall so certify upon said articles and return them to the commissioner. [S13,§1832; C24, 27, 31, 35, 39,§8807; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.28]

Referred to in §512.7

512.29 Certificate of authority—fees. If the commissioner shall approve the articles and also the bylaws or rules, he shall issue to the society, order, or association a certificate of authority, authorizing it to transact business within this state for a period of one year from the first day of May of the year of its issue, for which certificate and all proceedings in connection therewith, there shall be paid to the commissioner a fee of twenty-five dollars, and for each annual renewal thereof a like fee shall be paid. [C97,§1832; S13,§1832; C24, 27, 31, 35, 39,§8808; C46, 50, 54, 58, 62, 66, 71, 73, 75, §512.29; 66GA, ch 1056,§29]

Referred to in §512.7

512.30 Required applications. Before such certificate shall be issued, the fraternal society, order, or association shall have actual bona fide applications upon the lives of at least five hundred persons, residents of this state, for at least one thousand dollars of insurance each, and the commissioner may require the presentation of such applications, signed by the applicants themselves. [S13,§1832; C24, 27, 31, 35, 39,§8809; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.30]

Referred to in §512.7

512.31 Renewal of permit conditional. No renewal of certificate of authority shall be made to any society, order, or association whose membership, in good standing, or the amount of whose insurance in force shall be reduced below the above requirements. [S13, §1832; C24, 27, 31, 35, 39,§8810; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.31]

Referred to in §512.7

512.32 Foreign societies—conditions. Societies, orders, or associations not organized under the laws of this state, in addition to the requirements of the provisions of section 512.18, must also comply with all of the provisions of this chapter, except as to the residence of membership; provided that no such society, order, or association shall be authorized to transact business within this state unless it shall be shown to have actual members, in good standing, of at least one thousand, and at least one million dollars of insurance in force. [S13,§1832; C24, 27, 31, 35, 39, §8811; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.32]

Referred to in §512.7

512.33 Employment of agents. Such associations may employ agents in the soliciting or procuring of new members and such agents shall be subject to the provisions of chapter 522. The term "agent" as used in this section means any authorized or acknowledged agent of a society who acts as such in the solicitation, negotiation or procurement or making of a life insurance, accident and health insurance or annuity contract. Notwithstanding the

above definition of the term "agent", a society may appoint one individual to act as an agent for each lodge, or other subordinate unit by whatever name known, of the society and licensing under chapter 522 shall not be required of such individual so long as the life insurance contracts solicited and procured by such individual do not exceed twenty-five thousand dollars in any calendar year, or, in the case of any other kind or kinds of insurance which the society is authorized to write, on the persons of more than twenty-five individuals in any calendar year. Licensing in accordance with chapter 522 shall be required on and after July 1, 1970. Any examination which may be required under the provisions of said chapter 522 shall not be applicable to any agent of a society who is in the service of a society on July 1, 1970, and who on said date is authorized to represent a fraternal beneficiary society. The provisions of said chapter 522 shall not apply to the member representatives of any society organized or licensed under this chapter which insures its members against death, dismemberment and disability resulting from accident only, and which pays no commission or other compensation for the solicitation and procurement of such contracts. [C97,§1833; C24, 27, 31, 35, 39,§8812; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.33]

Referred to in §522.1

512.34 Meetings in foreign states. Any such association organized under the laws of this state may provide for the meetings of its legislative or governing body in any other state, territory, or province wherein such association shall have subordinate bodies, and all business transacted at such meetings shall be valid. In all respects, as if such meetings were held within this state. [C97,§1835; C24, 27, 31, 35, 39,§8813; C46, 50, 54, 58, 62, 66, 71, 73, 75, §512.34]

C97,§1835, editorially divided

512.35 Voting in foreign state. Where the laws of any such association provide for the election of its officers by votes to be cast in its subordinate bodies, the votes so cast in its subordinate bodies in any other state, territory, or province shall be valid, as if cast within this state. [C97,§1835; C24, 27, 31, 35, 39,§8814; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.35]

512.36 Violations of statute. Any such association refusing or neglecting to make the report as provided in this chapter shall be excluded from doing business within this state. [C97,§1836; C24, 27, 31, 35, 39,§8815; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.36]

C97,§1836, editorially divided

512.37 Delinquency reported — injunction. The commissioner of insurance must, within sixty days after failure to make such report, or in case any such association shall exceed its powers, or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of this chapter, give notice in writing to the attorney general, who shall immediately commence an action against such association to enjoin the same from carrying on any business. [C97,§1836; C24, 27, 31, 35, 39, §8816; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.37]

512.38 Business prohibited — reinstatement. No association so enjoined shall have authority to continue business until such report shall be made, or overt act or violation complained of shall have been corrected, or until the costs of such action be paid by it, provided the court shall find that such association was in default, as charged; whereupon the commissioner shall reinstate such association, and not until then shall such association be allowed to again do business in this state. [C97,§1836; C24, 27, 31, 35, 39,§8817; C46, 50, 54, 58, 62, 66, 71, 73, 75, §512.38]

512.39 Violations. Any officer, agent, or person acting for any such association or subordinate body thereof within this state, while such association shall be so enjoined or prohibited from doing business pursuant to this chapter, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than two hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court. [C97,§1836; C24, 27, 31, 35, 39,§8818; C46, 50, 54, 58, 62, 66, 71, 73, 75, §512.39]

Referred to in §512.40

512.40 Illegal business — agents. Any person who shall act within this state as an officer, agent, or otherwise for any such association which has failed, neglected, or refused to comply with, or which has violated any of the provisions of this chapter, or shall have failed or neglected to procure from the commissioner of insurance proper certificate of authority to transact business as provided for by this chapter, shall be subject to the penalty provided in section 512.39 for the misdemeanor therein specified. [C97,§1837; C24, 27, 31, 35, 39,§8819; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.40]

512.41 False representations. Any officer, agent, or member of such association, who shall obtain any money or property belonging thereto by any false or fraudulent representation, shall be fined not more than five hundred dollars and costs, and stand committed until such fine and costs are paid, or may be imprisoned in the county jail not more than six months. [C97,§1838; C24, 27, 31, 35, 39,§8820; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.41]

512.42 Report. Every such association doing business in this state shall, on or before the first day of March of each year, make, and file with the commissioner of insurance, a report for the year ending on the thirty-first day of December immediately preceding. All reports shall be upon blank forms to be provided by the commissioner, or may be printed

in pamphlet form, and shall be verified under oath by the authorized officers of such association, and shall be published, or the substance thereof, in the annual report of the commissioner under the separate title "Fraternal Beneficiary Associations", and shall contain answers to the following questions:

1. Number of certificates issued during the year, or members admitted.

2. Amount of indemnity effected thereby.

3. Number of losses or benefit liabilities incurred.

4. Number of losses or benefit liabilities paid.

5. The amount received from each assessment for the year.

6. Total amount paid members, beneficiaries, legal representatives, or heirs.

7. Number and kind of claims for which assessments have been made.

8. Number and kind of claims compromised or resisted, and brief statement of reason.

9. Does association charge annual or other periodical dues or admission fees.

10. How much on each one thousand dollars annually, or per capita, as the case may be.

11. Total amount received, from what source, and the disposition thereof.

12. Total amount of salaries, fees, per diem, mileage, expenses paid to officers, showing amount paid to each.

13. Does the association guarantee, in its certificates, fixed amounts to be paid regardless of amount realized from assessments, dues, admission fees, and donations.

14. If so, state amount guaranteed, and the security of such guarantee.

15. Has the association a reserve or emergency fund.

16. If so, how is it created, and for what purpose, the amount thereof, and how invested.

17. Has the association more than one class.

18. If so, how many, and amount of indemnity in each.

19. Number of members in each class.

20. If voluntary, so state, and give date of organization.

21. If organized under the laws of this state, under what law and at what time, giving chapter and year, and date of passage of the Act.

22. If organized under the laws of any other state, territory, or province, state such fact and the date of organization, giving chapter and year, and date of passage of the Act.

23. Number of certificates of beneficiary membership lapsed during the year.

24. Number in force at beginning and end of year; if more than one class, number in each class.

25. Names and addresses of its presidents, secretary, and treasurer, or corresponding officers.

The commissioner is empowered to make any additional inquiries of any such association relative to the business contemplated by this chapter, and such officer of such association as the commissioner may require shall promptly reply in writing, under oath, to all such inquiries. [C97,§1830; C24, 27, 31, 35, 39, §8822; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.42]

Referred to in §511.3

RATES

512.43 Mortuary assessment rates. No fraternal beneficiary society not admitted to transact business in this state prior to July 4, 1907, shall be incorporated, or given a permit or certificate of authority to transact business within this state, unless it shall first show that the mortuary assessment rates provided for in whatever plan of business it has adopted, including the issuance of term, whole life, or limited payment certificates with withdrawal options, are not lower than is indicated as necessary by the following mortality table:

NATIONAL FRATERNAL CONGRESS MORTALITY TABLE

Age	Number Living	Number Dying	Probability of Dying	Age	Number Living	Number Dying	Probability of Dying
20	100,000	500	.0050000	60	69,801	1,588	.0227504
21	99,500	501	.0050352	61	68,213	1,681	.0246434
22	98,999	502	.0050708	62	66,532	1,778	.0267240
23	98,497	503	.0051068	63	64,754	1,880	.0290330
24	97,994	505	.0051535	64	62,874	1,985	.0315701
25	97,489	507	.0052006	65	60,889	2,094	.0343904
26	96,982	510	.0052587	66	58,795	2,206	.0375202
27	96,472	513	.0053176	67	56,589	2,308	.0409620
28	95,957	517	.0053877	68	54,271	2,430	.0447753
29	95,442	522	.0054693	69	51,841	2,539	.0489767
30	94,920	527	.0055520	70	49,302	2,645	.0536489
31	94,393	533	.0056466	71	46,657	2,744	.0588122
32	93,860	540	.0057532	72	43,913	2,832	.0644912
33	93,320	548	.0058723	73	41,081	2,909	.0708113
34	92,772	557	.0060040	74	38,172	2,969	.0777795
35	92,215	567	.0061487	75	35,203	3,009	.0854957
36	91,648	578	.0063067	76	32,194	3,026	.0939927
37	91,070	591	.0064895	77	29,168	3,016	.1031010
38	90,479	606	.0066977	78	26,152	2,977	.1138345
39	89,873	622	.0069209	79	23,175	2,905	.1253506
40	89,251	640	.0071708	80	20,270	2,799	.1380858
41	88,611	660	.0074483	81	17,471	2,659	.1521951
42	87,951	683	.0077657	82	14,812	2,485	.1677694
43	87,268	708	.0081129	83	12,327	2,280	.1849599
44	86,568	734	.0084797	84	10,047	2,050	.2040410
45	85,826	761	.0088668	85	7,997	1,800	.2250844
46	85,065	790	.0092870	86	6,197	1,539	.2483460
47	84,275	822	.0097538	87	4,658	1,277	.2741520
48	83,453	857	.0102693	88	3,381	1,023	.3025732
49	82,596	894	.0108238	89	2,358	788	.3341815
50	81,702	935	.0114440	90	1,570	579	.3687898
51	80,767	981	.0121460	91	991	404	.4076690
52	79,786	1,029	.0128970	92	587	264	.4497445
53	78,757	1,083	.0137512	93	323	161	.4984520
54	77,674	1,140	.0146767	94	162	89	.5493827
55	76,534	1,202	.0157054	95	73	44	.6027397
56	75,332	1,270	.0168587	96	29	19	.6551724
57	74,062	1,342	.0181200	97	10	7	.7000000
58	72,720	1,418	.0194994	98	3	3	1.0000000
59	71,302	1,501	.0210513				

[S13,§1839-j; C24, 27, 31, 35, 39,§8823; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.43]

Referred to in §§512.5, 512.7, 512.44

S13,§1839-j, editorially divided

See also Mortality Tables, ch 450 and next preceding Table of Corresponding Sections

512.44 Exceptions. Section 512.43 shall not be construed so as to apply to or affect any association organized solely for benevolent purposes and whose articles of incorporation, constitution, rules, or bylaws provide that at the time of the admission to membership each member, when joining, shall belong to one certain occupation or guild. [S13,§1839-j; C24, 27, 31, 35, 39,§8824; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.44]

512.45 Valuation of certificates. The certificate written by any domestic fraternal beneficiary association operating under the provisions of the foregoing mortality table shall be valued in the same manner as provided in section 508.36, except that such valuation shall be based upon the foregoing mortality table and four percent interest.

If the society makes loans on its certificates, the valuation shall be based upon a mortality table not lower than the American table of mortality and four and one-half percent interest. [S13,§1839-j; C24, 27, 31, 35, 39,§8825; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.45; 66GA, ch 1056,§30]

See Mortality Table at end of Vol. II

INVESTMENTS

512.46 Society to authorize. Nothing in section 8826 [Code 1939] shall be construed to permit the officials or board of directors of such society, order, or association to make such investment without authority specifically granted by the said society, order, or association through its grand or supreme lodge or convention. [S13,§1839-k; C24, 27, 31, 35, 39, §8827; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.46]

512.47 Conveyance to commissioner—valuation. Any company or association so investing its funds shall convey the real estate thus acquired to the commissioner of insurance by deed, such property to be held by him in trust

for the benefit of the members of such association, the value thereof to be determined from time to time by the commissioner. [S13, §1839-k; C24, 27, 31, 35, 39,§8828; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.47]

512.48 Schedule of investments. Any fraternal beneficiary society, order, or association, organized under the laws of this state, accumulating money to be held in trust for the purpose of fulfillment of its certificates or contracts, shall invest such accumulation in the securities provided in section 511.8, and no other. [S13,§1839-l; C24, 27, 31, 35, 39,§8829; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.48]

Referred to in §512.54
S13,§1839-l, editorially divided
Similar provisions, §§511.8, 515.35

512.49 Deposit with commissioner. All such securities shall be deposited with the commissioner of insurance subject to his approval, and shall remain with him until withdrawn in accordance with the provisions of section 512.53.

Provided that societies, orders, or associations doing business in the Dominion of Canada may there deposit such portion of their securities as is necessary to maintain the required reserves on business written in that country. [S13,§1839-l; C24, 27, 31, 35, 39,§8830; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.49]

Referred to in §512.54

512.50 Payment of securities. Any fraternal beneficiary society, order, or association receiving payments, or partial payments on any securities deposited with the commissioner, shall notify him of such fact giving the amount and date of payment within fifteen days after such payment shall have been made. [S13, §1839-l; C24, 27, 31, 35, 39,§8831; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.50]

Referred to in §512.54

512.51 Failure to report payments. The officers of any society, order, or association which fails to report the receipt of payments or partial payments as above provided shall be liable to a fine in double the amount collected and not reported within the time and in the manner above specified. [S13,§1839-l; C24, 27, 31, 35, 39,§8832; C46, 50, 54, 58, 62, 66, 71, 73, 75, §512.51]

Referred to in §512.54

512.52 Authority for fund—purpose of withdrawal. Any society, order, or association required to make a deposit with the commissioner as herein contemplated, shall at the time of making such deposit, designate by what provisions of its articles of incorporation or laws such fund is accumulated and upon making request for withdrawal of any funds shall designate for what purpose such withdrawal is desired. [S13,§1839-l; C24, 27, 31, 35, 39,§8833; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.52]

Referred to in §512.54

512.53 Change of securities. Any society, order, or association, may at any time change its securities on deposit by depositing a like amount in other securities of the same character and the commissioner shall permit a withdrawal of the same upon satisfactory proof in writing filed with him that they are to be used for the purpose for which they were originally deposited. [S13,§1839-l; C24, 27, 31, 35, 39,§8834; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.53]

Referred to in §§512.49, 512.54

512.54 Violations — associations excepted. The commissioner shall have authority to suspend or revoke the certificate of authority of any society, order, or association failing to comply with any of the provisions of sections 512.48 to 512.53 or for violating the same. Nothing in said sections shall be construed to apply to any association organized solely for benevolent purposes and whose articles of incorporation, constitution, rules, or bylaws provide that, at the time of the admission to membership, each member, when joining, shall belong to one certain occupation, guild, profession, or religious denomination. [S13,§1839-l; C24, 27, 31, 35, 39,§8835; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.54]

512.55 Applicability—exceptions. The provisions of this chapter shall not be construed to apply to organizations, societies, or associations, the membership of which consists of members of the families of members of any one occupation, guild, profession, or religious denomination, nor shall the provisions of this chapter be construed to apply to auxiliary societies or associations, the membership of which consists of members of the families of members of any one occupation, guild, profession, or religious denomination. [S13,§1839-l; C24, 27, 31, 35, 39,§8836; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.55]

BENEFITS ON LIVES OF CHILDREN

512.56 Authorization. Any fraternal benefit society authorized to do business in this state may provide in its laws, in addition to other benefits provided therein, for insurance and/or annuities upon the lives of children at any age, upon the application of a relative by blood to the fourth degree, stepfather, stepmother, stepbrother, stepsister, or person responsible for the support of the child, as the laws of such society may provide. Any such society may, at its option, organize and operate branches for such children and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. [C24,§§8837, 8838; C27, 31, 35,§8842-b1; C39, §8842.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.56]

Referred to in §§512.59, 512.61
Similar provisions, §§510.10, 512.9, 512.69

512.57 Contributions. The contributions to be made upon such certificate shall be based upon the standard industrial mortality table or the English life table number six, or such other mortality table as may be approved by

the commissioner of insurance. [C24,§8841; C27, 31, 35,§8842-b2; C39,§8842.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.57]

Referred to in §§512.58, 512.59

512.58 Reserve. Any society issuing such benefit certificates shall maintain on all such certificates the reserve required by the standard of mortality and interest adopted by the society for computing contributions as provided in section 512.57. [C24,§8842; C27, 31, 35, §8842-b3; C39,§8842.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.58]

Referred to in §512.59

512.59 General regulations. A society shall have full power to provide for means of enforcing payment of contributions, designation and change of beneficiaries, which beneficiary shall be the child itself or a person qualified to make application therefor as provided in section 512.56, and in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith, not at variance with the provisions of this and sections 512.56 to 512.58. [C24,§8844; C27, 31, 35,§8842-b4; C39,§8842.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.59]

512.60 No vested interest in new certificate. Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contributions, shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership. [C24, 27, 31, 35, 39,§8845; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.60]

Similar provisions, §§510.10, 512.10

512.61 Specified payments. Any society shall have the right to provide in its laws and the certificate issued under section 512.56 for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society as its constitution and bylaws may provide. [C24, 27, 31, 35, 39,§8848; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.61]

FRATERNAL CHARITABLE INSTITUTIONS

512.62 General power granted. It shall be lawful for any fraternal beneficiary society, order, or association now organized and existing, or hereafter organized under and by virtue of the laws of this state, or any such society, order, or association organized and existing under and by virtue of the laws of any other state, province, or territory, and now or hereafter admitted to do business within this state, to create, maintain, and operate, for the benefit of its sick, disabled, or distressed members and their families and dependents, out of any general, special, or expense fund, and from any voluntary contributions it may receive therefor, hospitals, asylums, sanatoriums, schools, or homes. [C24, 27, 31, 35, 39,§8850; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.62]

Referred to in §512.68
40GA, ch 172,§1, editorially divided

512.63 Financial powers. For such purpose any such society, order, or association may own, hold, lease, mortgage, sell, and convey personal property and real property located within or without this state, with necessary buildings thereon; provided that the amount of the general, special, or expense fund to be expended, as herein provided, shall not exceed such amounts as shall have been or shall be, from time to time, authorized by the legislative or supreme governing body of such society, order, or association. [C24, 27, 31, 35, 39,§8851; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.63]

512.64 Charges. Maintenance, treatment, training, and proper attendance in any such hospital, asylum, sanatorium, school, or home may be furnished free, or a reasonable charge may be made therefor. [C24, 27, 31, 35, 39, §8852; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.64]

512.65 Profit prohibited. No such hospital, asylum, sanatorium, school, or home shall be operated for profit. [C24, 27, 31, 35, 39,§8853; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.65]

512.66 General funds protected. No part of the cost or expense of creating, maintaining, or operating any such hospital, asylum, sanatorium, school, or home shall be defrayed or paid out of the mortuary, sick, disability, or benefit funds of any such society. [C24, 27, 31, 35, 39,§8854; C46, 50, 54, 58, 62, 66, 71, 73, 75, §512.66]

512.67 Management. The management of such institutions shall be in such officers as the supreme governing body may designate, and such officers may or may not be members of the society, order, or association. [C24, 27, 31, 35, 39,§8855; C46, 50, 54, 58, 62, 66, 71, 73, 75, §512.67]

512.68 Legal standing. Any such hospital, asylum, sanatorium, school, or home, when established in the manner provided by section 512.62, is hereby declared to be a charitable institution, with all the rights, benefits, and privileges given to charitable institutions under and by the Constitution and laws of this state. [C24, 27, 31, 35, 39,§8856; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.68]

40GA, ch 172,§2, editorially divided

512.69 May be beneficiary. Such hospital, asylum, sanatorium, school, or home is hereby declared to be competent to be named and to take as beneficiary in and by the benefit certificate of any member of such society, order, or association. [C24, 27, 31, 35, 39,§8857; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.69]

Similar provisions, §§510.10, 512.56

512.70 General powers of commissioner. The commissioner of insurance shall have the same powers, supervision, and control over

such hospitals, asylums, sanatoriums, schools, and homes erected by any such society incorporated in this state, as he now has, or may hereafter legally exercise over fraternal beneficiary societies organized or transacting business in this state. [C24, 27, 31, 35, 39,§8858; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.70]

40GA, ch 172,§3, editorially divided

512.71 Mismanagement — delinquency reported. Whenever the commissioner of insurance finds that any such hospital, asylum, sanatorium, school, or home erected by such domestic society is being mismanaged or that the interest of the society or public requires it, the commissioner may direct an order to the officers responsible for such mismanagement or in control of such institution with reference to such mismanagement, and if such officers refuse, neglect, or fail to comply with such order within the time fixed by the commissioner of insurance, the commissioner shall communicate the fact to the attorney general. [C24, 27, 31, 35, 39,§8859; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.71]

512.72 Duty of attorney general — decree. The attorney general shall proceed in the manner provided for in section 512.101, or the court may remove such officers guilty of mismanagement and appoint others until the society may regularly elect or select other officers to succeed those deposed. [C24, 27, 31, 35, 39,§8860; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.72]

CONSOLIDATION OR REINSURANCE

512.73 Presenting proposed plan. When any domestic fraternal beneficiary association shall propose to consolidate or enter into any reinsurance contract with any other association or organization whether domiciled in this or any other state or territory, it shall present its proposed plan of consolidation or reinsurance, together with a statement of the condition of its affairs to the commissioner of insurance for his approval. [S13,§1839-g; C24, 27, 31, 35, 39,§8861; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.73]

Referred to in §§512.79, 512.80
S13,§1839-g, editorially divided

512.74 Submission of plan—notice. Should the commissioner approve the plan, the same shall be submitted by any association proposing to reinsure its risks or transfer its business, to its local lodges or organizations or to a regular or special meeting of its supreme lodge or governing body to be voted upon, such notice being given as the commissioner may direct. [S13,§1839-g; C24, 27, 31, 35, 39,§8862; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.74]

Referred to in §§512.79, 512.80

512.75 Submission to reinsuring association. If, in the judgment of the commissioner, it is deemed advisable he may also require the plan to be in like manner submitted to the association proposing to accept or reinsure the risks of any other association. [S13,§1839-g; C24, 27, 31, 35, 39,§8863; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.75]

Referred to in §§512.79, 512.80

512.76 Multiple consolidation. In case two or more associations propose to consolidate, the proposed plan of consolidation shall be submitted, as above provided, to all of the associations interested in such consolidation. [S13,§1839-g; C24, 27, 31, 35, 39,§8864; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.76]

Referred to in §§512.79, 512.80

512.77 Approval — proxies. In any of the above cases, a two-thirds vote of all of the members of each association present and voting shall be necessary to an approval of any plan of consolidation or reinsurance, and in no case shall proxies be voted. [S13,§1839-g; C24, 27, 31, 35, 39,§8865; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.77]

Referred to in §§512.79, 512.80

512.78 Official order of approval. On presenting to the commissioner satisfactory proof that the foregoing provisions have been complied with and that the required number of votes have been cast in favor of the proposed plan, he shall issue to the association an order to the effect that the plan has been approved, and the same shall be in force and effect from and after the date of such order, and the commissioner shall direct such distribution of the assets of any such association or associations as shall be just and equitable. [S13,§1839-g; C24, 27, 31, 35, 39,§8866; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.78]

Referred to in §§512.79, 512.80

512.79 Expenses. All expenses or costs incident to proceedings under the provisions of sections 512.73 to 512.78 shall be paid by the associations interested. [S13,§1839-h; C24, 27, 31, 35, 39,§8867; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.79]

512.80 Violations. Any officer, director, or manager of any association violating or consenting to the violation of any of the provisions of sections 512.73 to 512.78 shall be punished by a fine of not less than ten hundred dollars, or by imprisonment in the county jail not less than one year, or by both such fine and imprisonment in the discretion of the court. [S13,§1839-i; C24, 27, 31, 35, 39,§8868; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.80]

REORGANIZATION

512.81 Authorization. Any existing fraternal beneficiary society may amend its articles of incorporation and bylaws in such a manner as to transform itself into a legal reserve level premium company doing business either as a mutual or stock company, but only after complying with the provisions of sections 512.82 to 512.96. [C24, 27, 31, 35, 39,§8869; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.81]

Referred to in §§512.93, 512.97
38GA, ch 302,§1, editorially divided

512.82 Submission of plan. Whenever any such society shall propose to transform itself into a legal reserve level premium company as herein provided, it shall file with the commissioner of insurance, its proposed articles

and bylaws, its plan of transformation, setting forth in detail the terms and conditions of such transformation and also the method by which it proposes to protect the interests of its membership. [C24, 27, 31, 35, 39,§8870; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.82]

Referred to in §§512.81, 512.93, 512.97

512.83 Notice. The commissioner may proceed to hear and determine such petition without notice, or, if he deems it necessary that such notice should be given in order to conserve the interests of the membership, he shall require the society to first notify, by mail, all of the members of such society of the pendency of such petition, the contents of such notice to be determined by the commissioner. [C24, 27, 31, 35, 39,§8871; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.83]

Referred to in §§512.81, 512.93, 512.97

512.84 Appearance. When notice shall have been given, as above provided, any member of said society shall have the right to appear before said commissioner and be heard with reference to said petition. [C24, 27, 31, 35, 39, §8872; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.84]

Referred to in §§512.81, 512.93, 512.97

512.85 Examination. The commissioner may also make such examination into the affairs and conditions of the society as he deems proper, and shall have power to summon and compel the attendance and testimony of witnesses, and the production of books and papers, and may administer oaths. [C24, 27, 31, 35, 39, §8873; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.85]

Referred to in §§512.81, 512.93, 512.97

512.86 Authorization order. If satisfied that the interests of the membership of said society are properly protected and that no reasonable objection to said petition exists, the commissioner may authorize in writing, such transformation, or may first require such modification thereof as may seem to him necessary for the best interests of such membership. [C24, 27, 31, 35, 39,§8874; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.86]

Referred to in §§512.81, 512.93, 512.97

512.87 Disposition of assets. The said commissioner shall make such order and disposition of the assets of any such society as in his judgment may be just and equitable. [C24, 27, 31, 35, 39,§8875; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.87]

Referred to in §§512.81, 512.93, 512.97

512.88 Submission to supreme governing body. The commissioner shall require the plan of transformation to be submitted to the supreme governing body of such society, to be voted upon. When submitted, it shall be either at a regular meeting of said supreme governing body or at a special meeting of same called for that purpose. [C24, 27, 31, 35, 39,§8876; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.88]

Referred to in §§512.81, 512.93

38GA, ch 302,§2, editorially divided

512.89 Notice — vote required — proxies. A notice of said special meeting, in the form approved by the commissioner of insurance, shall be given in accordance with the requirement of the bylaws of such society. When so submitted, a majority vote of the said supreme governing body present and voting, as authorized by its articles of incorporation and bylaws, shall be necessary to an approval of such plan of transformation; and no proxies shall in any case be voted. [C24, 27, 31, 35, 39,§8877; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.89]

Referred to in §§512.81, 512.93

512.90 Referendum. If the supreme governing body approves the plan of transformation, the board of directors or other managing body of such society shall submit the plan to a referendum vote of the members of such society under such regulations as may be prescribed by the commissioner of insurance, and if the result of such vote shall show that the majority of the members of such society has voted to repeal the action of the supreme governing body, then the same shall be considered as repealed by such society and shall be null and of no effect. [C24, 27, 31, 35, 39,§8878; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.90]

Referred to in §§512.81, 512.93

512.91 Approval by commissioner — vote filed. Any such plan of transformation submitted to the supreme governing body as herein contemplated, must first have been approved by the commissioner of insurance; and the result of said vote must be filed with such commissioner and be by him determined before any transformation shall be so effective. [C24, 27, 31, 35, 39,§8879; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.91]

Referred to in §§512.81, 512.93

512.92 Conditions precedent. No such transformation shall take place until after its plan has been approved by the commissioner, either with or without a hearing as herein provided, and until such approved plan has been adopted by a majority vote of the board of directors or board of trustees of such society; and, if submitted to the supreme governing body, until such approved plan has also been adopted by a majority vote of the said supreme governing body present and voting. [C24, 27, 31, 35, 39, §8880; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.92]

Referred to in §§512.81, 512.93

512.93 Scope of reorganization act. Nothing in sections 512.81 to 512.92 shall be construed to apply to any association organized solely for benevolent purposes and whose articles of incorporation, or constitution, rules or bylaws provide that, at the time of the admission to membership, each member, when joining, shall belong to one certain occupation or guild. [C31, 35,§8880-d1; C39,§8880.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.93]

Referred to in §512.81

512.94 Effect of reorganization — officers. Any such society so transformed, shall incur

the obligations and enjoy the benefits thereof the same as though originally thus incorporated, and such corporation, under its charter as thus amended, shall be a continuation of such original corporation, and the officers thereof shall serve through their respective terms as provided in the original charter, but their successors shall be elected and serve as in such amended articles provided. Any society so transformed shall have the power to acquire, own, hold, lease, mortgage, sell, and convey personal and real property, and to provide the necessary funds, and to do all things necessary for the purpose of operating and maintaining such hospitals, asylums, sanatoriums, schools, or homes as it was operating and maintaining when so transformed and it shall have the power to discontinue operating and maintaining the same and to lease, mortgage, sell, and convey the personal and real property acquired for use in connection therewith. [C24, 27, 31, 35, 39,§8881; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.94]

Referred to in §§512.81, 512.96
38GA, ch 302,§3, editorially divided

512.95 Pending suits. Such amendment or reincorporation shall not affect existing suits, claims, or contracts. [C24, 27, 31, 35, 39,§8882; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.95]

Referred to in §512.81

512.96 Purchase of stock. Any such fraternal beneficiary society taking advantage of section 512.94, to reorganize into a stock company shall offer to each member of said society the privilege of subscribing for and purchasing his or her proportionate amount of capital stock. [C24, 27, 31, 35, 39,§8883; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.96]

Referred to in §512.81

512.97 Valuation of existing certificates. The existing certificates of membership of any fraternal beneficiary society which shall have transformed itself into a legal reserve level premium life insurance company, in conformity with the provisions of sections 512.81 to 512.87 shall be valued as follows:

1. Certificates on which rates of contribution are not on the basis of any table of mortality, valued as yearly renewable term policies according to the standard of valuation of life insurance policies prescribed by the laws of this state.

2. Certificates on which the rates of contribution are based upon a standard table of mortality and specified rate of interest, valued in accordance with such standard.

The reserve so ascertained shall be held as a liability by the company in its annual statement rendered to the insurance department. [C24, 27, 31, 35, 39,§8884; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.97]

EXAMINATION AND RECEIVERSHIP

512.98 "Association" defined. The term "association" when used in this chapter shall mean any society, order, or association organized or authorized under the provisions of this chapter. [S13,§1839-a; C24, 27, 31, 35, 39,§8885; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.98]

512.99 Examination. The commissioner of insurance may, at any time he may deem it advisable, either in person or by his legally appointed representative, make an examination of, or inquire into the affairs of any fraternal beneficiary association authorized or seeking to be authorized to transact business within this state, provided the examination of associations organized under the laws of this state shall not be less frequent than once during each biennial period. [S13,§1839-b; C24, 27, 31, 35, 39,§8886; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.99]

512.100 Officers to assist—oaths. When an association is being examined, the officers, agents, or employees thereof shall produce for inspection all books, papers, documents, or other information concerning the affairs of the association and shall otherwise assist in the examination. The commissioner of insurance or examiner shall have authority to administer oaths, and may summon and may examine under oath any officer, employee, representative, or agent of any association concerning its affairs or condition. [S13,§1839-c; C24, 27, 31, 35, 39,§8887; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.100]

512.101 Revocation or suspension of authority—action by attorney general. If upon investigation or examination, it shall appear to the satisfaction of the commissioner of insurance that any association is doing an illegal or unauthorized business, or is failing to fulfill its contracts with its members, or is conducting its business fraudulently, or if its membership or the amount of its insurance in force has been reduced below the legal requirement, or should any association decline or refuse to submit to an examination, the commissioner may suspend or revoke its certificate of authority to transact business within this state, and having revoked the certificate of authority of any association organized under the laws of this state, he shall at once report the same to the attorney general who shall apply to the district court for the appointment of a receiver to wind up the affairs of such association. [S13,§1839-d; C24, 27, 31, 35, 39,§8888; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.101]

Referred to in §512.72

512.102 Expenses—how paid. In addition to the compensation of the assistants, the commissioner of insurance or examiner and assistants shall be entitled to actual and necessary traveling, hotel, and other expenses while conducting examinations away from their respective places of residence, the same to be paid by the treasurer of state upon warrants drawn by the state comptroller, bills therefor having been filed under oath and approved by the comptroller. Such expense and compensation shall, by the commissioner, be charged to

and collected from the associations examined and should any association neglect or refuse to pay the same, the commissioner shall at once revoke its certificate of authority to transact business within this state. [S13,§1839-e; C24, 27, 31, 35, 39,§8889; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.102]

512.103 Illegal business. Any officer, manager, agent, or representative of any association who with knowledge that its certificate of authority has been suspended or revoked, or that it is doing an illegal, unauthorized, or fraudulent business solicits insurance for said association, or receives applications therefor, or does any other act or thing toward receiving or procuring any new business for said association, shall be deemed guilty of a misdemeanor and for every such act, on conviction thereof, shall pay a fine of not less than one hundred nor more than ten hundred dollars, or be imprisoned in the county jail not more than one year, or be punished by both such fine and imprisonment. [S13,§1839-f; C24, 27, 31, 35, 39,§8890; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.103]

512.104 Application for receiver. No application for the appointment of a receiver for any fraternal beneficiary society, or branch thereof, shall be entertained by any court in this state, unless same is made by the attorney general. [SS15,§1839-m; C24, 27, 31, 35, 39,§8891; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.104]

512.105 When commenced. No such proceedings shall be commenced by the attorney general against any fraternal beneficiary society until the commissioner of insurance has first made an examination of such fraternal beneficiary society, and completed a report upon its affairs, and not until after notice has been duly served on the chief executive officers of the society, and a reasonable opportunity given to it, on a date to be named in said notice, to show cause why such proceedings should not be commenced. [SS15,§1839-m; C24, 27, 31, 35, 39,§8892; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.105]

512.106 Examinations confidential. Pending, during or after an examination or investigation of such fraternal beneficiary society, the commissioner of insurance shall make public no financial statement, report, or finding, nor shall he permit to become public any financial statement, report, or finding affecting the status, standing, or rights of any such society until a copy of such examination and investigation shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer such financial statement, investigation, report, or finding, and to make such showing in connection therewith, as it may desire. [SS15,§1839-o; C24, 27, 31, 35, 39,§8893; C46, 50, 54, 58, 62, 66, 71, 73, 75,§512.106]

CHAPTER 512A

REGULATION OF BENEVOLENT ASSOCIATIONS

Referred to in §507B.2

512A.1 Definitions.
512A.2 Rules promulgated.
512A.3 Incorporation mandatory.
512A.4 Records of transactions.
512A.5 Fees to commissioner.
512A.6 Contributions for expenses.
512A.7 Certificate of membership.
512A.8 Penalties.

512A.1 Definitions. When used in this chapter:

1. A *"benevolent association"* shall mean any person, firm, company, partnership, association or corporation, organized to enroll persons as members of a group for the purpose of providing an agency by which persons so enrolled may in the event of the death of any other member of the group make voluntary contributions to be distributed in whole or in part by the benevolent association to the beneficiary of the deceased member, or to members as contribution towards expense incurred by accident or sickness.

2. A *"member"* shall be any person who participates in a plan or agreement to make voluntary contribution through a benevolent association.

3. *"Commissioner"* when used in this chapter shall mean the commissioner of insurance. [C71, 73, 75,§512A.1]

512A.2 Rules promulgated. The commissioner shall promulgate such reasonable rules as he deems necessary to assure the proper operation of benevolent associations. [C71, 73, 75,§512A.2]

512A.3 Incorporation mandatory. Before a benevolent association shall operate in this state it shall first incorporate in accordance with the laws of this state, and the articles of incorporation and bylaws shall be submitted to the commissioner. If he finds they conform to the requirements of the law and all rules and regulations promulgated under this chapter, he shall approve the articles of incorpora-

tion and file them with the secretary of state. Every benevolent association at the time of its incorporation shall submit its general plan of operation to the commissioner and if he finds it conforms to the requirements of the law and all reasonable rules and regulations promulgated under this chapter, he shall issue a license to expire on the first day of May after issuance. Said license shall be renewed from year to year upon application of the association, if the commissioner finds from his examination that it has conformed to the requirements of all laws and regulations applicable thereto. [C71, 73, 75,§512A.3; 66GA, ch 1056,§31]

For provisions relating to associations operating prior to January 1, 1967, see 62GA, ch 368,§3

512A.4 Records of transactions. The association shall keep a record of all its transactions and shall file an annual report thereof for the preceding calendar year on or before the first day of March on a form prescribed by the commissioner. The commissioner shall also prescribe the method of keeping books and accounts of benevolent associations. [C71, 73, 75,§512A.4]

512A.5 Fees to commissioner. There shall be paid to the commissioner for services required under the provisions of this chapter the following fees, which shall be accounted for by him in the same manner as other fees received in the discharge of the duties of his office:

1. For filing and examination of the articles of incorporation for organization in this state and the accompanying general plan of operation of any benevolent association, and the issuing of the permission to do business, ten dollars.

2. For filing an annual statement of a benevolent association, and issuing the renewal of the permission required by law to authorize continuance in business, three dollars. [C71, 73, 75,§512A.5]

512A.6 Contributions for expenses. Such associations may operate without the establishment of reserves or surplus except for current expenses. Contributions for expenses shall be added as a separate item to contributions for membership benefits. A reasonable membership fee to cover initial expenses may be charged. [C71, 73, 75,§512A.6]

512A.7 Certificate of membership. Within thirty days after acceptance to membership a certificate, the form of which has been approved by the commissioner, shall be delivered to each member. The certificate shall set forth the name of the association, the name of the member, a statement as to the benefits of membership, to whom such benefits are payable, and such other provisions as are, in the opinion of the commissioner, necessary to inform the member of his rights in the association. The commissioner before approving any certificate shall be satisfied that any benefits to be paid a member or the beneficiary of a member are reasonable in relationship to any and all charges made or assessed against the membership. The certificate shall not indicate therein that the plan or benefits constitute an insurance policy. [C71, 73, 75,§512A.7]

512A.8 Penalties. Except as otherwise provided by law, it shall be unlawful for any person or corporation to operate a benevolent association in this state except as provided for in this chapter. Any person violating the provisions of this chapter shall be subject to a fine not exceeding one thousand dollars or imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment. [C71, 73, 75,§512A.8]

CHAPTER 513

EMPLOYEES MUTUAL INSURANCE

513.1 Exemption.
513.2 Power of commissioner.

513.1 Exemption. Unless specific reference is made thereto, no provision of this title shall include or apply to domestic societies which limit their membership to the employees of:

1. A particular city or

2. A designated firm, business house, or corporation. [C24, 27, 31, 35, 39,§8894; C46, 50, 54, 58, 62, 66, 71, 73, 75,§513.1]

513.2 Power of commissioner. The commissioner of insurance may require from any society such information as will enable him to determine whether such society is exempt from the provisions of the laws relating to insurance or to fraternal benefit societies. [C24, 27, 31, 35, 39,§8895; C46, 50, 54, 58, 62, 66, 71, 73, 75,§513.2]

CHAPTER 514

MUTUAL HOSPITAL SERVICE

Referred to in §§135B.30, 249A.4(4), 491.1, 496A.142(1), 504A.100(1), 507.1, 507B.2, 509A.6, 514B.5, 514B.6, 514B.9, 514B.20, 514B.31, 514B.32, 514C.1, 515B.2, 515B.9

514.1 Insurance laws excluded generally.
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514.14 Dissolution or merger.
514.15 Nonexempt from taxation.
514.16 Governmental employees included.
514.17 Physicians and surgeons, podiatrists, or dentists—number required.
514.18 Podiatrists.

514.1 Insurance laws excluded generally. Any corporation hereafter organized under the provisions of chapter 504 or chapter 504A for the purpose of establishing, maintaining, and operating a nonprofit hospital service plan, whereby hospital service may be provided by the said corporation or by a hospital with which it has a contract for such service, to such of the public who become subscribers to said plan under a contract which entitles each subscriber to hospital service, or any such corporation organized for the purpose of establishing, maintaining, and operating a plan whereby medical and surgical service may be provided at the expense of said corporation, by duly licensed physicians and surgeons, dentists, podiatrists, osteopathic physicians, or osteopathic physicians and surgeons, to subscribers under contract, entitling each subscriber to medical and surgical service, as provided in said contract or any such corporation organized for the purpose of establishing, maintaining, and operating a nonprofit pharmaceutical service plan or optometric service plan, whereby pharmaceutical or optometric service may be provided by the said corporation or by a licensed pharmacy with which it has a contract for such service, to such of the public who become subscribers to said plan under a contract which entitles each subscriber to pharmaceutical or optometric service, shall be governed by the provisions of this chapter and shall be exempt from all other provisions of the insurance laws of this state, unless specifically designated herein, not only in governmental relations with the state but for every other purpose, and no additions hereafter enacted shall apply to such corporations unless they be expressly designated therein. For the purposes of this chapter, the term "subscriber" shall include any person eligible for medical assistance or additional medical assistance as defined under chapter 249A as hereafter amended,* with respect to whom the department of social services has entered into a contract with any firm operating under said chapter 514. [C39,§8895.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.1]

*See §4.3

514.2 Incorporation. Persons desiring to form a nonprofit hospital service corporation, or a nonprofit medical service corporation, or a nonprofit pharmaceutical or optometric service corporation shall incorporate under the provisions of chapter 504 or chapter 504A, as supplemented and amended herein and any acts amendatory thereof. [C39,§8895.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.2]

514.3 Approval by commissioner. The articles of incorporation, and any subsequent amendments, of such corporation shall have endorsed thereon or annexed thereto the approval of the commissioner of insurance before the same shall be filed for record. [C39, §8895.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, §514.3]

514.4 Directors. At least a majority of the directors of a hospital service corporation must be at all times administrators, or directors, or trustees, or members of the clinical staff of hospitals which have contracted or may contract with such corporation to render to its subscribers hospital service. The board of directors of such corporation shall consist of at least nine members and not more than one shall be from any one hospital.

At least a majority of the directors of a medical service corporation must be at all times physicians or surgeons, dentists, podiatrists, osteopathic physicians, or osteopathic physicians and surgeons, who have contracted or may contract with such corporation to render to its subscribers medical or surgical service. The board of directors of such corporation shall consist of at least nine members. [C39,§8895.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, §514.4]

514.5 Contracts for service. Any hospital service corporation organized under the provisions of said chapter may enter into contracts for the rendering of hospital service to any of its subscribers with hospitals maintained and operated by the state or any of its political subdivisions, or by any corporation, association, or individual. Hospital service is meant

to include bed and board, general nursing care, use of the operating room, use of the delivery room, ordinary medications and dressings and other customary routine care.

Any medical service corporation organized under the provisions of this chapter may enter into contracts with subscribers to furnish medical and surgical service through physicians and surgeons, dentists, podiatrists, osteopathic physicians, or osteopathic physicians and surgeons.

Any pharmaceutical or optometric service corporation organized under the provisions of said chapter may enter into contracts for the rendering of pharmaceutical or optometric service to any of its subscribers. Membership in any pharmaceutical service corporation shall be open to all pharmacies licensed under chapter 155. [C39,§**8895.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.5]

514.6 Rates — approval by commissioner. The rates charged by any such corporation to the subscribers for hospital service or for medical and surgical service, or for pharmaceutical or optometric service shall at all times be subject to the approval of the commissioner of insurance. [C39,§**8895.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.6]

514.7 Contracts—approval by commissioner. The contracts by any such corporation with the subscribers for hospital service or for medical and surgical service or for pharmaceutical or optometric service shall at all times be subject to the approval of the commissioner of insurance. The commissioner shall require that participating pharmacies be reimbursed by the pharmaceutical service corporation at rates or prices equal to the rates or prices charged nonsubscribers, unless the commissioner determines otherwise to prevent loss to subscribers. [C39,§**8895.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.7]

514.8 Contracts with hospitals — approval. The contracts by any such corporation with participating hospitals for hospital service or with participating physicians and surgeons, dentists, podiatrists, osteopathic physicians, or osteopathic physicians and surgeons for medical and surgical service, or with participating pharmacies for pharmaceutical service, or with participating optometrists for optometric service shall at all times be subject to the approval of the commissioner of insurance. [C39, §**8895.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.8]

514.9 Annual report. Every such corporation shall annually, on or before the first day of March, file in the office of the commissioner of insurance a statement verified by at least two of the principal officers of said corporation showing its condition on the thirty-first day of December then next preceding, which shall be in such form and shall contain such matters as the commissioner of insurance shall prescribe. [C39,§**8895.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.9]

514.10 Examination. Every such corporation shall be subject to examination under the provisions of chapter 507 and any acts amendatory thereto, so far as the chapter may be applicable. [C39,§**8895.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.10]

514.11 Costs approved. All acquisition costs in connection with the solicitation of subscribers to such hospital service plan or medical service plan or pharmaceutical or optometric service plan, and administration costs including salaries paid its officers, if any, shall at all times be subject to the approval of the commissioner of insurance. [C39,§**8895.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.11]

514.12 Investment of funds. The funds of any corporation subject to the provisions of this chapter shall be invested only in securities permitted by the laws of this state for the investment of funds of life insurance companies. [C39,§**8895.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.12]

514.13 Arbitration of disputes. Any dispute arising between a corporation organized under said chapter and any hospital with which such corporation has a contract for hospital service, or any physician and surgeon, dentist, podiatrist, osteopathic physician, or osteopathic physician and surgeon with whom any such corporation has a contract for medical and surgical service or any pharmacy or optometrist with whom any such corporation has a contract for pharmaceutical or optometric service, as provided for herein, may be submitted to the commissioner of insurance for his decision. All decisions and findings of the commissioner of insurance may be judicially reviewed in accordance with the terms of the Iowa administrative procedure Act. [C39, §**8895.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.13]

514.14 Dissolution or merger. Any dissolution, merger, or liquidation of a corporation organized under the provisions of said chapter shall be under the supervision of the commissioner of insurance who shall have all powers with respect thereto granted to him under the insurance laws of this state. [C39,§**8895.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.14]

514.15 Nonexempt from taxation. Every corporation organized under the provisions of this chapter is hereby declared to be a charitable and benevolent institution but its property and funds, including subscribers' contracts, shall not be exempt from taxation. [C39, §**8895.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.15]

514.16 Governmental employees included. An employee or employees of the state, or of any county, city or of any institution supported in whole or in part by public funds, or any subdivisions thereof, may authorize the deduction from his or their salary or wages of the amount of his or their subscription payments to any corporation operating a nonprofit

hospital service plan or medical service plan or pharmaceutical or optometric service plan, as provided in this chapter. The governing body of the state, or of the county, city or of any institution supported in whole or in part by public funds, or any subdivisions thereof, may authorize deductions from the salaries or wages of employees subscribing to such nonprofit hospital service plan or medical service plan or pharmaceutical or optometric service plan. The authorization by an employee or employees for deductions from his or their salaries or wages shall be evidenced by a written request signed by the employee directed to and filed with the treasurer of the state, county, city or of any institution supported in whole or in part by public funds, or any subdivisions thereof, and said treasurer is authorized to draw and deliver checks in favor of the hospital service corporation or medical service corporation or pharmaceutical or optometric service corporation stipulated in such authorization for the amount covering the sum total of the deductions authorized. The foregoing provisions are not to be deemed an assignment of salaries or wages. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.16]

Referred to in §§509A.3, 514B.21

514.17 Physicians and surgeons, podiatrists, or dentists — number required. No nonprofit medical service corporation shall be permitted to operate until it shall have entered into contracts with at least one hundred fifty physicians and surgeons licensed to practice medicine and surgery pursuant to chapter 148, or one hundred fifty dentists licensed to practice dentistry pursuant to chapter 153, or at least one hundred fifty physicians and surgeons licensed to practice osteopathy or osteopathy and surgery pursuant to chapter 150, or at least twenty-five podiatrists licensed to practice podiatry pursuant to chapter 149, who agree to furnish medical and surgical podiatric, or dental service and be governed by the bylaws of the corporation. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§514.17]

514.18 Podiatrists. Medical or surgical services or procedures constituting the practice of podiatry, also known as chiropody, as defined by chapter 149, and covered by the terms of any individual, group, blanket, or franchise policy providing accident or health benefits hereafter delivered or hereafter issued for delivery in Iowa and covering an Iowa risk may be performed by any practitioner, selected by the insured, licensed under chapter 149 to perform such medical or surgical services or procedures. Any provision of such policy or exclusion or limitation denying an insured the free choice of such licensed podiatrist, also known as chiropodist, shall to the extent of the denial, be void, but such voidance shall not affect the validity of the other provisions of the policy. [C66, 71, 73, 75,§514.18]

CHAPTER 514A

ACCIDENT AND HEALTH INSURANCE

Referred to in §§509.14(2,e), 514C.1

514A.1 Definition of accident and sickness insurance policy.
514A.2 Form of policy.
514A.3 Accident and sickness policy provisions.
514A.4 Conforming to statute.
514A.5 Application.
514A.6 Notice—waiver.
514A.7 Age limit.
514A.8 Nonapplication to certain policies.
514A.9 Violation.
514A.10 Judicial review.
514A.11 Inconsistent acts not applicable.
514A.12 Title and effective date of chapter.

514A.1 Definition of accident and sickness insurance policy. The term "policy of accident and sickness insurance" as used herein includes any policy or contract covering insurance against loss resulting from sickness or from bodily injury or death by accident, or both. For the purposes of this chapter the words "policy of accident and sickness insurance" are interchangeable without deviation of meaning with the words "policy of accident and health insurance" or the words "policy of accident or health insurance." The provisions of this chapter shall apply to all individual policies of such accident and sickness insurance as are written by Iowa or non-Iowa companies or associations duly licensed under the provisions of either chapter 508, 510, 515 or 520 also, societies, orders or associations licensed under the provisions of chapter 512 writing sickness and accident policies providing benefits for loss of time.

This chapter shall not apply to an association organized, existing and operating under chapter 510 which limits its contracts to providing benefits for spouses, heirs, orphans or legatees of deceased members whose death is caused by accident or accidental means, or of providing benefits for members for specific loss or loss of time from injuries caused by accident or accidental means, nor shall said chapter apply to a fraternal beneficiary association, as defined in section 512.1 and licensed under the provisions of section 510.23 thereof, which limits its contracts to providing benefits to beneficiaries of deceased members whose death is caused by accident or accidental means or of providing benefits for members for specific loss or loss of time from injuries caused by accident or accidental means.

Orders, societies or associations which admit

to membership only persons engaged in one or more crafts or hazardous occupations in the same or similar lines of business and the societies or auxiliaries to such orders shall not be subject to the provisions of this chapter nor shall any religious order be subject to the provisions of this chapter. [C54, 58, 62, 66, 71, 73, 75,§514A.1]

514A.2 Form of policy.

1. No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

a. The entire money and other considerations therefor are expressed therein; and

b. The time at which the insurance takes effect and terminates is expressed therein; and

c. It purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the policyholder; and

d. The style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lowercase unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and captions and subcaptions); and

e. The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in section 514A.3, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "exceptions", or "exceptions and reductions", provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

f. Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

g. It contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

2. If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may by ruling require that such policy meet the standards set forth in subsection 1 of this section and in section 514A.3. [C54, 58, 62, 66, 71, 73, 75,§514A.2]

Referred to in §514A.12

514A.3 Accident and sickness policy provisions.

1. *Required provisions.* Except as provided in subsection 3 of this section each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

a. A provision as follows:

Entire contract—changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

b. A provision as follows:

Time limit on certain defenses: (1) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such three-year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial three-year period, nor to limit the application of subsection 2, paragraphs *"a"*, *"b"*, *"c"*, *"d"* and *"e"*, in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (*a*) until at least age fifty or, (*b*) in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may

be omitted at the insurer's option) under the caption "incontestable":

After this policy has been in force for a period of three years during the lifetime of the insured, (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)

(2) No claim for loss incurred or disability (as defined in the policy) commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

c. A provision as follows:

Grace period: A grace period of .... (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision,

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

d. A provision as follows:

Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or, (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue.)

e. A provision as follows:

Notice of claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at ..... (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.)

f. A provision as follows:

Claim forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

g. A provision as follows:

Proofs of loss: Written proof of loss must be furnished to the insurer at its said office in

case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

h. A provision as follows:

Time of payment of claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid ..... (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

i. A provision as follows:

Payment of claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $..... (insert an amount which shall not exceed one thousand dollars), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

j. A provision as follows:

Physical examinations and autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

k. A provision as follows:

Legal actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

l. A provision as follows:

Change of beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

Subsection 1 referred to in subsection 4

2. *Other provisions.* Except as provided in subsection 3 of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

a. A provision as follows:

Change of occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classi-

fied by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

Referred to in subsection 1, "b"

b. A provision as follows:

Misstatement of age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

Referred to in subsection 1, "b"

c. A provision as follows:

Other insurance in this insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for ..... (insert type of coverage or coverages) in excess of $..... (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

Or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

Referred to in subsection 1, "b"

d. A provision as follows:

Insurance with other insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase "—expense incurred benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

Referred to in subsection 1,b

e. A provision as follows:

Insurance with other insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the phrase "—other benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form

by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

Referred to in subsection 1,*b*

f. A provision as follows:

Relation of earnings to insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or, (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

g. A provision as follows:

Unpaid premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

h. A provision as follows:

Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

i. A provision as follows:

Conformity with state statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

j. A provision as follows:

Illegal occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

k. A provision as follows:

Intoxicants and narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

Subsection 2 referred to in subsection 4

3. *Inapplicable or inconsistent provisions.* If any provision of this section is in whole or

in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

Referred to in subsections 1 and 2

4. *Order of certain policy provisions.* The provisions which are the subject of subsections 1 and 2 of this section, or any corresponding provisions which are used in lieu thereof in accordance with such subsections, shall be printed in the consecutive order of the provisions in such subsections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

5. *Third party ownership.* The word "insured", as used in this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

6. *Requirements of other jurisdictions.*

a. Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this chapter and which is prescribed or required by the law of the state under which the insurer is organized.

b. Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

7. *Filing procedure.* The commissioner may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this chapter as are necessary, proper or advisable to the administration of this chapter. This provision shall not abridge any other authority granted the commissioner by law. [S13,§1820; C24, 27, 31, 35, 39,§**8775**; C46, 50,§511.36; C54, 58, 62, 66, 71, 73, 75,§514A.3; 66GA, ch 1084,§43]

Referred to in §§514A.2, 514A.4, 514A.12

514A.4 Conforming to statute.

1. *Other policy provisions.* No policy provision which is not subject to section 514A.3 shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this chapter.

2. *Policy conflicting with this chapter.* A policy delivered or issued for delivery to any person in this state in violation of this chapter shall be held valid but shall be construed as provided in this chapter. When any provision in a policy subject to this chapter is in conflict with any provision of this chapter, the rights, duties and obligations of the insurer, the insured and the beneficiary shall be governed by the provisions of this chapter. [C54, 58, 62, 66, 71, 73, 75,§514A.4]

Referred to in §514A.12

514A.5 Application.

1. The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in this state shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

2. No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

3. The falsity of any statement in the application for any policy covered by this chapter may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer. [C54, 58, 62, 66, 71, 73, 75,§514A.5]

514A.6 Notice — waiver. The acknowledgment by any insurer of the receipt of notice given under any policy covered by this chapter, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy. [C54, 58, 62, 66, 71, 73, 75,§514A.6]

514A.7 Age limit. If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such

date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy. [C54, 58, 62, 66, 71, 73, 75,§514A.7]

514A.8 Nonapplication to certain policies. Nothing in this chapter shall apply to or affect (1) any policy of workers' compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein; or (2) any policy or contract of reinsurance; or (3) any blanket or group policy of insurance; or (4) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (*a*) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (*b*) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract. [C54, 58, 62, 66, 71, 73, 75,§514A.8; 66GA, ch 1084,§43]

514A.9 Violation. Any person, partnership or corporation willfully violating any provision of this chapter or order of the commissioner made in accordance with this chapter, shall forfeit to the people of the state a sum not to exceed one hundred dollars for each such violation, which may be recovered by a civil action. The commissioner may also suspend or revoke the license of an insurer or agent for any such willful violation. [C54, 58, 62, 66, 71, 73, 75,§514A.9]

514A.10 Judicial review. Judicial review of the actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act. [C54, 58, 62, 66, 71, 73, 75,§514A.10]

Amendment effective July 1, 1975
Constitutionality, 54GA, ch 188,§12

514A.11 Inconsistent acts not applicable. All acts or parts of acts inconsistent with this chapter shall not apply to the provisions hereof to the extent of said inconsistency. [C54, 58, 62, 66, 71, 73, 75,§514A.11]

514A.12 Title and effective date of chapter. This chapter may be cited as the "Uniform Individual Accident and Sickness Act." This chapter shall take effect on the fourth day of July, 1951. A policy, filed with and approved by the insurance commissioner prior to the effective date of this chapter for use, delivery, or issue for delivery to any person in this state, may continue to be used, or delivered, or issued for delivery to any person in this state for a period of five years from and after said effective date without being subject to the provisions of sections 514A.2, 514A.3 and 514A.4; and any rider or endorsement filed with and approved by the insurance commissioner at any time may be used, or delivered, or issued for delivery to any person holding such a policy without being subject to the provisions of sections 514A.2, 514A.3 and 514A.4. [C54, 58, 62, 66, 71, 73, 75,§514A.12]

CHAPTER 514B

HEALTH MAINTENANCE ORGANIZATIONS

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514B.1 Definitions. As provided in this chapter, unless the context otherwise requires:

1. *"Commissioner"* means the commissioner of insurance.

2. *"Health care services"* means services included in the furnishing to any individual of medical or dental care, or hospitalization, or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of all other services for the purposes of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

3. *"Health maintenance organization"* means any person, who:

a. Provides either directly or through arrangements with others, health care services to enrollees on a fixed prepayment basis;

b. Provides either directly or through arrangements with other persons for basic health care services; and,

c. Is responsible for the availability, accessibility and quality of the health care services provided or arranged.

4. *"Enrollee"* means an individual who is enrolled in a health maintenance organization.

5. *"Provider"* means any physician, hospital, or person as defined in chapter 4 which is licensed or otherwise authorized in this state to furnish health care services.

6. *"Basic health care services"* means services which an enrollee might reasonably require in order to be maintained in good health, including as a minimum, emergency care, inpatient hospital and physician care, and outpatient medical services rendered within or outside of a hospital.

7. *"Evidence of coverage"* means any certificate, agreement or contract issued to an enrollee setting out the coverage to which he is entitled. [C75,§514B.1]

514B.2 Establishment of health maintenance organizations. Any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person shall not establish or operate a health maintenance organization in this state, nor sell, offer to sell, or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a certificate under this chapter. [C75,§514B.2]

Application by organizations operating on January 1, 1974, see 65GA, ch 274,§3

514B.3 Application for a certificate of authority. An application for a certificate of authority shall be verified by an officer or authorized representative of the health maintenance organization, shall be in a form prescribed by the commissioner, and shall set forth or be accompanied by the following:

1. A copy of the basic organizational document, if any, of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all of its amendments.

2. A copy of the bylaws, rules or similar document, if any, regulating the conduct of the internal affairs of the applicant.

3. A list of the names, addresses and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers if a corporation and the partners or members if a partnership or association.

4. A copy of any contract made or to be made between any providers or persons listed in subsection 3 and the applicant.

5. A statement generally describing the health maintenance organization including, but not limited to, a description of its facilities and personnel.

6. A copy of the form of evidence of coverage.

7. A copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees or other organizations.

8. Financial statements showing the applicant's assets, liabilities and sources of financial support. If the applicant's financial affairs are audited by an independent certified public accountant, a copy of the applicant's most recent regular certified financial statement shall satisfy this requirement unless the commissioner directs that additional financial information is required for the proper administration of this chapter.

9. A description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of operating results anticipated, and a statement as to the sources of funding.

10. A power of attorney executed by any applicant who is not domiciled in this state appointing the commissioner, his successors in office and deputies as the true and lawful attorney of the applicant for this state upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state may be served.

11. A statement reasonably describing the geographic area to be served.

12. A description of the complaint procedures to be utilized as required under section 514B.14.

13. A description of the procedures and programs to be implemented to meet the requirements for quality of health care as determined by the commissioner of public health under section 514B.4.

14. A description of the mechanism by which enrollees shall be allowed to participate in matters of policy and operation as required by section 514B.7.

15. Other information the commissioner finds reasonably necessary to make the determinations required in section 514B.5.

A health maintenance organization shall, unless otherwise provided for in this chapter, file notice with the commissioner and receive approval from him before modifying the operations described in the information required by this section.

Upon receipt of an application for a certificate of authority, the commissioner shall immediately transmit copies of the application and accompanying documents to the commissioner of public health and the affected regional health planning council, as authorized by Public Law 89-749 (42 U.S.C. 246 (b) 2b), for their nonbinding consultation and advice. [C75,§514B.3]

Referred to in §§514B.5, 514B.12

514B.4 Duties of the commissioner of public health. The commissioner of public health shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:

1. Has demonstrated the willingness and potential ability to assure the availability, accessibility and continuity of service through adequate personnel and facilities.

2. Has arrangements established in accordance with regulations promulgated by the commissioner of public health for a continuous review of health care processes and outcomes.

3. Has a procedure established in accordance with regulations of the commissioner of public health to develop, compile, evaluate and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services, and other matters as may be reasonably required by the commissioner of public health.

The commissioner of public health, in carrying out his obligations under this section and sections 514B.25 and 514B.26, may contract with qualified persons to make recommendations concerning the determinations required to be made by him. Such recommendations may be accepted in full or in part by the commissioner of public health.

Within a reasonable period of time from the receipt of the application for a certificate of authority, the commissioner of public health shall certify to the commissioner whether the proposed health maintenance organization meets the requirements of this section. If the commissioner of public health certifies that the health maintenance organization does not meet these requirements, he shall specify in what respects it is deficient. [C75,§514B.4]

Referred to in §§514B.3, 514B.5, 514B.12

514B.5 Issuance and denial of a certificate of authority. The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to section 514B.3 within a reasonable period of time after receiving certification from the commissioner of public health. Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed in section 514B.22 if the commissioner is satisfied that the following conditions are met:

1. The persons responsible for the conduct of the affairs of the applicant are competent and trustworthy.

2. The commissioner of public health certifies that the health maintenance organization's proposed plan of operation meets the requirements of section 514B.4.

3. The health maintenance organization provides or arranges for the provision of basic health care services on a prepaid basis, except that the health maintenance organization may impose deductible and coinsurance charges which might be required to be paid by persons on whose behalf the federal government contracts with the health maintenance organization for health care services.

4. The health maintenance organization is fiscally sound and may reasonably be expected to meet its obligations to enrollees. In making this determination, the commissioner may consider:

a. The financial soundness of the health maintenance organization's arrangements for health care services in relation to its schedule of charges.

b. The adequacy of the health maintenance organization's working capital.

c. Any agreement made by the health maintenance organization with an insurer, a corporation authorized under chapter 514 or any other organization for insuring the payment of the cost of health care services or for providing immediate alternative coverage in the event of discontinuance of the health maintenance organization.

d. Any agreement made with providers for the provision of health care services.

e. Any surety bond or deposit of cash or securities submitted in accordance with section 514B.16.

5. The enrollees may participate in matters of policy and operation pursuant to section 514B.7.

6. Nothing in the proposed method of operation as shown by the information submitted pursuant to section 514B.3 or by independent investigation is contrary to the public interest.

7. Any deficiencies certified by the commissioner of public health have been corrected.

A certificate of authority shall be denied only after compliance with the requirements of section 514B.26. [C75,§514B.5]

Referred to in §§514B.3, 514B.9

514B.6 Powers of health maintenance organizations. The powers of a health maintenance organization include, but are not limited to, the following:

1. The purchase, lease, construction, renovation, operation or maintenance of hospitals, medical facilities, or both, and their ancillary

equipment, and such property as may reasonably be required for transacting the business of the organization.

2. The making of loans to a medical group under contract with it or to a corporation under its control for the purpose of acquiring or constructing medical facilities and hospitals or in furtherance of a program providing health care services to enrollees.

3. The furnishing of health care services to the public through providers which are under contract with or employed by the health maintenance organization.

4. The contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment and administration.

5. The contracting with an insurance company authorized to insure groups or individuals in this state for the cost of health care or with a corporation authorized under chapter 514 for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization.

6. The offering, in addition to basic health care services, of health care services and indemnity benefits to enrollees or groups of enrollees.

7. The acceptance from any person of payments covering all or part of the charges made to enrollees of the health maintenance organization.

A health maintenance organization shall file notice with the commissioner before the exercise of any power granted in subsections 1 and 2. The notice shall be accompanied by adequate supporting information obtained from the commissioner of public health relating to the health maintenance organization's need for physical facilities. The commissioner shall disapprove the exercise of power if in his opinion it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. The commissioner may promulgate rules exempting from the filing requirement of this section those activities having a minimum effect. [C75,§514B.6]

Referred to in §§514B.5, 514B.15

514B.7 Governing body. The governing body of any health maintenance organization shall be a legal entity separate from the governing body of any other legal entity and may include providers, other individuals, or both, but it shall establish a mechanism to allow a reasonable representation of enrollees to participate in matters of policy and operation as members of the governing body. The commissioner shall establish guidelines to implement this section. [C75,§514B.7]

Referred to in §§514B.3, 514B.5

514B.8 Fiduciary responsibilities. Any director, officer or partner of a health maintenance organization who receives, collects, disburses or invests funds in connection with the activities of a health maintenance organization shall be responsible for these funds in a fiduciary relationship to the enrollees. [C75, §514B.8]

514B.9 Evidence of coverage. Every enrollee shall receive an evidence of coverage and any amendments. If the enrollee obtains coverage through an insurance policy or a contract issued by a corporation authorized under chapter 514, the insurer or the corporation shall issue the evidence of coverage. No evidence of coverage or amendment shall be issued or delivered to any person in this state until a copy of the form of the evidence of coverage or amendment has been filed with and approved by the commissioner.

An evidence of coverage shall contain a clear and complete statement of:

1. The health care services and the insurance or other benefits, if any, to which the enrollee is entitled in the total context of the organizational structure of the health maintenance organization.

2. Any limitations on the services or benefits to be provided, including any deductible or coinsurance charges permitted under section 514B.5, subsection 3.

3. The manner in which information is available on the method of obtaining health care services.

4. The total amount of payment for health care services and indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or an indication whether the plan offered through the health maintenance organization is contributory or noncontributory with respect to group contracts.

5. The health maintenance organization's method for resolving enrollee complaints.

6. The mechanism by which enrollees shall be allowed to participate in matters of policy and operation.

A copy of the form of the evidence of coverage to be used in this state and any amendment shall be subject to the filing and approval requirements of this section unless it is subject to the jurisdiction of the commissioner under the laws governing health insurance or corporations authorized under chapter 514 in which event the filing and approval provisions of such laws apply. To the extent, however, that those provisions are less strict than those provided under this section, then the requirements of this section shall apply.

Enrollees shall be entitled to receive the most recent annual statement of the financial condition of the health maintenance organization in which they are enrolled, which statement shall include a balance sheet and summary of receipts and disbursements. [C75, §514B.9]

Referred to in §514B.11

514B.10 Charges — approval required. No schedule of charges for enrollees coverage for health care services or amendment to the schedule may be used by a health maintenance organization until a copy of the schedule or amendment to the schedule has been filed with and approved by the commissioner. Charges to enrollees may be established in accordance with actuarial principles for various categories of enrollees, but the charges shall not be determined according to the status of an individual enrollee's health or sex and shall not be excessive, inadequate or unfairly discriminatory. [C75,§514B.10]

Referred to in §§514B.11, 514B.17

514B.11 Disapproval of filings. If the commissioner disapproves a filing made pursuant to sections 514B.9 and 514B.10, he shall notify the filer and in the notice specify the reasons for his disapproval. A hearing shall be granted by the commissioner within a reasonable period of time from the request for the hearing, which request must be made within thirty days after receipt by the filer of the notice of disapproval. The commissioner may require the submission of whatever relevant information he deems necessary in determining whether to disapprove a filing. [C75,§514B.11]

514B.12 Annual report. A health maintenance organization shall annually before the first day of March file with the commissioner, with a copy to the commissioner of public health, a report verified by at least two of its principal officers and covering the preceding calendar year. The report shall be on forms prescribed by the commissioner and shall include:

1. Financial statements of the organization including a balance sheet as of the end of the preceding calendar year and statement of profit and loss for the year then ended, certified by a certified public accountant or an independent public accountant.

2. Any material changes in the information submitted pursuant to section 514B.3.

3. The number of persons enrolled during the year, the number of enrollees as of the end of the year and the number of enrollments terminated during the year.

4. A summary of information compiled pursuant to section 514B.4, subsection 3, in the form required by the commissioner of public health.

5. Other information relating to the performance of the health maintenance organization as is necessary to enable the commissioner to carry out his duties under this chapter. [C75,§514B.12]

514B.13 Open enrollment. After a health maintenance organization has been in operation twenty-four months, it shall have an annual open enrollment period of at least one month during which it accepts enrollees up to the limits of its capacity, as determined by the health maintenance organization, in the order in which they apply for enrollment. A health maintenance organization may apply to the commissioner for authorization to impose such underwriting restrictions upon enrollment as are necessary to preserve its financial stability, to prevent excessive adverse selection by prospective enrollees, or to avoid unreasonably high or unmarketable charges for enrollee coverage for health care services. The commissioner shall approve or deny the application made pursuant to this section within a reasonable period of time from the receipt of the application.

Health maintenance organizations providing services exclusively on a group contract basis may limit the open enrollment provided for in this section to all members of the group covered by the contract. [C75,§514B.13]

514B.14 Complaint system. A health maintenance organization shall establish and maintain a complaint system which has been approved by the commissioner in consultation with the commissioner of public health and which shall provide for the resolution of written complaints initiated by enrollees concerning health care services. A health maintenance organization shall submit to the commissioner and to the commissioner of public health an annual report in a form prescribed by the commissioner in consultation with the commissioner of public health, which shall include:

1. A description of the procedures of the complaint system.

2. The total number of complaints handled through the complaint system and a compilation of causes underlying the complaints filed.

3. The number, amount and disposition of malpractice claims settled during the year by the health maintenance organization and any of its providers.

The health maintenance organization shall maintain statistical information of written complaints filed with it concerning benefits over which the health maintenance organization does not have control and shall submit to the commissioner a summary report at the time and in the format that the commissioner may require. Complaints involving other persons shall be referred to those persons and a copy of the complaint sent to the commissioner. [C75,§514B.14]

Referred to in §514B.3

514B.15 Investments. With the exception of investments made in accordance with section 514B.6, the investable funds of a health maintenance organization shall be invested only in securities or other investments permitted by section 511.8 for the investment of assets constituting the legal reserves of life insurance companies or such other securities or investments as the commissioner may permit. For purposes of this section, investable funds of a health maintenance organization are all moneys held in trust for the

purpose of fulfilling the obligations incurred by a health maintenance organization in providing health care services to enrollees. [C75, §514B.15]

514B.16 Protection against insolvency. A health maintenance organization shall furnish a surety bond in an amount satisfactory to the commissioner, or deposit with the commissioner cash or securities acceptable to him in at least the same amount, as a guarantee that its obligations to enrollees will be performed. The commissioner may waive this requirement when satisfied that the assets of the organization or its contracts with other organizations are sufficient to reasonably assure the performance of its obligations. [C75, §514B.16]

Referred to in §514B.5

514B.17 Cancellation of enrollees. An enrollee shall not be canceled except for the failure to pay the charges permitted under section 514B.10 or for other reasons stated in the rules promulgated by the commissioner and subject to review in accordance with chapter 17A. No notice of cancellation to an enrollee shall be effective unless delivered to the enrollee by the health maintenance organization in a manner prescribed by the commissioner and at least thirty days before the effective date of cancellation and unless accompanied by a statement of reason for cancellation. At any time before cancellation of the policy for nonpayment, the enrollee may pay to the health maintenance organization the full amount due, including court costs if any, and from the date of payment by the enrollee or the collection of the judgment, coverage shall revive and be in full force and effect. [C75,§514B.17]

514B.18 False representation. A health maintenance organization, unless licensed as an insurer, shall not use in its name, contracts, or literature any words descriptive of an insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state. No health maintenance organization or any person on its behalf shall advertise or merchandise its services in a manner to misrepresent its services or capacity for service, nor shall it engage in misleading, deceptive or unfair practices with respect to advertising or merchandising. This section does not exempt health maintenance organizations which are engaged in the business of insurance from regulation under the provisions of chapter 507B. [C75,§514B.18]

514B.19 Regulation of agents. The commissioner may, after notice and hearing, promulgate such reasonable rules under the provisions of chapter 522 that are necessary to provide for the licensing of agents who engage in solicitation or enrollment for a health maintenance organization. [C75,§514B.19]

514B.20 Powers of insurers and hospital and medical service corporations. An insurance company authorized to engage in insuring individuals or groups for the cost of health care in this state or a corporation authorized under chapter 514 may either directly or through a subsidiary or affiliate do one or more of the following:

1. Organize and operate a health maintenance organization under the provisions of this chapter.
2. Contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through the health maintenance organization.
3. Contract with a health maintenance organization to provide coverage in the event of the failure of the health maintenance organization to meet its obligations.

Any two or more insurance companies, corporations, or their subsidiaries or affiliates may jointly organize and operate a health maintenance organization. [C75,§514B.20]

514B.21 Public employees included. Any employee of the state, political subdivision of the state, or of any institution supported in whole or in part by public funds may authorize the deduction from his salary or wages of the amount charged to him for any health care services provided through health maintenance organizations under this chapter in the manner provided in section 514.16. [C75, §514B.21]

514B.22 Fees. Every health maintenance organization subject to this chapter shall pay to the commissioner the following fees:

1. For filing an application for a certificate of authority or an amendment to the certificate, one hundred dollars.
2. For filing each annual report, twenty-five dollars.

Fees charged under this section shall be remitted to the treasurer of state and credited by him to the general fund. [C75,§514B.22]

Referred to in §514B.5

514B.23 Rules. The commissioner and the commissioner of public health may promulgate rules as are necessary to carry out the provisions of this chapter, subject to review in accordance with chapter 17A. [C75, §514B.23]

514B.24 Examinations permitted. The commissioner shall make an examination of the affairs of any health maintenance organization and its providers as often as he deems necessary for the protection of the interests of the people of this state, but not less frequently than once every three years.

The commissioner of public health shall make an examination concerning the quality of health care services provided through any health maintenance organization as often as he deems necessary for the protection of the interests of the people of this state, but not less frequently than once every three years.

Every health maintenance organization and provider shall submit its books and records to the commissioner and the commissioner of public health and in every way facilitate the examination. For the purpose of examinations, the commissioners may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of its providers concerning their business. The expenses of examinations under this section shall be assessed against the organization being examined and remitted to the commissioner or commissioner of public health as the case may be.

In lieu of the examination required by this section, either commissioner may accept the report of an examination made by the appropriate departments in other states. [C75, §514B.24]

Referred to in §514B.30

514B.25 Suspension or revocation of certificate of authority. The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this chapter if he finds that the health maintenance organization is operating in contravention of its proposed plan of operation on the basis of which a certificate of authority was issued to it or has failed to comply with the provisions of and rules promulgated under this chapter. When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of suspension, enroll any additional enrollees except newly acquired dependents of existing enrollees and shall not engage in any advertising or solicitation or merchandising for the health maintenance organization. When the certificate of authority of a health maintenance organization is revoked, the health maintenance organization shall, immediately following the effective date of the order of revocation, conduct no further business except as may be essential to the orderly conclusion of its affairs and shall engage in no further advertising or solicitation or merchandising. The commissioner may in writing permit continued operation of the organization as he finds to be in the best interest of enrollees to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage. If the certificate of authority of a health maintenance organization is revoked, the commissioner shall report the revocation to the attorney general who shall apply to the district court for the appointment of a receiver to close the affairs of the health maintenance organization.

The commissioner may, in lieu of suspension or revocation of a certificate of authority, levy an administrative penalty in an amount not more than five thousand dollars, if reasonable notice in writing is given of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations which gave rise to the penalty citation. [C75, §514B.25]

Referred to in §514B.4

514B.26 Administrative procedures. When the commissioner has cause to believe that grounds for the denial, suspension, or revocation of a certificate of authority exist, he shall notify the health maintenance organization in writing of the particular grounds for denial, suspension, or revocation and shall issue a notice of a time fixed for a hearing, which shall be held not less than ten days after the receipt by the health maintenance organization of the notice. The commissioner of public health or his designee shall participate in the proceedings of the hearing and his recommendation and findings with respect to matters relating to the quality of health care services provided in connection with any decision regarding denial, suspension, or revocation of a certificate of authority, or in connection with an order to the health maintenance organization by the commissioner to cease from methods or practices in violation of this chapter, shall be conclusive and binding upon the commissioner.

At the time and place fixed for a hearing, the person charged shall have an opportunity to be heard and to show cause why the order should not be made by the commissioner. Upon good cause shown, the commissioner may permit any person to intervene, appear and be heard at the hearing by counsel or in person. Nothing contained in this chapter shall require the observance at any hearing of formal rules of pleading or evidence. The provisions of section 507B.6, subsections 4 and 5, relating to the powers and duties of the commissioner in relation to the hearing and relating to the rights and obligations of persons upon whom the commissioner has served notice shall apply to this chapter.

After the hearing, or upon the failure of the health maintenance organization to appear at the hearing, the commissioner shall take action as he deems advisable and which is permitted by him under the provisions of this chapter and shall reduce his findings to writing. Copies of the written findings shall be mailed to the health maintenance organization charged with violation of this chapter and to the commissioner of public health. [C75,§514B.26]

Referred to in §§514B.4, 514B.5, 514B.27

514B.27 Judicial review. The action of the commissioner and the recommendation and findings of the commissioner of public health under section 514B.26 shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. [C75,§514B.27]

514B.28 Injunction. The commissioner may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against the person violating any provision of this chapter. [C75,§514B.28]

514B.29 Penalties—indictable misdemeanor. Where no other penalty is provided for in this chapter, any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one hundred dollars or by imprisonment for a period not to exceed thirty days or be punished by both such fine and imprisonment. [C75,§514B.29]

514B.30 Communications in professional confidence. No officer, director, trustee, partner or employee of a health maintenance organization shall testify as to nor make other public disclosure of any communication made to a provider and deemed privileged under section 622.10, and which communication has come into the knowledge or possession of such officer, director, trustee, partner or employee by reason of his employment with said health maintenance organization. To the extent necessary to effectuate the examinations provided in section 514B.24 only, the commissioner or the commissioner of public health shall have the right to examine medical or hospital records of a person receiving basic health care services under the provisions of this chapter but shall not testify as to such confidential communications or make other public disclosure thereof without the express consent of said person or his legal representative, if he be deceased or incompetent. The provisions of section 622.10 respecting waiver shall apply to this section.

A health maintenance organization is hereby prohibited from releasing the names of its membership list of enrollees, whether or not for value or consideration, except to the extent necessary to effectuate the provisions of this chapter. [C75,§514B.30]

514B.31 Taxation. Payments received by a health maintenance organization for health care services, insurance, indemnity, or other benefits to which an enrollee is entitled through a health maintenance organization authorized under this chapter and payments by a health maintenance organization to providers for health care services, to insurers, or corporations authorized under chapter 514 for insurance, indemnity, or other service benefits authorized under this chapter are not premiums received and taxable under the provisions of section 432.1 for the first five years of the existence of the health maintenance organization, its successors or assigns. After the first five years, the payments received shall be considered premiums received and shall be taxable under the provisions of section 432.1. [C75, §514B.31]

514B.32 Construction.

1. Except as otherwise provided in this chapter, laws regulating the insurance business in this state and the operations of corporations authorized under chapter 514 shall not be applicable to any health maintenance organization granted a certificate of authority under this chapter with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

2. Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives shall not be construed to violate any provision of law prohibiting solicitation or advertising by health professionals. Upon a prospective enrollee's request, a list of locations of services and a list of providers who have current agreements with the health maintenance organization shall be made available. No health maintenance organization shall, in any advertising, identify by name any physician or surgeon, osteopathic physician or surgeon, dentist, optometrist, podiatrist, chiropractor, or professional corporation as defined by chapter 496C, with whom the health maintenance organization has an agreement to provide health care services.

3. Any health maintenance organization authorized under this chapter is not practicing medicine and shall not be subject to the limitations provided in section 135B.26 on types of contracts entered into between doctors and hospitals. [C75,§514B.32]

CHAPTER 514C

HEALTH AND ACCIDENT POLICIES FOR NEWLY BORN CHILDREN

514C.1 Supplemental coverage for newly born.

514C.1 Supplemental coverage for newly born.

1. Any policy of individual or group accident and sickness insurance providing coverage on an expense incurred basis, and any individual or group hospital or medical service contracts issued pursuant to chapters 509, 514, and 514A, which provide coverage for a family member of the insured or subscriber shall also provide that the health insurance benefits applicable for children shall be payable with respect to a newly born child of the insured or subscriber from the moment of birth.

2. The coverage for newly born children shall consist of coverage for injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities.

3. If payment of a specific premium or subscription fee is required to provide coverage for a newly born child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within thirty-one days after the date of birth in order to have coverage continue beyond such thirty-one day period. [C75, §514C.1]

CHAPTER 515

INSURANCE OTHER THAN LIFE

Referred to in §§491.1, 496A.142(1), 504A.100(1), 507.1, 507.11, 508.30, 509.5, 514A.1, 515B.1, 515B.2, 515C.10, 518.15, 518A.18, 518A.40, 519.9, 521.1, 521A.1(5), 521A.2(3,c), 682.14, 682.16
Insurance to pay for ambulance service, see §332.3(23)

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515.1 Incorporation. Corporations formed for the purpose of insurance, other than life insurance, shall be governed by the provisions of chapter 491, except as modified by the provisions of this chapter. [C73,§1122; C97,§1684; C24, 27, 31, 35, 39,§8896; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.1]

Referred to in §515.25

515.2 Articles—approval. Each such organization shall present to the commissioner of insurance its articles of incorporation, which shall show its name, objects, location of its principal place of business, and amount of its capital stock, who shall submit it to the attorney general for examination, and if found by him to be in accordance with the provisions of this title, the laws of the United States, and the Constitution and laws of the state, he shall certify such fact thereon and return the same to said commissioner, and no articles shall be approved by him or recorded unless accompanied with such certificate. [C73,§1122; C97, §1685; C24, 27, 31, 35, 39,§8897; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.2]

Referred to in §515.25

515.3 Certificate—recording. If the commissioner of insurance approves them, he shall so certify, and the articles with the certificates of approval shall be recorded in the office of the secretary of state as articles of other corporations are, who shall endorse thereon his certificate thereof, as is required in case of other corporations for pecuniary profit. [C73,§1123; C97,§1686; C24, 27, 31, 35, 39,§8898; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.3]

Recording, §491.5

515.4 Name. If the commissioner of insurance finds the name of the company to be so similar to one already appropriated by a corporation of the same character as to be likely to mislead the public or to cause inconvenience, he shall refuse his certificate to its articles on that ground. [C73,§1122; C97,§1687; C24, 27, 31, 35, 39,§8899; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.4]

515.5 Filing with commissioner. The articles, when thus certified by the secretary of state as recorded in his office, or a copy thereof certified by him as such, shall be filed in the office of the commissioner of insurance and remain therein. [C73,§1123; C97,§1688; C24, 27, 31, 35, 39,§8900; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.5]

515.6 Nature of organization entered on policy. Every domestic and foreign insurance company organized and doing business under this chapter shall indicate upon the first page of every policy and renewal receipt that the policy is issued by a mutual company in case of a mutual company, and by a stock company in case of a stock company. [C73,§1140; C97, §1689; S13,§1689; C24, 27, 31, 35, 39,§8901; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.6]

515.7 Stock and mutual plan distinguished. No company shall be organized to do business upon both stock and mutual plans; nor shall a company organized as a stock company do business upon the plan of a mutual company; nor shall a company organized upon the mutual plan do business or take risks upon the stock plan. [C73,§1159; C97,§1690; C24, 27, 31, 35, 39,§8902; C46, 50, 54, 58, 62, 66, 71, 73, 75, §515.7]

STOCK COMPANIES

515.8 Paid-up capital required. No insurance company other than life shall be incorporated to transact business upon the stock plan with less than two hundred thousand dollars capital, the entire amount of which shall be fully paid up in cash and invested as provided by law. No increase of the capital stock of any company shall be made unless the amount of such increase is fully paid up in cash. The stock shall be divided into shares of not less than one dollar each. [C73,§1124; C97,§1691; S13,§1783-e; C24, 27, 31, 35, 39,§8903; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.8]

Referred to in §511.23
40ExGA, ch 9,§11, editorially divided

515.9 Reduction of capital or shares. Any insurance company, other than life, may, upon the vote of a majority of its shares of stock represented at a meeting legally called for that purpose, reduce its capital stock and the number of shares thereof or the par value of the shares thereof, provided that the total amount of capital shall not be reduced to an amount less than the minimum required by law, but no part of its assets and property shall be distributed to its stockholders without the consent of the insurance commissioner. [C27, 31, 35,§8903-b1; C39,§8903.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.9]

Referred to in §511.23

515.10 Surplus required. Such company shall be possessed, in addition to the required paid-up capital, of a surplus in cash or invested in securities authorized by law of not less than three hundred thousand dollars. If the commissioner of insurance finds that a company offers or plans to offer only one kind of insurance he may reduce the amount of surplus required, but in no event shall it be reduced to less than one hundred thousand dollars. [C73,§1124; C97,§1691; C24, 27, 31, 35, 39,§8904; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.10]

Referred to in §511.23

515.11 Prohibited loans. No part of the capital referred to shall be loaned to any officer or stockholder of the company. [S13,§1783-e; C24, 27, 31, 35, 39,§8905; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.11]

Referred to in §511.23

MUTUAL COMPANIES

515.12 Mutual companies—conditions. No mutual company shall issue policies or transact any business of insurance unless it shall hold a certificate of authority from the commissioner of insurance authorizing the transaction of such business, which certificate of authority shall not be issued until and unless the company shall comply with the following conditions:

1. It shall hold bona fide applications for insurance upon which it shall issue simultaneously, or it shall have in force, at least two hundred policies issued to at least two hundred members for the same kind of insurance upon not less than two hundred separate risks, each within the maximum single risk described herein; provided that not more than one hundred members shall be required for employer's liability and workers' compensation insurance.

2. The maximum single risk shall not exceed twenty percent of the admitted assets, or three times the average risk, or one percent of the insurance in force, whichever is the greater, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk.

3. It shall have collected a premium upon each application, which premium shall be held in cash or securities in which insurance companies are authorized to invest, which shall be equal, in case of fire insurance, to not less than twice the maximum single risk assumed subject to one fire nor less than ten thousand dollars; and in any other kind of insurance, to not less than five times the maximum single risk assumed; and, in case of employer's liability and workers' compensation insurance, to not less than fifty thousand dollars.

4. For the purpose of transacting employer's liability and workers' compensation insurance, the applications shall cover not less than one thousand five hundred employees, each such employee being considered a separate risk for determining the maximum single risk.

5. It shall have in cash or in securities in which insurance companies are authorized to invest, surplus in an amount of not less than two hundred thousand dollars; provided that the commissioner of insurance, if in his judgment it appears necessary, may require surplus in excess of said amount, but not more than three hundred thousand dollars. The surplus so required may be advanced in accordance with the provisions of section 515.19.

Provided, however, that such surplus requirements shall not apply to a company which establishes and maintains a guaranty fund as provided by section 515.20. [C73,§1124; C97, §1692; C24, 27, 31, 35, 39,§8906; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.12; 66GA, ch 1084,§43]

Referred to in §515.13

515.13 Reservation. None of the provisions of subsection 5* of section 515.12 shall apply to any company heretofore organized and approved by the commissioner of insurance, but which had not completed its organization at the time of the taking effect** of said subsection, nor shall said subsection 5 apply to any company already licensed to issue policies.

[C39,§8906.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §515.13]

*Omnibus repeal, 47GA, ch 214,§3
**Effective date, May 28, 1937

515.14 Membership in mutuals. Any public or private corporation, board, or association in this state, or elsewhere, may make applications, enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee, or local representative of any such corporation, board, association, or estate may be recognized as acting for, or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. The right of any corporation organized under the laws of this state to participate as a member of any such mutual insurance company is hereby declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred. [C73,§1124; C97,§1693; C24, 27, 31, 35, 39,§8907; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.14]

515.15 Voting power. Every policyholder of such mutual company shall be a member of the company and shall be entitled to one vote, and such member may vote in person or by proxy as may be provided in the bylaws. [C24, 27, 31, 35, 39,§8908; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.15]

515.16 Maximum premium. The maximum premium payable by any member of a mutual company shall be expressed in the policy and in the application for the insurance. Such maximum may be a cash premium and an additional contingent premium not less than the cash premium, or may be solely a cash premium, which premium may be made payable in installments or regular assessments. No policy shall be issued for a cash premium without an additional contingent premium unless the company has a surplus which is not less in amount than the capital stock required, at the time of the organization of such mutual insurance company, of domestic stock insurance companies writing the same kind of insurance; but said surplus shall not be less than one hundred thousand dollars. [C24, 27, 31, 35, 39,§8909; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.16]

515.17 Unearned premiums. Such mutual company shall maintain unearned premium and other reserves separately for each kind of insurance, upon the same basis as that required of domestic insurance companies transacting the same kind of insurance; provided that any reserve for losses or claims based upon the premium income shall be computed upon the net premium income, after deducting any so-called dividend or premium returned or credited to the member. [C24, 27, 31, 35, 39, §8910; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.17]

515.18 Assessments. Any such mutual company not possessed of assets at least equal to the unearned premium reserve and other liabilities shall make an assessment upon its members liable to assessment to provide for such deficiency, such assessment to be against each member in proportion to such liability as expressed in his policy; provided the commissioner may by written order, relieve the company from an assessment or other proceedings to restore such assets during the time fixed in such order. [C24, 27, 31, 35, 39,§8911; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.18]

Referred to in §§432.1, 515.20

515.19 Advancement of funds. Any director, officer, or member of any such mutual company, or any other person, may advance to such company, any sum or sums of money necessary for the purpose of its business, or to enable it to comply with any of the requirements of the law, and such moneys and such interest thereon as may have been agreed upon, not exceeding the maximum statutory rate of interest, shall not be a liability or claim against the company or any of its assets, except as herein provided, and upon approval of the commissioner of insurance may be repaid, but only out of the surplus earnings of such company. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company. The amount of such advance shall be reported in each annual statement. [C24, 27, 31, 35, 39, §8912; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.19]

Referred to in §§515.12, 515.20

515.20 Guaranty fund. Any mutual company heretofore or hereafter organized under this chapter may establish and maintain a guaranty fund of at least fifty thousand dollars made up of multiples of ten thousand dollars, divided into shares of not less than fifty dollars each, to be invested as provided for the investment of insurance capital and funds by section 515.35. Guaranty shareholders shall be members of the corporation, and provision may be made for representation of the shareholders of such guaranty fund on the board of directors of the corporation, such representation not to exceed one-third of the membership of such board. Guaranty shareholders in such mutual companies shall be subject to the same regulations of law relative to their right to vote as apply to its policyholders. Such guaranty fund shall be applied to the payment of the legal obligations of the corporation only when such corporation has exhausted its assets in excess of the unearned premium reserve and other liabilities; and if such guaranty fund be thus impaired, the directors may restore the whole, or any part thereof, by assessment on its policyholders as provided for in section 515.18. By a legal vote of the policyholders of the corporation, at any regular or special meeting thereof, said guaranty fund may be fully retired or may be reduced to an amount of not less than fifty thousand dollars, provided that the net surplus of the corpora-

tion together with the remaining guaranty fund shall equal or exceed the amount of minimum assets required by this chapter for such companies, and provided, further, that the commissioner of insurance consents thereto. Due notice of such proposed action on the part of the corporation shall be included in the notice given to policyholders and shareholders of any annual or special meeting and notice of such meeting shall also be given in accordance with the provisions of its articles of incorporation. No company with such guaranty fund, which has ceased to do business, shall distribute among its shareholders or policyholders any part of its assets, or guaranty fund, until it has fully performed, or legally canceled, all of its policy obligations. Shareholders of such guaranty fund shall be entitled to interest on the par value of their respective shares at a rate to be fixed by the board of directors, not to exceed seven percent per annum, cumulative, payable semiannually, and payable only out of the surplus earnings of such company, but in no event shall the surplus account of such company be reduced by the payment of such interest below the figure maintained at the time said guaranty fund was established; and provided, further, that no such interest payment shall be made unless the surplus assets remaining after the payment thereof shall at least equal the amount required by the statutes of Iowa to permit such corporation to continue in business. In the event of the dissolution and liquidation of any corporation having a guaranty fund under the provisions hereof, the shareholders of such fund shall be entitled, after the payment of all valid obligations of the company, to receive the par value of their respective shares, together with any unpaid interest thereon, before there may be any distribution of the assets of said corporation among its policyholders. These provisions are in addition to and independent of the provisions now contained in section 515.19. [C35, §8912-f1; C39,§**8912.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.20]

Referred to in §515.12

515.21 Additional policy provisions. Such mutual company may insert in any form of policy prescribed by the law of this state any additional provisions or conditions required by its plan of insurance if not inconsistent or in conflict with any law of this state. [C24, 27, 31, 35, 39,§**8913**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.21]

515.22 Countersigning policies. Such mutual company shall comply with the provisions of any law applicable to stock insurance companies effecting the same kind of insurance requiring that policies be countersigned and delivered through a resident agent, provided that this requirement shall not apply to any policy of such mutual company on which no commission shall be paid to any local agent. [C24, 27, 31, 35, 39,§**8914**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.22]

GENERAL PROVISIONS

515.23 Existing companies. The provisions of this chapter* shall not apply to any company or association of this state now doing business whether organized under chapter 4 or chapter 5, Title IX of the Code, as amended [Code of 1897], unless such company or association shall so elect by resolution of its board of directors duly certified to by the president and secretary and filed with and approved by the commissioner, and shall further amend its articles, if necessary, to permit full compliance with this chapter* and to include such additional kind or kinds of insurance as such company or association intends to transact. On the filing and approval of such resolution and on making such amendment if required, such company may be authorized to transact such kinds of insurance under this chapter. [C24, 27, 31, 35, 39,§**8915**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.23]

*37GA, ch 429

515.24 Tax—computation. For the purpose of determining the basis of any tax upon the "gross amount of premiums", or "gross receipts from premiums, assessments, fees, and promissory obligations", now or hereafter imposed upon any fire or casualty insurance company under any law of this state, such gross amount or gross receipts shall consist of the gross premiums or receipts for direct insurance, without including or deducting any amounts received or paid for reinsurance except that any company reinsuring windstorm or hail risks written by county mutual associations shall be required to pay a two percent tax on the gross amount of reinsurance premiums received upon such risks, but with such other deductions as provided by law, and in addition deducting any so-called dividend or return of savings or gains to policyholders; provided that as to any deposits or deposit premiums received by any such company, the taxable premiums shall be the portion of such deposits or deposit premiums earned during the year with such deductions therefrom as provided by law. [C24, 27, 31, 35, 39,§**8916**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.24]

515.25 Subscriptions of stock—applications. After compliance by the incorporators with sections 515.1 and 515.2, the secretary of state shall certify the articles of incorporation to the commissioner of insurance. When the commissioner of insurance is satisfied that all provisions of law in relation to the promotion and organization of said corporation, including sections 506.4 to 506.6, have been complied with, he shall issue a certificate to that effect, and thereupon such corporation may open books for subscriptions to the stock of stock companies or if a mutual company take applications and receive premiums for insurance at such times and places as it may find convenient, and may keep such books open until the full amount required is subscribed or taken, or the time granted therefor has expired, or until an order is issued by the

commissioner of insurance to desist for failure to comply with the provisions of law in reference thereto. [C73,§1125; C97,§1694; C24, 27, 31, 35, 39,§**8917**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.25; 66GA, ch 67,§50]

515.26 Directors. The affairs of a company organized as provided by this chapter shall be managed by a number of directors, of not less than five nor more than twenty-one, all of whom, in case of a stock company, shall be stockholders, or, in case of a mutual company, be policyholders, or before the company shall effect insurance, be subscribers for stock or for insurance as the case may be. When the paid-up capital for a stock company, or the subscriptions for insurance for a mutual company, shall have been obtained, the incorporators or directors in charge of the business shall give at least ten days' written notice by mail to stockholders or subscribers, as the case may be, of a meeting of the stockholders or subscribers, for the election of directors, and such meeting shall be held within thirty days after the paid-up capital or subscriptions have been secured. The directors then elected shall continue in office until their successors have been elected and qualified. [C73,§1126; C97, §1695; C24, 27, 31, 35, 39,§**8918**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.26]

515.27 Election. The annual meetings for the election of directors shall be held at such time as the articles of incorporation or bylaws of the company provide; but if for any cause no election is held, or there is a failure to elect at any annual meeting, then a special meeting for that purpose shall be held on the call of a majority of the directors, or of those persons holding a majority of the stock, or of a majority of policyholders if a mutual company, by giving thirty days' notice thereof in some newspaper of general circulation in the county in which the principal office of the company is located. [C73,§1127; C97,§1696; C24, 27, 31, 35, 39,§**8919**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §515.27]

C97,§1696, editorially divided

515.28 Term of office. The directors chosen at any such annual or special meeting shall continue in office until the next annual meeting, and until their successors are elected and have accepted. [C73,§1127; C97,§1696; C24, 27, 31, 35, 39,§**8920**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.28]

515.29 Classification of directors. A company may in its articles of incorporation provide that the board of directors be divided into classes holding for a term of not to exceed three years and providing for the election of the members of one class at each annual meeting. [C24, 27, 31, 35, 39,§**8921**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.29]

515.30 Election of officers. The directors shall elect a president, a secretary, and such other officers as may be necessary for transacting the business of the company. [C73, §§1128, 1129; C97,§§1697, 1698; C24, 27, 31, 35, 39,§§**8922, 8923**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §§515.30, 515.31; 66GA, ch 236,§1]

515.31 Filling of vacancies. The directors shall have authority to fill vacancies occurring on the board of directors, and shall fill vacancies of officers occurring between regular elections. [C73,§1128; C97,§1697; C24, 27, 31, 35, 39,§**8922**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.30; 66GA, ch 236,§2]

C97,§1698, editorially divided
Section 515.31, Code 1975, repealed by 66GA, ch 236,§2

515.32 Bylaws. It may adopt such bylaws and regulations not inconsistent with law as shall appear to them necessary for the regulation and conduct of the business. [C73,§1129: C97,§1698; C24, 27, 31, 35, 39,§**8924**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.32]

515.33 Record and inspection. The directors shall keep full and correct entries of their transactions, which shall at all times be open to the inspection of the stockholders if a stock company, or policyholders if a mutual company, and to the inspection of persons invested by law with the right thereof. [C73,§1129; C97, §1698; C24, 27, 31, 35, 39,§**8925**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.33]

515.34 Right to own real estate. No company organized under this chapter shall purchase, hold, or convey any real estate, save for the purpose and in the manner herein set forth:

1. Such as shall be required for the transaction of its business.

2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for money due.

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company, or for money due.

4. Such as shall have been purchased at sales upon judgments, decrees, or mortgages obtained or made for such debt, or obtained by redemption as junior judgment creditor or mortgagee; but it may convey real estate which shall be found in the course of its business not necessary therefor, and all such last-mentioned real estate shall be sold and conveyed within three years after the same has been determined, by the commissioner of insurance, unnecessary, unless the company shall procure a certificate from him that the interest of the company will materially suffer by a forced sale, in which event the sale may be postponed for such a period as he may direct in such certificate. [C73,§1137; C97, §1703; C24, 27, 31, 35, 39,§**8926**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.34]

515.35 Investments. Any company organized under the provisions of this chapter shall invest its capital and funds in the following described securities and no other:

1. *Federal and territorial obligations.* Bonds or other evidences of indebtedness issued or guaranteed by the United States, federal farm loan bonds, federal home loan bank bonds, home owners' loan corporation bonds, bonds, notes or obligations representing loans and advances of credit which are eligible for insurance by the federal housing administrator, and bonds, notes or obligations secured by real property or leasehold which the federal housing administrator has insured or has committed himself to insure or debentures issued by such administrator.

Investments in federal insured loans, §682.45

2. *State and municipal obligations.* Bonds or other evidences of indebtedness issued or guaranteed by the state of Iowa or any other state, or any county, city, school, road, drainage, or other district, or any civil subdivision or governmental authority of such state or states, or any instrumentality of any such authorized by statute to borrow money and issue securities, provided that the obligations are:

a. General or full faith and credit obligations of the issuing or guaranteeing unit, or

b. Payable from assessments levied for improvement purposes and secured by a lien upon real estate, or

c. Payable from especially designated revenues which are specifically pledged to the payment of principal and interest on such obligations.

3. *Canadian government and municipal obligations.* Bonds or other evidences of indebtedness issued or guaranteed by the Dominion of Canada, or any province thereof, or any municipality or district therein with a population in excess of ten thousand according to the last dominion or provincial census taken prior to the date of such investment, which are general or full faith and credit obligations of the issuing or guaranteeing unit.

4. *Real estate mortgages.* Mortgages and other interest-bearing securities being first liens upon real estate within this or any other state of the United States, provided that at the date of acquisition the total indebtedness secured by such lien shall not exceed seventy-five percent of the value of the property upon which it is a lien. Improvements shall not be considered in estimating value unless the owner shall contract to keep the same insured in a reliable fire insurance company or companies, association or associations authorized to transact business in this state, during the life of the loan in a sum at least equal to the excess of the loan above seventy-five percent of the value of the ground, exclusive of improvements, the insurance to be made payable in case of loss to the company or association investing its funds as its interests may appear at the time of loss. Any mortgage lien upon real estate shall not for the purpose of this section be held or construed to be other than a first lien, by reason of the fact that drainage or other improvement assessments may have been levied against the real estate covered by said mortgage whether the installment of said assessments be matured or not, provided that in determining the value of such real estate for loan purposes the amount of drainage or other assessment tax unpaid shall be first deducted.

5. *Real estate bonds.* Real estate bonds which are first lien upon real estate within this or any other state of the United States, provided the outstanding indebtedness against the property does not exceed sixty percent of the reasonable value thereof and provided further that the average earnings of the property are at least two and one-half times the interest requirements of all outstanding bonds and indebtedness.

6. *Corporate bonds and stocks.* Bonds or other evidences of indebtedness of any solvent corporation organized under the laws of any of the states of the United States; and, not to exceed thirty percent of its capital and funds, in stock of any solvent dividend-paying corporation, organized under the laws of the United States, or any state thereof, other than the company's own stock, provided that no company may invest an amount in excess of ten percent of its capital and surplus in the stock and bonds of any one corporation, and provided further that any such company may purchase or acquire its own stock in furtherance of a general savings and investment plan for employees of such company with the approval of the Iowa state insurance commissioner.

7. *Loans.* Any loans secured by collateral security consisting of any securities enumerated in this section, provided there is a margin of ten percent between the amount of the loan and the value of the securities. [C73, §1130; C97,§1699; S13,§1699; C24, 27, 31, 35, 39, §8927; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.35]

Referred to in §§515.20, 518.14, 518A.12
Amendment effective July 1, 1975
Similar provisions, §§511.8, 512.48

515.36 Financial statements—mutual companies. After complying with the requirements of the preceding sections of this chapter, the company shall file with the commissioner of insurance a satisfactory detailed statement showing the financial condition of the company, including all transactions had during its organization, together with a record of all moneys received and disbursed, a list of the stockholders, the amount of stock purchased by each, and the price paid. The incorporators or officers of such mutual company shall file the statement under oath required of stock companies. [C73,§1131; C97,§1700; C24, 27, 31, 35, 39,§§8928, 8929; C46, 50, 54, 58, 62, 66,§§515.36, 515.37; C71, 73, 75,§515.36]

37GA, ch 429,§14, editorially divided

515.37 Subsidiary fire and casualty companies. Any insurance company incorporated in this state may organize, or acquire by purchase, in whole or in part, subsidiary insurance and investment companies in which it owns not less than fifty-one percent of the

common stock, and, subject to the approval of the insurance commissioner and provided that no company invest an amount in excess of thirty percent of its capital and surplus in the stock of such subsidiary companies, may:

1. Invest funds from surplus for each purpose.

2. Make loans to such subsidiaries.

3. Permit all or part of its officers and directors to serve as officers or directors of any such subsidiary companies. [C71, 73, 75, §515.37]

515.38 Examination—certificate of compliance. Such commissioner may appoint in writing some disinterested person to make an examination and if it shall be found that the capital or assets herein required of the company named, according to the nature of the business proposed to be transacted by such company, have been paid in, and are now possessed by it in money or such stock, bonds, and mortgages as are required by the preceding sections of this chapter, he shall so certify; but if the examination is made by another than the commissioner, the certificate shall be by him, and under his oath. [C73,§1131; C97, §1700; C24, 27, 31, 35, 39,§8930; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.38]

515.39 Ownership of assets—oath. The incorporators or officers of any such company, or proposed company, shall be required to state to the commissioner of insurance under oath that the capital or assets exhibited to the person making the examination are actually and in good faith the property of the company examined, and free and clear of any lien or claim on the part of any other person. [C73, §1131; C97,§1700; C24, 27, 31, 35, 39,§8931; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.39]

515.40 Form of certificate. The certificate of examination of a mutual company shall be to the effect that it has received and has in its actual possession:

1. The cash premiums.

2. Actual contracts of insurance upon property, belonging to the signers thereof, and upon which the insurance applied for can properly be issued.

3. Other securities, as the case may be, to the extent and value hereinbefore required. [C97,§1700; C24, 27, 31, 35, 39,§8932; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.40]

515.41 Certificate of authority. The certificate and statements above contemplated shall be filed in the insurance department and the commissioner of insurance shall deliver to the company a copy of the report of the examination, in the event one is made, together with his written permission for it to commence the business proposed in its articles of incorporation, which permission shall be its authority to commence business and issue policies. [C73, §1131; C97,§1700; C24, 27, 31, 35, 39,§8933; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.41]

515.42 Tenure of certificate—renewal—evidence. Such certificate of authority shall expire on the first day of May next succeeding its issue, and shall be renewed annually so long as such company shall transact business in accordance with the requirements of law; a copy of which certificate, when certified to by the commissioner of insurance, shall be admissible in evidence for or against a company with the same effect as the original. [C73, §1131; C97,§1700; C24, 27, 31, 35, 39,§8934; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.42]

515.43 Capital increased. When the directors of a stock company with less than the maximum capital allowed in this chapter desire to increase the amount, they shall, if authorized by the holders of a majority of the stock to do so, file with the commissioner of insurance an amendment of its articles authorizing such increase, not exceeding the maximum authorized capital, and thereupon shall be entitled to have the increased amount of capital fixed by such amendment, and the examination of securities constituting the increased capital stock shall be made in the same manner as provided for the original capital stock. [C73,§1135; C97,§1701; C24, 27, 31, 35, 39,§8935; C46, 50, 54, 58, 62, 66, 71, 73, 75, §515.43]

515.44 Dividends. The directors or managers of a stock company, incorporated under the laws of this state shall make no dividends except from the earned profits arising from their business, which shall not include contributed capital or contributed surplus. [C73, §1136; C97,§1702; C24, 27, 31, 35, 39,§8936; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.44]

Referred to in §515.46

515.45 Reserve fund required. In estimating the profits, a reserve for unearned premiums as set out in section 515.47, also a reserve for unpaid losses, expenses, and taxes which have been incurred shall be set up; and there shall also be held as nonadmitted assets all sums due the corporation on bonds and mortgages, bonds, stocks, and book accounts, of which no part of the principal or interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosure or collection has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and on which interest has not been paid; and such judgment with the interest due or accrued thereon and remaining unpaid, shall also be so held. [C73, §1136; C97,§1702; C24, 27, 31, 35, 39,§8937; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.45]

Referred to in §515.46
39GA, ch 190,§1, editorially divided

515.46 Forfeiture of certificate of authority. Any dividend made contrary to the provisions of sections 515.44 and 515.45 shall subject the company making it to forfeiture of its certificate of authority. [C73,§1136; C97,§1702; C24, 27, 31, 35, 39,§8938; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.46; 66GA, ch 1056,§32]

515.47 Unearned premium reserve—computation. The policy liability of any company or association, transacting business under the provisions of this chapter, and the amount such company or association shall hold as a reserve for unearned premiums, shall be computed in the following manner:

1. On all policies written or renewed prior to January 1, 1922, there shall be held as such unearned premium reserve an amount equal to forty percent of the aggregate gross premiums written in all policies in force, less deductions for reinsurance as provided for in section 515.49.

2. On all policies written or renewed on and after January 1, 1922, and running one year or less from date of policy or last renewal thereof, shall be held as such unearned premium reserve an amount equal to fifty percent of the aggregate gross premiums written in all policies in force, less deductions for reinsurance as provided for in section 515.49.

3. On all policies written or renewed on and after January 1, 1922, and running for more than one year, and not exceeding five years, from date of policy or last renewal thereof there shall be held as such unearned premium reserve an amount of the aggregate gross premiums written in all policies in force, less deductions for reinsurance as provided for in section 515.49, computed in accordance with the following table:

Term for which Policy was written	Reserve for Unearned Premium	
Two years	1st year	3-4
	2nd year	1-4
Three years	1st year	5-6
	2nd year	1-2
	3rd year	1-6
Four years	1st year	7-8
	2nd year	5-8
	3rd year	3-8
	4th year	1-8
Five years	1st year	9-10
	2nd year	7-10
	3rd year	1-2
	4th year	3-10
	5th year	1-10

4. On all policies written or renewed on and after January 1, 1922, and running for more than five years from date of policy or last renewal thereof, there shall be held as such unearned premium reserve an amount of the aggregate gross premiums, less deductions for reinsurance as provided in section 515.49 equal to the pro rata unearned premium on all policies in force. The term "pro rata" used herein shall be such proportion of the gross premiums on policies in force as the number of months unexpired bears to the total number of months for which the policy was written.

5. On all policies written or renewed and for which any premium has been received which would continue a policy in force for a period beyond the term for which it was written, or term covered by last renewal thereof, there shall be held as such unearned premium reserve an amount equal to one hundred percent of such premium on all policies in force.

6. Mutual companies or associations, organized, or doing business under this chapter, shall hold as a reserve for unearned premiums an amount equal to at least forty percent of the aggregate gross premiums written in all policies in force less deductions for reinsurance as provided for in section 515.49. [C73,§1136; C97,§1702; C24, 27, 31, 35, 39,§8939; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.47]

Referred to in §§515.45, 515.71, 515C.3

515.48 Kinds of insurance. Any company organized under this chapter or authorized to do business in this state may:

1. Insure dwelling houses, stores and all kinds of buildings and household furniture, and other property against direct or indirect or consequential loss or damage, including loss of use or occupancy and the depreciation of property lost or damaged by fire, smoke, smudge, lightning and other electrical disturbances, collision, falls, wind, tornado, cyclone, volcanic eruptions, earthquake, hail, frost, snow, sleet, ice, weather or climatic conditions, including excess or deficiency of moisture, flood, rain, or drought, rising of the waters of the ocean or its tributaries, bombardment invasion, insurrection, riot, strikes, labor disturbances, sabotage, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, and by explosion whether fire ensues or not, except explosion on risks specified in subsection 6 of this section, provided, however, that there may be insured hereunder the following:

a. Explosion of pressure vessels (not including steam boilers of more than fifteen pounds pressure) in buildings designed and used solely for residential purposes by not more than four families;

b. Explosion of any kind originating outside of the insured building or outside of the building containing the property insured; and

c. Explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jackets; and also against loss or damage by insects or disease to farm crops or products, and loss of rental value of land used in producing such crops or products; and against accidental injury to sprinklers, pumps, water pipes, elevator tanks and cylinders, steam pipes and radiators, plumbing and its fixtures, ventilating, refrigerating, heating, lighting or cooking apparatus, or their connections, or conduits or containers of any gas, fluid or other substance; and against loss or damage to property of the insured caused by the breakage or leakage

thereof; or by water, hail, rain, sleet or snow seeping or entering through water pipes, leaks or openings in buildings; and against loss of and damage to glass, including lettering and ornamentation thereon, and against loss or damage caused by the breakage of glass; and against loss or damage caused by railroad equipment, motor vehicles, airplanes, seaplanes, dirigibles or other aircraft.

d. Risks under a multiple peril nonassessable policy reasonably related to the ownership, use or occupancy of a private dwelling or dwellings.

Loss by depreciation as herein referred to may include the cost of repair and replacement.

Referred to in §515.49(1)

2. Insure the fidelity of persons holding places of private or public trust, or execute any bond or other obligation whenever the performance or refraining from any contract, act, duty or obligation is required or permitted by law to be made, given, or filed, including all bonds in criminal causes, and insure the maker, drawer, drawee, or endorser of checks, drafts, bills of exchange, or other commercial paper against loss by reason of any alteration of such instruments.

Referred to in §§321.1(71), 515.49(2, 3, 6), 763.11

3. Insure the safekeeping of books, papers, moneys, stocks, bonds and all kinds of personal property from loss, damage or destruction from any cause, and receive them on deposit.

Referred to in §515.49(3)

4. Insure against loss or damage by theft, injury, sickness, or death of animals and to furnish veterinary service.

Referred to in §515.49(2, 3, 4, 5)

5. *a.* Insure any person, his family or dependents, against bodily injury or death by accident, or against disability on account of sickness, or accident, including the granting of hospital, medical, surgical and sick care benefits, but such benefits shall not include the furnishing or replacing in kind of whole human blood or blood products of any kind; however, this provision shall not prohibit payments of indemnity for human blood or blood products.

b. Insure against legal liability, and against loss, damage, or expense incident to a claim of such liability, arising out of the death or injury of any person, or arising out of injury to the economic interests of any person as the result of error or negligence in rendering expert, fiduciary or professional service.

c. Insure against loss or damage to property caused by the accidental discharge or leakage of water from automatic sprinkler system and against loss or damage by water or other fluid or substance to any property resulting from the breakage or leakage of other apparatus or of water pipes or other conduits or containers or resulting from casual water entering into cracks or openings in buildings or by seepage through building walls, but not including loss or damage resulting from flood; and including insurance against accidental injury of such sprinklers, pumps, apparatus, conduits or containers.

d. Insure against loss in consequence of accidents or casualties of any kind to employees, including workers' compensation, or to persons or property resulting from any act of an employee, or any accident or casualty to person or property, or both, occurring in or connected with the transaction of insured's business, or from the operation of any machinery connected therewith; or to persons or property for which loss the insured is legally liable including an obligation of the insurer to pay medical, hospital, surgical, funeral or other benefits irrespective of legal liability of insured.

Referred to in §517.1

e. Insure against liability for loss or expense arising or resulting from accidents occurring by reason of the ownership, maintenance, or use of automobiles or other conveyances including aircraft, resulting in personal injuries or death, or damage to property belonging to others, or both, and for damages to assured's own automobile or aircraft when sustained through collision with another object, and insure the assured's own automobile or aircraft against loss or damage, including the loss of use thereof, by fire, lightning, windstorm, tornado, cyclone, hail, burglary or theft, vandalism, malicious mischief, or the wrongful conversion, disposal, or concealment thereof, or any one or more of such hazards, whether said automobile or aircraft is held under conditional sale, contract, or subject to chattel mortgages.

Insurer's liability—unsatisfied judgments, §516.1

f. Insure against loss of or damage to any property of the insured resulting from collision of any object with such property.

Referred to in §515.49 (2, 3, 4, 5)

6. Insure against loss or injury to person or property, or both, and against loss of rents or use of buildings, and other property growing out of explosion or rupture of boilers, pipes, flywheels, engines, pressure containers, machinery, and similar apparatus of any kind including equipment used for creating, transmitting, or applying power, light, heat, steam, air conditioning or refrigeration.

Referred to in §515.49(2, 3, 4, 5) and subsection 1 of this section

7. Insure against loss or damage resulting from burglary or robbery, or attempt thereat, or larceny.

8. Insure or guarantee and indemnify merchants, traders, and those engaged in business and giving credit from loss and damage by reason of giving and extending credit to their customers and those dealing with them, which business shall be known as credit insurance. Such insurance may cover losses, less a deduction of an agreed percentage, not to exceed ten percent, representing anticipated profits, and a further deduction not to exceed thirty-

three and one-third percent, on losses on credits extended to risks who have inferior ratings, and less an agreed deduction for normal loss.

Such coinsurance percentages shall be deducted in advance of the agreed normal loss from the gross covered loss sustained by the insured.

Referred to in §515.49(6)

9. Insure vessels, boats, cargoes, goods, merchandise, freights, specie, bullion, jewelry, jewels, profits, commissions, bank notes, bills of exchange, and other evidence of debt, bottomry, and respondentia interest and every insurance appertaining to or connected with any or all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment, incident thereto, including marine builder's risks; and for loss or damage for which the insured is legally liable to persons or property in connection with or appertaining to marine, inland marine, transit, or transportation insurance, including liability for loss of or damage arising out of or in connection with the construction, repair, maintenance, storage or use of the subject matter of such insurance; and insure against loss or damage to silverware, musical instruments, furs, garments, fine arts, precious stones, jewels, jewelry, gold, silver, and other precious metals or valuable items whether used in business, transportation, trade or otherwise; and insure automobiles, airplanes, seaplanes, dirigibles or other aircraft, whether stationary or being operated under their own power, which include all or any of the hazards of fire, explosion, transportation, collision, loss by legal liability for damage to property resulting from the maintenance and use of automobiles, airplanes, seaplanes, dirigibles, or other aircraft, and loss by burglary or theft, vandalism, malicious mischief, or the wrongful conversion, disposal or concealment of automobiles whether held under conditional sale, contract, or subject to chattel mortgage, or any one or more of such hazards, including insurance against loss by reason of bodily injury to the person including medical, hospital and surgical expense irrespective of legal liability of insured.

Referred to in §515.49(1)

10. Insure any additional risk not specifically included within any of the foregoing classes, which is a proper subject for insurance, is not prohibited by law or contrary to sound public policy, and which, after public notice and hearing, is specifically approved by the commissioner of insurance, except title insurance or insurance against loss or damage by reason of defective title, encumbrances or otherwise. When such additional kind of insurance is approved by the commissioner, he shall designate within which classification of risks provided for in section 515.49 it shall fall. [C73, §1132; C97,§1709; S13,§1709; C24, 27, 31, 35, 39, §8940; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.48; 66GA, ch 1084,§43]

Referred to in §§321.1(71), 432.1, 432A.1, 515.49, 517.1, 515B.9, 763.11
Action on liability policy, ch 516

515.49 Limitation on risks. No company authorized to transact business in this state as provided in this chapter, shall issue policies of insurance for more than one of the purposes or subsections enumerated in section 515.48, except as herein provided, as follows:

1. Any domestic or foreign insurance company authorized in this state to do the business specified in subsection 1 of section 515.48 may, in addition to the business specified in subsection 1 insure against the casualties specified in subsection 9 of said section.

2. Any domestic or foreign insurance company authorized in this state to do the business contemplated by either subsection 2 or 5 may in addition to such business insure against the casualties specified in subsections 4 and 6 of section 515.48, and also to insure against theft, larceny, burglary and robbery, or attempt thereat.

3. Any domestic or foreign company authorized in this state to transact the business specified in subsection 5 of section 515.48, if it is possessed of a paid-up capital of three hundred thousand dollars, may, in addition to insuring against the casualties specified in subsection 5 transact the business specified in subsections 2, 3, 4 and 6 of said section, and insure against loss of and damage to glass.

4. Any domestic insurance company authorized in this state to transact the business specified in subsection 5 of section 515.48, and possessed of two hundred fifty thousand dollars paid-up capital stock, may, in addition to insuring against the casualties specified in subsection 5, transact the business specified in subsection 4 of said section, and insure against injury or loss to persons or property, or both, contemplated by subsection 6, and may also insure against loss of or damage to glass.

5. Any foreign insurance company authorized in this state to transact the business specified in subsection 5 of section 515.48, if possessed of a paid-up capital or surplus of three hundred thousand dollars, in addition to insuring against the casualties specified in subsection 5, may insure against the casualties specified in subsections 4 and 6 of said section, and also insure against loss of and damage to glass.

6. Any domestic or foreign insurance company authorized in their state to transact the business specified in subsection 2 of section 515.48, if possessed of paid-up capital stock of five hundred thousand dollars, may, in addition to transacting the business authorized by said subsection 2, transact the business of credit insurance as authorized by subsection 8 of said section.

7. Any foreign or domestic mutual insurance company, when found upon examination by the commissioner of insurance to possess surplus and other funds available for the payment of liabilities equal to the capital stock as by law required of like stock insurance companies may transact the same kinds of insurance permitted to like stock insurance companies.

Providing always, that the charter or articles of incorporation of any such company authorizes the writing of such additional insurance.

No company shall expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its surplus to policyholders:

a. Unless the excess shall be reinsured in some other good and reliable company licensed to do an insurance business in this state, but in no case shall such excess reinsurance exceed ten percent of the capital of the reinsuring company, and a certificate of such reinsurance shall be furnished to the insured; or

b. Unless the excess shall be reinsured by a group of individual unincorporated insurers who are authorized to transact an insurance business in at least one state of the United States and who possess assets which are held in trust for the benefit of the American policyholders in the sum of not less than fifty million dollars, and a certificate of such reinsurance shall be furnished to the insured.

The restrictions as to the amount of risk a company may assume shall not be applicable to a company that receives on deposit and guarantees the safekeeping of books, papers, and moneys and other personal property.

8. Any company organized under this chapter or authorized to transact in the state the kinds of insurance business specified in any subsection of section 515.48 may insure and reinsure risks of every kind or description specified in said section providing it maintains a surplus to policyholders of not less than five hundred thousand dollars. Wherever section 515.48 is referred to herein said section shall be deemed to include all amendments or modifications thereof. [C73,§1132; C97,§1710; S13, §1710; C24, 27, 31, 35, 39,§**8941**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.49]

Referred to in §§515.47, 515.48(10), 515.50, 515C.2, 521.13

515.50 Loans—reinsurance. Such company may lend money on bottomry or respondentia, and cause itself to be insured in companies or groups authorized to do business in this state, as set forth in section 515.49, against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property on account of any such loan, and generally to do and perform all other matters and things proper to promote these objects. [C73,§1132; C97,§1711; S13,§1711; C24, 27, 31, 35, 39,§**8942**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.50]

515.51 Execution of policies. All policies or contracts of insurance made or entered into by the company may be made either with or without the seal of said company, but shall be subscribed by the president, or such other officer as may be designated by the directors for that purpose, and be attested by the secretary thereof. [C73,§1133; C97,§1712; C24, 27, 31, 35, 39,§**8943**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.51]

515.52 Issuance by licensed agents. No insurance company shall write, issue, or place, or cause to be written, issued, or placed any policy or contract of insurance or endorsement thereto, covering risks on any property, insurable business activity, or interest, located within, or transacted within this state, including any contract of indemnity or suretyship, except through or by a duly licensed agent of such company, residing within this state, who shall before delivery, countersign said policy or contract of insurance or endorsement thereto. No such resident agent shall countersign such policies, contracts of insurance or endorsements in blank. [C35,§8943-e1; C39, §**8943.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.52]

Referred to in §§515.53, 515.54, 515.58–515.61

515.53 Agents on commission only. Only resident agents within this state, whose compensation for soliciting and writing insurance is by way of commission figured as a percentage of the premium or membership fee for each policy or contract of insurance written, may countersign policies, contracts of insurance or endorsements thereto within this state. No branch manager, state agent, special agent, or other supervisory agent, or any other representative of an insurance company whose compensation in the insurance business is derived either in whole or in part by salary may countersign policies, contracts of insurance or endorsements thereto on risks located in this state within the purview of section 515.52. [C39,§**8943.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.53]

Referred to in §§515.58–515.61

515.54 Agent within state countersigning—commission. In the event policies, contracts of insurance or endorsements thereto on risks located within this state as defined in section 515.52 are contracted for or otherwise originate without the state, then in that event, there shall be payable to the countersigning agent, resident of the state, a commission which shall be not less than five percent of the premium charged for such policy, or contract of insurance or endorsement thereto, provided, however, said countersigning commission shall not exceed one-half of the total commission on any line, form, or type of insurance. Nothing herein shall prevent the payment of a larger commission to the resident countersigning agent if agreed to by the interested parties, as hereinafter provided. [C39,§**8943.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.54]

Referred to in §§515.55, 515.56, 515.58–515.61

515.55 Commission agreements enforceable. In the event that any insurance company is

furnished with a written signed agreement, duly executed by and between a forwarding nonresident agent or broker and a resident countersigning agent, providing for a commission in excess of that provided in section 515.54, then and in that event until notice is received by the company to the contrary, the commission due and payable to the resident countersigning agent shall be as contained in said agreement, and the rights of such resident countersigning agent to enforce payment thereof shall be the same as are applicable to the commission provided for in said section. [C39,§8943.04; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.55]

Referred to in §§515.56, 515.58–515.61

515.56 Action on claim. The resident countersigning agent shall have a direct claim against the insurance company issuing such policy, or contract of insurance or endorsement thereto for his commission in accordance with sections 515.54 and 515.55. The liability of such company for such commission may be enforced in an action at law or equity as the case may be. [C39,§8943.05; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.56]

Referred to in §§515.58–515.61

515.57 Records of out-of-state contracts. It shall be the duty of every resident countersigning agent for business originating without this state but covering property or business transactions within this state, and the insurance companies issuing such policies, to keep a written record of each such transaction which shall contain the name of the company issuing the policy, the name of the assured, the number of the policy, the expiration date thereof and the amount of the premium payable thereunder, and such records shall be subject to the inspection of the commissioner of insurance for the purpose of verifying the amount of premium tax payable by such company under the provisions of chapter 432. [C39,§8943.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.57]

Referred to in §§515.58–515.61

515.58 Contracts covered and exempt. The provisions of sections 515.52 to 515.57 shall be applicable to all companies doing business under this chapter and interinsurance exchanges engaged in business under the provisions of chapter 520, when such companies or exchanges are engaged in business on the commission basis, and the agents thereof, but shall not have application to life insurance companies, associations doing business under chapter 518A, domestic insurance companies or exchanges, or companies or exchanges who solicit insurance exclusively by salaried representatives who are paid no commission on business written, or to the business of mutual insurance companies obtained through salaried representatives and upon which no commission is paid; nor shall such sections apply to insurance on rolling stock of railroad corporations operating between states, or property in transit from one state to another while in possession of railroads or other common carriers; or to insurance upon ocean marine risks or property in transportation; or to bid bonds issued in connection with any public or private contract. [C35,§8943-e2; C39,§8943.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.58]

Referred to in §§515.59–515.61

515.59 Commissioner's power to enforce. The commissioner of insurance may revoke or suspend the certificate of authority of any insurance company or exchange violating the provisions of any of sections 515.52 to 515.58 or the license of any agent violating any of such sections. [C39,§8943.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.59]

Referred to in §§515.60, 515.61

515.60 Penalty. Any employee, representative, or agent of an insurance company violating any of the provisions of sections 515.52 to 515.59 shall be guilty of a misdemeanor, and upon conviction shall be liable to imprisonment for a term of not to exceed thirty days or for a fine not to exceed one hundred dollars or for both such fine and imprisonment. [C39, §8943.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.60]

Referred to in §515.61

515.61 Lawful commissions in other states applicable. If, by the existing or future laws of any state, a higher commission is payable to agents resident of such state on risks located in such state, the policies or contracts of insurance for which originate in this state, then and in that event the resident countersigning agent under sections 515.52 to 515.60 shall be entitled to a like commission on risks located in this state as defined in section 515.52 and which are contracted for or otherwise originate in such other state. [C39,§8943.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.61]

515.62 Transfer of stock. Transfers of stock made by any stockholder or his legal representative shall be subject to the provisions of chapters 491 and 492 relative to transfer of shares, and to such restrictions as the directors shall establish in their bylaws, except as hereinafter provided. [C73,§1134; C97,§1713; C24, 27, 31, 35, 39,§8944; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.62]

515.63 Annual statement. The president or the vice-president and secretary of each company organized or authorized to do business in the state shall annually before the first day of March of each year prepare under oath and file with the commissioner of insurance a full, true, and complete statement of the condition of such company on the last day of the preceding year, which shall exhibit the following items and facts:

First—The amount of capital stock of the company.

Second—The names of the officers.

Third—The name of the company and where located.

Fourth—The amount of its capital stock paid up.

Fifth—The property or assets held by the company, specifying:

1. The value of real estate owned by the company.

2. The amount of cash on hand and deposited in banks to the credit of the company, and in what bank deposited.

3. The amount of cash in the hands of agents and in the course of transmission.

4. The amount of loans secured by first mortgage on real estate, with the rate of interest thereon.

5. The amount of all other bonds and loans and how secured, with the rate of interest thereon.

6. The amount due the company on which judgment has been obtained.

7. The amount of bonds of the state, of the United States, of any county or municipal corporation of the state, and of any other bonds owned by the company, specifying the amount and number thereof, and par and market value of each kind.

8. The amount of bonds, stock, and other evidences of indebtedness held by such company as collateral security for loans, with amount loaned on each kind, and its par and market value.

9. The amount of assessments on stock and premium notes, paid and unpaid.

10. The amount of interest actually due and unpaid.

11. All other securities and their value.

12. The amount for which premium notes have been given on which policies have been issued.

Sixth—Liabilities of such company, specifying:

1. Losses adjusted and due.

2. Losses adjusted and not due.

3. Losses unadjusted.

4. Losses in suspense and the cause thereof.

5. Losses resisted and in litigation.

6. Dividends in scrip or cash, specifying the amount of each, declared but not due.

7. Dividends declared and due.

8. The amount required to reinsure all outstanding risks on the basis of the unearned premium reserve as required by law.

9. The amount due banks or other creditors.

10. The amount of money borrowed and the security therefor.

11. All other claims against the company.

Seventh—The income of the company during the previous year, specifying:

1. The amount received for premiums, exclusive of premium notes.

2. The amount of premium notes received.

3. The amount received for interest.

4. The amount received for assessments or calls on stock notes, or premium notes.

5. The amount received from all other sources.

Eighth—The expenditures during the preceding year, specifying:

1. The amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which such losses were estimated in such statement.

2. The amount paid for dividends.

3. The amount paid for commissions, salaries, expenses, and other charges of agents, clerks, and other employees.

4. The amount paid for salaries, fees, and other charges of officers and directors.

5. The amount paid for local, state, national and other taxes and duties.

6. The amount paid for all other expenses, including printing, stationery, rents, furniture, or otherwise.

Ninth—The largest amount insured in any one risk.

Tenth—The amount of risks written during the year then ending.

Eleventh—The amount of risks in force having less than one year to run.

Twelfth—The amount of risks in force having more than one and not over three years to run.

Thirteenth—The amount of risks having more than three years to run.

Fourteenth—The dividends, if any, declared on premiums received for risks not terminated.

Fifteenth—All other information as required by the national association of insurance commissioners' annual statement blank. [C73, §1141; C97,§1714; C24, 27, 31, 35, 39,§8945; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.63]

Referred to in §511.3
C97,§1714 editorially divided

515.64 Accident insurance — record. Each accident insurance company, or company insuring against accidents, shall keep a register of tickets sold or policies issued by its officers or agents, which register shall show the name and residence of the person insured, the amount of insurance, the date of issue of such ticket or policy, and the time the same will remain in force; and the annual statement of each such company shall show the number of tickets sold and policies issued by it during the year, and the aggregate amount of insurance evidenced by such tickets and policies, classified as to the length of time for which such insurance is given. [C73,§1141; C97,§1714; C24, 27, 31, 35, 39,§8946; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.64]

Referred to in §511.3

515.65 Certificate refused. The commissioner of insurance shall withhold his certificate or permission of authority to do business from any company neglecting or failing to

comply with the provisions of this chapter. [C97,§1715; C24, 27, 31, 35, 39,§8947; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.65]

515.66 Annual statement of foreign company. The annual statement of foreign companies doing business in this state shall also show, in addition to the foregoing matters, the amount of losses incurred and premiums received in the state during the preceding period, so long as such company continues to do business in this state. [C73,§1146; C97,§1716; C24, 27, 31, 35, 39,§8948; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.66]

515.67 Inquiry by commissioner. The commissioner of insurance shall address any inquiries to any insurance company in relation to its doings and condition, or any other matter connected with its transactions, which he may deem it necessary for the public good, or for a proper discharge of his duties, and any company so addressed shall promptly reply in writing thereto. [C73,§1142; C97,§1718; C24, 27, 31, 35, 39,§8949; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.67]

515.68 Forms for statements. He shall cause to be prepared and furnished to each company organized under the laws of this state, and to the attorney or agent of each company incorporated in other states and foreign governments, who may apply therefor, printed forms of statements required by this chapter, and may from time to time make such changes in the forms as shall seem to him best adapted to elicit from the companies a true exhibit of their condition in respect to the several points hereinbefore enumerated. [C73,§1157; C97,§1719; C24, 27, 31, 35, 39,§8950; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.68]

515.69 Foreign companies—capital required. No stock insurance company organized under or by the laws of any other state or foreign government for the purpose specified in this chapter, shall, directly or indirectly, take risks or transact any business of insurance in this state unless possessed of two hundred thousand dollars of actual paid-up capital, and a surplus in cash or invested in securities authorized by law of not less than three hundred thousand dollars, exclusive of any assets deposited in any state, territory, district, or country for the special benefit or security of those insured therein. [C73,§1144; C97,§1721; SS15, §1721; C24, 27, 31, 35, 39,§8951; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.69]

515.70 Alien insurer defined. An alien insurer is hereby defined to mean an insurance company incorporated or organized under the laws of any country other than the United States. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.70]

515.71 Deposit of securities—amount. Every alien insurer authorized to transact business in this state shall at all times maintain a deposit with the commissioner of insurance in cash or in securities in which insurance companies are authorized to invest, a sum equal to the unearned premium reserve on all policies covering risks located in this state. Such securities shall be approved, and the amount of such deposit shall be determined, by the commissioner in accordance with section 515.47, provided, that the minimum amount of any deposit shall be twenty-five thousand dollars. The commissioner, in his discretion, may permit the withdrawal of interest earnings.

In lieu of the deposit provided herein any such alien insurer may file with the commissioner a bond of equal amount executed by a licensed United States surety company, so conditioned for the protection of Iowa creditors and policyholders.

No such alien insurer shall be granted a certificate of authority to transact business in this state, or a renewal thereof, until such deposit shall have been made, and the commissioner may revoke the certificate of authority of any such alien insurer which fails to make such deposit within a reasonable period of time after April 23, 1941. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.71]

515.72 Insolvency of company — procedure. In the event of insolvency or receivership of any such alien insurer the title to the cash or securities so deposited shall vest in the commissioner of insurance for the use and benefit of the policies issued by said insurer and outstanding in this state, and in such event the commissioner shall be appointed receiver of said insurer by the district court, in and for Polk county, with the right, subject to the court's approval, to reinsure said policies in some insurance company or association authorized to do business in this state, or to liquidate said deposit for the sole benefit of the policies for which said deposit was made. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.72]

Constitutionality, 49GA, ch 277,§4

515.73 Commissioner as process agent. Any foreign company desiring to transact the business of insurance under this chapter, by an agent or agents in the state, shall file with the commissioner of insurance a written instrument, duly signed and sealed, authorizing such commissioner to acknowledge service of notice or process for and in behalf of such company in this state, and consenting that service of notice or process may be made upon the said commissioner, and when so made shall be taken and held as valid as if served upon the company according to the laws of this or any other state, and waiving all claim, or right, of error, by reason of such acknowledgment of service. [C73,§1144; C97,§1722; C24, 27, 31, 35, 39,§8952; C46, 50, 54, 58, 62, 66, 71, 73, 75, §515.73]

C97,§1722, editorially divided

Similar provisions, §§491.15, 494.2, 511.27, 512.22, 520.5, 534.53

515.74 Manner of service. Such notice or process with a copy thereof may be mailed to the commissioner of insurance at Des Moines, Iowa, in a certified mail letter addressed to

him by his official title, and he shall immediately upon its receipt acknowledge service thereon on behalf of the defendant foreign insurance company by writing thereon, giving the date thereof, and shall immediately return such notice or process in a certified mail letter to the clerk of the court in which the suit is pending, addressed to him by his official title, and shall also forthwith mail such copy, with a copy of his acknowledgment of service written thereon, in a certified mail letter addressed to the person or corporation who shall be named or designated by such company in such written instrument. [C97,§1722; C24, 27, 31, 35, 39,§**8953**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.74]

515.75 Additional statements—impaired capital. Such company shall also file with the commissioner a certified copy of its charter or deed of settlement, together with a statement under oath of the president or vice-president or other chief officer and the secretary of the company for which they may act, stating the name of the company, the place where located, the amount of its capital, with a detailed statement of the facts and items required from companies organized under the laws of this state, and a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by liabilities as specified in this chapter to the extent of twenty percent thereof, while such deficiency shall continue. [C73,§1144; C97,§1722; C24, 27, 31, 35, 39,§**8954**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.75]

515.76 Foreign mutual companies—surplus. Any mutual insurance company organized outside of this state and authorized to transact the business of insurance on the mutual plan in any other state of the United States or in the District of Columbia, may be admitted to this state and authorized to transact herein any of the kinds of insurance authorized by its charter or articles of incorporation, when so permitted by the provisions of this chapter, with the powers and privileges and subject to the conditions and limitations specified in said chapter; provided, however, such company has complied with all the statutory provisions which require stock companies to file papers and to furnish information and to submit to examination, and is also solvent according to the requirements of this chapter and is possessed of a surplus safely invested as follows:

1. In case any such mutual company issuing policies for a cash premium without an additional contingent liability equal to or greater than the cash premium, the surplus shall be at least three hundred thousand dollars.

2. In case of any other such mutual company issuing policies for a cash premium or payment with an additional contingent liability equal to or greater than the cash premium or payment, the surplus shall be such an amount as the commissioner of insurance of Iowa may require, but in no case less than three hundred thousand dollars, provided that the provisions of this section fixing a minimum surplus of three hundred thousand dollars shall not apply to companies now admitted to do business in Iowa; provided, further, that no such mutual company shall be authorized to transact compensation insurance without a surplus of at least three hundred thousand dollars unless all liability for each adjusted claim in this state, the payment of any part of which is deferred for more than one year, shall be provided for by a special deposit, in a trust company or a bank having fiduciary powers, located in this state, which shall be a trust fund applicable solely and exclusively to the payment of the compensation benefits for which such deposit is made, or shall be reinsured in an authorized stock company, or in an authorized mutual company with a surplus of at least three hundred thousand dollars. [C73,§1144; C97,§1723; C24, 27, 31, 35, 39,§**8955**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.76]

515.77 Certificate to foreign company. When any foreign company has fully complied with the requirements of law and become entitled to do business, the commissioner of insurance shall issue to such company a certificate of that fact, which certificate shall be renewed annually on the first day of May, if the commissioner is satisfied that the capital, securities, and investments of such company remain unimpaired, and the company has complied with the provisions of law applicable thereto. Provided, however, the commissioner shall not grant or continue authority to transact insurance in this state as to any insurer the management of which is found by him, after a hearing held thereon, in which he shall establish and consider any prior criminal records or any other matters to be untrustworthy, or so lacking in insurance experience as to make the proposed operation hazardous to the insurance-buying public; or which, after a hearing held thereon, he has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by manipulation or dissipation of assets, or manipulation of accounts, or of reinsurance, or by similar injurious actions. [C73,§1146; C97,§1724; C24, 27, 31, 35, 39,§**8956**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.77; 66GA, ch 67,§51]

515.78 Agent's certificate of authority. No agent shall directly or indirectly act for any insurance company referred to in this chapter, in taking risks or transacting business of insurance in the state, without procuring from the commissioner of insurance a certificate of authority to the effect that such company has complied with all the requirements of this chapter. [C73,§1145; C97,§1725; C24, 27, 31, 35, 39,§**8957**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.78]

515.79 Notes taken for insurance. All notes taken for policies of insurance in any company doing business in the state shall state upon their face that they have been taken for insurance, and shall not be collectible unless the company and its agents have fully complied with the laws of the state relative to insurance. [C73,§1146; C97,§1726; C24, 27, 31, 35, 39,§8958; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.79]

515.80 Forfeiture of policies — notice. No policy or contract of insurance provided for in this chapter shall be forfeited or suspended for nonpayment of any premium, assessment, or installment provided for in the policy, or in any note or contract for the payment thereof, unless within thirty days prior to, or on or after the maturity thereof, the company shall serve notice in writing upon the insured that such premium, assessment, or installment is due or to become due, stating the amount, and the amount necessary to pay the customary short rates, up to the time fixed in the notice when the insurance will be suspended, forfeited, or canceled, which shall not be less than thirty days after service of such notice, which may be made in person, or by mailing in a certified mail letter addressed to the insured at his post office as given in or upon the policy, and no suspension, forfeiture, or cancellation shall take effect until the time thus fixed and except as herein provided, anything in the policy, application, or a separate agreement to the contrary notwithstanding. [C97, §1727; C24, 27, 31, 35, 39,§8959; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.80]

Referred to in §§515.82, 515D.5

515.81 Cancellation of policy—notice to insured or mortgagee. At any time after the maturity of a premium, assessment, or installment provided for in the policy, or any note or contract for the payment thereof, or after the suspension, forfeiture, or cancellation of any policy or contract of insurance, the insured may pay to the company the customary short rates and costs of action, if one has been commenced or judgment rendered thereon, and may then, if he so elect, have his policy and all contracts or obligations connected therewith, whether in judgment or otherwise, canceled, and they and each of them thereafter shall be void; and in case of suspension, forfeiture, or cancellation of any policy or contract of insurance, the assured shall not be liable for any greater amount than the short rates earned at the date of such suspension, forfeiture, or cancellation and the costs herein provided. The policy may be canceled by the insurance company by service of notice in writing upon the insured which notice shall fix the date of cancellation which shall be not less than five days after service of such notice. Such service of notice may be made in person, or by mailing such notice to the insured at his post-office address as given in or upon the policy, or to such other address notice of which the insured shall have given to the company in writing. A post office department receipt of certified or registered mailing shall be deemed proof of receipt of such notice. When canceled by the insurer, it may retain only the pro rata premium, and in the event the initial cash premium, or any part thereof, shall not have been paid, then said policy may be canceled by the insurer by giving said notice to the insured and ten days' notice to the mortgagee, or other person to whom the policy is made payable, if any, without tendering any part or portion of such premium, anything to the contrary in the policy notwithstanding. [C97,§1728; S13,§1728; C24, 27, 31, 35, 39,§8960; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.81]

Referred to in §§515.82, 515D.5

515.82 Short rates. The commissioner of insurance shall prepare and promulgate tables of the short rates provided for in sections 515.80 and 515.81, for the various kinds and classes of insurance governed by the provisions of this chapter, which, when promulgated, shall be for the guidance of all companies covered in this chapter and shall be the rate to be given in any notice therein required. No company shall discriminate unfairly between like assureds in the rate or rates so provided. [C97,§1729; C24, 27, 31, 35, 39,§8961; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.82]

515.83 Policy restored. At any time before cancellation of the policy for nonpayment of any premium, assessment, or installment provided for therein, or in any note or contract for the payment thereof, or after action commenced or judgment rendered thereon, the insured may pay to the insurer the full amount due, including court costs if any, and from the date of such payment, or the collection of the judgment, the policy shall revive and be in full force and effect, provided such payment is made during the term of the policy and before a loss occurs. [C97,§1730; C24, 27, 31, 35, 39, §8962; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.83]

C97,§1730, editorially divided

515.84 Right of insured to cancel. No provision, stipulation, or agreement to the contrary in or independent of the policy or contract of insurance shall avoid or defeat the right of any insured to pay short rates and costs of action, if any, and have the policy and all contracts connected therewith, including judgments rendered thereon, canceled. [C97,§1730; C24, 27, 31, 35, 39,§8963; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.84]

515.85 Examination—dissolution. The commissioner of insurance shall, when he finds it expedient, appoint one or more persons, not officers, agents, or stockholders of any insurance company doing business in the state, to examine into the affairs and condition of any such company incorporated or doing business therein, or make such examination himself; and the officers or agents thereof shall produce their books for the inspection of the examiners and otherwise assist therein, so far as they can do so; and in conducting the investigation they

may examine under oath the officers or agents of any company, or others, relative to the business and condition of the company, and the result thereof shall be published in one or more papers in the state, when the commissioner believes the public interest requires it. When it appears to the commissioner from such examination that the assets and funds of any company incorporated in this state are reduced or impaired by its liabilities, as defined under the head of liabilities in the statement required by this chapter, more than twenty percent below the paid-up capital stock required, he shall direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition, or he shall communicate the fact to the attorney general, who shall apply to the district court for an order requiring the company to show cause why its business shall not be dissolved. The court shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it appears to its satisfaction that the assets and funds of said company are not sufficient, as aforesaid, or that the interest of the public requires it, said court shall decree a dissolution of said company and a distribution of its effects, and appoint a receiver therefor. The application of the attorney general may be by the court sent to a referee to inquire into and report upon the facts stated therein, which report shall be made to the court. [C73,§1149; C97,§1731; C24, 27, 31, 35, 39, §8964; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.85]

Referred to in §507.11

515.86 Requisition on stockholders — personal liability. Any company receiving such a requisition from the commissioner of insurance shall forthwith call upon its stockholders for such amounts as will make its paid-up capital equal to the amount fixed by this chapter or the articles of incorporation of said company; and in case any stockholder shall refuse or neglect to pay the amount called for after notice personally given, or by advertisement in such time and manner as the commissioner shall approve, it shall be lawful for the company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholder may be entitled to in the proportion that the ascertained value of the funds of the said company may be found to bear to its original capital, the value of such shares for which new certificates shall be issued to be ascertained under the direction of the commissioner, the company paying for the fractional parts of shares, and the directors of such company may issue new stock and dispose of the same, and issue new certificates therefor, to an amount sufficient to make up the original capital of the company. In the event of additional losses accruing upon new risks, taken after the expiration of the period limited by the commissioner in the aforesaid requisition for the filling up of the deficiency in the capital of such company, and before said deficiency shall have been made up, the directors shall be individually liable to the extent thereof. [C73,§1150; C97,§1732; C24, 27, 31, 35, 39,§8965; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.86]

Referred to in §507.11

515.87 Mutual companies—dissolution—personal liability. If, upon such examination, it shall appear to the commissioner of insurance that the assets of any company organized or operating upon the plan of mutual insurance under this chapter are insufficient to justify the continuance of such company in business, he shall proceed in relation to such company in the same manner as herein required in regard to stock companies; and the trustees or directors of such company are made personally liable for any losses which may be sustained upon risks taken after the expiration of the period limited by the commissioner for filling up the deficiency in the assets or premium notes, and before such deficiency shall have been made up. [C73,§1151; C97,§1733; C24, 27, 31, 35, 39,§8966; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.87]

515.88 Transfers pending investigation. Any transfer of the stock of any company organized under this chapter, made pending any investigation above required, shall not release the party making the transfer from any liability for losses which may have accrued previous to such transfer. [C73,§1151; C97,§1734; C24, 27, 31, 35, 39,§8967; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.88]

515.89 Revocation of certificate of foreign company. The commissioner of insurance shall be authorized to examine into the condition and affairs of any insurance company, as provided for in this chapter, doing business in this state, not organized under its laws, or cause such examination to be made by some person or persons appointed by him having no interest in any insurance company; and when it shall appear to his satisfaction that the affairs of any such company are in an unsound condition, he shall revoke the certificates granted in its behalf, and cause a notification thereof to be published in some newspaper of general circulation, published at the seat of government, and no agent or agents of such company after such notice shall issue policies or renew any previously issued. [C73,§1152; C97,§1735; C24, 27, 31, 35, 39,§8968; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.89]

515.90 Certificates of compliance—how published. The commissioner of insurance shall annually, as soon as practicable after the first of March, publish in two newspapers of general circulation, a statement made up from the annual report of every insurance company of the character provided for in this chapter and doing business in this state whether organized under the laws of this or any other state, which statements shall contain a synopsis of the company's annual report and shall show that the company has in all respects complied with the

laws of the state relating to insurance and is authorized to transact business in the state. The publications as above contemplated shall be made in newspapers published in different counties, but in the case of companies organized in this state, one publication shall be made in the county in which the home office of the company is located, but no two publications to be made in the same county. The fee for each publication shall be ten dollars, which shall be paid to the commissioner at the time and in the manner provided for in section 515.128, and shall be by him paid to the papers making the publication upon receipt of a bill for same, together with an affidavit by the publisher or foreman showing that such publication has been properly made, the same to be filed within thirty days from the date of such publication. [C73,§1155; C97,§1737; S13,§1737; C24, 27, 31, 35, 39,§8970; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.90]

515.91 False statement of assets. No company transacting the business of fire insurance within the state shall state or represent by advertisement in any newspaper, magazine, or periodical, or by any sign, circular, card, policy of insurance, or renewal certificate thereof or otherwise, any funds or assets to be in its possession and held available for the protection of holders of its policies unless so held, except the policy of insurance or certificate of renewal thereof may state, as a single item, the amount of capital set forth in the charter, or articles of incorporation, or association, or deed of settlement under which it is authorized to transact business. [C97,§1738; C24, 27, 31, 35, 39,§8971; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.91]

Referred to in §515.93

515.92 Statement of capital and surplus. Every advertisement or public announcement, and every sign, circular, or card issued or published by any foreign company transacting the business of fire insurance in the state, or by an officer, agent, or representative thereof, which shall purport to make known its financial standing, shall exhibit the capital actually paid in in cash, and the amount of net surplus of assets over all its liabilities actually held and available for the payment of losses by fire and for the protection of holders of fire policies, and shall also exhibit the amount of net surplus of assets over all liabilities in the United States actually available for the payment of losses by fire and held in the United States for the protection of holders of fire policies in the United States, including in such liabilities the fund reserved for reinsurance of outstanding risks, and the same shall correspond with the latest verified statement made by the company or association to the commissioner of insurance. No such company shall write, place, or cause to be written or placed, any policy or contract for insurance upon property situated or located in this state except through its resident agent or agents. [C97,§1739; C24, 27, 31, 35, 39,§8972; C46, 50, 54, 58, 62, 66, 71, 73, 75, §515.92]

Referred to in §515.93

515.93 Violations. Any violation of the provisions of sections 515.91 and 515.92 shall for the first offense subject the company, association, or individual guilty thereof to a penalty of five hundred dollars, to be recovered in the name of the state, with costs, in an action instituted by the county attorney, either in the county in which the company, association, or individual is located or transacts business, or in the county where the offense is committed, and such penalty, when recovered, shall be paid into the school fund of the county in which action is brought. Every subsequent violation of said sections shall subject the company, association, or individual to a penalty of one thousand dollars, to be sued for, recovered, and disposed of in like manner. [C97, §1740; C24, 27, 31, 35, 39,§8973; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.93]

515.94 Copy of application—duty to attach. All insurance companies or associations shall, upon the issue or renewal of any policy, attach to such policy, or endorse thereon, a true copy of any application or representation of the assured which, by the terms of such policy, is made a part thereof, or of the contract of insurance, or referred to therein, or which may in any manner affect the validity of such policy. [C97,§1741; C24, 27, 31, 35, 39,§8974; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.94]

Referred to in §515.95
C97,§1741, editorially divided
Similar provisions, §§511.33, 512.14

515.95 Failure to attach—effect. The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of section 515.94 it shall forever be precluded from pleading, alleging, or proving any such application or representations, or any part thereof, or falsity thereof, or any parts thereof, in any action upon such policy, and the plaintiff in any such action shall not be required, in order to recover against such company or association, either to plead or prove such application or representation, but may do so at his option. [C97,§1741; C24, 27, 31, 35, 39,§8975; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.95]

Similar provisions, §§511.34, 512.15

515.96 Presumption as to value. In any action brought in any court in this state on any policy of insurance for the loss of any building so insured, the amount stated in the policy shall be received as prima-facie evidence of the insurable value of the property at the date of the policy. [C97,§1742; C24, 27, 31, 35, 39,§8976; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.96]

C97,§1742, editorially divided
Similar provision, §518A.23

515.97 Value of building—liability. The insurance company or association issuing such policy may show the actual value of said property at date of policy, and any depreciation in

the value thereof before the loss occurred; but the said insurance company or association shall be liable for the actual value of the property insured at the date of the loss, unless such value exceeds the amount stated in the policy. [C97,§1742; C24, 27, 31, 35, 39,§8977; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.97]

Similar provision, §518A.24

515.98 Prima-facie right of recovery. In an action on such policy it shall only be necessary for the assured to prove the loss of the building insured, and that he has given the company or association notice in writing of such loss, accompanied by an affidavit stating the facts as to how the loss occurred, so far as they are within his knowledge, and the extent of his loss. [C97,§1742; C24, 27, 31, 35, 39,§8978; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.98]

Similar provisions, §§511.35, 514A.3, 518A.19

515.99 Repealed by 52GA, ch 263,§5. See §515.138.

515.100 Notice of loss of personal property by hail. In case of loss to growing crops by hail, notice of such loss must be given to the company by the insured by mailing a certified mail letter within ten days from the time such loss or damage occurs. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.100]

515.101 Invalidating stipulations — avoidance. Any condition or stipulation in an application, policy, or contract of insurance, making the policy void before the loss occurs, shall not prevent recovery thereon by the insured, if it shall be shown by the plaintiff that the failure to observe such provision or the violation thereof did not contribute to the loss. [C97, §1743; S13,§1743; C24, 27, 31, 35, 39,§8980; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.101]

Referred to in §§515.102, 515.105, 515.106
S13,§1743, editorially divided

515.102 Conditions invalidating policy. Any condition or stipulation referring:

1. To any other insurance, valid or invalid, or

2. To vacancy of the insured premises, or

3. To the title or ownership of the property insured, or

4. To lien, or encumbrances thereon created by voluntary act of the insured and within his control, or

5. To the suspension or forfeiture of the policy during default or failure to pay any written obligation given to the insurance company for the premium, or

6. To the assignment or transfer of such policy of insurance before loss without the consent of the insurance company, or

7. To the removal of the property insured, or

8. To a change in the occupancy or use of the property insured, if such change or use makes the risk more hazardous, or

9. To the fraud of the insured in the procurement of the contract of insurance—shall not be changed or affected by the provision of section 515.101. [C97,§1743; S13,§1743; C24, 27, 31, 35, 39,§8981; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.102; 66GA, ch 67,§52]

Referred to in §§515.105, 515.106

515.103 and 515.104 Repealed by 52GA, ch 263,§5. See §515.138.

515.105 Pleadings. Nothing in sections 515.101 and 515.102 shall be construed to change the limitations or restrictions respecting the pleading or proving of any defense by any insurance company to which it is subject by law. [C97,§1743; S13,§1743; C24, 27, 31, 35, 39,§8984; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.105]

Referred to in §515.106

515.106 *Applicability of statute.* The provisions of sections 515.101, 515.102, and 515.105 shall apply to all contracts of insurance on real and personal property. [C97,§1743; S13, §1743; C24, 27, 31, 35, 39,§8985; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.106]

515.107 Repealed by 52GA, ch 263,§5. See §515.138.

515.108 More favorable conditions. Nothing contained in section 515.138 shall be so construed as to prohibit any insurance company not required by the statutes of Iowa to issue a standard form of policy, from embodying, with the approval of the commissioner of insurance, in any insurance contract issued by it, provisions or conditions which are more favorable to the insured than those authorized in said statutes. [C24, 27, 31, 35, 39,§8987; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.108]

515.109 Forms of policies and endorsements —approval. The form of all policies, and of applications, and of agreements or endorsements modifying the provisions of policies, and of all permits and riders used generally throughout the state, issued or proposed to be issued by any insurance company doing business in this state under the provisions of this chapter, shall first be examined and approved by the commissioner of insurance. [C97,§1745; S13,§1745; C24, 27, 31, 35, 39,§8988; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.109]

Referred to in §515.138
S13,§1745, editorially divided

515.110 Special policy requirements. Such commissioner shall refuse to authorize it to do business or to renew its permission to do business when the form of policy issued or proposed to be issued does not provide for the cancellation of the same at the request of the insured upon equitable terms, and the return to the insured of any premium paid in excess of the customary short rates for the insurance up to the time of cancellation, or the release of the insured from any liability beyond such short rates, or for losses after the cancellation of the policy if the insurance be in a mutual company; and in case any company or associa-

tion shall issue any policies not containing such provision, it shall be the duty of the commissioner to revoke the authority of such company or association to do business. [C97, §1745; S13,§1745; C24, 27, 31, 35, 39,§8989; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.110]

515.111 Coinsurance or contribution clause. Contracts of insurance against loss or damage by fire or other perils may contain a coinsurance or contribution clause or clause having similar effect, provided the form setting up the terms of the same has been approved by the commissioner of insurance. [C97,§1746; S13,§1746; C24, 27, 31, 35, 39,§§8990–8995, 8997; C46, 50, 54,§§515.111–515.116, 515.118; C58, 62, 66, 71, 73, 75,§515.111]

515.112 to 515.116 Repealed by 56GA, ch 245,§1. See §515.111.

515.117 Repealed by 52GA, ch 263,§5. See §515.138.

515.118 Repealed by 56GA, ch 245,§1. See §515.111.

515.119 Compliance with law—change of articles. Every insurance company organized under the laws of or doing business in this state shall conform to all the provisions of this chapter and to other laws of this state, whether now existing or hereafter enacted, applicable thereto, and when necessary any existing company shall change its charter and bylaws so as to conform thereto, by a vote of a majority of its board of directors. [C73,§1147; C97,§1747; C24, 27, 31, 35, 39,§8998; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.119]

C97,§1747, editorially divided

515.120 Violations. Any officer, manager, or agent of any insurance company or association who, with knowledge that it is doing business in an unlawful manner, or is insolvent, solicits insurance with said company or association, or receives applications therefor, or does any other act or thing towards procuring or receiving any new business for such company or association, shall be guilty of a misdemeanor, and for every such act, on conviction thereof, shall be adjudged to pay a fine of not less than one hundred nor more than one thousand dollars, or be imprisoned in the county jail not exceeding one year, or be punished by both such fine and imprisonment. [C73,§1147; C97,§1747; C24, 27, 31, 35, 39,§8999; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.120]

515.121 Officers punished. Any president, secretary, or other officer of any company organized under the laws of this state, or any officer or person doing or attempting to do business in this state for any insurance company organized either within or without this state, failing to comply with any of the requirements of this chapter, or violating any of the provisions thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars, and be imprisoned in the county jail for a period not less than thirty days nor more than six months. [C73,§1147; C97,§1748; C24, 27, 31, 35, 39,§9000; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.121]

515.122 Advertisements. Every agent of any insurance company shall, in all advertisements of such agency, publish the location of the company, giving the name of the city or village in which it is located, and the state or government under the laws of which it is organized. [C73,§1148; C97,§1749; C24, 27, 31, 35, 39,§9001; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.122]

Referred to in §511.4
C97,§1749, editorially divided
Applicable to life companies, §511.4

515.123 "Soliciting agent" defined. Any person who shall hereafter solicit insurance or procure application therefor shall be held to be the soliciting agent of the insurance company or association issuing a policy on such application or on a renewal thereof, anything in the application, policy, or contract to the contrary notwithstanding. [C73,§1148; C97,§1749; C24, 27, 31, 35, 39,§9002; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.123]

Referred to in §511.4
Applicable to life companies, §511.4

515.124 Agent—general definition. The term "agent" used in the foregoing sections of this chapter shall include any other person who shall in any manner directly or indirectly transact the insurance business for any insurance company complying with the laws of this state. [C97,§1750; C24, 27, 31, 35, 39,§9003; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.124]

Referred to in §511.4
C97,§1750, editorially divided
Applicable to life companies, §511.4

515.125 Agent—specific definition. Any officer, agent, or representative of an insurance company doing business in this state who may solicit insurance, procure applications, issue policies, adjust losses, or transact the business generally of such companies, shall be held to be the agent of such insurance company with authority to transact all business within the scope of his employment, anything in the application, policy, contract, bylaws, or articles of incorporation of such company to the contrary notwithstanding. [C97,§1750; C24, 27, 31, 35, 39,§9004; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.125]

Referred to in §511.4
Applicable to life companies, §511.4

515.126 Exceptions. Members of mutual assessment associations which pay no commission, reward, or gratuity for the procuring of applications for membership, the income of which associations is derived solely from assessments, dues, and fees collected from its members for the sole purpose of meeting loss and expenses, shall not be deemed to be agents under any section of this chapter. [C24,

27, 31, 35, 39,§9005; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.126]

Referred to in §511.4
Applicable to life companies, §511.4

515.127 Applicability to organizations and individuals. The provisions of the foregoing sections relative to insurance companies shall apply to all such companies, partnerships, associations, or individuals, whether incorporated or not. [C73,§1148; C97,§1751; C24, 27, 31, 35, 39,§9006; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.127]

515.128 Fees. There shall be paid to the commissioner of insurance for services required under the provisions of this chapter the following fees, which shall be accounted for by him in the same manner as other fees received in the discharge of the duties of his office:

1. For filing and examination of the first application of any company and accompanying articles of incorporation for organization in this state, and the issuing of the permission to do business, ten dollars.

2. For filing application of any foreign company for certificate to do business in this state, and the accompanying certified copy of charter or articles of incorporation, twenty-five dollars.

3. For permission to foreign company to do business in this state, or certified copy thereof, two dollars.

4. For filing annual statement of a domestic company, and issuing the renewal of the permission required by law to authorize continuance in business, three dollars.

5. For filing annual statement of a foreign company, twenty dollars, and issuing renewal of permission, two dollars.

6. For certificate of authority to agent of foreign or domestic company, two dollars and fifty cents.

7. For every copy of any paper filed, the sum of twenty cents per folio, and for affixing the official seal to such copy and certifying the same, one dollar.

8. For each certificate for publication of foreign companies, two dollars, and for each certificate for publication of Iowa companies, fifty cents. [C73,§1153; C97,§1752; S13,§1752; C24, 27, 31, 35, 39,§9007; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.128]

Referred to in §515.90
Deposit of fees, §12.10

515.129 Expenses of examination. The necessary expenses of any examination of any insurance company made or ordered to be made by the commissioner of insurance under this chapter shall be certified to by him, and paid on his requisition by the company so examined; and in case of failure of the company to make such payment, the commissioner shall suspend such company from doing business in this state until such expenses are paid. If such expenses are not paid by the company, they shall be audited by the state comptroller and paid out of the state treasury. [C73,§1156; C97,§1753; C24, 27, 31, 35, 39,§9008; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.129]

C97,§1753, editorially divided

515.130 Repealed by 53GA, ch 213,§1. See §507.2.

515.131 Unlawful combinations—exceptions. It shall be unlawful for two or more insurance companies doing business in this state, or for the officers, agents, or employees of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting the insurance business within this state, but any number of insurance companies may appoint the same person or persons, who shall be residents of the state of Iowa, as their common agent or agents for the purpose of filing, in the manner prescribed by the insurance commissioner of Iowa, the forms of policies and of all permits and riders used generally throughout the state, as required by the laws of this state to be examined and approved by the said commissioner. [C97,§1754; C24, 27, 31, 35, 39,§9010; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.131]

C97,§1754, editorially divided
Referred to in §§515.133, 515.134, 515A.19

515.132 Violations. Any such company, officer, agent, or employee violating the above provision shall be guilty of a misdemeanor, and on conviction thereof shall pay a penalty of not less than one hundred dollars nor more than five hundred dollars for each offense, to be recovered in the name of the state for the use of the permanent school fund. [C97,§1754; C24, 27, 31, 35, 39,§9011; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.132]

515.133 Examination of officers and employees. The commissioner of insurance is authorized to summon before him, for examination under oath, any officer, agent, or employee of any such company suspected of violating any of the provisions of section 515.131, and, on complaint to him in writing by two or more residents of this state charging such company under oath upon their knowledge or belief with violating the provisions of said section, he shall summon any officer, agent, or employee of said company before him for examination under oath. [C97,§1755; C24, 27, 31, 35, 39,§9012; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.133]

Referred to in §515.136
C97,§1755, editorially divided

515.134 Revocation of authority. If upon such examination, and that of any other witness produced and examined, he shall determine that such company is guilty of a violation of any of the provisions of section 515.131, or if any such officer, agent, or employee after being duly summoned shall fail to appear or submit to examination, the commissioner shall forthwith issue an order revoking the authority of such company to transact business with-

in this state, and it shall not thereafter be permitted to do the business of fire insurance in this state at any time within one year therefrom. [C97,§1755; C24, 27, 31, 35, 39,§**9013**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.134]

Referred to in §§515.135, 515.136

515.135 Judicial review. Judicial review of the actions of the commissioner of insurance may be sought in accordance with the terms of the Iowa administrative procedure Act, upon filing with the clerk of court a good and sufficient bond for the payment of all costs adjudged against the petitioner. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county where the decision of the commissioner, pursuant to section 515.134, was made. [C97,§1756; C24, 27, 31, 35, 39,§**9014**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.135]

Referred to in §515.136
Docketing appeals, R.C.P. 181
Presumption of approval of bonds, §682.10

515.136 Incrimination. The statements and declarations made or testimony given by any such officer, agent or employee in the investigation before the commissioner of insurance, or upon the hearing on the petition for judicial review, as provided in sections 515.133 to 515.135, shall not be used against the person making the same in any criminal prosecution against him. [C97,§1757; C24, 27, 31, 35, 39, §**9015**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.136]

Incrimination generally, §622.14 et seq.

515.137 Insurance in unauthorized companies. No action shall be maintained in any court in the state upon any policy or contract of fire insurance issued upon any property situated in the state by any company, association, partnership, individual, or individuals that have not been authorized by the commissioner of insurance to transact such insurance business, unless it shall be shown that the insurer or insured, within six months after the issuing of such policy or contract of insurance, has paid into the state treasury two percent of the gross premium paid or agreed to be paid for such policy or contract of insurance. [C97,§1758; C24, 27, 31, 35, 39,§**9016**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.137]

515.138 Fire insurance contract—standard policy provisions—permissible variations.

First. The printed form of a policy of fire insurance as set forth in subsection sixth shall be known and designated as the "standard policy" to be used in the state of Iowa.

Second. Standard policy, additions, riders and clauses. It shall be unlawful for any insurance company to issue any policy of fire insurance upon any property in this state except upon automobiles, airplanes, seaplanes, dirigibles, or other aircraft, farm crops until stored, marine and inland marine risks other or different from the standard form of fire insurance policy herein set forth.

There shall be printed at the head of said policy the name of the insurer or insurers issuing the policy; the location of the home office thereof; a statement whether said insurer or insurers are stock or mutual corporations or are reciprocal insurers; and subject to the approval of the commissioner of insurance, there may be added thereto such device or devices as the insurer or insurers issuing said policy shall desire. Provided, however, that any company organized under special charter provisions may so indicate upon its policy, and may add a statement of the plan under which it operates in this state.

The standard policy provided for herein need not be used for effecting reinsurance between insurers.

If the policy is issued by a mutual, cooperative or reciprocal insurer having special regulations with respect to the payment by the policyholder of assessments, such regulations shall be printed upon the policy, and any such insurer may print upon the policy such regulations as may be required by its home state or appropriate to its form of organization.

Third. Binders or other contracts for temporary insurance may be made and shall be deemed to include all the terms of such standard policy and all such applicable endorsements as may be designated in such contract of temporary insurance; except that the cancellation clause of such standard policy, and the clause thereof specifying the hour of the day at which the insurance shall commence, may be superseded by the express terms of such contract of temporary insurance.

Fourth. Two or more insurers authorized to do in this state the business of fire insurance, may, with the approval of the commissioner of insurance, issue a combination standard form of policy which shall contain the following:

a. A provision substantially to the effect that the insurers executing such policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of such insurance under such policy.

b. A provision substantially to the effect that service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing such policy, shall be deemed to be service upon all such insurers.

Fifth. Appropriate forms of other contracts or endorsements, insuring against one or more of the perils incident to the ownership, use or occupancy of said property, other than fire and lightning, which the insurer is empowered to assume, may be used in connection with the standard policy. Such forms of other contracts or endorsements attached or printed thereon may contain provisions and stipulations inconsistent with the standard policy if applicable only to such other perils. The pages of the standard policy may be renumbered and

rearranged to provide space for the listing of rates and premiums for coverages insured thereunder or under endorsements attached or printed thereon, and such other data as may be included for duplication on daily reports for office records. An insurer may issue a policy, either on an unspecified basis as to coverage or for an indivisible premium, which contains coverage against the peril of fire and substantial coverage against other perils, if such policy includes provisions with respect to the peril of fire which are the substantial equivalent of the minimum provisions of such standard policy, provided further the policy is complete as to all its terms of coverage without reference to any other document and is approved in accordance with section 515.109.

Sixth. The form of the standard policy (with permission to substitute for the word "company" a more accurate descriptive term for the type of insurer) shall be as follows:

FIRST PAGE OF STANDARD FIRE POLICY

No.....

(Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy.)

(Space for listing amounts of insurance, rates and premiums for the basic coverages insured under the standard form of policy and for additional coverages or perils insured under endorsements attached.)

IN CONSIDERATION OF THE PROVISIONS AND STIPULATIONS HEREIN OR ADDED HERETO AND OF ..... DOLLARS PREMIUM this company, for the term of ..... from the ..... day of ....., 19...., to the .... day of ....., 19...., at noon, Standard Time, at location of property involved, to an amount not exceeding .... Dollars, does insure ..... and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

IN WITNESS WHEREOF, this company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized agent of this company at .....

....
Secretary. President.

Countersigned this ... day of ....., 19....

.....
Agent.

SECOND PAGE OF STANDARD FIRE POLICY

Concealment—fraud. This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property. This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

Perils not included. This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (*a*) Enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (*b*) invasion; (*c*) insurrection; (*d*) rebellion; (*e*) revolution; (*f*) civil war; (*g*) usurped power; (*h*) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (*i*) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (*j*) nor shall this company be liable for loss by theft.

Other insurance. Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring:

a. While the hazard is increased by any means within the control or knowledge of the insured; or

b. While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or

c. As a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Other perils or subjects. Any other peril to be insured against or subject of insurance

to be covered in this policy shall be by endorsement in writing hereon or added hereto.

Added provisions. The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

Waiver provisions. No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

Cancellation of policy. This policy shall be canceled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by this company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

Mortgagee interests and obligations. If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be canceled by giving to such mortgagee a ten days' written notice of cancellation.

If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

Pro rata liability. This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs. The insured shall give immediate written notice to this company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amounts of loss claimed; AND WITHIN SIXTY DAYS AFTER THE LOSS, UNLESS SUCH TIME IS EXTENDED IN WRITING BY THIS COMPANY, THE INSURED SHALL RENDER TO THIS COMPANY A PROOF OF LOSS, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: The time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal. In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options. It shall be optional with this company to take all, or any part, of the

property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

Abandonment. There can be no abandonment to this company of any property.

When loss payable. The amount of loss for which this company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this company and ascertainment of the loss is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

Suit. No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months next after inception of the loss.

Subrogation. This company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company.

THIRD PAGE OF STANDARD FIRE POLICY
Attach Form Below This Line

FOURTH PAGE OF STANDARD FIRE POLICY
Standard Fire Insurance Policy

Expires .....
Property .....
Total
Amount $..... Premium $.....
Insured .....

SEE INSIDE OF POLICY FOR PERILS COVERED
No.

(Space of approximately two (2) inches for use of Agent or Insurer.)

(Space of approximately two (2) inches for use of Agent or Insurer.)

It is important that the written portions of all policies covering the same property read exactly alike. If they do not, they should be made uniform at once. [C97,§§1743, 1744, 1746; S13,§§1742-a, 1743, 1744, 1746, 1758-a, 1758-b; C24, §§8979, 8982, 8983, 8986, 8996, 9017, 9018; C27, 31, 35,§§8979, 8982, 8983, 8986, 8996, 9017, 9018, 9021-a1; C39,§§**8979, 8982, 8983, 8986, 8996, 9017, 9018, 9021.1**; C46,§§515.99, 515.103, 515.104, 515.107, 515.117, 515.138, 515.139, 515.143; C50, 54, 58, 62, 66, 71, 73, 75,§515.138]

Referred to in §§515.108, 515.139, 515.140, 515.141
Omnibus repeal, 52GA, ch 263,§6
Constitutionality, 52GA, ch 263,§7

515.139 Nuclear loss or damage excluded. Insurers issuing the standard policy pursuant to section 515.138 are authorized to affix thereto or include therein a written statement that the policy does not cover loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under said policy; provided, however, that nothing herein contained shall be construed to prohibit the attachment to any such policy of an endorsement or endorsements specifically assuming coverage for loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination. [C62, 66, 71, 73, 75,§515.139]

515.140 Violations — status of policy. Any insurance company, its officers or agents, or either of them, violating any of the provisions of section 515.138, by issuing, delivering, or offering to issue or deliver any policy of fire insurance on property in this state other or different from the standard form, herein provided for, shall be guilty of a misdemeanor, and upon complaint made by the commissioner of insurance, or by any citizen of this state, shall, upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than one hundred dollars for the first offense, and not less than one hundred dollars nor more than two hundred dollars for each subsequent offense, but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the same, and such company shall, until the payment of such fine, be disqualified from doing any insurance business in this state; but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the same. [S13,§1758-c; C24, 27, 31, 35, 39, §**9019**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.140]

Referred to in §515.141

515.141 Existing statutes—waiver. Nothing contained in sections 515.138 and 515.140, nor any provisions or conditions in the standard form of policy provided for in section 515.138, shall be deemed to repeal or in any way modify any existing statutes or to prevent any insurance company issuing such policy, from waiving any of the provisions or conditions contained therein, if the waiver of such provisions or conditions shall be in the interest of the insured. [S13,§1758-d; C24, 27, 31, 35, 39, §**9020**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.141]

515.142 Policy — formal execution. Every fire insurance company and association authorized to transact business in this state shall conduct its business in the name under which it is incorporated, and the policies issued by it shall be headed or entitled only by such name. There shall not appear on the face of the policy or on its filing back, anything that would indicate that it is the obligation of any other than the company responsible for the payment of losses under the policy, though it will be permissible to stamp or print on the bottom of the filing back, the name or names of the department or general agency issuing the same, and the group of companies with which the company is financially affiliated. [SS15, §1758-e; C24, 27, 31, 35, 39,§**9021**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.142]

Referred to in §§515.145, 515.146

515.143 Repealed by 52GA, ch 263,§5. See §515.138.

515.144 Repealed by 56GA, ch 237,§18.

515.145 Violations. Any violation of section 515.142 shall be punished by a fine of not exceeding five hundred dollars. [SS15,§1758-g; C24, 27, 31, 35, 39,§9023; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.145]

515.146 Advertisements by agents. Nothing contained in section 515.142 shall be construed to prevent any representative of an insurance company from advertising his own individual business without specific mention of the name of the company or companies which he may represent. [SS15,§1758-h; C24, 27, 31, 35, 39, §9024; C46, 50, 54, 58, 62, 66, 71, 73, 75,§515.146]

515.147 Business with unauthorized insurers. Nothing contained in this chapter shall be construed to prevent a licensed resident agent of this state from procuring insurance in certain unauthorized insurers providing that such insurance is restricted to the type and kind of insurance authorized by this chapter and the agent makes oath to the commissioner of insurance in such form as is prescribed by the commissioner that the agent has made diligent effort to place said insurance in authorized insurers and has either exhausted the capacity of all authorized insurers or has been unable to obtain the desired insurance in insurers licensed to transact business in this state. The procuring of any such contracts of insurance in unauthorized insurers makes such insurers liable for, and the agent shall pay, the taxes on such premiums as if such insurer were duly authorized to transact business in the state. A sworn report of all business transacted by agents of this state in such unauthorized insurers shall be made to the commissioner of insurance on or before March 1 of each year for the preceding calendar year, on such form as the commissioner of insurance may require; such report shall be accompanied by a remittance to cover the taxes thereon. Any agent who makes the oath as above provided, pays the taxes on the premiums and files the report above provided, shall not be deemed to have written such contracts of insurance unlawfully, and such agent shall not be personally liable for such contracts. [C66, 71, 73, 75,§515.147]

Referred to in §§507A.4, 515.149

515.148 Banned companies. No agent shall knowingly place insurance, either directly or through an intermediary broker, in insurers who are insolvent or unsound financially; and in no event shall an agent place or renew any insurance with unauthorized insurers found by the commissioner of insurance to have failed or refused to furnish in such manner as is provided in section 515.149, information reasonably showing the ability or willingness of such insurers to satisfy obligations undertaken with respect to insurance issued by them. [C66, 71, 73, 75,§515.148]

Referred to in §§507A.4, 515.149

515.149 Information required. The information required of nonadmitted insurers under section 515.148 may consist of a copy of such insurer's current annual statement, duly verified, or evidence of any trust funds or deposits maintained by such insurers for the protection of their policyholders, or both, or other material of such general description and relevancy, as the commissioner may require. Such information shall be furnished at the sole cost and expense of the unauthorized insurers either to the commissioner directly, or furnished to the National Association of Insurance Commissioners for the use of its members and their staffs, including the commissioner of insurance of this state and his staff, or for dissemination to him by the Central Nonadmitted Insurers Information Bureau of the said association or by any other agency or instrumentality of that association designed to receive and disseminate such information. The provisions of this section and sections 515.147 and 515.148 shall not apply to insurance of vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk including strikes and war risks commonly insured under ocean or wet marine forms of policy. [C66, 71, 73, 75,§515.149]

Referred to in §§507A.4, 515.148

515.150 Repealed by 65GA, ch 269,§5. See §505.8.

CHAPTER 515A

FIRE AND CASUALTY INSURANCE

Referred to in §§491.1, 515C.7, 518B.7

515A.1 Purpose of chapter.
515A.2 Scope of chapter.
515A.3 Making of rates.
515A.4 Rate filings.
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515A.6 Rating organizations.
515A.7 Deviations.
515A.8 Appeal by minority.
515A.9 Information to be furnished insureds —hearings and appeals of insureds.
515A.10 Advisory organizations.
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515A.12 Examinations.
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515A.14 False or misleading information.

515A.15 Assigned risks.
515A.16 Rebates prohibited.
515A.17 Penalties.
515A.18 Hearing procedure and judicial review.
515A.19 Laws affected.

515A.1 Purpose of chapter. The purpose of this chapter is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate co-operative action among insurers in rate making and in other matters within the scope of this chapter. Nothing in this chapter is intended (1) to prohibit or discourage reasonable competition, or (2) to prohibit, or encourage except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. This chapter shall be liberally interpreted to carry into effect the provisions of this section. [C50, 54, 58, 62, §§515A.1, 515B.1; C66, 71, 73, 75,§515A.1]

515A.2 Scope of chapter. This chapter applies to all forms of casualty insurance, including fidelity, surety and guaranty bond, to all forms of fire, marine and inland marine insurance, and to any combination of any of the foregoing, on risks or operations in this state. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner of insurance, hereinafter referred to as commissioner, or as established by general custom of the business, as inland marine insurance.

This chapter shall not apply to:

1. Reinsurance, other than joint reinsurance to the extent stated in section 515A.11;

2. Accident and health insurance;

3. Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine insurance policies;

4. Insurance written by a county mutual assessment association as provided in chapter 518A. [C50, 54, 58, 62, §§515A.2, 515B.2; C66, 71, 73, 75,§515A.2]

515A.3 Making of rates.

1. Rates shall be made in accordance with the following provisions:

a. Rates shall not be excessive, inadequate or unfairly discriminatory.

b. Due consideration shall be given to past and prospective loss experience within and outside this state, to the conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state; and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available.

Referred to in §515A.4(6)

c. The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or group of insurers to reflect the requirements of the operating methods of any such insurer or group of insurers with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

Referred to in §515A.8

d. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

2. Except to the extent necessary to meet the provisions of paragraph "*a*" of subsection 1 of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited. [C50, 54, 58, 62, §§515A.3, 515B.3; C66, 71, 73, 75,§515A.3]

Referred to in §§515A.4(6), 515A.7, 515A.8, 515A.13(1)

515A.4 Rate filings.

1. Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated.

When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of the chapter, he shall require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include (*a*) the experience or judgment of the

insurer or rating organization making the filing, (*b*) its interpretation of any statistical data it relies upon, (*c*) the experience of other insurers or rating organizations, or (*d*) any other relevant factors. A filing and any supporting information shall be open to public inspection after the filing becomes effective. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

2. An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf; provided that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

3. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.

4. Subject to the exception specified in subsection 5 of this section, each filing shall be on file for a waiting period of fifteen days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed fifteen days if he gives written notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within thirty days of receipt thereof by the commissioner.

Referred to in §515A.5(1)

5. Specific inland marine rates on risks specially rated by a rating organization, or any specific filing with respect to a surety or guaranty bond required by law or by court or executive order, rule or regulation of a public body and not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

Referred to in §515A.5(2)

6. Under such rules and regulations as he shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such order, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in paragraph "*b*" of subsection 1 of section 515A.3.

7. Upon the written application of the insured, stating his reasons therefor, filed with and approved by the commissioner a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

8. No insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for said insurer as provided in this chapter or in accordance with subsections 6 or 7 of this section. This subsection shall not apply to contracts or policies for inland marine risks as to which filings are not required. [C50, 54, 58, 62,§§515A.4, 515B.4; C66, 71, 73, 75,§515A.4]

Referred to in §515A.5(1, 2)

515A.5 Disapproval of filings.

1. If within the waiting period or any extension thereof as provided in subsection 4 of section 515A.4, the commissioner finds that a filing does not meet the requirements of this chapter, he shall send to the insurer or rating organization which made such filing, written notice of disapproval of such filing specifying therein in what respects he finds such filing fails to meet the requirements of this chapter and stating that such filing shall not become effective.

2. If within thirty days after a specific inland marine rate on a risk especially rated by a rating organization subject to subsection 5 of section 515A.4 has become effective or, if within thirty days after a special surety or guaranty filing subject to subsection 5 of section 515A.4 has become effective, the commissioner finds that such filing does not meet the requirements of this chapter, he shall send to the rating organization or insurer which made such filing written notice of disapproval of such filing specifying therein in what respects he finds that such filing fails to meet the requirements of this chapter and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Said disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in said notice.

3. If at any time subsequent to the applicable review period provided for in subsection 1 or 2 of this section, the commissioner finds that a filing does not meet the requirements of this chapter, he shall, after a hearing held upon not less than ten days' written notice, specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order specifying in what respects he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

4. Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon, provided, however, that the insurer that made the filing shall not be authorized to proceed under this subsection. Such application shall specify the grounds to be relied upon by the applicant and such application must show that the person or organization making such application has a specific economic interest affected by the filing. If the commissioner shall find that the application is made in good faith, that the applicant has a specific economic interest, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall within thirty days after receipt of such application hold a hearing, upon not less than ten days' written notice to the applicant and to every insurer and rating organization which made such filing. No rating or advisory organization shall have any status under this chapter to make application for a hearing on any filing made by an insurer with the commissioner.

If, after such hearing, the commissioner finds that the filing does not meet the requirements of this chapter, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

5. No filing shall be disapproved if the rates thereby produced meet the requirements of this chapter. [C50, 54, 58, 62,§§515A.5, 515B.5; C66, 71, 73, 75,§515A.5]

Referred to in §515A.7

515A.6 Rating organizations.

1. A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of insurance, or subdivision or class of risk or a part or combination thereof as are specified in its application and shall file therewith (*a*) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business, (*b*) a list of its members and subscribers, (*c*) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served and (*d*) a statement of its qualifications as a rating organization. If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance, or subdivisions or classes of risks or parts or combinations thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within sixty days of the date of its filing with him. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. The fee for said license shall be twenty-five dollars. Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the commissioner promptly of every change in (*a*) its constitution, its articles of agreement or association, or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business, (*b*) its list of members and subscribers and (*c*) the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

2. Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance, subdivision, or class of risk or a part or combination thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least ten days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified he shall make an order affirming its action.

3. No rating organization shall adopt any rule the effect of which would be to prohibit

or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

4. Co-operation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, provided the filings resulting from such co-operation are subject to all the provisions of this chapter which are applicable to filings generally. The commissioner may review such co-operative activities and practices and if, after a hearing, he finds that any such activity or practices is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice.

5. Any rating organization may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements or other evidences of insurance, or the cancellation thereof, and may make reasonable rules governing their submission. Such rules shall contain a provision that in the event any insurer does not within sixty days furnish satisfactory evidence to the rating organization of the correction of any error or omission previously called to its attention by the rating organization, it shall be the duty of the rating organization to notify the commissioner thereof. All information so submitted for examination shall be confidential.

6. Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination. [C50, 54, 58, 62,§§515A.6, 515B.6; C66, 71, 73, 75,§515A.6]

Referred to in §515A.12

515A.7 Deviations. Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization except that any such insurer may make written application to the commissioner to file a deviation from the class rates, schedules, rating plans or rules respecting any kind of insurance, or class of risk within a kind of insurance, or combination thereof. Such application shall specify the basis for the modification and a copy shall also be sent simultaneously to such rating organization. In considering the application to file such deviation the commissioner shall give consideration to the available statistics and the principles for rate making as provided in section 515A.3. The commissioner shall issue an order permitting the deviation for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that the deviation applied for does not meet the requirements of this chapter.

Each deviation permitted to be filed shall remain in effect for a period of not less than one year from the effective date unless sooner withdrawn by the insurer with the approval of the commissioner or until terminated in accordance with the provisions of section 515A.5. [C50, 54, 58, 62,§§515A.7, 515B.7; C66, 71, 73, 75,§515A.7]

515A.8 Appeal by minority. Any member or subscriber to a rating organization may appeal to the commissioner from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization and the commissioner shall, after a hearing held upon not less than ten days' written notice to the appellant, and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal, or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber, which is based on a system of expense provisions which differs, in accordance with the right granted in paragraph "c" of subsection 1 of section 515A.3, from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal the commissioner shall apply the standards set forth in section 515A.3. [C50, 54, 58, 62,§§515A.8, 515B.8; C66, 71, 73, 75,§515A.8]

515A.9 Information to be furnished insureds — hearings and appeals of insureds. Every rating organization and every insurer which makes its own rate shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, applicant may proceed in the same manner as if

his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action. [C50, 54, 58, 62,§§515A.9, 515B.9; C66, 71, 73, 75,§515A.9]

515A.10 Advisory organizations.

1. Every group, association or other organization of insurers, whether located within or outside of this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this chapter, shall be known as an advisory organization.

2. Every advisory organization shall file with the commissioner (*a*) a copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities, (*b*) a list of its members, (*c*) the name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served, and (*d*) an agreement that the commissioner may examine such advisory organization in accordance with the provisions of section 515A.12.

3. If, after a hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such act or practice.

4. No insurer which makes its own filings nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this section or with an order of the commissioner involving such statistics or recommendations issued under subsection 3 of this section. If the commissioner finds such insurer or rating organization to be in violation of this subsection he may issue an order requiring the discontinuance of such violation. [C50, 54, 58, 62,§§515A.10, 515B.10; C66, 71, 73, 75,§515A.10]

Referred to in §515A.12

515A.11 Joint underwriting or joint reinsurance.

1. Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as herein provided, subject, however, with respect to joint underwriting, to all other provisions of this chapter and, with respect to joint reinsurance, to sections 515A.12 and 515A.16 to 515A.19.

2. If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice. [C50, 54, 58, 62,§§515A.11, 515B.11; C66, 71, 73, 75,§515A.11]

Referred to in §§515A.2, 515A.12

515A.12 Examinations. The commissioner shall, at least once in five years, make or cause to be made an examination of each rating organization licensed in this state as provided in section 515A.6 and he may, as often as he may deem it expedient, make or cause to be made an examination of each advisory organization referred to in section 515A.10 and of each group, association or other organization referred to in section 515A.11. The reasonable costs of any such examination shall be paid by the rating organization, advisory organization or group, association or other organization examined upon presentation to it of a detailed account of such costs. The officers, manager, agents and employees of such rating organization, advisory organization, or group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state. [C50, 54, 58, 62,§§515A.12, 515B.12; C66, 71, 73, 75,§515A.12)

Referred to in §§515A.10(2), 515A.11

515A.13 Rate administration.

1. *Recording and reporting of loss and expense experience.* The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in section 515A.3. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In promulgating such rules and plans, the commissioner shall give due consideration to the rating sys-

tems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it. The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

2. *Interchange of rating plan data.* Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

3. *Consultation with other states.* In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

4. *Rules and regulations.* The commissioner may make reasonable rules necessary to effect the purposes of this chapter. [C50, 54, 58, 62, §§515A.13, 515B.13; C66, 71, 73, 75,§515A.13]

515A.14 False or misleading information. No person or organization shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under this chapter. A violation of this section shall subject the one guilty of such violation to the penalties provided in section 515A.17. [C50, 54, 58, 62,§§515A.14, 515B.14; C66, 71, 73, 75,§515A.14]

515A.15 Assigned risks. Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the commissioner. [C50, 54, 58, 62, 66, 71, 73, 75,§515A.15]

515A.16 Rebates prohibited. No agent shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the provisions of this chapter. No insurer or employee thereof, and no agent, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in an applicable filing. No insured named in a policy of insurance, nor any employee of such insured shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement.

Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents, nor as prohibiting any insurer from allowing or returning to its participating policyholders, members or subscribers, dividends, savings or unabsorbed premium deposits. As used in this section the word "insurance" includes suretyship and the word "policy" includes bond. [C50, 54, 58, 62,§§515A.16, 515B.15; C66, 71, 73, 75,§515A.16]

Referred to in §§507B.4(11), 515A.11

515A.17 Penalties. The commissioner may, if he finds that any person or organization has violated any provision of this chapter, impose a penalty of not more than fifty dollars for each such violation, but if he finds such violation to be willful he may impose a penalty of not more than five hundred dollars for each such violation. Such penalties may be in addition to any other penalty provided by law.

The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him, unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed.

No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after a hearing held upon not less than ten days' written notice to such person or organization specifying the alleged violation. [C50, 54, 58, 62,§§515A.17, 515B.16; C66, 71, 73, 75,§515A.17]

Referred to in §§515A.11, 515A.14

515A.18 Hearing procedure and judicial review.

1. Any person, insurer or rating organization to which the commissioner has directed an order made without a hearing may, within thirty days after notice to it of such order, make written request to the com-

missioner for a hearing thereon. The commissioner shall hear such party or parties within twenty days after receipt of such request and shall give not less than ten days' written notice of the time and place of the hearing. Within fifteen days after such hearing the commissioner shall affirm, reverse or modify his previous action, specifying his reasons therefor. Pending such hearing and decision thereon the commissioner may suspend or postpone the effective date of his previous action.

2. Nothing contained in this chapter shall require the observance at any hearing of formal rules of pleading or evidence.

3. Judicial review of the actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act.

The court shall determine whether the filing of the petition for such writ shall operate as a stay of any such order or decision of the commissioner. The court may, in disposing of the issue before it, modify, affirm or reverse the order or decision of the commissioner in whole or in part. [C50, 54, 58, 62,§§515A.18, 515B.17; C66, 71, 73, 75,§515A.18; 66GA, ch 237,§1]

Referred to in §515A.11

515A.19 Laws affected. Compliance with this chapter shall not be deemed to be a violation of section 515.131. [C50, 54, 58, 62,§§515A.19, 515B.18; C66, 71, 73, 75,§515A.19]

Referred to in §515A.11
Constitutionality, 61GA, ch 400,§21

CHAPTER 515B

INSURANCE GUARANTY ASSOCIATION

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515B.1 Scope. This chapter shall apply to all kinds of direct insurance authorized to be written by an insurer licensed to operate in this state under chapter 515 or chapter 520, except life, title, surety, fidelity, disability including accident and health, credit, mortgage guaranty and ocean marine insurance. [C71, 73, 75,§515B.1]

515B.2 Definitions. As used in this chapter unless the context otherwise requires:

1. *"Association"* means the Iowa insurance guaranty association created pursuant to section 515B.3.

2. *"Commissioner"* means the commissioner of insurance of this state.

3. *"Covered claim"* means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after July 1, 1970, and one of the following conditions exists:

a. The claimant or insured is a resident of this state at the time of the insured event.

b. The property from which the claim arises is permanently located in this state.

Covered claim shall not include any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise nor shall covered claim include any amount due an attorney or adjuster as fees for services rendered to the insolvent insurer. This paragraph shall not prevent any person from filing such excluded claim with the insolvent insurer or its receiver, but such claim shall not be asserted against the insured of the insolvent insurer except to the extent that such claim exceeds the coverage of the policy issued by the insolvent insurer.

4. *"Insurer"* means an insurer licensed to transact insurance business in this state under either chapter 515 or chapter 520, either at the time the policy was issued or when the insured event occurred. It shall not include county or state mutual assessment associations licensed under chapter 518 or chapter 518A, or fraternal beneficiary societies, orders or associations licensed under chapter 512, or corporations operating nonprofit service plans under chapter 514, or life insurance companies or life, accident or health associations licensed under chapter 508 or chapter 510, or those professions under chapter 519.

5. *"Insolvent insurer"* means an insurer as herein defined which has been determined to be insolvent by a court of competent jurisdiction.

6. *"Net direct written premiums"* means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums and dividends paid or credited to policyholders on such direct business. Such term does not include premiums on contracts between insurers or reinsurers.

7. *"Person"* means any individual, corporation, partnership, association, or voluntary organization. [C71, 73, 75,§515B.2; 66GA, ch 1210, §§1, 2]

Referred to in §515B.3

515B.3 Creation of the association. There is created a nonprofit unincorporated legal entity to be known as the Iowa insurance guaranty association. All insurers as defined in section 515B.2, subsection 4 shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved pursuant to section 515B.6 and shall exercise its powers through a board of directors established under section 515B.4. Except as otherwise provided in such plan of operation, annual or special meetings of members of the association may be held on call as directed by the association's board of directors or by the commissioner of insurance, upon not less than ten days' written notice by ordinary mail to each member at the member's principal office as shown by the records in the commissioner's office, specifying the time and place, and in the case of a special meeting, the purpose of the meeting. Members may vote in person or by proxy and ten members present in person or by proxy shall constitute a quorum for the transaction of any business. [C71, 73, 75,§515B.3]

Referred to in §515B.2

515B.4 Board of directors. The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by majority vote of the remaining directors, subject to the approval of the commissioner.

In approving selections to the board the commissioner shall consider among other things whether all member insurers are fairly represented.

Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors. [C71, 73, 75,§515B.4]

Referred to in §§515B.3, 515B.6
Initial appointment provisions omitted

515B.5 Duties and powers of the association.

1. The association shall:

a. Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within thirty days after the determination of insolvency, or before the policy expiration date if less than thirty days after the determination, or before the insured replaces the policy or on request effects cancellation if he does so within thirty days of the determination. Such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars and less than three hundred thousand dollars, except that the association shall pay the full amount of any covered claim arising out of a workers' compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.

b. Be deemed the insurer to the extent of its obligations on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

c. Assess member insurers amounts necessary to pay the obligations of the association under paragraph *"a"* of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 515B.10, and other expenses authorized by this chapter. The assessment of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer serving as a servicing facility pursuant to this section may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer. In addition, the association shall have the authority to levy an administrative assessment of not more than fifty dollars per year per member insurer on a non pro rata basis, which assessment shall be credited against any future insolvency assessment. Such assessment shall be used to pay authorized ex-

penses not directly attributable to any particular insolvency or insolvent insurer. All overdue and unpaid assessments shall draw interest at the rate of seven percent per annum.

d. Investigate claims brought against the fund and adjust, compromise, settle, defend and pay covered claims to the extent of the association's obligation and deny all other claims.

e. Notify such persons as the commissioner directs under section 515B.7, subsection 2, paragraph "*a*".

f. Process claims through its employees or through one or more member insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

g. If at any time the board of directors finds that the amount assessed for any insolvency exceeds the actual and projected liabilities of that insolvency, it may refund such excess to member insurers in the same proportion that each contributed to the original assessment or assessments. Any assessments or refunds of any member insurer in amounts not to exceed twenty-five dollars may, at the discretion of the board of directors, be waived.

2. The association may:

a. Appear in, defend, and appeal any action on a claim brought against the association.

b. Employ or retain persons necessary to handle claims and perform other duties of the association.

c. Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

d. Sue or be sued.

e. Negotiate and become a party to contracts necessary to carry out the purpose of this chapter.

f. Perform such other acts necessary or proper to effectuate the purposes of this chapter.

g. If at the end of any calendar year, the board of directors finds that the assets of the association exceed its liabilities as estimated by the board of directors for the coming year, refund to the member insurers in proportion to the contribution of each that amount by which the assets of the association exceed the liabilities. [C71, 73, 75,§515B.5; 66GA, ch 1084, §43, ch 1210,§§3, 4, 5]

Referred to in §515B.6

515B.6 Plan of operation.

1. The association shall submit a plan of operation to the commissioner, together with any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments shall become effective upon approval in writing by the commissioner.

If the association fails to submit a suitable plan of operation within ninety days following the effective date of this chapter or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and opportunity for hearing, adopt and promulgate reasonable rules necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

2. All member insurers shall comply with the plan of operation.

3. The plan of operation shall:

a. Establish the procedures for performance of all the duties and powers of the association under section 515B.5.

b. Establish procedures for managing assets of the association.

c. Establish the amount and method of reimbursing members of the board of directors under section 515B.4.

d. Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

e. Establish regular places and times for meetings of the board of directors.

f. Establish procedures for keeping records of all financial transactions of the association, its agents, and the board of directors.

g. Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.

h. Establish procedures for submission to the commissioner of selections for the board of directors.

i. Contain additional provisions necessary or proper for the execution of the duties and powers of the association.

4. The plan of operation may provide that any or all duties and powers of the association, except those under section 515B.5, subsection 1, paragraph "*c*", and subsection 2, paragraph "*c*", are delegated to a person which performs or will perform functions similar to those of this association in two or more states. Such person shall be reimbursed as a servicing facility and shall be paid for performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a person which extends protection not substantially less favorable and effective than that provided by this chapter. [C71, 73, 75, §515B.6]

Referred to in §515B.3

515B.7 Duties and powers of the commissioner.

1. The commissioner shall:

a. Notify the association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency.

b. Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

2. The commissioner may:

a. Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. Such notification shall be by mail at their last known address, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.

b. Suspend or revoke, after notice and opportunity for hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than one hundred dollars per month.

c. Revoke the designation of any servicing facility if he finds claims are being processed unsatisfactorily.

3. Judicial review of actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act. [C71, 73, 75,§515B.7]

Referred to in §515B.5

515B.8 Effect of paid claims.

1. Any person recovering under this chapter shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this chapter shall co-operate with the association to the same extent as such person would have been required to co-operate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out.

2. The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority, including the deductible portion thereof, against the assets of the insolvent insurer over all other claims not having statutory or secured priority. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

3. The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association, which statements shall preserve the rights of the association against the assets of the insolvent insurer. [C71, 73, 75,§515B.8; 66GA, ch 1210,§6]

515B.9 Nonduplication of recovery.

1. Any person having a claim against his or her insurer, under any provision in his or her insurance policy, which is also a covered claim shall be required to exhaust first his or her right under the policy. Any amount recovered or recoverable by a person under another insurance policy shall be credited against the policy limits of the policy of the insolvent insurer before computing the amount of any covered claim. For purposes of this section, another insurance policy means a policy issued by any insurance company, whether a member insurer or not, which policy insures against any of the types of risks set forth in section 515.48, except those types of risks set forth in section 515.48, subsection 5, paragraph *"a"*, and except those types of risks set forth in chapters 508 and 514.

2. Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured. However, if such claim is a first party claim for damage to property with a permanent location recovery shall be first sought from the association of the location of the property; and if such claim is a workers' compensation claim recovery shall be first sought from the association of the residence of the claimant. Any recovery under this chapter shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent. [C71, 73, 75,§515B.9; 66GA, ch 1210,§7, ch 1084,§43]

515B.10 Prevention of insolvencies. To aid in the detection and prevention of insurer insolvencies:

1. The board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

2. The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners' examination or may be conducted by such persons as the commissioner designates. The cost of

such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection 3 of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

3. The commissioner shall report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

4. The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations are not public documents.

5. The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

6. The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner. [C71, 73, 75,§515B.10]

Referred to in §515B.5

515B.11 Examination of the association. The association is subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner. [C71, 73, 75,§515B.11]

515B.12 Tax exemption. The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real or personal property. [C71, 73, 75,§515B.12]

515B.13 Recognition of assessments in rates. The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive as a result of containing such recoupment allowances. [C71, 73, 75,§515B.13]

515B.14 Immunity. There is no liability, and no cause of action of any nature shall arise against any member insurer, the association, its agents or employees, the board of directors, the commissioner, or his representatives, for any reasonable action taken by them in the performance of their duties and powers under this chapter. [C71, 73, 75,§515B.14]

515B.15 Stay of proceedings. All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed for sixty days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. [C71, 73, 75,§515B.15]

See section following

515B.16 Stay of proceedings. *All proceedings to which the insolvent insurer is a party or in which it is obligated to defend a party shall be stayed from the date of the insolvency to and including the date set as the deadline for the filing of claims against the insolvent insurer or its receiver: However, upon application, the court having jurisdiction of the receivership, may lengthen or shorten the period, either as to all claims or as to any particular claim.* [66GA, ch 1210,§8]

This section probably intended as a substitute for §515B.15

515B.16 Actions against the association. Actions against the association shall be brought against it in its own name in the Polk county district court. Service of original notice in actions against the association may be made on any officer thereof or upon the commissioner of insurance on its behalf. The commissioner shall promptly transmit any notice so served upon him to the association. [C73, 75,§515B.16]

This section 515B.16, Code 1975, was inadvertently repealed by 66GA, ch 1210,§8

515B.17 Timely filing of claims. Notwithstanding any other provision of this chapter, a covered claim shall not include any claim filed with the association after the final date set by the court for the filing of claims against the insolvent insurer or its receiver. However the association may waive the requirement of this section when in its discretion the claim was not timely presented due to circumstances beyond the control of the person having the claim. [66GA, ch 1210,§9]

515B.18 Title. This chapter shall be known and may be cited as the "Iowa Insurance Guaranty Association Act." [C71,§515B.16; C73, 75,§515B.17]

CHAPTER 515C

MORTGAGE GUARANTY INSURANCE

Referred to in §507.1

515C.1 Definition.
515C.2 Eligibility for insurance.
515C.3 Bases for computations.
515C.4 Contingency reserve.
515C.5 Limit of outstanding liability.
515C.6 Determination of loss reserves.
515C.7 Rate-making provisions.
515C.8 Policy forms approved.
515C.9 Restrictions on advertising.
515C.10 Law applicable.
515C.11 Mortgages secured by first lien on real estate.

515C.1 Definition. "Mortgage guaranty insurance" means insurance against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed or trust or other instrument constituting a lien or charge on real estate or on an owner-occupied mobile home. [C66, 71, 73, 75,§515C.1]

515C.2 Eligibility for insurance. Eligibility for mortgage guaranty insurers shall be as follows:

1. An insurer, in order to qualify for writing mortgage guaranty insurance, must have the same surplus to policyholders as that required of a multiple line company by section 515.49, subsection 8.

2. An insurer transacting any class of insurance other than mortgage guaranty insurance is not eligible for the issuance of a certificate of authority to transact mortgage guaranty insurance in this state, nor the renewal thereof.

3. A foreign or alien insurer writing mortgage guaranty insurance shall not be eligible for the issuance of a certificate of authority in Iowa unless it has demonstrated a satisfactory operating experience in its state of domicile. [C66, 71, 73, 75,§515C.2]

515C.3 Bases for computations. The unearned premium reserve shall be computed in accordance with section 515.47, except that all premiums on risks written for one year or less must be reserved on a monthly pro rata basis, and the reserve for those policies covering a risk period of more than five years shall be computed in accordance with formulae filed by the insurer and approved by the commissioner of insurance. [C66, 71, 73, 75, §515C.3]

515C.4 Contingency reserve. For the protection of the people of this state and for the purpose of protecting against the effect of adverse economic cycles, the company shall establish a contingency reserve. The company shall annually contribute fifty percent of the earned premiums to this reserve. The earned premiums so reserved may be released annually after the period of time required by the commissioner, provided that said time shall not be less than one hundred twenty months. However, subject to the approval of the commissioner, this reserve may be available only for loss payments, when the loss ratio (incurred losses to premiums earned) exceeds twenty percent. This amount so used shall reduce the next subsequent annual release to surplus from the established contingency reserve. [C66, 71, 73, 75,§515C.4]

515C.5 Limit of outstanding liability. A mortgage guaranty insurer shall not at any time have outstanding a total liability, net of reinsurance, in excess of twenty-five times its capital, unassigned funds and contingency reserve. It shall not insure loans secured by properties in a single housing tract or a contiguous tract (not separated by more than one-half mile) in excess of ten percent of its capital, unassigned funds and contingency reserve. Coverage may be provided only if the properties in such tract are residential buildings, buildings designed for occupancy by not more than four families, or owner-occupied mobile homes. [C66, 71, 73, 75,§515C.5]

Referred to in §515C.11

515C.6 Determination of loss reserves. The case basis method shall be used to determine the loss reserves, which shall include a reserve for claims reported and unpaid and a reserve for claims incurred but not reported. [C66, 71, 73, 75,§515C.6]

515C.7 Rate-making provisions. Mortgage guaranty insurance shall be subject to the provisions of chapter 515A, for the purposes of rate making. [C66, 71, 73, 75,§515C.7]

515C.8 Policy forms approved. All policy forms and endorsements shall be filed with and be subject to the approval of the commissioner of insurance. With respect to owner-occupied single family dwellings and owner-occupied mobile homes, the mortgage insurance policy shall provide that the borrower shall not be liable to the insurance company for any deficiency arising from a foreclosure sale. [C66, 71, 73, 75,§515C.8]

515C.9 Restrictions on advertising. No bank, savings and loan association, insurance company or other lending institution, any of whose authorized real estate securities are insured by mortgage guaranty insurance companies may state in any brochure, pamphlet, report or any form of advertising that the

real estate loans of the bank, savings and loan association, insurance company or other lending institution are "insured loans" unless the brochure, pamphlet, report or advertising also clearly states that the loans are insured by private insurers and the names of the private insurers are given and shall not make any such statement at all unless such insurance is by an insurer authorized to write this coverage in this state. [C66, 71, 73, 75,§515C.9]

515C.10 Law applicable. All companies writing insurance as authorized by this chapter shall, in addition to the provisions herein, comply with and be subject to all of the provisions of chapter 515 not inconsistent herewith. [C66, 71, 73, 75,§515C.10]

515C.11 Mortgages secured by first lien on real estate. A mortgage guaranty insurer in addition to coverage provided under section 515C.5 may insure mortgages secured by first lien upon improved real estate which is used for commercial purposes, except for those types of commercial properties specifically excluded by the commissioner of insurance. [C71, 73, 75,§515C.11]

CHAPTER 515D

AUTOMOBILE INSURANCE CANCELLATION CONTROL

515D.1 Title.
515D.2 Definition.
515D.3 When not applicable.
515D.4 Notice of cancellation—reasons.
515D.5 Delivery of notice.
515D.6 Prohibited reasons.
515D.7 Notice of intent.
515D.8 Duplicate coverage.
515D.9 Renewal not a waiver or estoppel.
515D.10 Hearing before commissioner.
515D.11 Insured told of alternate coverage.
515D.12 Immunity of liability.

515D.1 Title. This chapter shall be known as the "Iowa Automobile Insurance Cancellation Control Act." [C71, 73, 75,§515D.1]

515D.2 Definition. As used in this chapter, unless otherwise required by the context:

1. *"Policy"* means an automobile insurance policy providing bodily injury liability, property damage liability, medical payments, uninsured motorist coverage, physical damage coverage, or any combination thereof, delivered or issued for delivery in this state, insuring a single individual or one or more related individuals resident in the same household, as named insured, and insuring vehicles of the following types only:

a. Motor vehicles of the private passenger or station wagon type which are not used as public conveyances nor rented to others.

b. Any other four-wheel motor vehicles with a load capacity of one thousand five hundred pounds or less which are not used in the business or profession of the insured.

2. *"Renewal"* or *"to renew"* means the issuance and delivery by an insurer of a policy replacing at the end of the previous policy term a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the coverage of the policy beyond its original term. Any renewal policy, other than a replacement policy for an unfinished term, with a term of six months or less shall be considered written, for the purposes of this chapter, for a term of six months.

Any policy written for a term longer than one year or with no fixed expiration date shall be considered written for successive policy terms of one year.

3. *"Nonpayment of premium"* means failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on the policy, or any installment of a premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit. [C71, 73, 75, §515D.2]

515D.3 When not applicable. This chapter shall not apply to any policy:

1. Issued under an automobile assigned risk plan.

2. Covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards.

3. Insuring more than four automobiles.

4. Issued principally to cover personal or premises liability of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance, or use of a motor vehicle on the premises of such insured or on the ways immediately adjoining the premises. [C71, 73, 75,§515D.3]

515D.4 Notice of cancellation—reasons. No policy may be canceled except by notice to the insured as provided in this chapter. No notice of cancellation of a policy shall be effective unless it is based on one or more of the following reasons:

1. Nonpayment of premium.

2. Nonpayment of dues to an association or organization other than an insurance associ-

ation or organization, where payment of dues is a prerequisite to obtaining or continuing insurance in force and the dues payment requirement was in effect prior to January 1, 1969.

3. Fraud or material misrepresentation affecting the policy or the presentation of a claim.

4. Violation of terms or conditions of the policy.

5. The named insured or any operator who either resides in the same household or customarily operates an automobile insured under the policy has his driver's license suspended or revoked during the policy term or, if the policy is a renewal, during its term or the one hundred eighty days immediately preceding its effective date.

This section shall not apply to any policy or coverage which has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy. This section shall not apply to the nonrenewal of a policy.

During the policy period no modification of automobile physical damage coverage, except coverage for loss caused by collision, whereby provision is made for the application of a deductible amount not exceeding one hundred dollars shall be deemed a cancellation of the coverage or of the policy. [C71, 73, 75,§515D.4]

515D.5 Delivery of notice. Notwithstanding the provisions of section 515.81 no notice of cancellation of a policy shall be effective unless mailed or delivered by the insurer to the named insured at least twenty days prior to the effective date of cancellation, or, where the cancellation is for nonpayment of premium notwithstanding the provisions of section 515.80 at least ten days prior to the date of cancellation. A post-office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of cancellation, the notice shall state that, upon written request of the named insured, mailed or delivered to the insurer not less than fifteen days prior to the date of cancellation, the insurer will state the reason for cancellation, together with notification of the right to a hearing before the commissioner within fifteen days as provided herein.

When the reason does not accompany the notice of cancellation, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for cancellation. A statement of reason shall be mailed or delivered to the named insured within five days after receipt of a request. [C71, 73, 75,§515D.5]

515D.6 Prohibited reasons. No insurer shall refuse to renew a policy solely because of age, residence, sex, race, color, creed, or occupation of an insured.

No insurer shall require a physical examination of a policyholder as a condition for renewal solely on the basis of age or other arbitrary reason. In the event that an insurer requires a physical examination of a policyholder, the burden of proof in establishing reasonable and sufficient grounds for such requirement shall rest with the insurer and the expenses incident to such examination shall be borne by the insurer. [C71, 73, 75,§515D.6; 66GA, ch 238,§1]

515D.7 Notice of intent. No insurer shall fail to renew a policy except by notice to the insured as provided in this chapter. A notice of intention not to renew shall not be effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. A post-office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of intent not to renew, the notice shall state that, upon written request of the named insured, mailed or delivered to the insurer not less than twenty days prior to the expiration date of the policy, the insurer will state the reason for nonrenewal.

When the reason does not accompany the notice of intent not to renew, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for nonrenewal, together with notification of the right to a hearing before the commissioner within fifteen days as provided herein. A statement of reason shall be mailed or delivered to the named insured within ten days after receipt of a request.

This section shall not apply:

1. If the insurer has manifested its willingness to renew.

2. If the insured fails to pay any premium due or any advance premium required by the insurer for renewal. [C71, 73, 75,§515D.7]

Referred to in §515D.8

515D.8 Duplicate coverage. If an insured obtains a second policy which provides equal or more extensive coverage for any vehicle designated in both policies, the first policy's coverage of such vehicle may be terminated by failure to renew as of the effective time and date of the second policy, whether or not the first policy insurer complies with all provisions of section 515D.7. [C71, 73, 75,§515D.8]

515D.9 Renewal not a waiver or estoppel. Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of renewal. [C71, 73, 75,§515D.9]

515D.10 Hearing before commissioner. Any named insured who has received a statement of reason for cancellation, or of reason for an insurer's intent not to renew a policy, may, within fifteen days of the receipt or delivery of a statement of reason, request a hear-

ing before the commissioner of insurance. The purpose of this hearing shall be limited to establishing the existence of the proof or evidence used by the insurer in its reason for cancellation or intent not to renew. The burden of proof of the reason for cancellation or intent not to renew shall be upon the insurer. The commissioner of insurance shall adopt rules for carrying out the provisions of this section. [C71, 73, 75,§515D.10]

515D.11 Insured told of alternate coverage. When automobile bodily injury and property damage liability coverage is canceled or not renewed, other than for nonpayment of premium, the insurer shall notify the named insured of his possible eligibility for automobile liability insurance through the Iowa automobile insurance plan. Such notice shall accompany the notice of cancellation or intent not to renew. [C71, 73, 75,§515D.11]

515D.12 Immunity of liability. There shall be no liability on the part of, and no cause of action of any nature shall arise against the commissioner of insurance or any employee of the insurance department of Iowa or against any insurer, its authorized representatives, its agents, its employees, or against any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or intent not to renew, for any statement made by any of them in any written notice of cancellation or notice of intent not to renew or in any other communication, oral or written, specifying the reasons for cancellation or intent not to renew, or for any information provided or evidence submitted at any hearings conducted in connection with reasons for cancellation or intent not to renew. [C71, 73, 75,§515D.12]

Constitutionality, 63GA, ch 1248,§13

CHAPTER 516

LIABILITY POLICIES—UNSATISFIED JUDGMENTS

516.1 Inurement of policy.
516.2 Settlement.
516.3 Limitation on action.

516.1 Inurement of policy. All policies insuring the legal liability of the insured, issued in this state by any company, association or reciprocal exchange shall, notwithstanding any other provision of the statutes, contain a provision providing that, in event an execution on a judgment against the insured be returned unsatisfied in an action by a person who is injured or whose property is damaged, the judgment creditor shall have a right of action against the insurer to the same extent that such insured could have enforced his claim against such insurer had such insured paid such judgment. [C35,§9024-g1; C39,§**9024.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§516.1]

516.2 Settlement. No settlement between said insurer and insured, after loss, shall bar said action unless consented to by said judgment plaintiff. [C35,§9024-g2; C39,§**9024.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§516.2]

516.3 Limitation on action. Said action may be brought against said insurer within one hundred eighty days from the entry of judgment in case no appeal is taken, and, in case of appeal, within one hundred eighty days after the judgment is affirmed on appeal, anything in the policy or statutes to the contrary notwithstanding. [C35,§9024-g3; C39,§**9024.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§516.3]

CHAPTER 516A

PROTECTION AGAINST UNINSURED OR HIT-AND-RUN MOTORISTS

516A.1 Coverage included in every liability policy—rejection by insured.
516A.2 Construction—minimum coverage.
516A.3 Definition.
516A.4 Insurer making payment—reimbursement.

516A.1 Coverage included in every liability policy—rejection by insured. No automobile liability or motor vehicle liability insurance policy insuring against liability for bodily injury or death arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided in such policy or supplemental thereto, for the protection of persons insured under such policy who are legally entitled to recover damages from the owner or operator of an uninsured motor

vehicle or a hit-and-run motor vehicle because of bodily injury, sickness, or disease, including death resulting therefrom, caused by accident and arising out of the ownership, maintenance, or use of such uninsured motor vehicle, or arising out of physical contact of such hit-and-run motor vehicle with the person insured or with a motor vehicle which the person insured is occupying at the time of the accident. Such coverage shall include limits for bodily injury or death at least equal to those stated in subsection 10 of section 321A.1. The form and provisions of such coverage shall be examined and approved by the commissioner of insurance.

However, the named insured shall have the right to reject such coverage by written rejections signed by the named insured. If such rejection is made on a form or document furnished by an insurance company or insurance agent, it shall be on a separate sheet of paper which contains only such rejection and information directly related thereto. Such coverage need not be provided in or supplemental to a renewal policy where the named insured has rejected such coverage in connection with a policy previously issued to him by the same insurer. [C71 73, 75,§516A.1]

516A.2 Construction — minimum coverage. Nothing contained in this chapter shall be construed as requiring forms of coverage provided pursuant hereto, whether alone or in combination with similar coverage afforded under other automobile liability or motor vehicle liability policies, to afford limits in excess of those that would be afforded had the insured thereunder been involved in an accident with a motorist who was insured under a policy of liability insurance with the minimum limits for bodily injury or death prescribed in subsection 10 of section 321A.1. Such forms of coverage may include terms, exclusions, limitations, conditions, and offsets which are designed to avoid duplication of insurance or other benefits. [C71, 73, 75, 516A.2]

516A.3 Definition. For the purpose of this chapter, the term "uninsured motor vehicle" shall, subject to the terms and conditions of the coverage herein required, be deemed to include an insured motor vehicle with respect to which insolvency proceedings have been instituted against the liability insurer thereof by the insurance regulatory official of this or any other state or territory of the United States or of the District of Columbia.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect and only if the liability insurer of the tort-feasor is insolvent at the time of such an accident or becomes insolvent within one year after such an accident. [C71, 73, 75,§516A.3]

516A.4 Insurer making payment — reimbursement. In the event of payment to any person under the coverage required by this chapter and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer. The person to whom said payment is made under the insolvency protection required by this chapter shall to the extent thereof, be deemed to have waived any right to proceed to enforce such a judgment against the assets of the judgment debtor who was insured by the insolvent insurer whose insolvency resulted in said payment being made, other than assets recovered or recoverable by such judgment debtor from such insolvent insurer. [C71, 73, 75,§516A.4]

CHAPTER 517

EMPLOYERS LIABILITY INSURANCE

517.1 Reserve required.
517.2 Terms defined.
517.3 Distribution of unallocated payments.
517.4 Reports required.

517.1 Reserve required. Every corporation, association, company, or reciprocal exchange writing any of the several classes of insurance authorized by paragraph "*d*" of subsection 5 of section 515.48 shall maintain reserves for outstanding losses under insurance against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable computed as follows:

1. For all liability suits being defended under policies written more than:

a. Ten years prior to the date as of which the statement is made, one thousand five hundred dollars for each suit.

b. Five and less than ten years prior to the date as of which the statement is made, one thousand dollars for each suit.

c. Three and less than five years prior to the date as of which the statement is made, eight hundred fifty dollars for each suit.

2. For all liability policies written during the three years immediately preceding the date as of which the statement is made, such reserve

shall be sixty percent of the earned liability premiums of each of such three years less all loss and loss expense payments made under liability policies written in the corresponding years; but in any event, such reserve shall, for the first of such three years, be not less than seven hundred fifty dollars for each outstanding liability suit on said year's policies.

3. For all compensation claims under policies written more than three years prior to the date as of which the statement is made, the present values at four percent interest of the determined and the estimated future payments.

4. For all compensation claims under policies written in the three years immediately preceding the date as of which the statement is made, such reserve shall be sixty-five percent of the earned compensation premiums of each of such three years, less all loss and loss expense payments in connection with such claims under policies written in the corresponding years; but in any event, in the case of the first year of any of such three-year period such reserve shall be not less than the present value at four percent interest of the determined and the estimated unpaid compensation claims under policies written during such year. [C24, 27, 31, 35, 39,§9025; C46, 50, 54, 58, 62, 66, 71, 73, 75,§517.1]

517.2 Terms defined. The term "earned premiums" as used herein shall include gross premiums charged on all policies written, including all determined excess and additional premiums, less returned premiums, other than premiums returned to policyholders as dividends, and less reinsurance premiums and premiums on policies canceled, and less unearned premiums on policies in force.

Any participating company which has charged in its premiums a loading solely for dividends shall not be required to include such loading in its earned premiums, provided a statement of the amount of such loading has been filed with and approved by the commissioner of insurance.

The term "compensation" as used in this chapter shall relate to all insurances affected by virtue of statutes providing compensation to employees for personal injuries irrespective of fault of the employer.

The term "liability" shall relate to all insurance, except compensation insurance, against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable.

The terms "loss payments" and "loss expense payments" as used herein shall include all payments to claimants, including payments for medical and surgical attendance, legal expenses, salaries and expenses of investigators, and field personnel, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses, and all other payments made on account of claims, whether such payments shall be allocated to specific claims or unallocated. [C24, 27, 31, 35, 39,§9026; C46, 50, 54, 58, 62, 66, 71, 73, 75,§517.2]

517.3 Distribution of unallocated payments. All unallocated liability loss expense payments made in a given calendar year subsequent to the first four years in which an insurer has been issuing liability policies shall be distributed as follows: Thirty-five percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, ten percent to the policies written in the second year preceding, ten percent to the policies written in the third year preceding, and five percent to the policies written in the fourth year preceding, and such payments made in each of the first four calendar years in which an insurer issues liability policies shall be distributed as follows: In the first calendar year one hundred percent shall be charged to the policies written in that year, in the second calendar year fifty percent shall be charged to the policies written in that year and fifty percent to the policies written in the preceding year, in the third calendar year forty percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, and twenty percent to the policies written in the second year preceding, and in the fourth calendar year thirty-five percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, fifteen percent to the policies written in the second year preceding, and ten percent to the policies written in the third year preceding, and a schedule showing such distribution shall be included in the annual statement.

All unallocated compensation loss expense payments made in a given calendar year subsequent to the first three years in which an insurer has been issuing compensation policies shall be distributed as follows:

Forty percent shall be charged to the policies written in that year, forty-five percent to the policies written in the preceding year, ten percent to the policies written in the second year preceding and five percent to the policies written in the third year preceding, and such payments made in each of the first three calendar years in which an insurer issues compensation policies shall be distributed as follows: In the first calendar year one hundred percent shall be charged to the policies written in that year, in the second calendar year fifty percent shall be charged to the policies written in that year and fifty percent to the policies written in the preceding year, in the third calendar year forty-five percent shall be charged to the policies written in that year, forty-five percent to the policies written in the preceding year and ten percent to the policies written in the second year preceding, and a schedule showing such distribution shall be included in the annual statement.

Whenever, in the judgment of the commissioner of insurance, the liability or compensa-

tion loss reserves of any insurer under his supervision, calculated in accordance with the foregoing provisions, are inadequate, he may, in his discretion, require such insurer to maintain additional reserves based upon estimated individual claims or otherwise. [C24, 27, 31, 35, 39,§9027; C46, 50, 54, 58, 62, 66, 71, 73, 75, §517.3]

517.4 Reports required. Each insurer that writes liability or compensation policies shall include in the annual statement required by law a schedule of its experience thereunder in such form as the commissioner of insurance may prescribe. [C24, 27, 31, 35, 39,§9028; C46, 50, 54, 58, 62, 66, 71, 73, 75,§517.4]

Annual statement, §515.63

CHAPTER 517A

LIABILITY INSURANCE FOR PUBLIC EMPLOYEES

See ch 25A for tort liability of state
See ch 613A for tort liability of governmental subdivisions

517A.1 Authority to purchase.

517A.1 Authority to purchase. All state commissions, departments, boards and agencies and all commissions, departments, boards, districts, municipal corporations and agencies of all political subdivisions of the state of Iowa not otherwise authorized are hereby authorized and empowered to purchase and pay the premiums on liability, personal injury and property damage insurance covering all officers, proprietary functions and employees of such public bodies, including volunteer firemen, while in the performance of any or all of their duties including operating an automobile, truck, tractor, machinery or other vehicles owned or used by said public bodies, which insurance shall insure, cover and protect against individual personal, corporate or quasi corporate liability that said bodies or their officers or employees may incur.

The form and liability limits of any such liability insurance policy purchased by any commission, department, board, or agency of the state of Iowa shall be subject to the approval of the attorney general. [C54, 58, 62, 66, 71, 73, 75,§517A.1]

CHAPTER 518

COUNTY MUTUAL INSURANCE ASSOCIATIONS

Referred to in §§491.1, 507.1, 515B.2
Memorandum of intent, 61GA, S.J. 1612; H.J. 1785

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518.23 Cancellation of policies.

518.1 Incorporation. Corporations formed to operate as county mutual insurance associations shall be governed by the provisions of chapter 491, except as modified by the provisions of this chapter. [C66, 71, 73, 75,§518.1]

518.2 Articles — approval. Each such organization shall present to the commissioner of insurance its articles of incorporation which shall show its name, objects and purposes, the time and place of the annual meeting of the members, and the location of its principal place of business. The commissioner of insurance shall then submit the articles of incorporation to the attorney general for examination, and if found by him to be in accordance with the provisions of this chapter and

the Constitution and the laws of the state, he shall certify such fact thereon and return the same to said commissioner, and no articles shall be approved by him or recorded unless accompanied by such certificate. [C66, 71, 73, 75,§518.2]

518.3 Certificate — recording. If the commissioner of insurance approves the articles of incorporation, he shall so certify and the articles with the certificates of approval shall then be recorded and certified by the secretary of state. [C66, 71, 73, 75,§518.3]

518.4 Identification as to type of insurer. Any association incorporated under the laws of this state for the purpose of furnishing insurance as provided for in this chapter shall be known as a county mutual insurance association. The words "mutual" and "association" shall be incorporated in and become a part of its name. [C97,§1760; S13,§1759-b; C24, 27, 31, 35, 39,§**9030**; C46, 50, 54, 58, 62,§518.2; C66, 71, 73, 75,§518.4]

518.5 Commencement of business — conditions. No county mutual insurance association shall issue policies until applications for insurance of not less than fifty thousand dollars, representing at least fifty applicants, have been received, and no application for insurance during the period of organization shall exceed two percent of the amount required for organization, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk. [C66, 71, 73, 75,§518.5]

518.6 Powers of the members. Members of the association shall have the power to make or amend articles of incorporation at any membership meeting, provided that notice of such addition or amendment has been mailed to each member at least ten days in advance of the meeting in which such proposed action is to be considered, and provided that no amendment shall become effective until approved by the commissioner of insurance and recorded in the office of the secretary of state. [C66, 71, 73, 75,§518.6]

518.7 Officers and directors—election. Officers or directors shall be elected in the manner and for the length of time prescribed in the articles of incorporation. [C66, 71, 73, 75, §518.7]

518.8 Bylaws. The directors of the association shall have the authority to enact such bylaws and regulations not inconsistent with law as they consider necessary for the regulation and conduct of the business. No change in the bylaws shall have the effect of limiting coverage under existing policies of insurance. [C66, 71, 73, 75,§518.8]

518.9 Eligibility for membership. The members of the association shall consist of those persons or organizations insured therein. The words "persons" and "members" as used in this chapter shall be construed to mean trustees, administrators, and all other individuals, public or private corporations or associations. Insurance on the property of one or more minors may be granted on application of an adult parent, friend or guardian who consents to become a member as representing such minor. [C66, 71, 73, 75,§518.9]

518.10 Territorial limitations. The territory of any association shall be limited to the county in which its principal place of business is located, and to the counties contiguous thereto, and no coverage shall be placed on property located outside of this territory; provided, however, that the insurance may be extended, if the policy so provides, to cover personal property while temporarily removed to other locations. [C97,§1760; S13,§1759-b; C24, 27, 31, 35, 39,§**9030**; C46, 50, 54, 58, 62,§518.2; C66, 71, 73, 75,§518.10]

518.11 Kinds of insurance. Any association organized under this chapter is authorized to insure or to accept reinsurance against loss or damage by:

1. Any peril or perils resulting in physical loss or damage to property;

2. Theft of personal property;

3. Injury, sickness or death of animals and the furnishing of veterinary service.

Such contracts of insurance shall be subject only to such provisions as are contained in this chapter and shall consist of:

An application on blanks furnished by the association and signed by the insured or his representatives;

A policy issued by the association in accordance with its rules, and approved by the commissioner of insurance. [C66, 71, 73, 75, §518.11]

Referred to in §§518.16, 518.17

518.12 Properties to be insured. County mutual insurance associations are permitted to insure only the following classes of property:

1. Farm property, including residences and other farm buildings and all classes of personal property in connection therewith;

2. Buildings and personal property used in the processing of agricultural products in conjunction with a farming operation;

3. City and suburban residences, including household and personal effects;

4. Churches, schools and community buildings. [C66, 71, 73, 75,§518.12]

Referred to in §518.16

518.13 Premium charges. Any association may by action of its board of directors establish premium charges for the purpose of payment of losses and expenses and for the establishment or maintenance of a reserve fund.

Any policy shall stand suspended if any default shall be made in the payment of any

premium on or before the date specified in a written notice requiring the payment of such premium and mailed to the insured and directed to his last known address not less than thirty days prior to such suspension date. Such notice shall specify the amount and due date of the premium. The association shall in no event be liable for any loss occurring during such period of suspension. [C66, 71, 73, 75,§518.13]

518.14 Reserve fund. Funds which are not required for the payment of losses and expenses may be held in reserve for future losses and expenses. Such reserve fund may be deposited in banks approved by the board of directors, or at the option of the board of directors may be invested in the classes of securities permitted by section 515.35; but at the direction of the board of directors and with the consent of the commissioner of insurance, a part of such funds may be invested in a home office building. [C66, 71, 73, 75, §518.14]

518.15 Reports and examinations. The president or the vice-president and secretary of each association authorized to do business under this chapter shall annually before the first day of March prepare under oath and file with the commissioner of insurance a full, true and complete statement of the condition of such association on the last day of the preceding year. The commissioner of insurance shall prescribe the report forms and shall determine the information and data to be reported.

Such associations shall pay the same expenses of any examination made or ordered to be made by the commissioner of insurance and the same fees for the annual reports and annual certificates of authority as are required to be paid by domestic companies organized and doing business under chapter 515, which certificates shall expire May 1 of the year following the date of issue. [C66, 71, 73, 75, §518.15; 66GA, ch 1056,§33]

518.16 Qualification of agents. On and after July 1, 1965, no person, unless certified to the commissioner of insurance as an agent for a county mutual insurance association prior to that date, shall directly or indirectly act as agent, or otherwise, in receiving or procuring applications for insurance for any county mutual insurance association, until he has procured from the commissioner of insurance a license authorizing him to act for such association as agent.

Each first-time applicant, unless otherwise qualified under chapter 522, shall establish qualification by applying to the commissioner of insurance for an agent's license and by passage of an examination to be administered by the commissioner of insurance. The scope of such an examination shall be limited to the insurance coverages authorized by section 518.11 and the classes of property authorized by section 518.12. The commissioner of insurance shall have the right to disqualify any applicant who fails such examination; however, said applicant shall have the right to apply for re-examination after waiting for a period of not less than thirty days.

The commissioner shall require of each first-time applicant an application fee of five dollars.

Each license shall expire on March 31 following the time of issue. A fee of fifty cents for each license shall be paid by the county mutual insurance association.

The commissioner of insurance may, for a just and reasonable cause, cancel the license of such agent after due notice and hearing.

The commissioner of insurance may issue a temporary license for a period of not to exceed six months and for such temporary license may waive the requirements established herein. [C66, 71, 73, 75,§518.16]

Referred to in §522.1

518.17 Reinsurance. Any county mutual insurance association may reinsure a part or all of its risks with any association operating under the provisions of this chapter, or with any other association or company licensed in this state and authorized to write the kinds of insurance enumerated in section 518.11.

The commissioner of insurance may require any county mutual insurance association to obtain reinsurance coverage as provided for in this section if it appears to the commissioner of insurance that the perils insured against and the classes of properties insured may seriously endanger the financial position of the association and the security of its members. [C66, 71, 73, 75,§518.17]

518.18 Premium tax. After January 1, 1966, every association doing business under this chapter shall be required to pay to the director of the department of revenue, or a depository designated by the director, as taxes an amount equal to the following:

Two percent of the gross amount of premiums received during the preceding calendar year, after deducting the amount returned upon the canceled policies, certificates and rejected applications; and after deducting premiums paid for windstorm or hail reinsurance on properties specifically reinsured; provided, however, that the reinsurer of such windstorm or hail risks shall pay two percent of the gross amount of reinsurance premiums received upon such risks after deducting the amounts returned upon canceled policies, certificates and rejected applications. [C66, 71, 73, 75, §518.18]

Referred to in §432.1

518.19 Proof of loss — requirement for reporting. The insured shall give immediate written notice to the association of any loss for which claim is made and shall then furnish a written proof of loss to the association within sixty days from the time the loss occurred, unless such time is extended in

writing by the association. The proof of loss shall contain such information as is required by the policy provisions of the association, which information shall be signed and sworn to by the insured. [C66, 71, 73, 75,§518.19]

518.20 Reporting of livestock losses. In the event of loss of livestock, the insured shall give notice to the association in sufficient time to permit the performance by a licensed veterinarian of a post-mortem examination of the livestock for which claim is made, but in no event later than forty-eight hours from the time of occurrence. [C66, 71, 73, 75,§518.20]

518.21 Reporting of losses of crops by hail. In the event of loss to growing crops by hail, notice of such loss must be given by mailing to the association a certified letter within ten days from the time such loss or damage occurred. [C66, 71, 73, 75,§518.21]

518.22 Limitation of action. No action on any loss shall be begun sooner than forty days after proof of loss has been given to the association, and unless commenced within twelve months next after the inception of the loss. [C66, 71, 73, 75,§518.22]

518.23 Cancellation of policies. Any policy shall be canceled at any time at the request of the insured upon the return of the policy to the home office of the association, and the payment of all premium charges against such policy; or by the association by giving five days' notice of such cancellation. Such service of notice may be made in person, or by mailing such notice by certified mail deposited in the post office and directed to the insured at his post-office address as given in or upon the policy, or to such other address as the insured shall have given to the association in writing. A post-office department receipt of certified or registered mail shall be deemed proof of receipt of such notice. If in either case the cash payments shall exceed the amount properly chargeable, the excess will be refunded upon the surrender of the policy to the association at its home office. [C66, 71, 73, 75,§518.23]

CHAPTER 518A

MUTUAL FIRE, TORNADO, HAILSTORM AND OTHER ASSESSMENT INSURANCE ASSOCIATIONS

Referred to in §§491.1, 496A.142(1), 504A.100(1), 507.1, 515.58, 515A.2, 515B.2, 519.10, 521.1, 521A.1(5), 521A.2(3,c), 616.11
Additional provisions, ch 515

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518A.40 Annual fees.
518A.41 Agents to be licensed.
518A.42 License—fee.
518A.43 Cancellation of license.

518A.1 Organization—purpose and powers. 1. Any number of persons may, by incorporating under chapter 491, enter into contracts with each other for the following kinds of insurance from loss or damage by:

a. Any peril or perils resulting in physical loss of or damage to property.

b. Theft of personal property.

c. Injury, sickness, or death of animals and the furnishing of veterinary service.

d. Any automobile or aircraft or other vehicle, including loss, expense, or liability resulting from the ownership, maintenance, or use thereof, but shall not include, by county mutu-

als, insurance against bodily injury to the person.

2. For the purpose of this protection these contracts of insurance shall be subject only to such provisions as are contained in this chapter and shall consist of:

a. An application on blanks furnished by the association and signed by the insured or his representative, which may contain in addition to other provisions; the value of the property, the proper description thereof, the amount of other insurance and the encumbrance thereon, and agreement to be governed by the articles of incorporation and bylaws in force at the time the policy is issued, a representation that the foregoing statements are true as far as the same are known to the insured or material to the risk, and that the insurance shall take effect when approved by the secretary.

b. A policy issued by the association in accordance with its rules, and approved by the commissioner of insurance.

3. Such associations may insure risks of their members or may reinsure risks of other associations or companies.

4. The words "persons" and "members" as used in this chapter shall be construed to mean trustees, administrators, and all other individuals, public or private corporations or associations.

5. Insurance on the property of one or more minors may be granted on application of an adult parent, friend, or guardian who consents to become a member as representing such minor. [C73,§1160; C97,§1759; S13,§1759-a; C24, 27, 31, 35, 39,§9029; C46, 50, 54, 58, 62,§518.1; C66, 71, 73, 75,§518A.1]

Referred to in §518A.7

518A.2 State mutual associations. Any association incorporated under the laws of this state for the purpose of furnishing insurance as provided for in this chapter may do business throughout the state and in other states where they are legalized and authorized to do business. The words "mutual" and "association" shall be incorporated in and become a part of their name. [C97,§1760; S13,§1759-b; C24, 27, 31, 35, 39,§9030; C46, 50, 54, 58, 62, §518.2; C66, 71, 73, 75,§518A.2]

518A.3 Meetings. Unless the time and place of holding the annual meeting of the members of any association transacting business under the provisions of this chapter are plainly stated in their articles of incorporation or bylaws, twenty days' notice of the time and place of holding of said meetings shall be given to all members of the association. Annual meetings may adjourn from time to time. [S13,§1759-o; C24, 27, 31, 35, 39,§9031; C46, 50, 54, 58, 62,§518.3; C66, 71, 73, 75,§518A.3]

39GA, ch 120,§11, editorially divided

518A.4 Amendments to articles. Members of the association at such annual meetings shall have power to make or amend articles of incorporation or bylaws as they in their judgment may deem necessary. [S13,§1759-o; C24, 27, 31, 35, 39,§9032; C46, 50, 54, 58, 62,§518.4; C66, 71, 73, 75,§518A.4]

518A.5 Articles and bylaws part of policy. When such articles of incorporation and bylaws are printed on the policy they become a part thereof and are binding upon the association and the insured alike. [C24, 27, 31, 35, 39,§9033; C46, 50, 54, 58, 62,§518.5; C66, 71, 73, 75,§518A.5]

518A.6 Officers—election. Officers or directors shall be elected in the manner and for the length of time prescribed in the articles of incorporation or bylaws. [C24, 27, 31, 35, 39, §9034; C46, 50, 54, 58, 62,§518.6; C66, 71, 73, 75,§518A.6]

518A.7 Policies—issuance—conditions. No state mutual assessment association shall issue policies until at least one hundred twenty-five applications have been received in any class as shown by section 518A.1, representing the following amount of insurance: Classes one, two, three, and five, two hundred fifty thousand dollars each; class four, one hundred thousand dollars, and no county mutual assessment association shall issue policies until applications for insurance to the amount of fifty thousand dollars representing at least fifty applicants have been received, and no application for insurance during the period of organization shall exceed two percent of the amount required for organization, or after one year of organization, one percent of the total insurance in force, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk. [C97,§1761; S13,§1759-c; C24, 27, 31, 35, 39,§9035; C46, 50, 54, 58, 62,§518.7; C66, 71, 73, 75,§518A.7]

39GA, ch 120,§3, editorially divided

518A.8 Approval by commissioner. Neither shall any association issue policies of insurance until its articles of incorporation, bylaws, and form of policy shall have been submitted to the commissioner of insurance and if upon examination of same he finds them to conform to the provisions of this chapter he shall at once issue to the association a certificate authorizing it to transact an insurance business. [C97,§1761; S13,§1759-c; C24, 27, 31, 35, 39,§9036; C46, 50, 54, 58, 62,§518.8; C66, 71, 73, 75,§518A.8]

518A.9 Allowable assessments and fees. Such associations may collect a policy and contingent fee, and such assessments, provided for in their articles of incorporation and bylaws, as are required to pay losses and necessary expenses, and for the creation and maintenance of an emergency fund for the payment of excess losses and no part of such emergency fund can be claimed by any member whose policy expires or is surrendered for cancellation. [C97,§1765; S13,§1759-h; C24, 27, 31, 35, 39,§9037; C46, 50, 54, 58, 62,§518.9; C66, 71, 73, 75,§518A.9]

Referred to in §519.11
39GA, ch 120,§4, editorially divided

518A.10 Advance assessments. Any association may collect assessments for losses and expenses for one year in advance; or for more than one year in advance where such advance assessment does not exceed five mills on each dollar of insurance in force. [S13,§1759-h; C24, 27, 31, 35, 39,§9038; C46, 50, 54, 58, 62,§518.10; C66, 71, 73, 75,§518A.10]

Referred to in §519.11

518A.11 Borrowing money. In case the funds of any association are not sufficient to pay losses that have been reported or adjusted the association may borrow money for payment of losses until such time as it is practical to make an assessment or until the regular assessment period. [C24, 27, 31, 35, 39,§9039; C46, 50, 54, 58, 62,§518.11; C66, 71, 73, 75,§518A.11]

518A.12 Emergency fund. Funds raised by such associations which because of temporarily low rate of losses are not needed to pay losses and expenses in any year, may be passed to an emergency fund to be held for payment of excess losses in a subsequent year or years; such fund may be deposited in banks, or at the option of the board of directors may be invested in the classes of securities permitted by section 515.35; but under the direction of the board of directors and with the consent of the commissioner of insurance a part of such fund may be invested in a home office building or loaned to other associations organized under this chapter only when such loan shall be secured by a pledge of future assessments of such other association. [C24, 27, 31, 35, 39, §9040; C46, 50, 54, 58, 62,§518.12; C66, 71, 73, 75,§518A.12]

Referred to in §518A.17

518A.13 Policies with fixed premiums. When the emergency fund of any association reaches an amount equal to one hundred percent of the average cost per thousand on all policies in force for the full term for which assessment is collected and not less than one hundred thousand dollars or such amount of capital stock as is required of domestic companies, such associations may issue policies of fixed premiums. [C24, 27, 31; 35, 39,§9041; C46, 50, 54, 58, 62,§518.13; C66, 71, 73, 75,§518A.13]

518A.14 Net assets required — liability of members. Associations using a basis rate whose risks consist principally of store buildings and their contents, manufacturing establishments, public garages, lumber yards, office buildings, hotels, theaters, moving picture houses, stocks of implements or automobiles, shall maintain at all times net assets equal to forty percent of one annual assessment at the basis rate charged for such insurance on all policies in force, less deductions for reinsurance in authorized companies or associations; and may provide in its bylaws and specify in its policies the maximum liability of its members to the association; such liability shall not be less than a sum equal to the basis rate charged by the association for insurance nor greater than a sum equal to three times such basis rate. [S13,§1759-i; C24, 27, 31, 35, 39,§9042; C46, 50, 54, 58, 62,§518.14; C66, 71, 73, 75,§518A.14]

Referred to in §519.11

518A.15 Reserve for unearned premiums. Every association organized and operating under the provisions of this chapter, except county mutual assessment associations, reinsurance associations for county mutual associations, and associations operating on a post loss basis and not charging any advance assessments or premiums, shall hold as reserve for unearned premiums or assessments an amount equal to at least forty percent of the aggregate gross premiums or assessments in force, on all policies or contracts running one year or less, less deductions for reinsurance in force in authorized companies or associations. On all policies or contracts running more than one year, there shall be maintained such a reserve in an amount equal to at least forty percent of the amount of the aggregate gross premiums in force for any current year and one hundred percent of the amount of the aggregate gross premiums in force for each succeeding year of said terms, less deductions for reinsurance in authorized companies or associations. [C39,§9042.1; C46, 50, 54, 58, 62, §518.15; C66, 71, 73, 75,§518A.15]

518A.16 Repealed by 61GA, ch 401,§26.

518A.17 Hail assessments — payment of losses. Associations engaged in writing hail insurance may, as concerns such insurance, provide in their bylaws and policies for a limited assessment in any one year.

The books of any association which relate to hail insurance business shall be closed and balanced as of the thirty-first day of December of each year, and the aggregate amount of assessments and other sums paid by the members during the year, and the aggregate amount of losses paid including those in the process of adjustment and/or litigation during the year, shall be ascertained.

Not less than fifty percent of such aggregate amount of assessments, and other sums paid by the members shall be returned to the members, either through the payment of losses or through discounts, credits, or dividends, to be credited on the assessments required for the current or succeeding year, or, at the discretion of the board of directors, may be set aside in the emergency fund as defined in section 518A.12, but no sum less than forty percent of such aggregate assessments, and other sums paid by the members, shall be returned to the members through payment of such losses or through discounts, credits, or dividends during the current or succeeding year.

In the event that losses sustained exceed a sum equal to fifty percent of such aggregate assessments and other sums paid by the members, such losses shall be paid from any emergency or surplus funds then in existence, and if the total funds available for the payment of

losses is insufficient to pay such losses, such funds shall be prorated among the members sustaining such losses.

Such losses shall be due and payable on or before the twentieth day of January of the year succeeding that in which they occur, except such as may be then in dispute or litigation. [C24, 27, 31, 35, 39,§9043; C46, 50, 54, 58, 62,§518.17; C66, 71, 73, 75,§518A.17]

518A.18 Annual report. Each association doing business under the provisions of this chapter shall, annually, on or before March 1, report to the commissioner of insurance, upon blanks furnished by him, such facts as are required of domestic insurance companies organizing under chapter 515, as are applicable to this chapter. These reports shall be tabulated and published by the commissioner of insurance in the annual report of insurance, one copy of which shall be sent to each association. [C73,§1160; C97,§§1762, 1763; S13,§§1759-d,-e; C24, 27, 31, 35, 39,§9044; C46, 50, 54, 58, 62,§518.18; C66, 71, 73, 75,§518A.18]

518A.19 Proof of loss—sixty-day limit. In furnishing proofs of loss under any contract of insurance under this chapter for loss or damage it shall be necessary for the insured within sixty days from the time loss or damage occurs, to give notice in writing to the association issuing such contracts of insurance accompanied by an affidavit stating the facts as to how the loss occurred so far as the same are within the knowledge of the insured, the property destroyed or damaged, and the extent of the loss. [C24, 27, 31, 35, 39,§9045; C46, 50, 54, 58, 62,§518.19; C66, 71, 73, 75,§518A.19]

39GA, ch 120,§6, editorially divided
Similar provisions, §§511.35, 514A.3, 515.98, 518A.22

518A.20 Five-day limit. In case of damage or loss to livestock by fire or lightning or loss or damage to automobiles or aircraft by theft or fire, notice of such loss must be given the association by mailing written notice within five days from the time such loss or damage occurred. [C24, 27, 31, 35, 39,§9046; C46, 50, 54, 58, 62,§518.20; C66, 71, 73, 75,§518A.20]

518A.21 Ten-day limit. In case of loss to growing crops by hail, notice of such loss must be given the association by mailing a certified mail letter within ten days from the time such loss or damage occurred. [C24, 27, 31, 35, 39, §9047; C46, 50, 54, 58, 62,§518.21; C66, 71, 73, 75,§518A.21]

518A.22 Limitation of action. No action on any loss shall be begun until the date when such loss becomes due in accordance with the articles of incorporation or bylaws of such association and in no event sooner than forty days after such proof has been given to the association and no action can be started after one year from the date such cause of action accrues. [C24, 27, 31, 35, 39,§9048; C46, 50, 54, 58, 62,§518.22; C66, 71, 73, 75,§518A.22]

Similar provision, §518A.19

518A.23 Presumption as to value. In any action brought in any court in this state on any policy of insurance for the loss of any building so insured, the amount stated in the policy shall be received as prima-facie evidence of the insurable value of the building at the date of the policy. [C24, 27, 31, 35, 39,§9049; C46, 50, 54, 58, 62,§518.23; C66, 71, 73, 75,§518A.23]

39GA, ch 120,§7, editorially divided
Similar provision, §515.96

518A.24 Value of building — liability. The association issuing such policy may show the actual value of said property at date of policy, and any depreciation in the value thereof before the loss occurred; but the said association shall be liable for the actual value of the property insured at the date of the loss, unless such value exceeds the amount of insurance stated in the policy. [C24, 27, 31, 35, 39,§9050; C46, 50, 54, 58, 62,§518.24; C66, 71, 73, 75, §518A.24]

Similar provisions, §515.97

518A.25 Value of personal property—value of crops. In any action on a policy to recover loss or damage on personal property, the association shall not be liable in excess of the amount of damage or loss at the time the loss or damage occurs; provided that the value of growing crops may be stated in the policy or contract. [C24, 27, 31, 35, 39,§9051; C46, 50, 54, 58, 62,§518.25; C66, 71, 73, 75,§518A.25]

518A.26 Arbitration. No recovery on a policy or contract of insurance shall be defeated for failure of the insured to comply, after a loss occurs, with any arbitration or appraisement stipulation as to fixing the value of property. No arbitration shall take place except substantially where the property was situated at the time of loss. Contracts of insurance to indemnify against loss by hail to growing crops which stipulate for arbitration shall provide that the decision of the majority of the arbitrators shall be final only as to the arbitration. [C31, 35,§9051-c1; C39,§9051.1; C46, 50, 54, 58, 62,§518.26; C66, 71, 73, 75,§518A.26]

518A.27 Reinsurance — quo warranto. The commissioner of insurance may address inquiries to any association in relation to its doings and condition and any association so addressed shall promptly reply thereto in writing. If the commissioner of insurance is then satisfied that the association has failed to comply with any provisions of this law, or is exceeding its powers, or is not carrying out its contracts in good faith; or is transacting business fraudulently or soliciting insurance in territories where it is not legally admitted to do business, or is in such condition as to render the further transaction of business by it hazardous to the public or its policyholders, the business under his supervision and with the consent of the association may be reinsured in some mutual association, or he may present the facts relating thereto to the attorney general and if the circumstances warrant he may commence

an action in quo warranto in a court of competent jurisdiction. [C97,§1766; S13,§1759-g; C24, 27, 31, 35, 39,§9052; C46, 50, 54, 58, 62, §518.27; C66, 71, 73, 75,§518A.27]

Referred to in §518A.34

39GA, ch 120,§8, editorially divided

518A.28 Decree—receivership. Such court shall thereupon notify the officers of such association of a hearing, and unless it shall then appear that some special and good reason exists why such association should not be closed, said association shall be enjoined from carrying on any further business, and some person shall be appointed receiver of such association and shall proceed at once to take possession of the books, papers, moneys, and other assets of the association and shall forthwith, under the direction of the court proceed to close the affairs of the association and to distribute its funds to those entitled thereto, or he may make an assessment pro rata on the membership liable to an assessment to pay the legitimate debts of the association. [C97,§1766; S13, §1759-g; C24, 27, 31, 35, 39,§9053; C46, 50, 54, 58, 62,§518.28; C66, 71, 73, 75,§518A.28]

Referred to in §§518A.34, 519.11

518A.29 Cancellation by association—notice. Any policy of insurance issued by any association operating under the provisions of this chapter may be canceled by service of notice in writing upon the insured which notice shall fix the date of such cancellation which shall be not less than five days after service of such notice. Such service of notice may be made in person, or by mailing such notice to the insured at his post-office address as given in or upon the policy, or to such other address notice of which the insured shall have given to the company in writing. A post-office department receipt of certified or registered mailing shall be deemed proof of receipt of such notice.

The provisions of this section shall be applicable to the cancellation of reciprocal or interinsurance contracts and policies issued pursuant to chapter 520. [S13,§1759-m; C24, 27, 31, 35, 39,§9054; C46, 50, 54, 58, 62,§518.29; C66, 71, 73, 75,§518A.29]

39GA, ch 120,§9, editorially divided

518A.30 Cancellation by insured — conditions. If the insured shall demand in writing or in person of the association the cancellation of policy, the association shall immediately advise him by letter to last known address, the amount, if any, due, as his pro rata share of losses and in addition actual expenses incurred on said policy. Upon surrender of his policy and payment of all sums due, his membership shall cease, provided that during the months of May, June, July, and August, hail insurance policies may be canceled only at the option of the officers of the association carrying the risk. On or before the first day of April in each calendar year a member of any mutual hail insurance association doing business in Iowa may cancel his membership and contract or policy of insurance on which at least one annual assessment has been paid and upon which at the time no assessment is past due in such association without being required to pay anything therefor; and it shall be considered that no liability for insurance risks or for expenses shall attach against such member in that particular year if he shall cancel his contract and membership on or before April 1. [S13,§1759-m; C24, 27, 31, 35, 39,§9055; C46, 50, 54, 58, 62,§518.30; C66, 71, 73, 75,§518A.30]

518A.31 Unearned assessments — return. Upon the cancellation of any policy of insurance issued under the provisions of this chapter all obligations to the association having been paid, the unearned portion of any advance assessment paid, other than the emergency fund, shall be returned to the insured upon the surrender of his policy, the association retaining a pro rata share for losses and in addition actual expenses incurred on said policy. [S13,§1759-m; C24, 27, 31, 35, 39,§9056; C46, 50, 54, 58, 62,§518.31; C66, 71, 73, 75, §518A.31]

518A.32 When pro rata assessment retained. When the policy is canceled by the association by giving notice thereof it shall retain only the pro rata assessment. [S13,§1759-m; C24, 27, 31, 35, 39,§9057; C46, 50, 54, 58, 62,§518.32; C66, 71, 73, 75,§518A.32]

518A.33 Bonds of officers. Any state mutual assessment association contemplated by this chapter, before being authorized to do business in this state, shall require its secretary and treasurer to give a fidelity bond, personal or surety, to the association in such sums as the directors shall deem sufficient, no less, however, than ten thousand dollars for each office, which bond after being approved by the president of the association shall be deposited with the commissioner of insurance. [C97, §1767; S13,§1759-n; C24, 27, 31, 35, 39,§9058; C46, 50, 54, 58, 62,§518.33; C66, 71, 73, 75,§518A.33]

39GA, ch 120,§10, editorially divided

518A.34 Additional security — noncompliance. Should the commissioner of insurance find the surety on said bonds, or the amount thereof, insufficient, he may require additional security, or an increase in the amount of the bond. If such additional security or increase be not furnished within thirty days after notice thereof, the commissioner of insurance shall refer the matter to the attorney general the same as under sections 518A.27 and 518A.28, and it shall be taken care of by him in accordance therewith. [C97,§1767; S13, §1759-n; C24, 27, 31, 35, 39,§9059; C46, 50, 54, 58, 62,§518.34; C66, 71, 73, 75,§518A.34]

518A.35 Annual tax. Every state mutual association doing business under this chapter shall on or before the first day of March, each year, pay to the director of the department of revenue, or a depository designated by the director, a sum equivalent to two percent of the gross receipts from premiums, assessments, fees, and promissory obligations for

business done within the state, including all insurance upon property situated in the state without including or deducting any amounts received or paid for reinsurance except that any company reinsuring windstorm or hail risks written by county mutual associations shall be required to pay a two percent tax on the gross amount of reinsurance premiums received upon such risks, but after deducting the amount returned upon canceled policies and rejected applications covering property situated within the state, and dividends returned to policyholders on property situated within the state. [C24, 27, 31, 35, 39, §9060; C46, 50, 54, 58, 62,§518.35; C66, 71, 73, 75,§518A.35]

39GA, ch 120,§12, editorially divided

518A.36 Repealed by 53GA, ch 213,§1. See §507.2.

518A.37 Repealed by 61GA, ch 401,§28.

518A.38 Repealed by 66GA, ch 1056,§45.

518A.39 "Debt" defined. In ascertaining such corporate indebtedness, a debt shall be deemed to exist, on account of its liabilities on the policy certificates or contracts of insurance issued by it equal to the amount of surplus or other funds accumulated by such corporation for the purpose of fulfilling its policy contracts of insurance and which can be used for no other purpose. [C24, 27, 31, 35, 39,§9064; C46, 50, 54, 58, 62,§518.39; C66, 71, 73, 75,§518A.39]

518A.40 Annual fees. Such associations shall pay the same fees for annual reports and annual certificates of authority as are required to be paid by domestic companies organized and doing business under chapter 515, which certificates shall expire May 1 of the year following the date of issue. [C73,§1160; C97, §1764; S13,§1759-f; C24, 27, 31, 35, 39,§9065; C46, 50, 54, 58, 62,§518.40; C66, 71, 73, 75,§518A.40; 66GA, ch 1056,§34]

518A.41 Agents to be licensed. No person or corporation shall solicit any application for insurance for any association in this state without having procured from the commissioner of insurance a license authorizing him to act as agent. Violation of this provision shall be punished by a fine not exceeding twenty-five dollars per day. [C24, 27, 31, 35, 39,§9066; C46, 50, 54, 58, 62,§518.41; C66, 71, 73, 75,§518A.41]

39GA, ch 120,§15, editorially divided

518A.42 License—fee. The commissioner of insurance shall upon the receipt of payment of fifty cents issue license to act as agent to any person for whom a license is requested by any association doing business under the provisions of this chapter. [C24, 27, 31, 35, 39,§9067; C46, 50, 54, 58, 62,§518.42; C66, 71, 73, 75, §518A.42]

518A.43 Cancellation of license. The commissioner of insurance may, for a just and reasonable cause, cancel the license of such agent after due notice and hearing. [C24, 27, 31, 35, 39,§9068; C46, 50, 54, 58, 62,§518.43; C66, 71, 73, 75,§518A.43]

CHAPTER 518B

RIOT REINSURANCE PROGRAM

518B.1 Definitions.
518B.2 Reimbursement fund created.
518B.3 Secretary reimbursed.
518B.4 Insurers assessed.
518B.5 Warrants issued—overage fund.
518B.6 Insolvent insurers.
518B.7 Recovery factor included.

518B.1 Definitions. As used in this chapter, unless the context requires otherwise:

1. *"The secretary"* means the secretary of the United States department of housing and urban development.
2. *"Farm property"* means the residence, personal effects, other farm buildings and other personal property used in conjunction with a farming operation.
3. *"The Act"* means Section 1223 of the Housing and Urban Development Act of 1968, Public Law 90-448, 90th Congress approved August 1, 1968.
4. *"The fund"* or *"fund"* means the federal riot reinsurance reimbursement fund referred to in this chapter.
5. *"Commissioner"* means the commissioner of insurance. [C71, 73, 75,§518B.1]

518B.2 Reimbursement fund created. There is hereby created the federal riot reinsurance reimbursement fund in the office of the treasurer of state which shall be operated under the joint control of the director of revenue and the commissioner. The fund shall consist of all payments made by insurers in accordance with the provisions of this chapter. The director of revenue shall have the same power to enforce the collection of the assessments provided hereunder as any other obligation due the state. [C71, 73, 75,§518B.2]

518B.3 Secretary reimbursed. The commissioner shall reimburse the secretary in an amount up to five percent of the aggregate property, except farm property insurance premiums earned in this state during the calendar

year immediately preceding the calendar year with respect to which the secretary paid losses on lines of insurance reinsured by him in this state during that year and for which he claims reimbursement from the fund in accordance with the Act. [C71, 73, 75,§518B.3]

518B.4 Insurers assessed. Whenever the secretary shall, in accordance with the Act, present to the state a request for reimbursement under the Act, the commissioner shall immediately assess all insurers which, during the calendar year with respect to which reimbursement is requested by the secretary, were licensed to write and engaged in writing property insurance business, including the property insurance components of multiperil policies on a direct basis, in this state. The amount of each such insurer's assessment shall be calculated by multiplying the amount of the reimbursement requested by the secretary by a fraction the numerator of which is the insurer's premium actually written in this state in that calendar year on habitational and commercial property, except farm property, risks and the denominator of which is the aggregate premiums written by all licensed insurers on such property risks. In no event shall any insurer's assessment be less than one hundred dollars. [C71, 73, 75,§518B.4]

Referred to in §§518B.6, 518B.7

518B.5 Warrants issued—overage fund. The secretary shall be reimbursed up to the amount requested by warrants issued against the fund by the state comptroller upon vouchers approved by the director of revenue and the commissioner. If the assessment produces a fund greater than the amount requested by the secretary, the overage shall be placed in a special fund in the office of the treasurer of state under the control of the commissioner and the director of revenue and shall be applied to any subsequent requests by the secretary for reimbursement of losses paid on lines of insurance reinsured by him in this state in accordance with the Act.

In the event that the provisions of this chapter and the assessments made thereunder are no longer needed in order to effectuate the program for which they were intended, the amounts remaining in the special fund shall inure to the general fund of the state. [C71, 73, 75,§518B.5]

518B.6 Insolvent insurers. In the event any insurer fails, by reason of insolvency, to pay any assessment, the commissioner shall cause the reimbursement ratios computed under section 518B.4 to be immediately recalculated excluding therefrom the insolvent insurer, so that its assessment is in effect assumed and redistributed among the remaining insurers. [C71, 73, 75,§518B.6]

518B.7 Recovery factor included. Insurers shall include in filings submitted pursuant to chapter 515A, a factor, applicable to the line or lines of insurance on which the assessment is levied, sufficient to recover within not more than three years after the date of assessment any amounts so assessed under section 518B.4 during the preceding calendar year together with the amount of costs and expenses reasonably attributable to such assessment and recovery thereof. [C71, 73, 75,§518B.7]

CHAPTER 519

LIABILITY INSURANCE—CERTAIN PROFESSIONS

Referred to in §§491.1, 496A.142(1), 504A.100(1), 515B.2

519.1 Authorization.
519.2 Incorporation—powers.
519.3 Approval of articles.
519.4 Approval of policy—certificate of authority.
519.5 Conditions.
519.6 Reports.
519.7 Reinsurance reserve.
519.8 Cancellation of policy.
519.9 Fees.
519.10 Powers of commissioner.
519.11 Liability to assessments.
519.12 Foreign companies.
519.13 Construction.

519.1 Authorization. Any number of physicians and surgeons, osteopaths, osteopathic physicians and surgeons, podiatrist, chiropractors, pharmacists, dentists, and graduate nurses, licensed to practice their profession in this state, and hospitals licensed under chapter 135B, may, by complying with the provisions of this chapter and without regard to other statutory provisions, enter into contracts with each other for the purpose of protecting themselves by insurance against loss by reason of actions at law on account of their alleged error, mistake, negligence, or carelessness in the treatment and care of patients, including the performance of surgical operations, or in the prescribing and dispensing of drugs and medicines, or for loss by reason of damages in other respects, and to reimburse any member in case of such loss. [C24, 27, 31, 35, 39,§9069; C46, 50, 54, 58, 62, 66, 71, 73, 75,§519.1; 66GA, ch 239,§18]

38GA, ch 286,§1, editorially divided
Action on liability policy, ch 516

519.2 Incorporation—powers. All corporations, organized for the purpose of transacting

such insurance business under the provisions of this chapter, shall incorporate under the provisions of chapter 491, and be known as mutual corporations; and are hereby empowered to collect such assessments, or premium payments, provided for in their articles of incorporation or bylaws, as are required to pay losses and expenses incurred in the conduct of their business and to cede reinsurance. Such mutual insurance corporations may issue certificates of membership, or policies; and may provide that all assessments, or premium payments, payable thereunder, be made in cash, or on the installment, or assessment plan. [C24, 27, 31, 35, 39,§9070; C46, 50, 54, 58, 62, 66, 71, 73, 75,§519.2; 66GA, ch 239,§19]

519.3 Approval of articles. The articles of such mutual insurance corporations shall be submitted to, and approved by, the attorney general and the commissioner of insurance before being filed with the secretary of state. [C24, 27, 31, 35, 39,§9072; C46, 50, 54, 58, 62, 66, 71, 73, 75,§519.3]

38GA, ch 286,§2, editorially divided

519.4 Approval of policy—certificate of authority. No such mutual insurance corporation shall issue membership certificates, or policies, until its form of certificate or policy, shall have been submitted to, and approved by, the commissioner of insurance and until it has secured from such commissioner of insurance a certificate authorizing it to transact such an insurance business. [C24, 27, 31, 35, 39,§9073; C46, 50, 54, 58, 62, 66, 71, 73, 75,§519.4]

519.5 Conditions. No such certificate shall be issued by the commissioner of insurance until two hundred fifty individual applications or ten or more applications from a hospital group, have been received, and until the commissioner of insurance has satisfied himself that such mutual insurance corporation has bona fide applications representing the number of applicants required, and that there is in the possession of such mutual insurance corporation cash assets amounting to not less than ten times the maximum single retained risk. [C24, 27, 31, 35, 39,§9074; C46, 50, 54, 58, 62, 66, 71, 73, 75,§519.5; 66GA, ch 239,§20, ch 1211,§1]

519.6 Reports. Such mutual insurance corporations doing business under the provisions of this chapter shall, annually, before the first day of March, report to the commissioner of insurance, upon blanks furnished by him, the same facts, so far as applicable, as are required to be furnished by mutual insurance associations under the statutes of Iowa, which report shall be tabulated by the commissioner of insurance and published by him in the annual report on insurance. [C24, 27, 31, 35, 39,§9075; C46, 50, 54, 58, 62, 66, 71, 73, 75,§519.6; 66GA, ch 239,§21]

Annual report, §505.13

519.7 Reinsurance reserve. Such mutual insurance corporations shall, annually, set aside and maintain as a reinsurance reserve, an amount equal to ten percent of the receipts from assessments, or premium payments, during the year until the total amount thus accumulated shall equal forty percent, but not to exceed fifty percent of the amount of the annual assessment, or premium payment, at the rate charged for such insurance on all policies in force. The reserve thus accumulated may be used for the payment of losses and expenses, and when so used shall be restored and maintained in like manner as originally accumulated. [C24, 27, 31, 35, 39,§9076; C46, 50, 54, 58, 62, 66, 71, 73, 75,§519.7]

519.8 Cancellation of policy. Any certificate of membership, or policy, issued by such a mutual insurance corporation may be canceled by the corporation by giving thirty days' written notice thereof to the insured; or such cancellation may be upon demand of the insured; and such cancellation, when so made, either by the corporation or by the insured, shall be upon a pro rata basis, and the cancellation of such certificate or policy shall release the member from all other future obligations to such corporation. [C24, 27, 31, 35, 39,§9077; C46, 50, 54, 58, 62, 66, 71, 73, 75,§519.8; 66GA, ch 239,§22]

519.9 Fees. Such a mutual insurance corporation shall pay the same fees for admission into the state, for annual reports, and for annual certificates of authority as are required to be paid by domestic mutual companies organized and doing business under chapter 515; such certificate shall expire May 1 of the year following the date of its issue. [C24, 27, 31, 35, 39,§9078; C46, 50, 54, 58, 62, 66, 71, 73, 75,§519.9; 66GA, ch 239,§23]

38GA, ch 286,§6, editorially divided

519.10 Powers of commissioner. The commissioner of insurance shall have and exercise the same control over such corporations as he now has over mutual assessment insurance associations organized and doing business under the provisions of chapter 518A. [C24, 27, 31, 35, 39,§9079; C46, 50, 54, 58, 62, 66, 71, 73, 75,§519.10]

519.11 Liability to assessments. The provisions as to maximum liability of members to assessments when assets are insufficient and to assessments when the corporation is insolvent, found in sections 518A.9, 518A.10, 518A.14, and 518A.28, shall apply to all mutual insurance corporations organized under the provisions of this chapter. [C24, 27, 31, 35, 39,§9080; C46, 50, 54, 58, 62, 66, 71, 73, 75,§519.11]

519.12 Foreign companies. Any mutual insurance association organized under the laws of any other state, for the purpose of transacting the kind of business described in this chapter, and which has on hand surplus amounting to not less than ten times the maximum single retained risk, and has not less

than two hundred fifty members, may upon application, be admitted to do business in this state if the commissioner finds such admission is in the public interest; and shall thereafter make all reports and be subject to taxation, examination, and supervision by the commissioner of insurance to the same extent and in the same manner as are domestic corporations organized under the provisions of this chapter.

[C24, 27, 31, 35, 39,§**9081**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§519.12; 66GA, ch 239,§24]

519.13 Construction. All laws, or parts of laws, in conflict herewith shall be so construed as not to include corporations regulated by this chapter. [C24, 27, 31, 35, 39,§**9082**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§519.13]

CHAPTER 519A

MEDICAL MALPRACTICE INSURANCE

519A.1 Intent.
519A.2 Definitions.
519A.3 Temporary joint underwriting association.
519A.4 Plan of operation.
519A.5 Policy forms and rates.
519A.6 Stabilization reserve fund.
519A.7 Procedures.
519A.8 Participation.
519A.9 Governing board.
519A.10 Appeals and judicial review.
519A.11 Annual statements.
519A.12 Examinations.
519A.13 Privileged communications.

519A.1 Intent. The general assembly finds that a critical situation exists because of the high cost and impending unavailability of medical malpractice insurance. The purposes of sections 519A.2 to 519A.13 are to assure that the public is adequately protected against losses arising out of medical malpractice by providing licensed health care providers with medical malpractice insurance through the requirement that certain liability insurance carriers write medical malpractice insurance for a period of two years upon a finding of an emergency by the commissioner of insurance that either such insurance is not available through normal channels or that it is not available on a reasonable basis because of lack of competition for such insurance, or otherwise; to establish an association to equitably spread the risks for such insurance; and to provide for recoupment of losses resulting from the operation of the association through a stabilization reserve fund contributed to by insureds, a surcharge on future liability insurance policies, or a favorable premium tax treatment.

It is the intent of this chapter to provide only an interim solution to the impending unavailability of medical malpractice insurance. It is not anticipated that this chapter will resolve the underlying causes of the unavailability and high cost which extend beyond the insurance mechanism. It is anticipated that future legislation will be required to deal on a more permanent basis with the underlying causes of the current situation. [66GA, ch 239,§1]

519A.2 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Association"* means the joint underwriting association established pursuant to this section and sections 519A.3 to 519A.13.

2. *"Commissioner"* means the commissioner of insurance or a designee.

3. *"Medical malpractice insurance"* means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any licensed health care provider.

4. *"Net direct premiums"* means gross direct premiums written on liability insurance as reported in the annual statements filed by the insurers with the commissioner, including the liability component of multiple peril package policies as computed by the commissioner, less return premiums for the unused or unabsorbed portions of premium deposits.

5. *"Licensed health care provider"* means and includes a physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatrist, optometrist, pharmacist, chiropractor or nurse licensed pursuant to chapter 147, and a hospital licensed pursuant to chapter 135B. [66GA, ch 239,§2]

Referred to in §§519A.1, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.3 Temporary joint underwriting association.

1. A temporary joint underwriting association is created, consisting of all insurers authorized to write and engaged in writing on a direct basis within this state liability insurance, including insurers covering such peril in multiple peril policies. Every such insurer

shall be a member of the association and shall remain a member as a condition of its authority to continue to write liability insurance in this state.

2. The purpose of the association shall be to provide, for a period not exceeding two years, a market for medical malpractice insurance on a self-supporting basis without subsidy from its members.

3. The association shall not commence underwriting operations for health care providers until the commissioner, after notice and opportunity for hearing, has determined that medical malpractice insurance is not available at a reasonable cost for a specific type of licensed health care provider in the voluntary market. Upon such determination the association shall be authorized to issue policies of medical malpractice insurance for such specific type of health care provider but need not be the exclusive agency through which such insurance may be written on a primary basis in this state.

If the commissioner determines at any time that medical malpractice insurance can be made available in the voluntary market at a reasonable price for any specific type of licensed health care provider, the association shall thereby cease underwriting medical malpractice insurance for that type of licensed health care provider.

4. The association shall, subject to the terms and conditions of sections 519A.2 to 519A.13, have and exercise the following powers on behalf of its members:

a. To issue, or to cause to be issued, policies of insurance to applicants, including incidental coverages and subject to limits as specified in the plan of operation but not to exceed one million dollars for each claimant under one policy and three million dollars for all claimants under one policy in any one year.

b. To underwrite such insurance and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions.

c. To assume reinsurance from its members.

d. To cede reinsurance. [66GA, ch 239,§3]

Referred to in §§519A.1, 519A.2, 519A.4, 519A.5, 519A.10, 519A.13

519A.4 Plan of operation.

1. The association shall submit a plan of operation to the commissioner, together with any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association consistent with sections 519A.2 to 519A.13. The plan of operation and any amendments thereto shall become effective only after promulgation of the plan or amendment by the commissioner as a rule pursuant to section 17A.4: Provided that the initial plan may in the discretion of the commissioner become effective immediately upon filing with the secretary of state pursuant to section 17A.5, subsection 2, paragrah "*b*", subparagraph (1).

If the association fails to submit a suitable plan of operation within twenty-five days following the effective date of this chapter or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall adopt rules necessary to effectuate sections 519A.2 to 519A.13. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

2. The plan of operation shall provide for economic, fair and nondiscriminatory administration, and for the prompt and efficient provision of medical malpractice insurance. The plan shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers or other servicing arrangements and procedures for determining amounts of insurance to be provided by the association.

3. All member insurers shall comply with the plan of operation. [66GA, ch 239,§4]

Referred to in §§519A.1, 519A.2, 519A.3, 519A.5, 519A.10, 519A.13

519A.5 Policy forms and rates.

1. The rates, rating plans, rating classifications, and policy forms and endorsements applicable to insurance written by the association and the statistical and experience data relating thereto shall be subject to sections 519A.2 to 159A.13 and to the provisions of the general insurance code which are not inconsistent with the purposes and provisions of this chapter.

2. All policies issued by the association shall provide for a continuous period of coverage beginning with their respective effective dates and terminating automatically at 12:01 a.m. on July 1, 1977, unless sooner terminated in accordance with sections 519A.2 to 519A.13, or unless terminated because of failure of the policyholder to pay any premium or stabilization reserve fund charge or portion of either when due. All policies shall be issued subject to the group retrospective rating plan and the stabilization reserve fund authorized by this chapter. No policy form shall be used by the association unless it has been filed with and approved by the commissioner.

3. The commissioner shall specify whether policy forms and the rate structure shall be on a "claims-made" or "occurrence" basis and coverage shall be provided by the association only on the basis specified by the commissioner. The commissioner shall specify the "claims-made" basis only if the contract makes provision for residual "occurrence" cover-

age upon the retirement, death, disability or removal from this state of the insured. Provision may be made for a premium charge allocable to any such residual "occurrence" coverage and such premium charges for such residual coverage shall be segregated and separately maintained for such purpose which may include the reinsurance of all or a part of that portion of the risk.

4. The rates, rating plans, rating rules, and rating classifications applicable to the insurance written by the association shall be on an actuarially sound basis, giving due consideration to the group retrospective rating plan and the stabilization reserve fund, and shall be calculated to be self-supporting.

5. All policies issued by the association shall be subject to a nonprofit group retrospective rating plan to be approved by the commissioner under which the final premium for all policyholders of the association, as a group, will be equal to the administrative expenses, loss and loss adjustment expenses and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders shall be given full credit for all investment income, net of expenses and a reasonable management fee, on policyholder supplied funds. The standard premium, before retrospective adjustment, for each policy issued by the association shall be established for portions of the policy period coinciding with the association's fiscal year on the basis of the association's rates, rating plans, rating rules, and rating classifications then in effect. The maximum final premium for all policyholders of the association, as a group, shall be limited as provided in section 519A.6, subsection 5. Since the business of the association is subject to the nonprofit group retrospective rating plan required by this subsection, there shall be a presumption that the rates filed and premiums imposed by the association are not unreasonable or excessive.

6. The association shall certify to the commissioner the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted in payment of the maximum final premium for all policyholders of the association. Within sixty days after that certification the commissioner shall authorize the members of the association to commence recoupment of their respective shares of the deficit by deducting their share of the deficit from past or future premium taxes due the state of Iowa. The association shall amend the amount of its certification of deficit to the commissioner as the values of its incurred losses become finalized and the members of the association shall amend their recoupment procedure accordingly.

7. In the event that sufficient funds are not available for the sound financial operation of the association, all members shall contribute to the financial requirements of the association in the manner provided for in section 519A.8. Any contribution shall be reimbursed to the members by recoupment as provided in subsection 6. [66GA, ch 239,§5]

Referred to in §§519A.1, 519A.2, 519A.3, 519A.4, 519A.10, 519A.13

519A.6 Stabilization reserve fund.

1. There is created a stabilization reserve fund. The fund shall be administered by three directors, one of whom shall be the commissioner. The remaining two directors shall be appointed by the commissioner: One shall be a representative of the association and the other a representative of its policyholders.

2. The directors shall act by majority vote with two directors constituting a quorum for the transaction of any business or the exercise of any power of the fund. The directors shall serve without salary, but each director other than the commissioner shall be reimbursed for actual and necessary expenses incurred in the performance of official duties as a director. The directors shall not be subject to any personal liability with respect to the administration of the fund for acts or decisions made in good faith pursuant to the provisions of this chapter.

3. Each policyholder shall pay to the association a stabilization reserve fund charge determined by the directors which shall not exceed the amount of one annual premium due for insurance through the association. Such charge shall be separately stated in the policy. The association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge.

4. The association shall promptly pay to the fund all stabilization reserve fund charges which it collects from its policyholders and any retrospective premium refunds payable under any group retrospective rating plan approved by the commissioner under the provisions of this chapter.

5. All moneys received by the fund shall be held in trust by a corporate trustee selected by the directors. The corporate trustee may invest the moneys held in trust, subject to the approval of the directors. All investment income shall be credited to the fund, and all expenses of administration of the fund shall be charged against the fund. The moneys held in trust shall be used solely for the purpose of discharging when due any retrospective premium charges payable by policyholders of the association under the group retrospective rating plan approved by the commissioner. Payment of retrospective premium charges shall be made by the directors upon certification to them by the association of the amount due. If all moneys accruing to the fund are finally exhausted in payment of retrospective premium charges, all liability and obligations of the association's policyholders with respect to the payment of retrospective premium charges shall there-

upon terminate and shall be conclusively presumed to have been discharged. Any moneys remaining in the fund after all such retrospective premium charges have been paid shall be returned to policyholders pursuant to procedures authorized by the directors. [66GA, ch 239,§6]

Referred to in §§519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.7 Procedures.

1. Upon a finding by the commissioner, after notice and opportunity for hearing, that medical malpractice insurance is not available at a reasonable cost for a specific type of licensed health care provider in the voluntary market and upon notification of that finding to the association, any licensed health care provider of the type specified in the commissioner's finding shall be entitled to apply to the association for medical malpractice insurance coverage. The application may be made on behalf of a licensed health care provider by an authorized agent.

2. If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation, then the association, upon receipt of the premium or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of medical malpractice insurance. [66GA, ch 239,§7]

Referred to in §§519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.8 Participation. All members of the association shall participate in its writings, expenses, servicing allowance, management fees and losses in the proportion that the net direct premiums of each member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association. Each member's proportion shall be determined annually on the basis of the annual statements and other reports filed by the insurer with the commissioner. [66GA, ch 239,§8]

Referred to in §§519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.9 Governing board.

1. The association shall be governed by a board of eleven directors of whom three shall be appointed annually by the commissioner to represent the licensed health care providers. Eight members shall be elected annually, except as provided in subsection 2, by the members of the association. Vacancies on the board shall be filled for the remaining period of the term by majority vote of the remaining directors subject to approval of the commissioner.

2. Within fifteen days after July 1, 1975 the commissioner shall designate a time and place for a meeting of the members of the association at which the eight elected members serving on the first board shall be elected. The commissioner shall appoint the appointive members of the board on or before the date of such meeting.

The commissioner may, prior to the first meeting of the members of the association, appoint an interim governing board of the association consisting of eight member insurers and three representatives of the licensed health care providers. The eight member insurers of that interim governing board shall serve until their successors are elected by the members of the association. In appointing members of the association to the interim governing board, the commissioner shall consider among other things whether all member insurers are fairly represented. [66GA, ch 239,§9]

Referred to in §§519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.10 Appeals and judicial review.

1. Any applicant or any person insured pursuant to section 519A.7, or a legal representative, or any affected insurer, may appeal to the commissioner within thirty days after any ruling, action or decision by or on behalf of the association, with respect to those items the plan of operation defines as appealable matters.

2. All orders of the commissioner made pursuant to sections 519A.2 to 519A.13 shall be subject to judicial review as provided in the Iowa administrative procedure Act. [66GA, ch 239,§10]

Referred to in §§519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.11 Annual statements. The association shall file in the office of the commissioner on or before the first day of March each year, a statement as prescribed by the commissioner. The statement shall contain matters and information required by the commissioner including, but not limited to, information with respect to its transactions, condition, operations and affairs during the preceding year, and shall be in a form approved by the commissioner. The commissioner may, at any time, require the association to furnish additional information with respect to matters considered to be material to the scope, operation and experience of the association. [66GA, ch 239,§11]

Referred to in §§519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.12 Examinations. The commissioner shall make an examination of the association at least annually. The expenses of each examination shall be paid by the association. [66GA, ch 239,§12]

Referred to in §§519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

519A.13 Privileged communications. There shall be no liability on the part of, and no cause of action of any nature shall arise against the association, the commissioner, or

any other person or organization, for any statements made in good faith by any of them in any report or communication concerning risks insured or to be insured by the association, or during any proceedings within the scope of sections 519A.2 to 519A.12 and this section. [66GA, ch 239,§13]

Referred to in §§519A.1, 519A.2, 519A.3, 519A.4, 519A.5, 519A.10, 519A.13

CHAPTER 520

RECIPROCAL OR INTERINSURANCE CONTRACTS

Referred to in §§507.1, 509.5, 514A.1, 515.58, 515B.1, 515B.2, 518A.29, 521.1, 521A.1(5), 521A.2(3, c)

520.1 Authorization.
520.2 Execution of contract.
520.3 Office of attorney—foreign office.
520.4 Preliminary declaration.
520.5 Actions—venue—commissioner as process agent.
520.6 Manner of service.
520.7 Judgment—satisfaction.
520.8 Reports—limitations on risks.
520.9 Standard of solvency.
520.10 Annual report—examination.
520.11 Implied powers of corporations.
520.12 Certificate of authority.
520.13 Fidelity or surety bonds executed.
520.14 Violations—exceptions.
520.15 Refusal or revocation of certificate.
520.16 Bonds.
520.17 Additional security—refusal.
520.18 Foreign attorney—bonds.
520.19 Annual tax—fees.
520.20 Form of policy—construction.
520.21 Reinsurance.
520.22 Laws applicable.
520.23 Deposit of securities by reciprocal or interinsurance exchanges.

520.1 Authorization. Individuals, partnerships, and corporations, including independent school districts and municipal corporations, of this state, hereby designated subscribers, are hereby authorized to exchange reciprocal or interinsurance contracts with each other, and with individuals, partnerships, and corporations of other states, territories, districts, and countries, providing insurance among themselves from any loss which may be insured against under the law, except life insurance. [C24, 27, 31, 35, 39,§9083; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.1]

520.2 Execution of contract. Such contracts may be executed by an attorney, agent, or other representative herein designated attorney, duly authorized and acting for such subscribers under powers of attorney, and such attorney may be a corporation. Such attorney shall have the power and authority to execute any and all instruments, papers, and documents incident to and a part of the business of the reciprocal or interinsurance exchange, including deeds for the conveyance of real estate, and acquisition and sale of securities. Such attorney shall have the power and authority to do all things necessary and incident to the management and operation of such business. The certificate of the commissioner of insurance certifying the name of the attorney for any reciprocal or interinsurance exchange shall be sufficient proof of the authority of any such attorney. [C24, 27, 31, 35, 39,§9084; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.2]

37GA, ch 180,§2, editorially divided

520.3 Office of attorney—foreign office. The principal office of such attorney shall be maintained at such place as is designated by the subscribers in the power of attorney; provided that, where the principal office of such attorney is located in another state, the commissioner of insurance shall not issue a certificate of authority, or license, as provided in this chapter unless such attorney shall hold a license or certificate of authority from the insurance department of such other state. [C24, 27, 31, 35, 39,§9085; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.3]

520.4 Preliminary declaration. Such subscribers so contracting among themselves, shall, through their attorney, file with the commissioner of insurance a declaration verified by the oath of such attorney, or, where such attorney is a corporation, by the oath of the duly authorized officers thereof, setting forth:

1. The name of the attorney and the name or designation under which such contracts are issued, which name or designation shall not be so similar to any name or designation adopted by any attorney or by any insurance organization in the United States prior to the adoption of such name or designation by the attorney, as to confuse or deceive.

2. The location of the principal office.

3. The kind or kinds of insurance to be effected.

4. A copy of each form of policy, contract, or agreement under or by which insurance is to be effected.

5. A copy of the form of power of attorney under which such insurance is to be effected.

6. That applications have been made for indemnity or insurance upon at least one hun-

dred separate risks aggregating not less than one and one-half million dollars represented by executed contracts or bona fide applications to become concurrently effective; or in case of employers liability or workers' compensation insurance, covering a total payroll of not less than two and one-half million dollars.

7. That there is in the possession of such attorney and available for the payment of losses, assets amounting to not less than three hundred thousand dollars.

Referred to in §520.9

8. A financial statement under oath in form prescribed for the annual statement.

9. The instrument authorizing service of process as provided for in this chapter.

10. Certificate showing deposit of funds. [C24, 27, 31, 35, 39,§9086; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.4; 66GA, ch 1084,§43]

Referred to in §§520.5, 520.9, 520.18

520.5 Actions — venue — commissioner as process agent. Concurrently with the filing of the declaration provided for by the terms of section 520.4, the attorney shall file with the commissioner of insurance, an instrument in writing executed by him for said subscribers, conditioned that, upon the issuance of certificate of authority provided for in this chapter, action may be brought in the county in which the property or person insured thereunder is located, and that service of process shall be had upon the commissioner of insurance or upon the attorney in fact in all suits in this state, whether arising out of such policies, contracts, agreements or otherwise, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. All suits of every kind and description brought against such reciprocal exchange or the subscribers thereto on account of their connection therewith, must be brought against the attorney in fact therefor or the exchange as such, and shall not be brought against any of the subscribers thereto individually on account of their connection with or membership in such reciprocal exchange, and must be brought in the manner and method above provided. [C24, 27, 31, 35, 39,§9087; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.5]

37GA, ch 180,§4, editorially divided

Similar provisions, §§491.15, 494.2, 511.27, 512.22, 515.73, 534.53

520.6 Manner of service. Three copies of such process shall be served and the commissioner of insurance shall file one copy, forward one copy to said attorney, and return one copy with his admission of service. [C24, 27, 31, 35, 39,§9088; C46, 50, 54, 58, 62, 66, 71, 73, 75, §520.6]

520.7 Judgment—satisfaction. A judgment rendered in any such case where service of process has been so had upon the commissioner of insurance, shall be valid and binding against any and all such subscribers as their interests appear and such judgment may be satisfied out of the funds in the possession of the attorney belonging to such subscribers. [C24, 27, 31, 35, 39,§9089; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.7]

520.8 Reports—limitations on risks. There shall be filed with the commissioner of insurance by such attorney whenever the commissioner of insurance shall so require, a statement under oath of such attorney showing the maximum amount of indemnity upon a single risk, and, except as to workers' compensation insurance, no subscriber shall assume on any single risk an amount greater than ten percent of the net worth of such subscriber. [C24, 27, 31, 35, 39,§9090; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.8; 66GA, ch 1084,§43]

520.9 Standard of solvency. There shall at all times be maintained as assets a sum in cash, or in securities of the kind designated by the laws of the state where the principal office is located for the investment of funds of insurance companies, equal to one hundred percent of the net unearned premiums or deposits collected and credited to the account of subscribers, or assets equal to fifty percent of the net annual deposits collected and credited to the account of subscribers on policies having one year or less to run and pro rata on those for longer periods; in addition to which there shall be maintained in cash, or in such securities, assets sufficient to discharge all liabilities on all outstanding losses arising under policies issued, the same to be calculated in accordance with the laws of the state relating to similar reserves for companies insuring similar risks; provided that where the assets on hand available for the payment of losses other than determined losses, shall not equal three hundred thousand dollars, all liability for each determined loss or claim deferred for more than one year, shall be provided for by a special deposit in a trust company or bank having fiduciary powers of the state in which the principal office is located, to be used in payment of compensation benefits for disability; such deposit to be a trust fund and applicable only to the purposes stated, or such liability may be reinsured in authorized companies with a surplus of at least three hundred thousand dollars. For the purpose of said reserves, net deposits shall be construed to mean the advance payments of subscribers after deducting therefrom the amount specifically provided in the subscribers' agreements for expenses. If at any time the assets so held in cash or such securities shall be less than required above, or less than three hundred thousand dollars, the subscribers or their attorney for them shall make up the deficiency within thirty days after notice from the commissioner of insurance so to do. In computing the assets required by this section, the amount specified in subsection 7, section 520.4, shall be included. [C24, 27, 31, 35, 39,§9091; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.9]

520.10 Annual report — examination. Such attorney shall, within the time limited for filing the annual statement by insurance companies transacting the same kind of business, make a report, under oath, to the commissioner of insurance for each calendar year, showing the financial condition of affairs at the office where such contracts are issued and shall, at any and all times, furnish such additional information and reports as may be required; provided, however, that the attorney shall not be required to furnish the names and addresses of any subscribers except in case of an unpaid final judgment. The business affairs, records, and assets of any such organization shall be subject to examination by the commissioner of insurance at any reasonable time, and such examination shall be at the expense of the organization examined. [C24, 27, 31, 35, 39,§**9092**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.10]

520.11 Implied powers of corporations. Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and as fully granted as the rights and powers expressly conferred. [C24, 27, 31, 35, 39,§**9093**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.11]

520.12 Certificate of authority. Upon compliance with the requirements of this chapter, the commissioner of insurance shall issue a certificate of authority or a license to the attorney, authorizing him to make such contracts of insurance, which license shall specify the kind or kinds of insurance and shall contain the name of the attorney, the location of the principal office and the name or designation under which such contracts of insurance are issued. Such license shall be renewed annually upon a showing that the standard of solvency required herein has been maintained, and that all fees and taxes required have been paid. [C24, 27, 31, 35, 39,§**9094**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.12]

520.13 Fidelity or surety bonds executed. Fidelity or surety bonds executed by a reciprocal or interinsurance exchange pursuant to authority given by the commissioner of insurance shall be received and accepted as company or corporate bonds, provided, however, that such reciprocal companies before being permitted to qualify for writing fidelity or surety bonds shall be required to maintain a surplus of three hundred thousand dollars. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.13]

520.14 Violations—exceptions. Any attorney who shall exchange any contracts of insurance of the kind and character specified in this chapter, or any attorney or representative of such attorney, who shall solicit or negotiate any applications for the same without the attorney having first complied with the foregoing provisions, shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars. For the purpose of organization and upon issuance of permit by the commissioner of insurance, powers of attorney and applications for such contracts may be solicited without compliance with the provisions of this chapter, but no attorney, agent, or other person shall make any such contracts of indemnity until all of the provisions of this chapter shall have been complied with. [C24, 27, 31, 35, 39,§**9095**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.14]

520.15 Refusal or revocation of certificate. In addition to the foregoing penalties and where not otherwise provided, the penalty for failure or refusal to comply with any of the terms and provisions of this chapter, upon the part of the attorney, shall be the refusal, suspension, or revocation of certificate of authority or license by the commissioner of insurance and the public announcement of his act, after due notice and opportunity for hearing has been given such attorney so that he may appear and show cause why such action should not be taken. [C24, 27, 31, 35, 39,§**9096**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.15]

520.16 Bonds. Where the principal office of the attorney in fact is located in this state the attorney shall give a fidelity bond to the subscribers thereof, personal or surety, in such sum as the commissioner of insurance shall deem sufficient, no less, however, than ten thousand dollars, which bond shall be approved by and deposited with the commissioner of insurance. [C24, 27, 31, 35, 39,§**9097**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.16]

37GA, ch 180,§12, editorially divided

520.17 Additional security—refusal. Should the commissioner of insurance consider the surety on said bond, or the amount thereof, insufficient, he may require additional security or an increase in the amount of the bond. If such additional security or increase be not furnished within thirty days after notice to furnish the same, the commissioner of insurance may revoke the certificate of authority. [C24, 27, 31, 35, 39,§**9098**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.17]

520.18 Foreign attorney—bonds. Where the principal office of the attorney is located in another state, there shall be filed with the commissioner of insurance, in connection with the declaration, provided for by section 520.4, certified copies of all such bonds given by such attorney as security for the funds of subscribers. [C24, 27, 31, 35, 39,§**9099**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.18]

520.19 Annual tax—fees. In lieu of all other taxes, licenses, charges, and fees whatsoever,

such attorney shall pay annually to the director of the department of revenue, or a depository designated by him, on account of the transaction of such business in this state, the same fees as are paid by mutual companies transacting the same kind of business, and an annual tax of two percent, if a domestic reciprocal organization, and two percent, if a foreign reciprocal organization, calculated upon the gross premiums or deposits collected from subscribers in this state during the preceding calendar year, after deducting therefrom returns, or cancellations, and all amounts returned to subscribers or credited to their accounts as savings, and the amount returned upon canceled policies and rejected applications covering property situated or on business done within this state. [C24, 27, 31, 35, 39,§**9100**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.19]

520.20 Form of policy — construction. The attorney may insert in any form of policy prescribed by the laws of this state any provisions or conditions required by the plan of reciprocal or interinsurance, provided the same shall not be inconsistent with or in conflict with any law of this state. Such policy, in lieu of conforming to the language and form prescribed by such law, shall be held to conform thereto in substance if such policy includes a provision or endorsement reciting that the policy shall be construed as if in the language and form prescribed by such law. Any such policy or endorsement shall first be filed with and approved by the commissioner of insurance. [C24, 27, 31, 35, 39,§**9101**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.20]

520.21 Reinsurance. Such attorney shall not effect any reinsurance on risks in this state unless the insurance carrier granting such reinsurance shall be licensed in this state. [C24, 27, 31, 35, 39,§**9102**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.21]

520.22 Laws applicable. Except as provided in this chapter, the making of contracts as herein provided for and such other matters as are properly incident thereto, shall not be subject to the laws of this state relating to insurance, unless they are therein specifically mentioned. [C24, 27, 31, 35, 39,§**9103**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.22]

520.23 Deposit of securities by reciprocal or interinsurance exchanges. If the commissioner of insurance or chief insurance officer of any other state or territory of the United States, claiming to proceed under existing or future laws of any such state or territory, shall require reciprocal or interinsurance exchanges of this state or the agents thereof to make any deposit of securities in such other state or territory for the protection of policyholders or otherwise or to make payment of taxes, fines, penalties, certificates of authority, license fees or otherwise or subject them to any restrictions, obligations, conditions, or penalties, greater than are required or imposed by the laws of the state of Iowa relating to reciprocal or interinsurance exchanges, from such exchanges of such other states or territories by the then existing laws of this state, then and in every such case all such reciprocal or interinsurance exchanges of such other states or territories shall be and they are hereby required to make like deposits for like purposes with the insurance department of this state and to pay to the commissioner of insurance taxes, fines, penalties, certificates of authority, license fees and otherwise in an amount equal to the amount of such charges and payments, and shall be subjected to the same restrictions, obligations, conditions, or penalties imposed by the commissioner of insurance or chief insurance officer of such other states under and by virtue of law, upon reciprocal or interinsurance exchanges of this state and the agents thereof. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§520.23]

CHAPTER 521

CONSOLIDATION AND REINSURANCE

Securities to be deposited by foreign companies, §§508.20–508.22, 515.70–515.72

521.1 "Company" defined.
521.2 Life companies—consolidation and reinsurance.
521.3 Submission of plan.
521.4 Procedure—notice.
521.5 Commission to hear petition.
521.6 Examination.
521.7 Appearance by policyholders.
521.8 Authorization.
521.9 Unanimous decision required.
521.10 Election called.
521.11 Approval and filing with commissioner.
521.12 Companies other than life—approval of plan.
521.13 Consolidation prohibited—exception.
521.14 Expenses—how paid.
521.15 Violations.

521.1 "Company" defined. The word "company" or "companies" when used in this chapter shall mean any company or association organized under the provisions of chapters 508, 510, 511, 515, 518A, or 520, except county mutuals. [S13,§1821-m; C24, 27, 31, 35, 39,§**9104**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§521.1]

Referred to in §§521.2, 521.13, 521.15

521.2 Life companies—consolidation and reinsurance. No company organized under the laws of this state to do the business of life insurance, either on the stock, mutual, stipulated premium, or assessment plan, shall consolidate with any other company or reinsure its risks, or any part thereof, with any other company, or assume or reinsure the whole or any part of the risks of any other company, except as hereinafter provided; provided that nothing contained in this chapter shall prevent any company, as defined in section 521.1, from reinsuring a fractional part of any single risk. [S13,§1821-n; C24, 27, 31, 35, 39,§9105; C46, 50, 54, 58, 62, 66, 71, 73, 75,§521.2]

Referred to in §§521.12, 521.15

521.3 Submission of plan. When any such company shall propose to consolidate or enter into any reinsurance contract with any other company, it shall present its plan to the commissioner of insurance, setting forth the terms of its proposed contract of consolidation or reinsurance, asking for the approval or any modification thereof, which the commission hereinafter provided for may approve. The company must also file a statement of its assets and if a legal reserve company, of the reserve value of its policies or contracts. [S13, §1821-o; C24, 27, 31, 35, 39,§9106; C46, 50, 54, 58, 62, 66, 71, 73, 75,§521.3]

Referred to in §521.15

521.4 Procedure—notice. The commission shall proceed to hear and determine such petition, without notice. If the commission shall deem it necessary in order to conserve the interests of the policyholders that notice shall be given, it shall require the company or companies to notify, by mail, all of the members or policyholders of the said company or companies of the pendency of such petition, and the time and place at which the same will be heard, the length of time of such notice to be determined by the commission. [S13,§1821-p; C24, 27, 31, 35, 39,§9107; C46, 50, 54, 58, 62, 66, 71, 73, 75,§521.4]

Referred to in §521.15

521.5 Commission to hear petition. For the purpose of hearing and determining such petition, a commission consisting of the governor, commissioner of insurance, and attorney general is hereby created. In the inability of the governor to act, the secretary of state may act in his stead. [S13,§1821-q; C24, 27, 31, 35, 39, §9108; C46, 50, 54, 58, 62, 66, 71, 73, 75,§521.5]

Referred to in §521.15
S13,§1821-q, editorially divided

521.6 Examination. The commission may make such examination into the affairs and condition of any company or companies as it may deem proper, and shall have power to summon and compel the attendance and testimony of witnesses, and the production of books and papers before said commission and may administer oaths. [S13,§1821-q; C24, 27, 31, 35, 39,§9109; C46, 50, 54, 58, 62, 66, 71, 73, 75, §521.6]

Referred to in §521.15

521.7 Appearance by policyholders. When notice shall have been given as above provided, any policyholder, or stockholder of said company or companies shall have the right to appear before said commission and be heard with reference to said petition. [S13,§1821-q; C24, 27, 31, 35, 39,§9110; C46, 50, 54, 58, 62, 66, 71, 73, 75,§521.7]

Referred to in §521.15

521.8 Authorization. Said commission, if satisfied that the interests of the policyholders of said company or companies are properly protected and no reasonable objection to said petition exists, may authorize the proposed consolidation or reinsurance or may direct such modification thereof as may seem to it best for the interests of the policyholders; and said commission may make such order and disposition of the assets of any such company thereafter remaining as shall be just and equitable. [S13,§1821-q; C24, 27, 31, 35, 39,§9111; C46, 50, 54, 58, 62, 66, 71, 73, 75,§521.8]

Referred to in §521.15

521.9 Unanimous decision required. Such consolidation or reinsurance shall only be approved by the consent of all of the members of said commission, and it shall be the duty of said commission to guard the interests of the policyholders of any such company or companies proposing consolidation or reinsurance. [S13,§1821-q; C24, 27, 31, 35, 39,§9112; C46, 50, 54, 58, 62, 66, 71, 73, 75,§521.9]

Referred to in §521.15

521.10 Election called. In case of companies organized on the assessment plan, the commission may require the plan of consolidation or reinsurance to be submitted to the membership of such company or companies to be voted upon. When submitted, it shall be at a meeting called for that purpose, thirty days' notice being given, and a two-thirds vote of all the members present and voting shall be necessary to an approval of any plan of consolidation or reinsurance, and no proxies shall, in any case, be voted. [S13,§1821-q; C24, 27, 31, 35, 39,§9113; C46, 50, 54, 58, 62, 66, 71, 73, 75,§521.10]

Referred to in §521.15

521.11 Approval and filing with commissioner. Any plan of consolidation or reinsurance submitted as herein contemplated, must first have been approved by the commission, and the result of said vote must be filed with the commissioner of insurance and be by him determined before any consolidation or reinsurance shall be effected. [S13,§1821-q; C24, 27, 31, 35, 39,§9114; C46, 50, 54, 58, 62, 66, 71, 73, 75,§521.11]

Referred to in §521.15

521.12 Companies other than life—approval of plan. When any company or companies not named in section 521.2 desire to consolidate or

reinsure, it shall only be necessary for such company or companies to submit the plan of consolidation or reinsurance with any other information that may be required, to the commissioner of insurance and the attorney general and have the same by them approved. [S13,§1821-r; C24, 27, 31, 35, 39,§**9115**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§521.12]

Referred to in §521.15

521.13 Consolidation prohibited—exception. No company or companies as described in section 521.1 shall consolidate or reinsure except insofar as provided by section 515.49 with any other company or companies not authorized to transact business in this state. [S13,§1821-s; C24, 27, 31, 35, 39,§**9116**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§521.13]

Referred to in §521.15

521.14 Expenses—how paid. All expenses and costs incident to proceedings under the provisions of this chapter, shall be paid by the company or companies bringing the petition. [S13,§1821-t; C24, 27, 31, 35, 39,§**9117**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§521.14]

521.15 Violations. Any officer, director or stockholder of any company or companies, as defined in section 521.1, violating or consenting to the violation of any of the provisions of sections 521.2 to 521.13 shall be punished by a fine of not less than one thousand dollars, or by imprisonment in the county jail for not less than one year, or by both such fine and imprisonment in the discretion of the court. [S13, §1821-u; C24, 27, 31, 35, 39,§**9118**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§521.15]

CHAPTER 521A

INSURANCE HOLDING COMPANY SYSTEMS

521A.1 Definitions.
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521A.1 Definitions. For the purpose of this chapter, unless the context otherwise requires:

1. Affiliate of, or a person affiliated with, a specific person, shall mean a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

2. The term "commissioner" shall mean the insurance commissioner, his deputies, or the insurance department, as appropriate.

3. Control, including controlling, controlled by, and under common control with, shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or a corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not exist in fact.

4. Insurance holding company system shall consist of two or more affiliated persons, one or more of which is an insurer.

5. Insurer shall mean a company qualified and licensed by the insurance department of Iowa to transact the business of insurance in this state by certificate issued pursuant to chapters 508, 515, 518A, and 520, except that it shall not include:

a. Agencies, authorities or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

b. Fraternal benefit societies.

c. Nonprofit medical, hospital or dental service associations.

6. A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

7. A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

8. A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

9. The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security. [C71, 73, 75,§521A.1]

521A.2 Subsidiaries of insurers.

1. *Authorization.* Any domestic insurer, either by itself or in co-operation with one or more persons, subject to the limitations set forth herein or elsewhere in this chapter, may organize or acquire one or more subsidiaries engaged or registered to engage in one or more of the following businesses or activities:

a. Any kind of insurance business authorized by the jurisdiction in which it is incorporated.

b. Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries or intermediate insurer subsidiaries.

c. Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.

d. Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.

e. Acting as a broker dealer subject to or registered pursuant to the Securities Exchange Act of 1934 as amended.

f. Rendering financial services or advice to individuals, governments, government agencies, corporations, or other organizations or groups.

g. Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services.

h. Ownership and management of assets which the parent corporation could itself own and manage.

i. Acting as administrative agent for a government instrumentality which is performing an insurance function.

j. Financing of insurance premiums, agents and other forms of consumer financing.

k. Any other business or service activity reasonably ancillary to an insurance business.

l. Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in paragraphs "*a*" to "*k*" inclusive.

2. *Exception.* Nothing contained in subsection 1 of this section shall prohibit a domestic insurer, either by itself or in co-operation with one or more persons, from investing amounts up to a total of ten percent of surplus in one or more subsidiaries or affiliates organized to do any lawful business.

3. *Additional investment authority.* In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this Title, a domestic insurer may also:

a. Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of such insurer's assets or fifty percent of such insurer's surplus as regards policyholders, provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments both of the following shall be included:

(1) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities.

(2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

b. If the insurer's total liabilities, as calculated for National Association of Insurance Commissioners annual statement purposes, are less than ten percent of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that after such investment the insurer's surplus as regards policyholders, considering such investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

c. Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph "*a*" of this subsection or in chapters 511, 515, 518A, and 520 applicable to the insurer. For the purpose of this paragraph, "total investment of the insurer" shall include both:

(1) Any direct investment by the insurer in an asset.

(2) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

d. With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after such investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

e. Invest any amount in the common stock, preferred stock, debt obligations, or other

securities of any subsidiary exclusively engaged in holding title to or holding title to and managing or developing real or personal property, if after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, and if following such investment all voting securities of such subsidiary would be owned by the insurer.

4. *Exemption from investment restrictions.* Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection 3 of this section hereof shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in the Code applicable to such investments of insurers.

5. *Qualification of investment—when determined.* Whether any investment pursuant to subsection 3 of this section meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made.

6. *Cessation of control.* If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of the Code, and the insurer has notified the commissioner thereof. [C71, 73, 75,§521A.2]

Referred to in §521A.5(2, *j*)

521A.3 Acquisition of control of or merger with domestic insurer.

1. *Filing requirements.* No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

For purposes of this section a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

Referred to in subsections 2–7

2. *Content of statement.* The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

a. The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection 1 of this section is to be effected, hereinafter called "acquiring party".

(1) If such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years.

(2) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (1) of this paragraph.

b. The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

c. Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.

d. Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

e. The number of shares of any security referred to in subsection 1 of this section which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection 1 of this section, and a statement as to the method by which the fairness of the proposal was arrived at.

f. The amount of each class of any security referred to in subsection 1 of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

g. A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection 1 of this section in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

h. A description of the purchase of any security referred to in subsection 1 of this section during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

i. A description of any recommendations to purchase any security referred to in subsection 1 of this section made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interview or at the suggestion of such acquiring party.

j. Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection 1 of this section, and, if distributed, of additional soliciting material relating thereto.

k. The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection 1 of this section for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

l. Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection 1 of this section is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by paragraphs "*a*" through "*l*" of this subsection shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection 1 of this section is a corporation, the commissioner may require that the information called for by paragraphs "*a*" through "*l*" of this subsection shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation. If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

Referred to in subsections 5, 7

3. *Alternative filing materials.* If any offer, request, invitation, agreement or acquisition referred to in subsection 1 of this section is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration, or disclosure, the person required to file the statement referred to in subsection 1 of this section may utilize such documents in furnishing the information called for by that statement.

4. *Approval by the commissioner—hearings.*

a. The commissioner shall approve any merger or other acquisition of control referred to in subsection 1 of this section unless, after a public hearing thereon, he finds any of the following:

(1) After the change of control the domestic insurer referred to in subsection 1 of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

(2) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein.

(3) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with such acquiring party.

(4) The terms of the offer, request, invitation, agreement or acquisition referred to in subsection 1 of this section are unfair and unreasonable to the securityholders of the insurer.

(5) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

(6) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

b. The public hearing referred to in paragraph "*a*" of this subsection shall be held within thirty days after the statement required by subsection 1 of this section is filed, and at least twenty days' notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The insurer shall give such notice to its securityholders. The commissioner shall make a determination within thirty days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

Referred to in subsection 5

5. *Mailings to shareholders—payment of expenses.* All statements, amendments, or other material filed pursuant to subsections 1 or 2 of this section, and all notices of public hearings held pursuant to subsection 4 of this section, shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

6. *Exemptions.* The provisions of this section shall not apply to:

a. Any offers, requests, invitations, agreements or acquisitions by the person referred to in subsection 1 of this section of any voting security referred to in subsection 1 of this section which, immediately prior to the consummation of such offer, request, invitation, agreement or acquisition, was not issued and outstanding.

b. Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom for one of the following reasons:

(1) It has not been made or entered into for the purpose and does not have the effect of changing or influencing the control of a domestic insurer.

(2) It is otherwise not comprehended within the purposes of this section.

7. *Violations.* The following shall be violations of this section:

a. The failure to file any statement, amendment, or other material required to be filed pursuant to subsection 1 or 2 of this section.

b. The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

8. *Jurisdiction—consent to service of process.* The district court is hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process, notice or demand in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process, notice or demand shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address. [C71, 73, 75,§521A.3]

Referred to in §521A.9(2)

521A.4 Registration of insurers.

1. *Registration.* Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

Referred to in subsection 7

2. *Information and form required.* Every insurer subject to registration shall file a registration statement on a form provided by the

commissioner, which shall contain current information about:

a. The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

b. The identity of every member of the insurance holding company system.

c. The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

(1) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

(2) Purchases, sales, or exchanges of assets.

(3) Transactions not in the ordinary course of business.

(4) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(5) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles.

(6) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company.

d. Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

Referred to in subsection 3

3. *Materiality.* No information need be disclosed on the registration statement filed pursuant to subsection 2 of this section if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one percent or less of an insurer's admitted assets as of the thirty-first day of December next preceding shall not be deemed material for purposes of this section.

4. *Amendments to registration statements.* Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen days after the end of the month in which it learns of each such change or addition, provided, however, that subject to subsection 3 of section 521A.5, each registered insurer shall so report all dividends and other distributions to shareholders within two business days following the declaration thereof.

5. *Termination of registration.* The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

6. *Consolidated filing.* The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

7. *Alternative registration.* The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection 1 of this section and to file all information and material required to be filed under this section.

8. *Exemptions.* The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

9. *Disclaimer.* Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and basis for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

10. *Violations.* The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section. [C71, 73, 75,§521A.4]

Referred to in §§521A.5(3), 521A.6(1), 521A.7

521A.5 Standards.

1. *Transactions with affiliates.* Material transactions by registered insurers with their affiliates shall be subject to all of the following standards:

a. The terms shall be fair and reasonable.

b. The books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions.

c. The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

2. *Adequacy of surplus.* For purposes of this chapter in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial

needs, the following factors, among others, shall be considered:

a. The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

b. The extent to which the insurer's business is diversified among the several lines of insurance.

c. The number and size of risks insured in each line of business.

d. The extent of the geographical dispersion of the insurer's insured risks.

e. The nature and extent of the insurer's reinsurance program.

f. The quality, diversification, and liquidity of the insurer's investment portfolio.

g. The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.

h. The surplus as regards policyholders maintained by other comparable insurers.

i. The adequacy of the insurer's reserves.

j. The quality and liquidity of investments in subsidiaries made pursuant to section 521A.2. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

3. *Dividends and other distributions.* No insurer subject to registration under section 521A.4 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until either thirty days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or the commissioner shall have approved such payment within such thirty-day period.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of either ten percent of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or the net gain from operations of such insurer, if such insurer is a life insurer or the net investment income if such insurer is not a life insurer, for the twelve-month period ending the thirty-first day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until either the commissioner has approved the payment of such dividend or distribution, or the commissioner has not disapproved such payment within the thirty-day period referred to above. [C71, 73, 75, §521A.5]

Referred to in §521A.4(4)

521A.6 Examination.

1. *Power of commissioner.* Subject to the limitation contained in this section and in addition to the powers which the commissioner has under chapter 507 relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under section 521A.4 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner shall have the power to examine such affiliates to obtain such information.

2. *Purpose and limitation of examination.* The commissioner shall exercise his power under subsection 1 of this section only if the examination of the insurer under chapter 507 is inadequate or the interests of the policyholders of such insurer may be adversely affected.

3. *Use of consultants.* The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection 1 of this section. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

4. *Expenses.* Each registered insurer producing for examination records, books and papers pursuant to subsection 1 of this section shall be liable for and shall pay the expense of such examination in accordance with section 507.7. [C71, 73, 75,§521A.6]

Referred to in §521A.7

521A.7 Confidential treatment. All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 521A.6 and all information reported pursuant to section 521A.4, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate. [C71, 73, 75, §521A.7]

521A.8 Rules. The commissioner may, upon notice and opportunity for all interested per-

sons to be heard, issue such rules and orders as shall be necessary to carry out the provisions of this chapter. [C71, 73, 75,§521A.8]

521A.9 Injunctions — prohibitions against voting securities—sequestration of voting securities.

1. *Injunctions.* Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this chapter or any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply to the district court of the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court of Polk county for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate this chapter or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

2. *Voting of securities—when prohibited.* No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the district court has so ordered. If any insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule, regulation or order issued by the commissioner hereunder the insurer or the commissioner may apply to the district court of Polk county or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section 521A.3 or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

3. *Sequestration of voting securities.* In any case where a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule, regulation or order issued by the commissioner hereunder, the district court of Polk county or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this chapter. Notwithstanding any other provisions of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state. [C71, 73, 75,§521A.9]

521A.10 Criminal proceedings. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this chapter, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court of Polk county against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this chapter may be fined not more than one hundred dollars. Any individual who willfully violates this chapter may be fined not more than one thousand dollars or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than two years or both. [C71, 73, 75,§521A.10]

521A.11 Receivership. Whenever it appears to the commissioner that any person has committed a violation of this chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed as provided in section 505.9 to take possession of the property of such domestic insurer and to conduct the business thereof. [C71, 73, 75, §521A.11]

521A.12 Revocation, suspension, or nonrenewal of insurer's license. Whenever it appears to the commissioner that any person has committed a violation of this chapter which makes the continued operation of an insurer contrary to the interest of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law. [C71, 73, 75,§521A.12]

521A.13 Judicial review. Judicial review of the actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act. [C71, 73, 75, §521A.13]

CHAPTER 522

LICENSING OF INSURANCE AGENTS

Referred to in §§508A.5, 512.33, 514B.19, 518.16

522.1 License required.
522.2 Term of license.
522.3 Issuance and revocation.
522.4 Fee.
522.5 Violations.

522.1 License required. No person shall directly or indirectly, act within this state as agent, or otherwise, in receiving or procuring applications for insurance, or in doing or transacting any kind of insurance business for any company or association unless exempt from the provisions of this chapter by reason of section 512.33, and except that the licensing of persons so acting for county mutuals shall be subject only to the provisions of section 518.16, until he has procured from the commissioner of insurance a license authorizing him to act for such company or association as agent. [S13, §1821-k; C24, 27, 31, 35, 39,§9119; C46, 50, 54, 58, 62, 66, 71, 73, 75,§522.1]

Referred to in §522.5
S13,§1821-k, editorially divided

522.2 Term of license. Said license shall terminate at the end of the insurance year for which such company or association is authorized to transact business. [S13,§1821-k; C24, 27, 31, 35, 39,§9120; C46, 50, 54, 58, 62, 66, 71, 73, 75,§522.2]

522.3 Issuance and revocation. The commissioner shall require of each first-time applicant such reasonable proof of character and competency with respect to the type and kind of insurance the applicant proposes to sell as will protect public interest, before issuing such license and may, for good cause, after hearing held within sixty days from the date of application, decline to issue such license. Any license, whether it be a first-time or renewal license, may be suspended or revoked by the commissioner for good cause, after hearing. The commissioner may issue a temporary license for a period of not to exceed six months and for such temporary license may waive the requirements established herein.

Nothing contained herein shall preclude the licensee from engaging in any other lawful business, occupation or profession. Nothing contained herein shall be applicable to duly licensed attorneys providing surety bonds incident to their practice or to persons selling transportation tickets of a common carrier of persons or property who shall act as such agents only as to transportation ticket policies of health and accident insurance or baggage insurance on personal effects.

The commissioner shall require of each first-time applicant an application fee of five dollars. [S13,§1821-k; C24, 27, 31, 35, 39,§9121; C46, 50, 54, 58, 62, 66, 71, 73, 75,§522.3]

522.4 Fee. The fee charged for such agent's license shall be, for agents for insurance other than life, two dollars fifty cents, and for life insurance agents, five dollars. The commissioner shall remit the fees collected to the treasurer of state for deposit in the general fund of the state. [S13,§1821-k; C24, 27, 31, 35, 39,§9122; C46, 50, 54, 58, 62, 66, 71, 73, 75,§522.4]

522.5 Violations. Any person acting as agent or otherwise representing any insurance company or association, in violation of the provisions of section 522.1, shall be liable to a fine of twenty-five dollars for each day he shall so act. [S13,§1821-l; C24, 27, 31, 35, 39,§9123; C46, 50, 54, 58, 62, 66, 71, 73, 75,§522.5]

CHAPTER 523

ELECTIONS, PROPORTIONATE REPRESENTATION AND INSIDER TRADING

523.1 Proxies authorized.
523.2 Conditions.
523.3 and 523.4 Repealed by 61GA, ch 402,§1.
523.5 Proportionate representation.
523.6 Amendment of articles.
523.7 Statement of stock ownership filed with commissioner.
523.8 Profit in trading stock to inure to company.
523.9 Penalty for selling stock not directly owned by seller.
523.10 Exceptions—rules by commissioner.
523.11 Arbitrage transactions excepted.
523.12 Equity security defined.
523.13 Exceptions as to domestic stock companies.
523.14 Rules.

523.1 Proxies authorized. Any insurance company or association organized under the laws of this state, may provide in its articles of incorporation, that its members or stockholders may vote by proxies, voluntarily given, upon all matters of business coming before the stated or called meetings of the stockholders or members, including the election of directors. [S13,§1821-x; C24, 27, 31, 35, 39,§**9124**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§523.1]

S13,§1821-x, editorially divided

523.2 Conditions. The commissioner of insurance shall promulgate such rules with respect to the solicitation and voting of proxies as will in his opinion best protect the interests of all stockholders or policyholders from whom they are solicited. Any violation of any rule promulgated hereunder shall be deemed a misdemeanor and punishable accordingly. [S13, §1821-x; C24, 27, 31, 35, 39,§**9125**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§523.2]

523.3 and 523.4 Repealed by 61GA, ch 402,§1.

523.5 Proportionate representation. The holder or holders, jointly or severally, of not less than one-fifth but less than a majority of the shares of the capital stock of corporations organized on the stock plan under the laws of this state for transacting the business of life or fire insurance, shall be entitled to nominate, to be elected, or appointed, as the case may be, directors or other persons performing the functions of directors by whom, according to the articles of incorporation of such corporations, its affairs are to be conducted. In the event such nomination shall be made, there shall be elected or appointed to the extent that the total number to be elected or appointed is divisible, such proportionate number from the persons so nominated as the shares of stock held by persons making such nominations bear to the whole number of shares issued; provided the holder or holders of the minority shares of stock shall only be entitled to one-fifth (disregarding fractions) of the total number of directors to be elected for each one-fifth of the entire capital stock of such corporation so held by them; and provided, further, that this section shall not be construed to prevent the holders of a majority of the stock of any such corporation from electing the majority of its directors. Vacancies occurring from time to time shall be filled so as to preserve and secure to such minority and majority stockholders proportionate representation as above provided. [S13,§1821-v; C24, 27, 31, 35, 39,§**9128**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§523.5]

Referred to in §523.6

523.6 Amendment of articles. All such existing corporations shall by amendment to their articles of incorporation, approved by the commissioner of insurance, provide for the nomination, election, or appointment of the directors or other persons by whom its affairs are to be conducted, in conformity with the provisions of section 523.5, and the articles of incorporation of all such corporations hereafter organized shall contain like provisions. [S13,§1821-w; C24, 27, 31, 35, 39,§**9129**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§523.6]

523.7 Statement of stock ownership filed with commissioner. Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner of insurance within ten days after he becomes such beneficial owner, director or officer a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month. [C66, 71, 73, 75,§523.7]

Referred to in §§523.11, 523.12, 523.13, 523.14

523.8 Profit in trading stock to inure to company. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchase or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section. [C66, 71, 73, 75,§523.8]

Referred to in §§523.10, 523.11, 523.12, 523.13, 523.14

523.9 Penalty for selling stock not directly owned by seller. It shall be unlawful for any

such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal does not own the security sold, or if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense. [C66, 71, 73, 75,§523.9]

Referred to in §§523.10, 523.11, 523.12, 523.13, 523.14

523.10 Exceptions—rules by commissioner. The provisions of section 523.8 shall not apply to any purchase and sale, or sale and purchase, and the provisions of section 523.9 shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market, (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market. [C66, 71, 73, 75,§523.10]

Referred to in §§523.11, 523.12, 523.14

523.11 Arbitrage transactions excepted. The provisions of sections 523.7, 523.8, and 523.9 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of sections 523.7 to 523.14. [C66, 71, 73, 75,§523.11]

Referred to in §§523.12, 523.14

523.12 Equity security defined. The term "equity security" when used in sections 523.7 to 523.14 means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security. [C66, 71, 73, 75,§523.12]

Referred to in §§523.11, 523.14

523.13 Exceptions as to domestic stock companies. The provisions of sections 523.7, 523.8 and 523.9 shall not apply to equity securities of a domestic stock insurance company if (1) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934 [48 Stat. L. 881; 15 U.S.C., §77b et seq.], as amended, or if (2) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of sections 523.7, 523.8 and 523.9 except for the provisions of this subsection 2. [C66, 71, 73, 75,§523.13]

Referred to in §§523.11, 523.12, 523.14

523.14 Rules. The commissioner shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him by sections 523.7 to 523.13, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters, within his jurisdiction. No provisions of sections 523.7, 523.8 and 523.9 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason. [C66, 71, 73, 75,§523.14]

Referred to in §§523.11, 523.12

CHAPTER 523A

PREARRANGED FUNERAL PLANS

523A.1 Trust fund established.
523A.2 Deposit of funds.
523A.3 Repealed by 63GA, ch 273,§1841.
523A.4 Penalty.

523A.1 Trust fund established. Whenever an agreement is made by any person, firm or corporation for the final disposition of a dead human body wherein delivery of personal property to be used under a prearranged funeral plan or the furnishing of professional services of a funeral director or embalmer in connection therewith, is not immediately required, eighty percent of all payments made under the agreement, including interest there-

on, shall be and remain trust funds until occurrence of the death of the person for whose benefit the funds were paid, unless said funds are sooner released to the person making such payment by mutual consent of the parties. [C54, 58, 62, 66, 71, 73, 75,§523A.1]

Referred to in §§523A.2, 523A.4

523A.2 Deposit of funds. All such trust funds shall be deposited in a bank or trust company authorized to transact business in this state within thirty days after the receipt thereof and shall be held in a separate account or in one common trust fund under a trust agreement in the name of the depositor in trust for the designated beneficiary until said trust fund is released under either of the conditions provided in section 523A.1. [C54, 58, 62, 66, 71, 73, 75,§523A.2]

Referred to in §523A.4

523A.3 Repealed by 63GA, ch 273,§1841.

523A.4 Penalty. Any person, firm or corporation, or any agent or representative thereof, who shall violate any of the provisions of sections 523A.1 and 523A.2, or who shall aid and abet in such violation, shall be deemed guilty of a misdemeanor. [C54, 58, 62, 66, 71, 73, 75,§523A.4]

Punishment, see §687.7

TITLE XXI

BANKS

Referred to in §491.39

CHAPTER 524

IOWA BANKING LAW

Chapter 524, Code 1966, repealed by 63GA, ch 273,§1842
Referred to in §§491.1, 496A.142(1), 504A.100(1), 527.2, 533.4, 534.19, 537.1301, 537.2301, 537.6105, 537.6201, 601A.9
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DIVISION I
GENERAL PROVISIONS

524.101 Short title. This chapter shall be known and may be cited as the Iowa Banking Act of 1969. [C71, 73, 75,§524.101]

524.102 Statement of intent. The general assembly declares as its purpose in adopting this chapter to provide for:

1. The safe and sound conduct of the business of banking.

2. The conservation of the assets of state banks.

3. The maintenance of public confidence in state banks.

4. The protection of the interests of depositors, creditors, shareholders and of the

interest of the public in a sound and strong banking system.

5. The opportunity for state banks to be competitive with each other and with banks existing under the laws of other states and the United States.

6. The opportunity for state banks to effectively serve the convenience and banking needs of their depositors, borrowers and other customers and to participate in and promote the economic progress of Iowa and of the United States.

7. The opportunity for the management of a state bank to exercise its business judgment, in conducting the affairs of the state bank, to the extent compatible with, and subject to the purposes of this chapter.

8. The delegation to the superintendent of adequate rule-making power and administrative discretion, in order that the supervision and regulation of state banks may be flexible and readily responsive to changes in economic conditions and changes in banking and fiduciary practices.

9. The simplification and modernization of the law governing the business of banking and the exercise of certain fiduciary powers. [C71, 73, 75,§524.102]

524.103 Definitions. As used in this chapter, unless the context otherwise requires, the term:

1. "*Account*" means any account with a state bank and includes a demand, time or savings deposit account or any account for the payment of money to a state bank.

2. "*Agreement for the payment of money*" means a monetary obligation, other than an obligation in the form of an evidence of indebtedness or an investment security; including, but not limited to, amounts payable on open book accounts receivable and executory contracts and rentals payable under leases of personal property.

3. "*Articles of incorporation*" means the original or restated articles of incorporation and all amendments thereto and includes articles of merger.

4. "*Assets*" means all the property and rights of every kind of a state bank.

5. "*Bank*" means any person engaged in the business of banking, authorized by law to receive deposits and subject to supervision by banking authorities of the United States or of any state.

6. "*Business of banking*" means the business generally done by banks.

7. "*Capital*" means the sum of the par value of the preferred and common shares of a state bank issued and outstanding.

8. "*Capital structure*" means the capital, surplus, and undivided profits of a state bank and shall include an amount equal to the sum of any capital notes and debentures issued and outstanding pursuant to section 524.404.

9. "*Customer*" means any person having an account with a state bank. For the purpose of this chapter, a government or governmental body or entity may be a customer.

10. "*Evidence of indebtedness*" means a note, draft or similar negotiable or nonnegotiable instrument.

11. "*Fiduciary*" means an executor, administrator, guardian, conservator, receiver, trustee or one acting in a similar capacity.

12. "*Insolvent*" means the inability of a state bank to pay its debts and obligations as they become due in the ordinary course of its business.

13. "*Insured bank*" means a state bank the deposits of which are insured in accordance with the provisions of the federal deposit insurance act.

14. "*Municipal corporation*" means an incorporated city.

15. "*Person*" means an individual, a corporation (domestic or foreign), a partnership, an association, a trust or a fiduciary.

16. "*Private bank*" means an individual, partnership or other unincorporated association engaged in the business of banking to the extent provided for and limited by sections 524.1701 and 524.1702 and which was lawfully engaged in the business of banking in this state prior to April 19, 1919.

17. "*Shareholder*" means one who is a holder of record of shares in a state bank.

18. "*Shares*" means the units into which the proprietary interests in a state bank are divided.

19. "*State bank*" means any bank incorporated pursuant to the provisions of this chapter after January 1, 1970, and any "state bank" or "savings bank" incorporated pursuant to the laws of this state and doing business as such upon January 1, 1970.

20. "*Surplus*" means the aggregate of the amount originally paid in as required by section 524.402, subsection 1, any amounts transferred to surplus pursuant to section 524.402, subsection 2, and any amounts subsequently designated as such by action of the board of directors of the state bank.

21. "*Superintendent*" means the superintendent of banking of this state.

22. "*Undivided profits*" means the accumulated undistributed net profits of a state bank, including any residue from the fund established pursuant to section 524.403, after:

a. Payment or provision for payment of taxes and expenses of operations.

b. Transfers to reserves allocated to a particular asset or class of assets.

c. Losses estimated or sustained on a particular asset or class of assets in excess of the amount of reserves allocated therefor.

d. Transfers to surplus and capital.

e. Amounts declared as dividends to shareholders.

23. *"Unincorporated area"* means a village within which a state bank or national bank has its principal place of business.

24. *"Administrator"* means the person designated in section 537.6103.

25. *"Supervised financial organization"* as defined and used in the Iowa consumer credit code includes a person organized pursuant to this chapter. [C71, 73, 75,§524.103]

Referred to in §§422.34, 422.61(1), 453.1, 633.89

524.104 Rules of construction. In the interpretation and construction of this chapter:

1. Transactions or acts validly entered into or performed before January 1, 1970, and the rights, duties and interests flowing from them remain valid thereafter and may be completed or terminated according to their terms and as permitted by any statute repealed or amended by this chapter, as though such repeal or amendment had not occurred.

2. All individuals who, upon January 1, 1970, hold any office under a provision of law repealed by this chapter, and which offices are continued by this chapter shall continue to hold such offices according to their former tenure. [C71, 73, 75,§524.104]

524.105 Effect on existing banks.

1. The corporate existence of a state bank existing and operating on January 1, 1970, shall not be affected by the enactment of this chapter.

2. All state banks shall be subject to the provisions and requirements of this chapter in every particular, and all national banks, now or hereafter doing business in this state, shall be subject to the provisions of this chapter, to the extent applicable, from January 1, 1970. [C71, 73, 75,§524.105]

Referred to in §680.8

524.106 Renewal of the corporate existence of an existing state bank.

1. The corporate existence of a state bank existing and operating on January 1, 1970, which expires subsequent to said date, may be renewed prior to the expiration thereof, following the affirmative vote of the holders of at least two-thirds of the shares entitled to vote thereon, at a meeting held for that purpose and called in the manner required by section 524.509 and by delivery to the superintendent of articles of incorporation in conformance with the provisions of section 524.302 together with the applicable fees for the filing and recording of the articles of incorporation. If the superintendent finds that the articles of incorporation satisfy the requirements of this section, he shall deliver them to the secretary of state for filing and recording in his office. Following the receipt of the articles of incorporation, the secretary of state shall proceed in accordance with the provisions of section 524.306.

2. Sections 524.303, 524.304, 524.305, 524.307, 524.308, and 524.309 shall not be applicable to a state bank existing and operating on January 1, 1970, which renews its corporate existence in accordance with subsection 1 of this section.

3. The renewal of the corporate existence of a state bank pursuant to this section shall not affect any right accrued or established, or any liability or penalty incurred, under the laws of this state or of the United States, prior to the issuance of a certificate of incorporation by the secretary of state. [S13,§1618-a; C24, 27, 31, 35, 39,§§8371–8375; C46,§§491.33–491.37; C50, 54, 58, 62, 66,§§491.33–491.35, 491.37; C71, 73, 75, §524.106]

Referred to in §§524.224, 524.310, 524.312

524.107 Persons authorized to engage in banking business.

1. No person may lawfully engage in this state in the business of receiving money for deposit, transact the business of banking, or may lawfully establish in this state a place of business for such purpose, except a state bank which is subject to the provisions of this chapter, a private bank to the extent provided for and limited by sections 524.1701 and 524.1702, and a national bank authorized by the laws of the United States to engage in the business of receiving money for deposit.

2. No person doing business in this state shall use the words "bank" or "trust" or use any derivative, plural or compound of the words "bank", "banking", "bankers" or "trust" in any manner which would tend to create the impression that such person is authorized to engage in the business of banking or to act in a fiduciary capacity, except a state bank authorized to do so by the provisions of this chapter, or a national bank to the extent permitted by the laws of the United States, or, insofar as the word "bank" is concerned, a private bank to the extent provided for and limited by sections 524.1701 and 524.1702, or, insofar as the word "trust" is concerned, an individual permissibly serving as a fiduciary in this state, pursuant to section 633.63, or, insofar as the words "trust" and "bank" are concerned, a nonresident corporate fiduciary permissibly serving as a fiduciary in this state pursuant to section 633.64. [C97,§§1862, 1889; S13,§§1889, 1889-i; C24, 27, 31, 35, 39,§§9151, 9203, 9258, 9259, 9296; C46, 50, 54, 58, 62, 66,§§524.24, 527.2, 528.50, 528.52, 532.13; C71, 73, 75,§524.107]

Referred to in §§524.1005, 524.1603

524.108 Applicability of safe deposit provisions. The provisions of sections 524.809 to 524.812 shall apply, to the extent applicable, to any person engaged in this state in the business of leasing safe deposit boxes for the storage of property. [C71, 73, 75,§524.108]

DIVISION II
DEPARTMENT OF BANKING

524.201 Superintendent of banking.

1. The governor shall, within sixty days following the convening of the regular session of the general assembly in 1973, and each four

years thereafter, appoint, with the approval of two-thirds of the members of the senate, a superintendent of banking. Such appointee shall be selected solely with regard to his or her qualification and fitness to discharge the duties of office, and no person shall be appointed who has not had at least five years experience in a bank or in the regulation or examination of banks.

2. The superintendent shall have his or her office at the seat of government. The regular term of office shall be four years from the first day of July of the year of appointment. [C24, 27, 31, 35, 39,§§**9130, 9131**; C46, 50, 54, 58, 62, 66, §§524.1, 524.2; C71, 73, 75,§524.201; 66GA, ch 1058,§3]

Referred to in §524.205

524.202 Superintendent—salary. The superintendent shall receive a salary to be fixed by the state banking board. The superintendent shall be entitled to receive reimbursement for expenses incurred in the performance of his duties, subject to the provisions of section 524.209. [C24, 27, 31, 35, 39,§**9137**; C46, 50, 54, 58, 62, 66,§524.7; C71, 73, 75,§524.202]

524.203 Superintendent—vacancy. A vacancy in the office of superintendent that may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the time the general assembly next convenes. Prior to the expiration of said thirty days the governor shall transmit to the senate for its confirmation an appointment for the unexpired portion of the regular term. Vacancies occurring during a session of the general assembly shall be filled as regular appointments are made and before the end of said session, and for the unexpired portion of the regular term. [C24, 27, 31, 35, 39, §**9133**; C46, 50, 54, 58, 62, 66,§524.3; C71, 73, 75,§524.203]

524.204 Deputy superintendent of banking.

1. The superintendent shall appoint a deputy superintendent of banking, who shall assist the superintendent in the performance of his office and who shall perform the duties of the superintendent during the absence or the inability of the superintendent, and as directed by him.

2. The deputy superintendent shall be removable at the pleasure of the superintendent. If the office of the superintendent becomes vacant, the deputy superintendent shall have all the powers and duties of the superintendent until a new superintendent is appointed by the governor in accordance with the provisions of this chapter.

3. The deputy superintendent shall receive a salary to be fixed by the state banking board. The deputy superintendent shall be entitled to receive reimbursement for expenses incurred in the performance of his duties, subject to the provisions of section 524.209. [C24, 27, 31, 35, 39,§**9136, 9137**; C46, 50, 54, 58, 62, 66,§§524.6, 524.7; C71, 73, 75,§524.204]

524.205 State banking board.

1. The state banking board shall be composed of the superintendent, who shall be an ex officio nonvoting member and chairman, and six other members, appointed by the governor, who shall be chosen from various sections of the state. Provided, however, that in no event shall more than five members of such board be engaged in the business of banking in any executive capacity. In case of a vacancy in the state banking board, other than one resulting from a vacancy in the office of the superintendent, the governor shall appoint a new member to fill such vacancy for the unexpired term.

2. The regular term of office of each member, other than the superintendent, shall be contemporaneous with the regular term of office of the superintendent as defined in subsection 2 of section 524.201, and each such member shall hold his office for such term and until his successor shall have been appointed.

3. A member of the state banking board, other than the superintendent, shall receive no salary but shall be allowed and paid the sum of forty dollars per day for each day or any part thereof in which he is engaged in the performance of his duties together with reimbursement for actual and necessary expenses incurred by him in connection with such duties.

4. The state banking board shall act with the superintendent in an advisory capacity concerning all matters pertaining to the conduct of the administration of the provisions of this chapter and shall perform such other duties as are specifically provided for by the laws of this state.

5. The state banking board shall meet each month on such date and at such place as the state banking board may designate, and shall meet at such other times as the board may deem necessary, or when called by the chairman of the board, or any two members thereof. [C27, 31, 35,§§9154-a1,-a2,-a3,-a4,-a7,-a8; C39, §§**9154.04–9154.07, 9154.10, 9154.11**; C46, 50, 54, 58, 62, 66,§§525.1–525.4, 525.7, 525.8; C71, 73, 75,§524.205; 66GA, ch 1081,§5]

524.206 Department of banking. The department of banking shall be the office of the superintendent and shall consist of such employees as are necessary for the discharge of such duties and responsibilities as are imposed upon the superintendent by the laws of the state. [C71, 73, 75,§524.206]

524.207 Expenses of the department of banking. All expenses required in the discharge of the duties and responsibilities imposed upon the superintendent and the state banking board by the laws of this state shall be paid from funds appropriated from the general fund of the state. The superintendent shall pay all fees and other money received by the superintendent to the treasurer of state within the time required by section 12.10. The treasurer of state shall deposit such funds in the general fund of the state. Funds appropriated

to the department of banking shall be subject at all times to the warrant of the state comptroller, drawn upon written requisition of the superintendent or a designated representative, for the payment of all salaries and other expenses necessary to carry out the duties of the department of banking.

The superintendent shall account for receipts and disbursements according to the separate duties imposed upon the superintendent by any provisions of the laws of this state. [C24, 27, 31, 35, 39,§§**9144, 9145, 9149**; C46, 50, 54, 58, 62, 66,§§524.16, 524.17, 524.22; C71, 73, 75, §524.207; 66GA, ch 57,§18]

Fees deposited in general fund, 66GA, ch 57,§20

524.208 Assistants, examiners and other employees. The superintendent may appoint such assistants, examiners and other employees as he may deem necessary to the proper discharge of the duties imposed upon him by the laws of this state. The merit system as established by chapter 19A, shall apply to all employees of the department of banking, except the superintendent, deputy superintendent and one stenographer or secretary. The salary of such stenographer or secretary shall be fixed by the state banking board. Pay plans shall be established for employees subject to the merit system, other than clerical, who examine the accounts and affairs of state banks and who examine the accounts and affairs of other persons, subject to supervision and regulation by the superintendent which are substantially equivalent to those paid by the Federal Deposit Insurance Corporation and other federal supervisory agencies in this area of the United States. [C24, 27, 31, 35, 39,§§**9136, 9137**; C46, 50, 54, 58, 62, 66,§§524.6, 524.7; C71, 73, 75,§524.208]

Referred to in §116.20

524.209 Expenses. The superintendent, deputy superintendent, assistants, examiners and other employees of the department of banking shall be entitled to receive reimbursement for expenses incurred in the performance of their duties. The superintendent, and when specifically authorized by the superintendent, the deputy superintendent, assistants, examiners and other employees of the department of banking, shall be entitled to receive reimbursement for expenses incurred while attending conventions, meetings, conferences, schools, or seminars relating to the performance of their duties, and such expenses shall be paid by the treasurer of state on warrants drawn by the state comptroller. [C24, 27, 31, 35, 39,§**9144**; C46, 50, 54, 58, 62, 66,§524.16; C71, 73, 75,§524.209]

Referred to in §§524.202, 524.204

524.210 Insurance and surety bonds. The superintendent shall acquire good and sufficient bond in a company authorized to do business in this state insuring the faithful performance of the deputy superintendent, assistants, examiners, and all other employees of the department of banking and insuring against any liability which may accrue in the case of the loss of any property of a state bank, of a customer of a state bank or of any other person, in the course of any examination, investigation, or other function required or allowed by the laws of this state. The superintendent shall be bonded in accordance with the provisions of chapter 64. [C24, 27, 31, 35, 39,§§**9138, 9139**; C46, 50, 54, 58, 62, 66, §§524.8, 524.9; C71, 73, 75,§524.210]

524.211 Prohibitions relating to superintendent, deputy superintendent, assistants and examiners.

1. No sum of money or property, as a gift or loan, or otherwise, shall be given or granted, directly or indirectly by a state bank, or by persons subject to chapters 533, 533A, 533B, 536, 536A, or any affiliate of a state bank or of such persons, or any director, officer, employee, member, owner, or partner of a state bank or of such persons, to the superintendent, deputy superintendent, an assistant or examiner, nor shall the superintendent, deputy superintendent, an assistant or examiner receive from a state bank or from persons subject to chapters 533, 533A, 533B, 536, and 536A, or any affiliate of a state bank or of such persons, or any director, officer, employee, member, owner, or partner of a state bank or of such persons, any sum of money or any property as a gift or loan, or otherwise, either directly or indirectly.

2. The deputy superintendent, any assistant or examiner, shall not perform any services for, nor be a shareholder, member, partner, owner, director, officer or employee of any bank or private bank, or of persons subject to chapters 533, 533A, 533B, 536, or 536A, or of any affiliate of any bank, private bank or of any such persons. A violation of this subsection shall constitute grounds for discharge or suspension from employment or for reduction in rank or grade.

3. For the purposes of this section and section 524.212, an affiliate of a person other than a state bank shall include any corporation, trust, estate, association or other similar organization:

a. Of which such person, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees or other individuals exercising similar functions.

b. Of which control is held, directly or indirectly, through share ownership or in any other manner, by the shareholders of such person who own or control either a majority of the shares of such person or more than fifty percent of the number of shares voted for the election of directors of such person at the preceding election or by trustees for the benefit of the shareholders of any such person.

c. Of which a majority of its directors, trustees, or other individuals exercising similar functions are directors of any one such person.

d. Which owns or controls, directly or indirectly, either a majority of the voting shares of such person or more than fifty percent of the total number of shares voted for the election of directors of such person at the preceding election, or controls in any manner the election of a majority of the directors of such person, or for the benefit of whose shareholders or members all or substantially all of the outstanding voting shares of such person is held by trustees.

4. The deputy superintendent or any assistant or examiner who is convicted of theft, burglary, robbery, larceny or embezzlement as a result of a violation of the laws of this state or of the United States while holding such position shall be immediately discharged from employment and shall be forever disqualified from holding any position in the department of banking. [C97,§§1875, 1876; SS15, §1875; C24, 27, 31, 35, 39,§9146; C46, 50, 54, 58, 62, 66,§524.18; C71, 73, 75,§524.211]

Referred to in §524.1611(1)

524.212 Prohibition against disclosure. An examiner shall not disclose to any person, other than the superintendent, deputy superintendent, and the person examined, the name of any shareholder, member, partner, owner of, or borrower from, or disclose the nature of the collateral for any loan by any state bank or persons subject to chapters 533, 533A, 533B, 536, and 536A, or any affiliate of any state bank or of any such persons, or any other information relating to the business of any state bank or of any such persons, or any affiliate of any state bank or of any such persons, except when ordered to do so by a court of competent jurisdiction and then only in those instances referred to in subsections 1, 2, and 3 of section 524.215. [C31, 35,§9146-c1; C39,§9146.1; C46, 50, 54, 58, 62, 66,§524.19; C71, 73, 75,§524.212]

Referred to in §§524.211(3), 524.1611(2)

524.213 Duties and powers of superintendent. The superintendent shall have general control, supervision and regulation of all state banks and shall be charged with the administration and execution of the laws of this state relating to banks and banking and with such other duties and responsibilities as are imposed upon him by the laws of this state. The superintendent shall have power to adopt and promulgate such rules and regulations as in his opinion will be necessary to properly and effectively carry out and enforce the provisions of this chapter. [C24, 27, 31, 35, 39,§9140; C46, 50, 54, 58, 62, 66,§524.10; C71, 73, 75,§524.213]

524.214 Subpoena—contempt.

1. The superintendent, the deputy superintendent, and upon the approval of the superintendent, any assistant or examiner shall have the power to subpoena witnesses, to compel their attendance, to administer an oath, to examine any person under oath and to require the production of any relevant books or papers. Such examination may be conducted on any subject relating to the duties imposed upon, or powers vested in, the superintendent under the provisions of this chapter.

2. Whenever any person subpoenaed pursuant to subsection 1 of this section neglects or refuses to obey the terms of such subpoena, to produce books or papers or to give testimony, as required, the superintendent may apply to the district court of Polk county for the enforcement of such subpoena or the issuance of an order compelling such compliance as the court may direct.

3. The refusal of any person to obey an order of the district court, issued pursuant to subsection 2 of this section, without reasonable cause, shall be considered a contempt of that court. [C97,§1877; S13,§1871; C24, 27, 31, 35, 39,§§9226, 9236; C46, 50, 54, 58, 62, 66,§§528.20, 528.30; C71, 73, 75,§524.214]

Referred to in §524.217

524.215 Records of department of banking. All records of the department of banking shall be public records subject to the provisions of chapter 68A, except that all papers, documents, reports, reports of examinations and other writings relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state shall not be public records and shall not be open for examination or copying by the public or for examination or publication by the news media.

The superintendent, deputy superintendent, assistants or examiners shall not be subpoenaed in any cause or proceeding to give testimony concerning information relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state, nor shall the records of the department of banking which relate specifically to the supervision and regulation of any such state bank or other such person be offered in evidence in any court or subject to subpoena by any party except, where relevant:

1. In such actions or proceedings as are brought by the superintendent.

2. In any matter in which an interested and proper party seeks review of a decision of the superintendent.

3. In any action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

4. In any action brought as a shareholders derivative suit against a state bank.

5. In any action brought to recover moneys or to recover upon an indemnity bond for embezzlement, misappropriation or misuse of state bank funds. [C31, 35,§9146-c1; C39,§9146.1; C46, 50, 54, 58, 62, 66,§524.19; C71, 73, 75,§524.215]

Referred to in §524.212

524.216 Annual report of superintendent. The superintendent shall make a report in writing annually to the governor in the manner and within the time required by chapter 17. A copy of the report shall be furnished by the superintendent to each state bank.

In addition to the matters required by chapter 17, the annual report of the superintendent shall contain:

1. A summary of applications approved or denied by the superintendent pursuant to this chapter since his last previous report.

2. A summary of the assets, liabilities and capital structure of all state banks as of June 30 of the year for which the report is made.

3. A statement of the receipts and disbursements of funds of the superintendent during the calendar year ending on the preceding December 31 and of the funds on hand on such December 31.

4. Such other information as the superintendent may deem appropriate and advisable to fairly disclose the discharge of the duties imposed upon him by this chapter. [C97,§1881; C24, 27, 31, 35, 39,§**9148**; C46, 50, 54, 58, 62, 66, §524.21; C71, 73, 75,§524.216]

Annual report, §17.8

524.217 Examinations.

1. The superintendent shall have power to make or cause to be made an examination of every state bank whenever in his judgment such examination is necessary or advisable, but in no event less frequently than once during each eighteen-month period. During the course of each examination of a state bank, inquiry shall be made as to its financial condition, the security afforded to those to whom it is obligated, the policies of its management, whether the requirements of law have been complied with in the administration of its affairs, and such other matters as the superintendent may prescribe. The superintendent shall also have power to make or cause to be made such limited examinations at such times and with such frequency as he may deem necessary and advisable to determine the condition of any state bank and whether any person has violated any of the provisions of this chapter.

2. The superintendent shall have power to make or cause to be made an examination of any corporation in which the state bank owns shares except corporations described in paragraphs "*a*" and "*b*" of subsection 3 of section 524.901. The superintendent shall also have power, upon application to and order of the district court of Polk county, to make or cause to be made an examination of any person having business transactions or a relationship with any state bank when such an examination is deemed necessary and advisable in order to determine whether the capital of the state bank is impaired or whether the safety of its deposits has been imperiled. The fee for any such examination shall be paid by the state bank.

Referred to in subsection 7

3. To the extent necessary for the purpose of any examination provided for by this section and section 524.1105, the superintendent shall have the power to examine all relevant books, records, accounts and documents and to compel the production of the same in the manner prescribed by section 524.214.

4. The superintendent may furnish to the federal deposit insurance corporation and the federal reserve system, or to any official or supervising examiner thereof, a copy of the report of any or all examinations made of any state bank and of any affiliate of a state bank when the state bank is a member of the federal reserve system or to the federal deposit insurance corporation when the deposits of the state bank are insured by the federal deposit insurance corporation.

Referred to in subsection 6

5. A copy of the report of each examination of a state bank shall be transmitted by the superintendent to the board of directors of the state bank except to the extent that the report of any such examination may be confidential to the superintendent, and each member of the board of directors shall furnish to the superintendent, on forms to be supplied by the superintendent, a statement that he has read the report of examination.

6. All reports of examinations, including any copies thereof, in the possession of any person other than the superintendent or employee of the department of banking, including any state bank or any agency to which any report of such examination may be furnished under subsection 4 of this section, shall be confidential communications, shall not be subject to subpoena from such persons and shall not be published or made public by such persons.

7. The report of examination of any affiliate or of any person examined as provided for in subsection 2 of this section shall not be transmitted by the superintendent to any such affiliate or person or to any state bank or to the board of directors of any state bank unless authorized or requested by such affiliate or person. [R60,§1637; C73,§1571; C97,§1873; S13, §1873; C24, 27, 31, 35,§§9231, 9283-g4; C39,§§**9231, 9283.47**; C46, 50, 54, 58, 62, 66,§§528.25, 530.4; C71, 73, 75,§524.217]

Referred to in §§524.219, 537.2305

524.218 Regulation and examination of services.

1. A state bank may not cause to be performed, by contract or otherwise any bank services, of a type referred to in section 524.804, for itself, whether on or off its premises, unless assurances satisfactory to the superintendent are furnished to the superintendent by both the state bank and the person performing such services that the performance thereof will be subject to supervision, regulation, and examination by the superintendent to the same extent as if such services were being performed by the state bank itself on its own premises.

2. Any contract, to which a state bank is a party, for the performance of bank services of a type referred to in section 524.804, shall be approved by the superintendent prior to its execution. [C71, 73, 75,§524.218]

524.219 Fees for examinations. A state bank, and any private bank subject to examination, supervision, and regulation by the superintendent, shall pay to the superintendent a fee, established by the state banking board, based on the time required for the examination and the administrative costs and expenses incurred in the discharge of the duties imposed upon the superintendent by this chapter. The fee shall include, but not be limited to costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment. Such fee shall apply equally to all state banks and private banks subject to examination, and may not be changed more frequently than annually and when changed, shall be effective on January 1 of the year following the year in which the change was approved.

The fee for examination of any affiliate of a state bank as provided for in section 524.1105, and the examinations provided for in section 524.217, subsection 2, shall be established by the state banking board, based on the time required for the examination and the administrative costs and expenses incurred in the discharge of the duties imposed upon the superintendent by this chapter. The fee shall include, but not be limited to costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

Upon completion of each examination required or allowed by this chapter, the examiner in charge of such examination shall render a bill for such fee, in duplicate, and shall deliver one copy thereof to the state bank or private bank and one copy to the superintendent. Failure to pay the amount of such fee to the superintendent within ten days after the date of the close of each such examination shall subject the state bank or private bank to an additional fee equal to five percent of the amount of such fee for each day the payment is delinquent. [C97,§§1875, 1876, 1877; SS15,§1875; C24, 27, 31, 35, 39,§§**9143, 9150, 9237**; C46, 50, 54, .58, 62, 66,§§524.15, 524.23, 528.31; C71, 73, 75,§524.219; 66GA, ch 57,§19]

524.220 Reports to superintendent.

1. A state bank shall render a full, clear, and accurate statement of its condition to the superintendent, on forms to be supplied by the superintendent, verified by the oath of an officer and attested by the signatures of at least three of the directors, or verified by the oath of two of its officers and attested by two of the directors. The superintendent may, in his discretion, use any form of statement of condition that is used by the federal deposit insurance corporation or the federal reserve system.

2. The statement shall be transmitted to the superintendent within ten days after the receipt of a request for the statement from the superintendent. A statement shall be called for by the superintendent at least three times each year.

3. Within twenty days after the date of the receipt of the request for a statement of condition, the state bank shall cause the statement to be published once in a newspaper of general circulation in the municipal corporation or unincorporated area in which the state bank has its principal place of business, or if there is none, in a newspaper of general circulation published in the county, or in a county adjoining the county, in which the state bank has its principal place of business. Proof of such publication by affidavit of the publisher of the newspaper in which it was made, shall be delivered to the superintendent and shall be conclusive evidence of the fact.

4. The superintendent shall also have power to call for special reports from a state bank whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of its condition. Such reports shall be verified and attested in the same manner as required in subsection 1 of this section. [R60,§§1636, 1637; C73,§§1570, 1571; C97,§§1872, 1873, 1874; S13,§§1873, 1889-m; C24, 27, 31, 35, 39,§§**9228, 9229, 9231, 9232, 9234, 9305**; C46, 50, 54, 58,§§528.22, 528.23, 528.25, 528.26, 528.28, 532.20; C62, 66,§§528.22, 528.23, 528.25, 528.26, 528.28; C71, 73, 75,§524.220]

524.221 Preservation of bank records—statute of limitations.

1. A state bank shall not be required to preserve its records for a period longer than eleven years after the first day of January of the year following the time of the making or filing of such records, provided, however, that account records showing unpaid balances due to depositors shall not be destroyed. Film, photographic, photostatic, or other copies which accurately reproduce all lines and markings on the original may be kept in lieu of any such original record.

2. All causes of action, other than actions for relief on the grounds of fraud or mistake, against a state bank based upon a claim or claims inconsistent with an entry or entries in a state bank record, made in the regular course of business, shall be deemed to have accrued, and shall accrue for the purpose of the statute of limitations one year after the date of such entry or entries. No action founded upon such a cause may be brought after the expiration of ten years from the date of such accrual.

3. The provisions of this section, insofar as applicable, shall apply to the records of a national bank. [C50, 54, 58, 62, 66,§§528A.1–528A.5; C71, 73, 75,§524.221]

Referred to in §524.1314(2)

524.222 Meetings of the board of directors called by superintendent. Whenever the superintendent deems it necessary and advisable he may cause a meeting of the board of directors of a state bank to be held in such manner and at such time and place as he may direct. Any report of an examination required or allowed by this chapter, any conclusions drawn

therefrom by the superintendent, any recommendations made by him relative thereto and any other matters concerning the operation and condition of the state bank may be presented to the board of directors by the superintendent. The state bank shall cause the recommendations of the superintendent to be recorded in the minutes of the board of directors of the state bank.

Each member of the board of directors shall furnish to the superintendent a statement, on forms to be supplied by the superintendent, that he has read and is familiar with the recommendations of the superintendent. [C71, 73, 75,§524.222]

524.223 Power of superintendent to issue orders. Whenever it shall appear to the superintendent that a state bank is engaging or has engaged, or the superintendent has reasonable cause to believe that the state bank is about to engage, in an unsafe or unsound practice in conducting the business of such state bank, or is violating or has violated, or the superintendent has reasonable cause to believe that the state bank is about to violate, any provision of this chapter or of any regulation adopted pursuant to this chapter, or any condition imposed in writing by the superintendent in connection with the approval of any matter required by this chapter, or any written agreement entered into with the superintendent, the superintendent may issue and serve upon the state bank a notice containing a statement of the facts constituting the alleged violation or violations, or the unsafe or unsound practice or practices, and fixing a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should be issued to the state bank.

If the state bank fails to appear at the hearing it shall be deemed to have consented to the issuance of a cease and desist order. In the event of such consent, or if upon the record made at such hearing, the superintendent shall find that any violation or unsafe or unsound practice specified in the notice has been established, the superintendent may issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may require the state bank and its directors, officers and employees to cease and desist from any such violation or practice and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

Any order issued pursuant to this section shall become effective upon service thereof on the state bank and shall remain effective except to such extent that it is stayed, modified, terminated, or set aside by action of the superintendent or of the district court of the county in which the state bank has its principal place of business.

The superintendent may apply to the district court of the county in which the state bank has its principal place of business for the enforcement of any order pursuant to this section and such court shall have jurisdiction and power to order and require compliance therewith. [C73,§1572; C97,§1877; C24, 27, 31, 35, 39,§9235; C46, 50, 54, 58, 62, 66,§528.29; C71, 73, 75,§524.223]

524.224 Grounds for management of state bank by superintendent. The superintendent may take over the management of the property and business of a state bank whenever it appears to him that:

1. The state bank has violated its articles of incorporation or any law of this state.

2. The capital of the state bank is impaired.

3. The state bank is conducting its business in an unsafe or unsound manner.

4. The state bank is in such condition that it is unsound, unsafe or inexpedient for it to transact business.

5. The state bank has suspended or refused payment of its deposits or other liabilities contrary to the terms thereof.

6. The state bank refuses to make its records available to the superintendent for examination or otherwise refuses to make available, through an officer or employee having knowledge thereof, information required by the superintendent for the proper discharge of the duties of his office.

7. The state bank neglects or refuses to observe any order of the superintendent made pursuant to the provisions of this chapter, unless the enforcement of such order is stayed in a proceeding brought by the state bank.

8. The state bank has not transacted any business or performed any of the duties, contemplated by its authorization to do business, for a period of one year.

9. The state bank has failed to renew its corporate existence in the manner provided for in section 524.106 within one hundred eighty days prior to the expiration thereof.

The superintendent shall thereafter manage the property and business of the state bank until such time as he may relinquish to the state bank the management thereof, upon such conditions as he may prescribe, or until its affairs be finally dissolved as provided in this chapter. [C73,§1572; C97,§1877; C24, 27, 31, 35, §§9283-e1,-e2,-e3,-e4; C39,§§9235, 9285.05–9285.08; C46, 50, 54, 58, 62, 66,§§528.29, 528.90–528.93; C71, 73, 75,§524.224]

Referred to in §§524.226, 524:817

524.225 Judicial review. Judicial review of the actions of the superintendent may be sought in accordance with the terms of the Iowa administrative procedure Act. [C71, 73, 75,§524.225]

524.226 Management of state bank by superintendent. Upon taking over the management of the property and business of a state bank, the superintendent shall have the authority to

operate and direct the affairs of the state bank in its regular course of business. He shall also have the authority to collect such amounts due to the state bank and to do such other acts as are necessary or expedient to conduct the affairs of the state bank and conserve or protect its assets, property and business.

If upon taking over the management of the business and property of the state bank, the superintendent concludes that the state bank is insolvent or should be dissolved for any other reason enumerated in section 524.224, he may immediately, or at any time within three years, order that the state bank cease to carry on its business and proceed to dissolve the affairs of the state bank in accordance with the provisions of this chapter. If the superintendent has not caused the state bank to cease to carry on its business within three years of taking over the management of the property and business of the state bank, he shall relinquish the management thereof to the state bank.

The superintendent may appoint one or more special deputies as his agent or agents, with powers specified in the certificate of appointment, to assist him in the duty of management, conservation or dissolution and distribution of the business and property of a state bank.

The superintendent, during the period of his management of the property and business of the state bank, and prior to such time as he may apply to the district court for appointment as receiver, may require that he be reimbursed by the state bank to the extent of the expenses incurred by him in connection with such management. [C73,§1572; C97,§1877; C24, 27, 31, 35,§§9238, 9283-e2,-e4; C39,§§**9238, 9283.06, 9283.08**; C46, 50, 54, 58, 62, 66,§§528.32, 528.91, 528.93; C71, 73, 75,§524.226]

Referred to in §§524.817, 524.1310

524.227 Enforcement of Iowa consumer credit code.

1. The superintendent shall enforce the Iowa consumer credit code with respect to banks, as provided in sections 537.2303, 537.2305 and 537.6105.

2. The superintendent shall co-operate with the administrator, and shall assist the administrator whenever necessary to provide for the discharge of the duties of the administrator.

3. Notwithstanding other provisions of this chapter to the contrary, the superintendent shall authorize to be furnished to the administrator, access to or copies of records in the possession of the superintendent or other persons which relate to a bank when necessary to enable the administrator to enforce chapter 537.

4. The superintendent shall make an annual report in writing to the administrator. A copy of the report shall be furnished at cost by the superintendent to each bank or other person upon request. The annual report shall contain:

a. A summary of applications to engage in the business of banking approved or denied by the superintendent since the last report.

b. A summary of the volume of consumer installment credit outstanding per bank under the superintendent's supervision as of December 31 of the year for which the report is made.

c. An estimate of the disbursements of agency funds for consumer credit protection during the calendar year ending the preceding December 31.

d. Information which the superintendent may deem appropriate and advisable to disclose.

e. Information which the administrator may require to be included. [C75,§524.227; 66GA, ch 1212,§1]

DIVISION III
INCORPORATION

524.301 Incorporators. A state bank may be incorporated under this chapter by not less than five individuals eighteen years of age or older, a majority of whom shall be citizens of this state and all of whom shall be citizens of the United States. [C97,§§1840, 1863; C24, 27, 31, 35, 39,§§**9155, 9204**; C46, 50, 54, 58, 62, 66, §§526.1, 527.3; C71, 73, 75,§524.301]

524.302 Articles of incorporation. The articles of incorporation of a state bank, in the form prescribed by the superintendent, shall set forth the following:

1. The name of the state bank, that it is incorporated for the purpose of conducting the business of banking, and that it is incorporated under the provisions of this chapter.

2. The location of its proposed or existing principal place of business including the name of the county, municipal corporation or unincorporated area.

3. The duration of the state bank which shall be perpetual.

4. The aggregate number of shares which the state bank shall have authority to issue, and the par value of such shares; if such shares are to be divided into classes, the number of shares of each class and a statement of the par value of the shares of each class.

5. If there is to be a preferred class, a statement of the preferences, voting rights, if any, limitations and relative rights in respect of the shares of such class.

6. Any provision, permissible under section 524.506, limiting or denying the shareholders the pre-emptive right to acquire additional shares of the state bank.

7. Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this chapter is required or permitted to be set forth in the bylaws.

8. The number of directors constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.

9. The name and address of each incorporator.

10. The specific and named day on which the annual meeting of shareholders shall be held.

11. Any provision not inconsistent with law or the purposes for which the state bank is organized, which the incorporators elect to set forth; or any provision limiting any of the powers enumerated in this chapter.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter. The articles of incorporation shall be signed by all of the incorporators and acknowledged before an officer authorized to take acknowledgments of deeds. [C97,§§1842, 1863; S13,§1842; C24, 27, 31, 35, 39,§§**9157, 9204**; C46, 50, 54, 58, 62, 66, §§526.3, 527.3; C71, 73, 75,§524.302]

Referred to in §§524.106(1), 524.1402(5,*f*), 524.1411(5), 524.1508

524.303 Application for approval. The incorporators shall make an application to the superintendent for approval of a proposed state bank in the manner prescribed by the superintendent and shall deliver to the superintendent, together with such application:

1. The articles of incorporation.

2. Applicable fees, payable to the secretary of state as specified in section 496A.124, for the filing and recording of the articles of incorporation.

Within thirty days after delivery of the foregoing items, the incorporators shall also deliver to the superintendent proof of publication of the notice required by section 524.304 by affidavit of the publisher of the newspaper in which it was made. [C97,§§1842, 1863; S13,§1842; C24, 27, 31, 35,§9140-c1; C39,§§**9140.1, 9158, 9205**; C46, 50, 54, 58, 62, 66,§§524.11, 526.4, 527.4; C71, 73, 75,§524.303]

Referred to in §§524.106(2), 524.305

524.304 Publication of notice. The incorporators of a state bank shall publish notice of their intention to deliver, or the delivery of, the articles of incorporation to the superintendent, once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation which is proposed as the principal place of business of the state bank, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the proposed state bank is to have its principal place of business. The first publication of the notice shall appear prior to, or within seven days after, the date of delivery of the articles of incorporation to the superintendent and shall set forth:

1. The name of the proposed state bank.

2. A statement that it is to be incorporated under this chapter.

3. The purpose or purposes of the state bank.

4. The names and addresses of the incorporators and of the members of the initial board of directors as they appear, or will appear, in the articles of incorporation.

5. The date of the delivery of the articles of incorporation to the superintendent. [C97, §§1842, 1863; S13,§1842; C24, 27, 31, 35, 39,§§**9159, 9205**; C46, 50, 54, 58, 62, 66,§§526.5, 527.4; C71, 73, 75,§524.304]

Referred to in §§524.106(2), 524.303, 524.305

524.305 Approval by superintendent. Upon receipt of an application for approval of a state bank the superintendent shall conduct such investigation as he deems necessary to ascertain whether:

1. The articles of incorporation and supporting items satisfy the requirements of this chapter.

2. The convenience and needs of the public will be served by the proposed state bank.

3. The population density or other economic characteristics of the area primarily to be served by the proposed state bank afford reasonable promise of adequate support for the state bank.

4. The character and fitness of the incorporators and of the members of the initial board of directors are such as to command the confidence of the community and to warrant the belief that the business of the proposed state bank will be honestly and efficiently conducted.

5. The capital structure of the proposed state bank is adequate in relation to the amount of the anticipated business of the state bank and the safety of prospective depositors.

6. The proposed state bank will have sufficient personnel with adequate knowledge and experience to conduct the business of the state bank, and to administer fiduciary accounts, if the state bank is to be authorized to act in a fiduciary capacity.

Within one hundred eighty days after receipt of the application for approval together with the items referred to in section 524.303, subsections 1 and 2, the superintendent shall make a determination whether to approve or disapprove the pending application on the basis of his investigation. Within ninety days after the second publication of the notice referred to in section 524.304 any person opposing the pending application shall file written objections thereto with the superintendent. Following the expiration of the period referred to in the previous sentence and prior to making a determination on the pending application the superintendent shall, upon adequate notice, afford all interested persons, including the incorporators, an opportunity

for a stenographically reported hearing during which such persons shall be allowed to present evidence in support of, or in opposition to, the pending application. If the superintendent approves the pending application, he shall deliver the articles of incorporation, with his approval indicated thereon, to the secretary of state and notify the incorporators, and such other persons who requested in writing that they be notified, of such approval. If the superintendent disapproves the pending application he shall notify the incorporators of his action and the reason for his decision.

The actions of the superintendent shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. The court may award damages to the incorporators if it finds that review is sought frivolously and in bad faith.

Before receiving the decision of the superintendent with respect to the pending application the incorporators shall, upon notice, reimburse the superintendent to the extent of the expenses incurred by him in connection with the application. [C24, 27, 31, 35,§§9140-c1, 9141, 9142; C39,§§9140.1, 9141, 9142; C46, 50, 54, 58, 62, 66,§§524.11, 524.12, 524.13; C71, 73, 75,§524.305]

Referred to in §§524.106(2), 524.1001, 524.1507(2)

524.306 Issuance of certificate of incorporation. The receipt of the approved articles of incorporation of a state bank by the secretary of state shall constitute filing thereof with that office. The secretary of state shall record the articles of incorporation and forward a copy thereof to the county recorder of the county in which the state bank is to have its principal place of business who shall record same, all as required by section 496A.53. The secretary of state upon the filing of such articles of incorporation shall issue a certificate of incorporation and send the same to the incorporators. [C97,§§1842, 1863; S13,§1842; C24, 27, 31, 35, 39,§§9158, 9205; C46, 50, 54, 58, 62, 66, §§526.4, 527.4; C71, 73, 75,§524.306]

Referred to in §524.106

524.307 Organizational meeting. After the issuance of the certificate of incorporation of a state bank, an organizational meeting of the board of directors named in the articles of incorporation shall be held at the call of a majority of the incorporators for the purpose of adopting bylaws, if any are to be adopted, electing officers and the transaction of such other business as may properly come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting. [C97,§1845; C24, 27, 31, 35, 39, §9168; C46, 50, 54, 58, 62, 66,§526.11; C71, 73, 75,§524.307]

Referred to in §524.106(2)

524.308 Effect of certificate of incorporation; issuance of authorization to do business.

1. Upon the issuance of the certificate of incorporation of a state bank, the corporate existence shall begin, unless the certificate in conformity with a provision of the articles of incorporation provides that it shall begin on a stated day in the future, in which event the corporate existence shall without further action by either the incorporators or the secretary of state begin on the day so stated. Such certificate of incorporation shall be conclusive evidence of the fact that the state bank has been incorporated except as against the superintendent in a proceeding instituted by him to dissolve a state bank pursuant to section 524.1302.

2. The state bank shall not accept deposits or transact any business except such business as is incident to commencement of business, or to the obtaining of subscriptions and payment for its shares until receipt of an authorization to do business from the superintendent. The superintendent shall issue an authorization to do business upon finding that the proposed state bank has complied with all the requirements of this chapter precedent to commencing business and has submitted to the superintendent a statement under oath, in the manner designated by the superintendent, showing that the capital, surplus and undivided profits required by the superintendent in accordance with this chapter have been fully paid in.

3. If a state bank transacts any business before receipt of an authorization to do business in violation of subsection 2, the directors and officers who willfully authorized or participated in such action shall be severally liable for the debts and liabilities of the state bank incurred prior to the receipt of the authorization to do business. [C97,§§1843, 1864; S13,§§1843, 1864; C24, 27, 31, 35, 39,§§9161, 9207; C46, 50, 54, 58, 62, 66,§§526.6, 527.5; C71, 73, 75,§524.308]

Referred to in §524.106(2)

524.309 Publication of authorization to do business. A state bank shall cause to be published once within two weeks after the issuance by the superintendent of the authorization to do business, in a newspaper of general circulation published in the municipal corporation which is the principal place of business of the state bank, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the state bank has its principal place of business, a notice which shall state:

1. The name of the state bank, the address of its principal place of business and the date of the issuance of the authorization to do business.

2. The names and addresses of the members of the initial board of directors as designated in the articles of incorporation.

3. That the shareholders shall not be personally liable for the debts and obligations of the state bank.

Proof of such publication, by affidavit of the publisher of the newspaper in which it was made, shall be filed with the secretary of state and with the superintendent, and shall

be conclusive evidence of the fact. [C97,§§1843, 1864; S13,§§1843, 1864; C24, 27, 31, 35, 39,§§**9161, 9208**; C46, 50, 54, 58, 62, 66,§§526.6, 527.6; C71, 73, 75,§524.309]

Referred to in §524.106(2)

524.310 Name of state bank.

1. The name of a state bank originally incorporated after the effective date of this chapter shall include the word "bank" and the word "state" or "trust" in its name. If a state bank uses the word "trust" in its name, it must be authorized under this chapter to act in a fiduciary capacity.

2. The provisions of this section shall not require any state bank, existing and operating on January 1, 1970, to add to, modify or otherwise change its corporate name, either on January 1, 1970, or upon renewal of its corporate existence pursuant to section 524.106.

3. If a state bank existing and operating on January 1, 1970, causes its corporate name to be changed, the name as changed shall comply with subsection 1 of this section. [C97, §§1861, 1889; S13,§§1889, 1889-i; C24, 27, 31, 35, 39,§§**9202, 9261, 9295, 9296**; C46, 50, 54, 58, 62, 66,§§527.1, 528.54, 532.12, 532.13; C71, 73, 75, §524.310]

524.311 Commission for organizing state banks. No person shall, directly or indirectly, receive or contract to receive any commission or bonus of any kind for organizing any state bank or for securing a subscription to the original capital of any state bank or to any increase thereof; provided that this section shall not be construed as prohibiting the payment of reasonable compensation for legal or accounting services in connection with organization. [C24, 27, 31, 35, 39,§**9275**; C46, 50, 54, 58, 62, 66,§528.74; C71, 73, 75,§524.311]

Referred to in §524.1610

524.312 Location of state bank.

1. Every state bank originally incorporated pursuant to the provisions of this chapter shall have its principal place of business within the confines of a municipal corporation. The existence of a state bank shall not, however, be affected by the subsequent discontinuance of the municipal corporation. A state bank existing and operating on January 1, 1970, which does not have its principal place of business within the confines of a municipal corporation, shall be allowed to renew its corporate existence pursuant to the provisions of section 524.106 without regard to this section.

2. A state bank may, with the prior written approval of the superintendent, change the location of its principal place of business to a new location. A change of location shall be limited to another location in the same municipal corporation, to a location in a municipal corporation in the same county or to a municipal corporation in counties surrounding and contiguous to or touching or cornering on the county in which the state bank is located. If a state bank has its principal place of business in an unincorporated area, the superintendent may authorize a change of location of its principal place of business to a new location within the same unincorporated area as well as to any location referred to in the preceding sentence. [C71, 73, 75,§524.312; 66GA, ch 1056,§35]

524.313 Bylaws. The initial bylaws, if any, of a state bank shall be adopted by its board of directors. The power to alter, amend or repeal bylaws or adopt new bylaws shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the state bank not inconsistent with law or the articles of incorporation. [C97, §1844; C24, 27, 31, 35, 39,§**9162**; C46, 50, 54, 58, 62, 66,§526.7; C71, 73, 75,§524.313]

DIVISION IV
CAPITAL STRUCTURE

524.401 Minimum capital.

1. The minimum capital of a state bank existing and operating on January 1, 1970, shall be:

a. The amount required by subsection 2 of this section; or

b. Such lesser amount as the state bank had on January 1, 1970, but not less than the minimum amount required by law prior to such date.

2. The minimum capital of a state bank originally incorporated pursuant to the provisions of this chapter shall not be less than one hundred thousand dollars or such higher amount which the superintendent may deem necessary in view of the deposit potential of the state bank and current banking standards relating to total capital requirements. [C97,§§1843, 1864; S13,§§1843, 1864; C24, 27,§§9160, 9206; C31,§9217-c1; C35,§§9217-c1, 9283-f14; C39,§§**9217.1, 9283.42**; C46, 50, 54, 58, 62, 66,§§528.1, 528.127; C71, 73, 75,§524.401]

Referred to in §524.403

524.402 Surplus.

1. A state bank originally incorporated pursuant to the provisions of this chapter shall establish, prior to receiving an authorization to do business from the superintendent, a paid in surplus as required by the superintendent, in an amount not less than fifty percent of its capital.

2. If the surplus of a state bank is at any time less than the amount of its capital, the state bank shall, until surplus is equal to such amount, transfer to surplus an amount which is at least ten percent of the net profits of the state bank for the period since the end of the last fiscal year or for any shorter period since the last declaration of a dividend:

a. Prior to the declaration of any dividend, and

b. In any event, at the end of each fiscal year. [C97,§§1843, 1864; S13,§§1843, 1850-a, 1864;

C24, 27,§§9160, 9187, 9188, 9206; C31, 35,§§9187, 9188, 9217-c1, 9262-c1; C39,§§**9187, 9188, 9217.1, 9262.1**; C46, 50, 54, 58, 62, 66,§§526.32, 526.33, 528.1, 528.57; C71, 73, 75,§524.402]

Referred to in §§524.103(20), 524.516

524.403 Undivided profits. A state bank originally incorporated pursuant to the provisions of this chapter shall establish, prior to receiving an authorization to do business from the superintendent, a fund to be denominated undivided profits in an amount to be determined by the superintendent, but in no event less than twenty percent of the capital required by subsection 2 of section 524.401. The superintendent shall estimate the amount of initial expenses to be incurred by the state bank in determining the amount of the fund required by this section. [C97,§§1843, 1864; S13, §§1843, 1850-a, 1864; C24, 27,§§9160, 9188, 9206; C31, 35,§§9188, 9217-c1; C39,§§**9188, 9217.1**; C46, 50, 54, 58, 62, 66,§§526.33, 528.1; C71, 73, 75, §524.403]

Referred to in §524.103(22)

524.404 Capital notes and debentures.

1. A state bank may, with the prior approval of the superintendent and the affirmative vote of the holders of at least three-fourths of the shares entitled to vote thereon, issue capital notes or debentures. The amounts, maturities, rate of interest, relative rights with other creditors, and other terms and conditions shall be set forth on the face of the capital notes or debentures or in an attendant agreement, and all such terms and conditions shall be subject to the prior approval of the superintendent provided that all such capital notes and debentures shall be subordinated to the rights of other persons to the extent provided for in section 524.1312. The aggregate amount of all capital notes and debentures issued and outstanding pursuant to this section shall not exceed, at any one time, the capital and surplus of the state bank.

2. A state bank shall not make any payment of principal on any capital notes or debentures without the prior approval of the superintendent nor shall any payment of principal and interest be made on any such capital or debentures by a state bank when its capital is impaired or which would cause its capital to become impaired. Subject to the provisions of this section a state bank may issue capital notes or debentures with provision for installment or serial payment of capital notes or debentures according to an established schedule which shall be approved by the superintendent prior to issuance.

3. No state bank may issue capital notes or debentures within five years after it is originally authorized to do business. [C71, 73, 75, §524.404]

Referred to in §§524.103(8), 524.405, 524.814, 524.818

524.405 Increase or decrease of capital structure.

1. A state bank may, with the approval of the superintendent, increase its capital structure or effect an allocation of amounts within its capital structure, by the use of any of the following methods:

a. Sale of authorized but unissued shares.

b. Transfer of surplus or undivided profits to capital for authorized but unissued shares.

c. Transfer of undivided profits to surplus.

d. Authorization and issuance of common shares, preferred shares, or capital notes or debentures as provided in section 524.404.

2. Whenever it shall appear necessary to do so in the interest of the safety of the deposits of a state bank, the superintendent may require that the capital structure of the state bank be increased by either of the methods provided for in paragraphs "*a*" and "*d*" of subsection 1.

3. Neither capital nor surplus shall be decreased except with the approval of the superintendent. [C97,§1856; C24, 27, 31, 35, 39,§§**9194, 9262, 9264, 9265**; C46, 50, 54, 58, 62, 66,§§526.38, 528.56, 528.59, 528.60; C71, 73, 75,§524.405]

Referred to in §§524.501, 524.517

DIVISION V
SHARES, SHAREHOLDERS AND DIVIDENDS

524.501 Authorized shares.

1. A state bank shall have the power to create and issue:

a. Common shares with par value, and

b. One or more classes of preferred shares, all of which shall be shares with par value and any and all of which may be voting or nonvoting and which may have such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation.

2. Without limiting the authority herein contained, a state bank, when so provided in its articles of incorporation, may issue preferred shares:

a. Subject to the right of the state bank to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

b. Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends.

c. Having preference over common shares or any other classes of preferred shares as to the payment of dividends.

d. Having preference in the assets of the state bank over common shares or any other class of preferred shares upon the voluntary or involuntary dissolution of the state bank.

e. Convertible into shares of common or into shares of preferred of another class except a class having prior or superior rights and preferences as to dividends or distribution of assets upon dissolution.

Unless the articles of incorporation or bylaws otherwise provide, the board of directors may, by resolution duly adopted and with the approval of the superintendent as provided in section 524.405, issue from time to time, in whole or in part, the shares authorized by the articles of incorporation. [C97,§§1853, 1865;

C24, 27,§§9192, 9209; C31, 35,§§9192, 9209, 9261-c1; C39,§§9192, 9209, 9261.1; C46, 50, 54, 58, 62, 66,§§526.36, 527.7, 528.55; C71, 73, 75,§524.501]

524.502 Certificates representing shares. The shares of a state bank shall be represented by certificates signed by such officers, employees or agents as are authorized by the articles of incorporation or bylaws to sign. If no contrary provisions are made in the articles of incorporation or bylaws, such certificates shall be signed by the president or a vice-president and the cashier or an assistant cashier of the state bank, and may be sealed with the seal of the state bank or a facsimile thereof. The signatures of the president or vice-president and the cashier or an assistant cashier or other persons signing for the state bank upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the state bank itself or an employee of the state bank. In case any officer or other authorized person who has signed or whose facsimile signature has been placed upon such certificate for the state bank shall have ceased to be such officer or employee or agent before such certificate is issued, it may be issued by the state bank with the same effect as if he were such officer or employee or agent at the date of its issue. If a state bank is authorized to issue preferred shares, every certificate issued by the state bank shall set forth upon the face or back of the certificate, or shall state that the state bank will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of such preferred shares.

Each certificate representing shares shall state upon the face thereof:

1. That the state bank is organized under the laws of this state.

2. The name of the person to whom issued.

3. The number and class of shares which such certificate represents.

4. The par value of each share represented by such certificate.

No certificate shall be issued for any share until such share is fully paid. [C71, 73, 75, §524.502]

524.503 Consideration for shares.

1. Except in the case of a distribution of shares authorized by section 524.517 or shares issued upon exchanges or conversion, common shares of a state bank may be issued only for cash in an amount which shall be at least:

a. In the case of the issuance of additional common shares of an existing state bank, equal to the sum of the capital represented by the common shares and the surplus of the state bank divided by the number of common shares previously issued.

b. In the case of the issuance of common shares of a proposed state bank, the amount required to equal the sum of the capital, to be represented by the common shares, the surplus and the undivided profits, required by the superintendent as a condition precedent to the issuance of an authorization to do business, divided by the number of shares to be issued.

2. Preferred shares of a state bank may be issued only for cash and for an amount not less than that determined by the superintendent. [C97,§1853; C24, 27, 31, 35, 39,§9192; C46, 50, 54, 58, 62, 66,§§526.36; C71, 73, 75,§524.503]

Referred to in §524.507

524.504 Subscriptions for shares. A subscription for shares of a state bank to be incorporated pursuant to the provisions of this chapter shall be irrevocable for a period of six months, or for such longer period as is provided for by the terms of the subscription agreement, unless all of the subscribers consent to the revocation of such subscription.

Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after incorporation of a state bank, shall be paid in full at such time as shall be determined by the board of directors.

The call for payment by the board of directors on subscriptions shall be uniform as to all shares of the same class. [C71, 73, 75, §524.504]

524.505 Liability of shareholders and subscribers.

1. A holder of shares of a state bank shall be under no obligation to the state bank or its creditors with respect to such shares. A subscriber to shares of a state bank shall be under no obligation to the state bank or its creditors with respect to such shares other than the obligation to pay the full consideration for such shares prior to their issuance.

2. An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors or receiver shall not be personally liable to the state bank as a holder of or subscriber to shares of a state bank but the estate and funds in his hands shall be so liable.

3. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder. [C71, 73, 75,§524.505]

524.506 Shareholders pre-emptive rights. The pre-emptive right of a shareholder of common shares to acquire unissued common shares of a state bank or preferred shares and capital notes or debentures of a state bank which are convertible into common shares, shall not be limited or denied, except as provided in section 524.520. The pre-emptive right of holders of preferred shares to acquire unissued shares of a state bank may be limited or denied to the extent provided in the articles of incorporation or any amendment thereto. Any shares of a state bank purchased and acquired by such state bank, and held by it during the period permitted by this chapter,

shall not be entitled to pre-emptive rights. [C71, 73, 75,§524.506]

Referred to in §§524.302, 524.520

524.507 Owning or loaning on its own shares. No state bank shall make any loan or extension of credit on the security of the shares of its own capital, or, except as provided in sections 524.1406 and 524.1417, be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and shares so purchased or acquired shall be sold at public or private sale within one year from the time of their purchase or acquisition, unless the time is extended by the superintendent. Any common shares of a state bank purchased or acquired by the state bank pursuant to this chapter, and sold as directed by this chapter, shall be subject to the minimum consideration requirements of subsection 1 of section 524.503 unless a lesser consideration is approved by the superintendent. Any preferred shares of a state bank purchased or acquired by the state bank pursuant to this chapter, and sold as directed by this chapter, shall be subject to the consideration requirements of subsection 2 of section 524.503. [C97,§1850; S13,§1850; C24, 27,§9184; C31, 35,§9221-c2; C39,§9221.2; C46, 50, 54, 58, 62, 66,§528.9; C71, 73, 75,§524.507]

524.508 Meetings of shareholders. Meetings of shareholders may be held at such place, within this state, as may be provided in the articles of incorporation or the bylaws, or as may be fixed from time to time in accordance with the provisions thereof. In the absence of any such provision, all meetings shall be held at the principal place of business of the state bank. An annual meeting of the shareholders shall be held on the specific and named day as shall be provided in the articles of incorporation. Failure to hold the annual meeting on the designated day shall not work a forfeiture or dissolution of the state bank. Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws. [C71, 73, 75,§524.508]

524.509 Notice of shareholder meetings — waiver of notice generally.

1. Written or printed notice stating the place, day and hour of a meeting of the shareholders and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the cashier, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the state bank with postage thereon prepaid.

2. Whenever any notice is required to be given to any shareholder under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the state bank, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. [C71, 73, 75,§524.509]

Referred to in §§524.106, 524.1502(1), 524.1508(2)

524.510 Closing of transfer books and fixing record date. The board of directors of a state bank shall cause adequate stock transfer books to be maintained. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a state bank may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw, the board of directors may fix, in advance, a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof. [C97,§1853; C24, 27, 31, 35, 39,§9192; C46, 50, 54, 58, 62, 66,§526.36; C71, 73, 75, §524.510]

524.511 Voting list. The officer or agent having charge of the stock transfer books for shares of a state bank shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days

prior to such meeting, shall be kept on file at the principal place of business of the state bank and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer books shall be prima-facie evidence as to who are the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders. Failure to comply with the requirements of this section shall not affect the validity of action taken at such meeting. [C71, 73, 75,§524.511]

524.512 Quorum of shareholders. Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by the laws of this state or of the United States or by the articles of incorporation or bylaws. [C71, 73, 75,§524.512]

524.513 Voting of shares. Each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any preferred class, may be limited or denied by the articles of incorporation.

Shares of a state bank purchased or acquired by such state bank pursuant to this chapter shall not be voted at any meeting and shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite number of shares.

A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution.

At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many individuals as there are directors to be elected and for whose election he has a right to vote.

Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Except as provided in the following sentence, shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

In an election of directors, a state bank may not vote its own shares held by it as sole trustee unless under the terms of the trust the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and unless such donor or beneficiary actually directs how such shares shall be voted, provided, however, that shares held in trust by a state bank pursuant to an instrument in effect prior to January 1, 1970, under the terms of which the manner in which such shares shall be voted could not be determined by a donor or beneficiary of the trust, may be voted in an election of directors of a state bank upon petition filed by the state bank, to a court of competent jurisdiction, and the appointment by such court of an individual to determine the manner in which such shares shall be voted. When the shares of a state bank are held by such state bank and one or more persons as trustees, such shares may be voted by such other person or persons as trustees, in the same manner as if he or they were the sole trustee. Whenever shares cannot be voted by reason of being held by a state bank as sole trustee, such shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite number of shares.*

Unless otherwise provided by the governing instrument, shares which are held jointly by any number of fiduciaries shall be voted in the manner determined by the majority of such fiduciaries (excluding a trustee ineligible by reason of the preceding paragraph) or if the fiduciaries are equally divided on the manner of voting, any court of competent jurisdiction may, upon petition filed by any such fiduciaries or any beneficiary, appoint an additional person to act with such fiduciaries in determining the manner in which such shares shall be voted.

Unless otherwise provided by agreement, if persons holding shares jointly or as tenants in common are unable to agree upon the manner in which such shares shall be voted, the vote of such shares shall be divided among such persons in proportion to their interest.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

On and after the date on which written notice of redemption of preferred shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited in escrow with irrevocable instruction

and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares. [C97,§1847; S13,§1889-e; C24, 27, 31, 35, 39,§§**9175, 9289**; C46, 50, 54, 58, 62, 66,§§526.18, 532.6; C71, 73, 75, §524.513]

*See §633.699

524.514 Voting trust. Any number of shareholders of a state bank may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed twenty years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the state bank at its principal place of business, by delivery of a copy thereof to the superintendent and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting trust agreement so deposited with the state bank shall be subject to examination for any proper purpose during usual business hours by a shareholder of the state bank, in person or by agent or attorney, or by any holder of a beneficial interest in the voting trust, in person or by agent or attorney.

This section shall not affect the validity of any agreement, relative to the voting of shares, in effect on January 1, 1970. [C71, 73, 75, §524.514]

524.515 Lists—filing with superintendent. Every state bank shall cause to be kept a full and correct list of the names and addresses of the officers, directors, and shareholders of the state bank, and the number of shares held by each. The list shall be subject to public inspection during usual business hours. If an affiliate, as defined in subsection 4 of section 524.1101 is a shareholder in a state bank, such list shall include the names, addresses, and percentage of ownership or interest in the affiliate of the shareholders, members or other individuals possessing a beneficial interest in said affiliate.

A copy of the list as of the date of the adjournment of each annual meeting of shareholders, in the form of an affidavit signed by the president or cashier of the state bank, shall be transmitted to the superintendent within ten days after such annual meeting. [C97,§1889; S13,§1889; C24, 27, 31, 35, 39,§§**9255, 9256, 9257**; C46, 50, 54, 58, 62, 66,§§528.47, 528.48, 528.49; C71, 73, 75,§524.515]

524.516 Dividends.

1. The board of directors of a state bank may, from time to time, declare, and the state bank may pay, dividends on its outstanding shares subject to the restrictions of this chapter and to the restrictions, if any, in its articles of incorporation. Dividends may be declared and paid only out of undivided profits and may be paid in cash or property.

2. A dividend may not be declared or paid unless the transfer of net profits to surplus required by section 524.402 has been made prior to the declaration of the dividend. [C97, §§1852, 1888; S13,§§1850-a, 1852, 1889-l; C24, 27, 31, 35,§§9188, 9191, 9262, 9262-c1, 9263, 9283, 9299; C39,§§**9188, 9191, 9262, 9262.1, 9263, 9283, 9299**; C46, 50, 54, 58, 62, 66,§§526.33, 526.35, 528.56, 528.57, 528.58, 528.85, 532.16; C71, 73, 75,§524.516]

524.517 Distribution of shares of state bank.

1. The board of directors of a state bank may, subject to the provisions of section 524.405, distribute pro rata to holders of common shares authorized but unissued common shares of the state bank.

2. No distribution may be made in authorized but unissued shares of the state bank unless:

a. There shall be transferred to capital an amount equal to the total par value of the shares distributed, and

b. Immediately after the distribution, the surplus of the state bank would be at least equal to fifty percent of its capital. [C71, 73, 75,§524.517]

Referred to in §524.503

524.518 Redemption of preferred shares.

1. By resolution of its board of directors and with the prior approval of the superintendent, a state bank may redeem preferred shares. Any preferred shares which are redeemable according to the terms of their issuance shall be redeemed only in accordance with such terms. Preferred shares which are redeemed shall be canceled and shall not be reissued. Preferred shares which are not redeemable according to the terms of their issuance shall be redeemable only pro rata or by lot or by such other equitable method as may be selected by the board of directors.

2. When preferred shares are redeemed by a state bank, the redemption shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this section. The filing of the statement of cancellation shall constitute an amendment to the articles of incorporation and shall reduce the number of preferred shares of the class so canceled which the state bank is authorized to issue by the number so canceled.

The statement of cancellation shall be executed by the state bank by its president or a vice-president and by its cashier or an assistant cashier, and acknowledged by one of the officers signing such statement, and shall set forth:

a. The name of the state bank and the effective date of its incorporation.

b. The number of preferred shares canceled through redemption, itemized by classes.

c. The aggregate number of issued shares, itemized by classes, after giving effect to such cancellation.

d. The amount, expressed in dollars, of the stated capital of the state bank after giving effect to such cancellation.

e. The number of shares which the state bank has authority to issue, itemized by classes, after giving effect to such cancellation.

Such statement of cancellation, together with the applicable filing and recording fees, shall be delivered to the superintendent who shall, if he finds the statement of cancellation satisfies the requirements of this section, deliver it to the secretary of state for filing and recording in his office and the same shall be filed and recorded in the office of the county recorder. The capital of the state bank shall be deemed reduced by the par value of the shares so canceled upon the effective date of such redemption. [C71, 73, 75,§524.518]

524.519 Change of control—certificate of approval—shares as security—reports.

1. Whenever any person proposes to purchase or otherwise acquire directly or indirectly any of the outstanding shares of a state bank, and the proposed purchase or acquisition would result in control or in a change in control of the bank, the person proposing to purchase or acquire the shares shall first apply in writing to the superintendent for a certificate of approval for the proposed change of control. The superintendent shall grant the certificate if he is satisfied that the person who proposes to obtain control of the bank is qualified by character, experience and financial responsibility to control and operate the bank in a sound and legal manner, and that the interests of the depositors, creditors and shareholders of the bank, and of the public generally, will not be jeopardized by the proposed change of control. If the proposed purchaser or acquirer is a bank holding company as defined by section 524.1801, it shall comply with section 524.1804 in lieu of seeking a certificate of approval under this subsection. In any situation where he has reason to believe any of the foregoing requirements have not been complied with, it shall be the duty of the president or cashier of a bank to promptly report in writing such facts to the superintendent upon obtaining knowledge thereof. As used in this section, the term control means the power, directly or indirectly, to elect the board of directors. If there is any doubt as to whether a change in the ownership of the outstanding shares is sufficient to result in control thereof, or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the superintendent.

2. Whenever twenty-five percent or more of the outstanding voting shares of a state bank is used as security for any transaction, the person or persons owning such shares shall promptly report such transaction to the superintendent in writing.

3. The reports required by subsections 1 and 2 of this section shall contain information (to the extent known by the person making the report) relative to the number of shares involved, the names of the sellers and purchasers (or transferors and tranferees), the purchase price, the name of the borrower, the amount, source, and terms of the loan, or other transaction, the name of the bank issuing the shares used as security, and the number of shares used as security.

4. The superintendent may require, at such times as he deems appropriate, the submission of a financial statement from a shareholder or shareholders of a state bank possessing, directly or indirectly, control of such state bank. [C71, 73, 75,§524.519]

524.520 Options for shares. A state bank may authorize the granting of options to officers and employees to purchase unissued, common shares of the state bank in accordance with a plan approved by the superintendent provided the following steps are taken:

1. The plan is submitted to a vote of the shareholders at an annual meeting or special meeting called for the purpose, the notice of the meeting contains a complete description of the plan, and the plan receives the affirmative vote of the holders of at least two-thirds of the shares entitled to vote thereon.

2. The consideration per share shall be determined as of the date the options are granted and shall not be less than the sum of the capital represented by common shares and the surplus of the state bank divided by the number of common shares issued and outstanding on such date, but in no case less than an amount approved by the superintendent.

3. Options to purchase shares shall have a termination date and shall not be transferable by the holder of the option during his lifetime. In the event that the option is to survive the death of the holder of the option, the option shall terminate one year after the date of his death but may be exercised by his estate during that one-year period.

4. Notice of the meeting shall describe the extent to which pre-emptive rights of shareholders are inapplicable to the issuance of shares under this section.

Upon approval by the shareholders the cashier shall reserve authorized but unissued shares for purposes of this section until the options are exercised or expire.

Upon approval by the shareholders as provided in subsection 1 of this section, the provisions of section 524.506 inconsistent with this section shall be inapplicable. [C71, 73, 75,§524.520]

Referred to in §524.506

DIVISION VI
DIRECTORS

524.601 Board of directors.

1. The business and affairs of a state bank shall be managed by a board of five or more directors eighteen years of age or older, a majority of whom shall be citizens of this state and all of whom shall be citizens of the United States. No individual shall be eligible to serve as a director of any state bank unless he is the owner, in his own right, free of any lien and encumbrance, of common shares in the state bank of which he is a director having

a par value of not less than five hundred dollars.

2. The number of directors may be increased, or decreased to a number not less than five, by the shareholders at the annual meeting, or at a special meeting called for that purpose, but no decrease shall have the effect of shortening the term of an incumbent director. [C97,§§1845, 1866; C24, 27,§§9163, 9164, 9165, 9166, 9210–9212, 9213; C31, 35,§§9163, 9164, 9165, 9210–9212, 9217-c2; C39,§§**9163, 9164, 9165, 9210–9212, 9217.2**; C46, 50, 54, 58, 62, 66,§§526.8, 526.9, 526.10, 527.8–527.10, 528.2; C71, 73, 75, §524.601]

524.602 Board of directors — election. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting. Directors shall hold office for one year and until their successors have been elected and qualified, unless removed in accordance with provisions of section 524.606. When the shareholders increase the number of directors at an annual meeting or at a special meeting, they shall, at the same meeting or at a subsequent meeting, elect a director to fill each new directorship created. [C97,§1846; C24, 27, 31, 35, 39,§§**9171, 9172**; C46, 50, 54, 58, 62, 66,§§526.14, 526.15; C71, 73, 75,§524.602]

524.603 Vacancies. Unless otherwise provided in the articles of incorporation, the bylaws, or by action of the shareholders, any vacancy occurring in the board of directors may be filled by the affirmative vote of the majority of the directors then in office, even if less than a quorum of the board of directors. A director so elected shall be elected for the unexpired term of his predecessor in office. [C97,§1846; C24, 27, 31, 35, 39,§**9170**; C46, 50, 54, 58, 62, 66,§526.13; C71, 73, 75,§524.603]

524.604 Duties and responsibilities. The duties and responsibilities of a director or of the board of directors shall include, but are not limited to, the following:

1. Reasonably regular attendance at meetings of the board.

2. Employment of officer personnel, and determination of their compensation.

3. Periodic review of the original records of the state bank, or comprehensive summaries thereof prepared by the officers of the state bank, pertaining to loans, discounts, security interests and investments in bonds and securities.

4. Utilization of a method to insure the safety of the funds of depositors as provided for in section 524.608.

5. Periodic review of the utilization of security measures for the protection of the state bank and the maintenance of reasonable insurance coverage.

Directors of a state bank shall discharge the duties of their position in good faith and with that diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions. The directors shall have a continuing responsibility to assure themselves that the bank is being managed according to law and that the practices and policies adopted by the board are being implemented. [C27, 31, 35,§9283-b23; C39, §**9283.71**; C46, 50, 54, 58, 62, 66,§531.23; C71, 73, 75,§524.604]

524.605 Liability of directors in certain cases. In addition to any other liabilities imposed by law upon directors of a state bank:

1. Directors of a state bank who vote for or assent to the declaration of any dividend or other distribution of the assets of a state bank to its shareholders in willful or negligent violation of the provisions of this chapter or of any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the state bank for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or of the restrictions in the articles of incorporation.

2. The directors of a state bank who vote for or assent to any distribution of assets of a state bank to its shareholders during the dissolution of the state bank without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the state bank shall be jointly and severally liable to the state bank for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the state bank are not thereafter paid and discharged.

3. The directors of a state bank who, willfully or negligently, vote for or assent to any loan or extension of credit resulting in an obligation, as defined in subsection 1 of section 524.904, to such state bank in violation of the provisions of this chapter, shall be jointly and severally liable to the state bank for the amount of any loss sustained as a result of such obligation.

4. The directors of a state bank who, willfully or negligently, vote for or assent to any investment of funds of the state bank in violation of the provisions of this chapter shall be jointly and severally liable to the state bank for the amount of any loss sustained on such investment.

A director of a state bank who is present at a meeting of its board of directors at which action on any matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the individual acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the cashier of the state bank promptly after the adjournment of the meeting. Such

right to dissent shall not apply to a director who voted in favor of such action.

A director shall not be liable under subsections 1, 2, 3, or 4 of this section if the director relied and acted in good faith upon information represented to the director to be correct by an officer or officers of such state bank or stated in a written report by a certified public accountant or firm of such accountants. No director shall be deemed to be negligent within the meaning of this section if the director in good faith exercised that diligence, care and skill which an ordinarily prudent person would exercise as a director under similar circumstances.

Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a state bank and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of the provisions of this chapter, in proportion to the amounts received by them respectively. Further, any director against whom a claim shall be asserted pursuant to this section for the payment of any liability imposed by this section shall be entitled to contribution from any director found to be similarly liable.

Whenever the superintendent deems it necessary he may require, after affording an opportunity for a hearing upon adequate notice, that a director or directors whom he reasonably believes to be liable to a state bank pursuant to subsections 1, 2, 3, or 4 of this section, to place in an escrow account in an insured bank located in this state, as directed by the superintendent, an amount sufficient to discharge any liability which may accrue pursuant to subsections 1, 2, 3, or 4 of this section. The amount so deposited shall be paid over to the state bank by the superintendent upon final determination of the amount of such liability. Any portion of the escrow account which is not necessary to meet such liability shall be repaid on a pro rata basis to the directors who contributed to the fund.

Any action seeking to impose liability under this section, other than liability for contribution, shall be commenced only within five years of the action complained of and not thereafter. [C71, 73, 75,§524.605]

Referred to in §524.702(2)

524.606 Removal of directors.

1. At a meeting of shareholders expressly called for that purpose, individual directors or the entire board of directors may be removed, with or without cause, by the affirmative vote of the holders of at least two-thirds of the shares entitled to vote at an election of directors. The vacancies created may be filled at the same meeting at which the removal proceedings take place.

2. When, in the opinion of the superintendent any director of a state bank shall have continued to violate any law relating to such state bank or shall have continued unsafe or unsound practices in conducting the business of such state bank, after having been warned by the superintendent to discontinue or correct such violations of law or such unsafe or unsound practices, the superintendent may cause notice to be served upon such director, to appear before the superintendent to show cause why he should not be removed from office. A copy of such notice shall be sent to each director of the state bank affected, by registered or certified mail. If, after granting the accused director a reasonable opportunity to be heard, the superintendent finds that the director continued to violate any law relating to such state bank or continued unsafe or unsound practices in conducting the business of such state bank after having been warned by the superintendent to discontinue or correct such violations of law or such unsafe or unsound practices, the superintendent, in his discretion, may order that such director be removed from office. A copy of the order shall be served upon such director and upon the state bank of which he is a director at which time he shall cease to be a director of the state bank.

The decision of the superintendent shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. No action taken by a director prior to his removal shall be subject to attack on the ground of his disqualification. [C31, 35,§9224-c2; C39,§9224.2; C46, 50, 54, 58, 62, 66,§528.18; C71, 73, 75,§524.606]

Referred to in §§524.602, 524.707

524.607 Meetings — waiver of notice — quorum. The board of directors shall hold at least one meeting each calendar month. A special meeting may be called by the president, a vice-president, cashier or a director. Notice of a meeting shall be given to each director, either personally or by mail, at least two days in advance of the meeting. Notice shall not be required if the articles of incorporation, bylaws, or a resolution of the board of directors provide for a regular monthly meeting date.

Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Whenever any notice is required to be given to any director of a state bank under the provisions of this chapter or under the provisions of the articles of incorporation or the bylaws of the state bank, a waiver thereof in writing, signed by the individual or individuals entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

A majority of the board of directors shall constitute a quorum for the transaction of business unless a greater number is required

by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the laws of this state or of the United States, the articles of incorporation or the bylaws. [C97,§§1846, 1871; S13,§1871; C24, 27, §§9174, 9224; C31, 35,§§9174, 9224-c1; C39,§§**9174, 9224.1**; C46, 50, 54, 58, 62, 66,§§526.17, 528.17; C71, 73, 75,§524.607]

524.608 Examining by directors or auditing. In addition to any examination made by the superintendent or other supervisory agencies, the board of directors shall employ at least one of the methods described in this section.

1. An examining committee of not less than two members of the board of directors, who are not officers, shall examine the condition of the state bank at least once each six months, and submit a written report of each examination to the board of directors, who shall record the report in their minutes and deliver a copy of the report to the superintendent. The superintendent shall establish minimum standards for such examinations.

2. The board of directors may employ a certified public accountant or a firm of such accountants to perform certain auditing functions for a state bank during each year, according to generally accepted methods of accounting practice. The superintendent may establish minimum standards for such auditing functions. The report of the accountants shall be submitted to the board of directors, and a copy of the report shall be delivered to the superintendent.

3. The board of directors may establish an autonomous internal audit control system which shall be subject to approval of the superintendent. The individual directing the internal audit control system shall submit to the board of directors each quarter an interim report as to the degree of compliance with the internal audit control system and shall express an opinion as to the adequacy of the internal controls. A complete report shall be submitted annually to the board of directors, who shall record the report in their minutes and deliver a copy of the report to the superintendent. [C97,§1871; S13,§1871; C24, 27,§§9224, 9225; C31, 35,§§9224-c1, 9225, 9226; C39,§§**9224.1, 9225, 9226**; C46, 50, 54, 58, 62, 66,§§528.17, 528.19, 528.20; C71, 73, 75,§524.608]

Referred to in §524.604(4)

524.609 Executive and other committees. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the state bank shall have and may exercise all the authority of the board of directors, but no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange or other disposition of all or substantially all the property and assets of the state bank, recommending to the shareholders a voluntary dissolution of the state bank or a revocation thereof, or amending the bylaws of the state bank. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law. [C71, 73, 75,§524.609]

524.610 Compensation of directors. Subject to the approval of the superintendent, the shareholders of a state bank shall fix the compensation of directors for their services as members of the board of directors.

A director who is also a salaried officer or employee of the state bank of which he is a director shall receive no additional compensation as director. Directors may be reimbursed for reasonable expenses incurred in the performance of their duties. [C97,§§1869, 1871; S13,§§1869, 1871; C24, 27, 31, 35, 39,§§**9219, 9227**; C46, 50, 54, 58, 62, 66,§§528.5, 528.21; C71, 73, 75,§524.610]

524.611 Oath of directors. Each director of a state bank, before acting as a director, shall take an oath that he will diligently, faithfully and impartially perform the duties imposed upon him by law, that he will not knowingly violate or willingly permit a violation of any of the provisions of this chapter, and that he meets the eligibility requirements of this chapter.

The oath shall be signed by the director, acknowledged before an officer authorized to take acknowledgments of deeds, and delivered to the superintendent. [C97,§1845; C24, 27, §9167; C31, 35, 39,§**9224**; C46, 50, 54, 58, 62, 66, §528.16; C71, 73, 75,§524.611]

524.612 Director dealing with state bank.

1. The total obligations, as defined in subsection 1 of section 524.904, of a director to a state bank of which he is a director shall not exceed twenty percent of the capital and surplus of the state bank except that the total obligations of a director to a state bank of which he is a director shall not exceed forty percent of the capital and surplus of the state bank if the amount by which such obligations exceed twenty percent of the capital and surplus of the state bank shall consist of obligations described in subparagraphs (1), (2), and (3) of paragraph "*a*" of subsection 2 of section 524.904. A majority of the board of directors, voting in the absence of the applying director, shall give its prior approval to any obligation, as defined in subsection 1 of section 524.904, of a director to the state bank of which he is a director. The form of such approval shall be specified by the superintendent, and a copy

recorded in the minutes of the board of directors.

Referred to in §524.1601(2)

2. A director shall not be permitted to receive any loan or extension of credit or use any property of a state bank of which he is a director at a lower rate of interest or charge than the rate charged to other customers under similar circumstances.

3. A director shall not be paid a higher rate of interest on deposits by a state bank of which he is a director than the rate paid to any other customer under similar circumstances.

4. A director shall not purchase or lease any assets from or sell or lease any assets to a state bank of which he is a director except upon terms not less favorable to the state bank than those offered to or by other persons. All purchases or leases from and sales or leases to a director shall receive the prior approval of a majority of the board of directors voting in the absence of the interested director.

Referred to in §524.1601(1)

5. For the purpose of this section, and section 524.706, any obligation, as defined in section 524.904, subsection 1, of the spouse, other than a spouse who is separated from the director or officer under a decree of divorce or separate maintenance, or minor children of a director or officer to the state bank in which he is a director or officer shall be considered an obligation of such director or officer.

Referred to in §524.1601(2)

[C97,§1869; S13,§1869; C24, 27, 31, 35, 39,§9220; C46, 50, 54, 58, 62, 66,§528.6; C71, 73, 75,§524.612]

Referred to in §§524.706(2), 524.1601, 524.1806

524.613 Prohibitions applicable to directors. No director of a state bank shall:

1. Receive anything of value for procuring, or attempting to procure, any loan or extension of credit resulting, or which would result, in an obligation, as defined in subsection 1 of section 524.904, to the state bank or for procuring, or attempting to procure, an investment by the state bank, of which he is a director.

2. Overdraw his deposit account in the state bank. [C31, 35,§9221-c3; C39,§9221.3; C46, 50, 54, 58, 62, 66,§528.10; C71, 73, 75,§524.613]

Referred to in §§524.1601[(1),(1,a,b)], 524.1806

524.614 Honorary and advisory directors. The board of directors of a state bank may appoint an individual as an honorary director, director emeritus or member of an advisory board. An individual so appointed may not vote at any meeting of the board of directors nor be counted in determining a quorum and shall not be charged with any responsibilities or be subject to any liabilities imposed upon directors by this chapter. [C71, 73, 75,§524.614]

DIVISION VII
OFFICERS AND EMPLOYEES

524.701 Officers and employees. A state bank shall have, as officers, a president, one vice-president and a cashier. As additional officers the state bank may have a chairman, additional vice-presidents, assistant vice-presidents, assistant cashiers and other officers as may be prescribed by the articles of incorporation or the bylaws. Upon notice by the superintendent, an individual who performs active executive or official duties for a state bank may be treated as an officer for the purpose of this chapter. A state bank may have a chairman of the board of directors and one vice-president who, if they do not perform executive or official duties or receive a salary, need not be treated as officers for the purpose of this chapter. All officers shall be elected by the board of directors. No more than two offices may be held by the same individual. All other individuals employed by a state bank, except directors who are not officers, shall be employees for the purpose of this chapter. The president of a state bank shall be a member of the board of directors. [C97,§1845; C24, 27, 31, 35, 39,§9162; C46, 50, 54, 58, 62, 66,§526.7 (4); C71, 73, 75,§524.701]

524.702 Officers—duties and liability.

1. All officers of a state bank shall have such authority and perform such duties in the management of the state bank as may be provided for in the articles of incorporation or the bylaws, or as may be determined by a resolution of the board of directors not inconsistent with the bylaws or the articles of incorporation.

2. If an officer willfully or negligently submits any incorrect information to a director or directors, and action by the board of directors contrary to the provisions of this chapter, or of any restrictions in the articles of incorporation, is taken in reliance thereon, the officer shall be liable to the same extent as if the officer were a director voting for or assenting to such action, as provided in section 524.605. An officer shall also be liable to the extent of any loss sustained by the state bank as a result of the officer's willful or negligent violation of any provision of this chapter. The superintendent may require an officer or officers whom the superintendent reasonably believes to be liable to a state bank pursuant to this section, to place in an escrow account an amount sufficient to discharge such liability in the manner provided for in section 524.605. No officer shall be deemed to be negligent within the meaning of this section if the officer exercised that diligence, care and skill which an ordinarily prudent person would exercise as an officer under similar circumstances. [C97,§1886; C24, 27, 31, 35, 39,§9281; C46, 50, 54, 58, 62, 66, §528.83; C71, 73, 75,§524.702]

524.703 Officers—employment and compensation. The board of directors may fix the tenure and provide for the reasonable compensation of officers. Upon approval by the board of directors, officers may be reimbursed for reasonable expenses incurred by them in behalf of the state bank.

Subject to the approval of the superintendent, and approval by the shareholders at an

annual or special meeting called for the purpose, the board of directors of a state bank may adopt a pension or profit sharing plan, or both, or other plan of deferred compensation, for both officers and employees, to which the state bank may contribute. [C97,§§1844, 1869; S13,§1869; C24, 27, 31, 35, 39,§§**9162, 9219**; C46, 50, 54, 58, 62, 66,§§526.7(4), 528.5; C71, 73, 75,§524.703]

524.704 Employee—employment and compensation. Employees of a state bank may be employed by the president or his representative who shall determine, subject to the approval of the board of directors, their compensation and tenure. Employees may be reimbursed for reasonable expenses incurred by them in behalf of the state bank, upon approval of a designated officer. [C97,§1844; C24, 27, 31, 35, 39,§**9162**; C46, 50, 54, 58, 62, 66,§526.7 (4); C71, 73, 75,§524.704]

Referred to in §524.706

524.705 Bonds of officers and employees. The officers and employees of a state bank having the care, custody, or control of any funds or securities for any state bank shall give a good and sufficient bond in a company authorized to do business in this state indemnifying the state bank against losses, which may be incurred by reason of any act or acts of fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction, misapplication, misappropriation, or other unlawful act committed by such officer or employee directly or through connivance with others, until all of his accounts with the state bank shall have been fully settled and satisfied. The amounts and sureties shall be subject to the approval of the board of directors. If the agent of a bonding company issuing a bond under this section is an officer or employee of the state bank upon which the bond was issued, the bond so issued shall contain a provision that the bonding company shall not use, either as a grounds for rescission or as a defense to liability under the terms and conditions of the bond, the knowledge that the agent was so employed, whether or not he received any part of the premium for such bond as a commission. [C97,§1845; C24, 27, §9169; C31, 35,§§9169, 9217-c3; C39,§§**9169, 9217.3**; C46, 50, 54, 58, 62, 66,§§526.12, 528.3; C71, 73, 75,§524.705]

524.706 Officer dealing with state bank.

1. *a.* An executive officer of a state bank may receive loans or extensions of credit from a state bank of which he is an executive officer, resulting in obligations as defined in section 524.904, subsection 1, not exceeding, in the aggregate:

(1) Such amount as the bank is permitted to lend pursuant to section 524.905, subsection 2, if, at the time such obligation is incurred, it is secured by a first lien on a dwelling which is expected, after the obligation is incurred, to be owned by the executive officer and used by him as his residence, provided that at the time the loan is made there is no other loan by the bank to the executive officer, under authority of this subparagraph, outstanding; and

(2) An amount not exceeding an aggregate of ten thousand dollars outstanding at any one time, to finance the education of a child or children of the executive officer; and

(3) Any other loans or extensions of credit which in aggregate do not at any one time exceed five thousand dollars.

b. A state bank shall not loan money or extend credit to an executive officer of such state bank, nor shall an executive officer of a state bank receive a loan or extension of credit from such state bank, exceeding the limitations imposed by this section or for a purpose other than that authorized by this section. Such loans or extensions of credit shall not exceed an amount totaling more than twenty percent of the capital and surplus of the state bank and any such loan on real property shall comply with section 524.905. A majority of the board of directors, voting in the absence of the applying officer, whether or not he is also a director, shall give its prior approval to any obligation of an executive officer to the state bank of which he is an executive officer. The form of approval shall be specified by the superintendent, and a copy recorded in the minutes of the board of directors.

c. For the purposes of this subsection, the term "executive officer" means every officer of a state bank who participates or has authority to participate, otherwise than in the capacity of a director, in major policymaking functions of the bank, regardless of whether he has an official title or whether his title contains a designation of assistant and regardless of whether he is serving without salary or other compensation. The chairman of the board, the president, every vice president, the cashier, secretary, and treasurer of a state bank are assumed to be executive officers, unless, by resolution of the board of directors or by the bank's bylaws, but subject to contrary notice by the superintendent as provided for in section 524.704, any such officer is excluded from participation in major policymaking functions, otherwise than in the capacity of a director of the bank, and he does not actually participate therein.

2. The provisions of section 524.612, subsections 2, 3 and 4, shall apply to officers.

3. If an individual is a director and an officer, he shall be subject to the limitations of subsection 1 of this section.

4. Whenever an officer of a state bank borrows from or otherwise becomes obligated to any person or persons other than the state bank of which he is an officer, in a total amount equal to or exceeding twenty-five thousand dollars excluding such amounts as may be owing by him secured by a first lien on a dwelling which is used by him as his residence, the officer shall report in writing to the superintendent that he is so obligated. Upon the request of the superintendent, an

officer of a state bank shall submit to the superintendent, a personal financial statement which shall show the names of all persons to whom the officer is obligated, the dates, terms, and amounts of each loan or other obligation, the security therefor, and the purpose for which the proceeds of such loans or other obligations have been or are to be used. [C97, §1869; S13,§1869; C24, 27, 31, 35, 39,§**9220**; C46, 50, 54, 58, 62, 66,§528.6; C71, 73, 75,§524.706; 66GA, ch 1213,§1,2]

Referred to in §§524.612(5), 524.1601[(1), (1,*c*), (2)], 524.1806

524.707 Removal of officers.

1. Any officer may be removed by the board of directors whenever in its judgment the best interests of the state bank shall be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. Election of an officer shall not of itself create contract rights.

2. Subsection 2 of section 524.606 providing for the removal of directors by the superintendent, shall have equal application to officers. [C71, 73, 75,§524.707]

524.708 Report of change in officer personnel. A state bank shall promptly notify the superintendent of any change in the names of individuals holding the offices of chairman, president, vice president, and cashier. [C97, §1889; S13,§1889; C24, 27, 31, 35, 39,§§**9255, 9257**; C46, 50, 54, 58, 62, 66,§§528.47, 528.49; C71, 73, 75,§524.708]

524.709 Duty to make records available to superintendent. The officers and employees of a state bank shall make all records of the state bank available to the superintendent for the purpose of examination or for any other reasonable purpose. [C24, 27, 31, 35, 39,§**9147**; C46, 50, 54, 58, 62, 66,§524.20; C71, 73, 75, §524.709]

Referred to in §524.1604(3)

524.710 Prohibitions applicable to officers and employees. No officer or employee of a state bank shall:

1. Receive anything of value for procuring, or attempting to procure, any loan or extension of credit resulting, or which would result, in an obligation, as defined in subsection 1 of section 524.904, to the state bank or for procuring, or attempting to procure, an investment by the state bank, of which he is an officer or employee.

2. Overdraw his deposit account in the state bank.

3. Engage, directly or indirectly, in the sale of any kind of insurance, shares of stock, bonds or other securities, or real property, or procure or attempt to procure for a fee or other compensation, a loan or extension of credit for any person from a person other than the state bank of which he is an officer or employee, or act in any fiduciary capacity, unless authorized to do so by the board of directors of the state bank which shall also determine the manner in which the profits, fees, or other compensation derived therefrom shall be distributed. [C31, 35,§§9221-c3, 9222-c2, 9283-c1; C39,§§**9221.3, 9222.2, 9283.01**; C46, 50, 54, 58, 62, 66,§§528.10, 528.12, 528.86; C71, 73, 75,§524.710]

Referred to in §§524.912, 524.1601

DIVISION VIII.
GENERAL BANKING POWERS

524.801 General powers. A state bank, unless otherwise stated in its articles of incorporation, shall have power:

1. To have perpetual succession by its corporate name.

2. To sue and be sued, complain and defend, in its corporate name.

3. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

4. To purchase, take, receive, lease, or otherwise acquire, own, hold, improve and use real or personal property, or an interest therein, in connection with the exercise of any power granted in this chapter.

5. To sell, convey, pledge, mortgage, grant a security interest, lease, exchange, transfer, and release from trust or mortgage or otherwise dispose of all or any part of real or personal property, or an interest therein, in connection with the exercise of any power granted in this chapter.

6. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the state bank.

7. To make donations for the public welfare for religious, charitable, scientific or educational or community development purposes.

8. To indemnify any director, officer or employee, a former director, officer or employee of the state bank in the manner and in the instances authorized by section 496A.4, subsection 19.

9. To elect officers or appoint agents of the state bank and define their duties and fix their compensation.

10. To cease its existence as a state bank in the manner provided for in this chapter.

11. To have and exercise all powers necessary and proper to effect any or all of the purposes for which the state bank is organized.

12. To contract indebtedness and incur liabilities to effect any or all of the purposes for which the state bank is organized, subject to the provisions of this chapter.

The powers granted in this section shall not be construed as limiting or enlarging any grant of authority made elsewhere in this chapter, or as a limitation on the purposes for which a state bank may be incorporated. [C97, §§1841, 1844; S13,§1889-j; C24, 27, 31, 35, 39,

§§9153, 9162, 9267; C46, 50, 54, 58, 62, 66,§§526.2, 526.7, 532.14; C71, 73, 75,§524.801]

524.802 Additional powers related to conduct of business of a state bank. A state bank shall have in addition to other powers granted by this chapter, and subject to the limitations and restrictions contained in this chapter:

1. The power to become a member of a clearing house association.

2. The power to become a member of the federal reserve system, to hold shares of stock in a federal reserve bank, to take all actions incident to maintenance of such membership and to exercise all powers not inconsistent with the provisions of this chapter conferred on member banks by the federal reserve system.

3. The power to become an insured bank pursuant to the federal deposit insurance Act and to take all actions incident to maintenance of an insured status thereunder.

4. The power to act as agent of the United States or of any instrumentality or agency thereof for the sale or issue of bonds, notes or other obligations of the United States.

5. The power to buy and sell coin, currency and bullion.

6. All other powers incidental to the conduct of the business of banking. [C97,§1841; SS15, §1889-o; C24, 27, 31,§§9156, 9269, 9271; C35, §§9156, 9269, 9271, 9283-g2,-g3,-g4,-g5; C39, §§9156, 9269, 9271, 9283.45, 9283.46, 9283.47, 9283.48; C46, 50, 54, 58, 62, 66,§§526.2, 528.67, 528.70, 530.2, 530.3, 530.4, 530.5; C71, 73, 75, §524.802]

524.803 Business property of state bank.

1. A state bank shall have power to:

a. Acquire and hold, or lease as lessee, such personal property as is used, or is to be used, in its operations.

b. Subject to the prior approval of the superintendent, acquire and hold, or lease as lessee, only such real property as is used, or is to be used, wholly or substantially, in its operations or acquired for future use.

c. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation engaged solely in holding or operating real property used wholly or substantially by a state bank in its operations or acquired for its future use and in a corporation organized solely for the purpose of providing data processing services, as such services are defined in the first sentence of section 524.804.

d. Subject to the prior approval of the superintendent, invest in a bank service corporation as defined by, and in accordance with, the laws of the United States.

e. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation engaged in providing and operating facilities through which banks and customers may engage, by means of either the direct transmission of electronic impulses to and from a bank or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a bank, in transactions in which such banks are otherwise permitted to engage pursuant to applicable law.

2. The book value of all real and personal property acquired and held pursuant to this section, of all alterations to buildings on real property owned or leased by a state bank, of all shares in corporations acquired pursuant to paragraphs "*c*" and "*d*" of subsection 1 of this section, and of any and all obligations of such corporations to the state bank, shall not exceed twenty-five percent of the capital and surplus of the state bank or such larger amount as may be approved by the superintendent.

3. Any real property which is held by a state bank pursuant to this section and which it ceases to use for banking purposes, or is acquired for future use but not used within a reasonable period of time, shall be sold or disposed of by the state bank as directed by the superintendent. [C97,§1851; C24, 27, 31, 35, 39,§9190; C46, 50, 54, 58,§526.34; C62, 66,§§524.31, 526.34; C71, 73, 75,§524.803; 66GA, ch 240,§1]

Referred to in §§524.804, 524.901

524.804 Data processing services. A state bank which owns or leases equipment to perform such bank services as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or other clerical, bookkeeping, accounting, statistical, or other similar functions, may provide similarly related data processing services for others whether or not engaged in the business of banking. If a state bank holds shares in a corporation organized solely for the purpose of providing data processing services, pursuant to the authority granted by paragraph "*c*" of subsection 1 of section 524.803, other than a bank service corporation as defined by the laws of the United States, such corporation shall be authorized to perform services for the state bank owning such interest and for others, whether or not engaged in the business of banking. [C62, 66,§524.31; C71, 73, 75, §524.804]

Referred to in §§524.218, 524.803, 524.1201

524.805 Deposits.

1. A state bank may receive money for deposit and may provide, by resolution of the board of directors, for the payment of interest thereon in an amount not inconsistent with the provisions of subsection 2 of this section and shall repay such deposit in accordance with the terms and conditions of its acceptance.

2. A state bank shall not, directly or indirectly, by any device whatsoever, pay any interest on any demand deposit. The superintendent may from time to time limit by general regulation, applicable to all state banks, the rates of interest that may be paid by a

state bank on time and savings deposits. The superintendent may prescribe different rate limitations for different classes of deposits, for deposits of different amounts or with different maturities, or subject to different conditions regarding withdrawal or repayment according to such reasonable basis as the superintendent may deem desirable in the public interest. The superintendent shall by regulation define what constitutes time, savings and demand deposits in a state bank. Such regulations shall prohibit any state bank from paying any time deposit before its maturity except upon such conditions and in accordance with such regulations as may be prescribed by the superintendent and shall prohibit any state bank from waiving any requirement of notice before payment of any savings deposit except as to all savings deposits having the same requirement.

3. The terms and conditions attending an agreement to pay interest on deposits shall be furnished to each customer at the time of the acceptance by the state bank of the initial deposit. No change made in the terms and conditions attending an agreement to pay interest which adversely affects the interest of a depositor shall be retroactively effective. Savings account depositors and holders and payees of automatic renewal time certificates of deposit shall be given reasonable notice of any change in the terms and conditions attending an agreement to pay interest prior to the effective date thereof.

4. A state bank may make such charges for the handling or custody of deposits as may be fixed by its board of directors provided that a schedule of such charges shall be furnished to the customer at the acceptance by the state bank of the initial deposit. Any change in such charges shall be furnished to the customer within a reasonable amount of time before the effective date of such change.

5. A state bank shall not accept deposits or renew certificates of deposit when insolvent.

6. Except as provided in section 524.807, a state bank may receive deposits by or in the name of a minor and may deal with a minor with respect to a deposit account without the consent of a parent, guardian or conservator and with the same effect as though the minor were an adult. Any action of the minor with respect to such deposit account shall be binding on the minor with the same effect as though an adult.

7. A state bank may receive deposits from a person acting as fiduciary or in an official capacity which shall be payable to such person in such capacity.

8. A state bank may receive deposits from a corporation, trust, estate, association or other similar organization which shall be payable to any person authorized by its board of directors or other persons exercising similar functions. [C97,§§1844, 1848, 1849, 1852, 1854, 1884; S13, §§1848, 1852; C24, 27,§§9162, 9177, 9178, 9179, 9180, 9181, 9182, 9191, 9193, 9279; C31, 35,§§9162, 9177, 9178, 9179, 9180, 9181, 9182, 9191, 9193, 9222-c1, 9279; C39,§§**9162, 9177, 9178, 9179, 9180, 9181, 9182, 9191, 9193, 9222.1, 9279**; C46, 50, 54, 58, 62, 66,§§526.7, 526.19–526.24, 526.35, 526.37, 528.11, 528.81; C71, 73, 75,§524.805]

Referred to in §524.1608

524.806 Deposit in the names of two individuals. When a deposit shall be made in any state bank in the names of two individuals, payable to either, or payable to either or the survivor, such deposit, including interest, or any part thereof, may be paid to either of such individuals whether the other be living or not, and the receipt or acquittance of the individual so paid shall be a valid and sufficient release and discharge to the state bank for any payment so made. [S13,§1889-b; C24, 27, 31, 35, 39,§**9267**: C46, 50, 54, 58, 62, 66,§528.64; C71, 73, 75,§524.806]

524.807 Payment of deposited funds. When any deposit shall be made by any individual in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given to the state bank, in the event of the death of the trustee, the same or any part thereof, together with interest thereon, may be paid to the individual for whom the deposit was made, or to his or her legal representatives; provided that the individual for whom the deposit was made, if a minor, shall not draw the same during his or her minority without the consent of the legal representatives of said trustee. [SS15,§1889-d; C24, 27, 31, 35, 39,§**9287**; C46, 50, 54, 58, 62, 66,§532.4; C71, 73, 75,§524.807]

Referred to in §524.805(6)

524.808 Adverse claims to deposits.

1. A state bank shall not be required, in the absence of a court order or indemnity required by this section, to recognize any claim to, or any claim of authority to exercise control over, a deposit account made by a person or persons other than:

a. The customer in whose name the account is held by the state bank.

b. An individual or group of individuals who are authorized to draw on or control the account pursuant to certified corporate resolution or other written arrangement with the customer, currently on file with the state bank, which has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other customer, of which the state bank has received notice and which is not the subject of a dispute known to the state bank as to its original validity. The deposit account records of a state bank shall be presumptive evidence as to the identity of the customer on whose behalf the money is held.

2. To require a state bank to recognize an adverse claim to, or adverse claim of authority to control, a deposit account, whoever makes the claim must either:

a. Obtain and serve on the state bank an appropriate court order or judicial process

directed to the state bank, restraining any action with respect to the account until further order of such court or instructing the state bank to pay the balance of the account, in whole or in part, as provided in the order or process; or

b. Deliver to the state bank a bond, in form and amount and with sureties satisfactory to the state bank, indemnifying the state bank against any liability, loss or expense which it might incur because of its recognition of the adverse claim or because of its refusal by reason of such claim to honor any check or other order of anyone described in paragraphs *"a"* and *"b"* of subsection 1 of this section. [C71, 73, 75,§524.808]

524.809 Authority to lease safe deposit boxes.

1. A state bank may lease safe deposit boxes for the storage of property on terms and conditions prescribed by it. Such terms and conditions shall not bind any customer to whom the state bank does not give notice thereof by delivery of a lease and agreement in writing containing such terms and conditions. A state bank may limit its liability provided such limitations are set forth in the lease and agreement in at least the same size and type as the other substantive provisions of the contract.

2. The lease and agreement of a safe deposit box may provide that evidence tending to prove that property was left in any such box upon the last entry by the customer or his authorized agent, and that the same or any part thereof was found missing upon subsequent entry, shall not be sufficient to raise a presumption that the same was lost by any negligence or wrongdoing for which such state bank is responsible, or put upon the state bank the burden of proof that such alleged loss was not the fault of the state bank.

3. A state bank may lease a safe deposit box to a minor. A state bank may deal with a minor with respect to a safe deposit lease and agreement without the consent of a parent, guardian or conservator and with the same effect as though the minor were an adult. Any action of the minor with respect to such safe deposit lease and agreement shall be binding on the minor with the same effect as though an adult.

4. A state bank which has on file a power of attorney of a customer covering a safe deposit lease and agreement, which has not been revoked by the customer, shall incur no liability as a result of continuing to honor the provisions of the power of attorney in the event of the death or incompetence of the donor of the power of attorney until it receives written notice of the death, or written notice of adjudication by a court of the incompetence of the customer and the appointment of a guardian or conservator. [C31, 35,§9267-c1; C39, §9267.1; C46, 50, 54, 58, 62, 66,§528.65; C71, 73, 75,§524.809]

Referred to in §524.108

524.810 Search procedure on death. A state bank shall permit the person named in a court order for the purpose or, if no order has been served upon the state bank, the spouse, a parent, an adult descendant or a person named as executor in a copy of a purported will produced by him, to open and examine the contents of a safe deposit box leased by a decedent, or to examine any property delivered by a decedent for safekeeping, in the presence of an officer of the state bank. The state bank shall, if requested by such person, and upon their receipt therefor, deliver:

1. Any writing purported to be a will of the decedent to the court having jurisdiction of the decedent's estate.

2. Any writing purported to be a deed to a burial plot, or to give burial instructions, to the person making the request for a search.

3. Any document purported to be an insurance policy on the life of the decedent to the beneficiary named therein. A state bank shall prepare and keep a list of any contents delivered pursuant to this section describing the nature of the property and the individual to whom delivered, and place a copy of the list in the safe deposit box from which such contents were removed. [C71, 73, 75,§524.810]

Referred to in §524.108

524.811 Adverse claims to property in safe deposit and safekeeping.

1. A state bank shall not be required, in the absence of a court order or indemnity required by this section, to recognize any claim to, or claim of authority to exercise control over, property held in safe deposit or property held for safekeeping pursuant to section 524.813 made by a person or persons other than:

a. The customer in whose name the property is held by the state bank.

b. An individual or group of individuals who are authorized to have access to the safe deposit box, or to the property held for safekeeping, pursuant to a certified corporate resolution or other written arrangement with the customer, currently on file with the state bank, which has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other customer, of which the state bank has received notice and which is not the subject of a dispute known to the state bank as to its original validity. The safe deposit and safekeeping account records of a state bank shall be presumptive evidence as to the identity of the customer on whose behalf the money is held.

2. To require a state bank to recognize an adverse claim to, or adverse claim of authority to control, property held in safe deposit or for safekeeping, whoever makes the claim must either:

a. Obtain and serve on the state bank an appropriate court order or judicial process directed to the state bank, restraining any action with respect to the property until further

order of such court or instructing the state bank to deliver the property, in whole or in part, as provided in the order or process; or

b. Deliver to the state bank a bond, in form and amount and with sureties satisfactory to the state bank, indemnifying the state bank against any liability, loss or expense which it might incur because of its recognition of the adverse claim or because of its refusal to deliver the property to any person described in paragraphs "*a*" and "*b*" of subsection 1 of this section. [C71, 73, 75,§524.811]

Referred to in §524.108

524.812 Remedies and proceedings for nonpayment of rent on safe deposit box.

1. A state bank shall have a lien upon the contents of a safe deposit box for past due rentals and any expense incurred in opening the safe deposit box, replacement of the locks thereon, and of any sale made pursuant to this section. If the rental of any safe deposit box is not paid within six months from the day it is due, at any time thereafter and while such rental remains unpaid, the state bank shall mail a notice by certified or registered mail to the customer at his last known address as shown upon the records of the state bank, stating that if the amount due for such rental is not paid on or before a specified day, which shall be at least thirty days after the date of mailing such notice, the state bank will remove the contents thereof and hold the same for the account of the customer.

2. If the rental for the safe deposit box has not been paid after the expiration of the period specified in a notice mailed pursuant to subsection 1 of this section, the state bank may, in the presence of two of its officers, cause the box to be opened and the contents removed. An inventory of the contents of the safe deposit box shall be made by the two officers present and the contents held by the state bank for the account of the customer.

3. If the contents are not claimed within two years after their removal from the safe deposit box, the state bank may proceed to sell so much of the contents as is necessary to pay the past due rentals and the expense incurred in opening the safe deposit box, replacement of the locks thereon and the sale of the contents. The sale shall be held at the time and place specified in a notice published prior to the sale once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the state bank has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the state bank has its principal place of business. A copy of the notice so published shall be mailed to the customer at his last known address as shown upon the records of the state bank. The notice shall contain the name of the customer and need only describe the contents of the safe deposit box in general terms. The contents of any number of safe deposit boxes may be sold under one notice of sale and the cost thereof apportioned ratably among the several safe deposit box customers involved. At the time and place designated in said notice the contents taken from each respective safe deposit box shall be sold separately to the highest bidder for cash and the proceeds of each sale applied to the rentals and expenses due to the state bank and the residue from any such sale shall be held by the state bank for the account of the customer or customers. Any amount so held as proceeds from such sale shall be credited with interest at the customary annual rate for savings accounts at said state bank, or in lieu thereof, at the customary rate of interest in the community where such proceeds are held. The crediting of interest shall not activate said account to avoid an abandonment as unclaimed property under chapter 556.

4. Notwithstanding any of the provisions of this section, shares, bonds, or other securities which, at the time of a sale pursuant to subsection 3 of this section, are listed on any established stock exchange in the United States, shall not be sold at public sale but may be sold through an established stock exchange. Upon the making of a sale of any such securities, an officer of the state bank shall execute and attach to the securities so sold an affidavit reciting facts showing that such securities were sold pursuant to this section and that the state bank has complied with the provisions of this section. The affidavit shall constitute sufficient authority to any corporation whose shares are so sold or to any registrar or transfer agent of such corporation to cancel the certificates of shares so sold and to issue a new certificate or certificates representing such shares to the purchaser thereof, and to any registrar, trustee, or transfer agent of registered bonds or other securities, to register any such bonds or other securities in the name of the purchaser thereof.

5. The proceeds of any sale made pursuant to this section, after the payment of any amounts with respect to which the state bank has a lien, any property which was not offered for sale and property which, although offered for sale, was not sold, shall be retained by the state bank until such time as the property is presumed abandoned according to the provisions of section 556.2, and shall thereafter be handled in accordance with the provisions of that chapter. [C71, 73, 75,§524.812]

Referred to in §§524.108, 524.813

524.813 Authority to receive property for safekeeping.

1. A state bank may accept property for safekeeping if, except in the case of night depositories, it issues a receipt therefor. A state bank accepting property for safekeeping shall purchase and maintain reasonable insurance coverage to insure against loss incurred in connection with the acceptance of property for safekeeping. Property held for safekeeping

shall not be commingled with the property of the state bank or the property of others.

2. A state bank shall have a lien upon any property held for safekeeping for past due charges for safekeeping and for expenses incurred in any sale made pursuant to this subsection. If the charge for the safekeeping of property is not paid within six months from the day it is due, at any time thereafter and while such charge remains unpaid, the state bank may mail a notice to the customer at his last known address as shown upon the records of the state bank, stating that if the amount due is not paid on or before a specified day, which shall be at least thirty days after the date of mailing such notice, the state bank will remove the property from safekeeping and hold the same for the account of the customer. After the expiration of the period specified in such notice, if the charge for safekeeping has not been paid, the state bank may remove the property from safekeeping, cause the property to be inventoried and hold the same for the account of the customer. If the property is not claimed within two years after its removal from safekeeping the state bank may proceed to sell so much thereof as is necessary to pay the charge which remains unpaid and the expense incurred in making the sale in the manner provided for in subsections 3 and 4 of section 524.812. The proceeds of any sale made pursuant to this section, after payment of any amounts with respect to which the state bank has a lien, any property which was not offered for sale and property which, although offered for sale, was not sold, shall be retained by the state bank until such time as the property is presumed abandoned according to the provisions of section 556.2, and shall thereafter be handled in accordance with the provisions of that chapter. [C71, 73, 75,§524.813]

Referred to in §524.811

524.814 Pledge of assets. Pursuant to a resolution of its board of directors, a state bank may pledge its assets for the following purposes, and for no other purposes:

1. To secure deposits when a customer is required to obtain such security by the laws of the United States, the laws of the state of Iowa, by the terms of any interstate compact or by order of any court of competent jurisdiction.

2. To secure money borrowed by the state bank, provided that capital notes or debentures issued pursuant to section 524.404 shall not in any event be secured by a pledge of assets or otherwise. [S13,§1889-c; C24, 27, §9268; C31, 35,§§9222-c2, 9222-c3, 9268; C39, §§9222.2, 9222.3, 9268; C46, 50, 54, 58, 62, 66, §§528.12, 528.13, 528.66; C71, 73, 75,§524.814]

Referred to in §524.1601(4)

524.815 Deposits by a state bank. A state bank may deposit its funds in a depository which is selected by, or in a manner authorized by, the directors of a state bank and which is authorized by law to receive deposits and is subject to supervision by banking authorities of the United States or of any state, and, with the prior approval of the superintendent, in any other depository. [C71, 73, 75,§524.815]

524.816 Cash reserve requirements.

1. A state bank which is a member of the federal reserve system shall maintain cash reserves in accordance with the requirements applicable to a member bank under the laws of the United States.

2. A state bank which is not a member of the federal reserve system shall maintain cash reserves against its deposits in amounts:

a. In the case of a state bank with its principal place of business in a municipal corporation defined as a reserve city by the laws of the United States, not less than ten percent of its demand deposits except that the superintendent may on such basis as he may deem appropriate in view of the character of the business transacted by such state bank, make applicable the reserve requirement prescribed for banks not having their principal place of business in such a reserve city.

b. In the case of a state bank not having its principal place of business in a municipal corporation defined as a reserve city by the laws of the United States, not less than seven percent of its demand deposits.

c. In the case of any deposit other than a demand deposit, not less than three percent.

3. A state bank, except a state bank which is a member of the federal reserve system, shall determine the amount of its cash reserves required by this section in accordance with a formula prescribed by the superintendent by general regulation applicable to all such state banks.

4. The cash reserves required by this section of a state bank which is not a member of the federal reserve system shall consist of United States coin and currency on hand and funds on deposit in other banks, the deposits of which are insured by the federal deposit insurance corporation.

5. Whenever it shall appear necessary to do so in the interest of the depositors of a state bank, the superintendent may require that the state bank maintain reserves exceeding the amount required by this section consisting of such obligations of the United States as the superintendent shall prescribe. [C97,§§1860, 1867; SS15,§1860; C24, 27,§§9201, 9216, 9270; C31, 35,§§9270, 9270-c1; C39,§§9270, 9270.1; C46, 50, 54, 58, 62, 66,§§528.68, 528.69; C71, 73, 75, §524.816]

Referred to in §§524.817, 524.1602(1)

524.817 Deficiency in cash reserves.

1. Whenever it appears that a state bank is not paying due regard to the maintenance of its cash reserves as required by subsection 2 of section 524.816, the superintendent may require the state bank to submit periodic reports relating to its cash reserves at such intervals as the superintendent may deem necessary.

2. If a state bank fails to maintain the cash reserves required by section 524.816, the superintendent shall order the state bank to restore its cash reserves and if it fails to do so within a reasonable time, he may take over the management of the property and business of the state bank as provided for in sections 524.224 and 524.226. [C71, 73, 75,§524.817]

524.818 Indebtedness of state bank. A state bank may borrow money or otherwise contract indebtedness for necessary expenses in managing and transacting its business, to maintain proper cash reserves, and for other corporate purposes, provided, however, the superintendent may prohibit or place restrictions upon money borrowed or other indebtedness which would, in his judgment, constitute an unsafe or unsound practice in view of the condition and circumstances of the state bank. Nothing contained in this section shall limit the right of a state bank to issue capital notes or debentures pursuant and subject to the provisions of section 524.404. [S13,§1889-j; C24, 27, 31, 35, 39,§9297; C46, 50, 54, 58, 62, 66,§532.14; C71, 73, 75,§524.818]

524.819 Clearing checks at par. Checks drawn on a state bank shall be cleared at par by the state bank on which they are drawn. This section shall not be applicable where checks are received by a bank as special collection items. [C46, 50, 54, 58, 62, 66,§528.63; C71, 73, 75,§524.819]

Referred to in §524.1601(4)

524.820 Money received for transmission.

1. A state bank shall have power to receive money for transmission. Upon receiving money for transmission, a state bank shall give the customer a receipt setting forth the date of receipt of the money, the amount of the money in dollars and cents, and if the money is to be transmitted to a foreign country in the currency of such country, the amount of the money in such currency.

2. In an action by a customer against a state bank for recovery of money delivered for transmission, the burden of proof of delivery of the money in accordance with the instructions of the customer shall be on the state bank but an affidavit by an agent or depository of the state bank that the money was delivered in accordance with the instructions of the customer and a receipt for the money signed in the name of the recipient designated by the customer shall be prima-facie evidence of the delivery of the money in accordance with the instructions of the customer. [C71, 73, 75, §524.820]

524.821. Electronic transmission of funds—restrictions.

1. A state bank may engage in any transaction incidental to the conduct of the business of banking and otherwise permitted by applicable law, by means of either the direct transmission of electronic impulses to or from customers and banks or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a bank. Subject to the provisions of chapter 527, a state bank may utilize, establish or operate, alone or with one or more other banks, savings and loan associations incorporated under the provisions of chapter 534 or the Home Owners' Loan Act of 1933 (12 U.S.C. sections 1461-1463), credit unions incorporated under the provisions of chapter 533 or the federal Credit Union Act (12 U.S.C. sections 1751-1790), or third parties, the satellite terminals permitted under chapter 527, by means of which customers and banks may transmit and receive electronic impulses constituting transactions pursuant to this section. However, such utilization, establishment, or operation shall be lawful only when in compliance with chapter 527. Nothing in this section shall be construed as authority for any person to engage in transactions not otherwise permitted by applicable law, nor shall anything in this section be deemed to repeal, replace or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by any bank.

2. A state bank which offers its customers, or any of them, the opportunity to engage in transactions with or through the bank in the manner authorized by subsection 1 shall not require any customer to deal with or through the bank in that manner in lieu of writing checks in the usual manner upon a conventional checking account, and shall not impose any extraordinary charge upon customers who choose to write checks in the usual manner upon a conventional checking account maintained at that bank. [66GA, ch 240,§4, ch 1214,§1]

DIVISION IX
INVESTMENT AND LENDING POWERS

524.901 Investments.

1. A state bank may invest without limitation for its own account in the following bonds or securities:

a. Obligations of the United States and bonds and securities with respect to which the payment of principal and interest is fully and unconditionally guaranteed by the United States.

b. Obligations issued by any or all of the federal land banks, any or all of the federal intermediate credit banks, any or all of the banks for co-operatives, and any or all of the federal home loan banks, organized under the laws of the United States.

c. Obligations issued by the federal national mortgage association, under the laws of the United States.

d. Any other bonds or securities which are the obligations of or the payment of principal and interest of which is fully and unconditionally guaranteed by a federal reserve bank or by any department, bureau, board, commission, agency or establishment of the United States, or any corporation owned directly or indirectly by the United States.

e. General obligations of the state of Iowa and of political subdivisions thereof.

2. A state bank may invest for its own account in other readily marketable bonds or securities, with investment characteristics as defined by the superintendent by general regulation applicable to all state banks, subject to the following limitations:

a. The total amount of such bonds or securities of any one issuer or obligor, other than revenue bonds issued by a municipality pursuant to section 419.2, shall not exceed twenty percent of the capital and surplus of the state bank.

b. The total amount of revenue bonds issued by a municipality pursuant to section 419.2 which have been issued on behalf of any one lessee, as defined in section 419.1, or which are guaranteed by any one guarantor, or which are issued on behalf of or guaranteed by a corporation, a ten percent or greater ownership interest in which is held by or in common with a lessor or guarantor, or any combination of the foregoing whereby the municipality could receive revenues for payment of such bonds from any one person or any group of persons under common control, shall not exceed twenty percent of the capital and surplus of the state bank. A state bank shall obtain the express consent of the superintendent prior to investment by that bank of an amount in excess of twenty percent of its capital and surplus in bonds or securities issued by any one municipality.

c. No bond or security shall be eligible for investment by a state bank within this subsection if the bond or security has been in default either as to principal or interest at any time within five years prior to the date of purchase.

3. A state bank shall not, directly or indirectly, invest for its own account in the shares of any corporation except:

a. Shares in a federal reserve bank.

b. Shares in the federal national mortgage association.

c. When approved by the superintendent, shares and obligations of a corporation engaged solely in making loans for agricultural purposes eligible to discount or sell loans to a federal intermediate credit bank, commonly known as an agricultural credit corporation, in amounts not to exceed twenty percent of the capital and surplus of the state bank.

d. Shares in a corporation which the state bank is authorized to acquire and hold pursuant to section 524.803, subsection 1, paragraphs "*c*", "*d*" and "*e*".

e. Shares in an economic development corporation organized under chapter 496B to the extent authorized by and subject to the limitations of such chapter.

f. When approved by the superintendent, shares of a small business investment company as defined by the laws of the United States, except that in no event shall any such state bank hold shares in small business investment companies in an amount aggregating more than two percent of its capital and surplus. [C97,§§1844, 1850; S13,§1850; SS15,§1889-o; C24, 27, **31**, 35, 39,§§**9162, 9183, 9269, 9271;** C46, 50, 54, 58, 62, 66,§§526.7, 526.25, 528.15, 528.67, 528.70; C71, 73, 75,§524.901; 66GA, ch 240, §5, ch 1215,§1]

Referred to in §§524.217, 524.904[(3,*d,e*), (4,*f*)], 524.905 (6,*f*), 524.907, 524.1002(5,*a*), 524.1602(2)

524.902 General lending powers of a state bank.

1. A state bank may, subject to any applicable restrictions under other provisions of this chapter, loan money, extend credit and discount or purchase evidences of indebtedness and agreements for the payment of money.

2. Nothing in this chapter shall be deemed to permit a state bank to purchase a vendor's or vendee's interest in a real property sales contract, provided, however, that a state bank may loan or extend credit on the security of such an interest. [C97,§§1844, 1850, 1870; S13, §1850; SS15,§1870; C24, 27, 31, 35, 39,§**9162, 9184, 9223**; C46, 50, 54, 58, 62, 66,§§526.7, 526.29, 528.14; C71, 73, 75,§524.902]

Referred to in §524.904[(1,*a*), (2,*d*)]

524.903 Purchase and sale of drafts and bills of exchange.

1. A state bank shall have power to accept drafts drawn upon it having not more than six months after sight to run, exclusive of days of grace:

a. Which grow out of transactions involving the importation or exportation of goods.

b. Which grow out of transactions involving the domestic shipment of goods, provided documents of title are attached thereto at the time of acceptance.

c. In which a security interest is perfected at the time of acceptance covering readily marketable staples.

2. A state bank shall not accept such drafts in an amount which exceeds at any time in the aggregate for all drawers fifty percent of its capital and surplus. The superintendent may authorize a state bank to accept drafts in an amount not exceeding at any time in the aggregate for all drawers one hundred percent of its capital and surplus but the aggregate of acceptance growing out of domestic transactions shall in no event exceed fifty percent of such capital and surplus.

3. A state bank may, with the prior approval of the superintendent, accept drafts, having not more than three months after sight to run, drawn upon it by banks or bankers in foreign countries, or in dependencies or insular possessions of the United States, for the purpose of furnishing dollar exchange as required by the usages of trade where the drafts are drawn in an aggregate amount which shall not at any time exceed for all such acceptance on behalf of a single bank or banker ten percent of capital and surplus, and for all such acceptances, fifty percent of capital and surplus. [C24, 27, 31, 35, 39,§§**9272, 9273, 9274**; C46, 50,

54, 58, 62, 66,§§528.71, 528.72, 528.73; C71, 73, 75,§524.903]

Referred to in §§524.904[(3, c), (4, d, e)], 524.1602(3)

524.904 Obligations of one customer.

1. For the purpose of this section:

a. The term "obligations" means the amounts for the payment of which a customer is obligated, whether directly or indirectly, primarily or secondarily, to a state bank as a result of the exercise by the state bank of the powers conferred by section 524.902.

b. Obligations of a customer include obligations of others to a state bank arising out of loans made by such state bank for the benefit of such customer.

c. Obligations of a customer who is a partner include the obligations of a partnership or other unincorporated association for which obligations the customer is liable.

d. Obligations of a customer which is a partnership or other unincorporated association include the obligations of its partners who are liable for its obligations.

e. Obligations of a customer include the obligations of any and all corporations in which such customer owns or controls more than fifty percent of the shares entitled to vote.

f. Obligations of a customer which is a corporation include obligations of a person, who is also a customer, and who owns or controls more than fifty percent of the shares entitled to vote of such corporation.

g. Obligations of a customer which is a corporation include the obligations of any other corporation when a person owns or controls more than fifty percent of the shares entitled to vote, of such corporations.

h. If the superintendent shall determine at any time that the interests of a group of more than one customer, or any combination thereof, are so interrelated that they should be considered as a unit for the purpose of applying the limitations of this section, the total obligations of that group of customers existing at any time shall be combined and deemed obligations of one customer. A state bank shall not be deemed to have violated this section solely by reason of the fact that the obligations of a group exceed the limitations of this section at the time of a determination by the superintendent that the indebtedness of that group must be combined, but the state bank shall, if required by the superintendent, dispose of the obligations of the group in the amount in excess of the limitations of this section within such reasonable time as shall be fixed by the superintendent.

Referred to in §§524.605(3), 524.612(1, 5), 524.613, 524.706(1), 524.710

2. The total obligations of any one customer to a state bank at any one time, secured and unsecured, shall not exceed twenty percent of the capital and surplus of the state bank except that:

a. The total obligations of any one customer to a state bank at any one time, shall not exceed forty percent of the capital and surplus of the state bank if at least all of the amount by which such obligations exceed twenty percent of the capital and surplus of the state bank shall consist of any of the following or any combination of the following:

(1) Obligations in the form of notes or drafts, secured by nonnegotiable bills of lading, warehouse receipts or other documents transferring or securing title covering readily marketable nonperishable staples when such goods are covered by insurance to the extent that insuring such goods is customary, and when the market value of such goods is not at any time less than one hundred twenty percent of the face amount of such obligations.

(2) Obligations in the form of notes or drafts secured by nonnegotiable bills of lading, warehouse receipts or other documents transferring or securing title covering readily marketable refrigerated or frozen staples when such goods are fully covered by insurance and when the market value of such goods is not at any time less than one hundred twenty percent of the face amount of such obligations.

(3) Obligations in the form of notes or drafts secured by bills of lading, bills of sale or security agreements covering feeder livestock or female animals purchased and held for resale, or raised and held for sale prior to giving birth to their first offspring or after giving birth to but prior to weaning of their first offspring. Such livestock loans, including renewals or extensions thereof, made under the foregoing provisions shall not be made for a period in excess of eighteen months. In the case of purchase price livestock, the proceeds of such obligations shall have been given as purchase money for all or part of the purchase price of such livestock, but not to exceed the purchase price thereof. In the case of nonpurchase livestock, the proceeds of such obligations shall not be in an amount in excess of the prevailing local market price at the time of the loan, and the bank shall maintain proof of this fact.

Referred to in §524.612

(4) Obligations of the customer as endorser, guarantor or accommodation party for others, other than obligations as endorser of chattel paper described in paragraph "*b*" of this subsection.

(5) Such other obligations to a state bank as may be prescribed by the superintendent by regulations of general application to all state banks, or

b. The total obligations of any one customer to a state bank at any one time shall not exceed sixty percent of the capital and surplus of the state bank if at least all of the amount by which such obligations exceed twenty percent of the capital and surplus of the state bank shall consist of obligations as endorser of negotiable chattel paper negotiated by endorsement with recourse, or as unconditional guarantor of nonnegotiable chattel paper, or as transferor of chattel paper endorsed without recourse subject to a repurchase agreement, or

c. The total obligations of any one customer to a state bank at any one time shall not exceed the sum of twenty percent of the capital and surplus and fifty percent of the capital of the state bank, if at least all of the amount by which such obligations exceed twenty percent of the capital and surplus of a state bank shall consist of obligations secured by a first lien on farmland, or on single family or two family residences, subject to the provisions of section 524.905, except that the amount so loaned shall not exceed fifty percent of the appraised value of such real property, or

d. The total obligations of any one customer, who is an individual, to a state bank at any one time shall not exceed forty percent of the capital and surplus of the state bank if all of the amount by which such obligations exceed twenty percent of the capital and surplus of the state bank consists of amounts owed by one or more corporations of which the customer owns or controls more than fifty percent of the shares entitled to vote, provided however, when this paragraph applies:

(1) The amounts owed by such customer shall not exceed twenty percent of the capital and surplus of the state bank.

(2) The amounts owed by any one or all of such corporations shall not exceed twenty percent of the capital and surplus of the state bank.

(3) The shares, assets and any liabilities of any such corporation shall not be included in the financial statement of such customer or otherwise relied upon as a basis for a loan to such customer.

(4) The assets of such customer shall not be relied upon as a basis for a loan to any such corporation.

For the purposes of this paragraph, the term "amounts owed" means the amounts for the payment of which such customer or any one or all such corporations are obligated, whether directly or indirectly, primarily or secondarily, to a state bank as a result of the exercise by the state bank of the powers conferred by section 524.902, but determined without reference to paragraphs "*e*", "*f*" and "*g*" of subsection 1 of this section.

3. The total obligations of any one customer to a state bank at any one time for the purpose of applying the limitations of subsection 2 of this section shall include:

a. The aggregate rentals payable by the customer under leases of personal property by the state bank as lessor, except obligations secured by a lease on property in situations described in the second sentence of paragraph "*h*" of subsection 4 of this section.

b. Obligations secured by real property pursuant to section 524.905 and installment obligations made pursuant to section 524.906, except to the extent any such obligations are secured, guaranteed, insured or covered by unconditional commitments or agreements to purchase by the United States, veterans administration, federal housing administration, small business administration, farmers home administration, a federal reserve bank, or other department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States.

c. Obligations of the customer by reason of acceptance by the state bank of drafts of a type not described in subsection 1 of section 524.903, to the extent that the state bank has acquired such acceptances.

d. Obligations of the customer consisting of bonds and securities in which the state bank has invested pursuant to section 524.901, subsection 2.

e. Amounts invested by a state bank for its own account pursuant to section 524.901, subsection 3, paragraphs "*c*" and "*f*", in the shares and obligations of a corporation which is a customer of the state bank.

f. Obligations of the customer as obligor pursuant to evidences of indebtedness and agreements for the payment of money acquired by purchase or discount by the state bank.

g. All other obligations of the customer of the state bank, not otherwise excluded by subsection 4 of this section, whether direct or indirect, primary or secondary, including overdrafts and liability for items paid by the state bank against uncollected deposits of the customer.

4. The total obligations of any one customer to a state bank at any one time for the purpose of applying the limitations of subsection 2 of this section shall not include:

a. Obligations of such customer as the drawer of drafts drawn in good faith against actually existing values in connection with a sale of goods which have been endorsed by such customer with recourse or which have been accepted.

b. Obligations arising out of the discount of commercial paper actually owned by the customer negotiating the same and endorsed by the customer without recourse and which is not subject to repurchase by the customer.

c. Obligations drawn by the customer in good faith against actually existing values and secured by nonnegotiable bills of lading for goods in process of shipment.

d. Obligations in the form of acceptances of other banks of the kind described in section 524.903, subsection 3.

e. Obligations of the customer by reason of acceptances by the state bank for the account of the customer pursuant to section 524.903, subsection 1.

f. Obligations of the customer which are fully secured by bonds and securities of the kind in which a state bank is authorized to invest for its own account without limitation under section 524.901, subsection 1.

g. Obligations of a customer which is a member bank of the federal reserve system to a state bank which is a member bank of the federal reserve system for federal reserve funds borrowed.

h. Obligations of a federal reserve bank or of the United States, or of any department,

bureau, board, commission, agency, or establishment of the United States, or of any corporation owned directly or indirectly by the United States, or obligations of a customer to the extent that such obligations are secured or guaranteed or covered by unconditional commitments or agreements to purchase by a federal reserve bank or by the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States. An obligation of a customer secured by a lease on property under the terms of which the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States, or the state of Iowa, or any political subdivision thereof, is lessee and under the terms of which the aggregate rentals payable to the customer will be sufficient to satisfy the amount loaned shall be considered to be an obligation secured or guaranteed in the manner provided for in this paragraph. [C97,§1870; SS15,§1870; C24, 27, 31, 35, 39,§9223; C46, 50, 54, 58, 62, 66,§§528.14, 528.15; C71, 73, 75,§524.904]

Referred to in §§524.605, 524.612, 524.613, 524.706, 524.710, 524.907, 524.1602(4)

524.905 Loans on real property.

1. A state bank may make permanent loans or combined construction and permanent loans, secured by liens on residential real property housing more than two families, and on real property consisting of farmland, industrial, manufacturing and commercial properties including a leasehold in such properties. Any such loan may be made in an amount not to exceed seventy-five percent of the appraised value of the property offered as security and for a term not longer than twenty years, provided that the loan is secured by an amortized mortgage, deed of trust or other such instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within a period of not more than twenty years. In the case of a combined construction and permanent loan made pursuant to this subsection, the amount of the loan shall not exceed seventy-five percent of the value of the property upon completion of the construction.

2. A state bank may make permanent loans or combined construction and permanent loans, secured by liens on residential real property consisting of single family or two family residences as follows:

a. In an amount not to exceed ninety percent of the appraised value of the real property offered as security and for a term not longer than thirty years, provided that the loan is secured by an amortized mortgage, deed of trust or other such instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within a period of not more than thirty years.

b. In the case of a combined construction and permanent loan made pursuant to this subsection, the amount of the loan shall not exceed ninety percent of the value of the property upon completion of the construction.

3. A state bank may make loans secured by liens on real property for the purpose of:

a. Financing the construction of single family and two family residences if the maturity of such loans shall not exceed one year from the date thereof.

b. Financing the construction of industrial, manufacturing or commercial buildings or residences housing more than two families if the maturity of such loans shall not exceed two years from the date thereof and there is an unconditional commitment by a financially responsible permanent lender to advance the full amount of the loan of the state bank upon completion of the buildings.

c. Financing the acquisition and development of unimproved real property if the maturity of any such loan does not exceed three years from the date thereof and the amount of any such loan does not exceed one-half of the cost of the real property acquired for development plus one-half of the cost of development exclusive of the cost of construction of buildings.

4. A state bank may make loans secured by liens on real property repayable in one or more payments provided that the entire principal of any such loan shall mature in not more than five years from the date of the loan, but no such loan shall exceed fifty percent of the appraised value of the real property offered as security.

5. Any loan made pursuant to this section shall be subject to the following requirements:

a. The terms of any such loan, except loans made pursuant to subsection 3 or 4 of this section, shall require substantially equal payments of principal or principal and interest at successive intervals of not more than one year. In the case of any such loan which shall constitute a combined construction and permanent loan to finance farm buildings or single family and two family residences, the initial payment on the loan may be deferred for a period not to exceed one year from the date of the loan and, in the case of a combined construction and permanent loan to finance buildings or other improvements on industrial, manufacturing or commercial properties or residential properties housing more than two families, the initial payment on the loan may be deferred for a period not to exceed two years from the date of the loan.

b. The loan shall be evidenced by a bond, note or other obligation and secured by a lien in the form of a mortgage, deed of trust or other similar instrument.

c. The lien shall be a first lien, unless all prior liens are held by the state bank and the aggregate of all such loans by the state bank secured by liens on the real property satisfies all other requirements of this section pertain-

ing to such loans, provided that, for the purpose of this paragraph a mortgage, deed of trust or other similar instrument shall not be deemed to be other than a first lien within the meaning of this paragraph by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights of way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

d. The value of the real property shall be determined by averaging the appraisals of two qualified persons, selected in a manner authorized by the board of directors, who are familiar with real property values in the vicinity where the real property is located, and who inspect the real property and state its value to the best of their judgment in a written report to be retained by the state bank during the term of the loan.

e. Insurance against loss from fire on all buildings, which are included in the appraised value, and against other hazards, issued by insurers, acceptable to the state bank, authorized to do business where the real property is located, and in form and amount satisfactory to the state bank, shall be maintained during the term of the loan by or at the expense of the customer including the costs of any mortgage guaranty insurance required by the state bank except that the state bank may at its own expense maintain such insurance covering only its interest as lender.

f. The state bank shall obtain a written opinion by an attorney admitted to practice in Iowa stating that the mortgage, deed of trust or similar instrument is a first lien on the real property.

g. Real property securing loans under this section shall be located in this state or an adjoining state.

h. The customer shall pay all expenses in connection with the loan for preparation and examination of abstracts, opinions or title insurance, abstract certificates, and appraisal and recording fees.

i. The maturity date of a loan to a lessee on a leasehold shall occur prior to the expiration of two-thirds of the time from the inception of the lease to its expiration, including in such lease period the periods of time for which the lessee may exercise an option to renew but in no event shall the date of maturity be less than five years prior to such expiration date.

6. The restrictions and requirements of this section shall not apply to:

a. Loans guaranteed at least to the extent of twenty percent thereof, or for which a written commitment for such guarantee has been issued, by the veterans administration, under the laws of the United States.

b. Loans insured, or for which a written commitment to insure has been issued, by the federal housing administration under the laws of the United States.

c. Loans insured, or for which a written commitment to insure has been issued, by the farmers home administration under the laws of the United States.

d. Loans in which the small business administration participates, or has agreed in writing to participate, on an immediate or deferred basis under the laws of the United States.

e. Loans in connection with which a state bank takes a real property mortgage, deed of trust or other such instrument, as security but as to which it is relying for repayment:

(1) In the case of a loan made, with or without other security, for industrial, manufacturing, commercial or agricultural purposes, on the operations of the customer based primarily on the general credit of the customer and projection of his operations.

(2) On an unconditional commitment by a financially responsible person to advance the full amount of the loan or to provide funds for payment thereof, within a period not to exceed three years from the date of the loan.

(3) On a financially responsible lessee of the real property provided that the lease shall be assigned to the state bank and the lease by its terms shall be sufficient to amortize the entire principal of the loan within a period of not more than twenty years.

(4) On collateral other than the real property.

(5) On a guaranty or an agreement by a financially responsible person, other than a person engaged in the business of guaranteeing real property loans, to take over or purchase the loan in the event of default.

(6) In the case of a loan made for the purpose of the construction for or purchase by the borrower of a single-family or two-family residence, on the borrower's general credit and income.

f. Bonds and securities secured entirely or in part by real property, but in which a state bank is authorized to invest for its own account under section 524.901.

g. Loans made to families of low or moderate income as a part of programs authorized in sections 220.1 to 220.36 and approved by the Iowa housing finance authority.

7. A state bank may make a loan secured by a lien on an apartment constituting a part of a condominium constructed or established pursuant to the provisions of chapter 499B, subject to the provisions of this section.

8. Any loan, evidence of indebtedness or agreement for the payment of money secured by real property which is purchased by a state bank shall conform to the provisions of this section.

9. Nothing contained in this section shall prevent any state bank from accepting real property as security, or from taking secondary liens on real property to secure debts previously contracted to it in good faith, or to

further secure a loan if such loan is otherwise secured, or to secure loans made for improvements to the real property. [C97,§1850; S13, §1850; C24, 27, 31,§§9183, 9185, 9186; C35,§§9183, 9183-g1, 9185, 9186; C39,§§**9183, 9183.1, 9185, 9186**; C46, 50, 54, 58, 62, 66,§§526.25, 526.26, 526.30, 526.31; C71, 73, 75,§524.905; 66GA, ch 138,§46, ch 1216,§§1, 2]

Referred to in §§524.706(1), 524.904[(2,*c*), (3,*b*)], 524.907, 524.1602(4)

524.906 Installment loans by state banks. This section shall apply to installment loans other than consumer loans as defined in the Iowa consumer credit code.

1. A state bank may contract for and receive on any loan which is evidenced by a written agreement for repayment in installments, a charge, which shall include interest, determined in accordance with either of the following methods:

a. At a rate not to exceed six dollars per annum upon each one hundred dollars actually loaned to the customer. In addition to the amount actually loaned, the charge may be included in the total amount of the loan. The terms of any loan for which a charge is made pursuant to this paragraph shall require substantially equal installments at successive intervals of not more than one year in amounts sufficient to amortize the entire loan, including charges, within a period of not more than fifteen years provided, however, that the first installment may be deferred to not more than fifteen months from the date of the loan.

b. At a rate not to exceed one percent per month computed on unpaid principal balances. A state bank may receive such charge by crediting each installment whenever received, first to the charge at the monthly rate contracted for and the remainder to principal until the loan is fully paid, or the state bank may compute the total charge which would be earned at the monthly rate contracted for if the loan were repaid according to its terms and each installment were applied first to the charge and then to principal, and include such total charge in the total amount of the loan. The terms of any loan for which a charge is made pursuant to this paragraph shall require substantially equal installments at successive intervals of not more than one month in amounts sufficient to amortize the entire loan, including charges, within the period ending on the date of its maturity which shall not exceed fifteen years provided, however, that installments may be deferred or omitted on a seasonal basis. If the total charge is included in the total amount of the loan as provided for in this paragraph, a first interval of not less than fifteen nor more than forty-five days may be treated as a monthly interval.

2. If the charge determined in accordance with subsection 1 of this section is less than ten dollars, a state bank may contract and receive a charge of not more than ten dollars, which charge shall be in lieu of any charge determined in accordance with subsection 1 of this section and shall not be subject to refund as required by subsection 5 of this section.

3. No further amount shall be charged, contracted for or received, directly or indirectly, on or in connection with any loan subject to the provisions of this section, except fees paid for filing documents in public offices in connection with the loan, actual expenditures, including reasonable attorney's fees for proceedings to collect the loan, and the cost of a reasonable amount of insurance of the kind customarily required, but not in excess of standard insurance rates.

4. When an installment is not paid when due, a state bank may collect a single delinquency charge, in an amount not to exceed five percent of the installment, for each installment in arrears for a period of more than ten days, provided that the delinquency has not been caused by reason of acceleration or by reason of delinquency on a prior installment.

5. Any payment in cash made by a customer before maturity shall be accepted by the state bank. When full payment of a loan subject to the provisions of this section is made before maturity, whether by payment in cash, renewal or otherwise, or whenever the maturity of the loan is accelerated, the customer shall receive from the state bank at the time the loan is paid in full a refund of the unearned charge. The refund shall be so calculated that the customer will not have paid a charge for the loan at a greater rate when computed on actual unpaid principal balances than the customer would have paid had the loan been permitted to run to its maturity, and in no event shall the customer be required to pay in excess of one percent per month interest on the actual unpaid principal balances. All such refunds shall be made in accordance with a uniform refund schedule calculated, prescribed and approved by the superintendent.

6. No state bank shall have outstanding loans subject to this section and section 524.913 in an aggregate amount exceeding twenty-five percent of its total assets.

7. The provisions of this section, nor insofar as loans described in paragraph "*b*" of this subsection are concerned, the provisions of any other section of the laws of this state, shall not apply to loans, evidence of indebtedness or agreements for the payment of money which:

a. Are secured by first liens on real property.

b. Are real property improvement loans insured, all or in part, by the federal housing administration under the laws of the United States.

c. Are the obligations of a customer which is a corporation.

d. Have been acquired by the state bank by purchase or discount from the person owning

the same. [C46, 50, 54, 58, 62, 66,§§529.1, 529.3, 529.4, 529.6–529.8, 529.10; C71, 73, 75,§524.906]

Referred to in §§524.904(3,b), 524.907, 524.1602(4), 554.9203

524.907 Participations. A state bank may purchase and may sell, subject to the provisions of sections 524.901, 524.904, 524.905, and 524.906, and to such regulations as the superintendent may prescribe, participations in one or more evidences of indebtedness and agreements for the payment of money, and pools of bonds, securities, evidences of indebtedness and agreements for the payment of money. [C71, 73, 75,§524.907]

Referred to in §524.1602(4)

524.908 Direct leasing. A state bank shall have the power, subject to approval by the superintendent, to acquire, upon the specific request of and for the use of a customer, and lease, personal property pursuant to a binding arrangement for the leasing of such property to the customer upon terms requiring payment to the state bank, during the minimum period of the lease, of rentals which in the aggregate will be at least equal to the total expenditures by the state bank for, and in connection with, the acquisition, ownership, maintenance and protection of the property. [C71, 73, 75,§524.908]

524.909 Loans and investments by officer. No loan or investment shall be made from the funds of any state bank, directly or indirectly, except by an officer of the state bank who is authorized to do so by the board of directors. [C97,§1869; S13,§1869; C24, 27,§9220; C31, 35,§§9220, 9221-c3; C39,§§9220, 9221.3; C46, 50, 54, 58, 62, 66,§§528.6, 528.10; C71, 73, 75,§524.909]

524.910 Property acquired to satisfy debts previously contracted. A state bank may acquire property of any kind to secure, protect or satisfy a loan or investment previously made in good faith. Property acquired pursuant to this section shall be held and disposed of subject to the following conditions and limitations:

1. Shares in a corporation and other personal property, the acquisition of which is not otherwise authorized by this chapter, shall be sold or otherwise disposed of within six months unless the time is extended by the superintendent.

2. Real property purchased by a state bank at sales upon foreclosure of mortgages or deeds of trust owned by it, or acquired upon judgments or decrees obtained or rendered for debts due it, or such real property as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business, or such real property as it may obtain by redemption as a junior mortgagee or judgment creditor, shall be sold or otherwise disposed of by the state bank within one year after title is vested in the state bank, unless the time is extended by the superintendent. [C97,§1851; C24, 27, 31, 35, 39,§9190; C46, 50, 54, 58, 62, 66,§526.34; [C71, 73, 75,§524.910]

524.911 Letters of credit. A state bank shall have the power to issue, advise and confirm letters of credit authorizing a beneficiary thereof to draw on or demand payment of the state bank or its correspondent banks. [C71, 73, 75,§524.911]

524.912 Customer shall be free to obtain own insurance and loan. In any case in which any kind of insurance is required by the state bank as a condition for lending money or in connection with any other transaction, the customer shall be free to obtain such insurance from a source of his selection. In the case of a sale of shares of stock, bonds or other securities or real property by an officer or employee which is authorized by the board of directors of a state bank in the manner provided for in subsection 3 of section 524.710, the purchaser shall be free to obtain any loan for the purchase thereof from a lender of his selection. [C71, 73, 75,§524.912]

524.913 Consumer loans.

1. The provisions of the Iowa consumer credit code shall apply to consumer loans made by a bank, and provisions of that code shall supersede any conflicting provision of this chapter with respect to consumer loans.

2. This section shall not apply to a consumer loan which is a real property improvement loan insured wholly or in part by the federal housing administration of the United States. [C75,§524.913]

Referred to in §524.906

DIVISION X
FIDUCIARY POWERS

Referred to in §633.203

524.1001 Power to act as fiduciary. When approving a proposed state bank, or at any time subsequent thereto upon amendment of its articles of incorporation, the superintendent may authorize a state bank to act in a fiduciary capacity. In determining whether he shall authorize a state bank to act in a fiduciary capacity, the superintendent may consider any of the relevant criteria referred to in section 524.305, and other appropriate facts and circumstances. In any fiduciary capacity in which a state bank may act pursuant to this section, it shall have all the rights and duties which an individual has in such capacity under applicable law and under the terms upon which the state bank is designated to act in such capacity. In authorizing a state bank to act in a fiduciary capacity, the superintendent may limit such authorization to such capacities as he deems appropriate. [S13,§1889-g; SS15,§1889-d; C24, 27, 31, 35, 39, §§9284, 9291; C46, 50, 54, 58, 62, 66,§§532.1, 532.8; C71, 73, 75,§524.1001]

Referred to in §633.63

524.1002 Actions required, permitted or prohibited in a fiduciary capacity. The following rules shall be applicable to a state bank acting in the capacity of fiduciary:

1. A state bank shall segregate from its assets all property held as fiduciary, other

than items in the course of collection, and shall keep separate records of all such property for each account for which such property is held.

2. Funds of a fiduciary account may be deposited in the state bank which is acting as fiduciary, either as demand deposits, savings deposits or time deposits having a single or multiple maturity.

3. A state bank may provide any oath or affidavit required of the state bank as fiduciary through an officer acting on behalf of the state bank.

4. A state bank shall not make a loan or extension of credit of any funds held as fiduciary, directly or indirectly, to or for the benefit of a director, officer or employee of the state bank or of an affiliate, a partnership or other unincorporated association of which such director, officer or employee is a partner or member, or a corporation in which such officer, director or employee has a controlling interest, except a loan specifically authorized by the terms upon which the state bank was designated as fiduciary.

5. Unless otherwise authorized by the instrument creating the relationship, court order or the laws of this state, a state bank, as fiduciary, shall not, directly or indirectly, sell any asset to the state bank for its own account, or to an officer, director or employee, nor purchase from the state bank, or an officer, director or employee, any asset or any security issued by the state bank except, in the case of a state bank:

a. Investments in which a state bank may invest without limitation pursuant to section 524.901, subsection 1,

b. Assets purchased by the state bank pursuant to an agreement whereby the state bank is bound to sell, and the state bank as fiduciary is bound to buy, at a date not more than one year from the date of acquisition by the state bank, such assets at a price agreed upon at the time of acquisition by the state bank, or

c. Any asset sold to the state bank for its own account or purchased in a fiduciary capacity from the state bank with the prior approval of the superintendent. [S13,§1889-f; C24, 27, 31, 35, 39,§**9290**; C46, 50, 54, 58, 62, 66,§532.7; C71, 73, 75,§524.1002; 66GA, ch 1217,§1]

Referred to in §524.1601(3)

524.1003 Removal of fiduciary powers. If the superintendent at any time concludes that a state bank authorized to act in a fiduciary capacity is managing its accounts in an unsafe or unsound manner, or in a manner in conflict with the provisions of this chapter, and such state bank refuses to correct such practices upon notice to do so, the superintendent may forthwith direct that the state bank cease to act as a fiduciary and proceed to resign its fiduciary positions.

In such event the superintendent shall cause to be filed a petition in the district court in which the state bank has its principal place of business setting forth in general terms that the state bank is acting as fiduciary with respect to certain property and that it is necessary and desirable that successor fiduciaries be appointed. Upon the filing of the petition the court shall enter an order requiring all persons interested in all such fiduciary accounts to designate and take all necessary measures to appoint a successor fiduciary within a time to be fixed by the order, or to show cause why a successor fiduciary should not be appointed by the court. The court shall also direct the state bank to mail a copy of the order to each living settlor and each person known by the state bank to have a beneficial interest in the fiduciary accounts with respect to which the state bank is fiduciary and with respect to which it is being asked to resign its position. Such notice shall be mailed to the last known address of each such settlor and person having a beneficial interest as shown by the records of the state bank. The court may also order publication of such order to the extent that it deems necessary to protect the interests of absent or remote beneficiaries.

In any fiduciary account where those interested therein fail to cause a successor fiduciary to be appointed prior to the time fixed in such order, the court shall appoint a successor fiduciary. A successor fiduciary appointed in accordance with the terms of this section shall succeed to all the rights, powers, titles, duties and responsibilities of the state bank, except that he shall not exercise powers given in the instrument creating the powers that by its express terms are personal to the fiduciary therein designated and except claims or liabilities arising out of the management of the fiduciary account prior to the date of the transfer. [C39,§**9283.38**; C46, 50, 54, 58, 62, 66,§528.123; C71, 73, 75,§524.1003]

Referred to in §524.1004

524.1004 Voluntary relinquishment of fiduciary capacity. A state bank desiring to surrender its authorization to act in a fiduciary capacity, in order to relieve itself of the necessity of complying with the requirements attendant to such capacity, shall file with the superintendent a certified copy of a resolution signifying such intent. In such event the state bank shall cause to be filed a petition in the district court in which the state bank has its principal place of business setting forth in general terms that the state bank is acting as fiduciary with respect to certain property and that it desires to cease its fiduciary function and resign its fiduciary positions. Upon the filing of the petition the relinquishment of fiduciary capacity and the appointment of a successor fiduciary or fiduciaries shall be handled in the same manner and with the same effect as provided for in section 524.1003, dealing with the removal of fiduciary powers.

After compliance with this section the state bank shall proceed to amend its articles of incorporation, in accordance with the provi-

sions of this chapter, in a manner to indicate that it is no longer authorized to act in a fiduciary capacity. The superintendent shall approve the proposed amendment, in the manner provided for in this chapter, if he is satisfied that the state bank has properly relieved itself of its fiduciary responsibilities. [S13, §1889-h; C24, 27, 31, 35, 39,§**9292**; C46, 50, 54, 58, 62, 66,§532.9; C71, 73, 75,§524.1004]

524.1005 Trust companies on January 1, 1970. Any trust company existing and operating on January 1, 1970, and which was authorized to act only as a trust company, may continue to act only in a fiduciary capacity, according to the terms of its articles of incorporation, after January 1, 1970, and shall be, insofar as applicable, subject to the provisions of this chapter. Insofar as the use of the word "trust" is concerned, the provisions of subsection 2 of section 524.107 shall not apply to a trust company subject to this section. [C97, §1889; S13,§1889; C24, 27, 31, 35, 39,§§**9259, 9261**; C46, 50, 54, 58, 62, 66,§§528.52, 528.54; C71, 73, 75,§524.1005]

524.1006 Banks depositing securities in federally regulated corporation. A bank, either acting as a fiduciary or holding securities as a managing agent or custodian, including a custodian for a fiduciary, may deposit securities in a federally regulated clearing corporation as provided in section 633.89, and in addition may deposit securities, the principal and interest of which the United States or any United States department, agency, or instrumentality either has agreed to pay or has guaranteed, in a federal reserve bank.

The records of a depositing bank at all times must identify the persons on whose behalf securities have been deposited in a federal reserve bank. An interest in deposited securities may be transferred by entry on the books of the federal reserve bank without physical delivery of the securities. A depositing bank is subject to rules adopted by the superintendent of banking, with respect to state banks, and by the comptroller of the currency, with respect to national banking associations. On demand by the owner, a bank acting as a managing agent or as a custodian shall identify in writing the securities deposited in a federal reserve bank for the account of the owner. On demand by any party to the accounting of a bank acting as a fiduciary, the bank shall identify in writing the securities deposited in a federal reserve bank for its account as fiduciary.

This section applies regardless of the date of the agreement, instrument, or court order under which the bank was appointed. [C75, §524.1006]

DIVISION XI
AFFILIATES

524.1101 Definitions. For the purposes of this chapter, an "affiliate" of a state bank shall include any corporation, trust, estate, association, or other similar organization:

1. Of which a state bank, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other individuals exercising similar functions.

2. Of which control is held, directly or indirectly, through share ownership or in any other manner, by the shareholders of a state bank who own or control either a majority of the shares of such state bank or more than fifty percent of the number of shares voted for the election of directors of such state bank at the preceding election, or by trustees for the benefit of the shareholders of any such state bank.

3. Of which a majority of its directors, trustees, or other individuals exercising similar functions are directors of any one state bank.

4. Which owns or controls, directly or indirectly, either a majority of the voting shares of a state bank or more than fifty percent of the number of shares voted for the election of directors of a state bank at the preceding election, or controls in any manner the election of a majority of the directors of a state bank, or for the benefit of whose shareholders or members all or substantially all of the outstanding voting shares of a state bank is held by trustees.

5. Which is a bank holding company, as defined by the laws of the United States, of which a state bank is a subsidiary, and any other subsidiary, as defined by the laws of the United States, of a bank holding company. [C71, 73, 75,§524.1101]

Referred to in §§524.515, 524.1209

524.1102 Loans and other transactions with affiliates. No state bank shall make any loan or any extension of credit to, or purchase securities under repurchase agreement from, any of its affiliates, or invest any of its funds in the shares, bonds, capital securities, or other obligations of any such affiliate, or accept the shares, bonds, capital securities, or other obligations of any such affiliate as collateral security for advances made to any customer, if the aggregate amount of such loans, extensions of credit, repurchase agreements, investments and advances against such collateral security will exceed:

1. In the case of any one such affiliate, ten percent of the capital and surplus of such state bank.

2. In the case of all such affiliates, twenty percent of the capital and surplus of such state bank.

Within the foregoing limitations, each loan or extension of credit of any kind or character to an affiliate shall be secured by collateral in the form of shares of stock, bonds, capital securities or other such obligations having a market value at the time of making

the loan or extension of credit of at least twenty percent more than the amount of the loan or extension of credit, or of at least ten percent more than the amount of the loan or extension of credit if it is secured by obligations of any state, or of any political subdivision or agency thereof.

A loan or extension of credit to a director, officer, clerk or other employee or any representative of any such affiliate shall be deemed a loan to the affiliate to the extent that the proceeds of such loan are used for the benefit of, or transferred to, the affiliate.

The provisions of this section shall not apply to loans or extensions of credit fully secured by obligations of the United States, or the federal intermediate credit banks, or the federal land banks, or the federal home loan banks, or obligations fully guaranteed by the United States as to principal and interest. The provisions of this section shall likewise not apply to indebtedness of any affiliate for unpaid balances due a state bank on assets purchased from such bank.

For the purposes of this section, the term "extension of credit" and "extensions of credit" shall be deemed to include any purchase of securities, other assets or obligations under repurchase agreement, and the discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse. [C71, 73, 75,§524.1102]

Referred to in §§524.1103, 524.1104, 524.1602(5)

524.1103 Exceptions. The provisions of section 524.1102 shall not apply to any affiliate:

1. Engaged solely in holding or operating real estate used wholly or substantially by the state bank in its operations or acquired for its future use.

2. Engaged solely in conducting a safe-deposit business or the business of an agricultural credit corporation eligible to discount loans with a federal intermediate credit bank.

3. Engaged solely in holding obligations of the United States, the federal intermediate credit banks, the federal land banks, the federal home loan banks, or obligations fully guaranteed by the United States as to principal and interest.

4. Where the affiliate relationship has arisen as a result of shares acquired in satisfaction of a bona fide debt contracted prior to the date of the creation of such relationship provided that such shares shall be sold at public or private sale within one year from the date of the creation of the relationship, unless the time is extended by the superintendent.

5. Where the affiliate relationship exists by reason of the ownership or control of any voting shares thereof by a state bank as executor, administrator, trustee, receiver, agent, depository, or in any other fiduciary capacity, except where such shares are held for the benefit of all or a majority of the shareholders of such state bank.

6. Which is a bank. [C71, 73, 75,§524.1103]

524.1104 Applicability of general loan limitations. Any loan or extension of credit to an affiliate, and any investment in the shares, bonds, capital securities or other obligations of an affiliate, excepted by the provisions of section 524.1102 from the requirements of that section, shall continue to be subject to the other provisions of this chapter applicable to loans or extensions of credit by a state bank and investments by a state bank in shares, bonds, capital securities, or other such obligations. [C71, 73, 75,§524.1104]

Referred to in §524.1602(5)

524.1105 Examination of affiliates and reports.

1. For the purpose of determining the condition of a state bank and information concerning the state bank, the superintendent shall have the power to make or cause to be made an examination of any affiliate to the same extent as he may examine a state bank under this chapter.

2. If the superintendent has reasonable cause to believe that any corporation, trust, estate, association, or other similar organization is an affiliate, he may require the organization to furnish such information as may enable him to determine whether the organization is an affiliate. [C71, 73, 75,§524.1105]

Referred to in §§524.217, 524.219

524.1106 Fees paid to an affiliate—approval by superintendent. Any contract or arrangement for management or financial services which involves payment for these services by a state bank to a person who owns shares in that bank, or to any other affiliate, must be approved by the superintendent prior to such contract or arrangement becoming binding upon the state bank, and may also be reviewed at any time after original approval. Any contract or arrangement for consultation or other services which involve payment of those services by a state bank to any person who individually or whose spouse or immediate family or any combination thereof owns fifteen percent or more of the outstanding shares of that bank or is an officer or director thereof, or to an affiliate may be reviewed by the superintendent. The superintendent shall have authority to determine whether or not such fees are reasonable in relation to the services performed, and if he determines they are unreasonable, to require that they be reduced to a reasonable amount or eliminated and the excess refunded, or that such contract or arrangement not be entered into by the state bank. [C71, 73, 75,§524.1106]

DIVISION XII
OFFICES

524.1201 General provisions. No bank shall open or maintain a branch bank. A state bank may establish and operate bank offices subject to approval and regulation of the superintendent and to the restrictions upon location and number imposed by section 524.1202. A bank office may furnish all banking services ordi-

narily furnished to customers and depositors at the principal place of business of the state bank which operates the office. The central executive and official business and principal record-keeping functions of a state bank shall be exercised only at its principal place of business, except that data processing services referred to in section 524.804 may be performed for the state bank at some other point. All transactions of a bank office shall be immediately transmitted to the principal place of business of the state bank which operates the office, and no current record-keeping functions shall be maintained at a bank office except to the extent the state bank which operates the office deems it desirable to keep there duplicates of the records kept at the principal place of business of the state bank. [C27, 31, 35,§9258-b1; C39,§9258.1; C46, 50, 54, 58, 62, 66, §528.51; C71, 73, 75,§524.1201]

Referred to in §§524.1203, 524.1204, 524.1419, 524.1603(2)

524.1202 Location of offices. The location of any new bank office, or any change of location of a previously established bank office, shall be subject to the approval of the superintendent. No state bank shall establish a bank office outside the boundaries of the counties contiguous to or cornering upon the county in which the principal place of business of the state bank is located.

1. Except as otherwise provided in subsection 2 of this section, no state bank shall establish a bank office outside the corporate limits of a municipal corporation or in a municipal corporation in which there is already an established state or national bank or office, however the subsequent chartering and establishment of any state or national bank, through the opening of its principal place of business within the municipal corporation where the bank office is located, shall not affect the right of the bank office to continue in operation in that municipal corporation. The existence and continuing operation of a bank office shall not be affected by the subsequent discontinuance of a municipal corporation pursuant to the provisions of sections 368.11 to 368.22. A bank office existing and operating on July 1, 1976, which is not located within the confines of a municipal corporation, shall be allowed to continue its existence and operation without regard to this subsection.

2. A state bank located in a municipal corporation may establish not more than two bank offices within the boundaries of the municipal corporation, each of which shall have adequate off-street parking as determined by the superintendent, and may also have facilities to serve pedestrian customers. A state bank located in a municipal corporation, or in an urban complex composed of two or more Iowa municipal corporations each of which is contiguous to or corners upon at least one of the other municipal corporations within the complex, having a population of over fifty thousand according to the most recent federal census may establish two such offices within the boundaries of the municipal corporation or urban complex; however, such a municipal corporation or urban complex on boundaries of the state having a contiguous municipal corporation in another state may have one additional such office; if the municipal corporation or urban complex has a population of over one hundred thousand but not over two hundred thousand according to the most recent federal census, the state bank may establish three such offices within the boundaries of the municipal corporation or urban complex; if the municipal corporation or urban complex has a population of over two hundred thousand, the state bank may establish four such offices within the boundaries of the municipal corporation or urban complex. Such a facility located in the proximity of a state bank's principal place of business may be found by the superintendent to be an integral part of the principal place of business, and not a bank office within the meaning of this section. [C71, 73, 75,§524.1202; 66GA, ch 1214, §§2, 3]

Referred to in §§524.1201, 524.1204, 524.1212, 524.1419

524.1203 Cancellation of approval of offices. Whenever an examination by the superintendent or other supervisory agencies discloses that the operation of a bank office is being conducted in violation of section 524.1201, the superintendent may forthwith revoke the approval of the bank office. [C71, 73, 75,§524.1203]

Referred to in §524.1419

524.1204 Privileges extended to national banks. The privileges extended to state banks by sections 524.1201, 524.1202 and 524.1212 and chapter 527 shall be available on the same conditions to national banks to the extent they are so authorized by federal law. [C71, §524.1201(3); C73, 75,§524.1204; 66GA, ch 240, §6, ch 1214,§4]

524.1205 to 524.1211 Reserved.

524.1212 Location of satellite terminals. Any state bank may utilize a satellite terminal, as defined in section 527.2, when that satellite terminal is lawfully being operated, at any location within this state. A satellite terminal authorized by chapter 527 shall not be subject to the restrictions on location or number set forth in section 524.1202. Any transaction engaged in through the use of a satellite *terminal** shall be deemed to take place at the principal place of business of a bank whose accounts and records are affected by the transaction. [66GA, ch 1214,§5]

Referred to in §524.1204

*According to enrolled Act

See 66GA, ch 240,§§7 to 14 for temporary prior law on satellite banking

DIVISION XIII
DISSOLUTION

524.1301 Voluntary dissolution prior to commencement of business.

1. Subsequent to the issuance of the certificate of incorporation and prior to the issuance of the authorization to do business, a state bank which has not issued any shares may be voluntarily dissolved by its incorporators. In such case the articles of dissolution shall be prepared and filed in the manner provided in section 496A.79. The articles of dissolution shall be delivered to the superintendent, together with the applicable filing and recording fees, who shall deliver the same to the secretary of state for filing and recording in the office of the county recorder.

2. A state bank which has issued its shares, whether or not it has received an authorization to do business, but which has not commenced any business for which an authorization is required, may propose to dissolve by the affirmative vote of the holders of at least three-fourths of the shares entitled to vote thereon. After obtaining the approval of the superintendent to dissolve under this section the state bank shall deliver to the superintendent articles of dissolution which shall be executed by two duly authorized officers and which shall contain the date of incorporation, a statement that it has not transacted any business for which an authorization to do business is required, a statement that all liabilities of the state bank have been paid or provided for, a statement that all amounts received on account of capital, surplus and undivided profits, less any part thereof disbursed for necessary expenses, have been returned to the persons entitled thereto, and the number of shares entitled to vote on the dissolution and the number of shares voted for or against it respectively. If the superintendent finds that the articles of dissolution satisfy the requirements of this chapter, he shall deliver them to the secretary of state, with his written approval, and notify the state bank of his action. [C97, §1857; S13,§1857; C24, 27, 31, 35, 39,§9277; C46, 50, 54, 58, 62, 66,§528.76; C71, 73, 75,§524.1301]

524.1302 Involuntary dissolution prior to commencement of business. Prior to the issuance of an authorization to do business, the superintendent may cause the dissolution of a state bank if there exists any reason why it should not have been incorporated under this chapter or if an authorization to do business has not been issued within one year after the date of its incorporation, or such longer time as the superintendent may allow for satisfaction of conditions precedent to its issuance. After giving the state bank adequate notice and an opportunity for hearing, the superintendent shall certify the applicable facts by the filing of a statement with the secretary of state, who shall thereafter issue a certificate of dissolution. Upon the issuance of such certificate of dissolution by the secretary of state, the corporate existence of the state bank shall cease. [C31, 35,§9142-c1; C39,§9142.1; C46, 50, 54, 58, 62, 66,§524.14; C71, 73, 75,§524.1302]

Referred to in §524.308

524.1303 Voluntary dissolution after commencement of business.

1. A state bank which has commenced business may propose to voluntarily dissolve upon the affirmative vote of the holders of at least three-fourths of the shares entitled to vote thereon, adopting a plan of dissolution involving both a provision for acquisition of its assets and assumption of its liabilities by another state bank or national bank and a provision for continuance of its business if acquisition of its assets and assumption of its liabilities is not effected, or any other plan of dissolution providing for full payment of its liabilities.

2. Upon receipt of an application for approval of a plan of dissolution the superintendent shall conduct such investigation as he may deem necessary to determine whether the plan adequately protects the interests of depositors, other creditors and shareholders and, if the plan involves an acquisition of assets and assumption of liabilities by another state bank, whether such acquisition and assumption would be consistent with adequate and sound banking and in the public interest, on the basis of factors substantially similar to those set forth in section 524.1403, subsection 1, paragraph "*d*". Within ninety days after receipt of the application, the superintendent shall approve or disapprove the application on the basis of his investigation. Before receiving the decision of the superintendent with respect to the pending application, the applying state bank shall, upon notice, reimburse the superintendent to the extent of the expenses incurred by him in connection with the application. Thereafter the superintendent shall give to the applying state bank written notice of his decision, and in the event of disapproval, a statement of the reasons for his decision. The decision of the superintendent shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act.

3. When a state bank has proposed to dissolve by adopting a plan of dissolution involving a provision for acquisition of its assets and assumption of its liabilities by another state bank, it shall publish a notice of the proposed transaction. The notice shall be published once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the dissolving bank has its principal place of business, and in the municipal corporation or unincorporated area in which the acquiring state bank has its principal place of business, or if there is none, a newspaper of general circulation published in the county or counties, or in a county adjoining the county or counties, in which the dissolving bank and the acquiring bank have their principal place of business. Such publication of notice shall be made within thirty days after making application to the superintendent for approval of the plan of dissolution, and proof of publication of the notice shall be delivered to the superintendent. The notice shall set forth the name

of the dissolving state bank and of the acquiring state bank, the location and post-office address of the principal place of business of the dissolving state bank and of the acquiring state bank and of each office to be maintained by the acquiring state bank and a brief statement of the nature of the proposed transaction. Prior to making a determination on the pending application the superintendent shall, upon adequate notice, afford all interested parties an opportunity for a stenographically reported hearing during which such parties shall be allowed to present evidence in support of, or in opposition to, the pending application. If the superintendent finds that he must act immediately on the pending application in order to protect the interests of depositors or the assets of the dissolving bank, he may proceed without requiring publication of the notice and without providing for the hearing referred to in this subsection. [C97,§1857; S13, §1857; C24, 27, 31, 35, 39,§**9277**; C46, 50, 54, 58, 62, 66,§528.76; C71, 73, 75,§524.1303]

Referred to in §§524.1304, 524.1309

524.1304 Voluntary dissolution — statement of intent to dissolve.

1. Immediately upon the adoption and approval of a plan of dissolution under section 524.1303 (or if the plan provides for continuance of the business of the state bank unless a purchase of its assets and an assumption of its liabilities becomes effective, immediately after such purchase and assumption becomes effective), the state bank shall deliver to the superintendent a statement of intent to dissolve which shall be signed by two of its duly authorized officers and which shall contain the name of the state bank, the post-office address of its principal place of business, the name and address of its officers and directors, the number of shares entitled to vote on the plan of dissolution and the number of shares voted for or against the plan, respectively.

2. If the statement of intent to dissolve satisfies the requirements of this section, the superintendent shall deliver the statement with his written approval to the secretary of state who shall issue to the state bank an approved copy of such statement. Upon the issuance of an approved copy of the statement of intent to dissolve, the state bank shall cease to accept deposits or carry on its business, except insofar as may be necessary for the proper winding up thereof in accordance with the approved plan, but its corporate existence shall continue until issuance of a certificate of dissolution pursuant to section 524.1308.

3. If the laws of the United States require approval by any federal agency, the superintendent shall withhold delivery of the approved statement of intent to dissolve until he receives notice of the decision of such agency. If the final approval of the agency is not given, the superintendent shall notify the applying state bank that the approval of the superintendent has been rescinded for that reason. [C97,§1857; S13,§1857; C24, 27, 31, 35, 39,§**9277**; C46, 50, 54, 58, 62, 66,§528.76; C71, 73, 75, §524.1304]

Referred to in §524.1309

524.1305 Voluntary dissolution proceedings —winding up.

1. The board of directors shall have full power to wind up and settle the affairs of a state bank in voluntary dissolution proceedings.

2. Within thirty days after the issuance by the secretary of state of an approved copy of the statement of intent to dissolve, the state bank shall give notice of its dissolution:

a. By mail to each depositor and creditor (except those as to whom the liability of the state bank has been assumed by another state bank or national bank pursuant to the plan), at their last address of record as shown upon the books of the bank, including a statement of the amount shown by the books of the state bank to be due to such depositor or creditor and a demand that any claim for a greater amount be filed with the state bank any time before a specified date at least ninety days after the date of the notice.

Referred to in subsection 4

b. By mail to each lessee of a safe-deposit box and each customer for whom property is held in safekeeping (except those as to whom the liability of the state bank has been assumed by another state bank or national bank pursuant to the plan), at their last known address of record as shown upon the books of the state bank, including a demand that all property held in a safe-deposit box or held in safekeeping by the state bank be withdrawn by the person entitled thereto before a specified date which is at least ninety days after the date of the notice.

Referred to in subsection 5

c. By mail to each person, at his last known address as shown upon the books of the state bank, interested in funds held in a fiduciary account or other representative capacity.

d. By a conspicuous posting at each office of the state bank.

e. By such publication as the superintendent may prescribe.

Referred to in §524.1309(5)

3. As soon after the issuance of an approved statement of intent to dissolve as feasible, the state bank shall resign all fiduciary appointments and take such action as may be necessary to settle its fiduciary accounts.

Referred to in §524.1309(5)

4. All known depositors and creditors shall be paid promptly after the date specified in the notice given under paragraph "*a*" of subsection 2 of this section. Unearned portions of rentals for safe-deposit boxes shall be rebated to the lessees thereof.

Referred to in §524.1309(5)

5. Safe-deposit boxes, the contents of which have not been removed by the owners after the date specified in the notice given under paragraph "*b*" of subsection 2 of this section, shall be opened under the supervision of the

superintendent and the contents placed in sealed packages which, together with unclaimed property held by the state bank in safekeeping, shall be transmitted to the treasurer of state. Amounts due to depositors who are unknown, or who are under a disability and there is no person legally competent to receive such amount, or who cannot be found after the exercise of reasonable diligence, shall be transmitted to the treasurer of state, together with a statement giving the name of the person, if known, entitled to such amount, his last known address, the amount due such person, and such other information about such person as the treasurer of state may reasonably require. All property transmitted to the treasurer of state pursuant to this subsection shall be treated as abandoned, retained by the treasurer of state, and subject to claim, in the manner provided for in sections 556.14 to 556.21. All amounts due creditors described in section 496A.101 shall be deposited with the treasurer of state in accordance with the provisions of that section. Such amounts shall be retained by the treasurer of state and subject to claim in the manner provided for in said section 496A.101.

Referred to in §§524.1309(5), 524.1310

6. Upon approval by the superintendent, assets remaining after the performance of all obligations of the state bank under subsections 3, 4, and 5 of this section shall be distributed to its shareholders according to their respective rights and preferences. Partial distributions to shareholders may be made prior to such time only if, and to the extent, approved by the superintendent. All amounts due shareholders described in section 496A.101 shall be deposited with the treasurer of state in accordance with the provisions of that section. Such amounts shall be retained by the treasurer of state and subject to claim in the manner provided for in said section 496A.101.

7. During the course of dissolution proceedings the state bank shall make such reports as the superintendent may require, and shall continue to be subject to the provisions of this chapter, including those relating to examination of state banks, until completion of the dissolution of the state bank.

8. If at any time during the course of dissolution proceedings the superintendent finds that the assets of the state bank will not be sufficient to discharge its obligations, he shall apply to the district court for appointment as receiver in the manner required by section 524.1310, and the dissolution shall thereafter be treated as an involuntary dissolution in accordance with the terms of that section and sections 524.1311 and 524.1312. [C71, 73, 75, §524.1305]

Referred to in §§524.1309, 524.1310

524.1306 Revocation of voluntary dissolution proceedings.

1. A state bank may, at any time prior to the issuance of the approved copy of the statement of intent to dissolve by the secretary of state, revoke voluntary dissolution proceedings by consent of the shareholders in the manner provided for in section 496A.85 or by act of the state bank as provided for in section 496A.86, except that the vote taken on the resolution referred to in subsection 3 of section 496A.86 shall be adopted only upon the affirmative vote of the holders of at least three-fourths of the shares entitled to vote thereon.

2. The statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the state bank, shall be delivered to the superintendent, together with the applicable filing and recording fee, who shall, if he finds that they satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder. [C71, 73, 75,§524.1306]

Referred to in §524.1309

524.1307 Articles of dissolution.

1. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the state bank have been paid or otherwise discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the state bank have been distributed to its shareholders, articles of dissolution shall be executed by the state bank by its president or a vice president and by its cashier or an assistant cashier, and verified by one of the officers signing such statement, which shall set forth:

a. The name of the state bank.

b. That the secretary of state has theretofore filed a statement of intent to dissolve the state bank, and the date on which such statement was filed.

c. That all debts, obligations and liabilities of the state bank have been paid or otherwise discharged or that adequate provision has been made therefor.

d. That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.

e. That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

2. The articles of dissolution shall be delivered to the superintendent, together with the applicable filing and recording fee, who shall, if he finds that they satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder. [C71, 73, 75, §524.1307]

Referred to in §524.1309

524.1308 Certificate of dissolution. The secretary of state upon filing the articles of dissolution shall issue a certificate of dissolution,

and send the same to the representative of the dissolved state bank. Upon the issuance of such certificate of dissolution the existence of the state bank shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this chapter. [C71, 73, 75,§524.1308]

Referred to in §§524.1304(2), 524.1309

524.1309 Becoming subject to chapter 496A. In lieu of the dissolution procedure prescribed in sections 524.1303 to 524.1308, a state bank may cease to carry on the business of banking and, after compliance with the provisions of this section, continue as a corporation subject to the provisions of chapter 496A.

1. A state bank which has commenced business may propose to voluntarily cease to carry on the business of banking and become a corporation subject to the provisions of chapter 496A upon the affirmative vote of the holders of at least three-fourths of the shares entitled to vote thereon, adopting a plan involving both a provision for acquisition of its assets and assumption of its liabilities by another state bank or national bank and a provision for continuance of its business if acquisition of its assets and assumption of its liabilities is not effected, or any other plan providing for the cessation of banking business and the payment of its liabilities.

Referred to in subsection 2

2. The application to the superintendent for approval of a plan described in subsection 1 of this section shall be treated by him in the same manner as an application for approval of a plan of dissolution under subsection 2 of section 524.1303, and shall be subject to the provisions of subsection 3 of section 524.1303.

3. Immediately upon adoption and approval of a plan to voluntarily cease to carry on the business of banking and become a corporation subject to the provisions of chapter 496A, the state bank shall deliver to the superintendent a statement of its intent to cease to carry on the business of banking and become a corporation subject to the provisions of said chapter, which shall be signed by two of its duly authorized officers and shall contain the name of the state bank, the post-office address of its principal place of business, the name and address of its officers and directors, the number of shares entitled to vote on the plan and the number of shares voted for or against the plan, respectively, the nature of the business to be conducted by the corporation under the provisions of said chapter, and the general nature of the assets to be held by such corporation.

4. If the statement of intent to cease to carry on the business of banking and become a corporation subject to the provisions of chapter 496A satisfies the requirements of this section, the superintendent shall deliver the statement with his written approval to the secretary of state who shall issue to the state bank an approved copy of such statement. Upon the issuance of an approved copy of the statement of intent, the state bank shall immediately surrender to the superintendent its authorization to do business as a bank and shall cease to accept deposits or carry on the banking business except insofar as may be necessary for it to complete the settlement of its affairs as a state bank in accordance with subsection 5.

5. The board of directors shall have full power to complete the settlement of the affairs of the state bank. Within thirty days after the issuance of an approved copy of the statement of intent to cease to carry on the business of banking and become a corporation subject to the provisions of chapter 496A, the state bank shall give notice of its intent to persons described in subsection 2 of section 524.1305 and in the manner provided for in that subsection. In completing the settlement of its affairs as a state bank the state bank shall also follow the procedure prescribed in subsections 3, 4 and 5 of section 524.1305.

6. Upon approval by the superintendent, assets remaining after the performance of all obligations described in this section, except those which the state bank wishes to retain when it becomes a corporation subject to the provisions of chapter 496A, shall be distributed to its shareholders according to their respective rights and preferences.

7. Upon completion of all the requirements of this section, the state bank shall deliver to the superintendent articles of intent to be subject to chapter 496A, together with the applicable filing and recording fees, which shall set forth that the state bank has complied with the provisions of this section, that it has ceased to carry on the business of banking, and the information required by section 496A.49 relative to the contents of articles of incorporation under chapter 496A. If the superintendent finds that the state bank has complied with the provisions of this section and that the articles of intent to be subject to said chapter satisfy the requirements of this section, he shall deliver them to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder.

8. Upon the filing of the articles of intent to be subject to chapter 496A, the state bank shall cease to be a state bank subject to the provisions of this chapter, and shall cease to have the powers of a state bank subject to this chapter and shall become a corporation subject to the provisions of chapter 496A. The secretary of state shall issue a certificate as to the filing of the articles of intent to be subject to the provisions of chapter 496A, and send the same to the corporation or its representative. The articles of intent to be subject to chapter 496A shall be the articles of incorporation of the corporation. The provisions of chapter 496A becoming applicable to a corporation formerly doing business as a state bank shall not affect any right accrued or established, or liability or penalty incurred under the provisions of this

chapter prior to the filing with the secretary of state of the articles of intent to be subject to chapter 496A.

9. A shareholder of a state bank who objects, in the manner prescribed by section 496A.78, to adoption by the state bank of a plan to cease to carry on the business of banking and to continue as a corporation subject to the provisions of chapter 496A, shall be entitled to the rights and remedies of a dissenting shareholder provided for in that section.

10. A state bank may, at any time prior to the issuance of the approved copy of the statement of intent to cease to carry on the business of banking and become a corporation subject to the provisions of chapter 496A, revoke such proceedings in the manner prescribed by section 524.1306. [C71, 73, 75, §524.1309]

524.1310 Involuntary dissolution after commencement of business—superintendent as receiver. In a situation in which the superintendent has required, in accordance with the provisions of section 524.226, that the state bank cease to carry on its business, he shall apply to the district court for the county in which the state bank is located for appointment as receiver for the state bank. The district court shall appoint the superintendent as receiver unless the superintendent has tendered such appointment to the federal deposit insurance corporation as provided for in section 524.1313, in which case the district court shall appoint the federal deposit insurance corporation as receiver. The affairs of the state bank shall thereafter be under the direction of the district court, and the assets thereof shall be distributed in accordance with the provisions of section 524.1312. All amounts due creditors and shareholders described in section 496A.101 shall be deposited with the treasurer of state in accordance with the provisions of that section. Such amounts shall be retained by the treasurer of state and subject to claim in the manner provided for in section 496A.101. Amounts due to depositors who are unknown, or who are under a disability and there is no person legally competent to receive such amount, or who cannot be found after the exercise of reasonable diligence, shall be transmitted to the treasurer of state in the manner required by section 524.1305, subsection 5. Such property shall be treated as abandoned, retained by the treasurer of state, and subject to claim, in the manner provided for in sections 556.14 to 556.21. The attorney general, or such assistants as shall be appointed by the court, shall represent the superintendent in all proceedings connected with such receivership. [C73,§1572; C97,§1877; C24, 27, 31,§§9239, 9240, 9242; C35,§§9154-f3, 9239, 9240, 9242; C39, **§§9154.03, 9239, 9240, 9242, 9283.35, 9283.36**; C46, 50, 54, 58, 62, 66,§§524.30, 528.33, 528.41, 528.43, 528.120, 528.121; C71, 73, 75,§524.1310]

Referred to in §§524.1305(8), 524.1311(1)

524.1311 Involuntary dissolution after commencement of business — receivership procedure.

1. In all situations in which the superintendent has been named the receiver as provided in section 524.1310 he shall make a diligent effort to collect and realize on the assets of the state bank, and make distribution of the proceeds from time to time to those entitled thereto. The superintendent may execute assignments, releases and satisfactions to effectuate sales and transfers as receiver or after the receivership has terminated. Upon the order of the court in which the receivership is pending, the superintendent may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such state bank, on such terms as the court shall direct.

2. All expenses of the receivership and dissolution shall be fixed by the superintendent, subject to the approval of the district court, and shall be paid out of the assets of the state bank.

3. At the termination of the receivership, the superintendent shall file his final report containing the details of his actions therein, together with such additional facts as the court may require.

4. Upon the submission and approval of the final report, the court shall enter a decree dissolving the state bank whereupon the corporate existence of the state bank shall cease. It shall be the duty of the clerk of such court to cause certified copies of the decree to be filed with and recorded by the secretary of state and the county recorder of the county in which is located the state bank. No fee shall be charged by the secretary of state or said county recorder for the filing or recording thereof. [C73,§1572; C97,§§1857, 1877; S13,§1857; C24,§§9239, 9278; C27,§§9239, 9239-a5, 9278; C31, 35,§§9239, 9239-a5, 9278, 9278-c1; C39,§§**9239, 9239.6, 9278, 9278.1–9278.3**; C46, 50, 54, 58, 62, 66, §§528.33, 528.39, 528.77–528.80; C71, 73, 75, §524.1311]

Referred to in §§524.1305(8), 524.1313(2)

524.1312 Distribution of assets upon insolvency. In the distribution of the assets of a state bank which is dissolved under this chapter, or by any other method, the order of payment of the liabilities of the state bank, in the event that its assets are insufficient to pay in full all its liabilities for which claims are made, shall be:

1. The payment of costs and expenses of the administration of the dissolution.

2. The payment of claims which are given priority by applicable statutes and, if the assets are insufficient for the payment in full of all such claims, in the order provided by such statutes or, in the absence of contrary provisions, pro rata.

3. Amounts due to depositors.

4. The payment of all other claims pro rata, exclusive of claims on capital notes and debentures.

5. The payment of capital notes and debentures. [C73,§1572; C97,§§1857, 1877; S13,§1857; C24,§§9239, 9243, 9278; C27,§§9239, 9239-a6, 9243, 9278; C31, 35,§§9239, 9239-a6, 9243, 9278, 9278-c1; C39,§§**9239, 9239.7, 9243, 9278, 9278.1, 9278.2, 9278.3**; C46, 50, 54, 58, 62, 66,§§528.33, 528.40, 528.44, 528.77, 528.78, 528.79, 528.80; C71, 73, 75, §524.1312]

Referred to in §§524.404, 524.1305(8), 524.1310

524.1313 Involuntary dissolution after commencement of business — tender of receivership to F.D.I.C.

1. When an insured state bank has ceased to carry on its business, the superintendent may tender to the federal deposit insurance corporation the appointment as receiver of the insured state bank. If the federal deposit insurance corporation accepts the appointment as receiver, the rights of depositors and other creditors of the insured state bank shall be determined in accordance with the laws of this state.

2. The federal deposit insurance corporation as receiver shall possess all the powers, rights and privileges given to the superintendent under section 524.1311, except insofar as that section may be in conflict with the laws of the United States.

3. If the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of an insured state bank, the federal deposit insurance corporation, whether or not it has become receiver, shall be subrogated by operation of law to all rights against such insured state bank of the owners of such deposits in the same manner and to the same extent as subrogation of the federal deposit insurance corporation is provided for in applicable federal law in the case of a national bank. [C35,§9283-g3; C39,§**9283.46**; C46, 50, 54, 58, 62, 66,§530.3; C71, 73, **75**, §524.1313]

Referred to in §524.1310

524.1314 Survival of rights and remedies after dissolution or expiration — preservation of records.

1. The dissolution of a state bank, or the expiration of its period of duration, shall not take away or impair any remedy available to or against such state bank, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred prior to such dissolution or expiration, if action or other proceeding thereon is commenced within two years after the date of such dissolution or expiration. Any such action or proceeding by or against the state bank may be prosecuted or defended by the state bank in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim.

2. Subsequent to the dissolution of a state bank, other than through the adoption of a plan involving a provision for acquisition of its assets and assumption of its liabilities by another state or national bank, the superintendent shall assume custody of the records of the state bank and shall retain them in accordance with the provisions of section 524.221. The superintendent may make copies of such records in accordance with the provisions of subsection 1 of section 524.221. [C71, 73, 75, §524.1314]

DIVISION XIV
MERGER, CONSOLIDATION AND CONVERSION

524.1401 Authority to merge or consolidate.

1. Upon compliance with the requirements of this chapter, one or more state banks or one or more national banks, or any combination of state and national banks, may merge or consolidate into a national bank or, with the approval of the superintendent, may merge into a state bank or consolidate into a new state bank.

2. The authority of a state bank to merge or consolidate into a national bank shall be subject to the condition that at the time of the transaction the laws of the United States shall authorize a national bank located in this state, without approval by the comptroller of the currency of the United States, to merge or consolidate into a state bank under limitations no more restrictive than those contained in this chapter with respect to the merger or consolidation of a state bank into a national bank. [C54, 58, 62, 66,§§528B.1–528B.3; C71, 73, 75, §524.1401]

524.1402 Requirements for a merger or consolidation. The requirements for a merger or consolidation which must be satisfied by the parties thereto are:

1. The parties shall adopt a plan stating the method, terms and conditions of the merger or consolidation, including the rights under the plan of the shareholders of each of the parties, and an agreement concerning the merger or consolidation.

2. In the case of a state bank which is a party to the plan, if the proposed merger or consolidation will result in a state bank subject to this chapter, adoption of the plan by such state bank shall require the affirmative vote of at least a majority of the directors and approval by the shareholders, in the manner and according to the procedures prescribed in section 496A.70, at a meeting called in accordance with the terms of that section. In the case of a national bank, or if the proposed merger or consolidation will result in a national bank, adoption of the plan by each party thereto shall require the affirmative vote of at least such directors and shareholders whose affirmative vote thereon is required under the laws of the United States. Subject to applicable requirements of the laws of the United States in a case in which a national bank is a party to a plan, any modification of a plan which has been adopted shall be made by any method provided therein, or in the absence of such provision, by the same vote as required for adoption.

3. If a proposed merger or consolidation will result in a state bank, application for the required approval by the superintendent shall be made in the manner prescribed by the superintendent. There shall also be delivered to the superintendent, when available:

a. Articles of merger or consolidation.

b. Applicable fees payable to the secretary of state, as specified in section 496A.124, for the filing and recording of the articles of merger or consolidation.

c. If there is any modification of the plan at any time prior to the approval by the superintendent under section 524.1403, an amendment of the application and, if necessary, of the articles of merger or consolidation, signed in the same manner as the originals, setting forth the modification of the plan, the method by which such modification was adopted and any related change in the provisions of the articles of merger or consolidation.

d. Proof of publication of the notice required by subsection 4 of this section.

Referred to in §524.1403(1)

4. If a proposed merger or consolidation will result in a state bank, the parties to the plan shall publish a notice of the proposed transaction in a newspaper of general circulation published in a municipal corporation or unincorporated area in which each party to the plan has its principal place of business, and in the case of a consolidation, in which the resulting state bank is to have its principal place of business, or if there is none, in a newspaper of general circulation published in the county, or in a county adjoining the county, in which each party to the plan has its principal place of business and, in the case of a consolidation, in which the resulting state bank is to have its principal place of business. The notice shall be published once each week for two successive weeks, within thirty days after making application to the superintendent for approval of the plan. The notice shall set forth the names of the parties to the plan and the resulting state bank, the location and post-office address of the principal place of business of the resulting state bank and of each office to be maintained by the resulting state bank, the purpose or purposes of the resulting state bank, and the date of delivery of the articles of merger and consolidation to the superintendent.

5. The articles of merger or consolidation shall be signed by two duly authorized officers of each party to the plan and shall contain:

a. The names of the parties to the plan, and of the resulting state bank.

b. The location and the post-office address of the principal place of business of each party to the plan, and of each additional office maintained by the parties to the plan, and the location and post-office address of the principal place of business of the resulting state bank, and of each additional office to be maintained by the resulting state bank.

c. The votes by which the plan was adopted, and the time and place of each meeting in connection with such adoption.

d. The number of directors constituting the board of directors, and the names and addresses of the individuals who are to serve as directors until the next annual meeting of the shareholders or until their successors be elected and qualify.

e. In the case of a merger, any amendment of the articles of incorporation of the resulting state bank.

f. In the case of a consolidation, the provisions required in the articles of incorporation of a state bank by section 524.302, subsections 3 to 7 and 10.

g. The plan of merger or consolidation.

6. If a proposed merger or consolidation will result in a national bank, a state bank which is a party to the plan shall:

a. Notify the superintendent of the proposed merger or consolidation.

b. Provide such evidence of the adoption of the plan as the superintendent may request.

c. Notify the superintendent of any abandonment or disapproval of the plan.

d. File with the superintendent and with the secretary of state a certificate of approval of the merger or consolidation by the comptroller of the currency of the United States.

e. Notify the superintendent of the date upon which such merger or consolidation is to become effective. [C54, 58, 62, 66,§§528B.4, 528B.5; C71, 73, 75,§524.1402]

Referred to in §524.1403

524.1403 Approval of merger or consolidation by superintendent.

1. Upon receipt of an application for approval of a merger or consolidation and of the supporting items required by section 524.1402, subsection 3, the superintendent shall conduct such investigation as he deems necessary to ascertain whether:

a. The articles of merger or consolidation and supporting items satisfy the requirements of this chapter.

b. The plan and any modification thereof adequately protects the interests of depositors, other creditors and shareholders.

c. The requirements for a merger or consolidation under all applicable laws have been satisfied and the resulting state bank would satisfy the requirements of this chapter with respect to it.

d. The merger or consolidation would be consistent with adequate and sound banking and in the public interest on the basis of the financial history and condition of the parties to the plan, including the adequacy of the capital structure of the resulting state bank, the character of the management of the resulting state bank, the potential effect of the merger or consolidation on competition and the convenience and needs of the area primarily to be served by the resulting state bank.

Referred to in §524.1303(2)

2. Within one hundred eighty days after receipt of the application, or within an additional period of not more than sixty days after receipt of an amendment of the application, the

superintendent shall make a determination whether to approve or disapprove the application on the basis of his investigation. The plan shall not be modified at any time after approval of the application by the superintendent. Prior to making a determination on the pending application the superintendent shall, upon adequate notice, afford all interested persons an opportunity for a stenographically reported hearing during which such persons shall be allowed to present evidence in support of, or in opposition to, the pending application. If the superintendent finds that he must act immediately on the pending application in order to protect the interests of depositors or the assets of any party to the plan, he may proceed without requiring publication of the notice and without providing for the hearing referred to in this subsection. Before receiving the decision of the superintendent with respect to the pending application, the parties to the plan shall, upon notice, reimburse the superintendent to the extent of the expenses incurred by him in connection with the application. Thereafter the superintendent shall give to the parties to the plan written notice of his decision and, in the event of disapproval, a statement of the reasons for his decision. The decision of the superintendent shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. [C54, 58, 62, 66,§528B.4; C71, 73, 75,§524.1403]

Referred to in §§524.1303, 524.1402(3,c)

524.1404 Procedure after approval by the superintendent—issuance of certificate of merger or consolidation. If the laws of the United States require the approval of the merger or consolidation by any federal agency, the superintendent shall, after his approval, retain the articles of merger or consolidation until he receives notice of the decision of such agency. If the final approval of the agency is not given, the superintendent shall notify the parties to the plan that the approval of the superintendent has been rescinded for that reason. If such agency gives its approval, the superintendent shall deliver the articles of merger or consolidation, with his approval indicated thereon, to the secretary of state, and shall notify the parties to the plan. The receipt of the approved articles of merger or consolidation by the secretary of state shall constitute filing thereof with that office. The secretary of state shall record the articles of merger or consolidation in his office, and the same shall be filed and recorded in the office of the county recorder in each county in which the parties to the plan had previously maintained a principal place of business and, in the case of a consolidation, in the county in which the new state bank is to maintain its principal place of business. On the date upon which the merger or consolidation is effective the secretary of state shall issue a certificate of merger or consolidation and send the same to the resulting state bank and a copy thereof to the superintendent. [C54, 58, 62, 66,§528B.6; C71, 73, 75,§524.1404]

524.1405 Effect of merger or consolidation.

1. The merger or consolidation shall be effective upon the filing of the articles of merger or consolidation with the secretary of state, or at any later date and time specified by the superintendent in writing on the articles of merger or consolidation. The certificate of merger or consolidation shall be conclusive evidence of the performance of all conditions precedent to the merger or consolidation, and of the existence or creation of the resulting state bank, except as against the state.

2. When a merger or consolidation becomes effective, the existence of each party to the plan, except the resulting state bank, shall cease as a separate entity but shall continue in, and the parties to the plan shall be, a single corporation which shall be the resulting state bank and which shall have all the property, rights, powers, duties and obligations of each party to the plan, except that the resulting state bank shall have only the authority to engage in such business and exercise such powers as it would have, and shall be subject to the same prohibitions and limitations to which it would be subject, upon original incorporation under this chapter. A resulting state bank may, however, engage in any business and exercise any right that any party to the plan which was a state bank subject to this chapter could lawfully exercise or engage in immediately prior to the merger or consolidation.

3. No liability of any party to the plan or of its shareholders, directors or officers shall be affected, nor shall any lien on any property of a party to the plan be impaired, by the merger or consolidation. Any claim existing or action pending by or against any party to the plan may be prosecuted to judgment as if the merger or consolidation had not taken place, or the resulting state bank may be substituted in its place. The articles of incorporation of the resulting state bank shall be, in the case of a merger, the same as its articles of incorporation prior to the merger with any change stated in the articles of merger, and in the case of a consolidation, the provisions stated in the articles of consolidation shall be deemed to be the original articles of incorporation of the resulting state bank. [C54, 58, 62, 66,§§528B.6, 528B.8; C71, 73, 75,§524.1405]

524.1406 Rights of dissenting shareholders.

1. A shareholder of a state bank, which is a party to a proposed merger or consolidation plan which will result in a state bank subject to this chapter, who objects to the plan in the manner prescribed by section 496A.78, shall be entitled to the rights and remedies of a dissenting shareholder as provided in that section. Shares acquired by a state bank pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, pursuant to section 496A.78, shall be sold at public or private sale, within one year from the time of their purchase or acquisition, un-

less the time is extended by the superintendent.

2. If a shareholder of a national bank which is a party to a proposed merger or consolidation plan which will result in a state bank, or a shareholder of a state bank which is a party to a plan which will result in a national bank, shall object to the plan and shall comply with the requirements of the applicable laws of the United States, the resulting state bank or national bank, as the case may be, shall be liable for the value of his shares as determined in accordance with such laws of the United States. Shares acquired by a state bank pursuant to this subsection shall be sold at public or private sale within one year from the time of their purchase or acquisition, unless the time is extended by the superintendent. [C54, 58, 62, 66,§528B.9; C71, 73, 75, §524.1406]

Referred to in §524.507

524.1407 Succession to fiduciary accounts and appointments — application for appointment of new fiduciary.

1. If a party to a plan of merger or consolidation was authorized to act in a fiduciary capacity and if the resulting state or national bank is similarly authorized, the resulting state or national bank shall be automatically substituted by reason of the merger or consolidation as fiduciary of all accounts held in that capacity by such party to the plan, without further action and without any order or decree of any court or public officer, and shall have all the rights and be subject to all the obligations of such party as fiduciary.

2. No designation, nomination or appointment as fiduciary of a party to a plan of merger or consolidation shall lapse by reason of the merger or consolidation. The resulting state or national bank shall, if authorized to act in a fiduciary capacity, be entitled to act as fiduciary pursuant to each such designation, nomination or appointment to the same extent as the party to the plan so named could have acted in the absence of the merger or consolidation.

3. Any person with an interest in an account held in a fiduciary capacity by a party to a plan of merger or consolidation may, within sixty days after the effective date of the merger or consolidation, apply to the district court in the county in which the resulting state or national bank has its principal place of business, for the appointment of a new fiduciary to replace the resulting state or national bank on the ground that the merger or consolidation will adversely affect the administration of the fiduciary account. The court shall have the discretion to appoint a new fiduciary to replace the resulting state or national bank if it should find, upon hearing after notice to all interested parties, that the merger or consolidation will adversely affect the administration of the fiduciary account and that the appointment of a new fiduciary will be in the best interests of the beneficiaries of the fiduciary account. This provision shall be in addition to any other provision of law governing the removal of fiduciaries and shall be subject to the terms upon which the party to the plan which held the fiduciary account was designated as fiduciary. [C54, 58, 62, 66,§528B.10; C71, 73, 75, §524.1407]

Referred to in §524.1418

524.1408 Merger of corporation substantially owned by a state bank. Any state bank owning at least ninety-five percent of the outstanding shares, of each class, of another corporation which it is authorized to own under the provisions of this chapter, may merge such other corporation into itself without approval by a vote of the shareholders of either the state bank or the subsidiary corporation. The board of directors of the state bank shall approve a plan of merger, mail to shareholders of record of the subsidiary corporation and prepare and execute articles of merger in the manner provided for in section 496A.72. The articles of merger, together with the applicable filing and recording fees, shall be delivered to the superintendent who shall, if he approves of the proposed merger and if he finds the articles of merger satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in his office, and the same shall be filed in the office of the county recorder. The secretary of state upon filing the articles of merger shall issue a certificate of merger and send the same to the state bank and a copy thereof to the superintendent. [C71, 73, 75,§524.1408]

524.1409 Authority for conversion of national bank into state bank. A national bank may, subject to the provisions of this chapter, convert into a state bank upon authorization by and compliance with the laws of the United States, adoption of a plan of conversion by the affirmative vote of at least a majority of its directors and the holders of two-thirds of each class of its shares at a meeting held upon not less than ten days' notice to all shareholders, and upon approval of the superintendent. [C54, 58, 62, 66,§528B.3, 528B.7; C71, 73, 75, §524.1409]

524.1410 Application for approval by superintendent. A national bank shall make an application to the superintendent for approval of the conversion in a manner prescribed by the superintendent and shall deliver to the superintendent, when available:

1. Articles of conversion.

2. As soon as available, proof of publication of the notice required by section 524.1412.

3. The applicable fee payable to the secretary of state, by reason of subsection 20 of section 496A.124, for the filing and recording of the articles of conversion. [C54, 58, 62, 66, §528B.7; C71, 73, 75,§524.1410]

524.1411 Articles of conversion. The articles of conversion shall be signed by two duly

authorized officers of the national bank and shall contain:

1. The name of the national bank and the name of the resulting state bank.

2. The location and post-office address of its principal place of business and of each additional office, and the location and post-office address of the principal place of business of the resulting state bank and of each additional office to be maintained by the resulting state bank.

3. The votes by which the plan of conversion was adopted and the time and place of each meeting in connection with the adoption.

4. The number of directors constituting the board of directors, and the names and addresses of the persons who are to serve as directors until the next annual meeting of shareholders or until successors be elected and qualify.

5. The provisions required in the articles of incorporation by subsections 3, 4, 5, 6, 7 and 10 of section 524.302.

6. The plan of conversion. [C54, 58, 62, 66, §528B.4; C71, 73, 75,§524.1411]

524.1412 Publication of notice. The national bank shall publish a notice of its intention to deliver, or the delivery of, the articles of conversion to the superintendent, once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the national bank has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the national bank has its principal place of business. The notice shall appear prior to, or within seven days after, the date of delivery of the articles of conversion to the superintendent and shall set forth:

1. The name of the national bank and the name of the resulting state bank.

2. The location and post-office address of its principal place of business.

3. A statement that articles of conversion are to be, or have been delivered to the superintendent.

4. The purpose or purposes of the resulting state bank.

5. The date of delivery of the articles of conversion to the superintendent. [C54, 58, 62, 66, §528B.6; C71, 73, 75,§524.1412]

Referred to in §524.1410

524.1413 Approval of conversion by superintendent. Upon receipt of an application for approval of a conversion the superintendent shall conduct such investigation as he may deem necessary to ascertain whether:

1. The articles of conversion and supporting items satisfy the requirements of this chapter.

2. The plan adequately protects the interests of depositors.

3. The requirements for a conversion under all applicable laws have been satisfied and the resulting state bank would satisfy the requirements of this chapter applicable to it.

4. The resulting state bank will possess an adequate capital structure.

Within ninety days after receipt of the application the superintendent shall make a determination whether to approve or disapprove the pending application on the basis of his investigation. Before receiving the decision of the superintendent with respect to the pending application, the national bank shall, upon notice, reimburse the superintendent to the extent of the expenses incurred by him in connection with the application. Thereafter, the superintendent shall give the national bank written notice of his decision and, in the event of disapproval, a statement of the reasons for his decision. If the superintendent approves the pending application, he shall deliver the articles of conversion, with his approval indicated thereon, to the secretary of state. The decision of the superintendent shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, such a petition for judicial review must be filed within thirty days after the superintendent notifies the national bank of his decision. [C54, 58, 62, 66,§528B.4; C71, 73, 75,§524.1413]

524.1414 Issuance of certificate of conversion. The receipt of the approved articles of conversion by the secretary of state shall constitute filing thereof with that office. The secretary of state shall record the articles of conversion in his office, and the same shall be filed and recorded in the office of the county recorder in the county in which the resulting state bank has its principal place of business. On the date upon which the conversion is effective, the secretary of state shall issue a certificate of conversion and send the same to the resulting state bank and a copy thereof to the superintendent and the superintendent shall issue to the resulting state bank an authorization to do business. [C54, 58, 62, 66,§528B.6; C71, 73, 75,§524.1414]

524.1415 Effect of filing of articles of conversion with secretary of state and of certificate of conversion.

1. The conversion shall be effective upon the filing of the articles of conversion with the secretary of state, or at any later date and time specified by the superintendent in writing on the articles of conversion. The certificate of conversion shall be conclusive evidence of the performance of all conditions required by this chapter for conversion of a national bank into a state bank, except as against the state.

2. When a conversion becomes effective, the existence of the national bank shall continue in the resulting state bank which shall have all the property, rights, powers and duties of the national bank, except that the resulting state bank shall have only the authority to engage in such business and exercise such powers as it would have, and shall be subject to the same prohibitions and limitations to

which it would be subject, upon original incorporation under this chapter. The articles of incorporation of the resulting state bank shall be the provisions stated in the articles of conversion.

3. No liability of the national bank or of its shareholders, directors or officers shall be affected, nor shall any lien on any property of the national bank be impaired by the conversion. Any claim existing or action pending by or against the national bank may be prosecuted to judgment as if the conversion had not taken place, or the resulting state bank may be substituted in its place. [C54, 58, 62, 66,§§528B.6, 528B.8; C71, 73, 75,§524.1415]

524.1416 Authority for conversion of state bank into national bank.

1. A state bank may convert into a national bank upon authorization by and compliance with the laws of the United States, and adoption of a plan of conversion by the affirmative vote of at least a majority of its directors and the holders of two-thirds of each class of its shares at a meeting held upon not less than ten days' notice to all shareholders. The authority of a state bank to convert into a national bank shall be subject to the condition that at the time of the transaction, the laws of the United States shall authorize a national bank located in this state, without approval by the comptroller of the currency of the United States, to convert into a state bank under limitations and conditions no more restrictive than those contained in this section and section 524.1417 with respect to conversion of a state bank into a national bank.

2. A state bank which converts into a national bank shall notify the superintendent of the proposed conversion, provide such evidence of the adoption of the plan as the superintendent may request, notify the superintendent of any abandonment or disapproval of the plan, file with the superintendent and with the secretary of state a certificate of the approval of the conversion by the comptroller of the currency of the United States, and the date upon which such conversion is to become effective. [C54, 58, 62, 66,§528B.2; C71, 73, 75, §524.1416]

Referred to in §524.1417(1)

524.1417 Rights of dissenting shareholder of converting state or national bank.

1. A shareholder of a state bank which converts into a national bank, who votes against the plan of conversion or has given the state bank written notice that he dissents from the plan, at or prior to the meeting at which the plan is adopted in the manner prescribed by section 524.1416, shall be entitled to receive in cash the value of the shares held by him, if and when the conversion is consummated, upon written request made to the resulting national bank at any time within thirty days after the consummation of the conversion, accompanied by the surrender of his share certificates. The value of such shares shall be determined as of the date of the shareholders' meeting at which the conversion plan was adopted, by a committee of three persons, one to be selected by unanimous vote of the dissenting shareholders entitled to receive the value of their shares, one by the directors of the resulting national bank, and the third by the two so chosen. The valuation agreed upon by any two of three appraisers thus chosen shall govern. If the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment as provided herein, such shareholder may, within five days after being notified of the appraised value of his shares, appeal to the superintendent, who shall cause a reappraisal to be made, which shall be final and binding as to the value of the shares of the appellant. If, within ninety days from the date of consummation of the conversion, for any reason one or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of such shares, the superintendent shall, upon written request of any interested party, cause an appraisal to be made which shall be final and binding on all parties. The expenses of the superintendent in making the reappraisal, or the appraisal as the case may be, shall be paid by the resulting national bank. The plan of conversion shall provide the manner of disposing of the shares of the resulting national bank not taken by the dissenting shareholders of the state bank.

2. If a shareholder of a national bank, which converts into a state bank, shall object to the plan of conversion and shall comply with the requirements of applicable laws of the United States, the resulting state bank shall be liable for the value of his shares as determined in accordance with such laws of the United States. Shares acquired by a state bank pursuant to this subsection shall be sold at public or private sale, within one year from the time of purchase or acquisition, unless the time is extended by the superintendent. [C54, 58, 62, 66, §528B.9; C71, 73, 75,§524.1417]

Referred to in §§524.507, 524.1416(1)

524.1418 Succession to fiduciary accounts and appointments — application for appointment of new fiduciary. The provisions of section 524.1407 shall apply to a resulting state or national bank after a conversion with the same effect as though such state or national bank were a party to a plan of merger or consolidation, and the conversion were a merger or consolidation, within the provisions of that section. [C54, 58, 62, 66,§528B.10; C71, 73, 75, §524.1418]

524.1419 Offices of a resulting state bank. If a merger, consolidation or conversion results in a state bank subject to the provisions of this chapter, the resulting state bank shall, after the effective date of the merger, consolidation or conversion, be subject to all the provisions of sections 524.1201, 524.1202 and 524.1203 relating to the bank offices and parking lot offices. [C71, 73, 75,§524.1419]

524.1420 Nonconforming assets of resulting state bank. If a merger, consolidation or conversion results in a state bank subject to the provisions of this chapter, and the resulting state bank has assets which do not conform with the provisions of this chapter, the superintendent may allow the resulting state bank a reasonable time to conform with state law. [C54, 58, 62, 66,§528B.11; C71, 73, 75,§524.1420]

DIVISION XV
AMENDMENT TO ARTICLES OF INCORPORATION

524.1501 Right to amend. A state bank may, with the approval of the superintendent and in the manner provided in this chapter, amend its articles of incorporation in order to make any change therein so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in the original articles of incorporation at the time of making such amendment. [C35,§9283-f14; C39,§9283.42; C46, 50, 54, 58, 62, 66,§528.127; C71, 73, 75,§524.1501]

524.1502 Procedure to amend.

1. An amendment of the articles of incorporation shall be proposed by adoption of a resolution by the board of directors, directing that it be submitted to a vote at a meeting of shareholders called in the manner required by section 524.509.

2. The resolution proposing an amendment or amendments shall contain the language of each amendment by setting forth in full the articles of incorporation as they would be amended or any provision thereof as it would be amended or by setting forth in full any matter to be added to or deleted from the articles of incorporation. A copy of the resolution or a summary thereof shall be included with the notice of the meeting required for the vote of the shareholders.

3. Adoption of each amendment shall require the affirmative vote of the holders of a majority of the shares entitled to vote thereon and, if any class is entitled to vote thereon as a class, the affirmative vote of the holders of a majority of the shares of each class entitled to vote thereon as a class. [C35,§§9283-f11,-f12, -f13; C39,§§9283.39, 9283.40, 9283.41; C46, 50, 54, 58, 62, 66,§§528.124, 528.125, 528.126; C71, 73, 75, §524.1502]

Referred to in §524.1507

524.1503 Class voting on amendments. The shareholders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

1. Increase or decrease the aggregate number of authorized shares of such class.

2. Increase or decrease the par value of the shares of such class.

3. Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.

4. Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

5. Change the designations, preferences, limitations, or relative rights of the shares of such class.

6. Change the shares of such class into the same or a different number of shares of the same class or another class or classes.

7. Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences of any class having rights and preferences prior or superior to the shares of such class.

8. Divide the unissued shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to do so.

9. Limit or deny the existing pre-emptive rights, if any, of the shares of such class.

10. Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared. [C71, 73, 75, §524.1503]

524.1504 Articles of amendment.

1. Upon the adoption of an amendment, articles of amendment shall be prepared on forms prescribed by the superintendent, signed by two duly authorized officers of the state bank and shall contain:

a. The name of the state bank.

b. The location of its principal place of business.

c. The amendment adopted, which shall be set forth in full.

d. The place, date and hour of the meeting of shareholders at which the amendment was adopted, and the kind and period of notice given to the shareholders.

e. The number of shares entitled to vote on the amendment, and if the shares of any class are entitled to vote thereon as a class, the number of shares of each class.

f. The number of shares voted for and against such amendment, respectively, and if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment.

2. The articles of amendment shall be delivered to the superintendent together with the applicable fees for the filing and recording of the articles of amendment. [C71, 73, 75, §524.1504]

Referred to in §§524.1505(1), 524.1507

524.1505 Approval of articles of amendment.

1. Upon receipt of the articles of amendment the superintendent shall conduct such investigation as he may deem necessary to determine whether the articles of amendment satisfy the requirements of section 524.1504 and whether the amendment, if effected, will in any way prejudice the interests of the depositors of the state bank.

2. Within sixty days after receipt of the articles of amendment the superintendent shall approve or disapprove the articles of amendment on the basis of his investigation. If the superintendent shall approve the articles of amendment, he shall deliver them with his written approval to the secretary of state and notify the state bank of his action. If the superintendent shall disapprove the articles of amendment, he shall give written notice to the state bank of his disapproval and a statement of the reasons for his decision. The decision of the superintendent shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, such a petition for judicial review must be filed within thirty days after the superintendent notifies the state bank of his decision. [C71, 73, 75,§524.1505]

Referred to in §524.1508

524.1506 Certificate of amendment—effect.

1. The secretary of state shall record the articles of amendment in his office, and the same shall be filed and recorded in the office of the county recorder in the county in which the state bank has its principal place of business. The secretary of state upon the filing of the articles of amendment shall issue a certificate of amendment and send the same to the state bank.

2. Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly. No amendment shall affect the existing rights of persons other than shareholders, or any existing cause of action in favor of or against such state bank, or any pending suit to which such state bank shall be a party, and, in the event the name of the state bank shall be changed by amendment, no suit brought by or against such state bank under its former name shall abate for that reason. [C71, 73, 75,§524.1506]

Referred to in §524.1507

524.1507 Change of location of principal place of business.

1. If a change in the location of the principal place of business of a state bank is proposed and involves a change other than a change within the municipal corporation or unincorporated area in which the state bank has its principal place of business, application for the required approval of the superintendent shall be made in the manner required by the superintendent and subject to the provisions of this section. Any change in location of the principal place of business of a state bank subject to this section shall require amendment to the articles of incorporation in accordance with the provisions of sections 524.1502, 524.1504 and 524.1506. A state bank seeking approval of a change of location pursuant to this subsection shall publish a notice of the proposed change of location in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the state bank has its principal place of business, or if there is none, in a newspaper of general circulation published in the county, or in a county adjoining the county, in which the state bank has its principal place of business, and in the municipal corporation in which it seeks to establish its principal place of business, or if there is none, in a newspaper of general circulation published in the county, or in a county adjoining the county, in which such municipal corporation is located. The notice shall be published within thirty days after making application to the superintendent for approval of the change in location. The notice shall set forth the name of the state bank, the present location of its principal place of business, the location to which it wishes to move its principal place of business and the date upon which the state bank made application to the superintendent for approval of the change.

2. Upon receipt of an application for approval of a change of location of the principal place of business of a state bank pursuant to subsection 1 of this section, the superintendent shall conduct such investigation as he deems necessary giving due consideration to factors substantially similar to those set forth in section 524.305, subsections 2 to 6. Within one hundred eighty days after receipt of the application, the superintendent shall make a determination whether to approve or disapprove the application on the basis of his investigation. Prior to making a determination on the pending application the superintendent shall, upon adequate notice, afford all interested persons an opportunity for a stenographically reported hearing during which such persons shall be allowed to present evidence in support of, or in opposition to, the pending application. Thereafter the superintendent shall give written notice of his decision to the state bank and, in the event of disapproval, a statement of the reasons for his decision. If the superintendent shall approve the change in location he shall deliver the articles of amendment to the secretary of state. The decision of the superintendent shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. Before receiving the decision of the superintendent with respect to the pending application, the state bank shall upon notice reimburse the superintendent to the extent of the expenses incurred by him in connection with the application. [C71, 73, 75,§524.1507]

524.1508 Restatement of articles of incorporation. A state bank may at any time restate its articles of incorporation, which may be amended by such restatement, so long as its articles of incorporation as so restated contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such restatement, by the adoption of restated articles of incorporation,

including any amendments to its articles of incorporation to be made thereby, in the following manner:

1. The board of directors shall adopt a resolution setting forth the proposed restated articles of incorporation, which may include an amendment or amendments to the articles of incorporation of the state bank to be made thereby, and directing that such restated articles, including such amendment or amendments, be submitted to a vote at a meeting of shareholders, which may be either an annual meeting or a special meeting.

2. Written or printed notice setting forth the proposed restated articles or a summary of the provisions thereof shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in section 524.509. If the meeting be an annual meeting, the proposed restated articles may be included in the notice of such annual meeting. If the restated articles include an amendment or amendments to the articles of incorporation to be made thereby, the notice shall separately set forth such amendment or amendments or a summary of the changes to be effected thereby.

3. At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed restated articles. The proposed restated articles shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless such restated articles include an amendment to the articles of incorporation to be made thereby which, if contained in a proposed amendment to articles of incorporation to be made without restatement of the articles of incorporation, would entitle a class of shares to vote as a class thereon, in which event the proposed restated articles shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class, and of the total shares entitled to vote thereon.

Upon such approval, restated articles of incorporation shall be executed by the state bank by its president or vice-president and by its cashier or an assistant cashier, and verified by one of the officers signing the same, and shall set forth, as then stated in the articles of incorporation of the state bank and, if the restated articles of incorporation included an amendment or amendments to the articles of incorporation to be made thereby, as so amended, the material and contents described in section 524.302.

The restated articles of incorporation shall set forth also a statement that they correctly set forth the provisions of the articles of incorporation as theretofore or thereby amended, that they have been duly adopted as required by law and that they supersede the original articles of incorporation and all amendments thereto.

The restated articles of incorporation shall be delivered to the superintendent together with the applicable fees for the filing and recording of the restated articles of incorporation. The superintendent shall conduct such investigation and give his approval or disapproval, all as in the manner provided for in section 524.1505. If the superintendent shall approve the restated articles of incorporation he shall deliver them with his written approval to the secretary of state for filing and recording in his office and the same shall be filed and recorded in the office of the county recorder. The secretary of state upon filing the restated articles of incorporation shall issue a restated certificate of incorporation and send the same to the state bank or its representative.

Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation including any amendment or amendments to the articles of incorporation made thereby, shall become effective and shall supersede the original articles of incorporation and all amendments thereto.

No amendment shall affect the existing rights of persons other than shareholders, or any existing cause of action in favor of or against such state bank, or any pending suit to which such state bank shall be a party; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such state bank under its former name shall abate for that reason. [C71, 73, 75, §524.1508]

DIVISION XVI
PENAL

524.1601 Penalties and criminal provisions applicable to directors, officers and employees of state banks.

1. A director, officer or employee of a state bank who willfully violates any of the provisions of subsection 4 of section 524.612, section 524.613, subsection 2 of section 524.706, insofar as such subsection incorporates subsection 4 of section 524.612, or section 524.710, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both, plus, in the following circumstances, an additional fine or fines equal to:

a. The amount of money or the value of the property which he received for procuring, or attempting to procure, a loan, extension of credit or investment by the state bank, upon conviction of a violation of subsection 1 of section 524.613, or of subsection 1 of section 524.710.

b. The amount by which his deposit account in the state bank is overdrawn, upon conviction of a violation of subsection 2 of section 524.613, or of subsection 2 of section 524.710.

c. The amount of any profit which he receives on the transaction, upon conviction of a violation of subsection 4 of section 524.612, or of subsection 2 of section 524.706, insofar as

each applies to purchases from and sales to a state bank upon terms more favorable to such director or officer than those offered to other persons.

d. The amount of profit, fees or other compensation received, upon conviction of a violation of subsection 3 of section 524.710.

2. A director or officer who willfully makes or receives a loan in violation of subsection 1 of section 524.612, or subsection 1 of section 524.706, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both, plus an additional fine equal to that amount of the loan in excess of the limitation imposed by such subsections, and shall be forever disqualified from acting as a director or officer of any state bank. For the purpose of this subsection, amounts which are treated as obligations of an officer or director pursuant to subsection 5 of section 524.612, shall be considered in determining whether the loan or extension of credit is in violation of subsection 1 of section 524.612 and subsection 1 of section 524.706.

3. A director, officer or employee of a state bank who willfully makes or receives a loan or extension of credit of funds held by the state bank as fiduciary, in violation of subsection 4 of section 524.1002, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both, plus a further fine equal to the amount of the loan or extension of credit made in violation of subsection 4 of section 524.1002, and shall be forever disqualified from acting as a director, officer or employee of any state bank.

4. A director, officer or employee of a state bank who willfully violates, or participates in the violation of, section 524.814, or section 524.819, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both. [C97,§1869; S13, §1869; C24, 27, 31, 35, 39,§**9221**; C46, 50, 54, 58, 62, 66,§§528.7, 528.63; C71, 73, 75,§524.1601]

524.1602 Penalties applicable to state bank. The superintendent may impose a penalty on a state bank of up to one hundred dollars for each day:

1. That its cash reserves are less than the amount required by section 524.816.

2. That it holds investments for its own account in bonds or securities in violation of section 524.901.

3. On which it accepts and holds drafts in violation of section 524.903.

4. On which it has money loaned, credit extended or holds discounted or purchased evidences of indebtedness or agreements for the payment of money, in violation of sections 524.904 to 524.907.

5. On which it has money loaned, invested or is otherwise in violation of sections 524.1102 or 524.1104.

6. On which it publishes, disseminates or distributes any advertising containing any false, misleading or deceptive statements concerning rates, terms and conditions on which loans are made or deposits are received, in violation of section 524.1606. [C71, 73, 75, §524.1602]

524.1603 Engaging in business unlawfully.

1. Any person who willfully engages in the business of receiving money for deposit or transacts the business generally done by banks, or who willfully establishes a place of business for such purposes, in violation of subsection 1 of section 524.107, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to:

a. In the case of an individual, imprisonment in the county jail for a period not exceeding one year, or a fine not exceeding one thousand dollars, or both.

b. In the case of any other person, to a fine not exceeding five thousand dollars.

2. The superintendent may impose a penalty on a state bank of up to one hundred dollars for each day that it violates the provisions of section 524.1201. [C97,§1889; S13,§1889; C24, 27, 31, 35, 39,§§**9151, 9260**; C46, 50, 54, 58, 62, 66, §§524.25, 528.53; C71, 73, 75,§524.1603]

524.1604 Failure to file report or make statement.

1. Any person whose duty it is to make statements or file reports as may be required by this chapter, and who willfully neglects or refuses to perform such duty, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars.

2. A state bank which fails to furnish to the superintendent the statement of condition required within the time required by this chapter, or fails to furnish him any report or other information he is legally authorized to request, within ten days of his request therefor, or within the time required by this chapter, shall pay to the superintendent a penalty of fifty dollars for each day of delinquency, unless prior to such delinquency the superintendent has extended the time within which the same may be filed.

3. Any officer or employee who violates section 524.709 shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to imprisonment in the county jail for a period not to exceed one year or a fine not exceeding one thousand dollars, or both. [C97,§1886; S13, §1871; C24, 27, 31, 35, 39,§§**9226, 9230, 9281**; C46, 50, 54, 58, 62, 66,§§528.20, 528.24, 528.83; C71, 73, 75,§524.1604]

524.1605 False statements, reports and fraudulent acts.

1. Any director, officer or employee of a state bank who shall knowingly subscribe or make any false statements or false entries in the books, records, or memoranda of a state bank, or knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine its condition, or shall knowingly subscribe or make false reports, or shall knowingly divert the funds of the state bank to other purposes than those authorized by law, or who commits any other act with intent to defraud the state bank or any other person shall, upon conviction thereof, be subject to imprisonment in the penitentiary for a period not exceeding five years or a fine not exceeding ten thousand dollars, or both, and shall be forever disqualified from acting as a director, officer or employee of any state bank.

2. Any officer or employee of a state bank who, with intent to defraud the state bank or any other person, certifies any check when there are not sufficient funds on hand available to the credit of the drawer of said check to pay the same, or who issues any certificate of deposit when funds have not been deposited equal to the amount of such certificate, or who, with intent to defraud the state bank or any other person, draws any draft or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation or instrument, or participates in, or receives directly or indirectly any money, property or other benefit from any transaction, loan, contract or other act of a state bank shall, upon conviction thereof, be subject to imprisonment in the penitentiary for a period not exceeding five years, or a fine not exceeding ten thousand dollars, or both, or be subject to imprisonment in the county jail for a period not exceeding one year, or a fine not exceeding one thousand dollars, or both, and shall, in either event be forever disqualified from acting as an officer or employee of any state bank. [C97,§1887; C24, 27,§9282; C31, 35,§§9282, 9283-c2; C39,§§9282, 9283.02; C46, 50, 54, 58, 62, 66,§§528.84, 528.87; C71, 73, 75,§524.1605]

524.1606 Fraudulent advertising or notice. A state bank shall not publish, disseminate or distribute any advertising or notice containing any false, misleading or deceptive statements concerning the rates, terms or conditions on which loans are made or deposits are received, any charge which the state bank is authorized to impose pursuant to this chapter, or the financial condition of the state bank. Any officer or employee of a state bank who willfully violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year, or a fine not exceeding one thousand dollars, or both. [C97,§1859; C24, 27, 31, 35, 39, §9260; C46, 50, 54, 58, 62, 66,§§526.44, 529.12; C71, 73, 75,§524.1606]

Referred to in §524.1602(6)

524.1607 False statement for credit. Any person who knowingly makes or causes to be made, directly or indirectly, any false statement in writing, or who procures, knowing that a false statement in writing has been made concerning the financial condition or means or ability to pay of such person, or any other person in which such person is interested or for whom such person is acting, with the intent that such statement shall be relied upon by a bank for the purpose of procuring the delivery of property, the payment of cash or the receipt of credit in any form, for the benefit of such person or of any other person in which such person is interested or for whom such person is acting, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both. [C31, 35,§9283-c3; C39,§9283.03; C46, 50, 54, 58, 62, 66,§528.88; C71, 73, 75,§524.1607]

524.1608 Penalty for accepting deposits while insolvent. If a state bank shall accept any deposit or renew any certificate of deposit in violation of subsection 5 of section 524.805, any officer or employee knowing of such insolvency who willfully receives, accepts or renews or is accessory to or otherwise knowingly permits such acceptance shall, upon conviction thereof, be subject to imprisonment in the penitentiary for a period not exceeding ten years or a fine not exceeding ten thousand dollars, or both, or subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both, and shall, in either event be forever disqualified from acting as an officer or employee of any state bank. [C97,§1885; C24, 27, 31, 35, 39,§9280; C46, 50, 54, 58, 62, 66,§528.82; C71, 73, 75,§524.1608]

524.1609 False statements concerning state banks. Whoever maliciously or with intent to deceive makes, publishes, utters, repeats, or circulates any false statement concerning any state bank which imputes, or tends to impute, insolvency, unsound financial condition or financial embarrassment, or which may tend to cause or provoke, or aid in causing or provoking, a general withdrawal of deposits from such state bank, or which may otherwise injure or tend to injure the business or good will of such state bank, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both. [C31, 35,§9283-c4; C39,§9283.04; C46, 50, 54, 58, 62, 66, §528.89; C71, 73, 75,§524.1609]

524.1610 Violation of prohibition against receiving a commission for organizing a state bank. Any person violating the provisions of section 524.311 shall be guilty of a misdemeanor and shall upon conviction thereof be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding

one thousand dollars, or both, plus an additional fine equal to twice the amount of such commission or bonus. [C24, 27, 31, 35, 39,§**9276**; C46, 50, 54, 58, 62, 66,§528.75; C71, 73, 75, §524.1610]

524.1611 Offenses involving employees of department of banking.

1. Any person violating the provisions of subsection 1 of section 524.211 shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both, and shall be subject to a further fine of a sum equal to the amount of the value of the property given or received or the money so loaned or borrowed. The deputy superintendent, an assistant or examiner convicted of a violation of such subsection shall be immediately discharged from employment and shall be forever disqualified from holding any position in the department of banking.

2. Any examiner violating the provision of section 524.212 shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both. Any examiner convicted of a violation of section 524.212 shall be immediately discharged from employment and shall be forever disqualified from holding any position in the department of banking. [C71, 73, 75,§524.1611]

DIVISION XVII
PRIVATE BANKS

524.1701 Application of chapter. Nothing in this chapter shall be construed as affecting or in any way interfering with any private bank or private banker that was engaged in lawful business prior to April 19, 1919. [C24, 27, 31, 35, 39,§**9153**; C46, 50, 54, 58, 62, 66,§524.26; C71, 73, 75,§524.1701]

Referred to in §§524.103(16), 524.107(1, 2)

524.1702 Application for supervision—effect.

1. A private bank may request of the superintendent that such private bank be subject to examination and supervision pursuant to this chapter and to such rules and regulations as may be prescribed by the superintendent applicable to state banks. The superintendent may adopt and promulgate such regulations as he deems necessary for the supervision of private banks which have applied for supervision in accordance with this section.

2. Subsequent to the receipt by the superintendent of a request as provided in subsection 1 of this section, a private bank shall be subject to examination and supervision in the same manner as a state bank and shall thereafter remain subject to such examination and supervision. The superintendent shall have power to take over the management of the property and business of such private bank in the same manner as he may take over the management of the property and business of a state bank pursuant to this chapter. In the event that a receiver is appointed for a private bank which is subject to examination and supervision in the same manner as a state bank, the superintendent shall be appointed as such receiver. [C35,§§9154-f1–f3; C39,§§**9154.01, 9154.02, 9151.03**; C46, 50, 54, 58, 62, 66,§§524.28, 524.29, 524.30; C71, 73, 75,§524.1702]

Referred to in §§524.103(16), 524.107(1, 2)

DIVISION XVIII
BANK HOLDING COMPANIES

524.1801 Definition. As used in this section and sections 524.1802 to 524.1807, "Bank Holding Company" means any corporation, business trust, voting trust, association, partnership, joint venture, or similar organization, other than an individual, which directly or indirectly owns or controls twenty-five percent or more of the voting shares of each of two or more banks or of a company which is a bank holding company by virtue of this section, or which controls in any manner the election of a majority of the directors of each of two or more banks, or for the benefit of whose shareholders or members twenty-five percent or more of the voting shares of each of two or more banks or of a company which is a bank holding company by virtue of this section is held by trustees. However, no company shall be a bank holding company solely by virtue of its ownership or control of shares:

1. In a fiduciary capacity arising in the ordinary course of business.

2. Acquired by it in connection with its underwriting of bank shares and held only for such period of time as will permit sale of the shares upon a reasonable basis.

3. Acquired and held in the ordinary course of securing or collecting a debt previously contracted in good faith. [C73, 75,§524.1801]

Referred to in §§524.519, 524.1806, 524.1807

524.1802 Limitation. No bank holding company shall directly or indirectly acquire ownership or control of more than twenty-five percent of the voting shares of any bank, or the power to control in any manner the election of a majority of the directors of any bank, if upon such acquisition the banks so owned or controlled by the bank holding company would have, in the aggregate, more than eight percent of the total deposits, both time and demand, of all banks in this state, as determined by the superintendent on the basis of the most recent reports of the banks in the state to their supervisory authorities which are available at the time of the acquisition. [C73, 75,§524.1802]

Referred to in §§524.1801, 524.1807

524.1803 Offer to purchase stock. No bank holding company shall make any offer to purchase or acquire, directly or indirectly, the voting shares of any state or national bank without extending the same offer to the owners of all outstanding shares of the bank not owned or controlled by the holding company. The refusal of any shareholder to accept the offer shall not be a bar to purchase or acqui-

sition of the shares of any other shareholder if all other pertinent requirements of this division have been met by the bank holding company. [C73, 75,§524.1803]

Referred to in §§524.1801, 524.1807

524.1804 More than one-fourth of stock by acquisition—effect. Any bank holding company, or firm which would thereby become a bank holding company, which proposes to directly or indirectly acquire ownership or control of the voting shares of any bank, and which upon such acquisition would own or control more than twenty-five percent of the voting shares of the bank, shall provide to the superintendent a copy of any original application to the board of governors of the federal reserve system for permission to take such action, and a copy of any subsequent amendment thereto, at the same time the application or amendment is transmitted to the federal reserve system. The superintendent may conduct such investigation into and evaluation of the proposed action as he deems necessary and appropriate, and may submit to the federal reserve board any information so obtained together with his own comments or recommendations regarding the proposed acquisition. [C73, 75,§524.1804]

Referred to in §§524.519, 524.1801, 524.1807

524.1805 Out-of-state holding companies. Nothing in this division shall be construed to authorize a bank holding company which is with respect to the state of Iowa an "out-of-state bank holding company", as defined or referred to in 12 U.S.C. 1842(d), as amended to January 1, 1971, to acquire any of the voting shares of, any interest in, all or substantially all of the assets of, or power to control in any manner the election of any of the directors of any bank in this state, unless such bank holding company was on January 1, 1971 registered with the federal reserve board as a bank holding company, and on that date owned at least two banks in this state. [C73, 75,§524.1805]

Referred to in §§524.1801, 524.1807

524.1806 Banks owned or controlled — officers and directors. If any individual is a director or an officer, or both, of a bank holding company, or of a bank which is owned or controlled by a bank holding company in any manner, and to the extent, specified by section 524.1801, such individual shall also be deemed to be a director or an officer, or both, as the case may be, of each bank so owned or controlled by that bank holding company, for the purposes of sections 524.612, 524.613 and 524.706. [C73, 75,§524.1806]

Referred to in §§524.1801, 524.1807

524.1807 Penalties. Any bank holding company which willfully violates any provision of sections 524.1801 to 524.1806 shall, upon conviction, be fined not less than one hundred dollars nor more than one thousand dollars for each day during which the violation continues. Any individual who willfully participates in a violation of any provisions of sections 524.1801 to 524.1806 shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both. [C73, 75,§524.1807]

Referred to in §524.1801

DIVISION XIX
EFFECTIVE DATE AND APPLICABILITY

524.1901 Effective date. This chapter shall take effect and be in force on and after January 1, 1970. [C71,§524.1801; C73, 75,§524.1901]

524.1902 Applicability of other chapters. The provisions of chapters 491, 492, 493, and 496A shall not apply to banks except insofar as is provided by this chapter. [C71,§524.1802; C73, 75,§524.1902]

CHAPTER 525

STATE BANKING BOARD

Repealed by 63GA, ch 273,§1843

CHAPTER 526

SAVINGS BANKS

Repealed by 63GA, ch 273,§1844

CHAPTER 527

ELECTRONIC TRANSFER OF FUNDS

Referred to in §§524.821, 524.1204, 524.1212, 533.4, 534.19

527.1 Statement of intent.
527.2 Definitions.
527.3 Enforcement.
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527.7 Records maintained.
527.8 Liability and errors.
527.9 Central routing units.
527.10 Confidentiality.
527.11 Rule-making.
527.12 Revocation of privilege.

527.1 Statement of intent. The general assembly declares, as its purpose in adopting this chapter to provide:

1. That electronic funds transfer systems should provide reliable service to the consumer with full protection of privacy of personal financial information.

2. That electronic funds transfer systems should not impair the safety and soundness of a person's funds.

3. That electronic funds transfer systems are essential facilities in the channels of commerce.

4. That regulation of electronic funds transfer systems should be fair and not unduly impede the development of new technologies which benefit the public. [66GA, ch 1214,§10]

527.2 Definitions. As used in this chapter, the following definitions shall apply unless the context otherwise requires:

1. *"Satellite terminal"* means and includes any machine or device located off the premises of a financial institution, whether attended or unattended, by means of which the financial institution and its customers may engage through either the immediate transmission of electronic impulses to or from the financial institution or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the financial institution, in transactions which are incidental to the conduct of the business of the financial institution and which otherwise are specifically permitted by applicable law. However, the term "satellite terminal" does not include any such machine or device, wherever located, if that machine or device is not generally accessible to persons other than employees of a financial institution or an affiliate of a financial institution.

2. *"Data processing center"* means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at a satellite terminal are received and are processed in order to enable the satellite terminal to perform any function for which it is designed.

3. *"Central routing unit"* means any facility where electronic impulses or other indicia of a transaction originating at a satellite terminal are received and are routed and transmitted to a financial institution, or to a data processing center, or to another central routing unit, wherever located.

4. *"Financial institution"* means and includes any bank incorporated under the provisions of chapter 524 or under the national banking acts, Title 12, United States Code, sections 21 to 95, any savings and loan association incorporated under the provisions of chapter 534 or under the Home Owners Loan Act of 1933, Title 12, United States Code, sections 1461 to 1468, and any credit union organized under the provisions of chapter 533 or under the federal Credit Union Act, Title 12, United States Code, sections 1751 to 1790.

5. *"Premises"* means and includes only those locations where by applicable law financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses.

6. *"Administrator"* means and includes both the superintendent of banking and the supervisor of savings and loan associations within the office of the auditor of state. However, the powers of administration and enforcement of this chapter shall be exercised only as provided in section twelve (12) of this chapter.

7. *"Multiple use terminal"* means any machine or device to which all of the following are applicable:

a. The machine or device is owned or operated by a person who primarily engages in a service, business or enterprise, including but not limited to the retail sale of goods or services, but who is not organized under the laws of this state or under federal law as a bank, savings and loan association, or credit union;

b. The machine or device is used by the person by whom it is owned or operated in some capacity other than as a satellite terminal; and

c. A financial institution proposes to contract or has contracted to utilize that machine or device as a satellite terminal. [66GA, ch 1214,§11]

Referred to in §§524.1212, 527.3

527.3 Enforcement.

1. For purposes of this chapter the superintendent of banking only shall have the power to issue rules applicable to, to accept and approve or disapprove applications or informational statements from, to conduct hearings and revoke any approvals relating to, and to exercise all other supervisory authority created by this chapter with respect to banks and credit unions. The supervisor of savings and loan associations only shall have and exercise such powers and authority with respect to savings and loan associations.

2. The administrator shall have the authority to examine any person who operates a multiple use terminal or other satellite terminal, and any other device or facility

with which such terminal is interconnected, as to any transaction by, with, or involving a financial institution. Information obtained in the course of such an examination shall not be disclosed, except as provided by law.

3. Nothing contained in this chapter shall authorize the administrator to regulate the conduct of business functions or to obtain access to any business records, data, or information of a person who operates a multiple use terminal, except those pertaining to a financial transaction engaged in through a satellite terminal, or as may otherwise be provided by law.

4. Nothing contained in this chapter shall be construed to prohibit or to authorize the administrator to prohibit an operator of a multiple use terminal, other than a financial institution, or an operator of any other device or facility with which such terminal is interconnected, other than a central routing unit or data processing center (as defined in section 527.2) from using those facilities to perform internal proprietary functions, including the extension of credit pursuant to an open end credit arrangement. [66GA, ch 1214,§12]

Referred to in §527.12

527.4 Establishment of satellite terminals —restrictions.

1. A satellite terminal shall not be established within this state by any financial institution, except one whose principal place of business is located in this state.

2. A financial institution whose principal place of business is located in this state shall not establish a satellite terminal at any location outside of this state.

3. A financial institution may establish any number of satellite terminals within the boundaries of any municipal corporation, or any urban complex composed of two or more Iowa municipal corporations each of which is contiguous to or corners upon at least one of the other municipal corporations within the complex, if the principal place of business or an office of that financial institution is also located within the boundaries of that municipal corporation or urban complex. A financial institution shall not establish a satellite terminal at any other location except pursuant to an agreement with a financial institution which is authorized by the preceding sentence to establish a satellite terminal at that location and which will utilize the satellite terminal so established. [66GA, ch 1214,§13]

527.5 Satellite terminal requirements. A satellite terminal may be utilized by a financial institution to the extent permitted in this chapter only if the satellite terminal is utilized and maintained in compliance with the provisions of this chapter and only if all of the following are complied with:

1. Each satellite terminal shall be established and controlled by a single financial institution which shall have the duty of maintaining the location, use and operation of the satellite terminal, wherever located, in compliance with this chapter. The use and operation of each satellite terminal shall be governed by a written agreement between the controlling financial institution and the person controlling the physical location at which the satellite terminal is placed. The written agreement shall specify all of the terms and conditions, including any fees and charges, under which a satellite terminal is placed at that location. In the event a satellite terminal is a multiple use terminal, the written agreement shall specify, and may limit, the specific types of transactions incidental to the conduct of the business of a financial institution which may be engaged in through that terminal.

2. The satellite terminal shall be available for use on a nondiscriminatory basis by any other financial institution which has its principal place of business within this state, and by all customers who have been designated by a financial institution using the satellite terminal and who have been provided with a physical object or other method, approved by the administrator, by which to engage in electronic transactions by means of the satellite terminal. No financial institution shall be required to join, be a member or shareholder of, or otherwise participate in any corporation, association, partnership, co-operative or other enterprise as a condition of its utilizing any satellite terminal located within this state. However, for purposes of complying with this subsection, a satellite terminal which is established and controlled by a bank is not required to be available for use by any savings and loan association or credit union; and one established and controlled by a savings and loan association is not required to be available for use by a bank or credit union; and one established and controlled by a credit union, is not required to be available for use by a bank or savings and loan association.

The administrator shall have the authority until March 1, 1977, to defer from time to time the application of this subsection and to permit the establishment and utilization of a satellite terminal not meeting the mandatory sharing requirements of this subsection until March 1, 1977, if in the opinion of the administrator it is not in the best interests of mantaining safety and security of the financial structures of this state to require shared usage, and if in the opinion of the administrator those financial institutions being permitted to establish satellite terminals are in good faith attempting to perfect the system to the point where shared usage would provide safety and security. This paragraph is repealed effective March 1, 1977.

3. An informational statement shall be filed and shall be maintained on a current basis with the administrator by the financial institution controlling the satellite terminal, which sets forth all of the following:

a. The name and business address of the controlling financial institution;

b. The location of the satellite terminal;

c. A schedule of the charges which will be required to be paid by any financial institution utilizing the satellite terminal; and

d. An agreement with the administrator that the financial institution controlling the satellite terminal will maintain that satellite terminal in compliance with the provisions of this chapter.

The informational statement shall be accompanied by a copy of the written agreement required by subsection 1. The informational statement also shall be accompanied by a statement or copy of any agreement, whether oral or in writing, between the controlling financial institution and any data processing center or any central routing unit, unless operated by or solely on behalf of the controlling financial institution, by which transactions originating at that terminal will be received.

4. The satellite terminal shall not be attended or operated at any time by an employee of any financial institution or an affiliate of a financial institution, except for the purpose of instructing customers, on a temporary basis, in the use of the satellite terminal, for the purpose of testing the terminal, or for the purpose of transacting business on the employee's own behalf.

5. The satellite terminal shall bear a sign or label identifying each type of financial institution utilizing the terminal. A satellite terminal location shall not be used to advertise individual financial institutions or any group of financial institutions. The administrator is empowered to authorize such methods of identification as he or she deems necessary to enable the general public to determine the accessibility of the satellite terminal.

6. The charges required to be paid by any financial institution which utilizes the satellite terminal shall not exceed a pro rata portion of the costs, determined in accordance with generally accepted accounting principles, of establishing, operating and maintaining the satellite terminal, plus a reasonable return on these costs to the owner of the satellite terminal.

7. If the administrator finds grounds, under any applicable law or rule, for denying establishment of a satellite terminal the administrator shall notify the person filing the informational statement or an amendment thereto, within thirty days of the filing thereof, of the existence of such grounds. If such notification is not given by the administrator, he or she shall be considered to have expressly approved the establishment and operation of the satellite terminal as described in the informational statement or amendment and according to the agreements attached thereto, and operation of the satellite terminal in accordance therewith may commence on or after the thirtieth day following such filing. However, this subsection shall not be construed to prohibit the administrator from enforcing the provisions of this chapter, nor shall it be construed to constitute a waiver of any prohibition, limitation or obligation imposed by this chapter.

8. A satellite terminal shall not be operated in a manner to permit a person to credit any demand deposit account, savings account, share account, or any other account representing a liability of a financial institution to that person, except transfers between separate accounts of that person with the same financial institution, unless the satellite terminal is located either (*a*) within the county in which that financial institution maintains its principal place of business or within a county whch is contiguous to or corners upon the county in which that financial institution maintains its principal place of business; or (*b*) within the boundaries of any municipal corporation or any urban complex composed of two or more Iowa municipal corporations each of which is contiguous to or corners upon at least one of the other municipal corporations within the complex, if an office of that financial institution which is not its principal place of business is also located within the boundaries of that municipal corporation or urban complex.

9. A satellite terminal shall not be operated in any manner to permit a person to credit any demand deposit account, savings account, share account or any other account representing a liability of a financial institution, if that financial institution is located outside of this state. [66GA, ch 1214,§14]

Referred to in §527.9

527.6 Disclosure of terms. Prior to permitting a customer or member to engage in transactions in such person's account with a financial institution through use of a satellite terminal, the financial institution shall provide such person with a written statement which sets forth the terms under which such transactions will be permitted, including, but not limited to, the following information:

1. The specific transactions which, subject to the capabilities of individual satellite terminals, may be performed through a satellite terminal by such person.

2. The fixed charges, if any, for permitting such person to engage in transactions through a satellite terminal.

The charges, if any, for individual transactions engaged in through a satellite terminal, and the method for determining such charges.

3. The minimum balance, if any, which must be maintained by such person in an ac-

count with a financial institution as a condition for engaging in transactions in such account through a satellite terminal.

4. The limitation on the liability of the customer or member for losses incurred by such person as a result of transactions through a satellite terminal which were not authorized by such person or to which such person was not a party.

5. The legal status of receipts issued from a satellite terminal.

6. The right of the customer or member to a description of transactions performed through a satellite terminal on any periodic statement of an account of such person affected by such transactions.

7. The right of the customer or member to seek correction of any errors believed by such person to have been made as a result of any transaction through a satellite terminal affecting an account of such person with the financial institution. [66GA, ch 1214,§15]

527.7 Records maintained. All transactions engaged in through a satellite terminal shall be recorded in a form from which it will be possible to produce a humanly readable record of any transaction, and these recordings shall be retained by the utilizing financial institutions for the periods required by law.

The machine receipt provided to a satellite account transaction card user by a satellite terminal shall be admissible as evidence in any legal action or proceeding and shall constitute prima-facie proof of the transaction evidenced by that receipt.

A financial institution shall provide each of its satellite account holders with a periodic account statement that shall contain a brief description of all satellite terminal transactions sufficient to enable the account holder to identify any transaction and to relate it to machine receipts provided by satellite terminals.

When a periodic account statement includes both satellite terminal transactions and other nonsatellite terminal transactions, all satellite terminal transactions shall be indicated as such, and shall be accompanied by the description required by this subsection.

The administrator may provide by rule for the recording and maintenance, by any financial institution utilizing a satellite terminal, of amounts involved in a transaction engaged in through the satellite terminal which are of a known tax consequence to the customer initiating the transaction. For the purpose of this paragraph "known tax consequences" means and includes but shall not be limited to the following:

1. An amount directly or indirectly received from a customer and applied to a loan account of the customer which represents interest paid by the customer to the financial institution.

2. In any transaction where the total amount involved is deducted from funds in a customer's account and is simultaneously paid either directly or indirectly by the financial institution to the account of a third party, any portion of the transaction amount which represents a sales or other tax imposed upon or included within the transaction and collected by that third party from the customer, or any portion of the transaction amount which represents interest paid to the third party by the customer.

3. Any other transaction which the administrator determines to have direct tax consequences to the customer. The administrator also may provide for the periodic distribution to customers of summaries of transactions having known tax consequences. [66GA, ch 1214,§16]

Referred to in §527.8

527.8 Liability and errors.

1. As a condition of exercising the privilege of utilizing a satellite terminal, a financial institution shall be liable to each of its customers for all losses incurred by such customer as a result of the transmission or recording of electronic impluses as a part of a transaction not authorized by such customer or to which the customer was not a party. However, in the event the financial institution has provided the customer with a physical object or other method of engaging in a transaction at a satellite terminal which is unique to the customer, and losses are incurred by the customer as a result of the theft, loss or other compromise of that physical object or other method of engagement, the liability of the financial institution pursuant to this section shall not include the first fifty dollars of any losses incurred prior to the time the customer notifies the financial institution of such theft, loss or compromise.

2. If, upon receipt of a periodic statement of account from a financial institution, a customer or member of the financial institution believes that the statement contains an error with respect to a transaction engaged in by such person through a satellite terminal, then such person shall, within sixty days of the date on which such statement was mailed or otherwise delivered by the financial institution, notify the financial institution by means of a writing which (*a*) sets forth or otherwise enables the financial institution to identify the member or customer and the number of the account in question; (*b*) indicates the customer's or member's belief that the statement contains an error with respect to a transaction engaged in by such person through a satellite terminal, and states the amount of the alleged error; and (*c*) sets forth the reasons for the person's belief that the statement contains such an error. Unless the action required in subsection 3 is taken prior to the end of the thirty day period, the financial institution shall acknowledge in writing

its receipt of the notice provided for in this subsection within 30 days of its actual receipt thereof.

3. Within ninety days of the financial institution's receipt of the notice described in subsection 2, it shall either:

a. Correct the account in question and provide the customer or member with written notification of the correction and, if the correction is not in the exact amount of the alleged error, provide such person with a written explanation of any difference between the alleged error and the correction made; or

b. Provide the customer or member with a written explanation, after having conducted an investigation of the matter, stating the reason the financial institution believes the statement is correct and, within thirty days of further written request of the customer or member, provide such person with a written copy of the record of the transaction in question, as maintained by the financial institution pursuant to secton 527.7.

4. A financial institution which has received a notice specified in subsection 2 shall not, prior to its compliance with subsection 3, close the account concerning which the dispute exists or restrict transactions in such account which affect only the portion thereof which is not in dispute. A financial institution which has complied with the provisions of subsecton 3 with respect to an alleged error concerning a transaction engaged in through a satellite terminal shall have no further responsibility under subsections 2 to 4 if the customer or member continues to make substantially the same allegation with respect to such error.

5. If the correction of any error relating to a transaction engaged in through a satellite terminal in an account of a customer or member results in a credit to such account, the financial institution shall additionally credit such account with any amount of interest which would have been paid to such customer or member by the financial institution except for the error, or which was paid by such person to the financial institution as a result of the error.

6. A financial institution which fails to comply with the provisions of subsections 2 to 5 shall be liable to the customer or member who has complied with such provisions for a civil penalty in the amount of fifty dollars. [66GA, ch 1214,§17]

527.9 Central routing units.

1. A central routing unit shall not be operated in this state unless written approval for that operation has been obtained from the administrator.

2. A person desiring to operate a central routing unit shall submit to the administrator an application which shall contain all of the following information:

a. The name and business address of the owner of the proposed unit.

b. The name and business address of each data processing center and other central routing unit with which the proposed central routing unit will have direct electronic communication.

c. The location of the proposed central routing unit.

d. A schedule of the charges which will be required to be paid to that applicant by each financial institution which utilizes the proposed central routing unit.

The application shall be accompanied by all agreements between the proposed central routing unit and all data processing centers and other central routing units respecting the transmission of transaction data; and a copy of any agreement between the proposed central routing unit and any financial institution establishing a satellite terminal unless that agreement theretofore has been filed with the administrator pursuant to section 527.5.

e. An agreement by the applicant that the proposed central routing unit will be capable of accepting and routing, and will be operated to accept and route, transmissions of data originating at any satellite terminal located in this state and controlled by the same type of financial institution as those financial institutions previously utilizing the services of the applicant central routing unit, whether received from that terminal or from a data processing center or other central routing unit. For the purposes of this paragraph the term "type of financial institution" shall, notwithstanding the issuer of the financial institution's charter, mean either (1) banks; or (2) savings and loan associations; or (3) credit unions.

3. The administrator shall approve or disapprove an application for operation of a central routing unit within sixty days after receipt.

4. A central routing unit operating under the approval of the administrator shall be subject to examination by the administrator for the purpose of determining compliance with this chapter. [66GA, ch 1214,§18]

527.10 Confidentiality. A satellite terminal, data processing center, or central routing unit shall not be operated in any manner to permit any person to obtain information concerning the account of any person with a financial institution, unless such information is essential to complete or prevent the completion of a transaction then being engaged in through the use of that facility. [66GA, ch 1214,§19]

527.11 Rule-making. The administrator shall have the power to adopt and promulgate rules pursuant to chapter 17A as in his or her opinion will be necessary to properly and effectively carry out and enforce the provisions of this chapter. [66GA, ch 1214,§20]

527.12 Revocation of privilege. Whenever the administrator determines, upon notice and hearing pursuant to chapter 17A, that a satellite facility or data processing center or central routing unit is being operated in violation of this chapter, the administrator may revoke the approval to operate that facility. If the administrator does not have any direct authority over the facility because of the provisions of section 527.3, the administrator may revoke with respect to any financial institution over which he or she does have direct authority the privilege to engage in transactions through or with that facility. A revocation by the administrator shall be effective when ordered by the administrator, anything in chapter 17A to the contrary notwithstanding. The administrator may bring an action in the district court in the name of the state to enjoin any financial institution or other person who continues to utilize or to operate a satellite terminal or data processing center or central routing unit after the approval has been revoked. The administrator also may bring such an action to enjoin any person who fails to obtain any approval required by this chapter. [66GA, ch 1214,§21]

CHAPTER 528

GENERAL PROVISIONS RELATING TO BANKS AND TRUST COMPANIES

Repealed by 63GA, ch 273,§1846

CHAPTER 528A

PRESERVATION OF BANK RECORDS

Repealed by 63GA, ch 273,§1847

CHAPTER 528B

MERGER, CONSOLIDATION AND CONVERSION OF BANKS AND TRUST COMPANIES

Repealed by 63GA, ch 273,§1848

CHAPTER 529

INSTALLMENT LOANS BY BANKS

Repealed by 63GA, ch 273,§1849

CHAPTER 530

STATE-FEDERAL BANKING CO-ORDINATION

Repealed by 63GA, ch 273,§1850

CHAPTER 531

CO-OPERATIVE BANKS

Repealed by 63GA, ch 273,§1851

CHAPTER 532

BANKS AND TRUST COMPANIES ADDITIONAL POWERS AS FIDUCIARIES

Repealed by 63GA, ch 273,§1852

CHAPTER 533

CREDIT UNIONS

Referred to in §§428.36, 491.1, 496A.142(1), 504A.100(1), 524.211(1,2), 524.212, 534.19, 537.1301, 537.2301, 537.6105, 537.6201, 601A.9

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533.1 Purpose — administration — organization.

Definition and purpose. A credit union is hereby defined as a co-operative, nonprofit association, incorporated in accordance with the provisions of this chapter for the purpose of creating a source of credit at a fair and reasonable rate of interest, of encouraging habits of thrift among its members and of providing the opportunity for people to use and control their savings for their mutual benefit.

Administration. The superintendent of banking shall be charged with the execution of the laws of this state relating to credit unions.

Organization. Any seven residents of the state of Iowa may apply to the superintendent of banking for permission to organize a credit union.

A credit union is organized in the following manner:

1. The applicants shall execute in duplicate articles of incorporation by the terms of which they agree to be bound. The articles shall state:

a. The name and location of the proposed credit union.

b. The names and addresses of the subscribers to the articles and the number of shares subscribed by each.

c. The par value of the shares of the credit union which shall not exceed twenty-five dollars each and shall be established by the board of directors. A credit union may have more than one class of shares.

2. Said applicants shall prepare and adopt bylaws for the general government of the credit union consistent with the provisions of this chapter, and execute the same in duplicate.

3. The articles and the bylaws, both executed in duplicate, shall be forwarded with a fee of ten dollars to the superintendent of banking.

4. The superintendent shall, within thirty days of the receipt of said articles and bylaws, determine whether they conform with the provisions of this chapter, and whether or not the organization of the credit union in question would benefit the members of it and be consistent with the purposes of this chapter.

5. The superintendent shall thereupon notify the applicants of his decision. If it is favorable he shall issue a certificate of approval, attached to the duplicate articles of incorporation and return the same, together with the duplicate bylaws to the applicants.

6. The applicants shall thereupon file the said duplicate of the articles of incorporation, with the certificate of approval attached thereto, with the county recorder of the county within which the credit union is to do business, who shall record and index the same and return it, with his certificate of record attached thereto, to the said superintendent of banking for permanent record.

7. The applicants shall thereupon become and be a credit union, incorporated in accordance with the provisions of this chapter.

In order to simplify the organization of credit unions, the superintendent of banking, upon the taking effect of this chapter, or as soon thereafter as sufficient fees shall have accumulated to liquidate the cost of same, shall cause to be prepared an approved form of articles of incorporation and a form of bylaws, consistent with this chapter which may be used by credit union incorporators for their guidance, and on written application of any seven residents of the state, shall supply them without charge with blank articles of incorporation and a copy of said form of suggested bylaws. [C27, 31, 35,§9305-a1; C39, §9305.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, §533.1; 66GA, ch 241,§1]

Referred to in §533.35

533.2 Amendments. The articles of incorporation or the bylaws may be amended by a favorable vote of a majority of the members present at any meeting, which number must constitute a quorum provided the proposed amendment was contained in the notice of the meeting. Any and all such amendments must be approved by the superintendent of banking

before they become effective. [C27, 31, 35, §9305-a2; C39,§**9305.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.2; 66GA, ch 241,§2]

533.3 Restriction. No person, firm, corporation, copartnership, or association, except a credit union organized under the provisions of this chapter or under the federal credit union Act [12 U.S.C.§1751 et seq.] or except the Iowa credit union league, incorporated, or chapters of said league, shall use a name or title containing the words "credit union" or any derivation thereof or shall represent themselves, in their advertising or otherwise, as conducting business as a credit union.

Any person, firm, corporation, copartnership, or association, upon conviction of the violation of the provisions of this section shall be fined not more than five hundred dollars or imprisoned not more than one year or both; and may be enjoined from such continued use of said words, advertising or other representation. [C27, 31, 35,§9305-a3; C39,§**9305.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.3]

Punishment, §687.7

533.4 Powers. A credit union shall have the following powers to:

1. Receive the savings of its members either as payment on shares or as deposits, including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within the membership.

2. Make loans to members for provident or productive purposes.

3. Make loans to a co-operative society or other organization having membership in the credit union.

4. Deposit in state and national banks.

5. Make investments in:

a. Time deposits in national banks and in state banks, the deposits of which are insured by the federal deposit insurance corporation.

b. Obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by the United States government or any agency thereof; or any trust or trusts established for investing directly or collectively in the same.

c. General obligations of the state of Iowa and any subdivision thereof.

d. Paid-up shares of savings and loan associations, the shares of which are insured by the federal savings and loan insurance corporation.

e. Purchase of notes of liquidating credit unions with the approval of the superintendent of banking.

f. Shares and deposits in other credit unions.

g. Capital shares, obligations, or preferred stock issues of an agency or association organized either as a stock company, mutual association, or membership corporation, if the membership or stockholdings, as the case may be, of the agency or association are primarily confined or restricted to credit unions or organizations of credit unions, and if the purposes for which the agency or association is organized are primarily designed to provide services to credit unions. However, the aggregate amount invested pursuant to this subsection shall not exceed twenty percent of the unimpaired legal reserve account of the credit union.

6. Borrow money as hereinafter indicated.

7. Assess fines as may be provided by the bylaws for failure to make repayments on loans and payments on shares when due, provided no such fine shall exceed one percent per month on amounts in arrears or five cents, whichever is the larger.

8. Sue and be sued.

9. Make contracts.

10. Purchase, hold and dispose of property necessary and incidental to its operation provided, however, that any property acquired through foreclosure shall be disposed of within a period not to exceed ten years.

11. Exercise such incidental powers as may be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

12. Apply to the administrator of the national credit union administration for credit union share insurance under Title II of the federal Credit Union Act as amended by Public Law 91-468 and take all actions necessary to maintain an insured status thereunder.

13. Upon the approval of the superintendent of banking, serve an employee group having an insufficient number of members to form or conduct the affairs of a separate credit union.

14. Deposit with a credit union which has been in existence for not more than a year an amount not to exceed twenty-five percent of the assets of the new credit union, but only one credit union may at any time make the deposit.

15. Acquire the conditional sales contracts, promissory notes or other similar instruments executed by its members, but the rate of interest existing on the instrument shall not exceed the highest rate charged by the acquiring credit union on its outstanding loans.

16. Discount and sell obligations which are due for agricultural loans, student loans, home improvement loans, and consumer loans, without recourse.

17. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation engaged in providing and operating facilities through which a credit union and its members may engage, by means of either the direct transmission of electronic impulses to and from the credit union or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the credit union, in transactions in which such credit union is otherwise permitted to engage pursuant to applicable law.

18. Engage in any transaction otherwise permitted by this chapter and applicable law, by means of either the direct transmission of

electronic impulses to or from the credit union or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the credit union. Subject to the provisions of chapter 527, a credit union may utilize, establish or operate, alone or with one or more other credit unions, banks incorporated under the provisions of chapter 524 or the national banking acts (12 U.S.C. sections 21-95), savings and loan associations incorporated under the provisions of chapter 534 or the Home Owners' Loan Act of 1933 (12 U.S.C. sections 1461-1468) or third parties, the satellite terminals permitted under chapter 527, by means of which the credit union may transmit to or receive from any member electronic impulses constituting transactions pursuant to this subsection. However, such utilization, establishment, or operation shall be lawful only when in compliance with chapter 527. Nothing in this subsection shall be construed as authority for any person to engage in transactions not otherwise permitted by applicable law, nor shall anything in this subsection be deemed to repeal, replace or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by any credit union. [C27, 31, 35,§9305-a4; C39,**§9305.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.4; 66GA, ch 240,§15, ch 241,§§3, 4, ch 1056,§41, ch 1214,§6]

533.5 Membership. Credit union membership shall consist of the incorporators and such other persons as may be elected to membership and subscribe for at least one share, pay the installment thereon and the entrance fee, if any. Organizations, incorporated or otherwise, composed for the most part of the same general group as the credit union membership may be members. Credit union organization shall be limited to groups having a common bond of occupation or association or to groups within a well-defined neighborhood, community, or rural district. If adopted as a policy by the board of directors of a credit union, members who are no longer included in the common bond of association may retain their credit union membership and all membership privileges. [C27, 31, 35,§9305-a5; C39,**§9305.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §533.5; 66GA, ch 241,§5]

533.6 Reports—examinations.

1. Credit unions organized under this chapter shall report to the superintendent of banking annually on or before the first day of February on blanks supplied by him for that purpose. Additional reports may be required. If any report remains in arrears for more than five days, a fine of five dollars for each day such report remains in arrears may be levied against such offending credit union. If such report is not returned within thirty days of the due date, the superintendent of banking may, after written notice to the president of such credit union of his intention to do so, suspend or revoke the certificate of approval, take possession of the business and property of such credit union, and order its dissolution.

2. The superintendent of banking shall examine, or cause to be examined, each credit union annually. Each credit union and all of its officers and agents shall give to the representatives of said superintendent free access to all books, papers, securities, records and other sources of information under their control; and for the purposes of such examination said representatives shall have the power to subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents. A report of such examination shall be forwarded to the president of each credit union within thirty days after the completion of the examination. Within thirty days of the receipt of such report, a meeting of the directors shall be called to consider matters contained in the report and the action taken shall be set forth in the minutes of the board. The superintendent may furnish to the administrator or any other official of the national credit union administration any information or report relating to examinations and reports of the status of any state credit union insured by the national credit union administration. The superintendent of banking may accept, in lieu of the annual examination of a credit union, an audit report conducted by a certified public accounting firm selected from a list of firms previously approved by the superintendent of banking. The cost of the audit shall be paid by the credit union.

3. The superintendent of banking may require any credit union, whose records are inadequate or whose books have not been balanced as of the end of the month not less than thirty days previously or whose affairs are in an unfavorable condition, to submit to an additional examination each year.

4. Each credit union shall pay to the superintendent of banking a fee for making examinations, based on the actual cost of the operation of the credit union division of the department of banking and the proportionate share of administrative expenses in the operation of the department of banking, attributable to credit unions, to be determined by the superintendent of banking, in accordance with chapter 17A.

5. If it shall appear that any credit union is insolvent or that it has violated any of the provisions of this chapter, the superintendent of banking may, after hearing or giving opportunity for a hearing, order such credit union to correct such condition and shall grant it not less than sixty days within which to comply and failure so to do shall afford the said superintendent grounds to revoke the certificate of approval and to apply to the district court of the district in which such credit union is located for the appointment of a receiver for the credit union. The district court shall appoint the superintendent as receiver unless the superintendent has tendered the appointment to the administrator of the national credit union administration. The administrator as

receiver shall possess the rights, powers, and privileges granted by state law to a receiver of a state credit union. Neither the superintendent nor the administrator shall be required to furnish bond as receiver of a state credit union. [C27, 31, 35,§9305-a6; C39,§9305.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.6; 66GA, ch 241,§6]

Referred to in §§533.21, 537.2305

533.7 Fiscal year — meetings. The fiscal year of all credit unions shall end December 31. Annual meetings shall be held, and special meetings may be held, in the manner indicated in the bylaws.

At all meetings no member shall have more than one vote regardless of the shares held by him. There shall be no voting by proxy. A member other than a natural person may cast a single vote through a delegated agent which agent shall be a member of the organization for which he acts. The majority of members present at any meeting may modify, amend or reverse any act of the board of directors or instruct it to take action not inconsistent with the bylaws or of this chapter. [C27, 31, 35, §9305-a7; C39,§9305.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.7]

533.8 Elections. At the organization meeting there shall be elected a board of directors of not less than nine members to hold office for such terms as the bylaws provide and until successors are elected and qualify. At each annual meeting there shall be elected one member to fill each position vacated by reason of expiring terms or other causes. A record of the names and addresses of the directors, officers and committee persons shall be filed with the superintendent of banking within ten days following each election. [C27, 31, 35,§9305-a8; C39,§9305.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.8]

533.9 Directors and officers. Within five days following the organization meeting and each annual meeting the directors shall elect from their own number chairman of the board, vice chairman, president and secretary, of whom the last two may be the same individual, and also a credit committee of not less than three members and an auditing committee of not less than three members, and may also elect alternate members of the credit committee. It shall be the duty of the directors to have general management of the affairs of the credit union, particularly to:

1. Act on applications for membership. However, the board of directors may appoint a membership committee or a membership officer from among the members of the board of directors, other than the treasurer, assistant treasurer or loan officer, who may be authorized by the board to approve applications for membership under such conditions as the board may prescribe; except that the membership committee or the membership officer shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting.

2. Determine interest rates on loans and deposits.

3. Fix the amount of the surety bond which shall be required of all officers and employees handling money.

4. Declare dividends, interest refunds, and to transmit to the members recommended amendments to the bylaws.

5. Fill vacancies which occur in the board between meetings of the members until the next annual meeting and until successors are elected and qualify.

6. Determine the maximum individual share holdings and the maximum individual loan which can be made with and without security.

7. Have charge of investments other than loans to members.

The duties of the officers shall be determined in the bylaws, except that the president shall be the general manager. No member of the board or of either committee shall, as such, be compensated. [C27, 31, 35,§9305-a9; C39, §9305.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.9; 66GA, ch 241,§§7, 8]

533.10 Credit committee. The credit committee shall have the general supervision of all loans to members. Applications for loans shall be on a form, prepared by the credit committee, and all applications shall set forth the purpose for which the loan is desired, the security, if any, offered, and such other data as may be required. Within the meaning of this section an assignment of shares or deposits or the endorsement of a note may be deemed security. At least a majority of the members of the credit committee shall pass on all loans and may grant approval thereof, provided, however, that the credit committee of a credit union, with the approval of the board of directors, may appoint one or more loan officers, who may be the president or vice president, and delegate to him or them, subject to conditions and regulations of the credit committee, power to approve or reject loans. The credit committee shall meet as often as may be necessary after due notice to each member. [C27, 31, 35,§9305-a10; C39, §9305.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.10; 66GA, ch 241,§9]

533.11 Auditing committee. The auditing committee shall:

1. Make or cause to be made an examination of the affairs of the credit union at least quarterly, including an audit of its books and, in the event said committee feels such action to be necessary, it shall call the members together thereafter and submit to them its report.

2. Make or cause to be made an annual audit and report and submit the same as the annual meeting of the members.

3. By unanimous vote, if it deem such action to be necessary to the proper conduct of the credit union, suspend any officer, director, or member of committee and call the members together to act on such suspension. The members at said meeting may sustain such suspension and remove such officer permanently or may reinstate said officer.

By majority vote, the auditing committee may call a special meeting of the members to consider any matter submitted to it by said committee. [C27, 31, 35,§9305-a11; C39,**§9305.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.11]

533.12 Capital. The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. The credit union shall have a lien on the shares and deposits of a member for any sum due to the credit union from said member or for any loan endorsed by him. A credit union may charge an entrance fee as may be provided by the bylaws. [C27, 31, 35, §9305-a12; C39,**§9305.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.12]

533.13 Special shares and accounts.

1. *Joint accounts.* A member may designate any person or persons to hold shares, deposits, and thrift club accounts with him in joint tenancy with the right of survivorship, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance fee. Payment of part or all of such accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all.

2. *Minors.* Shares may be issued and deposits accepted in the name of a minor and such shares and deposits may be withdrawn by such minor and payments made on such withdrawals shall be valid. No such minor under sixteen years of age shall be entitled to vote in the meetings of the members either personally or through his parent or guardian, nor may he become a director until he shall have reached his eighteenth birthday.

3. *Trust accounts.* If shares and deposits are held in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of the holder as trustee for such beneficiary. Such shares and deposits may be withdrawn, upon the death of the trustee, by the beneficiary's legal representative. [C27, 31, 35,§9305-a13; C39, **§9305.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §533.13]

533.14 Interest rates. Interest rates on loans made by a credit union shall not exceed one percent a month on unpaid balances, except that with respect to consumer loans, a credit union may charge the finance charge permitted in sections 537.2401 and 537.2402. [C27, 31, 35, §9305-a14; C39,**§9305.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.14]

533.15 Power to borrow. A credit union may borrow from any source in total sum which shall not exceed fifty percent of the sum of its share and deposit account balances. [C27, 31, 35,§9305-a15; C39,**§9305.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.15]

533.16 Loans. A credit union may loan to members. Loans must be for a provident or productive purpose and are made subject to the conditions contained in the bylaws. A borrower may repay his loan in whole or in part any day the office of the credit union is open for business. A director of a credit union may borrow from that credit union under the provisions of this chapter, but the loan shall not be made on terms more favorable than those extended to other members. A director of a credit union may borrow from that credit union to the extent and in the amount of such director's holdings in the credit union in shares and deposits. A director desiring to borrow from the credit union an amount in excess of the director's holdings in shares and deposits shall first submit application for approval by the board of directors at a regular or special meeting. The director making application for the loan shall not be in attendance at the time the board of directors considers the application and shall not take part in the consideration. Prior to consideration of such loan, the director must have submitted to the board a detailed current financial statement. The aggregate amount of director loans shall not exceed twenty percent of the assets of the credit union. Loans secured by a mortgage or deed of trust upon real property may be made only on unencumbered property located in Iowa and in bordering counties of adjacent states and every such loan shall comply with one of the following conditions:

1. If the terms of the instrument securing such loan call for payment at maturity the loan shall not be for a period in excess of five years and the amount loaned shall not exceed fifty percent of the appraised value of the property given as security.

2. If the terms of the instrument securing such loan call for installment payments which are sufficient to retire at least forty percent of the principal of the loan within ten years the amount loaned shall not exceed sixty percent of the appraised value of the property given as security and shall not be for a period in excess of ten years.

3. If the terms of the instrument securing such loan call for monthly installment payments, including principal and interest, at least equal to one percent of the principal of the loan, the amount loaned shall not exceed eighty percent of the appraised value of the property given as security.

The foregoing restrictions or limitations shall not prevent the renewal or extension of loans and shall not apply to loans which are secured under the provisions of the national housing Act, as amended, or to loans made to families of low or moderate income as a part

of programs authorized in sections 220.1 to 220.36 and approved by the Iowa housing finance authority. The board of directors of a credit union possessing assets of at least five hundred thousand dollars may set maturity schedules for real property loans not to exceed twenty-five years. The value of the property given as security must be determined by an independent appraiser and the maximum loan must not exceed ninety percent of the appraised value. However, the maximum real property loan balances of this type in the credit union shall not exceed fifteen percent of the aggregate total of the member share and deposit accounts.

No credit union shall loan to any one member more than one hundred dollars or ten percent of its total assets whichever is greater. The provisions of the Iowa consumer credit code shall apply to consumer loans made by a credit union, and a provision of that code shall supersede any conflicting provision of this chapter with respect to a consumer loan. [C27, 31, 35,§9305-a16; C39,§**9305.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.16; 66GA, ch 138,§47, ch 241,§§10, 11, ch 1218,§1]

533.17 Reserves.

1. A portion of the gross earnings, as determined before payment of each dividend, shall be set aside as a legal reserve as follows:

a. Ten percent of gross income until the legal reserve equals seven and one-half percent of the total of outstanding loans and risk assets; then

b. Five percent of gross income until the legal reserve equals ten percent of the total of outstanding loans and risk assets.

Whenever the legal reserve falls below ten percent or seven and one-half percent of the total of outstanding loans and risk assets, as the case may be, the difference shall be replaced by regular contributions in order to maintain the seven and one-half percent or ten percent reserve. Any entrance fees, charges and transfer fees shall, after payment of organization expenses, be added to the legal reserve. The legal reserve shall belong to the credit union and shall be used to meet losses except those resulting from an excess of expenses over income. The reserve shall not be distributed except on liquidation of the credit union or in accordance with a plan approved by the superintendent of banking.

2. For the purpose of establishing legal reserves, the following shall not be considered risk assets:

a. Cash on hand.

b. Deposits and shares in federal or state banks, savings and loan associations, and credit unions.

c. Assets which are insured by, fully guaranteed as to principal and interest by, or due from the United States government.

d. Loans to other credit unions.

e. Student loans insured under the provisions of Title XX, United States Code, section 1071 to section 1087 or similar state programs.

f. Loans insured by the federal housing administration under Title XII, United States Code, section 1703.

g. Common trust investments which deal in investments authorized in section 533.4.

h. Prepaid expenses.

i. Accrued interest on nonrisk investments.

j. Furniture and equipment.

k. Land and buildings.

3. The superintendent of banking may require a credit union to set aside additional amounts as a special reserve if an examination of its assets should disclose that its legal reserve is inadequate. [C27, 31, 35,§9305-a17; C39, §**9305.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.17; 66GA, ch 241,§12]

533.18 Dividends.

1. At such intervals and for such periods as the board of directors may authorize, and after transfers to the required reserves, the board of directors may declare dividends at such rates and upon such classes of shares as are determined by the board. Such dividends shall be paid on all paid-up shares outstanding at the close of the period for which the dividend is declared.

2. Shares which become fully paid up during such dividend period and are outstanding at the close of period shall be entitled to a proportional share of such dividend.

3. Dividend credit for a month may be accrued on shares which are or become fully paid up during the first fifteen days of that month. [C27, 31, 35,§9305-a18; C39,§**9305.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.18; 66GA, ch 241, §13]

533.19 Expulsion—withdrawal. A member may be expelled by a majority vote of the board of directors at a regular or special meeting of the board. The expelled member may request a hearing before the membership of the credit union. A meeting of the membership shall be held within sixty days of the member's request. The membership may, by majority vote at the membership meeting, reinstate the expelled member upon terms and conditions prescribed by it. Any member may withdraw from the credit union at any time but notice of withdrawal may be required. All amounts paid on shares or as deposits of an expelled or withdrawing member, with any dividends or interest accredited thereto, to the date thereof, shall, as funds become available and after deducting all amounts due from the member to the credit union, be paid to him. The credit union may require sixty days' notice of intention to withdraw shares and thirty days' notice of intention to withdraw deposits. Withdrawing or expelled members shall have no further rights in the credit union but are

not, by such expulsion or withdrawal, released from any remaining liability to the credit union. [C27, 31, 35,§9305-a19; C39,**§9305.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.19; 66GA, ch 241,§14]

533.20 Voluntary dissolution. The process of voluntary dissolution shall be as follows:

1. At a special meeting called for the purpose, notice of which purpose must be contained in the call, a credit union may dissolve upon the affirmative vote of a majority of its members eligible to vote at the special meeting. Any member eligible to vote and not present at the meeting may, within twenty days after the date on which the meeting was held, vote in favor of dissolution by signing a statement in the form approved by the superintendent of banking and the vote shall have the same force and effect as if cast at the meeting.

2. The credit union shall cease to do business except for the purposes of liquidation immediately upon the giving of notice of the special meeting of the members to vote on dissolution and the board of directors shall immediately notify the superintendent of banking of the intention of the credit union to dissolve. The credit union shall not resume business unless the dissolution fails to receive the required vote of the members or the members shall have revoked prior affirmative action to dissolve as provided for in subsection 4 of this section.

3. The board of directors shall have power to terminate and settle the affairs of a credit union in voluntary dissolution. The credit union shall continue in existence for the purpose of discharging its liabilities, collecting and distributing its assets, and doing all acts required in order to terminate its affairs. The credit union may sue and be sued for the purpose of enforcing such liabilities and collecting its assets until its affairs are fully settled. During the course of dissolution proceedings, the credit union shall make such reports and shall be subject to such examinations as the superintendent of banking may require. If at any time, after affirmative vote of a majority of the members of a credit union to dissolve the credit union, the superintendent of banking finds that the credit union is not making reasonable progress toward terminating its affairs or that the credit union is insolvent, he may apply to the district court for a receiver to be appointed to terminate the affairs of the credit union.

4. A credit union may, at any time prior to any distribution of its assets, revoke voluntary dissolution proceedings upon the affirmative vote of a majority of its members eligible to vote at a special meeting called for that purpose in the manner prescribed by the bylaws. The board of directors shall immediately notify the superintendent of banking of any such action to revoke voluntary dissolution proceedings.

5. Upon such proof as is satisfactory to the superintendent of banking that all assets have been liquidated from which there is a reasonable expectance of realization that the liabilities of the credit union have been discharged and distribution made to its members, and that the liquidation has been completed, the superintendent of banking shall issue a certificate of dissolution, which shall be filed and recorded in the county in which the credit union has its principal place of business and in the county in which its original articles of incorporation were filed and recorded. Upon the issuance of a certificate of dissolution, the existence of the credit union shall cease. [C27, 31, 35,§9305-a20; C39,**§9305.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§533.20]

Referred to in §533.21

533.21 Involuntary dissolution.

1. In all situations in which the superintendent has been appointed as receiver as provided in section 533.6 and section 533.20 he shall make a diligent effort to collect and realize on the assets of the credit union, and make distribution of the proceeds from time to time to those entitled thereto in the order provided for by law. The superintendent may execute assignments, releases, and satisfactions to effectuate sales and transfers as receiver or after the receivership has terminated. Upon the order of the court in which the receivership is pending, the superintendent may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of the credit union, on such terms as the court shall direct.

2. All expenses of the receivership and dissolution shall be fixed by the superintendent, subject to the approval of the district court, and shall be paid out of the assets of the credit union.

3. At the termination of the receivership, the superintendent shall file his final report containing the details of his actions therein, together with such additional facts as the court may require.

4. Upon the submission and approval of the final report, the court shall enter a decree dissolving the credit union, at which time the existence of the credit union shall cease. It shall be the duty of the clerk of court to cause certified copies of the decree to be filed with and recorded by the county recorder of the county in which the credit union has its principal place of business and by the county recorder of the county in which its original articles of incorporation were filed and recorded. No fee shall be charged by the county recorder for the filing or recording of the decree. [C73, 75,§533.21]

533.22 Dissolution generally. The following shall apply to dissolution of a credit union under this chapter, whether voluntary or involuntary:

1. Distribution of the assets of the credit union shall be made in the following order:

a. The payment of costs and expense of the administrator of dissolution.

b. The payment of claims which are given priority by applicable statutes and, if the assets are insufficient for the payment in full of all such claims, in the order provided by such statutes or, in the absence of contrary provisions, pro rata.

c. The payment of deposits, including accrued interest, up to the date of the special meeting of the members at which voluntary dissolution was authorized or in the case of involuntary dissolution, the date of appointment of a receiver.

d. The pro rata apportionment of the balance among the members of record on the date of the special meeting of the members at which voluntary dissolution was authorized or in the case of involuntary dissolution, the members of record on the date of appointment of a receiver.

2. All amounts due to members who are unknown, or who are under a disability and there is no person legally competent to receive such amounts, or who cannot be found after the exercise of reasonable diligence shall be transmitted to the treasurer of state who shall hold such amounts in the manner prescribed by chapter 556. All amounts due to creditors as described in section 496A.101 shall be transmitted to the treasurer of state in accordance with the provisions of that section and shall be retained by the treasurer of state and subject to claim as provided for in that section.

3. The superintendent of banking shall assume custody of the records of a credit union dissolved pursuant to this chapter and shall retain them in accordance with the provisions of section 533.26. The superintendent may cause film, photographic, photostatic, or other copies of such records to be made and retain such copies in lieu of the original records.

4. The dissolution of a credit union shall not remove or impair any remedy available to or against such credit union, its directors, officers, or members for any right or claim existing or any liability incurred prior to such dissolution if an action or other proceeding to enforce the right or claim is commenced within two years after the date of filing of a certificate or decree of dissolution with the county recorder in the county in which the credit union has its principal place of business. Any such action or proceeding by or against the credit union may be prosecuted or defended by the credit union in its corporate name. The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. [C73, 75,§533.22]

533.23 Change in place of business. A credit union may change its place of business on written notice to the superintendent of banking. [C27, 31, 35,§9305-a21; C39,§9305.21; C46, 50, 54, 58, 62, 66, 71,§533.21; C73, 75,§533.23]

533.24 Taxation. A credit union shall be deemed an institution for savings and shall be subject to taxation only as to its real estate, tangible personal property, moneys and credits. The shares shall not be taxed.

The moneys and credits tax on credit unions is hereby imposed at a rate of five mills on each dollar of legal and special reserves of every credit union, and shall be levied by the board of supervisors, and placed upon the tax list and collected by the county treasurer, except that an exemption shall be given to each credit union in the amount of four thousand dollars and, in addition, any amount of the legal and special reserves which are invested in United States government securities. The amount collected in each taxing district within a city shall be apportioned twenty percent to the county general fund, thirty percent to the city general fund, and fifty percent to the general fund of the state, and the amount collected in each taxing district outside of cities shall be apportioned fifty percent to the county general fund and fifty percent to the general fund of the state. The moneys and credits tax shall be collected at the location of the credit union as shown in its articles of incorporation. [C27, 31, 35,§9305-a22; C39,§9305.22; C46, 50, 54, 58, 62, 66, 71,§533.22; C73, 75,§533.24]

533.25 Small loans legislation. Nothing contained in this chapter shall apply to any person engaged in the business of loaning money under chapter 536. [C27, 31, 35,§9305-a23; C39, §9305.23; C46, 50, 54, 58, 62, 66, 71,§533.23; C73, 75,§533.25]

533.26 Preservation of records. Credit unions shall not be required to preserve or keep their records or files for a longer period than eleven years next after the first day of January of the year following the time of the making or filing of such records or files; provided, however, that signature, identification records, and ledger sheets showing balances in favor of members of such credit unions shall not be destroyed. [C62, 66, 71,§533.24; C73, 75,§533.26]

Referred to in §§533.22, 533.27

533.27 Liability for destruction. No liability shall accrue against any credit union destroying any such records after the expiration of the time provided in sections 533.26 to 533.29 and in any cause or proceedings in which any such records or files may be called in question or be demanded of the credit union or any officer or employee thereof, a showing that such records or files have been destroyed in accordance with the terms of said sections shall be a sufficient excuse for the failure to produce them. Nothing herein shall require credit unions to retain any class of records or files for the period of limitation of actions provided herein; but any records, files or class of records not deemed necessary for the conduct of the current business of credit unions, or future examinations thereof, or for defense in the event of litigation, may be destroyed within such period.

For the purpose of assisting credit unions in the retention of only necessary records and

files, or for the destruction of those which are obsolete or unnecessary, credit unions are authorized to destroy such records and files or classes thereof within the period of limitation of actions upon the joint recommendation of the superintendent of banking and a credit union review board relating to records consisting of the directors of the Iowa credit union league. [C62, 66, 71,§533.25; C73, 75, §533.27]

533.28 Photographic records. Any writing or record, or a photostatic or photographic reproduction thereof, of any credit union whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of said act, transaction, occurrence or event, if made in the regular course of business. [C62, 66, 71, §533.26; C73, 75,§533.28]

Referred to in §533.27

533.29 Limitation of actions. All causes of action against a credit union based upon a claim or claims inconsistent with an entry or entries in any credit union record or ledger, made in the regular course of business, shall be deemed to have accrued, and shall accrue, one year after the date of such entry or entries; and no action founded upon such a cause may be brought after the expiration of ten years from the date of such accrual. Any such existing cause of action may be commenced in any court of competent jurisdiction within one year after July 4, 1959. [C62, 66, 71,§533.27; C73, 75,§533.29]

Referred to in §533.27

533.30 Merger.

1. A credit union may, with the approval of the superintendent of banking, merge with another credit union under the existing organization of the other credit union pursuant to a plan agreed upon by the majority of the board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of the merging credit unions.

2. After agreement by the directors and approval by the members of the merging credit unions, the chairman of the board and secretary of the credit unions shall execute a certificate of merger, which shall state:

a. The time and place of the meeting of the board of directors at which the plan was agreed upon.

b. The vote in favor of the plan adopted by the boards of the respective credit unions.

c. A copy of the resolution or other action by which the plan was agreed upon.

d. The vote by which the plan was approved by the members.

3. The certificate and a copy of the plan of merger agreed upon shall be forwarded to the superintendent of banking, certified by him, and returned to both credit unions within thirty days.

4. Upon return of the certificates from the superintendent of banking, all property, property rights, and members' interest of the merged credit union shall vest in the surviving credit union without deed, endorsement or other instrument of transfer, and all debts, obligations and liabilities of the merged credit union are assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union shall remain intact. Credit union membership in the surviving credit union shall be available to persons within the field of membership of the merged credit union.

5. This section shall be construed to permit a credit union organized under any other statute to merge with one organized under this chapter, or to permit one organized under this chapter to merge with one organized under any other statute. [C62, 66, 71,§533.28; C73, 75,§533.30; 66GA, ch 241,§15]

533.31 Penalty for falsification. Any director, officer, agent, employee, or clerk of any credit union who shall knowingly subscribe or make any false statements or false entries in the books thereof, or knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine its condition, or shall knowingly subscribe and make false reports, or shall knowingly divert the funds of the credit union to other objects than those authorized by law, shall be punished by imprisonment in the penitentiary not more than five years, or in the county jail not more than one year, or by fine of not more than one thousand dollars or by both such fine and imprisonment and be forever after barred from holding any office created by this chapter. [C66, 71,§533.29; C73, 75,§533.31]

533.32 Governmental employees—payments withheld. When a credit union has been organized by the employees of the state or of any political or municipal subdivision of the state, the officer who writes warrants for the state or other governmental body by which any public employee credit union member is employed, may withhold from the salary or wages of such employee, and pay over to such credit union, such sums as may be designated by written authorization signed by such employee. The provisions of section 539.4 shall have no application hereto. [C71,§533.30; C73, 75,§533.32]

533.33 Administration of national union as receiver.

1. The superintendent may tender to the administrator of the national credit union administration the appointment as receiver for an insured credit union. If the administrator accepts the appointment as receiver, the rights of the members and other creditors of the insured credit union shall be determined in accordance with the laws of this state.

2. The administrator of the national credit union administration as receiver shall possess

the powers, rights, and privileges given to the superintendent as provided by law.

3. If the administrator of the national credit union administration pays or makes available for payment the insured liabilities of a state credit union, he shall be subrogated by operation of law to all rights of the members against the insured credit union in the same manner and to the same extent as the subrogation of the administrator of the national credit union administration is provided for in applicable laws of the United States in the case of a closed federal credit union. [C73, 75,§533.33]

533.34 Conversion of state credit union into federal credit union.

1. A state credit union may convert into a federal credit union upon the affirmative vote of a majority of its members eligible to vote, at a special meeting called for that purpose in the manner prescribed by the bylaws and with the approval of the administrator of the national credit union administration. Any member eligible to vote and not present at the meeting may, within twenty days after the date on which the meeting was held, vote in favor of conversion by signing a statement in a form satisfactory to the superintendent of banking and the vote shall have the same force and effect as if cast at the meeting.

2. The board of directors of the state credit union shall notify the superintendent of banking of any proposed conversion and of any abandonment or disapproval of the conversion by the members or the administrator of the national credit union administration. The board of directors of the state credit union shall file with the superintendent appropriate evidence of approval of the conversion by the administrator of the national credit union administration and notify the superintendent of the date on which the conversion is to be effective.

3. Upon receipt of satisfactory proof that the state credit union has complied with all applicable laws of this state and the United States, the superintendent shall issue a certificate of conversion which shall be filed and recorded in the county in which the state credit union has its principal place of business and in the county in which its original articles of incorporation were filed and recorded. [C73, 75,§533.34]

533.35 Conversion of federal credit union into state credit union.

1. A federal credit union may convert into a state credit union upon compliance with the laws of the United States and approval by the superintendent of banking. Application for approval of conversion to a state credit union shall be submitted to the superintendent in the form prescribed by the superintendent, together with articles of incorporation and bylaws as required by section 533.1. The superintendent of banking may cause an examination to be made of any converting federal credit union and the credit union shall pay to the superintendent the same examination fee paid for examinations of state credit unions.

2. If the superintendent shall approve the application of a federal credit union for conversion to a state credit union, he shall cause the articles of incorporation of the resulting state credit union to be filed and recorded in the county in which the credit union has its principal place of business and shall issue a certificate of authority to the resulting state credit union to do business under the laws of this state. The credit union shall then become a state credit union subject to the laws of this state. The superintendent shall furnish a copy of the certificate to the administrator of the national credit union administration.

3. The existence of the federal credit union shall continue and the resulting state credit union shall have all of the property, rights, powers and duties of the federal credit union except that the resulting state credit union shall have only the authority to engage in such business and exercise such powers and shall be subject to the same prohibitions and limitations to which it would be subject upon original organization under this chapter.

4. No liability of the federal credit union or of its members, directors or officers shall be affected, nor shall any lien on any property of the federal credit union be impaired by the conversion. Any claim existing or action pending by or against the federal credit union may be prosecuted to judgment as if the conversion had not taken place, or the resulting state credit union may be substituted in its place. [C73, 75,§533.35]

533.36 Definitions. As used in this chapter unless the context otherwise requires:

1. *"Administrator"* means the person designated in section 537.6103.

2. *"Credit union"* means a person having a certificate of approval issued pursuant to this chapter. A credit union is also a supervised financial organization as defined and used in the Iowa consumer credit code. [C75,§533.36]

533.37 Enforcement of Iowa consumer credit code.

1. The superintendent shall enforce the Iowa consumer credit code with respect to credit unions, as provided in sections 537.2303, 537.2305 and 537.6105.

2. The superintendent shall co-operate with the administrator, and shall assist the administrator whenever necessary to provide for the discharge of the duties of the administrator.

3. Notwithstanding other provisions of this chapter to the contrary, the superintendent shall authorize to be furnished to the administrator, access to or copies of records in the possession of the superintendent or other persons which relate to a credit union, when necessary to enable the administrator to enforce chapter 537.

4. The superintendent shall make an annual report in writing to the administrator. A copy of the report shall be furnished at cost by the

superintendent to each credit union or other person upon request. The annual report shall contain:

a. A summary of applications for organization approved or denied by the superintendent since the last report.

b. A summary of the assets, liabilities and capital structure of all credit unions, and a summary of the volume of consumer installment credit outstanding per credit union, as of December 31 of the year for which the report is made.

c. An estimate of the disbursements of agency funds for consumer credit protection during the calendar year ending the preceding December 31.

d. Information which the superintendent may deem appropriate and advisable to disclose.

e. Information which the administrator may require to be included. [C75,§533.37; 66GA, ch 1212,§2]

533.38 Corporate central credit union. A credit union, in which all credit unions, the credit union league, and its affiliates in the state of Iowa are eligible for membership, may be established in this state and shall be known as a corporate central credit union. A corporate central credit union shall have all the powers, rights, restrictions and obligations imposed upon or granted credit unions established under the provisions of this chapter, except:

1. It shall not be required to transfer to the legal reserve of the corporation more than five percent of the corporation's net income for the year.

2. It may buy or sell investment securities and corporate bonds which are evidences of indebtedness. However, the buying and selling of such investment securities and corporate bonds shall be limited to buying and selling without recourse to marketable obligations evidencing indebtedness of any corporation or state or federal agency, under further definitions of the term "investment securities" as prescribed by the superintendent. The total amount of the investment securities of any one obligor or maker held by the credit union shall at no time exceed five percent of the shares, undivided earnings and reserves of the credit union except that this limit shall not apply to obligations of the federal government. The aggregate total of the investment securities held by the credit union shall not exceed fifteen percent of the shares, undivided earnings and reserves of said credit union. [66GA, ch 241,§16]

CHAPTER 533A

DEBT MANAGEMENT

Referred to in §§524.211(1,2), 524.212

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533A.1 Definitions. As used in this chapter:

1. "Debt management" means the planning and management of the financial affairs of a debtor and the receiving therefrom of money or evidences thereof for the purpose of distributing the same to his creditors in payment or partial payment of his obligations for a fee.

2. "Licensee" means any individual, partnership, unincorporated association, agency or corporation licensed under this chapter.

3. "Superintendent" means the superintendent of banking.

4. "Debtor" means any natural person.

5. "Office" means each location by street number, building number, city, and state where any person engages in debt management.

6. "Creditor" means a person for whose benefit moneys are being collected and distributed by licensees. [C71, 73, 75,§533A.1]

533A.2 Licenses required—exceptions.

1. No individual, partnership, unincorporated association, agency or corporation shall engage in the business of debt management in this state without a license therefor as provided for in this chapter, except that the following persons shall not be required to be licensed when engaged in the regular course of their respective businesses and professions:

a. Attorneys at law.

b. Banks, savings and loan associations, insurance companies and similar fiduciaries, chattel loan companies licensed under chapter 536 and industrial loan companies licensed under chapter 536A, as duly licensed in Iowa by law, authorized and admitted to transact business in this state and performing credit and financial adjusting in the regular course of their principal business, or while performing an escrow function.

c. Abstract companies, while performing an escrow function.

d. Employees of licensees under this chapter.

e. Judicial officers or others acting under court orders.

f. Nonprofit religious, fraternal or co-operative organizations, including credit unions, offering to debtors gratuitous debt-management service.

g. Those persons, associations, or corporations whose principal business is the origination of first mortgage loans on real estate for their own portfolios or for sale to institutional investors.

2. The application for such license shall be in writing, under oath, and in the form prescribed by the superintendent. The application shall contain the name of the applicant; date of incorporation, if incorporated, and the address where the business is to be conducted; and similar information as to any branch office of the applicant; the name and resident address of the owner or partners, or, if a corporation, association or agency, of the directors, trustees, principal officers, and agents, and such other pertinent information as the superintendent may require. If the applicant is a partnership, a copy of the certificate of assumed name or articles of partnership shall be filed with the application. If the applicant is a corporation, a copy of the articles of incorporation shall be filed with the application.

3. Each application shall be accompanied by a bond to be approved by the superintendent to the people of the state of Iowa in the penal sum of ten thousand dollars for each office, providing, however, the superintendent may require such bond to be raised to a maximum sum of twenty-five thousand dollars, and conditioned that the obligor will not violate any law pertaining to such business and upon the faithful accounting of all moneys collected upon accounts entrusted to such person engaged in debt management, and their employees and agents for the purpose of indemnifying debtors for loss resulting from conduct prohibited by this chapter. The aggregate liability of the surety to all debtors doing business with the office for which the bond is filed shall, in no event, exceed the penal sum of such bond. The surety on the bond shall have the right to cancel such bond upon giving thirty days' notice to the superintendent and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation. No individual, partnership, unincorporated association, agency or corporation shall engage in the business of debt management until a good and sufficient bond is filed in accordance with the provisions of this chapter.

4. Each applicant shall furnish with his application a copy of the contract he proposes to use between himself and the debtor, which shall contain a schedule of fees to be charged the debtor for his services.

5. At the time of making such application the applicant shall pay to the superintendent the sum of fifty dollars as a license fee for each of his offices and an investigation fee in the sum of one hundred dollars. A separate application shall be made for each office maintained by the applicant. [C71, 73, 75,§533A.2]

533A.3 Investigation—hearing.

1. Upon the filing of each application and the payment of such fees, the superintendent shall fix a date and a time for a hearing upon such application, and shall make an investigation of the facts concerning the application and the requirements provided for in subsection 3 of this section.

2. The superintendent shall grant or deny each application for a license within sixty days from the filing thereof with the required fee, unless the period is extended by written agreement between the applicant and the superintendent.

3. *a.* If the superintendent shall find the experience, financial responsibility, character and general fitness of the applicant is such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly and efficiently within the purposes of this chapter, and that the applicant, or if the applicant is an unincorporated association, agency or partnership, then the individuals involved, or if the applicant is a corporation then the officers and directors thereof, have not been convicted of a felony or a misdemeanor involving moral turpitude, or have not had a record of having defaulted in payment of money collected for others, including the discharge of such debts through bankruptcy proceedings, the superintendent shall thereupon enter an order granting such application and forthwith issue and deliver a license to the applicant. The superintendent may require as part of the application a credit report and other information.

b. If the applicant has, at the time of the application, a license for an office located within ten statute miles of the location of the office named in the application, no license shall be issued unless the superintendent finds that public convenience will be served by the issuance of such license.

c. No license shall be transferable or assignable.

4. If the superintendent finds the applicant not qualified by subsection 3 of this section, he shall enter an order denying such application and forthwith notify the applicant of the denial, returning the license fee. Within fifteen days after the entry of such order, he shall prepare written findings and shall forthwith deliver a copy thereof to the applicant. [C71, 73, 75,§533A.3]

Referred to in §533A.15

533A.4 Expiration date. The license issued under this chapter shall expire on July 1 next following its issuance unless sooner surren-

dered, revoked or suspended, but may be renewed as provided in this chapter. [C71, 73, 75,§533A.4]

533A.5 Renewal. Each licensee on or before July 1 may make application to the superintendent for renewal of its license. The application shall be on the form prescribed by the superintendent and shall be accompanied by a fee of one hundred dollars, together with a bond as in the case of an original application. A separate renewal application shall be made for each office maintained by the applicant. [C71, 73, 75,§533A.5]

533A.6 Appointment of process agent.

1. No licensee shall transact business until it shall have first appointed in writing the superintendent as agent of the licensee for service of process in this state. Service upon the superintendent or, in his absence, any employee in charge of his office, shall be of the same legal force and validity as if served upon any licensee under this chapter.

2. Whenever lawful process against any licensee shall be served upon the superintendent, two copies shall be furnished and he shall forthwith forward a copy of the process served on him, by certified mail, postpaid and directed to the licensee. For each service of process the sum of two dollars shall be collected, which shall be paid by the plaintiff at the time of such service, the same to be recovered by him as part of the taxable costs, if he prevails in the suit. [C71, 73, 75,§533A.6]

533A.7 Revocation or suspension.

1. The superintendent may revoke or suspend any license issued or applied for under this chapter for the following causes:

a. Conviction of a felony or of a misdemeanor involving moral turpitude.

b. For intentionally violating any of the provisions of this chapter.

c. For fraud or deceit in procuring the issuance of a license or renewal under this chapter.

d. For indulging in a continuous course of unfair conduct.

e. For insolvency, bankruptcy, receivership or assignment for the benefit of creditors by a licensee or applicant for a license under this chapter.

2. The denial, revocation or suspension shall be made only upon specific charges in writing, under oath, filed with the superintendent or by the superintendent whereupon a hearing shall be had as to the reasons for any denial, revocation or suspension and a certified copy of the charges shall be served on the licensee or applicant for license not less than ten days prior to the hearing. [C71, 73, 75,§533A.7]

Referred to in §533A.15

533A.8 Written contract required.

1. Each licensee shall make a written contract between himself and a debtor and shall immediately and before collecting any fee, furnish the debtor with a true copy of the contract. The contract shall set forth the complete list of creditors who are to receive payments under the contract, the total charges agreed upon for the services of the licensee, a statement of how the charges are to be paid, and the beginning and expiration date of the contract. No contract shall extend for a period longer than thirty-six months.

2. Each licensee shall maintain a separate bank trust account in which all payments received from debtors for the benefit of creditors shall be deposited and in which all payments shall remain until a remittance is made to either the debtor or the creditor. Every licensee shall keep, and use in his business, books, accounts and records which will enable the superintendent to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations of the superintendent. Every licensee shall preserve such books, accounts and records for at least seven years after making the final entry on any transaction recorded therein.

3. Each licensee shall keep complete and adequate records during the term of the contract and for a period of five years from the date of cancellation or completion of the contract with each debtor, which records shall contain complete information regarding the contract, extensions thereof, payments, disbursements, and charges, which records shall be open to inspection by the superintendent and his duly appointed agents during normal business hours.

4. Each licensee shall make remittances to creditors within forty-five days after initial receipt of funds, and thereafter remittances shall be made to creditors within thirty days of receipt, less fees and costs, unless the reasonable payment of one or more of the debtor's obligations requires that such funds be held for a longer period so as to accumulate a sum certain.

5. Each licensee shall, upon request, furnish the debtor a written statement of his account monthly or a verbal accounting at any time the debtor may request it during normal business hours. A monthly written statement of disbursements made and fees deducted from his account shall be made to the debtor, whether he requests it or not.

6. A licensee shall not receive any fee unless he has the consent of at least fifty percent of the total number of the creditors listed in the licensee's contract with the debtor, or such a like number of creditors have accepted a distribution of payment. The debtor shall be informed by the licensee of those creditors who have not agreed to the licensee's handling of the account. No licensee shall accept an account unless a written and thorough budget analysis has been performed which indicates that the debtor can meet the requirements determined by the budget analysis.

7. In the event a compromise of a debt is arranged by the licensee with any one or more

creditors, the debtor shall have the full benefit of such compromise. [C71, 73, 75,§533A.8]

533A.9 Fee agreed in advance. The fee of the licensee shall be agreed upon in advance and stated in the contract and provision for settlement in case of cancellation or prepayment shall be clearly stated herein. The fee of the licensee shall not exceed twelve and one-half percent of any payment made by the debtor and distributed to the creditors pursuant to the contract. In case of total payment of the contract before the contract period has expired, the licensee shall be entitled only to a fee of no more than three percent of such final payment. [C71, 73, 75,§533A.9]

533A.10 Examination of licensee.

1. The superintendent may examine the condition and affairs of said licensee. In connection with any examination, the superintendent may examine on oath any licensee, and any director, officer, employee, customer, creditor or stockholder of a licensee concerning the affairs and business of the licensee. The superintendent shall ascertain whether the licensee transacts its business in the manner prescribed by the law and the rules and regulations issued thereunder. The licensee shall pay the cost of the examination as determined by the superintendent, which fee shall not exceed the sum of one hundred dollars per day of examination. Failure to pay the examination fee within thirty days of receipt of demand from the superintendent shall automatically suspend the license until the fee is paid.

2. In the investigation of alleged violations of this chapter, the superintendent may compel the attendance of any person or the production of any books, accounts, records and files used therein, and may examine under oath all persons in attendance pursuant thereto.

The superintendent is authorized to make and promulgate as prescribed by law regulations necessary to carry out the purposes of this chapter. [C71, 73, 75,§533A.10]

533A.11 Unlawful acts of licensee. It shall be unlawful and a violation of this chapter for the holder of any license issued under the terms and provisions hereto:

1. To purchase from a creditor any obligation of a debtor.

2. To operate as a collection agent and as a licensee as to the same debtor's account without first disclosing in writing such fact to both the debtor and creditor.

3. To execute any contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in and finished.

4. To receive or charge any fee in the form of a promissory note or other promise to pay, or receive or accept any mortgage or other security for any fee, both as to real or personal property.

5. To pay any bonus or other consideration to any individual, agency, partnership, unincorporated association or corporation for the referral of a debtor to his business, or to accept or receive any bonus, commission or other consideration for referring any debtor to any individual, partnership, unincorporated association, agency or corporation for any reason.

6. To advertise his services, display, distribute, broadcast or televise or permit to be displayed, advertised, distributed, broadcast or televised his services in any manner inconsistent with the law.

7. To collect a fee or any other consideration from both the debtor and any creditor. [C71, 73, 75,§533A.11]

533A.12 Reserved for future use.

533A.13 License mandatory to business. It shall be unlawful for an individual, partnership, unincorporated association, agency or corporation to engage in the business of debt management without first obtaining a license as required by this chapter. Any individual, partnership, unincorporated association, agency, corporation or any other group of individuals, however organized, or any owner, partner, member, officer, director, employee, agent or representative thereof who shall willfully or knowingly engage in the business of debt management without the license required by this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars for each violation or imprisoned in the county jail for not more than six months, or by both such fine and imprisonment. [C71, 73, 75,§533A.13]

533A.14 Fees to state treasurer. All moneys received by the superintendent from fees, licenses and examinations pursuant to this chapter shall be deposited by the superintendent with the treasurer of state. [C71, 73, 75, §533A.14]

533A.15 Judicial review. Judicial review of actions of the superintendent pursuant to sections 533A.3 and 533A.7 may be sought in accordance with the terms of the Iowa administrative procedure Act. [C71, 73, 75,§533A.15]

CHAPTER 533B

SALE OF CERTAIN INSTRUMENTS FOR PAYMENT OF MONEY

Referred to in §§524.211(1,2), 524.212

533B.1 Permission from superintendent of banking.
533B.2 Agencies.
533B.3 Corporations exempt.
533B.4 Definition.
533B.5 Penalty.

533B.1 Permission from superintendent of banking. No person shall engage in the business of selling written instruments for the transmission or payment of money, whether in the form of checks, drafts, money orders, travelers checks or otherwise, unless such person's net worth is at all times at least twenty-five thousand dollars as shown by financial statements satisfactory to the superintendent of banking and such person has deposited and at all times keeps on deposit with the superintendent of banking fifty thousand dollars in cash or securities satisfactory to the superintendent of banking. However, the superintendent of banking may at his option accept a surety bond in the sum of fifty thousand dollars in the form satisfactory to him and issued by a surety company acceptable to him in lieu of such deposit. Such deposit or bond shall be for the protection of purchasers or holders of instruments sold by such person and the superintendent or any aggrieved party may enforce claims on such instruments against such deposit or bond. Simultaneously with the making of such deposit or delivery of such bond and annually thereafter each such person shall pay to the superintendent of banking an annual fee of one hundred dollars. [C62, 66, 71, 73, 75,§533B.1]

533B.2 Agencies. Any person complying with the provisions of this chapter may engage in such business at one or more locations in this state and through or by means of such agents as such person may designate and appoint from time to time and no such agent shall be required to comply with the provisions of this chapter. [C62, 66, 71, 73, 75, §533B.2]

533B.3 Corporations exempt. Nothing in this chapter shall apply to corporations organized under the general banking laws of this state or of the United States or any department or agency thereof, or to private banks of this state, or state chartered credit unions, or to the receipt of money by an incorporated telegraph company at any office or agency thereof for immediate transmission by telegraph. The Federal Home Loan Bank of Des Moines and federally chartered and state chartered savings and loan associations may sell checks, drafts, or money orders for single transaction transmission of money. [C62, 66, 71, 73, 75,§533B.3]

533B.4 Definition. As used in this chapter the word "person" shall mean any individual, partnership, association, joint stock association, trust or corporation. [C62, 66, 71, 73, 75, §533B.4]

533B.5 Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor and shall be fined not more than one thousand dollars. Each transaction in violation of this chapter and each day that a violation continues shall be a separate offense. [C62, 66, 71, 73, 75,§533B.5]

Constitutionality, 59GA, ch 264,§6

TITLE XXII

SAVINGS AND LOAN ASSOCIATIONS

Referred to in §491.39

See also reference in §11.29

CHAPTER 534

SAVINGS AND LOAN ASSOCIATIONS

Referred to in §§422.61, 491.1, 492.9, 496A.142(1), 504A.100(1), 533.4, 537.1301, 537.2301, 537.6105, 537.6201, 554.9203, 601A.9

534.1 Short title.
534.2 Definitions.
534.3 Incorporation and organization.
534.4 Organization.
534.5 Access to books and records—communication with members.
534.6 Financial statement.
534.7 Indemnity bonds.
534.8 Transactions of officers, directors, employees.
534.9 Records.
534.10 Savings liability.
534.11 Share accounts.
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534.13 Defamation of institutions prohibited—malicious circulation of reports.
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534.69 Corporations heretofore incorporated.
534.70 Enforcement of Iowa consumer credit code.
534.71 Mobile home loans.
534.72 Loans secured by less than first lien.
534.73 Line of credit loans.

534.1 Short title. This chapter may be cited as "Savings and Loan Association chapter." [C62, 66, 71, 73, 75,§534.1]

534.2 Definitions. When used in this chapter, the following words and phrases shall have the following meanings, except to the extent that any such word or phrase is specifically qualified by its context:

1. *"Association"* shall mean a corporation organized under the provisions of this chapter to promote thrift and home ownership by providing for its members a co-operative and

mutual plan for saving money and investing money so saved in home loans to its members. These "associations" shall be known as building and loan associations or savings and loan associations or savings associations. "Foreign companies" shall be any other savings and loan association or building and loan association or organization, incorporated for the purposes specified herein under the laws of another state or country.

2. "*Supervisor*" shall mean the supervisor of savings and loan associations.

3. "*Dividend*" shall mean that part of the net earnings of an association which is declared payable on share accounts from time to time by the board of directors and is the cost of savings money to the association.

4. "*Gross income*" shall mean the sum for an accounting period of the following:

a. Operating income.

b. Real estate income.

c. All profits actually received during such accounting period from the sale of securities, real estate or other property.

d. Other nonrecurring income.

5. "*Regular lending area*" shall mean the entire area within this state and an area which is outside this state and which is within one hundred miles from any approved office.

6. "*Impaired condition*" shall mean a condition in which the assets of an association do not have an aggregate value equal to the aggregate amount of liabilities of the association to its creditors, its members and all other persons.

7. "*Insured association*" shall mean an association the share accounts of which are insured wholly or in part by the federal savings and loan insurance corporation.

8. "*Member*" shall mean a person owning a share account of an association, and a person borrowing from or assuming or obligated upon a loan held by an association, or purchasing property securing a loan held by an association and any contract purchaser from the association. A joint and survivorship relationship, whether of investors or borrowers, constitutes a single membership.

9. "*Net earnings*" shall mean gross income for an accounting period less the aggregate of the following:

a. Operating expenses.

b. Real estate expenses.

c. All losses actually sustained during such accounting period from the sale of securities, real estate or other property, or such portion of such losses as shall not have been charged to reserves, pursuant to the provisions of this chapter.

d. All interest paid, or due but unpaid, on borrowed money.

e. Other nonrecurring income.

10. "*Operating expenses*" shall mean all expenses actually paid, or due but unpaid, by an association during an accounting period, excluding the following:

a. Real estate expenses.

b. Other nonrecurring charges.

That portion of prepaid expenses which is not apportionable to the period may be excluded from operating expenses, in which event operating expenses for future periods shall exclude that portion of such prepaid expenses apportionable thereto.

11. "*Operating income*" shall mean all income actually received by an association during an accounting period, excluding the following:

a. Foreclosed real estate income.

b. Other nonrecurring income.

12. "*Real estate expenses*" shall mean all expenses actually paid, or due but unpaid, in connection with the ownership, maintenance, and sale of real estate (other than office building or buildings and real estate held for investment) by an association during an accounting period, excluding capital expenditures and losses on the sale of real estate.

13. "*Real estate income*" shall mean all income actually received by an association during an accounting period from real estate owned (other than from office building or buildings and real estate held for investment) excluding profit from sales of real estate.

14. "*Real estate loan*" shall mean any loan or other obligation secured by real estate, whether in fee or in a leasehold extending or renewable automatically for a period of at least fifty years.

15. "*Home loan*" shall mean a real estate loan on a dwelling or dwellings for not more than four families, the principal use of which is for residential purposes. A "home" is the same as "home property" and constitutes the homestead of the owner. A home on a farm is a home.

16. "*Share account or shares*" shall mean that part of the savings liability of the association which is credited to the account of the holder thereof.

17. "*Savings liability*" shall mean the aggregate amount of share accounts of members, including dividends credited to such accounts, less redemptions and withdrawals.

18. "*Withdrawal value*" shall mean the amount credited to a share account of a member, less lawful deductions therefrom, as shown by the records of the association.

19. "*Insured mortgage*" is a mortgage covered in part by insurance, which insurance has been formally submitted to and approved by the supervisor or by the federal home loan bank of the area in which the association is located.

20. "*Administrator*" means the person designated in section 537.6103.

21. "*Supervised financial organization*" as defined and used in the Iowa consumer credit

code includes a person organized pursuant to this chapter. [C73,§§1184, 1187; C97,§§1890, 1902, 1903; C24, 27, 31,§§9306–9309, 9347, 9350; C35, §§9306, 9308-e1, 9347, 9350; C39,§§**9306, 9308.1, 9309, 9347**; C46, 50, 54, 58,§§534.1–534.3, 534.45; C62, 66, 71, 73, 75,§534.2; 66GA, ch 1102,§2]

Referred to in §534.12(1)

534.3 Incorporation and organization.

1. *Petition for certificate of incorporation.* At any time hereafter any five or more individuals (hereinafter referred to as the "incorporators", citizens of this state may form an association to promote thrift and home financing, subject to approval as hereinafter provided in this chapter by signing and acknowledging, before an officer competent to take acknowledgments of deeds, two copies of a petition for a certificate of incorporation in the form prescribed by the savings and loan supervisor, and of the bylaws in a form approved by the savings and loan supervisor, which shall be filed with the savings and loan supervisor in the office of the auditor of state accompanied by an incorporation fee.

2. *Articles.* The articles of incorporation shall show:

a. The names and residences of the incorporators.

b. The name of the association and its principal place of business.

c. The purpose for which such association is formed.

d. The terms and plan of becoming and continuing a member.

e. The plan of making loans.

f. The plan of distributing profits.

g. The plan of equalizing losses.

h. The plan and terms of withdrawal of members.

i. The plan of providing for payment of expenses.

j. The terms of paying in savings by subscribers and of savings liability.

k. The term of corporate existence.

l. The manner of electing officers and filling vacancies.

3. *Approval of articles—certificate of authority.*

a. The proposed articles of incorporation for any proposed new association, together with proposed bylaws, shall be presented to the auditor of state and by him submitted to the state executive council and if it finds that they are in conformity with the law and based upon a plan equitable in all respects to its members, and further finds from the best sources at its command and from such investigation as it may deem necessary, that the proposed incorporators are persons of good character, ability and responsibility; that a reasonable necessity exists for such new institution in the community to be served; that it can be established and operated without undue injury to existing local thrift and home financing institutions and that the proposed name of such institution is not similar to that of any other association operating in the same community and is not misleading or deceitful, the executive council shall attach thereto its certificate of approval and enter its approval of record, and thereupon such articles of incorporation shall be recorded in the office of the secretary of state and in the office of the recorder of the county in which the association's principal place of business is to be situated and then be filed in the office of the auditor of state who shall at that time issue a certificate authorizing the association to transact business as a building and loan or savings and loan association.

b. If the executive council does not affirmatively find as to each and all of the said requirements it shall enter its disapproval of record together with a statement of its findings and conclusions and a certificate of incorporation shall not be issued. Upon such disapproval the executive council shall, by registered mail, notify one, or all, of the proposed incorporators of its disapproval together with the reasons for such disapproval. Judicial review of the actions of the executive council may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review must be filed within thirty days after the mailing of such notice, and may be filed in the district court of Iowa in and for the county in which the principal place of business of the proposed association is to be located.

c. Before a certificate of authority to do business shall be issued to any such new association, the incorporators shall pay to the treasurer of the incorporators committee, in cash, an amount equal to not less than ten percent of the required minimum savings liability, which fund shall be in addition to the required minimum paid-in savings liability and shall, upon issuance of a certificate of incorporation, be paid to the association and shall be set up as a special reserve to be designated "reserve for the operating expenses". Such special reserve shall be used only for the purpose of paying the costs and expenses of organization and for paying or contributing toward payment of the operating expenses of such new association during any period or periods during which the association's earnings shall not be sufficient to pay all its expenses in addition to paying dividends to its members at such reasonable rate as shall be approved by the supervisor. Such "reserve for operating expenses" shall be used only for the purposes herein specified and shall be subject to be refunded in full or in part to the contributors as hereinafter provided.

d. After five years from the date of incorporation, the amounts contributed by the incorporators to such reserve for operating expenses may be refunded to the contributors thereto, but the amounts refunded shall at no

time be in excess of accumulated net earnings remaining after paying all expenses and paying or making allowances for payment of reasonable dividends to shareholders since the date of incorporation, and crediting at least the minimum amount required to general reserve. In addition to refunding the amounts contributed to such "reserve for operating expenses", the association may also pay to such contributors interest on the amounts contributed, at rates not in excess of the dividend rates paid members since date of incorporation. No such refund shall be made, or interest paid, without first obtaining written approval of the supervisor.

e. In case of dissolution or liquidation of an association before such contributions to such "reserve for operating expenses" have been refunded, the contributors thereto shall be entitled to such refunds out of moneys or assets remaining, if any, after payment of all debts, expenses, costs, and other liabilities, including refund to all members of the amounts paid in and credited on their share accounts.

f. The corporate existence of an association shall begin when the articles have been submitted and approved as required by this section and when the secretary of state has issued a certificate of incorporation. The corporate existence shall be perpetual unless otherwise limited or unless terminated as provided for herein.

g. Amendments or renewed and substituted articles of incorporation may be approved from time to time at any regular or special meeting of stockholders and shall be submitted for approval and processed in the same general manner as outlined in subsection 3 of this section.

h. No notices of incorporation or amendments need be published.

i. The executive council shall keep a record of its proceedings with reference to such associations.

j. The executive council shall have the power and it shall be its duty, to revoke any certificate of authority given to any association whenever it appears to said council that said association is transacting business illegally, or is unjust and oppressive to its members or the public. Before any such revocation shall be declared, the executive council shall first give thirty days' written notice of its intentions to revoke to the association involved and to the federal home loan bank. Said notice shall fix a time and place for hearing on the intended revocation and a permanent record shall be made of the proceedings, hearing and findings and parties so involved and notified shall be furnished with a copy thereof. Judicial review of actions of the executive council may be sought in accordance with the terms of the Iowa administrative procedure Act. [C73,§1184; C97,§§1891, 1893–1895; C24, 27, 31, 35, 39,§§9310, 9313, 9315, 9316, 9317, 9319; C46, 50, 54, 58,§§534.4, 534.8, 534.9, 534.11–534.13; C62, 66, 71, 73, 75,§534.3]

534.4 Organization.

1. *Incorporators committee—treasurer—cash payment—bond.* The incorporators shall appoint an incorporators committee and a treasurer thereof. The subscribers to the savings shall pay in cash to such treasurer on their subscriptions, before a certificate of incorporation is issued, an aggregate amount to be determined in relation to the population of the city in which the home office of the association is to be located, on the following basis:

a. In cities having not to exceed ten thousand population the minimum paid-in savings liability shall be fifty thousand dollars.

b. In cities having more than ten thousand but less than fifty thousand population, the minimum paid-in savings liability shall be one hundred thousand dollars.

c. In cities having more than fifty thousand population and less than one hundred thousand population, the minimum paid-in savings liability shall be one hundred and fifty thousand dollars; and

d. In cities having more than one hundred thousand population, the minimum paid-in savings liability shall be two hundred thousand dollars.

The population of any such city shall be determined by the said supervisor in accordance with the latest federal decennial census.

The treasurer of the incorporators committee shall file with the said supervisor a fidelity bond, signed by himself and an authorized surety company acceptable to the supervisor, in a penal sum at least equal to the required paid-in savings liability and expense fund as hereinbefore required, payable to the supervisor of building and loan associations. Such bond shall assure the safekeeping and delivery to the association, after issuance of a certificate of incorporation, and after the association's authorized officers have filed the required bonds of all of such required paid-in savings liability and expense fund, or in the event of failure to complete organization, such bond shall assure the return to the persons providing such paid-in savings liability and expense funds of the amounts contributed thereto by them, less any necessary cost and expenses.

2. *Commencement of business.* The association may commence business when the minimum savings liability as provided hereinbefore shall have been paid in and the other provisions of this chapter in relation thereto have been complied with. [C73,§1184; C97,§§1891, 1892; C24, 27, 31, 35, 39,§§9310–9312; C46, 50, 54, 58,§§534.4–534.6; C62, 66, 71, 73, 75,§534.4]

534.5 Access to books and records—communication with members.

1. *Exclusiveness of access.* Every member shall have the right to inspect such books and records of an association as pertain to his loan or savings investment. Otherwise, the right of inspection and examination of the books and records shall be limited (*a*) to the supervisor or his duly authorized represent-

ative as provided in this chapter (*b*) to persons duly authorized to act for the association, and (*c*) to any federal instrumentality or agency authorized to inspect or examine the books and records of an insured association or of an uninsured member by the federal home loan bank. The accounts and loans of members shall be kept confidential by the association, its directors, officers and employees, and by the supervisor, his examiners and representatives, and no member or any other person shall have access to the books and records or shall possess a partial or complete list of the members except upon express action and authority of the board of directors.

2. *Communication with members.* In the event, however, that any member or members desire to communicate with other members of the association with reference to any question pending or to be presented for consideration at a meeting of the members, the association shall furnish upon request a statement of the approximate number of members of the association at the time of such request, and an estimate of the cost of forwarding such communication. The requesting member or members shall then submit the communication to the supervisor who, if he finds it to be appropriate, truthful and in the best interests of the association and all its members, shall execute a certificate setting out such findings, forward the certificate together with the communications to the association, and direct that the communication be prepared and mailed by the association to the members upon the requesting member's or members' payment to it of the expenses of such preparation and mailing.

3. *Applicability of section to federal associations.* Insofar as the provisions of this section are not inconsistent with federal law, such provisions shall apply to federal savings and loan associations whose home offices are located in this state, and to the members thereof except that the communication provided for in subsection 2 shall be submitted to the federal home loan bank board, Washington, D. C., in the case of a federal savings and loan association and forwarded only upon that board's certificate and direction. [C97, §1904; C24, 27, 31, 35,§9357; C39,§§**9315, 9357**; C46, 50, 54, 58,§§534.10, 534.55; C62, 66, **71, 73,** 75,§534.5]

534.6 Financial statement. Every association shall prepare and publish annually in the month of January in a newspaper of general circulation in the county in which the home office of such association is located, and shall deliver to each member upon application therefor, a statement of its financial condition in the form prescribed or approved by the supervisor. [C97,§1898; S13,§1898; C24, 27, 31, 35, 39,§**9333**; C46, 50, 54, 58,§534.23; C62, 66, 71, 73, 75,§534.6]

534.7 Indemnity bonds.

1. *Domestic companies — bonds — custody.* The officers and employees of any domestic association who sign or endorse checks or handle any funds or securities of such association shall give such bonds or fidelity insurance as the board of directors may require; and no such officer shall be deemed qualified to enter upon the duties of his office until his bond is approved by the board of directors and by the auditor of state. Such bonds shall be deposited and filed with the auditor of state. Such associations may in connection with obtaining such bonds or insurance acquire and hold membership in mutual insurance or bonding companies. No such bond shall be terminated or canceled because of failure to pay premium or for any other cause until after ten days' written notice to the supervisor of intention to cancel such bond.

2. *Additional bonds.* All such bonds shall be increased or additional securities required by the board of directors or the auditor of state when it becomes necessary to protect the interests of the association or its members.

3. *Disqualified sureties.* No director shall be accepted as surety on such bonds, and no person shall be accepted as surety on the bond of more than one office of said association.

4. *Liability of directors.* The directors shall be individually liable for loss to the association or its members caused by their failure to require a compliance with the provisions of this section. [C97,§1895; C24, 27, 31, 35, 39, §§**9319–9322**; C46, 50, 54, 58,§§534.14–534.17; C62, 66, 71, 73, 75,§534.7]

534.8 Transactions of officers, directors, employees. It shall be unlawful for an officer, director or employee of an association:

1. To solicit, accept or agree to accept, directly or indirectly, from any person other than the association any gratuity, compensation or other personal benefit for any action taken by the association or for endeavoring to procure any such action.

2. To make a real estate loan or real estate contract to a director, officer or employee of the association, or to any attorney or firm of attorneys, regularly serving the association in the capacity of attorney at law, or to any partnership in which any such director, officer, employee, attorney or firm of attorneys has any interest, and no real estate loan or real estate contract shall be made to any corporation in which any of such parties are stockholders, except that with the prior approval of its board of directors a real estate loan or real estate contract may be made to a corporation in which no such party owns more than fifteen percent of the total outstanding stock and in which the stock owned by all such parties does not exceed twenty-five percent of the total outstanding stock: Provided, that nothing herein shall prohibit an association from making loans pursuant to section 534.19 and loans on the security of a first lien on the home property or mobile home owned and occupied by a director, officer or employee of an association, or by an attorney or member

of a firm of attorneys regularly serving the association in the capacity of attorney at law upon a two-thirds vote of the directors, the interested director not voting.

3. To have any interest, direct or indirect, in the purchase at less than its face value of any evidence of a savings liability or other indebtedness issued by the association or other assets at less than their fair market value.

4. Any association operating under this chapter shall have the power to indemnify any present or former director, officer or employee in the manner and in the instances authorized in section 496A.4, subsection 19. [C97,§1918; C24, 27, 31, 35, 39,§**9388**; C46, 50, 54, 58,§534.85; C62, 66, 71, 73, 75,§534.8; 66GA, ch 1102,§3]

534.9 Records.

1. Complete and adequate records of all accounts and of all minutes of proceedings of the members, directors and executive committee shall be maintained at all times at the office of the association.

2. Every association shall maintain membership records, which shall show the name and address of the member, whether the member is a share account holder, or a borrower, or a share account holder and borrower, and the date of membership thereof. In the case of account holding members, the association shall obtain a card containing the signature of the owner of such account or his duly authorized representative and shall preserve such signature card in the records of the association.

3. Associations shall not be required to preserve or keep their records or files for a longer period than eleven years next after the first day of January of the year following the time of the making or filing of such records or files; provided, however, that ledger sheets showing unpaid accounts in favor of members of such savings and loan association shall not be destroyed.

4. No liability shall accrue against any association, destroying any such records after the expiration of the time provided in subsection 3, and in any cause or proceedings in which any such records or files may be called in question or be demanded of the association or any officer or employee thereof, a showing that such records and files have been destroyed in accordance with the terms of this chapter shall be a sufficient excuse for the failure to produce them.

5. All causes of action against an association based upon a claim or claims inconsistent with an entry or entries in any savings and loan association record or ledger, made in the regular course of business, shall be deemed to have accrued, and shall accrue, one year after the date of such entry or entries; and no action founded upon such a cause may be brought after the expiration of ten years from the date of such accrual.

6. The provisions of this chapter, so far as applicable, shall apply to the records of federal savings and loan associations.

7. Any association may cause any or all records kept by such association to be copied or reproduced by any photostatic, photographic or microfilming process which correctly and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material and such association may thereafter dispose of the original record. Any such copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such copy or reproduction reproduced from a film record shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original. [C97,§1904; C24, 27, 31, 35, 39,§**9357**; C46, 50, 54, 58,§§534.55, 534.111–534.114; C62, 66, 71, 73, 75,§534.9]

534.10 Savings liability. The savings liability of an association is not limited, but shall consist only of the aggregate amount of share accounts of its members, plus dividends credited to such accounts, less redemption and withdrawal payments. Except as limited by the board of directors from time to time, a member may make additions to his share account in such amounts and at such times as he may elect. Share accounts shall be opened for cash. The members of an association shall not be responsible for any losses which its savings liability shall not be sufficient to satisfy, and share accounts shall not be subject to assessment, nor shall the holders thereof be liable for any unpaid installments on their accounts. Dividends shall be declared in accordance with the provisions of this chapter. No association shall prefer one of its share accounts over any other share account as to the right to participate in dividends as to time or amount, excepting that an association may classify its savings accounts according to the character, amount or duration thereof, or regularity of additions thereto, and may agree in advance to pay an additional rate of earnings for particular classes of accounts such as a variable rate or bonus for saving larger amounts, or for maintaining such savings over a longer period of time or with regularity, as determined by the board of directors; however, all such accounts shall be available to all qualifying members. The board of directors may also determine that earnings shall not be paid on any such account which has a withdrawable value in an amount less than fifty dollars. No preference between share account members shall be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution, or winding up of an association. No association shall have power to contract with respect to the savings liability in a manner inconsistent with the provisions of this chapter. [S13,§§1898-a,-c; C24, 27, 31, 35,§§9334, 9336; C39, §§**9334, 9340.07, 9340.11**; C46, 50, 54, 58,§§534.24, 534.31, 534.35; C62, 66, 71, 73, 75,§534.10]

534.11 Share accounts.

1. *Ownership.* Share accounts may be opened and held solely and absolutely in his own right by, or in trust for, any person, including an adult or minor individual, male or female, single or married, a partnership, association, fiduciary corporation, or political subdivision or public or government unit or any other corporation or legal entity. Share accounts shall be represented only by the account of each share account holder on the books of the association, and shall be transferable only on the books of the association and upon proper application by the transferee and upon acceptance of the transferee as a member upon terms approved by the board of directors. The association may treat the holder of record of a share account as the owner thereof for all purposes without being affected by any notice to the contrary unless the association has acknowledged in writing notice of a pledge of such share account.

2. *Evidence of ownership.* An account book may be issued to each share account holder on the books of the association and such account books shall, if issued, indicate the withdrawal value of the share account. A separate certificate for a share account may be issued in lieu of an account book in form to be approved by the supervisor.

3. *Duplicate account books and certificates.* Upon the filing with an association by any one of the holders of record as shown by the books of the association, or by his legal representative, of an affidavit to the effect that the account book or certificate evidencing his share account with the association has been lost or destroyed, and that such account book or certificate has not been pledged or assigned in whole or in part, such association shall issue a new account book or certificate in the name of the holder or holders of record, such book stating that it is issued in lieu of one lost or destroyed, and the association shall in no way be liable thereafter on account of the original account book, provided that the board of directors shall, if in its judgment it is necessary, require a bond in an amount it deems sufficient to indemnify the association against any loss which might result from the issuance of such new account book or certificate.

4. *Minors.* An association and any federal savings and loan association may issue share accounts to any minor as the sole and absolute owner of such share account, and pay withdrawals and act with respect to such accounts on the order of such minor. Any payment or delivery of rights to any minor, or a receipt of acquittance signed by a minor, who holds a share account, shall be a valid and sufficient release and discharge of such institution for any payment so made or delivery of right to such minor. In the case of a minor, the receipt, acquittance or other action required by the institution to be taken by the minor shall be binding upon such minor with like effect as if he were of full age and legal capacity. The parent or guardian of such minor shall not in his capacity as parent or guardian have the power to attach or in any manner to transfer any share account issued to or in the name of such minor, provided, however, that in the event of the death of such minor the receipt of acquittance of either parent or of a person standing in loco parentis to such minor shall be a valid and sufficient discharge of such institution for any sum or sums not exceeding the aggregate one thousand dollars unless the minor shall have given written notice to the institution not to accept the signature of such parent or person.

5. *Joint accounts.* When a share account is opened in any association or federal savings and loan association in the name of two or more persons, whether minor or adult, in such form that the moneys in the account are payable to either or the survivor or survivors then such account and all additions thereto shall be the property of such persons as joint tenants. The moneys in such account may be paid to or on the order of any one of such persons during their lifetimes or to or on the order of any one of the survivors of them after the death of any one or more of them upon presentation of the pass or account book or other evidence of ownership as required by the articles or bylaws of the association. The opening of the account in such form shall, in the absence of fraud or undue influence, be conclusive evidence in any act or proceedings to which either the association or the surviving party or parties is a party, of the intention of all of the parties to the account to vest title to such account and the additions thereto in such survivor or survivors. By written instructions given to the institution by all the parties to the account, the signatures of more than one of such persons during their lifetime or of more than one of the survivors after the death of any one of them may be required on any check, receipt or withdrawal order, in which case the institution shall pay the moneys in the account only in accordance with such instructions, but no such instructions shall limit the right of the survivor or survivors to receive the moneys in the account.

Payment of all or any of the moneys in such account as provided in the preceding paragraph of this section shall discharge the institution from liability with respect to the moneys so paid, prior to receipt by the institution of a written notice from any one of them directing the institution not to permit withdrawals in accordance with the terms of the account or the instructions. After receipt of such notice an institution may refuse, without liability to honor any check, receipt, or withdrawal order on the account pending determination of the rights of the parties. No institution paying any survivor in accordance with the provisions of this subsection shall thereby be liable for any estate, inheritance or succession taxes which may be due this state.

6. *Pledge to association of share account in joint tenancy.* The pledge to any association or federal savings and loan association of all or part of a share account in joint tenancy signed by that person or those persons who are authorized in writing to make withdrawals from the account shall, unless the terms of the share account provide specifically to the contrary, be a valid pledge and transfer to the association of that part of the account pledged, and shall not operate to sever or terminate the joint and survivorship ownership of all or any part of the account.

7. *Accounts of administrators, executors, guardians, custodians, trustees and other fiduciaries.* Any association or federal savings and loan association may accept share accounts in the name of any administrator, custodian, executor, guardian, trustee, or other fiduciary in trust for a named beneficiary or beneficiaries, or other fiduciary in trust for a specified class of unnamed beneficiaries. Any such fiduciary shall have power to vote as a member as if the membership were held absolutely, to open and to make additions to, and to withdraw any such account in whole or in part. The withdrawal value of such accounts, and dividends thereon, or other rights relating thereto may be paid or delivered, in whole or in part to such fiduciary without regard to any notice to the contrary as long as such fiduciary is living. The payment or delivery to any such fiduciary or a receipt or acquittance signed by any such fiduciary to whom any such payment or any such delivery of rights is made shall be a valid and sufficient release and discharge of an institution for the payment or delivery so made. Whenever a person holding an account in a fiduciary capacity dies and no written notice of the revocation or termination of the fiduciary relationship shall have been given to an institution and the institution has no notice of any other disposition of the beneficial estate, the withdrawal value of such account and dividends thereon, or other rights relating thereto may, at the option of an institution, be paid or delivered, in whole or in part, to the beneficiary or beneficiaries. Whenever an account shall be opened by any person, describing himself in opening such account as trustee for another and no other or further notice of the existence and terms of a legal and valid trust then such description shall have been given in writing to such association, in the event of the death of the person so described as trustee, the withdrawal value of such account or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the account was thus stated to have been opened, and such account and all additions thereto shall be the property of such person. The payment or delivery to any such beneficiary, beneficiaries or designated person, or a receipt or acquittance signed by such beneficiary, beneficiaries or designated person for any such payment or delivery shall be a valid and sufficient release and discharge of an institution for the payment or delivery so made. No institution paying any such fiduciary or beneficiary in accordance with the provisions of this subsection shall thereby be liable for any estate, inheritance or succession taxes which may be due this state.

8. *Pay on death accounts.* Any association and any federal savings and loan association may issue share accounts in the name of one or more persons with the provision that upon the death of the owner or owners thereof the proceeds thereof shall be the property of the person or persons designated by the owner or owners and shown by the record of such association, but such proceeds shall be subject to the debts of the decedent and the payment of Iowa inheritance tax, if any, provided, however, that six months after the date of the death of the owner the receipt or acquittance of the person so designated shall be a valid and sufficient release and discharge of such association for the delivery of such share account or the payment so made.

9. *Powers of attorney or share account.* Any association or federal savings and loan association may continue to recognize the authority of an attorney authorized in writing to manage or to make withdrawals either in whole or in part from the share account of a member until it receives written notice or is on clear actual notice of the revocation of his authority. For the purpose of this subsection, written notice of the death or adjudication of incompetency of such member shall constitute written notice of revocation of the authority of his attorney. No such institution shall be liable for damages, penalty or tax by reason of any payment made pursuant to this subsection.

10. *Share accounts as legal investments.* Administrators, executors, custodians, guardians, trustees, and other fiduciaries of every kind and nature, insurance companies, business and manufacturing companies, banks, credit unions and all other types of financial institutions, charitable, educational, eleemosynary and public corporations and organizations, and municipalities and other public corporations and bodies, and public officials hereby are specifically authorized and empowered to invest funds held by them, without any order of any court in share account of insured savings associations which are under state supervision, and in accounts of federal savings and loan associations organized under the laws of the United States and under federal supervision, and such investment shall be deemed and held to be legal investments for such funds.

Whenever, under the laws of this state or otherwise, a deposit of securities is required for any purpose, the securities made legal investments by this section shall be acceptable for such deposits, and whenever, under the laws of this state or otherwise, a bond is required with security such bond may be furnished, and the securities made legal investments by this section in the amount of such bond, when deposited therewith, shall

be acceptable as security without other security.

The provisions of this section are supplemental to any and all other laws relating to and declaring what shall be legal investments for the persons, corporations, organizations, and officials referred to in this section and the laws relating to the deposit of securities and the making and filing of bonds for any purpose. [C97,§§1901, 1904; C24, 27, 31, §§9343, 9344, 9357; C35,§9330-e1; C39,§§**9330.1, 9340.03, 9340.10, 9343, 9344, 9357**; C46, 50, 54, 58, §§534.21, 534.27, 534.34, 534.42, 534.43, 534.55, 534.111–534.114; C62, 66, 71, 73, 75,§534.11; 66GA, ch 1102,§4]

534.12 Members' general rights.

1. *Voting.* Each member shall have one vote for each one hundred dollars in his share account owned and held by him at any election, and may vote the same by proxy, but no person shall vote more than ten percent of the savings liability at the time of said election excepting that proxies held and voted by an individual member or a proxy committee shall not be included in said ten percent limitation. Every proxy shall be in writing and shall, unless otherwise specified in the proxy, continue in force for eleven months from date thereof. No proxies shall be voted at any meeting unless such proxies have been on file with the secretary of the association for verification at least five days before the date of the meeting. Anyone depositing or transferring savings as collateral security shall be deemed the owner of such share account within the meaning of this section. Notice of the regular annual meeting of members of an association shall be given by publishing said notice in a newspaper of general circulation in the county in which the office of said association is located at least thirty days before the date set for said annual meeting. Proxies may be revoked by any member upon written notice to the secretary of an association; by execution of a written proxy to another agent; or by personal attendance by the member at the members' meetings. Each member as defined by section 534.2, subsection 8, shall, regardless of shares, be entitled to at least one vote at any members' meeting.

2. *Withdrawals.* The terms of withdrawal of a member from such association shall be such that any withdrawing member shall receive a sum not less than he has paid into said association less withdrawals and legal charges against the account, unless losses have occurred to said association, during the time that said withdrawing member was a member, which exceed the amount of the profits, or any fund created with which to pay such losses, and in that case such withdrawing member shall be charged with his proportionate share of the excess of the losses over the profits, and no more. Such association may provide by its articles of incorporation or bylaws or by resolution of its board of directors, the order in which withdrawals shall be paid, and when dividends shall cease on share accounts on which withdrawal demands have been made and what portion of the association funds or receipts shall be used for payment of withdrawals.

3. *Association lien on share accounts.* Every such association shall at all times have a lien upon the savings of a member as security for repayment of money loaned him and as security for his other indebtedness to the association and such lien shall attach and continue without assignment or pledge to or possession by the association of any evidence of such ownership. Such lien may be enforced to satisfy any past due indebtedness by charging such indebtedness to the debtor's share account.

4. *Redemption.* At any time funds are on hand for the purpose the association shall have the right to redeem by lot or otherwise, as the board of directors may determine, all or any part of any of its share account on a dividend date by giving thirty days' notice by registered mail addressed to the account holders at their last addresses recorded on the books of the association. No association shall redeem any of its share accounts when the association is in an impaired condition or when it has applications for withdrawal which have been on file more than thirty days and have not been reached for payment. The redemption price of share accounts redeemed shall be the full value of the account redeemed, as determined by the board of directors, but in no event shall the redemption value be less than the withdrawal value. If the aforesaid notice of redemption shall have been duly given, and if on or before the redemption date the funds necessary for such redemption shall have been set aside so as to be and continue to be available therefor, dividends upon the accounts called for redemption shall cease to accrue from and after the dividend date specified as the redemption date, and all rights with respect to such accounts shall forthwith, after such redemption date, terminate, except only the right of the account holder of record to receive the redemption value without interest. All share accounts which have been validly called for redemption must be tendered for payment within ten years from the date of redemption designated in the redemption notice, otherwise they shall be canceled and forfeited for the use of the school fund of the county in which the association has its principal place of business and all claims of such account holders against the association shall be barred forever. Redemption shall not be made, however, of such share accounts held by a member-director which are necessary to qualify his acting as director. [C97,§1900; S13,§§1903-a,-b; C24, 27, 31, 35, §§9342, 9352, 9353; C39,§§**9340.11, 9340.12, 9340.15, 9342, 9352, 9353**; C46, 50, 54, 58,§§534.35, 534.36, 534.39, 534.41, 534.50, 534.51; C62, 66, 71, 73, 75,§534.12]

534.13 Defamation of institutions prohibited—malicious circulation of reports. Whoever maliciously or with intent to deceive makes, publishes, utters, repeats, or circulates any false report concerning any building and loan or savings and loan association which imputes or tends to impute, insolvency or unsound financial condition or financial embarrassment, or which may tend to cause or provoke or aid in causing or provoking a general withdrawal of funds from such association, or which may otherwise injure or tend to injure the business or good will of such building and loan or savings and loan association, shall be guilty of a felony and shall be fined not more than five thousand dollars or be imprisoned for not more than five years in the penitentiary or be punished by both such fine and imprisonment. [C35,§9388-e1; C39,§**9388.2**; C46, 50, 54, 58,§534.87; C62, 66, 71, 73, 75,§534.13]

534.14 Limitation on members' savings. Associations having assets of five hundred thousand dollars or less shall not accept from any one member savings liability of more than ten thousand dollars. Associations having assets in excess of five hundred thousand dollars shall not accept from any one member savings liability in excess of ten percent of its assets. These limitations shall not apply to share accounts issued to the United States government, or to any other federal government agency or instrumentality. [C73,§1185; S13,§1898; C24, 27, 31, 35, 39,§**9330**; C46, 50, 54, 58,§534.20; C62, 66, 71, 73, 75,§534.14]

534.15 Banking prohibited. It shall be unlawful for any association to receive investments of money from members without issuing evidence of savings liability for the same, or to transact a banking business. [C24, 27, 31, 35, 39,§**9328**; C46, 50, 54, 58,§534.18; C62, 66, 71, 73, 75,§534.15]

534.16 Deposits of funds by associations. Funds of such associations may be deposited in any state or national bank insured by the federal deposit insurance corporation on certificate of deposit, or the usual bank pass book credit, subject to check by the proper designated officers of such association or in the federal home loan bank of the district in which Iowa is located. [C27, 31, 35,§9340-b2; C39,§**9340.02**; C46, 50, 54, 58,§534.26; C62, 66, 71, 73, 75,§534.16]

534.17 Investments. Every association shall have power to invest in securities and real estate as follows:

1. In securities without limit, in obligations of, or guaranteed as to principal and interest by, the United States or this state; in stock of a federal home loan bank of which it is eligible to be a member, and in any obligation or consolidated obligations of any federal home loan bank or banks; in stock or obligation of the federal savings and loan insurance corporation; in stock or obligations of a national mortgage association or any successor or successors thereto; in demand, time or savings deposits, in bankers acceptances with any bank or trust company the deposits of which are insured by the federal deposit insurance corporation; in stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that such corporation or agency assists in furthering or facilitating the association's purposes or powers; in share accounts of any association operating under the provisions of this chapter and of any federal savings and loan association; in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, village, county, school district, or other municipal or political subdivision so long as the total investment in such corporation does not exceed five percent of the assets of said association. Any of said investments which are securities or obligations which are evidence of first mortgage liens on real estate are exempt from the above five percent limitation.

2. In real estate purchased at sheriff's sale or at any other sale, public or private, judicial or otherwise, upon which the association has a lien or claim, legal or equitable; in real estate accepted by the association in satisfaction of any obligation; in real estate purchased for sale or improvement and sale, upon contracts, at the cost of land and improvements, when such contracts are executed concurrently with or prior to such purchase, such transactions to be subject to all the limitations herein provided with respect to real estate loans; in real estate acquired by the association in exchange for real estate owned by the association; in real estate acquired by the association in connection with salvaging the value of property owned by the association; an amount not exceeding the sum of its reserves and undivided profits in the purchase and development of real estate for the purpose of producing income or for sale or for improvement thereof and the erection of buildings thereon for sale or rental purposes. Title to all real estate shall be taken and held in the name of the association and such title shall immediately be recorded in accordance with law. No association shall invest in any loan at any time when its liquid assets are less than five percent of its savings liability, unless the supervisor of savings and loan associations shall have issued written approval.

3. Subject to the prior approval of the supervisor, in shares in a corporation engaged solely in providing and operating facilities through which an association and its members may engage, by means of either the direct transmission of electronic impulses to and from the association or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the association, in transactions in which such association is otherwise permitted to engage pursuant to applicable law. [C27, 31, 35,§9340-b1;

C39,§**9340.01**; C46, 50, 54, 58,§534.25; C62, 66, 71, 73, 75,§534.17; 66GA, ch 240,§16]

Investments in federal insured bonds, §682.45

534.18 Investment—home office buildings. Any such association may invest an amount not to exceed five percent of its paid-in savings liability or such additional amounts as are authorized by the supervisor in unencumbered real estate for use wholly or partly as its business office. [C39,§**9340.16**; C46, 50, 54, 58, §534.40; C62, 66, 71, 73, 75,§534.18]

534.19 General powers. Every such association shall have the following general powers:

1. *General corporate power.* To sue and be sued, complain and defend in any court of law or equity; to purchase, acquire, hold, and convey real and personal estate consistent with its objects and powers; to mortgage, pledge, or lease any real or personal estate owned by the association and to authorize such pledgee to repledge same; to take property by gifts, devise or bequest; to have a corporate seal, which may be affixed by imprint, facsimile, or otherwise; to appoint officers, agents, and employees as its business shall require and allow them suitable compensation; to provide for life, health and casualty insurance for its officers and employees and to adopt and operate reasonable bonus plans and retirement benefits for such officers and employees to enter into payroll savings plans; to adopt and amend bylaws; to insure its accounts with the federal savings and loan insurance corporation and qualify as a member of a federal home loan bank; to become a member of, deal with, or make contributions to any organization to the extent that such organization assists in furthering or facilitating the association's purposes or powers and to comply with conditions of membership; to accept savings as provided in this chapter together with such other powers as are otherwise expressly provided for in this chapter, together with such implied powers as are reasonably necessary for the purpose of carrying out the express powers granted in this chapter.

2. *Loans on security of share accounts.* To make loans on the sole security of share accounts. No such loan shall exceed the withdrawal value of the accounts owned or otherwise pledged for or by the borrower. No such loan shall be made when an association has applications for withdrawal which have been on file more than sixty days and not been reached for payment.

3. *Mortgage loans.* To make first mortgage loans on real estate under the limitations and conditions imposed elsewhere in this chapter.

4. *Insured and guaranteed loans.* To make any loan, secured or unsecured, which is insured or guaranteed in any manner and in any amount by the United States or any instrumentality thereof or by this state or any instrumentality thereof.

5. *Dealing with successors in interest.* In the case of loans made under subsections 2, 3 and 4 of this section, in the event the ownership of the real estate security or any part thereof becomes vested in a person other than the party or parties originally executing the security instruments, and provided there is not an agreement in writing to the contrary, an association may, without notice to such party or parties, deal with successor or successors in interest with reference to said mortgage and the debt thereby secured in the same manner as with such party or parties, and may forbear to sue or may extend time for payment of or otherwise modify the terms of the debt secured thereby, without discharging or in any way affecting the original liability of such party or parties thereunder or upon the debt thereby secured.

6. *Property improvement loans.* To make loans for maintenance, repair, landscaping, modernization, furniture and fixtures, improvement and equipment, with or without security provided that no such loan without security shall exceed ten thousand dollars, and provided further that not in excess of twenty percent of the assets of the association shall be so invested, said twenty percent to be exclusive of the forty percent of assets power set out in section 534.21 hereof. Such loans, other than consumer loans as defined in the Iowa consumer credit code, shall be amortized to mature in not to exceed eight years. The provisions of the Iowa consumer credit code shall apply to consumer loans made by a savings and loan association and a provision of that code shall supersede any conflicting provision of this chapter with respect to a consumer loan. Loans made pursuant to this subsection shall be for terms not exceeding fifteen years.

7. *Power to purchase and to lend upon loans.* The power to make loans shall include (*a*) the power to purchase loans of any type that the association may make, (*b*) the power to make loans upon the security of loans of any type that the association may make, and (*c*) the power to sell any loans of the type the association is authorized to make.

8. *Participation loans.* An association may participate with other lenders in the origination or purchase of an interest in loans of any type that such an association may otherwise make, provided that the other participants are instrumentalities of or corporations owned wholly or in part by the United States or this state, or are associations or corporations insured by the federal savings and loan insurance corporation or the federal deposit insurance corporation or are life insurance companies with assets in excess of one hundred million dollars, or are approved federal housing administration lenders or are service corporations in which the majority of the capital stock is owned by one or more insured institutions, such loans to be within or without the regular lending area of the association.

9. *Servicing loans.* To service mortgages subject to such regulations and restrictions as may be prescribed by the supervisor, provided such mortgages originally are made by such association and subsequently sold. The maximum principal amount of mortgages thus serviced by an association at any one time shall not exceed twenty-five percent of the amount of the savings liability of such association. To service contracts for sale of real estate, provided that one of the parties to said contract is a member of the servicing association and that such association shall not undertake in connection with such servicing to be responsible for more than bookkeeping or other perfunctory services in connection herewith.

10. *Fiscal agent.* Any such association which is a member of a federal home loan bank shall have power to act as fiscal agent of the United States and, when designated for the purpose by the secretary of the treasury, it shall perform under such regulations as he may prescribe all such reasonable duties as fiscal agent of the United States as he may require, and shall have power to act as agent for any United States government instrumentality. An association may also handle travelers checks and money orders.

11. *Purchase of contracts.* Any such association may buy and sell vendors' real estate contracts; provided, however, that all such contracts shall contain forfeiture provisions as provided for in chapter 656, and provided further that the requirements for loans as set forth in section 534.21 shall be applicable to making and buying of such contracts, except that at the time of purchase of such vendors' contracts the association shall not purchase any such contract for more than ninety percent of the value of the real estate therein described appraised as required by section 534.21. No association shall hereafter invest more than fifteen percent of its assets in such vendors' contracts authorized by this subsection. Said fifteen percent shall be considered as included within the forty percent of assets lending power set out hereinafter.

12. *Lock boxes.* Any association may own, rent to its members, lock boxes for storage or safekeeping of securities and valuables.

13. *Power to borrow.* If and when an association is not a member of a federal home loan bank, it shall have power to borrow not more than an aggregate amount equal to one-fourth of its savings liability on the date of borrowing. If and when an association is a member of a federal home loan bank, it shall have power to secure advances of not more than an aggregate amount equal to one-half of its savings liability. Within such amount equal to one-half of its savings liability, the association may borrow from sources other than such federal home loan bank an aggregate amount not in excess of ten percent of its savings liability. A subsequent reduction of savings liability shall not affect in any way outstanding obligations for borrowed money. All such loans and advances may be secured by property of the association. In addition to the above unsecured or secured borrowing, an association may issue such notes, bonds, debentures and other obligations or securities, except capital stock, as are approved by the supervisor of savings and loan associations, and if authorized by the regulations of the federal home loan bank, as long as the total amount of funds borrowed under this sentence shall not exceed five percent of the withdrawable accounts of the association and provided that such obligations and securities shall be subject to the priority of the rights of the owners of the savings and deposits of said association.

14. *Automatic authorization.* Any association may have the right to participate in any new or additional powers or activities hereafter granted to such association under this chapter immediately upon the effective date of such additional authority, if authorized by the articles of incorporation of such association.

15. *Service corporations.* Any association shall have the power to organize and own, alone or with any other similar corporation, a service corporation for the mutual good of said corporations. An association may invest in capital stock, obligations, or other securities of service corporations in an amount not to exceed five percent of the association's assets. The supervisor of state chartered associations shall have the right to examine said service corporations.

16. *Urban renewal and public housing investments.* Any association shall have the power to organize or purchase stock in a corporation for the purpose of lending, owning or constructing property in urban renewal areas or constructing property or making loans therein itself, so long as the total investment of such association does not exceed five percent of the assets of said association. Any association shall have the power to invest, organize, purchase stock or obligations in any corporation for the purpose of lending, owning, improving, or constructing property in any subsidized program of any government or agency that is insured by said government or agency or that is insured by private mortgage insurance. The total investment in said program shall not exceed five percent of the assets of the association.

17. *Educational loans.* Any association is authorized to invest in loan, obligations, and advances of credit (all of which are hereinafter referred to in this subsection as "loans") made for the purpose of expenses of college or university education, but no association shall make any investment in loans under this paragraph if the principal amount of its investment in such loans, exclusive of any investment which is or which at the time of its making was otherwise authorized, would thereupon exceed five percent of its assets. Such loans may be secured, partly secured, or unsecured, and the association may require

a comaker or comakers, insurance, guaranty under a governmental student loan guarantee plan, or other protection against contingencies. The borrower shall certify to the association that the proceeds of the loan are to be used by a full-time student solely for the payment of expenses of college or university education. For the purpose of this subsection, the term "college or university education" means education at an institution which provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree.

18. *Operating under federal rules as to deposits and interest.* A savings and loan association operating under this chapter may operate in a manner similar to federally chartered savings and loan associations regarding the use of the terms "deposit" and "interest" and with such other powers as have been authorized to federally chartered associations under the Homeowners Loan Act of 1933, Title 12, section 1464, United States Code, and as permitted under the rules and regulations of the federal home loan bank system and federal savings and loan insurance corporation, to the extent that similar rules and regulations have been adopted by the supervisor of savings and loan associations and have been filed with the secretary of state. This subsection shall not diminish or restrict the powers otherwise granted to such association by the laws of Iowa.

The adoption and filing of such rules or regulations by the supervisor shall not diminish or restrict the rights of associations which do not make the above determination.

19. *Business development credit corporation.* Any association whose general reserve, surplus and undivided profits aggregate a sum in excess of five per centum of its withdrawable accounts is authorized to invest in, to lend to, or to commit itself to lend to any business development credit corporation incorporated in the state in which the head office of such association is situated, but the aggregate amount of such investments, loans, and commitments, of any such association outstanding at any time shall not exceed one-half of one per centum of the total outstanding loans made by such association, or two hundred fifty thousand dollars, whichever is the lesser.

20. *Limited trust powers.* Associations incorporated under this chapter may act as trustee for trusts which are created or organized in the United States, and which form part of a stock bonus, pension, or profit sharing plan which qualifies for special tax treatment under section 401 (d) or subsection (a) of section 408 of the Internal Revenue Code of 1954, as amended, if the funds of such trust are invested only in savings accounts or deposits in such association or in obligations or securities issued by such association. All funds held in such fiduciary capacity by any such association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this subsection.

21. *Electronic transactions.* Engage in any transaction otherwise permitted by this chapter and applicable law, by means of either the direct transmission of electronic impulses to or from the association or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the association. Subject to the provisions of chapter 527, an association may utilize, establish or operate, alone or with one or more other associations, banks incorporated under the provisions of chapter 524 or the national banking acts (12 U.S.C. sections 21-95), credit unions incorporated under the provisions of chapter 533 or the federal Credit Union Act (12 U.S.C. sections 1751-1790) or third parties, the satellite terminals permitted under chapter 527, by means of which the association may transmit to or receive from any member electronic impulses constituting transactions pursuant to this subsection. However, such utilization, establishment or operation shall be lawful only when in compliance with chapter 527. Nothing in this subsection shall be construed as authority for any association or other person to engage in transactions not otherwise permitted by applicable law, nor shall anything in this subsection be deemed to repeal, replace or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by any association. [C73, §§1185, 1186; C97,§§1898, 1899; S13,§1898; C24, 27, 31,§§9329, 9331, 9340; C35,§§9329, 9330-e1, 9331, 9340; C39,§§**9329, 9330.1, 9331, 9340.09, 9340.14**; C46, 50, 54, 58,§§534.19, 534.21, 534.22, 534.33, 534.38; C62, 66, 71, 73, 75,§534.19; 66 GA, ch 240,§17, ch 1056,§42, ch 1102,§§5–8, ch 1214,§7]

Referred to in §534.8

534.20 Emergency operations. In the event an association's offices are destroyed by enemy attack or by natural disaster, such association may operate from such temporary headquarters as may be necessary until such time as it is again able to resume operations in its normal location.

Such association may, with the approval of the supervisor, make loans beyond its regular lending area within this state in the event of an emergency resulting in the destruction of home financing facilities in any community in this state. [C62, 66, 71, 73, 75,§534.20]

534.21 Loan requirements.

1. *Loan plans.* Real estate loans may be made as authorized by this chapter, or upon any other loan plan approved by the supervisor. No real estate loan shall be made until two qualified persons or one professional appraiser selected by the board of directors shall have submitted a signed appraisal of the real estate securing such loan. If it is an

uninsured mortgage no such loan shall be made to exceed ninety percent of said appraised value. Any loans insured by the federal housing administration or which are guaranteed by the Servicemen's Readjustment Act of 1944 [58 Stat. L. 291; repealed; now covered by 37 U.S.C. §§1801 to 1824 inc.], as amended, or which are guaranteed or insured, in whole or in part, by any other duly constituted federal instrumentality or private corporation approved by the federal home loan bank or the supervisor which qualify for such insurance or guarantee, or loans made to families of low or moderate income as a part of programs authorized in sections 220.1 to 220.36 approved by the Iowa housing finance authority, may be made regardless of the requirements for other loans otherwise contained in this section.

Payments on real estate loans shall be applied first to the payment of interest of the unpaid balance of the loan and the remainder to the reduction of principal; provided that if the loan is in default in any manner, payments may be applied by the mortgagee in any manner approved by the association and provided by the contract between the parties.

If agreed in writing by written instrument separate from the note and mortgage at any time after execution of the note and mortgage, any prepayment of an installment may be applied on the final installment of the note or other obligation until fully paid, and thereafter on the installments in the inverse order of their maturity.

2. *Terms of loans.* All installment loans shall be repayable within thirty years or, if an insured or guaranteed loan, within the period acceptable to the insuring or guaranteeing agency. Loans of any type that such an association may make on a monthly installment basis may also be made without full amortization of principal; provided, that except for insured or guaranteed loans, interest shall be payable at least semiannually and any such loan may be made for an amount not in excess of fifty percent of the value and for a term of not more than five years: And provided further, that if the members have authorized loans to be made without full amortization up to such higher percentage such loans may be made for an amount not in excess of sixty percent of the value and for a term of not more than three years: And provided further, that if the members have authorized loans to be made without full amortization up to such higher percentage, such loans, if made, for the purpose of construction, may be made for an amount not in excess of eighty percent of the value and for a term of not more than eighteen months. A construction loan may be combined with an installment loan in one note, provided the total term does not exceed thirty-one years and six months.

3. *Home loans.* Every such association may originate and make first mortgage amortized real estate loans for not to exceed fifty thousand dollars secured by home property situated within the regular lending area. Home loans may be made in excess of the fifty thousand dollar limitation when made under the forty percent of assets lending power hereinafter set out.

4. *Other loans.* Every such association may use an aggregate amount not exceeding forty percent of the assets at the time of such use, or a larger amount with the approval of the supervisor, to make loans as follows:

a. Home loans, which are either direct-reduction home loans or not, but which exceed fifty thousand dollars each, regardless of where the home property securing the loan is situated.

b. Home loans of any amount, which are direct-reduction home loans, but which are secured by home property situated beyond the regular lending area.

c. Home loans of any amount which are not direct-reduction home loans, regardless of where the home property securing the loan is situated.

d. Other real estate loans, whether amortized or unamortized, regardless of amount thereof or location of real estate securing the loan.

e. First mortgage loans insured by an instrumentality of the United States government or first mortgage loans insured by an approved mortgage insurance company doing business in the state of Iowa shall be exempt from the provisions of the forty percent of assets lending power.

This power is herein referred to as the "forty percent of assets lending power." A subsequent reduction of savings liability shall not affect in any way outstanding loans made under the forty percent of assets lending power.

5. *Note.* Every loan shall be evidenced by a note for the amount of the loan. The note shall specify the amount, rate of interest, terms of repayment and may contain all other terms of the loan contract. The notes evidencing loans may be in negotiable form.

6. *Mortgage.* Every real estate loan shall be secured by an instrument constituting a first lien upon the real estate securing the loan. Such instrument shall be considered a mortgage and shall provide specifically for full protection to the association with respect to such loan and additional advances and the usual insurance risks, taxes, assessments, other governmental levies, maintenance, and repairs. It may provide for an assignment of rents, which assignment shall be absolute upon the borrower's default, becoming operative upon written demand made by the association. All such mortgages shall be recorded in accordance with the law of this state.

7. *Terms of mortgage.* Any mortgage made by an association under the provisions of this chapter may be made to secure existing debts or obligations, to secure debts or obligations created simultaneously with the execution of

the mortgage, to secure future advances necessary to protect the security, and to secure future advances to be made at the option of the parties up to a total amount stated in the mortgage, and all such debts, obligations and future advances shall, from and as of the time the mortgage is filed for record as provided by the laws of this state, be secured by such mortgage equally with, and have the same priority over the rights of all persons who subsequent to the recording of such mortgage acquire any rights in or liens upon the mortgaged real estate, as the debts and obligations secured thereby at the time of the filing of the mortgage for record.

8. *Payment of charges.* An association may pay taxes, assessments, insurance premiums, and other similar charges for the protection of its real estate loans. All such payments shall be added to the unpaid balance of the loan and shall be equally secured by the first lien on the property as provided above. An association may require life insurance to be assigned as additional collateral upon any real estate loan. In such event the association shall obtain a first lien upon such policy and may advance premiums thereon, and such premium advances shall be added to the unpaid balance of the loan and shall be equally secured by the first lien on the property as provided above. No association may require that any such insurance must be purchased from or through the association as a condition to any loan.

9. *Payment by borrower.* An association may require the borrower to pay monthly in advance, in addition to interest or interest and principal payments, the equivalent of one-twelfth of the estimated annual taxes, assessments, insurance premiums, and other charges upon the real estate securing a loan, or any of such charges, so as to enable the association to pay such charges as they become due from the funds so received. The amount of such monthly charges may be increased or decreased so as to provide reasonably for the payment of the estimated annual taxes, assessments, insurance premiums, and other charges. The association may carry such funds in trust in an account or may credit the same to the indebtedness and advance money for taxes, insurance or other charges. Every association shall keep a record of the status of taxes, assessment, insurance premiums, and other charges on all real estate securing its loans and on all real and other property owned by it.

10. *Advance interest on prepayments.* Real estate loans on one to four family dwellings may be repaid in part or in full at any time, excepting that the association may charge not to exceed six months advance interest on that part of the aggregate amount of all prepayments made on such loan in any twelve-month period which exceeds twenty percent of the original principal amount of the loan; and may charge any negotiated rate not to exceed three percent of the original principal for prepayment on other loans during the first three years of said loans, after which time the association may charge as above provided for on one to four family dwellings.

11. *Expenses of loan.* Every association may require borrowing members to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of real estate loans. Every association also may require borrowing members to pay the cost of all other necessary and incidental services rendered by the association or by others for the association in connection with real estate loans in such reasonable amounts as may be fixed by the board of directors. No director, officer, or employee of an association shall receive any fee or other compensation of any kind in connection with procuring any loan for an association, except for services actually rendered as above provided. The association shall furnish a loan settlement statement to each borrower upon the closing of the loan, indicating the charges and fees such borrower has paid or obligated himself to pay the association or to any other person in connection with such loan. A copy of such statement shall be retained in the records of the association.

12. *Loans on leasehold.* An association may also make loans on leasehold interests, under the same terms as above provided for other loans, if said leasehold interest extends or is automatically renewable at the option of the holder, or at the option of the association, for a period of at least fifty years from the date the loan is executed but at least ten years beyond the maturity date of the loan and provided further that, in event of default, the real estate described in such leasehold interest could be subjected to the satisfaction of the debt with the same priority. [C97,§1899; S13, §1899-a; C24, 27, 31,§§9340, 9341; C35,§§9340, 9340-b1, 9341; C39,§§**9340.01, 9340.04–9340.06, 9340.08, 9340.09**; C46, 50, 54, 58,§§534.25, 534.28–534.30, 534.32, 534.33; C62, 66, 71, 73, 75,§534.21; 66GA, ch 138,§48, ch 1102,§§9, 10, 11]

Referred to in §§534.19(6, 11), 534.71, 534.72, 534.73

534.22 Interest rates variable. The rate or rates of interest, premium commission and other fees to be charged on loans made by such associations and the basis on which different interest rates and charges shall be determined shall from time to time be fixed by the bylaws of the association but interest charged shall not exceed the maximum interest rate authorized by law. [S13,§§1893-a, 1899-a; C24, 27, 31, 35,§§9314, 9341; C39,§**9340.13**; C46, 50, 54, 58,§534.37; C62, 66, 71, 73, 75, §534.22]

Interest, maximum rate, §§535.2–535.6

534.23 Contracts for savings programs.

1. *School savings.* An association shall have power to contract with the proper authorities of any public or nonpublic elementary or secondary school or other institution of higher learning, or any public or charitable institution caring for minors, for the participation

and implementation by the association in any school or institutional thrift or savings plan, and it may accept share accounts at such a school or institution, either by its own collector or by any representative of the school or institution which becomes the agent of the association for such purpose.

2. *Payroll savings plans.* An association shall have power to contract with any corporation of any type for investment in such association by employees under a payroll savings plan. [C39,§9340.03; C46, 50, 54, 58,§534.27; C62, 66, 71, 73, 75,§534.23]

534.24 Conversion.

1. *Conversion into federal savings and loan association.* Any association of this state doing a home-financing business may convert itself into a federal savings and loan association or a federal savings association or other mutual savings association authorized under the laws of the United States, as now or hereafter amended, upon a vote of fifty-one percent or more of the votes of the members, in person or by proxy, such vote to be cast at an annual meeting or at any special meeting called to consider such action. A copy of the minutes of the proceedings of such meetings of the members, verified by the affidavit of the secretary or an assistant secretary, shall be filed in the office of the supervisor within ten days after the date of such meeting. A sworn copy of the proceedings of such meeting when so filed, shall be presumptive evidence of the holding and action of such meeting. Within three months after the date of such meeting, the association shall take such action in the manner prescribed and authorized by the laws of the United States as shall make it a federal savings and loan association. There shall be filed with the supervisor a copy of the charter issued to such federal savings and loan association by the federal home loan bank board or a certificate showing the organization of such association as a federal savings and loan association, certified by the secretary or assistant secretary of the federal home loan bank board. A similar copy of the charter, or of such certificate, shall be filed by the association with the secretary of state. No failure to file any such instruments either with the supervisor or the secretary of state shall affect the validity of such conversion. Upon the grant to any association of a charter by the federal home loan bank board, the association receiving such charter shall cease to be an association incorporated under this chapter and shall no longer be subject to the supervision and control of the supervisor. Upon the conversion of any association into a federal savings and loan association, the corporate existence of such association shall not terminate, but such federal association shall be deemed to be a continuation of the entity of the association so converted and all property of the converted association, including its rights, titles, and interests in and to all property of whatever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer and without any further act or deed remain and be vested in and continue and be the property of such federal association into which the state association has converted itself, and such federal association shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the converting association, and such federal association as of the time of the taking effect of such conversion shall continue to have and succeed to all the rights, obligations and relations of the converting association. All pending actions and other judicial proceedings to which the converting state association is a party shall not be deemed to have abated or to have discontinued by reason of such conversion, but may be prosecuted to final judgment, order or decree in the same manner as if such conversion into such federal association had not been made and such federal association resulting from such conversion may continue such action in its corporate name as a federal association, and any judgment, order, or decree may be rendered for or against it which might have been rendered for or against the converting state association theretofore involved in such judicial proceedings. Any association or corporation, which has heretofore converted itself into a federal savings and loan association or a federal savings association or other mutual savings association authorized under the laws of the United States and has received a charter from the federal home loan bank board, shall hereafter be recognized as a federal savings and loan association, and its federal charter shall be given full credence by the courts of this state to the same extent as if such conversion had taken place under the provisions of this section; provided, however, that there shall have been compliance with the foregoing requirements with respect to the filing with the supervisor of a copy of the federal charter or a certificate showing the organization of such association as a federal savings and loan association. All such conversions are hereby ratified and confirmed, and all obligations of such an association which has so converted shall continue as valid and subsisting obligations of such federal savings and loan association, and the title to all of the property of such an association shall be deemed to have continued and vested, as of the date of issuance of such federal charter, in such federal savings and loan association as fully and completely as if such conversion had taken place since the enactment of this chapter pursuant to this section.

2. *Conversion into state-chartered association.* Any federal savings and loan association may convert itself into an association under this chapter upon a vote of fifty-one percent or

more of the votes of members of such federal savings and loan association, in person or by proxy, such vote to be cast at an annual meeting or at any special meeting called to consider such action. Copies of the minutes of the proceedings of such meetings of members, verified by the affidavit of the secretary or an assistant secretary, shall be filed in the office of the supervisor and mailed to the federal home loan bank board, Washington, D. C., within ten days after such meeting. Such verified copies of the proceedings of the meetings when so filed shall be presumptive evidence of the holding and action of such meeting. At the meeting at which conversion is voted upon, the members shall also vote upon the directors who shall be the directors of the state-chartered association after conversion takes effect. Such directors then shall execute two copies of the petition for certificate of incorporation provided for in this chapter and two copies of the bylaws, as provided in this chapter. The supervisor may insert in the certificate of incorporation, at the end of the paragraph preceding the testimonium clause, the following:

"This association is incorporated by conversion from a federal savings and loan association."

Each of the directors chosen for the association shall sign and acknowledge the petition for certificate of incorporation as subscribed thereto and the proposed bylaws as incorporators of the association. The provisions of this chapter shall, so far as applicable, apply to such conversion under this section. The supervisor may provide, by regulation, for the procedure to be followed by any such federal savings and loan association converting into an association under this section. All the provisions regarding property and other rights contained in the preceding subsection shall apply, in reverse order, to the conversion of a federal savings and loan association into an association incorporated under this section, so that the state-chartered association shall be a continuation of the corporate entity of the converting federal association and continue to have all of its property and rights.

For the purposes of this entire section, wherever reference is made to "federal savings and loan association" it shall include any mutual or savings association authorized and chartered under the laws of the United States. [C35,§§9402-f1–9402-f3; C39,§§**9315.1, 9402.1–9402.3**; C46, 50, 54, 58,§§534.10, 534.102–534.104; C62, 66, **71**, 73, 75,§534.24]

534.25 Members' rights on conversion. When such conversion and transfer of assets are made to a federal savings and loan association all members, including borrowing members, in the state association shall become members in the federal savings and loan association and shall be entitled to receive evidence of their investment and membership in the federal association in lieu of membership in the state association, in such amounts and upon such terms and conditions as shall be approved by the boards of directors of such state and federal association. [C35,§§9402-f2,-f3; C39, §§**9402.2, 9402.3**; C46, 50, 54, 58,§§534.103, 534.104; C62, 66, 71, 73, 75,§534.25]

534.26 Liquidation. If only a portion of the assets and business of a state association is transferred to a federal savings and loan association such state association may continue in business for the purpose of liquidating its remaining assets and if authorized by a three-fourths vote of the savings liability represented at any members meeting it may from time to time make additional transfers of assets to such federal savings and loan association or may transfer such remaining assets to trustees who shall liquidate the same in the manner authorized, but after any such partial or complete transfer of assets no such state association shall accept any further savings. [C35,§9402-f4; C39,§§**9315.1, 9402.4**; C46, 50, 54, 58,§§534.10, 534.105; C62, 66, **71**, 73, 75, §534.26]

534.27 Rights of creditors. The rights of creditors of a state association shall not be impaired by such transfer of assets to a federal savings and loan association and they shall have the same rights to follow and satisfy their claims out of all transferred assets as if no transfer had been made, or they may elect to accept the obligations of such federal savings and loan association in satisfaction of their claims against such state association. [C35,§9402-f5; C39,§**9402.5**; C46, 50, 54, 58, §534.106; C62, 66, 71, 73, 75,§534.27]

534.28 Association under receivership. A state association in receivership may convert and transfer all or part of its assets to a federal savings and loan association if in such case the court having jurisdiction of the receivership shall after due notice and hearing approve such conversion and transfer. [C35, §9402-f6; C39,§**9402.6**; C46, 50, 54, 58,§534.107; C62, 66, 71, 73, 75,§534.28]

534.29 Approval by state auditor. Before any conversion and transfer of assets are made to a federal savings and loan association the proposed plan of conversion and transfer shall either before or after it is authorized by the members be submitted in writing to the auditor of state who shall issue to the state association his written approval thereof if he finds that the proposed plan is legal and that the requirements of law have been complied with. [C35,§9402-f7; C39,§**9402.7**; C46, 50, 54, 58, §534.108; C62, 66, 71, 73, 75,§534.29]

534.30 Report of conversion filed. When such conversion and transfer are made the president and secretary of the state association shall file with the recorder of the county in which the principal place of business of such association is located and with the auditor of state a written report showing in general terms the nature of such conversion and transfer together with true copies of the agree-

ments entered into and transfers made and the resolutions of members and directors authorizing the same. [C35,§9402-f8; C39,**§9402.8**; C46, 50, 54, 58,§534.109; C62, 66, 71, 73, 75,§534.30]

534.31 Federal associations having same rights. Every federal savings and loan association incorporated under the provisions of Home Owners' Loan Act of 1933 [12 U.S.C. §§1461-1468], as now or hereafter amended, and the holders of share accounts issued by any such association shall have all the rights, powers, and privileges and shall be entitled to the same exemptions and immunities, as savings and loan associations organized under the laws of this state and members thereof are entitled.

Every association organized under the provisions of this chapter shall have and exercise all the rights, powers and privileges pertaining to savings and to loans not in conflict with the laws of this state, which are conferred upon federal savings and loan associations by the Home Owners' Loan Act of 1933, title 12, section 1464, United States Code, and conferred by regulations adopted by the federal home loan bank board and the federal savings and loan insurance corporation. [C39, **§9402.9**; C46, 50, 54, 58,§534.110; C62, 66, 71, 73, 75,§534.31]

534.32 Reorganization — liquidation. Any savings and loan association, including one in receivership, may reorganize under any plan approved by its board of directors and by the supervisor. Such reorganization may include reduction of savings credits of its member, not pledged as security for real estate loans, and may also include segregation of assets of uncertain or doubtful value by transfer thereof to trustees for management and liquidation or by transfer to a separate fund within the association, to be managed and liquidated by the association for the benefit of the members whose savings credits have been reduced in connection with such segregation. [C39,**§9362.1**; C46, 50, 54, 58,§534.60; C62, 66, 71, 73, 75, §534.32]

534.33 Voluntary liquidation. Building and loan or savings and loan associations, by a vote of three-fourths of the members of such association represented in person or by proxy, may go into voluntary liquidation upon such plan as shall be determined upon by the members at their meeting. [S13,§1907-a; C24, 27, 31, 35, 39,**§9363**; C46, 50, 54, 58,§534.61; C62, 66, 71, 73, 75,§534.33]

534.34 Supervision during liquidation. During the period of voluntary liquidation of any such association, the supervisor shall have substantially the same powers and duties as to supervision as before such liquidation, and the persons in charge of such voluntary liquidation shall furnish and deposit with the supervisor such bonds as he shall require and approve, and shall semiannually, or oftener if required by the supervisor report to him fully as to their doings and progress, and as to the financial condition of the association. Upon completion of such liquidation they shall file with the supervisor a verified final report of such liquidation and disbursement of proceeds and upon approval of such report the supervisor shall issue a written order discharging the liquidators, and their duties shall thereupon cease. [C39,**§9363.1**; C46, 50, 54, 58,§534.62; C62, 66, 71, 73, 75,§534.34]

534.35 Transfer of mortgages—maturity. In case any such association resolves to go into voluntary liquidation, it shall have power after crediting the mortgages given by the borrowing member with the full book value of the stock, to sell and assign such mortgages to a similar building and loan association, or to any other parties who will hold the same upon the terms under which such mortgage was given to the association. In that event the said mortgage shall be held to become due, if no other time can be agreed upon between the mortgagor and the association, within three years after the assignment thereof. [S13, §1907-a; C24, 27, 31, 35, 39,**§9364**; C46, 50, 54, 58,§534.63; C62, 66, 71, 73, 75,§534.35]

534.36 Consolidation with other companies. Any building and loan or savings and loan association organized under the laws of this state shall have authority to consolidate its business and membership with one or more building and loan or savings and loan associations of the same class organized under the laws of this state and to transfer to such association or associations its entire assets subject to its existing liabilities. [S13,§1907-b; C24, 27, 31, 35, 39,**§9366**; C46, 50, 54, 58,§534.64; C62, 66, 71, 73, 75,§534.36]

534.37 Approval by executive council. The plan of such consolidation, when approved by the board of directors of each of the associations, shall be reduced to writing and submitted to the state executive council, and if they find that the plan is in conformity with the law, and equitable in all respects to the members of both associations, they shall attach thereto their certificate of approval. [S13, §1907-b; C24, 27, 31, 35, 39,**§9367**; C46, 50, 54, 58, §534.65; C62, 66, 71, 73, 75,§534.37]

534.38 Approval by members. Such plan shall be submitted to the members of both associations, either at the regular meeting or at special meetings called for that purpose, and if approved by a vote of fifty-one percent of the members of each association, voted in person or by proxy at said meeting, the same shall then be filed in the office of the auditor of state, who shall issue a certificate authorizing the consolidation. [S13,§1907-b; C24, 27, 31, 35, 39,**§9368**; C46, 50, 54, 58,§534.66; C62, 66, 71, 73, 75,§534.38]

534.39 Manner of voting. At such meetings the members may vote in person, or by proxy, or by written ballot mailed or otherwise de-

livered to the secretary at or before the time of meeting. [S13,§1907-b; C24, 27, 31, 35, 39, §9369; C46, 50, 54, 58,§534.67; C62, 66, 71, 73, 75,§534.39]

534.40 Consolidation under receivership. In any case where a receiver has been appointed for any such association, its membership and business may in like manner be consolidated with, and its assets transferred to, another such association of the same class, but in such case the receiver shall act in place of the board of directors, and the plan must also be approved by the court by which the receiver was appointed. [S13,§1907-c; C24, 27, 31, 35, 39, §9370; C46, 50, 54, 58,§534.68; C62, 66, 71, 73, 75,§534.40]

534.41 Examinations—supervisor.

1. *Supervisor.* The auditor of state shall appoint as a deputy, to be known as "supervisor of savings and loan associations", a person who shall be required to have at least five years practical experience in savings and loan association management, examination or supervision. Commencing with July 4, 1959, said supervisor or his successors shall be appointed for a term of four years, subject to removal by the executive council for good cause, after due hearing. Such supervisor's salary shall be fixed by the auditor of state, subject to the approval of the comptroller and governor. In addition thereto he shall receive his necessary traveling expenses.

2. *Authority — general.* The supervisor of savings and loan associations shall have general supervision of all savings and loan associations doing business in this state.

He may, with the approval of the auditor of state, appoint examiners and assistants necessary to properly execute the duties of his office. Any examiner so appointed shall have had at least one year of actual experience as examiner, officer, or employee, of a savings and loan association. Such examiners' salaries shall be fixed by the auditor of state subject to the approval of the comptroller and governor, which salaries shall be commensurate with that in the range of other employees as prescribed by certain classifications in accordance with their experience and qualifications. In addition such examiners shall be reimbursed for their actual and necessary expense.

Before entering upon their duties, the supervisor of savings and loan associations and each examiner appointed by him shall take an oath of office and shall each give bond to the state, signed by a responsible surety company, in the penal sum of two thousand dollars, conditioned upon faithful and impartial discharge of his duty and on proper accounting for all funds and other valuables which may come into his hands. Such bonds shall be approved by and filed with the auditor of state, together with oaths of office of such officer.

The supervisor shall have the right to pass further regulations deemed necessary to enable savings and loan associations to properly carry on the activities authorized under this chapter and which are not inconsistent with the provisions of this chapter.

3. *Duties.* The supervisor shall, at least once each year, examine or cause examination and audit to be made into the affairs of every association subject to this chapter. If an association is insured under the provisions of title IV of the National Housing Act (48 Stat. L. 1246; 12 U. S. C., ch 13), as now or hereafter amended, the supervisor may, in lieu of such examination and audit accept any examination or audit made by the federal savings and loan insurance corporation. Any such association may, in lieu of such examination and audit by the supervisor, at the option of the supervisor be audited by a certified public accountant, or by a public accountant qualified and licensed to practice accountancy under the provisions of the Code of Iowa. At least two copies of each examination or audit report, signed and verified by the accountant making it, shall promptly be filed with the supervisor. Whenever, in the judgment of the supervisor, the condition of any association renders it necessary or expedient to make an extra examination or audit or to devote any extraordinary attention to its affairs, the supervisor shall cause such work to be done. A copy of every examination or audit report shall be furnished to the association examined, exclusive of confidential comments made by the examiner, and a copy of every report and comments and any other information pertaining to an association may be furnished to the federal home loan bank board, federal home loan bank, and federal savings and loan insurance corporation. A copy of such examination or audit report shall be presented to the board of directors at its next regular or special meeting and their action thereon shall be recorded in the minutes, and two certified copies of such minutes shall be transmitted to the supervisor.

4. *Supervisor's authority — examinations.* The supervisor and examiners shall have full access to all books and papers of an association which relate to its business, and to books, records, and papers kept by an officer, director, agent, or employee relating to, or upon which any record of its business is kept, and may summon witnesses and administer oaths or affirmations, in the examination of the directors, officers, agents, or employees of any such association, or any other person, in relation to its affairs, transactions and condition, and may require and compel the production of records, books, papers, contracts, or other documents by court order, if not voluntarily produced.

5. *Expenses, per diem, vacation and sick leave.* Where the examination is made under the provisions of subsection 3 of this section, each examiner shall file with the auditor of state an itemized, certified and sworn voucher

of his expense for the time such examiner is actually engaged in such examination. On the fifteenth and last days of each month each examiner shall file in triplicate with the auditor of state a certified statement of the actual days engaged in such examination. The salaries shall be included in a semimonthly payroll. Upon approval of the auditor of state the state comptroller is authorized to issue warrants for the payment of said vouchers, and salaries, including a prorated amount for vacation and sick leave, from the savings and loan revolving fund. Repayment to the state shall be made as provided by section 534.61, subsection 4. Savings and loan examiners shall be paid salaries at rates commensurate with, and shall be reimbursed for meals and lodging at the same rate as, that which is received by federal examiners operating under the federal home loan bank board.

6. *Record required.* A record of such examination shall be kept in the auditor's office, showing in detail as to each association all matters connected with the conduct of the business, its financial standing and everything touching its solvency, plan of business and integrity.

Such examinations and reports, and other information connected therewith, shall be kept confidential in the office of the auditor of state and the supervisor of savings and loan associations, and shall not be subject to publication or disclosure to others except as in this chapter provided. However, any evidence of felonious acts on the part of the officers, directors or employees of such association may be referred by the office of the auditor of state to proper authorities. Members of such associations, other than their officers and directors, shall not be entitled to inspection of any such records or information, and shall not be entitled to any information relative to the names of the members of any association, or the amounts invested by them, as disclosed in the auditor's office, or in the records of any such association.

7. *Revocation of authority.* If any such association refuse to submit to such examination, the auditor shall revoke its certificate of authority.

8. *Supervisor's annual report.* The supervisor of savings and loan associations shall, as of December 31 of each year, prepare and publish a report showing in general terms the condition of all savings and loan associations doing business in this state, and containing such other general information as in his judgment shall seem desirable. Such reports shall also list the names of all examiners and other assistants employed by him, together with the respective salaries and expenses, and shall list all receipts from savings and loan associations, and shall show all expenditures made on account of the supervision and examination of such associations. [C97,§§1904, 1906; C24, 27, 31,§§9354–9358, 9360; C35,§§9354, 9354-f1, 9355–9358, 9360; C39,§§**9354, 9354.1, 9356–9358, 9360**; C46, 50, 54, 58,§§534.52–534.57; C62, 66, 71, 73, 75,§534.41; 66GA, ch 1102,§12, ch 1219,§1]

Referred to in §537.2305
Annual report, §17.4

534.42 Dividends. After making such provisions for absorbing immediate and possible future losses, the board of directors of such association shall annually, or at such other intervals as the board of directors may determine, declare and apportion as a dividend to members, according to its articles of incorporation, such portion of the association's net profits as it may deem available, and as authorized under this chapter. Members shall participate in dividends in proportion to their respective investments therein. Dividends for a particular month may be paid on sums invested by a member by the tenth day of that month or by such later date of that month as is authorized by the supervisor of savings and loan associations, which shall in no event be later than the twentieth day of a particular month. If the tenth day of said month or other authorized date falls on a Sunday, holiday or another business day on which the particular association is normally closed, then money received by the next business day may earn dividends from the first of that month. The board of directors may also devise other methods of paying dividends, including payment of dividends from date of investment to date of withdrawal, subject to the approval of the supervisor of savings and loan associations. Additionally a service fee not to exceed one dollar per dividend period may be charged to a member's account when no activity has taken place in said account for the eight preceding quarterly periods and the principal of such account is less than fifty dollars. [C73, §1187; C97,§§1902, 1903; C24, 27, 31, 35,§§9347, 9350; C39,§**9347**; C46, 50, 54, 58,§534.45; C62, 66, 71, 73, 75,§534.42]

534.43 Reserve for contingencies. As of June 30 and December 31 of each year, before declaring any dividends, the board of directors shall transfer and credit to a general reserve account an amount equivalent to not less than two percent of the net earnings of the association for the preceding six months, called the "accounting period", such transfers to be made at the end of each six months accounting period, until such general reserve account is equal to at least five percent of the total amount paid in by members and credited on share accounts. The above action shall be taken March 31, June 30, September 30 and December 31 of each year and the dividends and reserve periods correspondingly adjusted if dividends are paid quarterly. If at any time thereafter such general reserve account shall on account of losses be reduced to less than five percent of the amount paid in and credited on share accounts, such transfers and credits thereto shall be resumed and continued until such reserve is again equal to at least five percent of the total amount paid in and credited on share accounts of members. The re-

serve account so established shall at all times be maintained and used for the sole purpose of absorbing losses incurred by the association and for no other purposes. An association may establish such other and additional special reserves as may be ordered by its board of directors. An association as an optional method may close its books on a fiscal year base with one transfer to reserves at the conclusion of the fiscal year. [C39,§**9347.1**; C46, 50, 54, 58, §534.46; C62, 66, 71, 73, 75,§534.43]

534.44 Expenditures and expenses. All expenses for management in conducting the affairs of an association, excluding the cost of borrowed money, shall be paid from interest, service charges and other sources of profit. The said expense for an association in any one year shall not exceed three percent for associations with assets not to exceed eight hundred thousand dollars and two percent for those over such amount as shown by the associations in their last annual report. [S13,§1902-a; C24, 27, 31, 35, 39,§**9348**; C46, 50, 54, 58,§534.47; C62, 66, 71, 73, 75,§534.44]

534.45 Compensation of officers and agents. No officers, employee, or agent of any association shall receive directly or indirectly any salary or other compensation, except for services actually rendered. Any compensation paid in violation of this section may be recovered by the association or by any shareholder or borrower, in the name and for the use of such association, within three years from the receipt of such illegal compensation, from the person accepting the same, or from any officer knowingly consenting to the allowance thereof. [S13,§1902-a; C24, 27, 31, 35, 39,§**9349**; C46, 50, 54, 58,§534.48; C62, 66, 71, 73, 75,§534.45]

534.46 Conservatorship—operation—termination. If the supervisor, as a result of any examination or from any report made to him shall find that any savings and loan association is violating the provisions of its certificate of incorporation, or bylaws, or the laws of this state, or of the United States, or any lawful order of the supervisor, or is conducting its business in an unsafe manner, he may by an order, direct discontinuance of such violation or unsafe practice, and conformance with all requirements of law. No conservator shall be appointed for a solvent association where such violation or unsafe practice can be corrected otherwise. If any such association shall refuse or neglect to comply with such order within the time specified therein, or if it shall appear to the supervisor that any such association is in an unsafe condition or is conducting its business in an unsafe manner, or if he shall find that an impairment of capital exists to such extent that it threatens loss to the members, or if any association refuses to submit its books, papers, and accounts to the inspection of the supervisor or his representative, he, by written order signed by himself and the auditor of state, may appoint a conservator to take charge of the association and manage its business until the supervisor shall permit the board of directors to resume management of the business or shall reorganize the association, or until a receiver shall be appointed to liquidate its affairs. Any conservator so appointed shall, subject to approval of the supervisor and auditor of state, have all the rights, powers, and privileges possessed by the officers, board of directors, and members of the association. The conservator shall not retain special counsel or other experts, or incur any expenses other than normal operating expenses, or liquidate assets, except in the ordinary course of operations. The directors and officers shall remain in office and the employees shall remain in their respective positions, but the supervisor may remove any director, officer, or employee. While the association is in charge of a conservator, members of such association shall continue to make payments to the association in accordance with the terms and conditions of their contracts and the conservator, in his discretion, may permit members to withdraw as such in the ordinary course of business, or under, and subject to such rules and regulations as the supervisor may prescribe and the conservator shall have power to accept savings but any such savings thereon received by the conservator may be segregated if the supervisor shall so order in writing and if so ordered such savings shall not be subject to offset and shall not be used to liquidate any indebtedness of such association existing at the time the conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating the indebtedness of such association existing at the time such conservator was appointed. All expenses of the association during such conservatorship shall be paid by the association. The appointment of a conservator shall be evidenced by the supervisor issuing a certificate, signed by himself and by the auditor of state, delivered to the president, or the vice-president, or to at least three members of the board of directors of the association, certifying that a conservator has been appointed pursuant to this section. Within six months from the date upon which the conservator shall take charge of an association, the supervisor shall determine whether or not he shall restore the management of the association to the board of directors. Such determination shall be evidenced by the supervisor's certificate under the seal of his office, delivered to the president, or vice-president, or to the board of directors of the association, that the conservator forthwith is redelivering the management of the association to the board of directors of the association then in office. After the management of the association shall have been redelivered to the board of directors of an association, the association shall thenceforth be managed and operated as though no conservator had been appointed. At any time prior to the redelivery of the management to the board of directors, the supervisor shall determine whether such association shall be required to

reorganize. Such determination shall be evidenced by a certificate, signed by the supervisor, and by the auditor of state, under the seal of his office, delivered to an executive officer of the association stating that unless the association reorganize under the laws of this state within a period of sixty days from the date of such certificate, or within such further time as the supervisor shall approve, the supervisor shall proceed to liquidate the association. If the association has the insurance protection provided by title IV of the National Housing Act [48 Stat. L. 1246; 12 U. S. C., ch 13], as now or hereafter amended, a signed and sealed copy of each order and certificate mentioned in this section shall be promptly sent by the supervisor by registered mail to the federal savings and loan insurance corporation, Washington, D. C. If the association is insured by the federal savings and loan insurance corporation, that corporation shall be named receiver if the supervisor and auditor have determined the need for a receivership. [C39,§**9361**; C46, 50, 54, 58,§534.58; C62, 66, 71, 73, 75,§534.46]

Referred to in §534.66(13)

534.47 Quo warranto—receiver. When any building and loan or savings and loan association is conducting its business illegally, or in violation of its articles of incorporation or bylaws, or is practicing deception upon its members or the public, or is pursuing a plan of business that is injurious to the interest of its members, or its affairs are in an unsafe condition, the auditor of state shall notify the directors thereof, and, if they shall fail to put its affairs upon a safe basis, he shall advise the attorney general thereof, who shall take the necessary steps to wind up its affairs in the manner provided by law. In such proceedings a receiver may be appointed by the court and such proceedings shall be the exclusive liquidation or insolvency proceeding and a receiver shall not be appointed in any other proceedings. The provisions for notice, hearing, findings and review set out under the above section shall also apply to this section. [C97,§1907; C24, 27, 31, 35, 39,§**9362**; C46, 50, 54, 58,§534.59; C62, 66, 71, 73, 75,§534.47]

534.48 Foreign associations. If any foreign building and loan or savings and loan association, as in this chapter defined, desires to transact business within this state, it shall furnish to the state executive council a certified copy of its articles of incorporation, or charter and bylaws, and a certified copy of the state laws under which it is organized, together with a report for the year next preceding, verified by its president, vice president, secretary, and at least three directors, which report shall show:

1. The amount of its authorized savings liability and the par value of its shares, if any.

2. The increase in savings liability.

3. The withdrawal from savings liability during the year.

4. The amount of savings liability in force at the end of the year.

5. A detailed statement of all funds received during the year and all disbursements.

6. The salaries paid each of its officers.

7. A detailed statement of its assets and liabilities at the end of such year and the nature thereof.

8. Any other matters of fact which the council may require. [C97,§1908; C24, 27, 31, 35, 39, §**9371**; C46, 50, 54, 58,§534.69; C62, 66, 71, 73, 75,§534.48]

534.49 Approval by council — certificate of authority. Upon receipt of such report the council, if it finds therefrom that the association is properly managed, that its financial condition is satisfactory, and that its business is conducted upon a safe and reliable plan and one equitable to its members, shall so certify upon such copy and statement, and, the same being filed with the auditor, he shall issue a like certificate as in the case of domestic associations. [C97,§1908; C24, 27, 31, 35, 39,§**9372**; C46, 50, 54, 58,§534.70; C62, 66, 71, 73, 75, §534.49]

534.50 Conditions attending approval. No building and loan or savings and loan association, incorporated under the laws of any other state or country, shall be authorized to do business in this state, whose articles of incorporation are not found by the executive council to be in substantial compliance with the laws of this state, and affording equal security and protection to the members thereof. [S13, §1908-a; C24, 27, 31, 35, 39,§**9373**; C46, 50, 54, 58, §534.71; C62, 66, 71, 73, 75,§534.50]

Referred to in §534.57

534.51 Deposit by foreign association. Every such foreign building and loan or savings and loan association, before the state auditor shall issue to it a certificate, shall comply with the following provisions:

1. It shall deposit with the auditor of state one hundred thousand dollars, either in cash, or bonds of the United States or of the state of Iowa, or of any county or municipal corporation of the state, or notes secured by first mortgage, on real estate, or a like amount in such other security as shall be satisfactory to said auditor.

2. Such foreign association may collect and use the interest on any securities so deposited as long as it fulfills its obligations and complies with the provisions of this chapter. It may also exchange them for other securities of equal value and satisfactory to said auditor. [C97,§1909; C24, 27, 31, 35, 39,§**9374**: C46, 50, 54, 58,§534.72; C62, 66, 71, 73, 75,§534.51]

534.52 Liability of deposit. The deposit made with the auditor of state shall be held as security for all claims of resident members of the state against said association, and shall be liable for all judgments or decrees thereon, and subject to the payment of the same. [C97,

§1910; C24, 27, 31, 35, 39,§9375; C46, 50, 54, 58, §534.73; C62, 66, 71, 73, 75,§534.52]

534.53 Auditor of state as process agent. Such foreign associations shall also file with the auditor of this state a duly authorized copy of a resolution adopted by the board of directors of such association, stipulating and agreeing that, if any legal process or notice affecting such association be served on the said state auditor, and a copy thereof be mailed, postage prepaid, by the party procuring and issuing the same, or his attorney, to said association, addressed to its home office, then such service and mailing of such process or notice shall have the same effect as personal service on said association within this state. [C97,§1911; C24, 27, 31, 35, 39,§9376; C46, 50, 54, 58,§534.74; C62, 66, 71, 73, 75,§534.53]

Referred to in §534.54
Similar provisions, §§491.15, 494.2, 511.27, 512.22, 515.73, 520.5

534.54 Manner of service. When proceedings have been commenced against, or affecting any foreign building and loan or savings and loan association, as contemplated in section 534.53, and notice has been served upon the auditor of the state, the same shall be by duplicate copies, one of which shall be filed in his office, and the other mailed by him, postage prepaid, to the home office of such association. [C97,§1911; C24, 27, 31, 35, 39,§9377; C46, 50, 54, 58,§534.75; C62, 66, 71, 73, 75, §534.54]

534.55 Amendment to articles. All foreign building and loan or savings and loan associations shall file with the auditor of state, within ten days after their adoption, a duly certified copy of any amendment or amendments to their articles of incorporation or bylaws that may have been adopted. [C97,§1912; C24, 27, 31, 35, 39,§9378; C46, 50, 54, 58,§534.76; C62, 66, 71, 73, 75,§534.55]

534.56 Fees—foreign associations. Foreign building and loan or savings and loan associations shall pay to the auditor of state the following fees, which shall be paid by him into the state treasury: For each application to do business in this state, two hundred dollars; for each certificate of authority and each annual renewal thereof, one hundred dollars; for filing each annual statement of the assets of the association as shown by the statement filed, amounts to fifty thousand dollars or less, six dollars; if more than fifty thousand dollars and less than one hundred thousand dollars, ten dollars; if more than one hundred thousand dollars and less than two hundred fifty thousand dollars, twenty dollars; if more than two hundred fifty thousand dollars, and less than five hundred thousand dollars, forty dollars; if more than five hundred thousand dollars and less than one million dollars, sixty dollars; and if more than one million dollars, one hundred dollars. [C97,§1913; C24, 27, 31, 35, 39, §9379; C46, 50, 54, 58,§534.77; C62, 66, 71, 73, 75,§534.56]

Collection by auditor, §11.29

534.57 Sale of stock if unauthorized foreign company. It shall be unlawful for an agent, solicitor or other person to sell stock or solicit share accounts or solicit persons to subscribe for same in any association named in section 534.50 which has not been authorized to do business in this state, and any person convicted of so doing shall be punished by a fine of not less than fifty nor more than two hundred dollars and shall be committed to the county jail until the fine and costs are paid. [S13,§1915-a; C24, 27, 31, 35, 39,§9385; C46, 50, 54, 58,§534.82; C62, 66, 71, 73, 75,§534.57]

534.58 Annual statement. All associations doing business in this state shall, on or before the first day of February of each year, file with the auditor of state a detailed report and financial statement of their business for the year ending the thirty-first day of December next preceding, and such report shall be verified by the president and secretary or by three directors of the association, and such report shall show:

1. The date when the association was incorporated.
2. The increase in savings liability.
3. The amount of withdrawals during the year.
4. The total savings liability at the end of the year.
5. A statement of the assets and liabilities at the end of the year.
6. The salary paid to each of its officers during the year. [C97,§1914; C24, 27, 31, 35, 39, §9382; C46, 50, 54, 58,§534.79; C62, 66, 71, 73, 75,§534.58]

Referred to in §534.60
Annual report, §17.4

534.59 Additional report by foreign company. All foreign building and loan or savings and loan associations shall, in addition to the above, report the name of each shareholder or member of such association residing within the state, together with the post-office address of each and the number of shares or investment owned by each of said persons on the first day of January preceding. [C97,§1914; C24, 27, 31, 35, 39,§9383; C46, 50, 54, 58,§534.80; C62, 66, 71, 73, 75,§534.59]

Referred to in §534.60

534.60 Violations. If an association shall fail or refuse to furnish the auditor of state the report required in sections 534.58 and 534.59 it shall forfeit the sum of twenty-five dollars for every day such report shall be withheld and the auditor of state may maintain an action in the name of the state to recover such penalty and the same shall be paid into the treasury of the state. [C97,§1915; C24, 27, 31, 35, 39, §9384; C46, 50, 54, 58,§534.81; C62, 66, 71, 73, 75,§534.60]

534.61 Fees.

1. *Payable to state auditor.* Associations shall pay fees by delivering to the supervisor a check payable to the state auditor. All fees collected under the provisions of this chapter shall be deposited with the treasurer of state in a separate fund to be known as the savings and loan revolving fund. All expenses necessary to carry out the provisions of this chapter shall be paid from the savings and loan revolving fund.

2. *Incorporation fee.* Simultaneously with the filing with the supervisor of a certificate of incorporation, the corporation shall pay an incorporation fee of one hundred dollars.

3. *Change of location or change of name.* There shall accompany each application to the supervisor for leave to change the location of the home office or to change the name of the association a fee of fifty dollars.

4. *Supervision and examination fee.* At the time of filing its annual report each association shall pay to the auditor of state, an annual filing fee of fifty dollars. The supervisor shall assess against any association the actual and necessary expenses incidental to any examinations, or to supervision, or to any special audit made pursuant to an order of the supervisor acting under authority of this chapter. The annual assessment to each association shall also include a fair proportion of the cost of administration of the savings and loan division.

5. *Merger fee.* At the time of filing with the supervisor any merger agreement, the association proposing to so merge shall submit therewith a fee of one hundred fifty dollars, which fee shall be paid in equal parts by the associations parties to the proposed merger.

6. *For reorganization, transfer of assets, and dissolution.* There shall accompany every proposed plan of reorganization, every proposal for the transfer of assets in bulk, and every certificate of dissolution, filed with the supervisor for approval, a fee of fifty dollars.

7. *For approval of supervisor.* The supervisor is authorized, in his discretion, to charge a fee of not exceeding ten dollars upon each application for his approval, as provided by this chapter. [C97,§1913; C24, 27, 31, 35, 39, §9380; C46, 50, 54, 58,§534.78; C62, 66, 71, 73, 75,§534.61]

Referred to in §534.41(5)
Similar provision, §11.29

534.62 Discrimination in foreign states. When by the laws of any other state, territory, country or nation, or by the decision or rulings of the appropriate and proper officers thereof, any greater taxes, fines, penalties, licenses, fees, deposits of money or other securities, or other obligations or prohibitions, are demanded of building and loan or savings and loan associations of this state, as a condition to be complied with before doing business in this state, so long as such laws continue in force, the same requirements, obligations, and prohibitions of whatever kind shall be imposed on all building and loan or savings and loan associations of such other state, territory, country or nation doing business in this state, and upon their agents. It is hereby made the duty of the auditor of state to enforce the provisions of this section. [C97,§1916; C24, 27, 31, 35, 39,§9386; C46, 50, 54, 58,§534.83; C62, 66, 71, 73, 75,§534.62]

534.63 Revocation of certificate. If a certificate of authority to do business shall have been issued to any association, and it shall violate any of the provisions of this chapter, the auditor of state may revoke the same. [C97,§1917; C24, 27, 31, 35, 39,§9387; C46, 50, 54, 58,§534.84; C62, 66, 71, 73, 75,§534.63]

534.64 Criminal offenses. If any officer, director, or agent of any building and loan or savings and loan association shall knowingly and willfully swear falsely to any statement in regard to any matter in this chapter required to be made under oath, he shall be guilty of perjury. If any director of any such association shall vote to declare a dividend greater than has been earned; or if any officer or director or any agent or employee of any such association shall issue, utter, or offer to utter, any warrant, check, order, or promise to pay of such association, or shall sign, transfer, cancel, or surrender any note, bond, draft, mortgage, or other evidence of indebtedness belonging to such association, or shall demand, collect, or receive any money from any member or other person in the name of such association without being authorized to do so by the board of directors in pursuance of its lawful power; or if any such officer, director, agent, or employee shall embezzle or convert to his own use, or shall use or pledge for his own benefit or purpose, any moneys, securities, credits, or other property belonging to the association, or shall knowingly do or attempt to do business for such association that has not procured and does not hold the certificate of authority therefor as in this chapter provided, or shall knowingly make or cause to be made any false entries in the books of the association, or shall, with the intent to deceive any person making an examination in this chapter required to be made, exhibit to the person making the examination any false entry, paper, or statement, or shall knowingly do or solicit business for any building and loan or savings and loan association which has not procured the required certificate therefor, he shall be fined in any sum not exceeding ten thousand dollars, or imprisoned in the penitentiary not exceeding ten years, or punished by both such fine and imprisonment. [C97, §1918; C24, 27, 31, 35, 39,§9388.1; C46, 50, 54, 58, §534.85; C62, 66, 71, 73, 75,§534.64]

Similar provision, §534.66

534.65 Acknowledgments by employees. No public officer qualified to take acknowledgments or proofs of execution of written instruments shall by reason of his membership in

or being an officer of or employment by a savings and loan association interested in such instrument be disqualified from taking and certifying to the acknowledgment or proof of execution of any written instrument in which such association is interested, and any such acknowledgment or proof heretofore taken or certified is hereby legalized and declared valid. [C39,§9388.1; C46, 50, 54, 58,§534.86; C62, 66, 71, 73, 75,§534.65]

534.66 Unincorporated associations.

1. *Statutes applicable.* All unincorporated organizations, associations, societies, partnerships, or individuals conducting and carrying on a business, the purpose of which is to create a fund derived from periodical payments by members of such organizations, associations, societies, or other persons, upon contracts or otherwise, as well as from fines, forfeitures, incidental fees, and payment of premiums and interest; which fund is to be loaned or advanced to members of the organization, associations, society, or to the persons making such periodical payments, for the purpose of enabling them to acquire the ownership or free possession of real estate, or personal property, or to construct buildings, or any or all of such purposes, shall be deemed building and loan associations; and the provisions of this chapter shall apply to all such building and loan associations as far as the same can be made applicable to unincorporated organizations, associations, societies, partnerships, or individuals.

2. *Statement of resources, liabilities, and plan.* Every such unincorporated organization, association, society, partnership, or individual conducting and carrying on the business defined in this section shall, before transacting any business in this state, submit to the executive council a full and complete sworn statement of the resources and liabilties of such organization, association, society, partnership, or individual, and of the proposed plan or method of doing business.

3. *Deposit of securities.* No such unincorporated building and loan association shall be permitted to carry on its business within this state unless it shall first deposit with the auditor of state at least fifty thousand dollars of first mortgages and negotiable notes in the same amount secured thereby upon real estate in the state, bearing interest at a rate not less than five percent per annum, which said mortgages shall in no case exceed one-half the actual value of the real estate upon which they are taken.

4. *Additional deposits.* The auditor of state shall have power and authority to require that such further amount of such securities shall be deposited with him as in his judgment may thereafter be necessary to protect the members of such building and loan association, or the persons making periodical payments thereto.

5. *Securities held in trust.* The notes, mortgages, and securities so deposited with the auditor of state shall, with all interest and accumulations thereon, be held in trust by him for the purpose of fulfilling and carrying out all contracts made by such building and loan associations with the members thereof, and with the persons making periodical payments thereto.

6. *Approval—certificate of authority.* If the executive council approves the plan or method of business of any such building and loan association, it shall endorse its approval upon the statement of the resources and liabilities and plan of business presented to it, and such statement shall thereupon be filed in the office of the auditor of state, who shall issue a certificate to such building and loan association to transact business within the state, if such association has deposited with him the mortgages and securities required by the other provisions of this chapter.

7. *Officers to give bonds—approval.* Every officer of such building and loan association who signs or endorses checks, or handles any of the funds or securities thereof, shall give such bond or fidelity insurance for the faithful performance of his duty in such sum as the auditor of state may require, and no such officer shall be deemed qualified to enter upon the duties of his office until his bond is approved by, and deposited with, the auditor of state. And any such bond may be increased or additional sureties required by the auditor of state whenever in his judgment it becomes necessary to protect the interest of the association or its members, or persons making periodical payments of money thereto.

8. *Examination.* The auditor of state may at any time he may see proper make, or cause to be made, an examination of any such building and loan association, or he may call upon it for a report of its condition upon any given day which has passed, as often as four times each year, which report shall contain the information hereinafter required.

9. *Expense of examination.* The expense of making such examination shall be paid by the building and loan association, and if made by the auditor in person he shall be paid his necessary expenses only; if made by an examiner designated by the auditor, he shall receive not to exceed twenty-five dollars a day for the time employed by him, and his necessary expenses.

10. *Annual reports.* On or before the first day of February of each year, every such building and loan association shall file with the auditor of state its annual report in writing for the year ending on the thirty-first day of December preceding, giving a complete statement in detail of all of its receipts from all sources, and all disbursements made during such year, arranged and itemized as may be required by the auditor of state. Such report shall also show the number of members or persons making periodical payments to such association, the number and amount of loans made to such persons, the interest received

therefrom, the number and amounts of mortgages, contracts or other securities held by the association, the actual cash value of the real estate securing such mortgages or contracts, the salary paid to each of its officers during the preceding year, the assets and liability of the association at the end of the year, and any other matters which in the judgment of the auditor of state may be required to give him full information as to the business transacted by such building and loan association.

11. *Failure to furnish reports.* If any such building and loan association shall fail or refuse to furnish the auditor of state the report required in subsection 10, the officers or persons conducting the business of such building and loan association shall forfeit the sum of twenty-five dollars for each day that such report is withheld, and the auditor of state may maintain an action, jointly or severally, against them in the name of the state to recover such penalty, and the same shall be paid into the state treasury when recovered by him.

12. *Criminal offenses.* If any officer or agent of any such building and loan association, or any person conducting the business thereof, shall knowingly and willfully swear falsely to any statement in regard to any matter in this chapter required to be made under oath, he shall be guilty of perjury and punished accordingly. And if any officer, agent or employee of any such association, or any person transacting the business thereof, shall issue, utter, or offer to utter, any warrant, check, order, or promise to pay of such association, or shall sign, transfer, cancel, or surrender any note, bond, draft, mortgage, or other evidence of indebtedness belonging to such association, or shall demand, collect, or receive any money from any member or other person in the name of such association without being authorized so to do; or if any such officer, agent, or employee of such association, or any person transacting the business thereof, shall embezzle, convert to his own use, or shall use or pledge for his own benefit or purpose, any moneys, securities, credits, or other property belonging to the association, or shall knowingly solicit, transact, or attempt to transact any business for any such association which has not procured and does not hold the certificate of authority from the auditor of state to transact business in this state as provided herein; or shall knowingly make, or cause to be made, any false entries in the books of the association, or shall, with intent to deceive any person making an examination of such association, as herein provided, exhibit to the person making the examination any false entry, paper, or statement, he shall be fined in a sum not exceeding ten thousand dollars or imprisoned in the penitentiary not exceeding ten years or punished by both such fine and imprisonment.

13. *Revocation of certificate — receiver.* If any such building and loan association holding a certificate of authority to transact business within this state issued by the auditor as herein provided, shall violate any of the provisions of this chapter, or shall fail to deposit with the auditor of state such further amount of mortgages or securities as he may require under this chapter, the auditor of state shall at once revoke such certificate and notify the executive council of the revocation thereof; and under the direction of the executive council, application shall be made by the attorney general to the proper court for the appointment of a receiver to wind up the affairs of the association; and in such proceedings the amount due from the borrowing members or persons making periodical payments upon contracts or mortgages given by them, shall be ascertained in the manner provided in section 534.46; and the amount owing upon such mortgages or contracts from members of the association or persons making periodical payments thereto, shall be treated and considered as due and payable within a reasonable time, to be fixed by the court after the appointment of a receiver. [S13,§§1920-a–1920-j; C24, 27, 31, 35, 39,§§9390–9402; C46, 50, 54, 58, §§534.89–534.101; C62, 66, 71, 73, 75,§534.66]

Similar provision, §534.64

534.67 Directors.

1. *Association managed by board of directors.* The business of the association shall be managed by a board of directors of not less than five or more than fifteen as determined and elected by ballot from among the members by a plurality of the votes of the members present in person or by proxy. If authorized by vote of the members the directors may elect all directors. At all times at least two-thirds of the directors shall be bona fide residents of this state.

2. *Qualifications required of directors.* In order to qualify as a director, a member of an association must hold a share account, the withdrawal value of which is at least two hundred dollars; provided that, if the assets of the association exceed five hundred thousand dollars, such member must hold a share account the withdrawal value of which is at least five hundred dollars; and provided further, if the assets exceed two and one-half million dollars, the withdrawal value of such account must be at least one thousand dollars. A director shall automatically cease to be a director when he ceases to be a member, or when the net equity above share loans of all share accounts in the association held by him aggregates less than the minimum required to be eligible for election as a director, provided no action of the board of directors shall be invalidated through the participation of such director in such action.

3. *Classification of directors.* At the first annual meeting, the directors shall by majority vote be divided into three classes of as nearly equal numbers as possible. The term of office of directors of the first class shall expire at the annual meeting next after the first election; of the second class, one year thereafter; and

of the third class, two years thereafter; and at each annual election thereafter directors shall be chosen for a full term of three years to succeed those whose terms expire.

4. *Number of directors increased only by members.* The number of directors within the limits hereinabove specified may be subsequently increased only by vote of the members.

5. *Vacancy caused by increase filled.* If the members fail to elect a director to fill each vacancy created by any such increase, the directors may fill such vacancy by electing a director to serve until the next annual meeting of the members, at which time a director shall be elected to fill the vacancy for the unexpired term for the class of director in which such vacancy exists.

6. *Classifications of new directors.* Whenever under the provisions hereof the number of directors is changed and vacancies caused by such change are filled, the directors so elected shall be classified in accordance with the provisions hereof, so that each of the three classes shall always contain numbers as nearly equal as possible.

7. *Vacancy on board filled by directors.* Any vacancy among directors, not so filled by the members, may be filled by a majority vote of the remaining directors, though less than a quorum, by electing a director to serve until the next annual meeting of the members, at which time a director shall be elected to fill the vacancy for the unexpired term for the class of director in which such vacancy exists. In event of a vacancy on the board of directors from any cause, the remaining directors shall have full power and authority to continue direction of the association until such vacancy is filled. [C97,§1892; C24, 27, 31, 35, 39,§**9312**; C46, 50, 54, 58,§534.7; C62, 66, 71, 73, 75,§534.67]

534.68 Judicial review. Judicial review of the actions of the supervisor may be sought in accordance with the terms of the Iowa administrative procedure Act. [C62, 66, 71, 73, 75, §534.68]

534.69 Corporations heretofore incorporated.

1. *Chapter applicable.* The name, rights, powers, privileges, and immunities of every such corporation heretofore incorporated under the laws of this state repealed and revised by this chapter shall be governed, controlled, construed, extended, limited, and determined by the provisions of this chapter to the same extent and effect as if such corporation had been incorporated pursuant hereto, and the articles of association, certificate of incorporation, or charter, however entitled, bylaws and constitution, or other rules of every such corporation heretofore made or existing are hereby modified, altered, and amended to conform to the provisions of this chapter, as the same are inconsistent with the provisions of this chapter; except that the obligations of any such existing corporation, whether between such corporation and its members, or any of them, or any other person or persons, or any valid contract between the members of any such corporation, or between such corporation and any other person or persons, existing at the time this chapter takes effect, shall not be in any way impaired by the provisions of this chapter, and, with such exceptions, every such corporation shall possess the rights, powers, privileges and immunities and shall be subject to the duties, liabilities, disabilities, and restrictions conferred and imposed by this chapter notwithstanding anything to the contrary in its certificate of incorporation, bylaws, constitution or rules.

2. *Prior obligations.* All obligations heretofore contracted may be enforced. All obligations to any such corporation heretofore contracted shall be enforceable by it and in its name, and demands, claims, and rights of action against any such corporation may be enforced against it as fully and completely as they might have been enforced heretofore.

3. *Chapter controlling.* Insofar as the provisions of this chapter are inconsistent with the provisions of any other law affecting savings associations the provisions of this chapter shall control. [C58,§§534.112–534.114; C62, 66, 71, 73, 75,§534.69]

Constitutionality, 58GA, ch 338,§69(4)

534.70 Enforcement of Iowa consumer credit code.

1. The supervisor shall enforce the Iowa consumer credit code with respect to associations, as provided in sections 537.2303, 537.2305 and 537.6105.

2. The supervisor shall co-operate with the administrator, and shall assist the administrator whenever necessary to provide for the discharge of the duties of the administrator.

3. Notwithstanding other provisions of this chapter to the contrary, the supervisor shall authorize to be furnished to the administrator, access to or copies of records in the possession of the supervisor or other persons which relate to a savings and loan association when necessary to enable the administrator to enforce chapter 537.

4. The supervisor shall make an annual report in writing to the administrator. A copy of the report shall be furnished at cost by the supervisor to each association or other person upon request. The annual report shall contain:

a. A summary of applications for organization approved or denied by the supervisor since the last report.

b. A summary of the volume of consumer installment credit outstanding per association as of December 31 of the year for which the report is made.

c. An estimate of the disbursements of agency funds for consumer credit protection during the calendar year ending the preceding December 31.

d. Information which the supervisor may deem appropriate and advisable to disclose.

e. Information which the administrator may require to be included. [C75,§534.70; 66GA, ch 1212,§3]

534.71 Mobile home loans. An association may make and purchase loans and contracts secured by mobile homes and may participate with other lenders in the making and purchase of mobile home loans and contracts, provided that the terms of such loans do not exceed fifteen years and that the total investment in mobile home loans and contracts does not exceed ten percent of the assets of the association at the time of investment, said ten percent to be exclusive of the forty percent of assets classification set out in section 534.21. For purposes of this section, investment in loans and contracts means the total amount of such loans and contracts on the association's books less any unearned interest. [66GA, ch 1102,§13]

534.72 Loans secured by less than first lien. An association may make loans on real estate secured by less than a first lien, provided that the aggregate amount of all such loans shall not exceed five percent of the assets of the association at the time the loan is granted, said five percent to be exclusive of the forty percent of assets classification set out in section 534.21. [66GA, ch 1102,§13]

534.73 Line of credit loans. An association may make loans not secured by a real estate mortgage to contractors who are engaged in the business of constructing improvements on real estate and for use in that business provided that the aggregate amount of all such loans and commitments shall not exceed the greater of the sum of reserves and surplus or five percent of the assets of the association at the time the loan is granted, said five percent to be exclusive of the forty percent of assets classification set out in section 534.21. [66GA, ch 1102,§13]

TITLE XXIII

TRADE AND COMMERCE

CHAPTER 535

MONEY AND INTEREST

Referred to in §§536.16, 536A.30, 537.1301, 537.2301, 554.9203(4)

535.1 Denominations of money.
535.2 Rate of interest.
535.3 Interest on judgments and decrees.
535.4 Illegal rate prohibited—usury.
535.5 Penalty for usury.
535.6 Interest in excess of two percent per month.
535.7 Assignee of usurious contract.

535.1 Denominations of money. The money of account of this state is the dollar, cent, and mill, and all public accounts, and the proceedings of all courts in relation to money, shall be kept and expressed in the above denominations. Demands expressed in money of another denomination shall not be affected by the provisions of this section, but in any action or proceeding based thereon it shall be reduced to and computed by the denominations given. [C51,§§943, 944; R60,§§1785, 1786; C73,§§2075, 2076; C97,§3037; C24, 27, 31, 35, 39,§**9403**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§535.1]

535.2 Rate of interest.

1. Except as provided in subsection 2 hereof, the rate of interest shall be five cents on the hundred by the year in the following cases, unless the parties shall agree in writing for the payment of interest not exceeding nine cents on the hundred by the year:

a. Money due by express contract.

b. Money after the same becomes due.

c. Money loaned.

d. Money received to the use of another and retained beyond a reasonable time, without the owner's consent, express or implied.

e. Money due on the settlement of accounts from the day the balance is ascertained.

f. Money due upon open accounts after six months from the date of the last item.

g. Money due, or to become due, where there is a contract to pay interest, and no rate is stipulated.

2. Any domestic or foreign corporation or real estate investment trust as defined in section 856 of the Internal Revenue Code, and any person purchasing securities as defined in chapter 502 on credit from a broker or dealer registered or licensed under chapter 502 or under the Security Exchange Act of 1934, 48 Stat. 881, 15 United States Code 78A, as amended,* may agree in writing to pay any rate of interest in excess of the rate prescribed in subsection 1 hereof, and no such corporation or real estate investment trust or person so agreeing in writing shall plead or interpose the claim or defense of usury in any action or proceeding. [C51,§945; R60,§1787; C73, §2077; C97,§3038; C24, 27, 31, 35, 39,§**9404**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§535.2; 66GA, ch 1220, §1]

Referred to in §§535.3, 536A.23(1)
See also §682.46
*Act effective July 1, 1976

535.3 Interest on judgments and decrees. Interest shall be allowed on all money due on judgments and decrees of courts at the rate of seven* cents on the hundred by the year, unless a different rate is fixed by the contract on which the judgment or decree is rendered, in which case the judgment or decree shall draw interest at the rate expressed in the contract, not exceeding the maximum applicable rate permitted by the provisions of section 535.2, which rate must be expressed in the judgment or decree. [C51,§946; R60,§1789; C73,§2078; C97, §3039; C24, 27, 31, 35, 39,§**9405**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§535.3]

*Interest on judgments and decrees prior to July 1, 1973, see 65GA, ch 275,§2

535.4 Illegal rate prohibited — usury. No person shall, directly or indirectly, receive in money or in any other thing, or in any manner, any greater sum or value for the loan of money, or upon contract founded upon any sale or loan of real or personal property, than is in this chapter prescribed. [R60,§1790; C73, §2079; C97,§3040; C24, 27, 31, 35, 39,§**9406**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§535.4]

535.5 Penalty for usury. If it shall be ascertained in any action brought on any contract that a rate of interest has been contracted for, directly or indirectly, in money or in property, greater than is authorized by this chapter, the same shall work a forfeiture of eight cents on the hundred by the year upon the amount of the principal remaining unpaid upon such contract at the time judgment is

rendered thereon, and the court shall enter final judgment in favor of the plaintiff and against the defendant for the principal sum so remaining unpaid without costs, and also against the defendant and in favor of the state, for the use of the school fund of the county in which the action is brought, for the amount of the forfeiture; and in no case where unlawful interest is contracted for shall the plaintiff have judgment for more than the principal sum, whether the unlawful interest be incorporated with the principal or not. [R60,§1791; C73,§2080; C97,§3041; C24, 27, 31, 35, 39,§9407; C46, 50, 54, 58, 62, 66, 71, 73, 75, §535.5]

535.6 Interest in excess of two percent per month. Every person or persons, company, corporation, or firm, and every agent of any person, persons, company, corporation, or firm, who shall take or receive, or agree to take or receive, directly or indirectly, by means of commissions or brokerage charges, or otherwise, for the forbearance or use of money in the sum or amount of more than five hundred dollars a rate greater than two percent per month, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days. Nothing herein contained shall be construed as authorizing a higher rate of interest than is now provided by law. Provided, however, this section shall not apply to lawful loans under chapter 536. [SS15, §3041-a; C24, 27, 31, 35, 39,§9408; C46, 50, 54, 58, 62, 66, 71, 73, 75,§535.6]

535.7 Assignee of usurious contract. Any assignee of a usurious contract, becoming such in good faith in the usual course of business and without notice of such fact, may recover of the usurer the full amount of the consideration paid by him therefor, less any sum that may have been realized on the contract, anything in this chapter contained to the contrary notwithstanding. [R60,§1792; C73,§2081; C97, §3042; C24, 27, 31, 35, 39,§9409; C46, 50, 54, 58, 62, 66, 71, 73, 75,§535.7]

CHAPTER 536

CHATTEL LOANS

Referred to in §§524.211(1,2), 524.212, 533.25, 533A.2, 535.6, 536A.5, 537.2301, 537.6105, 537.6201, 554.9203(4), 601A.9

536.1 License and rights thereunder—face-to-face solicitation.
536.2 Application—fees.
536.3 Bond.
536.4 Grant or refusal of license.
536.5 License—form—posting.
536.6 Additional bond.
536.7 Separate license — change of place of business.
536.8 Annual fee—payment—new bond.
536.9 Suspension, revocation or surrender of license.
536.10 Examination of business—fee.
536.11 Records—annual report by licensee.
536.12 Restrictions on practices.
536.13 Banking board—report—additional restrictions.
536.14 Rights of borrower—payments.
536.15 Usury—limitation on principal loan.
536.16 Nonresident licensees—face-to-face solicitation.
536.17 and 536.18 Repealed by 65GA, ch 1250, §9.132.
536.19 Violations.
536.20 Nonapplicability of statute.
536.21 Rules.
536.22 Assistants.
536.23 Judicial review.
536.24 List of licensees by banking superintendent.
536.25 Statement of other loans by borrower.
536.26 Insured loans.
536.27 Repealed by 65GA, ch 1250,§9.132.
536.28 Definitions.
536.29 Enforcement of Iowa consumer credit code.

536.1 License and rights thereunder—face-to-face solicitation. With respect to a loan other than a consumer loan, no person, copartnership, association, or corporation shall engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of one thousand dollars or less and charge, contract for, or receive on any such loan a greater rate of interest or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder except as authorized by this chapter and without first obtaining a license from the superintendent of banking, hereinafter called the superintendent. With respect to a consumer loan, a person required by section 537.2301 to have a license shall not engage in the business of making loans of money, credit, goods or things in action in the amount or value of one thousand dollars or less and charge, contract for, or receive on any such loan a greater rate of interest or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder, except as authorized by this chapter and without first obtaining a license

from the superintendent. A person who enters into less than ten supervised loans per year in this state and who neither has an office physically located in this state nor engages in face-to-face solicitation in this state may contract for and receive the rate of interest permitted in this chapter for licensees hereunder. A "consumer loan" shall be as defined in section 537.1301. [C24, 27, 31,§9410; C35,§9438-f1; C39,§**9438.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.1]

Referred to in §§536.10, 536.13(1), 536.19

536.2 Application — fees. Application for such license shall be in writing, under oath, and in the form prescribed by the superintendent, and shall contain the name and the address (both of the residents and place of business) of the applicant, and if the applicant is a copartnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, of the place where the business of making loans under the provisions of this chapter is to be conducted and such further relevant information as the superintendent may require. Such applicant at the time of making such application shall pay to the superintendent the sum of fifty dollars if the liquid assets of the applicant are not in excess of twenty thousand dollars, and the sum of one hundred dollars if the liquid assets of the applicant are in excess of twenty thousand dollars, as a fee for investigating the application and the additional sum of seventy-five dollars if the liquid assets of the applicant are not in excess of twenty thousand dollars, and one hundred fifty dollars if the liquid assets of the applicant are in excess of twenty thousand dollars, as an annual license fee.

Every applicant shall also prove, in form satisfactory to the superintendent, that he or it has available for the operation of such business at the place of business specified in the application, liquid assets of at least five thousand dollars, or that he or it has at least the said amount actually in use in the conduct of such business at such place of business. [C24, 27, 31,§§9411, 9412; C35,§9438-f2; C39,§**9438.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.2]

Referred to in §§536.4, 536.8, 536.16, 536.22

536.3 Bond. The applicant shall also at the same time file with the superintendent a bond to be approved by him in which the applicant shall be the obligor, with one or more sureties, in the sum of one thousand dollars. The said bond shall run to the state for the use of the state and of any person or persons who may have a cause of action against the obligor of said bond under the provisions of this chapter. Such bond shall be conditioned that said obligor will faithfully conform to and abide by the provisions of this chapter and of all rules and regulations lawfully made by the superintendent hereunder, and will pay to the state and to any such person or persons any and all moneys that may become due or owing to the state or to such person or persons from said obligor under and by virtue of the provisions of this chapter. [C24, 27, 31,§§9413, 9414; C35,§9438-f3; C39,§**9438.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.3]

Referred to in §§536.6, 536.8

536.4 Grant or refusal of license. Upon the filing of such application, the approval of such bond and the payment of such fees, the superintendent shall make a thorough and complete investigation of the facts as he may deem necessary or proper.

If the superintendent shall determine from such application and from such investigation that the applicant can have a reasonable expectancy of a successful lending business at the location of the office for which application is made, and that there is a real need and necessity in that community for additional lending facilities to adequately serve the local people, and that said applicant is one who will command the respect of and confidence from the people in that community; that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a copartnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to warrant the belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this chapter, and if the superintendent shall find that the applicant has available or actually in use the assets described in section 536.2, he shall thereupon issue and deliver a license to the applicant to make loans in accordance with the provisions of this chapter at the place of business specified in the said application; if the superintendent shall not so find he shall not issue such license and he shall notify the applicant of the denial and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The superintendent shall approve or deny every application for a license hereunder within sixty days from the filing of the application and the approved bond and the payment of the said fees.

If the application is denied the superintendent shall within twenty days thereafter file with the banking department a written transcript of the evidence and decision and findings with respect thereto containing the reasons supporting the denial, and forthwith serve upon the applicant a copy thereof. [C24, 27, 31,§9415; C35,§9438-f4; C39,§**9438.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.4]

Referred to in §536.16

536.5 License—form—posting. Such license shall state the address of the place where the business of making such loans is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership or association, the names of the members thereof, and if a corporation, the date and

place of its incorporation. Such license shall be kept conspicuously posted in such place of business and shall not be transferable or assignable. [C24, 27, 31,§§9411, 9418; C35,§9438-f5; C39,§**9438.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §536.5]

536.6 Additional bond. If the superintendent shall find at any time that the bond is insecure or exhausted or otherwise of doubtful validity or collectibility, an additional bond to be approved by him, with one or more sureties and of the character specified in section 536.3, in the sum of not more than one thousand dollars, shall be filed by the licensee within ten days after written demand upon the licensee by the superintendent.

Every licensee shall have available at all times for each licensed place of business at least five thousand dollars in assets, either in liquid form or actually in use in the conduct of such business. [C24, 27, 31,§9437; C35,§9438-f6; C39,§**9438.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.6]

Referred to in §536.16

536.7 Separate license—change of place of business. Not more than one place of business where such loans are made shall be maintained under the same license, but the superintendent may issue more than one license to the same licensee upon compliance, for each such additional license, with all the provisions of this chapter governing an original issuance of a license.

Whenever a licensee shall change such place of business to another location he shall at once give written notice thereof to the superintendent who shall attach to the license in writing his record of the change and the date thereof, which shall be authority for the operation of such business under such license at such new place of business. [C24, 27, 31,§§9416, 9419; C35,§9438-f7; C39,§**9438.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.7]

536.8 Annual fee — payment — new bond. Every licensee shall, on or before the fifteenth day of each December, pay to the superintendent the sum as provided in section 536.2 as an annual license fee for the next succeeding calendar year and shall at the same time file with the superintendent a new bond or renewal of the old bond in the same amount and of the same character as required by section 536.3. [C35,§9438-f8; C39,§**9438.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.8]

536.9 Suspension, revocation or surrender of license.

1. The superintendent may, upon at least twenty days' written notice to the licensee stating the contemplated action and grounds, and upon reasonable opportunity to be heard, revoke any license issued hereunder if he shall find that:

a. The licensee has failed, after ten days' notice of default, to pay the annual license fee or to maintain in effect the bond or bonds required under the provisions of this chapter or to comply with any rule or regulation of the superintendent lawfully made pursuant to and within the authority of this chapter; or that

b. The licensee has violated any provision of this chapter or any rule or regulation lawfully made by the superintendent under and within the authority of this chapter; or that

c. Any fact or condition exists which would clearly have warranted the superintendent in refusing originally to issue such license.

2. If the superintendent shall find that probable cause for revocation of any license exists and that the enforcement of the chapter requires immediate suspension of such license pending investigation, he may, upon five days' written notice and a hearing, suspend such license for a period not exceeding thirty days.

3. The superintendent may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if he shall find that such grounds for revocation or suspension are of general application to all licensed places of business, or to more than one licensed place of business, operated by such licensee, he shall revoke or suspend all of the licenses issued to such licensee or such licenses as such grounds apply to, as the case may be.

4. Any licensee may surrender any license by delivering to the superintendent written notice that he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

5. No revocation or suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

6. Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or suspended in accordance with the provisions of this chapter. The superintendent shall have authority on his own initiative to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which would have warranted the superintendent in refusing originally to issue such license under this chapter.

7. Whenever the superintendent shall revoke or suspend a license issued under this chapter, he shall forthwith file with the banking department a written transcript of the evidence and order to that effect and findings with respect thereto containing the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof. [C24, 27, 31,§9436; C35,§9438-f9; C39, §**9438.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.9]

536.10 Examination of business — fee. For the purpose of discovering violations of this chapter or securing information lawfully re-

quired by him hereunder, the superintendent may at any time, either personally or by an individual or individuals duly designated by him, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business described in section 536.1, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter. For that purpose the superintendent and his duly designated representatives shall have and be given free access to the place of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The superintendent and all individuals duly designated by him shall have authority to require the attendance of and to examine under oath all individuals whomsoever whose testimony he may require relative to such loans or such business.

The superintendent shall make an examination of the affairs, place of business, and records of each licensed place of business at least once each year.

Every licensee subject to examination, supervision and regulation by the superintendent, shall pay to the superintendent an examination fee, based on the actual cost of the operation of the small loan division of the department of banking, and the proportionate share of administrative expenses in the operation of the department of banking attributable to the small loan division as determined by the superintendent of banking. Such fee shall apply equally to all licenses and shall not be changed more frequently than annually and when changed, shall be effective on January 1 of the year following the year in which the change is approved.

Upon completion of each examination required or allowed by this chapter, the examiner shall render a bill for such fee, in triplicate, and shall deliver one copy to the licensee and two copies to the superintendent. Failure to pay the fee to the superintendent within ten days after the date of the close of each such examination shall subject the licensee to an additional fee of five percent of the amount of such fee for each day the payment is delinquent. [C24, 27, 31,§9433; C35, §9438-f10; C39,**§9438.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.10]

Referred to in §§536.16, 537.2305

536.11 Records—annual report by licensee. The licensee shall keep such books, accounts, and records as the superintendent may require in order to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the superintendent hereunder. Every licensee shall preserve for at least two years after making the last entry on any loan recorded therein all books, accounts, and records, including cards used in the card system, if any.

Each licensee shall annually on or before the fifteenth day of March file a report with the superintendent giving such relevant information as the superintendent reasonably may require concerning the business and operations during the preceding calendar year of the licensed places of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the superintendent who shall make and publish annually an analysis and recapitulation of such reports. [C24, 27, 31,§9434; C35,§9438-f11; C39,**§9438.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.11]

536.12 Restrictions on practices. No licensee shall conduct the business of making loans under the provisions of this chapter within any office, room, suite or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the superintendent upon his finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this chapter or of the rules lawfully made by him hereunder.

No licensee shall make any loan provided for by this chapter under any other name or at any other place of business than that named in the license.

No licensee shall take any instrument in which blanks are left to be filled in after execution. [C24, 27, 31,§§9426, 9432; C35,§9438-f12; C39,**§9438.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §536.12]

Referred to in §536.19

536.13 Banking board — report — additional restrictions.

1. It shall be the duty of the state banking board, hereinafter called the board, and it shall have power, jurisdiction, and authority, from time to time to investigate the conditions and find the facts with reference to the business of making small loans, as described in section 536.1, hereinafter referred to as small loans, and after making such investigation, report in writing their findings to the next regular session of the general assembly, and upon the basis of such facts:

a. To classify small loans by a regulation according to such system of differentiation as will reasonably distinguish such classes of loans for the purposes of this chapter, and

b. To determine and fix by a regulation such maximum rate of interest or charges upon each such class of small loans as will induce efficiently managed commercial capital to enter such business in sufficient amounts to make available adequate credit facilities to individuals without the security or financial responsibility usually required by banks. Such maximum rate of interest or charge shall be stated by the board as an annual percentage rate calculated according to the actuarial method and applied to the unpaid balances of the amount financed.

2. The board may from time to time, commencing March 1, 1935, redetermine and refix

by a regulation, in accordance with subsection 1 above, any maximum rate of interest or charges previously fixed by it, but such changed maximum rates shall not affect preexisting loan contracts lawfully entered into between any licensee and any borrower; all regulations which the board may make respecting rates of interest or charges shall fix and contain the effective date thereof, which shall not be earlier than thirty days after notice to each licensee by mailing such notice to each licensed place of business.

3. Before fixing any classification of small loans or any maximum rate of interest or charges, or changing any such classification or rate under authority of this section, the board shall give reasonable notice of its intention to consider doing so to all licensees and a reasonable opportunity to be heard thereon and to introduce evidence with respect thereto.

4. Beginning July 4, 1965, and until such time as a different rate is fixed by the board, the maximum rate of interest or charges upon such class or classes of small loans shall be three percent per month on any part of the unpaid principal balance of the loan not exceeding one hundred fifty dollars and two percent per month on any part of the loan in excess of one hundred fifty dollars, but not exceeding three hundred dollars, and one and one-half percent per month on any part of the unpaid principal balance of the loan in excess of three hundred dollars, but not exceeding seven hundred dollars, and one percent per month on any part of the unpaid principal balance of the loan in excess of seven hundred dollars.

5. Every licensee hereunder may lend any sum of money not exceeding one thousand dollars in amount and may charge, contract for, and receive thereon interest or charges at a rate not exceeding the maximum rate of interest or charges determined and fixed by the board under authority of this section or by the provisions of the preceding subsection 4.

6. The following provision shall apply to all loans including consumer loans made by a licensee hereunder: If any interest or charge in excess of those permitted by this chapter are charged, contracted for, or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever.

The provisions of the Iowa consumer credit code shall apply to a consumer loan in which the licensee participates or engages, and any violation of the Iowa consumer credit code shall be a violation of this chapter.

Article 2, parts 3, 5 and 6, and article 3, sections 537.3203, 537.3206, 537.3209, 537.3304, 537.3305 and 537.3306 shall apply to any credit transaction, as defined in section 537.1301 in which a licensee participates or engages, and any violation of those parts or sections shall be a violation of this chapter. For the purpose of applying the provisions of the Iowa consumer credit code to those credit transactions, "consumer loan" shall include a loan for a business purpose.

A provision of the Iowa consumer credit code applicable to loans regulated by this chapter shall supersede a conflicting provision of this chapter. [C24, 27, 31,§§9420-9423; C35, §9438-f13; C39,§**9438.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.13]

Referred to in §536.19

536.14 Rights of borrower—payments. Every licensee, in addition to complying with requirements of the Iowa consumer credit code respecting consumer loans, shall:

1. Permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may apply such payment first to all interest or charges up to the date of such payment.

2. Upon repayment of the loan in full, mark indelibly every obligation and security other than a mortgage* signed by the borrower with the word "paid" or "canceled", and release any security interest which no longer secures a loan to the licensee, restore any collateral, return any note and any assignment given to the licensee by the borrower.

3. Display prominently in each licensed place of business an accurate schedule, to be approved by the superintendent, of the charges currently to be made upon all loans. [C24, 27, 31,§9425; C35,§9438-f14; C39,§**9438.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.14]

Referred to in §536.19
*See §554.1201(37)

536.15 Usury—limitation on principal loan. No licensee shall directly or indirectly charge, contract for, or receive any interest or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than one thousand dollars. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently or both to the licensee at any time the sum of more than one thousand dollars for principal. [C24, 27, 31,§9424; C35,§9438-f15; C39,§**9438.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.15]

536.16 Nonresident licensees — face-to-face solicitation. Notwithstanding other provisions of this chapter to the contrary, a person who neither has an office physically located in this state nor engages in face-to-face solicitation in this state, if authorized by another state to make loans in that state at a rate of finance charge in excess of the rate provided in chapter 535, shall not be subject to the following provisions of this chapter:

1. Section 536.2 to the extent it requires payment of an annual license fee in excess of ten dollars and requires a person to prove he has

any dollar amount of liquid assets or the use of any dollar amount in the conduct of his business at the licensed place of business.

2. Section 536.4, however, the superintendent may deny a license if upon investigation he determines that the financial responsibility, experience, character or general fitness of the person, or members, officers, or directors thereof, do not warrant the belief that the business will be operated lawfully, honestly, fairly and efficiently, within the purposes of this chapter.

3. Section 536.6 to the extent it requires a person to have any dollar amount of assets available for a licensed place of business.

4. Section 536.10 to the extent it requires the superintendent to make an examination of the affairs, place of business and records of the person on a periodic basis. [C75,§536.16]

Section 536.16, Code 1973, repealed by 65GA, ch 1250,§9.132

536.17 and 536.18 Repealed by 65GA, ch 1250,§9.132

536.19 Violations. Any person, copartnership, association, or corporation and the several members, officers, directors, agents, and employees thereof, who shall violate or participate in the violation of any of the provisions of sections 536.1, 536.12, 536.13 or 536.14, which are not also violations of article 5, part 3, of the Iowa consumer credit code, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not more than five hundred dollars or by imprisonment of not more than six months, or by both such fine and imprisonment, in the discretion of the court. Violations of the Iowa consumer credit code shall be subject to the penalties provided therein. [C24, 27, 31,§9435; C35,§9438-f19; C39,§**9438.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.19]

536.20 Nonapplicability of statute. This chapter shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, trust companies, building and loan associations, credit unions or licensed pawnbrokers, nor shall it apply to any domestic corporation entitled to the benefits of chapter 536A. [C35,§9438-f20; C39,§**9438.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.20]

536.21 Rules. The superintendent is hereby authorized and empowered to make such reasonable and relevant rules as may be necessary for the execution and the enforcement of the provisions of this chapter, in addition hereto and not inconsistent herewith. All rules shall be filed and entered by the superintendent in the banking department in an indexed, permanent book or record, with the effective date thereof suitably indicated, and such book or record shall be a public document. [C35,§9438-f21; C39,§**9438.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.21]

536.22 Assistants. The superintendent of banking is hereby authorized to employ such competent help as he deems necessary to carry out and perform the provisions of this chapter, and is hereby authorized and empowered to pay such persons so employed from the license fees, examination fees, and investigation fees referred to in section 536.2. [C35,§9438-f22; C39,§**9438.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.22]

536.23 Judicial review. Judicial review of the actions of the superintendent or the state banking board may be sought in accordance with the terms of the Iowa administrative procedure Act. [C35,§9438-f23; C39,§**9438.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§536.23]

Constitutionality, 45ExGA, ch 125,§25
Omnibus repeal, 45ExGA, ch 125,§24

536.24 List of licensees by banking superintendent. The superintendent of banking shall, in listing the names of licensees under this chapter, indicate if the licensee is one of a chain of two or more such licensees, the name of the owner and the address of the principal place of business of each owner, a summary of individual reports of each such licensed office indicating its location, the name of licensee, capital, surplus, reserves, loans receivable, cash and due from banks, real estate, borrowed money, net worth, total assets, total liabilities and such other pertinent and related information as may be necessary or desirable to give a correct and full picture of the total assets and total liabilities of each such licensee. [C62, 66, 71, 73, 75,§536.24]

536.25 Statement of other loans by borrower. Every licensee when making a loan hereunder shall require a statement in writing from each applicant setting forth a description of all installment indebtedness of such applicant by giving the amount of each such loan and the name of the lender. [C62, 66, 71, 73, 75,§536.25]

536.26 Insured loans. No licensee shall, directly or indirectly, sell or offer for sale any insurance in connection with any loan made under this chapter except as and to the extent authorized by this section. Life, accident and health insurance, or any of them, may be written by a licensed insurance agent upon or in connection with any loan for a term not extending beyond the final maturity date of the loan contract but only upon one obligor on any one loan contract.

The amount of life insurance shall at no time exceed the unpaid balance of principal and interest combined which are scheduled to be outstanding under the terms of the loan contract or the actual amount unpaid on the loan contract, whichever is greater.

Accident and health insurance shall provide benefits not in excess of the unpaid balance of principal and interest combined which are scheduled to be outstanding under the terms of the loan contract and the amount of

each periodic benefit payment shall not exceed the total amount payable divided by the number of installments and shall provide that if the insured obligor is disabled, as defined in the policy, for a period of more than fourteen days, benefits shall commence as of the first day of disability.

The premium, which shall be the only charge for such insurance, shall not exceed that approved by the commissioner of insurance of the state of Iowa as filed in the office of such commissioner. Such charge, computed at the time the loan is made for the full term of the loan contract on the total amount required to pay principal and interest.

If a borrower procures insurance by or through a licensee, the licensee shall cause to be delivered to the borrower a copy of the policy within fifteen days from the date such insurance is procured. No licensee shall decline new or existing insurance which meets the standards set out herein nor prevent any obligor from obtaining such insurance coverage from other sources.

If the loan contract is prepaid in full by cash, a new loan, or otherwise (except by the insurance) any life, accident and health insurance procured by or through a licensee shall be canceled and the unearned premium shall be refunded. The amount of such refund shall represent at least as great a proportion of the insurance premium or identifiable charge as the sum of the consecutive monthly balances of principal and interest of the loan contract originally scheduled to be outstanding after the installment date nearest the date of prepayment bears to the sum of all such monthly balances of the loan contract originally scheduled to be outstanding. [C66, 71, 73, 75,§536.26]

536.27 Repealed by 65GA, ch 1250,§9.132.

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

1. "*Administrator*" means the person designated in section 537.6103.

2. "*Licensee*" means a person licensed under this chapter. [C75,§538.28]

536.29 Enforcement of Iowa consumer credit code.

1. The superintendent shall enforce the Iowa consumer credit code with respect to licensees, as provided in sections 537.2303, 537.2305 and 537.6105.

2. The superintendent shall co-operate with the administrator, and shall assist the administrator whenever necessary to provide for the discharge of the duties of the administrator.

3. Notwithstanding other provisions of this chapter to the contrary, the superintendent shall authorize to be furnished to the administrator, access to or copies of records in the possession of the superintendent or other persons which relate to a person licensed under this chapter, when necessary to enable the administrator to enforce chapter 537.

4. The superintendent shall make an annual report in writing to the administrator. A copy of the report shall be furnished at cost by the superintendent to each licensee or other person upon request. The annual report shall contain:

a. A summary of license applications approved or denied by the superintendent since the last report.

b. A summary of the assets, liabilities and capital structure of all licensees, and volume of consumer installment of credit outstanding per licensee, as of December 31 of the year for which the report is made.

c. An estimate of the disbursements of agency funds for consumer credit protection during the calendar year ending the preceding December 31.

d. Information which the superintendent may deem appropriate and advisable to disclose.

e. Information which the administrator may require to be included. [C75,§536.29; 66GA, ch 1212,§4]

CHAPTER 536A

IOWA INDUSTRIAL LOAN LAW

Referred to in §§524.211(1,2), 524.212, 533A.2, 536.20, 537.2301, 537.6105, 537.6201, 554.9203, 601A.9

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536A.31 Applicability of Iowa consumer credit code.

536A.1 Title. This chapter may be referred to as the "Iowa Industrial Loan Law". [C66, 71, 73, 75,§536A.1]

536A.2 Definitions. The following words and terms when used in this chapter shall have the following meanings unless the context clearly requires a different meaning:

1. *"Corporation"* shall mean any corporation for pecuniary profit organized under the laws of the state of Iowa;
2. *"License"* shall mean a permit or authorization issued or required under the provisions of this chapter to make loans in accordance with this chapter at a single location or place of business;
3. *"Licensee"* shall mean a corporation to which a license has been issued;
4. *"Auditor"* shall mean the auditor of the state of Iowa;
5. *"Industrial Loan Company"* shall mean a corporation operating under the provisions of this chapter and engaged in the business of loaning money to be repaid in one payment or in weekly, monthly or other periodic installments and the charging, receiving or requiring of interest, discount, fees, compensation or charges of whatever nature or kind for the use of such money and for the services to be rendered to the borrower in connection with the loan. The term "Industrial Loan Company" shall not include those businesses specifically exempted in section 536A.5.
6. *"Administrator"* means the person designated in section 537.6103.
7. *"Licensee"* means a person licensed under this chapter. [C66, 71, 73, 75,§536A.2]

536A.3 License — face-to-face solicitation. With respect to a loan other than a consumer loan, no person shall engage in the business of operating an "Industrial Loan Company" in the state of Iowa without first having obtained a license from the auditor of the state of Iowa. With respect to a consumer loan, no person required by section 537.2301 to have a license shall be authorized to engage in the business of operating an "Industrial Loan Company" without first obtaining a license from the auditor of the state of Iowa. A person which enters into less than ten supervised loans per year in this state and which neither has an office physically located in this state nor engages in face-to-face solicitation in this state may contract for and receive the rate of interest permitted in this chapter for licensees hereunder. A "consumer loan" shall be as defined in section 537.1301. [C66, 71, 73, 75, §536A.3]

Referred to in §536A.27

536A.4 Limitations. No license shall be issued to any individual, partnership, nonprofit organization or unincorporated association. Not more than one place of business where loans are made shall be maintained under the same license but the auditor may issue more than one license to the same licensee upon compliance, for each such additional license, with all the provisions of this chapter governing an original issuance of a license. [C66, 71, 73, 75,§536A.4]

536A.5 Exemptions. The provisions of this chapter shall not apply to businesses organized or operating as permitted under the authority of any law of this state, or of the United States, relating to banks, trust companies, building and loan associations, savings and loan associations, insurance companies, small loan companies organized under the provisions of chapter 536, or credit unions; nor shall the provisions of this chapter apply to persons, firms or corporations that make no loans excepting on notes secured by first mortgages on real estate, nor shall the provisions of this chapter apply to licensed real estate brokers or salesmen, persons or corporations engaged exclusively in the business of purchasing commodity financing or commercial paper, pawnbrokers or persons engaged in the mercantile business. The provisions of this chapter shall not apply to loans made to any domestic or foreign corporation. [C66, 71, 73, 75,§536A.5]

Referred to in §536A.2

536A.6 Administration. The auditor of the state of Iowa is hereby invested with the power, authority and duty to supervise the operation of industrial loan companies in the state of Iowa in accordance with the provisions of this chapter. [C66, 71, 73, 75,§536A.6]

536A.7 Application for license. Applications for licenses to engage in the business of operating industrial loan companies shall be in writing on such forms as may be prescribed by the auditor. The application shall give the name of the corporation, the location where the business is to be conducted, the street address of the place of business, the names and addresses of the officers and directors of the corporation and such other relevant information as the auditor shall require. At the time of making such application the applicant shall pay to the auditor the sum of fifty dollars to cover the cost of the investigation of the applicant. The applicant shall also pay to the auditor the sum of fifty dollars as an annual license fee for the period ending December 31 next following the application;

provided that if the license is granted after June 30 in any year, the license fee for the remainder of that year shall be twenty-five dollars and any license fee paid by the applicant in excess of that amount shall be refunded by the auditor. [C66, 71, 73, 75,§536A.7]

Referred to in §§536A.9, 536A.11, 536A.12, 536A.30

536A.8 Capital stock requirement. The paid in capital stock of any corporation engaged in the business of operating an industrial loan company shall not be less than twenty-five thousand dollars when the corporation is transacting business in any city having less than twenty-five thousand inhabitants according to the last preceding decennial census. The paid in capital stock of any corporation engaged in the business of operating an industrial loan company in any city having a population of more than twenty-five thousand inhabitants according to the last preceding decennial census shall not be less than fifty thousand dollars. The paid in capital stock of any corporation engaged in the business of operating an industrial loan company outside the limits of any incorporated city shall not be less than fifty thousand dollars. Every corporation engaged in the industrial loan business in the state of Iowa shall have a surplus of not less than ten percent of its paid in capital stock. [C66, 71, 73, 75,§536A.8]

Referred to in §§536A.10, 536A.30

536A.9 Investigation of application. Upon the filing of an application for a license to engage in the business of operating an industrial loan company, and upon payment of the investigation fee and license fee as required by section 536A.7, the auditor shall cause an investigation to be made of the facts set forth in the application. If as the result of his preliminary investigation the auditor deems it proper, the auditor may hold a hearing at a time and place designated by him for the purpose of completing his investigation. [C66, 71, 73, 75,§536A.9]

536A.10 Issuance of license. If the auditor shall find:

1. That the financial responsibility, experience, character and general fitness of the applicant and of the officers thereof are such as to command the confidence of the community, and to warrant the belief that the business will be operated honestly, fairly and efficiently within the purpose of this chapter;
2. That a reasonable necessity exists for a new industrial loan company in the community to be served;
3. That the applicant has available for the operation of the business at the specified location paid-in capital and surplus as required by section 536A.8; and
4. That the applicant is a corporation organized for pecuniary profit under the laws of the state of Iowa.

The auditor shall approve the application and issue to the applicant a license to engage in the industrial loan business in accordance with the provisions of this chapter. The auditor shall approve or deny an application for a license within one hundred twenty days from the date of the filing of such application. [C66, 71, 73, 75,§536A.10]

Referred to in §536A.30

536A.11 Denial of license. If the auditor shall not approve the application, he shall prepare a written denial of the application with a written finding of facts which shall be sent by certified mail to the applicant. Within fifteen days after mailing of notice of the denial of its application, the applicant may file with the auditor a written demand for a hearing on the application. Upon such demand being made, the auditor must within thirty days hold a formal hearing at his office in Des Moines, Iowa, notice of the time of which hearing shall be given by the auditor to the applicant by mail within fifteen days after the filing of the written demand by the applicant. Notice of the time and place of hearing shall also be given by the auditor to all corporations holding licenses to engage in the industrial loan business in the county where the applicant proposes to establish its business and notice of said time and place of hearing shall be published pursuant to section 618.14.

At the formal hearing after the original denial of the license by the auditor the applicant shall be entitled to present evidence in support of his application. The auditor shall then grant or deny the application for a license within thirty days from the date of the formal hearing and give notice to the applicant by a decision and finding of facts in writing. If the application for a license is disapproved and a license is denied the auditor shall refund the annual license fee which was required to be deposited by section 536A.7 providing the cost of investigation does not exceed the investigation fee. If the cost of investigation exceeds the investigation fee, the excess cost shall be deducted from the license fee before any refund is made.

Judicial review of actions of the auditor may be sought in accordance with the terms of the Iowa administrative procedure Act. [C66, 71, 73, 75,§536A.11]

536A.12 Continuing license — annual fee — change of location. Each such license shall remain in full force and effect until surrendered, revoked, or suspended. Every licensee shall, on or before the second day of January, pay to the auditor the sum of fifty dollars as an annual license fee for the succeeding calendar year. When a licensee shall change its place of business from one location to another in the same city it shall at once give written notice thereof to the auditor who shall attach to the license in writing his record of the change and the date thereof, which shall be authority for the operation of such business under such license at the new place of business.

The license fees provided in this section and the investigation and license fee provided for

in section 536A.7, and the payment for the costs of examinations provided for in section 536A.15 shall constitute a revolving fund known as the "industrial loan law revolving fund." From this fund shall be paid all expenses incurred in the administration of this chapter. Any remainder in said fund at the end of each calendar year, exclusive of any license fees deposited for the succeeding year, shall revert to the general fund of the state. [C66, 71, 73, 75,§536A.12]

Referred to in §536A.30

536A.13 Books and records. Each industrial loan company shall keep such books, accounts and records as will enable the auditor to determine whether or not the licensee is complying with the provisions of this chapter. Industrial loan companies shall not be required to preserve or keep their records or files for a longer period than eleven years next after the first day of January of the year following the time of the making or filing of such records or files. [C66, 71, 73, 75,§536A.13]

536A.14 Annual report. Each licensee shall annually on or before the fifteenth day of March file with the auditor a report in writing showing the results of the operation of its industrial loan business for the previous calendar year, which report shall contain:

1. A balance sheet showing all assets and liabilities as of the thirty-first day of December next preceding.
2. An operating statement showing income, expenses and net profit for the previous calendar year.
3. Such other relevant information as the auditor shall reasonably require.

The report shall be verified under oath by the president and secretary of the corporation. The auditor shall make and publish annually an analysis and recapitulation of such reports. [C66, 71, 73, 75,§536A.14]

536A.15 Examination of licensees. The auditor or his duly authorized representative shall, at least once each year without previous notice, examine and audit the books, accounts and records of each licensee engaged in the industrial loan business as defined by this chapter. Any licensee, in lieu of such examination and audit by the auditor or his duly authorized representative, at the option of the auditor, may be audited at the expense of the licensee by a certified public accountant licensed to practice in the state of Iowa. After receiving such an audit the auditor may make such further examination of the licensee as he may deem necessary. A record of each examination shall be kept in the auditor's office. Such examinations and reports, and other information connected therewith, shall be kept confidential in the office of the auditor and shall not be subject to publication or disclosure to others except as in this chapter provided. Any evidence of criminal acts committed by officers, directors or employees of any industrial loan association shall be reported by the auditor to the proper authorities. The licensee shall be charged and shall pay the actual costs of the examination. [C66, 71, 73, 75,§536A.15]

Referred to in §§536A.12, 536A.30, 537.2305

536A.16 Cease and desist orders. Whenever the auditor has reasonable cause to believe that any licensee is violating any provision of this chapter, he may, after ten days' advance written notice, in addition to all actions provided for in this chapter, and without prejudice thereto, enter an order requiring such licensee to cease, desist and refrain from such violation. After receipt of the advance written notice as provided above, any licensee, within five days from the receipt of such notice may file with the auditor a written demand for a hearing. Such hearings shall promptly be held in the office of the auditor and no cease and desist order shall be issued until after the hearing during which the licensee shall be entitled to present evidence and the testimony of witnesses. [C66, 71, 73, 75,§536A.16]

536A.17 Injunctions. The auditor by counsel of the attorney general may commence an action in any court of competent jurisdiction, in the name of the state of Iowa as plaintiff on the relation of such auditor to restrain and enjoin any licensee from violating the provisions of this chapter or to restrain and enjoin any person, copartnership, firm or corporation from engaging in the business of operating an industrial loan company without obtaining a license as required by this chapter. [C66, 71, 73, 75,§536A.17]

536A.18 Revocation or suspension of license. The auditor, upon giving ten days' advance written notice to the licensee by certified mail stating his contemplated action and the grounds thereof, and after giving the licensee an opportunity to be heard, may by order in writing suspend or revoke any license issued under the provisions of this chapter, if the auditor shall find:

1. That the licensee has failed to pay the annual license fee required by this chapter.
2. That the licensee knowingly has violated any of the provisions of this chapter.
3. That the licensee has refused to submit to the examination required by this chapter.
4. That the licensee has neglected or refused for a period of more than thirty days to pay a final judgment rendered against it in the courts of this state.
5. That the licensee has become insolvent.

No suspension, revocation, relinquishment or expiration of any license shall invalidate, impair or affect the legality of obligations of any pre-existing contracts, or prevent the enforcement and collection thereof. Judicial review of the actions of the auditor may be sought in accordance with the terms of the Iowa administrative procedure Act. [C66, 71, 73, 75,§536A.18]

536A.19 Receivership—liquidation. If the auditor shall revoke the license of any industrial loan company he shall promptly report the revocation to the attorney general of Iowa who may apply to the district court of the county in which the licensee had conducted its business for the appointment of a receiver to take possession of the assets of the corporation for the purpose of liquidating its affairs. [C66, 71, 73, 75,§536A.19]

536A.20 Repealed by 65GA, ch 1250,§9.139.

536A.21 Other business in same office. A licensee engaged in the business of operating an industrial loan company under the provisions of this chapter may not conduct its business within any office, room, suite or place of business in which any other business is engaged in or conducted, unless specifically authorized to do so in writing by the auditor upon his finding that the character of the other business is such that its operation by the licensee would not facilitate evasions of this chapter or any other statute of the state of Iowa relating to the making of loans. [C66, 71, 73, 75,§536A.21]

536A.22 Thrift certificates. Licensed industrial loan companies may sell thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes or similar evidences of indebtedness. The total amount of such thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes or similar evidences of indebtedness outstanding and in the hands of the general public shall not at any time exceed ten times the total amount of capital, surplus, undivided profits and subordinated debt that gives priority to such securities of the issuing industrial loan company. The sale of such securities shall be subject to the provisions of chapter 502, and shall not be construed to be exempt therefrom by reason of the provisions of section 502.202, subsection 10, except that the sale of thrift certificates or installment thrift certificates which are redeemable by the holder thereof either upon demand or within a period not in excess of one hundred eighty days shall be exempt from sections 502.201 and 502.602. [C66, 71, 73, 75,§536A.22; 66GA, ch 234,§§614, 620]

536A.23 Powers of industrial loan companies. No industrial loan company licensed under the provisions of this chapter shall have the power and authority to:

1. Charge, receive or collect interest at a rate greater than that authorized by section 535.2, except that the interest may be computed when the note is made on the full amount of the cash advanced on the loan from the date of the note to the date of the final installment thereof, and the interest so computed may be included in the note, notwithstanding any agreement to pay the entire amount in installments; or the interest may be computed on the amount of the note and discounted or collected in advance when the loan is made, notwithstanding any agreement to pay the entire amount in installments. If the note is repayable in other than equal monthly installments, the interest may be an amount computed on the basis of the effective rates permitted as provided above; provided, however, there shall be no compounding of interest and when an interest rate as authorized herein is advertised, or negotiated for with a prospective borrower, with intent that it be computed by either of the two methods authorized herein, they being the "add on" method or the "discount" method, in such case such rate shall be further described as to the method of computation to be used, but interest computed by either method shall be stated to the borrower as provided in section 537.3210.

2. Charge, receive or collect in advance a service charge in excess of one dollar for each fifty dollars of the amount of the note, nor in excess of a total of forty dollars. The service charge authorized by this section shall not be charged, contracted for, collected or received on any loan which is renewed or rewritten within six months of the date of the original note; nor on that part of a new loan made to the same borrower by the same company which is used to discharge a prior loan made to the same borrower by the same company.

3. Require any borrower to purchase insurance from the lender as a condition for obtaining a loan. However, an industrial loan company may collect from the borrower, at the option of the borrower, and transmit the premiums charged for insuring real or personal property used by the borrower as security for a loan and provided that such insurance is obtained from a licensed insurance agent for an insurance company authorized to do business in Iowa; and the premiums charged for insuring the life of one party on the loan in an amount not to exceed the total amount of the note or contract, including cash advance, interest and service charge, provided that no licensee shall require that the contract of life insurance be outstanding for more than the unpaid balance of the indebtedness and provided that such insurance is obtained from a licensed insurance agent for an insurance company authorized to do business in Iowa; and an industrial loan company may receive and transmit the premiums charged for accident and health insurance on the borrower, provided such insurance bears a reasonable relationship to the existing hazards or risk of loss, and the aggregate benefits of which shall not exceed the approximate amount of the contractual payments on the loan outstanding at the time of loss, and provided that such insurance is obtained from a licensed agent for an insurance company authorized to do business in Iowa. However, all life insurance rates in connection with industrial loans shall be subject to the rules and regulations of the insurance commissioner of the state of Iowa.

4. Industrial loan companies licensed under the provisions of this chapter may purchase notes, contracts, mortgages, accounts, receivables, leases and securities of a type and kind authorized by the auditor. [C66, 71, 73, 75, §536A.23]

536A.24 Repealed by 65GA, ch 1250, §9.139.

536A.25 Restrictions. No industrial loan company licensed under this chapter shall make any loan of money or property to, or guarantee the obligations of, any of its directors or officers; or loan to any borrower, other than a subsidiary or affiliated corporation, more than twenty percent of its total capital, surplus and undivided profits. No licensee shall make any loan under any other name or at any other place of business than that named in the license. [C66, 71, 73, 75,§536A.25]

536A.26 Prepayment. In addition to the requirements of the Iowa consumer credit code respecting consumer loans, and notwithstanding the provisions of any note or contract to the contrary, a borrower may, at any time, prepay all or any part of the unpaid balance to become payable under any note or installment contract. [C66, 71, 73, 75,§536A.26]

536A.27 Penalty. If any officer, director or agent of any corporation engaged in the business of operating an industrial loan company shall violate any of the provisions of this chapter which are not also violations of the Iowa consumer credit code; or if any person individually or as a partner, or officer, director or agent of any corporation shall engage in the business of operating an industrial loan company without obtaining the license required by section 536A.3, when that person is not required by section 537.2301 to have a license, he shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. Violations of the Iowa consumer credit code shall be subject to the penalties provided therein. [C66, 71, 73, 75,§536A.27]

536A.28 Rules. The auditor is hereby authorized and empowered to make such reasonable and relevant rules, not inconsistent herewith, as may be necessary for the enforcement of the provisions of this chapter. [C66, 71, 73, 75,§536A.28]

Constitutionality, 61GA, ch 412,§31

536A.29 Enforcement of Iowa consumer credit code.

1. The auditor shall enforce the Iowa consumer credit code with respect to licensees, as provided in sections 537.2303, 537.2305 and 537.6105.

2. The auditor shall co-operate with the administrator, and shall assist the administrator whenever necessary to provide for the discharge of the duties of the administrator.

3. Notwithstanding other provisions of this chapter to the contrary, the auditor shall authorize to be furnished to the administrator, access to or copies of records in the possession of the auditor or other persons which relate to a licensee when necessary to enable the administrator to enforce chapter 537.

4. The auditor shall make an annual report in writing to the administrator. A copy of the report shall be furnished at cost by the auditor to each licensee or other person upon request. The annual report shall contain:

a. A summary of license applications approved or denied by the auditor since the last report.

b. A summary of the assets, liabilities and capital structure of all licensees, and volume of consumer installment credit outstanding per licensee, as of December 31 of the year for which the report is made.

c. An estimate of the disbursements of agency funds for consumer credit protection during the calendar year ending the preceding December 31.

d. Information which the auditor may deem appropriate and advisable to disclose.

e. Information which the administrator may require to be included. [C75,§536A.29; 66GA, ch 1212,§5]

536A.30 Nonresident licensees — face-to-face solicitation. Notwithstanding other provisions of this chapter to the contrary, a person which neither has an office physically located in this state nor engages in face-to-face solicitation in this state, if authorized by another state to make loans in that state at a rate of finance charge in excess of the rate provided in chapter 535, shall not be subject to the following provisions of this chapter:

1. Section 536A.7, to the extent it requires payment of an annual license fee in excess of ten dollars.

2. Section 536A.8.

3. Section 536A.10, subsections 2, 3 and 4.

4. Section 536A.12, to the extent it requires a licensee to pay an annual license fee which, when combined with that required in section 536A.7, is in excess of ten dollars.

5. Section 536A.15, to the extent it requires the auditor to make an examination and audit of the books, accounts and records of the licensee on a periodic basis. [C75,§536A.30]

536A.31 Applicability of Iowa consumer credit code.

1. The provisions of the Iowa consumer credit code shall apply to a consumer loan in which the licensee participates or engages, and any violation of the said code shall be a violation of this chapter.

2. Article 2, parts 3, 5 and 6, and article 3, sections 537.3203, 537.3206, 537.3209, 537.3210, 537.3304, 537.3305 and 537.3306 shall apply to any credit transaction, as defined in section 537.1301, in which a licensee participates or engages, and any violation of those parts or

sections shall be violations of this chapter. For the purpose of applying the provisions of the Iowa consumer credit code to those credit transactions, "consumer loan" shall include a loan for a business purpose.

3. A provision of the Iowa consumer credit code applicable to loans regulated by this chapter shall supersede a conflicting provision of this chapter. [C75,§536A.31]

CHAPTER 537

CONSUMER CREDIT CODE

Referred to in §§524.227, 533.37, 534.70, 536.29, 536A.29
Chapter 537, Code 1973, transferred to ch 537A

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ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

PART 1
SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

537.1101 Short title. Articles 1 to 7 of this chapter shall be known and may be cited as the "Iowa Consumer Credit Code." [C75, §537.1101]

537.1102 Purposes—rules of construction.

1. This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this chapter are to:

a. Simplify, clarify and modernize the law governing retail installment sales and other consumer credit.

b. Provide rate ceilings for certain creditors in order to assure an adequate supply of credit to consumers.

c. Further consumer understanding of the terms of credit transactions and foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost.

d. Protect consumers against unfair practices by some suppliers, solicitors or collectors of consumer credit, having due regard for the interests of legitimate and scrupulous creditors.

e. Permit and encourage the development of fair and economically sound consumer credit practices.

f. Conform the regulation of disclosure in consumer credit transactions to the Truth in Lending Act.

g. Make the law, including administrative rules, more uniform among the various jurisdictions.

3. A reference to a requirement imposed by this chapter includes reference to a related rule of the administrator adopted pursuant to this chapter. [C75,§537.1102]

537.1103 Law applicable. Unless displaced by the particular provisions of this chapter, the uniform commercial code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause supplement its provisions. [C75,§537.1103]

537.1104 Construction. This chapter being a general Act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [C75,§537.1104]

Severability, §4.12 (65GA, ch 1250,§1.105)

537.1105 and 537.1106 Reserved.

537.1107 Waiver—agreement—settlement.

1. Except in settlement of a bona fide dispute, a consumer may not waive or agree to forego rights or benefits under this Act.

2. A claim by a consumer against a creditor relating to an excess charge, any other civil violation of this chapter, or a civil penalty, or a claim by a creditor against a consumer for default or breach of a civil duty imposed by this chapter, may be settled by agreement if the claim is disputed in good faith.

3. A claim against a consumer, whether or not disputed, may be settled for less value than the amount claimed.

4. A settlement in which the consumer waives or agrees to forego rights or benefits under this chapter is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the consumer, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration may be considered, among other factors, with respect to the issue of unconscionability. [C75, §537.1107]

Referred to in §§537.3403–537.3405, 537.5110

537.1108 Effect on organizations.

1. This chapter prescribes maximum charges for certain creditors, except lessors and those excluded in section 537.1202, extending credit in consumer credit transactions.

2. This chapter does not displace limitations on powers of credit unions, savings and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

3. This chapter does not displace:

a. Limitations on powers of supervised financial organizations with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits.

b. Limitations on powers an organization is authorized to exercise under the laws of this state or the United States. [C75,§537.1108]

537.1109 Reserved.

537.1110 Obligation of good faith. Every contract or duty within this chapter imposes an obligation of good faith in its performance or enforcement. [C75,§537.1110]

PART 2
SCOPE AND JURISDICTION

537.1201 Territorial application.

1. This chapter applies to:

a. A transaction, or acts, practices or conduct with respect to a transaction, if the

transaction is entered into in this state, except that a transaction involving other than open end credit or acts, practices or conduct with respect to such a transaction shall not subject any person to damages or penalty under article 5 of this chapter, or administrative enforcement under article 6, part 1.

(1) If the buyer, lessee or debtor was physically located outside of this state, at the time he signed the writing evidencing the transaction or made, in face-to-face solicitation, a written or oral offer to enter into the transaction,

(2) If the transaction or acts, practices or conduct with respect to the transaction were not in violation of law in the state in which the buyer, lessee or debtor was physically located, and

(3) If, with respect to charges and agreements, the person does not collect or enforce that transaction except to the extent permitted by this chapter.

b. A transaction, or acts, practices or conduct with respect to a transaction, if it is modified in this state, without regard to where the transaction is entered into, except that acts, practices, conduct, disclosures, charges or provisions of agreements not in violation of law in the state where they occurred or were entered into, shall not subject any person to damages or penalty under article 5 or administrative enforcement under article 6, part 1, if, with respect to acts, practices, conduct or disclosures, they occurred outside this state and before a modification in this state, and if, with respect to charges and agreements, they are not collected or enforced by that person except to the extent permitted by this chapter. A person shall not be required to obtain a license under section 537.2301 solely because the person modifies a transaction in this state.

c. Acts, practices or conduct in this state in the solicitation, inducement, negotiation, collection or enforcement of a transaction, without regard to where it is entered into or modified; including, but not limited to, acts, practices or conduct in violation of sections 537.3209, 537.3210, 537.3311, 537.3501, article 5, parts 1 and 3, and article 7.

2. For the purposes of this section, a transaction is entered into or modified in this state if any of the following apply:

a. In a transaction involving other than open end credit:

(1) If the buyer, lessee or debtor is a resident of this state at the time the person extending credit solicits the transaction or modification, whether personally, by mail or by telephone, unless the parties have agreed that the law of the residence of the buyer, lessee or debtor applies, in which case that law applies.

(2) If the buyer, lessee or debtor is a resident of this state at the time the person extending credit receives either a signed writing evidencing the transaction or modification, or a written or oral offer of the buyer, lessee or debtor to enter into or modify the transaction.

(3) If the transaction otherwise has significant contacts with this state, unless the buyer, lessee or debtor is not a resident of this state at the times designated in subsection 2, paragraph *"a"*, subparagraphs (1) and (2), and the parties have agreed that the law of his residence applies. A person shall not be required to obtain a license under section 537.2301 solely because this chapter applies to a transaction pursuant to this subparagraph.

b. In an open end credit transaction:

(1) If the buyer, lessee or debtor is a resident of this state either at the time the buyer, lessee or debtor forwards or otherwise gives to the person extending credit a written or oral communication of his intention to establish the open end transaction, or at the time the person extending credit forwards or otherwise gives to the buyer, lessee or debtor a written or oral communication giving notice to the buyer, lessee or debtor of the right to enter into open end transactions with such person, unless the parties have agreed that the law of the residence of the buyer, lessee or debtor applies in which case that law shall apply.

(2) If the transaction otherwise has significant contacts with this state, unless the buyer, lessee or debtor is not a resident of this state at the times designated in subsection 2, paragraph *"a"*, subparagraph (1), and the parties have agreed that the law of his residence applies. A person shall not be required to obtain a license under section 537.2301 solely because this chapter applies to a transaction pursuant to this subparagraph.

c. In any credit transaction, if the parties have agreed that the law of the residence of the buyer, lessee or debtor applies and the buyer, lessee or debtor is a resident of this state at any time designated, with respect to a transaction other than open end, in subsection 2, paragraph *"a"*, subparagraphs (1) and (2) or, with respect to an open end credit transaction, in subsection 2, paragraph *"b"*, subparagraph (1).

3. For the purposes of this section, "modification" shall include, but not be limited to, any alteration in the maturity, schedule of payments, amount financed, rate of finance charge or other term of a transaction.

4. For the purposes of this chapter, the residence of a buyer, lessee or debtor is the address given by him as his residence in a writing signed by him in connection with a transaction until he notifies the person extending credit of a different address as his residence, and it is then the different address.

5. Except as provided in subsection 1, paragraph *"c"*, and subsection 6, a transaction entered into or modified in another jurisdiction is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the other jurisdiction.

6. A provision of an agreement made by a buyer, lessee or debtor is invalid:

a. Which provides, if the buyer, lessee or debtor is a resident of this state at the times designated in subsection 2, paragraph *"a"*, subparagraphs (1) and (2) and subsection 2, paragraph *"b"*, subparagraph (1):

(1) That the law of another jurisdiction shall apply, except as provided in subsection 2, paragraph *"a"*, subparagraph (1) and in subsection 2, paragraph *"b"*, subparagraph (1).

(2) That the buyer, lessee or debtor consents to be subject to the process of another jurisdiction.

(3) That the buyer, lessee or debtor appoints an agent to receive service of process.

(4) That venue is fixed at a particular place.

(5) That the consumer consents to the jurisdiction of a court that does not otherwise have jurisdiction.

b. If a provision would negate subsection 1, paragraph *"b"*.

7. The following provisions of this chapter specify the applicable law governing certain cases:

a. Section 537.6102 specifies the applicability of article 6, part 1.

b. Section 537.6201 specifies the applicability of article 6, part 2. [C75,§537.1201]

Referred to in §§537.1303(11), 537.5111, 537.5113, 537.6102, 537.6201, 537.6202

537.1202 Exclusions. This chapter does not apply to:

1. Extensions of credit to government or governmental agencies or instrumentalities.

2. Except as otherwise provided in article 4, the sale of insurance if the insured is not obligated to pay installments of the premium and the insurance may terminate or be canceled after nonpayment of an installment of the premium.

3. Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.

4. Transactions in securities or commodities accounts with a broker-dealer registered with the securities and exchange commission.

5. Pawnbrokers who are licensed and whose rates and charges are regulated under or pursuant to ordinances of cities or statutes of this state, except with respect to the provisions on compliance with the Truth in Lending Act in section 537.3201, civil liability for violation of disclosure provisions in section 537.5203, criminal penalties for disclosure violations in section 537.5302, and powers and functions of the administrator with respect to disclosure violations. [C75,§537.1202]

Referred to in §537.1108

537.1203 Jurisdiction—service of process.

1. The district court of this state may exercise jurisdiction over any person with respect to any conduct in this state governed by this chapter or with respect to any claim arising from a transaction subject to this chapter. In addition to any other method provided by rule or by statute, personal jurisdiction over a person may be acquired in a civil action or proceeding instituted in the district court by the service of process in the manner provided by this section.

2. If a person is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by this chapter, or engages in a transaction subject to this chapter, he may designate an agent upon whom service of process or original notice may be made in this state. The agent shall be a resident of state or a corporation authorized to do business in this state. The designation shall be in a writing and filed with the secretary of state. If no designation is made and filed or if process or original notice cannot be served in this state upon the designated agent, process or original notice may be served upon the secretary of state, in the manner provided in section 617.3 for service upon nonresident persons and foreign corporations which have made contracts with residents of Iowa, and the provisions of that section relating to the service of process or original notice apply. [C75, §537.1203]

PART 3
DEFINITIONS

537.1301 General definitions. As used in this Act, unless otherwise required by the context:

1. *"Actuarial method"* means the method of allocating payments made on a debt between the amount financed and the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed. The administrator may adopt rules not inconsistent with the Truth in Lending Act further defining the term and prescribing its application.

2. *"Administrator"* means the administrator designated in section 537.6103.

3. *"Agreement"* means the oral or written bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

4. *"Agricultural purpose"* means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. *"Agricultural products"* includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products,

and any and all products raised or produced on farms and any processed or manufactured products thereof.

5. *"Amount financed"* means:

a. In the case of a sale, the cash price of the goods, services, or interest in land, plus the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in, a lien on, or a debt with respect to property traded in, less the amount of any down payment whether made in cash or in property traded in, plus additional charges if permitted under paragraph *"c"*.

b. In the case of a loan, the net amount paid to, receivable by, or paid or payable for the account of the debtor, plus the amount of any discount excluded from the finance charge under subsection 20, paragraph *"b,"* subparagraph 3, plus additional charges if permitted under paragraph *"c"* of this subsection.

c. In the case of a sale or loan, additional charges permitted under section 537.2501, to the extent that payment is deferred, that the charge is not otherwise included, in the amount permitted respectively in paragraph *"a"* or *"b"*, and that the charge is authorized by and disclosed to the consumer as required by law.

6. *"Billing cycle"* means the time interval between periodic billing statement dates.

7. *"Card issuer"* means a person who issues a credit card.

8. *"Cardholder"* means a person to whom a credit card is issued or who has agreed with the card issuer to pay obligations arising from the issuance or use of the card to or by another person.

9. *"Cash price"* of goods, services or an interest in land means the price at which they are sold by the seller to cash buyers in the ordinary course of business, and may include the cash price of accessories or services related to the sale, such as delivery, installation, alterations, modifications and improvements, and taxes to the extent imposed on a cash sale of the goods, services or interest in land.

10. *Conspicuous.* A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether or not a term or clause is conspicuous is for decision by the court.

11. *"Consumer"* means the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

12. *"Consumer credit transaction"* means a consumer credit sale or consumer loan, or a refinancing or consolidation thereof, or a consumer lease.

13. *Consumer credit sale.*

a. Except as provided in paragraph *"b"*, a consumer credit sale is a sale of goods, services, or an interest in land in which all of the following are applicable:

(1) Credit is granted either pursuant to a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.

(2) The buyer is a person other than an organization.

(3) The goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose.

(4) Either the debt is payable in installments or a finance charge is made.

(5) With respect to a sale of goods or services, the amount financed does not exceed thirty-five thousand dollars.

b. A *"consumer credit sale"* does not include:

(1) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card.

(2) A sale of an interest in land if the finance charge does not exceed twelve percent per year calculated on the actuarial method on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

14. *Consumer lease.* A *"consumer lease"* is a lease of goods in which all of the following are applicable:

a. The lessor is regularly engaged in the business of leasing.

b. The lessee is a person other than an organization.

c. The lessee takes under the lease primarily for a personal, family, household or agricultural purpose.

d. The amount payable under the lease does not exceed thirty-five thousand dollars.

e. The lease is for a term exceeding four months.

15. *Consumer loan.*

a. Except as provided in paragraph *"b"*, a "consumer loan" is a loan in which all of the following are applicable:

(1) The person is regularly engaged in the business of making loans.

(2) The debtor is a person other than an organization.

(3) The debt is incurred primarily for a personal, family, household or agricultural purpose.

(4) Either the debt is payable in installments or a finance charge is made.

(5) Either the amount financed does not exceed thirty-five thousand dollars, or the debt is not incurred primarily for an agricultural purpose and is secured by an interest in land.

b. A *"consumer loan"* does not include:

(1) A sale or lease in which the seller or lessor allows the buyer or lessee to purchase or lease pursuant to a seller credit card.

(2) A loan secured by an interest in land if the security interest is bona fide and not for the purpose of circumvention or evasion of

this chapter and the finance charge does not exceed twelve percent per year calculated according to the actuarial method on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

16. *"Credit"* means the right granted by a person extending credit to a person to defer payment of debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor.

17. *"Credit card"* means a card or device issued under an arrangement pursuant to which a card issuer gives a cardholder the privilege of purchasing or leasing property or purchasing services, obtaining loans, or otherwise obtaining credit from the card issuer or other persons. A transaction is "pursuant to a credit card" if credit is obtained according to the terms of the arrangement by transmitting information contained on the card or device orally, in writing, by mechanical or automated methods, or in any other manner. A transaction is not "pursuant to a credit card" if the card or device is used solely to identify the cardholder and credit is not obtained according to the terms of the arrangement.

18. *"Creditor"* means the person who grants credit in a consumer credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment, but use of the term does not in itself impose on an assignee any obligation of his assignor. In the case of credit granted pursuant to a credit card, the "creditor" is the card issuer and not another person honoring the credit card.

19. *"Earnings"* means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

20. *Finance charge.*

a. Except as otherwise provided in subsection *"b"*, "finance charge" means the sum of all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, including any of the following types of charges which are applicable:

(1) Interest or any amount payable under a point, discount or other system of charges, however denominated, except that, with respect to a consumer loan secured by a first lien on a dwelling of the debtor given to finance the acquisition of that dwelling, points, consisting of a charge paid in cash at the time of commitment or closing of a loan transaction or, with respect to a consumer credit sale of goods or services, a cash discount of five percent or less of the stated price of goods or services which is offered to the consumer for payment by cash, check or the like either immediately or within a period of time, shall not be part of the finance charge for the purpose of determining maximum charges pursuant to section 537.2401 and chapters 524, 534, and 535. A cash discount permitted by this subparagraph shall not be considered part of the finance charge for the purpose of determining compliance with Truth in Lending pursuant to section 537.3201 if it is properly disclosed as required by the Truth in Lending Act as amended to and including October 28, 1975 and regulations issued pursuant to that Act as so amended prior to October 28, 1975.

(2) Time price differential, credit service, service, carrying or other charge, however denominated.

(3) Premium or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(4) Charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the creditor had no notice of the charges when the credit was granted.

b. "Finance charge" does not include:

(1) Charges as a result of default or delinquency if made for actual unanticipated late payment, delinquency, default, or other like occurrence unless the parties agree that these charges are finance charges. A charge is not made for actual unanticipated late payment, delinquency, default or other like occurrence if imposed on an account which is or may be debited from time to time for purchases or other debts and, under its terms, payment in full or at a specified amount is required when billed, and in the ordinary course of business the consumer is permitted to continue to have purchases or other debts debited to the account after the imposition of the charge.

(2) Additional charges as defined in section 537.2501, or deferral charges as defined in section 537.2503.

(3) A discount, if a creditor purchases or satisfies obligations of a cardholder pursuant to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation.

21. *"Gift certificate"* means a merchandise certificate conspicuously designated as a gift certificate, and purchased by a buyer for use by a person other than the buyer.

22. *a. "Goods"* includes, but is not limited to:

(1) "Goods" as described in section 554.2105, subsection 1.

(2) Goods not in existence at the time the transaction is entered into.

(3) Things in action.

(4) Investment securities.

(5) Mobile homes regardless of whether they are affixed to the land.

(6) Gift certificates.

b. "*Goods*" excludes money, chattel paper, documents of title, instruments and merchandise certificates other than gift certificates.

23. "*Insurance premium loan*" means a consumer loan that is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one or more policies or contracts issued by or on behalf of an insurer, is secured by an assignment by the insured to the lender of the unearned premium on the policy or contract, and contains an authorization to cancel the policy or contract financed.

24. "*Lender*" means a person who makes a loan or, except as otherwise provided in this Act, a person who takes an assignment of a lender's right to payment, but use of the term does not in itself impose on an assignee any obligation of the lender.

25. "*Lender credit card*" means a credit card issued by a lender.

26. *a.* "*Loan*" means any of the following, except as provided in paragraph "*b*":

(1) The creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third person for the account of the debtor.

(2) The creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately.

(3) The creation of debt pursuant to a lender credit card in any manner, including a cash advance or the card issuer's honoring a draft or similar order for the payment of money drawn or accepted by the debtor, paying or agreeing to pay the debtor's obligation, or purchasing or otherwise acquiring the debtor's obligation from the obligee or his assignees.

(4) The creation of debt by a cash advance to a debtor pursuant to a seller credit card.

(5) The forbearance of debt arising from a loan.

b. "*Loan*" does not include:

(1) A card issuer's payment or agreement to pay money to a third person for the account of a debtor if the debt of the debtor arises from a sale or lease and results from use of a seller credit card.

(2) The forbearance of debt arising from a sale or lease.

27. "*Merchandise certificate*" means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services. Sale of a merchandise certificate on credit is a credit sale beginning at the time the certificate is redeemed.

28. "*Official fees*" means:

a. Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating, or satisfying a security interest related to a consumer credit transaction.

b. Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph "*a*" which would otherwise be payable.

29. "*Open-end credit*" means an arrangement pursuant to which all of the following are applicable:

a. A creditor may permit a consumer, from time to time, to purchase or lease on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card.

b. The amounts financed and the finance and other appropriate charges are debited to an account.

c. The finance charge, if made, is computed on the account periodically.

d. Either the consumer has the privilege of paying in full or in installments, or the transaction is a consumer credit transaction solely because a delinquency charge or the like is treated as a finance charge pursuant to subsection 20, paragraph "*b*", subparagraph (1) of this section or the creditor otherwise periodically imposes charges computed on the account for delaying payment of it and permits the consumer to continue to purchase or lease on credit.

30. "*Organization*" means a corporation, government or governmental subdivision or agency, trust, estate, co-operative, or association.

31. "*Payable in installments*" means that payment is required or permitted by agreement to be made in more than four periodic payments, excluding a down payment. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment excluding the down payment, a transaction is "payable in installments".

32. "*Person*" means:

a. A natural person, partnership, or an individual.

b. An organization.

33. *a.* "*Person related to*" with respect to a natural person or an individual means any of the following:

(1) The spouse of the individual.

(2) A brother, brother-in-law, sister, or sister-in-law of the individual.

(3) An ancestor or lineal descendant of the individual or his spouse.

(4) Any other relative, by blood or marriage, of the individual or his spouse, if the relative shares the same home with the individual.

b. "*Person related to*" with respect to an organization means:

(1) A person directly or indirectly controlling, controlled by or under common control with the organization.

(2) An officer or director of the organization or a person performing similar functions with

respect to the organization or to a person related to the organization.

(3) The spouse of a person related to the organization.

(4) A relative by blood or marriage of a person related to the organization who shares the same home with him.

34. A *"precomputed consumer credit transaction"* is a consumer credit transaction, other than a consumer lease, in which the debt is a sum comprising the amount financed and the amount of the finance charge computed in advance. A disclosure required by the Truth in Lending Act does not in itself make a finance charge or transaction precomputed.

35. *"Presumed"* or *"presumption"* means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

36. *"Sale of goods"* includes, but is not limited to, any agreement in the form of a bailment or lease of goods if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with the terms of the agreement.

37. *"Sale of an interest in land"* includes, but is not limited to, a lease in which the lessee has an option to purchase the interest, by which all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

38. *"Sale of services"* means furnishing or agreeing to furnish services for a consideration and includes making arrangements to have services furnished by another.

39. *"Seller"* means a person who makes a sale or, except as otherwise provided in this chapter, a person who takes an assignment of the seller's right to payment, but use of the term does not in itself impose on an assignee any obligation of the seller.

40. *"Seller credit card"* means either of the following:

a. A credit card issued primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase or lease property or services from the card issuer, persons related to the card issuer, persons licensed or franchised to do business under the card issuer's business or trade name or designation, or from any of these persons and from other persons as well.

b. A credit card issued by a person other than a supervised lender primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase or lease property or services from at least one hundred persons not related to the card issuer.

41. *"Services"* includes, but is not limited to:

a. Work, labor, and other personal services.

b. Privileges or benefits with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like.

c. Insurance.

42. *"Supervised financial organization"* means a person, other than an insurance company or other organization primarily engaged in an insurance business, which is organized, chartered, or holding an authorization certificate pursuant to chapter 524, 533, or 534, or pursuant to the laws of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate or deposit account, and which is subject to supervision by an official or agency of this state or of the United States.

43. *"Supervised loan"* means a consumer loan, including a loan made pursuant to open end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds the rate of finance charge permitted in chapter 535.

With respect to a consumer loan made pursuant to open end credit, the finance charge shall be deemed not to exceed the rate permitted in chapter 535 if the finance charge contracted for and received does not exceed a charge for each monthly billing cycle which is one-twelfth of that rate multiplied by the average daily balance of the open end account in the billing cycle for which the charge is made. The average daily balance of the open end account is the sum of the amount unpaid each day during that cycle divided by the number of days in the cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day. If the billing cycle is not monthly, the finance charge shall be deemed not to exceed that rate per year if the finance charge contracted for and received does not exceed a percentage which bears the same relation to that rate as the number of days in the billing cycle bears to three hundred sixty-five. A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from the regular date. [C58, 62, 66, 71, 73,§322.2(12)–(15); C75,§537.1301; 66GA, ch 223,§1, ch 1221, §§1, 2]

Referred to in §§322.19, 322.33, 536.1, 536.13(6), 536A.3, 536A.31, 537.1303(10), 753.21

Amendment to subsection 20, "a" (1) effective October 28, 1975; see 66GA, ch 223,§2

537.1302 Definition—Truth in Lending Act. As used in this chapter, "Truth in Lending Act" means title 1 of the Consumer Credit Protection Act, in subchapter 1 of chapter 41 of title 15 of the United States Code, as amended to and including July 1, 1974, and includes regulations issued pursuant to that Act prior to that date. [C75,§537.1302]

Referred to in §537.5203

537.1303 Other defined terms. Other defined terms in this chapter and the sections in which they appear are:

1. *"Closing costs"*. Section 537.2501, subsection 1, paragraph *"e."*

2. *"Computational period"*. Section 537.2510, subsection 4, paragraph *"a."*

3. *"Debt"*. Section 537.7102, subsection 1.

4. *"Debt collection"*. Section 537.7102, subsection 2.

5. *"Debt collector"*. Section 537.7102, subsection 3.

6. *"Disposable earnings"*. Section 537.5105, subsection 1, paragraph *"a."*

7. *"Garnishment"*. Section 537.5105, subsection 1, paragraph *"b."*

8. *"Interval"*. Section 537.2510, subsection 4, paragraph *"b."*

9. *"Location"*. Section 537.2310, subsection 1.

10. *"Pursuant to a credit card"*. Section 537.1301, subsection 17.

11. *"Residence"*. Section 537.1201, subsection 4. [C75,§537.1303]

ARTICLE 2
FINANCE CHARGES AND RELATED PROVISIONS

PART 1
GENERAL PROVISIONS

Referred to in §§322.33, 536.13(6), 536A.31, 537.3304, 537.5301

537.2101 Short title. This article shall be known and may be cited as the "Iowa Consumer Credit Code—Finance Charges and Related Provisions." [C75,§537.2101]

537.2102 Scope. Part 2 applies to consumer credit sales. Parts 3 and 4 apply to consumer loans. Part 5 applies to other charges and modifications with respect to consumer credit transactions. Part 6 applies to other credit transactions. [C75,§537.2102]

PART 2
CONSUMER CREDIT SALES: MAXIMUM FINANCE CHARGES
Referred to in §§537.2102, 537.2501

537.2201 Finance charge for consumer credit sales not pursuant to open end credit.

1. With respect to a consumer credit sale, other than a sale pursuant to open end credit, a creditor may contract for and receive a finance charge not exceeding the maximum charge permitted by the law of this state or the United States for similar creditors. In addition, with respect to a consumer credit sale of goods or services, other than a sale pursuant to open end credit or a sale of a motor vehicle, a creditor may contract for and receive a finance charge not exceeding that permitted in subsections 2 to 6. With respect to a consumer credit sale of a motor vehicle, a creditor may contract for and receive a finance charge as provided in section 322.19, and a finance charge in excess of that provided in section 322.19, is an excess charge in violation of this chapter.

2. The finance charge, calculated according to the actuarial method, may not exceed fifteen percent per year on the unpaid balances of the amount financed.

3. This section does not limit or restrict the manner of calculating the finance charge whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section. If the sale is a precomputed consumer credit transaction, the finance charge may be calculated on the assumption that all scheduled payments will be made when due, and the effect of prepayment is governed by the provisions on rebate upon prepayment contained in section 537.2510.

4. For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed ten days or more after that date, with the date of commencement of delivery or performance. Any month may be counted as one-twelfth of a year, but a day is counted as one-three hundred sixty-fifth of a year. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. The administrator may adopt rules not inconsistent with the Truth in Lending Act with respect to treating as regular other minor irregularities in amount or time.

5. Subject to classifications and differentiations the seller may reasonably establish, he may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsection 2 if both of the following are applicable:

a. When applied to the median amount within each range, it does not exceed the maximum rate permitted by subsection 1.

b. When applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph *"a"* by more than eight percent of the rate calculated according to paragraph *"a"* of this subsection.

6. Regardless of subsection 2, the seller may contract for and receive a minimum finance charge of not more than five dollars when the amount financed does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount financed exceeds seventy-five dollars. [C75,§537.2201]

Referred to in §§537.2504, 537.2505

537.2202 Finance charge for consumer credit sales pursuant to open end credit.

1. With respect to a consumer credit sale made pursuant to open end credit, a creditor

may contract for and receive a finance charge not exceeding that permitted in this section.

2. For each billing cycle, a charge may be made which is a percentage of an amount not exceeding the greatest of the following:

a. The average daily balance of the open end account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle, divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day.

b. The balance of the open end account at the beginning of the first day of the billing cycle, after deducting all payments and credits made in the cycle except credits attributable to purchases charged to the account during the cycle.

c. The median amount within a specified range including the balance of the open end account not exceeding that permitted by paragraph "*a*" or "*b*". A charge may be made pursuant to this paragraph only if the creditor, subject to classifications and differentiations he may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent of the charge on the median amount.

3. If the billing cycle is monthly, the charge may not exceed an amount equal to one and one-half percent of that part of the maximum amount pursuant to subsection 2 which is five hundred dollars or less and one and one-fourth percent of that part of the maximum amount which is more than five hundred dollars. If the billing cycle is not monthly, the maximum charge for the billing cycle shall bear the same relation to the applicable monthly maximum charge as the number of days in the billing cycle bears to three hundred sixty-five divided by twelve. A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from the regular date.

4. If the charge determined pursuant to subsection 3 is less than fifty cents, a charge may be made which does not exceed fifty cents if the billing cycle is monthly or longer, or the pro rata part of fifty cents which bears the same relation to fifty cents as the number of days in the billing cycle bears to three hundred sixty-five divided by twelve if the billing cycle is shorter than monthly. [C75,§537.2202]

Referred to in §537.2506

PART 3
CONSUMER LOANS: SUPERVISED LOANS
Referred to in §§536.13(6), 536A.31, 537.2102

537.2301 Authority to make supervised loans.

1. As used in this part, "*licensing authority*" means the agency designated in chapter 524, 533, 534, 536, or 536A to issue licenses or otherwise authorize the conduct of business pursuant to the respective chapter or this chapter, and "*licensee*" includes any person subject to regulation by a licensing authority. "*License*" includes the authorization, of whatever form, to engage in the conduct regulated under those chapters.

2. A person who is not authorized to make supervised loans as provided herein shall not engage in the business of making supervised loans or undertaking direct collection of payments from or enforcement of rights against consumers arising from supervised loans, but he may collect and enforce for three months without a license if he promptly applies for a license and his application has not been denied.

3. The following persons are authorized to make supervised loans:

a. A person who is a supervised financial organization.

b. A person who has obtained a license pursuant to either chapter 536 or 536A.

c. A person who enters into less than ten supervised loans per year in this state and has neither an office physically located in this state nor engages in face-to-face solicitation in this state.

4. This section shall not affect dollar amount, purpose, or rate of finance charge restrictions imposed by any statute of this state or of the United States with respect to which a person is authorized to make loans at a rate of finance charge in excess of that permitted by chapter 535 or pursuant to which a person is licensed. [C75,§537.2301]

Referred to in §§536.1, 536A.3, 536A.27, 537.1201, 537.2310, 537.5201, 537.5301

537.2302 Reserved.

537.2303 Revocation or suspension of license.

1. The licensing authority may issue to a person subject to regulation by that authority an order to show cause why the person's license with respect to one or more specific places of business should not be suspended for a period not in excess of six months, or revoked. The order shall set the place for a hearing and set a time for the hearing that is not less than ten days from the date of the order. After the hearing, if the licensing authority finds that the licensee has intentionally violated this chapter, or any rule or order made pursuant to law, including an order of discontinuance, or if facts or conditions exist which would clearly have justified the licensing authority in refusing to grant a license for that place or those places of business had these facts or conditions been known to exist at the time the application for the license was made, he shall revoke or suspend the license or, if there are mitigating circumstances, may accept an assurance of discontinuance as pro-

vided in section 537.6109, and allow retention of the license.

2. No revocation or suspension of a license is lawful unless prior to institution of proceedings by the licensing authority notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

3. If the licensing authority finds that probable cause for revocation of a license exists and that enforcement of the law requires immediate suspension of the license pending investigation, he may, after a hearing upon five days' written notice, enter an order suspending the license for not more than thirty days.

4. Whenever the licensing authority revokes or suspends a license, he shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of the order he shall deliver to the licensee a copy of the order and the findings supporting the order.

5. Any person holding a license to make supervised loans may relinquish the license by notifying the licensing authority in writing of its relinquishment, but this relinquishment does not affect his liability for acts previously committed.

6. No revocation, suspension or relinquishment of a license impairs or affects the obligation of any pre-existing lawful contract between the licensee and any consumer.

7. The licensing authority may reinstate a license, terminate a suspension or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would justify the licensing authority in refusing to grant a license. [C75,§537.2303]

Referred to in §§524.227, 533.37, 534.70, 536.29, 536A.29, 537.2304, 537.6105

537.2304 Records—annual reports.

1. Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the licensing authority to determine whether the licensee is complying with the provisions of law. The record keeping system of a licensee is sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where supervised loans are made, if the licensing authority is given free access to the records wherever located.

2. On or before April 15 each year every licensee shall file with the licensing authority a composite annual report in the form prescribed by that authority relating to all supervised loans made by him. The licensing authority shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form. The licensing authority shall assess against a licensee who fails to file the prescribed report on or before April 15 a penalty of ten dollars for each day the report is overdue, up to a maximum of thirty days. When an annual report is overdue for more than thirty days, the licensing authority may institute proceedings under section 537.2303 for revocation of the licenses held by the licensee. [C75,§537.2304]

537.2305 Examinations and investigations.

1. For the purpose of discovering violations of this chapter or securing information lawfully required, the licensing authority shall examine periodically at intervals he deems appropriate, but not less frequently than is required for other examinations of the licensee by section 524.217, 533.6, 534.41, 536.10, or 536A.15, whichever is applicable, the loans, business, and records of every licensee, except a licensee which has no office physically located in this state and engages in no face-to-face solicitation in this state. In addition, the licensing authority may at any time investigate the loans, business, and records of any lender. For these purposes the licensing authority shall be given free and reasonable access to the offices, places of business, and records of the lender.

2. If the lender's records are located outside this state, the lender at his option shall make them available to the licensing authority at a convenient location within this state, or pay the reasonable and necessary expenses for the licensing authority or his representative to examine them at the place where they are maintained. The licensing authority may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

3. For the purposes of this section, the licensing authority may administer oaths or affirmations, and upon his own motion or upon request of any party may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

4. Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the licensing authority may apply to the district court for an order compelling compliance. [C75,§537.2305; 66GA, ch 1212,§6]

Referred to in §§524.227, 533.37, 534.70, 536.29, 536A.29, 537.6105

537.2306 Reserved.

537.2307 Restrictions on interest in land as security. With respect to a supervised loan in which the rate of finance charge is in excess

of fifteen percent computed according to the actuarial method, and the amount financed is two thousand dollars or less, a lender may not contract for a security interest in real property used as a residence for the consumer or his dependents. A security interest taken in violation of this section is void. [C75,§537.2307]

Referred to in §537.5201

537.2308 Regular schedule of payments—maximum loan term. Supervised loans, not made pursuant to open end credit and in which the amount financed is one thousand dollars or less, shall be scheduled to be payable in substantially equal installments at substantially equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor, and over a period of not more than thirty-seven months if the amount financed is more than three hundred dollars, or over a period of not more than twenty-five months if the amount financed is three hundred dollars or less. [C75,§537.2308]

Referred to in §537.5201

537.2309 No other business for purpose of evasion. A lender may not carry on other business for the purpose of evasion or violation of this chapter at a location where he makes supervised loans. [C75,§537.2309]

537.2310 Conduct of business other than making loans.

1. Except as provided in subsection 2, a licensee authorized to make supervised loans pursuant to section 537.2301 may not engage in the business of selling or leasing tangible goods at a location where supervised loans are made. In this section, *"location"* means the entire space in which supervised loans are made and the location must be separated from any space where goods are sold or leased by walls which may be broken only by a passageway to which the public is not admitted.

2. This section does not apply to:

a. Occasional sales of property used in the ordinary course of business of the licensee.

b. Sales of items of collateral of which the licensee has taken possession.

c. Sales of items by a licensee who is also authorized by law to operate as a pawnbroker.

d. Sales of property or items by the licensee which are not for the profit of the licensee and which are sold for a price not exceeding fifteen dollars. [C75,§537.2310; 66GA, ch 1222, §1]

Referred to in §537.1303(9)

PART 4

CONSUMER LOANS: MAXIMUM FINANCE CHARGES

Referred to in §§537.2102, 537.2501, 537.5301

537.2401 Finance charge for consumer loans not pursuant to open end credit.

1. Except as provided with respect to a finance charge for loans pursuant to open end credit under section 537.2402, a lender may contract for and receive a finance charge not exceeding the maximum charge permitted by the laws of this state or of the United States for similar lenders, and, in addition, with respect to a consumer loan not secured by a first lien on a dwelling of the debtor given to finance the acquisition of that dwelling, a supervised financial organization may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding fifteen percent per year on the unpaid balance of the amount financed.

2. This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section or the laws of this state or of the United States. The finance charge permitted by this section or the laws of this state or of the United States may be calculated by determining the single annual percentage rate as required to be disclosed to the consumer pursuant to section 537.3201 which, when applied according to the actuarial method to the unpaid balances of the amount financed, will yield the finance charge for that transaction which would result from applying any graduated rates permitted by this section or the laws of this state or of the United States to the transaction on the assumption that all scheduled payments will be made when due. If the loan is a precomputed consumer credit transaction, the finance charge may be calculated on the assumption that all scheduled payments will be made when due, and the effect of prepayment is governed by section 537.2510.

3. Except as provided in subsection 5, the term of a loan for the purposes of this section commences on the date the loan is made. Any month may be counted as one-twelfth of a year but a day is counted as one-three hundred sixty-fifth of a year. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. The administrator may adopt rules not inconsistent with the Truth in Lending Act with respect to treating as regular other minor irregularities in amount or time.

4. Subject to classifications and differentiations the lender may reasonably establish, he may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsection 1, if both of the following are applicable:

a. When applied to the median amount within each range, it does not exceed the maximum permitted by that subsection.

b. When applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph *"a"* by more than

eight percent of the rate calculated according to paragraph "*a*".

5. With respect to an insurance premium loan, the term of the loan commences on the earliest inception date of a policy or contract of insurance for which the premium is financed. [C75,§537.2401]

Referred to in §§533.14, 537.1301, 537.2504, 537.2505

537.2402 Finance charge for consumer loans pursuant to open end credit.

1. If authorized to make supervised loans, a creditor may contract for and receive a finance charge with respect to a loan pursuant to open end credit not exceeding that permitted in this section.

2. For each billing cycle, a charge may be made which is a percentage of an amount not exceeding the greatest of the following:

a. The average daily balance of the open end account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle, divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day.

b. The balance of the open end account at the beginning of the first day of the billing cycle, after deducting all payments and credits made in the cycle except credits attributable to purchases charged to the account during the cycle.

c. The median amount within a specified range including the balance of the open end account not exceeding that permitted by paragraph "*a*" or "*b*". A charge may be made pursuant to this paragraph only if the organization, subject to classifications and differentiations it may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent of the charge on the median amount.

3. If the billing cycle is monthly, the charge may not exceed an amount equal to one and one-half percent of that part of the maximum amount pursuant to subsection 2 which is five hundred dollars or less and one and one-fourth percent of that part of the maximum amount which is more than five hundred dollars. If the billing cycle is not monthly, the maximum charge for the billing cycle shall bear the same relation to the applicable monthly maximum charge as the number of days in the billing cycle bears to three hundred sixty-five divided by twelve. A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from the regular date.

4. If the charge determined pursuant to subsection 3 is less than fifty cents, a charge may be made which does not exceed fifty cents if the billing cycle is monthly or longer, or the pro rata part of fifty cents which bears the same relation to fifty cents as the number of days in the billing cycle bears to three hundred sixty-five divided by twelve if the billing cycle is shorter than monthly. [C75,§537.2402]

Referred to in §§533.14, 537.2401(1), 537.2506

PART 5

CONSUMER CREDIT TRANSACTIONS: OTHER CHARGES AND MODIFICATIONS

Referred to in §§322.33, 536A.13(6), 536A.31, 537.2102

537.2501 Additional charges.

1. In addition to the finance charge permitted by parts 2 and 4, a creditor may contract for and receive the following additional charges:

a. Official fees and taxes.

b. Charges for insurance as described in subsection 2.

c. Amounts actually paid or to be paid by the creditor for registration, certificate of title or license fees.

d. Annual charges, payable in advance, for the privilege of using a credit card which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, under an arrangement pursuant to which the debts resulting from the purchases or leases are payable to the card issuer.

e. With respect to a debt secured by an interest in land, the following "closing costs," provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this chapter:

(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes including surveys.

(2) Fees for preparation of a deed, settlement statement, or other documents, if not paid to the creditor or a person related to the creditor.

(3) Escrows for future payments of taxes, including assessments for improvements, insurance and water, sewer and land rents.

(4) Fees for notarizing deeds and other documents, if not paid to the creditor or a person related to the creditor.

f. Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator.

2. An additional charge may be made for insurance written in connection with the transaction, as follows:

a. With respect to insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, if the creditor furnishes a clear, conspicuous

and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained.

b. With respect to consumer credit insurance providing life, accident, or health coverage, if the insurance coverage is not required by the creditor, and this fact is clearly and conspicuously disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific dated and separately signed affirmative written indication of his desire to do so after written disclosure to him of the cost. [C24, 27, 31,§9422; C35,§9438-f13; C39,§9438.13; C46, 50, 54, 58, 62,§536.13(6); C66, 71, 73,§§536.13(6), 536A.23(6); C75,§537.2501]

Referred to in §§537.1301, 537.1303(1), 537.2503, 537.2504

537.2502 Delinquency charges.

1. With respect to a precomputed consumer credit transaction, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its due date, as originally scheduled or as deferred, in an amount not exceeding the greater of either of the following:

a. One and one-half percent of the unpaid amount of the installment, or a maximum of five dollars.

b. The deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

2. A delinquency charge under subsection 1, paragraph "*a*," may be collected only once on an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time afterward.

3. No delinquency charge may be collected under subsection 1, paragraph "*a*", on an installment which is paid in full within ten days after its scheduled or deferred installment due date even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection payments are applied first to current installments and then to delinquent installments. [C66, 71, 73,§§536.13(7), 536A.23(3); C75,§537.2502]

Referred to in §537.2510

537.2503 Deferral charges.

1. Before or after default in payment of a scheduled installment of a precomputed consumer credit transaction, the parties to the transaction may agree in writing to a deferral of all or part of one or more unpaid installments and the creditor may make at the time of deferral and receive at that time or at any time thereafter a deferral charge which is not in excess of one and one-half percent per month for the period of time for which it is deferred, but not to exceed the rate of finance charge which was required to be disclosed in the transaction to the consumer pursuant to section 537.3201 applied to each amount deferred for the period for which it is deferred. In computing a deferral charge for one or more months, any month may be counted as one-twelfth of a year and in computing a deferral charge for part of a month, a day shall be counted as one three hundred sixty-fifth of a year.

2. In addition to the deferral charge permitted by this section, a creditor may make and receive appropriate additional charges as permitted under section 537.2501, and the amount of these charges which is not paid may be added to the amount deferred for the purpose of computing the deferral charge according to subsection 1.

3. The parties may agree in writing at the time of a precomputed consumer credit transaction that if an installment is not paid within ten days after its due date, the creditor may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the creditor elects to accelerate the maturity of the transaction.

4. A delinquency charge made by the creditor on an installment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency. [C66, 71, 73,§§536.13(7), 537A.23(4); C75, §537.2503]

Referred to in §§322.20, 537.1301

537.2504 Finance charge on refinancing. With respect to a consumer credit transaction in which the rate of finance charge required to be disclosed in the transaction pursuant to section 537.3201 does not exceed eighteen percent per year, other than a consumer lease, the creditor may, by agreement with the consumer, refinance the unpaid balance and may contract for and receive a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on finance charge for consumer credit sales other than open end credit in section 537.2201 if a consumer credit sale is refinanced, the provisions on finance charge for a consumer loan other than a supervised loan in section 537.2401, subsection 1, or the provisions on finance charge for a supervised loan not pursuant to open end credit in section 537.2401, subsection 2, as applicable, if a consumer loan is refinanced. With respect to a consumer credit transaction in which the rate of finance charge required to be disclosed in the transaction to the consumer pursuant to section 537.3201 exceeds eighteen percent per year, other than a consumer lease, the creditor may by agreement with the consumer, refinance the unpaid balance and may contract for and receive a finance charge based on the amount financed resulting from the refi-

nancing at a rate of finance charge not to exceed that which was required to be disclosed in the original transaction to the consumer pursuant to section 537.3201. For the purpose of determining the finance charge permitted, the amount financed resulting from the refinancing consists of:

1. If the transaction was not precomputed, the total of the unpaid balance of the amount financed and the accrued charges, including finance charges, on the date of the refinancing, or, if the transaction was precomputed, the amount determined by deducting the unearned portion of the finance charge and any other unearned charges, including charges for insurance or deferral charges, from the unpaid balance on the date of refinancing. For the purposes of this section, the unearned portion of the finance charge and deferral charge, if any, shall be determined as provided in section 537.2510, subsection 2, but without allowing any minimum charge.

2. Appropriate additional charges as permitted under section 537.2501, payment of which is deferred. [C75,§537.2504]

Referred to in §§537.2505, 537.2508, 537.3308

537.2505 Finance charge on consolidation.

1. In this section, "consumer credit transaction" does not include a consumer lease.

2. If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction and becomes obligated on another consumer credit transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer credit transaction was not precomputed, the parties may agree to add the unpaid amount of the amount financed and accrued charges including finance charges on the date of consolidation to the amount financed with respect to the subsequent consumer credit transaction. If the previous consumer credit transaction was precomputed, the parties may agree to refinance the unpaid balance pursuant to section 537.2504, and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent consumer credit transaction. In either case the creditor may contract for and receive a finance charge as provided in subsection 3, based on the aggregate amount financed resulting from the consolidation.

3. If all debts consolidated arise exclusively from consumer loans, the creditor may contract for and receive the finance charge permitted by the provisions on finance charge for consumer loans pursuant to section 537.2401. If the debts consolidated include a debt arising from a consumer credit sale, including a transaction pursuant to a lender credit card, the amount of the finance charge is governed by the provisions on finance charge for consumer credit sales in section 537.2201.

4. If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction arising out of a consumer credit sale, and becomes obligated on another consumer credit transaction arising out of another consumer credit sale by the same seller, the parties may agree to a consolidation resulting in a single schedule of payments either pursuant to subsection 2 or by adding together the unpaid balances with respect to the two sales. [C75,§537.2505]

Referred to in §537.3302

537.2506 Advances to perform covenants of consumer.

1. If the agreement with respect to a consumer credit transaction other than a consumer lease contains covenants by the consumer to perform certain duties pertaining to insuring or preserving collateral and the creditor pursuant to the agreement pays for performance of the duties on behalf of the consumer, he may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the consumer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the consumer performed by the creditor pertain to insurance, a brief description of the insurance paid for by the creditor including the type and amount of coverages. No further information need be given.

2. A finance charge may be made for sums advanced pursuant to subsection 1 at a rate not exceeding the rate of finance charge required to be stated to the consumer pursuant to law in the disclosure statement required by this chapter and the Truth in Lending Act, except that with respect to open end credit the amount of the advance may be added to the unpaid balance of the debt and the creditor may make a finance charge not exceeding that permitted by section 537.2202 or 537.2402, as applicable. [C75,§537.2506]

537.2507 Attorney's fees. With respect to a consumer credit transaction, the agreement may not provide for the payment by the consumer of attorney's fees. A provision in violation of this subsection is unenforceable. [C75,§537.2507]

Referred to in §537.5201

537.2508 Conversion to open end credit. The parties may agree at or within ten days prior to the time of conversion to add the unpaid balance of a consumer credit transaction, other than a consumer lease, not made pursuant to open end credit to the consumer's open end credit account with the creditor. The unpaid balance so added is an amount equal to the amount financed determined according to the provisions on finance charge on refinancing under section 537.2504. [C75, §537.2508]

537.2509 Right to prepay. Subject to the provisions on prepayment and minimum charge under section 537.2510, the consumer may prepay in full the unpaid balance of a consumer credit transaction, other than a consumer lease, at any time. [C58, 62, 66, 71, 73, §322.3(6,*e*); C75,§537.2509]

537.2510 Rebate upon prepayment.

1. Except as provided in this section, upon prepayment in full of a precomputed consumer credit transaction, the creditor shall rebate to the consumer an amount not less than the amount of rebate provided in subsection 2, paragraph "*a*", or redetermine the earned finance charge as provided in subsection 2, paragraph "*b*", and rebate any other unearned charges including charges for insurance. If the rebate otherwise required is less than one dollar, no rebate need be made.

2. The amount of rebate and the redetermined earned finance charge shall be as follows:

a. The amount of rebate shall be determined by applying the rate of finance charge which was required to be disclosed in the transaction pursuant to section 537.3201, according to the actuarial method,

(1) If no deferral charges have been made in a transaction, to the unpaid balances and time remaining as originally scheduled for the period following prepayment.

(2) If a deferral charge has been made, to the unpaid balances and time remaining as deferred for the period following prepayment.

The time remaining for the period following prepayment shall be either the full days following the prepayment; or both the full days, counting the date of prepayment, between the prepayment date and the end of the computational period in which the prepayment occurs, and the full computational periods following the date of prepayment to the scheduled due date of the final installment of the transaction.

b. The redetermined earned finance charge shall be determined by applying, according to the actuarial method, the rate of finance charge which was required to be disclosed in the transaction pursuant to section 537.3201 to the actual unpaid balances of the amount financed for the actual time the unpaid balances were outstanding as of the date of prepayment. Any delinquency or deferral charges collected before the date of prepayment shall be applied to reduce the amount financed as of the date collected.

3. Upon prepayment, but not otherwise, of a consumer credit transaction whether or not precomputed, other than a consumer lease or one pursuant to open end credit:

a. If the prepayment is in full, the creditor may collect or retain a minimum charge not exceeding five dollars in a transaction which had an amount financed of seventy-five dollars or less, or not exceeding seven dollars and fifty cents in a transaction which had an amount financed of more than seventy-five dollars, if the minimum charge was contracted for, and the finance charge earned at the time of prepayment is less than the minimum charge contracted for.

b. If the prepayment is in part, the creditor may not collect or retain a minimum charge.

4. For the purposes of this section, the following defined terms apply:

a. "*Computational period*" means the interval between scheduled due dates of installments under the transaction if the intervals are substantially equal or, if the intervals are not substanially equal, one month if the smallest interval between the scheduled due dates of installments under the transaction is one month or more, and otherwise one week.

b. The "*interval*" between specified dates means the interval between them including one or the other but not both of them. If the interval between the date of a transaction and the due date of the first scheduled installment does not exceed one month by more than fifteen days when the computational period is one month, or eleven days when the computational period is one week, the interval may be considered by the creditor as one computational period.

5. This section does not preclude the collection or retention by the creditor of delinquency charges under section 537.2502.

6. If the maturity is accelerated for any reason and judgment is obtained, the consumer is entitled to the same rebate as if payment had been made on the date maturity is accelerated.

7. Upon prepayment in full of a precomputed consumer credit transaction by the proceeds of consumer credit insurance, the consumer or his estate is entitled to the same rebate as though the consumer had prepaid the agreement on the date the proceeds of the insurance are paid to the creditor, but no later than ten business days after satisfactory proof of loss is furnished to the creditor. [C66, 71, 73, §§536.13(7), 536A.26; C75,§537.2510]

Referred to in §§537.1303(2, 8), 537.2201(3), 537.2401(2), 537.2504, 537.2509, 537.3203

PART 6
OTHER CREDIT TRANSACTIONS

Referred to in §§322.33, 536.13(6), 536A.31, 537.2102

537.2601 Charges for other credit transactions.

1. Except as provided in subsection 2, with respect to a credit transaction other than a consumer credit transaction, the parties may contract for the payment by the debtor of any finance or other charge as permitted by law. Except with respect to debt obligations issued by a government, governmental agency or instrumentality, in calculating any finance charge contracted for, any month may be counted as one-twelfth of a year, but a day is to be counted as one three-hundred sixty-fifth of a year.

2. With respect to a credit transaction which would be a consumer credit transaction if a

finance charge were made, a charge for delinquency may not exceed amounts allowed for finance charges for consumer credit sales pursuant to open end credit. [C75,§537.2601]

Referred to in §537.5201

ARTICLE 3

REGULATION OF AGREEMENTS AND PRACTICES

Referred to in §§322.33, 536.13(6), 536A.31

PART 1
GENERAL PROVISIONS

537.3101 Short title. This article shall be known and may be cited as the "Iowa Consumer Credit Code—Regulation of Agreements and Practices." [C75,§537.3101]

537.3102 Scope. Part 2 applies to disclosure with respect to consumer credit transactions, and the provision in section 537.3201 applies to a sale of an interest in land or a loan secured by an interest in land, without regard to the rate of finance charge, if the sale or loan is otherwise a consumer credit sale or consumer loan. Parts 3 and 4 apply, respectively, to disclosure, limitations on agreements and practices, and limitations on consumer's liability with respect to certain consumer credit transactions. Part 5 applies to home solicitation sales. [C75,§537.3102]

PART 2
DISCLOSURE

Referred to in §537.3102

537.3201 Compliance with Truth in Lending Act. A person upon whom the Truth in Lending Act imposes duties or obligations shall make or give to the consumer the dislcosures, information and notices required of him by that Act and in all respects shall comply with that Act. To the extent the Truth in Lending Act does not impose duties or obligations upon a person in a credit transaction, other than a consumer lease, which is a consumer credit transaction under this chapter, the person shall make or give to the consumer disclosures, information and notices in accordance with the Truth in Lending Act, with respect to the credit transaction. [C75,§537.3201]

Referred to in §§537.1202, 537.1301, 537.2401(2), 537.2503, 537.2504, 537.2510, 537.3102, 537.3212

537.3202 Consumer leases.

1. With respect to a consumer lease the lessor shall give to the consumer the following information:

a. Brief description or identification of the goods.

b. Amount of any payment required at the inception of the lease.

c. Amount paid or payable for official fees, registration, certificate of title, or license fees or taxes.

d. Amount of other charges not included in the periodic payments and a brief description of the charges.

e. Brief description of insurance to be provided or paid for by the lessor, including the types and amounts of the coverages.

f. Except with respect to a consumer lease made pursuant to a lender credit card, the number of periodic payments, the amount of each payment, the due date of the first payment, the due dates of subsequent payments or interval between payments, and the total amount payable by the consumer.

g. Statement of the conditions under which the consumer may terminate the lease prior to the end of the term.

h. Statement of the liabilities the lease imposes upon the consumer at the end of the term.

2. The disclosures required by this section are subject to the following:

a. They shall be made clearly and conspicuously in writing, a copy of which shall be delivered to the lessee.

b. They may be supplemented by additional information or explanations supplied by the lessor but none shall be stated, utilized or placed so as to mislead or confuse the lessee or contradict, obscure or detract attention from the information required to be disclosed by this section.

c. They need be made only to the extent applicable.

d. They shall be made on the assumption that all scheduled payments will be made when due and will comply with this section, although the assumption may be rendered inaccurate by an act, occurrence or agreement subsequent to the required disclosure.

e. They shall be made before the lease transaction is consummated but may be made in the lease to be signed by the lessee. [C75, §537.3202]

Referred to in §537.5201

537.3203 Notice to consumer. The creditor shall give to the consumer a copy of any writing evidencing a consumer credit transaction, other than one pursuant to open end credit, if the writing requires or provides for signature of the consumer. The writing evidencing the consumer's obligation to pay under a consumer credit transaction, other than one pursuant to open end credit, shall contain a clear and conspicuous notice to the consumer that he should not sign it before reading it, that he is entitled to a copy of it, and, except in the case of a consumer lease, that he is entitled to prepay the unpaid balance at any time with such penalty and minimum charges as the agreement and section 537.2510 may permit, and may be entitled to receive a refund of unearned charges in accordance with law. The following notices if clear and conspicuous comply with this section:

1. In all transactions to which this section applies:

"NOTICE TO CONSUMER: 1. Do not sign this paper before you read it. 2. You are entitled to

a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law."

2. In addition, in a transaction in which a minimum charge will be collected or retained, the notice to consumer shall state "4. If you prepay the unpaid balance, you may have to pay a minimum charge not greater than seven dollars and fifty cents." [C58, 62, 66, 71, 73, §322.3(6, b); C75,§537.3203]

Referred to in §§322.33, 536.13(6), 536A.31, 537.5201

537.3204 Notice of assignment. A consumer is authorized to pay the original creditor until he receives notification of assignment of rights to payment pursuant to a consumer credit transaction and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the consumer may pay the original creditor. [C75,§537.3204]

537.3205 Change in terms of open end credit accounts.

1. Whether or not a change is authorized by prior agreement, a creditor may make a change in the terms of an open end credit account applying to any balance incurred after the effective date of the change only if either the consumer after receiving disclosure of the change agrees to it in writing or the creditor delivers or mails to the consumer two written disclosures of the change, the first at least three months before the effective date of the change and the second at a later time before the effective date of the change.

2. Unless authorized by a provision of this chapter, no creditor shall change the terms of an open end credit account, with respect to any balance incurred before the effective date of the change, which results in an increase of the rate of the finance charge or other charge or an increase in the amount of a periodic payment due, or which otherwise adversely affects the interests of the consumer with respect to such balance.

3. A disclosure provided for in subsection 1 is mailed to the consumer when mailed to him at his address used by the creditor for mailing him periodic billing statements.

4. If a creditor attempts to make a change in the terms of an open end credit account without complying with this section, any additional cost or charge to the consumer resulting from the change is an excess charge and is subject to the remedies available to the consumer under section 537.5201 and to the administrator under section 537.6113. [C75, 537.3205]

537.3206 Receipt—statements of account—evidence of payment.

1. The creditor shall deliver or mail to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. A periodic statement for a computational period showing a payment received by mail complies with this subsection.

2. Upon written request of a consumer, the person to whom an obligation is owed pursuant to a consumer credit agreement shall provide a written statement of the dates and amounts of payments made within the twelve months preceding the month in which the request is received and the total amount unpaid as of the end of the period covered by the statement. The statement shall be provided without charge once during each year of the term of the obligation. If additional statements are requested the creditor may charge not in excess of three dollars for each additional statement.

3. After a consumer has fulfilled all obligations with respect to a consumer credit transaction, other than one pursuant to open end credit, the person to whom the obligation was owed shall, upon request of the consumer, deliver or mail to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction. [C75,§537.3206]

Referred to in §§322.33, 536.13(6), 536A.31, 537.5201

537.3207 Form of insurance premium loan agreement. An agreement pursuant to which an insurance premium loan is made shall contain the names of the insurance agent or broker negotiating each policy or contract and of the insurer issuing each policy or contract, the number and inception date of, and premium for, each policy or contract, the date on which the term of the loan begins, and a clear and conspicuous notice that each policy or contract may be canceled if payment is not made in accordance with the agreement. If a policy or contract has not been issued when the agreement is signed, the agreement may provide that the insurance agent or broker may insert the appropriate information in the agreement and, if he does so, shall furnish the information promptly in writing to the insured. [C75,§537.3207]

Referred to in §537.5201

537.3208 Notice to cosigners and similar parties.

1. No natural person, other than the spouse of the consumer, is obligated as a cosigner, comaker, guarantor, endorser, surety, or similar party with respect to a consumer credit transaction, unless before or contemporaneously with signing any separate agreement of obligation or any writing setting forth the terms of the debtor's agreement, the person receives a separate written notice that contains a completed identification of the debt he may have to pay and reasonably informs him of his obligation with respect to it.

2. A clear and conspicuous notice in substantially the following form complies with this section:

NOTICE

You agree to pay the debt identified below although you may not personally receive any property, services, or money. You may be sued for payment although the person who receives the property, services, or money is able to pay. This notice is not the contract that obligates you to pay the debt. Read the contract for the exact terms of your obligation.

IDENTIFICATION OF DEBT YOU MAY HAVE TO PAY

.....
(name of debtor)

.....
(name of creditor)

.....
(date)

.....
(kind of debt)

I have received a copy of this notice.

....
(Date) (Signed)

3. The notice required by this section need not be given to a seller, lessor, or lender who is obligated to an assignee of his rights.

4. A person entitled to notice under this section shall also be given a copy of any writing setting forth the terms of the debtor's agreement and of any separate agreement of obligation signed by the person entitled to the notice. [C75,§537.3208]

Referred to in §537.5201

537.3209 Advertising.

1. A seller, lessor, or lender shall not advertise, print, display, publish, distribute, utter or broadcast, or cause to be advertised, printed, displayed, published, distributed, uttered or broadcast in any manner, any false, misleading, or deceptive statement or representation with regard to the rates, terms or conditions of credit with respect to a consumer credit transaction.

2. Advertising that complies with the Truth in Lending Act does not violate this section.

3. This section does not apply to the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated. [C24, 27, 31,§9432; C35, §9438-f12; C39,§9438.12; C46, 50, 54, 58, 62,§536.12; C66, 71, 73,§§536.12, 536A.20; C75,§537.3209]

Referred to in §§322.33, 536.13(6), 536A.31, 537.1201

537.3210 Prohibited statements relating to rates. A creditor shall not state the rate of a finance charge to a consumer, in response to any inquiry, or in any advertisement, in the form of an add-on or discount rate, or in any form other than the rate calculated according to the actuarial method as a percent per year on the unpaid balances of the amount financed, or the annual percentage rate required to be disclosed under the Truth in Lending Act. [C75,§537.3210]

Referred to in §§536A.23, 536A.31, 537.1201, 537.5201

537.3211 Notice of consumer paper. Every note which is a negotiable instrument pursuant to section 554.3104 taken in a consumer credit transaction, if the writing requires or provides for a signature of the consumer, shall conspicuously show on its face the following: "This is a consumer credit transaction." [C75,§537.3211]

Referred to in §537.5201

537.3212 Notice of methods of financing and rates.

1. With respect to a consumer who has an open end credit account with a creditor, and with respect to a creditor which offers to some or all of its customers consumer credit sales of goods or services both pursuant to open end credit and not pursuant to open end credit, that creditor shall give written notice to that consumer of those alternative methods at the times provided in subsection 3. The notice shall be as provided in subsection 2.

2. The notice required by this section shall conspicuously state the highest finance charge charged by that creditor to any consumer within the last calendar year for each type of credit sale. Such finance charge shall be stated as an annual percentage rate in such form as is required pursuant to section 537.3201 for each type of credit sale described in subsection 1, and the terms of repayment for each type of credit sale.

3. This section is complied with if notice is given at the following times:

a. With respect to an existing open end credit account holder, in a writing contained as a part of, or mailed with a periodic statement mailed to the account holders and no less than once every six months.

b. With respect to a consumer not holding an existing open end credit account, if the written notice is presented to the person at the time of the consumer credit transaction, and thereafter as provided in paragraph *"a"*. [C75,§537.3212]

PART 3

LIMITATIONS ON AGREEMENTS AND PRACTICES

Referred to in §537.3102

537.3301 Security in consumer credit transactions.

1. With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the amount

financed is one thousand dollars or more, or in the case of a security interest in goods if either the amount financed is three hundred dollars or more, or if the goods are household goods, or motor vehicles used by a consumer, his dependents, or the family with which the consumer resides, as transportation to and from a place of employment, one hundred dollars or more. The seller may also take a security interest in property which is itemized in the security agreement, to secure the debt arising from a consumer credit sale primarily for an agricultural purpose. Except as provided with respect to cross-collateral under section 537.3302, a seller may not otherwise take a security interest in property to secure the debt arising from a consumer credit sale.

2. With respect to a consumer lease other than a lease primarily for an agricultural purpose, a lessor may not take a security interest in property to secure the debt arising from the lease. This subsection does not apply to a security deposit for a consumer lease.

3. With respect to a supervised loan, a lender may not take a security interest, other than a purchase money security interest, in the clothing, one dining table and set of chairs, one refrigerator, one heating stove, one cooking stove, one radio, beds and bedding, one couch, two living room chairs, cooking utensils, or kitchenware used by the consumer, his dependents, or the family with whom the consumer resides.

4. A security interest taken in violation of this section is void. [C75,§537.3301]

Referred to in §§537.3302, 537.5201

537.3302 Cross-collateral.

1. In addition to contracting for a security interest pursuant to the provisions on security in consumer credit transactions under section 537.3301, a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

2. If the seller contracts for a security interest in other property pursuant to this section, the rate of finance charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on finance charge on consolidation under section 537.2505. The seller has a reasonable time after so contracting to make any adjustments required by this section. [C75,§537.3302]

Referred to in §537.3301

537.3303 Debt secured by cross-collateral.

1. If debts arising from two or more consumer credit sales, other than sales primarily for an agricultural purpose or pursuant to open end credit, are secured by cross-collateral or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debt originally incurred with respect to each item is paid.

2. Payments received by the seller upon an open end credit account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

3. If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt. [C75,§537.3303]

537.3304 Use of multiple agreements.

1. With respect to a sale or loan other than a supervised loan, a creditor may not use multiple agreements in what is in substance a single transaction, with intent to obtain a higher finance charge than would otherwise be permitted by the provisions of article 2 of this chapter.

2. With respect to a supervised loan, a lender may not use multiple agreements with intent to obtain a higher finance charge than would otherwise be permitted. For the purposes of this subsection, multiple agreements are used if a lender allows any person, or husband and wife, to become obligated in any way under more than one loan agreement with the lender or with a person related to the lender.

3. The excess amount of finance charge obtained in violation of this section is an excess charge for the purposes of the provisions on rights of parties in section 537.5201 and the provisions on civil actions by the administrator in section 537.6113. [C35,§9438-f13; C39, §9438.13; C46, 50, 54, 58, 62,§536.13(6); C66, 71, 73,§536.13(6), 536A.24; C75,§537.3304]

Referred to in §§322.33, 536.13(6), 536A.31

537.3305 No assignment of earnings.

1. A creditor may not take an assignment of earnings of the consumer for payment or as security for payment of a debt arising out of a consumer credit transaction. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the consumer. This section does not prohibit a consumer from authorizing

deductions in favor of his creditor if the authorization is revocable, the consumer is given a complete copy of the writing evidencing the authorization at the time he signs it, and the writing contains on its face a conspicuous notice of the consumer's right to revoke the authorization.

2. A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him secured by an assignment of earnings. [C24, 27, 31,§§9427, 9428; C35,§9438-f17; C39,§9438.17; C46, 50, 54, 58, 62, 66, 71, 73,§536.17; C75,§537.3305]

Referred to in §§322.33, 536.13(6), 536A.31, 537.5201

537.3306 Authorization to confess judgment prohibited. Unless executed after default on a claim arising out of a consumer credit transaction, authorization for a judgment by confession on that claim pursuant to chapter 676 is void. Any other authorization by a consumer for any person to confess judgment on the claim, whenever executed, is void. [C24, 27, 31, §9426; C35,§9438-f12; C39,§9438.12; C46, 50, 54, 58, 62, 66, 71, 73,§536.12; C75,§537.3306]

Referred to in §§322.33, 536.13(6), 536A.31, 537.5201

537.3307 Certain negotiable instruments prohibited. With respect to a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, the creditor may not take a negotiable instrument other than a check dated not later than ten days after its issuance as evidence of the obligation of the consumer. [C75,§537.3307]

Referred to in §§537.3404, 537.5201

537.3308 Balloon payments.

1. Except as provided in subsection 2, if any scheduled payment of a consumer credit transaction is more than twice as large as the average of earlier scheduled payments, the consumer has the right to refinance the amount of that payment at the time it is due without penalty, as provided in section 537.2504. The terms of the refinancing shall be no less favorable to the consumer than the terms of the original transaction.

2. This section does not apply to any of the following:

a. A consumer lease.

b. A transaction pursuant to open end credit.

c. A transaction primarily for an agricultural purpose.

d. A transaction to the extent that the payment schedule is adjusted to the seasonal or irregular income or scheduled payments of obligations of the consumer.

e. A transaction of a class defined by rule of the administrator as not requiring for the protection of the consumer his right to refinance as provided in this section. [C75,§537.3308]

537.3309 Referral sales and leases. A practice unlawful under section 713.24, subsection 2, paragraph "*b*", if done in connection with a consumer credit sale or consumer lease, is a violation of this chapter for which the consumer has a cause of action under section 537.5201, subsection 1. The administrator has all powers granted under article 6, part 1, to enforce the provisions of section 713.24, subsection 2, paragraph "*b*". If a consumer is induced by a violation of section 713.24, subsection 2, paragraph "*b*" to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the consumer, at his option, in addition to other remedies, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them. [C75,§537.3309]

Referred to in §537.5201

537.3310 Limitations on executory transactions.

1. In a consumer credit transaction, other than one for an agricultural purpose, if performance by a creditor is by delivery of goods, services or both, in four or more installments, either on demand of the consumer or by prearranged scheduled performance, the consumer shall have the right to cancel the obligation with respect to that part which has not been performed on the date of cancellation.

2. If the consumer exercises his right to cancel or, in any event, if the creditor attempts to exercise a right to accelerate, the creditor is entitled to recover only that part of the cash price and charges attributable to the part of the creditor's obligation which has been performed.

3. Cancellation under this section shall be effective when the consumer mails or delivers a written notice of cancellation.

4. Notwithstanding an agreement to the contrary, a creditor may not exercise a right to accelerate beyond the amount set forth in subsection 2. [C75,§537.3310; 66GA, ch 1223,§1]

Referred to in §537.5201

537.3311 Discrimination prohibited. A creditor shall not refuse to enter into a consumer credit transaction or impose finance charges or other terms or conditions more onerous than those regularly extended by that creditor to consumers of similar economic backgrounds because of the age, color, creed, national origin, political affiliation, race, religion, sex, marital status or disability of the consumer, or because the consumer receives public assistance, social security benefits, pension benefits or the like, or because of the exercise by the consumer of rights pursuant to this chapter or other provisions of law. [C75,§537.3311]

Referred to in §§537.1201, 537.5201

PART 4
LIMITATIONS ON CONSUMER'S LIABILITY

Referred to in §537.3102

537.3401 Restriction on liability in consumer lease. The obligation of a lessee upon expiration of a consumer lease other than one

primarily for an agricultural purpose, may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default. [C75,§537.3401]

537.3402 Limitation on default charges. Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit transaction other than a consumer lease may not provide for any charges as a result of default by the consumer other than those authorized by this chapter. A provision in violation of this section is unenforceable. [C75,§537.3402]

Referred to in §§322.20, 537.5201

537.3403 Card issuer subject to claims and defenses.

1. This section neither limits the liability of nor imposes liability on a card issuer as a manufacturer, supplier, seller, or lessor of property or services sold or leased pursuant to the credit card. This section may subject a card issuer to claims and defenses of a cardholder against a seller or lessor arising from sales or leases made pursuant to the credit card.

2. A card issuer is subject to claims and defenses of a cardholder against the seller or lessor arising from the sale or lease of property or services by a seller or lessor licensed, franchised, or permitted by the card issuer or a person related to the card issuer to do business under the trade name or designation of the card issuer or a person related to the card issuer, to the extent of the original amount owing to the card issuer with respect to the sale or lease of the property or services as to which the claim or defense arose.

3. Except as otherwise provided in subsection 2, a card issuer, including a lender credit card issuer, is subject to all claims and defenses of a cardholder against the seller or lessor arising from the sale or lease of property or services pursuant to the credit card only if all of the following apply:

a. The original amount owing to the card issuer with respect to the sale or lease of the property or services as to which the claim or defense arose exceeds fifty dollars.

b. The residence of the cardholder and the place where the sale or lease occurred are in the same state or within one hundred miles of each other.

c. The cardholder has made a good faith attempt to obtain satisfaction from the seller or lessor with respect to the claim or defense.

4. Except as otherwise provided in subsection 2, a card issuer, including a lender credit card issuer, is subject to claims and defenses only to the extent of the amount owing to the card issuer with respect to the sale or lease of the property or services as to which the claim or defense arose at the time the card issuer has notice of the claim or defense. Notice of the claim or defense may be given prior to the attempt to obtain satisfaction specified in subsection 3. Written notice is effective when mailed or delivered.

5. For the purpose of determining the amount owing to the card issuer with respect to the sale or lease upon an open end credit account, payments received for the account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

6. Except as provided in section 537.1107, an agreement may not contain a provision to limit or waive the claims or defenses of a cardholder under this section. A provision in violation of this subsection is unenforceable. [C75,§537.3403]

Referred to in §537.5201

537.3404 Assignee subject to claims and defenses.

1. With respect to a consumer credit sale or consumer lease, other than one primarily for an agricultural purpose, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the consumer against the seller or lessor arising from the sale or lease of property or services, notwithstanding that the assignee is a holder in due course of a negotiable instrument issued in violation of the provisions prohibiting certain negotiable instruments in section 537.3307; unless the consumer has agreed in writing not to assert against an assignee a claim or defense arising out of such sale, and the consumer's contract has been assigned to an assignee not related to the seller who acquired the consumer's contract in good faith and for value and who gives the consumer notice of the assigment as provided in this subsection and who within thirty days after the mailing of the notice receives no written notice of the facts giving rise to the consumer's claim or defense. Such agreement not to assert a claim or defense is not valid if the assignee receives such written notice from the consumer within such thirty-day period. The notice of assignment shall be in writing and addressed to the consumer at his address as stated in the contract, identify the contract, describe the property purchased by the consumer, state the names of the seller and consumer, the name and address of the assignee, the amount payable by the consumer and the number, amounts and due dates of the installments, and contain a conspicuous notice to the consumer that he has thirty days from the date of the mailing of the notice to him within which to notify the assignee in writing of any claims or defenses he may have against the seller and that if written notification of any such claims or defenses is not received by the assignee within such thirty-day period, the assignee will have the right to enforce the con-

tract free of any claims or defenses the consumer may have against the seller. An assignee does not acquire a consumer's contract in good faith within the meaning of this subsection if the assignee has knowledge or, from his course of dealing with the seller or his records, notice of substantial complaints by other consumers of the seller's failure or refusal to perform his contracts with them and of the seller's failure to remedy his defaults within a reasonable time after the assignee notifies him of the complaints.

2. A claim or defense of a consumer specified in subsection 1 may be asserted against the assignee under this section only if the consumer has made a good faith attempt to obtain satisfaction from the seller or lessor with respect to the claim or defense, and only to the extent of the amount owing to the assignee with respect to the sale or lease of the property or services as to which the claim or defense arose, at the time the assignee has notice of the claim or defense. Notice of the claim or defense may be given prior to the attempt specified in this subsection. Written notice is effective when mailed or delivered.

3. For the purpose of determining the amount owing to the assignee with respect to the sale or lease:

a. Payments received by the assignee after the consolidation of two or more consumer credit sales, other than pursuant to open end credit, are deemed to have been first applied to the payment of the sales first made, and if the sales consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smaller or smallest sale or sales.

b. Payments received upon an open end credit account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

4. Except as provided in section 537.1107, an agreement may not contain a provision to limit or waive the claims or defenses of a consumer under this section. A provision in violation of this subsection is unenforceable. [C75, §537.3404]

Referred to in §537.5201

537.3405 Lender subject to defenses arising from sales and leases.

1. A lender, other than the issuer of a lender credit card, who, with respect to a particular transaction, makes a consumer loan for the purpose of enabling a consumer to buy or lease from a particular seller or lessor property or services, other than for use primarily for an agricultural purpose, is subject to all claims and defenses of the consumer against the seller or lessor arising from that sale or lease of the property or services if any of the following are applicable:

a. The lender knows that the seller or lessor arranged for a commission, brokerage, or referral fee, for the extension of credit by the lender.

b. The lender is a person related to the seller or lessor, unless the relationship is remote or is not a factor in the transaction.

c. The seller or lessor guarantees the loan or otherwise assumes the risk of loss by the lender upon the loan.

d. The lender directly supplies the seller or lessor with the contract document used by the consumer to evidence the loan, and the seller or lessor has knowledge of the credit terms and participates in the preparation of the document.

e. The loan is conditioned upon the consumer's purchase or lease of the property or services from the particular seller or lessor, but the lender's payment of proceeds of the loan to the seller or lessor does not in itself establish that the loan was so conditioned.

f. The lender otherwise knowingly participates with the seller in the sale. The fact that the lender takes a security interest in property sold in that sale, or makes the proceeds of the loan payable to the seller does not in itself constitute knowing participation in the sale.

2. A claim or defense of a consumer specified in subsection 1 may be asserted against the lender under this section only if the consumer has made a good faith attempt to obtain satisfaction from the seller or lessor with respect to the claim or defense and only to the extent of the amount owing to the lender with respect to the sale or lease of the property or services as to which the claim or defense arose at the time the lender has notice of the claim or defense. Notice of the claim or defense may be given prior to the attempt specified in this subsection. Written notice is effective when mailed or delivered.

3. For the purpose of determining the amount owing to the lender with respect to the sale or lease:

a. Payments received by the lender after the consolidation of two or more consumer loans, other than pursuant to open end credit, are deemed to have been first applied to the payment of the loans first made, and if the loans consolidated arose from loans made on the same day, payments are deemed to have been first applied to the smaller or smallest loan or loans.

b. Payments received upon an open end credit account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

4. Except as provided in section 537.1107, an agreement may not contain a provision to limit or waive the claims or defenses of a consumer under this section. A provision in vio-

lation of this section is unenforceable. [C75, §537.3405]

Referred to in §§537.3501, 537.5201

PART 5
HOME SOLICITATION SALES
Referred to in §537.3102

537.3501 Door-to-door sales. In a consumer credit sale or a sale in which the goods or services are paid for in whole or in part by a lender credit card or a consumer loan in which the lender is subject to defenses arising from the sale under section 537.3405, other than a transaction for an agricultural purpose, a consumer has, in addition to all the rights and remedies provided by chapter 713B, a cause of action under section 537.5201, subsection 1, and the administrator has all powers granted under article 6, part 1, to enforce the provisions of chapter 713B. [C75,§537.3501]

Referred to in §§537.1201, 537.5201

ARTICLE 4
INSURANCE

Referred to in §537.1202

537.4101 Scope—excess charges.

1. This article applies to insurance provided in relation to a consumer credit transaction.

2. A charge for insurance in excess of the rates promulgated by the commissioner of insurance, or otherwise made in violation of the law, including this chapter, or the rules promulgated by the commissioner of insurance, is an excess charge for purposes of determining rights of parties under section 537.5201, and authority of the administrator to bring civil action under section 537.6113. [C75,§537.4101]

ARTICLE 5
REMEDIES AND PENALTIES

Referred to in §§536.19, 537.1201

PART 1
LIMITATIONS ON CREDITORS' REMEDIES
Referred to in §537.1201

537.5101 Short title. This article shall be known and may be cited as the "Iowa Consumer Credit Code — Remedies and Penalties." [C75,§537.5101]

537.5102 Scope. This part applies to actions or other proceedings to enforce rights arising from consumer credit transactions, to extortionate or unlawful extensions of credit, and to unconscionability. [C75,§537.5102]

537.5103 Creditor's obligations on repossession—restriction on deficiency judgments.

1. This section applies to a consumer credit sale of goods or services and a consumer loan. A consumer is not liable for a deficiency unless the creditor has disposed of repossessed or surrenderd goods in good faith and in a commercially reasonable manner.

2. If the seller repossesses or voluntarily accepts surrender either of goods which were the subject of the sale and in which he has a security interest, or of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services, the seller's duty to dispose of the collateral is governed by the provisions on disposition of collateral in sections 554.9501 to 554.9507.

3. If a lender takes possession or voluntarily accepts surrender of goods in which he has a security interest to secure a debt arising from a consumer loan, the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral in sections 554.9501 to 554.9507. [C75,§537.5103]

537.5104 No garnishment before judgment. Prior to entry of judgment in an action against the consumer arising from a consumer credit transaction, the creditor may not attach unpaid earnings of the consumer, or earnings deposited in a financial institution by the consumer, by garnishment, attachment, or proceedings under chapter 630. [C75,§537.5104]

537.5105 Limitation on garnishment.

1. For the purposes of this part:

a. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld.

b. "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

2. In addition to the provisions of section 642.21, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit transaction may not exceed the lesser of twenty-five percent of his disposable earnings for that week, or the amount by which his disposable earnings for that week exceed forty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act of 1938, United States Code, title 29, section 206, subsection "a," paragraph (1), in effect at the time the earnings are payable.

In the case of earnings for a pay period other than a week, the administrator shall prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth for a pay period of a week.

3. No court may make, execute, or enforce an order or process in violation of this section.

4. At any time after the entry of a judgment in favor of a creditor in an action against a consumer for debt arising from a consumer credit transaction, the consumer may file with the court his verified application for an order exempting from garnishment pursuant to that judgment for an appropriate period of time a greater portion or all of his aggregate disposable earnings for a workweek or other applicable pay period than is provided for in subsec-

tion 2. The application shall designate the portion of his earnings which are not exempt from garnishment under this section and other law, shall specify the period of time for which the additional exemption is sought, shall describe the judgment with respect to which the application is made, and shall state that the designated portion in addition to earnings that are exempt by law is necessary for the maintenance of the consumer or a family supported wholly or partly by the earnings. Upon the filing of a sufficient application under this subsection, the court may issue any temporary order staying enforcement of the judgment by garnishment that may be necessary under the circumstances, shall set a hearing on the application not less than five nor more than ten days from the date of the filing of the application, and shall cause notice of the application and the hearing date to be served on the judgment creditor or his attorney of record. At the hearing, if it appears to the court that all or any portion of the earnings sought to be additionally exempted are necessary for the maintenance of the consumer or a family supported wholly or partly by the earnings of the consumer for all or any part of the time requested in the application, the court shall issue an order granting the application to that extent, otherwise it shall deny the application. The order is subject to modification or vacation upon the further application of any party to it upon a showing of changed circumstances after a hearing upon notice to all interested parties. [C75,§537.5105]

Referred to in §§537.1303(6, 7), 642.2

537.5106 No discharge from employment for garnishment. The administrator has all powers granted under article 6, part 1, to enforce the provisions of section 642.21, in relation to a garnishment arising from a consumer credit transaction. [C75,§537.5106]

537.5107 Extortionate or unlawful extensions of credit. If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the consumer. [C75,§537.5107]

537.5108 Unconscionability—inducement by unconscionable conduct — unconscionable debt collection.

1. With respect to a transaction that is, gives rise to, or leads the debtor to believe it will give rise to a consumer credit transaction, in an action other than a class action, if the court as a matter of law finds the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement, or if the court finds any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable term or part, or may so limit the application of any unconscionable term or part as to avoid any unconscionable result.

2. With respect to a consumer credit transaction, or a transaction which would have been a consumer credit transaction if a finance charge was made or the obligation was payable in installments, if the court as a matter of law finds in an action other than a class action, that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction and award the consumer any actual damages he has sustained.

3. If it is claimed or appears to the court that the agreement or transaction or any term or part of it may be unconscionable, or that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the agreement or transaction or term or part thereof, or of the conduct, to aid the court in making the determination.

4. In applying subsection 1, consideration shall be given to each of the following factors, among others, as applicable:

a. Belief by the seller, lessor or lender at the time a transaction is entered into that there is no reasonable probability of payment in full of the obligation by the consumer or debtor.

b. In the case of a consumer credit sale or consumer lease, knowledge by the seller or lessor at the time of the sale or lease of the inability of the consumer to receive substantial benefits from the property or services sold or leased.

c. In the case of a consumer credit sale or consumer lease, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like consumers.

d. The fact that the creditor contracted for or received separate charges for insurance with respect to a consumer credit sale or consumer loan with the effect of making the sale or loan, considered as a whole, unconscionable.

e. The fact that the seller, lessor or lender has knowingly taken advantage of the inability of the consumer or debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

f. The fact that the seller, lessor or lender has engaged in conduct with knowledge or rea-

son to know that like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against fraudulent or unconscionable agreements or conduct in section 537.6111.

5. In applying subsection 2, violations of section 537.7103 shall be considered, among other factors, as applicable.

6. If in an action in which unconscionability is claimed the court finds unconscionability pursuant to subsection 1 or 2, the court shall award reasonable fees to the attorney for the consumer or debtor. If the court does not find unconscionability and the consumer or debtor claiming unconscionability has brought or maintained an action he knew to be groundless, the court shall award reasonable fees to the attorney for the party against whom the claim is made. Reasonable attorney's fees shall be determined by the value of the time reasonably expended by the attorney on the unconscionability issue and not by the amount of the recovery on behalf of the prevailing party.

7. The remedies of this section are in addition to remedies otherwise available for the same conduct under law other than this chapter, but no double recovery of actual damages may be had.

8. For the purpose of this section, a charge or practice expressly permitted by this chapter is not in itself unconscionable. [C75,§537.5108]

Referred to in §537.6111

537.5109 Default. *"Default"* with respect to a consumer credit transaction and for the purposes of this article, means either of the following, if without justification under any law:

1. Failure to make a payment within ten days of the time required by agreement.

2. Failure to observe any other covenant of the transaction, breach of which materially impairs the condition, value or protection of or the creditor's right in any collateral securing the transaction, or materially impairs the consumer's prospect to pay amounts due under the transaction. The burden of establishing material impairment is on the creditor. [C75, §537.5109]

537.5110 Cure of default.

1. Notwithstanding any term or agreement to the contrary, the obligation of a consumer in a consumer credit transaction is enforceable by a creditor only after compliance with this section.

2. A creditor who believes in good faith that a consumer is in default may give the consumer written notice of the alleged default, and, if the consumer has a right to cure the default, shall give the consumer the notice of right to cure provided in section 537.5111 before exercising any right he may have to enforce.

3. A consumer has a right to cure the default unless, in other than an insurance premium loan transaction, the creditor has given the consumer a proper notice of right to cure with respect to a prior default which occurred within three hundred sixty-five days of the present default, or the consumer has voluntarily surrendered possession of goods that are collateral and the creditor has accepted them in full satisfaction of any debt owing on the transaction in default.

4. If the consumer has a right to cure a default:

a. A creditor shall not accelerate the maturity of the unpaid balance of the obligation, demand or take possession of collateral, otherwise than by accepting a voluntary surrender of it, or otherwise attempt to enforce the obligation until twenty days after a proper notice of right to cure is given.

b. With respect to an insurance premium loan, a creditor shall not give notice of cancellation as provided in subsection 6 until thirteen days after a proper notice of right to cure is given.

c. Until the expiration of the minimum applicable period after the notice is given, the consumer may cure the default by tendering either the amount of all unpaid installments due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges, or the amount stated in the notice of right to cure, whichever is less, or by tendering any performance necessary to cure any default other than nonpayment of amounts due, which is described in the notice of right to cure. The act of curing a default restores to the consumer his rights under the agreement as though no default had occurred, except as provided in subsection 3.

5. This section and the provisions on waiver, agreements to forego rights, and settlement of claims under section 537.1107 do not prohibit a consumer from voluntarily surrendering possession of goods which are collateral and do not prohibit the creditor from thereafter enforcing his security interest in the goods at any time after default.

6. If a default on an insurance premium loan is not cured, the lender may give notice of cancellation of each insurance policy or contract to be canceled. If given, the notice of cancellation shall be in writing and given to the insurer that issued the policy or contract and to the insured. The insurer, within two business days after receipt of the notice of cancellation together with a copy of the insurance premium loan agreement if not previously given to him, shall give any notice of cancellation required by the policy or contract or by law and, within ten business days after the effective date of the cancellation, pay to the lender any premium unearned on the policy or contracts as of that effective date. Within ten business days after receipt of the unearned premium, the lender shall pay to the consumer

indebted upon the insurance premium loan any excess of the unearned premium received over the amount owing by the consumer upon the insurance premium loan. [C75,§537.5110]

Referred to in §537.5201

537.5111 Notice of right to cure.

1. The notice of right to cure shall be in writing and shall conspicuously state the name, address, and telephone number of the creditor to which payment is to be made, a brief identification of the credit transaction and of the consumer's right to cure the default, a statement of the nature of the right to cure the default, a statement of the nature of the alleged default, a statement of the total payment, including an itemization of any delinquency or deferral charges, or other performance necessary to cure the alleged default, and the exact date by which the amount must be paid or performance tendered.

2. Except as provided in subsection 4, a notice in substantially the following form complies with this section:

.....
(name, address, and telephone number of creditor)

.....
(account number, if any)

.....
(brief identification of credit transaction)

You are now in default on this credit transaction. You have a right to correct this default until ..... (date) If you do so, you may continue with the contract as though you did not default. Your default consists of ..... (describe default alleged) ..... Correction of the default: Before ..... (date), ... (describe the acts necessary for cure) If you do not correct your default by the date stated above, we may exercise rights against you under the law.

If you default again in the next year, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone ..... (the creditor) promptly.

3. A creditor gives notice to the consumer under this part when he delivers the notice to the consumer or mails the notice to him at his residence as defined in section 537.1201, subsection 4.

4. If the consumer credit transaction is an insurance premium loan, the notice shall conform to the requirements of subsection 2, and a notice in substantially the form specified in that subsection complies with this subsection except for the following:

a. In lieu of a brief identification of the credit transaction, the notice shall identify the transaction as an insurance premium loan and each insurance policy or contract that may be canceled.

b. In lieu of the statement in the form of notice specified in subsection 2 that the creditor may exercise his rights under the law, the statement that each policy or contract, identified in the notice may be canceled.

c. The last paragraph of the form of notice specified in subsection 2 shall be omitted. [C75,§537.5111]

Referred to in §§537.5110, 537.5201

537.5112 Reserved.

537.5113 Venue. An action by a creditor against a consumer arising from a consumer credit transaction shall be brought in the county of the consumer's residence as defined in section 537.1201, subsection 4, unless an action is brought to enforce an interest in land securing the consumer's obligation, in which case the action shall be brought in the county in which the land or a part of it is located. If the county of the consumer's residence has changed, the consumer upon motion may have the action removed to the county of his current residence. If the residence of the consumer is not within this state, the action may be brought in the county in which the sale, lease or loan was made. If the initial papers offered for filing in the action on their face show noncompliance with this section, they shall not be accepted by the clerk of the court. [C75,§537.5113]

537.5114 Complaint—proof.

1. In an action brought by a creditor against a consumer arising from a consumer credit transaction, the complaint shall allege the facts of the consumer's default, the amount to which the creditor is entitled, and an indication of how that amount was determined.

2. No default judgment shall be entered in the action in favor of the creditor unless the complaint is verified by the creditor, or unless sworn testimony, by affidavit or otherwise, is adduced showing that the creditor is entitled to the relief demanded. [C75,§537.5114]

537.5115 Reserved.

PART 2
CONSUMERS' REMEDIES

537.5201 Effect of violations on rights of parties.

1. The consumer has a cause of action to recover actual damages and in addition a right in an action other than a class action to recover from the person violating this chapter a penalty in an amount determined by the court not less than one hundred dollars nor more than one thousand dollars, if a person has violated the provisions of this chapter relating to:

a. Authority to make supervised loans under section 537.2301.

b. Restrictions on interests in land as security under section 537.2307.

c. Limitations on the schedule of payments or loan terms for supervised loans under section 537.2308.

d. Attorney's fees under section 537.2507.

e. Charges for other credit transactions under section 537.2601.

f. Disclosure with respect to consumer leases under section 537.3202.

g. Notice to consumers under section 537.3203.

h. Receipts, statements of account and evidences of payment under section 537.3206.

i. Form of insurance premium loan agreement under section 537.3207.

j. Notice to cosigners and similar parties under section 537.3208.

k. Restrictions on rates stated to the consumer under section 537.3210.

l. Security in consumer credit transactions under section 537.3301.

m. Prohibition against assignments of earnings under section 537.3305.

n. Authorizations to confess judgment under section 537.3306.

o. Certain negotiable instruments prohibited under section 537.3307.

p. Referral sales and leases under section 537.3309.

q. Limitations on executory transactions under section 537.3310.

r. Prohibition against discrimination under section 537.3311.

s. Limitations on default charges under section 537.3402.

t. Card issuer subject to claims and defenses under section 537.3403.

u. Assignees subject to claims and defenses under section 537.3404.

v. Lenders subject to claims and defenses arising from sales and leases, under section 537.3405.

w. Door-to-door sales under section 537.3501.

x. Assurance of discontinuance under section 537.6109.

y. Prohibitions against unfair debt collection practices under section 537.7103.

z. Failure to provide a proper notice of cure or right to cure under sections 537.5110 and 537.5111.

aa. Failure to provide a notice of consumer paper under section 537.3211.

With respect to violations arising from sales or loans made pursuant to open end credit, no action pursuant to this subsection may be brought more than two years after the violations occurred. With respect to violations arising from other consumer credit transactions, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement.

2. A consumer is not obligated to pay a charge in excess of that allowed by this chapter, and has a right of refund of any excess charge paid. A refund may not be made by reducing the consumer's obligation by the amount of the excess charge unless the creditor has notified the consumer that the consumer may request a refund and the consumer has not so requested within thirty days thereafter. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover the excess amount either from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against consumers arising from the debt.

3. If a creditor has contracted for or received a charge in excess of that allowed by this chapter, or if a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from the creditor or the person liable, in an action other than a class action, the excess charge or refund and a penalty in an amount determined by the court not less than one hundred dollars or more than one thousand dollars. With respect to excess charges arising from sales or loans made pursuant to open end credit, no action pursuant to this subsection may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. For purposes of this subsection, a reasonable time is presumed to be thirty days.

4. Except as otherwise provided in this chapter, no violation of this chapter impairs rights on a debt.

5. If an employer discharges an employee in violation of the provisions prohibiting discharge in section 642.21, subsection 2, paragraph "*c*", the employee may within two years bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

6. A person is not liable for a penalty under subsection 1 or 3 if he notifies the consumer of an error before the person receives from the consumer written notice of the error or before the consumer has brought an action under this section, and the person corrects the error within forty-five days after notifying the consumer. If the violation consists of a prohibited agreement, giving the consumer a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund

as provided in subsection 2. The administrator, and any official or agency of this state having supervisory authority over a person, shall give prompt notice to a person of any errors discovered pursuant to an examination or investigation of the transactions, business, records and acts of the person.

7. A person may not be held liable in any action brought under this section for a violation of this chapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

8. In an action in which it is found that a person has violated this chapter, the court shall award to the consumer the costs of the action and to his attorneys their reasonable fees. Reasonable attorney's fees shall be determined by the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the consumer. [C75,§537.5201]

Referred to in §§537.3205, 537.3304, 537.3309, 537.3501, 537.4101

537.5202 Damages or penalties as setoff to obligation. Damages or penalties to which a consumer is entitled pursuant to this part may be setoff against the consumer's obligation, and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this part. [C75,§537.5202]

537.5203 Civil liability for violation of disclosure provisions.

1. Except as otherwise provided in this section, a creditor who, in violation of the provisions of the Truth in Lending Act other than its provisions concerning advertising of credit terms, fails to disclose information to a person entitled to the information under this chapter is liable to that person, in other than a class action, in an amount equal to the sum of the following:

a. Twice the amount of the finance charge in connection with the transaction, but the liability pursuant to this paragraph shall be not less than one hundred dollars or more than one thousand dollars.

b. In the case of a successful action to enforce the liability under paragraph "*a*", the costs of the action together with reasonable attorney's fees as determined by the court.

2. A creditor has no liability under this section if within fifteen days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a finance charge in excess of the amount or percentage rate actually disclosed. The administrator, and any official or agency of this state having supervisory authority over a creditor, shall give prompt notice to a creditor of any errors discovered pursuant to an examination or investigation of the transactions, business, records and acts of the creditor.

3. A creditor may not be held liable in any action brought under this section for a violation of this chapter if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

4. Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this chapter and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

5. An obligor or consumer has all rights under this chapter that he has under the provisions of the Truth in Lending Act concerning a right of rescission as to certain transactions, and a creditor or other person has all liabilities and defenses under this section that he has under the Truth in Lending Act.

6. No action pursuant to this section may be brought more than one year after the date of the occurrence of the violation.

7. In this section, creditor includes a person who in the ordinary course of business regularly extends or arranges for the extension of credit, or offers to arrange for the extension of credit, and includes the seller of an interest in land and the lender who makes a loan secured by an interest in land if, but for the rate of the finance charge made in the transaction, the sale or loan would be a consumer credit sale or consumer loan.

8. The liability of a creditor under this section is in lieu of and not in addition to his liability under the Truth in Lending Act. An action by a person with respect to a violation may not be maintained pursuant to this section if a final judgment has been rendered for or against that person with respect to the same violation pursuant to the Truth in Lending Act, and if a final judgment has been rendered in favor of a person pursuant to this section and thereafter a final judgment with respect to the same violation is rendered in favor of the same person pursuant to the Truth in Lending Act, a creditor liable under both judgments has a cause of action against that person for appropriate relief to the extent necessary

to avoid double liability with respect to the same violation.

9. The administrator shall adopt rules to keep this section in harmony with the Truth in Lending Act. These rules supersede any provisions of this section which are inconsistent with the Truth in Lending Act as adopted by section 537.1302. [C75,§537.5203]

Referred to in §537.1202

PART 3
CRIMINAL PENALTIES

Referred to in §§536.19, 537.1201

537.5301 Willful violations.

1. A person who willfully and knowingly makes charges in excess of those permitted by the provisions of article 2, part 4, applying to supervised loans, is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding one thousand dollars, or to imprisonment not exceeding one year, or both.

2. A person who, in violation of the provisions of this Act applying to authority to make supervised loans under section 537.2301, willfully and knowingly engages without a license in the business of making supervised loans, or of taking assignments of and undertaking direct collection of payments from and enforcement of rights against consumers arising from supervised loans, is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding one thousand dollars, or to imprisonment not exceeding one year, or both.

3. A person who willfully and knowingly engages in the business of entering into consumer credit transactions, or of taking assignments of rights against consumers arising therefrom and undertaking direct collection of payments or enforcement of these rights, without complying with the provisions of this chapter concerning notification under section 537.6202 or payment of fees under section 537.6203, is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding one hundred dollars.

4. A person who willfully and knowingly violates the provisions of section 537.7103 is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding one thousand dollars. [C75,§537.5301]

537.5302 Disclosure violations. A person is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding five thousand dollars, or to imprisonment not exceeding one year, or both, if he willfully and knowingly does any of the following:

1. Gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of the Truth in Lending Act.

2. Uses any rate table or chart, the use of which is authorized by the provisions of the Truth in Lending Act, in a manner which consistently understates the annual percentage rate determined according to those provisions.

3. Otherwise fails to comply with any requirement of the provisions on disclosure of the Truth in Lending Act.

4. The criminal liability of a person under this section is in lieu of and not in addition to his criminal liability under the Truth in Lending Act. No prosecution of a person with respect to the same violation may be maintained pursuant to both this section and the Truth in Lending Act. [C75,§537.5302]

Referred to in §537.1202

ARTICLE 6
ADMINISTRATION

PART 1
POWERS AND FUNCTIONS OF ADMINISTRATOR

Referred to in §§537.1201, 537.3309, 537.3501, 537.5106

537.6101 Short title. This article shall be known and may be cited as the "Iowa Consumer Credit Code—Administration." [C75, §537.6101]

537.6102 Applicability. This part applies to persons who:

1. Participate in transactions, acts, practices or conduct to which this chapter applies pursuant to section 537.1201.

2. Participate in this state in transactions, acts, practices or conduct to which this chapter would apply pursuant to section 537.1201, but for the residence of the consumer.

3. Enter into or modify a sale of an interest in land or a loan secured by an interest in land, if, but for the rate of the finance charge, the sale, loan or modification would involve a consumer credit sale or consumer loan, but applies only for the purpose of authorizing the administrator to enforce the provisions on compliance with the Truth in Lending Act. [C75,§537.6102]

Referred to in §537.1201

537.6103 Administrator. Except as expressly provided in sections 537.6106 and 537.6108, *"administrator"* means the attorney general or his designee. [C75,§537.6103]

Referred to in §§524.103, 533.36, 534.2(20), 536.28, 536A.2, 537.1301, 537.7102

537.6104 Powers of administrator—reliance on rules—duty to report.

1. The administrator, within the limitations provided by law, may:

a. Receive and act on complaints.

b. Take action designed to obtain voluntary compliance with this chapter.

c. Commence proceedings on his own initiative.

d. Counsel persons and groups on their rights and duties under this chapter.

e. Establish programs for the education of consumers with respect to credit practices and problems.

f. Make studies appropriate to effectuate the purposes and policies of this chapter and make the results available to the public.

g. Maintain offices within this state.

2. The administrator may enforce the Truth in Lending Act to the fullest extent provided by law.

3. To keep the administrator's rules in harmony with the rules of administrators in other jurisdictions which enact the uniform consumer credit code, the administrator, so far as is consistent with the purposes, policies and provisions of this chapter, shall do both of the following:

a. Before adopting, amending and repealing rules, advise and consult with administrators in other jurisdictions which enact the uniform consumer credit code.

b. In adopting, amending, and repealing rules, take into consideration the rules of administrators in other jurisdictions which enact the uniform consumer credit code.

4. Except for refund of an excess charge, no liability is imposed under this chapter for an act done or omitted in conformity with a rule of the administrator notwithstanding that after the act or omission the rule is amended or repealed or determined by judicial or other authority to be invalid for any reason.

5. The administrator shall report annually on or before January 1 to the general assembly on the operation of the consumer credit protection bureau and the other agencies of this state charged with administering this chapter, on the use of consumer credit in the state, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the administrator may conduct research and make appropriate studies. The report shall include, for the consumer credit protection bureau and for other state agencies enforcing this chapter, a description of the examination and investigation procedures and policies, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this chapter, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit problems of both creditors and consumers which have come to his attention through his examinations and investigations and the disposition of them under existing law, and recommendations, if any, for legislation to deal with those problems within his general jurisdiction, a statement of the extent to which the rules of the administrator pursuant to this chapter are not in harmony with the rules of administrators in other jurisdictions which enact the uniform consumer credit code and the reasons for the variations, and a general statement of the activities of his office and of others to promote the purposes of this chapter. The report shall not identify the creditors against whom action is taken. [C75,§537.6104]

537.6105 Administrative powers with respect to supervised financial organizations and supervised loan licensees.

1. With respect to supervised financial organizations subject to regulation under chapters 524, 533 and 534, and persons licensed under chapters 536 and 536A, the powers of examination and investigation as provided in sections 537.2305 and 537.6106, and administrative enforcement as provided in sections 537.2303 and 537.6108, shall be exercised by the official or agency to whose supervision the person is subject. All other powers of the administrator under this chapter may be exercised by the administrator with respect to such persons. In all actions or other court proceedings brought to enforce this chapter, the attorney general or his designee shall participate.

2. If the administrator receives a complaint or other information concerning noncompliance with this chapter by a person specified in subsection 1, he shall inform the official or agency having supervisory authority over that person. The administrator may obtain information about any such person from the officials or agencies supervising them.

3. The administrator and any official or agency of this state having supervisory authority over a supervised financial organization or a chapter 536 or 536A licensee are authorized and directed to consult and assist one another in maintaining compliance with this chapter. They may jointly pursue investigations, prosecute suits, and take other official action against violations of this chapter, as they deem appropriate, if either of them otherwise is empowered to take the action. [C75, §537.6105]

Referred to in §§524.227, 533.37, 534.70, 536.29, 536A.29, 537.6106, 537.6108

537.6106 Investigatory powers.

1. For purposes of this section, "administrator" means either the attorney general or his designee, or the official or agency charged with enforcing this chapter against the person under investigation, as provided in section 537.6105, subsection 1. If the administrator has reasonable cause to believe that a person has engaged in conduct or committed an act which is in violation of this chapter, he may make an investigation to determine whether the person has engaged in the conduct or committed the act, and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of, or testimony as to, any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any

other matter reasonably calculated to lead to the discovery of admissible evidence. In any civil action brought by the administrator as a result of such an investigation, the administrator shall be awarded the reasonable costs of making the investigation if he prevails in the action.

2. If the person's records are located outside this state, the person at his option shall either make them available to the administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or his representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

3. Upon application by the administrator showing failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the district court shall grant an order compelling compliance.

4. The administrator shall not make public the name or identity of a person whose acts or conduct he investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not prohibit disclosures in actions or enforcement proceedings pursuant to this chapter. [C75,§537.6106]

Referred to in §§537.6103, 537.6105

537.6107 Reserved.

537.6108 Administrative enforcement orders.

1. For purposes of this section, "administrator" means either the attorney general or his designee, or the official or agency charged with enforcing this chapter against the person under investigation, as provided in section 537.6105, subsection 1. Except as provided in subsection 6, after notice and hearing the administrator may order a person to cease and desist from engaging in violations of this chapter. A person aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the district court for enforcement of the cease and desist order if he prevails in the proceeding for review, or as provided in subsection 5. The proceeding for review or enforcement is initiated by filing a petition in the district court. Copies of the petition shall be served upon all parties of record.

2. Within thirty days after service of the petition for review upon the administrator, or within any further time the court may allow, the administrator shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing, the court may reverse or modify the order if the findings of fact of the administrator are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or grant any temporary relief or restraining order it deems just, and enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the administrator, or remanding the case to the administrator for further proceedings.

3. An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the administrator in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the administrator.

4. The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the supreme court in the same manner and form and with the same effect as in appeals from a final judgment or decree in an equitable proceeding. The administrator's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

5. A proceeding for review under this section must be initiated within thirty days after a copy of the order of the administrator is received. If no proceeding is so initiated, the administrator may obtain a decree of the district court for enforcement of the cease and desist order upon a showing that the order was issued in compliance with this section, that no proceeding for review was initiated within thirty days after copy of the order was received, and that the person against whom the order was directed is subject to the jurisdiction of the court.

6. With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the administrator may not issue an order pursuant to this section but may bring a civil action for an injunction under section 537.6111. [C75,§537.6108]

Referred to in §§537.6103, 537.6105

537.6109 Assurance of discontinuance. If it is claimed that a person has engaged in conduct which could be subject to an order by the administrator or by a court, the administrator may accept an assurance in writing that the person will not engage in the same or in similar conduct in the future. The assurance may include stipulations that the creditor will voluntarily pay the costs of investigation, or that an amount will be held in escrow as restitution to debtors aggrieved by future conduct of the creditor or as a reserve to cover costs of future investigation, or may include admissions of past specific acts by the creditor or admissions that those acts violated this chapter or other statutes. A violation of an assurance of discontinuance is a violation of this chapter. [C75,§537.6109]

Referred to in §§537.2303, 537.5201

537.6110 Injunctions and other proceedings in equity. The administrator may bring a civil action to restrain a person from violating this chapter and for other appropriate relief, including but not limited to the following:

a. To prevent the use or employment by a person of practices prohibited by this chapter.

b. To reform contracts to conform to this chapter and to rescind contracts into which a creditor has induced a consumer to enter by conduct violating this chapter, even though the consumers are not parties to the action. An action under this section may be joined with an action under the provisions on civil actions by the administrator under section 537.6113. [C75,§537.6110]

Referred to in §537.6112

537.6111 Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

1. The adminstrator may bring a civil action to restrain a person to whom this part applies from engaging in any of the following courses of action:

a. Making or enforcing unconscionable terms or provisions of consumer credit transactions.

b. Fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions.

c. Conduct of any of the types specified in paragraph *"a"* or *"b"* with respect to transactions that give rise to or that lead persons to believe they will give rise to consumer credit transactions.

d. Fraudulent or unconscionable conduct in the collection of debts arising from consumer credit transactions or from transactions which would have been consumer credit transactions if a finance charge was made or the obligation was payable in installments.

2. In an action brought pursuant to this section the court may grant relief only if it finds all of the following:

a. That the defendant has made unconscionable agreements or has engaged in or is likely to engage in a course of fraudulent or unconscionable conduct.

b. That the defendant's agreements have caused or are likely to cause, or the conduct of the defendant has caused or is likely to cause, injury to consumers or debtors.

c. That the defendant has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

3. In applying subsection 1, paragraph *"a,"* *"b,"* or *"c,"* consideration shall be given to the factors specified in the provisions on unconscionability with respect to a transaction that is or gives rise to or that a person leads the debtor to believe will give rise to a consumer credit transaction, as provided in section 537.5108, subsection 3, among others.

4. In applying subsection 1, paragraph *"d,"* violations of section 537.7103 shall be considered, among other factors, as applicable.

5. In an action brought pursuant to this section, a charge or practice expressly permitted by this chapter is not in itself unconscionable. [C75,§537.6111]

Referred to in §§537.5108, 537.6108, 537.6112

537.6112 Temporary relief. With respect to an action brought to enjoin violations of this chapter under section 537.6110 or unconscionable agreements or fraudulent or unconscionable conduct under section 537.6111, the administrator may apply to the court for appropriate temporary relief against a defendant, pending final determination of the action. The court may grant appropriate temporary relief. [C75,§537.6112]

537.6113 Civil actions by administrator.

1. After demand, the administrator may bring a civil action against a person for all amounts of money, other than penalties, which a consumer or class of consumers has a right to recover explicitly granted by this chapter. The court shall order amounts recovered or recoverable under this subsection to be paid to each consumer or set off against his obligation. A consumer's action, other than a class action, takes precedence over a prior or subsequent action by the administrator with respect to the claim of that consumer. A consumer's class action takes precedence over a subsequent action by the administrator with respect to claims common to both actions but intervention by the administrator is authorized. An administrator's action on behalf of a class of consumers takes precedence over a consumer's subsequent class action with respect to claims common to both actions. Whenever an action takes precedence over another action under this subsection, the latter action may be stayed to the extent appropriate while the precedent action is pending and dismissed if the precedent action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the precedent action. A defense available to a person in a civil action brought by a consumer is available to him in a civil action brought under this subsection.

2. The administrator may bring a civil action against a person to recover a civil penalty of no more than five thousand dollars for repeatedly and intentionally violating this chapter. No civil penalty pursuant to this subsection may be imposed for violations of this chapter occurring more than two years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

3. The administrator may bring a civil action against a person for failure to file notification in accordance with the provisions on notification in section 537.6202, or to pay fees in accordance with the provisions on fees in section 537.6203, to recover the fees the defendant

has failed to pay plus interest at the rate of seven percent per annum and the administrator's reasonable costs in bringing the action, and a civil penalty in an amount determined by the court not exceeding the greater of three times the amount of fees the person has failed to pay or one thousand dollars. [C75,§537.6113]

Referred to in §§537.3205, 537.3304, 537.4101, 537.6110, 537.6115, 537.6203

537.6114 Reserved.

537.6115 Consumer's remedies not affected. The grant of powers to the administrator in this article does not affect remedies available to consumers under this chapter or under other principles of law or equity, except as provided in section 537.6113. [C75,§537.6115]

537.6116 Venue. The administrator may bring actions or proceedings in the district court in a county in which an act on which the action or proceeding is based occurred, or in a county in which the defendant resides or transacts business. [C75,§537.6116]

537.6117 Administrative rules.

1. The attorney general or his designee pursuant to chapter 17A may adopt, amend and repeal rules which he deems reasonably necessary for the enforcement of this chapter. Each rule so adopted shall be applicable to and binding upon every person subject to the provisions of this chapter.

2. An official or agency of this state charged with the enforcement of provisions of this chapter may adopt, amend or repeal rules pursuant to chapter 17A, subject to the following limitations:

a. A rule adopted pursuant to this subsection which conflicts with a rule adopted by the administrator is void.

b. An official or agency shall not adopt a rule which interprets or prescribes law or policy which has not been approved in advance of adoption by the administrator. If, in the opinion of the administrator, the proposed rule interprets the provisions of this chapter, or otherwise should be a rule of general applicability, the administrator may disapprove the proposed rule, in which case the official or agency shall not adopt that rule. The administrator may adopt that rule or a different rule relating to the same subject, or may determine that no rule relating to that subject shall be adopted. [C75,§537.6204; 66GA, ch 1212,§7]

PART 2
NOTIFICATION AND FEES

Referred to in §537.1201

537.6201 Applicability. This part applies to all of the following:

1. Creditors engaged in consumer credit transactions and acts, practices or conduct involving consumer credit transactions to which this chapter applies pursuant to section 537.1201, but not to those licensed, certificated, or otherwise authorized to engage in business by chapter 524, 533, 534, 536 or 536A.

2. Debt collectors, as defined in section 537.7102, subsection 3, to whose acts, practices, or conduct this chapter applies pursuant to section 537.1201. [C75,§537.6201]

Referred to in §537.1201

537.6202 Notification.

1. Persons subject to this part shall file notification with the administrator within thirty days after commencing business in this state, and, thereafter, on or before January 31 of each year. The notification must state all of the following:

a. Name of the person.

b. Every name in which business is transacted if different from the name of the person.

c. Address of principal office, whether or not within this state.

d. Address of all offices or retail stores, if any, in this state at which consumer credit transactions are entered into or acts, practices or conduct involving consumer credit transactions are engaged in, or in the case of a person taking assignments of obligations, any offices or places of business within this state at which business is transacted or, in the case of debt collectors, any offices in this state from or at which debt collection is engaged in.

e. If consumer credit transactions or acts, practices or conduct involving consumer credit transactions or debt collection, are engaged in otherwise than at an office or retail store in this state and this chapter applies to such transactions, acts, practices or conduct, pursuant to section 537.1201, a brief description of the manner in which they are engaged in.

f. Address of designated agent upon whom service of process may be made in this state.

g. Whether or not supervised loans are made.

2. If information in a notification becomes inaccurate after filing, no further notification is required until the following January 31. [C75,§537.6202]

Referred to in §§537.5301, 537.6113

537.6203 Fees.

1. A person required to file notification shall pay to the administrator an annual fee of ten dollars. The fee shall be paid with the filing of the first notification and on or before January 31 of each succeeding year.

2. A person required to file notification who is a seller, lessor or lender and who is not an assignee shall pay an additional fee at the time and in the manner stated in subsection 1 of ten dollars for each one hundred thousand dollars, or part thereof exceeding ten thousand dollars, of the average unpaid balances, including unpaid scheduled periodic payments under consumer leases, of obligations arising from consumer credit transactions entered into or modified by him in this state and held on the last day of each calendar month during the preceding calendar year and held either by the seller, lessor, or lender, or by his immediate

or remote assignee who has not filed notification. The unpaid balances of assigned obligations held by an assignee who has not filed notifications are presumed to be the unpaid balances of the assigned obligations at the time of their assignment by the seller, lessor, or lender.

3. A person required to file notification who is an assignee shall pay an additional fee at the time and in the manner stated in subsection 1 of ten dollars for each one hundred thousand dollars, or part thereof exceeding ten thousand dollars, of the average unpaid balances including unpaid scheduled periodic payments payable by lessees, of obligations arising from consumer credit transactions entered into or modified in this state taken by him by assignment and held by him on the last day of each calendar month during the preceding calendar year.

4. In addition to the penalties provided by section 537.6113, subsection 3, the administrator may collect a charge, established by rule, not exceeding twenty-five dollars from each person required to pay fees under this section who fails to pay the fees in full within thirty days after they are due. [C75,§537.6203]

Referred to in §§537.5301, 537.6113

537.6204 Repealed by 66GA, ch 1212,§8; see §537.6117.

ARTICLE 7
DEBT COLLECTION PRACTICES

Referred to in §537.1201

537.7101 Short title. This article shall be known and may be cited as the "Iowa Debt Collection Practices Act." [C75,§537.7101]

537.7102 Definitions. As used in this article, unless the context otherwise requires:

1. *"Debt"* means an actual or alleged obligation arising out of a consumer credit transaction, or a transaction which would have been a consumer credit transaction either if a finance charge was made, if the obligation was not payable in installments, if a lease was for a term of four months or less, or if a lease was of an interest in land.

2. *"Debt collection"* means an action, conduct or practice in soliciting debts for collection or in the collection or attempted collection of a debt.

3. *"Debt collector"* means a person engaging, directly or indirectly, in debt collection, whether for himself, his employer, or others, and includes a person who sells, or offers to sell, forms represented to be a collection system, device, or scheme, intended to be used to collect debts.

4. *"Administrator"* means the person designated in section 537.6103.

5. *"Debtor"*, for the purposes of this article, means the person obligated.

6. *"Creditor"*, for the purposes of this article, means the person to whom a debtor is obligated, either directly or indirectly, on a debt. [C75,§537.7102]

Referred to in §§537.1303(3-5), 537.6201

537.7103 Prohibited practices.

1. A debt collector shall not collect or attempt to collect a debt by means of an illegal threat, coercion or attempt to coerce. The conduct described in each of the following paragraphs is an illegal threat, coercion or attempt to coerce within the meaning of this subsection:

a. The use, or express or implicit threat of use, of force, violence or other criminal means, to cause harm to a person or to property of a person.

b. The false accusation or threat to falsely accuse a person of fraud or any other crime.

c. False accusations made to a person, including a credit reporting agency, or the threat to falsely accuse, that a debtor is willfully refusing to pay a just debt. However, a failure to reply to requests for payment and a failure to negotiate disputes in good faith are deemed willful refusal.

d. The threat to sell or assign to another an obligation of the debtor with an attending representation or implication that the result of the sale or assignment will be to subject the debtor to harsh, vindictive or abusive collection attempts.

e. The false threat that nonpayment of a debt may result in the arrest of a person or the seizure, garnishment, attachment or sale of property or wages of that person.

f. An action or threat to take an action prohibited by this chapter or any other law.

2. A debt collector shall not oppress, harass or abuse a person in connection with the collection or attempted collection of a debt of that person or another person. The following conduct is oppressive, harassing or abusive within the meaning of this subsection:

a. The use of profane or obscene language or language that is intended to abuse the hearer or reader and which by its utterance would tend to incite an immediate breach of the peace.

b. The placement of telephone calls to the debtor without disclosure of the name of the business or company the debt collector represents.

c. Causing expense to a person in the form of long distance telephone tolls, telegram fees or other charges incurred by a medium of communication by attempting to deceive or mislead persons as to the true purpose of the notice, letter, message or communication.

d. Causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously or at unusual hours or times known to be inconvenient, with intent to annoy, harass or threaten a person.

3. A debt collector shall not disseminate information relating to a debt or debtor as follows:

a. The communication or threat to communicate or imply the fact of a debt to a person other than the debtor or a person who might reasonably be expected to be liable for the debt, except with the written permission of the debtor given after default. For the purposes of this paragraph, the use of language on envelopes indicating that the communication relates to the collection of a debt is a communication of the debt. However, this paragraph does not prohibit a debt collector from any of the following:

(1) Notifying a debtor of the fact that he may report a debt to a credit bureau or engage an agent or an attorney for the purpose of collecting the debt.

(2) Reporting a debt to a credit reporting agency or any other person reasonably believed to have a legitimate business need for the information.

(3) Engaging an agent or attorney for the purpose of collecting a debt.

(4) Attempting to locate a debtor whom the debt collector has reasonable grounds to believe has moved from his residence, where the purpose of the communication is to trace the debtor, and the content of the communication is restricted to requesting information on the debtor's location.

(5) Communicating with the debtor's employer or credit union not more than once during any three-month period when the purpose of the communication is to obtain an employer's or credit union's debt counseling services for the debtor. In the event no response is received by the debt collector from a communication to the debtor's employer or credit union the debt collector may make one inquiry as to whether the communication was received. In addition a debt collector may respond to any communications by a debtor's employer or credit union.

(6) Communicating with the debtor's employer once during any one-month period, if the purpose of the communication is to verify with an employer the fact of the debtor's employment and if the debt collector does not disclose, except as permitted in subparagraph (5), any information other than the fact that a debt exists. This subparagraph shall not authorize a debtor collector to disclose to an employer the fact that a debt is in default.

(7) Communicating the fact of the debt not more than once in any three-month period, with the parents of a minor debtor, or with any trustee of any property of the debtor, conservator of the debtor or the debtor's property, or guardian of the debtor. In addition, a debt collector may respond to inquiry from a parent, trustee, conservator or guardian.

(8) Communicating with the debtor's spouse with the consent of the debtor, or responding to inquiry from the debtor's spouse.

b. The disclosure, publication, or communication of information relating to a person's indebtedness to another person, by publishing or posting a list of indebted persons, commonly known as "deadbeat lists", or by advertising for sale a claim to enforce payment of a debt when the advertisement names the debtor.

c. The use of a form of communication to the debtor, except a telegram, an original notice or other court process, or an envelope displaying only the name and address of a debtor and the return address of the debt collector, intended or so designed as to display or convey information about the debt to another person other than the name, address, and phone number of the debt collector.

4. A debt collector shall not use a fraudulent, deceptive, or misleading representation or means to collect or attempt to collect a debt or to obtain information concerning debtors. The following conduct is fraudulent, deceptive, or misleading within the meaning of this subsection:

a. The use of a business, company or organization name while engaged in the collection of debts, other than the true name of the debt collector's business, company, or organization or the name of the business or company the debt collector represents.

b. The failure to clearly disclose in all written communications made to collect or attempt to collect a debt or to obtain or attempt to obtain information about a debtor, that the debt collector is attempting to collect a debt and that information obtained will be used for that purpose, except where disclosure would tend to embarrass the debtor.

c. A false representation that the debt collector has information in his possession or something of value for the debtor, which is made to solicit or discover information about the debtor.

d. The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned at the time of making a demand for money.

e. An intentional misrepresentation, or a representation which tends to create a false impression of the character, extent or amount of a debt, or of its status in a legal proceeding.

f. A false representation, or a representation which tends to create a false impression, that a debt collector is vouched for, bonded by, affiliated with, or an instrumentality, agency or official of the state or an agency of federal, state or local government.

g. The use or distribution or sale of a written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or other legally constituted or authorized authority, or which tends to create a false impression about its source, authorization or approval.

h. A representation that an existing obligation of the debtor may be increased by the addition of attorney's fees, investigation fees, service fees or other fees or charges, when in

fact such fees or charges may not legally be added to the existing obligation.

i. A false representation, or a representation which tends to create a false impression, about the status or true nature of, or services rendered by, the debt collector or his business.

5. A debt collector shall not engage in the following conduct to collect or attempt to collect a debt:

a. The seeking or obtaining of a written statement or acknowledgment in any form that specifies that a debtor's obligation is one chargeable upon the property of either husband or wife or both, under section 597.14, when the original obligation was not in fact so chargeable.

b. The seeking or obtaining of a written statement or acknowledgment in any form containing an affirmation of an obligation which has been discharged in bankruptcy, without clearly disclosing the nature and consequences of the affirmation and the fact that the debtor is not legally obligated to make the affirmation. However, this subsection does not prohibit the accepting of promises to pay that are voluntarily written and offered by a bankrupt debtor.

c. The collection of or the attempt to collect from the debtor a part or all of the debt collector's fee for services rendered, unless the debt collector is legally entitled to collect the fee from the debtor.

d. The collection of or the attempt to collect interest or other charge, fee or expense incidental to the principal obligation unless the interest or incidental charge, fee, or expense is expressly authorized by the agreement creating the obligation and is legally chargeable to the debtor, or is otherwise legally chargeable.

e. A communication with a debtor when the debt collector knows that the debtor is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls or discuss the obligation in question, within a reasonable time, or prior approval is obtained from the debtor's attorney or when the communication is a response in the ordinary course of business to the debtor's inquiry.

6. A debt collector shall not use or distribute, sell or prepare for use, a written communication that violates or fails to conform to United States postal laws and regulations. [C75,§537.7103]

Referred to in §§537.5108, 537.5201, 537.5301, 537.6111

CHAPTER 537A

CONTRACTS

537A.1 Seals abolished.
537A.2 Consideration implied.
537A.3 Failure of consideration.
537A.4 Gaming contracts void.

537A.1 Seals abolished. The use of private seals in written contracts, or other instruments in writing, by individuals, firms, or corporations that have not adopted a corporate seal, is hereby abolished; but the addition of a seal to any such instrument shall not affect its character or validity in any respect. [C51, §974; R60,§1823; C73,§2112; C97,§3068; S13,§3068; C24, 27, 31, 35, 39,§**9439**; C46, 50, 54, 58, 62, 66, 71, 73,§537.1; C75,§537A.1]

Corporate seals, §558.2 et seq.

537A.2 Consideration implied. All contracts in writing, signed by the party to be bound or by his authorized agent or attorney, shall import a consideration. [C51,§975; R60,§1824; C73,§2113; C97,§3069; C24, 27, 31, 35, 39,§**9440**; C46, 50, 54, 58, 62, 66, 71, 73,§537.2; C75,§537A.2]

537A.3 Failure of consideration. The want or failure, in whole or in part, of the consideration of a written contract may be shown as a defense, total or partial, except as provided in the Uniform Commercial Code, chapter 554. [C51,§976; R60,§1825; C73,§2114; C97,§3070; C24, 27, 31, 35, 39,§**9441**; C46, 50, 54, 58, 62, 66, 71, 73,§537.3; C75,§537A.3]

537A.4 Gaming contracts void. All promises, agreements, notes, bills, bonds, or other contracts, mortgages or other securities, when the whole or any part of the consideration thereof is for money or other valuable thing won or lost, laid, staked, or bet, at or upon any game of any kind or on any wager, are absolutely void and of no effect.

This section shall not apply to a contract for the operation of or for the sale or rental of equipment for games of skill or games of chance, if both the contract and the games are in compliance with chapter 99B. [C51,§2724, R60,§4366; C73,§4029; C97,§4965; C24, 27, 31, 35, 39,§**9442**; C46, 50, 54, 58, 62, 66, 71, 73,§537.4; C75,§537A.4; 66GA, ch 99,§17]

CHAPTER 538

TENDER OF PAYMENT AND PERFORMANCE

Notary fee for noting tender, §77.19
Tender under offer to compromise, ch 677

538.1 Demand required.
538.2 Tender of labor or property.
538.3 Tender when contract assigned.
538.4 Effect of tender.
538.5 Tender when holder absent from state.
538.6 Offer in writing—effect.
538.7 Nonacceptance of tender.
538.8 Receipt—objection.

538.1 Demand required. No cause of action shall accrue upon a contract for labor or the payment or delivery of property other than money, where the time of performance is not fixed, until a demand of performance has been made upon the maker and refused, or a reasonable time for performance thereafter allowed. [C51,§959; R60,§1806; C73,§2097; C97,§3056; C24, 27, 31, 35, 39,§**9443**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§538.1]

538.2 Tender of labor or property. When a contract for labor, or for the payment or delivery of property other than money, does not fix a place of payment, the maker may tender the labor or property at the place where the payee resided at the time of making the contract, or at the residence of the payee at the time of performance of the contract, or where any assignee of the contract resides when it becomes due, but if the property in such case is too ponderous to be conveniently transported, or if the payee had no known place of residence within the state at the time of making the contract, or if the assignee of a written contract has no known place of residence within the state at the time of performance, the maker may tender the property at the place where he resided at the time of making the contract. [C51,§§960, 961; R60,§§1807, 1808; C73,§§2098, 2099; C97,§3057; C24, 27, 31, 35, 39,§**9444**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§538.2]

538.3 Tender when contract assigned. When the contract is contained in a written instrument which is assigned before due, and the maker has notice thereof, he shall make the tender at the residence of the holder if he resides in the state and no farther from the maker than the payee did at the making thereof. [C51,§962; R60,§1809; C73,§2100; C97,§3058; C24, 27, 31, 35, 39,§**9445**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§538.3]

538.4 Effect of tender. A tender of the property, as above provided, discharges the maker from the contract, and the property becomes vested in the payee or his assignee, and he may maintain an action therefor as in other cases. But if the property tendered be perishable, or requires feeding, or other care, and no person is found to receive it when tendered, the person making the tender shall preserve, feed, or otherwise take care of the same, and shall have a lien thereon for his reasonable expenses and trouble in so doing. [C51,§§963, 964; R60,§§1810, 1811; C73,§§2101, 2102; C97, §3059; C24, 27, 31, 35, 39,§**9446**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§538.4]

538.5 Tender when holder absent from state. When an instrument for the payment of money is due and the holder is absent from the state or his identity or whereabouts are unknown and the instrument does not provide for a place of payment, the maker may tender payment at the last known residence or place of business of the last known holder, and if there be no person there authorized to receive payment and give proper credit therefor, the maker shall be deemed to have tendered payment and interest shall cease on the date of deposit if:

1. The maker deposits the amount due with the clerk of the district court in the county where the maker resided at the time of the making of the instrument, if he was then a resident of the state of Iowa, or if the maker was a nonresident of the state of Iowa at the time of making, with the clerk of the district court of Polk county, and

2. *a.* The maker files an affidavit with the clerk of the court that the identity or address of the holder is unknown and that he has made diligent inquiry to ascertain it, or

b. The maker within three days gives notice of such deposit by ordinary mail to the holder, if his identity and address are known.

Upon presentment of the instrument by the holder to the clerk, the clerk shall pay the holder of such instrument the funds in his hands. If such deposit is in full payment of the instrument the clerk shall deliver the instrument to the maker. If such deposit is a partial payment thereof the clerk shall endorse such payment thereon and return the instrument to the holder. [C51,§958; R60,§1805; C73,§2103; C97,§3060; C24, 27, 31, 35, 39,§**9447**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§538.5]

538.6 Offer in writing—effect. An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, if not accepted, is equivalent to the actual tender of the money, instrument, or property, subject, however, to the condition contained in section 538.7; but if the party to whom the tender is made desires an inspection of the instrument or property tendered, other than money, before making his determination, it shall be allowed him on request. [C51,§967;

R60,§1816; C73,§2105; C97,§3061; C24, 27, 31, 35, 39,§**9448**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§538.6]

538.7 Nonacceptance of tender. When a tender of money or property is not accepted by the party to whom it is made, the party making it may, if he sees fit, retain it in his possession; but if afterwards the party to whom the tender was made concludes to accept it and gives notice thereof to the other party, and the subject of the tender is not delivered to him within a reasonable time, the tender shall be of no effect. [C51,§966; R60,§1815; C73,§2104; C97,§3062; C24, 27, 31, 35, 39,§**9449**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§538.7]

Referred to in §538.6

538.8 Receipt—objection. The person making a tender may demand a receipt in writing for the money or article tendered, as a condition precedent to the delivery thereof. The person to whom a tender is made must, at the time, make any objection which he may have to the money, instrument, or property tendered, or he will be deemed to have waived it. [C51,§§968, 969; R60,§§1817, 1818; C73,§§2106, 2107; C97,§3063; C24, 27, 31, 35, 39,§**9450**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§538.8]

CHAPTER 539

ASSIGNMENT OF ACCOUNTS AND NONNEGOTIABLE INSTRUMENTS

Assignment of thing in action, R.C.P. 7

539.1 Assignment of nonnegotiable instruments.
539.2 Assignment prohibited by instrument.
539.3 Assignment of open account.
539.4 Assignment of wages.
539.5 Priority.
539.6 Assignor liable.
539.7 to 539.15 Repealed by 61GA, ch 413, §10102.

539.1 Assignment of nonnegotiable instruments. Bonds, due bills, and all instruments by which the maker promises to pay another, without words of negotiability, a sum of money, or by which he promises to pay a sum of money in property or labor, or to pay or deliver any property or labor, or acknowledges any money, labor, or property to be due, are assignable by endorsement thereon, or by other writing, and the assignee shall have a right of action thereon in his own name, subject to any defense or counterclaim which the maker or debtor had against any assignor thereof before notice of such assignment. In case of conflict between this section and Uniform Commercial Code, sections 554.3805, 554.5116 or 554.9318, those sections control. [C51,§949; R60,§1796; C73,§2084; C97,§3044; C24, 27, 31, 35, 39,§**9451**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§539.1]

Related section, R.C.P. 7

539.2 Assignment prohibited by instrument. When by the terms of an instrument its assignment is prohibited, an assignment thereof shall nevertheless be valid, but the maker may avail himself of any defense or counterclaim against the assignee which he may have against any assignor thereof before notice of such assignment is given to him in writing. In case of conflict between this section and Uniform Commercial Code, sections 554.3805, 554.5116 or 554.9318, those sections control. [C51,§951; R60,§1798; C73,§2086; C97,§3046; C24, 27, 31, 35, 39,§**9452**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§539.2]

Referred to in §539.3
Related section, R.C.P. 7

539.3 Assignment of open account. An open account of sums of money due on contract may be assigned, and the assignee will have a right of action thereon in his own name, subject to such defenses and counterclaims as are allowed against the instruments mentioned in section 539.2, before notice of such assignment is given to the debtor in writing by the assignee. In case of conflict Uniform Commercial Code, section 554.9318, controls. [C51,§952; R60,§1799; C73,§2087; C97,§3047; S13,§3047; C24, 27, 31, 35, 39,§**9453**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§539.3]

S13,§3047, editorially divided
Related section, R.C.P. 7

539.4 Assignment of wages. No sale or assignment, by the head of a family, of wages, whether the same be exempt from execution or not, shall be of any validity whatever unless the same be evidenced by a written instrument, and if married, unless the husband and wife sign and acknowledge the same joint instrument before an officer authorized to take acknowledgments. Provided, however, that no such assignment or order shall be effective or binding upon the employer unless the employer has in writing agreed to accept and pay said assignment or order. This section shall not apply to a wage assignment by an employee to an organization which represents the employee in labor relations with his employer. [S13,§3047; C24, 27, 31, 35, 39,§**9454**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§539.4]

Referred to in §91A.3, 322.6(9), 533.32

539.5 Priority. Assignments of wages shall have priority and precedence in the order in which notice in writing of such assignments shall be given to the employer, and not otherwise. [S13,§3047; C24, 27, 31, 35, 39,§**9455**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§539.5]

539.6 Assignor liable. The assignor of any of the above instruments not negotiable shall be liable to the action of his assignee without notice. [C51,§956; R60,§1803; C73,§2088; C97, §3048; C24, 27, 31, 35, 39,**§9456**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§539.6]

539.7 to 539.15 Repealed by 61GA, ch 413, §10102.

CHAPTER 540

SURETIES

540.1 Requiring creditor to sue.
540.2 Refusal or neglect of creditor.
540.3 Suit by surety.
540.4 Executor—official bonds.

540.1 Requiring creditor to sue. When any person bound as surety for another for the payment of money, or the performance of any other contract in writing, apprehends that his principal is about to become insolvent or remove permanently from the state without discharging the contract, he may, if a cause of action has accrued thereon, by writing, require the creditor to sue upon the same, or permit the surety to commence an action in such creditor's name and at the surety's cost. [C51,§970; R60,§1819; C73,§2108; C97,§3064; C24, 27, 31, 35, 39,**§9457**; C46, 50, 54, 58, 62, 66, 71, 73, 75§,540.1]

Order of liability, R.C.P. 224
Right of subrogation, §626.19

540.2 Refusal or neglect of creditor. If the creditor refuses or neglects to bring an action for ten days after request, and does not permit the surety to do so, and to furnish him with a true copy of the contract or other writing therefor, and enable him to have the use of the original when requisite in such action, the surety shall be discharged. [C51,§971; R60, §1820; C73,§2109; C97,§3065; C24, 27, 31, 35, 39, §**9458**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§540.2]

540.3 Suit by surety. When the surety commences such action, he shall give a bond to pay such costs as may be adjudged against the creditor, and the action shall be brought against all the obligors, but those joining in the request to the creditor shall make no defense thereto, but may be heard on the assessment of the damages. [C51,§972; R60,§1821; C73,§2110; C97,§3066; C24, 27, 31, 35, 39,**§9459**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§540.3]

540.4 Executor — official bonds. The provisions of this chapter extend to the executor of a deceased surety and holder of the contract, but not to the official bonds of public officers, executors, or guardians. [C51,§973; R60,§1822; C73,§2111; C97,§3067; C24, 27, 31, 35, 39,**§9460**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§540.4]

CHAPTER 541

NEGOTIABLE INSTRUMENTS LAW

541.1 to 541.201 Repealed by 61GA, ch 413, §10102.
541.202 Negotiating instrument on holiday.

541.1 to 541.201 Repealed by 61GA, ch 413, §10102; see ch 554.

541.202 Negotiating instrument on holiday. Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank or trust company in this state because done or performed on any legal holiday or during any time other than regular banking hours, if such payment, certification, acceptance or other transaction could have been validly done or performed on any other day; provided that nothing herein shall be construed to compel any bank or trust company in this state, which by law or custom is entitled to close for the whole or any part of any legal holiday, to keep open for the transaction of business or to perform any of the acts or transactions aforesaid on any legal holiday except at its own option. [C54, 58, 62, 66, 71, 73, 75,§541.202]

CHAPTER 542

GRAIN DEALERS

542.1 Definitions.
542.2 Duties and powers of the commission.
542.3 License required.
542.4 Bond required.

542.5 License.
542.6 Fees.
542.7 Posting of license and registration.
542.8 Payment.
542.9 Inspection of premises, books and records.
542.10 Suspension or revocation of license.
542.11 Penalties—misdemeanor.

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

1. *"Commission"* means the Iowa state commerce commission.

2. *"Grain"* means any grain for which the United States department of agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt [emmer] and field peas.

3. *"Grain dealer"* shall mean any person who is engaged in the business of buying grain for resale. This shall not be construed to mean a person engaged in buying or selling grain on the board of trade or any person who sells purchased grain only in a registered feed. [C75,§542.1]

542.2 Duties and powers of the commission. The commission may exercise general supervision over the business operations of grain dealers. The supervisory and regulatory powers authorized by this chapter shall be the responsibility of the warehouse division of the commission. The commission may inspect or cause to be inspected any grain dealer operating in this state and may require the filing of reports pertaining to the operation of his business. The commission shall adopt rules to provide for the efficient administration and regulation of the provisions of this chapter, and may designate an employee of the commission to act for the commission in any details connected with such administration, including the issuance of licenses and approval of grain dealers' bonds in the name of the commission. [C75,§542.2]

542.3 License required. No person shall engage in the business of a grain dealer in this state without having obtained a license issued by the commission. Each application for a license to engage in business as a grain dealer shall be filed with the commission and shall be in a form prescribed by the commission. The application shall include the name of the applicant, its principal officers if the applicant is a corporation or the active members of a partnership if the applicant is a partnership and the location of the principal office or place of business of the applicant. A separate license shall be required for each location at which the records are normally kept for transactions of the grain dealer. The application shall also list the number of trucks or tractor trailer units that will be used in the transportation of grain purchased for resale or grain transported into this state for resale. The application shall be accompanied by a complete financial statement of the applicant setting forth the assets, liabilities and the net worth of the applicant. In order to receive a license the net worth of an applicant must exceed five thousand dollars. The commission may require additional information or verification with respect to the financial resources of the applicant and the applicant's ability to pay producers for grain purchased from them. [C75,§542.3]

542.4 Bond required. Any person applying for a license to operate as a grain dealer in accordance with this chapter shall, as a condition to the granting of the license, file with the commission a bond payable to the state of Iowa with a corporate surety approved by the commission in a penal sum of fifteen thousand dollars per license conditioned that the applicant will pay the purchase price of any grain to the seller, and that the grain dealer owns, free of liens, any grain which he offers for sale; provided that the aggregate liability of the surety to such persons shall in no event exceed the sum of such bond. One bond, cumulative as to minimum requirements, shall be required where a person has multiple licenses but in no event shall the total amount of bond exceed one hundred thousand dollars. No bond shall be canceled by a surety before at least sixty days' notice by certified mail to the commission and the grain dealer. The liability of the surety shall cover all purchases and transactions made by the grain dealer during the time the bond is in force. A grain dealer's bond filed with this commission shall be in continuous force until canceled by the surety. The liability of the surety on any bond required by the provisions of this chapter shall not accumulate for each successive license period during which the bond is in force. [C75,§542.4]

542.5 License. Upon the filing of the application and compliance with the terms and conditions of this chapter and rules of the commission, the commission shall issue a license to the applicant. The license shall terminate on the thirtieth of June of each year. A grain dealer's license may be renewed annually by the filing of a renewal application on a form prescribed by the commission accompanied by a current financial statement and the renewal fee. An application for renewal shall be received by the commission before the thirtieth of June. [C75,§542.5]

542.6 Fees. The commission shall collect fees as follows:

1. For the issuance of a license, twenty-five dollars per year or fraction of a year.

2. For renewal of license, twenty-five dollars per year.

3. An annual registration fee, to be determined by the commission, of not less than five dollars nor more than ten dollars for each vehicle used by the license holder in the transporting of grain.

4. A fee of one dollar will be charged for each duplicate identification to be used on any vehicle.

5. All fees collected by the commission under this chapter shall be deposited in the general fund of the state. [C75,§542.6]

542.7 Posting of license and registration. The grain dealer's license shall be posted in a conspicuous place in the place of business. Each vehicle used by a license holder shall be equipped with a special decal or other registration identification as prescribed by the commission so that the decal will be readily visible. A grain dealer's license is not transferable. The registration shall not be transferred from one vehicle to another, except in case of destruction or other disposition of the vehicle previously bearing the identification. All transfers must first be approved by the commission. If a registration for a vehicle becomes defaced or destroyed, a duplicate shall be obtained from the commission upon request and payment of the fee. [C75,§542.7]

542.8 Payment. A person licensed as a grain dealer shall make payment of the purchase price to the owner or his agent for grain upon delivery or demand of the owner or his agent. A person who holds a bonded warehouse license may issue deferred payment contracts in accordance with the provisions of section 543.17 and payment shall be made in accordance with the terms of the contract. [C75,§542.8]

542.9 Inspection of premises, books and records. The commission may inspect the premises used by any grain dealer in the conduct of his business at any time and the books, accounts, records and papers of every such grain dealer shall, during ordinary business hours, be subject to inspection by the commission. The transporter of grain in transit shall have in his possession bills of lading or other documents covering such grain in transit and such documents shall be available for inspection by the commission upon request. Any grain dealer licensed in this state who does not have a place of business within the state shall make available and furnish to the commission upon request all such books, accounts, records and papers of grain transactions within this state at any reasonable time and place that the commission may set for inspection thereof. [C75,§542.9]

542.10 Suspension or revocation of license. The commission may after hearing and upon information being filed with the commission by the head of the warehouse division of the commission or upon complaint filed by any person, suspend or revoke the license of any person licensed under this chapter for the violation of or failure to comply with the provisions of this chapter or any rule adopted under this chapter. An information or a verified complaint stating the grounds for suspension or revocation shall be filed with the commission in triplicate. The commission shall notify the licensee of the complaint and furnish him with a copy of the information or the complaint and a copy of the order of the commission fixing the time for a hearing, which time shall be at least five days from the date of notification. If the commission determines that the public good requires immediate action, the commission may, upon the filing of the information or the complaint and without hearing, temporarily suspend a license pending the determination by it of the complaint. Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act.

The commission may revoke a grain dealer's license upon information without hearing if a grain dealer fails to have sufficient bond on file with the commission, or if a grain dealer fails to submit to inspection.

Upon revocation of a license, any claim of a creditor shall be filed against the former licensee within one hundred twenty days after the date of revocation. [C75,§542.10]

542.11 Penalties—misdemeanor. Any person who engages in business as a grain dealer without obtaining a license or any person in violation of any other provision of this chapter, or any grain dealer who refuses to permit inspection of his premises, books, accounts or records as provided in this chapter, shall be guilty of a misdemeanor and, upon conviction, be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment for each offense. Each day that any violation continues shall constitute a separate offense. Any person violating the provisions of this chapter may be restrained by an injunction. [C75,§542.11]

CHAPTER 543

BONDED WAREHOUSES FOR AGRICULTURAL PRODUCTS

Referred to in §474.9

543.1 Terms defined.
543.2 Duties and powers of the commission.
543.3 Rules.
543.4 Issuance of license.

543.5 Application for license.
543.6 License to specify type and quantity of products which may be stored.
543.7 Repealed by 62GA, ch 384,§6.
543.8 Amendment of license.
543.9 Repealed by 64GA, ch 1118,§8.
543.10 Suspension or revocation of license.
543.11 Suspension or revocation of license for insufficiency of bond or insurance.
543.12 Bond required.
543.13 Form, amount, sureties and conditions of bond.
543.14 Action on bond.
543.15 Insurance required.
543.16 License required for the storage of bulk grain.
543.17 Receiving bulk grain at licensed and unlicensed warehouses.
543.18 Issuance of warehouse receipts.
543.19 Rights and obligations with respect to warehouse receipts—lost receipts.
543.20 Receipt by warehouseman to himself.
543.21 Repealed by 61GA, ch 413,§10102.
543.22 Receipt for nonfungible products.
543.23 to 543.26 Repealed by 61GA, ch 413, §10102.
543.27 Discrimination.
543.28 Rates.
543.29 Repealed by 61GA, ch 413,§10102.
543.30 Inspecting and grading.
543.31 and 543.32 Repealed by 62GA, ch 387, §§2, 3.
543.33 Fees.
543.34 Use of term "bonded warehouse".
543.35 Licensed warehouseman to keep records.
543.36 Penalties—misdemeanor.
543.37 Failure to pay fee.
543.38 No obligation of state.
543.39 Grain stored in another warehouse.

543.1 Terms defined. As used in this chapter:

1. *"Commission"* shall mean the Iowa state commerce commission.

2. *"Warehouse"* shall mean any building, structure, or other protected enclosure in this state used or usable for the storage of agricultural products. Buildings used in connection with the operation of the warehouse shall be deemed to be a part of the warehouse.

3. *"Licensed warehouse"* shall mean a warehouse for the operation of which the commission has issued a license in accordance with the provisions of section 543.4.

4. *"Agricultural product"* shall mean any product of agricultural activity suitable for storage in quantity, including refined or unrefined sugar and canned agricultural products and shall also mean any product intended for consumption in the production of other agricultural products, such as stock salt, binding twine, bran, cracked corn, soybean meal, commercial feeds, and cottonseed meal.

5. *"Grain"* shall mean wheat, corn, oats, barley, rye, flaxseed, field peas, soybeans, grain sorghums, spelt, and similar agricultural products.

6. *"Bulk grain"* shall mean grain which is not contained in sacks.

7. *"Person"* shall mean an individual, corporation, partnership, or two or more persons having a joint or common interest in the same venture, and, except with respect to the privilege of operating a warehouse under this chapter, shall include the United States or Iowa state government, or any subdivision or agency of either.

8. *"Warehouseman"* means any person engaged in the business of operating or controlling a warehouse for the storing, shipping, handling or processing of agricultural products.

9. *"Licensed warehouseman"* shall mean a warehouseman who has obtained a license for the operation of a warehouse under the provisions of section 543.4.

10. *"Delivery charge"* shall mean the charge made by the warehouseman for receiving grain into and delivering grain from the warehouse, exclusive of the warehouseman's other charges.

11. *"Unlicensed warehouseman"* means a warehouseman who retains grain in his warehouse not to exceed ten days and is not licensed under the provisions of this chapter or Title VII, U.S.C.

12. *"Scale weight ticket"* means a load slip or other evidence, other than a receipt, given to a depositor by a warehouseman licensed under this chapter upon initial delivery of the agricultural product to the warehouse.

13. *"Depositor"* means any person who deposits an agricultural product in a warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the agricultural product.

14. *"Station"* means a warehouse located more than three miles from the central office of the warehouse or in a different city than the central office.

15. *"Warehouseman's obligation"* means a sufficient quantity and quality of grain or other products for which a warehouseman is licensed including company owned grain and grain of depositors as the warehouseman's records indicate. For an unlicensed warehouseman it means a sufficient quantity and quality to cover company owned and all deposits of grain for which actual payment has not been made. At no time may a warehouseman have less grain in his warehouse than his obligations to depositors, as determined by investigation of the warehouseman's records.

16. *"Storage"* means any grain or other agricultural products that have been received and have come under care, custody or control of a warehouseman either for the depositor for which a contract of purchase has not been negotiated or for the warehouseman operating the facility.

17. *"Open storage"* means grain or agricultural products which are received by a warehouseman from a depositor for which warehouse receipts have not been issued or a purchase made and the records documented accordingly. [C24, 27, 31,§9719; C35,§9751-g1; C39, §**9751.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §543.1; 66GA, ch 1226,§§1, 2]

543.2 Duties and powers of the commission. The commission is authorized to exercise general supervision over the storage, warehousing, classifying according to grade or otherwise, weighing, and certification of agricultural products. The commission may inspect or cause to be inspected any warehouse and may require the filing of reports describing any warehouse or the operation thereof. If upon any such inspection a deficiency is found to exist as to the quantity or quality of agricultural products stored, the commission shall have the authority to, and may require an employee to remain at the licensed warehouse and supervise all operations conducted thereat involving agricultural products stored under the provisions of this chapter until the deficiency is corrected. The commission shall inspect or cause to be inspected every licensed warehouse and the contents thereof not less than once every six months and the commission shall have authority to make available to the United States government, or any of its agencies, including the Commodity Credit Corporation, the results of inspections made and inspection reports submitted to it by employees of the commission, upon payment to it of such charges as may be determined by the commission, but in no event shall such charges be less than the actual cost of such services rendered in regard thereto, as determined by the commission. The commission shall have authority to enter into contracts and agreements for such purpose and shall keep a record of all money thus received. All such money shall be paid over to the treasurer of state as miscellaneous receipts. The commission may classify any warehouse in accordance with its suitability for the storage of agricultural products and shall specify in any license issued for the operation of any warehouse the type or types and the quantity of agricultural products which may be exclusively stored in such warehouse. The commission may prescribe, within the limitations of this chapter, the duties of licensed warehousemen with respect to the care of and responsibility for the contents of licensed warehouses. The commission may from time to time establish and publish standards for agricultural products by which quality or value of such products may be judged or determined. The commission may from time to time publish such data in connection with the administration of this chapter as may be of public interest. The commission shall have the duty of administration of the further provisions of this chapter. [C24, 27, 31,§§9739, 9744, 9750; C35,§§9751-g22,-g27,-g32; C39,§§**9751.22, 9751.27, 9751.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.2; 66GA, ch 1226,§3]

543.3 Rules. The commission shall from time to time make such rules as it may deem necessary for the efficient administration of the provisions of this chapter, and may at its discretion designate an employee or officer of the commission to act for the commission in any details connected with such administration, including the issuance of licenses and approval of warehouse bonds in the name of the commission, but not including matters requiring a public hearing or suspension or revocation of licenses. [C24, 27, 31,§9721; C35, §9751-g3; C39,§**9751.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.3]

Referred to in §543.4

543.4 Issuance of license. The commission is authorized, upon application to it, to issue to any warehouseman or to any person about to become a warehouseman a license or licenses for the operation of a warehouse or warehouses in accordance with the provisions of this chapter and such rules and regulations as may be made by the commission under the authority of section 543.3. A single license may be issued for the operation of two or more warehouses located in the same city and operated by the same warehouseman. A license to operate two or more warehouses located in different cities within a twenty-five mile radius of a central office may be issued under a single application, but a separate fee shall be charged for each station. [C24, 27, 31,§9722; C35,§9751-g4; C39,§**9751.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §543.4]

Referred to in §543.1(3, 9)

543.5 Application for license. Each application for a license or licenses shall be in writing subscribed and sworn to by the applicant or a duly authorized representative of the applicant. In addition to any other information required by rule of the commission the application shall include the following:

1. The name of the individual, partnership, or corporation making the application, the names of all partners if applicant is a partnership, and the names and titles of the principal officers if applicant is a corporation.
2. The principal office or place of business of the applicant.
3. A general description of each warehouse as to storage capacity, type of construction, mechanical equipment, if any, and condition.
4. The approximate location of each warehouse.
5. The type and quantity of agricultural product, or products intended to be stored in each warehouse.

6. A complete financial statement for use of the commission in the administration of this chapter.

7. A tariff on a form to be prescribed by the commission, for storage, conditioning of stored products, and receiving and loadout charges. [C24, 27, 31,§9722; C35,§9751-g4; C39,§**9751.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.5; 66GA, ch 1226,§4]

Referred to in §543.8

543.6 License to specify type and quantity of products which may be stored. The commission shall determine with respect to each application for a license whether the warehouse or warehouses described in the application is or are suitable for the proper and safe storage of the particular agricultural product or products intended to be stored therein in the quantities specified in the application, provided that no warehouse shall be found to be suitable and safe for the storage of bulk grain unless such warehouse is equipped with a fixed or portable mechanical device of a type in common use as an adjunct to the movement of bulk grain. Each license issued for the operation of a single warehouse shall specify the type or types and quantities of agricultural products which may be stored in such warehouse. Each license issued to a warehouseman for the operation of two or more warehouses in the same city shall specify with respect to each warehouse the type or types and quantities of agricultural product which may be stored in such warehouse. It shall be unlawful for any licensed warehouseman to accept for storage or to store in any licensed warehouse any agricultural product or products other than the type or types and quantities specified in the license for the operation of such warehouse. [C24, 27, 31,§9722; C35,§9751-g4; C39,§**9751.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.6]

543.7 Repealed by 62GA, ch 384,§6.

543.8 Amendment of license. The commission is authorized, upon its own motion, or upon receipt of written application, to amend any license previously issued by it, to change or modify the provisions as to the type and quantity of agricultural products which may be stored in the warehouse or warehouses in respect to which the license was originally issued. Application for amendments to licenses shall include the same information, except as to the financial condition of the applicant, as required by section 543.5 to be included in an original application. Applications for amendments of licenses shall be considered by the commission on the same basis as applications for original licenses, and except as otherwise provided in this chapter, a license when amended shall have the same status, as of the date of the amendment, as though originally issued as amended. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.8]

Referred to in §543.12

543.9 Repealed by 64GA, ch 1118,§8.

543.10 Suspension or revocation of license. The commission is empowered after hearing before it and upon information being filed with the commission by the duly authorized head of the warehouse division of the commission or upon complaint filed by any person to suspend or revoke the license of anyone licensed under this chapter for the violation of or failure to comply with the provisions of this chapter or any rule made in pursuance of the authority therefor granted under this chapter. An information or a verified complaint stating the grounds for suspension or revocation shall be filed with the commission in triplicate, and thereupon the commission shall serve the licensee complained against with a copy of the information or the complaint and a copy of the order of the commission fixing the time for hearing thereon, which time shall be at least twenty days from the date of service. If the commission determines that the public good requires it, it may upon the filing of the information or the complaint and without hearing, temporarily suspend a license pending the determination by it of the complaint. Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act. [C24, 27, 31,§9747; C35,§9751-g29; C39,§**9751.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.10]

Amendment effective July 1, 1975

543.11 Suspension or revocation of license for insufficiency of bond or insurance. Whenever the commission shall determine that a bond filed under the provisions of section 543.12 and approved by the commission, is, or has become, insufficient to secure the faithful performance of the obligations of the licensed warehouseman, or whenever the commission shall determine that insurance is not fully provided as required under section 543.15, it may require the licensed warehouseman to provide additional bond or bonds or additional evidence of insurance coverage so that the bond and insurance shall conform with the requirements of sections 543.12, 543.13, and 543.15. If such additional insurance is not provided within five days after notice by certified mail the license of the warehouseman concerned shall be automatically suspended. If such additional insurance is not filed within another twenty-five days, the warehouse license shall be automatically revoked. If additional bond is not provided within thirty days after receiving notice by certified mail the warehouse license shall be suspended. If such additional bond is not filed within sixty days the warehouse license shall be automatically revoked. When a license is so revoked, the commission shall notify each holder of an outstanding warehouse receipt of such revocation. The commission shall further notify each receipt holder that his grain must be removed from the warehouse not later than

the thirtieth day following the initial revocation as herein set forth. Such notice shall be by ordinary mail sent to the last known address of each receipt holder.

Whenever the commission shall receive notice from a surety that it has canceled the bond of a warehouseman, the commission shall automatically suspend the warehouse license if a new bond is not received by the commission within thirty days of receipt of the notice of cancellation. The commission shall cause an inspection of the licensed warehouse immediately at the end of such thirty-day period. If a new bond is not received within sixty days of receipt of the notice of cancellation the commission shall revoke the warehouse license. The commission shall cause a further inspection of the licensed warehouse at the end of such sixty-day period. When a license is so revoked the commission shall give notice of such revocation to each holder of an outstanding warehouse receipt. The commission shall further notify each receipt holder that his grain must be removed from the warehouse not later than the ninetieth day following receipt of notice of cancellation, by the commission. Such notice to each receipt holder shall be sent by ordinary mail to the last known address of each receipt holder. The commission shall cause a final inspection of the licensed warehouse immediately after the end of such ninety-day period. [C24, 27, 31, §9748; C35,§9751-g30; C39,**§9751.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.11]

543.12 Bond required. Any person applying for a license or licenses to conduct a warehouse or warehouses in accordance with this chapter shall, as a condition to the granting thereof, execute and file with the commission a good and sufficient bond, other than personal security, to secure the faithful performance of his obligations as a warehouseman under the terms of this chapter and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman which may be assumed by him under contracts with depositors of agricultural products in such warehouse. Any person applying for an amended license under the provisions of section 543.8 shall, as a condition to the granting of the amendment to his license, file such additional or substituted bond or such amendment to a bond already on file as will result in a bonded liability in total effect equivalent to the bonded liability which would be required if such person were applying for an original license for the storage of agricultural products of types and in amounts specified in the application for an amended license. [C24, 27, 31, §9723; C35,§9751-g5; C39,**§9751.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.12]

Referred to in §§543.11, 543.13

543.13 Form, amount, sureties and conditions of bond. Each bond required under section 543.12 shall be in such form and shall contain such reasonable terms and conditions for the protection of the public as the commission shall prescribe, and shall be endorsed as surety by a bonding company authorized to do business in this state. No bond shall be canceled by the surety on less than ninety days' notice by certified mail to the commission and the principal. In no event, shall the liability of the surety on any bond required by section 543.12 accumulate for each successive license period during which the bond is in force. The liability of the surety shall be limited in the aggregate to the face amount of the bond.

1. If the agricultural product intended to be stored by the warehouseman, as specified in his application for a license or for an amended license, is bulk grain, the minimum amount of such bond shall be as follows:

a. For intended storage of bulk grain in any quantity less than twenty thousand bushels, the minimum amount of the bond shall be six thousand dollars plus one thousand dollars for each two thousand bushels or fraction thereof in excess of twelve thousand bushels up to a total of twenty thousand bushels.

b. For intended storage of bulk grain in any quantity not less than twenty thousand bushels and not more than fifty thousand bushels, the minimum amount of the bond shall be ten thousand dollars plus one thousand dollars for each three thousand bushels or fraction thereof in excess of twenty thousand bushels up to a total of fifty thousand bushels.

c. For intended storage of bulk grain in any quantity not less than fifty thousand bushels and not more than seventy thousand bushels, the minimum amount of the bond shall be twenty thousand dollars plus one thousand dollars for each four thousand bushels or fraction thereof in excess of fifty thousand bushels up to a total of seventy thousand bushels.

d. For intended storage of bulk grain in any quantity not less than seventy thousand bushels, the minimum amount of the bond shall be twenty-five thousand dollars plus one thousand dollars for each five thousand bushels or fraction thereof in excess of seventy thousand bushels.

2. If the agricultural product or products intended to be stored by the warehouseman, as specified in his application for a license or amended license, are other than bulk grain, the quantity of such product intended to be stored shall be valued at the fair market price on the date of filing the application, and the minimum amount of bond shall be determined with reference to such value as follows:

a. For intended storage of such products of a value less than twenty thousand dollars the minimum amount of the bond shall be three thousand dollars, plus one thousand dollars for each two thousand dollars, or fraction thereof, of value in excess of six thousand dollars up to twenty thousand dollars.

b. For intended storage of such products of a value not less than twenty thousand dollars and not more than fifty thousand dollars the minimum amount of the bond shall be ten thousand dollars plus one thousand dollars

for each three thousand dollars, or fraction thereof, of value in excess of twenty thousand dollars up to fifty thousand dollars.

c. For intended storage of such products of a value not less than fifty thousand dollars the minimum amount of the bond shall be twenty thousand dollars plus one thousand dollars for each five thousand dollars, or fraction thereof, of value in excess of fifty thousand dollars.

3. If the agricultural products intended to be stored by the warehouseman, as specified in his application for a license or an amended license, include both bulk grain and other agricultural products the minimum amount of the bond shall be the total of the minimum amount which would have been required for the exclusive storage of the bulk grain plus the minimum amount which would have been required for the exclusive storage of the agricultural products other than bulk grain. One bond, cumulative as to minimum requirements, may be accepted from a warehouseman operating warehouses in two or more cities. Notwithstanding any other provisions of this chapter, the bond provided in this section shall cover all bulk grain deposited with a licensed warehouseman, whether under open storage or warehouse receipts. [C24, 27, 31,§9725; C35, §9751-g6; C39,**§9751.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.13]

Referred to in §§543.11, 543.34

543.14 Action on bond. Any person injured by the breach of any obligation of a warehouseman, for the performance of which a bond has been given under any of the provisions of this chapter, may sue on such bond in his own name in any court of competent jurisdiction to recover any damages he may have sustained by reason of such breach.

Upon revocation of a license, any claim by a creditor shall be filed against the warehouseman within one hundred twenty days after the date of revocation. [C24, 27, 31,§9749; C35, §9751-g31; C39,**§9751.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.14; 66GA, ch 1226,§5]

543.15 Insurance required. All agricultural products in storage in a licensed warehouse, or a warehouse operated under temporary permit as provided in this chapter, and all agricultural products which have been deposited temporarily in a licensed warehouse pending storage or for purposes other than storage, shall be kept fully insured by the warehouseman for the current value of such agricultural products against loss by fire, inherent explosion, or windstorm. Such insurance shall be carried in an insurance company or companies authorized to do business in this state, and evidence of such insurance coverage in form to be approved by the commission shall be filed with the commission. No insurance policy shall be canceled by the insurance company on less than fifteen days' notice by certified mail to the commission and the principal unless such policy is being replaced with another policy and evidence of the new policy is filed with the commission at the time of cancellation of the policy on file. Such insurance shall be provided by, and carried in the name of, the warehouseman. Claimants against such insurance shall have precedence in the following order:

1. Holders of warehouse receipts other than the warehouseman and owners of bulk grain other than the warehouseman.

2. Owners of all other agricultural products as their interests appear.

3. Warehousemen who have warehouse receipts.

4. Warehousemen owners of bulk grain. [C24, 27, 31,§9725; C35,§9751-g7; C39,**§9751.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.15]

Referred to in §543.11

543.16 License required for the storage of bulk grain. It shall be unlawful for any person other than a licensed warehouseman to place in storage or to accept for storage any bulk grain, and it shall be unlawful for any person to place bulk grain in storage in a warehouse other than a licensed warehouse. This section shall not apply to the acceptance and storage of bulk grain by a person bonded and licensed under the provisions of a federal law, if and to the extent that such person is authorized under federal law to accept and store bulk grain, but such person shall comply with all other provisions of this chapter which do not conflict with such federal law. This section shall not apply to the storage of bulk grain owned by the person storing the same. [C24, 27, 31,§§9722, 9724; C35,§9751-g2; C39, **§9751.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §543.16]

543.17 Receiving bulk grain at licensed and unlicensed warehouses.

1. Any grain which has been received at any licensed warehouse for which the actual sale price is not fixed and proper documentation made or payment made shall be construed to be grain held for storage within the meaning of this chapter. Grain may be held in open storage or placed on warehouse receipt. Actual payment shall be made on all priced grain, or warehouse receipts shall be issued for all grain held in open storage, within six months of delivery to the warehouse, unless the depositor has signed a statement that he does not desire a warehouse receipt or unless a deferred payment contract has been concluded pursuant to subsection 2. Any deposit of grain for which the price has not been fixed and properly documented within thirty days from delivery to the warehouse shall be deemed as storage. The warehouseman's tariff shall apply for any grain that is retained in open storage or under warehouse receipt.

Bulk grain deposited with a licensed warehouseman for processing, cleaning, drying, shipping for the account of the depositor or any other purpose shall be removed within

thirty days or such grain shall be determined as stored grain and the warehouseman's tariff charges shall apply.

Grain received on a scale ticket which fails to have the price fixed and properly documented on the records of the warehouseman shall be construed to be in open storage and shall be covered by the warehouseman's bond within the provisions of this chapter.

All grain whether open storage or having been placed on warehouse receipt shall be covered by the warehouseman's bond as required under the provisions of this chapter.

2. Notwithstanding any provisions of this section, a written agreement may be made between the seller and the licensed warehouseman for any bulk grain delivered to or stored at a licensed warehouse that payment will be deferred to a later date. Such agreement shall contain a statement informing the seller that the warehouseman shall not be required to carry insurance or bond on such grain for the benefit of the seller and that the payment for such grain becomes a common claim against the warehouseman.

The agreement in addition to such other information as may be required shall contain the following:

a. The seller's or depositor's name and address.

b. The conditions of delivery.

c. The amount and kind of grain delivered.

d. The price per bushel or basis of value.

e. The date payment is to be made.

Such agreement must be numbered and signed by both parties and executed in duplicate. One copy shall be retained by the warehouseman and one copy shall be delivered to the seller.

Grain received or purchased in storage under a deferred payment contract under the provisions of this section shall not be deemed as warehouse owned grain.

Any grain which has been received at any unlicensed warehouse and for which the actual sale price has not been fixed and payment made within ten days from receipt of the grain, shall be construed to be grain held for storage within the meaning of this chapter. Bulk grain received at any unlicensed warehouse for any other purpose must either be returned to the depositor or disposed of by order of the depositor within ten days from date of actual deposit of the bulk grain.

If the depositor of bulk grain in an unlicensed warehouse fails to sell the grain or orders other disposition of the grain, the warehouseman may purchase the grain on the tenth day after deposit at not less than the local market price at the close of business on the tenth day or return the grain to the depositor by the tenth day. [C24, 27, 31,§9730; C35,§9751-g12; C39,**§9751.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.17; 66GA, ch 1226,§6]

Referred to in §542.8

543.18 Issuance of warehouse receipts. For all agricultural products that become storage in a licensed warehouse, warehouse receipts signed by the licensed warehouseman or his authorized agent shall be issued by the licensed warehouseman. Such warehouse receipts shall be in the form required or permitted by Uniform Commercial Code, sections 554.7202 and 554.7204, provided, however, that each receipt issued for agricultural products, in addition to the matters specified in Uniform Commercial Code, section 554.7202 shall embody in its written or printed terms:

1. The receiving and loadout charges which will be made by the warehouseman.

2. The grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made; provided that such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated; provided, further, that until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the secretary of agriculture of the United States.

Referred to in §543.22

3. A statement that the receipt is issued subject to the Iowa bonded warehouse Act and the rules and regulations prescribed thereunder.

4. Such other terms and conditions as may be required by rules of the commission.

Warehouses that are not licensed pursuant to this chapter or by the United States government shall not issue warehouse receipts for agricultural products. [C24, 27, 31,§§9736, 9737; C35,§§9751-g17, 9751-g18; C39, §§**9751.17, 9751.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §543.18; 66GA, ch 1226,§§7, 8]

Referred to in §§543.20, 543.22

543.19 Rights and obligations with respect to warehouse receipts—lost receipts. Insofar as not inconsistent with the provisions of this chapter, original or duplicate receipts issued by licensed warehousemen shall be deemed to have been issued under the provisions of Uniform Commercial Code, chapter 554, article 7.

Duplicates and releases for lost, destroyed, or stolen warehouse receipts may be issued only in accordance with the provisions of section 554.7601. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.19]

Referred to in §543.20

543.20 Receipt by warehouseman to himself. A licensed warehouseman may issue a warehouse receipt for agricultural products owned by himself and dispose of the title to or interest in such products through the medium of such receipt. Such receipt shall be of the same standing as though it had been issued to a person other than the licensed warehouseman

upon a rightful deposit of the products by such other person. Sections 543.18 and 543.19 shall be applicable to any such receipt. [C71, 73, 75,§543.20]

543.21 Repealed by 61GA, ch 413,§10102.

543.22 Receipt for nonfungible products. When requested by the depositor of other than fungible agricultural products, a nonnegotiable receipt may be issued omitting the information specified in section 543.18, subsection 2. [C24, 27, 31,§9738; C35,§9751-g20; C39, §**9751.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.22]

543.23 to 543.26 Repealed by 61GA, ch 413, §10102.

543.27 Discrimination. Every warehouseman conducting a warehouse licensed under this chapter shall receive for storage therein, so far as its authorized storage capacity permits, any product of the kind he is permitted by his license to store, and which may be tendered to him in a suitable condition for warehousing, in the usual manner and in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities. [C24, 27, 31,§9729; C35,§9751-g11; C39, §**9751.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.27]

543.28 Rates. The commission may from time to time prescribe a minimum charge for storage and a minimum receiving and loadout charge. Unless and until otherwise specified by rule of the commission, the minimum storage charge for bulk grain shall be as follows:

1. For the first four months or any part thereof, one-thirtieth of a cent per day per bushel.

2. For the next four months or any part thereof, one thirty-sixth of a cent per day per bushel.

3. Thereafter the minimum rate shall be one forty-fifth of a cent per day per bushel.

The minimum receiving or loadout charge for bulk grain shall be two cents per bushel. No receiving or loadout charge shall be made for products sold to the warehouseman whether such product has been in storage or not. The specific receiving or loadout charge herein provided shall not be mandatory as to grain received into grain elevators from railroad cars nor as to grain sold by a warehouseman and carried as storage for the purchaser.

The storage charges herein provided for shall commence on the date of receiving into the warehouse. Provided, however, that a storage, receiving or loadout charge other than that specified above may be made, if such charge is required by the terms of a written contract with the United States government, any of its subdivisions or agencies, providing copy of such contract is filed with the commission.

Rates for storage, conditioning of stored products and delivery charges shall be just, reasonable, and nondiscriminatory, and every unjust, unreasonable, and discriminatory charge for such services or any part thereof and not in accordance with tariffs as herein provided, is prohibited and is hereby declared to be unlawful.

It shall be the duty of every warehouseman at the time of making application for a license, to file a tariff with the commission and to publish the same, which shall contain rates to be charged for storage, conditioning of stored products, and receiving or loadout charges, such publication of tariff to be made by the applicant by posting the same in a conspicuous place at the place of business of the applicant. Such tariff shall be in a form as prescribed by the commission and shall become effective at the time the license becomes effective.

In the event that a warehouseman desires to change, alter, or amend a tariff at any time during the period in which his license is in effect, he may do so by filing a new tariff with the commission and by publishing the same by posting in a conspicuous place at his place of business at which time the new tariff shall become effective. [C24, 27, 31,§9737; C35,§9751-g18; C39,§**9751.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.28; 66GA, ch 1226,§9]

543.29 Repealed by 61GA, ch 413,§10102.

543.30 Inspecting and grading. Grain, flaxseed, or any other fungible agricultural product stored in a warehouse licensed under this chapter for which no separate compartment is provided, and its identity preserved, shall be inspected and graded. [C24, 27, 31,§9733; C35, §9751-g14; C39,§**9751.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.30]

543.31 and 543.32 Repealed by 62GA, ch 387, §§2, 3.

543.33 Fees. The commission shall charge, assess, and cause to be collected fees as follows:

1. For each examination or inspection of a warehouse when such examination or inspection is made in connection with the commission's consideration of an application for a license to operate a warehouse, ten dollars.

2. For each examination or inspection of a licensed warehouse which has been structurally changed since issuance of the original license when such examination or inspection is made in connection with the commission's consideration of an application for an amended license, ten dollars.

3. For the renewal or extension of each license, twenty-four dollars per station.

4. For the issuance of a license, two dollars for each month or fraction thereof of the period of time for which such license is issued per station.

5. For the cost of maintaining an employee at a licensed warehouse to supervise the correction of a deficiency, fifty dollars per day.

All such fees shall be paid over to the treasurer of state as miscellaneous receipts. [C24, 27, 31,§9726; C35,§9751-g9; C39,**§9751.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.33; 66GA, ch 1226, §10]

Referred to in §543.37

543.34 Use of term "bonded warehouse". Upon the filing, with the approval by the commission, of a bond, in compliance with this chapter, for the conduct of a warehouse, such warehouse may be designated as "bonded" but no warehouse shall be designated as "bonded" and no name or description conveying the impression that it is so bonded, shall be used, unless a bond, as provided for in section 543.13, has been approved by the commission and is uncanceled and on file with the commission, nor unless the license issued under this chapter for the conduct of such warehouse remains in effect. Every warehouseman's license issued under the provisions of this chapter shall be conspicuously displayed in the office of the warehouse for the operation of which the license has been issued. [C24, 27, 31,§9728; C35, §9751-g10; C39,**§9751.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.34]

543.35 Licensed warehouseman to keep records. Every licensed warehouseman operating a licensed warehouse shall keep in a place of safety complete and correct records of the storage and withdrawal of all agricultural products handled in each warehouse which he is licensed to operate, and complete records of all original and duplicate receipts issued by him, returned to him and canceled by him, which records shall be available for the six previous years for inspection by the commission. [C24, 27, 31,§§9743, 9746; C35,§§9751-g26, -g28; C39,§§**9751.26, 9751.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.35]

543.36 Penalties—misdemeanor. Every person who violates or fails to comply with any of the provisions of this chapter or to comply with any lawfully authorized order, direction, demand, or rule or regulation of the commission shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail for a period of not to exceed thirty days. [C24, 27, 31,§9751; C35,§9751-g33; C39,**§9751.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§543.36; 66GA, ch 1226,§11]

543.37 Failure to pay fee. Failure to pay the annual fee provided for in section 543.33 on or before the date the same shall become due shall cause a license to terminate. The annual fee shall become due on June 30 each year. [C71, 73, 75,§543.37]

543.38 No obligation of state. Nothing in this chapter shall be construed to imply any guarantee or obligation on the part of the state of Iowa, or any of its agencies, employees or officials, either elective or appointive, in respect of any agreement or undertaking to which the provisions of this chapter relate. [C71, 73, 75,§543.38]

543.39 Grain stored in another warehouse. A licensed warehouseman may store grain in any other licensed warehouse in addition to his own facilities, subject to the following conditions:

1. He must obtain from such warehouseman a nonnegotiable warehouse receipt and such receipt must show clearly the following notation: "Held in trust for" (customer's name and address).

2. Any grain stored by a licensed warehouseman in facilities licensed by another warehouseman shall be stored within a radius of twenty-five statute miles from the central facility of the warehouseman where it was originally received for storage.

3. At such time as the warehouseman may begin to use the additional facilities described in this section, he must furnish additional bond acceptable to the commission to cover the increase in his gross capacity.

4. A licensed warehouseman shall not accept grain for storage from another licensed warehouseman while he has grain stored under the provisions of this section. [C71, 73, 75,§543.39]

CHAPTER 544

UNIFORM PARTNERSHIP LAW

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544.1 Short title. This chapter may be cited as the "Uniform Partnership Act". [C73, 75, §544.1]

544.2 Definitions. As used in this chapter the terms:

1. "Court" includes every court and judge having jurisdiction in the case.

2. "Business" includes every trade, occupation, or profession.

3. "Person" includes individuals, partnerships, corporations, and other associations, trusts, trustees and other fiduciaries.

4. "Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent Act.

5. "Conveyance" includes every assignment, lease, mortgage, or encumbrance.

6. "Real property" includes land and any interest or estate in land. [C73, 75,§544.2]

544.3 Interpretation of knowledge and notice.

1. A person has "knowledge" of a fact within the meaning of this chapter not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

2. A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice:

a. States the fact to the person, or

b. Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence. [C73, 75,§544.3]

544.4 Rules of construction.

1. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

2. The law of estoppel shall apply under this chapter.

3. The law of agency shall apply under this chapter.

4. This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

5. This chapter shall not be construed so as to impair the obligations of any contract existing on July 1, 1971, nor to affect any action or proceedings begun or right accrued before that date. [C73, 75,§544.4]

See §4.2

544.5 Rules for cases not provided for in this chapter. In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall govern. [C73, 75,§544.5]

544.6 Partnership defined.

1. A partnership is an association of two or more persons to carry on as co-owners a business for profit.

2. But any association formed under any other statute of this state, or any statute adopted by authority, other than the authority of this state, is not a partnership under this chapter, unless the association would have been a partnership in this state prior to the adoption of this chapter; but this chapter shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith. [C73, 75,§544.6]

544.7 Rules for determining the existence of a partnership. In determining whether a partnership exists, these rules shall apply:

1. Except as provided by section 544.16, persons who are not partners as to each other are not partners as to third persons.

2. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

3. The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

4. The receipt by a person of a share of the profits of a business is prima-facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

a. As a debt by installments or otherwise,

b. As wages of an employee or rent to a landlord,

c. As an annuity to a widow or representative of a deceased partner,

d. As interest on a loan, though the amount of payment vary with the profits of the business,

e. As the consideration for the sale of a good will of a business or other property by installments or otherwise. [C73, 75,§544.7]

544.8 Partnership property.

1. All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

2. Unless the contrary intention appears, property acquired with partnership funds is partnership property.

3. Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

4. A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears. [C73, 75, §544.8]

544.9 Partner agent of partnership as to partnership business.

1. Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

2. An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

3. Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

a. Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

b. Dispose of the good will of the business,

c. Do any other act which would make it impossible to carry on the ordinary business of a partnership,

d. Confess a judgment,

e. Submit a partnership claim or liability to arbitration or reference.

4. No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction. [C73, 75,§544.9]

Referred to in §544.10

544.10 Conveyance of real property of the partnership.

1. Where title to real property is in the partnership name, any partner may convey title to the property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of section 544.9, subsection 1, or unless the property has been conveyed by the grantee or a person claiming through the grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

2. Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is within the authority of the partner under the provisions of section 544.9, subsection 1.

3. Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to the property, but the partnership may recover the property if the partners' act does not bind the partnership under the provisions of section 544.9, subsection 1, unless the purchaser or his assignee, is a holder for value, without knowledge.

4. Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of section 544.9, subsection 1.

5. Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in the property. [C73, 75,§544.10]

544.11 Partnership bound by admission of partner. An admission or representation made

by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership. [C73, 75,§544.11]

544.12 Partnership charged with knowledge of or notice to partner. Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operates as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner. [C73, 75, §544.12]

544.13 Partnership bound by partner's wrongful act. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act. [C73, 75,§544.13]

Referred to in §544.15

544.14 Partnership bound by partner's breach of trust. The partnership is bound to make good the loss:

1. Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it.

2. Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership. [C73, 75,§544.14]

Referred to in §544.15

544.15 Nature of partner's liability. All partners are liable:

1. Jointly and severally for everything chargeable to the partnership under sections 544.13 and 544.14.

2. Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract. [C73, 75,§544.15]

544.16 Partner by estoppel.

1. When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to anyone, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any person to whom the representation has been made, who has, on the faith of the representation, given credit to the actual or apparent partnership, and if he has made a representation or consented to its being made in a public manner he is liable to the person, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

a. When a partnership liability results, he is liable as though he were an actual member of the partnership.

b. When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

2. When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to the representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation. [C73, 75,§544.16]

Referred to in §§544.7, 544.35

544.17 Liability of incoming partner. A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property. [C73, 75,§544.17]

544.18 Rules determining rights and duties of partners. The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

1. Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

2. The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

3. A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

4. A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

5. All partners have equal rights in the management and conduct of the partnership business.

6. No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

7. No person can become a member of a partnership without the consent of all the partners.

8. Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners. [C73, 75,§544.18]

Referred to in §544.40

544.19 Partnership books. The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them. [C73, 75,§544.19]

544.20 Duty of partners to render information. Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability. [C73, 75, §544.20]

544.21 Partner accountable as a fiduciary.

1. Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, liquidation of the partnership or use of its property.

2. This section also applies to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner. [C73, 75,§544.21]

Referred to in §544.22

544.22 Right to an account. Any partner shall have the right to a formal account as to partnership affairs:

1. If he is wrongfully excluded from the partnership business or possession of its property by his copartners.

2. If the right exists under the terms of any agreement.

3. As provided by section 544.21.

4. Whenever other circumstances render it just and reasonable. [C73, 75,§544.22]

544.23 Continuation of partnership beyond fixed term.

1. When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking, without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

2. A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima-facie evidence of a continuation of the partnership. [C73, 75,§544.23]

544.24 Extent of property rights of a partner. The property rights of a partner are:

1. His rights in specific partnership property.

2. His interest in the partnership.

3. His right to participate in the management. [C73, 75,§544.24]

544.25 Nature of a partner's right in specific partnership property.

1. A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

2. The incidents of this tenancy are such that:

a. A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess the property for any other purpose without the consent of his partners.

b. A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

c. A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

d. On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his rights in the property vest in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

e. A partner's right in specific partnership property is not subject to dower, courtesy, or allowances to widows, heirs, or next of kin. [C73, 75,§544.25]

544.26 Nature of partner's interest in the partnership. A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property. [C73, 75,§544.26]

544.27 Assignment of a partner's interest.

1. A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or admin-

istration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

2. In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners. [C73, 75,§544.27]

Referred to in §544.32

544.28 Partner's interest subject to charging order.

1. On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of the judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

2. The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

a. With separate property, by any one or more of the partners, or

b. With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

3. Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership. [C73, 75,§544.28]

Referred to in §544.32

544.29 Dissolution defined. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business. [C73, 75,§544.29]

544.30 Partnership not terminated by dissolution. On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed. [C73, 75,§544.30]

544.31 Causes of dissolution. Dissolution is caused:

1. Without violation of the agreement between the partners:

a. By the termination of the definite term or particular undertaking specified in the agreement,

b. By the express will of any partner when no definite term or particular undertaking is specified,

c. By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,

d. By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

2. In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

3. By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

4. By the death of any partner, unless the partnership agreement provides otherwise;

5. By the bankruptcy of any partner or the partnership;

6. By decree of court under section 544.32. [C73, 75,§544.31]

544.32 Dissolution by decree of court. The court shall decree a dissolution:

1. On application by or for a partner whenever:

a. A partner has been declared a mentally ill person in any judicial proceeding, or is shown to be of unsound mind,

b. A partner becomes in any other way incapable of performing his part of the partnership contract,

c. A partner has been guilty of conduct as tends to affect prejudicially the carrying on of the business,

d. A partner willfully or persistently commits a breach of the partnership or agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

e. The business of the partnership can only be carried on at a loss,

f. Other circumstances render a dissolution equitable.

2. On application of the purchaser of a partner's interest under section 544.27 or 544.28:

a. After the termination of the specified term or particular undertaking,

b. At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued. [C73, 75,§544.32]

Referred to in §544.31

544.33 General effect of dissolution on authority of partner. Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership:

1. With respect to the partners,

a. When the dissolution is not by the act, bankruptcy or death of a partner, or

b. When the dissolution is by such act, bankruptcy or death of a partner, in cases where section 544.34 so requires.

2. With respect to persons not partners, as declared in section 544.35. [C73, 75,§544.33]

544.34 Right of partner to contribution from copartners after dissolution. Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

1. The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or

2. The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy. [C73, 75,§544.34]

Referred to in §544.33

544.35 Power of partner to bind partnership to third persons after dissolution.

1. After dissolution a partner can bind the partnership except as provided in subsection 3:

a. By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution.

b. By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

(1) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(2) Though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

2. The liability of a partner under subsection 1, paragraph "*b*" of this section shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

a. Unknown as a partner to the person with whom the contract is made; and

b. So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

3. The partnership is in no case bound by any act of a partner after dissolution:

a. Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

b. Where the partner has become bankrupt; or

c. Where the partner has no authority to wind up partnership affairs; except by a transaction with one who:

(1) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(2) Had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in subsection 1, paragraph "*b*."

4. Nothing in this section shall affect the liability under section 544.16 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business. [C73, 75,§544.35]

Referred to in §544.33

544.36 Effect of dissolution on partner's existing liability.

1. The dissolution of the partnership does not of itself discharge the existing liability of any partner.

2. A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

3. Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of the obligations.

4. The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts. [C73, 75,§544.36]

Referred to in §544.38

544.37 Right to wind up. Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided, however, that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court. [C73, 75,§544.37]

544.38 Rights of partners to application of partnership property.

1. When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have

the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under section 544.36, subsection 2, he shall receive in cash only the net amount due him from the partnership.

2. When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

a. Each partner who has not caused dissolution wrongfully shall have:

(1) All the rights specified in subsection 1, and

(2) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

b. The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under subsection 2, paragraph "*a*", subparagraph (2) of this section, and in like manner indemnify him against all present or future partnership liabilities.

c. A partner who has caused the dissolution wrongfully shall have:

(1) If the business is not continued under the provisions of subsection 2, paragraph "*b*" of this section, all the rights of a partner under subsection 1 of this section, subject to subsection 2, paragraph "*a*", subparagraph (2).

(2) If the business is continued under subsection 2, paragraph "*b*", of this section the right as against his copartners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good will of the business shall not be considered. [C73, 75,§544.38]

Referred to in §§544.41, 544.42

544.39 Rights where partnership is dissolved for fraud or misrepresentation. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled:

1. To a lien on, or a right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

2. To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

3. To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership. [C73, 75,§544.39]

544.40 Rules for distribution. In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

1. The assets of the partnership are:

a. The partnership property,

b. The contributions of the partners necessary for the payment of all the liabilities specified in subsection 2.

2. The liabilities of the partnership shall rank in order of payment, as follows:

a. Those owing to creditors other than partners,

b. Those owing to partners other than for capital and profits,

c. Those owing to partners in respect of capital,

d. Those owing to partners in respect of profits.

3. The assets shall be applied in order of their declaration in subsection 1 of this section to the satisfaction of the liabilities.

4. The partners shall contribute, as provided by section 544.18, subsection 1, the amount necessary to satisfy the liabilities; but if any, but not all of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

5. An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in subsection 4.

6. Any partner or his legal representative shall have the right to enforce the contributions specified in subsection 4, to the extent of the amount which he has paid in excess of his share of the liability.

7. The individual property of a deceased partner shall be liable for the contributions specified in subsection 4.

8. When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

9. Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:

a. Those owing to separate creditors,

b. Those owing to partnership creditors,

c. Those owing to partners by way of contribution. [C73, 75,§544.40]

544.41 Liability of persons continuing the business in certain cases.

1. When any new partner is admitted into an existing partnership, or when any partner retires and assigns, or the representative of the deceased partner assigns his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

2. When all but one partner retire and assign, or the representative of a deceased partner assigns their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

3. When any partner retires or dies and the business of the dissolved partnership is continued as set forth in subsections 1 and 2 of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

4. When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

5. When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of section 544.38, subsection 2, paragraph "*b*", either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

6. When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

7. The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

8. When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

9. Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

10. The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by the person or partnership. [C73, 75,§544.41]

Referred to in §544.42

544.42 Rights of retiring or estate of deceased partner when the business is continued. When any partner retires or dies, and the business is continued under any of the conditions set forth in section 544.41, subsections 1, 2, 3, 5 and 6, section 544.38, subsection 2, paragraph "*b*", without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by section 544.41, subsection 8. [C73, 75,§544.42]

544.43 Accrual of actions. The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary. [C73, 75,§544.43]

CHAPTER 545

LIMITED PARTNERSHIP LAW

Referred to in §§172C.1, 422.15(2), 422.32(1)

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545.58 Existing limited partnership continued.
545.59 Powers as to real estate.

545.1 "Limited partnership" defined. A limited partnership is a partnership formed by two or more persons under the provisions of this chapter, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership. [C24, 27, 31, 35, 39,§**9806**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.1]

545.2 Formation. Two or more persons desiring to form a limited partnership shall sign and acknowledge a certificate and file the same for record in the office of the county recorder of the county in which the principal place of business is located. The same shall be recorded in the miscellaneous records and indexed in the names of all the signers, both as grantors and grantees. Said certificate shall state:

1. The name of the partnership.
2. The character of the business.
3. The location of the principal place of business.
4. The name and place of residence of each member; general and limited partners being respectively designated.
5. The term for which the partnership is to exist.
6. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner.
7. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made.
8. The time, if agreed upon, when the contribution of each limited partner is to be returned.
9. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution.
10. The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution.
11. The right, if given, of the partners to admit additional limited partners.
12. The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority.
13. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or mental illness of a general partner.

14. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution. [C24, 27, 31, 35, 39,§**9807**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.2]

Referred to in §§229.27, 545.3, 545.46, 545.57

545.3 Sufficiency of certificate. A limited partnership is formed if there has been substantial compliance in good faith with the requirements of section 545.2. [C24, 27, 31, 35, 39,§**9808**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.3]

Referred to in §545.57

545.4 Business which may be carried on. A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking. [C24, 27, 31, 35, 39,§**9809**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.4]

545.5 Nature of contribution. The contributions of a limited partner may be cash or other property, but not services. [C24, 27, 31, 35, 39, §**9810**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.5]

545.6 Partnership name. The surname of a limited partner shall not appear in the partnership name:

1. Unless it is also the surname of a general partner, or

2. Unless, prior to the time when the limited partner became such, the business had been carried on under a name in which his surname appeared. [C24, 27, 31, 35, 39,§**9811**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.6]

Referred to in §545.7

545.7 Violation—effect. A limited partner whose name appears in a partnership name contrary to the provisions of section 545.6 is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner. [C24, 27, 31, 35, 39,§**9812**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.7]

545.8 Liability for false statements. If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false:

1. At the time he signed the certificate, or

2. Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as hereinafter provided. [C24, 27, 31, 35, 39,§**9813**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.8]

Referred to in §545.35

545.9 Limited partner not liable to creditors. A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. [C24, 27, 31, 35, 39,§**9814**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.9]

545.10 Additional limited partners. After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of sections 545.46 to 545.51, inclusive. [C24, 27, 31, 35, 39,§**9815**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §545.10]

545.11 Rights, powers and liabilities. A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority:

1. To do any act in contravention of the certificate.

2. To do any act which would make it impossible to carry on the ordinary business of the partnership.

3. To confess a judgment against the partnership.

4. To possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose.

5. To admit a person as a general partner.

6. To admit a person as a limited partner, unless the right so to do is given in the certificate.

7. To continue the business with partnership property on the death, retirement, or mental illness of a general partner, unless the right so to do is given in the certificate. [C24, 27, 31, 35, 39,§**9816**; C46, 50, 54, 58 62, 66, 71, 73, 75,§545.11]

Referred to in §229.27

545.12 Rights of limited partners. A limited partner shall have the same rights as a general partner:

1. To have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them.

2. To have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable.

3. To have dissolution and winding up by decree of court. [C24, 27, 31, 35, 39,§**9817**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.12]

545.13 Right to receive profits and income. A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as hereinafter provided. [C24, 27, 31, 35, 39,§**9818**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.13]

545.14 Mistake—effect. A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner,

a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income. [C24, 27, 31, 35, 39,§9819; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.14]

545.15 One person both general and limited. A person may be a general partner and a limited partner in the same partnership at the same time. [C24, 27, 31, 35, 39,§9820; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.15]

545.16 Partner holding dual relation. A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contributions, he shall have the rights against the other members which he would have had if he were not also a general partner. [C24, 27, 31, 35, 39,§9821; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.16]

545.17 Transactions with limited partner. A limited partner may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner, in respect to any such claim, shall:

1. Receive or hold as collateral security any partnership property.

2. Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners. [C24, 27, 31, 35, 39,§9822; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.17]

Referred to in §545.18

545.18 Violation—effect. The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of section 545.17 is a fraud on the creditors of the partnership. [C24, 27, 31, 35, 39,§9823; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.18]

545.19 Relation of limited partners inter se. Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing. [C24, 27, 31, 35, 39,§9824; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.19]

545.20 Compensation of limited partner. A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners. [C24, 27, 31, 35, 39,§9825; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.20]

545.21 Withdrawal of contribution. A limited partner shall not receive from a general partner or out of partnership property any part of his contribution:

1. Until all liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them.

2. Until the consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of section 545.22.

3. Until the certificate is canceled or so amended as to set forth the withdrawal or reduction. [C24, 27, 31, 35, 39,§9826; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.21]

Referred to in §§545.22, 545.24

545.22 Return of contribution. Subject to the provisions of section 545.21, a limited partner may rightfully demand the return of his contribution:

1. On the dissolution of a partnership.

2. When the date specified in the certificate for its return has arrived.

3. After he has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership. [C24, 27, 31, 35, 39,§9827; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.22]

Referred to in §545.21

545.23 Contribution payable in cash. In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution. [C24, 27, 31, 35, 39,§9828; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.23]

545.24 Dissolution. A limited partner may have the partnership dissolved and its affairs wound up:

1. When he rightfully but unsuccessfully demands the return of his contribution, or

2. When the other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by section 545.21, subsection 1, and the limited partner would otherwise be entitled to the return of his contribution. [C24, 27, 31, 35, 39,§9829; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.24]

545.25 Liability of limited partner. A limited partner is liable to the partnership:

1. For the difference between his contribution as actually made and that stated in the certificate as having been made.

2. For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate. [C24, 27, 31, 35, 39,§9830; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.25]

Referred to in §§545.28, 545.35

545.26 Limited partner held as trustee. A limited partner holds as trustee for the partnership:

1. Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned.

2. Money or other property wrongfully paid or conveyed to him on account of his contribution. [C24, 27, 31, 35, 39,§9831; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.26]

Referred to in §§545.28, 545.35

545.27 Continuing liability of limited partner. When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return. [C24, 27, 31, 35, 39,§9832; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.27]

Referred to in §§545.28, 545.35

545.28 Liability of limited partner—waiver. The liabilities of a limited partner as set forth in sections 545.25 to 545.27, inclusive, can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities. [C24, 27, 31, 35, 39, §9833; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.28]

Referred to in §545.35

545.29 Limited partner's interest in partnership. A limited partner's interest in the partnership is personal property, and is assignable. [C24, 27, 31, 35, 39,§9834; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.29]

545.30 Substituted limited partner. A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership. [C24, 27, 31, 35, 39,§9835; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.30]

545.31 Rights of assignee. An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled. [C24, 27, 31, 35, 39,§9836; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.31]

545.32 Assignee's right. An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto, or if the assignor, being thereunto empowered by the certificate, gives the assignee that right. [C24, 27, 31, 35, 39,§9837; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.32]

545.33 When assignee limited partner. An assignee becomes a substituted limited partner when the certificate is appropriately amended as hereinafter provided. [C24, 27, 31, 35, 39, §9838; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.33]

545.34 Right of substituted limited partner. The substituted limited partner has all the rights and powers and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate. [C24, 27, 31, 35, 39,§9839; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.34]

545.35 Liability of assignor. The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under sections 545.8 and 545.25 to 545.28, inclusive. [C24, 27, 31, 35, 39,§9840; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.35]

545.36 Effect of retirement, death or mental illness. The retirement, death, or mental illness of a general partner dissolves the partnership, unless the business is continued by the remaining general partners:

1. Under a right so to do stated in the certificate, or

2. With the consent of all members. [C24, 27, 31, 35, 39,§9841; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.36]

Referred to in §§229.27, 545.45

545.37 Death of limited partner. On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner. [C24, 27, 31, 35, 39,§9842; C46, 50, 54, 58, 62, 71, 73, 75,§545.37]

545.38 Liability of estate of limited partner. The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner. [C24, 27, 31, 35, 39,§9843; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.38]

545.39 Rights of creditors of limited partner. On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require. The remedies conferred by this section

shall not be deemed exclusive of others which may exist. [C24, 27, 31, 35, 39,§9844; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.39]

545.40 Redemption. The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property. [C24, 27, 31, 35, 39, §9845; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.40]

545.41 Exemptions. Nothing in this chapter shall be held to deprive a limited partner of his statutory exemption. [C24, 27, 31, 35, 39, §9846; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.41]

545.42 Distribution of assets. In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

1. Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners.

2. Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions.

3. Those to limited partners in respect to the capital of their contributions.

4. Those to general partners other than for capital and profits.

5. Those to general partners in respect to profits.

6. Those to general partners in respect to capital. [C24, 27, 31, 35, 39,§9847; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.42]

545.43 Share in partnership assets. Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions, respectively, in proportion to the respective amounts of such claims. [C24, 27, 31, 35, 39,§9848; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.43]

545.44 Cancellation of certificate. The certificate shall be canceled when the partnership is dissolved or all limited partners cease to be such. [C24, 27, 31, 35, 39,§9849; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.44]

545.45 Amendment of certificate. A certificate shall be amended:

1. When there is a change in the name of the partnership or in the amount or character of the contribution of any limited partner.

2. When a person is substituted as a limited partner.

3. When an additional limited partner is admitted.

4. When a person is admitted as a general partner.

5. When a general partner retires, dies, or becomes insane, and the business is continued under section 545.36.

6. When there is a change in the character of the business of the partnership.

7. When there is a false or erroneous statement in the certificate.

8. When there is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution.

9. When a time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate.

10. When the members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them. [C24, 27, 31, 35, 39,§9850; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.45]

545.46 Requirements for amendment. The writing to amend a certificate shall:

1. Conform to the requirements of section 545.2 as far as necessary to set forth clearly the change in the certificate which it is desired to make.

2. Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner. [C24, 27, 31, 35, 39,§9851; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.46]

Referred to in §§545.10, 545.48, 545.50, 545.51

545.47 Requirement for cancellation. The writing to cancel a certificate shall be signed by all members. [C24, 27, 31, 35, 39,§9852; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.47]

Referred to in §§545.10, 545.48, 545.50, 545.51

545.48 Petition for cancellation or amendment. A person desiring the cancellation or amendment of a certificate may petition the district court to direct a cancellation or amendment in those cases where any person designated in sections 545.46 and 545.47 as a person who must execute the writing, refuses to do so. [C24, 27, 31, 35, 39,§9853; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.48]

Referred to in §§545.10, 545.51

545.49 Order of court. If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the county recorder in the office where the certificate is recorded to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment. [C24, 27, 31, 35, 39,§9854; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.49]

Referred to in §§545.10, 545.50, 545.51

545.50 Consummation of cancellation. A certificate is amended or canceled when there

is filed for record in the office of the county recorder:

1. A writing in accordance with the provisions of sections 545.46 or 545.47, or

2. A certified copy of the order of court in accordance with the provisions of section 545.49. [C24, 27, 31, 35, 39,§9855; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.50]

Referred to in §§545.10, 545.51

545.51 Amended certificate. After the certificate is duly amended in accordance with sections 545.46 to 545.50, inclusive, the amended certificate shall thereafter be for all purposes the certificate provided for by this statute. [C24, 27, 31, 35, 39,§9856; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.51]

Referred to in §545.10

545.52 Parties to actions. A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership. [C24, 27, 31, 35, 39,§9857; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.52]

545.53 Name of law. This law may be cited as the "Uniform Limited Partnership Act". [C24, 27, 31, 35, 39,§9858; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.53]

545.54 Rules of construction. This law shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it. [C24, 27, 31, 35, 39,§9859; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.54]

545.55 Impairment of contracts. This law shall not be so construed as to impair the obligations of any contract existing when said law goes into effect, nor to affect any action or proceedings begun or right accrued before it takes effect. [C24, 27, 31, 35, 39,§9860; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.55]

545.56 Rules for cases not provided for. In any case not provided for in this statute the rules of law and equity shall govern. [C24, 27, 31, 35, 39,§9861; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.56]

545.57 Existing limited partnerships converted. A limited partnership formed under any statute of this state prior to the adoption of this chapter, may become a limited partnership hereunder by complying with the provisions of sections 545.2 and 545.3; provided the certificate sets forth:

1. The amount of the original contribution of each limited partner, and the time when the contribution was made.

2. That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners. [C24, 27, 31, 35, 39,§9862; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.57]

545.58 Existing limited partnership continued. A limited partnership formed under any statute of this state prior to the adoption of this chapter, until or unless it becomes a limited partnership hereunder, shall continue to be governed by the provisions of such statute except that such partnership shall not be renewed unless so provided in the original agreement. [C24, 27, 31, 35, 39,§9863; C46, 50, 54, 58, 62, 66, 71, 73, 75,§545.58]

545.59 Powers as to real estate. The partnership may take, hold, mortgage, encumber, lease or convey, in fee simple, or for any less estate, real estate or interests therein, in the firm name. The place of record of the certificate or articles of partnership shall be stated in all instruments of writing relating to real estate, but failure so to state shall not invalidate the instrument. Any instrument relating to real estate may be signed or sealed by one or more of the general partners, for the partnership and in the partnership name, if the certificate, articles of partnership, bylaws, rules or regulations shall so provide, but in case less than all the general partners are vested with this power the fact shall be stated in the original certificate or articles of partnership, or in amendments thereto, or in a statement duly signed and acknowledged by the general partners and recorded in the office of the recorder of deeds in the county in which the real estate is situated. [C71, 73, 75,§545.59]

CHAPTER 546

AUCTIONEERS

546.1 License may be issued.
546.2 Repealed by 57GA, ch 252,§2.
546.3 Exceptions.

546.1 License may be issued. The county board of supervisors may license any person in its county as an auctioneer for hire, which license, while unexpired, shall be effective any place in the state of Iowa. Such license shall be issued by the county auditor and shall authorize the licensee to conduct the business of an auctioneer for hire for a period of one year. Before such license is issued the licensee shall pay into the county treasury a fee of ten dollars. Provided, that a resident of another state may be licensed as an auc-

tioneer in Iowa upon complying with the laws of the state of Iowa relating to the issuance of auctioneers' licenses. [C24, 27, 31, 35, 39,§9864; C46, 50, 54, 58, 62, 66, 71, 73, 75,§546.1]

Referred to in §546.3

546.2 Repealed by 57GA, ch 252,§2. See §546.1.

546.3 Exceptions. The provisions of section 546.1 shall not be applicable to sales of property under direction or authority of the Uniform Commercial Code, section 554.9504, or of any court, or process thereof. [C24, 27, 31, 35, 39,§9866; C46, 50, 54, 58, 62, 66, 71, 73, 75, §546.3]

CHAPTER 546A

PUBLIC AUCTIONS

546A.1 License required.
546A.2 Application.
546A.3 Bond.
546A.4 Fee.
546A.5 Issuance of license.
546A.6 Inventory.
546A.7 Definitions.
546A.8 Exemptions.
546A.9 Penalties.

546A.1 License required. It shall be unlawful for any person, firm or corporation to sell, dispose of, or offer for sale at public auction at any place outside the limits of any city in the state of Iowa, or within the limits of any city in the state of Iowa that has not by ordinance provided for the licensing of sales by auction, any new merchandise, unless such person, firm or corporation and the owners of such merchandise, if it is not owned by the vendors, shall have first secured a license as herein provided and shall have complied with the regulations hereinafter set forth. [C54, 58, 62, 66, 71, 73, 75,§546A.1]

546A.2 Application. Any person, firm or corporation desiring such license shall, at least ten days prior to such proposed auction sale, file with the board of supervisors of the county wherein it is proposed to hold such auction sale, an application in writing duly verified by the person, firm or corporation proposing to sell, dispose of or offer for sale any new merchandise at public auction, which application shall state the following facts:

1. The name, residence and post-office address of the person, firm or corporation making the application, and if a firm or corporation, the name and address of the members of the firm or officers of the corporation, as the case may be.
2. The name, residence and post-office address of the auctioneer who will conduct such auction sale.
3. A detailed inventory and description of all such new merchandise to be offered for sale at such auction which inventory shall set forth the cost to the applicant of the several items contained in such inventory.
4. Whether or not the sale at public auction shall be with or without reservation. [C54, 58, 62, 66, 71, 73, 75,§546A.2]

546A.3 Bond. At the time of filing said application, and as a part thereof, the applicant shall file and deposit with the board of supervisors a bond, with sureties to be approved by the board of supervisors, in the penal sum of two times the value of the merchandise proposed to be offered for sale at such auction as shown by the inventory filed, running to the state of Iowa, and for the use and benefit of any purchaser of any merchandise at such auction who might have a cause of action of any nature arising from or out of such auction sale against the auctioneer or applicant; the bond to be further conditioned on the payment by the applicant of all taxes that may be payable by, or due from, the applicant to the state of Iowa or any department or subdivision thereof, the payment of any fines that may be assessed by any court against the applicant or auctioneer for violation of the provisions of this chapter, and the satisfaction of all causes of actions commenced within one year from date of such auction sale and arising therefrom, provided, however, that the aggregate liability of the surety for all said taxes, fines and causes of action shall in no event exceed the sum of such bond.

In such bond the applicant and the surety shall appoint the chairman of the board of supervisors of the county in which such bond is filed, the agent of the applicant and the surety for the service of process. In the event of such service, the agent on whom such service is made shall, within five days after the service, mail by ordinary mail a true copy of the process served upon him to each party for whom he is served, addressed to the last known address of such party. Failure to so mail said copy shall not, however, affect the court's jurisdiction.

Such bond shall contain the consent of the applicant and surety that the district court of the county wherein the application and bond is filed shall have jurisdiction of all actions arising against the applicant or surety, or both, arising out of said sale.

The state of Iowa or any subdivision thereof, or any person having a cause of action

against the applicant arising out of the sale of such new merchandise may join the applicant and the surety on such bond in the same action, or may in such action sue either such applicant or the surety alone. [C54, 58, 62, 66, 71, 73, 75,§546A.3]

546A.4 Fee. At the time of filing said application and bond the applicant shall pay to the county treasurer a license fee in the sum of twenty-five dollars for each day it is proposed to hold such auction sale as shown by the application for such license. [C54, 58, 62, 66, 71, 73, 75,§546A.4]

546A.5 Issuance of license. Upon the filing of such application and after the applicant has fully complied with all the provisions of this chapter, the board of supervisors, by its chairman, shall issue to the applicant a license authorizing the holding of such auction sale as proposed in said application. Such license shall not be transferable, and shall be valid only in the county where issued, and shall not be valid in any city in such county which has enacted an ordinance providing for the licensing of auction sales. [C54, 58, 62, 66, 71, 73, 75,§546A.5]

546A.6 Inventory. Within ten days after the last day of said auction the applicant shall file in duplicate with the board of supervisors an inventory of all merchandise sold at such auction and the price received therefor which said inventory shall be verified. The chairman of the board of supervisors shall, immediately after receiving such report and inventory, forward a copy thereof to the department of revenue. [C54, 58, 62, 66, 71, 73, 75,§546A.6]

546A.7 Definitions. "New merchandise" as used in this chapter shall mean all merchandise not previously sold at retail. "Auction sale" as used in this chapter shall mean the offering for sale or selling of personal property to the highest bidder or offering for sale or selling of personal property at a high price and then offering the same at successive lower prices until a buyer is secured. [C54, 58, 62, 66, 71, 73, 75,§546A.7]

546A.8 Exemptions. The provisions of this chapter shall not extend to the sale at public auction of livestock, farm machinery or farm produce or other items commonly sold at farm sales, or to auction sales of new merchandise which was assessed personal property tax or is replacement stock of merchandise inventory which was assessed personal property tax in the county in which the sale is to be had, and to auction sales under the direction of any court or court officers of such sales as may be required by law. [C54, 58, 62, 66, 71 73, 75, §546.8]

546A.9 Penalties. Any person who shall offer new merchandise for sale at public auction without first securing a license as herein provided, or who shall offer for sale new merchandise different from that shown by, or in excess of the amount and value of, the inventories filed with the application for license, shall be guilty of a misdemeanor and may be punished by a fine not to exceed three hundred dollars or by imprisonment in the county jail not to exceed ninety days. [C54, 58, 62, 66, 71, 73, 75,§546A.9]

Constitutionality, 55GA, ch 239,§10

CHAPTER 547

CONDUCTING BUSINESS UNDER TRADE NAME

Referred to in §117A.2

547.1 Use of trade name—verified statement required.
547.2 Change in statement.
547.3 Fee for recording.
547.4 Penalty.
547.5 "Offense" defined.

547.1 Use of trade name — verified statement required. It shall be unlawful for any person or copartnership to engage in or conduct a business under any trade name, or any assumed name of any character other than the true surname of each person or persons owning or having any interest in such business, unless such person or persons shall first file with the county recorder of the county in which the business is to be conducted a verified statement showing the name, post-office address, and residence address of each person owning or having any interest in the business, and the address where the business is to be conducted. [C27, 31, 35,§9866-a1; C39,§9866.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§547.1]

41GA, ch 183,§1, editorially divided

547.2 Change in statement. A like verified statement shall be filed of any change in ownership of the business, or persons interested therein and the original owners shall be liable for all obligations until such certificate of change is filed. [C27, 31, 35,§9866-a2; C39, §9866.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§547.2]

547.3 Fee for recording. The county recorder shall be entitled to charge and receive a fee of two dollars for each verified statement filed under the provisions of this chapter. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§547.3]

547.4 Penalty. Any person violating the provisions of this chapter shall, upon conviction, be punishable by a fine of not less than

twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for a term not exceeding thirty days. [C27, 31, 35,§9866-a3; C39,§9866.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§547.4]

41GA, ch 183,§2, editorially divided

547.5 "Offense" defined. Each day that any person or persons violate the provisions of this chapter shall be deemed to be a separate and distinct offense. [C27, 31, 35,§9866-a4; C39, §9866.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§547.5]

CHAPTER 548

REGISTRATION AND PROTECTION OF MARKS

548.1 Definitions.
548.2 Registrability.
548.3 Application for registration.
548.4 Certificate of registration.
548.5 Duration and renewal.
548.6 Assignment.
548.7 Cancellation.
548.8 Classification.
548.9 Fraudulent registration.
548.10 Infringement.
548.11 Remedies.
548.12 Defenses.
548.13 Application.

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

1. *"Applicant"* means a person filing an application for registration of a mark under this chapter, his legal representative, successor, or assignee.

2. *"Mark"* means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement used as a certification mark, collective mark, service mark, or trade-mark.

a. "Certification mark" means a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of the goods or services, or to indicate that the work or labor on the goods or services was performed by members of a union or other organization.

b. "Collective mark" means a mark used by members of a co-operative, association, or other collective group or organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization.

c. "Service mark" means a mark used by a person to identify services and to distinguish them from the services of others.

d. "Trade-mark" means a mark used by a person to identify goods and to distinguish them from the goods of others.

3. *"Person"* means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

4. *"Registrant"* means a person issued a registration of a mark under this chapter, his legal representative, successor, or assignee.

5. *"Trade name"* means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement used by a person to identify his business, vocation, or occupation, and distinguish it from others.

6. *"Use"* means:

a. Placing a mark on goods or containers or associated displays, or on affixed tags or labels, and selling or otherwise distributing the goods in this state.

b. Displaying a mark in connection with the sale or advertising of services rendered. [C71, 73, 75,§548.1]

548.2 Registrability.

1. A mark shall not be registered if it:

a. Consists of or comprises immoral, deceptive, or scandalous matter, or

b. Consists of or comprises matter which may disparage, bring into contempt or disrepute, or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or

c. Consists of or comprises the flag, or coat of arms, or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof, or

d. Consists of, or comprises the name, signature, or portrait of any living individual, except with his written consent, or

e. Is merely descriptive or misdescriptive, or primarily geographically descriptive or geographically misdescriptive as applied to the goods or services of the applicant, or

f. Is primarily a surname; except nothing in this paragraph shall prevent the registration of a mark used in this state by the applicant, which has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive proof of continuous use as a mark by the applicant in this state or

elsewhere for the five years preceding the date of the filing of the application for registration, or

g. Resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned, so as to be likely, when applied to the goods or services of the applicant, to cause confusion, mistake, or deception of purchasers.

2. Judicial review of actions of the secretary of state may be sought in accordance with the terms of the Iowa administrative procedure Act. [C71, 73, 75,§548.2]

548.3 Application for registration. Subject to the limitations set forth in this chapter, any person who has previously adopted and used a mark in this state may file in the office of the secretary of state, in the manner prescribed by the secretary of state, duplicate originals of an application for the registration of the mark. The application shall include, but not be limited to, the following:

1. The name and business address of the applicant, and if a corporation, the state of incorporation.

2. The goods or services in connection with which the mark is in use, the mode or manner in which the mark is used in connection with those goods or services, and the class or classes in which such goods or services fall, as described in regulations promulgated by the secretary of state.

3. The date on which the mark was first used anywhere by the applicant or his predecessor in interest, and the date on which it was first used in this state.

4. A statement that the applicant is the owner of the mark in this state and that no other person has the right to use a mark in this state which purchasers would be likely to confuse or mistake for the applicant's mark.

5. The signature and verification of the applicant, a specimen or facsimile of the mark illustrating its present mode of use, and a filing fee of ten dollars for each class of goods or services for which registration is sought. [C97,§5049; C24, 27, 31, 35, 39,§§**9867, 9868, 9870**; C46, 50, 54, 58, 62, 66,§§548.1, 548.2, 548.4; C71, 73, 75,§548.3]

548.4 Certificate of registration. The secretary of state shall issue a certificate of registration to the applicant upon compliance with the requirements of this chapter. The certificate of registration shall be issued over the signature and seal of the secretary of state or his designee, bear the date of registration, and be affixed to a duplicate original application or a copy. A duplicate original application shall be retained by the secretary of state with respect to each registered mark. The retained duplicate original application or a copy shall be available for public examination.

A certificate of registration by the secretary of state, affixed to a duplicate original application or to a copy, shall be prima-facie evidence of the validity of registration and of the registrant's right to use the mark throughout this state in the manner described in the certificate of registration. [C97,§5049; C24, 27, 31, 35, 39,§**9868, 9869**; C46, 50, 54, 58, 62, 66, §§548.2, 548.3; C71, 73, 75,§548.4]

548.5 Duration and renewal. Registration of a mark under this chapter shall be effective for a term of ten years and may be renewed for successive ten-year periods. A renewal fee of ten dollars shall accompany an application for renewal of registration. Application for renewal shall be made within six months prior to the expiration of the registration on a form furnished by the secretary of state and shall include a verified statement that the mark is still in use in this state.

The secretary of state shall notify a registrant of the pending expiration of his registration. However, the failure of a registrant to receive due notice from the secretary of state shall not prevent expiration of a registration.

The term of any registration in force on the date on which this chapter becomes effective shall not be affected by this chapter, but any registration in force on said date can only be renewed under this chapter. [C46, 50, 54, 58, 62, 66,§548.6; C71, 73, 75,§548.5]

548.6 Assignment. Any mark registered under this chapter shall be assignable with the good will of the business in which the mark is used. A mark connected with a part of the good will of a business can be assigned with that part of the good will of the business. Assignment of a registration can only be effected by filing duplicate originals of an assignment, signed by the registrant, with the secretary of state together with a filing fee of three dollars. After filing the assignment, the secretary of state shall issue to the assignee, for the remainder of the term of the assigned registration, a new certificate attached to one of the duplicate originals. [C46, 50, 54, 58, 62, 66,§548.5; C71, 73, 75,§548.6]

548.7 Cancellation. The secretary of state shall cancel from the register:

1. Any registration under a prior law which has expired without being renewed under this chapter.

2. Any registration concerning which the secretary of state receives a voluntary request for cancellation from the registrant or the assignee of record.

3. Any registration granted under this chapter and not renewed in accordance with its provisions.

4. Any registration which a district court, in an action involving the registration and from which no appeal is or can be taken, finds:

a. That the registered mark has been abandoned, or

b. That the registrant is not the owner of the mark, or

c. That the registration was granted contrary to the provisions of this chapter, or

d. That the registration was obtained fraudulently, or

e. That the registered mark has become incapable of serving as a mark, or

f. That the registered mark is so similar to a mark registered in the United States patent office by another party to the litigation and not abandoned prior to the date of first use by the registrant under this chapter as to be likely to cause confusion, mistake, or deception of purchasers. However, registration under this chapter shall not be canceled if the registrant under this chapter proves that he has a concurrent registration for his mark in the United States patent office for an area including this state.

5. Any registration that a district court, from which no appeal is or can be taken, orders canceled on any ground. [C71, 73, 75,§548.7]

548.8 Classification. The secretary of state shall establish a classification of goods and services for convenience in the administration of this chapter which shall not limit an applicant's or registrant's rights except as expressly provided by this chapter. [C71, 73, 75, §548.8]

548.9 Fraudulent registration. Any person who, either for himself or on behalf of any other person, shall procure the registration of any mark under this chapter by knowingly making any false or fraudulent representation or declaration or by any other fraudulent means is liable for the damages caused by the fraudulent registration and in an action to recover these damages the court shall order cancellation of the fraudulently obtained registration. [C71, 73, 75,§548.9]

548.10 Infringement. Any person who without the consent of the registrant uses any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter in a manner which is likely to cause confusion, mistake, or deception of purchasers; or reproduces, counterfeits, copies, or colorably imitates any registered mark and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used in a manner which is likely to cause confusion, mistake, or deception of purchasers in this state; shall be liable in a civil action by the registrant of the mark, for any or all of the remedies provided in section 548.11. [C97,§5051; C24, 27, 31, 35, 39,§9874; C46, 50, 54, 58, 62, 66, 71, 73, 75,§548.10]

548.11 Remedies.

1. The registrant of a mark that has been infringed may be granted an injunction against an infringer in accordance with the principles of equity. The court in its discretion may allow the registrant to recover the damages caused by the infringement or the profits of the infringer attributable to the infringement, or both. The court may order any counterfeits or imitations in the possession or under the control of an infringer to be destroyed and in exceptional cases the court may also award reasonable attorney fees to the prevailing party.

2. Likelihood of injury to business reputation or to a trade name valid at common law, or of dilution of the distinctive quality of a mark, whether registered or not registered under this chapter, shall be a ground for injunctive relief notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services. [C97,§§5050, 5051; C24, 27, 31, 35, 39,§§9871–9873, 9875; C46, 50, 54, 58, 62, 66, §§548.7–548.9, 548.11; C71, 73, 75,§548.11]

Referred to in §548.10

548.12 Defenses. A registrant shall not use the letter "R" enclosed in a circle, thus ®, "Registered in the U. S. Patent Office" or "Reg. U. S. Patent Off." to give notice of registration under this chapter. Use of false notice of federal registration is an affirmative defense which precludes recovery of damages, profits, or injunctive relief under this chapter for the period during which false notice of federal registration is used. [C71, 73, 75,§548.12]

548.13 Application. This chapter does not affect:

1. Rights, or the enforcement of rights, in marks or trade names acquired in good faith at any time at common law.

2. Rights, or the enforcement of rights in marks acquired under federal law.

3. Publishers, broadcasters, printers, or other persons engaged in the dissemination of information or reproduction of printed or pictorial matter who publish, broadcast, or reproduce material without knowledge of its infringing character.

4. Use of the Iowa certification mark as provided in section 28.7, subsection 4.

5. Marks for dairy products, as provided for in sections 192.23 through 192.39, inclusive. [C71, 73, 75,§548.13]

Chapter effective January 1, 1971. Existing registrations and litigation excepted; see 63GA, ch 1255,§§14, 15

CHAPTER 549

TRADE-MARKS FOR ARTICLES MANUFACTURED IN IOWA

Repealed by 52GA, ch 272,§1

See §28.7

Registration of marks, ch 548

CHAPTER 550

DISTRIBUTION OF TRADE-MARKED ARTICLES

Repealed by 66GA, ch 242

CHAPTER 551

UNFAIR DISCRIMINATION

551.1 Unfair discrimination in sales.
551.2 Unfair discrimination in purchases.
551.3 Repealed by 66GA, ch 1056,§45.
551.4 Penalty.
551.5 Contracts or agreements.
551.6 Enforcement.
551.7 Complaint—to whom made.
551.8 Revocation of permit.
551.9 Corporation to be enjoined.
551.10 Cumulative remedies.
551.11 Exceptions.

551.1 Unfair discrimination in sales. Any person, firm, company, association, or corporation, foreign or domestic, doing business in the state, and engaged in the production, manufacture, sale, or distribution of any commodity of commerce or commercial services excepting those, the rate of which is now subject to control of cities or other governmental agency, that shall, for the purpose of destroying the business of a competitor in any locality or creating a monopoly, discriminate between different sections, localities, communities or cities of this state, by selling such commodity or commercial services excepting those, the rate of which is now subject to control of cities or other governmental agency at a lower price or rate in one section, locality, community or city than such commodity or commercial services excepting those, the rate of which is now subject to control of cities or other governmental agency is sold for by said person, firm, association, company, or corporation, in another section, locality, community or city, after making due allowance in case of telephone service for the difference in the cost of furnishing service in different localities, and in the case of commodities and commercial services other than telephone service, for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of production or purchase, if a raw product, or from the point of manufacture, if a manufactured product, to a place of sale, storage, or distribution shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful; provided, however, that prices made to meet competition in such section, locality, community or city shall not be in violation of this section. [S13, §5028-b; C24, 27, 31, 35, 39,§9885; C46, 50, 54, 58, 62, 66, 71, 73, 75,§551.1]

Referred to in §§551.4–551.9
S13,§5028–b, editorially divided

551.2 Unfair discrimination in purchases. Any person, firm, association, company, or corporation, foreign or domestic, doing business in the state, and engaged in the business of purchasing for manufacture, storage, sale, or distribution, any commodity of commerce that shall, for the purpose of destroying the business of a competitor or creating a monopoly, discriminate between different sections, localities, communities or cities, in this state, by purchasing such commodity at a higher rate or price in one section, locality, community or city, than is paid for such commodity by such party in another section, locality, community or city, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of purchase to the point of manufacture, sale, distribution, or storage, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful; provided, however, that prices made to meet competition in such section, locality, community or city shall not be in violation of this section. [S13,§5028-b; C24, 27, 31, 35, 39,§9886; C46, 50, 54, 58, 62, 66, 71, 73, 75,§551.2]

Referred to in §§551.4–551.9

551.3 Repealed by 66GA, ch 1056,§45.

551.4 Penalty. Any person, firm, company, association, or corporation violating any of the provisions of sections 551.1 and 551.2, and any officer, agent, or receiver of any firm, company, association, or corporation, or any member of the same, or any individual, found guilty of a violation thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or suffer both penalties. [S13,5028-c; C24, 27, 31, 35, 39,§9888; C46, 50, 54, 58, 62, 66, 71, 73, 75,§551.4]

Referred to in §551.6

551.5 Contracts or agreements. All contracts or agreements made in violation of any of the provisions of sections 551.1 and 551.2 shall be void. [S13,§5028-d; C24, 27, 31, 35, 39, §9889; C46, 50, 54, 58, 62, 66, 71, 73, 75,§551.5]

Referred to in §551.6

551.6 Enforcement. It shall be the duty of the county attorneys, in their counties, and the attorney general, to enforce the provisions of sections 551.1 to 551.5, inclusive, by appropri-

ate actions in courts of competent jurisdiction. [S13,§5028-e; C24, 27, 31, 35, 39,§9890; C46, 50, 54, 58, 62, 66, 71, 73, 75,§551.6]

551.7 Complaint—to whom made. If complaint shall be made to the secretary of state that any corporation authorized to do business in this state is guilty of unfair discrimination, within the terms of sections 551.1 and 551.2, it shall be the duty of the secretary of state to refer the matter to the attorney general who may, if the facts justify it in his judgment, institute proceedings in the courts against such corporation. [S13,§5028-f; C24, 27, 31, 35, 39, §9891; C46, 50, 54, 58, 62, 66, 71, 73, 75,§551.7]

551.8 Revocation of permit. If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination, within the terms of sections 551.1 and 551.2, it shall be the duty of the secretary of state to immediately revoke the permit of such corporation to do business in this state. [S13,§5028-g; C24, 27, 31, 35, 39,§9892; C46, 50, 54, 58, 62, 66, 71, 73, 75,§551.8]

551.9 Corporation to be enjoined. If after revocation of its permit such corporation, or any other corporation not having a permit and found guilty of having violated any of the provisions of sections 551.1 and 551.2, shall continue or attempt to do business in this state, it shall be the duty of the attorney general, by a proper suit in the name of the state of Iowa, to enjoin such corporation from transacting all business of every kind and character in said state. [S13,§5028-h; C24, 27, 31, 35, 39,§9893; C46, 50, 54, 58, 62, 66, 71, 73, 75,§551.9]

551.10 Cumulative remedies. Nothing in this chapter shall be construed as repealing any other Act, or part of Act, but the remedies herein provided shall be cumulative to all other remedies provided by law. [S13,§5028-i; C24, 27, 31, 35, 39,§9894; C46, 50, 54, 58, 62, 66, 71, 73, 75,§551.10]

551.11 Exceptions. The provisions of this chapter shall not apply to any contract or agreement relating to any sale made to the state, its departments, commissions, agencies, boards and its governmental subdivisions. [C71, 73, 75,§551.11]

CHAPTER 551A

CIGARETTE SALES

551A.1 Short title.
551A.2 Definitions.
551A.3 Sales at less than cost—penalty.
551A.4 Combination sales.
551A.5 Sales by a wholesaler to a wholesaler.
551A.6 Sales exceptions.
551A.7 Transactions permitted to meet lawful competition.
551A.8 Cost determined.
551A.9 Sales outside ordinary channels of business—effect.
551A.10 Injunction.
551A.11 Director of revenue — powers and duties.

551A.1 Short title. This chapter shall be known and cited as the "Iowa Unfair Cigarette Sales Act." [C50, 54, 58, 62, 66, 71, 73, 75, §551A.1]

551A.2 Definitions. When used in any part of this chapter, the following words, terms and phrases shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

1. *"Cigarettes"* shall mean and include any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

2. *"Person"* shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club agency, syndicate, or anyone engaged in the sale of cigarettes.

3. *"Wholesaler"* means and includes any person who acquires cigarettes for the purpose of sale to retailers or to other persons for resale, and who maintains an established place of business when any part of the business is the sale of cigarettes at wholesale to persons licensed under this chapter, and where at all times a stock of cigarettes is available to retailers for resale.

4. *"Retailer"* means any person who is engaged in this state in the business of selling, or offering to sell, cigarettes at retail.

5. *"Sale"* and *"sell"* shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever.

6. *"Sell at wholesale"*, "sale at wholesale", and "wholesale sales" shall mean and include any sale or offer for sale made in the course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.

7. *"Sell at retail"*, "sale at retail" and "retail sales" shall mean and include any sale or offer

for sale for consumption or use made in the ordinary course of trade of the seller's business.

8. *"Basic cost of cigarettes"* shall mean whichever of the two following amounts is lower, namely, (*a*) the true invoice cost of cigarettes to the wholesaler or retailer, as the case may be, or (*b*) the lowest replacement cost of cigarettes to the wholesaler or retailer in the quantity last purchased, less, in either case, all trade discounts and customary discounts for cash, plus the full face value of any stamps which may be required by any cigarette tax Act of this state, unless included by the manufacturer in his list price.

9. *a. "Cost to wholesale"* shall mean the basic cost of the cigarettes plus the cost of doing business by the wholesaler, as defined in this chapter.

b. The cost of doing business by the wholesaler is presumed to be four percent of the basic cost of said cigarettes in the absence of proof of a lesser or higher cost, plus cartage to the retail outlet, if furnished or paid for by the wholesaler. Such cartage cost is presumed to be one-half of one percent of the basic cost of the cigarettes in the absence of proof of a lesser or higher cost.

10. *a. "Cost to the retailer"* shall mean the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as defined in this chapter.

b. The cost of doing business by the said retailer is presumed to be eight percent of the basic cost of cigarettes in the absence of proof of a lesser or higher cost.

c. If any retailer in connection with his purchase of any cigarettes shall receive the discounts ordinarily allowed upon purchases by a retailer and in whole or in part discounts ordinarily allowed upon purchases by a wholesaler, the cost of doing business by the retailer with respect to the said cigarettes shall be, in the absence of proof of a lesser or higher cost of doing business, the sum of the cost of doing business by the retailer and, to the extent that he shall have received the full discounts allowed to a wholesaler, the cost of doing business by a wholesaler as hereinabove defined in subsection 9, paragraph *"b."* [C50, 54, 58, 62, 66, 71, 73, 75,§551A.2]

Referred to in §§551A.4, 551A.5

551A.3 Sales at less than cost—penalty.

1. It shall be unlawful for any wholesaler or retailer to offer to sell, or sell, at wholesale or retail, cigarettes at less than cost to such wholesaler or retailer, as the case may be, as defined in this chapter. Any wholesaler or retailer who violates the provisions of this section shall be guilty of a misdemeanor and be punishable by fine of not less than one hundred dollars, nor more than five hundred dollars.

2. Evidence of advertisement, offering to sell, or sale of cigarettes by any wholesaler or retailer at less than cost to him as defined by this chapter shall be evidence of a violation of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75, §551A.3]

551A.4 Combination sales. In all offers for sale or sales involving cigarettes and any other item at a combined price, and in all offers for sale, or sales, involving the giving of any gift or concession of any kind whatsoever (whether it be coupons or otherwise), the wholesaler's or retailer's combined selling price shall not be below the cost to the wholesaler or the cost to the retailer, respectively, of the total of all articles, products, commodities, gifts and concessions included in such transactions; if any such articles, products, commodities, gifts or concessions, shall not be cigarettes, the basic cost thereof shall be determined in like manner as provided in section 551A.2, subsection 8. [C50, 54, 58, 62, 66, 71, 73, 75,§551A.4]

551A.5 Sales by a wholesaler to a wholesaler. When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter, the cost to the wholesaler, as defined by section 551A.2, but the latter wholesaler, upon resale to a retailer, shall be subject to the provisions of the said section. [C50, 54, 58, 62, 66, 71, 73, 75,§551A.5]

551A.6 Sales exceptions. The provisions of this chapter shall not apply to a sale at wholesale or a sale at retail made (1) in an isolated transaction; (2) where cigarettes are offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in such cigarettes and said offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes offered for sale, or to be sold; (3) where cigarettes are offered for sale, or sold as imperfect or damaged, and said offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes offered for sale, or to be sold. [C50, 54, 58, 62, 66, 71, 73, 75,§551A.6]

Referred to in §551A.7

551A.7 Transactions permitted to meet lawful competition.

1. Any wholesaler may advertise, offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at the cost to the competing wholesaler as defined by this chapter. Any retailer may offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling at the cost to the said competing retailer as defined in this chapter. The price of cigarettes offered for sale, or sold under the exceptions specified in section 551A.6 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt or forced sale be considered the price of a competitor within the purview of this section.

2. In the absence of proof of the actual cost to a competing wholesaler or to a competing retailer, as the case may be, such cost shall be the lowest cost to wholesalers or the lowest cost to retailers, as the case may be, within the same trading area as determined by a cost survey made pursuant to section 551A.8, subsection 2. [C50, 54, 58, 62, 66, 71, 73, 75,§551A.7]

Referred to in §551A.11

551A.8 Cost determined.

1. *Admissible evidence.* In determining cost to the wholesaler and cost to the retailer the court shall receive and consider as bearing on the bona fides of such cost, evidence that any person complained against under any of the provisions of this chapter purchased the cigarettes involved in the complaint before the court, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

2. *Cost survey.* Where a cost survey pursuant to recognized statistical and cost accounting practices has been made for the trading area in which a violation of this chapter is committed or charged, to determine and establish the lowest cost to wholesalers or the lowest cost to retailers within the area, the cost survey shall be deemed competent evidence in any action or proceeding under this chapter to establish actual cost to the wholesaler or actual cost to the retailer complained against. In such surveys to determine cost to the wholesaler or retailer there shall be included in the cost of doing business without limitation, labor, rent, depreciation, sales costs, compensation, maintenance of equipment, cartage, licenses, taxes, insurance and other expenses. [C50, 54, 58, 62, 66, 71, 73, 75,§551A.8]

Referred to in §§551A.7, 551A.11

551A.9 Sales outside ordinary channels of business—effect. In establishing the basic cost of cigarettes to a wholesaler or a retailer, it shall not be permissible to use the invoice cost or the actual cost of any cigarettes purchased at a forced, bankrupt, or close out sale, or other sale outside of the ordinary channels of trade. [C50, 54, 58, 62, 66, 71, 73, 75,§551A.9]

551A.10 Injunction. The director of revenue, or any person or persons injured by any violation, or who would suffer injury from any threatened violation of this chapter, may maintain an action in any equity court to enjoin such actual or threatened violation. If a violation or threatened violation of this chapter shall be established, the court shall enjoin such violation or threatened violation, and, in addition thereto, the court shall assess in favor of the plaintiff and against the defendant the costs of suit including reasonable attorney's fees. Where alleged and proved, the plaintiff, in addition to such injunctive relief and costs of suit, including reasonable attorney's fees, shall be entitled to recover from the defendant the actual damages sustained by him. [C50, 54, 58, 62, 66, 71, 73, 75,§551A.10]

551A.11 Director of revenue—powers and duties. The director of revenue may adopt rules for the enforcement of this chapter and the director is empowered to and may from time to time undertake and make or cause to be made such cost surveys for the state or such trading area or areas as the director shall deem necessary and it shall be permissible to use such cost survey as provided in section 551A.7, subsection 2 and section 551A.8, subsection 2.

The director of revenue may, upon notice and after hearing, suspend or revoke any permit issued under the provisions of the cigarette tax chapter and the rules of the director promulgated thereunder, for failure of the permit holder to comply with any provision of this unfair cigarette sales chapter or any rule adopted thereunder. The suspension or revocation of a permit shall be for a period of not less than six months from the date of suspension or revocation, and no permit shall be issued for the location designated in the suspended or revoked permit, during the period of suspension or revocation.

Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, and section 422.55. [C50, 54, 58, 62, 66, 71, 73, 75,§551A.11]

Constitutionality, 53GA, ch 226,§12

CHAPTER 552

BUCKET SHOPS

Repealed by 66GA, ch 1056,§45

CHAPTER 553

IOWA COMPETITION LAW

Effective January 1, 1977
Chapter 553, Code 1975, repealed by 66GA, ch 1224,§18

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553.1 Short title. This chapter shall be known and may be cited as the "Iowa Competition Law". [66GA, ch 1224,§1]

553.2 Construction. This chapter shall be construed to compliment and be harmonized with the applied laws of the United States which have the same or similar purpose as this chapter. This construction shall not be made in such a way as to constitute a delegation of state authority to the federal government, but shall be made to achieve uniform application of the state and federal laws prohibiting restraints of economic activity and monopolistic practices. [66GA, ch 1224,§2]

553.3 Definitions. As used in this chapter unless the context otherwise requires:

1. *"Commodity"* means tangible or intangible property, real, personal, or mixed.

2. *"Enterprise"* means a business, commercial or professional entity, including a corporation, partnership, limited partnership, professional corporation, proprietorship, incorporated or unincorporated association, or other form of organization.

3. *"Government agency"* means the state, its political subdivisions, and any public agency supported in whole or in part by taxation.

4. *"Person"* means a natural person, estate, trust, enterprise or government agency.

5. *"Price"* includes the terms and conditions of sale, rental, rate, fee, or any other form of payment for a commodity or service.

6. *"Relevant market"* means the geographical area of actual or potential competition in a line of commerce, all or any part of which is within this state.

7. *"Service"* means any activity which is performed in whole or part for financial gain.

8. *"Trade or commerce"* means any economic activity involving or relating to any commodity, service, or business activity. [66GA, ch 1224,§3]

553.4 Restraint prohibited. A contract, combination, or conspiracy between two or more persons shall not restrain or monopolize trade or commerce in a relevant market. [C97, §§5060, 5061; S13,§5067-a; C24, 27, 31, 35, 39, §§**9906, 9907, 9915**; C46, 50, 54, 58, 62, 66, **71, 73**, 75,§§553.1, 553.2, 553.10; 66GA, ch 1224,§4]

553.5 Monopoly prohibited. A person shall not attempt to establish or establish, maintain, or use a monopoly of trade or commerce in a relevant market for the purpose of excluding competition or of controlling, fixing, or maintaining prices. [C97,§§5060, 5061; S13, §5067-a; C24, 27, 31, 35, 39,§**9906, 9907, 9915**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§553.1, 553.2, 553.10; 66GA, ch 1224,§5]

553.6 Exemptions. This chapter shall not be construed to prohibit:

1. The activities of any labor organization, individual members of such an organization, or group of such organizations, of any employer or group of employers, or of any groups of employees, if these activities are directed solely to legitimate labor objectives which are permitted under the laws of either this state or the United States.

2. The activities of any agricultural or horticultural organization, whether incorporated or unincorporated, or of the individual members of such organizations, if these activities carry out the legitimate objectives of such organizations, to the extent permitted under the laws of either this state or the United States.

3. The activities of persons engaged in the production of agricultural products when these persons act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing the products of these persons, to the extent permitted under the laws of either this state or the United States. These associations may have marketing and purchasing agencies in common and their members may make the necessary contracts and agreements to effect such purposes. However, such associations must be operated for the mutual benefit of the members of these associations acting as producers to qualify under this subsection.

4. The activities or arrangements expressly approved or regulated by any regulatory body or officer acting under authority of this state or of the United States. [C24, 27, 31, 35, 39,§9916; C46, 50, 54, 58, 62, 66, 71, 73,§553.11; 66GA, ch 1224,§6]

553.7 Attorney general to enforce. The attorney general, with such assistance as may be required from time to time of the county attorneys in their respective counties, shall institute all criminal and civil actions and proceedings brought under this Act in the name of the state. [C97,§5067; C24, 27, 31, 35, 39,§9913; C46, 50, 54, 58, 62, 66, 71, 73,§553.8; 66GA, ch 1224,§7]

553.8 Venue. A suit or proceeding brought under this chapter may be brought in the county where the cause of action arose, where any defendant resides or transacts business, or where an act in furtherance of the conduct prohibited by this chapter occurred. [66GA, ch 1224,§8]

553.9 Investigation.

1. If the attorney general has reasonable cause to believe that a person has engaged in or is engaging in conduct prohibited by this chapter, the attorney general shall make such investigation as is deemed necessary and may, prior to the commencement of a suit against this person under this chapter:

a. Issue written demand on this person, its officers, directors, partners, fiduciaries, or employees to compel their attendance before the attorney general and examine them under oath;

b. Issue written demand to produce, examine, and copy a document or tangible item in the possession of this person or its officers, directors, partners, or fiduciaries;

c. Upon an order of a district court, pursuant to a showing that such is reasonably necessary to an investigation being conducted under this section:

(1) Compel the attendance of any other person before the attorney general and examine this person under oath;

(2) Require the production, examination, and copying of a document or other tangible item in the possession of such person; and,

d. Upon an order of a district court, impound a document or other tangible item produced pursuant to this section and retain possession of it until the completion of all proceedings arising out of the investigation.

2. A written demand or court order issued pursuant to this section shall contain the following information, as applicable:

a. A reference to this chapter and a general description of the subject matter being investigated;

b. The date, time and place at which any person is to appear or to produce documents or other tangible items;

c. Where the production of documents or other tangible items is required, a description of such documents or items by class with sufficient clarity so that they may be reasonably identified.

3. Any procedure, testimony taken, or material produced under this section shall be sealed by the court and be kept confidential by the attorney general, until an action is filed against a person under this chapter for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced material, or unless disclosure is authorized by the court for the purposes of interstate cooperation in enforcing this chapter and similar state and federal laws.

4. This chapter shall not be construed to limit or abridge statutory or constitutional limitations on self-incrimination.

5. Evidence obtained from a natural person pursuant to the provisions of this section shall not be introduced in a subsequent criminal prosecution of this person. However, evidence obtained from a natural person pursuant to a grand jury proceeding may be so introduced. [66GA, ch 1224,§9]

Referred to in §553.10, 553.11

553.10 Investigation enforcement. If a person objects or otherwise fails to obey a written demand or court order issued under section 553.9, the attorney general may file in the district court of the county in which the person resides or maintains a principal place of business within this state an application for an order to enforce the demand or order. Notice of hearing and a copy of the application shall be served upon the person, who may appear in opposition to the application. If the court finds that the demand or order is proper, that there is reasonable cause to believe there has been a violation of this chapter, and that the information sought or document or object demanded is relevant to the violation, it shall order the person to comply with the demand or order, subject to such modification as the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings which justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense. [66GA, ch 1224,§10]

Referred to in §553.11

553.11 Protective orders. Before the attorney general files an application under section 553.10 and upon application of any person who was served a written demand or court order under section 553.9, upon notice and hearing, and for good cause shown, the district court may make any order which justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden of expense, including the following:

1. That the examination of this person shall not be taken or that documents or other tangible items shall not be produced for inspection and copying;

2. That the examination or production of documents or other tangible items shall be had only on specified terms and conditions, including a change in the time or place;

3. That certain matters shall not be inquired into or that the scope of the examination or production shall be limited to certain matters;

4. That the examination or production and inspection shall be conducted with only those persons present as designated by the court;

5. That the transcript of the examination shall be sealed and be opened only by order of the court;

6. That a trade secret or other confidential research, development, or commercial information shall not be disclosed or shall be disclosed only in a designated way. [66GA, ch 1224,§11]

553.12 Remedies. The state or a person who is injured or threatened with injury by conduct prohibited under this chapter may bring suit to:

1. Prevent or restrain conduct prohibited under this chapter and remove the conduct's effect by injunction, divestiture, divorcement, dissolution of domestic enterprises right to do business in this state, compelling the forfeiture or restraint of the issuance of a certificate of incorporation, permit to transact business, license, or franchise, or granting other equitable relief. The state may bring suit under this section without posting bond.

2. Recover actual damages resulting from conduct prohibited under this chapter.

3. Recover, at the court's discretion, exemplary damages which do not exceed twice the actual damages awarded under subsection 2 if:

a. The trier of fact determines that the prohibited conduct is willful or flagrant; and,

b. The person bringing suit is not the state.

4. Recover the necessary costs of bringing suit, including a reasonable attorney fee. However, the state may not recover any attorney fee. [66GA, ch 1224,§12]

Referred to in §§553.13, 553.16, 553.17

553.13 Civil penalty. In addition to suit under section 553.12, the state may bring suit to assess a civil penalty against an enterprise whose conduct is prohibited under this chapter. The suit may be tried to the jury and the civil penalty provided for in this section shall be imposed by the court. The civil penalty assessed shall not exceed ten percent of the total value of the specific commodities by their brand, make, and size or of services either of which were the subject of the prohibited conduct sold in the relevant market in this state by the enterprise in each year in which this conduct occurred, but this penalty shall not exceed one hundred fifty thousand dollars. In computing this penalty, only the four most recent years in which the prohibited conduct occurred, as of commencement of suit under this section, shall be used in the computation. [66GA, ch 1224,§13]

Referred to in §553.16

553.14 Criminal penalties. A person or a natural person having substantial control over an enterprise who knowingly and willfully engages in conduct prohibited by this chapter shall be, upon conviction, fined not to exceed twenty-five thousand dollars, imprisoned in the county jail for not more than six months, or both so fined and imprisoned. [C97,§5062; S13,§§5062, 5067-c, 5077-a5; C24, 27, 31, 35, 39, §§**9908, 9918, 9926**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§553.3, 553.13, 553.21; 66GA, ch 1224,§14]

553.15 Election of remedies. The bringing of suit to assess a civil penalty against a person by filing a petition shall be an election of remedies to not bring a criminal prosecution against this person. The bringing of a criminal prosecution against a person by filing an information or returning an indictment shall be an election of remedies to not bring suit to assess a civil penalty against this person. [66GA, ch 1224,§15]

553.16 Limitations.

1. Suit by the state to assess a civil penalty or to obtain a criminal conviction under this chapter must be commenced within four years after the cause of action accrues or, if there is fraudulent concealment of this cause of action, within four years after the cause of action becomes known, whichever period is later.

2. Suit under section 553.12 must be commenced within four years after the cause of action accrues or, if there is a fraudulent concealment of this cause of action, within four years after the cause of action becomes known, whichever period is later. However, if this cause is based, in whole or part, on the same set of facts as alleged in a suit brought under section 553.13, this period shall be suspended until one year after the suit brought under section 553.13 is concluded. [66GA, ch 1224, §16]

553.17 Prima-facie evidence. A final decree or judgment, other than a consent decree or consent judgment entered before trial, in a suit brought by the state is prima-facie evidence against the defendant in a suit brought by any person other than the state under section 553.12 as to all matters respecting which this decree or judgment would be an estoppel between the state and the defendant. This section shall not affect the application of collateral estoppel or issue preclusion. [66GA, ch 1224,§17]

TITLE XXIV

PERSONAL PROPERTY

CHAPTER 554

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Referred to in §§98.45, 537A.8, 554.1110, 554.10105, 555.2

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ARTICLE 1
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Referred to in §§554.2103(4), 554.3102(4), 554.4104(4), 554.5103(4), 554.7102(4), 554.8102(6), 554.9105(4)

PART 1
SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE CHAPTER

554.1101 Short title. This chapter shall be known and may be cited as Uniform Commercial Code. [C66, 71, 73, 75,§554.1101]

554.1102 Purposes—rules of construction—variation by agreement.

1. This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

2. Underlying purposes and policies of this chapter are:

a. to simplify, clarify and modernize the law governing commercial transactions;

b. to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

c. to make uniform the law among the various jurisdictions.

3. The effect of provisions of this chapter may be varied by agreement, except as otherwise provided in this chapter and except that the obligations of good faith, diligence, reasonableness and care prescribed by this chapter may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

4. The presence in certain provisions of this chapter of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection 3.

5. In this chapter unless the context otherwise requires:

a. words in the singular number include the plural, and in the plural include the singular;

b. words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender. [S13,§§3138-a57,-b51; C24, 27, 31, 35, 39,§§**8296, 9717, 10003**; C46, §§487.53, 542.57, 554.75; C50, 54, 58, 62,§§487.53, 493A.19, 542.57, 554.75; C66, 71, 73, 75,§554.1102]

Referred to in §554.1201(30)

554.1103 Supplementary general principles of law applicable. Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions. [S13, §§3060-a196, 3138-a56,-b50; C24, 27, 31, 35, 39, §§**8295, 9657, 9716, 9931, 10002**; C46,§§487.52, 541.197, 542.56, 554.2, 554.74; C50, 54, 58, 62, §§487.52, 493A.18, 541.197, 542.56, 554.2, 554.74; C66, 71, 73, 75,§554.1103]

Referred to in §554.1201(3)

554.1104 Construction against implicit repeal. This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [C66, 71, 73, 75,§554.1104]

554.1105 Territorial application of the chapter—parties' power to choose applicable law.

1. Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or na-

tion shall govern their rights and duties. Failing such agreement this chapter applies to transactions bearing an appropriate relation to this state.

2. Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 554.2402.

Applicability of the Article on Bank Deposits and Collections. Section 554.4102.

Bulk transfers subject to the Article on Bulk Transfers. Section 554.6102.

Applicability of the Article on Investment Securities. Section 554.8106.

Perfection provisions of the Article on Secured Transactions, section 554.9103. [C66, 71, 73, 75,§554.1105]

554.1106 Remedies to be liberally administered.

1. The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this chapter or by other rule of law.

2. Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect. [C24, 27, 31, 35, 39,§**10001**; C46, 50, 54, 58, 62,§554.73; C66, 71, 73, 75,§554.1106]

554.1107 Waiver or renunciation of claim or right after breach. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. [S13,§§3060-a118,-a122; SS15,§3060-a120; C24, 27, 31, 35, 39, §§**9579**, **9581**, **9583**; C46, 50, 54, 58, 62,§§541.119, 541.121, 541.123; C66, 71, 73, 75,§554.1107]

554.1108 Severability. If any provision or clause of this chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [C66, 71, 73, 75,§554.1108]

554.1109 Section captions. Section captions are parts of this chapter. [C66, 71, 73, 75, §554.1109]

Referred to in §3.8

554.1110 Rules for filing and indexing.* The secretary of state shall make and promulgate rules for all filing and indexing pursuant to chapter 554 and chapter 555 including but not limited to rules on whether statements and documents shall be indexed in real estate records. [C71, 73, 75,§554.1110]

*This caption supplied by Code Editor

PART 2
GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

554.1201 General definitions. Subject to additional definitions contained in the subsequent Articles of this chapter which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this chapter:

1. *"Action"* in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

2. *"Aggrieved party"* means a party entitled to resort to a remedy.

3. *"Agreement"* means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (sections 554.1205 and 554.2208). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 554.1103). (Compare "Contract".)

4. *"Bank"* means any person engaged in the business of banking.

5. *"Bearer"* means the person in possession of an instrument, document of title, or security payable to bearer or endorsed in blank.

6. *"Bill of lading"* means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

7. *"Branch"* includes a separately incorporated foreign branch of a bank.

8. *"Burden of establishing"* a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

9. *"Buyer in ordinary course of business"* means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

Referred to in §554.9307

10. *"Conspicuous"*: A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: "Nonnegotiable Bill of Lading") is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

11. *"Contract"* means the total legal obligation which results from the parties' agreement as affected by this chapter and any other applicable rules of law. (Compare "Agreement".)

12. *"Creditor"* includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

13. *"Defendant"* includes a person in the position of defendant in a cross-action or counterclaim.

14. *"Delivery"* with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

15. *"Document of title"* includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

16. *"Fault"* means wrongful act, omission or breach.

17. *"Fungible"* with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this chapter to the extent that under a particular agreement or document unlike units are treated as equivalents.

18. *"Genuine"* means free of forgery or counterfeiting.

19. *"Good faith"* means honesty in fact in the conduct or transaction concerned.

20. *"Holder"* means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or endorsed to him or to his order or to bearer or in blank.

21. To *"honor"* is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

22. *"Insolvency proceedings"* includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

23. A person is *"insolvent"* who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

24. *"Money"* means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

25. A person has *"notice"* of a fact when

a. he has actual knowledge of it; or

b. he has received a notice or notification of it; or

c. from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

26. A person *"notifies"* or *"gives"* a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

a. it comes to his attention; or

b. it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

27. Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

28. *"Organization"* includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

29. *"Party"*, as distinct from "third party", means a person who has engaged in a trans-

action or made an agreement within this chapter.

30. *"Person"* includes an individual or an organization (See section 554.1102).

31. *"Presumption"* or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

32. *"Purchase"* means any voluntary transaction creating an interest in property, including taking by sale, discount, negotiation, mortgage, pledge, voluntary lien, issue, reissue or gift.

33. *"Purchaser"* means a person who takes by purchase.

34. *"Remedy"* means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

35. *"Representative"* includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

36. *"Rights"* includes remedies.

37. *"Security interest"* means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 554.2401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 554.2401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (section 554.2326). Whether a lease is intended as security is to be determined by the facts of each case; however, (*a*) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (*b*) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

38. *"Send"* in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

39. *"Signed"* includes any symbol executed or adopted by a party with present intention to authenticate a writing.

40. *"Surety"* includes guarantor.

41. *"Telegram"* includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

42. *"Term"* means that portion of an agreement which relates to a particular matter.

43. *"Unauthorized"* signature or endorsement means one made without actual, implied or apparent authority and includes a forgery.

44. *"Value"*. Except as otherwise provided with respect to negotiable instruments and bank collections (sections 554.3303, 554.4208 and 554.4209) a person gives "value" for rights if he acquires them

a. in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

b. as security for or in total or partial satisfaction of a pre-existing claim; or

c. by accepting delivery pursuant to a pre-existing contract for purchase; or

d. generally, in return for any consideration sufficient to support a simple contract.

45. *"Warehouse receipt"* means a receipt issued by a person engaged in the business of storing goods for hire.

46. *"Written"* or *"writing"* includes printing, typewriting or any other intentional reduction to tangible form. [S13,§§1889-a, 3060-a6, -a25,-a27,-a56,-a191, 3138-a1,-a58,-b,-b52; C24, 27, 31, 35, 39,§§**8245, 8297, 9266, 9466, 9485–9487, 9516, 9652, 9661, 9718, 9932, 9934, 9935, 10000, 10005**; C46, 50, 54, 58, 62,§§487.1, 487.54, 528.61, 541.6, 541.25–541.27, 541.56, 541.192, 542.1, 542.58, 554.3, 554.6, 554.7, 554.72, 554.77; C50, 54, 58, 62, §493A.22; C58, 62,§539.12; C66, 71, 73, 75, §554.1201; 66GA, ch 1107,§3]

Referred to in §§554.7102(1, *e*), 554.9105(1, *f*), 554.9307, 554.9408, 554.10104

554.1202 Prima-facie evidence by third party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima-facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party. [C66, 71, 73, 75, §554.1202]

554.1203 Obligation of good faith. Every contract or duty within this chapter imposes an obligation of good faith in its performance or enforcement. [C66, 71, 73, 75,§554.1203]

554.1204 Time — reasonable time — "seasonably".

1. Whenever this chapter requires any action to be taken within a reasonable time, any

time which is not manifestly unreasonable may be fixed by agreement.

2. What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

3. An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time. [S13,§3060-a193; C24, 27, 31, 35, 39,§§**9654, 9972**; C46, 50, 54, 58, 62,§§541.194, 554.44; C66, 71, 73, 75,§554.1204]

554.1205 Course of dealing and usage of trade.

1. A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

2. A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

3. A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

4. The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

5. An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

6. Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter. [C24, 27, 31, 35, 39, §§**9938, 9944, 9947, 10000**; C46, 50, 54, 58, 62, §§554.10, 554.16, 554.19, 554.72; C66, 71, 73, 75, §554.1205]

Referred to in §§554.1201(3), 554.2202, 554.2208

554.1206 Statute of frauds for kinds of personal property not otherwise covered.

1. Except in the cases described in subsection 2 of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

2. Subsection 1 of this section does not apply to contracts for the sale of goods (section 554.2201) nor of securities (section 554.8319) nor to security agreements (section 554.9203). [C24, 27, 31, 35, 39,§**9933**; C46, 50, 54, 58, 62, §554.4; C66, 71, 73, 75,§554.1206]

554.1207 Performance or acceptance under reservation of rights. A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient. [C66, 71, 73, 75,§554.1207]

554.1208 Option to accelerate at will. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised. [C66, 71, 73, 75, §554.1208]

554.1209 Subordinated obligations. An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it. [C75,§554.1209]

ARTICLE 2
SALES

Referred to in §§554.7509, 554.9113, 554.9206, 554.9504(1)

PART 1
SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

554.2101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Sales. C66, 71, 73, 75,§554.2101]

554.2102 Scope—certain security and other transactions excluded from this Article. Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as

a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers. [C24, 27, 31, 35, 39,§10004; C46, 50, 54, 58, 62,§554.76; C66, 71, 73, 75,§554.2102]

554.2103 Definitions and index of definitions.

1. In this Article unless the context otherwise requires

a. "Buyer" means a person who buys or contracts to buy goods.

b. "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

c. "Receipt" of goods means taking physical possession of them.

d. "Seller" means a person who sells or contracts to sell goods.

2. Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance". Section 554.2606.
"Banker's credit". Section 554.2325.
"Between merchants". Section 554.2104.
"Cancellation". Section 554.2106, Sub. 4.
"Commercial unit". Section 554.2105.
"Confirmed credit". Section 554.2325.
"Conforming to contract". Section 554.2106.
"Contract for sale". Section 554.2106.
"Cover". Section 554.2712.
"Entrusting". Section 554.2403.
"Financing agency". Section 554.2104.
"Future goods". Section 554.2105.
"Goods". Section 554.2105.
"Identification". Section 554.2501.
"Installment contract". Section 554.2612.
"Letter of Credit". Section 554.2325.
"Lot". Section 554.2105.
"Merchant". Section 554.2104.
"Overseas". Section 554.2323.
"Person in position of seller". Section 554.2707.
"Present sale". Section 554.2106.
"Sale". Section 554.2106.
"Sale on approval". Section 554.2326.
"Sale or return". Section 554.2326.
"Termination". Section 554.2106.

3. The following definitions in other Articles apply to this Article:

"Check". Section 554.3104.
"Consignee". Section 554.7102.
"Consignor". Section 554.7102.
"Consumer goods". Section 554.9109.
"Dishonor". Section 554.3507.
"Draft". Section 554.3104.

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [C24, 27, 31, 35, 39,§10005; C46, 50, 54, 58, 62,§554.77; C66, 71, 73, 75,§554.2103]

Referred to in §554.7102(3)

554.2104 Definitions: "merchant"—"between merchants"—"financing agency".

1. *"Merchant"* means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

2. *"Financing agency"* means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 554.2707).

3. *"Between merchants"* means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants. [S13,§§3138-b34,-b36; C24, 27, 31, 35, 39,§§8279, 8281; C46, 50, 54, 58, 62,§§487.35, 487.37; C66, 71, 73, 75,§554.2104]

Referred to in §554.2103(2)

554.2105 Definitions: transferability — "goods"—"future" goods—"lot"—"commercial unit".

1. *"Goods"* means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (section 554.2107).

2. Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

3. There may be a sale of a part interest in existing identified goods.

4. An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

5. *"Lot"* means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

6. *"Commercial unit"* means such a unit of goods as by commercial usage is a single

whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole. [C24, 27, 31, 35, 39,§§**9934, 9935, 10005**; C46, 50, 54; 58, 62,§§554.6, 554.7, 554.77; C66, 71, 73, 75,§554.2105]

Referred to in §§537.1301, 554.2103(2)

554.2106 Definitions: "contract" — "agreement"—"contract for sale"—"sale"—"present sale" — "conforming" to contract — "termination"—"cancellation".

1. In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. *"Contract for sale"* includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (section 554.2401). A "present sale" means a sale which is accomplished by the making of the contract.

2. Goods or conduct including any part of a performance are *"conforming"* or conform to the contract when they are in accordance with the obligations under the contract.

3. *"Termination"* occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

4. *"Cancellation"* occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance. [C24, 27, 31, 35, 39,§§**9930, 9940**; C46, 50, 54, 58, 62,§§554.1, 554.12; C66, 71, 73, 75,§2106]

Referred to in §§554.2103(2), 554.5103(3), 554.7102(3), 554.9105(3)

554.2107 Goods to be severed from realty: recording.

1. A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

2. A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection 1 or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

3. The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale. [C24, 27, 31, 35, 39,§**10005**; C46, 50, 54, 58, 62, §554.77; C66, 71, 73, 75,§554.2107]

Referred to in §554.2105(1)

PART 2
FORM, FORMATION AND READJUSTMENT OF CONTRACT

554.2201 Formal requirements—statute of frauds.

1. Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

2. Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection 1 against such party unless written notice of objection to its contents is given within ten days after it is received.

3. A contract which does not satisfy the requirements of subsection 1 but which is valid in other respects is enforceable

a. if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

b. if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

c. with respect to goods for which payment has been made and accepted or which have been received and accepted (section 554.2606). [C24, 27, 31, 35, 39,§**9933**; C46, 50, 54, 58, 62, §554.4; C66, 71, 73, 75,§554.2201]

Referred to in §§554.1206, 554.2209, 554.2326(4)

554.2202 Final written expression—parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the

parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

a. by course of dealing or usage of trade (section 554.1205) or by course of performance (section 554.2208); and

b. by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. [C66, 71, 73, 75,§554.2202]

Referred to in §§554.2316(1), 554.2326(4)

554.2203 Seals inoperative. The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer. [C24, 27, 31, 35, 39,§**9932**; C46, 50, 54, 58, 62, §554.3; C66, 71, 73, 75,§554.2203]

554.2204 Formation in general.

1. A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

2. An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

3. Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy. [C24, 27, 31, 35, 39,§§**9930, 9932**; C46, 50, 54, 58, 62,§§554.1, 554.3; C66, 71, 73, 75,§554.2204]

Referred to in §554.2311(1)

554.2205 Firm offers. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. [C24, 27, 31, 35, 39,§§**9930, 9932**; C46, 50, 54, 58, 62, §§554.1, 554.3; C66, 71, 73, 75,§554.2205]

554.2206 Offer and acceptance in formation of contract.

1. Unless otherwise unambiguously indicated by the language or circumstances

a. an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

b. an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but such a shipment of nonconforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

2. Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. [C24, 27, 31, 35, 39,§§**9930, 9932**; C46, 50, 54, 58, 62,§§554.1, 554.3; C66, 71, 73, 75,§554.2206]

554.2207 Additional terms in acceptance or confirmation.

1. A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

2. The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

a. the offer expressly limits acceptance to the terms of the offer;

b. they materially alter it; or

c. notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

3. Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this chapter. [C24, 27, 31, 35, 39,§§**9930, 9932**; C46, 50, 54, 58, 62,§§554.1, 554.3; C66, 71, 73, 75, §554.2207]

554.2208 Course of performance or practical construction.

1. Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

2. The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of per-

formance shall control both course of dealing and usage of trade (section 554.1205).

3. Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance. [C66, 71, 73, 75,§554.2208]

Referred to in §§554.1201(3), 554.2202

554.2209 Modification, rescission and waiver.

1. An agreement modifying a contract within this Article needs no consideration to be binding.

2. A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

3. The requirements of the statute of frauds section of this Article (section 554.2201) must be satisfied if the contract as modified is within its provisions.

4. Although an attempt at modification or rescission does not satisfy the requirements of subsection 2 or 3 it can operate as a waiver.

5. A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver. [C24, 27, 31, 35, 39,§9990; C46, 50, 54, 58, 62,§554.62; C66, 71, 73, 75,§554.2209]

554.2210 Delegation of performance—assignment of rights.

1. A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

2. Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

3. Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

4. An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

5. The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (section 554.2609). [C66, 71, 73, 75,§554.2210]

PART 3
GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

554.2301 General obligations of parties. The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract. [C24, 27, 31, 35, 39,§**9940, 9970**; C46, 50, 54, 58, 62, §§554.12, 554.42; C66, 71, 73, 75,§554.2301]

554.2302 Unconscionable contract or clause.

1. If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

2. When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination. [C66, 71, 73, 75,§554.2302]

554.2303 Allocation or division of risks. Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden. [C66, 71, 73, 75,§554.2303]

554.2304 Price payable in money, goods, realty, or otherwise.

1. The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

2. Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith. [C24, 27, 31, 35, 39,§**9938**; C46, 50, 54, 58, 62,§554.10; C66, 71, 73, 75, §554.2304]

554.2305 Open price term.

1. The parties if they so intend can conclude a contract for sale even though the price is

not settled. In such a case the price is a reasonable price at the time for delivery if

a. nothing is said as to price; or

b. the price is left to be agreed by the parties and they fail to agree; or

c. the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

2. A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

3. When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as canceled or himself fix a reasonable price.

4. Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account. [C24, 27, 31, 35, 39,§§**9938, 9939**; C46, 50, 54, 58, 62,§§554.10, 554.11; C66, 71, 73, 75,§554.2305]

554.2306 Output, requirements and exclusive dealings.

1. A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

2. A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale. [C66, 71, 73, 75,§554.2306]

554.2307 Delivery in single lot or several lots. Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot. [C24, 27, 31, 35, 39,§**9974**; C46, 50, 54, 58, 62,§554.46; C66, 71, 73, 75,§554.2307]

554.2308 Absence of specified place for delivery. Unless otherwise agreed

a. the place for delivery of goods is the seller's place of business or if he has none his residence; but

b. in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

c. documents of title may be delivered through customary banking channels. [C24, 27, 31, 35, 39,§**9972**; C46, 50, 54, 58, 62,§554.44; C66, 71, 73, 75,§554.2308]

554.2309 Absence of specific time provisions—notice of termination.

1. The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

2. Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

3. Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable. [C24, 27, 31, 35, 39,§§**9972, 9974, 9976, 9977**; C46, 50, 54, 58, 62,§§554.44, 554.46, 554.48, 554.49; C66, 71, 73, 75,§554.2309]

554.2310 Open time for payment or running of credit—authority to ship under reservation. Unless otherwise agreed

a. payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

b. if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 554.2513); and

c. if delivery is authorized and made by way of documents of title otherwise than by subsection "*b*" then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

d. where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period. [C24, 27, 31, 35, 39,§§**9971, 9976**; C46, 50, 54, 58, 62,§§554.43, 554.48; C66, 71, 73, 75, §554.2310]

554.2311 Options and co-operation respecting performance.

1. An agreement for sale which is otherwise sufficiently definite (subsection 3 of section 554.2204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

2. Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise pro-

vided in subsections 1 "c" and 3 of section 554.2319 specifications or arrangements relating to shipment are at the seller's option.

3. Where such specification would materially affect the other party's performance but is not seasonably made or where one party's co-operation is necessary to the agreed performance of the other but is not seasonably forthcoming the other party in addition to all other remedies

a. is excused for any resulting delay in his own performance; and

b. may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to co-operate as a breach by failure to deliver or accept the goods. [C66, 71, 73, 75,§554.2311]

Referred to in §554.2319(3)

554.2312 Warranty of title and against infringement—buyer's obligation against infringement.

1. Subject to subsection 2 there is in a contract for sale a warranty by the seller that

a. the title conveyed shall be good, and its transfer rightful; and

b. the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

2. A warranty under subsection 1 will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

3. Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications. [C24, 27, 31, 35, 39,§9942; C46, 50, 54, 58, 62,§554.14; C66, 71, 73, 75,§554.2312]

Referred to in §554.2607[(3,*b*), (5,*b*), (6)]

554.2313 Express warranties by affirmation, promise, description, sample.

1. Express warranties by the seller are created as follows:

a. Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

b. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

c. Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

2. It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty. [C24, 27, 31, 35, 39,§§9941, 9943, 9945; C46, 50, 54, 58, 62,§§554.13, 554.15, 554.17; C66, 71, 73, 75,§554.2313]

554.2314 Implied warranty: merchantability —usage of trade.

1. Unless excluded or modified (section 554.2316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

2. Goods to be merchantable must be at least such as

a. pass without objection in the trade under the contract description; and

b. in the case of fungible goods, are of fair average quality within the description; and

c. are fit for the ordinary purposes for which such goods are used; and

d. run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

e. are adequately contained, packaged, and labeled as the agreement may require; and

f. conform to the promises or affirmations of fact made on the container or label if any.

3. Unless excluded or modified (section 554.2316) other implied warranties may arise from course of dealing or usage of trade. [C24, 27, 31, 35, 39,§9944; C46, 50, 54, 58, 62,§554.16; C66, 71, 73, 75,§554.2314]

554.2315 Implied warranty—fitness for particular purpose. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose. [C24, 27, 31, 35, 39,§9944; C46, 50, 54, 58, 62,§554.16; C66, 71, 73, 75,§554.2315]

554.2316 Exclusion or modification of warranties.

1. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (section 554.2202) negation or limitation is

inoperative to the extent that such construction is unreasonable.

2. Subject to subsection 3, to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

3. Notwithstanding subsection 2

a. unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

b. when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

c. an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

4. Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (sections 554.2718 and 554.2719). [C66, 71, 73, 75,§554.2316]

Referred to in §554.2314(1,3)

554.2317 Cumulation and conflict of warranties express or implied. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

a. Exact or technical specifications displace an inconsistent sample or model or general language of description.

b. A sample from an existing bulk displaces inconsistent general language of description.

c. Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. [C24, 27, 31, 35, 39,§§9943–9945; C46, 50, 54, 58, 62, §§554.15–554.17; C66, 71, 73, 75,§554.2317]

554.2318 Third party beneficiaries of warranties express or implied. A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty extends. [C66, 71, 73, 75,§554.2318]

554.2319 F.O.B. and F.A.S. terms.

1. Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

a. when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (section 554.2504) and bear the expense and risk of putting them into the possession of the carrier; or

b. when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (section 554.2503);

c. when under either "*a*" or "*b*" the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (section 554.2323).

Referred to in §554.2311

2. Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

a. at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

b. obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

3. Unless otherwise agreed in any case falling within subsection 1 "*a*" or "*c*" or subsection 2 the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of co-operation under this Article (section 554.2311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

Referred to in §554.2311(2)

4. Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [C66, 71, 73, 75, §554.2319]

Referred to in §554.2311

554.2320 C.I.F. and C. & F. terms.

1. The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

2. Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

a. put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

b. load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

c. obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

d. prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

e. forward and tender with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.

3. Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

4. Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [C66, 71, 73, 75,§554.2320]

554.2321 C.I.F. or C. & F. — "net landed weights"—"payment on arrival" — warranty of condition on arrival. Under a contract containing a term C.I.F. or C. & F.

1. Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

2. An agreement described in subsection 1 or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

3. Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived. [C66, 71, 73, 75, §554.2321]

Referred to in §554.2513(3)

554.2322 Delivery "ex-ship".

1. Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

2. Under such a term unless otherwise agreed

a. the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

b. the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded. [C66, 71, 73, 75,§554.2322]

554.2323 Form of bill of lading required in overseas shipment—"overseas".

1. Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

2. Where in a case within subsection 1 a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

a. due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection 1 of section 554.2508); and

b. even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

3. A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce. [C66, 71, 73, 75,§554.2323]

Referred to in §§554.2103(2), 554.2319(1,*c*), 554.2503(5,*a*), 554.7102(3)

554.2324 "No arrival, no sale" term. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

a. the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the nonarrival; and

b. where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (section 554.2613). [C66, 71, 73, 75, §554.2324]

Referred to in §554.2613

554.2325 "Letter of credit" term — "confirmed credit".

1. Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

2. The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

3. Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market. [C66, 71, 73, 75,§554.2325]

Referred to in §554.2103(2)

554.2326 Sale on approval and sale or return —consignment sales and rights of creditors.

1. Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

a. a "sale on approval" if the goods are delivered primarily for use, and

b. a "sale or return" if the goods are delivered primarily for resale.

2. Except as provided in subsection 3, goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

3. Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

a. complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

b. establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

c. complies with the filing provisions of the Article on Secured Transactions (Article 9).

4. Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (section 554.2201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (section 554.2202). [C24, 27, 31, 35, 39, §9948; C46. 50, 54, 58, 62,§554.20; C66, 71, 73, 75,§554.2326]

Referred to in §§554.1201(37), 554.2103(2), 554.9114

554.2327 Special incidents of sale on approval and sale or return.

1. Under a sale on approval unless otherwise agreed

a. although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

b. use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

c. after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

2. Under a sale or return unless otherwise agreed

a. the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

b. the return is at the buyer's risk and expense. [C24, 27, 31, 35, 39,§9948; C46, 50, 54, 58, 62,§554.20; C66, 71, 73, 75,§554.2327]

Referred to in §554.2509(4)

554.2328 Sale by auction.

1. In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

2. A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

3. Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

4. If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale. [C24, 27, 31, 35, 39,§9950; C46, 50, 54, 58, 62,§554.22; C66, 71, 73, 75,§554.2328]

PART 4
TITLE, CREDITORS AND GOOD FAITH PURCHASERS

554.2401 Passing of title—reservation for security — limited application of this section. Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

1. Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 554.2501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this chapter. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

2. Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

a. if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

b. if the contract requires delivery at destination, title passes on tender there.

3. Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

a. if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

b. if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

4. A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale". [C24, 27, 31, 35, 39,§§9946–9949; C46, 50, 54, 58, 62,§§554.18–554.21; C66, 71, 73, 75, §554.2401]

Referred to in §§554.1201(37), 554.2106(1)

554.2402 Rights of seller's creditors against sold goods.

1. Except as provided in subsections 2 and 3, rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (sections 554.2502 and 554.2716).

2. A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

3. Nothing in this Article shall be deemed to impair the rights of creditors of the seller

a. under the provisions of the Article on Secured Transactions (Article 9); or

b. where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference. [C24, 27, 31, 35, 39,§9955; C46, 50, 54, 58, 62,§554.27; C66, 71, 73, 75, §554.2402]

Referred to in §§554.1105(2), 554.7504(2,*a*)

554.2403 Power to transfer—good faith purchase of goods—"entrusting".

1. A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

a. the transferor was deceived as to the identity of the purchaser, or

b. the delivery was in exchange for a check which is later dishonored, or

c. it was agreed that the transaction was to be a "cash sale", or

d. the delivery was procured through fraud punishable as larcenous under the criminal law.

2. Any entrusting of possession of goods to a merchant who deals in goods of that kind

gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

Security interests in farm products whose possession is entrusted to a person engaged in farming operations, which were filed as provided by this chapter prior to July 1, 1974, remain effective for their original term and may have their effectiveness continued, subject to the provisions of §554.11105(5). Notwithstanding division 1, chapter 1249, 65GA, an owner of farm products whose possession is entrusted to a person engaged in farming operations may create an Article 9 security interest in the farm products, with respect to the obligation of the person engaged in farming operations.

3. "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

4. The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9), Bulk Transfers (Article 6) and Documents of Title (Article 7). [C24, 27, 31, 35, 39,§§9949, 9952–9954; C46, 50, 54, 58, 62,§§554.21, 554.24–554.26; C66, 71, 73, 75,§554.2403]

Referred to in §§554.2103(2), 554.2702(3), 554.7503(1,a)

PART 5
PERFORMANCE

554.2501 Insurable interest in goods—manner of identification of goods.

1. The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

a. when the contract is made if it is for the sale of goods already existing and identified;

b. if the contract is for the sale of future goods other than those described in paragraph "*c*", when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

c. when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

2. The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

3. Nothing in this section impairs any insurable interest recognized under any other statute or rule of law. [C24, 27, 31, 35, 39, §§9946, 9948; C46, 50, 54, 58, 62,§§554.18, 554.20; C66, 71, 73, 75,§554.2501]

Referred to in §§554.2103(2), 554.2401(1)

554.2502 Buyer's right to goods on seller's insolvency.

1. Subject to subsection 2 and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

2. If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale. [C24, 27, 31, 35, 39,§§9946–9948; C46, 50, 54, 58, 62, §§554.18–554.20; C66, 71, 73, 75,§554.2502]

Referred to in §§554.2402, 554.2711(2,a)

554.2503 Manner of seller's tender of delivery.

1. Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular

a. tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

b. unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

2. Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

3. Where the seller is required to deliver at a particular destination tender requires that he comply with subsection 1 and also in any appropriate case tender documents as described in subsections 4 and 5 of this section.

4. Where goods are in the possession of a bailee and are to be delivered without being moved

a. tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

b. tender to the buyer of a nonnegotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer

has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

Referred to in §554.2509(2,c)

5. Where the contract requires the seller to deliver documents

a. he must tender all such documents in correct form except as provided in this Article with respect to bills of lading in a set (subsection 2 of section 554.2323); and

b. tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection. [C24, 27, 31, 35, 39, §§9940, 9948, 9949, 9972, 9975, 9980; C46, 50, 54, 58, 62,§§554.12, 554.20, 554.21, 554.44, 554.47, 554.52; C66, 71, 73, 75,§554.2503]

Referred to in §§554.2319(1,b), 554.2509(2,c)

554.2504 Shipment by seller. Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

a. put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

b. obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

c. promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph "*c*" or to make a proper contract under paragraph "*a*" is a ground for rejection only if material delay or loss ensues. [C24, 27, 31, 35, 39,§9975; C46, 50, 54, 58, 62,§554.47; C66, 71, 73, 75,§554.2504]

Referred to in §554.2319(1,a)

554.2505 Seller's shipment under reservation.

1. Where the seller has identified goods to the contract by or before shipment:

a. his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

b. a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection 2 of section 554.2507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

2. When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document. [C24, 27, 31, 35, 39,§9949; C46, 50, 54, 58, 62,§554.21; C66, 71, 73, 75,§554.2505]

Referred to in §554.2509(1,a)

554.2506 Rights of financing agency.

1. A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

2. The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face. [S13,§3138-b36; C24, 27, 31, 35, 39,§8281; C46, 50, 54, 58, 62,§487.37; C66, 71, 73, 75,§554.2506]

554.2507 Effect of seller's tender—delivery on condition.

1. Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

2. Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due. [C24, 27, 31, 35, 39,§§9940, 9970, 9971, 9998; C46, 50, 54, 58, 62, §§554.12, 554.42, 554.43, 554.70; C66, 71, 73, 75,§554.2507]

Referred to in §554.2505

554.2508 Cure by seller of improper tender or delivery—replacement.

1. Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

2. Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender. [C66, 71, 73, 75,§554.2508]

Referred to in §554.2323(2,a)

554.2509 Risk of loss in the absence of breach.

1. Where the contract requires or authorizes the seller to ship the goods by carrier

a. if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 554.2505); but

b. if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

2. Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

a. on his receipt of a negotiable document of title covering the goods; or

b. on acknowledgment by the bailee of the buyer's right to possession of the goods; or

c. after his receipt of a nonnegotiable document of title or other written direction to deliver, as provided in subsection 4 "*b*" of section 554.2503.

3. In any case not within subsection 1 or 2, the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

4. The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (section 554.2327) and on effect of breach on risk of loss (section 554.2510). [C24, 27, 31, 35, 39,§**9951**; C46, 50, 54, 58, 62,§554.23; C66, 71, 73, 75,§554.2509]

554.2510 Effect of breach on risk of loss.

1. Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

2. Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

3. Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time. [C66, 71, 73, 75,§554.2510]

Referred to in §554.2509(4)

554.2511 Tender of payment by buyer—payment by check.

1. Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

2. Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

3. Subject to the provisions of this chapter on the effect of an instrument on an obligation (section 554.3802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment. [C24, 27, 31, 35, 39,§**9971**; C46, 50, 54, 58, 62, §554.43; C66, 71, 73, 75,§554.2511]

554.2512 Payment by buyer before inspection.

1. Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless

a. the nonconformity appears without inspection; or

b. despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this chapter (section 554.5114).

2. Payment pursuant to subsection 1 does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies. [C24, 27, 31, 35, 39,§§**9976, 9978**; C46, 50, 54, 58, 62,§§554.48, 554.50; C66, 71, 73, 75, §554.2512]

554.2513 Buyer's right to inspection of goods.

1. Unless otherwise agreed and subject to subsection 3, where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

2. Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

3. Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection 3 of section 554.2321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

a. for delivery "C.O.D." or on other like terms; or

b. for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

4. A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract. [C24, 27, 31, 35, 39,§**9976**; C46, 50, 54, 58, 62,§554.48; C66, 71, 73, 75, §554.2513]

Referred to in §554.2310

554.2514 When documents deliverable on acceptance—when on payment. Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment. [S13,§3138-b40; C24, 27, 31, 35, 39,§8285; C46, 50, 54, 58, 62,§487.41; C66, 71, 73, 75,§554.2514]

554.2515 Preserving evidence of goods in dispute. In furtherance of the adjustment of any claim or dispute

a. either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

b. the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment. [C66, 71, 73, 75,§554.2515]

PART 6
BREACH, REPUDIATION AND EXCUSE

554.2601 Buyer's rights on improper delivery. Subject to the provisions of this Article on breach in installment contracts (section 554.2612) and unless otherwise agreed under the sections on contractual limitations of remedy (sections 554.2718 and 554.2719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

a. reject the whole; or

b. accept the whole; or

c. accept any commercial unit or units and reject the rest. [C24, 27, 31, 35, 39,§§9940, 9973, 9998; C46, 50, 54, 58, 62,§§554.12, 554.45, 554.70; C66, 71, 73, 75,§554.2601]

554.2602 Manner and effect of rightful rejection.

1. Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

Referred to in §554.2606

2. Subject to the provisions of the two following sections on rejected goods (sections 554.2603 and 554.2604),

a. after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

b. if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection 3 of section 554.2711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

c. the buyer has no further obligations with regard to goods rightfully rejected.

3. The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on Seller's remedies in general (section 554.2703). [C24, 27, 31, 35, 39, §9979; C46, 50, 54, 58, 62,§554.51; C66, 71, 73, 75, §554.2602]

Referred to in §554.2606

554.2603 Merchant buyer's duties as to rightfully rejected goods.

1. Subject to any security interest in the buyer (subsection 3 of section 554.2711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

2. When the buyer sells goods under subsection 1, he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten percent on the gross proceeds.

3. In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages. [C66, 71, 73, 75,§554.2603]

Referred to in §554.2602

554.2604 Buyer's options as to salvage of rightfully rejected goods. Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion. [C66, 71, 73, 75, §554.2604]

Referred to in §554.2602

554.2605 Waiver of buyer's objections by failure to particularize.

1. The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

a. where the seller could have cured it if stated seasonably; or

b. between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

2. Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents. [C66, 71, 73, 75, §554.2605]

554.2606 What constitutes acceptance of goods.

1. Acceptance of goods occurs when the buyer

a. after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or

b. fails to make an effective rejection (subsection 1 of section 554.2602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

c. does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

2. Acceptance of a part of any commercial unit is acceptance of that entire unit. [C24, 27, 31, 35, 39,§9977; C46, 50, 54, 58, 62,§554.49; C66, 71, 73, 75,§554.2606]

Referred to in §§554.2103(2), 554.2201(3,c)

554.2607 Effect of acceptance—notice of breach—burden of establishing breach after acceptance—notice of claim or litigation to person answerable over.

1. The buyer must pay at the contract rate for any goods accepted.

2. Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for nonconformity.

3. Where a tender has been accepted.

a. the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

b. if the claim is one for infringement or the like (subsection 3 of section 554.2312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

Referred to in §554.2714

4. The burden is on the buyer to establish any breach with respect to the goods accepted.

5. Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

a. he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

b. if the claim is one for infringement or the like (subsection 3 of section 554.2312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

6. The provisions of subsections 3, 4 and 5 apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection 3 of section 554.2312). [C24, 27, 31, 35, 39,§§9970, 9978, 9998; C46, 50, 54, 58, 62,§§554.42, 554.50, 554.70; C66, 71, 73, 75, §554.2607]

Referred to in §554.2714

554.2608 Revocation of acceptance in whole or in part.

1. The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it

a. on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

b. without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

2. Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

3. A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them. [C24, 27, 31, 35, 39,§9998; C46, 50, 54, 58, 62,§554.70; C66, 71, 73, 75,§554.2608]

554.2609 Right to adequate assurance of performance.

1. A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

2. Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

3. Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

4. After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract. [C24, 27, 31, 35, 39,§§9982–9984, 9992; C46, 50, 54, 58, 62,§§554.54–554.56, 554.64; C66, 71, 73, 75,§554.2609]

Referred to in §§554.2210(5), 554.2611(2)

554.2610 Anticipatory repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

a. for a commercially reasonable time await performance by the repudiating party; or

b. resort to any remedy for breach (section 554.2703 or 554.2711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

c. in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (section 554.2704). [C24, 27, 31, 35, 39,§§9992, 9994; C46, 50, 54, 58, 62,§§554.64, 554.66; C66, 71, 73, 75,§554.2610]

Referred to in §§554.2709, 554.5115

554.2611 Retraction of anticipatory repudiation.

1. Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation canceled or materially changed his position or otherwise indicated that he considers the repudiation final.

2. Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (section 554.2609).

3. Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. [C66, 71, 73, 75,§554.2611]

554.2612 "Installment contract"—breach.

1. An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

2. The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection 3 and the seller gives adequate assurance of its cure the buyer must accept that installment.

3. Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a nonconforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments. [C24, 27, 31, 35, 39,§9974; C46, 50, 54, 58, 62,§554.46; C66, 71, 73, 75,§554.2612]

Referred to in §§554.2103(2), 554.2601, 554.2616, 554.2703, 554.2711(1)

554.2613 Casualty to identified goods. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (section 554.2324) then

a. if the loss is total the contract is avoided; and

b. if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller. [C24, 27, 31, 35, 39,§§9936, 9937; C46, 50, 54, 58, 62, §§554.8, 554.9; C66, 71, 73, 75,§554.2613]

Referred to in §554.2324

554.2614 Substituted performance.

1. Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

2. If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory. [C66, 71, 73, 75,§554.2614]

554.2615 Excuse by failure of presupposed conditions. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

a. Delay in delivery or nondelivery in whole or in part by a seller who complies with para-

graphs "*b*" and "*c*" is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

b. Where the causes mentioned in paragraph "*a*" affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

c. The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under paragraph "*b*", of the estimated quota thus made available for the buyer. [C66, 71, 73, 75, §554.2615]

554.2616 Procedure on notice claiming excuse.

1. Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (section 554.2612), then also as to the whole,

a. terminate and thereby discharge any unexecuted portion of the contract; or

b. modify the contract by agreeing to take his available quota in substitution.

2. If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

3. The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under the preceding section. [C66, 71, 73, 75,§554.2616]

PART 7
REMEDIES

554.2701 Remedies for breach of collateral contracts not impaired. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article. [C66, 71, 73, 75,§554.2701]

554.2702 Seller's remedies on discovery of buyer's insolvency.

1. Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (section 554.2705).

2. Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

3. The seller's right to reclaim under subsection 2 is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Article (section 554.2403). Successful reclamation of goods excludes all other remedies with respect to them. [C24, 27, 31, 35, 39,§§**9982, 9983, 9986**; C46, 50, 54, 58, 62,§§554.54, 554.55, 554.58; C66, 71, 73, 75,§554.2702]

Referred to in §554.2705(1)

554.2703 Seller's remedies in general. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (section 554.2612), then also with respect to the whole undelivered balance, the aggrieved seller may

a. withhold delivery of such goods;

b. stop delivery by any bailee as hereafter provided (section 554.2705);

c. proceed under the next section respecting goods still unidentified to the contract;

d. resell and recover damages as hereafter provided (section 554.2706);

e. recover damages for nonacceptance (section 554.2708) or in a proper case the price (section 554.2709);

f. cancel.

[C24, 27, 31, 35, 39,§**9993**; C46, 50, 54, 58, 62, §554.65; C66, 71, 73, 75,§554.2703]

Referred to in §§554.2602(3), 554.2610, 554.2706(1)

554.2704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.

1. An aggrieved seller under the preceding section may

a. identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

b. treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

2. Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner. [C24, 27, 31, 35, 39,§§**9992, 9993**; C46, 50, 54, 58, 62, §§554.64, 554.65; C66, 71, 73, 75,§554.2704]

Referred to in §554.2610

554.2705 Seller's stoppage of delivery in transit or otherwise.

1. The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (section 554.2702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

2. As against such buyer the seller may stop delivery until

a. receipt of the goods by the buyer; or

b. acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

c. such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

d. negotiation to the buyer of any negotiable document of title covering the goods.

3. *a.* To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

b. After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

c. If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

d. A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. [S13,§3138-a9,-a11,-a49,-b11,-b13, -b41; C24, 27, 31, 35, 39,§§**8256, 8258, 8286, 9669, 9671, 9709, 9986–9988**; C46, 50, 54, 58, 62,§§487.12, 487.14, 487.42, 542.9, 542.11, 542.49, 554.58–554.60; C66, 71, 73, 75,§554.2705]

Referred to in §§554.2702, 554.2703, 554.2707, 554.7403 (1,*d*), 554.7504(4)

554.2706 Seller's resale including contract for resale.

1. Under the conditions stated in section 554.2703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (section 554.2710), but less expenses saved in consequence of the buyer's breach.

2. Except as otherwise provided in subsection 3 or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

3. Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

4. Where the resale is at public sale

a. only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

b. it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

c. if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

d. the seller may buy.

5. A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

6. The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (section 554.2707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection 3 of section 554.2711). [C24, 27, 31, 35, 39,§**9989**; C46, 50, 54, 58, 62,§554.61; C66, 71, 73, 75,§554.2706]

Referred to in §§554.2703, 554.2707, 554.2711(3), 554.2718

554.2707 "Person in the position of a seller".

1. A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

2. A person in the position of a seller may as provided in this Article withhold or stop delivery (section 554.2705) and resell (section 554.2706) and recover incidental damages (section 554.2710). [C24, 27, 31, 35, 39,§**9981**; C46, 50, 54, 58, 62,§554.53; C66, 71, 73, 75,§554.2707]

Referred to in §§554.2103(2), 554.2104, 554.2706(6), 554.5115

554.2708 Seller's damages for nonacceptance or repudiation.

1. Subject to subsection 2 and to the provisions of this Article with respect to proof of market price (section 554.2723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any in-

cidental damages provided in this Article (section 554.2710), but less expenses saved in consequence of the buyer's breach.

2. If the measure of damages provided in subsection 1 is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (section 554.2710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale. [C24, 27, 31, 35, 39,§9993; C46, 50, 54, 58, 62,§554.65; C66, 71, 73, 75,§554.2708]

Referred to in §§554.2703, 554.2723

554.2709 Action for the price.

1. When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

a. of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

b. of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

2. Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

3. After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (section 554.2610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section. [C24, 27, 31, 35, 39,§9992; C46, 50, 54, 58, 62, §554.64; C66, 71, 73, 75,§554.2709]

Referred to in §554.2703

554.2710 Seller's incidental damages. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach. [C24, 27, 31, 35, 39,§§9993, 9999; C46, 50, 54, 58, 62,§§554.65, 554.71; C66, 71, 73, 75,§554.2710]

Referred to in §§554.2706(1), 554.2707, 554.2708, 554.5115

554.2711 Buyer's remedies in general—buyer's security interest in rejected goods.

1. Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (section 554.2612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

a. "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

b. recover damages for nondelivery as provided in this Article (section 554.2713).

2. Where the seller fails to deliver or repudiates the buyer may also

a. if the goods have been identified recover them as provided in this Article (section 554.2502); or

b. in a proper case obtain specific performance or replevy the goods as provided in this Article (section 554.2716).

3. On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (section 554.2706). [C24, 27, 31, 35, 39,§9998; C46, 50, 54, 58, 62,§554.70; C66, 71, 73, 75,§554.2711]

Referred to in §§554.2602(2,b), 554.2603(1), 554.2610, 554.2706(6)

554.2712 "Cover"—buyer's procurement of substitute goods.

1. After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

2. The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (section 554.2715), but less expenses saved in consequence of the seller's breach.

3. Failure of the buyer to effect cover within this section does not bar him from any other remedy. [C66, 71, 73, 75,§554.2712]

Referred to in §554.2103(2)

554.2713 Buyer's damages for nondelivery or repudiation.

1. Subject to the provisions of this Article with respect to proof of market price (section 554.2723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (section 554.2715), but less expenses saved in consequence of the seller's breach.

2. Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival. [C24, 27, 31, 35, 39,§9996; C46, 50, 54, 58, 62,§554.68; C66, 71, 73, 75,§554.2713]

Referred to in §§554.2711(1,b), 554.2723

554.2714 Buyer's damages for breach in regard to accepted goods.

1. Where the buyer has accepted goods and given notification (subsection 3 of section 554.2607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

2. The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

3. In a proper case any incidental and consequential damages under the next section may also be recovered. [C24, 27, 31, 35, 39,§9998; C46, 50, 54, 58, 62,§554.70; C66, 71, 73, 75, §554.2714]

554.2715 Buyer's incidental and consequential damages.

1. Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

2. Consequential damages resulting from the seller's breach include

a. any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

b. injury to person or property proximately resulting from any breach of warranty. [C24, 27, 31, 35, 39,§§9998, 9999; C46, 50, 54, 58, 62, §§554.70, 554.71; C66, 71, 73, 75,§554.2715]

Referred to in §§554.2712, 554.2713

554.2716 Buyer's right to specific performance or replevin.

1. Specific performance may be decreed where the goods are unique or in other proper circumstances.

2. The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

3. The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. [C24, 27, 31, 35, 39,§§9995, 9997; C46, 50, 54, 58, 62,§§554.67, 554.69; C66, 71, 73, 75,§554.2716]

Referred to in §§554.2402, 554.2711(2,b)

554.2717 Deduction of damages from the price. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract. [C24, 27, 31, 35, 39,§9998; C46, 50, 54, 58, 62,§554.70; C66, 71, 73, 75,§554.2717]

554.2718 Liquidation or limitation of damages—deposits.

1. Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

2. Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

a. the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection 1, or

b. in the absence of such terms, twenty percent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars, whichever is smaller.

3. The buyer's right to restitution under subsection 2 is subject to offset to the extent that the seller establishes

a. a right to recover damages under the provisions of this Article other than subsection 1, and

b. the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

4. Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection 2; but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (section 554.2706). [C66, 71, 73, 75,§554.2718]

Referred to in §§554.2316(4), 554.2601

554.2719 Contractual modification or limitation of remedy.

1. Subject to the provisions of subsections 2 and 3 of this section and of the preceding section on liquidation and limitation of damages,

a. the agreement may provide for remedies in addition to or in substitution for those pro-

vided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

b. resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

2. Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.

3. Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima-facie unconscionable but limitation of damages where the loss is commercial is not. [C66, 71, 73, 75,§554.2719]

Referred to in §§554.2316(4), 554.2601

554.2720 Effect of "cancellation" or "rescission" on claims for antecedent breach. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach. [C24, 27, 31, 35, 39,§9990; C46, 50, 54, 58, 62,§554.62; C66, 71, 73, 75,§554.2720]

554.2721 Remedies for fraud. Remedies for material misrepresentation or fraud include all remedies available under this Article for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy. [C24, 27, 31, 35, 39, §9990; C46, 50, 54, 58, 62, §554.62; C66, 71, 73, 75,§554.2721]

554.2722 Who can sue third parties for injury to goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

a. a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

b. if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

c. either party may with the consent of the other sue for the benefit of whom it may concern. [C66, 71, 73, 75,§554.2722]

554.2723 Proof of market price—time and place.

1. If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (section 554.2708 or 554.2713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

2. If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

3. Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise. [C66, 71, 73, 75,§554.2723]

Referred to in §§554.2708, 554.2713

554.2724 Admissibility of market quotations. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility. [C66, 71, 73, 75,§554.2724]

554.2725 Statute of limitations in contracts for sale.*

1. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

2. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

3. Where an action commenced within the time limited by law* or by agreement as provided in subsection 1 is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

4. This section does not alter the law on tolling of the statute of limitations nor does it

apply to causes of action which have accrued before this chapter becomes effective. [C66, 71, 73, 75,§554.2725]

*Period of limitation, ch 614

ARTICLE 3
COMMERCIAL PAPER

Referred to in §§554.4102, 554.4106, 554.4203, 554.5111, 554.9206

PART 1
SHORT TITLE, FORM AND INTERPRETATION

554.3101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Commercial Paper. [S13,§3060-a190; C24, 27, 31, 35, 39,§9651; C46, 50, 54, 58, 62, §541.191; C66, 71, 73, 75,§554.3101]

554.3102 *Definitions and index of definitions.*

1. In this Article unless the context otherwise requires

a. "Issue" means the first delivery of an instrument to a holder or a remitter.

b. An *"order"* is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

c. A *"promise"* is an undertaking to pay and must be more than an acknowledgment of an obligation.

d. "Secondary party" means a drawer or endorser.

e. "Instrument" means a negotiable instrument.

2. Other definitions applying to this Article and the sections in which they appear are:

"Acceptance". Section 554.3410.
"Accommodation party". Section 554.3415.
"Alteration". Section 554.3407.
"Certificate of deposit". Section 554.3104.
"Certification". Section 554.3411.
"Check". Section 554.3104.
"Definite time". Section 554.3109.
"Dishonor". Section 554.3507.
"Draft". Section 554.3104.
"Holder in due course". Section 554.3302.
"Negotiation". Section 554.3202.
"Note". Section 554.3104.
"Notice of dishonor". Section 554.3508.
"On demand". Section 554.3108.
"Presentment". Section 554.3504.
"Protest". Section 554.3509.
"Restrictive Endorsement". Section 554.3205.
"Signature". Section 554.3401.

3. The following definitions in other Articles apply to this Article:

"Account". Section 554.4104.
"Banking Day". Section 554.4104.
"Clearing house". Section 554.4104.
"Collecting bank". Section 554.4105.
"Customer". Section 554.4104.
"Depositary Bank". Section 554.4105.
"Documentary Draft". Section 554.4104.
"Intermediary Bank". Section 554.4105.
"Item". Section 554.4104.
"Midnight deadline". Section 554.4104.
"Payor bank". Section 554.4105.

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [S13,§§3060-a1,-a128,-a191; C24, 27, 31, 35, 39, §§9461, 9589, 9652; C46, 50, 54, 58, 62,§§541.1, 541.129, 541.192; C66, 71, 73, 75,§554.3102]

Referred to in §554.4104(3)

554.3103 Limitations on scope of Article.

1. This Article does not apply to money, documents of title or investment securities.

2. The provisions of this Article are subject to the provisions of the Article on Bank Deposits and Collections (Article 4) and Secured Transactions (Article 9). [C66, 71, 73, 75, §554.3103]

554.3104 Form of negotiable instruments—"draft"—"check"—"certificate of deposit"—"note".

1. Any writing to be a negotiable instrument within this Article must

a. be signed by the maker or drawer; and

b. contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this Article; and

c. be payable on demand or at a definite time; and

d. be payable to order or to bearer.

2. A writing which complies with the requirements of this section is

a. a "draft" ("bill of exchange") if it is an order;

b. a "check" if it is a draft drawn on a bank and payable on demand;

c. a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;

d. a "note" if it is a promise other than a certificate of deposit.

3. As used in other Articles of this chapter, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this Article as well as to instruments which are so negotiable. [S13,§§3060-a1,-a5,-a10,-a126,-a184,-a185; C24, 27, 31, 35, 39, §§9461, 9465, 9470, 9587, 9645, 9646; C46, 50, 54, 58, 62,§§541.1, 541.5, 541.10, 541.127, 541.185, 541.186; C66, 71, 73, 75,§554.3104]

Referred to in §§537.3211, 554.2103(3), 554.3102(2), 554.4104(3), 554.5103(3), 554.9105[(1,i), (3)]

554.3105 When promise or order unconditional.

1. A promise or order otherwise unconditional is not made conditional by the fact that the instrument

a. is subject to implied or constructive conditions; or

b. states its consideration, whether performed or promised, or the transaction which

gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

c. refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

d. states that it is drawn under a letter of credit; or

e. states that it is secured, whether by mortgage, reservation of title or otherwise; or

f. indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

g. is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

h. is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

2. A promise or order is not unconditional if the instrument

a. states that it is subject to or governed by any other agreement; or

b. states that it is to be paid only out of a particular fund or source except as provided in this section. [S13,§3060-a3; C24, 27, 31, 35, 39,§9463; C46, 50, 54, 58, 62,§541.3; C66, 71, 73, 75,§554.3105]

554.3106 Sum certain.

1. The sum payable is a sum certain even though it is to be paid

a. with stated interest or by stated installments; or

b. with stated different rates of interest before and after default or a specified date; or

c. with a stated discount or addition if paid before or after the date fixed for payment; or

d. with exchange or less exchange, whether at a fixed rate or at the current rate; or

e. with costs of collection or an attorney's fee or both upon default.

2. Nothing in this section shall validate any term which is otherwise illegal. [S13,§3060-a2, -a6; C24, 27, 31, 35, 39,§§9462, 9466; C46, 50, 54, 58, 62,§§541.2, 541.6; C66, 71, 73, 75,§554.3106]

554.3107 Money.

1. An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

2. A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency. [S13,§3060-a6; C24, 27, 31, 35, 39,§9466; C46, 50, 54, 58, 62,§541.6; C66, 71, 73, 75,§554.3107]

554.3108 Payable on demand. Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated. [S13,§3060-a7; C24, 27, 31, 35, 39,§9467; C46, 50, 54, 58, 62,§541.7; C66, 71, 73, 75,§554.3108]

Referred to in §554.3102(2)

554.3109 Definite time.

1. An instrument is payable at a definite time if by its terms it is payable

a. on or before a stated date or at a fixed period after a stated date; or

b. at a fixed period after sight; or

c. at a definite time subject to any acceleration; or

d. at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

2. An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred. [S13,§3060-a4,-a17; C24, 27, 31, 35, 39,§§9464, 9477; C46, 50, 54, 58, 62,§§541.4, 541.17; C66, 71, 73, 75,§554.3109]

Referred to in §554.3102(2)

554.3110 Payable to order.

1. An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of

a. the maker or drawer; or

b. the drawee; or

c. a payee who is not maker, drawer or drawee; or

d. two or more payees together or in the alternative; or

e. an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

f. an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or

g. a partnership or unincorporated association, in which case it is payable to the partnership or association and may be endorsed or transferred by any person thereto authorized.

2. An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly endorsed."

3. An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten. [S13,§3060-a8; C24, 27, 31, 35, 39,§**9468**; C46, 50, 54, 58, 62,§541.8; C66, 71, 73, 75,§554.3110]

554.3111 Payable to bearer. An instrument is payable to bearer when by its terms it is payable to

a. bearer or the order of bearer; or

b. a specified person or bearer; or

c. "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee. [S13,§3060-a9; C24, 27, 31, 35, 39,§**9469**; C46, 50, 54, 58, 62,§541.9; C66, 71, 73, 75,§554.3111]

554.3112 Terms and omissions not affecting negotiability.

1. The negotiability of an instrument is not affected by

a. the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

b. a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in case of default on those obligations the holder may realize on or dispose of the collateral; or

c. a promise or power to maintain or protect collateral or to give additional collateral; or

d. a term authorizing a confession of judgment on the instrument if it is not paid when due; or

e. a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

f. a term in a draft providing that the payee by endorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

g. a statement in a draft drawn in a set of parts (section 554.3801) to the effect that the order is effective only if no other part has been honored.

2. Nothing in this section shall validate any term which is otherwise illegal. [S13,§3060-a5, -a6; C24, 27, 31, 35, 39,§§**9465, 9466**; C46, 50, 54, 58, 62,§§541.5, 541.6; C66, 71, 73, 75,§554.3112]

554.3113 Seal. An instrument otherwise negotiable is within this Article even though it is under a seal. [S13,§3060-a5,-a6; C24, 27, 31, 35, 39,§§**9465, 9466**; C46, 50, 54, 58, 62,§§541.5, 541.6; C66, 71, 73, 75,§554.3113]

554.3114 Date, antedating, postdating.

1. The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

2. Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

3. Where the instrument or any signature thereon is dated, the date is presumed to be correct. [S13,§3060-a6,-a11,-a12,-a17; C24, 27, 31, 35, 39,§§**9466, 9471, 9472, 9477**; C46, 50, 54, 58, 62,§§541.6, 541.11, 541.12, 541.17; C66, 71, 73, 75,§554.3114]

554.3115 Incomplete instruments.

1. When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

2. If the completion is unauthorized the rules as to material alteration apply (section 554.3407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting. [S13, §3060-a13,-a14,-a15; C24, 27, 31, 35, 39,§§**9473–9475**; C46, 50, 54, 58, 62,§§541.13–541.15; C66, 71, 73, 75,§554.3115]

Referred to in §554.3413

554.3116 Instruments payable to two or more persons. An instrument payable to the order of two or more persons

a. if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

b. if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them. [S13,§3060-a41; C24, 27, 31, 35, 39,§**9501**; C46, 50, 54, 58, 62, §541.41; C66, 71, 73, 75,§554.3116]

554.3117 Instruments payable with words of description. An instrument made payable to a named person with the addition of words describing him

a. as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;

b. as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;

c. in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties. [S13,§3060-a42; C24, 27, 31, 35, 39,§**9502**; C46, 50, 54, 58, 62,§541.42; C66, 71, 73, 75, §554.3117]

554.3118 Ambiguous terms and rules of construction. The following rules apply to every instrument:

a. Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

b. Handwritten terms control typewritten and printed terms, and typewr'tten control printed.

c. Words control figures except that if the words are ambiguous figures control.

d. Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

e. Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or endorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay."

f. Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with section 554.3604 tenders full payment when the instrument is due. [S13,§3060-a17,-a68,-a192; C24, 27, 31, 35, 39,§**9477, 9528, 9653**; C46, 50, 54, 58, 62,§§541.17, 541.68, 541.193; C66, 71, 73, 75,§554.3118]

554.3119 Other writings affecting instrument.

1. As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

2. A separate agreement does not affect the negotiability of an instrument. [C66, 71, 73, 75,§554.3119]

554.3120 Instruments "payable through" bank. An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument. [C66, 71, 73, 75,§554.3120]

554.3121 Instruments payable at bank. A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it. [S13,§3060-a87; C24, 27, 31, 35, 39,§**9548**; C46, 50, 54, 58, 62, §541.88; C66, 71, 73, 75,§554.3121]

554.3122 Accrual of cause of action.

1. A cause of action against a maker or an acceptor accrues

a. in the case of a time instrument on the day after maturity;

b. in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

2. A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

3. A cause of action against a drawer of a draft or an endorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

4. Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

a. in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

b. in all other cases from the date of accrual of the cause of action. [C66, 71, 73, 75, §554.3122]

PART 2
TRANSFER AND NEGOTIATION

554.3201 Transfer—right to endorsement.

1. Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

2. A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

3. Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified endorsement of the transferor. Negotiation takes effect only when the endorsement is made and until that time there is no presumption that the transferee is the owner. [S13,§3060-a27, -a49,-a58; C24, 27, 31, 35, 39,§§**9487, 9509, 9518**; C46, 50, 54, 58, 62,§§541.27, 541.49, 541.58; C66, 71, 73, 75,§554.3201]

Referred to in §554.3603(2)

554.3202 Negotiation.

1. Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary endorsement; if payable to bearer it is negotiated by delivery.

2. An endorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

3. An endorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

4. Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an endorsement do not affect its character as an endorsement. [S13,§3060-a30,-a31,-a32; C24, 27, 31, 35, 39, §§**9490–9492**; C46, 50, 54, 58, 62,§§541.30–541.32; C66, 71, 73, 75,§554.3202]

Referred to in §554.3102(2)

554.3203 Wrong or misspelled name. Where an instrument is made payable to a person under a misspelled name or one other than his own he may endorse in that name or his own or both; but signature in both names, may be required by a person paying or giving value for the instrument. [S13,§3060-a43; C24, 27, 31, 35, 39,§**9503**; C46, 50, 54, 58, 62,§541.43; C66, 71, 73, 75,§554.3203]

554.3204 Special endorsement — blank endorsement.

1. A special endorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially endorsed becomes payable to the order of the special endorsee and may be further negotiated only by his endorsement.

2. An endorsement in blank specifies no particular endorsee and may consist of a mere signature. An instrument payable to order and endorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially endorsed.

3. The holder may convert a blank endorsement into a special endorsement by writing over the signature of the endorser in blank any contract consistent with the character of the endorsement. [S13,§3060-a9,-a33,-a34,-a35,-a36, -a40; C24, 27, 31, 35, 39,§§**9469, 9493–9496, 9500**; C46, 50, 54, 58, 62,§§541.9, 541.33–541.36, 541.40; C66, 71, 73, 75,§554.3204]

554.3205 Restrictive endorsements. An endorsement is restrictive which either

a. is conditional; or

b. purports to prohibit further transfer of the instrument; or

c. includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or

d. otherwise states that it is for the benefit or use of the endorser or of another person. [S13,§3060-a36,-a37,-a39; C24, 27, 31, 35, 39, §§**9496, 9497, 9499**; C46, 50, 54, 58, 62,§§541.36, 541.37, 541.39; C66, 71, 73, 75,§554.3205]

Referred to in §§554.3102(2), 554.3206(3,4), 554.3419(4)

554.3206 Effect of restrictive endorsement.

1. No restrictive endorsement prevents further transfer or negotiation of the instrument.

2. An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the bank's immediate transferor or the person presenting for payment.

3. Except for an intermediary bank, any transferee under an endorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (subparagraphs "*a*" and "*c*" of section 554.3205) must pay or apply any value given by him for or on the security of the instrument consistently with the endorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of section 554.3302 on what constitutes a holder in due course.

4. The first taker under an endorsement for the benefit of the endorser or another person (subparagraph "*d*" of section 554.3205) must pay or apply any value given by him for or on the security of the instrument consistently with the endorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of section 554.3302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive endorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection 2 of section 554.3304). [S13, §3060-a36,-a37,-a39,-a47; C24, 27, 31, 35, 39,§§**9496, 9497, 9499, 9507**; C46, 50, 54, 58, 62,§§541.36, 541.37, 541.39, 541.47; C66, 71, 73, 75,§554.3206]

Referred to in §554.3419(4)

554.3207 Negotiation effective although it may be rescinded.

1. Negotiation is effective to transfer the instrument although the negotiation is

a. made by an infant, a corporation exceeding its powers, or any other person without capacity; or

b. obtained by fraud, duress or mistake of any kind; or

c. part of an illegal transaction; or

d. made in breach of duty.

2. Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law. [S13,§3060-a22,-a58,-a59; C24, 27, 31, 35, 39,§§**9482, 9518, 9519**; C46, 50, 54, 58, 62,§§541.22, 541.58, 541.59; C66, 71, 73, 75, §554.3207]

554.3208 Reacquisition. Where an instrument is returned to or reacquired by a prior party he may cancel any endorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his endorsement has been canceled is discharged as against subsequent holders in due course as well. [S13,§3060-a48,-a50, -a121; C24, 27, 31, 35, 39,§§**9508, 9510, 9582**; C46, 50, 54, 58, 62,§§541.48, 541.50, 541.122; C66, 71, 73, 75,§554.3208]

Referred to in §554.3601(1,e)

PART 3
RIGHTS OF A HOLDER

554.3301 Rights of a holder. The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in section 554.3603 on payment or satisfaction, discharge it or enforce payment in his own name. [S13,§3060-a51; C24,

27, 31, 35, 39,§9511; C46, 50, 54, 58, 62,§541.51; C66, 71, 73, 75,§554.3301]

554.3302 Holder in due course.

1. A holder in due course is a holder who takes the instrument

a. for value; and

b. in good faith; and

c. without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

2. A payee may be a holder in due course.

3. A holder does not become a holder in due course of an instrument:

a. by purchase of it at judicial sale or by taking it under legal process; or

b. by acquiring it in taking over an estate; or

c. by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

4. A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased. [S13,§3060-a52,-a54; C24, 27, 31, 35, 39,§§9512, 9514; C46, 50, 54, 58, 62,§§541.52. 541.54; C66, 71, 73, 75,§554.3302]

Referred to in §§554.3102(2), 554.3206(3, 4), 554.4104(3), 554.4209, 554.5103(3), 554.5114(2,*a*), 554.9105(3), 554.9309

554.3303 Taking for value. A holder takes the instrument for value

a. to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

b. when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

c. when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person. [S13,§3060-a25,-a26,-a27; C24, 27, 31, 35, 39,§§9485–9487; C46, 50, 54, 58, 62, §§541.25–541.27; C66, 71, 73, 75,§554.3303]

Referred to in §554.1201(44)

554.3304 Notice to purchaser.

1. The purchaser has notice of a claim or defense if

a. the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

b. the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

2. The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

Referred to in §554.3206(4)

3. The purchaser has notice that an instrument is overdue if he has reason to know

a. that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

b. that acceleration of the instrument has been made; or

c. that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be thirty days.

4. Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim

a. that the instrument is antedated or postdated;

b. that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;

c. that any party has signed for accommodation;

d. that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;

e. that any person negotiating the instrument is or was a fiduciary;

f. that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

5. The filing or recording of a document does not of itself constitute notice within the provisions of this Article to a person who would otherwise be a holder in due course.

6. To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it. [S13, §3060-a45,-a54,-a55,-a56; C24, 27, 31, 35, 39,§§9505, 9514–9516; C46, 50, 54, 58, 62,§§541.45, 541.54–541.56; C66, 71, 73, 75,§554.3304]

Referred to in §554.3206(4)

554.3305 Rights of a holder in due course. To the extent that a holder is a holder in due course he takes the instrument free from

1. all claims to it on the part of any person; and

2. all defenses of any party to the instrument with whom the holder has not dealt except

a. infancy, to the extent that it is a defense to a simple contract; and

b. such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

c. such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

d. discharge in insolvency proceedings; and

e. any other discharge of which the holder has notice when he takes the instrument. [S13,

§3060-a15,-a16,-a57,-a117; C24, 27, 31, 35, 39, §§9475, 9476, 9517, 9578; C46, 50, 54, 58, 62, §§541.15, 541.16, 541.57, 541.118; C66, 71, 73, 75,§554.3305]

Referred to in §554.3408

554.3306 Rights of one not holder in due course. Unless he has the rights of a holder in due course any person takes the instrument subject to

a. all valid claims to it on the part of any person; and

b. all defenses of any party which would be available in an action on a simple contract; and

c. the defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose (section 554.3408); and

d. the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive endorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party. [S13,§3060-a16,-a28,-a58, -a59; C24, 27, 31, 35, 39,§§9476, 9488, 9518, 9519; C46, 50, 54, 58, 62,§§541.16, 541.28, 541.58, 541.59; C66, 71, 73, 75,§554.3306]

554.3307 Burden of establishing signatures, defenses and due course.

1. Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

a. the burden of establishing it is on the party claiming under the signature; but

b. the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

2. When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

3. After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course. [S13,§3060-a59; C24. 27, 31, 35, 39,§9519; C46, 50, 54, 58, 62, §541.59; C66, 71, 73, 75,§554.3307]

PART 4
LIABILITY OF PARTIES

554.3401 Signature.

1. No person is liable on an instrument unless his signature appears thereon.

2. A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature. [S13,§3060-a18; C24, 27, 31. 35. 39,§9478; C46, 50, 54, 58, 62,§541.18; C66, 71, 73, 75,§554.3401]

Referred to in §554.3102(2)

554.3402 Signature in ambiguous capacity. Unless the instrument clearly indicates that a signature is made in some other capacity it is an endorsement. [S13,§3060-a17,-a63; C24, 27, 31, 35, 39,§§9477, 9523; C46, 50, 54, 58, 62,§§541.17, 541.63; C66, 71, 73, 75,§554.3402]

554.3403 Signature by authorized representative.

1. A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

2. An authorized representative who signs his own name to an instrument

a. is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

b. except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

3. Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity. [S13,§§1889-a, 3060-a19,-a20,-a21; C24, 27, 31, 35, 39,§§9266, 9479–9481; C46, 50, 54, 58, 62,§§528.61, 541.19–541.21; C66, 71, 73, 75,§554.3403]

554.3404 Unauthorized signatures.

1. Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

2. Any unauthorized signature may be ratified for all purposes of this Article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer. [S13,§3060-a23; C24, 27, 31, 35, 39,§9483; C46, 50, 54, 58, 62,§541.23; C66, 71, 73, 75,§554.3404]

554.3405 Impostors—signature in name of payee.

1. An endorsement by any person in the name of a named payee is effective if

a. an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

b. a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

c. an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

2. Nothing in this section shall affect the criminal or civil liability of the person so endorsing. [S13,§§1889-a, 3060-a9; C24, 27, 31, 35, 39,§§**9266, 9469**; C46, 50, 54, 58, 62,§§528.61, 541.9; C66, 71, 73, 75,§554.3405]

554.3406 Negligence contributing to alteration or unauthorized signature. Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business. [S13,§1889-a; C24, 27, 31, 35, 39,§**9266**; C46, 50, 54, 58, 62, §528.61; C66, 71, 73, 75,§554.3406]

554.3407 Alteration.

1. Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

a. the number or relations of the parties; or

b. an incomplete instrument, by completing it otherwise than as authorized; or

c. the writing as signed, by adding to it or by removing any part of it.

2. As against any person other than a subsequent holder in due course

a. alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

b. no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

3. A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed. [S13,§3060-a14,-a15,-a124, -a125; C24, 27, 31, 35, 39,§§**9474, 9475, 9585, 9586**; C46, 50, 54, 58, 62,§§541.14, 541.15, 541.125, 541.126; C66, 71, 73, 75,§554.3407]

Referred to in §§554.3102(2), 554.3115, 554.3601(1,*f*)

554.3408 Consideration. Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (section 554.3305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this chapter under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount. [S13,§3060-a24, -a25,-a28; C24, 27, 31, 35, 39,§§**9484, 9485, 9488**; C46, 50, 54, 58, 62,§§541.24, 541.25, 541.28; C66, 71, 73, 75,§554.3408]

Referred to in §554.3306

554.3409 Draft not an assignment.

1. A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

2. Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance. [S13,§3060-a127,-a189; C24, 27, 31, 35, 39,§§**9588, 9650**; C46, 50, 54, 58, 62,§§541.128, 541.190; C66, 71, 73, 75,§554.3409]

554.3410 Definition and operation of acceptance.

1. Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

2. A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

3. Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith. [S13,§3060-a132, -a133,-a134,-a135,-a136,-a137,-a138,-a161,-a162,-a163, -a164,-a165,-a166,-a167,-a168,-a169,-a170; C24, 27, 31, 35, 39,§§**9593–9599, 9622–9631**; C46, 50, 54, 58, 62,§§541.133–541.139, 541.162–541.171; C66, 71, 73, 75,§554.3410]

Referred to in §§554.3102(2), 554.4104(3), 554.5103(3)

554.3411 Certification of a check.

1. Certification of a check is acceptance. Where a holder procures certification the drawer and all prior endorsers are discharged.

2. Unless otherwise agreed a bank has no obligation to certify a check.

3. A bank may certify a check before returning it for lack of proper endorsement. If it does so the drawer is discharged. [S13,§3060-a187,-a188; C24, 27, 31, 35, 39,§§**9648, 9649**; C46, 50, 54, 58, 62,§§541.188, 541.189; C66, 71, 73, 75,§554.3411]

Referred to in §§554.3102(2), 554.3601(1,*g*), 554.4104(3)

554.3412 Acceptance varying draft.

1. Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance canceled.

2. The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

3. Where the holder assents to an acceptance varying the terms of the draft each drawer and endorser who does not affirmatively assent is discharged. [S13,§3060-a139,-a140,-a141,-a142; C24, 27, 31, 35, 39,§§**9600–9603**; C46, 50, 54, 58, 62,§§541.140–541.143; C66, 71, 73, 75,§554.3412]

Referred to in §554.3601(1,*h*)

554.3413 Contract of maker, drawer and acceptor.

1. The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to section 554.3115 on incomplete instruments.

2. The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any endorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

3. By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to endorse. [S13, §3060-a60,-a61,-a62; C24, 27, 31, 35, 39,§§**9520–9522**; C46, 50, 54, 58, 62,§§541.60–541.62; C66, 71, 73, 75,§554.3413]

554.3414 Contract of endorser — order of liability.

1. Unless the endorsement otherwise specifies (as by such words as "without recourse") every endorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his endorsement to the holder or to any subsequent endorser who takes it up, even though the endorser who takes it up was not obligated to do so.

2. Unless they otherwise agree endorsers are liable to one another in the order in which they endorse, which is presumed to be the order in which their signatures appear on the instrument. [S13,§3060-a38,-a44,-a66,-a67,-a68, -a84; C24, 27, 31, 35, 39,§§**9498, 9504, 9526–9528, 9544**; C46, 50, 54, 58, 62,§§541.38, 541.44, 541.66–541.68, 541.84; C66, 71, 73, 75,§554.3414]

554.3415 Contract of accommodation party.

1. An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

2. When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

3. As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

4. An endorsement which shows that it is not in the chain of title is notice of its accommodation character.

5. An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party. [C73,§2094; C97, §3053; S13,§§3053, 3060-a28,-a29,-a64; C24, 27, 31, 35, 39,§§**9488, 9489, 9524, 9545**; C46, 50, 54, 58, 62,§§541.28, 541.29, 541.64, 541.85; C66, 71, 73, 75,§554.3415]

Referred to in §554.3102(2)

554.3416 Contract of guarantor.

1. *"Payment guaranteed"* or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

2. *"Collection guaranteed"* or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

3. Words of guaranty which do not otherwise specify guarantee payment.

4. No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

5. When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

6. Any guaranty written on the instrument is enforcible notwithstanding any statute of frauds. [C73,§2094; C97,§3053; S13,§3053; C24, 27, 31, 35, 39,§**9545**; C46, 50, 54, 58, 62,§541.85; C66, 71, 73, 75,§554.3416]

554.3417 Warranties on presentment and transfer.

1. Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that

a. he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

b. he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith

i. to a maker with respect to the maker's own signature; or

ii. to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

iii. to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

c. the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith

i. to the maker of a note; or

ii. to the drawer of a draft whether or not the drawer is also the drawee; or

iii. to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

iv. to the acceptor of a draft with respect to an alteration made after the acceptance.

2. Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by endorsement to any subsequent holder who takes the instrument in good faith that

a. he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

b. all signatures are genuine or authorized; and

c. the instrument has not been materially altered; and

d. no defense of any party is good against him; and

e. he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

3. By transferring "without recourse" the transferor limits the obligation stated in subsection 2 "*d*" to a warranty that he has no knowledge of such a defense.

4. A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority. [S13,§3060-a65, -a69; C24, 27, 31, 35, 39,§§**9525, 9529**; C46, 50, 54, 58, 62,§§541.65, 541.69; C66, 71, 73, 75,§554.3417]

554.3418 Finality of payment or acceptance. Except for recovery of bank payments as provided in the Article on Bank Deposits and Collections (Article 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment. [S13,§3060-a62; C24, 27, 31, 35, 39, §**9522**; C46, 50, 54, 58, 62,§541.62; C66, 71, 73, 75,§554.3418]

554.3419 Conversion of instrument — innocent representative.

1. An instrument is converted when

a. a drawee to whom it is delivered for acceptance refuses to return it on demand; or

b. any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

c. it is paid on a forged endorsement.

2. In an action against a drawee under subsection 1 the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection 1 the measure of liability is presumed to be the face amount of the instrument.

3. Subject to the provisions of this chapter concerning restrictive endorsements a representative, including a depositary or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

4. An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item endorsed restrictively (sections 554.3205 and 554.3206) are not paid or applied consistently with the restrictive endorsement of an endorser other than its immediate transferor. [S13,§3060-a137; C24, 27, 31, 35, 39,§**9598**; C46, 50, 54, 58, 62,§541.138; C66, 71, 73, 75,§554.3419]

Referred to in §554.4203

PART 5
PRESENTMENT, NOTICE OF DISHONOR AND PROTEST

554.3501 When presentment, notice of dishonor, and protest necessary or permissible.

1. Unless excused (section 554.3511) presentment is necessary to charge secondary parties as follows:

a. presentment for acceptance is necessary to charge the drawer and endorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

b. presentment for payment is necessary to charge any endorser;

c. in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in section 554.3502 subsection 1 "*b*".

2. Unless excused (section 554.3511)

a. notice of any dishonor is necessary to charge any endorser;

b. in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in section 554.3502 subsection 1 "*b*".

3. Unless excused (section 554.3511) protest of any dishonor is necessary to charge the drawer and endorsers of any draft which on its face appears to be drawn or payable out-

side of the states, territories, dependencies and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

4. Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an endorser who has endorsed an instrument after maturity. [S13,§§3060-a70,-a89,-a117,-a118,-a129,-a143,-a144,-a150,-a151,-a152,-a157,-a158,-a186; C24, 27, 31, 35, 39,§§**9530, 9550, 9578, 9579, 9590, 9604, 9605, 9611–9613, 9618, 9619, 9647**; C46, 50, 54, 58, 62,§§541.70, 541.90, 541.118, 541.119, 541.130, 541.144, 541.145, 541.151–541.153, 541.158, 541.159, 541.187; C66, 71, 73, 75,§554.3501]

554.3502 Unexcused delay—discharge.

1. Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due

a. any endorser is discharged; and

b. any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

2. Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or endorser is discharged. [S13,§§3060-a7,-a70,-a89,-a144,-a150,-a152,-a186; C24, 27, 31, 35, 39,§§**9467, 9530, 9550, 9605, 9611, 9613, 9647**; C46, 50, 54, 58, 62,§§541.7, 541.70, 541.90, 541.145, 541.151, 541.153, 541.187; C66, 71, 73, 75, §554.3502]

Referred to in §§554.3501[(1,*c*), (2,*b*)], 554.3601(1,*f*)

554.3503 Time of presentment.

1. Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

a. where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

b. where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

c. where an instrument shows the date on which it is payable presentment for payment is due on that date;

d. where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

e. with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

2. A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

a. with respect to the liability of the drawer, thirty days after date or issue whichever is later; and

b. with respect to the liability of an endorser, seven days after his endorsement.

3. Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

4. Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day. [C73,§2094; C97,§3053; S13,§§3053, 3060-a71,-a72,-a75,-a85,-a86,-a144,-a145,-a146,-a186; C24, 27, 31, 35, 39,§§**9531, 9532, 9535, 9545–9547, 9605–9607, 9647**; C46, 50, 54, 58, 62, §§541.71, 541.72, 541.75, 541.85–541.87, 541.145–541.147, 541.187; C66, 71, 73, 75,§554.3503]

554.3504 How presentment made.

1. Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

2. Presentment may be made

a. by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

b. through a clearing house; or

c. at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

3. It may be made

a. to any one of two or more makers, acceptors, drawees or other payors; or

b. to any person who has authority to make or refuse the acceptance or payment.

4. A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

5. In the cases described in section 554.4210 presentment may be made in the manner and with the result stated in that section. [S13, §3060-a72,-a73,-a76,-a77,-a78,-a145; C24, 27, 31, 35, 39,§§**9532, 9533, 9536–9538, 9606**; C46, 50, 54, 58, 62,§§541.72, 541.73, 541.76–541.78, 541.146; C66, 71, 73, 75,§554.3504]

Referred to in §§554.3102(2), 554.4104(3)

554.3505 Rights of party to whom presentment is made.

1. The party to whom presentment is made may without dishonor require

a. exhibition of the instrument; and

b. reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

c. that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

d. a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

2. Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance. [S13, §3060-a74; C24, 27, 31, 35, 39,§**9534**; C46, 50, 54, 58, 62,§541.74; C66, 71, 73, 75,§554.3505]

Referred to in §554.4210(1,2)

554.3506 Time allowed for acceptance or payment.

1. Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

2. Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment. [S13, §3060-a136; C24, 27, 31, 35, 39,§**9597**; C46,§541.137; C50, 54, 58, 62,§§541.137, 541.201; C66, 71, 73, 75,§554.3506]

554.3507 Dishonor — holder's right of recourse—term allowing re-presentment.

1. An instrument is dishonored when

a. a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (section 554.4301); or

b. presentment is excused and the instrument is not duly accepted or paid.

2. Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and endorsers.

3. Return of an instrument for lack of proper endorsement is not dishonor.

4. A term in a draft or an endorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time. [C73,§2094; C97,§3053; S13,§§3053, 3060-a83,-a149; C24, 27, 31, 35, 39,§§**9543, 9545, 9610**; C46,§§541.83, 541.85, 541.150; C50, 54, 58, 62,§§541.83, 541.85, 541.150, 541.201; C66, 71, 73, 75,§554.3507]

Referred to in §§554.2103(3), 554.3102(2)

554.3508 Notice of dishonor.

1. Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

2. Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

3. Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

4. Written notice is given when sent although it is not received.

5. Notice to one partner is notice to each although the firm has been dissolved.

6. When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

7. When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

8. Notice operates for the benefit of all parties who have rights on the instrument against the party notified. [S13,§§3060-a90,-a91, -a92, -a93,-a94,-a95,-a96,-a97,-a98,-a99,-a100,-a101, -a102,-a103,-a104,-a105,-a106,-a107,-a108; C24, 27, 31, 35, 39,§**9551–9559**; C46, 50, 54, 58, 62,§§541.91–541.109; C66, 71, 73, 75,§554.3508]

Referred to in §§554.3102(2), 554.4104(3)

554.3509 Protest—noting for protest.

1. A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

2. The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

3. The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

4. Subject to subsection 5 any necessary protest is due by the time that notice of dishonor is due.

5. If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting. [C51,§§82, 2414; R60,§§199, 4011; C73,§3668; C97, §4624; S13,§3060-a153,-a154,-a155,-a156,-a158,-a160; C24, 27, 31, 35, 39,§§**9614–9617, 9619, 9621, 11284**; C46, 50, 54, 58, 62,§§541.154–541.157, 541.159, 541.161, 622.31; C66, 71, 73, 75,§554.3509]

Referred to in §§554.3102(2), 554.4104(3)

554.3510 Evidence of dishonor and notice of dishonor. The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

a. a document regular in form as provided in the preceding section which purports to be a protest;

b. the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

c. any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry. [C51,§§82, 2414; R60,§§199, 4011; C73, §3668; C97,§4624; C24, 27, 31, 35, 39,§**11284**; C46, 50, 54, 58, 62,§622.31; C66, 71, 73, 75,§544.3510]

554.3511 Waived or excused presentment, protest or notice of dishonor or delay therein.

1. Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

2. Presentment or notice or protest as the case may be is entirely excused when

a. the party to be charged has waived it expressly or by implication either before or after it is due; or

b. such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

c. by reasonable diligence the presentment or protest cannot be made or the notice given.

3. Presentment is also entirely excused when

a. the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

b. acceptance or payment is refused but not for want of proper presentment.

4. Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

5. A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

6. Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an endorser it binds him only. [S13,§3060-a79,-a80, -a81,-a82,-a109,-a110,-a111,-a112,-a113,-a114,-a115, -a116,-a130,-a147,-a148,-a150,-a151,-a159; C24, 27, 31, 35, 39,§§**9539–9542, 9570–9577, 9591, 9608, 9609, 9611, 9612, 9620**; C46, 50, 54, 58, 62,§§541.79–541.82, 541.110–541.177, 541.131, 541.148, 541.149, 541.151, 541.152, 541.160; C66, 71, 73, 75,§554.3511]

Referred to in §554.3501(1–3)

PART 6
DISCHARGE

554.3601 Discharge of parties.

1. The extent of the discharge of any party from liability on an instrument is governed by the sections on

a. payment or satisfaction (section 554.3603); or

b. tender of payment (section 554.3604); or

c. cancellation or renunciation (section 554.3605); or

d. impairment of right of recourse or of collateral (section 554.3606); or

e. reacquisition of the instrument by a prior party (section 554.3208); or

f. fraudulent and material alteration (section 554.3407); or

g. certification of a check (section 554.3411); or

h. acceptance varying a draft (section 554.3412); or

i. unexcused delay in presentment or notice of dishonor or protest (section 554.3502).

2. Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

3. The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument

a. reacquires the instrument in his own right; or

b. is discharged under any provision of this Article, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (section 554.3606). [S13, §3060-a119–a121; SS15,§3060-a120; C24, 27, 31, 35, 39,§§**9580–9582**; C46, 50, 54, 58, 62,§§541.120–541.122; C66, 71, 73, 75,§554.3601]

554.3602 Effect of discharge against holder in due course. No discharge of any party provided by this Article is effective against a

subsequent holder in due course unless he has notice thereof when he takes the instrument. [S13,§3060-a117; C24, 27, 31, 35, 39,§9578; C46, 50, 54, 58, 62,§541.118; C66, 71, 73, 75,§554.3602]

554.3603 Payment or satisfaction.

1. The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability

a. of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

b. of a party (other than an intermediary bank or a payor bank which is not a depositary bank) who pays or satisfies the holder of an instrument which has been restrictively endorsed in a manner not consistent with the terms of such restrictive endorsement.

2. Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (section 554.3201). [S13,§3060-a51,-a88,-a119,-a121,-a171, -a172,-a173,-a174,-a175,-a176,-a177; C24, 27, 31, 35, 39,§§9511, 9549, 9580, 9582, 9632–9638; C46, 50, 54, 58, 62,§§541.51, 541.89, 541.120, 541.122, 541.172–541.178; C66, 71, 73, 75,§554.3603]

Referred to in §§554.3301, 554.3601(1,*a*)

554.3604 Tender of payment.

1. Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

2. The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

3. Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender. [S13,§§3060-a70, -a120; C24, 27, 31, 35, 39,§9530, 9581; C46, 50, 54, 58, 62,§§541.70, 541.121; C66, 71, 73, 75,§554.3604]

Referred to in §§554.3118, 554.3601(1,*b*)

554.3605 Cancellation and renunciation.

1. The holder of an instrument may even without consideration discharge any party

a. in any manner apparent on the face of the instrument or the endorsement, as by intentionally canceling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

b. by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

2. Neither cancellation nor renunciation without surrender of the instrument affects the title thereto. [S13,§3060-a48,-a119,-a120,-a122, -a123; C24, 27, 31, 35, 39,§§9508, 9580, 9581, 9583, 9584; C46, 50, 54, 58, 62,§§541.48, 541.120, 541.121, 541.123, 541.124; C66, 71, 73, 75,§554.3605]

Referred to in §554.3601(1,*c*)

554.3606 Impairment of recourse or of collateral.

1. The holder discharges any party to the instrument to the extent that without such party's consent the holder

a. without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

b. unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

2. By express reservation of rights against a party with a right of recourse the holder preserves

a. all his rights against such party as of the time when the instrument was originally due; and

b. the right of the party to pay the instrument as of that time; and

c. all rights of such party to recourse against others. [S13, SS15,§3060-a120; C24, 27, 31, 35, 39,§9581; C46, 50, 54, 58, 62,§541.121; C66, 71, 73, 75,§554.3606]

Referred to in §554.3601[(1,*d*), (3,*b*)]

PART 7

ADVICE OF INTERNATIONAL SIGHT DRAFT

554.3701 Letter of advice of international sight draft.

1. A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

2. Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

3. Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unad-

vised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account. [C66, 71, 73, 75,§554.3701]

PART 8
MISCELLANEOUS

554.3801 Drafts in a set.

1. Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

2. Any person who negotiates, endorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

3. As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection 2. With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (section 554.4407).

4. Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged. [S13,§3060-a178,-a179,-a180, -a181,-a182,-a183; C24, 27, 31, 35, 39;§§**9639-9644**; C46, 50, 54, 58, 62,§§541.179–541.184; C66, 71, 73, 75,§554.3801]

Referred to in §554.3112(1,*g*)

554.3802 Effect of instrument on obligation for which it is given.

1. Unless otherwise agreed where an instrument is taken for an underlying obligation

a. the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

b. in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

2. The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety. [C66, 71, 73, 75,§554.3802]

Referred to in §554.2511

554.3803 Notice to third party. Where a defendant is sued for breach of an obligation for which a third person is answerable over under this Article he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this Article. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after seasonable receipt of the notice the person notified does come in and defend he is so bound. [C66, 71, 73, 75, §554.3803]

554.3804 Lost, destroyed or stolen instruments. The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument. [C66, 71, 73, 75,§554.3804]

554.3805 Instruments not payable to order or to bearer. This Article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this Article but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument. [C66, 71, 73, 75,§554.3805]

Referred to in §§539.1, 539.2

ARTICLE 4
BANK DEPOSITS AND COLLECTIONS

Referred to in §§554.3103, 554.3418, 554.5111

PART 1
GENERAL PROVISIONS AND DEFINITIONS

554.4101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Bank Deposits and Collections. [C66, 71, 73, 75,§554.4101]

554.4102 Applicability.

1. To the extent that items within this Article are also within the scope of Articles 3 and 8, they are subject to the provisions of those Articles. In the event of conflict the provisions of this Article govern those of Article 3 but the provisions of Article 8 govern those of this Article.

2. The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located. [C66, 71, 73, 75, §554.4102]

Referred to in §554.1105

554.4103 Variation by agreement—measure of damages—certain action constituting ordinary care.

1. The effect of the provisions of this Article may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

2. Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection 1, whether or not specifically assented to by all parties interested in items handled.

3. Action or nonaction approved by this Article or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearing house rules and the like or with a general banking usage not disapproved by this Article, prima facie constitutes the exercise of ordinary care.

4. The specification or approval of certain procedures by this Article does not constitute disapproval of other procedures which may be reasonable under the circumstances.

5. The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence. [C66, 71, 73, 75,§554.4103]

554.4104 Definitions and index of definitions.

1. In this Article unless the context otherwise requires

a. "Account" means any account with a bank and includes a checking, time, interest or savings account;

b. "Afternoon" means the period of a day between noon and midnight;

c. "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

d. "Clearing house" means any association of banks or other payors regularly clearing items;

e. "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

f. "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;

g. "Item" means any instrument for the payment of money even though it is not negotiable but does not include money;

h. "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

i. "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

j. "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

k. "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

2. Other definitions applying to this Article and the sections in which they appear are:

"Collecting bank"	Section 554.4105.
"Depositary bank"	Section 554.4105.
"Intermediary bank"	Section 554.4105.
"Payor bank"	Section 554.4105.
"Presenting bank"	Section 554.4105.
"Remitting bank"	Section 554.4105.

3. The following definitions in other Articles apply to this Article:

"Acceptance"	Section 554.3410.
"Certificate of deposit"	Section 554.3104.
"Certification"	Section 554.3411.
"Check"	Section 554.3104.
"Draft"	Section 554.3104.
"Holder in due course"	Section 554.3302.
"Notice of dishonor"	Section 554.3508.
"Presentment"	Section 554.3504.
"Protest"	Section 554.3509.
"Secondary party"	Section 554.3102.

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [C66, 71, 73, 75,§554.4104]

Referred to in §§554.3102(3), 554.5103(3)

554.4105 "Depositary bank"—"intermediary bank"—"collecting bank"—"payor bank"—"presenting bank"—"remitting bank". In this Article unless the context otherwise requires:

a. "Depositary bank" means the first bank to which an item is transferred for collection even though it is also the payor bank;

b. "Payor bank" means a bank by which an item is payable as drawn or accepted;

c. "Intermediary bank" means any bank to which an item is transferred in course of collection except the depositary or payor bank;

d. "Collecting bank" means any bank handling the item for collection except the payor bank;

e. "Presenting bank" means any bank presenting an item except a payor bank;

f. "Remitting bank" means any payor or intermediary bank remitting for an item. [C66, 71, 73, 75,§554.4105]

Referred to in §§554.3102(3), 554.4104(2), 554.8102(5)

554.4106 Separate office of a bank. A branch or separate office of a bank is a separate bank for the purpose of computing the time

within which and determining the place at or to which action may be taken or notices or orders shall be given under this Article and under Article 3. [C66, 71, 73, 75,§554.4106]

554.4107 Time of receipt of items.

1. For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cutoff hour for the handling of money and items and the making of entries on its books.

2. Any item or deposit of money received on any day after a cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day. [C66, 71, 73, 75,§554.4107]

554.4108 Delays.

1. Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this chapter for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

2. Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this chapter or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require. [C66, 71, 73, 75, §554.4108]

554.4109 Process of posting. The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

a. verification of any signature;

b. ascertaining that sufficient funds are available;

c. affixing a "paid" or other stamp;

d. entering a charge or entry to a customer's account;

e. correcting or reversing an entry or erroneous action with respect to the item. [C66, 71, 73, 75,§554.4109]

PART 2

COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

554.4201 Presumption and duration of agency status of collecting banks and provisional status of credits—applicability of Article—item endorsed "pay any bank".

1. Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (subsection 3 of section 554.4211 and sections 554.4212 and 554.4213) the bank is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this Article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

2. After an item has been endorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder

a. until the item has been returned to the customer initiating collection; or

b. until the item has been specially endorsed by a bank to a person who is not a bank. [C66, 71, 73, 75,§554.4201]

554.4202 Responsibility for collection — when action seasonable.

1. A collecting bank must use ordinary care in

a. presenting an item or sending it for presentment; and

b. sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor or directly to the depositary bank under subsection 2 of section 554.4212 after learning that the item has not been paid or accepted, as the case may be; and

c. settling for an item when the bank receives final settlement; and

d. making or providing for any necessary protest; and

e. notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

2. A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

3. Subject to subsection 1 *"a"* a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others. [C66, 71, 73, 75,§554.4202]

554.4203 Effect of instructions. Subject to the provisions of Article 3 concerning conversion of instruments (section 554.3419) and the provisions of both Article 3 and this Article concerning restrictive endorsements only

a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor. [C66, 71, 73, 75,§554.4203]

554.4204 Methods of sending and presenting—sending direct to payor bank.

1. A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

2. A collecting bank may send

a. any item direct to the payor bank;

b. any item to any nonbank payor if authorized by its transferor; and

c. any item other than documentary drafts to any nonbank payor, if authorized by Federal Reserve regulation or operating letter, clearing house rule or the like.

3. Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made. [C66, 71, 73, 75,§554.4204]

554.4205 Supplying missing endorsement—no notice from prior endorsement.

1. A depositary bank which has taken an item for collection may supply any endorsement of the customer which is necessary to title unless the item contains the words "payee's endorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depositary bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's endorsement.

2. An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the bank's immediate transferor. [C66, 71, 73, 75,§554.4205]

554.4206 Transfer between banks. Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank. [C66, 71, 73, 75,§554.4206]

554.4207 Warranties of customer and collecting bank on transfer or presentment of items—time for claims.

1. Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that

a. he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

b. he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

i. to a maker with respect to the maker's own signature; or

ii. to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

iii. to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

c. the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

i. to the maker of a note; or

ii. to the drawer of a draft whether or not the drawer is also the drawee; or

iii. to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

iv. to the acceptor of an item with respect to an alteration made after the acceptance.

2. Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that

a. he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

b. all signatures are genuine or authorized; and

c. the item has not been materially altered; and

d. no defense of any party is good against him; and

e. he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

3. The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of endorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

4. Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the

extent of any loss caused by the delay in making claim. [C66, 71, 73, 75,§554.4207]

Referred to in §554.4302

554.4208 Security interest of collecting bank in items, accompanying documents and proceeds.

1. A bank has a security interest in an item and any accompanying documents or the proceeds of either

a. in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

b. in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

c. if it makes an advance on or against the item.

2. When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

3. Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Article 9 except that

a. no security agreement is necessary to make the security interest enforceable (subsection 1 "*b*"* of section 554.9203); and

b. no filing is required to perfect the security interest; and

c. the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds. [C66, 71, 73, 75,§554.4208]

Referred to in §§554.1201(44), 554.9203(1), 554.9302(1,*f*), 554.9312(1)

*"*a*" probably intended, see amendment by 65GA, ch 1249, §36

554.4209 When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of section 554.3302 on what constitutes a holder in due course. [S13,§3060-a27; C24, 27, 31, 35, 39,§9487; C46, 50, 54, 58, 62, §541.27; C66, 71, 73, 75,§554.4209]

Referred to in §554.1201(44)

554.4210 Presentment by notice of item not payable by, through or at a bank—liability of secondary parties.

1. Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 554.3505 by the close of the bank's next banking day after it knows of the requirement.

2. Where presentment is made by notice and neither honor nor request for compliance with a requirement under section 554.3505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts. [C73,§2094; C97,§3053; S13,§3053; C24, 27, 31, 35, 39,§9545; C46, 50, 54, 58, 62,§541.85; C66, 71, 73, 75,§554.4210]

Referred to in §554.3504(5)

554.4211 Media of remittance—provisional and final settlement in remittance cases.

1. A collecting bank may take in settlement of an item

a. a check of the remitting bank or of another bank on any bank except the remitting bank; or

b. a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or

c. appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

d. if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

2. If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection 1 or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

3. A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement

a. if the remittance instrument or authorization to charge is of a kind approved by subsection 1 or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

b. if the person receiving the settlement has authorized remittance by a nonbank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection 1 "*b*",—at the time of receipt of such remittance check or obligation; or

c. if in a case not covered by subparagraphs "*a*" or "*b*" the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline. [C66, 71, 73, 75,§554.4211]

Referred to in §§554.4201(1), 554.4212(1), 554.4213(3), 554.4214(3)

554.4212 Right of charge-back or refund.

1. If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection 3 of section 554.4211 and subsections 2 and 3 of section 554.4213).

2. Within the time and manner prescribed by this section and section 554.4301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.

Referred to in §554.4202

3. A depositary bank which is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 554.4301).

4. The right to charge-back is not affected by

a. prior use of the credit given for the item; or

b. failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

5. A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

6. If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course. [C66, 71, 73, 75,§554.4212]

Referred to in §§554.4201(1), 554.4202

554.4213 Final payment of item by payor bank—when provisional debits and credits become final—when certain credits become available for withdrawal.

1. An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

a. paid the item in cash; or

b. settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or

c. completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or

d. made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.

Referred to in §§554.4214, 554.4303

Upon a final payment under subparagraphs "*b*", "*c*" or "*d*" the payor bank shall be accountable for the amount of the item.

Referred to in §554.4301

2. If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

Referred to in §§554.4212(1), 554.4214

3. If a collecting bank receives a settlement for an item which is or becomes final (subsection 3 of section 554.4211, subsection 2 of this section) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

Referred to in §§554.4212(1), 554.4214

4. Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right

a. in any case where the bank has received a provisional settlement for the item,—when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

b. in any case where the bank is both a depositary bank and a payor bank and the item is finally paid,—at the opening of the bank's second banking day following receipt of the item.

5. A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit. [C66, 71, 73, 75,§554.4213]

Referred to in §§554.4201(1), 554.4212(1), 554.4214(3), 554.4301, 554.4303

554.4214 Insolvency and preference.

1. Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

2. If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

3. If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsection 3 of section 554.4211, subsections 1 "*d*", 2 and 3 of section 554.4213).

4. If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank. [C66, 71, 73, 75,§554.4214]

PART 3
COLLECTION OF ITEMS: PAYOR BANKS

554.4301 Deferred posting—recovery of payment by return of items—time of dishonor.

1. Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection 1 of section 554.4213) and before its midnight deadline it

a. returns the item; or

b. sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return;

and the item or notice includes the reason for dishonor or nonpayment.

2. If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

3. Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

4. An item is returned:

a. as to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

b. in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions. [C66, 71, 73, 75,§554.4301]

Referred to in §§554.3507, 554.4212(2, 3)

554.4302 Payor bank's responsibility for late return of item. In the absence of a valid defense such as breach of a presentment warranty (subsection 1 of section 554.4207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of

a. a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

b. any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents. [C66, 71, 73, 75,§554.4302]

Referred to in §554.4303

554.4303 When items subject to notice, stop order, legal process or setoff—order in which items may be charged or certified.

1. Any knowledge, notice or stop order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

a. accepted or certified the item;

b. paid the item in cash;

c. settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement;

d. completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or

e. become accountable for the amount of the item under subsection 1 "*d*" of section 554.4213 and section 554.4302 dealing with the payor bank's responsibility for late return of items.

2. Subject to the provisions of subsection 1 items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank. [C31, 35, §9266-d1; C39,§**9266.1**; C46, 50, 54, 58, 62,§528.62; C66, 71, 73, 75,§554.4303]

Referred to in §554.4403

PART 4
RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

554.4401 When bank may charge customer's account.

1. As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

2. A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to

a. the original tenor of his altered item; or

b. the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper. [C66, 71, 73, 75, §554.4401]

554.4402 Bank's liability to customer for wrongful dishonor. A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case. [C66, 71, 73, 75,§554.4402]

554.4403 Customer's right to stop payment —burden of proof of loss.

1. A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in section 554.4303.

2. An oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.

3. The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer. [C31, 35,§9266-d1; C39,§**9266.1**; C46, 50, 54, 58, 62,§528.62; C66, 71, 73 ,75,§554.4403]

554.4404 Bank not obligated to pay check more than six months old. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith. [C66, 71, 73, 75,§554.4404]

554.4405 Death or incompetence of customer.

1. A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

2. Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account. [S13,§3060-a76; C24, 27, 31, 35, 39,§**9536**; C46, 50, 54, 58, 62,§541.76; C66, 71, 73, 75,§554.4405]

554.4406 Customer's duty to discover and report unauthorized signature or alteration.

1. When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

2. If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection 1 the customer is precluded from asserting against the bank

a. his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

b. an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

3. The preclusion under subsection 2 does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

4. Without regard to care or lack of care of either the customer or the bank a customer

who does not within one year from the time the statement and items are made available to the customer (subsection 1) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized endorsement is precluded from asserting against the bank such unauthorized signature or endorsement or such alteration.

5. If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim. [C66, 71, 73 ,75,§554.4406]

554.4407 Payor bank's right to subrogation on improper payment. If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights

a. of any holder in due course on the item against the drawer or maker; and

b. of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

c. of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose. [C66, 71, 73, 75,§554.4407]

Referred to in §554.3801

PART 5
COLLECTION OF DOCUMENTARY DRAFTS

554.4501 Handling of documentary drafts—duty to send for presentment and to notify customer of dishonor. A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right. [C66, 71, 73, 75,§554.4501]

554.4502 Presentment of "on arrival" drafts. When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods. [C66, 71, 73, 75,§554.4502]

554.4503 Responsibility of presenting bank for documents and goods—report of reasons for dishonor—referee in case of need. Unless otherwise instructed and except as provided in Article 5 a bank presenting a documentary draft

a. must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

b. upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses. [S13,§§3060-a131, 3138-b40; C24, 27, 31, 35, 39,§§8285, 9592; C46, 50, 54, 58, 62,§§487.41, 541.132; C66, 71, 73, 75,§554.4503]

554.4504 Privilege of presenting bank to deal with goods — security interest for expenses.

1. A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

2. For its reasonable expenses incurred by action under subsection 1 the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien. [C66, 71, 73, 75, §554.4504]

ARTICLE 5
LETTERS OF CREDIT

Referred to in §§554.4503, 554.7509

554.5101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Letters of Credit. [C66, 71, 73, 75,§554.5101]

554.5102 Scope.

1. This Article applies

a. to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

b. to a credit issued by a person other than a bank if the credit requires that the draft or

demand for payment be accompanied by a document of title; and

c. to a credit issued by a bank or other person if the credit is not within subparagraphs *"a"* or *"b"* but conspicuously states that it is a letter of credit or is conspicuously so entitled.

Referred to in §§554.5104, 554.5117

2. Unless the engagement meets the requirements of subsection 1, this Article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

3. This Article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this chapter or may hereafter develop. The fact that this Article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this Article. [C66, 71, 73, 75,§554.5102]

Referred to in §§554.5103(1,*a*), 554.5104, 554.5117

554.5103 Definitions.

1. In this Article unless the context otherwise requires

a. "Credit" or *"letter of credit"* means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this Article (section 554.5102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

b. A *"documentary draft"* or a *"documentary demand for payment"* is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

c. An *"issuer"* is a bank or other person issuing a credit.

d. A *"beneficiary"* of a credit is a person who is entitled under its terms to draw or demand payment.

e. An *"advising bank"* is a bank which gives notification of the issuance of a credit by another bank.

f. A *"confirming bank"* is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

g. A *"customer"* is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

2. Other definitions applying to this Article and the sections in which they appear are:

"Notation of Credit".	Section 554.5108.
"Presenter".	Section 554.5112(3).

3. Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or "Acceptance".	Section 554.3410.
"Contract for sale".	Section 554.2106.
"Draft".	Section 554.3104.
"Holder in due course".	Section 554.3302.
"Midnight deadline".	Section 554.4104.
"Security".	Section 554.8102.

4. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [C66, 71, 73, 75,§554.5103]

554.5104 Formal requirements—signing.

1. Except as otherwise required in subsection 1 *"c"* of section 554.5102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

2. A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing. [C66, 71, 73, 75,§554.5104]

554.5105 Consideration. No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms. [C66, 71, 73, 75,§554.5105]

554.5106 Time and effect of establishment of credit.

1. Unless otherwise agreed a credit is established

a. as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

b. as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

2. Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

3. Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

4. Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modifica-

tion or revocation and the issuer in turn is entitled to reimbursement from its customer. [C66, 71, 73, 75,§554.5106]

554.5107 Advice of credit — confirmation — error in statement of terms.

1. Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

2. A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

3. Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

4. Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit. [C66, 71, 73, 75,§554.5107]

554.5108 "Notation credit" — exhaustion of credit.

1. A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation credit".

2. Under a notation credit

a. a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

b. unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding thirty days to obtain such evidence.

3. If the credit is not a notation credit

a. the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

b. as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored. [C66, 71, 73, 75,§554.5108]

Referred to in §554.5103(2)

554.5109 Issuer's obligation to its customer.

1. An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility

a. for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

b. for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

c. based on knowledge or lack of knowledge of any usage of any particular trade.

2. An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

3. A nonbank issuer is not bound by any banking usage of which it has no knowledge. [C66, 71, 73, 75,§554.5109]

554.5110 Availability of credit in portions— presenter's reservation of lien or claim.

1. Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

2. Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand noncomplying. [C66, 71, 73, 75,§554.5110]

554.5111 Warranties on transfer and presentment.

1. Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under Articles 3, 4, 7 and 8.

2. Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under Article 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under Articles 7 and 8. [C66, 71, 73, 75,§554.5111]

554.5112 Time allowed for honor or rejection—withholding honor or rejection by consent—"presenter".

1. A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit

a. defer honor until the close of the third banking day following receipt of the documents; and

b. further defer honor if the presenter has expressly or impliedly consented thereto.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit except as otherwise provided in subsection 4 of section 554.5114 on conditional payment.

2. Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

3. "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization. [C66, 71, 73, 75,§554.5112]

Referred to in §554.5103(2)

554.5113 Indemnities.

1. A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

2. An indemnity agreement inducing honor, negotiation or reimbursement

a. unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

b. unless a longer time is explicitly agreed expires at the end of ten business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline. [C66, 71, 73, 75,§554.5113]

554.5114 Issuer's duty and privilege to honor—right to reimbursement.

1. An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

2. Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (section 554.7507) or of a security (section 554.8306) or is forged or fraudulent or there is fraud in the transaction

a. the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank of other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (section 554.3302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 554.7502) or a bona fide purchaser of a security (section 554.8302); and

b. in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

3. Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

4. When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer

a. any payment made on receipt of such notice is conditional; and

b. the issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

c. in the event of such rejection, the issuer is entitled by charge-back or otherwise to return of the payment made.

Referred to in §554.5112

5. In the case covered by subsection 4 failure to reject documents within the time specified in subparagraph "*b*" constitutes acceptance of the documents and makes the payment final in favor of the beneficiary. [C66, 71, 73, 75, §554.5114]

Referred to in §§554.2512, 554.5112

554.5115 Remedy for improper dishonor or anticipatory repudiation.

1. When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (section 554.2707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under section 554.2710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

2. When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the

buyer under section 554.2610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor. [C66, 71, 73, 75,§554.5115]

554.5116 Transfer and assignment.

1. The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

2. Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of an account under Article 9 on Secured Transactions and is governed by that Article except that

a. the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Article 9; and

Referred to in §554.9305

b. the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

c. after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

3. Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit. [C66, 71, 73, 75,§554.5116]

Referred to in §§539.1, 539.2, 554.9305

554.5117 Insolvency of bank holding funds for documentary credit.

1. Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this Article is made applicable by paragraphs "*a*" or "*b*" of section 554.5102 subsection 1 on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

a. to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

b. on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

c. a change to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

2. After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved. [C66, 71, 73, 75,§554.5117]

ARTICLE 6
BULK TRANSFERS

Referred to in §§554.2403(4), 554.9111

554.6101 Short title. This Article shall be known and may be cited as Uniform Commercial Code — Bulk Transfers. [C66, 71, 73, 75, §554.6101]

554.6102 "Bulk transfers" — transfers of equipment—enterprises subject to this Article —bulk transfers subject to this Article.

1. A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part in value of the materials, supplies, merchandise or other inventory (section 554.9109) of an enterprise subject to this Article.

2. A transfer of a substantial part of the equipment (section 554.9109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

3. The enterprises subject to this Article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

4. Except as limited by the following section all bulk transfers of goods located within this state are subject to this Article. [S13,§2911-c; C24, 27, 31, 35, 39,§10009; C46, 50, 54, 58, 62, §555.2; C66, 71, 73, 75,§554.6102]

Referred to in §554.1105(2)

554.6103 Transfers excepted from this Article. The following transfers are not subject to this Article:

1. Those made to give security for the performance of an obligation;

2. General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

3. Transfers in settlement or realization of a lien or other security interest;

4. Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

5. Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which

notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

6. Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

7. A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

8. Transfers of property which is exempt from execution. Public notice under subsection 6 or subsection 7 may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer. [S13,§2911-c; C24, 27, 31, 35, 39.§10010; C46, 50, 54, 58, 62,§555.3; C66, 71, 73, 75,§554.6103]

Referred to in §554.9111

554.6104 Schedule of property, list of creditors.

1. Except as provided with respect to auction sales (section 554.6108), a bulk transfer subject to this Article is ineffective against any creditor of the transferor unless:

a. The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

b. The parties prepare a schedule of the property transferred sufficient to identify it; and

c. The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the recorder in the county or counties where the goods are located.

2. The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

3. Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge. [SS15,§§2911-a,-b; C24, 27, 31, 35, 39, §10008; C46, 50, 54, 58, 62,§555.1; C66, 71, 73, 75,§554.6104]

Referred to in §§554.6107[(2,b), (3)], 554.6108

554.6105 Notice to creditors. In addition to the requirements of the preceding section, any bulk transfer subject to this Article except one made by auction sale (section 554.6108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (section 554.6107). [SS15,§§2911-a,-b; C24, 27, 31, 35, 39, §10008; C46, 50, 54, 58, 62,§555.1; C66, 71, 73, 75,§554.6105]

Referred to in §§554.6107(1), 554.6109

554.6106 Reserved.

554.6107 The notice.

1. The notice to creditors (section 554.6105) shall state:

a. that a bulk transfer is about to be made; and

b. the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and

c. whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

2. If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

a. the location and general description of the property to be transferred and the estimated total of the transferor's debts;

b. the address where the schedule of property and list of creditors (section 554.6104) may be inspected;

c. whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

d. whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.

3. The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (section 554.6104) and to all other persons who are known to the transferee to hold or assert claims against the transferor. [SS15,§§2911-a,-b; C24, 27, 31, 35, 39,§10008; C46, 50, 54, 58, 62, §555.1; C66, 71, 73, 75,§554.6107]

Referred to in §§554.6105, 554.6109

554.6108 Auction sales—"auctioneer".

1. A bulk transfer is subject to this Article even though it is by sale at auction, but only

in the manner and with the results stated in this section.

2. The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (section 554.6104).

3. The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

a. receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this Article (section 554.6104);

b. give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor.

4. Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several. [C66, 71, 73, 75, §554.6108]

Referred to in §§554.6104(1), 554.6105

554.6109 What creditors protected. The creditors of the transferor mentioned in this Article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (sections 554.6105 and 554.6107) are not entitled to notice. [C24, 27, 31, 35, 39,§10012; C46, 50, 54, 58, 62, §555.5; C66, 71, 73, 75,§554.6109]

554.6110 Subsequent transfers. When the title of a transferee to property is subject to a defect by reason of his noncompliance with the requirements of this Article, then:

1. a purchaser of any of such property from such transferee who pays no value or who takes with notice of such noncompliance takes subject to such defect, but

2. a purchaser for value in good faith and without such notice takes free of such defect. [C24, 27, 31, 35, 39,§10010; C46, 50, 54, 58, 62, §555.4; C66, 71, 73, 75,§554.6110]

554.6111 Limitation of actions and levies. No action under this Article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery. [C66, 71, 73, 75,§554.6111]

ARTICLE 7
WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

Referred to in §§543.19, 554.2403(4), 554.5111, 554.10104

PART 1
GENERAL

554.7101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Documents of Title. [S13,§3138-b56; C24, 27, 31, 35, 39,§8299; C46, 50, 54, 58, 62, §487.55; C66, 71, 73, 75,§554.7101]

554.7102 Definitions and index of definitions.

1. In this Article, unless the context otherwise requires:

a. "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

b. "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

c. "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

d. "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

e. "Document" means document of title as defined in the general definitions in Article 1 (section 554.1201).

f. "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

g. "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

h. "Warehouseman" is a person engaged in the business of storing goods for hire.

2. Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Duly negotiate". Section 554.7501.

"Person entitled under the document". Section 554.7403 subsection 4.

3. Definitions in other Articles applying to this Article and the sections in which they appear are:

"Contract for sale". Section 554.2106.

"Overseas". Section 554.2323.

"Receipt" of goods. Section 554.2103.

4. In addition Article 1 contains general definitions and principles of construction and

interpretation applicable throughout this Article. [R60,§1903; C73,§2180; C97,§3132; S13, §§3138-a58,-b52; C24, 27, 31, 35, 39,§§**8297, 9718, 10005, 10325**; C46, 50, 54, 58, 62,§§487.54, 542.58, 554.77, 575.1; C66, 71, 73, 75,§554.7102]

Referred to in §§428.9, 554.2103(3)

554.7103 Relation of Article to treaty, statute, tariff, classification or regulation. To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this Article are subject thereto. [C66, 71, 73, 75,§554.7103]

554.7104 Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title.

1. A warehouse receipt, bill of lading or other document of title is negotiable

a. if by its terms the goods are to be delivered to bearer or to the order of a named person; or

b. where recognized in overseas trade, if it runs to a named person or assigns.

2. Any other document is nonnegotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person. [S13,§§3138-a2–a5,-a7,-b1–b4,-b7,-b8,-b52; C24, 27, 31, 35, 39,§§**8246–8249, 8253, 8254, 8297, 9662–9665, 9667, 9956, 9959, 10005**; C46, 50, 54, 58, 62,§§487.2–487.5, 487.8, 487.9, 487.54, 542.2–542.5, 542.7, 554.28, 554.31, 554.77; C66, 71, 73, 75, §554.7104]

554.7105 Construction against negative implication. The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable. [C66, 71, 73, 75,§554.7105]

PART 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

Referred to in §§428.16, 554.7105

554.7201 Who may issue a warehouse receipt—storage under government bond.

1. A warehouse receipt may be issued by any warehouseman.

2. Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman. [S13,§3138-a1; C24, 27, 31,§§9661, 9740; C35,§§9661, 9751-g23; C39,§§**9661, 9751.23**; C46, 50, 54, 58, 62,§542.1, 543.20; C66, 71, 73, 75,§554.7201]

Referred to in §§427.1(28), 554.9105

554.7202 Form of warehouse receipt—essential terms—optional terms.

1. A warehouse receipt need not be in any particular form.

2. Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

a. the location of the warehouse where the goods are stored;

b. the date of issue of the receipt;

c. the consecutive number of the receipt;

d. a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

e. the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt;

f. a description of the goods or of the packages containing them;

g. the signature of the warehouseman, which may be made by his authorized agent;

h. if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

i. a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (section 554.7209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

3. A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this chapter and do not impair his obligation of delivery (section 554.7403) or his duty of care (section 554.7204). Any contrary provisions shall be ineffective. [S13, §§3138-a2,-a7; C24, 27, 31, 35,§975-g19; C39,§§**9662, 9667, 9751.19**; C46, 50, 54, 58, 62,§§542.2, 542.7, 543.21; C66, 71, 73, 75,§554.7202]

Referred to in §543.18

554.7203 Liability for nonreceipt or misdescription. A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or

the party or purchaser otherwise has notice. [S13,§3138-a20; C24, 27, 31, 35, 39,§9680; C46, 50, 54, 58, 62,§542.20; C66, 71, 73, 75,§554.7203]

554.7204 Duty of care—contractual limitation of warehouseman's* liability.

1. A warehouse person is liable for damages for loss of or injury to the goods caused by the warehouse person's failure to exercise such care in regard to them as a reasonably careful person would exercise under like circumstances but unless otherwise agreed the warehouse person is not liable for damages which could not have been avoided by the exercise of such care.

2. Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

3. Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff. [S13,§§3138-a3,-a21,-a24; C24, 27, 31, 35, 39,§§9663, 9681, 9684; C46, 50, 54, 58, 62,§§542.3, 542.21, 542.24; C66, 71, 73, 75,§554.7204]

Referred to in §§543.18, 554.7202(3)

*See §554.1109

554.7205 Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated. [C66, 71, 73, 75,§554.7205]

Referred to in §554.7502

554.7206 Termination of storage at warehouseman's option.

1. A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (section 554.7210).

2. If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection 1 for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

3. If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

4. The warehouseman must deliver the goods to any person entitled to them under this Article upon due demand made at any time prior to sale or other disposition under this section.

5. The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods. [S13,§3138-a34; C24, 27, 31,§9694; C35, §§9694, 9751-g21; C39,§§9694, 9751.21; C46, 50, 54, 58, 62,§§542.34, 543.23; C66, 71, 73, 75,§554.7206]

554.7207 Goods must be kept separate—fungible goods.

1. Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

2. Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated. [S13,§§3138-a22,-a23,-a24; C24, 27, 31, 35, 39, §§9682–9684; C46, 50, 54, 58, 62,§§542.22–542.24; C66, 71, 73, 75,§554.7207]

554.7208 Altered warehouse receipts. Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer

according to its original tenor. [S13,§3138-a13; C24, 27, 31, 35, 39,§9673; C46, 50, 54, 58, 62, §542.13; C66, 71, 73, 75,§554.7208]

554.7209 Lien of warehouseman.

1. A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

2. The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection 1, such as for money advanced and interest. Such a security interest is governed by the Article on Secured Transactions (Article 9).

3. *a.* A warehouseman's lien for charges and expenses under subsection 1 or a security interest under subsection 2 is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under section 554.7503.

b. A warehouseman's lien on household goods for charges and expenses in relation to the goods under subsection 1 is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

4. A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [R60,§§1898, 1899; C73,§§2177, 2178; C97,§3130; S13,§§3138-a27, -a28,-a29,-a30,-a31,-a32; C24, 27, 31,§§9687–9692, 9741, 10326; C35,§§9687–9692, 9751-g24, 10326; C39,§§**9687–9692, 9751.24, 10326**; C46, 50, 54, 58, 62,§§542.27–542.32, 543.24, 543.25, 575.2; C66, 71, 73, 75,§554.7209]

Referred to in §554.7202(2,i)

554.7210 Enforcement of warehouseman's lien.

1. Except as provided in subsection 2, a warehouseman's lien may be enforced by public or private sale of the goods in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

2. A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

a. All persons known to claim an interest in the goods must be notified.

b. The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

c. The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

d. The sale must conform to the terms of the notification.

e. The sale must be held at the nearest suitable place to that where the goods are held or stored.

f. After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the

sale in not less than six conspicuous places in the neighborhood of the proposed sale.

Referred to in §554.7308(7)

3. Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this Article.

4. The warehouseman may buy at any public sale pursuant to this section.

5. A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

6. The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

7. The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

8. Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection 1 or 2.

9. The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [R60,§§1899–1904; C73,§§2177–2181; C97,§§3130–3133; S13,§§3131, 3138-a33,-a35,-a36; C24, 27, 31, §§9693, 9695, 9696, 9741, 10327–10330, 10333–10335; C35,§§9693, 9695, 9696, 9751-g24, 10327–10330, 10333–10335; C39,§§**9646, 9693, 9695, 9751.24, 10327, 10330, 10333–10335**; C46, 50, 54, 58, 62,§§542.33, 542.35, 542.36, 543.24–543.26, 575.3–575.6, 575.9–575.11; C66, 71, 73, 75, §554.7210]

Referred to in §§554.7206(1), 554.7308

PART 3

BILLS OF LADING: SPECIAL PROVISIONS

Referred to in §554.7105

554.7301 Liability for nonreceipt or misdescription—"said to contain"—"shipper's load and count"—*improper handling*.

1. A consignee of a nonnegotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

2. When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

3. When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

4. The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

5. The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper. [S13,§§2074-b, 3138-b22; C24, 27, 31, 35, 39,§§**8267, 10980**; C46, 50, 54, 58, 62,§§487.23, 613.6; C66, 71, 73, 75, §554.7301]

554.7302 Through bills of lading and similar documents.

1. The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

2. Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his

own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

3. The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor. [C66, 71, 73, 75,§554.7302]

554.7303 Diversion—reconsignment—change of instructions.

1. Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

a. the holder of a negotiable bill; or

b. the consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee; or

c. the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

d. the consignee on a nonnegotiable bill if he is entitled as against the consignor to dispose of them.

2. Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms. [C66, 71, 73, 75,§554.7303]

Referred to in §554.7403(1,e)

554.7304 Bills of lading in a set.

1. Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

2. Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

3. Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

4. Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

5. The bailee is obliged to deliver in accordance with Part 4 of this Article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill. [S13,§3138-b5; C24, 27, 31, 35, 39,§8250; C46, 50, 54, 58, 62,§487.6; C66, 71, 73, 75,§554.7304]

554.7305 Destination bills.

1. Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

2. Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request. [C66, 71, 73, 75,§554.7305]

554.7306 Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor. [S13,§3138-b15; C24, 27, 31, 35, 39,§8260; C46, 50, 54, 58, 62, §487.16; C66, 71, 73, 75,§554.7306]

554.7307 Lien of carrier.

1. A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

2. A lien for charges and expenses under subsection 1 on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection 1 is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

3. A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [R60,§§1898, 1899; C73,§§2177, 2178; C97,§3130; S13,§§3138-a27–32,-b25; C24, 27, 31, 35, 39,§§8270, 9687–9692, 10326; C46, 50, 54, 58, 62,§§487.26, 542.27–542.32, 575.2; C66, 71, 73, 75,§554.7307]

554.7308 Enforcement of carrier's lien.

1. A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

2. Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this Article.

3. The carrier may buy at any public sale pursuant to this section.

4. A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

5. The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

6. The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

7. A carrier's lien may be enforced in accordance with either subsection 1 or the procedure set forth in subsection 2 of section 554.7210.

8. The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [R60,§§1899–1904; C73,§§2177–2181; C97,§§3130–3133; S13, §§3131, 3138-a33,-b26; C24, 27, 31, 35, 39,§§**8271, 9693, 10327–10336**; C46, 50, 54, 58, 62,§§487.27, 542.33, 575.3–575.7, 575.9–575.12; C66, 71, 73, 75,§554.7308]

Referred to in §§576.2, 577.2, 578.2

554.7309 Duty of care—contractual limitation of carrier's liability.

1. A carrier who issues a bill of lading whether negotiable or nonnegotiable must exercise the degree of care in relation to the goods which a reasonably careful person would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

2. Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

3. Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff. [S13,§§2074-b, 3138-b2; C24, 27, 31, 35, 39,§§**8247, 10980**; C46, 50, 54, 58, 62,§§487.3, 613.6; C66, 71, 73, 75,§554.7309]

PART 4

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

Referred to in §§554.7304, 554.7503(3)

554.7401 Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that

a. the document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form or content; or

b. the issuer may have violated laws regulating the conduct of his business; or

c. the goods covered by the document were owned by the bailee at the time the document was issued; or

d. the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt. [S13, §§3138-a20,-b22; C24, 27, 31, 35, 39,§§**8267, 9680**; C46, 50, 54, 58, 62,§§487.23, 542.20; C66, 71, 73, 75, §554.7401]

554.7402 Duplicate receipt or bill — overissue. Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face. [S13,§§3138-a6,-a15,-b6,-b17; C24, 27, 31, 35, 39,§§**8251, 8262, 9666, 9675**; C46, 50, 54, 58, 62,§§487.7, 487.18, 542.6, 542.15, 543.20; C66, 71, 73, 75,§554.7402]

554.7403 Obligation of warehouseman or carrier to deliver—excuse.

1. The bailee must deliver the goods to a person entitled under the document who com-

plies with subsections 2 and 3, unless and to the extent that the bailee establishes any of the following:

a. delivery of the goods to a person whose receipt was rightful as against the claimant;

b. damage to or delay, loss or destruction of the goods for which the bailee is not liable, but the burden of establishing negligence in such cases is on the person entitled under the document;

c. previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

d. the exercise by a seller of his right to stop delivery pursuant to the provisions of the Article on Sales (section 554.2705);

e. a diversion, reconsignment or other disposition pursuant to the provisions of this Article (section 554.7303) or tariff regulating such right;

f. release, satisfaction or any other fact affording a personal defense against the claimant;

g. any other lawful excuse.

2. A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

3. Unless the person claiming is one against whom the document confers no right under section 554.7503, subsection 1, he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

4. "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document. [S13,§§3138-a8,-a9,-a10,-a11,-a12,-a16,-a19,-b10,-b11,-b12,-b13,-b14,-b18,-b21; C24, 27, 31, 35, 39,§§**8255–8259, 8263, 8266, 9668–9672, 9676, 9679**; C46, 50, 54, 58, 62,§§487.11–487.15, 487.19, 487.22, 542.8–542.12, 542.16, 542.19; C66, 71, 73, 75,§554.7403]

Referred to in §§554.7102(2), 554.7202(3), 554.7503(1,*a*)

554.7404 No liability for good faith delivery pursuant to receipt or bill. A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this Article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them. [S13,§§2074-b, 3138-a10,-b12; C24, 27, 31, 35, 39,§§**8257, 9670, 10980**; C46, 50, 54, 58, 62,§§487.13, 542.10, 613.6; C66, 71, 73, 75, §554.7404]

PART 5
WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

554.7501 Form of negotiation and requirements of "due negotiation".

1. A negotiable document of title running to the order of a named person is negotiated by his endorsement and delivery. After his endorsement in blank or to bearer any person can negotiate it by delivery alone.

2. *a.* A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.

b. When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

3. Negotiation of a negotiable document of title after it has been endorsed to a specified person requires endorsement by the special endorsee as well as delivery.

4. A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

5. Endorsement of a nonnegotiable document neither makes it negotiable nor adds to the transferee's rights.

6. The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods. [S13, §§3138-a37, -a38, -a39, -a40, -a47, -b27, -b28. -b29, -b30, -b37; C24, 27, 31, 35, 39,§§**8272–8275, 8282, 9697–9700, 9707, 9957–9961, 9967**; C46, 50, 54, 58, 62,§§487.28–487.31, 487.38, 542.37–542.40. 542.47, 554.29–554.32, 554.39; C66, 71, 73, 75,§554.7501]

Referred to in §§554.7102(2), 554.9309

554.7502 Rights acquired by due negotiation.

1. Subject to the following section and to the provisions of section 554.7205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

a. title to the document;

b. title to the goods;

c. all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

d. the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this Article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the

issuer and any endorser will procure the acceptance of the bailee.

2. Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person. [S13,§§3138-a41,-a47,-a48,-a49, -b31,-b37,-b38,-b39,-b41; C24, 27, 31, 35, 39,§§**8276, 8282–8284, 8286, 9701, 9707–9709, 9949, 9954, 9962, 9967, 9991**; C46, 50, 54, 58, 62,§§487.32, 487.38–487.40, 487.42, 542.41, 542.47–542.49, 554.21, 554.26, 554.34, 554.39, 554.63; C66, 71, 73, 75, §554.7502]

Referred to in §554.5114(2,*a*)

554.7503 Document of title to goods defeated in certain cases.

1. A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

a. delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this Article (section 554.7403) or with power of disposition under this chapter (sections 554.2403 and 554.9307) or other statute or rule of law; nor

b. acquiesced in the procurement by the bailor or his nominee of any document of title.

Referred to in §554.7403(3)

2. Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

3. Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading discharges the carrier's obligation to deliver. [S13,§§3138-a41,-b31,-b42; C24, 27, 31, 35, 39,§§**8276, 8287, 9701, 9962**; C46, 50, 54, 58, 62, §§487.32, 487.43, 542.41, 554.34; C66, 71, 73, 75,§554.7503]

Referred to in §§554.7209(3), 554.7403(3)

554.7504 Rights acquired in the absence of due negotiation—effect of diversion—seller's stoppage of delivery.

1. A transferee of a document, whether negotiable or nonnegotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

2. In the case of a nonnegotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

a. by those creditors of the transferor who could treat the sale as void under section 554.2402; or

b. by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

c. as against the bailee by good faith dealings of the bailee with the transferor.

3. A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

4. Delivery pursuant to a nonnegotiable document may be stopped by a seller under section 554.2705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense. [S13,§§3138-a41,-a42, -b31,-b32; C24, 27, 31, 35, 39,§§**8276, 8277, 9701, 9702, 9959, 9963**; C46, 50, 54, 58, 62,§§487.32, 487.33, 542.41, 542.42, 554.31, 554.35; C66, **71, 73,** 75,§554.7504]

554.7505 Endorser not a guarantor for other parties. The endorsement of a document of title issued by a bailee does not make the endorser liable for any default by the bailee or by previous endorsers. [S13,§§3138-a45,-b35; C24, 27, 31, 35, 39,§§**8280, 9705, 9966**; C46, 50, 54, 58, 62,§§487.36, 542.45, 554.38; C66, 71, 73, 75, §554.7505]

554.7506 Delivery without endorsement — right to compel endorsement. The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary endorsement but the transfer becomes a negotiation only as of the time the endorsement is supplied. [S13,§§3138-a43,-b33; C24, 27, 31, 35, 39,§§**8278, 9703, 9964**; C46, 50, 54, 58, 62,§§487.34, 542.43, 554.36; C66, 71, 73, 75,§554.7506]

554.7507 Warranties on negotiation or transfer of receipt or bill. Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

a. that the document is genuine; and

b. that he has no knowledge of any fact which would impair its validity or worth; and

c. that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents. [S13,§§3138-a44,-b34,-b36; C24, 27, 31, 35, 39, §§**8279, 8281, 9704, 9965**; C46, 50, 54, 58, 62, §§487.35, 487.37, 542.44, 554.37; C66, 71, 73, 75,§554.7507]

Referred to in §554.5114(2)

554.7508 Warranties of collecting bank as to documents. A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected. [S13,§3138-a46; C24, 27, 31, 35, 39,§**9706**; C46, 50, 54, 58, 62,§542.46; C66, 71, 73, 75,§554.7508]

554.7509 Receipt or bill: When adequate compliance with commercial contract. The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Articles on Sales (Article 2) and on Letters of Credit (Article 5). [C66, 71, 73, 75,§554.7509]

PART 6
WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

554.7601 Lost and missing documents.

1. If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of nonsurrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

2. A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery.

3. If a warehouse receipt has been lost or destroyed, the warehouseman shall issue a duplicate upon receipt of:

a. An affidavit that the warehouse receipt has been lost or destroyed.

b. A bond in an amount at least double the value of the goods at the time of posting the bond, to indemnify any person injured by issuance of the duplicate warehouse receipt who files a notice of claim within one year after delivery of the goods.

A duplicate warehouse receipt shall be plainly marked to indicate that it is a duplicate. A receipt plainly marked as a duplicate is a representation and warranty by the warehouseman that the duplicate receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability.

A warehouseman who in good faith delivers goods to the holder of a duplicate receipt issued in accordance with this subsection is liable to any person injured by the delivery, but only to the extent of the security posted in accordance with paragraph "*b*" of this subsection.

4. If a warehouse receipt has been lost or destroyed, the depositor may either remove the goods from the warehouse or sell the goods to the warehouseman after executing a lost warehouse receipt release on a form prescribed by the Iowa state commerce commission. The form shall include an affidavit stating that the warehouse receipt has been lost or destroyed, and the depositor's undertaking to indemnify the warehouseman for any loss incurred as a result of the loss or destruction of the warehouse receipt. The form shall be filed with the commerce commission.

5. If a warehouse receipt has been lost or destroyed by a warehouseman after delivery of the goods or purchase of the goods by the warehouseman, he shall execute and file with the Iowa state commerce commission a notarized affidavit stating that the warehouse receipt has been lost or destroyed by him after delivery or purchase of the goods by him. The form of the affidavit shall be prescribed by the Iowa state commerce commission. [S13,§§3138-a14,-b16; C24, 27, 31, 35, 39,§§**8261, 9674**; C46, 50, 54, 58, 62,§§487.17, 542.14; C66, 71, 73, 75, §554.7601]

Referred to in §543.19

554.7602 Attachment of goods covered by a negotiable document. Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process. [S13,§§3138-a25,-b23, -b24; C24, 27, 31, 35, 39,§§**8268, 8269, 9685, 9968, 9969**; C46, 50, 54, 58, 62,§§487.24, 487.25, 542.25, 554.40, 554.41; C66, 71, 73, 75,§554.7602]

554.7603 Conflicting claims — interpleader. If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate. [S13,§§3138-a16,-a17,-a18,-b19,-b20,-b42; C24, 27, 31, 35, 39, §§8264, 8265, 8287, 9676–9678; C46, 50, 54, 58, 62, §§487.20, 487.21, 487.43, 542.16–542.18; C66, 71, 73, 75,§554.7603]

ARTICLE 8
INVESTMENT SECURITIES

Referred to in §§554.2105(1), 554.4102, 554.5111, 554.10104

PART 1
SHORT TITLE AND GENERAL MATTERS

554.8101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Investment Securities. [C50, 54, 58, 62,§493A.24; C66, 71, 73, 75,§554.8101]

554.8102 Definitions and index of definitions.

1. In this Article unless the context otherwise requires

a. A *"security"* is an instrument which

i. is issued in bearer or registered form; and

ii. is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

iii. is either one of a class or series or by its terms is divisible into a class or series of instruments; and

iv. evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

b. A writing which is a security is governed by this Article and not by uniform commercial code—commercial paper even though it also meets the requirements of that Article. This Article does not apply to money.

c. A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

d. A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any endorsement.

2. A *"subsequent purchaser"* is a person who takes other than by original issue.

3. A *"clearing corporation"* is a corporation

a. At least ninety percent of the capital stock of which is held by or for one or more persons, other than individuals, each of whom

i. is subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws, or

ii. is a broker or dealer or investment company registered under the Securities Exchange Act of 1934 (48 Stat. 881; 15 U.S.C. 78a et seq.) or the Investment Company Act of 1940 (54 Stat. 789; 15 U.S.C. 80a-1 et seq.) or

iii. is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934, and none of whom, other than a national securities exchange or association, holds in excess of twenty percent of the capital stock of such corporation; and

b. Any remaining capital stock of which is held by individuals who have purchased such capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such capital stock as may be necessary to permit them to qualify as such directors.

4. A *"custodian bank"* is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

5. Other definitions applying to this Article or to specified Parts thereof and the sections in which they appear are:

"Adverse claim".	Section 554.8301.
"Bona fide purchaser".	Section 554.8302.
"Broker".	Section 554.8303.
"Guarantee of the signature".	Section 554.8402.
"Intermediary bank".	Section 554.4105.
"Issuer".	Section 554.8201.
"Overissue".	Section 554.8104.

6. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [C66, 71, 73, 75,§554.8102]

Referred to in §§554.5103(3), 554.9105(1,i), 626.25, 633.89, 642.17

554.8103 Issuer's lien. A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security. [C50, 54, 58, 62,§493A.15; C66, 71, 73, 75,§554.8103]

554.8104 Effect of overissue—"overissue."

1. The provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but

a. if an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

b. if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

2. "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue. [C66, 71, 73, 75, §554.8104]

Referred to in §§554.8102(5), 554.8404(2,c), 554.8405(3)

554.8105 Securities negotiable — presumptions.

1. Securities governed by this Article are negotiable instruments.

2. In any action on a security:

a. unless specifically denied in the pleadings, each signature on the security or in a necessary endorsement is admitted;

b. when the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

c. when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

d. after it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (section 554.8202). [C66, 71, 73, 75,§554.8105]

554.8106 Applicability. The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer. [C66, 71, 73, 75,§554.8106]

Referred to in §554.1105(2)

554.8107 Securities deliverable — action for price.

1. Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or endorsed to him or in blank.

2. When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price

a. of securities accepted by the buyer; and

b. of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale. [C66, 71, 73, 75,§554.8107]

PART 2
ISSUE—ISSUER

554.8201 "Issuer."

1. With respect to obligations on or defenses to a security "issuer" includes a person who

a. places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or

b. directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or

c. becomes responsible for or in place of any other person described as an issuer in this section.

2. With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.

3. With respect to registration of transfer (Part 4 of this Article) "issuer" means a person on whose behalf transfer books are maintained. [S13,§§3060-a29,-a60,-a61,-a62; C24, 27, 31, 35, 39,§§9489, 9520–9522; C46, 50, 54, 58, 62, §§541.29, 541.60–541.62; C66, 71, 73, 75,§554.8201]

Referred to in §554.8102(5)

554.8202 Issuer's responsibility and defenses —notice of defect or defense.

1. Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

2. *a.* A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

b. The rule of subparagraph "*a*" applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

3. Except as otherwise provided in the case of certain unauthorized signatures on issue (section 554.8205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

4. All other defenses of the issuer including nondelivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

5. Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" con-

tract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed. [S13,§§3060-a16,-a23,-a28,-a56,-a57,-a60,-a61,-a62; C24, 27, 31, 35, 39,§§**9476, 9483, 9488, 9516, 9517, 9520-9522**; C46, 50, 54, 58, 62,§§541.16, 541.23, 541.28, 541.56, 541.57, 541.60–541.62; C66, 71, 73, 75,§554.8202]

Referred to in §554.8105

554.8203 Staleness as notice of defects or defenses.

1. After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer

a. if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

b. if the act or event is not covered by paragraph "*a*" and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

2. A call which has been revoked is not within subsection 1. [S13,§§3060,-a52,-a53; C24, 27, 31, 35, 39,§§**9512, 9513**; C46, 50, 54, 58, 62, §§541.52, 541.53; C66, 71, 73, 75,§554.8203]

554.8204 Effect of issuer's restrictions on transfer. Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it. [C50, 54, 58, 62,§493A.15; C66, 71, 73, 75,§554.8204]

554.8205 Effect of unauthorized signature on issue. An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by

a. an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

b. an employee of the issuer or of any of the foregoing entrusted with responsible handling of the security. [S13,§3060-a23; C24, 27, 31, 35, 39,§**9483**; C46, 50, 54, 58, 62,§541.23; C66, 71, 73, 75,§554.8205]

Referred to in §554.8202(3)

554.8206 Completion or alteration of instrument.

1. Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect

a. any person may complete it by filling in the blanks as authorized; and

b. even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

2. A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms. [S13,§§3060-a14,-a15,-a124; C24, 27, 31, 35, 39,§§**9474, 9475, 9585**; C46,§§541.14, 541.15, 541.25; C50, 54, 58, 62,§§493A.16, 541.14, 541.15, 541.125; C66, 71, 73, 75,§554.8206]

554.8207 Rights of issuer with respect to registered owners.

1. Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

2. Nothing in this Article shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like. [C50, 54, 58, 62,§§493A.3, 493A.21; C66, 71, 73, 75,§554.8207]

554.8208 Effect of signature of authenticating trustee, registrar or transfer agent.

1. A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that

a. the security is genuine; and

b. his own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and

c. he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

2. Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects. [C66, 71, 73, 75,§554.8208]

PART 3
PURCHASE

554.8301 Rights acquired by purchaser — "adverse claim" — title acquired by bona fide purchaser.

1. Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

2. A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

3. A purchaser of a limited interest acquires rights only to the extent of the interest purchased. [S13,§§3060-a52,-a57,-a58,-a59; C24, 27, 31, 35, 39,§§**9512, 9517–9519**; C46,§§541.52, 541.57–541.59; C50, 54, 58, 62,§§493A.4, 493A.7, 541.52, 541.57–541.59; C66, 71, 73, 75,§554.8301]

Referred to in §§554.8102(5), 554.8320(3), 554.9309

554.8302 "Bona fide purchaser." A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or endorsed to him or in blank. [S13, §3060-a52; C24, 27, 31, 35, 39,§**9512**; C46, 50, 54, 58, 62,§541.52; C66, 71, 73, 75,§554.8302]

Referred to in §§554.5114(2,*a*), 554.8102(5)

554.8303 "Broker." "Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this Article determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject. [C66, 71, 73, 75,§554.8303]

Referred to in §554.8102(5)

554.8304 Notice to purchaser of adverse claims.

1. A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if

a. the security whether in bearer or registered form has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

b. the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

2. The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or endorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims. [S13,§§3060-a37,-a56; C24, 27, 31, 35, 39,§§**9497, 9516**; C46,§§541.37, 541.56; C50, 54, 58, 62,§§493A.8, 541.37, 541.56; C66, 71, 73, 75,§554.8304]

Referred to in §554.8310

554.8305 Staleness as notice of adverse claims. An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase

a. after one year from any date set for such presentment or surrender for redemption or exchange; or

b. after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date. [S13,§§3060-a52, -a53; C24, 27, 31, 35, 39,§§**9512, 9513**; C46, 50, 54, 58, 62,§§541.52, 541.53; C66, 71, 73, 75,§554.8305]

554.8306 Warranties on presentment and transfer.

1. A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (section 554.8311) in a necessary endorsement.

2. A person by transferring a security to a purchaser for value warrants only that

a. his transfer is effective and rightful; and

b. the security is genuine and has not been materially altered; and

c. he knows no fact which might impair the validity of the security.

3. Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

4. A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection 3.

5. A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer. [S13,§§3060-a65,-a66,-a67,-a69; C24, 27, 31, 35, 39,§§**9525–9527, 9529**; C46,§§541.65–541.67, 541.69; C50, 54, 58, 62,§§493A.6, 493A.11, 493A.12, 541.65–541.67, 541.69; C66, 71, 73, 75,§554.8306]

Referred to in §554.5114(2)

554.8307 Effect of delivery without endorsement—right to compel endorsement. Where a security in registered form has been delivered to a purchaser without a necessary endorsement he may become a bona fide purchaser

only as of the time the endorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied. [S13, §3060-a49; C24, 27, 31, 35, 39,§9509; C46,§541.49; C50, 54, 58, 62,§§493A.9, 541.49; C66, 71, 73, 75, §554.8307]

554.8308 Endorsement, how made—special endorsement—endorser not a guarantor—partial assignment.

1. An endorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

2. An endorsement may be in blank or special. An endorsement in blank includes an endorsement to bearer. A special endorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank endorsement into a special endorsement.

3. "An appropriate person" in subsection 1 means

a. the person specified by the security or by special endorsement to be entitled to the security; or

b. where the person so specified is described as a fiduciary but is no longer serving in the described capacity,—either that person or his successor; or

c. where the security or endorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,— the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

d. where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary; or

e. where the security or endorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,— the survivor or survivors; or

f. a person having power to sign under applicable law or controlling instrument; or

g. to the extent that any of the foregoing persons may act through an agent,—his authorized agent.

4. Unless otherwise agreed the endorser by his endorsement assumes no obligation that the security will be honored by the issuer.

5. An endorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

6. Whether the person signing is appropriate is determined as of the date of signing and an endorsement by such a person does not become unauthorized for the purposes of this Article by virtue of any subsequent change of circumstances.

7. Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his endorsement unauthorized for the purposes of this Article. [S13, §§3060-a31, -a32, -a33, -a34, -a35, -a36, -a37, -a64, -a65, -a66, -a67, -a68, -a69; C24, 27, §§9491–9497, 9524–9529; C31, 35, §§8385-d2, 9491–9497, 9524–9529; C39, §§8385.2, 9491–9497, 9524–9529; C46, §§491.49, 541.31–541.37, 541.64–541.69; C50, 54, 58, 62, §§491.49, 493A.2, 493A.20, 541.31–541.37, 541.64–541.69; C66, 71, 73, 75,§554.8308]

Referred to in §§554.8312, 554.8401, 554.8402, 554.8404

554.8309 Effect of endorsement without delivery. An endorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the endorsement is on a separate document until delivery of both the document and the security. [S13,§3060-a30; C24, 27, 31, 35, 39,§9490; C46,§541.30; C50, 54, 58, 62,§§493A.1, 493A.10, 541.30; C66, 71, 73, 75,§554.8309]

554.8310 Endorsement of security in bearer form. An endorsement of a security in bearer form may give notice of adverse claims (section 554.8304) but does not otherwise affect any right to registration the holder may possess. [S13,§3060-a40; C24, 27, 31, 35, 39,§9500; C46, 50, 54, 58, 62,§541.40; C66, 71, 73, 75, 554.8310]

554.8311 Effect of unauthorized endorsement. Unless the owner has ratified an unauthorized endorsement or is otherwise precluded from asserting its ineffectiveness

a. he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or reregistered security on registration of transfer; and

b. an issuer who registers the transfer of a security upon the unauthorized endorsement is subject to liability for improper registration (section 554.8404). [S13,§3060-a23; C24, 27, 31, §9483; C35,§§8385-d2, 9483; C39,§§8385.2, 9483; C46, 50, 54, 58, 62,§§491.49, 541.23; C66, 71, 73, 75,§554.8311]

Referred to in §§554.8306(1), 554.8315

554.8312 Effect of guaranteeing signature or endorsement.

1. Any person guaranteeing a signature of an endorser of a security warrants that at the time of signing

a. the signature was genuine; and

b. the signer was an appropriate person to endorse (section 554.8308); and

c. the signer had legal capacity to sign. But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

2. Any person may guarantee an endorsement of a security and by so doing warrants not only the signature (subsection 1) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of endorsement as a condition to registration of transfer.

3. The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties. [C31, 35,§8385-d2; C39,§8385.2; C46, 50, 54, 58, 62,§491.49; C66, 71, 73, 75,§554.8312]

Referred to in §554.8402(1,a)

554.8313 When delivery to the purchaser occurs—purchaser's broker as holder.

1. Delivery to a purchaser occurs when

a. he or a person designated by him acquires possession of a security; or

b. his broker acquires possession of a security specially endorsed to or issued in the name of the purchaser; or

c. his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

d. with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

e. appropriate entries on the books of a clearing corporation are made under section 554.8320.

2. The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs *"b"*, *"c"* and *"e"* of subsection 1. Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

3. Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received. [C50, 54, 58, 62,§§493A.5, 493A.22; C66, 71, 73, 75,§554.8313]

554.8314 Duty to deliver, when completed.

1. Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers

a. the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgement to be made to the selling broker that it is held for him; and

b. the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

2. Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange a sale to a broker purchasing for his own account is within this subsection and not within subsection 1. [C66, 71, 73, 75,§554.8314]

554.8315 Action against purchaser based upon wrongful transfer.

1. Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

2. If the transfer is wrongful because of an unauthorized endorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported endorsement can be asserted against him under the provisions of this Article on unauthorized endorsements (section 554.8311).

3. The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation. [C50, 54, 58, 62, §493A.7; C66, 71, 73, 75,§554.8315]

554.8316 Purchaser's right to requisites for registration of transfer on books. Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer. [C97,§1626; C24, 27, 31, 35, 39,§8387; C46, 50, 54, 58, 62,§491.51; C66, 71, 73, 75,§554.8316]

554.8317 Attachment or levy upon security.

1. No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

2. A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunc-

tion or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. [C51, §§1859, 1860; R60,§3194; C73,§2967; C97,§3894; C24, 27, 31, 35, 39,§12098; C46,§639.22; C50, 54, 58, 62,§§493A.13, 493A.14, 639.22; C66, 71, 73, 75, §554.8317]

554.8318 No conversion by good faith delivery. An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them. [C66, 71, 73, 75, §554.8318]

554.8319 Statute of frauds. A contract for the sale of securities is not enforceable by way of action or defense unless

a. there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

b. delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

c. within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph "*a*" has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or

d. the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price. [C24, 27, 31, 35, 39,§9933; C46, 50, 54, 58, 62,§554.4; C66, 71, 73, 75,§554.8319]

Referred to in §554.1206

554.8320 Transfer or pledge within a central depository system.

1. If a security

a. is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

b. is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

c. is shown on the account of a transferor or pledgor on the books of the clearing corporation;

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

2. Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

3. A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly endorsed in blank (section 554.8301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (sections 554.9304 and 554.9305). A transferee or pledgee under this section is a holder.

4. A transfer or pledge under this section does not constitute a registration of transfer under Part 4 of this Article.

5. That entries made on the books of the clearing corporation as provided in subsection 1 are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby. [C66, 71, 73, 75,§554.8320]

Referred to in §554.8313(1,*e*)

PART 4
REGISTRATION

Referred to in §§554.8201(3), 554.8320(4)

554.8401 Duty of issuer to register transfer.

1. Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if

a. the security is endorsed by the appropriate person or persons (section 554.8308); and

b. reasonable assurance is given that those endorsements are genuine and effective (section 554.8402); and

c. the issuer has no duty to inquire into adverse claims or has discharged any such duty (section 554.8403); and

d. any applicable law relating to the collection of taxes has been complied with; and

e. the transfer is in fact rightful or is to a bona fide purchaser.

2. Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer. [C66, 71, 73, 75,§554.8401]

554.8402 Assurance that endorsements are effective.

1. The issuer may require the following assurance that each necessary endorsement (section 554.8308) is genuine and effective

a. in all cases, a guarantee of the signature (subsection 1 of section 554.8312) of the person endorsing; and

b. where the endorsement is by an agent, appropriate assurance of authority to sign;

c. where the endorsement is by a fiduciary, appropriate evidence of appointment or incumbency;

d. where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;

e. where the endorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

2. A "guarantee of the signature" in subsection 1 means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

3. "Appropriate evidence of appointment or incumbency" in subsection 1 means

a. in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

b. in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph "*b*" except to the extent that the contents relate directly to the appointment or incumbency.

4. The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subsection 3 "*b*" both requires and obtains a copy of a will, trust, indenture, articles of copartnership, bylaws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer. [C66, 71, 73, 75, §554.8402]

Referred to in §§554.8102(5), 554.8401, 554.8403[(1,*b*), (3)]

554.8403 Limited duty of inquiry.

1. An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if

a. a written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

b. the issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection 4 of section 554.8402.

2. The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either

a. an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

b. an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

3. Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection 4 of section 554.8402 or receives notification of an adverse claim under subsection 1 of this section, where a security presented for registration is endorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular

a. an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

b. an issuer registering transfer on an endorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

c. the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the endorsement of a fiduciary to the fiduciary himself or to his nominee. [C66, 71, 73, 75, §554.8403]

Referred to in §§554.8401, 554.8404

554.8404 Liability and nonliability for registration.

1. Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if

a. there were on or with the security the necessary endorsements (section 554.8308); and

b. the issuer had no duty to inquire into adverse claims or has discharged any such duty (section 554.8403).

2. Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless

a. the registration was pursuant to subsection 1; or

b. the owner is precluded from asserting any claim for registering the transfer under subsection 1 of the following section; or

c. such delivery would result in overissue, in which case the issuer's liability is governed by section 554.8104. [C66, 71, 73, 75,§554.8404]

Referred to in §554.8311

554.8405 Lost, destroyed and stolen securities.

1. Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under the preceding section or any claim to a new security under this section.

2. Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner

a. so requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and

b. files with the issuer a sufficient indemnity bond; and

c. satisfies any other reasonable requirements imposed by the issuer.

3. If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by section 554.8104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser. [S13,§§3060-a199,-a200; C24, 27, 31, 35, 39,§§**9659, 9660**; C46,§§541.199, 541.200; C50, 54, 58, 62,§§493A.17, 541.199; C66, 71, 73, 75,§554.8405]

554.8406 Duty of authenticating trustee, transfer agent or registrar.

1. Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities

a. he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

b. he has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

2. Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent. [C66, 71, 73, 75, §554.8406]

ARTICLE 9
SECURED TRANSACTIONS—SALES OF ACCOUNTS AND CHATTEL PAPER

Referred to in §§321.45(2,*b*), 321.47, 321.50(5), 554.1201 (37), 554.2326(3,*c*), 554.2401(1), 554.2402(3,*a*), 554.2403(4), 554.3103, 554.4208(3), 554.5116, 554.7209(2)
Title change by 65GA, ch 1249,§28

PART 1
SHORT TITLE, APPLICABILITY AND DEFINITIONS

554.9101 Short title. This Article shall be known and may be cited as Uniform Commercial Code — Secured Transactions. [C66, 71, 73, 75,§554.9101]

Referred to in §220.26

554.9102 Policy and subject matter of Article.

1. Except as otherwise provided in section 554.9104 on excluded transactions, this Article applies

a. to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts; and also

b. to any sale of accounts or chattel paper.

2. This Article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in section 554.9310.

3. The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply. [C73,§§1922, 3307; C97,§§2053, 2905, 4273, 4285; C24, 27, 31, 35, 39, §§**10016, 10032, 10039, 12352, 12364**; C46, 50, 54, 58, 62,§§556.4, 556.21, 556.28, 652.1, 653.1; C66, 71, 73, 75,§554.9102]

Referred to in §220.26

554.9103 Perfection of security interests in multiple state transactions.

1. *Documents, instruments and ordinary goods.*

a. This subsection applies to documents and instruments and to goods other than those cov-

ered by a certificate of title described in subsection 2, mobile goods described in subsection 3, and minerals described in subsection 5.

b. Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

c. If the parties to a transaction creating a security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

d. When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Article to perfect the security interest,

i. if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

ii. if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

iii. for the purpose of priority over a buyer of consumer goods, section 554.9307, subsection 2, the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

2. *Certificate of title.*

a. This subsection applies to goods covered by one or more certificates of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

b. Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

c. Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in subsection 1, paragraph "*d.*"

d. If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

3. *Accounts, general intangibles and mobile goods.*

a. This subsection applies to accounts (other than an account described in subsection 5 on minerals) and general intangibles and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection 2.

b. The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

c. If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" in-

cludes its territories and possessions and the Commonwealth of Puerto Rico.

d. A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

e. A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

4. *Chattel paper.* The rules stated for goods in subsection 1 apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection 3 apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

5. *Minerals.* Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located. [C66, 71, 73, 75,§554.9103; 66GA, ch 1107,§4]

Referred to in §§220.26, 321.50(1), 554.1105, 554.9105, 554.9302, 554.9312, 554.9401, 554.9402, 554.9403, 554.9405, 554.11105

554.9104 Transactions excluded from Article. This Article does not apply

a. to a security interest subject to any statute of the United States to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

b. to a landlord's lien; or

c. to a lien given by statute or other rule of law for services or materials except as provided in section 554.9310 on priority of such liens; or

d. to a transfer of a claim for wages, salary or other compensation of an employee; or

e. to a transfer by a government or governmental subdivision or agency; or

f. to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a pre-existing indebtedness; or

g. to a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (section 554.9306) and priorities in proceeds (section 554.9312); or

h. to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

i. to any right of setoff; or

j. except to the extent that provision is made for fixtures in section 554.9313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

k. to a transfer in whole or in part of any claim arising out of tort; or

l. to a transfer of an interest in any deposit account (section 554.9105, subsection 1), except as provided with respect to proceeds (section 554.9306) and priorities in proceeds (section 554.9312). [C51,§1193; R60,§2201; C73,§1923; C97,§2906; C24, 27, 31, 35, 39,§**10013**; C46, 50, 54, 58, 62,§556.1; C66, 71, 73, 75,§554.9104]

Referred to in §§220.26, 554.9102(1)

554.9105 Definitions and index of definitions.

1. In this Article unless the context otherwise requires:

a. "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

b. "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

c. "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

d. "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

e. "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association,

credit union or like organization, other than an account evidenced by a certificate of deposit;

f. "Document" means document of title as defined in the general definitions of Article 1 (section 554.1201), and a receipt of the kind described in section 554.7201, subsection 2;

g. "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

h. "Goods" include all things which are movable at the time the security interest attaches or which are fixtures (section 554.9313), but do not include money, documents, instruments, accounts, chattel paper, general intangibles or minerals or the like (including oil and gas) before extraction. "Goods" also include standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;

i. "Instrument" means a negotiable instrument (defined in section 554.3104), or a security (defined in section 554.8102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment;

j. "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

k. An advance is made *"pursuant to commitment"* if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

l. "Security agreement" means an agreement which creates or provides for a security interest;

m. "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

n. "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

2. Other definitions applying to this Article and the sections in which they appear are:

"Account".	Section 554.9106.
"Attach".	Section 554.9203.
"Construction mortgage".	Section 554.9313(1).
"Consumer goods".	Section 554.9109(1).
"Equipment".	Section 554.9109(2).
"Farm products".	Section 554.9109(3).
"Fixture".	Section 554.9313.
"Fixture filing".	Section 554.9313.
"General intangibles".	Section 554.9106.
"Inventory".	Section 554.9109(4).
"Lien creditor".	Section 554.9301(3).
"Proceeds".	Section 554.9306(1).
"Purchase money security interest".	Section 554.9107.
"United States".	Section 554.9103.

3. The following definitions in other Articles apply to this Article:

"Check".	Section 554.3104.
"Contract for sale".	Section 554.2106.
"Holder in due course".	Section 554.3302.
"Note".	Section 554.3104.
"Sale".	Section 554.2106.

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [C58, 62,§539.12; C66, 71, 73,§§554.9105, 555.1; C75,§554.9105]

Referred to in §§220.26, 554.9104, 554.9204, 555.1

554.9106 Definitions: "Account" — "general intangibles." *"Account"* means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts. [C58, 62,§539.12; C66, 71, 73, 75, §554.9106]

Referred to in §§220.26, 554.9105(2)

554.9107 Definitions: "Purchase money security interest". A security interest is a "purchase money security interest" to the extent that it is

a. taken or retained by the seller of the collateral to secure all or part of its price; or

b. taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used. [C66, 71, 73, 75,§554.9107]

Referred to in §§220.26, 554.9105(2)

554.9108 When after-acquired collateral not security for antecedent debt. Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a

reasonable time after new value is given. [C66, 71, 73, 75,§554.9108]

Referred to in §220.26

554.9109 Classification of goods—"consumer goods"—"equipment"—"farm products"—"inventory". Goods are

1. *"consumer goods"* if they are used or bought for use primarily for personal, family or household purposes;

2. *"equipment"* if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

3. *"farm products"* if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

4. *"inventory"* if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment. [C97, §2051; S13,§2051; C24, 27, 31, 35, 39,§10033; C46, 50, 54, 58, 62,§556.22; C66, 71, 73, 75,§554.9109]

Referred to in §§220.26, 554.2103(3), 554.6102, 554.9105(2)

554.9110 Sufficiency of description. For the purposes of this Article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described. [C66, 71, 73, 75, §554.9110]

Referred to in §220.26

554.9111 Applicability of bulk transfer laws. The creation of a security interest is not a bulk transfer under Article 6 (see section 554.6103). [C66, 71, 73, 75,§554.9111]

Referred to in §220.26

554.9112 Where collateral is not owned by debtor. Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under section 554.9502, subsection 2, or under section 554.9504, subsection 1, and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

a. to receive statements under section 554.9208;

b. to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under section 554.9505;

c. to redeem the collateral under section 554.9506;

d. to obtain injunctive or other relief under section 554.9507, subsection 1; and

e. to recover losses caused to him under section 554.9208, subsection 2. [C66, 71, 73, 75, §554.9112]

Referred to in §220.26

554.9113 Security interests arising under Article on sales. A security interest arising solely under the Article on Sales (Article 2) is subject to the provisions of this Article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

a. no security agreement is necessary to make the security interest enforceable; and

b. no filing is required to perfect the security interest; and

c. the rights of the secured party on default by the debtor are governed by the Article on Sales (Article 2). [C66, 71, 73, 75, §554.9113]

Referred to in §§220.26, 554.9203(1), 554.9302(1.*f*)

554.9114 Consignment.

1. A person who delivers goods under a consignment which is not a security interest and who would be required to file under this Article by section 554.2326, subsection 3, paragraph *"c"*, has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if

a. the consignor complies with the filing provision of the Article on Sales with respect to consignments (section 554.2326), subsection 3, paragraph *"c"* before the consignee receives possession of the goods; and

b. the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and

c. the holder of the security interest receives the notification within five years before the consignee receives possession of the goods; and

d. the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

2. In the case of a consignment which is not a security interest and in which the requirements of the preceding subsection have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor. [C75,§554.9114]

Referred to in §§220.26, 554.9312

PART 2
VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

554.9201 General validity of security agreement. Except as otherwise provided by this

chapter a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this Article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto. [C66, 71, 73, 75,§554.9201]

Referred to in §220.26

554.9202 Title to collateral immaterial. Each provision of this Article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor. [C66, 71, 73, 75, §554.9202]

Referred to in §220.26

554.9203 Attachment and enforceability of security interest—proceeds, formal requisites.

1. Subject to the provisions of section 554.4208 on the security interest of a collecting bank and section 554.9113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless

a. the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and

b. value has been given; and

c. the debtor has rights in the collateral.

2. A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection 1 have taken place unless explicit agreement postpones the time of attaching.

3. Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by section 554.9306.

4. A transaction, although subject to this Article, is also subject to chapters 322, 534, 535, 536, 536A and section 524.906, and the Iowa consumer credit code, where applicable, and in the case of conflict between the provisions of this Article and those statutes, the provisions of those statutes control. Failure to comply with any applicable statute has only the effect which is specified therein. [C66, 71, 73, §§554.9203, 554.9204(1, 2); C75,§554.9203]

Referred to in §§220.26, 554.1206, 554.4208 (3,*a*), 554.9105

554.9204 After-acquired property — future advances.

1. Except as provided in subsection 2, a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral, including after-acquired collateral which also constitutes identifiable noncash proceeds.

2. No security interest attaches under an after-acquired property clause to consumer goods other than accessions (section 554.9314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

3. Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (section 554.9105, subsection 1). [C58, 62,§539.9; C66, 71, 73, 75,§554.9204; 66GA, ch 1107,§5]

Referred to in §220.26

554.9205 Use or disposition of collateral without accounting permissible. A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee. [C66, 71, 73, 75,§554.9205]

Referred to in §220.26

554.9206 Agreement not to assert defenses against assignee — modification of sales warranties where security agreement exists.

1. Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article on Commercial Paper (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

2. When a seller retains a purchase money security interest in goods the Article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties. [C66, 71, 73, 75,§554.9206]

Referred to in §§220.26, 554.9318(1)

554.9207 Rights and duties when collateral is in secured party's possession.

1. A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

2. Unless otherwise agreed, when collateral is in the secured party's possession

a. reasonable expenses (including the cost of any insurance and payment of taxes or

other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

b. the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

c. the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

d. the secured party must keep the collateral identifiable but fungible collateral may be commingled;

e. the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

3. A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

4. A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement. [C51,§2071; R60,§3649; C73, §3307; C97,§4273; C24, 27, 31, 35, 39,§**12352**; C46, 50, 54, 58, 62,§652.1; C66, 71, 73, 75,§554.9207]

Referred to in §§220.26, 554.9501(1, 2)

554.9208 Request for statement of account or list of collateral.

1. A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

2. The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

3. A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding ten dollars for each additional statement furnished. [C58, 62,§539.11; C66, 71, 73, 75,§554.9208]

Referred to in §§220.26, 554.9112

PART 3

RIGHTS OF THIRD PARTIES—PERFECTED AND UNPERFECTED SECURITY INTERESTS—RULES OF PRIORITY

554.9301 Persons who take priority over unperfected security interests—right of "lien creditor".

1. Except as otherwise provided in subsection 2, an unperfected security interest is subordinate to the rights of

a. persons entitled to priority under section 554.9312;

b. a person who becomes a lien creditor before the security interest is perfected;

c. in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

d. in the case of accounts, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

2. If the secured party files with respect to a purchase money security interest before or within ten days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

3. A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

4. A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within forty-five days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien. [C58, 62, §§539.7, 539.9; C66, 71, 73, 75,§554.9301]

Referred to in §§220.26, 554.9105(2)

554.9302 When filing is required to perfect security interest—security interests to which filing provisions of this Article do not apply.

1. A financing statement must be filed to perfect all security interests except the following:

a. a security interest in collateral in possession of the secured party under section 554.9305;

b. a security interest temporarily perfected in instruments or documents without delivery under section 554.9304 or in proceeds for a ten-day period under section 554.9306;

c. a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

d. a purchase money security interest in consumer goods; but filing is required for a vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 554.9313;

e. an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

f. a security interest of a collecting bank (section 554.4208) or arising under the Article on Sales (see section 554.9113) or covered in subsection 3 of this section;

g. an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

2. If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

3. The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to

a. a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Article for filing of the security interest; or

b. the following statutes of this state; sections 321.18, 321.20 and 321.50; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by him as debtor; or

c. a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (section 554.9103, subsection 2).

4. Compliance with a statute or treaty described in subsection 3 is equivalent to the filing of a financing statement under this Article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in section 554.9103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Article. [C58, 62,§§539.7–539.9, 539.13; C66, 71, 73, 75,§554.9302; 66GA, ch 1107, §6]

Referred to in §§220.26, 554.9303, 554.9313, 554.9401, 554.11105

554.9303 When security interest is perfected —continuity of perfection.

1. A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in sections 554.9302, 554.9304, 554.9305 and 554.9306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

2. If a security interest is originally perfected in any way permitted under this Article and is subsequently perfected in some other way under this Article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Article. [C24, 27, 31, 35, 39,§10023; C46, 50, 54, §556.12; C58, 62,§§539.8, 556.12; C66, 71, 73, 75, §554.9303]

Referred to in §220.26

554.9304 Perfection of security interest in instruments, documents, and goods covered by documents—perfection by permissive filing —temporary perfection without filing or transfer of possession.

1. A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections 4 and 5 of this section and section 554.9306, subsections 2 and 3, on proceeds.

2. During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

3. A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

4. A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to

the extent that it arises for new value given under a written security agreement.

5. A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

a. makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to section 554.9312, subsection 3; or

b. delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

6. After the twenty-one day period in subsections 4 and 5 perfection depends upon compliance with applicable provisions of this Article. [C24, 27, 31, 35, 39,§**10023**; C46, 50, 54, 58, 62, §556.12; C66, 71, 73, 75,§554.9304]

Referred to in §§220.26, 554.8320(3), 554.9302(1,*b*), 554.9303, 554.9308, 554.9312(3,*b*)

554.9305 When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (subsection 2 *"a"* of section 554.5116), goods, instruments, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party. [C24, 27, 31, 35, 39, §§**9968, 10023**; C46, 50, 54, 58, 62,§§554.40, 556.12; C66, 71, 73, 75,§554.9305]

Referred to in §§220.26, 554.8320(3), 554.9302(1,*a*), 554.9303

554.9306 "Proceeds"—secured party's rights on disposition of collateral.

1. "Proceeds" include whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts and the like are "cash proceeds". All other proceeds are "noncash proceeds".

Referred to in §554.9105(2)

2. Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

3. The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

a. a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

b. a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

c. the security interest in the proceeds is perfected before the expiration of the ten-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this Article for original collateral of the same type.

4. In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

a. in identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

b. in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

c. in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

d. in all cash and deposit accounts of the debtor, in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph *"d"* is

i. subject to any right of setoff; and

ii. limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled

under paragraphs "*a*" through "*c*" of this subsection 4.

5. If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

a. If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

b. An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph "*a*" to the extent that the transferee of the chattel paper was entitled to priority under section 554.9308.

c. An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph "*a*".

d. A security interest of an unpaid transferee asserted under paragraph "*b*" or "*c*" must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods. [C66, 71, 73, 75,§554.9306]

Referred to in §§220.26, 554.9104, 554.9105(2), 554.9203, 554.9302 (1,*b*), 554.9303, 554.9304, 554.9308, 554.9402(2,*b*), 554.9502(1)

554.9307 Protection of buyers of goods.

1. A buyer in ordinary course of business (subsection 9 of section 554.1201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

2. In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

3. A buyer other than a buyer in ordinary course of business (subsection 1 of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than forty-five days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the forty-five-day period. [C66, 71, 73, 75,§554.9307]

Referred to in §§220.26, 554.7503, 554.9103

554.9308 Purchase of chattel paper and instruments. A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument

a. which is perfected under section 554.9304 (permissive filing and temporary perfection) or under section 554.9306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

b. which is claimed merely as proceeds of inventory subject to a security interest (section 554.9306) even though he knows that the specific paper or instrument is subject to the security interest. [C66, 71, 73, 75,§554.9308]

Referred to in §§220.26, 554.9306(5,*b*)

554.9309 Protection of purchasers of instruments and documents. Nothing in this Article limits the rights of a holder in due course of a negotiable instrument (section 554.3302) or a holder to whom a negotiable document of title has been duly negotiated (section 554.7501) or a bona fide purchaser of a security (section 554.8301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers. [C66, 71, 73, 75,§554.9309]

Referred to in §220.26

554.9310 Priority of certain liens arising by operation of law. When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise. [C66, 71, 73, 75, §554.9310]

Referred to in §§220.26, 554.9102(2), 554.9104

554.9311 Alienability of debtor's rights: judicial process. The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default. [C24, 27, 31, 35, 39,§9968; C46, 50, 54, 58, 62,§554.40; C66, 71, 73, 75,§554.9311]

Referred to in §220.26

554.9312 Priorities among conflicting security interests in the same collateral.

1. The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: section 554.4208 with respect to the security interests of collecting banks in items being collected, accom-

panying documents and proceeds; section 554.9103 on security interests related to other jurisdictions; section 554.9114 on consignments.

2. A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

3. A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

a. the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

b. the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (1) before the date of the filing made by the purchase money secured party, or (2) before the beginning of the twenty-one-day period where the purchase money security interest is temporarily perfected without filing or possession (section 554.9304, subsection 5); and

c. the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

d. the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

4. A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

5. In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections 3 and 4 of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

a. Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

b. So long as conflicting security interests are unperfected, the first to attach has priority.

6. For the purposes of subsection 5 a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

7. If future advances are made while a security interest is perfected by filing or the taking of possession, the security interest has the same priority for the purposes of subsection 5 with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made. [C58, 62, §539.9; C66, 71, 73, 75,§554.9312]

Referred to in §§220.26, 554.9104, 554.9301(1,*a*), 554.9304

554.9313 Priority of security interests in fixtures.

1. In this section and in the provisions of Part 4 of this Article referring to fixture filing, unless the context otherwise requires

a. goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law

b. a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of section 554.9402, subsection 5.

c. a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

2. A security interest under this Article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this Article in ordinary building materials incorporated into an improvement on land.

3. This Article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

4. A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where

a. the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

b. the security interest is perfected by a fixture filing before the interest of the en-

cumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

c. the fixtures are readily removable equipment or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this Article including section 554.9302, subsection 1, paragraph *"d"*; or

d. the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article including section 554.9302, subsection 1, paragraph *"d"*.

5. A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where

a. the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

b. the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

6. Notwithstanding paragraph *"a"* of subsection 4 but otherwise subject to subsections 4 and 5, a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

7. In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

8. When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. [C24, 27, 31, 35, 39,§**10032**; C46, 50, 54, 58, 62, §556.21; C66, 71, 73, 75,§554.9313; 66GA, ch 1107, §7]

Referred to in §§220.26, 554.9104, 554.9105(1,2), 554.9302, 554.9401, 554.9402

554.9314 Accessions.

1. A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection 3 and subject to section 554.9315, subsection 1.

2. A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection 3 but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

3. The security interests described in subsections 1 and 2 do not take priority over

a. a subsequent purchaser for value of any interest in the whole; or

b. a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

c. a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances;

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

4. When under subsections 1 or 2 and 3 a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. [C66, 71, 73, 75,§554.9314]

Referred to in §§220.26, 554.9204, 554.9315

554.9315 Priority when goods are commingled or processed.

1. If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

a. The goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

b. a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph "*b*" applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under section 554.9314.

2. When under subsection 1 more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. [C66, 71, 73, 75, §554.9315]

Referred to in §§220.26, 554.9314(1)

554.9316 Priority subject to subordination. Nothing in this Article prevents subordination by agreement by any person entitled to priority. [C66, 71, 73, 75,§554.9316]

Referred to in §220.26

554.9317 Secured party not obligated on contract of debtor. The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions. [C66, 71, 73, 75,§554.9317]

Referred to in §220.26

554.9318 Defenses against assignee—modification of contract after notification of assignment—term prohibiting assignment ineffective—identification and proof of assignment.

1. Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in section 554.9206 the rights of an assignee are subject to

a. all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

b. any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

2. So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

3. The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

4. A term in any contract between an account debtor and an assignor is effective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest. [C24, 27, 31, 35, 39,§10024: C46, 50, 54, 58, 62,§556.13; C66, 71, 73, 75,§554.9318]

Referred to in §§220.26, 539.1–539.3

PART 4
FILING

Referred to in §§554.9302, 554.9313

554.9401 Place of filing—erroneous filing—removal of collateral.

1. The proper place to file in order to perfect a security interest is as follows:

a. when the collateral is timber to be cut or is minerals or the like (including oil and gas), or accounts subject to section 554.9103, subsection 5, or when the financing statement is filed as a fixture filing (section 554.9313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

b. when the collateral is consumer goods and, when the debtor resides in this state, then in the office of the recorder in the county of the debtor's residence;

c. in all other cases, in the office of the secretary of state.

2. A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

3. A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

4. The rules stated in section 554.9103 determine whether filing is necessary in this state.

5. Notwithstanding the preceding subsections, and subject to section 554.9302, subsection 3, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. This filing constitutes a fixture filing (section 554.9313) as to the collateral described therein which is or is to become fixtures. [C51,§1193; R60,§2201; C73,§1923; C97,§§2052, 2906; S13,§2052; C24, 27, 31, 35, 39,§§10015, 10021.1, 10036; C46, 50, 54,

58, 62,§§556.3, 556.10, 556.25; C66, 71, 73, §§554.9401, 555.2; C75,§554.9401; 66GA, ch 1107, §8]

Referred to in §§220.26, 554.9403, 555.1

554.9402 Formal requisites of financing statement — amendments mortgage as financing statement.

1. A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to section 554.9103, subsection 5, or when the financing statement is filed as a fixture filing (section 554.9313) and the collateral is goods which are or are to be become fixtures, the statement must also comply with subsection 5. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.

2. A financing statement which otherwise complies with subsection 1 is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

a. collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or

b. proceeds under section 554.9306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

c. collateral as to which the filing has lapsed; or

d. collateral acquired after a change of name, identity or corporate structure of the debtor (subsection 7).

3. A form substantially as follows is sufficient to comply with subsection 1:

Name of debtor (or assignor) .....
Address .....
Name of secured party (or assignee) .....
Address .....

(1) This financing statement covers the following types (or items) of property:
(Describe) .....

(2) (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate) .....

(3) (If applicable) The above goods are to become fixtures on

Where appropriate either add or substitute "The above timber is standing on . . ." or "The above minerals or the like (including oil and gas) are located on . . ." or "The above accounts will be financed at the wellhead or minehead of the well or mine located on . . ." or any or all of these

(Describe Real Estate) ..... and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is .....

(4) (If products of collateral are claimed) Products of the collateral are also covered.

(use whichever is applicable).....
Signature of Debtor (or Assignor) .....
Signature of Secured Party (or Assignee)...

4. A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this Article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

5. A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to section 554.9103, subsection 5, or a financing statement filed as a fixture filing (section 554.9313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

6. A mortgage is effective as a financing statement filed as a fixture filing or a filing covering timber to be cut, or minerals or the like (including oil and gas), or accounts subject to section 554.9103, subsection 5, or any or all of these, from the date of its recording if (*a*) the goods are described in the mortgage by item or type, (*b*) the goods are or are to become fixtures or timber to be cut, or minerals or the like (including oil and gas),

or accounts subject to section 554.9103, subsection 5, or any or all of these, which are related to the real estate described in the mortgage, (*c*) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and (*d*) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

7. A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of the transfer.

8. A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. [C51,§1193; R60,§2201; C73,§1923; C97,§2906; C24, 27, 31, 35, 39,§**10015**; C46, 50, 54, 58, 62,§556.3; C66, 71, 73, 75,§554.9402; 66GA, ch 1107,§9]

Referred to in §§220.26, 554.9313, 554.9403, 554.9405, 554.9408, 554.11105, 554.11108

554.9403 What constitutes filing—duration of filing—effect of lapsed filing—duties of filing officer.

1. Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article.

2. Except as provided in subsection 6, a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

3. A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection 2. Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with section 554.9405, subsection 2, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection 2 unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection 6 shall be retained.

4. Except as provided in subsection 7, a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

Referred to in §§335.20, 554.9405

5. The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing shall be as follows:

a. Three dollars for an original financing statement if the statement is in the standard form prescribed by the secretary of state, and otherwise four dollars.

b. Two dollars for a continuation statement if the statement is in the standard form prescribed by the secretary of state, and otherwise three dollars.

6. If the debtor is a transmitting utility (section 554.9401, subsection 5), and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under section 554.9402, subsection 6, remains

effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

7. When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to section 554.9103, subsection 5, or is filed as a fixture filing, it shall be filed for record and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described. [C51,§§1193–1195; R60,§§2201–2203; C73,§§1923–1925; C97,§§2906–2908; C24, 27, 31, 35, 39,§§**10015, 10017, 10018, 10020, 10021, 10021.1, 10031**; C46, 50, 54,§§556.3, 556.5, 556.6, 556.8–556.10, 556.20; C58, 62,§§539.14, 556.3, 556.5, 556.6, 556.8–556.10, 556.20; C66, 71, 73, 75,§554.9403]

Referred to in §§220.26, 335.20, 554.9405, 554.11105

554.9404 Termination statement.

1. If a financing statement covering consumer goods is filed on or after January 1, 1975, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with section 554.9405, subsection 2, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

2. On presentation to the filing officer of such a termination statement he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one year after receipt of the termination statement.

3. There shall be no fee for filing a termination statement. [C58, 62,§539.10; C66, 71, 73, 75,§554.9404]

Referred to in §220.26

554.9405 Assignment of security interest—duties of filing officer—fees.

1. A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 554.9403, subsection 4. The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment on a form conforming to standards prescribed by the secretary of state shall be three dollars, or if such statement otherwise conforms to the requirements of this section, four dollars.

2. A secured party may assign of record all or a part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to section 554.9103, subsection 5, he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing

and furnishing filing data about such a separate statement of assignment on a form conforming to standards prescribed by the secretary of state shall be two dollars, or if such statement otherwise conforms to the requirements of this section, three dollars. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (section 554.9402, subsection 6), may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this chapter.

3. After the disclosure or filing of an assignment under this section, the assignee is the secured party of record. [C51,§1196; R60,§2204; C73,§1926; C97,§2910; C24, 27, 31, 35, 39,§§**10019, 10024, 10031**; C46, 50, 54, 58, 62,§§556.7, 556.13, 556.20; C66, 71, 73, 75,§554.9405]

Referred to in §§220.26, 554.9403, 554.9404, 554.9406

554.9406 Release of collateral—duties of filing officer—fees. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with section 554.9405, subsection 2, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release on a form conforming to standards prescribed by the secretary of state shall be two dollars, or if such statement otherwise conforms to the requirements of this section, three dollars. [C97,§2052; S13,§2052; C24, 27, 31, 35, 39,§§**10028, 10037**; C46, 50, 54, 58, 62,§§556.17, 556.26; C66, 71, 73, 75,§554.9406]

Referred to in §220.26

554.9407 Information from filing officer.

1. If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

2. Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any financing statement changes and if there is, giving the date and hour of filing of each such filing and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be two dollars if the request for the certificate is on a form conforming to standards prescribed by the secretary of state; otherwise, three dollars. Upon request and the payment of the appropriate fee the filing officer shall furnish a certified copy of any filed financing statement or financing statement changes for a uniform fee of one dollar per page.

3. Charging no more than a reasonable estimate of cost, in his discretion the secretary of state or a county recorder may adopt one or more of the following methods of providing information concerning public filings in his office to persons with an interest in this information that is related exclusively to the purposes of this Article:

a. subscription telephone service;

b. subscription daily, weekly or monthly written summaries;

c. granting suitable space for the preparation of written summaries and the provision of telephone service by those persons deemed by the secretary of state or a county recorder to have a legitimate interest in regular examination of the secretary of state's or the county recorder's public files; or

d. any other appropriate method of disseminating information.

Except with respect to willful misconduct, the state of Iowa, the secretary of state, a county, a county recorder and their employees and agents are immune from liability as a result of errors or omissions in information supplied pursuant to this subsection. [C66, 71, 73, 75,§554.9407; 66GA, ch 1107,§10]

Referred to in §220.26

554.9408 Financing statements covering consigned or leased goods. A consignor or lessor of goods may file a financing statement using the terms "consignor", "consignee", "lessor", "lessee" or the like instead of the terms specified in section 554.9402. The provisions of this Part shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (section 554.1201, subsection 37). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing. [C75, §544.9408]

Referred to in §220.26

PART 5
DEFAULT

Referred to in §§111.6, 321.47, 554.9313(8), 554.9314(4), 571.5

554.9501 Default—procedure when security agreement covers both real and personal property.

1. When a debtor is in default under a security agreement, a secured party has the

rights and remedies provided in this Part and except as limited by subsection 3 those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 554.9207. The rights and remedies referred to in this subsection are cumulative.

2. After default, the debtor has the rights and remedies provided in this Part, those provided in the security agreement and those provided in section 554.9207.

3. To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (section 554.9504, subsection 3 and section 554.9505) and with respect to redemption of collateral (section 554.9506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

a. subsection 2 of section 554.9502 and subsection 2 of section 554.9504 insofar as they require accounting for surplus proceeds of collateral;

b. subsection 3 of section 554.9504 and subsection 1 of section 554.9505 which deal with disposition of collateral;

c. subsection 2 of section 554.9505 which deals with acceptance of collateral as discharge of obligation;

d. section 554.9506 which deals with redemption of collateral; and

e. subsection 1 of section 554.9507 which deals with the secured party's liability for failure to comply with this Part.

4. If the security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this Part do not apply.

5. When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article. [C51,§2071; R60,§3649; C73,§3307; C97,§§4273, 4285; C24, 27, 31, 35, 39,§§**12352, 12364, 12365**; C46, 50, 54, 58, 62,§§652.1, 653.1, 653.2; C66, 71, 73, 75,§554.9501]

Referred to in §§220.26, 537.5103

554.9502 Collection rights of secured party.

1. When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under section 554.9306.

2. A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. [C51,§2072; R60, §3650; C73,§3308; C97,§4274; C24, 27, 31, 35, 39, §12353; C46, 50, 54, 58, 62,§652.2; C66, 71, 73, 75,§554.9502]

Referred to in §§220.26, 537.5103, 554.9112, 554.9501(3)

554.9503 Secured party's right to take possession after default. Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under section 554.9504. [C66, 71, 73, 75,§554.9503]

Referred to in §§220.26, 537.5103

554.9504 Secured party's right to dispose of collateral after default—effect of disposition.

1. A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the Article on Sales (Article 2). The proceeds of disposition shall be applied in the order following to

a. the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

b. the satisfaction of indebtedness secured by the security interest under which the disposition is made;

c. the satisfaction of indebtedness secured by any subordinate security interest or lien in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest or lien must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

Referred to in §554.9112

2. If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

Referred to in §554.9501(3)

3. Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

Referred to in §554.9501(3)

4. When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings

a. in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

b. in any other case, if the purchaser acts in good faith.

5. A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this Article. [C51, §§2071–2077; R60,§§3649–3655; C73,§§3307–3313; C97,§§4273–4280, 4285; C24, 27, 31, 35, 39,§§**12352–12359, 12369, 12370**; C46, 50, 54, 58, 62,§§652.1–652.8, 653.6, 653.7; C66, 71, 73, 75,§554.9504; 66GA, ch 1107,§11]

Referred to in §§220.26, 537.5103, 546.3, 554.9112, 554.9501(3), 554.9503, 554.9505, 554.9506

554.9505 Compulsory disposition of collateral—acceptance of the collateral as discharge of obligation.

1. If the debtor has paid sixty percent of the cash price in the case of a purchase money security interest in consumer goods or sixty percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this Part a secured party who has taken possession of collateral must dispose of it under section 554.9504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under section 554.9507, subsection 1, on secured party's liability.

2. In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights to notice and to object to retention of the collateral in full satisfaction of the obligation, under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be sent to any other secured party or lienor from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to be sent notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under section 554.9504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation. Retention of the collateral discharges the security interest of the secured party and discharges any security interest or lien subordinate to the security interest of the secured party. [C51,§§2071, 2072; R60, §§3649, 3650; C73,§§3307, 3308; C97,§§4273, 4274, 4285; C24, 27, 31, 35, 39,§§**12352, 12353, 12370**; C46, 50, 54, 58, 62,§§652.1, 652.2, 653.7; C66, 71, 73, 75,§554.9505; 66GA, ch 1107,§12]

Referred to in §§220.26, 537.5103, 554.9112, 554.9501(3), 554.9506

554.9506 Debtor's right to redeem collateral. At any time before the secured party has disposed of collateral or entered into a contract for its disposition under section 554.9504 or before the obligation has been discharged under section 554.9505, subsection 2, the debtor or any other secured party or lienor may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses. [C66, 71, 73, 75,§554.9506; 66GA, ch 1107,§13]

Referred to in §§220.26, 537.5103, 554.9112, 554.9501(3)

554.9507 Secured party's liability for failure to comply with this Part.

1. If it is established that the secured party is not proceeding in accordance with the provisions of this Part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten percent of the principal amount of the debt or the time price differential plus ten percent of the cash price.

2. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. [C66, 71, 73, 75,§554.9507]

Referred to in §§220.26, 537.5103, 554.9112, 554.9501(3), 554.9505

ARTICLE 10
EFFECTIVE DATE AND REPEALER

554.10101 Effective date. Except as otherwise provided in Article 11 of this chapter, this chapter shall take effect and be in force on and after July 4, 1966. It applies to transactions entered into and events occurring after that date.

Transactions validly entered into before the effective date specified in this section and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though such repeal or amendment had not occurred. [C24, 27, 31, 35, 39,§10006; C46, 50, 54, 58, 62,§554.78; C66, 71, 73, 75,§554.10101]

Referred to in §554.11102

554.10102 Reserved.

554.10103 General repealer. Except as provided in the following section, all acts and parts of acts inconsistent with this chapter are hereby repealed. [C66, 71, 73, 75,§554.10103]

Referred to in §554.11102

554.10104 Laws not repealed.

1. The Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (section 554.1201).

2. This chapter does not repeal sections 633.130 to 633.138 and if in any respect there is any inconsistency between those sections and the Article of this chapter on investment securities (Article 8) the provisions of the said sections shall control. [C66, 71, 73, 75,§554.10104]

Referred to in §554.11102

554.10105 Secretary of state exempted from personal liability. The secretary of state, his employees or agents, are hereby exempted from all personal liability as a result of errors or omissions in the performance of any duty required by the Uniform Commercial Code, chapter 554, except in cases of willful negligence.

In the event of such error or omission the state of Iowa shall be liable in respect to such claims in the same manner, and to the same extent as a private individual under like circumstances.

Immunity of the state from suit and liability in such case is waived to the extent provided in chapter 25A and said chapter shall govern the extent of liability and the practice and procedure necessary to establish any liability of the state. [C66, 71, 73, 75,§554.10105]

Referred to in §554.11102

ARTICLE 11
EFFECTIVE DATE OF 1974 AMENDMENTS

Referred to in §554.10101

554.11101 Effective date. Division 2 of this Act [65GA, chapter 1249], sections 9 to 72, the Iowa amendments to the Uniform Commercial Code pertaining primarily to security interests, and related amendments, shall become effective at 12:01 a.m. on January 1, 1975. [C75, §554.11101]

554.11102 Preservation of old transition provision. The provisions of Article 10 of this chapter, sections 554.10101 to 554.10105, shall continue to apply to this chapter as amended and for this purpose this chapter prior to amendment and this chapter as amended shall be considered one continuous statute. [C75, §554.11102]

554.11103 Transition to this chapter as amended—general rule. Transactions validly entered into after July 4, 1966, and before January 1, 1975, which were subject to the provisions of this chapter prior to amendment and which would be subject to this chapter as amended if they had been entered into on or after January 1, 1975, and the rights, duties and interests flowing from such transactions remain valid after January 1, 1975, and may be terminated, completed, consummated or enforced as required or permitted by this chapter as amended. Security interests arising out of such transactions which are perfected on January 1, 1975, shall remain perfected until they lapse or are terminated as provided in this chapter as amended, and may be continued as permitted by this chapter as amended, except as stated in section 554.11105. [C75,§554.11103]

554.11104 Transition provision on change of requirement of filing. A security interest for the perfection of which filing or the taking of possession was required under this chapter prior to amendment and which attached prior to January 1, 1975, but was not perfected shall be deemed perfected on January 1, 1975, if this chapter as amended permits perfection without filing or the taking of possession, or authorizes filing in the office or offices where a prior ineffective filing was made. [C75, §554.11104]

554.11105 Transition provision on change of place of filing.

1. Except as provided in subsection 5, a filed financing or continuation statement which has not lapsed or been terminated prior to January 1, 1975, shall remain effective for the period provided in this chapter prior to amendment, but not less than five years after the filing.

2. Except as provided in subsection 5, with respect to any collateral acquired by the debtor subsequent to January 1, 1975, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under this chapter as amended.

3. The effectiveness of any financing statement or continuation statement filed prior to January 1, 1975, may be continued by a continuation statement as permitted by this chapter as amended, except that if this chapter as amended requires a filing in an office where there was no previous financing statement, a new financing statement conforming to either section 554.9402 or subsection 8 shall be filed in that office.

4. If the record of a mortgage of real estate would have been effective as a fixture filing or a filing covering timber to be cut, or minerals or the like (including oil and gas), or accounts subject to subsection 5 and section 554.9103, or any or all of these, of goods described therein if this chapter as amended had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods under section 554.9402, subsection 6 on January 1, 1975, and the mortgage shall be deemed effective as a filing covering timber to be cut or minerals or the like (including oil and gas), or accounts subject to section 554.9103, subsection 5, or any or all of these, on July 1, 1976.

5. If collateral consists of equipment used in farming operations, or farm products, or accounts, contract rights, or general intangibles arising from or relating to the sale of farm products by a farmer, the place of effective filing is as follows:

a. Filings in the office of a county recorder which have not lapsed or been terminated prior to January 1, 1975, retain their effectiveness unless subsequently lapsed or terminated until January 1, 1980; however, on or after January 1, 1975, continuation statements are not to be filed in the office of a county recorder, and effectiveness can be continued only through the filing in the office of the secretary of state of a financing statement which complies with section 554.9402 or, if filed before January 1, 1980, with subsection 8; the effectiveness of such financing statements is to be continued through continuation statements which comply with section 554.9403, subsection 3; a prior county filing ordinarily may be continued in the office of the secretary of state only in the final six months of its effectiveness at the county level; however, if there were multiple filings in different counties with respect to the same secured transaction, the multiple filings may be consolidated into a single filing in the office of the secretary of state if any one of the multiple county filings is in the final six months of its effectiveness at the county level;

b. on or after January 1, 1975, initial financing statements must be filed in the office of the secretary of state; and must conform to section 554.9402; and

c. on or after January 1, 1980, all filings must be in the office of the secretary of state and

must conform to either section 554.9402 or subsection 8.

6. If collateral consists of fixtures, timber to be cut, minerals or the like (including oil and gas), or accounts subject to subsection 5 of section 554.9103, filings in the Uniform Commercial Code files of a county recorder which have not lapsed or been terminated prior to January 1, 1975, retain their effectiveness unless subsequently lapsed or terminated until January 1, 1980; however, on or after July 1, 1976, continuation statements in the form of financing statements which are to be recorded in the land records and cross-indexed in the Uniform Commercial Code files of the county recorder can be filed without regard to the remaining period of effectiveness of the prior filing; financing statements used to continue the effectiveness of prior county land-related filings must comply either with section 554.9402, or with subsection 8.

7. If a security interest is perfected or has priority on January 1, 1975, as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under this chapter as amended, the perfection and priority rights of the security interest continue until three years after January 1, 1975. The perfection will then lapse unless a financing statement which complies with either section 554.9402 or subsection 8 of this section has been filed or unless the security interest has been perfected otherwise than by filing. The effectiveness of such financing statements is to be continued through continuation statements which comply with section 554.9403, subsection 3.

8. Where indicated by this section, a financing statement which otherwise complies with section 554.9402 may be signed by either the secured party or the debtor provided that the financing statement is accompanied by a carbon, photocopy, or other suitable reproduction of an effective prior filing, and evidence of proper prior filing, and states that the prior filing is still effective. Insofar as subsection 7 authorizes perfection by filing of security interests which have been perfected without filing under section 554.9302, subsection 1, paragraph "*c*," prior to amendment, a financing statement which otherwise complies with section 554.9402 may be signed by either the secured party or the debtor provided that the financing statement identifies the security agreement and states that the security interest was perfected without filing under section 554.9302, subsection 1, paragraph "*c*," prior to amendment. [C75,§554.11105; 66GA, ch 1107, §§14, 15]

Referred to in §554.11103

554.11106 Reserved.

554.11107 Transition provisions as to priorities. Except as otherwise provided in this Article, this chapter prior to amendment shall apply to any questions of priority if the positions of the parties were fixed prior to January 1, 1975. In other cases questions of priority shall be determined by this chapter as amended. [C75,§554.11107]

554.11108 Presumption that rule of law continues unchanged. Unless a change in law has clearly been made, the provisions of this chapter as amended shall be deemed declaratory of the meaning of this chapter prior to amendment. The first sentence of section 554.9402, subsection 7, shall be deemed to be a change in law. [C75,§554.11108]

554.11109 Effect of official comments. To the extent that they are consistent with the Iowa statutory text, the 1972 Official Comments to the 1972 Official Text of the Uniform Commercial Code are evidence of legislative intent as to the meaning of this chapter as amended. However, prior drafts of the Official Text and Comments may not be used to ascertain legislative intent. [C75,§554.11109]

CHAPTER 555

SECURED TRANSACTIONS OF TRANSMITTING UTILITIES

Referred to in §554.1110

555.1 Definitions.
555.2 Security interest.
555.3 Recording mortgage or deed of trust upon real estate.
555.4 Repealed by 65GA, ch 1249,§72.

555.1 Definitions. As used in this chapter "*transmitting utility*" has the same meaning as defined in the Uniform Commercial Code, section 554.9105, subsection 1, paragraph "*n*". Security interests filed pursuant to this chapter prior to January 1, 1975, which have not been terminated, are deemed to be filed in accordance with section 554.9401, subsection 5. [C66, 71, 73, 75,§555.1]

555.2 Security interest. A security interest in rolling stock of a transmitting utility may be perfected either as provided in the Uniform Commercial Code, chapter 554, or as provided in the Interstate Commerce Act, 49 U.S.C., section 20 "c." [C66, 71, 73, 75,§555.2]

555.3 Recording mortgage or deed of trust upon real estate. Any mortgage or deed of

trust upon real estate executed by a transmitting utility may provide that property of the transmitting utility, whether owned at the time of the execution of the instrument or subsequently acquired, shall secure the obligations covered by the instrument. Recording the instrument in the office of the recorder of each county in which such property, or any part thereof, described in the instrument is situated shall give constructive notice to all persons of the lien of the mortgage or deed of trust from the time of recording or, in the case of subsequently acquired real estate, from the time of acquisition. [C66, 71, 73, 75, §555.3]

555.4 Repealed by 65GA, ch 1249,§72.

CHAPTER 556

DISPOSITION OF UNCLAIMED PROPERTY

Referred to in §§524.812(3), 533.22, 749A.9

556.1 Definitions and use of terms.
556.2 Property held by banking or financial organizations or by business associations.
556.3 Unclaimed funds held by life insurance corporations.
556.4 Deposits and refunds held by utilities.
556.5 Undistributed dividends and distributions of business associations.
556.6 Property of business associations and banking or financial organizations held in course of dissolution.
556.7 Property held by fiduciaries.
556.8 Property held by state courts and public officers and agencies.
556.9 Miscellaneous personal property held for another person.
556.10 Reciprocity for property presumed abandoned or escheated under the laws of another state.
556.11 Report of abandoned property.
556.12 Notice and publication of lists of abandoned property.
556.13 Payment or delivery of abandoned property.
556.14 Relief from liability by payment or delivery.
556.15 Income accruing after payment or delivery.
556.16 Periods of limitation not a bar.
556.17 Sale of abandoned property.
556.18 Deposit of funds.
556.19 Claim for abandoned property paid or delivered.
556.20 Determination of claims.
556.21 Judicial action upon determinations.
556.22 Election to take payment or delivery.
556.23 Examination of records.
556.24 Proceeding to compel delivery of abandoned property.
556.25 Penalties.
556.26 Rules.
556.27 Effect of laws of other states.
556.28 Uniformity of interpretation.
556.29 Short title.

ESCHEAT OF POSTAL SAVINGS SYSTEM ACCOUNTS

556.30 Declaration of escheat.
556.31 Obtaining information on accounts.
556.32 Proceeding to adjudicate escheat.
556.33 Notice.
556.34 Collection and deposit of funds.
556.35 Indemnification of the United States.
556.36 Short title.

556.1 Definitions and use of terms. As used in this chapter, unless the context otherwise requires:

1. *"Banking organization"* means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state.

2. *"Business association"* means any corporation other than a public corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

3. *"Financial organization"* means any savings and loan association, building and loan association, credit union, co-operative bank or investment company, engaged in business in this state.

4. *"Holder"* means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

5. *"Life insurance corporation"* means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

6. *"Owner"* means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or his legal representative.

7. *"Person"* means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

8. *"Utility"* means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas. [C71, 73, 75,§556.1]

556.2 Property held by banking or financial organizations or by business associations. The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

1. Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within ten years:

a. Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest.

b. Corresponded in writing with the banking organization concerning the deposit.

c. Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization. Such memorandum shall be dated and may have been prepared by the banking organization, in which case it shall be signed by an official of the bank, or it may have been prepared by the owner.

2. Any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within ten years:

a. Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends.

b. Corresponded in writing with the financial organization concerning the funds or deposit.

c. Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization. Such memorandum shall be dated and may have been prepared by the financial organization, in which case it shall be signed by an officer of the financial organization, or it may have been prepared by the owner.

3. Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and traveler's checks, that, with the exception of traveler's checks, has been outstanding for more than ten years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks, that has been outstanding for more than fifteen years from the date of its issuance, unless the owner has within ten years, or within fifteen years in the case of traveler's checks, corresponded in writing with the banking or financial organization or business association concerned, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association. Such memorandum shall be dated and may have been prepared by the banking or financial organization or business association, in which case it shall be signed by an officer of the banking or financial organization, or a member of the business association, or it may have been prepared by the owner.

4. Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than ten years from the date on which the lease or rental period expired. [C71, 73, 75, §556.2]

Referred to in §§524.812, 524.813, 556.10, 556.12(6), 556.13

556.3 Unclaimed funds held by life insurance corporations.

1. "Unclaimed funds," as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

2. "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than ten years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding ten years, (*a*) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (*b*) corresponded in writing with the life insurance corporation concern-

ing the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required. [C71, 73, 75,§556.3]

556.4 Deposits and refunds held by utilities. The following funds held or owing by any utility are presumed abandoned:

1. Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the termination of the services for which the deposit or advance payment was made.

2. Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the date it became payable in accordance with the final determination or order providing for the refund. [C71, 73, 75,§556.4]

556.5 Undistributed dividends and distributions of business associations. Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a co-operative, who has not claimed it, or corresponded in writing with the business association concerning it, within ten years after the date prescribed for payment or delivery, is presumed abandoned if:

1. It is held or owing by a business association organized under the laws of or created in this state; or

2. It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state. [C71, 73, 75,§556.5]

Referred to in §556.10

556.6 Property of business associations and banking or financial organizations held in course of dissolution. Except as provided in section 496A.101, all intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two years after the date for final distribution, is presumed abandoned. [C71, 73, 75,§556.6]

Referred to in §556.10

556.7 Property held by fiduciaries. All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within ten years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary which shall have been dated and may have been prepared by the fiduciary or by the owner:

1. If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

2. If it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

3. If it is held in this state by any other person. [C71, 73, 75,§556.7]

Referred to in §556.10

556.8 Property held by state courts and public officers and agencies. All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than ten years is presumed abandoned. [C71, 73, 75,§556.8]

556.9 Miscellaneous personal property held for another person. All intangible personal property, not otherwise covered by this chapter, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than ten years after it became payable or distributable is presumed abandoned. [C71, 73, 75, §556.9]

Referred to in §556.10

556.10 Reciprocity for property presumed abandoned or escheated under the laws of another state. If specific property which is subject to the provisions of sections 556.2, 556.5, 556.6, 556.7 and 556.9 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subjected to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this chapter if:

1. It may be claimed as abandoned or escheated under the laws of such other state; and

2. The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is

subject to the jurisdiction of this state. [C71, 73, 75,§556.10]

556.11 Report of abandoned property.

1. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the state treasurer with respect to the property as hereinafter provided.

2. The report shall be verified and shall include:

a. Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of three dollars or more presumed abandoned under this chapter.

b. In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records.

c. The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under three dollars each may be reported in aggregate.

d. The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property.

e. Other information which the state treasurer prescribes by rule as necessary for the administration of this chapter.

3. If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

4. The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The state treasurer may postpone the reporting date upon written request by any person required to file a report.

5. If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

6. Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

7. The initial report filed under this chapter shall include all items of property that would have been presumed abandoned if this chapter had been in effect during the ten-year period preceding its effective date. [C71, 73, 75, §556.11]

Referred to in §§556.12(1), (4), 556.13, 556.22

556.12 Notice and publication of lists of abandoned property.

1. Within one hundred twenty days from the final date for filing of the report required by section 556.11, the state treasurer shall cause notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

2. The published notice shall be entitled "Notice of Names of Persons Appearing to be Owner of Abandoned Property" and shall contain:

a. The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

b. A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state treasurer.

c. A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the state treasurer to whom all further claims must thereafter be directed.

3. The state treasurer is not required to publish in such notice any item of less than twenty-five dollars unless he deems such publication to be in the public interest.

4. Within one hundred twenty days from the receipt of the report required by section 556.11, the state treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under this chapter.

5. The mailed notice shall contain:

a. A statement that, according to a report filed with the state treasurer, property is being held to which the addressee appears entitled.

b. The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

c. A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published

notice, the property will be placed in the custody of the state treasurer to whom all further claims must be directed.

6. This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under section 556.2. [C71, 73, 75,§556.12]

Referred to in §556.13

556.13 Payment or delivery of abandoned property. Every person who has filed a report under section 556.11, within twenty days after the time specified in section 556.12 for claiming the property from the holder, or in the case of sums payable on traveler's checks or money orders presumed abandoned under section 556.2 within twenty days after the filing of the report, shall pay or deliver to the state treasurer all abandoned property specified in this report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 556.12, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the state treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment. [C71, 73, 75, §556.13]

556.14 Relief from liability by payment or delivery. Upon the payment or delivery of abandoned property to the state treasurer, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the state treasurer under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the state treasurer pursuant to this chapter, may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the state treasurer shall forthwith reimburse the holder for the payment. [C71, 73, 75,§556.14]

Referred to in §§524.1305(5), 524.1310

556.15 Income accruing after payment or delivery. When property is paid or delivered to the state treasurer under this chapter, the owner is not entitled to receive income or other increments accruing thereafter. [C71, 73, 75, §556.15]

Referred to in §§524.1305(5), 524.1310

556.16 Periods of limitation not a bar. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the state treasurer. [C71, 73, 75,§556.16]

Referred to in §§524.1305(5), 524.1310

556.17 Sale of abandoned property.

1. All abandoned property other than money delivered to the state treasurer under this chapter shall within one year after the delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The state treasurer may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

2. Any sale held under this section shall be preceded by a single publication of notice thereof at least three weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

3. The purchaser at any sale conducted by the state treasurer pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The state treasurer shall execute all documents necessary to complete the transfer of title. [C71, 73, 75,§556.17]

Referred to in §§524.1305(5), 524.1310, 556.18

556.18 Deposit of funds.

1. All funds received under this chapter, including the proceeds from the sale of abandoned property under section 556.17, shall forthwith be deposited by the state treasurer in the general funds of the state, except that the treasurer shall retain in a separate trust fund an amount not exceeding twenty-five thousand dollars from which he shall make prompt payment of claims duly allowed by him as hereinafter provided. Before making the deposit, he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

2. Before making any deposit to the credit of the general funds, the state treasurer may deduct:

a. Any costs in connection with sale of abandoned property.

b. Any costs of mailing and publication in connection with any abandoned property.

c. Reasonable service charges. [C71, 73, 75, §556.18]

Referred to in §§524.1305(5), 524.1310

556.19 Claim for abandoned property paid or delivered. Any person claiming an interest in any property delivered to the state under this chapter may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state treasurer. [C71, 73, 75, §556.19]

Referred to in §§524.1305(5), 524.1310

556.20 Determination of claims.

1. The state treasurer shall consider any claim filed under this chapter and may hold a hearing and receive evidence concerning it. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

2. If the claim is allowed, the state treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges. [C71, 73, 75,§556.20]

Referred to in §§524.1305(5), 524.1310

556.21 Judicial action upon determinations. Any person aggrieved by a decision of the state treasurer or as to whose claim the treasurer has failed to act within ninety days after the filing of the claim, may commence an action in the district court to establish his claim. The proceeding shall be brought within ninety days after the decision of the treasurer or within one hundred eighty days from the filing of the claim if the treasurer fails to act. The action shall be tried de novo without a jury. [C71, 73, 75,§556.21]

Referred to in §§524.1305(5), 524.1310

556.22 Election to take payment or delivery. The state treasurer, after receiving reports of property deemed abandoned pursuant to this chapter, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within one hundred twenty days after filing the report required under section 556.11, the state treasurer shall be deemed to have elected to receive the custody of the property. [C71, 73, 75,§556.22]

556.23 Examination of records. The auditor of state may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this chapter. [C71, 73, 75,§556.23]

556.24 Proceeding to compel delivery of abandoned property. If any person refuses to deliver property to the state treasurer as required under this chapter, the treasurer shall bring an action in a court of appropriate jurisdiction to enforce such delivery. [C71, 73, 75, §556.24]

556.25 Penalties.

1. Any person who willfully fails to render any report or perform other duties required under this chapter, shall be punished by a fine of twenty-five dollars for each day such report is withheld, but not more than five hundred dollars.

2. Any person who willfully refuses to pay or deliver abandoned property to the state treasurer as required under this chapter shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or imprisonment for not more than six months, or both, in the discretion of the court. [C71, 73, 75,§556.25]

556.26 Rules. The state treasurer is hereby authorized to make necessary rules to carry out the provisions of this chapter. [C71, 73, 75, §556.26]

556.27 Effect of laws of other states. This chapter shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to July 1, 1967. [C71, 73, 75,§556.27]

Constitutionality, 62GA, ch 391,§28

556.28 Uniformity of interpretation. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [C71, 73, 75, §556.28]

556.29 Short title. This chapter may be cited as the "Uniform Disposition of Unclaimed Property Act." [C71, 73, 75,§556.29]

ESCHEAT OF POSTAL SAVINGS SYSTEM ACCOUNTS

556.30 Declaration of escheat. All postal savings system accounts created by the deposits of persons whose last known addresses are in this state which have not been claimed by the persons entitled thereto before May 1, 1971, are presumed to have been abandoned by their owners and are declared to escheat and become the property of this state. [C73, 75, §556.30]

556.31 Obtaining information on accounts. The treasurer of state shall request from the bureau of accounts of the United States treasury department records providing the following information: The names of depositors at the post offices of this state whose accounts are unclaimed, their last addresses as shown by the records of the post office department and the balance in each account. He shall agree to return to the bureau of accounts promptly all account cards showing last addresses in another state. [C73, 75, §556.31]

556.32 Proceeding to adjudicate escheat. The treasurer of state may bring proceedings in the district court for the county where the state capitol is located to escheat unclaimed postal savings system accounts held by the United States treasury department. A single proceeding may be used to escheat as many accounts

as may be available for escheat at one time. [C73, 75,§556.32]

556.33 Notice. The treasurer of state shall notify depositors whose accounts are to be escheated as follows:

1. A letter advising that a postal savings system account in the name of the addressee is about to be escheated and setting forth the procedure by which a deposit may be claimed shall be mailed by first class mail to the named depositor at the last address shown on the account records for each account to be escheated having an unpaid principal balance of more than twenty-five dollars.

2. A general notice of intention to escheat postal savings system accounts shall be published once in each of three successive weeks in one or more newspapers which combine to provide general circulation throughout this state.

3. A special notice of intention to escheat the unclaimed postal savings system accounts originally deposited in each post office must be published once in each of three successive weeks in a newspaper published in the county in which the post office is located or, if there is none, in a newspaper having general circulation in the county. This notice must list the names of the owners of each unclaimed account to be escheated having a principal balance of three dollars or more. [C73, 75, §556.33]

556.34 Collection and deposit of funds. The treasurer of state shall present a copy of each final judgment of escheat to the United States treasury department for payment of the principal due and the interest computed under regulations of the United States treasury department. The payment received shall be deposited in the general fund in the state treasury. [C73, 75,§556.34]

556.35 Indemnification of the United States. This state shall indemnify the United States for any losses suffered as a result of the escheat of unclaimed postal savings system accounts. The burden of the indemnification falls upon the fund into which the proceeds of the escheated accounts have been paid. [C73, 75,§556.35]

556.36 Short title. This division may be cited as the "Escheat of Postal Savings System Accounts Act". [C73, 75,§556.36]

CHAPTER 556A

UNSOLICITED GOODS, WARES AND MERCHANDISE

556A.1 Gift of unsolicited goods.

556A.1 Gift of unsolicited goods. Unless otherwise agreed, where unsolicited goods are mailed to a person, he has a right to accept delivery of such goods as a gift only, and is not bound to return such goods to the sender. If such unsolicited goods are either addressed to or intended for the recipient, he may use them or dispose of them in any manner without any obligation to the sender, and in any action for goods sold and delivered, or in any action for the return of the goods, it shall be a complete defense that the goods were mailed voluntarily and that the defendant did not actually order or request such goods, either orally or in writing. [C71, 73, 75,§556A.1]

CHAPTER 556B

ABANDONED MOTOR VEHICLES OR OTHER PROPERTY

556B.1 Removal—notice to sheriff.

556B.1 Removal—notice to sheriff.

1. The owner or other lawful possessor of real property may remove or cause to be removed any motor vehicle or other personal property which has been unlawfully parked or placed on that real property, and may place or cause such personal property to be placed in storage until the owner of the same pays a fair and reasonable charge for towing, storage or other expense incurred. The real property owner or possessor, or his agent, shall not be liable for damages caused to the personal property by the removal or storage unless the damage is caused willfully or by gross negligence.

2. The real property owner or possessor shall notify the sheriff of the county where the real property is located of the removal of the motor vehicle or other personal property. If the owner of the motor vehicle or other personal property can be determined, he shall be notified of the removal by the sheriff by certified mail, return receipt requested. If such owner cannot be identified, notice by one publi-

cation in one newspaper of general circulation in the area where the personal property was parked or placed shall be sufficient to meet all notice requirements under this section. If the personal property has not been reclaimed by the owner within six months after notice has been effected, it may be sold by the sheriff at public or private sale. The net proceeds after deducting the cost of the sale shall be applied to the cost of removal and storage of the property, and the remainder, if any, shall be paid to the county treasurer for the use and benefit of the county general fund. [C75,§556.B.1]

TITLE XXV

REAL PROPERTY

CHAPTER 557

REAL PROPERTY IN GENERAL

GENERAL PRINCIPLES

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REGISTRATION OF FARMS

557.22 Authorization—certificate.
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GENERAL PRINCIPLES

557.1 Who deemed seized. All persons owning real estate not held by an adverse possession shall be deemed to be seized and possessed of the same. [C51,§1199; R60,§2207; C73,§1928; C97,§2912; C24, 27, 31, 35, 39,§**10040**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.1]

557.2 Estate in fee simple. The term "heirs" or other technical words of inheritance are not necessary to create and convey an estate in fee simple. [C51,§1200; R60,§2208; C73,§1929; C97,§2913; C24, 27, 31, 35, 39,§**10041**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.2]

557.3 Conveyance passes grantor's interest. Every conveyance of real estate passes all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used. [C51,§1201; R60,§2209; C73, §1930; C97,§2914; C24, 27, 31, 35, 39,§**10042**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.3]

557.4 After-acquired interest — exception. Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, inures to the benefit of the grantee. But if the wife or husband of such grantor joins in such conveyance for the purpose of relinquishing dower or homestead only, and subsequently acquires an interest therein as above defined, it shall not be held to inure to the benefit of the grantee. [C51, §1202; R60,§2210; C73,§1931; C97,§2915; C24, 27, 31, 35, 39,§**10043**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.4]

557.5 Adverse possession. Adverse possession of real estate does not prevent any person from selling his interest in the same. [C51, §1203; R60,§2211; C73,§1932; C97,§2916; C24, 27, 31, 35, 39,§**10044**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.5]

557.6 Future estates. Estates may be created to commence at a future day. [C51,§1204; R60,§2212; C73,§1933; C97,§2917; C24, 27, 31, 35, 39,§**10045**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §557.6]

557.7 Contingent remainders. A contingent remainder shall take effect, notwithstanding any determination of the particular estate, in the same manner in which it would have taken effect if it had been an executory devise or a springing or shifting use, and shall, as well as such limitations, be subject to the rule respecting remoteness known as the rule against perpetuities, exclusive of any other supposed rule respecting limitations to successive generations or double possibilities. [C24, 27, 31, 35, 39,§**10046**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §557.7]

Referred to in §557.8
40ExGA, SF 281,§2, editorially divided

557.8 Applicability. Section 557.7, except so far as declaratory of existing law, shall apply only to instruments executed on or after July 1, 1925, and to wills and codicils revived or confirmed by a will or codicil executed on or after said date. [C24, 27, 31, 35, 39,§**10047**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.8]

557.9 Defeating expectant estate. No expectant estate shall be defeated or barred by

an alienation or other act of the owner of the precedent estate, nor by the destruction of such precedent estate by disseizin, forfeiture, surrender, or merger; provided that on the petition of the life tenant, with the consent of the holder of the reversion, the district court may order the sale of the property in such estate and the proceeds shall be subject to the order of court until the right thereto becomes fully vested. The proceedings shall be as in an action for partition. [C24, 27, 31, 35, 39, §10048; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.9]

557.10 Declarations of trust. Declarations or creations of trusts or powers in relation to real estate must be executed in the same manner as deeds of conveyance; but this provision does not apply to trusts resulting from the operation or construction of law. [C51,§1205; R60,§2213; C73,§1934; C97,§2918; C24, 27, 31, 35, 39,§10049; C46, 50, 54, 58, 62, 66, 71, 73, 75, §557.10]

Statute of frauds, §622.32

557.11 Conveyances by married women. A married woman may convey or encumber any real estate or interest therein belonging to her, and may control the same, or contract with reference thereto, to the same extent and in the same manner as other persons. [C51,§1207; R60,§2215; C73,§1935; C97,§2919; C24, 27, 31, 35, 39,§10050; C46, 50, 54, 58, 62, 66, 71, 73, 75, §557.11]

557.12 Conveyances by husband and wife. Every conveyance made by a husband and wife shall be sufficient to pass any and all right of either in the property conveyed, unless the contrary appears on the face of the conveyance. [R60,§2255; C73,§1936; C97,§2920; C24, 27, 31, 35, 39,§10051; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.12]

557.13 Covenants — spouse not bound. Where either the husband or wife joins in a conveyance of real estate owned by the other, the husband or wife so joining shall not be bound by the covenants of such conveyance, unless it is expressly so stated on the face thereof. [C73,§1937; C97,§2921; C24, 27, 31, 35, 39,§10052; C46, 50, 54, 58, 62, 66, 71, 73, 75, §557.13]

557.14 Title and possession of mortgagor. In absence of stipulations to the contrary, the mortgagor of real estate retains the legal title and right of possession thereto. [C51,§1210; R60,§2217; C73,§1938; C97,§2922; C24, 27, 31, 35, 39,§10053; C46, 50, 54, 58, 62, 66, 71, 73, 75, §557.14]

557.15 Tenancy in common. Conveyances to two or more in their own right create a tenancy in common, unless a contrary intent is expressed. [C51,§1206; R60,§2214; C73,§1939; C97,§2923; C24, 27, 31, 35, 39,§10054; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.15]

557.16 Cotenant liable for rent. In all cases in which any real estate is now or shall be hereafter held by two or more persons as tenants in common, and one or more of said tenants shall have been or shall hereafter be in possession of said real estate, it shall be lawful for any one or more of said tenants in common, not in possession, to sue for and recover from such tenants in possession, his or their proportionate part of the rental value of said real estate for the time, not exceeding a period of five years, such real estate shall have been in possession as aforesaid. [C24, 27, 31, 35, 39, §10055; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.16]

37GA, ch 27,§1, editorially divided

557.17 Partition — cotenant charged with rent. In case of partition of such real estate held in common as aforesaid, the parties in possession shall have deducted from their distributive shares of said real estate the rental value thereof to which their cotenants are entitled. [C24, 27, 31, 35, 39,§10056; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.17]

557.18 Vendor's lien. No vendor's lien for unpaid purchase money shall be enforced in any court of this state after a conveyance by the vendee, unless such lien is reserved by conveyance, mortgage, or other instrument duly acknowledged and recorded, or unless such conveyance by the vendee is made after suit by the vendor, his executor, or assigns to enforce such lien. [C73,§1940; C97,§2924; C24, 27, 31, 35, 39,§10057; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.18]

C97,§2924, editorially divided
Referred to in §557.19

557.19 Fraudulent conveyances. Nothing in section 557.18 shall be construed to deprive a vendor of any remedy now existing against conveyance procured through the fraud or collusion of the vendees therein, or persons purchasing of such vendees with notice of such fraud or lien. [C73,§1940; C97,§2924; C24, 27, 31, 35, 39,§10058; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.19]

557.20 Rule in Shelley's case. The rule or principle of the common law known as the rule in Shelley's case is hereby abolished and is declared not to be a part of the law of this state. [S13,§2924-a; C24, 27, 31, 35, 39,§10059; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.20]

557.21 Devise, bequest, or conveyance not enlarged. No express devise, bequest, or conveyance of an estate for life, or other limited estate in real or personal property shall be enlarged or construed to pass any greater estate to the devisee, legatee, or grantee thereof by reason of any devise, bequest, or conveyance to the heirs, heirs of the body, children, or issue of such devisee, legatee, or grantee; but this section shall not in any manner or under any circumstances be so construed as to impair or affect the vested rights of any person in or to any lands or estates acquired prior to July 4, 1907. [S13,§2924-b; C24, 27, 31, 35, 39, §10060; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.21]

REGISTRATION OF FARMS

557.22 Authorization—certificate. Any owner of a farm in the state may have the name

of his farm, together with a description of his lands to which said name applies, recorded in a register kept for that purpose in the office of the county recorder of the county in which said farm is located.

Such recorder shall furnish to such landowner a proper certificate setting forth said name and a description of such lands. [S13, §2924-c; C24, 27, 31, 35, 39,§10061; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.22]

S13,§2924-c, editorially divided
Referred to in §557.24

557.23 Vested interest. When any name shall have been recorded as the name of any farm in such county, such name shall not be recorded as the name of any other farm in the same county. [S13,§2924-c; C24, 27, 31, 35, 39, §10062; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.23]

557.24 Fee. Any person having the name of his farm recorded as provided in section 557.22 shall first pay to the county recorder a fee of three dollars, which fee shall be paid to the county treasurer as other fees are paid to the county treasurer by such recorder. [S13,§2924-d; C24, 27, 31, 35, 39,§10063; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.24]

557.25 Transfer of farm. When any owner of a farm, the name of which has been recorded as hereinbefore provided, transfers by deed or otherwise the whole of such farm, such transfer may include the registered name thereof; but if the owner shall transfer only a portion of such farm, then in that event, the registered name thereof shall not be transferred to the purchaser unless so stated in the deed of conveyance. [S13,§2924-e; C24, 27, 31, 35, 39,§10064; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.25]

557.26 Cancellation—fee. When any owner of a registered farm desires to cancel the registered name thereof, he shall state on the margin of the record of the register of such name the following: "This name is canceled and I hereby release all rights thereunder", which shall be signed by the person canceling such name and attested by the county recorder. For such latter service the county recorder shall charge a fee of fifty cents, which shall be paid to the county treasurer as other fees are paid to the county treasurer by him. [S13, §2924-f; C24, 27, 31, 35, 39,§10065; C46, 50, 54, 58, 62, 66, 71, 73, 75,§557.26]

CHAPTER 558

CONVEYANCES

Referred to in §633.480

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558.1 "Instruments affecting real estate" defined—revocation. All instruments containing a power to convey, or in any manner relating to real estate, including certified copies of petitions in bankruptcy with or without the schedules appended, of decrees of adjudication in bankruptcy, and of orders approving trustees' bonds in bankruptcy, shall be held to be instruments affecting the same; and no such instrument, when certified and recorded as in this chapter prescribed, can be revoked as to third parties by any act of the parties by whom it was executed, until the instrument containing such revocation is acknowledged and filed for record in the same office in which the instrument containing such power is recorded, except that Uniform Commercial Code financing statements and financing statement changes need not be thus acknowledged. [C51,§1226; R60,§2234; C73,§1969; C97,§2957; C24, 27, 31, 35, 39,§**10066**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.1; 66GA, ch 1107,§16]

558.2 Corporation having seal. In the execution of any written instrument conveying, encumbering, or affecting real estate by a corporation that has adopted a corporate seal, the seal of such corporation shall be attached or affixed to such written instrument. [C51,§974; R60,§1823; C73,§2112; C97,§3068; S13,§3068; C24, 27, 31, 35, 39,§**10067**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.2]

40ExGA, HF 77,§2, editorially divided
Seals generally, 537A.1

558.3 Corporation not having seal. If the corporation has not adopted a corporate seal, such fact shall be stated in such written instrument. [S13,§3068; C24, 27, 31, 35, 39,§**10068**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.3]

558.4 Repealed by 65GA, ch 279,§1.

558.5 Contract for deed — presumption of abandonment. When the record shows that a contract or bond for a deed has been given prior to January 1, 1950, and the record discloses no performance of the same and that more than ten years have elapsed since the contract by its terms was to be performed, such contract shall be deemed abandoned and of no effect and the land freed from any lien or defect on account of such contract. [S13, §2963-j; C24, 27, 31, 35, 39,§**10070**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.5]

Saving clause, 50GA, ch 252,§4; 63GA, ch 1260,§3

558.6 Christian names — variation — effect. When there is a difference between the christian names or initials in which title is taken, and the christian names or initials of the grantor in a succeeding conveyance, and the surnames in both instances are written the same or sound the same, such conveyances or the record thereof shall be presumptive evidence that the surname in the several conveyances and instruments refers to the same person. [S13,§2963-k; C24, 27, 31, 35, 39,§**10071**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.6]

Saving clause, 50GA, ch 252,§4

558.7 Assignment of certificate of entry deemed deed. When the record shows:

1. That the original entry, certificate of entry, receipt, or duplicate thereof has been assigned;

2. That prior or subsequent to such assignment, the United States or state issued a patent or conveyance to the assignor;

3. That no deed of conveyance appears on record from the original entryman or assignor to the assignee; and

4. That the present record owner holds title under such assignment—

such assignment shall have the same force and effect as a deed of conveyance and shall be conclusively presumed to carry all right, title, and interest of the patentee of said real estate, the same as though a deed of conveyance had been subsequently executed by the patentee or assignor to a subsequent grantor. [S13,§2963-n; C24, 27, 31, 35, 39,§**10072**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.7]

558.8 Affidavits explanatory of title — presumption. Affidavits explaining any defect in the chain of title to any real estate may be recorded as instruments affecting the same, but no one except the owner in possession of such real estate shall have the right to file such affidavit. Such affidavit or the record thereof, including all such affidavits now of record, shall raise a presumption from the

date of recording that the purported facts stated therein are true; after the lapse of three years from the date of such recording, such presumption shall be conclusive. [C51,§1226; R60,§2234; C73,§1969; C97,§2957; S13,§2963-i; C24, 27, 31, 35, 39,§10073; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.8]

558.9 Railroad land grants—duty to record. Every railroad company which owns or claims real estate in this state, granted by the government of the United States or this state to aid in the construction of its railroad, where it has not already done so, shall place on file and cause to be recorded, in each county wherein the real estate granted is situated, evidence of its title or claim of title, whether the same consists of patents from the United States, certificates from the secretary of the interior, or governor of this state, or the proper land office of the United States or this state. Where no patent was issued, reference shall be made in said certificate to the Acts of Congress, and the acts of the legislature of this state, granting such lands, giving the date thereof, and date of their approval under which claim of title is made. [C97,§2939; C24, 27, 31, 35, 39,§10074; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.9]

558.10 Patents covering land in different counties. Where the certificate of the secretary of the interior or the patents cover real estate situated in more than one county, the secretary of state shall, upon the application of any railroad company or its grantee, prepare and furnish, to be recorded, a list of all the real estate situated in any one county so granted, patented, or certified; and all such evidences of title shall be entered by the auditor upon the index, transfer, and plat books. [C97, §2939; C24, 27, 31, 35, 39,§10075; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.10]

558.11 Record — constructive notice. The evidence of title shall be filed with the recorder of deeds of the county in which the real estate is situated, who shall record the same, and place an abstract thereof upon the index of deeds. The recording thereof shall be constructive notice to all persons, as provided in other cases of entries upon said index, and the recorder shall receive the same fees therefor as for recording other instruments. [C97,§2940; C24, 27, 31, 35, 39,§10076; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.11]

Fees, §335.14

558.12 Transcript of instruments. Any person interested therein may procure from any recorder in this state a transcript of any instrument affecting real estate which is of record in his office. Such transcript shall be certified by the recorder, and the clerk of the district court shall certify under the seal of his office to the signature of such recorder and his official character. [S13,§2938-a; C24, 27, 31, 35, 39,§10077; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.12]

Referred to in §558.13

558.13 Transcript recorded. A transcript of the record of any instrument affecting real estate, certified as provided in section 558.12, shall be entitled to record in the office of the recorder of any other county in which is situated any of the real estate affected by such instrument. The effect of the recording of transcript shall be the same as the recording of the original instrument. [S13,§2938-a; C24, 27, 31, 35, 39,§10078; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.13]

558.14 Grantor described as "spouse" or "heir"—presumption. All conveyances or the record title thereof of real estate executed prior to January 1, 1950, wherein the grantor or grantors described herself, himself, or themselves as the surviving spouse, heir at law, heirs at law, surviving spouse and heir at law, or surviving spouse and heirs at law, of some person deceased in whom the record title or ownership of said real estate previously vested, shall be conclusive evidence of the facts so recited as far as they relate to the right of the grantor or grantors to convey, as fully as if the record title of said grantor or grantors had been established by due probate proceedings in the county wherein the real estate is situated. [S13,§2963-e; C24, 27, 31, 35, 39,§10079; C46, 50, 54, 58, 62, 66, 71, 73, 75, §558.14]

Saving clause, 50GA, ch 252,§4; 63GA, ch 1260,§3

558.15 Notarial seals of nonresidents—presumption. Any notarial seal purporting to have been affixed to any instrument in writing, by any notary public residing elsewhere than in this state, shall be prima-facie evidence that the words thereon engraved conform to the requirements of the law of the place where such certificate purports to have been made. [S13,§2943-a; C24, 27, 31, 35, 39,§10080; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.15]

558.16 Records transcribed. The board of supervisors of any county may have copied, indexed, and arranged any deed, probate, mortgage, court, or county record, or government survey belonging or relating to said county, and have a complete index thereof made; and may cause any index of deeds, mortgages, or other records to be correctly copied. [R60, §§2258, 2259; C73,§§1971, 1972; C97,§2961; C24, 27, 31, 35, 39,§10081; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.16]

Referred to in §558.17

558.17 Compensation. The board of supervisors may employ any suitable person to perform the labor contemplated in section 558.16, the amount of compensation therefor to be previously fixed by them, not exceeding six cents for each one hundred words of the records proper, and twelve and one-half cents for each one hundred words of indexing. [R60, §2260; C73,§1973; C97,§2962; C24, 27, 31, 35, 39, §10082; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.17]

558.18 Certification—effect. When any such records are copied, the officer to whose office

the original records belong shall compare the copy so made with the original, and when found correct, shall attach his certificate in each volume or book of such copied records, to the effect that he has compared such copies with the original and they are true and correct, and such copied records shall thereupon have the same force and effect in all respects as the original records. [R60,§§2261, 2262; C73,§§1974, 1975; C97,§2963; C24, 27, 31, 35, 39,§**10083**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.18]

558.19 Forms of conveyance. The following or other equivalent forms of conveyance, varied to suit circumstances, are sufficient for the purposes herein contemplated:

1. FOR A QUITCLAIM DEED

For the consideration of ..... dollars, I hereby quitclaim to ..... all my interest in the following tract of real estate (describing it).

2. FOR A DEED IN FEE SIMPLE WITHOUT WARRANTY

For the consideration of ..... dollars, I hereby convey to ..... the following tract of real estate (describing it).

3. FOR A DEED IN FEE WITH WARRANTY

The same as the last preceding form, adding the words: "And I warrant the title against all persons whomsoever" (or other words of warranty, as the party may desire).

4. FOR A MORTGAGE

The same as deed of conveyance, adding the following: "To be void upon condition that I pay," etc. [C51,§1232; R60,§2240; C73,§1970; C97, §2958; C24, 27, 31, 35, 39,§**10084**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.19]

558.20 Acknowledgments within state. The acknowledgment of any deed, conveyance, or other instrument in writing by which real estate in this state is conveyed or encumbered, if made within this state, must be before some court having a seal, or some judge or clerk thereof, or some county auditor, or judicial magistrate or district associate judge within the county, or notary public within the state. Each of the officers above named is authorized to take and certify acknowledgments of all written instruments, authorized or required by law to be acknowledged. [C51,§1217; R60, §2226; C73,§1955; C97,§2942; S13,§2942; C24, 27, 31, 35, 39,§**10085**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.20]

Certain acknowledgments legalized, §589.4

558.21 Acknowledgments outside of state. When made out of the state but within the United States, it shall be before a judge of a court of record, or officer holding the seal thereof, or a commissioner appointed by the governor of this state to take the acknowledgment of deeds, or some notary public, or justice of the peace. [R60,§2245; C73,§1956; C97, §2943; S13,§2943; C24, 27, 31, 35, 39,§**10086**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.21]

Referred to in §558.23

558.22 Certificate of authenticity. When made out of the state but within the United States and before a judge, or justice of the peace, a certificate, under the official seal of the clerk or other proper certifying officer of a court of record of the county or district, or of the secretary of state of the state or territory within which such acknowledgment was taken, under the seal of his office, of the official character of said judge, or justice, and of the genuineness of his signature, shall accompany said certificate of acknowledgment. [R60,§2245; C73, §1956; C97,§2943; S13,§2943; C24, 27, 31, 35, 39, §**10087**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.22]

558.23 Authorized foreign officials. The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence, when made by any person without this state and within any other state, territory, or district of the United States, may also be made before any officer of such state, territory, or district authorized by the laws thereof to take the proof and acknowledgment of deeds; and when so taken and certified as provided in section 558.24, may be recorded in this state, and read in evidence in the same manner and with like effect as proofs and acknowledgments taken before any of the officers named in section 558.21. [C97,§2944; C24, 27, 31, 35, 39,§**10088**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.23]

Referred to in §558.24

558.24 Certificate of authenticity—evidence and recordation. To entitle any conveyance or written instrument, acknowledged or proved under section 558.23, to be read in evidence or recorded in this state, there shall be subjoined or attached to the certificate of proof or acknowledgment signed by such officer a certificate of the secretary of state of the state or territory in which such officer resides, under the seal of such state or territory, or a certificate of the clerk of a court of record of such state, territory, or district in the county in which said officer resides or in which he took such proof or acknowledgment, under the seal of such court. Such certificate shall comply substantially with section 558.25. [C97,§2945; C24, 27, 31, 35, 39,§**10089**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.24]

Referred to in §558.23

558.25 Form of authentication. The following form of authentication of the proof or acknowledgment of a deed or other written instrument, when taken without this state and within any other state, territory, or district of the United States, or any form substantially in compliance with the foregoing provisions of this chapter, shall be used:

(Begin with a caption specifying the state, territory, or district, and county or place where the authentication is made.)

"I, ..., clerk of the ..... court in and for said county, which court is a court of record, having a seal (or I, ..., secretary of state of such state or territory), do hereby certify that ....., by

and before whom the foregoing acknowledgment or proof was taken, was at the time of taking the same ..... residing
(Name of office held)
or authorized to act in said county, and was duly authorized by the laws of said state, territory, or district to take and certify acknowledgments or proofs of deeds of land in said state, territory, or district, and that said conveyance and the acknowledgment thereof are in due form of law; and, further, that I am well acquainted with the handwriting of said ....., and that I verily believe that the signature to said certificate of acknowledgment or proof is genuine. In testimony whereof, I have hereunto set my hand and affixed the seal of the said court or state this ..... day of ....., A. D. 19...." [C97, §2946; C24, 27, 31, 35, 39,§10090; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.25]

Referred to in §558.24

558.26 Acknowledgments by military or naval officers. In addition to the acknowledgment of instruments in the manner and form and as otherwise authorized by law, any person serving in or with the armed forces of the United States may acknowledge the same wherever located before any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or ensign or higher in the navy or United States coast guard. Neither the instrument nor the acknowledgment shall be rendered invalid by the failure to state therein the place of execution or acknowledgment. No authentication of the officer's certificate of acknowledgment shall be required, but the officer taking the acknowledgment shall endorse thereon or attach thereto a certificate substantially in the following form:

On this the .... day of ....., 19....., before me, ..., the undersigned commissioned officer, personally appeared ....., known to me (or satisfactorily proven) to be serving in or with the armed forces of the United States and to be the person whose name is subscribed to the within instrument and acknowledged that ... he ... executed the same as ..... voluntary act and deed.

.....
Signature of officer.
.....
Rank of officer and command to which attached.

Such acknowledgments executed according to the above provisions shall be deemed of the same force and effect as acknowledgments executed before officers authorized to accept acknowledgments.

Any acknowledgments made before March 30, 1943, by any person serving in or with the armed forces of the United States in the manner as prescribed by this section, or substantially so, are hereby legalized and considered sufficient. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §558.26]

558.27 Acknowledgments outside United States. When the acknowledgment is made without the United States, it may be before any ambassador, minister, secretary of legation, consul, vice-consul, charge-d'affaires, consular agent, or any other officer of the United States in a foreign country who is authorized to issue certificates under the seal of the United States. [C73,§1957; C97,§2947; C24, 27, 31, 35, 39,§10091; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.27]

558.28 Authorized foreign officials. Said instruments may also be acknowledged or proved without the United States before any officer of a foreign country who is authorized by the laws thereof to certify to the acknowledgments of written documents. [C73,§1957; C97,§2947; C24, 27, 31, 35, 39,§10092; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.28]

40ExGA, HF77,§25, editorially divided

558.29 Certificate of authenticity — foreign officials. The certificate of acknowledgment by a foreign officer must be authenticated by one of the above-named officers of the United States, whose official written statement that full faith and credit is due to the certificate of such foreign officer shall be deemed sufficient evidence of the qualification of said officer to take acknowledgments and certify thereto, and of the genuineness of his signature, and seal if he have any. [C73,§1957; C97,§2947; C24, 27, 31, 35, 39,§10093; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.29]

558.30 Certificate of acknowledgment—verification. The court or officer taking the acknowledgment must endorse upon the deed or instrument a certificate setting forth the following particulars:

1. The title of the court or person before whom the acknowledgment was made.

2. That the person making the acknowledgment was known to the officer taking the acknowledgment to be the identical person whose name is affixed to the deed as grantor, or that such identity was proved by at least one credible witness, naming him.

3. That such person acknowledged the execution of the instrument to be his voluntary act and deed. [C51,§1219; R60,§2227; C73,§1958; C97,§2948; C24, 27, 31, 35, 39,§10094; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.30]

558.31 Proof of execution and delivery in lieu of acknowledgment. Proof of the due and voluntary execution and delivery of a deed or other instrument may be made before any officer authorized to take acknowledgments, by one competent person other than the vendee or other person to whom the instrument is executed, in the following cases:

1. If the grantor dies before making the acknowledgment.

2. If his attendance cannot be procured.

3. If, having appeared, he refuses to acknowledge the execution of the instrument. [C51,§§1220, 1221; R60,§2228; C73,§1959; C97, §2949; C24, 27, 31, 35, 39,§10095; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.31]

558.32 Contents of certificate. The certificate endorsed by the officer upon a deed or other instrument thus proved must state:

1. The title of the officer taking the proof.

2. That it was satisfactorily proved that the grantor was dead, or that for some other reason his attendance could not be procured in order to make the acknowledgment, or that, having appeared, he refused to acknowledge the same.

3. The name of the witness by whom proof was made, and that it was proved by him that the instrument was executed and delivered by the person whose name is thereunto subscribed as a party. [C51,§1222; R60,§2230; C73, §1960; C97,§2950; C24, 27, 31, 35, 39,§10096; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.32]

558.33 Subpoenas. An officer having power to take the proof hereinbefore contemplated may issue the necessary subpoenas, and compel the attendance of witnesses residing within the county, in the manner provided for the taking of depositions. [C51,§1225; R60,§2233; C73,§1965; C97,§2956; C24, 27, 31, 35, 39,§10097; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.33]

Attendance of witnesses, §622.102

558.34 Use of seal. The certificate of proof or acknowledgment may be given under seal or otherwise, according to the mode by which the officer making the same usually authenticates his formal acts. [C51,§1223; R60,§2231; C73,§1961; C97,§2951; C24, 27, 31, 35, 39,§10098; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.34]

558.35 Married women. The acknowledgment of a married woman, when required by law, may be taken in the same form as if she were sole, and without any examination separate and apart from her husband. [C97,§2960; C24, 27, 31, 35, 39,§10099; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.35]

558.36 Attorney in fact. The execution of any deed, mortgage, or other instrument in writing, executed by any attorney in fact, may be acknowledged by the attorney executing the same. [R60,§2251; C73,§1962; C97,§2952; C24, 27, 31, 35, 39,§10100; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.36]

558.37 Certificate of acknowledgment — attorney in fact. The person taking the acknowledgment must endorse upon such instrument a certificate, setting forth the following particulars:

1. The title of the person before whom the acknowledgment was taken.

2. That the person making the acknowledgment was known to the officer taking the acknowledgment to be the identical person whose name is subscribed to the instrument as attorney for the grantor therein named, or that such identity was proved to him by at least one credible witness, to him personally known and therein named.

3. That such person acknowledged said instrument to be the act and deed of the grantor therein named by him, as such attorney thereunto appointed, voluntarily done and executed. [R60,§2252; C73,§1963; C97,§2953; C24, 27, 31, 35, 39,§10101; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.37]

558.38 Officers of corporation. If the acknowledgment is made by the officers of a corporation, the certificate shall show that such persons as such officers, naming the office of each person, acknowledged the execution of the instrument as provided in section 558.39. [C97,§2954; C24, 27, 31, 35, 39,§10102; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.38]

Employee of corporation as notary, §77.10

558.39 Forms of acknowledgment. The following forms of acknowledgment shall be sufficient in the cases to which they are respectively applicable. In each case where one of these forms is used, the name of the state and county where the acknowledgment is taken shall precede the body of the certificate, and the signature and official title of the officer shall follow it as indicated in the first form and shall constitute a part of the certificate, and the seal of the officer shall be attached when necessary under the provision of this chapter. No certificate of acknowledgment shall be held to be defective on account of the failure to show the official title of the officer making the certificate if such title appears either in the body of such certificate or in connection therewith, or with the signature thereto.

1. In the case of natural persons acting in their own right:

State of.....}
County of.....} ss.

On this .... day of ....., A.D. 19...., before me ....., personally appeared ....., to me known to be the person..named in and who executed the foregoing instrument, and acknowledged that.... executed the same as ..... voluntary act and deed.

(Insert title of acknowledging officer)

.....
Notary Public in the state of Iowa.

2. In the case of natural persons acting by attorney:

On this .... day of ....., A.D. 19...., before me, ..., personally appeared ....., to me known to be the person who executed the foregoing instrument in behalf of ....., and acknowledged that he executed the same as the voluntary act and deed of said .....

(Insert title of acknowledging officer)

3. In the case of corporations or joint-stock associations:

On this ..... day of ....., A.D. 19...., before me, a ....., in

(Insert title of acknowledging officer)

and for said county, personally appeared ....., to me personally known, who being by me duly [sworn or affirmed] did say that he is .... of said [corporation / association], that (Insert title of executing officer)

[the seal affixed to said instrument is the seal of said / no seal has been procured by the said] [corporation / association] and that said instrument was signed and sealed on behalf of the said [corporation / association] by authority of its board of [directors / trustees] and the said ..... acknowledged the execution of said instrument to be the voluntary act and deed of said [corporation / association] by it voluntarily executed.

(In all cases add signature and title of the officer taking the acknowledgment, and strike from between the parentheses the word or clause not used, as the case may be.)

Any instrument affecting real estate situated in this state which has been or may be acknowledged or proved in a foreign state or country and in conformity with the laws of that foreign state or country, shall be deemed as good and valid in law as though acknowledged or proved in conformity with the existing laws of this state. [C97,§2959; C24, 27, 31, 35, 39,§**10103**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §558.39]

Referred to in §558.38

558.40 Liability of officer. Any officer, who knowingly misstates a material fact in either of the certificates mentioned in this chapter, shall be liable for all damages caused thereby, and shall be guilty of a misdemeanor, and fined any sum not exceeding the value of the property conveyed or otherwise affected by the instrument on which such certificate is endorsed. [C51,§1224; R60,§2232; C73,§1964; C97, §2955; C24, 27, 31, 35, 39,§**10104**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.40]

558.41 Recording. No instrument affecting real estate is of any validity against subsequent purchasers for a valuable consideration, without notice, unless filed in the office of the recorder of the county in which the same lies, as hereinafter provided. [C51,§1211; R60,§2220; C73,§1941; C97,§2925; C24, 27, 31, 35, 39,§**10105**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.41]

558.42 Acknowledgment as condition precedent. It shall not be deemed lawfully recorded, unless it has been previously acknowledged or proved in the manner prescribed in this chapter, except that affidavits and certified copies of petitions in bankruptcy with or without the schedules appended, of decrees of adjudication in bankruptcy, and of orders approving trustees' bonds in bankruptcy, and Uniform Commercial Code financing statements and financing statement changes need not be thus acknowledged. [C51,§1212; R60,§2221; C73,§1942; C97,§2926; C24, 27, 31, 35, 39,§**10106**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.42; 66GA, ch 1107,§17]

558.43 Repealed by 63GA, ch 1169,§4.

558.44 Repealed by 64GA, ch 254,§1.

558.45 Notation of assignment or release on index. Where any mortgage, contract, or other instrument constituting an encumbrance upon real estate shall be assigned or released by a separate instrument it shall be the duty of the recorder to make a notation in red ink on the index and cross-index where such instrument was originally indexed, indicating the nature of such assignment or release and the book and page where the same is recorded. [C27, 31, 35,§10108-a1; C31, 35,§10115-c1; C39,§§**10108.1, 10115.1**; C46, 50, 54, 58, 62, 66,§§558.45, 558.56; C71, 73, 75,§558.45]

Dual methods of satisfaction, §655.1

558.46 Assignment — report to auditor required. The assignment, sale, or transfer of all real estate mortgages or notes secured by real estate mortgages or other evidences of indebtedness secured by real estate mortgages, shall be reported to the county auditor of the residence of the assignee, by the assignee thereof, within thirty days from the date of the execution of said assignment, sale, or transfer, unless such assignment be recorded in the county recorder's office of the county in which the assignee resides. [C35,§10108-e1; C39,§**10108.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.46]

558.47 When assignment void. No such assignment shall be of any validity until the same be reported to said county auditor. [C35, §10108-e2; C39,§**10108.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.47]

558.48 Omitted.

558.49 Index books. The recorder must keep index books, the pages of which are so divided as to show in parallel columns:

1. Each grantor.
2. Each grantee.
3. The time when the instrument was filed.
4. The date of the instrument.
5. The nature of the instrument.
6. The book and page where the record thereof may be found.
7. The description of the real estate conveyed. [C51,§1213; R60,§2222; C73,§1943; C97, §2935; S13,§2935; C24, 27, 31, 35, 39,§**10109**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.49]

558.50 Index for affidavits. In case of affidavits each and every affidavit filed for record shall be indexed in appropriately ruled columns as follows:

Affidavit of	Concerning Whom	Concerning Land in							Remarks
		Lot	Blk.	Addition	City	Sec.	Twp.	Rng.	

Affiant	Date of Filing					Date of Instrument			Where Recorded	
	Month	Day	Year	Hour		Month	Day	Year	Book	Page
				A.M.	P.M.					

[S13,§2935; C24, 27, 31, 35, 39,§**10110**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.50]

558.51 Separate indexes required. Separate index books shall be kept for mortgages and satisfactions or releases of same, one for those containing descriptions of lots, and one for those containing land; and separate books for other conveyances of real estate, one for lots, and one for lands; and an index book shall be kept for powers of attorney, affidavits, and certified copies of petitions in bankruptcy with or without the schedules appended, of decrees of adjudication in bankruptcy, and of orders approving trustees' bonds in bankruptcy; all of above indexes to be arranged alphabetically as provided in section 558.52. [S13,§2935; C24, 27, 31, 35, 39,§**10111**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.51]

558.52 Alphabetical arrangement. The entries in such book shall show the names of the respective grantors and grantees, arranged in alphabetical order. When such instrument is executed by an administrator, executor, guardian, referee, commissioner, receiver, sheriff, or other person acting in a representative capacity, the recorder shall enter upon the index book the name and representative capacity of each person executing the instrument and the owner of the property if disclosed therein. [C51,§1215; R60,§2224; C73,§1945; C97,§2937; C24, 27, 31, 35, 39,§**10112**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.52]

Referred to in §558.51

558.53 City lot deeds and mortgages. The recorder shall index and record all deeds, mortgages, and other instruments affecting lots in cities or villages, the plats whereof are recorded, in separate books from those in which other conveyances of real estate are recorded. [R60,§2241; C73,§1947; C97,§2941; S13,§2941; C24, 27, 31, 35, 39,§**10113**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.53]

558.54 Deeds covering both lands and lots. Where any instrument contains a description of land or lots in cities or villages, the plats whereof are recorded, and other land, he shall record such instrument in but one record and charge but one fee, but shall index in both land and city lot indexes. [S13,§2941; C24, 27, 31, 35, 39,§**10114**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §558.54]

558.55 Filing and indexing — constructive notice. The recorder must endorse upon every instrument properly filed for record in his office, the day, hour, and minute of such filing, and forthwith enter in the index book the entries required to be made therein, except the book and page where the complete record will appear, and such filing and indexing shall constitute constructive notice to all persons of the rights of the grantees conferred by such instruments. [C51,§1214; R60,§2223; C73,§1944; C97,§2936; C24, 27, 31, 35, 39,§**10115**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.55]

558.56 Repealed by 63GA, ch 1169,§6.

558.57 Entry on auditor's transfer books. The recorder shall not record any deed or

other instrument unconditionally conveying real estate until the proper entries have been made upon the transfer books in the auditor's office, and endorsement made upon the deed or other instrument properly dated and officially signed, in substantially the following form:

Entered upon transfer books and for taxation this ..... day of ....., 19.....
My fee one dollar paid by recorder.

.....
Auditor.

[C73,§§1952, 1953; C97,§§2932, 2934; C24, 27, 31, 35, 39,§**10116**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §558.57]

Referred to in §558.58

558.58 Recorder to collect and deliver to auditor. At the time of filing any deed or other instrument mentioned in section 558.57, the recorder shall collect from the person filing the same the recording fee provided by law, also the auditor's transfer fee, and forthwith deliver the deed and the transfer fee to the county auditor, after endorsing upon said instrument the following:

Filed for record, indexed, and delivered to county auditor this ..... day of ....., 19...., at ..... o'clock .....M. Recorder's and auditor's fee $..... paid.

.....
Recorder.

[C24, 27, 31, 35, 39,§**10117**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.58]

558.59 Final record. Every such instrument shall be recorded, as soon as practicable, in a suitable book to be kept by the recorder for that purpose; after which he shall complete the entries aforesaid so as to show the book and page where the record is to be found. [C51, §1216; R60,§2225; C73,§1946; C97,§2938; C24, 27, 31, 35, 39,§**10118**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.59]

558.60 Transfer and index books. The county auditor shall keep in his office books for the transfer of real estate, which shall consist of a transfer book, index book, and plat book. [C73,§1948; C97,§2927; C24, 27, 31, 35, 39,§**10119**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.60]

558.61 Form of transfer book. Said transfer book shall be ruled and headed substantially after the following form; and entries therein shall be in numerical order, beginning with section one:

Section No....., Township ....., Range ....

Grantee	Grantor	Date of Instrument	Description	Page of Plats
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

[C73,§1949; C97,§2928; C24, 27, 31, 35, 39,§**10120**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.61]

558.62 Form of index book. Said index book shall be ruled and headed substantially after the following form:

NAMES OF GRANTEES	PAGES OF TRANSFER BOOK
.....	.....
.....	.....
.....	.....
.....	.....

[C73,§1949; C97,§2928; C24, 27, 31, 35, 39,§**10121**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.62]

558.63 Book of plats—how kept. The auditor shall keep the book of plats so as to show the number of lot and block, or township and range, divided into sections and subdivisions as occasion may require, and shall designate thereon each piece of real estate, and mark in pencil the name of the owner thereon, in a legible manner; which plats shall be lettered or numbered so that they may be conveniently referred to by the memoranda of the transfer book, and shall be drawn on the scale of not less than four inches to the mile. [C73,§1950; C97,§2929; C24, 27, 31, 35, 39,§**10122**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.63]

558.64 Entries of transfers. When a deed of unconditional conveyance of real estate or transcript of decree in a partition proceeding is presented, the auditor shall enter in the index book, in alphabetical order, the name of the grantee, and opposite thereto the number of the page of the transfer book on which such transfer is made; and upon the transfer book he shall enter in the proper columns the name of the grantee, the grantor, date, and character of the instrument, the description of the real estate, and the number or letter of the plat on which the same is marked. [C73,§1951; C97,§2930; S13,§2930; C24, 27, 31, 35, 39,§**10123**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.64]

558.65 Council's approval of certain plats. No conveyances or plats of additions to any city or subdivision of any lands lying within or adjacent to any city in which streets and alleys and other public grounds are sought to be dedicated to public use, or other conveyances in which streets and alleys are sought to be conveyed to such city, shall be so entered, unless such conveyances, plats, or other instruments have endorsed thereon the approval of the council of such city, the certificates of such approval to be made by the city clerk. [S13,§2930; C24, 27, 31, 35, 39,§**10124**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.65]

City plats, ch 409

558.66 Title decree — entry on transfer books. Upon receipt of a certificate from the clerk of the district court or an appellate court that the title to real estate has been finally established in any named person by judgment or decree or by will, the auditor shall enter the same upon the transfer books, upon payment of a fee of one dollar, which fee shall be taxed as costs in the cause, col-

lected by the clerk, and paid to the auditor at the time of filing such certificate. [C97, §2931; C24, 27, 31, 35, 39,§10125; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.66; 66GA, ch 1241,§49]
Change of title—certificate, §606.14

558.67 Correction of books and instruments. The auditor from time to time shall correct any error appearing in the transfer books, and shall notify the grantee of any error in description discovered in any instrument filed for transfer, and permit the same to be corrected by the parties before completing such transfer. [C73,§1954; C97,§2933; C24, 27, 31, 35, 39,§10126; C46, 50, 54, 58, 62, 66, 71, 73, 75, §558.67]

558.68 Perpetuities prohibited. Every disposition of property is void which suspends the absolute power of controlling the same, for a longer period than during the lives of persons then in being, and twenty-one years thereafter. [C51,§1191; R60,§2199; C73,§1920; C97,§2901; C24, 27, 31, 35, 39,§10127; C46, 50, 54, 58, 62, 66, 71, 73, 75,§558.68]

CHAPTER 559

POWER OF APPOINTMENT

See probate code, §633.704

559.1 Release by donee of power.
559.2 Definition—scope of power.
559.3 Release by one donee exclusive of others.
559.4 Limiting release.
559.5 Disclaimer.
559.6 Delivery.
559.7 Other lawful means.
559.8 Declaration of common law.
559.9 Applicability.

559.1 Release by donee of power. A power to appoint which is exercisable by deed, by will, by deed or will, or otherwise, in whole or to any extent in favor of the donee of the power, his estate, his creditors, the creditors of his estate, or others, is releasable, either with or without consideration, by written instrument executed by the donee. If such instrument shall be executed and acknowledged in the manner provided for the execution and acknowledgment of instruments affecting real estate and recorded with the county recorder in the county in which the donee of the power resides or the county of last residence of the donor of the power or the county in which any real estate which may be subject to the power is located, such recording shall be deemed a sufficient delivery of such release.

A power to appoint described herein is releasable with respect to the whole or any part of the property subject to such power and is also releasable in such manner as to reduce or limit the persons or objects, or classes of persons or objects in whose favor such power would otherwise be exercisable.

It is hereby declared that such releases are in accordance with the public policy of this state and are valid and effectual whether heretofore or hereafter made. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§559.1]
Referred to in §§559.2, 559.6

559.2 Definition—scope of power. The term "power to appoint" as used in section 559.1, shall mean and include all powers which are in substance and effect powers of appointment, regardless of the language used in creating them and whether they are (1) general, special or otherwise, (2) vested, contingent or conditional, (3) in gross, appendant, simply collateral, in trust or in the nature of a trust or otherwise, (4) exercisable by an instrument amending, revoking, altering or terminating a trust or an estate, or an interest thereunder or otherwise, (5) exercisable presently or in the future, (6) exercisable in an individual or a fiduciary capacity whether alone or in conjunction with one or more other persons or corporations, (7) powers to invade or consume property, or (8) powers remaining after one or more partial releases have heretofore or hereafter been made with respect to a power to appoint. [C50, 54, 58, 62, 66, 71, 73, 75, §559.2]

559.3 Release by one donee exclusive of others. If a power to appoint is or may be exercisable by two or more persons either in an individual or fiduciary capacity in conjunction with one another or successively, a release or disclaimer of the power in whole or in part executed by any one of the donees of the power shall be effective to release or disclaim, to the extent therein provided, all right of such person to exercise or to participate in the exercise of the said power, but unless the instrument creating the power otherwise provides, shall not prevent or limit the exercise or participation in the exercise thereof by the other donee or donees. [C50, 54, 58, 62, 66, 71, 73, 75,§559.3]

559.4 Limiting release. A release of a power to appoint may also be made for life or lives or for a specified period of time. [C50, 54, 58, 62, 66, 71, 73, 75,§559.4]

559.5 Disclaimer. A donee of a power to appoint may disclaim the same at any time, wholly or in part, in the same manner and to the same extent as he might release it. [C50, 54, 58, 62, 66, 71, 73, 75,§559.5]

559.6 Delivery. A release or disclaimer may be delivered to any of the following: (1) Any

person who could be adversely affected by the exercise of the power; or (2) any trustee of the property to which the power relates; or (3) any person specified for such purpose in the instrument creating the power; or (4) the county recorder as provided in section 559.1. [C50, 54, 58, 62, 66, 71, 73, 75,§559.6]

559.7 Other lawful means. Nothing contained in this chapter shall prevent the release of any power to appoint or the disclaimer thereof in any lawful manner. [C50, 54, 58, 62, 66, 71, 73, 75,§559.7]

559.8 Declaration of common law. This chapter shall be deemed declaratory of the common law of this state and it shall be liberally construed so as to effectuate the intent that all powers to appoint whatsoever shall be releasable. [C50, 54, 58, 62, 66, 71, 73, 75,§559.8]

559.9 Applicability. This chapter shall apply to releases and disclaimers heretofore or hereafter delivered. [C50, 54, 58, 62, 66, 71, 73, 75,§559.9]

Constitutionality, 52GA, ch 275,§9

CHAPTER 560

OCCUPYING CLAIMANTS

See also reference in §567.7

560.1 Right to improvements.
560.2 "Color of title" defined.
560.3 Petition—trial—appraisement.
560.4 Rights of parties to property.
560.5 Tenants in common.
560.6 Waste by claimant.
560.7 Option to remove improvements.

560.1 Right to improvements. Where an occupant of real estate has color of title thereto and has in good faith made valuable improvements thereon, and is thereafter adjudged not to be the owner, no execution shall issue to put the owner of the land in possession of the same, after the filing of a petition as hereinafter provided, until the provisions of this chapter have been complied with. [C51, §1233; R60,§2264; C73,§1976; C97,§2964; C24, 27, 31, 35, 39,§**10128**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§560.1]

560.2 "Color of title" defined. Persons of each of the classes hereinafter enumerated shall be deemed to have color of title within the meaning of this chapter, but nothing contained herein shall be construed as giving a tenant color of title against his landlord:

1. *Purchaser at judicial or tax sale.* A purchaser in good faith at any judicial or tax sale made by the proper officer, whether said officer had sufficient authority to make said sale or not, unless want of authority in such officer was known to the purchaser at the time of the sale.

2. *Occupancy for five years.* A person who has by himself or together with those under whom he claims, occupied the premises for a period of five years continuously.

3. *Occupancy and improvements.* A person whose occupancy of the premises has been for a shorter period than five years, if during such occupancy the occupant or those under whom he claims have, with the knowledge or consent of the real owner, express or implied, made any valuable improvements thereon.

4. *Occupancy and payment of taxes.* A person whose occupancy of the premises has been for a shorter period than five years, if such occupant or those under whom he claims have at any time during such occupancy paid the ordinary county taxes thereon for any one year, and two years have elapsed without a repayment or offer of repayment of the same by the owner thereof, and such occupancy has continued to the time the action is brought by which the recovery of the real estate is obtained.

5. *Occupancy under state or federal law or contract.* A person who has settled upon any real estate and occupied the same for three years under or by virtue of any law, or contract with the proper officers of the state or of the United States for the purchase thereof and shall have made valuable improvements thereon. [C51,§§1239, 1240; R60,§§2268, 2269; C73,§§1982–1984; C97,§§2967, 2968; C24, 27, 31, 35, 39,§**10129**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §560.2]

560.3 Petition — trial — appraisement. The petition of the occupant must set forth the grounds upon which he seeks relief, and state as accurately as practicable the value of the real estate, exclusive of the improvements made thereon by the claimant or his grantors, and the value of such improvements. The issue joined thereon must be tried as in ordinary actions and the value of the real estate and of such improvements separately ascertained. [C51,§§1234, 1235; R60,§§2265, 2266; C73,§§1977, 1978; C97,§2965; C24, 27, 31, 35, 39, §**10130**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§560.3]

560.4 Rights of parties to property. The owner of the land may thereupon pay to the clerk of the court, for the benefit of the occupying claimant, the appraised value of the improvements and take the property and an execution may issue for the purpose of putting the owner of the land in possession thereof. Should he fail to make such payment within

such reasonable time as the court may fix, the occupying claimant may pay to the clerk of the court, within such time as the court may fix, for the use of the owner of the land, the value of the property exclusive of the improvements and take and retain the property together with the improvements. [C51,§§1236–1238, 1243; R60,§§2267, 2272; C73,§§1979–1981, 1986; C97,§§2966, 2970; C24, 27, 31, 35, 39,§**10131**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§560.4]

Referred to in §560.5

560.5 Tenants in common. Should the owner of the land fail to pay for the improvements and the occupying claimant fail to pay for the land within the time fixed by the court as provided in section 560.4, the parties shall be held to be tenants in common of all the real estate including the improvements, each holding an undivided interest proportionate to the values ascertained on the trial. [C51,§§1236–1238; R60,§2267; C73,§§1979–1981; C97,§2966; C24, 27, 31, 35, 39,§**10132**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§560.5]

560.6 Waste by claimant. If the occupying claimant has committed any injury to the real estate by cutting timber or otherwise, the owner may set the same off against any claim for improvements made by such claimant. [C51,§1241; R60,§2270; C73,§1985; C97,§2969; C24, 27, 31, 35, 39,§**10133**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§560.6]

560.7 Option to remove improvements. Any person having improvements on any real estate granted to the state in aid of any work of internal improvement, whose title thereto is questioned by another, may remove such improvements without other injury to such real estate at any time before he is evicted therefrom, or he may have the benefit of this chapter by proceeding as herein directed. [C73, §1987; C97,§2971; C24, 27, 31, 35, 39,§**10134**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§560.7]

CHAPTER 561

HOMESTEAD

Referred to in §425.11

561.1 "Homestead" defined.
561.2 Extent and value.
561.3 Dwelling and appurtenances.
561.4 Selecting—platting.
561.5 Platted by officer having execution.
561.6 Platting under order of court.
561.7 Changes—nonconsenting spouse.
561.8 Referees to determine exemption.
561.9 Referring back—marking off—costs.
561.10 Change of circumstances.
561.11 Occupancy by surviving spouse.
561.12 Life possession in lieu of dower.
561.13 Conveyance or encumbrance.
561.14 Devise.
561.15 Removal of spouse or children.
561.16 Exemption—divorced spouse.
561.17 "Family" defined.
561.18 Descent.
561.19 Exemption in hands of issue.
561.20 New homestead exempt.
561.21 Debts for which homestead liable.

561.1 "Homestead" defined. The homestead must embrace the house used as a home by the owner, and, if he has two or more houses thus used, he may select which he will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead. [C51,§§1250, 1251; R60,§§2282, 2283; C73,§§1994, 1995; C97,§2977; C24, 27, 31, 35, 39,§**10135**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.1]

561.2 Extent and value. If within a city plat, it must not exceed one-half acre in extent, otherwise it must not contain in the aggregate more than forty acres, but if, in either case, its value is less than five hundred dollars, it may be enlarged until it reaches that amount. [C51,§1252; R60,§2284; C73,§1996; C97,§2978; S13,§2978; C24, 27, 31, 35, 39,§**10136**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.2]

40GA, ch 237,§2, editorially divided

561.3 Dwelling and appurtenances. It must not embrace more than one dwelling house, or any other buildings except such as are properly appurtenant thereto, but a shop or other building situated thereon, actually used and occupied by the owner in the prosecution of his ordinary business, and not exceeding three hundred dollars in value, is appurtenant thereto. [C51,§1253; R60,§2285; C73,§1997; C97,§2978; S13,§2978; C24, 27, 31, 35, 39,§**10137**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.3]

561.4 Selecting—platting. The owner, husband, or wife, may select the homestead and cause it to be platted, but a failure to do so shall not render the same liable when it otherwise would not be, and a selection by the owner shall control. When selected, it shall be designated by a legal description, or if incapable thereof it shall be marked off by permanent, visible monuments, and the description thereof shall give the direction and dis-

tance of the starting point from some corner of the dwelling, which description, with the plat, shall be filed and recorded by the recorder of the proper county in the homestead book, which shall be, as nearly as may be, in the form of the record books for deeds, with an index kept in the same manner. [C51,§§1254, 1255; R60,§§2286, 2287; C73,§§1998, 1999; C97, §2979; S13,§2979; C24, 27, 31, 35, 39,§**10138**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.4]

561.5 Platted by officer having execution. Should the homestead not be platted and recorded at the time levy is made upon real property in which a homestead is included, the officer having the execution shall give notice in writing to said owner, and the husband or wife of such owner, if found within the county, to plat and record the same within ten days after service thereof; after which time said officer shall cause said homestead to be platted and recorded as above, and the expense thereof shall be added to the costs in the case. [C51,§1254; R60,§2286; C73,§1998; S13,§2979; C24, 27, 31, 35, 39,§**10139**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.5]

Referred to in §561.6

561.6 Platting under order of court. Upon application made to the district court by any creditor of the owner of the homestead, or other person interested therein, such court shall hear the cause upon the proof offered, and fix and establish the boundaries thereof, and the judgment therein shall be filed and recorded in the manner provided in section 561.5. [C97,§2980; C24, 27, 31, 35, 39,§**10140**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.6]

561.7 Changes—nonconsenting spouse. The owner may, from time to time, change the limits of the homestead by changing the metes and bounds, as well as the record of the plat and description, or vacate it.

Such changes shall not prejudice conveyances or liens made or created previously thereto.

No such change of the entire homestead, made without the concurrence of the husband or wife, shall affect his or her rights, or those of the children. [C51,§§1256, 1257; R60,§§2288, 2289; C73,§§2000, 2001; C97,§2981; C24, 27, 31, 35, 39,§**10141**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §561.7]

561.8 Referees to determine exemption. When a disagreement takes place between the owner and any person adversely interested, as to whether any land or buildings are properly a part of the homestead, the sheriff shall, at the request of either party, summon nine disinterested persons having the qualifications of jurors. The parties then, commencing with the owner, shall in turn strike off one person each, until three remain. Should either party fail to do so, the sheriff may act for him, and the three as referees shall proceed to examine and ascertain all the facts of the case, and report the same, with their opinion thereon, to the court from which the execution or other process may have issued within thirty days after their qualification as referees. [C51,§§1258, 1259; R60,§§2290, 2291; C73,§§2002, 2003; C97, §2982; C24, 27, 31, 35, 39,§**10142**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.8]

561.9 Referring back—marking off—costs. The court in its discretion may refer the whole or any part of the matter back to the same or other referees, to be selected in the same manner, or as the parties agree, giving them directions as to the report required of them. When the court is sufficiently advised in the case, it shall make its decision, and may direct the homestead to be marked off anew, or a new plat and description to be made and recorded, and take such other steps as shall be lawful and expedient in attaining the purpose of this chapter. It shall also award costs in accordance with the practice in other cases, as nearly as may be. [C51,§§1260, 1261; R60,§§2292, 2293; C73,§§2004, 2005; C97,§2983; C24, 27, 31, 35, 39, §**10143**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.9]

Costs, ch 625

561.10 Change of circumstances. The extent or appurtenances of the homestead thus established may be called in question in like manner, whenever a change in value or circumstances will justify such new proceedings. [C51,§1262; R60,§2294; C73,§2006; C97,§2984; C24, 27, 31, 35, 39,§**10144**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.10]

561.11 Occupancy by surviving spouse. Upon the death of either husband or wife, the survivor may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law, but the setting off of the distributive share of the husband or wife in the real estate of the deceased shall be such a disposal of the homestead as is herein contemplated. [C51,§1263; R60,§2295; C73, §§2007, 2008; C97,§2985; C24, 27, 31, 35, 39,§**10145**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.11]

561.12 Life possession in lieu of dower. The survivor may elect to retain the homestead for life in lieu of such share in the real estate of the deceased. [C73,§2008; C97,§2985; C24, 27, 31, 35, 39,§**10146**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §561.12]

40GA, ch 237,§11, editorially divided

561.13 Conveyance or encumbrance. No conveyance or encumbrance of, or contract to convey or encumber the homestead, if the owner is married, is valid, unless the husband and wife join in the execution of the same joint instrument, and the instrument sets out the legal description of the homestead, provided, however, that where the homestead is conveyed or encumbered along with or in addition to other real estate it shall not be necessary to particularly describe or set aside the tract of land constituting such homestead, whether the homestead is exclusively the subject of the contract or not; but such contracts may be enforced as to real estate other than

the homestead at the option of the purchaser or encumbrancer. If a spouse who holds only homestead and inchoate dower rights in said homestead specifically relinquishes homestead rights in said instrument it shall not be necessary for such spouse to join in the granting clause of the instrument. [C51,§1247; R60, §2279; C73,§1990; C97,§2974; C24, 27, 31, 35, 39, §10147; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.13]

For conveyances executed prior to July 4, 1943, see 50GA, ch 254,§2
Saving clause, 50GA, ch 254,§3

561.14 Devise. Subject to the rights of the surviving husband or wife, the homestead may be devised like other real estate of the testator. [C51,§1266; R60,§2298; C73,§2010; C97, §2987; C24, 27, 31, 35, 39,§10148; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.14]

561.15 Removal of spouse or children. Neither husband nor wife can remove the other nor the children from the homestead without the consent of the other. [C51,§1462; R60,§2514; C73,§2215; C97,§3166; C24, 27, 31, 35, 39,§10149; C46, 50, 54, 58, 62, 66, 71, 73, 75, §561.15]

561.16 Exemption — divorced spouse. The homestead of every family, whether owned by the husband or wife, is exempt from judicial sale, where there is no special declaration of statute to the contrary, and such right shall continue in favor of the party to whom it is adjudged by divorce decree during continued personal occupancy by such party. [C51,§1245; R60,§2277; C73,§1988; C97,§§2972, 2973; C24, 27, 31, 35, 39,§10150; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.16]

561.17 "Family" defined. A widow or widower, though without children, shall be deemed a family within the meaning of this chapter, while continuing to occupy the real estate used as a homestead at the death of the husband or wife. [C51,§1246; R60,§2278; C73,§1989; C97, §2973; C24, 27, 31, 35, 39,§10151; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.17]

561.18 Descent. If there be no survivor, the homestead descends to the issue of either husband or wife according to the rules of descent, unless otherwise directed by will. [C51,§1264; R60,§2296; C73,§2008; C97,§2985; C24, 27, 31, 35, 39,§10152; C46, 50, 54, 58, 62, 66, 71, 73, 75, §561.18]

561.19 Exemption in hands of issue. Where the homestead descends to the issue of either husband or wife the same shall be held by such issue exempt from any antecedent debts of their parents or their own, except those of the owner thereof contracted prior to its acquisition. [C51,§1264; R60,§2296; C73,§2008; C97, §2985; C24, 27, 31, 35, 39,§10153; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.19]

561.20 New homestead exempt. Where there has been a change in the limits of the homestead, or a new homestead has been acquired with the proceeds of the old, the new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former one would have been. [C51,§1257; R60,§2289; C73,§2001; C97,§2981; C24, 27, 31, 35, 39,§10154; C46, 50, 54, 58, 62, 66, 71, 73, 75, §561.20]

561.21 Debts for which homestead liable. The homestead may be sold to satisfy debts of each of the following classes:

1. Those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.

2. Those created by written contract by persons having the power to convey, expressly stipulating that it shall be liable, but then only for a deficiency remaining after exhausting all other property pledged by the same contract for the payment of the debt.

3. Those incurred for work done or material furnished exclusively for the improvement of the homestead.

4. If there is no survivor or issue, for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead. [C51,§§1248, 1249, 1265; R60,§§2280, 2281, 2297; C73,§§1991–1993, 2009; C97,§§2975, 2976, 2986; C24, 27, 31, 35, 39,§10155; C46, 50, 54, 58, 62, 66, 71, 73, 75,§561.21]

Homestead acquired with pension funds, §627.9
Liability for relief furnished poor person, §252.14

CHAPTER 562

LANDLORD AND TENANT

Landlord's lien, ch 570

562.1 Apportionment of rent.
562.2 Double rental value—liability.
562.3 Attornment to stranger.
562.4 Tenant at will—notice to terminate.
562.5 Termination of farm tenancies.
562.6 Agreement for termination.
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RENTAL DEPOSITS

562.8 Definition.
562.9 Deposits—separate from personal funds.
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562.1 Apportionment of rent. The executor of a tenant for life who leases real estate so held, and dies on or before the day on which the rent is payable, and a person entitled to rent dependent on the life of another may recover the proportion of rent which had accrued at the time of the death of such life tenant. [C51,§1267; R60,§2299; C73,§2011; C97, §2988; C24, 27, 31, 35, 39,**§10156**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§562.1]

562.2 Double rental value—liability. A tenant giving notice of his intention to quit leased premises at a time named, and holding over after such time, and a tenant or his assignee willfully holding over after the term, and after notice to quit, shall pay double the rental value thereof during the time he holds over to the person entitled thereto. [C51,§1268; R60, §2300; C73,§2012; C97,§2989; C24, 27, 31, 35, 39, **§10157**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§562.2]

562.3 Attornment to stranger. The payment of rent, or delivery of possession of leased premises, to one not the lessor, is void, and shall not affect the rights of such lessor, unless made with his consent, or in pursuance of a judgment or decree of court or judicial sale to which the lessor was a party. [C51, §1269; R60,§2301; C73,§2013; C97,§2990; C24, 27, 31, 35, 39,**§10158**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§562.3]

562.4 Tenant at will—notice to terminate. Any person in the possession of real estate, with the assent of the owner, is presumed to be a tenant at will until the contrary is shown, and thirty days' notice in writing must be given by either party before he can terminate such a tenancy; but when in any case, a rent is reserved payable at intervals of less than thirty days, the length of notice need not be greater than such interval. [C51,§§1208, 1209; R60,§§2216, 2218; C73,§§2014, 2015; C97,§2991; C24, 27, 31, 35, 39,**§10159**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§562.4]

Three-day forcible entry notice, §§648.3 and 648.4

562.5 Termination of farm tenancies. In case of tenants occupying and cultivating farms, the notice must fix the termination of the tenancy to take place on the first day of March, except in cases of mere croppers, whose leases shall be held to expire when the crop is harvested; if the crop is corn, it shall not be later than the first day of December, unless otherwise agreed upon. [R60,§2218; C73,§2015; C97,§2991; C24, 27, 31, 35, 39,**§10160**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§562.5]

Forcible entry provisions, §§648.3 and 648.4

562.6 Agreement for termination. Where an agreement is made fixing the time of the termination of the tenancy, whether in writing or not, it shall cease at the time agreed upon, without notice. In the case of farm tenants, except mere croppers, occupying and cultivating an acreage of forty acres or more, the tenancy shall continue for the following crop year upon the same terms and conditions as the original lease unless written notice for termination is given by either party to the other, whereupon the tenancy shall terminate March 1 following; provided further, the tenancy shall not continue because of absence of notice in case there be default in the performance of the existing rental agreement. [R60,§2218; C73,§2015; C97,§2991; C24, 27, 31, 35, 39,**§10161**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §562.6]

Forcible entry provisions, §§648.3 and 648.4

562.7 Notice—how and when served. The written notice so required shall be given as follows:

1. By delivery of notice in person on or before September 1 by one party to the other with acceptance of service thereon to be signed by the person receiving the notice, or

2. By service on either party on or before September 1 by a person in behalf of the other party, in the same manner as original notices are served, or

3. By either party sending to the other at his last known address before September 1, a notice by restricted certified mail. [C73,§2016; C97,§2991; C24, 27, 31, 35, 39,**§10162**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§562.7]

Forcible entry provisions, §§648.3 and 648.4
Original notice, RCP 56

RENTAL DEPOSITS

562.8 Definition. Any deposit of money to secure the performance of a residential rental agreement, other than a deposit which is exclusively in advance payment of rent, shall be subject to the provisions of this division. [C75,§562.8]

562.9 Deposits — separate from personal funds. All deposits of money shall be held by the landlord for the tenant, who is a party to the agreement, in a bank or savings and loan association which is insured by an agency of the federal government. Such deposits shall not be commingled with the personal funds of the landlord. Notwithstanding the provisions of chapter 117, all such deposits of money may be held in a trust account, which may be a common trust account and which may be an interest bearing trust account. Any interest earned on a deposit of money shall be the property of the landlord. [C75,§562.9]

562.10 Return or withholding of deposit. A landlord shall, within thirty days from the date of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding of the deposit or any portion thereof. If the deposit or any portion of the deposit is withheld for the restoration of the premises, the statement shall specify the nature of the damages. The landlord may withhold from the deposit only such amounts as are reasonably necessary for the following reasons:

1. To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to an agreement.

2. To restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

In an action concerning the deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the deposit shall be on the landlord. [C75,§562.10]

562.11 Written statement. A landlord who fails to provide a written statement within thirty days of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions shall forfeit all rights to withhold any portion of the deposit. If no mailing address or instructions are provided to the landlord within one year from the termination of the tenancy the deposit shall revert to the landlord and the tenant will be deemed to have forfeited all rights to the deposit. [C75, §562.11]

562.12 Transfer of deposit. Upon termination of a landlord's interest in the premises, the landlord or his agent shall, within a reasonable time, transfer the deposit, or any remainder after any lawful deductions to the landlord's successor in interest and notify the tenant of the transfer and of the transferee's name and address or return the deposit, or any remainder after any lawful deductions to the tenant.

Upon the termination of the landlord's interest in the premises and compliance with the provisions of this section, he shall be relieved of any further liability with respect to the deposit. [C75,§562.12]

562.13 Rights and obligations transferred. Upon termination of the landlord's interest in the premises, the landlord's successor in interest shall have all the rights and obligations of the landlord with respect to such deposits, except that if the tenant does not object to the stated amount within twenty days after written notice to the tenant of the amount of deposit being transferred or assumed, the obligations of the landlord's successor to return the deposit shall be limited to the amount contained in the notice. The notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service. [C75,§562.13]

562.14 Punitive damages. The bad faith retention of a deposit by a landlord, or any portion of the deposit, in violation of this division shall subject the landlord to punitive damages not to exceed two hundred dollars in addition to actual damages. [C75,§562.14]

562.15 Waiver void. Any attempted waiver of this division by a landlord and tenant shall be void and unenforceable. [C75,§562.15]

562.16 Effective date. The provisions of this division shall apply only to tenancies commencing or renewed on or after July 1, 1974. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period. [C75, §562.16]

CHAPTER 563

WALLS IN COMMON

563.1 Resting wall on neighbor's land.
563.2 Contribution by adjoining owner.
563.3 Openings in walls.
563.4 Repairs—apportionment.
563.5 Beams, joists and flues.
563.6 Increasing height of wall.
563.7 Rebuilding in order to heighten.
563.8 Heightened wall made common.
563.9 Paying for share of adjoining wall.
563.10 Openings in walls—fixtures.
563.11 Disputes—delay—bonds.
563.12 Special agreements—evidence.

563.1 Resting wall on neighbor's land. Where building lots have been surveyed and plats thereof recorded, anyone who is about to build contiguous to the land of another may, if there be no wall on the line between them, build a brick, reinforced concrete, or stone wall thereon, when the whole thickness of such wall above the cellar wall does not exceed eighteen inches exclusive of the plastering, and rest one-half thereof on the adjoining land, but the adjoining owner shall not be compelled to contribute to the expense of building said wall. [R60,§1914; C73,§2019; C97, §2994; C24, 27, 31, 35, 39,§**10163**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§563.1]

563.2 Contribution by adjoining owner. If the adjoining owner contributes one-half of the expense of building such wall, then it is a wall in common between them, but if he refuses to contribute, he shall have the right to make it a wall in common by paying to the person who erected or maintained it one-half of its appraised value at the time of using it. [R60,§1915; C73,§2020; C97,§2995; C24, 27, 31, 35, 39,§**10164**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §563.2]

563.3 Openings in walls. No wall shall be built by any person partly on the land of another with any openings therein, and every

separating wall between buildings shall, as high as the upper part of the first story, be presumed to be a wall in common, if there be no titles, proof, or mark to the contrary, and if any wall is erected which, under the provisions of this chapter, becomes, or may become, at the option of another, a wall in common, such person shall not be compelled to contribute to the expense of closing any openings therein, but this shall be done at the expense of the owner of such wall. [R60,§1916; C73, §2021; C97,§2996; C24, 27, 31, 35, 39,§10165; C46, 50, 54, 58, 62, 66, 71, 73, 75,§563.3]

563.4 Repairs—apportionment. The repairs and rebuilding of walls in common are to be made at the expense of all who have a right to them, and in proportion to the interest of each therein, but every coproprietor of a wall in common may be exonerated from contributing to the same by giving up his right in common, if no building belonging to him is actually supported by such wall. [R60,§1917; C73,§2022; C97,§2997; C24, 27, 31, 35, 39,§10166; C46, 50, 54, 58, 62, 66, 71, 73, 75,§563.4]

563.5 Beams, joists and flues. Every coproprietor may build against a wall held in common, and cause beams or joists to be placed therein; and any person building such a wall shall, on being requested by his coproprietor, make the necessary flues, and leave the necessary bearings for joists or beams, at such height and distance apart as shall be specified by his coproprietor. [R60,§1918; C73, §2023; C97,§2998; C24, 27, 31, 35, 39,§10167; C46, 50, 54, 58, 62, 66, 71, 73, 75,§563.5]

563.6 Increasing height of wall. Every coproprietor may increase the height of a wall in common at his sole expense, and he shall repair and keep in repair that part of the same above the part held in common. [R60, §1919; C73,§2024; C97,§2999; C24, 27, 31, 35, 39, §10168; C46, 50, 54, 58, 62, 66, 71, 73, 75,§563.6]

C97,§2999, editorially divided

563.7 Rebuilding in order to heighten. If the wall so held in common cannot support the wall to be raised upon it, one who wishes to have it made higher must rebuild it anew and at his own expense, and the additional thickness of the wall must be placed entirely on his own land. [R60,§1920; C73,§2025; C97, §2999; C24, 27, 31, 35, 39,§10169; C46, 50, 54, 58, 62, 66, 71, 73, 75,§563.7]

563.8 Heightened wall made common. The person who did not contribute to the heightening of a wall held in common may cause the raised part to become common by paying one-half of the appraised value of raising it, and half the value of the ground occupied by the additional thickness thereof, if any ground was so occupied. [R60,§1921; C73,§2026; C97, §2999; C24, 27, 31, 35, 39,§10170; C46, 50, 54, 58, 62, 66, 71, 73, 75,§563.8]

563.9 Paying for share of adjoining wall. Every proprietor joining a wall has the right of making it a wall in common, in whole or in part, by repaying to the owner thereof one-half of its value, or one-half of the part which he wishes to hold in common, and one-half of the value of the ground on which it is built, if the person who has built it has laid the foundation entirely upon his own ground. [R60, §1922; C73,§2027; C97,§3000; C24, 27, 31, 35, 39, §10171; C46, 50, 54, 58, 62, 66, 71, 73, 75,§563.9]

563.10 Openings in walls—fixtures. Adjoining owners of walls held in common shall not make openings or cavities therein, nor affix nor attach thereto any work or structure, without the consent of the other, or upon his refusal, without having taken all necessary precautions to guard against injury to the rights of the other, to be ascertained by persons skilled in building. [R60,§1923; C73,§2028; C97,§3001; C24, 27, 31, 35, 39,§10172; C46, 50, 54, 58, 62, 66, 71, 73, 75,§563.10]

563.11 Disputes—delay—bonds. No dispute between adjoining owners as to the amount to be paid by one or the other, by reason of any of the matters provided in this chapter, shall delay the execution of the provisions of the same, if the party on whom the claim is made shall enter into bonds, with security, to the satisfaction of the clerk of the district court of the proper county, conditioned that he shall pay to the claimant whatever may be found to be his due on the settlement of the matter between them, either in a court of justice or elsewhere; upon the presentation of such a bond, the clerk shall endorse his approval thereon, and retain the same until demanded by the party for whose benefit it is executed. [R60,§1924; C73,§2029; C97,§3002; C24, 27, 31, 35, 39,§10173; C46, 50, 54, 58, 62, 66, 71, 73, 75, §563.11]

563.12 Special agreements—evidence. This chapter shall not prevent adjoining proprietors from entering into special agreements about walls on the lines between them, but no evidence thereof shall be competent unless in writing, signed by the parties thereto or their lawfully authorized agents, or the guardian of either, if a minor, who shall have full authority to act for his ward in all matters relating to walls in common without an order of court therefor. [R60,§1925; C73,§2030; C97,§3003; C24, 27, 31, 35, 39,§10174; C46, 50, 54, 58, 62, 66, 71, 73, 75,§563.12]

Statute of frauds in general, §622.32

CHAPTER 564

EASEMENTS

564.1 Adverse possession—"use" as evidence.
564.2 Light and air.
564.3 Footway.
564.4 Notice to prevent acquisition.
564.5 Effect of notice.
564.6 Notice, service and record.
564.7 Evidence.
564.8 Action to establish.

564.1 Adverse possession — "use" as evidence. In all actions hereafter brought, in which title to any easement in real estate shall be claimed by virtue of adverse possession thereof for the period of ten years, the use of the same shall not be admitted as evidence that the party claimed the easement as his right, but the fact of adverse possession shall be established by evidence distinct from and independent of its use, and that the party against whom the claim is made had express notice thereof; and these provisions shall apply to public as well as private claims. [C73, §2031; C97,§3004; C24, 27, 31, 35, 39,§**10175**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§564.1]

See Book of Annotations under §614.1

564.2 Light and air. Whoever has erected, or may erect, any house or other building near the land of another person, with windows overlooking such land, shall not, by the mere continuance of such windows, acquire any easement of light or air, so as to prevent the erection of any building on such land. [C73, §2032; C97,§3005; C24, 27, 31, 35, 39,§**10176**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§564.2]

564.3 Footway. No right of footway, except claimed in connection with a right to pass with carriages, shall be acquired by prescription or adverse use for any length of time. [C73,§2033; C97,§3006; C24, 27, 31, 35, 39,§**10177**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§564.3]

564.4 Notice to prevent acquisition. When any person is in the use of a way, privilege, or other easement in the land of another, the owner of the land in such case may give notice in writing to the person claiming or using the way, privilege, or easement of his intention to dispute any right arising from such claim or use. [C73,§2034; C97,§3007; C24, 27, 31, 35, 39, §**10178**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§564.4]

C97,§3007, editorially divided

564.5 Effect of notice. Said notice, when served and recorded as hereinafter provided, shall be an interruption of such use, and prevent the acquiring of any right thereto by the continuance thereof. [C73,§2034; C97,§3007; C24, 27, 31, 35, 39,§**10179**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§564.5]

564.6 Notice, service and record. Said notice, signed by the owner of the land, his agent, or guardian, may be served in the same manner as in a civil action, upon the party, his agent, or guardian, if within this state, otherwise on the tenant or occupant, if there be any, and it, with the return thereof, shall be recorded within three months thereafter in the recorder's office of the county in which the land is situated. [C73,§2034; C97,§3007; C24, 27, 31, 35, 39,§**10180**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§564.6]

Manner of service, R.C.P. 56.1(*a*)

564.7 Evidence. A certified copy of such record of said notice and the officer's return thereon shall be evidence of the notice and the service thereof. [C73,§2034; C97,§3007; C24, 27, 31, 35, 39,§**10181**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§564.7]

564.8 Action to establish. When notice is given to prevent the acquisition of a right to a way or other easement, it shall be considered so far a disturbance thereof as to enable the party claiming to bring an action for disturbing the same in order to try such right, and if the plaintiff in the action prevails, he shall recover costs. [C73,§2035; C97,§3008; C24, 27, 31, 35, 39,§**10182**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §564.8]

CHAPTER 565

GIFTS

565.1 Churches may lease.
565.2 Taxation.
565.3 Gifts to state.
565.4 Management of property.
565.5 Gifts to state institutions.
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565.7 Trustees appointed by court—bond.
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565.13 Annuity tax.
565.14 Limitation on acceptance.
565.15 Surplus of tax.

565.1 Churches may lease. Church organizations, occupying real property granted to them by the territory or state, may lease the same for business purposes, and occupy other real property with their church edifices, but all of the income derived from such leased real property shall be devoted to maintaining the religious exercises and ordinance of the church to which the grant was originally made, and to no other purpose; and such churches and their affairs shall remain in the control of boards of trustees regularly chosen in accordance with their charters. [C73,§1921; C97,§2902; C24, 27, 31, 35, 39,§10183; C46, 50, 54, 58, 62, 66, 71, 73, 75,§565.1]

C97,§2902, editorially divided

565.2 Taxation. Real property so leased shall in all cases be subject to taxation, the same as the real property of natural persons. [C73,§1921; C97,§2902; C24, 27, 31, 35, 39,§10184; C46, 50, 54, 58, 62, 66, 71, 73, 75,§565.2]

Tax exemptions generally, §427.1

565.3 Gifts to state. A gift, devise, or bequest of property, real or personal, may be made to the state, to be held in trust for and applied to any specified purpose within the scope of its authority, but the same shall not become effectual to pass the title in such property unless accepted by the executive council in behalf of the state. [C73,§1387; C97,§2903; C24, 27, 31, 35, 39,§10185; C46, 50, 54, 58, 62, 66, 71, 73, 75,§565.3]

Referred to in §§224B.6, 565.4

565.4 Management of property. If gifts are made to the state in accordance with section 565.3, for the benefit of an institution thereof, the property, if accepted, shall be held and managed in the same way as other property of the state, acquired for or devoted to the use of such institution; and any conditions attached to such gift shall become binding upon the state, upon the acceptance thereof. [C97, §2904; C24, 27, 31, 35, 39,§10186; C46, 50, 54, 58, 62, 66, 71, 73, 75,§565.4]

Referred to in §224B.6

565.5 Gifts to state institutions. Gifts, devises, or bequests of property, real or personal, made to any state institution for purposes not inconsistent with the objects of such institution, may be accepted by its governing board, and such board may exercise such powers with reference to the management, sale, disposition, investment, or control of property so given, devised, or bequeathed, as may be deemed essential to its preservation and the purposes for which the gift, devise, or bequest was made. [S13,§2904-a; C24, 27, 31, 35, 39,§10187; C46, 50, 54, 58, 62, 66, 71, 73, 75,§565.5]

Referred to in §224B.6
See also §279.42

565.6 Gifts to governmental bodies. Counties, civil townships wholly outside of any city, and school corporations, are authorized to take and hold property, real and personal, by gift and bequest; and to administer the same through the proper officer in pursuance of the terms of the gift or bequest. No title shall pass unless accepted by the governing board of the corporation or township. Conditions attached to such gifts or bequests become binding upon the corporation or township upon acceptance thereof. [C97,§§740, 2903, 2904; S13,§740; C24, 27, 31, 35, 39,§10188; C46, 50, 54, 58, 62, 66, 71, 73, 75,§565.6]

Gifts, see §330.5

565.7 Trustees appointed by court—bond. When made for the establishing of institutions of learning or benevolence, and no provision is made in the gift or bequest for the execution of the trust, the judge of the district court having charge of the probate proceedings in the county shall appoint three trustees, residents of said county, who shall have charge and control of the same, and who shall continue to act until removed by the court. They shall give bond as required in case of executors, and be subject to the orders of said court. [C97,§740; S13,§740; C24, 27, 31, 35, 39, §10189; C46, 50, 54, 58, 62, 66, 71, 73, 75,§565.7]

565.8 Tax voted to maintain. When any county receives by gift or devise, property, real or personal, for the purpose of establishing any institution of benevolence including hospitals, and no sufficient fund or endowment is provided for its maintenance, or is received upon condition that the donee or devisee provide for aiding the maintenance of such institution by a tax levy upon the assessed property of such municipality, it shall be the duty of the governing board of such municipality to submit by resolution to the qualified electors thereof at a regular or special election the question whether there shall be levied upon the assessed property of such municipality an annual tax not exceeding twenty and one-fourth cents per thousand dollars of assessed value for the purpose of aiding the maintenance of such institution. The said proposition shall be submitted in the manner provided for similar propositions in the title on elections. [S13,§740; C24, 27, 31, 35, 39,§10190; C46, 50, 54, 58, 62, 66, 71, 73, 75,§565.8]

Referred to in §§24.37, 347A.8, 384.12
Manner of submission, §49.43 et seq.

565.9 Amount of levy. If a majority of the votes cast at such election on the proposition so submitted shall be in favor of the proposition, the governing board of such municipality shall determine the amount to be levied for such purpose, not exceedng twenty and one-fourth cents per thousand dollars of assessed value, and the amount so fixed shall be levied upon the assessed property of such municipality and collected in the same manner as other taxes of such municipality are levied and collected. [S13,§740; C24, 27, 31, 35, 39,§10191; C46, 50, 54, 58, 62, 66, 71, 73, 75,§565.9]

Referred to in §347A.8

565.10 Disbursement. When collected by the county treasurer said tax shall be paid over to the treasurer of the institution authorized to

receive the same and shall be paid out on the order of the trustees of such institution who are authorized to manage and control the same, for the purposes for which it was authorized. [S13,§740; C24, 27, 31, 35, 39,§**10192**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§565.10]

Referred to in §347A.8

565.11 Tax discontinued. The governing board of such municipality may discontinue such levy of tax in the event the institution to be aided thereby is destroyed by the elements and no fund is provided or available for its rebuilding; or after five years of continuance of such tax aid the governing board may, and upon the petition of twenty-five percent of the qualified electors of such municipality as shown by the pollbooks of the last preceding general election, shall, by resolution, resubmit to the qualified electors of such municipality, at a regular or special election, in the same manner hereinbefore specified, the question whether tax aid for such institution shall be discontinued, and if sixty-five percent of the votes cast at such election on the proposition so submitted be in favor of discontinuing tax aid, no further levy of tax shall be made for such purpose. [S13,§740; C24, 27, 31, 35, 39, §**10193**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§565.11]

Referred to in §347A.8

565.12 Condition as to annuity. When a gift or bequest is conditioned upon the payment of an annuity to the donor, or any other person, the governing board of a county or city may, upon acceptance of such gift or bequest, agree to pay such annuity providing the amount thereof does not exceed five percent of the amount of the gift or bequest and does not exceed the amount realized from a tax levy of twenty-seven cents per thousand dollars of assessed value upon the taxable property of said county or city. [C24, 27, 31, 35, 39,§**10194**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §565.12]

40GA, ch 239,§10, editorially divided

565.13 Annuity tax. To provide for the payment of such annuity, the county or city, through its proper officers, shall annually thereafter levy a tax, not exceeding twenty and one-fourth cents per thousand dollars of assessed value, if levied by a county, sufficient to pay such annuity. [C24, 27, 31, 35, 39, §**10195**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§565.13]

565.14 Limitation on acceptance. No agreement shall be made by a county unless the annuity provided for therein, and all annuities provided for under prior agreements, may be paid from the proceeds of one annual tax levy of twenty and one-fourth cents per thousand dollars of assessed value. [C24, 27, 31, 35, 39, §**10196**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§565.14]

565.15 Surplus of tax. Any amount collected by a tax so levied and which is not required for the payment of such annuity shall be used for the purposes for which such gift or bequest is made and may be transferred to such fund as will enable it to be used for such purpose. [C24, 27, 31, 35, 39,§**10197**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§565.15]

CHAPTER 565A

GIFTS TO MINORS

565A.1 Definitions.
565A.2 Gifts—how made.
565A.3 Gifts irrevocable.
565A.4 Custodian.
565A.5 Compensation—bond—liability.
565A.6 Responsibility of others.
565A.7 Successors to custodian.
565A.8 Accounting.
565A.9 Construction.
565A.10 Title.
565A.11 Laws not applicable.

565A.1 Definitions. In this chapter, unless the context otherwise requires:

1. An *"adult"* is a person who has attained the age of twenty-one years.

2. A *"bank"* is a bank, trust company, national banking association, savings bank or industrial bank.

3. A *"broker"* is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business.

4. *"Court"* means the supreme court, district courts, and such other courts, inferior to the supreme court, as the general assembly may establish or has established.

5. *"The custodial property"* includes:

a. All securities and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this chapter;

b. The income from the custodial property; and

c. The proceeds, immediate and remote, from the sale, exchange, conversion, investment, re-

investment or other disposition of such securities, money and income.

6. A *"custodian"* is a person so designated in a manner prescribed in this chapter.

7. A *"guardian"* of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person.

8. An *"issuer"* is a person who places or authorizes the placing of his name on a security, other than as a transfer agent, to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

9. A *"legal representative"* of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

10. A *"member"* of a *"minor's family"* means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

11. A *"minor"* is a person who has not attained the age of twenty-one years.

12. A *"security"* shall include any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest in an oil, gas, or mining lease, collateral trust certificate, preorganization certificate, preorganization subscription, any transferable share, investment contract, or beneficial interest in title to property, interest in or under a profit-sharing or participating agreement or scheme, or shares invested in savings and loan associations or any other instrument commonly known as a security. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

13. A *"transfer agent"* is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.

14. A *"trust company"* is a bank authorized to exercise fiduciary powers. [C62, 66, 71, 73, 75,§565A.1]

565A.2 Gifts—how made.

1. An adult person may, during his lifetime, make a gift of a security or money to a person who is a minor on the date of the gift.

a. If the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed, in substance, by the words: "as custodian for .....
(Name of minor)
under the Iowa Uniform Gifts to Minors Act";

b. If the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

"GIFT UNDER THE IOWA UNIFORM GIFTS TO MINORS ACT

I, ..., hereby deliver to .....
(Name of donor) (Name
..... as custodian for .....
of custodian) (Name of minor)
under the Iowa Uniform Gifts to Minors Act, the following security (ies):

(insert an appropriate description of the security or securities delivered sufficient to identify it or them)

.....
(Signature of donor)
..... hereby acknowledges
(Name of custodian)
receipt of the above described security (ies) as custodian for the above minor under the Iowa Uniform Gifts to Minors Act.

Dated: ....
(Signature of custodian)"

c. If the subject of the gift is money, by paying or delivering it to a broker or a bank for credit to an account in the name of the donor, another adult person or a bank with fiduciary powers, following, in substance, by the words: "as custodian for .....
(Name of minor)
under the Iowa Uniform Gifts to Minors Act".

2. Any gift made in a manner prescribed in subsection 1 may be made to only one minor and only one person may be the custodian.

3. A donor who makes a gift to a minor in a manner prescribed in subsection 1 shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor his designation of an ineligible person as custodian affects the consummation of the gift. [C62, 66, 71, 73, 75,§565A.2]

565A.3 Gifts irrevocable.

1. A gift made in a manner prescribed in this chapter is irrevocable and conveys to the minor indefeasibly vested legal title to the security or money given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this chapter.

2. By making a gift in a manner prescribed in this chapter, the donor incorporates in his gift all the provisions of this chapter and grants to the custodian, and to any issuer, transfer agent, bank, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this chapter. [C62, 66, 71, 73, 75,§565A.3]

565A.4 Custodian.

1. The custodian shall collect, hold, manage, invest and reinvest the custodial property.

2. The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

3. The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

4. To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one years or, if the minor dies before attaining the age of twenty-one years, he shall thereupon deliver or pay it over to the estate of the minor.

5. The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent person of discretion and intelligence who is seeking a reasonable income and the preservation of the prudent person's capital, except that the custodian may, in the custodian's discretion and without liability to the minor or the minor's estate, retain a security given to the minor in a manner prescribed in this chapter.

6. The custodian may sell, exchange, convert or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

7. The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for ..... under the Iowa Uniform Gifts to Minors Act". The custodian shall hold all money which is custodial property in an account with a broker or in a bank or in share accounts in savings and loan associations in the name of the custodian, followed, in substance, by the words: "as custodian for .....
(Name of minor)
under the Iowa Uniform Gifts to Minors Act". The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

8. The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years.

9. A custodian has, with respect to the custodial property, in addition to the rights and powers provided in this chapter, all the rights and powers which a guardian has with respect to property not held as custodial property. [C62, 66, 71, 73, 75,§565A.4]

565A.5 Compensation—bond—liability.

1. A custodian may act without compensation for his services.

2. Unless he is a donor, a custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties and may receive from the custodial property reasonable compensation for his services determined by a direction by the donor when the gift is made; or, if no such direction, by order of the court after submission by the custodian of an itemized claim or report setting forth his services, from time to time, as long as such custodian continues to serve.

3. Except as otherwise provided in this chapter, a custodian shall not be required to give a bond for the performance of his duties.

4. A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this chapter. [C62, 66, 71, 73, 75,§565A.5]

565A.6 Responsibility of others. No issuer, transfer agent, bank, broker or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this chapter, or is obliged to inquire into the validity or propriety under this chapter of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see

to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him. [C62, 66, 71, 73, 75,§565A.6]

565A.7 Successors to custodian.

1. Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become successor custodian. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this chapter.

2. A custodian, other than the donor, may resign and designate his successor by:

a. Executing an instrument of resignation designating the successor custodian; and

b. Causing each security which is custodial property and in registered form to be registered in the name of the successor custodian followed, in substance, by the words: "as custodian for ..... under the Iowa
(Name of minor)
Uniform Gifts to Minors Act"; and

c. Delivering to the successor custodian the instrument of resignation, each security registered in the name of the successor custodian and all other custodial property, together with any additional instruments required for the transfer thereof.

3. A custodian, whether or not a donor, may petition the court for permission to resign and for the designation of a successor custodian.

4. If the person designated as custodian is not eligible, renounces or dies before the minor attains the age of twenty-one years, the guardian of the minor shall be successor custodian. If the minor has no guardian, a donor, his legal representative, the legal representative of the custodian, an adult member of the minor's family, or the minor, if he has attained the age of fourteen years, may petition the court for the designation of a successor custodian.

5. A donor, the legal representative of a donor, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

6. Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the custodian and all other interested persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor. [C62, 66, 71, 73, 75, §565A.7]

565A.8 Accounting.

1. The minor, if he has attained the age of fourteen years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

2. The court, in a proceeding under this chapter or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof. [C62, 66, 71, 73, 75,§565A.8]

565A.9 Construction.

1. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

2. This chapter shall not be construed as providing an exclusive method for making gifts to minors. [C62, 66, 71, 73, 75,§565A.9]

565A.10 Title. This chapter may be cited as the "Iowa Uniform Gifts to Minors Act". [C62, 66, 71, 73, 75,§565A.10]

565A.11 Laws not applicable. Section 668.3* and all other laws of this state contrary to the provisions of this chapter, shall not apply to the custodial property of a minor held by the custodian under this chapter. [C62, 66, 71, 73, 75,§565A.11]

Constitutionality, 58GA, ch 342,§11

*Repealed by 60GA, ch 326,§704; see §633.108

CHAPTER 566

CEMETERIES AND MANAGEMENT THEREOF

MANAGEMENT BY TRUSTEE

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MANAGEMENT BY TRUSTEE

566.1 Trustee appointed—trust funds. The owners of, or any party interested in, any cemetery may, by petition presented to the district court of the county where the cemetery is situated, have a trustee appointed with authority to receive any and all moneys or property that may be donated for and on account of said cemetery and to invest, manage, and control same under the direction of the court; but he shall not be authorized to receive any gift, except with the understanding that the principal sum is to be a permanent fund, and only the net proceeds therefrom to be used in carrying out the purpose of the trust created, and all such funds shall be exempt from taxation. [S13,§254-a4; C24, 27, 31, 35, 39,§**10198**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.1]

566.2 Requisites of petition. Such petition may state the amount proposed to be placed in such trust fund, the manner of investment thereof, the provisions made for the disposition of any surplus income not required for the care and upkeep of the property described in such petition. [C24, 27, 31, 35, 39,§**10199**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.2]

40ExGA, HF 82,§2, editorially divided

566.3 Approval of court — surplus fund. Such provisions shall all be subject to the approval of the court and when so approved the trust fund and the trustee thereof shall, at all times, be subject to the orders and control of the court and such surplus arising from said fund shall not be used except for charitable, eleemosynary, or public purposes under the direction of the court. [C24, 27, 31, 35, 39,§**10200**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.3]

566.4 Receipt—cemetery record. Every such trustee shall execute and deliver to the donor a receipt showing the amount of money or other property received, and the use to be made of the net proceeds from same, duly attested by the clerk of the court granting letters of trusteeship, and a copy thereof, signed by the trustee and so attested, shall be filed with and recorded by the clerk in a book to be known as the cemetery record, in which shall be recorded all reports and other papers, including orders made by the court relative to cemetery matters. [S13,§254-a5; C24, 27, 31, 35, 39,§**10201**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §566.4]

566.5 Investments. Any such trustee shall have authority to receive and invest all moneys and property, so donated or bequeathed, and that portion of cemetery lot sales and permanent charges made against cemetery lots which has been set aside in a perpetual care fund, in such authorized investments and in the manner prescribed in section 682.23 or as the same may be hereafter amended. [S13,§254-a6; C24, 27, 31, 35, 39,§§**10202, 10203**; C46, 50, 54, 58,§§566.5, 566.6; C62, 66, 71, 73, 75,§566.5]

566.6 Repealed by 58GA, ch 343,§1; see §566.5.

566.7 Bond—approval—oath. Every such trustee before entering upon the discharge of his duties or at any time thereafter when required by the court, must give bond in such penalty as may be required by the court, approved by the clerk, conditioned for the faithful discharge of his duties, and take and subscribe an oath the same in substance as the condition of the bond, which bond and oath must be filed with the clerk. [S13, §254-a7; C24, 27, 31, 35, 39,§**10204**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.7]

566.8 Clerk—duty of. It shall be the duty of the clerk at the time of filing each such receipt, to at once advise the court as to the amount of the principal fund in the hands of such trustee, the amount of bond filed, and whether it is good and sufficient for the amount given. [S13,§254-a8; C24, 27, 31, 35, 39, §**10205**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.8]

566.9 Compensation — costs. Such trustee shall serve without compensation, but may, out of the income received, pay all proper items of expense incurred in the performance of his duties, including cost of bond, if any. [S13, §254-a9; C24, 27, 31, 35, 39,§**10206**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.9]

566.10 Annual report. Such trustee shall make full report of his doings in the month of January following his appointment and in January of each successive year. In each of said reports he shall apportion the net proceeds received from the sum total of the permanent fund and make proper credit to each of the separate funds assigned to him in trust. [S13, §254-a10; C24, 27, 31, 35, 39,§**10207**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.10]

566.11 Removal — vacancy filled. Any such trustee may be removed by the court at any time for cause, and in the event of removal or death, the court must appoint a new trustee and require his predecessor or his personal representative to make full accounting. [S13,

§254-a11; C24, 27, 31, 35, 39,§10208; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.11]

566.12 County auditor as trustee. In case no trustee is appointed, or if so appointed does not qualify, then such funds, or any funds donated by any person or estate to improvement of cemeteries, unless otherwise provided by law, shall be placed in the hands of the county auditor, who shall receipt for, loan, and make annual reports of such funds in such manner as provided in this chapter. [SS15, §254-a12; C24, 27, 31, 35, 39,§10209; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.12]

566.13 Accounting. The said auditor shall annually turn over the accrued interest in his hands to the cemetery association or other person having control of the cemetery entitled thereto, who shall use the same in carrying out the provisions of said trust, and who shall file a written report annually with the county auditor. [SS15,§254-a12; C24, 27, 31, 35, 39, §10210; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.13]

MANAGEMENT BY MUNICIPALITIES

566.14 Municipal corporation as trustee. Counties, cities, irrespective of their form of government, boards of trustees of cities to whom the management of municipal cemeteries has been transferred by ordinance, and civil townships wholly outside of any city, shall be and they are hereby created trustees in perpetuity, and are required to accept, receive, and expend all moneys and property donated or left to them by bequest, and that portion of cemetery lot sales or permanent charges made against cemetery lots which has been set aside in a perpetual care fund, to be used in caring for the property of the donor, or lot owner who by purchase or otherwise has provided for the perpetual care of a cemetery lot in any cemetery, or in accordance with the terms of such donation, bequest, or agreement for sale and purchase of a cemetery lot, and the money or property thus received shall be used for no other purpose. [S13,§740; C24, 27, 31, 35, 39,§10211; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.14]

566.15 Authority to invest funds. The board of supervisors, mayor and council, or board of trustees, as the case may be, shall have authority to receive and invest all moneys and property, so donated or bequeathed, and that portion of cemetery lot sales and permanent charges made against cemetery lots which has been set aside in a perpetual care fund in such authorized investments and in the manner prescribed in section 682.23, or as the same may be hereafter amended. Such money must be invested at the market value of such securities, and they shall use the income from such investment in caring for the property of the donor in any cemetery, or as shall be provided in the terms of such gift or donations or agreement for sale and purchase of a cemetery lot. [S13,§740; C24, 27, 31, 35, 39,§10212; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.15]

566.16 Resolution of acceptance—interest. Before any part of the principal may be so invested or used, the said county, city, board of trustees of cities to whom the management of municipal cemeteries has been transferred by ordinance, or civil township shall, by resolution, in accordance with the law as now provided, accept said donation or bequest, and that portion of cemetery lot sales or permanent charges made against cemetery lots which is to be used for perpetual care of cemetery lots, and shall, by said resolution, duly provide for the payment of interest thereon, payable annually, to the cemetery general fund or to the cemetery association, or to the person having charge of said cemetery, to be used in caring for or maintaining the individual property of the donor in said cemetery, or lots which have been sold where, in said sale, provision was made for the perpetual care thereof, all to be in accordance with the terms of the donation or bequest, or the terms of the sale or purchase of a cemetery lot.

In case there is no cemetery association then the income from said fund shall be expended under the direction of the board of supervisors in accordance with the terms of said donation or bequest, or the terms of the sale or purchase of a cemetery lot. [S13,§740; C24, 27, 31, 35, 39,§10213; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.16]

566.17 Delegates to conventions. Every county or township having a cemetery under its control may delegate not to exceed two officials from each cemetery so controlled to attend meetings of cemetery officials, and certain expenses, including association dues, not to exceed twenty-five dollars, of said delegates may be paid out of the cemetery fund of said county or township. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.17]

566.18 Subscribing to publications. The cemetery officials of every county or township having a cemetery under its control may subscribe to one or more publications devoted exclusively to cemetery management, but said subscriptions may be paid out of the cemetery fund of the county or township. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.18]

MAINTENANCE UNDER COURT ORDER

566.19 Settlement of estates—maintenance fund. The court in which the estate of any deceased person is administered, before final distribution, may allow and set apart from such estate, a sum sufficient to provide an income adequate to perpetual pay for the care and upkeep of the cemetery lot upon which the body of the deceased is buried, except where perpetual care has otherwise been provided for. The sum so allowed and set apart shall be paid to a trustee as provided by this chapter. [C27, 31, 35,§10213-a1; C39,§10213.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.19]

ABANDONED LOTS

566.20 Reversion. The ownership or right in or to an unoccupied cemetery lot or portion thereof shall upon abandonment revert to the person or corporation having ownership and charge of the cemetery containing such lots. [C31, 35,§10213-d1; C39,§**10213.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.20]

44GA, ch 207,§1, editorially divided
Referred to in §566.27

566.21 Presumption of abandonment. The continued failure to maintain or care for a cemetery lot for a period of ten years shall create and establish the presumption that the same has been abandoned. [C31, 35,§10213-d2; C39,§**10213.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.21]

Referred to in §566.27

566.22 Notice of abandonment. Abandonment shall not be deemed complete unless after such ten-year period there shall have been given by the reversionary owner to the recorded owner, or if he be deceased or his whereabouts unknown, to the heirs of such deceased, notice declaring the lot to be abandoned. [C31, 35,§10213-d3; C39,§**10213.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.22]

Referred to in §566.27

566.23 Service of notice. The notice may be served personally on the owner or his heirs, or may be served by the mailing of the notice by certified mail to the owner, or his heirs as the case may be, to their last known address. In the event that the address of the owner or his heirs cannot be ascertained, then notice of such abandonment shall be by one publication in the official newspaper of the county, in which the cemetery is located. [C31, 35,§10213-d4; C39,§**10213.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.23]

Referred to in §566.27

566.24 Notice of nonabandonment — effect. If within one year from the time of serving such notice the recorded owner or his heirs shall pay the past due annual care charges against the lot, then shall the presumption of abandonment no longer exist. [C31, 35,§10213-d5; C39,§**10213.6**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.24]

Referred to in §566.27
44GA, ch 207,§2, editorially divided

566.25 Reversioner's right to sell. In case the abandonment has been complete as herein provided the reversionary owner of the abandoned lot or portion thereof may sell the same and convey title thereto. [C31, 35,§10213-d6; C39,§**10213.7**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.25]

Referred to in §566.27

566.26 Use of fund. Any funds realized from the sale of such lots or portions thereof shall constitute a fund to be used solely for the perpetual care and upkeep of such lot or portion of lot so sold and likewise any occupied portion thereof. [C31, 35,§10213-d7; C39, §**10213.8**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.26]

Referred to in §566.27

566.27 Applicability of statute. Sections 566.20 to 566.26 shall not apply to a cemetery lot or tract for which perpetual care has been provided by will, by order of court or by contract with the original grantor. [C31, 35, §10213-d8; C39,§**10213.9**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§566.27]

CHAPTER 566A

CEMETERY REGULATIONS

566A.1 Applicability of chapter.
566A.2 Designation.
566A.3 Guarantee fund.
566A.4 Application to prior cemeteries.
566A.5 Nonperpetual care cemeteries.
566A.6 Perpetual care cemeteries.
566A.7 Commission or bonus unlawful.
566A.8 Discrimination prohibited.
566A.9 Penalty.
566A.10 Extent of offenses.
566A.11 Speculation prohibited.

566A.1 Applicability of chapter. Any corporation or other form of organization organized or engaging in the business under the laws of the state of Iowa, or wheresoever organized and engaging in the business in the state of Iowa, of the ownership, maintenance or operation of a cemetery, providing lots or other interment space therein for the remains of human bodies, except such organizations which are churches or religious or established fraternal societies, or incorporated cities or other political subdivisions of the state of Iowa owning, maintaining or operating cemeteries, shall be subject to the provisions of this chapter. [C54, 58, 62, 66, 71, 73, 75,§566A.1]

Referred to in §§566A.7, 566A.8

566A.2 Designation. All such organizations subject to the provisions of this chapter shall be, for the purposes hereof, designated either as "perpetual care cemeteries" or "nonperpetual care cemeteries." [C54, 58, 62, 66, 71, 73, 75,§566A.2]

566A.3 Guarantee fund. Any such organization subject to the provisions of this chap-

ter which is organized or commences business in the state of Iowa after July 4, 1953 and desires to operate as a perpetual care cemetery shall, before selling or disposing of any interment space or lots, establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash. The perpetual care and maintenance guarantee fund shall be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. The district court so having jurisdiction shall have full jurisdiction over the approval of trustees, reports and accounting of trustees, amount of surety bond required, and investment of funds. Only the income from such fund shall be used for the care and maintenance of the cemetery for which it was established.

To continue to operate as a perpetual care cemetery, any such organization shall set aside and deposit in the perpetual care fund not less than the following amounts for lots of interment space thereafter sold or disposed of:

1. A minimum of twenty percent of the gross selling price with a minimum of twenty dollars for each adult burial space, whichever is the greater.

2. A minimum of twenty percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches in length or ten dollars for each space up to sixty inches in length, whichever is the greater.

3. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars for each crypt in a public mausoleum, whichever is the greater.

4. A minimum of twenty percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a public columbarium.

The initial perpetual care fund established for any cemetery shall remain in an irrevocable trust fund until such time as this fund has reached fifty thousand dollars, when it may be withdrawn at the rate of one thousand dollars from the original twenty-five thousand dollars for each additional three thousand dollars added to the fund, until all of the twenty-five thousand dollars has been withdrawn. [C54, 58, 62, 66, 71, 73, 75,§566A.3]

Referred to in §§566A.4, 566A.6

566A.4 Application to prior cemeteries. Any such organization subject to the provisions of this chapter which was organized and engaged in business prior to the effective date of this chapter shall be a perpetual care cemetery if it shall at all times subsequent to the effective date of this chapter comply with the requirements of a perpetual care cemetery as set forth in section 566A.3. [C54, 58, 62, 66, 71, 73, 75,§566A.4]

566A.5 Nonperpetual care cemeteries. All other organizations subject to the provisions of this chapter shall be nonperpetual care cemeteries.

Each nonperpetual care cemetery shall post in a conspicuous place in the office or offices where sales are conducted a legible sign stating: "This is a nonperpetual care cemetery". The lettering of this sign shall be of suitable size so it is easily read at a distance of fifty feet.

Each nonperpetual care cemetery shall also have printed or stamped at the head of all its contracts, deeds, statements, letterheads and advertising material, the legend: "This is a nonperpetual care cemetery", and shall not sell any lot or interment space therein unless the purchaser thereof is informed that the cemetery is a nonperpetual care cemetery. [C54, 58, 62, 66, 71, 73, 75,§566A.5]

566A.6 Perpetual care cemeteries. Any nonperpetual care cemetery after the effective date of this chapter may become a perpetual care cemetery by placing in the perpetual care trust fund twenty-five thousand dollars or five thousand dollars per acre of all property sold, whichever is the greater, and shall comply with the requirement for a perpetual care cemetery as provided in section 566A.3. [C54, 58, 62, 66, 71, 73, 75,§566A.6]

566A.7 Commission or bonus unlawful. It shall be unlawful for any organization subject to the provisions of this chapter to pay or offer to pay to, or for any person, firm or corporation to receive directly or indirectly a commission or bonus or rebate or other thing of value, for or in connection with the sale of any interment space, lot or part thereof, in any cemetery described in section 566A.1 of this chapter. The provisions of this section shall not apply to a person regularly employed and supervised by such organization. [C54, 58, 62, 66, 71, 73, 75,§566A.7]

Referred to in §566A.10

566A.8 Discrimination prohibited. It shall be unlawful for any organization subject to the provisions of this chapter to deny the privilege of interment of the remains of any deceased person in any cemetery described in section 566A.1 of this chapter solely because of the race or color of such deceased person. Any contract, agreement, deed, covenant, restriction or charter provision at any time entered into, or bylaw, rule or regulation adopted or put in force, either subsequent or prior to July 4, 1953, authorizing, permitting or requiring any organization subject to the provisions of this chapter to deny such privilege of interment because of race or color of such deceased person is hereby declared to be null and void and in conflict with the public policy of this state. No organization subject to the provisions of this chapter or any director, officer, agent, employee or trustee thereof or therefor, shall be liable for damages or other relief, or be subjected to any action in any court otherwise having jurisdiction in the premises by reason of refusing to commit any

act declared unlawful herein. [C54, 58, 62, 66, 71, 73, 75,§566A.8]

Referred to in §566A.10

566A.9 Penalty. Any person, firm or corporation violating any of the provisions of this chapter, shall, upon conviction, be punishable by a fine of not less than twenty-five dollars nor more than one hundred dollars. [C54, 58, 62, 66, 71, 73, 75,§566A.9]

566A.10 Extent of offenses. Each day any person, firm or corporation violates any provision of this chapter, except the commission of any act declared unlawful in section 566A.7 or section 566A.8, shall be deemed to be a separate and distinct offense. [C54, 58, 62, 66, 71, 73, 75,§566A.10]

566A.11 Speculation prohibited. No organization subject to the provisions of this chapter nor any person representing it in a sales capacity shall advertise or represent, in connection with the sale or attempted sale of any interment space, that the same is or will be a desirable speculative investment for resale purposes. [C54, 58, 62, 66, 71, 73, 75,§566A.11]

Constitutionality, 55GA, ch 84,§11

CHAPTER 567

RIGHTS OF ALIENS

567.1 Acquisition of property of any kind.
567.2 Holders of liens—escheat.
567.3 Corporate holdings—obligation to sell.
567.4 Contract to sell.
567.5 Escheat.
567.6 Citizen may initiate proceedings.
567.7 Limitation.
567.8 Aliens' inheritances.
567.9 Reports by nonresident aliens.

567.1 Acquisition of property of any kind. Nonresident aliens, or corporations incorporated under the laws of any foreign country, or corporations organized in this country one-half of the stock of which is owned or controlled by nonresident aliens, are prohibited from acquiring title to or holding any real estate in this state, except as hereinafter provided.

The spouse and heirs and devisees, being nonresident aliens, of any alien or naturalized citizen who has acquired real estate in this state, may hold the same by devise, descent, or distribution, for a period of twenty years; and if at the end of that time such real estate has not been sold to a bona fide purchaser for value, or such alien heirs have not become residents of this state, such land shall escheat to the state.

Nothing in this section contained shall prevent aliens, or corporations organized under the laws of any foreign country, or corporations organized in this country, one-half or more of the stock of which is owned or controlled by nonresident aliens, from having title to or acquiring property of any kind within the corporate limits of any city in the state, and lands not to exceed six hundred forty acres outside the corporate limits of any city in the state, or from alienating, mortgaging or devising the same.

This chapter shall not affect the distribution of personal property, and shall apply to real estate heretofore devised or descended when no proceedings for forfeiture have been commenced. [C73,§§1908, 1909; C97,§2889; C24, 27, 31, 35, 39,§**10214**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§567.1]

Referred to in §567.2

567.2 Holders of liens—escheat. The provisions of this chapter shall not prevent the holder of any lien upon or interest in real estate, acquired before or after July 4, 1888, from taking or holding a valid title to the real estate in which he has such interest, or upon which he has such lien; nor shall it prevent any nonresident alien enforcing any lien or judgment for any debt or liability which may have been created subsequently to said date, or which he may hereafter acquire, nor from becoming a purchaser at any sale by virtue of such lien, judgment, or liability, if all real estate so acquired shall be sold within ten years after the title shall be perfected in such alien under such sale.

Any real estate owned or held by any nonresident alien, as provided in this and section 567.1 and not disposed of as therein required, shall escheat to the state. [C97,§2890; C24, 27, 31, 35, 39,§**10215**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§567.2]

Referred to in §§491.67, 567.3

567.3 Corporate holdings—obligation to sell. All corporations organized under the laws of any foreign country, and corporations organized under the laws of any state of the United States, one-half of whose stock is owned and controlled by nonresident aliens, shall have the right to own, hold, and dispose of any real property owned or held by any such corporations on July 4, 1888, or any real property acquired by any such corporations under the provisions of section 567.2; but any such corporation shall sell or dispose of any such property now owned by it on or before March 16, 1910, and in default thereof the provisions of sections 567.5 to 567.7 shall be applied thereto.

[S13,§2889-a; C24, 27, 31, 35, 39,§10216; C46, 50, 54, 58, 62, 66, 71, 73, 75,§567.3]

Referred to in §567.4
See also reference in §589.7

567.4 Contract to sell. A bona fide contract for the sale of any such lands owned by any such corporation shall be held and considered as a sale within the provisions of section 567.3 and a good and valid deed of conveyance may be made by such corporation at any time upon the fulfillment of such contract by the purchaser of any such lands. [S13,§2889-b; C24, 27, 31, 35, 39,§10217; C46, 50, 54, 58, 62, 66, 71, 73, 75,§567.4]

See reference in §589.7

567.5 Escheat. The county attorney of any county in which any real estate subject to escheat is situated shall proceed by petition in the name of the state against the owner thereof.

The court shall hear and determine the issues presented in said petition, and declare such real estate escheated, or dismiss the petition, as the facts may require.

When such escheat is decreed by the court, the clerk shall notify the governor that the title to such real estate is vested in the state by the decree of said court, and present to the state comptroller a bill of the costs incurred by the county in prosecuting such action, under his official certificate and seal, who shall issue a warrant payable to said clerk, drawn on the state treasurer, to pay the costs so incurred.

Any real estate, the title to which shall be acquired by the state under the provisions of this chapter, shall be sold in the manner provided for the sale of school lands, and the proceeds of such sales shall become a part of the permanent school fund. [C97,§2891; C24, 27, 31, 35, 39,§10218; C46, 50, 54, 58, 62, 66, 71, 73, 75,§567.5]

Referred to in §§567.3, 567.6
Sale of school lands, §302.4 et seq.

567.6 Citizen may initiate proceedings. Any citizen of the state, knowing of lands which have escheated under the provisions of this chapter, may file a motion or petition in the district court, praying an order directing the county attorney to commence the proceeding provided for in section 567.5; and if, after hearing such proofs as may be offered, it finds there is reasonable ground to believe that any land has escheated, shall direct the county attorney to proceed as provided in this chapter.

If in any such case the county attorney is adversely interested, the court may appoint an attorney to prosecute such action, and fix a reasonable attorney's fee therefor, to be paid as other costs in the case. [C97,§2892; C24, 27, 31, 35, 39,§10219; C46, 50, 54, 58, 62, 66, 71, 73, 75,§567.6]

Referred to in §567.3

567.7 Limitation. No action for the recovery of real estate, the title to which is acquired by the state under the provisions of this chapter, shall lie, after the execution and recording of a patent or conveyance thereof by the state, unless such action shall have been commenced within five years after the title became vested in the grantee of the state; but a minor or person of unsound mind shall have the right to bring an action therefor at any time within five years after his disability ceases.

The defendant in any action brought under the provisions of this chapter, if the decree is for the plaintiff, shall be entitled to the benefit of the provisions of the chapter relating to occupying claimants. [C97,§2893; C24, 27, 31, 35, 39,§10220; C46, 50, 54, 58, 62, 66, 71, 73, 75, §567.7]

Referred to in §567.3
Occupying claimants, ch 560
Recovery of lands in general, §614.1(5)

567.8 Aliens' inheritances.

1. The right of aliens not residing within the United States or its territories to take real property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents and the right of aliens not residing in the United States or its territories to take personal property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents.

2. The burden shall be upon such nonresident aliens to establish the fact of existence of the reciprocal right set forth in subsection 1.

3. If such reciprocal rights are not found to exist and if no heirs other than such aliens are found eligible to take such property, the property shall be disposed of as escheated property. [C54, 58, 62, 66, 71, 73, 75,§567.8]

567.9 Reports by nonresident aliens. Every nonresident alien, owning or leasing agricultural land, or engaged in farming outside the corporate limits of any city of this state, shall file with the secretary of state on forms approved pursuant to chapter 17A or before March 31, of each year, a report containing the following:

1. The nonresident alien's name, address, residence and citizenship.

2. A declaration of the type of agricultural activity engaged in by the reporting nonresident alien.

3. The acreage and location of agricultural land owned outside corporate limits of any

city of this state listed by township and county at the end of the preceding calendar or fiscal year.

4. The approximate number and kind of livestock or poultry owned, contracted for, fed or kept and the approximate number of acres used for each agricultural crop, fruit or other horticultural product grown or contracted for during the preceding calendar or fiscal year.

5. The number of acres owned and operated by the nonresident alien, the number of acres leased by the nonresident alien, and the number of acres leased to the nonresident alien. If a livestock or crop-share lease, the nonresident alien shall disclose the share of the livestock or the crop to which the nonresident alien is entitled under the lease. The nonresident shall also disclose whether such nonresident alien is represented in Iowa by an agent or other representative and, if so represented, the name of the individual or firm acting in such capacity. [66GA, ch 133, §7]

Referred to in §172C.8

CHAPTER 568

ISLANDS AND ABANDONED RIVER CHANNELS

568.1 Sale authorized.
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568.3 Application by prospective purchaser.
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568.21 Sale or lease authorized.
568.22 Survey—appraisement—sale.
568.23 Lease.
568.24 Sales and leases for cash—expenses.
568.25 Patent or lease.

568.1 Sale authorized. All land between high-water mark and the center of the former channel of any navigable stream, where such channel has been abandoned, so that it is no longer capable of use, and is not likely again to be used for the purposes of navigation, and all land within such abandoned river channels, and all bars or islands in the channels of navigable streams not heretofore surveyed or platted by the United States or the state of Iowa, and all within the jurisdiction of the state of Iowa shall be sold and disposed of in the manner hereinafter provided. [S13,§2900-a2; C24, 27, 31, 35, 39,§**10221**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.1]

Referred to in §§568.2, 568.10

568.2 Application by county auditor. It shall be the duty of the county auditor to file written application with the secretary of state, asking that certain land located within the county be surveyed, appraised, and sold, whenever he is satisfied that such land is of the character contemplated by section 568.1. [S13, §2900-a3; C24, 27, 31, 35, 39,§**10222**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.2]

S13,§2900-a3, editorially divided

568.3 Application by prospective purchaser. If the county auditor fails or neglects to make such application, then any person desiring to purchase such land may file a written application with the secretary of state, asking that the said land be surveyed, appraised, and sold. [S13,§2900-a3; C24, 27, 31, 35, 39,§**10223**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.3]

568.4 Form of application. The said application whether made by the county auditor or by a person desiring to purchase the land, shall contain an accurate description thereof, stating whether the land is abandoned river channel, or land within such abandoned river channel, or an island or a sand bar in a navigable stream, and giving the number of township and range in which it is located, and the section numbers if possible, and also the estimated acreage. [S13,§2900-a3; C24, 27, 31, 35, 39,§**10224**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §568.4]

568.5 Survey. Upon receiving such application, it shall be the duty of the secretary of state to order a complete survey of such land to be made by the county surveyor of the county wherein the land is situated, and in case of the refusal or inability of such county surveyor to make such survey then the secretary of state shall appoint some other competent surveyor to make such survey. [S13,

§2900-a4; C24, 27, 31, 35, 39,§**10225**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.5]

S13,§2900-a4, editorially divided

568.6 Report of survey. When such survey is made, a full report thereof, with field notes, shall be filed with the clerk of the state land office, which report and field notes shall constitute the official survey of such land. [S13, §2900-a4; C24, 27, 31, 35, 39,§**10226**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.6]

568.7 Appraisement. Upon the filing of such report, with the accompanying field notes, the secretary of state shall thereupon appoint a commission of three disinterested freeholders of the county wherein the land is situated, to view the land and make appraisement of the value thereof, which appraisement shall be returned and filed with the clerk of the state land office in the office of the secretary of state.

The secretary of state, if he deems it necessary, may either go in person or send the clerk of the state land office into the county to make proper selection of the said commissioners. [S13,§2900-a5; C24, 27, 31, 35, 39,§**10227**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.7]

Referred to in §568.11

568.8 Contract for survey. The secretary of state shall make a contract with some surveyor for making such survey; the surveyor to furnish all the chainmen and other attendants and pay all necessary expenses, which contract before it becomes binding shall be submitted to and approved by the executive council. [S13,§2900-a6; C24, 27, 31, 35, 39,§**10228**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.8]

568.9 Commissioners' compensation and expenses. Commissioners, for their services in making such appraisement shall be paid a forty-dollar per diem and shall be reimbursed for actual and necessary expenses. All per diem moneys paid to the commissioners shall be paid from funds appropriated to the secretary of state. [C24, 27, 31, 35, 39,§**10229**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.9]

568.10 Sale—how effected—rights of occupants. Such lands shall be sold in the following manner: Any person who has in fact lived upon any such land and occupied the same, as a home, continuously for a period of three or more years immediately prior to the time of the appraisement thereof, and such occupancy has been in good faith for the purpose of procuring title thereto, whenever by law such title could be vested in him by purchase from the proper authority, or any person who has acquired possession of such land by inheritance, or by purchase made in good faith from a former occupant, or occupants, whose occupancy dates back over a period of three years prior to the date of appraisement of the land, shall have first right to purchase such land at the appraised value; provided such bona fide occupant shall file his application for the purchase thereof at the appraised value with the secretary of state within sixty days after the day the appraisement is made, and shall accompany such application with affidavits showing proof of such bona fide occupancy. If no application has been filed by such bona fide occupant within the sixty-day period above provided, then the secretary of state shall advertise the sale of such land once each week for four consecutive weeks in two newspapers of general circulation published in the county wherein the land is situated, and proof of publication shall be filed with the secretary of state. The sale shall be made upon written bids addressed to the secretary of state and the advertisements shall fix the time when such bids will be received and opened. All bids shall be opened by the secretary of state or by the clerk of the state land office at the time fixed, and the land thereupon may be sold to the highest bidder and at not less than the appraised value.

Any such sale shall be subject to the permanent right of a utility association, company or corporation to continue in possession of a right of way for its underground and aerial plant, including cables, wires, poles, fixtures, piers and abutments, where such right of way has existed on lands which have become subject to sale under section 568.1. [S13, SS15,§2900-a7; C24, 27, 31, 35, 39,§**10230**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.10]

Referred to in §568.11

568.11 Lease authorized—lands readvertised—sale. If no application is filed for the purchase of the land within the sixty-day period by a bona fide occupant, and if no bids are received for the purchase thereof, on or before the date of the sale as advertised, then the secretary of state is authorized to lease the land for a period of from one to five years, upon as favorable terms as he can obtain. At the expiration of such lease he shall readvertise the land for sale in the manner provided in section 568.10. If no bids for the purchase of the land are received on the date of the second advertised sale, then the secretary of state shall submit the matter to the executive council, and they may either order the land reappraised in the manner provided in section 568.7, and then advertised and sold in the manner provided in section 568.10, or if they deem it advisable, they may authorize the secretary of state to sell the land for less than the appraised value. In such event the secretary of state shall readvertise the land for sale in the manner provided in section 568.10, and such advertisement shall also state that the land will be sold to the highest bidder without restrictions as to the appraised value. [S13,§2900-a8; C24, 27, 31, 35, 39,§**10231**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.11]

568.12 Deed or patent. When, upon full compliance with the conditions of this chapter, any person shall become entitled to a deed or patent for any land, a deed or patent shall thereupon be executed and delivered to such person by the governor, on behalf of the state,

duly attested with the seal of the state attached thereto, which deed shall, in addition to the usual formalities, also recite the name of the party making application to have the land surveyed, appraised, and sold, the date and the amount of the appraisement, the name of the party making final payment and entitled to a deed therefor, whether as bona fide occupant or as highest bidder, and also that such deed is given for the purpose of conveying such title and interest in the land as the state may at the time own and possess, and has the right to convey. A record of such conveyance shall be made and kept by the clerk of the state land office of the secretary of state. [S13, §2900-a9; C24, 27, 31, 35, 39,§**10232**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.12]

568.13 Previous survey. When any such land shall be found to have been previously surveyed under and by virtue of any order of a court of record, and the record of such survey has been duly made and preserved, then and in that event, in the discretion of the secretary of state, a duly certified transcript of such record, together with the field notes accompanying the same, if obtainable, may be filed with the clerk of the state land office in the office of secretary of state, and when so filed shall obviate the necessity for any further survey of such land except when such survey becomes necessary for the purpose of execution of conveyance thereof, and the record of such transcript, when filed, shall constitute the official survey of such land. [S13, §2900-a10; C24, 27, 31, 35, 39,§**10233**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.13]

568.14 Boundary commission. If in any proceeding contemplated by the provisions of this chapter, it shall become necessary to determine the boundary line between this state and either of the states adjoining, the matter shall then be at once referred to the executive council, who shall thereupon proceed to confer with the proper authority of such adjoining state, and if the co-operation of the proper authority of such adjoining state shall be obtained, then the executive council shall appoint a commission of three disinterested, competent persons, who shall, in conjunction with the parties acting for such adjoining state, have authority to ascertain and locate the true boundary line between this state and such adjoining state, so far as the particular land under consideration at the time is concerned. The report of the commissioners with a statement of their findings shall be submitted to the executive council, who shall file the same with the clerk of the state land office in the office of the secretary of state. The line so ascertained and located shall constitute the true and permanent boundary line between this state and such other state to the extent such line shall be so ascertainable and located. [S13,§2900-a11; C24, 27, 31, 35, 39,§**10234**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.14]

568.15 How constituted. The members of the commission shall be selected with reference to their fitness for the duties required and at least one of them shall be a competent surveyor and civil engineer. [S13,§2900-a12; C24, 27, 31, 35, 39,§**10235**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.15]

568.16 Purchase money refunded. If the grantee of the state, or his successors, administrators, or assigns, shall be deprived of the land conveyed by the state under this chapter by the final decree of a court of record for the reason that the conveyance by the state passed no title whatever to the land therein described, because title thereto had previously for any reason been vested in others, then the money so paid the state for the said land shall be refunded by the state to the person or persons entitled thereto, provided the said grantee, or his successors, administrators, or assigns, shall file a certified copy of the transcript of the said final decree with the executive council within one year from the date of the issuance of such decree, and shall also file satisfactory proof with the executive council that the action over the title to the land was commenced within ten years from the date of the issuance of patent or deed by the state. The amount of money to be refunded under the provisions of this section shall be certified by the executive council to the state comptroller, who shall draw his warrant therefor, and the same shall be paid out of the general fund. [S13,§2900-a13; C24, 27, 31, 35, 39,§**10236**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.16]

568.17 Sales and leases for cash. All sales and leases of land under the provisions of this chapter shall be for cash. All money received for such sales and leases shall be paid into the state treasury by the secretary of state. [S13,§2900-a14; C24, 27, 31, 35, 39,§**10237**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.17]

568.18 Good faith possession—preference. If any lands in the present or in any former channel of any navigable river, or island therein, or any lands formed by accretion or avulsion in consequence of the changes of the channel of any such river, have been for ten years or more in the possession of any person, company, or corporation, or of his or its grantors or predecessors in interest under a bona fide claim of ownership, and the person, company or corporation so in possession, or his or its grantors or predecessors in interest, have paid state or county taxes upon said lands for a period of five years, and have in good faith and under bona fide claim of title made valuable improvements thereon, and also in any other case where, in the judgment of the executive council, the person in possession of any land subject to the provisions of this chapter, has, in equity and good conscience, a substantial interest therein, then the said lands shall be sold to the person, company, or corporation so in possession thereof as hereinafter

provided. [S13,§2900-a16; C24, 27, 31, 35, 39, §10238; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.18]

Referred to in §568.20

568.19 Notice—action to determine title and value—patent. When any person, company, or corporation so in possession of any such lands shall give to the secretary of state written notice of his or its claim, or whenever the executive council shall deem it advisable, it shall be the duty of the attorney general to bring an action in equity, in the district court of the county in which said lands are situated, against the party in possession thereof to determine the title of the state to such lands, and the value thereof, exclusive of improvements made thereon by the occupant or by his or its grantors or predecessors in interest. If the person, company, or corporation in possession of such land shall, after the court has determined the value thereof as herein provided, tender to the secretary of state the amount adjudged to be the value of said lands, exclusive of improvements made thereon by the occupant or by his or its grantors or predecessors in interest, a deed or patent of such land shall be executed by the governor, attested by the secretary of state, and delivered to the person, company, or corporation making such tender, as provided by law. If the person, company, or corporation so in possession shall fail to pay to the state the amount so adjudged within six months after the final determination of the action so brought by the state, then said lands shall be subject to the other provisions of this chapter. [S13,§2900-a17; C24, 27, 31, 35, 39,§10239; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.19]

Referred to in §568.20

568.20 Withholding patent—deposit money refunded. If the land described in any application is covered by the provisions of sections 568.18 and 568.19, and notice thereof is given to the secretary of state as provided in section 568.19, no deed or patent of such land, or any part thereof, shall be executed or issued until the title thereto shall have been established by the court as herein provided. If the party making such application, or his assignee, does not desire to prosecute his application, or if he does not purchase the land under this chapter, then all of the money deposited by him with the secretary of state under the provisions of this chapter shall be repaid to said applicant by the secretary of state; and if any part of the money so deposited has been expended by the secretary of state, then the amount so expended shall be certified by the secretary of state to the state comptroller, who shall draw his warrant upon the general fund in favor of the person entitled thereto. [S13, §2900-a18; C24, 27, 31, 35, 39,§10240; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.20]

568.21 Sale or lease authorized. The executive council of the state is hereby authorized and empowered to sell, convey, lease, or demise any of the islands belonging to the state which are within the meandered banks of rivers in the state, and to execute and deliver a patent or lease thereof. Nothing in this and sections 568.22 to 568.25 shall be construed to apply to islands in the Mississippi or Missouri rivers. [S13,§2900-a28; C24, 27, 31, 35, 39,§10241; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.21]

Referred to in §568.22

568.22 Survey—appraisement—sale. Before a sale of any island is made under the provisions of section 568.21, the executive council shall cause a survey and plat of such island to be made, showing its location and area, and the plat and notes of such survey shall be filed with the secretary of state. The land composing the island shall then be appraised by a commission appointed by the governor, consisting of three disinterested freeholders of the state, who shall report their appraisement to the executive council. The sale of the island shall then be advertised once each week for four consecutive weeks in some newspaper of general circulation published in the county where the island is located, and proof of such publication filed with the executive council. The sale shall be made upon written bids addressed to the executive council of the state, and the advertisement shall fix the time when such bids will be received and opened. All bids shall be opened by the executive council at the time fixed, and the island may thereupon be sold to the highest bidder and at not less than its appraised value. [S13,§2900-a29; C24, 27, 31, 35, 39,§10242; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.22]

Referred to in §§568.21, 568.23

568.23 Lease. If it shall be deemed expedient to lease any such island, a lease thereof may be made upon written bids addressed to the executive council, and the island proposed to be leased shall be surveyed and platted, and notice of the leasing thereof and of the receiving and opening of bids shall be published, in the manner provided in section 568.22, but no appraisement shall be necessary. Upon the opening of the bids received by the executive council it may make a lease of such island to the highest bidder for such term as is deemed advisable. [S13,§2900-a30; C24, 27, 31, 35, 39, §10243; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.23]

Referred to in §568.21

568.24 Sales and leases for cash—expenses. All sales and leases must be for cash, and the money received therefor shall be paid into the state treasury. All expenses incurred in making the survey, plat, appraisement, sale, or lease of any such island shall be certified by the executive council to the state comptroller, who shall draw his warrant upon the state treasury for the amount, and the same shall be paid from the general fund. [S13,§2900-a31; C24, 27, 31, 35, 39,§10244; C46, 50, 54, 58, 62, 66, 71, 73, 75,§568.24]

Referred to in §568.21

568.25 Patent or lease. When any sale or lease of any island belonging to the state is

made by the executive council as herein provided, the governor shall execute and deliver to the purchaser or lessee a patent or a lease thereof, as the case may be, duly attested by the seal of the state. [S13,§2900-a32; C24, 27, 31, 35, 39,§**10245**; C46, 50, 54, 58, 62, **66, 71, 73,** 75,§568.25]

Referred to in §568.21

CHAPTER 569

ACQUISITION OF TITLE BY STATE OR MUNICIPAL CORPORATION

569.1 Right to receive conveyance.
569.2 Bidding in at execution sale.
569.3 Amount of bid.
569.4 Costs and expenses.
569.5 Management.
569.6 Costs, expenses and proceeds.
569.7 Execution of deeds and leases.
569.8 Title under tax deed—sale—apportionment of proceeds.

569.1 Right to receive conveyance. When it becomes necessary, to secure the state or any county or other municipal corporation thereof from loss, to take real estate on account of a debt by bidding the same in at execution sale or otherwise, the conveyance shall vest in the grantee as complete a title as if it were a natural person. [C73,§1910; C97,§2894; C24, 27, 31, 35, 39,§**10246**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§569.1]

569.2 Bidding in at execution sale. Such real estate shall be bid in, if for the state, by the attorney general, if for the county, by the county attorney, and if for any other municipal corporation, by its attorney or agent appointed for that purpose, the proceeds of any such real estate, when sold, to be covered into the state, county, or municipal treasury, as the case may be, for the use of the general or the special fund to which it rightfully belongs. [C73,§1911; C97,§2895; C24, 27, 31, 35, 39,§**10247**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§569.2]

Bidding at tax sale, §§446.19, 455.170

569.3 Amount of bid. When real estate is sold as above provided, the fair and reasonable value shall be bid therefor, unless in excess of the judgment, interest, costs, and accruing costs, in which case the bid shall be for such sum only. [C73,§1912; C97,§2896; C24, 27, 31, 35, 39,§**10248**; C46, 50, 54, 58. 62, 66, 71, 73, 75,§569.3]

569.4 Costs and expenses. In all cases in which the state becomes the purchaser of real estate under the provisions of this chapter, the costs and expenses attending such purchases shall be audited and allowed by the state comptroller, and paid out of any money in the state treasury not otherwise appropriated, upon the comptroller's warrant, and charged to the fund to which the indebtedness belonged upon which such real estate was taken.

If the real estate is purchased by a county, the costs and expenses shall be audited by the board of supervisors and paid out of the county treasury, upon a warrant drawn by the auditor on the treasurer, from the fund to which the debt belonged upon which said real estate was purchased.

If the real estate is purchased by any other municipal corporation, then the costs shall be audited and paid by it in the same manner as other claims against it are audited and paid. [C73,§1913; C97,§2897; C24, 27, 31, 35, 39,§**10249**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§569.4]

569.5 Management. When the title to real estate becomes vested in the state, or in a county or municipality under this chapter, or by conveyance under the statutes relating to taxation, the executive council, board of supervisors, or other governing body, as the case may be, shall manage, control, protect by insurance, lease, or sell said real estate on such terms, conditions, or security as said governing body may deem best. [C73,§§1914–1917, 1919; C97,§§2898, 2899; C24, 27, 31,§§10250–10252, 10254–10256; C35,§10260-e1; C39,§**10260.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§569.5]

569.6 Costs, expenses and proceeds. The cost and expense resulting from the exercise of said powers shall be paid from the fund to which said real estate belongs and the proceeds of a lease or sale shall be credited to said fund. [C73,§§1914–1917, 1919; C97,§§2898, 2899; C24, 27, 31,§§10250–10252, 10254–10256; C35, §10260-e2; C39,§**10260.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§569.6]

569.7 Execution of deeds and leases. The said governing body may appoint its chairman, president, or other member to execute and acknowledge, for and on behalf of the state, county, or municipality, leases and deeds of conveyance, but said instruments when executed shall be approved by the said body and said approval spread upon its minutes with the yea and nay vote thereon. A transcript of said minutes certified by the secretary of said body shall be entitled to be recorded in the same manner as the approved instrument is entitled to be recorded. [C73,§§1916, 1918, 1919; C97,§§2898–2900; C24, 27, 31,§§10254, 10257–10260; C35,§10260-e3; C39,§**10260.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§569.7]

569.8 Title under tax deed—sale—apportionment of proceeds. When the county acquires title to real estate by virtue of a tax deed such real estate shall be controlled, managed, and sold by the board of supervisors as provided in this chapter. All money received from said real estate either as rent or as proceeds from the sale thereof shall, after payment of any general taxes which have accrued against said real estate since said tax sale and after payment of insurance premiums on any buildings located on said real estate and after expenditures made for the actual and necessary repairs and upkeep of said real estate, be apportioned to the tax-levying and certifying bodies in proportion to their interests in the taxes for which said real estate was sold. Real property sold under this section shall be sold at public auction and not by use of sealed bids, but only after notice thereof has been published twice, on different dates, in a newspaper or newspapers of general circulation in the county wherein the property is located, stating the description of the property to be sold and the date, place and time of such sale, not more than fifteen days prior to the date of such sale. The board of supervisors may transfer title to real estate acquired by virtue of a tax deed to a city, a city agency, or to the Iowa housing finance authority* for use in an Iowa homesteading project under section 220.14 and they need not comply with the provisions of this section. [C35,§10260-g1; C39,§10260.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§569.8; 66GA, ch 138,§49]

*Ch 220

TITLE XXVI

CERTAIN SPECIAL LIENS

CHAPTER 570

LANDLORD'S LIEN

Landlord and tenant generally, ch 562
Referred to in §321.47

570.1 Lien created—property subjected.
570.2 Duration of lien.
570.3 Limitation on lien in case of sale under judicial process.
570.4 Limitation on lien in case of crop failure.
570.5 Enforcement—proceeding by attachment.
570.6 Lien upon additional property.
570.7 Action by tenant to recover property.
570.8 Acts sufficient to constitute taking of property.
570.9 Sale of crops held by landlord's lien.
570.10 Action barred by payment of rent.

570.1 Lien created—property subjected. A landlord shall have a lien for his rent upon all crops grown upon the leased premises, and upon any other personal property of the tenant which has been used or kept thereon during the term and which is not exempt from execution. [C51,§1270; R60,§2302; C73,§2017; C97,§2992; C24, 27, 31, 35, 39,§**10261**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§570.1]

570.2 Duration of lien. Such lien shall continue for the period of one year after a year's rent, or the rent of a shorter period, falls due. But in no case shall such lien continue more than six months after the expiration of the term. [C51,§1270; R60,§2302; C73,§2017; C97,§2992; C24, 27, 31, 35, 39,§**10262**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§570.2]

570.3 Limitation on lien in case of sale under judicial process. In the event that a stock of goods or merchandise, or a part thereof, subject to a landlord's lien, shall be sold under judicial process, order of court, or by an assignee under a general assignment for benefit of creditors, the lien of the landlord shall not be enforceable against said stock or portion thereof, except for rent due for the term already expired, and for rent to be paid for the use of demised premises for a period not exceeding six months after date of sale, any agreement of the parties to the contrary notwithstanding. [C97,§2992; C24, 27, 31, 35, 39, §**10263**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§570.3]

570.4 Limitation on lien in case of crop failure. In cases of farm leases involving the rental of farm lands of forty acres or more, where the tenant has defaulted in the payment of his rent and suit has been commenced aided by landlord's attachment for the enforcement of the landlord's lien, the defendant may file as a defense that the default or inability to pay is caused or brought about by reason of drought, flood, hail, storms, or other climatic conditions or infestation of pests affecting the crops in controversy. When such a defense has been filed, the issue as to the cause for the default shall be triable as an equitable action. Upon the hearing, if the court finds that the default or inability to pay is due to drought, flood, hail, storm, or other climatic conditions or infestation of pests affecting the crops in controversy, the court may enter a decree pursuant thereto with his finding of fact. Where a decree has been entered finding that the inability to pay was brought about by any of the conditions named in this section, the landlord's lien shall be confined to all of the crops grown and raised upon the premises and to all increase in livestock and hogs raised upon the premises.

The provisions of this section shall not apply to any farm leases executed prior to July 4, 1941. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§570.4]

570.5 Enforcement—proceeding by attachment. The lien may be enforced by the commencement of an action, within the period above prescribed, for the rent alone, in which action the landlord shall be entitled to a writ of attachment, upon filing with the clerk a verified petition, stating that the action is commenced to recover rent accrued within one year previous thereto upon premises described in the petition; and the procedure thereunder shall be the same, as nearly as may be, as in other cases of attachment, except no bond shall be required. [C51,§1271; R60,§2303; C73,§2018; C97,§2993; C24, 27, 31, 35, 39,§**10264**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§570.5]

Attachment, ch 639

570.6 Lien upon additional property. If a lien for rent is given in a written lease or other instrument upon additional property, it may be enforced in the same manner as a landlord's lien and in the same action. [C51, §1271; R60,§2303; C73,§2018; C97,§2993; C24, 27, 31, 35, 39,§**10265**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§570.6]

570.7 Action by tenant to recover property. An action brought by a tenant, his assignee or undertenant, to recover the possession of specific personal property taken under landlord's attachment, may be against the party who sued out the attachment; and the property claimed in such action may, under the writ therefor, be taken from the officer who seized it, when he has no other claim to hold it than that derived from the writ. [R60,§2770; C73,§2575; C97,§3490; C24, 27, 31, 35, 39,§**10266**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§570.7]

570.8 Acts sufficient to constitute taking of property. The endorsement of a levy on the property, made upon the process by the officer holding it, shall be a sufficient taking of the property to sustain an action against the party who sued out the writ. [R60,§2770; C73,§2575; C97,§3490; C24, 27, 31, 35, 39,§**10267**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§570.8]

Levy generally, R.C.P. 258 et seq.; §639.26

570.9 Sale of crops held by landlord's lien. If any tenant of farm lands, with intent to defraud, shall sell, conceal, or in any manner dispose of any of the grain, or other annual products thereof upon which there is a landlord's lien for unpaid rent, without the written consent of the landlord, he shall be guilty of larceny and punished accordingly. [S13,§4852-a; C24, 27, 31, 35, 39,§**10268**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§570.9]

Referred to in §570.10
Larceny, §§709.1, 709.2

570.10 Action barred by payment of rent. The payment of the rent for the lands upon which such grain or other annual products were raised at or before the time the same falls due, shall be a bar to any prosecution under section 570.9 and no prosecution shall be commenced until such rent be wholly due. [S13, §4852-b; C24, 27, 31, 35, 39,§**10269**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§570.10]

CHAPTER 571

THRESHERMAN'S OR CORNSHELLER'S LIEN

571.1 Nature of lien.
571.2 Priority of lien.
571.3 Preservation of lien.
571.4 Enforcement—time limit.
571.5 Foreclosure of lien.

571.1 Nature of lien. Any person, firm, corporation, or association engaged in operating a machine for the threshing, baling, or combining of any kind of grain or seed; or for the baling of hay, straw, or any other farm product whether done by stationary or movable baler; or for the mechanical husking or shelling of corn; or for doing custom threshing, combining, mechanical husking, baling, or corn shelling for hire, shall have a first lien on grain and seed threshed, or any farm product baled, or on corn shelled or husked, for the reasonable value of such services. [C35,§10269-e1; C39, §**10269.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§571.1]

571.2 Priority of lien. Said lien shall be prior and superior to any landlord's lien or security interest upon said grain, seed, or corn. [C35,§10269-e2; C39,§**10269.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§571.2]

571.3 Preservation of lien. In order to preserve said lien the person entitled thereto must, within ten days from the completion of the work for which the lien is claimed, file in the office of the clerk of the district court of the county in which said services were rendered an itemized and verified statement setting forth the services rendered, the number of bushels of grain threshed or corn shelled, the value of said services and the name of the person for whom said services were rendered and the place where said services were rendered; and the clerk of the district court shall note the filing of said verified statement in a book kept by him for that purpose and index the same under the name of the person for whom such service was performed. [C35, §10269-e3; C39,§**10269.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§571.3]

571.4 Enforcement—time limit. Proceedings to enforce said lien must be brought within thirty days after the filing of said verified statement and cannot be brought thereafter. [C35,§10269-e4; C39,§**10269.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§571.4]

571.5 Foreclosure of lien. Said lien may be foreclosed in the manner provided in Uniform Commercial Code, chapter 554, Article 9, Part 5. [C35,§10269-e5; C39,§**10269.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§571.5]

CHAPTER 572

MECHANIC'S LIEN

Referred to in §84.25

572.1 Definitions and rules of construction.
572.2 Persons entitled to lien.
572.3 Collateral security before completion of work.
572.4 Security after completion of work.
572.5 Extent of lien.
572.6 In case of leasehold interest.
572.7 In case of internal improvement.
572.8 Perfection of lien.
572.9 Time of filing.
572.10 Perfecting subcontractor's lien after lapse of sixty days.
572.11 Extent of lien filed after sixty days.
572.12 Time of filing against railway.
572.13 Liability of owner to original contractor.
572.14 Liability to subcontractor after payment to original contractor.
572.15 Discharge of subcontractor's lien.
572.16 Rule of construction.
572.17 Priority of mechanics' liens between mechanics.
572.18 Priority over other liens.
572.19 Priority over garnishments of the owner.
572.20 Priority as to buildings over prior liens upon land.
572.21 Foreclosure of mechanic's lien when lien on land.
572.22 Record of claim.
572.23 Acknowledgment of satisfaction of claim.
572.24 Time of bringing action—court.
572.25 Place of bringing action.
572.26 Kinds of action—amendment.
572.27 Limitation on action.
572.28 Demand for bringing suit.
572.29 Assignment of lien.

572.1 Definitions and rules of construction. For the purpose of this chapter:

1. *"Owner"* shall include every person for whose use or benefit any building, erection, or other improvement is made, having the capacity to contract, including guardians.

2. *"Subcontractor"* shall include every person furnishing material or performing labor upon any building, erection, or other improvement, except those having contracts therefor directly with the owner, his agent, or trustee.

3. *"Building"* shall be construed as if followed by the words "erection, or other improvement upon land".

4. *"Material"* shall in addition to its ordinary meaning embrace and include machinery, fixtures, trees, evergreens, vines, plants, shrubs, tubers, bulbs, hedges, bushes, sod, soil, dirt, mulch, peat, fertilizer, fence wire, fence material, fence posts, tile, and the use of forms, accessories, and equipment. [C51,§982; R60, §§1866, 1871; C73,§§2144, 2146; C97,§§3096, 3097; C24, 27, 31, 35, 39,§**10270**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.1]

572.2 Persons entitled to lien. Every person who shall furnish any material or labor for, or perform any labor upon, any building or land for improvement, alteration, or repair thereof, including those engaged in the construction or repair of any work of internal or external improvement, and those engaged in grading, sodding, installing nursery stock, landscaping, sidewalk building, fencing on any land or lot, by virtue of any contract with the owner, his agent, trustee, contractor, or subcontractor shall have a lien upon such building or improvement, and land belonging to the owner on which the same is situated or upon the land or lot so graded, landscaped, fenced, or otherwise improved, altered, or repaired, to secure payment for material or labor furnished or labor performed. [C51,§§981, *1010*; R60,§1846; C73,§2130; C97,§3089; C24, 27, 31, 35, 39,§**10271**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.2]

Homestead liable, §561.21

572.3 Collateral security before completion of work. No person shall be entitled to a mechanic's lien who, at the time of making a contract for furnishing material or performing labor, or during the progress of the work, shall take any collateral security on such contract. [C51,§1009; R60,§1845; C73,§2129; C97, §3088; C24, 27, 31, 35, 39,§**10272**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.3]

572.4 Security after completion of work. After the completion of such work, the taking of security of any kind shall not affect the right to establish a mechanic's lien unless such new security shall, by express agreement, be given and received in lieu of such lien. [C97, §3088; C24, 27, 31, 35, 39,§**10273**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.4]

572.5 Extent of lien. The entire land upon which any building or improvement is situated, including that portion not covered therewith, shall be subject to a mechanic's lien to the extent of the interest therein of the person for whose benefit such material was furnished or labor performed. [*R60,§1854; C73,§2140;* C97, §3090; C24, 27, 31, 35, 39,§**10274**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.5]

572.6 In case of leasehold interest. When the interest of such person is only a leasehold, the forfeiture of the lease for the nonpayment of rent, or for noncompliance with any of the other conditions therein, shall not forfeit or impair the mechanic's lien upon such building

or improvement; but the same may be sold to satisfy such lien, and removed by the purchaser within thirty days after the sale thereof. [R60,§1854; C73,§2140; C97,§3090; C24, 27, 31, 35, 39,§**10275**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §572.6]

572.7 In case of internal improvement. When the lien is for material furnished or labor performed in the construction, repair, or equipment of any railroad, canal, viaduct, or other similar improvement, said lien shall attach to the erections, excavations, embankments, bridges, roadbeds, rolling stock, and other equipment and to all land upon which such improvements or property may be situated, except the easement or right of way. [C73,§2132; C97,§3091; C24, 27, 31, 35, 39,§**10276**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.7]

572.8 Perfection of lien. Every person who wishes to avail himself of a mechanic's lien shall file with the clerk of the district court of the county in which the building, land, or improvement to be charged with the lien is situated a verified statement or account of the demand due him, after allowing all credits, setting forth:

1. The time when such material was furnished or labor performed, and when completed.

2. The correct description of the property to be charged with the lien. [R60,§1851; C73, §2137; C97,§3092; C24, 27, 31, 35, 39,§**10277**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.8]

Referred to in §572.9

572.9 Time of filing. The statement or account required by section 572.8 shall be filed by a principal contractor within ninety days, and by a subcontractor within sixty days, from the date on which the last of the material was furnished or the last of the labor was performed. A failure to file the same within said periods shall not defeat the lien, except as otherwise provided in this chapter. [R60,§1851; C73,§2137; C97,§3092; C24, 27, 31, 35, 39,§**10278**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.9]

Referred to in §572.10

572.10 Perfecting subcontractor's lien after lapse of sixty days. After the lapse of the sixty days prescribed in section 572.9, a subcontractor may perfect a mechanic's lien by filing his claim with the clerk of the district court and giving written notice thereof to the owner, his agent, or trustee. Such notice may be served by any person in the manner original notices are required to be served. If the party to be served, his agent, or trustee, is out of the county wherein the property is situated, a return of that fact by the person charged with making such service shall constitute sufficient service from and after the time it was filed with the clerk of the district court. [C73,§2133; C97, §3094; SS15,§3094; C24, 27, 31, 35, 39,§**10279**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.10]

Referred to in §572.11
Service of notice, R.C.P. 56.1(a)

572.11 Extent of lien filed after sixty days. Liens perfected under section 572.10 shall be enforced against the property or upon the bond, if given, by the owner, as hereinafter provided, only to the extent of the balance due from the owner to the contractor at the time of the service of such notice; but if the bond was given by the contractor, or person contracting with the subcontractor filing the claim for a lien, such bond shall be enforced to the full extent of the amount found due the subcontractor. [C73,§2133; C97,§3094; SS15, §3094; C24, 27, 31, 35, 39,§**10280**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.11]

572.12 Time of filing against railway. Where a lien is claimed upon a railway, the subcontractor shall have sixty days from the last day of the month in which such labor was done or material furnished within which to file his claim therefor. [R60,§1851; C73,§2137; C97, §3092; C24, 27, 31, 35, 39,§**10281**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.12]

572.13 Liability of owner to original contractor. No owner of any building, land, or improvement upon which a mechanic's lien of a subcontractor may be filed, shall be required to pay the original contractor for compensation for work done or material furnished for said building, land, or improvement until the expiration of sixty days from the completion of said building, or improvement unless the original contractor shall furnish to the owner:

1. Receipts and waivers of claims for mechanics' liens, signed by all persons who furnished any material or performed any labor for said building, land, or improvement, or

2. A good and sufficient bond to be approved by said owner, conditioned that said owner shall be held harmless from any loss which he may sustain by reason of the filing of mechanics' liens by subcontractors. [R60,§1847; C73, §2131; C97,§3093; S13,§3093; C24, 27, 31, 35, 39, §**10282**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.13]

572.14 Liability to subcontractor after payment to original contractor. Payment to the original contractor by the owner of any part or all of the contract price of such building, or improvement before the lapse of the sixty days allowed by law for the filing of a mechanic's lien by a subcontractor, will not relieve the owner from liability to the subcontractor for the full value of any material furnished or labor performed upon said building, land, or improvement if the subcontractor file his lien within the time provided by law for the filing of the same. [S13,§3093; C24, 27, 31, 35, 39, §**10283**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.14]

572.15 Discharge of subcontractor's lien. Every mechanic's lien of a subcontractor may be discharged at any time by the owner, principal contractor, or intermediate subcontractor filing with the clerk of the district court of the county in which the property is located a bond in twice the amount of the sum for which the claim for the lien is filed, with surety or sure-

ties, to be approved by said clerk, conditioned for the payment of any sum for which the claimant may obtain judgment upon his claim. [C97,§3093; S13,§3093; C24, 27, 31, 35, 39,§10284; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.15]

572.16 Rule of construction. Nothing in this chapter shall be construed to require the owner to pay a greater amount or at an earlier date than is provided in his contract with the principal contractor, unless said owner pays a part or all of the contract price to the original contractor before the expiration of the sixty days allowed by law for the filing of a mechanic's lien by a subcontractor. [C97,§3093; S13,§3093; C24, 27, 31, 35, 39,§10285; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.16]

572.17 Priority of mechanics' liens between mechanics. Mechanics' liens shall have priority over each other in the order of the filing of the statements or accounts as herein provided. [R60,§§1853, 1855; C73,§§2139, 2141; C97,§3095; C24, 27, 31, 35, 39,§10286; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.17]

572.18 Priority over other liens. Mechanics' liens shall be preferred to all other liens which may attach to or upon any building or improvement and to the land upon which it is situated, except liens of record prior to the time of the original commencement of the work or improvements; but the rights of purchasers, encumbrancers, and other persons who acquire interests in good faith and for a valuable consideration, and without notice, after the expiration of the time for filing claims for such liens, shall be prior to the claims of all contractors or subcontractors who have not, at the dates such rights and interests were acquired, filed their claims for such liens. [R60,§§1851, 1853, 1855; C73,§§2137, 2139, 2141; C97,§§3092, 3095; C24, 27, 31, 35, 39, §10287; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.18]

572.19 Priority over garnishments of the owner. Mechanics' liens shall take priority of all garnishments of the owner for the contract debts, whether made prior or subsequent to the commencement of the furnishing of the material or performance of the labor, without regard to the date of filing the claim for such lien. [C97,§3095; C24, 27, 31, 35, 39,§10288; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.19]

572.20 Priority as to buildings over prior liens upon land. Mechanics' liens, including those for additions, repairs, and betterments, shall attach to the building or improvement for which the material or labor was furnished or done, in preference to any prior lien, encumbrance, or mortgage upon the land upon which such building or improvement was erected or situated. [R60,§§1853, 1855; C73,§§2139, 2141; C97,§3095; C24, 27, 31, 35, 39,§10289; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.20]

572.21 Foreclosure of mechanic's lien when lien on land. In the foreclosure of a mechanic's lien when there is a prior lien, encumbrance, or mortgage upon the land the following regulations shall govern:

1. *Lien on original and independent building or improvement.* If such material was furnished or labor performed in the construction of an original and independent building or improvement commenced after the attaching or execution of such prior lien, encumbrance, or mortgage, the court may, in its discretion, order such building or improvement to be sold separately under execution, and the purchaser may remove the same in such reasonable time as the court may fix. If the court shall find that such building or improvement should not be sold separately, it shall take an account of and ascertain the separate values of the land, and the building or improvement, and order the whole sold, and distribute the proceeds of such sale so as to secure to the prior lien, encumbrance, or mortgage priority upon the land, and to the mechanic's lien priority upon the building or improvement.

2. *Lien on existing building or improvement for repairs or additions.* If the material furnished or labor performed was for additions, repairs, or betterments upon any building or improvement, the court shall take an accounting of the values before such material was furnished or labor performed, and the enhanced value caused by such additions, repairs, or betterments; and upon the sale of the premises, distribute the proceeds of such sale so as to secure to the prior mortgagee or lienholder priority upon the land and improvements as they existed prior to the attaching of the mechanic's lien, and to the mechanic's lienholder priority upon the enhanced value caused by such additions, repairs, or betterments. In case the premises do not sell for more than sufficient to pay off the prior mortgage or other lien, the proceeds shall be applied on the prior mortgage or other liens. [R60,§§1853, 1855; C73,§§2139, 2141; C97,§3095; C24, 27, 31, 35, 39,§10290; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.21]

572.22 Record of claim. The clerk of the court shall endorse upon every claim for a mechanic's lien filed in his office the date and hour of filing and make an abstract thereof in the mechanic's lien book kept for that purpose. Said book shall be properly indexed and shall contain the following items concerning each claim:

1. The name of the person by whom filed.
2. The date and hour of filing.
3. The amount thereof.
4. The name of the person against whom filed.
5. The description of the property to be charged therewith. [R60,§1852; C73,§2138; C97, §3100; C24, 27, 31, 35, 39,§10291; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.22]

572.23 Acknowledgment of satisfaction of claim. When a mechanic's lien is satisfied by payment of the claim, the claimant shall ac-

knowledge satisfaction thereof upon the mechanic's lien book, or otherwise in writing, and, if he neglects to do so for thirty days after demand in writing, he shall forfeit and pay twenty-five dollars to the owner or contractor, and be liable to any person injured to the extent of his injury. [R60,§§1867-1869; C73, §2145; C97,§3101; C24, 27, 31, 35, 39,§10292; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.23]

572.24 Time of bringing action—court. An action to enforce a mechanic's lien, or an action brought upon any bond given in lieu thereof, may be commenced in the district court after said lien is perfected. [R60,§1856; C73,§§2142, 2143; C97,§3098; C24, 27, 31, 35, 39, §10293; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.24]

572.25 Place of bringing action. An action to enforce a mechanic's lien shall be brought in the county in which the property to be affected, or some part thereof, is situated. [C73,§§2142, 2578; C97,§§3098, 3493; C24, 27, 31, 35, 39,§10294; C46, 50, 54, 58, 62, 66, 71, 73, 75, §572.25]

572.26 Kinds of action — amendment. An action to enforce a mechanic's lien shall be by equitable proceedings, and no other cause of action shall be joined therewith.

Any lien statement may be amended by leave of court in furtherance of justice, except as to the amount demanded. [C51,§985; R60, §4183; C73,§2510; C97,§3429; C24, 27, 31, 35, 39, §10295; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.26]

572.27 Limitation on action. An action to enforce a mechanic's lien may be brought within two years from the expiration of the sixty or ninety days, as the case may be, for filing the claim as provided in this chapter and not afterwards. [C51,§984; R60,§1865; C73,§2529; C97,§3447; S13,§3447; C24, 27, 31, 35, 39,§10296; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.27]

572.28 Demand for bringing suit. Upon the written demand of the owner, his agent, or contractor, served on the lienholder requiring him to commence action to enforce his lien, such action shall be commenced within thirty days thereafter, or the lien and all benefits derived therefrom shall be forfeited. [C73, §2143; C97,§3099; C24, 27, 31, 35, 39,§10297; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.28]

572.29 Assignment of lien. A mechanic's lien is assignable, and shall follow the assignment of the debt for which it is claimed. [C97, §3099; C24, 27, 31, 35, 39,§10298; C46, 50, 54, 58, 62, 66, 71, 73, 75,§572.29]

CHAPTER 573

LABOR AND MATERIAL ON PUBLIC IMPROVEMENTS

Referred to in §384.100

573.1 Terms defined.
573.2 Public improvements—bond and conditions.
573.3 Bond mandatory.
573.4 Deposit in lieu of bond.
573.5 Amount of bond.
573.6 Subcontractors on public improvements.
573.7 Claims for material or labor.
573.8 Highway improvements.
573.9 Officer to endorse time of filing claim.
573.10 Time of filing claims.
573.11 Claims filed after action brought.
573.12 Retention from payments on contracts.
573.13 Inviolability and disposition of fund.
573.14 Retention of unpaid funds.
573.15 Exception.
573.16 Optional and mandatory actions—bond to release.
573.17 Parties.
573.18 Adjudication—payment of claims.
573.19 Insufficiency of funds.
573.20 Converting property into money.
573.21 Attorney fees.
573.22 Unpaid claimants—judgment on bond.
573.23 Abandonment of public work—effect.
573.24 Notice of claims to state department of transportation.
573.25 Filing of claim—effect.
573.26 Public corporation—action on bond.
573.27 Payment before work completed.

573.1 Terms defined. For the purpose of this chapter:

1. *"Public corporation"* shall embrace the state, and all counties, cities, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements.

2. *"Public improvement"* is one, the cost of which is payable from taxes or other funds under the control of the public corporation, except in cases of public improvement for drainage or levee purposes the provisions of the drainage law in cases of conflict shall govern.

3. *"Construction"* shall, in addition to its ordinary meaning, embrace repair and alteration.

4. *"Material"* shall, in addition to its ordinary meaning, embrace feed, gasoline, kerosene, lubricating oils and greases, provisions and fuel, and the use of forms, accessories, and equipment, but shall not include personal expenses or personal purchases of employees for their individual use.

5. *"Service"* shall, in addition to its ordinary meaning, include the furnishing to the contractor of workers' compensation insurance, and premiums and charges for such insurance shall be considered a claim for service. [C24, 27, 31, 35, 39,§**10299**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.1; 66GA, ch 1084,§43]

573.2 Public improvements—bond and conditions. Contracts for the construction of a public improvement shall, when the contract price equals or exceeds five thousand dollars, be accompanied by a bond, with surety, conditioned for the faithful performance of the contract, and for the fulfillment of such other requirements as may be provided by law. Such bond may also be required when the contract price does not equal said amount. [C24, 27, 31, 35, 39,§**10300**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §573.2; 66GA, ch 1225,§1]

573.3 Bond mandatory. The obligation of the public corporation to require, and the contractor to execute and deliver said bond, shall not be limited or avoided by contract. [C24, 27, 31, 35, 39,§**10301**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.3]

573.4 Deposit in lieu of bond. A deposit of money, or a certified check on a solvent bank of the county in which the improvement is to be located, or state or federal bonds, or bonds issued by any city, school corporation, or county of this state, or bonds issued on behalf of any drainage or highway paving district of this state, may be received in an amount equal to the amount of the bond and held in lieu of a surety on such bond, and when so received such securities shall be held on the terms and conditions applicable to a surety. [C24, 27, 31, 35, 39,§**10302**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.4]

573.5 Amount of bond. Said bond shall run to the public corporation. The amount thereof shall be fixed, and the bond approved, by the official board or officer empowered to let the contract, in an amount not less than seventy-five percent of the contract price, and sufficient to comply with all requirements of said contract and to insure the fulfillment of every condition, expressly or impliedly embraced in said bond; except that in contracts where no part of the contract price is paid until after the completion of the public improvement the amount of said bond may be fixed at not less than twenty-five percent of the contract price. [C24, 27, 31, 35, 39,§**10303**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.5]

573.6 Subcontractors on public improvements. The following provisions shall be held to be a part of every bond given for the performance of a contract for the construction of a public improvement, whether said provisions be inserted in such bond or not, to wit:

1. The principal and sureties on this bond hereby agree to pay to all persons, firms, or corporations having contracts directly with the principal or with subcontractors, all just claims due them for labor performed or materials furnished, in the performance of the contract on account of which this bond is given, when the same are not satisfied out of the portion of the contract price which the public corporation is required to retain until completion of the public improvement, but the principal and sureties shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law.

2. Every surety on this bond shall be deemed and held, any contract to the contrary notwithstanding, to consent without notice:

a. To any extension of time to the contractor in which to perform the contract.

b. To any change in the plans, specifications, or contract, when such change does not involve an increase of more than twenty percent of the total contract price, and shall then be released only as to such excess increase.

c. That no provision of this bond or of any other contract shall be valid which limits to less than one year from the time of the acceptance of the work the right to sue on this bond for defects in workmanship or material not discovered or known to the obligee at the time such work was accepted. [S13,§1527-s18; C24, 27, 31, 35, 39,§**10304**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.6]

573.7 Claims for material or labor. Any person, firm, or corporation who has, under a contract with the principal contractor or with subcontractors, performed labor, or furnished material, service, or transportation, in the construction of a public improvement, may file, with the officer, board, or commission authorized by law to let contracts for such improvement, an itemized, sworn, written statement of the claim for such labor, or material, service, or transportation. [C97,§3102; S13,§1989-a57; C24, 27, 31, 35, 39,§**10305**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.7]

573.8 Highway improvements. In case of highway improvements by the county, claims shall be filed with the county auditor of the county letting the contract. In case of contracts for improvements on the farm-to-market highway system paid from farm-to-market funds, claims shall be filed with the auditor of the state department of transportation.

But no claims filed for credit extended for the personal expenses or personal purchases of employees for their individual use shall cause any part of the unpaid funds of the contractor to be withheld. [C24, 27, 31, 35, 39, §**10306**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.8]

573.9 Officer to endorse time of filing claim. The officer shall endorse over his official signature upon every claim filed with him, the date and hour of filing. [C24, 27, 31, 35, 39,§**10307**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.9]

573.10 Time of filing claims. Claims may be filed with said officer as follows:

1. At any time before the expiration of thirty days immediately following the completion and final acceptance of the improvement.

2. At any time after said thirty-day period, if the public corporation has not paid the full contract price as herein authorized, and no action is pending to adjudicate rights in and to the unpaid portion of the contract price. [C97,§3102; S13,§1989-a57; C24, 27, 31, 35, 39, §10308; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.10]

573.11 Claims filed after action brought. The court may permit claims to be filed with it during the pendency of the action hereinafter authorized, if it be made to appear that such belated filing will not materially delay the action. [C24, 27, 31, 35, 39,§10309; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.11]

573.12 Retention from payments on contracts. Payments made under contracts for the construction of public improvements, unless provided otherwise by law, shall be made on the basis of monthly estimates of labor performed and material delivered. In making said payments, there shall be retained ten percent of each said monthly estimate by the public corporation; provided, however, that if the contract is for more than fifty thousand dollars, and if the public corporation at any time after fifty percent of the improvement has been completed finds that satisfactory progress is being made, the public corporation may authorize any of such remaining payments to be made in full. [S13,§1989-a57; C24, 27, 31, 35, 39,§10310; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.12]

Referred to in §573.13

573.13 Inviolability and disposition of fund. No public corporation shall be permitted to plead noncompliance with section 573.12, and the retained percentage of the contract price, which in no case shall be less than five percent shall constitute a fund for the payment of claims for materials furnished and labor performed on said improvement, and shall be held and disposed of by the public corporation as hereinafter provided. [S13,§1989-a57; C24, 27, 31, 35, 39,§10311; C46, 50, 54, 58, 62, 66, 71, 73, 75.§573.13]

573.14 Retention of unpaid funds. Said fund shall be retained by the public corporation for a period of thirty days after the completion and final acceptance of the improvement. If at the end of said thirty-day period claims are on file as herein provided the public corporation shall continue to retain from said unpaid funds a sum not less than double the total amount of all claims on file. [C97,§3104; S13, §1989-a59; C24, 27, 31, 35, 39,§10312; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.14]

573.15 Exception. No part of the unpaid fund due the contractor shall be retained as provided in this chapter on claims for material furnished, other than materials ordered by the general contractor or his authorized agent, unless such claims are supported by a certified statement that the general contractor had been notified within thirty days after the materials are furnished or by itemized invoices rendered to contractor during the progress of the work, of the amount, kind, and value of the material furnished for use upon the said public improvement, and no part of such unpaid fund due the contractor shall be retained as provided in this chapter because of the commencement of any action by the contractor against the state department of transportation under authority granted in section 613.11. [C31, 35,§10312-d1; C39,§10312.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.15]

573.16 Optional and mandatory actions — bond to release. The public corporation, the principal contractor, any claimant for labor or material who has filed his claim, or the surety on any bond given for the performance of the contract, may, at any time after the expiration of thirty days, and not later than sixty days, following the completion and final acceptance of said improvement, bring action in equity in the county where the improvement is located to adjudicate all rights to said fund, or to enforce liability on said bond.

Provided that upon written demand of the contractor served on the person or persons filing said claims requiring him to commence action in court to enforce his claim in the manner as prescribed for original notices, such action shall be commenced within thirty days thereafter, otherwise such retained and unpaid funds due the contractor shall be released; and it is further provided that, after such action is commenced, upon the general contractor filing with the public corporation or person withholding such funds, a surety bond in double the amount of the claim in controversy, conditioned to pay any final judgment rendered for such claims so filed, said public corporation or person shall pay to the contractor the amount of such funds so withheld. [C97,§3103; S13, §1989-a58; C24, 27, 31, 35, 39,§10313; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.16]

Action against surety, §616.15
Manner of service, R.C.P. 56.1(a)

573.17 Parties. The official board or officer letting the contract, the principal contractor, all claimants for labor and material who have filed their claim, and the surety on any bond given for the performance of the contract shall be joined as plaintiffs or defendants. [C24, 27, 31, 35, 39,§10314; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.17]

573.18 Adjudication — payment of claims. The court shall adjudicate all claims. Payments from said retained percentage, if still in the hands of the public corporation, shall be made in the following order:

1. Costs of the action.
2. Claims for labor.
3. Claims for materials.

4. Claims of the public corporation. [C24, 27, 31, 35, 39,§**10315**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.18]

Referred to in §573.19

573.19 Insufficiency of funds. When the retained percentage aforesaid is insufficient to pay all claims for labor or materials, the court shall, in making distribution under section 573.18, order the claims in each class paid in the order of filing the same. [C97,§3102; S13, §1989-a57; C24, 27, 31, 35, 39,§**10316**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.19]

573.20 Converting property into money. When it appears that the unpaid portion of the contract price for the public improvement, or a part thereof, is represented in whole or in part, by property other than money, or if a deposit has been made in lieu of a surety, the court shall have jurisdiction thereover, and may cause the same to be sold, under such procedure as it may deem just and proper, and disburse the proceeds as in other cases. [C24, 27, 31, 35, 39,§**10317**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.20]

573.21 Attorney fees. The court may tax, as costs, a reasonable attorney fee in favor of any claimant for labor or materials who has, in whole or in part, established his claim. [C97,§3103; S13,§1989-a58; C24, 27, 31, 35, 39, §**10318**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.21]

573.22 Unpaid claimants — judgment on bond. If, after the said retained percentage has been applied to the payment of duly filed and established claims, there remain any such claims unpaid in whole or in part, judgment shall be entered for the amount thereof against the principal and sureties on the bond. In case the said percentage has been paid over as herein provided, judgment shall be entered against the principal and sureties on all such claims. [C24, 27, 31, 35, 39,§**10319**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.22]

573.23 Abandonment of public work—effect. When a contractor abandons the work on a public improvement or is legally excluded therefrom, the improvement shall be deemed completed for the purpose of filing claims as herein provided, from the date of the official cancellation of the contract. The only fund available for the payment of the claims of persons for labor performed or material furnished shall be the amount then due the contractor, if any, and if said amount be insufficient to satisfy said claims, the claimants shall have a right of action on the bond given for the performance of the contract. [C24, 27, 31, 35, 39,§**10320**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §573.23]

573.24 Notice of claims to state department of transportation. If payment for such improvement is to be made in whole or in part from the primary road fund, the county auditor shall immediately notify the state department of transportation of the filing of all claims. [C24, 27, 31, 35, 39,§**10321**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.24]

573.25 Filing of claim—effect. The filing of any claim shall not work the withholding of any funds from the contractor except the retained percentage, as provided in this chapter. [C24, 27, 31, 35, 39,§**10322**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.25]

573.26 Public corporation—action on bond. Nothing in this chapter shall be construed as limiting in any manner the right of the public corporation to pursue any remedy on the bond given for the performance of the contract. [C24, 27, 31, 35, 39,§**10323**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§573.26]

573.27 Payment before work completed. Notwithstanding anything in this Code to the contrary, when at least ninety-five percent of any contract for the construction of public improvements has been completed to the satisfaction of the public contracting authority and owing to conditions beyond the control of the construction contractor the remaining work on the contract cannot proceed for a period of more than sixty days, such public contracting authority may make full payment for the completed work and enter into a supplemental contract with the construction contractor involved on the same terms and conditions so far as applicable thereto for the construction of the work remaining to be done, provided however, that the contractor's bondsman consents thereto and agrees that the bond shall remain in full force and effect. [C62, 66, 71, 73, 75,§573.27]

CHAPTER 573A

EMERGENCY STOPPAGE OF PUBLIC CONTRACTS

573A.1 National emergency.
573A.2 Termination of contracts.
573A.3 Determination of dispute.
573A.4 Rules applicable.
573A.5 Jurisdiction.
573A.6 Appeal.
573A.7 Order of court.
573A.8 Limit of payment.
573A.9 Application of statute.
573A.10 Definitions.

573A.1 National emergency. In the event work or construction upon a public improvement is stopped directly or indirectly by or as the result of an order or action of any fed-

eral or state authority or of any court because of the occurrence or existence of a situation which the president or the Congress of the United States has declared to be national emergency, and the circumstances or conditions are such that it is and will be impracticable to proceed with such work or construction, then the public corporation and the contractor or contractors may, by written agreement terminate said contract. Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which any party shall pay to the other, or any other person, firm or corporation under the facts and circumstances in the case. [C54, 58, 62, 66, 71, 73, 75,§573A.1]

Referred to in §573A.2

573A.2 Termination of contracts. Whenever a public corporation and a contractor or contractors, have entered into a contract for the construction of a public improvement, and any party to such contract desires to terminate said contract because of the occurrence of the event and under the circumstances stated in section 573A.1, and another party thereto will not agree to such termination, or said parties having agreed upon the termination of the contract cannot agree upon the terms and conditions thereof, then any party may have the issues in dispute determined in the manner hereinafter provided. [C54, 58, 62, 66, 71, 73, 75,§573A.2]

573A.3 Determination of dispute. Any party to the contract may have the issue in dispute determined by filing in the district court of the county in which the public improvement or any part thereof is located a verified petition which shall allege in detail the ultimate facts upon which the petitioner relies for the termination of such contract. All subcontractors and the sureties upon all bonds given in connection with the contract and subcontracts shall be made parties to the proceeding. [C54, 58, 62, 66, 71, 73, 75,§573A.3]

573A.4 Rules applicable. The rules of civil procedure shall be applicable to such action. The cause shall be tried forthwith in equity, and the court shall give such cases preference over other cases, except criminal cases. [C54, 58, 62, 66, 71, 73, 75,§573A.4]

573A.5 Jurisdiction. The district court shall have jurisdiction of the issue which is thus presented, and of all parties including any public corporation as defined in this chapter. The court shall make findings and render its judgment determining the issues involved in accordance with the purpose and spirit of this chapter. [C54, 58, 62, 66, 71, 73, 75,§573A.5]

573A.6 Appeal. Any party aggrieved by the findings and judgment of the district court may appeal to the supreme court as in other cases and the case shall be given preference over other cases in the supreme court. [C54, 58, 62, 66, 71, 73, 75,§573A.6]

573A.7 Order of court. If the court determines that said contract should be terminated, or if the parties have agreed to its termination, the court shall include in its order:

1. The terms and conditions imposed upon each party to the contract, including the extent of the liability of the sureties upon any bond;
2. The protective requirements, if any be deemed necessary, to protect the property, and provision for the payment of the cost thereof;
3. The determination of the relative rights of the parties involved, including the compensation or payments, if any, which any party shall pay to any other person, firm or corporation under the facts and circumstances of the case.

If the court determines that the contract shall not be terminated, it shall state in its order the reasons therefor. The court shall adjust and assess the costs in such manner as may be equitable and fair under the circumstances. [C54, 58, 62, 66, 71, 73, 75,§573A.7]

573A.8 Limit of payment. In no event shall the public corporation pay or be required to pay compensation or moneys in excess of the total compensation stated in the contract for the construction of the public improvement. [C54, 58, 62, 66, 71, 73, 75,§573A.8]

573A.9 Application of statute. The provisions of this chapter shall not apply unless it is specifically contracted for between the contracting parties. [C54, 58, 62, 66, 71, 73, 75, §573A.9]

573A.10 Definitions. For the purposes of this chapter:

1. *"Public corporation"* shall embrace the state, and all counties, cities, public school corporations, drainage districts, and all officers, boards or commissions empowered by law to enter into contracts for the construction of public improvements.
2. *"Public improvement"* is one, the cost of which is payable from taxes or other funds under the control of the public corporation.
3. *"Construction"* shall, in addition to its ordinary meaning, embrace repair and alteration. [C54, 58, 62, 66, 71, 73, 75,§573A.10]

CHAPTER 574

MINER'S LIEN

574.1 Nature of miner's lien.

574.1 Nature of miner's lien. Every laborer or miner who shall perform labor in opening, developing, or operating any coal mine shall have a lien for the full value of such labor upon all the property of the person, firm, or corporation owning or operating such mine and used in the construction or operation thereof, including real estate and personal property. Such lien shall be secured and enforced in the same manner as a mechanic's lien. [C97,§3105; C24, 27, 31, 35, 39,§**10324**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§574.1]

Mechanic's lien, ch 572

CHAPTER 575

COMMON CARRIER'S LIEN

Repealed by 61GA, ch 413,§10102; see ch 554

CHAPTER 576

FORWARDING AND COMMISSION MERCHANT'S LIEN

576.1 Nature of lien.
576.2 Enforcement of lien.

576.1 Nature of lien. Every forwarding and commission merchant shall have a lien upon all property of every kind in his possession, for the transportation and storage thereof, for all lawful charges and services thereon or in connection therewith, and, if sold under the provisions of this chapter, for selling the same. [R60,§§1898, 1899, 1900–1902; C73,§§2177–2179; C97,§§3130, 3131; S13,§3131; C24, 27, 31, 35, 39, §**10341**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§576.1]

Bond to release, ch 584

576.2 Enforcement of lien. Said lien may be foreclosed in the manner provided in the Uniform Commercial Code, section 554.7308. [R60, §§1898–1905; C73,§§2177–2182; C97,§§3130–3134; S13,§3131; C24, 27, 31, 35, 39,§**10342**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§576.2]

Attachment to enforce lien, §640.1

CHAPTER 577

ARTISAN'S LIEN

Referred to in §321.47

577.1 Nature of lien.
577.2 Enforcement of lien.

577.1 Nature of lien. Any person who renders any service or furnishes any material in the making, repairing, improving, or enhancing the value of any inanimate personal property, with the assent of the owner, express or implied, shall have a lien thereon for the agreed or reasonable compensation for his service and material while such property is lawfully in his possession, which possession he may retain until such compensation is paid, but such lien shall be subject to all prior liens of record, unless notice is given to all lienholders of record and written consent is obtained from all lienholders of record to the making, repairing, improving, or enhancing the value of any inanimate personal property and in this event the lien created under this section shall be prior to liens of record. [R60, §1898; C73,§2177; C97,§3130; C24, 27, 31, 35, 39, §**10343**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§577.1]

Bond to release, ch 584

577.2 Enforcement of lien. Said lien may be foreclosed in the manner provided in the Uniform Commercial Code, section 554.7308. [R60,§§1898–1905; C73,§§2177–2182; C97,§§3130–3134; S13,§3131; C24, 27, 31, 35, 39,§**10344**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§577.2]

Attachment to enforce lien, §640.1

CHAPTER 578

COLD STORAGE LOCKER LIEN

Regulation and licensing, ch 172

578.1 Storage lien.
578.2 Enforcement of lien.

578.1 Storage lien. Every lessor owning or operating a refrigerated locker plant or plants, shall have a lien upon all property of every kind in its possession for all reasonable charges and rents thereon and for the handling, keeping, and caring for the same. [C39, §**10344.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§578.1]

Bond to release, ch 584

578.2 Enforcement of lien. Said lien may be foreclosed in the manner provided in the Uniform Commercial Code, section 554.7308. [C39,§**10344.2**; C46, 50, 54, 58, 62, 66, 71, **73,** 75,§578.2]

Attachment to enforce lien, §640.1

CHAPTER 579

LIEN FOR CARE OF STOCK AND STORAGE OF BOATS AND MOTOR VEHICLES

Referred to in §321.47

579.1 Nature of lien.
579.2 Satisfaction of lien by sale.
579.3 Disposal of proceeds.

579.1 Nature of lien. Livery and feed stablekeepers, herders, feeders, keepers of stock and of places for the storage of motor vehicles, boats and boat engines and boat motors shall have a lien on all property coming into their hands, as such, for their charges and the expense of keeping, but such lien shall be subject to all prior liens of record. [C97,§3137; C24, 27, 31, 35, 39,§**10345**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§579.1]

Bond to release, ch 584

579.2 Satisfaction of lien by sale. If such charges and expenses are not paid, the lienholder may sell said stock and property at public auction, after giving to the owner or claimant, if found within the county, ten days' notice in writing of the time and place of such sale, and also by posting written notices thereof in three public places in the township where said stock and property were kept or received. [C97,§3137; C24, 27, 31, 35, 39,§**10346**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§579.2]

Attachment to enforce, §640.1

579.3 Disposal of proceeds. Out of the proceeds of such sale the lienholder shall pay all of the charges and expenses of keeping said stock and property, together with the costs and expenses of said sale, and the balance shall be paid to the owner or claimant of the stock and property. [C97,§3137; C24, 27, 31, 35, 39,§**10347**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §579.3]

CHAPTER 580

LIEN FOR SERVICES OF ANIMALS

580.1 Nature of lien—forfeiture.
580.2 Period of lien—sale or removal.
580.3 Sale or removal prohibited—penalty.
580.4 Affidavit of foreclosure.
580.5 Possession and notice.
580.6 Service of notice.
580.7 Joinder of liens.
580.8 Sale—application of proceeds.
580.9 Right of contest—injunction.

580.1 Nature of lien—forfeiture. The owner or keeper of any stallion, bull or jack kept for public service, or any person, firm, or association which invokes pregnancy of animals for the public by means of artificial insemination shall have a prior lien on the progeny of such stallion, bull, artificial insemination or jack, to secure the amount due such owner, artificial inseminator or keeper for the service resulting in such progeny, but no such lien shall obtain

where the owner or keeper misrepresents his animal by a false or spurious pedigree, or fails to substantially comply with the laws of Iowa relating to such animals. [S13,§2341-s; C24, 27, 31,§2967; C35,§10347-a1; C39,§**10347.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§580.1]

580.2 Period of lien—sale or removal. The lien herein provided for shall attach at the birth of such progeny and shall remain in force on such progeny for one year and shall not be lost by reason of any sale, exchange, or removal from the county of the animals subject to such lien. [S13,§2341-t; C24, 27, 31,§2968; C35,§10347-a2; C39,§**10347.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§580.2]

580.3 Sale or removal prohibited—penalty. It shall be unlawful to sell, exchange, or remove permanently from the county any animal subject to the lien herein provided for, without the written consent of the holder of such lien, and any person violating this provision, shall, on conviction be punished by a fine of not less than twenty-five dollars nor more than fifty dollars. [C24, 27, 31,§2969; C35, §10347-a3; C39,§**10347.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§580.3]

580.4 Affidavit of foreclosure. Liens may be enforced by the holder filing with the sheriff of the county in which the progeny is kept, an affidavit which shall, in addition to a demand for foreclosure, contain:

1. A description of the stallion, bull or jack, when used and of the dam and its progeny.
2. The time and terms of said service.
3. A statement of the amount due for said service. [S13,§2341-u; C24, 27, 31,§2970; C35, §10347-a4; C39,§**10347.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§580.4]

580.5 Possession and notice. The sheriff shall, under said affidavit, take immediate possession of said progeny, and give written notice of the sale thereof, which notice shall contain:

1. A copy of the said affidavit.
2. The date and hour when, and the particular place at which, said property will be sold. [S13,§2341-u; C24, 27, 31,§2971; C35,§10347-a5; C39,§**10347.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§580.5]

580.6 Service of notice. Said notice shall be served as follows:

1. By posting a duplicate copy for ten days prior to the day of sale in three public places in the township in which the sale is to take place, and
2. If the owner of the progeny resides in the said county, by also serving a duplicate copy on the owner in the manner in which original notices are served, at least ten days prior to the day of sale. [S13,§2341-u; C24, 27, 31,§2972; C35,§10347-a6; C39,§**10347.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§580.6]

Manner of service, R.C.P. 56.1(*a*)

580.7 Joinder of liens. A foreclosure may embrace liens on more than one progeny of the same stallion, bull, inseminator or jack when all of said progenies are owned by the same person. In such case there shall be separate sales until an amount is realized sufficient to pay all liens and costs. [C24, 27, 31,§2973; C35,§10347-a7; C39,§**10347.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§580.7]

580.8 Sale—application of proceeds. If payment of the service fee, and costs, be not made prior to the time of sale, as fixed in such notice, the sheriff may sell property so held by him, or so much thereof as may be necessary, at public auction to the highest bidder, and the proceeds shall be applied, first, to the payment of the costs, and second, in payment of amount due for service fee. Any surplus arising from such sale shall be forthwith paid to the owner of the property sold. [S13,§2341-u; C24, 27, 31,§2974; C35,§10347-a8; C39,§**10347.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§580.8]

580.9 Right of contest — injunction. The right of the owner or keeper to foreclose, as well as the amount claimed to be due, may be contested by anyone interested in so doing, and the proceeding may be transferred to the district court, for which purpose an injunction may issue, if necessary. [S13,§2341-v; C24, 27, 31,§2975; C35,§10347-a9; C39,§**10347.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§580.9]

Injunctions, ch 664

CHAPTER 581

VETERINARIAN'S LIEN

581.1 Nature of lien.
581.2 Priority.
581.3 Statement—filing.
581.4 Enforcement.

581.1 Nature of lien. Every veterinarian, licensed and registered in accordance with chapter 169, shall have a lien for the actual and reasonable value of any product used and for the actual and reasonable value of any professional service rendered by him in connection with livestock, providing claim for said lien is filed as hereinafter provided. [C35, §10347-f1; C39,**§10347.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§581.1]

581.2 Priority. Said lien shall have priority over all other liens and encumbrances upon said livestock if filed as hereinafter provided. [C35,§10347-f2; C39,**§10347.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§581.2]

581.3 Statement—filing. Any veterinarian entitled to a lien under this chapter shall make an account in writing, duly verified, stating the kind and number and a particular description of livestock upon which such services were rendered, the amount and kind of product used and the actual and reasonable value of such services and products and the name of the person or persons for whom such services were rendered and file the same in the office of the clerk of the district court in the county in which the person or persons owning such livestock resides, within sixty days after the day on which said services were rendered. Said lien shall be effective from the date of filing. [C35,§10347-f3; C39,**§10347.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§581.3]

581.4 Enforcement. The lienholder may enforce his lien by a suit in equity. [C35,§10347-f4; C39,**§10347.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§581.4]

CHAPTER 582

HOSPITAL LIEN

582.1 Nature of lien.
582.2 Written notice of lien.
582.3 Duration and enforcement of lien.
582.4 Lien book—fees.

582.1 Nature of lien. Every association, corporation, county, or other institution, including a municipal corporation, maintaining a hospital in the state, which shall furnish medical or other service to any patient injured by reason of an accident not covered by the workers' compensation Act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien upon that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such patient, or by his heirs or personal representatives in the case of his death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care, and maintenance of such patient in such hospital up to the date of payment of such damages; provided, however, that this lien shall not in any way prejudice or interfere with any lien or contract which may be made by such patient or his heirs or personal representatives with any attorney or attorneys for handling the claim on behalf of such patient, his heirs, or personal representatives; provided, further, that the lien herein set forth shall not be applied or considered valid against anyone coming under the workers' compensation Act in this state. [C35,§10347-f5; C39, **§10347.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §582.1; 66GA, ch 1084,§43]

45ExGA, ch 131,§1, editorially divided
Workers' compensation, ch 85

582.2 Written notice of lien. No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the clerk of the district court of the county in which such hospital is located, prior to the payment of any moneys to such injured person, his attorneys or legal representative, as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries sustained prior to the payment of any moneys to such injured person, his attorneys

or legal representative, as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm or corporation against such liability, if the name and address shall be known. [C35,§10347-f6; C39,§**10347.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§582.2]

582.3 Duration and enforcement of lien. Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to his attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement, after paying the amount of any prior liens, shall, for a period of one year from the date of payment to such patient or his heirs, attorneys, or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was entitled to receive as aforesaid; any such association, corporation, or other institution maintaining such hospital may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment. [C35,§10347-f7; C39,§**10347.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§582.3]

582.4 Lien book—fees. Every clerk of the district court shall, at the expense of the county, provide a suitable well-bound book to be called the hospital lien docket in which, upon the filing of any lien claim under the provisions of this chapter, he shall enter the name of the injured person, the date of the accident, and the name of the hospital or other institution making the claim. Said clerk shall make a proper index of the same in the name of the injured person and such clerk shall collect a fee of two dollars for filing each claim. [C35,§10347-f8; C39,§**10347.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§582.4]

CHAPTER 583

HOTELKEEPER'S LIEN

583.1 Definitions.
583.2 Nature of hotelkeeper's lien.
583.3 Enforcement of claim by ordinary action.
583.4 Satisfaction of lien by sale.
583.5 Disposal of proceeds—statement.
583.6 Duty of county treasurer—right of guest.

583.1 Definitions. For the purposes of this chapter:

1. *"Hotel"* shall include inn, rooming house, and eating house, or any structure where rooms or board are furnished, whether to permanent or transient occupants.

2. *"Hotelkeeper"* shall mean a person who owns or operates a hotel.

3. *"Guest"* shall include boarder and patron, or any legal occupant of any hotel as herein defined.

4. *"Baggage"* shall include all property which is in any hotel belonging to or under the control of any guest. [C97,§3138; S13,§3138; C24, 27, 31, 35, 39,§**10348**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§583.1]

583.2 Nature of hotelkeeper's lien. A hotelkeeper shall have a lien upon the baggage of any guest, which may be in his hotel, for:

1. The accommodations and keep of said guest.

2. The money paid for or advanced to said guest.

3. The extras and other things furnished said guest. [C97,§3138; S13,§3138; C24, 27, 31, 35, 39,§**10349**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §583.2]

Bond to release, ch 584

583.3 Enforcement of claim by ordinary action. The hotelkeeper may take and retain possession of all baggage and may enforce his claim by an ordinary action. Said baggage shall be subject to attachment and execution for the reasonable charges of the hotelkeeper against the guest, and for the costs of enforcing the lien thereon. [C97,§3138; S13,§3138; C24, 27, 31, 35, 39,§**10350**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§583.3]

Attachment to enforce lien, §640.1

583.4 Satisfaction of lien by sale. If the hotelkeeper does not proceed by an ordinary action he shall retain the baggage upon which he has a lien for a period of ninety days, at the expiration of which time, if such lien is not satisfied, he may sell such baggage at public auction after giving ten days' notice of the time and place of sale in a newspaper of general circulation in the county where the hotel is situated, and also by mailing a copy of such notice addressed to said guest at the place of residence registered by him in the register of the hotel. [C97,§3138; S13,§3138; C24, 27, 31, 35, 39,§**10351**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §583.4]

583.5 Disposal of proceeds—statement. From the proceeds of said sale the hotelkeeper shall satisfy his lien, the reasonable expense of stor-

age, and the costs for enforcing the lien, and any remaining balance shall, on demand within six months, be paid to the guest, and if not demanded within said period of time, said balance shall be deposited by the hotelkeeper with the county treasurer of the county in which the hotel is situated, together with:

1. A statement of the hotelkeeper's claim and the costs of enforcing same.
2. A copy of the published notice of sale.
3. A statement of the amounts received for the goods sold at said sale. [C97,§3138; S13, §3138; C24, 27, 31, 35, 39,§**10352**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§583.5]

Referred to in §583.6

583.6 Duty of county treasurer — right of guest. The balance received by the county treasurer under section 583.5 shall be credited by him to the general fund of the county, subject to a right of the guest, or his representative, to reclaim the same at any time within three years from the date of deposit with the county treasurer. [C97,§3138; S13,§3138; C24, 27, 31, 35, 39,§**10353**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§583.6]

CHAPTER 584

RELEASE OF LIENS BY BOND

584.1 Liens subject to release.
584.2 Requirements of bond.
584.3 Effect of bond.
584.4 Action on bond.

584.1 Liens subject to release. An owner of personal property in this state who disputes, either the existence, on such property, of a common law or statutory lien, or the amount of any such lien, may release such lien, if any, and become entitled to the immediate possession of said property by filing a bond as hereinafter provided. [C24, 27, 31, 35, 39,§**10354**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §584.1]

584.2 Requirements of bond. Said bond shall be in an amount equal to twice the amount of the lien claimed, shall have one or more sureties, shall be approved by and filed with the clerk of the district court of the county where the property is being held under the claimed lien, and shall be conditioned to pay claimant any sum found to be due and also found to have been a lien on said property at the time the bond is filed. [C24, 27, 31, 35, 39,§**10355**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §584.2]

584.3 Effect of bond. When said bond is filed and claimant is given written notice of such filing, the said lien, if any, shall stand released, and the owner shall be entitled to the immediate possession of said property. [C24, 27, 31, 35, 39,§**10356**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§584.3]

584.4 Action on bond. An action upon said bond shall be brought in the county where the owner of the property resides; when the said owner is a nonresident of this state, the action shall be brought in the county where the bond is filed. [C24, 27, 31, 35, 39,§**10357**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§584.4]

TITLE XXVII

LEGALIZING ACTS

The date given in the six-point note indicates the time of taking effect of an Act by publication, see §§3.8–3.10

CHAPTER 585

PUBLICATION OF PROPOSED LEGALIZING ACTS

Referred to in §331.23

585.1 Publication prior to passage.
585.2 Place of publication in certain cases.
585.3 Caption of publication.
585.4 Cost of publication.
585.5 Subsequent amendment—effect.

585.1 Publication prior to passage. No bill which seeks to legalize the official proceedings of any board of supervisors, board of school directors, or city council, or which seeks to legalize any warrant or bond issued by any of said official bodies, shall be placed on passage in either house or senate until such bill as introduced shall have been published in full in some newspaper published within the territorial limits of the public corporation whose proceedings, warrants, or bonds are proposed to be legalized, nor until proof of such publication shall have been filed with the chief clerk of the house, and with the secretary of the senate, and a brief minute of such filing entered on the respective journals. [C24, 27, 31, 35, 39,§**10358**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§585.1]

Additional requirements, §17.19

585.2 Place of publication in certain cases. In case no newspaper is published within such territorial limits, the publication required by this chapter shall be made in one newspaper of general circulation published within the county. [C24, 27, 31, 35, 39,§**10359**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§585.2]

585.3 Caption of publication. The publication required by this chapter shall be made under the following caption or heading, to wit:

"Proposed bill for the legalization of the proceedings of (name of official body)".

If the proposed bill be for the legalization of the bonds or warrants of the public corporation, the caption shall be modified accordingly. [C24, 27, 31, 35, 39,§**10360**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§585.3]

585.4 Cost of publication. If the bill be introduced at the instance of the public body whose proceedings, bonds, or warrants are sought to be legalized, the cost of the aforesaid publication may be paid from the general fund of the public corporation. [C24, 27, 31, 35, 39,§**10361**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §585.4]

Cost of printing, §17.19

585.5 Subsequent amendment—effect. The amendment of the proposed bill after its publication as aforesaid shall not affect its legality, provided the subject matter of the bill is not substantially changed. [C24, 27, 31, 35, 39, §**10362**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§585.5]

CHAPTER 586

NOTARIES PUBLIC AND ACKNOWLEDGMENTS

586.1 Specific defects legalized.

586.1 Specific defects legalized. The following acts and instruments are hereby legalized and declared to be as valid as though all defects and irregularities therein as set forth below had never existed; nothing in this section, however, shall affect pending litigation:

1. Official acts performed before 1960 by notaries public during the time that they held over in office without qualifying after the expiration of the preceding term, if such notaries public have since qualified.

2. Acknowledgments taken before 1960 by notaries public outside their jurisdiction.

3. Acknowledgments taken and oaths administered by mayors under section 691, Code 1897, or section 1216 of subsequent Codes to

and including the Code of 1939 and section 78.2 to and including Code of 1966, in proceedings not connected with their offices.

4. Acknowledgments of deeds, mortgages, school fund mortgages and contracts taken and certified before 1960 by any county auditor, deputy county auditor, or deputy clerk of the district court although such officer was not authorized to take such acknowledgments at the time they were taken.

5. Acknowledgments taken and certified as provided by the Code of 1873, which were taken and certified after September 29, 1897, and prior to April 14, 1898, by officers having authority under the Code of 1873 to take and certify acknowledgments, as though such acknowledgments were taken and certified according to the provisions of the Code of 1897, and as though the officers were authorized to take and certify acknowledgments.

6. Acknowledgments taken, certified, and recorded before 1960 in the proper counties, and which are defective only in the form of the certificate of the officer taking the acknowledgment or because made before an official not qualified to take such acknowledgment but who was qualified to take acknowledgments generally.

7. Acknowledgments taken outside the United States before 1960 by officers authorized by section 10092, Codes 1924 to 1939 and section 558.28, Code 1946 to and including the Code of 1966, to take such acknowledgments, whether or not a certificate of authenticity as provided by section 10093, Codes of 1924 to 1939 and section 558.29, Code 1946 to and including the Code of 1966, is attached to such instrument; and the certificate of acknowledgment of such officer is hereby made conclusive evidence that such officer was duly qualified to make such certificate of acknowledgment.

8. Any instrument affecting real estate executed before 1960 by an attorney in fact for the grantor where a duly executed and sufficient power of attorney was on file in the county where the land was situated, although the instrument was executed and acknowledged in the form of "A, attorney in fact for B", instead of "B, by A, his attorney in fact"; or if such instrument is duly recorded and there is no record in the county where the land is situated of a power of attorney authorizing the attorney in fact to so act.

9. Any written instrument and the recording thereof, recorded prior to 1960 in the office of the recorder of the proper county, although there is attached to the instrument a defective certificate of acknowledgment. [S13,§§2942-c,-e,-k,-l; SS15,§§2963-v,-x; C24, 27,§§10363–10374; C31, 35,§§10363–10374-b1; C39,§§**10363–10374.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§586.1]

Pending litigation excepted, 59GA, ch 271,§2; 63GA, ch 1263,§2
See 59GA, ch 271,§1, effective July 4, 1961
Saving clause, 54GA, ch 199,§2

CHAPTER 587

JUDGMENTS AND DECREES LEGALIZED

587.1 Decrees against unknown claimants.
587.2 Certain publications of original notices.
587.3 Original notices failing to name term.
587.4 Decrees for sale of real estate by guardian.
587.5 Judgments or decrees respecting wills.
587.6 Judgments in probate by circuit courts.
587.7 Judgments or decrees quieting title.
587.8 Decrees in general—affidavit of nonresidence.
587.9 Decrees in general—affidavit of publication.
587.10 Affidavit of publication of notice by assistant publisher.
587.11 Annulment of marriages — service by publication.
587.12 Service by publication under rule 60.

587.1 Decrees against unknown claimants. All decrees of court obtained in actions against unknown defendants in which the notice was entitled in the initial or initials of the plaintiff instead of his full Christian name are hereby legalized, and said decrees shall have the same force and effect as if such notice had been entitled in the full name of the plaintiff as was provided for in section 3538, Code of 1897, and as is provided for in section 3538 of the supplement to the Code 1913. [SS15,§3540-a; C24, 27, 31, 35, 39,§**10375**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§587.1]

Re-enacted, 49GA, ch 289,§1, effective July 4, 1941
See 36GA, ch 25,§1, effective July 4, 1915

587.2 Certain publications of original notices. No action in which unknown persons were made parties defendant pursuant to the requirements of section 3538, supplemental supplement to the Code, 1915, and in which notice of such action was given by publication between July 1, 1913, and July 1, 1915, for four consecutive weeks, the last publication being ten days prior to the first day of the term for which said action was brought as shown by proof on file in the office of the clerk of the court where said action was pending, shall be held ineffectual, void, or insufficient because the records fail to show that the court or judge approved said notice before publication or

failed to endorse his approval on said notice or failed to designate in which paper said notice should be published as required by section 3539, Code of 1897. [C24, 27, 31, 35, 39,§**10376**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§587.2]

Re-enacted, 49GA, ch 289,§2, effective July 4, 1941
See 37GA, ch 37, effective July 4, 1917

587.3 Original notices failing to name term. All judgments and decrees heretofore entered by default prior to July 4, 1963, in causes wherein the original notices set out the date when and the place where the court would convene are hereby declared legal and binding, notwithstanding the fact that said original notices fail to name the term at which defendant or defendants was or were required to appear. Nothing contained in this section shall affect pending litigation. [C39,§**10376.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§587.3]

Pending litigation excepted, 63GA, ch 1264,§8
See 59GA, ch 272,§1, effective July 4, 1961; 63GA, ch 1264, §1, effective July 1, 1970

587.4 Decrees for sale of real estate by guardian. In all cases where decrees and orders of court have been obtained for the sale of real estate by a guardian prior to January 1, 1969, where the original notice shows that service of notice pertaining to the sale of such real estate was made on the minor or ward outside of the state of Iowa, such services of notices are hereby legalized. All decrees so obtained as aforesaid are hereby legalized and held to have the same force and effect as though the service of such original notice had been made on the minor or ward within the state of Iowa. [C24, 27, 31, 35, 39, §**10377**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§587.4]

Pending litigation excepted, 63GA, ch 1264,§8
See 59GA, ch 272,§2 effective July 4, 1961; 63GA, ch 1264, §2, effective July 1, 1970

587.5 Judgments or decrees respecting wills. No judgment or decree purporting to set aside any will or the provisions of any will, or to place any construction upon any will or terms of any will, or to aid in carrying out the provisions of any will, and no contract or agreement purporting to be a settlement of any suit or action to set aside any will or the terms of any will, or to place any construction upon any will or any of the terms thereof, shall be held ineffectual, void, or insufficient because the records fail to show proper service of notice on all parties interested, that persons under disability affected by the action were not properly served with notice or represented by guardian or guardian ad litem, either in suit, action, or in a settlement thereof, that all persons interested participated in the settlement, or that any other provisions of law had been complied with which are necessary to make a valid decree, judgment, or settlement; provided more than ten years had elapsed since the judgment, decree, contract, or agreement was filed, entered, or placed on record in the county where the real estate affected thereby is situated. Said decree, judgment, contract, or agreement shall be conclusive evidence of the right, title, or interest it purports to establish or adjudicate insofar as it affects the title to such real estate, and said proceedings therein are hereby made legal and effectual the same as though all provisions of law had been complied with in the obtaining of said decree, judgment, or execution of said contract or agreement, and any judgment, decree, contract, or agreement such as above described which is now of record less than ten years in the county in which the real estate is situated shall, at the expiration of ten years from date of filing, entering, or recording thereof, have the same force and effect as is above given to those now in effect more than ten years. [S13,§2963-m; C24, 27, 31, 35, 39, §**10378**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§587.5]

Re-enacted, 49GA, ch 289,§5, effective July 4, 1941
See 35GA, ch 272,§9, effective July 4, 1913

587.6 Judgments in probate by circuit courts. In all cases where matters or proceedings in probate have been heard by the circuit courts or judges outside the county in which such matters or proceedings were pending, and in all cases where orders and judgments in probate matters and proceedings have been made by the circuit courts and judges outside the county in which such proceeding or matter was pending, and where such hearing was had or order or judgment made within the circuit to which the county belonged in which such proceeding or matter was pending, such hearing, order, or judgment shall be held and deemed to be of the same validity and force and effect as if such hearing was had or such order or judgment was made within the county in which such proceeding or matter was pending, and all title and rights acquired under such orders and judgments shall be held and deemed to be of the same legal force and effect and to be as valid as if such order or judgment had been made within the county in which the proceeding or matter was pending. [C24, 27, 31, 35, 39,§**10379**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§587.6]

Re-enacted, 49GA, ch 289,§6, effective July 4, 1941
See 21GA, ch 41, effective March 26, 1886

587.7 Judgments or decrees quieting title. No existing judgment or decree quieting title to real estate as against defects arising prior to January 1, 1966, and purporting to sustain the record title shall be held ineffectual because of the failure to properly set out in the petition or notice the derivation or devolution of the interest of the unknown defendants, or on account of the failure of the record to show that such notice was approved by the court or that the same was published as directed by the court, or because of the failure of the record to show that an affidavit was filed by plaintiff showing that personal service could not be made on any defendant in the state of Iowa, or because of the failure of defense by a guardian ad litem for any defendant under legal disability, or where there was more than one tract of real estate described in the same petition and decree, or where the

plaintiffs have no joint or common interest in the property or defects of title, or because of failure to comply with any other provision of law. All such decrees are hereby made legal and effectual the same as if all provisions of law had been complied with in obtaining them. [S13,§2963-f; C24, 27, 31, 35, 39,§**10380**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§587.7]

Pending litigation excepted, 63GA, ch 1264,§8
See 59GA, ch 272,§3, effective July 4, 1961; 63GA, ch 1264, §3, effective July 1, 1970

587.8 Decrees in general—affidavit of nonresidence. In all cases where decrees of court have been obtained prior to January 1, 1966, upon publication of notice before the filing of the affidavit of nonresidence, as provided by section 3534, Code of 1897, or section 11081, Codes of 1924, 1927, 1931, 1935, 1939 and rule of civil procedure, number 60, effective July 4, 1943, and the same have not been filed as provided by law, but have been filed during the time that the notice was being published, on which such decrees are based, are hereby legalized and such decrees shall have the same force and effect as though the affidavit of nonresidence, as provided in said section, was filed at the time of or prior to the first publication of such notice. All decrees so obtained, as aforesaid, are hereby legalized and held to have the same force and effect as though the affidavit of nonresidence had been filed, as by law required. [S13,§3534-a; C24, 27, 31, 35, 39, §**10381**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§587.8]

Pending litigation excepted, 63GA, ch 1264,§8
See 59GA, ch 272,§4, effective July 4, 1961; 63GA, ch 1264, §4, effective July 1, 1970

587.9 Decrees in general—affidavit of publication. In all cases where decrees of court have been obtained prior to January 1, 1969, in which the proof of publication of the original notice has been made by the affidavit of the editor of the newspaper or the publisher, manager, cashier, or foreman thereof in which such original notice was published, the same are hereby legalized and such decrees shall have the same force and effect as though the affidavit of the publisher or foreman of the newspaper in which original notice was published had been filed as provided by section 3536, Code of 1897, or section 11085, Codes of 1924, 1927, 1931, 1935, 1939 and rule of civil procedure, number 60, Code 1946, that all decrees obtained as aforesaid are hereby legalized and held to have the same force and effect as though the proof of the publication on the original notice had been made by the affidavit of the publisher or foreman of the newspaper in which such original notice was published. [S13,§3536-a; C24, 27, 31, 35, 39,§**10382**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§587.9]

Pending litigation excepted, 63GA, ch 1264,§8
See 59GA, ch 272,§5, effective July 4, 1961; 63GA, ch 1264, §5, effective July 1, 1970

587.10 Affidavit of publication of notice by assistant publisher. All affidavits of proof of publication of any notice or original notice made by the assistant publisher of any newspaper of general circulation, which were executed and filed prior to January 1, 1970, are hereby legalized, declared valid, binding, and of full force and effect. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§587.10]

Pending litigation excepted, 63GA, ch 1264,§8
See 59GA, ch 272,§6, effective July 4, 1961; 63GA, ch 1264, §6, effective July 1, 1970

587.11 Annulment of marriages—service by publication. All decrees of the courts of this state made and entered of record in actions brought to annul a marriage in which the service of the original notice was made by publication in the manner provided by law for actions for divorce are hereby legalized and validated as fully and to the same extent as if the statute at the time such suit was instituted had provided for service of the original notice by publication in the time and manner aforesaid. [S13,§3187-a; C24, 27, 31, 35, 39,§**10383**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§587.11]

Re-enacted, 49GA, ch 289,§10, effective July 4, 1941
See 35GA, ch 270, effective July 4, 1913

587.12 Service by publication under rule 60.

1. In all actions or in proceedings in probate where an order, judgment or decree has been entered prior to July 1, 1970, based upon service of notice by publication as provided by rule 60 of the Iowa rules of civil procedure or any statute authorizing publication of notice or upon service of notice by publication or posting pursuant to authorization or direction of any court of competent jurisdiction in the state of Iowa, all such orders, judgments or decrees are hereby declared valid and of full force and effect, unless an action shall be commenced within the time provided in subsection 2 hereof to question such order, judgment or decree, or any right or status created, confirmed or existing thereunder.

2. No action shall be maintained in any court to question any such order, judgment or decree, or any right or status created, confirmed or existing thereunder unless such action shall be commenced within one year from July 1, 1970.

3. The provisions of section 614.8 as to the rights of minors and insane persons and any other provision of law fixing or extending the time within which actions may be commenced shall not be applicable to extend the time within which any such action shall be commenced beyond one year after July 1, 1970. [C54, 58, 62, 66, 71, 73, 75,§587.12]

Pending litigation excepted, 59GA, ch 272,§8; 63GA, ch 1264,§8
See 59GA, ch 272,§7, effective July 4, 1961

CHAPTER 588

EXECUTION SALES LEGALIZED

588.1 Failure to make proper entries.
588.2 Homestead selection—deficiency.

588.1 Failure to make proper entries. All execution sales heretofore had wherein the execution officer has failed to endorse on the execution the day and hour when received, the levy, sale, or other act done by virtue thereof, with the date thereof, the dates and amounts of any receipts or payment in satisfaction thereof at the time of the receipt or act done, or has failed to endorse thereon, an exact description of the property levied upon at length with the date of levy, be and the same are hereby legalized and declared to be legal and valid as if all of the provisions of laws as required by sections 11664 to 11668.1 [Code 1939], both inclusive, had been in all respects strictly and fully complied with. [C35,§10383-e1; C39, §**10383.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§588.1]

Re-enacted, 47GA, ch 251,§1, effective February 19, 1937
See 45GA, ch 169, effective April 28, 1933

588.2 Homestead selection—deficiency. All execution sales of real estate heretofore had in which the execution officer has failed to serve notice upon the titleholders in possession to select their homestead or has defectively served such notice or, having served such notice, has, upon the failure of defendants to select a homestead, neglected to plat the same or has defectively platted the same, or where said execution officer in such sales has offered the property en masse without first offering the same in the least legal subdivisions, or where said officer has failed to offer property, including the homestead, first separately in least legal subdivisions exclusive of homestead, then offering all property en masse, exclusive of the homestead, then offering the homestead separately, then offering all of the property for sale, en masse, be and the same are hereby legalized and declared to be legal and valid in all particulars as if all of the provisions of the law had been in all respects strictly and fully complied with at the time of said acts or said sales. [C39,§**10383.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§588.2]

See 47GA, ch 251,§2, effective February 19, 1937

CHAPTER 589

REAL PROPERTY LEGALIZING ACTS

Dubuque and Pacific R. R. lands, see §10.12

589.1 Acknowledgments—seal not affixed.
589.2 Conveyances by county.
589.3 Absence of or defective acknowledgments.
589.4 Acknowledgments by corporation officers.
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589.17 Conveyances by spouse under power.
589.18 Conveyances by foreign executors.
589.19 Conveyances under school-fund foreclosures.
589.20 Conveyances according to law of other states.
589.21 Releases and discharges in re real estate.
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589.23 Descriptions referring to defective plats.
589.24 Defective conveyances—tax deeds—etc.
589.25 Sales of real estate by school district.
589.26 Social welfare department land transfers legalized.
589.27 Condemnation by highway commission.

589.1 Acknowledgments — seal not affixed. All deeds, mortgages, or other instruments in writing, for the conveyance of lands which have been made and executed before July 4, 1943, and the officer taking the acknowledgment has not affixed his seal to the acknowledgment; such acknowledgment shall, nevertheless, be good and valid in law and equity, anything in any law passed before July 4, 1943, to the contrary notwithstanding. [S13,§2942-h;

C24, 27, 31, 35, 39,§**10384**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.1]

Modified by 50GA, ch 262,§1, effective July 4, 1943
See 13GA, ch 160,§3, effective April 29, 1870; 31GA, ch 146,§3, effective March 24, 1906

589.2 Conveyances by county. All deeds executed before July 4, 1943, by a county judge, or county court, or the chairman of the board of supervisors of any county, and to which the officer executing the same has failed or omitted to affix the county seal, and all deeds where the clerk has failed or omitted to countersign when required so to do, be and the same are hereby legalized and made valid the same in all respects as though the law had in all respects been fully complied with. [C24, 27, 31, 35, 39,§**10385**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §589.2]

Modified by 50GA, ch 262,§2, effective July 4, 1943
See 18GA, ch 180, effective July 4, 1880

589.3 Absence of or defective acknowledgments. Any instrument in writing affecting the title to real estate within the state of Iowa, to which is attached no certificate of acknowledgment, or to which is attached a defective certificate of acknowledgment, which was, prior to January 1, 1930, recorded or spread upon the records in the office of the recorder of the county in which the real estate described in such instrument is located, is, together with the recording and the record thereof, legalized and declared as valid, legal, and binding as if such instrument had been properly acknowledged and legally recorded. [S13, SS15,§2963-a; C24, 27, 31, 35, 39,§**10386**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.3]

See 13GA, ch 160,§2, effective April 29, 1870; 14GA, ch 110,§2, effective May 1, 1872; 35GA, ch 265,§1, effective July 4, 1913; 36GA, ch 51,§1, effective July 4, 1915; 37GA, ch 288,§1, effective July 4, 1917; 40GA, ch 196,§1, effective July 4, 1923; 50GA, ch 262,§3, effective July 4, 1943

589.4 Acknowledgments by corporation officers. The acknowledgments of all deeds, mortgages, or other instruments in writing taken or certified before July 4, 1943, and which instruments have been recorded in the recorder's office of any county of this state, including acknowledgments of instruments made by any private or other corporation, or to which such corporation was a party, or under which such corporation was a beneficiary, and which have been acknowledged before or certified by any notary public who was at the time of such acknowledgment or certifying a stockholder or officer in such corporation, are hereby declared to be legal and valid official acts of such notaries public, and to entitle such instruments to be recorded, anything in the laws of the state of Iowa in regard to acknowledgments to the contrary notwithstanding. This section shall not affect pending litigation. [C39, §**10387.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §589.4]

Modified by 50GA, ch 262,§5, effective July 4, 1943
See 48GA, ch 253,§1, effective July 4, 1939

589.5 Acknowledgments by stockholders. All deeds and conveyances of lands within this state executed before July 4, 1943, but which have been acknowledged or proved according to and in compliance with the laws of this state before a notary public or other official authorized by law to take acknowledgments who was, at the time of such acknowledgment, an officer or stockholder of a corporation interested in any such deed or conveyance, or otherwise interested therein, are, if otherwise valid, hereby declared effectual and valid in law to all intents and purposes as though acknowledged or proved before an officer not interested therein; and if recorded before July 4, 1943, in the respective counties in which such lands may be, the records thereof are hereby confirmed and declared effectual and valid in law to all intents and purposes as though said deeds and conveyances, so acknowledged or proved and recorded, had (prior to being recorded) been acknowledged or proved before an officer having no interest therein. [S13, §2942-d; C24, 27, 31, 35, 39,§**10388**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.5]

Modified by 50GA, ch 262,§6, effective July 4, 1943
See 27GA, ch 166, effective July 4, 1898

589.6 Instruments affecting real estate. All instruments in writing executed by any corporation prior to July 4, 1943, conveying, encumbering, or affecting real estate, including releases, satisfaction of mortgages, judgments, or any other liens by entry of such release or satisfaction upon the page or pages where such lien appears recorded or entered, where the corporate seal of such corporation has not been affixed or attached thereto, and which are otherwise legally and properly executed, are hereby declared legal, valid, and binding, the same as though the corporate seal had been attached or affixed thereto. [S13,§3068-a; C24, 27, 31, 35, 39,§**10389**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.6]

Modified by 50GA, ch 262,§7, effective July 4, 1943
See 34GA, ch 225, effective July 4, 1911

589.7 Sales, contracts and deeds by corporations. All sales, contracts, deeds, or conveyances of lands owned by any such corporation* on July 4, 1888, or acquired by any such corporation under the provisions of section 6 of chapter 85 of the laws of the Twenty-second General Assembly or section 2890 of the Code [Code of 1897], bearing date on or after July 4, 1888, are hereby legalized and rendered of full force and effect, according to their terms, insofar as their validity or the validity of the titles conveyed thereby may be affected by chapter 85 of the laws of the Twenty-second General Assembly, or any amendments thereto, or by chapter 1, Title XIV, of the Code [Code of 1897]. [S13,§2889-c; C24, 27, 31, 35, 39,§**10390**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.7]

See 28GA, ch 117,§3, effective March 17, 1900
*"Such corporation" refers to §§567.3 and 567.4

589.8 Mortgages, trust deeds and realty liens—releases before July 4, 1933. Any release or satisfaction of any mortgage or trust deed, or of any instrument in writing creating a lien upon real estate where such release or satisfaction has been recorded in the recorder's

office of the county in this state, or upon the margin of the record, where such original instrument was recorded and which release or satisfaction was made by any individual, association, copartnership, assignee, corporation, attorney in fact, or by a resident or foreign executor, administrator, referee, receiver, trustee, guardian, or commissioner, and which release or satisfaction was executed, filed, and recorded prior to July 4, 1933, is hereby legalized, declared valid, legal and binding and of full force and effect, any defects in the execution, acknowledgment, recording, filing, or otherwise of such releases or satisfactions to the contrary notwithstanding. [S13,§2938-b; C24, 27, 31, 35, 39,§**10391**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.8]

Modified by 50GA, ch 262,§8, effective July 4, 1943
See 37GA, ch 345, effective July 4, 1917

589.9 Marginal releases of school-fund mortgages. The release or satisfaction of any school-fund mortgage entered on the margin of the record of such mortgage by the auditor of the county prior to July 4, 1894, is hereby legalized and given the same force and effect as though such auditor had had, at the time of entering such release or satisfaction, the same power thereafter conferred upon him by chapter 53 of the Acts of the Twenty-fifth General Assembly. [C24, 27, 31, 35, 39,§**10392**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.9]

See 37GA, ch 339, effective July 4, 1917

589.10 Marginal assignment of mortgage or lien. In any case where an assignment of a mortgage or other recorded lien on real estate has been made before July 4, 1943, by written assignment thereof on the margin of the record where such mortgage or other lien is recorded or entered, such assignment shall be deemed to have passed all the right, title, and interest therein, which the assignor at the time had, with like force and effect as if such assignment had been made by separate instrument duly acknowledged and recorded; and any such assignment or a duly authenticated copy thereof when accompanied by a duly authenticated copy of the record of the instrument or lien it purports to assign, shall be admissible in evidence as is provided by law for the admission of the records of deeds and mortgages. [SS15, §2963-x2; C24, 27, 31, 35, 39,§**10393**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.10]

Modified by 50GA, ch 262,§9, effective July 4, 1943
See 34GA, ch 227,§1, effective July 4, 1911

589.11 Conveyances by executors, trustees, etc. In all cases where, prior to the year 1930, an executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner, acting as such in this or any state, has conveyed in such trust capacity real estate lying in this state and such conveyance has been of record since prior to January 1, 1930, in the county where the real estate so conveyed is located and which conveyance purports to sustain the title in the present record owner or owners thereof, such conveyance shall not be held void or insufficient by reason of the fact that due and legal notice of all proceedings with reference to the making of any such conveyance was not served upon all interested or necessary parties, or that such executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner is not shown to have been duly authorized by an order of court to make and execute such conveyance, that a bond was not given therefor, or that no report of the sale was made; or such sale or deed of conveyance was not approved by order of court, or that any such foreign executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner was not appointed or qualified in the state of Iowa prior to the making of such conveyance, or that the record thereof fails to disclose compliance with any other provisions of law, and all such conveyances are hereby legalized and declared valid, legal, and binding and of full force and effect. Allotments by referees in partition shall be considered conveyances within the meaning of this section. [S13, SS15,§2963-l; C24, 27, 31, 35, 39,§**10394**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.11]

See 35GA, ch 272,§8, effective July 4, 1913; 36 GA, ch 230, effective April 29, 1915; 37GA, ch 388,§2, effective July 4, 1917; 43GA, ch 245,§1, effective March 21, 1929; 50GA, ch 262,§10, effective July 4, 1943

589.12 Sheriffs' deeds. No foreclosure proceeding or sale of real estate on execution prior to January 1, 1930, wherein a sheriff's deed was executed and which purports to sustain the record title shall be held ineffectual on account of the failure of the record to show that any of the steps in obtaining said judgment or in the sale of said property were complied with. Such proceedings are hereby legalized and made valid as if the record showed that all the provisions of the law had been complied with. [S13,§2963-c; C24, 27, 31, 35, 39,§**10396**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §589.12]

See 35GA, ch 272,§4, effective July 4, 1913; 40GA, ch 240, §2, effective July 4, 1923; 50GA, ch 262,§12, effective July 4, 1943

589.13 Sheriff's deed executed by deputy. All conveyances of land in this state, executed in this state by a deputy sheriff, and properly recorded in the office of the county recorder of the county wherein the land is located, prior to January 1, 1930, shall have the same force and effect as though such conveyance had been executed by the sheriff. [C24, 27, 31, 35, 39, §**10397**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.13]

See 34GA, ch 226,§1, effective July 4, 1911; 40GA, ch 240, §1, effective July 4, 1923; 50GA, ch 262,§13, effective July 4, 1943

589.14 Defective tax deeds. No sale of real property for taxes made prior to January 1, 1930, wherein the tax deed was executed and which deed purports to sustain the record title, shall be held ineffectual on account of the failure of the record to show that any of the steps in the sale and deeding of said property were complied with; said proceedings are hereby legalized and made valid and effectual as if the record showed that all the provisions

of law had been complied with. [S13,§2963-o; C24, 27, 31, 35, 39,§**10398**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.14]

Modified by 50GA, ch 262,§14, effective July 4, 1943
See 43GA, ch 246,§1, effective July 4, 1929

589.15 Tax deeds legalized. That in all instances where tax deeds have been issued by county treasurers in the absence of the report and entry required by section 7283 of the Code, 1939, or corresponding sections of earlier Codes relating to collection of costs of serving notices, such tax deeds shall not by reason of omission to make such report and entry be held invalid, but are hereby legalized. Nothing herein contained shall be construed as curing any other defect in tax deeds than that herein specifically described. Nothing herein contained shall be so construed as to affect pending litigation. [C35,§10398-g1; C39,§**10398.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.15]

Limitation of actions on tax sales and deeds, §448.13
Modified by 50GA, ch 262,§15, effective July 4, 1943
See 46GA, ch 203, effective March 22, 1935

589.16 Tax sales legalized. In all instances where a county treasurer heretofore conducted a tax sale at the time provided in section 7259 or section 7262, both of the Code, 1935, sales made at such tax sale or any adjournment thereof shall not be held invalid by reason of the failure of the county treasurer to have brought forward the delinquent tax of prior years upon the current tax lists in use by the said county treasurer at the time of conducting the sale, or by reason of the failure of the county treasurer to have offered all the property unsold before each adjournment of said sale and said tax sales are hereby legalized and declared valid notwithstanding the provisions of section 7193 and section 7259, both of the Code, 1935, provided the delinquent taxes for which the said real estate was sold had been brought forward upon the current tax list of the year preceding the year in which the said tax sale was conducted. Provided, however, that no tax sale so legalized and validated shall affect a special assessment if the same continues to remain a lien notwithstanding a tax deed now or hereafter issued pursuant to such tax sale. [C39,§**10398.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.16]

See 48GA, ch 251, effective April 28, 1939

589.17 Conveyances by spouse under power. No conveyance of real estate made before July 4, 1941, wherein the husband or wife conveyed or contracted to convey the inchoate right of dower through the other spouse, acting as the attorney in fact, by virtue of a power of attorney executed by such spouse, such power of attorney not having been executed as a part of a contract of separation, shall be held invalid as contravening the provisions of section 3154 of the Code, 1897, or section 10447 of subsequent Codes to and including the Code of 1939, but all such conveyances are hereby legalized and made effective. [S'02,§2942-f; C24, 27, 31, 35, 39,§**10399**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §589.17]

See 29GA, ch 237,§1, effective April 3, 1902; 30GA, ch 118, effective July 4, 1904; 37GA, ch 351,§2, effective July 4, 1917; 50GA, ch 262,§16, effective July 4, 1943

589.18 Conveyances by foreign executors. All conveyances of real property made prior to January 1, 1943, by executors or trustees under foreign wills and prior to the date upon which such will was admitted to probate in Iowa or prior to the expiration of three months after the recording of a duly authenticated copy of such will, original record of appointment, qualification, and bond as required by the provisions of section 3295 of the Code of 1897 or sections 11878 to 11881, inclusive, of subsequent Codes to and including the Code of 1939, and in which such will was subsequent to said conveyance, probated in Iowa or shall hereafter be probated in Iowa, and in which a duly authenticated copy of the will, original record of appointment, qualification, and bond as required by said sections was subsequent to such conveyance, or shall be hereafter made a matter of record as provided in said sections, are hereby legalized and declared as valid and effectual in law and in equity as though such will had been probated in Iowa prior to such conveyance and as though the provisions of said sections had been strictly complied with; provided nothing in this section shall affect pending litigation. [S13,§3295-c; C24, 27, 31, 35, 39,§**10401**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §589.18]

Modified by 50GA, ch 262,§18, effective July 4, 1943
See 35GA, ch 273, effective July 4, 1913

589.19 Conveyances under school-fund foreclosures. In any case where the title to real estate has been conveyed prior to January 1, 1943, by the sheriff of any county in the state of Iowa pursuant to sheriff's sale under the foreclosure of permanent school-fund mortgages to the state of Iowa, or to the state of Iowa for the use of the school fund, or to the county for the school fund; and said land has been heretofore sold under authority of the board of supervisors of said county and conveyed under its authority, prior to January 1, 1943, and the full purchase price paid and credited to, and used by, the county for the permanent school fund of said county, all right, title, or interest of the state of Iowa in and to said real estate is hereby relinquished and quitclaimed to the purchaser or his grantees forever, and the title thereto confirmed in such purchaser, or his grantees insofar as the aforesaid erroneous conveyance is concerned. [C31, 35,§10401-c1; C39,§**10401.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.19]

Modified by 50GA, ch 262,§19, effective July 4, 1943
See 43GA, ch 276, effective March 23, 1929

589.20 Conveyances according to law of other states. All deeds and conveyances of lands lying and being within this state heretofore executed and which said deeds have been acknowledged or proved according to and in compliance with the laws and usages of the

state, territory, or country in which said deeds or conveyances were acknowledged and proved are hereby declared effectual and valid in law to all intents and purposes as though the same acknowledgments had been taken or proof of execution made within this state and in pursuance of the Acts and laws thereof, and such deeds so acknowledged or proved as aforesaid shall be admitted to be legally recorded in the respective counties in which such lands may be, anything in the Acts and laws of this state to the contrary notwithstanding, and all deeds and conveyances of lands situated within this state which have been acknowledged or proved in any other state, territory, or country according to and in compliance with the laws and usages of such state, territory, or country and which deeds and conveyances have been recorded within this state be and the same are hereby confirmed and declared effectual and valid in law to all intents and purposes as though the said deeds or conveyances so acknowledged or proved and recorded had prior to being recorded been acknowledged or proved within this state.

This Act* shall apply to all deeds, mortgages, and conveyances made, filed, recorded, and proved as contemplated in section 1 of this Act prior to January 1, 1884. [C24, 27, 31, 35, 39, §10402; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.20]

*20GA, ch 203

See 13GA, ch 160,§1, effective April 29, 1870; 14GA, ch 110, §1, effective May 1, 1872; 20GA, ch 203, effective July 4, 1884

589.21 Releases and discharges in re real estate. All releases and discharges of judgments, mortgages, or deeds of trust affecting property in this state made prior to January 1, 1933, by administrators, executors, or guardians appointed by the court of any other state or country without complying with the provisions of section 3308 of the Code of 1897 and sections 11897 to 11899, inclusive, of subsequent Codes to and including the Code of 1931 are hereby legalized and declared as valid and effective in law and in equity as though the provisions of said sections had been strictly followed; provided that nothing in this section shall affect pending litigation. [S13,§3308-a; C24, 27, 31, 35, 39,§10403; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.21]

Modified by 50GA, ch 262,§20, effective July 4, 1943

See 35GA, ch 276, effective July 4, 1913

589.22 Certain loans, contracts and mortgages. All loans, contracts, and mortgages which are affected by the repeal of chapter 48, Acts of the Twenty-seventh General Assembly, are hereby legalized so far as to permit recovery to be had thereon for interest at the rate of eight percent per annum, but at no greater rate, and nothing contained in such contracts shall be construed to be usurious so as to work a forfeiture of any penalty to the school fund. [S13,§1898-b; C24, 27, 31, 35, 39,§10404; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.22]

See 28GA, ch 69,§16, effective May 4, 1900

589.23 Descriptions referring to defective plats. The description of land in all instruments, conveyances, and encumbrances describing lots in or referring to plats made by the county auditors of Iowa, or by the county surveyor for the owner, and placed of record by the county recorders of Iowa prior to January 1, 1930, are hereby legalized and the same declared valid and binding the same as though the said plats had been signed and acknowledged and filed and recorded in strict compliance with law. [S13,§924-b; C24, 27, 31, 35, 39, §10405; C46, 50, 54, 58, 62, 66, 71, 73, 75,§589.23]

Modified by 50GA, ch 262,§21, effective July 4, 1943

See 32GA, ch 247,§2, effective March 3, 1907

589.24 Defective conveyances—tax deeds—etc. Any deed of conveyance, or other instrument purporting to convey real estate within the state of Iowa, where such deed or instrument has been recorded in the office of the recorder of any county wherein such real estate is situated, and which said deed or instrument was executed by a county treasurer under a tax sale, a sheriff under execution sale, or by a resident or foreign executor, administrator, referee, receiver, trustee, guardian, commissioner, individual, copartnership, association, or corporation, and was executed and recorded prior to January 1, 1930, and where the grantee or grantees named in such deed or conveyance, or other instrument, his, her, their, or its grantees, heirs, or devisees, by direct line of title or conveyance have been in the actual, open, adverse possession of such premises since said date, be and the same is hereby legalized, declared valid, legal, and binding, and of full force and effect, notwithstanding any defects in the execution of said deed or instrument. [S13,§2963-c; C24, 27, 31, 35, 39,§10406; C46, 50, 54, 58, 62, 66, 71, 73, 75, §589.24]

Saving clause, 50GA, ch 262,§23

See 35GA, ch 261,§1, effective April 15, 1913; 43GA, ch 247, §1, effective July 4, 1929; 50GA, ch 262,§22, effective July 4, 1943

589.25 Sales of real estate by school district. All deeds and conveyances of land made by or purporting to be made by any school district or by the board of directors of any school district prior to July 4, 1943, and placed of record prior to July 4, 1943, which deeds or conveyances purport to sustain the record title, are hereby legalized and made valid, even though the record fails to show that all necessary steps in the sale and deeding of the property were complied with. Such deeds and conveyances are legalized and made valid and effectual, as fully and completely as if the record showed that all provisions of law had been complied with, and that the said sales had been duly authorized by the electors of the school district. [C58, 62, 66, 71, 73, 75, §589.25]

See 56GA, ch 258,§1, effective July 4, 1955

589.26 Social welfare department land transfers legalized. Every deed, release or other instrument in writing purporting to transfer any interest in land held or claimed by either the state department of social welfare or the state board of social welfare of the state of

Iowa, which is signed for either or both said bodies by the secretary of either, and which are now filed or of record as of February 1, 1961, in the office of the auditor or recorder or clerk of the district court of any county in Iowa, and any writing thus signed, filed or recorded which purports to release any old-age assistance lien on any real estate in Iowa is hereby legalized and shall be good and valid in law and in equity as fully as if the record expressly showed that same in all respects complied with and was fully authorized as provided in any statute pertaining to such instrument, anything in the laws of Iowa to the contrary notwithstanding. [C62, 66, 71, 73, 75, §589.26]

See 59GA, ch 273, effective July 4, 1961

589.27 Condemnation by highway commission*. In any condemnation proceedings instituted by the state highway commission* and pending on or filed subsequent to January 1, 1968, in any court of the state, under chapter 472, wherein the property owner has served a proper notice of appeal on the applicant for condemnation within the statutory period, but has failed to serve notice of appeal on a lienholder within the statutory period as required by section 472.18, such failure shall not deprive the court of jurisdiction insofar as the property owner is concerned, unless a lienholder can show prejudice thereby, and in such instances the appeal, as it affects the property owner, is legalized and validated.

Any award of damages and judgment for costs, in any such proceeding, which has been set aside or vacated, by reason of the failure of the property owner to serve notice of appeal on a lienholder within the statutory period required under section 472.18, shall be reinstated by the court where such award and judgment was entered after notice and hearing, as prescribed by the court, and after a finding that such lienholder will not be prejudiced thereby. [C73, 75,§589.27]

See 64GA, ch 1120, effective July 1, 1972
*State department of transportation after July 1, 1975

CHAPTER 590

WILLS—LEGALIZING ACTS

590.1 Notice of appointment of executors.
590.2 Notice of hearing in probate.

590.1 Notice of appointment of executors. In all instances prior to January 1, 1964, where executors or administrators have failed to publish notice of their appointment as required by section 3304, Code of 1897, and section 11890, Codes of 1924 to 1939, inclusive, and section 633.46, Codes 1946 to 1962, inclusive, but have published a notice of appointment, such notice of appointment is hereby legalized and shall have the same force and effect as though the same had been published as directed by the court or clerk.

In all instances where more than five years have passed since the appointment of a personal representative or probate of a will without administration, where administrators have failed to publish notice of their appointment as required by section 633.230, and executors have failed to publish a notice of admission of the will to probate and their appointment as required by sections 633.304 and 633.305, but have published a notice of appointment or notice of admission of the will to probate and of the appointment of the executor, such notice of appointment or notice of admission of the will to probate and of the appointment of the executor, is hereby legalized and shall have the same force and effect as though the same had been published as required. [C24, 27, 31, 35, 39,§10407; C46, 50, 54, 58, 62, 66, 71, 73, 75,§590.1; 66GA, ch 1227,§1]

See 59GA, ch 274,§1, effective July 4, 1961

590.2 Notice of hearing in probate. In all instances prior to January 1, 1964, where the clerk of the district court of any county failed to publish notice of the time fixed for hearing of the probate of any will filed in such county as required by section 11865 of the Code [1924 to 1939, inclusive], and section 633.20, Codes 1946 to 1962, inclusive, but did publish a notice of the time fixed for such hearing signed by himself and addressed to whom it may concern in a daily or weekly newspaper printed in the county where the will was filed, such notice of time fixed for the hearing of the probate of such will is hereby legalized and shall have the same force and effect as though the same had been published in strict conformity with the requirements of said section. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§590.2]

Pending litigation excepted, 59GA, ch 274,§3; 63GA, ch 1265,§3
See 59GA, ch 274,§2, effective July 4, 1961; 63GA, ch 1265, §2, effective July 1, 1970

CHAPTER 591

CORPORATIONS LEGALIZED

591.1 Defective publication.
591.2 Publication after required time.
591.3 Filing of renewals after required time.
591.4 Defective notice or acknowledgment, etc.
591.5 Notices of incorporation.
591.6 Amended articles and change of name.
591.7 Co-operative associations or corporations.
591.8 Defective organization or renewal.
591.9 Interstate bridges—merger and consolidation.
591.10 Failure to publish notice of renewal.
591.11 Failure to publish notice of amendment.
591.12 Effect of foregoing statutes.
591.13 Corporation stock—certificates of information.
591.14 Failure to file certificate—penalty.
591.15 Failure to publish notice of incorporation or amendment.
591.16 Nonprofit corporate renewal legalized.
591.17 Nonprofit corporations legalized.

591.1 Defective publication. Corporations heretofore incorporated under the laws of the state which have caused notice of their incorporation to be published once each week for four consecutive weeks in some daily, semiweekly or triweekly newspaper, instead of causing the same to be published in each issue of such newspaper for four consecutive weeks, are hereby legalized and are declared legal incorporations the same as though the law had been complied with in all respects in regard to the publication of notice. [S13,§1613-a; C24, 27, 31, 35, 39,§**10408**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§591.1]

Referred to in §591.12
See 58GA, ch 347,§1, effective July 4, 1959

591.2 Publication after required time. In all instances where the incorporators of corporations organized in this state for pecuniary profit have omitted to publish notice of such incorporation within three months after the date of the certificates of incorporation issued by the secretary of state, but did publish such notices thereafter in the manner and form as required by law, such notices of incorporation are hereby legalized and shall have the same force and effect as though published within said period of three months. [C24, 27, 31; 35, 39,§**10409**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §591.2]

Referred to in §591.12
See 58GA, ch 347,§2, effective July 4, 1959

591.3 Filing of renewals after required time. In all instances where proper action has been taken prior to July 1, 1959, by the stockholders for renewal of any corporation for pecuniary profit and the certificates showing such proceedings, together with the articles of incorporation, have been filed and recorded in the office of the county recorder and later in the office of the secretary of state, or have been filed and recorded in the office of the secretary of state and later in the office of the county recorder, although there has been failure to file such certificates and articles of incorporation in either or both of the said offices within the time specified therefor by law, such renewals are hereby legalized and shall be held to have the same force and effect as though the filings of the said documents in the said offices had been made within the periods prescribed by statute. [SS15,§1618-1a; C24, 27, 31, 35, 39, §**10410**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§591.3]

Referred to in §591.12
See 58GA, ch 347,§3, effective July 4, 1959

591.4 Defective notice or acknowledgment, etc. In all instances where the incorporators of corporations organized in the state prior to January 1, 1959, have failed to publish notices of such incorporation within three months from and after the date of the certificates of incorporation issued by the secretary of state, but did publish such notices within three months after the date required by law in such cases in manner and form as required by law, and in all instances where the number of incorporators or the signatures or acknowledgment thereof were less than the number required by law, or the articles of incorporation were otherwise defective, but where the corporation or association has thereafter been conducted with the requisite number of stockholders or members, such notices of incorporation and the incorporation of corporations or associations so defectively incorporated are in each and every case hereby legalized and all the corporate acts of all such corporations and associations are hereby legalized in all respects. [C24, 27, 31, 35, 39,§**10411**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§591.4]

Referred to in §591.12
See 58GA, ch 347,§4, effective July 4, 1959

591.5 Notices of incorporation. In all instances where the incorporators of corporations for pecuniary profit have omitted to publish notice of incorporation within three months from the date of the certificate of incorporation issued by the secretary of state, but have published notice thereafter in manner and form as by law required, such notices are hereby legalized and shall have the same force and effect as though published within said period of three months, as to all acts of said corporation from the date of said completed publication. [C24, 27, 31, 35, 39,§**10412**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§591.5]

Referred to in §591.12
See 37GA, ch 96, effective July 4, 1917
Re-enacted by 49GA, ch 291,§5, effective July 4, 1941; 54GA, ch 202,§5, effective July 4, 1951; 56GA, ch 259,§5, effective July 4, 1955

591.6 Amended articles and change of name. Any corporation, organized under chapter 2 of

Title IX, Code of 1897, or chapter 394, Codes of 1924, 1927, 1931, 1935 and 1939, or chapter 504, Codes of 1946, 1950, 1954 and 1958, which shall have heretofore adopted articles of incorporation or changed its name or amended its articles, and some question has arisen as to whether such articles, change in name or amendment was adopted by a majority of the members of such corporation as required by section 1651, Code of 1897, and section 8593, Codes of 1924, 1927, 1931, 1935 and 1939, and section 504.19, Codes of 1946, 1950, 1954 and 1958, and such corporation shall have been engaged in the exercise of its corporate functions for the period of at least three years, such articles, change in name or amendment shall be held and considered to have been duly adopted by a majority of all the members of such corporation and are hereby legalized and made valid. [S13,§1642-b; C24, 27, 31, 35, 39, §10413; C46, 50, 54, 58, 62, 66, 71, 73, 75,§591.6]

Referred to in §591.12
See 58GA, ch 347,§5, effective July 4, 1959

591.7 Co-operative associations or corporations. In all instances where co-operative associations or corporations have been organized under the law as it appears in chapter 389, Code of 1927, where such associations or corporations have filed the original articles rather than a verified copy with the county recorder or where the secretary of state failed to certify the filing and acceptance of such articles, or where the certificate of the secretary of state contained a facsimile signature rather than the true signature of the secretary of state, or where there is any defect in the articles, notice, procedure or otherwise, the incorporation of such corporation or association and all of the corporate acts thereof are hereby legalized in all respects. [C31, 35,§10413-c1; C39,§10413.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§591.7]

Referred to in §591.12
See 43GA, ch 398, effective April 26, 1929
Re-enacted by 49GA, ch 291,§7, effective July 4, 1941; 54GA, ch 202,§7, effective July 4, 1951; 56GA, ch 259,§7, effective July 4, 1955

591.8 Defective organization or renewal. In all cases wherein a corporation organized or purporting to have been organized under the laws of this state has adopted articles of incorporation or other instrument of similar import and has functioned as a corporation in carrying out the objects and purposes set forth therein and in the transaction of its business, but has failed to file its articles of incorporation or such other instrument with the secretary of state, or otherwise to comply with the laws of this state relating to the organization of corporations, or to take appropriate action for the renewal of its existence within the period limited by law, and has, subsequent thereto, filed in the office of the secretary of state its renewal articles of incorporation and a certificate of the adoption thereof, paid all fees in connection therewith and has heretofore received a certificate from the secretary of state renewing and extending its corporate existence, the acts, franchises, rights, privileges and corporate existence of any such corporation are hereby legalized and validated and shall have the same force and effect as if all the laws of this state relating to the organization of corporations and the renewal of their corporate existence had been strictly complied with. [C31, 35,§10413-d1; C39,§10413.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§591.8]

Referred to in §591.12
See 58GA, ch 347,§6, effective July 4, 1959

591.9 Interstate bridges—merger and consolidation. In all cases wherein any corporation organized or purporting to have been organized under the laws of this state for the purpose of constructing or operating a bridge or both, one extremity of which shall rest in an adjacent state, has attempted to merge or consolidate its stock, property, franchises, assets and liabilities with the stock, property, franchises, assets and liabilities of a corporation organized or purporting to have been organized for a similar purpose under the laws of such adjacent state, and such corporations have in fact united and combined their stock, property, franchises, assets and liabilities, such merger or consolidation, together with the action taken in effecting such merger or consolidation, is hereby legalized and validated, and such corporations so merging or consolidating shall be deemed to have become one corporation under such name as shall have been agreed upon, and such corporation shall be deemed on the date of such merger or consolidation to have succeeded to all the property, rights, privileges, assets and franchises and to have assumed all of the liabilities of such merging or consolidating corporations. [C31, 35,§10413-d2; C39,§10413.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§591.9]

Referred to in §591.12
See 44GA, ch 211, effective March 27, 1931
Re-enacted by 49GA, ch 291,§9, effective July 4, 1941; 54GA, ch 202,§9, effective July 4, 1951; 56GA, ch 259,§9, effective July 4, 1955

591.10 Failure to publish notice of renewal. In all instances where there has been an omission to publish notice of renewal within three months after the filing of the certificate and articles of incorporation with the secretary of state as provided in section 491.32, Code 1954, but such notice was published thereafter in the manner and form as required by law and proof of publication filed in the office of the secretary of state, such notices are hereby legalized and shall have the same force and effect as though published within said period of three months and proper proof of publication thereof was filed. [C54, 58, 62, 66, 71, 73, 75,§591.10]

Referred to in §591.12
See 58GA, ch 347,§7, effective July 4, 1959

591.11 Failure to publish notice of amendment. In all instances where notices of amendments to articles of incorporation have not been published within three months after the filing with and approval by the secretary of state of such amendments, as provided in section 491.20 of the Code 1954, but such

notices have been thereafter published in the form and manner as required by law and proof of publication filed with the secretary of state, such notices are hereby legalized and shall have the same force and effect as though published within said period of three months and proper proof of publication filed with the secretary of state. [C54, 58, 62, 66, 71, 73, 75, §591.11]

Referred to in §591.12
See 58GA, ch 347,§8, effective July 4, 1959

591.12 Effect of foregoing statutes. Sections 591.1 to 591.11 hereof shall not affect pending litigation and shall not operate to revive rights or claims previously barred, and shall not permit an action to be brought or maintained upon any claim or cause of action which was barred by any statute which was in force prior to July 4, 1955. [C58, 62, 66, 71, 73, 75,§591.12]

See 56GA, ch 259,§12, effective July 4, 1955

591.13 Corporation stock—certificates of information. In all instances in which corporations, incorporated under the laws of this state, have properly issued any of their capital stock prior to July 4, 1951, and have filed in the office of secretary of state certificates relative thereto containing the specific information required by statute at the time of the issuance of said stock, although there has been failure to file such certificates in said office within the time specified therefor by law, such filings are hereby legalized and shall be held to have the same force and effect as though the filings of the said certificates had been made within the period prescribed by the statute then in effect. [C58, 62, 66, 71, 73, 75,§591.13]

See 56GA, ch 260,§1, effective July 4, 1955

591.14 Failure to file certificate—penalty. Any corporation organized under the laws of this state which failed to file with the office of secretary of state a certificate relative to any issuance of its capital stock prior to July 4, 1951, containing the specific information required by statute at the time of such issuance of stock may file with the office of the secretary of state subsequent to July 4, 1955, a certificate of issuance of said stock upon first paying to the secretary of state a penalty of ten dollars when said certificate is offered for filing and, provided that the penalty herein provided for is first paid and that said certificate contains the specific information required by section 492.9, said certificate when so filed shall be received by the secretary of state as a compliance with the statutes requiring the filing of such certificates in effect at the time of the issuance of said stock and shall be held to have the same force and effect as though the filing of said certificate had been made within the period prescribed by statute then in effect. [C58, 62, 66, 71, 73, 75,§591.14]

See 56GA, ch 260,§2, effective July 4, 1955

591.15 Failure to publish notice of incorporation or amendment. In all instances where the incorporators, stockholders and directors of corporations organized in this state for pecuniary profit have omitted to publish notice of incorporation or notice of amendments to articles of incorporation within three months after the date of the certificates of incorporation issued by the secretary of state or approval by the secretary of state of such amendments, but have published such notices of incorporation or notices of amendments to articles of incorporation and filed proper proof of publication with the secretary of state prior to July 4, 1963, such notices of incorporation and notices of amendments to articles of incorporation are hereby legalized and shall have the same force and effect as though published within said period of three months. [C66, 71, 73, 75,§591.15]

See 60GA, ch 320,§1, effective July 4, 1963

591.16 Nonprofit corporate renewal legalized. In all cases wherein any corporation organized under chapter 2 of Title IX, Code of 1897, or chapter 394 of the Codes of 1924, 1927, 1931, 1935 and 1939, or chapter 504 of the Codes of 1946, 1950, 1954, 1958 and 1962, or purporting to have been organized, reincorporated or renewed thereunder, whose articles of incorporation, either original or on renewal or reincorporation, are filed with the secretary of state has thereafter taken action to reincorporate or renew its period of existence and has filed with the secretary of state articles of incorporation on renewal or reincorporation with a certificate or proof of the adoption thereof and has paid all fees in connection therewith and has heretofore received a certificate from the secretary of state approving said articles of incorporation filed on renewal or reincorporation, the acts, franchises, rights, privileges and corporate existence of any such corporation for the period provided by any such renewal or reincorporation but not in excess of the period permitted by law and the articles of incorporation adopted on such renewal or reincorporation, as filed in the office of the secretary of state, are hereby legalized and validated and shall have the same force and effect as if all the laws of this state relating to the organization or reincorporation of such corporations and the renewal of their corporate existence by reincorporation or renewal had been strictly complied with.

This section shall not operate to revive rights or claims previously barred and shall not permit an action to be brought or maintained upon any claim or cause of action which was barred by any statute which was in force prior to the effective date of this section. [C66, 71, 73, 75,§591.16]

See 60 Ex GA, ch 19,§§1, 2, effective April 3, 1964

591.17 Nonprofit corporations legalized. In all instances where corporations not for pecuniary profit have heretofore adopted renewal articles of incorporation or articles of reincorporation and there has been a failure to set forth therein the time of the annual meeting or the time of the annual meeting of the trustees or directors and such renewal ar-

ticles of incorporation or articles of reincorporation are otherwise complete and in compliance with the law as set forth in section 504.1, such renewal articles of incorporation or articles of reincorporation are hereby legalized and validated and shall be held to have the same force and effect as though all of such provisions had been complied with in all respects.

In all instances where corporations not for pecuniary profit have adopted renewal articles of incorporation or articles of reincorporation and the certificate thereof shall not have been signed and acknowledged by the three or more persons who shall have adopted the same but such documents shall have been signed and acknowledged by one or more officers of the corporation or of its board of directors or trustees, such certificates of renewal are hereby legalized and validated and shall be held to be in full force and effect. [C66, 71, 73, 75,§591.17]

See 60 Ex GA, ch 20,§§1, 2, effective July 4, 1964

CHAPTER 592

CITIES AND TOWNS—LEGALIZING ACTS

592.1 Bonds for garbage disposal plants.
592.2 Plats legalized.
592.3 City and town plats.
592.4 Making and recording plats.
592.5 Ordinances and proceedings of council.
592.6 Contracts, elections and ordinances in re libraries.
592.7 Changing names of streets.
592.8 Taxes for secondary roads.

592.1 Bonds for garbage disposal plants. All proceedings of such cities and towns as herein included, heretofore had, subsequent to the adoption of section 696-b [SS '15] by the Thirty-sixth General Assembly, and prior to the passage of this Act,* providing for the issuance of bonds within the limitations of this Act, for the purchase or erection of garbage disposal plants, the vote of the people authorizing such issue and the bonds issued under such proceedings and vote, are hereby legalized and declared legal and valid, the same as though all of the provisions of this Act had been included in said section 696-b of the supplemental supplement to the Code, 1915, and such cities may issue and sell such bonds without again submitting such question to vote. [C24, 27, 31, 35, 39,§**10414**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§592.1]

*See 37GA, ch 367, effective May 1, 1917

592.2 Plats legalized. None of the provisions of this chapter [ch 13, Title V, Code of 1897] shall be construed to require replatting in any case where plats have been made and recorded in pursuance of law; and all plats heretofore filed for record and not subsequently vacated are hereby declared valid, notwithstanding irregularities and omissions in the required statement or plat, or in the manner or form of acknowledgment, or certificates thereof. [C73,§571; C97,§929; C24, 27, 31, 35, 39, §**10415**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§592.2]

Code of 1873, effective September 1, 1873 (see §49)
Code of 1897, effective October 1, 1897 (see §50)

592.3 City and town plats. In all cases where, prior to January 1, 1950, any person, persons, or corporations have laid out any parcel of land into town or city lots and the plat or plats thereof have been recorded and the same appears to be insufficient because of failure to show certificates of the county judge, county treasurer, or county recorder, or because said certificates are defective, or because of a failure to fully comply with all of the provisions of chapter 409 of the Code, 1950, or corresponding statutes of earlier Codes, or because said plat failed to show signatures or acknowledgment of proprietors as provided by law, or because said acknowledgment was defective, and, subsequent to such platting, lots or subdivisions thereof have been sold and conveyed, all such said plats which have not been vacated and have been of record for a period of twenty years or more, are hereby legalized and made of full force and effect as of the date of the making thereof the same as though all certificates had been attached and all the other necessary steps taken as provided by law, and the record thereof shall be conclusive evidence that the person, persons, firm, or corporation were the proprietors of such tract of land and the owners thereof at the time of said platting, and that said tract of land was free and clear of all encumbrances unless an affidavit to the contrary was filed at the time of recording such plat. After January 1, 1954, no action shall be brought to establish, enforce, or recover any right, title, interest, lien, or condition existing at the time of the platting, adverse to or against a clear, absolute, and unqualified title in fee simple in the owner or owners. After January 1, 1968, no action shall be brought on any cause arising between January 1, 1930, and December 31, 1949, inclusive, to establish, enforce, or recover any right, title, interest, lien, or condition existing at the time of the platting between the dates aforesaid, and adverse to or against a clear, absolute, and unqualified title in fee simple in the owner or owners. [C24, 27, 31, 35, 39,§**10416**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§592.3]

Modified by 62GA, ch 393,§1, effective July 1, 1967
See 37GA, ch 79, effective July 4, 1917

592.4 Making and recording plats. The acts of the county auditors of Iowa, in making and recording plats as authorized under sections 922, 923 and 924 of the Code, 1897, and sections 6289 to 6299, inclusive, of subsequent Codes to and including the Code, 1939, without first having properly signed or acknowledged the same, and the acts of the county recorders of Iowa in recording such plats, are hereby legalized and the same declared valid and binding the same as though they had in such respects been made and recorded in strict compliance with law. [S13,§924-a; C24, 27, 31, 35, 39,§**10417**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§592.4]

See 32GA, ch 247,§1, effective March 8, 1907; 50GA, ch 285,§2, effective July 4, 1943

592.5 Ordinances and proceedings of council. All acts, motions, proceedings, resolutions, and ordinances heretofore passed or adopted by the council of any city and incorporated towns in the state on the supposition that the mayor was not a member of such council, and which would conform to the law if the mayor had not been a member of said council, shall for all purposes from the date of such act, motion, proceeding, resolution, or ordinance, be considered as valid and legal as they would have been had the mayor not been a member of such body. [S13,§658-a; C24, 27, 31, 35, 39, §**10418**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§592.5]

See 29GA, ch 224,§1, effective March 1, 1902

592.6 Contracts, elections and ordinances in re libraries. Where cities or incorporated towns and institutions of learning have established or contracted to establish public libraries to be maintained and controlled jointly as contemplated by this Act,* all contracts, elections, ordinances, and other proceedings made, held, or passed in the manner provided by law are hereby declared as valid and obligatory upon the parties thereto as though the same had been made, held, or passed after the taking effect of this Act. [S13,§730-a; C24, 27, 31, 35, 39,§**10419**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §592.6]

***See 30GA, ch 24,§3, effective July 4, 1904**

592.7 Changing names of streets. Whereas, certain cities or towns throughout the state of Iowa have passed ordinances changing the name or names of certain streets in said cities;

Now, therefore, it is provided that the acts of said city and town councils of such cities and towns in enacting said ordinances changing the names of said certain streets are hereby declared valid. The proper method for recording a change of street name is found in section 409.17. [C24, 27, 31, 35, 39,§**10420**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§592.7]

Saving clause, 50GA, ch 285,§4
See 34GA, ch 228, effective March 30, 1911

592.8 Taxes for secondary roads. All taxes heretofore* assessed, levied or collected by any county, for secondary road construction and maintenance purposes, on real and personal property within cities and towns located in any such county, be and the same are hereby declared to be legal and valid, and where the same have not been paid, the officers of such counties are hereby empowered and directed to proceed at once to collect the same as other taxes are collected and to use the same for authorized secondary road construction and maintenance purposes. [C58, 62, 66, 71, 73, 75, §592.8]

***Effective May 27, 1955**

CHAPTER 593

BONDS LEGALIZED

Repealed by 66GA, ch 1056,§45

CHAPTER 594

ELECTIONS LEGALIZED

Repealed by 66GA, ch 1056,§45

CHAPTER 594A

SCHOOL CORPORATIONS ORGANIZED

594A.1 Organization or change in boundaries.
594A.2 Organization or change before July 2, 1960.
594A.3 Organization or change before September 1, 1963.
594A.4 Public community or junior colleges.
594A.5 Organization or change before January 1, 1965.
594A.6 Organization or change before January 1, 1967.
594A.7 Merged area schools before January 1, 1969.
594A.8 Organization or change before January 1, 1969.
594A.9 Merged areas before January 1, 1972.

594A.1 Organization or change in boundaries. All proceedings taken prior to January 2, 1959, purporting to provide for the organization, reorganization, enlargement, or change in the boundaries of any school corporation in this state and not heretofore declared invalid by any court are hereby legalized, validated and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this section* becomes effective involving the organization, reorganization, enlargement or change in boundaries of any school corporation. [C58, 62, 66, 71, 73, 75,§594A.1]

*Effective July 4, 1959
See also 58GA, ch 349, effective February 13, 1959

594A.2 Organization or change before July 2, 1960. All proceedings taken prior to July 2, 1960, purporting to provide for the organization, reorganization, enlargement, or change in the boundaries of any school corporation in this state and not heretofore declared invalid by any court are hereby legalized, validated and confirmed. [C62, 66, 71, 73, 75,§594A.2]

Pending litigation excepted, 59GA, ch 275,§2

594A.3 Organization or change before September 1, 1963. All proceedings taken prior to September 1, 1963, purporting to provide for the organization, reorganization, enlargement, or change in the boundaries of any school corporation in this state and not heretofore declared invalid by any court are hereby legalized, validated and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this section becomes effective involving the organization, reorganization, enlargement, or change in boundaries of any school corporation. [C66, 71, 73, 75,§594A.3]

594A.4 Public community or junior colleges. All proceedings heretofore taken by or on behalf of any school corporation for the organization, establishment and maintenance of a public community or junior college therein are hereby legalized, validated and confirmed. [C66, 71, 73, 75,§594A.4]

594A.5 Organization or change before January 1, 1965. All proceedings taken prior to January 1, 1965, purporting to provide for the organization, reorganization, enlargement, or change in the boundaries of any school corporation in this state and not heretofore declared invalid by any court are hereby legalized, validated and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this section becomes effective involving the organization, reorganization, enlargement, or change in boundaries of any school corporation. [C66, 71, 73, 75,§594A.5]

594A.6 Organization or change before January 1, 1967. All proceedings taken prior to January 1, 1967, purporting to provide for the organization of, reorganization of, attachment of territory to, enlargement of, or change in boundaries of any school corporation in this state and not heretofore declared invalid by any court are hereby legalized, validated and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this section becomes effective, involving the organization of, reorganization of, attachment of territory to, enlargement of, or change in boundaries of any school corporation.

This section shall not apply to proceedings purporting to provide for the attachment of territory to a school corporation pursuant to section 275.1, if such attachment was disapproved by the state board of public instruction pursuant to said section and was not subsequently approved by the state board of public instruction prior to January 1, 1967. [C71, 73, 75,§594A.6]

594A.7 Merged area schools before January 1, 1969. All proceedings taken prior to January 1, 1969, purporting to provide for the establishment, organization, formation, and changes in the boundaries of merged areas under the provisions of chapter 280A and not heretofore declared invalid by any court, are hereby legalized, validated and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending July 1, 1969, involving the establishment, organization, formation, or changes in the boundaries of any such merged area. [C71, 73, 75,§594A.7]

594A.8 Organization or change before January 1, 1969. All proceedings taken prior to January 1, 1969, purporting to provide for the organization of, reorganization of, attachment of territory to, enlargement of, or change in boundaries of any school corporation in this state and not heretofore declared invalid by any court are hereby legalized, validated and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this section becomes effective, involving the organization of, reorganization of, attachment of territory to, enlargement of, or change in boundaries of any school corporation.

This section shall not apply to proceedings purporting to provide for the attachment of territory to a school corporation pursuant to section 275.1, if such attachment was disapproved by the state board of public instruction pursuant to said section and was not subsequently approved by the state board of public instruction prior to January 1, 1969. [C71, 73, 75,§594A.8]

594A.9 Merged areas before January 1, 1972. All proceedings taken after January 1, 1969 and prior to January 1, 1972, purporting to provide for the establishment, organization,

formation, and changes in the boundaries of merged areas under the provisions of chapter 280A, and not heretofore declared invalid by any court, are legalized, validated, and confirmed. The foregoing shall not be construed to affect any litigation that may be pending July 1, 1972 involving the establishment, organization, formation, or changes in the boundaries of any such merged area. [C73, 75, §594A.9]

TITLE XXVIII

DOMESTIC RELATIONS

CHAPTER 595

MARRIAGE

Referred to in §596.1

595.1 Contract.
595.2 Age.
595.3 License.
595.4 Age and qualification—verified application—waiting period—exception.
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595.16 Spouse responsible for return.
595.17 Exceptions.
595.18 Issue legitimatized.
595.19 Void marriages.
595.20–595.28 Repealed by 57GA, ch 255,§1.

595.1 Contract. Marriage is a civil contract, requiring the consent of the parties capable of entering into other contracts, except as herein otherwise declared. [C51,§1463; R60, §2515; C73,§2185; C97,§3139; C24, 27, 31, 35, 39, §**10427**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§595.1]

595.2 Age. A marriage between a male and a female each eighteen years of age or older is valid. A marriage between a male and a female either or both of whom have not attained that age may be valid under the circumstances prescribed in this section.

1. If either party to a marriage falsely represents himself or herself to be eighteen years of age or older at or before the time the marriage is solemnized, the marriage is valid unless the person who falsely represented his or her age chooses to void the marriage by making his or her true age known and verified by a birth certificate or other legal evidence of age in an annulment proceeding initiated at any time before he or she reaches his or her eighteenth birthday. A child born of a marriage voided under this subsection is legitimate.

2. A marriage license may be issued to a male and a female either or both of whom are sixteen or seventeen years of age if:

a. The parents of the underaged party or parties certify in writing that they consent to the marriage. If one of the parents of any underaged party to a proposed marriage is dead or incompetent the certificate may be executed by the other parent, if both parents are dead or incompetent the guardian of the underaged party may execute the certificate, and if the parents are divorced the parent having legal custody may execute the certificate and

b. The certificate of consent of the parents, parent or guardian is approved by a judge of the district court or, if both parents of any underaged party to a proposed marriage are dead, incompetent or cannot be located and the party has no guardian, the proposed marriage is approved by a judge of the district court. A judge shall grant approval under this subsection only if he finds the underaged party or parties capable of assuming the responsibilities of marriage and that the marriage will serve the best interest of the underaged party or parties. Pregnancy alone does not establish that the proposed marriage is in the best interest of the underaged party or parties, however if pregnancy is involved the court records which pertain to the fact that the female is pregnant shall be sealed and available only to the parties to the marriage or proposed marriage or to any interested party securing an order of the court.

c. If a parent or guardian withholds consent, the judge upon application of a party to a proposed marriage shall determine if the consent has been unreasonably withheld. If the judge so finds, the judge shall proceed to review the application under paragraph "*b*" of this subsection. [C51,§§1464, 1469; R60, §§2516, 2521; C73,§§2186, 2191; C97,§§3140, 3143; C24, 27, 31, 35, 39,§§**10428, 10434**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§595.2, 595.8; 66GA, ch 244,§1]

Referred to in §595.3

595.3 License. Previous to the solemnization of any marriage, a license for that purpose must be obtained from the clerk of the district court. Such license must not be granted in any case:

1. Where either party is under the age necessary to render the marriage valid.

2. Where either party is under eighteen years of age, unless the marriage is approved by a judge of the district court as provided by section 595.2, subsection 2.

3. Where either party is disqualified from making any civil contract.

4. Where the parties are within the degrees of consanguinity or affinity in which marriages are prohibited by law.

5. Where either party is mentally ill or retarded, a mental retardate, or under guardianship as an incompetent. [C51,§§1465-1467; R60, §§2517, 2518; C73,§§2187-2189; C97,§§3141, 3142; S13,§3141; C24, 27, 31, 35, 39,§§**10429, 10431**; C46, 50, 54, 58,§§595.3, 595.5; C62, 66, 71, 73, 75, §595.3; 66GA, ch 244,§2]

Referred to in §§229.27, 595.8, 595.18

595.4 Age and qualification—verified application—waiting period—exception. Previous to the issuance of any license to marry, the parties desiring such license shall sign and file a verified application with the clerk of the court which application either may be mailed to the parties at their request or may be signed by them at the office of the clerk of the district court in the county in which the license is to be issued. Such application shall set forth at least one affidavit of some competent and disinterested person stating such facts as to age and qualification of the parties as the clerk may deem necessary to determine the competency of the parties to contract a marriage. Upon the filing of the application for a license to marry, the clerk of the district court shall file the application in a record kept for that purpose.

After expiration of three days from the date of filing the application by the parties, the clerk shall issue the license if he is satisfied as to the competency of the parties to contract a marriage. If the license has not been issued within one year from the date of the application, the application shall be void and of no effect.

A license to marry may be issued prior to the expiration of three days from the date of filing the application for such license in cases of emergency or extraordinary circumstances. An order authorizing the issuance of such license may be granted by a judge of the district court under conditions of emergency or extraordinary circumstances upon application of the parties therefor filed with the clerk of court. No such order may be granted unless the parties have filed an application for a marriage license in a county within the judicial district. An application for such order shall be made on forms furnished by the clerk at the same time the application for the license to marry is made. If after examining the application for the marriage license the clerk is satisfied as to the competency of the parties to contract a marriage, he shall refer the parties to a judge of the district court for action on the application for an order authorizing the issuance of a marriage license prior to expiration of three days from the date of filing the application for the license. The judge shall, if satisfied as to the existence of an emergency or extraordinary circumstances, grant an order authorizing the issuance of a license to marry prior to the expiration of three days from the date of filing the application for the license to marry. The clerk shall issue a license to marry upon presentation by the parties of the order authorizing such license to be issued. A fee of five dollars shall be paid to the clerk at the time the application for the order is made, which fee shall be in addition to the fee prescribed by law for the issuance of a marriage license. [C51,§1468; R60,§2520; C73,§2190; C97,§3142; C24, 27, 31, 35, 39,§**10430**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§595.4]

595.5 Repealed by 59GA, ch 277,§2; see §595.3.

595.6 Filing and record required. The affidavit or certificate, in each case, shall be filed by the clerk and constitute a part of the records of his office. A memorandum of such affidavit or certificate shall also be entered in the license book. [C51,§1468; R60,§2520; C73, §2190; C97,§3142; C24, 27, 31, 35, 39,§**10432**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§595.6]

595.7 Delivery of blank with license. When a license is issued the clerk shall deliver to the applicant a blank return for the marriage, and give such instructions relative thereto as will insure a complete and accurate return. [C24, 27, 31, 35, 39,§**10433**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§595.7]

595.8 Repealed by 66GA, ch 244,§5.

595.9 Violations. If a marriage is solemnized without procuring a license, the parties married, and all persons aiding them, are guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days. [C51,§1470; R60, §2522; C73,§2192; C97,§3144; C24, 27, 31, 35, 39, §**10435**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§595.9; 66GA, ch 244,§3]

595.10 Who may solemnize. Marriages must be solemnized by:

1. A judge of the supreme or district court, including a district associate judge, or a judicial magistrate.

2. Some minister of the gospel, ordained or licensed according to the usages of his denomination. [C51,§1472; R60,§2524; C73,§2193; C97, §3145; C24, 27, 31, 35, 39,§**10436**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§595.10]

595.11 Nonstatutory solemnization — forfeiture. Marriages solemnized, with the consent of parties, in any other manner than as herein prescribed, are valid; but the parties thereto, and all persons aiding or abetting them, shall forfeit to the school fund the sum of fifty dollars each; but this shall not apply to the person conducting the marriage ceremony, if

within fifteen days thereafter he makes the required return to the clerk of the district court. [C51,§§1474, 1475; R60,§§2526, 2527; C73, §§2195, 2196; C97,§3147; S13,§3147; C24, 27, 31, 35, 39,§**10437**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §595.11]

595.12 Fee. Any person authorized to solemnize marriage may charge two dollars in each case for officiating and making return. [C51,§2551; R60,§4159; C73,§3828; C97,§3152; C24, 27, 31, 35, 39,§**10438**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§595.12]

595.13 Certificate — return. After the marriage has been solemnized, the officiating minister or magistrate shall:

1. Give each of the parties a certificate of the same.

2. Make return of such marriage within fifteen days to the clerk of the district court, who issued the marriage license upon the blank provided for that purpose. [C51,§§1473, 1476; R60,§§2525, 2528; C73,§§2194, 2197; C97, §3146; S13,§3146; C24, 27, 31, 35, 39,§**10439**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§595.13]

See also §144.36 for certificate

595.14 Repealed by 65GA, ch 281,§1.

595.15 Inadequate return. If the return of a marriage is not complete in every particular as required by the forms specified in section 144.12, the clerk shall require the person making the same to supply the omitted information. [C24, 27, 31, 35, 39,§**10441**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§595.15]

595.16 Spouse responsible for return. When a marriage is consummated without the services of a cleric or magistrate, the required return thereof may be made to the clerk by either spouse. [C51,§1478; R60,§2530; C73,§2199; C97,§3149; C24, 27, 31, 35, 39,§**10442**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§595.16]

595.17 Exceptions. The provisions of this chapter, so far as they relate to procuring licenses and to the solemnizing of marriages are not applicable to members of any particular denomination having, as such, any peculiar mode of entering the marriage relation; but each and every denomination and religious society thus exempted from the duties on the part of their members as to procuring a marriage license, before they allow such marriage relation to be entered into in their church, meeting or society, shall require and ascertain that a certificate as provided by chapter 596 has been filed in the office of the clerk of the court; in the county where such marriage ceremony is to take place; and the clerk of the district court shall not make any record or certificate regarding such marriage or marriage ceremony until such certificate has been filed in his office, as provided in section 596.2. [C51,§1477; R60,§2529; C73,§2198; C97, §3148; C24, 27, 31, 35, 39,§**10443**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§595.17]

Referred to in §596.2

595.18 Issue legitimatized. Illegitimate children become legitimate by the subsequent marriage of their parents. Children born of a marriage contracted in violation of section 595.3 or 595.19 are legitimate. [C51,§1479; R60, 2531; C73,§2200; C97,§3150; C24, 27, 31, 35, 39, §**10444**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§595.18; 66GA, ch 244,§4]

595.19 Void marriages. Marriages between the following persons shall be void:

1. Between a man and his father's sister, mother's sister, father's widow, wife's mother, daughter, wife's daughter, son's widow, sister, son's daughter, daughter's daughter, son's son's widow, daughter's son's widow, brother's daughter or sister's daughter.

2. Between a woman and her father's brother, mother's brother, mother's husband, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, brother's son, or sister's son.

3. Between first cousins.

4. Between persons either of whom has a husband or wife living, but, if the parties live and cohabit together after the death or divorce of the former husband or wife, such marriage shall be valid. [R60,§§4367, 4368; C73,§4030; C97,§§3151, 4936; S13,§4936; C24, 27, 31, 35, 39, §**10445**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§595.19]

Referred to in §595.18
Incest, §704.1

595.20 to 595.28 Repealed by 57GA, ch 255,§1.

CHAPTER 596

PHYSICAL REQUIREMENTS FOR MARRIAGE LICENSE

Referred to in §§140.10, 595.17

596.1 Examination by physician.
596.2 Certificate by physician.
596.3 Laboratory tests.
596.4 Exception as to pregnant women.
596.5 Reporting venereal diseases.
596.6 Penalty.
596.7 Period of validity of license.
596.8 Applicant from another state—certificate from home physician.

596.1 Examination by physician. In addition to the requirements for a marriage license as set out in chapter 595, all persons making application for license to marry shall, at any time within twenty days prior to such application, be examined by a duly licensed physician

in this state as to the existence of or freedom from syphilis, and it shall be unlawful for the clerk of the district court of any county in this state to issue a license to marry, except as otherwise provided in this chapter, to any person who fails to present for filing with such clerk a certificate signed by such physician setting forth that said person to the proposed marriage is either free from syphilis or not in a stage whereby it may become communicable as nearly as can be determined by such standard microscopic and serological tests as are necessary for the discovery of syphilis. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§596.1]

Referred to in §141.4

596.2 Certificate by physician. If, on the basis of negative laboratory findings, the physician in attendance finds no evidence of syphilis, or if any applicant so infected is not in a stage of the disease whereby it may become communicable, said physician shall issue a certificate to the examinee to that effect on a form prescribed by the commissioner of public health and furnished by the office of the clerk of the district court. Such certificate of negative findings as to each of the parties to a proposed marriage shall be filed with the clerk of the district court at the time application for a license to marry is made. If the marriage ceremony is to take place under the provisions of section 595.17, the certificate required by this chapter shall be filed in the office of the clerk of the court in the county in which such marriage ceremony is to take place. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§596.2]

Referred to in §595.17

596.3 Laboratory tests. All standard serological tests for syphilis as required under this chapter shall be made by the state hygienic laboratory of the state University of Iowa or by such other laboratories which are approved by the state department of health. Such tests as may be made by the state hygienic laboratory of the state University of Iowa shall be free of charge. The results of all laboratory tests shall be reported on standard forms prescribed by the commissioner of public health. Said blanks may be destroyed by the clerk of the district court two years after the laboratory date thereon. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§596.3; 66GA, ch 118,§4]

596.4 Exception as to pregnant women. Irrespective of the laboratory test results, the clerk of the district court shall issue a marriage license to parties to a proposed marriage when the woman is pregnant at the time of application, and in lieu of the health certificate required under this chapter such clerk of the district court is hereby authorized to accept an affidavit on a form prescribed by the state department of health, signed by an Iowa licensed physician, stating that the woman is pregnant, which affidavit shall be sealed and available only to the contracting parties or to any interested party securing an order of court. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§596.4]

596.5 Reporting venereal diseases. Nothing in this chapter shall impair or affect existing laws or rules made by authority of law relative to the reporting of cases of venereal disease discovered by physicians in the course of their practice. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§596.5]

596.6 Penalty. Any clerk of the district court who shall unlawfully issue a license to marry to any person who fails to present and file the certificate as required in this chapter, and any person or persons who shall disclose or falsify any matter relating or pertaining to the examination of or certificate about any applicant for license to marry or clinical and laboratory tests taken by any party to a proposed marriage, except as may be required by law, and any person who shall obtain a license to marry contrary to the provisions of this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §596.6]

596.7 Period of validity of license. Marriage licenses issued under the provisions of this chapter shall become void and of no effect unless the marriage be solemnized within twenty days following the issuance thereof. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§596.7]

596.8 Applicant from another state—certificate from home physician. Where a party making application for the issuance of a marriage license is a nonresident of the state of Iowa and the state of which he is a resident has a law in effect requiring a test to show freedom from syphilis, as provided in this chapter, the said applicant shall be entitled to the issuance of a license provided he furnishes a certificate conforming to the requirements of the state of which he is resident, signed by a duly licensed physician of said state, showing freedom from disease as provided in this chapter.

Where a person resides in a state which requires no physical examination as a prerequisite to the issuance of a marriage license and desires to make application for a marriage license in this state the said person, as a condition to the issuance of said license, shall be required to file a certificate signed by a duly licensed physician of the state in which the applicant resides, certifying that the said applicant has been examined by said physician and that he is free from syphilis or not in a stage whereby it may become communicable and the certificate shall be signed by the said physician and sworn to by him and his signature acknowledged by an officer authorized to administer oaths. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §596.8]

CHAPTER 597

HUSBAND AND WIFE

597.1 Property rights of married women.
597.2 Interest of spouse in other's property.
597.3 Remedy by one against the other.
597.4 Conveyances to each other.
597.5 Attorney in fact.
597.6 Mental illness—conveyance of property.
597.7 Proceedings.
597.8 Decree.
597.9 Conveyances—revocation.
597.10 Abandonment of either—proceedings.
597.11 Contracts and sales binding.
597.12 Nonabatement of action.
597.13 Annulment of decree.
597.14 Family expenses.
597.15 Custody of children.
597.16 Wages of wife—actions by.
597.17 Liability for separate debts.
597.18 Contracts of wife.
597.19 Spouse not liable for torts of other spouse.

597.1 Property rights of married women. A married woman may own in her own right, real and personal property, acquired by descent, gift, or purchase, and manage, sell, and convey the same, and dispose thereof by will, to the same extent and in the same manner the husband can property belonging to him. [C73,§2202; C97,§3153; C24, 27, 31, 35, 39,§10446; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.1]

597.2 Interest of spouse in other's property. When property is owned by the husband or wife, the other has no interest therein which can be the subject of contract between them, nor such interest as will make the same liable for the contracts or liabilities of the one not the owner of the property, except as provided in this chapter. [C73,§2203; C97,§3154; C24, 27, 31, 35, 39,§10447; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.2]

597.3 Remedy by one against the other. Should the husband or wife obtain possession or control of property belonging to the other before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and extent as if they were unmarried. [C73,§2204; C97,§3155; C24, 27, 31, 35, 39,§10448; C46, 50, 54, 58, 62, 66, 71, 73, 75, §597.3]

597.4 Conveyances to each other. A conveyance, transfer, or lien, executed by either husband or wife to or in favor of the other, shall be valid to the same extent as between other persons. [C73,§2206; C97,§3157; C24, 27, 31, 35, 39,§10449; C46, 50, 54, 58, 62, 66, 71, 73, 75, §597.4]

597.5 Attorney in fact. A husband or wife may constitute the other his or her attorney in fact, to control and dispose of his or her property for their mutual benefit, and may revoke the appointment, the same as other persons. [C73,§2210; C97,§3161; C24, 27, 31, 35, 39, §10450; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.5]

597.6 Mental illness—conveyance of property. Where either the husband or wife is mentally ill and incapable of executing a deed or mortgage relinquishing, conveying, or encumbering his or her right to the real property of the other, including the homestead, the other may petition the district court of the county of his or her residence or the county where the real estate to be conveyed or encumbered is situated, setting forth the facts and praying for an order authorizing the applicant or some other person to execute a deed or mortgage and relinquish or encumber the interest of the mentally ill person in said real estate. [R60,§1500; C73,§2216; C97,§3167; S13, §3167; C24, 27, 31, 35, 39,§10451; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.6]

Referred to in §229.27
See probate code §633.652

597.7 Proceedings. The petition shall be verified by the petitioner, and filed in the office of the clerk of the district court of the proper county, notice of which shall be given as in other cases. Upon completed service, the court shall appoint some responsible attorney thereof guardian for the person alleged to be mentally ill, who shall ascertain the propriety, good faith, and necessity of the prayer of the petitioner, and may resist the application by making any legal or equitable defense thereto, and he shall be allowed by the court a reasonable compensation to be paid as the other costs. [R60,§1501; C73,§2217; C97,§3168; C24, 27, 31, 35, 39,§10452; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.7]

597.8 Decree. Upon the hearing of the petition the court, if satisfied that it is made in good faith by the petitioner, and he is a proper person to exercise the power and make the conveyance or mortgage, and it is necessary and proper, shall enter a decree authorizing the execution of the conveyance or mortgage for and in the name of such husband or wife by such person as the court may appoint. [R60,§1502; C73,§2218; C97,§3169; S13,§3169; C24, 27, 31, 35, 39,§10453; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.8]

597.9 Conveyances—revocation. All deeds executed as provided in this chapter shall convey the interest of such mentally ill person in the real estate described, but such power shall

cease and be revoked as soon as he or she shall again be in good mental health and apply to the court therefor, but such revocation shall not affect conveyances previously made. [R60, §1503; C73,§2219; C97,§3170; C24, 27, 31, 35, 39, §**10454**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.9]

597.10 Abandonment of either—proceedings. In case the husband or wife abandons the other for one year, or leaves the state and is absent therefrom for such term, without providing for the maintenance and support of his or her family, or is confined in jail or the penitentiary for such period, the district court of the county where the abandoned party resides may, on application by petition setting forth the facts, authorize the applicant to manage, control, sell, and encumber the property of the guilty party for the support and maintenance of the family and for the purpose of paying debts. Notice of such proceedings shall be given as in ordinary actions, and anything done under or by virtue of the order or decree of the court shall be valid to the same extent as if the same was done by the party owning the property. [C51,§§1456–1459, 1461; R60, §§2508–2511, 2513; C73,§2207; C97,§3158; C24, 27, 31, 35, 39,§**10455**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.10]

Referred to in §§597.11, 597.13, 600.4
Service in ordinary actions, ch 617

597.11 Contracts and sales binding. All contracts, sales, or encumbrances made by either husband or wife under the provisions of section 597.10 shall be binding on both, and during such absence or confinement the person acting under such power may sue and be sued thereon, and for all acts done the property of both shall be liable, and execution may be levied or attachment issued accordingly. [C73,§2208; C97,§3159; C24, 27, 31, 35, 39,§**10456**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.11]

C97,§3159, editorially divided
Referred to in §597.13

597.12 Nonabatement of action. No action or proceedings shall abate or be affected by the return or release of the person absent or confined, but he or she may be permitted to prosecute or defend jointly with the other. [C73, §2208; C97,§3159; C24, 27, 31, 35, 39,§**10457**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.12]

Referred to in §597.13

597.13 Annulment of decree. The husband or wife affected by the proceedings contemplated in sections 597.10 to 597.12 may obtain an annulment thereof, upon filing a petition therefor and serving a notice on the person in whose favor the same was granted, as in ordinary actions; but the setting aside of such decree or order shall not affect any act done thereunder. [C51,1460; R60,§2512; C73,§2209; C97,§3160; C24, 27, 31, 35, 39,§**10458**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.13]

597.14 Family expenses. The reasonable and necessary expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately. [C51,§1455; R60,§2507; C73,§2214; C97,§3165; S13,§3165; C24, 27, 31, 35, 39,§**10459**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.14]

Referred to in §537.7103

597.15 Custody of children. If the husband abandons the wife she is entitled to the custody of the minor children, unless the district court, upon application for that purpose, shall otherwise direct. [C51,§1462; R60,§2514; C73, §2215; C97,§3166; C24, 27, 31, 35, 39,§**10460**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.15]

597.16 Wages of wife—actions by. A wife may receive the wages for her personal labor, and maintain an action therefor in her own name, and hold the same in her own right, and may prosecute and defend all actions for the preservation and protection of her rights and property, as if unmarried. [C73,§2211; C97, §3162; C24, 27, 31, 35, 39,§**10461**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.16]

597.17 Liability for separate debts. Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and, except as herein otherwise declared, they are not liable for the debts of each other contracted after marriage; nor are the wages, earnings, or property of either, nor is the rent or income of the property of either, liable for the separate debts of the other. [C51, §1453; R60,§2505; C73,§2212; C97,§3163; C24, 27, 31, 35, 39,§**10465**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.17]

597.18 Contracts of wife. Contracts may be made by a wife and liabilities incurred, and the same enforced by or against her, to the same extent and in the same manner as if she were unmarried. [C51,§1454; R60,§2506; C73, §2213; C97,§3164; C24, 27, 31, 35, 39,§**10466**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.18]

597.19 Spouse not liable for torts of other spouse. For civil injuries committed by a married person, damages may be recovered from the person alone, and the partner shall not be liable therefor, except in cases where the partner would be jointly liable if the marriage did not exist. [C73,§2205; C97,§3156; C24, 27, 31, 35, 39,§**10467**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§597.19]

CHAPTER 598
DISSOLUTION OF MARRIAGE

Referred to in §252B.3, 252B.4, 252B.5

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598.1 Definitions. As used in this chapter:

1. *"Dissolution of marriage"* means a termination of the marriage relationship and shall be synonymous with the term "divorce".

2. *"Support"* or *"support payments"* means any amount which the court may require either of the parties to pay under a temporary order or a final judgment or decree, and may include alimony, child support, maintenance, and any other term used to describe such obligations. Such obligations may include support for a child who is between the ages of eighteen and twenty-two years who is regularly attending an approved school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs; or is, in good faith, a full-time student in a college, university, or area school; or has been accepted for admission to a college, university, or area school and the next regular term has not yet begun; or a child of any age who is dependent on the parties to the dissolution proceedings because of physical or mental disability.

3. *"Minor child"* means any person under legal age. [C71, 73, 75,§598.1]

598.2 Jurisdiction. The district court in the county where either party resides has jurisdiction of the subject matter of this chapter. [C51,§1480; R60,§2532; C73,§2220; C97,§3171; C24, 27, 31, 35, 39,§**10468**; C46, 50, 54, 58, 62, 66,§598.1; C71, 73, 75,§598.2]

598.3 Kind of action—joinder. An action for dissolution of marriage shall be by equitable proceedings, and no cause of action, save for alimony, shall be joined therewith. Such actions shall not be subject to counterclaim or cross petition by the respondent. After the appearance of the respondent, no dismissal of the cause of action shall be allowed unless both the petitioner and the respondent sign the dismissal. [R60,§4184; C73,§2511; C97, §3430; C24, 27, 31, 35, 39,§**10469**; C46, 50, 54, 58, 62, 66,§598.2; C71, 73, 75,§598.3; 66GA, ch 1228, §1]

598.4 Caption of petition for dissolution. The petition for dissolution of marriage shall be captioned substantially as follows:

In the District Court of the State of Iowa
In and For ..... County
In Re the Marriage of ..... and .....
Upon the Petition of ..... (Petitioner)
Petition for Dissolution of Marriage
Equity No. .....
and Concerning
..... (Respondent)

[C71, 73, 75,§598.4]

598.5 Contents of petition. The petition for dissolution of marriage shall:

1. State the name and address of the petitioner and his attorney.

2. State the place and date of marriage of the parties.

3. State the name and address, if known, of the respondent.

4. State the name and age of each minor child by date of birth whose welfare may be affected by the controversy.

5. State whether or not a separate action for dissolution of marriage has been com-

menced by the respondent and whether such action is pending in any court in this state or elsewhere.

6. Allege that the petition has been filed in good faith and for the purposes set forth therein.

7. Allege that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

8. Set forth any application for temporary support of the petitioner and any children without enumerating the amounts thereof.

9. Set forth any application for permanent alimony or support, child custody, or disposition of property, as well as attorneys' fees and suit money, without enumerating the amounts thereof.

10. State whether the appointment of a conciliator pursuant to section 598.16 may preserve the marriage. [C71, 73, 75,§598.5; 66GA, ch 1228,§2]

Referred to in §598.6

598.6 Additional contents. Except where the respondent is a resident of this state and is served by personal service, the petition for dissolution of marriage, in addition to setting forth the information required by section 598.5, must state that the petitioner has been for the last year a resident of the state, specifying the county in which the petitioner has resided, and the length of such residence therein after deducting all absences from the state; and that the maintenance of the residence has been in good faith and not for the purpose of obtaining a marriage dissolution only. [C51, §1481; R60,§2533; C73,§2221; C97,§3172; C24, 27, 31, 35, 39,§**10470**; C46, 50, 54, 58, 62, 66,§598.3; C71, 73, 75,§598.6]

598.7 Verification—evidence. The petition must be verified by the petitioner, and its allegations established by competent evidence. [C51,§1481; R60,§2533; C73,§2222; C97,§3173; C24, 27, 31, 35, 39,§**10471**; C46, 50, 54, 58, 62, 66,§598.4; C71, 73, 75,§598.7]

598.8 Hearings. Hearings for dissolution of marriage shall be held in open court upon the oral testimony of witnesses, or upon the depositions of such witnesses taken as in other equitable actions or taken by a commissioner appointed by the court. However, the court may in its discretion close the hearing. Hearings held for the purpose of determining child custody may be limited in attendance by the court. [C73,§2222; C97,§3173; C24, 27, 31, 35, 39, §**10472**; C46, 50, 54, 58, 62, 66,§598.5; C71, 73, 75,§598.8]

598.9 Residence—failure of proof. If the averments as to residence are not fully proved, the hearing shall proceed no further, and the action be dismissed by the court. [C73,§2222; C97,§3173; C24, 27, 31, 35, 39,§**10473**; C46, 50, 54, 58, 62, 66,§598.6; C71, 73, 75,§598.9]

598.10 Repealed by 66GA, ch 1228,§10.

598.11 Temporary orders. The court may order either party to pay the clerk a sum of money for the separate support and maintenance of the other party and the children and to enable such party to prosecute or defend the action. The court may on its own motion and shall upon application of either party or an attorney appointed under section 598.12 determine the temporary custody of any minor child whose welfare may be affected by the filing of the petition for dissolution.

The court may make such an order when a claim for temporary support is made by the petitioner in the petition, or upon application of either party, after service of the original notice and when no application is made in the petition; however, no such order shall be entered until at least five days' notice of hearing, and opportunity to be heard, is given the other party. Appearance by an attorney or the respondent for such hearing shall be deemed a special appearance for the purpose of such hearing only and not a general appearance. [C73,§2226; C97,§3177; C24, 27, 31, 35, 39,§**10478**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§598.11; 66GA, ch 1228,§3]

Referred to in §598.22

598.12 Attorney for minor child. The court may appoint an attorney to represent the interests of the minor child or children of the parties. Such attorney shall be empowered to make independent investigations and to cause witnesses to appear and testify before the court on matters pertinent to the interests of the children. The court shall enter an order in favor of such attorney for fees and disbursements, which amount shall be charged against the party responsible for court costs unless the court determines that the party responsible for costs is indigent in which event the fees shall be borne by the county. [C71, 73, 75,§598.12]

Referred to in §§598.11, 598.16

598.13 Financial statements filed. All applications for temporary or permanent support of a party or minor children shall be accompanied by the financial statement of the applicant on a form prescribed by the supreme court and furnished without charge by the clerk of the district court. The respondent shall file a financial statement whenever the respondent desires to resist any application for support by the petitioner, or when the court so orders.

Financial statements shall be set forth by affidavit and shall be contained in two divisions. Division one shall contain the affiant's income from salary, wages or other source, personal expenses, and necessary payments on debts, and also the best estimates of such income, personal expenses, and necessary payments on debts of the other party, as well as all family living expenses. Such financial information shall be calculated on either a weekly or monthly basis, and shall not contain debts to be paid subsequent to the anticipated

pendency of the action. Division two shall contain all other joint or separate assets and liabilities of the parties, including ownership of realty and tangible or intangible personalty and all debts to be paid subsequent to the anticipated pendency of the action. [C71, 73, 75,§598.13; 66GA, ch 1228,§4]

598.14 How temporary order made — changes. In making temporary orders, the court shall take into consideration the age and sex of the applicant, the physical and pecuniary condition of the parties, and such other matters as are pertinent, which may be shown by affidavits, as the court may direct; however, the hearing on the application shall be limited to matters set forth in such application, the affidavits of the parties, and the required statements of income. The court shall not hear any other matter relating to the petition, respondent's answer, or any pleadings connected therewith.

After notice and hearing subsequent changes in temporary orders may be made by the court on application of either party demonstrating a substantial change in the circumstances occurring subsequent to the issuance of such order. If the order is not so modified it shall continue in force and effect until the action is dismissed or a decree is entered dissolving the marriage. [C73,§2228; C97,§3179; C24, 27, 31, 35, 39,§**10480**; C46, 50, 54, 58, 62, 66, §598.13; C71, 73, 75,§598.14]

598.15 Attachment. The petition may be presented to the court for the allowance of an order of attachment, which, by endorsement thereon, may direct such attachment and fix the amount for which it may issue, and the amount of the bond, if any, that shall be given. Any property taken by virtue thereof shall be held to satisfy the judgment or decree of the court, but may be discharged or released as in other cases. [C73,§2227; C97,§3178; C24, 27, 31, 35, 39,§**10479**; C46, 50, 54, 58, 62, 66,§598.12; C71, 73, 75,§598.15]

598.16 Conciliation. A majority of the judges in any judicial district, with the co-operation of any county board of social welfare in such district, may establish a domestic relations division of the district court of the county where such board is located. Said division shall offer counseling and related services to persons before such court.

Upon the application of the petitioner in the petition or by the respondent in the responsive pleading thereto or, within twenty days of appointment, of an attorney appointed under section 598.12, the court shall require the parties to participate in conciliation efforts for a period of sixty days from the issuance of an order setting forth the conciliation procedure and the conciliator.

At any time upon its own motion or upon the application of a party the court may require the parties to participate in conciliation efforts for sixty days or less following the issuance of such an order.

Every order for conciliation shall require the conciliator to file a written report by a date certain which shall state the conciliation procedures undertaken and such other matters as may have been required by the court. The report shall be a part of the record unless otherwise ordered by the court. Such conciliation procedure may include, but is not limited to, referrals to the domestic relations division of the court, if established, public or private marriage counselors, family service agencies, community health centers, physicians and clergymen.

The costs of any such conciliation procedures shall be paid in full or in part by the parties and taxed as court costs; however, if the court determines that such parties will be unable to pay the costs without prejudicing their financial ability to provide themselves and any minor children with economic necessities, such costs may be paid in full or in part from the court expense fund. [C71, 73, 75, §598.16; 66GA, ch 1228,§§5, 6]

Referred to in §598.5

598.17 Dissolution of marriage — evidence. A decree dissolving the marriage may be entered when the court is satisfied from the evidence presented that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved. The decree shall state that the dissolution is granted to the parties, and shall not state that it is granted to only one party.

If at the time of trial petitioner fails to present satisfactory evidence that there has been a breakdown of the marriage relationship to the extent that the reasonable likelihood that the marriage can be preserved, the respondent may then proceed to present such evidence as though the respondent had filed the original petition.

The court shall, based upon competent and relevant evidence, in such decree provide for the division of the assets of the parties and reasonable support or maintenance of any dependent children or either spouse.

No marriage dissolution granted due to the mental illness of one of the spouses shall relieve the other spouse of any obligation imposed by law as a result of the marriage for the support of the mentally ill spouse. The court may make an order for such support or may waive the support obligation when satisfied from the evidence that is would create an undue hardship on the obliged spouse or his other dependents. [C71, 73, 75, §598.17; 66GA, ch 1228,§7]

598.18 Recrimination not a bar to dissolution of marriage. If, upon the trial of an action for dissolution of marriage, both of the parties are found to have committed an act or acts which would support or justify a decree of dissolution of marriage, such dissolution may be decreed, and the acts of one party shall

not negate the acts of the other, nor serve to bar the dissolution decree in any way. [C71, 73, 75,§598.18]

598.19 Waiting period before decree. No decree dissolving a marriage shall be granted in any proceeding before ninety days shall have elapsed from the day the original notice is served, or from the last day of publication of notice, or from the date that waiver or acceptance of original notice is filed or until after conciliation is completed, whichever period shall be longer. However, the court may in its discretion, on written motion supported by affidavit setting forth grounds of emergency or necessity and facts which satisfy the court that immediate action is warranted or required to protect the substantive rights or interests of any party or person who might be affected by the decree, hold a hearing and grant a decree dissolving the marriage prior to the expiration of the applicable period, provided that requirements of notice have been complied with. In such case the grounds of emergency or necessity and the facts with respect thereto shall be recited in the decree unless otherwise ordered by the court. The court may enter an order finding the respondent in default and waiving conciliation when the respondent has failed to file an appearance within the time set forth in the original notice. [C58, 62, 66,§598.25; C71, 73, 75,§§598.16, 598.19; 66GA, ch 1228,§8]

598.20 Forfeiture of marital rights. When a dissolution of marriage is decreed the parties shall forfeit all rights acquired by marriage which are not specifically preserved in the decree. This provision shall not obviate any of the provisions of section 598.21. [C51,§1486; C73,§2230; C97,§3181; C24, 27, 31, 35, 39,**§10483**; C46, 50, 54, 58, 62, 66,§598.16; C71, 73, 75, §598.20]

598.21 Alimony — custody of children — changes. When a dissolution of marriage is decreed, the court may make such order in relation to the children, property, parties, and the maintenance of the parties as shall be justified.

Subsequent changes may be made by the court in these respects when circumstances render them expedient. [C51,§1485; R60,§2537; C73,§2229; C97,§3180; C24, 27, 31, 35, 39,**§10481**; C46, 50, 54, 58, 62, 66,§598.14; C71, 73, 75,§598.21]

Referred to in §§598.20, 598.22

598.22 Support payments—clerk of court—defaults. All orders or judgments providing for temporary or permanent support payments shall direct the payment of such sums to the clerk of the court for the use of the person for whom the same have been awarded. An order or judgment entered by the court for temporary or permanent support shall be filed with the court clerk. Such orders shall have the same force and effect as judgments when entered in the judgment docket and lien index and shall be a record open to the public. The clerk shall disburse the payments received pursuant to such orders or judgments. All moneys received or disbursed under this section shall be entered in a record book kept by the clerk, which shall be open to inspection by the parties to the action and their attorneys.

If the sums ordered to be paid are not paid to the clerk at the time provided in said order or judgment, the clerk shall certify a default to the court which may, on its own motion, proceed as provided in section 598.23.

Prompt payment of sums required to be paid under sections 598.11 and 598.21 shall be the essence of such orders or judgments and the court may act pursuant to section 598.23 regardless of whether the amounts in default are paid prior to the contempt hearing. [C71, 73, 75,§598.22]

Referred to in §598.34

598.23 Contempt proceedings — alternative to jail sentence. If any party against whom any temporary order or final decree has been entered shall willfully disobey the same, or secrete his property, he may be cited and punished by the court for contempt and be committed to the county jail for a period of time not to exceed thirty days for each offense.

The court may, as an alternative to punishment for contempt, make an order directing the defaulting party to assign a sufficient amount in salary or wages due, or to become due in the future, from an employer or successor employers, to the clerk of the court where the order or judgment was granted for the purpose of paying the sums in default as well as those to be made in the future. The assignment order shall not be binding upon the employer, but the court shall send a copy of the order, signed by the employee, to the employer and request his co-operation in deducting support payments. For each payment deducted in compliance with such request, the employer shall receive one dollar to cover the expense created by the deduction, which amount shall be deducted from the money due the employee. Compliance by an employer with the court's request shall operate as a discharge of his liability to the employee as to the affected portion of the employee's wages.

Any employer who dismisses an employee due to the entry of an assignment order commits a public offense and upon conviction shall be fined not more than one hundred dollars. [C24, 27, 31, 35, 39,**§10482**; C46, 50, 54, 58, 62, 66, §598.15; C71, 73, 75,§598.23]

Referred to in §598.22

598.24 Contempt proceedings initiated by interested party — costs taxable to party in default. Nothing in this chapter shall prohibit the party entitled to support payments, or an interested party from initiating contempt proceedings on his own motion. If the defaulting party is found to be in contempt, the costs of such proceedings, including attorney's fees for the party initiating the proceedings in an amount deemed reasonable by the court, shall

be taxed against such party. [C71, 73, 75, §598.24]

Referred to in §598.34

598.25 Termination of jurisdiction of court granting marriage dissolution decree. Whenever a proceeding is initiated in a court for adoption involving the children of parents or guardians whose marriage has been dissolved, or for modification of a judgment of alimony, child support, or custody granted in an action for dissolution of marriage, the following requirements must be met if such proceedings are initiated in a court other than the court which granted the dissolution decree.

1. The party initiating such proceedings must present to the court the names and addresses of the parties to the dissolution decree if known, as well as the name and place of the court which granted the dissolution decree and the date of the decree.

2. The court in which the proceedings are initiated shall cause notice of such proceedings to be served upon the parties to the original action unless either or both parties are deceased.

Such court, or either of the parties to the dissolution decree, may request that a copy of the transcript of the proceedings of the court which granted the dissolution decree be made available for consideration in the new proceedings. [C71, 73, 75,§598.25; 66GA, ch 1228, §9]

598.26 Record — impounding — violation indictable. The record and evidence in all cases where a marriage dissolution is sought shall be closed to all but the court and its officers, and access thereto shall be refused until a decree of dissolution has been entered. If the action is dismissed judgment for costs shall be entered in the judgment docket and lien index. The clerk shall maintain a separate docket for dissolution of marriage actions. No officer or other person shall permit a copy of any of the testimony, or pleading, or the substance thereof, to be made available to any person other than a party or attorney to the action. Nothing in this section shall be construed to prohibit publication of the original notice as provided by the rules of civil procedure. Violation of the provisions of this section shall be a public offense, punishable by a fine of not more than one hundred dollars, or imprisonment in the county jail not more than thirty days, or by both such fine and imprisonment. [C71, 73, 75,§598.26]

598.27 Repealed by 66GA, ch 1228, §10.

598.28 Separate maintenance and annulment. A petition shall be filed in separate maintenance and annulment actions as in actions for dissolution of marriage, and all applicable provisions of this chapter in relation thereto shall apply to separate maintenance and annulment actions. [C73,§2232; C97,§3183; C24, 27, 31, 35, 39,§**10487**; C46, 50, 54, 58, 62, 66, §598.20; C71, 73, 75,§598.28]

598.29 Annulling illegal marriage — causes. Marriage may be annulled for the following causes:

1. Where the marriage between the parties is prohibited by law.

2. Where either party was impotent at the time of marriage.

3. Where either party had a husband or wife living at the time of the marriage, provided they have not, with a knowledge of such fact, lived and cohabited together after the death or marriage dissolution of the former spouse of such party.

4. Where either party was mentally ill or a mental retardate at the time of the marriage. [C73,§2231; C97,§3182; C24, 27, 31, 35, 39,§**10486**; C46, 50, 54, 58, 62, 66,§598.19; C71, 73, 75,§598.29]

Referred to in §229.27

598.30 Validity determined. When the validity of a marriage is doubted, either party may file a petition, and the court shall decree it annulled or affirmed according to the proof. [C73,§2233; C97,§3184; C24, 27, 31, 35, 39,§**10488**; C46, 50, 54, 58, 62, 66,§598.21; C71, 73, 75,§598.30]

598.31 Children—legitimacy. Children born to the parties, or to the wife, in a marriage relationship which may be terminated or annulled pursuant to the provisions of this chapter shall be legitimate as to both parties, unless the court shall decree otherwise according to the proof. [C73,§§2234, 2235; C97,§§3185, 3186; C24, 27, 31, 35, 39,§§**10489, 10490**; C46, 50, 54, 58, 62, 66,§§598.22, 598.23; C71, 73, 75,§598.31]

598.32 Alimony. In case either party entered into the contract of marriage in good faith, supposing the other to be capable of contracting, and the marriage is declared a nullity, such fact shall be entered in the decree, and the court may decree such innocent party compensation as in case of dissolution of marriage. [C73,§2236; C97,§3187; C24, 27, 31, 35, 39,§**10491**; C46, 50, 54, 58, 62, 66,§598.24; C71, 73, 75,§598.32]

598.33 Repealed by 66GA, ch 1228,§10.

598.34 Welfare recipients—assignment of support payments. Persons entitled to periodic support payments pursuant to an order or judgment entered in an action for dissolution of marriage, who are also welfare recipients, shall assign their rights to such payments to the department of social services. The clerk of court shall forward support payments received pursuant to section 598.22 to the department, which shall have the right to secure support payments in default through proceedings provided for in chapter 252A or section 598.24.

The clerk shall furnish the department with copies of all orders or decrees awarding support to parties having custody of minor children when such parties are receiving welfare assistance. [C71, 73, 75,§598.34; 66GA, ch 151,§12]

598.35 Grandparents visitation rights. The grandparents of a child may petition the district court for grandchild visitation rights when:

1. The parents of the child are divorced, or
2. A petition for dissolution of marriage has been filed by one of the parents of the child, or
3. The parent of the child, who is the child of the grandparents, has died, or
4. The child has been placed in a foster home.

A petition for grandchild visitation rights shall be granted only upon a finding that the visitation is in the best interests of the child. [C75,§598.35]

CHAPTER 599

MINORS

599.1 Period of minority.
599.2 Contracts—disaffirmance.
599.3 Misrepresentations — engaging in business.
599.4 Payments.
599.5 Veterans minority disabilities.
599.6 Repealed by 66GA, ch 1056,§45.

599.1 Period of minority. The period of minority extends to the age of eighteen years, but all minors attain their majority by marriage. [C51,§1487; R60,§2539; C73,§2237; C97, §3188; C24, 27, 31, 35, 39,§**10492**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§599.1]

599.2 Contracts—disaffirmance. A minor is bound not only by contracts for necessaries, but also by his other contracts, unless he disaffirms them within a reasonable time after he attains his majority, and restores to the other party all money or property received by him by virtue of the contract, and remaining within his control at any time after his attaining his majority except as otherwise provided. [C51,§1488; R60,§2540; C73,§2238; C97,§3189; C24, 27, 31, 35, 39,§**10493**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§599.2]

599.3 Misrepresentations—engaging in business. No contract can be thus disaffirmed in cases where, on account of the minor's own misrepresentations as to his majority, or from his having engaged in business as an adult, the other party had good reason to believe him capable of contracting. [C51,§1489; R60,§2541; C73,§2239; C97,§3190; C24, 27, 31, 35, 39,§**10494**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§599.3]

599.4 Payments. Where a contract for the personal services of a minor has been made with him alone, and the services are afterwards performed, payment therefor made to him, in accordance with the terms of the contract, is a full satisfaction therefor, and the parent or guardian cannot recover a second time. [C51,§1490; R60,§2542; C73,§2240; C97, §3191; C24, 27, 31, 35, 39,§**10495**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§599.4]

599.5 Veterans minority disabilities. The disability of minority of any person otherwise eligible for guaranty or insurance of a loan pursuant to the Servicemen's Readjustment Act of 1944*, as amended and of the minor spouse of any eligible veteran, irrespective of his or her age, in connection with any transaction entered into pursuant to said Act, as amended, is hereby removed for all purposes in connection with such transaction, including, but not limited to, incurring of indebtedness or obligations, and acquiring, encumbering, selling, releasing or conveying property or any interest therein, and litigating or settling controversies arising therefrom, if all or part of any obligations incident to such transaction be guaranteed or insured by the administrator of veterans affairs pursuant to such Act; provided, nevertheless, that this section shall not be construed to impose any other or greater rights or liabilities than would exist if such person and such spouse were under no such disability. [C50, 54, 58, 62, 66, 71, 73, 75, §599.5]

*58 Stat. L. 291; repealed, 72 Stat. L. 1273; now covered by 37 U.S.C. §§1801 to 1824, inc.

599.6 Repealed by 66GA, ch 1056,§45.

CHAPTER 600

ADOPTION

Adoption records prior to January 1, 1977: See 66GA, ch 1229, §26
Referred to in §§238.41, 422.9

600.1 Construction.
600.2 Definitions.
600.3 Commencement of adoption action — jurisdiction — forum non conveniens.
600.4 Qualifications to file adoption petition.
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600.8 Placement investigations and reports.
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600.11 Notice of adoption hearing.
600.12 Adoption hearing.
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600.14 Appeal.
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600.16 Termination and adoption record.
600.17 Financial assistance.
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600.19 Amount of assistance.
600.20 Availability of assistance.
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600.22 Rules.
600.23 Vietnamese refugee children.

600.1. Construction. This chapter shall be construed liberally. The welfare of the person to be adopted shall be the paramount consideration in interpreting this division. However, the interests of the adopting parents shall be given due consideration in this interpretation. [66GA, ch 1229,§10]

Referred to in §600.23
Sections 600.1 to 600.10, Code 1975
Repealed by 66GA, ch 1229,§41

600.2 Definitions.

1. *"Child", "parent", "parent-child relationship", "termination of parental rights", "natural parent", "stepparent", "guardian", "custodian", "guardian ad litem", "minor", "adult", "agency", "department", "court", "juvenile court", "independent placement"* mean the same as defined in section 600A.2.

2. *"Investigator"* means a natural person who is certified or approved, by the department as being capable of conducting an investigation under section 600.8. [66GA, ch 1229,§11]

600.3 Commencement of adoption action—jurisdiction—forum non conveniens.

1. An action for the adoption of any natural person shall be commenced by the filing of an adoption petition, as prescribed in section 600.5, in the court of the county in which an adult person to be adopted is domiciled or resides, or in the court of the county in which the guardian of a minor person to be adopted or the petitioner is domiciled or resides.

2. Unless the person to be adopted is an adult, an adoption petition shall not be filed until a termination of parental rights has been accomplished. However, this subsection shall not apply to the parent-child relationship existing between a child and a parent whose spouse is a petitioning stepparent of that child.

3. If upon filing of the adoption petition or at any later time in the adoption action the court finds that in the interest of substantial justice the adoption action should be conducted in another court, it may transfer, stay, or dismiss the adoption action on any conditions that are just. [R60,§2600; C73,§2307; C97, §3250; C24,§10496; C27, 31, 35, §10501-b1; C39, §**10501.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§600.1; 66GA, ch 1229,§12]

Referred to in §§600.4, 600.5, 600.23

600.4 Qualifications to file adoption petition. Any person who may adopt may file an adoption petition under section 600.3. The following persons may adopt:

1. An unmarried adult.

2. Husband and wife together.

3. A husband or wife separately if the person to be adopted is not the other spouse and if the adopting spouse:

a. Is the stepparent of the person to be adopted;

b. Has been separated from the other spouse by reason of the other spouse's abandonment as prescribed in section 597.10; or

c. Is unable to petition with the other spouse because of the prolonged and unexplained absence, unavailability, or incapacity of the other spouse, or because of an unreasonable withholding of joinder by the other spouse, as determined by the court under section 600.5, subsection 7. [R60,§2600; C73,§2307; C97,§3250; C24,§10496; C27, 31, 35, §10501-b1; C39,§**10501.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§600.1; 66GA, ch 1229,§13]

Referred to in §600.5

600.5 Contents of an adoption petition. An adoption petition shall be signed and verified by the petitioner, shall be filed with the court designated in section 600.3, and shall state:

1. The name, as it appears on the birth certificate or in a verified birth record or as it appears as a result of marriage, and the residence or domicile of the person to be adopted.

2. The date and place of birth of the person to be adopted.

3. Any new name requested to be given the person to be adopted.

4. The name, residence, and domicile of any guardian, custodian, or guardian ad litem for the person to be adopted.

5. The name, residence, and domicile of the petitioner, if this is not required to be stated under subsection 4, and the date or expected date on which the person to be adopted, if a minor, began or begins living with the petitioner.

6. The name, residence, and domicile of any parent of the person to be adopted.

7. A designation of the particular provision in section 600.4 under which the petitioner is qualified to adopt and, if under section 600.4, subsection 3, paragraph *"c"*, a request that the court approve the petitioner's qualification to adopt.

8. A description and estimate of the value of any property owned by or held for the person to be adopted.

9. A description of the facilities and resources, including those provided under a subsidy agreement pursuant to sections 600.17 to 600.22, that the petitioner is willing and able to supply for the nurture and care of any minor person to be adopted.

10. When and where termination of parental rights pertaining to the person to be adopted have occurred, if termination was required under section 600.3. [R60,§2600; C73, §2307; C97,§3250; C24,§10496; C27, 31, 35, §10501-b1; C39,§**10501.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§600.1; 66GA, ch 1229,§14]

Referred to in §§600.3, 600.4, 600.8

600.6 Attachments to an adoption petition. An adoption petition shall have attached to it the following:

1. A certified copy of the birth certificate showing parentage of the person to be adopted or, if such certificate is not available, a verified birth record.

2. A copy of any order terminating parental rights with respect to the person to be adopted.

3. Any written consent and verified statement required under section 600.7, except the consent required under subsection 1, paragraph *"d"*, of that section.

4. Any preplacement investigation report that has been prepared at the time of filing pursuant to section 600.8. [R60,§2601; C73, §2308; C97,§3251; C24,§10497; C27, 31, 35, §10501-b3; C39,§**10501.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§600.3; 66GA, ch 1229,§15]

600.7 Consents to the adoption.

1. An adoption petition shall not be granted unless the following persons consent to the adoption or unless the court makes a determination under subsection 4:

a. Any guardian of the person to be adopted.

b. The spouse of a petitioner who is a stepparent.

c. The spouse of a petitioner who is separately petitioning to adopt an adult person.

d. The person to be adopted if that person is fourteen years of age or older.

2. A consent to the adoption shall be in writing, shall name the person to be adopted and the petitioner, shall be signed by the person consenting, and shall be made in the following manner:

a. If by any minor person to be adopted who is fourteen years of age or older, in the presence of the court in which the adoption petition is filed.

b. If by any adult person to be adopted, either in the presence of the court in which the adoption petition is filed or before a notary public.

c. If by any other person, before a notary public.

3. A consent to the adoption may be withdrawn prior to the issuance of an adoption decree under section 600.13 by the filing of an affidavit of consent withdrawal with the court. Such affidavit shall be treated in the same manner as an attached verified statement is treated under subsection 4.

4. If any person required to consent under this section refuses to or cannot be located to give consent, the petitioner may attach to the petition a verified statement of such refusal or lack of location. The court shall then determine, at the adoption hearing prescribed in section 600.12, whether, in the best interests of the person to be adopted and the petitioner, any particular consent shall be unnecessary to the granting of an adoption petition. [R60,§§2600, 2601; C73,§§2307, 2308; C97,§§3250, 3251; C24,§§10496, 10497; C27, 31, 35,§§10501-b1, 10501-b3; C39,§§**10501.1, 10501.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§600.1, 600.3; 66GA, ch 1229, §16]

Referred to in §§600.6, 600.11
Section 600.7, Code 1975, repealed 66GA, ch 1229,§41

600.8 Placement investigations and reports.

1. *a.* A preplacement investigation shall be directed to and a report of this investigation shall answer the following:

(1) Whether the home of the prospective adoption petitioner is a suitable one for the placement of a minor person to be adopted.

(2) How the prospective adoption petitioner's emotional maturity, finances, health, relationships, and any other relevant factor may affect the petitioner's ability to accept, care, and provide a minor person to be adopted with an adequate environment as that person matures.

b. A postplacement investigation and a report of this investigation and a report of this investigation shall:

(1) Verify the allegations of the adoption petition and its attachments and of the report of expenditures required under section 600.9.

(2) Evaluate the progress of the placement of the minor person to be adopted.

(3) Determine whether adoption by the adoption petitioner may be in the best interests of the minor person to be adopted.

c. A background information investigation and a report of this investigation shall not disclose the identity of the natural parents of the minor person to be adopted and shall answer the following:

(1) What is the complete family medical history of the person to be adopted, including any known genetic, metabolic, or familial disorders.

(2) What is the complete medical and developmental history of the person to be adopted.

2. *a.* A preplacement investigation and report of the investigation shall be completed and the prospective adoption petitioner approved for a placement by the person making the investigation prior to any agency or independent placement of a minor person in the petitioner's home in anticipation of an ensu-

ing adoption. A report of a preplacement investigation that has approved a prospective adoption petitioner for a placement shall not authorize placement of a minor person with that petitioner after one year from the date of the report's issuance. However, if the prospective adoption petitioner is a stepparent or a relative within the fourth degree of consanguinity who has assumed custody of a minor person to be adopted, a preplacement investigation of this petitioner and a report of the investigation may be completed at a time established by the court. Also, any investigation and report required under this subsection may be waived by the court if the prospective adoption petitioner is a stepparent or a relative to the person to be adopted within the fourth degree of consanguinity.

b. If the person making the investigation does not approve a prospective adoption petitioner under paragraph *"a"* of this subsection, the person investigated may appeal the disapproval as a contested case to the commissioner of social services. Judicial review of any adverse decision by the commissioner may be sought pursuant to chapter 17A.

3. The agency making an agency placement shall conduct the preplacement investigation and report required under subsection 2. The department or an investigator shall conduct all other investigations and reports required under subsection 2.

4. A postplacement and a background information investigation and the reports of these investigations shall be completed and the reports filed with the court prior to the holding of the adoption hearing prescribed in section 600.12. Upon the filing of an adoption petition pursuant to section 600.5, the court shall immediately appoint the department, an agency, or an investigator to conduct this investigation and report. Any person, including a juvenile court, who has gained relevant background information concerning a minor person subject to an adoption petition shall, upon request, fully cooperate with the conducting of the background information investigation and report by disclosing any relevant background information, whether contained in sealed records or not.

5. Any person conducting an investigation under subsections 3 and 4 may, in the investigation or subsequent report, include, utilize, or rely upon any reports, studies, or examinations to the extent they are relevant.

6. Any person conducting an investigation under subsections 3 and 4 may charge a fee which does not exceed the reasonable cost of the services rendered and which is based on a sliding scale schedule relating to the investigated person's ability to pay.

7. Any investigation or report required under this section shall not apply when the person to be adopted is an adult.

8. Any person designated to make an investigation and report under this section may request an agency or state agency, within or without this state, to conduct a portion of the investigation or the report, as may be appropriate, and to file a supplemental report of such investigation or report with the court.

9. The department may investigate, on its own initiative or on order of the court, any placement made or adoption petition filed under this chapter or chapter 600A and may report its resulting recommendation to the court.

10. The department or an agency may conduct any investigations required for an interstate or interagency placement.

11. Any person who assists in or impedes the placement or adoption of a minor person in violation of the provisions of this section shall be, upon conviction, guilty of a misdemeanor, and shall be fined not more than one hundred dollars or imprisoned in the county jail for not more than thirty days. [C27, 31, 35,§10501-b2; C39,§**10501.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§600.2; 66GA, ch 1229,§17]

Referred to in §§600.2, 600.6, 600.11, 600.16

600.9 Report of expenditures.

1. An adoption petitioner of a minor person shall file with the court, prior to the adoption hearing, a full accounting of all disbursements of any thing of value paid or agreed to be paid by or on behalf of the petitioner in connection with the petitioned adoption. This accounting shall be made by a report prescribed by the court. The report shall be signed and verified by the petioner and shall show any expenses incurred in connection with:

a. The birth of the minor person to be adopted.

b. Placement of the minor person with the adoption petitioner.

c. Medical care received by the natural parents or the minor person during the pregnancy or delivery of the minor person.

d. Any other services relating to the adoption or to the placement of the minor person which were received by or on behalf of the petitioner, the natural parents, or any other person, including legal fees.

The provisions of this subsection do not apply in a stepparent adoption.

2. A natural parent shall not receive any thing of value as a result of the natural parent's child or former child being placed with and adopted by another person, unless that thing of value is commensurate with some necessary service provided the natural parent in relation to childbirth, child raising, or delivering the child for adoption. Any person assisting in any way with the placement or adoption of a minor person shall not charge a fee which is more than usual, necessary, and commensurate with the services rendered. If the natural parent receives any prohibited thing of value, if a person gives a prohibited thing of value, or if a person charges a prohibited fee under this subsec-

tion, each such person shall be, upon conviction, guilty of a misdemeanor, and shall be fined not more than one hundred dollars or imprisoned in the county jail for not more than thirty days. [66GA, ch 1229,§18]

Referred to in §600.8

600.10 Minimum residence of a minor child. The adoption of a minor person shall not be decreed until that person has lived with the adoption petitioner for a minimum residence period of one hundred eighty days. However, the court may waive this period if the adoption petitioner is a stepparent or related to the minor person within the fourth degree of consanguinity or may shorten this period upon good cause shown when the court is satisfied that the adoption petitioner and the person to be adopted are suited to each other. [C27, 31, 35,§10501-b2; C39,§**10501.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§600.2; 66GA, ch 1229,§19]

600.11 Notice of adoption hearing.

1. The court shall set the time and place of the adoption hearing prescribed in section 600.12 upon application of the petitioner. The court may continue the adoption hearing if the notice prescribed in subsections 2 and 3 is given, except that such notice shall only be given at least ten days prior to the date which has been set for the continuation of the adoption hearing.

2. At least sixty days before the adoption hearing, a copy of the petition and its attachments and a notice of the adoption hearing shall be given by the adoption petitioner to:

a. A guardian, guardian ad litem, and custodian of, and any person in a parent-child relationship with the person to be adopted.

b. The person to be adopted who is an adult.

c. The department.

d. Any person who is designated to make an investigation and report under section 600.8.

e. Any other person who is required to consent under section 600.7.

3. A notice of the adoption hearing shall state the time, place, and purpose of the hearing and shall be given according to the appropriate rules of civil procedure. Proof of the giving of notice shall be filed with the court prior to the adoption hearing and approved by the court prior to issuance of an adoption decree under section 600.13. [C27, 31, 35,§10501-b4; C39,§**10501.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§600.4; 66GA, ch 1229,§20]

Referred to in §600.12

600.12 Adoption hearing.

1. An adoption hearing shall be conducted informally as a hearing in equity. The hearing shall be reported.

2. Only those persons notified under section 600.11 and their witnesses and legal counsel or persons requested by the court to be present shall be admitted to the court chambers while an adoption hearing is being conducted. The adoption petitioner and the person to be adopted shall be present at the hearing, unless the presence of either is excused by the court.

3. Any person admitted to the hearing shall be heard and allowed to present evidence upon request and according to the manner in which the court conducts the hearing. [C27, 31, 35,§10501-b4; C39,§**10501.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§600.4; 66GA, ch 1229,§21]

Referred to in §§600.6, 600.8, 600.11

600.13 Adoption decrees.

1. At the conclusion of the adoption hearing, the court either shall:

a. Issue a final adoption decree;

b. Issue an interlocutory adoption decree; or,

c. Dismiss the adoption petition if the requirements of this Act have not been met or if dismissal of the adoption petition is in the best interest of the person whose adoption has been petitioned. Upon dismissal, the court shall determine who is to be guardian or custodian of a minor child, including the adoption petitioner if it is in the best interest of the minor person whose adoption has been petitioned.

2. An interlocutory adoption decree automatically becomes a final adoption decree at a date specified by the court in the interlocutory adoption decree which date shall not be less than one hundred eighty days nor more than three hundred sixty days from the date the interlocutory decree is issued. However, an interlocutory adoption decree may be vacated sooner than the date specified in it by the court for good cause shown. Also, the court may provide in the interlocutory adoption decree for further observation, investigation, and report of the conditions of and the relationships between the adoption petitioner and the person petitioned to be adopted.

3. Except as enumerated in subsection 2, an interlocutory adoption decree shall have the same legal effect as a final adoption decree. If an interlocutory adoption decree is vacated under subsection 2, it shall be void from the date of issuance and the rights, duties, and liabilities of all persons affected by it shall, unless they have become vested, be governed accordingly. Upon vacation of an interlocutory adoption decree, the court shall proceed under the provisions of subsection 1, paragraph "*c*".

4. A final adoption decree terminates any parental rights, except those of a spouse of the adoption petitioner, existing at the time of its issuance and establishes the parent-child relationship between the adoption petitioner and the person petitioned to be adopted. Unless otherwise specified by law, such parent-child relationship shall be deemed to have been created at the birth of the child.

5. An interlocutory or a final adoption decree shall be entered with the clerk of the court. Such decree shall set forth any facts of the adoption petition which have been proven to the satisfaction of the court and any other facts considered to be relevant by the court and shall grant the adoption petition. If so designated in the adoption decree, the name of the adopted person shall be changed by issuance of that decree. The clerk of the court shall, within thirty days of issuance, deliver one certified copy of any adoption decree to the petitioner, one copy of any adoption abstract to the department and any agency or person making an independent placement who placed a minor person for adoption, and one certification of adoption as prescribed in section 144.19 to the state registrar of vital statistics. Upon receipt of the certification, the state registrar shall prepare a new birth certificate pursuant to section 144.23 and deliver to the parents named in the decree and any adult person adopted by the decree a copy of the new birth certificate. The parents shall pay the fee prescribed in section 144.46. If the person adopted was born outside the state, the state registrar shall forward the certification of adoption to the appropriate agency in the state of birth. A copy of any interlocutory adoption decree vacation shall be delivered and another birth certificate shall be prepared in the same manner as a certification of adoption is delivered and the birth certificate was originally prepared. [R60,§§2601, 2602, 2603; C73,§§2308, 2309, 2310; C97,§§3251, 3252, 3253; S13,§3253; C24,§§10498, 10499, 10500; C27, 31, 35,§§10501-b5, 10501-b6, 10501-b8; C39,§§**10501.5, 10501.6, 10501.8;** C46, 50, 54, 58, 62, 66, 71, 73, 75,§§600.5, 600.6, 600.8; 66GA, ch 1229,§22]

Referred to in §§600.7, 600.11

600.14 Appeal. An appeal from any final order or decree rendered under this chapter or chapter 600A shall be taken in the same manner as an appeal is taken from a final judgment under the rules of civil procedure. However, a rule of civil procedure provision regarding a minimum amount of value in controversy shall not bar an adoption appeal. The supreme court shall review an adoption appeal de novo. [66GA, ch 1229,§23]

600.15 Foreign and international adoptions.

1. A decree terminating a parent-child relationship or establishing a parent-child relationship by adoption which is issued pursuant to due process of law by a court of any other jurisdiction, whether within or without the United States, shall be recognized in this state.

2. If there is a proxy adoption in the minor person's country of origin, a further adoption must occur in the state where the adopting parents reside in accordance with the adoption laws of that state.

3. The department may provide necessary assistance to an eligible citizen of Iowa who desires to, in accordance with the immigration laws of the United States, make an international adoption. For any such assistance the department may charge a fee which does not exceed the reasonable cost of services rendered and which is based on a sliding scale relating to the investigated person's ability to pay.

4. Any rules of the department relating to placement of a minor child for adoption which are more restrictive than comparable rules of agencies making international placements and laws of the United States shall not be enforced by the department in an international adoption. [66GA, ch 1229,§24]

600.16 Termination and adoption record.

1. Any information compiled under section 600.8, subsection 1, paragraph *"c"*, subparagraphs (1) and (2) shall be made available at any time by the clerk of the court, the department, or any agency which made the placement to:

a. The adopting parents.

b. The adopted person who is an adult.

c. Any person approved by the department if the person uses this information solely for the purposes of conducting a legitimate research project or of treating a patient in a medical facility.

2. The permanent termination of parental rights record of the juvenile court under chapter 600A and the permanent adoption record of the court shall be sealed by the clerk of the juvenile court and the clerk of court, as appropriate, when they are complete and after the time for appeal has expired. All papers and records pertaining to a termination of parental rights under chapter 600A and to an adoption, whether a part of the permanent termination and adoption records of the juvenile court and of the court or on file with a guardian, guardian ad litem, custodian, person who placed a minor person, or the department shall not be open to inspection and the identity of the natural parents of an adopted person shall not be revealed. However, an agency involved in placement shall contact the adopting parents or the adult adopted child regarding eligibility of the adopted child for benefits based on entitlement of benefits or inheritance from the terminated natural parents. Also, the clerk of the court shall, upon application to and order of the court for good cause shown, open the permanent adoption record of the court for the adopted person who is an adult and reveal the names of either or both of the natural parents. A natural parent may file an affidavit requesting that the court reveal or not reveal the parent's name. The court shall consider any such affidavit in determining whether there is good cause to order opening of the records. If the adopted person who applies for revelation of the natural parents' name has a sibling who is a minor and who has been adopted by the same

parents, the court shall deny such application on the grounds that revelation to the applicant may also indirectly and harmfully permit the same revelation to the applicant's minor sibling. To facilitate the natural parents in filing such affidavit, the department shall, upon request of such parent, file an affidavit in the court in which the adoption records have been sealed.

3. Notwithstanding any other provision in this section, the juvenile court or court may, upon competent medical evidence, open termination or adoption records if opening is shown to be necessary to save the life of or prevent irreparable physical harm to an adopted person or the person's offspring. The juvenile court or court shall make every reasonable effort to prevent the identity of the natural parents from becoming revealed under this subsection to the adopted person. The juvenile court or court may, however, permit revelation of the identity of the natural parents to medical personnel attending the adopted person or the person's offspring. These medical personnel shall make every reasonable effort to prevent the identity of the natural parents from becoming revealed to the adopted person.

4. Any person, other than the adopting parents or the adopted person, who discloses information in violation of the provisions of this section shall be, upon conviction, guilty of a misdemeanor, and shall be fined not more than one hundred dollars or imprisoned in the county jail for not more than thirty days. [C46,§600.9; C50, 54, 58, 62, 66, 71, 73, 75, §§600.9, 600.10; 66GA, ch 1229,§25]

Referred to in §238.24

600.17 Financial assistance. The department of social services shall, within the limits of funds appropriated to the department of social services and any gifts or grants received by the department for this purpose, provide financial assistance to any person who adopts a physically or mentally handicapped, older, or otherwise hard-to-place child, if the adoptive parent has the capability of providing a suitable home for the child but the need for special services or the costs of maintenance are beyond the economic resources of the adoptive parent.

1. Financial assistance shall not be provided when the special services are available free of cost to the adoptive parent or are covered by an insurance policy of the adoptive parent.

2. "Special services" means any medical, dental, therapeutic, educational, or other similar service or appliance required by an adopted child by reason of a mental or physical handicap. [C73, 75,§600.11]

Referred to in §§600.5, 600.18, 600.22, 627.19

600.18 Determination of assistance. Any prospective adoptive parent desiring to avail himself of financial assistance shall state this fact in his petition for adoption. The department of social services shall investigate the person petitioning for adoption and the child and shall file with the court a statement of whether the department will provide assistance as provided in sections 600.17 to 600.22, the estimated amount, extent, and duration of assistance, and any other information the court may order.

If the department of social services is unable to determine that an insurance policy will cover the costs of special services, it shall proceed as if no policy existed, for the purpose of determining eligibility to receive assistance. The department shall, to the amount of financial assistance given, be subrogated to the rights of the adoptive parent in the insurance contract. [C73, 75,§600.12]

Referred to in §§600.5, 600.22, 627.19

600.19 Amount of assistance. The amount of financial assistance for maintenance shall not exceed the amount the department would normally spend for foster care of the child. The amount of financial assistance for special services shall not exceed the amount the department would normally spend if it were to provide these services. [C73, 75,§600.13]

Referred to in §§600.5, 600.18, 600.22, 627.19

600.20 Availability of assistance. Financial assistance shall be available only if the child to be adopted was under the guardianship of the state, county, or a licensed child-placing agency immediately prior to his adoption. The twelve months' period of residence in the proposed home required in section 600.2* shall not apply to this section. [C73, 75,§600.14]

Referred to in §§600.5, 600.18, 600.22, 627.19
*Section 600.2, Code 1975, repealed by 66GA, ch 1229,§41

600.21 Termination of assistance. Financial assistance shall terminate when the need for assistance no longer exists. Financial assistance shall not extend beyond the adopted child's twenty-first birthday. [C73, 75,§600.15]

Referred to in §§600.5, 600.18, 600.22, 627.19

600.22 Rules. The department of social services shall adopt rules in accordance with the provisions of chapter 17A, which are necessary for the administration of sections 600.17 to 600.21. [C73, 75,§600.16]

Referred to in §§600.5, 600.18, 627.19

600.23 Vietnamese refugee children. Notwithstanding this chapter, a child placed under 66GA, chapter 145, section 1 may be adopted without the adoption petition allegations relating to the child required under section 600.1* and without the consents required under section 600.3* if an affidavit by the agency verifying that the documents specified under section 1, paragraph *"b"* of the Act existed and are now unavailable is submitted to the court. In such case, the agency shall deliver to the court all available information on the child. [66GA, ch 145,§2]

Referred to in §144.57
*Code 1975

CHAPTER 600A

TERMINATION OF PARENTAL RIGHTS

Proceedings prior to January 1, 1977; see 66GA, ch 1229,§26
Referred to in §§231.3, 232.12, 232.86, 232.63, 238.32, 600.8, 600.14, 600.16

600A.1 Construction.
600A.2 Definitions.
600A.3 Exclusivity.
600A.4 Relationship unaltered — release of custody — voluntariness of release.
600A.5 Petition for termination.
600A.6 Notice of termination hearing.
600A.7 Termination hearing — forum non conveniens.
600A.8 Grounds for termination.
600A.9 Termination findings and order — vacation of order.

600A.1 Construction. This chapter shall be construed liberally. The welfare of the child subject to the proceedings of this chapter shall be the paramount consideration in interpreting this chapter. However, the interests of the parents of this child or any natural person standing in the place of the parents to this child shall be given due consideration in this interpretation. [66GA, ch 1229,§1]

600A.2 Definitions. As used in this chapter:

1. *"Child"* means a son or daughter of a parent, whether by birth or adoption.

2. *"Parent"* means a father or mother of a child, whether by birth or adoption.

3. *"Parent-child relationship"* means the relationship between a parent and a child recognized by the law as conferring certain rights and privileges and imposing certain duties. The term extends equally to every child and every parent, regardless of the marital status of the parents of the child. The rights, duties, and privileges recognized in the parent-child relationship include those which are maintained by a guardian, custodian, and guardian ad litem.

4. *"Termination of parental rights"* means a complete severance and extinguishment of a parent-child relationship between one or both living parents and the child.

5. *"Natural parent"* means a parent who has been a biological party to the procreation of the child.

6. *"Stepparent"* means a person who is the spouse of a parent in a parent-child relationship, but who is not a parent in that parent-child relationship.

7. *"Guardian"* means a person who is not the parent of a minor child, but who has been appointed by a court or juvenile court having jurisdiction over the minor child to make important decisions which have permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the minor child or by operation of law, the rights and duties of a guardian with respect to a minor child shall be as follows:

a. To consent to marriage, enlistment in the armed forces of the United States, or medical, psychiatric or surgical treatment.

b. To serve as guardian ad litem, unless the interests of the guardian conflict with the interests of the minor child or unless another person has been appointed guardian ad litem.

c. To serve as custodian, unless another person has been appointed custodian.

d. To make reasonable visitations if the guardian does not have physical possession or custody of the minor child.

e. To consent to adoption and to make any other decision that the parents could have made when the parent-child relationship existed.

8. *"Custodian"* means a stepparent or a relative within the fourth degree of consanguinity to a minor child who has assumed responsibility for that child, a person who has accepted a release of custody, or a person appointed by a court or juvenile court having jurisdiction over a child. The rights and duties of a custodian with respect to a child shall be as follows:

a. To maintain or transfer to another the physical possession of that child.

b. To protect, train, and discipline that child.

c. To provide food, clothing, housing, and ordinary medical care for that child.

d. To consent to emergency medical care, including surgery.

e. To sign a release of medical information to a health professional.

All rights and duties of a custodian shall be subject to any residual rights and duties remaining in a parent or guardian.

9. *"Guardian ad litem"* means a person appointed by a court or juvenile court having jurisdiction over the minor child to represent that child in a legal action.

10. *"Minor"* means an unmarried person who is under the age of eighteen years.

11. *"Adult"* means a person who is married or eighteen years of age or older.

12. *"Agency"* means a child-placing agency as defined in section 238.2 or the department.

13. *"Department"* means the state department of social services or its subdivisions.

14. *"Court"* means a district court.

15. *"Juvenile court"* means a juvenile court as established under section 231.1.

16. *"To abandon a minor child"* means to permanently relinquish or surrender, without reference to any particular person, the parental rights, duties, or privileges inherent in the parent-child relationship. The term includes both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over a long or any particular period of time.

17. *"Independent placement"* means placement of a minor person by a person, other than an agency, in the home of a proposed parent in anticipation of an ensuing adoption. [66GA, ch 1229,§2]

Referred to in §§232.2, 600.2

600A.3 Exclusivity. Termination of parental rights shall be accomplished only according to the provisions of this chapter. However, termination of parental rights between an adult child and the child's parents may be accomplished by a decree of adoption establishing a new parent-child relationship. [C66, 71, 73, 75,§232.40; 66GA, ch 1229,§3]

600A.4 Relationship unaltered — release of custody — voluntariness of release.

1. A parent shall not permanently alter the parent-child relationship, except as ordered by a juvenile court or court. However, custody of a minor child may be assumed by a stepparent or a relative of that child within the fourth degree of consanguinity or transferred by an acceptance of a release of custody. A person who assumes custody or who accepts a release of custody under this section becomes, upon assumption or acceptance, the custodian of the minor child.

2. A release of custody:

a. Shall be accepted only by an agency or a person making an independent placement.

b. Shall not be accepted by a person who in any way intends to adopt the child who is the subject of the release.

c. Shall be in writing.

d. Shall be signed, not less than seventy-two hours after the birth of the child to be released, by all living parents.

e. Shall be witnessed by two disinterested persons familiar with the parent-child relationship.

f. Shall name the person who is accepting the release.

g. Shall be followed, within a reasonable time, by the filing of a petition for termination of parental rights under section 600A.5.

h. Shall state the purpose of the release, including that if it is not revoked it may be grounds for termination, and shall fully inform the signing parent of the manner in which the parent may seek to revoke the release.

3. Notwithstanding the provisions of subsection 2, an agency or a person making an independent placement may assume custody of a minor child upon the signature of the one living parent who has possession of the minor child if the agency or a person making an independent placement immediately petitions the juvenile court designated in section 600A.5 to be appointed custodian and otherwise petitions, within a reasonable time, for termination of parental rights under section 600A.5. Upon the custody petition, the juvenile court may appoint a guardian as well as a custodian. A nonsigning parent may be heard on the custody petition at the hearing on termination of parental rights provided in section 600A.6.

4. A parent who signs a release of custody may petition, within the time prior to the hearing on termination of parental rights, or may request, at the hearing on termination of parental rights, the juvenile court designated in section 600A.5, to order the release revoked. If, within ninety-six hours of signing the release a parent petitions to have the release revoked, the juvenile court shall order the release revoked. Otherwise, the juvenile court shall order the release revoked only upon clear and convincing evidence that good cause exists for revocation. Good cause for revocation includes but is not limited to a showing that the release was obtained by fraud, coercion, or misrepresentation of law or fact which was material to its execution. In determining whether good cause, other than fraud, coercion or misrepresentation, exists for revocation, the juvenile court shall give paramount consideration to the best interests of the child and due consideration to the interests of the parents of the child and of any person standing in the place of the parents. [S13,§3260-c; C24,§3665; C27, 31, 35, §§3661-a82,-a83,-a86; C39,§§**3661.096, 3661.097, 3661.100**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §§238.25, 238.26, 238.29; 66GA, ch 1229,§4]

Referred to in §600A.8

600A.5 Petition for termination.

1. The following persons may petition a juvenile court for termination of parental rights if the child of the parent-child relationship is born or expected to be born within one hundred eighty days of the date of petition filing:

a. A parent or prospective parent of the parent-child relationship.

b. A custodian or guardian of the child.

c. Any other person who has knowledge of circumstances indicating that the parent-child relationship should be terminated.

2. A petition for termination of parental rights shall be filed with the juvenile court in which the guardian or custodian of the child resides or the child or the pregnant woman is domiciled. However, if a juvenile court has made an order pertaining to a minor child under section 232.33 and that order is

still in force, the petition shall be filed with that juvenile court.

3. A petition for termination of parental rights shall include the following:

a. The legal name, age and domicile, if any, of the child.

b. The names, residences, and domicile of any:

(1) Living parents of the child.
(2) Guardian of the child.
(3) Custodian of the child.
(4) Guardian ad litem of the child.
(5) Petitioner.
(6) Person standing in the place of the parents of the child.

c. A plain statement of the facts and grounds in section 600A.8 which indicate that the parent-child relationship should be terminated.

d. A plain statement explaning why the petitioner does not know any of the information required under paragraphs *"a"* and *"b"* of this subsection.

e. The signature and verification of the petitioner. [C66, 71, 73, 75,§§232.42, 232.43; 66GA, ch 1229,§5]

Referred to in §§600A.4, 600A.6, 600A.8

600A.6 Notice of termination hearing.

1. A termination of parental rights shall, unless provided otherwise in this section, be effectuated only after notice has been served on all necessary parties and these parties have been given an opportunity to be heard before the juvenile court. A "necessary party" includes any person whose name, residence, and domicile is required to be included on the petition under section 600A.5, subsection 3, paragraphs *"a"* and *"b"*. However, a "necessary party" does not include a natural parent who has been adjudicated to have raped the other natural parent thereby producing the birth of the child designated in section 600A.5, subsection 3, paragraph *"a"*.

2. Prior to the service of notice on the necessary parties, the juvenile court shall appoint a guardian ad litem for a minor child if the child does not have a guardian or guardian ad litem or if the interests of the guardian or guardian ad litem conflict with the interests of the child. Such guardian ad litem shall be a necessary party under subsection 1 of this section.

3. Notice under this section may be served personally or constructively, as specified under subsections 4, 5, and 6. This notice shall state:

a. The time and place of the hearing on termination of parental rights.

b. A clear statement of the purpose of the action and hearing.

4. A necessary party whose identity and location or last location is known shall be served by notice personally delivered or sent by restricted certified mail, whichever is determined to be the most effective means of notification. Such notice shall be made according to the rules of civil procedure relating to an original notice where not inconsistent with the provisions of this section. Notice by personal delivery shall be served not less than seven days prior to the hearing on termination of parental rights. Notice by restricted certified mail shall be sent not less than fourteen days prior to the hearing on termination of parental rights. A notice by restricted certified mail which is refused by the necessary party being noticed shall be sufficient notice to that party under this section.

5. A necessary party whose identity is known but whose location or last location is unknown may be served by published notice. Such notice shall be served according to the rules of civil procedure relating to an original notice where not inconsistent with the provisions of this section. In addition to the requirements of subsection 3, such notice shall include only the name of the unlocated necessary party being noticed. Notice by publication shall be published once a week for two consecutive weeks, the last publication to be not less than seven days prior to the hearing on termination of parental rights.

6. The juvenile court shall require that every reasonable effort is made to identify, locate, and notice an unidentified and unlocated necessary party. A reasonable effort to notice this necessary party shall not be by published notice which includes the name of any identified necessary party. If the juvenile court reasonably concludes, upon a proper showing, that the identity and location of the necessary party has not been determined, the juvenile court shall, upon proper findings and order entered of record, dispense with notice to this necessary party.

7. Proof of service of notice in the manner prescribed shall be filed with the juvenile court prior to the hearing on termination of parental rights and approved by the juvenile court prior to issuance of a termination order under section 600A.8. [C66, 71, 73, 75,§§232.44, 232.45; 66GA, ch 1229,§6]

Referred to in §600A.4

600.7 Termination hearing — forum non conveniens.

1. The hearing on termination of parental rights shall be conducted in accordance to the provisions of sections 232.27, 232.28, 232.30, and 232.32 and otherwise in accordance with the rules of civil procedure. Such hearing shall be held not less than one week after the child is born.

2. Relevant information, including that contained in reports, studies or examinations and testified to by interested persons, may be admitted into evidence at the hearing and relied upon to the extent of its probative value. When such information is so admitted, the person sponsoring it or testifying shall be subject to both direct and cross-examination by a necessary party.

3. If the juvenile court finds that in the interest of substantial justice the hearing on termination of parental rights should be heard by another juvenile court, it may transfer, stay, or dismiss the proceedings in whole or part on any conditions that are just so long as a good faith attempt is made to notify all necessary parties. [C66, 71, 73, 75,§§232.42, 232.46; 66GA, ch 1229,§7]

600A.8 Grounds for termination. The juvenile court shall base its findings and order under section 600A.9 on clear and convincing proof. The following shall be, either separately or jointly, grounds for ordering termination of parental rights:

1. A parent has signed a release of custody pursuant to section 600A.4 and the release has not been revoked.

2. A parent has petitioned for the parent's termination of parental rights pursuant to section 600A.5.

3. A parent has abandoned the child.

4. A parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent-child relationship.

5. A parent is palpably unfit to be a party to the parent-child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent-child relationship either of which are determined by the juvenile court to be permanently detrimental to the physical or mental health of the child.

6. If, following an adjudication that the child is in need of assistance under chapter 232, reasonable efforts under the direction of the juvenile court have failed to correct the conditions giving rise to this adjudication.

7. A parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has failed to do so without good cause. This subsection shall not be construed so as to state a grounds for termination of parental rights of a noncustodial parent if that parent has not been ordered to or cannot financially contribute to the support of the child or aid in the child's birth. [C66, 71, 73, 75,§232.41; 66GA, ch 1229,§8]

Referred to in §§600A.5, 600A.6

600A.9 Termination findings and order—vacation of order.

1. Subsequent to the hearing on termination of parental rights, the juvenile court shall make a finding of facts and shall order that either:

a. The petition be dismissed;

b. The petition should not be granted at that time, but that conditions indicating that the child is in need of assistance exist, and an order to that effect is issued pursuant to section 232.33; or,

c. The petition be granted. The juvenile court shall appoint a guardian and a custodian or a guardian only. An order issued under this paragraph shall include the finding of facts. This finding shall enumerate the factual basis which indicates that the parent-child relationship should be terminated and shall specify how this finding applies to the grounds upon which the termination is ordered.

2. If an order is issued under subsection 1, paragraph *"c"*, the juvenile court shall retain jurisdiction to change a guardian or custodian and to allow a terminated parent to request vacation of the termination order if:

a. The child is not on placement for adoption or a petition for adoption of the child is not on file; and,

b. The guardian consents in writing to the vacation. The juvenile court shall grant the vacation request if it is in the best interest of the child.

3. A copy of any findings of fact and order made under this section shall be sent by the clerk of the juvenile court to:

a. The department.

b. The petitioner.

c. The parents whose rights have been terminated if they request such copies.

d. Any guardian, custodian, or guardian ad litem of the child. [S13,§254-a21; C24, 27, 31, 35, 39,§3638; C46, 50, 54, 58, 62,§232.22; C66, 71, 73, 75,§§232.47–232.50; 66GA, ch 1229,§9]

Referred to in §600A.8

TITLE XXIX

SOCIAL JUSTICE

CHAPTER 601

STATUS OF WOMEN

601.1 Establishment.
601.2 Term of office.
601.3 Meetings of the commission.
601.4 Objectives of commission.
601.5 Duties.
601.6 Additional authority.
601.7 Access to information.
601.8 Annual report.

601.1 Establishment. There is established a commission on the status of women, hereinafter referred to as the "commission", to consist of twenty-four members, appointed by the governor and representing a cross-section of the citizens of Iowa. The commission shall be nonpartisan, and the members shall be appointed without reference to their political affiliation. The governor shall appoint one of the members to serve as chairman. [C73, 75, §601.1]

601.2 Term of office. One-half of the members appointed to the initial commission shall be designated by the governor to serve two-year terms, and one-half shall be designated by the governor to serve four-year terms. Succeeding appointments shall be for a term of four years. Vacancies in the membership shall be filled for the unexpired term in the same manner as the original appointment. [C73, 75,§601.2]

601.3 Meetings of the commission. The commission shall meet at least four times each year, and shall hold special meetings on the call of the chairman. Ten members shall constitute a quorum, and the concurrence of at least thirteen members shall be necessary for the commission to render a determination or decision. The commission shall adopt rules as it deems necessary. [C73, 75,§601.3]

601.4 Objectives of commission. The commission shall study the changing needs and problems of the women of this state, and develop and recommend new programs and constructive action to the governor and the general assembly, including but not limited to, the following areas:

1. Public and private employment policies and practices.
2. Iowa labor laws.
3. Legal treatment relating to political and civil rights.
4. The family and the employed woman.
5. Expanded programs to help women as wives, mothers, and workers.
6. Women as citizen volunteers.
7. Education. [C73, 75,§601.4]

Referred to in §601.6

601.5 Duties. The commission shall:

1. Serve as a clearinghouse on programs and agencies operating to assist women.
2. Conduct conferences.
3. Co-operate with governmental agencies to assist them in equalizing opportunities between men and women in employment and in expanding women's rights and opportunities.
4. Serve as the central permanent agency for the development of services for women.
5. Co-operate with public and private agencies in joint efforts to study and resolve problems relating to the status of women.
6. Publish and disseminate information relating to women and develop other educational programs.
7. Provide assistance to organized efforts by communities, organizations, associations, and other groups working toward the improvement of women's status. [C73, 75,§601.5]

Referred to in §601.6

601.6 Additional authority. The commission may:

1. Do all things necessary, proper, and expedient in accomplishing the duties listed in section 601.5 and this section.
2. Hold hearings.
3. Enter into contracts, within the limit of funds made available, with individuals, organizations, and institutions for services furthering the objectives of the commission as listed in section 601.4.
4. Seek advice and counsel of informed individuals, or any agricultural, industrial, professional, labor or trade association, or civic group in the accomplishment of the objectives of the commission.
5. Accept grants of money or property from the federal government or any other source, and may upon its own order use this money, property, or other resources to accomplish the objectives of the commission. [C73, 75,§601.6]

601.7 Access to information. The commission shall have access to all nonconfidential records, data, information, and statistics of all departments, boards, commissions, agencies, and institutions of this state, and upon terms which may be mutually agreed upon, have studies and research conducted. [C73, 75, §601.7]

601.8 Annual report. Not later than February 1 of each year the commission shall file a report with the governor and the general assembly of its proceedings for the previous calendar year, and may submit with the report such recommendations pertaining to its affairs as it deems desirous, including recommendations for legislative consideration and other action it deems necessary. [C73, 75,§601.8]

Annual report, §17.4

CHAPTER 601A

CIVIL RIGHTS COMMISSION

Referred to in §§601A.5, 605.6
See also ch 735
See 66GA, ch 1105,§1 for legislative intent in use of appropriation and duties of lawyers in handling cases

601A.1 Citation.
601A.2 Definitions.
601A.3 Commission appointed.
601A.4 Compensation and expenses—rules.
601A.5 Powers and duties.
601A.6 Unfair employment practices.
601A.7 Unfair practices—accommodations or services.
601A.8 Unfair or discriminatory practices—housing.
601A.9 Unfair credit practices.
601A.10 Aiding or abetting.
601A.11 Exceptions.
601A.12 Sex or age provisions not applicable to retirement plans.
601A.13 Promotion or transfer.
601A.14 Complaint—hearing.
601A.15 Judicial review—enforcement.
601A.16 Rule of construction.
601A.17 Local laws may implement this chapter.

601A.1 Citation. This chapter may be known and may be cited as the "Iowa Civil Rights Act of 1965." [C66, 71,§105A.1; C73, 75,§601A.1]

601A.2 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Court"* means the district court in and for the judicial district of the state of Iowa in which the alleged unfair or discriminatory practice occurred or any judge of said court if the court is not in session at that time.

2. *"Person"* means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state of Iowa and all political subdivisions and agencies thereof.

3. *"Employment agency"* means any person undertaking to procure employees or opportunities to work for any other person or any person holding himself or itself to be equipped to do so.

4. *"Labor organization"* means any organization which exists for the purpose in whole or in part of collective bargaining, of dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.

5. *"Employer"* means the state of Iowa or any political subdivision, board, commission, department, institution, or school district thereof, and every other person employing employees within the state.

6. *"Employee"* means any person employed by an employer.

7. *"Unfair practice"* or *"discriminatory practice"* means those practices specified as unfair or discriminatory in sections 601A.6, 601A.7 and 601A.10.

8. *"Commission"* means the Iowa state civil rights commission created by this chapter.

9. *"Commissioner"* means a member of the commission.

10. *"Public accommodation"* means each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee or charge, provided that any place, establishment, or facility that caters or offers services, facilities, or goods to the general public gratuitously shall be deemed a public accommodation if the accommodation receives any substantial governmental support or subsidy. Public accommodation shall not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private, except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the general public for fee or charge or gratuitously, it shall be deemed a public accommodation during such period.

11. *"Disability"* means the physical or mental condition of a person which constitutes a substantial handicap. In reference to employment, under this chapter, "disability" also means the physical or mental condition of a person which constitutes a substantial handicap, but is unrelated to such person's ability to engage in a particular occupation. [C66, 71, §105A.2; C73, 75,§601A.2]

601A.3 Commission appointed. The Iowa state civil rights commission shall consist of seven members appointed by the governor

with the advice and consent of the senate. Appointments shall be made to provide geographical area representation insofar as may be practicable. No more than four members of the commission shall belong to the same political party. Members appointed to the commission shall serve for a term of four years except the initial appointees shall be appointed by the governor to serve as follows:

1. Three members shall serve from the date of appointment until June 30, 1967.

2. Four members shall serve from the date of appointment until June 30, 1969.

Vacancies on the commission shall be filled by the governor by appointment for the unexpired part of the term of the vacancy with the advice and consent of the senate if the general assembly shall be in session. Any appointment filling a vacancy occurring while the general assembly is not in session shall be transmitted to the senate for confirmation within thirty days following the convening of the next session of the general assembly or the appointment shall expire. Any commissioner may be removed from office by the governor for cause.

The governor with the consent of two-thirds of the members of the senate shall appoint a director who shall serve as the executive officer of the commission. [C66, 71, §105A.3; C73, 75,§601A.3; 66GA, ch 1143,§2]

601A.4 Compensation and expenses—rules. Commissioners shall be paid a forty-dollar per diem and shall be reimbursed for actual and necessary expenses incurred while on official commission business. All per diem and expense moneys paid to commissioners shall be paid from funds appropriated to the commission. The commission shall adopt, amend or rescind such rules as shall be necessary for the conduct of its meetings. A quorum shall consist of four commissioners. [C66, 71, §105A.4; C73, 75,§601A.4]

601A.5 Powers and duties. The commission shall have the following powers and duties:

1. To prescribe the duties of a director and appoint and prescribe the duties of such investigators and other employees and agents as the commission shall deem necessary for the enforcement of this chapter.

2. To receive, investigate, and pass upon complaints alleging unfair or discriminatory practices.

3. To investigate and study the existence, character, causes, and extent of discrimination in public accommodations, employment, apprenticeship programs, on-the-job training programs, vocational schools, and housing in this state and to attempt the elimination of such discrimination by education and conciliation.

4. To seek a temporary injunction against a respondent when it appears that a complainant may suffer irreparable injury as a result of an alleged violation of chapter 601A. A temporary injunction may only be issued ex parte, if the complaint filed with the commission alleges discrimination in housing. In all other cases a temporary injunction may be issued only after the respondent has been notified and afforded the opportunity to be heard.

5. To hold hearings upon any complaint made against a person, an employer, an employment agency, or a labor organization, or the employees or members thereof, to subpoena witnesses and compel their attendance at such hearings, to administer oaths and take the testimony of any person under oath, and to compel such person, employer, employment agency, or labor organization, or employees or members thereof to produce for examination any books and papers relating to any matter involved in such complaint. The commission shall issue subpoenas for witnesses in the same manner and for the same purposes on behalf of the respondent upon his request. Such hearings may be held by the commission, by any commissioner, or by any hearing examiner appointed by the commission. If a witness either fails or refuses to obey a subpoena issued by the commission, the commission may petition the district court having jurisdiction for issuance of a subpoena and the court shall in a proper case issue the subpoena. Refusal to obey such subpoena shall be subject to punishment for contempt.

6. To issue such publications and reports of investigations and research as in the judgment of the commission shall tend to promote good will among the various racial, religious, and ethnic groups of the state and which shall tend to minimize or eliminate discrimination in public accommodations, employment, apprenticeship and on-the-job training programs, vocational schools, or housing because of race, creed, color, sex, national origin, religion, ancestry or disability.

7. To prepare and transmit to the governor and to the general assembly from time to time, but not less often than once each year, reports describing its proceedings, investigations, hearings conducted and the outcome thereof, decisions rendered, and the other work performed by the commission.

8. To make recommendations to the general assembly for such further legislation concerning discrimination because of race, creed, color, sex, national origin, religion, ancestry or disability as it may deem necessary and desirable.

9. To co-operate, within the limits of any appropriations made for its operation, with other agencies or organizations, both public and private, whose purposes are consistent with those of this chapter, and in the planning and conducting of programs designed to eliminate racial, religious, cultural, and intergroup tensions.

10. To adopt, publish, amend, and rescind regulations consistent with and necessary for the enforcement of this chapter.

11. To receive, administer, dispense and account for any funds that may be voluntarily

contributed to the commission and any grants that may be awarded the commission for furthering the purposes of this chapter with the approval of the executive council.

12. To defer a complaint to a local civil rights commission under commission rules promulgated pursuant to chapter 17A. [C66, 71,§105A.5; C73, 75,§601A.5; 66GA, ch 1143,§3]

601A.6 Unfair employment practices.

1. It shall be an unfair or discriminatory practice for any:

a. Person to refuse to hire, accept, register, classify, or refer for employment, to discharge any employee, or to otherwise discriminate in employment against any applicant for employment or any employee because of the age, race, creed, color, sex, national origin, religion or disability of such applicant or employee, unless based upon the nature of the occupation. If a disabled person is qualified to perform a particular occupation, by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminating practices prohibited by this subsection.

b. Labor organization or the employees, agents or members thereof to refuse to admit to membership any applicant, to expel any member, or to otherwise discriminate against any applicant for membership or any member in the privileges, rights, or benefits of such membership because of the age, race, creed, color, sex, national origin, religion or disability of such applicant or member.

c. Employer, employment agency, labor organization, or the employees, agents, or members thereof to directly or indirectly advertise or in any other manner indicate or publicize that individuals of any particular age, race, creed, color, sex, national origin, religion or disability are unwelcome, objectionable, not acceptable, or not solicited for employment or membership unless based on the nature of the occupation. If a disabled person is qualified to perform a particular occupation by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminating practices prohibited by this subsection.

An employer, employment agency, or their employees, servants or agents may offer employment or advertise for employment to only the disabled, when other applicants have available to them, other employment compatible with their ability which would not be available to the disabled because of their handicap. Any such employment or offer of employment shall not discriminate among the disabled on the basis of race, color, creed, sex or national origin.

2. This section shall not apply to:

a. Any employer who regularly employs less than four individuals. For purposes of this subsection, individuals who are members of the employer's family shall not be counted as employees.

b. The employment of individuals for work within the home of the employer if the employer or members of his family reside therein during such employment.

c. The employment of individuals to render personal service to the person of the employer or members of his family.

d. Any bona fide religious institution or its educational facility, association, corporation or society with respect to any qualifications for employment based on religion when such qualifications are related to a bona fide religious purpose. [C66, 71,§105A.7; C73,§601A.7; C75, §601A.6]

Referred to in §601A.2(7)

601A.7 Unfair practices — accommodations or services.

1. It shall be an unfair or discriminatory practice for any owner, lessee, sublessee, proprietor, manager, or superintendent of any public accommodation or any agent or employee thereof:

a. To refuse or deny to any person because of race, creed, color, sex, national origin, religion or disability the accommodations, advantages, facilities, services, or privileges thereof, or otherwise to discriminate against any person because of race, creed, color, sex, national origin, religion or disability in the furnishing of such accommodations, advantages, facilities, services, or privileges.

b. To directly or indirectly advertise or in any other manner indicate or publicize that the patronage of persons of any particular race, creed, color, sex, national origin, religion or disability is unwelcome, objectionable, not acceptable, or not solicited.

2. This section shall not apply to:

a. Any bona fide religious institution with respect to any qualifications the institution may impose based on religion when such qualifications are related to a bona fide religious purpose.

b. The rental or leasing to transient individuals of less than six rooms within a single housing accommodation by the occupant or owner of such housing accommodation if the occupant or owner or members of his family reside therein. [C97,§5008; C24, 27, 31, 35, 39, §13251; C46, 50, 54, 58,§735.1; C66, 71,§105A.6; C73,§601A.6; C75,§601A.7]

Referred to in §601A.2(7)

601A.8 Unfair or discriminatory practices —housing. It shall be an unfair or discriminatory practice for any owner, or person acting for an owner, of rights to housing or real property, with or without compensation, including but not limited to persons licensed as real estate brokers or salesmen, attorneys, auctioneers, agents or representatives by power of attorney or appointment, or any person acting under court order, deed of trust, or will:

1. To refuse to sell, rent, lease, assign or sublease any real property or housing accommodation or part, portion or interest therein, to any person because of the race, color, creed,

sex, religion, national origin or disability of such person.

2. To discriminate against any person because of his race, color, creed, sex, religion, national origin or disability, in the terms, conditions or privileges of the sale, rental, lease assignment or sublease of any real property or housing accommodation or any part, portion or interest therein.

3. To directly or indirectly advertise, or in any other manner indicate or publicize that the purchase, rental, lease, assignment, or sublease of any real property or housing accommodation or any part, portion or interest therein, by persons of any particular race, color, creed, sex, religion, national origin or disability is unwelcome, objectionable, not acceptable or not solicited. [C71,§105A.13; C73,§601A.13; C75,§601A.8]

Referred to in §601A.11

601A.9 Unfair credit practices.

1. A creditor shall not refuse to enter into a consumer credit transaction or impose finance charges or other terms or conditions more onerous than those regularly extended by that creditor to consumers of similar economic backgrounds because of age, color, creed, national origin, race, religion, marital status, sex, or physical disability.

2. A person authorized or licensed to do business in this state pursuant to chapter 524, 533, 534, 536, or 536A shall not refuse to loan or extend credit or impose terms or conditions more onerous than those regularly extended to persons of similar economic backgrounds because of age, color, creed, national origin, race, religion, marital status, sex or physical disability.

3. Refusal by a creditor to offer credit life or health and accident insurance based upon the age or physical disability of the consumer shall not violate the provisions of this section provided such denial is based solely upon bona fide underwriting considerations not prohibited by title XX.

The provisions of this section shall not be construed by negative implication or otherwise to narrow or restrict any other provisions of this chapter. [C75,§601A.9]

601A.10 Aiding or abetting. It shall be an unfair or discriminatory practice for:

1. Any person to intentionally aid, abet, compel, or coerce another person to engage in any of the practices declared unfair or discriminatory by this chapter.

2. Any person to discriminate against another person in any of the rights protected against discrimination on the basis of age, race, creed, color, sex, national origin, religion or disability by this chapter because such person has lawfully opposed any practice forbidden under this chapter, obeys the provisions of this chapter, or has filed a complaint, testified, or assisted in any proceeding under this chapter. An employer, employment agency, or their employees, servants or agents may offer employment or advertise for employment to only the disabled, when other applicants have available to them other employment compatible with their ability which would not be available to the disabled because of their handicap. Any such employment or offer of employment shall not discriminate among the disabled on the basis of race, color, creed, sex or national origin. [C66, 71,§105A.8; C73,§601A.8; C75,§601A.10]

Referred to in §601A.2(7)

601A.11 Exceptions. The provisions of section 601A.8 shall not apply to:

1. Any bona fide religious institution with respect to any qualifications it may impose based on religion, when such qualifications are related to a bona fide religious purpose.

2. The rental or leasing of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of his family reside in one of such housing accommodations.

3. The rental or leasing of less than six rooms within a single housing accommodation by the occupant or owner of such housing accommodation, if he or members of his family reside therein.

4. Restrictions based on sex on the rental or leasing of housing accommodations by nonprofit corporations.

5. The rental or leasing of a housing accommodation within which residents of both sexes must share a common bathroom facility on the same floor of the building. [C71,§105A.14; C73, §601A.14; C75,§601A.11]

601A.12 Sex or age provisions not applicable to retirement plans. The provisions of this chapter relating to discrimination because of sex or age shall not be construed to apply to any retirement plan or benefit system of any employer unless such plan or system is a mere subterfuge adopted for the purpose of evading the provisions of this chapter. [C71, §105A.15; C73,§601A.15; C75,§601A.12]

601A.13 Promotion or transfer. After a handicapped individual is employed, the employer shall not be required under this chapter to promote or transfer such handicapped person to another job or occupation, unless, prior to such transfer, such handicapped person by training or experience is qualified for such job or occupation. Any collective bargaining agreement between an employer and labor organization shall contain this section as a part of such agreement. [C73,§601A.16; C75, §601A.13]

601A.14 Complaint—hearing.

1. Any person claiming to be aggrieved by a discriminatory or unfair practice may, by himself or his attorney, make, sign, and file with the commission a verified, written complaint in triplicate which shall state the name and

address of the person, employer, employment agency, or labor organization alleged to have committed the discriminatory or unfair practice of which complained, shall set forth the particulars thereof, and shall contain such other information as may be required by the commission. The commission, a commissioner, or the attorney general may in like manner make, sign, and file such complaint.

In an action the plaintiff may recover, if he shows that there was no reasonable cause to believe the ground upon which the complaint was made, the actual damages sustained and reasonable attorney fees to be fixed by the court.

2. Any place of public accommodation, employer, labor organization, or other person who has any employees or members who refuse or threaten to refuse to comply with the provisions of this chapter may file with the commission a verified written complaint in triplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

3. After the filing of a verified complaint, a true copy thereof shall be promptly served by registered mail to the person against whom the complaint is filed. Then a commissioner or a duly authorized member of the commission's staff shall make a prompt investigation thereof and if such investigating official shall determine that probable cause exists for crediting the allegations of the complaint, the investigating official shall promptly endeavor to eliminate such discriminatory or unfair practice by conference, conciliation, and persuasion.

4. The members of the commission and its staff shall not disclose the filing of a complaint, the information gathered during the investigation, or the endeavors to eliminate such discriminatory or unfair practice by conference, conciliation, and persuasion, unless such disclosure is made in connection with the conduct of such investigation.

5. In case of failure to satisfactorily settle a complaint by conference, conciliation, and persuasion, or in advance thereof if in the opinion of the investigating official circumstances so warrant, the official may issue and cause to be served a written notice together with a copy of such complaint, as the same may have been amended, requiring the person, employer, employment agency, or labor organization named in such complaint, hereafter referred to as respondent, to answer the charges of such complaint in writing within ten days after the date of such notice or within such extended time as the investigating official may allow.

6. When the investigating official is satisfied that further endeavor to settle a complaint by conference, conciliation, and persuasion shall be futile, the official shall report the same to the commission. If the commission determines that the circumstances warrant, it shall issue and cause to be served a written notice requiring the respondent to answer the charges of such complaint at a hearing before the commission, a commissioner, or such other person designated by the commission to conduct the hearing, hereafter referred to as hearing examiner, and at a time and place to be specified in such notice.

7. The case in support of such complaint shall be presented at the hearing by one of the commission's attorneys or agents. The investigating official shall not participate in the hearing except as a witness nor shall he participate in the deliberations of the commission in such case.

8. The respondent may file a written verified answer to the complaint, and may appear at the hearing in person, with or without counsel, and submit testimony. In the discretion of the hearing examiner, a complainant may be allowed to intervene and present testimony in person or by counsel.

9. When a respondent has failed to answer a complaint at a hearing as provided by this section the commission may enter his default. For good cause shown, the commission may set aside an entry of default within ten days after the date of such entry. If the respondent is in default, the commission may proceed to hear testimony adduced upon behalf of the complainant. After hearing such testimony, the commission may enter such order as in its opinion the evidence warrants.

10. The commission or the complainant shall have the power to reasonably and fairly amend any complaint and the respondent shall have like power to amend his answer.

11. The commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity but the right of cross-examination shall be preserved. Complainant shall bear the burden of proving the allegations in his complaint. The testimony taken at a hearing shall be under oath, reported, and, if ordered by the commission, transcribed.

12. If, upon taking into consideration all the evidence at a hearing, the commission shall find that a respondent has engaged in or is engaging in, any discriminatory or unfair practice as defined in this chapter, the commission shall state its findings of fact and shall issue and cause to be served upon such respondent an order requiring such respondent to cease and desist from such discriminatory or unfair practice and to take such affirmative action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without back pay, the referring of applicants for employment by any respondent employment agency, the admittance or restoration to membership by any respondent labor organization, the admission to or continuation in enrollment in an apprenticeship program, on-the-job training program, the posting of notices, and the making of reports as to the manner of compliance, as in the judgment of the commission shall effectuate the purposes of this chapter.

13. If, upon taking into consideration all of the evidence at a hearing, the commission shall

find that a respondent has not engaged in any such discriminatory or unfair practice, the commission shall state its findings of fact and shall issue and cause to be served an order on the complainant and the respondent dismissing the complaint.

14. The commission shall establish rules to govern, expedite, and effectuate the procedures established by this chapter and its own actions thereunder.

15. Any verified complaint filed under this chapter shall be so filed within one hundred twenty days after the alleged discriminatory or unfair practice occurred. [C66, 71,§105A.9; C73,§601A.9; C75,§601A.14]

Referred to in §601A.15(10)

601A.15 Judicial review—enforcement.

1. Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petition for judicial review may be filed in the district court in which an enforcement proceeding under subsection 2 may be brought.

2. The commission may obtain an order of court for the enforcement of commission orders in a proceeding as provided in this section. Such an enforcement proceeding shall be brought in the district court of the district in the county in which the alleged discriminatory or unfair practice which is the subject of the commission's order was committed, or in which any respondent required in the order to cease or desist from a discriminatory or unfair practice or to take other affirmative action, resides, or transacts business.

3. Such an enforcement proceeding shall be initiated by the filing of a petition in such court and the service of a copy thereof upon the respondent. Thereupon the commission shall file with the court a transcript of the record of the hearing before it. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified, or setting aside the order of the commission, in whole or in part.

4. An objection that has not been urged before the commission shall not be considered by the court in an enforcement proceeding, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

5. Any party to the enforcement proceeding may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereof, providing such party shall show reasonable grounds for the failure to adduce such evidence before the commission.

6. In the enforcement proceeding the court shall determine its order on the same basis as it would in a proceeding reviewing commission action under section 17A.19, subsection 8.

7. The commission's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the commission's orders.

8. The commission may appear in court by its own attorney.

9. Petitions filed under this section shall be heard expeditiously and determined upon the transcript filed without requirement for printing.

10. If no proceeding to obtain judicial review is instituted within thirty days from the service of an order of the commission under section 601A.14, the commission may obtain an order of the court for the enforcement of such order upon showing that respondent is subject to the jurisdiction of the commission and resides or transacts business within the county in which the petition for enforcement is brought. [C66, 71,§105A.10; C73,§601A.10; C75, §601A.15]

601A.16 Rule of construction. This chapter shall be construed broadly to effectuate its purposes. [C66, 71,§105A.11; C73,§601A.11; C75, §601A.16]

601A.17 Local laws may implement this chapter. Nothing contained in any provision of this chapter shall be construed as indicating an intent on the part of the general assembly to occupy the field in which this chapter operates to the exclusion of local laws not inconsistent with this chapter that deal with the same subject matter. [C66, 71,§105A.12; C73,§601A.12; C75,§601A.17]

Constitutionality, 61GA, ch 121,§13

CHAPTER 601B

COMMISSION FOR THE BLIND

601B.1 Membership.
601B.2 Tenure.
601B.3 Officers—assistants.
601B.4 Compensation and expenses.
601B.5 Bureau of information and library services.
601B.6 Duties.
601B.7 Federal aid—conditions excluded.

601B.1 Membership. The Iowa commission for the blind is hereby created. Said commission shall consist of three members to be appointed by the governor with the approval of

two-thirds of the members of the senate. [C27, 31, 35,§1541-a1; C39,§**1541.1**; C46, 50, 54, 58, 62, 66, 71,§93.1; C73, 75,§601B.1]

601B.2 Tenure. Prior to July 1 of each year, the governor shall appoint a member of said board to succeed the member whose term of office expires on said date. All such appointees shall serve for a period of three years from July 1 of the year of appointment. No more than two members shall be from the same political party. [C27, 31, 35,§1541-a2; C39, §**1541.2**; C46, 50, 54, 58, 62, 66, 71,§93.2; C73, 75,§601B.2]

Terms of first appointees, 60GA, ch 94,§2

601B.3 Officers—assistants. The commission shall elect its own officers and shall employ a director and such assistants as may be necessary to carry out the provisions of this chapter, and hold such meetings as it may determine. [C27, 31, 35,§1541-a3; C39,§**1541.3**; C46, 50, 54, 58, 62, 66, 71,§93.3; C73, 75,§601B.3]

601B.4 Compensation and expenses. The members of the commission shall be paid a forty-dollar per diem and shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the commission. All per diem and expense moneys paid to members shall be paid from funds appropriated to the commission. [C27, 31, 35,§1541-a4; C39,§**1541.4**; C46, 50, 54, 58, 62, 66, 71,§93.4; C73, 75,§601B.4]

601B.5 Bureau of information and library services. The commission for the blind may provide library services to blind and physically handicapped persons and shall act as a bureau of information and industrial aid for the blind, such as assisting the blind in finding employment, teaching them industries, giving them such assistance as may be necessary or advisable in helping the adult blind in marketing their products. [C27, 31, 35,§1541-a5; C39, §**1541.5**; C46, 50, 54, 58, 62, 66, 71,§93.5; C73, 75,§601B.5]

601B.6 Duties. The commission shall:

1. Prepare and maintain a complete register of the blind of the state which shall describe the condition, cause of blindness, capacity for education and industrial training, and such other facts as the commission deems of value.

2. Assist in marketing of products of blind workers of the state.

3. Ameliorate the condition of the blind by promoting visits to them in their homes for the purpose of instruction and by such other lawful method as the commission deems expedient.

4. Make inquiries concerning the causes of blindness to ascertain what portion of such cases are preventable and co-operate with the other organized agents of the state in the adoption and enforcement of proper preventive measures.

5. Provide for suitable vocational training whenever the commission shall deem it advisable and necessary. The commission may establish workshops for the employment of the blind, paying suitable wages for work under such employment. The commission may provide or pay for, during their training period, the temporary lodging and support of persons receiving vocational training. The commission shall have authority as provided in this chapter to use any receipts or earnings that accrue from the operation of workshops, but a detailed statement of receipts or earnings and expenditures shall be made monthly to the state comptroller.

6. Discourage begging, either directly or indirectly, on the part of the blind within the limits of the state.

7. Make an annual report to the governor of its proceedings for each fiscal year. It shall embody therein a properly classified and tabulated statement of its estimates for the ensuing year with its own opinion of the necessity or expediency of appropriations in accordance with such estimates. Such annual report shall also present a concise review of the work of the commission for the preceding year with such suggestions and recommendations for improving the condition of the blind as may be expedient.

8. Perform all other duties required of it by law.

9. Establish, manage and control a special training, orientation and adjustment center or centers for the blind. Training in the centers shall be limited to persons who are sixteen years of age or older, and the commission shall not provide or cause to be provided any academic education or training to children under the age of sixteen except that the commission may provide library services to these children. The commission shall have the power to provide for the maintenance, upkeep, repair, and alteration of the buildings and grounds designated as centers for the blind. Such power shall include the power to spend such moneys as may be appropriated to the commission by the state for the purpose of carrying out the provisions of this chapter. The director of the commission for the blind shall have the power to employ the necessary personnel to maintain and operate the center or centers, at salaries fixed by the director with the approval of the commission.

10. Establish and maintain offices for the commission.

11. Accept gifts, grants, devises or bequests of real or personal property from any source for the use and purposes of the commission.

12. Nonresidents may be admitted to Iowa centers for the blind if their presence would not be prejudicial to the interests of residents, and upon such terms as may be fixed by the commission. [C27, 31, 35,§1541-a6; C39,§**1541.6**; C46, 50, 54, 58, 62, 66, 71,§93.6; C73, 75,§601B.6]

Referred to in §§18.3, 18.8, 18.12
Annual report, §17.4

601B.7 Federal aid — conditions excluded. The Iowa commission for the blind is hereby

authorized to accept financial aid from the government of the United States for the purpose of assisting in carrying out rehabilitation and physical restoration of the blind and to provide library services to the blind and physically handicapped, and shall have the same powers and duties for that purpose, as provided the state board for vocational education in chapter 259.

No contribution or grant shall be received or accepted if any condition is attached as to its use or administration other than that it be used for assistance to the blind as provided in this section. [C46, 50, 54, 58, 62, 66, 71,§93.7; C73, 75,§601B.7]

CHAPTER 601C

OPERATION OF FOOD SERVICE IN PUBLIC BUILDINGS

601C.1 Public policy.
601C.2 Definitions.
601C.3 Agreement with commission for blind.
601C.4 Other public buildings.

601C.1 Public policy. It is the policy of this state to provide maximum opportunities for training blind persons, helping them to become self-supporting and demonstrating their capabilities. This chapter shall be construed to carry out this policy. [C71,§93C.1; C73, 75,§601C.1]

601C.2 Definitions. For the purposes of this chapter:

1. *"Public office building"* means the state capitol, all county courthouses, all city halls, and all buildings used primarily for governmental offices of the state or any county or city. It does not include public schools or buildings at institutions of the state board of regents or the state department of social services.

2. *"Food service"* includes restaurant, cafeteria, snack bar, vending machines for food and beverages, and goods and services customarily offered in connection with any of the foregoing. It does not include goods and services offered by a veteran's newsstand under section 19.16 or section 332.5. [C71,§93C.2; C73, 75,§601C.2]

601C.3 Agreement with commission for blind. A governmental agency which proposes to operate or continue a food service in a public office building shall first attempt in good faith to make an agreement for the commission for the blind to operate the food service without payment of rent. The governmental agency shall not offer or grant to any other party a contract or concession to operate such food service unless the governmental agency determines in good faith that the commission for the blind is not willing to or cannot satisfactorily provide such food service. This chapter shall not impair any valid contract existing on July 1, 1969, and shall not preclude renegotiation of such contract on the same terms and with the same parties. [C71, §93C.3; C73, 75,§601C.3]

Referred to in §601C.4

601C.4 Other public buildings. With respect to all state, county, municipal, and school buildings which are not subject to section 601C.3, the governmental agency in charge of the building shall consider allowing the commission for the blind to operate any existing or proposed food service in the building, and shall discuss such operation with the commission for the blind upon its request. [C71, §93C.4; C73, 75,§601C.4]

CHAPTER 601D

RIGHTS OF BLIND, PARTIALLY BLIND AND PHYSICALLY DISABLED

601D.1 Participation by handicapped.
601D.2 Public employment.
601D.3 Free use of public facilities.
601D.4 Accommodations.
601D.5 Use of guide dogs.
601D.6 Failure to use cane or dog not negligence.
601D.7 Penalty for denying rights.
601D.8 White cane safety day.
601D.9 Curb cutouts and ramps for handicapped.

601D.1 Participation by handicapped. It is the policy of this state to encourage and enable the blind, the partially blind and the physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. [C71,§93B.1; C73, 75,§601D.1]

601D.2 Public employment. The blind, the partially blind and the physically disabled shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds, on the same terms and conditions as

the able bodied, unless it is shown that the particular disability prevents the performance of the work required. [C71,§93B.2; C73, 75, §601D.2]

601D.3 Free use of public facilities. The blind, the partially blind and the physically disabled have the same right as the able bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public elevators, public facilities and other public places. [C62, 66,§351.31; C71, §93B.3; C73, 75,§601D.3]

Referred to in §601D.5

601D.4 Accommodations. The blind, the partially blind and the physically disabled are entitled to full and equal accommodations, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, other public conveyances or modes of transportation, hotels, lodging places, eating places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. [C71,§93B.4; C73, 75, §601D.4]

Referred to in §601D.5

601D.5 Use of guide dogs. Every blind or partially blind person shall have the right to be accompanied by a guide dog, under control and especially trained for the purpose, in any of the places listed in sections 601D.3 and 601D.4 without being required to make any additional payment for the guide dog. He shall be liable for any damage done to the premises or facilities by such dog. [C62, 66,§351.30; C71, §93B.5; C73, 75,§601D.5]

Referred to in §170.19

601D.6 Failure to use cane or dog not negligence. A blind or partially blind pedestrian not carrying a cane or using a guide dog in any place shall have all of the rights and privileges conferred by law upon other persons, and the failure of a blind or partially blind pedestrian to carry a cane or to use a guide dog in any place shall not be held to constitute or be evidence of contributory negligence. [C71,§93B.6; C73, 75,§601D.6]

601D.7 Penalty for denying rights. Any person, firm, or corporation, or the agent of any person, firm, or corporation, who denies or interferes with the rights of any person under this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than two hundred dollars. [C62, 66,§351.32; C71,§93B.7; C73, 75,§601D.7]

601D.8 White cane safety day. The governor shall annually take suitable public notice of October 15 as white cane safety day. He shall issue a proclamation commenting upon the significance of the white cane; calling upon the citizens to observe the provisions of this chapter and sections 321.332 and 321.333 and to take precautions necessary for the safety of the disabled; reminding the citizens of the policies herein declared and urging the citizens to co-operate in giving effect to them; and emphasizing the need of the citizens to be aware of the presence of disabled persons in the community and to offer assistance to disabled persons upon appropriate occasions. [C71, §93B.8; C73, 75,§601D.8]

601D.9 Curb cutouts and ramps for handicapped.

1. Curbs constructed along any public street in this state, when the street is paralleled or intersected by sidewalks, or when city ordinances or other lawful regulations will require the construction of sidewalks in parallel to or intersecting the street, shall be constructed with not less than two curb cuts or ramps per lineal block which shall be located on or near the crosswalks at intersections. Each curb cut or ramp shall be at least thirty inches wide, shall be sloped at not greater than one inch of rise per twelve inches lineal distance, except that a slope no greater than one inch of rise per eight inches lineal distance may be used where necessary, shall have a nonskid surface, and shall otherwise be so constructed as to allow reasonable access to the crosswalk for physically handicapped persons using the sidewalk.

2. The requirements of subsection 1 shall apply after January 1, 1975 to all new curbs constructed and to all replacement curbs constructed at any point along a public street which gives reasonable access to a crosswalk. [C75,§601D.9]

CHAPTER 601E

DISTRESS FLAGS AND IDENTIFICATION DEVICES FOR HANDICAPPED

601E.1 Definitions.
601E.2 Disabled motor vehicle—display of flag.
601E.3 Application—issuance of flag.
601E.4 Return of flag.
601E.5 Penalty.
601E.6 Special identification devices for handicapped persons.

601E.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Handicapped or paraplegic person"* means:

a. Any person who has impairments that, for all practical purposes, confine him to a wheelchair.

b. Any person who has impairments that cause him to walk with difficulty and insecurity including, but not limited to, a person using braces or crutches, amputees, arthritics, spastics, and any person with a pulmonary or cardiac problem who is semiambulatory.

2. *"Distress flag"* means a white flag made of reflective material, seven and one-half inches in width and thirteen inches in length, with an irregular one-half inch red border and a red letter "H" centered thereon, approved and issued by the director of transportation. [C73, 75,§601E.1; 66GA, ch 67,§65]

Referred to in §601E.3

601E.2 Disabled motor vehicle—display of flag. A person whose motor vehicle is disabled, may use or display a distress flag as a distress signal if he qualifies as a handicapped or paraplegic person and has been issued a permit and a distress flag as provided in section 601E.3. [C73, 75,§601E.2]

Referred to in §601E.3

601E.3 Application—issuance of flag. Any person desiring a distress flag for use as provided in section 601E.2 shall apply to the department of transportation, upon an application form furnished by the department, providing his name, address, date of birth, a physician's signature attesting to the disability and information on the type of physical apparatus needed to operate a motor vehicle, if any, and information relating to his handicap required by the director of transportation. Upon determination by the director that the applicant qualifies as a handicapped or paraplegic person as defined in section 601E.1 and the payment of a fee, the director shall issue the applicant a permit to use a distress flag. The director shall determine the fee for the distress flag except that the fee shall not exceed the cost of the flag to the department. Each distress flag shall be numbered and in the event of its loss or destruction, the director may issue a duplicate upon payment of the fee. The director shall maintain a record of all applicants and those qualified applicants receiving permits and distress flags. [C73, 75,§601E.3; 66GA, ch 67,§65]

Referred to in §601E.2

601E.4 Return of flag. If a person who has been issued a permit and distress flag under this chapter becomes disqualified as a handicapped or paraplegic person, he shall return the permit and the distress flag to the department. [C73, 75,§601E.4]

601E.5 Penalty. Any person who is not qualified as a handicapped or paraplegic person and uses a distress flag as provided in this chapter or for any other purpose is guilty of a misdemeanor and punishable by a fine of not more than one hundred dollars or thirty days in jail. [C73, 75,§601E.5]

601E.6 Special identification devices for handicapped persons.

1. A special identification device bearing the international symbol of accessibility may be displayed in a motor vehicle being used, either as operator or passenger, by an individual who is confined to a wheelchair or is otherwise so physically handicapped that he or she has significant difficulty or insecurity in walking. The devices shall be of uniform design and fabricated of durable material, suitable for display from within the passenger compartment of a motor vehicle, and readily transferable from one vehicle to another. They shall be acquired by the department and sold at cost to persons who are physically handicapped to the extent described in this section, upon application on forms prescribed by the department. Before delivering a special identification device to a purchaser, the department shall permanently affix to the device a unique number which may be used by the department to identify that individual purchaser.

2. A city or other political subdivision which provides on-street parking areas or off-street parking facilities shall in all cases where so required by chapters 103A and 104A, and may in all other cases, set aside special parking places designated only for parking motor vehicles displaying a special identification device issued under this section. The use of parking spaces which are so designated and are located on public property by a motor vehicle not displaying such a device, or by a motor vehicle displaying such a device but not being used as operator or passenger by the individual to whom the device has been issued or another individual physically handicapped to the extent described by this section, shall be a misdemeanor for which a fine not to exceed one hundred dollars may be imposed. Proof of conviction of three or more such violations involving improper use of the same special identification device shall be grounds for revocation by the department of the holder's privilege to use the device.

3. The department shall promulgate rules:

a. Establishing procedure for applying to the department for issuance of a special identification device under this section.

b. Requiring persons issued special identification devices to furnish evidence at appropriate intervals that they remain physically handicapped to the extent described by subsection 1.

c. Establishing advisory standards for dimensions and general location of parking spaces, to be considered by cities and other political subdivisions which elect to proceed under subsection 2. The advisory standards promulgated under this paragraph shall not unnecessarily duplicate and shall not conflict with standards promulgated pursuant to chapters 103A and 104A.

d. Governing the manner in which special identification devices are to be displayed in motor vehicles parked in spaces designated under subsection 2. [66GA, ch 1231,§1]

CHAPTER 601F

GOVERNOR'S COMMITTEE ON EMPLOYMENT OF HANDICAPPED

Federal funds appropriated, 65GA, ch 75,§3

601F.1 Committee established.
601F.2 Membership.
601F.3 Ex officio members.
601F.4 Term.
601F.5 Officers.
601F.6 Duties.
601F.7 Executive secretary.
601F.8 Gifts, grants or donations.

601F.1 Committee established. There is hereby established a committee to be known as the "Governor's Committee on Employment of the Handicapped". [C66, 71,§93A.1; C73, 75,§601F.1]

601F.2 Membership. The committee shall be composed of a minimum of twenty-four members appointed by the governor and such additional members as the governor may appoint. Insofar as practicable, the committee shall consist of representatives of industry, labor, business, agriculture, federal, state, and local government, and representatives of religious, charitable, fraternal, civic, educational, medical, legal, veteran, welfare, women's, and other professional groups and organizations. Members shall be appointed representing every geographic center and employment area of the state. [C66, 71,§93A.2; C73, 75,§601F.2]

601F.3 Ex officio members. The following shall serve as ex officio members of the committee:

1. The commissioner of public health.
2. The commissioner of the department of social services and any directors of his department so assigned by him.
3. The state superintendent of public instruction.
4. The director of vocational rehabilitation.
5. The director of the commission for the blind.
6. The commissioner of labor.
7. The industrial commissioner.
8. The director of the Iowa department of job service.
9. A member of the state board of vocational education designated by the governor. [C66, 71,§93A.3; C73, 75,§601F.3; 66GA, ch 1068,§37]

601F.4 Term. Members of the committee appointed by the governor shall serve for a term of two years except that of the members appointed as of July 4, 1965, one-half shall serve until June 30, 1966, and one-half shall serve until June 30, 1967. Vacancies on the committee shall be filled for the remainder of the term of the original appointment. Members whose terms expire may be reappointed. [C66, 71,§93A.4; C73, 75,§601F.4]

601F.5 Officers. The governor shall appoint a committee chairman and a vice-chairman and such other officers as he deems necessary. Such officers shall serve until their successors are appointed and qualified. Members of the committee shall receive no compensation for their services. [C66, 71,§93A.5; C73, 75, §601F.5]

601F.6 Duties. The committee shall:

1. Carry on a continuing program to promote the employment of handicapped persons.
2. Co-operate with all public and private agencies interested in the employment of the handicapped.
3. Co-operate with all agencies responsible for or interested in the rehabilitation and placement of the handicapped.
4. Encourage the organization of committees at the community level and work closely with such committees in promoting the employment of the handicapped.
5. Assist in developing employer acceptance of qualified handicapped workers.
6. Inform handicapped persons of specific facilities available in seeking employment.
7. Conduct such educational programs as members deem necessary.
8. Report annually to the governor and general assembly on committee activities and submit any recommendations believed necessary in promoting the employment of handicapped persons. [C66, 71,§93A.6; C73, 75, §601F.6]

601F.7 Executive secretary. Committee officers may appoint an executive secretary and designate the duties and obligations of the position. Any person so employed may be the employee of another agency of state government appointed with the consent of the executive officer of such agency. The officers may appoint such other personnel as may be necessary for the efficient performance of the duties prescribed by this chapter. [C66, 71,§93A.7; C73, 75,§601F.7]

601F.8 Gifts, grants or donations. The committee is authorized to receive any gifts, grants, or donations made for any of the purposes of its program and to disburse and administer the same in accordance with the terms thereof. [C66, 71,§93A.8; C73, 75,§601F.8]

Appropriation, 61GA, ch 103,§9

CHAPTER 601G

CITIZENS' AIDE

(Ombudsman)

601G.1 Definitions.
601G.2 Office established.
601G.3 Appointment—vacancy.
601G.4 Citizen of United States and resident of Iowa.
601G.5 Term—removal.
601G.6 Deputy—assistant for penal agencies.
601G.7 Prohibited activities.
601G.8 Closed files.
601G.9 Powers.
601G.10 No charge for services.
601G.11 Subjects for investigations.
601G.12 Complaints investigated.
601G.13 No investigation—notice to complainant.
601G.14 Institutionalized complainants.
601G.15 Reports critical of agency or officer.
601G.16 Recommendations to agency.
601G.17 Publication of conclusions.
601G.18 Report to general assembly.
601G.19 Disciplinary action recommended.
601G.20 Immunities.
601G.21 Witnesses.
601G.22 Penalties.
601G.23 Citation.

601G.1 Definitions. As used in this chapter:

1. *"Person"* means an individual, aggregate of individuals, corporation, partnership, or unincorporated association.

2. *"Agency"* means all governmental entities, departments, boards, commissions, councils or institutions, and any officer, employee or member thereof acting or purporting to act in the exercise of his official duties, but it does not include:

a. Any court or judge or appurtenant judicial staff.

b. The members, committees, or permanent or temporary staffs of the Iowa general assembly.

c. The governor of Iowa or his personal staff.

d. Any instrumentality formed pursuant to an interstate compact and answerable to more than one state.

3. *"Officer"* means any officer of an agency.

4. *"Employee"* means any employee of an agency.

5. *"Administrative action"* means any policy or action taken by an agency or failure to act pursuant to law. [C73, 75,§601G.1]

601G.2 Office established. The office of citizens' aide is established. [C73, 75,§601G.2]

601G.3 Appointment — vacancy. The citizens' aide shall be appointed by the legislative council with the approval and confirmation of a constitutional majority of the senate and with the approval and confirmation of a constitutional majority of the house of representatives. The legislative council shall fill a vacancy in this office in the same manner as the original appointment. If the appointment or vacancy occurs while the general assembly is not in session, such appointment shall be reported to the senate and the house of representatives within thirty days of their convening at their next regular session for approval and confirmation.

The citizens' aide shall employ and supervise all employees under his direction in such positions and at such salaries as shall be authorized by the legislative council. [C73, 75, §601G.3]

601G.4 Citizen of United States and resident of Iowa. The citizens' aide shall be a citizen of the United States and a resident of the state of Iowa, and shall be qualified to analyze problems of law, administration and public policy. [C73, 75,§601G.4]

601G.5 Term—removal. The citizens' aide shall hold office for four years from the first day in July of the year of his approval by the senate and the house of representatives, and until his successor is appointed by the legislative council, unless he can no longer perform his official duties, or is removed from office. The citizens' aide may at any time be removed from office by constitutional majority vote of the two houses of the general assembly or as provided by chapter 66. If a vacancy occurs in the office of citizens' aide, the deputy citizens' aide shall act as citizens' aide until the vacancy is filled by the legislative council. [C73, 75,§601G.5]

601G.6 Deputy—assistant for penal agencies. The citizens' aide shall designate one of the members of his staff as the deputy citizens' aide, with authority to act as citizens' aide when the citizens' aide is absent from the state or becomes disabled. The citizens' aide may delegate to members of the staff any of his authority or duties except the duty of formally making recommendations to agencies or reports to the governor or the general assembly.

The citizens' aide shall appoint an assistant who shall be responsible for investigating complaints relating only to penal or correctional agencies. [C73, 75,§601G.6]

601G.7 Prohibited activities. Neither the citizens' aide nor any member of his staff shall:

1. Hold any other public office of trust or profit under the laws of this state.

2. Engage in any other employment for remuneration.

3. Knowingly engage in or maintain any business transactions with persons employed by agencies against whom complaints may be made under the provisions of this chapter.

4. Be actively involved in partisan affairs. [C73, 75,§601G.7]

601G.8 Closed files. The citizens' aide may maintain secrecy in respect to all matters including the identities of the complainants or witnesses coming before him, except that the general assembly, any standing committee of the general assembly or the governor may require disclosure of any matter and shall have complete access to the records and files of the citizens' aide. The citizens' aide may conduct private hearings. [C73, 75,§601G.8]

601G.9 Powers. The citizens' aide shall have the following powers:

1. He may investigate, on complaint or on his own motion, any administrative action of any agency, without regard to the finality of the administrative action, except that he shall not investigate the complaint of an employee of an agency in regard to that employee's employment relationship with the agency.

2. He may prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of this chapter, he may determine the form, frequency, and distribution of his conclusions and recommendations.

3. He may request and shall be given by each agency such assistance and information as may be necessary in the performance of his duties. He may examine the records and documents of all agencies not specifically made confidential by law. He may enter and inspect premises within any agency's control.

4. He may issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his inquiry. The citizens' aide, his deputy and his assistants shall have the power to administer oaths to persons giving testimony before them. If a witness either fails or refuses to obey a subpoena issued by the citizens' aide, the citizens' aide may petition the district court having jurisdiction for an order directing obedience to the subpoena. In the event the court finds that the subpoena should be obeyed, it shall enter an order requiring obedience to the subpoena, and refusal to obey such court order shall be subject to punishment for contempt. [C73, 75,§601G.9]

601G.10 No charge for services. No monetary or other charge shall be levied upon any person as a prerequisite to presentation of a complaint to the citizens' aide. [C73, 75, §601G.10]

601G.11 Subjects for investigations. An appropriate subject for investigation by the office of the citizens' aide is an administrative action that might be:

1. Contrary to law or regulation.

2. Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though in accordance with law.

3. Based on a mistake of law or arbitrary in ascertainments of fact.

4. Based on improper motivation or irrelevant consideration.

5. Unaccompanied by an adequate statement of reasons. The citizens' aide may also concern himself with strengthening procedures and practices which lessen the risk that objectionable administrative actions will occur. [C73, 75,§601G.11]

601G.12 Complaints investigated. The citizens' aide may receive a complaint from any source concerning an administrative action. He shall conduct a suitable investigation into the administrative actions complained of unless he finds substantiating facts that:

1. The complainant has available to him another remedy or channel of complaint which he could reasonably be expected to use.

2. The grievance pertains to a matter outside the citizens' aide power.

3. The complainant has no substantive or procedural interest which is directly affected by the matter complained about.

4. The complaint is trivial, frivolous, vexatious, or not made in good faith.

5. Other complaints are more worthy of attention.

6. The citizens' aide resources are insufficient for adequate investigation.

7. The complaint has been delayed too long to justify present examination of its merit.

The citizens' aide may decline to investigate a complaint, but shall not be prohibited from inquiring into the matter complained about or into related problems at some future time. [C73, 75,§601G.12]

601G.13 No investigation — notice to complainant. If the citizens' aide decides not to investigate, he shall within sixty days inform the complainant in writing of that decision and shall state his reasons. If the citizens' aide decides to investigate, he shall within sixty days notify the complainant in writing of his decision and he shall also notify the agency of his intention to investigate. After completing his consideration of a complaint, whether or not it has been investigated, the citizens' aide shall without delay inform the complainant of the fact, and when appropriate, the administrative agency or agencies involved. The citizens' aide shall on request of the complainant, and as appropriate, report the status of his investigation to the complainant. [C73, 75, §601G.13]

601G.14 Institutionalized complainants. A letter to the citizens' aide from a person in a

correctional institution, a hospital, or other institution under the control of an administrative agency shall be immediately forwarded, unopened to the citizens' aide by the institution where the writer of the letter is a resident. A letter from the citizens' aide to such a person shall be immediately delivered, unopened to the person. [C73, 75,§601G.14]

601G.15 Reports critical of agency or officer. Before announcing a conclusion or recommendation that criticizes an agency or any officer or employee, the citizens' aide shall consult with that agency, officer or employee, and shall attach to every report sent or made under the provisions of this chapter a copy of any unedited comments made by or on behalf of the officer, employee, or agency. [C73, 75, §601G.15]

601G.16 Recommendations to agency. If, having considered a complaint and whatever material he deems pertinent, the citizens' aide finds substantiating facts that:

1. A matter should be further considered by the agency;
2. An administrative action should be modified or canceled;
3. A rule on which an administrative action is based should be altered;
4. Reasons should be given for an administrative action; or
5. Any other action should be taken by the agency, he shall state his recommendations to the agency. If the citizens' aide requests, the agency shall, within twenty working days notify him of any action taken on his recommendations or the reasons for not complying with them.

If the citizens' aide believes that an administrative action has occurred because of laws of which results are unfair or otherwise objectionable, he shall notify the general assembly concerning desirable statutory change. [C73, 75,§601G.16]

601G.17 Publication of conclusions. The citizens' aide may publish his conclusions, recommendations, and suggestions and transmit them to the governor, the general assembly or any of its committees. When publishing an opinion adverse to an administrative agency or official he shall, unless excused by the agency or official affected, include with the opinion any unedited reply made by the agency.

Any conclusions, recommendations, and suggestions so published may at the same time be made available to the news media or others who may be concerned. [C73, 75,§601G.17]

601G.18 Report to general assembly. In addition to whatever reports he may make from time to time, the citizens' aide shall by February 15 of each year report to the general assembly and to the governor concerning the exercise of his functions during the preceding calendar year. In discussing matters with which he has been concerned, the citizens' aide need not identify specific persons or agencies if to do so would cause needless hardship. If the annual report criticizes named agencies or officials, it must also include unedited replies made by the agency or official to the criticism, unless excused by the agency or official affected. [C73, 75,§601G.18]

601G.19 Disciplinary action recommended. If the citizens' aide believes that any public official, employee or other person has acted in a manner warranting criminal or disciplinary proceedings, he shall refer the matter to the appropriate authorities. [C73, 75,§601G.19]

601G.20 Immunities. No civil action, except removal from office as provided in chapter 66, or proceeding shall be commenced against the citizens' aide or any member of his staff for any act or omission performed pursuant to the provisions of this chapter unless the act or omission is actuated by malice or is grossly negligent, nor shall the citizens' aide or any member of his staff be compelled to testify in any court with respect to any matter involving the exercise of his official duties except as may be necessary to enforce the provisions of this chapter. [C73, 75,§601G.20]

601G.21 Witnesses. A person required by the citizens' aide to provide information shall be paid the same fees and travel allowances as are extended to witnesses whose attendance has been required in the district courts of this state. Officers and employees of an agency shall not be entitled to such fees and allowances. A person who, with or without service of compulsory process, provides oral or documentary information requested by the citizens' aide shall be accorded the same privileges and immunities as are extended to witnesses in the courts of this state, and shall also be entitled to be accompanied and advised by counsel while being questioned. [C73, 75,§601G.21]

601G.22 Penalties. A person who willfully obstructs or hinders the lawful actions of the citizens' aide or his staff, or who willfully misleads or attempts to mislead the citizens' aide in his inquiries, shall be subject to a fine of not more than one thousand dollars. [C73, 75,§601G.22]

601G.23 Citation. This chapter shall be known and may be cited as the "Iowa Citizens' Aide Act". [C73, 75,§601G.23]

CHAPTER 601H

PROGRAMS FOR LOW-INCOME, ELDERLY AND HANDICAPPED

601H.1 Green thumb program.
601H.2 Fund.
601H.3 Conservation commission to implement.
601H.4 Requirements of plan.
601H.5 Retired Iowans employment program.

601H.1 Green thumb program. There is established a "green thumb" program to be administered by the state conservation commission. The purpose of the program is to encourage and promote meaningful employment of senior citizens in conservation and outdoor recreation related fields. [66GA, ch 110,§1, ch 1232,§1]

601H.2 Fund. There is created a "green thumb" fund to be administered by the state conservation commission which shall consist of those moneys appropriated by the general assembly, received from the federal government, or donated by a private individual or organization for the purpose of implementing the "green thumb" program. The state conservation commission may allocate money from the "green thumb" fund to county conservation boards in amounts not exceeding the amount expended by the county conservation board to implement its "green thumb" program. [66GA, ch 110,§2]

601H.3 Conservation commission to implement. The state conservation commission in co-operation with the commission on aging and the governor's committee on employment of the handicapped shall prepare a state plan for implementation of the "green thumb" program in facilities under the jurisdiction of the state conservation commission and for "green thumb" programs sponsored by county conservation boards. [66GA, ch 110,§3]

601H.4 Requirements of plan. The plan for a "green thumb" program shall include the following:

1. A person shall be sixty years of age or older to be eligible for employment.

2. A lower income person shall be preferred for employment. "Lower income" means a person who meets the requirements for "lower income families" described in section 8, subsection "f" of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974 (Public Law 93-383), section 201, subsection "a".

3. At the option of the employee, persons may cease being employed when they have earned the maximum amount allowed before their retirement benefits are reduced.

4. A person employed shall be paid at least the minimum wage as established by federal law.

5. A person shall be employed for the purpose of doing a job in a conservation and outdoor recreation related field that is both meaningful and respectable.

6. Persons shall be carefully selected so as to insure that they are physically capable of doing a particular job.

7. Persons shall be employed both on a part-time and full-time basis.

8. Notwithstanding the provisions of chapters 19A, 96, and 97B, persons employed through the "green thumb" program shall be exempt from merit system requirements, shall not be eligible for membership in the Iowa public employees retirement system, and shall not be eligible to receive unemployment compensation benefits. [66GA, ch 110,§4, ch 1232,§§2, 3]

601H.5 Retired Iowans employment program. There is established an experimental retired Iowan employment program to be administered by the commission on aging. The purpose of the program is to encourage and promote the meaningful employment of retired citizens of the state. The Iowa employment security commission shall co-operate with the commission on aging in the administration of the retired Iowan employment program. [66GA, ch 110,§6, ch 1232,§5]

Report to General Assembly, 66GA, ch 110,§5
Additional programs funded on a one-year basis:
1. Retired Iowan employment program, 66GA, ch 110, §§6–10, approp., §11
2. Well-elderly clinics for elderly, 66GA, ch 110,§12
3. Winterize homes of low-income elderly, 66GA, ch 110, §15
4. Rural transportation services for elderly and handicapped, 66GA, ch 1232,§9
5. Mobile dental clinic for elderly and persons in need of care, 66GA, ch 110,§19
6. Department of health report, see 66GA, ch 1232,§6
7. Office of planning and programming report, 66GA, ch 1232,§11

CHAPTER 601I

SERVICE PROGRAM FOR THE DEAF

601I.1 Definitions.
601I.2 Establishment.
601I.3 Advisory committee.
601I.4 Terms.
601I.5 Duties of the commissioner.
601I.6 Grants and gifts received.

601I.1 Definitions. As used in this chapter unless the context otherwise requires:

1. *"Deaf"* or *"deafness"* refers to a hearing handicap which impairs the ability of the handicapped person to avail himself or herself of one or more community services.

2. *"Service projects"* include interpretation services for persons who are deaf, referral and counseling services for deaf people in the areas of adult education, legal aid, employment, medical, finance, housing, recreation and other personal assistance and social programs.

3. *"Resource workers"* are persons who, on a volunteer basis or for compensation, carry out service projects.

4. *"Advisory committee"* means the advisory committee on the deaf established in section 601I.3.

5. *"Commissioner"* means the commissioner of public health. [66GA, ch 121,§1]

601I.2 Establishment. There is established within the department of health a service program for the deaf. The commissioner shall appoint a full-time director of the service program who shall be proficient in the use of sign language and knowledgeable in the problems of deaf persons. The director shall administer all service projects authorized by the commissioner. [66GA, ch 121,§2]

601I.3 Advisory committee. There is created an advisory committee on the deaf to consist of seven members appointed by the governor. Lists of nominees for appointment to membership on the advisory committee shall be submitted by the Iowa association for the deaf, the Iowa school for the deaf, and the governor's committee on employment of the handicapped. At least four members shall be persons to whom human speech is unintelligible with or without use of amplification. All members shall reside in Iowa. [66GA, ch 121,§3]

Referred to in §601I.1

601I.4 Terms. Members of the advisory committee shall be appointed for terms of three years, except that terms of the initial appointees shall be staggered so that two members are appointed for terms of one year, two members for terms of two years, and three members for terms of three years. Vacancies shall be filled for the unexpired term in the manner of the original appointment. Members shall not serve more than two consecutive terms. Members of the advisory committee shall serve without compensation, but shall receive reimbursement for the actual and necessary expenses incurred in the performance of their official duties as members of the committee. [66GA, ch 121,§4]

601I.5 Duties of the commissioner. The commissioner, with the advice of the advisory committee, shall:

1. Interpret to communities and to interested persons the needs of the deaf and how their needs may be met through the use of resource workers.

2. Obtain without additional cost to the state available office space in public and private agencies which resource workers may utilize in carrying out service projects.

3. Establish service projects throughout the state. No projects shall be undertaken by resource workers for compensation which would duplicate existing services when those services are available to deaf people through paid interpreters or other persons able to communicate with deaf people.

4. Identify agencies, both public and private, which provide community services, evaluate the extent to which they make services available to deaf people and co-operate with the agencies in co-ordinating and extending these services.

5. Collect information concerning deafness and provide for the dissemination of the information.

6. Provide for the mutual exchange of ideas and information on services for deaf people between federal, state and local governmental agencies and private organizations and individuals.

7. Make an annual report to the governor with recommendations for extending services to deaf people through the operations of the service program established in this chapter. [66GA, ch 121,§5]

601I.6 Grants and gifts received. The commissioner may receive federal funds or private grants and gifts for use in the service program for the deaf. All federal funds, grants and gifts shall be used only for the purposes agreed upon as conditions for receiving the funds, grants and gifts. [66GA, ch 121,§6]

CHAPTER 601J

TRANSPORTATION PROGRAMS

601J.1 Definitions.
601J.2 Technical assistance.
601J.3 Fiscal and service plan.
601J.4 Federal and private aid.
601J.5 Vehicles transferred.

601J.1 Definitions. For purposes of this chapter, unless the context otherwise requires:

1. *"Transportation disadvantaged persons"* means persons who are physically or mentally handicapped persons, persons who are determined by the department to be economically disadvantaged and other persons or groups determined by the department to be disadvantaged in terms of the transportation services that are available to them.

2. *"Department"* means the state department of transportation.

3. *"Federal aid"* means any federal grants, loans, or other federal assistance whether or not state or local funds are required to match or contribute toward the costs of the program for which the aid is available.

4. *"Private aid"* means any grants, loans, or other assistance available from nonprofit corporations, foundations, and all private or nongovernmental sources, whether or not state or local funds are required to match or contribute toward the costs of the program for which the aid is available. [66GA, ch 1230, §1]

601J.2 Technical assistance. The department may, at the request of a political subdivision provide the following technical transportation assistance to the political subdivision:

1. An evaluation of existing urban and rural transportation systems, including but not limited to an evaluation of rolling stock, the costs of operation including the costs of fuel, maintenance and personnel and the development of common management and operating systems and procedures.

2. An analysis of existing urban and rural services provided for transportation disadvantaged persons and the service needs of transportation disadvantaged persons, including an evaluation of specialized equipment required to meet the service needs of transportation disadvantaged persons. [66GA, ch 1230,§2]

601J.3 Fiscal and service plan. The department may at the request of a political subdivision, or public and private providers of transportation services assist such providers in the development of a fiscal and service plan which may be used by political subdivisions to co-ordinate and consolidate all forms of urban and rural transportation services except public school transportation, including but not limited to, the following:

1. Senior citizen transportation.
2. Head start transportation.
3. Handicapped services.
4. Cab companies.
5. Common carriers.
6. Transportation services provided by private nonprofit agencies to their clients or the general public. [66GA, ch 1230,§3]

601J.4 Federal and private aid.

1. The department shall compile and maintain current information on available and pending federal and private aid effecting urban and rural public transit programs. Public and private providers applying for aid shall furnish a copy of any application for federal or private funds to be used for public transit programs and such other information as the department may require pursuant to rule.

2. Upon request, the department shall provide assistance to political subdivisions for federal aid applications for urban and rural public transit program aid. The department shall maintain current information reflecting the amount of federal and private aid received by political subdivisions of the state and the purpose for which such aid is received. The department shall annually prepare a report to be submitted to the general assembly, the office for planning and programming, and to the governor, prior to February 1 of each year, stating the receipts and disbursements made during the preceding fiscal year and the adequacy of programs financed by federal and private aid in the state. The department shall analyze the programs financed and recommend to political subdivisions methods of avoiding duplication and increasing the efficacy of programs financed.

3. The department shall receive and distribute federal aid to political subdivisions unless precluded by federal statute, however the department shall not retain or redirect any portion of funds received by the department for a particular political subdivision. The department may designate the political subdivision as the direct recipient of federal aid. [66GA, ch 1230,§4]

601J.5 Vehicles transferred. Notwithstanding the provisions of section 18.115, subsection 5, vehicles and the titles to vehicles purchased by the commission on the aging with federal funds provided pursuant to title III of the Older Americans Act of 1965 (Public Law 89-73) as amended by the Older Americans Comprehensive Services Amendments of 1973 (Public Law 93-29) shall be transferred by the state vehicle dispatcher to local units of government and organizations specified by the commission on the aging and the state department of transportation at no cost to the local unit of government or organization. [66GA, ch 1230,§5]

TITLE XXX

TRIAL COURT

CHAPTER 602

IOWA DISTRICT COURT

UNIFIED TRIAL COURT

602.1 Unified trial court.
602.2 Appeals and writs of error.
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DISTRICT JUDGES

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UNIFIED TRIAL COURT

602.1 Unified trial court. There shall be a unified trial court in the state of Iowa, known as "Iowa District Court". The Iowa district court shall have exclusive, general and original jurisdiction of all actions, proceedings, and remedies, civil, criminal, probate, and juvenile, except in cases where exclusive or concurrent jurisdiction is conferred upon some other court, tribunal, or administrative body, and it shall have and exercise all the power usually possessed and exercised by trial courts of general jurisdiction and shall be a court of record. [C51,§1576; R60,§2663; C73,§161; C97, §225; C24, 27, 31, 35, 39,§**10761**; C46, 50, 54, 58, 62, 66, 71,§604.1; C73, 75,§602.1]

See Constitution, Art. V,§6

602.2 Appeals and writs of error. It shall also possess and exercise jurisdiction in all appeals and writs of error taken in civil and criminal actions and special proceedings authorized to be taken from all tribunals, boards, or officers, under any provisions of the laws of this state, and shall have a general supervision thereof, in all matters, to prevent and correct abuses, where no other remedy is provided. [C51,§1576; R60,§2663; C73,§161; C97,§225; C24, 27, 31, 35, 39,§**10762**; C46, 50, 54, 58, 62, 66, 71, §604.2; C73, 75,§602.2]

602.3 Judicial officers. The jurisdiction of the Iowa district court shall be exercised by Iowa district judges, district associate judges and judicial magistrates. [C73, 75,§602.3]

DISTRICT JUDGES

602.4 District judges. Iowa district judges shall possess the full jurisdiction of the Iowa district court, including the jurisdiction of ju-

dicial magistrates. While exercising the jurisdiction possessed by judicial magistrates, district judges shall employ judicial magistrates' practice and procedure, and may hold court at any place where a judicial magistrate may do so. [C73, 75,§602.4]

602.5 Place of holding court. Courts must be held at the places in each county, as designated by the chief judge of the judicial district, except for the determination of actions, special proceedings, and other matters not requiring a jury, when they may be held at some other place in the district with the consent of the parties. [C51,§1597; R60,§2687; C73,§192; C97, §286; C24, 27, 31, 35, 39,§**10769**; C46, 50, 54, 58, 62, 66, 71,§604.9; C73, 75,§602.5]

602.6 County without courthouse. When there is no courthouse at the place where the courts are to be held, its sessions shall be at such suitable place as the board of supervisors provides, but if no such place is provided, the court may direct the sheriff to procure one at the expense of the county. [C51,§§1573, 1574; R60,§§2660, 2661; C73,§§173, 174; C97,§239; C24, 27, 31, 35, 39,§**10770**; C46, 50, 54, 58, 62, 66, 71, §604.10; C73, 75,§602.6]

602.7 City to provide courtroom. Where court is held in any city not the county seat, such city shall provide and furnish the necessary rooms and places therefor free of charge to the county. [C51,§1566; R60,§2653; C73,§163; C97,§226; C24, 27, 31, 35, 39,§**10771**; C46, 50, 54, 58, 62, 66, 71,§604.11; C73, 75,§602.7]

602.8 Dual county seats. In any county having two county seats, court shall be held at each, and, in the county of Pottawattamie, court shall be held at Avoca, as well as at the county seat. [C73,§164; C97,§228; C24, 27, 31, 35, 39,§**10772**; C46, 50, 54, 58, 62, 66, 71,§604.12; C73, 75,§602.8]

602.9 Sessions not at county seats—effect—duty of clerk. When a court shall be held at a place not the county seat, all of the provisions of the statute in relation to district courts shall be applicable thereto, except as herein modified. All proceedings had in said court shall have, within the territory over which said court shall have jurisdiction, the same force and effect as though ordered in the court at the county seat of said county, but transcripts of judgments and decrees rendered therein, levies of writs of attachment upon real estate, mechanics' liens, lis pendens, sales of real estate, redemption, satisfaction of judgments and mechanics' liens, dismissals or decrees in lis pendens, together with all other matters affecting titles to real estate, shall be forthwith certified by the deputy clerk at such place, to the clerk of such court at the county seat, who shall immediately enter the same upon the records in his office. [C97,§230; C24, 27, 31, 35, 39,§**10773**; C46, 50, 54, 58, 62, 66, 71, §604.13; C73, 75,§602.9]

602.10 Court in continuous session. The district court of each judicial district shall be in continuous session in all of the several counties comprising said district. [C97,§229; C24, 27, 31, 35, 39,§**10774**; C46, 50, 54, 58, 62, 66, 71,§604.14; C73, 75,§602.10]

602.11 Rules for internal operation of courts. The supreme court shall adopt and enforce rules for the orderly and efficient internal operation of the district court in rendering judicial services. Such rules shall provide for a court session by a judge at least once each week in each county to be fixed in advance and announced in the form of a printed schedule, provided that, if in the opinion of the chief judge more efficient operations in the district will result, such court sessions may be at different intervals than once each week. They shall also provide for additional sessions for the trial of cases in each county of such frequency as will promptly dispose of the pending cases ready for trial. Such rules shall be adopted in the manner provided in section 684.19. [C71,§604.44; C73, 75,§602.11]

602.12 Judges not to sit together. District judges shall not sit together in the trial of causes nor upon the hearings of motions for new trials. They may, however, hold court in the same county at the same time. [C97,§241; C24, 27, 31, 35, 39,§**10797**; C46, 50, 54, 58, 62, 66, 71,§604.37; C73, 75,§602.12]

602.13 Preparation and signing of record. The clerk shall from time to time make a record of all proceedings of the court, which, when correct, shall be signed by the judge. [C51,§1577; R60,§2664; C73,§176; C97,§242; C24, 27, 31, 35, 39,§**10798**; C46, 50, 54, 58, 62, 66, 71, §604.38; C73, 75,§602.13]

C97,§242, editorially divided

602.14 Delay in signing—effect. Delay in the preparation and signing of the record of court proceedings shall not prevent the issuance of an execution and other proceedings may be had in the same manner as though the record had been signed. [C51,§1578; R60,§2665; C73,§177; C97,§242; C24, 27, 31, 35, 39,§**10799**; C46, 50, 54, 58, 62, 66, 71,§604.39; C73, 75,§602.14]

602.15 Amending or expunging entry. The record of any court proceedings is under the control of the court and, except as provided in section 789A.6, may be amended or any entry therein expunged before it has been signed by the judge or within sixty days thereafter. [C51,§1579; R60,§2666; C73,§178; C97,§243; C24, 27, 31, 35, 39,§**10801**; C46, 50, 54, 58, 62, 66, 71,§604.41; C73, 75,§602.15]

Referred to in §789A.6

602.16 Unauthorized alteration. No record shall be amended or impaired by the clerk or other officer of the court, or by any other person without the order of such court, or of some court of competent authority. [R60,§2984; C73, §2736; C97,§3646; C24, 27, 31, 35, 39,§**10802**; C46, 50, 54, 58, 62, 66, 71,§604.42; C73, 75,§602.16]

602.17 Corrections because of mistakes. Entries made and signed, unless amended or expunged as above provided, may be altered only to correct an evident mistake. [C51,§1580; R60,§2667; C73,§179; C97,§244; C24, 27, 31, 35, 39,§10803; C46, 50, 54, 58, 62, 66, 71,§604.43; C73, 75,§602.17]

602.18 Judicial districts. For all judicial purposes except as provided by this section the state is divided into eight judicial districts as follows:

The first district shall consist of the counties of Dubuque, Delaware, Clayton, Allamakee, Winneshiek, Chickasaw, Fayette, Buchanan, Black Hawk, Howard, and Grundy.

The second district shall consist of the counties of Mitchell, Floyd, Butler, Bremer, Worth, Winnebago, Hancock, Cerro Gordo, Franklin, Wright, Humboldt, Pocahontas, Sac, Calhoun, Webster, Hamilton, Carroll, Greene, Hardin, Marshall, Story, and Boone.

The third district shall consist of the counties of Kossuth, Emmet, Dickinson, Osceola, Lyon, O'Brien, Clay, Palo Alto, Cherokee, Buena Vista, Plymouth, Sioux, Woodbury, Ida, Monona, and Crawford.

The fourth district shall consist of the counties of Harrison, Shelby, Audubon, Pottawattamie, Cass, Mills, Montgomery, Fremont, and Page.

The fifth district shall consist of the counties of Guthrie, Dallas, Polk, Jasper, Madison, Warren, Marion, Adair, Adams, Union, Clarke, Lucas, Taylor, Ringgold, Decatur, and Wayne.

The sixth district shall consist of the counties of Tama, Benton, Linn, Jones, Iowa, and Johnson.

The seventh district shall consist of the counties of Jackson, Clinton, Cedar, Scott, and Muscatine.

The eighth district shall consist of the counties of Poweshiek, Mahaska, Keokuk, Washington, Monroe, Wapello, Jefferson, Appanoose, Davis, Van Buren, Louisa, Henry, Des Moines, and Lee.

Judicial election districts are established for purposes of nomination, appointment and election of judges and application of the provisions of subsections 2 through 8 of this section, and for the purpose of removal of judicial magistrates as provided in section 602.56. They shall include the fourth, sixth, and seventh districts as above set forth, but the other election districts shall be as follows:

Election district 1A shall consist of the counties of Dubuque, Delaware, Clayton, Allamakee and Winneshiek. Election district 1B shall consist of the counties of Chickasaw, Fayette, Buchanan, Black Hawk, Howard, and Grundy.

Election district 2A shall consist of the counties of Mitchell, Floyd, Butler, Bremer, Worth, Winnebago, Hancock, Cerro Gordo, and Franklin. Election district 2B shall consist of the counties of Wright, Humboldt, Pocahontas, Sac, Calhoun, Webster, Hamilton, Carroll, Greene, Hardin, Marshall, Story, and Boone.

Election district 3A shall consist of the counties of Kossuth, Emmet, Dickinson, Osceola, Lyon, O'Brien, Clay, Palo Alto, Cherokee, and Buena Vista. Election district 3B shall consist of the counties of Plymouth, Sioux, Woodbury, Ida, Monona, and Crawford.

Election district 5A shall consist of the counties of Guthrie, Dallas, Polk, Jasper, Madison, Warren, and Marion. Election district 5B shall consist of the counties of Adair, Adams, Union, Clarke, Lucas, Taylor, Ringgold, Decatur, and Wayne.

Election district 8A shall consist of the counties of Poweshiek, Mahaska, Keokuk, Washington, Monroe, Wapello, Jefferson, Appanoose, Davis, and Van Buren. Election district 8B shall consist of the counties of Louisa, Henry, Des Moines, and Lee.

1. Subject to the provisions for temporary assignment of judges, as set out in subsection 9 hereof, each district judge in office on July 1, 1967, shall continue to serve in the district of his domicile so long as he remains a district judge, regardless of the number of judgeships to which the district is entitled under subsection 2 hereof.

2. The number of judgeships to which each of the judicial election districts shall be entitled shall be determined from time to time according to the following formula:

a. In an election district wherein the largest county contains two hundred thousand or more population, there shall be one judgeship per seven hundred twenty-five combined civil and criminal filings or major fraction thereof; provided, the seat of government shall be entitled to one additional judgeship.

b. In an election district wherein the largest county contains eighty-five thousand or more population, but less than two hundred thousand, there shall be one judgeship per six hundred twenty-five combined civil and criminal filings or major fraction thereof.

c. In an election district wherein the largest county contains forty-five thousand or more population, but less than eighty-five thousand, there shall be one judgeship per five hundred twenty-five combined civil and criminal filings or major fraction thereof.

d. In an election district wherein the largest county contains less than forty-five thousand population, there shall be one judgeship per four hundred seventy-five combined civil and criminal filings or major fraction thereof.

e. Notwithstanding paragraph *"a"*, *"b"*, *"c"*, or *"d"*, each election district shall be entitled to not less than one judgeship for each forty thousand population or major fraction thereof contained in the election district. The court administrator shall determine both the number of judgeships for each election district based upon this paragraph, and the number of judgeships for each election district based upon paragraph *"a"*, *"b"*, *"c"*, or *"d"*. If the number for any election district determined under this paragraph exceeds the number determined under paragraph *"a"*, *"b"*, *"c"*, or *"d"*, that election district shall be entitled to the number of judgeships determined under this paragraph.

f. The filings included in the determinations to be made under this subsection shall not include small claims or nonindictable misdemeanors filed after June 30, 1973, nor shall they include either civil actions for money judgment where the amount in controversy does not exceed three thousand dollars or indictable misdemeanors, which were assigned to district associate judges and judicial magistrates as shown on their administrative reports, but they shall include appeals from decisions of judicial magistrates, district associate judges, and district judges sitting as judicial magistrates. The figures on filings shall be the average for the latest available previous three-year period and when current census figures on population are not available, figures shall be taken from the state department of health computations.

3. A vacancy, for purposes of this section, is defined as the death, resignation, retirement, removal, or failure of retention in office at the judicial election, of a judge or increase in judgeships under this section.

4. In those districts having more judges than the number of judgeships specified by the formula set out in subsection 2 hereof, vacancies shall not be filled.

5. In those districts having fewer judges or the same number of judges as the number of judgeships specified by the formula set out in subsection 2 hereof, vacancies in the number of judges shall be filled as they occur.

6. In those judicial districts that contain judicial election districts, no vacancy in any judicial election district shall be filled if the total number of judges in all the judicial election districts within the judicial district equals or exceeds the number of judgeships to which all of the judicial election districts of the judicial district combined are authorized.

7. Vacancies shall not be filled in any district which may become entitled to fewer judgeships under subsection 2; but no incumbent judge shall ever be removed from office by reason thereof.

8. During February of each year, and at such other times as may be appropriate, the supreme court administrator shall make the determinations required under this section, and shall notify the nominating commissions involved and the governor of any appointments that may be required as a result thereof.

9. It shall be the duty of the chief justice to assign judges and other court personnel from one judicial district to another, on a continuing basis, if need be, in order to provide a sufficient number of judges to handle the judicial business in all districts promptly and efficiently at all times.

10. The supreme court administrator shall notify the secretary of state of any additional judgeships created by this chapter. The secretary of state shall notify the proper judicial nominating commission in accordance with chapter 46. Such commission shall proceed as provided in that chapter. Effective July 1, 1973, a district judge shall be appointed for the district pursuant to chapter 46, if the district is entitled to an additional judge or judges as a result of this chapter.

11. The governor may appoint a person to serve as a judge or magistrate whenever federal funds are available for his salary, the cost of courtroom space, and the salary of any additional court staff. The person appointed by the governor shall fill the position until his successor is appointed or until federal funds are no longer available as required in this section. The person appointed under this section may hear all cases in which the use of alcohol is evident, and any prosecution under section 321.281 may be transferred within the judicial district to the jurisdiction of the person appointed under this subsection. [C97, §227; SS15,§227; C24, 27, 31, 35, 39,§**10768**; C46, 50, 54, 58, 62, 66, 71,§604.8; C73, 75,§602.18; 66GA, ch 245,§1, 2, ch 1233,§1]

Amendments effective July 1, 1972, see 64GA, ch 1124,§§3 to 7, 283, also 65GA, ch 282,§1

602.19 Probate orders. Iowa district judges shall have statewide jurisdiction to enter orders in probate matters not requiring notice and hearing, although the judge is not a judge of or present in the district in which the probate matter is pending. Such orders shall be made in conformity with the rules of the district in which the probate matter is pending. [C73,§2312; C97,§225; C24, 27, 31, 35, 39,§**10763**; C46, 50, 54, 58, 62, 66, 71,§604.3; C73, 75,§602.19]

602.20 Counties bordering on Missouri river. The jurisdiction of the courts of the state of Iowa, in counties bordering on the Missouri river, in all civil and criminal actions and proceedings, is hereby declared to extend to the center of the main channel of the Missouri river, where the same now is or may hereafter be, and to all lands and territory lying along said river, which have been adjudged by the United States supreme court or the supreme court of this state to be within the state of Iowa, and to such other lands and territory along said river over which the courts of this state have heretofore exercised jurisdiction. [S13,§395-a; C24, 27, 31, 35, 39,§**10767**; C46, 50, 54, 58, 62, 66, 71,§604.7; C73, 75,§602.20]

Related provisions, Admission of Iowa; Constitution, Preamble; also §§1.2, 1.3

602.21 Circuit court records. The district court shall succeed to, and exercise full authority and jurisdiction over, the records of the circuit court, and may enforce all judgments, decrees, and orders thereof in the same manner and to the same extent as it may exercise like jurisdiction and authority over its own records, and, for the purpose of the issuance of process, and of any and all other acts necessary to the due and efficient enforcement of the orders, judgments, and decrees of the circuit court, the records thereof shall be deemed records of the district court. [C73,§§162, 2312;

C97,§225; C24, 27, 31, 35, 39,§10765; C46, 50, 54, 58, 62, 66, 71,§604.5; C73, 75,§602.21]

602.22 Transcripts — process. Transcripts and process from the judgments, decrees, and records of the circuit court shall be issued by the clerk of the district court, and under the seal of his office. [C97,§225; C24, 27, 31, 35, 39, §10766; C46, 50, 54, 58, 62, 66, 71,§604.6; C73, 75,§602.22]

602.23 to 602.27 Reserved.

DISTRICT ASSOCIATE JUDGES AND THEIR REPORTERS AND DEPUTY CLERKS AND SHERIFFS

602.28 District associate judges. The regular judges of the municipal courts of Iowa who are in office on June 30, 1973, and who are less than seventy-two years of age on July 1, 1973, and who have not been appointed district court judges shall become district associate judges on the latter date. [C73, 75,§602.28]

602.29 Term, retention. District associate judges shall stand for retention in office within the county of their residence at the judicial election in 1974 and every four years thereafter, under sections 46.17 to 46.24. The term of office of the judges who are retained in office at the judicial election shall extend for four years after January 1 next following the election, and the term of office of the judges who are not retained in office at such a judicial election shall extend until January 1 next following such election. District associate judges shall cease to hold office upon attaining age seventy-two. [C73, 75,§602.29]

602.30 Vacancies. A vacancy in the office of district associate judge after June 30, 1973, shall not be filled and all funds, dockets and records relating to the office so vacated shall be promptly deposited with the clerk of court who issued the docket. [C73, 75,§602.30]

602.31 Salary, expenses, retirement. The annual salary of each district associate judge, payable from the general fund of the state of Iowa, shall be a sum of nineteen thousand five hundred dollars. District associate judges shall also receive from the state their actual and necessary expenses in the performance of their duties away from the city of their residence, in accordance with section 605.2. District associate judges who are members of the judicial retirement system under chapter 605A shall remain members thereof; but the state of Iowa, instead of the city and county, shall deduct four percent from their salaries for the judicial retirement fund and shall contribute the public's portion to the judicial retirement fund. [C73, 75,§602.31]

602.32 Jurisdiction, procedure, appeals. District associate judges shall have the jurisdiction provided in section 602.60. District associate judges shall hold court as directed at any place within the judicial district that a judicial magstrate may do so, and shall employ judicial magistrates' practice and procedure. In addition, district associate judges shall have jurisdiction in civil actions for money judgments where the amount in controversy does not exceed three thousand dollars, jurisdiction of indictable misdemeanors and the jurisdiction provided for in section 231.3 when designated as a judge of the juvenile court and while exercising the additional jurisdiction granted herein, shall employ district judges' practice and procedure. When a district court judge is unable to serve as a result of temporary incapacity, a district associate judge may, by order of the chief judge of the district enrolled in the records of the clerk of the district court, temporarily exercise any of the jurisdiction of a district judge during the time of incapacity and as to the specific matters or classes of matters specified in that order. District associate judges shall have power to act at any place within their respective judicial districts, and venue shall be the same as in other district court proceedings.

Appeals from judgments or orders of district associate judges while exercising the jurisdiction possessed by judicial magistrates shall be governed by the laws relating to appeals and orders from judicial magistrates. Appeals from judgments or orders of district associate judges while exercising any other jurisdiction conferred upon them shall be governed by the laws relating to appeals from judgments or orders from district judges.

For purposes of administration district associate judges shall be under the jurisdiction of the chief judge of the judicial district and he shall have the power to allocate their work load as he deems necessary. District associate judges shall be subject to the same rules and laws that apply to district judges except as otherwise provided in this chapter. [C73, 75, §602.32]

602.33 Reporters. Each district associate judge and judicial magistrate appointed pursuant to section 602.51 may appoint a shorthand reporter subject to the approval of the chief judge of the district. All shorthand reporters appointed are reporters for the judicial district and their compensation shall be in accordance with section 605.8. [C73, 75, §602.33]

602.34 Clerks and bailiffs. The individuals who were municipal court clerks and bailiffs on June 30, 1973, and who were municipal court deputy clerks and deputy bailiffs on that date, may as deputies of the district court clerks and sheriffs be suspended, demoted, or discharged by the district court clerks and sheriffs only for neglect of duty, disobedience of orders, misconduct, or failure to properly perform duties, by pursuing the procedure provided by sections 400.19 to 400.26 and in these cases the district court clerk or sheriff shall be deemed to be the person having the appointing power, the county auditor shall perform the functions of the mayor or city manager, the board of supervisors shall per-

form the functions of the civil service commission, and the county attorney shall perform the functions of the city attorney or solicitor. A municipal court bailiff or deputy bailiff who on June 30, 1973, is a member of the retirement system provided by chapter 411 shall continue to be such a member thereafter; and that chapter shall continue to apply to them notwithstanding this chapter, with the appropriate county deducting from his compensation his contributions to the retirement fund and the county contributing the public's portion to such fund out of the court expense fund notwithstanding any other provision of law.

Those provisions of this section which provide civil service status for individuals transferred hereunder shall cease to have effect and shall be inoperative as to any of such individuals who become subject to civil service provisions under any other law of this state. [C73, 75,§602.34]

Transition period from municipal court, 65GA, ch 282,§37

602.35 No new municipal courts. No new municipal courts shall be established, no new municipal court judgeships shall come into existence, and no elections of municipal court judges, clerks, or bailiffs shall be held. [C73, 75,§602.35]

602.36 Courts abolished, transition. All mayors' courts, justice of the peace courts, police courts, superior courts, and municipal courts and offices connected therewith, are abolished as of July 1, 1973. Promptly after July 1, 1973, the officials of these courts shall deposit all funds, dockets and records pertaining to their offices with the clerk of the district court of their counties. The chief judge or his designee shall enter an order enrolled in the office of the clerk assigning to judicial magistrates, district associate judges, and district judges the pending cases within their respective jurisdictions, and such cases shall then be pending before those judicial magistrates, district associate judges, and district judges. The clerk shall within thirty days give written notice of such assignment by ordinary mail to the parties or their attorneys of record at their last known addresses. Criminal warrants issued by courts abolished by this section which are unserved or unreturned on July 1, 1973, shall be valid and returnable to the judicial magistrate, district associate judge, or district judge to whom the case has been assigned. All municipal court judges, clerks of the municipal court and their deputies, bailiffs of municipal court and their deputies, police court judges, justices of the peace and constables holding office on July 1, 1972, or elected or appointed thereafter, shall continue in office through June 30, 1973.

The district court shall succeed to, and exercise full authority and jurisdiction over, the records of the municipal court, and may enforce all judgments, decrees, and orders thereof in the same manner and to the same extent as it may exercise like jurisdiction and authority over its own records, and, for the purpose of the issuance of process, and of any and all other acts necessary to the due and efficient enforcement of the orders, judgments, and decrees of the municipal court, the records thereof shall be deemed records of the district court; except that no judgment of the municipal court shall be a lien on real estate unless the person in whose favor the judgment exists files a written request with the district court clerk on forms prescribed by the supreme court administrator. Upon filing the request, the clerk shall enter the judgment in the judgment docket and lien index, and such judgment shall be a lien on real estate for a period ending ten years after date of entry of the judgment in municipal court. [C73, 75, §602.36]

602.37 to 602.41 Reserved.

JUDICIAL MAGISTRATES

602.42 Composition of county judicial magistrate appointing commissions.

1. There shall be in each county a judicial magistrate appointing commission which shall be composed of the following members:

a. A district court judge designated by the chief judge of the district to serve until a successor is designated.

b. Three members appointed by the board of supervisors, except as provided in section 602.43.

c. Two attorneys elected by the county bar.

2. The clerk of the district court shall maintain a permanent record of the name, address, and term of office of each commissioner designated, appointed or elected. [C73, 75,§602.42]

Effective July 1, 1972, 64GA, ch 1124,§283 and 65GA, ch 282,§1; amendment effective July 1, 1973, 65GA, ch 282, §§4, 5

602.43 Commissioners appointed by a county.

1. The board of supervisors of each county shall appoint three electors to the county judicial magistrate appointing commission for the county for six-year terms beginning January 1, 1973. However, in the event there is only one resident member of the bar in a county who is qualified and willing to serve pursuant to section 602.44, the number of commissioners appointed by the county board of supervisors shall be two. In the event there is no resident member of the bar within the county qualified and willing to serve, the county board of supervisors shall appoint one commissioner.

2. A commissioner appointed pursuant to this section shall not be an attorney at law, or an active law enforcement officer.

3. The county auditor shall certify the name, address and expiration date of term for all regular and special appointees of the board of supervisors to the clerk of the court. [C73, §§602.43, 602.47, 602.48; C75,§602.43]

Referred to in §602.42
Effective July 1, 1972, 64GA, ch 1124,§283 and 65GA, ch 282,§1; amendment effective July 1, 1973, 65GA, ch 282,§6

602.44 Commissioners elected by the bar.

1. The resident members of the bar of each county shall elect resident members of the bar of such county to the county judicial magistrate appointing commission for six-year terms beginning on January 1. During December 1972, and in each December thereafter which immediately precedes the expiration of the terms of the members of the commission, the members of the bar shall elect commissioners to six-year terms.

2. A county attorney shall not be elected to the commission. [C73, 75,§602.44]

Referred to in §602.43
Effective July 1, 1972, 64GA, ch 1124,§283 and 65GA, ch 282,§1

602.45 Eligibility to vote. Eligibility to vote in elections of judicial magistrate appointing commissioners within a county shall be registration as a member of the bar in accordance with sections 46.7 and 46.8, and residency within the county. [C73, 75,§602.45]

Referred to in §602.46
Effective July 1, 1972, 64GA, ch 1124,§283 and 65GA, ch 282,§1

602.46 Conduct of elections. When an election of judicial magistrate appointing commissioners in a county is to be held, the clerk of the district court for the county shall cause ballots to be mailed to the members of the bar eligible in accordance with section 602.45, substantially as follows:

..... County Judicial Magistrate Appointing Commission

BALLOT

To be cast by the resident members of the bar of ..... County.

Vote for (state number) for ..... County judicial magistrate appointing commissioner(s) for term commencing .....
.....
.....
.....
.....

To be counted, this ballot must be completed and mailed or delivered to Clerk of the District Court, ..., not later than December 31, 19.... (or the appropriate date under section 602.49 of the Code in case of an election to fill a vacancy). [C73, 75,§602.46]

Effective July 1, 1972, 64GA, ch 1124,§283 and 65GA, ch 282,§1; amendment effective July 1, 1973, 65GA, ch 282,§7

602.47 No member of commission to be appointed magistrate. No person while a member of the county judicial magistrate appointing commission shall be appointed to the office of judicial magistrate. [C73, 75,§602.47]

Effective July 1, 1972, 64GA, ch 1124,§283 and 65GA, ch 282,§1

602.48 Repealed by 65GA, ch 1085,§43.

602.49 Vacancy. A vacancy in the office of judicial magistrate appointing commissioner shall be filled by special appointment or election as the case may be for the unexpired term. [C73, 75,§602.49]

Referred to in §602.46
Effective July 1, 1972, 64GA, ch 1124,§283 and 65GA, ch 282,§1

602.50 Appointment of judicial magistrates.

1. *Regular appointments.* In April of each year in which magistrates' terms expire, the commission shall appoint, except as otherwise permitted in section 602.59, the number of magistrates apportioned to the county by the supreme court administrator as provided in section 602.57 and may appoint the additional magistrate allowed by section 602.58. The commission shall appoint no more magistrates than are apportioned to the county by the supreme court administrator except as provided in section 602.58.

2. *Applications.* The appointing commission for each county shall prescribe the content of an application for an appointment pursuant to this section. The commission shall publicize in at least two publications in the official county newspaper, notice of any vacancy to be filled. For a minimum of fifteen days prior to any appointment, the commission shall accept applications, and shall make available during that period of time any printed application forms the commission may, in its discretion, prescribe.

3. *Vacancies.* Within thirty days following receipt of notification of a vacancy in the office of judicial magistrate appointed under this section, the commission shall appoint a person to the office vacated to serve the remainder of the unexpired term. For purposes of this section, vacancy means death, resignation, retirement, removal or increase in the number of positions authorized.

4. *Term of office.* The office of judicial magistrate, when appointed pursuant to this section, shall be for a term of two years from July 1, 1975, and each two years thereafter.

A magistrate appointed to take office on July 1, 1974, shall serve for a term ending June 30, 1975.

5. *Certification.* The commission shall promptly certify the names and addresses of the magistrates appointed to the clerk of the district court and the chief judge of the judicial district. The clerk shall certify to the supreme court administrator and to the state comptroller the names and addresses of magistrates so appointed. The certification of the clerk to the comptroller shall be authority for the comptroller to pay the salaries and expenses in accordance with section 602.54. Judicial magistrates shall be officers of the state.

6. *Oath and instruction.* Before assuming office, a judicial magistrate shall subscribe and file in the office of the clerk of the district court of the county of his residence his oath of office to uphold and support the Constitutions of the United States of America and the state of Iowa, the laws enacted pursuant thereto, and the law and ordinances of the political subdivisions of the state of Iowa. Annually, the supreme court administrator shall

cause a school of instruction to be conducted for judicial magistrates, and each judicial magistrate appointed as provided in this chapter prior to the time he takes office shall attend unless excused by the chief justice for good cause.

A judicial magistrate appointed under this section to fill a vacancy shall attend the first school of instruction held following his appointment unless excused by the chief justice for good cause. [C73, 75,§602.50; 66GA, ch 245,§3]

Referred to in §§602.52, 602.57, 602.59
Appointments during April 1973, see 65GA, ch 282,§8
Effective July 1, 1973, 64GA, ch 1124,§283; retroactive to July 1, 1972, 65GA, ch 282,§1; amendment effective July 1, 1973, 65GA, ch 282,§8

602.51 Additional judicial magistrates — apportionment and appointment. There shall be one judicial magistrate who shall devote his entire time to the duties of his position in those counties having a population, according to the last federal decennial census, of more than thirty-five thousand and less than eighty thousand. There shall be two such magistrates in these counties having a population of more than eighty thousand and less than one hundred twenty-five thousand. There shall be three such magistrates in any county having a population of more than one hundred twenty-five thousand and less than two hundred thousand people. There shall be four such magistrates in counties having a population of two hundred thousand people or above. In those counties in which a district court associate judge resides, the district court associate judge shall be considered a judicial magistrate for the purpose of this paragraph. A judicial magistrate appointed pursuant to section 602.59 shall not be counted for the purposes of this paragraph.

The judicial magistrates authorized by this section and section 602.59 shall be appointed by the district judges of the election district from persons nominated by the county judicial magistrate appointing commission. Each office of judicial magistrate authorized by this section shall be for a term of four years from July 1, 1974, and each four years thereafter.

In March of the year in which the terms of magistrates appointed pursuant to this section expire, and, within thirty days after notification is received of a vacancy in an office authorized by this section, the county judicial magistrate appointing commission for the county affected shall carefully consider individuals for the available position, and shall, by majority vote, certify to the chief judge of the judicial district the names of three individuals for each office vacated. The nominees shall be chosen solely on the basis of their qualifications and not on the basis of their political affiliation.

Within thirty days after the chief judge has received the list of nominees, the district judges in the election district shall, by majority vote, appoint one of the nominees to each vacancy. For purposes of this section, vacancy means death, resignation, retirement, removal, or increase in the number of positions authorized. [C73, 75,§602.51]

Referred to in §§231.3, 602.33, 602.52, 602.53, 602.54, 602.59, 602.60, 602.71, 605.15
Applicable to vacancies occurring after July 1, 1973; see 65GA, ch 282,§99

602.52 Qualifications, age. A judicial magistrate shall be an elector of the county of appointment during his or her term of office. A person shall not be qualified for appointment and shall not be appointed as a judicial magistrate unless that person can complete prior to his or her reaching the age of seventy-two years the entire two-year or four-year term of office of judicial magistrate for which nomination and appointment is being made. A judicial magistrate appointed pursuant to section 602.50 may be licensed to practice law in Iowa, and the commission in selecting persons for those positions shall first consider for appointment applicants so licensed. After July 1, 1973, a judicial magistrate nominated and appointed pursuant to section 602.51 shall be licensed to practice law in Iowa. [C73, 75, §602.52; 66GA, ch 1238,§1]

Effective July 1, 1974, 65GA, ch 282,§40
Exemption to incumbents as of July 1, 1976

602.53 Prohibitions.

1. No magistrate shall accept any fee or reward from or on behalf of anyone for services rendered in the conduct of any official business except as provided in this chapter.

2. If a judicial magistrate appears as counsel for a client in a matter that is within the jurisdiction of a magistrate, that matter shall be heard only by a district judge, a district associate judge, or a judicial magistrate appointed pursuant to section 602.51. A disqualification under this section shall be had upon motion of the judicial magistrate or of any party, either orally or in writing, and the clerk shall be advised to reassign the matter to a proper judicial officer. [C73, 75,§602.53]

602.54 Salary, expenses. Each judicial magistrate shall receive a salary payable from the general fund of the state and also his actual and necessary expenses in the performance of his duties while away from the city of his residence, in accordance with section 605.2. The salary of judicial magistrates, except as otherwise provided herein, shall be the sum of four thousand eight hundred dollars annually. The judicial magistrates serving pursuant to section 602.51 shall receive an annual salary of nineteen thousand five hundred dollars. Judicial magistrates except district associate judges shall be members of the Iowa public employees' retirement system. [C73, 75, §602.54]

Referred to in §602.50

602.55 Funds, reports. Each month each judicial magistrate and district associate judge shall file with the clerk of the district court of the proper county a sworn, itemized statement, of all cases disposed of and all

funds received and disbursed per case, and at least monthly shall remit to the clerk all funds received by him. The clerk shall provide adequate clerical assistance to judicial magistrates and district associate judges to carry out this section. The clerk shall remit ninety percent of all fines and forfeited bail received from a magistrate or district associate judge to the city that was the plaintiff in any action, and shall provide that city with a statement showing the total number of such cases, the total of all fines and forfeited bail collected and the total of all cases dismissed. The clerk shall remit the remaining ten percent to the county treasurer for deposit in the county general fund. The clerk shall remit to the treasurer of the county, for the benefit of the school fund, all other fines and forfeited bail received from a magistrate. All fees and costs for the filing of a complaint or information or upon forfeiture of bail received from a magistrate shall be remitted monthly by the clerk as follows:

1. Three-fifths to the state treasurer to be credited to the general fund of the state.

2. Two-fifths to the county treasurer to be credited to the general fund of the county. [C73, 75,§602.55]

Referred to in §§602.63, 753.19

602.56 Removal of judicial magistrates. The electors residing within a county where a magistrate resides or a district judge of his district may petition the judges of the district court to terminate the appointment of a judicial magistrate sitting in that district. If by the electorate, such petition shall be signed by at least two percent of the electors voting for governor in the last general election of the county of residence of the magistrate. The petition shall contain a general statement of the grounds upon which termination is sought. Within thirty days after the petition is filed with the clerk of the district court of the county in which the judicial magistrate resides, the chief judge of the judicial district shall appoint a tribunal composed of three other judges of the judicial election district where the magistrate resides who shall schedule and hold a hearing to determine if good cause exists to terminate the appointment.

The clerk shall give notification of the time and place of hearing to the magistrate against whom the petition was brought by restricted certified mail and shall notify all other interested parties by publication. Notification shall be made at least fifteen days prior to the time set for hearing. The judicial magistrate may be represented by counsel at the hearing, shall have the right to confront and cross-examine all witnesses against him, and may call witnesses and introduce evidence in his own behalf.

The tribunal may, by majority vote, dismiss the petition, declare the office vacant, or make other disposition of the case as is appropriate. All decisions of the tribunal are final, and there shall be no appeal. [C73, 75,§602.56]

Referred to in §602.18

602.57 Allotment. Except as provided in section 602.58, there shall be a total of one hundred ninety-one Iowa judicial magistrates to be appointed pursuant to section 602.50. During February of 1977 and every two years thereafter, the supreme court administrator shall apportion the number of judicial magistrates to be so appointed among the counties in accordance with the following criteria:

1. The number and type of proceedings contained in the administrative reports required by section 602.64.

2. The existence of either permanent, temporary or seasonal populations not included in the current census figures.

3. The geographical area to be served.

4. An inordinate number of pending cases over which magistrates have jurisdiction in the preceding year.

5. The number and types of juvenile proceedings handled by district associate judges and full-time magistrates.

Provided, however, that each county shall be allotted no less than one resident judicial magistrate.

During March of 1977 and during March of every two years thereafter, the supreme court administrator shall notify the clerk of the district court of each county and the chief judge of the appropriate judicial district, of the number of magistrates to which the county is entitled. [C73, 75,§602.57; 66GA, ch 245,§§4, 5]

Referred to in §§602.50, 602.58, 602.59

Effective July 1, 1973, 64GA, ch 1124,§283; retroactive to July 1, 1972, 65GA, ch 282,§1; amendment effective July 1, 1973, 65GA, ch 282,§10; however, see 65GA, ch 1085,§44

602.58 Additional judicial magistrate allowed. In those counties which are allotted one judicial magistrate under section 602.57 or 602.59, the county judicial magistrate appointing commission may, by majority vote, decide to appoint one additional judicial magistrate. In those counties appointing an additional magistrate under this section, each magistrate shall receive a salary of two thousand four hundred dollars per year. [C73, 75, §602.58]

Referred to in §§602.50, 602.57

Effective July 1, 1973, 64GA, ch 1124,§283; retroactive to July 1, 1972, 65GA, ch 282,§1

602.59 Substitution for apportionment.

1. *Applicability.* In any county having an apportionment of three or more judicial magistrates appointable pursuant to section 602.50, the chief judge of the district, subject to the limitations of this section, may designate by order that magistrates appointed pursuant to this section be utilized in lieu of magistrates appointed pursuant to section 602.50. The order of substitution may be made only upon the affirmative vote of a majority of the district judges in that judicial election district that the substitution be made. An order

of substitution is renewable for successive terms upon the vote of the judges, but shall not be effective for any term unless a copy of the order is received by the chairman of the county judicial magistrate appointing commission not later than the thirty-first day of March of the year in which the substitution is to take effect. A copy of the order also shall be sent to the supreme court administrator.

The district judges of a judicial election district may determine, for the year 1974, that a substitution be made pursuant to this section, by an affirmative vote of a majority rendered and with written notice thereof delivered to the chairman of the county judicial magistrate appointing commission not later than June 1, 1974. A magistrate appointed in 1974 pursuant to this subsection shall be subject to all of the provisions of this section, except that the term of office shall be an irregular one for a period of five years from July 1, 1974.

2. *Reduction in appointments.* For any county in which such an order is in effect, the number of magistrates actually appointed pursuant to section 602.50 shall be reduced by three for each magistrate substituted under the provisions of this section.

Upon any subsequent reduction in the apportionment of magistrates to the county, either the commission shall further reduce the number of magistrates appointed, or the chief judge shall revoke an order of substitution.

3. *Appointment.* A judicial magistrate ordered pursuant to this section shall be nominated and appointed, and shall have qualifications, rights, salary, duties, responsibilities, liabilities, authority and jurisdiction, the same as a magistrate authorized by paragraph (1) of section 602.51.

4. *Limitations.*

a. Except as provided in subsections 1 and 2, a substitution shall not increase or decrease the number of judicial magistrates authorized by this chapter.

b. A substitution or reversion pursuant to this section shall not take effect during the term of office of any magistrate.

c. A substitution shall not be made or maintained where the apportionment to a county is insufficient to permit the full reduction in appointments required by subsection 2.

5. *Reversion.* If an apportionment by the supreme court administrator pursuant to section 602.57 reduces the number of judicial magistrate offices in the county to less than three, or a majority of the district judges in that judicial election district determines that a substitution is no longer desirable, then the substituted office shall not be renewed for a successive term. At the end of the term, appointments shall be made pursuant to section 602.50. [C73, 75,§602.59]

Referred to in §§602.50, 602.51, 602.58

602.60 Jurisdiction, venue. Judicial magistrates shall have jurisdiction of nonindictable misdemeanors, including traffic and ordinance violations, preliminary hearings, search warrant proceedings, and small claims. They shall also have jurisdiction to exercise the powers specified in sections 748.2, 644.2 and 644.12. They shall have power to act any place within the district as directed, and venue shall be the same as in other district court proceedings. In addition, judicial magistrates appointed pursuant to section 602.51 shall have jurisdiction of indictable misdemeanors, the jurisdiction provided for in section 231.3 when designated a judge of the juvenile court, and jurisdiction in civil actions for money judgments where the amount in controversy does not exceed three thousand dollars and while exercising that jurisdiction, judicial magistrates shall employ district judges' practice and procedure.

For purposes of administration judicial magistrates shall be under the jurisdiction of the chief judge of the judicial district. Judicial magistrates shall be subject to the same rules and laws that apply to district judges except as otherwise provided in this chapter. [C73, 75,§602.60]

Referred to in §602.32
Effective July 1, 1974, 65GA, ch 282,§45

602.61 Times and places of holding court. Judicial magistrates shall hold court at the times and places designated by the chief judge of the district. The times and places shall be designated so as to insure accessibility of judicial magistrates at all times throughout the district. In addition, the chief judge may allocate the work load among the judicial magistrates as he deems necessary. The chief judge may assign a magistrate to hold court at other designated places within the district outside of the county of the magistrate's residence only if it is necessary for the orderly administration of justice. The boards of supervisors shall provide facilities for the holding of court at the county seats. If court is held in a city outside the county seat, such city shall furnish suitable facilities and equipment. The schedule of places and times of availability of magistrates and of any changes therein shall be disseminated by the chief judge of the judicial district to the peace officers within the district. [C73, 75,§602.61]

602.62 Procedure. The criminal procedure before judicial magistrates shall be as provided in chapters 751, 754 to 763, 765, 766, and 768. The civil procedure before judicial magistrates shall be as provided in chapters 631 and 648. [C73, 75,§602.62]

602.63 Dockets, judgments, costs. The clerk of the district court of the county in which a judicial magistrate resides shall furnish the judicial magistrate, district associate judge, or district judge acting as judicial magistrate, a docket in which shall be entered all proceedings except small claims. Such docket shall be indexed and shall contain in each case the title and nature of the action; place of hearing; appearances; and notations of the documents filed

with the judicial magistrate, of the proceedings in the case and orders made, of the verdict and judgment including costs, of any satisfaction of the judgment, of whether the judgment was certified to the clerk of the district court, of whether an appeal was taken, and of the amount of the appeal bond. All costs in criminal cases shall be assessed and distributed as in chapter 606, except that the cost of filing and docketing of a complaint or information for a nonindictable misdemeanor shall be five dollars which shall be distributed pursuant to section 602.55. The five dollar cost for filing and docketing a complaint or information for a nonindictable misdemeanor shall not apply in cases of overtime parking. If the judgment and costs are not fully and immediately satisfied in criminal cases, the judicial magistrate shall promptly certify a copy of the judgment to the clerk of the district court indicating thereon the portion unsatisfied; and the clerk shall index and file the judgment, whereupon it shall be a judgment of the district court without recording.

The chief judge of a district may order that criminal proceedings which are within the jurisdiction of judicial magistrates and district associate judges be combined into centralized dockets for the county if the chief judge determines that administration could be improved thereby. When so ordered, a centralized docket shall be in lieu of individual dockets otherwise prescribed, and the clerk shall compile a centralized docket in the manner prescribed for an individual docket. The chief judge may assign actions and proceedings on centralized dockets to judicial magistrates and district associate judges as he deems necessary. [C73, 75,§602.63]

Referred to in §753.18

602.64 Administrative reports. Each judicial magistrate, district associate judge and district judge acting as a judicial magistrate shall report all judicial business handled by him to the clerk and board of supervisors of the appropriate county in which he held court and the chief judge of his judicial district. Such reports shall be on a form prescribed by the supreme court administrator and be made at such times as required by him. The administrator may require the clerk to forward copies of individual reports to him or require a consolidated report for the county. [C73, 75, §602.64]

Referred to in §602.57

602.65 Magistrates not holding office. When a judicial magistrate ceases to hold office, his docket and all records relating to his office shall be promptly deposited with the clerk of the district court who issued the docket. [C73, 75,§602.65]

602.66 to 602.70 Reserved.

602.71 Alternate judicial magistrate.

1. *Authorization.* In any county having only one district associate judge, or only one judicial magistrate appointed pursuant to section 602.51, the county judicial magistrate appointing commission, by majority vote, may authorize that an alternate judicial magistrate be selected.

2. *Selection.* The procedures for selecting an alternate judicial magistrate shall be as provided in section 602.51, but any person so appointed shall be designated as an alternate judicial magistrate, and shall be subject to the limitations contained in this section.

3. *Jurisdiction.* An alternate judicial magistrate shall have the same qualificatons, jurisdiction, obligations and liabilities as a judicial magistrate appointed pursuant to section 602.51.

4. *Duties.* In case of inability of a district associate judge or judicial magistrate to act, the chief judge of the district may order that the alternate temporarily sit in place of that officer. The words "inability to act" shall mean a temporary absence from court duties, including a reasonable vacation period. An alternate may practice as an attorney except at such times as he is acting as judicial magistrate, but he shall not act in any manner on any case in which he is interested as an attorney.

5. *Salary.* The alternate shall be compensated by the state at the rate of forty dollars per day for each day of actual duty as magistrate, and for actual expenses incurred in the performance of duties as magistrate, upon certification to the comptroller by the chief judge of the days of duty and the expenses incurred.

6. *Limitations.* The appointment of an alternate judicial magistrate shall not affect the rights, duties or remuneration of any regular judicial officer, and the appointment of an alternate shall not affect the number or apportionment of judicial magistrates authorized by this chapter. [C75,§602.71]

Section 602.71, Code 1973, repealed by 65GA, ch 1085,§15; see §631.16

CHAPTER 603

SUPERIOR COURT

Repealed by 64GA, ch 1124,§282

CHAPTER 604

DISTRICT COURT

This chapter transferred to chapter 602 and rearranged

CHAPTER 605

GENERAL PROVISIONS RELATING TO JUDGES AND COURTS

Referred to in §684.47

605.1 Salary of judges.
605.2 Expenses.
605.3 Contest—to whom salary and expenses paid.
605.4 Acts of judge de facto.
605.5 Audit and payment.
605.6 Shorthand reporter.
605.7 Oath—removal.
605.8 Compensation.
605.9 Population determined—proportion of payment—assistants.
605.10 Expenses.
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605.12 Taxed as part of costs.
605.13 Residence.
605.14 Judge to be attorney—exception.
605.15 Practice prohibited.
605.16 Judicial proceedings public.
605.17 When judge disqualified.
605.18 Sunday—permissible acts.
605.19 to 605.23 Repealed by 64GA, ch 1124, §282.
Rule—Death, retirement, or disability of judge, R.C.P. 367.
Rule—Appeal to district court from administrative body, R.C.P. 368.
605.24 Mandatory retirement.
605.25 Temporary service by retired judges.

JUDICIAL QUALIFICATIONS

605.26 Commission on judicial qualifications.
605.27 Power of supreme court.
605.28 Operation of commission.
605.29 Procedure before commission.
605.30 Procedure before supreme court.
605.31 Defamation.
605.32 Rules.
605.33 and 605.34 Reserved.
605.35 District court administrator — district court administrative fund.

605.1 Salary of judges. The salary of each judge of the district court and the chief judge of each judicial district shall be as fixed by the general assembly. [C73,§3774; C97,§253; SS15,§253; C24, 27, 31, 35, 39,§**10804**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.1]

Referred to in §605.3
SS15,§253, editorially divided
See 65GA, ch 283,§3

605.2 Expenses. Where a judge of the district court, court of appeals or supreme court is required, in the discharge of his official duties, to leave the county of his residence or leave the city of his residence to perform such duties, he shall be paid such actual and necessary expenses for living quarters and living expenses not to exceed the sum of twenty dollars per day and transportation expenses as shall be incurred. Expenses for judges of the court of appeals are limited as provided in section 684.45. [SS15,§253; C24, 27, 31, 35, 39,§**10805**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.2; 66GA, ch 1241,§50]

Referred to in §§602.31, 602.54, 605.3, 684.20

605.3 Contest — to whom salary and expenses paid. The salary and expense of district judges as provided in sections 605.1 and 605.2 shall be paid to any person who has received a certificate of election as such judge, and has qualified, and is acting thereunder, during the period he so acts without regard to the result of any contest or action brought to test the validity of such election or failure to qualify within the time fixed by law for good cause shown to the chief justice of the supreme court. [C35,§10805-e1; C39,§**10805.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.3]

605.4 Acts of judge de facto. The right, power, and authority of any such person acting as judge in any and all matters which may come before the court or judge shall be of the same force and effect as if the said person had been duly elected and qualified as such judge. [C35,§10805-e3; C39,§**10805.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.4]

605.5 Audit and payment. An itemized expense account shall be certified by the party entitled thereto to the state comptroller, which account shall be rendered quarterly and shall be paid in the same manner as the salary of such judge. [SS15,§253; C24, 27, 31, 35, 39, §**10806**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.5]

Preparation and audit of claim, §8.6

605.6 Shorthand reporter. Each judge of the district court shall appoint a shorthand reporter who shall, upon the request of either party in a civil case or a criminal case, take and report in full the oral evidence and proceedings in the case, and perform all duties required of him on the trial, as provided by law.

There shall be no discrimination in hiring shorthand court reporters on the basis of sex. Complaints of persons aggrieved may be made under the provisions of chapter 601A. [C73, §181; C97,§245; C24, 27, 31, 35, 39,§**10807**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.6]

Detailed report of trial, §624.9

605.7 Oath—removal. Such reporter shall take an oath faithfully to perform the duties of his office, which shall be filed in the office of the clerk. He shall attend such sessions of the court and perform such other reporting and related duties in aid of the court as the judge who appointed him may direct, and may be removed by the judge making such appointment. [C73,§182; C97,§246; C24, 27, 31, 35, 39,§**10808**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §605.7]

605.8 Compensation. Each full-time shorthand reporter of the district court shall be paid, in equal installments, an annual salary as hereinafter provided. Each district judge, upon the appointment of a full-time shorthand reporter, shall certify the name and address of the reporter and the date upon which his term of service begins, to each county auditor in the judicial district.

The base starting salary of a full-time certified shorthand reporter shall be fourteen thousand dollars. The base salary may be increased by an amount not to exceed six hundred dollars for each year of experience as a shorthand reporter. The maximum salary shall not exceed eighteen thousand eight hundred dollars except as provided in this section.

Shorthand reporters who are employed on an emergency basis in the district court shall be paid not to exceed seventy-five dollars per diem while employed by the court or while employed under the direction of the judge. The per diem shall be paid from the county treasury where the court is held, upon the certificate of the judge holding the court, or directing the employment. However, the maximum compensation for one-day attendance at court shall not exceed the per diem. Payments shall be made at least once each month.

Full-time certified shorthand reporters serving district associate judges shall be entitled to receive the same compensation they would be entitled to receive if they were serving district court judges.

Notwithstanding the provisions of this section, full-time certified shorthand reporters may, by joint order of the district court judges in such district, be individually granted additional compensation in excess of the amounts provided for in this section, not to exceed five percent of such amounts. [C73,§3777; C97,§254; SS15,§254-a2; C24, 27, 31, 35, 39,§**10809**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.8; 66GA, ch 1100, §2]

SS15,§254-a2, editorially divided
Referred to in §602.33

605.9 Population determined—proportion of payment—assistants. Immediately after the results of each decennial federal census are published, the chief judge of each judicial district shall determine therefrom the population of each county of said district, and shall certify to the county auditor of each such county the percentage proportion of the population of each such county to the aggregate population of all of the counties in said judicial district. The chief judge shall select one county to issue warrants to the reporter in the amount of his total compensation. Each county auditor of the other counties in the district shall issue warrants to the county treasurer of the county paying the reporter in the percentage amount of the total compensation of said reporter as certified by the district judges, and the county treasurer shall pay same out of any funds in the county treasury not otherwise appropriated.

In the event it is determined by any judge of the district court that it is necessary to employ an additional shorthand reporter because of an extraordinary volume of work, or because of the temporary illness or incapacity of a regular shorthand reporter, such judge may appoint a temporary shorthand reporter who shall serve as required by said judge, and shall be paid compensation on a per diem basis at the prevailing rates of compensation for such reporters as may be determined by the judge. A temporary shorthand reporter shall be paid in the same manner as a regular reporter. [SS15,§254-a2; C24, 27, 31, 35, 39,§**10810**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §605.9]

Referred to in §§509A.7, 605.35

605.10 Expenses. Where a shorthand court reporter is required, in the discharge of his official duties, to leave the county of his residence or leave the city of his residence to perform such duties, he shall be paid his actual and necessary hotel and living expenses not to exceed the sum of twenty dollars per day and transportation expenses as shall be incurred, which account shall be itemized and approved by the presiding judge of the district court and certified to the county auditor of the county in which such expenses are incurred, and shall be paid in the same manner as the per diem of such reporter is paid. [SS15,§254-a2; C24, 27, 31, 35, 39,§**10811**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.10]

605.11 Transcript fee. Shorthand reporters shall also receive such compensation as shall be fixed by rule of the supreme court for transcribing their official notes, to be paid for in all cases by the party ordering the same.

The compensation of shorthand reporters for transcribing their official notes is hereby fixed at one dollar and forty cents per page for the original, fifty cents per page for the first carbon copy, and thirty-five cents per page for each additional carbon copy. [Applicable to transcripts ordered after February 1, 1975]

A page of transcript shall consist of not less than twenty-five lines written on paper at least 8½x11 inches in size, prepared for binding on the left side, with margins of not more than 1¾ inch on the left nor ⅝ inch on the right. Type shall be standard pica with ten letters to the inch. Questions and answers shall each begin a new line. Indentations for speakers or paragraphs shall not be more than ten spaces from left margin. Pages shall be numbered consecutively in the upper right-hand corner. Testimony of a new witness may be started on a new page where the prior witness' testimony ends below

the center of the preceding page. Transcripts shall be indexed as to witnesses and exhibits. All transcripts shall show upon their face the date the transcript was ordered and the date it was delivered.*

[C73,§3777; C97,§254; SS15,§254-a2; C24, 27, 31, 35, 39,§**10812**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §605.11]

*By Supreme Court order, July 1, 1965; amended May 8, 1968; January 13, 1971; January 14, 1975

605.12 Taxed as part of costs. A charge of fifteen dollars per day for reporting in all cases, except where the defendant in a criminal case is acquitted, shall be taxed as part of the costs in the case by the clerk of the court and paid into the county treasury when collected. [S13,§254-a3; C24, 27, 31, 35, 39,§**10813**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.12]

605.13 Residence. The district judge shall be a resident of the district in which he is elected. [C97,§227; SS15,§227; C24, 27, 31, 35, 39, §**10814**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.13]

605.14 Judge to be attorney—exception. No person shall be eligible for, or hold the office of supreme court judge, court of appeals judge, or district judge or district associate judge who is not an attorney at law, admitted to the practice of law in this state. [S13,§281; C24, 27, 31, 35, 39,§**10815**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.14; 66GA, ch 1241§51]

40GA, ch 264, editorially divided

605.15 Practice prohibited. During the time that a supreme court judge, court of appeals judge, district judge, district associate judge, or judicial magistrate appointed pursuant to section 602.51 is holding such office he shall not practice as an attorney or counselor or give advice in relation to any action pending or about to be brought in any of the courts of the state. [C51,§1587; R60,§2674; C73,§187; C97,§281; S13,§281; C24, 27, 31, 35, 39,§**10816**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.15; 66GA, ch 1241,§52]

605.16 Judicial proceedings public. All judicial proceedings must be public, unless otherwise specially provided by statute or agreed upon by the parties. [C51,§1593; R60,§2683; C73,§189; C97,§283; C24, 27, 31, 35, 39,§**10817**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.16]

Constitution, Art. I,§10

605.17 When judge disqualified. A judge or magistrate is disqualified from acting as such, except by mutual consent of parties, in any case wherein he or any member of any corporation, partnership, firm or association with which he may be associated is a party or interested, or where he is related to either party by consanguinity or affinity within the fourth degree, or where he or any member of any firm, partnership or association with which he may be associated has been attorney for either party in the action or proceeding. This section shall not prevent him from disposing of any preliminary matter not affecting the merits of the case. [C51,§1595; R60,§2685; C73,§190; C97,§284; C24, 27, 31, 35, 39,§**10818**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.17]

Computing relation, §4.1(23)
Similar provision, §633.17

605.18 Sunday—permissible acts. No court can be opened nor any judicial business transacted on Sunday, except to:

1. Give instructions to a jury then deliberating on its verdict.

2. Receive a verdict or discharge a jury.

3. Exercise the powers of a single magistrate in a criminal proceeding.

4. Perform such other acts as are provided by law. [C51,§1596; R60,§2686; C73,§191; C97, §285; C24, 27, 31, 35, 39,§**10819**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§605.18]

Analogous or related provisions, §§626.6, 639.5, 643.3, 667.3, and R.C.P. 57
Appearance on holiday, §617.8

605.19 to 605.23 Repealed by 64GA, ch 1124, §282.

Death, retirement, or disability of judge. See R.C.P. 367.

Appeal to district court from administrative body. See R.C.P. 368.

605.24 Mandatory retirement. All judges of the supreme court, court of appeals or district court who shall have reached the mandatory retirement age, shall cease to hold office. The mandatory retirement age shall be seventy-five years for all judges of the supreme court or district court holding office on July 1, 1965. The mandatory retirement age shall be seventy-two years for all judges of the supreme court, court of appeals or district court appointed to office after July 1, 1965. [C66, 71, 73, 75,§605.24; 66GA, ch 1241, §53]

Referred to in §46.16

605.25 Temporary service by retired judges. Judges of the supreme court, court of appeals and district court who are hereafter retired by reason of age, or who are drawing benefits under section 605A.6, may with their consent be assigned by the supreme court to temporary judicial duties on a court in this state: However, a retired judge shall not be assigned to temporary judicial duties on any court superior to the highest court to which that judge had been appointed prior to retirement, and a judge may not be assigned for temporary duties with the supreme court or the court of appeals except in the case of a temporary absence of a member of one of those courts. A retired judge shall not engage in the practice of law unless he shall file with the clerk of the supreme court an election to practice law, in which event he shall thereafter be ineligible for assignment to temporary judicial duties at any time. While serving under temporary assignment as herein provided, a retired judge shall receive the

compensation and actual expense provided by law for judges on the court to which he is assigned, but shall not receive any annuity payments to which he may be entitled under the judicial retirement system. He may be authorized in the order of assignment to appoint a temporary reporter, who shall receive the compensation and actual expense provided by law for a regular reporter in the court to which the judge is assigned. The order of assignment shall be filed in the offices of the clerks of court at the places where the judge is to serve. [C66, 71, 73, 75,§605.25; 66GA, ch 1241,§54]

Referred to in §46.16

JUDICIAL QUALIFICATIONS

605.26 Commission on judicial qualifications. A "Commission on Judicial Qualifications" is hereby created consisting of one district court judge and two members who are practicing attorneys in Iowa licensed under the provisions of chapter 610 and are not of the same political affiliation, appointed by the chief justice of the supreme court, and four electors of the state who are not attorneys, no more than two of whom shall belong to the same political party, to be appointed by the governor and subject to confirmation by a vote of two-thirds of the membership of the senate. The commission members shall serve for six-year terms, shall be ineligible for a second term, shall hold no other office of and shall not be employed by the United States or the state of Iowa or of its political subdivisions, except for the judicial member. The first commission members shall take office January 1, 1974. Initially, two members shall serve for two years, two for four years, and three for six years, as shall be determined by lot among the first commission members. Vacancies shall be filled by appointment by the chief justice or governor as the case may be, for the unexpired portion of the term of the previous commission member.

If the judicial member or a judge who is a resident judge of the same judicial district as the judicial member is the subject of a charge before the commission, the chief justice shall appoint a judge of another district court to act in his place on the commission until he is exonerated of the charge or for the unexpired portion of his term as member of the commission if he is not exonerated of the charge. The commission shall elect its own chairman and the supreme court administrator of the judicial department or his designee shall be executive secretary of the commission, without additional compensation. The members of the commission other than the judicial member shall receive compensation of forty dollars for each day spent in the performance of their duties. The commission members and the executive secretary shall be paid their actual and necessary expenses for transportation, meals and lodging in the performance of their duties, and all other actual and necessary expenses of the operation of the commission. [C66, 71, 73, §605.28; C75,§605.26; 66GA, ch 1081,§6]

Referred to in §605A.13

605.27 Power of supreme court. Upon application by the commission on judicial qualifications, the supreme court shall have power to do either of the following:

1. Retire a district associate judge, a district judge, a judge of the court of appeals, or a judge of the supreme court for permanent physical or mental disability which substantially interferes with the performance of his judicial duties.

2. Discipline or remove any judge referred to in subsection 1 for persistent falure to perform his duties, habitual intemperance, willful misconduct in office, conduct which brings judicial office into disrepute, or substantial violation of the canons of judicial ethics. Discipline may include suspension without pay for a definite period of time not to exceed twelve months. [C66, 71, 73,§§605.26, 605.27; C75,§605.27; 66GA, ch 1241,§55]

Referred to in §605A.13

605.28 Operation of commission. A quorum of the commission shall be four members. Only commission members present at commission meetings or hearings may vote. Any application by the commission to the supreme court to retire, discipline, or remove a judge or any action by the commission which affects the final disposition of a complaint shall require the affirmative vote of at least four commission members. Notwithstanding the provisions of chapter 28A, all records, papers, proceedings, meetings and hearings of the commission shall be confidential, but if the commission applies to the supreme court to retire, discipline or remove a judge, the application and all of the records and papers in that proceeding shall become public documents. [C75, §605.28]

Referred to in §605A.13

605.29 Procedure before commission.

1. Charges before the commission shall be in writing but may be simple and informal. The commission shall investigate each charge as indicated by its gravity. If the charge is groundless, it shall be dismissed by the commission. If the charge appears to be substantiated but does not warrant application to the supreme court, the commission may dispose of it informally by conference with or communication to the judge involved, but if the charge appears to be substantiated and if proved would warrant application to the supreme court, notice to the judge shall be given and hearing shall be held before the commission. The commission may employ such additional investigative personnel, including but not limited to the executive secretary, as it deems necessary.

2. In case of hearing before the commission, notice in writing of the charge and of the time and place of hearing shall be mailed to the

judge at his residence at least twenty days prior to the time set for hearing. Hearing shall be held in the county where the judge resides unless the commission and the judge agree to a different location. The judge shall continue his judicial duties during the pendency of the charge unless otherwise ordered by the commission. The commission shall have subpoena power on behalf of the state and the judge, and disobedience of the commission's subpoena shall be punishable as contempt in the district court in and for the county in which the hearing is held. The attorney general shall prosecute the charge before the commission on behalf of the state. The judge may defend and shall have the right to participate in person and by counsel, to cross-examine, to be confronted by the witnesses, and to present evidence in accordance with the rules of civil procedure. A complete record shall be made of the evidence by a certified shorthand reporter. In accordance with its findings on the evidence, the commission shall dismiss the charge or make application to the supreme court to retire, discipline, or remove the judge. [C66, 71, 73,§605.29–605.31; C75,§605.29]

Referred to in §605A.13

605.30 Procedure before supreme court.

1. If the commission makes application to the supreme court to retire, discipline, or remove a judge, it shall promptly file in the supreme court a transcript of its proceedings at the hearing. The statutes and rules relative to proceedings following the filing of records in appeals of equity suits shall apply.

2. The attorney general shall prosecute the proceedings in the supreme court on behalf of the state, and the judge may defend in person and by counsel. If the supreme court finds the application should be granted in whole or in part, it shall render such decree as it deems appropriate and may retire the judge from office, discipline him or remove him from office.

Its decree retiring him from office for permanent physical or mental disability shall constitute an adjudication within the provisions of section 605A.13. [C75,§605.30]

Referred to in §605A.13

605.31 Defamation. The making of charges before the commission, the giving of evidence or information before the commission or to an investigator employed by the commission and the presentation of transcripts, extensions of evidence, briefs and arguments in the supreme court shall be privileged in actions for defamation. [C75,§605.31]

Referred to in §605A.13

605.32 Rules. The commission may adopt rules for its operation and procedure. [C75, §605.32]

Referred to in §605A.13

605.33 and 605.34 Reserved.

605.35 District court administrator — district court administrative fund. A district court administrator for each judicial district may be appointed to perform such duties as may be assigned by the chief judge of the district, at a salary to be fixed by order of that chief judge. District court administrators shall co-operate with the court administrator of the judicial department in developing necessary statewide district court administration policies, and the court administrator of the judicial department shall, from time to time, call conferences of the district court administrators. The chief judge of a judicial district in which an administrator has been appointed may provide for the establishment of a district court administrative fund, in which shall be deposited all appropriated funds received from the court administrator of the judicial department for district court use, and out of which all expenses of the district court administrator's office and any other district wide expenses may be paid. Expenses not covered by funds appropriated for district court use shall be assessed to and paid by the counties in the judicial district in the same manner that expenses of shorthand reporters are assessed to and paid by the counties pursuant to section 605.9. The district court administrator shall report to the court administrator of the judicial department, at the request of the latter, all information respecting the district court administrative fund. [66GA, ch 1234,§1]

CHAPTER 605A

JUDICIAL RETIREMENT SYSTEM

Referred to in §§602.31, 684.45

605A.1 System created.
605A.2 Administered by court administrator.
605A.3 Notice by judge in writing.
605A.4 Deposit by judge—deductions—contributions by governing body.
605A.5 Qualification conditions.
605A.6 Retirement.
605A.7 Amount of annuity.
605A.8 Individual accounts—refunding.
605A.9 Payment of annuities.
605A.10 Other public employment prohibited.
605A.11 Investment of fund.
605A.12 Voluntary retirement for disability.
605A.13 Retirement benefits for disability.
605A.14 Forfeiture of benefits—refund.
605A.15 Annuity for survivor of annuitant.

605A.1 System created. A retirement system is hereby created and established to be known as the "Judicial Retirement System", hereinafter called the "system". [C50, 54, 58, 62, 66, 71, 73, 75,§605A.1]

605A.2 Administered by court administrator. The court administrator shall be vested with authority to administer the system and related reports and may promulgate rules therefor not inconsistent with the provisions of this chapter. [C50, 54, 58, 62, 66, 71, 73, 75, §605A.2]

605A.3 Notice by judge in writing. This chapter shall not apply to any judge of the municipal, superior, or district court including a district associate judge, or a judge of the court of appeals or of the supreme court, until he gives notice in writing, while serving as a judge, to the state comptroller and treasurer of state, of his purpose to come within its purview. Judges of the municipal and superior courts shall at the same time give a copy of such notice to the city treasurer and county auditor within the district of such court. Such notice shall be given within one year after the effective date hereof or within one year after any date on which he takes oath of office as such judge. [C50, 54, 58, 62, 66, 71, 73, 75,§605A.3; 66GA, ch 1241,§56]

Membership in I.P.E.R.S. terminated, §97B.69

605A.4 Deposit by judge—deductions—contributions by governing body. Each judge coming within the purview of this chapter shall, on or before retirement, pay to the court administrator for deposit with the treasurer of state to the credit of a fund to be known as the "judicial retirement fund", hereinafter called the "fund", a sum equal to four percent of his basic salary for services as such judge for the total period of service as a judge of a municipal, superior, district or supreme court, or the court of appeals, including district associate judges, before the date of said notice, and after the date of the notice there shall be deducted and withheld from the basic salary of each judge coming within the purview of this chapter a sum equal to four percent of such basic salary. Provided that the maximum amount which any judge shall be required to contribute for past service shall not exceed for municipal or superior or district associate judges thirty-five hundred dollars, for district judges four thousand dollars, for court of appeals judges four thousand five hundred dollars, and for supreme court judges five thousand dollars. The amounts so deducted and withheld from the basic salary of each said judge shall be paid to the court administrator for deposit with the treasurer of state to the credit of the judicial retirement fund, and said fund is hereby appropriated for the payment of annuities, refunds, and allowances herein provided, except that the amount of such appropriations affecting payment of annuities, refunds, and allowances to judges of the municipal and superior court shall be limited to that part of said fund accumulated for their benefit as hereinafter provided. The judges of the municipal, superior, district and supreme court, and the court of appeals, including district associate judges, coming within the provisions of this chapter shall be deemed to consent and agree to the deductions from basic salary as provided herein and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services rendered by such judges during the period covered by such payment, except the right to the benefits to which they shall be entitled under the provisions of this chapter. The state shall contribute a sum not exceeding three percent of the basic salary of all judges of the district and supreme court for the years 1949 and 1950 and thereafter such sums as may be necessary over the amount contributed by the district and supreme court judges to finance the system, but only to the extent that the system applies to them. After June 30, 1973, the state shall contribute such sums as may be necessary over the amount contributed by district associate judges to finance the system as to them for the portion of their tenure after July 1, 1973, and thereafter such sums as may be necessary over the amount contributed by the district associate judges to finance the system, but only to the extent the system applies to them; and the respective cities and counties within each municipal and superior court district shall contribute the additional amount necessary pursuant to the next paragraph* of this section, for the portion of the tenure of such district associate judges prior to July 1, 1973. After July 1, 1976, the state shall contribute such sums as may be necessary over the amount contributed by judges of the court of appeals to finance the system, but only to the extent the system applies to them. [C50, 54, 58, 62, 66, 71, 73, 75,§605A.4; 66GA, ch 1241,§57]

*See 65GA, ch 282,§§56, 57

605A.5 Qualification conditions. No person, except the survivor of a person qualified to receive an annuity, shall be entitled to receive an annuity under this chapter unless he shall have contributed, as herein provided, to the judicial retirement fund for the entire period of his service as a judge of one or more of the courts included in this chapter. [C50, 54, 58, 62, 66, 71, 73, 75,§605A.5]

605A.6 Retirement. Any person who shall have become separated from service as a judge of any of the courts included in this chapter and who has had an aggregate of at least six years of service as a judge of one or more of such courts and shall have attained the age of sixty-five years or who has had twenty-five years of consecutive service as a judge of one or more of said courts, and

who shall have otherwise qualified as provided in this chapter, shall be entitled to an annuity as hereinafter provided. [C50, 54, 58, 62, 66, 71, 73, 75,§605A.6]

Referred to in §§605.25, 605A.12

605A.7 Amount of annuity. The annuity of a judge under this system shall be an amount equal to three percent of his average annual basic salary for his last three years as a judge of one or more of the courts included in this chapter, multiplied by his years of service as a judge of one or more of such courts, but no such annuity shall exceed an amount equal to fifty percent of the salary that he is receiving at the time he becomes separated from such service. [C50, 54, 58, 62, 66, 71, 73, 75,§605A.7]

605A.8 Individual accounts — refunding. The amounts deducted and withheld from the basic salary of each judge of the municipal, superior, district or supreme court, or court of appeals, including district associate judges, for the credit of the judicial retirement fund and all amounts paid into such fund by each judge shall be credited to the individual account of such judge. In the event a judge of the municipal, superior, district or supreme court, court of appeals, including district associate judges, becomes separated from service as such judge before he completes an aggregate of six years of service as a judge of one or more of such courts, the total amount of his contribution to the fund shall be returned to said judge or his legal representatives, and in the event a judge who has completed an aggregate of six years or more of service as a judge of one or more of such courts, dies before retirement, without a survivor, the total amount of his contribution to the fund shall be paid in one sum to his legal representatives, and in the event an annuitant under this section dies without a survivor, without having received in annuities an amount equal to the total amount remaining to his credit at the time of his separation from service, the amount remaining to his credit shall be paid in one sum to his legal representatives. [C50, 54, 58, 62, 66, 71, 73, 75,§605A.8; 66GA, ch 1241, §58]

605A.9 Payment of annuities. Annuities granted under the terms of this chapter shall be due and payable in monthly installments on the last business day of each month following the month or other period for which the annuity shall have accrued and shall continue during the life of the annuitant and payment of all annuities, refunds, and allowances granted hereunder shall be made by checks or warrants drawn and issued by the state comptroller. Applications for annuities shall be in such form as the state comptroller may prescribe. [C50, 54, 58, 62, 66, 71, 73, 75, §605A.9]

605A.10 Other public employment prohibited. No annuity shall be paid to any person, except a survivor, entitled to receive an annuity hereunder while he is serving as a state officer or employee. [C50, 54, 58, 62, 66, 71, 73, 75,§605A.10]

605A.11 Investment of fund. So much of the judicial retirement fund as may not be necessary to be kept on hand for the making of disbursements under this chapter shall be invested by the treasurer of state in bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality thereof or in any investments authorized for the Iowa public employees' retirement system in section 97B.7, subsection 2, paragraph "*b*", and the earnings therefrom shall be credited to said fund. [C50, 54, 58, 62, 66, 71, 73, 75, §605A.11]

Omnibus repeal, 53GA, ch 235,§12

605A.12 Voluntary retirement for disability. Any judge of the supreme, district or municipal court, including a district associate judge, or a judge of the court of appeals, who shall have served as a judge of one or more of such courts for a period of six years in the aggregate and who believes he has become permanently incapacitated, physically or mentally, to perform the duties of his office may personally or by his next friend or guardian file with the court administrator a written application for retirement. The application shall be filed in duplicate and accompanied by an affidavit as to the duration and particulars of his service and the nature of his incapacity. The court administrator shall forthwith transmit one copy of the application and affidavit to the chief justice who shall request the attorney general in writing to cause an investigation to be made relative to the claimed incapacity and report back the results thereof in writing. If the chief justice finds from the report of the attorney general that the applicant is permanently incapacitated, physically or mentally, to perform the duties of his office he shall by his endorsement thereon declare the applicant retired, and the office vacant, and shall file the report in the office of the court administrator, and a copy in the office of the secretary of state. From the date of such filing the applicant shall be deemed retired from his office and entitled to the benefits of this chapter to the same extent as if he had retired under the provisions of section 605A.6. [C66, 71, 73, 75,§605A.12; 66GA, ch 1241,§59]

605A.13 Retirement benefits for disability. An adjudication as to permanent physical or mental disability under the provisions of sections 605.26 to 605.32 shall entitle the judge to the same retirement benefits as provided for voluntary retirement for such cause. [C66, 71, 73, 75,§605A.13]

Referred to in §605.30

605A.14 Forfeiture of benefits—refund. In the event a judge of the supreme, district or municipal court including a district associate

judge, or a judge of the court of appeals, is removed for cause other than permanent disability he and his survivor shall forfeit the right to any retirement benefits under the system but the total amount of his contribution to the fund shall be returned to him or his legal representative. [C66, 71, 73, 75, §605A.14; 66GA, ch 1241,§60]

Constitutionality, 60GA, ch 322,§4

605A.15 Annuity for survivor of annuitant. The survivor of a judge who was qualified for retirement compensation under the system at the time of his death, is entitled to receive an annuity of one-half the amount of the annuity the judge was receiving or would have been entitled to receive at the time of his death, or if the judge died before age sixty-five, then one-half of the amount he would have been entitled to receive at age sixty-five based on his years of service. Such annuity shall begin on the judge's death, or on the date the judge would have been sixty-five if he died earlier than age sixty-five, or upon the survivor reaching age sixty, whichever is later.

For the purposes of this chapter "survivor" means the surviving spouse of a person who was a judge, if married to the judge for at least five years next preceding his death, but does not include a surviving spouse who remarries.

In the event the judge dies leaving a survivor but without receiving in annuities an amount equal to his credit, the balance shall be credited to the account of his survivor, and if the survivor dies without remarrying and without receiving in annuities an amount equal to said balance, the amount then remaining shall be paid to the survivor's legal representative. [C73, 75,§605A.15]

CHAPTER 606

CLERK OF THE DISTRICT COURT

Referred to in §602.63

606.1 General duties.
606.2 Death of judge—notice to comptroller.
606.3 Payment of money—notice.
606.4 Service of notice.
606.5 Default—liability.
606.6 Attestation of process.
606.7 Records and books.
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606.11 Pleadings—when deemed filed—removal of papers.
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606.13 Not to be practicing attorney.
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PRESERVATION AND DESTRUCTION OF COURT RECORDS

606.20 Reproduction of records.
606.21 Destruction of original records.
606.22 Destruction without reproduction.
606.23 Articles of historical interest.

606.1 General duties. The clerk of the district court shall keep his office at the county seat, attend the sessions of the district court himself or by deputy, keep the records, papers, and seal, and record the proceedings of the court as hereinafter directed, under the direction of the judge. [C51,§1577; R60,§343; C73, §194; C97,§287; C24, 27, 31, 35, 39,§10825; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.1]

Right to select newspapers for publication, §618.7

606.2 Death of judge—notice to comptroller. In the event of the death of a judge of the district court, the clerk of the district court of the county in which said judge resided at the time of his death shall immediately notify the state comptroller in writing of the date of the death of said judge. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.2]

606.3 Payment of money — notice. When money to the amount of five hundred dollars or more is paid to the clerk to be paid to any person, and not disbursed within thirty days, he shall notify the person entitled to receive such money, or for whose account the money is paid, or the attorney of record of such person. [C24, 27, 31, 35, 39,§10826; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.3]

40GA, ch 266,§2, editorially divided

606.4 Service of notice. The notice shall be by certified mail, and shall be mailed within forty days from the receipt of the money, to the last address of the person or attorney known to the clerk, and memorandum thereof entered on the proper record. [C24, 27, 31, 35, 39,§10827; C46, 50, 54, 58, 62, 66, 71, 73, 75, §606.4]

606.5 Default—liability. If the clerk fails to give said notice, he and his bondsmen shall be personally liable for interest on such money from the date of the receipt thereof by him to the date the same is paid to the person or attorney. [C24, 27, 31, 35, 39,§10828; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.5]

606.6 Attestation of process. All process issued by the clerk of the court shall bear date the day it is issued, and be attested in the name of the clerk who issued it, and under the seal of the court. [C51,§1592; R60,§2682; C73,§188; C97,§282; C24, 27, 31, 35, 39,§10829; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.6]

606.7 Records and books. The records of said court shall consist of the original papers filed in all proceedings, and the books to be kept by the clerk thereof as follows:

1. *Record book.* One containing the entries of the proceedings of the court, which may be known as the "record book", and which is to have an index referring to each proceeding in each cause under the names of the parties, both plaintiff and defendant, and under the name of each person named in either party.

2. *Judgment docket.* One containing an abstract of the judgments, having in separate and appropriate columns the names of the parties, the date of the judgment, the damages recovered, costs, the date of the issuance and return of executions, with the entry of satisfaction, and other memoranda, which book may be known as the "judgment docket", and is to have an index like that required for the record book.

3. *Fee book.* One in which to enter in detail the costs and fees in each action or proceeding under the title of the same, with an index like that required above, and which may be known as the "fee book".

4. *Sale book.* One in which to enter the following matters in relation to any judgment under which real property is sold, entering them after the execution is returned: The title of the action, the date of the judgment, the amount of damages recovered, the total amount of costs, and the officer's return in full; which book may be known as the "sale book", and is to have an index like those required above.

5. *Encumbrance book.* One to be called the "encumbrance book", in which the sheriff shall enter a statement of the levy of every attachment on real estate.

6. *Appearance or combination docket.* One to be known as the "appearance docket", which shall contain all matters required by law to be kept therein; but the entries provided for in this subsection and subsections 2 and 3 may be combined in one book, indexed as provided in subsection 1 hereof, which, when thus kept, shall be known as the "combination docket".

7. *Lien book.* One in which an index of all liens in said court shall be kept. [R60,§§345, 346; C73,§§196, 197; C97,§288; C24, 27, 31, 35, 39, §10830; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.7]

Referred to in §631.2

606.8 Appearance docket—entries required. The clerk shall enter in said appearance docket the titles of all actions or special proceedings that shall be brought in the court, numbering them consecutively in the order in which they shall have been commenced, which numbers shall not be changed during the further progress thereof. In making such entries, the clerk shall set out the full names of all the parties, plaintiffs and defendants, as contained in the petition, or as subsequently made parties by any pleading, proceeding, or order. [C73,§198; C97,§289; C24, 27, 31, 35, 39,§10831; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.8]

606.9 Entry of return of notice. When the original notice shall be returned to the office of the clerk, he shall enter in said docket so much of the return thereon as to show who of the parties have been served therewith, and the manner and time of service. [C73, §199; C97,§290; C24, 27, 31, 35, 39,§10832; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.9]

606.10 Entry of lien — details required. When the clerk of the district court enters a lien, or indexes an action affecting real estate, on the records of his office, he shall, immediately in connection with the entry, enter the year, month, day, hour, and minute when the entry was made. [C31, 35,§10832-d1; C39, §10832.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §606.10]

606.11 Pleadings—when deemed filed—removal of papers. The clerk shall, upon the filing thereof, make in the appearance docket a memorandum of the date of the filing of all petitions, demurrers, answers, motions, or papers of any other description in the cause; and no pleading of any description shall be considered as filed in the cause, or taken from the clerk's office, until the said memorandum is made. Such memorandum shall be made before the end of the next working day. [C73, §200; C97,§291; C24, 27, 31, 35, 39,§10833; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.11]

606.12 Subsequent proceedings. Immediately upon the sustaining or overruling of any demurrer or motion, the striking out or amendment of any pleading, trial of the cause, rendition of the verdict, entry of judgment, issuing of execution or any other act or thing done in the progress of the cause, the like memorandum thereof shall be made in said docket, giving the date thereof, and the number of the book and page of the record where such entry shall have been made, it being intended that the appearance docket shall be an index from the commencement to the end of a suit. [C73,§201; C97,§292; C24, 27, 31, 35, 39, §10834; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.12]

606.13 Not to be practicing attorney. The clerk, or deputy clerk of the district court is prohibited from practicing, directly or indirectly, as an attorney or solicitor in any of the courts of this state. [C73,§204; C97,§294; C24, 27, 31, 35, 39,§10835; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.13]

606.14 Change in title—certification. Where the title of any real estate is finally established

in any person or persons by a judgment or decree of the district court or by a decision of an appellate court, or where title to real estate is changed by judgment, decree, will, proceeding, or order in probate, the clerk of the district court shall certify the same, under the seal of said court, to the county auditor of the county in which said land is located. [C97,§295; C24, 27, 31, 35, 39,§**10836**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.14; 66GA ch 1241,§61]

Entry on transfer books, §558.66

606.15 Fees. Except in probate matters, the clerk of the district court shall charge and collect the following fees, all of which shall be paid into the county treasury for the use of the county except as indicated:

1. For filing any petition, appeal, or writ of error and docketing the same, seven dollars. Four dollars of such fee shall remain in the county treasury for the use of the county, and three dollars of such fee shall be paid into the state treasury and deposited in the general fund of the state. In counties having a population of one hundred thousand or over, an additional one dollar shall be charged and collected, to be known as the journal publication fee and to be used for the purposes provided for in section 618.13.

2. For every attachment, two dollars.

3. For every cause tried by jury, five dollars.

4. For every cause tried by the court, two dollars and fifty cents.

5. For every equity case, three dollars.

6. For each injunction or other extraordinary process or order, five dollars.

7. For all causes continued on application of a party by affidavit, two dollars.

8. For all other continuances, one dollar.

9. For entering any final judgment or decree, one dollar and fifty cents.

10. For taxing costs, one dollar.

11. For issuing execution or other process after judgment or decree, two dollars.

12. For filing and properly entering and endorsing each mechanic's lien, three dollars, and in case a suit is brought thereon, the same to be taxed as other costs in the action.

13. For certificate and seal, two dollars.

14. For filing and docketing transcript of judgment from another county, one dollar.

15. For entering any rule or order, one dollar.

16. For issuing writ or order, not including subpoenas, two dollars.

17. For issuing commission to take depositions, two dollars.

18. For entering sheriff's sale of real estate, two dollars.

19. For entering judgment by confession, two dollars.

20. For entering satisfaction of any judgment, one dollar.

21. For all copies of records, or papers filed in his office, transcripts, and making complete record, fifty cents for each one hundred words.

22. For taking and approving a bond and sureties thereon, two dollars.

23. For receiving and filing a declaration of intention and issuing a duplicate thereof, two dollars. For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, four dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, four dollars.

24. In addition to the fees required in the preceding subsection, the petitioner shall, upon the filing of his petition to become a citizen of the United States, deposit with the clerk money sufficient to cover the expense of subpoenaing and paying the legal fees of witnesses for whom he may request a subpoena, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys aforesaid, and the residue, if any, except such as may be necessary to pay the cost of serving subpoenas, shall be returned by the clerk to the petitioner.

25. For certificates and seal to applications to procure pensions, bounties, or back pay for soldiers or other persons entitled thereto, no charge.

26. For making out transcripts in criminal cases appealed to the supreme court, for each one hundred words, fifty cents.

27. In criminal cases, the same fees for same services as in suits between private parties. When judgment is rendered against the defendant, the fees shall be collected from such defendant.

28. For issuing marriage licenses, five dollars each, and for issuing an application for an order of the district court authorizing the issu ance of a license to marry prior to the expiration of three days from the date of filing the application for the license, five dollars each.

29. For certifying change in title of real estate, two dollars.

30. In addition to all other fees, for making a complete record in cases where the same is required by law or directed by an order of the court, for every one hundred words, twenty cents. [C51,§§2527, 2531, 2532; R60,§§430, 436, 1852, 4136, 4140, 4141; C73,§§3781, 3782, 3787; C97,§296; S13,§296; C24, 27, 31, 35, 39,§**10837**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.15; 66GA, ch 1002,§3]

606.16 Accounting for fees. He shall, on the first Monday in January and July of each year, pay into the county treasury, for the use of the county, all other fees not belonging to his office, in his hands at the date of preceding

payment and still unclaimed. [R60,§353; C73, §3786; C97,§300; C24, 27, 31, 35, 39,§**10838**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.16]

Referred to in §631.6
Cu7,§300, editorially divided
Analogous provision, §12.11

606.17 Receipts—filing with auditor. At the time of so doing, he shall take from the treasurer duplicate receipts therefor, giving the title of the cause and style of the court in which the same was pending, with the names of the witnesses, jurors, officers, or other persons, and the amount each one is entitled to receive; one of which receipts he shall file with the county auditor. [R60,§354; C73,§3786; C97,§300; C24, 27, 31, 35, 39,§**10839**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.17]

Analogous provision, §12.12

606.18 Allowed claims—payment. The auditor shall charge the amount thereof to the treasurer as so much county revenue, and shall enter the same upon the proper records as a claim allowed, and, on demand and proper proof by the person entitled thereto, shall issue warrant accordingly, providing such demand is made within five years from the time the county treasurer received said fund; and that unless and within one year from July 4, 1933, demand is made upon the county auditor and proper proof is made by the person entitled to any unclaimed fees, which have been paid to the county treasurer, as provided in this chapter, on and prior to July 4, 1930, the person entitled to such unclaimed fees shall be deemed to have waived all right, claim or interest therein, and shall not be permitted to have or make claim therefor. [R60,§356; C73, §3786; C97,§300; C24, 27, 31, 35, 39,§**10840**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§606.18]

Analogous provision, §12.13

606.19 Salary exclusive. The clerk of the district court shall accept the salary herein provided, in full compensation of all services performed by him in his official capacity as such clerk of the district court. [C24, 27, 31, 35, 39,§**10841**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §606.19]

PRESERVATION AND DESTRUCTION OF COURT RECORDS

606.20 Reproduction of records. The clerk of the district court may reproduce original records of the court by any reasonably permanent legible means including, but not limited to, reproduction by photographing, photostating, microfilming, and computer cards, with proper indexing of such reproduction. When said records have been so reproduced, such reproduction shall have the same authenticity, force, and effect as the original record. [C71, 73, 75,§606.20]

Referred to in §§606.21, 606.22

606.21 Destruction of original records. After the clerk has reproduced the original records, as authorized in section 606.20, and upon the application of the clerk, a majority of the judges of the district court may order the clerk to destroy the original records, including, but not limited to, dockets, journals, scrapbooks, files, and marriage license applications. Any order of the court authorizing destruction of any of the records referred to in this division shall state what records are to be destroyed.

Original court files cannot be destroyed until the passage of ten years after a decree or judgment entry is signed and entered of record and after the contents have been reproduced as authorized in section 606.20, however, if the matter is dismissed with prejudice before judgment or decree the file may be destroyed one year from the date of the dismissal and after reproduction as authorized in section 606.20. [C71, 73, 75,§606.21]

606.22 Destruction without reproduction. The following may be destroyed by the clerk without prior court order or reproduction of any kind:

1. All records including, but not limited to, dockets, journals, scrapbooks, and files including court reporters' notes, forty years after final disposition of the case. However, judgments, decrees, stipulations, records in criminal proceedings, probate records, and orders of court shall not be destroyed unless they have been reproduced as provided in section 606.20.

2. All administrative records, after five years, including, but not limited to, warrants, subpoenas, clerks' certificates, statements, praecipes and depositions. [C71, 73, 75, §606.22]

606.23 Articles of historical interest. For the purposes of this division, "destruction" shall include the transmission of such articles as referred to in the division, which are of general historical interest, to any recognized historical society or association. [C71, 73, 75, §606.23]

CHAPTER 607

JURORS IN GENERAL

607.1 Competency.
607.2 Exemption.
607.3 Jurors excused.
607.4 False excuse—prohibited requests.
607.5 Fees of jurors.
607.6 Clerk to certify attendance.

607.1 Competency. All qualified electors of the state, of good moral character, sound judgment, and in full possession of the senses of hearing and seeing, and who can speak, write, and read the English language, are competent jurors in their respective counties. [C51,§1630; R60,§2720; C73,§227; C97,§332; C24, 27, 31, 35, 39, §**10842**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§607.1]

Electors, Constitution, Art. II,§1; Amendment, 1868; Constitution (U.S.), Amendment 19

607.2 Exemption. The following persons are exempt from liability to act as jurors:

1. Persons holding office under the laws of the United States or of this state.
2. Practicing attorneys, physicians, chiropractors, osteopaths, veterinarians, dentists, and clerygmen.
3. Active members of any fire company.
4. Persons conscientiously opposed to acting as a juror because of religious faith. [C51, §1631; R60,§2721; C73,§228; C97,§333; S13,§333; C24, 27, 31, 35, 39,§**10843**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§607.2; 66GA, ch 1056,§§36, 45]

Members of national guard, §29A.41; of fire companies, §102.1
See §609.2

607.3 Jurors excused. Any person may be excused from serving on a jury when his own interests or those of the public will be materially injured by his attendance, or when the state of his own health, or the death or sickness of a member of his family, requires his absence from court; provided, however, that the court may, in its discretion, excuse any one or more of the jurors for any cause which to the court may seem advisable or may excuse any juror temporarily to serve with a succeeding petit jury panel within the same jury list. [C51,§1632; R60,§2722; C73,§229; C97, §334; C24, 27, 31, 35, 39,§**10844**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§607.3]

607.4 False excuse — prohibited requests. Any person who knowingly makes any false affidavit, statement, or claim, for the purpose of relieving himself or another from serving as a juror, or any person who requests the judges of election to return his name as such juror, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not more than thirty days, or the court may punish such person as for contempt. [C97,§334; C24, 27, 31, 35, 39,§**10845**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§607.4]

Contempts, ch 665

607.5 Fees of jurors. Grand jurors and petit jurors in all courts shall receive ten dollars as compensation for each day's service or attendance, including attendance required for the purpose of being considered for service, mileage expenses at the rate of fifteen cents per mile for each mile traveled each day to and from their residences to the place of attendance, and actual expenses of parking, as determined by the clerk of court. No juror shall receive mileage for travel or actual expenses of parking when he travels in a vehicle for which another juror is receiving mileage. [C51,§2545; R60,§4154; C73,§3811; C97, §354; S13,§354; C24, 27, 31, 35, 39,§**10846**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§607.5; 66GA, ch 67,§53, ch 246,§1]

607.6 Clerk to certify attendance. Upon conclusion of every calendar quarter the clerk of the district court shall certify to the county auditor a list of the jurors with the number of days' attendance to which each one is entitled. [C73,§3811; C97,§354; S13,§354; C24, 27, 31, 35, 39,§**10847**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§607.6]

CHAPTER 608

JURY COMMISSIONS

608.1 Ex officio commission to draw jurors.
608.2 Appointive commission to select.
608.3 Limitation on appointment.
608.4 Manner of appointment.
608.5 Clerk to notify.
608.6 Vacancy.
608.7 Qualification—tenure.
608.8 Instructions to appointive commission.
608.9 Repealed by 66GA, ch 1235,§8.
608.10 Compensation and expenses.
608.11 Assistants.

608.1 Ex officio commission to draw jurors. In all counties the clerk of the district court, the county auditor, and the county recorder shall, ex officio, constitute the jury commission to draw jurors, but shall receive no extra compensation as such. [C24, 27, 31, 35, 39,§**10848**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§608.1]

40ExGA, HF 266,§7, editorially divided

608.2 Appointive commission to select. In each county the judges of the district court of the judicial district in which said county is located shall, on or before October 1 of each year in which the general election is held, appoint three competent electors as a jury commission to select and make lists of the names of persons to serve as grand and petit jurors and talesmen for the two years beginning January 1 after such election. [C24, 27, 31, 35, 39,§**10849**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§608.2; 66GA, ch 1235,§1]

608.3 Limitation on appointment. Not more than two members of the appointive commission shall be residents of the city in which the courthouse of the county in which they are appointed, is located, and no person shall be appointed who has solicited such appointment; nor shall any county officer or attorney at law be appointed a member of such commission. [C24, 27, 31, 35, 39,§**10850**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§608.3]

608.4 Manner of appointment. The appointment shall be in writing, signed by three judges of the judicial district and shall be filed and made a matter of record, in the office of the clerk of the district court. [C24, 27, 31, 35, 39,§**10851**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §608.4]

608.5 Clerk to notify. The clerk of the district court shall at once notify each appointive commissioner of his appointment. [C24, 27, 31, 35, 39,§**10852**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §608.5]

608.6 Vacancy. If a vacancy occurs in such appointive commission through death, removal, or inability of a member thereof to act, the judge or judges of the judicial district shall appoint some person to act during the remainder of such unexpired term. [C24, 27, 31, 35, 39,§**10853**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§608.6]

608.7 Qualification — tenure. The appointive commissioners shall qualify on or before the tenth day of October, following their appointment, by taking the oath of office required of civil officers. Said oath shall be subscribed by them and filed in the office of the clerk of the district court. They shall hold office for the term of two years and until their successors are duly appointed and qualified. [C24, 27, 31, 35, 39,§**10854**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§608.7]

Oath, §63.10

608.8 Instructions to appointive commission. It shall be the duty of the judges of the district court to give instructions to appointive jury commissioners at the time of their appointment as to their duties, and to call their especial attention to the provisions of section 609.2. [C24, 27, 31, 35, 39,§**10855**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§608.8]

40ExGA, HF 266,§13, editorially divided

608.9 Repealed by 66GA, ch 1235,§8.

608.10 Compensation and expenses. Each appointive commissioner shall, in addition to his actual expenses, receive a compensation of ten dollars for each day employed by him in the discharge of his official duties. [C24, 27, 31, 35, 39,§**10857**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§608.10]

608.11 Assistants. The commissioners may employ such assistants in preparing the jury lists as they may deem necessary, and the board of supervisors shall allow reasonable compensation to such assistants. [C24, 27, 31, 35, 39,§**10858**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§608.11]

CHAPTER 609

SELECTION OF JURORS

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609.2 Noneligible names.
609.3 Judicial division of county.
609.4 Auditor to apportion and certify.
609.5 Additional information provided.
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609.12 Filing commissioners' lists.
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609.40 Rejection of names.
609.41 Talesmen summoned.
609.42 Disposition of ballots.
609.43 Talesmen at large.
609.44 Disposition of ballots drawn.
609.45 Special venire of talesmen.
609.46 Delinquency of officers.
609.47 Correcting illegality in original lists.
609.48 Notice to commissioners.

609.1 Jury lists. The appointive jury commission shall, on the second Monday after the general election is held in each even-numbered year, meet at the courthouse in rooms provided by the county, and, in accordance with the certificate of apportionment furnished by the county auditor, prepare, select, and return on blanks furnished by the county, the following lists, to wit:

1. *Grand jurors.* A list of names and addresses of one hundred fifty eligible electors from which to select grand jurors.

2. *Petit jurors.* A list of names and addresses of eligible electors equal to one-eighth of the whole number of qualified electors in the county as shown by the current list of registered voters, from which to select petit jurors.

3. *Talesmen.* A list of the names and addresses of eligible electors equal to fifteen percent of the whole number of qualified electors as shown by the current list of registered voters, in the city in which the district court is held and in the township or townships in which such city is located (but in no case exceeding five hundred names) from which to select talesmen. [C51,§1633; R60,§2723; C73, §234; C97,§335; S13,§§335, 335-a; C24, 27, 31, 35, 39,§**10859**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §609.1; 66GA, ch 1235,§2]

Referred to in §609.47

609.2 Noneligible names. The appointive commission, in the preparation of said lists, shall not place thereon the name of any person:

1. Who by reason of the condition of his or her health, business, domestic duties, or other circumstances will probably be unable to serve as a juror.

2. Who has, directly or indirectly, requested that his or her name be placed on said lists, or on any of them.

3. Who has been exempted by law from jury service. [C97,§337; S13,§337; C24, 27, 31, 35, 39,§**10860**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §609.2; 66GA, ch 1235,§3]

Referred to in §§608.8, 609.11
Exemption from liability for service, §§29A.41, 102.1, 607.2

609.3 Judicial division of county. In counties which are divided for judicial purposes, and in which courts are held at more than one place, each division shall be treated as a separate county, and the grand and petit jurors and talesmen, selected to serve in the respective courts, shall be drawn from the division of the county in which the court is held, at which they are required to serve. [S13, §335-b; C24, 27, 31, 35, 39,§**10861**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.3]

609.4 Auditor to apportion and certify. On or before the date of said meeting of the appointive commission, the county auditor shall apportion the number of grand and petit jurors to be selected among the several election precincts, and the talesmen of which there shall be at least two, among the precincts from which the same are to be drawn, in each case as nearly as practicable in proportion to the number of persons residing in the respective election precincts, and certify said apportionment to such commission. [C51,§§1635, 1636; R60,§§2725, 2726; C73,§236; C97,§§336, 337; S13, §337; C24, 27, 31, 35, 39,§**10862**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.4; 66GA, ch 1235,§4]

609.5 Additional information provided. For the purpose of aiding the appointive commission in drawing the jury lists, officials of the state and its political subdivisions shall furnish the appointive commission with copies of the current list of registered voters, tax assessments lists, lists of persons holding motor vehicle operators' licenses, or such other comprehensive lists of persons residing in the county as the commission may request. The clerk of the district court shall also deliver to the commission a list of all persons who have served as grand or petit jurors since January 1 of the preceding year. [C97,§337; S13,§337; C24, 27, 31, 35, 39,§§**10863, 10864**; C46, 50, 54, 58, 62, 66, 71, 73,§§609.5, 609.6; C75,§609.5; 66GA, ch 1235,§5]

609.6 Repealed by 65GA, ch 136,§401.

609.7 Definitions. As used in this chapter, the term *"eligible elector"* has the meaning assigned the term by section 39.3, subsection 1. [66GA, ch 1235,§6]

Section 609.7, Code 1975, repealed by 66GA, ch 1235,§6

609.8 to 609.10 Repealed by 66GA, ch 1235, §8.

609.11 Certification. When the jury lists prescribed by this chapter are completed, they shall be certified by the appointive commissioners in substantially the following form:

We, ..., and ....., constituting the jury commission for ..... county, do hereby certify that the foregoing lists do not, to our knowledge and belief, contain the name of any person who should be excluded under section 609.2. [C97,§337; S13,§337; C24, 27, 31, 35, 39, §**10869**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.11; 66GA, ch 1235,§7]

609.12 Filing commissioners' lists. The appointive commissioners shall, after so certifying said lists, place the same in envelopes and on or before the first Monday of December of the year in which such lists are made, deposit the same with the county auditor, who shall file and record the same in the proper record. [C24, 27, 31, 35, 39,§**10870**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.12]

609.13 Repealed by 66GA, ch 1235,§8.

609.14 Lists made official. The names entered upon said lists and returned as herein provided shall constitute the grand and petit jury lists, and the list of talesmen from which

grand and petit jurors and talesmen shall be selected, for the biennial period commencing with the first day of January next after the general election. [C24, 27, 31, 35, 39,§**10872**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.14]

609.15 Preparation of ballots. Within five days after such lists are deposited with the county auditor, the auditor and clerk of the court shall prepare therefrom separate ballots, which shall be uniform in size, shape, and appearance, and upon which the names and places of residence of all persons selected for grand and petit jurors and talesmen, shall be written. The names of the classes of jurors shall be kept separate, and each ballot shall be folded, so as to conceal the name written thereon. [C51,§1640; R60,§2730; C73,§240; C97, §§338, 342; C24, 27, 31, 35, 39,§**10873**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.15]

609.16 Names rejected. In preparing the said ballots the county auditor and clerk shall omit the names of all persons who have served as grand or petit jurors since January 1 preceding. [C51,§1640; R60,§2730; C73,§240; C97, §338; C24, 27, 31, 35, 39,§**10874**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.16]

609.17 Ballot boxes — sealing and custody. The ballots containing the names of the grand and petit jurors and talesmen shall be deposited in separate boxes which shall be plainly marked so as to show the class of jurors whose names are contained therein, and shall have but one aperture through which a hand may be inserted. The boxes shall then be sealed by the auditor, in the presence of the clerk, and deposited with the clerk of the district court. [C97,§342; C24, 27, 31, 35, 39,§**10875**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.17]

609.18 Repealed by 62GA, ch 400,§143.

609.19 Juries. In counties containing a city having a population in excess of fifty thousand according to the latest decennial census, petit jury panels shall be drawn six times annually to serve for the following two months, and in other counties they shall be drawn four times annually to serve for the following three months, however, a judge of the district court may, in his discretion, require that a new petit jury panel be drawn before the expiration of the periods of service herein required. After an individual juror has served in two or more trials the court shall on that juror's request discharge him from the panel. A juror serves in a trial within this section when he has been sworn as a juror for that trial whether or not the trial is completed to a verdict. Jurors may be added to the panel as needed. The number of jurors on a panel shall be ordered by a judge of the district. [C51, §§1639, 1642; R60,§§2729, 2732; C73,§§231, 239; C97,§§341, 346; C24, 27, 31, 35, 39,§§**10876, 10877**; C46, 50, 54, 58, 62, 66,§§609.18, 609.19; C71, 73, 75,§609.19]

Referred to in §762.17

609.20 Time for drawing. Petit jurors shall be drawn by the ex officio commission at the office of the clerk of the district court. The court may by order prescribe the time for such drawing. The clerk shall notify the jurors thus drawn of their selection and of their obligation to report for service when called. [C51,§1641; R60,§2731; C73,§241; C97,§342; C24, 27, 31, 35, 39,§**10878**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.20]

609.21 Notice of drawing. The said clerk shall, at least five days prior to the day of such drawing, notify in writing the other members of the ex officio commission of the time and place of such drawing. [C24, 27, 31, 35, 39,§**10879**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.21]

609.22 Drawing of petit jurors. The members of the ex officio jury commission or a majority thereof, shall meet at the time and place fixed and shall draw from the petit jury box the required number of names of persons to serve as petit jurors, and the persons whose names are so drawn shall constitute the petit jurors. [C24, 27, 31, 35, 39,§**10880**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.22]

40ExGA, HF 266,§32, editorially divided

609.23 Absence of commissioner. In the absence or inability to act of any one of the ex officio jury commissioners, his deputy shall act as such commissioner in his stead. [C24, 27, 31, 35, 39,§**10881**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.23]

609.24 Details of drawing. The appropriate box shall, at the time of the drawing, be first thoroughly shaken in the presence of the commissioners attending the drawing, and thereupon the seal on the opening shall be broken, likewise in the presence of the commissioners. One of said commissioners shall then, without looking at the ballots, successively draw the required number of names from the box, and successively pass said ballots to one of the other commissioners, who shall open said ballots as they are drawn, and read aloud the names thereon, and enter said names in writing on an appropriate list. [C51, §1641; R60,§2731; C73,§241; C97,§342; C24, 27, 31, 35, 39,§**10882**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.24]

609.25 Grand jury panel. A grand jury panel of twelve persons shall be drawn by the said commissioners from the grand jury box on or before the last secular Monday of December preceding the new calendar year, and shall be drawn in the same manner and under the same conditions, except as otherwise provided, as are specified for the drawing of said petit jury panel. Such grand jury panel shall constitute the panel from which to select the grand jurors for one year.

A majority of the judges of the district court may order a second panel of twelve persons to be drawn in like manner from which a second

grand jury may be selected. Such second grand jury shall serve on matters assigned to it by the foreman of the first grand jury and it shall be served by the same clerk and staff, but otherwise it shall be governed by the same law as in the case of the original grand jury panel and grand jury. [C51,§§1641, 1642; R60,§§2731, 2732; C73,§241; C97,§339; C24, 27, 31, 35, 39, §10883; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.25]

609.26 Maximum service permitted. No person on the list of grand jurors shall be eligible to serve as a grand juror except for one calendar year of the biennial period for which the list is made. [C51,§1642; R60,§2732; C73,§239; C97,§339; S13,§335-c; C24, 27, 31, 35, 39,§10884; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.26]

609.27 Number from township limited. In drawing grand jurors, not more than one person shall be drawn as grand juror from any election precinct in the county.

If any county has less than twelve election precincts, one or more persons may be drawn as a grand juror from any election precinct in the county, provided that at least one person shall be selected as a grand juror from each election precinct in the county. [C97,§339; C24, 27, 31, 35, 39,§10885; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.27]

Effect of violation, §776.2

609.28 Rejecting names. If more persons shall be drawn from any election precinct than is hereby authorized, or any person is drawn who has served during the preceding jury year as grand juror, it is the duty of the commissioners to reject all such names so drawn, and to proceed with the drawing until the required number of jurors shall be secured. [C97,§339; C24, 27, 31, 35, 39,§10886; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.28]

609.29 Resealing of box. After the required number of grand or petit jurors shall have been drawn in the manner provided, and their names entered upon the list, the box or boxes shall again be sealed by the commission, and returned to the custody of the clerk. [C97, §342; C24, 27, 31, 35, 39,§10887; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.29]

609.30 Filing list—precept. The clerk shall file said list or lists, in his office, and immediately, upon order of the court issue his precept or precepts to the sheriff, commanding him to summon the persons so drawn to appear at the courthouse at such times as the court may prescribe, to serve as petit or grand jurors, as the case may be. [C51,§1643; R60,§2733; C73, §§230, 241; C97,§§342, 345; C24, 27, 31, 35, 39, §10888; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.30]

609.31 Sheriff to summon. The sheriff shall immediately obey such precepts, and on or before the day for the appearance of said jurors must make return thereof, and, on a failure to do so without sufficient cause, may be punished for contempt. [C51,§1644; R60, §2734; C73,§242; C97,§343; C24, 27, 31, 35, 39, §10889; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.31]

Contempts, ch 665

609.32 Grand jurors summoned but once. The twelve persons from whom the grand jury is to be impaneled shall convene regularly four times a year on the first secular Monday of the first month of each calendar quarter without summons, or upon summons at such other additional times as the court may order. [C51,§1646; R60,§2736; C73,§243; C97,§344; C24, 27, 31, 35, 39,§10890; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.32]

609.33 Contempt. If any person fail to appear at any regularly scheduled meeting date or when summoned without sending a sufficient excuse, the court may issue an order requiring him to appear and show cause why he should not be punished for contempt, and unless he render a sufficient excuse for such failure he may be punished for contempt. [C51,§1645; R60,§2735; C73,§230; C97,§345; C24, 27, 31, 35, 39,§10891; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.33]

Contempts, ch 665

609.34 Cancellation for illegality. If the court shall, for any reason, determine that the petit jurors have been illegally drawn, selected, or summoned, it may set aside the precept, under which they were summoned, and direct a sufficient number to be drawn and summoned. In such case, the jury commission shall meet at the office of the clerk of the court, at such time as the court may direct, and in the manner provided for the drawing of an original panel, draw the number of petit jurors required, under the order of the court. The jurors so drawn and summoned shall be required to appear immediately, or at such time as the court may fix. [C97,§342; C24, 27, 31, 35, 39,§10892; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.34]

609.35 Discharged jurors — resummoning. Jurors who have been discharged for any reason may, during the calendar quarter, be resummoned if the business before the court necessitates such action. [C73,§233; C97,§348; C24, 27, 31, 35, 39,§10893; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.35]

609.36 Additional petit jurors. The judge presiding over any trial calendar assignment may order as many additional jurors drawn therefor, or for the trial of any case, as he deems necessary. [C51,§1647; R60,§2737; C73, §232; C97,§347; C24, 27, 31, 35, 39,§10894; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.36]

Referred to in §609.38

609.37 Discharge of panel. The court may at any time discharge the panel of jurors, or any part of it, and order a new panel, or such number of jurors as may be deemed necessary to be drawn. [C24, 27, 31, 35, 39,§10895; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.37]

Referred to in §609.38

609.38 Method of drawing. The names of the jurors contemplated in sections 609.36 and 609.37 shall be drawn by the commissioners in the manner provided for the drawing of an original panel. [C73,§232; C97,§347; C24, 27, 31, 35, 39,§**10896**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.38]

609.39 Talesmen. If the court shall determine that it is probable talesmen will be needed to complete a jury, or if the regular panel has been exhausted, the clerk shall, in the presence of the court, draw such number of names as the court may order from the talesmen box to complete the jury. [C97,§349; C24, 27, 31, 35, 39,§**10897**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.39]

609.40 Rejection of names. The clerk, when the court directs, shall reject the names of those known to be unable to serve, or absent from the territory from which drawn. [C97, §349; C24, 27, 31, 35, 39,§**10898**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.40]

609.41 Talesmen summoned. The talesmen whose names have been so drawn shall, so far as possible, be immediately summoned by the sheriff to appear forthwith. [C97,§349; C24, 27, 31, 35, 39,§**10899**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.41]

609.42 Disposition of ballots. The names of talesmen so drawn, and who serve, shall be placed in a safe receptacle from time to time, until all the ballots are drawn from the talesmen's box, when such ballots shall be returned to the said box, to be drawn in like manner as before. [C97,§349; C24, 27, 31, 35, 39,§**10900**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.42]

609.43 Talesmen at large. When the parties to the cause, by agreement entered of record, waive the drawing of talesmen as above provided, the court may direct the sheriff to summon such talesmen from the body of the county. [C97,§349; C24, 27, 31, 35, 39,§**10901**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.43]

609.44 Disposition of ballots drawn. All ballots drawn, when the persons do not appear or do not serve (except when permanent ineligibility or disability is shown), shall be returned to the respective boxes from which drawn or, at the discretion of the judge, a person excused from service on one panel may be required to serve on the succeeding panel if the reason for his being excused will not be present at such time. The ballots of the petit jurors, except talesmen, so drawn, who appear and serve during any calendar quarter, shall be destroyed. [C97,§350; C24, 27, 31, 35, 39,§**10902**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.44]

609.45 Special venire of talesmen. When a city is a party to a suit, the talesmen shall not be drawn therefrom, but in such cases the court shall order a special venire, or may order the talesmen drawn from the petit jury box. [C97,§351; C24, 27, 31, 35, 39,§**10903**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.45]

609.46 Delinquency of officers. Any officer whose duty it is to perform any of the services mentioned in this chapter, who shall intentionally fail to perform them as required by law, or who shall act corruptly in the discharge of such duties or any of them, shall be imprisoned in the county jail not less than six months, nor more than one year. [C97,§352; C24, 27, 31, 35, 39,§**10904**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.46]

609.47 Correcting illegality in original lists. Should the court for any reason determine that there has been such substantial failure to comply with the law relative to the selection, preparation, or return of grand, petit, or talesmen lists that lawful grand or petit jurors or talesmen cannot be drawn, or when the petit jury list as provided for in section 609.1, subsection 2, becomes exhausted, or insufficient for the needs of the court, said court shall order the appointive jury commissioners or ex officio jury commissioners as the case may be, to convene at the courthouse at a named time and to prepare lists in lieu of those lists which have been found to be illegal, or such additional list or lists as the court may deem necessary. If the ex officio commissioners are called upon to act, they shall make up the lists in the same manner as such lists are required to be made by appointive commissioners. [S13, §337-a; C24, 27, 31, 35, 39,§**10905**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.47]

609.48 Notice to commissioners. Whenever the commission shall be required to meet for the purpose of drawing jurors under the order of the court, the clerk of the court shall at once notify each commissioner of such order, and the time fixed for the meeting of the commission; and, if deemed necessary, the court may order the notice to be served by the sheriff. [C24, 27, 31, 35, 39,§**10906**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§609.48]

CHAPTER 610

ATTORNEYS AND COUNSELORS

Referred to in §605.26

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610.1 Admission to practice. The power to admit persons to practice as attorneys and counselors in the courts of this state, or any of them, is vested exclusively in the supreme court which shall adopt and promulgate rules to carry out the intent and purpose of this chapter. [C97,§§309, 315; S13,§315; C24, 27, 31, 35, 39,§§**10907, 10918**; C46, 50, 54, 58, 62, 66, 71, 73,§§610.1, 610.12; C75,§610.1]

610.2 Qualifications for admission. Every applicant for such admission shall be a person of honesty, integrity, trustworthiness, truthfulness and one who appreciates and will adhere to a code of conduct for lawyers as adopted by the supreme court. He shall be an inhabitant of this state, and shall have actually and in good faith pursued a regular course of study of the law and shall have graduated from some reputable law school. The application form shall not contain a recent photograph of the applicant. An applicant shall not be ineligible for registration because of age, citizenship, sex, race, religion, marital status or national origin although the application form may require citizenship information. The board may consider the past record of guilty pleas and convictions of public offenses of an applicant. Character references may be required; however, such references shall not be restricted to lawyers. [C51,§1610; R60,§2700; C73,§208; C97,§310; S13,§310; C24, 27, 31, 35, 39,§**10908**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.2]

Referred to in §§684.23, 684.51, Court Rule 120

610.3 Board of law examiners. There is established a board of law examiners which shall consist of five persons admitted to practice law in this state and two persons not admitted to practice law in this state who shall represent the general public. Members shall be appointed by the supreme court. A member admitted to practice law shall be actively engaged in the practice of law in this state. [S13, §311-a; C24, 27, 31, 35, 39,§**10910**; C46, 50, 54, 58, 62, 66, 71, 73,§610.4; C75,§610.3]

610.4 Examinations. Every applicant shall be examined by the board concerning his learning and skill in the law. The sufficiency of the education of the applicant may be determined by written examination or in such other manner as the board shall prescribe. The board shall hold at least one meeting each year at the seat of government. Examinations shall be given as often as deemed necessary as determined by the court, but shall be conducted at least one time per year. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible.

An applicant who fails the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the court. An applicant who has failed the examination may request in writing information from the court concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the court administers a uniform, standardized examination, the court shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the court. [C97,§311; S13,§311; C24, 27, 31, 35, 39,§**10909**; C46, 50, 54, 58, 62, 66, 71, 73, §610.3; C75,§610.4]

610.5 Term of office. Appointments shall be for three-year terms and shall commence on July 1 of the year in which the appointment is made. Vacancies shall be filled for the unexpired term by appointment of the supreme court. Members shall serve no more than

three terms or nine years, whichever is less. [S13,§311-a; C24, 27, 31, 35, 39,§**10911**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.5]

610.6 Oath — compensation. The members thus appointed shall take and subscribe an oath to be administered by one of the judges of the supreme court to faithfully and impartially discharge the duties of the office. The members shall, in addition to receiving actual and necessary expenses, set the per diem compensation for themselves and the temporary examiners appointed under section 610.7 at a rate not exceeding forty dollars per diem for each day actually engaged in the discharge of their duties. Such duties shall include the traveling to and from the place of examination, the preparation and conducting of examinations, and the reading of the examination papers. The per diem authorized under this section shall be reasonably apportioned in relation to the funds appropriated to the board. [S13,§311-a; C24, 27, 31, 35, 39,§**10912**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.6; 66GA ch 247,§1]

Referred to in Court Rule 100

610.7 Temporary appointments — expenses. The supreme court may appoint from time to time, when necessary, temporary examiners to assist the board, who shall receive their actual and necessary expenses to be paid from funds appropriated to the board.

The members of the board authorized to grade examinations shall make the final decision on passage or failure of each applicant, subject to the rules of the supreme court. The board shall, also, recommend to the supreme court for admission to practice law in this state all applicants who pass the examination and who meet the requisite character requirements. The supreme court shall make the final decision in determining who shall be admitted. [S13,§311-a; C24, 27, 31, 35, 39,§**10913**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.7]

Referred to in §610.6

610.8 Fees. The board shall set the fees for examination and for admission. The fees for examination shall be based upon the annual cost of administering the examinations. The fees for admission shall be based upon the costs of conducting an investigation of the applicant and the administrative costs of sustaining the board, which shall include but shall not be limited to:

1. Expenses and travel for board members and temporary examiners.
2. Office facilities, supplies, and equipment.
3. Clerical assistance.

Fees shall be collected by the board and transmitted to the treasurer of state who shall deposit the fees in the general fund of the state. [S13,§311-b; C24, 27, 31, 35, 39,§**10914**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.8]

610.9 Repealed by 65GA, ch 1086,§198.

610.10 Practitioners from other states. Any person who is a resident of this state, and has been admitted to the bar of any other state in the United States or the District of Columbia, may, in the discretion of the court, be admitted to practice in this state without examination or proof of a period of study. The person, in his application for admission to practice law in this state, in addition to all other requirements stated in this chapter, shall establish that he has practiced law for five full years under license in such jurisdiction within the seven years immediately preceding the date of his application and still holds a license to practice law. The teaching of law as a full-time instructor in a recognized law school in this state or some other state shall for the purpose of this section be deemed the practice of law. Any person who has discharged actual legal duties as a member of the armed services of the United States shall be deemed to have practiced law for the purposes of this section if certified to as such by the judge advocate general of the service. The court may charge an investigation fee based upon the cost of conducting the investigation as determined by the court. [C97,§313; S13,§313; C24, 27, 31, 35, 39, §**10916**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.10]

610.11 Oath. All persons on being admitted to the bar shall take an oath or affirmation to support the Constitutions of the United States and of the state of Iowa, and to faithfully discharge the duties of an attorney and counselor of this state according to the best of their ability. [C51,§1613; R60,§2703; C73,§208; C97, §314; C24, 27, 31, 35, 39,§**10917**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.11]

610.12 Repealed by 65GA, ch 1086,§198.

610.13 Nonresident attorney—appointment of local attorney. Any member of the bar of another state, actually engaged in any cause or matter pending in any court of this state, may be permitted by such court to appear in and conduct such cause or matter while retaining his residence in another state, without being subject to the foregoing provisions of this chapter; provided that at the time he enters his appearance he files with the clerk of such court the written appointment of some attorney resident and admitted to practice in the state of Iowa, upon whom service may be had in all matters connected with said action, with the same effect as if personally made on such foreign attorney within this state. In case of failure to make such appointment, such attorney shall not be permitted to practice as aforesaid, and all papers filed by him shall be stricken from the files. [C51,§1612; R60,§2702; C73,§210; C97,§316; S13,§316; C24, 27, 31, 35, 39,§**10919**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.13; 66GA, ch 1236,§1]

Referred to in court rule 116

610.14 Duties of attorneys and counselors. It is the duty of an attorney and counselor:

1. To maintain the respect due to the courts of justice and judicial officers.

2. To counsel or maintain no other actions, proceedings, or defenses than those which appear to him legal and just, except the defense of a person charged with a public offense.

3. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law.

4. To maintain inviolate the confidence, and, at any peril to himself, to preserve the secret of his client.

5. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

6. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest.

7. Never to reject for any consideration personal to himself the cause of the defenseless or oppressed. [C51,§1614; R60,§2704; C73,§211; C97,§317; C24, 27, 31, 35, 39,§**10920**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.14]

610.15 Deceit or collusion. An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge or a party to an action or proceeding, is liable to be disbarred, and shall forfeit to the injured party treble damages to be recovered in a civil action. [C51,§1615; R60,§2705; C73,§212; C97,§318; C24, 27, 31, 35, 39, §**10921**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.15]

610.16 Authority. An attorney and counselor has power to:

1. Execute in the name of his client a bond, or other written instrument, necessary and proper for the prosecution of an action or proceeding about to be or already commenced, or for the prosecution or defense of any right growing out of an action, proceeding, or final judgment rendered therein.

2. Bind his client to any agreement, in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreement is receivable, except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court.

3. Receive money claimed by his client in an action or proceeding during the pendency thereof, or afterwards, unless he has been previously discharged by his client, and, upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment. [C51,§1616; R60,§2706; C73, §213; C97,§319; C24, 27, 31, 35, 39,§**10922**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.16]

Attorney as surety, §§621.7, 682.5

610.17 Proof of authority. The court may, on motion of either party and on the showing of reasonable grounds therefor, require the attorney for the adverse party, or for any one of the several adverse parties, to produce or prove by his own oath, or otherwise, the authority under which he appears, and, until he does so, may stay all proceedings by him on behalf of the parties for whom he assumes to appear. [C51,§1617; R60,§2707; C73,§214; C97, §320; C24, 27, 31, 35, 39,§**10923**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.17]

610.18 Attorney's lien—notice. An attorney has a lien for a general balance of compensation upon:

1. Any papers belonging to his client which have come into his hands in the course of his professional employment.

2. Money in his hands belonging to his client.

3. Money due his client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed, from the time of giving notice in writing to such adverse party, or attorney of such party, if the money is in the possession or under the control of such attorney, which notice shall state the amount claimed, and, in general terms, for what services.

4. After judgment in any court of record, such notice may be given, and the lien made effective against the judgment debtor, by entering the same in the judgment or combination docket, opposite the entry of the judgment. [C51,§1618; R60,§2708; C73,§215; C97,§321; C24, 27, 31, 35, 39,§**10924**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.18]

610.19 Release of lien by bond. Any person interested may release such lien by executing a bond in a sum double the amount claimed, or in such sum as may be fixed by any district judge, payable to the attorney, with security to be approved by the clerk of the supreme or district court, conditioned to pay any amount finally found due the attorney for his services, which amount may be ascertained by suit on the bond. [C51,§1619; R60,§2709; C73,§216; C97,§322; C24, 27, 31, 35, 39,§**10925**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.19]

C97,§322, editorially divided

610.20 Automatic release. Such lien will be released, unless the attorney, within ten days after demand therefor, files with the clerk a full and complete bill of particulars of the services and amount claimed for each item, or written contract with the party for whom the services were rendered. [C73,§216; C97, §322; C24, 27, 31, 35, 39,§**10926**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.20]

610.21 Unlawful retention of money. An attorney who receives the money or property of his client in the course of his professional business, and refuses to pay or deliver it in a reasonable time, after demand, is guilty of a misdemeanor. [C51,§1627; R60,§2717; C73,§224; C97,§330; C24, 27, 31, 35, 39,§**10927**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.21]

Referred to in §610.22
Punishment, §687.7

610.22 Excuse for nonpayment. When the attorney claims to be entitled to a lien upon the money or property, he is not liable to the penalties of section 610.21 until the person demanding the money proffers sufficient security for the payment of the amount of the attorney's claim, when it is legally ascertained. Nor is he in any case liable as aforesaid, provided he gives sufficient security that he will pay over the whole or any portion thereof to the claimant when he is found entitled thereto. [C51,§§1628, 1629; R60,§§2718, 2719; C73, §§225, 226; C97,§331; C24, 27, 31, 35, 39,§**10928**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.22]

610.23 Revocation of license. The supreme court may revoke or suspend the license of an attorney to practice law in this state. [C51, §1620; R60,§2710; C73,§217; C97,§323; C24, 27, 31, 35, 39,§**10929**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §610.23]

610.24 Grounds of revocation. The following are sufficient causes for revocation or suspension:

1. When he has been convicted of a felony. The record of conviction is conclusive evidence.

2. When he is guilty of a willful disobedience or violation of the order of the court, requiring him to do or forbear an act connected with or in the course of his profession.

3. A willful violation of any of the duties of an attorney or counselor as hereinbefore prescribed.

4. Doing any other act to which such a consequence is by law attached.

5. Soliciting legal business for himself or office, either by himself or representative. Nothing herein contained shall be construed to prevent or prohibit listing in legal or other directories, law lists and other similar publications, or the publication of professional cards in any such lists, directories, newspapers or other publication. [C51,§1621; R60, §2711; C73,§218; C97,§324; C24, 27, 31, 35, 39, §**10930**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.24]

Referred to in Court Rule 119, Canon 2-101(6)

610.25 Proceedings. The proceedings to remove or suspend an attorney may be commenced by the direction of the court or on motion of any individual. In the former case, the court must direct some attorney to draw up the accusation; in the latter, the accusation must be drawn up and sworn to by the person making it. [C51,§1622; R60,§2712; C73, §219; C97,§325; S13,§325; C24, 27, 31, 35, 39, §**10931**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.25]

S13,§325, editorially divided

610.26 Costs. If an action is commenced by direction of the court, the costs shall be taxed and disposed of as in criminal cases; provided that no allowance shall be made in such case for the payment of attorney fees. [S13,§325; C24, 27, 31, 35, 39,§**10932**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.26]

610.27 Order for appearance—notice—service. If the court deem the accusation sufficient to justify further action, it shall cause an order to be entered requiring the accused to appear and answer in the court where the accusation or charge shall have been filed on a day therein fixed, and shall cause a copy of the accusation and order to be served upon him personally. [C51,§1623; R60,§2713; C73,§220; C97,§326; C24,§10933; C27, 31, 35,§10934-b1; C39, §**10934.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.27]

42GA, ch 220,§1, editorially divided

610.28 Copy of accusation—duty of clerk. The clerk of the district court shall immediately certify to the clerk of the supreme court a copy of the accusation. [C27, 31, 35,§10934-b2; C39,§**10934.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.28]

610.29 Notice to attorney general — duty. Thereupon the chief justice of the supreme court shall notify the attorney general of such accusation and cause a copy thereof to be delivered to him, and it shall thereupon become the duty of the attorney general to superintend either through his office, or through a special assistant to be designated by him, the prosecution of such charges. [C27, 31, 35, §10934-b3; C39,§**10934.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.29]

610.30 Trial court. The supreme court shall designate three district judges to sit as a court to hear and decide such charges. [C27, 31, 35, §10934-b4; C39,§**10934.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.30]

610.31 Time and place of hearing. The hearing shall be at such time as the chief justice of the supreme court may designate, and shall be held within the county where the accusation was originally filed. [C27, 31, 35,§10934-b5; C39,§**10934.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.31]

610.32 Determination of issues. The determination of all issues shall be heard before the said judges selected by the supreme court as herein provided for. [C27, 31, 35,§10934-b6; C39, §**10934.6**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.32]

610.33 Record and judgment. The records and judgment at such trial shall constitute a part of the records of the district court in the county in which the accusations are originally filed. [C27, 31, 35,§10934-b7; C39,§**10934.7**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.33]

610.34 Pleadings — evidence — preservation. To the accusation, the accused may plead or demur and the issues joined thereon shall in all cases be tried by said judges so selected and all of the evidence at such trial shall be reduced to writing, filed and preserved. [C51, §1624; R60,§2714; C73,§221; C97,§327; C24,§10934; C27, 31, 35,§10934-b8; C39,§**10934.8**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.34]

610.35 Costs and expenses. The court costs incident to such proceedings, and the reason-

able expense of said judges in attending said hearing after being approved by the supreme court shall be paid as court costs by the executive council. [C27, 31, 35,§10934-b9; C39, §**10934.9**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.35]

610.36 Plea of guilty or failure to plead. If the accused plead guilty, or fail to answer, the court shall proceed to render such judgment as the case requires. [C51,§1625; R60,§2715; C73,§222; C97,§328; C24, 27, 31, 35, 39,§**10935**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.36]

610.37 Appeal. In case of a removal or suspension being ordered, an appeal therefrom lies to the supreme court, and all the original papers, together with a transcript of the record, shall thereupon be transferred to the supreme court, to be there considered and finally acted upon. A judgment of acquittal by a court of record is final. [C51,§1626; R60,§2716; C73,§223; C97,§329; C24, 27, 31, 35, 39,§**10936**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.37]

610.38 Certification of judgment. When a judgment has been entered in any court of record in the state revoking or suspending the license of any attorney at law to practice in the said court, the clerk of the court in which the judgment is rendered shall immediately certify to the clerk of the supreme court the order or judgment of the court in said cause. [S13,§329-a; C24, 27, 31, 35, 39,§**10937**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§610.38]

610.39 to 610.44 Reserved.

610.45 Renewals. The right to practice law in this state shall be renewed annually by the supreme court upon such conditions as the court shall determine. Any moneys received from those persons admitted to practice law and which are designated for a client security fund or similar fund created by the supreme court shall be separately retained and administered by said court in accordance with rules promulgated by it. [C75,§610.45]

610.46 Client security fund not an insurance company. A client security fund established by the supreme court is not an insurance company and the insurance laws of this state and the rules of the commissioner of insurance are not applicable to such a client security fund. [C75,§610.46]

610.47 Officers. The board shall organize following its appointment and shall elect a chairman and vice chairman. [S13,§311-a; C24, 27, 31, 35, 39,§**10910**; C46, 50, 54, 58, 62, 66, 71, 73, §610.4; C75,§610.47]

610.48 Public members. The public members of the board may participate in the administration of the examination and shall participate in the determination of whether or not each applicant meets the requisite character requirements. The public members shall not participate in the grading of any portion of the examination or the determination of whether an applicant passed or failed such examination. [C75,§610.48]

610.49 Disclosure of confidential information. A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.

2. Information relating to the contents of the examination.

3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C75, §610.49]

TITLE XXXI

GENERAL PROVISIONS RELATING TO CIVIL PRACTICE AND PROCEDURE

CHAPTER 611

FORMS OF ACTIONS

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611.1 "Proceedings" classified. Every proceeding in court is an action, and is civil, special, or criminal. [R60,§2605; C73,§2504; C97, §3424; C24, 27, 31, 35, 39,§**10938**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.1]

611.2 Civil and special actions. A civil action is a proceeding in a court of justice in which one party, known as the plaintiff, demands against another party, known as the defendant, the enforcement or protection of a private right, or the prevention or redress of a private wrong. It may also be brought for the recovery of a penalty or forfeiture.

Every other proceeding in a civil case is a special action. [R60,§§2606, 2607, 2609; C73, §§2505, 2506; C97,§3425; C24, 27, 31, 35, 39,§**10939**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.2]

611.3 Forms of action. All forms of action are abolished, but proceedings in civil actions may be of two kinds, ordinary or equitable. [R60,§§2608, 2610; C73,§2507; C97,§3426; C24, 27, 31, 35, 39,§**10940**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.3]

611.4 Equitable proceedings. The plaintiff may prosecute his action by equitable proceedings in all cases where courts of equity, before the adoption of this Code, had jurisdiction, and must so proceed in all cases where such jurisdiction was exclusive. [R60,§2611; C73,§2508; C97,§3427; C24, 27, 31, 35, 39,§**10941**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.4]

611.5 Action on note and mortgage. An action on a note, together with a mortgage or deed of trust for the foreclosure of the same, shall be by equitable proceedings. An action on the bond or note alone, without regard therein to the mortgage or deed of trust, shall be by ordinary proceedings. [R60,§4179; C73, §2509; C97,§3428; C24, 27, 31, 35, 39,§**10942**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.5]

Actions on certain judgments prohibited, ch 615
Related provision, §654.4

611.6 Ordinary proceedings. In all other cases, unless otherwise provided, the plaintiff must prosecute his action by ordinary proceedings. [R60,§2612; C73,§2513; C97,§3431; C24, 27, 31, 35, 39,§**10943**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.6]

611.7 Error — effect of. An error of the plaintiff as to the kind of proceedings adopted shall not cause the abatement or dismissal of the action, but merely a change into the proper proceedings, and a transfer to the proper docket. [R60,§2613; C73,§2514; C97,§3432; C24, 27, 31, 35, 39,§**10944**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §611.7]

611.8 Correction by plaintiff. Such error may be corrected by the plaintiff without motion at any time before the defendant has answered, or afterward on motion in court. [R60,§2614; C73,§2515; C97,§3433; C24, 27, 31, 35, 39,§**10945**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.8]

611.9 Correction on motion. The defendant may have the correction made by motion at or before the filing of his answer, where it appears by the provisions of this Code wrong proceedings have been adopted. [R60,§§2615, 2616; C73,§2516; C97,§3434; C24, 27, 31, 35, 39, §**10946**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.9]

611.10 Equitable issues. Where the action has been properly commenced by ordinary proceedings, either party shall have the right, by motion, to have any issue heretofore exclusively cognizable in equity tried in the manner hereinafter prescribed in cases of equitable proceedings; and if all the issues were such, though none were exclusively so, the defendant shall be entitled to have them all tried as in cases of equitable proceedings. [R60,§2617; C73,§2517; C97,§3435; C24, 27, 31, 35, 39,§**10947**; C46, 50, 54, 58, 62, 66 71, 73, 75,§611.10]

611.11 Court may order change. If there is more than one party plaintiff or defendant, who fail to unite on the kind of proceedings to be adopted, the court, on its own motion, may direct such proceedings to be changed to the same extent as if the parties had united in asking it to be done. [C73,§2518; C97,§3436; C24, 27, 31, 35, 39,§**10948**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.11]

611.12 Errors waived. An error as to the kind of proceedings adopted in the action is waived by a failure to move for its correction at the time and in the manner prescribed in this chapter; and all errors in the decisions of the court are waived unless excepted to at the time, save final judgments and interlocutory or final decrees entered of record. [R60,§2619; C73,§2519; C97,§3437; C24, 27, 31, 35, 39,§**10949**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.12]

611.13 Uniformity of procedure. The provisions of this Code concerning the prosecution of a civil action apply to both ordinary and equitable proceedings unless the contrary appears, and shall be followed in special actions not otherwise regulated, so far as applicable. [C51,§2516; R60,§§2620, 4173; C73,§2520; C97, §3438; C24, 27, 31, 35, 39,§**10950**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.13]

611.14 Title of cause. The title of the cause shall not be changed in any of its stages of transit from one court to another. [R60,§2949; C73,§2721; C97,§3631; C24, 27, 31, 35, 39,§**10951**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.14]

Similar provision, R.C.P. 342(*a*)

611.15 Judgments annulled in equity. Judgment obtained in an action by ordinary proceedings shall not be annulled or modified by any order in an action by equitable proceedings, except for a defense which has arisen or been discovered since the judgment was rendered. But such judgment does not prevent the recovery of any claim, though such claim might have been used by way of counterclaim in the action on which the judgment was recovered. [R60,§2621; C73,§2522; C97,§3440; C24, 27, 31, 35. 39,§**10952**; C46, 50, 54, 58, 62, 66, 71, 73. 75,§611.15]

See R.C.P. 29

611.16 Action to obtain discovery. No action to obtain a discovery shall be brought, except, where a person or corporation is liable either jointly or severally with others by the same contract, an action may be brought against any parties who are liable, to obtain discovery of the names and residences of the others. [R60,§4127; C73,§2523; C97,§3441; C24, 27, 31, 35, 39,§**10953**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §611.16]

C97,§3441, editorially divided

611.17 Petition for discovery. In such action the plaintiff shall state in his petition, in effect, that he has used due diligence, without success, to obtain the information asked to be discovered, and that he does not believe the parties to the contract who are known to him have property sufficient to satisfy his claim. The petition shall be verified. [R60,§4127; C73, §2523; C97,§3441; C24, 27, 31, 35, 39,§**10954**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.17]

611.18 Costs. The cost of such action shall be paid by the plaintiff unless the discovery be resisted. [R60,§4127; C73,§2523; C97,§3441; C24, 27, 31, 35, 39,§**10955**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.18]

611.19 Successive actions. Successive actions may be maintained upon the same contract or transaction whenever, after the former action, a new cause of action has arisen thereon or therefrom. [R60,§4128; C73,§2524; C97,§3442; C24, 27, 31, 35, 39,§**10956**; C46, 50, 54. 58, 62, 66, 71, 73, 75,§611.19]

611.20 Actions survive. All causes of action shall survive and may be brought notwithstanding the death of the person entitled or liable to the same. [C51,§2502; R60,§3467; C73, §2525; C97,§3443; C24, 27, 31, 35, 39,§**10957**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.20]

Referred to in §611.22

611.21 Civil remedy not merged in crime. The right of civil remedy is not merged in a public offense, but may in all cases be enforced independently of and in addition to the punishment of the latter. [C51,§2500; R60,§4110; C73, §2526; C97,§3444; C24, 27, 31, 35, 39,§**10958**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.21]

Referred to in §611.22

611.22 Actions by or against legal representatives—substitution. Any action contemplated in sections 611.20 and 611.21 may be brought, or the court, on motion, may allow the action to be continued, by or against the legal representatives or successors in interest of the deceased. Such action shall be deemed a continuing one, and to have accrued to such representative or successor at the time it would have accrued to the deceased if he had survived. If such is continued against the legal representative of the defendant, a notice shall be served on him as in case of original notices. [C51,§1699; R60,§4111; C73,§2527; C97,§3445; C24, 27, 31, 35, 39,§**10959**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§611.22]

Manner of service, R.C.P. 56.1

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CHAPTER 612

JOINDER OF ACTIONS

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CHAPTER 613

PARTIES TO ACTIONS

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Assignment of accounts and nonnegotiable instruments, §§539.1–539.6

Class actions. See R.C.P. 42.

Virtual representation. See R.C.P. 43.

613.1 Joint and several obligations. Where two or more persons are bound by contract or by judgment, decree, or statute, whether jointly only, or jointly and severally, or severally only, including the parties to negotiable paper, common orders, and checks, and sureties on the same or separate instruments, or by any liability growing out of the same, the action thereon may, at the plaintiff's option, be brought against any or all of them. When any of those so bound are dead, the action may be brought against any or all of the survivors, with any or all of the representatives of the decedents, or against any or all such representatives. [C51,§§1681, 1682; R60,§2764; C73,§2550; C97,§3465; C24, 27, 31, 35, 39,§10975; C46, 50, 54, 58, 62, 66, 71, 73, 75,§613.1]

Referred to in R.C.P. 25(a)
C97,§3465, editorially divided
Separate trials, R.C.P. 186

613.2 Adjudication. An action or judgment against any one or more of several persons jointly bound shall not be a bar to proceedings against the others. [R60,§2764; C73,§2550; C97, §3465; C24, 27, 31, 35, 39,§**10976**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§613.2]

Referred to in R.C.P. 25(a)

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Compromise or dismissal. See R.C.P. 45.

For dismissal generally, see rule 215

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613.3 to 613.6 Repealed by 61GA, ch 413, §10102.

Public bond. See R.C.P. 3.

Partnerships. See R.C.P. 4.

Foreign corporations. See R.C.P. 5.

See §494.9

Seduction. See R.C.P. 6.

Injury or death of a minor. See R.C.P. 8.

613.7 Written instrument. When an action is founded on a written instrument, it may be brought by or against any of the parties thereto by the same name and description as those by which they are designated in such instrument. [C51,§1692; R60,§2786; C73,§2558; C97, §3473; C24, 27, 31, 35, 39,§**10988**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§613.7]

Defense by incompetent, prisoner, etc. See R.C.P. 13.

Actions by and against state. See R.C.P. 9.

Action to abate nuisance, §469.16
Attachment by state, ch 641
Right to bid under execution sale, ch 569

613.8 Actions against state. Upon the conditions herein provided for the protection of the state, the consent of the state be and it is hereby given, to be made a party in any suit or action which is now pending or which may hereafter be brought in any of the district courts of Iowa, any of the United States district courts within the state or in any other court of or in Iowa having jurisdiction of the subject matter, involving the title to real estate, the partition of real estate, the foreclosure of liens or mortgages against real estate or the determination of the priorities of liens or claims against real estate, for the purpose of obtaining an adjudication touching or pertaining to any mortgage or other lien or claim which the state may have or claim to the real estate involved. The petition in such action shall specifically allege the interest or apparent interest of the state and the specific facts upon which the claim against the state is based and it shall be legally insufficient to allege said claim in general terms. [C35,§10990-g1; C39, §**10990.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§613.8]

Referred to in §613.10

613.9 Service on state. Service upon the state shall be made by serving a copy of the original notice with a copy of the petition upon the county attorney for the county, or counties, in which the real estate is located, and by sending a copy of the original notice and petition by certified mail to the attorney general, at Des Moines. The state shall appear within thirty days after the day such notice is served upon the county attorney or within thirty days after such notice is mailed to the attorney general, whichever is later. [C35,§10990-g2; C39,§**10990.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§613.9]

Referred to in §613.10

613.10 Status of state as defendant. After compliance with sections 613.11 and 613.12 and sections 613.8 and 613.9 the state of Iowa shall have the same standing as any other plaintiff or defendant and any and all orders, judgments, or decrees rendered and entered in any such action shall be binding on the state of Iowa in the same manner and degree as any other party to an action against whom such an order, judgment, or decree is entered, and the state of Iowa shall have the same rights in respect to the trial of such cause and in respect to any orders, judgments, or decrees entered therein, together with all rights of appeal, as any other similarly situated party would have. [C35,§10990-g3; C39,§**10990.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§613.10]

613.11 Actions against department of transportation. The state of Iowa hereby waives immunity from suit and consents to the jurisidiction of any court in which an action is brought against the state department of transportation respecting any claim, right, or controversy arising out of the work performed, or by virtue of the provisions of any construction contract entered into by the department. Such action shall be heard and determined pursuant to rules otherwise applicable to civil actions brought in the particular court having jurisdiction of the suit and the parties to the suit shall have the right of appeal from any judgment, decree, or decision of the trial court to the appropriate appellate court under applicable rules of appeal. [C66, 71, 73, 75,§613.11; 66GA, ch 67,§54]

Referred to in §§573.15, 613.10, 613.14

613.12 Venue. Any such action shall name the state department of transportation as defendant and the venue for trial shall be in the county, or in the federal court district, where all or part of the construction work was performed. [C66, 71, 73, 75,§613.12]

Referred to in §613.10

613.13 Service of notice. Service upon the state of Iowa shall be made by serving an original notice or summons, with a copy of

the petition attached, upon any member of the state department of transportation in the manner provided for the service of original notices in actions brought in the district courts of the state of Iowa, or by serving summonses upon any member of the said department in the manner provided for service of summons in actions brought in United States district courts, except only that the state shall be required to appear within thirty days after the day such notice or summons is served upon a member of the said department. [C66, 71, 73, 75,§613.13]

613.14 Limitation. Actions against the state of Iowa authorized under the provisions of section 613.11 may be instituted within three years from the date of the completion or acceptance of the work, whichever date is later, except that this should not apply to contracts completed and accepted and for which final payment was made previous to July 4, 1963. [C66, 71, 73, 75,§613.14]

Transfer of interest. See R.C.P. 16.

613.15 Injury or death of spouse—measure of recovery. In any action for damages because of the wrongful or negligent injury or death of a woman, there shall be no disabilities or restrictions, and recovery may be had on account thereof in the same manner as in cases of damage because of the wrongful or negligent injury or death of a man. In addition she, or her administrator for her estate, may recover for physician's services, nursing and hospital expense, and in the case of both women and men, such person, or the appropriate administrator, may recover the value of services and support as spouse or parent, or both, as the case may be, in such sum as the jury deems proper; provided, however, recovery for these elements of damage may not be had by the spouse and children, as such, of any person who, or whose administrator, is entitled to recover same. [SS15,§3477-a; C24, 27,§10463; C31, 35,§10991-d1; C39,§**10991.1**; C46, 50, 54, 58, 62,§613.11; C66, 71, 73, 75,§613.15]

Married women—husband and wife. See R.C.P. 10.

Desertion of family. See R.C.P. 11.

Minors—incompetents. See R.C.P. 12.

Majority of minor. See R.C.P. 19.

Guardian ad litem. See R.C.P. 14.

As to mental illness, etc., occurring pending suit, see rule 17

For class actions, see rule 42

For answer of guardian ad litem, see rule 71

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By defendants. See R.C.P. 36.

For procedure to bring in, see rule 34

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Injunction. See R.C.P. 39.

For injunctions generally, see rule 320 et seq.

Costs. See R.C.P. 40.

Sheriff or officer—creditor. See R.C.P. 41.

See rule 224

613.16 Parental responsibility for actions of children.

1. The parent or parents of an unemancipated minor child under the age of eighteen years shall be liable for actual damages to person or property caused by unlawful acts of such child. However, a parent who is not entitled to legal custody of the minor child at the time of the unlawful act shall not be liable for such damages.

2. The legal obligation of the parent or parents of an unemancipated minor child under the age of eighteen years to pay damages shall be limited as follows:

a. Not more than one thousand dollars for any one act.

b. Not more than two thousand dollars, payable to the same claimant, for two or more acts.

3. The word "person" for the purpose of this section shall include firm, association, partnership or corporation.

4. When an action is brought on parental responsibility for acts of their children, the parents shall be named as defendants therein and, in addition, the minor child shall be named as a defendant. The filing of an answer by the parents shall remove any requirement that a guardian ad litem be required. [C71, 73, 75,§613.16]

Referred to in §624.38

613.17 Emergency assistance in an accident. Any person, who in good faith renders emergency care or assistance without compensation at the place of an emergency or accident, shall not be liable for any civil damages for acts or omissions unless such acts or omissions constitute recklessness. [C71, 73, 75,§613.17]

CHAPTER 613A

TORT LIABILITY OF GOVERNMENTAL SUBDIVISIONS

Referred to in §§235A.20, 332.40, 442.5, 749B.6

613A.1 Definitions.
613A.2 Liability imposed.
613A.3 Actual knowledge of defect as defense.
613A.4 Claims exempted.
613A.5 Limitation of actions.
613A.6 Death—claim presented by another.
613A.7 Insurance.
613A.8 Officers and employees defended.
613A.9 Compromise and settlement.
613A.10 Tax to pay judgment or settlement.
613A.11 Claims not retrospective.

613A.1 Definitions. As used in this chapter, the following terms shall have the following meanings:

1. *"Municipality"* means city, county, township, school district, and any other unit of local government.

2. *"Governing body"* means the council of a city, county board of supervisors, board of township trustees, local school board, and other boards and commissions exercising quasi-legislative, quasi-executive, and quasi-judicial power over territory comprising a municipality.

3. *"Tort"* means every civil wrong which results in wrongful death or injury to person or injury to property or injury to personal or property rights and includes but is not restricted to actions based upon negligence; error or omission; nuisance; breach of duty, whether statutory or other duty or denial or impairment of any right under any constitutional provision, statute or rule of law.

4. *"Officer"* includes but is not limited to the members of the governing body. [C71, 73, 75,§613A.1]

613A.2 Liability imposed. Except as otherwise provided in this chapter, every municipality is subject to liability for its torts and those of its officers, employees, and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

A tort shall be deemed to be within the scope of employment or duties if the act or omission reasonably relates to the business or affairs of the municipality and the officer, employee, or agent acted in good faith and in a manner a reasonable person would have believed to be in and not opposed to the best interests of the municipality.

For the purposes of this chapter, employee includes a person who performs services for a municipality whether or not the person is compensated for the services, unless the services are performed only as an incident to the person's attendance at a municipality function. [C71, 73, 75,§613A.2]

Referred to in §§613A.4, 613A.5, 613A.7, 613A.9, 613A.10

613A.3 Actual knowledge of defect as defense. In any action subject to the provisions of this chapter, an affirmative showing that the injured party had actual knowledge of the existence of the alleged obstruction, disrepair, defect, accumulation, or nuisance at the time of the occurrence of the injury, and a further showing that an alternate safe route was available and known to the injured party, shall constitute a defense to the action. [C71, 73, 75,§613A.3]

613A.4 Claims exempted. The liability imposed by section 613A.2 shall have no application to any claim enumerated in this section. As to any such claim, a municipality shall be liable only to the extent liability may be imposed by the express statute dealing with such claims and, in the absence of such express statute, the municipality shall be immune from liability.

1. Any claim by an employee of the municipality which is covered by the Iowa workers' compensation law.

2. Any claim in connection with the assessment or collection of taxes.

3. Any claim based upon an act or omission of an officer or employee, exercising due care, in the execution of a statute, ordinance, or officially adopted resolution, rule, or regulation of a governing body.

4. Any claim against a municipality as to which the municipality is immune from liability by the provisions of any other statute or where the action based upon such claim has been barred or abated by operation of statute or rule of civil procedure.

The remedy against the municipality provided by section 613A.2 shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the officer, employee or agent whose act or omission gave rise to the claim, or his estate. [C71, 73, 75,§613A.4; 66GA, ch 1084,§43]

Referred to in §613A.7

613A.5 Limitation of actions. Every person who claims damages from any municipality or any officer, employee or agent of a municipality for or on account of any wrongful death, loss or injury within the scope of section 613A.2 or section 613A.8 or under common law shall commence an action therefor within six months, unless said person shall cause to be presented to the governing body of the municipality within sixty days after the alleged wrongful death, loss or injury a writ-

ten notice stating the time, place, and circumstances thereof and the amount of compensation or other relief demanded. Failure to state time or place or circumstances or the amount of compensation or other relief demanded shall not invalidate the notice; providing, the claimant shall furnish full information within fifteen days after demand by the municipality. No action therefor shall be maintained unless such notice has been given and unless the action is commenced within two years after such notice. The time for giving such notice shall include a reasonable length of time, not to exceed ninety days, during which the person injured is incapacitated by his injury from giving such notice. [C71, 73, 75,§613A.5]

613A.6 Death—claim presented by another. When the claim is one for death by wrongful act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin, or the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury resulting in such death; but if the person for whose death the claim is made has presented a notice that would have been sufficient had he lived, an action for wrongful death may be brought without additional notice. [C71, 73, 75,§613A.6]

613A.7 Insurance. The governing body of any municipality may purchase a policy of liability insurance insuring against all or any part of liability which might be incurred by such municipality or its officers, employees and agents under the provisions of section 613A.2 and section 613A.8 and may similarly purchase insurance covering torts specified in section 613A.4. The premium costs of such insurance may be paid out of the general fund or any available funds or may be levied in excess of any tax limitation imposed by statute. Any independent or autonomous board or commission in the municipality having authority to disburse funds for a particular municipal function without approval of the governing body may similarly procure liability insurance within the field of its operation. The procurement of such insurance constitutes a waiver of the defense of governmental immunity as to those exceptions listed in section 613A.4 to the extent stated in such policy but shall have no further effect on the liability of the municipality beyond the scope of this chapter. The existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of the plaintiff, or lack of any such insurance, shall not be material in the trial of any action brought against the governing body of any municipality, or their officers, employees or agents and any reference to such insurance, or lack of same, shall be grounds for a mistrial. [C71, 73, 75,§613A.7]

Referred to in §§285.10, 332.37, 384.12

613A.8 Officers and employees defended. The governing body shall defend any of its officers, employees and agents, whether elected or appointed and, except in cases of malfeasance in office, willful and unauthorized injury to persons or property, or willful or wanton neglect of duty, shall save harmless and indemnify such officers, employees and agents against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of their employment or duties. Any independent or autonomous board or commission of a municipality having authority to disburse funds for a particular municipal function without approval of the governing body shall similarly defend, save harmless and indemnify its officers, employees and agents against such tort claims or demands.

The duty to defend, save harmless, and indemnify shall apply whether or not the municipality is a party to the action and shall include but not be limited to cases arising under title 42 United States Code section 1983. [C71, 73, 75,§613A.8]

Referred to in §§260.27, 613A.5, 613A.7, 613A.9, 613A.10

613A.9 Compromise and settlement. The governing body of any municipality may compromise, adjust and settle tort claims against the municipality, its officers, employees and agents, for damages under section 613A.2 or 613A.8 and may appropriate money for the payment of amounts agreed upon. [C71, 73, 75,§613A.9]

613A.10 Tax to pay judgment or settlement. When a final judgment is entered against or a settlement is made by a municipality for a claim within the scope of section 613A.2 or 613A.8, payment shall be made and the same remedies shall apply in the case of nonpayment as in the case of other judgments against the municipality. If said judgment or settlement is unpaid at the time of the adoption of the annual budget, it shall budget an amount sufficient to pay the judgment or settlement together with interest accruing thereon to the expected date of payment. Such tax may be levied in excess of any limitation imposed by statute. [C71, 73, 75,§613A.10]

613A.11 Claims not retrospective. This chapter shall have no application to any occurrence or injury claim or action arising prior to January 1, 1968. [C71, 73, 75,§613A.11]

CHAPTER 614

LIMITATIONS OF ACTIONS

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GENERAL PROVISIONS

614.1 Period. Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:

1. *Penalties or forfeitures under ordinance.* Those to enforce the payment of a penalty or forfeiture under an ordinance, within one year.

2. *Injuries to person or reputation—relative rights—statute penalty.* Those founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statute penalty, within two years.

Will contest, §633.309

3. *Against sheriff or other public officer.* Those against a sheriff or other public officer for the nonpayment of money collected on execution within three years of collection.

4. *Unwritten contracts—injuries to property—fraud—other actions.* Those founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years, except as provided by subsection 8.

Referred to in §222.82
Damages incident to quo warranto, §660.2

5. *Written contracts—judgments of courts not of record—recovery of real property.* Those founded on written contracts, or on judgments of any courts except those provided for in the next subsection, and those brought for the recovery of real property, within ten years.

6. *Judgments of courts of record.* Those founded on a judgment of a court of record, whether of this or of any other of the United States, or of the federal courts of the United States, within twenty years.

7. *Judgment quieting title.* No action shall be brought to set aside a judgment or decree quieting title to real estate unless the same shall be commenced within ten years from and after the rendition thereof.

8. *Wages.* Those founded on claims for wages or for a liability or penalty for failure to pay wages, within two years.

9. *Malpractice.* Those founded on injuries to the person or wrongful death against any physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatrist, optometrist, pharmacist, chiropractor, or nurse, licensed under chapter 147, or a hospital licensed under chapter 135B, arising out of patient care, within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of, the injury or death for which damages are sought in the action, whichever of the dates occurs first, but in no event shall any action be brought more than six years after the date on which occurred the act or omission or occurrence alleged in the action to have been the cause of the injury or death unless a foreign object unintentionally left in the body caused the injury or death. [C51, §1659; R60,§§1075, 1865, 2740; C73,§§486, 2529; C97,§3447; S13,§§2963-g, 3447; C24, 27, 31, 35,

39,§**11007**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §614.1; 66GA, ch 239,§26]

Referred to in §222.82
S13,§3447, editorially divided
Escheated lands, §567.7
Legality of municipal bonds, §§384.68(7), 384.92, 461.23, 463.23
Sale or mortgage by executor or guardian, §633.413

614.2 Death of party to be charged. In all cases where by the death of the party to be charged, the bringing of an action against his estate shall have been delayed beyond the period provided for by statute, the time within which action may be brought against his estate is hereby extended for six months from the date of the death of said decedent. [S13, §3447-a; C24, 27, 31, 35, 39,§**11008**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.2]

Administration granted, §633.227

614.3 Judgments. No action shall be brought upon any judgment against a defendant therein, rendered in any court of record of this state, within nine years after the rendition thereof, without leave of the court for good cause shown, and, if the adverse party is a resident of this state, upon reasonable notice of the application therefor to him; nor on a judgment of a justice of the peace in the state within nine years after the same is rendered, unless the docket of the justice or record of such judgment is lost or destroyed; but the time during which an action on a judgment is prohibited by this section shall not be excluded in computing the statutory period of limitation for an action thereon. [C73,§2521; C97,§3439; S13,§3439; C24, 27, 31, 35, 39,§**11009**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.3]

Action on certain judgments prohibited, ch 615
Lien of judgments, §624.23

614.4 Fraud—mistake—trespass. In actions for relief on the ground of fraud or mistake, and those for trespass to property, the cause of action shall not be deemed to have accrued until the fraud, mistake, or trespass complained of shall have been discovered by the party aggrieved. [C51,§1660; R60,§2741; C73, §2530; C97,§3448; C24, 27, 31, 35, 39,§**11010**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.4]

614.5 Open account. When there is a continuous, open, current account, the cause of action shall be deemed to have accrued on the date of the last item therein, as proved on the trial. [C51,§1662; R60,§2743; C73,§2531; C97, §3449; C24, 27, 31, 35, 39,§**11011**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.5]

Tolling limitations. See R. C. P. 55.

614.6 Nonresident or unknown defendant. The period of limitation above described shall be computed omitting any time when:

1. The defendant is a nonresident of the state, or

2. In those cases involving personal injuries or death resulting from a felony or indictable misdemeanor, while the identity of the defendant is unknown after diligent effort has been made to discover it. The provisions of this section shall be effective January 1, 1970, and to this extent the provisions are retroactive. [C51,§1664; R60,§2745; C73,§2533; C97,§3451; C24, 27, 31, 35, 39,§**11013**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.6]

614.7 Bar in foreign jurisdiction. When a cause of action has been fully barred by the laws of any country where the defendant has previously resided, such bar shall be the same defense here as though it had arisen under the provisions of this chapter; but this section shall not apply to causes of action arising within this state. [C51,§1665; R60,§2746; C73, §2534; C97,§3452; C24, 27, 31, 35, 39,§**11014**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.7]

614.8 Minors and mentally ill persons. The times limited for actions herein, except those brought for penalties and forfeitures, shall be extended in favor of minors and mentally ill persons, so that they shall have one year from and after the termination of such disability within which to commence said action. [C51, §1666; R60,§2747; C73,§2535; C97,§3453; C24, 27, 31, 35, 39,§**11015**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.8]

Referred to in §§229.27, 587.12(3), 614.19, 614.27

614.9 Exception in case of death. If the person having a cause of action dies within one year next previous to the expiration of the limitation above provided for, such limitation shall not apply until one year after such death. [C51,§1667; R60,§2748; C73,§2536; C97,§3454; C24, 27, 31, 35, 39,§**11016**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.9]

614.10 Failure of action. If, after the commencement of an action, the plaintiff, for any cause except negligence in its prosecution, fails therein, and a new one is brought within six months thereafter, the second shall, for the purposes herein contemplated, be held a continuation of the first. [C51,§1668; R60,§2749; C73,§2537; C97,§3455; C24, 27, 31, 35, 39,§**11017**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.10]

614.11 Admission in writing—new promise. Causes of action founded on contract are revived by an admission in writing, signed by the party to be charged, that the debt is unpaid, or by a like new promise to pay the same. [C51,§1670; R60,§2751; C73,§2539; C97, §3456; C24, 27, 31, 35, 39,§**11018**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.11]

614.12 Counterclaim. A counterclaim may be pleaded as a defense to any cause of action, notwithstanding it is barred by the provisions of this chapter, if it was the property of the party pleading it at the time it became barred, and was not barred at the time the claim sued on originated; but no judgment thereon, except for costs, can be rendered in favor of the party so pleading it. [R60,§2752; C73,§2540; C97,§3457; C24, 27, 31, 35, 39,§**11019**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.12]

614.13 Injunction. When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of such injunction or prohibition shall not be part of the time limited for the commencement of the action, except as herein otherwise provided. [C73,§2541; C97,§3458; C24, 27, 31, 35, 39,§**11020**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.13]

SPECIAL LIMITATIONS

614.14 Recovery by cestui que trust. In all cases where any deed of trust or declaration of trust has been executed and the real estate affected thereby has been conveyed by the trustee or the surviving spouse or heirs of said trustee and such conveyance was duly recorded in the proper county prior to January 1, 1960, and the interest of the cestui que trust thereunder has not been by such cestui que trust conveyed, or established by proper proceedings in court, no action, suit or proceeding shall be commenced or maintained to foreclose the same, or to establish or recover the interest of the cestui que trust therein, or of the surviving spouse or heirs of the cestui que trust, unless such action, suit, or proceeding be commenced by filing petition and service of notice not later than March 1, 1971. [S13, §3447; C24, 27, 31, 35, 39,§**11021**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.14]

Referred to in §614.16

614.15 Spouse failing to join in conveyance. In all cases where the holder of the legal or equitable title or estate to real estate situated within this state, prior to January 1, 1960, conveyed said real estate or any interest therein by deed, mortgage, or other instrument, and the spouse failed to join therein, such spouse or the heirs at law, personal representatives, devisees, grantees, or assignees of such spouse shall be barred from recovery unless suit is brought therefor within one year after July 1, 1970. But in case the right to such distributive share has not accrued by the death of the spouse making such instrument, then the one not joining is hereby authorized to file in the recorder's office of the county where the land is situated, a notice with affidavit, setting forth affiant's claim, together with the facts upon which such claim rests, and the residence of such claimants; and if such notice is not filed within two years from July 1, 1970, such claim shall be barred forever. Any action contemplated in this section may include land situated in different counties, by giving notice thereof as provided by section 617.13. [S13, §3447-b; C24, 27, 31, 35, 39,§**11022**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.15]

Referred to in §§614.16, 614.20

614.16 Interpretative clause. Sections 614.14 and 614.15 shall not affect pending litigation, nor shall they operate to revive rights or claims previously barred, nor permit an action to be brought or maintained upon any claim or cause of action which is barred by any statute which is in force prior to July 1, 1970. [C24, 27, 31, 35, 39,§**11023**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.16]

614.17 Claims to real estate antedating 1960. No action based upon any claim arising or existing prior to January 1, 1960, shall be maintained, either at law or in equity, in any court to recover any real estate in this state or to recover or establish any interest therein or claim thereto, legal or equitable, against the holder of the record title to such real estate in possession, when such holder of the record title and his grantors immediate or remote are shown by the record to have held chain of title to said real estate, since January 1, 1960, unless such claimant, by himself, or by his attorney or agent, or if he be a minor or under legal disability, by his guardian, trustee, or either parent shall within one year from and after July 1, 1970, file in the office of the recorder of deeds of the county wherein such real estate is situated, a statement in writing, which shall be duly acknowledged, definitely describing the real estate involved, the nature and extent of the right or interest claimed, and stating the facts upon which the same is based.

For the purposes of this and sections 614.18 to 614.20 any person who holds title to real estate by will or descent from any person who held the title of record to such real estate at the date of his death or who holds title by decree or order of any court, or under any tax deed, trustee's, referee's, guardian's, executor's, administrator's, receiver's, assignee's, master's in chancery, or sheriff's deed, shall be deemed to hold chain of title the same as though holding by direct conveyance.

For the purposes of this section, such possession of said real estate may be shown of record by affidavits showing such possession, and when said affidavits have been filed and recorded, it shall be the duty of the recorder to enter upon the margin of said record, a certificate to the effect that said affidavits were filed by the owner in possession, as named in said affidavits, or by his attorney in fact, as shown by the records and in like manner, such affidavits may be filed and recorded where any action was barred on any claim by this section as in force prior to July 1, 1970. [C24, 27, 31, 35, 39,§**11024**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.17]

Referred to in §§614.19, 614.20

614.18 Claim indexed. Any such claim so filed, shall be indexed under the description of the real estate involved in a book set apart and specially designed for that purpose to be known as the "claimant's book" and kept in the office of the recorder of the county where such real estate is situated, and said statement, when so indexed, shall be recorded as other instruments affecting real estate. [C24, 27, 31, 35, 39,§**11025**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.18]

Referred to in §§614.17, 614.19, 614.20, 614.26

614.19 Minors and insane. The provisions of section 614.8 as to the rights of minors and

insane persons shall not be applicable against the provisions of sections 614.17, 614.18, and 614.20. [C24, 27, 31, 35, 39,§11026; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.19]

Referred to in §§229.27, 614.17, 614.20

614.20 Limitation on Act. Provided, however, that nothing contained in sections 614.17 to 614.19 shall be construed as limiting or extending the time within which actions by a spouse to recover dower or distributive share in real estate within this state may be brought or maintained under the provisions of section 614.15, or as limiting or extending the time within which actions may be brought or maintained to foreclose or enforce any real estate mortgage, bond for deed, trust deed, or contract for the sale or conveyance of real estate under the provisions of section 614.21, and provided further, that sections 614.17 to 614.19 should in no case revive or permit an action to be brought or maintained upon any claim or cause of action which is barred by any statute which is in force prior to July 1, 1970; provided that nothing contained in sections 614.17 to 614.19 shall affect pending litigation. [C24, 27, 31, 35, 39,§11027; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.20]

Referred to in §§614.17, 614.19
Pending litigation excepted, 59GA, ch 286,§7

614.21 Foreclosure of ancient mortgages. No action shall be maintained to foreclose or enforce any real estate mortgage, bond for deed, trust deed, or contract for the sale or conveyance of real estate, after twenty years from the date thereof, as shown by the record of such instrument, unless the record of such instrument shows that less than ten years have elapsed since the date of maturity of the indebtedness or part thereof, secured thereby, or since the right of action has accrued thereon, or unless the record shows an extension of the maturity of the instrument or of the debt or a part thereof, and that ten years from the expiration of the time of such extension have not yet expired. The date of maturity, when different than as appears by the record of the instrument, and the date of maturity of any extension of said indebtedness or part thereof, may be shown at any time prior to the expiration of the above periods of limitation by the holder of the debt or the owner or assignee of the instrument filing an extension agreement, duly acknowledged as the original instrument was required to be acknowledged, in the office of the recorder where the instrument is recorded, or by noting on the margin of the record of such instrument in the recorder's office an extension of the maturity of the instrument or of the debt secured, or any part thereof; each notation to be witnessed by the recorder and entered upon the index of mortgages in the name of the mortgagor and mortgagee.

From and after July 4, 1946, this section shall also apply to any instrument of the kind described in this section which is not of record but which is described or referred to in any other instrument which is filed of record and the limitation shall be ten years from the due date of the instrument referred to if disclosed in the record and if not so disclosed then within ten years from the date of the record of the instrument containing such reference. [S13, §3447-c; C24, 27, 31, 35, 39,§11028; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.21]

Referred to in §614.20

614.22 Action affecting ancient deeds. No action shall be maintained to set aside, cancel, annul, declare void or invalid, or to redeem from any tax deed, guardian's deed, executor's deed, administrator's deed, receiver's deed, referee's deed, assignee's deed, sheriff's deed which shall have been recorded in the office of the recorder of the county or counties in this state in which the land described in such deed is situated prior to January 1, 1960, unless such action shall be commenced prior to January 1, 1971, and if no action to set aside, cancel, annul, declare void or invalid, or to redeem from any such deed shall be commenced prior to January 1, 1971, then such deed and all the proceedings upon which the same is based shall be conclusively presumed to have been in all things valid and unimpeachable and effective to convey title according to the purport thereof, without exception for infancy, mental illness, absence from the state, or other disability or cause; provided that this and section 614.23 shall not apply to any real property described in any such deed which is not on July 1, 1970, in the possession of those claiming title under such deed. [SS15,§3447-d; C24, 27, 31, 35, 39,§11029; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.22]

Referred to in §§229.27, 614.23
Legalizing Acts, ch 589

614.23 How "possession" established. The possession of the persons claiming title as provided for in section 614.22 may be established by affidavit recorded in the office of the recorder of the county or counties in this state in which the deed to the land referred to in said affidavit is recorded. [SS15,§3447-e; C24, 27, 31, 35, 39,§11030; C46, 50, 54, 58, 62, 66, 71, 73, 75,§614.23]

Referred to in §614.22

614.24 Reversion or use restrictions on land —preservation. No action based upon any claim arising or existing by reason of the provisions of any deed or conveyance or contract or will reserving or providing for any reversion, reverted interests or use restrictions in and to the land therein described shall be maintained either at law or in equity in any court to recover real estate in this state or to recover or establish any interest therein or claim thereto, legal or equitable, against the holder of the record title to such real estate in possession after twenty-one years from the recording of such deed of conveyance or contract or after twenty-one years from the admission of said will to probate unless the claimant shall, by himself, or by his attorney or agent, or if he is a minor or under legal disability,

by his guardian, trustee, or either parent or next friend, shall file a verified claim with the recorder of the county wherein said real estate is located within said twenty-one year period. In the event said deed was recorded or will was admitted to probate more than twenty years prior to July 4, 1965, then said claim may be filed on or before one year after July 4, 1965. Such claims shall set forth the nature thereof, also the time and manner in which such interest was acquired. For the purposes of this section, the claimant shall be any person or persons claiming any interest in and to said land or in and to such reversion, reverter interest or use restriction, whether the same is a present interest or an interest which would come into existence if the happening or contingency provided in said deed or will were to happen at once. Said claimant further shall include any member of a class of persons entitled to or claiming such rights or interests. [C66, 71, 73, 75,§614.24]

Referred to in §§229.27, 614.26, 614.27, 614.28

614.25 Effect of filing claim. The filing of such claim shall extend for a further period of twenty-one years the time within which such action may be brought by any person entitled thereto, and successive claims for further like extensions may be filed. [C66, 71, 73, 75,§614.25]

Referred to in §§614.26, 614.27, 614.28

614.26 Indexing. The provisions of section 614.18 are made applicable to the provisions of sections 614.24 to 614.28. [C66, 71, 73, 75, §614.26]

Referred to in §§614.27, 614.28

614.27 Persons under disability. The provisions of section 614.8 as to the rights of minors and insane persons shall not be applicable against the provisions of sections 614.24 to 614.28. [C66, 71, 73, 75,§614.27]

Referred to in §§229.27, 614.26, 614.28

614.28 Barred claims. The provisions of sections 614.24 to 614.27, inclusive, or the filing of a claim or claims, hereunder, shall not revive or permit an action to be brought or maintained upon any claim or cause of action which is barred by any other statute. Provided further, that nothing contained in these sections shall affect litigation pending on July 4, 1965. [C66, 71, 73, 75,§614.28]

Referred to in §§614.26, 614.27

MARKETABLE RECORD TITLE

614.29 Definitions. As used in this division:

1. *"Marketable record title"* means a title of record, as indicated in section 614.31, which operates to extinguish such interests and claims, existing prior to the effective date of the root of title, as are stated in section 614.33.

2. *"Records"* includes probate and other official public records, as well as records in the office of the county recorder.

3. *"Recording"*, when applied to the official public records of a probate or other court, includes filing.

4. *"Person dealing with the land"* includes a purchaser of any estate or interest therein, a mortgagee, a levying or attaching creditor, a land contract vendee, or any other person, corporation, or entity seeking to acquire an estate or interest therein, or impose a lien thereon.

5. *"Root of title"* means that conveyance or other title transaction or other link in the chain of title of a person, purporting to create the interest claimed by such person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded or established as of a date forty years prior to the time when marketability is being determined. The effective date of the "root of title" is the date on which it is recorded.

6. *"Title transaction"* means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or deed by trustee, referee, guardian, executor, administrator, master in chancery, sheriff, or any other form of deed or decree of any court, as well as warranty deed, quitclaim deed, mortgage, or transfer or conveyance of any kind. [C71, 73, 75,§614.29]

Referred to in §§302.28, 614.31

614.30 Construction liberal. This division shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in section 614.31, subject only to such limitations as appear in section 614.32. [C71, 73, 75, §614.30]

Referred to in §302.28

614.31 Forty-year chain of title. Any person who has an unbroken chain of title of record to any interest in land for forty years or more, shall be deemed to have a marketable record title to such interest as defined in section 614.29, subject only to the matters stated in section 614.32. A person shall be deemed to have such an unbroken chain of title when the official public records disclose a conveyance or other title transaction, of record not less than forty years at the time the marketability is to be determined, which said conveyance or other title transaction purports to create such interest, either in:

1. The person claiming such interest, or

2. Some other person from whom, by one or more conveyances or other title transactions of record, such purported interest has become vested in the person claiming such interest; with nothing appearing of record, in either case, purporting to divest such claimant of such purported interest. [C71, 73, 75,§614.31]

Referred to in §§302.28, 614.29, 614.30

614.32 What interests and rights subject. Such marketable record title shall be subject to:

1. All interests and defects which are inherent in the muniments of which such chain of record title is formed; provided however, that a general reference in such muniments, or any of them, to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them, unless specific identification be made therein of a recorded title transaction which creates such easement, use restriction, or other interest.

2. All interest preserved by the filing of proper notice or by possession by the same owner continuously for a period of forty years or more, in accordance with section 614.34.

3. The rights of any person arising from a period of adverse possession or user, which was in whole or in part subsequent to the effective date of the root of title.

4. Any interest arising out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title of record is started; provided such recording shall not revive or give validity to any interest which has been extinguished prior to the time of the recording by the operation of section 614.33.

5. The exceptions as stated and set forth in section 614.36. [C71, 73, 75,§614.32]

Referred to in §§302.28, 614.30, 614.31, 614.33

614.33 Free and clear of other interests not stated. Subject to the matters stated in section 614.32, such marketable record title shall be held by its owner and shall be taken by any person dealing with the land free and clear of all interests, claims or charges whatsoever, the existence of which depends upon any act, transaction, event or omission that occurred prior to the effective date of the root of title. All such interests, claims or charges, however denominated, whether legal or equitable, present or future, whether such interest, claims or charges are asserted by a person able to assert a claim on his own behalf or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental, are hereby declared to be null and void. [C71, 73, 75,§614.33]

Referred to in §§302.28, 614.29, 614.32

614.34 Preserving interest during forty-year period.

1. Any person claiming an interest in land may preserve and keep effective such interest by filing for record during the forty-year period immediately following the effective date of the root of title of the person whose record title would otherwise be marketable, a notice in writing duly verified by oath or affirmation setting forth the nature of the claim. No disability or lack of knowledge of any kind on the part of anyone shall suspend the running of said forty-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

a. Under a disability,

b. Unable to assert a claim on his own behalf, or

c. One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

2. If the same record owner of any possessory interest in land has been in possession of such land continuously for a period of forty years or more, during which period no title transaction with respect to such interest appears of record in his chain of title, and no notice has been filed by him or on his behalf as provided in subsection 1, and such possession continues to the time when marketability is being determined, such period of possession shall be deemed equivalent to the filing of the notice immediately preceding the termination of the forty-year period described in subsection 1. [C71, 73, 75,§614.34]

Referred to in §§302.28, 614.32

614.35 Recording interest. To be effective and to be entitled to record the notice above referred to shall contain an accurate and full description of all land affected by such notice which description shall be set forth in particular terms and not by general inclusions; but if said claim is founded upon a recorded instrument, then the description in such notice may be the same as that contained in such recorded instrument. Such notice shall be filed for record in the office of the county recorder of the county or counties where the land described therein is situated. The recorder of each county shall accept all such notices presented to him which describe land located in the county in which he serves and shall enter and record full copies thereof in the same way that deeds and other instruments are recorded, and each recorder shall be entitled to charge the same fees for the recording thereof as are charged for recording deeds. In indexing such notices in his office each recorder shall enter such notices under the grantee indexes of deeds in the names of the claimants appearing in such notices. Such notices shall also be indexed under the description of the real estate involved in a book set apart for that purpose to be known as the "claimant's book." [C71, 73, 75,§614.35]

Referred to in §302.28

614.36 Lessors, reversioners and easements. This division shall not be applied to bar any lessor or his successor as a reversioner of his right to possession on the expiration of any lease; or to bar or extinguish any easement or interest in the nature of an easement, the existence of which is apparent from or can be proved by physical evidence of its use; or to bar any right, title or interest of the United States, by reason of failure to file the notice herein required. [C71, 73, 75,§614.36]

Referred to in §§302.28, 614.32

614.37 Limitation statutes not extended. Nothing contained in this division shall be construed to extend the period for the bringing of an action or for the doing of any other required act under any statutes of limitations, nor, except as herein specifically provided, to effect the operation of any statutes governing the effect of the recording or the failure to record any instrument affecting land. It is intended that nothing contained in this division be interpreted to revive or extend the period of filing a claim or bringing an action that may be limited or barred by any other statute. [C71, 73, 75,§614.37]

Referred to in §302.28

614.38 Period extension in certain cases. If the forty-year period specified in this division shall have expired prior to one year after July 1, 1969, such period shall be extended one year after July 1, 1969. [C71, 73, 75,§614.38]

Referred to in §302.28

CHAPTER 615

SPECIAL LIMITATIONS ON JUDGMENTS

Method of computing time, §4.1(22)

615.1 Execution on certain judgments prohibited.
615.2 Revival of certain judgments prohibited.
615.3 Future judgments without foreclosure.
615.4 Former judgments without foreclosure.

615.1 Execution on certain judgments prohibited. From and after January 1, 1934, no judgment in an action for the foreclosure of a real estate mortgage or deed of trust or in any action on a claim for rent or judgment assigned by a receiver of a closed bank or rendered upon credits assigned by the receiver of a closed bank when the assignee is not a trustee for depositors or creditors of the bank, the reconstruction finance corporation or any other federal governmental agency to which the bank or the receiver is or may be indebted shall be enforced and no execution issued thereon and no force or vitality given thereto for any purpose other than as a setoff or counterclaim after the expiration of a period of two years from the entry thereof. [C35,§11033-e1; C39,§**11033.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§615.1]

See also §654.6

615.2 Revival of certain judgments prohibited. After January 1, 1934, no action or proceedings shall be brought in any court of this state for the purpose of renewing or extending such judgment or prolonging the life thereof. Provided, however, that nothing herein shall prevent the continuance of such judgment in force for a longer period by the voluntary written stipulation of the parties, filed in said cause. [C35,§11033-e2; C39,§**11033.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§615.2]

Omnibus repeal, 45GA, ch 178,§3

615.3 Future judgments without foreclosure. Judgments hereafter rendered on promissory obligations secured by mortgage or deed of trust of real estate, but without foreclosure against said security, shall not be subject to renewal by action thereon, and, after the lapse of two years from the date of rendition, shall be without force and effect for any purpose whatsoever except as a setoff or counterclaim. [C35,§11033-g1; C39,§**11033.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§615.3]

Effective date, May 3, 1935

615.4 Former judgments without foreclosure. Judgments heretofore rendered or in actions now pending upon promissory obligations secured by mortgage or deed of trust of real estate, and upon which judgments or actions now pending the holder thereof brought suit direct upon the said promissory obligation without a foreclosure against said security, shall have no force or vitality for any purpose other than a setoff or counterclaim from and after the expiration of two years from the passage of this Act* and no execution shall be issued thereon. [C35,§11033-g2; C39,§**11033.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§615.4]

*46GA, ch 108, effective date, May 3, 1935

CHAPTER 616

PLACE OF BRINGING ACTIONS

Change of venue, ch 623

616.1 Real property.
616.2 Injuries to real property.
616.3 Local actions.
616.4 Nonresident—attachment.
616.5 Resident—attachment.
616.6 Transfer—attached property held.

616.7 Place of contract.
616.8 Certain carriers and transmission companies—actions against.
616.9 Construction companies.
616.10 Insurance companies.
616.11 Nonlife insurance assessments.
616.12 Nonlife insurance premiums or notes.
616.13 Operators of coal mines.
616.14 Office or agency.
616.15 Surety companies.
616.16 Municipal corporations in certain counties.
616.17 Personal actions.
616.18 Personal injury or damage actions.
616.19 Negotiable paper.
616.20 Right of nonresident defendant.
616.21 Change of residence.
Rule—Action brought in wrong county, R.C.P. 175.

616.1 Real property. Actions for the recovery of real property, or of an estate therein, or for the determination of such right or interest, or for the partition of real property, must be brought in the county in which the subject of the action or some part thereof is situated. [C51,§1703; R60,§2795; C73,§2576; C97,§3491; C24, 27, 31, 35, 39,§**11034**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.1]

Real estate foreclosure, §654.3

616.2 Injuries to real property. Actions for injuries to real property may be brought either in the county where the property is, or where the defendant resides. [C73,§2577; C97,§3492; C24, 27, 31, 35, 39,§**11035**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.2]

616.3 Local actions. Actions for the following causes must be brought in the county where the cause, or some part thereof, arose:

1. *For fines, penalties, or forfeitures.* Those for the recovery of a fine, penalty, or forfeiture imposed by a statute; but when the offense for which the claim is made was committed on a watercourse or road which is the boundary of two counties, the action may be brought in either of them.

2. *Against public officers.* Those against a public officer or person specially appointed to execute his duties, for an act done by him in virtue or under color of his office, or against one who by his command or in his aid shall do anything touching the duties of such officer, or for neglect of official duty.

3. *On official bonds.* Those on the official bond of a public officer.

4. *Actions on bonds of executor or guardian.* Those on the bond of an executor, administrator, or guardian may be brought in the county in which the appointment was made and such bond filed.

5. *Actions on other bonds.* Actions on all other bonds provided for or authorized by law may be brought in the county in which such bond was filed and approved. [R60,§2796; C73, §2579; C97,§3494; S13,§3494; C24, 27, 31, 35, 39, §11036; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.3]

616.4 Nonresident—attachment. An action against a nonresident of the state, when aided by an attachment, may be brought in any county of the state wherein any part of the property sought to be attached may be found, or wherein any part was situated when the action was commenced, or where the defendant is personally served in this state. [C51, §1703; R60,§2797; C73,§2580; C97,§3495; C24, 27, 31, 35, 39,§**11037**; C46, 50, 54, 58, 62, 66, **71, 73,** 75,§616.4]

C97,§3495, editorially divided

616.5 Resident — attachment. Except as hereinafter provided, an action against a resident of this state must be brought in the county of his residence, or that in which the contract was to be performed, except that, if an action be duly brought against such defendant in any other county by virtue of any of the provisions of this chapter, then such action may, if legal cause for an attachment exist, be aided by attachment. [R60,§2797; C73, §2580; C97,§3495; C24, 27, 31, 35, 39,§**11038**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.5]

616.6 Transfer — attached property held. Should such action be brought against a resident of this state in any other county than that of his residence, he may have the place of trial changed to the district court of the county wherein he resides, in the same manner and upon the same terms as provided in rule of civil procedure 175, and the property attached shall not be released because said action was brought in the wrong county, but shall be held and subject in the same manner as if said action had been brought in the county of defendant's residence. [R60,§2797; C73,§2580; C97,§3495; C24, 27, 31, 35, 39,§**11039**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.6]

616.7 Place of contract. When, by its terms, a written contract is to be performed in any particular place, action for a breach thereof may, except as otherwise provided, be brought in the county wherein such place is situated. [C51,§1704; R60,§2798; C73,§2581; C97,§3496; C24, 27, 31, 35, 39,§**11040**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.7]

Change of venue for fraud, R.C.P. 167

616.8 Certain carriers and transmission companies—actions against. An action may be brought against any railway corporation, the owner of stages, or other line of coaches or cars, express, canal, steamboat and other rivercrafts, telegraph and telephone companies, or the owner of any line for the transmission of electric current for lighting, power, or heating purposes, and the lessees, companies, or persons operating the same, in any county

through which such road or line passes or is operated. [C73,§2582; C97,§3497; S13,§3497; C24, 27, 31, 35, 39,§**11041**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.8]

616.9 Construction companies. An action may be brought against any corporation, company, or person engaged in the construction of a railway, canal, telegraph or telephone line, oil, gas, or gasoline transmission lines, highway, or public drainage improvement, on any contract relating thereto, or to any part thereof, or for damages in any manner growing out of the contract or work thereunder, in any county where such contract was made, or performed in whole or in part, or where the work was done out of which the damage claimed arose. [C73,§2583; C97,§3498; C24, 27, 31, 35, 39, §**11042**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.9]

616.10 Insurance companies. Insurance companies may be sued in any county in which their principal place of business is kept, or in which the contract of insurance was made, or in which the loss insured against occurred, or, in case of insurance against death or disability, in the county of the domicile of the insured at the time the loss occurred, or in the county of plaintiff's residence. As used in this section the term "insurance companies" includes nonprofit hospital service corporations and nonprofit medical service corporations which have incorporated under the provisions of chapter 504. [C73,§2584; C97,§3499; C24, 27, 31, 35. 39, §**11043**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.10]

616.11 Nonlife insurance assessments. No court other than that of the county in which the member resides shall have jurisdiction of actions to collect assessments levied by associations organized under the provisions of chapter 518A but such actions shall be brought in the county of the member's residence, any statement or agreement in the policy or contract of insurance, the application therefor, or any other contract entered into between the member and the association to the contrary notwithstanding. [C24, 27, 31, 35, 39,§**11044**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.11]

616.12 Nonlife insurance premiums or notes. No court other than that of the county in which the policyholder resides shall have jurisdiction of actions to collect premiums or premium notes payable or given for insurance other than life, but such actions shall be brought in the county of the policyholder's residence, any statement or agreement in the policy or contract of insurance, the application therefor, or any other contract entered into between the policyholder and the company or its agent to the contrary notwithstanding. [C27, 31, 35,§11044-a1; C39,§**11044.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.12]

616.13 Operators of coal mines. An action may be brought against any corporation, company, or person, owning, leasing, operating, or maintaining a coal mine, in the county where said mine is located, on any contract, or for any tort, in any manner connected with or growing out of the construction, use, or operation of said mine. [S13,§3499-a; C24, 27, 31, 35, 39,§**11045**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §616.13]

616.14 Office or agency. When a corporation, company, or individual has an office or agency in any county for the transaction of business, any actions growing out of or connected with the business of that office or agency may be brought in the county where such office or agency is located. [C51,§1705; R60,§2801; C73,§2585; C97,§3500; C24, 27, 31, 35, 39,§**11046**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §616.14]

Related section, R.C.P. 56.1(*f, g*)

616.15 Surety companies. Suit may be brought against any company or corporation furnishing or pretending to furnish surety, fidelity, or other bonds in this state, in any county in which the principal place of business of such company or corporation is maintained in this state, or in any county wherein is maintained its general office for the transaction of its Iowa business, or in the county where the principal resides at the time of bringing suit, or in the county where the principal did reside at the time the bond or other undertaking was executed; and in the case of bonds furnished by any such company or corporation for any building or improvement, either public or private, action may be brought in the county wherein said building or improvement, or any part thereof is located. [S13,§3500-a; C24, 27, 31, 35, 39,§**11047**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.15]

Surety on public improvements, §573.16

616.16 Municipal corporations in certain counties. Actions against municipal corporations in all counties where the district court convenes in more than one place must be brought in the county and at the place where court is held nearest to where the cause or subject of the action originated. [S13,§3504-a; C24, 27, 31, 35, 39,§**11048**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.16]

616.17 Personal actions. Personal actions, except as otherwise provided, must be brought in a county in which some of the defendants actually reside, but if neither of them have a residence in the state, they may be sued in any county in which either of them may be found. [C51,§1701; R60,§2800; C73,§2586; C97,§3501; C24, 27, 31, 35, 39,§**11049**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.17]

C97,§3501, editorially divided
Referred to in §616.20
Cross petition against nonresident, R.C.P. 33, 34, and 74

616.18 Personal injury or damage actions. Actions arising out of injuries to a person or damage to property may be brought in the county in which the defendant, or one of the defendants, is a resident or in the county in which the injury or damage is sustained. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.18]

616.19 Negotiable paper. In all actions upon negotiable paper, except when made payable at a particular place, in which any maker thereof, being a resident of the state, is defendant, the place of trial shall be limited to a county wherein some one of such makers resides. [C73,§2586; C97,§3501; C24, 27, 31, 35, 39, §**11050**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.19]

Referred to in §616.20

616.20 Right of nonresident defendant. Where an action provided for in sections 616.17 and 616.19 is against several defendants, some of whom are residents and others nonresidents of the county, and the action is dismissed as to the residents, or judgment is rendered in their favor, or there is a failure to obtain judgment against such residents, such nonresidents may, upon motion, have said cause dismissed, with reasonable compensation for trouble and expense in attending at the wrong county, unless they, having appeared to the action, fail to object before judgment is rendered against them. [C73,§2587; C97,§3502; C24, 27, 31, 35, 39, §**11051**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§616.20]

616.21 Change of residence. If, after the commencement of an action in the county of the defendant's residence, he removes therefrom, the service of notice upon him in another county shall have the same effect as if it had been made in the county from which he removed. [C73,§2588; C97,§3503; C24, 27, 31, 35, 39,§**11052**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §616.21]

Action brought in wrong county. See R.C.P. 175.

CHAPTER 617

MANNER OF COMMENCING ACTIONS

Rule—Commencement of, R.C.P. 48.
Rule—Serving copies of original notice and petition, R.C.P. 50.
Rule—Time for appearance, R.C.P. 53.
617.1 Process—criminal defendant.
Rule—Tolling limitations, R.C.P. 55.
Rule—By whom served, R.C.P. 52.
Rule—Special cases—appearance of garnishee, R.C.P. 54.
Rule—Personal service, R.C.P. 56.1.
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617.15 Notice perpetuated.

Commencement of actions. See R.C.P. 48.

Serving copies of original notice and petition. See R.C.P. 50.

Time for appearance. See R.C.P. 53.

617.1 Process — criminal defendant. Any defendant in any criminal action pending or to be brought in any court in the state of Iowa may be served with process, either civil or criminal, in any other action pending or to be brought against him in the courts of this state while he is present in this state, either voluntarily or involuntarily. [C39,§**11056.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§617.1]

Process in pending cases legalized, 47GA, ch 234,§2

Tolling limitations. See R.C.P. 55.

For filing petition and copies, see rule 82

By whom served. See R.C.P. 52.

Special cases — appearance of garnishee. See R.C.P. 54.

Personal service. See R.C.P. 56.1.

617.2 Penalty—amendment. If a notice is not filed or returned by the sheriff to the person from whom it was received, or if the return thereon is defective, the officer making the same may be fined by the court not exceeding ten dollars, and he shall be liable to an action for damages by any person aggrieved thereby. The court may, before or after judgment is entered, permit an amendment according to the truth of the case. [R60,§2820; C73,§2606; C97,§3521; C24, 27, 31, 35, 39,§**11063**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§617.2]

Service on Sunday. See R.C.P. 57.

Notice of no personal claim. See R.C.P. 51.

Returns of service. See R.C.P. 59.
(*a*) *Signature—fees.*
(*b*) *Contents.*
(*c*) *Endorsement and filing.*

617.3 Foreign corporations or nonresidents contracting or committing torts in Iowa. If the action is against any corporation or person owning or operating any railway or canal, steamboat or other rivercraft, or any telegraph, telephone, stage, coach, or carline, or against any express company, or against any foreign corporation, service may be made upon any general agent of such corporation, company, or person, wherever found, or upon any station, ticket, or other agent, or person transacting the business thereof or selling tickets therefor in the county where the action is brought; if there is no such agent in said county, then service may be had upon any such agent or person transacting said business in any other county.

If a foreign corporation makes a contract with a resident of Iowa to be performed in whole or in part by either party in Iowa, or if such foreign corporation commits a tort in whole or in part in Iowa against a resident of Iowa, such acts shall be deemed to be doing business in Iowa by such foreign corporation for the purpose of service of process or original notice on such foreign corporation under this section, and, if the corporation does not have a registered agent or agents in the state of Iowa, shall be deemed to constitute the appointment of the secretary of state of the state of Iowa to be its true and lawful attorney upon whom may be served all lawful process or original notice in actions or proceedings arising from or growing out of such contract or tort. If a nonresident person makes a contract with a resident of Iowa to be performed in whole or in part by either party in Iowa, or if such person commits a tort in whole or in part in Iowa against a resident of Iowa, such acts shall be deemed to be doing business in Iowa by such person for the purpose of service of process or original notice on such person under this section, and shall be deemed to constitute the appointment of the secretary of state of the state of Iowa to be the true and lawful attorney of such person upon whom may be served all lawful process or original notice in actions or proceedings arising from or growing out of such contract or tort. The term "nonresident person" shall include any person who was, at the time of the contract or tort, a resident of the state of Iowa but who removed from the state before the commencement of such action or proceedings and ceased to be a resident of Iowa or, a resident who has remained continuously absent from the state for at least a period of six months following commission of the tort. The making of the contract or the committing of the tort shall be deemed to be the agreement of such corporation or such person that any process or original notice so served shall be of the same legal force and effect as if served personally upon such defendant within the state of Iowa. The term "resident of Iowa" shall include any Iowa corporation, any foreign corporation holding a certificate of authority to transact business in Iowa, any individual residing in Iowa, and any partnership or association one or more of whose members is a resident of Iowa.

Service of such process or original notice shall be made (1) by filing duplicate copies of said process or original notice with said secretary of state, together with a fee of five dollars, and (2) by mailing to the defendant and to each of them if more than one, by registered or certified mail, a notification of said filing with the secretary of state, the same to be so mailed within ten days after such filing with the secretary of state. Such notification shall be mailed to each such foreign corporation at the address of its principal office in the state or country under the laws of which it is incorporated and to each such nonresident person at his address in the state of his residence. The defendant shall have sixty days from the date of such filing with the secretary of state within which to appear. Proof of service shall be made by filing in court the duplicate copy of the process or original notice with the secretary of state's certificate of filing, and the affidavit of the plaintiff or his attorney of compliance herewith.

The secretary of state shall keep a record of all processes or original notices so served upon him, recording therein the time of service and his actions with reference thereto, and he shall promptly return one of said duplicate copies to the plaintiff or his attorney, with a certificate showing the time of filing thereof in his office.

For the purpose of determining whether an action has been commenced within the time allowed by statutes for limitation of actions, the filing of the original notice with the secretary of state shall be deemed a commencement of the action.

The original notice of suit filed with the secretary of state shall be in form and substance the same as provided in suits against residents of this state, except that that part of said notice pertaining to the return day shall be in substantially the following form, to wit:

"and unless you appear thereto and defend in the district court of Iowa in and for ..... county at the courthouse in ..... Iowa within sixty days following the filing of this notice with the secretary of state of the state of Iowa, default will be entered and judgment rendered against you by the court."

The notification of filing shall be in substantially the following form, to wit:

"To ..... (Here insert the name of each defendant with proper address.) You will take notice that an origi-

nal notice of suit or process against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa by filing a copy of said notice or process on the .... day of ....., 19... with the secretary of state of the state of Iowa.

Dated at ....., Iowa this ..... day of ....., 19....

.....
Plaintiff
BY
.....
Attorney for Plaintiff"

Actions against foreign corporations or nonresident persons as contemplated by this law may be brought in the county of which plaintiff is a resident, or in the county in which any part of the contract is or was to be performed or in which any part of the tort was committed. [C51,§1727; R60,§2825; C73,§2611; C97,§3529; S13,§3529; C24, 27, 31, 35, 39,§11072; C46, 50, 54, 58, 62, 66, 71, 73, 75,§617.3]

S13,§3529, editorially divided
Referred to in §§537.1203, 631.4, 631.6
Constitutionality, 60GA, ch 325,§2

617.4 Consolidated railways. If the action is against any railway corporation which has merged and consolidated its stock, property, franchises, and liabilities with that of any other railway corporation, as authorized by section 476.4*, or which has sold or leased its property and franchises to any other railway corporation as authorized by section 327E.2, service of the original notice may be made upon any station, ticket, or other agent of the merged, vendee, or lessee corporation in the county where the action is brought; if there is no such agent in said county, then service may be made upon such agent or person in any other county. [S13,§3529; C24, 27, 31, 35, 39,§11073; C46, 50, 54, 58, 62, 66, 71, 73, 75, §617.4]

*Repealed by 66GA, ch 170,§33

617.5 Insurance company. If the action is against an insurance company, for loss or damage upon any contract of insurance or indemnity, service may be had upon any general agent of the company wherever found, or upon any recording agent or agent who has authority to issue policies. [C97,§3530; C24, 27, 31, 35, 39,§11074; C46, 50, 54, 58, 62, 66, 71, 73, 75,§617.5]

Actions against bonding companies, §§682.20, 682.21

617.6 Other corporations. When the action is against any other corporation, service may be made on any trustee or officer thereof, or on any agent employed in the general management of its business, or on any of the last known or acting officers of such corporation. [C51,§1726; R60,§2824; C73,§2612; C97,§3531; C24, 27, 31, 35, 39,§11077; C46, 50, 54, 58, 62, 66, 71, 73, 75,§617.6]

Last known or acting officers, §496.1
Public officers as process agents, §§491.15, 494.2, 511.27, 512.22, 515.73, 520.5, 534.53

Service by publication — what cases. See R.C.P. 60.

Known defendants. See R.C.P. 60.1.

617.7 Unknown defendants. Where it is necessary to make an unknown person defendant, the petition shall be sworn to and state the claim of plaintiff with reference to the property involved in the action, that the name and residence of such person is unknown to the plaintiff, and that he has sought diligently to learn the same. [R60,§2836; C73,§2622; C97, §3538; SS15,§3538; C24, 27, 31, 35, 39,§11082; C46, 50, 54, 58, 62, 66, 71, 73, 75,§617.7]

40ExGA, HF 228,§5, editorially divided

Unknown defendants. See R.C.P. 61.

How published. See R.C.P. 62.

Proof of publication. See R.C.P. 63.

Actual service. See R.C.P. 64.

Appearances. See R.C.P. 65.

See also rule 87 limiting the effect of appearance alone

Special appearance. See R.C.P. 66.

See also rule 104(a)

Member of general assembly. See R.C.P. 58.

617.8 Holidays. No person shall be held to answer or appear in any court on any day now or hereafter made a legal holiday. [C97, §3541; S13,§3541; C24, 27, 31, 35, 39,§11090; C46, 50, 54, 58, 62, 66, 71, 73, 75,§617.8]

Depositions, R.C.P. 141

617.9 Unserved parties—optional procedure. When the action is against two or more defendants, and one or more of them shall have been served, but not all, the plaintiff may proceed as follows:

If the action is against defendants who are jointly, or jointly and severally, or severally liable only, he may, without prejudice to his rights in that or any other action against those not served, proceed against those served in the same manner as if they were the only defendants; if he recovers against those jointly liable only, he may take judgment against all thus liable, which may be enforced against the joint and separate property of those served, but not against the separate property of those not served, until they have had opportunity to show cause why judgment should not be enforced against their separate property. [R60,§2841; C73,§2627; C97,§3542; C24, 27, 31, 35, 39,§11091; C46, 50, 54, 58, 62, 66, 71, 73, 75,§617.9]

617.10 Real estate—action indexed. When a petition affecting real estate is filed, the clerk of the district court where filed shall forthwith index same in an index book to be provided therefor, under the tract number which describes the property, entering in each instance the cause number as a guide to the record of court proceedings which affect such real estate. If the petition be amended to include other parties or other lands, same shall be

similarly indexed. When the cause is finally determined the result shall be indicated in said book wherever indexed. [R60,§2842; C73, §2628; C97,§3543; S13,§3543; C24, 27, 31, 35, 39, §11092; C46, 50, 54, 58, 62, 66, 71, 73, 75,§617.10]

S13,§3543, editorially divided
Exact time of indexing required, §606.10

617.11 Lis pendens. When so indexed said action shall be considered pending so as to charge all third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject matter thereof as against the plaintiff's rights. [R60,§2842; C73,§2628; C97,§3543; S13,§3543; C24, 27, 31, 35, 39,§11093; C46, 50, 54, 58, 62, 66, 71, 73, 75,§617.11]

617.12 Exceptions. If the real property affected be situated in the county where the petition is filed it shall be unnecessary to show in said index lands not situated in said county. [R60,§2842; C73,§2628; C97,§3543; S13,§3543; C24, 27, 31, 35, 39,§11094; C46, 50, 54, 58, 62, 66, 71, 73, 75,§617.12]

617.13 Real estate in foreign county—superior court. When any part of real property, the subject of an action, is situated in any other county than the one in which the action is brought, or when the action is brought in the superior court, the plaintiff must, in order to affect third persons with constructive notice of the pendency thereof, file with the clerk of the district court of such county a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected thereby, who shall at once index and enter a memorandum thereof in the encumbrance book. [R60,§2843; C73,§2629; C97, §3544; C24, 27, 31, 35, 39,§11095; C46, 50, 54, 58, 62, 66, 71, 73, 75,§617.13]

40ExGA, HF 228,§8, editorially divided
Referred to in §614.15

617.14 Constructive notice. From the time of such indexing, the pendency of the action shall be constructive notice to subsequent purchasers or encumbrancers thereof, who shall be bound by all the proceedings taken after the filing of such notice, to the same extent as if parties to the action. [R60,§2843; C73, §2629; C97,§3544; C24, 27, 31, 35, 39,§11096; C46, 50, 54, 58, 62, 66, 71, 73, 75,§617.14]

617.15 Notice perpetuated. Within two months after the determination of the action, there shall also be filed with such clerk a certified copy of the final order, judgment, or decree, who shall enter and index the same as though rendered in that county, or such notice of pendency shall cease to be constructive notice. [R60,§2843; C73,§2629; C97,§3544; C24, 27, 31, 35, 39,§11097; C46, 50, 54, 58, 62, 66, 71, 73, 75,§617.15]

CHAPTER 618

PUBLICATION AND POSTING OF NOTICES

Referred to in §442.14

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618.6 Selection by plaintiff, etc.
618.7 Selection by county officers.
618.8 Refusal to publish.
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618.11 Fees for publication.
618.12 Fee for posting.
Rule—Effect of notice by posting, R.C.P. 369.
618.13 Publication of docket in certain counties.
618.14 Publication of matters of public importance.
618.15 Service by certified mail.

618.1 Publications in English. All notices, proceedings, and other matter whatsoever, required by law or ordinance to be published in a newspaper, shall be published only in the English language and in newspapers published wholly in the English language. [C73,§§306, 307; C97,§549; S13,§549; C24, 27, 31, 35, 39,§11098; C46, 50, 54, 58, 62, 66, 71, 73, 75,§618.1]

Referred to in §618.2

618.2 Violation. Any public official who violates the provisions of section 618.1 or who willfully fails to make publication as now required of him by law of any notice, report of proceedings or other matter whatsoever, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than thirty days. [C97,§550; C24, 27, 31, 35, 39,§11099; C46, 50, 54, 58, 62, 66, 71, 73, 75,§618.2]

Punishment, §687.7

618.3 "Newspaper" defined. For the purpose of establishing and giving assured circulation to all notices and reports of proceedings required by statute to be published within the state, where newspapers are required to be used, newspapers of general circulation that have been established, published regularly and mailed through the post office of current entry for more than two years and

which have had for more than two years a bona fide paid circulation recognized by the postal laws of the United States shall be designated for the publication of notices and reports of proceedings as required by law. [C35, §11099-e1; C39,§11099.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§618.3]

Referred to in §§49.53, 618.14

618.4 Change in name—effect. A change of name or ownership of a newspaper thus designated that does not affect its general circulation as above required shall in no way disqualify such newspaper for selection in making such publication of legal notices. [C35, §11099-e2; C39,§11099.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§618.4]

618.5 Permissible selection. Publications may be made in a newspaper published once a week or oftener. [C73,§3832; C97,§1293; S13, §1293; C24, 27, 31, 35, 39,§11100; C46, 50, 54, 58, 62, 66, 71, 73, 75,§618.5]

40ExGA, HF 40,§8, editorially divided

618.6 Selection by plaintiff, etc. The plaintiff or executor or his attorney, in all publications concerning actions, executions, and estates, may designate the newspaper in which such publication shall be made. [C73,§3832; C97,§1293; S13,§1293; C24, 27, 31, 35, 39,§11101; C46, 50, 54, 58, 62, 66, 71, 73, 75,§618.6]

618.7 Selection by county officers. The clerk of the district court, sheriff, auditor, treasurer, and recorder shall designate the newspapers in which the notices pertaining to their respective offices shall be published and the board of supervisors shall designate the newspapers in which all other county notices and proceedings, not required to be published in the official county newspapers, shall be published. [R60,§314; C73,§306; C97,§549; S13, §549; C24, 27, 31, 35, 39,§11102; C46, 50, 54, 58, 62, 66, 71, 73, 75,§618.7]

618.8 Refusal to publish. If publication be refused when copy therefor, with the cost or security for payment of the cost, is tendered, such publication may be made in some other newspaper of general circulation at or nearest to the county seat, with the same effect as if made in the newspaper so refusing. [C73, §3832; C97,§1293; S13,§1293; C24, 27, 31, 35, 39, §11103; C46, 50, 54, 58, 62, 66, 71, 73, 75,§618.8]

618.9 Days of publication. When the publication is in a newspaper which is published oftener than once a week, the succeeding publications of such notice shall be on the same day of the week as the first publication. This section shall not apply to any notice for the publication of which provision inconsistent herewith is specially made. [S13,§1293-a; C24, 27, 31, 35, 39,§11104; C46, 50, 54, 58, 62, 66, 71, 73, 75,§618.9]

Proof of publication, §622.92

618.10 Payment for publication. Publications required by law shall, in the first instance, be paid for by the party causing publication, and shall be taxed as costs in the proceeding. [C51,§2558; R60,§4165; C73,§3838; C97,§1296; C24, 27, 31, 35, 39,§11105; C46, 50, 54, 58, 62, 66, 71, 73, 75,§618.10]

618.11 Fees for publication. The compensation, when not otherwise fixed, for the publication in a newspaper of any notice, order, citation, or other publication required or allowed by law, shall not exceed twenty-four cents for one insertion, and sixteen cents for each subsequent insertion, for each line of eight-point type two inches in length, or the equivalent thereof. In case of controversy or doubt regarding measurements, style, manner or form, said controversy shall be referred to the executive council, and its decision shall be final. [C73,§3832; C97,§1293; S13,§1293; C24, 27, 31, 35, 39,§11106; C46, 50, 54, 58, 62, 66, 71, 73, 75,§618.11]

Referred to in §§380.9, 446.10

618.12 Fee for posting. In all cases where an officer in the discharge of his duty is required to post an advertisement or notice, he shall, when not otherwise provided, be allowed twenty-five cents, and the same mileage as a sheriff. [C51,§2558; R60,§4165; C73,§3838; C97, §1296; C24, 27, 31, 35, 39,§11107; C46, 50, 54, 58, 62, 66, 71, 73, 75,§618.12]

Proof of posting, §622.94; mileage, §79.9

Effect of notice by posting. See R.C.P. 369.

618.13 Publication of docket in certain counties. When the petition provided for in rule of civil procedure 70 is filed with the clerk of the district court in a county of one hundred thousand population or over, the names of the parties plaintiff and defendant in such action, the description of the real estate involved, if any, except for quieting title, partition, and suits involving tax assessments, and the names of the attorneys for the plaintiff, and the docket number assigned to such case, may, in the event the majority of the judges of the judiciary district in which such county lies, so direct, be published once in a daily newspaper having a general circulation in said county; such paper to be designated by a majority of the judges of the district court. Provided, that whenever thereafter such case is assigned for trial or any other pleadings are filed therein, or court action taken with reference thereto, except general orders of court for continuations, the title of such case and kind of pleading shall be published, and if it is in an assignment for trial it shall be carried in printed assignment from day to day until final disposition. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§618.13]

Referred to in §§606.15(1), 622.93, 624.8

618.14 Publication of matters of public importance. The governing body of any municipality or other political subdivision of the state is authorized to make publication, as straight matter or display, of any matter of general public importance, not otherwise au-

thorized or required by law, by publication in one or more newspapers, as defined in section 618.3 published in and having general circulation in such municipality or political subdivision, at the legal or appropriate commercial rate, according to the character of the matter published.

In the event there is no such newspaper published in such municipality or political subdivision or in the event publication in more than one such newspaper is desired, publication may be made in any such newspaper having general circulation in such municipality or political subdivision. [C50, 54, 58, 62, 66, 71, 73, 75,§618.14]

Referred to in §§330A.8, 536A.11

618.15 Service by certified mail. Wherever used in this Code, the following words shall have the meanings respectively ascribed to them unless such meanings are repugnant to the context:

1. The words, "certified mail" mean any form of mail service, by whatever name, provided by the United States post office where the post office provides the mailer with a receipt to prove mailing.

2. The words, "restricted certified mail" mean any form of certified mail as defined in subsection 1 which carries on the face thereof, in a conspicuous place where it will not be obliterated, the endorsement, "Deliver to addressee only", and for which the post office provides the mailer with a return receipt showing the date of delivery, the place of delivery, and person to whom delivered. [C31, 35,§5079-d16; C39,§5038.06; C46, 50, 54,§321.503; C58, 62, 66, 71, 73, 75,§618.15]

Referred to in §§323.2, 323.3

CHAPTER 619
PLEADINGS AND MOTIONS

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619.17 Contributory negligence—burden.
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Technical forms abolished. See R.C.P. 67.

Allowable pleadings. See R.C.P. 68.
For counterclaims, see rules 29–32
For cross-claims and cross-petitions, see rules 33, 34
Motions in general, ch 620

General rules of pleading. See R.C.P. 69.

Petition. See R.C.P. 70.
For title, signature, etc., see rule 78

Paragraphs — separate statements. See R.C.P. 79.

Answer. See R.C.P. 72.
For counterclaims, see rule 29 et seq.
See also rules 79, 103, 105, 110 and 176

Answers for ward. See R.C.P. 71.

619.1 Nonnecessity for prayer. In the defense part of an answer or reply, it shall not be necessary to make a prayer for judgment. [R60,§2883; C73,§2658; C97,§3569; C24, 27, 31, 35, 39,§11118; C46, 50, 54, 58, 62, 66, 71, 73, 75, §619.1]

Correcting or recasting pleadings. See R.C.P. 81.

619.2 Exception. If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, the defendant shall plead within three days after service of the original notice. [C31, 35,§11121-d1; C39,§11121.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§619.2]
Referred to in §619.3

619.3 Exception—limit on pleading extension. If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, the court shall not extend the time to plead more than two days beyond the time fixed in section 619.2. [C31, 35,§11123-d1; C39,§11123.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§619.3]

Service and filing of pleadings and other papers. See R.C.P. 82.

Enlargement; additional time after service by mail. See R.C.P. 83.

Copy fees. See R.C.P. 84.

619.4 Taking files from office. The original files shall be taken from the clerk's office only on order of the judge by leaving with the clerk a receipt for the same. [C97,§3558; SS15, §3558; C24, 27, 31, 35, 39,§11126; C46, 50, 54, 58, 62, 66, 71, 73, 75,§619.4]

Motion for more specific statement. See R.C.P. 112.

Contract. See R.C.P. 91.

Separate adjudication of law points. See R.C.P. 105.
See also last sentence of rule 176

All defenses in answer. See R.C.P. 103.
See rules 72, 73, 104

Exceptions. See R.C.P. 104.
See also rule 66

Motion days—disposition of motions. See R.C.P. 117.

Specific rulings required. See R.C.P. 118.

Time to move or plead. See R.C.P. 85.
(a) *Motions.*
(b) *Pleading.*
(c) *Time after filing motions.*
(d) *Response to amendments.*
(e) *Shortening time.*
(f) *Extending time.*
(g) *Petition for removal to federal court.*
See rule 86 as to when time for repleader begins to run

Motions combined. See R.C.P. 111.

619.5 Withdrawal of motion or demurrer. A motion or demurrer once filed shall not be withdrawn without the consent of the adverse party in writing, or given in open court, or of the court. [R60,§2870; C73,§2642; C97,§3556; C24, 27, 31, 35, 39,§11139; C46, 50, 54, 58, 62, 66, 71, 73, 75,§619.5]

Failure to move—effect of overruling motion. See R.C.P. 110.

Pleading over—election to stand. See R.C.P. 86.

Appearance alone. See R.C.P. 87.

For time of pleading, see rules 85(a) and 85(b)

For defaults, see rule 230; for appearances, see rules 65, 66

Compulsory counterclaims. See R.C.P. 29.

Indispensable parties are defined in rule 25(b)

Permissive counterclaims. See R.C.P. 30.

For prohibited counterclaims, see Code section 643.2, on replevin and rule 275 on partition

Joinder of counterclaims. See R.C.P. 31.

See also rules 72 and 74

Counterclaim not limited. See R.C.P. 32.

619.6 Counterclaim by comaker or surety. A comaker or surety, when sued alone, may, with the consent of his comaker or principal, avail himself by way of counterclaim of a debt or liquidated demand due from the plaintiff at the commencement of the action to such comaker or principal, but the plaintiff may meet such counterclaim in the same way as if made by the comaker or principal himself. [R60, §2887; C73,§2661; C97,§3572; C24, 27, 31, 35, 39, §11153; C46, 50, 54, 58, 62, 66, 71, 73, 75,§619.6]

Third party practice. See R.C.P. 34.

Cross-claim against coparty. See R.C.P. 33.

Reply. See R.C.P. 73.

Under rule 102 facts asserted in a reply are denied by operation of law

For disposition of points of law raised by reply, see rules 105, 176

Cross-claim, cross-petition — judgment. See R.C.P. 74.

See also rules 186, 221

Caption and signature. See R.C.P. 78.

Verification abolished—affidavits. See R.C.P. 80.

619.7 Mitigating facts. In any action brought to recover damages for an injury to person, character, or property, the defendant may set forth, in a distinct division of his answer, any facts, of which evidence is legally admissible, to mitigate or otherwise reduce the damages, whether a complete defense or justification be pleaded or not, and he may give in evidence the mitigating circumstances, whether he proves the defense or justification or not. [R60,§2929; C73,§2682; C97,§3593; C24, 27, 31, 35, 39,§11172; C46, 50, 54, 58, 62, 66, 71, 73, 75,§619.7]

C97,§3593, editorially divided

619.8 Necessity to plead. No mitigating circumstances shall be proved unless pleaded, except such as are shown by or grow out of the testimony introduced by the adverse party. [R60,§2929; C73,§2682; C97,§3593; C24, 27, 31, 35, 39,§11173; C46, 50, 54, 58, 62, 66, 71, 73, 75, §619.8]

Contributory negligence as mitigating fact, R.C.P. 97

Interventions. See R.C.P. 75.

Disposition. See R.C.P. 77.

Manner. See R.C.P. 76.

Variance—failure of proof. See R.C.P. 106.

Special action — proper remedy awarded. See R.C.P. 107.

619.9 Amount of proof. A party shall not be compelled to prove more than is necessary to entitle him to the relief asked for, or any lower degree included therein, nor more than sufficient to sustain his defense. [R60,§2966; C73,§2729; C97,§3639; C24, 27, 31, 35, 39,§11181; C46, 50, 54, 58, 62, 66, 71, 73, 75,§619.9]

Amendments. See R.C.P. 88.

Making and construing amendments. See R.C.P. 89.

Discovery methods. See R.C.P. 121.

Scope of discovery. See R.C.P. 122.
(a) *In general.*
(b) *Insurance agreements.*
(c) *Trial preparation—materials.*
(d) *Trial preparation—experts.*

Sequence and timing of discovery. See R.C.P. 124.

Protective orders. See R.C.P. 123.

Supplementation of responses. See R.C.P. 125.

Interrogatories to parties. See R.C.P. 126.

Requests for admission. See R.C.P. 127.

Effect of admission. See R.C.P. 128.

Production of documents and things and entry upon land for inspection and other purposes. See R.C.P. 129.

Procedure under rule 129. See R.C.P. 130.

Action for production or entry against persons not parties. See R.C.P. 131.

Physical and mental examination of persons. See R.C.P. 132.

Report of examining physician. See R.C.P. 133.

Failure to make discovery — consequences. See R.C.P. 134.

(a) *Motion for order compelling discovery.*

(1) *Appropriate court.*

(2) *Motion.*

(3) *Evasive or incomplete answer.*

(4) *Award of expenses of motion.*

(b) *Failure to comply with order.*

(1) *Sanctions by court in district where deposition is taken.*

(2) *Sanctions by court in which action is pending.*

(c) *Expenses on failure to admit.*

(d) *Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.*

Allegation of time or place. See R.C.P. 92.

619.10 Evidence under denial. Under a denial of an allegation, no evidence shall be introduced which does not tend to negative some fact the party making the controverted allegation is bound to prove. [R60,§2944; C73, §2704; C97,§3615; C24, 27, 31, 35, 39,§**11196**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§619.10]

Striking improper matter. See R.C.P. 113.

Judicial notice—statutes. See R.C.P. 94.

Unliquidated damages. See R.C.P. 95.

Exception. See R.C.P. 93.

What admitted. See R.C.P. 102.

Account——bill of particulars—denial. See R.C.P. 99.

For affidavit required for default, see rule 232(a)

Permissible conclusions — denials thereof. See R.C.P. 98.

Defenses to be specially pleaded. See R.C.P. 101.

Negligence—mitigation. See R.C.P. 97.

619.11 Pleading conveyance. When a party claims by conveyance, he may state it according to its legal effect or name. [R60,§2952; C73,§2723; C97,§3633; C24, 27, 31, 35, 39,§**11212**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§619.11]

619.12 Pleading estate. It shall not be necessary to allege the commencement of either a particular or a superior estate, unless it be essential to the merits of the case. [R60, §2954; C73,§2724; C97,§3634; C24, 27, 31, 35, 39, §**11213**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§619.12]

619.13 Injuries to goods. In actions for injuries to goods and chattels, their kind or species shall be alleged. [R60,§2956; C73,§2725; C97,§3635; C24, 27, 31, 35, 39,§**11214**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§619.13]

619.14 Injuries to real property. In actions for injuries to real property, the petition shall describe the property, and when the injury is to an incorporeal hereditament, shall describe the property in respect of which the right is claimed, as well as the right itself, either by the numbers by which the property is designated in the national survey, or by its abuttals, or by its courses and distances, or by any name which it has acquired by reputation certain enough to identify it. [R60,§2958; C73,§2726; C97,§3636; C24, 27, 31, 35, 39,§**11215**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§619.14]

Malice. See R.C.P. 96.

619.15 Bond—breaches of. In an action on a bond with conditions, the party suing thereon shall notice the conditions and allege the facts constituting the breaches relied on. [C51, §1818; R60,§2960; C73,§2728; C97,§3638; C24, 27, 31, 35, 39,§**11217**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§619.15]

Denying signature. See R.C.P. 100.

(a) *By party.*

(b) *By nonparty.*

Supplemental pleadings. See R.C.P. 90.

Consolidation. See R.C.P. 185.

Lost pleading — substitution. See R.C.P. 108.

619.16 Immaterial errors disregarded. The court, in every stage of an action, must disregard any error or defect in the proceeding which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect. [R60,§2978; C73,§2690; C97,§3601; C24, 27, 31, 35, 39,§**11228**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§619.16]

Immaterial exceptions, §624.15

619.17 Contributory negligence — burden. In all actions brought in the courts of this state to recover damages of a defendant in which contributory negligence of the plaintiff, actual or imputed, was heretofore a complete defense or bar to recovery, the plaintiff shall not hereafter, have the burden of pleading and proving his freedom from contributory negligence, and if the defendant relies upon negligence of the plaintiff as a complete defense or bar to plaintiff's recovery, the defendant shall have the burden of pleading and proving negligence of the plaintiff, if any, and that it was a proximate cause of the injury or damage. As used in this section, the term "plaintiff" shall include a defendant filing a counterclaim or cross-petition, and the term "defendant" shall include a plaintiff against whom a counterclaim or cross-petition has been filed. [C66, 71, 73, 75,§619.17]

619.18 Medical malpractice — money damages not to be stated. In an action for personal injury or wrongful death against a physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatrist, optometrist, pharmacist, chiropractor or nurse licensed to practice that profession in this state, or against a hospital licensed for operation in this state, based upon the alleged negligence of the practitioner in the practice of the profession or occupation, or upon the alleged negligence of the hospital in patient care, the amount of money damages demanded shall not be stated in the petition, or original notice, or in any counterclaim or cross-petition. [66GA, ch 239,§27]

CHAPTER 620

MOTIONS AND ORDERS

Rule—Motion defined, R.C.P. 109.
Rule—Proof of facts in motions, R.C.P. 116.
Rule—Notice of motion days unnecessary, R.C.P. 114.
Rule—Discretionary notice, R.C.P. 115.
Rule—Order defined, R.C.P. 119.
Rule—When and how entered, R.C.P. 120.

Motion defined. See R.C.P. 109.

Proof of facts in motions. See R.C.P. 116.

Notice of motion days unnecessary. See R.C.P. 114.

For motion days and submission and determination of motions, see rule 117

Discretionary notice. See R.C.P. 115.

Order defined. See R.C.P. 119.

When and how entered. See R.C.P. 120.

For entry of record, see rule 226

For clerk's notice to counsel, see rule 86

CHAPTER 621

SECURITY FOR COSTS

621.1 Bond for costs.
621.2 Nonresident intervenor — action in probate.
621.3 Procedure.
621.4 Dismissal for failure to furnish.
621.5 Becoming nonresident.
621.6 Additional security.
621.7 Prohibited sureties.
621.8 Judgment on bond.
621.9 Cash in lieu of bond.

PRETRIAL PROCEDURE

Rule—Pretrial calendar, R.C.P. 135.
Rule—Pretrial conference, R.C.P. 136.
Rule—Pretrial conference—record, R.C.P. 137.
Rule—Orders, R.C.P. 138.
Rule—Restriction on orders, R.C.P. 139.

621.1 Bond for costs. If a defendant, at any time before answering shall make and file an affidavit stating that he has a good defense in whole or in part, the plaintiff, or party bringing the action or proceeding, if he is a nonresident of this state, or a private or foreign corporation, before any other proceedings in the action, must file in the clerk's office a bond with sureties to be approved by the clerk, in an amount to be fixed by the court, for the payment of all costs which may legally be adjudged against plaintiff. [R60,§3442; C73,§2927; C97,§3847; S13,§3847; C24, 27, 31, 35, 39,§**11245**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §621.1]

37GA, ch 47,§2, editorially divided
Referred to in §§621.4, 621.5

621.2 Nonresident intervenor — action in probate. A nonresident intervenor or party bringing an action in probate shall be required in like manner to give bond on motion of any party required to answer or defend. [S13,§3847; C24, 27, 31, 35, 39,§**11246**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§621.2]

Referred to in §§621.4, 621.5

621.3 Procedure. The application for such security shall be by motion, filed with the case, and the facts supporting it must be shown by affidavits annexed thereto, which may be responded to by counter affidavits on or before the hearing of the motion, and each party shall file all his affidavits at once, and none thereafter. [R60,§3448; C73,§2927; C97,§3847; S13, §3847; C24, 27, 31, 35, 39,§**11247**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§621.3]

Referred to in §§621.4, 621.5

621.4 Dismissal for failure to furnish. An action in which a bond for costs is required by sections 621.1 to 621.3, inclusive, shall be dis-

missed, if a bond is not given in such time as the court allows. [R60,§3443; C73,§2928; C97, §3848; C24, 27, 31, 35, 39,§11248; C46, 50, 54, 58, 62, 66, 71, 73, 75,§621.4]

Referred to in §621.5

621.5 Becoming nonresident. If the plaintiff or any intervenor in an action, after its institution and at any time before its final determination, becomes a nonresident of this state, he may be required to give security for costs in the manner provided in sections 621.1 to 621.4, inclusive. [R60,§3444; C73,§2929; C97, §3849; S13,§3849; C24, 27, 31, 35, 39,§11249; C46, 50, 54, 58, 62, 66, 71, 73, 75,§621.5]

621.6 Additional security. In an action in which a bond for costs has been given, the defendant may, at any time before trial, make a motion for additional security, and if on such motion the court is satisfied that the surety in the plaintiff's bond has removed from the state, or it is not sufficient for the amount thereof, it may dismiss the action unless, in a reasonable time to be fixed by the court, sufficient security is given by the plaintiff. [R60,§3445; C73,§2930; C97,§3850; C24, 27, 31, 35, 39,§11250; C46, 50, 54, 58, 62, 66, 71, 73, 75, §621.6]

621.7 Prohibited sureties. No attorney or other officer of the court shall be received as security in any proceeding in court. [R60, §3446; C73,§2931; C97,§3851; C24, 27, 31, 35, 39, §11251; C46, 50, 54, 58, 62, 66, 71, 73, 75,§621.7]

Similar provision, §682.5

621.8 Judgment on bond. After final judgment has been rendered in an action in which security for costs has been given as above required, the court may, on motion of the defendant or any other person having the right to such costs or any part thereof, render judgment summarily, in the name of the defendant or his legal representatives, against the sureties for costs, for the amount of costs adjudged against the plaintiff, or so much thereof as may remain unpaid. [R60,§3447; C73, §2932; C97,§3852; C24, 27, 31, 35, 39,§11252; C46, 50, 54, 58, 62, 66, 71, 73, 75,§621.8]

621.9 Cash in lieu of bond. In all cases in which a bond for security for costs is required, the party required to give such security may deposit in cash the amount fixed in said bond with the clerk of the district court in lieu of said bond. [S13,§3852-a; C24, 27, 31, 35, 39, §11253; C46, 50, 54, 58, 62, 66, 71, 73, 75,§621.9]

PRETRIAL PROCEDURE

Pretrial calendar. See R.C.P. 135.

Pretrial conference. See R.C.P. 136.

Pretrial conference — record. See R.C.P. 137.

Orders. See R.C.P. 138.

Restriction on orders. See R.C.P. 139.

CHAPTER 622

EVIDENCE

Presumption of death of person missing in action, §633.517
Applicable to criminal procedure, §782.1

GENERAL PRINCIPLES

622.1 Witnesses—who competent.
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622.4 Transaction with person since deceased.
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622.9 Communications between husband and wife.
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GENERAL PRINCIPLES

622.1 Witnesses — who competent. Every human being of sufficient capacity to understand the obligation of an oath is a competent witness in all cases, except as otherwise declared. [C51,§2388; R60,§3978; C73,§3636; C97, §4601; C24, 27, 31, 35, 39,§**11254**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.1]

622.2 Credibility. Facts which have heretofore caused the exclusion of testimony may still be shown for the purpose of lessening its credibility. [C51,§2389; R60,§3979; C73,§3637; C97,§4602; C24, 27, 31, 35, 39,§**11255**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.2]

622.3 Interest. No person offered as a witness in any action or proceeding in any court, or before any officer acting judicially, shall be excluded by reason of his interests in the event of the action or proceeding, or because he is a party thereto, except as provided in this chapter. [R60,§3980; C73,§3638; C97,§4603; C24, 27, 31, 35, 39,§**11256**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.3]

622.4 Transaction with person since deceased. No party to any action or proceeding, nor any person interested in the event thereof, nor any person from, through, or under whom

any such party or interested person derives any interest or title by assignment or otherwise, and no husband or wife of any said party or person, shall be examined as a witness in regard to any personal transaction or communication between such witness and a person at the commencement of such examination deceased, mentally ill, or lunatic, against the executor, administrator, heir at law, next of kin, assignee, legatee, devisee, or survivor of such deceased person, or the assignee or guardian of such insane person or lunatic. [R60,§3982; C73,§3639; C97,§4604; C24, 27, 31, 35, 39,§**11257**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §622.4]

C97,§4604, editorially divided
Referred to in §622.6

622.5 Exceptions. This prohibition shall not extend to any transaction or communication as to which any such executor, administrator, heir at law, next of kin, assignee, legatee, devisee, survivor, or guardian shall be examined on his own behalf, or as to which the testimony of such deceased or mentally ill person or lunatic shall be given in evidence. [R60,§3982; C73,§3639; C97,§4604; C24, 27, 31, 35, 39,§**11258**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §622.5]

622.6 Depositions taken conditionally. Any person may have his own deposition, or that of any other person, read in evidence in all cases where his evidence would be incompetent by the provisions of section 622.4, by causing it to be taken, either before or after action is brought, during the lifetime or good mental health of the person against whose executor, heir, or other representative the same is to be used, if such deposition shall have been taken and filed ten days prior to the death or mental illness of such person. If after action is brought, such deposition may be taken in the usual manner; if before, then the same may be taken de bene esse, as provided by law. [C73,§3640; C97,§4605; C24, 27, 31, 35, 39,§**11259**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.6]

Perpetuating testimony, R.C.P. 160 et seq.
Referred to in §229.27

622.7 Husband or wife as witness. Neither the husband nor wife shall in any case be a witness against the other, except:

1. In a criminal prosecution for a crime committed one against the other, or

2. In a civil action or proceeding one against the other, or

3. In a civil action by one against a third party for alienating the affections of the other, or

4. In any civil action brought by a judgment creditor against either the husband or the wife, to set aside a conveyance of property from one to the other on the ground of want of consideration or fraud, and to subject the same to the payment of his judgment. [C51, §2391; R60,§3983; C73,§3641; C97,§4606; S13,§4606; C24, 27, 31, 35, 39,§**11260**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.7]

S13,§4606, editorially divided
Referred to in §235A.8
Exception, §731.2

622.8 Witness for each other. In all civil and criminal cases the husband and wife may be witnesses for each other. [C51,§2391; R60, §3983; C73,§3641; C97,§4606; S13,§4606; C24, 27, 31, 35, 39,§**11261**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.8]

622.9 Communications between husband and wife. Neither husband nor wife can be examined in any case as to any communication made by the one to the other while married, nor shall they, after the marriage relation ceases, be permitted to reveal in testimony any such communication made while the marriage subsisted. [C51,§2392; R60,§3984; C73, §3642; C97,§4607; C24, 27, 31, 35, 39,§**11262**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.9]

Referred to in §235A.8

622.10 Communications in professional confidence—exceptions—application to court. No practicing attorney, counselor, physician, surgeon, or the stenographer or confidential clerk of any such person, who obtains such information by reason of his employment, minister of the gospel or priest of any denomination shall be allowed, in giving testimony, to disclose any confidential communication properly entrusted to him in his professional capacity, and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline. Such prohibition shall not apply to cases where the person in whose favor the same is made waives the rights conferred; nor shall such prohibition apply, as the same relates to physicians or surgeons or to the stenographer or confidential clerk of any such physicians or surgeons, in a civil action to recover damages for personal injuries or wrongful death in which the condition of the person in whose favor such prohibition is made is an element or factor of the claim or defense of such person or of any party claiming through or under such person. Such evidence shall be admissible upon trial of the action only as it relates to the condition alleged. If an adverse party desires the oral deposition, either discovery or evidentiary, of any such physician or surgeon to which such prohibition would otherwise apply or the stenographer or confidential clerk of any such physician or surgeon or desires to call any such physician or surgeon to which such prohibition would otherwise apply or the stenographer or confidential clerk of any such physician or surgeon as a witness at the trial of the action, he shall file an application with the court for permission to do so. The court upon hearing, which shall not be ex parte, shall grant such permission unless the court finds that the evidence sought does not relate to the condition alleged and shall fix a reasonable fee to be

paid to such physician or surgeon by the party taking the deposition or calling the witness.

No qualified school guidance counselor, who has met the certification and approval standards of the department of public instruction as provided in section 257.25, subsection 9, who obtains information by reason of his employment as a qualified school guidance counselor shall be allowed, in giving testimony, to disclose any confidential communications properly entrusted to him by a pupil or his parent or guardian in his capacity as a qualified school guidance counselor and necessary and proper to enable him to perform his duties as a qualified school guidance counselor. [C51,§§2393, 2394; R60,§§3985, 3986; C73,§3643; C97,§4608; S13, §4608; C24, 27, 31, 35, 39,§**11263**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.10]

Referred to in §§235A.8, 514B.30

622.11 Public officers. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure. [C51, §2395; R60,§3987; C73,§3644; C97,§4609; C24, 27, 31, 35, 39,§**11264**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.11]

622.12 Judge as witness. The judge of the court is a competent witness for either party, and may be sworn upon the trial. In such case it is in his discretion to order the trial to be postponed or suspended, and to take place before another judge. [C51,§2408; R60,§4005; C73,§3645; C97,§4610; C24, 27, 31, 35, 39,§**11265**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.12]

622.13 Civil liability. No witness is excused from answering a question upon the mere ground that he would be thereby subjected to a civil liability. [C51,§2396; R60,§3988; C73,§3646; C97,§4611; C24, 27, 31, 35, 39,§**11266**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.13]

622.14 to 622.16 Repealed by 65GA, ch 1272, §4, see §§782.9–782.11.

622.17 Previous conviction. A witness may be interrogated as to his previous conviction for a felony. No other proof is competent, except the record thereof. [C51,§2398; R60, §3990; C73,§3648; C97,§4613; C24, 27, 31, 35, 39, §**11270**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.17]

622.18 Moral character. The general moral character of a witness may be proved for the purpose of testing his credibility. [R60,§3991; C73,§3649; C97,§4614; C24, 27, 31, 35, 39,§**11271**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.18]

622.19 Whole of a writing or conversation. When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other; thus, when a letter is read, all other letters on the same subject between the same parties may be given. [C51,§2399; R60,§3992; C73,§3650; C97,§4615; C24, 27, 31, 35, 39,§**11272**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §622.19]

C97,§4615, editorially divided

622.20 Detached acts, declarations, or conversations. When a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it fully understood, or to explain the same, may also be given in evidence. [C51,§2399; R60,§3992; C73,§3650; C97,§4615; C24, 27, 31, 35, 39,§**11273**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.20]

622.21 Writing and printing. When an instrument consists partly of written and partly of printed form, the former controls the latter, if the two are inconsistent. [C51,§2400; R60, §3993; C73,§3651; C97,§4616; C24, 27, 31, 35, 39, §**11274**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.21]

622.22 Understanding of parties to agreement. When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it. [C51,§2401; R60, §3994; C73,§3652; C97,§4617; C24, 27, 31, 35, 39, §**11275**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.22]

622.23 Historical and scientific works. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are presumptive evidence of facts of general notoriety or interest therein stated. [C51,§2402; R60, §3995; C73,§3653; C97,§4618; C24, 27, 31, 35, 39, §**11276**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.23]

622.24 Subscribing witness — substitute proof. When a subscribing witness denies or does not recollect the execution of the instrument to which his name is subscribed as such witness, its execution may be proved by other evidence. [C51,§2403; R60,§3996; C73,§3654; C97, §4619; C24, 27, 31, 35, 39,§**11277**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.24]

622.25 Handwriting. Evidence respecting handwriting may be given by experts, by comparison, or by comparison by the jury, with writings of the same person which are proved to be genuine. [C51,§2404; R60,§3997; C73,§3655; C97,§4620; C24, 27, 31, 35, 39,§**11278**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.25]

622.26 Private writing — acknowledgment. Every private writing, except a last will and testament, after being acknowledged or proved and certified in the manner prescribed for the proof or acknowledgment of conveyances of real property, may be read in evidence without further proof. [C51,§2407; R60,§4000; C73, §3656; C97,§4621; C24, 27, 31, 35, 39,§**11279**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.26]

622.27 Entries and writings of deceased person. The entries and other writings of a person deceased, who was in a position to know the facts therein stated, made at or near the time of the transaction, are presumptive evidence of such facts, when the entry was made against the interest of the person so making it, or when made in a professional capacity or in the ordinary course of professional con-

duct, or when made in the performance of a duty specially enjoined by law. [C51,§2405; R60,§3998; C73,§3657; C97,§4622; C24, 27, 31, 35, 39,§11280; C46, 50, 54, 58, 62, 66, 71, 73, 75, §622.27]

622.28 Writing or record—when admissible —absence of record—effect. Any writing or record, whether in the form of an entry in a book, or otherwise, including electronic means and interpretations thereof, offered as memoranda or records of acts, conditions or events to prove the facts stated therein, shall be admissible as evidence if the judge finds that they were made in the regular course of a business at or about the time of the act, condition or event recorded, and that the sources of information from which made and the method and circumstances of their preparation were such as to indicate their trustworthiness, and if the judge finds that they are not excludable as evidence because of any rule of admissibility of evidence other than the hearsay rule.

Evidence of the absence of a memorandum or record from the memoranda or records of a business of an asserted act, event or condition, shall be admissible as evidence to prove the nonoccurrence of the act or event, or the nonexistence of the condition, if the judge finds that it was in the regular course of that business to make such memoranda of all such acts, events or conditions at the time thereof or within a reasonable time thereafter, and to preserve them.

The term business, as used in this section, includes business, profession, occupation, and calling of every kind. [C51,§2406; R60,§3999; C73,§3658; C97,§4623; S13,§4623; C24, 27, 31, 35, 39,§§11281, 11282; C46, 50, 54, 58,§§622.28, 622.29; C62, 66, 71, 73, 75,§622.28]

S13,§4623, editorially divided
Referred to in §622.30

622.29 Repealed by 59GA, ch 288,§1. See §622.28.

622.30 Photographic copies — originals destroyed.

1. In all cases where depositions are taken by either method provided by law, outside of the county in which the case is for trial where books of account are competent evidence in the case, the party desiring to offer the entries of said books as evidence may cause the same to be photographed by or under the direction of the officer taking the deposition and such photographic copy when certified by such officer with his seal attached shall be attached to the deposition, and if the record shows affirmatively the preliminary proof required by section 622.28, such copy shall be admitted in evidence with the same force and effect as the original.

2. If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry print, representation or combination thereof, of any act, transaction, occurrence or event and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law, except if the originals are records, reports or other papers of a county officer they shall not be destroyed until they have been preserved for ten years. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original. [S13,§4623; C24, 27, 31, 35, 39,§11283; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.30]

Referred to in §324.80

622.31 Repealed by 61GA, ch 413,§10102.

622.32 Statute of frauds. Except when otherwise specially provided, no evidence of the following enumerated contracts is competent, unless it be in writing and signed by the party charged or by his authorized agent:

1. Those made in consideration of marriage.

2. Those wherein one person promises to answer for the debt, default, or miscarriage of another, including promises by executors to pay the debt of the decedent from their own estate.

3. Those for the creation or transfer of any interest in lands, except leases for a term not exceeding one year.

4. Those that are not to be performed within one year from the making thereof. [C51, §§2409, 2410; R60,§§4006, 4007; C73,§§3663, 3664; C97,§4625; C24, 27, 31, 35, 39,§11285; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.32]

Referred to in §622.33
Declarations of trust, §557.10
Party walls, §563.12

622.33 Exception. The provisions of subsection 3 of section 622.32 do not apply where the purchase money, or any portion thereof, has been received by the vendor, or when the vendee, with the actual or implied consent of the vendor, has taken and held possession of the premises under and by virtue of the contract, or when there is any other circumstance which, by the law heretofore in force, would have taken the case out of the statute of frauds. [C51,§2411; R60,§4008; C73,§3665; C97, §4626; C24, 27, 31, 35, 39,§11286; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.33]

622.34 Contract not denied in the pleadings. The above regulations, relating merely to the

proof of contracts, shall not prevent the enforcement of those not denied in the pleadings, except in cases when the contract is sought to be enforced, or damages recovered for the breach thereof, against some person other than him who made it. [C51,§2412; R60,§4009; C73,§3666; C97,§4627; C24, 27, 31, 35, 39,§**11287**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.34]

622.35 Party made witness. The oral evidence of the maker against whom the unwritten contract is sought to be enforced shall be competent to establish the same. [C51,§2413; R60,§4010; C73,§3667; C97,§4628; C24, 27, 31, 35, 39,§**11288**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §622.35]

622.36 Instruments affecting real estate — adoption of minors. Every instrument in writing affecting real estate, or the adoption of minors, which is acknowledged or proved and certified as required, may be read in evidence without further proof. [C51,§1227; R60,§§2235, 4001; C73,§3659; C97,§4629; C24, 27, 31, 35, 39, §**11289**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.36]

622.37 Record or certified copy. When the recording of any instrument in the office of any public officer is authorized by law, the record of such instrument, or a duly authenticated copy thereof, is competent evidence whenever, by the party's own oath or otherwise, the original is shown to be lost, or not belonging to the party wishing to use the same, nor within his control. [C51,§§1228, 1476; R60,§§2528, 4002; C73,§§2197, 3660; C97,§4630; C24, 27, 31, 35, 39,§**11290**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.37]

Referred to in §622.39
C97,§4630, editorially divided
Birth certificate, §144.13
Federal statute, see page xxvii of this Code

622.38 Absence of seal. In such case, it is no objection to the record that no official seal is appended to the recorded acknowledgment thereof, if, when the acknowledgment purports to have been taken by an officer having an official seal, the record shows, by a scroll or otherwise, that there was such a seal, which will be presumptive evidence that it was attached to the original certificate. [C51,§1228; R60,§4002; C73,§3660; C97,§4630; C24, 27, 31, 35, 39,§**11291**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §622.38]

Referred to in §622.39

622.39 Retrospective. The provisions of sections 622.37 and 622.38 are intended to apply to all instruments heretofore recorded, as well as those hereafter to be recorded. [C51,§1229; R60,§§2237, 4003; C73,§3661; C97,§4631; C24, 27, 31, 35, 39,§**11292**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.39]

622.40 Presumption rebuttable. Neither the certificate, the record, nor the transcript thereof is conclusive evidence of the facts therein stated. [C51,§1230; R60,§§2238, 4004; C73,§3662; C97,§4632; C24, 27, 31, 35, 39,§**11293**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.40]

622.41 United States and state patents. United States and state patents for land in the state, and duly certified copies thereof from the general land office of the United States, or the state land office, that have been or may be recorded in the recorder's office of the county in which the land is situated, shall be matters of record and such record, and copies thereof, certified to by the recorder, may be received and read in evidence in all courts, with like effect as the record of other instruments, and other certified copies of original papers recorded in his office; and such patents and certified copies may be recorded without an acknowledgment. [C97,§4633; S13,§4633; C24, 27, 31, 35, 39,§**11294**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.41]

Referred to in §622.51

622.42 Field notes and plats. A copy of the field notes of any surveyor, or a plat made by him and certified under oath as correct, may be received as evidence to show the shape or dimensions of a tract of land, or any other fact the ascertainment of which requires the exercise of scientific skill or calculation only. [C51, §2431; R60,§4046; C73,§3701; C97,§4634; C24, 27, 31, 35, 39,§**11295**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.42]

Referred to in §622.51

622.43 Records and entries in public offices. Duly certified copies of all records and entries or papers belonging to any public office, or by authority of law filed to be kept therein, shall be evidence in all cases of equal credibility with the original record or papers so filed. [C51,§2432; R60,§4047; C73,§3702; C97,§4635; C24, 27, 31, 35, 39,§**11296**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.43]

Referred to in §§321.557, 622.51
Federal statute, see page xxvii of this Code
Similar provision, §446.36

622.44 Copies of books of original entries. Copies of entries made in the book of "copies of original entries", kept as a record in the office of the county recorder, when such book has been compared with the originals and certified as true copies by the register of the United States land office at which such original entries were made, may, when certified by the recorder to be true copies, be received and read in evidence in all of the courts, with like effect as certified copies of original papers recorded in his office. [R60,§4049; C73,§3704; C97,§4636; C24, 27, 31, 35, 39,§**11297**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.44]

Referred to in §§622.45, 622.51

622.45 Additional entries. Copies of additional entries shall, from time to time, be procured as made, certified as required in section 622.44, and entered in the book of "copies of original entries", until all the lands in the county have been entered and so certified. [R60,§4050; C73,§3705; C97,§4637; C24, 27, 31, 35, 39,§**11298**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §622.45]

Referred to in §622.51

622.46 Officer to give copies of records. Every officer having the custody of a public record or writing shall furnish any person, upon demand and payment of the legal fees therefor, a certified copy thereof. [C51,§2433; R60,§4051; C73,§3706; C97,§4638; C24, 27, 31, 35, 39,§**11299**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §622.46]

Referred to in §§68A.2, 622.51

622.47 Maps in office of surveyor general. Copies of all maps, official letters, and other documents in the office of the surveyor general of the United States, when certified by that officer according to law, shall be received by the courts of this state as presumptive evidence of the existence and contents of the originals, and that they are copies of the originals, notwithstanding such maps, official letters, or other papers, may themselves be copied. [R60,§4052; C73,§3707; C97,§4639; C24, 27, 31, 35, 39,§**11300**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.47]

Referred to in §622.51

622.48 Certificate as to loss of paper. The certificate of a public officer, that he has made diligent and ineffectual search for a paper in his office, is of the same efficacy in all cases as if such officer had personally appeared and sworn to such facts. [C51,§2434; R60,§4053; C73,§3708; C97,§4640; C24, 27, 31, 35, 39,§**11301**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.48]

Referred to in §622.51

622.49 Duplicate receipt of receiver of land office. The usual duplicate receipt of the receiver of any land office, or the certificate of such receiver that the books of his office show the sale of a tract of land to a certain individual, is proof of title, equivalent to a patent, against all but the holder of an actual patent. [C51,§2435; R60,§4054; C73,§3709; C97,§4641; C24, 27, 31, 35, 39,§**11302**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.49]

Referred to in §622.51

622.50 Certificate of register or receiver. The certificate of the register or receiver of any land office of the United States, as to the entry of land within his district, shall be presumptive evidence of title, in the person entering, to the real estate therein named. [R60, §4055; C73,§3710; C97,§4642; C24, 27, 31, 35, 39, §**11303**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.50]

Referred to in §622.51

622.51 Official signature presumed genuine. In the cases contemplated in sections 622.41 to 622.50, the signature of the officer shall be presumed to be genuine until the contrary is shown. [C51,§2436; R60,§4056; C73,§3711; C97, §4643; C24, 27, 31, 35, 39,§**11304**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.51]

622.52 Judicial record — state or federal courts. A judicial record of this state, including the filed certified shorthand notes of the official court reporter as transcribed, or any court of the United States may be proved by the production of the original, or a copy thereof certified by the clerk or person having the legal custody thereof, authenticated by his seal of office, if he has one. [C51,§2437; R60,§4057; C73, §3712; C97,§4644; C24, 27, 31, 35, 39,§**11305**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.52]

622.53 Of another state. That of another state may be proved by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of a judge, chief justice, or presiding magistrate that the attestation is in due form of law. [C51,§2438; R60,§4058; C73,§3713; C97,§4645; C24, 27, 31, 35, 39,§**11306**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.53]

622.54 Of a justice of the peace. The official certificate of a justice of the peace of any of the United States to any judgment and the preliminary proceedings before him, supported by the official certificate of the clerk of any court of record within the county in which such justice resides, stating that he is an acting justice of the peace of that county, and that the signature to his certificate is genuine, is sufficient evidence of such proceedings and judgment. [C51,§2439; R60,§4059; C73,§3714; C97,§4646; C24, 27, 31, 35, 39,§**11307**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.54]

622.55 Of a foreign country. Copies of records and proceedings in the courts of a foreign country may be admitted in evidence upon being authenticated as follows:

1. By the official attestation of the clerk or officer in whose custody such records are legally kept.

2. By the certificate of one of the judges or magistrates of such court, that the person so attesting is the clerk or officer legally entrusted with the custody of such records, and that the signature to his attestation is genuine.

3. By the official certificate of the officer who has the custody of the principal seal of the government under whose authority the court is held, attested by said seal, stating that such court is duly constituted, specifying the general nature of its jurisdiction, and verifying the seal of the court. [C51,§2440; R60,§4060; C73,§3715; C97,§4647; C24, 27, 31, 35, 39,§**11308**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.55]

622.56 Presumption of regularity. The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular, except in regard to matters required to be entered of record, and except where otherwise expressly declared. [C51, §2512; R60,§4120; C73,§3669; C97,§4648; C24, 27, 31, 35, 39,§**11309**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.56]

622.57 Executive acts. Acts of the executive of the United States, or of this or any other state of the Union, or of a foreign government, are proved by the records of the state department of the respective govern-

ments, or by public documents purporting to have been printed by order of the legislatures of those governments, respectively, or by either branch thereof. [C51,§2441; R60,§4061; C73,§3716; C97,§4649; C24, 27, 31, 35, 39,§**11310**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.57]

622.58 Proceedings of legislature. The proceedings of the legislature of this or any other state of the Union, or of the United States, or of any foreign government, are proved by the journals of those bodies, respectively, or of either branch thereof, and either by copies officially certified by the clerk of the house in which the proceeding was had, or by a copy purporting to have been printed by its order. [C51,§2442; R60,§4062; C73,§3717; C97,§4650; C24, 27, 31, 35, 39,§**11311**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.58]

622.59 Printed copies of statutes. Printed copies of the statute laws of this or any other of the United States, or of Congress, or of any foreign government, purporting or proved to have been published under the authority thereof, or proved to be commonly admitted as evidence of the existing laws in the courts of such state or government, shall be admitted in the courts of this state as presumptive evidence of such laws. [C51,§2443; R60,§4063; C73, §3718; C97,§4651; C24, 27, 31, 35, 39,§**11312**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.59]

622.60 Written law or public writing. The public seal of the state or county, affixed to a copy of the written law or other public writing, is admissible as evidence of such law or writing, respectively. [C51,§2444; R60,§4064; C73,§3719; C97,§4652; C24, 27, 31, 35, 39,§**11313**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.60]

C97,§4652, editorially divided

622.61 Foreign unwritten law. The unwritten laws of any other state or government may be proved as facts by parol evidence, or by the books of reports of cases adjudged in their courts. [C51,§2444; R60,§4064; C73,§3719; C97, §4652; C24, 27, 31, 35, 39,§**11314**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.61]

622.62 Ordinances of city.

1. The printed copies of a city code and of supplements to it which are purported or proved to have been compiled pursuant to section 380.8 shall be admitted in the courts of this state as presumptive evidence of the ordinances contained therein. When properly pleaded, the courts of this state shall take judicial notice of ordinances contained in a city code or city code supplement.

2. The printed copies of an ordinance of any city which has not been compiled in a city code or a supplement pursuant to section 380.8 but which has been published by authority of the city, or transcripts of any ordinance, act, or proceeding thereof recorded in any book, or entries on any minutes or journals kept under direction of the city, and certified by the city clerk, shall be received in evidence for any purpose for which the original ordinances, books, minutes, or journals would be received, and with the same effect. The clerk shall furnish such transcripts, and be entitled to charge therefor at the rate that the clerk of the district court is entitled to charge for transcripts of records from that court.

The actions of any court of this state in taking judicial notice of the existence and content of a city ordinance in any proceeding which was commenced between the first day of July, 1973 and April 17, 1976 shall be conclusively presumed to be lawful, and to the extent required by this section this section is retroactive. [R60,§1076; C73,§3720; C97, §4653; C24, 27, 31, 35, 39,§**11315**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.62; 66GA, ch 1239,§§1, 2]

Fees, §606.15

622.63 Subpoenas. The clerks of the several courts shall, on application of any person having a cause or matter pending in court, issue a subpoena for witnesses under the seal of the court, inserting all the names required by the applicant in one subpoena, if practicable, which may be served by the sheriff of the county, or by the party or any other person. [R60,§4012; C73,§3671; C97,§4658; C24, 27, 31, 35, 39,§**11320**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.63]

C97,§4658, editorially divided
Referred to in §631.3

622.64 Proof of service — costs. When a subpoena is served by any person other than the sheriff or constable, proof thereof shall be shown by affidavit; but no costs for serving the same shall be allowed. [R60,§4012; C73, §3671; C97,§4658; C24, 27, 31, 35, 39,§**11321**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.64]

Referred to in §631.3

622.65 To whom directed — duces tecum. The subpoena shall be directed to the person therein named, requiring him to attend at a particular time or place to testify as a witness, and it may contain a clause directing the witness to bring with him any book, writing, or other thing under his control, which he is bound by law to produce as evidence. [C51, §2415; R60,§4013; C73,§3672; C97,§4659; C24, 27, 31, 35, 39,§**11322**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.65]

Referred to in §§204.502(3,*d*), 631.3

622.66 How far compelled to attend. Witnesses in civil cases cannot be compelled to attend the district or superior court out of the state where they are served, nor at a distance of more than one hundred miles from the place of their residence, or from that where they are served with a subpoena, unless within the same county. [C51,§2416; R60,§4014; C73, §3673; C97,§4660; C24, 27, 31, 35, 39,§**11323**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.66]

C97,§4660, editorially divided
Referred to in §631.3
Limit on taxation of costs, §625.2

622.67 Deposit—effect. The court or judge, for good cause shown, may, upon deposit with the clerk of the court of sufficient money to pay the legal fees and mileage of a witness, order a subpoena to issue requiring the attendance of such witness from a greater distance within the state. Such subpoena shall show that it is issued under the provisions hereof. [C24, 27, 31, 35, 39,§**11324**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.67]

Referred to in §631.3

622.68 Thirty-mile limit. No other subpoena but that from the district or superior court can compel his attendance at a greater distance than thirty miles from his place of residence, or of service, if not in the same county. [C51,§2416; R60,§4014; C73,§3673; C97,§4660; C24, 27, 31, 35, 39,§**11325**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.68]

Referred to in §§91.10, 631.3

622.69 Witness fees. Witnesses shall receive ten dollars for each full day's attendance, and five dollars for each attendance less than a full day, and mileage expenses at the rate of fifteen cents per mile for each mile actually traveled. [C51,§2544; R60,§4153; C73,§3814; C97, §4661; C24, 27, 31, 35, 39,§**11326**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.69; 66GA, ch 246,§2]

Referred to in §§91.10, 631.3
C97,§4661, editorially divided

622.70 Attorney, juror, or officer. An attorney, juror, or officer, who is in habitual attendance on the court for the court session at which he is examined as a witness, shall be entitled to but one day's attendance. [C51,§2544; R60,§4153; C73,§3814; C97,§4661; C24, 27, 31, 35, 39,§**11327**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §622.70]

622.71 Peace officer. No peace officer who receives a regular salary, or any other public official shall, in any case, receive fees as a witness for testifying in regard to any matter coming to his knowledge in the discharge of his official duties in such case in a court in the county of his residence, except police officers who are called as witnesses when not on duty. [C97,§4661; C24, 27, 31, 35, 39,§**11328**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.71]

622.72 Expert witnesses — fee. Witnesses called to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and state the result thereof, shall receive additional compensation, to be fixed by the court, with reference to the value of the time employed and the degree of learning or skill required; but such additional compensation shall not exceed one hundred fifty dollars per day while so employed. [C73, §3814; C97,§4661; C24, 27, 31, 35, 39,§**11329**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.72; 66GA, ch 248,§1]

Superintendent of state hospital, §226.5

622.73 Fees payable by county or city. For attending before the trial jury or court in criminal cases where the defendant is adjudged not guilty or the action is dismissed, the fees above provided for attending court shall be paid as follows:

1. In actions based on a violation of a state statute, by the county, upon a written statement of the clerk or a judicial officer showing the amount due.

2. In actions based on a violation of a city ordinance, by the city, upon a written statement of the clerk or a judicial officer showing the amount due. [C51,§2544; R60,§4153; C73, §3814; C97,§4661; C24, 27, 31, 35, 39,§**11330**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.73]

622.74 Fees in advance. Witnesses, except parties to the action, are entitled to receive in advance, if demanded when subpoenaed, their traveling fees to and from the court, with their fees for one day's attendance. At the commencement of each day after the first, they are further entitled, on demand, to receive the legal fees for that day in advance. If not thus paid, they are not compelled to attend or remain as witnesses. [C51,§2417; R60,§4015; C73,§3674; C97,§4662; C24, 27, 31, 35, 39,§**11331**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §622.74]

622.75 Reimbursement to party, county or city. When a county or city or any party has paid the fees of any witness, and the same is afterward collected from the defendant or adverse party, the county, city or person so paying the same shall, upon the production of the receipt of such witness or other satisfactory evidence, be entitled to such fee. [C73,§3817; C97,§4663; C24, 27, 31, 35, 39,§**11332**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.75]

622.76 Failure to attend or testify—liability. For a failure to obey a valid subpoena without a sufficient cause or excuse, or for a refusal to testify after appearance, the delinquent is guilty of a contempt of court and subject to be proceeded against by attachment. He is also liable to the party by whom he was subpoenaed for all consequences of such delinquency, with fifty dollars additional damages. [C51,§2418; R60,§4016; C73,§3675; C97, §4664; C24, 27, 31, 35, 39,§**11333**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.76]

Referred to in §631.3
Contempts, ch 665
Similar provisions, §781.7

622.77 Proceedings for contempt. Before a witness is so liable for a contempt for not appearing, he must be served personally with the process, by reading it to him, and leaving a copy thereof with him, if demanded, and it must be shown that the fees and traveling expenses allowed by law were tendered to him, if required; or it must appear that a copy of the subpoena, if left at his usual place of residence, came into his hands, with the fees and traveling expenses above mentioned. [C51, §2419; R60,§4017; C73,§3676; C97,§4665; C24, 27, 31, 35, 39,§**11334**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.77]

Referred to in §631.3

622.78 Serving subpoena. If a witness conceals himself, or in any manner attempts to avoid being personally served with a subpoena, any sheriff having the subpoena may use all necessary and proper means to serve the same, and may for that purpose break into any building or other place where the witness is to be found, having first made known his business and demanded admission. [C51,§2420; R60,§4018; C73,§3677; C97,§4666; C24, 27, 31, 35, 39,§**11335**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §622.78]

622.79 When party fails to obey subpoena. In addition to the above remedies, if a party to an action in his own right, on being duly subpoenaed, fails to appear and give testimony, the other party may, at his election, have a continuance of the cause at the cost of the delinquent. [C51,§2421; R60,§4024; C73, §3683; C97,§4667; C24, 27, 31, 35, 39,§**11336**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.79]

622.80 Pleading taken true. Or if he shows by his own testimony, or otherwise, that he could not have a full personal knowledge of the transaction, the court may order his pleading to be taken as true; subject to be reconsidered by the court within a reasonable time thereafter, upon satisfactory reasons being shown for the delinquency. [C51,§2422; R60,§4025; C73,§3684; C97,§4668; C24, 27, 31, 35, 39,§**11337**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §622.80]

622.81 Authority to subpoena. Any officer or board authorized to hear evidence shall have authority to subpoena witnesses and compel them to attend and testify, in the same manner as officers authorized to take depositions. [C97,§4669; C24, 27, 31, 35, 39,§**11338**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.81]

Enforcing attendance, §§622.84, 622.102

622.82 Prisoner produced. A person confined in a penitentiary or jail in the state may, by order of any court of record, be required to be produced for oral examination in the county where he is imprisoned, and in a criminal case in any county in the state; but in all other cases his examination must be by a deposition. [R60,§4019; C73,§3678; C97,§4670; C24, 27, 31, 35, 39,§**11339**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.82]

622.83 Deposition of. While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge, who shall afford reasonable facilities for the taking thereof. [R60,§4020; C73,§3679; C97, §4671; C24, 27, 31, 35, 39,§**11340**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.83]

622.84 Subpoenas — enforcing obedience. When, by the laws of this or any other state or country, testimony may be taken in the form of depositions to be used in any of the courts thereof, the person authorized to take such depositions may issue subpoenas for witnesses, which must be served by the same officers and returned in the same manner as is required in district court, and obedience thereto may be enforced in the same way and to the same extent, or he may report the matter to the district court who may enforce obedience as though the action was pending in said court. [C51,§§2477–2479; R60,§§4021–4023; C73,§§3680–3682; C97, §4672; C24, 27, 31, 35, 39,§**11341**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.84]

Similar provision, §622.102

622.85 Affidavits—before whom made. An affidavit is a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state. [R60,§§4030, 4035; C73,§§3689, 3690; C97,§4673; C24, 27, 31, 35, 39, §**11342**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.85]

Perpetuating testimony, R.C.P. 160 et seq.
Referred to in §135D.26

622.86 Foreign affidavits. Those taken out of the state before any judge or clerk of a court of record, or before a notary public, or a commissioner appointed by the governor of this state to take acknowledgment of deeds in the state where such affidavit is taken, are of the same credibility as if taken within the state. [C51,§2475; R60,§4036; C73,§3691; C97, §4674; C24, 27, 31, 35, 39,§**11343**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.86]

622.87 How affidavits compelled. When a person is desirous of obtaining the affidavit of another who is unwilling to make the same fully, he may apply by petition to any officer competent to take depositions, stating the object for which he desires the affidavit. [C51, §2480; R60,§4038; C73,§3692; C97,§4675; C24, 27, 31, 35, 39,§**11344**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.87]

622.88 Subpoena issued. If the officer is satisfied that the object is legal and proper, he shall issue his subpoena to bring the witness before him, and, if he fails then to make a full affidavit of the facts within his knowledge to the extent required of him by the officer, the latter may proceed to take his deposition by question and answer in the usual way, which may be used instead of an ordinary affidavit. [C51,§2481; R60,§4039; C73, §3693; C97,§4676; C24, 27, 31, 35, 39,§**11345**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.88]

622.89 Notice. The officer may, in his discretion, require notice of the taking of such affidavit or deposition to be given to any person interested in the subject matter, and allow him to be present and cross-examine such witness. [C51,§2482; R60,§4040; C73,§3694; C97,§4677; C24, 27, 31, 35, 39,§**11346**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.89]

622.90 Cross-examination. The court or officer to whom any affidavit is presented as a basis for some action, in relation to which any discretion is lodged with such court or officer, may require the witness to be brought before it or him and submit to a cross-examination by the opposite party. [C51,§2483; R60,§4041;

C73,§3695; C97,§4678; C24, 27, 31, 35, 39,§**11347**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.90]

622.91 Signature and seal — presumption. The signature and seal of such officers as are authorized to take depositions or affidavits, having a seal, and the simple signature of such as have no seal, are presumptive evidence of the genuineness thereof, as well as of the official character of the officer, except as otherwise declared. [C51,§2476; R60,§4037; C73,§3696; C97,§4679; C24, 27, 31, 35, 39,§**11348**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.91]

622.92 Newspaper publications — how proved. Publications required to be made in a newspaper may be proved by the affidavit of any person having knowledge of the fact, specifying the times when and the paper in which the publication was made, but such affidavit must be made within six months after the last day of publication. [C51,§2427; R60, §4042; C73,§3697; C97,§4680; C24, 27, 31, 35, 39, §**11349**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.92]

Proof of publication, R.C.P. 63

622.93 Applicability in Polk county. Proof of the publication of the filing in the district court of the petitions as provided for in section 618.13 and a charge on the basis of one dollar* for each petition shall be made once each month by the publisher thereof, presented to the clerk of the district court for verification and approval, and filed with the county auditor to be presented to the board of supervisors, which shall order the claim for such publications paid from the district court funds. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.93]

*See 243 Iowa 913, Daily Record Company v. Armel

622.94 Proof of serving or posting notices. The posting up or service of any notice or other paper required by law may be proved by the affidavit of any competent witness attached to a copy of said notice or paper, and made within six months of the time of such posting up. [C51,§2428; R60,§4043; C73,§3698; C97,§4681; C24, 27, 31, 35, 39,§**11350**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.94]

622.95 Other facts. Any other fact which is required to be shown by affidavit, and which may be required for future use in any action or other proceeding, may be proved by pursuing the course above indicated, as nearly as the circumstances of the case will admit. [C51, §2429; R60,§4044; C73,§3699; C97,§4682; C24, 27, 31, 35, 39,§**11351**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.95]

622.96 How perpetuated — presumption of fact. Proof so made may be perpetuated and preserved for future use by filing the papers above mentioned in the office of the clerk of the district court of the county where the act is done. The original affidavit appended to the notice or paper, if there is one, and, if not, the affidavit by itself is presumptive evidence of the facts stated therein, but does not preclude other modes of proof now held sufficient. [C51,§2430; R60,§4045; C73,§3700; C97,§4683; C24, 27, 31, 35, 39,§**11352**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.96]

REPORTER'S NOTES AS EVIDENCE

622.97 Authorized use. The original shorthand notes of the evidence or any part thereof heretofore or hereafter taken upon the trial of any cause or proceeding, in any court of record of this state, by the shorthand reporter of such court, or any transcript thereof, duly certified by such reporter, when material and competent, shall be admissible in evidence on any retrial of the case or proceeding in which the same were taken, and for purposes of impeachment in any case, and shall have the same force and effect as a deposition, subject to the same objections so far as applicable. [S13,§245-a; C24, 27, 31, 35, 39,§**11353**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.97]

S13,§245-a, editorially divided

622.98 Transcript must be complete. No portion of the transcript of the shorthand notes of the evidence of any witness shall be admissible as such deposition, unless it shall appear from the certificate or verification thereof that the whole of the shorthand notes of the evidence of such witness, upon the trial or hearing in which the same was given, is contained in such transcript, but the party offering the same shall not be compelled to offer the whole of such transcript. [S13,§245-a; C24, 27, 31, 35, 39,§**11354**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.98]

622.99 Certification. It shall be the duty of any such reporter, upon demand by any party to any cause or proceeding, or by the attorney of such party, when such shorthand notes are offered in evidence, to read the same before the court, judge, referee, or jury, or to furnish to any person when demanded a certified transcript of the shorthand notes of the evidence of any one or more witnesses, upon payment of his fees therefor. [S13,§245-a; C24, 27, 31, 35, 39,§**11355**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §622.99]

Fees, §605.11

622.100 Sworn verification. When the reporter taking such notes in any case or proceeding in court has ceased to be the reporter of such court, any transcript by him made therefrom and sworn to by him before any person authorized to administer an oath as a full, true, and complete transcript of the notes of the testimony of the witness, a transcript of whose testimony is demanded, shall have the same force and effect as though duly certified by the reporter of said court. [S13,§245-a; C24, 27, 31, 35, 39,§**11356**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.100]

622.101 Identification of exhibits. When any exhibit, record, or document is referred to in such shorthand notes or transcript thereof, the identity of such exhibit, record, or document, as the one referred to by the witness, may be proven either by the reporter or any other

person who heard the evidence of the witness given on the stand. [S13,§245-a; C24, 27, 31, 35, 39,§11357; C46, 50, 54, 58, 62, 66, 71, 73, 75, §622.101]

DEPOSITIONS

Before whom taken. See R.C.P. 153.

Depositions upon oral examination. See R.C.P. 140.

Restrictions. See R.C.P. 141.

On written interrogatories. See R.C.P. 150.

Subpoena. See R.C.P. 155.

622.102 Refusal to appear or testify. Any witness who refuses to obey such subpoena or after appearance refuses to testify shall be reported by the officer or commissioner to the district court of the county where the subpoena was issued. [C24, 27, 31, 35, 39,§11367; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.102]

Similar provision, §622.84

Letters rogatory. See R.C.P. 154.

Oral examination—notice. See R.C.P. 147.

On objecting to notice see rule 158(a)

Conduct of oral examination. See R.C.P. 148.

Reading and signing. See R.C.P. 149.

Answers to interrogatories. See R.C.P. 151.

Defaults—notice. See R.C.P. 142.

Witness lists. See R.C.P. 143.

Use of depositions. See R.C.P. 144.

Effect of taking or using. See R.C.P. 145.

Substituted parties — successive actions. See R.C.P. 146.

Notice—service. See R.C.P. 156.

Certification and return—copies. See R.C.P. 152.

Irregularities—objections. See R.C.P. 158.

(*a*) *Notice.*
(*b*) *Officer.*
(*c*) *Interrogatories.*
(*d*) *Taking deposition.*
(*e*) *Testimony.*
(*f*) *Motion to suppress.*

622.103 Repealed by 63GA, ch 1268,§4.

622.104 Witness fees. A witness appearing before an officer directed to take his deposition is entitled to the same fees and mileage as a witness in the court in which the deposition is to be used. If subpoenaed, such a witness is entitled to his fees and mileage in advance, as in other cases. [C97,§4716; C24, 27, 31, 35, 39, §11398; C46, 50, 54, 58, 62, 66, 71, 73, 75,§622.104]

Fees and mileage, §622.69 et seq.

Costs. See R.C.P. 157.

(*a*) *Generally.*
(*b*) *Failure to attend.*

PERPETUATING TESTIMONY

Common law preserved. See R.C.P. 159.

Before action—application. See R.C.P. 160.

Notice. See R.C.P. 161.

Guardian ad litem. See R.C.P. 162.

Taking and filing tstimony. See R.C.P. 164.

When ordered — who not examined. See R.C.P. 163.

Use—limitation. See R.C.P. 165.

Perpetuating testimony pending appeal. See R.C.P. 166.

DOCUMENTS FILED WITH STATE OR DIVISIONS THEREOF

622.105 Evidence of date mailed. Any report, claim, tax return, statement, or any payment required or authorized to be filed or made to the state, or any political subdivision which is transmitted through the United States mail or mailed but not received by the state or political subdivision or received and the cancellation mark is illegible, erroneous or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement, or payment was deposited in the United States mail on or before the date for filing or paying. In the event of nonreceipt of any such report, tax return, statement, or payment, the sender shall file a duplicate within thirty days of receiving written notification of nonreceipt of such report, tax return, statement, or payment. Filing of a duplicate within thirty days of receiving written notification shall be considered to be a filing made on the date of the original filing.

For the purposes of this section "competent evidence" means evidence, in addition to the testimony of the sender, sufficient or adequate to prove that the document was mailed on a specified date which evidence is credible and of such a nature to reasonably support the determination that the letter was mailed on a specified date. [66GA, ch 1237,§1]

622.106 Certified or registered mail. If any report, claim, tax return, statement, or payment is sent by United States mail and either registered or certified, a record authenticated by the United States post office shall be considered competent evidence that the report,

claim, tax return, statement, or payment was delivered to the state or political subdivision to which addressed, and the date of registration or certification shall be deemed the postmarked date. [66GA, ch 1237,§1]

CHAPTER 622A

COURT INTERPRETERS

622A.1 Definition.
622A.2 Who entitled to interpreter.
622A.3 Costs—when taxed.
622A.4 Fee set by court.
622A.5 Oath.
622A.6 Qualifications and integrity.

622A.1 Definition. As used in this chapter, "legal proceeding" means any action before any court, or any legal action preparatory to appearing before any court, whether civil or criminal in nature; and any administrative proceeding before any state agency or governmental subdivision which is quasi-judicial in nature and which has direct legal implications to any person. [C71, 73, 75,§622A.1]

622A.2 Who entitled to interpreter. Every person who cannot speak or understand the English language, or every person who because of hearing, speaking or other impairment has difficulty in communicating with other persons, and who is a party to any legal proceeding or a witness therein, shall be entitled to an interpreter to assist such person throughout the proceeding. [C71, 73, 75,§622A.2]

622A.3 Costs—when taxed. An interpreter shall be appointed without expense to the person requiring assistance in the following cases:

1. If the person requiring assistance is a witness in the civil legal proceeding.

2. If the person requiring assistance is indigent and financially unable to secure an interpreter.

In civil cases, every court shall tax the cost of an interpreter the same as other court costs. In criminal cases, where the defendant is indigent, the interpreter shall be considered as a defendant's witness under chapter 781 for the purpose of receiving fees, except that subpoenas shall not be required. If the proceeding is before an administrative agency, that agency shall provide such interpreter but may require that a party to the proceeding pay the expense thereof. [C71, 73, 75,§622A.3]

622A.4 Fee set by court. Every interpreter appointed by a court or administrative agency shall receive a fee to be set by the court or administrative agency. [C71, 73, 75,§622A.4]

622A.5 Oath. Every interpreter in any legal proceeding shall take the same oath as any other witness. [C71, 73, 75,§622A.5]

622A.6 Qualifications and integrity. Any court or administrative agency may inquire into the qualifications and integrity of any interpreter, and may disqualify any person from serving as an interpreter. [C71, 73, 75, §622A.6]

CHAPTER 623

CHANGE OF VENUE

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Demand for jury trial. See R.C.P. 177.

To court or jury. See R.C.P. 178.

Reporter's fee—small cases. See R.C.P. 178.1.

624.1 Evidence in ordinary actions. All issues of fact in ordinary actions shall be tried upon oral evidence taken in open court, except that depositions may be used as provided by law.

A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief. [R60,§2999; C73,§2741; C97,§3651; C24, 27, 31, 35, 39,§**11430**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.1]

C97,§3651, editorially divided
Depositions, R.C.P. 153

624.2 Ordinary actions—evidence on appeal. Upon appeal, in ordinary actions no evidence shall go to the appellate court except such as may be necessary to explain any exception taken in the cause, and such court shall hear and try the case only on the legal errors so presented. [R60,§2999; C73,§2741; C97,§3651; C24, 27, 31, 35, 39,§**11431**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.2; 66GA, ch 1241,§62]

Constitution, Art. V,§4

624.3 Evidence in equitable actions. In actions cognizable in equity, wherein issues of fact are joined, the court may order the evidence or any part thereof to be taken in the form of depositions, or either party may take depositions as authorized by law, and may in the discretion of the court be granted a continuance for that purpose. [R60,§2999; C73,§2742; C97,§3652; S13,§3652; C24, 27, 31, 35, 39,§**11432**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.3]

40ExGA, SF 231,§1, editorially divided

624.4 Equitable actions — evidence on appeal. The evidence in actions cognizable in equity shall be presented on appeal to the appellate court, which shall try such causes anew. However, upon certiorari to the supreme court of equity actions heard by the court of appeals the review may be limited in scope as provided in the rules of appellate procedure. [R60,§2999; C73,§2742; C97,§3652; S13,§3652; C24, 27, 31, 35, 39,§**11433**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.4; 66GA, ch 1241,§63]

624.5 Abstracts in equity causes. In equitable causes, where the evidence is taken in the form of depositions, the district court may require to be submitted with the arguments an abstract of the pleadings and evidence, substantially as required by the rules of appellate procedure for abstracts in appeals in equitable causes, except that the same need not be printed. [C97,§3653; C24, 27, 31, 35, 39,§**11434**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.5; 66GA, ch 1241,§64]

See R.C.P. 340

Findings by court. See R.C.P. 179.

624.6 When triable. Causes shall be triable at any time after the expiration of twenty days after legal and timely service has been made. [C51,§1763; R60,§3007; C73,§2744; C97,§3655; C24, 27, 31, 35, 39,§**11436**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.6]

624.7 Exception. If the action challenges the legality, validity, or constitutionality of a proposed constitutional amendment, the cause shall be tried within three days after the issues are made up. [C31, 35,§11436-d1; C39,§**11436.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.7]

Separate trials. See R.C.P. 186.

As to separate adjudication of points of law, see rule 105

Certificate of readiness for trial. See R.C.P. 181.

Ready calendar list. See R.C.P. 181.1.

Trial assignments. See R.C.P. 181.2.

(a) *Initial assignment day — actions having precedence.*
(b) *Trial sessions assigned.*

Duty to notify court. See R.C.P. 181.3.
(a) *Of settlements.*
(b) *Of conflicting engagements and termination thereof.*

624.8 Calendar. The clerk shall keep a calendar of criminal causes, arranging them in the order of their commencement and, if the court so order, shall, under the direction of the court, apportion the same to as many days as is believed necessary, and, at the request of any party to a cause or his attorney, shall issue subpoenas accordingly. The clerk shall furnish the court and bar with a sufficient number of copies of the calendar on or before January 15, April 15, July 15 and October 15 of each year, furnish the court and bar with a sufficient number of copies of a supplement thereto, which shall include the new causes only, but the publication of the assignments as provided in section 618.13 shall be in lieu of the publishing of a court calendar except that the first two daily publications of said paper shall be furnished free by the publisher to any attorney who shall request the clerk for the same. [C51, §§1761, 1762; R60,§3005; C73,§2747; C97,§3661; C24, 27, 31, 35, 39,§**11441**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.8]

Motions for continuance. See R.C.P. 182.

That the motion need not be served; see rule 115

Causes for continuance. See R.C.P. 183.

Objections—ruling—costs. See R.C.P. 184.

624.9 Detailed report of trial. In all appealable actions triable by ordinary or equitable proceedings, any party thereto shall be entitled to have reported the whole proceedings upon the trial or hearing, and the court shall direct the reporter to make such report in writing or shorthand, which shall contain the date of the commencement of the trial, the proceedings impaneling the jury, and any objections thereto with the rulings thereon, the oral testimony at length, and all offers thereof, all objections thereto, the rulings thereon, the identification as exhibits, by letter or number or other appropriate mark, of all written or other evidence offered, and by sufficient reference thereto, made in the report, to make certain the object or thing offered, all objections to such evidence and the rulings thereon, all motions or other pleas orally made and the rulings thereon, the fact that the testimony was closed, the portions of arguments objected to, when so ordered by the court, all objections thereto with the rulings thereon, all oral comments or statements of the court during the progress of the trial, and any exceptions taken thereto, the fact that the jury is instructed, all objections and exceptions to instructions given by the court on its own motion, the fact that the case is given to the jury, the return of the verdict and action thereon of whatever kind, and any other proceedings before the court or jury which might be preserved and made of record by bill of exceptions, and shall note that exception was saved by the party adversely affected to every ruling made by the court. [C97,§3675; C24, 27, 31, 35, 39,§**11456**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.9]

C97,§3675, editorially divided

624.10 Certification — ipso facto bill. Such report shall be certified by the trial judge and reporter, when demanded by either party, to the effect that it contains a full, true, and complete report of all proceedings had that are required to be kept, and, when so certified, the same shall be filed by the clerk and, with all matters set out or identified therein, shall be a part of the record in such action, and constitute a complete bill of exceptions. [C97, §3675; C24, 27, 31, 35, 39,§**11457**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.10]

Certification by successor, R.C.P. 241
Duty to file translation, R.C.P. 340
When bill unnecessary, R.C.P. 214 and 241

624.11 Matters excluded. On a trial before a jury it shall not be necessary to take down arguments of counsel or statements of the court, except his rulings, when not made in the presence of the jury. [C97,§3675; C24, 27, 31, 35, 39,§**11458**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.11]

Impaneling jury. See R.C.P. 187.
(a) *Selection.*
(b) *Oath or examination.*
(c) *Challenges.*
(d) *To panel.*
(e) *To juror.*
(f) *For cause.*
(g) *Number—striking.*
(h) *Vacancies.*
(i) *Jury sworn.*

Saturday a religious day. See R.C.P. 188.

Alternate jurors. See R.C.P. 189.

Returning ballots to box. See R.C.P. 190.

624.12 Panel exhausted. If for any reason the regular panel is exhausted without a jury being selected, it shall be completed in the manner provided in the chapters upon selecting, drawing, and summoning juries. [C97, §3698; C24, 27, 31, 35, 39,§**11482**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.12]

Juries, see ch 607 et seq.
Similar provision, §779.2

Rendering verdict and answering interrogatories. See R.C.P. 203.

(*a*) *Number.*
(*b*) *Return—poll.*
(*c*) *Sealed.*

Procedure after jury sworn. See R.C.P. 191.

624.13 Interlocutory questions. Upon interlocutory questions, the party moving the court or objecting to testimony shall be heard first; the respondent may then reply by one counsel, and the mover rejoining, confining his remarks to the points first stated and a pertinent answer to respondent's argument. Argument on the questions shall then be closed, unless further requested by the court. [R60,§3046; C73, §2779; C97,§3700; C24, 27, 31, 35, 39,§**11486**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.13]

Arguments. See R.C.P. 195.

Instructions. See R.C.P. 196.

View. See R.C.P. 194.

624.14 Juror as witness. Section 780.17 shall be applicable to the trial of civil cases. [C27, 31, 35,§11496-b1; C39,§**11496.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.14]

Separation and deliberation of jury. See R.C.P. 199.

Discharge—retrial. See R.C.P. 200.

Adjournments. See R.C.P. 193.
For admonishing a jury on adjournment, see rule 199(a)

What jury may take. See R.C.P. 198.

Court open for verdict. See R.C.P. 201.

Further testimony for mistake. See R.C.P. 192.

Additional instructions. See R.C.P. 197.

Food and lodging. See R.C.P. 202.

Special verdicts. See R.C.P. 205.

Interrogatories. See R.C.P. 206.

Form and entry of verdicts. See R.C.P. 204.
For judgment on verdict, see rule 223

Reference. See R.C.P. 207.

Compensation. See R.C.P. 208.

Powers. See R.C.P. 209.

Filing report. See R.C.P. 213.

Disposition. See R.C.P. 214.

Speedy hearing. See R.C.P. 210.

Witnesses. See R.C.P. 211.

Accounts. See R.C.P. 212.

Exceptions unnecessary. See R.C.P. 180.
This rule has nothing to do with bills of exceptions to complete an otherwise incomplete record, for which see rule 241.

Bill of exceptions. See R.C.P. 241.
(*a*) *When necessary.*
(*b*) *Affidavits.*
(*c*) *Certification—judge—bystanders.*
(*d*) *Disability.*

624.15 Must be on material point. No exception shall be regarded in an appellate court unless the ruling has been on a material point, and the effect thereof prejudicial to the rights of the party excepting. [R60,§3111; C73,§2836; C97,§3754; C24, 27, 31, 35, 39,§**11548**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.15; 66GA, ch 1241,§65]
Errors disregarded, §619.16
Similar provision, §786.4

New trial defined. See R.C.P. 242.

Judgment notwithstanding verdict, etc. See R.C.P. 243.
See also rule 244(i)

New trial. See R.C.P. 244.
For setting aside defaults, see rule 236; other new trials, see rules 251 and 252

Motion—affidavits. See R.C.P. 245.

Stay. See R.C.P. 246.

Time for motions and exceptions. See R.C.P. 247.

Conditional rulings on grant of motion. See R.C.P. 248.

Issues tried by consent—amendment. See R.C.P. 249.

624.16 Costs of new trial. The cost of all new trials shall either abide the event of the action or be paid by the party to whom such new trial is granted, according to the order of the court, to be made at the time of granting such new trial. [R60,§3117; C73,§2840; C97, §3762; C24, 27, 31, 35, 39,§**11560**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.16]

Conditional new trial. See R.C.P. 250.

Voluntary dismissal. See R.C.P. 215.

Uniform rule for dismissal for want of prosecution. See R.C.P. 215.1.

Involuntary dismissal. See R.C.P. 216.

Effect of dismissal. See R.C.P. 217.

Costs of previously dismissed action. See R.C.P. 218.

Judgment defined. See R.C.P. 219.

For part — in abatement. See R.C.P. 220.
Bar or abatement, see also rule 103

624.17 Special execution — pleading. Where any other than a general execution of the com-

mon form is required, the party must state in his pleading the facts entitling him thereto, and the judgment may be entered in accordance with the finding of the court or jury thereon. [R60,§3125; C73,§2852; C97,§3772; C24, 27, 31, 35, 39,§11570; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.17]

As to some parties only. See R.C.P. 221.

See also rule 74

Relief in other cases. See R.C.P. 235.

Judgment on the pleadings, etc. See R.C.P. 222.

On verdict. See R.C.P. 223.

For judgment on special verdict, see rule 205.

For judgment on election by standing on or failing to amend pleading, see rule 86.

Principal and surety—order of liability. See R.C.P. 224.

See rule 41.

On counterclaim—excess. See R.C.P. 225.

By agreement. See R.C.P. 226.

624.18 Distinction between debt and damages. In all actions where the plaintiff recovers a sum of money, the amount to which he is entitled may be awarded him by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of debt or damages. [R60,§3144; C73, §2862; C97,§3782; C24, 27, 31, 35, 39,§11580; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.18]

624.19 Court acting as jury. The provisions of this chapter relative to juries are intended to be applied to the court when acting as a jury on the trial of a cause, so far as they are applicable and not incompatible with other provisions herein contained. [C51,§1823; R60,§3145; C73,§2863; C97,§3783; C24, 27, 31, 35, 39,§11581; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.19]

Entry. See R.C.P. 227.

See rule 120.

Taxation of costs. See R.C.P. 227.1.

Notes surrendered. See R.C.P. 228.

624.20 Satisfaction of judgment. Where a judgment is set aside or satisfied by execution or otherwise, the clerk shall at once enter a memorandum thereof on the column left for that purpose in the judgment docket. [C51, §1819; R60,§3141; C73,§2865; C97,§3785; C24, 27, 31, 35, 39,§11583; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.20]

40ExGA, SF 231,§3, editorially divided

624.21 Complete record. In cases where the title to land is involved and expressly settled or determined, the clerk shall make a complete record of the whole cause, except abstracts of title attached to the pleadings, and enter it in the proper book. In no other case need a complete entry be made, except at the request of either party, which party shall pay the costs of said entry. [C51,§1817; R60,§3142; C73,§2866; C97,§3785; C24, 27, 31, 35, 39,§11584; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.21]

Affidavit of identity. See R.C.P. 229.

Judgment discharged on motion. See R.C.P. 256.

Fraudulent assignment — motion. See R.C.P. 257.

Default defined. See R.C.P. 230.

How entered. See R.C.P. 231.

Setting aside default. See R.C.P. 236.

For new trial after 60 days, see rules 251–253.

Judgment on default. See R.C.P. 232.

See rules 13, 14, 17 and 71 as to hearings on default against incompetents, prisoners, etc., and guardians ad litem therein.

See rules 46 and 47 as to required hearing in defaulted class suit.

Notice — notice of default in certain cases. See R.C.P. 233.

Retrial after published notice. See R.C.P. 251.

(*a*) *Retrial.*

(*b*) *New judgment.*

For effect on title of good faith purchaser, see rule 254.

On published service. See R.C.P. 234.

624.22 Personal judgment — when authorized. A personal judgment may be rendered against a defendant, whether he appears or not, who has been served in any mode provided in this Code other than by publication, whether served within or without this state, if such defendant is a resident of the state. [R60,§3164; C73,§2881; C97,§3800; C24, 27, 31, 35, 39,§11601; C46, 50, 54, 58, 62, 66, 71, 73, 75, §624.22]

624.23 Liens of judgments. Judgments in the appellate or district courts of this state, or in the circuit or district court of the United States within the state, are liens upon the real estate owned by the defendant at the time of such rendition, and also upon all he may subsequently acquire, for the period of ten years from the date of the judgment. [C51,§§2485, 2489; R60,§§4105, 4109; C73,§2882; C97,§3801; C24, 27, 31, 35, 39,§11602; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.23; 66GA, ch 1241,§66]

Referred to in §232.51
Judgment lien, §123.113
Special limitations on judgments, ch 615

624.24 When judgment lien attaches. When the real estate lies in the county wherein the judgment of the district court of this state or of the circuit or district courts of the United States was entered in the judgment docket and lien index kept by the clerk of the court having jurisdiction, the lien shall attach from the date of such entry of judgment, but if in another it will not attach until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the real estate lies. [C51,§§2486, 2487; R60,§§4106, 4107; C73,§§2883, 2884; C97,§3802; S13,§3802; C24, 27, 31, 35, 39,§**11603**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.24]

624.25 Appellate court judgments. The lien of judgments of the appellate courts of Iowa shall not attach to any real estate until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the real estate lies. [S13, §3802; C24, 27, 31, 35, 39,§**11604**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.25; 66GA, ch 1241,§67]

624.26 Docketing transcript. Such clerk shall, on the filing of such transcript of the judgment of the appellate or district court of this state or of the circuit or district court of the United States in his office, immediately proceed to docket and index the same, in the same manner as though rendered in the court of his own county. [C51,§2488; R60,§4108; C73, §2885; C97,§3803; C24, 27, 31, 35, 39,§**11605**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.26; 66GA, ch 1241,§68]

624.27 Judgment against railway. A judgment against any railway, interurban railway, or street railway corporation or copartnership, for an injury to any person or property, and any claim for compensation under the workers' compensation Act for personal injuries sustained by their employees arising out of and in the course of their employment, shall be a lien upon the property of such corporation or copartnership within the county where the judgment was recovered or in which occurred the injury for which compensation is due. [C73,§1309; C97,§2075; C24, 27, 31, 35, 39,§**11606**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.27; 66GA, ch 1084,§43]

37GA, ch 403,§1, editorially divided

624.28 Priority. Said lien shall be prior and superior to the lien of any mortgage or trust deed executed since July 4, 1862, by any railway corporation or partnership, and prior and superior to the lien of any mortgage or trust deed executed after August 9, 1897, by any interurban railway or street railway corporation or copartnership. [C73,§1309; C97,§2075; C24, 27, 31, 35, 39,§**11607**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.28]

On what claims. See R.C.P. 237.

(a) For claimant.
(b) For defending party.
(c) Motion and proceedings thereon.
(d) Case not fully adjudicated on motion.
(e) Form of affidavits—further testimony—defense required.
(f) When affidavits are unavailable.
(g) Affidavits made in bad faith.

Procedure. See R.C.P. 238.

On motion in other cases. See R.C.P. 239.

Procedure. See R.C.P. 240.

For declaratory judgments, a species of special action, see rule 261, et seq.

624.29 Conveyance by commissioner. Real property may be conveyed by a commissioner appointed by the court:

1. Where, by judgment in an action, a party is ordered to convey such property to another.

2. Where such property has been sold under a judgment or order of the court, and the purchase price has been paid. [R60,§3165; C73, §2886; C97,§3805; C24, 27, 31, 35, 39,§**11613**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.29]

624.30 Deed. The deed of the commissioner shall refer to the judgment, orders, and proceedings authorizing the conveyance. [R60, §3166; C73,§2887; C97,§3806; C24, 27, 31, 35, 39, §**11614**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.30]

624.31 Conveys title. A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land. [R60,§3167; C73,§2888; C97,§3807; C24, 27, 31, 35, 39,§**11615**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.31]

624.32 Other parties. A conveyance made in pursuance of a sale ordered by the court shall pass to the grantee the title of all the parties to the action or proceeding. [R60,§3168; C73,§2889; C97,§3808; C24, 27, 31, 35, 39,§**11616**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.32]

624.33 Approval by court. A conveyance by a commissioner shall not pass any right until it has been approved by the court, which approval shall be endorsed on the conveyance and recorded with it. [R60,§3169; C73,§2890; C97,§3809; C24, 27, 31, 35, 39,§**11617**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§624.33]

624.34 Form. The conveyance shall be signed by the commissioner only, without affixing the names of the parties whose title is conveyed, but the names of such parties shall be recited in the body of the conveyance. [R60,§3170; C73,§2891; C97,§3810; C24, 27, 31, 35, 39,§**11618**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §624.34]

624.35 Recorded. The conveyance shall be recorded in the office in which, by law, it should have been recorded had it been made by the parties whose title is conveyed by it. [R60,§3171; C73,§2892; C97,§3811; C24, 27, 31, 35, 39,§**11619**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §624.35]

624.36 Repealed by 62GA, ch 400,§164.

624.37 Satisfaction of judgment — penalty. When the amount due upon judgment is paid off, or satisfied in full, the party entitled to the proceeds thereof, or those acting for him, must acknowledge satisfaction thereof upon the record of such judgment, or by the execution of an instrument referring to it, duly acknowledged and filed in the office of the clerk in every county wherein the judgment is a lien. A failure to do so for thirty days after having been requested in writing shall subject the delinquent party to a penalty of fifty dollars, to be recovered in an action therefor by the party aggrieved. [C97,§3804; C24, 27, 31, 35, 39,§**11621**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §624.37]

DECLARATORY JUDGMENTS

Declaratory judgments permitted. See R.C.P. 261.

Construing contracts, etc. See R.C.P. 262.

Before or after breach. See R.C.P. 263.

Fiduciaries, beneficiaries. See R.C.P. 264.

Discretionary. See R.C.P. 265.

Supplemental relief. See R.C.P. 266.

Review. See R.C.P. 267.

Jury trial. See R.C.P. 268.

"Person." See R.C.P. 269.

624.38 Minor's liability for own acts. The provisions of section 613.16 shall not limit any liability of any minor for his own acts and shall not limit any liability imposed by the common law or by any other provision of the Code. [C71, 73, 75,§624.38]

CHAPTER 625

COSTS

625.1 Recoverable by successful party.
625.2 Witness fees—limitation.
625.3 Apportionment generally.
625.4 Apportionment among numerous parties.
625.5 Liability of successful party.
625.6 Cost of procuring testimony.
625.7 Postage.
625.8 Jury fees—report.
625.9 Transcripts—retaxation.
625.10 Defense arising after action brought.
625.11 Dismissal of action or abatement.
625.12 Between coparties.
625.13 Dismissal for want of jurisdiction.
625.14 Costs taxable.
625.15 Liability of nonparty.
625.16 Retaxation.
625.17 Liability of clerk.
625.18 Bill of costs on appeal.
625.19 Costs in appellate court.
625.20 Repealed by 66GA, ch 249,§2.
625.21 Interest.
625.22 Attorney's fees.
625.23 Limitations.
625.24 Affidavit required.
625.25 Opportunity to pay.

625.1 Recoverable by successful party. Costs shall be recovered by the successful against the losing party. [C51,§1811; R60,§3449; C73,§2933; C97,§3853; S13,§3853; C24, 27, 31, 35, 39,§**11622**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §625.1]

40GA, ch 269,§1, editorially divided

625.2 Witness fees—limitation. The losing party, however, shall not be assessed with the cost of mileage of any witness for a distance of more than one hundred miles from the place of trial, unless otherwise ordered by the court at the time of entering judgment. [S13,§3853; C24, 27, 31, 35, 39,§**11623**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.2]

625.3 Apportionment generally. Where the party is successful as to a part of his demand, and fails as to part, unless the case is otherwise provided for, the court on rendering judgment may make an equitable apportionment of costs. [C51,§1811; R60,§3449; C73,§2933; C97,§3853; S13,§3853; C24, 27, 31, 35, 39,§**11624**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.3]

625.4 Apportionment among numerous parties. In actions where there are several plaintiffs or several defendants, the costs shall be apportioned according to the several judgments rendered; and where there are several causes of action embraced in the same petition, or several issues, the plaintiff shall recover costs upon the issues determined in his favor, and the defendant upon those determined in his favor. [R60,§3451; C73,§2934; C97,§3854; C24, 27, 31, 35, 39,§**11625**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.4]

Apportionment between heirs and devisees, §633.476

625.5 Liability of successful party. All costs accrued at the instance of the successful party, which cannot be collected of the other party, may be recovered on motion by the person entitled to them against the successful party. [R60,§3452; C73,§2935; C97,§3855; C24, 27, 31, 35, 39,§**11626**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §625.5]

625.6 Cost of procuring testimony. The necessary fees paid by the successful party in procuring copies of deeds, bonds, wills, or

other records filed as a part of the testimony shall be taxed in the bill of costs. [R60,§3453; C73,§2936; C97,§3856; C24, 27, 31, 35, 39,§**11627**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.6]

625.7 Postage. Postage paid by the officers of the court, or by the parties, in sending process, depositions, and other papers being part of the record, by mail, shall be taxed in the bill of costs. [R60,§3454; C73,§2937; C97, §3857; C24, 27, 31, 35, 39,§**11628**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.7]

625.8 Jury fees — report. There shall be taxed, in every action tried in a court of record by a jury, a jury fee of ten dollars, which, when collected, shall be paid by the clerk into the county treasury; all such fees, not previously reported, to be by him reported to the board of supervisors at each regular session, and by it charged to the treasurer. [C73,§3812; C97,§3872; C24, 27, 31, 35, 39,§**11629**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.8]

625.9 Transcripts—retaxation. The fees of shorthand reporters for making transcripts of the notes in any case or any portion thereof, as directed by any party thereto, shall be taxed as costs, as shall also the fees of the clerk for making any transcripts of the record required on appeal, but such taxation may be revised by an appellate court on motion on the appeal, without any motion in the lower court for the retaxation of costs. [C97,§3875; C24, 27, 31, 35, 39,§**11631**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.9; 66GA, ch 1241,§69]

625.10 Defense arising after action brought. When a pleading contains as a defense matter which arose after the commencement of the action, whether such matter of defense is pleaded alone or with other matter of defense which arose before the action, the party affected by such matter may confess the same, and shall be entitled to the costs of the action to the time of such pleading. [R60,§3455; C73, §2938; C97,§3858; C24, 27, 31, 35, 39,§**11632**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.10]

625.11 Dismissal of action or abatement. When a plaintiff dismisses the action or any part thereof, or suffers it to abate by the death of the defendant or other cause, or where the action abates by the death of the plaintiff, and his representatives fail to revive the same, judgment for costs may be rendered against such plaintiff or representative, and, if against a representative, shall be paid as other claims against the estate. [R60,§3456; C73,§2939; C97, §3859; C24, 27, 31, 35, 39,§**11633**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.11]

625.12 Between coparties. Coparties against whom judgment has been recovered are entitled, as between themselves, to a taxation of the costs of witnesses whose testimony was obtained at the instance of one of the coparties and inured exclusively to his benefits. [R60, §3457; C73,§2940; C97,§3860; C24, 27, 31, 35, 39, §**11634**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.12]

625.13 Dismissal for want of jurisdiction. Where an action is dismissed from any court for want of jurisdiction the costs shall be adjudged against the party attempting to institute or bring up the same. [R60,§3458; C73, §2941; C97,§3861; C24, 27, 31, 35, 39,§**11635**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.13]

625.14 Costs taxable. The clerk shall tax in favor of the party recovering costs the allowance of his witnesses, the fees of officers, the compensation of referees, the necessary expenses of taking depositions by commission or otherwise, and any further sum for any other matter which the court may have awarded as costs in the progress of the action, or may allow. [R60,§3459; C73,§2942; C97,§3862; C24, 27, 31, 35, 39,§**11636**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.14]

625.15 Liability of nonparty. In actions in which the cause of action shall, by assignment after the commencement thereof, or in any other manner, become the property of a person not a party to the action, such party shall be liable for the costs in the same manner as if he were a party. [R60,§3460; C73,§2943; C97,§3863; C24, 27, 31, 35, 39,§**11637**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.15]

625.16 Retaxation. Any person aggrieved by the taxation of a bill of costs may, upon application, have the same retaxed by the court, or by a referee appointed by the court in which the application or proceeding was had, and in such retaxation all errors shall be corrected. [C51,§1813; R60,§3461; C73,§2944; C97,§3864; C24, 27, 31, 35, 39,§**11638**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.16]

C97,§3864, editorially divided

625.17 Liability of clerk. If the party aggrieved shall have paid any unlawful charge by reason of the first taxation, the clerk shall pay the costs of retaxation, and also to the party aggrieved the amount which he may have paid by reason of the allowing of such unlawful charges. [C51,§1813; R60,§3461; C73, §2944; C97,§3864; C24, 27, 31, 35, 39,§**11639**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.17]

625.18 Bill of costs on appeal. In cases of appeals from a trial court, the supreme court clerk, if judgment is rendered in the supreme court or court of appeals or both, shall make a complete bill of costs in that court which shall be filed in the office of the clerk of the trial court and taxed with the costs in the action therein. [R60,§3462; C73,§2945; C97, §3865; C24, 27, 31, 35, 39,§**11640**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.18; 66GA, ch 1241,§70]

625.19 Costs in appellate court. When the costs accrued in the appellate courts and the trial court are paid to the clerk of the trial court, the clerk shall pay them to the persons entitled thereto. [R60,§3463; C73,§2946; C97, §3866; C24, 27, 31, 35, 39,§**11641**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.19; 66GA, ch 249,§1, ch 1241,§71]

625.20 Repealed by 66GA, ch 249,§2.

625.21 Interest. When the judgment is for the recovery of money, interest from the time of the verdict or report until judgment is finally entered shall be computed by the clerk and added to the costs of the party entitled thereto. [R60,§3466; C73,§2948; C97,§3868; C24, 27, 31, 35, 39,§**11643**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §625.21]

Interest on judgments, §535.3

625.22 Attorney's fees. When judgment is recovered upon a written contract containing an agreement to pay an attorney's fee, the court shall allow and tax as a part of the costs:

1. On the first two hundred dollars or fraction thereof recovered, ten percent.

2. On the excess of two hundred to five hundred dollars, five percent.

3. On the excess of five hundred to one thousand dollars, three percent.

4. On all sums in excess of one thousand dollars, one percent. [C97,§3869; C24, 27, 31, 35, 39,§**11644**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §625.22]

C97,§3869, editorially divided
Referred to in §625.24

625.23 Limitations. If action is commenced and the claim paid off before return day, the amount shall be one-half of the sum above provided, and if it is paid after the return day but before judgment, three-fourths of said sum; but no fee shall be allowed in any case if an action has not been commenced, or expense incurred, nor shall any greater sum be allowed, any agreement in the contract to the contrary notwithstanding. [C97,§3869; C24, 27, 31, 35, 39,§**11645**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.23]

Referred to in §625.24

625.24 Affidavit required. The attorney's fee allowed in sections 625.22 and 625.23 shall not be taxed in any case unless it shall appear by affidavit of the attorney, filed with the petition at the commencement of the action, that there has been, and is, no agreement between such attorney and his client, express or implied, nor between him and any other person, except a practicing attorney engaged with him as an attorney in the cause, for any division or sharing of the fee to be taxed, which, when taxed, shall be only in favor of a regular attorney and as compensation for services actually rendered in the action. [C97, §3870; C24, 27, 31, 35, 39,§**11646**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.24]

625.25 Opportunity to pay. No such attorney fee shall be taxed if the defendant is a resident of the county and the action is not aided by an attachment, unless it shall be made to appear that such defendant had information of and a reasonable opportunity to pay the debt before action was brought. This provision, however, shall not apply to contracts made payable by their terms at a particular place, the maker of which has not tendered the sum due at the place named in the contract. [C97,§3871; C24, 27, 31, 35, 39,§**11647**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§625.25]

CHAPTER 626

EXECUTIONS

Referred to in §422.26
See also reference in §639.23

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626.1 Enforcement of judgments and orders. Judgments or orders requiring the payment of money, or the delivery of the possession of property, are to be enforced by execution. Obedience to those requiring the performance of any other act is to be coerced by attachment as for a contempt. [C51,§1885; R60,§3247; C73, §3026; C97,§3954; C24, 27, 31, 35, 39,**§11648**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.1]

Contempts, ch 665; exceptions, §598.23
Enjoining enforcement, R.C.P. 329

626.2 Within what time—to what counties. Executions may issue at any time before the judgment is barred by the statute of limitations; and upon those in the district and appellate courts, into any county which the party ordering may direct. [C51,§§1886, 1888; R60, §§3246, 3248; C73,§§3025, 3027; C97,§3955; S13, §3955; C24, 27, 31, 35, 39,**§11649**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.2; 66GA, ch 1241,§72]

S13,§3955, editorially divided
Issuance prohibited, ch 615

626.3 Limitation on number. Only one execution shall be in existence at the same time. [R60,§3246; C73,§3025; C97,§3955; S13,§3955; C24, 27, 31, 35. 39,**§11650**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.3]

626.4 Lost writ. When the plaintiff in judgment shall file in any court in which a judgment has been entered an affidavit made by himself, his agent or attorney, or by the officer to whom the execution was issued, that an outstanding execution has been lost or destroyed, the clerk of such court may issue a duplicate execution as of the date of the lost execution, which shall have the same force and effect as the original execution, and any levy made under the execution so lost shall have the same force and effect under the duplicate execution as under the original. [S13, §3955; C24, 27, 31, 35, 39,**§11651**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.4]

626.5 Expiration of lost writ—effect. When the lost execution shall have expired by limitation and such affidavit is filed, an execution may issue as it might if such lost execution had been duly returned. [S13,§3955; C24, 27,

31, 35, 39,§11652; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.5]

626.6 Issuance on Sunday. An execution may be issued and executed on Sunday, when an affidavit is filed by the plaintiff, or some person in his behalf, stating that he believes he will lose his judgment unless process issues on that day. [R60,§3263; C73,§3028; C97,§3956; C24, 27, 31, 35, 39,§11653; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.6]

Analogous or related provisions, §§605.18, 639.5, 643.3, 667.3, and R.C.P. 57

626.7 Issuance on demand. Upon the rendition of judgment, execution may be at once issued by the clerk on the demand of the party entitled thereto. [R60,§3265; C73,§3029; C97, §3957; C24, 27, 31, 35, 39,§11654; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.7]

C97,§3957, editorially divided

626.8 Record kept. The clerk shall enter on the judgment docket the date of its issuance and to what county and officer issued, the return of the officer, with the date thereof; the dates and amount of all moneys received or paid out of the office thereon; which entries shall be made at the time each act is done. [R60,§3265; C73,§3029; C97,§3957; C24, 27, 31, 35, 39,§11655; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.8]

626.9 Entries in foreign county. In case execution is issued to a county other than that in which judgment is rendered, and is levied upon real estate in such county, an entry thereof shall be made upon the encumbrance book of that county by the officer making it, showing the same particulars as are required in case of the attachment of real estate, which shall be bound from the time of such entry. [R60,§3249; C73,§3031; C97,§3958; S13,§3958; C24, 27, 31, 35, 39,§11656; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.9]

S13,§3958, editorially divided

626.10 Duplicate returns and record. If real estate is sold under said execution said officer shall make return thereof in duplicate, one of which shall be appended to the execution and returned to the court from which it is issued, the other with a copy of the execution to the district court of the county in which said real estate is situated, which shall be filed by the clerk who shall make entries thereof in the sale book in the same manner as if such judgment had been rendered and execution issued from said court. [S13,§3958; C24, 27, 31, 35, 39, §11657; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.10]

626.11 Return from foreign county. When sent into any county other than that in which the judgment was rendered, return may be made by mail. Money cannot thus be sent, except by direction of the party entitled thereto, or his attorney. [C51,§1889; R60,§3250; C73,§3032; C97,§3959; C24, 27, 31, 35, 39,§11658; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.11]

626.12 Form of execution. The execution must intelligibly refer to the judgment, stating the time when and place at which it was rendered, the names of the parties to the action as well as to the judgment, its amount, and the amount still to be collected thereon, if for money; if not, it must state what specific act is required to be performed. If it is against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment and interest out of property of the debtor subject to execution. [C51,§1890; R60,§3251; C73,§3033; C97,§3960; C24, 27, 31, 35, 39,§11659; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.12]

626.13 Property in hands of others. If it is against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment and interest out of such property. [R60,§3252; C73,§3034; C97,§3961; C24, 27, 31, 35, 39,§11660; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.13]

626.14 Delivery of possession and money recovery. If it is for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require him to satisfy any costs, damages, or rents and profits, with interest, recovered by the same judgment, out of the property of the party against whom it was rendered subject to execution.

The value of the property for which judgment was recovered shall be specified therein, if a delivery thereof cannot be had, and it shall in that respect be regarded as an execution against property. [R60,§3253; C73,§3035; C97, §3962; C24, 27, 31, 35, 39,§11661; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.14]

626.15 Performance of other acts. When it requires the performance of any other act, a certified copy of the judgment may be served on the person against whom it is rendered, or upon the person or officer who is required thereby, or by law, to obey the same, and his obedience thereto enforced. [R60,§3254; C73, §3036; C97,§3963; C24, 27, 31, 35, 39,§11662; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.15]

626.16 Receipt and return. Every officer to whose hands an execution may come shall give a receipt therefor, if required, stating the hour when the same was received, and shall make sufficient return thereof, together with the money collected, on or before the seventieth day from the date of its issuance. [R60,§3255; C73,§3037; C97,§3964; C24, 27, 31, 35, 39,§11663; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.16]

Endorsement. See R.C.P. 259.

626.17 Principal and surety—order of liability. The clerk issuing an execution on a judgment against principal and surety shall state in the execution the order of liability recited in the judgment, and the officer serving it shall exhaust the property of the principal

first, and of the other defendants in the order of liability thus stated. To obtain the benefits of this section, the order of liability must be recited in the execution, and the officer holding it must separately return thereon the amount collected from the principal debtor and surety. [C51,§1915; R60,§§3258, 3260, 3261, 3303; C73, §§3039, 3041, 3042, 3071; C97,§3966; C24, 27, 31, 35, 39,§**11665**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.17]

C97,§3966, editorially divided
Referred to in §§588.1 [as §11665, Code 1939], 626.18
Analogous provisions, §626.64, and R.C.P. 224

626.18 Duty to point out property. Each person subsequently liable shall, if requested by the officer, point out property owned by the party liable, before him, to obtain the benefits of the provision of section 626.17. [R60,§3259; C73,§3040; C97,§3966; C24, 27, 31, 35, 39,§**11666**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.18]

Referred to in §588.1 [as §11666, Code 1939]

626.19 Surety subrogated. When the principal and surety are liable for any claim, such surety may pay the same, and recover thereon against all liable to him. If a judgment against principal and surety has been paid by the surety, he shall be subrogated to all the rights of the creditor, and may take an assignment thereof, and enforce the same by execution or otherwise, as the creditor could have done. All questions between the parties thereto may be heard and determined on motion by the court upon such notice as may be prescribed by it or him. [C97,§3967; C24, 27, 31, 35, 39, §**11667**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.19]

Referred to in §588.1 [as §11667, Code 1939]
See R.C.P. 239

Execution—duty of officer. See R.C.P. 258.

626.20 Entry on encumbrance book. If real estate is levied upon, except by virtue of a special execution issued in cases foreclosing recorded liens, the officer making the levy shall make an entry in the encumbrance book in the office of the clerk of the district court of the county where the real estate is located, which entry shall constitute notice to all persons of such levy. Such entry shall contain the number and title of the case, date of levy, date of the entry, amount claimed, description of the real estate levied upon, and signature of the officer. [C31, 35,§11668-c1; C39,§**11668.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.20]

Referred to in §588.1 [as §11668.1, Code 1939]
Analogous provision, §639.28

Levy on personalty. See R.C.P. 260.

626.21 Choses in action. Judgments, money, bank bills, and other things in action may be levied upon, and sold or appropriated thereunder, and an assignment thereof by the officer shall have the same effect as if made by the defendant. [C51,§1893; R60,§3272; C73,§3046; C97,§3971; C24, 27, 31, 35, 39,§**11672**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.21]

C97,§3971, editorially divided

626.22 Levy on judgment. The levy upon a judgment shall be made by entering upon the judgment docket a memorandum of such fact, giving the names of the parties plaintiff and defendant, the court from which the execution issued, and the date and hour of such entry, which shall be signed by the officer serving the execution, and a return made on the execution of his doings in the premises. [C97,§3971; C24, 27, 31, 35, 39,§**11673**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.22]

626.23 Persons indebted may pay officer. After the rendition of judgment, any person indebted to the defendant in execution may pay to the sheriff the amount of such indebtedness, or so much thereof as is necessary to satisfy the execution, and his receipt shall be a sufficient discharge therefor. [C51,§1894; R60,§3273; C73,§3047; C97,§3972; C24, 27, 31, 35, 39,§**11674**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §626.23]

626.24 Levy against municipal corporation—tax. If no property of a municipal corporation against which execution has issued can be found, or if the judgment creditor elects not to issue execution against such corporation, a tax must be levied as early as practicable to pay off the judgment. When a tax has been so levied and any part thereof shall be collected, the treasurer of such corporation shall pay the same to the clerk of the court in which the judgment was rendered, in satisfaction thereof. [C51,§1896; R60,§3275; C73,§3049; C97, §3973; C24, 27, 31, 35, 39, §**11675**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.24]

626.25 Unsecured interest in hands of third persons. Any interest which is not represented by a security as defined in the Uniform Commercial Code, section 554.8102, owned by the defendant in any company or corporation, and also debts due him and property of his in the hands of third persons, may be levied upon in the manner provided for attaching the same. [C51,§1892; R60,§3269; C73,§3050; C97,§3974; C24, 27, 31, 35, 39,§**11676**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.25]

Garnishment, ch 642

626.26 Garnishment. Property of the defendant in the possession of another, or debts due him, may be reached by garnishment. [R60,§3270; C73,§3051; C97,§3975; C24, 27, 31, 35, 39,§**11677**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §626.26]

626.27 Expiration or return of execution. Proceedings by garnishment on execution shall not be affected by its expiration or its return. [R60,§3271; C73,§3052; C97,§3976; C24, 27, 31, 35, 39,§**11678**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.27]

C97,§3976, editorially divided

626.28 Return of garnishment—action docketed. Where parties have been garnished under it, the officer shall return to the clerk of court a copy of the execution with all his

doings thereon, so far as they relate to the garnishments, and the clerk shall docket an action thereon without fee, and thereafter the proceedings shall conform to proceedings in garnishment under attachments as nearly as may be. [R60,§3271; C73,§3052; C97,§3976; C24, 27, 31, 35, 39,§**11679**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.28]

Garnishment, ch 642

626.29 Distress warrant by director of revenue. In the service of a distress warrant issued by the director of revenue for the collection of income tax, sales tax, freight line and equipment car tax or use tax, the property of the taxpayer in the possession of another, or debts due him, may be reached by garnishment. [C39,§**11679.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.29]

Referred to in §435.8
Garnishment, ch 642

626.30 Expiration or return of distress warrant. Proceedings by garnishment under a distress warrant issued by the Iowa director of revenue shall not be affected by its expiration or its return. [C39,§**11679.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.30]

626.31 Return of garnishment—action docketed. Where parties have been garnished under a distress warrant issued by the director of revenue, the officer shall make return thereof to the court in the county where the garnishee lives, if he lives in Iowa, otherwise in the county where the taxpayer resides, if he lives in Iowa; and if neither the garnishee nor the taxpayer lives in Iowa, then to the district court in Polk county, Iowa; the officer shall make return in the same manner as a return is made on a garnishment made under a writ of execution so far as they relate to garnishments, and the clerk of the district court shall docket an action thereon without fee the same as if a judgment had been recovered against the taxpayer in the county where the return is made, an execution issued thereon, and garnishment made thereunder, and thereafter the proceedings shall conform to proceedings in garnishment under attachments as nearly as may be. [C39,§**11679.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.31]

626.32 Joint or partnership property. When an officer has an execution against a person who owns property jointly or in common with another, such officer may levy on and take possession of the property owned jointly or in common, sufficiently to enable him to appraise and inventory the same, and for that purpose shall call to his assistance three disinterested persons, which inventory and appraisement shall be returned by the officer with the execution, and shall state in his return who claims to own the property. [C51, §1917; R60,§3287; C73,§3053; C97,§3977; C24, 27, 31, 35, 39,§**11680**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.32]

Analogous provisions, §639.37 et seq.

626.33 Lien — equitable proceeding — receiver. The plaintiff shall, from the time such property is so levied on, have a lien on the interest of the defendant therein, and may commence an action by equitable proceedings to ascertain the nature and extent of such interest and to enforce the lien; and, if deemed necessary or proper, the court may appoint a receiver under the circumstances provided in the chapter relating to receivers. [R60, §§3289–3291; C73,§3054; C97,§3978; C24, 27, 31, 35, 39,§**11681**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §626.33]

Receivers, ch 680

626.34 Personal property subject to security interest—payment. Personal property subject to a security interest not exempt from execution may be taken on attachment or execution issued against the debtor, if the officer, or the attachment or execution creditor, within ten days after such levy, shall pay to the secured party the amount of the secured debt and interest accrued, or deposit the same with the clerk of the district court of the county from which the attachment or execution issued, for the use of the secured party, or secure the same as in this chapter provided. [C97,§3979; C24, 27, 31, 35, 39,§**11682**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.34]

Applicable to attachments, §639.40

626.35 Interest on secured debt. When the secured debt is not due as shown by the security agreement, the officer or the attachment or execution creditor, must also pay or deposit with the clerk interest on the principal sum at the rate specified in the security agreement for the term of sixty days from the date of the deposit, unless the debt secured falls due in a less time, in which case interest shall be deposited for such shorter period. [C97,§3980; C24, 27, 31, 35, 39,§**11683**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.35]

626.36 Failure to pay, deposit, or give security. If within ten days after such levy the attachment or execution creditor does not pay the amount, make the deposit, or give the security required, the levy shall be discharged, and the property restored to the possession of the person from whom it was taken and the creditor shall be liable to the secured party for any damages sustained by reason of such levy. [C97,§3981; C24, 27, 31, 35, 39,§**11684**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.36]

626.37 Creditor subrogated. When such sum is paid to the secured party or deposited with the clerk, the attachment or execution creditor shall be subrogated to all the rights of such holder, and the proceeds of the sale of the collateral shall be first applied to the discharge of such indebtedness and the costs incurred under the writ of attachment or execution. [C97,§3982; C24, 27, 31, 35, 39,§**11685**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.37]

626.38 Holder reinstated. If, for any reason, the levy upon the collateral is discharged or

released without a sale thereof, the attachment or execution creditor who has paid or deposited the amount of the secured debt shall have all the rights under such security agreement possessed by the secured party at the time of the levy. If the secured party thereof desires to be reinstated in his rights thereunder, he may repay the money received by him, with interest thereon at the rate borne by the secured debt for the time it has been held by him, and demand the return of the security agreement, whereupon his rights thereunder shall revest in him, and the attachment or execution creditor shall be entitled to the deposit made, or any part thereof remaining in the hands of the clerk, or any money returned to the clerk by the secured party. [C97,§3983; C24, 27, 31, 35, 39,§11686; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.38]

626.39 Statement of amount due. The secured party, before receiving the money tendered to him by the attaching or execution creditor or which was deposited with the clerk, shall state by a signed memorandum the amount due or to become due and deliver the same along with the security agreement, unless it has been filed as the financing statement, to the person paying the said amount or the clerk with whom the deposit is made, and the secured party shall only receive the amount so stated to be due, and the surplus, if any, shall be returned to the person making the deposit. [C97,§3984; C24, 27, 31, 35, 39, §11687; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.39]

626.40 Indemnifying bond. When the attaching or execution creditor thus pays or deposits the amount of the claim under the security agreement, he shall not be required to give an indemnifying bond on notice to the sheriff by the holder of the security agreement of his right to the property thereunder, or if one has been given, it shall be released. [C97, §3985; C24, 27, 31, 35, 39,§11688; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.40]

626.41 Sale—costs—surplus. If under execution sale the collateral does not sell for enough to pay the secured debt, interest, and costs of sale, the judgment creditor shall be liable for all costs thus made, but if a greater sum is realized, the officer conducting the sale shall at once pay to the secured party the amount due thereunder, and apply the surplus on the execution. [C97,§3986; C24, 27, 31, 35, 39,§11689; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.41]

626.42 Statement of indebtedness. For the purpose of enabling the attaching or execution creditor to determine the amount to be tendered or deposited to hold the levy under the writ of attachment or execution, the person entitled to receive payment of the secured debt shall deliver to any such person, upon written demand therefor, a statement in writing under oath, showing the nature and amount of the original debt, the date and the amount of each payment, if any, which has been made thereon, and an itemized statement of the amount then due and unpaid. [C97, §3987; C24, 27, 31, 35, 39,§11690; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.42]

626.43 Contest as to validity or amount. If the right of the secured party to receive such or any sum is for any reason questioned by the levying creditor, he may, within ten days after levy, or after demand is made for a statement of the amount due as above provided, commence an action in equity or contest such right upon filing a bond in a penalty double the amount of such security interest, or double the value of the property levied upon, conditioned either for the payment of any sum found due on said security interest to the person entitled thereto, or for the value of the property levied upon, as the party ordering the levy may elect, with sureties to be approved by the clerk. [C97,§3988; S13,§3988; C24, 27, 31, 35, 39,§11691; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.43]

S13,§3988, editorially divided

626.44 Nonresident—service—transfer of action. If such secured party is a nonresident or his residence is unknown, service may be made by publication as in other actions, but if such residence becomes known before final submission, the court may order personal service to be made. If commenced at law, the court may transfer the same to the equity side as in other cases. [C97,§3988; S13,§3988; C24, 27, 31, 35, 39, §11692; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.44]

Service by publication, R.C.P. 60

626.45 Receiver—decree—costs. The court may appoint a receiver, and shall determine the amount due on the security agreement, the value of the property levied upon, and all other questions properly presented, and may continue and preserve or dismiss the lien of the levy, the costs to be taxed to the losing party as in other cases. [C97,§3988; S13,§3988; C24, 27, 31, 35, 39,§11693; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.45]

Costs, ch 625

626.46 Various security agreements—priority. If there are two or more security agreements, the creditor may admit the validity of one or more, and make the required deposit as to such, and contest the other, and where there are two or more such security agreements, each of which is questioned, a failure to establish the invalidity of all shall not defeat the rights of the levying creditor, but in such case the decree shall determine the priority of liens, and direct the order of payment out of the proceeds of the property which shall be sold under special execution to be awarded in said cause. [C97,§3988; S13,§3988; C24, 27, 31, 35, 39,§11694; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.46]

626.47 Other remedies. Nothing in this chapter contained shall be construed to forbid or in any way affect the right of a creditor to

contest in any other way the validity of any security agreement. [C97,§3988; S13,§3988; C24, 27, 31, 35, 39,§**11695**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.47]

626.48 Failure to make statement—effect. A failure to make the statement, when required as above provided, shall have the effect to postpone the priority of the security interest and give the levy of the writ of attachment or execution priority over the claim of the holder thereof. [C97,§3989; C24, 27, 31, 35, 39,§**11696**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.48]

626.49 Where secured party garnished. If the secured party, before the levy of a writ of attachment or execution, has been garnished at the suit of a creditor of a debtor, a creditor desiring to seize the collateral under a writ of attachment or execution shall pay to the secured party, or deposit with the clerk, in addition to the secured debt, the sum claimed under the garnishment, and the provisions of this chapter, so far as applicable, in all respects shall govern proceedings relating thereto. [C97,§3990; C24, 27, 31, 35, 39,§**11697**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.49]

626.50 Duty to levy—notice of ownership or exemption. An officer is bound to levy an execution on any personal property in the possession of, or that he has reason to believe belongs to, the defendant, or on which the plaintiff directs him to levy, unless he has received notice in writing under oath from some other person, his agent or attorney, that such property belongs to him; stating the nature of his interests therein, how and from whom he acquired the same, and consideration paid therefor; or from the defendant, that the property is exempt from execution. [C51,§1916; R60,§3277; C73,§3055; C97,§3991; C24, 27, 31, 35, 39,§**11698**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §626.50]

C97,§3991, editorially divided
Applicable to attachments, §639.41

626.51 Failure to give notice—effect. Failure to give such notice shall not deprive the party of any other remedy. [C97,§3991; C24, 27, 31, 35, 39,§**11699**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.51]

626.52 Right to release levy. If after levy he receives such notice, such officer may release the property unless a bond is given as provided in section 626.54. [C51,§1916; R60, §3277; C73,§3055; C97,§3991; C24, 27, 31, 35, 39, §**11700**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.52]

626.53 Exemption from liability. The officer shall be protected from all liability by reason of such levy until he receives such written notice. [C51,§1916; R60,§3277; C73,§3055; C97, §3991; C24, 27, 31, 35, 39,§**11701**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.53]

626.54 Indemnifying bond—sale and return. When the officer receives such notice he may forthwith give the plaintiff, his agent, or attorney, notice that an indemnifying bond is required. Bond may thereupon be given by or for the plaintiff, with one or more sufficient sureties, to be approved by the officer, to the effect that the obligors will indemnify him against the damages which he may sustain in consequence of the seizure or sale of the property, and will pay to any claimant thereof the damages he may sustain in consequence of the seizure or sale, and will warrant to any purchaser of the property such estate or interest therein as is sold; and thereupon the officer shall proceed to subject the property to the execution, and shall return the indemnifying bond to the court from which the execution issued. [R60,§3277; C73,§3056; C97,§3992; C24, 27, 31, 35, 39,§**11702**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.54]

Referred to in §626.52
Applicable to attachments, §639.41

626.55 Failure to give bond. If such bond is not given, the officer may refuse to levy, or if he has done so, and the bond is not given in a reasonable time after it is required by the officer, he may restore the property to the person from whose possession it was taken, and the levy shall stand discharged. [R60, §3278; C73,§3057; C97,§3993; C24, 27, 31, 35, 39, §**11703**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.55]

626.56 Application of proceeds. Where property for the sale of which the officer is indemnified sells for more than enough to satisfy the execution under which it was taken, the surplus shall be paid into the court to which the indemnifying bond is directed to be returned. The court may order such disposition or payment of the money to be made, temporarily or absolutely, as may be proper in respect to the rights of the parties interested. [R60,§3280; C73,§3059; C97,§3994; C24, 27, 31, 35, 39,§**11704**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.56]

626.57 Repealed by 64GA, ch 1124,§282.

626.58 Stay of execution—exceptions. On all judgments for the recovery of money, except those rendered on any appeal or writ of error, or in favor of a laborer or mechanic for his wages, or against one who is surety in the stay of execution, or against any officer, person, or corporation, or the sureties of any of them, for money received in a fiduciary capacity, or for the breach of any official duty, there may be a stay of execution, if the defendant therein shall, within ten days from the entry of judgment, procure one or more sufficient freehold sureties to enter into a bond, acknowledging themselves security for the payment of the judgment, interest, and costs from the time of rendering judgment until paid, as follows:

1. If the sum for which judgment was rendered, inclusive of costs, does not exceed one hundred dollars, three months.

2. If such sum and costs exceed one hundred dollars, six months. [R60,§3293; C73, §3061; C97,§3996; C24, 27, 31, 35, 39,§**11706**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.58]

626.59 Affidavit of surety. Officers approving stay bonds shall require the affidavit of the signers thereof, unless waived in writing by the party in whose favor the judgment is rendered, that they own property not exempt from execution, and aside from encumbrance, to the value of twice the amount of the judgment. [C73,§3062; C97,§3997; C24, 27, 31, 35, 39, §11707; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.59]

626.60 Stay waives appeal. No appeal shall be allowed after a stay of execution has been obtained. [R60,§3294; C73,§3063; C97,§3998; C24, 27, 31, 35, 39,§11708; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.60]

626.61 Bond — approval — recording—effect. The sureties for stay of execution may be taken and approved by the clerk, and the bond shall be recorded in a book kept for that purpose, and have the force and effect of a judgment confessed from the date thereof against their property, and shall be indexed in the proper judgment docket, as in case of other judgments. [R60,§§3295, 3298; C73,§3064; C97, §3999; C24, 27, 31, 35, 39,§11709; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.61]

626.62 Execution recalled. When the bond is accepted and approved after execution has been issued, the clerk shall immediately notify the sheriff of the stay, and he shall forthwith return the execution with his doings thereon. [R60,§3296; C73,§3065; C97,§4000; C24, 27, 31, 35, 39,§11710; C46, 50, 54, 58, 62, 66, 71, 73, 75, §626.62]

626.63 Property released. All property levied on before stay of execution, and all written undertakings for the delivery of personal property to the sheriff, shall be relinquished by the officer, upon stay of execution being entered. [R60,§3297; C73,§3066; C97,§4001; C24, 27, 31, 35, 39,§11711; C46, 50, 54, 58, 62, 66, 71, 73, 75, §626.63]

626.64 Execution against principal and sureties. At the expiration of the stay, the clerk shall issue a joint execution against the property of all the judgment debtors and sureties, describing them as debtors or sureties therein, and the liability of such sureties shall be subject to that of their principal as provided in this chapter. [R60,§3299; C73, §3067; C97,§4002; C24, 27, 31, 35, 39,§11712; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.64]

Analogous provisions, §626.17, R.C.P. 224

626.65 Objections by surety. When any court shall render judgment against two or more persons, any of whom is surety for any other in the contract on which judgment is founded, there shall be no stay of execution allowed, if the surety objects thereto at or before the time of rendering the judgment, whereupon it shall be ordered by the court that there be no stay, unless the surety for the stay of execution will undertake specifically to pay the judgment in case the amount thereof cannot be levied of the principal defendant, and the judgment shall recite that the liability of such stay is prior to that of the objecting surety. [R60,§3300; C73,§3068; C97,§4003; C24, 27, 31, 35, 39,§11713; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.65]

626.66 Stay terminated by surety. Any surety for the stay of execution may file with the clerk an affidavit, stating that he verily believes he will be compelled to pay the judgment, interest, and costs thereon unless execution issues immediately, and gives notice thereof in writing to the party for whom he is surety; and the clerk shall thereupon issue execution forthwith, unless other sufficient surety be entered before the clerk within five days after such notice is given as in other cases. [R60,§3301; C73,§3069; C97,§4004; C24, 27, 31, 35, 39,§11714; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.66]

626.67 Other security given. If other sufficient surety is given, it shall have the force of the original surety entered before the filing of the affidavit, and shall discharge the original surety. [R60,§3302; C73,§3070; C97,§4005; C24, 27, 31, 35, 39,§11715; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.67]

626.68 Lien not released. Where a stay of execution has been taken, such confessed judgment shall not release any judgment lien by virtue of the original judgment for the amount then due. [R60,§3303; C73,§3071; C97,§4006; C24, 27, 31, 35, 39,§11716; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.68]

626.69 Labor claims preferred. When the property of any company, corporation, firm, or person shall be seized upon by any process of any court, or placed in the hands of a receiver, trustee, or assignee, or their property shall be seized by the action of creditors, for the purpose of paying or securing the payment of the debts of such company, corporation, firm, or person, the debts owing to employees for labor performed within the ninety days next preceding the seizure or transfer of such property, to an amount not exceeding one hundred dollars to each person, shall be a preferred debt and paid in full, or if there is not sufficient realized from such property to pay the same in full, then, after the payment of costs, ratably out of the fund remaining. [C97,§4019; S13,§4019; C24, 27, 31, 35, 39,§11717; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.69]

Referred to in §§626.71, 680.7
S13,§4019, editorially divided
Labor claims preferred, §§633.425, 680.7, 681.13

626.70 Exceptions. Such preference shall be junior and inferior to mechanics' liens for labor in opening and developing coal mines. [C97,§4019; S13,§4019; C24, 27, 31, 35, 39,§11718; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.70]

626.71 Statement of claim—allowance. Any employee desiring to enforce his claim for wages, at any time after the seizure of the property under execution or writ of attachment

or under any other authority, and before sale thereof is ordered, shall present to the officer levying on such property or to such receiver, trustee, or assignee, or to the court having custody of such property or from which such process issued, or person charged with such property, a statement under oath, showing the amount due after allowing all just credits and setoffs, and the kind of work for which such wages are due, and when performed; and unless objection be made thereto as provided in section 626.72, such claim shall be allowed and paid to the person entitled thereto, after first paying all costs occasioned by the proceeding out of the proceeds of the sale of the property so seized or placed in the hands of a receiver, trustee, or assignee, or court, or person charged with the same, subject, however, to the provisions of section 626.69. [C97,§4020; S13,§4020; C24, 27, 31, 35, 39,§**11719**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.71]

626.72 Contest. Any person interested may contest any claim or part thereof by filing objections thereto, supported by affidavit, with such court, receiver, trustee, or assignee, and its validity shall be determined in the same way the validity of other claims are which are sought to be enforced against such property, provided that where the claim is filed with a person charged with the property other than the officers above enumerated and a contest is made, the cause shall be transferred to the district court, and there docketed and determined. [C97,§4021; S13,§4021; C24, 27, 31, 35, 39, §**11720**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.72]

Referred to in §626.71

626.73 Priority. Claims of employees for labor, if not contested, or if allowed after contest, shall have priority over all claims against or liens upon such property, except prior mechanics' liens for labor in opening or developing coal mines as allowed by law. [C97,§4022; C24, 27, 31, 35, 39,§**11721**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.73]

626.74 Notice of sale. The officer must give four weeks' notice of the time and place of selling real property, and three weeks' notice of personal property. [C51,§1905; R60,§3310; C73,§3079; C97,§4023; C24, 27, 31, 35, 39,§**11722**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.74]

Referred to in §626.77

626.75 Posting and publication—compensation. Notice shall be given by posting up in at least three public places of the county, one of which shall be at the place where the last district court was held. In addition to which, in case of the sale of real estate, or where personal property to the amount of two hundred dollars or upwards is to be sold, there shall be two weekly publications of such notice in some newspaper printed in the county, to be selected by the party causing the notice to be given, and the compensation for such publication shall be the same as is provided by law for legal notices. [C51,§1906; R60,§3311; C73, §3080; C97,§4024; S13,§4024; C24, 27, 31, 35, 39, §**11723**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.75]

Referred to in §§626.77, 751.26

626.76 Repealed by 64GA, ch 1124,§282.

626.77 Penalty for selling without notice. An officer selling without the notice prescribed in sections 626.74 and 626.75, shall forfeit one hundred dollars to the defendant in execution, in addition to the actual damages sustained by either party; but the validity of the sale is not thereby affected. [C51,§1907; R60,§3312; C73,§3081; C97,§4027; S13,§4027; C24, 27, 31, 35, 39,§**11725**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §626.77]

626.78 Notice to defendant. If the debtor is in actual occupation and possession of any part of the land levied on, the officer having the execution shall, at least twenty days previous to such sale, serve him with written notice, stating that the execution is levied on said land, and mentioning the time and place of sale, which notice shall be served in the manner provided by rule 56.1 "*a*" of the rules of civil procedure. [R60,§3318; C73,§3087; C97, §4025; S13,§4025; C24, 27, 31, 35, 39,§**11726**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.78]

S13,§4025, editorially divided
Referred to in §626.79

626.79 Setting aside sale. Sales made without the notice required in section 626.78 may be set aside on motion made within ninety days thereafter. [R60,§3318; C73,§3087; C97, §4025; S13,§4025; C24, 27, 31, 35, 39,§**11727**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.79]

626.80 Time and manner. The sale must be at public auction, between nine o'clock in the forenoon and four o'clock in the afternoon, and the hour of the commencement of the sale must be fixed in the notice. [C51,§1908; R60,§3313; C73,§3082; C97,§4028; C24, 27, 31, 35, 39,§**11728**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §626.80]

State or municipality as purchaser, ch 569

626.81 Sale postponed. When there are no bidders, or when the amount offered is grossly inadequate, or when from any cause the sale is prevented from taking place on the day fixed, or the parties so agree, the officer may postpone the sale for not more than three days without being required to give any further notice thereof, which postponement shall be publicly announced at the time the sale was to have been made, but not more than two such adjournments shall be made, except by agreement of the parties in writing and made a part of the return upon the execution. [C51,§1909; R60,§3314; C73,§3083; C97,§4029; C24, 27, 31, 35, 39,§**11729**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §626.81]

626.82 Overplus. When the property sells for more than the amount required to be collected, the overplus must be paid to the debtor, unless the officer has another execution in his

hands on which said overplus may be rightfully applied, or unless there are liens upon the property which ought to be paid therefrom, and the holders thereof make claim to such surplus and demand application thereon, in which case the officer shall pay the same into the hands of the clerk of the district court, and it shall be applied as ordered by the court. [C51,§1910; R60,§3315; C73,§3084; C97, §4030; C24, 27, 31, 35, 39,§**11730**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.82]

626.83 Deficiency — additional execution. If the property levied on sells for less than sufficient to satisfy the execution, the judgment holder may order out another, which shall be credited with the amount of the previous sale. The proceedings under the second execution shall conform to those hereinbefore prescribed. [C51,§1911; R60,§3316; C73,§3085; C97,§4031; C24, 27, 31, 35, 39,§**11731**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.83]

626.84 Plan of division of land. At any time before nine o'clock a.m. of the day of the sale, the debtor may deliver to the officer a plan of division of the land levied on, subscribed by him, and in that case the officer shall sell, according to said plan, so much of the land as may be necessary to satisfy the debt and costs, and no more. If no such plan is furnished, the officer may sell without any division. [R60,§3319; C73,§3088; C97,§4032; C24, 27, 31, 35, 39,§**11732**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.84]

626.85 Failure of purchaser to pay—optional procedure. When the purchaser fails to pay the money when demanded, the judgment holder or his attorney may elect to proceed against him for the amount; otherwise the sheriff shall treat the sale as a nullity, and may sell the property on the same day, or after postponement as above authorized. [C51, §1913; R60,§3320; C73,§3089; C97,§4033; C24, 27, 31, 35, 39,§**11733**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.85]

626.86 Sales vacated for lack of lien. When any person shall purchase at a sheriff's sale any real estate on which the judgment upon which the execution issued was not a lien at the time of the levy, and which fact was unknown to the purchaser, the court shall set aside such sale on motion, notice having been given to the debtor as in case of action, and a new execution may be issued to enforce the judgment, and, upon the order being made to set aside the sale, the sheriff or judgment creditor shall pay over to the purchaser the purchase money; said motion may also be made by any person interested in the real estate. [R60,§3321; C73,§3090; C97,§4034; C24, 27, 31, 35, 39,§**11734**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.86]

626.87 Money — things in action. Money levied upon may be appropriated without being advertised or sold, and so may bank bills, drafts, promissory notes, or other papers of the like character, if the plaintiff will receive them at their par value as cash, or if the officer can exchange them for cash at that value. [C51,§1914; R60,§3322; C73,§3091; C97,§4035; C24, 27, 31, 35, 39,§**11735**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.87]

626.88 Real estate of deceased judgment debtor. When a judgment has been obtained against a decedent in his lifetime, the plaintiff may file his petition in the office of the clerk of the court where the judgment is rendered, against the executor, the heirs, and devisees of real estate, if such there be, setting forth the facts, and that there is real estate of the deceased, describing its location and extent, and praying the court to award execution against the same. [C51,§1918; R60,§3323; C73,§3092; C97, §4036; C24, 27, 31, 35, 39,§**11736**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.88]

626.89 Notice. The person against whom the petition is filed shall be notified by the plaintiff to appear within twenty days following completion of service and show cause, if any he have, why execution should not be awarded. [C51,§1919; R60,§3324; C73,§3093; C97, §4037; C24, 27, 31, 35, 39,§**11737**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.89]

626.90 Service and return. The notice must be served and returned in the ordinary manner, and the same length of time shall be allowed for appearance as in civil actions, and service of such notice on nonresident defendants may be had in such cases by publication. [C51,§1920; R60,§3325; C73,§3094; C97,§4038; C24, 27, 31, 35, 39,§**11738**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.90]

See also R.C.P. 53
Service by publication, R.C.P.

626.91 Execution awarded. At the proper time, the court shall award the execution, unless sufficient cause is shown to the contrary, but the nonage of the heirs or devisees shall not be held such sufficient cause. [C51, §§1921, 1922; R60,§§3326, 3327; C73,§§3095, 3096; C97,§4039; C24, 27, 31, 35, 39,§**11739**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.91]

626.92 Mutual judgments—setoff. Mutual judgments, executions on which are in the hands of the same officer, may be set off the one against the other, except the costs, but if the amount collected on the large judgment is sufficient to pay the costs of both, such costs shall be paid therefrom. [C51,§1923; R60,§3328; C73,§3097; C97,§4040; C24, 27, 31, 35, 39,§**11740**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.92]

626.93 Personal property and leasehold interests—appraisement. Personal property, and leasehold interests in real property having less than two years of an unexpired term, levied upon and advertised for sale on execution, must be appraised before sale by two disinterested householders of the neighborhood, one of whom shall be chosen by the execution

debtor and the other by the plaintiff, or, in case of the absence of either party, or if either or both parties neglect or refuse to make choice, the officer making the levy shall choose one or both, as the case may be, who shall forthwith return to said officer a just appraisement, under oath, of said property if they can agree; if they cannot, they shall choose another disinterested householder, and with his assistance shall complete such appraisement, and the property shall not, upon the first offer, be sold for less than two-thirds of said valuation; but if offered at the same place and hour of the day as advertised upon three successive days, and no bid is received equal to two-thirds of the appraised value thereof, then it may be sold for one-half of said valuation. [C73,§3100; C97,§4041; C24, 27, 31, 35, 39,§**11741**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.93]

Referred to in §626.94

626.94 Property unsold—optional procedure. Subject to the provisions of section 626.93, when property is unsold for want of bidders, the levy still holds good; and, if there be sufficient time, it may again be advertised, or the execution returned and one issued commanding the officer to sell the property, describing it, previously levied on, to which a clause may be added that, if such property does not produce a sum sufficient to satisfy such execution, the officer shall proceed to make an additional levy, on which he shall proceed as on other executions; or the plaintiff may, in writing filed with the clerk, abandon such levy, upon paying the costs thereof; in which case execution may issue with the same effect as if none had ever been issued. [C51,§1912; R60, §3317; C73,§3086; C97,§4042; C24, 27, 31, 35, 39, §**11742**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.94]

626.95 Deed or certificate. If the property sold is not subject to redemption, the sheriff must execute a deed therefor to the purchaser; but, if subject to redemption, a certificate, containing a description of the property and the amount of money paid by such purchaser, and stating that, unless redemption is made within one year thereafter, or such other time as may be specifically provided for particular actions according to law, he or his heirs or assigns will be entitled to a deed for the same. [C51, §1925; R60,§3331; C73,§3101; C97,§4044; C24, 27, 31, 35, 39,§**11743**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.95]

626.96 Duplicate issued in case of loss. When any person, firm, or corporation to whom a sheriff's certificate of sale has been issued or an assignee thereof shall file in the office of the clerk of the district court in which the certificate was issued and in said action, a verified application signed by the purchaser or assignee, his agent, legal representative or attorney that the outstanding sheriff's certificate of sale in said action has been lost or destroyed, the court shall fix a time for hearing thereon and prescribe the notice therefor and the manner of service thereof on the parties to said action or their successors in interest, and on said hearing if the court finds that the sheriff's certificate of sale issued in said cause has been lost or destroyed, shall order the sheriff of said county to issue a duplicate certificate of sale as of the date of the original certificate which shall have the same force and effect as the original, and any deed executed thereunder shall have the same force and effect as if executed under the original certificate of sale. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.96]

626.97 Cancellation after eight years. After eight years have elapsed from the date of issuance of any sheriff's certificate of sale, and no action has been taken by the holder of such certificate to obtain a deed thereunder, it shall be the duty of the sheriff and clerk of the district court to cancel such sale and certificate of record and all rights thereunder shall be barred. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.97]

626.98 Deed. If the debtor or his assignee fails to redeem, the sheriff then in office must, at the end of the period for redemption provided by law for the particular action, execute a deed to the person who is entitled to the certificate as hereinbefore provided, or to his assignee. If the person entitled is dead, the deed shall be made to his heirs. [C51,§1946; R60,§3354; C73,§§348, 3124; C97,§4062; C24, 27, 31, 35, 39,§**11744**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.98]

626.99 Constructive notice—recording. The purchaser of real estate at a sale on execution need not place any evidence of his purchase upon record until sixty days after the expiration of the full time of redemption. Up to that time the publicity of the proceedings is constructive notice of the rights of the purchaser. [C51,§1947; R60,§3355; C73,§3125; C97,§4063; C24, 27, 31, 35, 39,§**11745**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.99]

626.100 Presumption. Deeds executed by a sheriff in pursuance of the sales contemplated in this chapter are presumptive evidence of the regularity of all previous proceedings in the case, and may be given in evidence without preliminary proof. [C51,§1948; R60,§3356; C73,§3126; C97,§4064; C24, 27, 31, 35, 39,§**11746**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.100]

626.101 Damages for injury to property. When real estate has been sold on execution, the purchaser thereof, or any person who has succeeded to his interest, may, after his estate becomes absolute, recover damages for any injury to the property committed after the sale and before possession is delivered under the conveyance. [C51,§1949; R60,§3357; C73, §3127; C97,§4065; C24, 27, 31, 35, 39,§**11747**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.101]

Recovery for waste, §658.7

626.102 Repealed by 64GA, ch 1124,§282.

626.103 Death of holder of judgment. The death of any or all of the joint owners of a judgment shall not prevent an execution being issued thereon, but on any such execution the clerk shall endorse the fact of the death of such of them as are dead, and if all are dead, the names of their personal representatives, if the judgment passed to the personal representatives, or the names of the heirs of such deceased person, if the judgment was for real property. [R60,§3482; C73,§3130; C97,§4067; C24, 27, 31, 35, 39,§**11749**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.103]

626.104 Officer's duty. In acting upon an execution, so endorsed, the sheriff shall proceed as if the surviving owners, or the personal representatives or heirs as above provided, were the only owners of the judgment upon which it was issued, and take bonds accordingly. [R60,§3483; C73,§3131; C97,§4068; C24, 27, 31, 35, 39,§**11750**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.104]

626.105 Affidavit required. Before making the endorsements as above provided, an affidavit shall be filed with the clerk by one of the owners of such judgment, or one of such personal representatives or heirs, or their attorney, of the death of such owners as are dead, and that the persons named as such are the personal representatives or heirs, and in the case of personal representatives they shall file with the clerk a certificate of their qualification, unless their appointment is by the court from which the execution issues, in which case the record of such appointment shall be sufficient evidence of the fact. [R60, §3484; C73,§3132; C97,§4069; C24, 27, 31, 35, 39, §**11751**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.105]

626.106 Execution quashed. Any debtor in such a judgment may move the court to quash an execution on the ground that the personal representatives or heirs of a deceased judgment creditor are not properly stated in the endorsement on the execution. [R60,§3486; C73, §3134; C97,§4070; C24, 27, 31, 35, 39,§**11752**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.106]

Injunctions, ch 664

626.107 Death of part of defendants. The death of part of the joint debtors in a judgment shall not prevent execution being issued thereon, but, when issued, it shall operate alone on the survivors and their property. [R60,§3485; C73,§3133; C97,§4071; C24, 27, 31, 35, 39,§**11753**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §626.107]

626.108 Fee bill execution. After the expiration of sixty days from the rendition of a final judgment not appealed, removed, or reversed, the clerk of the court may, and, upon demand of any party entitled to any part thereof, shall, issue a fee bill for all costs of such judgment, which shall have the same force and effect as an execution issued by such officer; and shall be served and executed in the same manner. [C73,§3842; C97,§1299; C24, 27, 31, 35, 39, §**11754**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§626.108]

CHAPTER 627

EXEMPTIONS

Avails of life and accident insurance and wrongful death, §§511.37, 633.333, 633.336

627.1 "Family" defined.
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627.3 Failure to claim exemption.
627.4 Absconding debtor.
627.5 Purchase money.
627.6 General exemptions.
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627.10 Repealed by 64GA, ch 270,§2.
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627.13 Workers' compensation.
627.14 Unmarried persons—nonresidents.
627.15 Persons starting to leave the state.
627.16 Wages of nonresidents—garnishment.
627.17 Sending claims out of state.
627.18 Public property.
627.19 Adopted child assistance.

627.1 "Family" defined. The word "family", as used in this chapter, does not include strangers or boarders lodging with the family. [C51,§1900; R60,§3306; C73,§3073; C97,§4012; C24, 27, 31, 35, 39,§**11755**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.1]

627.2 Who deemed resident. Any person coming into this state with the intention of remaining shall be considered a resident. [C51,§1902; R60,§3308; C73,§3076; C97,§4014; C24, 27, 31, 35, 39,§**11756**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.2]

C97,§4014, editorially divided

627.3 Failure to claim exemption. Any person entitled to any of the exemptions mentioned in this chapter does not waive his rights thereto by failing to designate or select such exempt property, or by failing to object to a levy thereon, unless he fails or neglects to do so when required in writing by the officer about to levy thereon. [C51,§§1898, 1899; R60, §§3304, 3305, 3308; C73,§3072; C97,§4017; C24, 27, 31, 35, 39,§**11757**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.3]

627.4 Absconding debtor. When a debtor absconds and leaves the debtor's family, such

property as is exempt to the debtor under this chapter shall be exempt in the hands of the debtor's spouse and children, or either of them. [R60,§3309; C73,§3078; C97,§4016; C24, 27, 31, 35, 39,§**11758**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.4]

627.5 Purchase money. None of the exemptions prescribed in this chapter shall be allowed against an execution issued for the purchase money of property claimed to be exempt, and on which such execution is levied. [C73,§3077; C97,§4015; C24, 27, 31, 35, 39,§**11759**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.5]

627.6 General exemptions. If the debtor is a resident of this state and the head of a family, he may hold exempt from execution the following property:

1. All wearing apparel of himself and family kept for actual use and suitable to their condition, and the trunks or other receptacles necessary to contain the same.
2. One musket or rifle and shotgun.
3. All private libraries, family Bibles, portraits, pictures, musical instruments, and paintings not kept for the purpose of sale.
4. A seat or pew occupied by the debtor or his family in any house of public worship.
5. An interest in a public or private burying ground, not exceeding one acre for any defendant.
6. Two cows and two calves.
7. Fifty sheep and the wool therefrom and the materials manufactured from such wool.
8. Six stands of bees.
9. Five hogs, and all pigs under six months.
10. The necessary food for all animals exempt from execution for six months.
11. One bedstead and the necessary bedding for every two in the family.
12. All cloth manufactured by the defendant, not exceeding one hundred yards in quantity.
13. Household and kitchen furniture, not exceeding two hundred dollars in value.
14. All spinning wheels and looms.
15. One sewing machine and other instruments of domestic labor kept for actual use.
16. The necessary provisions and fuel for the use of the family for six months.
17. The proper tools, instruments, or books of the debtor, if a farmer, mechanic, surveyor, professional engineer, architect, clergyman, lawyer, physician, dentist, teacher, or professor.
18. If the debtor is a physician, public officer, farmer, teamster, or other laborer, a team consisting of not more than two horses or mules, or two yoke of cattle, and the wagon or other vehicle, with the proper harness or tackle, by the use of which he habitually earns his living, otherwise one horse.
19. If a printer, a printing press and the types, furniture, and material necessary for the use of such printing press and a newspaper office connected therewith, not to exceed in all the value of twelve hundred dollars.
20. Poultry to the value of fifty dollars.
21. If the debtor is a resident of this state and is the head of a family, and does not own one or more of the foregoing items of property, the spouse, if the spouse owns one or more such items, and is the debtor, shall be entitled to hold such items except from execution. [C51,§§1898, 1899; R60,§§3304, 3305, 3308; C73,§3072; C97,§4008; C24, 27, 31, 35, 39,§**11760**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.6]

Exemptions denied, §123.113
Insurance, proceeds of, §511.37
Judgment for exempt property, §643.22

627.7 Motor vehicle. No motor vehicle shall be held exempt from any order, judgment, or decree for damages occasioned by the use of said motor vehicle upon a public highway of this state. [C31, 35,§11760-c1; C39,§**11760.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.7]

627.8 Pension money. All money received by any person, a resident of the state, as a pension from the United States government, whether the same shall be in the actual possession of such pensioner, or deposited, loaned, or invested by him, shall be exempt from execution, whether such pensioner shall be the head of a family or not. [C97,§4009; C24, 27, 31, 35, 39,§**11761**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.8]

627.9 Homestead bought with pension money. The homestead of every such pensioner, whether the head of a family or not, purchased and paid for with any such pension money, or the proceeds or accumulations thereof, shall also be exempt; and such exemption shall apply to debts of such pensioner contracted prior to the purchase of the homestead. [C97,§4010; C24, 27, 31, 35, 39,§**11762**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.9]

627.10 Repealed by 64GA, ch 270,§2.

627.11 Exception under divorce decree. Where the party in whose favor the order, decree, or judgment was rendered has not remarried, the personal earnings of the debtor shall not be exempt from any order, judgment, or decree for temporary or permanent alimony hereafter rendered in this state, nor from any installment of any such order, judgment, or decree heretofore rendered within this state which, by the provisions thereof, may hereafter become due. [C24, 27, 31, 35, 39,§**11764**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.11]

38GA, ch 65,§1, editorially divided

627.12 Exception under decree for support of minors. The personal earnings of the debtor shall not be exempt from any order, judgment, or decree for the support of his minor child or children hereafter rendered in this state nor any installment of any such order, judgment, or decree heretofore rendered in this state which, by the provisions thereof, may here-

after become due. [C24, 27, 31, 35, 39,§**11765**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.12]

Referred to in §642.21
Similar provision, §232.51

627.13 Workers' compensation. Any compensation due or that may become due an employee or dependent under the provisions of chapter 85 shall be exempt from garnishment, attachment, and execution. [C24, 27, 31, 35, 39, §**11766**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.13; 66GA, ch 1084,§43]

627.14 Unmarried persons — nonresidents. There shall be exempt to an unmarried person not the head of a family, and to nonresidents, their own ordinary wearing apparel and trunk necessary to contain the same. [C51,§1902; R60,§3308; C73,§3075; C97,§4013; C24, 27, 31, 35, 39,§**11767**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §627.14]

627.15 Persons starting to leave the state. Where the debtor, if the head of a family, has started to leave this state, he shall have exempt only the ordinary wearing apparel of himself and family, and such other property, in addition, as he may select, in all not exceeding seventy-five dollars in value; which property shall be selected by the debtor and appraised according to the provisions of this Code relating to the discharge of attached property. [C51,§1902; R60,§3308; C73,§3076; C97, §4014; C24, 27, 31, 35, 39,§**11768**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.15]

Appraisement, §639.46

627.16 Wages of nonresidents — garnishment. Wages earned outside of this state by a nonresident of this state, and payable outside of this state, shall in all cases where the garnishing creditor is a nonresident of this state, be exempt from attachment or garnishment where the cause of action arises outside of this state; and it shall be the duty of the garnishee in such cases to plead such exemption, unless the defendant shall be personally served with original notice in this state. [S13,§4071-a; C24, 27, 31, 35, 39,§**11769**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.16]

627.17 Sending claims out of state. Whoever, whether as principal, agent, or attorney, with intent to deprive a resident in good faith of the state of the benefit of the exemption laws thereof, sends a claim against such resident and belonging to a resident, to another state for action, or causes action to be brought on such claim in another state, or assigns or transfers such claim to a nonresident of the state, with intent that action thereon be brought in the courts of another state, the action in either case being one which might have been brought in this state, and the property or debt sought to be reached by such action being such as might, but for the exemptions laws of this state, have been reached by action in the courts of this state, shall be guilty of a misdemeanor, and punished by a fine of not less than ten nor more than fifty dollars. [C97,§4018; C24, 27, 31, 35, 39,§**11770**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.17]

627.18 Public property. Public buildings owned by the state, or any county, city, school district, or other municipal corporation, or any other public property which is necessary and proper for carrying out the general purpose for which such corporation is organized, are exempt from execution. The property of a private citizen can in no case be levied on to pay the debt of any such. [C51,§1895; R60, §3274; C73,§3048; C97,§4007; C24, 27, 31, 35, 39, §**11771**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§627.18]

627.19 Adopted child assistance. Any financial assistance due or that may become due, under the provisions of sections 600.17 through 600.22, shall be exempt from garnishment, attachment, and execution. [C73, 75,§627.19]

CHAPTER 628

REDEMPTION

628.1 Place of redemption.
628.2 When sale absolute.
628.3 Redemption by debtor.
628.4 Redemption prohibited.
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628.24 Interest of tenant in common.
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628.26 Agreement to reduce period of redemption.
628.27 Redemption where property abandoned.

628.1 Place of redemption. All redemptions made under the provisions of this chapter shall be made in the county where the sale is had. [S13,§4051; C24, 27, 31, 35, 39,§**11772**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.1]

S13,§4051, editorially divided

628.2 When sale absolute. When real property has been levied upon, if the estate is less than a leasehold having two years of an unexpired term, the sale is absolute, but if of a larger amount, it is redeemable as hereinafter prescribed. [C51,§1924; R60,§§3329, 3330; C73, §§3098, 3099; C97,§4043; C24, 27, 31, 35, 39,§**11773**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.2]

628.3 Redemption by debtor. The debtor may redeem real property at any time within one year from the day of sale, and will, in the meantime, be entitled to the possession thereof; and for the first six months thereafter such right of redemption is exclusive. Any real property redeemed by the debtor shall thereafter be free and clear from any liability for any unpaid portion of the judgment under which said real property was sold. [C51,§§1926, 1927; R60,§§3332, 3333; C73,§§3102, 3103; C97, §4045; C24, 27, 31, 35, 39,§**11774**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.3]

C97,§4045, editorially divided
Referred to in §628.26

628.4 Redemption prohibited. No party who has taken an appeal from the superior or district court, or stayed execution on the judgment, shall be entitled to redeem. [C73,§3102; C97,§4045; C24, 27, 31, 35, 39,§**11775**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.4]

628.5 Redemption by creditors. If no redemption is made by the debtor as above provided, thereafter, and at any time within nine months from the day of sale, said redemption may be made by a mortgagee before or after the debt secured by the mortgage falls due, or by any creditor whose claim becomes a lien prior to the expiration of the time allowed for such redemption. [C51,§§1927, 1928; R60,§§3333, 3334; C73,§§3103, 3104; C97,§4046; C24, 27, 31, 35, 39,§**11776**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §628.5]

C97,§4046, editorially divided
Referred to in §§628.26, 628.27

628.6 Mechanic's lien before judgment. A mechanic's lien before judgment thereon is not of such character as to entitle the holder to redeem. [C51,§1927; R60,§3333; C73,§3103; C97,§4046; C24, 27, 31, 35, 39,§**11777**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.6]

628.7 Probate creditor. The owner of a claim which has been allowed and established against the estate of a decedent may redeem as in this chapter provided, by making application to the district court of the district where the real estate to be redeemed is situated. Such application shall be heard after notice to such parties as said court may direct, and shall be determined with due regard to rights of all persons interested. [C97,§4046; C24, 27, 31, 35, 39,§**11778**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.7]

628.8 Redemption by creditors from each other. Creditors having the right of redemption may redeem from each other within the time above limited, and in the manner herein provided. [C51,§1929; R60,§3335; C73,§3105; C97, §4047; C24, 27, 31, 35, 39,§**11779**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.8]

628.9 Senior creditor. When a senior creditor thus redeems from his junior, he is required to pay off only the amount of those liens which are paramount to his own, with the interest and costs appertaining to those liens. [C51,§1931; R60,§3337; C73,§3107; C97, §4048; C24, 27, 31, 35, 39,§**11780**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.9]

628.10 Junior may prevent. The junior creditor may in all such cases prevent a redemption by the holder of the paramount lien by paying off the lien, or by leaving with the clerk beforehand the amount necessary therefor, and a junior judgment creditor may redeem from a senior judgment creditor. [C51, §1932; R60,§§3338, 3339; C73,§§3108, 3109; C97, §4049; C24, 27, 31, 35, 39,§**11781**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.10]

628.11 Terms. The terms of redemption, when made by a creditor, in all cases shall be the reimbursement of the amount bid or paid by the holder of the certificate, including all costs, with interest the same as the lien redeemed from bears on the amount of such bid or payment, from the time thereof. [C51,§1930; R60,§3336; C73,§3106; C97,§4050; C24, 27, 31, 35, 39,§**11782**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §628.11]

C97,§4050, editorially divided
Advancements to protect lien, §629.2

628.12 Mortgage not matured — interest. Where a mortgagee whose claim is not yet due is the person from whom the redemption is thus to be made, he shall receive on such mortgage only the amount of the principal thereby secured, with unpaid interest thereon to the time of such redemption. [C51,§1930; R60, §3336; C73,§3106; C97,§4050; C24, 27, 31, 35, 39, §**11783**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.12]

628.13 By holder of title. The terms of redemption, when made by the titleholder, shall be the payment into the clerk's office of the amount of the certificate, and all sums paid by the holder thereof in effecting redemptions, added to the amount of his own lien, or the amount he has credited thereon, if less than the whole, with interest at contract rate on the certificate of sale from its date, and upon sums so paid by way of redemption from date of payment, and upon the amount credited on his own judgment from the time of said credit, in each case including costs.

Redemption may also be made by the titleholder presenting to the clerk of the district court sheriff's certificate of sale properly as-

signed to the titleholder, whereupon the clerk of the district court shall cancel the said certificate and enter full redemption in the sale book. [C51,§1930; R60,§3336; C73,§3106; C97,§4051; S13, §4051; C24, 27, 31, 35, 39,§**11784**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.13]

628.14 By junior from senior creditor. When a senior redeems from a junior creditor, the latter may, in return, redeem from the former, and so on, as often as the land is taken from him by virtue of a paramount lien. [C51, §1933; R60,§3341; C73,§3111; C97,§4052; C24, 27, 31, 35, 39,§**11785**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.14]

628.15 After nine months. After the expiration of nine months from the day of sale, the creditors can no longer redeem from each other, except as hereinafter provided. [C51, §1934; R60,§3342; C73,§3112; C97,§4053; C24, 27, 31, 35, 39,§**11786**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.15]

Referred to in §§628.26, 628.27

628.16 Who gets property. Unless the defendant redeems, the purchaser, or the creditor who has last redeemed prior to the expiration of the nine months aforesaid, will hold the property absolutely. [C51,§1935; R60,§3343; C73, §3113; C97,§4054; C24, 27, 31, 35, 39,§**11787**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.16]

Referred to in §§628.26, 628.27

628.17 Claim extinguished. In case it is thus held by a redeeming creditor, his lien, and the claim out of which it arose, will be held to be extinguished, unless he pursues the course pointed out in sections 628.18 to 628.20, inclusive. [C51,§1936; R60,§3344; C73,§3114; C97,§4055; C24, 27, 31, 35, 39,§**11788**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.17]

628.18 Mode of redemption. The mode of redemption by a lienholder shall be by paying into the clerk's office the amount necessary to effect the same, computed as above provided, and filing therein his affidavit, or that of his agent or attorney, stating as nearly as practicable the nature of his lien and the amount still due and unpaid thereon. [C51,§§1938, 1940; R60,§§3346, 3348; C73,§§3116, 3118; C97, §4056; C24, 27, 31, 35, 39,§**11789**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.18]

C97,§4056, editorially divided
Referred to in §628.17

628.19 Credit on lien. If he is unwilling to hold the property and credit the debtor thereon the full amount of his lien, he must state the utmost amount he is willing to credit him with. [R60,§3345; C73,§3115; C97,§4056; C24, 27, 31, 35, 39,§**11790**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §628.19]

Referred to in §628.17

628.20 Excess payment—entry and credit. If the amount paid to the clerk is in excess of the prior bid and liens, he shall refund the excess to the party paying the same, and enter each such redemption made by a lienholder upon the sale book, and credit upon the lien, if a judgment in the court of which he is clerk, the full amount thereof, including interest and costs, or such less amount as the lienholder is willing to credit therein, as shown by the affidavit filed. [C51,§§1937, 1939, 1941; R60,§§3340, 3347, 3349; C73,§§3110, 3117, 3119; C97,§4056; C24, 27, 31, 35, 39,§**11791**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.20]

Referred to in §628.17

628.21 Contest determined. In case any question arises as to the right to redeem, or the amount of any lien, the person claiming such right may deposit the necessary amount therefor with the clerk, accompanied with the affidavit above required, and also stating therein the nature of such question or objection, which question or objection shall be submitted to the court as soon as practicable thereafter, upon such notice as it or he shall prescribe of the time and place of the hearing of the controversy, at which time and place the matter shall be tried upon such evidence and in such manner as may be prescribed, and the proper order made and entered of record in the cause in which execution issued, and the money so paid in shall be held by the clerk subject to the order made. [C97,§4057; C24, 27, 31, 35, 39,§**11792**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.21]

628.22 Assignment of certificate. A creditor redeeming as above contemplated is entitled to receive an assignment of the certificate issued by the sheriff to the original purchaser as hereinbefore directed. [C51,§1942; R60,§3350; C73, §3120; C97,§4058; C24, 27, 31, 35, 39,§**11793**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.22]

628.23 Redemption of part of property. When the property has been sold in parcels, any distinct portion may be redeemed by itself. [C51,§1943; R60,§3351; C73,§3121; C97,§4059; C24, 27, 31, 35, 39,§**11794**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.23]

628.24 Interest of tenant in common. When the interests of several tenants in common have been sold on execution, the undivided portion of any or either of them may be redeemed separately. [C51,§1944; R60,§3352; C73, §3122; C97,§4060; C24, 27, 31, 35, 39,§**11795**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.24]

628.25 Transfer of debtor's right. The rights of a debtor in relation to redemption are transferable, and the assignee has the like power to redeem. [C51,§1945; R60,§3353; C73,§3123; C97,§4061; C24, 27, 31, 35, 39,§**11796**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§628.25]

628.26 Agreement to reduce period of redemption. The mortgagor and the mortgagee of real property consisting of less than ten acres in size may agree and provide in the mortgage instrument that the period of redemption after sale on foreclosure of said mortgage as set forth in section 628.3 be re-

duced to six months, provided the mortgagee waives in the foreclosure action any rights to a deficiency judgment against the mortgagor which might arise out of the foreclosure proceedings. In such event the debtor will, in the meantime, be entitled to the possession of said real property; and if such redemption period is so reduced, for the first three months after sale such right of redemption shall be exclusive to the debtor, and the time periods in sections 628.5, 628.15, and 628.16, shall be reduced to four months. [C62, 66, 71, 73, 75, §628.26]

628.27 Redemption where property abandoned. The mortgagor and the mortgagee of any tract of real property consisting of less than ten acres in size may also agree and provide in the mortgage instrument that the court in a decree of foreclosure may find affirmatively that the tract has been abandoned by the owners and those persons personally liable under the mortgage at the time of such foreclosure, and that should the court so find, and if the mortgagee shall waive any rights to a deficiency judgment against the mortgagor or his successors in interest in the foreclosure action, then the period of redemption after foreclosure shall be reduced to sixty days. If the redemption period is so reduced, the mortgagor or his successors in interest or the owner shall have the exclusive right to redeem for the first thirty days after such sale and the times of redemption by creditors provided in sections 628.5, 628.15 and 628.16 shall be reduced to forty days. Entry of appearance by pleading or docket entry by or on behalf of the mortgagor shall be a presumption that the property is not abandoned. [C71, 73, 75, §628.27]

CHAPTER 629

PROTECTION OF ADVANCEMENTS

629.1 Lienholder's advancements protected — affidavit filed.
629.2 Redemption—payment of advances.
629.3 Record of lien.

629.1 Lienholder's advancements protected —affidavit filed. The holder of a sheriff's sale certificate or junior lien upon any real estate after the delinquency of any taxes or special assessment, or of interest on any senior lien, or breach of any condition of a senior encumbrance, upon payment by him, or performance of the condition broken, shall have a lien upon said real estate for such expenditures and interest thereon of equal priority with the lien so held by him upon his filing with the clerk of the district court in the county in which the land is situated, a verified statement of said expenditures and the dates thereof, together with a description of the real estate, the name of the record owner, and a reference to the lien which he holds, and may recover the same in any action brought for the foreclosure of the junior lien referred to in said verified statement. [C24, 27, 31, 35, 39, §11797; C46, 50, 54, 58, 62, 66, 71, 73, 75,§629.1]

40GA, ch 192,§1, editorially divided

629.2 Redemption — payment of advances. When such advancements have been made by the holder of a sheriff's sale certificate the sum so advanced shall be a part of the amount required to redeem from said sheriff's sale. [C24, 27, 31, 35, 39,§11798; C46, 50, 54, 58, 62, 66, 71, 73, 75,§629.2]

629.3 Record of lien. It shall be the duty of the clerk of the district court to record the statements so filed in the encumbrance book and to enter the same in the lien index. Payments advanced after execution has been issued upon the junior lien, shall be added to the execution upon receipt, by the sheriff, of a verified statement of such advancements and when the redemption period has expired the clerk shall release them on his record. [C24, 27, 31, 35, 39,§11799; C46, 50, 54, 58, 62, 66, 71, 73, 75,§629.3]

CHAPTER 630

PROCEEDINGS AUXILIARY TO EXECUTION

Referred to in §§441.17(5), 537.5104

630.1 Debtor examined.
630.2 Affidavit as to property.
630.3 By whom order granted.
630.4 Debtor interrogated.
630.5 Witnesses examined.
630.6 Disposition of property.
630.7 Receiver—injunction.
630.8 Equitable interest sold.
630.9 Sheriff as receiver.
630.10 Continuance.
630.11 Debtor failing to appear—contempt.
630.12 Service of order.
630.13 Compensation.
630.14 Warrant of arrest.
630.15 Bond.
630.16 Equitable proceedings.
630.17 Answers verified — petition taken as true.
630.18 Lien created.
630.19 Surrender of property enforced.

630.1 Debtor examined. When execution against the property of a judgment debtor, or one of several debtors in the same judgment, has been issued from the district court or an appellate court to the sheriff of the county where such debtor resides, or if he or she does not reside in the state, to the sheriff of the county where the judgment was rendered, and execution issued thereon is returned unsatisfied in whole or in part, the owner of the judgment is entitled to an order for the appearance and examination of the debtor. [C51, §1953; R60,§3375; C73,§3135; C97,§4072; C24, 27, 31, 35, 39,§**11800**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.1; 66GA, ch 1241,§73]

630.2 Affidavit as to property. The like order may be obtained at any time after the issuing of an execution, upon proof, by the affidavit of the party or otherwise, to the satisfaction of the court who is to grant the same, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment. [C51,§1954; R60, §3376; C73,§3136; C97,§4073; C24, 27, 31, 35, 39, §**11801**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.2]

630.3 By whom order granted. Such order may be made by the district court in which the judgment was rendered, or by the district court of the county to which execution has been issued. The debtor may be required to appear and answer before either of such courts, or before a referee appointed for that purpose by the court who issued the order, to report either the evidence or the facts. [C51,§1955; R60,§§3377, 3385; C73,§3137; C97, §4074; C24, 27, 31, 35, 39,§**11802**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.3]

630.4 Debtor interrogated. The debtor, on his appearance, may be interrogated in relation to any facts calculated to show the amount of his property, or the disposition which has been made of it, or any other matter pertaining to the purpose for which the examination is permitted to be made. The interrogatories and answers shall be reduced to writing and preserved by the court or officer before whom they are taken. All examinations and answers under this chapter shall be on oath. [C51,§1956; R60,§3378; C73,§3138; C97,§4075; C24, 27, 31, 35, 39,§**11803**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.4]

Criminating questions, §§782.9–782.11

630.5 Witnesses examined. Witnesses may be required by order of the court or by subpoenas from the referee, to appear and testify upon any proceedings under this chapter, in the same manner as upon the trial of an issue. [R60,§3379; C73,§3139; C97,§4076; C24, 27, 31, 35, 39,§**11804**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.5]

630.6 Disposition of property. If any property, rights, or credits subject to execution are thus ascertained, an execution may be issued and the same levied upon. The court may order any property of the judgment debtor not exempt, in the hands of himself or others or due him, to be delivered up, or in any other mode applied towards the satisfaction of the judgment. [C51,§1957; R60,§3380; C73,§3140; C97,§4077; C24, 27, 31, 35, 39,§**11805**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.6]

630.7 Receiver—injunction. The court may also, by order, appoint the sheriff of the proper county or other suitable person, a receiver of the property of the judgment debtor, or by injunction forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, or any interference therewith. [R60,§3381; C73,§3141; C97,§4078; C24, 27, 31, 35, 39,§**11806**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.7]

630.8 Equitable interest sold. If it shall appear that the judgment debtor has any equitable interest in real estate in the county in which proceedings are had, as mortgagor, mortgagee, or otherwise, and the interest of said debtor can be ascertained as between himself and the person holding the legal estate or having any lien on or interest in the same, without controversy as to the interest of such person, the receiver may be ordered to sell and convey the same, or the debtor's equitable interest therein, in the same manner as is provided for the sale of real estate upon execution. [R60,§3382; C73,§3142; C97,§4079; C24, 27, 31, 35; 39,§**11807**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.8]

Sale of real estate, §626.74 et seq.

630.9 Sheriff as receiver. If the sheriff is appointed receiver, he and his sureties shall be liable on his official bond for the faithful discharge of his duties as such. [R60,§3383; C73,§3143; C97,§4080; C24, 27, 31, 35, 39,§**11808**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.9]

630.10 Continuance. The court or referee acting under the provisions of this chapter shall have power to continue his proceedings from time to time until they shall be completed. [R60,§3384; C73,§3144; C97,§4081; C24, 27, 31, 35, 39,§**11809**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.10]

630.11 Debtor failing to appear—contempt. Should the judgment debtor fail to appear after being personally served with notice to that effect, or should he fail to make full answers to all proper interrogatories propounded to him, he will be guilty of contempt, and may be arrested and imprisoned until he complies with the requirements of the law in this respect. If any person, party, or witness disobey an order of the court, judge, or referee, duly served, such person, party, or witness may be punished as for contempt. [C51,§1958; R60,§3386; C73,§3145; C97,§4082; C24, 27, 31, 35, 39,§**11810**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §630.11]

Contempts, ch 665

630.12 Service of order. The order mentioned herein shall be in writing and signed

by the court, judge, or referee making the same, and be served in the same manner as an original notice in other cases. [R60,§3387; C73,§3146; C97,§4083; C24, 27, 31, 35, 39,§11811; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.12]

630.13 Compensation. Sheriffs, referees, receivers, and witnesses shall receive such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and the collection thereof from such party or parties as ought to pay the same shall be enforced by an order or execution. [R60,§3388; C73,§3147; C97,§4084; C24, 27, 31, 35, 39,§11812; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.13]

630.14 Warrant of arrest. Upon proof, to the satisfaction of the court or judge authorized to grant the order aforesaid, that there is danger that the defendant will leave the state, or that he will conceal himself, such court or judge, instead of the order, may issue a warrant for the arrest of the debtor, and for bringing him forthwith before the court or judge, upon which being done, he may be examined in the same manner and with the like effect as is above provided. [C51,§1959; R60,§3389; C73,§3148; C97,§4085; C24, 27, 31, 35, 39,§11813; C46, 50, 54, 58, 62, 66, 71, 73, 75, §630.14]

Approval of warrant and expenses, §§79.12, 79.13

630.15 Bond. Upon being brought before the court or judge, he may enter into an undertaking in such sum as the court or officer shall prescribe, with one or more sureties, that he will attend from time to time for examination before the court or judge as shall be directed, and will not, in the meantime, dispose of his property, or any part thereof; in default whereof he shall continue under arrest, and may be committed to jail for safekeeping until the examination shall be concluded. [R60,§3390; C73,§3149; C97,§4086; C24, 27, 31, 35, 39,§11814; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.15]

630.16 Equitable proceedings. At any time after the rendition of a judgment, an action by equitable proceedings may be brought to subject any property, money, rights, credits, or interest therein belonging to the defendant to the satisfaction of such judgment. In such action, persons indebted to the judgment debtor, or holding any property or money in which such debtor has any interest, or the evidences of securities for the same, may be made defendants. [R60,§3391; C73,§3150; C97,§4087; C24, 27, 31, 35, 39,§11815; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.16]

Referred to in §630.18
Grantor deemed equitable owner, §639.30

630.17 Answers verified—petition taken as true. The answers of all defendants shall be verified by their own oath, and not by that of an agent or attorney, and the court shall enforce full and explicit discoveries in such answers by process of contempt; or, upon failure to answer the petition, or any part thereof, as fully and explicitly as the court may require, the same, or such part not thus answered, shall be deemed true, and such order made or judgment rendered as the nature of the case may require. [R60,§3392; C73,§3151; C97,§4088; C24, 27, 31, 35, 39,§11816; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.17]

Referred to in §630.18
Contempts, ch 665

630.18 Lien created. In the case contemplated in sections 630.16 and 630.17, a lien shall be created on the property of the judgment debtor, or his interest therein, in the hands of any defendant or under his control, which is sufficiently described in the petition, from the time of the service of notice and copy of the petition on the defendant holding or controlling such property or any interest therein. [R60,§§3393, 3394; C73,§3152; C97,§4089; C24, 27, 31, 35, 39,§11817; C46, 50, 54, 58, 62, 66, 71, 73, 75,§630.18]

630.19 Surrender of property enforced. The court shall enforce the surrender of the money or securities therefor, or of any other property of the defendant in the execution, which may be discovered in the action, and for this purpose may commit to jail any defendant or garnishee failing or refusing to make such surrender until it shall be done, or the court is satisfied that it is out of his power to do so. [R60,§3395; C73,§3153; C97,§4090; C24, 27, 31, 35, 39,§11818; C46, 50, 54, 58, 62, 66, 71, 73, 75, §630.19]

Analogous provisions, §§633.112, 680.10

CHAPTER 631

SMALL CLAIMS

Referred to in §602.62

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631.1 Small claims.

1. The following actions or claims are small claims and shall be commenced, heard and determined as provided in this chapter:

A civil action for a money judgment where the amount in controversy is one thousand dollars or less, exclusive of interest and costs.

2. The district court sitting in small claims shall have concurrent jurisdiction of an action for forcible entry and detainer which is based on those grounds set forth in section 648.1, subsections 1, 2, 3 and 5. When commenced under this chapter, the action shall be a small claim for the purposes of this chapter. [C73, 75,§631.1]

631.2 Jurisdiction and procedures.

1. The district court sitting in small claims shall exercise the jurisdiction conferred by this chapter, and shall determine small claims according to the statutes and the rules prescribed by this chapter. Except when transferred from the small claims docket as provided in section 631.8, small claims may be tried by a judicial magistrate, a district associate judge, or a district judge.

2. The clerk of court shall maintain a separate docket for small claims which shall be known as the small claims docket, and which shall contain all matters relating to those small claims which are required by section 606.7 to be contained in a combination docket.

3. Statutes and rules relating to venue and jurisdiction shall apply to small claims, except that a provision of this chapter which is inconsistent therewith shall supersede that statute or rule. [C73,§§631.2, 631.3; C75,§631.2]

631.3 Commencement of actions—clerk to furnish forms—subpoena.

1. All actions shall be commenced by the filing of an original notice with the clerk. At the time of filing, the clerk shall enter on the original notice and the copies to be served, the file number and the date the action is filed.

2. The clerk shall furnish standard forms as provided in section 631.15, as such pleadings may be required. The clerk may furnish information to any party to enable him to complete a form.

3. The clerk shall cause to be entered upon each copy of the original notice and in the docket the day for appearance, which date shall be determined in accordance with section 631.4. Appearance dates shall be set only for days on which the office of the clerk is scheduled to be open.

4. Upon the request of any party to the action, the clerk or a judicial officer shall issue subpoenas for the attendance of witnesses at a hearing. The provisions of sections 622.63 to 622.69, 622.76 and 622.77 shall apply to subpoenas issued pursuant to this chapter. [C73, §§631.3, 631.5; C75,§631.3]

631.4 Service—time for appearance. The manner of service of original notice and the times for appearance shall be as provided in this section.

1. *Actions for money judgment.*

a. In actions for money judgment the defendant shall be required to appear not later than twenty days following the date of filing of the original notice, except as provided in paragraph "*c*" of this subsection. The clerk shall enter the latest date for appearance which is consistent with this chapter and shall cause service to be obtained as provided in this subsection.

b. Except as provided in paragraph "*c*" of this subsection, at the option of the plaintiff and upon receipt of the prescribed costs, the clerk either shall mail, by certified mail, restricted delivery, return receipt to the clerk requested, a copy of the original notice together with a conforming copy of an answer form to each defendant, or shall cause the original notice and answer form to be delivered to a peace officer or other person for personal service as provided in rules 52 and 56.1 of the rules of civil procedure.

c. If a defendant is a nonresident of the state of Iowa, and is subject to the jurisdiction of this state pursuant to section 617.3, service of original notice and answer shall be made as provided in that section, and the date for appearance shall be sixty days from the date of filing with the secretary of state. The clerk shall collect the prescribed fees and costs, and shall cause duplicate copies of the original notice to be filed with the secretary of state, and copies of the original notice and answer to be mailed to each defendant in the manner prescribed in section 617.3.

2. *Actions for forcible entry or detention.*

a. In an action for the forcible entry or detention of real property, the clerk shall set a date, time and place for hearing, and shall cause service as provided in this subsection.

b. Original notice shall be served personally upon each defendant as provided in rule 56 of the rules of civil procedure, which service shall be made at least five days prior to the date set for hearing. Upon receipt of the prescribed costs the clerk shall cause the original notice to be delivered to a peace officer or other person for service upon each defendant. [C73, §§631.3—631.5; C75,§631.4]

Referred to in §§631.3, 631.5

631.5 Appearance — default. This section shall apply to all small claims except actions for forcible entry or detention of real property.

1. *Appearance.* A defendant may appear in person or by attorney, and by the denial of a claim a defendant does not waive any defenses.

2. *Hearing set.* If all defendants either have entered a timely appearance or have defaulted, the clerk shall assign a contested claim to the small claims calendar for hearing at a place and time certain. The time of hearing shall be not less than five days nor more than twenty

days after the latest timely appearance. The clerk shall transmit the original notice and all other papers relating to the case to the judicial officer to whom the case is assigned, and copies of all papers so transmitted shall be retained in the clerk's office.

3. *Partial service.* If the plaintiff has joined more than one defendant, and less than all defendants are served with notice as determined by subsection 4, the plaintiff may elect to proceed against all defendants served, or he may elect to have a continuance, issuable by the clerk, to a date certain not more than sixty days thereafter. If the plaintiff elects to proceed, the action shall be dismissed without prejudice as against each defendent not served with notice.

4. *Return of service.* Proper notice shall be established by a signed return receipt or a return of service as provided in rule 59 of the rules of civil procedure.

5. *Failure of service.* In the event a sole defendant or all defendants fail to appear and the clerk, in accordance with subsection 4, determines that proper notice has not been given, the clerk shall reset the date for appearance and upon receipt of the prescribed fees shall cause personal service upon each defendant as prescribed in section 631.4.

6. *Notification to parties.* When a small claim is set for hearing the clerk immediately shall notify by ordinary mail each party or the attorney representing the party, and the judicial officer to whom the action is assigned, of the date, time and place of hearing.

7. *Default.* If a defendant fails to appear and the clerk in accordance with subsection 4 determines that proper notice has been given, judgment shall be rendered against the defendant by the clerk if the relief is readily ascertainable. If the relief is not readily ascertainable the claim shall be assigned to a judicial magistrate for determination and the clerk shall immediately notify the plaintiff or his attorney and the judicial magistrate of such assignment by ordinary mail. [C75, §631.5]

Referred to in §631.9
Section 631.5, Code 1973, repealed by 65GA, ch 1085,§23

631.6 Fees and costs. All fees and costs required to be paid in small claims actions shall be paid in advance, and shall be assessed as costs in the action.

1. Docket fees and other fees imposed for small claims shall be the same as those required in regular actions in district court.

2. Postage for the mailing of original notices shall be the actual cost of the postage.

3. Fees for personal service by peace officers or other officials of the state shall be the amounts specified by law.

4. Fees for service of notice on nonresidents shall be as provided in section 617.3.

All fees and costs collected in small claims actions shall be remitted to the county treasurer as provided in section 606.16. The fee specified in subsection 4 shall be remitted to the secretary of state. [C73,§§631.5, 631.6; C75, §631.6]

631.7 Parties, pleadings and motions.

1. Except as specifically provided in this chapter, there shall be no written pleadings or motions unless the court in the interests of justice permits them, in which event they shall be similar in form to the original notice.

2. Motions, except a motion under rule 34 of the rules of civil procedure, shall be heard only at the time set for a hearing on the merits.

3. Except as provided in section 631.8, subsection 4, a counterclaim, cross-petition or intervention shall be in writing and in the form promulgated under section 631.15. Copies shall be submitted for each party appearing, and shall be mailed by ordinary mail to those parties by the clerk. A cross-petition against persons not a party to the action shall be made pursuant to rule 34 of the rules of civil procedure and the new party shall be served with notice as provided in this chapter.

4. The rules of civil procedure pertaining to actions, joinder of actions, parties and intervention shall apply to small claims actions, except that rule 29 shall not apply. No counterclaim is necessary to assert an offset arising out of the subject matter of the plaintiff's claim. A counterclaim, cross-petition, or intervention against an existing party is deemed denied and no responsive pleading by such party is required. [C73,§§631.7, 631.8; C75, §631.7]

631.8 Procedure.

1. Small claims not determined within ninety days following the expiration of any period of continuance or following the last entry placed on the record for that action shall be dismissed by the clerk without prejudice.

2. In small claims actions, if a party joins a small claim with one which is not a small claim, the court shall:

a. Order the small claim to be heard under this chapter and dismiss the other claim without prejudice, or

b. As to parties who have appeared or are existing parties, either (1) order the small claim to be heard under this chapter and the other claim to be tried by regular procedure or (2) order both claims to be tried by regular procedure.

3. If commenced as a regular civil action or under the statutes relating to probate proceedings, a small claim shall be transferred to the small claims docket. A small claim commenced as a regular action shall not be dismissed but shall be transferred to the small claims docket. Civil and probate actions not small claims but commenced hereunder shall be dismissed without prejudice except for defendants who have appeared, as to whom such actions shall be transferred to the combination or probate docket, as appropriate.

4. In small claims actions, a counterclaim, cross claim, or intervention in a greater amount than that of a small claim shall be in the form of a regular pleading. A copy shall be filed for each existing party. New parties, when permitted by order, may be brought in under rule 34 of the rules of civil procedure and shall be given notice under the rules of civil procedure pertaining to commencement of actions. The court shall either order such counterclaim, cross claim, or intervention to be tried by regular procedure and the other claim to be heard under this division, or order the entire action to be tried by regular procedure.

5. In regular action, when a party joins a small claim with one which is not a small claim, regular procedure shall apply to both unless the court transfers the small claim to the small claims docket for hearing under this division.

6. In regular actions, a counterclaim, cross claim, or intervention in the amount of a small claim shall be pleaded, tried, and determined by regular procedure, unless the court transfers the small claim to the small claims docket for hearing under this division.

7. Pleadings which are not in correct form under this section shall be ordered amended so as to be in correct form; but a small claim which is proceeding under this chapter need not be amended although in the form of a regular pleading.

8. Copies of any papers filed by the parties which are not required to be served, shall be mailed or delivered by the clerk as provided in rule 82 of the rules of civil procedure. [C73,§§631.2, 631.8; C75,§631.8]

Referred to in §§631.2, 631.7

631.9 Jurisdiction determined. At the time set for the hearing of a small claim, the court first shall determine that proper notice as provided in section 631.5, subsection 4, has been given a party before proceeding further as to him, unless he has appeared or is an existing party, and also shall determine that the action is properly brought as a small claim. [C73, 75,§631.9]

631.10 Failure to appear—effect. Unless good cause to the contrary is shown, if the parties fail to appear at the time of hearing the claim shall be dismissed without prejudice by the court; if the plaintiff fails to appear but the defendant appears, the claim shall be dismissed with prejudice by the court with costs assessed to the plaintiff; and if the plaintiff appears but the defendant fails to appear, judgment may be rendered against the defendant by the court. The filing by the plaintiff of a verified account, or an instrument in writing for the payment of money with an affidavit the same is genuine, shall constitute an appearance by plaintiff for the purpose of this section. [C73, 75,§631.10]

631.11 Hearing.

1. *Informality.* The hearing shall be to the court, shall be simple and informal, and shall be conducted by the court itself, without regard to technicalities of procedure.

2. *Evidence.* The court shall swear the parties and their witnesses, and examine them in such a way as to bring out the truth. The parties may participate, either personally or by attorney. The court may continue the hearing from time to time and may amend new or amended pleadings, if justice requires.

3. *Record.* Upon the trial, the judicial magistrate shall make detailed minutes of the testimony of each witness and append the exhibits or copies thereof to the record. The proceedings upon trial shall not be reported by a certified court reporter, unless the party provides the reporter at such party's expense. The magistrate, in his discretion, may cause the proceedings upon trial to be reported electronically. If the proceedings are being electronically recorded both parties shall be notified in advance of that recording. If the proceedings have been reported electronically the recording shall be retained under the jurisdiction of the magistrate unless appealed, and upon appeal shall be transcribed only by a person designated by the court under the supervision of the magistrate.

4. *Judgment.* Judgment shall be rendered, based upon applicable law and upon a preponderance of the evidence.

5. *Destruction of recordings.* Unless an appeal is taken, an electronic recording of a proceeding in small claims shall be retained until the time for appeal has expired as specified in section 631.13. Thereafter, the magistrate may direct that the recording tape or other device be erased and used for subsequent recordings. If the proceeding is appealed, the recording may be erased following entry of judgment by the district judge hearing the appeal. [C73, 75,§631.11]

631.12 Entry of judgment. The judgment shall be entered in a space on the original notice first filed, and the clerk shall immediately enter the judgment in the small claims docket and district court lien book, without recording. Such relief shall be granted as is appropriate. Upon entering judgment, the court may provide for installment payments to be made directly by the party obligated to the party entitled thereto; and in such event execution shall not issue as long as such payments are made but execution shall issue for the full unpaid balance of the judgment upon the filing of an affidavit of default. When entered on the small claims docket and district court lien book, a small claims judgment shall constitute a lien to the same extent as regular judgments entered on the district court judgment docket and lien book; but if a small claims judgment requires installment pay-

ments, it shall not be enforceable until an affidavit of default is filed. [C73, 75,§631.12]

631.13 Appeals.

1. *Notice.* An appeal from a judgment in small claims may be taken by any party by giving oral notice to the court at the conclusion of the hearing, or by filing a written notice of appeal with the clerk within ten days after judgment is rendered. In either case, the appealing party shall pay to the clerk within that ten days the usual district court docket fee to perfect the appeal. No appeal shall be taken after ten days.

2. *Stay of judgment.* Execution of judgment shall be stayed upon the filing with the clerk of the district court an appeal bond with surety approved by the clerk, in the sum specified in the judgment.

3. *Transcript.* Within twenty days after an appeal is taken, unless extended by order of a district judge or by stipulation of the parties, any party may file with the clerk as part of the record a transcript of the official report, if any, or in the event the report was made electronically, a transcription of the recording. If a transcription of an electronic recording is filed, the record on appeal shall contain the tape or other medium on which the proceedings were preserved. A transcription of an electronic recording shall be provided any party upon request and upon payment by the party of the actual costs of transcription.

4. *Procedure on appeal.*

a. A district judge shall promptly hear the appeal upon the record thus filed without further evidence. The judge shall decide the appeal without regard to technicalities or defects which have not prejudiced the substantial rights of the parties, and may affirm, reverse, or modify the judgment, or render judgment as the magistrate should have rendered.

If the record, in the opinion of the district judge, is inadequate for the purpose of rendering a judgment on appeal, the district judge may order that additional evidence be presented before him relative to one or more issues, and may enter any other order which may be necessary to protect the rights of the parties. The district judge shall take minutes of any additional evidence, but the hearing shall not be reported by a certified court reporter.

b. Upon entry of judgment the clerk may cause any recording tape or other device contained in the record to be erased for subsequent use. [C73, 75,§631.13]

Referred to in §631.11

631.14 Representation in small claims actions. Actions constituting small claims may be brought or defended by an individual, partnership, association, corporation, or other entity. In actions in which a person other than an individual is a party, that person may be represented by an officer or an employee. Any person, however, may be represented in small claims action by an attorney. [C75,§631.14]

631.15 Standard forms. The supreme court shall prescribe standard forms of pleadings to be used in small claims actions. Standard forms promulgated by the supreme court shall be the exclusive forms used after December 31, 1975, but forms prepared in accordance with the law prior to July 1, 1974, may be used until December 31, 1975. [C73,§631.4; C75, §631.15]

Referred to in §§631.3, 631.7

631.16 Discretionary review by supreme court.

1. A civil action originally tried as a small claim shall not be appealed to the supreme court except by discretionary review as provided herein.

2. "Discretionary review" is the process by which the supreme court may exercise its discretion, in like manner as under the rules pertaining to interlocutory appeals and certiorari in civil cases, to review specified matters not subject to appeal as a matter of right. The supreme court may adopt additional rules to control access to discretionary review.

3. The party seeking review shall be known as the appellant and the adverse party as the appellee, but the title of the action shall not be changed from that in the court below.

4. A petition for review shall be filed in writing with the clerk of the district court within ten days after judgment.

5. When an application for discretionary review is filed, the clerk of the court in which the judgment or order was rendered shall:

a. Immediately prepare and mail by certified mail, return receipt requested, to the appellees and their attorneys of record, true copies of the application, together with the date of filing.

b. Immediately prepare and transmit to the clerk of the supreme court a transcript of all record entries relevant to the application, together with copies of all papers in the case on file with the court, and a transcript of the official report, if any, all duly certified under seal of the court.

Failure of the clerk of the district court to transmit all the papers as required by this subsection shall not prejudice the rights of the parties.

6. The record and case shall be presented to the supreme court as provided by the rules of appellate procedure; and the provisions of law in civil procedure relating to the filing of decisions and opinions of the supreme court shall apply in such cases. The case may be transferred to the court of appeals by the supreme court.

7. An application shall not be dismissed for an informality or defect in taking it if corrected as directed by the appellate court. The appellate court, after an examination of the

entire record, may dispose of the case by affirmation, reversal or modification of the lower court judgment, and may order a new trial. It also may dismiss the application if both of the following are true:

a. The court determines that there has been no substantial miscarriage of justice.

b. The arguments do not present definite grounds for a hearing.

8. The decision of the appellate court with any opinion filed or judgment rendered must be recorded by the supreme court clerk. After the expiration of the period allowed for a rehearing, or as ordered by the court or provided by its rules, a certified copy of the decision and opinion shall be transmitted to the clerk of the trial court, and filed and entered of record in the district court.

9. The jurisdiction of the appellate court shall cease after the certified copy of the decision and opinion is transmitted to the clerk of the trial court. All proceedings for executing the judgment shall be had in the trial court or by its clerk. [C73,§602.71; C75,§631.16; 66GA, ch 1241,§74]

TITLE XXXII

PROBATE

CHAPTER 632

CLERK OF PROBATE COURT

Repealed by 60GA, ch 326,§704

CHAPTER 633

PROBATE CODE

Referred to in §135C.24

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DIVISION I
INTRODUCTION AND DEFINITIONS

PART 1
INTRODUCTION

633.1 Short title. This chapter shall be known and may be cited as the "Iowa Probate Code". [C66, 71, 73, 75,§633.1]

633.2 How Code to take effect.

1. *Effective date.* This Code shall take effect and be in force on and after January 1, 1964. The procedure herein prescribed shall govern all proceedings in probate brought after the effective date of this Code. It shall also govern further procedure in proceedings in probate then pending, except to the extent that, in the opinion of the court, its application in particular proceedings or parts thereof would not be feasible or would work injustice, in which event the former procedure shall apply.

2. *Rights not affected.* No act done in any proceeding commenced before this Code takes effect and no accrued or vested right shall be impaired by its provisions. When a right has been acquired, extinguished, or barred upon the expiration of a prescribed period of time

governed by the provision of any statute in force before this Code takes effect, such provision shall remain in force and be deemed a part of this Code with respect to such right. [C66, 71, 73, 75,§633.2]

Constitutionality, 60GA, ch 326,§2(3)

PART 2

DEFINITIONS AND USE OF TERMS

633.3 Definitions and use of terms. When used in this Code, unless otherwise required by the context, or another division of this Code, the following words and phrases shall be construed as follows:

1. *Administrator*—any person appointed by the court to administer an intestate estate.

2. *Bequeath*—includes the word "devise" when used as a verb.

3. *Bequest* — includes the word "devise" when used as a noun.

4. *Charges*—includes costs of administration, funeral expenses, cost of monument, and federal and state estate taxes.

5. *Child*—includes an adopted child but does not include a grandchild or other more remote descendants, nor, except as provided in sections 633.221 and 633.222, an illegitimate child.

6. *Clerk*—"Clerk of the District Court" in the county in which the matter is pending and includes the term "Clerk of the Probate Court".

7. *Conservator*—a person appointed by the court to have the custody and control of the property of a ward under the provisions of this Code.

8. *Costs of administration* — includes court costs, fiduciary's fees, attorney fees, all appraisers' fees, premiums on corporate surety bonds, statutory allowance for support of surviving spouse and children, cost of continuation of abstracts of title, recording fees, transfer fees, transfer taxes, agents' fees allowed by order of court, and all other fees and expenses allowed by order of court in connection with the administration of the estate. Court costs shall include expenses of selling property.

9. *Court*—the Iowa district court sitting in probate and includes any Iowa district judge.

10. *Debts*—includes liabilities of the decedent which survive, whether arising in contract, tort or otherwise.

11. *Devise*—when used as a noun, includes testamentary disposition of property, both real and personal.

12. *Devise*—when used as a verb, to dispose of property, both real and personal, by a will.

13. *Devisee*—includes legatee.

14. *Distributee*—a person entitled to any property of the decedent under his will or under the statutes of intestate succession.

15. *Estate*—the real and personal property of a decedent, a ward, or a trust, as from time to time changed in form by sale, reinvestment or otherwise, and augmented by any accretions or additions thereto and substitutions therefor, or diminished by any decreases and distributions therefrom.

16. *Executor*—means any person appointed by the court to administer the estate of a testate decedent.

17. *Fiduciary*—includes personal representative, executor, administrator, guardian, conservator and trustee.

18. *Full age*—the state of legal majority attained through arriving at the age of eighteen years or through having married, even though such marriage is terminated by divorce.

19. *Guardian*—the person appointed by the court to have the custody of the person of the ward under the provisions of this Code.

20. *Guardian of the property*—at the election of the person appointed by the court to have the custody and care of the property of a ward, the term "guardian of the property" may be used, which term shall be synonymous with the term "conservator".

21. *Heir*—any person, except the surviving spouse, who is entitled to property of a decedent under the statutes of intestate succession.

22. *Incompetent*—includes any person who has been adjudicated by a court to be incapable of managing his property, or caring for his own person, or both.

23. *Issue*—for the purposes of intestate succession, includes all lawful lineal descendants of a person, whether natural or adopted, except those who are the lineal descendants of his living descendants.

24. *Legacy*—a testamentary disposition of personal property.

25. *Legatee*—a person entitled to personal property under a will.

26. *Letters*—includes letters testamentary, letters of administration, letters of guardianship, letters of conservatorship, and letters of trusteeship.

27. *Minor*—a person who is not of full age.

28. *Person*—includes natural persons and corporations.

29. *Personal representative*—includes executor and administrator.

30. *Property*—includes both real and personal property.

31. *Surviving spouse*—the surviving wife or husband, as the case may be.

32. *Temporary administrator* — any person appointed by the court to care for an estate pending the probating of a proposed will, or to handle any special matter designated by the court.

33. *Trustee*—the person or persons appointed as trustee by the instrument creating the trust, or the person or persons appointed by the court to administer the trust.

34. *Trusts — include only:* Testamentary trusts; express trusts where jurisdiction is specifically conferred on the court by the trust instrument; express trusts where the jurisdiction

of the court is invoked by the trustee, beneficiary or any interested party for a limited purpose, or otherwise; and trusts which are established by a judgment or a decree of court which results in administration of the trust by the court, and the court entering the judgment or decree establishing such trust orders the administration of the trust transferred to the probate court.

35. *Will*—includes codicil; it also includes a testamentary instrument that merely appoints an executor, and a testamentary instrument that merely revokes or revives another will. [C51,§1286; R60,§2318; C73,§2336; C97,§3280; C24, 27, 31, 35, 39,§**11860**; C46, 50, 54, 58, 62,§633.15; C66, 71, 73, 75,§633.3; 66GA, ch 208,§2]

Referred to in §§600A.2, 633.89

633.4 Gender and number. When used in this Code, unless otherwise required by the context, the masculine gender includes the feminine and the neuter; the singular number includes the plural and the plural number includes the singular. [C66, 71, 73, 75,§633.4]

633.5 to 633.9 Reserved.

DIVISION II

PROBATE COURT, CLERK OF PROBATE COURT AND PROCEDURE IN PROBATE

PART 1

PROBATE COURT

633.10 Jurisdiction. The district court sitting in probate shall have jurisdiction of:

1. Estates of decedents and absentees.

The probate and contest of wills; the appointment of personal representatives; the granting of letters testamentary and of administration; the administration, settlement and distribution of estates of decedents and absentees, whether such estates consist of real or personal property or both.

2. Construction of wills and trust instruments.

The construction of wills and trust instruments during the administration of the estate or trust, whether said construction be incident to such administration, or as a separate proceeding.

3. Conservatorships and guardianships.

The appointment of conservators and guardians; the granting of letters of conservatorship and guardianship; the administration, settlement and closing of conservatorships and guardianships.

4. Trusts and trustees.

The appointment of trustees; the granting of letters of trusteeship; the administration of testamentary trusts; the administration of express trusts where jurisdiction is specifically conferred on the court by the trust instrument; the administration of express trusts where the administration of the court is invoked by the trustee, beneficiary or any interested party; the administration of trusts which are established by a decree of court and result in the administration thereof by the court; and the settlement and closing of all such trusts. [C73, §2312; C97,§225; C24, 27, 31, 35, 39,§§**10763, 10764**; C46, 50, 54, 58, 62,§§604.3, 604.4; C66, 71, 73, 75,§633.10]

633.11 Declaratory judgments — determination of heirship — distribution. During the administration of an estate, the district court sitting in probate shall have full, legal and equitable powers to make declaratory judgments in all matters involved in the administration of the estate, including those pertaining to the title of real estate, the determination of heirship, and the distribution of the estate. It shall have full, legal and equitable powers to enter final orders and decrees in all probate matters to effectuate its jurisdiction and to carry out its orders, judgments and decrees. [C66, 71, 73, 75,§633.11]

633.12 County of jurisdiction. The court of each county shall have original and exclusive jurisdiction to administer the estates of all persons who are residents of the county, or who were residents at the time of their death, and all nonresidents of the state who have property, or who die leaving property in the county subject to administration, or whose property is afterwards brought into the county; to appoint conservators for nonresidents having property in the county; and to appoint conservators and guardians of residents of the county. [C73,§2312; C97,§225; C24, 27, 31, 35, 39, §§**10763, 10764**; C46, 50, 54, 58, 62,§§604.3, 604.4; C66, 71, 73, 75,§633.12]

633.13 Extent of jurisdiction. The court of the county in which a will is probated, or in which administration, conservatorship or guardianship is granted, shall have jurisdiction coextensive with the state in the settlement of the estate, and in the sale and distribution thereof. [R60,§2472; C73,§2319; C97, §3265; C24, 27, 31, 35, 39,§**11825**; C46, 50, 54, 58, 62,§631.7; C66, 71, 73, 75,§633.13]

633.14 Concurrent jurisdiction. When a case is originally within the jurisdiction of the courts of two or more counties, the one which first takes cognizance thereof by the commencement of the proceedings shall retain the same throughout. [C51,§1274; R60,§2306; C73, §2318; C97,§3264; C24, 27, 31, 35, 39,§**11824**; C46, 50, 54, 58, 62,§631.6; C66, 71, 73, 75,§633.14]

633.15 Probate court always open. The court sitting in probate shall always be open for the transaction of probate business. [C73, §2313; C97,§3261; C24, 27, 31, 35, 39,§**11819**; C46, 50, 54, 58, 62,§631.1; C66, 71, 73, 75,§633.15]

633.16 Control of probate records. The court shall have jurisdiction and supervision of the probate records of the clerk, and may direct the destruction of records it deems to be old, obsolete or unnecessary, except that the probate record provided for in section 633.29 and the will record provided for in section 633.301 or a copy thereof, shall be preserved at all times. [C66, 71, 73, 75,§633.16]

633.17 Judge disqualified—procedure. Where the judge is a party, or is connected by blood or affinity with a person interested nearer than the fourth degree, or is personally interested in any probate matter, the same shall be heard before another judge of the same district, or be transferred to the court of another district, or a judge of another district shall be procured to hold court for the hearing of such matter. [C73,§2317; C97,§3263; C24, 27, 31, 35, 39,§**11823**; C46, 50, 54, 58, 62,§631.5; C66, 71, 73, 75,§633.17]

Similar provision, §605.17

633.18 Uniform rules in probate. The supreme court shall have power to adopt rules of procedure in probate not inconsistent with the provisions of this Code. The judges of the district court sitting en banc may adopt rules of procedure in probate matters within their respective districts not inconsistent with the rules adopted by the supreme court and the provisions of this Code. [C66, 71, 73, 75, §633.18]

633.19 Process revoked. Any process or authority emanating from the court in probate matters may for good cause be revoked and a new one issued. [C51,§1275; R60,§2307; C73, §2320; C97,§3266; C24, 27, 31, 35, 39,§**11827**; C46, 50, 54, 58, 62, §631.9; C66, 71, 73, 75,§633.19]

633.20 Referee—examination of accounts—fees. For the auditing of the accounts of fiduciaries and for the performance of such other ministerial duties as the court may direct, the court may appoint a referee in probate whenever in the opinion of the court it seems fit and proper to do so. The referee may be the clerk. No person shall be appointed as referee in any matter where he is acting as a fiduciary or as the attorney. All fees received by any county officer serving in the capacity of referee in probate shall become a part of the fees of his office and shall be accounted for as such. [C73,§2412; C97,§3393; C24, 27, 31, 35, 39,§**12041**; C46, 50, 54, 58, 62,§638.1; C66, 71, 73, 75,§633.20]

633.21 Appraisers' fees and referees' fees fixed by rule. The district court sitting en banc shall by rule fix the fees of probate referees. It shall also by rule provide, insofar as practicable, a uniform schedule of compensation for inheritance tax appraisers, other appraisers, brokers, and agents employed at estate expense. [C66, 71, 73, 75,§633.21]

PART 2
CLERK OF PROBATE COURT

633.22 Probate powers of clerk. The clerk shall have and may exercise within his county all the powers and jurisdiction of the court and of the judge thereof, in the following matters:

1. The appointment of personal representatives who are residents of the state, guardians and conservators for minors, the fixing and determining of the amount of the bond, or waiving the same when permitted by law or by will, and the approval of any and all bonds given by fiduciaries in the discharge of their duties.

2. The examination and approval of all intermediate and interlocutory accounts and reports of fiduciaries.

3. The admission of wills of decedents to probate, when not contested, and the making of necessary orders in relation thereto, including orders for the issuance of commissions to take depositions. Proof may be made before the clerk in the same manner as is made in open court.

4. The making of all necessary orders in relation to the personal effects of a deceased person, where no objection is filed, and perform all other acts within his jurisdiction, as provided in this Code.

5. The approval, when notice has been waived by all persons interested, of petitions and reports, or joint petitions and reports, in respect to the sale, mortgage, pledge, lease or exchange of property pursuant to sections 633.386 to 633.400. [C51,§1276; R60,§2308; C73, §§2315, 2321; C97,§§250, 3267, 3268; S13,§3268; C24, 27, 31, 35, 39,§§**11828, 11832, 11838**; C46, 50, 54, 58, 62,§§631.10, 632.1, 632.7; C66, 71, 73, 75,§633.22; 66GA, ch 208,§3]

Referred to in §633.23

633.23 Clerk's actions reviewed. Any person aggrieved by any order made or entered by the clerk under the powers conferred in section 633.22, subsections 1 to 4, may have the same reviewed in court upon motion filed within six months or before the hearing on the final report of the fiduciary, whichever is the earlier, and upon such notice as provided in section 633.40. [C97,§251; C24, 27, 31, 35, 39,§**11834**; C46, 50, 54, 58, 62,§632.3; C66, 71, 73, 75,§633.23; 66GA, ch 208,§4]

633.24 Docketing and hearing. Upon the filing of such a motion, the clerk shall place the cause or proceeding on the docket without additional docket fee, and the matter shall stand for hearing or trial de novo in open court. [C97,§251; C24, 27, 31, 35, 39,§**11835**; C46, 50, 54, 58, 62,§632.4; C66, 71, 73, 75,§633.24]

633.25 Validity of clerk's orders. The records, orders, and judgments made and entered by the clerk, as hereinbefore provided, and not reversed, set aside, or modified by the court, shall stand, and shall be of the same force, validity, and effect, and be entitled to the same faith and credit, as if they had been made by the court. [C97,§252; C24, 27, 31, 35, 39,§**11836**; C46, 50, 54, 58, 62,§632.5; C66, 71, 73, 75,§633.25]

633.26 Clerk not to prepare reports. No clerk, deputy, or employee of the clerk shall act as attorney for a fiduciary, or make or assist in making, drafting, or filling out any report of any fiduciary or any other report to be filed in his office. [C97,§252; C24, 27, 31, 35, 39, §**11837**; C46, 50, 54, 58, 62,§632.6; C66, 71, 73, 75,§633.26]

633.27 Probate docket. The clerk shall keep a book to be known as the Probate Docket, which shall show:

1. The name of every deceased person whose estate is administered or whose will is admitted to probate, and the date of his death.

2. The name of each person as to whom application for conservatorship or guardianship is made.

3. The names of all the heirs in intestate estates and the surviving spouse of such deceased intestate, and their ages and places of residence, so far as they can be ascertained.

4. The title of each trust where letters of trusteeship are issued.

5. A note of every sale of real estate made under the order of the court, with a reference to the volume and page of the record where a complete record thereof may be found. [C73, §2490; C97,§3411; C24, 27, 31, 35, 39,§**11841**; C46, 50, 54, 58, 62,§632.10; C66, 71, 73, 75,§633.27]

633.28 Docketing trust proceedings. When a trust is created by a will, the administration thereof shall be treated as a separate proceeding, with a separate docket number, from the date of the order of appointment or confirmation of the original trustee, unless otherwise ordered by the court. When the clerk dockets a trust proceedings under this section, he shall place and keep in such file a true copy of the will creating such trust. [C66, 71, 73, 75, §633.28]

633.29 Probate record. The clerk shall also keep a book to be known as the Probate Record that shall contain full and complete journal entries of all orders made in relation to the business of each estate. When real estate is sold or mortgaged by a fiduciary under an order of court therefor, a complete record of the same shall be made in the probate record, including the petition, the notice, the returns of service, and all other papers filed, with the orders made relating thereto. [C73,§2492; C97, §3413; C24, 27, 31, 35, 39,§**11842**; C46, 50, 54, 58, 62,§632.11; C66, 71, 73, 75,§633.29]

Referred to in §633.16

633.30 Bonds given by fiduciaries. The clerk shall also keep a book known as Record of Bonds, in which he shall record all bonds given by fiduciaries. [C73,§2493; C97,§3414; C24, 27, 31, 35, 39,§**11843**; C46, 50, 54, 58, 62, §632.12; C66, 71, 73, 75,§633.30]

633.31 Calendar—fees in probate.

1. The clerk shall keep a court calendar, and enter thereon such matters as the court may prescribe.

2. The clerk shall charge and collect the following fees, in connection with probate matters, all of which shall be paid into the county treasury for the use of the county:

a. For services performed in short form probates pursuant to sections 450.22 and 450.44 ..... $10.00

b. For services performed in probate of will without administration 10.00

c. For filing and indexing a transcript 3.00

d. For taking and approving a bond, or the sureties on a bond 2.00

e. For entering a rule or order 1.00

***f.* For certificate and seal 2.00**

g. For making a complete record where real estate is sold ..... per 100 words .20

h. For making a transcript or copies of orders or records filed in his office ....per 100 words .50

i. For certifying change of title 2.00

j. For issuing commission to appraisers 2.00

k. For other services performed in the settlement of the estate of any decedent, minor, insane person, or other persons laboring under legal disability, except where actions are brought by the administrator, guardian, trustee, or person acting in a representative capacity or against him, or as may be otherwise provided herein, where the value of the personal property and real estate of such a person falls within the following indicated amounts, the fee opposite such amount shall be charged.

Up to $3,000.00	5.00
3,000.00 to 5,000.00	10.00
5,000.00 to 7,000.00	15.00
7,000.00 to 10,000.00	20.00
10,000.00 to 15,000.00	25.00
15,000.00 to 25,000.00	30.00
For each additional $25,000.00 or major fraction thereof	20.00

l. For services performed in small estate administration 10.00

[C97,§3269; C24, 27, 31, 35, 39,§**11844**; C46, 50, 54, 58, 62,§632.13; C66, 71, 73, 75,§633.31]

633.32 Delinquent inventories and reports.

1. On May 1 and November 1 of each year, the clerk shall notify the fiduciary and his attorney of any delinquent inventories or reports due by law in any pending estate, trust, guardianship, or conservatorship, and that unless such delinquent inventory or report is filed within sixty days thereafter, the matter shall be reported to the presiding judge. If the delinquent inventory is not filed within the time so specified, the fiduciary will be subject to removal under the provisions of section 633.65 of this Code.

2. On July 1 and January 1 of each year, the clerk shall report to the presiding judge all delinquent inventories or reports in estates, trusts, guardianships or conservatorships on which such notice has been given and no report or inventory has been filed in response to the notice.

3. The reports required by this section shall indicate thereon all cases in which the attorney, or the fiduciary or his surety, is deceased, or insolvent, or cannot be found, or has re-

moved from this state, and where it is shown by said reports, or it otherwise appears that there are no known assets belonging to the estate, the judge may, on his own motion, order said estate closed, and may, in his discretion, waive costs, or, on reasonable notice to the fiduciary, tax costs against the fiduciary. Such order shall not operate to prevent the reopening of such estate. [C97,§3269; C24, 27, 31, 35, 39,§**11845**; C46, 50, 54, 58, 62,§632.14; C66, 71, 73, 75,§633.32]

PART 3
PROCEDURE IN PROBATE

633.33 Nature of proceedings in probate. Actions to set aside or contest wills, for the involuntary appointment of guardians and conservators, and for the establishment of contested claims shall be triable in probate as law actions, and all other matters triable in probate shall be tried by the probate court as a proceeding in equity. [C66, 71, 73, 75, §633.33]

633.34 Applicability of Rules of Civil Procedure. All actions triable in probate shall be governed by the Rules of Civil Procedure, except as provided otherwise in this Code. [C66, 71, 73, 75,§633.34]

633.35 Reports and applications for orders. All reports and applications for orders in probate must be in writing, verified and self-explanatory, so that the clerk or court from a perusal thereof may understand the relief sought without explanations. [C97,§3421; C24, 27, 31, 35, 39,§**12072**; C46, 50, 54, 58, 62,§638.35; C66, 71, 73, 75,§633.35]

633.36 Orders in probate. All orders and decrees of the court sitting in probate are final decrees as to the parties having notice and those who have appeared without notice. [C66, 71, 73, 75,§633.36]

633.37 Orders without notice. All orders entered without notice or appearance are reviewable by the court at any time prior to the entry of the order approving the final report. [C66, 71, 73, 75,§633.37]

633.38 Time and place of hearing. Except as otherwise provided in this Code, the hearing of any matter requiring notice shall be had at such time and place as the court may fix. [C73, §2313; C97,§3261; C24, 27, 31, 35, 39,§**11820**; C46, 50, 54, 58, 62,§631.2; C66, 71, 73, 75,§633.38]

633.39 Place of hearing — noncontest or agreement. In cases where no objection, resistance or appearance has been filed, or by agreement, such hearing may be had at any place within the judicial district. [C97,§3261; C24, 27, 31, 35, 39,§**11821**; C46, 50, 54, 58, 62, §631.3; C66, 71, 73, 75,§633.39]

633.40 Notice in probate proceedings.

1. *Court prescribing notice.* Except as otherwise provided in this Code, the court shall fix the time and place of hearing of any matter requiring notice and shall prescribe the time and manner of service of the notice of such hearing.

2. *Notice by publication.* In the case of proceedings against unknown persons or persons whose address or whereabouts are unknown, the court shall prescribe that notice may be served by publication within the time and in the manner provided by the Rules of Civil Procedure.

3. *No notice by posting.* No notice shall be served at any time by posting.

4. *Notice otherwise provided.* In lieu of the foregoing the notice may direct each interested party to file his objections thereto in writing, if any, on or before a date certain, to be set out in the notice and to be not less than twenty days after the day the notice is served upon him and that unless he does so file his objections in writing that he will be forever barred from making any objections thereto. Said notice shall be served upon each interested party personally in compliance with the rules of civil procedure, or upon those parties not under legal disability by ordinary United States mail. In the event objections thereto are timely filed, the court shall fix the time and place of the hearing for the judicial determination of the issues raised.

5. *Notice by mail.* When notice in probate proceedings is served upon an interested party by United States mail, the service is made and completed when the notice being served is enclosed in a sealed envelope with the proper postage thereon addressed to the interested party at his last known post-office address and is deposited in a mail receptacle provided by the United States postal service. [C73,§2314; C97,§3262; C24, 27, 31, 35, 39,§**11822**; C46, 50, 54, 58, 62,§631.4; C66, 71, 73, 75,§633.40; 66GA, ch 1227,§2]

Referred to in §§633.23, 633.389, 633.478, 633.677, 633.702

633.41 Consular representatives — notice. Whenever in the course of the administration of any estate, it shall appear that any subject, citizen, or national of a foreign country is interested as an heir, devisee, legatee, or otherwise, and the address of such person is unknown to the personal representative, the personal representative shall give notice by mail to the consular representative of such country for Iowa of the pendency of such proceedings and of the particular interest of such foreign subject. If such consular representative shall not have filed his designation and address with the clerk, then such notice shall be mailed to the chief diplomatic representative of such foreign country at Washington, D. C. Failure to give such notice shall in no event and in no manner affect title to property. [C27, 31, 35,§11845-b1; C39,§**11845.1**; C46, 50, 54, 58, 62, §632.15; C66, 71, 73, 75,§633.41]

633.42 Requests for notice. At any time after the issuance of letters testamentary or of administration upon a decedent's estate, any

person interested in the estate may file with the clerk a written request, in duplicate, for notice of the time and place of all hearings in such estate for which notice is required by law, by rule of court, or by an order in such estate. Such request for notice shall state the name and post-office address of such person and the name and post-office address of the attorney for the party requesting the notice. The clerk shall docket such request, and transmit the duplicate to the personal representative of the estate of the decedent. Thereafter, the personal representative shall, unless otherwise ordered by the court, serve, by ordinary mail, upon such person, or his said attorney, a notice of each such hearing. [C66, 71, 73, 75,§633.42]

Referred to in §633.43

633.43 Notice and appearance. In any matter pending in the probate court, the attorney general may request notice of all hearings therein as provided by section 633.42, and may, with the approval of the court, intervene in behalf of the public interest. The court, on its own motion, in any such matter involving the public interest, may direct the fiduciary to give notice of the hearing to the attorney general. [C66, 71, 73, 75,§633.43]

633.44 Waiver of service of notice. Any notice required under this Code, or by order of court, may be waived in writing by the person, or the fiduciary, entitled to receive such notice. [C66, 71, 73, 75,§633.44]

633.45 Notice of order served on fiduciary and attorney. When the court makes an order affecting a fiduciary, it shall be served upon him and his attorney of record in such manner as the court may prescribe. [R60,§§2474, 2475, 2476; C73,§§2479, 2480, 2481; C97,§§3403, 3404; S13,§3403; C24, 27, 31, 35. 39,§§**12055, 12056**; C46, 50, 54, 58, 62,§§638.15, 638.16; C66, 71, 73, 75,§633.45]

633.46 Proof of publication. Proof of the publication of all notices that are by this Code or by order of court required to be published shall be made by an affidavit of the publisher or of any employee having knowledge of the facts. [C66, 71, 73, 75,§633.46]

633.47 Proof of service and taxation of costs. Proof of service of any notice, required by this Code or by order of court, including those by publication, shall be filed with the clerk. The costs of serving any notice given by the fiduciary shall be taxed by the clerk as part of the costs of administration in said estate. [C66, 71, 73, 75,§633.47]

633.48 Certified copies affecting foreign real estate. A certified copy of any proceedings, order, judgment, or deed, affecting real estate in any county other than that in which administration or conservatorship is originally granted, shall be furnished to the clerk of the court of the county where such real estate is situated, and shall by him be entered in the Probate Record. [C97,§3265; C24, 27, 31, 35, 39, §**11826**; C46, 50, 54, 58, 62,§631.8; C66, 71, 73, 75,§633.48]

633.49 Transfer to another county. In any proceeding in probate, the court may, upon written showing, supported by affidavit, and on such notice to interested parties as the court may prescribe, transfer such proceeding to any other county, when it is made to appear that such transfer will be in furtherance of justice. Thereupon, the matter shall be pending in such other county. [C24, 27, 31, 35, 39, §**11829**; C46, 50, 54, 58, 62,§631.11; C66, 71, 73, 75,§633.49]

Referred to in §633.51

633.50 Certified copy filed. The clerk of the court which orders such a transfer shall retain the original files and papers, but shall make a certified copy thereof and of all record entries pertaining to the proceedings. He shall at once file the same in the office of the clerk of the court to which the transfer has been made. [C24, 27, 31, 35, 39,§**11830**; C46, 50, 54, 58, 62, §631.12; C66, 71, 73, 75,§633.50]

633.51 Certified copy recorded. The clerk of the court to which the proceedings are transferred shall record at length, in the probate record of his county, the certified copy of the record entries referred to in section 633.49. [C24, 27, 31, 35, 39,§**11831**; C46, 50, 54, 58, 62, §631.13; C66, 71, 73, 75,§633.51]

633.52 Mistakes corrected. Mistakes in settlements may be corrected at any time before the final discharge of any fiduciary on such notice, if any, as the court may direct. [C51, §1432; R60,§2457; C73,§2474; C97,§3398; C24, 27, 31, 35, 39,§**12049**; C46, 50, 54, 58, 62,§638.9; C66, 71, 73, 75,§633.52]

633.53 Submission and retention of vouchers and receipts. In all accountings filed by fiduciaries, vouchers or receipts for all disbursements shall be filed or submitted by the fiduciary upon written request of any interested party, or upon order of court. After an order, or decree, has been entered approving such accounting, any vouchers or receipts which have been filed may be withdrawn under order of the court. Vouchers or receipts not filed, or which have been withdrawn, shall be preserved by the fiduciary until the accounting of such fiduciary becomes final. [C66, 71, 73, 75,§633.53]

633.54 to 633.62 Reserved.

DIVISION III
GENERAL PROVISIONS RELATING TO FIDUCIARIES

PART 1
QUALIFICATION, APPOINTMENT, SUBSTITUTION AND REMOVAL OF FIDUCIARIES

633.63 Qualification of fiduciary—resident.

1. Any natural person of full age, who is a resident of this state, is qualified to serve as a fiduciary, except the following:

a. One who is a mental retardate, mentally ill, a chronic alcoholic, or a spendthrift.

b. Any other person whom the court determines to be unsuitable.

2. Banks and trust companies organized under the laws of the United States or state banks, when approved by the superintendent of banking under section 524.1001, are authorized to act in a fiduciary capacity in Iowa. [C51,§§1304, 1305; R60,§§2336, 2337; C73,§§2345, 2346; C97,§§3288, 3289; C24, 27, 31, 35, 39,§§**11871, 11872**; C46, 50, 54, 58, 62,§§633.27, 633.28; C66, 71, 73, 75,§633.63; 66GA, ch 67,§55]

Referred to in §§262.9, 524.107(2), 633.64, 633.65, 633.649

633.64 Qualification of fiduciary — nonresident. The court may, upon application, appoint the following nonresidents as fiduciaries:

1. *Natural persons.* A natural person who is a nonresident of this state and who is otherwise qualified under the provisions of section 633.63, provided a resident fiduciary is appointed to serve with such nonresident fiduciary; and provided further that the court, for good cause shown, may appoint such nonresident fiduciary to serve alone without the appointment of a resident fiduciary.

2. *Banks and trust companies.* Banks and trust companies organized under the laws of the United States or of another state and authorized to act in a fiduciary capacity in another state, if banks and trust companies of this state are permitted to act as fiduciary under similar conditions in the state where such bank or trust company is located. [C66, 71, 73, 75,§633.64]

Referred to in §§524.107(2), 633.65, 633.649

633.65 Removal of fiduciary. When any fiduciary is, or becomes, disqualified under sections 633.63 and 633.64, has mismanaged the estate, failed to perform any duty imposed by law, or by any lawful order of court, or ceases to be a resident of the state, then the court may remove him. The court may upon its own motion, and shall upon the filing of a verified petition by any person interested in the estate, including a surety on the fiduciary's bond, order the fiduciary to appear and show cause why he should not be removed. Any such petition shall specify the grounds of complaint. The removal of a fiduciary after letters are duly issued to him shall not invalidate his official acts performed prior to removal. [C51, §§1306, 1509, 1510; R60,§§2338, 2561, 2562; C73, §§2247, 2251, 2496–2500; C97,§§3198, 3201, 3416–3418; S13,§3228-g; C24, 27,§§12066–12068, 12600, 12604, 12643; C31, 35,§§12066–12068, 12600, 12604, 12643, 12644-c12; C39,§§**12066–12068, 12600, 12604, 12643, 12644.12**; C46, 50, 54, 58, 62,§§638.29–638.31, 668.27, 668.31, 671.12, 672.12; C66, 71, 73, 75, §633.65]

Referred to in §§633.32, 633.649, Court Probate Rule 1 following §633.70

633.66 Appointment of successor fiduciary. When any fiduciary fails to qualify, dies, is removed by the court, or resigns, and such resignation is accepted by the court, the court may, and if he were the sole or last surviving fiduciary, and the administration has not been completed, the court shall appoint another fiduciary in his place. [C51,§§1303, 1307; R60, §§2335, 2339; C73,§§2347, 2348; C97,§§3290, 3291; C24, 27, 31, 35, 39,§§**11873, 11874**; C46, 50, 54, 58, 62,§§633.29, 633.30; C66, 71, 73, 75,§633.66]

Referred to in §633.649

633.67 Powers of surviving cofiduciary. When the instrument creating the estate or trust requires two or more fiduciaries, and a vacancy occurs on account of the death, resignation, or removal of one of the fiduciaries, during the period of the vacancy thus created, the remaining fiduciary or fiduciaries shall have all the rights, titles and powers, whether discretionary or otherwise, of all the fiduciaries. [C66, 71, 73, 75,§633.67]

Referred to in §633.649

633.68 Powers of successor fiduciary. When a successor fiduciary is appointed, he shall have all the rights, powers, titles and duties of his predecessor, except that he shall not exercise powers given in the instrument creating the powers that by its express terms are personal to the fiduciary therein designated. [C66, 71, 73, 75,§633.68]

Referred to in §633.649

633.69 Substitution — effect. The substitution of a fiduciary shall occasion no delay in the administration of an estate. The periods herein specified within which acts are to be performed after the appointment of a fiduciary shall, unless otherwise ordered by the court, be computed from the issuing of the letters to the first fiduciary. [C51,§1308; R60,§2340; C73, §2349; C97,§3292; C24, 27, 31, 35, 39,§**11875**; C46, 50, 54, 58, 62,§633.31; C66, 71, 73, 75,§633.69]

Referred to in §633.649

633.70 Property delivered — penalty. Upon the removal of any fiduciary he shall be required by order of the court to deliver to the person who may be entitled thereto all the property in his hands or under his control belonging to the estate, and if he fails or refuses to comply with any proper order of the court, he may be committed to the jail of the county until he does. [C51,§1509; R60,§§2561, 2563; C73,§§2251, 2252, 2501, 2502; C97,§§3201, 3419; C24, 27, 31, 35, 39,§§**12069, 12601, 12602**; C46, 50, 54, 58, 62,§§638.32, 668.28, 668.29; C66, 71, 73, 75,§633.70]

Referred to in §633.649, Court Probate Rule 1

Court Probate Rule 1. **Effective removal order—turnover.** When the court orders the removal of a fiduciary under section 633.65, such order, unless expressly providing otherwise, shall be effective as a turnover order under section 633.70, and without further order the fiduciary so removed shall turn over all personal property, money or securities to or for his successor at the clerk's office within five days after such order is filed. [Court order of November 16, 1965 pursuant to §633.18]

633.71 Legal effect of appointment. By qualifying as fiduciary any person, resident or nonresident, submits himself to the jurisdiction of the court making the appointment of the fiduciary and, in addition, shall be deemed to agree that:

1. All property coming into his hands is subject to the jurisdiction of the court wherein is pending the proceedings in which he is serving, and

2. He is subject to all orders entered by the court in the proceedings in which he is serving and that notices served upon him with respect thereto in compliance with the procedure prescribed by the Code shall have the same force and effect as if such service had been personally made upon him within the state.

3. He shall be subject to the jurisdiction of the courts of this state in all actions and proceedings against him arising from or growing out of his fiduciary relationship and activities and that the service of process in such actions and proceedings may be made upon him by serving the original notice upon him outside this state and that such service shall have the same force and effect as though the service had been personally made upon the fiduciary within this state.

4. The clerk of the court in which is pending the proceedings in which the fiduciary is serving is the lawful attorney or resident agent of such nonresident fiduciary upon whom service of process may be made whether such process be an order of the court entered in the proceedings in which the fiduciary is serving or an original notice of an action arising from or growing out of the fiduciary relationship and activities of the nonresident fiduciary. [C71, 73, 75,§633.71]

Referred to in §633.649

633.72 Manner of service. Service of an original notice of an action or process upon a nonresident fiduciary as herein provided may be made upon such fiduciary either by:

1. Delivering four copies of said notice or of said process to the clerk of court wherein the proceedings in which such fiduciary is serving are pending; or

2. Mailing four copies of said original notice or of said process by certified mail addressed to said clerk of court by his official title.

Upon receipt of said copies, such clerk of court shall immediately acknowledge and accept service thereof on behalf of the nonresident fiduciary by writing thereon or attaching thereto his written acknowledgment and acceptance of such service on behalf of such nonresident fiduciary, giving the date thereof.

The clerk of court shall forthwith:

1. File one copy in the action or proceedings to which it relates if pending in the court of which he is clerk, or transmit such notice or process and his acknowledgment and acceptance of the service thereof by certified mail to the clerk of court in which the action or proceedings is pending.

2. Mail one copy of such original notice or process and a copy of his written acknowledgment and acceptance of service thereof by certified mail to the nonresident fiduciary at the last address of such fiduciary as shown by the records in the proceedings in which such fiduciary is serving.

3. Mail one copy of such original notice or process and a copy of his written acknowledgment and acceptance of service thereof by certified mail to the attorney of record for such fiduciary.

4. Retain a copy of such original notice or process for his files.

Said service upon the clerk of court as herein provided shall have the same force and effect as if served upon the nonresident fiduciary personally within the state of Iowa on the date stated in said acknowledgment and acceptance of such service by the clerk of court. [C71, 73, 75,§633.72]

Referred to in §633.649

633.73 to 633.75 Reserved.

PART 2

POWERS APPLICABLE TO ALL FIDUCIARIES

633.76 Two or more fiduciaries—exercise of powers. Where there are two or more fiduciaries, they shall all concur in the exercise of the powers conferred upon them, unless the instrument creating the estate provides to the contrary. In the event that the fiduciaries cannot concur upon the exercise of any power, any one of the fiduciaries may apply to the court for directions, and the court shall make such orders as it may deem to be to the best interests of the estate. [C66, 71, 73, 75,§633.76]

Referred to in §633.649

633.77 Receipts by one fiduciary. One of the several fiduciaries may receive and receipt for any money, which receipt shall be given by him in his own name only, and he must individually account for all the money thus received and receipted for by himself, and this shall not charge his cofiduciary, except insofar as it can be shown to have come into his hands. [C51,§1442; R60,§2467; C73,§2478; C97, §3402; C24, 27, 31, 35, 39,§12054; C46, 50, 54, 58, 62,§638.14; [C66, 71, 73, 75,§633.77]

Referred to in §633.649

633.78 Third parties protected. A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary. [C66, 71, 73, 75,§633.78]

Referred to in §633.649

633.79 Fiduciaries considered as one. In an action against several fiduciaries, in their fidu-

ciary capacity, they shall be considered one person, and judgment may be taken against all as such, although not all were served with notice. [C51,§1437; R60,§2462; C73,§2489; C97, §3410; C24, 27, 31, 35, 39,§**12062**; C46, 50, 54, 58, 62,§638.22; C66, 71, 73, 75,§633.79]

Referred to in §633.649

633.80 Fiduciary of a fiduciary. A fiduciary has no authority to act in a matter wherein his decedent or ward was merely a fiduciary, except that he shall file a report and accounting on behalf of his decedent or ward in said matter. [C51,§1438; R60,§2463; C73,§2483; C97, §3406; C24, 27, 31, 35, 39,§**12058**; C46, 50, 54, 58, 62,§638.18; C66, 71, 73, 75,§633.80]

Referred to in §633.649

633.81 Suit by and against fiduciary. Any fiduciary may sue, be sued and defend in such capacity. [R60,§1452; C73,§2275; C97,§3224; C24, 27, 31, 35, 39,§**12582**; C46, 50, 54, 58, 62,§668.10; [C66, 71, 73, 75,§633.81]

Referred to in §633.649

633.82 Designation of attorney. The designation of the attorney or attorneys employed by the fiduciary to assist him in the administration of the estate shall be filed in said estate proceedings. Such designation shall state the attorney's name and post-office address. [C66, 71, 73, 75,§633.82]

Referred to in §633.649

633.83 Continuation of business. Upon a showing of advantage to the estate, the court may authorize the fiduciary to continue any business of the estate for the benefit thereof. The order may be without notice, or after such notice as the court may prescribe. The court may on its own motion, and upon the application of any interested party shall, review such authorization, and upon such review, may revoke or modify the same. The order may provide:

1. For the conduct of the business solely by the fiduciary, or jointly with one or more other persons; for the formation of a partnership for the conduct of such business; or for the formation of, or for the fiduciary to join in the formation of a corporation for the conduct of such business;

2. For the extent of the liability of the estate, or any part thereof, or of the fiduciary, for obligations incurred in the continuation of the business;

3. As to whether liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate set aside for use in the business, or to the estate as a whole;

4. As to the period of time for which the business may be conducted; and

5. Such other conditions, restrictions, regulations and requirements as the court may order. [C51,§1327; R60,§2359; C73,§2407; C97, §3337; C24, 27, 31, 35, 39,§**11956**; C46, 50, 54, 58, 62,§635.52; C66, 71, 73, 75,§633.83]

Referred to in §633.649

633.84 Delegation of authority. Under order of court, with or without notice, a fiduciary may engage, at estate expense, outside specialists, and he may delegate to them, or consult with them for advice regarding the performance of aspects of the estate management which require professional skills or facilities which he does not possess, or does not possess in sufficient degree, and he may employ, at estate expense, subordinates and agents to perform ministerial acts and carry on or complete details of estate business under the policies and terms established by him. [C66, 71, 73, 75,§633.84]

Referred to in §§633.86, 633.649

633.85 Liability of fiduciary employing agents. The fiduciary shall not be personally liable for the acts or omissions of any such specialist, subordinate or agent, unless it can be shown that said acts or omissions would have been a breach of duty by the fiduciary had he done it himself, and that,

1. The fiduciary directed or permitted the breach; or

2. He did not select or retain the said specialist, subordinate or agent with reasonable care; or

3. The fiduciary did not properly supervise the specialist, subordinate or agent; or

4. The fiduciary approved, acquiesced or cooperated in the neglect, omission, misconduct or default by the specialist, subordinate or agent. [C66, 71, 73, 75,§633.85]

Referred to in §633.649

633.86 Reduction of fees when agents are employed. The court shall, in fixing the fees of any fiduciary, consider the compensation allowed to any person employed by the fiduciary under the provisions of section 633.84. If the court determines that the services rendered by such person were services that would normally have been performed by the fiduciary, the compensation of the fiduciary may, in the court's discretion, be reduced by all or any part of the compensation allowed to any such person. [C66, 71, 73, 75,§633.86]

Referred to in §633.649

633.87 Deposit of money in banks. A fiduciary may deposit moneys and other assets belonging to the estate in any banking institution authorized to do business in the state of Iowa. [C66, 71, 73, 75,§633.87]

Referred to in §633.649

633.88 Law governing administration of estates of nonresidents. Except as otherwise provided in this Code, all provisions of the law relating to the administration of domestic estates and to the fiduciaries appointed therein, shall apply to the administration of the estate of a nonresident, the appointment of the fiduciary therein, and the granting of letters. [C66, 71, 73, 75,§633.88]

Referred to in §633.649

633.89 Power of fiduciary or custodian to deposit securities. A fiduciary as defined in

section 633.3, subsection 17, holding securities, and a bank as defined in section 524.103, subsection 5, which is holding securities as a managing agent or as a custodian, including a custodian for a fiduciary, may deposit securities in a clearing corporation, as defined in section 554.8102, subsection 3, which is located within or without the state of Iowa, if the clearing corporation is federally regulated. A depositing bank is subject to rules adopted by the superintendent of banking, with respect to state banks, and by the comptroller of the currency, with respect to national banking associations.

Certificates representing deposited securities of the same class of the same issuer may merge securities deposited by a fiduciary, or by a bank acting as a managing agent or custodian, with securities deposited by any other person and may be held in the name of the clearing corporation or its nominee. The records of a depositing fiduciary and a depositing bank acting as a managing agent or custodian at all times must identify the persons on whose behalf securities have been deposited. Title to deposited securities may be transferred by entry on the books of a clearing corporation without physical delivery of the securities.

On demand by the owner, a bank depositing securities in a clearing corporation as a managing agent or as a custodian shall identify in writing the securities so deposited. On demand by any party to the accounting of a fiduciary, the fiduciary shall identify in writing the securities deposited in a clearing corporation for its account as fiduciary.

This section applies regardless of the date of the agreement, instrument, or court order under which the fiduciary or bank was appointed. [C75,§633.89]

Referred to in §§524.1006, 633.649

633.90 to 633.92 Reserved.

PART 3

SPECIAL PROVISIONS RELATING TO PROPERTY

633.93 Limitation on actions affecting deeds. No action for recovery of any real estate sold by any fiduciary can be maintained by any person claiming under the deceased, the ward, or a beneficiary, unless brought within five years after the date of the recording of the conveyance. [C66, 71, 73, 75,§633.93]

Referred to in §633.649

633.94 Platting. When it is for the best interests of the estate in order to dispose of real property, the court may, upon application by the fiduciary, or any other interested person, after notice and upon good cause shown, authorize the fiduciary, either alone or together with other owners, to plat any land belonging to the estate in accordance with the statutes in regard to platting. The court may authorize the fiduciary to execute any instruments which may be required of the titleholder or proprietor in connection with the platting of such land. [C66, 71, 73, 75,§633.94]

Referred to in §633.649
See also ch 409

633.95 Release of liens and mortgages. Any fiduciary qualified under the laws of this state may, without prior order of court, release or discharge, in whole or in part any mortgage, judgment or other lien held by the estate. [C51,§1337; R60,§2369; C73,§2383; C97,§3319; S13, §3307-a; C24, 27, 31, 35, 39,§§**11897, 11929**; C46, 50, 54, 58, 62,§633.53, 635.18; C66, 71, 73, 75, §633.95; 66GA, ch 208,§5]

Referred to in §§633.98, 633.649
See §682.26

633.96 Specific performance voluntary. When an estate is under such an obligation to convey property as might be enforced by suit for specific performance, the fiduciary may without prior order of court execute such conveyance. [C51,§§1435, 1436; R60,§§2460, 2461; C73,§§2487, 2488; C97,§3409; C24, 27, 31, 35, 39, §**12061**; C46, 50, 54, 58, 62,§638.21; C66, 71, 73, 75,§633.96]

Referred to in §§633.98, 633.649

633.97 Specific performance involuntary. When an estate is under obligation to convey property, the court may, upon application of any interested person, with or without notice as the court may direct, require the fiduciary to execute such a conveyance. [C51,§§1435, 1436; R60,§§2460, 2461; C73,§§2487, 2488; C97, §3409; C24, 27, 31, 35, 39,§**12061**; C46, 50, 54, 58, 62,§638.21; C66, 71, 73, 75,§633.97]

Referred to in §§633.98, 633.649

633.98 Certificate of appointment and authority. When any instrument executed in accordance with sections 633.95 to 633.97, inclusive, is to be recorded in a county other than the county in which the estate is pending, there shall also be recorded a certificate executed by the clerk of the court making the appointment, with seal affixed, showing the name of the court making the appointment, the date of the same, and that such fiduciary had not been discharged at the time of the execution of such instrument. [C97,§3308; SS15, §3308; C24, 27, 31, 35, 39,§**11898**; C46, 50, 54, 58, 62,§633.54; C66, 71, 73, 75,§633.98]

Referred to in §633.649

633.99 Federal stock authority to purchase. When the court shall enter an order authorizing the fiduciary to execute a mortgage to encumber any property of the estate to secure a loan obtained from any association or corporation created, or which may be created, by authority of the United States and as an instrumentality of the United States, the court may authorize the fiduciary to purchase stock in an association or corporation, when such a purchase of stock is necessary or required as an incident to, or condition of, obtaining the loan, and to mortgage the estate property for such purpose, as well as to make payment for the stock so purchased from the proceeds

of the loan so obtained. [C35,§11951-g1; C39, §11951.1; C46, 50, 54, 58, 62,§635.41; C66, 71, 73, 75,§633.99]

Referred to in §633.649

633.100 Waiver of exemption. Any deed or mortgage executed by a fiduciary under order of court shall have the effect of waiving any exemption as to homestead or otherwise of any person owning an interest in said real estate as fully as such owner could do if he were sui juris. [C35,§§11951-g3, 12644-g1,-g2, -g3,-g4,-g5; C39,§§11951.3, 12644.21-12644.25; C46, 50, 54, 58, 62,§§635.43, 673.1-673.5; C66, 71, 73, 75,§633.100]

Referred to in §633.649

633.101 Appraisal. At any time that the court may determine it to be to the best interests of the estate, it may order an appraisal of any or all of the property of an estate. [C66, 71, 73, 75,§633.101]

Referred to in §633.649

633.102 Costs and expenses. In connection with the sale, mortgage, lease, pledge or exchange of property, the court may authorize the fiduciary to pay, out of the proceeds realized therefrom or out of other funds of the estate, the customary and reasonable auctioneers' and brokers' fees and any necessary expenses for abstracting, survey, revenue stamps, and other necessary costs and expenses in connection therewith. [C66, 71, 73, 75,§633.102]

Referred to in §633.649

633.103 Certain corporate distributions. In the absence of contrary provisions in the will or trust instrument, the following types of corporate distributions shall be treated as follows:

1. Commencing with such distributions to shareholders of record on or after July 1, 1969, corporate distributions of shares of the distributing corporation, including distributions in the form of a share split or share dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to shareholders on account of their share ownership and the proceeds of any sale of the right are principal.

2. Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new shares or cash or an option to purchase additional shares, are principal. [C71, 73, 75,§633.103]

Referred to in §633.649

633.104 to 633.107 Reserved.

PART 4

PROVISIONS RELATING TO ADMINISTRATION BY ALL FIDUCIARIES

GENERAL PROVISIONS

633.108 Small legacies to minors—payment. Whenever a minor shall become entitled under the terms of a will to a bequest or legacy, to a share of the estate of an intestate, or to a beneficial interest in a trust fund upon the distribution thereof, and the value of such bequest, legacy, share, or interest shall not exceed the sum of one thousand dollars, and no conservator for such minor has theretofore been appointed, the court having jurisdiction of the distribution of such funds may, in its discretion, upon the application of the fiduciary, enter an order authorizing such fiduciary to pay such bequest, legacy, share or interest to the parents of such minor, or to the person with whom such minor resides, for the use of such minor, and the receipt of such person or persons therefor, when presented to the court or filed with the report of distribution of any such fiduciary, shall have the same force and effect as though such payment had been made to a duly appointed and qualified conservator for such minor. [C39,§12077.1; C46, 50, 54, 58, 62,§638.41; C66, 71, 73, 75,§633.108]

Referred to in §633.649
See §565A.11 and R.C.P. 297

633.109 Inability to distribute estate funds. Any fiduciary having in his possession or under his control any funds, moneys or securities due or to become due to any other person to whom payment or delivery cannot be made as shown by the report of the fiduciary on file, may, upon order of court, deposit such property with the clerk and take the receipt of the clerk for the same. Such receipt shall specifically state from whom said property was derived, the description thereof, and the name of the person entitled to the same. Thereafter, such funds shall be held and disposed of by the clerk in accordance with the provisions of chapter 682. [C66, 71, 73, 75,§633.109]

Referred to in §633.649
See §§682.31, 682.34

633.110 Receipts taken. If such fiduciary shall otherwise discharge all the duties imposed upon him by such appointment, he may take the receipts of the clerk for such funds, moneys, or securities so deposited, which receipts shall specifically set forth from whom said funds, moneys, or securities were derived, the amount thereof, and the name of the person to whom due or to become due, if known. [C66, 71, 73, 75,§633.110]

Referred to in §633.649
See §682.32

633.111 Final discharge period. Such fiduciary may file such receipts with his final report, and if it shall be made to appear to the satisfaction of the court that he has in all other respects complied with the law governing his appointment and duties, the court may

approve such final report and enter his discharge. [C66, 71, 73, 75,§633.111]

Referred to in §633.649
See §682.33

633.112 Discovery of property. The court may require any person suspected of having possession of any property, including records and documents, of the decedent, ward, or the estate, or of having had such property under his control, to appear and submit to an examination under oath touching such matters, and if on such examination it appears that he has the wrongful possession of any such property, the court may order the delivery thereof to the fiduciary. Such a person shall be liable to the estate for all damages caused by his acts. [C51, §§1334, 1439; R60,§§2366, 2464; C73,§§2379, 2484; C97,§§3315, 3407; C24, 27, 31, 35, 39,§§**11925, 12059**; C46, 50, 54, 58, 62,§§635.14, 638.19; C66, 71, 73, 75,§633.112]

Referred to in §633.649
Similar provisions, §§630.19, 680.10

633.113 Commitment. If, upon being served with an order of the court requiring him to appear for interrogation, as provided in the preceding sections hereof, any person fails to appear in accordance therewith, or if, having appeared, he refuses to answer any question which the court thinks proper to be put to him in the course of such examination, or if he fails to comply with the order of the court requiring him to deliver the property to the fiduciary, he may be committed to the jail of the county until he does. [C51,§1335; R60,§2367; C73,§2380; C97,§3316; C24, 27, 31, 35, 39,§**11926**; C46, 50, 54, 58, 62,§635.15; C66, 71, 73, 75, §633.113]

Referred to in §633.649

633.114 Compromise of claims held by an estate. When it appears for the best interest of the estate, the fiduciary may, subject to approval of the court, effect a compromise with any debtor or other obligor, or extend, renew, or in any other manner, modify the terms of any obligation owing to the estate. If the fiduciary holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of such encumbered assets from the owner thereof in satisfaction of the indebtedness secured by such lien, if it appears for the best interests of the estate, and if the court shall so order. [C51,§1336; R60,§2368; C73,§2382; C97,§3318; C24, 27, 31, 35, 39,§**11928**; C46, 50, 54, 58, 62,§635.17; C66, 71, 73, 75, §633.114]

Referred to in §633.649

633.115 Compromise of claims against an estate. When a claim against an estate has been filed, or suit thereon is pending, the creditor and the fiduciary may, if it appears for the best interests of the estate, subject to approval of the court, compromise the claim, whether it is due or not due, absolute or contingent, liquidated or unliquidated. [C51,§1336; R60, §2368; C73,§2382; C97,§3318; C24, 27, 31, 35, 39, §**11928**; C46, 50, 54, 58, 62,§635.17; C66, 71, 73, 75,§633.115]

Referred to in §633.649

633.116 Abandonment of property. When any property is valueless, or is so encumbered, or in such condition, that it is of no benefit to the estate, the court may order the fiduciary to abandon it, or make such other disposition of it as may be suitable in the premises. [C66, 71, 73, 75,§633.116]

Referred to in §633.649

633.117 Encumbered assets. When any assets of the estate are encumbered by mortgage, pledge or other lien, the fiduciary may pay such encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or may convey or transfer such assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, or he may purchase lands claimed or contracted for by the decedent, if it appears to be for the best interests of the estate and if the court shall so order. The making of such payment shall not increase the share of the distributee entitled to such encumbered assets. [C51,§1380; R60,§2412; C73,§2428; C97,§3354; C24, 27, 31, 35, 39,§**11977**; C46, 50, 54, 58, 62,§635.72; C66, 71, 73, 75,§633.117]

Referred to in §633.649
See also §633.423

633.118 Attorney appointed for persons not represented. At or before the hearing in any proceedings under this Code, where all the parties interested in the estate are required to be notified thereof, the court, in its discretion, may appoint some competent attorney to represent any interested person who has been served with notice and who is otherwise unrepresented. [C97,§3423; C24, 27, 31, 35, 39, §**12074**; C46, 50, 54, 58, 62,§638.37; C66, 71, 73, 75,§633.118]

Referred to in §§633.120, 633.121, 633.649

633.119 Order and authority thereunder. The order making the appointment of such attorney must specify the names of the parties, so far as known, for whom he is appointed, and he will be authorized to represent such parties in all such proceedings subsequent to his appointment. [C97,§3423; C24, 27, 31, 35, 39, §**12075**; C46, 50, 54, 58, 62,§638.38; C66, 71, 73, 75,§633.119]

Referred to in §633.649

633.120 Compensation. Any attorney so appointed under the authority of section 633.118 shall be paid for his services out of the estate, as a part of the costs of administration, a fee to be fixed by the court, and upon distribution of the estate, the fee may be charged to the party represented by him. [C97,§3423; C24, 27, 31, 35, 39,§**12076**; C46, 50, 54, 58, 62,§638.39; C66, 71, 73, 75,§633.120]

Referred to in §633.649

633.121 Substitution—division of fee. The court may substitute another attorney for the

one first appointed under the authority of section 633.118, in which case the fees must be divided in proportion to the services rendered. [C97,§3423; C24, 27, 31, 35, 39,§12077; C46, 50, 54, 58, 62,§638.40; C66, 71, 73, 75,§633.121]

Referred to in §633.649

633.122 Settlement contested. The acts of the fiduciary without prior approval of court after notice, may be contested by any interested person at or before the entry of the order discharging the fiduciary. [C51,§1431; R60, §2456; C73,§2475; C97,§3399; C24, 27, 31, 35, 39, §12050; C46, 50, 54, 58, 62,§638.10; C66, 71, 73, 75,§633.122]

Referred to in §633.649

INVESTMENTS BY FIDUCIARIES

633.123 Model prudent person investment Act.

1. *Investments by fiduciaries.* In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for the purpose of speculation, but with regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety, of their capital. Within the limitations of the foregoing standards, a fiduciary is authorized to acquire and retain every kind of property and every kind of investment, specifically including, but not by way of limitation, bonds, debentures, and other corporate obligations, and stocks and shares, preferred or common, which persons of prudence, discretion and intelligence acquire or retain for their own account.

2. *Limitations.* Nothing contained in this Code shall be construed as authorizing any departure by a fiduciary from, or his variation of, the express terms or limitations set forth in any will, agreement, court order, or other instrument creating or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investment", or words of similar import, as used in any such instrument, shall be taken to mean any investment that is permitted by the provisions of subsection 1 hereof.

3. *Powers of court to authorize investment.* Nothing contained in this section shall be construed as restricting the power of the court, after such notice as the court may prescribe, to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of fiduciary property.

4. *Scope of application.* The provisions of this section shall govern all fiduciaries acting under the jurisdiction of the court whether the wills, agreements or other instruments under which they are acting now exist, or are hereafter made. [C31, 35,§12644-c14; C39, §12644.14; C46 50, 54, 58, 62,§672.14; C66, 71, 73, 75,§633.123]

Referred to in §§412.4, 633.348, 633.646, 633.649

APPOINTMENT OF A NOMINEE BY BANKING INSTITUTIONS ACTING IN A FIDUCIARY CAPACITY

633.124 Investment may be held in name of nominee of bank or trust company. Any state or national bank or trust company, when acting with the consent of its cofiduciary, if any, may cause any investment held in any such capacity to be registered and held in the name of a nominee or nominees of such bank or trust company. Such cofiduciary is hereby empowered to give such consent unless it is specifically forbidden in the instrument creating the fiduciary relationship. Such bank or trust company shall be liable for the acts of any such nominee with respect to any investment so registered. [C66, 71, 73, 75,§633.124]

Referred to in §633.649

633.125 Records of bank or trust company to show ownership. The records of said bank or trust company shall at all times show the ownership of any such investment, which investment shall be in the possession and control of such bank or trust company and be kept separate and apart from the assets of such bank or trust company. [C66, 71, 73, 75, §633.125]

Referred to in §633.649

COMMON TRUST FUNDS

633.126 Definitions.

1. "Common trust fund" means a fund maintained by a bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as a fiduciary or cofiduciary.

2. "Fiduciary", for the purposes of this section and sections 633.127 to 633.129, means acting in any of the following capacities, namely: Testamentary trustee appointed by any court, trustee under any written agreement, declaration or instrument of trust, executor, administrator, guardian, or conservator. [C62,§§533A.1–533A.5; C66, 71, 73, 75,§633.126]

Referred to in §§633.129, 633.649

633.127 Establishment of common trust funds. Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment. If the instrument creating the fiduciary relationship gives to the bank or trust company the exclusive right to select

investments, the consent of the cofiduciary shall not be required. [C58,§532.21; C62, §§532.21, 533A.1—533A.5; C66, 71, 73, 75, §633.127]

Referred to in §§633.126, 633.129, 633.649

633.128 Court accountings. Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the court, secure approval of such an accounting on such conditions as the court may establish.

When an accounting of a common trust fund is presented to a court for approval, the court shall assign a time and place for hearing, and order notice thereof by: (1) Publication once each week for three consecutive weeks in a newspaper of general circulation, published in the county in which the bank or trust company operating the common trust fund is located, the first publication to be not less than twenty days prior to the date of hearing, and (2) sending by ordinary mail not less than fourteen days prior to the date of hearing, a copy of the notice prescribed to all beneficiaries of the trust participating in the common trust fund whose names are known to the bank or trust company from the records kept by it in the regular course of business in the administration of said trusts, directed to them at the addresses shown by such records, and (3) such further notice, if any, as the court may order. [C58,§532.21; C62,§§532.21, 533A.1–533A.5; C66, 71, 73, 75,§633.128]

Referred to in §§633.126, 633.129, 633.649

633.129 Uniformity of interpretation. Sections 633.126 to 633.128 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact the common trust funds. [C62,§533A.4; C66, 71, 73, 75,§633.129]

Referred to in §§633.126, 633.649

SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

633.130 Registration in the name of a fiduciary. A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security. [C66, 71, 73, 75,§633.130]

Referred to in §§554.10104, 633.134 to 633.138, 633.649

633.131 Assignment by a fiduciary. Except as otherwise provided in this Code, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

1. May assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity, and is not in breach of his fiduciary duties;

2. May assume without inquiry that the fiduciary has complied with any controlling instrument and with this Code, including any law requiring the fiduciary to obtain court approval of the transfer; and

3. Is not charged with notice of, and is not bound to obtain or examine, any court record, or any recorded or unrecorded document, relating to the fiduciary relationship or the assignment, even though the record or document is in his possession. [C66, 71, 73, 75, §633.131]

Referred to in §§554.10104, 633.134 to 633.138, 633.649

633.132 Evidence of appointment or incumbency. A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

1. In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof, and dated within sixty days before the transfer; or

2. In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible, or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection, provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection, except to the extent that the contents relate directly to the appointment or incumbency. [C66, 71, 73, 75,§633.132]

Referred to in §§554.10104, 633.134 to 633.138, 633.649

633.133 Adverse claims.

1. A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this chapter relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is put on notice, unless it proceeds in the manner authorized in subsection 2.

2. As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by certified or registered mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice, it shall withhold the transfer for thirty days after the mailing, and shall then make the transfer unless restrained by a court order. [C66, 71, 73, 75,§633.133]

Referred to in §§554.10104, 633.134 to 633.138, 633.649

633.134 Nonliability of corporation and transfer agent. A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by sections 633.130 to 633.133. [C66, 71, 73, 75,§633.134]

Referred to in §§554.10104, 633.136, 633.137, 633.138, 633.649

633.135 Nonliability of third persons.

1. No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being, or were to be, used wrongfully for the individual benefit of the fiduciary, or that the transaction was otherwise in breach of duty.

2. If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of sections 633.130 to 633.133 incurs no liability.

3. This section does not impose any liability upon the corporation or its transfer agent. [C66, 71, 73, 75,§633.135]

Referred to in §§554.10104, 633.136, 633.137, 633.138, 633.649

633.136 Territorial application.

1. The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary, or in making a transfer of a security pursuant to an assignment by a fiduciary, are governed by the law of the jurisdiction under whose laws the corporation is organized.

2. Sections 633.130 to 633.135 apply to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary, and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction. [C66, 71, 73, 75,§633.136]

Referred to in §§554.10104, 633.137, 633.138, 633.649

633.137 Tax obligations. Sections 633.130 to 633.136 do not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of this state. [C66, 71, 73, 75,§633.137]

Referred to in §§554.10104, 633.138, 633.649

633.138 Uniformity of interpretation. Sections 633.130 to 633.137 shall be so construed as to effectuate their general purpose to make uniform the transfers of securities by fiduciaries. [C66, 71, 73, 75,§633.138]

Referred to in §§554.10104, 633.649

633.139 to 633.143 Reserved.

PART 5
POWERS OF FOREIGN FIDUCIARIES

633.144 Mortgages and judgments. Judgments rendered by any court in the state of Iowa and mortgages belonging to an estate, trust, or to a person under conservatorship may, without prior order of court, be released, discharged or assigned, in whole or in part as to any particular property, and deeds may be executed in performance of real estate contracts entered into before the creation of the estate, trust, or conservatorship, by any foreign fiduciary, receiver, referee, assignee or commissioner, or by any other person acting in a fiduciary capacity appointed by a court of record of any foreign state or country, where a statement is filed by said fiduciary that no fiduciary, receiver, referee, assignee, or commissioner has been appointed and qualified in this state. Such release, satisfaction, discharge, assignment or deed may be made without any order of court in any manner or by any instrument which would be valid and effective if made by a like officer qualified under the law of this state. [S13,§3307-a; C24, 27, 31, 35, 39,§**11897**; C46, 50, 54, 58, 62,§633.53; C66, 71, 73, 75,§633.144]

Referred to in §§633.145, 633.649

633.145 Certificate of appointment and authority. Before any instrument executed by such foreign fiduciary or officer as authorized by section 633.144 shall be effective, a certificate executed by the court or clerk making the appointment, with seal attached, if such officer has a seal, shall be recorded. Such certificates shall state the name of the court making such appointment, the date of the appointment, and that such fiduciary or officer has not been discharged at the time of the execution of said instrument. [C97,§3308; SS15,§3308; C24, 27, 31, 35, 39,§**11898**; C46, 50, 54, 58, 62,§633.54; C66, 71, 73, 75,§633.145]

Referred to in §633.649

633.146 Filing of certificate. The certificate aforesaid shall be filed for record:

1. In the case of judgments, in the office of the clerk in which the judgment is of record or in which it has been filed, and

2. In the case of mortgages and deeds executed in performance of real estate contracts,

in the office of the appropriate county recorder. [C97,§3308; SS15,§3308; C24, 27, 31, 35, 39, §11899; C46, 50, 54, 58, 62,§633.55; C66, 71, 73, 75,§633.146]

Referred to in §633.649

633.147 Record. Such certificate shall be recorded by the proper officer in the judgment records of the court in which the same appears of record, or in the appropriate chattel or real estate records, as the case may be. [C97,§3308; SS15,§3308; C24, 27, 31, 35, 39,§11900; C46, 50, 54, 58, 62,§633.56; C66, 71, 73, 75,§633.147]

Referred to in §633.649

633.148 Maintaining actions. When there is no administration of an estate nor a petition therefor pending, in this state, a foreign fiduciary may maintain actions and proceedings in this state subject to the requirements and conditions imposed upon nonresident suitors generally. [C66, 71, 73, 75,§633.148]

Referred to in §633.649

633.149 Filing of bond. At the time of commencing any action or proceeding in any court of this state, the foreign fiduciary shall file with the court an authenticated copy of his appointment, and of his official bond, if he has given a bond. If the court believes that the security furnished by him in the domiciliary administration is insufficient to cover the proceeds of the action or the proceeding, or for any other reason or cause, it may at any time order the action or proceeding stayed until sufficient security is furnished in the action or proceeding. [C66, 71, 73, 75,§633.149]

Referred to in §633.649

633.150 to 633.154 Reserved.

PART 6
LIABILITY OF FIDUCIARIES

633.155 Self-dealing by fiduciary prohibited. No fiduciary shall in any manner deal with himself, except on order of court after notice to all interested persons, and shall derive no profit other than his distributive share in the estate from the sale or liquidation of any property belonging to the estate. Every application of a fiduciary seeking an order under the provisions of this section shall specify in detail the reasons for such application and the facts justifying the requested order. The notice shall have a copy of the application attached, or, if published, it shall contain a detailed statement of the reasons and facts justifying the requested order. [C51,§1427; R60,§2452; C73, §2473; C97,§3397; C24, 27, 31, 35, 39,§12048; C46, 50, 54, 58, 62,§638.8; C66, 71, 73, 75,§633.155]

Referred to in §§633.156, 633.649

633.156 Deposits by corporate fiduciaries. Section 633.155 shall not be construed to prohibit a corporate fiduciary from making a deposit of estate funds in its own banking department. [C66, 71, 73, 75,§633.156]

Referred to in §633.649

633.157 Liability for property of estate. Every fiduciary shall be liable for, and chargeable in his accounts with, all of the estate that comes into his possession at any time, including all the income therefrom; but he shall not be accountable for any debts due to the estate or other assets of the estate that remain uncollected without his fault. He shall not be entitled to profit from the increase in value of any asset of the estate, nor shall he be chargeable with loss resulting, without his fault, from the decrease in value or the destruction of any part of the estate, excepting, only to the extent of his pro rata share in such gain or loss as one of the distributees of the estate. [C51,§§1425, 1427; R60,§§2450, 2452; C73, §§2471, 2473; C97,§§3395, 3397; C24, 27, 31, 35, 39, §§12046, 12048; C46, 50, 54, 58, 62,§§638.6, 638.8; C66, 71, 73, 75,§633.157]

Referred to in §633.649

633.158 Liability for property not a part of estate. Every fiduciary shall be chargeable in his accounts with property not a part of the estate that comes into his hands at any time, and shall be liable to the persons entitled thereto, if:

1. The property was received under a duty imposed upon him by law in the capacity of fiduciary; or

2. He has commingled such property with the assets of the estate. [C66, 71, 73, 75, §633.158]

Referred to in §633.649

633.159 Judgment—execution. If judgment is rendered against a fiduciary for costs in any action prosecuted or defended by him in that capacity, execution shall be awarded against him as for his own debt, if it appears to the court that such action was prosecuted or defended without reasonable cause. [C51,§1433; R60,§2458; C73,§2477; C97,§3401; C24, 27, 31, 35, 39,§12053; C46, 50, 54, 58, 62,§638.13; C66, 71, 73, 75,§633.159]

Referred to in §633.649

633.160 Breach of duty. Every fiduciary shall be liable and chargeable in his accounts for neglect or unreasonable delay in collecting the credits or other assets of the estate or in selling, mortgaging or leasing the property of the estate; for neglect in paying over money or delivering property of the estate he shall have in his hands; for failure to account for or to close the estate within the time provided by this Code; for any loss to the estate arising from his embezzlement or commingling of the assets of the estate with other property; for loss to the estate through self-dealing; for any loss to the estate arising from wrongful acts or omissions of his cofiduciaries which he could have prevented by the exercise of ordinary care; and for any other negligent or willful act or nonfeasance in his administration of the estate by which loss to the estate arises. [C51, §1428; R60,§2453; C73,§2482; C97,§3405; C24, 27, 31, 35, 39,§12057; C46, 50, 54, 58, 62,§638.17; C66, 71, 73, 75,§633.160]

Referred to in §633.649

633.161 Examination of fiduciaries. The fiduciary may be examined under oath by the court upon any matter relating to his accounts. [C51,§1424; R60,§2449; C73,§2470; C97,§3395; C24, 27, 31, 35, 39,§**12045**; C46, 50, 54, 58, 62,§638.5; C66, 71, 73, 75,§633.161]

Referred to in §633.649

633.162 Penalty. In fixing the fees of any fiduciary, the court shall take into consideration any violation of this Code by the fiduciary, and may diminish the fee of such fiduciary to the extent the court may determine to be proper. [C66, 71, 73, 75,§633.162]

Referred to in §633.649

633.163 to 633.167 Reserved.

PART 7
OATH AND BOND OF FIDUCIARIES

633.168 Oath. Every fiduciary, before entering upon the duties of his office and within such time as the court or clerk directs, shall subscribe an oath that he will faithfully discharge the duties imposed upon him by law, according to the best of his ability. [C51, §§1276, 1316, 1317, 1496; R60,§§2308, 2348, 2349, 2548; C73,§§2246, 2321, 2362, 2363; C97,§§3197, 3267, 3268, 3301; S13,§3268; C24, 27, 31, 35, 39, §§**11828, 11838, 11887, 12577, 12579**; C46, 50, 54, 58, 62,§§631.10, 632.7, 633.43, 668.5, 668.7; C66, 71, 73, 75,§633.168]

633.169 Bond. Except as herein otherwise provided, every fiduciary shall execute and file with the clerk a bond with sufficient surety or sureties, as hereinafter provided. It shall be conditioned upon the faithful discharge of all the duties of his office according to law, including his duty to account. It shall be procured at the expense of the estate, if an approved surety company bond is furnished. [C51,§§1276, 1316, 1317; R60,§§2308, 2348, 2349; C73,§§2321, 2350, 2362, 2363; C97,§§3267, 3268, 3293, 3301; S13,§3268; C24, 27, 31, 35, 39,§§**11828, 11838, 11876, 11887**; C46, 50, 54, 58, 62,§§631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75,§633.169]

633.170 Amount of bond.

1. *How determined.* Except as herein otherwise provided, the court or the clerk shall fix the penalty of the bond in an amount equal to the value of the personal property of the estate, plus the estimated gross annual income of the estate during the period of administration.

2. *Bonds fixed by clerk.* Unless a bond is waived by will under the authority of section 633.172, or by other instrument creating the estate, or in accordance with section 633.173, or by prior order of court, the clerk shall fix the bond in the amount provided by subsection 1 of this section. The clerk shall not thereafter increase or decrease a bond. [C51, §§1276, 1316, 1317; R60,§§2308, 2348, 2349; C73, §§2321, 2350, 2362, 2363; C97,§§3267, 3268, 3293, 3301; S13,§3268; C24, 27, 31, 35, 39,§§**11828, 11838, 11876, 11887, 12578**; C46, 50, 54, 58, 62,§§631.10, 632.7, 633.32, 633.43, 668.6; C66, 71, 73, 75, §633.170]

633.171 Approval by clerk. The bond shall not be deemed sufficient until it has been examined and approved by the clerk who shall endorse such approval thereon. In the event that the bond is not approved, the fiduciary shall, within such time as the court or the clerk directs, secure and file a bond with satisfactory surety or sureties. [C51,§§1276, 1316, 1317; R60,§§2308, 2348, 2349; C73,§§2321, 2350, 2362, 2363; C97,§§3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39,§§**11828, 11838, 11876, 11887**; C46, 50, 54, 58, 62,§§631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75,§633.171]

633.172 Will—waiver of bond.

1. When, by the terms of the will, the testator has directed or expressed the desire that no bond shall be required, such direction or expression shall be construed to be a waiver of the posting of a bond by the fiduciary for all purposes, and no bond shall be required unless the court for good cause finds it proper to require one; if no bond is initially required, the court may nevertheless, for good cause, at any subsequent time require that a bond be given.

2. Unless otherwise required by the instrument creating the relationship, or by order of court, a corporate fiduciary shall not be required to provide any bond. [C51,§§1276, 1316, 1317; R60,§§2308, 2348, 2349; C73,§§2321, 2350, 2362, 2363; C97,§§3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39,§§**11828, 11838, 11876, 11887**; C46, 50, 54, 58, 62,§§631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75,§633.172]

Referred to in §633.170

633.173 Waiver of bond by distributees. If the distributees, in writing waive the statutory requirement that a bond shall be filed by the fiduciary with the clerk, and the court finds that the interests of the creditors will not thereby be prejudiced, no bond shall be required. [C51,§§1276, 1316, 1317; R60,§§2308, 2348, 2349; C73,§§2321, 2350, 2362, 2363; C97, §§3267, 3268, 3293, 3301; S13,§3268; C24, 27, 31, 35, 39,§§**11828, 11838, 11876, 11887**; C46, 50, 54, 58, 62,§§631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75,§633.173]

Referred to in §633.170
Attorneys acting as fiduciaries, see Court Rule 121.5

633.174 Guardians—bond. When the guardian appointed for a person is not the conservator of the property of that person, no bond shall be required of the guardian, unless the court for good cause finds it proper to require one. If no bond is initially required, the court may, nevertheless, for good cause, at any subsequent time, require that a bond be given. [C51,§§1276, 1316, 1317, 1496; R60,§§2308, 2348, 2349, 2548; C73,§§2246, 2321, 2350, 2362, 2363; C97,§§3197, 3267, 3268, 3293, 3301; S13,§3268; C24, 27,§§11828, 11838, 11876, 11887, 12579; C31, 35,

§§11828, 11838, 11876, 11887, 12579, 12644-c10; C39,§§**11828, 11838, 11876, 11887, 12579, 12644.10**; C46, 50, 54, 58, 62,§§631.10, 632.7, 633.32, 633.43, 668.7, 672.9; C66, 71, 73, 75,§633.174]

633.175 Waiver of bond by court. The court may, for good cause shown, exempt any fiduciary from giving bond, provided the court finds that the interests of creditors and distributees will not thereby be prejudiced. [C51, §§1276, 1316, 1317, 1496; R60,§§2308, 2348, 2349, 2548; C73,§§2246, 2321, 2350, 2362, 2363; C97, §§3197, 3267, 3268, 3293, 3301; S13,§3268; C24, 27, 31, 35, 39,§§**11828, 11838, 11876, 11887, 12577**; C46, 50, 54, 58, 62,§§631.10, 632.7, 633.32, 633.43, 668.5; C66, 71, 73, 75,§633.175]

Administering moneys paid by veterans administration, see §633.622

Attorneys acting as fiduciaries, see Court Rule 121.5

633.176 Reduction of bond by deposit. Personal property of the estate may be deposited with a bank or trust company located in the state of Iowa upon such terms as may be prescribed by order of the court. The amount of the bond of the fiduciary may be then reduced as the court may determine. [C51,§§1276, 1316, 1317; R60,§§2308, 2348, 2349; C73,§§2321, 2350, 2362, 2363; C97,§§3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39,§§**11828, 11838, 11876, 11887**; C46, 50, 54, 58, 62,§§631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75,§633.176]

633.177 Deposit in lieu of bond. The court may permit the fiduciary to deposit cash or other prescribed securities of his own in lieu of bond. [C51,§§1276, 1316, 1317; R60,§§2308, 2348, 2349; C73,§§2321, 2350, 2362, 2363; C97, §§3267, 3268, 3293, 3301; S13,§3268; C24, 27, 31, 35, 39,§§**11828, 11838, 11876, 11887**; C46, 50, 54, 58, 62,§§631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75,§633.177]

633.178 Letters. Upon the filing of an oath of office and a bond, if any is required, the clerk shall issue letters under the seal of the court, giving the fiduciary the powers authorized by law. [C51,§1319; R60,§2351; C73,§2365; C97,§3303; C24, 27, 31, 35, 39,§**11889**; C46, 50, 54, 58, 62,§633.45; C66, 71, 73, 75,§633.178]

633.179 Review by clerk when inventory is filed. At the time the inventory of the estate is filed, the clerk shall review the amount of bond, and report to the court as to any apparent insufficiency thereof. [C66, 71, 73, 75, §633.179]

633.180 Bond changed. The court may at any time require a new bond, or increase or decrease the amount of the penalty of the bond of any fiduciary, when good cause therefor appears. [C51,§1510; R60,§2562; C73,§2247; C97, §3198; C24, 27,§12604; C31, 35,§§12604, 12644-c9; C39,§§**12604, 12644.09**; C46, 50, 54, 58, 62,§§668.31, 672.9; C66, 71, 73, 75,§633.180]

633.181 Obligees of bond—joint and several liability. The bond of the fiduciary shall run to the use of all persons interested in the estate, and shall be for the security and benefit of such persons. The sureties shall be jointly and severally liable with the fiduciary, and with each other. [C66, 71, 73, 75,§633.181]

633.182 Qualifications for sureties. Qualifications for sureties on probate bonds shall be the same as those provided by section 682.4 or section 682.14, provided, however, that no attorney shall act as surety on any such bond. [C66, 71, 73, 75,§633.182]

633.183 Authority for fiduciary and surety to enter into agreement for deposit of property or joint control. It shall be lawful for the fiduciary to agree with his surety for the deposit of any or all moneys and other property of the estate with a bank, safe deposit or trust company, authorized by law to do business as such, or other depository approved by the court, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys or other property without the written consent of the surety, or on order of the court made on such notice to the surety as the court may direct. [C66, 71, 73, 75, §633.183]

633.184 Release of sureties before estate fully administered.

1. *Release for cause.* For good cause, the court may, before the estate is fully administered, order the release of the sureties of the fiduciary and require the fiduciary to furnish a new bond.

2. *Extent of liability of original and new sureties.* The original sureties shall be liable for all breaches of the obligation of the bond up to the time of filing of the new bond and the approval thereof by the clerk, but not for acts and omissions of the fiduciary thereafter. The new bond shall bind the sureties thereon with respect to acts and omissions of the fiduciary from the time when the sureties on the original bond are no longer liable therefor. [C51,§1318; R60,§2350; C73,§2364; C97,§3302; C24, 27, 31, 35, 39,§**11888**; C46, 50, 54, 58, 62,§633.44; C66, 71, 73, 75,§633.184]

633.185 Insolvency of fiduciary. If, at any time, a fiduciary becomes insolvent after qualifying as such fiduciary, and after the maturity of a debt owing by such fiduciary to the estate, then the fiduciary and the sureties on his bond shall be liable to the estate for the indebtedness owing by the fiduciary to the estate. If the fiduciary is not solvent at any time after his qualification and after the maturity of the debt, the sureties on his bond shall not be liable to the estate for the indebtedness. [C66, 71, 73, 75,§633.185]

633.186 Suit on bond.

1. *Execution of bond deemed as appearance.* The execution and filing of the bond by a fiduciary, any other provisions of law notwithstanding, shall be deemed an appearance by the surety in the proceeding for the adminis-

tration of the estate including all hearings with respect to the bond.

2. *Summary enforcement in proceedings for administration.* Subject to the provisions of subsection 3 hereof, the court may, upon the breach of the obligation of the bond of a fiduciary, after notice to the obligors on the bond and to such other persons as the court directs, summarily determine the damages as a part of the proceeding for the administration of the estate, and by appropriate process enforce the collection thereof from those liable on the bond. Such determination and enforcement may be made by the court upon its own motion or upon application of a successor fiduciary, or of any other interested person. The court may hear the application at the time of settling the accounts of the defaulting fiduciary or at such other time as the court may direct. Damages shall be assessed on behalf of all interested persons and may be paid over to the successor or other nondefaulting fiduciary and distributed as other assets held by the fiduciary in his official capacity.

3. *Enforcement by separate suit.* If the estate is already distributed, or if, for any reason, the procedure to recover on the bond provided in subsection 2 hereof, is inadequate, any interested person may bring a separate suit in a court of competent jurisdiction on his own behalf for damages suffered by him by reason of the default of the fiduciary.

4. *Bond not void upon first recovery.* The bond of the fiduciary shall not be void upon the first recovery, but may be proceeded upon from time to time until the whole penalty is exhausted.

5. *Denial of liability by surety—intervention.* If the court has already determined the liability of the fiduciary, the sureties shall not be permitted thereafter to deny such liability in any action or hearing to determine their liability; but the surety may intervene in any hearing to determine the liability of the fiduciary. [C51,§§1387, 1389, 1509; R60,§§2419, 2421, 2561; C73,§§2251, 2435; C97,§§3201, 3361; C24, 27, 31, 35, 39,§§**11984, 11985, 12603**; C46, 50, 54, 58, 62,§§635.79, 635.80, 668.30; C66, 71, 73, 75, §633.186]

Referred to in §633.487
See §682.20

633.187 Limitation of action on bond. No proceedings upon the bond of a fiduciary shall be brought subsequent to two years after the discharge of the fiduciary or six months after the discovery of fraud, whichever is later. [C66, 71, 73, 75,§633.187]

633.188 to 633.196 Reserved.

PART 8
COMPENSATION OF FIDUCIARIES AND ATTORNEYS

633.197 Compensation. Personal representatives shall be allowed such reasonable fees as may be determined by the court for services rendered, but not in excess of the following commissions upon the gross assets of the estate listed in the probate inventory for Iowa inheritance tax purposes, which shall be received as full compensation for all ordinary services:

For the first one thousand dollars, six percent;

For the overplus between one and five thousand dollars, four percent;

For all sums over five thousand dollars, two percent. [C51,§1429; R60,§2454; C73,§2494; C97, §3415; C24, 27, 31, 35, 39,§**12063**; C46, 50, 54, 58, 62,§638.23; C66, 71, 73, 75,§633.197]

See also §§633.86 and 633.162

633.198 Attorney fee. There shall also be allowed and taxed as part of the costs of administration of estates as an attorney's fee for the personal representative's attorney, such reasonable fee as may be determined by the court, for services rendered, but not in excess of the schedule of fees herein provided for personal representatives. [C24, 27, 31, 35, 39,§**12064**; C46, 50, 54, 58, 62,§638.24; C66, 71, 73, 75,§633.198]

633.199 Expenses and extraordinary services. Such further allowances as are just and reasonable may be made by the court to personal representatives and their attorneys for actual necessary and extraordinary expenses or services. Necessary and extraordinary services shall be construed to also include services in connection with real estate, tax matters, and litigated matters. [C51,§1430; R60,§2455; C73, §2495; C97,§3415; C24, 27, 31, 35, 39,§**12065**; C46, 50, 54, 58, 62,§638.25; C66, 71, 73, 75,§633.199]

633.200 Compensation of other fiduciaries and their attorneys. The court shall allow and fix from time to time the compensation for fiduciaries, other than personal representatives, and their attorneys for such services as they shall render as shown by an itemized claim or report made and filed setting forth what such services consist of during the period of time they continue to act in such capacities. [C51,§1515; R60,§2567; C73,§2256; C97,§3205; C24, 27,§12599; C31, 35,§§12065-d1, 12599; C39, §§**12065.1, 12599**; C46, 50, 54, 58, 62,§§638.26, 668.26; C66, 71, 73, 75,§633.200]

633.201 Court officers as fiduciaries. Judges, clerks and deputy clerks serving as fiduciaries shall not be allowed any compensation for services as such fiduciaries. [C66, 71, 73, 75,§633.201]

633.202 Affidavit relative to compensation. In no case shall the compensation of fiduciaries and their attorneys be allowed or paid until there shall have been filed with the clerk of the district court in which administration of the estate is pending an affidavit of the fiduciary, or attorney, as the case may be, stating that there is no contract, agreement, or arrangement, either oral or written, express or implied, contemplating any division of compensation for such services, or participation therein, directly or indirectly, by any other person, firm, or corporation with such fiduci-

ary or attorney, unless it be with a regular and bona fide law partner, or with one jointly serving with them in the same capacity in relation to the estate in which such compensation is allowed, in which event the affidavit shall show such fact. [C31, 35,§12065-d2; C39, §12065.2; C46, 50, 54, 58, 62,§638.27; C66, 71, 73, 75,§633.202]

Referred to in §633.203

633.203 Affidavit for corporate fiduciary. In any case where a corporation is acting as a fiduciary under and by virtue of the provisions of chapter 524, division X, the affidavit required by section 633.202 shall be executed and made by an officer of such corporation. [C31, 35,§12065-d3; C39,§12065.3; C46, 50, 54, 58, 62, §638.28; C66, 71, 73, 75,§633.203]

633.204 Fees of deceased fiduciary. When a fiduciary dies, all fees to which his personal representative and his attorney are entitled shall be a charge against the estate assets until paid. [C66, 71, 73, 75,§633.204]

633.205 to 633.209 Reserved.

DIVISION IV

INTESTATE SUCCESSION

PART 1

RULES OF INHERITANCE

633.210 Rules of descent. The estate of a person dying intestate shall descend as provided in sections 633.211 to 633.226. [C51, §1390; R60,§2422; C73,§2436; C97,§3362; C24, 27, 31, 35, 39,§11986; C46, 50, 54, 58, 62,§636.1; C66, 71, 73, 75,§633.210]

633.211 Share of surviving spouse if decedent left issue. If the decedent dies intestate leaving a surviving spouse and leaving issue, the surviving spouse shall receive the following share:

1. One-third in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage, which have not been sold on execution or other judicial sale, and to which the surviving spouse has made no relinquishment of his right.

2. All personal property that, at the time of death, was, in the hands of the decedent as the head of a family, exempt from execution.

3. One-third of all other personal property of the decedent which is not necessary for the payment of debts and charges.

4. If the property received by the surviving spouse under subsections 1, 2 and 3 of this section is not equal in value to the sum of twenty-five thousand dollars, then so much additional of any remaining homestead interest and of the remaining real and personal property of the decedent that is subject to payment of debts and charges against the decedent's estate, after payment of such debts and charges, even to the extent of the whole of the net estate, as may be necessary to make the amount of twenty-five thousand dollars. [C51,§§1329, 1390, 1394, 1421; R60,§§2361, 2422, 2477, 2479; C73,§§2371, 2436, 2440; C97,§§3312, 3362, 3366; C24, 27, 31, 35, 39,§§11918, 11986, 11990, 11991; C46, 50, 54, 58, 62,§635.7, 636.1, 636.5, 636.6; C66, 71, 73, 75,§633.211]

Referred to in §§633.210, 633.218, 633.436

633.212 Share of surviving spouse where decedent left no issue. If the decedent dies intestate leaving a surviving spouse and leaving no issue, the surviving spouse shall receive the following share:

1. One-third in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage, which have not been sold on execution or other judicial sale, and to which the surviving spouse has made no relinquishment of his right.

2. All personal property that, at the time of death, was in the hands of the decedent as the head of a family, exempt from execution.

3. One-third of all other personal property of the decedent which is not necessary for the payment of debts and charges.

4. If the property received by the surviving spouse under subsections 1 and 3 of this section is not equal in value to the sum of twenty-five thousand dollars, then so much additional of any remaining homestead interest and of the nonexempt real and personal property of the decedent remaining after payment of the debts and charges against the estate, as may be necessary, even to the extent of the entire net estate, to make the amount of twenty-five thousand dollars.

5. So much additional of the remaining real and personal property belonging to the decedent as is necessary to make the entire share of the surviving spouse, including the property received under subsections 1, 3 and 4 of this section, equal in value to the aforesaid sum of twenty-five thousand dollars plus one-half of the net value of the estate over and above the said sum of twenty-five thousand dollars and the value of the exempt personal property. [C51,§1410; R60,§2495; C73,§2455; C97,§3379; S13, §§3379, 3381-a; C24, 27, 31, 35, 39,§12017; C46, 50, 54, 58, 62,§636.32; C66, 71, 73, 75,§633.212]

Referred to in §§633.210, 633.218

633.213 Appraisal. Prior to the settlement of every intestate estate in which there is a surviving spouse, and in which appraisal has not been waived by the surviving spouse and all the heirs of the decedent, it shall be the duty of the court, upon application of the personal representative, the surviving spouse, or any of the heirs of the decedent, to appoint three competent disinterested appraisers to appraise such estate and to make their report to the court, at such time as the court may direct by order, unless the court, after notice, finds further appraisal unnecessary. In such appraisement, the homestead, if any, shall be appraised separately. [C24, 27, 31, 35, 39,§12018; C46, 50, 54, 58, 62,§636.33; C66, 71, 73, 75, §633.213]

Referred to in §§633.210, 633.214

633.214 Procedure determined by court. At the time it appoints the appraisers provided for by section 633.213 the court shall prescribe the kind of notice and the method of service thereof, whether by publication or otherwise. [C24, 27, 31, 35, 39,§**12019**; C46, 50, 54, 58, 62, §636.34; C66, 71, 73, 75,§633.214]

Referred to in §633.210

633.215 Notice. Such notice shall designate the names of the appraisers, the time and place of the appraisement, and the date on which the appraisers shall file with the clerk the report of their appraisement, directed to all persons interested in such appraisement. [C24, 27, 31, 35, 39,§**12020**; C46, 50, 54, 58, 62, §636.35; C66, 71, 73, 75,§633.215]

Referred to in §633.210

633.216 Objections. All persons interested in such report and having objections to it and the appraisement, shall file their objections within ten days after the date fixed in said notice for the filing of the report of such appraisement. [C24, 27, 31, 35, 39,§**12021**; C46, 50, 54, 58, 62,§636.36; C66, 71, 73, 75,§633.216]

Referred to in §633.210

633.217 Trial. Such objections, if any, shall be tried to the court as in equity, and the court shall enter a final order in the matter. [C24, 27, 31, 35, 39,§**12022**; C46, 50, 54, 58, 62, §636.37; C66, 71, 73, 75,§633.217]

Referred to in §633.210

633.218 Right of spouse to select property. After such proceedings, and after payment of debts and charges, the surviving spouse shall have the right to select from the property so appraised, at its appraised value thus fixed, property equal in value to the amount to which she is entitled under section 633.211 or 633.212 which selection shall be in writing filed with the clerk of court. [C24, 27, 31, 35, 39,§**12023**; C46, 50, 54, 58, 62,§636.38; C66, 71, 73, 75,§633.218]

Referred to in §633.210

633.219 Share of others than surviving spouse. The portion of the estate remaining after the payment of the debts and charges, and not distributed to the surviving spouse, as provided in this Code, or if there is no surviving spouse, then the remaining estate after payment of the debts and charges, shall descend and be distributed as follows:

1. In equal shares to the decedent's children, unless one or more of them is dead, in which case the issue of such deceased child shall inherit his or her share in accordance with the rules herein prescribed, in the same manner as though said child had outlived his parents.

2. If there is no person to take under subsection 1 of this section, then to the surviving parents in equal shares; and if either parent is dead, the portion that would have gone to such deceased parent, shall go to the survivor.

3. If there is no person to take under either subsection 1 or 2 of this section, the portion uninherited shall go to such persons as would have been entitled to take if the parents of the decedent had outlived the intestate and had died in possession and ownership of the portion thus falling to their share, and so on, through their ascending ancestors and their heirs.

4. If heirs are not thus found under subsection 1, 2 or 3 of this section, the portion uninherited shall go to the spouse of the intestate; and if the spouse is dead, then to the heirs of the spouse, according to like rules. If such intestate has had more than one spouse who either died or survived in lawful wedlock, it shall be equally divided between the one who is living and the heirs of those who are dead, or between the heirs of all such heirs, taking per stirpes and not per capita.

5. If there is no person who qualifies under either subsection 1, 2, 3 or 4 of this section, the intestate property shall escheat to the state of Iowa. [C51,§§1408–1411, 1413, 1414; R60, §§2436, 2437, 2439, 2440, 2495–2497; C73,§§2453–2458, 2460; C97,§§3378–3382, 3387; S13,§§3379, 3381-a,-b,-c; C24, 27, 31, 35, 39,§§**12016, 12017, 12024–12028, 12035**; C46, 50, 54, 58, 62,§§636.31, 636.32, 636.39–636.43, 636.50; C66, 71, 73, 75, §633.219]

Referred to in §633.210

633.220 Afterborn heirs—time of determining relationship. Heirs of an intestate, begotten before his death but born thereafter, shall inherit as if they had been born in the lifetime of the intestate and had survived him. With this exception, the intestate succession shall be determined by the relationships existing at the time of the death of the intestate. [C51, §§1284, 1285; R60,§§2316, 2317; C73,§§2334, 2335; C97,§3279; S13,§3279; C24, 27, 31, 35, 39,§**11858**; C46, 50, 54, 58, 62,§633.13; C66, 71, 73, 75, §633.220]

Referred to in §633.210

633.221 Illegitimate child — inherit from mother. Unless he has been adopted, an illegitimate child shall inherit from his natural mother, and she from the child. [C51,§1415; R60,§2441; C73,§2465; C97,§3384; C24, 27, 31, 35, 39,§**12030**; C46, 50, 54, 58, 62,§636.45; C66, 71, 73, 75,§633.221]

Referred to in §§633.3, 633.210

633.222 Illegitimate child — inherit from father. Unless he has been adopted, an illegitimate child shall inherit from his natural father when the paternity is proven during the father's lifetime, or when the child has been recognized by the father as his child; but such recognition must have been general and notorious, or else in writing. Under such circumstances, if the recognition has been mutual, and the child has not been adopted, the father may inherit from his illegitimate child. [C51,§§1416, 1417; R60,§§2442, 2443; C73,§§2466, 2467; C97,§3385; C24, 27, 31, 35, 39,§**12031**; C46, 50, 54, 58, 62,§636.46; C66, 71, 73, 75,§633.222]

Referred to in §§633.3, 633.210

633.223 Effect of adoption. A lawfully adopted person and his heirs shall inherit from and through the adoptive parents the same as a natural born child. The adoptive parents and their heirs shall inherit from and through the adopted person the same as though he were a natural born child. [C66, 71, 73, 75,§633.223; 66GA, ch 1229,§40]

Referred to in §633.210

633.224 Advancements—in general. When the owner of property transfers it as an advancement to a person who would be an heir of such transferor were the latter to die at that time, and the transferor dies intestate, then the property thus advanced shall be counted toward the share of the transferee in the estate, (which for this purpose only shall be increased by the value of the advancement at the time the advancement was made). The transferee shall have no liability to the estate for such part, if any, of the advancement as may be in excess of his share in the estate as thus determined. Every gratuitous inter vivos transfer is presumed to be an absolute gift, and not an advancement. Such presumption is rebuttable. [C51,§§1419, 1420; R60,§§2445, 2446; C73, §2459; C97,§3383; C24, 27, 31, 35, 39,§**12029**; C46, 50, 54, 58, 62,§636.44; C66, 71, 73, 75,§633.224]

Referred to in §§633.210, 633.225, 633.226

633.225 Valuation of advancements. An advancement under section 633.224 shall be valued as of the time when the advancee came into possession or enjoyment or as of the date of the death of the intestate, whichever first occurs. [C51,§§1419, 1420; R60,§§2445, 2446; C73, §2459; C97,§3383; C24, 27, 31, 35, 39,§**12029**; C46, 50, 54, 58, 62,§636.44; C66, 71, 73, 75,§633.225]

Referred to in §633.210

633.226 Death of advancee before intestate. If an advancee under section 633.224 dies before the intestate, leaving an heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been made directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled to, had he survived the intestate, then the heir shall be charged with only such proportion of the advancement as the amount he would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited, had there been no advancement. [C51,§§1419, 1420; R60,§§2445, 2446; C73, §2459; C97,§3383; C24, 27, 31, 35, 39,§**12029**; C46, 50, 54, 58, 62,§636.44; C66, 71, 73, 75,§633.226]

Referred to in §633.210

PART 2
PROCEDURE FOR OPENING ADMINISTRATION OF INTESTATE ESTATES

633.227 Administration granted. Where there is no will, administration shall be granted to any qualified person on the petition of:

1. The surviving spouse;
2. The heirs of the decedent;
3. Creditors of the decedent;
4. Other persons showing good grounds therefor. [C51,§§1311, 1312; R60,§§2343, 2344; C73,§§2354, 2355; C97,§3297; C24, 27, 31, 35, 39, §**11883**; C46, 50, 54, 58, 62,§633.39; C66, 71, 73, 75,§633.227]

633.228 Time allowed. To file such petition, there shall be allowed, commencing with the death of the decedent:

1. To the surviving spouse, a period of twenty days;
2. To each other class in succession, a period of ten days.

The period allowed each class shall be advanced to the period allowed the preceding class if there is no member of such preceding class. Any member of any class may file such petition after the expiration of the period allowed to him if letters have not been issued prior thereto. [C51,§1313; R60,§2345; C73,§2356; C97,§3298; C24, 27, 31, 35, 39,§**11884**; C46, 50, 54, 58, 62,§633.40; C66, 71, 73, 75,§633.228]

633.229 Petition for administration of an intestate estate. The petition for administration of an intestate estate shall contain the following:

1. The name, domicile and date of death of the decedent.
2. If the decedent was domiciled outside the state at the time of his death, a statement that he had property within the county in which the petition is filed, or any other basis for jurisdiction in such county.
3. The name and address of the surviving spouse, if any, and the name and address of each heir so far as known to the petitioner.
4. The estimated value of the personal property of the estate plus the estimated gross annual income of the estate during the period of administration. [C66, 71, 73, 75§633.229]

633.230 Notice in intestate estates. In intestate matters, the administrator shall, as soon as letters are issued, cause to be published once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the estate is pending, a notice of his appointment which shall be in substantially the following form:

Notice of appointment of administrator and notice to creditors

In the District Court of Iowa
in and for ..... County.
In the Estate of .....
deceased
Probate No. .....

To All Persons Interested in the Estate of ..... deceased:

You are hereby notified that on the ..... day of ....., 19....., the undersigned was appointed administrator of said estate.

Notice is hereby given that all persons indebted to said estate are requested to make immediate payment to the undersigned, and

creditors having claims against said estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance, and unless so filed within six months from the second publication of this notice (unless otherwise allowed or paid) such claim shall thereafter be forever barred.

Dated this ..... day of ....., 19.....

.....
Administrator of said estate

.....
Address

.....
Attorney for said administrator

.....
Address

Date of second publication ..... day of ....., 19.....
(Date to be inserted by publisher)

[C66, 71, 73, 75,§633.230]

Referred to in §590.1

633.231 to 633.235 Reserved.

DIVISION V
RIGHTS OF SURVIVING SPOUSE

PART 1
RIGHT TO TAKE AGAINST THE WILL

633.236 Right of surviving spouse to elect to take against will. When a married person dies testate as to any part of his estate, the surviving spouse shall have the right to elect to take against the will under the provisions of sections 633.237 to 633.246. [C51,§1407; R60,§2435; C73,§2452; C97,§3376; S13,§3376; C24, 27, 31, 35, 39,§**12006, 12010**; C46, 50, 54, 58, 62, §§636.21, 636.25; C66, 71, 73, 75,§633.236]

Referred to in §§633.245, 633.246, 633.247, 633.264

633.237 Presumption that surviving spouse elects to take under will. Where a voluntary election to take or refuse to take under a will has not been filed by a surviving spouse within two months of the date of the second publication of notice of admission of the will to probate, and the surviving spouse is not the executor of such will, it shall be the duty of the executor to cause to be served a written notice upon the surviving spouse in the manner directed by the court, advising the surviving spouse that the will of such decedent has been admitted to probate, stating the name of the court where the will was admitted and the date when the will was admitted to probate, and notifying such spouse that unless within four months after service of such notice, he files an election in writing with the clerk of such court refusing to take under the provisions of such will, such surviving spouse shall take under the provisions of the will; provided that if the surviving spouse files his election to take under the will at any time the requirements of this section for serving notice are thereby waived; provided, further, that if within the before described period of four months an affidavit is filed setting forth that such surviving spouse is incapable to make such election, the court shall determine whether there shall be an election to take against the will in accordance with section 633.238; provided further, that the court on application may, prior to the expiration of such period of four months, for cause shown, enter an order extending the time for making such election. If such surviving spouse shall be an executor of the will and fails, within six months after the date of the second publication of notice of admission of the will to probate, to file with the clerk of the court an election to refuse to take under the provisions of the will of the deceased, it shall be conclusively presumed that such survivor consents to the provisions of the will and elects to take thereunder; provided, further, that the court on application may, prior to the expiration of such period of six months, on cause shown, enter an order extending the time for making such election. [C73,§2452; C97,§3376; S13,§3376; C24, 27, 31, 35, 39,§§**12007, 12010**; C46, 50, 54, 58, 62, §§636.22, 636.25; C66, 71, 73, 75,§633.237]

Referred to in §633.236

633.238 Share of surviving spouse who elects to take against will. If the surviving spouse elects to take against the will, the share of such surviving spouse will be:

1. One-third in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage, which have not been sold on execution or other judicial sale, and to which the surviving spouse has made no relinquishment of his right.

2. All personal property that, at the time of death, was in the hands of the decedent as the head of a family, exempt from execution.

3. One-third of all other personal property of the decedent that is not necessary for the payment of debts and charges. [C51,§§1329, 1390, 1394, 1421; R60,§§2361, 2422, 2477, 2479; C73, §§2371, 2436, 2440; C97,§§3312, 3362, 3366; C24, 27, 31, 35, 39,§§**11918, 11986, 11990, 11991**; C46, 50, 54, 58, 62,§§635.7, 636.1, 636.5, 636.6; C66, 71, 73, 75,§633.238]

Referred to in §§633.236, 633.237, 633.239, 633.240

633.239 Share to embrace homestead. The share of the surviving spouse in such real estate shall be set off in such manner as to include the ordinary dwelling house given by law to the homestead, or so much thereof as will be equal to the share allotted to him by section 633.238 unless he prefers a different arrangement; but no such different arrangement shall be permitted unless there be sufficient property remaining to pay the claims and charges against the decedent's estate. [C51,§1395; R60,§2426; C73,§2441; C97,§3367; C24, 27, 31, 35, 39,§**11992**; C46, 50, 54, 58, 62,§636.7; C66, 71, 73, 75,§633.239]

Referred to in §633.236

633.240 Election to occupy homestead. In intestate estates, or where the surviving spouse elects to take against the will, the surviving spouse may, in lieu of his share in the

real property possessed by the decedent at any time during their marriage which has not been sold on execution or other judicial sale, and to which the surviving spouse has made no relinquishment of his right, elect to occupy the homestead. Such election shall be made and entered of record as provided in section 633.245. In making such election, the surviving spouse shall have all the rights as to personal property provided in subsections 2 and 3 of section 633.238. In case of failure to make such election, the right to occupy the homestead shall be waived. [C97,§3377; S13,§3377; C24, 27, 31, 35, 39,§**12012**; C46, 50, 54, 58, 62,§636.27; C66, 71, 73, 75,§633.240]

Referred to in §§633.236, 633.245, 633.246

633.241 Time for election to occupy homestead. In case the surviving spouse does not make an election to occupy the homestead and file it with the clerk within six months from the date of the second publication of the notice to creditors, it shall be conclusively presumed that such surviving spouse waives the right to make such election. The court on application may, prior to the expiration of such period of six months, for cause shown, enter an order extending the time for making such election. [C97,§3377; S13,§3377; C24, 27, 31, 35, 39,§**12013**; C46, 50, 54, 58, 62,§636.28; C66, 71, 73, 75,§633.241]

Referred to in §633.236

633.242 Rights of election personal to surviving spouse. The right of the surviving spouse to elect to take against the will and the right of the surviving spouse to occupy the homestead are personal. They are not transferable, and cannot be exercised for him subsequent to his death. If the surviving spouse dies prior to filing an election to take against the will, it shall be conclusively presumed that the surviving spouse takes under the provisions of the will. [C66, 71, 73, 75,§633.242]

Referred to in §633.236

633.243 Filing elections. The election to take against the will and the election to occupy the homestead shall be filed in the office of the clerk. [C24, 27, 31, 35, 39,§**12010**; C46, 50, 54, 58, 62,§636.25; C66, 71, 73, 75,§633.243]

Referred to in §633.236

633.244 Incompetent spouse — election by court. In case an affidavit is filed that the surviving spouse is incapable of making an election to take against the will, or to elect to occupy the homestead, the court shall fix a time and place of hearing on the matter, and cause a notice thereof to be served upon said surviving spouse in such manner and for such time as the court may direct. At the hearing, a guardian ad litem shall be appointed to represent such spouse, and the court shall enter such orders as it may deem to be for the best interests of such person. [S13,§§3376, 3377; C24, 27, 31, 35, 39,§§**12011, 12014**; C46, 50, 54, 58, 62, §§636.26, 636.29; C66, 71, 73, 75,§633.244]

Referred to in §§229.27, 633.236, 633.245, 633.246

633.245 Record of election. The elections of the surviving spouse under section 633.236, 633.240 or 633.244 shall be entered on the proper records of the court. [C73,§2452; C97, §3376; S13,§3376; C24, 27, 31, 35, 39,§**12008**; C46, 50, 54, 58, 62,§636.23; C66, 71, 73, 75,§633.245]

Referred to in §§633.236, 633.240

633.246 Election not subject to change. An election by or on behalf of a surviving spouse to take the share provided in either section 633.236 or 633.240 or 633.244 hereof once made shall be binding and shall not be subject to change except for such causes as would justify an equitable decree for the rescission of a deed. [C66, 71, 73, 75,§633.246]

Referred to in §633.236

PART 2

PROCEDURE FOR SETTING OFF SHARE

633.247 Setting off share of surviving spouse when electing to take against the will — time limit. The share of the surviving spouse under section 633.236 may be set off by the mutual consent of all parties in interest, or by referees appointed by the court. An application to have it set off by referees shall be made in writing within six months after the second publication of notice of the probate of the will, or within one month after the election to take against the will is filed with the clerk, whichever is the longer. The application must describe the land in which the share is claimed, and pray for the appointment of referees to set it off. [C51,§§1396, 1397; R60,§§2427, 2428; C73,§§2443, 2444; C97,§3369; S13,§3377; C24, 27, 31, 35, 39,§§**11994, 12015**; C46, 50, 54, 58, 62, §§636.9, 636.30; C66, 71, 73, 75,§633.247]

Referred to in §633.253

633.248 Referee—notice. In the absence of mutual consent to the appointment of referees, the court shall fix a time and place for hearing upon such application and of the fact that referees will be appointed if such application is granted, and shall prescribe the time and manner of the service of notice of the hearing. [C51,§1398; R60,§2429; C73,§2445; C97,§3370; C24, 27, 31, 35, 39,§**11995**; C46, 50, 54, 58, 62,§636.10; C66, 71, 73, 75,§633.248]

Referred to in §633.253

633.249 Mode of setting off share in real estate. The referees may employ a surveyor, and may cause the shares in real estate to be set off by legally sufficient land descriptions. They shall make a report of their proceedings to the court as early as reasonably possible. [C51,§1399; R60,§2430; C73,§2446; C97,§3371; C24, 27, 31, 35, 39,§**11996**; C46, 50, 54, 58, 62,§636.11; C66, 71, 73, 75,§633.249]

Referred to in §633.253

633.250 Report — delinquency. The court may require a report by such a time as it deems reasonable. If the referees fail to obey this or any other of its orders, the court may discharge them and appoint others in their stead, and impose upon the first referees the payment of all costs previously made, unless

they show good cause against it. [C51,§1400; R60,§2431; C73,§2447; C97,§3372; C24, 27, 31, 35, 39,§**11997**; C46, 50, 54, 58, 62,§636.12; C66, 71, 73, 75,§633.250]

Referred to in §633.253

633.251 Confirmation—new reference. The court may set the report for hearing and prescribe the notice to be given to interested parties. The court may confirm the report, or may set it aside and refer the matter to the same or other referees, at its discretion. [C51,§1401; R60,§2432; C73,§2448; C97,§3373; C24, 27, 31, 35, 39,§**11998**; C46, 50, 54, 58, 62,§636.13; C66, 71, 73, 75,§633.251]

Referred to in §633.253

633.252 Confirmation conclusive — possession. An order confirming a report of the referees shall be binding and conclusive unless appealed from within thirty days, and the surviving spouse may bring an action to obtain possession of the land set apart to him. [C51,§1402; R60,§2433; C73,§2449; C97,§3373; C24, 27, 31, 35, 39,§**11999**; C46, 50, 54, 58, 62,§636.14; C66, 71, 73, 75,§633.252]

Referred to in §633.253

633.253 Right contested. Nothing in sections 633.247 through 633.252 shall prevent any person interested from controverting the right of the surviving spouse to the share thus set apart before confirmation of the report of the referees. [C51,§1403; R60,§2434; C73,§2450; C97, §3374; C24, 27, 31, 35, 39,§**12000**; C46, 50, 54, 58, 62,§636.15; C66, 71, 73, 75,§633.253]

633.254 Sale — division of proceeds. If it appears to the court, upon application of the personal representative, the surviving spouse, or the report of the referee, that the property, or any part of it, cannot be advantageously divided, the court may order the whole, or any part of such property, sold, and the share of the surviving spouse in the proceeds paid over to him. [C51,§1404; R60,§2478; C73,§2451; C97, §3375; C24, 27, 31, 35, 39,§**12001**; C46, 50, 54, 58, 62,§636.16; C66, 71, 73, 75,§633.254]

Referred to in §§633.256, 633.258

633.255 Purchase of new homestead. In case the homestead is sold, the surviving spouse may use any or all of her share to procure a homestead which shall be exempt from liability for all debts from which the former homestead would have been exempt. [C51, §1406; C73,§2451; C97,§3375; C24, 27, 31, 35, 39, §**12002**; C46, 50, 54, 58, 62,§636.17; C66, 71, 73, 75,§633.255]

633.256 Security to avoid sale. No sale shall be made under section 633.254 if anyone interested gives security to the satisfaction of the court, conditioned to pay the surviving spouse the appraised value of the share with seven percent interest on the same, within such reasonable time as the court may fix, not exceeding one year. [C51,§1405; C73,§2451; C97, §3375; C24, 27, 31, 35, 39,§**12003**; C46, 50, 54, 58, 62,§636.18; C66, 71, 73, 75,§633.256]

633.257 Security by surviving spouse. If no such arrangement is made, the surviving spouse may keep the property by giving like security to pay the claims of all others interested upon like terms. [C51,§1405; C73,§2451; C97,§3375; C24, 27, 31, 35, 39,§**12004**; C46, 50, 54, 58, 62,§636.19; C66, 71, 73, 75,§633.257]

633.258 Sale prohibited. Such sale under section 633.254 shall not be ordered so long as those in interest shall express a contrary desire and agree upon some mode of sharing and dividing the rents, profits, or use thereof, or shall consent that the court shall order the division of such rents, profits or use. [C51, §1405; R60,§2478; C73,§2451; C97,§3375; C24, 27, 31, 35, 39,§**12005**; C46, 50, 54, 58, 62,§636.20; C66, 71, 73, 75,§633.258]

633.259 to 633.263 Reserved.

DIVISION VI
WILLS
PART 1
GENERAL PROVISIONS RELATING TO WILLS

633.264 Disposal of property by will. Subject to the rights of the surviving spouse to elect to take against the will as provided by section 633.236, any person of full age and sound mind may dispose by will of all his property, except sufficient to pay the debts and charges against his estate. [C51,§§1277, 1407; R60,§§2309, 2435; C73,§§2322, 2452; C97, §§3270, 3376; S13,§3376; C24, 27, 31, 35, 39, §§**11846, 12006**; C46, 50, 54, 58, 62,§§633.1, 636.21; C66, 71, 73, 75,§633.264]

633.265 Procedure prescribed by will. When the interests of creditors will not thereby be prejudiced, a testator may prescribe the entire manner in which his estate shall be administered, and, also, the manner in which his affairs shall be conducted until his estate is finally settled. [C51,§1326; R60,§2358; C73,§2406; C97,§3336; C24, 27, 31, 35, 39,§**11955**; C46, 50, 54, 58, 62,§635.51; C66, 71, 73, 75,§633.265]

See also §633.172

633.266 Limitation on disposal by will. If the total of the devises in the decedent's will to corporations organized under the chapter relating to corporations not for profit, to foreign corporations of a similar character, to unincorporated associations of a similar character, or to a trustee for the use and benefit of any such organization is in excess of one-fourth of the testator's estate valued as of the date of death after the payment of debts and charges, then the surviving spouse, any child, child of a deceased child or parent of the decedent shall have the right to make an election as follows:

1. The amount by which such devises described in this section exceeds such one-fourth of the testator's estate shall be first determined.

2. Each of such persons shall have the right to elect to receive the portion of such excess to which he would have been entitled had such

excess been intestate property, provided, that in no event shall he receive in the aggregate under the will and as the result of such election, an amount greater than he would have received had the decedent died intestate.

3. Such election shall be made in writing by said person and filed with the clerk within six months after the second publication of the notice of appointment of the personal representative, unless the time is extended by order of court, or unless an affidavit is filed under the provisions of subsection 4 hereof.

4. In case an affidavit is filed within six months after the second publication of the notice of appointment of the personal representative that the said surviving spouse, child, child of a deceased child or parent is under legal disability or is otherwise incapable of making the election provided for in this section, the court shall fix a time and place of hearing on the matter and cause a notice thereof to be served upon said person in such manner and for such time as the court may determine. At the hearing, a guardian ad litem shall be appointed to represent such person, and the court shall enter such orders as it may deem to be for the best interests of such person.

5. Any portion of the excess determined under the provisions of this section which is not distributed under an election provided in this section, shall be distributed under the will of the decedent the same as if no election had been made under subsection 2 by anyone.

6. The right of election as provided for in this section is personal, is not transferable, and cannot be exercised for him subsequent to his death.

7. All elections hereunder shall be entered upon the records of the court, shall be binding, and shall not be subject to change except for such cause as would justify an equitable decree for the rescission of a deed.

8. In the event that there is more than one devise affected by the election provided for in this section, any reduction shall be made ratably in the absence of express testamentary intent to the contrary. [C51,§1277; R60,§§1198, 2309; C73,§§1101, 2322; C97,§3270; C24, 27, 31, 35, 39,§11848; C46, 50, 54, 58, 62,§633.3; C66, 71, 73, 75,§633.266]

Referred to in §229.27

633.267 Children born or adopted after execution of will. When a testator fails to provide in his will for any of his children born to or adopted by him after the making of his last will, such child, whether born before or after the testator's death, shall receive a share in the estate of the testator equal in value to that which he would have received if the testator had died intestate, unless it appears from the will that such omission was intentional. [C51, §§1284, 1285; R60,§§2316, 2317; C73,§§2334, 2335; C97,§3279; S13,§3279; C24, 27, 31, 35, 39,§11858; C46, 50, 54, 58, 62,§633.13; C66, 71, 73, 75, §633.267]

Referred to in §633.477

633.268 Presumption attending devise to spouse. Where the testator's spouse is named as a devisee in a will, it shall be presumed, unless the intent is clear and explicit to the contrary, and except as provided in section 633.272, that such devise is in lieu of the intestate share and homestead rights of the surviving spouse. [C97,§3270; C24, 27, 31, 35, 39,§11847; C46, 50, 54, 58, 62,§633.2; C66, 71, 73, 75,§633.268]

633.269 After acquired property. Any property acquired by the testator after the making of his will shall pass thereby, and in like manner as if title thereto were vested in him at the time of making the will, unless the intent is clear and explicit to the contrary. [C51, §1278; R60,§2310; C73,§2323; C97,§3271; C24, 27, 31, 35, 39,§11849; C46, 50, 54, 58, 62,§633.4; C66, 71, 73, 75,§633.269]

633.270 Contractual or mutual wills. No will shall be construed to be contractual or mutual, unless in such will the testator shall expressly state his intent that such will shall be so construed. [C66, 71, 73, 75,§633.270]

633.271 Effect of divorce or dissolution. If after making a will the testator is divorced or the marriage is dissolved, all provisions in the will in favor of the testator's spouse are thereby revoked. In the event the testator and spouse remarry each other, the provisions of the will revoked by the divorce or dissolution of marriage shall be reinstated unless otherwise revoked by the testator. [C66, 71, 73, 75, §633.271]

633.272 Partial intestacy. If part but not all of the estate of a decedent is validly disposed of by will, the part not disposed of by will shall be distributed as provided herein for intestate estates. If the testator left a surviving spouse, and the spouse does not elect to take against the will, such spouse shall receive, in addition to the property given to him by the will, one-third of the intestate property, and that one-third shall be subject to the payment of its proportionate share of debts and charges against the estate. [C66, 71, 73, 75, §633.272]

Referred to in §633.268

633.273 Antilapse statute. If a devisee die before the testator, his heirs shall inherit the property devised to him, unless from the terms of the will, the intent is clear and explicit to the contrary. [C51,§1287; R60,§2319; C73,§2337; C97,§3281; C24, 27, 31, 35, 39,§11861; C46, 50, 54, 58, 62,§633.16; C66, 71, 73, 75,§633.273]

Referred to in §§633.274, 633.704(3)

633.274 Exception to antilapse statute. The devise to a spouse of the testator, where the spouse does not survive the testator, shall lapse notwithstanding the provisions of section 633.273, unless from the terms of the will, the intent is clear and explicit to the contrary. [C66, 71, 73, 75,§633.274]

633.275 Testamentary additions to trusts. A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established, or to be established, by the testator, or by the testator and some other person or persons, or by some other person or persons, (including a funded or unfunded life insurance trust, although the trustor has reserved some or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will, and if its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will, or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, or character of the corpus of the trust). The devise or bequest shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised or bequeathed: (1) shall not be deemed to be held under a testamentary trust of the testator, but shall become a part of the trust to which it is given; and, (2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator (regardless of whether any such amendment was made before or after the execution of the testator's will), and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator shall cause the devise or bequest to lapse. [C66, 71, 73, 75,§633.275]

Referred to in §§633.276, 633.277

Adopted from uniform testamentary additions to trust Act

633.276 Effect on prior wills. Section 633.275 shall not invalidate any devise or bequest made by a will executed prior to January 1, 1964. [C66, 71, 73, 75,§633.276]

633.277 Uniformity of interpretation. Section 633.275 shall be so construed as to effectuate its general purpose to make uniform the law of those states which have adopted a similar provision. [C66, 71, 73, 75,§633.277]

633.278 Devise of encumbered property. When any property subject to a mortgage, other lien or security interest, is specifically devised, the devisee shall take such property so devised subject to such mortgage, other lien or security interest, unless the will provides expressly or by necessary implication that such mortgage, other lien or security interest be otherwise paid. If there is a testamentary direction to discharge such mortgage, other lien or security interest, the rules of abatement specified in section 633.436 shall be applied. [C66, 71, 73, 75,§633.278]

PART 2
EXECUTION AND REVOCATION

633.279 Signed and witnessed.

1. *Formal execution.* All wills and codicils, except as provided in section 633.283, to be valid, must be in writing, signed by the testator, or by some person in his presence and by his express direction writing his name thereto, and declared by the testator to be his will, and witnessed, at his request, by two competent persons who signed as witnesses in the presence of the testator and in the presence of each other; provided, however, that the validity of the execution of any will or instrument which was executed prior to January 1, 1964, shall be determined by the law in effect immediately prior to said date.

2. *Self-proved will.* An attested will may, at the time of its execution, or at any subsequent date, be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a person authorized to administer oaths and take acknowledgements under the laws of this state, and evidenced by such person's certificate, under seal, attached or annexed to the will, in form and content substantially as follows:

State of .....
} ss
County of .....

Before me, the undersigned, on this day personally appeared ....., ... and ..... known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, ..., the testator, declared to me and to the witnesses, in my presence, that said instrument is the testator's will and that the testator willingly signed and executed such instrument, or expressly directed another to sign the same for the testator, in the presence of said witnesses, as the testator's free and voluntary act for the purposes therein expressed; that said witnesses, and each of them, declared that such will was executed and acknowledged by the testator as the testator's will in their presence and that they, in the testator's presence, at the testator's request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of such will; and that the testator, at the time of the execution of such instrument, was of full age and of sound mind and that the witnesses were sixteen years of age or older and otherwise competent to be witnesses.

.....
Testator

.....
Witness

.....
Witness

Subscribed, sworn and acknowledged before me by ....., the testator; and subscribed and sworn before me by ..... and ....., witnesses, this .... day of ....., 19.....

.....
Notary Public, or other officer
(seal) authorized to take and certify acknowledgements and administer oaths

A self-proved will shall constitute proof of due execution of such instrument as required by section 633.293 and may be admitted to probate without testimony of witnesses. [C51, §1281; R60,§2313; C73,§2326; C97,§3274; C24, 27, 31, 35, 39,§**11852**; C46, 50, 54, 58, 62,§633.7; C66, 71, 73, 75,§633.279; 66GA, ch 1227,§3]

633.280 Competency of witnesses. Any person who is sixteen years of age, or older, and who is competent to be a witness generally in this state, may act as an attesting witness to a will. [C66, 71, 73, 75,§633.280]

633.281 Interest of witnesses. No will is invalidated because attested by an interested witness; but any interested witness shall, unless the will is also attested by two competent and disinterested witnesses, forfeit so much of the provisions therein made for him as in the aggregate exceeds in value, as of the date of the decedent's death, that which he would have received had the testator died intestate. No attesting witness is interested unless he is devised or bequeathed some portion of the testator's estate. [C51,§§1282, 1283; R60,§§2314, 2315; C73,§§2327, 2328; C97,§3275; C24, 27, 31, 35, 39,§**11854**; C46, 50, 54, 58, 62,§633.9; C66, 71, 73, 75,§633.281]

633.282 Defect cured by codicil. If a codicil to a defectively executed will is duly executed, and such will is clearly identified in said codicil, the will and the codicil shall be considered as one instrument and the execution of both shall be deemed sufficient. [C97,§3274; C24, 27, 31, 35, 39,§**11853**; C46, 50, 54, 58, 62,§633.8; C66, 71, 73, 75,§633.282]

633.283 Will executed in foreign state or country. A will executed outside this state, in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state, provided said will is in writing and subscribed by the testator. [C97,§3309; C24, 27, 31, 35, 39,§**11893**; C46, 50, 54, 58, 62,§633.49; C66, 71, 73, 75,§633.283]

Referred to in §633.279

633.284 Revocation—cancellation—revival. A will can be revoked in whole or in part only by being canceled or destroyed by the act or direction of the testator, with the intention of revoking it, or by the execution of a subsequent will. When done by cancellation, the revocation must be witnessed in the same manner as the making of a new will. No will, nor any part thereof, which shall be in any manner revoked, or which shall be or become invalid, can be revived otherwise than by a re-execution thereof, or by the execution of another will or codicil in which the revoked or invalid will, or part thereof, is incorporated by reference. [C51,§§1288, 1289; R60,§§2320, 2321; C73,§§2329, 2330; C97,§3276; S13,§3276; C24, 27, 31, 35, 39,§**11855**; C46, 50, 54, 58, 62,§633.10; C66, 71, 73, 75,§633.284]

PART 3
CUSTODY

633.285 Custodian — filing — penalty. After being informed of the death of the testator, the person having custody of his will shall deliver it to the court having jurisdiction of his estate. Every person who willfully refuses or fails to deliver a will after being ordered by the court to do so shall be guilty of contempt of court. He shall also be liable to any person aggrieved for the damages which may be sustained by such refusal or failure. [C51, §§1291, 1292; R60,§§2323, 2324; C73,§§2338, 2339; C97,§3282; C24, 27, 31, 35, 39,§**11862**; C46, 50, 54, 58, 62,§633.17; C66, 71, 73, 75,§633.285]

Referred to in §633.286

633.286 Deposit of will with clerk. The clerk shall maintain a file for the safekeeping of wills. There shall be placed therein wills deposited with the clerk by living testators or by persons on their behalf, and wills of deceased testators not accompanied by petitions for the probate thereof, when deposited with the clerk by persons having custody thereof as provided in section 633.285. [C51,§1290; R60, §2322; C73,§2331; C97,§3277; C24, 27, 31, 35, 39, §**11856**; C46, 50, 54, 58, 62,§633.11; C66, 71, 73, 75,§633.286]

Referred to in §633.645

633.287 Manner of deposit. Every such will shall be enclosed in a sealed wrapper. The clerk shall endorse thereon the name of the testator, the name of the depositor, the date of deposit, and, if provided, the name of the person to be notified of the deposit of such will upon the death of the testator. The clerk shall hold such will until disposed of as provided in section 633.288 or 633.289. [C66, 71, 73, 75,§633.287]

Referred to in §633.645

633.288 Delivery by clerk during lifetime of testator. During the lifetime of the testator, such will shall be delivered only to him, or o some person authorized by him by an order in writing duly acknowledged. [C66, 71, 73, 75, §633.288]

Referred to in §§633.287, 633.645

633.289 Delivery by clerk after death of testator. After being informed of the death of a testator, the clerk shall notify the person, if any, named in the endorsement on the wrapper of said will. If no petition for the probate thereof has been filed within thirty days after

the death of the testator, it shall be publicly opened, and the court shall make such orders as it deems appropriate for the disposition of said will. The clerk shall notify the executor named therein and such other persons as the court shall designate of such action. If the proper venue is in another court, the clerk, upon request, shall transmit such will to such court, but before such transmission, he shall make a true copy thereof and retain the same in his files. [C66, 71, 73, 75,§633.289]

Referred to in §§633.287, 633.645

PART 4
PROCEDURE FOR PROBATE OF WILLS

633.290 Petition for probate of will. At the time the will of a decedent is filed with the clerk, or thereafter, any interested person may file a verified petition in the district court of the proper county:

1. To have the will admitted to probate;

2. For the appointment of the executor.

A petition for probate may be combined with a petition for appointment of the executor, and any person interested in either the probate of a will or in the appointment of the executor, may petition for both. [C66, 71, 73, 75,§633.290]

633.291 Contents of petition for probate of will. A petition for probate of a will shall state:

1. The name, domicile, and date of death of the decedent.

2. If the decedent was not domiciled in the state at the time of his death, then, that he had property within the county in which the petition is filed, or any other basis for jurisdiction in such county. [C66, 71, 73, 75, §633.291]

633.292 Contents of petition for appointment of executor. A petition for the appointment of an executor shall state the name and address of the person nominated or proposed as executor, and that such person is qualified to act as executor. If the person proposed in said petition is not the person nominated in the will, the petition shall state the reason why the person nominated is not proposed as executor. Unless bond is waived in the will, the petition shall state the estimated value of the personal property of the estate plus the estimated gross annual income of the estate during the period of administration. [C66, 71, 73, 75,§633.292]

633.293 Hearing upon petition. Upon the filing of a petition for probate of a will, the court or the clerk may, in its or his discretion, hear it forthwith, or at such time and place as the court or clerk may direct, with or without requiring notice, and upon proof of due execution of the will, admit the same to probate. [C51,§1294; R60,§2326; C73,§2341; C97, §3284; S13,§3284; C24, 27, 31, 35, 39,§**11865**; C46, 50, 54, 58, 62,§633.20; C66, 71, 73, 75,§633.293]

Referred to in §633.279

633.294 Order of preference for appointment of executor. Letters testamentary may be granted to one or more persons found to be qualified. Preference for appointment shall be in the following order:

1. The person designated in the will;

2. Any beneficiary named in the will, or a person nominated by the beneficiaries;

3. Any creditor of the deceased, or a person nominated by such creditor;

4. Such other person as the court may find to be qualified. [C66, 71, 73, 75,§633.294]

633.295 Testimony of witnesses. The proof may be made by the oral or written testimony of one or more of the subscribing witnesses to the will. If such testimony is in writing, it shall be substantially in the following form executed and sworn to after the death of the decedent:

In the District Court of Iowa
In and for ..... County
In the Matter of the Estate of .....
..... Deceased
Probate No. .....
Testimony of Subscribing
Witness on Probate of Will.

State of .....
..... County } ss

I, ..., being first duly sworn, state:

I reside in the County of ....., State of .....; I knew the testator on the ..... day of ....., 19...., the date of the instrument, the original or exact reproduction of which is attached hereto, now shown to me, and purporting to be the last will and testament of the said ....., deceased; I am one of the subscribing witnesses to said instrument; at the said date of said instrument, I knew ....., the other subscribing witness; that said instrument was exhibited to me and to the other subscribing witness by the testator, who declared the same to be his last will and testament, and was signed by the testator at ....., in the County of ....., State of ....., on the date shown in said instrument, in the presence of myself and the other subscribing witness; and the other subscribing witness and I then and there, at the request of the testator, in the presence of said testator and in the presence of each other, subscribed our names thereto as witnesses.

.....
Name of witness

.....
Address

Subscribed and sworn to before me this ..... day of ....., 19.....

.....
Notary Public in and for the
State of .....

(SEAL)

[C66, 71, 73, 75,§633.295]

Referred to in §§633.296, 633.319

633.296 Deposition. If it is desired to prove the execution of the will by deposition, rather than by use of the affidavit form provided in section 633.295, upon application, the clerk shall issue a commission to some officer authorized by the law of this state to take depositions, with the will annexed, and the officer taking the deposition shall exhibit it to the witness for identification, and, when identified by him, shall mark it as "Exhibit ....." and cause the witness to connect his identification with it as such exhibit. Before sending out the commission, the clerk shall make and retain in his office a true copy of such will. [C97,§3285; C24, 27, 31, 35, 39,§**11866**; C46, 50, 54, 58, 62,§633.21; C66, 71, 73, 75,§633.296]

633.297 Witnesses unavailable. If all of such witnesses are deceased or otherwise not available, then it shall be permissible to prove said will by the sworn testimony of two credible disinterested witnesses that the signature to the will is in the handwriting of the person whose will it purports to be, and that the signatures of the witnesses are in the handwriting of such witnesses, or it may be proved by other sufficient evidence of the execution of such will. [C46, 50, 54, 58, 62,§633.22; C66, 71, 73, 75,§633.297]

Other evidence, proof, §622.24

633.298 Order admitting or disallowing probate of will. The court or the clerk shall enter an order either admitting said will to probate, or disallowing probate because of insufficient proof thereof. [C66, 71, 73, 75,§633.298]

633.299 Order appointing executor. If a petition for appointment of an executor has been filed, the order admitting the will to probate shall include appointment of an executor thereof, unless the court or clerk shall determine that no appointment should be made at such time. [C51,§§1299, 1302; R60,§§2331, 2334; C73, §§2332, 2333; C97,§3278; C24, 27, 31, 35, 39, §**11857**; C46, 50, 54, 58, 62,§633.12; C66, 71, 73, 75,§633.299]

633.300 Certificate of probate. When a will has been admitted to probate the clerk shall have a certificate of such fact, endorsed thereon or annexed thereto, signed by the clerk and attested by the seal of the court; and, when so certified, it, or the record thereof, or the transcript of such record properly authenticated, may be read in evidence in all courts without further proof. [C51,§1300; R60,§2332; C73,§2342; C97,§3286; C24, 27, 31, 35, 39,§**11867**; C46, 50, 54, 58, 62,§633.23; C66, 71, 73, 75, §633.300]

633.301 Record—copy for executor. When a will has been admitted to probate, it, together with the certificate herein required, shall be recorded in a book kept for that purpose, and the clerk shall cause an authenticated copy thereof to be placed in the hands of the executor to whom letters are issued. The clerk shall retain the will in a separate file provided for that purpose until the time for contest has expired, and promptly thereafter shall place it with the files of said estate. [C51,§§1295, 1298; R60,§§2327, 2330; C73,§§2343, 2344; C97,§3287; S13,§3287; C24, 27, 31, 35, 39, §**11868**; C46, 50, 54, 58, 62,§633.24; C66, 71, 73, 75,§633.301]

Referred to in §§633.16, 633.302

633.302 Clerk filing copies of will. When the clerk places an original will in a separate file as provided in section 633.301, he shall place and keep a true copy of such will in the probate file containing the proceedings in the estate which it governs. [C66, 71, 73, 75, §633.302]

633.303 Charitable trusts—copy of wills to attorney general. When a will creating a charitable trust has been admitted to probate, or when any instrument establishing a charitable trust has been filed with the clerk, the clerk shall forthwith mail a copy of such will or instrument to the attorney general. At any time, the attorney general may investigate for the purpose of determining and ascertaining whether or not such estate or trust is being administered in accordance with law and within the terms and purposes thereof, and may, at any time, make application to the court for such orders therein as may appear to be reasonable and proper to carry out the purposes of the trust. The words "charitable trust" as used in this section shall mean any fiduciary relationship with respect to property arising as a result of manifestation of an intention to create it and subjecting the person by whom the property is held to equitable duties to deal with the property for charitable, educational or religious purposes. [C66, 71, 73, 75,§633.303]

633.304 Notice of probate of will with administration. On admission of a will to probate, the executor shall, as soon as letters are issued, cause to be published once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the estate is pending, a notice of admission of the will to probate and of the appointment of the executor, in which shall be included a notice that any action to set aside the probate of said will must be brought within six months from the date of the second publication of said notice or thereafter be forever barred, and there shall also be included therein a notice to debtors to make payment, and to creditors having claims against said estate to file them with the clerk within six months from the second publication of said notice, or thereafter be forever barred.

Such notice shall be substantially in the following form:

Notice of Probate of Will, of Appointment of Executor, and Notice to Creditors

In the District Court of Iowa
in and for ..... County. Probate No.....

In the Estate of....., Deceased
To All Persons Interested in the Estate
of ....., Deceased:

You are hereby notified that on the ..... day of ....., 19...., the last will and testament of ....., deceased, bearing date of the ..... day of ....., 19..., was admitted to probate in the above named court and that..... was appointed executor of said estate. Any action to set aside said will must be brought in the district court of said county within six months from the date of the second publication of this notice, or thereafter be forever barred.

Notice is further given that all persons indebted to said estate are requested to make immediate payment to the undersigned, and creditors having claims against said estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance; and unless so filed within six months from the second publication of this notice (unless otherwise allowed or paid) such claim shall thereafter be forever barred.

Dated this.....day of....., 19....

.....
Executor of said estate

.....
Address

.....
Attorney for said executor

.....
Address

Date of second publication
.....day of....., 19....
(Date to be inserted by publisher)

This section is applicable to wills admitted to probate on or after July 1, 1975. [C51, §§1357, 1358; R60,§§2389, 2390; C73,§2366; C97, §3304; C24, 27, 31, 35, 39,§**11890**; C46, 50, 54, 58, 62,§633.46; C66, 71, 73, 75,§633.304; 66GA, ch 208,§6]

Referred to in §590.1

633.305 Notice where no administration. On admission of a will to probate without administration of the estate, and upon advanced payment of the costs thereof by the proponent, the clerk shall cause to be published, in the manner prescribed in the preceding section, a notice of the admission of the will to probate in which shall be included a notice that any action to set aside said will must be brought within six months from the date of the second publication of said notice or thereafter be barred.

Such notice shall be substantially in the following form:

Notice of Proof of Will
Without Administration

In the District Court of Iowa
in and for.....County. Probate No.....
In the Estate of ....., Deceased
To All Persons Interested in the Estate
of ....., Deceased:

You are hereby notified that on the..... day of ....., 19..., the last will and testament of ....., deceased, bearing date of the .....day of ....., 19.., was admitted to probate in the above named court and there will be no present administration of the estate. Any action to set aside said will must be brought in the district court of said county within six months from the date of the second publication of this notice or thereafter be forever barred.

Dated this.....day of ....., 19....

.....
Clerk of the district court

.....
Attorney for said estate

.....
Address

Date of second publication
.....day of....., 19...
(Date to be inserted by publisher)

This section is applicable to wills admitted to probate on or after July 1, 1975. [C66, 71, 73, 75,§633.305; 66GA, ch 208,§7]

Referred to in §§590.1, 635.11
See legalizing Act, §590.1

633.306 Record in foreign county. Whenever it shall appear that the testator died seized of real estate located in a county of this state other than that in which probate is granted, a complete transcript, properly authenticated, of the record entry of the order of court admitting the will to probate, and, if a copy of such will is not contained therein, a certified copy of such will shall be attached thereto, and the same shall be filed by the clerk in the office of the clerk of the district court in such other county, who shall cause the same to be entered in the probate docket, and said transcript shall be recorded in full in the book kept for the recording of wills in such county. When so recorded, such record may be read in evidence in all courts without further proof. [S13,§3287; C24, 27, 31, 35, 39,§**11869**; C46, 50, 54, 58, 62,§633.25; C66, 71, 73, 75,§633.306]

See also §633.401

633.307 Costs of transcript. The cost of such transcript and of the recording thereof shall be taxed against the estate of the decedent unless administration thereof is closed, in which event it shall be paid by the owner of the real estate involved. [S13,§3287; C24, 27, 31, 35, 39,§**11870**; C46, 50, 54, 58, 62,§633.26; C66, 71, 73, 75,§633.307]

PART 5
ACTIONS TO SET ASIDE OR CONTEST OF WILLS

633.308 Setting aside probate of will. Any interested person may petition to set aside the probate of a will by filing a written petition in the probate proceedings. The petition for such purpose shall state the grounds therefor. [C51,§1297; R60,§2329; C73,§2353; C97,§3296; C24, 27, 31, 35, 39,§**11882**; C46, 50, 54, 58, 62, §633.38; C66, 71, 73, 75,§633.308]

633.309 Time within which action must be commenced. An action to contest or set aside

the probate of a will must be commenced in the court in which the will was admitted to probate within six months from the date of second publication of notice of admission of such will to probate and not thereafter. This section is applicable to wills admitted to probate on or after July 1, 1975. [C51,§1659; R60, §§1075, 1865, 2740; C73,§§486, 2529; C97,§3447; S13,§§2963-g, 3447; C24, 27, 31, 35, 39,§11007; C46, 50, 54, 58, 62,§614.1(3); C66, 71, 73, 75, 633.309; 66GA, ch 208,§8]

633.310 Objections prior to admission of will to probate. Nothing herein contained shall prevent any interested person from filing objections to probate of a proposed will prior to probate thereof. If such objections are filed prior to the admission of the will to probate, the will shall not be admitted to probate pending trial and determination as to whether or not said instrument is the last will of the decedent. [C24, 27, 31, 35, 39,§11833; C46, 50, 54, 58, 62,§632.2; C66, 71, 73, 75,§633.310]

633.311 Contest or objection shall be tried as a law action. An action objecting to the probate of a proffered will, or to set aside a will, is triable in the probate court as an action at law, and the Rules of Civil Procedure governing law actions, including demand for jury trial, shall be applicable thereto. [C97,§3283; C24, 27, 31, 35, 39,§11864; C46, 50, 54, 58, 62, §633.19; C66, 71, 73, 75,§633.311]

633.312 Joinder of parties. In all actions to contest or set aside a will, all known interested parties who have not jointed with the contestants as plaintiffs in the action, shall be joined with proponents as defendants. When additional interested parties become known, the court shall order them brought in as party defendants. All such defendants shall be brought in by serving them with notice pursuant to the Rules of Civil Procedure. [C66, 71, 73, 75, §633.312]

633.313 Election of defendants to join with contestants. Any person named as a defendant in an action to contest or set aside a will may, at time of appearance, or by leave of court at any time thereafter, elect to join with the contestants. [C66, 71, 73, 75,§633.313]

633.314 Taxation of costs. The court shall tax the costs in an action to contest or set aside a will. No costs shall be taxed against a losing party who has been joined in the action but who does not appear. [C66, 71, 73, 75,§633.314]

633.315 Allowance for defending will. When any person is designated as executor in a will, or has been appointed as executor, and defends or prosecutes any proceedings in good faith and with just cause, whether successful or not, he shall be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney fees in such proceedings. [C66, 71, 73, 75,§633.315]

633.316 Notice to devisees in other wills. If the ground of objection is that another will of the decedent has been discovered, each devisee named in such other will shall be joined in the action. [C66, 71, 73, 75,§633.316]

633.317 Where will is filed after letters of administration have been granted. If, after letters of administration have been granted, a will of the decedent is admitted to probate, such letters of administration are thereby revoked, and the person to whom such letters were issued shall promptly file a final report and make an accounting to the court. [C66, 71, 73, 75,§633.317]

633.318 Where will is filed after letters testamentary have been granted. If, after a will has been admitted to probate, another instrument purporting to be the will of the decedent, which has not been previously presented for probate, is filed, the court shall determine whether or not the former grant of letters should be revoked pending determination of which instrument constitutes the will of the decedent. [C66, 71, 73, 75,§633.318]

633.319 Proof of execution. If the lack of the due execution of a will constitutes a ground for objection, proof of such execution shall not be made by affidavit as provided in section 633.295. [C66, 71, 73, 75,§633.319]

633.320 Declaratory judgment to determine last will. The executor or any person named as a beneficiary in a will may bring an action for a declaratory judgment to have such will declared to be the last will of the decedent. In such action, all known interested persons, including heirs of the decedent and persons named as beneficiaries in said instrument and other known instruments purporting to be wills of the decedent, shall be joined as parties. [C66, 71, 73, 75,§633.320]

633.321 to 633.329 Reserved.

DIVISION VII
ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1
GENERAL PROVISIONS
LIMITATION

633.330 Character of proceedings. The administration of the estate of a decedent from the filing of the petition for probate and admission or for administration until the order approving the final report and discharge of the last personal representative shall be considered as one proceeding for purposes of jurisdiction. Such entire proceeding is a proceeding in rem. [C66, 71, 73, 75,§633.330]

Referred to in §633.515

633.331 Limitation of administration. Probate of a will, original administration of an intestate estate, or ancillary administration of an estate, shall not be granted after five years from the death of the decedent, whether he die within or without this state, unless a petition therefor is filed prior to the expiration of the five-year period. Provided, however,

that the limitation herein provided shall not apply to the probate of a will of a decedent who died prior to January 1, 1964. [C51,§1325; R60,§2357; C73,§2367; C97,§3305; S13,§3305; C24, 27, 31, 35, 39,§**11891**; C46, 50, 54, 58, 62,§633.47; C66, 71, 73, 75,§633.331]

Referred to in §635.10

EXEMPT PROPERTY AND INSURANCE

633.332 Exempt personal property. When the decendent left a surviving spouse, all personal property which in the hands of the decedent as head of a family would be exempt from execution, which is bequeathed or set aside to the surviving spouse in accordance with the provisions of this chapter, shall be exempt in the hands of such surviving spouse as in the hands of the decedent. [C51,§1329; R60,§2361; C73,§2371; C97,§3312; C24, 27, 31, 35, 39,§**11918**; C46, 50, 54, 58, 62,§635.7; C66, 71, 73, 75,§633.332; 66GA, ch 208,§9]

633.333 Proceeds of insurance. The avails of any life or accident insurance, or other sum of money made payable to the decedent's estate by any mutual aid or benevolent society upon the death or disability of a member thereof, are not subject to the debts of the decedent, except by contract or by express provision in the will, and shall be disposed of like other property left by the decedent. [C51, §1330; R60,§2362; C73,§§1182, 2372; C97,§3313; C24, 27, 31, 35, 39,§**11919**; C46, 50, 54, 58, 62, §635.8; C66, 71, 73, 75,§633.333]

633.334 Surviving spouse included as "heir". The words "heirs" and "legal heirs", and other equivalent words used to designate the beneficiaries in any life insurance policy or certificate of membership in any mutual aid or benevolent association, where no contrary intention is expressed in such instrument, shall be construed to include the surviving husband or wife of the insured. [C97,§3313; C24, 27, 31, 35, 39,§**11921**; C46, 50, 54, 58, 62,§635.10; C66, 71, 73, 75,§633.334]

633.335 Share of survivor. The share of such survivor in the proceeds of such policy or certificate made payable as aforesaid shall be the same as that provided by law for the distribution of the personal property of intestates. [C97,§3313; C24, 27, 31, 35, 39,§**11922**; C46, 50, 54, 58, 62,§635.11; C66, 71, 73, 75, §633.335]

WRONGFUL DEATH

633.336 Damages for wrongful death. When a wrongful act produces death, damages recovered therefor shall be disposed of as personal property belonging to the estate of the deceased, however, if the damages include damages for loss of services and support of a deceased spouse and parent, such damages shall be apportioned by the court among the surviving spouse and children of the decedent in such manner as the court may deem equitable consistent with the loss of services and support sustained by the surviving spouse and children respectively. If the decedent leaves a spouse, child or parent, damages for wrongful death shall not be subject to debts and charges of the decedent's estate. [R60, §4111; C73,§2526; C97,§3313; C24, 27, 31, 35, 39, §**11920**; C46, 50, 54, 58, 62,§635.9; C66, 71, 73, 75, §633.336; 66GA, ch 1227,§4]

633.337 to 633.341 Reserved.

PART 2
TEMPORARY ADMINISTRATION

633.342 Appointment of temporary administrator pending administration.

1. When, from any cause, probate of a will or administration cannot be immediately granted, a temporary administrator may be appointed to collect, manage, preserve and dispose of the property of the deceased, as the court may prescribe, and no appeal from such appointment shall prevent his proceeding in the discharge of his duties.

2. Such temporary administrator shall make and file an inventory of the property of the deceased in the same manner as is required of personal representative, and shall preserve such property from injury, and may do all needful acts under the direction of the court, including the sale of property and the payment of claims as directed by the court. Upon the granting of administration, the powers of the temporary administrator shall cease, and the administration of the estate shall be transferred to the personal representative to whom letters are granted. [C51,§§1320–1324; R60, §§2352–2356; C73,§§2357–2361; C97,§§3299, 3300; C24, 27, 31, 35, 39,§§**11885, 11886**; C46, 50, 54, 58, 62,§§633.41, 633.42; C66,§§633.342, 633.343; C71, 73, 75,§633.342]

633.343 Appointment of temporary administrator during administration. At any time during the administration of an estate, the court, for good cause shown, may appoint a temporary administrator to carry out such orders of the court as may be necessary for the proper administration of such estate. No appeal from such appointment shall prevent the temporary administrator from proceeding in the discharge of his duties. [C71, 73, 75, §633.343]

633.344 to 633.347 Reserved.

PART 3
TITLE AND POSSESSION OF DECEDENT'S PROPERTY

633.348 Right to retain existing property. Notwithstanding the provisions of section 633.123, any personal representative may continue to hold any investment or property originally received by him and also any increase thereof. [C66, 71, 73, 75,§633.348]

633.349 Security to sustain devise or bequest. When a person by his will makes such a disposition of his property as to prejudice the rights of creditors, the will may be sustained, by giving security to the satisfaction of the court for the payment of the debts and

charges to the extent of the value of the property devised. [C51,§1339; R60,§2371; C73,§2384; C97,§3320; C24, 27, 31, 35, 39,§**11930**; C46, 50, 54, 58, 62,§635.19; C66, 71, 73, 75,§633.349]

633.350 Title to decedent's estate — when property passes—possession and control thereof—liability for administration expenses, debts and family allowance. Except as otherwise provided in this Code, when a person dies, the title to his property, real and personal, passes to the person to whom it is devised by his last will, or, in the absence of such disposition, to the persons who succeed to his estate as provided in this Code, but all of his property shall be subject to the possession of the personal representative as provided in section 633.351 and to the control of the court for the purposes of administration, sale, or other disposition under the provisions of law, and such property, except homestead and other exempt property, shall be chargeable with the payment of debts and charges against his estate. There shall be no priority as between real and personal property, except as provided in this Code or by the will of the decedent. [C66, 71, 73, 75,§633.350]

633.351 Possession of real and personal property. If there is no distributee of the real estate present and competent to take possession, or if there is a lease of such real estate outstanding, or if the distributees present and competent consent thereto, the personal representative shall take possession of such real estate, except the homestead and other property exempt to the surviving spouse. Every personal representative shall take possession of all the personal property of the decedent, except the property exempt to the surviving spouse. The personal representative may maintain an action for the possession of such real and personal property or to determine the title to any property of the decedent. [C51, §1327; R60,§2359; C73,§§2402–2404, 2407; C97, §§3333, 3334, 3337; C24, 27, 31, 35, 39,§§**11952, 11953, 11956**; C46, 50, 54, 58, 62,§§635.48, 635.49, 635.52; C66, 71, 73, 75,§633.351]

Referred to in §633.350

633.352 Collection of rents and payment of taxes and charges. Unless otherwise provided by the will, the personal representative shall collect the income from the property of which he has possession, pay the taxes and fixed charges thereon and apply the balance of such income to general estate obligations. Unless otherwise provided by will, any unexpended portion of such income shall become a part of the general assets of such estate. [C73,§§2403–2405; C97,§§3334, 3335; C24, 27, 31, 35, 39,§§**11953, 11954**; C46, 50, 54, 58, 62,§§635.49, 635.50; C66, 71, 73, 75,§633.352; 66GA, ch 208,§10]

633.353 Surrender of possession upon application by personal representative. Upon application by the personal representative, and after such notice, if any, as the court may prescribe, for good cause shown, the court may enter an order authorizing said personal representative to surrender any of such property to the person or persons who, under the will or under the rules of intestate succession, will ultimately be entitled to such property. [C66, 71, 73, 75,§633.353]

633.354 Surrender of possession upon application by any interested person. Upon application of any interested person and after such notice to the personal representative and to such other persons, if any, as the court may prescribe, and for good cause shown, the court may enter an order authorizing said personal representative to surrender any of such property to the person or persons who, under the will or under the rules of intestate succession, will ultimately be entitled to such property. The court may require a bond or other security conditioned as it may determine in connection with the delivery of such property. [C66, 71, 73, 75,§633.354]

633.355 Delivery of specific devise after nine months. Unless the court, for cause shown, determines that the possession of the personal representative shall continue for a longer period, the personal representative shall deliver all specifically devised property to the devisees entitled thereto after the expiration of nine months from the date of appointment of the personal representative. This section shall not preclude the court from directing that such delivery be made before such period has expired, nor shall the personal representative be prevented from sooner settling the estate and delivering such property. [C51, §§1381–1383; R60,§§2413–2415; C73,§§2429–2431; C97,§§3355–3357; C24, 27, 31, 35, 39,§§**11978–11980**; C46, 50, 54, 58, 62,§§635.73–635.75; C66, 71, 73, 75,§633.355]

633.356 to 633.360 Reserved.

PART 4
INVENTORY

633.361 Inventory and report. Within sixty days after his qualification, unless a longer time shall be granted by the court, the personal representative shall file with the clerk, in duplicate, a verified, or affirmed under penalty of perjury, full and detailed report and inventory of the property of the deceased, so far as the same has come to his knowledge, as follows:

1. Name, age and last residence of decedent.
2. Date of death.
3. Whether decedent died testate or intestate.
4. Name and post-office address of personal representative.
5. Name, age and post-office address of surviving spouse, if any.
6. If testate, name, age, relationship and post-office address of each beneficiary under will.

7. If testate, the name, age and address of each child, if any, born to or adopted by decedent after execution of the will.

8. If intestate, name, age, relationship and post-office address of each heir.

9. Inventory of all the real estate of the decedent in the state of Iowa, giving value and accurate description of each tract.

10. Any real property located outside of the state of Iowa not otherwise reported.

11. Personal property regarded as exempt from execution.

12. All other personal property.

13. All property whether subject to probate or not, not otherwise listed which is subject to the Iowa inheritance tax as provided in chapter 450.

14. A statement as to whether or not there is any property not therein inventoried which must be reported for federal estate tax purposes.

The clerk shall send a copy of the report and inventory, and a copy of any supplementary inventory, to the department of revenue. [C51,§1328; R60,§2360; C73,§2370; C97,§3310; S13, §1481-a26; C24,§§7319, 11913; C27, 31, 35, 39, §**11913**; C46, 50, 54, 58, 62,§635.1; C66, 71, 73, 75, §633.361]

Referred to in §§450.14, 450.73, 635.7, 635.9

633.362 Filing mandatory. Such inventory must be filed in all cases, notwithstanding the provisions of any will or the action of any heirs or devisees waiving the filing thereof, and no administration shall be closed until the same has been filed. [C97,§3310; C24, 27, 31, 35, 39,§**11915**; C46, 50, 54, 58, 62,§635.4; C66, 71, 73, 75,§633.362]

633.363 Reporting failure to court. The failure of the personal representative promptly to make said inventory and report shall be forthwith reported by the clerk to the court for such order as may be necessary to enforce the making and filing of the same. [C27, 31, 35,§11913-b1; C39,§**11913.1**; C46, 50, 54, 58, 62. §635.2; C66, 71, 73, 75,§633.363]

633.364 Supplementary inventory. Whenever any additional information or property not mentioned in the inventory comes to the knowledge of a personal representative, he shall make a supplementary inventory thereof, such supplementary inventory to be filed within thirty days after such discovery. [C51, §1333; R60,§2365; C73,§2376; C97,§3310; C24, 27, 31, 35, 39,§**11914**; C46, 50, 54, 58, 62,§635.3; C66, 71, 73, 75,§633.364]

633.365 Appraisement. Property belonging to the estate need not be appraised unless required for inheritance tax purposes, under the provisions of this Code, or by order of court. [C51,§§1331, 1332; R60,§§2363, 2364; C73,§§2373, 2374, 2378; C97,§3311; S13,§3311; C24, 27, 31, 35, 39,§§**11916, 11917**; C46, 50, 54, 58, 62,§§635.5, 635.6; C66, 71, 73, 75,§633.365]

633.366 Debts of executor. The naming of any person as executor in a will shall not operate as a discharge or bequest of any right of action owned by the testator against such persons, if it is a right that otherwise survives against such person. Every such right of action shall be included among the assets of the decedent in the inventory. [C66, 71, 73, 75, §633.366]

633.367 Inventory and appraisement as evidence. Inventories and appraisements may be given in evidence in all proceedings, but shall not be conclusive, and other evidence may be introduced to vary the effect thereof. [C66, 71, 73, 75,§633.367]

633.368 Property for payment of creditor's claims. The property liable for the payment of debts and charges against a decedent's estate shall include all property transferred by him with intent to defraud his creditors or any of them, or transferred by any other means which is in law void or voidable as against his creditors or any of them; and the right to recover such property, so far as necessary for the payment of the debts and charges against the estate of the decedent, shall be exclusively in the personal representative, who shall take such steps as may be necessary to recover the same. Such property shall constitute general assets for the payment of all creditors. [C73,§2381; C97,§3317; C24, 27, 31, 35, 39,§**11927**; C46, 50, 54, 58, 62,§635.16; C66, 71, 73, 75,§633.368]

633.369 to 633.373 Reserved.

PART 5
ALLOWANCE FOR SURVIVING SPOUSE AND MINOR CHILDREN

633.374 Allowance to surviving spouse. The court shall, upon application, set off and order paid to the surviving spouse, as part of the costs of administration, sufficient of the decedent's property as it deems reasonable for the proper support of the surviving spouse for the period of twelve months following the death of the decedent. When said application is not made by the personal representative, notice of hearing upon the application shall be given to the personal representative. The court shall take into consideration the station in life of the surviving spouse and the assets and condition of the estate. The allowance shall also include such additional amount as the court deems reasonable for the proper support, during such period, of dependents of the decedent who reside with the surviving spouse. Such allowance to the surviving spouse shall not abate upon the death or remarriage of such spouse. [C51,§1338; R60,§2370; C73,§§2375, 2377; C97,§3314; C24, 27, 31, 35, 39,§§**11923, 11924**; C46, 50, 54, 58, 62,§§635.12, 635.13; C66, 71, 73, 75,§633.374]

Referred to in §450.12

633.375 Review of allowance to surviving spouse. The court may, upon the petition of the spouse, or other person interested, and

after hearing pursuant to notice to all interested parties, review such allowance and increase or decrease the same. [C51,§1338; R60, §2370; C73,§§2375, 2377; C97,§3314; C24, 27, 31, 35, 39,§**11923**; C46, 50, 54, 58, 62,§635.12; C66, 71, 73, 75,§633.375; 66GA, ch 208,§11]

Referred to in §450.12

633.376 Allowance to minor children who do not reside with surviving spouse. The court may also make an allowance to a child of the decedent who is less than eighteen years of age or who is between the ages of eighteen and twenty-two years who is regularly attending an approved school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs; or is, in good faith, a full-time student in a college, university, or area school; or has been accepted for admission to a college, university, or area school and the next regular term has not yet begun; or a child of any age who is dependent on the parties to the dissolution proceedings because of physical or mental disability; who does not reside with the surviving spouse, of such an amount as it deems reasonable in the light of the assets and condition of the estate, to provide for their proper support during such period of twelve months. [C66, 71, 73, 75, §633.376]

Referred to in §450.12

633.377 Review of allowance to minor children. The court may, upon the petition of any interested person, review the allowance made to the minor children who do not reside with the surviving spouse and may increase or decrease the same and make such other orders as it may deem proper. [C51,§1338; R60,§2370; C73,§§2375, 2377; C97,§3314; C24, 27, 31, 35, 39, §**11923**; C46, 50, 54, 58, 62,§635.12; C66, 71, 73, 75,§633.377]

Referred to in §450.12

633.378 to 633.382 Reserved.

PART 6
SALE OF PROPERTY

633.383 When power given in will. When power to sell, mortgage, lease, pledge or exchange property of the estate has been given to any personal representative under the terms of any will, the statutory requirements with reference to procedure for such purposes shall not apply. [C51,§1297; R60,§2329; C73,§2353; C97,§§3295, 3296; C24, 27, 31, 35, 39,§§**11879–11882**; C46, 50, 54, 58, 62,§§633.35–633.38; C66, 71, 73, 75,§633.383]

633.384 Equitable conversion and power of sale. A testamentary direction to sell real property, and the exercise of a testamentary power of sale of real property, shall constitute an equitable conversion of real estate into personal property, but shall not affect distribution of the estate under the provisions of the will. [C51,§1297; R60,§2329; C73,§2353; C97, §§3295, 3296; C24, 27, 31, 35, 39,§§**11879–11882**; C46, 50, 54, 58, 62,§§633.35–633.38; C66, 71, 73, 75,§633.384]

633.385 Conversion.

1. *When realty treated as personalty.* Real property acquired by the personal representative by the completion of foreclosure proceedings, or by the forfeiture of real estate contracts, after the death of the decedent shall be deemed to be personal property for the purpose of administration and distribution of the estate.

2. *When personalty treated as realty.* In all cases of sale of real property by a personal representative under order of court, the surplus of the proceeds of such sale remaining after the payment of debts and charges shall be deemed to be real property and disposed of in the same proportions as the real property would have been if it had not been sold. [C66, 71, 73, 75,§633.385]

633.386 Sale, mortgage, pledge, lease or exchange of property—purposes.

1. Any real or personal property belonging to the decedent, except exempt personal property and the homestead, may be sold, mortgaged, pledged, leased or exchanged by the personal representative for any of the following purposes:

a. The payment of debts and charges against the estate;

b. The distribution of the estate or any part thereof;

c. Any other purpose in the best interests of the estate.

2. Exempt personal property under such provisions as the court may direct, if not set off to the surviving spouse, may be sold, mortgaged, pledged, leased, or exchanged, provided that the surviving spouse consents thereto.

3. The homestead, under such provisions as the court may direct, if not set off to the surviving spouse and if the surviving spouse has not elected to occupy the homestead, may be sold, mortgaged, pledged, leased or exchanged.

4. The proceeds from the sale of any exempt personal property or from the sale of the homestead shall be held by the personal representative subject to the rights of the surviving spouse or issue, unless such surviving spouse or issue has expressly waived his rights to such proceeds. [C51,§§1341–1343; R60,§§2373–2375; C73,§§2386–2388; C97,§§3322, 3323; C24, 27, 31,§§11932, 11933; C35,§§11932, 11933, 11951-g2; C39,§§**11932, 11933, 11951.2**; C46, 50, 54, 58, 62, §§635.21–635.23, 635.42; C66, 71, 73, 75,§633.386]

Referred to in §633.22

633.387 Sale of personal property without order of court. Personal property of a perishable nature and personal property for which there is a regularly established market may be sold by the personal representative without

order of court. [C51,§1341; R60,§2373; C73,§2386; C97,§3322; C24, 27, 31, 35, 39,§**11932**; C46, 50, 54, 58, 62,§635.21; C66, 71, 73, 75,§633.387]

Referred to in §633.22

633.388 Petition to sell, mortgage, exchange, pledge or lease property. A petition to sell, mortgage, exchange, pledge or lease any real or personal property shall set forth the reasons for the application and describe the property involved. It may apply for different authority as to separate parts of the property; or it may apply in the alternative for authority to sell, mortgage, exchange, pledge or lease. Whenever it is for the best interests of the estate, real and personal property of the estate may be sold, mortgaged, exchanged, pledged or leased as a unit. [C51,§§1342, 1343; R60,§§2374, 2375; C73,§§2387, 2388; C97,§3323; C24, 27,§11933; C35,§§11933, 11951-g4; C39,§§**11933, 11951.4**; C46, 50, 54, 58, 62,§§635.23, 635.44; C66, 71, 73, 75, §633.388]

Referred to in §§633.22, 633.391, 633.400

633.389 Notice and hearing on sale, mortgage, exchange, pledge or lease of property. Upon the filing of the petition, unless notice is waived in writing, notice of hearing in accordance with section 633.40, shall be served on all persons interested in such property, provided, however, that as to personal property and as to the lease of real property not specifically devised, for a period of not to exceed one year, the court may, in its discretion, hear the petition without notice. In those instances where notice is required, the notice shall state briefly the nature of the application. At the hearing and upon satisfactory proof, the court may order the sale, mortgage, exchange, pledge or lease of the property described, or any part thereof, at such price and upon such terms and conditions as the court may authorize. For the purposes of this section, the term "all persons interested" shall include only distributees in the estate and persons who have requested notice as provided by this Code. [C51,§§1342–1344; R60,§§2374–2376; C73,§§2387–2389; C97, §§3323, 3324; C24,§§11933, 11934, 11935; C27, 31, §§11933, 11935; C35,§§11933, 11935, 11951-g5; C39, §§**11933, 11935, 11951.5**; C46, 50, 54, 58, 62, §§635.23–635.25, 635.45; C66, 71, 73, 75,§633.389]

Referred to in §633.22

633.390 Sale subject to mortgage. When a claim is secured by a mortgage on property, the court may, with the consent of the mortgagee, order the sale of the property subject to the mortgage, and such consent shall release the estate should a deficiency later appear. [C66, 71, 73, 75,§633.390]

Referred to in §633.22

633.391 Quieting adverse claims. A petition to determine questions of conflicting and controverted title, or to remove clouds from any title or interest of property involved, may be combined with the petition provided in section 633.388. [C66, 71, 73, 75,§633.391]

Referred to in §633.22

633.392 Terms of sale. In all sales of property, the court may authorize credit to be given by the personal representative on such terms as the court may prescribe. Credit for more than twelve months shall be extended only after hearing pursuant to notice to interested parties. [C51,§§1347, 1348, 1350; R60, §§2379, 2380, 2382; C73,§§2392, 2393, 2395; C97, §3326; C24, 27, 31, 35, 39,§**11938**; C46, 50, 54, 58, 62,§635.27; C66, 71, 73, 75,§633.392]

Referred to in §633.22

633.393 Purchase by holder of lien. At any sale of real or personal property upon which there is a mortgage, pledge or other lien, the holder of such lien may become the purchaser, and may apply the amount of his lien on the purchase price in the following manner. If no claim thereon has been filed or allowed, the court, at the hearing on the report of sale and for confirmation of the sale, may examine into the validity and enforceability of the lien or charge and the amount due thereunder and secured thereby, and may authorize the personal representative to accept the receipt of such purchaser for the amount due thereunder and secured thereby as payment pro tanto. If such mortgage, pledge or other lien is a valid claim against the estate and has been allowed, the receipt of the purchaser for the amount due him from the proceeds of the sale is a payment pro tanto. If the amount for which the property is purchased, whether or not a claim for it has been filed or allowed, is insufficient to defray the expenses and discharge his mortgage, pledge or other lien, the purchaser must pay an amount sufficient to pay the balance of such expenses. Nothing permitted under the terms of this section shall be deemed to be an allowance of a claim based upon such mortgage, pledge or other lien. [C66, 71, 73, 75,§633.393]

Referred to in §633.22

633.394 Order to sell, mortgage, pledge, exchange or lease to be refused if bond given.

1. *Bond to prevent sale.* Any person interested in the estate may prevent a sale, mortgage, pledge, exchange or lease of the whole or any part of the real estate or personal property for any purpose, by giving bond to the satisfaction of the court, conditioned that he will pay such demands against the estate as the court shall require, not to exceed the value of the property thus kept from sale, mortgage, pledge, exchange, or lease, as soon as called upon by the court for that purpose.

2. *Breach of bond—procedure.* If the conditions of such bond are broken, the property will be liable for the debts, unless it has passed into the hands of innocent purchasers, and the executor or administrator may take possession thereof and sell it under the direction of the court, or he may prosecute the bond, or pursue both remedies at the same time, if the court so directs.

3. *Effect of bond.* If the conditions of the bond are complied with, the property shall

pass by devise, bequest, distribution, or descent in the same manner as though there had been no debts against the estate. [C51, §§1351–1353; R60,§§2383–2385; C73,§§2396–2398; C97,§§3328, 3329; C24, 27, 31, 35, 39,§§**11941–11943**; C46, 50, 54, 58, 62,§635.30–635.32; C66, 71, 73, 75, §633.394]

Referred to in §633.22

633.395 Validity of proceedings. No proceedings for sale, mortgage, pledge, lease, exchange or conveyance by a personal representative of property belonging to the estate shall be subject to collateral attack on account of any irregularity in the proceedings which is not such as to deprive the court of jurisdiction. [C66, 71, 73, 75,§633.395]

Referred to in §633.22

633.396 Order for sale, mortgage, pledge, exchange or lease of real property. The order shall describe the property to be sold, mortgaged, pledged, exchanged or leased, and may designate the sequence in which the several parcels shall be sold, mortgaged, pledged, exchanged or leased. An order for sale may direct whether the property shall be sold at private sale or public auction, and, if the latter, the place or places of sale. The order of sale may prescribe the terms, conditions and manner of sale. The court may, in its discretion, provide for appraisal for its guidance as to value of the property, and determine whether or not additional bond shall be deposited by the personal representative. If real property is to be mortgaged, it may fix the maximum amount of principal, the earliest and latest dates of maturity, and the purposes for which the proceeds shall be used. An order for sale, mortgage, pledge, exchange or lease shall remain in force until terminated by the court. [C51,§§1345–1350; R60,§§2377–2382; C73,§§2390–2395; C97,§§3325–3327; C24, 27, 31, 35, 39,§§**11937–11940**; C46, 50, 54, 58, 62,§§635.26–635.29; C66, 71, 73, 75,§633.396]

Referred to in §633.22

633.397 Sale at public auction. In all sales of property at public auction, the personal representative shall give such notice, in such form and manner, and to such persons or parties, as the court may prescribe. If no provision for notice is made by the court, the notice shall be published once each week for two consecutive weeks in some newspaper of general circulation in the county where sale is to be held, the last publication to be not less than one day nor more than seven days before the day of sale. If the property to be sold is located in more than one county, the sale may be held and notice given in any one or more of said counties. Unless otherwise provided by order of the court, the notice shall state the time and place of the sale and describe the property to be sold. Proof of service of the notice required shall be filed before confirmation of the sale. [C51,§§1347, 1348, 1350; R60,§§2379, 2380, 2382; C73,§§2392, 2393, 2395; C97,§3326; C24, 27, 31, 35, 39,§**11938**; C46, 50, 54, 58, 62,§635.27; C66, 71, 73, 75,§633.397]

Referred to in §633.22

633.398 Adjournment of sale at public auction. The personal representative may adjourn any sale from time to time when, in his discretion, it is deemed for the best interests of the estate to do so, but no adjournment shall be to a time more than three months from the date first fixed for the sale. Every adjournment shall be announced publicly at the time and place at which adjournment is made. [C51,§§1347, 1348, 1350; R60,§§2379, 2380, 2382; C73,§§2392, 2393, 2395; C97,§3326; C24, 27, 31, 35, 39,§**11938**; C46, 50, 54, 58, 62,§635.27; C66, 71, 73, 75,§633.398]

Referred to in §633.22

633.399 Report for approval. After making any such sale, mortgage, exchange or lease of real property, the personal representative shall make a verified report thereof to the court. The court shall examine said report, and if satisfied that the sale, mortgage, exchange, or lease has been at a price and upon terms advantageous to the estate, and, in all respects, made in conformity with law, and that it ought to be confirmed, shall confirm the same and order the personal representative to deliver a deed, mortgage, lease or other proper instruments to the persons entitled thereto; provided, however, that in the event said real property has been sold at private sale without an appraisal for inheritance tax purposes or for purpose of such sale, or, if it has been so appraised and has been sold at private sale for less than the appraised value thereof, then, upon the filing of such report, the court may enter an order fixing a time and place for hearing thereon and prescribe a notice of such hearing to be served upon all interested persons, any one of whom, prior to the time fixed for such hearing, may file written objections to the entry of an order approving said sale. If not satisfied that the sale, mortgage, exchange, or lease has been made in conformity with law and that it is to the best interests of the estate, the court may reject the sale, mortgage, exchange, or lease, and enter such orders as the court may deem advisable. [C51, §§1354, 1355; R60,§§2386, 2387; C73,§§2399, 2400; C97,§§3330, 3331; C24, 27, 31,§§11944–11947; C35, §§11944–11947, 11951-g6,-g7; C39,§§**11944–11947, 11951.6, 11951.7**; C46, 50, 54, 58, 62,§§635.33–635.36, 635.46, 635.47; C66, 71, 73, 75,§633.399]

Referred to in §§633.22, 633.400

633.400 Joining report with petition. The report of any private sale, mortgage, exchange, or lease of real property, as provided in section 633.399, may be joined with the petition provided in section 633.388. [C66, 71, 73, 75, §633.400]

Referred to in §633.22

633.401 Record in foreign county. When real property so conveyed or encumbered is located in a county other than that in which

such proceedings are had, a complete transcript of the record of all proceedings relating thereto shall be filed by the personal representative in the office of the clerk in such county. [C97,§3331; C24, 27, 31, 35, 39,§**11949**; C46, 50, 54, 58, 62,§635.38; C66, 71, 73, 75, §633.401]

633.402 to 633.409 Reserved.

PART 7
CLAIMS AGAINST DECEDENT'S ESTATE
TIME AND MANNER OF FILING CLAIMS

633.410 Limitation on filing claims against decedent's estate. All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, shall be forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within six months after the date of the second publication of the notice to creditors; provided, however, that the personal representative may waive such limitation on filing; and this provision shall not bar claimants entitled to equitable relief due to peculiar circumstances. [C51,§1373; R60,§2405; C73,§2421; C97,§3349; C24, 27, 31, 35, 39,§**11972**; C46, 50, 54, 58, 62,§635.68; C66, 71, 73, 75,§633.410]

Referred to in §§633.413, 633.414, 633.415, 633.444

633.411 Pleading statute of limitations. It shall be within the discretion of the personal representative to determine whether or not the applicable statute of limitations shall be pleaded to bar a claim which he believes to be just, provided, however, that this section shall not apply where the personal representative was appointed upon the application of a creditor. [C66, 71, 73, 75,§633.411]

633.412 When claim not affected by statute of limitation. No claim shall be barred by the statutes of limitation which was not barred at the time of the decedent's death, if the claim shall have been filed against the decedent's estate within six months from the date of the decedent's death. [C51,§1373; R60,§2405; C73, §2421; C97,§3349; C24, 27, 31, 35, 39,§**11972**; C46, 50, 54, 58, 62,§635.68; C66, 71, 73, 75,§633.412]

Referred to in §633.414

633.413 Claims barred when no administration commenced. All claims barrable under the provisions of section 633.410 shall, in any event, be barred if administration of the estate, whether testate or intestate, original or ancillary is not commenced within five years after the death of the decedent. [C51,§§1325, 1356; R60,§§2357, 2388; C73,§§2367, 2401; C97,§§3305, 3332; S13,§3305; C24, 27, 31, 35, 39,§§**11891, 11951**; C46, 50, 54, 58, 62,§§633.47, 635.40; C66, 71, 73, 75,§633.413]

Referred to in §633.414

633.414 Liens not affected by failure to file claim. Nothing in sections 633.410, 633.412 and 633.413 shall affect or prevent any action or proceeding to enforce any mortgage, pledge or other lien upon property of the estate. [C66, 71, 73, 75,§633.414]

633.415 Commencement or continuance of separate action. Any action pending against the decedent at the time of his death that survives, shall also be considered a claim filed against the estate if notice of substitution is served upon the personal representative as defendant within the time provided for filing claims in section 633.410; however, this provision shall not bar parties entitled to equitable relief due to peculiar circumstances. A copy of the proof of service of notice of such proceedings shall be filed in the probate proceedings but shall not be jurisdictional.

A separate action based on a debt or other liability of the decedent may be commenced against a personal representative of the decedent in lieu of filing a claim in the estate. Such an action shall be commenced by serving an original notice on the personal representative within the time provided for filing claims in section 633.410 and such action shall also be considered a claim filed against the estate. Such action may be commenced only in a county wherein the venue would have been proper had the decedent survived and the action been commenced against him. A copy of the proof of service of notice shall be filed in the probate proceedings but shall not be jurisdictional.

A judgment or decree in favor of the plaintiff in any such action shall constitute an adjudication against the estate.

In all cases where by the death of the party to be charged, the bringing of the action against his estate shall have been delayed beyond the period provided by the statute of limitations, the action may be brought if the original notice is served on the personal representative as defendant, and proof of service of notice of such proceeding is filed in the probate proceedings within the time provided for filing claims in section 633.410. [C51,§1373; R60, §2405; C73,§2421; C97,§3349; C24, 27, 31, 35, 39, §**11972**; C46, 50, 54, 58, 62,§635.68; C66, 71, 73, 75,§633.415]

Referred to in §§633.416, 633.417

633.416 Compulsory counterclaims — Rules of Civil Procedure. In an action commenced by or against the fiduciary under the provisions of section 633.415, or in any action pending by or against the decedent that survives under the provisions of section 633.415, the Rules of Civil Procedure as to compulsory counterclaims shall apply in such action. [C66, 71, 73, 75,§633.416]

See R.C.P. 29 et seq.

633.417 Separate action in lieu of proceeding on claims. The provisions of sections 633.438 to 633.448 are not applicable to actions continued or commenced under section 633.415. [C66, 71, 73, 75,§633.417]

633.418 Form and verification of claims—general requirements. No claim shall be al-

lowed against an estate on application of the claimant unless it shall be in writing, filed in duplicate with the clerk, stating the claimant's name and address, describing the nature and the amount thereof, if ascertainable, and accompanied by the affidavit of the claimant, or someone for him, that the amount is justly due, or if not yet due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant, except as therein stated. If the claim is contingent, the nature of the contingency shall also be stated. The duplicate of said claim shall be mailed by the clerk to the personal representative or his attorney of record. [C51, §1359; R60,§2391; C73,§2408; C97,§3338; C24, 27, 31, 35, 39,§§**11957, 11958**; C46, 50, 54, 58, 62, §§635.53, 635.54; C66, 71, 73, 75,§633.418]

633.419 Requirements when claim founded on written instrument. If a claim is founded on a written instrument, the original or a copy thereof with all endorsements must be attached to the claim. The original instrument must be exhibited to the personal representative or court, upon demand, unless it is lost or destroyed, in which case its loss or destruction must be stated in the claim. [C51,§1359; R60, §2391; C73,§2408; C97,§3338; C24, 27, 31, 35, 39, §**11957**; C46, 50, 54, 58, 62,§635.53; C66, 71, 73, 75,§633.419]

633.420 How claim entitled. All claims filed against the estate shall be entitled in the name of the claimant against the personal representative as such, naming the estate, and in all further proceedings thereon that title shall be preserved. [C73,§2409; C97,§3339; C24, 27, 31, 35, 39,§**11960**; C46, 50, 54, 58, 62,§635.56; C66, 71, 73, 75,§633.420]

633.421 Unsecured claims not yet due. Upon proof of an unsecured claim which will become due at some future time, the same may be paid if the claimant will consent to such discount as the court thinks reasonable; otherwise, the court shall direct the investment of an amount which will provide for the payment of the claim when it becomes due. [C51, §§1364, 1377; R60,§§2396, 2409; C73,§§2413, 2425; C97,§§3342, 3352; C24, 27, 31, 35, 39,§§**11964, 11975**; C46, 50, 54, 58, 62,§§635.60, 635.70; C66, 71, 73, 75,§633.421]

633.422 Secured claims not yet due. When a creditor holds any security for a claim not yet due, he may file his claim as a claim not yet due with the right of withdrawing the claim if the compromise offer is not satisfactory, and, after such withdrawal, rely entirely on his security, or he may elect to rely entirely on his security without the necessity of filing a claim. [C51,§§1364, 1377; R60,§§2396, 2409; C73, §§2413, 2425; C97,§§3342, 3352; C24, 27, 31, 35, 39,§§**11964, 11975**; C46, 50, 54, 58, 62,§§635.60, 635.70; C66, 71, 73, 75,§633.422]

633.423 Procedure for secured claims. When a creditor holds any security for his claim, the security shall be described in the claim. If the claim is secured by a mortgage, pledge or other lien which has been recorded, it shall be sufficient to describe the lien by date, and refer to the volume, page and place of recording. The claim shall be allowed in the amount remaining unpaid at the time of its allowance, and the judgment allowing it shall describe the security. Payment of the claim shall be upon the basis of the full amount thereof if the creditor shall surrender his security; otherwise payment shall be upon the basis of one of the following:

1. If the creditor shall exhaust his security before receiving payment, then upon the full amount of the claim allowed, less the amount realized upon exhausting the security; or

2. If the creditor shall not have exhausted, or shall not have the right to exhaust, his security, then upon the full amount of the claim allowed, less the value of the security determined by agreement, or as the court may direct. [C66, 71, 73, 75,§633.423]

633.424 Contingent claims. Contingent claims which cannot be allowed as absolute debts shall, nevertheless, be filed in the court and proved. If allowed as a contingent claim, the order of allowance shall state the nature of the contingency. If such claim shall become absolute before distribution of the estate, it shall be paid in the same manner as absolute claims of the same class. In all other cases, the court may provide for the payment of contingent claims in any one of the following methods:

1. The creditor and personal representative may determine, by agreement, arbitration or compromise, the value thereof, according to its probable present worth, and upon approval thereof by the court, it may be allowed and paid in the same manner as an absolute claim, or

2. The court may order the personal representative to make distribution of the estate but to retain in his hands sufficient funds to pay the claim if and when the same becomes absolute; but, for this purpose, the estate shall not be kept open longer than two years after distribution of the remainder of the estate; and if such claim has not become absolute within that time, distribution shall be made to the distributees of the funds so retained, after paying any costs and expenses accruing during such period, and such distributees shall be liable to the creditor to the extent of the estate received by them, if such contingent claim thereafter becomes absolute. When distribution is so made to distributees, the court may require such distributees to give bond for the satisfaction of their liability to the contingent creditor, or

3. The court may order distribution of the estate as though such contingent claim did not exist, but the distributees shall be liable to the creditor to the extent of the estate received by them, if the contingent claim thereafter becomes absolute; and the court may require

such distributees to give bond for the performance of their liability to the contingent creditor, or

4. Such other method as the court may order. [C51,§1365; R60,§2397; C73,§2414; C97,§3343; C24, 27, 31, 35, 39,§**11965**; C46, 50, 54, 58, 62,§635.61; C66, 71, 73, 75,§633.424]

CLASSIFICATION, ALLOWANCE AND PAYMENT OF DEBTS AND CHARGES

633.425 Classification of debts and charges. In any estate in which the assets are, or appear to be, insufficient to pay in full all debts and charges of the estate, the personal representative shall classify such debts and charges as follows:

1. Court costs.

2. Other costs of administration.

3. Reasonable funeral and burial expenses.

4. All debts and taxes having preference under the laws of the United States.

5. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him at his last illness.

6. All taxes having preferences under the laws of this state.

7. All debts owing to employees for labor performed during the ninety days next preceding the death of the decedent.

8. All other claims allowed. [C51,§§1370–1372, 1374, 1376, 1378, 1379; R60,§§2402–2404, 2406, 2408, 2410, 2411; C73,§§2418–2420, 2422, 2424, 2426, 2427; C97,§§3347, 3348, 3350, 3353; S13,§3348; C24, 27, 31, 35, 39,§§**11969–11971, 11973, 11976**; C46, 50, 54, 58, 62,§§635.65–635.67, 635.69, 635.71; C66, 71, 73, 75,§633.425]

Referred to in §§125.36, 229.27, 230.30, 252.13, 633.474

633.426 Order of payment of debts and charges. Payment of debts and charges of the estate shall be made in the order provided in the preceding section, without preference of any claim over another of the same class. If the assets of the estate are insufficient to pay in full all of the claims of a class, then such claims shall be paid on a pro rata basis, without preference between claims then due and those of the same class not due. [C51,§§1378, 1379; R60,§§2410, 2411; C73,§§2426, 2427; C97,§3353; C24, 27, 31, 35, 39,§**11976**; C46, 50, 54, 58, 62,§635.71; C66, 71, 73, 75,§633.426]

633.427 Payment of contingent claims by distributees — contribution. If a contingent claim shall have been filed and allowed against an estate and all the assets of the estate shall have been distributed, and the claim shall thereafter become absolute, the creditor shall have the right to recover thereon against those distributees whose distributive shares have been increased by reason of the fact that the amount of said claim as finally determined was not paid prior to final distribution, provided an action therefor shall be commenced within six months after the claim becomes absolute. Such distributees shall be jointly and severally liable, but no distributee shall be liable for an amount exceeding the amount of the estate or fund so distributed to him. If more than one distributee is liable to the creditor, the creditor shall make parties to the action all such distributees who can be reached by process. By its judgment, the court shall determine the amount of the liability of each of the distributees as between themselves, but if any be insolvent or unable to pay his proportion, or beyond the reach of process, the others, to the extent of their respective liabilities, shall nevertheless be liable to the creditor for the whole amount of his debt. If any person liable for the debt fails to pay his just proportion to the creditors, he shall be liable to indemnify all who, by reason of such failure on his part, have paid more than their just proportion of the debt, the indemnity to be recovered in the same action or in separate actions. [C66, 71, 73, 75,§633.427]

633.428 Allowance by personal representative. Where a claim has been filed and is admitted in writing by the personal representative, it shall stand allowed in the absence of fraud or collusion. [C73,§2410; C97,§3340; S13, §3340; C24, 27, 31, 35, 39,§**11961**; C46, 50, 54, 58, 62,§635.57; C66, 71, 73, 75,§633.428]

633.429 Compelling payment of claims. No claimant shall be entitled to compel payment unless his claim has been duly filed and allowed. [C66, 71, 73, 75,§633.429]

633.430 Execution and levies prohibited. No execution shall issue upon, nor shall any levy be made against, any property of the estate under any judgment against a decedent or a personal representative, but the provisions of this section shall not be construed to prevent the enforcement of mortgages. [C51,§1368; R60,§2400; C73,§2416; C97,§3345; C24, 27, 31, 35, 39,§**11967**; C46, 50, 54, 58, 62,§635.63; C66, 71, 73, 75,§633.430]

633.431 Claims of personal representative. If the personal representative is a creditor of the decedent, he shall file his claim as other creditors, and the court shall appoint some competent person as temporary administrator to represent the estate in the matter of allowing or disallowing such claim. The same procedure shall be followed in the case of corepresentatives where all such representatives are creditors of the estate; but if one of the corepresentatives is not a creditor of the estate, such disinterested representative shall represent the estate in the matter of allowing or disallowing such claim against the estate by a corepresentative. [C51,§1369; R60,§2401; C73, §2417; C97,§3346; C24, 27, 31, 35, 39,§**11968**; C46, 50, 54, 58, 62,§635.64; C66, 71, 73, 75,§633.431]

633.432 Allowance or disallowance of claim of personal representative. The temporary administrator shall, after investigation, file a report with the court recommending the allowance or disallowance of such claim. Unless the court allows the claim, it shall then be disposed of as a contested claim in accordance

with the provisions of sections 633.439 to 633.448. [C66, 71, 73, 75,§633.432]

633.433 Payment of debts and charges before expiration of six months' period. As soon as the personal representative is possessed of sufficient means over and above the other costs of administration, he shall pay any allowance made by the court for the surviving spouse and children of the decedent, and may pay the expenses of funeral, and burial and last illness. Prior to the expiration of six months after the date of the second publication of notice to creditors, the personal representative shall pay such other debts and charges against the estate as the court shall order, and the court may require bond or other security to be given by the creditor to refund such part of such payment as may be necessary to make payment in accordance with the provisions of this Code. All payments made by the personal representative without order of court shall be at his own peril. [C51,§§1370, 1371, 1374, 1376, 1378, 1379; R60,§§2402, 2403, 2406, 2408, 2410, 2411; C73, §§2418, 2419, 2422, 2424, 2426, 2427; C97,§§3347, 3350, 3353; C24, 27, 31, 35, 39,§§**11969, 11973, 11976**; C46, 50, 54, 58, 62,§§635.65, 635.69, 635.71; C66, 71, 73, 75,§633.433]

633.434 Payment of debts and charges after expiration of six months' period. Upon the expiration of six months after the date of the second publication of notice to creditors, the personal representative shall proceed to pay the debts and charges against the estate in accordance with the provisions of this Code. If it appears at any time that the estate is or may be insolvent, that there are insufficient funds on hand, or that there is other good and sufficient cause, the personal representative may report that fact to the court and apply for any order that he deems necessary in connection therewith. [C51,§§1370, 1371, 1374, 1376, 1378, 1379; R60,§§2402, 2403, 2406, 2408, 2410, 2411; C73,§§2418, 2419, 2422, 2424, 2426, 2427; C97,§§3347, 3350, 3353; C24, 27, 31, 35, 39,§§**11969, 11973, 11976**; C46, 50, 54, 58, 62,§§635.65, 635.69, 635.71; C66, 71, 73, 75,§633.434]

633.435 Debts and charges not filed. The personal representative may pay any valid debts and charges against the estate even though no claim for such debts and charges has been filed, but all such payments made by the personal representative shall be at his own peril. [C66, 71, 73, 75,§633.435]

633.436 General order for abatement. Except as provided in section 633.211, shares of the distributees shall abate, for the payment of debts and charges, federal and state estate taxes, legacies, the shares of children born or adopted after the making of a will, or the share of the surviving spouse who elects to take against the will, without any preference or priority as between real and personal property, in the following order:

1. Property not disposed of by the will;

2. Property devised to the residuary devisee, except property devised to a surviving spouse who takes under the will;

3. Property disposed of by the will, but not specifically devised and not devised to the residuary devisee, except property devised to a surviving spouse who takes under the will;

4. Property specifically devised, except property devised to a surviving spouse who takes under the will;

5. Property devised to a surviving spouse who takes under the will.

A general devise charged on any specific property or fund shall, for purposes of abatement, be deemed property specifically devised to the extent of the value of the property on which it is charged. Upon the failure or insufficiency of the property on which it is charged, it shall be deemed property not specifically devised to the extent of such failure or insufficiency. [C51,§§1284, 1285; R60,§§2316, 2317; C73,§§2334, 2335; C97,§3279; S13,§§3279, 3279-a; C24, 27, 31, 35, 39,§§**11858, 11859**; C46, 50, 54, 58, 62,§§633.13, 633.14; C66, 71, 73, 75, §633.436]

Referred to in §§633.278, 633.437

633.437 Contrary provision as to abatement. If, upon application to the court by a fiduciary or a distributee, and after notice to all interested parties, the court finds it clear and convincing that the provisions of the will, the testamentary plan, or the express or the implied purpose of the devise would be defeated by the order of abatement stated in section 633.436, the court shall determine the order of abatement the shares of distributees shall abate in such other manner as may be found necessary to give effect to the intention of the testator. [C66, 71, 73, 75,§633.437; 66GA, ch 208,§12]

DENIAL AND CONTEST OF CLAIMS

633.438 General denial of claims. Where a claim has been filed, but not admitted in writing by the personal representative before a request for hearing has been given as hereinafter provided, the claim shall be considered as denied without any pleading on behalf of the personal representative. [C73,§2410; C97, §3340; S13,§3340; C24, 27, 31, 35, 39,§**11961**; C46, 50, 54, 58, 62,§635.57; C66, 71, 73, 75,§633.438]

Referred to in §§633.417, 633.666

633.439 Disallowance by personal representative. At any time after the filing of a claim against an estate, the personal representative may give the claimant written notice of disallowance of claim. Such a notice shall be given by certified mail addressed to the claimant at the address stated in the claim. [C66, 71, 73, 75,§633.439]

Referred to in §§633.417, 633.432, 633.666

633.440 Contents of notice of disallowance. Such a notice of disallowance shall advise the claimant that the claim has been disallowed and will be forever barred unless the claimant shall within twenty days after the date of

mailing the notice, file a request for hearing on the claim with the clerk, and mail a copy of such request for hearing to the personal representative by certified mail. [C66, 71, 73, 75,§633.440]

Referred to in §§633.417, 633.432, 633.666

633.441 Proof of service. Proof of service of the notice of disallowance shall be made by affidavit, shall show the date and place of mailing, and shall be filed with the clerk. [C66, 71, 73, 75,§633.441]

Referred to in §§633.417, 633.432, 633.666

633.442 Claims barred after twenty days. Unless the claimant shall within twenty days after the date of mailing said notice of disallowance, file a request for hearing with the clerk, and mail a copy thereof to the personal representative, the claim shall be deemed disallowed, and shall be forever barred. [C66, 71, 73, 75,§633.442]

Referred to in §§633.417, 633.432, 633.443, 633.666

633.443 Request for hearing by claimant. At the time of the filing of a claim against an estate, or at any time thereafter prior to the time that the claim may be barred by the provisions of section 633.442, or the approval of the final report of the personal representative after notice to the claimant, the claimant may file a written request, in duplicate, for hearing on his claim with the clerk who shall mail the duplicate to the personal representative, or to his attorney of record. [C51,§§1359, 1361; R60, §§2391, 2393; C73,§2408; C97,§3338; C24, 27, 31, 35, 39,§**11959**; C46, 50, 54, 58, 62,§635.55; C66, 71, 73, 75,§633.443]

Referred to in §§633.417, 633.432, 633.666

633.444 Applicability of Rules of Civil Procedure. Within twenty days from the filing of the request for hearing on a claim, the personal representative shall move or plead to said claim in the same manner as though the claim were a petition filed in an ordinary action, and thereafter, all provisions of law and Rules of Civil Procedure applicable to motions, pleadings and the trial of ordinary actions shall apply; provided, however, that a restatement of such claim shall not be barred by the provisions of section 633.410. [C66, 71, 73, 75, §633.444]

Referred to in §§633.417, 633.432, 633.666

633.445 Offsets and counterclaims. At the time of the filing of an answer to a claim, the personal representative shall plead all offsets against the claim, and shall plead all counterclaims against the claimant of which he has knowledge. An offset or counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding the amount, or different in kind, from that sought in the claim. [C66, 71, 73, 75, §633.445]

Referred to in §§633.417, 633.432, 633.666

633.446 Burden of proof. The burden of proving that a claim is unpaid shall not be placed upon the party filing a claim against the estate; but the personal representative may on the trial of the cause, subject the claimant to an examination on the question of payment or consideration, and the estate shall not be concluded or bound thereby. [C97,§3340; S13, §3340; C24, 27, 31, 35, 39,§**11962**; C46, 50, 54, 58, 62,§635.58; C66, 71, 73, 75,§633.446]

Referred to in §§633.417, 633.432, 633.666

633.447 Trial and hearing. The trial of a claim and the offsets or counterclaims, if any, shall be to the court without a jury; provided, however, that the court may, in its discretion, either on its own motion or upon the motion of any party, submit the same to a jury; and provided further, that in the event that the amount of the claim or a counterclaim exceeds the sum of three hundred dollars, either party shall be entitled to a jury trial, if written demand therefor is made as provided in the Rules of Civil Procedure in relation to the trial of ordinary actions. [C51,§§1360, 1362, 1366; R60, §§2392, 2394, 2398; C73,§§2411, 2415; C97,§§3341, 3344; C24, 27, 31, 35, 39,§§**11963, 11966**; C46, 50, 54, 58, 62,§§635.59, 635.62; C66, 71, 73, 75, §633.447]

Referred to in §§633.417, 633.432, 633.666
See R.C.P. 177

633.448 Allowance and judgment. Upon the trial of a claim, offsets and counterclaims, the amount owing by or to the estate, if any, shall be determined. A claim against the estate shall be allowed for the net amount. Judgment shall be rendered for any amount found to be due the estate. If a judgment is rendered against a claimant for any net amount, execution may issue in the same manner as on judgments in civil cases. [C66, 71, 73, 75,§633.448]

Referred to in §§633.417, 633.432, 633.666

633.449 Payment of federal estate taxes. All federal and state estate taxes (as distinguished from state inheritance taxes) owing by the estate of a decedent shall be paid from the property of the estate, unless the will of the decedent, or other trust instrument, provides expressly to the contrary. [C66, 71, 73, 75, §633.449]

633.450 to 633.468 Reserved.

PART 8
ACCOUNTING, DISTRIBUTION, FINAL REPORT AND DISCHARGE

633.469 Interlocutory report. The personal representative may at any time file an interlocutory accounting to the court showing the condition of the estate, its debts and property, the amount of money received, and the disposition made of any of the assets of the estate.

The court may on application of any interested party, or on its own motion, order such an accounting at any time. Such an accounting shall embrace all matters directed by the court. The court may order such further accountings from time to time as it may determine to be to the best interests of the estate.

[C51,§§1422, 1423; R60,§§2447, 2448; C73,§2469; C97,§§3394, 3420; C24, 27, 31, 35, 39,§§**12042, 12043, 12070**; C46, 50, 54, 58, 62,§§638.2, 638.3, 638.33; C66, 71, 73, 75,§633.469]

633.470 Waiver of accounting. The distributee, if under no legal disability, may waive the accounting. [C66, 71, 73, 75,§633.470]

633.471 Right of retainer. When a distributee of an estate is indebted to the estate, or if a distributee takes as an heir of a deceased devisee indebted to the estate, the amount of such indebtedness, if due, or the present worth of the indebtedness, if not due, shall be treated as a setoff and retained by the personal representative out of any testate or intestate property, real or personal, of the estate to which such distributee is entitled. In intestate estates, the personal representative shall have the same right of setoff and retainer against an heir whose ancestor was indebted to the estate. The right of setoff and retainer shall be prior and superior to the rights of judgment creditors, heirs or assigns of such distributee and shall not be barred by the statute of limitations, nor by a discharge in bankruptcy. [C51,§§1383–1386; R60,§§2415–2418; C73,§§2431–2434; C97,§§3357–3360; C24, 27, 31, 35, 39,§§**11980–11983**; C46, 50, 54, 58, 62,§§635.75–635.78; C66, 71, 73, 75,§633.471]

633.472 Property distributed in kind. Property not otherwise disposed of by the personal representative may be distributed in kind. [C51,§§1384, 1385, 1392; R60,§§2416, 2417, 2424; C73,§§2432, 2433, 2438; C97,§§3358, 3359, 3364; C24, 27, 31, 35, 39,§§**11981, 11982, 11988**; C46, 50, 54, 58, 62,§§635.76, 635.77, 636.3; C66, 71, 73, 75, §633.472]

633.473 Final settlement—time limit. Final settlement shall be made within three years, after the second publication of the notice to creditors, unless otherwise ordered by the court after notice to all interested parties. [C51, §1393; R60,§2425; C73,§§2439, 2469; C97,§§3365, 3394; C24, 27, 31, 35, 39,§§**11989, 12044**; C46, 50, 54, 58, 62,§§636.4, 638.4; C66, 71, 73, 75,§633.473]

633.474 Certificate as to payment of personal taxes. Prior to or at the time of filing the final report, there shall be filed in the estate proceedings, the certificate of the treasurer of the county in which the administration of the estate is pending, that all personal taxes due and to become due the county in such estate matter have been paid in full. When no assets remain in the hands of the personal representative after the payment of debts and charges having priority under the provisions of section 633.425, such certificate need not be filed. No charge shall be made by the county treasurer for the issuance of such certificate. [C39,§**12781.1**; C46, 50, 54, 58, 62,§682.35; C66, 71, 73, 75,§633.474]

633.475 Compromise of personal taxes. For the purpose of facilitating the speedy settlement and distribution of estates, the county treasurer of such county, by and with the consent of the board of supervisors may compromise and agree upon the amount of personal taxes at any time due or to become due the county from an estate, and payment in accordance with such compromise or agreement shall be for the satisfaction of all taxes in such estate matter. No compensation shall be allowed any person because of such compromise or agreement. [C39,§§**12781.1, 12781.2**; C46, 50, 54, 58, 62,§§682.35, 682.36; C66, 71, 73, 75,§633.475]

633.476 Action against distributees—costs—tender. In an action against the distributees, where the judgment is to be against them in proportion to the respective amounts received by them from the estate, costs awarded against them shall be in like proportion, and anyone may tender the amount due from him to the plaintiff, which shall have the same effect, as far as he is concerned, as though he were the sole defendant. [C51,§§1440, 1441; R60,§§2465, 2466; C73,§§2485, 2486; C97,§3408; C24, 27, 31, 35, 39,§**12060**; C46, 50, 54, 58, 62,§638.20; C66, 71, 73, 75,§633.476]

633.477 Final report. Each personal representative shall, in his final report, set forth:

1. An accurate description of all the real estate of which the decedent died seized, stating the nature and extent of his interest therein, which has not been sold and conveyed by the personal representative.

2. Whether the deceased died testate or intestate.

3. The name and place of residence of the surviving spouse, or that none survived the deceased.

4. In intestate estates, the name and place of residence of each of the heirs and their relationship to the deceased.

5. In testate estates, the name and place of residence of each of the devisees and their relationship to the deceased, and the name and residence of after-born children, if any, as defined in section 633.267.

6. Whether any legacy or devise remains a charge on the real estate, and, if so, the nature and amount thereof.

7. Whether any distributee is under any legal disability.

8. The name of the conservator or trustee for any distributee, and the court from which his letters were issued.

9. An accounting of all the moneys and personal property coming into the hands of the personal representative. The accounting may be omitted if waived by all interested parties.

10. A statement as to whether or not all statutory requirements pertaining to taxes have been complied with. [C73,§2491; C97, §3412; C24, 27, 31, 35, 39,§**12071**; C46, 50, 54, 58, 62,§638.34; C66, 71, 73, 75,§633.477]

Referred to in §633.479

633.478 Notice of application for discharge. No personal representative shall be discharged

from further duty or responsibility upon final settlement until notice of hearing on his final report or of an application for discharge shall have been served upon all persons interested, in accordance with section 633.40, unless such notice is waived. An order prescribing notice may be made before or after the filing of the final report. [C97,§3422; C24, 27, 31, 35, 39, §12073; C46, 50, 54, 58, 62,§638.36; C66, 71, 73, 75,§633.478]

633.479 Discharge. Upon final settlement of an estate, an order shall be entered discharging the personal representative from further duties and responsibilities. The order approving the final report shall constitute a waiver of the omission from the final report of any of the recitals required in section 633.477. [C51, §1434; R60,§2459; C73,§2476; C97,§3400; C24, 27, 31, 35, 39,§12052; C46, 50, 54, 58, 62,§638.12; C66, 71, 73, 75,§633.479]

633.480 Certificate to county auditor for tax purposes with administration. After the entry of the order approving the final report, the clerk shall issue a certificate under the provisions of chapter 558 relative to each parcel of real estate described in the final report of the personal representative which has not been sold by the personal representative, and deliver such certificate to the county auditor of the county in which such real estate is situated. [C66, 71, 73, 75,§633.480]

Referred to in §633.481

633.481 Certificate to county auditor for tax purposes without administration. Whenever an inventory or report is filed under the provisions of section 450.22, without administration of the estate of a decedent, the clerk shall issue and deliver to the county auditor of the county in which the real estate is situated a like certificate pertaining to each parcel of real estate described in the inventory or report. Any fees for certificates required by this section or section 633.480 shall be assessed as costs of administration, but the certificates shall be filed whether fees are paid or not. [C66, 71, 73, 75,§633.481]

Referred to in §635.7

633.482 to 633.486 Reserved.

PART 9
REOPENING

633.487 Limitation on rights. No person, having been served with notice of the hearing upon the final report and accounting of a personal representative or having waived such notice, shall, after the entry of the final order approving the same and discharging the said personal representative, have any right to contest, in any proceeding, other than by appeal, the correctness or the legality of the inventory, the accounting, distribution, or other acts of the personal representative, or the list of heirs set forth in the final report of the personal representative, provided, however, that nothing contained in this section shall prohibit any action against the personal representative and his bondsman under the provisions of section 633.186 on account of any fraud committed by the personal representative. [C97,§3422; C24, 27, 31, 35, 39,§12073; C46, 50, 54, 58, 62,§638.36; C66, 71, 73, 75,§633.487]

633.488 Reopening settlement. Whenever a final report has been approved and a final accounting has been settled in the absence of any person adversely affected and without notice to him, the hearing on such report and accounting may be reopened at any time within five years from the entry of the order approving the same, upon the application of such person, and, upon a hearing, after such notice as the court may prescribe to be served upon the personal representative and the distributees, the court may require a new accounting, or a redistribution from the distributees. In no event, however, shall any distributee be liable to account for more than the property distributed to him. If any property of the estate shall have passed into the hands of good faith purchasers for value, the rights of such purchasers shall not, in any way, be affected. [C51,§1431; R60,§2456; C73,§2475; C97,§3399; C24, 27, 31, 35, 39,§12051; C46, 50, 54, 58, 62,§638.11; C66, 71, 73, 75,§633.488]

633.489 Reopening administration. Upon the petition of any interested person, the court may, with such notice as it may prescribe, order an estate reopened if other property be discovered, if any necessary act remains unperformed, or for any other proper cause appearing to the court. It may reappoint the personal representative, or appoint another personal representative, to administer any additional property or to perform other such acts as may be deemed necessary. The provisions of law as to original administration shall apply, insofar as applicable, to accomplish the purpose for which the estate is reopened, but a claim which is already barred can, in no event, be asserted in the reopened administration. [S13, §3305; C24, 27, 31, 35, 39,§11892; C46, 50, 54, 58, 62,§633.48; C66, 71, 73, 75,§633.489]

633.490 to 633.494 Reserved.

DIVISION VIII
FOREIGN WILLS AND ANCILLARY ADMINISTRATION

PART 1
FOREIGN WILLS

633.495 Admission of wills of nonresidents. A will of a nonresident of this state, not probated in any other state or county, may be admitted to probate in any county of this state where either real or personal property of the deceased nonresident is located. [C66, 71, 73, 75,§633.495]

633.496 Foreign probated wills. A will probated in any other state or country shall be admitted to probate in this state upon the production of a copy thereof and of the original record of probate, authenticated by the certificate of the clerk of the court in which such probation was made, or, if there be no clerk,

then by the certificate of the judge of such court, and by the seal of office of such officer if he or his office has a seal. [C51,§1296; R60, §2328; C73,§2351; C97,§3294; C24, 27, 31, 35, 39, §11877; C46, 50, 54, 58, 62,§633.33; C66, 71, 73, 75,§633.496]

633.497 Foreign wills as a muniment of title. After the expiration of the five-year period from the date of the death of the decedent, an exemplified copy of a will which has not been denied probate in Iowa, and of the order admitting it to probate in a foreign state or country, may be recorded in the office of the county recorder of any county where real estate owned by the testator is located. The record of such a will and of the order admitting the will to probate shall operate to dispose of said property as though said will had been admitted to probate in this state. Nothing contained in this section shall operate to defeat the rights, acquired prior to such record, of purchasers for value whose rights are shown of record. [C66, 71, 73, 75,§633.497]

633.498 Foreign wills — procedure. All provisions of law relating to the carrying of domestic wills into effect after their probate shall apply, so far as applicable, to foreign wills admitted to probate in this state. [C73,§2352; C97,§3295; C24, 27, 31, 35, 39,§11878; C46, 50, 54, 58, 62,§633.34; C66, 71, 73, 75, §633.498]

633.499 Reserved.

PART 2
ANCILLARY ADMINISTRATION

633.500 Appointment of foreign administrator. Notwithstanding any other provision of this Code, if administration of the estate of a deceased intestate nonresident has been granted in accordance with the law of the state where he resided, the duly qualified administrator of the estate of the nonresident may upon application be appointed administrator in this state, unless another has already been appointed and provided that a resident administrator be appointed to serve with the nonresident administrator; provided further, however, that for good cause shown, the court may appoint the nonresident administrator to act alone without the appointment of a resident administrator. [C51,§1309; R60,§2341; C73, §2368; C97,§3306; C24, 27, 31, 35, 39,§11894; C46, 50, 54, 58, 62,§633.50; C66, 71, 73, 75,§633.500]
Referred to in §633.501

633.501 Application for appointment of foreign administrator. The application for any such appointment under section 633.500 shall contain the name and address of the foreign administrator and of the resident administrator, if any, to be appointed, and shall be accompanied by a certificate of the clerk of the court of original jurisdiction certifying that such estate is under administration, and a certification of the original letters or other authority authorizing the nonresident administrator to act in that estate. [C66, 71, 73, 75,§633.501]

633.502 Appointment of foreign fiduciary. Notwithstanding any other provision of this Code, the duly qualified fiduciary under a will admitted to probate in another state, may upon application be appointed fiduciary in this state, after said will has been admitted to probate in this state, provided that a resident fiduciary be appointed to serve with the nonresident fiduciary; provided further, however, that, for good cause shown, the court may appoint the nonresident fiduciary to act alone without the appointment of a resident fiduciary. [C51,§1310; R60,§2342; C73,§2369; C97,§3306; C24, 27, 31, 35, 39,§11895; C46, 50, 54, 58, 62, §633.51; C66, 71, 73, 75,§633.502]

633.503 Application for appointment of foreign executor or trustee. The application for appointment of a nonresident executor or trustee shall include the name and address of the nonresident executor or trustee, and the name and address of the resident executor or trustee, if any, to be appointed. It shall be accompanied by a certificate of the clerk of the foreign court granting the original letters or other authority conferring the power upon the nonresident executor or trustee to act as such. The application shall also state the cause for the appointment of the nonresident executor or trustee to act as the sole executor or trustee, if such appointment is desired. When the will has not been admitted to probate in any other state, the application shall include the name and address of the executor or trustee, if any, named in the will of the nonresident, and of the resident executor or trustee to be appointed. [C66, 71, 73, 75, §633.503]

633.504 Removal of property — payment of claims. In all estates of nonresidents, being administered in this state, the court may require payment of all claims filed and allowed belonging to residents of this state, and all legacies or distributive shares payable to residents of this state, before allowing any of the property in the estate to be removed from the state. [C97,§3306; C24, 27, 31, 35, 39,§11896; C46, 50, 54, 58, 62,§633.52; C66, 71, 73, 75, §633.504]

633.505 to 633.509 Reserved.

DIVISION IX
ESTATES OF ABSENTEES

633.510 Administration authorized—petition. Administration may be had upon the estate of an absentee. A petition therefor must be filed in the office of the clerk and must allege:

1. Whether the absentee was a resident or a nonresident of this state, and his address at his last known domicile; that he has, without known cause, absented himself from his usual place of residence, and concealed his whereabouts from his family, for a period of five years.

2. That the said absentee has property in this state (describing it with reasonable certainty), all or part of which is situated in the county in which the petition is filed.

3. The names of the persons, so far as known to the petitioner, who would be entitled to share in the estate of the absentee if he were dead.

4. In the case of a nonresident, whether administration upon the estate has been granted in the state of last known domicile.

5. Facts showing that the petitioner is a party who would be entitled to administer the estate of the said absentee in case the absentee were known to be dead. [C97,§3307; S13,§3307; C24, 27, 31, 35, 39,§11901; C46, 50, 54, 58, 62, §634.1; C66, 71, 73, 75,§633.510]

633.511 Notice. Upon filing of such petition, the court shall, by a proper order, prescribe the notice and the return day therein, which shall be addressed to and served upon such absentee and the alleged distributees of his estate. [C97,§3307; S13,§3307; C24, 27, 31, 35, 39, §11902; C46, 50, 54, 58, 62,§634.2; C66, 71, 73, 75,§633.511]

633.512 Service. Said notice shall in all cases be served:

1. By publication in the county in which the petition is filed, once each week for three consecutive weeks, in a newspaper designated by the court; and

2. Upon all the alleged distributees of the estate of said absentee by ordinary mail addressed to them at their last known address. [C97,§3307; S13,§3307; C24, 27, 31, 35, 39,§11903; C46, 50, 54, 58, 62,§634.3; C66, 71, 73, 75, §633.512]

633.513 Proof of service—filing. Proof of the publication and service of such notice shall be filed with the clerk aforesaid on or before the day set for hearing. [C97,§3307; S13,§3307; C24, 27, 31, 35, 39,§11904; C46, 50, 54, 58, 62, §634.4; C66, 71, 73, 75,§633.513]

633.514 Hearing — continuance—orders. If, on the day set for hearing, the absentee fails to appear, the court shall appoint some disinterested person as guardian ad litem to appear for the absentee and all distributees not appearing, and said cause shall thereupon stand continued for twenty days. The court shall have authority to make further continuance upon proper showing. The guardian ad litem shall investigate the matter and things alleged in the petition. Upon the further hearing, the court shall hear the proofs, and, if satisfied of the truth of the allegations of the petition, shall enter an order establishing the death of the absentee as a matter of law. [C97,§3307; S13, §3307; C24, 27, 31, 35, 39,§11905; C46, 50, 54, 58, 62,§634.5; C66, 71, 73, 75,§633.514]

Referred to in §633.515

633.515 Administration. Upon the entry of such further order under section 633.514, administration of the estate of such absentee, whether testate or intestate, shall proceed as provided herein for the administration of the estates of other decedents, notwithstanding the provisions of section 633.330. [S13,§§3307, 3307-a; C24, 27, 31, 35, 39,§§11906–11910; C46, 50, 54, 58, 62,§§634.6–634.10; C66, 71, 73, 75, §633.515]

633.516 Rights of absentee barred—sale by spouse. Such an order establishing the death of an absentee shall forever bar the rights of homestead and distributive share of the absentee, and his interest in and to any real estate owned or held by the spouse of such absentee, and in which said spouse may have a legal or equitable interest. Conveyance of any such real estate by such spouse, after six months or more from date of publication of second notice of appointment of a personal representative, shall be free and clear of any claim or right of homestead or distributive share on the part of such absentee. [S13, §3307-b; C24, 27, 31, 35, 39,§11911; C46, 50, 54, 58, 62,§634.11; C66, 71, 73, 75,§633.516]

633.517 Missing soldiers or sailors — presumption of death.

1. A written finding of presumed death, made by the secretary of defense, or other officer or employee of the United States authorized to make such finding, pursuant to the federal Missing Persons Act [56 Stat. 143, 1092, and P.L. 408, Ch. 371, 2d Session 78th Congress; 50 U.S.C. App. Supp. 1001-17], as now or hereafter amended, or a duly certified copy of such a finding, shall be received in any court, office or other place in this state, as evidence of the death of the person therein found to be dead, and of the date, circumstances, and place of his disappearance.

2. An official written report or record, or a duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the Act referred to in subsection 1 of this section, or by any other law of the United States, to make such a report or record, shall be received in any court, office or other place in this state as evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, as the case may be.

3. For the purposes of subsections 1 and 2 of this section, any finding, report, or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described in said subsections, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing the same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be

prima-facie evidence of his authority so to certify. [C46, 50, 54, 58, 62,§634.12; C66, 71, 73, 75,§633.517]

633.518 to 633.522 Reserved.

DIVISION X
UNIFORM SIMULTANEOUS DEATH ACT

633.523 No sufficient evidence of survivorship. Where the title to property or the devolution thereof depends upon priority of death, and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in sections 633.524 to 633.527. [C46, 50, 54, 58, 62,§637.1; C66, 71, 73, 75,§633.523]

Referred to in §§633.527, 633.528

633.524 Beneficiaries of another person's disposition of property. Where two or more beneficiaries are designated to take successively, by reason of survivorship, under another person's disposition of property, and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries, and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived. [C46, 50, 54, 58, 62,§637.2; C66, 71, 73, 75,§633.524]

Referred to in §§633.523, 633.527, 633.528

633.525 Joint tenants. Where there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants. [C46, 50, 54, 58, 62,§637.3; C66, 71, 73, 75,§633.525]

Referred to in §§633.523, 633.528

633.526 Insurance policies. Where the insured and the beneficiary in a policy of life or accident insurance have died, and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. [C46, 50, 54, 58, 62,§637.4; C66, 71, 73, 75,§633.526]

Referred to in §§633.523, 633.527, 633.528

633.527 Limitation of application. Sections 633.523, 633.524 and 633.526 shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of said sections. [C46, 50, 54, 58, 62,§637.6; C66, 71, 73, 75,§633.527]

Referred to in §§633.523, 633.528

633.528 Uniformity of interpretation. Sections 633.523 to 633.527 shall be so construed and interpreted as to effectuate their general purpose to make uniform the law relating to simultaneous death. [C46, 50, 54, 58, 62,§637.7; C66, 71, 73, 75,§633.528]

633.529 to 633.534 Reserved.

DIVISION XI
FELONIOUS DEATH

633.535 Feloniously causing death. No person who feloniously takes or causes or procures another to take the life of another shall inherit from such person, or receive any interest in the estate of the decedent as surviving spouse, or take by devise or legacy from him, any portion of his estate. [C97,§3386; S13, §3386; C24, 27, 31, 35, 39,§**12032**; C46, 50, 54, 58, 62,§636.47; C66, 71, 73, 75,§633.535]

Referred to in §633.537

633.536 Insurance beneficiary feloniously causing death. No beneficiary of any policy of insurance or certificate of membership issued by any benevolent association or organization, payable upon the death or disability of any person, who feloniously takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who feloniously causes or procures a disability of such person, shall take the proceeds of such policy or certificate. [C97,§3386; S13,§3386; C24, 27, 31, 35, 39,§**12033**; C46, 50, 54, 58, 62,§636.48; C66, 71, 73, 75,§633.536]

Referred to in §633.537

633.537 Distribution to other heirs or insured. In every instance mentioned in sections 633.535 and 633.536, all benefits that would accrue to any such person upon the death or disability of the person whose life is thus taken or who is thus disabled shall be distributed to the other persons who would take under the will of the decedent or according to the rules of intestate succession, as the case may be. [C97, §3386; S13,§3386; C24, 27, 31, 35, 39,§**12034**; C46, 50, 54, 58, 62,§636.49; C66, 71, 73, 75,§633.537]

633.538 to 633.542 Reserved.

DIVISION XII
PROCEEDINGS FOR ESCHEAT

633.543 Proceedings for escheat. When the court has reason to believe that any property of the estate of a decedent within the county should by law escheat, he must forthwith inform the attorney general of the state of Iowa thereof, and appoint some suitable person as personal representative to take charge of such property, unless a personal representative has already been appointed. [C51,§1443; R60,§2468; C73,§2461; C97,§3388; C24, 27, 31, 35, 39,§**12036**; C46, 50, 54, 58, 62,§636.51; C66, 71, 73, 75, §633.543]

633.544 Notice to persons interested. The personal representative must give such notice of the death of the deceased, and of the amount and kind of property left by him within the state, as, in the opinion of the court appointing him shall be best calculated

to notify those interested, or supposed to be interested, in the property. [C51,§1444; R60, §2469; C73,§2462; C97,§3389; C24, 27, 31, 35, 39,§**12037**; C46, 50, 54, 58, 62,§636.52; C66, 71, 73, 75,§633.544]

633.545 Sale — proceeds. If within six months from the giving of such notice, no claimant thereof appears, such property may be sold and the proceeds paid over by the personal representative to the state comptroller for the benefit of the school fund. [C51, §1445; R60,§2470; C73,§2463; C97,§3390; C24, 27, 31, 35, 39,§**12038**; C46, 50, 54, 58, 62,§636.53; C66, 71, 73, 75,§633.545]

633.546 Payment to person entitled. The money or any portion of it shall be paid at any time within ten years after the sale of the property or the appropriation of the money, but not afterwards, to anyone showing himself entitled thereto. [C51,§1446; R60,§2471; C73,§2464; C97,§3391; C24, 27, 31, 35, 39,§**12039**; C46, 50, 54, 58, 62,§636.54; C66, 71, 73, 75, §633.546]

633.547 to 633.551 Reserved.

DIVISION XIII
OPENING GUARDIANSHIPS AND CONSERVATORSHIPS

PART 1
OPENING GUARDIANSHIPS

633.552 Petition for appointment of guardian. Any person may file with the clerk a verified petition for the appointment of a guardian. The petition shall state the following information so far as known to the petitioner.

1. The name, age and post-office address of the proposed ward.

2. That the proposed ward is a minor or is incapable of caring for his own person.

3. The name and post-office address of the proposed guardian, and that such person is qualified to serve in that capacity.

4. That the proposed ward is a resident of the state of Iowa or is present in the state, and that his best interests require the appointment of a guardian in this state.

5. The name and address of the person or institution, if any, having the care, custody or control of the proposed ward. [R60,§1449; C73,§2272; C97,§3219; C24, 27,§§12614, 12616; C31, 35,§§12614, 12616, 12644-c3; C39,§§**12614, 12616, 12644.03**; C46, 50, 54, 58, 62,§§670.2, 670.4, 672.3; C66, 71, 73, 75,§633.552]

Referred to in §229.27

633.553 No notice required—minor. No notice of the filing of such petition need be given when the proposed ward is a minor and such petition is filed by the person having custody of the proposed ward. [C31, 35,§12644-c4; C39, §**12644.04**; C46, 50, 54, 58, 62,§672.4; C66, 71, 73, 75,§633.553]

Referred to in §229.27

633.554 Notice governed by Rules of Civil Procedure. In all other cases, notice of the filing of such petition shall be served upon the proposed ward in the manner of an original notice and the Rules of Civil Procedure governing original notices shall also govern such notice as to content. [C31, 35,§12644-c4; C39, §**12644.04**; C46, 50, 54, 58, 62,§672.4; C66, 71, 73, 75,§633.554]

Referred to in §229.27

633.555 Pleadings and trial—Rules of Civil Procedure. All other pleadings and the trial of the cause shall be governed by the Rules of Civil Procedure. The cause shall be tried as a law action, and either party shall be entitled to a jury trial if demand is made therefor as provided by the Rules of Civil Procedure. [C73,§2273; C97,§3220; C24, 27,§12621; C31, 35,§§12621, 12644-c6; C39,§§**12621, 12644.06**; C46, 50, 54, 58, 62,§§670.9, 672.6; C66, 71, 73, 75, §633.555]

Referred to in §299.27
See R.C.P. 177

633.556 Appointment of guardian. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a guardian are proved, the court may appoint a guardian. [R60,§1449; C73,§2272; C97,§3219; C24, 27, 31, 35, 39,§**12614**; C46, 50, 54, 58, 62,§670.2; C66, 71, 73, 75, §633.556]

Referred to in §229.27

633.557 Appointment of guardian on voluntary petition. A guardian may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if he is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.635. [C51, §1495; R60,§2547; C73,§2244; C97,§3195; C24, 27, 31, 35, 39,§§**12576, 12617**; C46, 50, 54, 58, 62, §668.4, 670.5; C66, 71, 73, 75,§633.557]

Referred to in §633.635
See also §633.572

633.558 Appointment of temporary guardian. A temporary guardian may be appointed, but only after a hearing on such notice, and subject to such conditions, as the court shall prescribe. [C73,§2273; C97,§3220; C24, 27, 31, §12620; C35,§§12620, 12644-c5; C39,§§**12620, 12644.05**; C46, 50, 54, 58, 62,§§670.8, 672.5; C66, 71, 73, 75,§633.558]

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

[C51,§§1491, 1492, 1495, 1498; R60,§§2543, 2544, 2547, 2550; C73,§§2241, 2242, 2244, 2249; C97, §§3192, 3193, 3195; C24, 27, 31, 35, 39,§§**12573, 12574, 12576**; C46, 50, 54, 58, 62,§§668.1, 668.2, 668.4; C66, 71, 73, 75,§633.559]

633.560 Appointment of guardian on a standby basis. A petition for the appointment of a guardian on a standby basis may be filed by any person under the same procedure and requirements as provided in sections 633.591 to 633.597, for appointment of standby conservator, insofar as applicable. [C66, 71, 73, 75, §633.560]

633.561 to 633.565 Reserved.

PART 2
OPENING CONSERVATORSHIPS

633.566 Petition for appointment of conservator. Any person may file with the clerk a verified petition for the appointment of a conservator. The petition shall state the following information, so far as known to the petitioner:

1. The name, age and post-office address of the proposed ward.

2. That the proposed ward is a minor or is incapable of managing his property.

3. The name and post-office address of the proposed conservator, and that such person is qualified to serve in that capacity.

4. The estimated present value of the real estate, the estimated value of the personal property, and the estimated gross annual income of the estate. If any money is payable, or to become payable, to the proposed ward by the United States through the veterans administration, the petition shall so state.

5. The name and address of the person or institution, if any, having the care, custody or control of the proposed ward.

6. That the proposed ward resides in the state of Iowa, is a nonresident, or that his residence is unknown, and that his best interests require the appointment of a conservator in the state of Iowa. [C51,§§1493, 1494; R60,§§1449, 2545, 2546; C73,§§2243, 2253, 2272, 2273; C97, §§3194, 3202, 3219, 3220; C24, 27,§§12575, 12605, 12614, 12619; C31, 35,§§12575, 12605, 12614, 12619, 12644-c3; C39,§§**12575, 12605, 12614, 12619, 12644.03**; C46, 50, 54, 58, 62,§§668.3, 668.32, 670.2, 670.7, 672.3; C66, 71, 73, 75,§633.566]

633.567 No notice required—minor. No notice of the filing of such petition need be given when the proposed ward is a minor and such petition is filed by the person having custody of the proposed ward. [C31, 35,§12644-c4; C39, §**12644.04**; C46, 50, 54, 58, 62,§672.4; C66, 71, 73, 75,§633.567]

633.568 Notice governed by Rules of Civil Procedure. In all other cases, notice of the filing of such petition shall be served upon the proposed ward in the manner of an original notice and the Rules of Civil Procedure governing original notice shall also govern such notice as to content. [C31, 35,§12644-c4; C39, §**12644.04**; C46, 50, 54, 58, 62,§672.4; C66, 71, 73, 75,§633.568]

633.569 Pleadings and trial—Rules of Civil Procedure. All other pleadings and the trial of the cause shall be governed by the Rules of Civil Procedure. The cause shall be tried as a law action, and either party shall be entitled to a jury trial if demand is made therefor as provided by the Rules of Civil Procedure. [C73,§2273; C97,§3220; C24, 27,§12621; C31, 35,§§12621, 12644-c6; C39,§§**12621, 12644.06**; C46, 50, 54, 58, 62,§§670.9, 672.6; C66, 71, 73, 75, §633.569]

See R.C.P. 177

633.570 Appointment of conservator. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a conservator are proved, the court may appoint a conservator. [R60,§1449; C73,§2272; C97,§3219; C24, 27,§§12614, 12616; C31, 35,§§12614, 12616, 12644-c8; C39,§§**12614, 12616, 12644.08**; C46, 50, 54, 58, 62,§§670.2, 670.4, 672.8; C66, 71, 73, 75,§633.570]

633.571 Preference as to appointment of conservator. The parents of a minor, or either of them, if qualified and suitable, shall be preferred over all others for appointment as conservator. Preference shall then be given to any person, if qualified and suitable, nominated as conservator for a minor child by a will executed by the parent having custody of a minor child, and any qualified and suitable person requested by a minor fourteen years of age or older. Subject to these preferences, the court shall appoint as conservator a qualified and suitable person who is willing to serve in that capacity. [C51,§§1491, 1492, 1495, 1498; R60,§§2543, 2544, 2547, 2550; C73,§§2241, 2242, 2244, 2249; C97,§§3192, 3193, 3195; C24, 27, 31, 35, 39,§§**12573, 12574, 12576**; C46, 50, 54, 58, 62, §§668.1, 668.2, 668.4; C66, 71, 73, 75,§633.571]

633.572 Appointment of conservator on voluntary petition. A conservator may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if he is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.635. [C51, §1495; R60,§2547; C73,§2244; C97,§3195; C24, 27, 31, 35, 39,§§**12576, 12617, 12618**; C46, 50, 54, 58, 62,§§668.4, 670.5, 670.6; C66, 71, 73, 75,§633.572]

Referred to in §633.635
See also §633.557

633.573 Appointment of temporary conservator. A temporary conservator may be appointed but only after a hearing on such notice, and subject to such conditions, as the court shall prescribe. [C73,§2273; C97,§3220; C24, 27,§12620; C31, 35,§§12620, 12644-c5; C39, §§**12620, 12644.05**; C46, 50, 54, 58, 62,§§670.8, 672.5; C66, 71, 73, 75,§633.573]

Referred to in §229.27

633.574 Procedure in lieu of conservatorship. If no conservator has been appointed, money due a minor or other property to which a minor is entitled, not exceeding in the aggregate the sum of one thousand dollars in value, may be paid or delivered to a parent of the minor who is entitled to the custody of such minor, upon written statement verified by the oath of such parent, that all money or property of such minor does not exceed in the aggregate the sum of one thousand dollars; and the written receipt of such parent shall constitute an acquittance of the person making such payment of money or delivery of such property. [C51,§§1493, 1494; R60,§§2545, 2546; C73,§2243; C97,§3194; C24, 27, 31, 35, 39,§**12575**; C46, 50, 54, 58, 62,§668.3; C66, 71, 73, 75,§633.574]

See also ch 565A

633.575 to 633.579 Reserved.

PART 3
CONSERVATORSHIPS FOR ABSENTEES

633.580 Petition for appointment of conservator for absentee. When a person owns property located in the state of Iowa, his whereabouts are unknown, and no provision for the care, control and supervision of such property has been made, with the result that such property is likely to be lost or damaged, or that the dependents of such owner are likely to be deprived of means of support because of such absence, it shall be proper for any person to file with the clerk a petition for the appointment of a conservator of such property of the absentee. The petition shall state the following information, so far as known to the petitioner:

1. The name, age and last known post-office address of the proposed ward.

2. The facts concerning the disappearance of the absentee.

3. The name and post-office address of the proposed conservator, and that he is qualified to serve in that capacity.

4. A general description of the property of the proposed ward within this state and of his right to receive property; also, the estimated present value of the real estate, the estimated value of the personal property, and the estimated gross annual income of the estate. If any money is payable, or to become payable, to the proposed ward by the United States through the veterans administration, the petition shall so state.

5. That the property of the absentee is likely to be lost or damaged, or that his dependents are likely to be deprived of means of support, because of his absence, and that no proper provision has been made for the care, control and supervision over such property. [S13, §3228-a; C24, 27, 31, 35, 39,§**12632**; C46, 50, 54, 58, 62,§671.1; C66, 71, 73, 75,§633.580]

633.581 Original notice governed by Rules of Civil Procedure. Notice of the filing of such a petition and of the hearing thereon shall be served upon the absentee by publication in the manner of an original notice and the Rules of Civil Procedure governing original notices by publication shall also govern such a notice as to content. [S13,§3228-a; C24, 27, 31, 35, 39, §**12633**; C46, 50, 54, 58, 62,§671.2; C66, 71, 73, 75,§633.581]

633.582 Notice on county attorney. Such notice shall also be served on the county attorney of the county in which the petition is filed and on the spouse and children of the absentee as provided by the Rules of Civil Procedure. If there is no spouse or children, such notice shall be served on such persons and in such manner as the court may prescribe. [S13, §3228-a; C24, 27, 31, 35, 39,§**12634**; C46, 50, 54, 58, 62,§671.3; C66, 71, 73, 75,§633.582]

633.583 Pleadings and trial—Rules of Civil Procedure. All other pleadings and the trial of the cause shall be governed by the Rules of Civil Procedure. [S13,§3228-a; C24, 27, 31, 35, 39,§**12635**; C46, 50, 54, 58, 62,§671.4; C66, 71, 73, 75,§633.583]

633.584 Appointment of conservator. In the event that the absentee does not appear at said hearing, the court shall hear the petition and the proof offered. All evidence shall be made a part of a transcript to be filed in such proceedings. If the allegations of the petition are proved, the court may appoint a conservator. [S13,§§3228-b,-c; C24, 27, 31, 35, 39,§§**12636, 12637, 12639**; C46, 50, 54, 58, 62,§§671.5, 671.6, 671.8; C66, 71, 73, 75,§633.584]

633.585 Appointment of temporary conservator. A temporary conservator may be appointed, but only after a hearing on such notice, and subject to such conditions as the court shall prescribe. [C66, 71, 73, 75,§633.585]

633.586 to 633.590 Reserved.

PART 4
STANDBY CONSERVATORSHIPS

633.591 Voluntary petition for appointment of conservator—standby basis. Any person of full age and sound mind may execute a verified petition for the voluntary appointment of a conservator of his property upon the express condition that such petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in said petition. [C66, 71, 73, 75, §633.591]

Referred to in §§633.560, 633.635

633.592 Petition may nominate conservator. Such petition may nominate a person for appointment to serve as such conservator, and may request that the appointment be made without bond, or with bond of a certain stated sum. The court in appointing the conservator shall give due regard to such nomination and other requests and recommendations contained in the petition. [C66, 71, 73, 75,§633.592]

Referred to in §633.560

633.593 Deposit of petition. Such petition may be deposited with the clerk of the county in which the party resides, or with any person, firm, bank or trust company selected by the petitioner. [C66, 71, 73, 75,§633.593]

Referred to in §§633.560, 633.595

633.594 Revocation of petition. Such petition may be revoked by the petitioner at any time before appointment of a conservator by the court, provided that the petitioner is of sound mind. Revocation shall be accomplished by the destruction of the petition by the petitioner, or by the execution of an acknowledged instrument of revocation. If the petition has been deposited with the clerk, the revocation may likewise be deposited there. [C66, 71, 73, 75,§633.594]

Referred to in §633.560

633.595 Filing petition upon occurrence of condition. At any time after the deposit of the petition with the clerk, and before its revocation, it may be brought on for hearing by the filing of a verified statement to the effect that the occurrence of the event or the condition provided for in the petition has come to pass. If the petition has not been deposited with the clerk under the provisions of section 633.593, then it may be brought on for hearing at any time by the filing of it and such a verified statement with the clerk of the county in which the person who executed the petition then resides. [C66, 71, 73, 75,§633.595]

Referred to in §633.560

633.596 Time of appointment of conservator. At the time such petition is filed, the court, without any notice, may appoint the conservator nominated in such petition or may set the petition for hearing on such notice as the court may prescribe. [C66, 71, 73, 75, §633.596]

Referred to in §633.560

633.597 Conservator shall have same powers and duties. The powers and duties of such a conservator shall be the same as those of a conservator appointed in response to any of the other petitions authorized in this Code. [C66, 71, 73, 75,§633.597]

Referred to in §633.560

633.598 to 633.602 Reserved.

PART 5
FOREIGN CONSERVATORS

633.603 Appointment of foreign conservators. When there is no conservatorship, nor any application therefor pending, in this state, the duly qualified foreign conservator or guardian of a nonresident ward may, upon application, be appointed conservator of the property of such person in this state; provided that a resident conservator is appointed to serve with the foreign conservator; and provided further, that for good cause shown, the court may appoint the foreign conservator to act alone without the appointment of a resident conservator. [C51,§1512; R60,§2564; C73,§2266; C97,§3213; C24, 27, 31, 35, 39,§12606; C46, 50, 54, 58, 62,§669.1; C66, 71, 73, 75,§633.603]

633.604 Application. The application for appointment of a foreign conservator or guardian as conservator in this state shall include the name and address of the nonresident ward, and of the nonresident conservator or guardian, and the name and address of the resident conservator to be appointed. It shall be accompanied by a certified copy of the original letters or other authority conferring the power upon the foreign conservator or guardian to act as such. The application shall also state the cause for the appointment of the foreign conservator to act as sole conservator, if such be the case. [C51,§1513; R60,§2565; C73,§2267; C97,§3214; C24, 27, 31, 35, 39,§12607; C46, 50, 54, 58, 62,§669.2; C66, 71, 73, 75,§633.604]

633.605 Personal property. A foreign conservator or guardian of a nonresident may be authorized by the court of the county wherein such ward has personal property to receive the same upon compliance with the provisions of sections 633.606, 633.607 and 633.608. [C73, §2269; C97,§3216; C24, 27, 31, 35, 39,§12609; C46, 50, 54, 58, 62,§669.4; C66, 71, 73, 75,§633.605]

633.606 Copy of bond. Such foreign conservator or guardian shall file in the office of the clerk in the county where the property is situated, a certified copy of his official bond, duly authenticated by the court granting his letters, and shall also execute a receipt for the property received by him. [C51,§1514; R60, §2566; C73,§§2268, 2270; C97,§§3215, 3217; C24, 27, 31, 35, 39,§§12608, 12610; C46, 50, 54, 58, 62, §669.3, 669.5; C66, 71, 73, 75,§633.606]

Referred to in §633.605

633.607 Order for delivery. Upon the filing of the bond as above provided, and the court being satisfied with the amount thereof, it shall order the personal property of the ward delivered to such conservator or guardian. [C73,§2271; C97,§3218; C24, 27, 31, 35, 39,§12611; C46, 50, 54, 58, 62,§669.6; C66, 71, 73, 75, §633.607]

Referred to in §633.605

633.608 Recording of bond—notice to court. The clerk shall record the bonds and the receipt, and notify by mail the court which granted the letters of conservatorship or guardianship of the amount of property delivered to the fiduciary and the date of delivery thereof. [C73,§2271; C97,§3218; C24, 27, 31, 35, 39, §12612; C46, 50, 54, 58, 62,§669.7; C66, 71, 73, 75,§633.608]

Referred to in §633.605

633.609 to 633.613 Reserved.

PART 6
CONSERVATORSHIPS INVOLVING VETERANS ADMINISTRATION

633.614 Application of other provisions to veterans' conservatorships. Whenever moneys are paid or are payable pursuant to any law of the United States through the veterans ad-

ministration to a conservator or a guardian, the provisions of sections 633.615, 633.617 and 633.622 shall apply to the administration of said moneys. However, such provisions shall be construed to be supplementary to the other provisions for conservators, and shall not be exclusive of such provisions. [C31, 35,§12644-c2; C39,§**12644.02**; C46, 50, 54, 58, 62,§672.2; C66, 71, 73, 75,§633.614; 66GA, ch 208,§13]

633.615 Administrator of veterans affairs—party in interest. The administrator of veterans affairs of the United States, his successor, or the designee of either, shall be a party in interest in any proceeding for the appointment or removal of a conservator, or for the termination of the conservatorship, and in any suit or other proceeding, including reports and accountings, affecting in any manner the administration of those assets that were derived in whole or in part from benefits paid by the veterans administration. Not less than fifteen days prior to the time set for a hearing in any such matters, notice, in writing, of the time and place thereof shall be given by mail to the office of the veterans administration having jurisdiction over the area in which such matter is pending. [C31, 35,§§12644-c4, -c11; C39,§§**12644.04, 12644.11**; C46, 50, 54, 58, 62, §§672.4, 672.11; C66, 71, 73, 75,§633.615]

Referred to in §633.614

633.616 Repealed by 66 GA, ch 208,§17.

633.617 Ward rated incompetent by veterans administration. Upon the trial of an issue arising upon a prayer for the appointment of either a temporary or a permanent conservator, a certificate of the administrator of veterans administration, or his representative, setting forth the fact that the defendant veteran has been rated incompetent by the veterans administration upon examination in accordance with the laws and regulations governing the veterans administration, shall be prima-facie evidence of the necessity for such appointment, and the court may appoint a conservator for the property of such person. [C31, 35,§§12644-c3,-c7; C39,§§**12644.03, 12644.07**; C46, 50, 54, 58, 62,§§672.3, 672.7; C66, 71, 73, 75,§633.616; 66GA, ch 1240,§1]

Referred to in §633.614
Section 633.617, Code 1975; repealed by 66GA, ch 208,§17

633.618 to 633.621 Repealed by 66GA, ch 208,§17.

633.622 Bond requirements. In administering moneys paid by the veterans administration the conservator, unless it is a bank or trust company qualified to act as a fiduciary in this state, shall execute and file with the clerk a bond by a recognized surety company equal to such moneys and the annual income therefrom, plus the expected annual veterans administration benefit payments. [C31, 35, §§12644-c14,-c15; C39,§§**12644.14, 12644.15**; C46, 50, 54, 58, 62,§§672.14, 672.15; C66, 71, 73, 75, §633.622; 66GA, ch 208,§14]

Referred to in §633.614

633.623 to 633.626 Reserved.

PART 7
COMBINING PETITION FOR GUARDIAN AND CONSERVATOR

633.627 Combining petitions. The petitions for the appointment of a guardian and a conservator may be combined and the cause tried in the same manner as a petition for the appointment of a conservator. [C66, 71, 73, 75,§633.627]

633.628 Same person as guardian and conservator. The same person may be appointed to serve as both guardian and conservator. [C66, 71, 73, 75,§633.628]

633.629 to 633.633 Reserved.

DIVISION XIV
ADMINISTRATION OF GUARDIANSHIPS AND CONSERVATORSHIPS

PART 1
APPOINTMENT AND QUALIFICATION OF GUARDIANS AND CONSERVATORS

633.634 Provisions applicable to all fiduciaries shall govern. The provisions of this Code applicable to all fiduciaries shall govern the appointment, qualification, oath and bond of guardians and conservators, except that a guardian shall not be required to give bond unless the court, for good cause, finds that the best interests of the ward require a bond. The court shall then fix the terms and conditions of such bond. [C51,§1496; R60,§2548; C73,§2246; C97,§3197; S13,§3228-d; C24, 27, §§12577–12579, 12640; C31, 35,§§12577–12579, 12640, 12644-c9; C39,§§**12577–12579, 12640, 12644.09**; C46, 50, 54, 58, 62,§§668.5–668.7, 671.9, 672.9; C66, 71, 73, 75,§633.634]

633.635 Combination of voluntary and standby petitions with involuntary petition for hearing. If prior to the time of hearing on a petition for the appointment of a guardian or a conservator, a petition is filed under the provisions of sections 633.557, 633.572 or 633.591, the court shall combine the hearing on such petitions and determine who shall be appointed guardian or conservator, and such petition shall be triable to the court. [C66, 71, 73, 75,§633.635]

Referred to in §§633.557, 633.572

PART 2
RIGHTS AND TITLE OF WARD

633.636 Effect of appointment of guardian or conservator. The appointment of a guardian or conservator shall not constitute an adjudication that the ward is of unsound mind. [C66, 71, 73, 75,§633.636]

633.637 Powers of ward. A ward for whom a conservator has been appointed shall not have the power to convey, encumber or dispose of property in any manner, other than by will if he possesses the requisite testamentary capacity. [C66, 71, 73, 75,§633.637]

633.638 Presumption of fraud. If a conservator be appointed, all contracts, transfers and gifts made by the ward after the filing of

the petition shall be presumed to be a fraud against the rights and interest of the ward. [C24, 27, 31, 35, 39,§**12622**; C46, 50, 54, 58, 62, §670.10; C66, 71, 73, 75,§633.638]

See also §633.650

633.639 Title to ward's property. The title to all property of the ward is in the ward and not the conservator subject, however, to the possession of the conservator and to the control of the court for the purposes of administration, sale or other disposition, under the provisions of the law. [C66, 71, 73, 75, §633.639]

633.640 Conservator's right to possession. Every conservator shall have a right to, and shall take, possession of all of the real and personal property of the ward. He shall pay the taxes and collect the income therefrom until the conservatorship is terminated. He may maintain an action for the possession of the property, and to determine the title to the same. [C73,§2245; C97,§3196; C24, 27, 31, 35, 39,§§**12584, 12585**; C46, 50, 54, 58, 62,§§668.11, 668.12; C66, 71, 73, 75,§633.640]

PART 3
DUTIES AND POWERS OF CONSERVATOR

633.641 General duties of conservator. It is the duty of the conservator of the estate to protect and preserve it, to invest it prudently, to account for it as herein provided, and to perform all other duties required of him by law, and at the termination of the conservatorship, to deliver the assets of the ward to the person entitled thereto. [C51,§1499; R60, §2551; C73,§2250; C97,§3200; S13,§3228-d; C24, 27, 31, 35, 39,§§**12581, 12640**; C46, 50, 54, 58, 62,§§668.9, 671.9; C66, 71, 73, 75,§633.641]

633.642 Inventory of ward's property. Within sixty days after the date of his appointment, or, within such further time as the court may allow, a conservator shall file in the conservatorship a verified inventory of all of the property of the ward that has come into his possession or of which he has knowledge. Whenever any property of the ward not mentioned in the inventory comes into the possession, or to the knowledge, of the conservator, he shall file in the conservatorship a verified supplemental inventory within thirty days after the property comes into his possession, or becomes known to him; or he may include the property in his next accounting. [C51,§1497; R60,§2549; C73, §2248; C97,§3199; C24, 27, 31, 35, 39,§**12580**; C46, 50, 54, 58, 62,§668.8; C66, 71, 73, 75,§633.642]

633.643 Disposal of will by conservator. When an instrument purporting to be the will of the ward comes into the hands of a conservator, the conservator shall immediately deliver it to the court. [C66, 71, 73, 75, §633.643]

Referred to in §§633.644, 633.645

633.644 Court order to preserve testamentary intent of ward. Upon receiving an instrument purporting to be the will of a living ward under the provisions of section 633.643, the court may open said will and read it. The court with or without notice, as it may determine, may enter such orders in the conservatorship as it deems advisable for the proper administration of the conservatorship in light of the expressed testamentary intent of the ward. [C66, 71, 73, 75,§633.644]

633.645 Court to deliver will to clerk. An instrument purporting to be the will of a ward coming into the hands of the court under the provisions of section 633.643, shall thereafter be resealed by the court and be deposited with the clerk to be held by said clerk as provided in sections 633.286 through 633.289. [C66, 71, 73, 75,§633.645]

633.646 Powers of the conservator without order of court. The conservator shall have the full power, without prior order of court, with relation to the estate of his ward:

1. To collect, receive, receipt for any principal or income, and to enforce, defend against or prosecute any claim by or against the ward or the conservator; to sue on and defend claims in favor of, or against, the ward or the conservator.

2. To sell and transfer personal property of a perishable nature and personal property for which there is a regularly established market.

3. To vote at corporate meetings in person or by proxy.

4. To receive additional property from any source.

5. Notwithstanding the provisions of section 633.123, to continue to hold any investment or other property originally received by him, and also any increase thereof, pending the timely filing of the first annual report. [S13,§3228-d; C24, 27, 31, 35, 39,§**12640**; C46, 50, 54, 58, 62, §671.9; C66, 71, 73, 75,§633.646]

633.647 Powers of conservator subject to the approval of the court. Conservators shall have the following powers subject to the approval of the court after hearing on such notice, if any, as the court may prescribe:

1. To invest the funds belonging to the ward.

2. To execute leases.

3. To make payments to, or for the benefit of, his ward in any of the following ways:

a. Directly to the ward;

b. Directly for the maintenance, welfare and education of the ward;

c. To the legal guardian of the person of the ward; or

d. To anyone who at the time shall have the custody and care of the person of the ward.

4. To apply any portion of the income or of the estate of the ward for the support of any person for whose support the ward is legally liable.

5. To compromise or settle any claim by or against the ward or the conservator; to adjust, arbitrate or compromise claims in favor of or against the ward or the conservator.

6. To do any other thing that the court determines to be to the best interests of the ward and his estate. [C97,§3225; S13,§§3225, 3228-d; C24, 27, 31, 35, 39,§§**12629, 12640**; C46, 50, 54, 58, 62,§§670.17, 671.9; C66, 71, 73, 75, §633.647]

Referred to in §633.648

633.648 Appointment of attorney in compromise of personal injury settlements. Notwithstanding the provisions of section 633.647 prior to authorizing a compromise of a claim for damages on account of personal injuries to the ward, the court may order an independent investigation by an attorney other than by the attorney for the conservator. The cost of such investigation, including a reasonable attorney fee, shall be taxed as part of the cost of the conservatorship. [C66, 71, 73, 75,§633.648]

633.649 Powers of conservators—same as all fiduciaries. Except as expressly modified herein, conservators shall have the powers relating to all fiduciaries as set out in sections 633.63 to 633.162. [S13,§3228-d; C24, 27, 31, 35, 39,§**12640**; C46, 50, 54, 58, 62,§671.9; C66, 71, 73, 75,§633.649]

633.650 Breach of contracts. Under order of court, for good cause shown, after such notice as the court may prescribe, a conservator shall have the power to breach contracts of the ward entered into by the ward prior to the appointment of the conservator, thereby incurring such liability of the ward's estate for such breach as the ward would have incurred for such breach if he had been competent. [R60, §1454; C73,§2277; C97,§3226; C24, 27, 31, 35, 39,§**12586**; C46, 50, 54, 58, 62,§668.13; C66, 71, 73, 75,§633.650]

See also §633.638

633.651 Tort liability of conservator. The fact that a person is a conservator or a guardian shall not in itself make him personally liable for damages for the acts of his ward. [C66, 71, 73, 75,§633.651]

PART 4
TRANSFERRING, ENCUMBERING AND LEASING PROPERTY BY CONSERVATOR

633.652 Procedure applicable to personal representatives shall govern. Conservators shall have the power to sell, mortgage, exchange, pledge and lease real and personal property belonging to the ward, including the homestead and exempt personal property, when it appears to be to the best interests of the ward, in the same manner and by the same procedure that is provided in this Code for sale, mortgage, exchange, pledge and lease by personal representatives in administration of estates of decedents. [C51,§§1500–1508; R60, §§1453, 2552–2560; C73,§§2257–2265, 2276; C97, §§3206–3212, 3225; S13,§3225; C24, 27, 31,§§12587–12596, 12628; C35,§§12587–12596, 12628, 12644-g1, -g2,-g3,-g4,-g5; C39,§§**12587–12596, 12628, 12644.21–12644.25**; C46, 50, 54, 58, 62,§§668.14–668.23, 670.16, 673.1–673.5; C66, 71, 73, 75,§633.652]

See Code §§597.6 to 597.9

PART 5
CLAIMS

633.653 Claims against the ward, the conservatorship or the conservator in that capacity. Claims accruing before or after the appointment of the conservator, and whether arising in contract or tort or otherwise, after being allowed or established as provided in sections 633.654 to 633.656, shall be paid by the conservator from the assets of the conservatorship. [C66, 71, 73, 75,§633.653]

633.654 Form and verification of claims—general requirements. No claim shall be allowed against the estate of a ward upon application of the claimant unless it shall be in writing, filed in duplicate with the clerk, stating the claimant's name and address, and describing the nature and the amount thereof, if ascertainable. It shall be accompanied by the affidavit of the claimant, or of someone for him, that the amount is justly due, or if not due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant, except as therein stated. The duplicate of said claim shall be mailed by the clerk to the conservator or his attorney of record; however, valid contract claims arising in the ordinary course of the conduct of the business or affairs of the ward by the conservator may be paid by the conservator without requiring affidavit or filing. [C66, 71, 73, 75,§633.654]

Referred to in §§633.653, 633.664

633.655 Requirements when claim founded on written instrument. If a claim is founded upon a written instrument, the original of such instrument, or a copy thereof, with all endorsements, must be attached to the claim. The original instrument must be exhibited to the conservator or to the court, upon demand, unless it has been lost or destroyed, in which case, its loss or destruction must be stated in the claim. [C51,§1359; R60,§2391; C73,§2408; C97, §3338; C24, 27, 31, 35, 39,§§**11957, 11958**; C46, 50, 54, 58, 62,§§635.53, 635.54; C66, 71, 73, 75, §633.655]

Referred to in §633.653

633.656 How claim entitled. All claims filed against the estate of the ward shall be entitled in the name of the claimant against the conservator as such, naming the conservator, and in all further proceedings thereon, this title shall be preserved. [C73,§2409; C97,§3339; C24, 27, 31, 35, 39,§**11960**; C46, 50, 54, 58, 62,§635.56; C66, 71, 73, 75,§633.656]

Referred to in §633.653

633.657 Filing of claim required. The filing of a claim in the conservatorship tolls the statute of limitations applicable to such claim. [C66, 71, 73, 75,§633.657]

633.658 Compelling payment of claims. No claimant shall be entitled to compel payment until his claim has been duly filed and allowed. [C66, 71, 73, 75,§633.658]

Referred to in §633.664

633.659 Allowance by conservator. When a claim has been filed and has been admitted in writing by the conservator, it shall stand allowed, in the absence of fraud or collusion. [C66, 71, 73, 75,§633.659]

633.660 Execution and levy prohibited. No execution shall issue upon, nor shall any levy be made against, any property of the estate of a ward under any judgment against the ward or a conservator, but the provisions of this section shall not be so construed as to prevent the enforcement of a mortgage, pledge or other lien upon property in an appropriate proceeding. [C66, 71, 73, 75,§633.660]

633.661 Claims of conservators. If the conservator is a creditor of the ward, he shall file his claim as other creditors, and the court shall appoint some competent person as temporary conservator to represent the ward at the hearing on the conservator's claim. The same procedure shall be followed in the case of coconservators where all such conservators are creditors of the ward; but if one of the coconservators is not a creditor of the ward, such disinterested conservator shall represent the ward at the hearing on any claim against the ward by a coconservator. [C51,§1369; R60,§2401; C73,§2417; C97,§3346; C24, 27, 31, 35, 39,§**11968**; C46, 50, 54, 58, 62,§635.64; C66, 71, 73, 75,§633.661]

633.662 Claims not filed. The conservator may pay any valid claim against the estate of the ward even though such claim has not been filed, but all such payments made by the conservator shall be at his own peril. [C66, 71, 73, 75,§633.662]

633.663 Waiver of statute of limitations by conservator. It shall be within the discretion of the conservator to determine whether or not the applicable statute of limitation shall be invoked to bar a claim which he believes to be just, and his decision as to the invoking of such statute shall be final. [C66, 71, 73, 75,§633.663]

633.664 Liens not affected by failure to file claim. Nothing in sections 633.654 and 633.658 shall affect or prevent an action or proceeding to enforce any mortgage, pledge or other lien upon the property of the ward. [C66, 71, 73, 75,§633.664]

633.665 Separate actions and claims. Any action pending against the ward at the time the conservator is appointed shall also be considered a claim filed in the conservatorship if notice of substitution is served on the conservator as defendant, and a duplicate of the proof of service of notice of such proceeding is filed in the conservatorship proceeding.

A separate action based on a debt or other liability of the ward may be commenced against the conservator as such in lieu of filing a claim in the conservatorship. Such an action shall be commenced by serving an original notice on the conservator and filing a duplicate of the proof of service of notice of such proceeding in the conservatorship proceeding. Such an action shall also be considered a claim filed in the conservatorship. Such an action may be commenced only in a county where the venue would have been proper if there were no conservatorship and the action had been commenced against the ward. [C66, 71, 73, 75,§633.665]

Referred to in §633.666

633.666 Denial and contest of claims. The provisions of sections 633.438 through 633.448 shall be applicable to the denial and contest of claims against conservatorships, but shall not be applicable to actions continued or commenced under section 633.665. [C66, 71, 73, 75,§633.666]

633.667 Payment of claims in insolvent conservatorships. When it appears that the assets in a conservatorship are insufficient to pay in full all the claims against such conservatorship, the conservator shall report such matter to the court, and the court shall, upon hearing, with notice to all persons who have filed claims in the conservatorship, make an order for the pro rata payment of claims giving claimants the same priority, if any, as they would have if the ward were not under conservatorship. [R60,§1455; C73, §2278; C97,§3227; C24, 27, 31, 35, 39,§**12630**; C46, 50, 54, 58, 62,§670.18; C66, 71, 73, 75, §633.667]

PART 6
GIFTS

633.668 Conservator may make gifts. For good cause shown and under order of court, a conservator may make gifts on behalf of the ward out of the assets under a conservatorship to persons or religious, educational, scientific, charitable, or other nonprofit organizations to whom or to which such gifts were regularly made prior to the commencement of the conservatorship. The making of gifts out of such assets must not forseeably impair the ability to provide adequately for the best interests of the ward. [C66, 71, 73, 75,§633.668]

PART 7
GUARDIAN'S REPORT

633.669 Guardian's report. Immediately after the appointment of the guardian, he shall make a report to the court advising the court as to the physical condition and whereabouts of the ward. At such times thereafter as the court may order, a guardian shall present to the court and file in the guardianship proceedings a written report of the condition of the ward and of the guardian's exercise of authority and performance of his duties. [C66, 71, 73, 75,§633.669]

PART 8
CONSERVATOR'S REPORT

633.670 Conservator shall report and account. A conservator shall present to the court and file in the conservatorship pro-

ceedings a written verified report and accounting of his administration:

1. Annually within sixty days following the anniversary date of his appointment, unless the court otherwise orders on good cause shown.

2. Upon filing his resignation and before his resignation is accepted by the court.

3. Within thirty days following the date of his removal.

4. Within sixty days following the date of the termination of the conservatorship under the provisions of section 633.675, unless that time is extended by the court.

5. At such other times as the court may order. [R60,§§2568, 2569; C73,§§2254, 2255; C97, §§3203, 3204, 3222; C24, 27,§§12597, 12598, 12627; C31, 35,§§12597, 12598, 12627, 12644-c11; C39, §§**12597, 12598, 12627, 12644.11**; C46, 50, 54, 58, 62,§§668.24, 668.25, 670.15, 672.11; C66, 71, 73, 75,§633.670]

Referred to in §633.671

633.671 Requirements of report and accounting. The report and accounting required by section 633.670 shall account for all of the period since the close of the accounting contained in the next previous report, and shall include the following information as far as applicable:

1. The balance of funds on hand at the close of the last previous accounting, and all amounts received from whatever source during the period covered by the accounting.

2. All disbursements made during the period covered by the accounting.

3. Any changes in investments since the last previous report, including a list of all assets, and recommendations of the conservator for the retention or disposition of any property held by the conservator.

4. The amount of the bond and the name of the surety on it.

5. The residence or physical location of the ward.

6. The general physical and mental condition of the ward.

7. Such other information as shall be necessary to show the condition of the affairs of the conservatorship. [R60,§§2568, 2569; C73,§§2254, 2255; C97,§§3203, 3204; C24, 27,§§12597, 12598; C31, 35,§§12597, 12598, 12644-c11; C39,§§**12597, 12598, 12644.11**; C46, 50, 54, 58, 62,§§668.24, 668.25, 672.11; C66, 71, 73, 75,§633.671]

PART 9
COSTS AND ACCOUNTS

633.672 Payment of court costs in conservatorships. No order shall be entered approving an annual report of a conservator until the court costs which have been docketed have been paid or provided for. [C66, 71, 73, 75, §633.672]

633.673 Court costs in guardianships. The ward or his estate shall be charged with the court costs of a ward's guardianship, including the guardian's fees and the fees of the attorney for the guardian. [C97,§3222; S13,§3228-f; C24, 27, 31, 35, 39,§§**12626, 12642**; C46, 50, 54, 58, 62,§§670.14, 671.11; C66, 71, 73, 75,§633.673]

633.674 Settlement of accounts. The court shall settle each account filed by a conservator by allowing or disallowing it, either in whole or in part, or by surcharging the account against the conservator. [C66, 71, 73, 75, §633.674]

PART 10
TERMINATION OF GUARDIANSHIPS AND CONSERVATORSHIPS

633.675 Cause for termination. A guardianship shall cease, and a conservatorship shall terminate, upon the occurrence of any of the following circumstances:

1. If the ward is a minor, when he reaches full age.

2. The death of the ward.

3. A determination by the court that the ward is competent and capable of managing his property and affairs, and that the continuance of the guardianship or conservatorship would not be in his best interests.

4. Upon determination by the court that the conservatorship or guardianship is no longer necessary for any other reason. [S13,§3228-e; C24, 27, 31, 35, 39,§**12641**; C46, 50, 54, 58, 62, §§671.10, 672.21; C66, 71, 73, 75,§633.675]

Referred to in §633.670

633.676 Assets exhausted. At any time that the assets of the ward's estate do not exceed the amount of the charges and claims against it, the court may direct the conservator to proceed to terminate the conservatorship. [C46, 50, 54, 58, 62,§668.33; C66, 71, 73, 75,§633.676]

633.677 Accounting to ward—notice of hearing. Upon the termination of a conservatorship, the conservator shall pay the costs of administration, and render a full and complete accounting to the ward or his personal representative and to the court. Notice of hearing on the final report of a conservator shall be served on the ward or his personal representative, in accordance with section 633.40, unless such notice is waived. An order prescribing notice may be made before or after the filing of the final report. [C46, 50, 54, 58, 62,§672.21; C66, 71, 73, 75,§633.677]

633.678 Delivery of assets. Upon the termination of a conservatorship, all assets of the conservatorship shall be delivered, under direction of the court, to the person or persons entitled to them. [C46, 50, 54, 58, 62,§668.33; C66, 71, 73, 75,§633.678]

633.679 Petition to terminate. At any time, not less than six months after the appointment of a guardian or conservator, the person under guardianship or conservatorship may apply to the court by petition, alleging that he is no longer a proper subject thereof, and asking that the guardianship or conservatorship be

terminated. [C97,§3222; C24, 27, 31, 35, 39,§12623; C46, 50, 54, 58, 62,§670.11; C66, 71, 73, 75,§633.679]

633.680 Limit on application to terminate. If any petition for terminating such guardianship or conservatorship shall be denied, no other petition shall be filed therefor until at least six months shall have elapsed since the denial of the former one. [C97,§3222; C24, 27, 31, 35, 39,§12627; C46, 50, 54, 58, 62,§670.15; C66, 71, 73, 75,§633.680]

633.681 Assets of minor ward exhausted. Whenever the assets of a minor ward's conservatorship are exhausted or consist of personal property only of an aggregate value not in excess of one thousand dollars, the court, upon application or upon its own motion, may terminate the conservatorship and direct the conservator to deliver such property to the parent or other person having the custody of the minor ward, for the use of such ward, after payment of allowed claims and expenses of administration. Such delivery shall have the same force and effect as if delivery had been made to the ward after he attains his majority. [C46, 50, 54, 58, 62,§668.33; C66, 71, 73, 75, §633.681]

633.682 Discharge of conservator and release of bond. Upon settlement of the final accounting of a conservator, and upon determining that the property of the ward has been delivered to the person or persons lawfully entitled thereto, the court shall discharge the conservator and exonerate the surety on his bond. [S13,§3228-h; C24, 27, 31, 35, 39,§12644; C46, 50, 54, 58, 62,§§671.13, 672.21; C66, 71, 73, 75,§633.682]

633.683 to 633.698 Reserved.

DIVISION XV

TRUSTS

633.699 Powers of trustees. Unless it is otherwise provided by the will creating a testamentary trust, the instrument creating an express trust, or by an order or decree duly entered by a court of competent jurisdiction, a trustee shall have all the general powers of a fiduciary, including, but not limited to, the following powers:

1. To collect, receive and receipt for any principal or income, belonging to the trust estate, and to enforce, sue upon, defend against, prosecute, abandon, adjust, compromise, arbitrate or settle, any claim by or against the trust.

2. To acquire, manage, invest, reinvest, exchange, retain, grant options on, contract to sell, to sell at public auction or private sale, and, to convey, any or all property, real or personal, at any time, forming a part of the trust estate, in such manner and upon such terms and conditions as shall be deemed by such trustee to be for the best interests of the trust.

3. To vote in person, or to execute proxies to vote, corporate shares belonging to the trust at all regular and special meetings of share holders.

4. To borrow money for the benefit of the trust estate, and to secure loans by pledge or mortgage of trust property, upon good cause shown and subject to the approval and direction of the court.

5. To execute leases for a customary period for the type of real estate involved, not to extend beyond the termination date of the trust without the specific approval and direction of the court, provided that in any event, leases may be made for as long as one year.

6. To make payments to, or for the benefit of, any beneficiary in any of the following ways:

a. Directly to the beneficiary;

b. Directly for the maintenance, welfare, and education of the beneficiary;

c. To the guardian or conservator of the beneficiary; or

d. To anyone who at the time shall have the custody and care of the person of the beneficiary. A trustee shall not be obliged to see to the application of the funds so paid, but the receipt of the person to whom the funds were paid shall constitute a full acquittance of the trustee.

7. To make any required division or distribution in whole or in part in money, securities, or other property, and in undivided interests therein, and to continue to hold any remaining undivided interest in trust.

8. To receive additional property from any source. [C66, 71, 73, 75,§633.699]

See also §524.513

633.700 Intermediate report of trustees. Unless specifically relieved from so doing, by the instrument creating the trust, or by order of the court, the trustee shall make a written report, under oath, to the court, once each year, and oftener, if required by the court. Such report shall state:

1. The period covered by the report.

2. All changes in beneficiaries since the last previous report.

3. Any changes in investments since the last previous report, including a list of all assets, and recommendations of the trustee for the retention or disposition of any property held by the trustee.

4. A detailed accounting for all cash receipts and disbursements, and for all property of the trust, unless such accounting shall be waived in writing by all beneficiaries. [C66, 71, 73, 75,§633.700]

Referred to in §633.701

633.701 Final report of trustee. Upon the partial or total termination of a trust, or upon the transfer of the trusteeship due to resignation, removal, dissolution, or other disqualification of the trustee of any trust pending in court, the trustee shall make a final report to the court, showing for the period since the

filing of the last report the facts required for an intermediate report; provided, however, that unless specifically required by the court to do so, he shall not in any event, be required to report such facts for any period of time as to which he has, under any of the provisions of section 633.700, been expressly relieved from reporting. In any event, the final report of the trustee shall include the following:

1. The name and last known address of each beneficiary.

2. A statement as to those beneficiaries who are known to be minors or under any other legal disability.

3. Distributions made or to be made to each beneficiary at the time of such termination. [C66, 71, 73, 75,§633.701]

Referred to in §633.703

633.702 Notice of application for discharge. No final report of a trustee of a trust pending in court shall be approved, and no such trustee shall be discharged from further duty or responsibility upon final settlement, until notice of his application for discharge shall have been served upon all persons interested, in accordance with section 633.40, unless notice is waived. An order prescribing notice may be made before or after the filing of the final report. [C66, 71, 73, 75,§633.702]

633.703 Discharge. Upon final settlement of a trust, an order shall be entered discharging the trustee from further duties and responsibilities. The order approving the final report shall constitute a waiver of the omission from the final report of any of the recitals required in section 633.701. [C66, 71, 73, 75,§633.703]

DIVISION XVI

DISCLAIMER OF SUCCESSION TO REAL AND PERSONAL PROPERTY

633.704 Right to disclaim succession.

1. *Right of distributee.* No person, including a person designated to take pursuant to a power of appointment, shall be required to take as a distributee, or otherwise, under the laws of Iowa, and any person may disclaim in whole or in part, the succession to any property, real or personal, or interest therein by filing a written instrument within the time and at the place hereinafter provided. The instrument shall:

a. Describe the property or part thereof or interest therein disclaimed.

b. Declare the disclaimer and the extent thereof and

c. Be signed and acknowledged by the disclaimant.

2. *Time and place of filing.*

a. Time of filing. The disclaimer instrument shall be filed within six months after the date of the second publication of the notice to creditors, or within six months after the death of the donee of the power, as the case may be, or if the taker of the property or interest is not then finally ascertained or his interest has not become indefeasibly fixed both in quality and in quantity, then not later than two months after the event when the taker has become finally ascertained and his interest has become indefeasibly fixed both in quality and in quantity.

b. Place of filing. The instrument shall be filed with the clerk in the county where the administration proceedings are pending. If no such administration proceedings are pending, the instrument shall be filed with the clerk in the county where the proceedings would be located by law. A copy of the instrument shall also be mailed to the personal representative of the decedent, if any. A copy of a disclaimer affecting real estate shall be recorded in the office of the recorder of the county where the real estate is located. The instrument shall be irrevocable upon filing.

3. *Effective disclaimer.* Unless the decedent or donee of the power has otherwise provided, the property or part thereof or interest therein disclaimed, and any further interest which is to take effect in possession or enjoyment at or after the termination of the interest disclaimer, shall descend or be distributed as if the disclaimant has predeceased the decedent, or if the disclaimant is one designated to take pursuant to a power of appointment, exercised by testamentary instrument, then as if the disclaimant has predeceased the donee of the power. In every case, the disclaimer shall be related back for all purposes to the date of the death of the decedent or the donee, as the case may be. In the case of a devisee, the interest disclaimed shall descend pursuant to section 633.273. A person who has a present and a future interest in property and disclaims his present interest in whole or in part, shall be deemed to have disclaimed his future interest to the same extent. In the event of death of the disclaimant within the time allowed for the filing of a disclaimer, the right to disclaim shall terminate. In the event of disability of a person entitled to disclaim, the court may authorize or direct a conservator or guardian to exercise the right to disclaim on behalf of the person under disability when it is in his interest that it be done.

4. *Waiver and bar.* Any assignment, conveyance, encumbrance, pledge or transfer of property or any interest therein or any contract therefor, or any written waiver of the right to disclaim or any acceptance or property or interest therein by an heir, next of kin, devisee, legatee, donee, person succeeding to a disclaimed interest, beneficiary or person designated to take pursuant to a power of appointment exercised by testamentary instrument, and any sale of property by execution, made before the expiration of the period in which a person may disclaim as provided in this section, bars the right to disclaim the property. The right to disclaim granted by this section shall exist irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction. A disclaimer, when filed and recorded as provided in this section or a written waiver of

the right to disclaim, shall be binding upon the disclaimant or person waiving and all parties claiming by, through or under him. The right to disclaim shall follow the proceeds of a disposition of property by a fiduciary, and shall not affect the disposition.

5. *Exclusiveness of remedy.* This section shall not abridge the right of any person to assign, convey, release or renounce any property or interest therein arising under any other statute. [C73, 75,§633.704; 66GA, ch 1227,§5]

See chapter 559, power of appointment

633.705 When power of attorney not affected by disability. Whenever a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal", or "This power of attorney shall become effective upon the disability of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal and his heirs, devisees and personal representatives as if the principal were alive, competent and not disabled. If a conservator thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal, and the conservator shall have the power to revoke the power of attorney on behalf of the principal. [66GA, ch 208,§15]

633.706 Other powers of attorney not revoked until notice of death or disability.

1. The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by section 633.705, does not revoke or terminate the agency as to the attorney in fact, agent or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.

2. An affidavit, executed by the attorney in fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney actual knowledge of the revocation or termination of the power of attorney, by death, disability or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when properly acknowledged is likewise recordable.

3. This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney. [66GA, ch 208,§16]

CHAPTER 634

PRIVATE FOUNDATIONS AND CHARITABLE TRUSTS

634.1 Applicability.
634.2 Statutory provisions as part of the trust.
634.3 Distribution to avoid tax liability.
634.4 Limitations.
634.5 Internal Revenue Code defined.
634.6 Statutory exception in trust.

634.1 Applicability. This chapter shall apply only to trusts which are private foundations as defined in section 509 of the Internal Revenue Code of 1954, charitable trusts as described in section 4947(a)(1) of the Internal Revenue Code of 1954, or split-interest trusts as described in section 4947(a)(2) of the Internal Revenue Code of 1954. With respect to any such trust created after December 31, 1969, this chapter shall apply from such trust's creation. With respect to any such trust created before January 1, 1970, this chapter shall apply only to such trust's federal taxable years beginning after December 31, 1971. [C73, 75, §634.1]

634.2 Statutory provisions as part of the trust. The trust instrument of each trust to which this chapter applies shall be deemed to contain provisions prohibiting the trustee from:

1. Engaging in any act of self-dealing, as defined in section 4941(d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954;

2. Retaining any excess business holdings, as defined in section 4943(c) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954;

3. Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue

Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954; and

4. Making any taxable expenditures, as defined in section 4945(d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4945 (a) of the Internal Revenue Code of 1954.

However, this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code of 1954. [C73, 75,§634.2]

Referred to in §634.6

634.3 Distribution to avoid tax liability. The trust instrument of each trust to which this chapter applies, except split-interest trusts, shall be deemed to contain a provision requiring the trustee to distribute for the purposes specified in the trust instrument for each taxable year of the trust amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954. [C73, 75,§634.3]

Referred to in §634.6

634.4 Limitations. Nothing in this chapter shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust. [C73, 75,§634.4]

634.5 Internal Revenue Code defined. All references to sections of the Internal Revenue Code of 1954 shall mean the Code as amended to and including January 1, 1971. [C73, 75, §634.5]

634.6 Statutory exception in trust. Nothing in this chapter shall limit the power of a person who creates a trust after July 1, 1971, or the power of a person who has retained or has been granted the right to amend a trust created before July 1, 1971, to include a specific provision in the trust instrument or an amendment to the trust instrument as the case may be, which provides that some or all of the provisions of sections 634.2 and 634.3 shall have no application to such trust. [C73, 75,§634.6]

CHAPTER 635

ADMINISTRATION OF SMALL ESTATES

635.1 When applicable.
635.2 Petition requirements.
635.3 Possession of estate.
635.4 Turning over assets to representative.
635.5 Transfer of stock or securities.
635.6 Property of perishable nature.
635.7 Report and inventory—showing greater gross value.
635.8 Failure to terminate—liability.
635.9 Petition for administration on other basis.
635.10 Effect of termination.
635.11 Statement in notice by clerk.

635.1 When applicable.

1. When the total value of the probate and nonprobate property of a decedent subject to the jurisdiction of this state including life insurance payable to the estate but not including other life insurance does not exceed ten thousand dollars, if the decedent dies intestate and is survived by a spouse or children or both, or if the decedent leaves a last will and testament and that will is admitted to probate but there is no present administration and the only beneficiaries are a spouse or children or both, then upon the petition of the spouse or a child of the decedent who is a resident of the state of Iowa, the clerk shall issue to the petitioner letters of appointment of executor or administrator for administration of a small estate.

2. When the total value of the probate and nonprobate property of a decedent subject to the jurisdiction of this state including life insurance payable to the estate but not including other life insurance does not exceed ten thousand dollars, if the decedent dies intestate without a surviving spouse or issue and with a surviving parent or parents, or if the decedent dies without a surviving spouse or issue and leaves a last will and testament and that will is admitted to probate but there is no present administration and the only beneficiaries are a surviving parent or parents, then upon the petition of a parent of the decedent who is a resident of the state of Iowa the clerk shall issue to the petitioner letters of appointment as executor or administrator for administration of a small estate. [C75,§635.1]

Referred to in §§635.2, 635.7

635.2 Petition requirements. The petition for administration of a small estate must contain the following:

1. The name, domicile and date of death of the decedent.

2. The name and address of the surviving spouse, if any, the name and address of each child of the decedent, and the name and address of each parent of the decedent, if the parent is an heir or beneficiary of the decedent, unless none are beneficiaries under the will of the decedent.

3. Whether a will has been admitted without present administration.

4. A statement that the probate and nonprobate property of the decedent subject to the

jurisdiction of this state including life insurance payable to the estate but not including other life insurance does not have an aggregate gross value of more than the amount permitted under the provisions of section 635.1.

5. A statement that petitioner agrees to be personally liable for the payment of debts and charges against the estate to the extent the assets of the estate would be subject to the payment of those debts and charges under estate administration other than for a small estate.

6. A statement that petitioner agrees to account to any personal representative for all assets of the estate coming into the possession of petitioner, if a personal representative is appointed for administration of the estate other than for a small estate. [C75,§635.2]

Referred to in §§635.7–635.9

635.3 Possession of estate. The letters of appointment of the personal representative of a small estate shall entitle the personal representative to possession of any property of the estate. [C75,§635.3]

Referred to in §635.7

635.4 Turning over assets to representative. Any debtor, financial institution, or other possessor of property shall deliver to the personal representative of a small estate all property of the estate in its possession unless the value of the property exceeds ten thousand dollars. The possessor of property shall be exonerated from any liability for the delivery of property to the personal representative and shall not be responsible for its disposition after the delivery. [C75,§635.4]

635.5 Transfer of stock or securities. The letters of appointment are authority for the transfer of stock or other securties to the persons entitled by law to the stock or other securities as stated to the transfer agent by the personal representative for the small estate. The transfer agent shall be exonerated from all liability for making the transfer. [C75, §635.5]

635.6 Property of perishable nature. The personal representative of a small estate may sell personal property of a perishable nature and personal property for which there is a regularly established market without order of court. The personal representative has no other power to sell property of the estate. [C75,§635.6]

635.7 Report and inventory—showing greater gross value. The personal representative is required to file the report and inventory for which provision is made in section 633.361. Nothing in sections 635.1 to 635.3 shall exempt the personal representative from complying with the requirements of section 450.22 or the clerk from complying with the requirements of section 633.481. If the inventory and report shows assets subject to the jurisdiction of this state including life insurance payable to the estate but not including other life insurance which exceed the total gross value of ten thousand dollars, the clerk shall terminate the letters issued under section 635.1 without prejudice to the rights of persons who delivered property as permitted under section 635.3. The personal representative shall then be required to petition for administration of the estate. [C75,§635.7]

Referred to in §§635.8, 635.10

635.8 Failure to terminate—liability. Unless an interested person petitions for administration of the estate on a basis other than for a small estate within one year after letters of administration for a small estate are issued, if those letters of administration are not terminated under the provisions of section 635.7, any property of the estate shall then be free of debts and charges. However, the personal representative of the small estate shall not be exonerated from debts and charges of the estate and shall be subject to personal liability to the extent provided in section 635.2, subsection 5, for the period of time otherwise provided by law. [C75,§635.8]

635.9 Petition for administration on other basis. At any time within one year after letters of administration are issued for a small estate, any interested person may petition for appointment of an executor or administrator for administration of the estate other than as a small estate. In that event the clerk shall notify the person holding letters of appointment for administration of a small estate by ordinary mail not less than ten days before a hearing on the petition. The notice shall be directed to the personal representative of the small estate at his last known address as reflected in the petition filed under section 635.2 or the report and inventory filed under section 633.361, whichever is filed later. [C75,§635.9]

635.10 Effect of termination. If letters of administration of a small estate are terminated under section 635.7, the time period for estate proceedings under section 633.331 shall apply. [C75,§635.10]

635.11 Statement in notice by clerk. If a petition for administration of a small estate is filed at the time a will is admitted to probate without administration, the clerk's notice under section 633.305 shall state that a small estate administration is contemplated. [C75, §635.11]

CHAPTER 636

DESCENT AND DISTRIBUTION OF INTESTATE'S PROPERTY

Repealed by 60GA, ch 326,§704; see §633.210 et seq.
Aliens' inheritances, §567.8

CHAPTER 637

UNIFORM SIMULTANEOUS DEATH ACT

Repealed by 60GA, ch 326,§704; see §§633.523–633.528

CHAPTER 638

ACCOUNTING OF EXECUTORS AND ADMINISTRATORS

Repealed by 60GA, ch 326,§704; see §§633.469–633.481

TITLE XXXIII

PARTICULAR ACTIONS AND SPECIAL PROCEEDINGS

CHAPTER 639

ATTACHMENT

Referred to in §445.4

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639.1 Method. The plaintiff in a civil action may cause the property of the defendant not exempt from execution to be attached at the commencement or during the progress of the proceeding, by pursuing the course hereinafter prescribed. [C51,§1846; R60,§3172; C73,§2949; C97,§3876; C24, 27, 31, 35, 39,§**12078**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.1]

639.2 Proceedings auxiliary. If it be subsequent to the commencement of the action, a separate petition or an amendment to the petition must be filed, and in all cases the proceedings relative to the attachment are to be deemed independent of the ordinary proceedings and only auxiliary thereto. [C51,§1847; R60,§3173; C73,§2950; C97,§3877; C24, 27, 31, 35, 39,§**12079**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.2]

639.3 Grounds. The petition or amendment to petition which asks an attachment, must in all cases be sworn to. It must state one or more of the following grounds:

1. That the defendant is a foreign corporation or acting as such.
2. That he is a nonresident of the state.
3. That he is about to remove his property out of the state without leaving sufficient remaining for the payment of his debts.
4. That he has disposed of his property, in whole or in part, with intent to defraud his creditors.

5. That the defendant is about to dispose of his property with intent to defraud his creditors.

6. That he has absconded, so that the ordinary process cannot be served upon him.

7. That he is about to remove permanently out of the county, and has property therein not exempt from execution, and that he refuses to pay or secure the plaintiff.

8. That he is about to remove permanently out of the state, and refuses to pay or secure the debt due the plaintiff.

9. That he is about to remove his property or a part thereof out of the county with intent to defraud his creditors.

10. That he is about to convert his property or a part thereof into money for the purpose of placing it beyond the reach of his creditors.

11. That he has property or rights in action which he conceals.

12. That the debt is due for property obtained under false pretenses. [C51,§1848; R60, §3174; C73,§2951; C97,§3878; C24, 27, 31, 35, 39, §12080; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.3]

C97,§3878, editorially divided
Referred to in §204.407

639.4 Alternative statement of grounds. The causes for the attachment shall not be stated in the alternative. [R60,§3242; C73,§3021; C97, §3878; C24, 27, 31, 35, 39,§12081; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.4]

639.5 Issued on Sunday. Where the petition states, in addition to the other facts required, that the plaintiff will lose his claim unless the attachment issues and is served on Sunday, it may be issued and served on that day. [C73, §2952; C97,§3879; C24, 27, 31, 35, 39,§12082; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.5]

Analogous or related provisions, §§605.18, 626.6, 643.3, 667.3, and R.C.P. 57

639.6 On contract — amount due. If the plaintiff's demand is founded on contract, the petition must state that something is due, and, as nearly as practicable, the amount, which must be more than five dollars in order to authorize an attachment. [C51,§1849; R60,§3175; C73,§2953; C97,§3880; C24, 27, 31, 35, 39,§12083; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.6]

639.7 Value of property attached. The amount thus sworn to is intended as a guide to the sheriff, who must, as nearly as the circumstances of the case will permit, levy upon property fifty percent greater in value than that amount. [C51,§1850; R60,§3176; C73,§2954; C97,§3881; C24, 27, 31, 35, 39,§12084; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.7]

639.8 Allowance of value in other cases. If the demand is not founded on contract, the original petition must be presented to some judge of the supreme or district court, or the judge of the court from which the issuance of a writ of attachment is sought, who shall make an allowance thereon of the amount in value of the property that may be attached. [C51,§1851; R60,§3177; C73,§2955; C97,§3882; C24, 27, 31, 35, 39,§12085; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.8]

639.9 For debts not due — grounds. The property of a debtor may be attached on debts not due, when nothing but time is wanting to fix an absolute indebtedness, and when the petition, in addition to that fact, states one or more of the following grounds:

1. That the defendant is about to dispose of his property with intent to defraud his creditors.

2. That he is about to remove or has removed from the state, and refuses to secure the payment of the debt when it falls due, and which removal or contemplated removal was not known to the plaintiff at the time the debt was contracted.

3. That the defendant has disposed of his property in whole or in part with intent to defraud his creditors.

4. That the debt was incurred for property obtained under false pretenses. [C51,§1852; R60,§3178; C73,§2956; C97,§3883; C24, 27, 31, 35, 39,§12086; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.9]

639.10 Appearance — judgment — perishable property. If, at the time of the service of the attachment, the claim upon which suit is brought is not due, the defendant need not appear in the action until the maturity of the demand, unless he elects to plead, in which event the cause shall stand for trial when it is reached in its regular order, and no final judgment shall be rendered therein before the maturity of the debt unless such election is made, but if perishable property is levied upon, it may be sold as in other attachment cases. [R60,§§3179, 3180; C73,§§2957, 2958; C97,§3884; C24, 27, 31, 35, 39,§12087; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.10]

639.11 Bond. In all cases before it can be issued, the plaintiff must file with the clerk a bond for the use of the defendant, with sureties to be approved by such clerk, in a penalty at least double the value of the property sought to be attached, and in no case less than two hundred fifty dollars conditioned that the plaintiff will pay all damages which the defendant may sustain by reason of the wrongful suing out of the attachment. [C51;§1853; R60,§3181; C73,§2959; C97,§3885; C24, 27, 31, 35, 39,§12088; C46, 50, 54, 58, 62, 66, 71, 73, 75, §639.11]

639.12 Bond for levy on real property only. In any case where only real property is sought to be attached, the plaintiff shall file such bond in a penalty to be fixed by the court or the clerk, and in such cases, the clerk shall issue a writ thereunder and shall direct therein that real property only shall be attached. [C31, 35, §12088-d1; C39,§12088.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.12]

639.13 Additional security. The defendant may, at any time before judgment, move the court for additional security on the part of the

plaintiff, and if, on such motion, the court is satisfied that the surety on the plaintiff's bond has removed from the state, or is not sufficient, the attachment may be vacated and restitution directed of any property taken under it, unless, in a reasonable time, to be fixed by the court, security is given by the plaintiff. [R60,§3182; C73,§2960; C97,§3886; C24, 27, 31, 35, 39,§12089; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.13]

639.14 Action on bond. In an action on such bond, the plaintiff therein may recover, if he shows that the attachment was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true, the actual damages sustained, and reasonable attorney's fees to be fixed by the court; and if it be shown such attachment was sued out maliciously, he may recover exemplary damages, nor need he wait until the principal suit is determined before suing on the bond. [C51,§1854; R60, §3183; C73,§2961; C97,§3887; C24, 27, 31, 35, 39, §12090; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.14]

Referred to in §445.4

639.15 Remedy for falsely suing out—counterclaim. The fact stated as a cause of attachment shall not be contested in the action by a mere defense. The defendant's remedy shall be on the bond, but he may in his discretion sue thereon by way of counterclaim, and in such case shall recover damages as in an original action on such bond. [R60,§3238; C73, §3017; C97,§3888; C24, 27, 31, 35, 39,§12091; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.15]

639.16 Writ to sheriff. The clerk shall issue a writ of attachment, directing the sheriff of the county therein named to attach the property of the defendant to the requisite amount therein stated. [C51,§1856; R60,§3185; C73,§2962; C97,§3889; C24, 27, 31, 35, 39,§12092; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.16]

639.17 Several writs to different counties. Attachments may be issued from the district court to different counties, and several may, at the option of the plaintiff, be issued at the same time, or in succession and subsequently, until sufficient property has been attached; but only those executed shall be taxed in the costs, unless otherwise ordered by the court. [C51, §§1855, 1858; R60,§3184; C73,§2963; C97,§3890; C24, 27, 31, 35, 39,§12093; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.17]

C97,§3890, editorially divided

639.18 Surplus levy. If more property is attached in the aggregate than the plaintiff is entitled to, the surplus must be abandoned, and the plaintiff pay all costs incurred in relation to such surplus. [C51,§1858; R60,§3184; C73,§2963; C97,§3890; C24, 27, 31, 35, 39,§12094; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.18]

639.19 Property attached. The sheriff shall in all cases attach the amount of property directed, if sufficient, not exempt from execution, is found in his county, giving that in which the defendant has a legal and unquestionable title a preference over that in which his title is doubtful or only equitable. [C51, §1857; R60,§3186; C73,§2964; C97,§3891; C24, 27, 31, 35, 39,§12095; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.19]

639.20 Several attachments. Where there are several attachments against the same defendant, they shall be executed in the order in which they were received by the sheriff. [R60, §3187; C73,§2965; C97,§3892; C24, 27, 31, 35, 39, §12096; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.20]

639.21 Following property. If, after an attachment has been placed in the hands of the sheriff, any property of the defendant is moved from the county, the sheriff may pursue and attach the same in an adjoining county within twenty-four hours after removal. [R60,§3188; C73,§2966; C97,§3893; C24, 27, 31, 35, 39,§12097; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.21]

Analogous provisions, §§643.8, 643.9

639.22 Repealed by 61GA, ch 413,§10102.

639.23 Judgments — money — things in action. Judgments, money, bank bills, and other things in action may be levied upon by the officer under an attachment in the same manner as levies are made under execution, except that notice of such levy shall be given as in levies by attachment, and after judgment such property shall be sold, appropriated, or transferred as provided for in the chapter on executions. [C51,§§1859, 1860; R60,§3194; C73,§2967; C97,§3895; C24, 27, 31, 35, 39,§12099; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.23]

Executions, ch 626
Levy on judgments, moneys, etc., §§626.21, 626.22

639.24 Property in possession of another. Property of defendant in possession of another, and of which defendant is entitled to the immediate possession, may be seized under attachment by taking possession thereof, in the same manner as though found in the defendant's possession. [C51,§§1859, 1860; R60,§3194; C73,§2967; C97,§3896; C24, 27, 31, 35, 39,§12100; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.24]

639.25 Garnishment. Property of the defendant in the possession of another, or debts due the defendant, may be attached by garnishment as hereinafter provided. [C51,§§1859, 1860; R60,§3194; C73,§2967; C97,§3897; C24, 27, 31, 35, 39,§12101; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.25]

Garnishment, ch 642

639.26 When property bound. Property capable of manual delivery, and attached otherwise than by garnishment, is bound thereby from the time manual custody thereof is taken by the officer under the attachment. [C51, §§1859, 1860, 1874; R60,§§3194, 3215; C73,§§2967, 2969; C97,§3898; C24, 27, 31, 35, 39,§12102; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.26]

Analogous provision, R.C.P. 258

639.27 Real estate. Real estate or equitable interests therein may be attached. [R60,§3243;

C73,§3022; C97,§3899; C24, 27, 31, 35, 39,§**12103**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.27]

C97,§3899, editorially divided

639.28 Lien. The levy shall be a lien thereon from the time of an entry made and signed by the officer making the same upon the encumbrance book in the office of the clerk of the county in which the land is situated, showing the levy, the date thereof, name of the county from which the attachment issued, title of the action, and a description of the land levied on. [R60,§3243; C73,§3022; C97,§3899; C24, 27, 31, 35, 39,§**12104**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.28]

Analogous provision, §626.20

639.29 Levy on equitable interest. In case of a levy upon any equitable interest in real estate, such entry shall show, in addition to the foregoing matters, the name of the person holding the legal title, and the owner of the alleged equitable interest, where known. [C97, §3899; C24, 27, 31, 35, 39,§**12105**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.29]

639.30 Lands fraudulently conveyed. The grantor of real estate conveyed in fraud of creditors shall, as to such creditors, be deemed the equitable owner thereof, and such interest may be attached as above provided, when the petition alleges such fraudulent conveyance and the holder of the legal title is made a party to the action. [C97,§3899; C24, 27, 31, 35, 39,§**12106**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §639.30]

Conveyances annulled in auxiliary proceedings, §630.16

639.31 Notice to defendant—return. When any property is attached, the officer making the levy shall at once give written notice thereof to the defendant, if found within the county in which the levy is made, and the fact of the giving of such notice, or that the defendant is not found within the county, shall be shown by the officer's return. [C51,§§1859, 1860; R60, §3194; C73,§2967; C97,§3900; C24, 27, 31, 35, 39, §**12107**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.31]

C97,§3900, editorially divided

639.32 Notice to party in possession. A like notice shall be given to the party in possession of the property attached. [C51,§1860; R60,§3194; C73,§2967; C97,§3900; C24, 27, 31, 35, 39,§**12108**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.32]

639.33 Service when party absent. If the party required to be notified is not found at his usual place of business or residence, such notice may be served upon a member of his family over fourteen years of age at such place. [C97,§3900; C24, 27, 31, 35, 39,§**12109**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.33]

639.34 Examination of defendant. Whenever it appears by the affidavit of the plaintiff, or by the return of the attachment, that no property is known to the plaintiff or the officer on which the attachment can be executed, or not enough to satisfy the plaintiff's claim, and it being shown to the court by affidavit that the defendant has property within the state not exempt, the defendant may be required to attend before the court in which the action is pending, or a commissioner appointed for that purpose, and give information on oath respecting his property. [R60,§3189; C73,§2968; C97,§3901; C24, 27, 31, 35, 39,§**12110**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.34]

639.35 Money paid clerk. All money attached by the sheriff, or coming into his hands by virtue of the attachment, shall forthwith be paid over to the clerk, to be by him retained till the further action of the court. [C51, §§1875, 1882; R60,§3217; C73,§2971; C97,§3902; C24, 27, 31, 35, 39,§**12111**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.35]

639.36 Other property. The sheriff shall make such disposition of other attached property as may be directed by the court, and, where there is no direction upon the subject, he shall safely keep the property subject to the order of the court. [R60,§3218; C73,§2972; C97,§3903; C24, 27, 31, 35, 39,§**12112**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.36]

639.37 Common or joint property. In executing an attachment against a person who owns property jointly or in common with another, the officer may take possession of such property so owned jointly or in common, sufficiently to enable him to inventory and appraise the same, and for that purpose shall call to his assistance three disinterested persons; which inventory and appraisement shall be returned by the officer with the attachment, and such return shall state who claims to own such property. [R60,§3190; C73,§2973; C97,§3904: C24, 27, 31, 35, 39,§**12113**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.37]

C97,§3904, editorially divided
Analogous provision, §626.32

639.38 Lien acquired—action to determine interest. The plaintiff shall, from the time such property is taken possession of by the officer, have a lien on the interest of the defendant therein, and may, either before or after he obtains judgment in the action in which the attachment issued, commence action by equitable proceedings to ascertain the nature and extent of such interest and to enforce the lien. [C73,§2974; C97,§3904; C24, 27, 31, 35, 39,§**12114**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §639.38]

639.39 Receiver. If deemed necessary or proper, the court may appoint a receiver under the circumstances and conditions provided in chapter 680. [C73,§2974; C97,§3904; C24, 27, 31, 35, 39,§**12115**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.39]

639.40 Personal property subject to secured interest. Personal property subject to a security interest may be levied on under attachment in the method provided for levying exe-

cution thereon. [C97,§3905; C24, 27, 31, 35, 39, §12116; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.40]

Manner of levying, §626.34 et seq.

639.41 Indemnifying bond. The provisions as to notice of ownership and indemnifying bond to be given in cases of levies under execution shall in all respects be applicable to levies made under writs of attachment. [C97, §3906; C24, 27, 31, 35, 39,§12117; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.41]

Indemnifying bond, §626.54 et seq.
Notice of ownership, §626.50 et seq.

639.42 Bond to discharge. If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the attachment, or after the return thereof, by the clerk, to the effect that he will perform the judgment of the court, the attachment shall be discharged, and restitution made of property taken or proceeds thereof. [R60, §3191; C73,§2994; C97,§3907; C24, 27, 31, 35, 39, §12118; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.42]

C97,§3907, editorially divided
Similar provisions, §§639.45, 643.12, 667.7

639.43 Automatic appearance. The execution of such bond shall be deemed an appearance of such defendant to the action. [R60, §3192; C73,§2994; C97,§3907; C24, 27, 31, 35, 39, §12119; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.43]

639.44 Judgment on bond. Such bond shall be part of the record. If judgment go against the defendant, the same shall be entered against him and sureties. [R60,§3193; C73, §2995; C97,§3908; C24, 27, 31, 35, 39,§12120; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.44]

639.45 Delivery bond. The defendant, or any person in whose possession any attached property is found, or any person making affidavit that he has an interest in it, may, at any time before judgment, discharge the property attached, or any part thereof, by giving bond with security, to be approved by the sheriff, or after the return of the writ, by the clerk, in a penalty at least double the value of the property sought to be released, but if that sum would exceed double the amount of the claim for which an attachment is sued out, then in such sum as equals double the amount of such claim, conditioned that such property or its appraised value shall be delivered to the sheriff, to satisfy any judgment which may be obtained against the defendant in that suit, within twenty days after the rendition thereof. This bond shall be filed with the clerk of the court. [C51,§1876; R60,§3219; C73,§2996; C97,§3909; C24, 27, 31, 35, 39,§12121; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.45]

Similar provisions, §§639.42, 643.12, 667.7

639.46 Appraisement. To determine the value of property in cases where a bond is to be given, unless the parties agree otherwise, the sheriff shall summon two disinterested persons having the qualification of jurors, who, after having been sworn by him to make the appraisement faithfully and impartially, shall proceed to the discharge of their duty. If such persons disagree as to the value of the property, the sheriff shall decide between them. [C51,§§1877, 1878; R60,§3220; C73,§2997; C97,§3910; C24, 27, 31, 35, 39,§12122; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.46]

639.47 Defense in action on delivery bond. In an action brought upon such bond, it shall be a sufficient defense that the property for the delivery of which the bond was given did not, at the time of the levy, belong to the defendant against whom the attachment was issued, or was exempt from seizure under such attachment. [C51,§1879; R60,§3221; C73, §2998; C97,§3911; C24, 27, 31, 35, 39,§12123; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.47]

639.48 Perishable property — examination. When the sheriff thinks the property attached in danger of serious and immediate waste and decay, or when the keeping of the same will necessarily be attended with such expense as greatly to depreciate the amount of proceeds to be realized therefrom, or when the plaintiff makes affidavit to that effect, the sheriff may summon three persons having the qualifications of jurors to examine the same. [C51, §1881; R60,§3222; C73,§2999; C97,§3912; S13,§3912-a; C24, 27, 31, 35, 39,§12124; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.48]

S13,§3912-a, editorially divided

639.49 Notice. The sheriff shall give the defendant, if within the county, three days' notice of such hearing, and he may appear before such jury and have a personal hearing. [C51,§1881; R60,§3222; C73,§2999; C97,§3912; S13, §3912-a; C24, 27, 31, 35, 39,§12125; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.49]

639.50 Determination and sale. If they are of the opinion that the property requires soon to be disposed of, they shall specify in writing a day beyond which they do not deem it prudent that it should be kept in the hands of the sheriff. If such day occurs before the trial day, he shall thereupon give the same notice as for sale of goods on execution, and for the same length of time, unless the condition of the property renders a more immediate sale necessary. The sale shall be made accordingly. If the defendant gives his written consent, such sale may be made without such finding. [C51,§1881; R60,§3222; C73,§2999; C97, §3912; S13,§3912-a; C24, 27, 31, 35, 39,§12126; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.50]

Notice of sale, §626.74 et seq.

639.51 Sheriff's return. The sheriff shall return upon every attachment what he has done under it, which must show the property attached, the time it was attached, and the disposition made of it, by a full and particular inventory; also the appraisement above contemplated when such has been made. [R60, §3224; C73,§3010; C97,§3923; C24, 27, 31, 35, 39, §12127; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.51]

C97,§3923, editorially divided

639.52 Garnishment. When garnishees are summoned, their names and the time each was summoned must be stated, with a copy of each notice of garnishment served attached as a part of his return. [R60,§3224; C73,§3010; C97,§3923; C24, 27, 31, 35, 39,§**12128**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.52]

639.53 Description of real estate. Where real property is attached, the sheriff shall describe it with certainty to identify it, and, where he can do so, by a reference to the book and page where the deed under which the defendant holds is recorded. [R60,§3224; C73, §3010; C97,§3923; C24, 27, 31, 35, 39,§**12129**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.53]

639.54 Bonds, notices and moneys. He shall return with the writ all bonds taken under it, any notice of claim to such property by another than the defendant, any indemnifying bond given by the plaintiff in consequence of such notice, and all money and bank bills levied upon or paid to him thereunder. [R60, §3224; C73,§3010; C97,§3923; C24, 27, 31, 35, 39, §**12130**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.54]

639.55 Time of return. Such return must be made immediately after he has attached sufficient property, or all that he can find. [R60, §3224; C73,§3010; C97,§3923; C24, 27, 31, 35, 39, §**12131**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.55]

639.56 Judgment—satisfaction—special execution. If judgment is rendered for the plaintiff in any case in which an attachment has been issued, the court shall apply, in satisfaction thereof, any money seized by or paid to the sheriff under such attachment and by him delivered to the clerk, and any money arising from the sales of perishable property, and if the same is not sufficient to satisfy the plaintiff's claim, the court shall order the issuance of a special execution for the sale of any other attached property which may be under his control. [R60,§3232; C73,§3011; C97, §3924; C24, 27, 31, 35, 39,§**12132**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.56]

639.57 Court may control property. The court may from time to time make and enforce proper orders respecting the property, sales, and application of the money collected. [R60,§3233; C73,§3012; C97,§3925; C24, 27, 31, 35, 39,§**12133**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §639.57]

639.58 Expenses for keeping. The sheriff shall be allowed by the court the necessary expenses of keeping the attached property, to be paid by the plaintiff and taxed in the costs. [R60,§3234; C73,§3013; C97,§3926; C24, 27, 31, 35, 39,§**12134**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §639.58]

639.59 Surplus. Any surplus of the attached property and its proceeds shall be returned to the defendant. [R60,§3235; C73,§3014; C97, §3927; C24, 27, 31, 35, 39,§**12135**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.59]

639.60 Intervention—petition. Any person other than the defendant may, before the sale of any attached property, or before the payment to the plaintiff of the proceeds thereof, or any attached debt, present his petition verified by oath to the court, disputing the validity of the attachment, or stating a claim to the property or money, or to an interest in or lien on it, under any other attachment or otherwise, and setting forth the facts upon which the claim is founded. [R60,§3237; C73,§3016; C97,§3928; C24, 27, 31, 35, 39,§**12136**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.60]

C97,§3928, editorially divided
Intervention generally, R.C.P. 75

639.61 Hearing and orders. The petitioner's claim shall be in a summary manner investigated. The court may hear the proof or order a reference, or may impanel a jury to inquire into the facts. If it is found that the petitioner has a title to, a lien on, or any interest in such property, the court shall make such order as may be necessary to protect his rights. [R60,§3237; C73,§3016; C97,§3928; C24, 27, 31, 35, 39,§**12137**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §639.61]

639.62 Costs. The costs of such proceedings shall be paid by either party at the discretion of the court. [R60,§3237; C73,§3016; C97,§3928; C24, 27, 31, 35, 39,§**12138**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.62]

639.63 Discharge on motion. A motion may be made to discharge the attachment or any part thereof, at any time before trial, for insufficiency of statement of cause thereof, or for other cause making it apparent of record that the attachment should not have issued, or should not have been levied on all or on some part of the property held. [R60,§3239; C73,§3018; C97,§3929; C24, 27, 31, 35, 39,§**12139**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.63]

639.64 Automatic discharge—canceling entry on encumbrance book. If the judgment is rendered in the action for the defendant, or, if the action is dismissed by the court, by the plaintiff, or, by agreement of the parties, or, if judgment has been entered for the plaintiff and has been satisfied of record, the attachment shall, subject to the right of appeal, automatically be discharged and the property attached, or its proceeds, shall be returned to the defendant. If the attachment has been entered on the encumbrance book, it shall be the duty of the clerk to cancel such attachment, and in his entry of cancellation, he shall refer to the entry in the case showing his authority to cancel said attachment. [R60, §3236; C73,§3015; C97,§3930; C24, 27, 31, 35, 39, §**12140**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.64]

639.65 Perfecting appeal from order of discharge. When an attachment has been discharged, if the plaintiff then announces his purpose to appeal from such order of discharge, he shall have two days in which to perfect his appeal, and during that time such discharge

shall not operate to divest any lien or claim under the attachment, nor shall the property be returned, and the appeal, if so perfected, shall operate as a supersedeas thereof. [R60, §3240; C73,§3019; C97,§3931; C24, 27, 31, 35, 39, §12141; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.65]

Perfecting appeal, R.C.P. 336 and 353

639.66 Appeal from judgment against plaintiff. If a judgment in the action be also given against the plaintiff, he must, within the same time, take his appeal thereon, or such discharge shall be final. [R60,§3241; C73,§3020; C97,§3932; C24, 27, 31, 35, 39,§12142; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.66]

639.67 Liberal construction — amendments. This chapter shall be liberally construed, and the plaintiff, at any time when objection is made thereto, shall be permitted to amend any defect in the petition, affidavit, bond, writ, or other proceeding; and no attachment shall be quashed or dismissed, or the property attached released, if the defect in any of the proceedings has or can be amended so as to show that a legal cause for the attachment existed at the time it was issued; and the court shall give the plaintiff a reasonable time to perfect such defective proceedings. [R60, §3242; C73,§3021; C97,§3933; C24, 27, 31, 35, 39, §12143; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.67]

Amendments generally, R.C.P. 88 and 249

639.68 Sheriff or officer. The word "sheriff", or "officer", as used in this chapter is meant to apply to the like officer of any other court. [C51,§1883; R60,§3244; C73,§3023; C97, §3934; C24, 27, 31, 35, 39,§12144; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.68]

639.69 Certificate of release. When real estate or an equitable interest therein is attached in any county other than that in which the action is commenced, or is pending, and the action is dismissed, or the attachment is dissolved and discharged or satisfied, the clerk of the court of the county wherein such action is pending must issue a certificate directed to the clerk of the court in which the land is situated giving date of release and setting forth a true copy of the order or release and he shall be allowed as compensation for such service the sum of fifty cents, to be taxed as a part of the costs in the case. [S13,§3934-a; C24, 27, 31, 35, 39,§12145; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.69]

639.70 Filing and recording. The clerk of the court receiving such certificate shall file and record the same upon the margin of the encumbrance book at place where the original entry of attachment is found. [S13,§3934-b; C24, 27, 31, 35, 39,§12146; C46, 50, 54, 58, 62, 66, 71, 73, 75,§639.70]

CHAPTER 640

SPECIFIC ATTACHMENT

Seizure of boats or rafts, ch 667

640.1 When authorized.
640.2 Fraudulently induced sales.
640.3 Granted by court or judge—terms.
640.4 Form of writ.
640.5 Bond to discharge.

640.1 When authorized. In an action to enforce a security interest in or a lien upon personal property, or for the recovery, sale, or partition of such property, or by a plaintiff having a future estate or interest therein for the security of his rights, where it satisfactorily appears by the petition, verified on oath, or by affidavits or the proofs in the cause, that the plaintiff has a just claim, and that the property has been or is about to be sold, concealed, or removed from the state, or where plaintiff states on oath that he has reasonable cause to believe, and does believe, that unless prevented by the court the property will be sold, concealed, or removed, an attachment may be granted against the property. [R60,§3225; C73, §3000; C97,§3913; C24, 27, 31, 35, 39,§12147; C46, 50, 54, 58, 62, 66, 71, 73, 75,§640.1]

Referred to in §640.3

640.2 Fraudulently induced sales. In an action by a vendor of property fraudulently purchased to vacate the contract and have a restoration of the property or compensation therefor, where the petition shows such fraudulent purchase of property and the amount of the plaintiff's claim, and is verified, an attachment against the property may be granted. [R60,§3226; C73,§3001; C97,§3914; C24, 27, 31, 35, 39,§12148; C46, 50, 54, 58, 62, 66, 71, 73, 75, §640.2]

Referred to in §640.3

640.3 Granted by court or judge — terms. The attachment in the cases mentioned in sections 640.1 and 640.2 may be granted by the court in which the action is brought, upon such terms and conditions as to security by the plaintiff for the damages which may be occasioned, and with such directions as to the disposition to be made of the property attached as may be just and proper under the circumstances of each case. [R60,§3227; C73, §3002; C97,§3915; C24, 27, 31, 35, 39,§12149; C46, 50, 54, 58, 62, 66, 71, 73, 75,§640.3]

640.4 Form of writ. The attachment shall describe the specific property against which it is issued, and have endorsed upon it the direction of the court as to the disposition to be made of the attached property, and be directed, executed, and returned as other attachments. [R60,§3230; C73,§3003; C97,§3916; C24, 27, 31, 35, 39,§**12150**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§640.4]

640.5 Bond to discharge. The court may, in any of the cases mentioned under this head of specific attachments, direct the terms and conditions of the bond to be executed by the defendant, with security, in order to obtain a discharge of the attachment or to release the attached property. [R60,§3231; C73,§3004; C97, §3917; C24, 27, 31, 35, 39,§**12151**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§640.5]

CHAPTER 641

ATTACHMENT BY STATE

Actions by state, R.C.P. 9

641.1 Indebtedness due the state.
641.2 Attachment authorized.
641.3 No bond required.
641.4 Bond to discharge or release.
641.5 Sheriff indemnified.

641.1 Indebtedness due the state. In all cases in which any person is indebted to the state, or to any officer or agent thereof for the use or benefit of the state, the proper county attorney or attorney general shall demand payment or security therefor, when, in the opinion of said county attorney or attorney general, the debt is not sufficiently secured. [C73,§3005; C97,§3918; C24, 27, 31, 35, 39,§**12152**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§641.1]

641.2 Attachment authorized. In all actions for money due to the state, or to any agent or officer for the use of the state, it shall be lawful for an attachment to issue against the property or debts of the defendant not exempt from execution, upon the filing of an affidavit by the county attorney of the proper county, or of the attorney general, that he verily believes that a specific amount therein stated is justly due, and the defendant therein has refused to pay or secure the same, and unless an attachment is issued against the property of the defendant there is danger that the amount due will be lost to the state. [C73,§3006; C97,§3919; C24, 27, 31, 35, 39,§**12153**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§641.2]

Referred to in §§641.4, 641.5

641.3 No bond required. The attachment so issued shall be levied as in other cases of attachment, and no bond shall be required of the plaintiff in such cases, and the sheriff shall not be authorized to require any indemnifying bond in case of such levy. [C73,§3007; C97, §3920; C24, 27, 31, 35, 39,§**12154**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§641.3]

Referred to in §§641.4, 641.5

641.4 Bond to discharge or release. An attachment levied under the provisions of sections 641.2 and 641.3 may be discharged, or any property taken thereunder may be released, by the execution of a bond with sufficient sureties, as provided by law in other cases of attachment. [C73,§3008; C97,§3921; C24, 27, 31, 35, 39,§**12155**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §641.4]

Referred to in §641.5
Delivery bond, §639.45

641.5 Sheriff indemnified. In case any sheriff shall be held liable to pay any damages by reason of the wrongful execution of any writ of attachment issued under sections 641.2 to 641.4 and if a judgment is rendered therefor, the amount thereof, when paid by such sheriff, shall become a claim against the state in his favor, and a warrant therefor shall be drawn by the state comptroller upon proper proof. [C73,§3009; C97,§3922; C24, 27, 31, 35, 39, §**12156**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§641.5]

CHAPTER 642

GARNISHMENT

Referred to in §445.4

642.1 Who may be garnished.
642.2 Garnishment of public employer.
642.3 Fund in court.
642.4 Death of garnishee.
642.5 Sheriff may take answers.
642.6 Garnishee required to appear.
642.7 Examination in court.
642.8 Witness fees.
642.9 Failure to appear or answer — cause shown.
642.10 Paying or delivering.
642.11 Answer controverted.
642.12 Notice of controverting pleadings.
642.13 Judgment against garnishee.
642.14 Notice.

642.15 Pleading by defendant — discharge of garnishee.
642.16 When debt not due.
642.17 Negotiable paper—indemnity.
642.18 Judgment conclusive.
642.19 Docket to show garnishments.
642.20 Appeal.
642.21 Exemption from net earnings.

642.1 Who may be garnished. A sheriff may be garnished for money of the defendant in his hands; a judgment debtor of the defendant, when the judgment has not been assigned on the record, or by writing filed in the office of the clerk and by him minuted as an assignment on the margin of the judgment docket; and an executor, for money due from decedent. [C51,§1862; R60,§3196; C73,§2976; C97,§3936; C24, 27, 31, 35, 39,§**12158**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.1]

C97,§3936, editorially divided
Garnishment proceedings by director of revenue, §§626.29–626.31
Return date, see R.C.P. 54(*b*)

642.2 Garnishment of public employer.

1. The state of Iowa, and all of its governmental subdivisions and agencies may be garnisheed, only as provided in this section and the consent of the state and of its governmental subdivisions and agencies to those garnishment proceedings is hereby given.

2. Garnishment pursuant to this section may be made only upon a judgment against an employee of the state, or of a governmental subdivision or agency thereof.

3. No debt of the garnishee is subject to garnishment other than the wages of the public employee.

4. Service upon the garnishee shall be made by serving an original notice with a copy of the judgment against the defendant, and with a copy of the questions specified in section 642.5, by certified mail or by personal service upon the attorney general, county attorney, city attorney or other legal counsel of the appropriate governmental unit. The garnishee shall be required to answer within thirty days following receipt of the notice.

5. If it is established that the garnishee owed wages to the defendant at the time of being served with the notice of garnishment, judgment shall be entered, subject to the requirement of section 642.14 against the garnishee in an amount not exceeding the amount recoverable upon the judgment against the defendant employee, but in no event shall the judgment granted be for any amount in excess of that permitted by section 642.21 and section 537.5105.

6. A judgment in garnishment issued pursuant to this section shall be enforceable against a garnishee only to the extent of the defendant's wages actually in the possession of the garnishee, and shall not be enforceable against any property, claims or other rights of the garnishee.

7. A person garnisheed pursuant to this section shall be subject to the provisions of this chapter not inconsistent with this section. [R60,§3196; C73,§2976; C97,§3936; C24, 27, 31, 35, 39,§**12159**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §642.2]

642.3 Fund in court. Where the property to be attached is a fund in court, the execution of a writ of attachment shall be by leaving with the clerk of the court a copy thereof, with notice, specifying the fund. [R60,§3197; C73,§2977; C97,§3937; C24, 27, 31, 35, 39,§**12160**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.3]

642.4 Death of garnishee. If the garnishee dies after he has been summoned by garnishment and pending the litigation, the proceedings may be revived by or against his heirs or legal representatives. [R60,§3198; C73,§2978; C97,§3938; C24, 27, 31, 35, 39,§**12161**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.4]

642.5 Sheriff may take answers. When the plaintiff, in writing, directs the sheriff to take the answer of the garnishee, he shall put to him the following questions:

1. Are you in any manner indebted to the defendant in this suit, or do you owe him money or property which is not yet due? If so, state the particulars.

2. Have you in your possession or under your control any property, rights, or credits of the said defendants? If so, what is the value of the same? State all particulars.

3. Do you know of any debts owing the said defendant, whether due or not due, or any property, rights, or credits belonging to him and now in the possession or under the control of others? If so, state the particulars.

The sheriff shall append the examination to his return. [C51,§§1864, 1865; R60,§§3200, 3201; C73,§2980; C97,§3939; C24, 27, 31, 35, 39, §**12162**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.5]

Referred to in §642.2

642.6 Garnishee required to appear. If the garnishee refuses to answer fully and unequivocally all the foregoing interrogatories, he shall be notified to appear and answer as above provided, and he may be so required in any event, if the plaintiff so notifies him. [C51, §1866; R60,§3202; C73,§2981; C97,§3940; C24, 27, 31, 35, 39,§**12163**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.6]

642.7 Examination in court. The questions propounded to the garnishee in court may be such as are above prescribed to be asked by the sheriff, and such others as the court may think proper. [C51,§1867; R60,§3203; C73,§2982; C97,§3941; C24, 27, 31, 35, 39,§**12164**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.7]

642.8 Witness fees. Where the garnishee is required to appear at court, unless he has

refused to answer as contemplated above, he is entitled to the pay and mileage of a witness, and may, in like manner, require advance payment before any liability shall arise for nonattendance. [C51,§1868; R60,§3204; C73,§2983; C97,§3942; C24, 27, 31, 35, 39,§**12165**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.8]

Witness fees and mileage, §622.69 et seq.

642.9 Failure to appear or answer—cause shown. If, duly summoned, and his fees tendered when demanded, he fails to appear and answer the interrogatories propounded to him without sufficient excuse, he shall be presumed to be indebted to the defendant to the full amount of the plaintiff's demand, but for a mere failure to appear no judgment shall be rendered against him until he has had an opportunity to show cause against the same. [C51,§§1869, 1870; R60,§§3205, 3206; C73,§§2984, 2985; C97,§3943; C24, 27, 31, 35, 39,§**12166**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.9]

642.10 Paying or delivering. A garnishee may, at any time after answer, exonerate himself from further responsibility by paying over to the sheriff the amount owing by him to the defendant, and placing at the sheriff's disposal the property of the defendant, or so much of said debts and property as is equal to the value of the property to be attached. [C51,§1871; R60,§3207; C73,§2986; C97,§3944; C24, 27, 31, 35, 39,§**12167**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §642.10]

642.11 Answer controverted. When the garnishee has answered the interrogatories propounded to him, the plaintiff may controvert them by pleading thereto, and an issue may be joined, which shall be tried in the usual manner, upon which trial such answer of the garnishee shall be competent testimony. [C51, §1872; R60,§3208; C73,§2987; C97,§3945; C24, 27, 31, 35, 39,§**12168**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.11]

642.12 Notice of controverting pleadings. No judgment shall be rendered against a garnishee on a pleading which controverts his answer until notice of the filing of the controverting pleading and of the time and place of trial thereon is served on the garnishee for such time and in such manner as the court or judge shall order. A garnishee who has been so notified shall not be entitled to notice of the filing of amendments or of trial thereon. [C27, 31, 35,§12168-b1; C39,§**12168.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.12]

642.13 Judgment against garnishee. If in any of the above methods it is made to appear that the garnishee was indebted to the defendant, or had any of his property in his hands, at the time of being served with the notice of garnishment, he will be liable to the plaintiff, in case judgment is finally recovered by him, to the full amount thereof, or to the amount of such indebtedness or property held by the garnishee, and the plaintiff may have a judgment against the garnishee for the amount of money due from the garnishee to the defendant in the main action, or for the delivery to the sheriff of any money or property in the garnishee's hands belonging to the defendant in the main action within a time to be fixed by the court, and for the value of the same, as fixed in said judgment, if not delivered within the time thus fixed, unless before such judgment is entered the garnishee has delivered to the sheriff such money or property. Property so delivered shall thereafter be treated as if levied upon under the writ of attachment in the usual manner. [C51,§§1871, 1873; R60,§§3207, 3209; C73,§§2986, 2988; C97,§3946; C24, 27, 31, 35, 39,§**12169**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.13]

642.14 Notice. Judgment against the garnishee shall not be entered until the principal defendant shall have had ten days' notice of the garnishment proceedings, to be served in the same manner as original notices. [C51, §1861; R60,§3195; C73,§2975; C97,§3947; S13,§3947; C24, 27, 31, 35, 39,§**12170**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.14]

Referred to in §642.2

642.15 Pleading by defendant—discharge of garnishee. The defendant in the main action may, by a suitable pleading filed in the garnishment proceedings, set up facts showing that the debt or the property with which it is sought to charge the garnishee is exempt from execution, or for any other reason is not liable for plaintiff's claim, and if issue thereon be joined by the plaintiff, it shall be tried with the issues as to the garnishee's liability. If such debt or property, or any part thereof, is found to be thus exempt or not liable, the garnishee shall be discharged as to that part which is exempt or not liable. [C97,§3948; S13, §3948; C24, 27, 31, 35, 39,§**12171**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.15]

642.16 When debt not due. If the debt of the garnishee to the defendant is not due, execution shall be suspended until its maturity. [R60,§3210; C73,§2989; C97,§3949; C24, 27, 31, 35, 39,§**12172**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §642.16]

642.17 Negotiable paper — indemnity. The garnishee shall not be made liable on a debt due by negotiable paper other than negotiable documents of title, or securities as defined in Uniform Commercial Code, section 554.8102, unless such paper is delivered, or the garnishee completely exonerated or indemnified from all liability thereon after he may have satisfied the judgment. [R60,§3211; C73,§2990; C97,§3950; C24, 27, 31, 35, 39,§**12173**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.17]

642.18 Judgment conclusive. The judgment in the garnishment action, condemning the property or debt in the hands of the garnishee to the satisfaction of the plaintiff's demand, is conclusive between the garnishee and defendant. [R60,§3212; C73,§2991; C97,§3951; C24, 27,

31, 35, 39,§12174; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.18]

642.19 Docket to show garnishments. The docketing of the original case shall contain a statement of all the garnishments therein, and when judgment is rendered against a garnishee, the same shall distinctly refer to the original judgment. [R60,§3213; C73,§2992; C97, §3952; C24, 27, 31, 35, 39,§12175; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.19]

642.20 Appeal. An appeal lies in all garnishment cases at the instance of the plaintiff, the defendant, the garnishee, or an intervenor claiming the money or property. [R60,§3214; C73,§2993; C97,§3953; C24, 27, 31, 35, 39,§12176; C46, 50, 54, 58, 62, 66, 71, 73, 75,§642.20]

642.21 Exemption from net earnings.

1. The disposable earnings of an individual shall be exempt from garnishment to the extent provided by the federal Consumer Credit Protection Act, Title III. The term "Consumer Protection Act" means the Act of Congress approved May 29, 1968, 82 Stat. 163, officially cited as the "Consumer Credit Protection Act, Title III." The maximum amount of an employee's earnings which may be garnished during any one calendar year is two hundred fifty dollars for each judgment creditor, except as provided in section 627.12.

2. No employer shall:

a. Withhold from the earnings of an individual an amount greater than that provided by law.

b. Dispose of garnished wages in any manner other than ordered by a court of law.

c. Discharge an individual by reason of his earnings having been subject to garnishment for indebtedness.

d. Be held liable for an amount not earned at the time of the service of notice of garnishment or for the costs of a garnishment action.

3. For the purpose of this section:

a. The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

b. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld. [C51,§1901; R60,§3307; C73,§3074; C97,§4011; C24, 27, 31, 35, 39,§11763; C46, 50, 54, 58, 62, 66, 71,§627.10; C73, 75,§642.21]

Referred to in §§537.5105, 537.5106, 537.5201, 642.2

CHAPTER 643

REPLEVIN

643.1 Where brought—petition.
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643.16 Assessment of value and damages—right of possession.
643.17 Judgment.
643.18 Execution.
643.19 Plaintiff's option.
643.20 Judgment on bond.
643.21 Concealment.
643.22 Exemption.

643.1 Where brought—petition. An action of replevin may be brought in any county in which the property or some part thereof is situated. The petition must be verified and must state:

1. A particular description of the property claimed.

2. Its actual value, and, where there are several articles, the actual value of each.

3. The facts constituting the plaintiff's right to the present possession thereof, and the extent of his interest in the property, whether it be full or qualified ownership.

4. That it was neither taken on the order or judgment of a court against him, nor under an execution or attachment against him or against the property; but if it was taken by either of these modes, then it must state the facts constituting an exemption from seizure by such process.

5. The facts constituting the alleged cause of detention thereof, according to his best belief.

6. The amount of damages which the affiant believes the plaintiff ought to recover for the detention thereof. [C51,§§1703, 1994, 1995; R60, §3553; C73,§3225; C97,§4163; C24, 27, 31, 35, 39, §12177; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.1]

643.2 Ordinary proceedings — joinder or counterclaim. The action shall be by ordinary proceedings, but there shall be no joinder of any cause of action not of the same kind, nor shall there be allowed any counterclaim. [R60,

§4175; C73,§3226; C97,§4164; C24, 27, 31, 35, 39, §12178; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.2]

643.3 Process on Sunday. If the plaintiff alleges in his petition that he will lose the property unless process issues on Sunday, the order may be issued and served on that day. [C73,§3227; C97,§4165; C24, 27, 31, 35, 39,§12179; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.3]

Analogous or related provisions, §§605.18, 626.6, 639.5, 667.3, and R.C.P. 57

643.4 New parties. If a third person claims the property or any part thereof, the plaintiff may amend and bring him in as a codefendant, or the defendant may obtain his substitution by the proper mode, or the claimant may himself intervene by the process of intervention. [C51,§§1684, 1999; R60,§3561; C73,§3228; C97, §4166; C24, 27, 31, 35, 39,§12180; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.4]

Interpleader, R.C.P. 35 to 41
Intervention, R.C.P. 75

643.5 Writ issued. Upon direction of the court after notice and opportunity for such hearing as it may prescribe, the clerk shall issue a writ under his hand, and the seal of the court, directed to the proper officer, requiring him to take the property therein described and deliver it to the plaintiff. [C51,§1997; R60, §3555; C73,§3230; C97,§4168; C24, 27, 31, 35, 39, §12183; C46, 50, 54, 58, 62, 66, 71, 73,§643.7; C75, §643.5]

643.6 Filing — purpose of bond. A bond shall be filed with the clerk, and be for the use of any person injured by the proceeding. [C51,§1996; R60,§3554; C73,§3229; C97,§4167; C24, 27, 31, 35, 39,§12182; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.6]

643.7 Bond. When the plaintiff desires the immediate delivery of the property, he shall execute a bond to the defendant, with sureties to be approved by the clerk, in a penalty at least equal to twice the value of the property sought to be taken, conditioned that he will appear in court on or before the day fixed in the original notice, and prosecute his action to judgment, and return the property, if a return is awarded, and pay all costs and damages that may be adjudged against him. [C51,§1996; R60,§3554; C73,§3229; C97,§4167; C24, 27, 31, 35, 39,§12181; C46, 50, 54, 58, 62, 66, 71, 73,§643.5; C75,§643.7]

643.8 Wrongful removal—service. If the petition shows that the property has been wrongfully removed into another county from the one in which the action is commenced, the writ may issue from the county whence the property was wrongfully taken, and may be served in any county where it may be found. [C73,§3230; C97,§4168; C24, 27, 31, 35, 39,§12184; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.8]

Analogous provision, §639.21

643.9 Following property — duplicate writs. When any of the property is removed to another county after the commencement of the action, the officer to whom the writ is issued may follow the same and execute the writ in any county of the state where the property is found. For the purpose of following the property, duplicate writs may be issued, if necessary, and served as the original. [R60,§3556; C73,§3231; C97,§4169; C24, 27, 31, 35, 39,§12185; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.9]

Analogous provision, §639.21

643.10 Execution of writ. The officer must forthwith execute the writ by taking possession of the property therein described, if it is found in the possession of the defendant or his agent, or of any other person who obtained possession thereof from the defendant, directly or indirectly, after the writ was placed in the officer's hands, for which purpose he may break open any dwelling house or other enclosure, having first demanded entrance and exhibited his authority, if demanded. [C51, §1998; R60,§3557; C73,§3232; C97,§4170; C24, 27, 31, 35, 39,§12186; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.10]

643.11 Defendant examined. When it appears by affidavit that the property claimed has been disposed of or concealed so that the writ cannot be executed, the court upon verified petition therefor, may compel the attendance of the defendant or other person claiming or concealing the property, and examine him on oath as to the situation of the property, and punish a willful obstruction or hindrance or disobedience of the order of the court in this respect as in case of contempt. [R60,§3558; C73,§3233; C97,§4171; C24, 27, 31, 35, 39,§12187; C46, 50, 54, 58, 62, 66, 71, 73, 75, §643.11]

Contempts, ch 665

643.12 Delivery bond. The officer, having taken the property or any part thereof, shall forthwith deliver the same to the plaintiff, unless, before the actual delivery to him, the defendant executes a bond to the plaintiff, with sureties to be approved by the clerk or officer, conditioned that he will appear in and defend the action, and deliver the property to the plaintiff, if he recovers judgment therefor, in as good condition as it was when the action was commenced, and that he will pay all costs and damages that may be adjudged against him for the taking or detention of the property. [R60,§3560; C73,§§3234, 3235; C97,§4172; C24, 27, 31, 35, 39,§12188; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.12]

C97,§4172, editorially divided
Similar provisions, §§639.42, 639.45, 667.7

643.13 Release—return of bond. Said bond shall be delivered to the officer, who shall return the property to the defendant, append the bond to the writ, return it therewith to the officer issuing it, and refer thereto in his return on the writ. [R60,§3559; C73,§3237; C97, §4172; C24, 27, 31, 35, 39,§12189; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.13]

643.14 Inspection—appraisement. When the property is so retained by the defendant, he

shall permit the officer and plaintiff to inspect the same, and, if the plaintiff so requests, the officer shall cause it to be examined and appraised by two sworn appraisers chosen by the parties to the action, or, in their default, by the officer himself, in the manner provided for other cases of appraisement, and in case they cannot agree he shall select a third, and an appraisement agreed to by two of them shall be sufficient, and he shall return their appraisement with the writ. [C73,§3236; C97,§4173; C24, 27, 31, 35, 39,§12190; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.14]

643.15 Return of writ. The officer must return the writ within sixty days after its issuance or at an earlier time if the court shall order, and shall state fully what he has done thereunder. If he has taken any property, he shall describe the same particularly. [R60,§3559; C73,§3237; C97,§4174; C24, 27, 31, 35, 39,§12191; C46, 50, 54, 58, 62, 66, 71, 73, 75, §643.15]

643.16 Assessment of value and damages—right of possession. The jury must assess the value of the property and the damages for the taking or detention thereof, whenever by their verdict there will be a judgment for the recovery or the return of the property, and, when required so to do by either party, must find the value of each article, and find which is entitled to the possession, designating his right therein, and the value of such right. [R60,§3082; C73,§3238; C97,§4175; C24, 27, 31, 35, 39,§12192; C46, 50, 54, 58, 62, 66, 71, 73, 75, §643.16]

643.17 Judgment. The judgment shall determine which party is entitled to the possession of the property, and shall designate his right therein, and if such party have not the possession thereof, shall also determine the value of the right of such party, which right shall be absolute as to an adverse party, and shall also award such damages to either party as he may be entitled to for the illegal detention thereof. If the judgment be against the plaintiff for the money value of the property, it shall also be against the sureties on his bond. [C51,§§2000, 2001; R60,§§3554, 3562, 3567; C73,§§3229, 3239; C97,§4176; C24, 27, 31, 35, 39, §12193; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.17]

643.18 Execution. The execution shall require the officer to deliver the possession of the property, particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, or rents and profits, with interest, recovered by the same judgment, out of the property of the party against whom it was rendered, subject to execution, and the value of the property for which judgment was recovered to be specified therein if a delivery thereof cannot be had, and shall in that respect be deemed an execution against property. [R60,§3253; C73,§3240; C97,§4177; C24, 27, 31, 35, 39,§12194; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.18]

643.19 Plaintiff's option. If the party found to be entitled to the property be not already in possession thereof by delivery under the provisions of this chapter or otherwise, he may at his option have an execution for the delivery of the specific property, or for the value thereof as determined by the jury, and if any article of the property cannot be obtained on execution, he may take the remainder, with the value of the missing articles. [R60,§§3563, 3568; C73,§3241; C97,§4178; C24, 27, 31, 35, 39,§12195; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.19]

643.20 Judgment on bond. When property for which a bond has been given as hereinbefore provided is not forthcoming to answer the judgment, and the party entitled thereto so elects, a judgment may be entered against the principal and sureties in the bond for its value. [C73,§3242; C97,§4179; C24, 27, 31, 35, 39, §12196; C46, 50, 54, 58, 62, 66, 71, 73, 75, §643.20]

643.21 Concealment. When it appears by the return of the officer or by the affidavit of the plaintiff that any specific property which has been adjudged to belong to one party has been concealed or removed by the other, the court may require him to attend and be examined on oath respecting such matter, and may enforce its order in this respect as in case of contempt. [R60,§3564; C73,§3243; C97,§4180; C24, 27, 31, 35, 39,§12197; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.21]

Contempts, ch 665

643.22 Exemption. A money judgment rendered under the provisions of this chapter for property exempt from execution shall also be to the same extent exempt from execution, and from all setoff or diminution by any person, which exemption may, at the election of the party in interest, be stated in the judgment. [R60,§4176; C73,§3244; C97,§4181; C24, 27, 31, 35, 39,§12198; C46, 50, 54, 58, 62, 66, 71, 73, 75,§643.22]

CHAPTER 644

LOST PROPERTY

644.1 Taking up vessels, rafts, logs and lumber.
644.2 Warrant—appraisal—return—record.
644.3 Value under twenty dollars.
644.4 Value exceeding twenty dollars.
644.5 Advertisement—when title vests.
644.6 Lost goods or money.
644.7 When owner unknown.

644.8 Advertisement.
644.9 Record of publication.
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644.11 Vesting of title.
644.12 Ownership settled.
644.13 Compensation.
644.14 Costs, charges and care—assessment.
644.15 Proceeds—forfeiture.
644.16 Responsibility of taker-up.
644.17 Penalty for selling.
644.18 Failure to comply.

644.1 Taking up vessels, rafts, logs and lumber. If any person shall stop or take up any vessel or watercraft, or any raft of logs, or part thereof, or any logs suitable for making lumber or hewn timber, or sawed lumber, found adrift within the limits or upon the boundaries of this state, of the value of five dollars or upwards, including the cargo, tackle, rigging, and other appendages of such vessel or watercraft, such person, within five days thereafter, provided the same shall not have been previously proved and restored to the owner, shall go before some district judge, district associate judge, judicial magistrate or district court clerk where such property is found, and make affidavit setting forth the exact description of such property; where and when the same was found; whether any, and if so what cargo, tackle, rigging, or other appendages were found on board or attached thereto; and that the same has not been altered or defaced, either in whole or in part, since the taking up, either by him or by any other person to his knowledge. [C51,§§876–878; R60, §1506; C73,§§1509, 1512; C97,§2371; C24, 27, 31, 35, 39,§**12199**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §644.1]

C97,§2371, editorially divided

644.2 Warrant—appraisal—return—record. The said district judge, district associate judge, judicial magistrate or district court clerk shall thereupon issue his warrant, directed to some peace officer, commanding him to summon three respectable householders of the neighborhood, who shall proceed without delay to examine and appraise such property, including cargo, tackle, rigging, and other appendages if any there be, and to make report thereof under their hands to the magistrate, judge or clerk issuing such warrant, who shall transmit a certified copy thereof to the county auditor to be recorded in the estray book in his office. [C51,§§878–880; R60,§1506; C73,§§1509, 1512; C97, §2371; C24, 27, 31, 35, 39,§**12200**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.2]

Referred to in §602.60

644.3 Value under twenty dollars. In all cases where the appraisement of any such property shall not exceed the sum of twenty dollars, the finder shall advertise the same on the door of the courthouse, and in three other of the most public places in the county, within five days after the appraisement, and if no person shall appear to claim and prove such property within six months of the time of taking up, it shall vest in the finder. [C51, §§879, 880; R60,§1507; C73,§1513; C97,§2372; S13, §2372; C24, 27, 31, 35, 39,§**12201**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.3]

644.4 Value exceeding twenty dollars. If the value thereof shall exceed the sum of twenty dollars, the county auditor, within five days from the time of the reception of the magistrate, judge or clerk's certificate at his office, shall cause an advertisement to be posted on the door of the courthouse, and at three other of the most public places in the county, and also a notice to be published once each week for three weeks successively, in some newspaper printed in this state; and if such property be not claimed or proved within ninety days after the advertisement of the same, as aforesaid, the finder shall deliver the same to the sheriff of the county wherein it was taken up, who shall thereupon proceed to sell it at public auction to the highest bidder for cash, having first given ten days' notice of the time and place of sale, and the proceeds of all such sales, after deducting the costs and other necessary expenses, shall be paid into the county treasury. [C51,§881; R60, §1507; C73,§1513; C97,§2372; S13,§2372; C24, 27, 31, 35, 39,§**12202**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.4]

644.5 Advertisement—when title vests. In all cases where any vessel, watercraft, logs, or lumber shall be taken up as aforesaid, which shall be of a value less than five dollars, the finder shall advertise the same by posting a notice of such finding in three of the most public places in the neighborhood; but in such cases he shall keep and preserve the same in his possession, and shall make restitution thereof to the owner, without fee or reward, except the same be given voluntarily when the owner claims the same, provided it shall be done in three months from such taking up or finding; but, if no owner shall claim such property within the time aforesaid, the exclusive right to it shall be vested in the finder. [C51,§§876, 877; R60,§1510; C73,§1516; C97,§2375; C24, 27, 31, 35, 39,§**12203**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.5]

644.6 Lost goods or money. If any person shall find any lost goods, money, bank notes, or other things of any description whatever, of the value of five dollars and over, such person shall inform the owner thereof, if known, and make restitution thereof. [C51,§§876–879; R60, §1508; C73,§1514; C97,§2373; C24, 27, 31, 35, 39, §**12204**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.6]

644.7 When owner unknown. If the owner be unknown, such person shall, within five days after such finding, take such money, bank notes, and a description of any other property before the county auditor of the county where the property was found, and make affidavit of

the description thereof, the time when and place where the same was found, and that no alteration has been made in the appearance thereof since the finding; whereupon the county auditor shall enter a description of the property and the value thereof, as nearly as he can determine it, in his estray book, together with the affidavit of the finder. [R60,§1508; C73,§1514; C97,§2373; C24, 27, 31, 35, 39,§12205; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.7]

644.8 Advertisement. The finder of such lost goods, money, bank notes, or other things, shall forthwith give written notice of the finding of such property. Such notice shall contain an accurate description of the property and a statement as to the time when and place where the same was found, and the post-office address of the finder. Said notice shall:

1. Be posted at the door of the courthouse in the county in which the property was found and in three other of the most public places in the said county; and

2. In case the property found shall exceed ten dollars in value, the notice shall be published once each week for three consecutive weeks in some newspaper published in and having general circulation in said county. [C51,§§877, 878, 880; R60,§§1509, 1510; C73, §§1510, 1514-1516; C97,§§2372, 2374; S13,§§2372, 2374; C24, 27, 31, 35, 39,§12206; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.8]

644.9 Record of publication. Proof of publication of said notice and of the posting thereof shall be made by affidavits of the publisher and the person posting said notices, and said affidavits shall be filed in the office of the county auditor of said county. [C51,§886; C24, 27, 31, 35, 39,§12207; C46, 50, 54, 58, 62, 66. 71, 73, 75,§644.9]

Referred to in §644.10

644.10 Additional publication. The affidavits provided for in section 644.9 shall be entered by the auditor in the proceedings of the board of supervisors and the same shall be published with the proceedings of said board. [C24, 27, 31, 35, 39,§12208; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.10]

644.11 Vesting of title. If no person appears to claim and prove ownership to said goods, money, bank notes, or other things within twelve months of the date when proof of said publication and posting is filed in the office of the county auditor, the right to such property shall irrevocably vest in said finder. [C51,§§879, 881; R60,§§1509, 1510; C73,§§1510, 1513, 1515, 1516; C97,§§2372, 2374, 2375; S13, §§2372, 2374; C24, 27, 31, 35, 39,§12209; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.11]

644.12 Ownership settled. In any case where a claim is made to property found or taken up, and the ownership of the property cannot be agreed upon by the finder and claimant, they may make a case before any district judge, associate district judge, or judicial magistrate in the county, who may hear and adjudicate it, and if either of them refuses to make such case the other may make an affidavit of the facts which have previously occurred, and the claimant shall also verify his claim by his affidavit, and the district judge, associate district judge, or judicial magistrate may take cognizance of and try the matter on the other party having one day's notice, but there shall be no appeal from the decision. This section does not bar any other remedy given by law. [C51,§890; R60,§1504; C73,§1517; C97, §2376; C24, 27, 31, 35, 39,§12210; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.12]

Referred to in §602.60

644.13 Compensation. As a reward for the taking up of boats and other vessels, and for finding lost goods, money, bank notes, and other things, before restitution of the property or proceeds thereof shall be made, the finder shall be entitled to ten percent upon the value thereof, and for taking up any logs or lumber, as hereinbefore described, twenty-five cents for each log not exceeding ten, twenty cents for each exceeding ten and not exceeding fifty, fifteen cents for each exceeding fifty, and fifty cents per thousand feet for sawed lumber. [C51,§892; R60,§1514; C73,§§1511, 1518; C97, §2377; C24, 27, 31, 35, 39,§12211; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.13]

644.14 Costs, charges and care—assessment. The owner shall also be required to pay the finder all such costs and charges as may have been paid by him for services rendered as aforesaid, including the cost of publication, together with reasonable charges for keeping and taking care of such property, which last mentioned charge, in case the finder and the owner cannot agree, shall be assessed by two disinterested householders of the neighborhood, to be appointed by some magistrate judge of the proper county, whose decision, when made, shall be binding and conclusive on all parties. [C51,§893; R60,§1514; C73,§1518; C97,§2377; C24, 27, 31, 35, 39,§12212; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.14]

644.15 Proceeds — forfeiture. The net proceeds of all sales made by the sheriff, and all money or bank notes paid over to the county treasurer, as directed in this chapter, shall remain in the hands of the county treasurer in trust for the owner, if any such shall apply within one year from the time the same shall have been paid over; but, if no owner shall appear within such time, the money shall be forfeited, and the claim of the owner thereto forever barred, in which event the money shall remain in the county treasury for the use of the common schools in said county. [C51,§885; R60,§1516; C73,§1519; C97,§2378; C24, 27, 31, 35, 39,§12213; C46, 50, 54, 58, 62, 66, 71, 73, 75, §644.15]

644.16 Responsibility of taker-up. If the taker-up of any watercraft, logs, or lumber, or finder of lost goods, bank notes, or other

things, shall take reasonable care of the same, and any unavoidable accident happens thereto without the fault or neglect of the finder or taker-up before the owner shall have an opportunity of reclaiming the same, such taker-up or finder shall not be accountable therefor, if in cases of accident as aforesaid he within ten days thereafter shall certify the same to the county auditor, who shall make an entry thereof in his estray book. [R60,§1517; C73,§1520; C97,§2379; C24, 27, 31, 35, 39,§**12214**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.16]

644.17 Penalty for selling. If any person shall trade, sell, loan, or take out of the limits of this state any such property taken up or found as aforesaid, before he shall be vested with the right to the same according to the foregoing provisions, he shall forfeit and pay double the value thereof, to be recovered by any person in an action, one half of which shall go to the plaintiff and the other half to the county. [R60,§1518; C73,§1521; C97,§2380; C24, 27, 31, 35, 39,§**12215**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.17]

644.18 Failure to comply. If any person shall take up any boat or vessel, or any logs or lumber, or shall find any goods, money, bank notes, or other things, and shall fail to comply with the requirements of this chapter, he shall forfeit and pay the sum of twenty dollars, to be recovered in an action by any person who will sue for the same, one half for the use of the person suing and the other half to be deposited in the county treasury for the use of the common schools; but nothing herein contained shall prevent the owner from having and maintaining his action for the recovery of any damage he may sustain. [R60,§1519; C73, §1522; C97,§2381; C24, 27, 31, 35, 39,§**12216**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§644.18]

CHAPTER 645

PROPERTY STOLEN OR EMBEZZLED

Referred to in §§749A.9, 751.30

645.1 Held by officer.
645.2 Delivered to owner.
645.3 Proof of title.
645.4 By order of court.
645.5 When not claimed.
645.6 Receipt given.

645.1 Held by officer. When property alleged to have been stolen or embezzled comes into the custody of a peace officer, he must hold the same subject to the order of the proper magistrate directing the disposal thereof. [C51,§3253; R60,§5049; C73,§4654; C97,§5569; C24, 27, 31, 35, 39,§**12217**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§645.1]

645.2 Delivered to owner. On satisfactory proof of title by the owner of the property, the magistrate before whom the information is laid, or who shall examine the charge against the person accused of stealing or embezzling the same, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in the preservation and keeping thereof, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property. [C51, §3254; R60,§5050; C73,§4655; C97,§5570; C24, 27, 31, 35, 39,§**12218**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§645.2]

645.3 Proof of title. If the property stolen or embezzled come into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified as before provided. [C51,§3255; R60,§5051; C73,§4656; C97,§5571; C24, 27, 31, 35, 39,§**12219**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§645.3]

645.4 By order of court. If the property stolen or embezzled has not been delivered to the owner, the court before which a conviction is had may, on proof of his title, order its restoration. [C51,§3256; R60,§5052; C73,§4657; C97, §5572; C24, 27, 31, 35, 39,§**12220**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§645.4]

645.5 When not claimed. If the property stolen or embezzled, except ammunition or firearms, be not claimed by the owner before the expiration of six months from the conviction of the person for stealing or embezzling it, the magistrate or other officer having it in his custody must, on payment of the necessary expenses incurred for its preservation, deliver it to the auditor of the county, to be applied under the direction of the board of supervisors thereof for the benefit of the poor of the county. If the stolen or embezzled property is ammunition or a firearm and the property is not claimed under the provisions of this section, the property shall be disposed of pursuant to section 749A.9. [C51,§3257; R60,§5053; C73,§4658; C97,§5573; C24, 27, 31, 35, 39,§**12221**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §645.5; 66GA, ch 1243,§2]

645.6 Receipt given. When money or other property is taken from the defendant arrested upon a charge of a public offense, the officer taking it shall, at the time, give duplicate receipts therefor, specifying particularly the amount of money and the kind of property taken; one of which receipts he must deliver to the defendant, and the other he must forth-

with file with the clerk of the district court of the county where the depositions and statements are to be sent by the magistrate. [C51, §3258; R60,§5054; C73,§4659; C97,§5574; C24, 27, 31, 35, 39,§12229; C46, 50, 54, 58, 62, 66, 71, 73, 75,§645.6]

CHAPTER 646

RECOVERY OF REAL PROPERTY

646.1 Ordinary proceedings — joinder — counterclaim.
646.2 Parties.
646.3 Title.
646.4 Tenant in common.
646.5 Service on agent.
646.6 Petition.
646.7 Abstract of title.
646.8 Unwritten muniments of title — unrecorded conveyances.
646.9 Evidence—abstract amended.
646.10 Answer.
646.11 Landlord substituted.
646.12 Possession.
646.13 Purchase pending suit.
646.14 Order to enter and survey.
646.15 Service.
646.16 Verdict—special.
646.17 General verdict.
646.18 Judgment for damages.
646.19 Use and occupation.
646.20 Improvements set off.
646.21 Wanton aggression.
646.22 Tenant—extent of liability.
646.23 Growing crops—bond.
646.24 Writ of possession.
646.25 Judgment for rent accruing.
Rule—Other proceedings not invoked, R.C.P. 255.

646.1 Ordinary proceedings — joinder — counterclaim. Actions for the recovery of real property shall be by ordinary proceedings, and there shall be no joinder and no counterclaim therein, except of like proceedings, and as provided in this chapter. [R60,§4177; C73, §3245; C97,§4182; C24, 27, 31, 35, 39,§12230; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.1]

646.2 Parties. Any person having a valid subsisting interest in real property, and a right to the immediate possession thereof, may recover the same by action against any person acting as owner, landlord, or tenant of the property claimed. [C51,§2002; R60,§3569; C73, §3246; C97,§4183; C24, 27, 31, 35, 39,§12231; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.2]

646.3 Title. The plaintiff must recover on the strength of his own title. [C51,§2020; R60, §3591; C73,§3247; C97,§4184; C24, 27, 31, 35, 39, §12232; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.3]

646.4 Tenant in common. In an action by a tenant in common or joint tenant of real property against his cotenant, the plaintiff must show, in addition to his evidence of right, that the defendant either denied the plaintiff's right, or did some act amounting to such denial. [C51,§2027; R60,§3605; C73,§3248; C97, §4185; C24, 27, 31, 35, 39,§12233; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.4]

646.5 Service on agent. When the defendant is a nonresident having an agent of record for the property in the state, service may be made upon such agent in the same manner and with the like effect as though made on the principal. [C51,§2004; R60,§3572; C73,§3249; C97, §4186; C24, 27, 31, 35, 39,§12234; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.5]

646.6 Petition. The petition may state generally that the plaintiff is entitled to the possession of the premises, particularly describing them, also the quantity of his estate and the extent of his interest therein, and that the defendant unlawfully keeps him out of possession, and the damages, if any, which he claims for withholding the same; but if he claims other damages than the rents and profits, he shall state the facts constituting the cause thereof. [R60,§3570; C73,§3250; C97,§4187; C24, 27, 31, 35, 39,§12235; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.6]

646.7 Abstract of title. The plaintiff shall attach to his petition, and the defendant to his answer, if he claims title, an abstract of the title relied on, showing from and through whom such title was obtained, together with a statement showing the page and book where the same appears of record. [C73,§3251; C97, §4188; C24, 27, 31, 35, 39,§12236; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.7]

C97,§4188, editorially divided
Abstracts, R.C.P. 272

646.8 Unwritten muniments of title — unrecorded conveyances. If such title, or any portion thereof, is not in writing, or does not appear of record, such fact shall be stated in the abstract, and either party shall furnish the adverse party with a copy of any unrecorded conveyance, or furnish a satisfactory reason for not so doing within a reasonable time after demand therefor. [C73,§3251; C97,§4188; C24, 27, 31, 35, 39,§12237; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.8]

646.9 Evidence — abstract amended. No written evidence of title shall be introduced on the trial unless it has been sufficiently re-

ferred to in such abstract, which, on motion, may be made more specific, or may be amended by the party setting it out. [C73,§3251; C97, §4188; C24, 27, 31, 35, 39,§12238; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.9]

646.10 Answer. The answer of the defendant, and each if more than one, must set forth what part of the land he claims and what interest he claims therein generally, and if as mere tenant, the name and residence of his landlord. [C51,§2005; R60,§3573; C73,§3252; C97, §4189; C24, 27, 31, 35, 39,§12239; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.10]

646.11 Landlord substituted. When it appears that the defendant is only a tenant, the landlord may be substituted by the service upon him of original notice, or by his voluntary appearance, in which case the judgment shall be conclusive against him. [C51,§2003; R60,§§3571, 3589; C73,§3253; C97,§4190; C24, 27, 31, 35, 39,§12240; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.11]

646.12 Possession. When the defendant makes defense it is not necessary to prove him in possession of the premises. [C51,§2007; R60,§3575; C73,§3254; C97,§4191; C24, 27, 31, 35, 39,§12241; C46, 50, 54, 58, 62, 66, 71, 73, 75, §646.12]

646.13 Purchase pending suit. Any person acquiring title to land or any interest therein, after commencement of an action under this chapter to recover the same, shall take subject to notice of and without prejudice to the rights of the parties to such action. [R60,§3578; C73, §3255; C97,§4192; C24, 27, 31, 35, 39,§12242; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.13]

646.14 Order to enter and survey. The court on motion, and after notice to the opposite party, may for cause shown grant an order allowing the party applying therefor to enter upon the land in controversy and make survey thereof for the purposes of the action. [C51, §2021; R60,§3592; C73,§3256; C97,§4193; C24, 27, 31, 35, 39,§12243; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.14]

646.15 Service. The order must describe the property, and a copy thereof must be served upon the owner or person having the occupancy and control of the land. [C51,§2022; R60,§3593; C73,§3257; C97,§4194; C24, 27, 31, 35, 39,§12244; C46, 50, 54, 58, 62, 66, 71, 73, 75, §646.15]

646.16 Verdict — special. The verdict may specify the extent and quantity of the plaintiff's estate and the premises to which he is entitled, with reasonable certainty, by metes and bounds and other sufficient description, according to the facts as proved. [R60,§3594; C73,§3258; C97,§4195; C24, 27, 31, 35, 39,§12245; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.16]

646.17 General verdict. A general verdict in favor of the plaintiff, without such specifications, entitles the plaintiff to the quantity of interest or estate in the premises as set forth and described in the petition. [R60,§3595; C73, §3259; C97,§4196; C24, 27, 31, 35, 39,§12246; C46, C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.17]

646.18 Judgment for damages. If the interest of the plaintiff expires before the time in which he could be put in possession, he can obtain a judgment for damages only. [C51, §2010; R60,§3579; C73,§3260; C97,§4197; C24, 27, 31, 35, 39,§12247; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.18]

646.19 Use and occupation. The plaintiff cannot recover for the use and occupation of the premises for more than five years prior to the commencement of the action. [C51, §2008; R60,§3576; C73,§3261; C97,§4198; C24, 27, 31, 35, 39,§12248; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.19]

646.20 Improvements set off. When the plaintiff is entitled to damages for withholding or using or injuring his property, the defendant may set off the value of any permanent improvements made thereon to the extent of the damages, unless he prefers to avail himself of the law for the benefit of occupying claimants. [C51,§2023; R60,§3596; C73,§3262; C97,§4199; C24, 27, 31, 35, 39,§12249; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.20]

Occupying claimants; ch 560

646.21 Wanton aggression. In case of wanton aggression on the part of the defendant, the jury may award exemplary damages. [C51, §2024; R60,§3597; C73,§3263; C97,§4200; C24, 27, 31, 35, 39,§12250; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.21]

646.22 Tenant—extent of liability. A tenant in possession in good faith, under a lease or license from another, is not liable beyond the rent in arrear at the time of suit brought for the recovery of land, and that which may afterward accrue during the continuance of his possession. [R60,§3598; C73,§3264; C97,§4201; C24, 27, 31, 35, 39,§12251; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.22]

646.23 Growing crops — bond. If the defendant avers that he has a crop sowed, planted, or growing on the premises, the jury, finding for the plaintiff, and also finding that fact, shall further find the value of the premises from the date of the trial until the first day of January next succeeding, and no execution for possession shall be issued until that time, if the defendant executes, with surety to be approved by the clerk, a bond in double such sum to the plaintiff, conditioned to pay at said date the sum so assessed, which shall be part of the record, and shall have the force and effect of a judgment, and if not paid at maturity the clerk, on the application of the plaintiff, shall issue execution thereon against all the obligors. [R60,§3599; C73,§3265; C97,§4202; C24, 27, 31, 35, 39,§12252; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.23]

646.24 Writ of possession. When the plaintiff shows himself entitled to the immediate possession of the premises, judgment shall be entered and an execution issued accordingly. [C51,§2009; R60,§3577; C73,§3266; C97,§4203; C24, 27, 31, 35, 39,§12253; C46, 50, 54, 58, 62, 66, 71, 73, 75,§646.24]

646.25 Judgment for rent accruing. The plaintiff may have judgment for the rent or rental value of the premises which accrues after judgment and before delivery of possession, by motion in the court in which the judgment was rendered, ten days' notice thereof in writing being given, unless judgment is stayed by appeal and bond given to suspend the judgment, in which case the motion may be made after the affirmance thereof. [R60,§3600; C73,§3267; C97,§4204; C24, 27, 31, 35, 39,§12254; C46, 50, 54, 58, 62, 66, 71, 73, 75, §646.25]

Other proceedings not invoked. See R.C.P. 255.

CHAPTER 647

RESTORATION OF LOST RECORDS

647.1 Action in rem.
647.2 Proceedings.
647.3 Proof required.
647.4 Filing of restored records—effect.
647.5 Costs of restoration—how paid.

647.1 Action in rem. Whenever the public records in the office of any county official in this state have been or shall hereafter be lost or destroyed in any material part, the said county on relation of said public officer or the owner of any real estate affected thereby, may bring an action in rem in equity in the district court of the state in and for the county in which said real estate is situated against all known and unknown persons, firms, or corporations that might have any interest in said real estate affected by said record, to have said lost or destroyed records restored in whole or in part.

Any number of parcels of land may be included in the same suit; and whenever said action is brought by the owner, the public official in whose office said lost or destroyed public records are required by law to be kept shall be made a defendant therein. [S13,§4227-a; C24, 27, 31, 35, 39,§12258; C46, 50, 54, 58, 62, 66, 71, 73, 75,§647.1]

647.2 Proceedings. The petition, notice, and decree in said action to restore any lost or destroyed records, and all proceedings in said suit, so far as the same relate to unknown defendants, shall conform to the statutes of this state applicable to actions against unknown defendants and unknown claimants; and all known defendants shall be served with notice in the time and manner now provided by law; and whenever said action is brought by the owner of said real estate, all clouds upon said title and defects therein and all adverse claims thereto may be adjudicated in the same suit and title quieted therein.

The provisions of rule number 251 of the Rules of Civil Procedure shall be applicable to defendants served with original notice in such action by publication. [S13,§4227-b; C24, 27, 31, 35, 39,§12259; C46, 50, 54, 58, 62, 66, 71, 73, 75, §647.2]

Unknown defendants, §617.7

647.3 Proof required. No judgment or decree restoring any lost or destroyed record in such action shall be entered by default, but the court must require proof of the facts alleged in reference thereto and the court shall make such finding of facts and decree as may be sustained by the evidence and may order such lost or destroyed record to be prepared by said public official as completely as the circumstances and proof will permit, and said record when so prepared shall be approved by the court and its approval endorsed thereon by the clerk. [S13,§4227-c; C24, 27, 31, 35, 39, §12260; C46, 50, 54, 58, 62, 66, 71, 73, 75,§647.3]

647.4 Filing of restored records—effect. All public records restored as provided by this chapter shall be filed, bound, and indexed the same as original records are required to be, and shall have the same force and effect as the original records before their loss or destruction. [S13,§4227-d; C24, 27, 31, 35, 39, §12261; C46, 50, 54, 58, 62, 66, 71, 73, 75,§647.4]

647.5 Costs of restoration—how paid. Whenever any public record is restored, as provided in this chapter, all court costs and necessary expenses of restoring the same shall be paid by the county to which said records belong, whether said action is commenced or prosecuted by a county official or by the owner of any real estate authorized to maintain such action. [SS15,§4227-e; C24, 27, 31, 35, 39,§12262; C46, 50, 54, 58, 62, 66, 71, 73, 75,§647.5]

CHAPTER 648

FORCIBLE ENTRY OR DETENTION OF REAL PROPERTY

Referred to in §602.62

648.1 Grounds.
648.2 By legal representatives.
648.3 Notice to quit.
648.4 Notice terminating tenancy.
648.5 Jurisdiction.
648.6 to 648.8 Repealed by 64GA, ch 1124,§282.
648.9 Change of venue.
648.10 Service by publication.
648.11 to 648.14 Repealed by 64GA, ch 1124,§282.
648.15 How title tried.
648.16 Priority of assignment.
648.17 Remedy not exclusive.
648.18 Possession—bar.
648.19 No joinder or counterclaim.
648.20 Order for removal.
648.21 Repealed by 64GA, ch 1124,§282.
648.22 Judgment.
648.23 Restitution.

648.1 Grounds. A summary remedy for forcible entry or detention of real property is allowable:

1. Where the defendant has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property, and detains the same.

2. Where the lessee holds over after the termination of his lease.

3. Where the lessee holds contrary to the terms of his lease.

4. Where the defendant continues in possession after a sale by foreclosure of a mortgage, or on execution, unless he claims by a title paramount to the lien by virtue of which the sale was made, or by title derived from the purchaser at the sale; in either of which cases such title shall be clearly and concisely set forth in the defendant's pleading.

5. For the nonpayment of rent, when due.

6. When the defendant or defendants remain in possession after the issuance of a valid tax deed. [C51,§§2362, 2363; R60,§§3952, 3953; C73,§§3611, 3612; C97,§4208; C24, 27, 31, 35, 39, §12263; C46, 50, 54, 58, 62, 66, 71, 73, 75, §648.1]

Referred to in §631.1

648.2 By legal representatives. The legal representative of a person who, if alive, might have been plaintiff may bring this action after his death. [C51,§2364; R60,§3954; C73,§3613; C97,§4209; C24, 27, 31, 35, 39,§12264; C46, 50, 54, 58, 62, 66, 71, 73, 75,§648.2]

648.3 Notice to quit. Before action can be brought in any except the first of the above classes, three days' notice to quit must be given to the defendant in writing. [C51,§2365; R60, §3955; C73,§3614; C97,§4210; C24, 27, 31, 35, 39, §12265; C46, 50, 54, 58, 62, 66, 71, 73, 75,§648.3]

40GA, ch 271,§2, editorially divided
Landlord and tenant provisions, §§562.4 to 562.7, inc.

648.4 Notice terminating tenancy. When the tenancy is at will and the action is based on the ground of the nonpayment of rent when due, no notice of the termination of the tenancy other than the three-day notice need be given before beginning the action. [C24, 27, 31, 35, 39,§12266; C46, 50, 54, 58, 62, 66, 71, 73, 75,§648.4]

Farm tenancies, §§562.5 to 562.7, inc.
See also §562.4

648.5 Jurisdiction. The court within the county shall have jurisdiction of actions for the forcible entry or detention of real property. It shall be tried as an equitable action. Unless commenced as a small claim, a petition shall be presented to a district court judge. The court shall make an order fixing the time and place for hearing upon said petition and shall prescribe that notice of the hearing be personally served upon the defendant or defendants, which service shall be at least five days prior to the date set for hearing. [C51,§2367; R60, §3957; C73,§3616; C97,§4211; C24, 27, 31, 35, 39, §12267; C46, 50, 54, 58, 62, 66, 71, 73, 75,§648.5]

648.6 to 648.8 Repealed by 64GA, ch 1124, §282.

648.9 Change of venue. In any such action a change of place of trial may be had as in other cases. [C51,§2367; R60,§3957; C73,§3616; C97,§4212; C24, 27, 31, 35, 39,§12270; C46, 50, 54, 58, 62, 66, 71, 73, 75,§648.9]

648.10 Service by publication. Where it is made to appear by affidavit that personal service of the original notice in such action cannot be made upon the defendant within the state, the same may be made by publication in the same manner and for the same length of time as is required in other cases where such substituted service may be made. [C97,§4213; C24, 27, 31, 35, 39,§12271; C46, 50, 54, 58, 62, 66, 71, 73, 75,§648.10]

Publication, R.C.P. 60

648.11 to 648.14 Repealed by 64GA, ch 1124, §282.

648.15 How title tried. When title is put in issue, the cause shall be tried by equitable proceedings. [C97,§4216; C24, 27, 31, 35, 39, §12276; C46, 50, 54, 58, 62, 66, 71, 73, 75,§648.15]

Referred to in §648.17

648.16 Priority of assignment. Such actions shall be accorded reasonable priority for assignment to assure their prompt disposition. No continuance shall be granted for the purpose of taking testimony in writing. [C97, §4216; C24, 27, 31, 35, 39,§12277; C46, 50, 54, 58, 62, 66, 71, 73, 75,§648.16]

Referred to in §648.17

648.17 Remedy not exclusive. Nothing contained in sections 648.15 and 648.16 shall prevent a party from suing for trespass or from testing the right of property in any other manner. [C51,§2371; R60,§3961; C73,§3620; C97,§4216; C24, 27, 31, 35, 39,§12278; C46, 50, 54, 58, 62, 66, 71, 73, 75,§648.17]

648.18 Possession—bar. Thirty days' peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to this proceeding. [C51,§2372; R60,§3962; C73,§3621; C97,§4217; C24, 27, 31, 35, 39,§12279; C46, 50, 54, 58, 62, 66, 71, 73, 75,§648.18]

648.19 No joinder or counterclaim. An action of this kind cannot be brought in connection with any other, nor can it be made the subject of counterclaim. [C51,§2373; R60,§3963; C73,§3622; C97,§4218; C24, 27, 31, 35, 39,§12280; C46, 50, 54, 58, 62, 66, 71, 73, 75,§648.19]

648.20 Order for removal. The order for removal can be executed only in the daytime. [C51,§2374; R60,§3964; C73,§3623; C97,§4219; C24, 27, 31, 35, 39,§12281; C46, 50, 54, 58, 62, 66, 71, 73, 75,§648.20]

648.21 Repealed by 64GA, ch 1124,§282.

648.22 Judgment. If the defendant is found guilty, judgment shall be entered that he be removed from the premises, and that the plaintiff be put in possession thereof, and an execution for his removal shall issue accordingly, to which shall be added a clause commanding the officer to collect the costs as in ordinary cases. [C51,§2370; R60,§3960; C73, §3619; C97,§4221; C24, 27, 31, 35, 39,§12283; C46, 50, 54, 58, 62, 66, 71, 73, 75,§648.22]

648.23 Restitution. The court, on the trial of an appeal, may issue an execution for removal or restitution, as the case may require. [C51,§2376; R60,§3966; C73,§3624; C97,§4222; C24, 27, 31, 35, 39,§12284; C46, 50, 54, 58, 62, 66, 71, 73, 75,§648.23]

CHAPTER 649

QUIETING TITLE

649.1 Who may bring action.
649.2 Petition.
649.3 Notice.
649.4 Disclaimer—costs.
649.5 Demand for quitclaim—attorney's fees.
649.6 Equitable proceedings.
649.7 Deeds—recitals—rebuttable and conclusive presumptions.
649.8 Construction of Act.

649.1 Who may bring action. An action to determine and quiet the title of real property may be brought by anyone, whether in or out of possession, having or claiming an interest therein, against any person claiming title thereto, though not in possession. [C51,§2025; R60,§3601; C73,§3273; C97,§4223; C24, 27, 31, 35, 39,§12285; C46, 50, 54, 58, 62, 66, 71, 73, 75, §649.1]

649.2 Petition. The petition therefor must be under oath, setting forth the nature and extent of his estate, and describing the premises as accurately as may be, and that he is credibly informed and believes the defendant makes or may make some claims adverse to the petitioner, and praying for the establishment of the plaintiff's estate, and that the defendant be barred and forever estopped from having or claiming any right or title to the premises adverse to the plaintiff. [R60, §3602; C73,§3274; C97,§4224; C24, 27, 31, 35, 39, §12286; C46, 50, 54, 58, 62, 66, 71, 73, 75,§649.2]

C97,§4224, editorially divided

649.3 Notice. The notice in such action shall accurately describe the property, and, in general terms, the nature and extent of the plaintiff's claim, and shall be served as in other cases. [C73,§3274; C97,§4224; C24, 27, 31, 35, 39,§12287; C46, 50, 54, 58, 62, 66, 71, 73, 75, §649.3]

649.4 Disclaimer—costs. If the defendant appears and disclaims all right and title adverse to the plaintiff, he shall recover his costs. In all other cases the costs shall be in the discretion of the court. [R60,§3603; C73,§3275; C97,§4225; C24, 27, 31, 35, 39,§12288; C46, 50, 54, 58, 62, 66, 71, 73, 75,§649.4]

649.5 Demand for quitclaim — attorney's fees. If a party, twenty days or more before bringing suit to quiet a title to real estate, shall request of the person holding an apparent adverse interest or right therein the execution of a quitclaim deed thereto, and shall also tender to him one dollar and twenty-five cents to cover the expense of the execution and delivery of the deed, and if he shall refuse or neglect to comply therewith, the filing of a disclaimer of interest or right shall not avoid the costs in an action afterwards brought, and the court may, in its discretion, if the plaintiff succeeds, tax, in addition to the ordinary costs of court, an attorney's fee for plaintiff's attorney, not exceeding twenty-five dollars if there is but a single tract not exceeding forty acres in extent, or a single lot in a city, involved, and forty dollars, if but a

single tract exceeding forty acres and not more than eighty acres; in cases in which two or more tracts are included that may not be embraced in one description, or single tracts covering more than eighty acres, or two or more city lots, a reasonable fee may be taxed, not exceeding, however, proportionately, those hereinbefore provided for. [C97,§4226; C24, 27, 31, 35, 39,§12289; C46, 50, 54, 58, 62, 66, 71, 73, 75,§649.5]

649.6 Equitable proceedings. In all other respects, the action contemplated in this chapter shall be conducted as other actions by equitable proceedings, so far as the same may be applicable, with the modifications prescribed. [C51,§2026; R60,§3604; C73,§3276; C97, §4227; C24, 27, 31, 35, 39,§12290; C46, 50, 54, 58, 62, 66, 71, 73, 75,§649.6]

649.7 Deeds — recitals — rebuttable and conclusive presumptions. In the proof of title to real estate derived from deeds or other conveyances affecting real estate, executed prior to January 1, 1905, where it appears from recitals therein that such deeds or other conveyances have been executed in pursuance to a contract assigned by the original vendee or his assignee to the grantee in such deeds or other conveyances, the recitals thereof shall be presumptive evidence of the truth of said recitals, and of the fact of said assignment, and that such assignment was made in good faith for a valuable consideration, and no action shall be maintained by such original vendee, assignee, or any person or persons holding by, through, or under such vendee or assignee, against the grantee in said deed or other conveyance, and his grantees in the record chain of title, and said recitals shall be conclusive evidence of the fact of such assignment and that it was made in good faith and for a valuable consideration. [C24, 27, 31, 35, 39,§12291; C46, 50, 54, 58, 62, 66, 71, 73, 75,§649.7]

Referred to in §649.8

649.8 Construction of Act. Section 649.7 shall not be construed to remove the bar of any other statute of limitations. [C24, 27, 31, 35, 39,§12292; C46, 50, 54, 58, 62, 66, 71, 73, 75, §649.8]

CHAPTER 650

DISPUTED CORNERS AND BOUNDARIES

650.1 When allowed.
650.2 County as party.
650.3 Notice.
650.4 Nature of action.
650.5 Petition.
650.6 Specific issues—acquiescence.
650.7 Commission.
650.8 Oath—assistants.
650.9 Hearing.
650.10 Finding as to acquiescence.
650.11 Adjournments—report.
650.12 Exceptions—hearing in court.
650.13 Decree conclusive.
650.14 Boundaries by acquiescence established.
650.15 Appeal.
650.16 Costs.
650.17 Boundaries by agreement.

650.1 When allowed. When one or more owners of land, the corners and boundaries of which are lost, destroyed, or in dispute, desire to have the same established, they may bring an action in the district court of the county where such lost, destroyed, or disputed corners or boundaries, or part thereof, are situated, against the owners of the other tracts which will be affected by the determination or establishment thereof, to have such corners or boundaries ascertained and permanently established. [C97,§4228; C24, 27, 31, 35, 39,§12293; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.1]

C97,§4228, editorially divided

650.2 County as party. If any public road is likely to be affected thereby, the proper county shall be made defendant. [C97,§4228; C24, 27, 31, 35, 39,§12294; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.2]

650.3 Notice. Notice of such action shall be given as in other cases, and if the defendants or any of them are nonresidents of the state, or unknown, they may be served by publication as is provided by law. [C97,§4229; C24, 27, 31, 35, 39,§12295; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.3]

650.4 Nature of action. The action shall be a special one. [C97,§4230; C24, 27, 31, 35, 39, §12296; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.4]

C97,§4230, editorially divided

650.5 Petition. The only necessary pleading therein shall be the petition of plaintiff describing the land involved, and, so far as may be, the interest of the respective parties, and asking that certain corners and boundaries therein described, as accurately as may be, shall be established. [C97,§4230; C24, 27, 31, 35, 39,§12297; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.5]

650.6 Specific issues—acquiescence. Either the plaintiff or defendant may, by proper plea, put in issue the fact that certain alleged boundaries or corners are the true ones, or

that such have been recognized and acquiesced in by the parties or their grantors for a period of ten consecutive years, which issue may be tried before commission is appointed, in the discretion of the court. [C97,§4230; C24, 27, 31, 35, 39,§12298; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.6]

650.7 Commission. The court in which said action is brought shall appoint a commission of one or more disinterested surveyors, who shall, at a date and place fixed by the court in the order of appointment, proceed to locate the lost, destroyed, or disputed corners and boundaries. [C97,§4231; C24, 27, 31, 35, 39, §12299; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.7]

650.8 Oath—assistants. The commissioners so appointed shall subscribe and file with the clerk, within ten days from the date of their appointment, an oath for the faithful and impartial discharge of their duties, and shall have the power to appoint necessary assistants. [C97,§4232; C24, 27, 31, 35, 39,§12300; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.8]

650.9 Hearing. At the time and in the manner specified in the order of court, the commission shall proceed to locate said boundaries and corners, and for that purpose may take the testimony of witnesses as to where the true boundaries and corners are located. [C97,§4233; C24, 27, 31, 35, 39,§12301; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.9]

C97,§4233, editorially divided

650.10 Finding as to acquiescence. If that issue is presented, the commission shall also take testimony as to whether the boundaries and corners alleged to have been recognized and acquiesced in for ten years or more have in fact been recognized and acquiesced in, and, if it finds affirmatively on such issue, shall incorporate the same into the report to the court. [C97,§4233; C24, 27, 31, 35, 39,§12302; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.10]

650.11 Adjournments—report. The proceedings may be adjourned by the commission from time to time as may be necessary, but the survey and location of the corners and boundaries must be completed and the report thereof filed with the clerk of the court within sixty days after its appointment, unless there are good and sufficient reasons for delay. [C97, §4234; C24, 27, 31, 35, 39,§12303; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.11]

650.12 Exceptions—hearing in court. Within twenty days after such report is filed, any party interested may file exceptions thereto and the court shall hear and determine them, hearing evidence in addition to that reported by the commission, if necessary, and may approve or modify such report, or again refer the matter to the same or another commission for further report. [C97,§4235; C24, 27, 31, 35, 39,§12304; C46, 50, 54, 58, 62, 66, 71, 73, 75, §650.12]

650.13 Decree conclusive. The corners and boundaries finally established by the court in such proceeding, or on appeal therefrom, shall be binding upon the parties as the corners or boundaries which had been lost, destroyed, or in dispute. [C97,§4236; C24, 27, 31, 35, 39,§12305; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.13]

C97,§4236, editorially divided

650.14 Boundaries by acquiescence established. If it is found that the boundaries and corners alleged to have been recognized and acquiesced in for ten years have been so recognized and acquiesced in, such recognized boundaries and corners shall be permanently established. [C97,§4236; C24, 27, 31, 35, 39, §12306; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.14]

650.15 Appeal. There shall be no appeal in such proceeding, except from final judgment of the court, taken in the time and manner that other appeals are, and heard as in an action by ordinary proceedings. [C97,§4237; C24, 27, 31, 35, 39,§12307; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.15]

Appeal, R.C.P. 336 and 353

650.16 Costs. The costs in the proceeding shall be taxed as the court shall think just, and shall be a lien on the land or interest therein owned by the party or parties against whom they are taxed, so far as such land is involved in the proceeding. [C97,§4238; C24, 27, 31, 35, 39,§12308; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.16]

650.17 Boundaries by agreement. Any lost or disputed corner or boundary may be determined by written agreement of all parties thereby affected, signed and acknowledged by each as required for conveyances of real estate, clearly designating the same, and accompanied by a plat thereof, which shall be recorded as an instrument affecting real estate, and shall be binding upon their heirs, successors, and assigns. [C97,§4239; C24, 27, 31, 35, 39,§12309; C46, 50, 54, 58, 62, 66, 71, 73, 75,§650.17]

Acknowledgment, §558.20 et seq.

CHAPTER 651

PARTITION

Referred to in §499B.18

Rule—The action—pending probate, R.C.P. 270.
Rule—Petition, R.C.P. 271.
Rule—Abstracts, R.C.P. 272.
Rule—Parties, R.C.P. 273.
Rule—Early appearance, R.C.P. 274.
Rule—Joinder and counterclaim, R.C.P. 275.

Rule—Jurisdiction of property — proceeds, R.C.P. 276.
651.1 Share of absent owner.
651.2 Answer.
Rule—Liens, R.C.P. 280.
Rule—Sale free of liens, R.C.P. 281.
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Rule—Division or sale, R.C.P. 278.
Rule—Possession and preservation of property, R.C.P. 282.
Rule—Referees to divide — oath — inability, R.C.P. 283.
Rule—Partition in kind, R.C.P. 284.
Rule—Specific allotment, R.C.P. 285.
651.3 Partition of part.
Rule—Report—notice—hearing, R.C.P. 286.
Rule—Decree—recording, R.C.P. 287.
651.4 Costs attending transcript.
Rule—Costs, R.C.P. 293.
Rule—Attorney fees, R.C.P. 294.
Rule—Referees to sell—bond, R.C.P. 288.
Rule—Sales — notice — expense — approval, R.C.P. 289.
Rule—Report of sale—notice, R.C.P. 290.
Rule—Approving sale—conveyance, R.C.P. 291.
Rule—Deed—validity, R.C.P. 292.
651.5 Sales disapproved.
651.6 Security to refund money.
Rule—Estate less than fee, R.C.P. 277.
Rule—Other fees, R.C.P. 295.
Rule—Final reports, R.C.P. 296.
Rule—Paying small sums, R.C.P. 297.
Rule—Unborn parties, R.C.P. 298.

The action — pending probate. See R.C.P. 270.

Petition. See R.C.P. 271.

Abstracts. See R.C.P. 272.

Parties. See R.C.P. 273.
(*a*) *Indispensable parties.*
(*b*) *Optional parties.*

Early appearance. See R.C.P. 274.

Joinder and counterclaim. See R.C.P. 275.

Jurisdiction of property — proceeds. See R.C.P. 276.

651.1 Share of absent owner. The ascertained share of any absent owner shall be retained, or the proceeds invested for his benefit, under like order. [C51,§2070; R60,§3648; C73,§3280; C97,§4243; C24, 27, 31, 35, 39,§**12317**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§651.1]

651.2 Answer. The answers of the defendants must state, among other things, the amount and nature of their respective interests. They may deny the interest of any of the plaintiffs, and by supplemental pleading, if necessary, may deny the interest of any of the other defendants. [C51,§2032; R60,§3610; C73,§3282; C97,§4245; C24, 27, 31, 35, 39,§**12318**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§651.2]

Liens. See R.C.P. 280.

Sale free of liens. See R.C.P. 281.
For initial or supplemental decree as to liens, see rules 279 and 280

Decree. See R.C.P. 279.
Sale for less than appraisement, see rule 291

Division or sale. See R.C.P. 278.

Possession and preservation of property. See R.C.P. 282.

Referees to divide — oath — inability. See R.C.P. 283.

Partition in kind. See R.C.P. 284.

Specific allotment. See R.C.P. 285.

651.3 Partition of part. When partition can be conveniently made of part of the premises but not of all, one portion may be partitioned and the other sold, as provided in this chapter. [C51,§2062; R60,§3640; C73,§3294; C97, §4257; C24, 27, 31, 35, 39,§**12332**; C46, 50, 54, **58**, 62, 66, 71, 73, 75,§651.3]

Report—notice—hearing. See R.C.P. 286.

Decree—recording. See R.C.P. 287.
(*a*) *Decree—costs.*
Further as to costs, see rule 293
(*b*) *Recording.*

651.4 Costs attending transcript. The costs of making and recording such transcript shall be taxed as part of the costs in the case. [S13,§4259; C24, 27, 31, 35, 39,§**12338**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§651.4]

Costs. See R.C.P. 293.

Attorney fees. See R.C.P. 294.

Referees to sell—bond. See R.C.P. 288.

Sales—notice—expense—approval. See R.C.P. 289.
(*a*) *Approval.*
(*b*) *Expense.*
(*c*) *Notice of public sale.*

Report of sale—notice. See R.C.P. 290.
(*a*) *Generally.*
(*b*) *Notice mandatory.*

Approving sale — conveyance. See R.C.P. 291.

Deed—validity. See R.C.P. 292.

651.5 Sales disapproved. If the sales are disapproved, the money paid and the securities given must be returned to the persons respectively entitled thereto. [C51,§2058; R60, §3636; C73,§3304; C97,§4269; C24, 27, 31, 35, 39, §**12348**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§651.5]

651.6 Security to refund money. The court in its discretion may require all or any of the parties, before they receive the moneys arising from any sale authorized in this chapter, to give satisfactory security to refund the same, with interest, in case it afterward appears that such parties were not entitled thereto. [C51,§2054; R60,§3632; C73,§3305; C97,§4270; C24, 27, 31, 35, 39,§**12349**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§651.6]

Estate less than fee. See R.C.P. 277.

Other fees. See R.C.P. 295.

Final reports. See R.C.P. 296.

Paying small sums. See R.C.P. 297.

Unborn parties. See R.C.P. 298.

CHAPTER 652

FORECLOSURE OF CHATTEL MORTGAGES

Repealed by 61GA, ch 413,§10102; see ch 554

CHAPTER 653

FORECLOSURE OF PLEDGES

Repealed by 61GA, ch 413,§10102; see ch 554

CHAPTER 654

FORECLOSURE OF REAL ESTATE MORTGAGES

Referred to in §8.45

Delay of foreclosure, §654.15

654.1 Equitable proceedings.
654.2 Deeds of trust.
654.3 Venue.
654.4 Separate suits on note and mortgage.
654.5 Judgment—sale and redemption.
654.6 Deficiency—general execution.
654.7 Overplus.
654.8 Junior encumbrancer entitled to assignment.
654.9 Payment of other liens—rebate of interest.
654.10 Amount sold.
654.11 Foreclosure of title bond.
654.12 Vendee deemed mortgagor.
RENTALS AND RECEIVERSHIP
654.13 Pledge of rents—priority.
654.14 Preference in receivership—application of rents.
654.15 Moratorium continuance.

654.1 Equitable proceedings. No deed of trust or mortgage of real estate shall be foreclosed in any other manner than by action in court by equitable proceedings. [C51,§§2083, 2096; R60,§§3660, 3673, 4179; C73,§3319; C97, §4287; C24, 27, 31, 35, 39,§**12372**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§654.1]

654.2 Deeds of trust. Deeds of trust of real property may be executed as securities for the performance of contracts, and shall be considered as, and foreclosed like, mortgages. [C51,§2096; R60,§3673; C73,§3318; C97,§4284; C24, 27, 31, 35, 39,§**12373**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§654.2]

654.3 Venue. An action for the foreclosure of a mortgage of real property, or for the sale thereof under an encumbrance or charge thereon, shall be brought in the county in which the property to be affected, or some part thereof, is situated. [C73,§2578; C97,§3493; C24, 27, 31, 35, 39,§**12374**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§654.3]

654.4 Separate suits on note and mortgage. If separate actions are brought in the same county on the bond or note, and on the mortgage given to secure it, the plaintiff must elect which to prosecute. The other will be discontinued at his cost. [C51,§2086; R60, §3663; C73,§3320; C97,§4288; C24, 27, 31, 35, 39, §**12375**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§654.4]

Action on certain judgments prohibited, ch 615
Related provision, §611.5

654.5 Judgment — sale and redemption. When a mortgage or deed of trust is foreclosed, the court shall render judgment for

the entire amount found to be due, and must direct the mortgaged property, or so much thereof as is necessary, to be sold to satisfy the same, with interest and costs. A special execution shall issue accordingly, and the sale thereunder shall be subject to redemption as in cases of sale under general execution. [C51, §2084; R60,§3661; C73,§3321; C97,§4289; C24, 27, 31, 35, 39,§**12376**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§654.5]

Redemption, ch 628

654.6 Deficiency—general execution. If the mortgaged property does not sell for sufficient to satisfy the execution, a general execution may be issued against the mortgagor, unless the parties have stipulated otherwise. [C51, §2085; R60,§3662; C73,§3322; C97,§4290; C24, 27, 31, 35, 39,§**12377**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§654.6]

See also §615.1

654.7 Overplus. If there is an overplus remaining after satisfying the mortgage and costs, and if there is no other lien upon the property, such overplus shall be paid to the mortgagor. [C51,§2089; R60,§3666; C73,§3324; C97,§4291; C24, 27, 31, 35, 39,§**12378**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§654.7]

654.8 Junior encumbrancer entitled to assignment. At any time prior to the sale, a person having a lien on the property which is junior to the mortgage will be entitled to an assignment of all the interest of the holder of the mortgage, by paying him the amount secured, with interest and costs, together with the amount of any other liens of the same holder which are paramount to his. He may then proceed with the foreclosure, or discontinue it, at his option. [C51,§2088; R60,§3665; C73,§3323; C97,§4292; C24, 27, 31, 35, 39,§**12379**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§654.8]

654.9 Payment of other liens—rebate of interest. If there are any other liens on the property sold, or other payments secured by the same mortgage, they shall be paid off in their order. If the money secured by any such lien is not yet due, a rebate of interest, to be fixed by the court must be made by the holder, or his lien on such property will be postponed to those of a junior date, and if there are none such, the balance shall be paid to the mortgagor. [C51,§2090; R60,§3667; C73, §3325; C97,§4293; C24, 27, 31, 35, 39,§**12380**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§654.9]

654.10 Amount sold. As far as practicable, the property sold must be only sufficient to satisfy the mortgage foreclosed. [C51,§2091; R60,§3668; C73,§3326; C97,§4294; C24, 27, 31, 35, 39,§**12381**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §654.10]

654.11 Foreclosure of title bond. In cases where the vendor of real estate has given a bond or other writing to convey the same on payment of the purchase money, and such money or any part thereof remains unpaid after the day fixed for payment, whether time is or is not of the essence of the contract, the vendor may file his petition asking the court to require the purchaser to perform his contract, or to foreclose and sell his interest in the property. [C51,§2094; R60,§3671; C73,§3329; C97,§4297; C24, 27, 31, 35, 39,§**12382**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§654.11]

654.12 Vendee deemed mortgagor. The vendee shall in such cases, for the purpose of the foreclosure, be treated as a mortgagor of the property purchased, and his rights may be foreclosed in a similar manner. [C51,§2095; R60,§3672; C73,§3330; C97,§4298; C24, 27, 31, 35, 39,§**12383**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §654.12]

RENTALS AND RECEIVERSHIP

654.13 Pledge of rents — priority. Whenever any real estate is encumbered by two or more real estate mortgages which in addition to the lien upon the real estate grant to the mortgagee the right to subject the rents, profits, avails and/or income from said real estate to the payment of the debt secured by such mortgage, the priority of the respective mortgagees under the provisions of their mortgages affecting the rents, profits, avails and/or incomes from the said real estate shall, as between such mortgagees, be in the same order as the priority of the lien of their respective mortgages on the real estate. [C35, §12383-e1; C39,§**12383.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§654.13]

654.14 Preference in receivership — application of rents. In any action to foreclose a real estate mortgage where a receiver is appointed to take charge of the real estate, preference shall be given to the owner in actual possession, subject to approval of the court, in leasing the mortgaged premises. The rents, profits, avails and/or income derived from said real estate shall be applied as follows:

1. To the cost of receivership.
2. To the payment of taxes due or becoming due during said receivership.
3. To pay the insurance on buildings on the premises and/or such other benefits to the real estate as may be ordered by the court..
4. The balance shall be paid and distributed as determined by the court. [C35,§12383-e2; C39,§**12383.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §654.14]

Omnibus repeal, 45GA, ch 181,§3

654.15 Moratorium continuance. In all actions for the foreclosure of real estate mortgages, deeds of trust of real property, and contracts for the purchase of real estate, when the owner or owners enter appearance and file answer admitting some indebtedness and breach of the terms of the above designated instrument (which admissions cannot after a continuance is granted hereunder, be withdrawn or denied) such owner or owners may apply for a continuance of the foreclosure

action when and where the default or inability of such party or parties to pay or perform is mainly due or brought about by reason of drought, flood, heat, hail, storm, or other climatic conditions or by reason of the infestation of pests which affect the land in controversy, or when the governor of the state of Iowa by reason of a depression shall have by proclamation declared a state of emergency to exist within this state. Said applications must be in writing and filed at or before final decree. Upon the filing of such application the court shall set a day for hearing of the same and provide by order for notice, to be given to plaintiff, of the time fixed for said hearing. If the court shall on said hearing find that the application is made in good faith, and the same is supported by competent evidence showing that default in payment or inability to pay is due to drought, flood, heat, hail, storm, or other climatic conditions or due to infestation of pests or when the governor of the state of Iowa by reason of a depression shall have by proclamation declared a state of emergency to exist within this state, the court may in its discretion continue said foreclosure proceeding or proceedings as follows:

1. If the default or breach of terms of the written instrument or instruments on which the action is based occur on or before the first day of March of any year by reason of any of the causes hereinbefore specified, causing the loss and failure of crops on the land involved in the previous year, then the continuance shall end on the first day of March of the succeeding year.

2. If the default or breach of terms of said written instrument occur after the first day of March, but during that crop year and that year's crop fails by reason of any of the causes hereinbefore set out, then the continuance shall end on the first day of March of the second succeeding year.

3. Only one such continuance shall be granted, except upon a showing of extraordinary circumstances in which event the court may in its discretion grant a second continuance for such further period as to the court may seem just and equitable, not to exceed one year.

4. The order shall provide for the appointment of a receiver to take charge of the property and to rent the same and the owner or party in possession shall be given preference in the occupancy thereof and the receiver shall collect the rents and income and distribute the proceeds as follows:

a. For the payment of the costs of receivership.

b. For the payment of taxes due or becoming due during the period of receivership.

c. For the payment of insurance on the buildings on the premises.

d. The balance remaining shall be paid to the owner of the written instrument upon which the foreclosure is based, to be credited thereon. [C39,§**12383.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§654.15]

Constitutionality, 48GA, ch 245,§2

CHAPTER 655

SATISFACTION OF MORTGAGES

655.1 Dual methods.
655.2 Penalty.
655.3 Repealed by 63GA, ch 1169,§8.
655.4 Entry of foreclosure.
655.5 Instrument of satisfaction.

655.1 Dual methods. When the amount due on a mortgage is paid off, the mortgagee, his personal representative or assignee, or those legally acting for him, and in case of payment of a school fund mortgage the county auditor, must acknowledge satisfaction thereof by execution of an instrument in writing, referring to the mortgage, and duly acknowledged and recorded. [C51,§2093; R60,§3670; C73,§3327; C97,§4295; C24, 27, 31, 35, 39,§**12384**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§655.1]

40ExGA, SF 241,§5, editorially divided
Duty of recorder, §558.45

655.2 Penalty. If he fails to do so within thirty days after being requested in writing, he shall forfeit to the mortgagor or any grantee of the property who has paid the mortgage, the sum of twenty-five dollars. [C51, §2093; R60,§3670; C73,§3327; C97,§4295; C24, 27, 31, 35, 39,§**12385**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§655.2]

655.3 Repealed by 63GA, ch 1169,§8.

655.4 Entry of foreclosure. When a judgment of foreclosure is entered in any court, the clerk shall file with the recorder an instrument in writing referring to the mortgage and duly acknowledging that the same was foreclosed and giving the date of the decree. [C73, §3328; C97,§4296; C24, 27, 31, 35, 39,§**12387**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§655.4]

C97,§4296, editorially divided

655.5 Instrument of satisfaction. When the judgment is fully paid and satisfied upon the judgment docket of such court, the clerk shall file with the recorder an instrument in

writing, referring to the mortgage and duly acknowledging a satisfaction of such mortgage, and for such service the sum of twenty-five cents will be allowed to be taxed as part of the costs of the case. [C73,§3328; C97,§4296; C24, 27, 31, 35, 39,§12388; C46, 50, 54, 58, 62, 66, 71, 73, 75,§655.5]

CHAPTER 656

FORFEITURE OF REAL ESTATE CONTRACTS

Referred to in §§8.45, 534.19(11)

656.1 Conditions prescribed.
656.2 Notice.
656.3 Service.
656.4 Compliance with notice.
656.5 Proof and record of service.
656.6 Scope of chapter.

656.1 Conditions prescribed. A contract which provides for the sale of real estate located in this state, and for the forfeiture of the vendee's rights in such contract in case the vendee fails, in specified ways, to comply with said contract, shall, nevertheless, not be forfeited or canceled except as provided in this chapter. [C97,§4299; S13,§4299; C24, 27, 31, 35, 39,§12389; C46, 50, 54, 58, 62, 66, 71, 73, 75, §656.1]

656.2 Notice. Such forfeiture and cancellation shall be initiated by the vendor or by his successor in interest, by serving or causing to be served on the vendee or his successor in interest, if known to the vendor or his successor in interest, and on the party in possession of said real estate, a written notice which shall:

1. Reasonably identify said contract, and accurately describe the real estate covered thereby.
2. Specify the terms and conditions of said contract which have not been complied with.
3. Notify said party that said contract will stand forfeited and canceled unless said party within thirty days after the completed service of said notice performs the terms and conditions in default, and, in addition, pays the reasonable costs of serving the notice. [C97, §4299; S13,§4299; C24, 27, 31, 35, 39,§12390; C46, 50, 54, 58, 62, 66, 71, 73, 75,§656.2]

656.3 Service. Said notice may be served personally or by publication, on the same conditions, and in the same manner as is provided for the service of original notices, except that when the notice is served by publication no affidavit therefor shall be required before publication. Service by publication shall be deemed complete on the day of the last publication. [C97,§4299; S13,§4299; C24, 27, 31, 35, 39,§12391; C46, 50, 54, 58, 62, 66, 71, 73, 75, §656.3]

Manner of service, R.C.P. 56.1(a); publication service, R.C.P. 60, 60.1

656.4 Compliance with notice. The right to forfeit for breach occurring before said notice was served shall terminate if, prior to the expiration of the day for performance as specified in the notice, the party in default performs the terms and conditions as to which he is in default, and pays to the party not in default the reasonable cost of serving said notice. [C97,§4300; S13,§4300; C24, 27, 31, 35, 39,§12392; C46, 50, 54, 58, 62, 66, 71, 73, 75,§656.4]

656.5 Proof and record of service. If the terms and conditions as to which there is default are not performed within said thirty days, the party serving said notice or causing the same to be served, may file for record in the office of the county recorder a copy of the notice aforesaid with proofs of service attached or endorsed thereon (and, in case of service by publication, his personal affidavit that personal service could not be made within this state), and when so filed and recorded, the said record shall be constructive notice to all parties of the due forfeiture and cancellation of said contract. [S13,§4300; C24, 27, 31, 35, 39,§12393; C46, 50, 54, 58, 62, 66, 71, 73, 75,§656.5]

656.6 Scope of chapter. This chapter shall be operative in all cases where the intention of the parties, as gathered from the contract and surrounding circumstances, is to sell or to agree to sell an interest in real estate, any contract or agreement of the parties to the contrary notwithstanding. [C97,§4301; C24, 27, 31, 35, 39,§12394; C46, 50, 54, 58, 62, 66, 71, 73, 75,§656.6]

CHAPTER 657

NUISANCES

Referred to in §§467D.23, 697.5
Billboard law violations, §319.10
Liquor law violations, §123.60

657.1 Nuisance—what constitutes — action to abate.
657.2 What deemed nuisances.
657.3 Penalty—abatement.
657.4 Process.
657.5 Repealed by 64GA, ch 1124,§282.
657.6 Stay of execution.
657.7 Expenses—how collected.
657.8 Feedlots.

657.1 Nuisance — what constitutes—action to abate. Whatever is injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the same and to recover damages sustained on account thereof. [C51,§§2131-2133; R60,§§3713-3715; C73,§3331; C97,§4302; C24, 27, 31, 35, 39,§**12395**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§657.1]

657.2 What deemed nuisances. The following are nuisances:

1. The erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture, which, by occasioning noxious exhalations, offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or the public.

2. The causing or suffering any offal, filth, or noisome substance to be collected or to remain in any place to the prejudice of others.

3. The obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.

4. The corrupting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.

5. The obstructing or encumbering by fences, buildings, or otherwise the public roads, private ways, streets, alleys, commons, landing places, or burying grounds.

6. Houses of ill fame, kept for the purpose of prostitution and lewdness, gambling houses, or places resorted to by persons using controlled substances, as defined in section 204.101, subsection 6, in violation of law, or houses where drunkenness, quarreling, fighting, or breaches of the peace are carried on or permitted to the disturbance of others.

7. Billboards, signboards, and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a public street, avenue, highway, boulevard, or alley or of a railroad or street railway track as to render dangerous the use thereof.

Similar provision, §319.10

8. Cotton-bearing cottonwood trees and all other cotton-bearing poplar trees in cities.

9. Any object or structure hereafter erected within one thousand feet of the limits of any municipal or regularly established airport or landing place, which may endanger or obstruct aerial navigation, including take-off and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the same is located.

See §§329.2, 329.5

10. The depositing or storing of inflammable junk, such as old rags, rope, cordage, rubber, bones, and paper, by dealers in such articles within the fire limits of any city, unless it be in a building of fireproof construction, is a public nuisance.

11. The emission of dense smoke, noxious fumes, or fly ash in cities is a nuisance and cities may provide the necessary rules for inspection, regulation and control.

12. Dense growth of all weeds, vines, brush, or other vegetation in any city so as to constitute a health, safety, or fire hazard is a public nuisance.

13. Trees infected with Dutch elm disease in cities. [C51,§§2759, 2761; R60,§§4409, 4411; C73, §§4089, 4091; C97,§§5078, 5080; S13,§§713-a,-b, 1056-a19; C24, 27, 31, 35, 39,§§**5740, 5741, 6567, 6743, 12396**; C46, 50,§§368.3, 368.4, 416.92, 420.54, 657.2; C54, 58, 62, 66, 71, 73, 75,§657.2]

657.3 Penalty—abatement. Whoever is convicted of erecting, causing, or continuing a public or common nuisance as provided in this chapter, or at common law when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, and the court, with or without such fine, may order such nuisance abated, and issue a warrant as hereinafter provided. [C51,§2762; R60,§4412; C73,§4092; C97,§5081; S13,§5081; C24, 27, 31, 35, 39,§**12397**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §657.3]

Referred to in §467D.23

657.4 Process. When upon indictment, complaint, or civil action any person is found guilty of erecting, causing, or continuing a nuisance, the court before whom such finding

is had may, in addition to the fine imposed, if any, or to the judgment for damages or cost for which a separate execution may issue, order that such nuisance be abated or removed at the expense of the defendant, and, after inquiry into and estimating as nearly as may be the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor. [C51,§2763; R60,§4413; C73,§4093; C97,§5082; C24, 27, 31, 35, 39,§**12398**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§657.4]

657.5 Repealed by 64GA, ch 1124,§282.

657.6 Stay of execution. Instead of issuing such warrant, the court may order the same to be stayed upon motion of the defendant, and upon his entering into an undertaking to the state, in such sum and with such surety as the court may direct, conditioned either that the defendant will discontinue said nuisance, or that, within a time limited by the court, and not exceeding six months, he will cause the same to be abated and removed, as either is directed by the court; and, upon his failure to perform the condition of his undertaking, the same shall be forfeited, and the court, upon being satisfied of such default, may order such warrant forthwith to issue, and action may be brought on such undertaking. [C51, §2765; R60,§4415; C73,§4095; C97,§5084; C24, 27, 31, 35, 39,§**12400**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§657.6]

657.7 Expenses — how collected. The expense of abating a nuisance by virtue of a warrant can be collected by the officer in the same manner as damages and costs are collected on execution, except that the materials of any buildings, fences, or other things that may be removed as a nuisance may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of the removal, such balance must be paid by the officer to the defendant, or to the owner of the property levied upon; and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof. [C51,§2766; R60,§4416; C73,§4096; C97, §5085; C24, 27, 31, 35, 39,§**12401**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§657.7]

657.8 Feedlots. This chapter shall apply to the operation of a livestock feedlot, only as provided in chapter 172D. [66GA, ch 1121,§5]

CHAPTER 658

WASTE AND TRESPASS

658.1 Treble damages.
658.2 Forfeiture and eviction.
658.3 Who deemed to have committed.
658.4 Treble damages for injury to trees.
658.5 Estate of remainder or reversion.
658.6 Action by heir.
658.7 Purchaser at execution sale.
658.8 Settlers on lands of state.
658.9 Holder of tax certificate.
658.10 Disposition of money.

658.1 Treble damages. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property commit waste thereon, he is liable to pay three times the damages which have resulted from such waste, to the person who is entitled to sue therefor. [C51, §2134; R60,§3716; C73,§3332; C97,§4303; C24, 27, 31, 35, 39,§**12402**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§658.1]

658.2 Forfeiture and eviction. Judgment of forfeiture and eviction may be rendered against the defendant whenever the amount of damages so recovered is more than two-thirds the value of the interest such defendant has in the property injured, when the action is brought by the person entitled to the reversion. [C51,§2135; R60,§3717; C73,§3333; C97, §4304; C24, 27, 31, 35, 39,§**12403**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§658.2]

658.3 Who deemed to have committed. Any person whose duty it is to prevent waste, and who fails to use reasonable and ordinary care to avert the same, shall be held to have committed it. [C51,§2136; R60,§3718; C73,§3334; C97, §4305; C24, 27, 31, 35, 39,§**12404**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§658.3]

658.4 Treble damages for injury to trees. For willfully injuring any timber, tree, or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard, or city lot, or on the public grounds of any city, or any land held by the state for any purpose whatever, the perpetrator shall pay treble damages at the suit of any person entitled to protect or enjoy the property. [C51,§2137; R60,§3719; C73,§3335; C97,§4306; C24, 27, 31, 35, 39,§**12405**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§658.4]

658.5 Estate of remainder or reversion. The owner of an estate in remainder or reversion may maintain either of the aforesaid actions for injuries done to the inheritance, notwithstanding any intervening estate for life or years. [C51,§2139; R60,§3721; C73,§3337; C97, §4307; C24, 27, 31, 35, 39,§**12406**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§658.5]

658.6 Action by heir. An heir, whether a minor or of full age, may maintain these actions for injuries done in the time of his ancestor as well as in his own time, unless barred by the statute of limitations. [C51, §2140; R60,§3722; C73,§3338; C97,§4308; C24, 27, 31, 35, 39,§**12407**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§658.6]

658.7 Purchaser at execution sale. The purchaser of lands or tenements at execution sale may have and maintain an action against any person for either of the causes above mentioned, occurring or existing after such purchase; but this provision shall not be construed to forbid the person occupying the lands in the meantime from using them in the ordinary course of husbandry, or taking timber with which to make suitable repairs thereon, unless the timber so taken shall be of higher grade than required, in which case he shall be held guilty of waste and liable accordingly. [C51,§§2141–2143; R60,§§3723–3725; C73,§§3339–3341; C97,§4309; C24, 27, 31, 35, 39, §**12408**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§658.7]

Right of purchaser, §626.101

658.8 Settlers on lands of state. Any person settled upon and occupying any portion of the public lands held by the state is not liable as a trespasser for improving or cultivating it in the ordinary course of husbandry, nor for taking and using timber or other materials necessary and proper to enable him to do so, provided the timber and other materials are taken from land properly constituting a part of the "claim" or tract of land so settled upon and occupied by him. [C51,§2144; R60,§3726; C73,§3342; C97,§4310; C24, 27, 31, 35, 39,§**12409**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§658.8]

658.9 Holder of tax certificate. The owner of a treasurer's certificate of purchase of land sold for taxes may recover treble damages of any person willfully committing waste or trespass thereon. [C73,§3343; C97,§4311; C24, 27, 31, 35, 39,§**12410**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §658.9]

Referred to in §658.10

658.10 Disposition of money. All money recovered in an action brought under section 658.9 shall be paid by the officer collecting it to the auditor of the county in which the lands are situated, which shall be held by him, and an entry thereof made in a book kept for that purpose, until the lands are redeemed, or a treasurer's deed therefor executed to the holder of said certificate. If redemption is made, the money shall be paid to the owner of the land, and if not, to the person to whom the deed is executed. [C73,§3344; C97,§4312; C24, 27, 31, 35, 39,§**12411**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§658.10]

CHAPTER 659

LIBEL AND SLANDER

659.1 Pleading.
659.2 Libel—retraction—actual damages.
659.3 Retraction — actual, special, and exemplary damages.
659.4 Candidate for office—retraction—time.
659.5 Defamatory statement by radio.
659.6 Proof of malice.

659.1 Pleading. In an action for slander or libel, it shall not be necessary to state any extrinsic facts for the purpose of showing the application to the plaintiff of any defamatory matter out of which the cause of action arose, or that the matter was used in a defamatory sense; but it shall be sufficient to state the defamatory sense in which such matter was used, and that the same was spoken or published concerning the plaintiff. [R60,§2928; C73,§2681; C97,§3592; C24, 27, 31, 35, 39,§**12412**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§659.1]

Similar provision, §737.3

659.2 Libel—retraction—actual damages. In any action for damages for the publication of a libel in a newspaper, free newspaper or shopping guide, or for defamatory statements made on a radio or television station, if the defendant can show that such libelous matter was published or broadcast through misinformation or mistake, the plaintiff shall recover no more than actual damages, unless a retraction be demanded and refused as hereinafter provided. Plaintiff shall serve upon the publisher at the principal place of publication or upon the owner of a radio or television station at his principal place of business a notice specifying the statements claimed to be libelous, and requesting that the same be withdrawn. [SS15,§3592-a; C24, 27, 31, 35, 39,§**12413**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§659.2]

Referred to in §659.4
SS15,§3592-a, editorially divided

659.3 Retraction — actual, special, and exemplary damages. If a retraction or correction thereof be not published in as conspicuous a place and type in said newspaper, free newspaper or shopping guide, as were the statements complained of, in a regular issue thereof published within two weeks after such service, or in case of a defamatory statement on a radio or television station if a retraction or

correction thereof be not broadcast at a time considered as favorable as that of the defamatory statement within two weeks after such service, plaintiff may allege such notice, demand, and failure to retract in his complaint and may recover both actual, special, and exemplary damages if his cause of action be maintained. If such retraction be so published or broadcast, he may still recover such actual, special, and exemplary damages, unless the defendant shall show that the libelous publication or defamatory statement was made in good faith, without malice, and under a mistake as to the facts. [SS15,§3592-a; C24, 27, 31, 35, 39,§**12414**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §659.3]

Referred to in §659.4

659.4 Candidate for office — retraction — time. If the plaintiff was a candidate for office at the time of the libelous publication, no retraction shall be available unless published in a conspicuous place on the editorial page, nor if the libel was published within two weeks next before the election; provided that this and sections 659.2 and 659.3 shall not apply to any libel imputing unchastity to a woman. [SS15,§3592-a; C24, 27, 31, 35, 39,§**12415**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§659.4]

659.5 Defamatory statement by radio. The owner, lessee, licensee, or operator of a radio broadcasting station, and the agents or employees of any such owner, lessee, licensee, or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a radio broadcast, by one other than such owner, lessee, licensee, or operator, or agent or employee thereof, if such owner, lessee, licensee, operator, agent, or employee shall prove the exercise of due care to prevent the publication or utterance of such statement in such broadcasts. [C39, §**12415.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§659.5]

659.6 Proof of malice. In actions for slander or libel, an unproved allegation of the truth of the matter charged shall not be deemed proof of malice, unless the jury on the whole case finds that such defense was made with malicious intent. [R60,§2929; C73,§2682; C97,§3593; C24, 27, 31, 35, 39,§**12416**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§659.6]

CHAPTER 660

QUO WARRANTO

Rule—For what causes, R.C.P. 299.
Rule—No joinder or counterclaim, R.C.P. 301.
Rule—By whom brought, R.C.P. 300.
Rule—Petition, R.C.P. 302.
Rule—Judgment, R.C.P. 303.
660.1 Books and papers.
660.2 Action for damages.
Rule—Costs, R.C.P. 304.
Rule—Corporation dissolved, R.C.P. 305.
660.3 Action against officers of corporation.
660.4 Corporation dissolved.
660.5 Bond.
660.6 Action.
660.7 Duty of trustees.
660.8 Books delivered.
660.9 Inventory.
660.10 Powers.
660.11 Penalty for refusing to obey order.

For what causes. See R.C.P. 299.

No joinder or counterclaim. See R.C.P. 301.

By whom brought. See R.C.P. 300.

Petition. See R.C.P. 302.

Judgment. See R.C.P. 303.

660.1 Books and papers. The court, after such judgment, shall order the defendant to deliver over all books and papers in his custody or under his control belonging to said office. [C51,§2159; R60,§3741; C73,§3354; C97,§4322; C24, 27, 31, 35, 39,§**12426**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§660.1]

660.2 Action for damages. When judgment has been rendered in favor of the claimant he may, at any time within one year thereafter, bring an action against the defendant, and recover the damages he has sustained by reason of the act of the defendant. [C51,§2160; R60,§3742; C73,§3355; C97,§4323; C24, 27, 31, 35, 39,§**12427**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§660.2]

Costs. See R.C.P. 304.

Corporation dissolved. See R.C.P. 305.

660.3 Action against officers of corporation. When judgment of ouster is rendered against a corporation on account of the misconduct of the directors or officers thereof, such officers shall be jointly and severally liable to an action by anyone injured thereby. [C51,§2173; R60, §3755; C73,§3359; C97,§4327; C24, 27, 31, 35, 39, §**12431**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§660.3]

660.4 Corporation dissolved. If a corporation is ousted and dissolved by the proceedings herein authorized, the court shall appoint three disinterested persons as trustees of the creditors and stockholders. [C51,§2166; R60,

§3748; C73,§3360; C97,§4328; C24, 27, 31, 35, 39, §12432; C46, 50, 54, 58, 62, 66, 71, 73, 75,§660.4]

660.5 Bond. Said trustees shall enter into a bond in such a penalty and with such security as the court approves, conditioned for the faithful discharge of their trust. [C51,§2167; R60,§3749; C73,§3361; C97,§4329; C24, 27, 31, 35, 39,§12433; C46, 50, 54, 58, 62, 66, 71, 73, 75,§660.5]

660.6 Action. Action may be brought on such bond by any person injured by the negligence or wrongful act of the trustees in the discharge of their duties. [C51,§2168; R60,§3750; C73,§3362; C97,§4330; C24, 27, 31, 35, 39,§12434; C46, 50, 54, 58, 62, 66, 71, 73, 75,§660.6]

660.7 Duty of trustees. The trustees shall proceed immediately to collect the debts and pay the liabilities of the corporation, and to divide the surplus among those thereto entitled. [C51,§2169; R60,§3751; C73,§3363; C97, §4331; C24, 27, 31, 35, 39,§12435; C46, 50, 54, 58, 62, 66, 71, 73, 75,§660.7]

660.8 Books delivered. The court shall, upon application for that purpose, order any officer of such corporation, or any other person having possession of any of the effects, books, or papers thereof, in any wise necessary for the settlement of its affairs, to deliver the same to the trustees. [C51,§2170; R60,§3752; C73,§3364; C97,§4332; C24, 27, 31, 35, 39,§12436; C46, 50, 54, 58, 62, 66, 71, 73, 75,§660.8]

660.9 Inventory. As soon as practicable after their appointment, the trustees shall make and file in the office of the clerk of the court an inventory, sworn to by each of them, of all the effects, rights, and credits which come to their possession or knowledge. [C51, §2171; R60,§3753; C73,§3365; C97,§4333; C24, 27, 31, 35, 39,§12437; C46, 50, 54, 58, 62, 66, 71, 73, 75,§660.9]

660.10 Powers. They shall sue for and recover the debts and property of the corporation, and shall be responsible to the creditors and stockholders, respectively, to the extent of the effects which come into their hands. [C51,§2172; R60,§3754; C73,§3366; C97,§4334; C24, 27, 31, 35, 39,§12438; C46, 50, 54, 58, 62, 66, 71, 73, 75,§660.10]

660.11 Penalty for refusing to obey order. Any person who without good reason refuses to obey an order of the court, as herein provided, shall be guilty of contempt, and fined in any sum not exceeding five thousand dollars, and imprisoned in the county jail until he complies therewith, and shall be further liable for the damages resulting to any person on account of his disobedience. [C51,§2174; R60,§3756; C73,§3367; C97,§4335; C24, 27, 31, 35, 39,§12439; C46, 50, 54, 58, 62, 66, 71, 73, 75, §660.11]

CHAPTER 661

MANDAMUS

661.1 Definition.
661.2 Discretion—exercise of.
661.3 Nature of action.
661.4 Order issued.
661.5 Auxiliary remedy.
661.6 "Enforceable duty" defined.
661.7 Other plain, speedy and adequate remedy.
661.8 When order granted.
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661.10 Other pleadings.
661.11 Repealed by 62GA, ch 400,§197.
661.12 Injunction may issue—joinder.
661.13 Peremptory order.
661.14 Form of order—return.
661.15 Performance by another—costs.
661.16 Temporary orders.
661.17 Appeal by state.

661.1 Definition. The action of mandamus is one brought to obtain an order commanding an inferior tribunal, board, corporation, or person to do or not to do an act, the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station. [R60,§3761; C73,§3373; C97,§4341; S13,§4341; C24, 27, 31, 35, 39,§12440; C46, 50, 54, 58, 62, 66, 71, 73, 75,§661.1]

S13,§4341, editorially divided

661.2 Discretion—exercise of. Where discretion is left to the inferior tribunal or person, the mandamus can only compel it to act, but cannot control such discretion. [C51,§2180; R60,§3763; C73,§3373; C97,§4341; S13,§4341; C24, 27, 31, 35, 39,§12441; C46, 50, 54, 58, 62, 66, 71, 73, 75,§661.2]

661.3 Nature of action. All such actions shall be tried as equitable actions. [S13,§4341; C24, 27, 31, 35, 39,§12442; C46, 50, 54, 58, 62, 66, 71, 73, 75,§661.3]

661.4 Order issued. The order may be issued by the district court to any inferior tribunal, or to any corporation, officer, or person; and by the supreme court or the court of appeals to any inferior court, if necessary, and in any other case where it is found necessary for either of those courts to exercise its legitimate power. [C51,§§2179, 2181; R60,§§3761,

3764; C73,§3374; C97,§4342; C24, 27, 31, 35, 39, §12443; C46, 50, 54, 58, 62, 66, 71, 73, 75,§661.4; 66GA, ch 1241,§75]

661.5 Auxiliary remedy. The plaintiff in any action, except those brought for the recovery of specific real or personal property, may also, as an auxiliary relief, have an order of mandamus to compel the performance of a duty established in such action. [R60,§3767; C73,§3375; C97,§4343; C24, 27, 31, 35, 39,§12444; C46, 50, 54, 58, 62, 66, 71, 73, 75,§661.5]

C97,§4343, editorially divided

661.6 "Enforceable duty" defined. If such duty, the performance of which is sought to be compelled, is not one resulting from an office, trust, or station, it must be one for the breach of which a legal right to damages is already complete at the commencement of the action, and must also be a duty of which a court of equity would enforce the performance. [R60,§3767; C73,§3375; C97,§4343; C24, 27, 31, 35, 39,§12445; C46, 50, 54, 58, 62, 66, 71, 73, 75,§661.6]

661.7 Other plain, speedy and adequate remedy. An order of mandamus shall not be issued in any case where there is a plain, speedy and adequate remedy in the ordinary course of the law, save as herein provided. [C51,§2182; R60,§3765; C73,§3376; C97,§4344; C24, 27, 31, 35, 39,§12446; C46, 50, 54, 58, 62, 66, 71, 73, 75,§661.7]

661.8 When order granted. The order of mandamus is granted on the petition of any private party aggrieved, without the concurrence of the prosecutor for the state, or on the petition of the state by the county attorney, when the public interest is concerned, and is in the name of such private party or of the state, as the case may be in fact brought. [R60,§3761; C73,§3377; C97,§4345; C24, 27, 31, 35, 39,§12447; C46, 50, 54, 58, 62, 66, 71, 73, 75, §661.8]

661.9 Petition. The plaintiff in such action shall state his claim, and shall also state facts sufficient to constitute a cause for such claim, and shall also set forth that the plaintiff, if a private individual, is personally interested therein, and that he sustains and may sustain damage by the nonperformance of such duty, and that performance thereof has been demanded by him, and refused or neglected, and shall pray an order of mandamus commanding the defendant to fulfill such duty. [R60,§3762; C73,§3378; C97,§4346; C24, 27, 31, 35, 39,§12448; C46, 50, 54, 58, 62, 66, 71, 73, 75,§661.9]

661.10 Other pleadings. The pleadings and other proceedings in any action in which a mandamus is claimed shall be the same, as nearly as may be, and costs shall be recoverable by either party, as in an ordinary action for the recovery of damages. [R60,§3766; C73,§3379; C97,§4347; C24, 27, 31, 35, 39,§12449; C46, 50, 54, 58, 62, 66, 71, 73, 75,§661.10]

661.11 Repealed by 62GA, ch 400,§197.

661.12 Injunction may issue—joinder. When the action is brought by a private person, it may be joined with a cause of action for such an injunction as may be obtained by ordinary proceedings, or with the causes of actions specified in this chapter, but no other joinder and no counterclaim shall be allowed. [R60,§4181; C73,§3380; C97,§4348; C24, 27, 31, 35, 39,§12450; C46, 50, 54, 58, 62, 66, 71, 73, 75,§661.12]

661.13 Peremptory order. When the plaintiff recovers judgment, the court may include therein a peremptory order of mandamus directed to the defendant, commanding him forthwith to perform the duty to be enforced, together with a money judgment for damages and costs, upon which an ordinary execution may issue. [R60,§3768; C73,§3381; C97,§4349; C24, 27, 31, 35, 39,§12451; C46, 50, 54, 58, 62, 66, 71, 73, 75,§661.13]

661.14 Form of order—return. The order commanding the performance of the duty shall be directed to the party and shall be returnable forthwith. No return except that of compliance shall be allowed; however, the court may upon sufficient grounds allow reasonable time for making the return. [R60,§3769; C73, §3382; C97,§4350; C24, 27, 31, 35, 39,§12452; C46, 50, 54, 58, 62, 66, 71, 73, 75,§661.14]

661.15 Performance by another—costs. The court may, upon application of the plaintiff, besides or instead of proceeding against the defendant by attachment, direct that the act required to be done may be done by the plaintiff or some other person appointed by the court, at the expense of the defendant, and, upon the act being done, the amount of such expense may be ascertained by the court, or by a referee appointed by the court, and the court may render judgment for the amount of the expense and cost, and enforce payment thereof by execution. [R60,§3770; C73,§3383; C97,§4351; C24, 27, 31, 35, 39,§12453; C46, 50, 54, 58, 62, 66, 71, 73, 75,§661.15]

661.16 Temporary orders. During the pendency of the action, the court may make temporary orders for preventing damage or injury to the plaintiff until the action is decided. [R60,§3771; C73,§3384; C97,§4352; C24, 27, 31, 35, 39,§12454; C46, 50, 54, 58, 62, 66, 71, 73, 75, §661.16]

661.17 Appeal by state. When the state is a party, it may appeal without security. [R60, §3772; C73,§3385; C97,§4353; C24, 27, 31, 35, 39, §12455; C46, 50, 54, 58, 62, 66, 71, 73, 75, §661.17]

CHAPTER 662

CERTIORARI

When writ may issue. See R.C.P. 306.

Other remedies. See R.C.P. 308.

The writ. See R.C.P. 309.

Stay—bond. See R.C.P. 310.

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CHAPTER 663

HABEAS CORPUS

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663.2 Verification—presentation to court.
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663.40 Plaintiff retained in custody.
663.41 Right to be present waived.
663.42 Disobedience of order.
663.43 Papers filed with clerk.
663.44 Costs.

663.1 Petition. The petition for the writ of habeas corpus must state:

1. That the person in whose behalf it is sought is restrained of his liberty, and the person by whom and the place where he is so restrained, mentioning the names of the parties, if known, and if unknown describing them with as much particularity as practicable.

2. The cause or pretense of such restraint, according to the best information of the applicant; and if by virtue of any legal process, a copy thereof must be annexed, or a satisfactory reason given for its absence.

3. That the restraint is illegal, and wherein.

4. That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best knowledge and belief of the applicant.

5. Whether application for the writ has been before made to and refused by any court or judge, and if so, a copy of the petition in that case must be attached, with the reasons for the refusal, or satisfactory reasons given for the failure to do so. [C51,§2213; R60,§3801; C73, §3449; C97,§4417; C24, 27, 31, 35, 39,§12468; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.1]

Referred to in §663A.1

663.2 Verification — presentation to court. The petition must be sworn to by the person confined, or by someone in his behalf, and pre-

sented to some court or officer authorized to allow the writ. [C51,§2214; R60,§3802; C73, §3450; C97,§4418; C24, 27, 31, 35, 39,§**12469**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.2]

Referred to in §663A.1

663.3 Writ allowed—service. The writ may be allowed by the supreme or district court, or by a supreme court judge or district judge, and may be served in any part of the state. [C51, §2215; R60,§3803; C73,§3451; C97,§4419; C24, 27, 31, 35, 39,§**12470**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.3]

Referred to in §663A.1

663.4 Application—to whom made. Application for the writ must be made to the court or judge most convenient in point of distance to the applicant, and the more remote court or judge, if applied to therefor, may refuse the same unless a sufficient reason be stated in the petition for not making the application to the more convenient court or a judge thereof. [C51,§2217; R60,§3805; C73,§3452; C97,§4420; S13, §4420; C24, 27, 31, 35, 39,§**12471**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.4]

S13,§4420, editorially divided
Referred to in §§663.5, 663A.1

663.5 Inmates of state or federal institutions. When the applicant is confined in a state or federal institution, other than a penal institution, the provisions of section 663.4 relating to the court to which or the judge to whom applications must be made are mandatory, and the convenience or preference of an attorney or witness or other person interested in the release of the applicant shall not be a sufficient reason to authorize a more remote court or judge to assume jurisdiction. [S13, §4420; C24, 27, 31, 35, 39,§**12472**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.5]

Referred to in §663A.1

663.6 Writ refused. If, from the showing of the petitioner, the plaintiff would not be entitled to any relief, the court or judge must refuse to allow the writ. [C51,§2218; R60,§3806; C73,§3453; C97,§4421; C24, 27, 31, 35, 39,§**12473**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.6]

Referred to in §663A.1

663.7 Reasons endorsed. If the writ is disallowed, the court or judge shall cause the reasons thereof to be appended to the petition and returned to the person applying for the writ. [C51,§2221; R60,§3809; C73,§3454; C97, §4422; C24, 27, 31, 35, 39,§**12474**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.7]

Referred to in §663A.1

663.8 Form of writ. If the petition is in accordance with the foregoing requirements, and states sufficient grounds for the allowance of the writ, it shall issue, and may be substantially as follows:

The State of Iowa,

To A..... B.....:

You are hereby commanded to have the body of C..... D....., by you unlawfully detained, as is alleged, before the court (or before me, or before E..... F....., judge, etc., as the case may be), at ....., on..... (or immediately after being served with this writ), to be dealt with according to law, and have you then and there this writ, with a return thereon of your doings in the premises. [C51,§2219; R60,§3807; C73,§3455; C97,§4423; C24, 27, 31, 35, 39,§**12475**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.8]

Referred to in §663A.1

663.9 How issued. When the writ is allowed by a court, it must be issued by the clerk, but when by a judge, he must issue it himself, subscribing his name thereto. [C51, §2220; R60,§3808; C73,§3456; C97,§4424; C24, 27, 31, 35, 39,§**12476**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.9]

Referred to in §663A.1

663.10 Penalty for refusing. Any judge, whether acting individually or as a member of the court, who wrongfully and willfully refuses the allowance of the writ when properly applied for, shall forfeit to the party aggrieved the sum of one thousand dollars. [C51, §2222; R60,§3810; C73,§3457; C97,§4425; C24, 27, 31, 35, 39,§**12477**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.10]

Referred to in §663A.1

663.11 Issuance on judge's own motion. When any court or judge authorized to grant the writ has evidence, from a judicial proceeding before him, that any person within the jurisdiction of such court or officer is illegally restrained of his liberty, such court or judge shall issue the writ or cause it to be issued, on its or his own motion. [C51,§2223; R60, §3811; C73,§3458; C97,§4426; C24, 27, 31, 35, 39, §**12478**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.11]

Referred to in §663A.1

663.12 County attorney notified. The court or officer allowing the writ must cause the county attorney of the proper county to be informed thereof, and of the time and place where and when it is made returnable. [C51, §2240; R60,§3828; C73,§3459; C97,§4427; C24, 27, 31, 35, 39,§**12479**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.12]

Referred to in §663A.1

663.13 Service of writ. The writ may be served by the sheriff, or by any other person appointed in writing for that purpose by the court or judge by whom it is issued or allowed. If served by any other than the sheriff, he possesses the same power, and is liable to the same penalty for a nonperformance of his duty, as though he were the sheriff. [C51, §2224; R60,§3812; C73,§3460; C97,§4428; C24, 27, 31, 35, 39,§**12480**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.13]

Referred to in §663A.1

663.14 Mode. The service shall be made by leaving the original writ with the defendant, and preserving a copy thereof on which to make the return of service, but a failure in this respect shall not be held material. [C51,

§2225; R60,§3813; C73,§3461; C97,§4429; C24, 27, 31, 35, 39,§**12481**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.14]

Referred to in §663A.1

663.15 Defendant not found. If the defendant cannot be found, or if he has not the plaintiff in custody, the service may be made upon any person who has, in the same manner and with the same effect as though he had been made defendant therein. [C51,§2226; R60, §3814; C73,§3462; C97,§4430; C24, 27, 31, 35, 39, §**12482**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.15]

Referred to in §663A.1

663.16 Power of officer. If the defendant conceals himself, or refuses admittance to the person attempting to serve the writ, or if he attempts wrongfully to carry the plaintiff out of the county or the state after the service of the writ, the sheriff, or the person who is attempting to serve or who has served it, is authorized to arrest the defendant and bring him, together with the plaintiff, forthwith before the officer or court before whom the writ is made returnable. [C51,§2227; R60,§3815; C73, §3463; C97,§4431; C24, 27, 31, 35, 39,§**12483**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.16]

Referred to in §663A.1

663.17 Arrest. In order to make the arrest, the sheriff or other person having the writ possesses the same power as is given to a sheriff for the arrest of a person charged with a felony. [C51,§2228; R60,§3816; C73,§3464; C97,§4432; C24, 27, 31, 35, 39,§**12484**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.17]

Referred to in §663A.1
Arrest, ch 755 et seq.

663.18 Repealed by 63GA, ch 1276,§16.

663.19 Defects in writ. The writ must not be disobeyed for any defects of form or misdescription of the plaintiff or defendant, provided enough is stated to show the meaning and intent thereof. [C51,§2234; R60,§3822; C73, §3466; C97,§4434; C24, 27, 31, 35, 39,§**12486**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.19]

Referred to in §663A.1

663.20 Penalty for eluding writ. If the defendant attempts to elude the service of the writ, or to avoid the effect thereof by transferring the plaintiff to another, or by concealing him, he shall, on conviction, be imprisoned in the penitentiary or county jail not more than one year, and fined not exceeding one thousand dollars, and any person knowingly aiding or abetting in any such act shall be subject to like punishment. [C51,§2253; R60, §3841; C73,§3467; C97,§4435; C24, 27, 31, 35, 39, §**12487**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.20]

Referred to in §663A.1

663.21 Refusal to give copy of process. An officer refusing to deliver a copy of any legal process by which he detains the plaintiff in custody to any person who demands it and tenders the fees therefor, shall forfeit two hundred dollars to the person who demands it. [C51,§2254; R60,§3842; C73,§3468; C97,§4436; C24, 27, 31, 35, 39,§**12488**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.21]

Referred to in §663A.1

663.22 Preliminary writ. The court or judge to whom the application for the writ is made, if satisfied that the plaintiff would suffer any irreparable injury before he could be relieved by the proceedings above authorized, may issue an order to the sheriff, or any other person selected instead, commanding him to bring the plaintiff forthwith before such court or judge. [C51,§2230; R60,§3818; C73,§3469; C97, §4437; C24, 27, 31, 35, 39,§**12489**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.22]

Referred to in §663A.1

663.23 Arrest of defendant. If the evidence is sufficient to justify the arrest of the defendant for a criminal offense committed in connection with the illegal detention of the plaintiff, the order must also direct the arrest of the defendant. [C51,§2231; R60,§3819; C73, §3470; C97,§4438; C24, 27, 31, 35, 39,§**12490**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.23]

Referred to in §663A.1

663.24 Execution of writ—return. The officer or person to whom the order is directed must execute the same by bringing the defendant, and also the plaintiff if required, before the court or judge issuing it, and the defendant must make return to the writ in the same manner as if the ordinary course had been pursued. [C51,§2232; R60,§3820; C73,§3471; C97,§4439; C24, 27, 31, 35, 39,§**12491**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.24]

Referred to in §663A.1

663.25 Examination. The defendant may also be examined and committed, or bailed, or discharged, according to the nature of the case. [C51,§2233; R60,§3821; C73,§3472; C97,§4440; C24, 27, 31, 35, 39,§**12492**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.25]

Referred to in §663A.1

663.26 Informalities. Any person served with the writ is to be presumed to be the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person. [C51,§2235; R60,§3823; C73,§3473; C97,§4441; C24, 27, 31, 35, 39,§**12493**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §663.26]

Referred to in §663A.1

663.27 Appearance—answer. Service being made in any of the modes herein provided, the defendant must appear at the proper time and answer the petition, but no verification shall be required to the answer. [C51,§2236; R60, §§3824, 4182; C73,§3474; C97,§4442; C24, 27, 31, 35, 39,§**12494**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.27]

Referred to in §663A.1

663.28 Body to be produced. He must also produce the body of the plaintiff, or show good cause for not doing so. [C51,§2237; R60,

§3825; C73,§3475; C97,§4443; C24, 27, 31, 35, 39, §12495; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.28]

Referred to in §663A.1

663.29 Penalty—contempt. A willful failure to comply with the above requirements will render the defendant liable to be attached for contempt, and to be imprisoned till he complies, and shall subject him to the forfeiture of one thousand dollars to the party thereby aggrieved. [C51,§2238; R60,§3826; C73,§3476; C97,§4444; C24, 27, 31, 35, 39,§12496; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.29]

Referred to in §663A.1

663.30 Attachment. Such attachment may be served by the sheriff or any other person authorized by the court or judge, who shall also be empowered to produce the body of the plaintiff forthwith, and has, for this purpose, the same powers as are above conferred in similar cases. [C51,§2239; R60,§3827; C73,§3477; C97,§4445; C24, 27, 31, 35, 39,§12497; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.30]

Referred to in §663A.1

663.31 Answer. The defendant in his answer must state whether he then has, or at any time has had, the plaintiff under his control and restraint, and if so the cause thereof. [C51,§2241; R60,§3829; C73,§3478; C97,§4446; C24, 27, 31, 35, 39,§12498; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.31]

Referred to in §663A.1

663.32 Transfer of plaintiff. If he has transferred him to another person, he must state that fact, and to whom, and the time thereof, as well as the reason or authority therefor. [C51,§2242; R60,§3830; C73,§3479; C97,§4447; C24, 27, 31, 35, 39,§12499; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.32]

Referred to in §663A.1

663.33 Copy of process. If he holds him by virtue of a legal process or written authority, a copy thereof must be annexed. [C51,§2243; R60,§3831; C73,§3480; C97,§4448; C24, 27, 31, 35, 39,§12500; C46, 50, 54, 58, 62, 66, 71, 73, 75, §663.33]

Referred to in §663A.1

663.34 Demurrer or reply—trial. The plaintiff may demur or reply to the defendant's answer, but no verification shall be required to the reply, and all issues joined therein shall be tried by the judge or court. [C51,§2244; R60, §3832; C73,§3481; C97,§4449; C24, 27, 31, 35, 39, §12501; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.34]

Referred to in §663A.1

663.35 Commitment questioned. The reply may deny the sufficiency of the testimony to justify the action of the committing magistrate, on the trial of which issue all written testimony before such magistrate may be given in evidence before the court or judge, in connection with any other testimony which may then be produced. [C51,§2245; R60,§3833; C73,§3482; C97,§4450; C24, 27, 31, 35, 39,§12502; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.35]

Referred to in §663A.1

663.36 Nonpermissible issues. It is not permissible to question the correctness of the action of a court or judge when lawfully acting within the scope of their authority. [C51,§2246; R60,§3834; C73,§3483; C97,§4451; C24, 27, 31, 35, 39,§12503; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.36]

Referred to in §663A.1

663.37 Discharge. If no sufficient legal cause of confinement is shown, the plaintiff must be discharged. [C51,§2247; R60,§3835; C73, §3484; C97,§4452; C24, 27, 31, 35, 39,§12504; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.37]

Referred to in §663A.1

663.38 Plaintiff held. Although the commitment of the plaintiff may have been irregular, if the court or judge is satisfied from the evidence that he ought to be held or committed, the order may be made accordingly. [C51,§2248; R60,§3836; C73,§3485; C97,§4453; C24, 27, 31, 35, 39,§12505; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.38]

Referred to in §663A.1

663.39 Repealed by 63GA, ch 1276,§20.

663.40 Plaintiff retained in custody. Until the sufficiency of the cause of restraint is determined, the defendant may retain the plaintiff in his custody, and may use all necessary and proper means for that purpose. [C51,§2250; R60,§3838; C73,§3487; C97,§4455; C24, 27, 31, 35, 39,§12507; C46, 50, 54, 58, 62, 66, 71, 73, 75, §663.40]

Referred to in §663A.1

663.41 Right to be present waived. The plaintiff may, in writing, or by attorney, waive his right to be present at the trial, in which case the proceedings may be had in his absence. The writ will in such cases be modified accordingly. [C51,§2251; R60,§3839; C73,§3488; C97,§4456; C24, 27, 31, 35, 39,§12508; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.41]

Referred to in §663A.1

663.42 Disobedience of order. Disobedience to any order of discharge will subject the defendant to attachment for contempt, and also to the forfeiture of one thousand dollars to the party aggrieved, besides all damages sustained by him in consequence thereof. [C51,§2252; R60,§3840; C73,§3489; C97,§4457; C24, 27, 31, 35, 39,§12509; C46, 50, 54, 58, 62, 66, 71, 73, 75, §663.42]

Referred to in §663A.1

663.43 Papers filed with clerk. When the proceedings are before a judge, except when the writ is refused, all the papers in the case, including his final order, shall be filed with the clerk of the district court of the county wherein the final proceedings were had, and a memorandum thereof shall be entered by the clerk upon his judgment docket. [C51,§2255; R60,

§3843; C73,§3490; C97,§4458; C24, 27, 31, 35, 39, §12510; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.43]

Referred to in §663A.1

663.44 Costs. If the plaintiff is discharged, the costs shall be taxed to the defendant, unless he is an officer holding the plaintiff in custody under a commitment, or under other legal process, in which case the costs shall be taxed to the county. If the plaintiff's application is refused, the costs shall be taxed against him, and, in the discretion of the court, against the person who filed the petition in his behalf.

However, where the plaintiff is confined in any state institution, and is discharged in habeas corpus proceedings, or where the habeas corpus proceedings fail and costs and fees cannot be collected from the person liable to pay the same, such costs and fees shall be paid by the county in which such state institution is located. The facts of such payment and the proceedings on which it is based, with a statement of the amount of fees or costs incurred, with approval in writing by the presiding judge appended to such statement or endorsed thereon, shall then be certified by the clerk of the district court under his seal of office to the state executive council. The executive council shall then review the proceedings and authorize reimbursement for all such fees and costs or such part thereof as the executive council shall find justified, and shall notify the state comptroller to draw a warrant to such county treasurer on the state general fund for the amount authorized. The costs and fees referred to above shall include any award of fees made to a court appointed attorney representing an indigent party bringing the habeas corpus action. [C97,§4459; C24, 27, 31, 35, 39,§12511; C46, 50, 54, 58, 62, 66, 71, 73, 75,§663.44]

Referred to in §663A.1

Amendment retroactive to January 1, 1966; see 63GA, ch 1275,§1

CHAPTER 663A

POSTCONVICTION PROCEDURE

663A.1 Statutes not applicable to convicted persons.
663A.2 Situations where law applicable.
663A.3 How to commence proceeding.
663A.4 Facts to be presented.
663A.5 Payment of costs.
663A.6 Determination of relief.
663A.7 Court to hear application.
663A.8 Grounds must be all-inclusive.
663A.9 Appeal.
663A.10 Rule of construction.
663A.11 Citation.

663A.1 Statutes not applicable to convicted persons. The provisions of sections 663.1 through 663.44, inclusive, shall not apply to persons convicted of, or sentenced for, a public offense. [C71, 73, 75,§663A.1]

663A.2 Situations where law applicable. Any person who has been convicted of, or sentenced for, a public offense and who claims that:

1. The conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this state;
2. The court was without jurisdiction to impose sentence;
3. The sentence exceeds the maximum authorized by law;
4. There exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. His sentence has expired, his probation, parole, or conditional release has been unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error formerly available under any common law, statutory or other writ, motion, petition, proceeding, or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

This remedy is not a substitute for nor does it affect any remedy, incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory, or other remedies formerly available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them. [C71, 73, 75,§663A.2]

663A.3 How to commence proceeding. A proceeding is commenced by filing an application verified by the applicant with the clerk of the court in which the conviction or sentence took place. An application may be filed at any time. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct. The supreme court may prescribe the form of the application and verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the county attorney and the attorney general. [C71, 73, 75,§663A.3]

Referred to in §663A.4

663A.4 Facts to be presented. The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment of conviction or sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be verified as provided in section 663A.3. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or sentence. Argument, citations, and discussion of authorities are unnecessary. [C71, 73, 75, §663A.4]

663A.5 Payment of costs. If the applicant is unable to pay court costs and expenses of representation, including stenographic, printing, and legal services, these costs and expenses shall be made available to the applicant in the preparation of the application, in the trial court, and on review. [C71, 73, 75, §663A.5]

663A.6 Determination of relief. Within thirty days after the docketing of the application, or within any further time the court may fix, the state shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court may grant leave to withdraw the application. The court may make appropriate orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering the application the court shall take account of substance regardless of defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.

When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to postconviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for dismissal. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if a material issue of fact exists.

The court may grant a motion by either party for summary disposition of the application, when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. [C71, 73, 75,§663A.6]

663A.7 Court to hear application. The application shall be heard in, and before any judge of, the court in which the conviction or sentence took place. A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings including pretrial and discovery procedures are available to the parties. The court may receive proof of affidavits, depositions, oral testimony, or other evidence, and may order the applicant brought before it for the hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment. [C71, 73, 75,§663A.7]

663A.8 Grounds must be all-inclusive. All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application. [C71, 73, 75,§663A.8]

663A.9 Appeal. A final judgment entered under this chapter may be reviewed by the supreme court of this state on appeal, brought either by the applicant or by the state within sixty days from the entry of the judgment. [C71, 73, 75,§663A.9]

663A.10 Rule of construction. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [C71, 73, 75,§663A.10]

663A.11 Citation. This chapter may be cited as the Uniform Postconviction Procedure Act. [C71, 73, 75,§663A.11]

CHAPTER 664

INJUNCTIONS

Bootlegging, §§123.70-123.72

Independent or auxiliary remedy. See R.C.P. 320.

Temporary—when allowed. See R.C.P. 321.

By whom granted. See R.C.P. 325.

Outside district. See R.C.P. 324.

Notice. See R.C.P. 326.

Endorsing refusal. See R.C.P. 322.

Statement re prior presentation. See R.C.P. 323.

Dissolution. See R.C.P. 328.

Bond. See R.C.P. 327.

Enjoining proceedings or judgment—venue—bond. See R.C.P. 329.

Violation as contempt. See R.C.P. 330.

CHAPTER 665

CONTEMPTS

Referred to in §§20.12, 123.19(6), 356A.3, 762.32, 789.17
Liquor injunction, §§123.19(6), 123.68

665.1 "Court" defined.
665.2 Acts constituting contempt.
665.3 In courts of record.
665.4 Punishment.
665.5 Imprisonment.
665.6 Affidavit necessary.
665.7 Notice to show cause.
665.8 Testimony reduced to writing.
665.9 Personal knowledge of court—record required.
665.10 Warrant of commitment.
665.11 Revision by certiorari.
665.12 Indictment not barred.

665.1 "Court" defined. Any officer authorized to punish for contempt is a court within the meaning of this chapter. [C51,§1608; R60, §2698; C73,§3501; C97,§4470; C24, 27, 31, 35, 39, §12540; C46, 50, 54, 58, 62, 66, 71, 73, 75,§665.1]

665.2 Acts constituting contempt. The following acts or omissions are contempts, and are punishable as such by any of the courts of this state, or by any judicial officer, including judicial magistrates, acting in the discharge of an official duty, as hereinafter provided:

1. Contemptuous or insolent behavior toward such court while engaged in the discharge of a judicial duty which may tend to impair the respect due to its authority.

2. Any willful disturbance calculated to interrupt the due course of its official proceedings.

3. Illegal resistance to any order or process made or issued by it.

4. Disobedience to any subpoena issued by it and duly served, or refusing to be sworn or to answer as a witness.

5. Unlawfully detaining a witness or party to an action or proceeding pending before such court, while going to or remaining at the place where the action or proceeding is thus pending, after being summoned, or knowingly assisting, aiding or abetting any person in evading service of the process of such court.

6. Any other act or omission specially declared a contempt by law. [C51,§1598; R60, §2688; C73,§3491; C97,§4460; C24, 27, 31, 35, 39, §12541; C46, 50, 54, 58, 62, 66, 71, 73, 75,§665.2]

665.3 In courts of record. In addition to the above, any court of record may punish the following acts or omissions as contempts:

1. Failure to testify before a grand jury, when lawfully required to do so.

2. Assuming to be an officer, attorney, or counselor of the court, and acting as such without authority.

3. Misbehavior as a juror, by improperly conversing with a party or with any other person in relation to the merits of an action in which he is acting or is to act as a juror, or receiving a communication from any person in respect to it without immediately disclosing the same to the court.

4. Bribing, attempting to bribe, or in any other manner improperly influencing or attempting to influence a juror to render a verdict, or suborning or attempting to suborn witness.

5. Disobedience by an inferior tribunal, magistrate, or officer to any lawful judgment, order or process of a superior court, or proceeding in any matter in a manner contrary to law,

after it has been removed from such tribunal, magistrate or officer. [C51,§1599; R60,§2689; C73,§3492; C97,§4461; C24, 27, 31, 35, 39,§**12542**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§665.3]

665.4 Punishment. The punishment for contempt, where not otherwise specifically provided, shall be:

1. In the supreme court or the court of appeals, by a fine not exceeding one thousand dollars or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment.

2. Before district judges and district associate judges, by a fine not exceeding five hundred dollars or imprisonment in a county jail not exceeding six months or by both such fine and imprisonment.

3. Before judicial magistrates, by a fine not exceeding one hundred dollars or imprisonment in a county jail not exceeding thirty days. [C51,§1600; R60,§2690; C73,§3493; C97, §4462; C24, 27, 31, 35, 39,§**12543**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§665.4; 66GA, ch 1241,§76]

Referred to in §856.36

665.5 Imprisonment. If the contempt consists in an omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he performs it. In that case the act to be performed must be specified in the warrant of the commitment. [C51,§1601; R60,§2691; C73,§3494; C97,§4463; C24, 27, 31, 35, 39,§**12544**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§665.5]

665.6 Affidavit necessary. Unless the contempt is committed in the immediate view and presence of the court, or comes officially to its knowledge, an affidavit showing the nature of the transaction is necessary as a basis for further action in the premises. [C51, §1602; R60,§2692; C73,§3495; C97,§4464; C24, 27, 31, 35, 39,§**12545**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§665.6]

665.7 Notice to show cause. Before punishing for contempt, unless the offender is already in the presence of the court, he must be served personally with a rule to show cause against the punishment, and a reasonable time given him therefor; or he may be brought before the court forthwith, or on a given day, by warrant, if necessary. In either case he may, at his option, make a written explanation of his conduct under oath, which must be filed and preserved. [C51,§1603; R60, §2693; C73,§3496; C97,§4465; C24, 27, 31, 35, 39, §**12546**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§665.7]

665.8 Testimony reduced to writing. Where the action of the court is founded upon evidence given by others, such evidence must be in writing, and be filed and preserved. [C51, §1604; R60,§2694; C73,§3497; C97,§4466; C24, 27, 31, 35, 39,§**12547**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§665.8]

C97,§4466, editorially divided

665.9 Personal knowledge of court—record required. If the court or judge acts upon personal knowledge in the premises, a statement of the facts upon which the order is founded must be entered on the records of the court, or be filed and preserved when the court keeps no record, and shall be a part of the record. [C51,§1604; R60,§2694; C73,§3497; C97,§4466; C24, 27, 31, 35, 39,§**12548**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§665.9]

665.10 Warrant of commitment. When the offender is committed, the warrant must state the particular facts and circumstances on which the court acted in the premises, and whether the same was in the knowledge of the court or was proved by witnesses. [C51, §1605; R60,§2695; C73,§3498; C97,§4467; C24, 27, 31, 35, 39,§**12549**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§665.10]

665.11 Revision by certiorari. No appeal lies from an order to punish for a contempt, but the proceedings may, in proper cases, be taken to a higher court for revision by certiorari. [C51,§1606; R60,§2696; C73,§3499; C97, §4468; C24, 27, 31, 35, 39,§**12550**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§665.11]

665.12 Indictment not barred. The punishment for a contempt constitutes no bar to an indictment, but if the offender is indicted and convicted for the same offense, the court, in passing sentence, must take into consideration the punishment before inflicted. [C51, §1607; R60,§2697; C73,§3500; C97,§4469; C24, 27, 31, 35, 39,§**12551**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§665.12]

CHAPTER 666

OFFICIAL BONDS, FINES AND FORFEITURES

666.1 Official bonds construed.
666.2 Prior judgment no bar.
666.3 Fines and forfeitures.
666.4 By whom action prosecuted.
666.5 Collusion.
666.6 Report of forfeited bonds.

666.1 Official bonds construed. The official bond of a public officer is to be construed as a security to the body politic or civil corporation of which he is an officer, and to all the members thereof, severally, who are intended to be secured thereby. [C51,§2145; R60,§3727; C73,

§3368; C97,§4336; C24, 27, 31, 35, 39,§12552; C46, 50, 54, 58, 62, 66, 71, 73, 75,§666.1]

Conditions of bond, §64.2

666.2 Prior judgment no bar. A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency, except that sureties can be made liable in the aggregate only to the extent of their undertaking. [C51,§2147; R60,§3728; C73, §3369; C97,§4337; C24, 27, 31, 35, 39,§12553; C46, 50, 54, 58, 62, 66, 71, 73, 75,§666.2]

666.3 Fines and forfeitures. All fines and forfeitures, after deducting therefrom court costs, court expenses collectible through the clerk of the court, and fees of collection, if any, and not otherwise disposed of, shall go into the treasury of the county where the same are collected for the benefit of the school fund. [C51,§§1158, 2148; R60,§3729; C73,§3370; C97, §4338; C24, 27, 31, 35, 39,§12554; C46, 50, 54, 58, 62, 66, 71, 73, 75,§666.3]

Constitutional provisions, Art. IX(2),§4; Art. XII,§4

666.4 By whom action prosecuted. Actions for their recovery may be prosecuted by the officers or persons to whom they by law belong, in whole or in part, or by the public officer into whose hands they are to be paid when collected. [C51,§2149; R60,§3730; C73, §3371; C97,§4339; C24, 27, 31, 35, 39,§12555; C46, 50, 54, 58, 62, 66, 71, 73, 75,§666.4]

666.5 Collusion. A judgment for a penalty or forfeiture, rendered by collusion, does not prevent another action for the same subject matter. [C51,§2150; R60,§3731; C73,§3372; C97, §4340; C24, 27, 31, 35, 39,§12556; C46, 50, 54, 58, 62, 66, 71, 73, 75,§666.5]

666.6 Report of forfeited bonds. Clerks of district court shall, on the first Monday in January in each year, make report in writing to the board of supervisors for their respective counties of all forfeited recognizances in their offices; of all fines, penalties, and forfeitures imposed in their respective courts, which by law go into the county treasury for the benefit of the school fund; in what cause or proceeding, when and for what purpose, against whom and for what amount, rendered; whether said fines, penalties, forfeitures, and recognizances have been paid, remitted, canceled, or otherwise satisfied; if so, when, how, and in what manner, and if not paid, remitted, canceled, or otherwise satisfied, what steps have been taken to enforce the collection thereof.

Such report must be full, true, and complete with reference to the matters therein contained, and of all things required by this section to be reported, and be under oath, and any officer failing to make such report shall be guilty of a misdemeanor. [C73,§3974; C97, §1302; C24, 27, 31, 35, 39,§12557; C46, 50, 54, 58, 62, 66, 71, 73, 75,§666.6]

Punishment, §687.7

CHAPTER 667

SEIZURE OF BOATS OR RAFTS

667.1 Seizure.
667.2 Petition and warrant.
667.3 Warrant issued on Sunday.
667.4 Service of notice.
667.5 Service of warrant.
667.6 Who may appear.
667.7 Bond to discharge.
667.8 Special execution.
667.9 Sale.
667.10 Fractional share sold.
667.11 Appeal.
667.12 Rights saved.
667.13 Contract alleged.
667.14 Lien.
667.15 Appearance by executing bond.

667.1 Seizure. In an action brought against the owners of any boat or raft to recover any debt contracted by such owner, or by the master, agent, clerk, or consignee thereof, for supplies furnished, or for labor done in, about, or on such boat or raft, or for materials furnished in building, repairing, fitting out, furnishing, or equipping the same, or to recover for the nonperformance of any contract relative to the transportation of persons or property thereon, made by any of the persons aforementioned, or to recover damages for injuries to persons or property done by such boat or raft or the officers or crew thereof in connection with its business, a warrant may issue for the seizure of the same as herein provided. [C51,§2116; R60,§§3693, 3698, 3700; C73,§§3432, 3445, 3447; C97,§4402; C24, 27, 31, 35, 39,§12558; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.1]

667.2 Petition and warrant. The petition must be in writing, sworn to, and filed with the clerk who shall thereupon issue a warrant to the proper officer, commanding him to seize the boat or raft, its apparel, tackle, furniture, and appendages, and detain the same until released by due course of law. [C51,§2121; R60,§3701; C73,§3433; C97,§4403; C24, 27, 31, 35, 39,§12559; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.2]

667.3 Warrant issued on Sunday. The warrant may be issued on Sunday, if the plaintiff, his agent, or attorney states in his petition that it would be unsafe to delay proceedings. [R60,§3702; C73,§3434; C97,§4404; C24, 27, 31, 35, 39,§12560; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.3]

Analogous or related provisions, §§605.18, 626.6, 639.5, 643.3, and R.C.P. 57

667.4 Service of notice. It shall be sufficient service of the original notice in such an action to serve it on the defendant, or on the master, agent, clerk, or consignee of such boat or raft; if neither of them can be found, it may be served by posting a copy thereof on some conspicuous part of the same. [C51,§2122; R60, §3703; C73,§3435; C97,§4405; C24, 27, 31, 35, 39, §12561; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.4]

667.5 Service of warrant. Any marshal of any city may execute the warrant. [R60,§3704; C73,§3436; C97,§4406; C24, 27, 31, 35, 39,§12562; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.5]

Approval of warrant and expenses, §§79.12, 79.13

667.6 Who may appear. Any persons interested in the property seized may appear for the defendant by himself, agent, or attorney, and defend the action, and no continuance shall be granted to the plaintiff while the property is held in custody. [C51,§2123; R60,§3705; C73,§3437; C97,§4407; C24, 27, 31, 35, 39,§12563; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.6]

667.7 Bond to discharge. The property seized may be discharged at any time before final judgment, by giving a bond with sureties, to be approved by the officer executing the warrant, or by the clerk who issued it, in a penalty double the plaintiff's demand, conditioned that the obligors therein will pay the amount which may be found due to the plaintiff, together with the costs. [C51,§2124; R60, §3706; C73,§3438; C97,§4408; C24, 27, 31, 35, 39, §12564; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.7]

Similar provisions, §§639.42, 639.45, 643.12

667.8 Special execution. If judgment is rendered for the plaintiff before the property is thus discharged, a special execution shall be issued against it. If it has been previously discharged, the execution shall issue against the principal and sureties in the bond without further proceedings. [C51,§2125; R60,§3707; C73,§3439; C97,§4409; C24, 27, 31, 35, 39,§12565; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.8]

667.9 Sale. The officer must first sell the furniture or appendages of the boat or raft, if by so doing he can satisfy the demand. If he sells the boat or raft, he must do so to the bidder who will advance the amount required to satisfy the execution for the lowest fractional share thereof, unless the person defending desires a different and equally convenient mode of sale. The officer making the sale shall execute a bill of sale to the purchaser for the interest sold. [C51,§2126; R60,§3708; C73,§3440; C97,§4410; C24, 27, 31, 35, 39,§12566; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.9]

667.10 Fractional share sold. If a fractional share of the boat or raft is thus sold, the purchaser shall hold such share or interest jointly with the other owners. [C51,§2127; R60,§3709; C73,§3441; C97,§4411; C24, 27, 31, 35, 39,§12567; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.10]

667.11 Appeal. If an appeal is taken by the defendant before the property is discharged as above provided, the appeal bond, if one is filed, will have the same effect in discharging it as the bond above contemplated, and execution shall issue against the obligors therein after judgment in the same manner. [C51, §2128; R60,§3710; C73,§3442; C97,§4412; C24, 27, 31, 35, 39,§12568; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.11]

Presumption of approval of bond, §682.10

667.12 Rights saved. Nothing herein contained is intended to affect the rights of a plaintiff to sue in the same manner as though the provisions of this chapter had not been enacted. [C51,§2129; R60,§3711; C73,§3443; C97, §4413; C24, 27, 31, 35, 39,§12569; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.12]

667.13 Contract alleged. In actions commenced in accordance with the provisions of this chapter, it is sufficient to allege the contract to have been made with the boat or raft itself. [C51,§2130; R60,§3712; C73,§3444; C97, §4414; C24, 27, 31, 35, 39,§12570; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.13]

667.14 Lien. Claims growing out of either of the above causes shall be liens upon the boat or raft, its tackle, and appendages, for the term of twenty days from the time the right of action therefor accrued. [R60,§3699; C73,§3446; C97,§4415; C24, 27, 31, 35, 39,§12571; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.14]

667.15 Appearance by executing bond. The execution by or for the owner of such boat or raft of a bond, whereby possession of the same is obtained or retained by him, shall be an appearance of such owner as a defendant to the action. [R60,§4130; C73,§3448; C97,§4416; C24, 27, 31, 35, 39,§12572; C46, 50, 54, 58, 62, 66, 71, 73, 75,§667.15]

CHAPTER 668

GUARDIANS FOR MINORS

Repealed by 60GA, ch 326,§704; see §§633.552 to 633.560

CHAPTER 669

FOREIGN GUARDIANS

Repealed by 60GA, ch 326,§704; see §§633.603–633.608

CHAPTER 670

GUARDIANS FOR ALCOHOLICS, SPENDTHRIFTS, LUNATICS, AND PERSONS OF UNSOUND MIND

Repealed by 60GA, ch 326,§704; see §633.552 et seq.

CHAPTER 671

GUARDIANS FOR ABSENTEES

Repealed by 60GA, ch 326,§704; see §§633.580 to 633.584

CHAPTER 672

GUARDIANSHIP OF VETERANS

Repealed by 60GA, ch 326,§704; see ch 633

CHAPTER 673

SALE OR MORTGAGE OF EXEMPT PROPERTY

Repealed by 60GA, ch 326,§704; see §§633.100, 633.652

CHAPTER 674

CHANGING NAMES

Referred to in §144.39

674.1 Who authorized.
674.2 Petition to court.
674.3 Petition copy.
674.4 When granted.
674.5 Contents of decree.
674.6 Spouse must join.
674.7 Copy to state department.
674.8 Copy to counties.
674.9 Minor children.
674.10 Fee.
674.11 County clerk's record.
674.12 Legal name of spouse and children.
674.13 Further change barred.
674.14 Indexing in real property record.

674.1 Who authorized. Any person under no civil disabilities, who has attained his or her majority, desiring to change his or her name, may do so by filing a verified petition as provided in this chapter. [C51,§§2256–2260; R60,§§3844–3848; C73,§§3502–3506; C97,§§4471–4475; S13,§4471-b; C24, 27, 31, 35, 39,§**12645**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§674.1]

674.2 Petition to court. The verified petition shall be addressed to the district court and shall state:

1. The name of petitioner and that he or she is a resident of the county where filed.
2. A description including height, weight, color of hair, color of eyes, race, sex, and date and place of birth.
3. Residence at time of petition and any prior residences for the past five years.
4. Reason for change of name, briefly and concisely stated.
5. A legal description of all real property in this state owned by the petitioner. [S13,§4471-c; C24, 27, 31, 35, 39,§§**12646, 12647**; C46, 50, 54, 58, 62, 66, 71,§674.2, 674.3; C73, 75,§674.2]

Referred to in §674.6

674.3 Petition copy. A copy of the petition shall be filed by the clerk of court with the division for records and statistics of the state department of health. [C73, 75,§674.3]

674.4 When granted. A decree of change of name may be granted any time after thirty days of the filing of the petition. [S13,§4471-h; C24, 27, 31, 35, 39,§**12653**; C46, 50, 54, 58, 62, 66, 71,§674.9; C73, 75,§674.4]

674.5 Contents of decree. The decree shall describe the petitioner, giving his or her name and former name, height, weight, color of hair, color of eyes, race, sex, date and place of birth and the given name of the spouse and any minor children affected by the change. The decree shall also give a legal description of all real property owned by the petitioner. [C73, 75,§674.5]

674.6 Spouse must join. If the petitioner is married, his or her spouse must join in the petition or file his or her written consent with the petition.

If the petitioner has a minor child, the petition shall state this fact and shall state all the information about the child that is required of a petitioner in section 674.2. If the minor child is fourteen years of age or older he shall file his written consent. [C73, 75,§674.6]

674.7 Copy to state department. When the court grants a decree of change of name, the clerk of the court shall mail a certified copy to the state registrar of vital statistics of the state department of health and furnish the petitioner with a certified copy of the decree. [C73, 75,§674.7]

674.8 Copy to counties. The clerk of the court shall send a certified copy of the decree to the recorder's office in every county in this state where real property is owned by the petitioner. [S13,§4471-i; C24, 27, 31, 35, 39,§**12656**; C46, 50, 54, 58, 62, 66, 71,§674.12; C73, 75,§674.8]

674.9 Minor children. Any new birth certificate issued to the petitioner or a minor child of the petitioner shall reflect the former name of the person affected by the new birth certificate. [C73, 75,§674.9]

674.10 Fee. Upon the original filing of the petition for change of name the petitioner shall pay a fee of ten dollars and after issuance of the decree a fee of two dollars for each copy. [S13,§4471-g; C24, 27, 31, 35, 39,§§**12651, 12652**; C46, 50, 54, 58, 62, 66, 71,§§674.7, 674.8; C73, 75,§674.10]

674.11 County clerk's record. The clerk of the district court shall keep a record entitled "Change of Name Record." The entire proceedings shall be recorded in this record and the action shall be indexed under the original name and the new name. [S13,§§4471-e, 4471-f; C24, 27, 31, 35, 39,§§**12649, 12650**; C46, 50, 54, 58, 62, 66, 71,§§674.5, 674.6; C73, 75,§674.11]

674.12 Legal name of spouse and children. The surname of such new name may become the legal surname of the spouse and minor children of such person. [S13,§4471-h; C24, 27, 31, 35, 39,§**12654**; C46, 50, 54, 58, 62, 66, 71, §674.10; C73, 75,§674.12]

674.13 Further change barred. No person shall change his or her name more than once under the provisions of this chapter. [S13, §4471-h; C24, 27, 31, 35, 39,§**12655**; C46, 50, 54, 58, 62, 66, 71,§674.11; C73, 75,§674.13]

674.14 Indexing in real property record. The county recorder and county auditor of each county wherein the petitioner owns real property may charge one dollar for indexing a change of name for each parcel of real estate. [S13,§4471-i; C24, 27, 31, 35, 39,§**12656**; C46, 50, 54, 58, 62, 66, 71,§674.12; C73, 75,§674.14]

CHAPTER 675

PATERNITY OF CHILDREN AND OBLIGATION OF PARENTS THERETO

See also chapter 252A
Referred to in §§252B.3, 252B.4, 252B.5

675.1 Obligation of parents.
675.2 Recovery by mother from father.
675.3 Limitation on recovery.
675.4 Recovery by others than mother.
675.5 Discharge of father's obligation.
675.6 Liability of the father's estate.
675.7 Proceedings to establish paternity.
675.8 Who may institute proceedings.
675.9 Time of instituting proceedings.
675.10 Venue.
675.11 Nonresident complainant.
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675.13 Form of complaint—verification.
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675.15 Original notice.
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675.20 Exclusion of bystanders.
675.21 Death, absence or mental illness of mother—testimony receivable.
675.22 Death of defendant.
675.23 Costs payable by county.
675.24 Judgment in general.
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675.26 Expenses of confinement.
675.27 Payment to trustees.
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675.30 Agreement or compromise.
675.31 Continuing jurisdiction.
675.32 Concurrence of remedies.
675.33 Limitation of actions.
675.34 Foreign judgments.
675.35 Reference to illegitimacy prohibited.
675.36 Report to registrar of vital statistics.
675.37 Contempt.
675.38 Welfare recipients — assignment of support payments.

675.1 Obligation of parents. The parents of a child born out of wedlock and not legitimized (in this chapter referred to as "the child") owe the child necessary maintenance, education, and support. They are also liable for the child's funeral expenses. The father is also liable to pay the expense of the mother's pregnancy and confinement. The obligation of

the parent to support the child under the laws for the support of poor relatives applies to children born out of wedlock. [C27, 31, 35, §12667-a1; C39,§12667.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.1]

Referred to in §675.25
Analogous provision, §252.2

675.2 Recovery by mother from father. The mother may recover from the father a reasonable share of the necessary support of the child. [C27, 31, 35,§12667-a2; C39,§12667.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.2]

41GA, ch 81,§2, editorially divided

675.3 Limitation on recovery. In the absence of a previous demand in writing (served personally or by certified mail addressed to the father at his last known residence or in the manner provided for service of original notices) not more than two years support furnished prior to the bringing of the action may be recovered. [C27, 31, 35,§12667-a3; C39, §12667.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, §675.3]

Service of notice R.C.P. 56.1

675.4 Recovery by others than mother. The obligation of the father as hereby provided creates also a cause of action on behalf of the legal representative of the mother, or on behalf of third persons furnishing support or defraying the reasonable expenses thereof, where paternity has been judicially established by proceedings brought by the mother or by or on behalf of the child or by the authorities charged with its support, or where paternity has been acknowledged by the father in writing or by the part performance of the obligations imposed upon him. [C27, 31, 35,§12667-a4; C39,§12667.04; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.4]

675.5 Discharge of father's obligation. The obligation of the father other than that under the laws providing for the support of poor relatives is discharged by complying with a judicial decree for support or with the terms of a judicially approved settlement. The legal adoption of a child into another family discharges the obligation for the period subsequent to the adoption. [C27, 31, 35,§12667-a5; C39,§12667.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, §675.5]

675.6 Liability of the father's estate. The obligation of the father, when his paternity has been judicially established in his lifetime, or has been acknowledged by him in writing or by the part performance of his obligations, is enforceable against his estate in such an amount as the court may determine, having regard to the age of the child, the ability of the mother to support it, the amount of property left by the father, the number, age, and financial condition of the lawful issue, if any, and the rights of the widow, if any. The court may direct the discharge of the obligation by periodical payments or by the payment of a lump sum. [C27, 31, 35,§12667-a6; C39,§12667.06; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.6]

Referred to in §675.22

675.7 Proceedings to establish paternity. Proceedings to establish paternity and to compel support by the father may be brought in accordance with the provisions of this chapter. They shall not be exclusive of other proceedings that may be available on principles of law and equity. [C27, 31, 35,§12667-a7; C39, §12667.07; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.7]

Additional reference, §252.3

675.8 Who may institute proceedings. The proceedings may be brought by the mother, or other interested person, or if the child is or is likely to be a public charge, by the authorities charged with its support. After the death of the mother or in case of her disability, it may also be brought by the child acting through its guardian or next friend. [C51,§848; R60,§1416; C73,§4715; C97,§5629; C24, §12658; C27, 31, 35,§12667-a8; C39,§12667.08; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.8]

675.9 Time of instituting proceedings. The proceedings may be instituted during the pregnancy of the mother or after the birth of the child, but, except with the consent of the person charged with being the father, the trial shall not be had until after the birth of the child. [C27, 31, 35,§12667-a9; C39,§12667.09; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.9]

675.10 Venue. The action shall be by ordinary proceedings entitled in the name of the complainant against the defendant and shall be brought in the district court in the county in which the alleged father is permanently or temporarily resident, or in which the mother or the child resides or is found. [C51,§848; R60,§1416; C73,§4715; C97,§5629; C24,§12658; C27, 31, 35,§12667-a10; C39,§12667.10; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.10]

41GA, ch 81,§9, editorially divided

675.11 Nonresident complainant. It is not a bar to the jurisdiction of the court, that the complaining mother or child resides in another state. [C27, 31, 35,§12667-a11; C39, §12667.11; C46, 50, 54, 58, 62, 66, 71, 73, 75, §675.11]

675.12 Complaint — where brought. The complaint may be made to the county attorney. [C51,§848; R60,§1416; C73,§4715; C97,§5629; C24,§12658; C27, 31, 35,§12667-a12; C39,§12667.12; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.12]

675.13 Form of complaint—verification. The complaint may be made in writing, or oral and in the presence of the complainant reduced to writing by the prosecuting attorney. It shall be verified by oath or affirmation of the complainant. [C51,§848; R60,§1416; C73, §4715; C97,§5629; C24,§12658; C27, 31, 35,§12667-a13; C39,§12667.13; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.13]

675.14 Substance of complaint. The complainant shall charge the person named as defendant with being the father of the child. [C51,§848; R60,§1416; C73,§4715; C97,§5629; C24, §12658; C27, 31, 35,§12667-a14; C39,§**12667.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.14]

675.15 Original notice. An original notice shall be issued as in other civil cases, which notice shall be served as in ordinary actions. [C51,§849; R60,§1417; C73,§4716; C97,§5630; C24, §12659; C27, 31, 35,§12667-a16; C39,§**12667.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.15]

Manner of service, R.C.P. 56.1

675.16 Lis pendens. From the time of the filing of such complaint, a lien shall be created upon the real property of the accused in the county where the action is pending for the payment of any money and the performance of any order adjudged by the proper court. [C51,§850; R60,§1418; C73,§4717; C97,§5631; C24, §12660; C27, 31, 35,§12667-a17; C39,§**12667.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.16]

41GA, ch 81,§14, editorially divided

675.17 Writ of attachment. The district court may order an attachment to issue thereon without bond, which order shall specify the amount of property to be seized thereunder, and may be revoked at any time by such court on a showing made for a revocation of the same, and on such terms as such court may deem proper in the premises. [C73, §4718; C97,§5632; C24,§12661; C27, 31, 35, §12667-a18; C39,§**12667.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.17]

675.18 Method of trial. The trial shall be by jury, if either party demands a jury, otherwise by the court, and shall be conducted as in other civil cases. [C51,§§851, 854; R60,§§1419, 1422; C73,§4720; C97,§5634; C24,§12663; C27, 31, 35,§12667-a27; C39,§**12667.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.18]

41GA, ch 81,§18, editorially divided

675.19 County attorney to prosecute. The county attorney, on being notified of the facts justifying a complaint as provided in this chapter, or of the filing of such complaint, shall prosecute the matter in behalf of the complainant. [C73,§4719; C97,§5633; C24,§12662; C27, 31, 35,§12667-a28; C39,§**12667.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.19]

675.20 Exclusion of bystanders. Unless objection is raised by either party to the action the judge shall exclude from the hearing all persons except the employees of the court, witnesses, and immediate relatives of the parties involved. [C27, 31, 35,§12667-a29; C39, §**12667.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §675.20]

675.21 Death, absence or mental illness of mother—testimony receivable. If after the complaint the mother dies or becomes mentally ill or cannot be found within the jurisdiction, the proceeding does not abate, but the child shall be substituted as complainant. The testimony of the mother taken by deposition as in other civil cases, may in any such case be read as evidence and in all cases shall be read as evidence if demanded by the defendant. [C27, 31, 35,§12667-a31; C39,§**12667.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.21]

675.22 Death of defendant. In case of the death of the defendant the action may be prosecuted against the personal representative of the deceased with like effects as if he were living, subject as regards the measure of support to the provision of section 675.6. [C27, 31, 35,§12667-a32; C39,§**12667.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.22]

675.23 Costs payable by county. If the verdict of the jury at the trial or the finding of the court be in favor of the defendant the costs of the action shall be paid by the county. [C24,§12666; C27, 31, 35,§12667-a33; C39,§**12667.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.23]

41GA, ch 81,§22, editorially divided

675.24 Judgment in general. If the findings or verdict be against the defendant, the court shall give judgment against him declaring paternity and for support of the child. [C51, §855; R60,§1423; C73,§4721; C97,§5635; C24, §12664; C27, 31, 35,§12667-a35; C39,§**12667.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.24]

41GA, ch 81,§23, editorially divided

675.25 Form of judgment. The judgment shall be for annual amounts, equal or varying, having regard to the obligation of the father under section 675.1, as the court directs, until the child reaches the age of sixteen years. The payments may be required to be made at such periods or intervals as the court directs. [C51,§855; R60,§1423; C73,§4721; C97,§5635; C24, §12664; C27, 31, 35,§12667-a36; C39,§**12667.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.25]

Referred to in §675.38

675.26 Expenses of confinement. In addition to providing for support, the judgment may also provide for the payment of the necessary expenses incurred by or for the mother in connection with the birth of the child. [C27, 31, 35,§12667-a37; C39,§**12667.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.26]

675.27 Payment to trustees. The court may require the payment to be made to the mother, or to some person or corporation to be designated by the court as trustee. The payments shall be directed to be made to a trustee if the mother does not reside within the jurisdiction of the court. [C27, 31, 35,§12667-a38; C39,§**12667.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.27]

41GA, ch 81,§24, editorially divided

675.28 Report by trustee. The trustee shall report to the court annually, or oftener as directed by the court, the amounts received and paid over. [C27, 31, 35,§12667-a39; C39, §**12667.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §675.28]

675.29 Desertion statute applicable. The provisions of chapter 731, relating to desertion and abandonment of children, shall have the same force and effect in cases of illegitimacy where paternity has been judicially established, or has been acknowledged by the father in writing or by the furnishing of support, as in cases of children born in wedlock. [C27, 31, 35,§12667-a45; C39,§**12667.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.29]

675.30 Agreement or compromise. An agreement or compromise made by the mother or child or by some authorized person on their behalf with the father concerning the support of the child shall be binding upon the mother and child only when adequate provision is fully secured by payment or otherwise and when approved by a court having jurisdiction to compel support of the child. The performance of the agreement or compromise, when so approved, shall bar other remedies of the mother or child for the support of the child. [C27, 31, 35,§12667-a46; C39,§**12667.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.30]

675.31 Continuing jurisdiction. The court has continuing jurisdiction over proceedings brought to compel support and to increase or decrease the amount thereof until the judgment of the court has been completely satisfied, and also has continuing jurisdiction to determine the custody in accordance with the interests of the child. [C73,§4722; C97,§5636; C24,§12667; C27, 31, 35,§12667-a47; C39,§**12667.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.31]

675.32 Concurrence of remedies. A criminal prosecution shall not be a bar to, or be barred by, civil proceedings to compel support; but money paid toward the support of the child shall be allowed for and accredited in determining or enforcing any civil liability. [C27, 31, 35,§12667-a49; C39,§**12667.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.32]

675.33 Limitation of actions. Proceedings to enforce the obligation of the father shall not be brought after the lapse of more than two years from the birth of the child, unless paternity has been judicially established, or has been acknowledged by the father in writing or by the furnishing of support. [C27, 31, 35,§12667-a50; C39,§**12667.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.33]

675.34 Foreign judgments. The judgment of the court of another state rendered in proceedings to compel support of a child born out of wedlock, and directing payment either of a fixed sum or of sums payable from time to time, may be sued upon in this state and made a domestic judgment so far as not inconsistent with the laws of this state, and the same remedies may thereupon be had upon such judgment as if it had been recovered originally in this state. [C27, 31, 35,§12667-a51; C39,§**12667.34**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.34]

675.35 Reference to illegitimacy prohibited. In all records, certificates, or other papers hereafter made or executed, other than birth records and certificates or records of judicial proceedings in which the question of birth out of wedlock is at issue, requiring a declaration by or notice to the mother of a child born out of wedlock, it shall be sufficient for all purposes to refer to the mother as the parent having the sole custody of the child or to the child as being in the sole custody of the mother and no explicit reference shall be made to illegitimacy, and the term natural shall be deemed equivalent to the term illegitimate when referring to parentage or birth out of wedlock. [C27, 31, 35,§12667-a52; C39,§**12667.35**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.35]

675.36 Report to registrar of vital statistics. Upon the entry of a judgment determining the paternity of an illegitimate child the clerk of the district court shall notify in writing the state registrar of vital statistics of the name of the person against whom such judgment has been entered, together with such other facts disclosed by his records as may assist in identifying the record of the birth of the child as the same may appear in the office of said registrar. If such judgment shall thereafter be vacated that fact shall be reported by the clerk in the same manner. [C27, 31, 35,§12667-a53; C39,§**12667.36**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§675.36]

675.37 Contempt. If the father fails to comply with or violates the terms or conditions of a support order made pursuant to the provisions of this chapter, he shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court in any other suit or proceeding cognizable by such court. [C73, 75,§675.37]

Referred to in §675.38

675.38 Welfare recipients — assignment of support payments. Persons entitled to periodic support payments pursuant to an order or judgment entered in a paternity action pursuant to this chapter, who are also welfare recipients, shall assign their rights to the payments to the department of social services. The clerk of court shall forward support payments received pursuant to section 675.25 to the department, which shall have the right to secure support payments in default through proceedings prescribed in chapter 252A or section 675.37. The clerk shall furnish the department with copies of all orders or decrees awarding support to parties having custody of minor children when the parties are receiving welfare assistance. [66GA, ch 151,§13]

CHAPTER 676

JUDGMENT BY CONFESSION

Referred to in §§537.3306, 677.1

676.1 Judgment by confession—how entered.
676.2 For money only—contingent liability.
676.3 Statement.
676.4 Judgment—execution.

676.1 Judgment by confession — how entered. A judgment by confession, without action, may be entered by the clerk of the district court. [C51,§1837; R60,§3397; C73,§2894; C97,§3813; C24, 27, 31, 35, 39,§**12668**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§676.1]

676.2 For money only—contingent liability. The judgment can be only for money due or to become due, or to secure a person against contingent liabilities on behalf of the defendant, and must be for a specified sum. [C51,§1838; R60,§3398; C73,§2895; C97,§3814; C24, 27, 31, 35, 39,§**12669**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §676.2]

676.3 Statement. A statement in writing must be made, signed, and verified by the defendant, and filed with the clerk, to the following effect:

1. If for money due or to become due, it must state concisely the facts out of which the indebtedness arose, and that the sum confessed therefor is justly due, or to become due, as the case may be.

2. If for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting such liability, and must show that the sum confessed therefor does not exceed the same. [C51,§1839; R60,§3399; C73,§2896; C97,§3815; C24, 27, 31, 35, 39,§**12670**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§676.3]

676.4 Judgment—execution. The clerk shall thereupon make an entry of judgment in his court record for the amount confessed and costs, and shall issue execution thereon as in other cases, when ordered by the party entitled thereto. [C51,§1840; R60,§3400; C73,§2897; C97,§3816; C24, 27, 31, 35, 39,§**12671**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§676.4]

CHAPTER 677

OFFER TO CONFESS JUDGMENT

677.1 Offer to confess before action brought.
677.2 Nonacceptance—costs.
677.3 Effect of nonaccepted offer.
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677.5 Nonacceptance—costs.
677.6 Effect of nonaccepted offer.
677.7 Offer to confess after action brought.
677.8 Acceptance—judgment.
677.9 Effect of nonaccepted offer.
677.10 Costs.
677.11 Conditional offer.
677.12 Acceptance—effect.
677.13 Nonacceptance—effect.
677.14 No cause for continuance.

677.1 Offer to confess before action brought. Before an action for the recovery of money is brought against any person, he may go before the clerk of the county of his residence, or of that in which the person having the cause of action resides, and offer to confess judgment in favor of such person for a specified sum on such cause of action, as provided for in chapter 676. [R60,§3403; C73,§2898; C97,§3817; C24, 27, 31, 35, 39,§**12672**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§677.1]

C97,§3817, editorially divided

677.2 Nonacceptance — costs. If such person, having had the same notice as if he were defendant in an action that the offer would be made, of its amount, and of the time and place of making it, refuses to accept it, and afterwards commences an action upon such cause, and does not recover more than the amount so offered to be confessed, he shall pay all the costs of the action. [R60,§3403; C73,§2898; C97, §3817; C24, 27, 31, 35, 39,§**12673**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§677.2]

677.3 Effect of nonaccepted offer. On the trial thereof the offer shall not be treated as an admission of the cause of action or amount to which the plaintiff was entitled, nor be given in evidence. [R60,§3403; C73,§2898; C97, §3817; C24, 27, 31, 35, 39,§**12674**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§677.3]

677.4 Offer to confess after action brought. After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. [R60,§3404; C73,§2899; C97,§3818; C24,

27, 31, 35, 39,§12675; C46, 50, 54, 58, 62, 66, 71, 73, 75,§677.4]

C97,§3818, editorially divided

677.5 Nonacceptance — costs. If the plaintiff, being present, refuses to accept judgment for such sum in full of his demands in the action, or, having had three days' notice that the offer would be made, of its amount, and of the time of making it, fails to attend, and on the trial does not recover more than was offered to be confessed, he shall pay the costs of the defendant incurred after the offer. [R60, §3404; C73,§2899; C97,§3818; C24, 27, 31, 35, 39, §12676; C46, 50, 54, 58, 62, 66, 71, 73, 75,§677.5]

677.6 Effect of nonaccepted offer. The offer shall not be treated as an admission of the cause of action or amount to which the plaintiff was entitled nor be given in evidence upon the trial. [R60,§3404; C73,§2899; C97,§3818; C24, 27, 31, 35, 39,§12677; C46, 50, 54, 58, 62, 66, 71, 73, 75,§677.6]

677.7 Offer to confess after action brought. The defendant in an action for the recovery of money only may, at any time after service of notice and before the trial, serve upon the plaintiff or his attorney an offer in writing to allow judgment to be taken against him for a specified sum with costs. [R60,§3405; C73, §2900; C97,§3819; C24, 27, 31, 35, 39,§12678; C46, 50, 54, 58, 62, 66, 71, 73, 75,§677.7]

C97,§3819, editorially divided

677.8 Acceptance—judgment. If the plaintiff accepts the offer, and gives notice thereof to the defendant or his attorney within five days after the offer is made, the offer, and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance with a copy of the offer, verified by affidavit; and in either case a minute of the offer and acceptance shall be entered upon the judge's calendar, and judgment shall be rendered by the court accordingly. [R60,§3405; C73,§2900; C97,§3819; C24, 27, 31, 35, 39,§12679; C46, 50, 54, 58, 62, 66, 71, 73, 75,§677.8]

677.9 Effect of nonaccepted offer. If the notice of acceptance is not given in the period limited, the offer shall be treated as withdrawn, and shall not be given in evidence or mentioned on the trial. [R60,§3405; C73,§2900; C97, §3819; C24, 27, 31, 35, 39,§12680; C46, 50, 54, 58, 62, 66, 71, 73, 75,§677.9]

677.10 Costs. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he cannot recover costs, but shall pay the defendant's costs from the time of the offer. [R60,§3405; C73,§2900; C97,§3819; C24, 27, 31, 35, 39,§12681; C46, 50, 54, 58, 62, 66, 71, 73, 75,§677.10]

677.11 Conditional offer. In an action for the recovery of money only, the defendant, having answered, may serve upon the plaintiff or his attorney an offer in writing that, if he fails in his defense, the amount of recovery shall be assessed at a specified sum. [R60, §3406; C73,§2901; C97,§3820; C24, 27, 31, 35, 39, §12682; C46, 50, 54, 58, 62, 66, 71, 73, 75,§677.11]

C97,§3820, editorially divided

677.12 Acceptance—effect. If the plaintiff accepts the offer, and gives notice thereof to the defendant or his attorney within five days after it was served, or within three days if served in term time, and the defendant fails in his defense, the judgment shall be for the amount so agreed upon. [R60,§3406; C73,§2901; C97,§3820; C24, 27, 31, 35, 39,§12683; C46, 50, 54, 58, 62, 66, 71, 73, 75,§677.12]

677.13 Nonacceptance—effect. If the plaintiff does not accept the offer, he shall prove the amount to be recovered as if the offer had not been made, and the offer shall not be given in evidence or mentioned on the trial, and if the amount recovered by the plaintiff does not exceed the sum mentioned in the offer, the defendant shall recover his costs incurred in the defense. [R60,§3406; C73,§2901; C97,§3820; C24, 27, 31, 35, 39,§12684; C46, 50, 54, 58, 62, 66, 71, 73, 75,§677.13]

677.14 No cause for continuance. The making of any offer pursuant to the provisions of this chapter shall not be cause for a continuance of the action or a postponement of the trial. [R60,§3407; C73,§2902; C97,§3821; C24, 27, 31, 35, 39,§12685; C46, 50, 54, 58, 62, 66, 71, 73, 75,§677.14]

CHAPTER 678

SUBMITTING CONTROVERSIES WITHOUT ACTION OR IN ACTION

678.1 Agreed statement of facts.
678.2 Affidavit.
678.3 Judgment.
678.4 Record.
678.5 Judgment enforced.
678.6 Submission of cause pending.
678.7 Pleadings abandoned—lien and custody of property.
678.8 Submission of question of law—agreement as to judgment.
678.9 Costs.

678.1 Agreed statement of facts. Parties to a question in difference, which might be the subject of a civil action, may, without action, present an agreed statement of the facts to any court having jurisdiction of the subject matter. [C51,§1843; R60,§3408; C73,§3408; C97,

§4377; C24, 27, 31, 35, 39,§12686; C46, 50, 54, 58, 62, 66, 71, 73, 75,§678.1]

678.2 Affidavit. It must be shown by affidavit that the controversy is real, and that the proceeding is in good faith to determine the rights of the parties thereto. [C51,§1844; R60,§3409; C73,§3409; C97,§4378; C24, 27, 31, 35, 39,§12687; C46, 50, 54, 58, 62, 66, 71, 73, 75,§678.2]

678.3 Judgment. The court shall hear and determine the case and render judgment as if an action were pending. [C51,§1845; R60,§3410; C73,§3410; C97,§4379; C24, 27, 31, 35, 39,§12688; C46, 50, 54, 58, 62, 66, 71, 73, 75,§678.3]

678.4 Record. The statement, the submission, and the judgment shall constitute the record. [R60,§3411; C73,§3411; C97,§4380; C24, 27, 31, 35, 39,§12689; C46, 50, 54, 58, 62, 66, 71, 73, 75,§678.4]

678.5 Judgment enforced. The judgment shall be with costs, and it may be enforced and shall be subject to review in the same manner as if it had been rendered in an action, unless otherwise provided for in the submission. [R60,§3412; C73,§3412; C97,§4381; C24, 27, 31, 35, 39,§12690; C46, 50, 54, 58, 62, 66, 71, 73, 75,§678.5]

678.6 Submission of cause pending. The same may also be done at any time before trial in an action pending, subject to the same requirements and attended by the same results as in a case without action. [R60,§3413; C73,§3413; C97,§4382; C24, 27, 31, 35, 39,§12691; C46, 50, 54, 58, 62, 66, 71, 73, 75,§678.6]

C97,§4382, editorially divided

678.7 Pleadings abandoned — lien and custody of property. Such submission of a stated case shall be an abandonment by both parties of all pleadings filed in such cause, and the cause shall stand on the agreed case alone, which must provide for any lien created for attachment, and for any property in the custody of the law, else such lien and custody will be held to be waived. [R60,§3413; C73, §3413; C97,§4382; C24, 27, 31, 35, 39,§12692; C46, 50, 54, 58, 62, 66, 71, 73, 75,§678.7]

678.8 Submission of question of law—agreement as to judgment. The parties may, if they think fit, enter into an agreement in writing that, upon the judgment of the court being given on the question of law raised, particular property therein described, or a sum of money fixed by the parties or to be ascertained by the court or in such manner as the court may direct, shall be delivered to and vested in one of the parties by the other, or, in case of money, shall be paid by one of such parties to the other of them, either with or without costs of the action; and the judgment of the court may be entered for the transfer and delivery of such property, or for such sum as shall be so agreed or ascertained, with or without costs, as the case may be. [R60,§3414; C73,§3414; C97, §4383; C24, 27, 31, 35, 39,§12693; C46, 50, 54, 58, 62, 66, 71, 73, 75,§678.8]

678.9 Costs. In case no agreement is entered into as to the costs, they shall follow the event of the action, and be recovered by the successful party. [R60,§3415; C73,§3415; C97,§4384; C24, 27, 31, 35, 39,§12694; C46, 50, 54, 58, 62, 66, 71, 73, 75,§678.9]

CHAPTER 679

ARBITRATION

679.1 What controversies.
679.2 Written agreement.
679.3 What submitted.
679.4 Action pending.
679.5 Procedure—oaths—evidence.
679.6 Revocation.
679.7 Neglect to appear.
679.8 Time for award.
679.9 When time not fixed.
679.10 Award—how made.
679.11 Hearing in court.
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679.13 Force and effect of award.
679.14 Appeal.
679.15 Costs.
679.16 Rights saved.
679.17 Compensation of arbitrators.
679.18 Arbitration by agreement.
679.19 Disputes between governmental agencies.

679.1 What controversies. All controversies which might be the subject of civil action may be submitted to the decision of one or more arbitrators, as hereinafter provided. [C51,§2098; R60,§3675; C73,§3416; C97,§4385; C24, 27, 31, 35, 39,§12695; C46, 50, 54, 58, 62, 66, 71, 73, 75, §679.1]

679.2 Written agreement. The parties themselves, or those persons who might lawfully have controlled a civil action in their behalf for the same subject matter, must sign and acknowledge a written agreement, specifying particularly what demands are to be submitted, the names of the arbitrators, and court by which the judgment on their award is to be rendered. [C51,§§2099, 2100; R60,§§3676, 3677; C73,§3417; C97,§4386; C24, 27, 31, 35, 39,§12696; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.2]

679.3 What submitted. The submission may be of some particular matters or demands, or of all demands which the one party has against the other, or of all mutual demands on both sides. [C51,§2101; R60,§3678; C73, §3418; C97,§4387; C24, 27, 31, 35, 39,§**12697**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.3]

679.4 Action pending. A submission to arbitration of the subject matter of an action may also be made by an order of court, upon agreement of parties, after action is commenced. [C51,§2102; R60,§3679; C73,§3419; C97, §4388; C24, 27, 31, 35, 39,§**12698**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.4]

679.5 Procedure—oaths—evidence. All the rules prescribed by law in cases of referees are applicable to arbitrators, except as herein otherwise expressed, or except as otherwise agreed upon by the parties. Any member of a board of arbitration, whether composed of one or more arbitrators may administer oaths to witnesses, and the board may accept, demand and call for such evidence as in equity and good conscience the board may deem material and proper, whether strictly legal evidence or not. [C51,§2103; R60,§3680; C73,§3420; C97,§4389; C24, 27, 31, 35, 39,§**12699**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.5]

679.6 Revocation. Neither party shall have the power to revoke the submission without the consent of the other. [C51,§2104; R60,§3681; C73,§3421; C97,§4390; C24, 27, 31, 35, 39,§**12700**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.6]

679.7 Neglect to appear. If either party neglects to appear before the arbitrators after due notice, except in case of sickness, they may nevertheless proceed to hear and determine the controversy upon the evidence which is produced before them. [C51,§2105; R60,§3682; C73,§3422; C97,§4391; C24, 27, 31, 35, 39,§**12701**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.7]

679.8 Time for award. If the time within which the award is to be made is fixed in the submission, one made after that time shall not have any legal effect, unless made upon a recommitment of the matter by the court to which it is reported. [C51,§2106; R60,§3683; C73, §3423; C97,§4392; C24, 27, 31, 35, 39,§**12702**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.8]

679.9 When time not fixed. If the time of filing the award is not fixed in the submission, it must be filed within one year from the time the agreement is signed and acknowledged, unless by mutual consent the time is prolonged. [C51,§2107; R60,§3684; C73,§3424; C97, §4393; C24, 27, 31, 35, 39,§**12703**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.9]

679.10 Award—how made. The award must be in writing, and shall be delivered by one of the arbitrators to the court designated in the agreement, or it may be enclosed and sealed by them and transmitted to the court, and not opened until the court so orders. [C51,§2108; R60,§3685; C73,§3425; C97,§4394; C24, 27, 31, 35, 39,§**12704**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.10]

679.11 Hearing in court. The award shall be entered on the docket of the court as an action is entered and shall be called up and acted upon in its order, but the court may require actual notice to be given to either party, when it appears necessary and proper, before proceeding to act on the award. [C51, §2109; R60,§3686; C73,§3426; C97,§4396; C24, 27, 31, 35, 39,§**12705**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.11]

679.12 Rejection — rehearing. The award may be rejected by the court for any legal and sufficient reasons, or it may be recommitted for a rehearing to the same arbitrators, or any others agreed upon by the parties, or appointed by the court if they cannot agree. [C51,§2110; R60,§3687; C73,§3427; C97,§4397; C24, 27, 31, 35, 39,§**12706**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.12]

679.13 Force and effect of award. When the award has been adopted, it shall be filed and entered on the records, and shall have the same force and effect as the verdict of a jury. Judgment may be entered and execution issued accordingly. [C51,§2111; R60,§3688; C73,§3428; C97,§4398; C24, 27, 31, 35, 39,§**12707**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.13]

679.14 Appeal. When an appeal is taken from such judgment, copies of the submission and award, together with all affidavits, shall be filed with the clerk of the supreme court. [C51,§2112; R60,§3689; C73,§3429; C97,§4399; C24, 27, 31, 35, 39,§**12708**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.14]

679.15 Costs. If there is no provision in the submission respecting costs, the arbitrators may apportion the same. [C51,§2113; R60, §3690; C73,§3430; C97,§4400; C24, 27, 31, 35, 39, §**12709**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.15]

679.16 Rights saved. Nothing herein contained shall be construed to affect in any manner the control of the court over the parties, the arbitrators, or their award; nor to impair or affect any action upon an award, or upon any bond or other engagement to abide an award. [C51,§2115; R60,§3692; C73,§3431; C97, §4401; C24, 27, 31, 35, 39,§**12710**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.16]

679.17 Compensation of arbitrators. Arbitrators shall be paid, for each day actually and necessarily engaged in their official duties, two dollars, or such greater sum as the parties to the arbitration agree upon. [C51,§2114; R60, §3691; C73,§3834; C97,§3873; C24, 27, 31, 35, 39, §**12711**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§679.17]

679.18 Arbitration by agreement. Awards by arbitrators who may have been chosen without complying with the provisions of this chapter shall nevertheless be valid and bind-

ing upon the parties thereto, as other contracts, and may be impeached only for fraud or mistake, but such award can only be enforced by an action. [C97,§4395; C24, 27, 31, 35, 39,§**12712**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §679.18]

679.19 Disputes between governmental agencies. Any litigation between administrative departments, commissions or boards of the state government is prohibited. All disputes between said governmental agencies shall be submitted to a board of arbitration of three members to be composed of two members to be appointed by the departments involved in the dispute and a third member to be appointed by the governor. The decision of the board shall be final. [C62, 66, 71, 73, 75, §679.19]

This section not enacted as a part of this chapter.

CHAPTER 680

RECEIVERS

Referred to in §639.39
See also reference in §626.33

680.1 Appointment.
680.2 Permissible proofs.
680.3 Oath and bond.
680.4 Powers.
680.5 Priority of liens.
680.6 Taxes as prior claim — nonnecessity to file.
680.7 Claims entitled to priority.
680.8 Nonapplicability.
680.9 Legislative intent.
680.10 Discovery of assets.
680.11 Contempt.

680.1 Appointment. On the petition of either party to a civil action or proceeding, wherein he shows that he has a probable right to, or interest in, any property which is the subject of the controversy, and that such property, or its rents or profits, are in danger of being lost or materially injured or impaired, and on such notice to the adverse party as the court shall prescribe, the court, if satisfied that the interests of one or both parties will be thereby promoted, and the substantial rights of neither unduly infringed, may appoint a receiver to take charge of and control such property under its direction during the pendency of the action, and may order and coerce the delivery of it to him. [C51,§1656; R60,§§3216, 3419; C73,§§2903, 2970; C97,§3822; C24, 27, 31, 35, 39,§**12713**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§680.1]

C97,§3822, editorially divided
Exception as to fraternal beneficiary society, §512.104
Orders executed outside district, R.C.P. 120

680.2 Permissible proofs. Upon the hearing of the application, affidavits, and such other proof as the court or judge permits, may be introduced, and upon the whole case such order made as will be for the best interest of all parties concerned. [C73,§2903; C97,§3822; C24, 27, 31, 35, 39,§**12714**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§680.2]

680.3 Oath and bond. Before entering upon the discharge of his duties, he must be sworn faithfully to discharge his trust to the best of his ability, and must also file with the clerk a bond with sureties, to be approved by him, in a penalty to be fixed by the court, and conditioned for the faithful discharge of his duties, and that he will obey the orders of the court in respect thereto. [C51,§1657; R60, §3420; C73,§2904; C97,§3823; C24, 27, 31, 35, 39, §**12715**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§680.3]

680.4 Powers. Subject to the control of the court, a receiver has power to bring and defend actions, to take and keep possession of property, to collect debts, to receive the rents and profits of real property, and, generally, to do such acts in respect to the property committed to him as may be authorized by law or ordered by the court. [C51,§1658; R60,§3421; C73,§2905; C97,§3824; C24, 27, 31, 35, 39,§**12716**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §680.4]

680.5 Priority of liens. Persons having liens upon the property placed in the hands of a receiver shall, if there is a contest as to their priority, submit them to the court for determination. [C97,§3825; S13,§3825; C24, 27, 31, 35, 39, §**12717**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§680.5]

S13,§3825, editorially divided

680.6 Taxes as prior claim—nonnecessity to file. When the assets of any corporation, partnership, or person shall be placed in the hands of a receiver, all taxes against said corporation, partnership, or person, whether levied under the laws of the state or ordinances of municipal corporations, shall be entitled to priority and be first paid in full by the receiver and claims therefor need not be filed with said receiver. [S13,§3825; C24, 27, 31, 35, 39,§**12718**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §680.6]

680.7 Claims entitled to priority. When the property of any person, partnership, company, or corporation has been placed in the hands

of a receiver for distribution, after the payment of all costs the following claims shall be entitled to priority of payment in the order named:

1. Taxes or other debts entitled to preference under the laws of the United States.

2. Debts due or taxes assessed and levied for the benefit of the state, county, or other municipal corporation in this state.

3. Debts owing to employees for labor performed as defined by section 626.69. [S13, §3825-a; C24, 27, 31, 35, 39,§12719; C46, 50, 54, 58, 62, 66, 71, 73, 75,§680.7]

Referred to in §§680.8, 680.9
Bank receivership, see ch 524
Labor claims preferred, §§626.69, 633.425, 681.13

680.8 Nonapplicability. The provisions of section 680.7 shall not apply to the receivership of state banks, as defined in section 524.105, trust companies, or private banks, and in the receivership of such state banks and trust companies, or private banks, no such preference or priority shall be allowed as is provided in said section except for labor as provided by statute. [C27, 31, 35,§12719-a1; C39,§12719.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§680.8]

Referred to in §680.9

680.9 Legislative intent. The provisions of section 680.8 are declaratory of the intent of the legislature and of its interpretation of the provisions of section 680.7. [C27, 31, 35,§12719-a2; C39,§12719.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§680.9]

680.10 Discovery of assets. The court having direction or control of a receiver may, on its own motion, or on motion of the receiver, require any person suspected of having taken wrongful possession of any of the effects of any person, corporation, or partnership for which said receiver has been appointed, or of having had such effects under his control, or any officer or agent of any such suspected person, to appear and submit to an examination, under oath, touching such matters, and if, on such examination, it appears that the person examined has the wrongful possession of any such property, the court may order the delivery thereof to the receiver. [C27, 31, 35, §12719-b1; C39,§12719.3; C46, 50, 54, 58, 62, 66, 71, 73, 75,§680.10]

Analogous provisions, §§630.19, 633.112

680.11 Contempt. If, on being served with the order of the court requiring him to do so, any person fails to appear in accordance therewith, or if, having appeared, he refuses to answer any questions which the court thinks proper to be put to him in the course of such examination, or if he fails to comply with the order of the court requiring him to deliver any such property or effects to the receiver, he may be committed to the jail of the county until he does. [C27, 31, 35,§12719-b2; C39, §12719.4; C46, 50, 54, 58, 62, 66, 71, 73, 75,§680.11]

CHAPTER 681

ASSIGNMENT FOR BENEFIT OF CREDITORS

681.1 Must be without preferences.
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681.11 Claims contested.
681.12 Priority of taxes—nonnecessity to file claim.
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681.17 Disposal of property—time limit.
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681.26 Mandatory removal of assignee.
681.27 Permissive removal of assignee.
681.28 Accounting and delivery.
681.29 Death of assignee—failure to act.
681.30 Additional security—misconduct.
681.31 Repealed by 62GA, ch 400,§216.

681.1 Must be without preferences. No general assignment of property by an insolvent person, firm, or corporation, or in contemplation of insolvency, for the benefit of creditors, shall be valid unless it be made for the benefit of all the creditors in proportion to the amount of their respective claims; and in every such assignment the assent of the creditors shall be presumed. [C51,§§977, 978; R60,§§1826, 1827; C73,§§2115, 2116; C97,§3071; C24, 27, 31, 35, 39, §12720; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.1]

681.2 How made. Every such assignment shall be by an instrument in writing, setting

forth the name of the assignor, his residence and business, the name of the assignee and his residence and business, and, in a general way, the property assigned and its location, and the purpose of the assignment. [C97,§3072; C24, 27, 31, 35, 39,§**12721**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.2]

C97,§3072, editorially divided

681.3 Execution—record and index. It shall be signed and acknowledged in the manner prescribed for the execution and acknowledgment of deeds, and recorded in the office of the recorder of the county where the assignor resides, and in any other county in the state in which he has real property to be assigned thereby, in the records of deeds, and indexed in the proper index books. [R60,§1828; C73,§2117; C97,§3072; C24, 27, 31, 35, 39,§**12722**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.3]

681.4 Inventory—list of creditors. The assignor shall annex to such instrument an inventory, under oath, of his estate, real and personal, according to the best of his knowledge, and a list of his creditors and the amount of their respective demands, but such inventory shall not be conclusive as to the amount of the debtor's estate. [R60,§1828; C73,§2117; C97,§3072; C24, 27, 31, 35, 39,§**12723**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.4]

681.5 Effect of assignment. Such assignment shall vest in the assignee the title to any other property belonging to the debtor at the time of making the assignment, not exempt from execution. [R60,§1828; C73,§2117; C97,§3072; C24, 27, 31, 35, 39,§**12724**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.5]

681.6 Filing with clerk. As soon as such assignment is recorded, it shall be filed, with the inventory and list of creditors, in the office of the clerk of the district court, as shall all subsequent papers connected with such proceedings. [R60,§1828; C73,§2117; C97,§3072; C24, 27, 31, 35, 39,§**12725**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.6]

681.7 Inventory and appraisement — bond. The assignee shall forthwith file with the clerk of the district court where such assignor resides a true and full inventory and valuation of said estate under oath, so far as the same has come to his knowledge, and shall then enter into bonds to said clerk, for the use of the creditors, in double the amount of the inventory and valuation, with one or more sureties to be approved by said clerk, for the faithful performance of said trust, and the assignee may thereupon proceed to perform any duty necessary to carry into effect the purpose of said assignment. [R60,§1830; C73, §2118; C97,§3073; C24, 27, 31, 35, 39,§**12726**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.7]

681.8 Notice of assignment—notice to creditors. The assignee shall forthwith give notice of such assignment by publication in some newspaper in the county, which shall be continued, once each week, at least six weeks, and forthwith send a notice by mail to each creditor of whom he shall be informed, directed to his usual place of residence, requiring such creditor to file in the office of the clerk of the district court within three months thereafter his claims under oath. [R60,§1829; C73,§2119; C97,§3074; S13,§3074; C24, 27, 31, 35, 39,§**12727**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §681.8]

Referred to in §681.9

681.9 Claims filed. The claims of all creditors, clearly and distinctly stated and sworn to by the claimant, or by some person acquainted with the facts, shall be filed in the office of the clerk of the district court within three months from the date of the first publication provided for in section 681.8, unless the court extends such time for all or some of such claimants, which it may do in its discretion where peculiar circumstances seem to justify such extension, but in no case shall such time be extended beyond nine months. [C97,§3075; C24, 27, 31, 35, 39,§**12728**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.9]

681.10 Report required. At the expiration of three months from the time of first publishing notice, the assignee shall report and file with the clerk of the court a true and full list, under oath, of all such creditors of the assignor as shall have claimed to be such, with a statement of their claims, an affidavit of publication of notice, and a list of the creditors, with their places of residence, to whom notice has been sent by mail, and the date of mailing the same. [R60,§1831; C73,§2120; C97,§3076; C24, 27, 31, 35, 39,§**12729**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.10]

681.11 Claims contested. Any person interested may appear within three months after such report is filed and contest the claim or demand of any creditor by written exceptions thereto filed with the clerk, who shall forthwith cause notice thereof to be given to the creditor, which shall be served as in case of an original notice.

The action shall be accorded reasonable priority for assignment to assure its prompt disposition. The court may order a trial by jury but if it does not, it shall hear the proofs and allegations of the parties in the case and render such judgment thereon as shall be just. [R60,§1832; C73,§2121; C97,§3077; C24, 27, 31, 35, 39,§**12730**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §681.11]

681.12 Priority of taxes — nonnecessity to file claim. In all assignments of property for the benefit of creditors, assessments thereof, or taxes levied thereon, whether under the laws of the state or ordinances of municipal corporations, shall be entitled to priority, and paid in full by the assignee, and claims therefor need not be filed with him. [C97,§3078; C24, 27, 31, 35, 39,§**12731**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.12]

Referred to in §681.14

681.13 Labor claims preferred. If the claim of any creditor is for personal services rendered the assignor within ninety days next preceding the execution of the assignment, it shall be paid in full. [C97,§3079; C24, '27, 31, 35, 39,§**12732**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §681.13]

C97,§3079, editorially divided
Referred to in §681.14
Labor claims preferred, §§626.69, 633.425, 680.7

681.14 Dividends—compensation. Subject to the provisions contained in sections 681.12 and 681.13, if no exception be made to the claim of any creditor, or if the same has been adjudicated, the court shall order the assignee to make, from time to time, fair and equal dividends among the creditors of the assets in his hands in proportion to their claims, and as soon as may be to render a final account of said trust to said court, which may allow such compensation to said assignee in the final settlement as may be considered just and right. [C73,§2122; C97,§3079; C24, 27, 31, 35, 39,§**12733**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.14]

681.15 Absent creditor. If, upon making the final dividend to the creditors, the assignee shall be unable, after reasonable efforts, to ascertain the place of residence of any creditor, or any person who is authorized to receive the dividend due him, he shall report the same to the court, with evidence showing diligent attempts to find such creditor or person authorized to receive the dividend, whereupon the court may, in its discretion, order the distribution of the unclaimed dividend among the other creditors. [C97,§3079; C24, 27, 31, 35, 39,§**12734**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §681.15]

681.16 Power of court. The assignee shall be at all times subject to the order and supervision of the court, and from time to time may be compelled by citation or attachment to file reports of his proceedings and of the situation and condition of the trust, and to proceed in the execution of the duties required by this chapter. [R60,§§1834, 1842; C73,§2123; C97,§3080; C24, 27, 31, 35, 39,§**12735**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.16]

C97,§3080, editorially divided

681.17 Disposal of property — time limit. The assignee shall dispose of all personal property and divide the proceeds of the same among creditors as they may be entitled thereto within six months from the date of the assignment, and shall dispose of real estate within one year from such date, and make full settlement by that time, unless the court, for good reason shown, shall extend the time within which such disposition or settlement shall be made. [C97,§3080; C24, 27, 31, 35, 39, §**12736**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.17]

681.18 Neglect to file inventory or list. No assignment shall be declared fraudulent or void for want of any list or inventory, as provided in this chapter. [R60,§1835; C73,§2124; C97,§3081; C24, 27, 31, 35, 39,§**12737**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.18]

C97,§3081, editorially divided

681.19 Examination of debtor. The court may, upon application of the assignee or any creditor, compel the appearance in person of the debtor before such court or forthwith to answer under oath such matters as may be inquired of him, and such debtor may be fully examined under oath as to the amount and situation of his estate, and the names of the creditors and amounts due to each, with their places of residence, and may be compelled to deliver to the assignee any property or estate embraced in the assignment. [R60,§1835; C73,§2124; C97,§3081; C24, 27, 31, 35, 39,§**12738**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.19]

681.20 Additional inventory and security. The assignee shall, from time to time, file with the clerk of the court an inventory and valuation of any additional property which may come into his hands under said assignment after the filing of the first inventory, and the clerk may thereupon require him to give additional security. [R60,§1836; C73,§2125; C97, §3082; C24, 27, 31, 35, 39,§**12739**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.20]

681.21 Claims not due. Any creditor may claim debts to become due, as well as debts due, but on debts not due a reasonable rebate shall be made when the same are not drawing interest. [R60,§1837; C73,§2126; C97,§3083; C24, 27, 31, 35, 39,§**12740**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.21]

C97,§3083, editorially divided

681.22 Claims filed after three months. All creditors who shall not file their claims within three months from the publication of notice, as aforesaid, shall not participate in the dividends until after the payment in full of all claims presented within said term, and allowed by the court, unless the court has extended the time for filing such claims, except as provided by this chapter. [R60,§1837; C73,§2126; C97,§3083; C24, 27, 31, 35, 39,§**12741**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.22]

681.23 Sale of property generally. The assignee may dispose of and sell all the estate assigned, real and personal, which the debtor had at the time of the assignment, may sue for and recover in his name everything belonging or appertaining to said estate, and generally do whatever the debtor might have done in the premises. [R60,§1838; C73,§2127; C97,§3084; C24, 27, 31, 35, 39,§**12742**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.23]

C97,§3084, editorially divided

681.24 Sale of real estate. No sale of real estate belonging to said trust shall be made without notice, published as in case of sales of real estate on execution, unless the court shall otherwise order. [R60,§1838; C73,§2127;

C97,§3084; C24, 27, 31, 35, 39,§12743; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.24]

Sale of real estate, §626.74 et seq.

681.25 Approval of sales. No such sales shall be valid until approved by such court. [C97, §3084; C24, 27, 31, 35, 39,§12744; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.25]

681.26 Mandatory removal of assignee. Upon a written application of two-thirds of the creditors in number, and two-thirds in amount, the court shall remove the assignee and appoint in his stead a person approved by the creditors in the same number and amount. [C97,§3085; C24, 27, 31, 35, 39,§12745; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.26]

C97,§3085, editorially divided

681.27 Permissive removal of assignee. If an assignee shall reside out of the state, or become insane or otherwise incapable of discharging the trust, the court may, upon ten days' notice to him or his attorney remove him and appoint another in his stead. [C97, §3085; C24, 27, 31, 35, 39,§12746; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.27]

681.28 Accounting and delivery. The person so removed shall immediately turn over to the clerk of the district court, or any person appointed by the court, all moneys and property of the estate in his hands. [C97,§3085; C24, 27, 31, 35, 39,§12747; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.28]

681.29 Death of assignee—failure to act. If an assignee dies before the closing of his trust, or in case any assignee shall fail or neglect for the period of twenty days after the making of any assignment to file an inventory and valuation, and give bond as required by this chapter, the district court of the county where such assignment may be recorded, on the application of any person interested, shall appoint some person to execute the trust, who shall, on giving bond with sureties as required of an assignee, have all of the powers of the assignee first appointed, and be subject to all the duties hereby imposed. [R60,§1839; C73, §2128; C97,§3086; C24, 27, 31, 35, 39,§12748; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.29]

C97,§3086, editorially divided

681.30 Additional security—misconduct. In case any bond or surety is found to be insufficient, or, on complaint before the court, it shall be made to appear that any assignee is guilty of wasting or misapplying the trust estate, such court may require additional security, may remove the assignee and appoint another in his place, and such person so appointed, on giving bond, shall execute such duties, and may demand and sue for all estate in the hands of the person removed, and recover the amount and value of all moneys and property or estate wasted and misapplied, from such person and his sureties. [R60, §1839; C73,§2128; C97,§3086; C24, 27, 31, 35, 39, §12749; C46, 50, 54, 58, 62, 66, 71, 73, 75,§681.30]

681.31 Repealed by 62GA, ch 400,§216.

CHAPTER 682

SECURITIES AND INVESTMENTS OF TRUST FUNDS

Referred to in §633.109

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SURETY BONDS

682.1 Security to be by bond. Whenever security is required to be given by law or by order or judgment of a court, and no particular mode is prescribed, it shall be by bond. [C51,§2505; R60,§4113; C73,§246; C97,§355; C24, 27, 31, 35, 39,§**12751**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.1]

See §§633.169 to 633.177

682.2 Payee. Such security, when not otherwise directed, may, if for the benefit of individuals, be given to the party intended to be secured thereby; if in relation to the public matters concerning the inhabitants of one county or part of a county, it may be made payable to the county; if concerning the inhabitants of more than one county, it may be made payable to the state, but a mere mistake in these respects will not vitiate the security. [C51,§2506; R60,§4114; C73,§247; C97,§356; C24, 27, 31, 35, 39,§**12752**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.2]

See §633.181

682.3 Defects rectified. No defective bond or other security or affidavit in any case shall prejudice the party giving or making it, provided it be so rectified, within a reasonable time after the defect is discovered, as not to cause essential injury to the other party. [C51, §2511; R60,§4119; C73,§248; C97,§357; C24, 27, 31, 35, 39,§**12753**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §682.3]

682.4 Qualifications of sureties. Each personal surety shall execute and file with the clerk an affidavit that he owns real estate subject to execution, other than real estate held in joint tenancy, equal to double the amount of the bond, and shall include in such affidavit the total amount of his obligations as surety on other official or statutory bonds. Where there are two or more sureties in the same bond, they must in the aggregate have the qualification prescribed in this section. [R60,§4126; C73,§249; C97,§358; S13,§358; C24, 27, 31, 35, 39, §**12754**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.4]

S13,§358, editorially divided
Referred to in §§633.182, 682.5

682.5 Attorneys not receivable as surety. Attorneys at law shall not be accepted as sureties upon any official bonds provided for in section 682.4. [S13,§358; C24, 27, 31, 35, 39, §**12755**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.5]

Referred to in §682.7
See §633.182
Similar provision, §621.7

682.6 New bond required. Whenever the board of supervisors of any county shall have knowledge that any attorney at law is surety upon any official bond, above referred to, it shall require said officer to forthwith file a new bond. [S13,§358; C24, 27, 31, 35, 39,§**12756**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.6]

Referred to in §682.7
See §633.180

682.7 Surety bound notwithstanding disqualification. Nothing in sections 682.5 and 682.6 shall exempt such person from any liability upon the bond signed by him. [S13,§358; C24, 27, 31, 35, 39,§**12757**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.7]

682.8 Affidavit of sureties—effect of. The officer whose duty it is to take a surety in any bond provided for or authorized by law shall require the person offered as surety to make affidavit of his qualification, which affidavit may be made before such officer, or other officer authorized to administer oaths. [R60, §4125; C73,§250; C97,§359; C24, 27, 31, 35, 39, §**12758**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.8]

C97,§359, editorially divided

682.9 Effect of affidavit. The taking of such an affidavit shall not exempt the officer from any liability to which he might otherwise be subject for taking insufficient security. [R60, §4125; C73,§250; C97,§359; C24, 27, 31, 35, 39, §**12759**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.9]

682.10 Appeal bonds — presumption. The filing by an approving officer of a duly tendered appeal bond in an appeal to any court shall carry the presumption until the contrary is established that said officer approved the bond even though no formal approval is endorsed on the bond. [C31, 35,§12759-c1; C39, §**12759.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §682.10]

SURETY COMPANIES

682.11 Certificate of authority. Any company engaged in the business of becoming surety upon bonds shall file, with the clerk of any county in which it shall do business, a certificate from the commissioner of insurance that it has complied with the law and is authorized to do business in this state. [C97, §359; C24, 27, 31, 35, 39,§**12760**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.11]

682.12 Certificate revoked — notice. Should said authority be withdrawn at any time, the commissioner of insurance shall at once notify the clerk of each district court to that effect.

[C97,§359; C24, 27, 31, 35, 39,§**12761**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.12]

682.13 Record by clerk. The clerk shall keep a book, properly indexed, in which shall be recorded all such certificates and revocations. [C97,§359; C24, 27, 31, 35, 39,§**12762**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.13]

682.14 Guaranty company as surety. Whenever any person who now or hereafter may be required or permitted to give a bond applies for the approval thereof, any officer or body who is now or shall hereafter be required to approve the sufficiency of such bond shall accept and approve the same, whenever its conditions are guaranteed by a company or corporation duly organized or incorporated under the laws of this state, or authorized to do business therein, and to guarantee the fidelity of persons holding positions of public or private trust, or secure any bond above referred to, and which company shall have the certificate of the commissioner of insurance authorizing it to do business therein, as provided in chapter 515. [C97,§360; SS15,§360; C24, 27, 31, 35, 39,§**12763**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.14]

SS15,§360, editorially divided
Referred to in §§633.182, 682.15, 682.18

682.15 Payment of premiums. The premium for any such guaranty or surety company bond as defined in section 682.14, may, by the approval of the court, be paid out of the trust funds in the hands of the party of whom the bond is required. [SS15,§360; C24, 27, 31, 35, 39,§**12764**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.15]

Referred to in §682.18

682.16 Certificate as authority. The certificate of the commissioner of insurance, to the effect that such company has complied with the requirements of chapter 515 and is authorized to do business in this state, shall be sufficient evidence to authorize the officer or body having the approval of such bond to accept and approve the same. [C97,§360; SS15, §360; C24, 27, 31, 35, 39,§**12765**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.16]

Referred to in §682.18

682.17 Limitation on acceptance. No such security shall be accepted on any bond for an amount in excess of ten percent of the paid-up cash capital of such company or corporation unless the excess shall be reinsured in some other company or corporation authorized to do business in the state and in no case to exceed ten percent of the capital of the reinsuring company and provided that a certificate of such reinsurance shall be furnished to the insured. [C97,§360; SS15,§360; C24, 27, 31, 35, 39,§**12766**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.17]

Referred to in §682.18

682.18 Criminal bonds. Nothing contained in sections 682.14 to 682.17 shall apply to bonds in criminal cases. [C97,§360; SS15,§360; C24, 27, 31, 35, 39,§**12767**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.18]

682.19 Release. Such company or corporation may be released from its liability as such surety on any bond on the same terms and conditions, and in the same manner, as is by law prescribed for the release of natural persons as such sureties; it being the intent of this chapter to enable companies created, incorporated, or chartered for such purposes to become surety on bonds required by law, subject to all the rights and liabilities of natural persons. [C97,§361; C24, 27, 31, 35, 39,§**12768**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.19]

Discharge of sureties, ch 65

682.20 Suit on bond — service. Whenever suit is required to be brought on any bond given by such company, service shall be had upon any agent of such company in this state, and if there is no agent in the state, then service may be had by serving the commissioner of insurance fifteen days before the term of court in which the suit is sought to be brought. [C97,§362; C24, 27, 31, 35, 39,§**12769**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.20]

C97,§362, editorially divided
See §633.186

682.21 Commissioner as process agent. It shall be the duty of the commissioner of insurance, upon service being made upon him, to immediately mail a copy of such notice to such company at their principal place of business, and any notice so served shall be deemed to be good and sufficient service on any such company. [C97,§362; C24, 27, 31, 35, 39,§**12770**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.21]

See §633.186

682.22 Estoppel — stockholders liable. Any company which shall execute any bond as surety under the provisions of this chapter shall be estopped, in any proceeding to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute such instrument or assume such liability; and the private property of the stockholders shall be liable for the debts of the corporation to the full amount of the capital stock held by such stockholders. [C97,§363; C24, 27, 31, 35, 39,§**12771**; C46, 50, 54, 58, 62 66, 71, 73, 75,§682.22]

INVESTMENT OF FUNDS

682.23 Authorized securities. All proposed investments of trust funds by fiduciaries shall first be reported to the court or a judge for approval and be approved and unless otherwise authorized or directed by the court under authority of which he or it acts, or by the will, trust agreement, or other document which is the source of authority, a trustee, executor, administrator, or guardian shall invest all moneys received by such fiduciary, to be by him or it invested, in securities which at the time of the purchase thereof are included in one or more of the following classes:

1. *Federal bonds.* Bonds or other interest-bearing obligations of the United States for the payment of which the faith and credit of the United States is pledged.

2. *Federal bank bonds.* Bonds issued by any federal land bank or by the federal Farm Mortgage Corporation or any corporation or governmental agency or instrumentality authorized to issue bonds, or debentures under the Act of Congress designated as the federal Farm Loan Act [12 USC,§§641–1012, 1021–1129] and Acts amendatory thereof and in bonds issued by any federal home loan bank under the Act of Congress known and cited as the federal Home Loan Bank Act, [12 USC,§§1421–1449] and the Acts amendatory thereof.

3. *State bonds.* Bonds or other interest-bearing obligations of any state in the United States for the payment of which the faith and credit of such state is pledged and which state has not defaulted in the payment of any of its bonded debts within the ten preceding years.

4. *Municipal bonds.* Bonds, or other interest-bearing obligations, which are a direct obligation of any county, township, city, village, school district, or other municipal corporation or district, having power to levy general taxes, in the state of Iowa, and also bonds, or other interest-bearing obligations, which are a direct obligation of any county, township, city, village, school district, or other municipal corporation or district, having power to levy general taxes, in any adjoining state, having a population of not less than five thousand; and also bonds, or other interest-bearing obligations, which are a direct obligation of any county, township, city, village, school district, or other municipal corporation or district, having power to levy general taxes, in any other state, having a population of not less than ten thousand. Provided the total funded indebtedness of any such municipality enumerated in this subsection shall not exceed ten percent of the assessed value of the taxable property therein, as ascertained by the last assessment for tax purposes, and provided further that such municipality or district has not defaulted in the payment of any of its bonded indebtedness within the ten preceding years.

5. *Real estate mortgage bonds.* Notes or bonds of any individual secured by a first mortgage on improved real estate located in this state, provided the aggregate amount of such notes and/or bonds secured by such first mortgage, does not exceed fifty percent of the value of the mortgage property as determined by the fiduciary; any such loan may be made in an amount not to exceed seventy-five percentum of the appraised value of the real estate offered as security and for a term not longer than twenty years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within the period ending on the date of its maturity.

6. *Corporate mortgages.* Notes or bonds of any corporation secured by a first mortgage on improved real estate located in this or any adjoining state upon which no default in payment of principal or interest shall have occurred within five preceding years provided the aggregate amount of such notes and/or bonds secured by such first mortgage does not exceed fifty percent of the value of the mortgage property as determined by the fiduciary.

7. *Railroad bonds.* Bonds of any railroad corporation which are secured by a first lien mortgage or trust deed upon not less than one hundred miles of main track in the United States and which mortgage or trust deed has been outstanding not less than fifteen years and upon which bonds issued thereunder there has been no default in the payment of principal and/or interest since the date of said such trust deed.

8. *Bonds guaranteed by railroad.* Bonds of any corporation secured by a first lien upon any railroad terminal depot, tunnel, or bridge in the United States used by two or more railroad companies which have guaranteed the payment of principal and interest of such bonds and have otherwise covenanted or agreed to pay the same, provided at least one of said railroad companies meets the following requirements:

a. Has earned net income equal to at least four percent of the par value of its outstanding capital stock for five preceding years, and

b. Has regularly and punctually paid interest and maturing principal on all of its mortgage indebtedness for five preceding years.

c. Has outstanding capital stock of the par value of at least one-third of its total mortgage indebtedness.

9. *Public utility bonds.* Bonds of any corporation supplying either water, electric energy, or artificial manufactured gas or two or more thereof for light, heat, power, water, or other purposes, or furnishing telephone or telegraph service, provided that such bonds are secured by a first mortgage on all property used in the business of the issuing corporation or by a first and refunding mortgage containing provision for retiring all prior liens, and provided further, that the issuing corporation is incorporated within the United States, and if operating entirely outside this state is operating in a state or other jurisdiction having a public utilities commission with regulatory powers, and providing such operating corporation has annual gross earnings of at least one million dollars, seventy-five percent of which gross earnings have come from the sale of water, gas, or electricity, or the rendering of telephone or telegraph service and not more than fifteen percent from any other one kind of business and which corporation has a record on its behalf or for its predecessors or constituent companies, of

having officially reported net earnings at least twice its interest charges on all mortgage indebtedness for the period of five years immediately preceding the investment and having outstanding stock the book value of which is not less than two-thirds of its total funded debt, and which corporation shall have all franchises to operate in the territory it serves in which at least seventy-five percent of its gross income is earned, which franchise shall extend at least five years beyond the maturity of such bonds or which have indeterminate permits or agreements with duly constituted public authorities, or in the bonds of any constituent or subsidiary company of any such operating company which are secured by a first mortgage on all property of such constituent or subsidiary company, provided such bonds are to be retired or refunded by a junior mortgage, the bonds of which are eligible hereunder.

10. *Building and loan associations.* Shares of building and loan associations and savings and loan associations, incorporated under the laws of Iowa and in shares of federal savings and loan associations organized under the laws of the United States of America.

11. *Bonds and debentures guaranteed by the federal government.* Bonds, debentures, or other interest-bearing obligations, the payment of which is guaranteed by the United States of America.

12. *Stock in federal government instrumentalities.* Stock in any association or corporation created or which may be created by authority of the United States and as an instrumentality of the United States, when the purchase of said stock is necessary or required as an incident or condition of obtaining a loan from any association or corporation created or which may be created by authority of the United States and as an instrumentality of the United States.

13. *Life, endowment or annuity contracts of legal reserve life insurance companies authorized to do business in Iowa.* The purchase of contracts authorized by this subsection shall be limited to executors or the successors to their powers when specifically authorized by will, and to guardians and trustees, in an amount not to exceed twenty-five percent of the value of the ward's property in possession of the fiduciary. Such contract may be issued on the life or lives of a ward or wards or beneficiary or beneficiaries of a trust fund created by will or trust agreement, or upon the life or lives of persons in whose life or lives such ward or beneficiary has an insurable interest. The proceeds or avails of such contract shall be the sole property of the person or persons whose funds are invested therein.

14. *Limitation as to court-approved investments.* Nothing in this section shall be construed as prohibiting investment of such funds in a savings account or time certificate of deposit of a bank located in this state and when first approved by the court.

15. *When court approval not required.* Nothing in this section contained shall be construed as modifying the probate code nor be construed as requiring investments of trust funds by fiduciaries to be reported to any court or judge for approval where the trust agreement or other document under which the fiduciary is acting is not being administered under the jurisdiction of any court or by its terms specifically exempts the fiduciary from reporting any such investments for approval. [C51,§2507; R60,§4115; C73,§251; C97,§364; S13, §364; C24, 27, 31, 35, 39,§**12772**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.23]

Referred to in §§37.24, 455.162, 566.5, 566.15, 682.24, 682.25, 682.26
See §§633.123, 633.127

682.24 Population and indebtedness. The population specified in section 682.23 shall be determined by the last preceding official federal census. The indebtedness of any municipality or governmental subdivision shall be determined by the official certificate of the officer of such municipality or district in charge of its public accounts. [C31, 35,§12772 -c1; C39,§**12772.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.24]

Referred to in §682.25
See §§633.123, 633.127

682.25 Existing investments. Any fiduciary not governed by the probate code may by and with the consent of the court having jurisdiction over such fiduciary or under permission of the instrument creating the trust, continue to hold any investment originally received by him or it under the trust or any increase thereof. Such fiduciary may also make investments which he or it may deem necessary to protect and safeguard investments already made according to the provisions of this and sections 682.23 and 682.24. [C31, 35,§12772-c2; C39,§**12772.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.25]

Referred to in §682.26
Omnibus repeal, 43GA, ch 259,§4
See §§633.123, 633.127

682.26 Security subject to court order. When any investment is made pursuant to approval of the court as required by section 682.23 or made or held by and with the consent of the court as provided in section 682.25, such investment shall not be transferred and any security taken to secure such investment shall not be discharged or impaired prior to payment or satisfaction thereof without an order of the court to that effect, unless otherwise authorized by the will, trust agreement or other document under which the fiduciary is acting. Nothing herein contained shall be construed as requiring the approval of any court to release or discharge of record any mortgage or other lien held by any fiduciary upon the payment or satisfaction thereof in full.

All releases or discharges of record of mortgages or other liens prior to July 4, 1951, by any fiduciary without an order of court where such order was required by section 682.26, Code 1950, are hereby declared to be valid and

effective from the filing or recording thereof without such order of court being had and obtained, unless within six months after said date a statement is filed under oath by the claimant or on his behalf if under disability with the county recorder where such release or discharge was filed or recorded setting forth the claim upon which the invalidity of such release or discharge is based. Nothing herein contained shall affect pending litigation. [C51,§2508; R60,§4116; C73,§252; C97,§365; C24, 27, 31, 35, 39,§**12773**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.26]

See §633.95

682.27 Collection, application of funds, and reinvestment. The clerk or other person appointed in such cases to make the investment must receive all moneys as they become due thereon, and apply or reinvest the same under the direction of the court, unless the court appoints some other person to do such acts. [C51,§2509; R60,§4117; C73,§253; C97,§366; C24, 27, 31, 35, 39,§**12774**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.27]

682.28 Annual accounting. Once in each year, and oftener if required by the court, the person so appointed must, on oath, render to the court an account in writing of all moneys so received by him, and of the application thereof. [C51,§2510; R60,§4118; C73,§254; C97, §367; C24, 27, 31, 35, 39,§**12775**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.28]

See §§633.469, 633.470, 633.671, 633.700

ESTATE AND TRUST FUNDS

682.29 Property or funds in litigation—deposit. When it is admitted by the pleadings, or shown by the examination of a party, that he has in his possession, or under his control, any money or property capable of delivery, which is in any degree the subject of litigation, and which is held by him as trustee for another party, the court may order the same to be deposited in the office of the clerk, or delivered to such party, with or without security, subject to the further direction of the court; or may order such money to be deposited in a bank, with the consent of the parties in interest, to the credit of the court in which the action is pending, and the same shall be paid out by such bank only upon the check of the clerk, annexed to a certified copy of the order of the court directing such payment. [R60,§3416; C73,§255; C97,§368; C24, 27, 31, 35, 39,§**12776**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §682.29]

682.30 Enforcement of order. Whenever a court, in the exercise of its authority, has ordered the deposit or delivery of money or other property, and the order is disobeyed, such court, besides punishing the disobedience, may make an order requiring the sheriff to take the money or property, and deposit or deliver it in conformity with the directions of the court, and in such cases he has the same power as when acting under an order for the delivery of personal property. [R60,§§3417, 3418; C73,§§256, 257; C97,§369; C24, 27, 31, 35, 39,§**12777**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.30]

682.31 Inability to distribute trust funds—deposit. Whenever any fiduciary not governed by the probate code shall desire to make his final report, and shall then have in his possession or under his control any funds, moneys, or securities due, or to become due, to any heir, legatee, devisee, or other person, whose place of residence is unknown to such fiduciary, or to whom payment of the amount due cannot be made as shown by the report on file, such funds, moneys, or securities may upon order of the court and after such notice as the court may prescribe, be deposited with the clerk of the district court of the county wherein such appointment was made. [C97, §370; S13,§370; C24, 27, 31, 35, 39,§**12778**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.31]

S13,§370, editorially divided
See §633.109

682.32 Receipt taken. If said fiduciary shall otherwise discharge all the duties imposed upon him by such appointment, he may take the receipt of the clerk of the district court for such funds, moneys, or securities so deposited, which receipt shall specifically set forth from whom said funds, moneys, or securities, were derived, the amount thereof, and the name of the person to whom due or to become due, if known. [C97,§370; S13, §370; C24, 27, 31, 35, 39,§**12779**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.32]

See §633.110

682.33 Final discharge. Said fiduciary may file such receipt with his final report, and if it shall be made to appear to the satisfaction of the court that he has in all other respects complied with the law governing his appointment and duties, the court may approve such final report and enter his discharge. [C97, §370; S13,§370; C24, 27, 31, 35, 39,§**12780**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.33]

Fiduciaries' reports, §422.27
See §633.111

682.34 Notice of deposit. Notice of such contemplated deposit, and of final report, shall be given for the same time and in the same manner as is now required in cases of final report by personal representatives under the probate code. [C97,§370; S13,§370; C24, 27, 31, 35, 39,§**12781**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.34]

Notice, §§633.478, 633.487
See §633.109

682.35 Repealed by 60GA, ch 326,§705.

682.36 Repealed by 60GA, ch 326,§705. See §633.475.

682.37 Duty of clerk. The clerk of the district court with whom any deposit of funds, moneys, or securities shall be made, as provided by any law or an order of court, shall enter in a book, to be provided and kept for

that purpose, the amount of such deposit, the character thereof, the date of its deposit, from whom received, from what source derived, to whom due or to become due, if known. [C97, §371; S13,§371; C24, 27, 31, 55, 39,§12782; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.37]

S13,§371, editorially divided

682.38 Liability—reports required. He shall be liable upon his bond for all such funds, moneys, or securities which may be deposited with him, and shall make complete verified statements thereof to the board of supervisors at the January and June sessions each year. [C97,§371; S13,§371; C24, 27, 31, 35, 39,§12783; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.38]

682.39 to 682.44 Repealed by 62GA, ch 391, §31.

FEDERAL SECURITIES

682.45 Federal insured loans. Insurance companies, building and loan associations, trustees, guardians, executors, administrators, and other fiduciaries, the state and its political subdivisions, and institutions and agencies thereof, and all other persons, associations, and corporations (1) may make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance pursuant to Title I, section 2, of the National Housing Act [12 U.S.C., ch 13], and may obtain such insurance, (2) may make such loans, secured by real property or leasehold, as the federal housing administrator insures or makes a commitment to insure pursuant to Title II of the National Housing Act, and may obtain such insurance, and (3) may make real property loans which are guaranteed or insured by the administrator of veterans' affairs under the provisions of Title 38, sections 1801 through 1824, inclusive, United States Code.

It shall be lawful for insurance companies, building and loan associations, trustees, guardians, executors, administrators, and other fiduciaries, the state and its political subdivisions, and institutions and agencies thereof, and all other persons, associations, and corporations, subject to the laws of this state, to originate real estate loans which are guaranteed or insured by the administrator of veterans' affairs under the provisions of Title 38, sections 1801 through 1824, inclusive, United States Code, and originate loans secured by real property or leasehold, as the federal housing administrator insures or makes a commitment to insure pursuant to Title II of the National Housing Act, and may obtain such insurance and may invest their funds, and the moneys in their custody or possession, eligible for investment, in bonds and notes secured by mortgage or trust deed insured by the federal housing administrator, and in the debentures issued by the federal housing administrator pursuant to Title II of the National Housing Act, and in securities issued by national mortgage associations or similar credit institutions now or hereafter organized under Title III of the National Housing Act, and in real estate loans which are guaranteed or insured by the administrator of veterans' affairs under the provisions of Title 38, sections 1801 through 1824, inclusive, United States Code. [C35,§12786-g1; C39,§12786.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §682.45]

Referred to in §682.46

682.46 Inapplicable statutes. No law of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount or form of such security, or prescribing or limiting interest rates upon loans or investments which may be made, shall be deemed to apply to loans or investments pursuant to section 682.45. [C35,§12786-g2; C39,§12786.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§682.46]

VOLUNTARY AGREEMENTS

682.47 Deposit and joint control agreements. It shall be lawful for any party of whom a bond, undertaking or other obligation is required, to agree with his surety or sureties for the deposit of any or all moneys and assets for which he and his surety or sureties are or may be held responsible, with a bank, savings bank, safe-deposit or trust company, authorized by law to do business as such, or with other depository approved by the court if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such surety or sureties, or an order of court made on such notice to such surety or sureties as such court may direct; provided, however, that such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the said bond. [C54, 58, 62, 66, 71, 73, 75,§682.47]

See §633.183

682.48 to 682.59 Repealed by 61GA, ch 432, §69.

TRUSTS NOT IN PROBATE COURT

682.60 Powers and duties of trustees not subject to court administration. Trustees of express trusts not being administered in the probate court, shall have all the powers and shall be subject to all the duties and liabilities as provided in the probate code, except the duty of reporting to or obtaining approval of the court. [C66, 71, 73, 75,§682.60]

CHAPTER 683

PROCEDURE TO VACATE OR MODIFY JUDGMENTS

Rule—Judgment vacated or modified—grounds, R.C.P. 252.
683.1 Time limit.
Rule—Petition, notice, trial, R.C.P. 253.
Rule—Disposition of exhibits, R.C.P. 253.1.
683.2 Cause of action or defense—necessity.
Rule—Titles and liens protected, R.C.P. 254.
683.3 Injunction.

Judgment vacated or modified — grounds. See R.C.P. 252.

683.1 Time limit. Such proceedings must be commenced within one year after the judgment or order was made, unless the party entitled thereto is a minor or person of unsound mind, and then within one year after the removal of such disability. [R60,§3501; C73, §3157; C97,§4094; C24, 27, 31, 35, 39,§**12793**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§683.1]

Petition, notice, trial. See R.C.P. 253.

(*a*) *Petition.*
(*b*) *Notice.*
(*c*) *Trial.*
(*d*) *Preliminary determination.*
(*e*) *Judgment.*

Disposition of exhibits. See R.C.P. 253.1.

683.2 Cause of action or defense—necessity. The judgment shall not be vacated on motion or petition until it is adjudged there is a cause of action or defense to the action in which the judgment is rendered. [R60,§3503; C73, §3159; C97,§4096; C24, 27, 31, 35, 39,§**12796**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§683.2]

C97,§4096, editorially divided

Titles and liens protected. See R.C.P. 254.

683.3 Injunction. The party seeking to vacate or modify a judgment or order may have an injunction suspending proceedings on the whole or part thereof, which shall be granted by the court upon its being rendered probable, by affidavit or verified petition, or by exhibition of the record, that the party is entitled to the relief asked. [R60,§3505; C73, §3161; C97,§4098; C24, 27, 31, 35, 39,§**12799**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§683.3]

TITLE XXXIV

APPELLATE COURT

CHAPTER 684

SUPREME COURT AND COURT OF APPEALS

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ORGANIZATION OF SUPREME COURT

684.1 Jurisdiction.

1. The supreme court shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law. The jurisdiction of the supreme court shall be coextensive with the state.

See Const. Art. V,§4

2. Any civil or criminal action or special proceeding filed with the supreme court for appeal or review, may be transferred by the supreme court to the court of appeals by issuing an order of transfer. The jurisdiction of the supreme court in such a matter shall cease upon the filing of that order by the clerk of the supreme court. Any matter which has been transferred to the court of appeals pursuant to order of the supreme court shall not thereafter be subject to the jurisdiction of the supreme court, except as provided in subsection 4.

3. The supreme court shall promulgate rules for the transfer of matters to the court of appeals. Those rules may provide for the selective transfer of individual cases and may provide for the transfer of cases according to subject matter or other general criteria. Rules relating to the transfer of cases shall be subject to the provisions of section 684.19. A rule shall not provide for the transfer of a matter other than by an order of transfer as provided in subsection 2.

4. Any party to an appeal decided by the court of appeals may, as a matter of right, file an application with the supreme court for further review. An application for further review shall not be granted by the supreme court unless the application was filed within twenty days following the filing of the decision of the court of appeals. The court of appeals may extend the time for filing of an

application if the court of appeals determines that a failure to timely file an application was due to the failure of the clerk of the court of appeals to notify the prospective applicant of the filing of the decision. If an application for further review is not acted upon by the supreme court within thirty days after the application was filed, the application shall be deemed denied, the supreme court shall lose jurisdiction, and the decision of the court of appeals shall be conclusive.

5. The supreme court shall promulgate rules of appellate procedure which shall govern further review by the supreme court of decisions of the court of appeals. Such rules shall contain, but need not be limited to, a specification of the grounds upon which further review may, in the discretion of the supreme court, be granted. Rules promulgated pursuant to this subsection shall be subject to section 684.19. [66GA, ch 1241,§77]

Referred to in §§684.35, 684.36

684.2 Judges—quorum—divisions.

1. The supreme court shall consist of nine judges. A majority of the judges sitting shall constitute a quorum but in no case shall a quorum consist of less than three judges.

2. The supreme court may be divided into divisions of three or more judges in such manner as it may by rule prescribe. Said divisions may hold open court separately and cases may be submitted to each division separately, in accordance with such rules as the court may adopt. [C51,§1551; R60,§2627; C73,§139; C97, §§193, 194; S13,§§193, 194; C24, 27, 31, 35, 39, §§**12801, 12802**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §§684.1, 684.2; 66GA, ch 1241,§78]

S13,§194, editorially divided

684.3 Submission to entire court — rules. The supreme court shall also adopt rules for the submission of any case or petition for rehearing whenever differences shall arise between members of divisions or whenever the chief justice shall order or direct the submission of said question or petition for rehearing to the whole court. The supreme court shall make all rules and regulations necessary to provide for the submission of cases to the entire bench, or to the separate divisions. [C97, §194; S13,§194; C24, 27, 31, 35, 39,§**12803**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.3]

684.4 Chief justice. The members of the supreme court shall select one of their number to be chief justice, to serve as such throughout the remainder of his then term of office. He shall be eligible for reselection. The chief justice shall appoint one of the other members of the court to act in his place and stead in case of his absence or inability to act and, when so acting, such member shall have all the rights, duties and powers given by law to the chief justice. [R60,§467; C73,§582; C97, §1066; S13,§1066; C24, 27, 31, 35, 39,§**12804**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.4]

684.5 Terms of court. The supreme court shall be held at the seat of government, and shall convene and hold three regular terms each year. The first term shall begin with the second Tuesday of January and end with the first Monday of May; the second shall begin with the first Tuesday after the first Monday of May and end with the third Monday of September; and the third shall begin with the first Tuesday after the third Monday of September and end with the third Saturday of December. [C97,§192; S13,§192-a; C24, 27, 31, 35, 39,§**12805**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.5]

684.6 Business at each term—docket. Each of said terms of court shall be for the submission and determination of causes, and for the transaction of such other business as shall properly come before the court. All causes on the docket shall be heard at each term, unless continued or otherwise disposed of by order of the court. The court shall remain in session, so far as practicable, until it is determined what the opinion of the court shall be in all causes submitted to it, except in causes where reargument is ordered. Judgments of affirmance, rulings, and orders in causes submitted, and orders authorized by law may be made and entered by the court at any time, regardless of the terms of court. [R60,§2623; C73,§133; C97,§192; C24, 27, 31, 35, 39,§**12806**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.6]

684.7 Recess or adjournment. The court shall not be required to continue in actual public session during an entire term, but may adjourn from time to time as by order or rule it shall direct; provided, however, that no such recess or adjournment shall be taken for more than thirty days at one time, except during the period from the first Monday in July to the third Monday in September in each year. [S13,§192-b; C24, 27, 31, 35, 39, §**12807**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.7]

684.8 Causes assigned and submitted. At each regular or adjourned session of a term of court, causes pending therein may be assigned and submitted, but no more submission shall be taken or allowed at any one session than in the judgment of the court can be properly considered and determined before the next succeeding session. [S13,§193-a; C24, 27, 31, 35, 39,§**12808**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.8]

684.9 Rules for assignment of causes. The court shall by appropriate rules provide for the assignment of causes for hearing at the regular and adjourned sessions thereof, and for reasonable notice to counsel of the time or times at which their cases will be called. [S13,§193-b; C24, 27, 31, 35, 39,§**12809**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.9]

684.10 Divided court. When the court is equally divided in opinion, the judgment of the court below shall stand affirmed, but the decision is of no further force or authority, but in such cases opinions may be filed. [C51,

§1552; R60,§2628; C73,§140; C97,§195; C24, 27, 31, 35, 39,§**12810**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.10]

684.11 Failure of judges to attend. If none of the judges attend on the first day of the term, the clerk must enter the fact on the record, and the court shall stand adjourned until the next day, and so on until the fourth day; then, if none of the judges appear, the court shall stand adjourned until the next term. [C51,§1553; R60,§2629; C73,§141; C97,§196; C24, 27, 31, 35, 39,§**12811**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.11]

684.12 Business continued. No process or proceeding shall in any manner be affected by an adjournment or failure to hold court, but all shall stand continued to the next term, without any special order to that effect. [C51, §1554; R60,§2630; C73,§142; C97,§197; C24, 27, 31, 35, 39,§**12812**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.12]

684.13 Opinions to be filed. The decisions of the court on all questions passed upon by it, including motions and points of practice, shall be specifically stated, and shall be accompanied with an opinion upon all such as are deemed of sufficient importance, together with any dissent therefrom, which dissent may be stated with or without an opinion. All decisions and opinions shall be in writing and filed with the clerk, except that rulings upon motions may be entered upon the announcement book.

The supreme court may publish reports of its official opinions, or it may direct that publication of the opinions by a private publisher shall be considered the official reports. [C51, §§1560, 1561; R60,§§2636, 2637; C73,§143; C97, §§198, 218; SS15,§224-d; C24, 27, 31, 35, 39,§§**159, 12813**; C46, 50, 54, 58, 62, 66,§§14.6, 684.13; C71, §§14.4, 684.13; C73, 75,§684.13]

Referred to in §684.41

Opinions on criminal appeals, §793.23

684.14 Dissenting opinions. The records and reports must in all cases show whether a decision was made by a full bench, and whether any and, if so, which of the judges dissented from the decision. [C51,§1562; R60.§2638; C73, §144; C97,§199; C24, 27, 31, 35, 39,§**12814**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.14]

Referred to in §684.41

684.15 What cases reported. If the decision, in the judgment of the court, is not of sufficient general importance to be published, it shall be so designated, in which case it shall not be included in the reports, and no case shall be reported except by order of the full bench. [C73,§145; C97,§200; C24, 27, 31, 35, 39, §**12815**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.15]

Referred to in §684.41

684.16 Attendance of sheriff of Polk county. The court may at any time require the attendance and services of the sheriff of Polk county. [C97,§201; C24, 27, 31, 35, 39,§**12816**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.16]

684.17 Salary. Each justice and the chief justice of the supreme court shall receive a salary as fixed by the general assembly. [C27, 31, 35,§12816-al; C39,§**12816.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.17]

See appropriation Act, 65GA, ch 283,§3

684.18 Rules for actions and proceedings.

1. The supreme court shall have the power to prescribe all rules of pleading, practice and procedure, and the forms of process, writs and notices, for all proceedings of a civil nature in all courts of this state, for the purpose of simplifying the same, and of promoting the speedy determination of litigation upon its merits. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant.

2. The supreme court shall have the power to prescribe rules of appellate procedure relating to appeals to and review by the supreme court, discretionary review by the courts of small claims actions, review by the supreme court by writ of certiorari to inferior courts, and appeal or review by the court of appeals of a matter transferred to that court by the supreme court. Rules prescribed pursuant to this subsection shall be known as "Rules of Appellate Procedure", and shall be codified apart from rules of civil procedure applicable in the district court and other rules prescribed by the supreme court.

3. Rules prescribed pursuant to this section shall be subject to section 684.19. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.18; 66GA, ch 1241,§79]

Referred to in §684.37

684.19 Report to general assembly—enrollment. Any such rules and forms prescribed by the supreme court shall be reported by it to the general assembly within twenty days after the commencement of either regular session and shall take effect July 1 following the adjournment of such session, with such changes, if any, as may have been enacted at such session; and thereafter all laws in conflict therewith shall be of no further force or effect.

At adjournment of the general assembly where such report has been filed, an enrolled copy thereof, together with any changes, shall be made in substantially the same manner as Acts are enrolled. The enrolled copy shall be certified as to whether or not any action was taken by the general assembly and if any, what action, and thereupon it shall be filed with the secretary of state and bound with the Acts of the general assembly. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§684.19]

Referred to in §§602.11, 684.1, 684.18, 684.21, 684.37

The supreme court is authorized to propose changes in the rules of criminal procedure for consideration by the First Session of the Sixty-seventh Session of the General Assembly. This section shall be effective July 1, 1976. Any rules promulgated under the authority of this section shall become effective January 1, 1978; (66GA, ch 1245, (ch 4), §530)

684.20 Judicial conferences. The chief justice may from time to time order conferences of members of the courts on matters relating to the administration of justice. Expenses shall be paid to court members attending such conferences, subject to the limitations expressed in section 605.2. [C62, 66, 71, 73, 75,§684.20]

684.21 Supreme court rules for inferior courts. The supreme court shall adopt and enforce rules for the orderly and efficient administration of the courts inferior to the supreme court, which rules shall be executed by the chief justice. Such rules shall be adopted in the manner provided in section 684.19. [C62, 66, 71, 73, 75,§684.21]

Referred to in §231.8

684.22 Repealed by 63GA, ch 298,§1.

684.23 Clerks for supreme court justices. The supreme court shall have authority to appoint not more than nine attorneys or graduates of a reputable law school as defined in section 610.2, to act as legal assistants to the judges of the supreme court, such assistants to serve at a salary not to exceed seven thousand dollars per year and shall render these services in such manner as may be prescribed by the court. [C71, 73, 75,§684.23]

684.24 to 684.30 Reserved.

COURT OF APPEALS

PART 1

GENERAL PROVISIONS

684.31 Court of appeals created. There is established an intermediate court of appeals which is a court of record and which shall be known as the Iowa court of appeals. [66GA, ch 1241,§1]

684.32 Term of court. The court of appeals shall hold annual terms commencing on the second Tuesday in January of each year, and the court always shall be in session. The expiration of a term shall not affect the power of the court to do any act or assume jurisdiction of any proceeding, and pending matters shall be continued from term to term. [66GA, ch 1241,§2]

684.33 Sessions—location. The court of appeals shall hold sessions at the seat of state government at the times specified by order of the supreme court. Sessions shall be held in the courtroom of the supreme court at the statehouse. [66GA, ch 1241,§3]

684.34 Number of judges—quorum—chief judge.

1. The court of appeals shall consist of a chief judge and four associate judges, any three of whom shall constitute a quorum.

2. *a.* At the first meeting after initial appointment of judges to the court of appeals, and at the first meeting in each odd-numbered year the judges by majority vote shall designate one of their members to serve as chief judge for a two-year term. A vacancy in the office of chief judge shall be filled by majority vote of the judges of the court of appeals, after any actual vacancy has been filled and for the remainder of the unexpired term.

b. In the absence of the chief judge the duties of the chief judge shall be exercised by the judge next in precedence.

c. The chief judge shall supervise the affairs of the court and shall preside at any session of the court at which the chief judge is in attendance.

d. If the chief judge desires to be relieved of the duties of chief judge while retaining the status of judge of the court of appeals, the chief judge shall notify the chief justice of the supreme court and the other judges of the court of appeals. The office of chief judge shall be deemed vacant, and shall be filled as provided in this subsection.

3. Judges of the court of appeals other than the chief judge shall have precedence according to the length of time served on that court. Of several judges having equal periods of time served, the eldest shall have precedence. [66GA, ch 1241,§4]

684.35 Appellate jurisdiction. The jurisdiction of the court of appeals is coextensive with the state. The court of appeals shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law.

The court of appeals shall have subject matter jurisdiction to review the following matters:

1. All civil actions and special civil proceedings, whether at law or in equity.

2. All criminal actions.

3. All post-conviction remedy proceedings.

4. A judgment of a district judge in a small claims action.

The jurisdiction of the court of appeals with respect to actions and parties shall be limited to those matters for which an appeal or review proceeding properly has been brought before the supreme court, and for which the supreme court pursuant to section 684.1 has entered an order transferring the matter to the court of appeals.

The court of appeals and judges of the court are empowered to issue writs and other process necessary for the exercise and enforcement of its jurisdiction, but a writ, order or other process issued in any matter not before the court pursuant to an order of transfer issued by the supreme court shall be void. [66GA, ch 1241,§5]

684.36 Decisions of the court—finality.

1. The court of appeals may affirm, modify, vacate, set aside or reverse any judgment, order or decree of the district court or other tribunal which is under the jurisdiction of the court, and may remand the cause and direct the entry of an appropriate judgment,

order or decree, or require further proceedings to be had as may be just. If the judges are equally divided on the ultimate decision, the judgment, order or decree being reviewed shall be affirmed.

2. A decision of the court of appeals is final and shall not be reviewed by any other court except upon the granting by the supreme court of an application for further review as provided in section 684.1. Upon the filing of the application, the judgment and mandate of the court of appeals shall be stayed pending action of the supreme court or until the expiration of the time specified in section 684.1, subsection 4. [66GA, ch 1241,§6]

Referred to in §684.38

684.37 Rules. The supreme court, and the court of appeals subject to the approval of the supreme court, may from time to time prescribe rules of appellate procedure and other rules for the conduct of business of the court of appeals. Rules prescribed shall not abridge, enlarge, or modify a substantive right, and shall be subject to section 684.18.

The rules of civil procedure and supreme court rules which are in effect on July 1, 1976, or which become effective subsequent to July 1, 1976, shall apply to and govern, until July 1, 1977, all matters transferred to the court of appeals pursuant to section 684.1, to the extent that those rules are not inconsistent with the provisions of this chapter. The supreme court shall have the power to prescribe temporary rules of appellate procedure on or after July 1, 1976 which relate to the methods and procedures to be used in determining whether or not a matter shall be transferred to the court of appeals, or which relate to the conditions and procedures for further review by the supreme court of a decision of a court of appeals, and each of those temporary rules shall be effective, anything in section 684.19 to the contrary notwithstanding, from the date specified by the supreme court in the respective temporary rules until July 1, 1977. [66GA, ch 1241,§7]

684.38 When decisions effective. A decision of the court of appeals shall be in writing, and shall be effective, except as provided in section 684.36, subsection 2, when the decision of the court has been filed with the clerk of the supreme court. [66GA, ch 1241,§8]

684.39 Process—style—seal.

1. Process of the court of appeals shall be styled: "In the Court of Appeals of Iowa".

2. The supreme court may adopt a seal for the court of appeals. Upon adoption, the clerk of the supreme court shall file a facsimile and description of the design in the office of the secretary of state. Judicial notice shall be taken of the official seal of the court of appeals. [66GA, ch 1241,§9]

684.40 Records. The records of the court of appeals shall be kept by the clerk of the supreme court, and at the same place as, but segregated from the records of the supreme court. Records of the court of appeals shall be maintained in the same manner as records of the supreme court are required by law to be maintained. [66GA, ch 1241,§10]

684.41 Publication of opinions. The court administrator shall cause the publication of opinions of the judges of the court of appeals in accordance with rules issued by the supreme court. Sections 684.13, 684.14, and 684.15 shall apply to decisions of the court of appeals. The court administrator shall cause the publication of abstracts of all decisions for which written opinions are not published. [66GA, ch 1241,§11]

684.42 Fees — Costs. Costs to be collected and awarded in the court of appeals shall be as prescribed from time to time by the supreme court. Fees and costs may be awarded to a party to the appeal in the discretion of the court of appeals. A fee shall not be charged for the docketing of any matter in the court of appeals upon transfer from the supreme court. [66GA, ch 1241,§12]

PART 2
JUDGES

684.43 Appointment—term. Judges of the court of appeals shall be nominated and appointed and shall stand for retention in office as provided in chapter 46. The term of office of a judge of the court of appeals shall be as provided in section 46.16. [66GA, ch 1241,§13]

684.44 Qualification for office. A person appointed as judge of the court of appeals must satisfy all requirements for a judge of the supreme court, and shall qualify for and take office in the same manner as a judge of the supreme court. [66GA, ch 1241,§14]

684.45 Salary — expenses — retirement. A judge of the court of appeals shall receive a salary as provided by law, and shall be reimbursed for expenses reasonably incurred in the performance of official duties. A judge of the court of appeals may elect to participate in the judicial retirement system as provided in chapter 605A.

Each judge of the court of appeals shall be provided personal office space and equipment, and facilities for a secretary and law clerk at the seat of state government only. Each judge may choose to reside at the seat of government as he or she may elect, but a judge of the court of appeals shall not be entitled to receive reimbursement for any expenses incurred as a result of residing or maintaining a residence elsewhere than at the seat of government. [66GA, ch 1241,§15]

Referred to in §605.2

684.46 Prohibited acts. A judge of the court of appeals shall not do any of the following:

1. Hear or participate in an appeal from the decision of a case or issue tried before him or her.

2. Participate in an appeal in which he or she has a substantial interest, has been of counsel, has been a material witness, or is so related to or connected with any party or attorney so as to render it improper for him or her to participate. [66GA, ch 1241,§16]

684.47 Judicial qualifications — impeachment. A judge of the court of appeals shall be subject to the jurisdiction and procedures of the commission on judicial qualifications as provided in chapter 605, and may be impeached as provided in chapter 68. [66GA, ch 1241,§17]

PART 3
ADMINISTRATION

684.48 Clerk of court. The clerk of the supreme court also shall act as clerk of the court of appeals. The clerk of the court of appeals shall keep a complete record of the proceedings of that court, shall collect the fees and costs prescribed by the supreme court, and shall account for and report to the court administrator all receipts and disbursements of the court of appeals. The clerk of the supreme court shall not receive any additional compensation for acting as clerk of the court of appeals. [66GA, ch 1241,§18]

684.49 Deputy clerk—personnel. The clerk of the supreme court, subject to the approval of the supreme court, may employ a deputy clerk for the performance of duties relating to the court of appeals. The deputy clerk shall receive a salary as prescribed by the court administrator, and shall be reimbursed for expenses reasonably incurred in the performance of official duties. The deputy clerk shall give bond to the state as provided in chapter 64 for the clerk of the supreme court. [66GA, ch 1241,§19]

684.50 Secretary to judge. Each judge of the court of appeals may employ one personal secretary at a salary as prescribed by the court administrator. [66GA, ch 1241,§20]

684.51 Law clerks. The court of appeals may employ not more than five attorneys or graduates of a reputable law school as defined in section 610.2, to act as legal assistants to the court. Salaries shall be as prescribed by the court administrator. [66GA, ch 1241,§21]

684.52 Practice of law prohibited. The deputy clerk and other persons employed by the court of appeals shall not practice as an attorney or counselor of law. [66GA, ch 1241, §22]

684.53 Payment of salaries and expenses. The salaries and expenses of the court of appeals and its judges and other employees shall be paid from funds appropriated for such purposes, and shall be accounted for by the court administrator. Salaries and other expenditures shall not be incurred, except upon approval of the court administrator. The court administrator shall not approve for reimbursement any expenditure incurred as a result of an officer's or employee's residing or maintaining a residence elsewhere than at the seat of state government. [66GA, ch 1241,§23]

684.54 Physical facilities. The court administrator shall obtain for the court of appeals suitable facilities for the conduct of court business at the seat of state government. To the extent practicable, the court administrator shall utilize existing supreme court facilities. State funds shall not be utilized for securing or maintaining facilities for any court personnel elsewhere than at the seat of state government. [66GA, ch 1241,§24]

684.55 Supervision by the supreme court. The court of appeals and all of its officers and employees shall be subject to the supervisory and administrative control of the supreme court. [66GA, ch 1241,§25]

CHAPTER 685

CLERK OF THE SUPREME COURT AND COURT ADMINISTRATOR

SUPREME COURT CLERK
685.1 Appointment.
685.2 Office—duties.
685.3 Supreme court fees.
685.4 Execution for fees.
685.5 Deputy—qualification—duties.

COURT ADMINISTRATOR
685.6 Court administrator appointed.
685.7 Assistants.
685.8 Duties.
685.9 Co-operation of court officers.
685.10 Courts affected.

SUPREME COURT CLERK

685.1 Appointment. Within ninety days prior to the first secular day in January, 1927, and every four years thereafter, the judges of the supreme court shall appoint a clerk of the supreme court who shall hold office for four years and until his successor has been appointed and qualified. In case a vacancy oc-

curs, the same shall be filled by appointment for the unexpired portion of the term only. [C73,§583; C97,§1067; S13,§§207-a,-b; C24, 27, 31, 35, 39,§12817; C46, 50, 54, 58, 62, 66, 71, 73, 75,§685.1]

685.2 Office—duties. The clerk of the supreme court shall have an office at the seat of government, keep a complete record of the proceedings of the court, and allow no opinion filed therein to be removed except by the reporter, which opinions shall be open to examination and may be copied, and, upon request, shall be certified by him. He shall also, when required, make out and certify a copy thereof. He shall promptly announce by mail to one of the attorneys on each side any ruling made or decision rendered, record every opinion rendered as soon as filed, and perform all other duties pertaining to his office. [C51, §§1564, 1565; R60,§§2647-2651; C73,§§146-149; C97,§204; C24, 27, 31, 35, 39,§12818; C46, 50, 54, 58, 62, 66, 71, 73, 75,§685.2]

685.3 Supreme court fees. The supreme court shall by rule prescribe fees for the services of the court and clerk of the supreme court. The court shall account for fees as provided in section 12.10 and shall keep account of and report in a like manner all uncollected fees.

Rules prescribed under this section shall be reported to the general assembly within twenty days after the commencement of a regular session and shall take effect July 1 following the adjournment of such session, with such changes, if any, as may have been enacted at such session; and thereafter all laws in conflict therewith shall be of no further force or effect.

At adjournment of the general assembly where such report has been filed, an enrolled copy thereof, together with any changes, shall be made in substantially the same manner as Acts are enrolled. The enrolled copy shall be certified as to whether or not any action was taken by the general assembly and if any, what action, and thereupon it shall be filed with the secretary of state and bound with the Acts of the general assembly. [C51,§2525; R60, §§2949, 4134; C73,§3771; C97,§205; S13,§205; C24, 27, 31, 35, 39,§12819; C46, 50, 54, 58, 62, 66, 71, 73, 75,§685.3]

The supreme court of Iowa has prescribed and hereby reports to the general assembly a rule fixing fees to be charged by the clerk of the supreme court, in lieu of all prior fees, as follows:

1. The fee for filing an application for permission to appeal or petition for certiorari shall be fifteen dollars. If an application for permission to appeal is granted, the applicant shall pay a docketing fee of twenty-five dollars within forty days. If a petition for certiorari is granted, the petitioner shall pay a docketing fee of twenty-five dollars within ten days.

2. The fee for filing an original proceeding other than certiorari shall be twenty-five dollars. No docketing fee shall be charged in such cases.

3. The fee for docketing an appeal from a final judgment or decree shall be twenty-five dollars.

4. The fee for providing copies of papers shall be forty cents for each page, except that copies of opinions of the court shall be furnished to the trial judge, counsel of record and to any unrepresented party in the case without cost. [Filed January 15, 1975; 66GA, ch 261]

685.4 Execution for fees. If any of the foregoing fees of the clerk are not paid in advance, execution may issue therefor, except where the fees are payable by the county or the state. [C97,§206; C24, 27, 31, 35, 39,§12820; C46, 50, 54, 58, 62, 66, 71, 73, 75,§685.4]

685.5 Deputy — qualification — duties. The court administrator may appoint, in writing, any person, except one holding a state office, as deputy clerk of the supreme court, which appointment must be approved by the officer having the approval of the principal's bond, and such appointment may be revoked in the same manner. The appointment and the revocation shall be filed and kept in the office of the secretary of state. The deputy shall qualify by taking the oath of the principal, to be endorsed upon and filed with the certificate of appointment, and, when so qualified, the deputy shall, in the absence or disability of the clerk, perform all of the duties of the clerk. The deputy clerk also shall perform such duties with respect to the court of appeals as are prescribed by the court administrator. [C97,§207; SS15,§207; C24, 27, 31, 35, 39,§12821; C46, 50, 54, 58, 62, 66, 71, 73, 75,§685.5; 66GA, ch 1241,§80]

COURT ADMINISTRATOR

685.6 Court administrator appointed. There is hereby established the position of court administrator of the judicial department. The court administrator shall be appointed by the supreme court and shall hold office at the pleasure of such court.

The court shall fix the compensation of the administrator and the employees of the office. The supreme court is authorized to accept federal funds to supplement the funds appropriated to the court. [C58, 62, 66, 71, 73, 75, §685.6]

Referred to in §685.10

685.7 Assistants. The court administrator, with the approval of the supreme court, shall appoint such assistants as are necessary to enable him to perform the powers and duties vested in him. While holding such position, neither the court administrator nor his assistants shall practice law in any of the courts of this state. [C58, 62, 66, 71, 73, 75,§685.7]

Referred to in §685.10

685.8 Duties. Under the direction of the supreme court the court administrator shall be the administrative officer of the court and in addition his duties shall be to:

1. Collect and compile statistical and other data and make reports relating to the business transacted by the courts;

2. Collect statistical and other data and make reports relating to the expenditure of moneys for the maintenance and operation of the judicial system and the offices connected therewith;

3. Obtain reports from clerks of court, judges and magistrates, in accordance with law, or rules prescribed by the supreme court as to cases and other judicial business in which action has been delayed beyond periods of time specified by law or such rules, and make report thereof;

4. Examine the state of the dockets of the courts and determine the need for assistance by any courts;

5. Make reports concerning the overloading and underloading of particular courts;

6. Make recommendations relating to the assignment of judges where courts are in need of assistance;

7. Examine the administrative methods employed in the offices of clerks of courts, probation officers, and sheriffs, and make recommendations regarding the improvement of same;

8. Formulate recommendations for the improvement of the judicial system with reference to the structure of the system of courts, their organization, their methods of operation, the functions which should be performed by various courts, the selection, compensation, number, and tenure of judges and court officials, and as to such other matters as the chief justice and the supreme court may direct; and

9. Administer funds appropriated to the supreme court, district courts, office of court administrator, the judicial qualifications commission, the clerk of the supreme court, the board of law examiners and the board of examiners of shorthand reporters.

10. Attend to such other matters as may be assigned by the chief justice and the supreme court. [C58, 62, 66, 71, 73, 75,§685.8; 66GA, ch 4, §2]

Referred to in §685.10

685.9 Co-operation of court officers. The judges, district associate judges, judicial magistrates, reporters, clerks of court, probation officers, sheriffs, and all other officers, state and local, shall comply with all requirements made by the court administrator or his assistants for information and statistical data bearing on the state of the dockets of the courts, the progress of court business, and such other information as may reflect the business transacted by them and the expenditure of moneys for the maintenance and operation of the judicial system. [C58, 62, 66, 71, 73, 75,§685.9]

Referred to in §685.10

685.10 Courts affected. Sections 685.6 to 685.9 apply to the supreme court and the district court. [C58, 62, 66, 71, 73, 75,§685.10]

See §606.15 for said fees of district court

CHAPTER 686

PROCEDURE IN THE APPELLATE COURT IN CIVIL ACTIONS

Rule—From final judgment, R.C.P. 331.
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686.1 Mistake of clerk below.
686.2 Motion for new trial.
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686.4 Coparties not joining.
686.5 Appeal from part of judgment or order—effect.
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686.10 Execution recalled.
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686.12 Bond for costs.
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Rule—Filing and service of briefs, R.C.P. 343.
Rule—Submission and oral argument, R.C.P. 346.
686.13 Arguments in re constitutional test.
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Rule—Form of briefs, the appendix and other papers, R.C.P. 344.2.
686.14 Remand—process.
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686.16 Title not affected.
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Rule—Petition for rehearing, R.C.P. 350.
Rule—Procedendo, R.C.P. 351.
Rule—Certiorari or appeal, R.C.P. 352.
Rule—Filing and service, R.C.P. 353.

686.17 Death of party—continuance.
Rule—Motions to dismiss or affirm, R.C.P. 348.
Rule—Affirmed or enforced without opinion, R.C.P. 348.1.
Rule—Remands, R.C.P. 349.
686.18 Executions.

From final judgment. See R.C.P. 331.

From interlocutory orders. See R.C.P. 332.

686.1 Mistake of clerk below. A mistake of the clerk shall not be ground for an appeal until the same has been presented to and acted upon by the court below. [R60,§3498; C73,§3167; C97,§4104; C24, 27, 31, 35, 39,§12826; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.1]

686.2 Motion for new trial. An appellate court on appeal may review and reverse any judgment or order of the district court, although no motion for a new trial was made in such court. [C73,§3169; C97,§4106; C24, 27, 31, 35, 39,§12828; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.2; 66GA, ch 1241,§81]

Time for appeal. See R.C.P. 335.

686.3 Time for appealing in re constitutional test. If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, notice of appeal may be taken within three days from and after the entry of the decree in district court, and not afterwards. [C31, 35,§12832-d1; C39, §12832.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.3]

Amount in controversy. See R.C.P. 333.

Scope of review. See R.C.P. 334.

686.4 Coparties not joining. Coparties, refusing to join in an appeal, cannot afterward appeal, or derive any benefit therefrom, unless from the necessity of the case, but they shall be held to have joined, and be liable for their proportion of the costs, unless they appear and object thereto. [C51,§§1980, 1981; R60, §§3518, 3519; C73,§§3175, 3176; C97,§4112; C24, 27, 31, 35, 39,§12835; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.4]

686.5 Appeal from part of judgment or order—effect. An appeal from part of an order, or from one of the judgments of a final adjudication, or from part of a judgment, shall not disturb, delay, or affect the rights of any party to any judgment or order, or part of a judgment or order, not appealed from. [R60,§3510; C73,§3177; C97,§4113; C24, 27, 31, 35, 39,§12836; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.5]

How taken. See R.C.P. 336.

The record on appeal. See R.C.P. 340.

(a) Composition of record on appeal.

(b) Transcript; duty of appellant to order; notice if partial transcript ordered.

(c) Statement of the evidence or proceedings when no report was made or when the transcript is unavailable.

(d) Agreed statement as the record on appeal.

(e) Correction or modification of the record.

686.6 Filing in re action to test constitutionality. If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, an abstract of record shall be filed within five days after the service of notice of appeal, unless additional time, not to exceed three days, be granted by the chief justice. [C31, 35,§12847-d1; C39, §12847.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.6]

Docketing appeal; filing record. See R.C.P. 342.

(a) Docketing the appeal.

(b) Certificate of Ordering Transcript.

(c) Dismissal for failure to transmit or docket.

(d) Trial court jurisdiction.

(e) Limited remand.

Transmission of record. See R.C.P. 341.

(a) Time for transmission of docket entries.

(b) Transmission of remaining record.

(c) Retention of trial record in trial court.

(d) Portions of record not transmitted.

686.7 Transmission. The transcript of any paper or exhibit required for use in an appellate court may be transmitted thereto by the clerk of the trial court by express or other safe and speedy method, but not by a party or any attorney of a party. [C51,§§1975, 1976; R60,§3511; C73,§3179; C97,§4125; C24, 27, 31, 35, 39,§12855; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.7; 66GA, ch 1241,§82]

686.8 Return of original papers. If a new trial is granted by an appellate court, the clerk, as soon as the cause is at an end therein, shall transmit to the clerk of the court below all original papers or exhibits certified up from said court, and may at any time return any such papers when no new trial is awarded. [C97,§4126; C24, 27, 31, 35, 39,§12856; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.8; 66GA, ch 1241,§83]

Supersedeas—bond. See R.C.P. 337.

686.9 Execution on unstayed part of judgment. The taking of the appeal from part of

a judgment or order, and the filing of a bond as above directed, does not stay execution as to that part of the judgment or order not appealed from. [C51,§1985; R60,§3532; C73,§3191; C97,§4129; C24, 27, 31, 35, 39,§12862; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.9]

686.10 Execution recalled. If execution has issued prior to the filing of the bond, the clerk shall countermand the same. [C51,§1987; R60, §3533; C73,§3192; C97,§4130; C24, 27, 31, 35, 39, §12863; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.10]

686.11 Surrender of property. Property levied upon and not sold at the time such countermand is received by the sheriff shall be at once delivered to the judgment debtor. [C51,§1988; R60,§3534; C73,§3193; C97,§4131; C24, 27, 31, 35, 39,§12864; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.11]

Bond—hearing on sufficiency. See R.C.P. 338.

686.12 Bond for costs. The appellant may be required to give security for costs under the same circumstances and upon the same showing as plaintiffs in civil actions in the inferior court may be. [R60,§3526; C73,§3210; C97,§4135; C24, 27, 31, 35, 39,§12868; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.12]

Cost bond, ch 621

Briefs. See R.C.P. 344.

(a) Appellant's brief.

(b) Appellee's brief.

(c) Reply brief.

(d) References in briefs to parties.

(e) References in briefs to legal authorities.

(f) References in briefs to legal propositions.

(g) References in briefs to the record.

(h) Length of briefs.

(i) Briefs in cross appeals.

(j) Multiple appellants or appellees.

Appendix to briefs. See R.C.P. 344.1.

(a) Duty of appellant: content; time; number.

(b) Determination of contents: cost of producing.

(c) Alternative method of designating contents.

(d) Arrangement of the appendix.

(e) Reproduction of exhibits.

(f) Hearing on original record without appendix.

Filing and service of briefs. See R.C.P. 343.

(a) Time for serving and filing briefs.

(b) Number of copies to be filed and served.

(c) Consequence of failure to file briefs.

Submission and oral argument. See R.C.P. 346.

686.13 Arguments in re constitutional test. If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, the appellant shall file a written argument with the supreme court within ten days after the filing of the abstract and appellee shall file his argument within ten days thereafter, and appellant shall then file his reply within three days. The cause shall then be submitted to the supreme court in regular or special en banc session as soon thereafter as the chief justice may order. [C31, 35,§1287-d1; C39,§12871.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.13; 66GA, ch 1241,§84]

Judgment on bond. See R.C.P. 339.

Form of briefs, the appendix and other papers. See R.C.P. 344.2.

(a) Form of briefs and the appendix.

(b) Form of other papers.

(c) Printing taxed as costs.

686.14 Remand—process. If an appellate court affirms the judgment or order of an inferior court, it may send the cause to the appropriate court below to have the same carried into effect, or may issue the necessary process for this purpose, directed to the sheriff of the proper county, as the party may require. [C51,§1991; R60,§3539; C73,§3197; C97,§4143; C24, 27, 31, 35, 39,§12875; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.14; 66GA, ch 1241,§85]

686.15 Restitution of property. If, by the decision of an appellate court, the appellant becomes entitled to a restoration of any part of the money or property that was taken from him by means of a judgment or order, either the appellate court or the court below may direct execution or writ of restitution to issue for the purpose of restoring to him such property or its value. [C51,§1992; R60,§3540; C73,§3198; C97,§4145; C24, 27, 31, 35, 39,§12877; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.15; 66GA, ch 1241,§86]

686.16 Title not affected. Property acquired by a purchaser in good faith under a judgment subsequently reversed shall not be affected thereby. [C51,§1993; R60,§3541; C73, §3199; C97,§4146; C24, 27, 31, 35, 39,§12878; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.16]

Writs and orders in the supreme court. See R. C. P. 347.

(a) Writs and process.

(b) Orders.

(c) Hearings.

Petition for rehearing. See R.C.P. 350.

(a) Time for filing: content; answer; action by court if granted.

(b) Form of petition; length.

Procedendo. See R.C.P. 351.

Certiorari or appeal. See R.C.P. 352.

Filing and service. See R.C.P. 353.

(*a*) *Filing.*

(*b*) *Service of all papers required.*

(*c*) *Manner of service.*

(*d*) *Proof of service.*

(*e*) *Additional time after service by mail.*

(*f*) *Applicability.*

686.17 Death of party—continuance. The death of one or all of the parties shall not cause the proceedings to abate, but the names of the proper persons shall be substituted, as is provided in such cases in the district court, and the case may proceed. The court may also, in such case, grant a continuance when such a course will be calculated to promote the ends of justice. [R60,§3520; C73,§3211; C97, §4150; C24, 27, 31, 35, 39,§12884; C46, 50, 54, 58, 62, 66, 71, 73, 75,§686.17]

Motions to dismiss or affirm. See R.C.P. 348.

Affirmed or enforced without opinion. See R.C.P. 348.1.

Remands. See R.C.P. 349.

686.18 Executions. Executions issued from the appellate courts shall be like those from the district court, attended with the same consequences, and returnable in the same time. [R60,§3552; C73,§3215; C97,§4153; C24, 27, 31, 35, 39,§12888; C46, 50, 54, 58, 62, 66, 71, 73, 75, §686.18; 66GA, ch 1241,§87]

Execution generally, ch 626

TITLE XXXV

CRIMINAL LAW

CHAPTER 687

PUBLIC OFFENSES

687.1 Classification.
687.2 "Felony" defined.
687.3 Repealed by 65GA, ch 1093,§92.
687.4 "Misdemeanor" defined.
687.5 Manner of punishment.
687.6 Prohibited acts—misdemeanors.
687.7 Punishment for indictable misdemeanors.

687.1 Classification. Public offenses are divided into:

1. Felonies.

2. Misdemeanors. [C51,§2816; R60,§4428; C73, §4103; C97,§5092; C24, 27, 31, 35, 39,§12889; C46, 50, 54, 58, 62, 66, 71, 73, 75,§687.1]

687.2 "Felony" defined. A felony is a public offense which is, or in the discretion of the court may be, punished by imprisonment in the penitentiary or men's reformatory or the women's reformatory. [C51,§2817; R60,§4429; C73,§4104; C97,§5093; C24, 27, 31, 35, 39,§12890; C46, 50, 54, 58, 62, 66, 71, 73, 75,§687.2]

Referred to in §321.561

687.3 Repealed by 65GA, ch 1093,§92.

687.4 "Misdemeanor" defined. Every other public offense is a misdemeanor. [C51,§2818; R60,§4430; C73,§4105; C97,§5094; C24, 27, 31, 35, 39,§12891; C46, 50, 54, 58, 62, 66, 71, 73, 75,§687.4]

687.5 Manner of punishment. No person can be punished for a public offense except upon legal conviction in a court having jurisdiction thereof. [C51,§2819; R60,§4431; C73,§4106; C97, §5095; C24, 27, 31, 35, 39,§12892; C46, 50, 54, 58, 62, 66, 71, 73, 75,§687.5]

687.6 Prohibited acts—misdemeanors. When the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the doing of such act is a misdemeanor. [C51,§2675; R60,§4302; C73,§3966; C97,§4905; C24, 27, 31, 35, 39,§12893; C46, 50, 54, 58, 62, 66, 71, 73, 75,§687.6]

687.7 Punishment for indictable misdemeanors. Every person who is convicted of a misdemeanor, the punishment of which is not otherwise prescribed by any statute of this state, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [C51,§2676; R60,§4303; C73,§3967; C97,§4906; C24, 27, 31, 35, 39,§12894; C46, 50, 54, 58, 62, 66, 71, 73, 75,§687.7]

Referred to in §780.22
See nonindictable Art. I,§11

CHAPTER 688

PRINCIPALS AND ACCESSORIES

688.1 Distinction between principal and accessory.
688.2 Accessory after the fact.

688.1 Distinction between principal and accessory. The distinction between an accessory before the fact and a principal is abrogated, and all persons concerned in the commission of a public offense, whether they directly commit the act constituting the offense, or aid and abet its commission, though not present, must hereafter be indicted, tried, and punished as principals. [C51,§2928; R60, §4668; C73,§4314; C97,§5299; C24, 27, 31, 35, 39, §12895; C46, 50, 54, 58, 62, 66, 71, 73, 75,§688.1]

Corroboration of accomplice, §782.5

688.2 Accessory after the fact. An accessory after the fact to the commission of a public offense may be indicted, tried, and punished, though the principal be neither tried nor convicted. [C51,§2929; R60,§4669; C73,§4315; C97,§5300; C24, 27, 31, 35, 39,§12896; C46, 50, 54, 58, 62, 66, 71, 73, 75,§688.2]

CHAPTER 689

TREASON AND OFFENSES AGAINST THE GOVERNMENT

689.1 Treason.
689.2 Evidence necessary.
689.3 Misprision of treason.
689.4 Inciting insurrection.
689.5 Inciting treason—display of red flag.
689.6 Presumptive evidence.
689.7 Aggravated offense.
689.8 Inciting hostilities.
689.9 Organizations for inciting hostilities.
689.10 Criminal syndicalism.
689.11 Advocating criminal syndicalism.
689.12 Assemblages for promoting.
689.13 Use of buildings—punishment of owner or custodian.

689.1 Treason. Whoever, within the jurisdiction of the state, levies war against it or adheres to its enemies, giving them aid and comfort, is guilty of treason, and shall be punished by imprisonment in the penitentiary at hard labor for life. [C51,§2565; R60,§4188; C73,§3845; C97,§4724; C24, 27, 31, 35, 39,§**12897**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§689.1]

689.2 Evidence necessary. No person can be convicted of the crime of treason except upon the evidence of at least two witnesses to the same overt act, or on confession in open court. [C51,§2567; R60,§4190; C73,§3847; C97,§4726; C24, 27, 31, 35, 39,§**12898**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§689.2]

689.3 Misprision of treason. If any person have knowledge of the commission of said crime of treason, and does not as soon as may be disclose such offense to the governor or some judge within the state, he is guilty of misprision of treason, and shall be fined not exceeding one thousand dollars, or be imprisoned in the penitentiary not exceeding three years nor less than one year. [C51,§2566; R60,§4189; C73,§3846; C97,§4725; C24, 27, 31, 35, 39,§**12899**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§689.3]

689.4 Inciting insurrection. If any person shall excite an insurrection or sedition amongst any portion or class of the population of this state, or shall attempt by writing, speaking, or by any other means to excite such insurrection or sedition, the person or persons so offending shall be punished by imprisonment in the state penitentiary not exceeding twenty years and shall be fined not less than one thousand nor more than ten thousand dollars. [C24, 27, 31, 35, 39,§**12900**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§689.4]

689.5 Inciting treason—display of red flag. Any person who displays, carries, or exhibits any red flag, or other flag, pennant, banner, ensign, or insignia, or who aids, encourages, or advises such display, carriage, or exhibition, with the intent thereby to himself, or to induce others, to advocate, encourage, or incite anarchy or treason or hostility to the government of the United States or of the state of Iowa, or to insult or disregard the flag of the United States, shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed one thousand dollars, or be imprisoned not to exceed six months, or both. C24, 27, 31, 35 39,§**12901**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§689.5]

Referred to in §§689.6, 689.7

689.6 Presumptive evidence. In all prosecutions for violation of section 689.5, the display, carriage, or exhibition of such red flag, pennant, banner, ensign, or insignia in processions, parades, meetings, or assemblages, shall be presumptive evidence that the same was so displayed, carried, or exhibited with the intent thereby to advocate, teach, encourage, or incite anarchy or treason or hostility to the government of the United States or the state of Iowa, or with intent to insult or disregard the flag of the United States. [C24, 27, 31, 35, 39,§**12902**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§689.6]

689.7 Aggravated offense. If any person so violate the provisions of section 689.5, and be then and there armed with a dangerous weapon, he shall be guilty of a felony and upon conviction shall be imprisoned not to exceed five years. [C24, 27, 31, 35, 39,§**12903**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§689.7]

689.8 Inciting hostilities. Any person who shall in public or private, by speech, writing, printing, or by any other mode or means advocate the subversion and destruction by force of the government of the state of Iowa or of the United States, or attempt by speech, writing, printing, or in any other way whatsoever to incite or abet, promote or encourage hostility or opposition to the government of the state of Iowa or of the United States, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail not less than six months nor more than one year and shall be fined not less than three hundred nor more than one thousand dollars. [C24, 27, 31, 35, 39,§**12904**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§689.8]

689.9 Organizations for inciting hostilities. Any person who shall become a member of any organization, society, or order organized or formed, or attend any meeting or council or solicit others so to do, for the purpose of inciting, abetting, promoting, or encouraging hostility or opposition to the government of the state of Iowa or to the United States, or who shall in any manner aid, abet, or encourage any such organization, society, order, or

meeting in the propagation or advocacy of such a purpose, shall be guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail not less than six months nor more than one year and shall be fined not less than three hundred nor more than one thousand dollars. [C24, 27, 31, 35, 39,§12905; C46, 50, 54, 58, 62, 66, 71, 73, 75,§689.9]

689.10 Criminal syndicalism. Criminal syndicalism is the doctrine which advocates crime, sabotage, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political reform. The advocacy of such doctrine, whether by word of mouth or writing, is a felony punishable as provided in sections 689.11 to 689.13. [C24, 27, 31, 35, 39,§12906; C46, 50, 54, 58, 62, 66, 71, 73, 75,§689.10]

Referred to in §689.12

689.11 Advocating criminal syndicalism. Any person who:

1. By word of mouth or writing, advocates or teaches the duty, necessity, or propriety of crime, sabotage, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political reform; or

2. Prints, publishes, edits, issues, or knowingly circulates, sells, distributes, or publicly displays any book, paper, document, or written matter in any form, containing or advocating, advising, or teaching the doctrine that industrial or political reform should be brought about by crime, sabotage, violence, or other unlawful methods of terrorism; or

3. Openly, willfully and deliberately justifies, by word of mouth or writing, the commission or the attempt to commit crime, sabotage, violence, or other unlawful methods of terrorism with intent to exemplify, spread, or advocate the propriety of the doctrines of criminal syndicalism; or

4. Organizes or helps to organize, or becomes a member of or voluntarily assembles with any society, group, or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism—

is guilty of a felony and punishable by imprisonment in the state penitentiary or reformatory for not more than ten years, or by a fine of not more than five thousand dollars, or both. [C24, 27, 31, 35, 39,§12907; C46, 50, 54, 58, 62, 66, 71, 73, 75,§689.11]

Referred to in §§689.10, 689.12

689.12 Assemblages for promoting. Whenever two or more persons assemble for the purpose of advocating or teaching the doctrines of criminal syndicalism as defined in sections 689.10 and 689.11, such an assemblage is unlawful and every person voluntarily participating therein by his aid or instigation is guilty of a felony and punishable by imprisonment in the state penitentiary or reformatory for not more than ten years or by a fine of not more than five thousand dollars or both. [C24, 27, 31, 35, 39,§12908; C46, 50, 54, 58, 62, 66, 71, 73, 75,§689.12]

Referred to in §§689.10, 689.13

689.13 Use of buildings — punishment of owner or custodian. The owner, agent, superintendent, janitor, caretaker, or occupant of any place, building, or room, who willfully and knowingly permits therein any assemblage of persons prohibited by the provisions of section 689.12, or who, after notification by the sheriff of the county or the police authorities that the premises are so used, permits such use to be continued, is guilty of a misdemeanor and punishable by imprisonment in the county jail for not more than one year or by a fine of not more than five hundred dollars or both. [C24, 27, 31, 35, 39,§12909; C46, 50, 54, 58, 62, 66, 71, 73, 75,§689.13]

Referred to in §689.10

CHAPTER 690

HOMICIDE

690.1 Murder.
690.2 First-degree murder.
690.3 Second-degree murder.
690.4 Degree determined.
690.5 Repealed by 61GA, ch 436,§4.
690.6 Assault with intent to murder.
690.7 Assault while masked.
690.8 Advising or inciting murder.
690.9 Poisoning food or drink with intent to kill.
690.10 Manslaughter.
690.11 Death from intoxicating liquors.

690.1 Murder. Whoever kills any human being with malice aforethought, either express or implied, is guilty of murder. [C51, §2568; R60,§4191; C73,§3848; C97,§4727; C24, 27, 31, 35, 39,§12910; C46, 50, 54, 58, 62, 66, 71, 73, 75,§690.1]

690.2 First-degree murder. All murder which is perpetrated by means of poison, or lying in wait, or any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate any arson, rape, robbery, mayhem, or burglary, is murder in the first degree, and shall be punished by imprisonment for life at hard labor in the penitentiary and the court shall enter judgment and pass sentence accordingly. [C51,§2569; R60,§4192; C73,§3849; C97,§4728; C24, 27, 31, 35, 39,§12911; C46, 50, 54, 58, 62, 66, 71, 73, 75,§690.2]

Referred to in §690.8

690.3 Second-degree murder. Whoever commits murder otherwise than as set forth in section 690.2 is guilty of murder in the second degree, and shall be punished by imprisonment in the penitentiary for life, or for a term of not less than ten years. [C51,§2570; R60,§4193; C73,§3850; C97,§4729; C24, 27, 31, 35, 39,§**12912**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§690.3]

690.4 Degree determined. Upon the trial of an indictment for murder, the jury, if it finds the defendant guilty, must inquire, and by its verdict ascertain and determine the degree; but if the defendant is convicted upon a plea of guilty, the court must, by the examination of witnesses, determine the degree, and in either case must enter judgment and pass sentence accordingly. [C51,§2571; R60,§4194; C73,§3851; C97,§4730; C24, 27, 31, 35, 39,§**12913**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§690.4]

690.5 Repealed by 61GA, ch 436,§4.

690.6 Assault with intent to murder. If any person assault another with intent to commit murder, he shall be imprisoned in the penitentiary not exceeding thirty years. [C51,§2591; R60,§4214; C73,§3872; C97,§4768; S13,§4768; C24, 27, 31, 35, 39,§**12915**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§690.6]

690.7 Assault while masked. Any person within this state, masked or in disguise, who shall assault another with a dangerous weapon shall be deemed guilty of assault with intent to commit murder and shall be punished by imprisonment in the penitentiary for a term not to exceed twenty years. [C24, 27, 31, 35, 39,§**12916**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §690.7]

690.8 Advising or inciting murder. Whoever shall within this state advise, counsel, encourage, advocate, or incite the unlawful killing within or without the state of any human being where no such killing takes place, shall be punished by imprisonment in the state penitentiary for not more than twenty years. [S13,§4750-a; C24, 27, 31, 35, 39, §**12917**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§690.8]

690.9 Poisoning food or drink with intent to kill. If any person mingle any poison with any food, drink, or medicine, with intent to kill or injure any human being, or willfully poison any spring, well, cistern, or reservoir of water, he shall be imprisoned in the penitentiary not exceeding ten years, and be fined not exceeding one thousand dollars. [C51, §2596; R60,§4219; C73,§3877; C97,§4773; C24, 27, 31, 35, 39,§**12918**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§690.9]

690.10 Manslaughter. Any person guilty of the crime of manslaughter shall be imprisoned in the penitentiary not exceeding eight years, and fined not exceeding one thousand dollars. [C51,§2576; R60,§4199; C73,§3856; C97,§4751; C24, 27, 31, 35, 39,§**12919**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§690.10]

690.11 Death from intoxicating liquors. Any person who sells, gives away, or otherwise furnishes intoxicating liquor contrary to law which causes the death of a human being is guilty of manslaughter and punishable accordingly. [C24, 27, 31, 35, 39,§**12920**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§690.11]

Related provision, §732.4

CHAPTER 691

SELF-DEFENSE

691.1 Lawful resistance in self-defense.
691.2 Cases in which permitted.
691.3 Persons aiding another.

691.1 Lawful resistance in self-defense. Lawful resistance to the commission of a public offense may be made by the party about to be injured, or by others. [C51,§2773; R60, §4442; C73,§4112; C97,§5102; C24, 27, 31, 35, 39, §**12921**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§691.1]

691.2 Cases in which permitted. Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person.

2. To prevent an illegal attempt by force to take or injure property in his lawful possession. [C51,§2774; R60,§4443; C73,§4113; C97, §5103; C24, 27, 31, 35, 39,§**12922**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§691.2]

691.3 Persons aiding another. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the same. [C51,§2775; R60,§4444; C73,§4114; C97,§5104; C24, 27, 31, 35, 39,§**12923**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§691.3]

CHAPTER 692

DUELING

692.1 Killing in duel.
692.2 Fighting duel—seconds—challenges.
692.3 Accepting challenge—consenting to assist.
692.4 Taunting for not accepting.

692.1 Killing in duel. Whoever fights a duel with deadly weapons, and inflicts a mortal wound on his antagonist, is guilty of murder in the first degree, and shall be punished accordingly. [C51,§2572; R60,§4195; C73,§3852; C97,§4747; C24, 27, 31, 35, 39,§12924; C46, 50, 54, 58, 62, 66, 71, 73, 75,§692.1]
Penalty, §690.2

692.2 Fighting duel — seconds — challenges. Any person who fights a duel with deadly weapons, or is present thereat as aid, second, or surgeon, or advises, encourages, or promotes the same, although no homicide ensue; and any person who challenges another to fight a duel, or sends or delivers any verbal or written message purporting or intended to be such challenge, although no duel ensue, shall be fined in a sum not exceeding one thousand nor less than four hundred dollars, and imprisoned in the penitentiary not more than three nor less than one year. [C51,§2573; R60,§4196; C73,§3853; C97,§4748; C24, 27, 31, 35, 39,§12925; C46, 50, 54, 58, 62, 66, 71, 73, 75,§692.2]
Referred to in §692.3

692.3 Accepting challenge — consenting to assist. Any person who accepts such challenge, or who consents to act as a second, aid, or surgeon on such acceptance, or who advises, encourages, or promotes the same, although no duel ensue, shall be punished as prescribed in section 692.2. [C51,§2574; R60, §4197; C73,§3854; C97,§4749; C24, 27, 31, 35, 39, §12926; C46, 50, 54, 58, 62, 66, 71, 73, 75,§692.3]

692.4 Taunting for not accepting. If any person post another, or in writing or print use any reproachful or contemptuous language to or concerning another, for not fighting a duel, or for not sending or accepting a challenge, he shall be fined not exceeding three hundred nor less than one hundred dollars, and shall be imprisoned in the county jail not more than six nor less than two months. [C51,§2575; R60,§4198; C73,§3855; C97,§4750; C24, 27, 31, 35, 39,§12927; C46, 50, 54, 58, 62, 66, 71, 73, 75,§692.4]

CHAPTER 693

MAYHEM

693.1 Maiming or disfiguring.

693.1 Maiming or disfiguring. If any person, with intent to maim or disfigure, cut or maim the tongue; cut out or destroy an eye; cut, slit, or tear off an ear; cut, bite, slit, or mutilate the nose or lip; cut off or disable a limb or any member of another person, he shall be imprisoned in the penitentiary not more than five years, and fined not exceeding one thousand nor less than one hundred dollars. [C51,§2577; R60,§4200; C73,§3857; C97, §4752; C24, 27, 31, 35, 39,§12928; C46, 50, 54, 58, 62, 66, 71, 73, 75,§693.1]

CHAPTER 694

ASSAULTS

694.1 Assault and battery.
694.2 Pointing gun at another.
694.3 Intimidation while masked.
694.4 Assault while masked.
694.5 Assault with intent to commit a felony.
694.6 Assault with intent to inflict bodily injury.
694.7 Assault with intent to commit certain crimes.

694.1 Assault and battery. Whoever is convicted of an assault, or an assault and battery, where no other punishment is prescribed, shall be imprisoned in the county jail not exceeding thirty days, or be fined not exceeding one hundred dollars. [C51,§2597; R60,§4220; C73,§3878; C97,§4774; C24, 27, 31, 35, 39,§12929; C46, 50, 54, 58, 62, 66, 71, 73, 75,§694.1]

694.2 Pointing gun at another. If any person shall willfully draw or point a pistol, revolver, or gun at another, he shall be guilty of a misdemeanor, and be fined not more than one hundred dollars or imprisoned in the county jail not more than thirty days; but this section shall not apply to police officers or other persons whose duty it is to execute process or warrants, or make arrests. [C73, §3879; C97,§4775; C24, 27, 31, 35, 39,§12930; C46, 50, 54, 58, 62, 66, 71, 73, 75,§694.2]

694.3 Intimidation while masked. Any person, masked or in disguise, who shall prowl, travel, ride, or walk within this state to the disturbance of the peace or to the intimidation of any person, shall be guilty of a misde-

meanor and on conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail of the county for not less than thirty days nor more than six months, or by both such fine and imprisonment. [C24, 27, 31, 35, 39,§12931; C46, 50, 54, 58, 62, 66, 71, 73, 75,§694.3]

694.4 Assault while masked. Any person, masked or in disguise, who shall enter upon the premises of another or demand admission into the house or enclosure of another with intent to inflict bodily injury or injury to property, shall be deemed guilty of assault with intent to commit a felony and such entrance or demand for admission shall be prima-facie evidence of such intent and, upon conviction thereof, such person shall be punished by imprisonment in the penitentiary for a term of not more than ten years. [C24, 27, 31, 35, 39,§12932; C46, 50, 54, 58, 62, 66, 71, 73, 75,§694.4]

694.5 Assault with intent to commit a felony. If any person assault another with intent to commit any felony or crime punishable by imprisonment in the penitentiary, where the punishment is not otherwise prescribed, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year. [C51,§2595; R60,§4218; C73,§3876; C97, §4772; C24, 27, 31, 35, 39,§12933; C46, 50, 54, 58, 62, 66, 71, 73, 75,§694.5]

694.6 Assault with intent to inflict bodily injury. If any person assault another with intent to inflict a great bodily injury, he shall be imprisoned in the county jail not exceeding one year, or be fined not exceeding five hundred dollars, or be imprisoned in the penitentiary not exceeding one year. [C51,§2594; R60, §4217; C73,§3875; C97,§4771; S13,§4771; C24, 27, 31, 35, 39,§12934; C46, 50, 54, 58, 62, 66, 71, 73, 75,§694.6]

694.7 Assault with intent to commit certain crimes. If any person assault another with intent to maim, rob, steal, or commit arson or burglary, he shall be imprisoned in the penitentiary not exceeding five years, or be fined not exceeding one thousand dollars, or both so fined and imprisoned, at the discretion of the court. [C51,§2593; R60,§4216; C73,§3874; C97, §4770; C24, 27, 31, 35, 39,§12935; C46, 50, 54, 58, 62, 66, 71, 73, 75,§694.7]

CHAPTER 695

WEAPONS, FIREARMS AND TOY PISTOLS

695.1 Going armed with intent.
695.2 Carrying concealed weapons.
695.3 Punishment.
695.4 Permit to carry concealed weapon.
695.5 Application.
695.6 Form of application.
695.7 Issuance of permit.
695.8 Nonresidents.
695.9 Issuance by commissioner.
695.10 Name of holder—transferability.
695.11 Authority granted by permit.
695.12 General permits for certain companies.
695.13 Duration of permit.
695.14 Expiration of term of office—revocation.
695.15 Duty to carry permit.
695.16 Record of permits issued.
695.17 Prima-facie evidence of violation.
695.18 Sale of dangerous weapons prohibited.
695.19 Dealer's permit to sell.
695.20 Record of permits to sell.
695.21 Report and record of sales.
695.22 Failure to make report.
695.23 Purchasing under fictitious name.
695.24 Wholesale dealers and jobbers excepted.
695.25 Display of weapons prohibited.
695.26 Selling firearms to minors.
695.27 Sale of blank cartridges and giant firecrackers.
695.28 Punishment.
695.29 Purchase or sale of firearms in contiguous states.

695.1 Going armed with intent. Any person who with intent to use the same unlawfully against the person of another goes armed with a pistol, revolver, or other firearm, dagger, dirk, razor, stiletto, or knife having a blade of three inches in length or other dangerous or deadly instrument shall be guilty of a felony and on the conviction thereof shall be punished by a fine not to exceed one thousand dollars or imprisonment in the state prison for not more than five years, or by both such fine and imprisonment, in the discretion of the court. [C35,§12935-g1; C39, §12935.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.1]

695.2 Carrying concealed weapons. It shall be unlawful for any person, except as hereinafter provided, to go armed with or carry a dirk, dagger, sword, pistol, revolver, stiletto, metallic knuckles, pocket billy, sandbag, skull cracker, slug shot or other offensive or dangerous weapon, except hunting knives adapted and carried as such, concealed either on or about his person, except in his own dwelling house or place of business or other land possessed by him. No person shall carry a pistol or revolver concealed on or about his person or whether concealed or otherwise in any vehicle operated by him, except in his dwell-

ing house or place of business or on other land possessed by him, without a permit therefor as herein provided.

However, it shall be lawful to carry one or more unloaded pistols or revolvers for the purpose of or in connection with lawful target practice, lawful hunting, lawful sale or attempted sale, lawful exhibit or showing, or other lawful use, if such unloaded weapon or weapons are carried either (1) in the trunk compartment of a vehicle or (2) in a closed container which is too large to be effectively concealed on the person or within the clothing of an individual, and such container may be carried in a vehicle or in any other manner; and no permit shall be required therefor. [S13,§4775-1a; C24, 27, 31, 35, 39,§12936; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.2]

Referred to in §695.3

695.3 Punishment. Any person who shall violate any of the provisions of section 695.2 shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the state prison not more than five years, or by both such fine and imprisonment in the discretion of the court, and in addition thereto may be required to enter into a recognizance with sufficient surety in such sum as the court may order, not exceeding one thousand dollars, to keep the peace and be of good behavior for a period not exceeding one year, provided that in case of the first offense the court may in its discretion reduce the punishment to imprisonment in the county jail of a term not more than three months, or a fine of not more than one hundred dollars. [S13,§4775-11a; C24, 27, 31, 35, 39,§12937; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.3]

695.4 Permit to carry concealed weapon. The sheriff of any county may issue a permit to a resident of his county only which shall be valid throughout the state, limited to the time which shall be designated therein, to carry concealed or otherwise, a revolver, pistol, or pocket billy. [S13,§4775-3a; C24, 27, 31, 35, 39,§12938; C46, 50, 54, 58, 62, 66, 71, 73, 75, §695.4]

40ExGA, SF 247,§2, editorially divided

695.5 Application. Before any permit to go armed with a revolver, pistol, or pocket billy is granted, an application therefor shall be filed with the sheriff. Permits may be issued only on personal application therefor, except that:

1. Chiefs of police may make application for permits for members of their respective departments.

2. Owners, managing officers, or superintendents of banks, trust companies, mining, transportation, manufacturing, and mercantile companies or establishments may make such application for and in behalf of their employees. [S13,§§4775-4a,-7a; C24, 27, 31, 35, 39, §12939; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.5]

40ExGA, SF 247,§5, editorially divided
Referred to in §695.23

695.6 Form of application. The application shall be in writing and state the full name, residence, age, place and nature of the employment or business of the person to whom it is proposed to grant the permit. The application shall be signed by the person making application. [S13,§4775-7a; C24, 27, 31, 35, 39, §12940; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.6]

Referred to in §695.23

695.7 Issuance of permit. It shall be the duty of the sheriff to issue a permit to go armed with a revolver, pistol, or pocket billy to all peace officers and such other persons who are residents of his county, and who, in the judgment of said official, should be permitted to go so armed. [S13,§4775-3a; C24, 27, 31, 35, 39,§12941; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.7]

43GA, ch 261,§2, editorially divided

695.8 Nonresidents. A nonresident of the state may be issued a permit by the sheriff of any county in which said nonresident is employed or on duty, provided that it shall appear to the sheriff upon investigation, that such nonresident is a fit person to be permitted to go so armed, and any permit issued to such a nonresident shall be valid throughout the state until revoked either by the sheriff issuing the same or upon expiration as provided by law. [C31, 35,§12941-c1; C39,§12941.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.8]

695.9 Issuance by commissioner. The commissioner of public safety may, in his discretion, issue a permit to carry concealed a revolver, pistol, pocket billy or other weapon to any officer or employee of the state. Such a permit may also be issued by the commissioner to a nonresident of the state who is engaged in law enforcing work in this state. The provisions of this chapter relative to permits to carry concealed weapons shall apply insofar as applicable, and the commissioner of public safety shall keep a record of permits issued the same as is required of sheriffs. [C31, 35,§12941-d1; C39,§12941.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.9]

695.10 Name of holder — transferability. The permit shall be issued, except as otherwise provided in section 695.12, to the individual whom it permits to go armed and shall not be transferable. [C24, 27, 31, 35, 39,§12942; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.10]

695.11 Authority granted by permit. Permits issued to peace officers or to employees of railroad or express companies shall permit such persons to go armed anywhere within the state while in the discharge of their duties. [S13,§4775-4a; C24, 27, 31, 35, 39,§12943; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.11]

695.12 General permits for certain companies. Banks, trust companies, mining, transportation, manufacturing, and mercantile companies or establishments may obtain a general permit good for any of their employees, only

while on duty, actually engaged in guarding any property or the transportation of moneys or other valuables. [S13,§4775-4a; C24, 27, 31, 35, 39,§**12944**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.12]

Referred to in §695.10

695.13 Duration of permit. Each such permit shall, unless revoked by notice in writing sent by certified mail to the permit holder by the sheriff issuing same, expire on December 31, following the issuance. [C24, 27, 31, 35, 39,§**12945**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §695.13]

695.14 Expiration of term of office—revocation. Whenever a permit is issued to any person to carry concealed weapons by virtue of such person being a peace officer, the right of such person to carry any of said weapons shall cease when said person ceases to be a peace officer. The sheriff may at any time revoke any permit issued by him. [S13,§4775-6a; C24, 27, 31, 35, 39,§**12946**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.14]

695.15 Duty to carry permit. It shall be the duty of any person armed with a revolver, pistol, or pocket billy concealed upon his person to have in his immediate possession the permit provided for in this chapter and to produce same for inspection at the request of any peace officer. Failure to so produce such permit shall constitute a misdemeanor. [S13,§4775-8a; C24, 27, 31, 35, 39,§**12947**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.15]

Punishment, §687.7

695.16 Record of permits issued. The sheriff shall keep a record showing the names and addresses of all persons to whom permits shall have been issued, together with the dates of issuance and expiration of such permits. [S13, §4775-6a; C24, 27, 31, 35, 39,§**12948**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.16]

695.17 Prima-facie evidence of violation. In all prosecutions on the charge of carrying a concealed weapon without a permit, proof that no permit had been issued to the defendant in the county in which the offense was alleged to have been committed shall be prima-facie evidence that the defendant had no permit to carry a concealed weapon. [S13,§4775-8a; C24, 27, 31, 35, 39,§**12949**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.17]

695.18 Sale of dangerous weapons prohibited. It shall be unlawful to sell, to keep for sale, or offer for sale, loan, or give away, dirk, dagger, stiletto, metallic knuckles, sandbag, or skull cracker, silencer, and no pistol or revolver shall be sold to any person under the age of eighteen years. The provisions of this section shall not prevent the selling or keeping for sale of hunting and fishing knives. [S13,§4775-2a; C24, 27, 31, 35, 39,§**12950**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.18]

695.19 Dealer's permit to sell. It shall be unlawful for any person, firm, association, or corporation to engage in the business of selling, keeping for sale, exchange, or to give away to any person within the state, any revolver, pistol, or pocket billy, or other weapons of a like character which can be concealed on the person, without first securing a permit from the proper officials having authority to issue such permit. [S13,§4775-9a; C24, 27, 31, 35, 39,§**12951**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.19]

695.20 Record of permits to sell. The chief of police, sheriff, or mayor shall have authority to issue permits to sell and shall keep a correct list of all persons to whom permits to sell are issued, together with the number of such permit and the date each is revoked, and furnish the county recorder a copy of all such permits issued and revocations made. [S13, §4775-5a; C24, 27, 31, 35, 39,§**12952**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.20]

695.21 Report and record of sales. Every person selling revolvers, pistols, pocket billies, and other weapons of a like character which can be concealed on the person, whether such person is a retail dealer, pawnbroker, or otherwise, shall report within twenty-four hours to the county recorder the sale of any revolver, pistol, or pocket billy and in such report shall set forth the time of selling, age, occupation, place of employment or business, name and residence of such purchaser of said weapon or weapons, together with the number, make, and other marks of identification of such weapon or weapons, and the recorder on receipt of such information shall make a permanent record of the same in a book specially kept for that purpose. [S13,§4775-10a; C24, 27, 31, 35, 39,§**12953**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.21]

Referred to in §695.23

695.22 Failure to make report. Every person who shall fail to make such report will be guilty of a misdemeanor, and on being convicted of a second offense his permit shall be revoked. [S13,§4775-10a; C24, 27, 31, 35, 39, §**12954**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.22]

Punishment, §687.7

695.23 Purchasing under fictitious name. Any person purchasing a revolver, pistol, or a pocket billy according to the provisions in sections 695.5, 695.6, and 695.21, and giving a fictitious name will be guilty of a misdemeanor. [S13,§4775-10a; C24, 27, 31, 35, 39, §**12955**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§§695.23]

Punishment, §687.7

695.24 Wholesale dealers and jobbers excepted. The provisions of the preceding sections of this chapter shall not affect in any respect wholesale dealers or jobbers. [S13, §4775-12a; C24, 27, 31, 35, 39,§**12956**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.24]

695.25 Display of weapons prohibited. Any person, firm, or corporation or the agent thereof who shall display in any window facing

a public street or alley any pistols, revolvers, blackjacks, slugs, billies, knuckles, daggers, stilettos, or bowie knives, except war relics, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not less than ten dollars nor more than one hundred dollars or be imprisoned in the county jail not to exceed thirty days. [C24, 27, 31, 35, 39, §12957; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.25]

695.26 Selling firearms to minors. No person shall knowingly sell, present, or give any pistol or revolver to any minor. Any violation of this section shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, or by imprisonment in the county jail not less than ten nor more than thirty days. Nothing herein contained shall prohibit the sale of ammunition to minors who have been licensed to hunt by the state of Iowa and to those minors who by reason of hunting on their own premises are not required by law to have a hunting license. [C97, §5004; C24, 27, 31, 35, 39,§12958; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.26]

695.27 Sale of blank cartridges and giant firecrackers. No person shall use, sell, offer for sale, or keep for sale within this state any blank cartridges for toy revolvers or toy pistols, or firecrackers more than five inches in length and more than three-fourths of an inch in diameter; provided caps containing dynamite may be used, kept for sale, or sold when needed for mining purposes, or for danger signals, or for other necessary uses. [S13, §5028-p; C24, 27, 31, 35, 39,§12959; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.27]

Referred to in §695.28
See also §§111.42, 732.17, 732.18

695.28 Punishment. Any person violating the provisions of section 695.27 shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days. [S13,§5028-q; C24, 27, 31, 35, 39,§12960; C46, 50, 54, 58, 62, 66, 71, 73, 75,§695.28]

695.29 Purchase or sale of firearms in contiguous states. A resident of Iowa not otherwise precluded by applicable law, may purchase firearms, rifles, shotguns, ammunition, reloading components, or firearms accessories in states contiguous to Iowa. This authorization is enacted in conformance with Gun Control Act of 1968, 18 U.S.C. section 922(b)(3)(A). In the event that presently enacted federal restrictions on the purchase of firearms, rifles, shotguns, ammunition, reloading components, or firearms accessories are repealed by the United States Congress or set aside by courts of competent jurisdiction, this section shall in no way be interpreted to prohibit or restrict the purchase of firearms, shotguns, rifles, ammunition, reloading components, or firearms accessories by residents of Iowa otherwise competent to purchase the same in contiguous or other states.

A dealer licensed in Iowa may sell or deliver a rifle or shotgun, and a collector licensed in Iowa may sell or deliver a rifle or shotgun if it is a curio or relic, to a resident of an adjacent state, if the purchaser's state of residence permits such sale or delivery by law, the sale fully complies with the legal conditions of Iowa and the adjacent state, and the purchaser and licensee have, prior to the sale or delivery for sale of the rifle or shotgun, complied with all the requirements of the federal Gun Control Act of 1968. [C71, 73, 75,§695.29]

CHAPTER 696

MACHINE GUNS

696.1 Possession.
696.2 Aiding possession.
696.3 Punishment.
696.4 Exceptions.
696.5 Interpretative clause.
696.6 Relics.
696.7 Additional exception.
696.8 Finding or summary seizure.
696.9 Duty of peace officers—order.
696.10 Indictment.
696.11 Evidence.

696.1 Possession. No person, firm, partnership, or corporation, except law enforcement officers, shall knowingly have in his or its possession or under his or its control any machine gun of any nature or kind. [C27, 31, 35, §12960-b1; C39,§12960.01; C46, 50, 54, 58, 62, 66, 71, 73, 75,§696.1]

Referred to in §§696.3, 696.4

696.2 Aiding possession. No person, firm, partnership, or corporation shall do any act with the intent to enable any other person, firm, partnership, or corporation to obtain possession of such gun. [C27, 31, 35,§12960-b2; C39,§12960.02; C46, 50, 54, 58, 62, 66, 71, 73, 75,§696.2]

Referred to in §§696.3, 696.4

696.3 Punishment. A violation of either section 696.1 or section 696.2 shall be punished as follows:

1. If the accused has prior to conviction been convicted of an offense which would constitute a felony under the laws of this state, by imprisonment in the penitentiary or men's or women's reformatory for five years.

2. If such prior conviction for felony be not charged or established, by imprisonment in the penitentiary or men's or women's reformatory for a period not exceeding three years.

3. By a fine in all cases of not less than five hundred dollars nor more than two thousand dollars. [C27, 31, 35,§12960-b3; C39,§**12960.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§696.3]

Referred to in §696.4

696.4 Exceptions. Sections 696.1 to 696.3 shall not apply to:

1. Peace officers as herein provided.

2. Persons who are members of the national guards.

3. Persons in the service of the government of the United States.

4. Banks. [C27, 31, 35,§12960-b4; C39,§**12960.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§696.4]

Referred to in §696.5

696.5 Interpretative clause. Section 696.4 shall not be construed to exempt any person therein specified when the possession charged had no connection with the official duties or service of said person. [C27, 31, 35,§12960-b5; C39,§**12960.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§696.5]

696.6 Relics. It shall be a defense that the machine gun or machine which the accused is charged with possessing was a gun which was in general use prior to November 11, 1918, and was, prior to the commencement of the prosecution, rendered permanently unfit for use, and was possessed solely as a relic. [C27, 31, 35,§12960-b6; C39,§**12960.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§696.6]

696.7 Additional exception. This chapter shall not apply to any person or persons, firm, or corporation engaged or interested in the improvement, the invention, or manufacture of firearms. [C27, 31, 35,§12960-b7; C39,§**12960.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§696.7]

696.8 Finding or summary seizure. Possession of such machine gun by finding or by summary seizure shall not be deemed an offense provided the finder or person seizing immediately delivers the same to some peace officer of the county in which the gun is found. [C27, 31, 35,§12960-b8; C39,§**12960.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§696.8]

696.9 Duty of peace officers—order. A peace officer to whom such gun is delivered shall forthwith redeliver it to the sheriff. The sheriff shall forthwith report such possession to the district court which may enter a summary order for the destruction of such gun or such order as may be necessary in order to preserve it as evidence. [C27, 31, 35,§12960-b9; C39,§**12960.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§696.9]

696.10 Indictment. When the state relies on prior judgments of convictions of the accused in aggravation of the punishment, such judgments shall be referred to in the indictment or information by stating the court, date, and place of rendition. [C27, 31, 35, §12960-b10; C39,§**12960.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§696.10]

696.11 Evidence. A duly authenticated copy of a judgment of prior conviction of felony shall be prima-facie evidence of such conviction and of the finality and conclusiveness thereof. [C27, 31, 35,§12960-b11; C39,§**12960.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§696.11]

CHAPTER 697

INJURIES BY EXPLOSIVES—BOMB THREATS

697.1 Death caused by high explosives.
697.2 Injury to person.
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697.5 Manufacture of gunpowder—public nuisance.
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697.10 Definitions.
697.11 Unlawful materials—exceptions.

697.1 Death caused by high explosives. If any person willfully deposits or throws in, under, or about any dwelling house, building, boat, vessel, or raft or other inhabited place, where its combustion or explosion will or is likely to destroy the same, any explosive or incendiary device or molotov cocktail, and by reason of the combustion or explosion thereof any person is killed, he shall be guilty of murder. [C97,§4796; C24, 27, 31, 35, 39,§**12961**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§697.1]

Referred to in §§697.2, 697.3
Murder, §§690.1–690.3

697.2 Injury to person. If any person willfully deposits or throws any explosive or incendiary device or molotov cocktail as provided in section 697.1, and by means of the explosion thereof any person is injured, he shall be guilty of an assault with intent to commit murder. [C97,§4797; C24, 27, 31, 35, 39,§**12962**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§697.2]

Referred to in §697.3
Penalty, §690.6

697.3 Damage to property. If any person, with intent to destroy or injure any building,

boat, vessel, or raft, any bridge, viaduct, or other structure not provided for in sections 697.1, 697.2, and 697.4, deposits or throws in, under, or about such building, boat, vessel, raft, bridge, viaduct, or other structure any explosive or incendiary device or molotov cocktail, by the combustion or explosion of which any such structure will or will be likely to be destroyed or injured, he shall be imprisoned in the penitentiary not more than fifteen years. [C97,§4798; C24, 27, 31, 35, 39, §12963; C46, 50, 54, 58, 62, 66, 71, 73, 75,§697.3]

697.4 Damage by high explosives. If any person, with intent to destroy or injure any inhabited dwelling house, building, boat, vessel, or raft, deposits or throws therein or thereunder, or elsewhere about the same, where its explosion or combustion will or is likely to destroy or injure the same, any explosive or incendiary device or molotov cocktail, he shall be imprisoned in the penitentiary not more than twenty-five years. [C97,§4795; C24, 27, 31, 35, 39,§12964; C46, 50, 54, 58, 62, 66, 71, 73, 75,§697.4]

Referred to in §697.3

697.5 Manufacture of gunpowder — public nuisance. If any person carry on the business of manufacturing gunpowder, or of mixing or grinding the composition therefor, in any building within eighty rods of any valuable building erected at the time when such business may be commenced, the building in which such business is thus carried on is a public nuisance, and such person shall be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, and the court, with or without such fine, may order such nuisance abated, and issue a warrant as provided in chapter 657. [C51,§§2760, 2762; R60,§§4410, 4412; C73,§§4090, 4092; C97,§§5079, 5081; S13,§5081; C24, 27, 31, 35, 39,§12965; C46, 50, 54, 58, 62, 66, 71, 73, 75,§697.5]

697.6 False report of bomb or explosive. Any person who, knowing the information to be false, willfully conveys or causes to be conveyed to any other person any false information concerning the placement of or an attempt being made or to be made to place any bomb or other explosive or destructive substance or device in or upon the premises of any school, place of worship, business establishment, home or other dwelling place, place of accommodation, aircraft, bus, train, or other public or private transportation facility, public building, or other public place shall be guilty of a felony. [C71, 73, 75,§697.6]

Referred to in §§697.8, 697.9

697.7 Threat to place bomb or explosive — knowledge to be reported. Any person who willfully makes any threat to any other person to place or attempt to place any bomb or other explosive or destructive substance or device in or upon the premises of any school, place of worship, business establishment, home or other dwelling place, place of accommodation, aircraft, bus, train, or other public or private transportation facility, public building, or other public place shall be guilty of a felony.

Any person who receives or has knowledge of such a threat or who discovers or has knowledge of the discovery of any bomb or explosive materials shall promptly report the same to a peace officer or to the county attorney. Failure to report such knowledge or discovery shall be a public offense punishable, upon conviction, by imprisonment in the county jail not to exceed thirty days, or by a fine not to exceed one hundred dollars. [C71, 73, 75,§697.7]

Referred to in §§697.8, 697.9

697.8 Where prosecuted. Violations of sections 697.6 and 697.7 may be prosecuted in either the county wherein the false information or threat is made or conveyed or the county wherein the false information or threat is received. [C71, 73, 75,§697.8]

697.9 Penalty. Any person convicted of violating section 697.6 or section 697.7 shall be imprisoned in the penitentiary not exceeding five years or in the county jail not exceeding one year, or be fined in an amount not exceeding one thousand dollars, or be both so fined and imprisoned. [C71, 73, 75,§697.9]

697.10 Definitions. As used in this chapter, unless the context otherwise indicates:

1. "Explosive device" means any material, container containing a chemical compound or mixture that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible materials or other ingredients, in such proportions, quantities or packing that an ignition by fire, by friction, by concussion or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects.

2. "Incendiary device" means any inflammable material or container containing an inflammable liquid or material whose ignition, by fire, friction, concussion, detonation, or other method is intended to produce destructive effects primarily through combustion rather than explosion.

3. "Molotov cocktail" means a breakable container containing an explosive or inflammable liquid or other substance, having a wick or similar device capable of being ignited, and may be described as either an explosive or incendiary device. A "molotov cocktail" is not intended to mean a device commercially manufactured primarily for the purpose of illumination or other such uses. [C71, 73, 75,§697.10]

697.11 Unlawful materials — exceptions. It shall be unlawful for any person to receive, possess, sell, purchase, or manufacture a bomb, bombshell, grenade, or incendiary or explosive device including but not limited to

black powder bombs and molotov cocktails, or, with intent to assemble them, the materials which may be assembled into any such device and any person violating any of the provisions of this section shall be guilty of a felony and shall, upon conviction thereof, be punished by a fine of not more than two thousand dollars or by imprisonment in the penitentiary or men's or women's reformatory for not more than five years, or by both such fine and imprisonment, or by imprisonment in the county jail for not more than six months; provided, however, that this section shall not apply to military and law-enforcement agencies and their personnel, and persons, firms, or corporations engaged in business, occupational or recreational use of commercial explosives, fireworks, firearms, or ammunition when possession and use is otherwise authorized or permitted by law. This chapter shall have no application to the possession or sale of rifle, pistol, or shotgun ammunition; nor shall it prohibit the use, sale, or possession of primers, percussion caps, brass, powder, and other components and supplies for hand loading or reloading rifle, pistol, or shotgun ammunition or loading muzzle-loading arms, where the same is for lawful purposes. [C71, 73, 75, §697.11]

CHAPTER 698

RAPE

698.1 Definition—punishment.
698.2 Jurisdiction of the board of parole.
698.3 Carnal knowledge of imbecile.
698.4 Assault with intent to commit rape.

698.1 Definition—punishment. If any person ravish and carnally know any female by force or against her will, or if any person carnally know and abuse any female child under the age of sixteen years, or if any person over the age of twenty-five years carnally know and abuse any female under the age of seventeen years, he shall be imprisoned in the penitentiary for life, or any term of years, not less than five, and the court may pronounce sentence for a lesser period than the maximum, the provisions of the indeterminate sentence law to the contrary notwithstanding. [C51,§2581; R60,§4204; C73,§3861; C97,§4756; C24, 27, 31, 35, 39,§**12966**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§698.1]

41GA, ch 197,§1, editorially divided
Evidence of past conduct, §782.4
See additional exception in §789.13

698.2 Jurisdiction of the board of parole. When a lesser than the maximum sentence is pronounced, the prisoner shall be subject to the jurisdiction of the board of parole. [C27, 31, 35,§12966-a1; C39,§**12966.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§698.2]

698.3 Carnal knowledge of imbecile. If any person unlawfully have carnal knowledge of any female by administering to her any substance, or by any other means producing such stupor or such imbecility of mind or weakness of body as to prevent effectual resistance, or have such carnal knowledge of an idiot or female naturally of such imbecility of mind or weakness of body as to prevent effectual resistance, he shall be punished by imprisonment for life or any term of years. [C51, §2583; R60,§4206; C73,§3863; C97,§4758; C24, 27, 31, 35, 39,§**12967**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§698.3]

698.4 Assault with intent to commit rape. If any person assault a female with intent to commit a rape, he shall be imprisoned in the penitentiary not exceeding twenty years, or any term of years, and the court may pronounce sentence for a lesser period than the maximum, the provisions of the indeterminate sentence law to the contrary notwithstanding, and when sentence is pronounced, the prisoner shall be subject to the jurisdiction of the board of parole. [C51,§2592; R60,§4215; C73,§3873; C97, §4769; C24, 27, 31, 35, 39,§**12968**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§698.4]

CHAPTER 699

FORCIBLE MARRIAGE AND DEFILEMENT

699.1 Compelling to marry or be defiled.

699.1 Compelling to marry or be defiled. If any person take any woman unlawfully and against her will, and by force, menace, or duress compels her to marry him or any other person, or to be defiled, he shall be fined not exceeding one thousand dollars and impris-

oned in the penitentiary not exceeding ten years. No person shall be convicted under the provisions of this section unless the evidence of the prosecuting witness be corroborated by other evidence tending to connect the defendant with the commission of the crime. [C51,§2582; R60,§4205; C73,§3862; C97, §4757; C24, 27, 31, 35, 39,§**12969**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§699.1]

CHAPTER 700

SEDUCTION

700.1 Definition—punishment.
700.2 Marriage a bar to prosecution.
700.3 Desertion after seduction and marriage.

700.1 Definition—punishment. If any person seduce and debauch any unmarried woman of previously chaste character, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year. [C51,§2586; R60,§4209; C73,§3867; C97, §4762; C24, 27, 31, 35, 39,§**12970**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§700.1]

Evidence of past conduct, §782.4

700.2 Marriage a bar to prosecution. If, before judgment upon an indictment, the defendant marry the woman thus seduced, it is a bar to any further prosecution for the offense. [C51,§2587; R60,§4210; C73,§3868; C97, §4763; C24, 27, 31, 35, 39,§**12971**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§700.2]

700.3 Desertion after seduction and marriage. Every man who shall marry any woman for the purpose of escaping prosecution for seduction, and shall afterwards desert her without good cause, shall be deemed guilty of a misdemeanor and shall be punished accordingly. [C97,§4764; C24, 27, 31, 35, 39,§**12972**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§700.3]

Punishment, §687.7

CHAPTER 701

ATTEMPT TO PRODUCE ABORTION

701.1 Administration of drugs—use of instruments.

701.1 Administration of drugs — use of instruments. If any person, with intent to produce the miscarriage of any woman, willfully administer to her any drug or substance whatever, or, with such intent, use any instrument or other means whatever, unless such miscarriage shall be necessary to save her life, he shall be imprisoned in the penitentiary for a term not exceeding five years, and be fined in a sum not exceeding one thousand dollars. [R60,§4221; C73,§3864; C97,§4759; SS15,§4759; C24, 27, 31, 35, 39,§**12973**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§**701.1**]

CHAPTER 702

ADULTERY

702.1 Punishment—prosecution.

702.1 Punishment — prosecution. Every person who commits adultery shall be imprisoned in the penitentiary not more than three years, or be fined not exceeding three hundred dollars and imprisoned in the county jail not exceeding one year; and when the crime is committed between parties only one of whom is married, both shall be punished. No prosecution therefor can be commenced except on the complaint of the husband or wife. [C51,§2705; R60,§4347; C73,§4008; C97, §4932; C24, 27, 31, 35, 39,§**12974**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§**702.1**]

CHAPTER 703

BIGAMY

703.1 Definition—punishment.
703.2 Exceptions—absence of spouse.
703.3 Knowingly marrying spouse of another.

703.1 Definition—punishment. If any person who has a former husband or wife living marry another person, or continue to cohabit with such second husband or wife, he or she, except in the cases mentioned in section 703.2, is guilty of bigamy, and shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year. [C51,§2706; R60,§4348; C73, §4009; C97,§4933; C24, 27, 31, 35, 39,§**12975**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§703.1]

Referred to in §703.2

703.2 Exceptions—absence of spouse. The provisions of section 703.1 do not extend to any person whose husband or wife has continually remained beyond seas, or who has voluntarily withdrawn from the other and remained absent, for the space of three years together, the party marrying again not knowing the other to be living within that time; nor to any person who has good reason to believe such husband or wife to be dead; nor to any person who has been legally divorced* from the bonds of matrimony. [C51,§2707; R60,§4349; C73,§4010; C97,§4934; C24, 27, 31, 35, 39,§**12976**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§703.2]

Referred to in §703.1
*See ch 598

703.3 Knowingly marrying spouse of another. Every unmarried person who knowingly marries the husband or wife of another, when such husband or wife is guilty of bigamy thereby, shall be imprisoned in the penitentiary not exceeding three years, or be fined not more than three hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2708; R60,§4350; C73,§4011; C97, §4935; C24, 27, 31, 35, 39,§**12977**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§703.3]

CHAPTER 704

INCEST

704.1 Definition—punishment.

704.1 Definition—punishment. If any persons, being within the degrees of consanguinity or affinity in which marriages are declared by law to be void, carnally know each other, they shall be guilty of incest, and imprisoned in the penitentiary not exceeding twenty-five years. [R60,§§4367-4369; C73,§4030; C97,§4936; C24, 27, 31, 35, 39,§**12978**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§704.1]

Void marriages, §595.19

CHAPTER 705

SODOMY

705.1 Definition.
705.2 Punishment.

705.1 Definition. Whoever shall have carnal copulation in any opening of the body except sexual parts, with another human being, or shall have carnal copulation with a beast, shall be deemed guilty of sodomy. [S13,§4937-a; C24, 27, 31, 35, 39,§**12979**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§705.1]

705.2 Punishment. Any person who shall commit sodomy, shall be imprisoned in the penitentiary not more than ten years. [C97, §4937; C24, 27, 31, 35, 39,§**12980**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§705.2]

CHAPTER 706

KIDNAPING

706.1 Definition—punishment.
706.2 Child stealing.
706.3 Kidnaping for ransom.

706.1 Definition—punishment. If any person willfully, and without lawful authority, forcibly or secretly confine or imprison any other person within the state against his will; or forcibly carry or send such person out of the state; or forcibly seize and confine or inveigle or kidnap any other person with the intent either to cause such person to be secretly confined or imprisoned in the state against his will, or to cause such person to be sent out of the state against his will, he shall be imprisoned in the penitentiary not more than five years, or fined not exceeding one thousand dollars, or be both so fined and imprisoned, at the discretion of the court. [C51, §2588; R60,§4211; C73,§3869; C97,§4765; C24, 27, 31, 35, 39,§12981; C46, 50, 54, 58, 62, 66, 71, 73, 75,§706.1]

706.2 Child stealing. If any person maliciously, forcibly, or fraudulently take, decoy, or entice away any child under the age of sixteen years with intent to detain or conceal such child from its parents, guardian, or other person or institution having the lawful custody thereof, he shall be imprisoned in the penitentiary not more than ten years, or be imprisoned in the county jail not more than one year, or be fined not exceeding one thousand dollars. [S13,§254-a46; C24, 27, 31, 35, 39, §12982; C46, 50, 54, 58, 62, 66, 71, 73, 75,§706.2]

706.3 Kidnaping for ransom. Whoever kidnaps, takes, or carries away any person, or decoys or entices such person away from any place in this state for the purpose of or with the intention of receiving or securing from anyone any money, property, or thing of value as a ransom, reward, or price for the return of the person so kidnaped, taken, carried, decoyed, or enticed away, as aforesaid, or whoever shall imprison, detain, or hold any person at any place in this state for the purpose or with the intent of receiving or securing from anyone money, property, or thing of value as a ransom, reward, or price for the return, liberation, or surrender of the person so imprisoned, detained, or held, shall be deemed to be guilty of the crime of kidnaping for the purpose of ransom, and upon conviction thereof shall be punished by imprisonment for life at hard labor in the penitentiary and the court shall enter judgment and pass sentence accordingly. [S13,§4750-b; C24, 27, 31, 35, 39,§12983; C46, 50, 54, 58, 62, 66, 71, 73, 75, §706.3]

CHAPTER 707

ARSON

707.1 Dwelling house and parcels thereof.
707.2 Miscellaneous buildings.
707.3 Cribs—agricultural products and personal property.
707.4 Defrauding insurers.
707.5 Attempts.
707.6 Married persons.
707.7 Setting out fire.
707.8 Allowing fire to escape.

707.1 Dwelling house and parcels thereof. Any person who willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any dwelling house, kitchen, shop, barn, stable or other outhouse that is parcel thereof, or belonging to or adjoining thereto, the property of himself or of another, shall be guilty of arson, and upon conviction thereof, be sentenced to the penitentiary for not more than twenty years. [C51,§§2598, 2599; R60,§§4222, 4223; C73, §§3880, 3881; C97,§§4776, 4777; C24,§§12984, 12985; C27, 31, 35,§12991-b1; C39,§12991.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§707.1]

Referred to in §§707.5, 707.6

707.2 Miscellaneous buildings. Any person who willfully and maliciously sets fire or burns or causes to be burned or who aids, counsels or procures the burning of any barn, stable or other building, the property of himself or of another, not a parcel of a dwelling house; or any shop, storehouse, warehouse, factory, mill or other building, the property of himself or of another; or any church, meetinghouse, courthouse, workhouse, school, jail or other public building or any public bridge; shall, upon conviction thereof, be sentenced to the penitentiary for not more than ten years. [C51,§§2600, 2601; R60,§§4224, 4225; C73,§§3882, 3883; C97,§§4778, 4779; C24,§§12986, 12987; C27, 31, 35,§12991-b2; C39,§12991.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§707.2]

Referred to in §§707.5, 707.6
See also §100.37

707.3 Cribs—agricultural products and personal property. Any person who willfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any barrack, cock, crib, rick or stack of hay, corn, wheat, oats, barley or other grain or vegetable product of any kind; or any field of standing hay or grain of any kind; or any pile of coal, wood or other fuel; or any streetcar, railway car, boat, automobile or other motor vehicle; or any other personal property not herein specifically named, such property being the property of another person; shall, upon conviction thereof, be sentenced to the penitentiary for not more than three years, or be fined not to exceed one thousand dollars. [C51,§2602; R60,§4226; C73,§3884; C97,§4780; C24,§12988; C27, 31, 35, §12991-b3; C39,§**12991.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§707.3]

Referred to in §§707.5, 707.6

707.4 Defrauding insurers. Any person who willfully and maliciously and with intent to injure or defraud the insurer, sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any goods, wares, merchandise or other chattels or personal property of any kind, the property of himself or of another, which shall at the time be insured by any person or corporation against loss or damage by fire, shall, upon conviction thereof, be sentenced to the penitentiary for not more than five years. [C51, §2606; R60,§4230; C73,§3888; C97,§4784; C24, §12991; C27, 31, 35,§12991-b4; C39,§**12991.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§707.4]

Referred to in §§707.5, 707.6

707.5 Attempts. Any person who willfully and maliciously attempts to set fire to, or attempts to burn or to aid, counsel or procure the burning of any of the buildings or property mentioned in sections 707.1 to 707.4 shall, upon conviction thereof, be sentenced to the penitentiary for not more than two years or fined not to exceed one thousand dollars. [C51, §2603; R60,§4227; C73,§3885; C97,§4781; C24, §12989; C27, 31, 35,§12991-b5; C39,§**12991.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§707.5]

Referred to in §707.6

707.6 Married persons. Sections 707.1 to 707.5 extend to a married person who commits either of the offenses therein described, though the property burnt or set fire to may belong partly or wholly to the other spouse. [C51, §2605; R60,§4229; C73,§3887; C97,§4783; C24, §12990; C27, 31, 35,§12991-b6; C39,§**12991.6**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§707.6]

707.7 Setting out fire. If any person willfully, or without using proper caution, set fire to and burn, or cause to be burned, any prairie or timbered land, or any enclosed or cultivated field, or any road, by which the property of another is injured or destroyed, he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not more than one year, or be both so fined and imprisoned in the discretion of the court. [C51,§2607; R60,§4231; C73,§3889; C97,§4785; C24, 27, 31, 35, 39,§**12992**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§707.7]

707.8 Allowing fire to escape. If any person, between the first day of September in any year and the first day of May following, set fire to, burn, or cause to be burned, any prairie or timbered land, and allow such fire to escape from his control, he shall be imprisoned in the county jail not more than thirty days, or be fined not exceeding one hundred dollars. [C73,§3890; C97,§4786; C24, 27, 31, 35, 39,§**12993**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§707.8]

CHAPTER 708

BURGLARY

708.1 Definition—punishment.
708.2 Aggravated offense.
708.3 Burglary without aggravation.
708.4 Burglary by means of explosives.
708.5 Burglary by means of electricity or gas.
708.6 Punishment.
708.7 Possession of burglar's tools—evidence.
708.8 Other breakings and enterings.
708.9 Entering bank with intent to rob.
708.10 Attempting to break and enter.
708.11 Breaking and entering car.

708.1 Definition—punishment. If any person break and enter any dwelling house in the nighttime, with intent to commit any public offense; or, after having entered with such intent, break any such dwelling house in the nighttime, he shall be guilty of burglary, and shall be punished according to the aggravation of the offense, as is provided in sections 708.2 and 708.3. [C51,§2608; R60,§4232; C73, §3891; C97,§4787; C24, 27, 31, 35, 39,§**12994**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§708.1]

Referred to in §773.38

708.2 Aggravated offense. If such offender, at the time of committing such burglary, is armed with a dangerous weapon, or so arm himself after having entered such dwelling house, or actually assault any person being lawfully therein, or has any confederate present aiding and abetting in such burglary, he shall be imprisoned in the penitentiary for life or any term of years. [C51,§2609; R60, §4233; C73,§3892; C97,§4788; C24, 27, 31. 35, 39, §**12995**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§708.2]

Referred to in §§708.1, 708.3, 773.38

708.3 Burglary without aggravation. If such offender commit such burglary otherwise than is mentioned in section 708.2, he shall be imprisoned in the penitentiary not exceeding twenty years. [C51,§2610; R60,§4234; C73,§3893; C97,§4789; C24, 27, 31, 35, 39,§**12996**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§708.3]

Referred to in §§708.1, 773.38

708.4 Burglary by means of explosives. Any person who, with intent to commit crime, breaks and enters, either by day or by night, any building, whether inhabited or not, and opens or attempts to open any vault, safe, or other secure place by use of nitroglycerin, dynamite, giant powder, gunpowder, or any other explosive material, shall be deemed guilty of burglary with explosives. [S13,§4799-a; C24, 27, 31, 35, 39,§**12997**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§708.4]

Referred to in §§708.6, 773.38

708.5 Burglary by means of electricity or gas. Any person who, with intent to commit crime, breaks and enters, either by day or night, any building whether inhabited or not, and opens or attempts to open any vault, safe, or other secure place by the use of electricity as a motive or burning or melting power or agency, or in any form, or by any electrical means whatsoever, or by the use of acetylene gas or by oxyacetylene gas, or by any gas in any form whatsoever; shall be deemed guilty of burglary with electricity or gas, as the case may be. [S13,§4799-a; C24, 27, 31, 35, 39,§**12998**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§708.5]

Referred to in §§708.6, 773.38

708.6 Punishment. Any person duly convicted of burglary under the terms of sections 708.4 and 708.5 shall be imprisoned in the penitentiary not more than forty years. [S13, §4799-a; C24, 27, 31, 35, 39,§**12999**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§708.6]

Referred to in §773.38

708.7 Possession of burglar's tools — evidence. If any person be found having in his possession at any time any burglar's tools or implements, with intent to commit the crime of burglary, he shall be imprisoned in the penitentiary not more than fifteen years, or be fined not exceeding one thousand dollars. The court before whom such conviction is had shall order the retention by the sheriff of such tools or implements, to be used in evidence in any court in which such person is tried for the offense herein defined, or that of burglary, and the possession of such tools or implements shall be presumptive evidence of his intent to commit burglary. [C97,§4790; S13, §4790; C24, 27, 31, 35, 39,§**13000**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§708.7]

Referred to in §773.38

708.8 Other breakings and enterings. If any person, with intent to commit any public offense, in the daytime break and enter, or in the nighttime enter without breaking, any dwelling house; or at any time break and enter any office, shop, store, warehouse, railroad car, boat, or vessel, or any building in which any goods, merchandise, or valuable things are kept for use, sale, or deposit, he shall be imprisoned in the penitentiary not more than ten years, or be fined not exceeding one hundred dollars and imprisoned in the county jail not more than one year. [C51,§2611; R60,§4235; C73,§3894; C97,§4791; C24, 27, 31, 35, 39,§**13001**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§708.8]

Referred to in §773.38

708.9 Entering bank with intent to rob. If any person shall enter or attempt to enter the premises of a bank or trust company, with intent to hold up and rob any bank or trust company, or any person or persons therein, or thought to be therein, of any money or currency or silver or gold or nickels or pennies or of anything of value belonging to said bank or trust company, or from any person or persons therein; or shall intimidate, injure, wound, or maim any person therein with intent to commit such holdup or "stick-up" or robbery, he shall, upon conviction thereof, be imprisoned in the penitentiary at hard labor for life, or for any term not less than ten years. [C24, 27, 31, 35, 39,§**13002**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§708.9]

Referred to in §773.38

708.10 Attempting to break and enter. If any person, with intent to commit any public offense, shall attempt to break and enter any dwelling house, at any time, or to enter any dwelling house in the nighttime without breaking, or at any time to break and enter any office, shop, store, warehouse, railroad car, boat, vessel, or any building in which any goods, merchandise, or valuable things are kept for use, sale, or deposit, he shall be imprisoned in the penitentiary not more than five years, or fined not exceeding three hundred dollars and imprisoned in the county jail not more than one year. [C97,§4792; C24, 27, 31, 35, 39,§**13003**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§708.10]

Referred to in §773.38

708.11 Breaking and entering car. If any person unlawfully break and enter any freight or express car which is sealed or locked, in which any goods, merchandise, or valuable things are kept for use, deposit, or transportation, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding one hundred dollars and imprisoned in the county jail not more than one year. [C97,§4794; C24, 27, 31, 35, 39,§**13004**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§708.11]

Referred to in §773.38

CHAPTER 709

LARCENY

Larceny of a motor vehicle, §321.82

709.1 Definition.
709.2 Punishment.
709.3 Measure of value of stolen goods.
709.4 Larceny in nighttime.
709.5 Larceny in daytime.
709.6 Larceny from building on fire or from the person.
709.7 Larceny of electric current, water, steam or gas.
709.8 Larceny of domestic fowls and animals.
709.9 Taking goods from officer.
709.10 Custody of property levied on or deposited by officer.
709.11 Appropriating found property.
709.12 Larceny of logs or lumber.
709.13 Punishment.
709.14 Double damages for conversion of logs.
709.15 Possession as evidence.
709.16 Search for lost logs.
709.17 Obstructing search—penalty.
709.18 Taking property for boat or vessel.
709.19 "Common thief" defined.
709.20 Shoplifting.
709.21 Evidence of intention.
709.22 Search.
709.23 Permission.
709.24 Immunities.
709.25 Larceny from parking meter.

709.1 Definition. If any person steal, take, and carry away of the property of another any money, goods, or chattels, including all domesticated or restrained animals; any writ, process, or public record; any bond, bank note, promissory note, bill of exchange or other bill, or order, or certificate; or any book of accounts respecting money, goods, or other things; or any deed or writing containing a conveyance of real estate; or any contract in force; or any receipt, release, or defeasance; or any instrument or writing whereby any demand, right, or obligation is created, increased, extinguished, or diminished, he is guilty of larceny. [C51,§2612; R60,§4237; C73,§3902; C97,§4831; C24, 27, 31, 35, 39,§**13005**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.1]

40GA, ch 273,§1, editorially divided

709.2 Punishment. When the value of the property stolen exceeds twenty dollars, he shall be punished by imprisonment in the penitentiary not more than five years, or in the county jail not more than one year, or by fine of not more than one thousand dollars, or by both such fine and imprisonment; when the value does not exceed twenty dollars, by fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days. [C51,§2612; R60,§4237; C73,§3902; C97,§4831; C24, 27, 31, 35, 39,§**13006**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.2]

709.3 Measure of value of stolen goods. If the property stolen consists of any bank note, bond, bill, covenant, bill of exchange, draft, order, or receipt, or any evidence of debt whatever, or any public security, or any instrument whereby any demand, right, or obligation may be assigned, transferred, created, increased, released, extinguished, or diminished, the money due thereon or secured thereby and remaining unsatisfied, or which in any event or contingency might be collected thereon, or the value of the property transferred or affected, as the case may be, shall be adjudged the value of the thing stolen. [C51,§2625; R60, §4250; C73,§3914; C97,§4849; C24, 27, 31, 35, 39, §**13007**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.3]

709.4 Larceny in nighttime. If any person in the nighttime commit larceny in any dwelling house, store, or any public or private building, or other construction of any type or character, or in any boat, vessel, or watercraft, or in any motor vehicle and/or trailer, when the value of the property stolen exceeds the sum of twenty dollars, he shall be imprisoned in the penitentiary not exceeding ten years; and when the value of the property stolen does not exceed twenty dollars, be fined not exceeding three hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2613; R60,§4238; C73,§3903; C97, §4832; C24, 27, 31, 35, 39,§**13008**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.4]

Referred to in §709.5

709.5 Larceny in daytime. If any person in the daytime commit larceny as defined in section 709.4, and the value of the property stolen exceeds twenty dollars, he shall be imprisoned in the penitentiary not more than five years; and when the value of the property stolen does not exceed twenty dollars, be fined not exceeding two hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2614; R60,§4239; C73,§3904; C97, §4833; C24, 27, 31, 35, 39,§**13009**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.5]

709.6 Larceny from building on fire or from the person. If any person commit the crime of larceny by stealing from any building on fire, or by stealing any property removed in consequence of an alarm caused by fire, or by stealing from the person of another, he shall be imprisoned in the penitentiary not exceeding fifteen years. [C51,§2615; R60,§4240; C73,§3905; C97,§4837; C24, 27, 31, 35, 39,§**13010**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.6]

709.7 Larceny of electric current, water, steam or gas. If any person willfully, and with intent to defraud, in any manner take

from the wires, pipes, meters, or any other apparatus of any electric motor, electric light, water, steam heating, or gas plant or works, any electric current, water, steam, steam heat, or gas, he shall be guilty of larceny and shall be punished accordingly. [S13,§4852-c; C24, 27, 31, 35, 39,§**13014**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.7]

709.8 Larceny of domestic fowls and animals. If any person steal, take and carry away, irrespective of value, any domestic fowl or poultry, pig, cow, calf, horse, colt, or other domestic animal, he shall be punished by imprisonment in the penitentiary or men's or women's reformatory not more than five years, or by imprisonment in the county jail not more than one year, or by a fine not more than one thousand dollars, or by both such fine and imprisonment in the county jail. [S13,§4852-d; C24, 27, 31, 35, 39,§**13015**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.8]

709.9 Taking goods from officer. If any person, knowingly and without authority of law, take, carry away, secrete, or destroy any goods or chattels while the same are lawfully in the custody of any sheriff, county medical examiner, marshal, or other officer, and held by such officer by virtue of execution, writ of attachment, or other legal process, he shall be guilty of larceny, and, when the value of the property so taken, carried away, secreted, or destroyed exceeds the sum of twenty dollars, be imprisoned in the penitentiary not more than one year; and when it does not exceed twenty dollars, be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days. [R60, §4251; C73,§3915; C97,§4850; S13,§4850; C24, 27, 31, 35, 39,§**13016**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.9]

Referred to in §709.10

709.10 Custody of property levied on or deposited by officer. The possession or custody of goods and chattels by any person with whom the same have been left or deposited for safekeeping, to be returned for the purpose of being disposed of on legal process, shall be the possession and custody of the officer having or depositing the same and entitled to the custody thereof, and, in a prosecution under section 709.9, the property taken, carried away, secreted, or destroyed, as therein mentioned, may be laid in the officer entitled to the custody thereof at the time of the commission of the offense. [R60,§4252; C73,§3916; C97,§4851; C24, 27, 31, 35, 39,§**13017**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.10]

709.11 Appropriating found property. If any person come by finding to the possession of any personal property of which he knows the owner, and unlawfully appropriate the same or any part thereof to his own use, he is guilty of larceny, and shall be punished accordingly. [C51,§2617; R60,§4242; C73,§3907; C97,§4839; C24, 27, 31, 35, 39,§**13018**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.11]

709.12 Larceny of logs or lumber. Whoever shall willfully take, carry away, or otherwise convert to his own use, or sell or dispose of, without the consent of the owner or owners, any pile, logs, or cant suitable to be worked into plank, board, joist, shingles, or other lumber, the property of another, whether the owner thereof be known or unknown, lying or being in any lake, bay, or river in or bordering on this state, or in any tributary of such lake, bay, or river or tributary, or in or on any slough, ravine, island, bottom, or land adjoining any such lake, bay, or river or tributary, such property being so taken, carried away, or otherwise converted or sold or disposed of within this state, or taken possession of with intent to sell or dispose of as aforesaid; or cuts out, mutilates, destroys, or renders illegible the marks or mark thereon, destroying the identification thereof; or in any manner willfully injures any such logs, not his own; or places upon such logs or pieces of timber any mark or device other than the original mark or device, shall be deemed guilty of the crime of larceny. [C97,§4834; C24, 27, 31, 35, 39,§**13019**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.12]

C97,§4834, editorially divided
Referred to in §§709.14, 709.15

709.13 Punishment. On conviction thereof, such person shall be fined not less than fifty dollars and be imprisoned in the county jail not less than three months; and, on a second conviction for a like crime, shall be fined not less than one hundred dollars and be imprisoned in the penitentiary not more than two years. [C97,§4834; C24, 27, 31, 35, 39,§**13020**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.13]

Referred to in §709.15

709.14 Double damages for conversion of logs. Every person guilty of any of the offenses described in section 709.12 shall, whether convicted thereof in a criminal prosecution or not, be liable to pay the owner or owners of such pile, log, cant, or other lumber respecting which the offense is committed, double the amount of the value of the same, to be recovered in an action therefor. [C97, §4835; C24, 27, 31, 35, 39,§**13021**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.14]

Referred to in §709.15

709.15 Possession as evidence. In any prosecution under sections 709.12 to 709.14, if any such pile, log or cant shall be found in the possession of the defendant, either with or without the mark cut out or destroyed, or partly cut out or destroyed, or partly sawed or manufactured into lumber of any kind, fence posts, fence rails, or stovewood, such possession shall be presumptive evidence of his guilt. [C97,§4836; C24, 27, 31, 35, 39,§**13022**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.15]

C97,§4836, editorially divided

709.16 Search for lost logs. The owner of any such pile, log, cant, or other lumber may at any time lawfully, by himself or agent, enter

in a peaceable manner into or upon any mill or mill boom or raft of logs, piles, cant, or other lumber, in any river or its tributaries in or bordering on this state, or on or near the banks of such lakes, bays, or rivers, or their tributaries, in search of any such pile, log, cant, or other lumber which he may have lost. [C97,§4836; C24, 27, 31, 35, 39,§**13023**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.16]

709.17 Obstructing search — penalty. Any person who shall willfully prevent or obstruct such search shall, upon conviction thereof, be liable to a penalty of not less than twenty dollars, nor more than fifty dollars, for every such offense. [C97,§4836; C24, 27, 31, 35, 39,§**13024**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.17]

709.18 Taking property for boat or vessel. If any owner, master, clerk, or any other person having charge of or belonging to any boat, vessel, or raft take any cordwood or any other species of property from the owner or his agent, without the knowledge of such owner or agent, or without paying the customary price for the same, he shall be fined not exceeding two hundred dollars, or imprisoned in the county jail not exceeding six months. [C51, §2689; R60,§4329; C73,§3988; C97,§4830; C24, 27, 31, 35, 39,§**13025**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.18]

709.19 "Common thief" defined. If any person, having before been twice convicted within the state of larceny, is guilty of another crime of larceny, he shall be deemed a common thief, and imprisoned in the penitentiary not more than seven years, or fined not exceeding one thousand dollars and imprisoned in the county jail not more than one year. [R60,§4247; C97,§4846; C24, 27, 31, 35, 39,§**13026**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§709.19]

Referred to in §712.2

Multifarious convictions, §§712.2, 718.7, 718.11; also ch 747

709.20 Shoplifting. Whoever shall willfully take possession of any goods, wares, or merchandise offered for sale by any store or other mercantile establishment, with the intention of converting the same to his own use without paying the purchase price thereof, shall be guilty of shoplifting and, when the value of the property so taken into possession exceeds the sum of twenty dollars, he shall be punished by imprisonment in the penitentiary not more than five years, or in the county jail not more than one year, or by fine of not more than one thousand dollars, or by both such fine and imprisonment; when the value does not exceed twenty dollars, by fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days. [C62, 66, 71, 73, 75,§709.20]

Referred to in §§709.21, 709.24

709.21 Evidence of intention. The fact that any person has concealed unpurchased goods or merchandise of any store or other mercantile establishment, either on the premises or outside the premises of such store, shall be material evidence of concealment of such article with the intention of converting the same to his own use without paying the purchase price thereof within the meaning of section 709.20, and the finding of such unpurchased goods or merchandise concealed, upon the person or among the belongings of such person, shall be material evidence of willful concealment and, if such person conceals, or causes to be concealed, such unpurchased goods or merchandise, upon the person or among the belongings of another, the finding of the same shall also be material evidence of willful concealment on the part of the person concealing such goods. [C62, 66, 71, 73, 75,§709.21]

Referred to in §709.24

709.22 Search. Persons so concealing such goods may be detained and searched by a peace officer, merchant, or a merchant's employee, provided that the detention is for a reasonable length of time and that the search is conducted in a reasonable manner by a person of the same sex and according to section 709.23. [C62, 66, 71, 73, 75,§709.22]

Referred to in §709.24

709.23 Permission. No search of the person shall be conducted by any person other than someone acting under the direction of a peace officer except where permission of the one to be searched has been first obtained. [C62, 66, 71, 73, 75,§709.23]

Referred to in §§709.22, 709.24

709.24 Immunities. The detention or search under sections 709.20 to 709.23, by a peace officer, merchant, or merchant's employee shall not render such peace officer, merchant or merchant's employee liable, in a criminal or civil action, for false arrest or false imprisonment provided the peace officer, merchant, or merchant's employee had reasonable grounds to believe the person detained or searched committed or was attempting to commit the crime of shoplifting as defined in sections 709.20 to 709.23. [C62, 66, 71, 73, 75,§709.24]

709.25 Larceny from parking meter. If any person opens, steals, takes and carries away, or attempts to open, steal, take and carry away money, regardless of the value or amount thereof, from a parking meter erected and maintained by a city, he shall be guilty of larceny from a parking meter and upon the first conviction thereof he shall be punished by imprisonment in the penitentiary or county jail for not more than one year, or by fine of not more than five hundred dollars, or by both such fine and imprisonment; upon each subsequent conviction thereof he shall be punished by imprisonment in the penitentiary for not more than five years, or by fine of not more than one thousand dollars, or by both such fine and imprisonment. [C71, 73, 75,§709.25]

CHAPTER 710

EMBEZZLEMENT

710.1 Embezzlement by public officers.
710.2 Punishment.
710.3 "Officer" defined.
710.4 Embezzlement by bailee.
710.5 Embezzlement by agents.
710.6 Money converted by series of acts.
710.7 Retaining money on account of commission.
710.8 Retention of actual commission permitted.
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710.10 Embezzlement by carrier or persons entrusted.
710.11 Embezzlement by executor, administrator or guardian.
710.12 Embezzlement of secured interest in collateral—penalty.
710.13 Prima-facie evidence of disposal.
710.14 Leased and rented vehicle offenses.

710.1 Embezzlement by public officers. If any state, county, township, school, or municipal officer, or officer of any state institution, or other public officer within the state charged with the collection, safekeeping, transfer, or disbursement of public money or property:

1. Fails or refuses to keep the same in any place of custody or deposit that may be provided by law for keeping such money or property until the same is withdrawn therefrom as authorized by law, or

2. Keeps or deposits such money or property in any other place than in such place of custody or deposit, or

3. Unlawfully converts to his own use in any way whatever, or uses by way of investment in any kind of property, or loans without the authority of law, any portion of the public money entrusted to him for collection, safekeeping, transfer, or disbursement, or

4. Converts to his own use any money or property that may come into his hands by virtue of his office—

he shall be guilty of larceny by embezzlement to the amount of so much of said money or the value of so much of said property as is thus taken, converted, invested, used, loaned, or unaccounted for; and an offer to return and account for, or the actual return and accounting for, such funds or property so embezzled as herein defined shall not relieve such defaulting officer from the crime of larceny by embezzlement or the punishment therefor as fixed in section 710.2. [C51,§2618; R60,§§806, 807, 4243; C73,§3908; C97,§4840; C24, 27, 31, 35, 39,§13027; C46, 50, 54, 58, 62, 66, 71, 73, 75,§710.1]

C97,§4840, editorially divided
Referred to in §710.3

710.2 Punishment. Such officer shall be imprisoned in the penitentiary not exceeding ten years, and fined in a sum equal to the amount of money embezzled or the value of such property converted, and shall be forever after disqualified from holding any office under the laws of the state. [C51,§2618; R60, §4243; C73,§3908; C97,§4840; C24, 27, 31, 35, 39, §13028; C46, 50, 54, 58, 62, 66, 71, 73, 75,§710.2]

Referred to in §§710.1, 710.3
Constitution, Art. II, §5

710.3 "Officer" defined. The words "officer" or "public officer" as used in sections 710.1 and 710.2 shall be defined as any person who is elected, appointed, or employed by the state, county, township, school district, municipality, or any other public body or subdivision thereof. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§710.3]

710.4 Embezzlement by bailee. Whoever embezzles or fraudulently converts to his own use, or secretes with intent to embezzle or fraudulently convert to his own use, money, goods, or property delivered to him, or any part thereof, which may be the subject of larceny, shall be guilty of larceny and punished accordingly. [C97,§4841; C24, 27, 31, 35, 39, §13030; C46, 50, 54, 58, 62, 66, 71, 73, 75,§710.4]

710.5 Embezzlement by agents. If any officer, agent, clerk, or servant of any corporation or voluntary association, or if any clerk, agent, or servant of any private person or copartnership, except persons under the age of sixteen years, or if any attorney at law, collector, or other person who in any manner receives or collects money or other property for the use of and belonging to another, embezzles or fraudulently converts to his own use, or takes and secretes with intent to embezzle or convert to his own use, without the consent of his employer, master, or the owner of the money or property collected or received, any money or property of another, or which is partly the property of another and partly the property of such officer, agent, clerk, servant, attorney at law, collector, or other person, which has come to his possession or under his care in any manner whatsoever, he is guilty of larceny. [C73,§3909; C97,§4842; C24, 27, 31, 35, 39,§13031; C46, 50, 54, 58, 62, 66, 71, 73, 75, §710.5]

C97,§4842, editorially divided
Referred to in §710.7
Larceny penalty, §709.2

710.6 Money converted by series of acts. If money or property is so embezzled or converted by a series of acts during the same employment, the total amount of the money and the total value of the property so embezzled or converted shall be considered as embezzled or converted in one act, and he shall be punished accordingly. [C73,§3909; C97,§4842; C24, 27, 31, 35, 39,§13032; C46, 50, 54, 58, 62, 66, 71, 73, 75,§710.6]

Referred to in §710.7

710.7 Retaining money on account of commission. In a prosecution under sections 710.5 and 710.6, it shall be no defense that such officer, agent, clerk, servant, collector, attorney at law, or other person was entitled to a commission or compensation out of such money or property as compensation or commission for collecting or receiving the same for or on behalf of the owner thereof. [C73,§3909; C97, §4843; C24, 27, 31, 35, 39,§13033; C46, 50, 54, 58, 62, 66, 71, 73, 75,§710.7]

C97,§4843, editorially divided

710.8 Retention of actual commission permitted. It shall be lawful for such agent, clerk, servant, attorney at law, collector, or other person to retain his reasonable compensation or collection fee for collecting or receiving the same, but no attorney at law may retain any money or property as compensation, or as money and property on which he has an attorney's lien, after the filing of a bond as provided in regard to such liens. [C73, §3909; C97,§4843; C24, 27, 31, 35, 39,§13034; C46, 50, 54, 58, 62, 66, 71, 73, 75,§710.8]

Bond to release, §610.19

710.9 Embezzlement by bank officers or employees. Any officer, director, or employee of a bank who shall in any manner, directly or indirectly, use the funds or deposits of a bank or any part thereof, except for the regular business transactions of the bank, or who secretes, with intent to embezzle or fraudulently convert to his own use, any funds, deposits or any part thereof of any bank and which may be the subject of larceny, or money placed in his hands for the purpose of deposit in the bank, or for remittance to any other person, or to apply on or discharge any obligation held by the bank, either as owner, agent, or trustee, which has been received by him or delivered to him as an officer, director, or employee of a bank or on account of his connection therewith, shall be guilty of embezzlement and shall, on conviction thereof, be imprisoned in the penitentiary not to exceed twenty years. [C27, 31, 35,§13034-a1; C39, §13034.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§710.9]

710.10 Embezzlement by carrier or persons entrusted. If any carrier or other person to whom any money, goods, or other property which may be the subject of larceny has been delivered to be carried for hire, or if any other person entrusted with such property, embezzle or fraudulently convert to his own use any such money, goods, or other property, either in the mass as the same were delivered or otherwise, and before the same were delivered at the place or to the person where and to whom they were to be delivered, he is guilty of larceny. [C51,§2620; R60,§4245; C73,§3910; C97,§4844; C24, 27, 31, 35, 39,§13035; C46, 50, 54, 58, 62, 66, 71, 73, 75,§710.10]

Larceny penalty, §709.2

710.11 Embezzlement by executor, administrator or guardian. If any executor, administrator, or guardian embezzles or fraudulently converts to his own use any money or property collected or received by him or coming into his possession or under his control by virtue of his said office, he is guilty of larceny and the statute of limitations shall not begin to run as to such offense until the settlement of the estate or the attainment of majority by the ward, as the case may be. [S13,§4852-e; C24, 27, 31, 35, 39,§13036; C46, 50, 54, 58, 62, 66, 71, 73, 75,§710.11]

Larceny penalty, §709.2
Limitation of actions, ch 752

710.12 Embezzlement of secured interest in collateral — penalty. If any debtor who has given a security interest in collateral willfully and with intent to defraud, destroys, conceals, sells, or in any manner disposes of the collateral while the security interest remains unsatisfied and without the written consent of the secured party, he shall be guilty of larceny and punished accordingly. [R60,§4236; C73, §3895; C97,§4852; C24, 27, 31, 35, 39,§13037; C46, 50, 54, 58, 62, 66, 71, 73, 75,§710.12]

Larceny penalty, §709.2

710.13 Prima-facie evidence of disposal. Failure to produce the property specifically described in such security agreement and existing and owned by the debtor at the time it was executed in accordance with the terms thereof, shall be prima-facie evidence that the property described in such security agreement has been destroyed, concealed, sold, or otherwise disposed of by the debtor. Nothing herein contained shall relieve the debtor from making demand for satisfaction or return of the collateral. [C31, 35,§13037-c1; C39,§13037.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§710.13]

710.14 Leased and rented vehicle offenses.

1. Whoever rents or leases any motor vehicle, as defined under section 321.1, with intent to defraud, alter, or attempt to alter the odometer or other instrument which records the distance traveled by the vehicle, shall be punished by imprisonment in the county jail for not less than six months and not more than one year, or by fine not exceeding five hundred dollars, or both.

2. Whoever, after renting a motor vehicle, as defined under section 321.1, from any person or persons under an agreement to pay for the use of such vehicle a sum of money determinable either in whole or in part upon the distance such vehicle travels during the period for which hired, removes, attempts to remove, tampers with, or attempts to tamper with, or otherwise interferes with any odometer or other mechanical device attached to said hired vehicle for the purpose of registering the distance such vehicle travels, with the intent to deceive the person or persons letting such vehicle or their lawful agent as to the actual distance traveled thereby, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not less than six months and not more than one year, or by fine not exceeding five hundred dollars, or both.

3. Whoever, after consenting to the use of a motor vehicle, as defined under section 321.1, under a written agreement to redeliver the same to the person letting such vehicle or his agent, shall, with intent to defraud, abandon such vehicle or willfully refuse or willfully neglect to redeliver such vehicle as agreed, shall be guilty of a felony and punished by imprisonment in the penitentiary for not more than one year or by fine not to exceed one thousand dollars, or both. If the person letting the vehicle has performed all of his obligations under the agreement, the failure to return the vehicle within seventy-two hours of the time agreed shall be evidence of such abandonment or willful refusal or willful neglect to redeliver such vehicle. [C71, 73, 75,§710.14]

CHAPTER 711

ROBBERY

711.1 Definition—punishment.
711.2 Robbery with aggravation.
711.3 Robbery without aggravation.
711.4 Train robbery.

711.1 Definition—punishment. If any person, with force or violence, or by putting in fear, steal and take from the person of another any property that is the subject of larceny, he is guilty of robbery, and shall be punished according to the aggravation of the offense, as is provided in sections 711.2 and 711.3. [C51,§2578; R60,§4201; C73,§3858; C97, §4753; C24, 27, 31, 35, 39,§**13038**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§711.1]

711.2 Robbery with aggravation. If such offender at the time of such robbery is armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed; or if, being so armed, he wound or strike the person robbed; or if he has any confederate aiding or abetting him in such robbery, present and so armed, he shall be imprisoned in the penitentiary for a term of twenty-five years. [C51,§2579; R60,§4202; C73,§3859; C97, §4754; C24, 27, 31, 35, 39,§**13039**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§711.2]

Referred to in §§711.1, 711.3

711.3 Robbery without aggravation. If such offender commits the robbery otherwise than is mentioned in section 711.2, he shall be imprisoned in the penitentiary not exceeding ten years. [C51,§2580; R60,§4203; C73,§3860; C97,§4755; C24, 27, 31, 35, 39,§**13040**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§711.3]

Referred to in §711.1

711.4 Train robbery. If any person shall:

1. Stop, or attempt to stop, any railway passenger train, with intent to rob any person thereon, or to rob any coach attached thereto, or to rob any mail pouch, express safe, or box on such train; or

2. Wreck or attempt to wreck, derail, or attempt to derail, any such train, by any means whatever, with intent to commit such robbery; or

3. Obstruct or detain such train, or any locomotive, tender, coach, or car attached thereto, with such intent; or

4. Place upon any railway track, or under any engine, tender, coach, or car any explosive substance, with intent to obstruct, stop, detain, derail, or wreck such train, for the purpose of committing such robbery; or

5. Remove any spike, fishplate, frog, rail, switch, tie, stringer, or appliance used on such railway with intent to obstruct, stop, detain, derail, or wreck such train, for the purpose of committing such robbery; or

6. Enter any locomotive, tender, coach, or car attached to such train, and take or attempt to take possession thereof, for the purpose of committing such robbery; or

7. Rifle any coach, car, safe, box, or mail pouch on such train; or

8. Take and carry away, with force and arms, any valuable thing whatever from such train, or from any person thereon; or

9. Intimidate, injure, wound, or maim any person thereon, with intent to commit such robbery—

he shall, upon conviction thereof, be imprisoned in the penitentiary at hard labor, for life. [S13,§4810-a; C24, 27, 31, 35, 39,§**13041**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§711.4]

CHAPTER 712

RECEIVING STOLEN GOODS

712.1 Punishment.
712.2 Second conviction.
712.3 Receiver convicted without principal.

712.1 Punishment. If any person buy, receive, or aid in concealing any stolen money, goods, or property the stealing of which is larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, he shall, when the value of the property so bought, received, or concealed by him exceeds the sum of twenty dollars, be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year; and when the value of the property so bought, received, or concealed by him does not exceed the sum of twenty dollars, be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days. [C51,§2621; R60,§4246; C73,§3911; C97,§4845; C24, 27, 31, 35, 39,§**13042**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§712.1]

Receiving, concealing, or selling motor vehicle, §321.77

712.2 Second conviction. If any person, after having been convicted of the offense of buying, receiving, or aiding in the concealment of stolen money, goods, or any property the stealing of which is larceny, or property obtained by robbery or burglary, be again convicted of the like offense, he shall be punished as provided in section 709.19. [C51,§2623; R60, §4248; C73,§3912; C97,§4847; C24, 27, 31, 35, 39, §**13043**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§712.2]

Multifarious convictions, §§718.7, 718.11; also ch 747

712.3 Receiver convicted without principal. In any prosecution for the offense of buying, receiving, or aiding in the concealment of stolen property, or property obtained by robbery or burglary, knowing the same was so obtained, it shall not be necessary to aver nor prove on the trial that the person who stole, robbed, or took the property has been convicted. [C51,§2624; R60,§4249; C73,§3913; C97, §4848; C24, 27, 31, 35, 39,§**13044**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§712.3]

CHAPTER 713

FALSE PRETENSES, FRAUDS AND OTHER CHEATS

713.1 False pretenses.
713.2 Receiving goods by false personation.
713.3 False drawing or uttering of checks.
713.4 False drawing or uttering of checks.
713.5 Suppression or destruction of will.
713.6 Fraudulent conveyances.
713.7 Frauds upon hotelkeepers.
713.8 Presumptive evidence of fraud.
713.9 Exception as to regular boarders.
713.10 Fitting out boat to defraud owner or insurer.
713.11 Swindling in sale of grain or seed.
713.12 Dealing in certain instruments.
713.13 False warehouse receipts.
713.14 Making false bills of lading.
713.15 Making false affidavits or manifests.
713.16 Altering stamps or marks of public officer.
713.17 to 713.21 Repealed by 63GA, ch 1255,§16.
713.22 Binder twine—label required.
713.23 Punishment.
713.24 Consumer frauds.
713.25 Repealed by 61GA, ch 438,§2.
713.26 False entries in corporation books.
713.27 Transacting business without license.
713.28 Unlawfully wearing military badges.
713.29 Three-card monte and other games—penalty.
713.30 Authority and duty to make arrests.
713.31 Ejection from public conveyances and places.
713.32 Exceptions.
713.33 Posting copy of law.
713.34 Gross fraud or cheat at common law.
713.35 Operating coin machine by false means—penalty.
713.36 Selling slugs or false coins—penalty.
713.37 Manufacture—penalty.
713.38 Tokens excepted.
713.39 False use of credit cards.
713.40 Fraudulent use of wire services.
713.41 "Notice" defined.
713.42 Penalty.
713.43 Simulated legal process.

FRAUDULENT USE OF RECORDINGS

713.44 Definitions.
713.45 Reproduction of sound recordings.

713.1 False pretenses. If any person designedly and by false pretense, or by any privy or false token, and with intent to defraud, obtain from another any money, goods, or other property, or so obtain the signature of any person to any written instrument, the false making of which would be punished as forgery, he shall be imprisoned in the penitentiary not more than seven years, or be fined not exceeding five hundred dollars, or be imprisoned in the county jail not exceeding one year, or be punished by both such fine and imprisonment. [C51,§2744; R60,§4394; C73,§4073; C97,§5041; C24, 27, 31, 35, 39,§**13045**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.1]

Referred to in §713.3

713.2 Receiving goods by false personation. If any person falsely personate or represent another, and in such assumed character receive any money or property intended to be delivered to the person so personated, with

intent to convert the same to his own use, he is guilty of larceny, and shall be punished accordingly. [C51,§2616; R60,§4241; C73,§3906; C97,§4838; C24, 27, 31, 35, 39,§13046; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.2]

Larceny penalty, §709.2

713.3 False drawing or uttering of checks. Any person who with fraudulent intent shall make, utter, draw, deliver, or give any check, draft, or written order upon any bank, person, or corporation and who secures money, credit, or thing of value therefor, and who knowingly shall not have an arrangement, understanding, or funds with such bank, person, or corporation sufficient to meet or pay the same, shall be guilty of a felony, if such check, draft, or written order shall be for the sum of twenty dollars or more, and shall on conviction thereof be punished as in section 713.1; and if such check, draft, or written order be for less than twenty dollars, such person shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days; provided, however, that if such person has been three times convicted of such offense, he shall on the fourth and all subsequent convictions, be sentenced to the county jail or penitentiary at the discretion of the court, for a period of not to exceed one year. [C24, 27, 31, 35, 39,§13047; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.3]

713.4 False drawing or uttering of checks. As against the maker or drawer of a check, draft, or written order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer or because the maker or drawer has no account with the drawee, the fact that payment of such check, draft, or written order has been refused by the drawee shall be prima-facie evidence of intent to defraud and of knowingly not having an arrangement, understanding, or funds with such bank, person, or corporation sufficient to meet or pay the check, draft, or written order, provided such maker or drawer shall not have paid the holder thereof the amount due thereon within ten days after receiving written notice by certified mail or notice in the manner of serving an original notice that such check, draft, or written order has not been paid by the drawee. [C24, 27, 31, 35, 39,§13048; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.4]

713.5 Suppression or destruction of will. If any person, having in his possession or under his control any last will of any deceased person, willfully suppress, secrete, deface, or destroy the same, or any codicil belonging thereto, with intent to injure or defraud any devisee, legatee, or other person, he shall be imprisoned in the penitentiary not more than seven years, or be fined not exceeding one thousand dollars, and imprisoned in the county jail not more than one year. [C51,§2746; R60,§4396; C73,§4075; C97,§5043; C24, 27, 31, 35, 39,§13050; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.5]

Duty to produce will, §633.285

713.6 Fraudulent conveyances. Any person who, knowingly being a party to any conveyance or assignment of any estate or interest in lands, goods, or things in action, or of any rents or profits arising therefrom, or being a party to any charge on such estate, interest, rents, or profits, made or created with intent to defraud prior or subsequent purchasers, or to hinder, delay, or defraud creditors or other persons, and every person who, being privy to or knowing of such fraudulent conveyance, assignment, or charge, puts the same in use as having been made in good faith, shall be imprisoned in the penitentiary not exceeding three years, or may be fined in the discretion of the court not exceeding one thousand dollars, or imprisoned in the county jail not more than one year. [C51,§2745; R60,§4395; C73,§4074; C97,§5042; C24, 27, 31, 35, 39,§13051; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.6]

713.7 Frauds upon hotelkeepers. Any person who shall obtain food, lodging, or other accommodation at any hotel, inn, or boarding or eating house, with intent to defraud the owner or keeper thereof, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding thirty days. [C97,§5076; C24, 27, 31, 35, 39,§13052; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.7]

Referred to in §713.8

713.8 Presumptive evidence of fraud. Proof that lodging, food, or other accommodation was obtained by false pretense, or by false or fictitious show or pretense of baggage, or that the party refused or neglected to pay for such food, lodging, or other accommodation on demand, or that he absconded or left the premises without paying or offering to pay for such food, lodging, or other accommodation, or that he surreptitiously removed or attempted to remove his baggage, shall be presumptive evidence of the fraudulent intent mentioned in section 713.7. [C97,§5077; C24, 27, 31, 35, 39,§13053; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.8]

Referred to in §713.9
C97,§5077, editorially divided

713.9 Exception as to regular boarders. Section 713.8 shall not apply to regular boarders, nor when there has been an agreement for delay in payment. [C97,§5077; C24, 27, 31, 35, 39,§13054; C46, 50, 54, 58, 62, 66, 71, 73, 75, §713.9]

713.10 Fitting out boat to defraud owner or insurer. If any person lade, equip, or fit out, or assist in lading, equipping, or fitting out, any raft, boat, or vessel, with intent that the same be cast away, burnt, sunk, or otherwise destroyed, to injure or defraud any owner or insurer thereof, or of any property laden on board the same, he shall be fined not exceeding one thousand dollars and imprisoned in

the county jail not exceeding one year. [C51, §2754; R60,§4404; C73,§4083; C97,§5055; C24, 27, 31, 35, 39,§13055; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.10]

Similar provision, §714.15

713.11 Swindling in sale of grain or seed. Whoever, either for his own benefit or as the agent of any corporation, company, association, or person, obtains from any other person any thing of value, or procures the signature of any such person as maker, endorser, guarantor, or surety thereon to any bond, bill, receipt, promissory note, draft, check, or any other evidence of indebtedness, as the whole or part consideration of any bond, contract, or promise given the vendee of any grain, seed, or cereal; binding the vendor or any other person, corporation, company, association, or the agent thereof, to sell for such vendee any grain, seed, or cereal at a fictitious price, or at a price equal to or more than four times the market price thereof, shall be imprisoned in the penitentiary not more than three years, or be fined not more than five hundred nor less than one hundred dollars, or both. [C97,§5069; C24, 27, 31, 35, 39,§13056; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.11]

C97,§5069, editorially divided

713.12 Dealing in certain instruments. Whoever sells, barters, or disposes of, or offers to sell, barter, or dispose of, either for his own benefit or as the agent of any corporation, company, association, or person, any bond, bill, receipt, promissory note, draft, check, or other evidence of indebtedness, knowing the same to have been obtained as the whole or part consideration for any bond, contract, or promise given the vendee of any grain, seed, or cereal, binding the vendor or any other person, corporation, company, association, or the agent thereof, to sell for such vendee any grain, seed, or cereal at a fictitious price, or at a price equal to or more than four times the market price thereof, shall be imprisoned in the penitentiary not more than three years, or be fined not more than five hundred nor less than one hundred dollars, or both. [C97,§5069; C24, 27, 31, 35, 39,§13057; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.12]

713.13 False warehouse receipts. If any person sell, transfer, or dispose of any receipt or voucher, given or purporting to have been given by any person for property in store, knowing that such person has not in his possession such property, or any part thereof, he shall be fined not exceeding one thousand dollars and imprisoned in the penitentiary not exceeding five years. [C73,§4088; C97, §5068; C24, 27, 31, 35, 39,§13058; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.13]

713.14 Making false bills of lading. If any owner of any boat or vessel, or of any property laden or pretended to be laden on board the same, or if any other person concerned in the lading or fitting out of such boat or vessel, make out and exhibit, or cause to be made out and exhibited, any false estimate of any goods or property laden or pretended to be laden on board such boat or vessel, with intent to injure or defraud any insurer of such boat or vessel or property, or of any part thereof, he shall be fined not exceeding one thousand dollars, or imprisoned in the penitentiary not more than three years. [C51,§2755; R60,§4405; C73,§4084; C97,§5056; C24, 27, 31, 35, 39,§13059; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.14]

713.15 Making false affidavits or manifests. If any master or other officer of any boat or vessel make, or cause to be made, any false affidavit or manifest, or if any owner or other person concerned in such boat or vessel, or in the goods or property laden on board the same, procure any such false affidavit or manifest to be made, or exhibit the same, with intent to injure, deceive, or defraud any insurer of such boat or vessel, or of the goods or property laden on board of the same, he shall be imprisoned in the penitentiary not exceeding five years, or be fined not exceeding three thousand dollars and imprisoned in the county jail not exceeding one year. [C51, §2756; R60,§4406; C73,§4085; C97,§5057; C24, 27, 31, 35, 39,§13060; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.15]

713.16 Altering stamps or marks of public officer. If any person falsely alter any stamp, brand, or mark on any cask, package, box, or bale containing merchandise or produce, made by a public officer, appointed for that purpose, in order to denote the quality, weight, or quantity of the contents thereof, with intent to defraud, he shall be fined not more than five hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2749; R60,§4399; C73,§4078; C97,§5046; C24, 27, 31, 35, 39,§13061; C46, 50, 54, 58, 62, 66, 71, 73, 75, §713.16]

713.17 to 713.21 Repealed by 63GA, ch 1255,§16.

713.22 Binder twine — label required. No binder twine shall be sold, exposed, or offered for sale within this state, except the same bears upon each ball a stamp or label truly stating the name of the manufacturer or importer and the number of feet to the pound in such ball; provided that a deficiency not exceeding five percent in length stated on the stamp or label shall not be a violation hereof. [S13,§5077-a25; C24, 27, 31, 35, 39,§13067; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.22]

Referred to in §713.23

713.23 Punishment. Any person, firm, or corporation who violates the provisions of section 713.22 shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars. [S13,§5077-a26; C24, 27, 31, 35, 39,§13068; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.23]

713.24 Consumer frauds.

1. Definitions:

a. The term *"advertisement"* includes the attempt by publication, dissemination, solicitation or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise;

b. The term *"merchandise"* includes any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services;

c. The term *"person"* includes any natural person or his legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof;

d. The term *"sale"* includes any sale, offer for sale, or attempt to sell any merchandise for cash or on credit.

e. The term *"subdivided lands"* refers to improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into five or more lots or parcels; provided, however, it does not apply to the leasing of apartments, offices, stores or similar space within an apartment building, industrial building or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in said structure.

2. *a.* The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

b. The advertisement for sale, lease or rent, or the actual sale, lease, or rental of any merchandise at a price or with a rebate or payment or other consideration to the purchaser which is contingent upon the procurement of prospective customers provided by the purchaser, or the procurement of sales, leases, or rentals to persons suggested by the purchaser, is declared to be an unlawful practice rendering any obligation incurred by the buyer in connection therewith, completely void and a nullity. The rights and obligations of any contract relating to such contingent price, rebate, or payment shall be interdependent and inseverable from the rights and obligations relating to the sale, lease, or rental.

c. It shall be unlawful for any person to advertise the sale of merchandise at reduced rates due to the cessation of business operations and after the date of the first such advertisement remain in business under the same, or substantially the same, ownership, under the same, or substantially the same trade name, or continue to offer for sale the same type of merchandise at the same location for more than one hundred twenty days.

d. (1) No person shall offer or advertise within this state for sale or lease, any subdivided lands without first filing with the real estate commission, true and accurate copies of all road plans, plats, field notes and diagrams of water, sewage and electric power lines as they exist at the time of such filing, provided such filing shall not be required for a subdivision subject to section 306.21 or chapter 409. Each such filing shall be accompanied by a fee of fifty dollars for each subdivision included, payable to the real estate commission.

(2) False or misleading statements filed pursuant to subparagraph 1 of paragraph *"d"* of this subsection or section 306.21 or chapter 409, and advertising, offers to sell, or contracts not in substantial conformity with the filings made pursuant to section 306.21 or chapter 409 are unlawful.

e. Any violations of chapter 123 or any other provisions of law by a manufacturer, distiller, vintner, importer, or any other person participating in the distribution of alcoholic liquor or beer as defined in chapter 123.

3. When it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by this section or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any such practice, he may:

a. Require such person to file on such forms as he may prescribe a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person, and such other data and information as he may deem necessary;

b. Examine under oath any person in connection with the sale or advertisement of any merchandise;

c. Examine any merchandise or sample thereof, record, book, document, account or paper as he may deem necessary; and

d. Pursuant to an order of a district court impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with this section, and retain the same in his possession until the completion of all proceedings in connection with which the same are produced.

4. *a.* To accomplish the objectives and to carry out the duties prescribed by this section, the attorney general, in addition to other powers conferred upon him by this section, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules and regulations as may be necessary, which rules and regulations shall have the force of law.

b. No information or evidence provided the attorney general by a person pursuant to subsections 3 and 4 of this section shall be ad-

mitted in evidence, or used in any manner whatsoever, in any criminal prosecution. If a criminal prosecution under the provisions of this section is initiated in a state court against a person who has provided information pursuant to subsections 3 and 4 of this section, the state shall have the burden of proof that the information so provided was not used in any manner to further the criminal investigation or prosecution.

c. In any civil action brought pursuant to this chapter, the attorney general shall have the right to require any defendant to give testimony, and no criminal prosecution based upon transactions or acts about which he is questioned and required to give testimony shall thereafter be brought against such defendant.

5. Service by the attorney general of any notice requiring a person to file a statement or report, or of a subpoena upon any person, shall be made personally within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

a. Personal service thereof without this state; or

b. The mailing thereof by registered mail to the last known place of business, residence or abode within or without this state of such person for whom the same is intended; or

c. As to any person other than a natural person, in the manner provided in the Rules of Civil Procedure as if a petition had been filed; or

d. Such service as a district court may direct in lieu of personal service within this state.

6. If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to a district court and, after hearing thereof, request an order:

a. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons;

b. Dissolving a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

c. Granting such other relief as may be required; until the person files the statement or report, or obeys the subpoena.

7. Whenever it appears to the attorney general that a person has engaged in, is engaging in or is about to engage in any practice declared to be unlawful by this section he may seek and obtain in an action in a district court an injunction prohibiting such person from continuing such practices or engaging therein or doing any acts in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by a person of any prohibited practices, or which may be necessary to restore to any person in interest any moneys or property, real or personal which may have been acquired by means of any practice in this section declared to be unlawful including the appointment of a receiver in cases of substantial and willful violation of the provisions of this section.

8. When a receiver is appointed by the court pursuant to this section, he shall have the power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this section, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

9. Subject to an order of the court terminating the business affairs of any person after receivership proceedings held pursuant to this section, the provisions of this section shall not bar any claim against any person who has acquired any moneys or property, real or personal, by means of any practice herein declared to be unlawful.

10. In any action brought under the provisions of this section, the attorney general is entitled to recover costs for the use of this state.

11. If any provision of this section or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions of applications of the section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

12. Nothing contained in this section shall apply to the owner or publisher of newspapers, magazines, publications or printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser; and provided,

further, that nothing herein contained shall apply to any advertisement which complies with the rules and regulations of, and the statutes administered by the federal trade commission. [S13,§5051-a; C24, 27, 31, 35, 39, §§**13069, 13070**; C46, 50, 54, 58, 62,§§713.24, 713.25; C66, 71, 73, 75,§713.24]

Referred to in §§123.19(6), 154A.24, 154A.26, 162.13, 322.6(9), 496A.91(3), 537.3309, 713A.6
Real estate contracts, dual prohibited, §117.45

713.25 Repealed by 61GA, ch 438,§2.

713.26 False entries in corporation books. Any officer, agent, or employee of any corporation who shall knowingly make or knowingly authorize to be made false entries upon the books of such corporation, and any employee of another who shall knowingly make or cause to be made false entries upon the books of his employer, shall be guilty of a felony, and, upon conviction, shall be punished by imprisonment not to exceed two years, or by a fine not to exceed five thousand dollars, or by both such fine and imprisonment. [C24, 27, 31, 35, 39,§**13071**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.26]

Similar criminal provision, §491.43

713.27 Transacting business without license. If any person carry on or transact any business or occupation without license therefor, when such license is required by any law of the state, he shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days. [C51,§2737; R60, §4380; C73,§4046; C97,§5010; C24, 27, 31, 35, 39, §**13072**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.27]

713.28 Unlawfully wearing military badges. Any person who shall willfully wear, display or use the insignia or rosette of the military order of the Loyal Legion of the United States, or wear, display, or use the button, emblem, or insignia of the Grand Army of the Republic, the United Spanish American War Veterans, the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans of the World War, or any other organization, or auxiliary thereof, composed of members or former members of the military or naval forces of the United States, or use the same to obtain aid or assistance, unless such person is authorized and/or entitled to wear, display or use the same under the rules and regulations or constitutions and bylaws of such organizations, shall be guilty of a misdemeanor, and shall be punished by imprisonment not exceeding thirty days, or fined not to exceed one hundred dollars. [C97,§5071; C24, 27, 31, 35, 39,§**13073**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.28]

713.29 Three-card monte and other games —penalty. Whoever by means of three-card monte, so-called, or any other form or device, sleight of hand, or other means whatever, by use of cards or instruments of like character, obtains from another person any money or other property, shall be guilty of swindling and be fined not less than two hundred nor more than two thousand dollars, or be imprisoned in the penitentiary not more than five years, or both.

All persons aiding, encouraging, advising, or confederating with, or knowingly harboring or concealing, any such person or persons, or in any manner being accessory to the commission of the above-described offense, or confederating together for the purpose of playing such games, shall be deemed principals therein, and punished accordingly. [C97,§5072; C24, 27, 31, 35, 39,§§**13074, 13075**; C46, 50, 54, 58, 62, 66, 71, 73,§§713.29, 713.30; C75,§713.29]

Referred to in §§713.30–713.33

713.30 Authority and duty to make arrests. Any person may, and every conductor and other employee on any railroad car or train, every captain, clerk, and other employee on any boat, every station agent at any railway depot, the officers of any fair or fairgrounds, and the proprietor of any place of public resort and his employees, shall, with or without warrant, arrest any person found in the act of committing any of the offenses mentioned in section 713.29, or any person whom he or they may have good reason to believe to be guilty of the commission of any such offense. [C97,§5073; C24, 27, 31, 35, 39,§**13076**; C46, 50, 54, 58, 62, 66, 71, 73,§713.31; C75,§713.30]

Referred to in §§713.32, 713.33

713.31 Ejection from public conveyances and places. Any conductor, captain, hotelkeeper, proprietor or manager of any public conveyance or place of public resort, and the officers of any fair or fairgrounds, shall eject from his car, train, boat, hotel, public conveyance, fairgrounds or place of public resort any person known to him or whom he has good reason to believe to be a three-card monte man, or who offers to wager or bet money or other valuable thing upon what is commonly known as three-card monte, or bet on any trick or game with cards or other gaming device, and any failure, neglect, or refusal to do so, or to suppress or prevent a violation of section 713.29, shall be a misdemeanor. [C97, §5074; C24, 27, 31, 35, 39,§**13077**; C46, 50, 54, 58, 62, 66, 71, 73,§713.32; C75,§713.31]

Referred to in §§713.32, 713.33
Punishment, §687.7

713.32 Exceptions. The provisions of sections 713.29 to 713.33 shall not apply to games of skill, games of chance, or raffles conducted pursuant to chapter 99B or to devices lawful under section 99B.10 or to games lawful under section 726.12.* [C75,§713.32]

Referred to in §713.33
*This section repealed by 66GA, ch 99,§25; however see §99B.12

713.33 Posting copy of law. Any person or company operating any public conveyance by which passengers are carried shall keep posted up in such conveyance a copy of sections 713.29 to 713.32. [C97,§5075; C24, 27, 31, 35, 39, §**13078**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.33]

Referred to in §713.32

713.34 Gross fraud or cheat at common law. Every person who is convicted of any gross fraud or cheat at common law shall be fined not more than two hundred dollars or imprisoned in the county jail not more than one year, or both. [C51,§2752; R60,§4402; C73,§4081; C97,§5053; C24, 27, 31, 35, 39,§13079; C46, 50, 54, 58, 62, 66, 71, 73, 75,§713.34]

713.35 Operating coin machine by false means—penalty. Whoever, by means of any token, slug, false or counterfeited coin, or by any other means, method, trick or device whatsoever not lawfully authorized by the owner, lessee, or licensee of any parking meter, vending machine, coin-box telephone or other lawful receptacle designed to receive or be operated by lawful coin of the United States of America in furtherance of or in connection with the sale, use or enjoyment of property or service, knowingly shall operate or cause to be operated, or shall attempt to operate or attempt to cause to be operated, any parking meter, vending machine, coin-box telephone, or other lawful receptacle designed to receive or be operated by lawful coin of the United States of America, or whoever shall take, obtain, use or receive, from or by means of any such meter, machine, coin box or receptacle any article of value or service, or the use or enjoyment of any facility or service, without depositing in, delivering to and payment into such meter, machine, coin box or receptacle, the amount of lawful coin of the United States of America required therefor by the owner, lessee or licensee of such meter, machine, coin box or receptacle shall be fined not more than one hundred dollars, or imprisoned not more than thirty days. [C50, 54, 58, 62, 66, 71, 73, 75,§713.35]

713.36 Selling slugs or false coins—penalty. Whoever, with intent to cheat or defraud the owner, lessee, licensee or other person entitled to the contents of any parking meter, vending machine, coin-box telephone or other lawful receptacle designed to receive or be operated by lawful coin of the United States of America in furtherance of or in connection with the sale, use or enjoyment of property or service or other facilities, or whoever, knowingly or having cause to believe that the same is intended for fraudulent or unlawful use on the part of the purchaser, donee or user thereof, shall sell, offer for sale, advertise for sale, possess or give away any token, slug, false or counterfeited coin or any device or substance whatsoever which, when placed, deposited or used in any such meter, machine, coin box or receptacle, will cause the same to operate or function, shall be fined not more than one hundred dollars, or imprisoned not more than thirty days.

The sale, offer for sale, advertisement for sale, possession or giving away of any token, slug, false or counterfeited coin or any device or substance whatsoever which, when placed, deposited or used in any parking meter, vending machine, coin-box telephone or other lawful receptacle designed to receive or be operated by lawful coin of the United States of America, will cause the same to operate or function, shall be prima-facie evidence, within the meaning of this section, of an intent to cheat or defraud or of knowing or having cause to believe that any such token, slug, false or counterfeited coin, device or substance whatsoever is intended for fraudulent or unlawful use. [C50, 54, 58, 62, 66, 71, 73, 75, §713.36]

713.37 Manufacture — penalty. The manufacture, sale, offering for sale, advertising for sale or distribution, of a token, disc, blank, washer, check, slug, false coin or other device, whether solid or perforated, with knowledge or reason to believe that such token, disc, blank, washer, check, slug, false coin or other device may be used in substitution for any lawful coin of the United States of America in any parking meter, vending machine, coin-box telephone or other lawful receptacle designed to receive or be operated by lawful coin of the United States of America in connection with the sale, use or enjoyment of property, privilege or service, is hereby prohibited.

Whoever violates this section shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both. [C50, 54, 58, 62, 66, 71, 73, 75,§713.37]

713.38 Tokens excepted. The provisions of this division shall in no manner limit or restrict the manufacture, sale, offering for sale or advertising for sale, or prohibit the possessing, distributing or giving away of proper tokens for use in operation of the facilities or equipment of any electric street railway, urban motor bus company, interurban motor bus company or motor transportation company operating in this state. [C50, 54, 58, 62, 66, 71, 73, 75,§713.38]

713.39 False use of credit cards. It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious, counterfeit or expired credit card, telephone number, credit number or other credit device, or by the use of any credit card, telephone number, credit number or other credit device of another without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, telephone number, credit number or other credit device in any case where such card, number or device has been revoked and notice of revocation has been given to the person to whom issued. [C66, 71, 73, 75,§713.39]

Referred to in §§713.41, 713.42

713.40 Fraudulent use of wire services. It shall be unlawful for any person to obtain or attempt to obtain, by the use of any fraudulent scheme, device, means or method, telephone or telegraph service or the transmission of a

message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of charges therefor. [C66, 71, 73, 75, §713.40]

Referred to in §713.42

713.41 "Notice" defined. The word "notice" as used in section 713.39 shall be a notice given in writing to the person to whom the number, card or device was issued. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last address known to the issuer, shall be evidence that such notice was duly received. [C66, 71, 73, 75,§713.41]

713.42 Penalty. Any person who violates section 713.39 or section 713.40 and the amount of credit obtained or attempted to be obtained, or the amount of purchase or attempted purchase, or the amount of service obtained or attempted to be obtained, does not exceed one hundred dollars shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars, or imprisonment for not more than thirty days. If the amount of credit obtained or attempted to be obtained, or the amount of purchase or attempted purchase, or the amount of service obtained or attempted to be obtained, exceeds one hundred dollars, the person shall be guilty of a felony and shall be punished by imprisonment in the penitentiary not more than five years, or in the county jail not more than one year, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. If the service or credit is so obtained by a series of acts the total amount of the service or credit shall be considered as obtained in one act and shall be punished accordingly. [C66, 71, 73, 75, §713.42]

713.43 Simulated legal process. Whoever sends or delivers to another any document which simulates a petition, original notice or other court process with intent thereby to induce payment of a claim shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days.

1. Proof that the document was mailed or was delivered to any person with intent that it be forwarded to the intended recipient shall be sufficient proof of sending.

2. This section applies even though the simulating document contains a statement to the effect that it is not legal process.

3. Violations of this section may be prosecuted in either the county where the document was sent or the county in which it was delivered. [C66, 71, 73, 75,§713.43]

FRAUDULENT USE OF RECORDINGS

713.44 Definitions. For the purposes of this division:

1. *"Person"* shall mean person as defined in section 4.1, subsection 13.

2. *"Owner"* means any person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded, and from which the transferred recorded sounds are derived. [66GA, ch 250,§1]

713.45 Reproduction of sound recordings.

1. Except as provided in subsection 3, it is unlawful for a person knowingly to:

a. Transfer or cause to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film or other article without the consent of the owner; or

b. Sell; distribute; circulate; offer for sale, distribution or circulation; possess for the purpose of sale, distribution or circulation; or cause to be sold, distributed, circulated; offered for sale, distribution or circulation; or possessed for sale, distribution or circulation, any article or device on which sounds have been transferred without the consent of the person who owns the master phonograph record, master disc, master tape or other device or article from which the sounds are derived.

2. It is unlawful for a person to sell, distribute, circulate, offer for sale, distribution or circulation or possess for the purposes of sale, distribution or circulation, any phonograph record, disc, wire, tape, film or other article on which sounds have been transferred unless the phonograph record, disc, wire, tape, film or other article bears the actual name and address of the transferor of the sounds in a prominent place on its outside face or package.

3. This section does not apply to a person who transfers or causes to be transferred sounds intended for or in connection with radio or television broadcast transmission or related uses, synchronized sound tracks of motion pictures or sound tracks recorded for synchronizing with motion pictures, for archival purposes or for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer.

4. A person who violates the provisions of this section is guilty of a misdemeanor. [66GA, ch 250,§2]

Indictment, see §687.7

CHAPTER 713A

ADVERTISING AND SELLING COURSES OF INSTRUCTION

713A.1 Unlawful acts.
713A.2 Bond filed.
713A.3 Nonapplicability.
713A.4 One contract per person.
713A.5 Penalty.
713A.6 Trade and vocational schools—exemption—conditions.

713A.1 Unlawful acts. It shall be unlawful for any person, firm, association, or corporation maintaining, advertising, or conducting in Iowa any course of instruction for profit, or for tuition charge, whether by classroom instructions or by correspondence, to:

1. Falsely advertise or represent to any person any matter material to such course of instruction. All advertising of such courses of instruction shall adhere to and comply with the rules and regulations of the federal trade commission as of the effective date of this chapter.

2. Collect tuition or other charges in excess of one hundred fifty dollars in the case of correspondence courses of study, in advance of the receipt and approval by the pupil of the first assignment or lesson of such course. Any contract providing for advance payment of more than one hundred fifty dollars shall be voidable on the part of the pupil or any person liable for the tuition provided for in the contract.

3. Promise or guarantee employment utilizing information, training, or skill purported to be provided or otherwise enhanced by a course, unless the promisor or guarantor offers the student or prospective student a bona fide contract of employment agreeing to employ said student or prospective student for a period of not less than one hundred twenty days in a business or other enterprise regularly conducted by the promisor or guarantor and in which such information, training, or skill is a normal condition of employment. [C66, 71, 73, 75,§713A.1]

713A.2 Bond filed. Every person, firm, association, or corporation maintaining or conducting in Iowa any such course of instruction, by classroom instruction or by correspondence, or soliciting in Iowa the sale of such course, shall file with the superintendent of public instruction:

1. A continuous corporate surety bond to the state of Iowa in the sum of fifty thousand dollars conditioned for the faithful performance of all contracts and agreements with students made by such person, firm, association, or corporation, or their salesmen; provided, however, that the aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the sum of said bond. The surety on the bond shall have the right to cancel said bond upon giving thirty days' written notice to the superintendent of public instruction and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation.

2. A statement designating a resident agent for the purpose of receiving service in civil actions. In the absence of such designation, service may be had upon the superintendent of public instruction if service cannot otherwise be made in this state.

3. A copy of any catalog, prospectus, brochure, or other advertising material intended for distribution in Iowa. Such material shall state the cost of the course offered, the schedule of refunds for portions of the course not completed, and if no refunds are to be paid, the material shall so state. Any contract induced by advertising materials not previously filed as provided in this chapter shall be voidable on the part of the pupil or any person liable for the tuition provided for in the contract. [C66, 71, 73, 75,§713A.2]

Referred to in §713A.6

713A.3 Nonapplicability. None of the provisions of this chapter shall apply to the following:

1. Colleges or universities authorized by the laws of Iowa or any other state or foreign country to grant degrees.

2. Schools of nursing accredited by the board of nurse examiners or an equivalent public board of another state or foreign country.

3. Public schools.

4. Private and nonprofit schools recognized by the state department of public instruction or a local school board for the purpose of complying with chapter 299 and employing certified teachers.

5. Nonprofit schools exclusively engaged in training physically handicapped persons in the state of Iowa.

6. Schools and educational programs conducted by firms, corporations, or persons for the training of their own employees, for which no fee is charged.

7. Seminars, refresher courses and schools of instruction sponsored by professional, business, or farming organizations or associations for the members and employees of members of such organizations or associations.

8. Private business schools accredited by the accrediting commission for business schools or an acknowledged accrediting agency.

9. Any school licensed under the provisions of sections 157.9* or 158.11*.

10. Private college preparatory schools approved or probationally approved under the provisions of section 257.25, subsection 13. [C66, 71, 73, 75,§713A.3]

*Chapters 157 and 158 are repealed by 65GA, ch 1093,§95; effective July 1, 1975

713A.4 One contract per person. It shall be unlawful to sell more than one lifetime contract to any one person. [C66, 71, 73, 75, §713A.4]

713A.5 Penalty. Violation of any of the provisions of this chapter shall be punishable upon conviction by a fine not exceeding five hundred dollars or six months in jail, or both. [C66, 71, 73, 75,§713A.5]

Constitutionality, 61GA, ch 440,§6
Penalty re-enacted; See 169 NW2d 832

713A.6 Trade and vocational schools—exemption—conditions. The provisions of this chapter shall not apply to trade or vocational schools if they meet either of the following conditions:

1. File a bond or a bond is filed on their behalf by a parent corporation with the superintendent of public instruction as required by section 713A.2, subsection 2.

2. File an annual sworn statement, or such statement is filed on their behalf by a parent corporation, certified by a certified public accountant, showing all assets and liabilities of the trade or vocational school and the assets of a parent corporation. The statement shall show the trade or vocational school's net worth, or the net worth of the parent corporation, to be not less than five times the amount of the bond required by section 713A.2, subsection 2. In the event that a parent corporation files such statement or its net worth is included therein to comply with this subsection, such parent corporation shall appoint a registered agent and otherwise be subject to section 713A.2, subsection 2 and shall be liable for the breach of any contract or agreement with students as well as liable for any fraud in connection therewith or for any violation of section 713.24 by such trade or vocational school or any of its agents or salesmen. [C73, 75,§713A.6]

CHAPTER 713B

DOOR-TO-DOOR SALES

Referred to in §537.3501

713B.1 Definitions.
713B.2 Contract.
713B.3 Cancellation.
713B.4 Duties of seller.
713B.5 Effect on indebtedness.
713B.6 Penalty.

713B.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. *"Door-to-door sale"* means a sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. Door-to-door sale does not include a transaction:

a. Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis.

b. In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, title 15 United States Code section 1635, or rules issued pursuant to this chapter.

c. In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days.

d. Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services.

e. In which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion.

f. Pertaining to the sale or rental of real property, to the sale of insurance and prepaid health service plans, or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission.

2. *"Consumer goods or services"* means goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

3. *"Seller"* means any person engaged in the door-to-door sale of consumer goods or services.

4. *"Place of business"* means the main or permanent branch office or local address of a seller.

5. *"Purchase price"* means the total price paid or to be paid for the consumer goods or services, including all interest and service charges.

6. *"Business day"* means any calendar day except Saturday, Sunday, or public holiday, including holidays observed on Mondays. [C75,§713B.1]

713B.2 Contract. Every seller shall furnish the buyer with a fully completed receipt or copy of any contract pertaining to a door-to-door sale at the time of its execution, which is in the same language as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of ten points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right." [C75,§713B.2]

713B.3 Cancellation. Every seller shall furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "Notice of Cancellation", which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face type the following information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION

.....
[enter date of transaction]
(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to ....., at
(Name of seller)
.....not later
(Address of seller's place of business)
than midnight of .....
(Date)

I hereby cancel this transaction.

.....
(Date)

.....
(Buyer's signature)

[C75,§713B.3]

713B.4 Duties of seller. A seller shall:

1. Furnish two copies of the notice of cancellation to the buyer, and complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

2. Not include in any contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this chapter including specifically his right to cancel the sale in accordance with the provisions of this chapter.

3. Inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

4. Not misrepresent in any manner the buyer's right to cancel.

5. Honor any valid notice of cancellation by a buyer and within ten business days after the receipt of notice shall refund all payments made under the contract or sale, return any goods or property traded in, in substantially as good condition as when received by the seller, and cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

6. Not negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the seventh business day following the day the contract was signed or the goods or services were purchased.

7. Within ten business days of receipt of the buyer's notice of cancellation notify him whether the seller intends to repossess or to abandon any shipped or delivered goods. [C75,§713B.4]

713B.5 Effect on indebtedness. Rescission of any contract pursuant to this chapter or the failure to provide a copy of the contract to the buyer as required by this chapter shall void any contract, note, instrument, or other evidence of indebtedness executed or entered into in connection with the contract and shall con-

stitute a complete defense in any action based on the contract, note, instrument or other evidence of indebtedness brought by the seller, his successors or assigns unless a successor or assignee of the seller after the seventh business day following the day the contract was signed has detrimentally relied upon a representation of the buyer that the contract has not been rescinded. This section shall not affect the rights of holders in due course of checks made by the buyer. [C75,§713B.5]

713B.6 Penalty. Any seller who violates the provisions of this chapter shall be guilty of a misdemeanor. [C75,§713B.6]

Punishment, §687.7

CHAPTER 714

MALICIOUS MISCHIEF AND WILLFUL TRESPASS

714.1 Malicious injury to buildings and fixtures.
714.2 Injuring or terrorizing inhabitants of dwelling.
714.3 Defacing buildings.
714.4 Injury to fence, produce or fixtures.
714.5 Injury to sidewalks.
714.6 Trespass by digging, cutting or carrying away.
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OBSTRUCTION OF TELEPHONE CALLS

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714.1 Malicious injury to buildings and fixtures. If any person maliciously injure, deface, or destroy any building or fixture attached thereto, or willfully and maliciously destroy, injure, or secrete any goods, chattels, or valuable papers of another, he shall be imprisoned in the penitentiary not more than five years, or shall be imprisoned in the county jail not more than one year, or be fined not exceeding five hundred dollars, and be liable to the party injured in a sum equal to three times the value of the property so destroyed or injured. [C51, §2686; R60,§4326; C73,§3985; C97,§4822; S13, §4822; C24, 27, 31, 35, 39,§13080; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.1]

714.2 Injuring or terrorizing inhabitants of dwelling. If any person, with intent to injure or terrorize the inhabitants of any dwelling house, or other building used as a dwelling, or any inhabited boat, vessel, or raft, or with intent to injure or deface any such structure, throws at, against, or into the same any brick, stone, billet of wood, or other missile, or shoots thereat, with such intent, any gun, pistol, or revolver, he shall be imprisoned in the penitentiary not more than three years, or in the county jail not more than one year, or be fined not more than one thousand dollars. [C97,§4799; C24, 27, 31, 35, 39,§13081; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.2]

714.3 Defacing buildings. If any person willfully write, make marks, or draw characters on the walls or any other part of any church, college, academy, schoolhouse, courthouse, or other public building, or on any furniture, apparatus, or fixtures therein; or willfully injure or deface the same, or any wall or fence enclosing the same, he shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than

thirty days. [C51,§2687; R60,§4327; C73,§3986; C97,§4802; C24, 27, 31, 35, 39,§13082; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.3]

714.4 Injury to fence, produce or fixtures. If any person maliciously or mischievously break down, mar, deface, or injure any fence, hedge, or ditch enclosing lands belonging to another; or throw down or leave open any gate or bars not his own or under his charge, whereby an injury is done to another; or maliciously injure, destroy, or sever from the land of another any produce thereof or anything attached thereto, he shall be imprisoned in the county jail not more than one year, or be fined not exceeding five hundred dollars, or both. [C97,§4825; C24, 27, 31, 35, 39,§13083; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.4]

714.5 Injury to sidewalks. Any person guilty of willfully and unlawfully injuring or destroying any sidewalk made of wood, brick, stone, cement, or any other material, shall be fined not more than one hundred dollars or be imprisoned in the county jail not exceeding thirty days. [S13,§4830-b; C24, 27, 31, 35, 39, §13085; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.5]

714.6 Trespass by digging, cutting or carrying away. If any person willfully commit any trespass by cutting down or destroying any timber or wood standing or growing on the land of another; or by carrying away timber or wood being on such land; or by digging or carrying away any earth, stone, marble, slate, coal, copper, lead, iron ore, or any other ore or metal; or by taking and carrying from such land any grass, hay, corn, grain, fruit, or other vegetables; or carrying away from any wharf, street, or landing place, any goods whatever in which he has no interest, he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not more than one year, or both at the discretion of the court. [C51,§2684; R60,§4324; C73,§3983; C97,§4829; C24, 27, 31, 35, 39,§13086; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.6]

C97,§4829, editorially divided

714.7 Value not in excess of fifty dollars. If in any case the value of the property so cut down, carried away, or otherwise taken shall not exceed the sum of fifty dollars, then the person so offending shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days. [C73, §3983; C97,§4829; C24, 27, 31, 35, 39,§13087; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.7]

714.8 Injury to fruit or ornamental tree. If any person maliciously or mischievously bruise, break, pull up, carry away, cut down, injure, destroy, or sever from the land any fruit, ornamental, or other tree, vine, or shrub standing or growing on the land of another for ornament or use, he shall upon conviction thereof be punished by imprisonment in the county jail not more than one year, or by fine of not more than five hundred dollars, or both. [C51,§2682; R60,§4322; C73,§§3899, 3981; C97, §4826; C24, 27, 31, 35, 39,§13088; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.8]

714.9 Stealing or knocking off fruit in daytime. If any person maliciously or mischievously enter the enclosure of another with intent to knock off, pick, destroy, or carry away, or, having lawfully entered, afterwards wrongfully knocks off, picks, destroys, or carries away any fruit or flower of any tree, shrub, bush, or vine, he shall be fined for the first offense not less than five nor more than one hundred dollars, with the costs of conviction, or be imprisoned in the county jail not exceeding thirty days; and for a second violation he shall be fined not less than ten dollars and costs of conviction, or be imprisoned as above provided. [C73,§3897; C97,§4827; C24, 27, 31, 35, 39,§13089; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.9]

714.10 Stealing or knocking off fruit in nighttime. If any person maliciously or mischievously enter the enclosure of another in the nighttime and knock off, pick, destroy, or carry away any fruit or flower of any tree, shrub, bush, or vine, or if, having so entered with intent to knock off, pick, destroy, or carry away any fruit or flower as aforesaid, he be actually found therein, he shall be fined not less than twenty-five nor more than one hundred dollars and costs of conviction, or imprisoned in the county jail not exceeding thirty days. [C73,§3898; C97,§4828; C24, 27, 31, 35, 39, §13090; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.10]

714.11 Injury to vehicle or harness. If any person maliciously, willfully, and feloniously cut, break, sever, or unfasten any tug, strap, line, or other part of any harness attached to any horse or team, or maliciously and feloniously remove, break, unfasten, or injure any part of any vehicle, he shall be imprisoned in the penitentiary not to exceed one year, or be imprisoned in the county jail not to exceed six months, or be fined not to exceed five hundred dollars. [C97,§4823; S13,§4823; C24, 27, 31, 35, 39,§13091; C46, 50, 54, 58, 62, 66, 71, 73, 75, §714.11]

S13,§4823, editorially divided

714.12 Alteration of manufacturer's serial number. Any person or corporation removing from or altering, defacing, mutilating, concealing, covering or destroying the manufacturer's serial number or other distinguishing mark upon any machine or manufactured article, except a motor vehicle, for the purpose of concealing, destroying or misrepresenting the identity of such machine or manufactured article, or who sells or offers for sale, or who owns or has possession of any machine or manufactured article knowing that the manufacturer's serial number or other distinguishing number or identification mark has been removed, altered, defaced, mutilated, concealed, covered or destroyed with the purpose of concealing, destroying or misrepresenting the identity of such machine or manufactured

article, shall be guilty of a misdemeanor. [C31, 35,§13092-d1; C39,§**13092.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.12]

Referred to in §714.13
Punishment, §687.7
Similar provisions, §§321.80, 321.92

714.13 Presumption of unlawful alteration. It shall be presumed that such serial number, or distinguishing number or identification mark, or portion thereof, was unlawfully removed, altered, defaced, mutilated, concealed, covered or destroyed by said person in violation of the provisions of section 714.12, if it shall appear that said person has had possession or control of any such machine, musical instrument or other goods, wares or merchandise with such serial number or distinguishing number or identification mark, or portion thereof removed, altered, defaced, mutilated, concealed, covered, or destroyed, but such presumption shall not be conclusive. [C31, 35, §13092-d2; C39,§**13092.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.13]

714.14 Injury to rafts or boats. If any person maliciously cut away, let loose, injure, or destroy any boom or raft of wood, logs, or other lumber, or any boat or vessel fastened to any place, of which he is not the owner or legal possessor, he shall be fined not exceeding five hundred dollars, and imprisoned in the county jail not more than one year, and forfeit to the person injured double the amount of damages sustained. [C51,§2681; R60,§4321; C73, §3980; C97,§4824; C24, 27, 31, 35, 39,§**13093**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.14]

714.15 Fraudulent destruction of boats. If any person cast away, sink, or otherwise destroy any raft, boat, or vessel, within any county, with intent to defraud any owner or insurer thereof, or the owner or insurer of any property laden on board the same, or of any part thereof, he shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding two thousand dollars and imprisoned in the county jail not exceeding one year. [C51,§2753; R60,§4403; C73,§4082; C97, §5054; C24, 27, 31, 35, 39,§**13094**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.15]

Similar provisions, §713.10

714.16 Injury to public library books or property. Any person who shall willfully, maliciously, or wantonly tear, deface, mutilate, injure, or destroy, in whole or in part, any newspaper, periodical, book, map, pamphlet, chart, picture, or other property belonging to any public library or reading room shall be deemed guilty of a misdemeanor and shall be fined not more than one hundred dollars, or imprisoned not more than thirty days. [S13, §4830-a; C24, 27, 31, 35, 39,§**13095**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.16]

714.17 Injuries to monuments of state boundaries. If any person willfully dig up, pull down, break, or destroy, or in any other manner injure or remove, any of the cast-iron pillars or other evidences planted and fixed in and along any part of the boundaries of this state, he shall be fined not less than fifty nor more than two hundred dollars, or be imprisoned in the penitentiary for a term of not less than six months, or both. [C51,§2690; R60, §4330; C73,§3989; C97,§4800; C24, 27, 31, 35, 39, §**13096**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.17]

714.18 Injury to boundary marks, milestones and signboards. If any person maliciously take down, injure, or remove any monument erected or any tree marked as a boundary of any tract of land or city lot; or destroy, deface, or alter the marks of any such monument or tree made for the purpose of designating such boundary; or injure or deface any milestone, post, or guideboard erected on any public way; or remove, deface, or injure any signboard; or break or remove any lamp or lamppost or extinguish any lamp on any bridge, way, street, or passage, he shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding one year, or both, at the discretion of the court. [C51,§2683; R60,§4323; C73,§3982; C97, §4801; C24, 27, 31, 35, 39,§**13097**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.18]

714.19 Removal of safeguards or danger signals. Whoever shall, without the consent of the person in control thereof, willfully remove, throw down, destroy, or carry away from any highway, street, alley, avenue, or bridge, any lamp, obstruction, guard, or other article or things, or extinguish any lamp or other light, erected or placed thereon for the purpose of guarding or enclosing unsafe or dangerous places in said highway, street, alley, avenue, or bridge, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail not exceeding one year. [S13,§4830-c; C24, 27, 31, 35, 39,§**13098**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.19]

714.20 Defacing or destroying proclamations or notices. If any person intentionally deface, obliterate, tear down, or destroy in whole or in part any transcript or extract from or of any law of the United States or of this state, or any proclamation, advertisement, or notification, set up at any place within this state by authority of law or by order of any court, during the time for which the same is to remain set up, he shall be fined in a sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days. [C51,§2688; R60,§4328; C73,§3987; C97,§4803; C24, 27, 31, 35, 39,§**13099**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.20]

714.21 Violating sepulcher. If any person, without lawful authority, willfully dig up, disinter, remove, or carry away any human body, or the remains thereof, including ancient human remains as defined in section 305A.7, from its place of interment; or aid, assist, encourage, incite, or procure the same to be done or attempted; or willfully receive, conceal, or

dispose of any such human body or the remains thereof; or if any person, with the intent to commit any of the aforesaid acts, partially perform the same, the person shall be imprisoned in the penitentiary not more than two years, or be fined not exceeding twenty-five hundred dollars, or both. [C51, §2714; R60,§4356; C73,§4017; C97,§4945; C24, 27, 31, 35, 39,§**13100**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.21; 66GA, ch 1158,§9]

C97,§4945, editorially divided

714.22 Exposing dead bodies. If any person willfully and unnecessarily, and in an improper manner, indecently expose, throw away, or abandon any human body, or the remains thereof, in any public place, or in any river, stream, pond, or other place, he shall be imprisoned in the penitentiary not more than two years, or be fined not exceeding twenty-five hundred dollars, or both. [C51,§2714; R60, §4356; C73,§4017; C97,§4945; C24, 27, 31, 35, 39, §**13101**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.22]

714.23 Injury to gravestones or property in cemetery. Any person who shall willfully and maliciously destroy, mutilate, deface, injure, or remove any tomb, vault, monument, gravestone, or other structure placed in any public or private cemetery in this state, or any fences, railing, or other work for the protection or ornamentation of said cemetery, or of any tomb, vault, monument, or gravestone, or other structure aforesaid, on any cemetery lot within such cemetery, or shall willfully and maliciously destroy, cut, break, or injure any tree, shrub, plant, or lawn within the limits of said cemetery, or shall willfully and maliciously throw or leave any rubbish, refuse, garbage, waste, litter or foreign substance within the limits of said cemetery, or shall drive at an unusual and forbidden speed over the avenues or roads in said cemetery, or shall drive outside of said avenues and roads, and over the grass or graves of said cemetery, shall be guilty of a misdemeanor, and, upon conviction, punished accordingly, in the discretion of the court. [C51,§2715; R60,§4357; C73,§4021; C97, §588; C24, 27, 31, 35, 39,§**13102**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.23]

C97,§588, editorially divided
Punishment, §687.7

714.24 Civil liability. Such offender shall also be liable, in an action in the name of the person or corporation having the custody and control of said cemetery grounds, to pay all such damages as have been occasioned by his unlawful act or acts; which money, when recovered, shall be applied by said person or corporation to the reparation and restoration of the property so injured or destroyed, if the same can be so repaired or restored. [C97,§588; C24, 27, 31, 35, 39,§**13103**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.24]

714.25 Hunting or fishing upon cultivated or enclosed land and waters. Any person who shall hunt with dog, bow and arrow, or gun upon the cultivated or enclosed lands of another, or who shall fish upon the enclosed or cultivated lands containing or encompassing an artificially constructed pond or ponds of another which have been privately stocked with fish, without first obtaining permission from the owner or occupant thereof, or his agent, or who shall trap upon the cultivated or enclosed lands of another without the permission of the owner or occupant thereof, or his agent shall for each offense be fined not more than one hundred dollars and costs of prosecution, and shall stand committed until such fine and costs are paid. [C97,§4821; S13,§4821; C24, 27, 31, 35, 39,§**13104**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.25]

S13,§4821, editorially divided
Referred to in §714.27

714.26 Island in navigable stream. All islands in navigable streams bordering on the state shall be deemed enclosed lands without fences where the owners or lessees thereof post in plain view notices warning others not to trespass thereon. [S13,§4821; C24, 27, 31, 35, 39,§**13105**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §714.26]

Referred to in §714.27

714.27 Prosecution. No prosecution shall be commenced under sections 714.25 and 714.26 except upon the information of the owner or occupant of such cultivated or enclosed lands, or his agent. [C97,§4821; S13,§4821; C24, 27, 31, 35, 39,§**13106**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.27]

714.28 Injury to fire apparatus. If any person willfully destroy or injure any engine, hose carriage, hose, hook and ladder carriage, or other thing used and kept for the extinguishment of fires, he shall, upon conviction, be imprisoned in the penitentiary for a period of not less than one nor more than three years. [R60,§1766; C73,§1564; C97,§2466; C24, 27, 31, 35, 39,§**13107**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §714.28]

714.29 Removal of fire apparatus. No person shall remove any engine or other apparatus for the extinguishment of fire from the house or other place where it is kept or deposited, except in time of fire or alarm thereof, unless authorized so to do by the president, director, or foreman of the company to whom the same shall belong. [R60,§1767; C73,§1565; C97,§2467; S13,§2467; C24, 27, 31, 35, 39,§**13108**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.29]

S13,§2467, editorially divided
Referred to in §714.30

714.30 Punishment. Any person violating the provisions of section 714.29 shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days. [R60,§1767; C73,§1565; C97,§2467; S13,§2467; C24, 27, 31, 35, 39,§**13109**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.30]

714.31 False alarms of fire. No person or persons shall cause or give a false alarm of

fire, by setting fire to any combustible material, or by crying or sounding an alarm, or by any other means, without cause. [R60,§1768; C73, §1566; C97,§2468; S13,§2468; C24, 27, 31, 35, 39, §13110; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.31]

S13,§2468, editorially divided
Referred to in §714.32
See also §714.42

714.32 Punishment. Any person violating the provisions of section 714.31 shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days. [R60,§1768; C73,§1566; C97,§2468; S13,§2468; C24, 27, 31, 35, 39,§13111; C46, 50, 54, 58, 62, 66, 71, 73, 75,§714.32]

OBSTRUCTION OF TELEPHONE CALLS

714.33 Definitions. For the purposes of this section and sections 714.34 to 714.36, the following terms have the meanings ascribed to them:

1. "Party line" means a subscriber's line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number;

2. "Emergency" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential. [C62, 66, 71, 73, 75,§714.33]

Referred to in §§714.34, 714.36

714.34 Penalty for refusal. Any person who shall intentionally refuse to relinquish immediately a telephone party line or public pay telephone when informed that such line or telephone is needed for an emergency actually existing as defined in section 714.33, for use in calling a fire department or police department, or for medical aid or ambulance service, shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days. [C62, 66, 71, 73, 75, §714.34]

Referred to in §§714.33, 714.36

714.35 Penalty for false statement. Any person who shall secure the use of a telephone party line or public pay telephone by falsely stating that such line or phone is needed for an emergency call shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days. [C62, 66, 71, 73, 75,§714.35]

Referred to in §§714.33, 714.36

714.36 Publication of law in directories. Every telephone company doing business in this state shall print a copy of sections 714.33 to 714.35 in a prominent place in every telephone directory published by it after July 4, 1959. Any person, firm, or corporation providing telephone service which distributes or causes to be distributed in this state copies of a telephone directory which is subject to the provisions of this section which does not contain the notice herein provided for shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days. [C62, 66, 71, 73, 75,§714.36]

Referred to in §714.33

714.37 Unlawful use of telephone. It shall be unlawful for any person, with intent to terrify, intimidate, threaten, harass, annoy or offend, to telephone another and use any obscene, lewd or profane language or suggest any lewd or lascivious act, or threaten to inflict injury or physical harm to the person or property of any person. It shall also be unlawful to attempt to extort money or other thing of value from any person, or to otherwise disturb by repeated anonymous telephone calls the peace, quiet or right of privacy of any person at the place where the telephone call or calls were received. [C71, 73, 75,§714.37]

Referred to in §§714.38, 714.40
See §720.1

714.38 Prima-facie intent. The use of obscene, lewd or profane language or the making of a threat or statement as set forth in sections 714.37 to 714.40, inclusive, shall be prima-facie evidence of intent to terrify, intimidate, threaten, harass, annoy or offend. [C71, 73, 75,§714.38]

Referred to in §714.40

714.39 Place of offense. Any offense committed by use of a telephone as set forth herein shall be deemed to have been committed at either the place where the telephone call or calls originated or at the place where the telephone call or calls were received. [C71, 73, 75,§714.39]

Referred to in §§714.38, 714.40

714.40 Penalty. Any violation of sections 714.37 to 714.39, inclusive, shall be punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not to exceed one year, or by both such fine and imprisonment. [C71, 73, 75,§714.40]

Referred to in §714.38

714.41 Private lake or pool—posting against trespass. No person shall trespass upon any posted private property without the consent of the owner or occupant thereof if the private property has a privately-owned pond, pool, lake, or water-filled pit upon it. This section shall not apply to a person entering upon posted private property for the purpose of talking to, conducting business with, or performing services for the owner or occupant, or employees of the owner or occupant. No private property shall be considered posted for the purposes of this section unless the posting is by a sign or signs in plain view, warning others not to trespass, and plainly displaying a number registered with the sheriff of the county. The sheriff of each county may assign a number to each owner or occupant who registers to post private property under this section and shall keep a record of the numbers. No person shall tear down, remove or damage any sign lawfully posted in compliance with this section, except with the consent of the owner or occupant of the posted

property. Any person violating this section shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days. Chapter 232 shall have no application in the prosecution of offenses committed by minors under this chapter. [C71, 73, 75,§714.41]

714.42 False reports or alarms. Whoever intentionally and without good cause shall give a false or fraudulent report of a crime, a fire, or an accident by calling any peace officer, physician, hospital, ambulance service, or fire department, or by crying or sounding an alarm, or by performing any act calculated to cause such report or alarm, or who shall intentionally communicate false or fraudulent information with reference to a crime, a fire, or an accident to any peace officer, physician, hospital, ambulance service, or fire department knowing such information to be false or fraudulent, shall be guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned in the county jail not more than thirty days. However, nothing herein shall prevent communication of such false or fraudulent information if, at the time of the communication, the communicant explains the source of the information and the details relevant thereto. [C71, 73, 75,§714.42]

See also §§714.31, 714.32

CHAPTER 715

ALTERATION, SALE AND CHARGING OF STORAGE BATTERIES

715.1 Injury to identification mark.
715.2 Unlawful delivery.
715.3 Unlawful recharging.
715.4 Unlawful retention.
715.5 Penalty.

715.1 Injury to identification mark. It is unlawful for any person, copartnership, or corporation to remove or deface or alter or destroy, or cause to be removed or defaced or altered or destroyed, the word "rental" or any other word, mark, or character printed or painted or stamped upon or attached to any electric storage battery which has been so placed upon or attached to such electric storage battery to identify the same as belonging to or being the property of any person, copartnership, or corporation. [C27, 31, 35,§13111-a1; C39,§**13111.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §715.1]

715.2 Unlawful delivery. It is unlawful for any person, copartnership, or corporation to sell, dispose of, deliver, or give or attempt to sell, dispose of, deliver, or give to any person, copartnership, or corporation, other than the owner thereof, any electric storage battery upon which the word "rental" or any other word, mark, or character is printed, painted, or stamped, or to which such word, mark, or character is attached, for the purpose of identifying the said electric storage battery as belonging to or being the property of any person, copartnership, or corporation. [C27, 31, 35, §13111-a2; C39,§**13111.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§715.2]

715.3 Unlawful recharging. It is unlawful for any person, copartnership, or corporation engaged in buying, selling, or recharging electric storage batteries to receive or retain in his, their, or its possession, or to recharge, except in cases of emergency, any electric storage battery not owned by such person, copartnership, or corporation upon which the word "rental" or any other word, mark, or character is printed, painted or stamped, or to which such word, or mark, or character, is attached, for the purpose of identifying the said electric storage battery as belonging to or being the property of any person, copartnership, or corporation. [C27, 31, 35,§13111-a3; C39, §**13111.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§715.3]

715.4 Unlawful retention. It shall be unlawful for any person, copartnership, or corporation to retain in his, their, or its possession for a longer period than thirty days, without the consent of the owner, any electric storage battery upon which the word "rental" or any other word, mark, or character is printed, painted or stamped, or to which any such word, mark, or character is attached, for the purpose of identifying the said electric storage battery as belonging to or being the property of any person, copartnership, or corporation. [C27, 31, 35,§13111-a4; C39,§**13111.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§715.4]

715.5 Penalty. Any person, copartnership, or corporation, and the officers, agents, employees, and members of any copartnership, or corporation, violating any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or be imprisoned in the county jail for a term not exceeding thirty days, or both. [C27, 31, 35,§13111-a5; C39,§**13111.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§715.5]

CHAPTER 716

INJURIES TO INTERNAL IMPROVEMENTS AND COMMON CARRIERS

716.1 Injury to dams, locks, mills or machinery.
716.2 Injury to levees.
716.3 Obstructing public ditches or drains.
716.4 Obstructing ditches and breaking levees.
716.5 Draining meandered lakes.
716.6 Obstructing or defacing roads.
716.7 Injury to roads, railways and other utilities.
716.8 Tapping telegraph or telephone wires.
716.9 Placing obstructions on railways.
716.10 Depositing refuse on track.
716.11 Shooting or throwing at train.
716.12 Uncoupling locomotive or cars.
716.13 Seizing and running locomotive.
716.14 Conspiracy to seize locomotive.
716.15 Wrongfully running handcar.
716.16 Aggravated offense.
716.17 Interference with air brake or bell rope.
716.18 Power of trainmen to arrest.
716.19 Jumping off cars in motion.

716.1 Injury to dams, locks, mills or machinery. If any person maliciously injure or destroy any dam, lock, canal, trench, or reservoir, or any of the appurtenances thereof, or any of the gear or machinery of any mill or manufactory; or maliciously draw off the water from any mill pond, reservoir, canal, or trench; or destroy, injure, or render useless any engine or the apparatus belonging thereto, prepared or kept for the extinguishing of fires, he shall be imprisoned in the county jail not exceeding one year and be fined not exceeding five hundred dollars. [C51,§2679; R60,§4319; C73,§3978; C97,§4806; C24, 27, 31, 35, 39,§**13112**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.1]

716.2 Injury to levees. If any person maliciously injure, break, or cause to be broken, any levee erected to prevent the overflow of land within the state, such person so offending shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not exceeding one year. [R60,§4332; C73,§3991; C97,§4804; C24, 27, 31, 35, 39,§**13113**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.2]

716.3 Obstructing public ditches or drains. If any person place any obstruction in any of the public ditches or drains made for the purpose of draining any of the swamp lands in this state, he shall be compelled to remove the same, and be fined not less than five nor more than one hundred dollars, or be imprisoned in the county jail not more than thirty days. [C73,§3992; C97,§4805; C24, 27, 31, 35, 39,§**13114**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.3]

716.4 Obstructing ditches and breaking levees. Any person, firm, or corporation diverting, obstructing, impeding, or filling up, without legal authority, any ditch, drain, or watercourse, or breaking down any levee established, constructed, or maintained under any provision of law, shall be deemed guilty of a misdemeanor and punished accordingly. [S13,§1989-a15; C24, 27, 31, 35, 39,§**13115**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.4]

Punishment, §687.7

716.5 Draining meandered lakes. Every person who shall drain or cause to be drained, or shall attempt to drain in any manner, any lake, pond, or body of water, which shall have been meandered and its metes and bounds established by the government of the United States in the survey of public lands, shall be guilty of a misdemeanor and be punished by a fine not exceeding one thousand dollars; provided this shall not apply where the drainage was or is authorized by law. [SS15,§2900-e; C24, 27, 31, 35, 39,§**13116**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.5]

716.6 Obstructing or defacing roads. If any person, without authority or permission from the board of trustees, shall in any manner obstruct, deface, or injure any public road by breaking up, plowing, or digging within the boundary lines thereof, he shall be fined not less than five nor more than twenty-five dollars, or be imprisoned in the county jail not more than thirty days, at the discretion of the court. [C97,§4808; S13,§4808; C24, 27, 31, 35, 39, §**13117**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.6]

716.7 Injury to roads, railways and other utilities. If any person maliciously injure, remove, or destroy any electric railway or apparatus belonging thereto, or any bridge, rail or plank road; or place, or cause to be placed, any obstruction on any electric railway, or on any such bridge, rail or plank road; or willfully obstruct or injure any public road or highway; or maliciously cut, burn, or in any way break down, injure, or destroy any post or pole used in connection with any system of electric lighting, electric railway, or telephone or telegraph system; or break down and destroy or injure and deface any electric light, telegraph or telephone instrument; or in any way cut, break, or injure the wires of any apparatus belonging thereto; or shall willfully tap, cut, injure, break, disconnect, connect, make any connection with, or destroy any of the wires, mains, pipes, conduits, meters, or other apparatus belonging to, or attached to, the power plant or distributing system of any electric light plant, electric motor, gas plant, or water plant; or shall aid or abet any other person in so doing, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars, or imprisoned in the county jail not more than one year, or by both such fine and imprisonment, at the discretion of the court. [C51,§2680;

R60,§4320; C73,§3979; C97,§4807; S13,§4807; C24, 27, 31, 35, 39,§13120; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.7]

Proof of obstruction, §782.2

716.8 Tapping telegraph or telephone wires. Any person who shall wrongfully or unlawfully tap or connect a wire with the telephone or telegraph wires of any person, company, or association engaged in the transmission of messages on telephone or telegraph lines between the states or in this state, shall be fined not more than five hundred dollars, or imprisoned in the county jail not exceeding six months. [C97,§4816; C24, 27, 31, 35, 39,§13121; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.8]

716.9 Placing obstructions on railways. If any person shall willfully and maliciously place any obstruction on the track of any railroad in the state, or remove any rail therefrom, or in any other way injure such railroad, or do any other thing thereto whereby the life of any person is or may be endangered, he shall be imprisoned in the penitentiary for life, or for any term not less than two years. [R60,§4331; C73,§3990; C97,§4809; C24, 27, 31, 35, 39,§13122; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.9]

716.10 Depositing refuse on track. If any person engaged in the dragging of a public highway or private way across a railroad shall cause to be deposited any dirt, gravel, stone, or other substance upon the rails of such railroad, or in such close proximity thereto so that it interferes with or jeopardizes the operation of trains upon such railroad, he shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars. [C27, 31, 35,§13122-a1; C39,§13122.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.10]

716.11 Shooting or throwing at train. If any person throw any stone or other substance whatever, or present or discharge any gun, pistol, or other firearm at any railroad train, car, or locomotive engine, or at any cable, wire or other part of the equipment of any signal system of any railroad, he shall be guilty of a misdemeanor. [C97,§4810; C24, 27, 31, 35, 39, §13123; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.11]

Punishment, §687.7

716.12 Uncoupling locomotive or cars. If any person shall willfully and maliciously uncouple or detach the locomotive or tender or any of the cars of any railroad train, or in any manner aid, abet, or procure the doing of the same, such person shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding one thousand dollars, or both, at the discretion of the court. [C97,§4812; C24, 27, 31, 35, 39,§13124; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.12]

716.13 Seizing and running locomotive. If any person shall unlawfully seize upon any locomotive, with or without any express, mail, baggage, or other car attached thereto, and run the same upon any railroad, or aid, abet, or procure the doing of the same, such person shall be imprisoned in the penitentiary not exceeding ten years, or fined not exceeding two thousand dollars, or both fined and imprisoned. [C97,§4813; C24, 27, 31, 35, 39,§13125; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.13]

716.14 Conspiracy to seize locomotive. If any two or more persons maliciously and willfully confederate together for the purpose of going upon or taking charge of any locomotive engine or car of any railroad company by force and without the consent of the person or persons in charge thereof, or if one or more persons shall go upon any locomotive engine or car of any railroad company armed with a dangerous or deadly weapon for the purpose of committing a public offense thereon, he shall be imprisoned in the penitentiary for not exceeding five years or pay a fine of not exceeding one thousand dollars. [C24, 27, 31, 35, 39,§13126; C46, 50, 54, 58, 62, 66, 71, 73, 75, §716.14]

716.15 Wrongfully running handcar. If any person shall, without permission from the proper authority, wrongfully take or run any handcar upon any railroad in this state, he shall be guilty of a misdemeanor. [C97,§4814; C24, 27, 31, 35, 39,§13127; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.15]

C97,§4814, editorially divided
Referred to in §716.17
Punishment, §687.7

716.16 Aggravated offense. If by such unlawful use of any handcar any locomotive or car is thrown from the track, or a collision produced, or any person injured, he [such person so offending] shall be imprisoned in the penitentiary for a term of not more than five years; and if thereby any person is killed, such person so offending shall be guilty of manslaughter. [C97,§4814; C24, 27, 31, 35, 39, §13128; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.16]

Referred to in §716.17
Punishment, §687.7

716.17 Interference with air brake or bell rope. If any person not an employee upon the railroad shall wrongfully interfere with any automatic air brake or bell rope upon any railroad car, or use the same for the purpose of stopping or in any way controlling the movement of the train, he shall be subject to the penalty provided in sections 716.15 and 716.16. [C97,§4815; C24, 27, 31, 35, 39,§13129; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.17]

C97,§4815, editorially divided

716.18 Power of trainmen to arrest. Any conductor or brakeman on a railroad train shall have power to arrest a person so offending and deliver him to some peace officer on the line of the railroad. [C97,§4815; C24, 27, 31, 35, 39,§13130; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.18]

716.19 Jumping off cars in motion. If any person not employed thereon, or not an officer

of the law in the discharge of his duty, without the consent of the person having the same in charge, get upon or off any locomotive engine or car of any railroad company while the same is in motion, or elsewhere than at the established depots of such company, or get upon, cling to, or otherwise attach himself to any such engine or car for the purpose of riding upon the same, intending to jump therefrom when such engine or car is in motion, or, for the purpose of riding thereon without the payment of the usual fare, he shall be guilty of a misdemeanor. [C97,§4811; C24, 27, 31, 35, 39,§13131; C46, 50, 54, 58, 62, 66, 71, 73, 75,§716.19]

Punishment, §687.7

CHAPTER 717

INJURIES TO ANIMALS

717.1 Injuries to beasts.
717.2 Impounding animals without food and water.
717.3 Cruelty to animals.
717.4 Docking horses prohibited—exceptions.
717.5 Punishment.
717.6 Disturbing stock with firearms or dogs.
717.7 Driving away stock.

717.1 Injuries to beasts. If any person maliciously kill, maim, or disfigure any horse, cattle, or domestic animal or dog of another, or maliciously administer poison to any such animal; or expose any poisonous substance with intent that the same should be taken by such animal, he shall be imprisoned in the penitentiary not exceeding five years, or imprisoned in the county jail not exceeding one year, or be fined not exceeding three hundred dollars. [C51,§2678; R60,§4318; C73,§3977; C97, §4818; C24, 27, 31, 35, 39,§13132; C46, 50, 54, 58, 62, 66, 71, 73, 75,§717.1]

717.2 Impounding animals without food and water. If any person impound or confine, or cause to be impounded or confined, in any pound or other place, any creature, and fail to supply the same during such confinement with a sufficient quantity of food and water, he shall be guilty of a misdemeanor. [C73,§4034; C97,§4972; C24, 27, 31, 35, 39,§13133; C46, 50, 54, 58, 62, 66, 71, 73, 75,§717.2]

Punishment, §687.7

717.3 Cruelty to animals. If any person torture, torment, deprive of necessary sustenance, mutilate, overdrive, overload, drive when overloaded, cruelly beat, or cruelly kill any animal, or unnecessarily fail to provide the same with proper food, drink, shelter, or protection from the weather, or drive or work the same when unfit for labor, or cruelly abandon the same, or carry the same or cause the same to be cruelly carried on any vehicle or otherwise or shall commit any other act or omission by which unjustifiable pain, distress, suffering, or death is caused or permitted to any animal or animals, whether the acts or omissions herein contemplated be committed either maliciously, willfully, or negligently, and if any person shall knowingly permit such act or omission or shall cause or procure the same to be done he shall be imprisoned in the county jail not exceeding thirty days, or be fined not exceeding one hundred dollars. [C51, §2716; R60,§4358; C73,§4031; C97,§4969; S13, §4969; C24, 27, 31, 35, 39,§13134; C46, 50, 54, 58, 62, 66, 71, 73, 75,§717.3]

717.4 Docking horses prohibited — exceptions. It shall be unlawful for any person or persons to dock the tail of any colt or horse of any age, other than horses and colts used for breeding and show purposes, or to procure the same to be done. [S13,§4975-a; C24, 27, 31, 35, 39,§13135; C46, 50, 54, 58, 62, 66, 71, 73, 75, §717.4]

Referred to in §717.5

717.5 Punishment. Any person or persons violating any of the provisions of section 717.4 shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars, or by imprisonment in the county jail not to exceed thirty days. [S13,§4975-b; C24, 27, 31, 35, 39, §13136; C46, 50, 54, 58, 62, 66, 71, 73, 75,§717.5]

717.6 Disturbing stock with firearms or dogs. Any person who knowingly discharges firearms of any description within, or in the immediate vicinity of, any enclosure where cattle, hogs, or sheep are being fed for the purpose of fattening the same; or any person who enters such enclosure with firearms or dog, unless such person shall be the owner of said stock, or have the control of the same, or shall have permission from such owner or the person having control thereof to enter said premises, shall be guilty of a misdemeanor. [C73,§3900; C97,§4820; C24, 27, 31, 35, 39,§13137; C46, 50, 54, 58, 62, 66, 71, 73, 75,§717.6]

Punishment, §687.7

717.7 Driving away stock. If any person knowingly or willfully drive off, or suffer or permit to be driven off, any stock of another to a distance exceeding one mile from the residence of the owner, or of his agent having charge of such stock, or the range in which such stock is usually in the habit of running, without the consent of such owner or agent, he shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days; and any judicial magistrate in any county through which the stock thus driven off should pass, or in which it may be found, shall have jurisdiction of the offense. [C73,§3896; C97,§4819; C24, 27, 31, 35, 39,§13138; C46, 50, 54, 58, 62, 66, 71, 73, 75,§717.7]

CHAPTER 718

FORGERY AND COUNTERFEITING

718.1 Forgery.
718.2 Uttering forged instrument.
718.3 Public instruments.
718.4 Counterfeiting bills, notes or drafts.
718.5 Possession of counterfeit papers.
718.6 Uttering counterfeit securities.
718.7 Second conviction.
718.8 Fraudulent alteration of instruments.
718.9 Affixing fictitious signatures.
718.10 Obliteration of records or instruments.
718.11 Second and third convictions.
718.12 Existence of corporation—proof.
718.13 Making tools for counterfeiting.
718.14 Possession of tools for counterfeiting.
718.15 Counterfeiting coin.
718.16 Uttering or possession of counterfeit coin.
718.17 Counterfeiting foreign coin.
718.18 Counterfeiting public seals.
718.19 Counterfeiting brands or stamps.
718.20 Possession of instruments for counterfeiting.
718.21 Circulation of foreign bank notes.
718.22 Allegations of indictment—proof.
718.23 Repealed by 64GA, ch 1124,§282.
718.24 Unauthorized use of rubber stamp.

718.1 Forgery. If any person, with intent to defraud, falsely make, alter, forge, or counterfeit any:

1. Public record; or

2. Process issued or purporting to be issued by any competent court, magistrate, or officer; or

3. Pleading or proceeding filed or entered in any court of law or equity; or

4. Attestation or certificate of any public officer, or other person, in relation to any matter wherein such attestation or certificate is required by law, or may be received or be taken as legal proof; or

5. Charter, deed, will, bond, writing obligatory, power of attorney, letter of credit, policy of insurance, bill of lading, bill of exchange, promissory note; or

6. Order, acquittance, discharge, or accountable receipt for money or other valuable thing; or

7. Acceptance of any bill of exchange or order; or

8. Endorsement or assignment of any bill of exchange, promissory note or order, or of any debt or contract; or

9. Instrument in writing, being, or purporting to be, the act of another, by which any pecuniary demand or obligation, or any right or interest in or to any property whatever, is or purports to be created, increased, transferred, conveyed, discharged, or diminished—

he shall be imprisoned in the penitentiary not more than ten years or imprisoned in the county jail not exceeding one year, or fined not exceeding one thousand dollars. [C51, §2626; R60,§4253; C73,§3917; C97,§4853; S13, §4853; C24, 27, 31, 35, 39,§**13139**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.1]

Referred to in §718.2

718.2 Uttering forged instrument. If any person utter and publish as true any record, process, certificate, deed, will, or any other instrument of writing mentioned in section 718.1, knowing the same to be false, altered, forged, or counterfeited, with intent to defraud, he shall be imprisoned in the penitentiary not more than ten years, or imprisoned in the county jail not exceeding one year, or fined not exceeding one thousand dollars. [C51, §2627; R60,§4254; C73,§3918; C97,§4854; C24, 27, 31, 35, 39,§**13140**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.2]

718.3 Public instruments. If any person, with intent to defraud, falsely make, utter, forge, or counterfeit any note, certificate, state bond, warrant, or other instrument, being public security for money or other property, issued or purporting to be issued by authority of this state or any other of the United States; or any endorsement or other writing purporting to transfer the right or interest of any holder of such public security, he shall be imprisoned in the penitentiary not more than twenty years. [C51,§2628; R60,§4255; C73,§3919; C97,§4855; C24, 27, 31, 35, 39,§**13141**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.3]

718.4 Counterfeiting bills, notes or drafts. If any person make, alter, forge, or counterfeit any bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued by any corporation or company duly authorized for that purpose by any state of the United States, or any other government or country, with intent to injure or defraud, he shall be imprisoned in the penitentiary not more than ten years, or be fined not exceeding three hundred dollars, and imprisoned in the county jail not exceeding one year. [C51,§2629; R60,§4256; C73,§3920; C97,§4856; C24, 27, 31, 35, 39,§**13142**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §718.4]

Referred to in §718.5

718.5 Possession of counterfeit papers. If any person has in his possession any forged, counterfeited, or altered bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued as is mentioned in section 718.4, with intent to defraud, knowing them to be forged, counterfeited, or altered, he shall be imprisoned in the penitentiary not more than five years, or fined not exceeding two hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2630; R60,§4257; C73,§3921; C97,§4857; C24, 27, 31, 35, 39,§**13143**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.5]

718.6 Uttering counterfeit securities. If any person utter, pass, or tender in payment as true any false, altered, forged, or counterfeited note, certificate, state bond, warrant, or other instrument of public security, or any bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued by any corporation or company, knowing the same to be false, altered, forged, or counterfeited, with the intent to injure or defraud, he shall be imprisoned in the penitentiary not more than ten years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2631; R60,§4258; C73,§3922; C97,§4858; C24, 27, 31, 35, 39,§**13144**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.6]

Referred to in §718.7

718.7 Second conviction. If any person, having been convicted of any of the offenses described in section 718.6, afterward be convicted of a like offense, he shall be imprisoned in the penitentiary not more than ten years. [C51,§2632; R60,§4259; C73,§3923; C97,§4859; C24, 27, 31, 35, 39,§**13145**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.7]

Multifarious convictions, §§709.19, 712.2, 718.11; also ch 747

718.8 Fraudulent alteration of instruments. If any person fraudulently connect together different parts of several genuine bank bills, notes, or other instruments in writing, so as to produce one instrument; or alter any note or instrument in writing in a matter that is material, with intent to defraud, the same shall be forgery in like manner as if such bill or note or other instrument had been forged and counterfeited. [C51,§2636; R60,§4263; C73, §3927; C97,§4863; C24, 27, 31, 35, 39,§**13146**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.8]

718.9 Affixing fictitious signatures. If any fictitious or pretended signature of an officer or agent of any corporation be fraudulently affixed to any instrument of writing purporting to be a note, draft, or other evidence of debt issued by such corporation, with intent to utter or pass the same as true, it is a forgery, though no such person may ever have been an officer or agent of such corporation, nor such corporation have ever existed; and the person guilty thereof shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding three hundred dollars and imprisoned in the county jail not more than one year. [C51,§2637; R60,§4264; C73,§3928; C97, §4864; C24, 27, 31, 35, 39,§**13147**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.9]

718.10 Obliteration of records or instruments. The total or partial erasure or obliteration of any record, process, certificate, deed, will, or any other instrument in writing mentioned in this chapter, with the intent to defraud, shall be deemed forgery, and the offender shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding five hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2638; R60,§4265; C73,§3929; C97,§4865; C24, 27, 31, 35, 39,§**13148**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §718.10]

Referred to in §718.11

718.11 Second and third convictions. If any person, having been convicted of either of the offenses mentioned in section 718.10, be afterward convicted of a like offense, he shall be imprisoned in the penitentiary not more than ten nor less than three years. [C51, §2639; R60,§4266; C73,§3930; C97,§4866; C24, 27, 31, 35, 39,§**13149**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.11]

Multifarious convictions, §§709.19, 712.2, 718.7; also ch 747

718.12 Existence of corporation—proof. On the trial of any person for forging or counterfeiting any bill, note, or other evidence of debt purporting to be issued by any incorporated company; or for uttering, passing, or attempting to pass, or having in possession the same with intent to utter or pass, such bill, note, or evidence of debt, it is not necessary to prove the incorporation by the charter or act thereof; but the same may be proved by general reputation, and persons of skill are competent witnesses to prove that such bill, note, or evidence of debt is forged or counterfeit. [C51,§3643; R60,§4270; C73,§3934; C97,§4870; C24, 27, 31, 35, 39,§**13150**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.12]

718.13 Making tools for counterfeiting. If any person engrave, make, or mend, or begin to engrave, make, or mend, any plate, block, press, or other tool, instrument, or implement, or make or provide any paper or other materials, adapted and designed for the forging or making any false and counterfeit note, certificate, state bond, warrant, or other instrument of public security for money or other property of this state or any other of the United States, or any bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued by any corporation or company, he shall be imprisoned in the penitentiary not more than five years. [C51,§2633; R60,§4260; C73,§3924; C97,§4860; C24, 27, 31, 35, 39,§**13151**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §718.13]

C97,§4860, editorially divided

718.14 Possession of tools for counterfeiting. Every person who has in his possession any such plate or block engraved in any part, or any press or other tool, instrument, or implement, paper or other material, adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used, in forging or making any such false and forged certificates, notes, bonds, warrants, public securities, or evidences of debt, shall be imprisoned in the penitentiary not more than five years. [C51,§2633; R60,§4260; C73,§3924; C97,§4860; C24, 27, 31, 35, 39,§**13152**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.14]

Similar provision, §718.20

718.15 Counterfeiting coin. If any person forge or counterfeit any gold or silver coin,

current by law or usage within this state, or if any person have in his possession at the same time five or more pieces of false money or coin counterfeited in the similitude of any gold or silver coin current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, he shall be imprisoned in the penitentiary not more than ten years. [C51,§2634; R60,§4261; C73,§3925; C97,§4861; C24, 27, 31, 35, 39,§**13153**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.15]

Referred to in §718.16

718.16 Uttering or possession of counterfeit coin. Any person who has in his possession any number of pieces less than five of the counterfeit coin mentioned in section 718.15, knowing the same to be false or counterfeit, with intent to utter or pass the same as true; and any person who utters, passes, or tenders in payment any false and counterfeit coin, knowing the same to be false and counterfeit, shall be imprisoned in the penitentiary not exceeding eight years, or fined not more than five hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2635; R60,§4262; C73,§3926; C97,§4862; C24, 27, 31, 35, 39,§**13154**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §718.16]

718.17 Counterfeiting foreign coin. If any person forge or counterfeit any gold or silver coin of any foreign government or country, with intent to export the same to injure or defraud any such government or the citizens thereof, he shall be imprisoned in the penitentiary not exceeding ten years. [C51,§2641; R60, §4268; C73,§3932; C97,§4868; C24, 27, 31, 35, 39, §**13155**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.17]

718.18 Counterfeiting public seals. Every person who is convicted of having forged, counterfeited, or falsely altered the great seal of the state; or the seal of any public office authorized by law; or the seal of any court, corporation, city, or county; or who falsely makes, forges, or counterfeits any impression purporting to be the impression of any such seal, with intent to defraud, shall be imprisoned in the penitentiary not exceeding ten years. [C51,§2642; R60,§4269; C73,§3933; C97,§4869; C24, 27, 31, 35, 39,§**13156**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.18]

718.19 Counterfeiting brands or stamps. If any person, with intent to defraud, falsely make, forge, or counterfeit any stamp or brand authorized by law to be affixed to any substance or thing whatever; or, knowing such stamp or brand to be counterfeit, use the same as genuine, with intent to defraud, he shall be imprisoned in the penitentiary not exceeding ten years. [C73,§3935; C97,§4871; C24, 27, 31, 35, 39§**13157**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §718.19]

718.20 Possession of instruments for counterfeiting. If any person cast, stamp, engrave, make, or amend, or have in his possession any mold, die, press, or other instrument or tool adapted and designed for the forging and counterfeiting of any coin before mentioned, with intent to use the same, or permit the same to be used, for that purpose, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not more than one year. [C51,§2640; R60,§4267; C73,§3931; C97,§4867; C24, 27, 31, 35, 39,§**13158**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.20]

Similar provision, §718.14

718.21 Circulation of foreign bank notes. If any person pay out or offer to pay, or in any manner put in circulation or offer to put in circulation, any bank note, bill, or other instrument intended to circulate as money, issued or purporting to be issued by any bank, individual, or corporation elsewhere than in this state, excepting treasury notes, notes of any bank organized under the law of the United States, or any other description of currency issued by the authority of Congress, he shall be fined the sum of five dollars for each note, bill, or other instrument so paid out or offered to be paid out, put in circulation, or offered to be put in circulation. [C73,§4047; C97,§5011; C24, 27, 31, 35, 39,§**13159**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.21]

C97,§5011, editorially divided
Referred to in §718.22

718.22 Allegations of indictment—proof. In prosecutions under section 718.21, it shall not be necessary to state in the indictment or information the name of the bank issuing the notes, nor to prove the existence of the bank or other person purporting to issue them; but it shall be sufficient to allege in general terms the fact of paying out, or attempting to pay out, as the case may be, of bank notes issued out of this state; and the proof may be made as if the particulars were alleged. [C73,§4047; C97,§5011; C24, 27, 31, 35, 39,§**13160**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§718.22]

718.23 Repealed by 64GA, ch 1124,§282.

718.24 Unauthorized use of rubber stamp. Any person who without authorization uses a rubber stamp reproduction of a handicapped person's name or facsimile of the actual signature as provided in section 4.1, subsection 17, with the intent to defraud another person shall upon conviction be guilty to the same extent as if the person had forged another person's signature. [66GA, ch 68,§2]

CHAPTER 719

CONSPIRACY

719.1 "Conspiracy" defined—common law.
719.2 Conspiracy to prosecute.

719.1 "Conspiracy" defined — common law. If any two or more persons conspire or confederate together with the fraudulent or malicious intent wrongfully to injure the person, character, business, property, or rights in property of another, or to do any illegal act injurious to the public trade, health, morals, or police, or to the administration of public justice, or to commit any felony, they are guilty of a conspiracy, and every such offender, and every person who is convicted of a conspiracy at common law, shall be imprisoned in the penitentiary not more than three years. [C51, §2758; R60,§4408; C73,§4087; C97,§5059; C24, 27, 31, 35, 39,§**13162**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§719.1]

Conspiracy in re insurance, §511.19
Proof of overt acts, §782.6

719.2 Conspiracy to prosecute. If two or more persons conspire or confederate together with intent, falsely and maliciously, to cause or procure another person to be indicted or in any way impleaded or prosecuted for an offense of which he is innocent, whether such person be so impleaded, indicted, or prosecuted or not, they shall be guilty of a conspiracy, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding one thousand nor less than one hundred dollars, and imprisoned in the county jail not exceeding one year. [C51,§2757; R60,§4407; C73,§4086; C97, §5058; C24, 27, 31, 35, 39,§**13163**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§719.2]

CHAPTER 720

MALICIOUS THREATS

720.1 Malicious threats to extort.

720.1 Malicious threats to extort. If any person, either verbally or by any written or printed communication, maliciously threaten to accuse another of a crime or offense, or to do any injury to the person or property of another, with intent to extort any money or pecuniary advantage whatever, or to compel the person so threatened to do any act against his will, he shall be imprisoned in the penitentiary not more than five years or be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, or both such fine and imprisonment. [C51,§2590; R60,§4213; C73,§3871; C97,§4767; S13, §4767; C24, 27, 31, 35, 39,§**13164**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§720.1]

See also §§714.37–714.40

CHAPTER 721

PERJURY

721.1 Definition—punishment.
721.2 Subornation of perjury.
721.3 Attempt to suborn.

721.1 Definition—punishment. If any person, on oath or affirmation lawfully administered, willfully and corruptly swear or affirm falsely to any material matter in any proceeding in any court of justice, or before any officer thereof, or before any tribunal or officer created by law, or in any proceeding in regard to any matter or thing in or respecting which an oath or affirmation is or may be required or authorized by law, he is guilty of perjury, and shall, if the perjury was committed on the trial of a capital crime, be imprisoned in the penitentiary for life or any term not less than ten years; and if committed in any other case, not more than ten years. [C51,§2644; R60,§4271; C73,§3936; C97,§4872; C24, 27, 31, 35, 39,§**13165**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§721.1]

Referred to in §721.2
Indictment, §773.28

721.2 Subornation of perjury. If any person procure another to commit perjury, he is guilty of subornation of perjury, and shall be punished as provided in section 721.1. [C51, §2645; R60,§4272; C73,§3937; C97,§4873; C24, 27, 31, 35, 39,§**13166**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§721.2]

721.3 Attempt to suborn. If any person endeavor to incite or procure another to commit perjury, though no perjury be committed, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year. [C51, §2646; R60,§4273; C73,§3938; C97,§4874; C24, 27, 31, 35, 39,§**13167**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§721.3]

CHAPTER 722

COMPOUNDING FELONIES

722.1 Compounding certain felonies.
722.2 Compounding lesser felonies.

722.1 Compounding certain felonies. If any person, having knowledge of the commission of any offense punishable with imprisonment in the penitentiary for life, take any money or valuable consideration or gratuity, or any promise therefor, upon an agreement or understanding, expressed or implied, to compound or conceal such offense, or not to prosecute the same, or not to give evidence thereof, he shall be imprisoned in the penitentiary not more than six years, or be fined not exceeding one thousand dollars. [C51,§2659; R60,§4286; C73,§3951; C97,§4889; C24, 27, 31, 35, 39,§**13168**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§722.1]

Referred to in §722.2
Additional provision, §773.50

722.2 Compounding lesser felonies. If any person, having knowledge of the commission of any offense punishable by imprisonment in the penitentiary for a limited term of years, is guilty of the offense described in section 722.1, he shall be imprisoned in the county jail not more than one year, and be fined not exceeding four hundred dollars. [C51,§2660; R60,§4287; C73,§3952; C97,§4890; C24, 27, 31, 35, 39,§**13169**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §722.2]

CHAPTER 723

OBSTRUCTING JUSTICE

723.1 Interference with administration of justice.
723.2 Injunction to prevent obstruction of justice.
723.3 Unlawful solicitation and promotion of action.

723.1 Interference with administration of justice. If any person attempt in any manner to improperly influence, intimidate, impede, or obstruct any petit juror, grand juror, or other officer in any civil or criminal action or proceeding, or any one drawn, summoned, appointed, or sworn as such juror or officer, or any arbitrator or referee, or any witness or any officer in, or of, any court or tribunal in relation to any cause or matter or proceeding pending in, or that may be brought before, such court or tribunal, for which such juror or other officer has been drawn, appointed or in which said witness has been, or may be, called to testify, or in regard to which such officer is, or may be, required to act in his official capacity, or, if any person shall intentionally, or by threat or force, or by any threatening letter or threatening communication, or by any public speech or in any other manner improperly influence, obstruct, or impede, or endeavor or attempt to improperly influence, obstruct, or impede the due administration of justice or the actions or conduct of any such jurors, witnesses, arbitrator, referee, or other officer, he shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the penitentiary not more than one year, or by both such fine and imprisonment. [C51,§2654; R60,§4281; C73,§3946; C97,§4882; C24, 27, 31, 35, 39,§**13170**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§723.1]

723.2 Injunction to prevent obstruction of justice. The commission, threat, or attempt to commit any of the acts or things hereinbefore referred to shall be held to be an injury to the general welfare and any person doing or threatening or attempting to do any such acts may be enjoined and restrained at the suit of the state upon the relation of the attorney general. [C24, 27, 31, 35, 39,§**13171**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§723.2]

723.3 Unlawful solicitation and promotion of action. It shall be unlawful for any person, with the intent, or for the purpose of instituting a suit thereon outside of this state, to seek or solicit the business of collecting any claim for damages for personal injuries sustained within this state or for death resulting therefrom, or in any way to promote the prosecution of a suit brought outside of this state for such damages, or to do any act or thing in furtherance thereof, in cases where such right of action rests in a resident of this state, or his legal representative, and is against a person, copartnership, or corporation subject to personal service within this state. [C24, 27, 31, 35, 39,§**13172**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §723.3]

CHAPTER 724

PROSTITUTION

724.1 Punishment.
724.2 Soliciting.
724.3 Keeping house of ill fame.
724.4 Evidence—general reputation.
724.5 Terminating lease after conviction.
724.6 Leasing house for prostitution.
724.7 Permitting minor persons to be inmates.
724.8 Detention of persons.
724.9 Enticing to house of ill fame.
724.10 Enticing minor for prostitution.

724.1 Punishment. If any person, for the purpose of prostitution or lewdness, resorts to, uses, occupies, or inhabits any house of ill fame or place kept for such purpose, or if any person be found at any hotel, boarding house, cigar store, or other place, leading a life of prostitution or lewdness, such person shall be imprisoned in the penitentiary not more than five years. [C97,§4943; C24, 27, 31, 35, 39,§**13173**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§724.1]

724.2 Soliciting. Any person who shall ask, request, or solicit another to have carnal knowledge with any male or female for a consideration or otherwise, shall be punished by imprisonment in the penitentiary not exceeding five years, or imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both such fine and jail imprisonment. [S13,§4975-c; C24, 27, 31, 35, 39,§**13174**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§724.2]

724.3 Keeping house of ill fame. If any person keeps a house of ill fame, resorted to for the purpose of prostitution or lewdness, such person shall be imprisoned in the penitentiary not more than five years. [C51,§2710; R60,§4352; C73,§4013; C97,§4939; C24, 27, 31, 35, 39,§**13175**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §724.3]

724.4 Evidence — general reputation. The state, upon the trial of any person indicted for keeping a house of ill fame, may, for the purpose of establishing the character of the house kept by defendant, introduce evidence of the general reputation of such house as so kept. [C97,§4944; C24, 27, 31, 35, 39,§**13176**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§724.4]

General reputation, §§123.67, 123.88

724.5 Terminating lease after conviction. When a tenant, or anyone claiming under him, is convicted of keeping a house of ill fame, the landlord of the premises may terminate the lease therefor, and recover possession thereof in the manner provided in case of violation of the provisions of title VI, relative to intoxicating liquors. [C51, §2711; R60,§4353; C73,§4014; C97,§4940; C24, 27, 31, 35, 39,§**13177**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§724.5]

724.6 Leasing house for prostitution. If any person let any house, knowing that the lessee intends to use it as a place or resort for the purpose of prostitution and lewdness, or knowingly permit such lessee to use the same for such purpose, he shall be fined not exceeding three hundred dollars, or imprisoned in the county jail not exceeding six months. [C51, §2712; R60,§4354; C73,§4015; C97,§4941; C24, 27, 31, 35, 39,§**13178**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§724.6]

724.7 Permitting minor persons to be inmates. Whoever, being the keeper of a house of prostitution, or assignation house, building, or premises in this state where prostitution, fornication, or concubinage is allowed, or practiced, shall suffer or permit any unmarried person under the age of eighteen years to live, board, stop, or room in such house, building, or premises, shall, on conviction, be imprisoned in the penitentiary not less than one year nor more than five years. [S13,§4944-i; C24, 27, 31, 35, 39,§**13179**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §724.7]

724.8 Detention of persons. Whoever shall unlawfully detain or confine any person, by force, false pretense, or intimidation, in any room, house, building, or premises in this state, against the will of such person, for purposes of prostitution or with intent to cause such person to become a prostitute, and be guilty of fornication or concubinage therein, or shall by force, false pretense, confinement, or intimidation attempt to prevent any person so as aforesaid detained, from leaving such room, house, building, or premises, and whoever aids, assists, or abets by force, false pretense, confinement, or intimidation, in keeping, confining, or unlawfully detaining any person in any room, house, building, or premises in this state, against the will of such person, for the purpose of prostitution, fornication, or concubinage, shall, on conviction, be imprisoned in the penitentiary not more than ten years. [S13,§4944-j; C24, 27, 31, 35, 39,§**13180**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§724.8]

724.9 Enticing to house of ill fame. If any person inveigle or entice any person, before reputed virtuous, to a house of ill fame, or knowingly conceal or aid or abet in concealing such person so deluded or enticed, for the purpose of prostitution or lewdness, or entice back into a life of prostitution any person who has theretofore been guilty of prostitution and has abandoned it, the person shall be imprisoned in the penitentiary not more than ten years. [C51,§2713; R60,§4355; C73,§4016; C97,§4942; C24,

27, 31, 35, 39,§**13181**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§724.9]

724.10 Enticing minor for prostitution. If any person take or entice away any unmarried minor under the age of eighteen years for the purpose of prostitution, the person shall be imprisoned in the penitentiary not more than five years, or be fined not more than one thousand dollars and imprisoned in the county jail not more than one year. [C51,§2584; R60,§4207; C73,§3865; C97,§4760; C24, 27, 31, 35, 39,§**13182**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§724.10]

CHAPTER 725

OBSCENITY AND INDECENCY

Referred to in §234.28

725.1 Definitions.
725.2 Dissemination and exhibition of obscene material to minors.
725.3 Admitting minors to premises where obscene material is exhibited.
725.4 Civil suit to determine obscenity.
725.5 Exemptions for public libraries and educational institutions.
725.6 Suspension of licenses or permits.
725.7 Evidence considered.
725.8 Affirmative defense.
725.9 Uniform application.
725.10 Lascivious acts with persons under the age of sixteen years.
725.11 Repealed by 65GA, ch 1267,§11.
725.12 Exhibition of deformed or abnormal persons.

725.1 Definitions. As used in this section and sections 725.2 to 725.10, unless the context otherwise requires:

1. "*Obscene material*" is any material depicting or describing the genitals, sex acts, masturbation, excretory functions or sado-masochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for minors, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political or artistic value.

2. "*Material*" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial representation or any statute or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.

3. "*Disseminate*" means to transfer possession, with or without consideration.

4. "*Knowingly*" means being aware of the character of the matter.

5. "*Sado-masochistic abuse*" means the infliction of physical or mental pain upon a person or the condition of a person being fettered, bound or otherwise physically restrained.

6. "*Minor*" means any person under the age of eighteen.

7. "*Sex act*" means any sexual contact, actual or simulated, between two or more persons, either natural or deviate, or between a person and an animal, by penetration of the penis into the vagina or anus, or by contact between the mouth and genitalia or anus, or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus. [C75, §725.1]

Referred to in §§725.4, 725.5, 725.9

725.2 Dissemination and exhibition of obscene material to minors. Any person, other than the parent or guardian of the minor, who knowingly disseminates or exhibits obscene material to a minor, including the exhibition of obscene material so that it can be observed by a minor on or off the premises where it is displayed, is guilty of a public offense and shall upon conviction be imprisoned in the state penitentiary for not to exceed one year or be fined not to exceed one thousand dollars or be subject to both such fine and imprisonment. [C51,§2717; R60,§4359; C73,§4022; C97, §§4951, 4955; C24, 27, 31, 35, 39,§§**13189, 13193**; C46, 50, 54, 58, 62, 66, 71, 73,§§725.4, 725.8; C75, §725.2]

Referred to in §§725.1, 725.4–725.7, 725.9, 789A.1

725.3 Admitting minors to premises where obscene material is exhibited. Any person who knowingly sells, gives, delivers or provides a minor with a pass or admits a minor to premises where obscene material is exhibited is guilty of a public offense and shall upon conviction be imprisoned in the state penitentiary for not to exceed one year or be fined not to exceed one thousand dollars or be subject to both such fine and imprisonment. [C51,§2717; R60,§4359; C73,§4022; C97,§4951; S13, §4944-k; C24, 27, 31, 35, 39,§§**13185, 13189**; C46, 50, 54, 58, 62, 66, 71, 73,§§725.3, 725.4; C75,§725.3]

Referred to in §§725.1, 725.4–725.7, 725.9

725.4 Civil suit to determine obscenity. Whenever the county attorney of any county has reasonable cause to believe that any person is engaged or plans to engage in the dissemination or exhibition of obscene material within his county to minors he may institute a civil proceeding in the district court of the county to enjoin the dissemination or exhibition of obscene material to minors. Such application for injunction is optional and not

mandatory and shall not be construed as a prerequisite to criminal prosecution for a violation of sections 725.1 to 725.10. [C75, §725.4]

Referred to in §§725.1, 725.5, 725.9

725.5 Exemptions for public libraries and educational institutions. Nothing in sections 725.1 to 725.10 prohibits the use of appropriate material for educational purposes in any accredited school, or any public library, or in any educational program in which the minor is participating. Nothing in said sections prohibits the attendance of minors at an exhibition or display of art works or the use of any materials in any public library. [C75,§725.5]

Referred to in §§725.1, 725.4, 725.9

725.6 Suspension of licenses or permits. Any person who knowingly permits a violation of section 725.2 or 725.3 to occur on premises under his control shall have all permits and licenses issued to him under state or local law as a prerequisite for doing business on such premises revoked for a period of six months. The county attorney shall notify all agencies responsible for issuing licenses and permits of any conviction under section 725.2 or 725.3. [C75,§725.6]

Referred to in §§725.1, 725.4, 725.5, 725.9

725.7 Evidence considered. At a trial for violation of sections 725.2 and 725.3 the court may consider the material, and receive into evidence in addition to other competent evidence, the offered testimony of experts pertaining to:

1. The artistic, literary, politicial or scientific value, if any, of the challenged material.

2. The degree of public acceptance within the community of the material or material of similar character.

3. The intent of the author, artist, producer, publisher or manufacturer in creating the material.

4. The advertising promotion and other circumstances relating to the sale of the material. [C75,§725.7]

Referred to in §§725.1, 725.4, 725.5, 725.9

725.8 Affirmative defense. In any prosecution for disseminating or exhibiting obscene material to minors, it is an affirmative defense that the defendant had reasonable cause to believe that the minor involved was eighteen years old or more and the minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was eighteen years old or more or was accompanied by a parent or spouse eighteen years of age or more. [C75,§725.8]

Referred to in §§725.1, 725.4, 725.5, 725.9

725.9 Uniform application. In order to provide for the uniform application of the provisions of sections 725.1 to 725.10 relating to obscene material applicable to minors within this state, it is intended that the sole and only regulation of obscene material shall be under the provisions of these sections, and no municipality, county or other governmental unit within this state shall make any law, ordinance or regulation relating to the availability of obscene materials. All such laws, ordinances or regulations, whether enacted before or after said sections, shall be or become void, unenforceable and of no effect upon July 1, 1974. [C75,§725.9]

Referred to in §§725.1, 725.4, 725.5

725.10 Lascivious acts with persons under the age of sixteen years. It is unlawful for any person eighteen years of age or older to perform any of the following acts with any person under the age of sixteen, with or without his or her consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the pubes or genitals of a person under the age of sixteen.

2. Permit a person under the age of sixteen to fondle or touch his or her genitals or pubes.

3. Solicit a person under sixteen years of age to engage in sexual contact performed by penetration of the penis into the vagina or anus or by contact between the mouth and genitalia or anus, or by use of artificial sexual organs or substitutes therefor in contact with genitalia or anus.

4. Inflict pain or discomfort upon a person under the age of sixteen or permit a person under the age of sixteen to inflict pain or discomfort on him or her.

Any person who violates a provision of this section shall, upon conviction, be imprisoned in the penitentiary for not to exceed five years or be fined not to exceed five hundred dollars, or be subject to both such fine and imprisonment. [S13,§4938-a; C24, 27, 31, 35, 39,§**13184**; C46, 50, 54, 58, 62, 66, 71, 73,§725.2; C75,§725.10]

Referred to in §§725.1, 725.4, 725.5, 725.9

725.11 Repealed by 65GA, ch 1267,§11.

725.12 Exhibition of deformed or abnormal persons. Any person, firm, or corporation who shall exhibit, place on exhibition, or cause to be exhibited in any public place in the state, or in any tent, shed, booth, building, or in any theater, hall, or within any enclosure in the state, any deformed, maimed, idotic, or abnormal person or human monstrosity, and receive any fee or compensation therefor, shall be deemed guilty of a misdemeanor and upon conviction shall pay a fine of not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail for a term not less than ten days nor more than thirty days, or be punished by both such fine and imprisonment. [S13,§4975-1a; C24, 27, 31, 35, 39,§**13197**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§725.12]

CHAPTER 726

GAMBLING

Possession of gambling devices—licenses revoked, ch 99A

Referred to in §99B.15

726.1 Keeping gambling houses.
726.2 "Keeper" defined.
726.3 Gaming and betting—penalty.
726.4 Wagers—forfeiture.
726.5 Possession of gambling devices prohibited.
726.6 Pool selling—places used for.
726.7 Bullfights and other contests.
726.8 Lotteries and lottery tickets—definition.
726.9 Minors in billiard rooms — duty of owner.
726.10 Punishment.
726.11 Exceptions.
726.12 and 726.13 Repealed by 66GA, ch 99,§25.
726.14 Penalty.
726.15 Protection money prohibited.
726.16 Collection service prohibited.

726.1 Keeping gambling houses. Any person who keeps a house, shop, or place resorted to for the purpose of gambling, or permits any person in any house, shop, or other place under his control or care to conduct bookmaking or to play at cards, dice, faro, roulette, equality, punchboard, slot machine or other game for money or other thing, commits a misdemeanor. [C51,§2721; R60,§4363; C73, §4026; C97,§4962; C24, 27, 31, 35, 39,§**13198**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§726.1; 66GA, ch 99, §18]

Referred to in §§726.2, 726.11
C97,§4962, editorially divided
Punishment, §687.7

726.2 "Keeper" defined. In a prosecution under section 726.1, any person who has the charge of or attends to any such house, shop, or place is the keeper thereof. [C51,§2721; R60,§4363; C73,§4026; C97,§4962; C24, 27, 31, 35, 39,§**13199**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§726.2]

Referred to in §726.11

726.3 Gaming and betting—penalty. Any person who participates in any game for any sum of money or other property of any value, or who makes any bet or wager for money or other property of value, or who engages in bookmaking commits a misdemeanor. [C51, §2723; R60,§4365; C73,§4028; C97,§4964; C24, 27, 31, 35, 39,§**13202**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §726.3; 66GA, ch 99,§19]

Referred to in §726.11
Punishment, §687.7

726.4 Wagers—forfeiture. Property, whether real or personal, offered as a stake, or any moneys, property, or other thing of value staked, paid, bet, wagered, laid, or deposited in connection with or as a part of any game of chance, lottery, gambling scheme or device, gift enterprise, or other trade scheme unlawful under the laws of this state shall be forfeited to the state and said personal property may be seized and disposed of under chapter 751. [C24, 27, 31, 35, 39,§**13203**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§726.4]

Referred to in §§726.11, 751.3

726.5 Possession of gambling devices prohibited. No one shall, in any manner or for any purpose whatever, except under proceeding to destroy the same, have, keep, or hold in possession or control any gambling device. The term "gambling device" means and includes every device used or adapted or designed to be used for gambling. Roulette wheels, klondike tables, punchboards, faro layouts, keno layouts, numbers tickets, slot machines, pinball machines, push cards, jar tickets and pull-tabs are gambling devices per se. The term "gambling device" does not include any device regularly manufactured and offered for sale and sold as a toy, except that any use of such a device for gambling purposes constitutes unlawful gambling. [S13, §4965-a; C24, 27, 31, 35, 39,§**13210**; C46, 50, 54, 58, 62, 66, 71, 73,§726.5; 66GA, ch 99,§20]

Referred to in §§99A.1, 99B.18, 726.11, 751.3
See ch 99A

726.6 Pool selling — places used for. Any person who records or registers bets or wagers or sells pools upon the result of any trial or contest of skill, speed, or power of endurance of man or beast, or upon the result of any political nomination or election, and any person who keeps a place for the purpose of doing any such thing, and any owner, lessee, or occupant of any premises, who knowingly permits the same, or any part thereof, to be used for any such purpose, and anyone who, as custodian or depositary thereof, for hire or reward, receives any money, property, or thing of value staked, wagered, or bet upon any such result, shall be fined not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year, or both. [C97,§4966; C24, 27, 31, 35, 39,§**13216**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§726.6]

Referred to in §§99.1, 726.11

726.7 Bullfights and other contests. If any person keep or use, or in any way be connected with, or be interested in the management of, or receive money for the admission of any person to, any place kept or used for the purpose of fighting or baiting any bull, bear, dog, cock, or other creature, or engage in, aid, abet, encourage, or assist in any bull, bear, dog, or cock fight, or a fight between any other

creatures, he shall be guilty of a misdemeanor. [C73,§4033; C97,§4971; C24, 27, 31, 35, 39,§**13217**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§726.7]

Referred to in §99B.11
Punishment, §687.7

726.8 Lotteries and lottery tickets—definition. If any person make or aid in making or establishing, or advertise or make public any scheme for any lottery; or advertise, offer for sale, sell, negotiate, dispose of, purchase, or receive any ticket or part of a ticket in any lottery or number thereof; or have in his possession any ticket, part of a ticket, or paper purporting to be the number of any ticket of any lottery, with intent to sell or dispose of the same on his own account or as the agent of another, the person commits a misdemeanor.

When used in this section, lottery shall mean any scheme, arrangement, or plan whereby a prize is awarded by chance or any process involving a substantial element of chance to a participant who has paid or furnished a consideration for such chance.

For the purpose of determining the existence of a lottery under this section, a consideration shall be deemed to have been paid or furnished only in such cases where as a direct or indirect requirement or condition of obtaining a chance to win a prize, the participants are required to make an expenditure of money or something of monetary value through a purchase, payment of an entry or admission fee, or other payment or the participants are required to make a substantial expenditure of effort; provided, however, that no substantial expenditure of effort shall be deemed to have been expended by any participant solely by reason of the registration of the participant's name, address, and related information, the obtaining of an entry blank or participation sheet, by permitting or taking part in a demonstration of any article or commodity, by making a personal examination of posted lists of prize winners, or by acts of a comparable nature, whether performed or accomplished in person at any store, place of business, or other designated location, through the mails, or by telephone; and further provided, that no participant shall be required to be present in person or by representative at any designated location at the time of the determination of the winner of the prize, and that the winner shall be notified either by the same method used to communicate the offering of the prize or by regular mail. [C51,§2730; R60,§4377; C73,§4043; C97,§5000; C24, 27, 31, 35, 39,§**13218**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§726.8; 66GA, ch 99,§21]

Referred to in §726.11
Punishment, §687.7

726.9 Minors in billiard rooms — duty of owner. No person who keeps a billiard hall where beer is sold, or the agent, clerk, or servant of any such person, or any person having charge or control of any such hall, shall permit any minor to remain in such hall, or to take part in any of the games known as billiards. The council in any city shall have power by ordinance to establish minimum age limits for minors for the purpose of regulating their admittance to billiard halls which do not sell beer and their participation while therein in the games known as pool and billiards. [C97,§5002; C24, 27, 31, 35, 39,§**13219**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§726.9]

Referred to in §726.10
C97,§5002, editorially divided

726.10 Punishment. A violation of the provisions of section 726.9 shall be punished by a fine not less than five nor exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days. [C97,§5002; C24, 27, 31, 35, 39,§**13220**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§726.10]

726.11 Exceptions. Sections 726.1 to 726.6, and section 726.8 shall not apply to any game, activity or device when lawfully possessed, used, conducted or participated in pursuant to chapter 99B. [C75,§726.11; 66GA, ch 99,§22]

726.12 and 726.13 Repealed by 66GA, ch 99, §25.

726.14 Penalty. A person who commits an offense declared in this chapter or chapter 99B to be a misdemeanor shall be subject to imprisonment in the county jail for a period not exceeding one year, or to a fine not exceeding one thousand dollars, or to both fine and imprisonment. [C51,§§2721, 2730; R60,§§4363, 4377; C73, §§4026, 4043; C97,§4962, 5000; C24, 27, 31, 35, 39,§§**13198, 13218**; C46, 50, 54, 58, 62, 66, 71, 73,§§726.1, 726.8; C75,§§99B.9, 726.1, 726.8; 66GA, ch 99,§23]

726.15 Protection money prohibited. Any officer or employee of this state, or of a county, city, or judicial district who asks for, receives or collects any money or other consideration for and with the understanding that the officer or employee will aid, exempt, or otherwise protect another person from detection, arrest or conviction of any violation of this chapter or chapter 99B commits a felony punishable by a fine not to exceed five thousand dollars or by imprisonment for a term not to exceed two years, or by both fine and imprisonment. [66GA, ch 99,§24]

726.16 Collection service prohibited. Any person who knowingly offers, gives or sells his or her services for use in collecting or enforcing any debt arising from gambling, whether or not lawful gambling, commits a felony, punishable by a fine not to exceed five thousand dollars or by imprisonment for a term not to exceed two years, or by both fine and imprisonment. [66GA, ch 99,§24]

CHAPTER 727

AFFRAYS

727.1 "Affray" defined and punished.
727.2 to 727.5 Repealed by 63GA, ch 1279,§10.

727.1 "Affray" defined and punished. If two or more persons voluntarily or by agreement engage in any fight, or use any blows or violence towards each other in an angry or quarrelsome manner, in any public place, to the disturbance of others, they are guilty of an affray, and shall be imprisoned in the county jail not exceeding thirty days, or be fined not exceeding one hundred dollars. [C51,§2738; R60,§4386; C73,§4065; C97,§5029; C24, 27, 31, 35, 39,§13221; C46, 50, 54, 58, 62, 66, 71, 73, 75, §727.1]

727.2 to 727.5 Repealed by 63GA, ch 1279, §10.

CHAPTER 727A

PROFESSIONAL BOXING AND WRESTLING

727A.1 Definition.
727A.2 State commissioner.
727A.3 Secretary.
727A.4 License.
727A.5 Application for license.
727A.6 Required conditions.
727A.7 Written report filed.
727A.8 Bond required.
727A.9 Failure to report—penalty.

727A.1 Definition. As used in this chapter, "boxing or wrestling match" means a boxing, wrestling, or sparring contest or exhibition open to the public for which the principals or contestants are paid for their participation. [C71, 73, 75,§727A.1]

727A.2 State commissioner. There is hereby created a state commissioner of athletics to be appointed by the governor. The commissioner shall serve at the pleasure of the governor, and shall serve until his successor is appointed and qualified. The commissioner shall receive such compensation and expenses as may be approved by the governor. [C71, 73, 75,§727A.2]

727A.3 Secretary. The commissioner shall appoint a secretary, who shall keep a full and true record of all proceedings, and who shall perform such other duties as the commissioner may prescribe. Under the direction of the commissioner the secretary shall issue subpoenas for the attendance of witnesses before the commissioner and may administer oaths in all matters pertaining to the duties of the commissioner. The traveling and other necessary expenses, including the salary of the secretary, shall be determined by the commissioner. [C71, 73, 75,§727A.3]

727A.4 License. No boxing or wrestling match shall be held within this state except as provided in this chapter. The commissioner may issue, suspend or revoke a license to conduct boxing and wrestling matches except that a person shall not be issued a license unless he has been a resident of this state for at least three years immediately preceding the date of application, and no group, club or association shall be issued a license unless it has at least ten members and all members shall have been residents of this state for at least one year immediately preceding the date of application, and no corporation shall be issued a license unless it has at least ten members or stockholders and all such members or stockholders shall have been residents of the state for at least one year immediately preceding the date of application. However, a license may be issued to residents of another state without complying with the residence requirements of this section if the other state extends the same privilege to residents of this state. Nothing in this chapter shall be construed to prohibit amateur boxing or wrestling exhibitions. Every license shall be subject to such rules as the commissioner may prescribe. [C71, 73, 75,§727A.4]

727A.5 Application for license. Every application for a license to conduct a boxing or wrestling match shall be in writing and shall be verified. It shall contain a recital of such facts as will show the applicant entitled to receive a license, and in addition such other facts as the commissioner may by rules require. [C71, 73, 75,§727A.5]

727A.6 Required conditions. A boxing match shall be not more than fifteen rounds in length; and the contestants shall wear gloves weighing at least six ounces during such contests. No person may take part in a boxing match unless they have first passed a

rigorous physical examination to determine their fitness to engage in any such match. Said examination shall be conducted by a regular practicing physician designated by the commissioner. [C71, 73, 75,§727A.6]

727A.7 Written report filed. Every person conducting a boxing or wrestling match in this state shall, within twenty-four hours after such match, furnish to the commissioner a written report, duly verified, showing the number of tickets sold for such boxing or wrestling match, and the amount of gross proceeds thereof, and such other matters as the commissioner may prescribe; and shall also within the said time pay to the treasurer of state a tax of five percent of its total gross receipts, after deducting any federal admission tax, from the sale of tickets of admission to such boxing or wrestling match. [C71, 73, 75,§727A.7]

727A.8 Bond required. Before any license shall be granted to any person to conduct any boxing or wrestling match, such applicant therefor shall execute and file with the treasurer of state a bond in the sum of five thousand dollars, payable to the state of Iowa, to be approved as to form by the attorney general, and as to sufficiency of the sureties thereon, by the commissioner, which bond shall be conditioned upon the payment of the tax and penalties imposed by this chapter. Upon the filing and approval of such bond, the commissioner may issue to such applicant a license as herein provided. [C71, 73, 75,§727A.8]

Referred to in §727A.9

727A.9 Failure to report—penalty. If any person fails to make a report of any match within the time prescribed by this chapter, or whenever such report is unsatisfactory to the commissioner, the commissioner may examine or cause to be examined the books and records of such person, and subpoena and examine under oath witnesses, for the purpose of determining the total amount of the gross receipts for any match and the amount of tax due pursuant to the provisions of this chapter. The commissioner may, as the result of such examination, fix and determine the tax, and may also assess the licensee the reasonable cost of conducting the examination. If any person defaults in the payment of any tax due or the costs incurred in making such examination, such person shall forfeit to the state of Iowa the sum of five thousand dollars, which may be recovered by the attorney general from the sureties of the bond required by section 727A.8. [C71, 73, 75,§727A.9]

CHAPTER 728

PROFANITY

728.1 Using blasphemous or obscene language.

728.1 Using blasphemous or obscene language. If any person publicly use blasphemous or obscene language, to the disturbance of the public peace and quiet, he shall be imprisoned in the county jail not exceeding thirty days, or be fined not exceeding one hundred dollars. [C97,§5034; S13,§5034; C24, 27, 31, 35, 39,§13226; C46, 50, 54, 58, 62, 66, 71, 73, 75, §728.1]

CHAPTER 729

CRIMINAL TRESPASS

729.1 Criminal trespass.
729.2 Penalty.
729.3 Damage or injury.

729.1 Criminal trespass. Definitions:

1. The term "property" shall include any land, dwelling, building, conveyance, vehicle, or other temporary or permanent structure whether publicly or privately owned.

2. The term "trespass" shall mean one or more of the following acts.

a. Entering upon or in property without legal justification or without the implied or actual permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense or to use, remove therefrom, alter, damage, harass, or place thereon or therein anything animate or inanimate, without the implied or actual permission of the owner, lessee, or person in lawful possession.

b. Entering or remaining upon or in property without legal justification after being notified or requested to abstain from entering

or to remove or vacate therefrom by the owner, lessee, or person in lawful possession, or the agent or employee of the owner, lessee, or person in lawful possession, or by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of the property.

c. Entering upon or in property for the purpose or with the effect of unduly interfering with the lawful use of the property by others.

d. Being upon or in property and using, removing therefrom, altering, damaging, harassing, or placing thereon or therein anything animate or inanimate, without the implied or actual permission of the owner, lessee, or person in lawful possession. [C97,§4793; C24, 27, 31, 35, 39,§**13374**; C46, 50, 54, 58, 62, 66, 71, §746.4; C73, 75,§729.1]

Referred to in §729.3

729.2 Penalty. Any person who shall knowingly trespass upon the property of another is guilty of a public offense and upon conviction shall be punished by a fine not to exceed one hundred dollars or by imprisonment in the county jail for a term not to exceed thirty days. [C73, 75,§729.2]

729.3 Damage or injury. Any person committing a trespass as defined in section 729.1 resulting in injury to any person or damage in an amount of more than one hundred dollars to anything, animate or inanimate, located thereon or therein shall be punished by a fine not to exceed three hundred dollars or by imprisonment in the county jail not to exceed six months or by both such fine and imprisonment. [C73, 75,§729.3]

CHAPTER 730
DESECRATION OF DECORATION DAY

Repealed by 62GA, ch 418,§1

CHAPTER 731
DESERTION AND ABANDONMENT OF WIFE AND CHILDREN

Referred to in §§252B.7, 675.29

731.1 "Desertion" defined.
731.2 Husband or wife may be witness.
731.3 Release on bond conditioned on support.
731.4 Annulment of bond.
731.5 Failure of undertaking—commitment—release.
731.6 Prima-facie evidence.
731.7 Exposing and abandoning child.

731.1 "Desertion" defined. Every person who shall, without good cause, willfully neglect or refuse to maintain or provide for his wife, she being in a destitute condition, or who shall, without good cause, abandon his or her legitimate or legally adopted child or children under the age of sixteen years, leaving such child or children in a destitute condition, or shall, without good cause, willfully neglect or refuse to provide for such child or children, they being in a destitute condition, shall be deemed guilty of desertion and, upon conviction, shall be punished by imprisonment in the penitentiary for not more than one year, or by imprisonment in the county jail for not more than six months. [S13,§4775-a; C24, 27, 31, 35, 39,§**13230**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§731.1]

731.2 Husband or wife may be witness. In all prosecutions under this chapter, the husband or wife shall be a competent witness for the state and may testify to any relevant acts or communications between them, anything in previous statutes to the contrary notwithstanding, provided, however, that no husband or wife shall be called or compelled to testify against the other under this chapter except upon consent of such witness. [S13,§4775-b; C24, 27, 31, 35, 39,§**13231**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§731.2]

General prohibition, §622.7

731.3 Release on bond conditioned on support. If after arrest and before trial, or after conviction and before sentence, the party so arrested or convicted shall appear before the court in which the case is pending or the conviction had, and enter into a bond to the state in a sum to be fixed by the court, which in no event shall exceed the sum of one thousand dollars, with or without sureties as may be determined by the court, conditioned that such husband will furnish said wife with a necessary and proper home, food, care, and clothing, or that such parent will furnish his or her child or children with a necessary and proper home, food, care, and clothing, then said court may release the defendant. [S13,§4775-c; C24, 27, 31, 35, 39,§**13232**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§731.3]

S13,§4775-c, editorially divided

731.4 Annulment of bond. Said bond shall remain in force so long as the court deems the same necessary; and whenever it shall appear to said court by affidavit or otherwise that such husband or parent is in good faith furnishing his wife, child, or children with the necessary and proper home, food, care, and clothing, the court may annul the said bond. [S13,§4775-c; C24, 27, 31, 35, 39,§**13233**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§731.4]

731.5 Failure of undertaking—commitment —release. Upon failure of said husband or parent to comply with his undertaking he or she may be arrested by the sheriff or other officer upon a warrant issued from the court in which the case is pending or the conviction was had and the court may thereupon order a forfeiture of the undertaking and that the defendant be tried or committed in execution of the sentence, or for good cause shown may release the defendant upon a new undertaking. [S13,§4775-d; C24, 27, 31, 35, 39,§**13234**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§731.5]

731.6 Prima-facie evidence. Proof of the desertion of wife, child, or children in destitute or necessitous circumstances or of neglect to furnish such wife, child, or children necessary and proper food, clothing, or shelter, shall be prima-facie evidence that such desertion or neglect was willful. [S13,§4775-e; C24, 27, 31, 35, 39,§**13235**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§731.6]

731.7 Exposing and abandoning child. If the father or mother of any child under the age of six years, or any person to whom such child has been entrusted or confided, expose such child in any highway, street, field, house, or outhouse, or in any other place, with intent wholly to abandon it, he or she, upon conviction thereof, shall be imprisoned in the penitentiary not exceeding five years. [C51,§2589; R60,§4212; C73,§3870; C97,§4766; C24, 27, 31, 35, 39,§**13236**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§731.7]

CHAPTER 731A

WANTON NEGLECT OF CHILDREN

731A.1 Wanton neglect unlawful.
731A.2 Definition.
731A.3 Punishment.
731A.4 Jurisdiction and appeal.

731A.1 Wanton neglect unlawful. Wanton neglect on the part of a parent in the care or supervision of his or her child under the age of eighteen years shall be unlawful. [C50, 54, 58, 62, 66, 71, 73, 75,§731A.1]

Referred to in §§731A.2, 731A.3

731A.2 Definition. "Wanton neglect" as contemplated by section 731A.1 is willful neglect of such a nature, arising under such circumstances as a parent of ordinary intelligence actuated by normal and natural concern for the welfare of the child would not permit or be a party to. [C50, 54, 58, 62, 66, 71, 73, 75,§731A.2]

731A.3 Punishment. A violation of section 731A.1 shall be punishable by a fine of not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days. [C50, 54, 58, 62, 66, 71, 73, 75,§731A.3]

731A.4 Jurisdiction and appeal. Juvenile courts shall have jurisdiction in the prosecution of the offense set forth herein, though the defendant or defendants in such actions be adults. Said proceedings in juvenile court shall be commenced by filing a sworn complaint or information and the matter shall be tried summarily and without a jury. Provided, however, that prior to the filing of such complaint or information the probation officer for the territory in question, or the county attorney, shall make such investigation as he may deem necessary, and no such complaint or information shall be filed without the approval of such probation officer or county attorney, except by order of a judge of the juvenile court. Any defendant convicted upon such trial shall have the right of appeal and trial de novo, including the right of trial by jury before a district judge. [C50, 54, 58, 62, 66, 71, 73, 75,§731A.4]

CHAPTER 732

PUBLIC HEALTH AND SAFETY

732.1 Spreading infectious disease.
732.2 Putting infected person on public conveyance.
732.3 Throwing dead animals or refuse in stream.
732.4 Selling drugged liquors.

732.5 Repealed by 62GA, ch 419,§1.
732.6 Use of dangerous fluids forbidden.
732.7 Punishment.
732.8 Depositing samples on porches.
732.9 Punishment.
732.10 Stench bombs, etc., prohibited.
732.11 Manufacture or possession.
732.12 General exceptions.
732.13 Specific exceptions.
732.14 Punishment.
732.15 and 732.16 Repealed by 64GA, ch 1131, §1.

FIREWORKS
732.17 Definitions.
732.18 Supervised exhibitions—permit.
732.19 Penalties.

ABANDONED REFRIGERATORS
732.20 Nuisance declared.
732.21 Offense defined.
732.22 Owner or occupant of premises also liable.
732.23 Penalty.
732.24 Fitting shoes by fluoroscope prohibited.
732.25 Pay Toilets.

732.1 Spreading infectious disease. If any person inoculate himself or any other person or suffer himself to be inoculated with the smallpox within the state, or come within the state with the intent to cause the prevalence or spread of this infectious disease, he shall be imprisoned in the penitentiary not more than three years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not exceeding one year. [C51,§2729; R60, §4375; C73,§4039; C97,§4977; C24, 27, 31, 35, 39, §**13237**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§732.1]

732.2 Putting infected person on public conveyance. If any person shall place or put, or aid or abet in placing or putting, any person upon any railroad car, steamboat, or other public conveyance, knowing such person to be infected with diphtheria, smallpox, or scarlet fever, he shall be fined not more than one hundred dollars, or be imprisoned in the county jail not more than thirty days. [C51,§2729; R60,§4375; C73,§4039; C97,§4978; C24, 27, 31, 35, 39,§**13238**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§732.2]

732.3 Throwing dead animals or refuse in stream. If any person throw, or cause to be thrown, any dead animal, night soil, or garbage into any river, well, spring, cistern, reservoir, stream, or pond, or in or upon any land adjoining, which is subject to overflow, he shall be imprisoned in the county jail not less than ten nor more than thirty days, or be fined not less than five nor more than one hundred dollars. [C73,§4041; C97,§4979; S13, §4979; C24, 27, 31, 35, 39,§**13239**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§732.3]

732.4 Selling drugged liquors. If any person willfully sell or keep for sale intoxicating, malt, or vinous liquors, which have been adulterated or drugged by admixture with any deleterious or poisonous substance, he shall be fined not exceeding five hundred dollars, or be imprisoned in the penitentiary not exceeding two years. [R60,§4376; C73,§4040; C97,§4980; C24, 27, 31, 35, 39,§**13240**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§732.4]

Related provision, §690.11

732.5 Repealed by 62GA, ch 419,§1.

732.6 Use of dangerous fluids forbidden. It shall be unlawful for any person to establish or operate any dye works, pantorium, or cleaning works, in which gasoline, benzine, naphtha, or other explosive or dangerous fluids are used for the purpose of cleaning or renovating wearing apparel or other fabrics, in any building any part of which is used as a residence or lodging house. [S13,§4999-a13; C24, 27, 31, 35, 39,§**13242**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§732.6]

Referred to in §732.7

732.7 Punishment. Any person convicted of violating the provisions of section 732.6 shall be fined in a sum not exceeding fifty nor less than ten dollars. [S13,§4999-a14; C24, 27, 31, 35, 39,§**13243**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§732.7]

732.8 Depositing samples on porches. It shall be unlawful for any person, firm, company, or corporation, either in person or by agent, to deposit any sample of any drugs or medicine or any controlled substance, as defined in section 204.101, subsection 6, upon any porch, lawns, in any vehicle, or any other place where such drugs or medicine or controlled substances might be picked up by children or other persons. [S13,§4999-a42; C24, 27, 31, 35, 39,§**13244**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§732.8]

Referred to in §732.9

732.9 Punishment. Any person, firm, company, corporation, or agent thereof violating the provisions of section 732.8, shall be guilty of a misdemeanor. [S13,§4999-a43; C24, 27, 31, 35, 39,§**13245**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §732.9]

Punishment, §687.7

732.10 Stench bombs, etc., prohibited. It shall be unlawful to throw, drop, pour, explode, deposit, release, discharge, or expose, or to attempt to throw, drop, pour, explode, deposit, release, discharge, or expose in, upon, or about any theater, restaurant, car, vessel, structure, place of business, place of amusement, or any place of public assemblage, any stench bomb, tear bomb, liyuid, gaseous, or solid substance or matter of any kind which is injurious to person or property, or is nauseous, sickening, irritating, or offensive to any of the senses. [C35,§13245-e1; C39,§**13245.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§732.10]

Referred to in §§732.12, 732.14

732.11 Manufacture or possession. It shall be unlawful to manufacture or prepare, or to

possess any stench bomb, tear bomb, liquid, gaseous, or solid substance or matter of any kind which is injurious to person or property, or is nauseous, sickening, irritating, or offensive, to any of the senses with intent to throw, drop, pour, explode, deposit, release, discharge, or expose the same in, upon, or about any theater, restaurant, car, vessel, structure, place of business, place of amusement, or any other place of public assemblage. [C35,§13245-e2; C39, §**13245.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §732.11]

Referred to in §§732.12, 732.13, 732.14

732.12 General exceptions. The provisions of sections 732.10 to 732.14, inclusive, shall not apply to any duly constituted police or military authorities or prison officials or peace officers in the discharge of their duties. [C35, §13245-e3; C39,§**13245.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§732.12]

Referred to in §732.14

732.13 Specific exceptions. The provisions of section 732.11 shall not apply to licensed physicians, nurses, pharmaceutists, and other persons licensed under the laws of this state; nor to any established place of business or home having tear gas installed as a protection against burglary, robbery, or holdup, nor to any bank or other messenger carrying funds or other valuables; nor to any manufacturer or representative thereof who maintains a permanent place of business in this state for the purpose of manufacturing and/or selling tear gas and tear-gas equipment for such protection, or of supplying tear gas and equipment therefor to regularly constituted peace officers. [C35, §13245-e4; C39,§**13245.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§732.13]

Referred to in §§732.12, 732.14

732.14 Punishment. Every person violating any of the provisions of sections 732.10 to 732.14, inclusive, shall be punishable by imprisonment in the county jail for not less than three months and not more than one year, or by a fine of not less than five hundred dollars and not more than two thousand dollars, or by both such fine and imprisonment. [C35,§13245-e5; C39,§**13245.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§732.14]

Referred to in §732.12

732.15 and 732.16 Repealed by 64GA, ch 1131,§1.

FIREWORKS

732.17 Definitions. The term "fireworks" shall mean and include any explosive composition, or combination of explosive substances, or article prepared for the purpose of producing a visible audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, roman candles, daygo bombs, or other fireworks of like construction and any fireworks containing any explosive or inflammable compound, or other device containing any explosive substance. The term "fireworks" shall not include gold-star-producing sparklers on wires which contain no magnesium or chlorate or perchlorate, nor flitter sparklers in paper tubes that do not exceed one-eighth of an inch in diameter, nor toy snakes which contain no mercury. [C39, §**13245.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §732.17]

Referred to in §§101A.1, 732.18, 732.19
See also §§111.42, 695.27

732.18 Supervised exhibitions—permit. Except as hereinafter provided it shall be unlawful for any person, firm, copartnership, or corporation to offer for sale, expose for sale, sell at retail, or use or explode any fireworks; provided the council of any city or the trustees of any township may, upon application in writing, grant a permit for the display of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals approved by such city or township authorities when such fireworks display will be handled by a competent operator but no such permit shall be required for such display of fireworks at the Iowa state fairgrounds by the Iowa state fair board nor of incorporated county fairs nor of district fairs receiving state aid. After such privilege shall have been granted sales of fireworks for such display may be made for that purpose only; provided further, that nothing in sections 732.17 to 732.19, inclusive, shall be construed to prohibit any resident, dealer, manufacturer, or jobber from selling such fireworks as are not herein prohibited; or the sale of any kind of fireworks provided the same are to be shipped out of the state; or the sale or use of blank cartridges for a show or theater, or for signal purposes in athletic sports or by railroads, trucks, for signal purposes, or by a recognized military organization; and provided further that nothing in said sections shall apply to any substance or composition prepared and sold for medicinal or fumigation purposes. [C39,§**13245.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§732.18]

Referred to in §§101A.1, 732.19
See also §§111.42, 695.27

732.19 Penalties. Any person, firm, copartnership, or corporation violating the provisions of sections 732.17 and 732.18 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding ninety days, or by both such fine and imprisonment. [C39,§**13245.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§732.19]

Referred to in §§101A.1, 732.18

ABANDONED REFRIGERATORS

732.20 Nuisance declared. Discarded, abandoned, unattended, or used refrigerators, iceboxes and similar containers with doors that may become locked, located or allowed to be

located on premises outside buildings or residences and accessible to children, are hereby declared to be dangerous and to constitute a public nuisance and a serious menace to life. [C58, 62, 66, 71, 73, 75,§732.20]

Referred to in §732.23

732.21 Offense defined. It shall be unlawful for any person, firm, copartnership, or corporation to place or allow to be placed outside any building or dwelling, or within any unoccupied or abandoned building, dwelling or other structure under his or its control, in a location accessible to children any discarded, abandoned, unattended, or used refrigerators, icebox or other similar container equipped with an airtight door or lid, snap lock or other locking device which may not be released from the inside without first removing said door or lid, snap lock or other locking device from said icebox, refrigerator or similar container. [C58, 62, 66, 71, 73, 75,§732.21]

Referred to in §732.23

732.22 Owner or occupant of premises also liable. The duties of this chapter are imposed alike on the owner of the refrigerator, icebox or similar container and the owner or occupant of premises where the icebox, refrigerator or similar container is permitted to remain. [C58, 62, 66, 71, 73, 75,§732.22]

Referred to in §732.23

732.23 Penalty. Any person, firm, copartnership, or corporation violating any of the provisions of sections 732.20 to 732.22, inclusive, shall be guilty of a misdemeanor, and upon conviction thereof, be fined in a sum not to exceed one hundred dollars, or imprisoned in the county jail for a period not to exceed thirty days, and each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. [C58, 62, 66, 71, 73, 75,§732.23]

732.24 Fitting shoes by fluoroscope prohibited. Whoever uses, possesses or controls, with intent to so use, any fluoroscopic or X-ray machine for the purpose of shoe fitting or attempting to fit shoes, or knowingly permits such machine, whether or not in use, to remain on his premises, shall be punished by a fine of not more than two hundred dollars or by imprisonment in the county jail for not more than sixty days or by both such fine and imprisonment. Each day of such use, possession or control shall constitute a separate violation of this section. [C62, 66, 71, 73, 75, §732.24]

732.25 Pay toilets. No person shall make a charge or require any special device, key or slug for the use of a toilet located in a room provided for use of the public. Violation of this section is a misdemeanor.* [C24, 27, 31, 35, 39,§2839; C46, 50, 54, 58, 62, 66, 71, 73, 75, §170.34; 66GA, ch 1242,§1]

*Punishment, §687.7

CHAPTER 733

DISEASED PLANTS

Repealed by 66GA, ch 1056,§45

CHAPTER 734

DESTRUCTION OF FOOD PRODUCTS

734.1 Waste of food products to increase price. 734.2 Punishment.

734.1 Waste of food products to increase price. It shall be unlawful for any person, firm, or corporation to willfully destroy, or negligently suffer to go to waste, with intent to increase the price thereof, any food products of any nature or description, without the authority or consent of the local board of health in whose jurisdiction the food products are located. [C24, 27, 31, 35, 39,§13249; C46, 50, 54, 58, 62, 66, 71, 73, 75,§734.1]

Referred to in §734.2

734.2 Punishment. Any person, firm, or corporation violating any of the provisions of section 734.1 shall be guilty of a misdemeanor, and, upon conviction, shall pay a fine in a sum not more than one thousand dollars, or be imprisoned for any length of time not exceeding one year, or be punished by both such fine and imprisonment. [C24, 27, 31, 35, 39,§13250; C46, 50, 54, 58, 62, 66, 71, 73, 75,§734.2]

CHAPTER 735

INFRINGEMENT OF CIVIL RIGHTS

See also 601A

735.1 and 735.2 Repealed by 61GA, ch 121,§14.
735.3 Religious test.
735.4 Evidence.
735.5 Penalty.
735.6 Fair employment practices.

735.1 and 735.2 Repealed by 61GA, ch 121, §14.

735.3 Religious test. Any violation of section 4, Article I of the Constitution of Iowa is hereby declared to be a misdemeanor. [C35, §13252-f1; C39,§**13252.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§735.3]

Referred to in §§735.4, 735.5

735.4 Evidence. If any person, agency, bureau, corporation, or association employed or maintained to obtain, or aid in obtaining, positions for others in the public schools, or positions in any other public institutions in the state, or any individual or official connected with any public school or public institution shall ask, indicate, or transmit orally or in writing the religion or religious affiliations of any person seeking employment in the public schools or any other public institutions, it shall constitute evidence of a violation of section 735.3. [C35,§13252-f2; C39,§**13252.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§735.4]

Referred to in §735.5

735.5 Penalty. Any person, agency, bureau, corporation, or association that violates provisions of sections 735.3 and 735.4 shall be guilty of a misdemeanor and upon conviction be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned not more than thirty days, or by both such fine and imprisonment. [C35,§13252-f3; C39,§**13252.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§735.5]

735.6 Fair employment practices.

1. Every person in this state is entitled to the opportunity for employment on equal terms with every other person. It shall be unlawful for any person or employer to discriminate in the employment of individuals because of race, religion, color, national origin or ancestry. However, as to employment such individual must be qualified to perform the services or work required.

2. It shall be unlawful for any labor union or organization or an officer thereof to discriminate against any person as to membership therein because of race, religion, color, national origin or ancestry.

3. Any person, employer, labor union or organization or officer of a labor union or organization convicted of a violation of subsections 1 or 2 shall be punished by a fine not to exceed one hundred dollars or imprisonment in the county jail not to exceed thirty days. [C66, 71, 73, 75,§735.6]

CHAPTER 736

BLACKLISTING EMPLOYEES

736.1 Punishment.
736.2 Blacklisting employees—treble damages.
736.3 False charges concerning honesty.

736.1 Punishment. If any person, agent, company, or corporation, after having discharged any employee from his or its service, shall prevent or attempt to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, company, or corporation, except by furnishing in writing on request a truthful statement as to the cause of his discharge, such person, agent, company, or corporation shall be punished by a fine not exceeding five hundred nor less than one hundred dollars, and shall be liable for all damages sustained by any such person. [C97,§5027; C24, 27, 31, 35, 39,§**13253**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§736.1]

Referred to in §736.2

736.2 Blacklisting employees — treble damages. If any railway company or other company, partnership, or corporation shall authorize or allow any of its or their agents to blacklist any discharged employee, or attempt by word or writing or any other means whatever to prevent such discharged employee, or any employee who may have voluntarily left said company's service, from obtaining employment with any other person or company, except as provided for in section 736.1, such company or copartnership shall be liable in treble damages to such employee so prevented from obtaining employment. [C97,§5028; C24, 27, 31, 35, 39,§**13254**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§736.2]

736.3 False charges concerning honesty. Every person who shall by any letter, mark, sign, or designation whatever, or by any verbal statement, falsely and without probable cause, report to any railroad or any other company or corporation, or to any person or firm, or to any of the officers, servants, agents, or employees of any such corporation, person, or firm, that any conductor, brakeman, engineer, fireman, station agent, or any employee of such railroad company, corporation, person, or firm has received any money or thing of value for the transportation of persons or property or for other service for which he has not accounted to such corporation, person, or firm, or shall falsely and without probable cause report that any conductor, brakeman, engineer, fireman, station agent, or other employee of any railroad company, corporation, firm, or person, neglected, failed, or refused to collect any money or ticket for transportation of persons or property or other service when it was their duty so to do, shall, on conviction, be adjudged guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars or be imprisoned in the county jail for a period not exceeding thirty days. [SS15, §5028-w1; C24, 27, 31, 35, 39,§13255; C46, 50, 54, 58, 62, 66, 71, 73, 75,§736.3]

CHAPTER 736A

LABOR UNION MEMBERSHIP

736A.1 Right to join union.
736A.2 Refusal to employ prohibited.
736A.3 Contracts to exclude unlawful.
736A.4 Union dues as prerequisite to employment—prohibited.
736A.5 Deducting dues from pay unlawful.
736A.6 Penalty.
736A.7 Injunction.
736A.8 Exception.

736A.1 Right to join union. It is declared to be the policy of the state of Iowa that no person within its boundaries shall be deprived of the right to work at his chosen occupation for any employer because of membership in, affiliation with, withdrawal or expulsion from, or refusal to join, any labor union, organization, or association, and any contract which contravenes this policy is illegal and void. [C50, 54, 58, 62, 66, 71, 73, 75,§736A.1]

736A.2 Refusal to employ prohibited. It shall be unlawful for any person, firm, association or corporation to refuse or deny employment to any person because of membership in, or affiliation with, or resignation or withdrawal from, a labor union, organization or association, or because of refusal to join or affiliate with a labor union, organization or association. [C50, 54, 58, 62, 66, 71, 73, 75, §736A.2]

736A.3 Contracts to exclude unlawful. It shall be unlawful for any person, firm, association, corporation or labor organization to enter into any understanding, contract, or agreement, whether written or oral, to exclude from employment members of a labor union, organization or association, or persons who do not belong to, or who refuse to join, a labor union, organization or association, or because of resignation or withdrawal therefrom. [C50, 54, 58, 62, 66, 71, 73, 75,§736A.3]

736A.4 Union dues as prerequisite to employment—prohibited. It shall be unlawful for any person, firm, association, labor organization or corporation, or political subdivision, either directly or indirectly, or in any manner or by any means as a prerequisite to or a condition of employment to require any person to pay dues, charges, fees, contributions, fines or assessments to any labor union, labor association or labor organization. [C50, 54, 58, 62, 66, 71, 73, 75,§736A.4]

736A.5 Deducting dues from pay unlawful. It shall be unlawful for any person, firm, association, labor organization or corporation to deduct labor organization dues, charges, fees, contributions, fines or assessments from an employee's earnings, wages or compensation, unless the employer has first been presented with an individual written order therefor signed by the employee, which written order shall be terminable at any time by the employee giving at least thirty days' written notice of such termination to the employer. [C50, 54, 58, 62, 66, 71, 73, 75,§736A.5]

736A.6 Penalty. Any person, firm, association, labor organization, or corporation or any director, officer, representative, agent or member thereof, who shall violate any of the provisions of this chapter or who shall aid and abet in such violation shall be deemed guilty of a misdemeanor. [C50, 54, 58, 62, 66, 71, 73, 75,§736A.6]

736A.7 Injunction. Additional to the penal provisions of this chapter, any person, firm, corporation, association, or any labor union, labor association or labor organization, or any officer, representative, agent or member thereof may be restrained by injunction from doing or continuing to do any of the matters and

tnings prohibited by this chapter, and all of the provisions of the law relating to the granting of restraining orders and injunctions, either temporary or permanent, shall be applicable. [C50, 54, 58, 62, 66, 71, 73, 75,§736A.7]

736A.8 Exception. The provisions of this chapter shall not apply to employers or employees covered by the federal Railroad Labor Act.* [C50, 54, 58, 62, 66, 71, 73, 75,§736A.8]

Constitutionality, 52GA, ch 296,§8
*45 USC §151 et seq.

CHAPTER 736B

LABOR BOYCOTTS AND STRIKES

736B.1 Contracting to boycott or strike in sympathy.
736B.2 Carrying out boycott or strike.
736B.3 Jurisdictional strike or slow-down.
736B.4 Penalty.
736B.5 Injunction.
736B.6 Hiring professional strikebreakers prohibited.

736B.1 Contracting to boycott or strike in sympathy. It shall be unlawful for any labor union, association or organization, or the officers, representatives, agents or members thereof, to enter into any contract, agreement, arrangement, combination or conspiracy for the purpose of, by strikes or threats of strikes, by violence or threats of violence, by coercion, or by concerted refusal to make, manufacture, assemble, or use, handle, transport, deliver or otherwise deal with any articles, products or materials:

1. To force or require any person, firm or corporation to cease using, selling, handling, transporting or dealing in the goods or products of any other person, firm or corporation, or

2. To force or require any person, firm or corporation to cease selling, transporting or delivering goods or products to any other person, firm or corporation, or

3. To force or require any employer other than their own employer to recognize, deal with, comply with the demands of, or employ members of any labor union, association or organization, or

4. To force or require any employer to break an existing collective bargaining agreement which such employer may have with any labor union, association or organization. [C50, 54, 58, 62, 66, 71, 73, 75,§736B.1]

Referred to in §§20.10, 736B.2

736B.2 Carrying out boycott or strike. It shall be unlawful for any labor union, association or organization, or the officers, representatives, agents, or a member or members thereof to carry out or attempt to carry out in this state any contract, agreement, arrangement, combination or conspiracy declared unlawful in section 736B.1. [C50, 54, 58, 62, 66, 71, 73, 75,§736B.2]

Referred to in §20.10

736B.3 Jurisdictional strike or slow-down. It shall be unlawful for any labor union, group, association or organization, or the officers, representatives, agents or members thereof, to cause a stoppage or slow-down of the work or a part of the work of an employer because of a dispute between labor unions, groups, associations or organizations, or the officers, representatives, agents or members thereof, with respect to jurisdiction over, or the right to do the work or a part of the work of such employer. [C50, 54, 58, 62, 66, 71, 73, 75,§736B.3]

Referred to in §20.10

736B.4 Penalty. Any person, or any labor union, labor association or labor organization or any officer, representative, agent or member thereof who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for a period of not more than thirty days. [C50, 54, 58, 62, 66, 71, 73, 75, §736B.4]

736B.5 Injunction. Additionally to the penal provisions of this chapter, any person, or any labor union, labor association or labor organization or any officer, representative, agent or member thereof may be restrained by injunction from doing or continuing to do any of the matters and things prohibited by this chapter, and all of the provisions of the law relating to the granting of restraining orders and injunctions, either temporary or permanent, shall be applicable. [C50, 54, 58, 62, 66, 71, 73, 75,§736B.5]

Constitutionality, 52GA, ch 297,§6

736B.6 Hiring professional strikebreakers prohibited. It shall be unlawful for any person, persons, partnership, agency, firm, or corporation, or agent thereof:

1. Unless directly involved in a labor dispute, to knowingly recruit, procure, supply or refer for employment in the place of employees involved in such labor dispute any person or persons who customarily or repeatedly offer themselves as replacements for employees involved in labor disputes.

2. If directly involved in a labor dispute, to knowingly employ in place of employees involved in such dispute persons who customarily or repeatedly offer themselves as replacements for employees involved in labor disputes.

3. To solicit or advertise for employees to replace employees involved in a labor dispute without notice in such solicitation or advertisement that the employment offered is in place of employees engaged in a labor dispute.

4. To enter into an agreement, contract or arrangement with other persons, partnerships, agencies, firms or corporations, or agents thereof, to commit acts prohibited by subsections 1, 2 or 3 of this section. [C66, 71, 73, 75,§736B.6]

CHAPTER 737

LIBEL

737.1 "Libel" defined.
737.2 Punishment.
737.3 Indictment for libel.
737.4 Truth given in evidence.
737.5 Publication.
737.6 What constitutes publication.
737.7 Jury determines law and fact.

737.1 "Libel" defined. A libel is the malicious defamation of a person, made public by any printing, writing, sign, picture, representation, or effigy, tending to provoke him to wrath or expose him to public hatred, contempt, or ridicule, or to deprive him of the benefits of public confidence and social intercourse; or any malicious defamation, made public as aforesaid, designed to blacken and vilify the memory of one who is dead, and tending to scandalize or provoke his surviving relatives or friends. [C51,§2767; R60,§4417; C73,§4097; C97,§5086; C24, 27, 31, 35, 39,§**13256**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§737.1]

737.2 Punishment. Every person who makes, composes, dictates, or procures the same to be done, or who willfully publishes or circulates such libel, or in any way knowingly or willfully aids or assists in making, publishing, or circulating the same, shall be imprisoned in the county jail not more than one year, or be fined not exceeding one thousand dollars. [C51,§2768; R60,§4418; C73,§4098; C97,§5087; C24, 27, 31, 35, 39,§**13257**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§737.2]

737.3 Indictment for libel. An indictment for a libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter upon which the indictment is founded, but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial. [C51,§2924; R60,§4664; C73, §4310; C97,§5294; C24, 27, 31, 35, 39,§**13258**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§737.3]

Indictments in general, ch 773
Similar provision, §659.1

737.4 Truth given in evidence. In all prosecutions or indictments for libel, the truth thereof may be given in evidence to the jury, and if it appear to them that the matter charged as libelous was true, and was published with good motives and for justifiable ends, the defendant shall be acquitted. [C51, §2769; R60,§4419; C73,§4099; C97,§5088; C24, 27, 31, 35, 39,§**13259**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§737.4]

737.5 Publication. No printing, writing, or other thing is a libel unless there has been a publication thereof. [C51,§2770; R60,§4420; C73,§4100; C97,§5089; C24, 27, 31, 35, 39,§**13260**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§737.5]

737.6 What constitutes publication. The delivering, selling, reading, or otherwise communicating a libel, or causing the same to be delivered, sold, read, or otherwise communicated, to one or more persons or to the party libeled, is a publication thereof. [C51,§2771; R60,§4421; C73,§4101; C97,§5090; C24, 27, 31, 35, 39,§**13261**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§737.6]

737.7 Jury determines law and fact. In all prosecutions for libel, the jury, after having received the direction of the court, shall have the right to determine at its discretion the law and the fact. [C51,§§2772, 3015; R60,§§4422, 4811; C73,§§4102, 4438; C97,§5091; C24, 27, 31, 35, 39,§**13262**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§737.7]

Question of law for jury, §780.23

CHAPTER 738

BRIBERY AND CORRUPTION IN ELECTIONS

Referred to in §43.5
For chapters applicable to primary elections, see §43.5
Offenses under primary election law, §§43.119, 43.120

738.1 Bribing electors—fine.
738.2 Bribe to refrain from voting—payment for work on election day.
738.3 Accepting bribe.
738.4 Exception.
738.5 and 738.6 Repealed by 65GA, ch 138,§31.
738.7 Voting more than once.
738.8 Voting when not qualified.
738.9 and 738.10 Repealed by 64GA, ch 1025, §35.
738.11 Counseling to vote when not qualified.
738.12 Deceiving voter as to ballot.
738.13 Duress to prevent voting.
738.14 Bribing election officials.
738.15 Procuring vote by duress.
738.16 Election officials doing unlawful acts.
738.17 Illegally receiving or rejecting votes.
738.18 Misconduct to avoid election.
738.19 Failure to return materials.
738.20 Improper registry and false personation.
738.21 Forgery of papers or ballots.
738.22 Political advertisements.
738.23 Exceptions.
738.24 Illegal voting at primary election.
738.25 Punishment.
738.26 Prima-facie evidence of illegal voting.
738.27 Officials to examine voters — administer oaths.
738.28 Perjury in examination.
738.29 Exception — conventions under caucus system.

738.1 Bribing electors — fine. Any person offering or giving a bribe to any elector for the purpose of influencing his vote at any election authorized by law, or any elector entitled to vote at such election receiving such bribe, shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding one year, or both. [C51,§2691; R60,§4333; C73,§3993; C97,§4914; C24, 27, 31, 35, 39,§**13263**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.1]

738.2 Bribe to refrain from voting—payment for work on election day. If any person shall make an agreement with another to pay him any sum of money or other valuable thing in consideration that such other person shall refrain from voting at any election, or shall induce other qualified electors to refrain from voting, or that such other person shall perform any service or labor on any election day in the interest of any candidate for any office who is to be voted for at such election, or in the interest of any measure or political party, he shall be fined in any sum not less than fifty nor more than three hundred dollars, or be imprisoned in the county jail not exceeding ninety days. [C97,§4915; C24, 27, 31, 35, 39,§**13264**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.2]

Referred to in §§738.3, 738.4

738.3 Accepting bribe. Any person who shall, in consideration of any sum of money or other valuable thing, agree to refrain from voting at any public election, or to induce or attempt to induce others to do so, or agree to perform on election day any service in the interest of any candidate, party, or measure in consideration of any money or other valuable thing, or who shall accept money or other valuable thing for such services performed in the interest of any candidate, political party or measure, shall be punished as provided in section 738.2. [C97,§4916; C24, 27, 31, 35, 39, §**13265**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.3]

Referred to in §738.4

738.4 Exception. Nothing in sections 738.2 and 738.3 shall be so construed as to punish individuals or committees of any political party for making contracts in good faith for the conveyance of voters to and from polling places and the payment of any reasonable compensation for such service. [C97,§4917; C24, 27, 31, 35, 39,§**13266**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.4]

738.5 and 738.6 Repealed by 65GA, ch 138, §31.

738.7 Voting more than once. If any elector unlawfully vote more than once at any election which may be held by virtue of any law of this state, he shall be fined not exceeding three hundred dollars, or be imprisoned in the county jail not exceeding one year. [C51, §2692; R60,§4334; C73,§3994; C97,§4918; C24, 27, 31, 35, 39,§**13269**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.7]

738.8 Voting when not qualified. If any person, knowing himself not to be qualified, vote at any election authorized by law, he shall be fined not exceeding three hundred dollars, or be imprisoned in the county jail not exceeding one year. [C51,§2693; R60,§4335; C73, §3995; C97,§4919; C24, 27, 31, 35, 39,§**13270**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.8]

738.9 and 738.10 Repealed by 64GA, ch 1025,§35.

738.11 Counseling to vote when not qualified. If any person procure, aid, assist, counsel, or advise another to give his vote, knowing that such person is disqualified, he shall be fined not exceeding five hundred nor less than

fifty dollars, and be imprisoned in the county jail not exceeding one year. [C51,§2696; R60, §4338; C73,§3998; C97,§4922; C24, 27, 31, 35, 39, §13273; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.11]

738.12 Deceiving voter as to ballot. If any precinct election official furnish an elector with a ticket or ballot, informing him that it contains a name or names different from those which are written or printed therein, with an intent to induce him to vote contrary to his inclination, or fraudulently or deceitfully change a ballot of any elector, by which such elector is deprived of voting for such candidate or person as he intended, he shall be imprisoned in the county jail not exceeding two years, and be fined not exceeding one thousand dollars nor less than one hundred dollars. [C51,§2697; R60,§4339; C73,§3999; C97,§4923; C24, 27, 31, 35, 39,§13274; C46. 50, 54, 58, 62, 66, 71, 73, 75,§738.12; 66GA, ch 67,§68]

738.13 Duress to prevent voting. If any person unlawfully and by force, or threats of force, prevent, or endeavor to prevent, an elector from giving his vote at any public election, he shall be imprisoned in the county jail not exceeding six months, and fined not more than two hundred dollars. [C51,§2698; R60,§4340; C73,§4000; C97,§4924; C24, 27, 31, 35, 39,§13275; C46, 50, 54, 58, 62, 66, 71, 73, 75, §738.13]

738.14 Bribing election officials. If any person give or offer a bribe to any precinct election official or canvasser of any election authorized by law, or any executive officer attending the same, as a consideration for some act done or omitted to be done contrary to his official duty in relation to such election, he shall be fined not exceeding seven hundred dollars, and imprisoned in the county jail not exceeding one year. [C51,§2699; R60,4341; C73, §4001; C97,§4925; C24, 27, 31, 35, 39,§13276; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.14; 66GA, ch 67,§68]

738.15 Procuring vote by duress. If any person procure, or endeavor to procure, the vote of any elector, or the influence of any person over other electors, at any election, for himself, or for or against any candidate, by means of violence, threats of violence, or threats of withdrawing custom or dealing in business or trade, or enforcing the payment of debts, or bringing any civil or criminal action, or any other threat of injury to be inflicted by him or by his means, he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not more than one year. [C51,§2700; R60,§4342; C73,§4002; C97,§4926; C24, 27, 31, 35, 39,§13277; C46, 50, 54, 58, 62, 66, 71, 73, 75, §738.15]

738.16 Election officials doing unlawful acts. If any precinct election official authorized by law knowingly make or consent to any false entry on the election register; or put into the ballot box, or permit to be so put in, any ballot not given by a voter; or take out of such box, or permit to be so taken out, any ballot deposited therein, except in the manner prescribed by law; or by any other act or omission designedly destroy or change the ballots given by the electors, he shall be fined not exceeding one thousand dollars, and imprisoned in the penitentiary not exceeding five years. [C51,§2701; R60,§4343; C73,§4003; C97,§4927; C24, 27, 31, 35, 39,§13278; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.16; 66GA, ch 67,§68]

738.17 Illegally receiving or rejecting votes. When anyone who offers to vote at any election is objected to by an elector as a person not possessing the requisite qualifications, if any precinct election official unlawfully permit him to vote without producing proof of such qualification in the manner directed by law, or if any such official willfully refuse the vote of any person who complies with the requisites prescribed by law to prove his qualifications, he shall be fined not more than two hundred nor less than twenty dollars, or be imprisoned in the county jail not exceeding six months. [C51,§2702; R60,§4344; C73,§4004; C97,§4928; C24, 27, 31, 35, 39,§13279; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.17; 66GA, ch 67,§68]

738.18 Misconduct to avoid election. If any precinct election official or executive officer designedly omit to do any official act required by law, or designedly do any illegal act, in relation to any public election, by which act or omission the votes taken at any such election in any city, precinct, township, or district be lost, or the electors thereof be deprived of their suffrage at such election, or designedly do any act which renders such election void, he shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned in the county jail not more than one year, or both. [C51,§2703; R60,§4345; C73,§4005; C97,§4929; C24, 27, 31, 35, 39,§13280; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.18; 66GA, ch 67,§68]

738.19 Failure to return materials. If any precinct election official or messenger, after having been deputed by the officials of the election to return to the county commissioner of elections the election register and other materials as required by section 50.17, willfully or negligently fail to deliver them within the time and in the condition prescribed by law, he shall, for every such offense, be fined not more than five hundred nor less than fifty dollars. [C51,§2704; R60,§4346; C73,§4006; C97, §4930; C24, 27, 31, 35, 39,§13281; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.19; 66GA, ch 67,§68]

738.20 Improper registry and false personation. Any person who causes his name to be registered, knowing that he is not or will not become a qualified elector in the precinct where his name is registered previous to the next election, or who shall wrongfully personate any qualified elector, and any person causing, or aiding or abetting any person in either of said acts, shall be, for each offense, im-

prisoned in the penitentiary not less than one year. [C73,§4007; C97,§4931; C24, 27, 31, 35, 39, §13282; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.20]

738.21 Forgery of papers or ballots. Any person who shall falsely make, or willfully destroy, any certificate of nomination or nomination papers, or any part thereof, or any letter of withdrawal, or file any certificate of nomination, or nomination papers, knowing the same or any part thereof to be falsely made, or suppress any certificate of nomination, or nomination papers, or in any part thereof, which have been duly filed, or forge or falsely make the official endorsement on any ballot, or substitute therefor any spurious or counterfeit ballot, or make, use, circulate, or cause to be made or circulated as an official ballot, any paper printed in imitation or resemblance thereof, or willfully destroy or deface any ballot, or willfully delay the delivery of any ballots, shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the penitentiary not less than one nor more than five years, or by both fine and imprisonment. [C97,§1136; C24, 27, 31, 35, 39,§13283; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.21]

738.22 Political advertisements. Whoever writes, prints, posts, or distributes, or causes to be written, printed, posted, or distributed, a circular, poster, or advertisement which is designed to promote the nomination or election of a candidate for public office or to injure and defeat the nomination or election of any candidate for public office, or to influence the voters on any constitutional amendment, or to influence the vote of any member of the legislature, unless there appears upon such circular or poster or advertisement, in a conspicuous place, either the name of the chairman or secretary or of two officers of the organization issuing the same, or of the person who is responsible therefor, with his name and address, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not to exceed thirty days, or be punished by both such fine and imprisonment. [SS15,§4931-a; C24, 27, 31, 35, 39,§13284; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.22]

Referred to in §738.23
SS15,§4931-a, editorially divided

738.23 Exceptions. Nothing in section 738.22 shall apply to the editorial or news advertisements of any magazine or newspaper where the same is not a political advertisement, nor to cards, posters, lithographs, or circulars, issued by a candidate advertising his own candidacy. [SS15,§4931-a; C24, 27, 31, 35, 39,§13285; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.23]

738.24 Illegal voting at primary election. Whenever any political party shall hold a primary election for the purpose of nominating a candidate for any public office or for the purpose of selecting delegates to any convention of such party, it shall be unlawful for any person not a qualified elector, or any qualified elector not at the time a member in good faith of such political party, to vote at such primary election. [S13,§4919-a; C24, 27, 31, 35, 39,§13286; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.24]

Referred to in §§738.25, 738.26, 738.29
S13,§4919-a, editorially divided

738.25 Punishment. Any person violating the provisions of section 738.24, and any person knowingly procuring, aiding, or abetting such violation, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not to exceed one hundred dollars or be imprisoned in the county jail not to exceed thirty days. [S13,§4919-a; C24, 27, 31, 35, 39, §13287; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.25]

Referred to in §738.29

738.26 Prima-facie evidence of illegal voting. It shall be prima-facie evidence of the violation of section 738.24 for any person who has participated in any primary election of one political party, to vote at a primary election held by another political party, to select candidates to be voted for at the same election; or to select delegates to any convention of the party holding such primary election. [S13, §4919-b; C24, 27, 31, 35, 39,§13288; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.26]

Referred to in §738.29

738.27 Officials to examine voters—administer oaths. Any precinct election official of such primary election shall have power to administer oaths to, and to examine under oath, any person offering to vote at such election, touching his qualifications to participate in such primary election, and it shall be the duty of such precinct election official to so examine or cause to be examined any person challenged as to his right to vote. [S13,§4919-c; C24, 27, 31, 35, 39,§13289; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.27; 66GA, ch 67,§68]

Referred to in §738.29
S13,§4919-c, editorially divided

738.28 Perjury in examination. Any person testifying falsely as to any material matter, touching his qualifications to participate in such primary election, shall be deemed guilty of perjury and punished accordingly. [S13,§4919-c; C24, 27, 31, 35, 39,§13290; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.28]

Referred to in §738.29
Punishment, §721.1

738.29 Exception — conventions under caucus system. Nothing in sections 738.24 to 738.28, inclusive, shall be construed to apply to conventions held under the caucus system. [S13,§4919-d; C24, 27, 31, 35, 39,§13291; C46, 50, 54, 58, 62, 66, 71, 73, 75,§738.29]

CHAPTER 739

BRIBERY AND CORRUPTION

739.1 Bribery of public officers.
739.2 Acceptance of bribes.
739.3 Disqualification for holding office.
739.4 Corrupt solicitation of places of trust.
739.5 Acceptance of reward for securing.
739.6 Bribery of jurors or referees.
739.7 Acceptance of bribes by such persons.
739.8 Jurors acting corruptly.
739.9 Sheriff or other officers receiving bribes.
739.10 Accepting reward for public duty.
739.11 Corruptly influencing officials.
739.12 Bribery in athletic contests.

739.1 Bribery of public officers. If any person give, offer, or promise to any executive or judicial officer or member of the general assembly, after his election or appointment, and either before or after he has qualified or has taken his seat, any valuable consideration, gratuity, service, or benefit whatever, with intent to influence his act, vote, opinion, or judgment in any matter, question, cause, or proceeding which may be pending, or which may legally come or be brought before him in his official capacity, he shall be imprisoned in the penitentiary not more than five years, or be fined not more than one thousand dollars and imprisoned in the county jail not more than one year. [C51,§2647; R60,§4274; C73,§3939; C97,§4875; C24, 27, 31, 35, 39,§**13292**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§739.1]

Referred to in §§88A.10, 104.17, 739.3, 739.5

739.2 Acceptance of bribes. If any executive or judicial officer or member of the general assembly accept any valuable consideration, gratuity, service, or benefit whatever, or any promise to make the same or to do any act beneficial to such officer or member, under the agreement or with the understanding that his vote, opinion, decision, or judgment shall be given in any particular manner or upon any particular side of any question, cause, or other proceeding which is or may by law be brought before him in his official capacity, or that in such capacity he will make any particular nomination or appointment, he shall be imprisoned in the penitentiary not more than ten years, or be fined not more than two thousand dollars and imprisoned in the county jail not more than one year. [C51,§2648; R60,§4275; C73,§3940; C97,§4876; C24, 27, 31, 35, 39,§**13293**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§739.2]

Referred to in §§739.3, 739.5

739.3 Disqualification for holding office. Every person who is convicted under either section 739.1 or section 739.2 shall forever afterwards be disqualified from holding any office under the laws of the state. [C51,§2649; R60, §4276; C73,§3941; C97,§4877; C24, 27, 31, 35, 39, §**13294**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§739.3]

Referred to in §§739.4, 739.5
Constitution, Art. II,§5

739.4 Corrupt solicitation of places of trust. If any person, directly or indirectly, give, offer, or promise any valuable consideration or gratuity to any other person not being such officer as is mentioned in section 739.3, with intent to induce such person to procure for him by his interest, influence, or any other means whatever any place of trust within this state, he shall be fined not exceeding three hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2650; R60,§4277; C73, §3942; C97,§4878; C24, 27, 31, 35, 39,§**13295**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§739.4]

Referred to in §739.5

739.5 Acceptance of reward for securing. If any person, not being such officer as is referred to in sections 739.1 to 739.4, inclusive, of this chapter, accept and receive of another any valuable consideration or gratuity whatever as a reward for procuring, or attempting to procure, any office or place of trust within the state for any person, he shall be fined not exceeding three hundred dollars and imprisoned in the county jail not exceeding one year. [C51, §2651; R60,§4278; C73,§3943; C97,§4879; C24, 27, 31, 35, 39,§**13296**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§739.5]

739.6 Bribery of jurors or referees. If any person give, offer, or promise any valuable consideration or gratuity whatever to anyone summoned, appointed, or sworn as a juror, or appointed or chosen arbitrator, umpire, or referee, or to any master in chancery, or appraiser of real or personal estate, or auditor, with intent to influence the opinion or decision of any such person in any matter, inquest, or cause which may be pending or can legally come before him, or which he may be called on to decide in either of said capacities, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not more than one year. [C51,§2652; R60,§4279; C73,§3944; C97,§4880; C24, 27, 31, 35, 39,§**13297**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§739.6]

739.7 Acceptance of bribes by such persons. If any person summoned, appointed, or sworn as a juror, or appointed arbitrator, umpire, or referee, or master in chancery, or auditor, or appraiser, as aforesaid, take or receive any valuable consideration or gratuity whatever to give his verdict, award, or report in favor of any particular party, in a matter for the hearing or decision of which such person has been summoned, appointed, or chosen as aforesaid, he shall be imprisoned in the penitentiary not more than ten years, or be fined not exceeding one thousand dollars and imprisoned in the

county jail not exceeding one year. [C51,§2653; R60,§4280; C73,§3945; C97,§4881; C24, 27, 31, 35, 39,§**13298**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§739.7]

739.8 Jurors acting corruptly. If any person drawn, summoned, or sworn as a juror make any promise or agreement to give a verdict for or against any person in any civil or criminal action, or corruptly receive any paper, evidence or information from anyone in relation to any matter or cause for the trial of which he is sworn, without the authority of the court or officer before whom such cause or matter is then pending, he shall be fined not exceeding two hundred dollars, or imprisoned in the county jail not exceeding three months. [C51,§2655; R60,§4282; C73,§3947; C97,§4883; C24, 27, 31, 35, 39,§**13299**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§739.8]

739.9 Sheriff or other officers receiving bribes. If any sheriff, deputy sheriff, or any marshal, deputy marshal, policeman, or police officer of any city, receive from a defendant, or other person, any money or other valuable thing as a consideration or inducement for omitting or delaying to arrest any defendant or to carry him before a magistrate or to prison, or for postponing, delaying, or neglecting the sale of property on execution, or for omitting or delaying to perform any other duty pertaining to his office, he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or both fined and imprisoned, at the discretion of the court. [C51,§2656; R60,§4283; C73,§3948; C97,§4884; C24, 27, 31, 35, 39,§**13300**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§739.9]

739.10 Accepting reward for public duty. If any state, county, township, city, school, or other municipal officer, not mentioned in this chapter, directly or indirectly accept any valuable consideration, gratuity, service, or benefit whatever, or the promise thereof, other than the compensation allowed him by law, conditioned upon said officer's doing or performing any official act, casting an official vote, making or procuring the appointment of any person to a place of trust or profit, or using his official influence or authority to give or procure for any person public employment, or conditioned upon said officer's refraining from doing or performing any of the foregoing acts or things, he shall be imprisoned in the penitentiary not exceeding two years, or in the county jail not exceeding one year, or fined in any sum not less than twenty nor more than three hundred dollars. [C97,§4885; C24, 27, 31, 35, 39,§**13301**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§739.10]

739.11 Corruptly influencing officials. If any person, directly or indirectly, give, offer, or promise, or conspire with others to give, offer, or promise to any officer contemplated in this chapter any valuable consideration, gratuity, service, or benefit whatever, with a view or for the purpose of corruptly influencing said officer's official acts or votes, such person shall be imprisoned in the penitentiary not exceeding two years, or in the county jail not exceeding one year, or be fined in any sum not exceeding three hundred nor less than twenty dollars. [C97,§4886; C24, 27, 31, 35, 39,§**13302**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§739.11]

739.12 Bribery in athletic contests. Whoever gives, promises, offers or conspires to give, promise or offer, to anyone who participates or expects to participate in any professional or amateur game, contest, match, race or sport; or to any umpire, referee, judge or other official of such game, contest, match, race or sport; or to any owner, manager, coach or trainer of, or to any relative of, or to any person having any direct, indirect, remote or possible connection with, any team, individual, participant or prospective participant in any such professional or amateur game, contest, match, race or sport, or the officials aforesaid, any bribe, money, goods, present, reward or any valuable thing whatsoever, or any promise, contract or agreement whatsoever, with intent to influence him or them to lose or cause to be lost any game, contest, match, race or sport, or to limit his or their or any person's or any team's margin of victory in any game, contest, match, race or sport, or to fix or throw any game, contest, match, race or sport, shall be sentenced to pay a fine not exceeding ten thousand dollars, or to imprisonment in the penitentiary not exceeding ten years, or both. [C54, 58, 62, 66, 71, 73, 75,§739.12]

CHAPTER 740

MISCONDUCT OR NEGLECT IN OFFICE

740.1 Extortion.
740.2 False certificate as to witness fees.
740.3 Oppression in official capacity.
740.4 Exercising office without authority.
740.5 Falsely assuming to be officer.
740.6 Stirring up quarrels and suits.
740.7 Officers failing to pay over fees.
740.8 Misappropriating fees—removal.
740.9 False entries in relation to fees.
740.10 Taking more than lawful fee.
740.11 Failure to take official oath.
740.12 False entries, returns, certificates or receipts.
740.13 Solicitation for political purposes.
740.14 Repealed by 65GA, ch 138,§31.
740.15 Using public motor vehicles.
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740.17 Exception.
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740.19 Neglect of duty.
740.20 Private use of public property.
740.21 Labeling publicly owned motor vehicles.
740.22 Punishment.

740.1 Extortion. If any person corruptly and willfully demand and receive of another, for performing any service or official duty for which the fee or compensation is established by law, any greater fee or compensation than is allowed or provided for the same, he shall be fined not exceeding one hundred dollars for each offense, or imprisoned in the county jail not exceeding six months. [C51,§2658; R60, §4285; C73,§3950; C97,§4888; C24, 27, 31, 35, 39, §13303; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.1]

740.2 False certificate as to witness fees. If any witness falsely and corruptly certify that as such he has traveled more miles or attended more days than he has actually traveled or attended, he shall be fined not exceeding one hundred dollars for each offense, or imprisoned in the county jail not exceeding six months. [C51,§2658; R60,§4285; C73,§3950; C97, §4888; C24, 27, 31, 35, 39,§13304; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.2]

740.3 Oppression in official capacity. If any judge or other officer, by color of his office, willfully and maliciously oppress any person under pretense of acting in his official capacity, he shall be fined not exceeding one thousand dollars, and imprisoned in the county jail not more than one year, and be liable to the injured party for any damage sustained by him in consequence thereof. [R60,§§4305, 4306; C73, §3969; C97,§4908; C24, 27, 31, 35, 39,§13305; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.3]

740.4 Exercising office without authority. If any person take upon himself to exercise or officiate in any office or place of authority in this state without being legally authorized; or if any person, by color of his office, willfully and corruptly oppress any person under pretense of acting in his official capacity, he shall be fined not exceeding one thousand dollars, or imprisoned in the county jail not more than one year, or be both fined and imprisoned. [C51,§2672; R60,§4299; C73,§3963; C97,§4902; C24, 27, 31, 35, 39,§13306; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.4]

740.5 Falsely assuming to be officer. If a person falsely assume to be a district judge, district associate judge, judicial magistrate, sheriff, deputy sheriff, peace officer, special agent of the Iowa department of public safety, or officer appointed by the state conservation commission, and take upon himself to act as such, or require anyone to aid or assist him in any matter pertaining to the duty of any such officer, he shall be imprisoned in the county jail not more than one year, or be fined not exceeding three hundred dollars. [C51, §2671; R60,§4298; C73,§3962; C97,§4901; C24, 27, 31, 35, 39,§13307; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.5]

740.6 Stirring up quarrels and suits. If any judge, clerk of any court, sheriff, district associate judge or judicial magistrate, attorney, or counselor at law, encourage, excite or stir up any action, quarrel, or controversy between two or more persons, with intent to injure such persons, he shall be fined not exceeding five hundred dollars, and shall be answerable to the party injured in treble damages. [C51,§2673; R60,§4300; C73,§3964; C97,§4903; C24, 27, 31, 35, 39,§13308; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.6]

740.7 Officers failing to pay over fees. If any officer who by law is authorized to receive and required to pay over fees of office, or who is or may be authorized to impose or collect fines, shall fail, neglect, or refuse to pay over, as prescribed by law, all such fees and fines, he shall be guilty of a misdemeanor, besides being liable in a civil action for the amount of fines and fees illegally withheld or appropriated. [R60,§4308; C73,§3970; C97,§4909; C24, 27, 31, 35, 39,§13309; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.7]

Punishment, §687.7

740.8 Misappropriating fees—removal. Any officer who may be found guilty of the offense of appropriating to his own use fees of office or fines collected for violation of law, or of neglecting to pay over the same as prescribed by law, shall be removed from office by the court before or by whom the offense may be tried and judgment or conviction had; and every person so found guilty shall be fined not exceeding three hundred nor less than ten dollars, or imprisoned in the county jail not exceeding one year, or be both fined and imprisoned, in the discretion of the court. [R60, §4310; C73,§3972; C97,§4911; C24, 27, 31, 35, 39, §13310; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.8]

740.9 False entries in relation to fees. If any officer who by law is authorized or required to keep a court docket, or who is required to keep an account of fees or fines, and pay over or in any way account for the same, shall in any manner falsify such docket or account, or shall fail, neglect, or refuse to make an entry upon such docket, or account for such fees and fines as are required to be paid over, he shall be guilty of a misdemeanor. [R60,§4309; C73,§3971; C97,§4910; C24, 27, 31, 35, 39,§13311; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.9]

Punishment, §687.7

740.10 Taking more than lawful fee. Any officer who willfully takes higher or other fees than are allowed by law is guilty of a misde-

meanor. [C51,§2560; R60,§4167; C73,§3840; C97, §1297; C24, 27, 31, 35, 39,§**13312**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.10]

Punishment, §687.7

740.11 Failure to take official oath. If any officer or person willfully fails to take the oath required by law before entering on the discharge of the duties of any office, trust, or station, or makes any contract which contemplates an expenditure in excess of the law under which he was elected or appointed, or fails to report to the proper officer, showing the expenditure of all public moneys with proper vouchers therefor, by the time required by law, he shall be fined not exceeding five thousand dollars, or imprisoned in the penitentiary not exceeding five years, or both, at the discretion of the court. [R60,§§216, 2184; C73, §3976; C97,§4913; C24, 27, 31, 35, 39,§**13313**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.11]

740.12 False entries, returns, certificates or receipts. If any public officer fraudulently make or give false entries, false returns, false certificates, or false receipts, in cases where entries, returns, certificates, or receipts are authorized by law, he shall be fined not exceeding one thousand dollars, or imprisoned in the penitentiary not exceeding five years, or both. [C51,§2677; R60,§4304; C73,§3968; C97,§4907; C24, 27, 31, 35, 39,§**13314**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.12]

740.13 Solicitation for political purposes. It shall be unlawful for any person or political organization either directly or indirectly to solicit or demand from any employee of any commission, board or agency created under the statutes of Iowa, any contribution of money or any other thing of value for election purposes or for the purpose of paying expenses of any political organization or any person seeking election to public office. [S13,§2727-a36; C24, 27, 31, 35,§13315; C39,§**13315.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.13]

Referred to in §§740.17, 740.18

740.14 Repealed by 65GA, ch 138,§31.

740.15 Using public motor vehicles. It shall be unlawful for any person to use or permit to be used any motor vehicle owned by the state of Iowa or any political subdivision thereof for the purpose of transporting any political literature or any person or persons engaging in a political campaign for any political party or any person seeking an elective office. [C39, §**13315.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.15]

Referred to in §§740.17, 740.18

740.16 State employees not to participate. It shall be unlawful for any state officer, any state appointive officer, or state employee to leave the place of his or her employment or the duties of his or her office for the purpose of soliciting votes or engaging in campaign work during the hours of employment of any such officer or employee. [C39,§**13315.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.16]

Referred to in §§740.17, 740.18

740.17 Exception. The provisions of sections 740.13 to 740.16, inclusive, shall not be construed as prohibiting any such officer or employee who is a candidate for political office to engage in campaign at any time or at any place for himself. [C39,§**13315.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.17]

Referred to in §740.18

740.18 Penalty. Any person who violates any provision of sections 740.13 to 740.17, inclusive, shall be guilty of misdemeanor and shall be punished accordingly. [S13,§2727-a36; C24, 27, 31, 35,§13315; C39,§**13315.6**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.18]

Punishment, §687.7

740.19 Neglect of duty. When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, where no special provision has been made for the punishment of such delinquency, is a misdemeanor. [C51,§2674; R60,§4301; C73,§3965; C97,§4904; C24, 27, 31, 35, 39,§**13316**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §740.19]

Punishment, §687.7

740.20 Private use of public property. No public officer, deputy or employee of the state or any governmental subdivision, having charge or custody of any automobile, machinery, equipment, or other property, owned by the state or a governmental subdivision of this state, shall use or operate the same, or permit the same to be used or operated for any private purpose. [C35,§13316-e1; C39,§**13316.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.20]

Referred to in §740.22

740.21 Labeling publicly owned motor vehicles. All publicly owned motor vehicles shall bear at least two labels in a conspicuous place, one on each side of said vehicle. This label shall be designed to cover not less than one square foot of surface. This section shall not apply to any motor vehicle which shall be specifically assigned by the head of the department or office owning or controlling it, to enforcement of police regulations. [C35,§13316-e2; C39,§**13316.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.21]

Referred to in §740.22

740.22 Punishment. A violation of section 740.20 or 740.21 shall be punishable as a misdemeanor. [C35,§13316-e3; C39,§**13316.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§740.22]

Punishment, §687.7

CHAPTER 741

GRATUITIES AND TIPS

See Donahoo v. Huber, 185 Iowa 753

741.1 Accepting or giving.
741.2 Punishment.
741.3 Testimony tending to incriminate.
741.4 Immunity from prosecution.
741.5 Exceptions.
741.6 to 741.10 Repealed by 62GA, ch 107,§11.
741.11 Interest in public contracts.

741.1 Accepting or giving. It shall be unlawful for any agent, representative, or employee, officer or any agent of a private corporation, or a public officer, acting in behalf of a principal in any business transaction, to receive, for his own use, directly or indirectly, any gift, commission, discount, bonus, or gratuity connected with, relating to, or growing out of such business transaction; and it shall be likewise unlawful for any person, whether acting in his own behalf or in behalf of any copartnership, association, or corporation, to offer, promise, or give directly or indirectly any such gift, commission, discount, bonus, or gratuity.

The provisions of this section shall not be construed to apply to officials or employees of the state of Iowa nor to legislators or legislative employees. [S13,§5028-n; C24, 27, 31, 35, 39, §**13317**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§741.1]

Referred to in §§741.2, 741.5
S13,§5028-n, editorially divided

741.2 Punishment. Any person violating the provisions of section 741.1 or any of them shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. [S13, §5028-n; C24, 27, 31, 35, 39,§**13318**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§741.2]

Referred to in §741.5

741.3 Testimony tending to incriminate. No person shall be excused from attending, testifying, or producing books, papers, contracts, agreements, and documents before any court in obedience to the subpoena of any court having jurisdiction of the misdemeanor on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture. [S13,§5028-o; C24, 27, 31, 35, 39,§**13319**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§741.3]

Referred to in §741.5
S13,§5028-o, editorially divided
Granting immunity, §782.9 et seq.

741.4 Immunity from prosecution. No person shall be liable to any criminal prosecution, for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before said court or in obedience to its subpoena or in any such case or proceeding, provided that no person so testifying or producing any such books, papers, contracts, agreements, or documents shall be exempted from prosecution and punishment for perjury committed in so testifying. [S13,§5028-o; C24, 27, 31, 35, 39, §**13320**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§741.4]

Referred to in §741.5

741.5 Exceptions. Sections 741.1 to 741.4, inclusive, shall not apply to those cases in which the principals, being the contracting parties, have knowledge of and consent to the payment of a commission to an agent or representative. [S13,§5028-o; C24, 27, 31, 35, 39,§**13321**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§741.5]

741.6 to 741.10, inc. Repealed by 62GA, ch 107,§11.

741.11 Interest in public contracts. Members of boards of supervisors and township trustees shall not buy from, sell to, or in any manner become parties, directly or indirectly, to any contract to furnish supplies, material, or labor to the county or township in which they are respectively members of such board of supervisors or township trustees. [S13, §468-a; C24, 27, 31, 35, 39,§**13327**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§741.11]

Similar provisions, §§18.5, 68B.3, 86.7, 252.29, 262.10, 314.2, 347.15, 362.5, 403.16, 403A.22

CHAPTER 742

RESISTANCE TO EXECUTION OF PROCESS

742.1 Resisting execution of process.
742.2 Calling out power of county.
742.3 Refusing to assist officer.
742.4 Certifying to court names of resisters.
742.5 Refusing to assist.
742.6 Calling out military force or posse.
742.7 Armed forces under command of sheriff.
742.8 Refusing to execute process.

742.1 Resisting execution of process. If any person knowingly and willfully resist or oppose any officer of this state, or any person authorized by law, in serving or attempting to execute any legal writ, rule, order, or process whatsoever, or shall knowingly and willfully resist any such officer in the discharge of his duties without such writ, rule, order, or process, he shall be imprisoned in the county jail not exceeding one year, or be fined not exceeding one thousand nor less than fifty dollars, or be both fined and imprisoned, at the discretion of the court. [C51,§2669; R60, §4296; C73,§3960; C97,§4899; C24, 27, 31, 35, 39, §13331; C46, 50, 54, 58, 62, 66, 71, 73, 75,§742.1]

742.2 Calling out power of county. When the sheriff or other officer authorized to execute process has reason to apprehend that resistance will be made, or finds that resistance is made, to the execution thereof, the sheriff or other person may command as many inhabitants of the county as the sheriff or other person may think proper, and may call upon the governor for the assistance of the military force to assist the sheriff or other person in overcoming the resistance, and, if necessary, in seizing, arresting and confining the resisters, their aiders, and abettors, to be held for punishment by law. [C51,§2793; R60,§4489; C73, §4145; C97,§5143; C24, 27, 31, 35, 39,§13332; C46, 50, 54, 58, 62, 66, 71, 73, 75,§742.2]

742.3 Refusing to assist officer. If any person, being lawfully required by any sheriff, deputy sheriff, constable, or other officer, willfully neglect or refuse to assist him in the execution of his office in any criminal case, or in any case of escape or rescue, he shall be imprisoned in the county jail not more than six months, or be fined not more than one hundred dollars. [C51,§2670; R60,§4297; C73, §3961; C97,§4900; C24, 27, 31, 35, 39,§13333; C46, 50, 54, 58, 62, 66, 71, 73, 75,§742.3]

742.4 Certifying to court names of resisters. The officers shall certify to the court from which the process issued the names of the resisters, their aiders, and abettors, to the end that they may be punished as for a contempt. [C51,§2794; R60,§4490; C73,§4146; C97,§5144; C24, 27, 31, 35, 39,§13334; C46, 50, 54, 58, 62, 66, 71, 73, 75,§742.4]

Punishment, §665.4

742.5 Refusing to assist. Every person commanded by a public officer to assist him in the execution of process, as provided in this chapter, who, without lawful cause, refuses or neglects to obey such command, is guilty of a misdemeanor. [C51,§2795; R60,§4491; C73,§4147; C97,§5145; C24, 27, 31, 35, 39,§13335; C46, 50, 54, 58, 62, 66, 71, 73, 75,§742.5]

Punishment, §687.7

742.6 Calling out military force or posse. If it appears to the governor that the power of any county is not sufficient to enable the sheriff to execute process delivered to him, he may, on the application of the sheriff, order such posse or military force from any other county or counties as is necessary. [C51,§2796; R60,§4492; C73,§4148; C97,§5146; C24, 27, 31, 35, 39,§13336; C46, 50, 54, 58, 62, 66, 71, 73, 75,§742.6]

742.7 Armed forces under command of sheriff. When such armed force is called out, it shall obey the commands of the sheriff or other person appointed by the governor for that purpose, or by a judge of the supreme or district court, district associate judge, or judicial magistrate in the order named, but such officer or person shall at all times be subject to the direction of the governor. [C51,§2802; R60, §4498; C73,§4154; C97,§5152; C24, 27, 31, 35, 39, §13337; C46, 50, 54, 58, 62, 66, 71, 73, 75,§742.7]

742.8 Refusing to execute process. If any officer authorized to serve process willfully refuse to execute any lawful process to him directed, requiring him to apprehend or confine any person charged with or convicted of any public offense, or willfully delay or omit to execute such process, whereby such person escape, he shall be imprisoned in the county jail not more than one year, or be fined not exceeding one thousand dollars, or both fined and imprisoned, at the discretion of the court. [C51,§2657; R60,§4284; C73,§3949; C97,§4887; C24, 27, 31, 35, 39,§13338; C46, 50, 54, 58, 62, 66, 71, 73, 75,§742.8]

CHAPTER 743

UNLAWFUL ASSEMBLY AND SUPPRESSION OF RIOTS

743.1 Unlawful assembly.
743.2 "Riot" defined.
743.3 One person may be tried and convicted alone.
743.4 Unlawful assemblages—dispersion.
743.5 Arrest—aid of other persons.
743.6 Refusing to aid.
743.7 Failure of duty.
743.8 Calling aid—arrest of offenders.
743.9 Riotous conduct—injury to person or property.

743.1 Unlawful assembly. When three or more persons in a violent or tumultuous manner assemble together to do an unlawful act, or, when together, attempt to do an act, whether lawful or unlawful, in an unlawful, violent, or tumultuous manner, to the disturbance of others, they are guilty of an unlawful assembly, and shall be imprisoned in the

county jail not more than thirty days, or be fined not exceeding one hundred dollars. [C51, §2739; R60,§4387; C73,§4066; C97,§5030; C24, 27, 31, 35, 39,§**13339**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§743.1]

Referred to in §743.2

743.2 "Riot" defined. When three or more persons together and in a violent or tumultuous manner commit an unlawful act, or together do a lawful act in an unlawful, violent, or tumultuous manner, to the disturbance of others, they are guilty of a riot, and shall be punished as is provided in section 743.1. [C51, §2740; R60,§4388; C73,§4067; C97,§5031; C24, 27, 31, 35, 39,§**13340**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§743.2]

743.3 One person may be tried and convicted alone. Any person guilty of unlawfully assembling, or of a riot, may alone be tried and convicted thereof, but it must be alleged in the information and proved on the trial that three or more persons were engaged therein. [C51, §2741; R60,§4389; C73,§4068; C97,§5032; C24, 27, 31, 35, 39,§**13341**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§743.3]

743.4 Unlawful assemblages — dispersion. When persons to the number of twelve or more, armed with dangerous weapons, or persons to the number of thirty or more, whether armed or not, are unlawfully or riotously assembled in any city, any judge, sheriff, and his deputies if they be present, the mayor, alderman, marshal and judicial magistrates of such city must go among the persons assembled, or as near them as may be safe, and command them, in the name of the state, immediately to disperse. [C51,§2797; R60,§4493; C73,§4149; C97,§5147; C24, 27, 31, 35, 39,§**13342**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§743.4]

Referred to in §743.7

743.5 Arrest—aid of other persons. If the persons assembled do not immediately disperse, the magistrate and officers must arrest them, and for that purpose may command the aid of all persons present or within the county. [C51,§2798; R60,§4494; C73,§4150; C97,§5148; C24, 27, 31, 35, 39,§**13343**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§743.5]

743.6 Refusing to aid. If any person commanded to aid the magistrate or officer neglect to do so without good cause, he is guilty of a misdemeanor. [C51,§2799; R60,§4495; C73, §4151; C97,§5149; C24, 27, 31, 35, 39,§**13344**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§743.6]

Punishment, §687.7

743.7 Failure of duty. If a magistrate or officer, having notice of an unlawful or riotous assembly as defined in section 743.4, neglect to proceed to the place of assembly, or as near thereto as may be with safety, and exercise the authority with which he is invested for suppressing the same and arresting the persons, he is guilty of a misdemeanor. [C51,§2800; R60, §4496; C73,§4152; C97,§5150; C24, 27, 31, 35, 39, §**13345**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§743.7]

Punishment, §687.7

743.8 Calling aid—arrest of offenders. If the persons so assembled and commanded to disperse do not immediately obey, any two of the magistrates or officers before mentioned may command the aid of a sufficient number of persons, and proceed in such manner as in their judgment is necessary to disperse the assembly and arrest the offenders. [C51,§2801; R60,§4497; C73,§4153; C97,§5151; C24, 27, 31, 35, 39,§**13346**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§743.8]

743.9 Riotous conduct—injury to person or property. If any person or persons, unlawfully or riotously assembled, pull down, injure, or destroy, or begin to pull down, injure, or destroy, any dwelling house or other building; or destroy or attempt to injure or destroy any boat or vessel; or perpetrate any premeditated injury on the person of another, not being a felony, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year, and shall also be answerable to any person injured to the full amount of the damages by him sustained. [C51,§2743; R60,§4391; C73,§4070; C97, §5035; C24, 27, 31, 35, 39,§**13347**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§743.9]

CHAPTER 744

DISTURBING PUBLIC ASSEMBLIES

744.1 Disturbance of peace.
744.2 Disturbing congregations or other assemblies.
744.3 Repealed by 64GA, ch 274,§4.
744.4 Disturbing public fairs.

744.1 Disturbance of peace. If any person make or excite any disturbance in a tavern, store, or grocery, or at any election or public meeting, or other place where the citizens are peaceably and lawfully assembled, he shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days. [C51,§2742; R60,§4390; C73,§4069; C97,§5033; C24, 27, 31, 35, 39,§**13348**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§744.1]

744.2 Disturbing congregations or other assemblies. If any person willfully disturb any

assembly of persons met for religious worship by profane discourse or rude and indecent behavior, or by making a noise, either within the place of worship or so near as to disturb the order and solemnity of the assembly, or if any person willfully disturb or interrupt any school, school meeting, teachers institute, lyceum, literary society, or other lawful assembly of persons, he shall be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding one hundred dollars. [C51,§2718; R60,§4360; C73,§4023; C97,§4959; C24, 27, 31, 35, 39,§13349; C46, 50, 54, 58, 62, 66, 71, 73, 75,§744.2]

744.3 Repealed by 64GA, ch 274,§4.

744.4 Disturbing public fairs. No person, firm, association or corporation shall cry, hawk, sell or expose for sale upon any public highway or the street of any city, within six hundred feet of any state, county or district fairgrounds during the time a fair, or other event or activity, is being conducted thereon, any wares, merchandise or parking or storage space for vehicles, nor conduct a show, riding device, shooting gallery, or game of any kind, in a temporary place of business within four hundred feet of any state, county or district fairgrounds while any such fair or other event or activity is being held. Any violation of the provisions hereof shall constitute a misdemeanor, and upon conviction any such violator shall be fined not less than ten dollars, nor more than one hundred dollars for each such offense. [C27, 31, 35,§13350-b1; C39, §13350.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§744.4]

CHAPTER 745

ESCAPES

Referred to in §§218.91, 245.11, 356A.3

745.1 Prison breach—escape—punishment.
745.2 Actual breaking not necessary.
745.3 Violation of parole.
745.4 Jurisdiction.
745.5 Costs and fees.
745.6 Amount certified to comptroller.
745.7 Comptroller to issue warrant.
745.8 Breaking jail—escape.
745.9 Suffering life prisoners to escape.
745.10 Suffering other felons to escape.
745.11 Suffering other prisoners to escape.
745.12 Assisting felon to escape.
745.13 Assisting other prisoners to escape.
745.14 Assisting escape from officer.
745.15 Aiding escapes — bringing liquor or drugs to inmates.
745.16 Placing controlled substances and articles near institutions.
745.17 Presumptive evidence.
745.18 Attempt to commit act.

745.1 Prison breach — escape — punishment. If any person committed to the penitentiary or to the men's or women's reformatory shall break such prison and escape therefrom or shall escape from or leave without due authority any building, camp, farm, garden, city, road, street, or any place whatsoever in which he is placed or to which he is directed to go or in which he is allowed to be by the warden or other officer or employee of the prison whether inside or outside of the prison walls, he shall be deemed guilty of an escape from said penitentiary or reformatory and shall be punished by imprisonment in said penitentiary or reformatory for a term not to exceed five years, to commence from and after the expiration of the term of his previous sentence. [S13,§4897-a; C24, 27, 31, 35, 39,§13351; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.1]

Referred to in §§247A.6, 745.2-745.5

745.2 Actual breaking not necessary. In order to constitute an escape under the provisions of section 745.1, or section 745.8, it is not necessary that the prisoner be within any walls or enclosure nor that there shall be any actual breaking nor that he be in the presence or actual custody of any officer or other person. [S13,§4987-a; C24, 27, 31, 35, 39,§13352; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.2]

Referred to in §§745.4, 745.5

745.3 Violation of parole. If any person having been paroled from the state penitentiary or state reformatory as provided by law, shall thereafter depart without the written consent of the board of parole from the territory within which by the terms of said parole he is restricted, he shall be deemed to have escaped from the custody within the meaning of section 745.1 and shall be punished as therein provided. [S13,§4897-a; C24, 27, 31, 35, 39, §13353; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.3]

Referred to in §§745.4, 745.5

745.4 Jurisdiction. The jurisdiction of an indictment for the crime of escape as defined in sections 745.1 to 745.3, inclusive, is in the county in which is located the penitentiary or reformatory to which the person charged with such escape has been committed, or in the county in which is located the building, camp, farm, garden, city, road, street, or any place in which he is placed or to which he is directed to go or in which he is allowed to be by the warden or any officer or employee of

the prison wherefrom he is charged with escaping. [S13,§4897-a; C24, 27, 31, 35, 39,§**13354**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.4]

Referred to in §745.5

745.5 Costs and fees. All costs and fees, including any award of attorney fees to a court-appointed attorney, hereafter incurred in prosecutions for violations of sections 745.1 to 745.4, inclusive, shall be paid out of the state treasury from the general fund, in any case where the prosecution fails, or where such fees and costs cannot be collected from the person liable to pay the same, the facts being certified by the clerk of the district court and verified by the county attorney of the county. [S13, §4897-b; C24, 27, 31, 35, 39,§**13355**; C46, 50, 54, 58 62, 66, 71, 73, 75,§745.5]

Amendment retroactive to January 1, 1966; see 63GA, ch 1275, §2(2)

745.6 Amount certified to comptroller. The clerk of the district court, in which the case is prosecuted or tried, shall, under his seal of office, certify to the state comptroller a statement of the amount of fees or costs incurred in each case, and such statement shall be approved by the presiding judge in writing appended thereto or endorsed thereon. Should the cause be appealed to the supreme court, the costs there incurred shall be certified to the comptroller by the clerk of that court, but no fees, in such case, for the clerk of either the district or supreme court shall be included or paid from the state treasury. [S13,§4897-c; C24, 27, 31, 35, 39,§**13356**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.6]

745.7 Comptroller to issue warrant. On such certificate being filed in the office of the state comptroller, the comptroller shall issue his warrant on the state treasurer for the amount thereof, payable to the clerk of the district or supreme court, as the case may be, and the clerk shall pay the same to the persons entitled thereto. [S13,§4897-d; C24, 27, 31, 35, 39, §**13357**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.7]

745.8 Breaking jail—escape. If any person confined in any jail upon any criminal charge, either before or after conviction for a criminal offense, break jail and escape therefrom, or escape from the custody of the officer charged with his keeping, he shall be guilty of a felony and shall be imprisoned in either the state penitentiary or reformatory not exceeding one year, and fined not exceeding three hundred dollars; but when such jail breaking, or escape from custody, occurs during incarceration after conviction, or before trial for a criminal offense whereof he is afterwards convicted, in either of such cases the sentence to commence from and after the expiration of the sentence upon the original charge. [C51,§2668; R60,§4295; C73,§3959; C97,§4898; S13,§4898; C24, 27, 31, 35, 39,§**13358**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.8]

Referred to in §§356.36, 745.2

745.9 Suffering life prisoners to escape. If any jailer or other officer voluntarily suffer any prisoner in custody upon a charge or conviction of a felony punishable by imprisonment for life to escape, he shall be imprisoned in the penitentiary not more than ten years. [C51,§2661; R60,§4288; C73,§3953; C97,§4891; C24, 27, 31, 35, 39,§**13359**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.9]

745.10 Suffering other felons to escape. If any jailer or other officer voluntarily suffer any prisoner in his custody upon charge or conviction of any other felony to escape, he shall be imprisoned in the penitentiary not more than eight years, or be fined not more than one thousand dollars. [C51,§2662; R60, §4289; C73,§3954; C97,§4892; C24, 27, 31, 35, 39. §**13360**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.10]

745.11 Suffering other prisoners to escape. If any jailer or other officer suffer any prisoner in his custody upon charge or conviction of any public offense to escape, he shall be fined not exceeding one thousand dollars and be imprisoned in the penitentiary not exceeding five years. [C51,§2663; R60,§4290; C73,§3955; C97, §4893; C24, 27, 31, 35, 39,§**13361**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.11]

745.12 Assisting felon to escape. If any person by any means whatever aid or assist any prisoner lawfully detained in the penitentiary, or in any jail or place of confinement, for any felony, in an attempt to escape, whether such escape be effected or not, or forcibly rescue any person held in legal custody upon any criminal charge, he shall be imprisoned in the penitentiary not exceeding ten years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not exceeding one year. [C51,§2664; R60,§4291; C73,§3956; C97, §4894; C24, 27, 31, 35, 39,§**13362**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.12]

745.13 Assisting other prisoners to escape. Every person who by any means whatever aids or assists any prisoner lawfully committed to any jail or place of confinement, charged with or convicted of any criminal offense other than a felony, in an attempt to escape, whether such escape be effected or not; or who conveys into such jail or place of confinement any disguise, instrument, arms, or other things proper or useful to facilitate the escape of any prisoner so committed, whether such escape be effected or attempted or not, shall be imprisoned in the county jail not exceeding one year, or be fined not exceeding five hundred dollars, or be both fined and imprisoned, at the discretion of the court. [C51,§2665; R60,§4292; C73,§3957; C97, §4895; C24, 27, 31, 35, 39,§**13363**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.13]

745.14 Assisting escape from officer. Every person who aids or assists any prisoner in escaping, or attempting to escape, from the custody of any sheriff, deputy sheriff, marshal, constable, or other officer or person who has

the lawful charge, with or without a warrant, of such prisoner upon any criminal charge, shall be fined not exceeding one thousand dollars and imprisoned in the penitentiary not exceeding five years. [C51,§2666; R60,§4293; C73,§3958; C97,§4896; C24, 27, 31, 35, 39,§13364; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.14]

745.15 Aiding escapes — bringing liquor or drugs to inmates. Any person not authorized by law, who shall bring or pass or cause to be brought into any county jail, city jail, or other place where persons may be committed or detained pursuant to law, or any institution under the management of the department of social services, or onto the grounds of any such institution, or into any enclosure, building, camp, quarry, farm, garden, or other place used in connection with any such institution in which prisoners, patients, or inmates are required or permitted to be, any controlled substance, as defined in section 204.101, subsection 6, or any intoxicating liquor, or any firearm, weapon, or explosive of any kind, or any rope, ladder, or other instrument or device for use in making or attempting an escape, or shall in any manner aid in such an escape, or who, knowing of such escape, shall conceal such inmate after escape, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the penitentiary or reformatory for a term not exceeding five years. [C73, §1663; C97,§2712; S13,§4913-a; SS15,§2713-n16; C24,§§13365, 13369, 13370; C27, 31, 35, 39,§13365; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.15]

Referred to in §§745.16–745.18
S13,§4913-a, editorially divided

745.16 Placing controlled substances and articles near institutions. Any person not duly authorized by law who shall place or cause to be placed or aid in placing any of the controlled substances, liquors, weapons, explosives, or other articles hereinbefore enumerated in or near any road, park, path, walk, grove, hedge, or field where any prisoner, patient, or other inmate of any county jail, city jail, or other place where persons may be committed or detained pursuant to law, or any institution specified in section 745.15 is, or is likely to be, with intent that the controlled substance, liquor, weapon, explosive, or other article so placed shall be found by or shall pass into the possession of any such prisoner, patient, or other inmate, shall be punished by imprisonment in the penitentiary or reformatory for a term not exceeding five years, or by a fine of not more than one thousand dollars nor less than one hundred dollars. [S13,§4913-a; C24, 27, 31, 35, 39,§13366; C46, 50, 54, 58, 62, 66, 71, 73 75,§745.16]

Referred to in §§745.17, 745.18

745.17 Presumptive evidence. The bringing or passing or causing to be brought into any of the places designated in sections 745.15 and 745.16, of any rope, ladder, or other instrument or device adapted for use in making an escape, shall be presumptive evidence that it was so brought or passed for such use, and the leaving of any drug, liquor, weapon, explosive, or other article enumerated in said sections in or near any of the places specified in said sections with knowledge that any prisoner, patient, or other inmate is or is likely to be in such place, shall be presumptive evidence that such article was so left to be found by or to pass into the possession of such prisoner, patient, or other person in violation of said sections. [S13,§4913-a; C24, 27, 31, 35, 39,§13367; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.17]

745.18 Attempt to commit act. An attempt to do any of the acts prohibited by sections 745.15 and 745.16 shall be subject to the same punishment as the completed act. [S13,§4913-a; C24, 27, 31, 35, 39,§13368; C46, 50, 54, 58, 62, 66, 71, 73, 75,§745.18]

CHAPTER 746

VAGRANCY

746.1 "Vagrants" defined.
746.2 Repealed by 65GA, ch 1093,§92.
746.3 Intimidation or other misconduct.
746.4 Repealed by 64GA, ch 274,§4.
746.5 Complaint—arrest.
746.6 Arrest.
746.7 Taking before magistrate.
746.8 Security for good behavior.
746.9 Record of conviction—commitment.
746.10 Breach of undertaking.
746.11 New security.
746.12 Discharge of bail.
746.13 Hearing—jury.
746.14 Judgment.
746.15 Imprisonment.
746.16 Expenses.
746.17 Employed while confined—supplies.
746.18 Employment when sentenced to hard labor.
746.19 Solitary confinement for refusing to work.
746.20 Method of imprisonment.
746.21 Proceeds of labor.
746.22 Tried jointly.
746.23 Fees of officers.
746.24 Unlawful fees.
746.25 Compensation for keeping.

746.1 "Vagrants" defined. The following persons are vagrants:

1. All common prostitutes and keepers of bawdy houses or houses for the resort of common prostitutes.

2. All habitual drunkards, gamesters, or other disorderly persons.

3. All persons wandering about and lodging in barns, outbuildings, tents, wagons, or other vehicles, and having no visible calling or business to maintain themselves.

4. All persons begging in public places, or from house to house, or inducing children or others to do so.

5. All persons representing themselves as collectors of alms for charitable institutions under any false or fraudulent pretenses.

6. All persons playing or betting in any street or public or open place at any game, or pretended game, of chance, or at or with any table or other instrument of gaming. [C51, §3310; R60,§4470; C73,§4130; C97,§5119; S13,§5119; C24, 27, 31, 35, 39,§**13371**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.1]

746.2 Repealed by 65GA, ch 1093,§92.

746.3 Intimidation or other misconduct. Any tramp who shall wantonly or maliciously, by means of violence, threats or otherwise, put in fear any inhabitant of this state, or shall enter any public building, or any house, barn, or outbuilding belonging to another, with intent to commit an unlawful act, or shall carry any firearm or other dangerous weapon, or indecently expose his person, or be found drunk and disorderly, or shall commit any offense against the laws of the state for which no greater punishment is provided, shall be guilty of a misdemeanor. [C97,§5135; C24, 27, 31, 35, 39,§**13373**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.3]

Punishment, §687.7

746.4 Repealed by 64GA, ch 274,§4.

746.5 Complaint — arrest. Upon complaint made on oath to any magistrate against any person as being such vagrant within his jurisdiction, he may issue a warrant for the arrest of such person, and his examination, and the complaint, warrant, and arrest shall be governed by the provisions of chapter 760, as nearly as practicable, except as herein provided. [C51,§3311; R60,§4471; C73,§4131; C97,§5120; C24, 27, 31, 35, 39,§**13375**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.5]

746.6 Arrest. Peace officers shall arrest any vagrant whom they may find at large, and not in the care of some discreet person, and take him before some magistrate of the county or city in which the arrest is made. [R60, §4472; C73,§4132; C97,§5121; C24, 27, 31, 35, 39, §**13376**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.6]

746.7 Taking before magistrate. If such arrest is made during the night, the officer may keep the person arrested in confinement until the next morning, unless bail be given. [R60, §4473; C73,§4133; C97,§5122; C24, 27, 31, 35, 39, §**13377**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.7]

746.8 Security for good behavior. If it appear by the confession of such person, or by competent testimony, that the person arrested is a vagrant, the magistrate may require an undertaking, with sufficient surety, for good behavior for the term of one year thereafter. [R60,§4474; C73,§4134; C97,§5123; C24, 27, 31, 35, 39,§**13378**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.8]

746.9 Record of conviction — commitment. The magistrate shall make up, sign, and file with the clerk of the district court of the county, a record of conviction of such person as a vagrant, specifying generally the nature and circumstances of the charge, and shall, in default of such security being given, commit such vagrant to the jail of the county or city as the case may be, until such security is given or such vagrant discharged according to law. [C51,§3312; R60,§4475; C73,§4135; C97, §5124; C24, 27, 31, 35, 39,§**13379**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.9]

746.10 Breach of undertaking. The committing of any of the acts which constitute such person so bound a vagrant shall be a breach of the condition of the undertaking. [C51, §3313; R60,§4476; C73,§4136; C97,§5125; C24, 27, 31, 35, 39,§**13380**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.10]

746.11 New security. On a recovery upon the undertaking, the court before which such recovery is had may, in its discretion, require new sureties for good behavior, or commit such vagrant to the county jail for any time not exceeding six months. [C51,§3314; R60, §4477; C73,§4137; C97,§5126; C24, 27, 31, 35, 39, §**13381**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.11]

746.12 Discharge of bail. Any person committed to jail on account of failing to furnish undertaking for good behavior may be discharged by any magistrate upon giving the same as was originally required. [C51,§3315; R60,§4478; C73,§4138; C97,§5127; C24, 27, 31, 35, 39,§**13382**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §746.12]

746.13 Hearing—jury. The district court to which the papers are returned shall, on demand of the defendant, impanel a jury to inquire into and determine the truth of the charge made against him, and the rules of practice applicable to trials of misdemeanors shall govern such trial. [C51,§3316; R60,§4479; C73,§4139; C97,§5128; C24, 27, 31, 35, 39,§**13383**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.13]

746.14 Judgment. If no jury is demanded, the district court may revise such conviction and discharge such vagrant from the undertaking or confinement absolutely, or upon sureties for good behavior, in its discretion. [C51,§3317; R60,§4480; C73,§4140; C97,§5129; C24,

27, 31, 35, 39,§13384; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.14]

746.15 Imprisonment. Such district court may, in its discretion, order any such vagrant to be kept in the common jail for any time, not exceeding six months, at hard labor. [C51, §3318; R60,§4481; C73,§4141; C97,§5130; C24, 27, 31, 35, 39,§13385; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.15]

746.16 Expenses. The expenses incurred in pursuance of such order shall be audited by the board of supervisors of the county and paid out of the county treasury. [C51,§3320; R60, §4483; C73,§4143; C97,§5132; C24, 27, 31, 35, 39, §13386; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.16]

746.17 Employed while confined—supplies. Such vagrants may be employed at hard labor as provided in chapter 356, or the court may direct the keeper thereof to furnish them such employment as it shall specify, and for that purpose he may purchase any necessary raw materials and implements, not exceeding such amount as the court shall prescribe, and compel such persons to perform such work as shall be allotted to them. [C51,§3319; R60, §4482; C73,§4142; C97,§5131; C24, 27, 31, 35, 39, §13387; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.17]

746.18 Employment when sentenced to hard labor. The sheriff or keeper of any jail, under the direction of the board of supervisors shall keep all persons sentenced to imprisonment at hard labor in such jail, under the provisions of this chapter, at such work as the board of supervisors may provide, and shall appoint or detail any deputy or other police officer to guard them while at work, or he may turn them over to the municipal authorities of any city to be worked on the streets, or at such labor as may be provided. [C97,§5140; C24, 27, 31, 35, 39,§13388; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.18]

746.19 Solitary confinement for refusing to work. Any tramp sentenced to hard labor, who wantonly or willfully refuses to work, shall be punished by such jailer while so refusing by imprisonment in solitary confinement in the county jail not exceeding ten days, during which time he shall be fed on bread and water; but such punishment shall not exceed the time for which he is sentenced. [C97, §5141; C24, 27, 31, 35, 39,§13389; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.19]

746.20 Method of imprisonment. No sheriff or keeper of any jail shall permit any person convicted of being a tramp to have any tobacco, intoxicating liquors, sporting or illustrated newspaper, cards, or other article of amusement or pastime, or permit such person to be kept or fed otherwise than stated in the commitment, and any person who knowingly violates this section shall be fined not exceeding one hundred nor less than twenty-five dollars. [C97,§5138; C24, 27, 31, 35, 39,§13390; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.20]

746.21 Proceeds of labor. One-half of the net proceeds of such labor shall be paid to the person earning the same, upon his discharge from imprisonment, and the other half shall be paid into the county treasury for the use of the county. [C51,§3321; R60,§4484; C73,§4144; C97,§5133; C24, 27, 31, 35, 39,§13391; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.21]

746.22 Tried jointly. If two or more tramps assemble or congregate together, they shall be tried jointly by the court before whom they are brought, and such court shall be entitled only to fees as for the arrest and trial of one person. [C97,§5136; C24, 27, 31, 35, 39,§13392; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.22]

746.23 Fees of officers. The board of supervisors shall, at any regular or special session, fix the compensation to be allowed the officers in each case under this chapter; to the trial magistrate, not exceeding one dollar; to the peace officer, for all services, not more than one dollar, and mileage as now allowed by law. [C97,§5137; C24, 27, 31, 35, 39,§13393; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.23]

746.24 Unlawful fees. Any officer or magistrate who shall conspire with any person for the purpose of increasing the emoluments of his office, or to evade the provisions of this chapter, or who shall, with such intent, in any manner or by any means, encourage a tramp to remain within his jurisdiction or come within the same, shall be fined not exceeding one hundred dollars, and stand committed until the fine and costs are paid, not to exceed thirty days. [C97,§5139; C24, 27, 31, 35, 39,§13394; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.24]

746.25 Compensation for keeping. No sheriff or jailer shall receive, and no board of supervisors allow, any compensation for keeping or boarding any tramp in the jail or other place in the county, unless such tramp has been duly arrested or committed under the provisions of this chapter, except the board of supervisors of each county may furnish one night's lodging for apparently deserving persons, and those who are sick or disabled may be cared for as the necessities of the case demand. [C97,§5142; C24, 27, 31, 35, 39,§13395; C46, 50, 54, 58, 62, 66, 71, 73, 75,§746.25]

CHAPTER 747

HABITUAL CRIMINALS

Referred to in §759A.4

Multifarious convictions, §§709.19, 712.2, 718.7, 718.11, 759A.4

747.1 Third conviction of felony.
747.2 Fourth conviction of petty larceny.
747.3 Evidence.
747.4 Duties of jury and judge.
747.5 "Habitual criminal" defined.
747.6 Evidence.
747.7 Pardon for former crime.

747.1 Third conviction of felony. Whenever any person has been twice convicted of either of the crimes of burglary, robbery, forgery, counterfeiting, larceny where the value of the property stolen exceeded twenty dollars, or of breaking and entering, with intent to commit a public offense, any dwelling house, office, shop, store, warehouse, railroad car, boat, vessel, or building, in which goods, merchandise, or valuable things, were kept for use, sale, or deposit, or has been convicted of two or more of said crimes, and shall thereafter be convicted of any one of such crimes, committed after such conviction, he shall be imprisoned in the penitentiary for any term not more than forty years. [S13,§4871-a; C24, 27, 31, 35, 39,§**13396**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§747.1]

Referred to in §§747.3, 773.35

747.2 Fourth conviction of petty larceny. Any person over the age of eighteen years who has been three times convicted of larceny where the value of the property stolen did not exceed twenty dollars, upon being convicted the fourth time of said offense shall be imprisoned in the penitentiary not exceeding three years. [S13,§4871-b; C24, 27, 31, 35, 39, §**13397**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§747.2]

Referred to in §747.3

747.3 Evidence. On the trial of any of said offenses named in sections 747.1 and 747.2, a duly authenticated copy of the record of the former judgment in any court wherein said conviction was had, for either of said crimes against the party indicted, shall be prima-facie evidence of such former conviction and may be used in evidence against said party. [S13, §4871-c; C24, 27, 31, 35, 39,§**13398**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§747.3]

747.4 Duties of jury and judge. Upon any trial when the indictment refers to former convictions of the defendant, the jury, if it finds the defendant guilty, and the court, if the defendant is convicted on a plea of guilty, must also find and determine specially whether the defendant had previously been convicted of either of the crimes referred to in the indictment, and the number of times so convicted. [S13,§4871-d; C24, 27, 31, 35, 39,§**13399**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§747.4]

747.5 "Habitual criminal" defined. Whoever has been twice convicted of crime, sentenced, and committed to prison, in this or any other state, or by the United States, or once in this state and once at least in any other state, or by the United States, for terms of not less than three years each shall, upon conviction of a felony committed in this state after the taking effect of this section, be deemed to be a habitual criminal, and shall be punished by imprisonment in the penitentiary for a term of not more than twenty-five years, provided that no greater punishment is otherwise provided by statute, in which case the law creating the greater punishment shall govern. [S13,§5091-a; C24, 27, 31, 35, 39,§**13400**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§747.5]

Referred to in §§747.6, 747.7

747.6 Evidence. On the trial of any cause, under the provisions of section 747.5, a duly authenticated copy of the former judgment and commitment, from any court in which such judgment and commitment was had, for either of the said crimes formerly committed by the party indicted under section 747.5, shall be competent and prima-facie evidence of such former judgment and commitment, and may be used in evidence upon the trial of said cause. [S13,§5091-b; C24, 27, 31, 35, 39,§**13401**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§747.6]

747.7 Pardon for former crime. If the person so convicted shall show, to the satisfaction of the court before whom such conviction was had, that he was released from imprisonment, upon either of said sentences, upon a pardon granted for the reason that he was innocent, such conviction and sentence shall not be considered as such under section 747.5. [S13,§5091-a; C24, 27, 31, 35, 39,§**13402**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§747.7]

TITLE XXXVI
CRIMINAL PROCEDURE

CHAPTER 748
MAGISTRATES, PEACE OFFICERS AND SPECIAL AGENTS

748.1 "Magistrate" defined.
748.2 Power of magistrates.
748.3 "Peace officers" defined.
748.4 Duties.
748.5 "Officers of justice" defined.
748.6 Power of governor and attorney general.

748.1 "Magistrate" defined. The term "magistrate" includes all judges of the supreme court, court of appeals and district courts and all district associate judges and judicial magistrates. [C51,§§2778, 2823; R60,§§4439, 4447; C73, §4108; C97,§5097; C24, 27, 31, 35, 39,**§13403**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§748.1; 66GA, ch 1241, §88]

Referred to in §229.22

748.2 Power of magistrates. Magistrates have power to hear complaints, or preliminary informations, issue warrants, order arrests, require security to keep the peace, make commitments, and take bail, as provided by law. [C51,§2778; R60,§4439; C73,§4108; C97,§5098; C24, 27, 31, 35, 39,**§13404**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§748.2]

Referred to in §602.60

748.3 "Peace officers" defined. The following are "peace officers":

1. Sheriffs and their deputies.
2. Marshals and policemen of cities.
3. All special agents appointed by the commissioner of public safety and all members of the state department of public safety excepting the members of the clerical force.
4. All agents appointed by the secretary of the board of pharmacy examiners.
5. Agents, officers, and investigators of the enforcement division of the Iowa liquor control commission.
6. Such persons as may be otherwise so designated by law. [C51,§2830; R60,§4440; C73, §4109; C97,§5099; C24, 27, 31, 35, 39,**§13405**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§748.3]

Referred to in §§7.10, 18.117, 79.9, 321.1(45)

748.4 Duties. It shall be the duty of a peace officer and his deputy, if any, throughout the county, township, or municipality of which he is such officer, or to which he is assigned or employed under any mutual assistance arrangement or intergovernmental agreement, to preserve the peace, to ferret out crime, to apprehend and arrest all criminals, and insofar as it is within his power, to secure evidence of all crimes committed, and present the same to the county attorney, grand jury or magistrate, and to file informations against all persons whom he knows, or has reason to believe, to have violated the laws of the state, and to perform all other duties, civil or criminal, pertaining to his office or enjoined upon him by law. Nothing herein shall be deemed to curtail the powers and duties otherwise granted to or imposed upon peace officers. [C51,§170; R60,§383; C73,§337; C97,§499; S13, §499; C24,§5181; C27, 31, 35,§13405-b1; C39, **§13405.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§748.4]

Duty to enforce motor vehicle law, §321.6

748.5 "Officers of justice" defined. Magistrates and peace officers are sometimes designated as "officers of justice". [R60,§4441; C73, §4110; C97,§5100; C24, 27, 31, 35, 39,**§13406**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§748.5]

748.6 Power of governor and attorney general. The governor and attorney general shall each have the power to call to their aid in the enforcement of the law any peace officer; and when such officers are so called upon it shall be their duty faithfully to render such assistance as may be required, in any part of the state, and such peace officers while so acting shall have the same powers throughout the state as possessed by the sheriff of the county in which such peace officer is acting. [C24, 27, 31, 35, 39,**§13411**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§748.6]

CHAPTER 749
BUREAU OF CRIMINAL IDENTIFICATION

Identification and use of publicly owned automobiles, etc., §740.20 et seq.

749.1 Criminal identification.
749.2 Finger and palm prints—duty of sheriff and chief of police.
749.3 Equipment.
749.4 Fingerprints and photographs at institutions.

749.1 Criminal identification. The commissioner of public safety may provide in his department a bureau of criminal identification. He may adopt rules and regulations for the same. The sheriff of each county and the chief of police of each city shall furnish to the department criminal identification records and other information as directed by the commissioner of public safety. [C24, 27, 31, 35, 39, §13416; C46, 50, 54, 58, 62, 66, 71, 73, 75,§749.1]

749.2 Finger and palm prints—duty of sheriff and chief of police. It shall be the duty of the sheriff of every county, and the chief of police of each city regardless of the form of government thereof and having a population of ten thousand or over, to take the fingerprints of all persons held either for investigation, for the commission of a felony, as a fugitive from justice, or for bootlegging, the maintenance of an intoxicating liquor nuisance, manufacturing intoxicating liquor, operating a motor vehicle while under the influence of an alcoholic beverage or for illegal transportation of intoxicating liquor, and to take the fingerprints of all unidentified dead bodies in their respective jurisdictions, and to forward such fingerprint records on such forms and in such manner as may be prescribed by the commissioner of public safety, within forty-eight hours after the same are taken, to the bureau of criminal investigation. If the fingerprints of any person are taken under the provisions hereof whose fingerprints are not already on file, and said person is not convicted of any offense, then said fingerprint records shall be destroyed by any officer having them. In addition to the fingerprints as herein provided any such officer may also take the palm prints of any such person. [C27, 31, 35,§13417-b1; C39,§13417.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§749.2]

Referred to in §§321B.2, 749.3
"Alcoholic beverage" defined, see §321B.2
Photographs and Bertillon measurements, §782.8

749.3 Equipment. The board of supervisors of each county and the council of each city affected by the provisions of section 749.2 shall furnish all necessary equipment and materials for the carrying out of the provisions of said section. [C27, 31, 35,§13417-b2; C39,§13417.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§749.3]

749.4 Fingerprints and photographs at institutions. It shall be the duty of the wardens of the penitentiary and men's reformatory, and superintendents of the women's reformatory, the Iowa training school for boys, and the Iowa training school for girls, to take or procure the taking of the fingerprints, and, in the case of the penitentiary, men's reformatory, and women's reformatory only, Bertillon photographs of any person received on commitment to their respective institutions, and to forward such fingerprint records and photographs within ten days after the same are taken to the division of criminal investigation and bureau of identification, Iowa department of public safety, and to the federal bureau of investigation.

It shall also be the duty of the said wardens and superintendents to procure the taking of five- by seven-inch photographic negative showing a full length view of each convict, prisoner or inmate of the penitentiary, men's reformatory, and women's reformatory in his or her release clothing immediately prior to his or her discharge from the institution either upon expiration of sentence or commitment or on parole, and to forward such photographic negative within two days after the same is taken to the division of criminal investigation and bureau of identification, Iowa department of public safety. [C50, 54, 58, 62, 66, 71, 73, 75, §749.4]

CHAPTER 749A

STATE CRIMINALISTICS LABORATORY AND MEDICAL EXAMINER

Referred to in §§339.9, 339.10

749A.1 Laboratory created.
749A.2 Presumption of qualification — acceptance in evidence.
749A.3 Commissioner to make rules.
749A.4 Copy of finding to defendant.
749A.5 State medical examiner.
749A.6 Duties.
749A.7 Commissioner to accept federal or private grants.
749A.8 Governor to transfer laboratory.
749A.9 Deposit of ammunition and firearms.

749A.1 Laboratory created. There is hereby created under the control, direction and supervision of the commissioner of public safety a state criminalistics laboratory. The commissioner of public safety may assign the criminalistics laboratory to a division or bureau within his department. The laboratory shall, within its capabilities, conduct analyses, comparative studies, fingerprint identification, firearms identification, questioned documents studies, and other studies normally performed by a criminalistics laboratory when requested

by a county attorney, medical examiner, or law enforcement agency of this state to aid in any criminal investigation. Agents of the division of criminal investigation and bureau of identification may be assigned to the criminalistics laboratory by the commissioner. New employees shall be appointed pursuant to chapter 19A, and need not qualify as agents for the division of criminal investigation and bureau of identification, and shall not participate in the peace officers' retirement plan established pursuant to chapter 97A. [C71, 73, 75,§749A.1]

749A.2 Presumption of qualification — acceptance in evidence. It shall be presumed that any employee or technician of the criminalistics laboratory is qualified or possesses the required expertise to accomplish any analysis, comparison, or identification done by him in the course of his employment in the criminalistics laboratory. Any report, or copy thereof, or the findings of the criminalistics laboratory shall be received in evidence in any court, preliminary hearing, and grand jury proceeding in the same manner and with the same force and effect as if the employee or technician of the criminalistics laboratory who accomplished the requested analysis, comparison, or identification had testified in person. An accused person or his attorney may request that such employee or technician testify in person at a criminal trial on behalf of the state before a jury or to the court, by notifying the proper county attorney at least ten days before the date of such criminal trial. [C71, 73, 75,§749A.2]

749A.3 Commissioner to make rules. The commissioner of public safety shall make rules defining the capabilities of the criminalistics laboratory. He shall make rules governing the handling of items to be processed by the criminalistics laboratory from the time they are forwarded to the laboratory by a county medical examiner or a city or state law enforcement agency or county sheriff until their return to the forwarder. The rules shall prescribe a method of identifying, forwarding, handling and returning items that will maintain the identity and integrity of the item. An item handled in conformity with the rules shall be presumed to be admissible in evidence as to the period in transit to and from and while in custody of the laboratory without further foundation. [C71, 73, 75, §749A.3]

749A.4 Copy of finding to defendant. The county attorney shall give the accused person, or his attorney, after an indictment or county attorney's information has been returned, a copy of each report of the findings of the criminalistics laboratory conducted in the investigation of the indictable criminal charge against him at the time of arraignment, or if such report is received after arraignment, upon receipt, whether or not such findings are to be used in evidence against him. If such report is not given to the accused or his attorney at least four days prior to trial, such fact shall be grounds for a continuance. [C71, 73, 75,§749A.4]

749A.5 State medical examiner. There is hereby created the position of state medical examiner. The state medical examiner shall be a physician and surgeon or osteopathic physician and surgeon and be licensed to practice medicine in the state of Iowa, and possess special knowledge in forensic pathology. The state medical examiner shall be appointed by and serve at the pleasure of the governor. The state medical examiner may be a faculty member of the college of medicine or the college of law at the University of Iowa, and any of his assistants or staff may be members of the faculty or staff of the college of medicine or the college of law at the University of Iowa. [C71, 73, 75,§749A.5]

749A.6 Duties. The duties of the state medical examiner shall be:

1. To provide assistance, consultation, and training to county medical examiners and law enforcement officials.

2. To keep complete records of all relevant information concerning deaths or crimes requiring investigation by the state medical examiner.

3. To promulgate rules pursuant to chapter 17A regarding the manner and techniques to be employed while conducting autopsies; the nature, character, and extent of investigations to be made in cases of homicide or suspected homicide necessary to allow a medical examiner to render a full and complete analysis and report; the format and matters to be contained in all reports rendered by medical examiners; and all other things necessary to carry out this chapter. All county medical examiners and peace officers shall be subject to such rules. [C71, 73, 75,§749A.6]

749A.7 Commissioner to accept federal or private grants. The commissioner of public safety may accept federal or private funds or grants to aid in the establishment or operation of the state criminalistics laboratory, and the board of regents may accept federal or private funds or grants to aid in the establishment of the position of state medical examiner. [C71, 73, 75,§749A.7]

749A.8 Governor to transfer laboratory. The governor shall by executive order provide for the transfer of any appropriate laboratory facilities, equipment, and technical personnel of the state to the state criminalistics laboratory if such transfer will more effectively and efficiently aid the investigation of crime. [C71, 73, 75,§749A.8]

749A.9 Deposit of ammunition and firearms.

1. Ammunition and firearms which are stolen or embezzled or confiscated pursuant to a valid arrest or search warrant and for which

lawful possession is not established or for which lawful title cannot be ascertained pursuant to chapters 645 and 751 shall be forwarded to the state criminalistics laboratory for deposit by the law enforcement agency having possession of such items. Ammunition and firearms which were used in the perpetration or attempted perpetration of a criminal offense and are owned by the perpetrator of such offense shall be forfeited to the state, and shall be deposited with the state criminalistics laboratory if no longer required in a criminal action for evidentiary purposes. Ammunition and firearms forfeited shall become the property of the state.

2. Ammunition and firearms other than those forfeited to the state, which come into the possession of the state criminalistics laboratory may, at the discretion of the commissioner of public safety, after being retained for at least one year, be destroyed, retained or exchanged with other public agencies. Ammunition and firearms forfeited to the state may be destroyed, retained, given to or exchanged with other public agencies, within or without the state.

3. Ammunition and firearms subject to this section shall not be subject to the provisions of chapter 556, or any other provisions of law relating to abandoned property.

4. If any person claims to be entitled to any property which may have been disposed of under this section, he may file a claim for the value of such property as provided in chapter 25A. [66GA, ch 1243,§1]

Referred to in §645.5, 751.26

CHAPTER 749B

CRIMINAL HISTORY AND INTELLIGENCE DATA

749B.1 Definitions of words and phrases.
749B.2 Dissemination of criminal history data.
749B.3 Redissemination.
749B.4 Statistics.
749B.5 Right of notice, access and challenge.
749B.6 Civil remedy.
749B.7 Criminal penalties.
749B.8 Intelligence data.
749B.9 Surveillance data prohibited.
749B.10 Rules.
749B.11 Education program.
749B.12 Data processing.
749B.13 Review.
749B.14 Systems for the exchange of criminal history data.
749B.15 Reports to department.
749B.16 Review and removal.
749B.17 Exclusions.
749B.18 Public records.
749B.19 Confidential records council.
749B.20 Motor vehicle operator's record exempt.

749B.1 Definitions of words and phrases. As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of public safety.

2. *"Bureau"* means the department of public safety, division of criminal investigation and bureau of identification.

3. *"Criminal history data"* means any or all of the following information maintained by the department or bureau in a manual or automated data storage system and individually identified:

a. Arrest data.

b. Conviction data.

c. Disposition data.

d. Correctional data.

4. *"Arrest data"* means information pertaining to an arrest for a public offense and includes the charge, date, time and place. Arrest data includes arrest warrants for all public offenses outstanding and not served and includes the filing of charges, by preliminary information when filed by a peace officer or law enforcement officer or indictment, the date and place of alleged commission and county of jurisdiction.

5. *"Conviction data"* means information that a person was convicted of or entered a plea of guilty to a public offense and includes the date and location of commission and place and court of conviction.

6. *"Disposition data"* means information pertaining to a recorded court proceeding subsequent and incidental to a public offense arrest and includes dismissal of the charge, suspension or deferral of sentence.

7. *"Correctional data"* means information pertaining to the status, location and activities of persons under the supervision of the county sheriff, the division of corrections of the department of social services, board of parole or any other state or local agency performing the same or similar function, but does not include investigative, sociological, psychological, economic or other subjective information maintained by the division of corrections of the department of social services or board of parole.

8. *"Public offense"* as used in subsections 4, 5 and 6 does not include nonindictable offenses under either chapter 321 or local traffic ordinances.

9. *"Individually identified"* means criminal history data which relates to a specific person by one or more of the following means of identification:

a. Name and alias, if any.

b. Social security number.

c. Fingerprints.

d. Other index cross-referenced to paragraphs "*a*", "*b*", or "*c*."

e. Other individually identifying characteristics.

10. *"Criminal justice agency"* means any agency or department of any level of government which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders.

11. *"Intelligence data"* means information collected where there are reasonable grounds to suspect involvement or participation in criminal activity by any person.

12. *"Surveillance data"* means information on individuals, pertaining to participation in organizations, groups, meetings or assemblies, where there are no reasonable grounds to suspect involvement or participation in criminal activity by any person. [C75,§749B.1]

749B.2 Dissemination of criminal history data. The department and bureau may provide copies or communicate information from criminal history data only to criminal justice agencies, or such other public agencies as are authorized by the confidential records council. The bureau shall maintain a list showing the individual or agency to whom the data is disseminated and the date of dissemination.

Authorized agencies and criminal justice agencies shall request and may receive criminal history data only when:

1. The data is for official purposes in connection with prescribed duties, and

2. The request for data is based upon name, fingerprints, or other individual identifying characteristics.

The provisions of this section and section 749B.3 which relate to the requiring of an individually identified request prior to the dissemination or redissemination of criminal history data shall not apply to the furnishing of criminal history data to the federal bureau of investigation or to the dissemination or redissemination of information that an arrest warrant has been or will be issued, and other relevant information including but not limited to, the offense and the date and place of alleged commission, individually identifying characteristics of the person to be arrested, and the court or jurisdiction issuing the warrant. [C75,§749B.2]

Referred to in §749B.20

749B.3 Redissemination. A peace officer, criminal justice agency, or state or federal regulatory agency shall not redisseminate criminal history data, within or without the agency, received from the department or bureau, unless:

1. The data is for official purposes in connection with prescribed duties of a criminal justice agency, and

2. The agency maintains a list of the persons receiving the data and the date and purpose of the dissemination, and

3. The request for data is based upon name, fingerprints, or other individual identification characteristics.

A peace officer, criminal justice agency, or state or federal regulatory agency shall not redisseminate intelligence data, within or without the agency, received from the department or bureau or from any other source, except as provided in subsections 1 and 2. [C75,§749B.3]

Referred to in §§749B.2, 749B.20

749B.4 Statistics. The department, bureau, or a criminal justice agency may compile and disseminate criminal history data in the form of statistical reports derived from such information or as the basis of further study provided individual identities are not ascertainable.

The bureau may with the approval of the commissioner of public safety disseminate criminal history data to persons conducting bona fide research, provided the data is not individually identified. [C75,§749B.4]

749B.5 Right of notice, access and challenge. Any person or his attorney with written authorization and fingerprint identification shall have the right to examine criminal history data filed with the bureau that refers to the person. The bureau may prescribe reasonable hours and places of examination.

Any person who files with the bureau a written statement to the effect that a statement contained in the criminal history data that refers to him is nonfactual, or information not authorized by law to be kept, and requests a correction or elimination of that information that refers to him shall be notified within twenty days by the bureau, in writing, of the bureau's decision or order regarding the correction or elimination. Judicial review of the actions of the bureau may be sought in accordance with the terms of the Iowa administrative procedure Act. Immediately upon the filing of the petition for judicial review the court shall order the bureau to file with the court a certified copy of the criminal history data and in no other situation shall the bureau furnish an individual or his attorney with a certified copy, except as provided by this chapter.

Upon the request of the petitioner, the record and evidence in a judicial review proceeding shall be closed to all but the court and its officers, and access thereto shall be refused unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. No person, other than the petitioner shall permit a copy of any of the testimony or

pleadings or the substance thereof to be made available to any person other than a party to the action or his attorney. Violation of the provisions of this section shall be a public offense, punishable under section 749B.7.

Whenever the bureau corrects or eliminates data as requested or as ordered by the court, the bureau shall advise all agencies or individuals who have received the incorrect information to correct their files. Upon application to the district court and service of notice on the commissioner of public safety, any individual may request and obtain a list of all persons and agencies who received criminal history data referring to him, unless good cause be shown why the individual should not receive said list. [C75,§749B.5]

749B.6 Civil remedy. Any person may institute a civil action for damages under chapters 25A or 613A or to restrain the dissemination of his criminal history data or intelligence data in violation of this chapter, and any person, agency or governmental body proven to have disseminated or to have requested and received criminal history data or intelligence data in violation of this chapter shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses and reasonable attorneys' fees incurred by the party bringing the action. In no case shall the award for damages be less than one hundred dollars. [C75,§749B.6]

749B.7 Criminal penalties.

1. Any person who willfully requests, obtains, or seeks to obtain criminal history data under false pretenses, or who willfully communicates or seeks to communicate criminal history data to any agency or person except in accordance with this chapter, or any person connected with any research program authorized pursuant to this chapter who willfully falsifies criminal history data or any records relating thereto, shall, upon conviction, for each such offense be punished by a fine of not more than one thousand dollars or by imprisonment in the state penitentiary for not more than two years, or by both fine and imprisonment. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate criminal history data except in accordance with this chapter shall for each such offense be fined not more than one hundred dollars or be imprisoned not more than ten days.

2. Any person who willfully requests, obtains, or seeks to obtain intelligence data under false pretenses, or who willfully communicates or seeks to communicate intelligence data to any agency or person except in accordance with this chapter, shall for each such offense be punished by a fine of not more than five thousand dollars or by imprisonment in the state penitentiary for not more than three years, or by both fine and imprisonment. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate intelligence data except in accordance with this chapter shall for each such offense be fined not more than five hundred dollars or be imprisoned not more than six months, or both.

3. If a person convicted under this section is a peace officer, the conviction shall be grounds for discharge or suspension from duty without pay and if the person convicted is a public official or public employee, the conviction shall be grounds for removal from office.

4. Any reasonable grounds for belief that a public employee has violated any provision of this chapter shall be grounds for immediate removal from all access to criminal history data and intelligence data. [C75,§749B.7]

Referred to in §§749B.5, 749B.9

749B.8 Intelligence data. Intelligence data contained in the files of the department of public safety or a criminal justice agency shall not be placed within a computer data storage system.

Intelligence data in the files of the department may be disseminated only to a peace officer, criminal justice agency, or state or federal regulatory agency, and only if the department is satisfied that the need to know and the intended use are reasonable. Whenever intelligence data relating to a defendant for the purpose of sentencing has been provided a court, the court shall inform the defendant or his attorney that it is in possession of such data and shall, upon request of the defendant or his attorney, permit examination of such data.

If the defendant disputes the accuracy of the intelligence data, he shall do so by filing an affidavit stating the substance of the disputed data and wherein it is inaccurate. If the court finds reasonable doubt as to the accuracy of such information, it may require a hearing and the examination of witnesses relating thereto on or before the time set for sentencing. [C75,§749B.8]

749B.9 Surveillance data prohibited. No surveillance data shall be placed in files or manual or automated data storage systems by the department or bureau or by any peace officer or criminal justice agency. Violation of the provisions of this section shall be a public offense punishable under section 749B.7. [C75, §749B.9]

749B.10 Rules. The department shall adopt rules designed to assure the security and confidentiality of all criminal history data and intelligence data systems. [C75,§749B.10]

Referred to in §749B.19

749B.11 Education program. The department shall require an educational program for its employees and the employees of criminal justice agencies on the proper use and control of criminal history data and intelligence data. [C75,§749B.11]

749B.12 Data processing. Nothing in this chapter shall preclude the use of the equip-

ment and hardware of the data processing service center for the storage and retrieval of criminal history data. Files shall be stored on the computer in such a manner as the files cannot be modified, destroyed, accessed, changed or overlaid in any fashion by noncriminal justice agency terminals or personnel. That portion of any computer, electronic switch or manual terminal having access to criminal history data stored in the state computer must be under the management control of a criminal justice agency. [C75,§749B.12]

749B.13 Review. The department shall initiate periodic review procedures designed to determine compliance with the provisions of this chapter within the department and by criminal justice agencies and to determine that data furnished to them is factual and accurate. [C75,§749B.13]

749B.14 Systems for the exchange of criminal history data. The department shall regulate the participation by all state and local agencies in any system for the exchange of criminal history data, and shall be responsible for assuring the consistency of such participation with the terms and purposes of this chapter.

Direct access to such systems shall be limited to such criminal justice agencies as are expressly designated for that purpose by the department. The department shall, with respect to telecommunications terminals employed in the dissemination of criminal history data, insure that security is provided over an entire terminal or that portion actually authorized access to criminal history data. [C75,§749B.14]

749B.15 Reports to department. When it comes to the attention of a sheriff, police department, or other law enforcement agency that a public offense has been committed in its jurisdiction, it shall be the duty of the law enforcement agency to report information concerning such crimes to the bureau on a form to be furnished by the bureau not more than thirty-five days from the time the crime first comes to the attention of such law enforcement agency. These reports shall be used to generate crime statistics. The bureau shall submit statistics to the governor, legislature and crime commission on a quarterly and yearly basis.

When a sheriff, police department or other law enforcement agency makes an arrest which is reported to the bureau, the arresting law enforcement agency and any other law enforcement agency which obtains custody of the arrested person shall furnish a disposition report to the bureau whenever the arrested person is transferred to the custody of another law enforcement agency or is released without having a complaint or information filed with any court.

Whenever a criminal complaint or information is filed in any court, the clerk shall furnish a disposition report of such case.

The disposition report, whether by a law enforcement agency or court, shall be sent to the bureau within thirty days after disposition on a form provided by the bureau. [C75, §749B.15]

749B.16 Review and removal. At least every year the bureau shall review and determine current status of all Iowa arrests reported after August 15, 1973, which are at least one year old with no disposition data. Any Iowa arrest recorded within a computer data storage system which has no disposition data after five years shall be removed unless there is an outstanding arrest warrant or detainer on such charge. [C75,§749B.16]

749B.17 Exclusions. Criminal history data in a computer data storage system does not include arrest or disposition data after the person has been acquitted or the charges dismissed. [C75,§749B.17]

749B.18 Public records. Nothing in this chapter shall prohibit the public from examining and copying the public records of any public body or agency as authorized by chapter 68A.

Criminal history data and intelligence data in the possession of the department or bureau, or disseminated by the department or bureau, are not public records within the provisions of chapter 68A. [C75,§749B.18]

749B.19 Confidential records council. There is hereby created a confidential records council consisting of nine regular members. Two members shall be appointed from the house of representatives to serve as ex officio nonvoting members by the speaker of the house, no more than one of whom shall be from the same party. Two members shall be appointed from the senate to serve as ex officio nonvoting members by the lieutenant governor, no more than one of whom shall be from the same party. The other members of the council shall be: A judge of the district court appointed by the chief justice of the supreme court, one local law enforcement official, appointed by the governor; the commissioner of public safety or his designee; and two private citizens not connected with law enforcement, appointed by the governor. The council shall select its own chairman. The members shall serve at the pleasure of those by whom their appointments are made.

The council shall meet at least annually and at any other time upon the call of the governor, the chairman of the council, or any three of its members. Each nonlegislative council member shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties from funds appropriated to the department of public safety. Each legislative member shall receive expenses pursuant to section 2.10 and section 2.12.

The council shall have the following responsibilities and duties:

1. Shall periodically monitor the operation of governmental information systems which deal with the collection, storage, use and dissemination of criminal history or intelligence data.

2. Shall review the implementation and effectiveness of legislation and administrative rules concerning such systems.

3. May recommend changes in said rules and legislation to the legislature and the appropriate administrative officials.

4. May require such reports from state agencies as may be necessary to perform its duties.

5. May receive and review complaints from the public concerning the operation of such systems.

6. May conduct such inquiries and investigations as it finds appropriate to achieve the purposes of this chapter. Each criminal justice agency in this state and each state and local agency otherwise authorized access to criminal history data is authorized and directed to furnish to the council, upon its request, such statistical data, reports, and other information in its possession as the council deems necessary to carry out its functions under this chapter. However, the council and its members, in such capacity, shall not have access to criminal history data or intelligence data unless it is data from which individual identities are not ascertainable or data which has been masked so that individual identities are not ascertainable. However, the council may examine data from which the identity of an individual is ascertainable if requested in writing by that individual or his attorney with written authorization and fingerprint identification.

7. Shall annually approve rules adopted in accordance with section 749B.10 and rules to assure the accuracy, completeness and proper purging of criminal history data.

8. Shall approve all agreements, arrangements and systems for the interstate transmission and exchange of criminal history data. [C75,§749B.19; 66GA, ch 1052,§17]

749B.20 Motor vehicle operator's record exempt. The provisions of sections 749B.2 and 749B.3 shall not apply to the certifying of an individual's operating record pursuant to section 321A.3. [C75,§749B.20]

CHAPTER 750

POLICE RADIO BROADCASTING SYSTEM

Federal funds appropriated, 65GA, ch 104,§3

750.1 Contract authorized.
750.2 Expenses.
750.3 Notification to supervisors.
750.4 Duty of supervisors to install—costs.
750.5 Option of city council to install—costs.
750.6 Additional communications systems.
750.7 Communication with local agencies.
750.8 Review committee.

750.1 Contract authorized. The commissioner of public safety may enter into such contracts as he may deem necessary for the purpose of utilizing a special radio broadcasting system for law enforcement and police work and for direct and rapid communication with the various peace officers of the state. The said commissioner shall be empowered, subject to the approval of the governor and executive council, to equip divisional headquarters, cars, and motorcycles in his department with radio sending and/or receiving apparatus. [C31, 35,§13417-d1; C39,§**13417.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§750.1]

Referred to in §§321.266, 750.2

750.2 Expenses. Any such contract authorized in section 750.1 shall involve no expense to the state, except that the state may buy its own radio remote control system and install the same in the offices of the department of public safety in broadcasting communications and information direct to the peace officers of the state. [C31, 35,§13417-d2; C39,§**13417.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§750.2]

750.3 Notification to supervisors. Whenever the commissioner of public safety has entered into a contract and has established radio broadcasting facilities as is provided in this chapter, he shall at once notify the boards of supervisors of the respective counties that such a radio service has been established. [C31, 35,§13417-d3; C39,§**13417.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§750.3]

44GA, ch 241,§3, editorially divided

750.4 Duty of supervisors to install—costs. It shall then be the duty of the board of supervisors of each county to install in the office of the sheriff, such a radio receiving set and a set in at least one motor vehicle used by the sheriff, for use in connection with said state radio broadcasting system. The board of supervisors of any county may install as many additional such radio receiving sets as may be deemed necessary. The cost of such radio receiving sets and the cost of installation thereof shall be paid from the general fund of the county. [C31, 35,§13417-d4; C39,§**13417.6**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§750.4]

750.5 Option of city council to install—costs. The council of each city of two thousand or more population may install at least one radio receiving set for use in law enforcement and police work. [C31, 35,§13417-d5; C39,§13417.7; C46, 50, 54, 58, 62, 66, 71, 73, 75,§750.5]

750.6 Additional communications systems. The board of supervisors of any county shall have in addition to the foregoing the discretionary authority:

1. To purchase, lease, own, and maintain additional radio, electronic communications and telecommunications systems as may be deemed necessary by said agency for the efficient operation of the law enforcement agencies under its jurisdiction, and to pay the cost thereof from the general fund of said county.

2. To enter into lease or contract arrangements for the joint ownership, maintenance, acquisition or leasing of said equipment with any other county and may jointly operate the same with such co-operating agency for the mutual economy and efficiency of both. [C62, 66, 71, 73, 75,§750.6]

750.7 Communication with local agencies. The department of public safety shall maintain law enforcement communications with local enforcement agencies using frequencies in use on July 1, 1973. The Iowa highway safety patrol base stations and all Iowa highway safety patrol cars assigned to troopers and sergeants with field enforcement responsibilities shall maintain law enforcement communications with local enforcement agencies using transmitting and receiving frequencies in use by the Iowa highway safety patrol on July 1, 1973. [C75,§750.7; 66GA, ch 251,§1]

750.8 Review committee. There is established a police communications review committee which shall consist of three members of the senate appointed by the president of the senate and three members of the house of representatives appointed by the speaker of the house. The committee shall select a chairman and shall meet at the call of the chairman.

Members shall be appointed prior to the adjournment of the first regular session of each general assembly and shall serve for terms ending upon the convening of the following general assembly or when their successors are appointed. Vacancies shall be filled in the same manner as original appointments and shall be for the remainder of the unexpired term of the vacancy. The members of the committee shall be reimbursed for actual and necessary expenses incurred in the performance of their duties and shall receive forty dollars for each day in which engaged in the performance of such duties. However, such per diem compensation and expenses shall not be paid when the general assembly is actually in session at the seat of government. Expenses and per diem shall be paid from funds appropriated pursuant to section 2.12.

The police communications review committee shall meet periodically with representatives of the department of public safety and shall review proposed changes of the communications operating procedures of the department which affect operating procedures of local law enforcement agencies. [C75,§750.8]

First members and terms, 65GA, ch 104,§5

CHAPTER 751

SEARCH WARRANTS

Referred to in §§110.21, 127.11, 204.505(4), 455B.3, 602.62, 726.4, 749A.9

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751.1 Definition. A search warrant is an order in writing, in the name of the state, signed by a magistrate, other than a judge of the supreme court or the court of appeals, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate. [C51,§3291; R60,§5024; C73,§4629; C97,§5545; C24, 27, 31,§13418; C35, §13441-g1; C39,§**13441.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.1; 66GA, ch 1241,§89]

751.2 Docketing—trial—nature of proceedings. Search warrant proceedings shall be docketed in the name of the state against the property seized and shall be tried as an ordinary action, the county attorney appearing for the state. [C24, 27, 31,§§1967, 13207; C35, §13441-g2; C39,§**13441.02**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.2]

751.3 When authorized. A search warrant may be issued:

1. For property which has been stolen or embezzled.

2. For property which has been used as a means or as one of the means of committing or of accomplishing the commission of a public offense.

3. For property which is in the possession of a person with the intent to use it as a means of committing a public offense, or which has been delivered by such person to another for the purpose of concealing it.

4. For property which is being used or employed in carrying on, keeping or maintaining a place of any description for the purpose of gambling for money or for any other thing of value.

5. For personal property of the character enumerated in section 726.4.

6. For property of the character specifically enumerated in section 726.5.

7. For cigarettes and cigarette papers, and the containers thereof, received, possessed, kept, stored, sold or given away in violation of any law of this state, or with intent to violate any such law.

8. For intoxicating liquors, including alcohol, brandy, whisky, rum, gin, beer, ale, porter, wine, spirituous, vinous, and malt liquors, manufactured, sold, kept for sale, owned, or possessed in violation of any law of this state, including all instrumentalities, containers, equipment, articles or things used or employed or intended to be used or employed in effecting said unlawful acts or any of them.

9. For any other property relevant and material as evidence in a criminal prosecution. [C51,§3292; R60,§5025; C73,§4630; C97,§5546; C24, 27, 31,§13419; C35,§13441-g3; C39,§**13441.03**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.3]

Referred to in §751.30

751.4 Information. Any credible resident of this state may make application for the issuance of a search warrant by filing before any magistrate, except a judge of the supreme court or the court of appeals, a written information, supported by his oath or affirmation, and alleging therein the existence of any ground or grounds specified in this chapter as ground for the issuance of a search warrant and that he believes and has substantial reason to believe that said ground or grounds exist in fact. Said information shall describe with reasonable certainty the person or premises, or both, to be searched, the property to be seized, and the person, if known, in possession of said premises and property.

If the magistrate thereafter issues the search warrant, he shall endorse on the application the name and address of all persons upon whose sworn testimony he relied to issue such warrant together with an abstract of such witness' testimony. However, if the grounds for issuance is supplied by an informant, the magistrate shall only identify the peace officer to whom the information was given and that he finds that such informant had previously given reliable information. [C51,§2722; R60, §§1565, 4364; C73,§§1544, 1545, 4027; C97,§§2413, 2414, 4963; S13,§§4965-b, 5007-a; SS15,§2413; C24, 27, 31,§§1578, 1968, 1969, 13200, 13211; C35, §13441-g4; C39,§**13441.04**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.4; 66GA, ch 1241,§90]

751.5 Issuance of warrant. If the magistrate is satisfied from his examination of the applicant, and of other witnesses, if any, and of the allegations of the information, of the existence of the grounds of the application, or that there is probable cause to believe their existence, he shall issue a search warrant, signed by him with his name of office, directed to any peace officer in the county, commanding him forthwith to search the person or place named for the property specified, and bring said property before him. [C51,§§2722, 3294–3296; R60,§§1565, 4364, 5027–5029; C73, §§1544, 4027, 4632–4634; C97,§§2413, 4963, 5548–5550; S13,§5007-a; SS15,§2413; C24, 27, 31,§§1578, 1970, 13200, 13421, 13423; C35,§13441-g5; C39, §**13441.05**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.5]

751.6 Form of warrant. The warrant may be in substantially the following form:

County of ..... }
State of Iowa. }

To any peace officer of said county:

Proof having been this day made before me as provided by law that (here, with reasonable certainty and in accordance with the information and other proof obtained by the magistrate, designate the property, its location, the person in possession thereof, and the unlawful use or purpose to which it has been, or is being employed or held)

and being satisfied that the foregoing recital relative to said property is probably true, now, therefore, you are commanded to make immediate search of (here state whether the search is of the person of a named person or of said premises, or of both) and if said property or any part thereof be found you are commanded

to bring said property forthwith before me at my office.

Dated at ..... this ..... day of ....., 19.....

.....
(Official title)

[R60,§§1565, 5031; C73,§§1544, 4636; C97,§§2413, 5551; SS15,§2413; C24, 27, 31,§§1970, 13424; C35, §13441-g6; C39,§**13441.06**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.6]

751.7 By whom served. A search warrant may in all cases be served by any peace officer, but by no other person, except in aid of the officer on his requisition, he being present and acting in its execution. [C51,§3297; R60,§§1565, 5032; C73,§§1544, 4637; C97,§§2413, 5552; S13, §5007-a; SS15,§2413; C24, 27, 31,§§1578, 1970, 13425; C35,§13441-g7; C39,§**13441.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.7]

751.8 Execution of warrant. The peace officer to whom such warrant shall be delivered shall, in the daytime or in the nighttime, forthwith obey and execute, as effectually as possible, the commands of said warrant, and forthwith make return of his doings to said magistrate, who shall securely keep all property so seized and the vessels, if any, containing said property until final action be had thereon. [R60,§§1565, 5035; C73,§§1544, 4640; C97,§5555; SS15,§§2413, 2415; C24, 27, 31,§§1971, 13428; C35, §13441-g8; C39,§**13441.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.8]

751.9 Breaking in to execute warrant. The officer may break open any outer or inner door or window of a house, or any part thereof, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance. [C51,§3298; R60,§5033; C73,§4638; C97,§5553; C24, 27, 31,§13426; C35, §13441-g9; C39,§**13441.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.9]

751.10 Liberating person assisting in execution. He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or, when necessary, for his own liberation. [R60,§5034; C73,§4639; C97,§5554; C24, 27, 31,§13427; C35,§13441-g10; C39,§**13441.10**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.10]

Breaking out after lawful entrance, §755.10

751.11 Arrest of persons. The officer serving a search warrant, shall, in connection therewith, and in addition thereto, make arrest of persons under all circumstances justifying an arrest without a warrant, and take said persons before said magistrate to be dealt with as provided by law. [C35,§13441-g11; C39, §**13441.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §751.11]

751.12 Return of warrant. A search warrant must be executed and returned to the magistrate who issued it within ten days after its date. After the expiration of such time the warrant, unless executed, is void. [C51, §3299; R60,§§1565, 5036; C73,§§1544, 4641; C97, §§2413, 2415, 5556; SS15,§§2413, 2415; C24, 27, 31, §§1581, 1971, 13429; C35,§13441-g12; C39,§**13441.12**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.12]

751.13 Receipt for property. When the officer takes any property under the warrant, he must, on demand, give to the person from whom it was taken, or in whose possession it was found, an itemized receipt therefor. [C51,§3300; R60,§5037; C73,§4642; C97,§5557; C24, 27, 31,§13430; C35,§13441-g13; C39,§**13441.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.13]

751.14 Inventory. The officer must forthwith return the warrant to the magistrate, with a complete inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they be present. [C51,§3301; R60,§5038; C73,§4643; C97,§5558; C24, 27, 31,§13431; C35,§13441-g14; C39,§**13441.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.14]

751.15 Copy of inventory. The magistrate, if required, must deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant. [C51,§3302; R60,§5039; C73,§4644; C97,§5559; C24, 27, 31,§13432; C35,§13441-g15; C39,§**13441.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.15]

751.16 Notice of hearing. Said magistrate, in the event of a seizure under said warrant, shall, within forty-eight hours after the officer's return is filed with him, issue a notice of hearing on said seizure, which notice shall:

1. Be addressed:

a. To the person or persons named or described in said information as the owner or keeper or possessor of said property.

b. "To all persons whom it may concern."

2. Describe said property so seized with reasonable certainty, and state where, when, and why the same was seized.

3. Summon said persons and all others whom it may concern to appear before said magistrate within the county at a place and time named in said notice, which time shall not be less than five nor more than fifteen days after the filing of said return, and show cause, if any they have, why said property, together with the containers in which the same are contained, if any, should not be forfeited.

4. Be signed by said magistrate. [R60,§1566; C73,§1546; C97,§2415; S13,§4965-b; SS15,§2415; C24, 27, 31,§§1972, 13204, 13205, 13213; C35, §13441-g16; C39,§**13441.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.16]

751.17 Service of notice. Said notice shall be served at least three days prior to the hearing:

1. By posting a copy thereof in some conspicuous place on or about the building or place where said property was seized.

2. If the person or persons named or described in the information as owner or keeper of the property so seized be resident of said county, then by personally serving said notice on said person, or by leaving a copy of said notice at the last known usual place of residence of said person with some adult member of his family if found at said residence. [R60, §1566; C73,§1546; C97,§2415; S13,§4965-b; SS15, §2415; C24, 27, 31,§§1973, 13204, 13213; C35, §13441-g17; C39,**§13441.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.17]

751.18 Hearing. The magistrate must, at the time so fixed, or at an adjournment thereof, proceed to take testimony in relation to the property so seized. [C51,§§3303, 3304; R60, §§5040, 5041; C73,§§4645, 4646; C97,§§5560, 5561; C24, 27, 31,§§13206, 13433, 13434; C35,§13441-g18; C39,**§13441.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.18]

751.19 Substitute magistrate. Should the magistrate issuing the warrant be absent or for any reason be unable to serve at the time of the hearing aforesaid, any other magistrate of the county, designated by the absent magistrate or by the county attorney, shall act. [S13, §4965-b; C24, 27, 31,§13213; C35,§13441-g19; C39, **§13441.19**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §751.19]

751.20 Procedure. The procedure in the trial of cases not commenced before a judge of the district court may be the same, substantially as in the case of misdemeanors triable before magistrates. Proceedings commenced before a judge of the district court may be treated as pending in the district court and be disposed of under the general procedure therein provided except as it may be herein modified. [R60,§1566; C73,§1546; C97, SS15,§2415; C24, 27, 31,§§1975, 13207; C35,§13441-g20; C39,**§13441.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.20]

751.21 Right to contest forfeiture. At the time and place prescribed in said notice, the person named in said information, or any other person claiming an interest in said property, or in any part thereof, may appear and show specific and legal cause why the same should not be forfeited. [R60,§1566; C73,§1546; C97,§2415; SS15,§2415; C24, 27, 31,§§1974, 13206; C35,§13441-g21; C39,**§13441.21**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.21]

751.22 Insufficient description—effect. When any property shall have been seized by virtue of any such warrant, the same shall not be discharged or returned to any person claiming the same, by reason of any alleged insufficiency of description in the warrant, but the claimant shall only have a right to be heard on the merits of the case. [C73,§1545; C97,§2414; C24, 27, 31,§1978; C35,§13441-g22; C39,**§13441.22**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.22]

751.23 Property restored. If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate shall cause it to be restored to the person from whom it was taken. [C51, §3305; R60,§§1567, 5042; C73,§§1547, 4647; C97, §§2416, 5562; S13,§4965-b; C24, 27, 31,§§1988, 13206, 13214, 13435; C35,§13441-g23; C39, **§13441.23**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §751.23]

751.24 Execution, return and costs. The officer shall obey said order and make return thereon to the court of his acts thereunder and the costs of the proceeding in such case attending the restoration shall be taxed to and paid by the state. [R60,§1567; C73,§1547; C97, §2416; C24, 27, 31,§1989; C35,§13441-g24; C39, **§13441.24**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §751.24]

751.25 Judgment of forfeiture and destruction. If the magistrate finds that the property or any part thereof seized under the search warrant is of the illegal nature or character alleged in the information, he shall enter judgment of forfeiture to the state of said property, or of the part thereof, as the case may be, and shall, in addition to said judgment of forfeiture, enter an order directing the immediate destruction of all such property which does not have a legitimate use and the sale of all property other than money which may be used legitimately, unless said latter property is otherwise disposed of as in this chapter provided. [R60,§1566; C73,§1546; C97,§2415; S13, §5007-a; SS15,§2415; C24, 27, 31,§§1579, 1979, 13208; C35,§13441-g25; C39,**§13441.25**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.25]

751.26 Execution — sale — destruction. Execution shall issue for the sale of all property, except money, ammunition and firearms which may have a legitimate use, and for the destruction of all property having no legitimate use. Sales shall be made as provided by section 626.75. Due return of the execution shall be made thereon by the officer excuting it. Ammunition and firearms shall be disposed of pursuant to section 749A.9. [C51,§2722; R60, §§4364, 5048; C73,§§4027, 4653; C97,§§4963, 5568; S13,§§4965-b, 5007-a; C24, 27, 31,§§1579, 1993, 1996, 13201, 13208, 13215, 13441; C35,§13441-g26; C39,**§13441.26**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §751.26; 66GA, ch 1243,§3]

751.27 Limitation on sale. Property seized under search warrant and forfeited to the state and ordered sold shall be sold only to persons who have legal right to purchase or receive such property. [S13,§5007-a; C24, 27, 31,§1579; C35,§13441-g27; C39,**§13441.27**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.27]

751.28 Repealed by 66GA, ch 98,§2.

751.29 Proceeds. The proceeds derived from a sale and the money seized and forfeited, if any, shall be paid by the peace officer to the county treasurer and by him credited to the school fund of the county. [C24, 27, 31,§§1580,

13209; C35,§13441-g29; C39,§**13441.29**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.29]

751.30 Disposition of stolen or like property. If the property taken by virtue of a search warrant was stolen or embezzled, it must be restored to the owner, upon his making satisfactory proof to the magistrate of his ownership thereof, or of his right of possession thereto, as provided in chapter 645. If it was taken on a warrant issued on the grounds stated in the second or third subsection of section 751.3, the magistrate must retain it in his possession, subject to the order of any other court having jurisdiction to try the offense which the property taken was used as a means of committing, or so intended to be. [C51,§3306; R60,§5043; C73,§4648; C97,§5563; C24, 27, 31, §13436; C35,§13441-g30; C39,§**13441.30**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.30]

751.31 Utilizing condemned liquors. When a judgment has been entered decreeing a forfeiture of any intoxicating liquors, the magistrate shall direct the disposition of such liquors and the vessels containing the same:

1. By ordering that forfeited intoxicating liquors, which have a valid unbroken federal liquor tax stamp properly affixed to the vessel and which the magistrate has no reason to believe is adulterated or contaminated, be delivered to the Iowa beer and liquor control department.

2. By ordering the destruction of forfeited intoxicating liquors which do not have a valid federal liquor tax stamp properly affixed to the vessel or which the magistrate has reason to believe is contaminated or adulterated.

3. By ordering any portion thereof consisting of alcohol, brandies, wine, or whiskey, to be delivered, for medicinal or scientific purposes, to any state or reputable hospital in the county, or in adjoining counties, or to the board of control of state institutions, or to any reputable educational institution in the state for scientific purposes. [C24, 27, 31,§1990; C35, §13441-g31; C39,§**13441.31**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.31]

Referred to in §123.20(8)

751.32 Dispensation by board of control. Liquors delivered to the board of control shall be dispensed by it to any state institution or reputable hospital in this state and solely for medical or scientific purposes. [C24, 27, 31, §1991; C35,§13441-g32; C39,§**13441.32**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.32]

751.33 Transportation by carrier. When any such liquor is ordered delivered or shipped, the magistrate shall securely attach, or cause to be attached, to the box or package containing the same, a certified copy of the order of the court and thereupon any common carrier may receive, transport, and deliver such liquor to the consignee. The cost of packing and transportation shall be paid by the consignee receiving such liquor. [C24, 27, 31,§1997; C35, §13441-g33; C39,§**13441.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.33]

751.34 Utilizing other property. When property seized under search warrant has been finally forfeited to the state, and is of a nature useful to peace officers in law enforcement, the magistrate may order it delivered to any state, county, or city law-enforcing agency, and in such case the head, chief, or superintendent of such agency shall receipt to the magistrate therefor, and hold and use such property solely in effecting law enforcement, and deliver the same to his successor and shall be liable therefor on his bond. [C35,§13441-g34; C39,§**13441.34**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.34]

751.35 Costs. If no person be made defendant, or if judgment be in favor of all the defendants who appear and are made such, then the costs of the proceeding shall be paid as in ordinary criminal prosecution where the prosecution fails.

If the judgment shall be against only one party defendant, he shall be adjudged to pay all the costs of the proceedings.

If such judgment shall be against more than one party defendant claiming distinct interests in said property, the costs of said proceedings and trial shall be, according to the discretion of said magistrate, equitably apportioned among said defendants.

Execution shall be issued on said judgments against said defendants for the amount of costs so adjudged against them. [R60,§1566; C73,§1546; C97, SS15,§2415; C24, 27, 31,§1980; C35,§13441-g35; C39,§**13441.35**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.35]

751.36 Seizure of other property — disposition. When any officer in the execution of a search warrant shall find any stolen or embezzled property, or shall seize any other things for which a search warrant is allowed by this chapter, all the property and things so seized shall be safely kept, by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced as evidence on any trial; and as soon as may be afterwards all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant may be destroyed, or otherwise disposed of, under the direction of the court or magistrate. [R60,§5048; C73,§4653; C97,§5568; C24, 27, 31,§13441; C35,§13441-g36; C39,§**13441.36**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.36]

751.37 Searching prisoner. When a person charged with an offense is supposed by the magistrate before whom he is brought to have upon his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or evidence to be retained, subject to his order, or the order of the court in which the defendant may be tried. [C51,§3309; R60,

§5047; C73,§4652; C97,§5567; C24, 27, 31,§13440; C35,§13441-g37; C39,§**13441.37**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.37]

751.38 Maliciously suing out warrant. Whoever maliciously and without probable cause procures a search warrant to be issued and executed is guilty of a misdemeanor. [C51, §3308; R60,§5045; C73,§4650; C97,§5565; C24, 27, 31,§13438; C35,§13441-g38; C39,§**13441.38**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.38]

Punishment, §687.7

751.39 Officer exceeding authority. A peace officer who, in executing a search warrant, willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor. [R60,§5046; C73,§4651; C97,§5566; C24, 27, 31,§13439; C35,§13441-g39; C39,§**13441.39**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.39]

Punishment, §687.7

751.40 Appeal by claimant. Any person appearing as aforesaid may, when the proceedings are not before a district judge, appeal to a district judge from said judgment or forfeiture, as to the whole or any part of said property, and the procedure on appeal, except as herein modified, shall be as upon other appeals from judicial magistrates' judgments. [R60, §1566; C73,§1546; C97, SS15,§2415; C24, 27, 31, §1981; C35,§13441-g40; C39,§**13441.40**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.40]

751.41 Appeal — how taken. Said appeal shall be taken by filing with the magistrate, within two days after the entry of forfeiture, a written notice of appeal specifically stating the part of the judgment of forfeiture appealed from, and a bond in such reasonable sum as the magistrate may fix and approve, conditioned to pay all costs of the proceedings in case appellant is unsuccessful on his appeal. [C35,§13441-g41; C39,§**13441.41**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.41]

751.42 Appeal by state. Where the judgment is against the state, it shall have the same right of appeal, and on the same conditions, except that no bond shall be required. [C24, 27, 31,§1982; C35,§13441-g42; C39,§**13441.42**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.42]

751.43 Stay of proceedings. If an appeal be taken, the same shall operate as a stay of proceedings and the property seized under the warrant and involved in the appeal shall not be returned to any claimant thereof nor sold or destroyed or otherwise disposed of until final determination is had. [C24, 27, 31,§1983; C35,§13441-g43; C39,§**13441.43**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§751.43]

CHAPTER 752

LIMITATION OF CRIMINAL ACTIONS

752.1 Actions for murder.
752.2 Eighteen months' limitation.
752.3 Three-year limitation.
752.4 One-year limitation.
752.5 Absence from state deducted.
752.6 Time of finding indictment

752.1 Actions for murder. A prosecution for murder may be commenced at any time after the death of the person killed. [C51, §2811; R60,§4513; C73,§4165; C97,§5163; C24, 27, 31, 35, 39,§**13442**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§752.1]

752.2 Eighteen months limitation. An indictment for a public offense must be found within eighteen months after its commission, in the following cases, and not after:

1. Taking or enticing away an unmarried female under the age of consent, for the purpose of marriage or prostitution.
2. Seducing or debauching an unmarried female of previously chaste character.
3. For rape or adultery.
4. For an assault with intent to commit a rape. [C51,§2812; R60,§4514; C73,§4166; C97, §5164; C24, 27, 31, 35, 39,§**13443**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§752.2]

752.3 Three-year limitation. In all other cases an indictment for a public offense must be found within three years after the commission thereof, and not afterwards. [C51,§2813; R60,§4515; C73,§4167; C97,§5165; C24, 27, 31, 35, 39,§**13444**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§752.3]

Accrual in embezzlement by executor, §710.11
Nonindictable offenses, §752.4

752.4 One-year limitation. A prosecution for a nonindictable misdemeanor or violation of an ordinance of a city, must be commenced within one year after the commission thereof, and not after. [C73,§4168; C97,§5166; C24, 27, 31, 35, 39,§**13445**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§752.4]

752.5 Absence from state deducted. If, when the offense is committed, the defendant is out of the state, the indictment or prosecution may be found or commenced within the time herein limited after his coming into the state, and no period during which the party charged was not publicly resident within the state is a part of the limitation. [C51,§2814; R60,§4516; C73,§4169; C97,§5167; C24, 27, 31, 35, 39,§**13446**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§752.5]

752.6 Time of finding indictment. An indictment is found, within the meaning of this chapter, when it is duly presented by the grand jury in open court and there filed. [C51,§2815; R60,§4517; C73,§4170; C97,§5168; C24, 27, 31, 35, 39,§13447; C46, 50, 54, 58, 62, 66, 71, 73, 75, §752.6]

CHAPTER 753

JURISDICTION OF PUBLIC OFFENSES AND PLACE OF TRIAL

753.1 State criminal jurisdiction.
753.2 Place of trial—general.
753.3 Place of trial—special provisions.
753.4 Bar to action.

POLICE CITATIONS

753.5 Conditions.
753.6 Form.
753.7 Procedure.
753.8 Complaint.
753.9 Failure to appear.
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TRAFFIC VIOLATIONS

753.13 Uniform citation and complaint.
753.14 Traffic violations offices—fine collection boxes.
753.15 Scheduled violations.
753.16 Admission of scheduled violations.
753.17 Required court appearance.
753.18 Other penalties.
753.19 Disposition of traffic fines and costs.
753.20 Venue.
753.21 Credit cards.

753.1 State criminal jurisdiction.

1. A person is subject to prosecution in this state for an offense which he commits within or outside this state, by his own conduct or that of another for which he is legally accountable, if:

a. The offense is committed either wholly or partly within this state.

b. Conduct of the person outside the state constitutes an attempt to commit an offense within this state.

c. Conduct of the person outside the state constitutes a conspiracy to commit an offense within this state.

d. Conduct of the person within this state constitutes an attempt, solicitation or conspiracy to commit an offense in another jurisdiction, which conduct is punishable under the laws of both this state and such other jurisdiction.

2. An offense may be committed partly within this state if conduct which is an element of the offense, or a result which constitutes an element of the offense, occurs within this state. If the body of a homicide victim is found within the state, the death is presumed to have occurred within the state.

3. An offense which is based on an omission to perform a duty imposed upon a person by the law of this state is committed within the state, regardless of the location of the person at the time of the omission. [C51,§2803; R60, §4500; C73,§4155; C97,§5153; C24, 27, 31, 35, 39, §13448; C46, 50, 54, 58, 62, 66, 71, 73, 75,§753.1]

753.2 Place of trial—general. Criminal actions shall be tried in the county in which the crime is committed, except as otherwise provided by law. All objections to place of trial are waived by a defendant unless he objects thereto prior to trial. [R60,§4502; C73,§4156; C97,§5154; C24, 27, 31, 35, 39,§13449; C46, 50, 54, 58, 62, 66, 71, 73, 75,§753.2]

753.3 Place of trial—special provisions. The following special provisions apply:

1. If conduct or results which constitute elements of an offense occur in two or more counties, prosecution of the offense may be had in any of such counties. In such cases, where a dominant number of elements occur in one county, that county shall have the primary right to proceed with prosecution of the offender.

2. If an offense commenced outside the state is consummated within this state, trial of the offense shall be held in the county or counties in which the offense is consummated or the interest protected by the involved penal statute is impaired.

3. If an offense is committed in or upon any conveyance in transit, and it cannot readily be determined in which county the offense was committed, trial of the offense may be held in any county through or over which the conveyance passed in the course of its journey.

4. If an offense is committed on the boundary of two or more counties, and it cannot readily be determined within which county the commission took place, trial of the offense may be held in any of the counties concerned.

5. If the offense is a traffic offense, section 753.20 shall be applicable. [C51,§§2804, 2806–2808; R60,§§4505, 4507–4509; C73,§§4157, 4159–4161; C97,§§5155, 5157–5159; C24, 27, 31, 35, 39, §§13450, 13451–13453; C46, 50, 54, 58, 62, 66, 71, §§753.3–753.6; C73, 75,§753.3]

753.4 Bar to action. A conviction or acquittal of an offense in a court having jurisdiction thereof is a bar to a prosecution of the offense in another court. [R60,§4512; C73,§4164; C97, §5162; C24, 27, 31, 35, 39,§13457; C46, 50, 54, 58, 62, 66, 71,§753.10; C73, 75,§753.4]

POLICE CITATIONS

753.5 Conditions. Whenever it would be lawful for a peace officer to arrest a person without a warrant, he may issue a citation instead of making the arrest and taking the person before a magistrate. [C73, 75,§753.5]

753.6 Form. The citation shall include the name and address of the person, the nature of the offense, the time and place at which the person is to appear in court, and the penalty for nonappearance. [C73, 75,§753.6]

753.7 Procedure. Before he is released, the cited person shall sign the citation as a written promise to appear in court at the time and place specified. A copy of the citation shall be given to the person. [C73, 75,§753.7]

753.8 Complaint. The law enforcement officer issuing the citation shall cause to be filed a complaint in the court in which the cited person is required to appear, as soon as practicable, charging the crime stated in said notice. [C73, 75,§753.8]

753.9 Failure to appear. Except for citations for traffic violations, any person who willfully fails to appear in court as specified by the citation shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment. Failure to appear in response to a citation for a traffic violation shall be governed by section 321.487.

In a case where a defendant fails to make a required court appearance, the court shall issue an arrest warrant for the offense of failure to appear, and shall forward the warrant and the original citation to the clerk. The clerk shall enter a transfer to the issuing agency on the docket, and shall return the warrant with the original citation attached to the law enforcement agency which issued the original citation for enforcement of the warrant. Upon arrest of the defendant, the warrant and the original citation shall be returned to the court, and the offenses shall be heard and disposed of simultaneously. [C73, 75,§753.9]

Referred to in §754.3

753.10 to 753.12 Reserved.

TRAFFIC VIOLATIONS

753.13 Uniform citation and complaint. The commissioner of public safety shall adopt a uniform, combined traffic citation and complaint, which shall be used for charging all traffic violations in Iowa under state law or municipal ordinance, unless the defendant is charged by information or section 321.236, subsection 1, is applicable. Each citation and complaint shall be serially numbered and shall be in quadruplicate, and the officer shall deliver the original and a copy to the court where the defendant is to appear, a copy to the defendant, and a copy to the law enforcement agency of the officer. The court shall forward the copy of the citation and complaint in accordance with section 321.207. The citation and complaint shall contain, among other things, spaces for the parties' names and for the information required by section 321.485, subsection 2; a place where the defendant may sign the promise to appear referred to in section 321.486; a list of the minimum fines prescribed by section 753.15, either separately or by groups; a brief explanation of sections 753.16 and 753.17; and a space where the defendant may sign an admission of the violation when such section 753.16 is applicable. The citation and complaint may contain a space for the imprint of a credit card. Every citation and complaint shall require the defendant to appear before a court at a specified time and place. Notwithstanding section 321.485, subsection 2, the officer may arrest the defendant although a citation and complaint is used to charge the violation, if authorized by section 755.4.

Supplies of the uniform traffic citation and complaint for municipal corporations and county agencies shall be paid for out of the court expense fund of the county. Supplies of the uniform traffic citation and complaint for all other agencies shall be paid for out of the budget of the agency concerned.

The uniform citation and complaint shall contain a place for the verification of the officer issuing the citation. The complaint may be verified before the chief officer of the law enforcement agency or his designee, and the chief officer of each law enforcement agency of the state is authorized to designate specific individuals to administer oaths and certify verifications. Nothing in this section shall be deemed to invalidate forms of uniform citation and complaint in existence prior to July 1, 1974, and existing forms may be used until supplies are exhausted. [C73, 75,§753.13; 66GA, ch 1174,§11]

Referred to in §§321.236, 321.485, 753.15, 754.1

753.14 Traffic violations offices—fine collection boxes.

1. *Offices.* Each district court clerk's office shall constitute a traffic violations office of the district court. Additional traffic violations offices may be established at other locations, as needed, if authorized by the chief judge of the district.

2. *Collection boxes.* The chief judge of the district may permit the maintenance of locked collection boxes to be used at weigh stations. Such boxes shall be used solely for the deposit of fines and costs received upon written admissions of scheduled violations respecting weight and other nonmoving scheduled violations applicable to commercial carriers. The collection boxes shall remain locked at all times and shall be opened only by the clerk of the district court or his designee. The chief judge of the district may prescribe procedures for the system and may discontinue its use if necessary. [C73, 75,§753.14]

Referred to in §§321.236, 321.485, 753.15

753.15 Scheduled violations. The following shall be scheduled violations and the minimum fine for all convictions of the following violations, whether of state law or municipal ordinance, shall be:

1. Illegal parking, except under section 321.236, subsection 1, two dollars.

2. Registration card or plate violation under sections 321.37, 321.38, 321.39 and 321.388, five dollars.

3. Improper lights, ten dollars.

4. Improper muffler, ten dollars.

5. Other defective equipment, ten dollars.

6. Excess speed up to ten miles per hour over the legal limit, ten dollars.

7. Motor running unattended, ten dollars.

8. Failure to dim lights, ten dollars.

9. Violation of restricted license, twenty dollars.

10. Stopping on traveled portion, twenty dollars.

11. Violation of height, length, or width, twenty-five dollars.

12. Violation of display of identification required by section 326.22 and violation of trip permits as prescribed by sections 326.23 and 326.24*, ten dollars.

13. Violation of intrastate hauling on foreign registration under sections 321.54 and 321.55; use of registration under section 321.99; and display of registration or plates under section 321.98, twenty dollars.

14. Violation of sections 324.14, 324.52 or 324.74, subsections 2 and 6, ten dollars.

15. No evidence or improper evidence of intrastate authority carried or displayed, twenty-five dollars.

16. No evidence or improper evidence of interstate authority carried or displayed, one hundred dollars.

17. No or improper carrier identification markings, fifteen dollars.

18. Operation of vehicle by unqualified driver, twenty-five dollars.

19. Operating a vehicle in violation of maximum hours of service or failure to maintain and display evidence of hours of service, twenty-five dollars.

Violations of the schedule of axle and tandem axle and gross or group of axle weight violations in section 321.463 shall be scheduled violations subject to the provisions, procedures and exceptions contained in sections 753.13 to 753.18, irrespective of the amount of the fine under such schedule. Violations of the schedule of weight violations shall be chargeable, where the fine charged does not exceed one hundred dollars, only by uniform citation and complaint. Violations of the schedule of weight violations, where the fine charged exceeds one hundred dollars: (1) Shall, when the violation is admitted and section 753.16 applies, be chargeable upon uniform citation and complaint, indictment, or county attorney's information, (2) but otherwise, shall be chargeable only upon indictment or county attorney's information. In all cases of charges under the schedule of weight violations, the charge shall specify the amount of fine charged under the schedule. Where a defendant is convicted and the fine under the foregoing schedule of weight violations exceeds one hundred dollars, the conviction shall be of an indictable offense although section 753.16 is employed and whether the violation is charged upon uniform citation and complaint, indictment, or county attorney's information.

Such violations shall be called scheduled violations. [C73, 75,§753.15; 66GA, ch 67,§56, ch 1174,§§12, 13]

Referred to in §§321.236, 321.485, 321.486, 753.13, 753.16, 753.18, 753.21

*Repealed by 66GA, ch 173,§12

753.16 Admission of scheduled violations.

1. In cases of scheduled violations, the defendant, before the time specified in the citation and complaint for appearance before the court, may sign the admission of violation on the citation and complaint and deliver or mail the citation and complaint, together with the minimum fine for the violation, plus five dollars costs, to a traffic violations office in the county. The office shall, if the offense is a moving violation, forward a copy of the citation and complaint and admission to the commissioner of public safety as required by section 321.207. Thereupon the defendant shall not be required to appear before the court. The admission shall constitute a conviction.

2. A defendant charged with a scheduled violation by information may obtain two copies of the information from the court and, before the time he is required to appear before the court, deliver or mail such copies, together with his admission, fine, and five dollars costs, to the traffic violations office in the county. The procedure, fine, and costs shall be the same as when the charge is by citation and complaint, with the admission and the number of the defendant's operator's or chauffeur's license placed upon the information.

3. When section 753.15 and this section are applicable but the officer does not deem it advisable to release the defendant and no court in the county is in session:

a. If the defendant wishes to admit the violation, the officer may release the defendant upon observing him mail the citation and complaint, admission, and minimum fine, together with five dollars costs, to a traffic violations office in the county, in an envelope furnished by the officer. The officer may allow the defendant to use a credit card pursuant to rules adopted pursuant to section 753.21 by the department of public safety or to mail a check in the proper amount in lieu of cash. If the check is not paid by the drawee for any reason, the defendant may be held in contempt of court. The officer shall advise the defendant of the penalty for nonpayment of the check.

b. If the defendant does not comply with paragraph "*a*" of this subsection, the officer may release the defendant upon observing him mail to a court in the county the citation and complaint and one and one-half times the minimum fine together with five dollars costs, or in lieu of one and one-half times the fine and the costs, a guaranteed arrest bond certificate as provided in section 321.1, subsection 71, as bail together with the following statement signed by the defendant:

"I agree that either (1) I will appear pursuant to this citation or (2) if I do not so appear the amount deposited as bail will be forfeited."

c. If the defendant does not comply with paragraph "*a*" or "*b*", or in any event when section 755.4 is applicable, the officer may arrest and confine the defendant if authorized by the latter section, and proceed with him according to chapter 757 or 758.

4. Any defendant who admits a scheduled violation may nevertheless appear before court. The procedure, costs, and fine, without suspension of the fine, after the hearing shall be the same as in the traffic violations office.

5. A defendant charged with a scheduled violation who does not fully comply with subsection 1, 2, 3, or 4 of this section before the time required to appear before the court must, at that time, appear before the court. If such defendant admits the violation, the procedure and fine, without suspension, after the hearing shall be the same before the court as before the traffic violations office with five dollars court costs, without prejudice, when applicable, to proceedings under section 321.487. [C73, 75,§753.16; 66GA, ch 1174,§14]

Referred to in §§321.236, 321.485, 753.13, 753.15, 753.17

753.17 Required court appearance. Section 753.16 shall not apply to a scheduled violation:

1. When the violation charged involved an accident or injury.

2. When the officer believed the defendant did not have in force a valid operator's or chauffeur's license or permit.

3. When the officer believed the violation was hazardous or aggravated because of highway conditions, visibility, traffic, repetition, or other circumstances.

In such cases, the defendant shall appear before the court and regular procedure shall apply. If an information is used the officer shall endorse thereon, "Court appearance required." If a citation and complaint is used, the officer shall strike out the space in which the defendant may admit the violation before a traffic violations office and shall endorse thereon "Court appearance required". A defendant shall appear before the court for any nonscheduled violation either in person or by attorney. [C73, 75,§753.17]

Referred to in §§321.236, 321.485, 753.13, 753.15, 753.18

753.18 Other penalties. If the defendant is convicted of a scheduled violation, the penalty shall be the scheduled fine, without suspension of the fine prescribed in section 753.15 together with costs assessed and distributed as prescribed by section 602.63, unless it appears from the evidence that the violation was of the type set forth in section 753.17, subsection 3, in which event the punishment shall be increased accordingly within the limits of law. [C73, 75,§753.18]

Referred to in §§321.236, 321.485, 753.15

753.19 Disposition of traffic fines and costs. Fines, forfeiture of bail, fees, and costs collected for all traffic violations shall be remitted in accordance with section 602.55. [C73, 75, §753.19]

Referred to in §§321.236, 321.485

753.20 Venue.

1. Traffic violations may be tried before the nearest magistrate in the judicial district in which the offense is committed.

2. Upon written consent of the defendant and the officer who apprehended him, traffic violations may be prosecuted in any county in the state irrespective of where committed, and in such event the documents in the case shall be sent to the court or traffic violations office designated by the defendant and the officer. [C73, 75,§753.20]

Referred to in §§321.236, 321.485, 753.3

753.21 Credit cards. Fines for scheduled traffic violations enumerated in section 753.15 may be paid by credit cards, as defined in section 537.1301, subsection 17, approved for that purpose by the commissioner of public safety. The commissioner shall enter agreements with financial institutions extending credit through the use of credit cards to insure reimbursement of the amount of the fine plus appropriate costs to the proper traffic violations office in the state. The commissioner shall adopt rules pursuant to chapter 17A to implement the provisions of this section. [66GA, ch 1174, §2]

Referred to in §753.16

CHAPTER 754

PRELIMINARY INFORMATION AND WARRANTS OF ARREST

Referred to in §602.62

754.1 Definition.
754.2 Form.
754.3 Filing—issuing warrant.
754.4 Form of warrant.
754.5 Directed to peace officer—contents.
754.6 Order for bail—endorsed on warrant.
754.7 Manner of executing warrant.

754.1 Definition. A complaint or preliminary information is a statement in writing, under oath or affirmation, made before a magistrate, or in his absence before the district court clerk or his deputy, of the commission or threatened commission of a public offense, and accusing someone thereof. Provided, however, that this section shall not apply to the uniform traffic citations and complaints under section 753.13. [C51,§2822; R60,§4530; C73,§4111; C97,§5101; C24, 27, 31, 35, 39,§**13458**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§754.1]

754.2 Form. The information may be substantially in the form required in criminal actions triable before a judicial magistrate. [C73,§4185; C97,§5182; C24, 27, 31, 35, 39,§**13459**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§754.2]

C97,§5182, editorially divided
Form and contents, §§762.3 et seq., 773.34

754.3 Filing—issuing warrant. When a preliminary information is made before a magistrate, or district court clerk or his deputy, charging the commission of some designated public offense triable on indictment in the county in which such magistrate, or district court clerk or his deputy, has local jurisdiction, by some person named therein, he may issue a warrant for the arrest of such person.

Whenever the preliminary information or complaint charges a misdemeanor the magistrate, or district court clerk or his deputy, may in his discretion issue a citation instead of a warrant of arrest. The citation shall set forth substantially the nature of the offense and shall command the person against whom the complaint was made to appear before the magistrate issuing the citation at a time and place stated therein.

The citation may be served in the same manner as an original notice in a civil action.

If the person named in the citation is actually served as provided herein and fails without good cause to appear as commanded by the citation, he shall be guilty of a misdemeanor, and, upon conviction, shall be punished as provided in section 753.9. Upon such failure to appear, the magistrate, or district court clerk or his deputy, shall issue a warrant of arrest for the offense originally charged. Failure to appear in response to a citation for a traffic violation shall be governed by section 321.487.

Except for citations for traffic violations, if after issuing a citation the magistrate, or district court clerk or his deputy, becomes satisfied that the person to whom such citation has been directed will not appear, he may at once issue a warrant of arrest without waiting for the date mentioned in the citation. A warrant or citation issued by a clerk or deputy shall be returnable before a magistrate for the county, or in his absence, before the nearest magistrate, whether the warrant is for a felony as under section 757.2 or for a misdemeanor. If a citation or warrant is issued by the clerk, the preliminary information shall be transmitted to the magistrate before whom the defendant is to appear. [C73,§4185; C97,§5182; C24, 27, 31 35, 39,§**13460**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§754.3]

Approval of warrant and expenses, §§79.12, 79.13

754.4 Form of warrant. The warrant of arrest on a preliminary information must be substantially in the following form:

State of Iowa,
County of .....}

To any peace officer of the state:

Preliminary information upon oath having been this day filed with me, charging that the crime (naming it) has been committed and accusing A.....B..... thereof:

You are commanded forthwith to arrest the said A..... B..... and bring him before me at (naming the place), or, in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at ..... this ..... day of ....., A. D. .....

C..... D..... (with official title).

[C51,§2827; R60,§4534; C73,§4186; C97,§5183; C24, 27, 31, 35, 39,§**13461**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§754.4]

754.5 Directed to peace officer — contents. The warrant must be directed to any peace officer in the state; give the name of the defendant, if known to the magistrate, or district court clerk or his deputy; if unknown, may designate him by any name, and must state by name or general description an offense which authorizes a warrant to issue, the time of issuing it, the county, city, village, or township where issued, and be signed by the magistrate, or district court clerk or his deputy, with his name of office. [C51,§§2828, 2829; R60,§§4535, 4536; C73,§§4187, 4188; C97,§5184; C24, 27, 31, 35, 39,§**13462**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§754.5]

754.6 Order for bail—endorsed on warrant. If the offense stated in the warrant be a misdemeanor, the magistrate, or district court clerk or his deputy, issuing it must make an endorsement thereon as follows: "Let the defendant, when arrested, be admitted to bail in the sum of ..... dollars", stating the amount in which bail may be taken. [R60, §4537; C73,§4189; C97,§5185; C24, 27, 31, 35, 39, §**13463**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§754.6]

754.7 Manner of executing warrant. The warrant may be delivered to any peace officer for execution, and served in any county in the state. [R60,§4538; C73,§4190; C97,§5186; C24, 27, 31, 35, 39,§**13464**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§754.7]

CHAPTER 755

ARREST: GENERAL PROVISIONS

Referred to in §602.62

755.1 "Arrest" defined—time of making.
755.2 Acts necessary.
755.3 Persons authorized to make.
755.4 Arrests by peace officers.
755.5 Arrests by private persons.
755.6 Arrests on oral order.
755.7 Manner of making.
755.8 Resistance to arrest—use of force.
755.9 Breaking and entering premises.
755.10 Breaking out after lawful entrance.
755.11 Summoning aid—refusing to assist.
755.12 Taking weapons — delivery to magistrate.
755.13 Escape after arrest—recapture.
755.14 Arrests by private person—disposition of prisoner.
755.15 Conveying prisoner to jail—fees and expenses.
755.16 Public safety department prisoners.
755.17 Communications by arrested persons.

755.1 "Arrest" defined — time of making. Arrest is the taking of a person into custody when and in the manner authorized by law, and may be made at any time of any day or night. [C51,§§2837, 2850; R60,§§4545, 4551; C73, §§4197, 4203; C97,§5193; C24, 27, 31, 35, 39,§**13465**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§755.1]

755.2 Acts necessary. An arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest. No unnecessary force or violence shall be used in making the same, and the person arrested shall not be subjected to any greater restraint than is necessary for his detention. [C51,§2838; R60,§§4557–4559; C73,§§4209–4211; C97,§5194; C24, 27, 31, 35, 39,§**13466**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§755.2]

755.3 Persons authorized to make. An arrest may be made by a peace officer or by a private person. [R60,§4546; C73,§4198; C97, §5195; C24, 27, 31, 35, 39,§**13467**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§755.3]

755.4 Arrests by peace officers. A peace officer may make an arrest in obedience to a warrant delivered to him; and without a warrant:

1. For a public offense committed or attempted in his presence.

2. Where a public offense has in fact been committed, and he has reasonable ground for believing that the person to be arrested has committed it.

3. Where he has reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it.

4. Where he has received from the department of public safety, or from any other peace officer of this state or any other state or the United States an official communication by bulletin, radio, telegraph, telephone, or otherwise, informing him that a warrant has been issued and is being held for the arrest of the person to be arrested on a designated charge. [C51,§2840; R60,§§4547, 4548; C73,§§4199, 4200; C97,§5196; C24, 27, 31, 35, 39,§**13468**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§755.4]

Referred to in §§753.13, 753.16

755.5 Arrests by private persons. A private person may make an arrest:

1. For a public offense committed or attempted in his presence.

2. When a felony has been committed, and he has reasonable ground for believing that the person to be arrested has committed it. [C51,§2846; R60,§4549; C73,§4201; C97,§5197; C24, 27, 31, 35, 39,§**13469**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§755.5]

755.6 Arrests on oral order. A magistrate may orally order a peace officer or a private person to arrest anyone committing or attempting to commit a public offense in the presence of such magistrate, which order shall authorize the arrest. [C51,§2845; R60, §4550; C73,§4202; C97,§5198; C24, 27, 31, 35, 39, §**13470**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§755.6]

755.7 Manner of making. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of arrest, of his authority to make it, and that he is a peace officer, if such be the case, and require him to submit to his custody, except when the person to be arrested is actually engaged in the commission of or attempt to commit an offense, or escapes, so that there is no time or opportunity to do so; if acting under the authority of a warrant, he must give information thereof and show the warrant, if required. [C51,§§2839, 2841, 2847; R60,§4552; C73,§4204; C97,§5199; C24, 27, 31, 35, 39,§**13471**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§755.7]

755.8 Resistance to arrest—use of force. When the arrest is being made by an officer under the authority of a warrant, if, after information of the intention to make the arrest, the person to be arrested attempts to escape or forcibly resists, the officer may use all necessary means to effect the arrest. [C51,§2844; R60,§4553; C73,§4205; C97,§5200; C24, 27, 31, 35, 39,§**13472**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§755.8]

755.9 Breaking and entering premises. To make an arrest for any public offense, a peace

officer, acting with or, when authorized, without a warrant, may break into a house or other building in which the person to be arrested may be, or in which the officer has reasonable grounds for believing he is, after having demanded admittance and explained the purpose for which admittance is desired. In case of a felony, a private person may use like means to make an arrest. [C51,§§2843, 2848; R60,§4554; C73,§4206; C97,§5201; C24, 27, 31, 35, 39,§**13473**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§755.9]

Referred to in §755.10

755.10 Breaking out after lawful entrance. Any person who has lawfully entered a house for the purpose of making an arrest, under the provisions of section 755.9, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself; and an officer may do the same when necessary for the purpose of liberating a person who, acting in his aid and by his command, lawfully entered for the purpose of making an arrest, and is detained therein. [R60, §4555; C73,§4207; C97,§5202; C24, 27, 31, 35, 39, §**13474**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§755.10]

755.11 Summoning aid—refusing to assist. Any person making an arrest may orally summon as many persons as he finds necessary to aid him in making the arrest, and all persons failing to obey such summons shall be guilty of a misdemeanor. [R60,§4556; C73,§4208; C97, §5203; C24, 27, 31, 35, 39,§**13475**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§755.11]

Punishment, §687.7

755.12 Taking weapons—delivery to magistrate. He who makes an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken, to be disposed of according to law. [R60,§4560; C73,§4212; C97,§5204; C24, 27, 31, 35, 39,§**13476**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §755.12]

755.13 Escape after arrest—recapture. If a person after being arrested escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him in any part of the state, and may use the same means to retake as are authorized for an arrest; and this may be done at any time under the original warrant or commitment, when there is one. [C51,§2851; R60,§4561; C73,§4213; C97,§5205; C24, 27, 31, 35, 39,§**13477**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §755.13]

755.14 Arrests by private person—disposition of prisoner. A private person who has arrested another for the commission of an offense must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer, who may take the arrested person before a magistrate, but the person making the arrest must also accompany the officer before the magistrate. [C51,§§2842, 2849; R60, §§4562–4564; C73,§§4214–4216; C97,§5206; C24, 27, 31, 35, 39,§**13478**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§755.14]

Referred to in §755.17

755.15 Conveying prisoner to jail—fees and expenses. Every officer or person who shall arrest anyone with a warrant or order issued by any court or officer, or who shall be required to convey a prisoner from a place distant from the county jail to such jail on an order of commitment, shall be allowed the same fees and expenses as provided for in case of such services by the sheriff. [C73,§3820; C97,§1292; C24, 27, 31, 35, 39,§**13479**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§755.15]

Sheriff's fees, §337.11

755.16 Public safety department prisoners. The sheriff of any county shall accept for custody in the county jail of his respective county any person handed over to him for safekeeping and lodging by any member of the state department of public safety. [C39,§**13479.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§755.16]

755.17 Communications by arrested persons. Any peace officer or other person having custody of any person arrested or restrained of his liberty for any reason whatever, shall, before preliminary hearing and arraignment, except in cases of imminent danger of escape, permit that person, without unnecessary delay after arrival at the place of detention, to call, consult, and see a member of his or her family or an attorney of his or her choice. If a call is made, it shall be made in the presence of the person having custody of the one arrested or restrained. If the person arrested or restrained is intoxicated, or a person under eighteen years of age, the call shall be made by the person having custody. An attorney shall be permitted to see and consult the person arrested or restrained alone and in private at the jail or other place of custody. Before any arrested or restrained person is moved beyond the boundaries of this state by any peace officer or other person, for any reason whatever, he or she shall at all times be entitled to a reasonable delay for the purpose of obtaining counsel and availing himself or herself of the Constitution and the laws of this state for the security of personal liberty. Nothing in this section shall be construed to amend or modify section 758.1 or 755.14. A violation of this section shall constitute a misdemeanor. [C62, 66, 71, 73, 75,§755.17]

CHAPTER 756

UNIFORM FRESH PURSUIT LAW

Referred to in §602.62

756.1 Authority of officers from another state.
756.2 Procedure following arrest.
756.3 Construction of statute.
756.4 Officers from District of Columbia.
756.5 Definitions of terms.
756.6 Name of Act.

756.1 Authority of officers from another state. Any member of a duly organized state, county, or municipal law enforcing unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody, as has any member of any duly organized state, county, or municipal law enforcing unit of this state, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§756.1]

Referred to in §§756.2, 756.3

756.2 Procedure following arrest. If an arrest is made in this state by an officer of another state in accordance with the provisions of section 756.1 he shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state or admit him to bail for such purpose. If the magistrate determines that the arrest was unlawful he shall discharge the person arrested. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§756.2]

756.3 Construction of statute. Section 756.1 shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful. [C46, 50, 54, 58, 62, 66, 71, 73, 75, §756.3]

756.4 Officers from District of Columbia. For the purpose of this chapter the word "state" shall include the District of Columbia. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§756.4]

756.5 Definitions of terms. The term "fresh pursuit" as used in this chapter shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay. [C46, 50, 54, 58, 62, 66, 71, 73, 75,§756.5]

Constitutionality, 49GA, ch 95,§7

756.6 Name of Act. This chapter may be cited as the "Uniform Act on Fresh Pursuit." [C46, 50, 54, 58, 62, 66, 71, 73, 75,§756.6]

CHAPTER 757

ARREST BY WARRANT

Referred to in §§602.62, 753.16

757.1 Disposition of prisoner.
757.2 In case of arrest for felony.
757.3 In case of arrest for misdemeanor.
757.4 Order for discharge.
757.5 Discharge—delivery of warrant and papers.
757.6 Failure to give bail.
757.7 Proceedings after arrest.
757.8 Hearing before another magistrate.

757.1 Disposition of prisoner. An officer making an arrest in obedience to a warrant shall proceed with the person arrested as commanded by the warrant or as provided by law. [R60,§4565; C73,§4217; C97,§5207; C24, 27, 31, 35, 39,§13480; C46, 50, 54, 58, 62, 66, 71, 73, 75,§757.1]

Approval of warrant and expenses, §§79.12, 79.18

757.2 In case of arrest for felony. If the offense stated in the warrant be a felony, the officer making the arrest must take the defendant before the magistrate who issued it at the place mentioned in the command thereof, or, in the event of his absence or inability to act, before the nearest or most accessible magis-

trate in the county in which it was issued. [C51,§2831; R60,§4539; C73,§4191; C97,§5187; C24, 27, 31, 35, 39,§13481; C46, 50, 54, 58, 62, 66, 71, 73, 75,§757.2]

Referred to in §754.3

757.3 In case of arrest for misdemeanor. If the offense stated in the warrant be a misdemeanor, and the defendant be arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate or the clerk of the district court of the same county in which he was arrested, for the purpose of giving bail, and the magistrate or clerk before whom he is taken in such county must take bail from him, in the sum endorsed upon the warrant, for his appearance at the district court of the county in which the warrant was issued on a date entered on the bond which shall be not less than twenty nor more than thirty days after bail is given. But if the warrant was issued by a magistrate or court other than the district court the bond must provide for the defendant's appearance before such magistrate or court at a time to be entered on said bond. The time so entered shall not be sooner than the fifth nor later than the tenth day after bail is given. [C51, §2832; R60,§4540; C73,§4192; C97,§5188; C24, 27, 31, 35, 39,§13482; C46, 50, 54, 58, 62, 66, 71, 73, 75,§757.3]

Referred to in §757.4
Similar provision, §763.5

757.4 Order for discharge. On taking bail in the case provided for in section 757.3, the magistrate or clerk taking the same must endorse on the warrant his official order for the discharge of the defendant, substantially as follows:

State of Iowa,
County of .....}

To the officer (naming him and his official title, thus A..... B....., sheriff of ..... county) having in custody C..... D..... (naming him):

The defendant named in the within warrant of arrest, now in your custody under the authority thereof for the offense therein designated, having given sufficient bail to answer the same by the undertaking herewith delivered to you, you are commanded forthwith to discharge him from custody, and, without unnecessary delay, deliver this order, together with the said undertaking of bail, to the clerk of the district court of ..... county, on or before the .... day of ....(month), 19.... (year), (which date shall correspond with the date entered upon the bond) or to (name and address of the court or magistrate who issued the warrant) if the warrant was not by the district court.

Dated at ...., this .... day of ...., A.D.....
E.... F.... (with official title).

[C51,§2833; R60,§4541; C73,§4193; C97,§5189; C24, 27, 31, 35, 39,§13483; C46, 50, 54, 58, 62, 66, 71, 73, 75,§757.4]

C97,§5189, editorially divided

757.5 Discharge—delivery of warrant and papers. He must deliver the warrant with the order thereon, together with the undertaking of bail, to the officer having the defendant in custody, who shall forthwith discharge him from arrest, and at once inform the magistrate issuing the warrant of his doings. [C51,§2833; R60,§4541; C73,§4193; C97,§5189; C24, 27, 31, 35, 39,§13484; C46, 50, 54, 58, 62, 66, 71, 73, 75,§757.5]

757.6 Failure to give bail. If bail be not forthwith given by the defendant as above provided, the magistrate or clerk must redeliver to the officer the warrant, and the officer must take the defendant before the magistrate who issued it at the place mentioned in the command thereof, or, if he be absent or unable to act, before the nearest or most accessible magistrate in the county in which the warrant was issued. [C51,§2834; R60,§4542; C73,§4194; C97, §5190; C24, 27, 31, 35, 39,§13485; C46, 50, 54, 58, 62, 66, 71, 73, 75,§757.6]

757.7 Proceedings after arrest. In all cases the defendant, when arrested, must be taken before the magistrate or clerk without unnecessary delay, and the officer must at the same time deliver to the magistrate or clerk the warrant, with his return thereon endorsed and subscribed by him with his official title. [C51, §2835; R60,§4543; C73,§4195; C97,§5191; C24, 27, 31, 35, 39,§13486; C46, 50, 54, 58, 62, 66, 71, 73, 75,§757.7]

757.8 Hearing before another magistrate. If the defendant be taken before a magistrate in the county in which the warrant was issued, other than the magistrate who issued it as hereinbefore provided, the affidavits on which the warrant was issued must be sent to such magistrate, or if they cannot be procured, the informant and his witnesses must be subpoenaed to make new affidavits. [C51,§2836; R60,§4544; C73,§4196; C97,§5192; C24, 27, 31, 35, 39,§13487; C46, 50, 54, 58, 62, 66, 71, 73, 75,§757.8]

CHAPTER 758

ARREST WITHOUT WARRANT

Referred to in §§602.62, 753.16

758.1 Disposition of prisoner.
758.2 Hearing before magistrate.
758.3 Transfer for convenience.
758.4 Proceedings—same as under warrant.
758.5 Offense triable in another county—transfer.
758.6 Bail—commitment—discharge.
758.7 Proceedings in case of transfer.
758.8 Proper magistrate to conduct hearing—bail.
758.9 Officers return.

758.1 Disposition of prisoner. When an arrest is made without a warrant, the person arrested shall, without unnecessary delay, be taken before the nearest available magistrate, and the grounds on which the arrest was made shall be stated to the magistrate by affidavit, subscribed and sworn to by the person making the statement, in the same manner as upon a preliminary information, as nearly as may be. [R60,§4566; C73,§4218; C97,§5208; C24, 27, 31, 35, 39,§**13488**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§758.1]

Referred to in §755.17

758.2 Hearing before magistrate. If the magistrate believes from the statements in the affidavit that the offense charged is triable in the county in which the arrest was made, and there is sufficient ground for a trial or preliminary examination, as the case may require, and it will not be inconvenient for the witnesses on the part of the state that it should be had before him, he shall proceed as if the person arrested had been brought before him on arrest under a warrant, and, if the case be one within his jurisdiction to try and determine, shall order an information to be filed against him. [R60,§4567; C73,§4219; C97,§5209; C24, 27, 31, 35, 39,§**13489**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§758.2]

C97,§5209, editorially divided

758.3 Transfer for convenience. If the magistrate finds that it will be more convenient for the witnesses on the part of the state that such trial or examination should be had before some other magistrate, he shall, by a written order, commit the person arrested to a peace officer, to be by him taken before the other magistrate, together with the order of commitment and affidavits, unless the person arrested give bail, when authorized, for his appearance, as in case of arrest under a warrant. [R60, §4568; C73,§4220; C97,§5209; C24, 27, 31, 35, 39, §**13490**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§758.3]

758.4 Proceedings—same as under warrant. Unless bail is given, the peace officer shall take the arrested person before the designated magistrate, and in any case shall deliver to him the affidavits and order of commitment, and when the person arrested is brought or appears before him, he shall proceed as on an arrest under a warrant, and, when necessary, shall order an information to be filed against the person arrested. [R60,§4568; C73,§4220; C97, §5210; C24, 27, 31, 35, 39,§**13491**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§758.4]

758.5 Offense triable in another county—transfer. If the magistrate believes from the statements in the affidavit that the offense charged is triable in a county different from that in which the arrest is made, and there is sufficient ground for a trial or preliminary examination, he shall, by a written order, commit the person arrested to a peace officer, to be by him taken before a magistrate in the county in which the offense is triable, and if the offense be a misdemeanor triable on indictment, shall fix in the order the amount of bail which the person arrested may give for his appearance at the district court of the county (naming it) in which the offense is indictable to answer to an indictment. If the offense charged be a bailable crime, the arrested person may give bail, conditioned as above provided, before a clerk of the district court. [R60,§4569; C73,§4221; C97,§5211; C24, 27, 31, 35, 39,§**13492**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§758.5]

Referred to in §§758.6, 758.8

758.6 Bail—commitment—discharge. If bail be given before a magistrate, as provided in section 758.5, it may be either before the magistrate making the order, or the magistrate in the county in which the offense is triable before whom he is taken under the order, or a magistrate of any county through which he passes in going from the county in which the arrest was made to that in which the offense is triable, or, in any bailable case, before the clerk of the district court of either of said counties; and, when given, the magistrate or clerk taking the same shall make, on the order of commitment, an order for the discharge of the person arrested from custody, who shall forthwith be discharged, and shall transmit by mail, or otherwise, to the clerk of the district court of the county at which the person arrested is bound to appear as soon as convenient and within twenty days after taking the bail, the affidavits, the order of commitment, and discharge, together with the undertaking of bail, and he shall file the same in his office. [R60,§4570; C73,§4222; C97,§5212; C24, 27, 31, 35, 39,§**13493**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§758.6]

Referred to in §758.8

758.7 Proceedings in case of transfer. If bail be not given as above provided, or if the offense charged is a felony not bailable, or a misdemeanor triable on information, the magistrate must deliver the affidavits and order of commitment to a peace officer, who shall proceed with the person arrested as directed by the order or provided by law; and the magistrate in the county in which the offense is triable, when the person arrested is brought before him, shall proceed as on an arrest under a warrant, and if the case be within his jurisdiction to try and determine, shall order an information to be filed against the person arrested. [R60,§4571; C73,§4223; C97,§5213; C24, 27, 31, 35, 39,§**13494**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§758.7]

Referred to in §758.8

758.8 Proper magistrate to conduct hearing—bail. In the cases contemplated in sections 758.5 to 758.7, inclusive, the officer having the person arrested in custody, under the order, shall take him before the proper magistrate, in the county in which the offense is triable, which is most convenient for the witnesses on the part of the state; unless, in case of a misdemeanor triable on indictment as hereinbefore provided, the person arrested desires to give bail, in which case he shall take him before the most convenient magistrate in the county in which the offense with which he is

charged is triable, or any county through which he passes in going from the county in which the arrest was made to the county in which the offense is triable, or before the clerk of the district court of either of said counties, for the purpose of giving bail. [R60, §4572; C73,§4224; C97,§5214; C24, 27, 31, 35, 39, §13495; C46, 50, 54, 58, 62, 66, 71, 73, 75,§758.8]

758.9 Officers return. In all cases, the peace officer, when he takes a person committed to him under an order as provided in this chapter before a magistrate or clerk of the district court, either for the purpose of giving bail, if bail be taken, or for trial or preliminary examination, must make his return on such order, and sign such return with his name of office, and deliver the same to the magistrate or clerk. [R60,§4573; C73,§4225; C97,§5215; C24, 27, 31, 35, 39,§13496; C46, 50, 54, 58, 62, 66, 71, 73, 75,§758.9]

CHAPTER 759

UNIFORM CRIMINAL EXTRADITION ACT

Referred to in §602.62

759.1 Definitions.
759.2 Arrest of fugitives.
759.3 Demand in writing.
759.4 Investigation by attorney general.
759.5 Persons imprisoned in another state.
759.6 Criminal acts committed in third state.
759.7 Warrant for arrest.
759.8 Authority of warrant.
759.9 Authority of peace officer.
759.10 Testing legality of arrest.
759.11 Penalty for willful disobedience.
759.12 Confinement in jail.
759.13 Arrest on affidavit.
759.14 Arrest without warrant.
759.15 Holding to await requisition.
759.16 Bail—exceptions.
759.17 Discharge or recommitment.
759.18 Forfeiture of bond.
759.19 Criminal prosecution pending.
759.20 Guilt or innocence of person held.
759.21 Warrant recalled.
759.22 Receiving person extradited.
759.23 Application for extradition.
759.24 Expenses—how paid.
759.25 Waiver by person arrested.
759.26 State's rights not deemed waived.
759.27 Trial for other crimes.
759.28 Construction of chapter.
759.29 Title.

759.1 Definitions. Where appearing in this chapter, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state, and the term "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America. [C50, 54, 58, 62, 66, 71, 73, 75,§759.1]

759.2 Arrest of fugitives. Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state. [C51,§3283; R60,§4522; C73,§4175; C97,§5172; C24, 27, 31, 35, 39,§13502; C46,§759.6; C50, 54, 58, 62, 66, 71, 73, 75,§759.2]

759.3 Demand in writing. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 759.6, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand. [R60,§4521; C73,§4174; C97,§5171; C24, 27, 31, 35, 39,§13501; C46,§759.5; C50, 54, 58, 62, 66, 71, 73, 75,§759.3]

Referred to in §759.6

759.4 Investigation by attorney general. When a demand shall be made upon the governor of this state by the executive authority of

another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered. [C50, 54, 58, 62, 66, 71, 73, 75,§759.4]

759.5 Persons imprisoned in another state. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section 759.23 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. [C50, 54, 58, 62, 66, 71, 73, 75,§759.5]

759.6 Criminal acts committed in third state. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 759.3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not filed therefrom. [C50, 54, 58, 62, 66, 71, 73, 75, §759.6]

Referred to in §§759.3, 759.13, 759.15

759.7 Warrant for arrest. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. [C51,§3283; R60,§4522; C73,§4175; C97,§5172; C24, 27, 31, 35, 39,§13502; C46,§759.6; C50, 54, 58, 62, 66, 71, 73, 75,§759.7]

Referred to in §759.25

759.8 Authority of warrant. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter to the duly authorized agent of the demanding state. [C51,§§3283, 3289; R60,§§4522, 4528; C73,§§4175, 4181; C97,§§5172, 5178; C24, 27, 31, 35, 39,§§13502, 13508; C46,§§759.6, 759.12; C50, 54, 58, 62, 66, 71, 73, 75,§759.8]

Referred to in §759.25

759.9 Authority of peace officer. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. [C50, 54, 58, 62, 66, 71, 73, 75,§759.9]

759.10 Testing legality of arrest. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state. [C50, 54, 58, 62, 66, 71, 73, 75,§759.10]

Referred to in §759.25

759.11 Penalty for willful disobedience. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in willful disobedience to the last section, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than one hundred dollars or be imprisoned not more than thirty days. [C50, 54, 58, 62, 66, 71, 73, 75,§759.11]

759.12 Confinement in jail. The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this

state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state. [C24, 27, 31, 35, 39,§**13512**; C46,§759.16; C50, 54, 58, 62, 66, 71, 73, 75,§759.12]

759.13 Arrest on affidavit. Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases under section 759.6, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 759.6, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. [C51,§3284; R60,§4523; C73,§4176; C97, §5173; C24, 27, 31, 35, 39,§**13503**; C46,§759.7; C50, 54, 58, 62, 66, 71, 73, 75,§759.13]

759.14 Arrest without warrant. The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant. [C50, 54, 58, 62, 66, 71, 73, 75,§759.14]

759.15 Holding to await requisition. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under section 759.6, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged. [C50, 54, 58, 62, 66, 71, 73, 75,§759.15]

759.16 Bail—exceptions. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state. [C51,§§3285, 3286; R60,§§4524, 4525; C73,§§4177, 4178; C97,§§5174, 5175; C24, 27, 31, 35, 39,§§**13504, 13505**; C46,§§759.8, 759.9; C50, 54, 58, 62, 66, 71, 73, 75,§759.16]

Referred to in §759.17

759.17 Discharge or recommitment. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate judge may again take bail for his appearance and surrender, as provided in section 759.16, but within a period not to exceed sixty days after the date of such new bond. [C51,§3288; R60,§4527; C73,§4180; C97,§5177; C24, 27, 31, 35, 39,§**13507**; C46,§759.11; C50, 54, 58, 62, 66, 71, 73, 75,§759.17]

759.18 Forfeiture of bond. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state. [C51, §3287; R60,§4526; C73,§4179; C97,§5176; C24, 27, 31, 35, 39,§**13506**; C46,§759.10; C50, 54, 58, 62, 66, 71, 73, 75,§759.18]

759.19 Criminal prosecution pending. If a criminal prosecution has been instituted

against such person under the laws of this state and is still pending the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state. [C50, 54, 58, 62, 66, 71, 73, 75,§759.19]

759.20 Guilt or innocence of person held. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime. [C50, 54, 58, 62, 66, 71, 73, 75,§759.20]

759.21 Warrant recalled. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper. [C50, 54, 58, 62, 66, 71, 73, 75,§759.21]

759.22 Receiving person extradited. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed. [C51, §3282; R60,§4518; C73,§4171; C97,§5169; C24, 27, 31, 35, 39,§13497; C46,§759.1; C50, 54, 58, 62, 66, 71, 73, 75,§759.22]

759.23 Application for extradition. When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits or of the judgment of conviction or of the sentence shall be filed in the office of the governor to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition. [C50, 54, 58, 62, 66, 71, 73, 75,§759.23]

Referred to in §759.5

759.24 Expenses — how paid. When the punishment of the crime shall be the confinement of the criminal in the penitentiary, the expenses shall be paid out of the state treasury, on the certificate of the governor and warrant of the comptroller; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, and all necessary and actual traveling expenses incurred in returning the prisoner. [C51,§3282; R60,§4518; C73,§§4171, 4184; C97,§§5169, 5181; C24, 27, 31, 35, 39,§§13498, 13499, 13511; C46, §§759.2, 759.3, 759.15; C50, 54, 58, 62, 66, 71, 73, 75,§759.24]

759.25 Waiver by person arrested. Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 759.7 and 759.8 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to

the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 759.10.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state. [C50, 54, 58, 62, 66, 71, 73, 75,§759.25]

759.26 State's rights not deemed waived. Nothing in this chapter contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever. [C50, 54, 58, 62, 66, 71, 73, 75, §759.26]

759.27 Trial for other crimes. After a person has been brought back to this state by, or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition. [C50, 54, 58, 62, 66, 71, 73, 75,§759.27]

759.28 Construction of chapter. The provisions of this chapter shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it. [C50, 54, 58, 62, 66, 71, 73, 75,§759.28]

759.29 Title. This chapter may be cited as the "Uniform Criminal Extradition Act." [C50, 54, 58, 62, 66, 71, 73, 75,§759.29]

Constitutionality, 53GA, ch 244,§29
Omnibus repeal, 53GA, ch 244,§31

CHAPTER 759A

AGREEMENT ON DETAINERS COMPACT

Referred to in §602.62

759A.1 Agreement with other states.
759A.2 Court defined.
759A.3 Co-operation.
759A.4 Habitual criminals.
759A.5 Escape in another state.
759A.6 Transfer of custody.
759A.7 Detainer administrator.
759A.8 Copies of law transmitted.

759A.1 Agreement with other states. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of co-operative procedures. It is the further purpose of this agreement to provide such co-operative procedures.

ARTICLE II

As used in this agreement:

a. "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

b. "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

c. "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

ARTICLE III
Referred to in Articles II, V and VI

a. Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: Provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

b. The written notice and request for final disposition referred to in paragraph "*a*" hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

c. The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

d. Any request for final disposition made by a prisoner pursuant to paragraph "*a*" hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

e. Any request for final disposition made by a prisoner pursuant to paragraph "*a*" hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph "*d*" hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

f. Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph "*a*" hereof shall void the request.

ARTICLE IV
Referred to in Articles II, V and VI

a. The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V "*a*" hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: Provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: And provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

b. Upon receipt of the officer's written request as provided in paragraph "*a*" hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the

receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

c. In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

d. Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph "*a*" hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

e. If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V "*e*" hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

Referred to in Article IV (*a*,*e*)

a. In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

b. The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

c. If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

d. The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

e. At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

f. During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

g. For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

h. From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

a. In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the

running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

b. No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the Constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the Constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [C66, 71, 73, 75,§759A.1]

759A.2 Court defined. The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean any court with criminal jurisdiction in the matter involved. [C66, 71, 73, 75,§759A.2]

759A.3 Co-operation. All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to co-operate with one another and with other party states in enforcing the agreement and effectuating its purpose. [C66, 71, 73, 75,§759A.3]

759A.4 Habitual criminals. Nothing in this chapter or in the agreement on detainers shall be construed to require the application of chapter 747 to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of this agreement. [C66, 71, 73, 75,§759A.4]

759A.5 Escape in another state. Escape from custody while in another state, pursuant to this agreement on detainers shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the agreement on detainers and shall be punishable in the same manner as an escape from said institution. [C66, 71, 73, 75,§759A.5]

759A.6 Transfer of custody. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers. [C66, 71, 73, 75,§759A.6]

759A.7 Detainer administrator. Pursuant to the agreement on detainers, the governor is hereby authorized to designate an officer or alternate who shall be the central administrator of and information agent for the agreement on detainers and who, acting jointly with like officers of other party states, shall have power to formulate rules and regulations to carry out more effectively the terms of the agreement, and shall serve subject to the pleasure of the governor. [C66, 71, 73, 75, §759A.7]

759A.8 Copies of law transmitted. Copies of this chapter shall, upon its approval, be transmitted to the governor of each state, the attorney general, and the administrator of general services of the United States, and the council of state governments. [C66, 71, 83, 75,§759A.8]

CHAPTER 760

SECURITY TO KEEP THE PEACE

Referred to in §§602.62, 746.5

760.1 Public offense threatened—complaint—arrest.
760.2 Proceedings before magistrate.
760.3 Change of venue—examination.
760.4 Discharge ordered—costs.
760.5 Defendant bound over—sureties.
760.6 Committed to jail.
760.7 Disposition of papers.
760.8 Assault in presence of court or magistrate.

760.9 Bond required on conviction.
760.10 Appearance—time of—forfeiture.
760.11 Hearing—judgment—costs.
760.12 Breach of bond.
760.13 Suit brought by county attorney.
760.14 Record of conviction must be alleged—evidence.

760.1 Public offense threatened—complaint—arrest. When complaint is made before a magistrate, other than a judge of the supreme court or court of appeals, that any person has threatened to commit any public offense punishable by law, and such magistrate is satisfied that there is reason to fear the commission thereof, he may issue a warrant for the arrest of the person complained of; and the officer to whom the same shall be delivered for service shall forthwith arrest and bring the accused before such magistrate, or, in case of his absence or inability to act, before the nearest and most accessible magistrate of the same county. When the name of the person complained of is unknown, he may be designated in the warrant by any name, and the warrant issued in pursuance hereof may be executed by any peace officer in any county of the state. [R60,§§4447-4454; C73,§4115; C97,§5105; C24, 27, 31, 35, 39,§**13513**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§760.1; 66GA, ch 1241,§91]

Approval of warrant and expenses, §§79.12, 79.13

760.2 Proceedings before magistrate. When the person arrested is taken before a magistrate other than the one who issued the warrant, the peace officer who executed the same and who has charge of the person arrested must, at the same time, deliver to the magistrate before whom the person arrested is taken, the warrant, with his return endorsed and subscribed by him. The complaint and other affidavits, if any, on which the warrant was issued must be sent to the magistrate before whom the person arrested is taken, and, if they cannot be procured, the complainant and his witnesses, if any, must be subpoenaed, if necessary, by the magistrate before whom the person arrested is taken, to appear before him and make a new complaint and affidavits. [R60,§4455; C73,§4116; C97,§5106; C24, 27, 31, 35, 39,§**13514**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§760.2]

760.3 Change of venue—examination. When the person complained of is brought before the magistrate, if the charge be controverted, a change of venue may be had as in preliminary examinations, and at the hearing the magistrate must take the testimony in relation thereto, which must be reduced to writing and subscribed by the witnesses. [R60,§4456; C73,§4117; C97,§5107; C24, 27, 31, 35, 39,§**13515**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§760.3]

760.4 Discharge ordered—costs. If it appear that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged, and the complainant may be ordered to pay the costs of the proceeding if the magistrate regards the complaint as unfounded and frivolous, and, he shall transmit the complaint, affidavits, warrant, and order to the clerk of the district court of the county, who shall file the same, make a memorandum thereof in the judgment docket, and issue execution therefor immediately. [R60,§4457; C73,§4118; C97,§5108; C24, 27, 31, 35, 39,§**13516**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§760.4]

760.5 Defendant bound over — sureties. If there be just reason to fear the commission of the offense, the person complained of shall be required to enter into an undertaking, in such sum as the magistrate may direct, with one or more sufficient sureties, to abide the order of the district court of the county, and in the meantime to keep the peace toward the people of the state, and particularly toward the person against whom or whose property there is reason to fear the offense may be committed. [R60,§4458; C73,§4119; C97,§5109; C24, 27, 31, 35, 39,§**13517**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §760.5]

Referred to in §760.6

760.6 Committed to jail. If the undertaking required by section 760.5 be given, the party complained of must be discharged; if not, the magistrate must commit him to prison, specifying in the warrant the requirements to give security, the amount thereof, and the omission to give the same; if committed for not giving such undertaking, he may be discharged by a magistrate upon giving the required bonds. [R60,§§4459, 4460, 4464; C73, §§4120, 4121; C97,§5110; C24, 27, 31, 35, 39, §**13518**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§760.6]

760.7 Disposition of papers. The undertaking, together with the complaints, affidavits, if any, and other papers in the proceeding must be filed by the magistrate with the clerk of district court of the county to stand trial in the district court subject to the provisions of sections 760.10 and 760.11. [R60,§4461; C73,§4122; C97,§5111; C24, 27, 31, 35, 39,§**13519**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§760.7]

760.8 Assault in presence of court or magistrate. Any person who, in the presence of a court or magistrate, shall assault or threaten to assault another, or to commit an offense against the person or property of another, or contends with another with angry words, may be ordered, without process, to enter into an undertaking to keep the peace for a period of time not exceeding ninety days and in case of his omission to comply with said order, he may be committed accordingly. [R60,§4462; C73, §4123; C97,§5112; C24, 27, 31, 35, 39,§**13520**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§760.8]

760.9 Bond required on conviction. The district court, upon the conviction of any person for an offense against the person or property of another, when necessary for the public good, may require the defendant to enter into an undertaking to keep the peace, as hereinbefore provided, and, on his omission to do so, may commit him accordingly. [R60,§4463; C73,§4124; C97,§5113; C24, 27, 31, 35, 39,§**13521**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§760.9]

760.10 Appearance—time of—forfeiture. A person who has entered into an undertaking to keep the peace, when required by a magistrate as hereinbefore provided, must appear within ninety days following the date of the undertaking, and if the complainant appear and the person bound by the undertaking does not appear, the court may forfeit his undertaking and order the same to be prosecuted, unless his default be excused. [R60,§4465; C73, §4125; C97,§5114; C24, 27, 31, 35, 39,§**13522**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§760.10]

Referred to in §760.7

760.11 Hearing — judgment — costs. If the principal in the undertaking appear, and the complainant does not appear, or if neither of the parties appear, the court shall enter an order discharging the undertaking; but if both parties appear, the court shall hear their proofs, and may require a new undertaking in such sum as it shall prescribe, for a period not exceeding one year, and may commit the defendant until the same be given. Judgment shall be entered against the party held to keep the peace for all the costs of the proceeding, but if it is made to appear to the court that the proceeding was instituted without probable cause, the court may render judgment against the complainant for such costs. [R60,§4466; C73,§4126; C97,§5115; C24, 27, 31, 35, 39,§**13523**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§760.11]

Referred to in §760.7

760.12 Breach of bond. An undertaking to keep the peace is broken by the forfeiture of the same by order of the court, as hereinbefore provided, or upon the conviction of the party bound for a breach of the peace. [R60, §4467; C73,§4127; C97,§5116; C24, 27, 31, 35, 39, §**13524**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§760.12]

760.13 Suit brought by county attorney. Upon the county attorney's producing evidence of such conviction to the district court to which the undertaking is returned, the court must order the enforcement of the undertaking, and the county attorney must thereupon commence an action upon it. [R60,§4468; C73,§4128; C97,§5117; C24, 27, 31, 35, 39,§**13525**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§760.13]

760.14 Record of conviction must be alleged —evidence. In such action, the record of forfeiture or conviction must be alleged as the breach of the undertaking, and is conclusive evidence thereof. [R60,§4469; C73,§4129; C97, §5118; C24, 27, 31, 35, 39,§**13526**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§760.14]

CHAPTER 761

PRELIMINARY EXAMINATIONS

Referred to in §602.62

761.1 Procedure—waiver.
761.2 Change of venue—grounds.
761.3 Procedure on change.
761.4 Examinations—adjournments.
761.5 Commitment or bail.
761.6 Absence of jail.
761.7 Witnesses.
761.8 Depositions.
761.9 Cross-interrogatories.
761.10 Order for taking.
761.11 Exclusion of deposition.
761.12 Witnesses separated.
761.13 Private hearing.
761.14 Minutes of examination.
761.15 Repealed by 64GA, ch 1124,§282.
761.16 Certification of proceedings.
761.17 Discharge—endorsement on minutes.
761.18 Commitment—endorsement on minutes.
761.19 Order as to bail.
761.20 Warrant of commitment.
761.21 Witnesses bound.
761.22 Security for appearance.
761.23 Minors may be bound.
761.24 Witness committed.
761.25 Return to district court.
761.26 Nonindictable offense—information.
761.27 Lack of jurisdiction—trial transferred.
761.28 Witnesses bound—papers transferred.
761.29 Liability of informant—costs.
761.30 Evidence taken in writing.

761.1 Procedure — waiver. When the arrested person is brought before the magistrate, with or without a warrant, upon preliminary information, the magistrate must immediately inform him of the offense with which he is charged, and of his right to counsel in every stage of the proceedings, and must allow him a reasonable time to send for counsel, and, if necessary, adjourn for that purpose. After waiting a reasonable time for or on the appearance of counsel for defendant, the magistrate shall immediately proceed with the preliminary examination, or may allow the defendant to waive the same. [C51,§§2852–2854; R60, §§4575–4577; C73,§§4226–4228; C97,§5216; C24, 27, 31, 35, 39,§**13527**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.1]

761.2 Change of venue — grounds. Before any evidence is heard, the defendant may have a change of venue, upon filing an affidavit that the magistrate is prejudiced against him, or is a material witness for either party, or that the defendant cannot obtain justice before him, as affiant verily believes. [C73,§4228; C97,§5217; C24, 27, 31, 35, 39,§13528; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.2]

C97,§5217, editorially divided
Similar provisions, §762.13 et seq.

761.3 Procedure on change. On filing such an affidavit a change of venue must be allowed, and the magistrate must immediately transmit all original papers, and a transcript of the entire record in the case, to the nearest magistrate in the township, if there be one; if not, to the nearest magistrate in the county, who shall proceed with said examination as hereinafter provided; but one such change shall be allowed. [C51,§2854; R60,§4577; C73,§4228; C97, §5217; C24, 27, 31, 35, 39,§13529; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.3]

761.4 Examinations — adjournments. The examination must be terminated at one session unless the magistrate, for good cause shown, adjourn it; but it shall not be adjourned for a longer period than thirty days. [C51,§§2855, 2856; R60,§§4578, 4579; C73,§§4229, 4230; C97, §5218; C24, 27, 31, 35, 39,§13530; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.4]

761.5 Commitment or bail. If an adjournment be had for any cause, the magistrate shall commit the defendant for examination, or require him to give ample bail for his appearance at the time and place to which the examination is adjourned. [C51,§2857; R60,§4580; C73,§4231; C97,§5219; C24, 27, 31, 35, 39,§13531; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.5]

761.6 Absence of jail. If there is no jail in the county, the sheriff must retain the defendant in his custody until the examination. [C51,§2859; R60,§4582; C73,§4232; C97,§5220; C24, 27, 31, 35, 39,§13532; C46. 50, 54, 58, 62, 66, 71, 73, 75,§761.6]

761.7 Witnesses. The magistrate must issue subpoenas for any witnesses required by the state or defendant, and those who appear must be examined in the presence of the defendant. [C51,§2860; R60,§4583; C73,§4233; C97,§5221; C24, 27, 31, 35, 39,§13533; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.7]

761.8 Depositions. The deposition of a witness who resides out of the county in which the examination is had may be taken on application of the defendant, on the order of the magistrate, before any officer authorized to take depositions in civil actions; which order shall not be made until three days after the filing with the magistrate of the written interrogatories to be propounded to the witness, nor until three days after the service of notice on the state, or on the attorney who appears for the state, of the filing of such interrogatories. [C73,§4234; C97,§5222; C24, 27, 31, 35, 39, §13534; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.8]

Depositions in general, R.C.P. 153

761.9 Cross-interrogatories. Before the order to take deposition is made, the state may file cross-interrogatories to be propounded to the witness, which shall be answered by him in the deposition. [C73,§4235; C97,§5223; C24, 27, 31, 35, 39,§13535; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.9]

761.10 Order for taking. At the expiration of three days from the filing of the interrogatories and the service of the notice thereof on the state as above provided, the magistrate may order the testimony of the witness to be taken in answer to the interrogatories and cross-interrogatories, if any, on file. [C73, §4236; C97,§5224; C24, 27, 31, 35, 39,§13536; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.10]

C97,§5224, editorially divided

761.11 Exclusion of deposition. The deposition thus taken may be read in evidence on the examination; nor shall the same be excluded because of any irregularity in the taking of it, if the magistrate is satisfied that the irregularity complained of could work no substantial prejudice to the opposite party. [C73,§4236; C97,§5224; C24, 27, 31, 35, 39,§13537; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.11]

761.12 Witnesses separated. While a witness is under examination before the magistrate he may exclude all others who have not been examined, and may cause the witnesses to be kept separate, that they may not converse with each other until the examination is closed. [C51,§2867; R60,§4591; C73,§4239; C97, §5225; C24, 27, 31, 35, 39,§13538; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.12]

761.13 Private hearing. The magistrate must also, upon request of the defendant, exclude from hearing the examination all persons except the magistrate, his clerk, the peace officer who has the custody of the defendant, the attorney or attorneys representing the state, the defendant and his counsel. [R60, §4592; C73,§4240; C97,§5226; C24, 27, 31, 35, 39, §13539; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.13]

761.14 Minutes of examination. The magistrate shall, in the minutes of the examination, write out or cause to be written out the substance of the testimony given on the examination by each witness, the name, place of residence, business or profession of each witness, and the amount he is entitled to for mileage and attendance. [C51,§2868; R60,§4593; C73,§4241; C97,§5227; C24, 27, 31, 35, 39,§13540; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.14]

C97,§5227, editorially divided

761.15 Repealed by 64GA, ch 1124,§282.

761.16 Certification of proceedings. After the examination is closed, the magistrate must attach together the complaint, the warrant or order of commitment, if any, under which the

defendant was brought before him, the minutes of the examination, including all depositions used, and annex thereto his certificate, which must set forth, in substance, the time and place of examination, and that the minutes thereof are true, which certificate must be officially signed by the magistrate. [C51,§§2869, 2870; R60,§4594; C73,§4242; C97,§5228; C24, 27, 31, 35, 39,§**13542**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.16]

761.17 Discharge—endorsement on minutes. If after hearing the testimony it appears to the magistrate that a public offense has not been committed, or that there is no sufficient reason for believing the defendant guilty thereof, he must order him discharged, and such order must be endorsed on the minutes of the examination, or annexed thereto and signed by the magistrate, to the following effect: "There being no sufficient cause for believing the defendant guilty of the offense herein mentioned, I order him to be discharged." [C51,§2871; R60,§4595; C73,§4243; C97, §5229; C24, 27, 31, 35, 39,§**13543**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.17]

761.18 Commitment—endorsement on minutes. If it appears from the examination that a public offense, triable on indictment, has been committed, and there is sufficient reason for believing the defendant guilty thereof, the magistrate shall in like manner endorse on or annex to the minutes of the examination an order signed by him to the following effect: "It appearing to me by the within minutes that an offense, triable on indictment (stating generally the nature thereof), has been committed, and that there is sufficient cause for believing the defendant guilty thereof, I order that he be held to answer the same." [C51,§2872; R60, §4596; C73,§4244; C97,§5230; C24, 27, 31, 35, 39, §**13544**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.18]

C97,§5230, editorially divided

761.19 Order as to bail. The order shall either state, "and I have admitted him to bail to answer thereto by the bail bond hereto annexed"; or, if bail is not given, "and that he be committed to the county jail until he give bail in the sum of .....dollars (naming it)"; but if the offense is not bailable, the order of commitment shall state, "without bail." [C51,§§2873, 2874; R60,§§4598, 4599; C73,§§4245, 4246; C97,§5230; C24, 27, 31, 35, 39, §**13545**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.19]

761.20 Warrant of commitment. If the magistrate order the defendant to be committed, he shall make out a warrant of commitment, officially signed, and deliver it, with the defendant, to the officer to whom he is committed; or, if the officer be not present, to a peace officer, who shall deliver the defendant into the proper custody, together with the warrant of commitment, which may be in the following form:

The State of Iowa,
To the Sheriff of ..... County:

An order having been this day made by me that A..... B..... (the name of the defendant) be held to answer upon a charge of (state the offense), you are commanded to receive him into your custody and detain him in the jail of the county until he be legally discharged.

Dated at .. this .... day of ...., A.D. ....

G..... H..... (with official title).

[C51,§2875; R60,§4600; C73,§4247; C97,§5231; C24, 27, 31, 35, 39,§**13546**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.20]

761.21 Witnesses bound. On holding the defendant to answer, the magistrate may take from each material witness examined by him on the part of the state a written undertaking, to the effect that he will appear and testify at the court to which the defendant is bound to answer, when required in the further progress of the cause, and that he will not evade or attempt to evade the service of a subpoena, or will forfeit the sum of one hundred dollars. [C51,§2876; R60,§4601; C73,§4248; C97,§5232; C24, 27, 31, 35, 39,§**13547**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.21]

761.22 Security for appearance. When the magistrate is satisfied by oath or otherwise that there is reason to believe any witness will not fulfill his undertaking and appear and testify unless surety be required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper for his appearance. [C51,§2877; R60,§4602; C73,§4249; C97,§5233; C24, 27, 31, 35, 39,§**13548**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §761.22]

Referred to in §761.23

761.23 Minors may be bound. Minors who are material witnesses against the defendant may in like manner be required to procure sureties for their appearance as provided in section 761.22. [C51,§2878; R60,§4603; C73,§4250; C97,§5234; C24, 27, 31, 35, 39,§**13549**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.23]

761.24 Witness committed. If a witness required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for the purpose, the magistrate must commit him until he comply or be legally discharged. [C51, §2879; R60,§4604; C73,§4251; C97,§5235; C24, 27, 31, 35, 39,§**13550**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.24]

761.25 Return to district court. When a magistrate has discharged a defendant, or held him to answer an indictment, he must return to the district court of the county as soon after the closing of the examination as practicable, all the papers filed in the proceeding, including therewith the minutes of the evidence, together with the undertaking of bail for the appearance of the defendant, and the undertakings of the witnesses or for them, taken by him. [C51,§2880; R60,§4605; C73, §4252; C97,§5236; C24, 27, 31, 35, 39,§**13551**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.25]

761.26 Nonindictable offense — information. If it appear from the examination that a public offense has been committed which is not triable on indictment, but on information only, and there is sufficient reason for believing the defendant guilty thereof, the magistrate shall retain all the papers, and forthwith order an information to be filed against the defendant, before him. [R60,§4607; C73,§4253; C97,§5237; C24, 27, 31, 35, 39,§**13552**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.26]

C97,§5237, editorially divided

761.27 Lack of jurisdiction — trial transferred. If he have not jurisdiction to try and determine the same, he shall endorse on or annex to the minutes of the examination an order, signed by him, to the following effect: "It appearing to me by the within minutes that the offense of (here state its name or nature generally) has been committed and that there is sufficient reason for believing the defendant guilty thereof, I order that an information be filed against him therefor before (here name some magistrate who is the nearest and most accessible in the same county, giving the name of office), and that the defendant be committed to any peace officer to be taken before such magistrate." [R60,§4607; C73,§4253; C97,§5237; C24, 27, 31, 35, 39,§**13553**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.27]

761.28 Witnesses bound — papers transferred. The magistrate shall thereupon cause each material witness on the part of the state to enter into a written undertaking, to the effect that he will appear forthwith before the magistrate before whom the defendant is to be taken, or he will forfeit the sum of fifty dollars, and deliver the undertaking, with all the other papers, to a peace officer, who shall forthwith take the defendant before such magistrate, and deliver all the papers with the undertakings of the witnesses to the magistrate directed in the order, and make his return thereto, and sign the same with his name of office, and the magistrate before whom he is taken shall thereupon proceed accordingly. [R60,§4607; C73,§4253; C97,§5237; C24, 27, 31, 35, 39,§**13554**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §761.28]

761.29 Liability of informant—costs. When the defendant is discharged, the magistrate shall, if he is satisfied that the prosecution is malicious or without probable cause; or if the person commencing the prosecution by filing the information fail to appear by himself, agent, or attorney to prosecute the same or give evidence, and the accused is discharged by reason thereof, the magistrate in his discretion may tax the costs and render a judgment therefor against such person, subject to the right of appeal therefrom in the manner provided for appeals by prosecuting witnesses in cases of acquittal upon trial. [C73,§4254; C97,§5238; C24, 27, 31, 35, 39,§**13555**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.29]

Appeal,§762.35 et seq.
Similar provision, §762.34

761.30 Evidence taken in writing. On the demand of the county attorney, the magistrate shall take the evidence in writing of the state's witnesses, notwithstanding he has permitted the defendant to waive the preliminary examination. [C97,§5239; C24, 27, 31, 35, 39, §**13556**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§761.30]

CHAPTER 762

TRIAL OF NONINDICTABLE OFFENSES

Referred to in §602.62

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762.1 To whom tried. Judicial magistrates and district associate judges must hear, try and determine all nonindictable offenses. District judges may transfer any nonindictable offenses pending before them to the nearest judicial magistrate or district associate judge. [C51,§3322; R60,§5055; C73,§4660; C97,§5575; C24, 27, 31, 35, 39,§**13557**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.1]

762.2 Information — complaint. Criminal actions for the commission of a public offense must be commenced before a magistrate or district court clerk or his deputy by an information or complaint, subscribed and sworn to, and filed with the magistrate or district court clerk or his deputy. [C51,§3323; R60,§5056; C73, §4661; C97,§5576; C24, 27, 31, 35, 39,§**13558**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.2]

762.3 Contents of information. Such information must contain:

1. The name of the county and of the magistrate where the information is filed.

2. The names of the parties, if the defendants be known, and if not, then such names as may be given them by the complainant.

3. A statement of the acts constituting the offense, in ordinary and concise language, and the time and place of the commission of the offense, as near as may be.

4. The provisions of section 769.6 shall be applicable to the prosecution before a magistrate of cases within its jurisdiction. [C51, §3324; R60,§5057; C73,§4662; C97,§5577; C24, 27, 31, 35, 39,§**13559**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.3]

"Short form" authorized, §773.34

762.4 Form of information. The information may be substantially in the following form:

..... County: } Before magistrate ...
The State of Iowa } (here insert the name
against } of the magistrate).
A.... B...., defendant }

The defendant is accused of the crime (here name the offense).

For that the defendant, on the .... day of ....., A.D....., at the (here name the city or township), in the county aforesaid (here state the act or omission constituting the offense as in an indictment). [C51,§3325; R60, §5058; C73,§4663; C97,§5578; C24, 27, 31, 35, 39, §**13560**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.4]

"Short form" authorized, §773.35

762.5 Filing of information. The magistrate or district court clerk or his deputy must file such information and mark thereon the time of filing the same. [C51,§3326; R60,§5059; C73, §4664; C97,§5579; C24, 27, 31, 35, 39,§**13561**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.5]

762.6 Warrant of arrest. Immediately upon the filing of such information, the magistrate, the district court clerk or deputy may, in his discretion, issue a warrant for the arrest of the defendant, directed in the same manner as a warrant of arrest upon a preliminary information, which may be served in like manner. [C51,§3327; R60,§5060; C73,§4665; C97, §5580; C24, 27, 31, 35, 39,§**13562**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.6]

762.7 Service of warrant. The officer who receives the warrant must serve the same by arresting the defendant, if in his power, and bringing him without unnecessary delay before the magistrate. The magistrate may fix bail and in his absence the district court clerk or deputy may do so. [C51,§3328; R60,§5061; C73,§4666; C97,§5581; C24, 27, 31, 35, 39,§**13563**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.7]

C97,§5581, editorially divided
Approval of warrant and expenses, §§79.12, 79.13

762.8 Service against corporation. If defendant is a corporation, it may be proceeded against upon notice as in case of indictment. [C97,§5581; C24, 27, 31, 35, 39,§**13564**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.8]

Process against corporation, §774.7 et seq.

762.9 Appearance of defendant. When the defendant is brought before the magistrate, the charge against him must be distinctly read to him, and he shall be asked whether he is presented by his right name, and be required to plead. [C51,§3329; R60,§5062; C73,§4667; C97, §5582; C24, 27, 31, 35, 39,§**13565**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.9]

C97,§5582, editorially divided

762.10 Wrong name—waiver. If he objects that he is wrongly named in the information, he must give his right name, and if he refuses to do so, or does not object that he is wrongly named, the magistrate shall make an entry thereof in his docket, and he is thereafter precluded from making any such objection. [C51, §3329; R60,§5062; C73,§4667; C97,§5582; C24, 27, 31, 35, 39,§**13566**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.10]

762.11 Pleadings of defendant. The defendant may plead the same as upon an indictment, orally or in writing, and such pleas shall be entered on the docket of the magistrate. [C51, §3330; R60,§5063; C73,§4668; C97,§5583; C24, 27, 31, 35, 39,§**13567**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.11]

Pleading, ch 777

762.12 Trial. Upon a plea other than guilty, the magistrate shall set a trial date which shall be at least fifteen days after the plea is entered. He shall notify the prosecuting attorney of the trial date and shall advise the defendant that the trial will be without jury unless demand for jury trial is made at least ten days prior to the date set for trial. Upon the request of the defendant, the magistrate may set the date of trial at a time less than fifteen days after a plea other than guilty is entered. The magistrate shall notify the defendant that a request for earlier trial date shall constitute a waiver of jury.

Upon the trial, the judicial magistrate shall append the exhibits or copies thereof to the

record. The proceedings upon trial shall not be reported. [C51,§3331; R60,§5064; C73,§4669; C97,§5584; C24, 27, 31, 35, 39,§**13568**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.12]

762.13 Change of place of trial—grounds. Before any testimony is heard, a change of place of trial may be applied for by an affidavit filed, stating that the magistrate is prejudiced against the defendant, or is of near relation to the prosecutor upon the charge or the party injured or interested, or is a material witness for either party, or that the defendant cannot obtain justice before him, as the affiant verily believes. [R60,§5065; C73,§4670; C97,§5585; C24, 27, 31, 35, 39,§**13569**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.13]

Similar provision, §761.2 et seq.

762.14 Change allowed — transmission of papers. If such affidavit be filed, the change of place of trial must be allowed, and the magistrate must immediately transmit all the original papers, and a transcript of all his docket entries in the case, to the next nearest magistrate, unless said magistrate be a party to the action, or is related to either party by consanguinity, or affinity within the fourth degree, or where he has been attorney for either party in the action or proceeding; and in such case the magistrate before whom such action or proceeding is commenced shall transmit all the original papers, together with a transcript of all his docket entries, to the next nearest magistrate against whom none of the above objections exist, who shall proceed with the case as provided in this chapter, but no more than one change of place of trial in the same case shall be allowed. [R60,§5066; C73, §4671; C97,§5586; C24, 27, 31, 35, 39,§**13570**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.14]

762.15 Jury trial. A defendant in a criminal action shall be entitled to jury trial by filing with the magistrate a written jury demand at least ten days before the time set for trial. Failure to make a jury demand in the manner prescribed herein constitutes a waiver of jury. If demand is made, the action shall be tried by a jury of six members. [C51,§3332; R60,§5067; C73,§4672; C97,§5587; C24, 27, 31, 35, 39,§**13571**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.15]

762.16 Bailiff obtained. If trial by jury is demanded, the magistrate shall notify the sheriff who shall furnish a bailiff at that time and place to act as officer of the court. [C73, 75,§762.16]

762.17 Selection of names. If a trial by jury is demanded, the magistrate shall notify the clerk of the time and place of trial. The clerk shall thereupon select by lot fourteen names from the district court jury panel selected pursuant to section 609.19. The clerk shall notify the jurors of the time and place for trial. [C51,§§3333, 3334; R60,§§5068, 5069; C73, §§4673, 4674; C97,§§5588, 5589; C24, 27, 31, 35, 39, §§**13572, 13573**; C46, 50, 54, 58, 62, 66, 71,§§762.16, 762.17; C73, 75,§762.17]

Competency of jurors, §607.1

762.18 Challenges. The same challenges may be taken by either party to any individual juror as on the trial of an indictment for a misdemeanor, but no challenge to the panel is allowed. [C73, 75,§762.18]

762.19 Applicable provisions. Sections 779.4 through 779.16 relating to trial juries, shall apply to trials under this chapter. [C73, 75, §762.19]

762.20 Bystanders summoned. If for any reason the magistrate's panel as chosen by the clerk becomes insufficient to obtain a jury, he may direct the officer of the court to summon any bystander or others who may be competent, and against whom no sufficient cause of challenge appears, to act as jurors. [C73, 75,§762.20]

762.21 Repealed by 65GA, ch 1085,§43.

762.22 Repealed by 66GA, ch 67,§57.

762.23 Repealed by 65GA, ch 1085,§43.

762.24 Jury of six. When six jurors appear and are accepted, they shall constitute the jury. [C51,§3341; R60,§5076; C73,§4681; C97, §5596; C24, 27, 31, 35, 39,§**13580**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.24]

762.25 Oath of jurors. The magistrate must thereupon administer to them the following oath or affirmation: "You do swear (or, you do solemnly affirm, as the case may be) that you will well and truly try the issue between the state of Iowa and the defendant, and a true verdict give according to the law and evidence." [C51,§3342; R60,§5077; C73,§4682; C97, §5597; C24, 27, 31, 35, 39,§**13581**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.25]

762.26 Proceedings before jury. After the jurors are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public. After which, they may either decide in court or retire for consideration. [C51,§3343; R60,§5078; C73,§4683; C97,§5598; C24, 27, 31, 35, 39,§**13582**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.26]

762.27 Retirement for consideration — oath. If they do not immediately agree, they must retire with the officer, who shall take the following oath: "You do swear that you will keep the jury together in some private and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless it be to ask them if they have agreed upon a verdict, and that you will return them into court when they have so agreed." [C51,§3344; R60,§5079; C73,§4684; C97, §5599; C24, 27, 31, 35, 39,§**13583**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.27]

762.28 Verdict. When the jury have agreed upon a verdict, they must deliver it publicly

to the magistrate, who shall enter it on his docket. [C51,§3345; R60,§5080; C73,§4685; C97, §5600; C24, 27, 31, 35, 39,§**13584**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.28]

762.29 Jury kept together. The jury must be kept together after the cause is submitted to them until they have agreed upon and rendered a verdict, unless, for good cause, the magistrate sooner discharge them. [C51,§3346; R60,§5081; C73,§4686; C97,§5601; C24, 27, 31, 35, 39,§**13585**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §762.29]

Referred to in §762.30

762.30 Jury discharged. If the jury is discharged as provided in section 762.29, the magistrate may proceed again to the trial in the same manner as upon the first, and so on till a verdict is rendered. [C51,§3347; R60,§5082; C73, §4687; C97,§5602; C24, 27, 31, 35, 39,§**13586**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.30]

762.31 Judgment—rules. When the defendant pleads guilty or is convicted, the magistrate shall render judgment thereon of fine or imprisonment, as the case may require, being governed by the rules prescribed for the district court, as far as the same are applicable, in rendering such judgment. [C51,§3348; R60, §5083; C73,§4688; C97,§5603; C24, 27, 31, 35, 39, §**13587**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.31]

762.32 Satisfaction of judgment. Upon entering a judgment imposing a fine, the court may provide that the judgment be paid in installments. If the defendant willfully fails to pay installments when due, he shall be guilty of contempt and shall be punished as provided in chapter 665. [C51,§3349; R60,§5084; C73,§4689; C97,§5604; C24, 27, 31, 35, 39,§**13588**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.32]

762.33 Defendant discharged. When the defendant is acquitted, he must be immediately discharged. [C51,§3350; R60,§5085; C73,§4690; C97,§5605; C24, 27, 31, 35, 39,§**13589**; C46, 50, 54, 58 62, 66, 71, 73, 75,§762.33]

762.34 Costs taxed to prosecutor. If the prosecuting witness fails to appear by himself, agent, or attorney to prosecute or give evidence on the trial, and defendant is discharged on account of such nonappearance, the magistrate may, in his discretion, tax the costs of the proceeding against such prosecuting witness and render judgment therefor; and if defendant is acquitted, the magistrate shall, if satisfied that the prosecution is malicious or without probable cause, so tax the costs and render judgment therefor. [R60,§5086; C73,§4691; C97, §5606; C24, 27, 31, 35, 39,§**13590**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.34]

C97,§5606, editorially divided
Similar provisions, §761.29

762.35 Appeal. In either case the prosecuting witness may appeal from such judgment to a district judge, by giving notice thereof as provided with reference to appeals by defendant, and the fact of the giving of such notice shall be entered by the magistrate on his record. The same procedure shall obtain as upon an appeal by the defendant. [C73,§4691; C97,§5606; C24, 27, 31, 35, 39,§**13591**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.35]

Manner of taking, §762.43

762.36 and 762.37 Repealed by 64GA, ch 1124, §282.

762.38 Certificate of conviction. When a conviction is had upon a plea of guilty, or upon trial, the magistrate must make and officially sign a certificate thereof, in which it shall be sufficient briefly to state the offense charged, the conviction and judgment thereon, and, if any fine has been collected, the amount thereof. [C51,§3351; R60,§5087; C73,§4692; C97,§5607; C24, 27, 31, 35, 39,§**13594**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.38]

762.39 Judgment—how executed. The judgment shall be executed by a peace officer of the county where the conviction is had, by virtue of a warrant under the hand of the magistrate, specifying the particulars of such judgment. [C51,§3354; R60,§5090; C73,§4693; C97, §5608; C24, 27, 31, 35, 39,§**13595**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.39]

762.40 Repealed by 64GA, ch 1124,§282.

762.41 Payment to sheriff. If the defendant be committed for not paying a fine, he may pay it to the sheriff of the county, but to no other person, who must, within thirty days after the receipt thereof, pay it into the county treasury. [C51,§3356; R60,§5092; C73,§4695; C97, §5610; C24, 27, 31, 35, 39,§**13597**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.41]

762.42 Receipt for fine. If the fine, or any part thereof, is paid to the magistrate or sheriff, he must execute duplicate receipts therefor. [C51,§3357; R60,§5093; C73,§4696; C97,§5611; C24, 27, 31, 35, 39,§**13598**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.42]

762.43 Appeal. An appeal may be taken by the plaintiff only upon a finding of invalidity of an ordinance or statute. In all other cases, an appeal may only be taken by the defendant and only upon a judgment of conviction. Execution of the judgment shall be stayed upon the filing with the clerk of the district court an appeal bond with surety approved by the clerk, in the sum specified in the judgment. The defendant may take an appeal, by giving notice orally to the magistrate that he appeals, or by delivering to the magistrate not later than ten days thereafter, a written notice of his appeal, and in either case the magistrate must make an entry on its docket of the giving of such notice. Payment of fine or service of a sentence of imprisonment does not waive the right to appeal, nor render the appeal moot. When an appeal is taken, the magistrate shall forward to the appropriate district court clerk a copy of the

docket entries in his court, together with copies of the complaint, warrant, motions, pleadings and the exhibits or copies thereof, and all other papers in the case. The case shall stand for trial anew in the district court in the same manner as it originally should have been tried. The court shall have full power over the case, the judicial magistrate and his record, and shall render original judgment. [C51,§3358; R60,§5095; C73,§4697; C97, §5612; C24, 27, 31, 35, 39,§**13599**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§762.43]

762.44 Appeal from the district court. After appeal to a district judge in a nonindictable case, either party may appeal from the judgment of the district judge to the supreme court in the same manner as from a judgment in a prosecution by indictment, and the defendant may be admitted to bail in like manner, and similar proceedings shall be had on the appeal in all respects, as far as applicable. The same proceedings shall be had to carry into effect the judgment of an appellate court upon the appeal as if it had been taken from a judgment prosecuted by indictment. [C73, 75,§762.44; 66GA, ch 1241,§92]

762.45 to 762.52 Repealed by 64GA, ch 1124, §282.

CHAPTER 763

BAIL OR RELEASE ON RECOGNIZANCE

Referred to in §602.62

763.1 Bailable offenses.
763.2 Nonbailable offenses.
763.3 Repealed by 62GA, ch 420,§1.
763.4 Form of bail bond.
763.5 Indictment for misdemeanor.
763.6 Felony.
763.7 Officers required to take bail.
763.8 Form of bail bond.
763.9 Bail on appeal—conditions.
763.10 By whom taken.
763.11 Qualifications of surety—insurance companies excepted.
763.12 Affidavit by surety.
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763.14 Order of allowance.
763.15 Discharge of defendant.
763.16 Disallowance.
763.17 Conditions for release of defendant.
763.18 Appeal from conditions of release.
763.19 Failure to appear—penalty.

763.1 Bailable offenses. All defendants are bailable both before and after conviction, by sufficient surety, except for murder in the first degree and kidnaping for ransom when the proof is evident or the presumption great. [C51,§§3212, 3213; R60,§4962; C73,§4107; C97, §5096; S13,§5096; C24, 27, 31, 35, 39,§**13609**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.1]

S13,§5096, editorially divided

763.2 Nonbailable offenses. No defendant convicted of murder in the first degree, or of the crime of treason shall be admitted to bail. [C51,§3211; R60,§4962; C73,§3845; C97,§5096; S13, §5096; C24, 27, 31, 35, 39,§**13610**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.2]

Referred to in §763.17
Similar provision, §789.19

763.3 Repealed by 62GA, ch 420,§1; see §§763.16–763.18.

763.4 Form of bail bond. Bail is put in by a written undertaking, executed by one or more sufficient sureties (with or without the defendant, in the discretion of the court, clerk, or magistrate), accepted by the court, clerk, or magistrate taking the same, and may be substantially in the following form:

County of .....

An order having been made on the .... day of ....., A. D. ....., by A..... B....., a (official title) that C..... D..... be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been duly admitted to bail, in the sum of ..... dollars.

We, E..... F..... and G..... H....., hereby undertake that the said C..... D....., shall appear at the district court of the county of....., on the ..... day of ..... (month), 19.... (year) (which date shall not be more than twenty days after perfection of the undertaking), and answer said charge, and submit to the orders and judgment of said court, and not depart without leave of the same, or, if he fail to perform either of these conditions, that we will pay to the state of Iowa the sum of ..... dollars (inserting the sum in which the defendant is admitted to bail).

E..... F.....
G..... H.....

Accepted by me as ....., in the township of ....., in the county of ....., this.... day of ....., A. D. .....

I..... J..... (with official title). [C51,§3219; R60,§4968; C73,§4574; C97,§5501; C24, 27, 31, 35, 39,§**13612**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.4]

Information by county attorney—effect on bail, §769.31

763.5 Indictment for misdemeanor. When the offense charged in an indictment is a misdemeanor, the officer serving the warrant, if bail is authorized, must take the defendant before a magistrate in the county in which it

was issued, or in which he is arrested, or before the clerk of the district court of either of such counties, for the purpose of giving bail. [C51,§3227; R60,§4976; C73,§4582; C97, §5502; C24, 27, 31, 35, 39,§**13613**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.5]

Similar provision, §757.3

763.6 Felony. If the offense charged in the indictment be a felony, the officer arresting the defendant must deliver him into custody according to the command of the warrant. [C51, §3228; R60,§4977; C73,§4583; C97,§5503; C24, 27, 31, 35, 39,§**13614**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.6]

763.7 Officers required to take bail. When the defendant is so delivered into custody, if the felony charged be bailable, bail must be taken by that court, or its clerk, or by any magistrate in the same county. [C51,§3229; R60,§4978; C73,§4584; C97,§5504; C24, 27, 31, 35, 39,§**13615**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.7]

763.8 Form of bail bond. The bail must be put in by a written undertaking, executed by one sufficient surety, with or without the defendant, in the discretion of the court, clerk, or magistrate, acknowledged before and accepted by the court, clerk, or magistrate taking the same, and may be substantially in the following form:

County of .....

An indictment having been found in the district court of the county of ....., on the .. day of ....., A. D. ....., charging A..... B..... with the crime of (designating it as in the warrant), and he having been duly admitted to bail in the sum of ..... dollars:

We, A..... B..... and C..... D....., hereby undertake that the said A.... B.... shall appear and answer the said indictment, and submit to the orders and judgment of said court, and not depart without leave of the same, or, if he fail to perform either of these conditions, that he will pay to the state of Iowa the sum of ..... dollars (inserting the sum in which the defendant is admitted to bail).

A..... B.....
C..... D.....
E..... F.....

Acknowledged before and accepted by me, at ....., in the township of ....., in the county of ....., this ..... day of ....., A. D. .....

G..... H..... (with official title).

[R60,§4979; C73,§4585; C97,§5505; C24, 27, 31, 35, 39,§**13616**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.8]

763.9 Bail on appeal — conditions. After conviction and upon an appeal the defendant must be admitted to bail, if it be from a judgment imposing a fine, upon the undertaking of bail that he will, in all respects, abide the orders and the judgment of an appellate court upon the appeal; if from a judgment of imprisonment, upon the undertaking of bail that the defendant will surrender himself in execution of the judgment and direction of the appellate court, and in all respects abide the orders and judgment of the appellate court upon the appeal. [R60,§4966; C73,§4587; C97,§5506; C24, 27, 31, 35, 39,§**13617**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.9; 66GA, ch 1241,§93]

C97,§5506, editorially divided

763.10 By whom taken. The bail may be taken, either by the court where the judgment was rendered, or the district court of the county in which he is imprisoned, or by the appellate court, or a judge or clerk of any of such courts. [R60,§4981; C73,§4587; C97,§5506; C24, 27, 31, 35, 39,§**13618**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.10; 66GA, ch 1241,§94]

763.11 Qualifications of surety — insurance companies excepted. The surety must be a resident and householder or freeholder within the state, worth the amount specified in the undertaking, exclusive of property exempt from execution. In taking bail each signer may justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to one sufficient bail.

Insurance companies doing business in this state under the provisions of subsection 2 of section 515.48, may act as surety in such cases, and need not be a resident, householder or freeholder within the state. Such company need not justify as above provided. [C51, §3220; R60,§4969; C73,§4575; C97,§5507; C24, 27, 31, 35, 39,§**13619**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.11]

Referred to in §763.12
Unallowable sureties, §682.5

763.12 Affidavit by surety. The surety must in all cases justify by affidavit taken before an officer authorized to administer oaths, and the affidavit must state that each possesses the qualifications prescribed in section 763.11.

Insurance companies and surety companies referred to in section 763.11 need not make such justification. [C51,§3221; R60,§4970; C73, §4576; C97,§5508; C24, 27, 31, 35, 39,§**13620**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.12]

763.13 Examination as to sufficiency. The court in which the action is pending, or the clerk thereof, or the county attorney, or magistrate may require the personal appearance of sureties offered, and may thereupon further examine them upon oath concerning their sufficiency, and may also receive other evidence for or against the sufficiency of the bail. [C51,§§3222, 3223; R60,§§4971, 4972; C73,§§4577, 4578; C97,§5509; C24, 27, 31, 35, 39,§**13621**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.13]

763.14 Order of allowance. When the examination is closed the court, clerk, or magistrate must make an order, either allowing or disallowing the bail, and forthwith cause the same, with the affidavits of justification and the undertaking of bail, to be filed with the clerk of the court to which the papers on the

preliminary examination are required to be sent. [C51,§3224; R60,§4973; C73,§4579; C97, §5510; C24, 27, 31, 35, 39,§**13622**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.14]

763.15 Discharge of defendant. Upon the allowance of bail and the execution of the undertaking, the court, clerk, or magistrate must make an order, signed officially, for the discharge of the defendant, to the following effect:

The State of Iowa,
To the sheriff of the county of .....:

C..... D....., who is detained by you on commitment (or indictment or conviction, as the case may be) for the offense of (here designate it generally), having given sufficient bail to answer the same, you are commanded forthwith to discharge him from custody.

Dated at ....., in the township (city) of ....., in the county of ....., this ..... day of ....., A.D. .....

K..... L..... (with official title).

[C51,§3225; R60,§4974; C73,§4580; C97,§5511; C24, 27, 31, 35, 39,§**13623**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.15]

763.16 Disallowance. If the bail be disallowed, the defendant must be detained in custody until other bail is put in and justified. [C51,§3226; R60,§4975; C73,§4581; C97,§5512; C24, 27, 31, 35, 39,§**13624**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§763.16]

763.17 Conditions for release of defendant.

1. All bailable defendants shall be ordered released from custody pending judgment on their personal recognizance, or upon the execution of an unsecured appearance bond in an amount specified by the magistrate unless the magistrate determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the defendant as required. When such determination is made, the magistrate shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

a. Place the defendant in the custody of a designated person or organization agreeing to supervise him;

b. Place restrictions on the travel, association or place of abode of the defendant during the period of release;

c. Require the execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash or other qualified security of a sum not to exceed ten percent of the amount of the bond, such deposit to be returned to the defendant upon the performance of the appearances as required in section 766.1;

d. Require the execution of a bail bond with sufficient surety, or the deposit of cash in lieu thereof, provided that, except as provided in section 763.2, bail initially given shall remain valid until final disposition of the offense. If the amount of bail is deemed insufficient by the court before whom the offense is pending, the court may order an increase thereof and the defendant must provide the additional undertaking, written or cash, to secure his release.

e. Impose any other condition deemed reasonably necessary to assure appearances as required, including a condition requiring that the defendant return to custody after specified hours.

2. In determining which conditions of release will reasonably assure appearance, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

3. A magistrate authorizing the release of a defendant under this section shall issue a written order containing a statement of the conditions imposed, if any, shall inform the defendant of the penalties applicable to violation of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon such violation.

4. A defendant who remains in custody twenty-four hours after bail or other conditions of release are imposed by a magistrate not a district court judge as a result of his inability to fulfill the conditions of release imposed shall be brought forthwith before the magistrate who imposed the conditions and informed of the defendant's right to have said conditions reviewed. If the defendant indicates he desires such a review and is indigent and unable to retain legal counsel, the magistrate shall appoint an attorney to represent the defendant for the purpose of such review. Unless the conditions of release are amended and the defendant is thereupon released, the magistrate shall set forth in writing the reasons for requiring conditions imposed. A defendant who is ordered released by a magistrate other than a district court judge on a condition which required that he return to custody after specified hours shall, upon application, be entitled to review by the magistrate who imposed the condition in the same manner as a defendant who remains in full-time custody. In the event that the magistrate who imposed conditions of release is not available, any other magistrate in the district may review such conditions.

5. A magistrate ordering the release of the defendant on any conditions specified in this section may at any time amend his order to impose additional or different conditions or release, provided that, if the imposition of different or additional conditions results in the detention of the defendant as a result of

his inability to meet such conditions, the provisions of subsection 4 shall apply. [C51, §3216–3218; R60,§4967; C73,§4573; C97,§5500; C24, 27, 31, 35, 39,§13611; C46, 50, 54, 58, 62, 66,§763.3; C71, 73, 75,§763.17]

Referred to in §§763.18, 763.19

763.18 Appeal from conditions of release.

1. A defendant who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to section 763.17, subsections 4 or 5, by a magistrate, other than a judge of the district court having original jurisdiction over the offense with which he is charged, may move the district court having jurisdiction over the county in which the offense is pending to amend the order. Said motion shall be promptly set for hearing and a record made thereof.

2. In any case in which a court denied a motion under subsection 1 to amend an order imposing conditions of release, or a defendant is detained after conditions of release have been imposed or amended upon such a motion, an appeal may be taken to the supreme court. The appeal shall be determined summarily without briefs on the record made in the district court. However, the defendant may elect to file briefs and may be heard in oral argument, in which case the prosecution shall have a right to respond as in an ordinary appeal from a criminal conviction. The appellate court may, on its own motion, order the parties to submit briefs and set the time in which such briefs shall be filed. Any order so appealed shall be affirmed if it is supported by the proceedings in the district court. If the order is not so supported the court may remand the case for a further hearing, or may, with or without additional evidence, order the defendant released pursuant to section 763.17, subsection 1. [C71, 73, 75, §763.18; 66GA, ch 1241,§95]

Referred to in §763.19

763.19 Failure to appear — penalty. Any defendant who, having been released pursuant to sections 763.17 and 763.18 willfully fails to appear before any court or magistrate as required shall, in addition to the forfeiture of any security given or pledged for his release, if he was released in connection with a charge which constitutes a felony, or while awaiting sentence or pending appeal after conviction of any public offense, shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five thousand dollars. If the defendant was released before conviction or acquittal in connection with a charge which constitutes any public offense not a felony, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars. [C71, 73, 75,§763.19]

CHAPTER 764

UNDERTAKINGS OF BAIL AS LIENS

764.1 When lien on real estate.
764.2 Attested copies filed in proper counties.

764.1 When lien on real estate. Undertakings of bail, immediately after filing by the clerk of the district court, shall be docketed and entered upon the lien index as required for judgments in civil cases, and, from the time of such entries, shall be liens upon real estate of the persons executing the same, with like effect as judgments in civil actions. [R60, §§5000, 5001; C73,§§4606, 4607; C97,§5513; C24, 27, 31, 35, 39,§13625; C46, 50, 54, 58, 62, 66, 71, 73, 75,§764.1]

Judgment docket and lien book, §606.7

764.2 Attested copies filed in proper counties. Attested copies of such undertakings may be filed in the office of the clerk of the district court of the county in which the real estate is situated, in the same manner and with like effect as attested copies of judgments, and shall be immediately docketed and indexed in the same manner. [R60,§5002; C73,§4608; C97, §5514; C24, 27, 31, 35, 39,§13626; C46, 50, 54, 58, 62, 66, 71, 73, 75,§764.2]

Filing of attested copies, §624.24

CHAPTER 765

CASH BAIL

Referred to in §602.62

765.1 Deposit in lieu of bail.
765.2 Cash substituted for bail.
765.3 Bail substituted for cash.
765.4 Disposition of deposited money.

765.1 Deposit in lieu of bail. The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit with the clerk of the district court to which the undertaking is required to be sent, the sum mentioned in the order, and, upon delivering to the officer in whose custody he is, a certificate under seal from said clerk of the deposit, he must be discharged from custody. [C51,§3232; R60,§4983; C73,§4589; C97,§5524; C24, 27, 31, 35, 39,§**13627**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§765.1]

765.2 Cash substituted for bail. If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the undertaking, and, upon the deposit being made, the bail shall be exonerated. [C51,§3233; R60, §4984; C73,§4590; C97,§5525; C24, 27, 31, 35, 39, §**13628**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§765.2]

Referred to in §765.3

765.3 Bail substituted for cash. If money is deposited as provided in section 765.2, bail may be given in the same manner as if it had been originally given, upon the order for admission to bail at any time before the forfeiture of the deposit. The court or magistrate before whom the bail is taken shall thereupon direct, in the order of allowance, that the money deposited be refunded by the clerk to the defendant, and it shall be done. [C51, §3234; R60,§4985; C73,§4591; C97,§5526; C24, 27, 31, 35, 39,§**13629**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§765.3]

765.4 Disposition of deposited money. When money has been deposited by the defendant, if it remain on deposit at the time of a judgment against him, the clerk, under the direction of the court, shall apply the money in satisfaction of so much of the judgment as requires the payment of money, and shall refund the surplus, if any, to him, unless an appeal be taken to the supreme court, and bail put in, in which case the deposit shall be returned to the defendant. [C51,§3235; R60,§4986; C73,§4592; C97,§5527; C24, 27, 31, 35, 39,§**13630**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§765.4]

CHAPTER 766

FORFEITURE OF BAIL

Referred to in §602.62

766.1 Entry.
766.2 Notice.
766.3 Judgment.
766.4 Repealed by 64GA, ch 1124,§282.
766.5 Clerk to retain funds.
766.6 Judgment set aside.
766.7 Nonindictable misdemeanors.

766.1 Entry. If the defendant fails to appear for arraignment, trial or judgment, or at any other time when his personal appearance in court is lawfully required, or to surrender himself in execution of the judgment, the court must at once direct an entry of such failure to be made of record, and the undertaking of his bail, or the money deposited instead of bail, is thereupon forfeited. [R60,§4990; C73, §4596; C97,§5515; C24, 27, 31, 35, 39,§**13631**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§766.1]

Referred to in §763.17

766.2 Notice. Where forfeiture is entered the magistrate shall within ten days file all official entries in relation thereto in the office of the clerk; and thereupon, it shall be the duty of the clerk to direct the sheriff to give ten days' notice in writing to the defendant and his sureties to show cause, if any, why judgments should not be entered for the amount of such bail or the amount of money deposited instead of bail. [C24, 27, 31, 35, 39,§**13632**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§766.2]

40GA, ch 219,§2, editorially divided
Referred to in §766.7

766.3 Judgment. If the defendant and his sureties fail to appear, judgment shall be entered by the court. If such defendant and his sureties shall appear at the time fixed and offer objections to the entering of such judgment, the court shall set the case down for immediate hearing as an ordinary action; in such hearing the state shall be plaintiff and the defendant and his sureties defendants. The judgment entered by the court either on default or upon trial shall have the same force and effect as any other judgment of such court. [R60,§§4991–4994; C73,§§4597–4600; C97,§§5516, 5517; C24, 27, 31, 35, 39,§**13633**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§766.3]

Referred to in §766.7

766.4 Repealed by 64GA, ch 1124,§282.

766.5 Clerk to retain funds. Where a forfeiture and judgment have been entered as herein provided and the amount of the judgment has been paid to the clerk, he shall hold the same as funds of his office for a period of sixty days from the date of judgment. [C24, 27, 31, 35, 39,§**13635**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§766.5]

40GA, ch 219,§4, editorially divided
Referred to in §766.7

766.6 Judgment set aside. Such judgment shall never be set aside unless, within sixty days from the date thereof, the defendant shall

voluntarily surrender himself to the sheriff of the county, or his bondsmen shall, at their own expense, deliver him to the custody of the sheriff within said time, whereupon the court may, upon application, set aside the judgment and in such event the original appearance bond shall stand and the court may order refund of the amount of the judgment paid in to the office of the clerk of the court. Such judgment, however, shall not be set aside unless as a condition precedent thereto the defendant and his sureties shall have paid all costs incurred in connection therewith. [R60, §4994; C73,§4600; C97,§5519; C24, 27, 31, 35, 39, §13636; C46, 50, 54, 58, 62, 66, 71, 73, 75,§766.6]

Referred to in §766.7

766.7 Nonindictable misdemeanors. The provisions of sections 766.2 to 766.6 shall not apply to nonindictable misdemeanors, and when a defendant fails to appear as required in such a case, the court shall enter a judgment of forfeiture of the bond which shall be final upon entry and shall not be set aside. [C73, 75,§766.7]

CHAPTER 767

RECOMMITMENT AFTER BAIL

767.1 Grounds for recommitment.
767.2 Contents of order of recommitment.
767.3 Arrest of defendant.
767.4 Commitment—in what cases.

767.1 Grounds for recommitment. The district court in which a criminal action is pending, or during the pendency of an appeal from its judgment therein, or in which a judgment is to be carried into effect, may, by an order entered on the record, direct the defendant to be arrested and committed to jail until legally discharged, after he has given bail, or deposited money instead thereof, in the following cases:

1. When by reason of his failure to appear he has incurred a forfeiture of his bail, or money deposited instead thereof.
2. When it satisfactorily appears to the court that his bail, either by reason of the death of one or more of them, or from any other cause, is insufficient, or have removed from the state.
3. When, after the filing of an indictment, the court finds the bail taken by or money deposited with the committing magistrate insufficient. [C51,§3243; R60,§4995; C73,§4601; C97, §5520; C24, 27, 31, 35, 39,§13637; C46, 50, 54, 58, 62, 66, 71, 73, 75,§767.1]

767.2 Contents of order of recommitment. The order for recommitment must recite generally the facts upon which it is founded, and must direct that the defendant be arrested and committed to the custody of the sheriff of the county where the depositions and statement were returned, or the indictment was found, or the conviction was had, as the case may be, to be detained until legally discharged. [C51, §3244; R60,§4996; C73,§4602; C97,§5521; C24, 27, 31, 35, 39,§13638; C46, 50, 54, 58, 62, 66, 71, 73, 75,§767.2]

767.3 Arrest of defendant. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county in the state. [C51,§3245; R60,§4997; C73,§4603; C97, §5522; C24, 27, 31, 35, 39,§13639; C46, 50, 54, 58, 62, 66, 71, 73, 75,§767.3]

767.4 Commitment—in what cases. If the order recite, as the ground on which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirements of the order; if made for any other cause and the offense is bailable, the court must cause a direction to be inserted in the order that the defendant be admitted to bail, in a sum to be stated in the order. [C51,§§3246, 3247; R60,§§4998, 4999; C73,§§4604, 4605; C97, §5523; C24, 27, 31, 35, 39,§13640; C46, 50, 54, 58, 62, 66, 71, 73, 75,§767.4]

CHAPTER 768

SURRENDER OF DEFENDANT

Referred to in §602.62

768.1 Manner of surrendering defendant.
768.2 Arrest of defendant by bail.
768.3 Return of money deposited.

768.1 Manner of surrendering defendant. At any time before the forfeiture of their undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1. A certified copy of the undertaking of bail must be delivered to the officer, who shall detain the defendant in his custody thereon as upon a commitment, and must, by a certificate in writing, acknowledge the surrender.

2. Upon the undertaking and the certificate of the officer, the court in which the indictment is pending, or was tried, upon three clear days' notice thereof to the county attorney, with a copy of the undertaking and certificate, may order the bail to be exonerated. [C51,§3236; R60,§4987; C73,§4593; C97,§5528; C24, 27, 31, 35, 39,§**13641**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§768.1]

768.2 Arrest of defendant by bail. For the purpose of surrendering the defendant, the bail, at any time before they are finally charged, and at any place within the state, may themselves arrest him, or, by a written authority endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so. [C51, §3237; R60,§4988; C73,§4594; C97,§5529; C24, 27, 31, 35, 39,§**13642**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§768.2]

768.3 Return of money deposited. If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, shall surrender himself to the officer to whom the commitment was made or directed in the manner prescribed in this chapter, the court in which the indictment is pending, or was tried, must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon three clear days' notice to the county attorney, with a copy of the certificate. [C51, §3238; R60,§4989; C73,§4595; C97,§5530; C24, 27, 31, 35, 39,§**13643**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§768.3]

CHAPTER 769

INFORMATION BY COUNTY ATTORNEY

Referred to in §773.42

769.1 Offenses prosecuted on information — jurisdiction.
769.2 Filing by county attorney.
769.3 Endorsement.
769.4 Names of witnesses — minutes of evidence.
769.5 Additional witnesses.
769.6 Allegations of prior convictions.
769.7 Verification by oath.
769.8 Approval by judge.
769.9 Information set aside.
769.10 Copy to accused or attorney.
769.11 Filing by private prosecutor—endorsement—costs.
769.12 Amendments.
769.13 Statutes applicable.
769.14 Warrant for arrest—bail.
769.15 Assistant county attorney may act.
769.16 Time of commencing prosecutions.
769.17 Motion to set aside—grounds.
769.18 Time of making motion — rulings of court.
769.19 Subpoenas — cross-examination of witnesses.
769.20 Oath.
769.21 Refusal.
769.22 Clerk of grand jury.
769.23 Witness fees.
769.24 to 769.30 Repealed by 62GA, ch 400,§243.
769.31 Bail—construction.
769.32 Form of information.
769.33 and 769.34 Repealed by 64GA, ch 1124, §282.

769.1 Offenses prosecuted on information—jurisdiction. Criminal offenses in which the punishment exceeds a fine of one hundred dollars or exceeds imprisonment for thirty days may be prosecuted to final judgment, either on indictment, as is now or may be hereafter provided, or on information as herein provided, and the district and appellate courts shall possess and exercise the same power and jurisdiction to hear, try, and determine prosecutions on information, as herein provided, for all such criminal offenses, to issue writs and process, and do all other acts therein, as they possess and may exercise in cases of like prosecutions upon indictment. [S13,§5239-a; C24, 27, 31, 35, 39,§**13644**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §769.1; 66GA, ch 1241,§96]

769.2 Filing by county attorney. The county attorney may file with the clerk of the district court, upon approval by a district judge or district associate judge, an information charging a person with an indictable offense. [S13,§5239-b; C24, 27, 31, 35, 39,§**13645**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§769.2]

769.3 Endorsement. Such information shall be endorsed, "a true information", which endorsement shall be signed by the county attorney. [S13,§5239-c; C24, 27, 31, 35, 39,§**13646**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§769.3]

Similar provision, §772.1

769.4 Names of witnesses—minutes of evidence. The county attorney shall, at the time of filing such information, endorse or cause to be endorsed thereon the names of the witnesses whose evidence he expects to introduce and use on the trial of the same, and shall also file with such information a minute

of the evidence relating to the guilt of the accused of the offense charged of each witness whose name is so endorsed upon the information. [S13,§5239-d; C24, 27, 31, 35, 39,§13647; C46, 50, 54, 58, 62, 66, 71, 73, 75,§769.4]

S13,§5239-d, editorially divided
Related and similar provisions, §§771.13, 772.3

769.5 Additional witnesses. Should the county attorney desire to use on the trial witnesses in addition to those whose names are so endorsed, he shall proceed in the same manner as is provided in such cases in trials on indictment. [S13,§5239-d; C24, 27, 31, 35, 39, §13648; C46, 50, 54, 58, 62, 66, 71, 73, 75,§769.5]

Notice of additional testimony, §780.10 et seq.

769.6 Allegations of prior convictions. If the offense charged is one for which the defendant, if convicted, will be subject by reason of the Code, to an increased penalty because of prior convictions, the allegation of such convictions, if any, shall be contained in the information. A supplemental information shall be prepared for the purpose of trial of the facts of the current offense only, and shall satisfy all pertinent requirements of the Code, except that it shall make no mention, directly or indirectly, of the allegation of the prior convictions, and shall be the only information read or otherwise presented to the jury prior to conviction of the current offense. The effect of this section shall be to alter the procedure for trying, in one criminal proceeding, the offenses appropriate to its provisions, and not to alter in any manner the basic elements of an offense as provided by law. [C66, 71, 73, 75,§769.6]

Referred to in §762.3

769.7 Verification by oath. Such information shall be sworn to by the county attorney before some officer authorized by the laws of Iowa to administer oaths. [S13,§5239-e; C24, 27, 31, 35, 39,§13649; C46, 50, 54, 58, 62,§769.6; C66, 71, 73, 75,§769.7]

S13,§5239-e, editorially divided

769.8 Approval by judge. The information, before being filed, shall be presented to a district judge or district associate judge of the county having jurisdiction of the offense, which judge shall endorse his approval or disapproval thereon. If the information receive the approval of the judge, the same shall be filed. If not approved, the charge shall be presented to the next grand jury for consideration. [S13,§5239-e; C24, 27, 31, 35, 39,§13650; C46, 50, 54, 58, 62,§769.7; C66, 71, 73, 75,§769.8]

769.9 Information set aside. At any time after the approval of an information, and prior to the commencement of trial, the court, on its own motion may order said information set aside and said cause submitted to the grand jury. [S13,§5239-e; C24, 27, 31, 35, 39,§13651; C46, 50, 54, 58, 62,§769.8; C66, 71, 73, 75,§769.9]

769.10 Copy to accused or attorney. The clerk of the district court shall cause a copy of the information and minutes of evidence to be delivered to the accused, or to his attorney, at or prior to the time of arraignment. [S13,§5239-f; C24, 27, 31, 35, 39,§13652; C46, 50, 54, 58, 62,§769.9; C66, 71, 73, 75,§769.10]

Similar provision, §772.4

769.11 Filing by private prosecutor — endorsement—costs. If the information is filed at the instance of a private prosecutor, the county attorney may endorse such fact upon the information and sign such endorsement, and, in such case, the costs may be taxed in the same manner and under the same limitations as in case of indictments. [S13,§5239-g; C24, 27, 31, 35, 39,§13653; C46, 50, 54, 58, 62, §769.10; C66, 71, 73, 75,§769.11]

Taxation of costs, §772.2

769.12 Amendments. An information may be amended in the same manner and to the same extent that an indictment may be amended. [S13,§5239-h; C24, 27, 31, 35, 39, §13654; C46, 50, 54, 58, 62,§769.11; C66, 71, 73, 75,§769.12]

Amendments, §773.43 et seq.

769.13 Statutes applicable. The information shall be drawn and construed, in matter of substance, as indictments are required to be drawn and construed. All provisions of law applying to prosecutions on indictments and relating to the issuance of warrants, the correction of the name of the accused, the issuing of process, the giving of bail, arraignments, pleadings, trials, change of place of trials, return of verdicts, the taking of exceptions, new trials, arrest of judgments, the entering of judgments and the execution thereof, appeals, except as modified or otherwise provided for in this chapter, and all other proceedings in cases of indictments, whether in the court of original or appellate jurisdiction, shall in the same manner and to the same extent, as nearly as may be, apply to information and all prosecutions and proceedings thereon. [S13, §5239-i; C24, 27, 31, 35, 39,§13655; C46, 50, 54, 58, 62,§769.12; C66, 71, 73, 75,§769.13]

769.14 Warrant for arrest—bail. Upon the filing of such information the clerk shall issue a warrant for the arrest of the accused, and the court, or in the absence of a judge thereof, the clerk, shall fix the bail, if bail is allowable; the action of the clerk being reviewable by the court. [S13,§5239-j; C24, 27, 31, 35, 39,§13656; C46, 50, 54, 58, 62,§769.13; C66, 71, 73, 75,§769.14]

Approval of warrant and expenses, §§79.12, 79.13

769.15 Assistant county attorney may act. Wherever the words "county attorney" appear in this chapter, the same shall be construed to mean county attorney or the assistant county attorney. [S13,§5239-k; C24, 27, 31, 35, 39, §13657; C46, 50, 54, 58, 62,§769.14; C66, 71, 73, 75,§769.15]

769.16 Time of commencing prosecutions. The time in which criminal prosecutions may be commenced by information shall be the

same as in cases of prosecutions by indictment, which time shall be computed from the date of the filing of the initial information. [S13, §5239-l; C24, 27, 31, 35, 39,§13658; C46, 50, 54, 58, 62,§769.15; C66, 71, 73, 75,§769.16]

Limitation of criminal actions, ch 752

769.17 Motion to set aside—grounds. A motion to set aside the information may be made on one or more of the following grounds:

1. When it is not endorsed "a true information", and the endorsement signed by the county attorney.
2. When the minutes of evidence have not been filed with the information.
3. When the names of the witnesses named in such minutes of evidence are not endorsed on the information.
4. When the information has not been verified or filed in the manner herein required.
5. When the information has not been approved as required. [S13,§5239-m; C24, 27, 31, 35, 39,§13659; C46, 50, 54, 58, 62,§769.16; C66, 71, 73, 75,§769.17]

769.18 Time of making motion—rulings of court. Such motion must be made before a plea is entered by the accused. If not so made, the objection shall be deemed waived. If an objection is shown to be true, the court shall sustain said motion, unless the defects are corrected within such time as the court may order. [S13,§5239-m; C24, 27, 31, 35, 39,§13660; C46, 50, 54, 58, 62,§769.17; C66, 71, 73, 75,§769.18]

769.19 Subpoenas—cross-examination of witnesses. The clerk of the district court, on application of the county attorney, shall issue subpoenas for such witnesses as the county attorney may require, and in such subpoenas shall direct the appearance of said witnesses before the county attorney at a specified time and place; provided that no subpoena shall issue unless an order authorizing same shall have been first made by the court or a judge thereof. After preliminary information, indictment, or information the defendant shall be present and have the opportunity to cross-examine any witnesses whose appearance before the county attorney is required by this section. [C24, 27, 31, 35, 39,§13661; C46, 50, 54, 58, 62,§769.18; C66, 71, 73, 75,§769.19]

769.20 Oath. The county attorney shall have authority to administer oaths to said witnesses. [C24, 27, 31, 35, 39,§13662; C46, 50, 54, 58, 62,§769.19; C66, 71, 73, 75,§769.20]

769.21 Refusal. In case a witness refuses to appear in obedience to said subpoena, or refuses to testify, the county attorney shall cause said witness to be taken before some judge of the district court of the county who shall proceed with such refusal as though the said refusal had occurred before said judge in a trial in said court. [C24, 27, 31, 35, 39,§13663; C46, 50, 54, 58, 62,§769.20; C66, 71, 73, 75,§769.21]

769.22 Clerk of grand jury. The county attorney, in the taking of testimony, shall be entitled to the services of the clerk of the grand jury in those counties in which such clerk is regularly employed. [C24, 27, 31, 35, 39,§13664; C46, 50, 54, 58, 62,§769.21; C66, 71, 73, 75,§769.22]

769.23 Witness fees. The witnesses aforesaid shall receive the same fees and mileage as are allowed witnesses in the district court, and shall be paid in the same manner in which witnesses before the grand jury are paid except that such fees and mileage shall be certified only by the county attorney. [C24, 27, 31, 35, 39,§13665; C46, 50, 54, 58, 62,§769.22; C66, 71, 73, 75,§769.23]

Witness fees and mileage, §622.69 et seq.; payment, §333.3

769.24 to 769.30 Repealed by 62GA, ch 400,§243.

769.31 Bail — construction. Whenever an accused shall be held to answer to the grand jury for an offense and shall give bail, such bail shall be construed as conditioned to answer to any indictment for said offense returned by the grand jury, to which the accused is legally held to answer, and to any information charging said offense filed by the county attorney. [S13,§5239-p; C24, 27, 31, 35, 39,§13673; C46, 50, 54, 58, 62,§769.30; C66, 71, 73, 75,§769.31]

769.32 Form of information. Information shall be, substantially, in the following form:

IN THE DISTRICT COURT OF ..... COUNTY.

THE STATE OF IOWA, vs. A..... B..... } INFORMATION.

Comes now ....., as county attorney of ..... county, state of Iowa, and in the name and by the authority of the state of Iowa accuses A..... B..... of the crime of (here insert the name of the offense), committed as follows:

The said A..... B....., on or about the ..... day of ....., A.D. .... (inserting the year) in the county of ....., and state of Iowa, (here insert the acts or omissions constituting the offense).

.....
County Attorney.

State of Iowa, ... County } ss.

I, ..., being first duly sworn, do depose and say, that I have made full and careful investigation of the facts upon which the above charge is based, and that the allegations contained in the above and foregoing information are true, as I verily believe.

.....

Subscribed and sworn to by ..... before me, the undersigned, this ..... day of ....., A. D. .....

.....
(Here insert title of official before whom verification is made.)

Upon the information shall be endorsed the following:

(a) A true information.

.....
County Attorney.

(*b*) Names of witnesses:
.....
.....
.....
.....

(*c*) On this ..... day of ....., A. D. ....., being satisfied from the showing made herein that this cause should (or should not, as the case may be) be prosecuted by information, the same is approved (or disapproved and the charge is ordered submitted to the next grand jury, as the case may be).

.....
Judge of District Court.

(*d*) This information duly filed in the district court, this ..... day of ....., A. D. .....

.....
(Clerk of the District Court of .....County, State of Iowa.)
By .....
Deputy Clerk.

(*e*) Bail is hereby fixed on the within information in the sum of $.....

.....
(Here insert official title of judge or clerk, as case may be.)

[S13,§5239-q; C24, 27, 31, 35, 39,§**13674**; C46, 50, 54, 58, 62,§769.31; C66, 71, 73, 75,§769.32]
Short form, §773.35

769.33 and 769.34 Repealed by **64GA, ch** 1124,§282.

CHAPTER 770

IMPANELING GRAND JURY

770.1 Drawing grand jurors.
770.2 Additional drawings.
770.3 Challenge to panel—motion.
770.4 Joinder in challenges.
770.5 Grounds of challenge.
770.6 Decided by the court.
770.7 Effect of allowing challenge to panel.
770.8 Dismissal of jurors—new panels.
770.9 Summoning additional jurors.
770.10 Effect of violation.
770.11 Refilling panel.
770.12 Foreman appointed.
770.13 Oath of foreman.
770.14 Oath of members.
770.15 General charge of court.
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770.17 Clerk—oath.
770.18 Expression of opinion — presence before jury.
770.19 Compensation.
770.20 and 770.21 Repealed by 66GA, ch 252,§2.
770.22 Assistant clerk.
770.23 Member appointed clerk.
770.24 Discharge of grand jury.

770.1 Drawing grand jurors. On the first secular Monday of the first month of each calendar quarter at which grand jurors are required to appear or at such alternative times as may be prescribed by the court, the names of the twelve persons constituting the panel of the grand jury, except such as may have died, removed from the county, or have been excused by the court, shall, unless otherwise ordered by the court, be placed by the clerk in a box, and after thoroughly mixing the same, he shall draw therefrom seven names, and the persons so drawn shall constitute the grand jury for that calendar quarter. Should any of the persons so drawn be excused or fail to attend on the day designated for their appearance, the clerk shall draw other names until the seven grand jurors are secured. [C51, §2881; R60,§§4608–4610; C73,§§4255–4257; C97, §5240; S13,§5240; C24, 27, 31, 35, 39,§**13678**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.1]
S13,§5240, editorially divided

770.2 Additional drawings. If, for any reason, the number of grand jurors required is not secured from the twelve persons so constituting such panel, the clerk shall draw from the grand jury box such number of names as the court may direct, and from the persons whose names are so drawn the panel of the grand jury shall be filled, and the court shall issue a venire to secure their attendance. [C51, §2881; R60,§§4609, 4610; C73,§§4256, 4257; C97, §5240; S13,§5240; C24, 27, 31, 35, 39,§**13679**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.2]

770.3 Challenge to panel — motion. A defendant held to answer for a public offense may, before the grand jury is sworn, challenge the panel, only for the reason that it was not selected, drawn, or summoned as prescribed by law. A defendant indicted not having been held to answer, or having been so held after the impaneling of the grand jury, may for the same reasons object to the panel by motion, but the right to make such motion is waived by entering a plea to an indictment. [C51, §§2882, 2883, 2890; R60,§§4611, 4612, 4619; C73, §§4258, 4260, 4266; C97,§5241; C24, 27, 31, 35, 39, §**13680**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.3]

770.4 Joinder in challenges. When several persons are held to answer for one and the same offense, no challenge to the panel can be made unless they all join therein. [C51,§2890; R60,§4619; C73,§4266; C97,§5242; C24, 27, 31, 35, 39,§**13681**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.4]

770.5 Grounds of challenge. A challenge to an individual grand juror may be made before the grand jury is sworn as follows:

1. By the state or the defendant, because the grand juror does not possess the qualifications required by law.

2. By the state only because:

a. He is related either by affinity or consanguinity nearer than in the fifth degree, or stands in the relation of agent, clerk, servant, or employee, to any person held to answer for a public offense, whose case may come before the grand jury.

b. He is bail for anyone held to answer for a public offense, whose case may come before the grand jury.

c. He is defendant in a prosecution similar to any prosecution to be examined by the grand jury.

d. He is, or within one year preceding has been, engaged or interested in carrying on any business, calling, or employment the carrying on of which is a violation of law, and for which the juror may be indicted by the grand jury.

3. By the defendant only because:

a. He is a prosecutor upon a charge against the defendant.

b. He has formed or expressed such an opinion as to the guilt or innocence of the prisoner as would prevent him from rendering a true verdict upon the evidence submitted on the trial. [C51,§§2882, 2884, 2890; R60,§§4611, 4613, 4619; C73,§§4258, 4259, 4261, 4266; C97,§5243; C24, 27, 31, 35, 39,§13682; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.5]

Competency of jurors, §607.1
Computing relationship, §4.1(23)

770.6 Decided by the court. Challenges to the panel or to an individual grand juror must be decided by the court. [C51,§2886; R60,§4615; C73,§4262; C97,§5244; C24, 27, 31, 35, 39,§13683; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.6]

770.7 Effect of allowing challenge to panel. If a challenge to the panel be allowed, the grand jury is prohibited from inquiring into the charge against the defendant by whom it was interposed, and, if it does so and finds an indictment, the court must set it aside. [C51, §2887; R60,§4616; C73,§4263; C97,§5245; C24, 27, 31, 35, 39,§13684; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.7]

770.8 Dismissal of jurors — new panels. If a challenge to an individual grand juror be allowed, he shall not be present at or take any part in the consideration of the charge against the defendant. If a challenge to the panel is allowed, or if by reason of challenges to individual grand jurors being allowed, or if for any cause at any time, the grand jury is reduced to a less number than seven, a new grand jury shall be impaneled to inquire into the charge against the defendant in whose behalf the challenge to the panel has been allowed, or the panel of the jury so reduced below the number required by law shall be filled as the case may be. If a challenge is allowed to the panel, the names of jurors required to impanel a new jury shall be drawn from the grand jury list. [C51,§2888; R60,§4617; C73,§4264; C97,§5246; S13,§5246; C24, 27, 31, 35, 39,§13685; C46, 50, 54, 58, 62, 66, 71, 73, 75, §770.8]

Referred to in §770.10
S13,§5246, editorially divided

770.9 Summoning additional jurors. If such grand jury has been reduced to a less number than seven by reason of challenges to individual jurors being allowed, or from any other cause, the additional jurors required to fill the panel shall be summoned, first, from such of the twelve jurors originally summoned which were not drawn on the grand jury as first impaneled, or excused, and if they are exhausted, the additional number required shall be drawn from the grand jury list and the court shall, when necessary, issue a venire to secure the attendance of such additional jurors. The persons so summoned shall serve only in the case, or cases, in which, by reason of challenges, or other causes, the regular panel is set aside or is insufficient in number to find an indictment. [S13,§5246; C24, 27, 31, 35, 39,§13686; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.9]

Referred to in §770.10

770.10 Effect of violation. The grand jury must inform the court of any violation of sections 770.8 and 770.9, which offense shall be punished as a contempt. [C51,§2889; R60,§4618; C73,§4265; C97,§5247; C24, 27, 31, 35, 39,§13687; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.10]

Contempts, ch 665

770.11 Refilling panel. If for any cause the number of grand jurors is reduced below twelve, the court may order the clerk to immediately draw from the grand jury list sufficient additional names to fill the panel, and such new grand jurors so drawn may, if so ordered by the court, serve as regular grand jurors for the county in which they are drawn for the remainder of the year. [C24, 27, 31, 35, 39,§13688; C46, 50, 54, 58, 62, 66, 71, 73, 75, §770.11]

770.12 Foreman appointed. From the persons impaneled as grand jurors the court must appoint a foreman, or when the foreman already appointed is discharged, excused, or from any cause becomes unable to act, before the grand jury is finally discharged. [C51, §2891; R60,§4620; C73,§4267; C97,§5248; C24, 27, 31, 35, 39,§13689; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.12]

770.13 Oath of foreman. The following oath must be administered to the foreman of the grand jury: "You, as foreman of the grand jury, shall diligently inquire and true presentment make of all public offenses against the people of this state, triable on indictment within this county, of which you have or can obtain legal evidence; you shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof, but in all your presentments you shall present the truth, the whole truth, and

nothing but the truth, according to the best of your skill and understanding." [C51,§2892; R60,§4621; C73,§4268; C97,§5249; C24, 27, 31, 35, 39,§**13690**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §770.13]

770.14 Oath of members. The following oath must thereupon be administered to the other grand jurors: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part." [C51,§2893; R60,§4622; C73,§4269; C97,§5250; C24, 27, 31, 35, 39,§**13691**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.14]

770.15 General charge of court. The grand jury, being impaneled and sworn, may be charged by the court, who shall give them such information as may be proper as to the nature of their duties, and any charges for public offenses returned to the court or likely to come before that body. [C51,§2894; R60, §4623; C73,§4270; C97,§5251; C24, 27, 31, 35, 39, §**13692**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.15]

C97,§5251, editorially divided

770.16 Special charge of court. The court shall specially give in his charge the provisions of the law regulating the accounting by public officers for fines and fees collected by them, and those providing for the suppression of intemperance. [C51,§2894; R60,§4623; C73, §4270; C97,§5251; C24, 27, 31, 35, 39,§**13693**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.16]

770.17 Clerk—oath. The court may appoint as clerk of the grand jury, a competent person who is not a member thereof. The following oath must be administered to him: "You solemnly swear that you will faithfully and impartially perform the duties of clerk of the grand jury, that you will not reveal to anyone its proceedings or the testimony given before it and will abstain from expressing any opinion upon any question before it, to or in the presence or hearing of the grand jury or any member thereof." [C51,§2895; R60,§§4624, 4629; C73,§4275; C97,§5256; S13,§5256; C24, 27, 31, 35, 39,§**13694**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §770.17]

S13,§5256, editorially divided

770.18 Expression of opinion—presence before jury. Such clerk shall strictly abstain from expressing an opinion upon any question before the body, either to or in the presence or hearing of it or any member thereof, and shall not be present when any vote is being taken upon the finding of an indictment. [C97,§5256; S13,§5256; C24, 27, 31, 35, 39,§**13695**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.18]

770.19 Compensation. Such clerk shall receive compensation at the rate set by the court subject to the approval of the board of supervisors. [C97,§5256; S13,§5256; C24, 27, 31, 35, 39,§**13696**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §770.19; 66GA, ch 252,§1]

770.20 and 770.21 Repealed by 66GA, ch 252, §2.

770.22 Assistant clerk. In addition thereto the court may, in counties having a population of one hundred twenty thousand inhabitants and over, if it deems it necessary, appoint assistant clerks of the grand jury and fix their salary therefor. [C24, 27, 31, 35, 39,§**13699**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.22]

770.23 Member appointed clerk. If no such appointment is made by the court, the grand jury shall appoint as its clerk one of its own number who is not its foreman. [R60,§4629; C73,§4275; C97,§5257; C24, 27, 31, 35, 39,§**13700**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§770.23]

770.24 Discharge of grand jury. The grand jury, on the completion of its business, shall be discharged by the court, but, whether its business be completed or not, it is discharged by the final adjournment thereof. [C51,§2896; R60,§4625; C73,§4271; C97,§5252; C24, 27, 31, 35, 39,§**13701**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §770.24]

CHAPTER 771

DUTIES OF GRAND JURY

See also reference in §772.3

771.1 Indictable offenses.
771.2 Special duties.
771.3 Access to county jails and public records.
771.4 Duty of court and county attorney.
771.5 Right of county attorney to appear.
771.6 Secrecy of vote.
771.7 Subpoenas.
771.8 Failure to obey.
771.9 Administering oath.
771.10 Refusal of witness to testify.
771.11 Minutes to be kept.
771.12 Minutes read—signing by witness.
771.13 Evidence returned and filed.
771.14 Member as witness.
771.15 Evidence for defendant.
771.16 Evidence sufficient for indictment.
771.17 Kind of evidence required.
771.18 Minutes of preliminary examination.
771.19 When presence of witnesses unnecessary.
771.20 Minutes of testimony before magistrate.
771.21 No indictment found—effect.
771.22 Effect of dismissal.
771.23 Proceedings secret — disclosure of action.
771.24 Disclosure required.
771.25 Privilege of jurors.

771.1 Indictable offenses. The grand jury shall inquire into all indictable offenses which may be tried within the county, and present them to the court by indictment. [C51,§2897; R60,§4626; C73,§4272; C97,§5253; C24, 27, 31, 35, 39,§**13702**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.1]

771.2 Special duties. It is made the special duty of the grand jury to inquire into:

1. The case of every person imprisoned in the jail of the county on a criminal charge and not indicted.

2. The condition and management of the public prisons within the county.

3. The willful and corrupt misconduct in office of all county officers.

4. The obstruction of highways. [C51,§2902; R60,§4632; C73,§4278; C97,§5261; C24, 27, 31, 35, 39,§**13703**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.2]

771.3 Access to county jails and public records. The grand jury is entitled to free access at all reasonable times to the county jails, and to the examination without charge of all public records within the county. [C51,§2904; R60, §4634; C73,§4280; C97,§5263; C24, 27, 31, 35, 39, §**13704**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.3]

771.4 Duty of court and county attorney. The grand jury may at all reasonable times ask the advice of the county attorney or the court. [C51,§2905; R60,§4635; C73,§4281; C97, §5264; C24, 27, 31, 35, 39,§**13705**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.4]

C97,§5264, editorially divided

771.5 Right of county attorney to appear. The county attorney shall be allowed at all times to appear before the grand jury on his own request for the purpose of giving information relative to any matter cognizable by it, and for the purpose of examining witnesses, when necessary. [C51,§§2905, 2906; R60,§§4635, 4636; C73,§§4281, 4282; C97,§§5264, 5265; C24, 27, 31, 35, 39,§**13706**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.5]

C97,§5265, editorially divided

771.6 Secrecy of vote. Neither the county attorney nor any other officer or person except the grand jury must be present when the question is taken upon the finding of an indictment. [C51,§2906; R60,§4636; C73,§4282; C97, §5265; C24, 27, 31, 35, 39,§**13707**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.6]

771.7 Subpoenas. The clerk of the court must, when required by the foreman of the grand jury or county attorney, issue subpoenas for witnesses to appear before the grand jury. [C51,§2903; R60,§4633; C73,§4279; C97,§5262; C24, 27, 31, 35, 39,§**13708**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.7]

771.8 Failure to obey. If a witness fails to attend before the grand jury in obedience to a subpoena issued for that purpose and duly served, the court shall, upon the application of the county attorney or foreman of the grand jury, coerce the attendance of the witness by attachment, and may punish his disobedience as in the case of a witness failing to attend on the trial. [R60,§4642; C73,§4288; C97,§5271; C24, 27, 31, 35, 39,§**13709**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.8]

Contempts, ch 665

771.9 Administering oath. The foreman of the grand jury may administer the oath to all witnesses produced and examined before it. [R60,§4628; C73,§4274; C97,§5255; C24, 27, 31, 35, 39,§**13710**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.9]

771.10 Refusal of witness to testify. When a witness under examination before the grand jury refuses to testify or to answer a question put to him, it shall proceed with the witness into open court, and the foreman shall then distinctly state to the court the question and the refusal of the witness, and if upon hearing the witness the court shall decide that he is bound to testify or answer the question propounded, he shall inquire of the witness if he persists in his refusal, and, if he does, shall proceed with him as in cases of similar refusal in open court. [R60,§4641; C73,§4287; C97, §5270; C24, 27, 31, 35, 39,§**13711**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.10]

Contempts, ch 665

771.11 Minutes to be kept. The clerk of the grand jury shall take and preserve minutes of the proceedings and of the evidence given before it, except the votes of its individual members on finding an indictment. [R60, §4629; C73,§4275; C97,§5258; S13,§5258; C24, 27, 31, 35, 39,§**13712**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.11]

S13,§5258, editorially divided

771.12 Minutes read—signing by witness. When the evidence is taken, it shall be read over to and signed by the witness. [C97,§5258; S13,§5258; C24, 27, 31, 35, 39,§**13713**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.12]

771.13 Evidence returned and filed. When an indictment is found, all minutes and exhibits relating thereto shall be returned therewith and filed by the clerk of the court. [C73, §4275; C97,§5258; S13,§5258; C24, 27, 31, 35, 39, §**13714**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.13]

Related provisions, §§769.4, 772.3

771.14 Member as witness. If a member of the grand jury knows or has reason to believe that a public offense has been committed, triable in the county, he must declare the same to his fellow jurors, and be sworn as a witness upon the investigation before them. [C51, §2901; R60,§4631; C73,§4277; C97,§5260; C24, 27, 31, 35, 39,§**13715**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.14]

771.15 Evidence for defendant. The grand jury is not bound to hear evidence for defendant, but may do so, and must weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its

reach will explain away the charge, it may order the same produced. [C51,§2900; R60, §4630; C73,§4276; C97,§5259; C24, 27, 31, 35, 39, §13716; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.15]

771.16 Evidence sufficient for indictment. An indictment should be found when all the evidence, taken together, is such as in the judgment of the grand jury, if unexplained, would warrant a conviction by the trial jury; otherwise it should not. [R60,§4637; C73,§4283; C97,§5266; C24, 27, 31, 35, 39,§13717; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.16]

771.17 Kind of evidence required. An indictment can be found only upon evidence given by witnesses produced, sworn, and examined before the grand jury, or furnished by legal documentary evidence, or upon the minutes of evidence given by witnesses before a committing magistrate. [C51,§§2898, 2899; R60, §4627; C73,§4273; C97,§5254; C24, 27, 31, 35, 39, §13718; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.17]

771.18 Minutes of preliminary examination. All papers and other matters of evidence relating to the arrest and preliminary examination of the charge against defendants who have been held to answer, returned to the court by magistrates, shall be laid before the grand jury, and shall be competent evidence upon which an indictment may be found. [R60,§4643; C73, §4289; C97,§5272; C24, 27, 31, 35, 39,§13719; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.18]

C97,§5272, editorially divided

771.19 When presence of witnesses unnecessary. The grand jury need not have before it for examination any witness who was examined before the committing magistrate, and whose evidence is returned by such magistrate in the minutes, unless requested by the county attorney. [C97,§5272; C24, 27, 31, 35, 39,§13720; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.19]

771.20 Minutes of testimony before magistrate. If an indictment was found in whole or in part upon the minutes of evidence taken before a committing magistrate, the clerk of the grand jury shall write out a brief minute of the substance of such evidence, and the same shall be returned to the court with the indictment. [C97,§5272; C24, 27, 31, 35, 39, §13721; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.20]

771.21 No indictment found — effect. If, upon investigation, the grand jury refuses to find an indictment, it shall return all of said papers to the court, with an endorsement thereon, signed by the foreman, to the effect that the charge is dismissed, and thereupon the court must order the discharge of the defendant from custody if in jail, and the exoneration of bail if bail be given, unless the court, upon good cause shown, direct that the charge should again be submitted to the grand jury, in which case the defendant may be continued in custody, or on bail, until the next current jury session. [R60,§4643; C73,§4289; C97,§5272; C24, 27, 31, 35, 39,§13722; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.21]

Related provision, §795.1

771.22 Effect of dismissal. Such dismissal of the charge does not prevent the same from being submitted to a grand jury as often as the court may direct; but without such direction it cannot be again submitted. [R60,§4644; C73,§4290; C97,§5273; C24, 27, 31, 35, 39,§13723; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.22]

771.23 Proceedings secret—disclosure of action. Every member of the grand jury must keep secret the proceedings of that body and the testimony given before it, except as provided in section 771.24; nor shall any grand juror or officer of the court disclose the fact that an indictment for a felony has been found against a person not in custody or under bail, otherwise than by presenting the same in court or issuing or executing process thereon, until such person has been arrested. A violation of this section is a misdemeanor. [C51, §2907; R60,§4638; C73,§4284; C97,§5267; C24, 27, 31, 35, 39,§13724; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.23]

Punishment, §687.7

771.24 Disclosure required. Any member of the grand jury and the clerk thereof, and any officer of the court, may be required by the court or any legislative committee duly authorized to inquire into the conduct or acts of any state officer which might be the basis for impeachment proceedings, to disclose the testimony of a witness examined before the grand jury for the purpose of ascertaining whether it is consistent with that given by him before the court or legislative committee, or to disclose the same upon a charge of perjury against the witness, or when in the opinion of the court or legislative committee such disclosure is necessary in the administration of justice. [C51, §2908; R60,§4639; C73,§4285; C97,§5268; C24, 27, 31, 35, 39,§13725; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.24]

Referred to in §771.23

771.25 Privilege of jurors. No grand juror shall be questioned for anything he may say or any vote he may give in the grand jury relative to a matter legally pending before it, except for perjury of which he may have been guilty in making an accusation, or in giving testimony to his fellow jurors. [C51,§2909; R60, §4640; C73,§4286; C97,§5269; C24, 27, 31, 35, 39, §13726; C46, 50, 54, 58, 62, 66, 71, 73, 75,§771.25]

CHAPTER 772

FINDING AND PRESENTATION OF INDICTMENT

772.1 Vote necessary—endorsement.
772.2 Indictment at instance of private prosecutor.
772.3 Names of witnesses endorsed.
772.4 Minutes of evidence not public—copy.
772.5 Minutes used on resubmission.

772.1 Vote necessary—endorsement. An indictment cannot be found without the concurrence of five grand jurors. Every indictment must be endorsed "a true bill" and the endorsement signed by the foreman of the grand jury. [C51,§2910; R60,§4645; C73,§4291; C97, §5274; S13,§5274-a; C24, 27, 31, 35, 39,§**13727**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§772.1]

Referred to in §772.2
Similar provision, §769.3

772.2 Indictment at instance of private prosecutor. When an indictment is found at the instance of a private prosecutor, the following must be added to the endorsement required by section 772.1, "found at the instance of" (here state the name of the person) and, in such case, if the prosecution fails, the court trying the cause may tax the costs against him, if satisfied from all the circumstances that the prosecution was malicious or without probable cause. [R60,§4646; C73,§4292; C97,§5275; C24, 27, 31, 35, 39,§**13728**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§772.2]

Similar provision, §769.11

772.3 Names of witnesses endorsed. When an indictment is found, the names of all witnesses on whose evidence it is found must be endorsed thereon before it is presented in the court, and must be, with the minutes of the evidence of such witnesses, presented to the court by the foreman in the presence of the grand jury, and all of the same marked "filed" by the clerk, as provided in the chapter relating to the duties of the grand jury, and shall remain in his office as a record. [C51,§§2913, 2914; R60,§§4647, 4648; C73,§§4293, 4294; C97, §5276; C24, 27, 31, 35, 39,§**13729**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§772.3]

Duties of grand jury, ch 771
Similar and related provisions, §§769.4, 771.13

772.4 Minutes of evidence not public—copy. Such minutes of evidence shall not be open for the inspection of any person except the judge of the court, the county attorney or his assistant or clerk, the defendant and his counsel, or the assistant or clerk of such counsel. The clerk of the court must, within two days after demand made, furnish the defendant or his counsel a copy thereof without charge, or permit the defendant's counsel, or the clerk of such counsel, to take a copy. [C51,§2913; R60,§4647; C73,§4293; C97,§5277; C24, 27, 31, 35, 39,§**13730**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§772.4]

Similar provision, §769.10

772.5 Minutes used on resubmission. When an indictment is held insufficient, and an order is made to resubmit the case to the same or another grand jury, or where the grand jury has ignored a bill and the same has been ordered back to the same or another grand jury for further investigation, it shall be unnecessary to summon the witnesses again before such jury in such cases, but the minutes of the testimony returned with the defective indictment or ignored bill or information shall be detached and returned to the grand jury; and thereupon, without more, such grand jury may find a bill and attach said minutes of the evidence thereto, and return said indictment therewith into court in the usual manner, and may in either case take additional testimony. [C97,§5278; C24, 27, 31, 35, 39,§**13731**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§772.5]

CHAPTER 773

INDICTMENT

Applicable to county attorney information, §769.13

773.1 Definition.
773.2 Form of indictment.
773.3 Allegations of prior convictions.
773.4 Contents of indictment.
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773.41 Judgment.
773.42 "Indictment" includes "information".
773.43 Amendment.
773.44 Amendment before trial.
773.45 Amendment during trial.
773.46 Nonpermissible amendment.
773.47 Continuance.
773.48 Pleading judicial proceedings.
773.49 Pleading private statute.
773.50 Compounding offense.

773.1 Definition. An indictment is an accusation in writing, found and presented by a grand jury legally impaneled and sworn to the court in which it is impaneled, charging that a person therein named has done some act, or been guilty of some omission, which by law is a public offense, punishable on indictment. [C51,§2915; R60,§4649; C73,§4295; C97,§5279; C24, 27, 31, 35, 39,§13732; C46, 50, 54, 58, 62, 66, 71, 73, 75,§773.1]

773.2 Form of indictment. The indictment may be in substantially the following form:

"In the district court of Iowa in and for ..... county.

State of Iowa vs. A. B.

The grand jurors of the county of ..... accused A. B. of (here state the offense, e. g., treason, manslaughter, robbery, or larceny) and charge that (here the particulars of the offense, for instance, as set forth in section 773.35 may be added with the view to avoiding the necessity for a bill of particulars)."

Illustration for indictment for murder.

The grand jurors of the county of Polk accuse John Doe of murder and charge that on about the first day of December, 1928, John Doe murdered Richard Roe.

Illustration for indictment for burglary.

The grand jurors of the county of Polk accuse John Doe of burglary and charge that on or about the first day of December, 1928, John Doe committed burglary of the dwelling of Richard Roe.

Illustration for indictment for robbery.

The grand jurors of the county of Polk accuse John Doe of robbery and charge that on or about the first day of December, 1928, John Doe robbed Richard Roe. [R60,§4651; C73,§4297; C97,§5281; C24, 27,§13734; C31, 35,§13732-c1; C39, §13732.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, §773.2]

773.3 Allegations of prior convictions. If the offense charged is one for which the defendant, if convicted, will be subject by reason of the Code, to an increased penalty because of prior convictions, the allegation of such convictions, if any, shall be contained in the indictment. A supplemental indictment shall be prepared for the purpose of trial of the facts of the current offense only, and shall satisfy all pertinent requirements of the Code, except that it shall make no mention, directly or indirectly, of the allegation of the prior convictions, and shall be the only indictment read or otherwise presented to the jury prior to conviction of the current offense. The effect of this section shall be to alter the procedure for trying, in one criminal proceeding, the offenses appropriate to its provisions, and not to alter in any manner the basic elements of an offense as provided by law. [C66, 71, 73, 75,§773.3]

773.4 Contents of indictment. The indictment may charge, and is valid and sufficient if it charges, the offense for which the accused is being prosecuted in one or more of the following ways:

1. By using the name given to the offense by statute.

2. By stating so much of the definition of the offense, either in terms of the common law or of the statute defining the offense, or in terms of substantially the same meaning, as is sufficient to give the court and the accused notice of what offense is intended to be charged.

The indictment may refer to a section or subsection of any statute creating the crime charged therein, and in determining the validity or sufficiency of such indictment regard shall be had to such reference. [C51,§2916; R60,§§4650, 4652, 4659; C73,§§4296, 4298, 4305; C97,§§5280, 5282, 5289; S13,§5289; C24, 27,§§13733, 13735, 13743; C31, 35,§13732-c2; C39,§13732.02; C46, 50, 54, 58, 62,§773.3; C66, 71, 73, 75,§773.4]

Referred to in §§773.5, 773.6, 773.11–773.15, 773.17, 773.23, 773.30

773.5 Absence of particulars—effect. No indictment which charges the offense in accordance with the provisions of section 773.4 shall be held to be insufficient on the ground that it fails to inform the defendant of the particulars of the offense. [C31, 35,§13732-c3; C39, §13732.03; C46, 50, 54, 58, 62,§773.4; C66, 71, 73, 75,§773.5]

773.6 Bill of particulars.

1. When an indictment charges an offense in accordance with the provisions of section 773.4, but such indictment together with the minutes of the evidence filed therewith fails to inform the defendant of the particulars of the offense sufficiently to enable him to prepare his defense, or to give him such information as he

is entitled to under the Constitution of this state, the court may, of its own motion, and shall, at the request of the defendant, order the county attorney to furnish a bill of particulars containing such information as may be necessary for these purposes, or the county attorney may of his own motion furnish such bill of particulars.

2. When the court deems it to be in the interest of justice that facts not set out in the indictment or in the minutes of the evidence or in any previous bill of particulars, should be furnished to the defendant, it may order the county attorney to furnish a bill of particulars containing such facts. In determining whether such facts and, if so, what facts, should be so furnished the court shall consider the whole record of the case and the entire course of the proceedings against the defendant.

3. Supplemental bills of particulars or a new bill may be ordered by the court or furnished voluntarily under the conditions above stated.

4. Each supplemental bill shall operate to amend any and all previous bills and a new bill shall supersede any previous bill.

5. When any bill of particulars is furnished it shall be filed and become a part of the record and a copy of such bill shall be given to the defendant upon his request. [C31, 35,§13732-c4; C39,§**13732.04**; C46, 50, 54, 58, 62,§773.5; C66, 71, 73, 75,§773.6]

Referred to in §773.7

773.7 Setting aside indictment. If it appears from the bill of particulars furnished under section 773.6 that the particulars stated do not constitute the offense charged in the indictment, or that the defendant did not commit that offense, or that a prosecution for that offense is barred by the statute of limitations, the court may and on motion of defendant shall set aside the indictment unless the county attorney shall furnish another bill of particulars which so states the particulars as to show that the particulars constitute the offense charged in the indictment and that the offense was committed by the defendant and that it is not barred by the statute of limitations. [C31, 35,§13732-c5; C39,§**13732.05**; C46, 50, 54, 58, 62, §773.6; C66, 71, 73, 75,§773.7]

773.8 Identification of defendant.

1. In an indictment or bill of particulars it is sufficient for the purpose of identifying the defendant to state his true name, or to state the name, appellation or nickname by which he has been or is known, or, if no better way of identifying him is practicable, by stating a fictitious name, or describing him as a person whose name is unknown, or in any other manner. In stating the true name or the name by which the defendant has been or is known or a fictitious name, it is sufficient to state a surname, a surname and one or more given names, or a surname and one or more abbreviations or initials of a given name or names.

2. If the defendant is a corporation, it is sufficient to state the corporate name of such corporation, or any name or designation by which it has been or is known or by which it may be identified, without an averment that the corporation is a corporation or that it was incorporated according to law.

3. If in the course of the proceedings the true name of a person indicted otherwise than by his true name is disclosed by the defendant or in the proceedings before the court, it shall order the true name of the defendant to be inserted in the indictment and court record wherever his name appears otherwise therein, and the case shall proceed against him in his true name.

4. In no case is it necessary to prove that the true name of the defendant is unknown to the grand jury or prosecuting attorney. [C51, §2916; R60,§§4653, 4659; C73,§§4299, 4305; C97, §§5283, 5289; S13,§5289; C24, 27,§§13736, 13743; C31, 35,§13732-c6; C39,§**13732.06**; C46, 50, 54, 58, 62,§773.7; C66, 71, 73, 75,§773.8]

773.9 Time of commission of offense.

1. An indictment need contain no allegation of the time of the commission of the offense except in those cases in which time is a material ingredient of the offense.

2. The allegation in an indictment that the defendant committed the offense shall in all cases be considered an allegation that the offense was committed after it became an offense and before the finding of the indictment and within the period of limitations prescribed by law for the prosecution of the offense.

3. All allegations of the indictment and bill of particulars shall, unless stated otherwise, be deemed to refer to the same time. [C51,§2916; R60,§§4651, 4655, 4659; C73,§§4297, 4301, 4305; C97,§§5281, 5285, 5289; S13,§5289; C24, 27,§§13734, 13739, 13743; C31, 35,§13732-c7; C39,§**13732.07**; C46, 50, 54, 58, 62,§773.8; C66, 71, 73, 75,§773.9]

773.10 Place of commission of offense.

1. An indictment need contain no allegation of the place of the commission of the offense, except in those cases in which the place is a material ingredient of the offense.

2. The allegation in an indictment that the defendant committed the offense shall in all cases be considered an allegation that the offense was committed within the territorial jurisdiction of the court.

3. All allegations in the indictment and bill of particulars shall, unless stated otherwise, be deemed to refer to the same place. [C51,§§2916, 2920; R60,§§4651, 4659, 4660; C73,§§4297, 4305, 4306; C97,§§5281, 5289, 5290; S13,§5289; C24, 27, §§13734, 13743, 13749; C31, 35,§13732-c8; C39, §**13732.08**; C46, 50, 54, 58, 62,§773.9; C66, 71, 73, 75,§773.10]

773.11 Means. An indictment need contain no allegation of the means by which an offense was committed, unless such allegation is necessary to charge an offense under section 773.4. [C31, 35,§13732-c9; C39,§**13732.09**; C46, 50, 54, 58, 62,§773.10; C66, 71, 73, 75,§773.11]

773.12 Value. An indictment or bill of particulars need contain no allegation of the value or price of any property, unless such allegation is necessary to charge an indictable offense under section 773.4, and in such case it is sufficient to aver that the value or price of the property equals or exceeds the certain value or price which determines the offense. The facts which give the property such value need not be alleged. [C31, 35,§13732-c10; C39,**§13732.10**; C46, 50, 54, 58, 62,§773.11; C66, 71, 73, 75,§773.12]

773.13 Ownership.

1. An indictment need contain no allegation of the ownership of any property, unless such allegation is necessary to charge the offense under section 773.4.

2. An allegation in an indictment or bill of particulars of ownership of property is supported by proof of possession or right of possession of such property, and any statement in an indictment or bill of particulars which implies possession or right of possession is a sufficient allegation of ownership. [C31, 35, §13732-c11; C39,**§13732.11**; C46, 50, 54, 58, 62, §773.12; C66, 71, 73, 75,§773.13]

773.14 Intent.

1. An indictment need contain no allegation of the intent with which an act was done, unless such allegation is necessary to charge the offense under section 773.4.

2. An allegation generally of an intent to defraud and injure is sufficient without alleging an intent to defraud or injure any particular person, unless such allegation is necessary to charge the offense under section 773.4. [C51, §2927; R60,§4667; C73,§4313; C97,§5298; C24, 27, §13756; C31, 35,§13732-c12; C39,**§13732.12**; C46, 50, 54, 58, 62,§773.13; C66, 71, 73, 75,§773.14]

773.15 Immaterial allegations. An indictment need not allege that the offense was committed or the act done "feloniously" or "traitoriously" or "unlawfully" or "with force and arms" or "with a strong hand", nor need it use any phrase of like kind otherwise to characterize the offense, nor need it allege that the offense was committed or the act done "burglariously", "willfully", "knowingly", "maliciously", or "negligently", nor need it otherwise characterize the manner of the commission of the offense unless such characterization is necessary to charge the offense under section 773.4. [C51,§2920; R60,§4660; C73,§4306; C97, §5290; C24, 27,§13749; C31, 35,§13732-c13; C39, **§13732.13**; C46, 50, 54, 58, 62,§773.14; C66, 71, 73, 75,§773.15]

773.16 Unnecessary allegations. An indictment need not state any matter not necessary to be proved. [C51,§2920; R60,§4660; C73,§4306; C97,§5290; C24, 27,§13749; C31, 35,§13732-c14; C39, **§13732.14**; C46, 50, 54, 58, 62,§773.15; C66, 71, 73, 75,§773.16]

Surplusage, §773.31

773.17 Description of place or thing. Whenever it is necessary in an indictment to describe any place or thing in order to charge an offense under section 773.4 it is sufficient to describe such place or thing by any term which in common understanding embraces such place or thing and does not include any place or thing which is not by law the subject of, or connected with, the offense. [R60,§§4656, 4657; C73,§§4302, 4303; C97,§§5286, 5287; C24, 27, §§13740, 13741; C31, 35,§13732-c15; C39,**§13732.15**; C46, 50, 54, 58, 62,§773.16; C66, 71, 73, 75,§773.17]

773.18 Identification of others than defendant.

1. In an indictment or bill of particulars it is sufficient for the purpose of identifying any person other than the defendant to state his true name, or to state the name, appellation, or nickname by which he has been or is known, or, if no better way of identifying such person is practicable, by stating a fictitious name, or stating the name of an office or position held by him, or by describing him as "a certain person", or by words of similar import, or in any other manner. In stating the true name of such person or the name by which such person has been, or is known, it is sufficient to state a surname, or a surname and one or more given names, or a surname and one or more abbreviations or initials of a given name or names.

2. It is sufficient for the purpose of describing any group or association of persons not incorporated to state the proper name of such group or association, or to state any name or designation by which the group or association has been or is known or by which it may be identified, or to state the names of all the persons in such group or association, or to state the name or names of one or more persons in such group or association, referring to the other or others as "another" or "others".

3. It is sufficient for the purpose of describing a corporation to state the corporate name of such corporation, or any name or designation by which it has been or is known, or by which it may be identified, without an averment that the corporation is a corporation or that it was incorporated according to law.

4. In no case is it necessary to aver or prove that the true name of any person, group or association of persons or any corporation is unknown to the grand jury or prosecuting attorney.

5. If in the course of the trial the true name of any person, group, or association of persons, or corporation, described otherwise than by the true name is disclosed by the evidence, the court shall cause the true name to be inserted in the indictment and court record wherever the name appears otherwise. [R60,§4656; C73, §4302; C97,§5286; C24, 27,§13740; C31, 35,§13732-c16; C39,**§13732.16**; C46, 50, 54, 58, 62,§773.17; C66, 71, 73, 75,§773.18]

773.19 Money or securities. In an indictment in which it is necessary to make an averment as to money, treasury notes or certifi-

cates, bank notes or other securities intended to circulate as money, checks, drafts or bills of exchange, it is sufficient to describe the same or any of them as money, without specifying the particular character, number, denomination, kind, species, or nature thereof. [C31, 35, §13732-c17; C39,§**13732.17**; C46, 50, 54, 58, 62, §773.18; C66, 71, 73, 75,§773.19]

773.20 Instruments generally. Whenever it is necessary in an indictment or bill of particulars to make an averment relative to any instrument which consists wholly or in part of writing or figures, pictures or designs, it is sufficient to describe such instrument by any name or description by which it is usually known or by which it may be identified, or by its purport, without setting forth a copy or facsimile of the whole or any part thereof; provided that the description, if in a bill of particulars, sets forth the character and contents of the instrument with such particularity as to enable the defendant to prepare his defense. [C51,§2925; R60,§4665; C73,§4311; C97,§5295; C24, 27,§13753; C31, 35,§13732-c18; C39,§**13732.18**; C46, 50, 54, 58, 62,§773.19; C66, 71, 73, 75,§773.20]

773.21 Spoken or written words—pictures. Whenever in an indictment or bill of particulars an averment relative to any spoken or written words or any picture is necessary, it is sufficient to set forth such spoken or written words by their general purport or to describe such picture generally, without setting forth a copy or facsimile of such written words or such picture; provided that when such words or description occur in a bill of particulars, the defendant is thereby sufficiently informed of the identity of the words or picture concerning which the averment is made as to enable him to prepare his defense. [C31, 35, §13732-c19; C39,§**13732.19**; C46, 50, 54, 58, 62, §773.20; C66, 71, 73, 75,§773.21]

773.22 Words and phrases. The words and phrases used in an indictment or bill of particulars are to be construed according to their usual acceptation, except that words and phrases which have been defined by law or which have acquired a legal signification are to be construed according to their legal signification. [R60,§4657; C73,§4303; C97,§5287; C24, 27,§13741; C31, 35,§13732-c20; C39,§**13732.20**; C46, 50, 54, 58, 62,§773.21; C66, 71, 73, 75,§773.22]

773.23 Prior conviction. In alleging in an indictment or information a prior conviction of the defendant it is sufficient to allege that the defendant was convicted of a certain offense, stating the name of the offense, if it has one, or otherwise stating the offense in accordance with the provisions of section 773.4, subsection 2. [C31, 35,§13732-c21; C39,§**13732.21**; C46, 50, 54, 58, 62,§773.22; C66, 71, 73, 75,§773.23]

See ch 747

773.24 Negativing exception. No indictment for an offense created or defined by statute shall be invalid or insufficient merely for the reason that it fails to negative any exception, excuse or proviso contained in the statute creating or defining the offense. [C31, 35,§13732-c22; C39,§**13732.22**; C46, 50, 54, 58, 62,§773.23; C66, 71, 73, 75,§773.24]

773.25 Disjunctive or alternative allegations. No indictment for an offense which may be committed by the doing of one or more of several acts, or by one or more of several means, or with one or more of several intents, or with one or more of several results, shall be invalid or insufficient for the reason that two or more of such acts, means, intents, or results are charged in the disjunctive or alternative. [C31, 35,§13732-c23; C39,§**13732.23**; C46, 50, 54, 58, 62,§773.24; C66, 71, 73, 75,§773.25]

773.26 Indirect or inferential allegations. No indictment shall be invalid or insufficient for the reason that it alleges indirectly and by inference or by way of recital any matters, facts, or circumstances connected with or constituting the offense. [C31, 35,§13732-c24; C39, §**13732.24**; C46, 50, 54, 58, 62,§773.25; C66, 71, 73, 75,§773.26]

773.27 Libel. No indictment for libel shall be invalid or insufficient for the reason that it does not set forth extrinsic facts for the purpose of showing the application to the party alleged to be libeled of the defamatory matter on which the indictment is founded. [C31, 35, §13732-c25; C39,§**13732.25**; C46, 50, 54, 58, 62, §773.26; C66, 71, 73, 75,§773.27]

Additional provision, §736.1

773.28 Perjury. An indictment for perjury, or for subornation of, solicitation of, or conspiracy to commit, perjury need not set forth any part of the records or proceedings with which the oath was connected, or the commission or authority of the court or other official before whom the perjury was committed or was to have been committed, or the form of the oath or affirmation, or the manner of administering the same. [C51,§2926; R60,§4666; C73, §4312; C97,§5296; C24, 27,§13754; C31, 35,§13732-c26; C39,§**13732.26**; C46, 50, 54, 58, 62,§773.27; C66, 71, 73, 75,§773.28]

773.29 Degrees of offense. In an indictment for an offense which is divided into degrees it is sufficient to charge that the accused committed the offense. [C31, 35,§13732-c27; C39, §**13732.27**; C46, 50, 54, 58, 62,§773.28; C66, 71, 73, 75,§773.29]

773.30 Repugnant allegation. No indictment shall be invalid or insufficient by reason of any repugnant allegation contained therein; provided that an offense is charged in accordance with the provisions of section 773.4. [C51,§2920; R60,§4660; C73,§4306; C97,§5290; C24, 27,§13749; C31, 35,§13732-c28; C39,§**13732.28**; C46, 50, 54, 58, 62,§773.29; C66, 71, 73, 75,§773.30]

773.31 Surplusage. Any allegation unnecessary under existing law or under the provisions of this Act* may, if contained in an indictment, be disregarded as surplusage. [C51,

§2920; R60,§4660; C73,§4306; C97,§5290; C24, 27, §13749; C31, 35,§13732-c29; C39,§**13732.29**; C46, 50, 54, 58, 62,§773.30; C66, 71, 73, 75,§773.31]

*43GA, ch 266, Code sections 773.2, 773.4 to 773.35
Unnecessary allegations, §773.16

773.32 Indictment under prior law. Nothing contained in this Act* shall be so construed as to make invalid or insufficient any indictment which would have been valid and sufficient under the law existing at the date of the enactment hereof. [C31, 35,§13732-c30; C39,§**13732.30**; C46, 50, 54, 58, 62,§773.31; C66, 71, 73, 75,§773.32]

*43GA, ch 266, Code sections 773.2, 773.4 to 773.35

773.33 Rule of interpretation. Whenever reference is made to what is necessary to be included in an indictment the interpretation shall be that it is necessary to be included in the indictment, information or bill of particulars; and wherever reference is made to what is not necessary to be included in an indictment, the interpretation shall be that it is not necessary to be included in the indictment, information or bill of particulars. [C31, 35,§13732-c31; C39,§**13732.31**; C46, 50, 54, 58, 62,§773.32; C66, 71, 73, 75,§773.33]

773.34 Form of informations. No preliminary information and no information for a nonindictable offense which charges the offense in accordance with the provisions of this Act* shall be held to be insufficient. [C31, 35, §13732-c32; C39,§**13732.32**; C46, 50, 54, 58, 62, §773.33; C66, 71, 73, 75,§773.34]

*43GA, ch 266, Code sections 773.2, 773.4 to 773.35

773.35 Permissible forms. The following forms may be used in the cases in which they are applicable:

Adultery—A. B. committed adultery with C. D.

Affray—A. B. and C. D. made an affray.

Arson—A. B. committed arson of the dwelling of C. D. (Other burnings) A. B. willfully and maliciously burned the warehouse of C. D. A. B. willfully and maliciously set fire to the haystack of C. D.

Assault—A. B. assaulted C. D.

Assault and battery—A. B. committed assault and battery upon C. D.

Assault with intent—A. B. assaulted C. D. with intent to murder (or to rob or to inflict great bodily injury, as the case may be).

Assault while masked—A. B., while masked, assaulted C. D.

Attempt—A. B. attempted to break and enter the dwelling of C. D. with intent to commit a public offense (or attempted to commit arson of the dwelling of C. D., or attempted to produce the miscarriage of C. D., or whatever the indictable attempt may be).

Bigamy—A. B. committed bigamy with C. D.

Bribery—A. B. bribed C. D. (or offered a bribe to C. D., or accepted a bribe from C. D., etc.).

Burglary—A. B. committed burglary of the dwelling of C. D.

Burglary by means of explosives—A. B. committed burglary of the building of C. D. by means of explosives.

Burglary by means of electricity—A. B. committed burglary of the building of C. D. by means of electricity.

(Other breaking and enterings)—A. B. broke and entered the dwelling of C. D. (or A. B. committed an entry of the dwelling of C. D., or A. B. broke and entered office of C. D., as the case may be).

Carrying concealed weapons—A. B. carried concealed weapons.

Cigarettes—A. B. sold cigarettes to C. D. without affixing stamps.

Common felon—A. B. committed burglary of the dwelling of C. D. [or robbed C. D., or set forth any other crime mentioned in section 747.1 after the following convictions (set forth convictions of D. of two prior offenses mentioned in section 747.1, giving the court, date and place of rendition)].

Conspiracy—A. B. and C. D. conspired together to murder E. F. (or to steal the property of E. F. or to rob E. F., as the case may be).

Desertion—A. B. deserted his wife C. B. (or his child D.B.).

Embezzlement—A. B. embezzled fifty dollars of C. D.

Failure to report automobile accident—A. B., while operating a motor vehicle, injured C. D. and failed to give notice of the accident.

False pretenses—A. B. obtained an automobile from C. D. by means of false pretenses.

Forgery—A. B. forged a certain instrument purporting to be a promissory note (or describe the note or give its tenor or substance).

Gambling—A. B. gambled with C. D.

Incest—A. B. committed incest with C. D.

Indecent exposure—A. B. made an indecent exposure of his person.

Intoxicating liquors—

Nuisance—A. B. kept a building at (give street and number and city or otherwise describe or identify the building for purposes of abatement) in which he unlawfully possessed intoxicating liquors.

Possession—A. B. unlawfully possessed intoxicating liquors.

Keeping house of ill fame—A. B. kept a house of ill fame.

Kidnaping—A. B. kidnaped C. D.

Larceny—A. B. stole from C. D. a horse worth more than twenty dollars.

Lascivious acts with children—A. B. committed lascivious acts with C. D. who was under sixteen years of age.

Lewdness—A. B. and C. D. lewdly associated together.

Libel—A. B. published a libel concerning C. D. in the form of a letter (book, picture, etc.,

as the case may be), (the particulars should specify the pages and lines constituting the libel, when necessary, as where it is contained in a book or pamphlet).

Malicious mischief — A. B. maliciously injured the building of C. D.

Manslaughter—A. B. unlawfully killed C. D.

Murder—A. B. murdered C. D.

Perjury—A. B. committed perjury by testifying as follows: (Set forth the testimony).

Prostitution—A. B. resorted to a house of ill fame for the purpose of prostitution (or A. B. was found in a hotel leading a life of prostitution, as the case may be).

Rape—A. B. raped C. D.

Receiving stolen property—A. B. received a stolen watch belonging to C. D. and worth more than twenty dollars, knowing that it had been stolen.

Robbery—A. B. robbed C. D.

Seduction—A. B. seduced C. D.

Sodomy—A. B. committed sodomy with C. D.

Uttering a forged instrument—A. B. uttered as genuine a forged instrument purporting to be a promissory note (or describe the note or give its tenor or substance). [R60,§4651; C73,§4297; C97,§5281; C24, 27,§13734; C31, 35, §13732-c33; C39,§**13732.33**; C46, 50, 54, 58, 62, §773.34; C66, 71, 73, 75,§773.35]

Referred to in §773.2

773.36 Charging but one offense. The indictment must charge but one offense, but it may be charged in different forms to meet the testimony, and, if it may have been committed in different modes and by different means, may allege the modes and means in the alternative. [C51,§2917; R60,§4654; C73,§4300; C97,§5284; C24, 27, 31, 35, 39,§**13737**; C46, 50, 54, 58, 62,§773.35; C66, 71, 73, 75,§773.36]

C97,§5284, editorially divided

773.37 Charging several offenses. In case of compound offenses where in the same transaction more than one offense has been committed, the indictment may charge the several offenses and the defendant may be convicted of any offense included therein. [R60,§4654; C73, §4300; C97,§5284; C24, 27, 31, 35, 39,§**13738**; C46, 50, 54, 58, 62,§773.36; C66, 71, 73, 75,§773.37]

773.38 Miscellaneous separate offenses. An indictment may charge in separate counts:

1. A burglary and one or more other indictable offenses committed in connection with said burglary. The term "burglary" shall embrace any violation of sections 708.1 to 708.11, or

2. A robbery and one or more other indictable offenses committed in connection with said robbery, or

3. The forgery of an instrument and the uttering and publishing of said forgery when both offenses are committed by the same person, or

4. A conspiracy and the offense committed in pursuance of said conspiracy, if such offense be indictable, or

5. An attempt to commit an unlawful miscarriage of a woman, and the homicide resulting from such attempt. [C27, 31, 35,§13738-b1; C39,§**13738.1**; C46, 50, 54, 58, 62,§773.37; C66, 71, 73, 75,§773.38]

Referred to in §§773.39, 773.42

773.39 Judgment. Under section 773.38, separate judgments shall be rendered on each count on which the accused is convicted. [C27, 31, 35,§13738-b2; C39,§**13738.2**; C46, 50, 54, 58, 62, §773.38; C66, 71, 73, 75,§773.39]

Referred to in §773.42

773.40 Larceny, false pretenses and receiving stolen property. An indictment may charge in separate counts against the same person:

1. An indictable larceny, the obtaining of the same property by false pretenses, and the receiving of the same property with knowledge that it has been obtained by means of a larceny, or

2. The larceny of property and the embezzlement of the same property. [C27, 31, 35,§13738-b3; C39,§**13738.3**; C46, 50, 54, 58, 62,§773.39; C66, 71, 73, 75,§773.40]

Referred to in §§773.41, 773.42

773.41 Judgment. Under section 773.40 judgment shall not be rendered against the accused on more than one count. [C27, 31, 35,§13738-b4; C39,§**13738.4**; C46, 50, 54, 58, 62,§773.40; C66, 71, 73, 75,§773.41]

Referred to in §773.42

773.42 "Indictment" includes "information". The term "indictment" as used in sections 773.38 to 773.41, inclusive, shall be deemed to embrace not only an indictment but also a trial information as provided in chapter 769. [C27, 31, 35,§13738-b5; C39,§**13738.5**; C46, 50, 54, 58, 62, §773.41; C66, 71, 73, 75,§773.42]

773.43 Amendment. The court may, on motion of the state, and before or during the trial, order the indictment so amended as to correct errors or omissions in matters of form or substance. [S13,§5289; C24, 27, 31, 35, 39, §**13744**; C46, 50, 54, 58, 62,§773.42; C66, 71, 73, 75,§773.43]

Waiver of defects, §777.3

773.44 Amendment before trial. If the application for an amendment be made before the commencement of the trial, the application and a copy of the proposed amendment shall be served upon the defendant, or upon his attorney of record, and an opportunity given the defendant to resist the same. [S13,§5289; C24, 27, 31, 35, 39,§**13745**; C46, 50, 54, 58, 62, §773.43; C66, 71, 73, 75,§773.44]

40ExGA, HF 274,§3, editorially divided

773.45 Amendment during trial. If the application be made during the trial, the application and the amendment may be dictated into the record in the presence of the defendant or of his counsel, and such record shall constitute

sufficient notice to the defendant. [C24, 27, 31, 35, 39,§**13746**; C46, 50, 54, 58, 62,§773.44; C66, 71, 73, 75,§773.45]

773.46 Nonpermissible amendment. Such amendment shall not be ordered when it will have the effect of charging the accused with an offense which is different than the offense which was intended to be charged in the indictment as returned by the grand jury. [S13, §5289; C24, 27, 31, 35, 39,§**13747**; C46, 50, 54, 58, 62,§773.45; C66, 71, 73, 75,§773.46]

773.47 Continuance. No continuance or delay in trial shall be granted because of such amendment unless it is made to appear that defendant should have additional time to prepare for trial because of such amendment. [S13,§5289; C24, 27, 31, 35, 39,§**13748**; C46, 50, 54, 58, 62,§773.46; C66, 71, 73, 75,§773.47]

773.48 Pleading judicial proceedings. In pleading a judgment or other determination of or proceeding before a court or officer of special jurisdiction, the facts conferring jurisdiction need not be stated in the indictment. It is sufficient to state that the judgment or determination was duly made, or the proceedings duly had, before such court or officer; but such jurisdictional facts must be established on the trial. [C51,§2922; R60,§4662; C73,§4308; C97, §5292; C24, 27, 31, 35, 39,§**13751**; C46, 50, 54, 58, 62,§773.47; C66, 71, 73, 75,§773.48]

773.49 Pleading private statute. In pleading a private statute or right derived therefrom, it is sufficient to refer to the same by its title and the day of its approval, and the court must thereupon take judicial notice thereof. [C51, §2923; R60,§4663; C73,§4309; C97,§5293; C24, 27, 31, 35, 39,§**13752**; C46, 50, 54, 58, 62,§773.48; C66, 71, 73, 75,§773.49]

773.50 Compounding offense. A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity or reward, or engagement or promise therefor, upon agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense has not been indicted or tried. [C51,§2930; R60,§4670; C73,§4316; C97,§5301; C24, 27, 31, 35, 39,§**13757**; C46, 50, 54, 58, 62,§773.49; C66, 71, 73, 75, §773.50]

CHAPTER 774

PROCESS AFTER INDICTMENT

774.1 Bench warrant.
774.2 Warrant ordered—bail fixed.
774.3 Issuance of warrant.
774.4 Form in case of felony.
774.5 Form in case of misdemeanor.
774.6 Proceedings as to bail.
774.7 Process against corporation.
774.8 Service and return.
774.9 When defendant deemed present.
774.10 Indictment against convict in penitentiary.
774.11 Defendant returned—how punished.
774.12 Transfer of misdemeanors.

774.1 Bench warrant. The process upon an indictment for the arrest of an individual shall be a warrant. [R60,§4672; C73,§4318; C97,§5303; C24, 27, 31, 35, 39,§**13759**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§774.1]

Approval of warrant and expenses, §§79.12, 79.13

774.2 Warrant ordered — bail fixed. When an indictment is filed by the clerk of the court against a defendant not in custody nor under bail, or who has not deposited money instead of bail, the judge of the court shall make an order on the indictment, which shall be signed by him with his name of office, that a warrant issue for the arrest of the defendant, and, if the offense charge be bailable, fix the amount in which bail may be taken. [R60,§4673; C73, §4319; C97,§5304; C24, 27, 31, 35, 39,§**13760**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§774.2]

774.3 Issuance of warrant. The clerk on the application of the county attorney shall at any time after the making of the order of the judge, whether the court be in session or not, issue a warrant into one or more counties. [R60,§4674; C73,§4320; C97,§5305; C24, 27, 31, 35, 39,§**13761**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §774.3]

774.4 Form in case of felony. A warrant, if the offense be a felony, shall be substantially in the following form:

The State of Iowa, }
County of ..... }

To any peace officer in the state:

An indictment having been found in the district court of said county on the ..... day of ....., A.D. ....., (the day on which the indictment is marked "filed" by the clerk of the court) charging A. B. with the crime of (here designate the offense by the name, if it have one, or by a brief general description of it, substantially as in the indictment).

You are hereby commanded to arrest the said A. B. and bring him before said court to answer said indictment.

Given under my hand and the seal of said court at my office in the county aforesaid, this ..... day of ....., A. D. .....

.....

[Seal] Clerk.

By order of the judge of the court.

[R60,§4675; C73,§4321; C97,§5306; C24, 27, 31, 35, 39,§**13762**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §774.4]

774.5 Form in case of misdemeanor. If the offense be a misdemeanor, the warrant may be in a similar form, adding to the body thereof a direction substantially to the following effect: "Or, if the said A. B. require it, that you take him before a magistrate or the clerk of the district court in said county, or in the county in which you arrest him, that he may give bail to answer the said indictment", and the clerk must make an endorsement thereon to the following effect: "The defendant is to be admitted to bail in the sum of ..... dollars" (the amount fixed by the judge and endorsed on the indictment). The warrant may be served in any county in the state. [C51,§2935; R60,§§4676-4678; C73,§§4322-4324; C97,§5307; C24, 27, 31, 35, 39,§**13763**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§774.5]

774.6 Proceedings as to bail. If the defendant, when arrested, is brought before a magistrate or the clerk of the district court of any county for the purpose of giving bail, the same proceedings must be had in all respects as if he had been arrested on a warrant of arrest issued by a magistrate on a preliminary information, as nearly as may be. [R60,§4679; C73, §4325; C97,§5308; C24, 27, 31, 35, 39,§**13764**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§774.6]

Bail, ch 763 et seq.

774.7 Process against corporation. The process on an indictment against a corporation shall be a notice under the seal of the court, which shall be issued by the clerk, at any time after the filing of the indictment in his office, on the application of the county attorney, and shall substantially notify the defendant of the finding of the indictment, of the nature of the offense charged, and that it must forthwith appear and answer the same. [C73,§4326; C97, §5309; C24, 27, 31, 35, 39,§**13765**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§774.7]

C97,§5309, editorially divided

774.8 Service and return. Said notice may be served by any peace officer in any county in the state on any officer or agent of the defendant, by reading the same to him and leaving with him a copy thereof, and shall be returned to the clerk's office without delay, with proper return of its service. [C73,§4326; C97,§5309; C24, 27, 31, 35, 39,§**13766**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§774.8]

774.9 When defendant deemed present. From and after two days from the time of the making of such service, the defendant shall be considered in court, and present to all proceedings had on the indictment. [C73,§4326; C97,§5309; C24, 27, 31, 35, 39,§**13767**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§774.9]

774.10 Indictment against convict in penitentiary. Upon the return of an indictment or upon the filing of a trial information for any offense which may be punished by death or life imprisonment, against any person confined in the penitentiary or men's reformatory, the court to which such indictment is returned may enter an order directing that such person be produced before it for trial. The sheriff shall execute such order by serving a copy thereof on the warden having such accused person in custody and thereupon such person shall be delivered to such sheriff and conveyed to the place of trial. [S13,§§5718-b, 5718-c; C24, 27, 31, 35, 39,§**13768**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§774.10]

774.11 Defendant returned—how punished. If the defendant be found not guilty, he shall be returned to the institution from which he was taken; if convicted he shall be punished as provided by law. [S13,§5718-d; C24, 27, 31, 35, 39,§**13769**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§774.11]

774.12 Transfer of misdemeanors. District judges may, within the judicial district, transfer any indictable misdemeanors pending before them to the nearest district associate judge or judicial magistrate having jurisdiction. [C27, 31, 35,§13677-b1; C39,§**13677.1**; C46, 50, 54, 58, 62,§769.32; C66, 71,§769.33; C73, 75, §774.12]

Effective July 1, 1974; 65GA, ch 282,§98

CHAPTER 775

ARRAIGNMENT OF DEFENDANT

775.1 Time of arraignment—waiver—corporation.
775.2 Personal presence—when necessary.
775.3 Out on bail—failure to appear—arrest.
775.4 Right to counsel.
775.5 Fee for attorney defending.
775.6 Partial payment—affidavit required.
775.7 Arraignment—by whom made.
775.8 Arraignment—how made.
775.9 Incorrect name—estoppel.
775.10 Entry of true name.
775.11 Answer—time granted.

775.1 Time of arraignment—waiver—corporation. As soon as practicable after an indictment is found, the defendant must be arraigned thereon, unless he waive the same. Where a corporation is defendant, arraignment shall not be required. [C51,§2931; R60,§4680; C73,§4327; C97,§5310; C24, 27, 31, 35, 39,§**13770**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§775.1]

775.2 Personal presence—when necessary. A person charged with a felony, or in custody without an attorney, must be personally present for arraignment, but in other cases he may appear therefor by counsel. [C51,§2932; R60,§§4681, 4682; C73,§§4328, 4329; C97,§5311; C24, 27, 31, 35, 39,§**13771**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§775.2]

775.3 Out on bail—failure to appear—arrest. If the defendant is at large on bail or deposit of money, and fails to appear for arraignment, or when his personal presence is necessary, the court shall, in addition to the forfeiture of the undertaking of bail or money deposited, enter an order directing the clerk at any time, upon the application of the county attorney, to issue a warrant into one or more counties for his arrest. [C51,§§2933, 2934; R60,§§4683, 4684; C73,§§4330, 4331; C97,§5312; C24, 27, 31, 35, 39,§**13772**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§775.3]

Approval of warrant and expenses, §§79.12, 79.13

775.4 Right to counsel. If the defendant appears for arraignment without counsel, he must, before proceeding therewith, be informed by the court of his right thereto, and be asked if he desires counsel; and if he does, and is unable to employ any, the court must allow him to select or assign him counsel, not exceeding two, who shall have free access to him at all reasonable hours. [C51,§2936; R60,§4685; C73,§4332; C97,§5313; C24, 27, 31, 35, 39,§**13773**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§775.4]

Referred to in §§336B.2, 777.12

775.5 Fee for attorney defending. An attorney appointed by the court to defend any person charged with a crime in this state shall be entitled to a reasonable compensation to be decided in each case by the court, including such sum or sums as the court may determine are necessary for investigation in the interests of justice and in the event of appeal the cost of obtaining the transcript of the trial and the printing of the trial record and necessary briefs in behalf of the defendant. Such attorney need not follow the case into another county or into the appellate court unless so directed by the court at the request of the defendant, where grounds for further litigation are not capricious or unreasonable, but if he does so his fee shall be determined accordingly. Only one attorney fee shall be so awarded in any one case. [C51,§§2561–2563; R60,§§1578, 4168–4170; C73,§§3829–3831; C97, §5314; C24, 27, 31, 35, 39,§**13774**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§775.5; 66GA, ch 1241,§97]

Referred to in §§229.8, 336A.7; Court Rule 15.1
C97,§5314, editorially divided

775.6 Partial payment — affidavit required. Any attorney appointed at public expense may receive, or contract to receive, a partial payment on behalf of the client he is appointed to represent. Such attorney shall fully disclose to the court, by affidavit, any sums he has received or contracted for, and any such sums shall be considered by the court in determining the portion of the attorney fee to be paid by the public. [C51,§2563; R60,§4170; C73,§3831; C97,§5314; C24, 27, 31, 35, 39,§**13775**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§775.6]

Referred to in §229.8

775.7 Arraignment — by whom made. The arraignment may be made by the court, or by the clerk or county attorney under its direction. [C51,§2937; R60,§4686; C73,§4333; C97,§5315; C24, 27, 31, 35, 39,§**13776**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§775.7]

C97,§5315, editorially divided

775.8 Arraignment — how made. Arraignment consists in reading the indictment to the defendant, and, unless previously done, delivering to him a copy thereof and the endorsements thereon, and informing him that, if the name by which he is indicted is not his true name, he must then declare what his true name is, or be proceeded against by the name in the indictment, and asking him what he answers to the indictment. [C51,§2938; R60, §4686; C73,§4333; C97,§5315; C24, 27, 31, 35, 39, §**13777**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§775.8]

775.9 Incorrect name—estoppel. If he gives no other name or gives his true name, he is thereafter precluded from objecting to the indictment upon the ground of being therein improperly named. [C51,§2939; R60,§4687; C73, §4334; C97,§5316; C24, 27, 31, 35, 39,§**13778**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§775.9]

775.10 Entry of true name. If he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted. [C51,§2940; R60,§4688; C73,§4335; C97,§5317; C24, 27, 31, 35, 39,§**13779**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§775.10]

775.11 Answer—time granted. In answer to the arraignment, the defendant may move to set aside the indictment, or demur or plead to it, and is entitled to one day after arraignment, if he demand it, in which to do so. [C51,§§2941, 2942; R60,§§4689, 4690; C73,§4336; C97,§5318; C24, 27, 31, 35, 39,§**13780**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§775.11]

CHAPTER 776

SETTING ASIDE INDICTMENT

776.1 Grounds for setting aside indictment.
776.2 Exception.
776.3 Correction of indictment.
776.4 Objections to selection of grand jury.
776.5 Hearing on motion.
776.6 Motion overruled — defendant must answer.
776.7 Motion sustained—defendant discharged.
776.8 Resubmission—bail.
776.9 Order to set aside—effect.

776.1 Grounds for setting aside indictment. The motion to set aside the indictment can be made, before a plea is entered by the defendant, on one or more of the following grounds, and must be sustained:

1. When it is not endorsed "a true bill" and the endorsement signed by the foreman of the grand jury as prescribed by this Code.

2. When the names of all witnesses examined before the grand jury are not endorsed thereon.

3. When the minutes of the evidence of the witnesses examined before the grand jury are not returned therewith.

4. When it has not been presented and marked "filed" as prescribed by this Code.

5. When any person other than the grand jurors was present before the grand jury when the question was taken upon the finding of the indictment.

6. When any person other than the grand jurors was present before the grand jury during the investigation of the charge, except as required or permitted by law.

7. That the grand jury were not selected, drawn, summoned, impaneled, or sworn as prescribed by law, except as hereinafter provided. [C51,§2943; R60,§4691; C73,§4337; C97, §5319; C24, 27, 31, 35, 39,§**13781**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§776.1]

Referred to in §§776.3, 776.4

776.2 Exception. A motion to set aside an indictment shall not lie on the ground that the grand jury which returned the indictment was composed of more than one juror from the same civil township. [C31, 35,§13781-c1; C39, §**13781.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§776.2]

See §609.27

776.3 Correction of indictment. A motion to set aside the indictment on the ground that the names of all the witnesses examined before the grand jury are not endorsed thereon; or that the name of any other witness than those so examined is endorsed thereon as prescribed in the second subsection of section 776.1, shall not be sustained if the endorsement is corrected by the insertion or striking out of such names or name by the county attorney or the clerk of the court, under the direction of the court, so as to correspond with the minutes required to be kept by the clerk of the grand jury, and returned and preserved with the indictment to the court. [R60,§4692; C73,§4338; C97,§5320; C24, 27, 31, 35, 39,§**13782**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§776.3]

776.4 Objections to selection of grand jury. The ground of the motion to set aside the indictment mentioned in the seventh subsection of section 776.1 is not allowed to a defendant who has been held to answer before indictment. [R60,§4693; C73,§4339; C97,§5321; C24, 27, 31, 35, 39,§**13783**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§776.4]

776.5 Hearing on motion. The motion must be heard when it is made, unless for good cause the court postpone the hearing to another time. [C51,§2945; R60,§4695; C73,§4340; C97,§5322; C24, 27, 31, 35, 39,§**13784**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§776.5]

776.6 Motion overruled — defendant must answer. If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto. [C51, §2946; R60,§4696; C73,§4341; C97,§5323; C24, 27, 31, 35, 39,§**13785**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§776.6]

776.7 Motion sustained — defendant discharged. If the motion be granted, the court must order the defendant, if in custody, to be discharged; or, if admitted to bail, that his bail be exonerated; or, if he has deposited money instead of bail, that the money deposited be refunded to him, unless the court direct that the case be resubmitted to the same or another grand jury. [C51,§2947; R60,§4697; C73, §4342; C97,§5324; C24, 27, 31, 35, 39,§**13786**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§776.7]

776.8 Resubmission—bail. If the court direct that the case be resubmitted, the defendant, if already in custody, must so remain unless he be admitted to bail; or, if already admitted to bail, or money had been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment, if a resubmission has been ordered. [C51,§2948; R60,§4698; C73,§4343; C97,§5325; C24, 27, 31, 35, 39,§**13787**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§776.8]

776.9 Order to set aside—effect. An order to set aside the indictment, as provided in this chapter, shall be no bar to a future prosecution for the same offense. [C51,§2949; R60, §4699; C73,§4344; C97,§5326; C24, 27, 31, 35, 39, §**13788**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§776.9]

CHAPTER 777

PLEADINGS OF DEFENDANT

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777.18 Insanity or alibi defense — notice — continuance.
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777.1 Demurrer or plea. The only pleading on the part of the defendant is a demurrer or plea. [C51,§2950; R60,§4700; C73,§4345; C97, §5327; C24, 27, 31, 35, 39,§**13789**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.1]

777.2 Grounds of demurrer. The defendant may demur to the indictment when it appears upon its face, either:

1. That it does not substantially conform to the requirements of this Code, or

2. That the indictment contains matter which, if true, would constitute a legal defense or bar to the prosecution. [C51,§2952; R60, §4707; C73,§4352; C97,§5328; C24, 27, 31, 35, 39, §**13790**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.2]

777.3 Failure to demur—waiver. All objections to the indictment relating to matters of substance and form which might be raised by demurrer shall be deemed waived if not so raised by the defendant before the jury is sworn on the trial of the case. [S13,§5289; C24, 27, 31, 35, 39,§**13791**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.3]

Related provision, §773.43

777.4 Method of demurring. A demurrer to the indictment may be filed with the clerk or made in open court, and shall be entered of record substantially in the following form: "The defendant demurs to the indictment". [C51,§2951; R60,§§4701, 4708; C73,§§4346, 4353; C97,§5330; C24, 27, 31, 35, 39,§**13792**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.4]

777.5 Issues—by whom tried. An issue of law arises upon a demurrer to the indictment, which must be tried by the court, but no joinder is necessary. [R60,§§4702, 4703; C73,§§4347, 4348; C97,§5329; C24, 27, 31, 35, 39,§**13793**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.5]

777.6 Time of hearing demurrer. When a demurrer is filed or entered of record, it must be heard immediately, or at such time as the court may appoint. [C51,§2954; R60,§4709; C73, §4354; C97,§5331; C24, 27, 31, 35, 39,§**13794**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.6]

C97,§5331, editorially divided

777.7 Jurisdiction in another county—procedure. If a demurrer is sustained on the ground that the offense charged was within the exclusive jurisdiction of another county in this state, the same proceedings shall be had as provided in case of the discharge of a jury for want of jurisdiction of the offense charged. [R60,§4710; C73,§4355; C97,§5331; C24, 27, 31, 35, 39,§**13795**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.7]

Discharge for want of jurisdiction, §780.29

777.8 Absolute discharge. If a demurrer is correctly sustained because the indictment contains matter which is a legal defense or bar to the indictment, the judgment shall be final and the defendant must be discharged. If a demurrer to an indictment is incorrectly sustained, such error shall not act as a bar to further prosecution for the same offense. [R60, §4711; C73,§4356; C97,§5331; C24, 27, 31, 35, 39, §**13796**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.8]

777.9 Resubmission. If a demurrer is sustained on any other ground, the defendant must be discharged and his bail exonerated, if bail has been given, unless the court is of opinion, on good cause shown, that the objection can be remedied or avoided in another indictment, in which case the court may order the cause to be resubmitted to the same or another grand jury, and the defendant may be held in custody, if not at large on bail, in which case the undertaking given shall remain in force. [R60,§4712; C73,§4357; C97,§5331; C24, 27, 31, 35, 39,§**13797**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.9]

777.10 Pleading over — final judgment. If the demurrer is overruled, the defendant has a right to plead to the indictment; if he fails to do so, final judgment may be rendered against him on the demurrer, and, if necessary, a jury may be impaneled to inquire and ascertain the degree of the offense. [C51,§2955; R60,§4713; C73,§4358; C97,§5332; C24, 27, 31, 35, 39,§**13798**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.10]

777.11 Pleas to the indictment. There are but three pleas to the indictment—(1) guilty, (2) not guilty, or (3) of a former judgment of

conviction or acquittal of the offense charged. [C51,§2957; R60,§4714; C73,§4359; C97,§5333; C24, 27, 31, 35, 39,§13799; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.11]

777.12 Plea of guilty — form — entry. The plea of guilty can only be made in open court and by the defendant himself, and in the presence of legal counsel acting on behalf of the defendant if the defendant is charged with a felony in substantially the following form: "The defendant pleads that he is guilty of the offense charged in the indictment", and shall be entered of record. Before a plea of guilty or an entry of judgment, if the defendant has neither employed counsel nor been assigned counsel as provided in section 775.4 the court shall appoint counsel for the defendant if the defendant is charged with a felony. [R60, §§4715, 4716; C73,§§4360, 4361; C97,§5334; C24, 27, 31, 35, 39,§13800; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.12]

Referred to in §336B.2

777.13 Other pleas—form—entry. The other pleas may be in writing, filed with the clerk, or made in open court, in substantially the following form: "The defendant pleads that he is not guilty of the offense charged in the indictment", or, "The defendant pleads that he has formerly been convicted (or acquitted, as the case may be) of the offense charged in the indictment by the judgment of the ..... court of ..... (naming it), rendered on the .... day of ....., A. D. ...." (naming the time), which may be pleaded alone or with the plea of not guilty. The pleas shall be entered of record. [C51,§2957; R60,§§4714, 4715; C73, §§4359, 4360; C97,§5335; C24, 27, 31, 35, 39,§13801; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.13]

777.14 Failure to plead. If the defendant fails or refuses to plead to the indictment by demurrer or plea, a plea of not guilty must be entered by the court. [C51,§2963; R60,§4722; C73,§4367; C97,§5336; C24, 27, 31, 35, 39,§13802; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.14]

777.15 Withdrawal of plea of guilty. At any time before judgment, the court may permit the plea of guilty to be withdrawn and other plea or pleas substituted. [C51,§2961; R60, §4717; C73,§4362; C97,§5337; C24, 27, 31, 35, 39, §13803; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.15]

777.16 Issues of fact—trial. An issue of fact arises on a plea of not guilty or of former conviction or acquittal, and no further pleading is necessary. Issues of fact must be tried by a jury, unless right to jury trial is waived by defendant pursuant to section 780.23. [R60, §§4702, 4704, 4705; C73,§§4347, 4349, 4350; C97, §5338; C24, 27, 31, 35, 39,§13804; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.16]

C97, §5338, editorially divided
See also Const., Art. I, §9

777.17 Plea of not guilty—evidence admissible. The plea of not guilty is a denial of every material allegation in the indictment, and all matters of fact may be given in evidence under it, except a former conviction or acquittal. [C97,§5338; C24, 27, 31, 35, 39,§13805; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.17]

777.18 Insanity or alibi defense — notice — continuance. Where the defendant pleads not guilty and proposes to show insanity as a defense, or that he relies on an alibi or that he was at some other place at the time of the alleged commission of the offense charged, he shall, at the time he pleads or at any time thereafter, not later than four days before trial, file a written notice of this purpose, setting forth the names of the witnesses, together with the address and occupation of each, and a statement of the substance of that which the defendant expects to prove by the testimony of each of said witnesses. If the defendant files said notice less than four days before the case is set for trial, the state, on motion of the county attorney, shall be entitled to a continuance of said cause for not to exceed four days. C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.18]

777.19 Personal presence at trial. If a felony is charged, the defendant must be personally present at the trial, but the trial of a misdemeanor may be had in his absence, if he appears by counsel. [R60,§4706; C73,§4351; C97,§5338; C24, 27, 31, 35, 39,§13806; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.19]

777.20 Conviction or acquittal—when a bar. A conviction or acquittal by a judgment upon a verdict shall bar another prosecution for the same offense, notwithstanding a defect in form or substance in the indictment on which the conviction or acquittal took place. [R60,§4719; C73,§4364; C97,§5339; C24, 27, 31, 35, 39,§13807; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.20]

Constitution, Art. I,§12
See 237 Iowa 1271

777.21 Prosecutions barred. When a defendant has been convicted or acquitted upon an indictment for an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the offense charged in the former or for any lower degree of that offense, or for an offense necessarily included therein. [R60,§4720; C73,§4365; C97, §5340; C24, 27, 31, 35, 39,§13808; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.21]

777.22 Other judgments—when a bar. Except where otherwise provided, the judgment for a defendant on a demurrer, or on an objection to its form or substance taken on the trial, or for variance between the indictment and the proof, shall not bar another prosecution for the same offense, if a resubmission has been ordered. [R60,§4721; C73,§4366; C97,§5341; C24, 27, 31, 35, 39,§13809; C46, 50, 54, 58, 62, 66, 71, 73, 75,§777.22]

CHAPTER 778

CHANGE OF VENUE

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778.1 Right to change. In all criminal cases which may be pending in any of the district courts, any defendant therein, or the state, in cases where defendant is charged with felony, may petition the court for a change of place of trial to another county. [C51,§3270; R60,§4727; C73,§4368; C97,§5342; C24, 27, 31, 35, 39,§**13810**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§778.1]

778.2 Petition by defendant. Such petition, when filed by the defendant, must set forth the nature of the prosecution, the court where the same is pending, and that such defendant cannot receive a fair and impartial trial owing to the prejudice of the judge, or to excitement or prejudice against the defendant in such county, and be verified on information and belief by the affidavit of the defendant. [C51, §3271; R60,§4728; C73,§4369; C97,§5343; C24, 27, 31, 35, 39,§**13811**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§778.2]

778.3 Additional verification. When the ground alleged in the petition filed by the defendant is excitement or prejudice against him in the county, it must be verified by the affidavit of three disinterested persons, residents of the county from which the change is sought, in addition to the affidavit of the petitioner himself. [R60,§4729; C73,§4370; C97,§5344; C24, 27, 31, 35, 39,§**13812**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§778.3]

778.4 Petition by state. Such petition, when filed by the state, shall set forth the nature of the prosecution, the court where the same is pending, and that the state cannot receive a fair and impartial trial in said county owing to excitement or prejudice in such county against the prosecution, and be verified on information and belief by the affidavit of the county attorney or his assistant. [C24, 27, 31, 35, 39,§**13813**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §778.4]

778.5 Petition for second change. When a change in place of trial has been granted to one party to the prosecution, the other party thereto to whom no change has been granted, may, in the county to which the case has been sent, petition for a change in the same manner as though said county was the county in which the case was first pending. In such case, if the change be granted, the case shall not be sent to the county in which it was originally pending. [C24, 27, 31, 35, 39,§**13814**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§778.5]

778.6 General terms sufficient. The petition need not state the facts upon which the belief of the petitioner or other person verifying the same is founded, but may allege the belief of the particular ground thereof in general terms. [R60,§4730; C73,§4371; C97,§5345; C24, 27, 31, 35, 39,§**13815**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§778.6]

778.7 Additional testimony. When the alleged ground in the petition is excitement or prejudice in the county against the petitioner, the court may receive additional testimony by affidavits only, either on the part of the defendant or the state. [R60,§4731; C73,§4372; C97,§5346; C24, 27, 31, 35, 39,§**13816**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§778.7]

778.8 Filed with clerk. The petition and affidavits must be filed with the clerk, and are parts of the record. [R60,§4732; C73,§4373; C97, §5347; C24, 27, 31, 35, 39,§**13817**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§778.8]

778.9 Discretion of court. The court, in the exercise of a sound discretion, must, when fully advised, decide the matter of the petition according to the very right of it. [C51,§3272; R60,§4733; C73,§4374; C97,§5348; C24, 27, 31, 35, 39,§**13818**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§778.9]

778.10 Order of change of venue. If sustained, the court must, if the ground alleged be the prejudice of the judge, order the change of venue to the most convenient county in an adjoining district to which no objection exists. If sustained on the ground of excitement and prejudice in the county, it must be awarded to such county in the same district in which no such objection exists. [C51,§3272; R60,§§4734, 4735; C73,§§4375, 4376; C97,§5349; C24, 27, 31, 35, 39,§**13819**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §778.10]

778.11 Transmission of papers. Upon the change of place of trial to another county, if there be but one defendant in the case, or if all have joined in the petition, the clerk must make out and certify a transcript of all papers on file in the case, including the indictment, and file the same in his office; and all the original papers on file, with a certified copy of all record entries therein, must be without unnecessary delay transmitted to the clerk of the

court to which the change is ordered. [C51, §3273; R60,§4736; C73,§4377; C97,§5350; C24, 27, 31, 35, 39,§**13820**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§778.11]

778.12 Several defendants—transcripts. If there be more than one defendant in such case, and all the defendants have not joined in the petition, the clerk must, without unnecessary delay, make out and certify a transcript of all entries appearing on the record, and of all the papers on file in the case, including the indictment, and transmit the same to the clerk of the court to which the change of place of trial is ordered, retaining the originals. [R60, §4737; C73,§4378; C97,§5351; C24, 27, 31, 35, 39, §**13821**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§778.12]

778.13 Delivery of accused. When a change of place of trial to another county has been ordered, if the defendant is in custody, the sheriff of the county from which the change is granted must, on the order of the court, deliver him to the sheriff of the county to which such change is allowed, and upon such delivery, with a certified copy of the order therefor, the sheriff last mentioned must receive and detain the defendant in his custody until legally discharged therefrom, and give a certificate of such delivery. [C51,§3274; R60,§4738; C73,§4379; C97,§5352; C24, 27, 31, 35, 39,§**13822**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§778.13]

778.14 Proceedings after change. The court to which the change is granted must take cognizance of the cause, and proceed therein to trial, judgment, and execution, in all respects as if the indictment had been found by the grand jury impaneled in such court. [C51, §3275; R60,§4739; C73,§4380; C97,§5353; C24, 27, 31, 35, 39,§**13823**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§778.14]

778.15 Cost attending change. When the place of trial is changed under the provisions of this chapter, the county from which the change was taken shall pay the expenses and charges of removing, delivering, and keeping the defendant, and all other expenses and costs necessary and consequent upon such change and trial, which shall be audited and allowed by the court trying the case; and all such expenses and costs may be recovered by the county to which the trial is changed in an action against the county in which the prosecution was commenced. [C51,§3276; R60,§§4740, 4745; C73,§§3841, 4381, 4386; C97,§5354; C24, 27, 31, 35, 39,§**13824**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§778.15]

778.16 Sheriffs' fees. For delivering prisoners under the provisions of this chapter, sheriffs are entitled to the same fees as are allowed for the conveyance of convicts to the penitentiary. [C51,§3277; R60,§4741; C73,§4382; C97, §5355; C24, 27, 31, 35, 39,§**13825**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§778.16]

Fees, §337.11

778.17 Jury fees in criminal actions. Where the place of trial in any criminal action is changed to any county other than that in which the same was properly commenced, where the trial thereof takes place at a regular session and occupies more than one calendar day, the judge trying it shall certify the number of days so occupied, and the county in which the action was originally commenced shall be liable to the county where the same is tried for the sum of ten dollars per day and mileage expenses at the rate of fifteen cents per mile for each mile traveled each day to and from their residence to the place of attendance, for each juryman engaged in the trial thereof. [C73,§2597; C97,§3512; C24, 27, 31, 35, 39,§**11424**; C46, 50, 54, 58, 62, 66, 71, 73, §623.1; C75,§778.17; 66GA, ch 1244,§1]

CHAPTER 779

TRIAL JURY

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779.16 Bias in favor of party—waiver.
779.17 Jurors sworn.
779.18 Alternate jurors.

779.1 Rules for drawing. The rules for drawing the jury shall be the same as those provided in civil procedure. [R60,§4751; C73, §4389; C97,§5356; C24, 27, 31, 35, 39,§**13826**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.1]

See R.C.P. 187

779.2 Completion of panel. If for any reason the regular panel is exhausted without a jury being selected, it shall be completed in the manner provided in the chapters upon selecting, drawing, and summoning juries. [C51,

§2970; R60,§4758; C73,§4396; C97,§5357; C24, 27, 31, 35, 39,§13827; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.2]

Jurors in general, ch 607 et seq.
Similar provision, §624.12

779.3 Challenges to the panel. All the provisions of law relating to challenges to the panel of trial jurors in civil procedure, the grounds therefor, the manner of exercising the same, and the effect thereof, shall apply to the panel of trial jurors in criminal cases. [C51,§§2972–2977; R60,§§4760–4765; C73,§§4398–4403; C97,§5358; C24, 27, 31, 35, 39,§13828; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.3]

Challenge to panel, R.C.P. 187

779.4 Challenges to individual juror. A challenge to an individual juror is an objection which may be taken orally, and is either for cause or peremptory. [C51,§2978; R60,§4766; C73,§4404; C97,§5359; C24, 27, 31, 35, 39,§13829; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.4]

Referred to in §762.19

779.5 Challenges for cause. A challenge for cause may be made by the state or defendant, and must distinctly specify the facts constituting the causes thereof. It may be made for any of the following causes:

1. A previous conviction of the juror of a felony.

2. A want of any of the qualifications prescribed by statute to render a person a competent juror.

3. Unsoundness of mind, or such defects in the faculties of the mind or the organs of the body as render him incapable of performing the duties of a juror.

4. Affinity or consanguinity, within the ninth degree, to the person alleged to be injured by the offense charged, or on whose preliminary information, or at whose instance, the prosecution was instituted, or to the defendant, to be computed according to the rule of the civil law.

Computing relationship, §4.1(24)

5. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose preliminary information, or at whose instance, the prosecution was instituted, or in his employ on wages.

6. Being a party adverse to the defendant in a civil action, or having been the prosecutor against or accused by him in a criminal prosecution.

7. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment.

8. Having served on a trial jury which has tried another defendant for the offense charged in the indictment.

9. Having been on a jury formerly sworn to try the same indictment and whose verdict was set aside, or which was discharged without a verdict after the cause was submitted to it.

10. Having served as a juror, in a civil action brought against the defendant, for the act charged as an offense.

11. Having formed or expressed such an opinion as to the guilt or innocence of the prisoner as would prevent him from rendering a true verdict upon the evidence submitted on the trial.

12. Because of his being bail for any defendant in the indictment.

13. Because he is defendant in a similar indictment, or complainant or private prosecutor against the defendant or any other person indicted for a similar offense.

14. Because he is, or within a year preceding has been, engaged or interested in carrying on any business, calling, or employment, the carrying on of which is a violation of law, where the defendant is indicted for a like offense.

15. Because he has been a witness, either for or against the defendant, on the preliminary trial or before the grand jury.

16. Having requested, directly or indirectly, that his name be returned as a juryman for the regular biennial period.

17. Having served in the district court as a grand or petit juror during the last preceding calendar year. [C51,§§2982–2986; R60,§§4767–4771; C73,§4405; C97,§§337, 5360; S13,§337; C24, 27, 31, 35, 39,§13830; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.5]

Referred to in §762.19

779.6 Examination of jurors. Upon the trial of a challenge to an individual juror, the juror challenged shall be sworn, if demanded by either party, and examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry thereon, but his answer shall not afterwards be testimony against him. [C51,§2988; R60, §4773; C73,§4407; C97,§5361; C24, 27, 31, 35, 39, §13831; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.6]

Referred to in §762.19

779.7 Examination of other witnesses. Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge, and the court shall determine the law and the fact, and must allow or disallow the challenge. [C51,§§2989, 2990; R60, §§4774, 4775; C73,§§4408, 4409; C97,§5362; C24, 27, 31, 35, 39,§13832; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.7]

Referred to in §762.19

779.8 Order of challenges for cause. The state shall first complete its challenge for cause, and the defendant afterwards, until sixteen jurors have been obtained against whom no cause of challenge has been found to exist. [R60,§§4776, 4777; C73,§§4410, 4411; C97,§5363; C24, 27, 31, 35, 39,§13833; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.8]

Referred to in §762.19

779.9 Order of challenges in general. The challenges of either party need not be all taken at once, but separately, in the following order, including in each challenge all the causes of challenge belonging to the same class: To the panel; to an individual juror for cause; to an individual juror peremptorily. [R60,§4781; C73,§4415; C97,§5367; C24, 27, 31, 35, 39,§**13834**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.9]

Referred to in §762.19

779.10 Peremptory challenges. Peremptory challenges shall be exercised in the same manner as is provided in the trial of civil actions. [R60,§4780; C73,§4414; C97,§5364; C24, 27, 31, 35, 39,§**13835**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §779.10]

Referred to in §762.19
See R.C.P. 187

779.11 Peremptory challenges—number. If the offense charged in the indictment or information is or may be punishable with imprisonment for life, the state and defendant shall each have the right to peremptorily challenge eight jurors and shall strike two jurors.

If the offense charged be any other felony, the state and the defendant shall each have the right to peremptorily challenge four jurors and shall strike two jurors.

If the offense charged be a misdemeanor, the state and the defendant shall each have the right to peremptorily challenge two jurors and shall strike two jurors. [R60,§4779; C73, §4413; C97,§5365; C24, 27, 31, 35, 39,§**13836**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.11]

Referred to in §762.19

779.12 Multiple charges. If the indictment charges different offenses in different counts, the state and the defendant shall each have that number of peremptory challenges which they would have if the highest grade of offense charged in the indictment were the only charge. [C27, 31, 35,§13836-b1; C39,§**13836.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.12]

Referred to in §762.19

779.13 Clerk to prepare list—procedure. The clerk shall prepare a list of jurors called; and, after all challenges for cause are exhausted or waived, the parties, commencing with the state, shall alternately challenge peremptorily or waive by indicating any such challenge upon the list opposite the name of the juror challenged, or by indicating the number of waiver elsewhere on the list. [R60,§4780; C73,§4414; C97,§5363; C24, 27, 31, 35, 39,§**13837**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.13]

Referred to in §762.19

779.14 Vacancy filled. After each challenge, sustained for cause, or made peremptorily as indicated on the list, another juror shall be called and examined for challenge for cause before a further challenge is made; and any new juror thus called may be challenged for cause and shall be subject to peremptory challenge or to being struck from the list as other jurors. [R60,§4782; C73,§4416; C97,§5366; C24, 27, 31, 35, 39,§**13838**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.14]

Referred to in §762.19

779.15 Reading of names. After all challenges have thus been exercised or waived and four jurors have been struck from the list the clerk shall read the names of the twelve jurors remaining who shall constitute the jury selected. [C24, 27, 31, 35, 39,§**13839**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.15]

Referred to in §762.19

779.16 Bias in favor of party—waiver. Bias in a juror against either party is no cause of challenge by the other, and may be waived by the party against whom it exists. [R60,§4784; C73,§4418; C97,§5368; C24, 27, 31, 35, 39,§**13840**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.16]

Referred to in §762.19

779.17 Jurors sworn. When twelve jurors are accepted they shall be sworn to try the issues. [R60,§4783; C73,§4417; C97,§5369; C24, 27, 31, 35, 39,§**13841**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§779.17]

779.18 Alternate jurors. The court may impanel one or two alternate jurors whose qualifications, powers, functions, facilities, and privileges shall be the same as regular jurors. After the regular jury is selected, the clerk shall draw the names of three more persons if one alternate juror is desired, or four more persons if two alternate jurors are desired, who are to serve under this chapter, who shall be sworn and subject to examination and challenge for cause as provided in this chapter. Each party must then strike off one such name, and the one or two remaining shall be sworn to try the case with the regular jury, and sit at the trial. Alternate jurors shall, in the order they were drawn, replace any juror who becomes unable to act, or is disqualified, before the jury retires, and if not so needed shall then be discharged. [C58, 62, 66, 71, 73, 75,§779.18]

CHAPTER 780

TRIAL

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780.1 Joint indictment — separate trials. When two or more defendants are jointly indicted for felony, any defendant requiring it may be tried separately; in other cases defendants jointly indicted may be tried separately or jointly, in the discretion of the court. [C51, §2992; R60,§4789; C73,§4424; C97,§5375; C24, 27, 31, 35, 39,§**13842**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.1]

780.2 Continuances. The provisions of the rules of civil procedure relative to the continuances of the trial of civil causes shall apply to the continuance of criminal actions, but no judgment for costs shall be rendered against a defendant on account thereof, except as in this Code otherwise provided. [C73,§4419; C97,§5370; C24, 27, 31, 35, 39,§**13843**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.2]

C97,§5370, editorially divided
Continuances, R.C.P. 182 et seq.

780.3 Time to prepare for trial. The defendant shall, if he demands it upon entering his plea, be entitled to three days in which to prepare for trial. [C73,§4419; C97,§5370; C24, 27, 31, 35, 39,§**13844**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.3]

780.4 Mode and manner of trial. All the provisions relating to mode and manner of the trial of civil actions, report thereof, translation of the shorthand reporter's notes, the making such report and translation a part of the record, and in all other respects, apply to the trial of criminal actions. [R60,§4809; C73, §4436; C97,§5371; C24, 27, 31, 35, 39,§**13845**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.4]

780.5 Order of trial. The jury having been impaneled and sworn, the trial must proceed in the following order:

1. *Reading indictment and plea.* The clerk or county attorney must read the indictment or, the supplemental indictment as required under the provisions of the Code,* and state the defendant's plea to the jury.

2. *Statement of state's evidence.* The county attorney may briefly state the evidence by which he expects to sustain the indictment.

3. *Statement of defendant's evidence.* The attorney for the defendant may then briefly state his defense, and the evidence by which he expects to sustain it.

4. *Offer of state's evidence.* The state may then offer the evidence in support of the indictment.

5. *Offer of defendant's evidence.* The defendant or his counsel may then offer his evidence in support of his defense.

6. *Rebutting or additional evidence.* The parties may then, respectively, offer rebutting evidence only, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original case. [C51, §2991; R60,§4785; C73,§4420; C97,§5372; C24, 27, 31, 35, 39,§**13846**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.5]

Referred to in §§780.10, 780.14
*Supplemental indictment, §§769.6, 773.3
C97,§5372, editorially divided

780.6 Arguments. When the evidence is concluded, unless the case is submitted to the jury on both sides without argument, the county attorney must commence, the defendant follow by one or two counsel, at his option, unless the court permit him to be heard by a larger number, and the county attorney conclude, confining himself to a response to the arguments of the defendant's counsel. Where two or more defendants are on trial for the same offense, they may be heard by one counsel each. [R60,§4785; C73,§4420; C97,§5372; C24, 27, 31, 35, 39,§**13847**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.6]

Referred to in §780.14

780.7 Closing argument by defendant. When the affirmative of the issue is with the defendant, the court may, in its discretion, award to the defendant the last argument. [R60,§4785; C73,§4420; C97,§5372; C24, 27, 31, 35, 39,§**13848**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.7]

Referred to in §780.14

780.8 Time for argument. The court shall not restrict counsel as to time in their arguments to the jury. [R60,§4788; C73,§4423; C97, §5372; C24, 27, 31, 35, 39,§**13849**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.8]

Similar provision, R.C.P. 195

780.9 Charge to jury — instructions. Upon the conclusion of the arguments, the court shall charge the jury in writing, without oral explanation or qualification, stating the law of the case. [R60,§4785; C73,§4420; C97,§5372; C24, 27, 31, 35, 39,§**13850**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.9]

780.10 Notice of additional testimony. The county attorney, in offering the evidence in support of the indictment in the order prescribed in section 780.5, shall not be permitted to introduce any witness who was not examined before a committing magistrate or the grand jury, and the minutes of whose testimony were not presented with the indictment to the court, unless he shall have given to the defendant, or his attorney of record if the defendant be not found within the county, a notice in writing stating the name, place of residence, and occupation of such witness, and the substance of what he expects to prove by him on the trial, at least four days before the commencement of such trial. [R60,§4786; C73, §4421; C97,§5373; S13,§5373; C24, 27, 31, 35, 39, §**13851**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.10]

S13,§5373, editorially divided

780.11 Insufficient time for notice—motion. Whenever the county attorney desires to introduce evidence to support the indictment, of which he shall not have given four days' notice because of insufficient time therefor since he learned said evidence could be obtained, he may move the court for leave to introduce such evidence, giving the same particulars as in the former case, and showing diligence such as is required in a motion for a continuance, supported by affidavit. [R60, §4786; C73,§4421; C97,§5373; S13,§5373; C24, 27, 31, 35, 39,§**13852**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.11]

780.12 Election as to continuance. If the court sustains said motion, the defendant shall elect whether said cause shall be continued on his motion, or the witness shall then testify. [C97,§5373; S13,§5373; C24, 27, 31, 35, 39,§**13853**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.12]

780.13 Examination—limitation. If said defendant shall not elect to have said cause continued, the county attorney may examine said witness in the same manner and with the same effect as though four days' notice had been given defendant or his attorney as hereinbefore provided, except the county attorney, in the examination of witnesses, shall be strictly confined to the matters set out in his motion. [C97,§5373; S13,§5373; C24, 27, 31, 35, 39,§**13854**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.13]

780.14 Former conviction or acquittal — order of trial. When the defendant's only plea is a former conviction or acquittal, the order prescribed in sections 780.5 to 780.7, inclusive, shall be reversed, and the defendant shall first offer his evidence in support of his defense. [R60,§4787; C73,§4422; C97,§5374; C24, 27, 31, 35, 39,§**13855**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §780.14]

780.15 View of premises by jury. When the court is of the opinion that it is proper the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which shall be shown them by a person appointed by the court for that purpose. [C51,§3009; R60, §4800; C73,§4432; C97,§5380; C24, 27, 31, 35, 39, §**13856**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.15]

C97,§5380, editorially divided
Similar provisions, R.C.P. 194

780.16 Officers sworn — duty while jury views premises. The officers must be sworn to suffer no person to speak to or communicate with the jury on any subject connected with the trial, nor to do so themselves, except the person appointed by the court for that purpose, and that only to show the place to be viewed, and to return them into court without unnecessary delay at a specified time. [R60,§4800; C73, §4432; C97,§5380; C24, 27, 31, 35, 39,§**13857**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.16]

780.17 Juror as witness — grounds to set aside verdict. If a juror have personal knowledge respecting a fact in controversy in a cause, he must declare the same in open court during the trial, and if, during the retirement of the jury, a juror declares any fact which could be evidence in the cause, as of his own knowledge, the jury must return into court, and the juror must be sworn as a witness and examined in the presence of the parties, if his evidence be admissible; and in support of a motion to set aside a verdict, proof of such declaration may be made by any juror. [C51,§3010; R60,§4801; C73,§4433; C97,§5381; C24, 27, 31, 35, 39,§**13858**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.17]

Referred to in §624.14
Applicable in civil cases, §624.14

780.18 Sickness of juror. If before the conclusion of a trial a juror becomes sick so as to be unable to perform his duty, the court may order him to be discharged, and in such case a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or afterwards impaneled. [C51, §3013; R60,§4804; C73,§4443; C97,§5388; C24, 27, 31, 35, 39,§**13859**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.18]

Similar provision, R.C.P. 189

780.19 Separation of jury. The jurors sworn to try an indictment, in the discretion of the court, may be permitted to separate as in civil

cases or may be kept together in the charge of proper officers. [C51,§3011; R60,§4802; C73, §4434; C97,§5382; C24, 27, 31, 35, 39,§**13860**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.19]

C97,§5382, editorially divided
Similar provision, R.C.P. 199

780.20 Officers sworn—duty during adjournment. The officers must be sworn to keep the jury together and to suffer no person to speak to or communicate with them on any subject connected with the trial, nor do so themselves, and to return them into court at the time to which it adjourns. [R60,§4802; C73,§4434; C97, §5382; C24, 27, 31, 35, 39,§**13861**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.20]

780.21 Admonition as to communications. The jury, whether permitted to separate or kept together in charge of sworn officers, must be admonished by the court that it is their duty not to permit any person to speak to or communicate with them on any subject connected with the trial, and that any and all attempts to do so should be immediately reported by them to the court, and that they should not converse among themselves on any subject connected with the trial, or form or express an opinion thereon, until the cause is finally submitted to them. [C51,§3012; R60, §4803; C73,§4435; C97,§5383; C24, 27, 31, 35, 39, §**13862**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.21]

C97,§5383, editorially divided
Similar provision, R.C.P. 199

780.22 Admonition repeated. Said admonition must be given or referred to by the court at each adjournment during the progress of the trial previous to the final submission of the cause to the jury. [R60,§4803; C73,§4435; C97, §5383; C24, 27, 31, 35, 39,§**13863**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.22]

780.23 Questions of law and fact—waiver of jury trial. On the trial of an indictment for any other offense than libel, questions of law are to be decided by the court, saving the right of the defendant and the state to except; questions of facts are to be tried by jury. However, when the punishment prescribed for a public offense does not exceed the punishment provided in section 687.7, the defendant may waive his right to jury trial by signing a statement which contains a written explanation fully apprising the defendant of his right to a jury trial. The statement shall be read to the defendant by the presiding judge in open court. The presiding judge shall determine if the defendant is fully aware of the fact that he is waiving his right to a jury trial and if satisfied that the defendant is aware of such fact, the defendant shall be allowed to sign the waiver which shall be filed as part of the court record. [C51,§3016; R60,§4812; C73,§4439; C97, §5385; C24, 27, 31, 35, 39,§**13864**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.23]

Referred to in §777.16
C97,§5385, editorially divided
Libel, §737.7

780.24 Jury bound by instructions. Although the jury has the power to find a general verdict which includes questions of law as well as fact, it is bound, nevertheless, to receive as law what is laid down as such by the court. [C51,§3016; R60,§4812; C73,§4439; C97,§5385; C24, 27, 31, 35, 39,§**13865**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.24]

780.25 Higher offense proved — procedure. If it appears by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment, the court may direct the jury to be discharged and all proceedings on the indictment to be suspended, and order the defendant to be committed or continued on bail to answer any new indictment which may be found against him for the higher offense. [C51,§3000; R60,§4791; C73, §4430; C97,§5378; C24, 27, 31, 35, 39,§**13866**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.25]

780.26 New indictment not found — procedure. If the indictment for the higher offense be not found and presented within ninety days after such order of suspension, the court must proceed to try the defendant on the original indictment. [C51,§3001; R60,§4792; C73,§4431; C97,§5379; C24, 27, 31, 35, 39,§**13867**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.26]

780.27 Lack of jurisdiction — no offense charged. The court may also discharge the jury where it appears that it has not jurisdiction of the offense, or that the facts as charged in the indictment do not constitute an offense punishable by law. [C51,§3002; R60,§4793; C73, §4444; C97,§5389; C24, 27, 31, 35, 39,§**13868**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.27]

780.28 Crime committed in another state. If the jury be discharged because the court has not jurisdiction of the offense charged in the indictment, and it appear that it was committed out of the jurisdiction of this state, the defendant must be discharged, or ordered to be retained in custody a reasonable time until the county attorney shall have a reasonable opportunity to inform the chief executive of the state in which the offense was committed of the facts, and for said officer to require the delivery of the offender. [C51,§3003; R60,§4794; C73,§4445; C97,§5390; C24, 27, 31, 35, 39,§**13869**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.28]

780.29 Crime committed in another county. If the offense was committed within the exclusive jurisdiction of another county of this state, the court must direct the defendant to be committed for such time as shall be reasonable to await a warrant from the proper county for his arrest, or, if the offense be bailable, he may be admitted to bail in an undertaking with sufficient sureties that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and, if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a certain time particularly designated in the

undertaking, to surrender himself upon the warrant, if issued, or that the bail will forfeit such sum as the court may fix, to be mentioned in the undertaking. [C51,§3004; R60,§4795; C73, §4446; C97,§5391; C24, 27, 31, 35, 39,§**13870**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.29]

Referred to in §780.30

780.30 Papers transmitted to proper county. In such case, the clerk must transmit, forthwith, a certified copy of the indictment, and all the papers in the action filed with him, except the undertaking mentioned in section 780.29, to the county attorney of the proper county. [C51,§3005; R60,§4796; C73,§4447; C97, §5392; C24, 27, 31, 35, 39,§**13871**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.30]

780.31 Defendant discharged—procedure. If the defendant be not arrested on a warrant from the proper county, he shall be discharged from custody, and his bail, if any, exonerated, or money deposited instead of bail refunded, as the case may be, and the sureties in the undertaking must be discharged. [C51,§3006; R60,§4797; C73,§4448; C97,§5393; C24, 27, 31, 35, 39,§**13872**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §780.31]

780.32 Defendant arrested — procedure. If he be arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate. [C51,§3007; R60,§4798; C73,§4449; C97,§5394; C24, 27, 31, 35, 39,§**13873**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.32]

See §757.3

780.33 No offense charged — resubmission. If the jury be discharged because the facts set forth do not constitute an offense punishable by law, the court must order the defendant discharged and his bail, if any, exonerated, or, if he has deposited money instead of bail, that the money deposited be refunded, unless in its opinion a new indictment can be framed upon which the defendant can be legally convicted, in which case the court may direct that the case be submitted to the same or another grand jury. [C51,§3008; R60,§4799; C73,§4450; C97,§5395; C24, 27, 31, 35, 39,§**13874**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.33]

780.34 Defendant committed during trial. When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after such appearance, order him committed to the custody of the proper officer to abide the judgment or further order of the court; and he shall be committed and held in custody accordingly. [C51,§3020; R60,§4816; C73,§4451; C97,§5396; C24, 27, 31, 35, 39,§**13875**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.34]

780.35 Instructions. The rules relating to the instruction of juries in civil cases shall be applicable to the trial of criminal prosecutions. [C51,§§3017, 3018; R60,§§4813, 4814; C73, §§4440, 4441; C97,§5386; C24, 27, 31, 35, 39,§**13876**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.35]

In civil cases, R.C.P. 196 et seq.

780.36 Decision in court—retirement. After hearing the charge, the jury may either decide in court or retire for deliberation. [C51,§3019; R60,§4815; C73,§4442; C97,§5387; C24, 27, 31, 35, 39,§**13877**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §780.36]

C97,§5387, editorially divided

780.37 Officers sworn—duty during deliberations. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place without food or drink, water excepted, unless directed by the court, and not to suffer any person to speak to or communicate with them, nor speak to or communicate with them themselves except to ask them whether they have agreed upon their verdict, and not to communicate to anyone the state of their deliberation or the verdict agreed upon, until after the same shall have been declared in open court, and received by the court, and to return them into court when they shall have so agreed upon their verdict, unless, by permission of the court, they be sooner discharged. [C51,§3019; R60,§4815; C73,§4442; C97, §5387; C24, 27, 31, 35, 39,§**13878**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§780.37]

Similar provision, R.C.P. 199

CHAPTER 781

WITNESSES

Referred to in §622A.3

781.1 Subpoenas for witnesses.
781.2 Defense witnesses at expense of state.
781.3 Witnesses for defendant — form of subpoena.
781.4 Witnesses for defendant in criminal cases.
781.5 Service of subpoena.
781.6 Breaking in to serve subpoena.
781.7 Disobedience of witness.
781.8 Civil liability.
781.9 Forfeiture of bond.
781.10 Depositions.
781.11 Perpetuating testimony.
781.12 Defendant as witness.
781.13 Cross-examination.
781.14 Attendance of witnesses outside state.
781.15 Costs paid in advance.
781.16 Order to enforce attendance.
781.17 Fees advanced—protection from service of process.

781.1 Subpoenas for witnesses. A magistrate in a criminal action before him, and the clerk of court in any criminal action pending therein, shall issue blank subpoenas for witnesses, signed by him, with the seal of the court if by the clerk, and deliver as many of them as requested to the defendant or his attorney or the attorney for the state. They may be served in any part of the state. [C51, §§3168, 3170; R60,§§4950, 4951, 4958; C73,§§4561, 4562, 4569; C97,§5492; C24, 27, 31, 35, 39,§**13879**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.1]

C97,§5492, editorially divided

781.2 Defense witnesses at expense of state. Witnesses for the defense shall be subpoenaed at the expense of the county only upon the order of the court before which the case is pending, made upon a satisfactory showing that the witnesses are material and necessary for the defense, which order may be made at the time of the trial or other disposition of the case. The board of supervisors shall not allow any claims for fees of witnesses not thus authorized. [C51,§§3168, 3170; R60,§§4950, 4951, 4958; C73,§§3818, 4561, 4562; C97,§5492; C24, 27, 31, 35, 39,§**13880**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.2]

781.3 Witnesses for defendant—form of subpoena. Subpoenas for defendant's witnesses shall show whether they are summoned on the order of the court. [C51,§3170; R60,§4950; C73, §4562; C97,§5492; C24, 27, 31, 35, 39,§**13881**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.3]

781.4 Witnesses for defendant in criminal cases. Witnesses subpoenaed for the defendant in criminal cases may demand their fees in advance as in civil cases, unless the subpoena shows that it is issued under the order of the judge. [C97,§1298; C24, 27, 31, 35, 39,§**13882**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.4]

Fees in advance in civil cases, §622.74

781.5 Service of subpoena. A peace officer must serve without delay within his county or city any subpoena issued in a criminal action, delivered to him for service, and make written return thereof, stating the time, place, and manner of service, but a subpoena may be served by any other adult person. Service thereof is made by delivering a copy and showing the original to the witness. [C51, §§3171, 3172; R60,§§4952, 4953; C73,§§4563, 4564; C97,§5493; C24, 27, 31, 35, 39,§**13883**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.5]

781.6 Breaking in to serve subpoena. If a witness conceal himself to avoid the service of a subpoena, the officer may break open doors or windows for the purpose of making service. [C51,§3176; R60,§4954; C73,§4565; C97,§5494; C24, 27, 31, 35, 39,§**13884**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.6]

781.7 Disobedience of witness. Disobedience to a subpoena, or refusal to be sworn or to answer as a witness, may be punished by the court or magistrate as a contempt, as provided in the civil procedure. [C51,§3174; R60, §4955; C73,§4566; C97,§5495; C24, 27, 31, 35, 39, §**13885**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.7]

Contempts, ch 665
Similar provision, §622.76

781.8 Civil liability. A witness willfully disobeying a subpoena in a criminal case without good cause shall be liable to the party injured for the amount of the damages sustained by such party. [C51,§3175; R60,§4956; C73,§4567; C97,§5496; C24, 27, 31, 35, 39,§**13886**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.8]

Similar provision, §622.76

781.9 Forfeiture of bond. The undertakings of witnesses in criminal cases may be forfeited and enforced like the undertaking of bail. [R60,§4957; C73,§4568; C97,§5497; C24, 27, 31, 35, 39,§**13887**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.9]

Forfeiture of bail, ch 766

781.10 Depositions. A defendant in a criminal case, either after preliminary information, indictment, or information, may examine witnesses conditionally or on notice or commission, in the same manner and with like effect as in civil actions. [R60,§4960; C73,§4571; C97, §5498; C24, 27, 31, 35, 39,§**13888**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.10]

Depositions, R.C.P. 153

781.11 Perpetuating testimony. A person apprehensive of a criminal prosecution may perpetuate testimony in his favor in the same manner, and with like effect, as may be done in apprehension of any civil action. [R60, §4961; C73,§4572; C97,§5499; C24, 27, 31, 35, 39, §**13889**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.11]

Perpetuating testimony, R.C.P. 160

781.12 Defendant as witness. Defendants in all criminal proceedings shall be competent witnesses in their own behalf, but cannot be called as witnesses by the state. [C51,§2388; R60,§3978; C73,§3636; C97,§5484; C24, 27, 31, 35, 39,§**13890**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §781.12]

781.13 Cross-examination. When the defendant testifies in his own behalf, he shall be subject to cross-examination as an ordinary witness, but the state shall be strictly confined therein to the matters testified to in the examination in chief. [C73,§4238; C97,§5485; C24, 27, 31, 35, 39,§**13892**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.13]

781.14 Attendance of witnesses outside state. When a petition is filed in the office of a clerk of the district court upon the relation and oath of a prosecuting attorney in another state, which, by its laws, has heretofore or may hereafter make provision for commanding persons within its borders to attend and testify in a criminal action in this state, setting forth that there is a criminal action pending in the courts of such state wherein a person residing or being within the county wherein said court is held is a material witness for the state in

such action, to which there is attached a certified copy of the indictment therein, said court shall issue an order fixing a time and place for a hearing on said petition and thereupon the clerk shall prepare a notice requiring the said witness to appear before the said court at the time and place specified in said order to make defense thereto and shall deliver the same to the sheriff of said county for service upon said person. [S13,§5499-b; C24, 27, 31, 35, 39,§13893; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.14]

781.15 Costs paid in advance. All costs of said proceeding, which shall be estimated by the clerk, shall be paid to the clerk at the time said petition is filed. [S13,§5499-c; C24, 27, 31, 35, 39,§13894; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.15]

781.16 Order to enforce attendance. If it shall be shown upon said hearing that the said person is a material and necessary witness for the prosecution in said case, the court shall enter an order commanding said person to appear and testify in said cause in the court in which such criminal action is pending at a certain named time and place, of which order the said person shall take notice. [S13,§5499-d; C24, 27, 31, 35, 39,§13895; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.16]

781.17 Fees advanced—protection from service of process. If any person on whom such order has been made, having been tendered by the party asking for the order ten cents for each mile traveled to and from such court, and the sum of five dollars for each day that his attendance is required, including the time going to and returning from the place of trial, the number of days to be specified in such order, shall unreasonably neglect to attend and testify in such court, he shall be punished in the manner provided for the punishment of disobedience of any order issued from the office of the clerk of the district court; provided that the laws of the state in which the trial is to be held give to persons coming into the state, under such order, protection from the service of papers and arrest. [S13,§5499-e; C24, 27, 31, 35, 39,§13896; C46, 50, 54, 58, 62, 66, 71, 73, 75,§781.17]

CHAPTER 782

EVIDENCE

782.1 Rules of evidence.
782.2 Obstructing highway by railroad.
782.3 Rape—actual penetration.
782.4 Evidence of past sexual conduct in trials of rape.
782.5 Corroboration of accomplice.
782.6 Proof of overt acts.
782.7 Confession of defendant.
782.8 Photographs — measurements — Bertillon system.
782.9 Compelling answer — application to court for immunity.
782.10 Transcript of evidence.
782.11 Continued refusal—punishment.

782.1 Rules of evidence. The rules of evidence prescribed in civil procedure shall apply to criminal proceedings as far as applicable and not inconsistent with the provisions of this chapter. [R60,§4805; C73,§§4426, 4556; C97, §5483; C24, 27, 31, 35, 39,§13897; C46, 50, 54, 58, 62, 66, 71, 73, 75,§782.1]

Evidence, ch 622

782.2 Obstructing highway by railroad. In a prosecution against a railway company for obstructing a highway or any private way, proof that any such way is in an unsafe condition, or that it is inconvenient for travel at the place of its intersection with such railway, shall be presumptive evidence that such company has obstructed such way. [C73,§4557; C97,§5486; C24, 27, 31, 35, 39,§13898; C46, 50, 54, 58, 62, 66, 71, 73, 75,§782.2]

Punishment for obstruction, §716.7

782.3 Rape — actual penetration. Proof of actual penetration into the body is sufficient to sustain an indictment for rape. [C51,§2997; R60,§4101; C73,§4558; C97,§5487; C24, 27, 31, 35, 39,§13899; C46, 50, 54, 58, 62, 66, 71, 73, 75,§782.3]

782.4 Evidence of past sexual conduct in trials of rape. In prosecutions for the crime of rape, evidence of the prosecuting witness' previous sexual conduct shall not be admitted, nor reference made thereto in the presence of the jury, except as provided herein. Evidence of the prosecuting witness' previous sexual conduct shall be admissible if the defendant shall make application to the court before or during the trial.

The court shall conduct a hearing in camera as to the relevancy of such evidence of previous sexual conduct, and shall limit the questioning and control the admission and exclusion of evidence upon trial.

In no event shall such evidence of previous sexual conduct of the prosecuting witness committed more than one year prior to the date of the alleged crime be admissible upon the trial, except previous sexual conduct with the defendant. Nothing in this section shall limit the right of either the state or the accused to impeach credibility by the showing of prior felony convictions. [C75,§782.4]

See also §§698.1, 699.1, 700.1

782.5 Corroboration of accomplice. A conviction cannot be had upon the testimony of an accomplice, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely show the commission of the offense or the circumstances thereof. [C51,§2998; R60, §4102; C73,§4559; C97,§5489; C24, 27, 31, 35, 39, §13901; C46, 50, 54, 58, 62, 66, 71, 73, 75,§782.5]

Accessories, §688.1

782.6 Proof of overt acts. Upon a trial for conspiracy, a defendant cannot be convicted unless one or more overt acts alleged in the indictment are proved, when required by law to constitute the offense, but other overt acts not alleged in the indictment may be given in evidence. [C51,§2996; R60,§4790; C73,§4425; C97, §5490; C24, 27, 31, 35, 39,§13902; C46, 50, 54, 58, 62, 66, 71, 73, 75,§782.6]

782.7 Confession of defendant. The confession of the defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the offense was committed. [R60,§4806; C73,§4427; C97, §5491; C24, 27, 31, 35. 39,§13903; C46, 50, 54, 58, 62, 66, 71, 73, 75,§782.7]

782.8 Photographs—measurements—Bertillon system. It shall be lawful for the sheriff of any county or the chief of police in any city in this state, to take or procure the taking of the photograph of any person held to answer on a charge of any felony, such person being in the custody of such officer, or to make and record any measurements of such prisoner, by the Bertillon or other system, and to exchange such photographs, or measurements, or copies of the same, with other sheriffs and police officers, or to distribute the same by mail for the purpose of securing evidence for the identification of such person held to answer, if the identity and past record of the said person are unknown to him; and the cost of such photographs and measurements, and of distributing the same, may be allowed by the court as a part of the costs in the case. [S13,§5499-a; C24, 27, 31, 35, 39,§13904; C46, 50, 54, 58, 62, 66, 71, 73, 75,§782.8]

Fingerprints, §749.2

782.9 Compelling answer — application to court for immunity. Before any witness shall be compelled to answer or to produce evidence in any judicial proceeding after having asserted that such answer or evidence would tend to render him criminally liable, incriminate him or violate his right to remain silent under the fifth amendment to the Constitution of the United States, the witness must knowingly waive his right or:

1. A county attorney or the attorney general must file with a district court judge or district associate judge a verified application setting forth that:

a. The testimony of the witness, or the production of documents or other evidence in the possession of such witness, or both, is necessary and material; and

b. The witness has refused to testify, or to produce documents or other evidence, or both, upon the ground that such testimony or evidence would tend to incriminate him; and

c. It is the considered judgment of the county attorney or attorney general that justice and the public interest require the testimony, documents or evidence in question.

2. The application, transcripts and orders required by this section and sections 782.10 and 782.11 shall be filed as a separate case in the criminal docket entitled "In the matter of the testimony of ....." and shall be
(Name of witness)
indexed in the criminal index under the name of the witness. Any testimony given in support of the application for immunity shall be reported and a transcript of the testimony shall be filed with the application.

3. Upon consideration of such application the judge shall enter an order granting the witness immunity to prosecution for any crime or public offense concerning which he was compelled to give competent and relevant testimony or to produce competent and relevant evidence.

4. Testimony, documents or evidence which has been given by a witness granted immunity shall not be used against him in any trial or proceeding, or subject him to any penalty or forfeiture; provided, that such immunity shall not apply to any prosecution or proceeding for a perjury or a contempt of court committed in the course of or during the giving of such testimony. [C51,§2397; R60,§3989; C73,§3647; C97,§§2399, 4612; S13,§§2727-a2,-a10, 4612; C24, 27, 31, 35, 39,§§11267, 11269; C46, 50, 54, 58, 62, 66, 71, 73,§§622.14, 622.16; C75,§782.9]

782.10 Transcript of evidence. A complete verbatim transcript of testimony given pursuant to an order of immunity shall be made and filed with the application and the order of court. The application, order granting immunity and all transcripts filed shall be sealed upon motion of the defendant, county attorney, or attorney general and shall be opened only by order of the court. This section shall not bar the use of the transcript as evidence in any proceeding except the transcript shall not be used in any proceeding against the witness himself. [C75,§782.10]

782.11 Continued refusal—punishment. Whoever shall refuse to testify or to produce evidence after having been granted immunity as aforesaid shall be subject to punishment for contempt of court as in the case of any witness who refuses to testify, a claim to privilege against self-incrimination notwithstanding. [C75,§782.11]

CHAPTER 783

INSANITY OF DEFENDANT DURING TRIAL

Referred to in §228.4

783.1 Doubt as to sanity—procedure.
783.2 Method of trial.
783.3 Finding of insanity—discharge.
783.4 Restored to reason—returned to custody.
783.5 Insanity after commitment to jail.

783.1 Doubt as to sanity — procedure. If a defendant appears in any stage of the trial of a criminal prosecution, and a reasonable doubt arises as to his sanity, further proceedings must be suspended and a trial had upon that question. [C51,§§3260, 3261; R60,§§5015, 5016; C73,§§4620, 4621; C97,§5540; C24, 27, 31, 35, 39, §13905; C46, 50, 54, 58, 62, 66, 71, 73, 75,§783.1]

783.2 Method of trial. Such trial shall be conducted in all respects, so far as may be, as the prosecution itself would be, except the defendant shall hold the burden of proof, and first offer his evidence and have the opening and closing argument. [R60,§5017; C73,§4622; C97,§5541; C24, 27, 31, 35, 39,§13906; C46, 50, 54, 58, 62, 66, 71, 73, 75,§783.2]

783.3 Finding of insanity—discharge. If the accused shall be found insane, no further proceedings shall be taken under the indictment until his reason is restored, and, if his discharge will endanger the public peace or safety, the court must order him committed to the Iowa security medical facility until he becomes sane; but if found sane, the trial upon the indictment shall proceed, and the question of the then insanity of the accused cannot be raised therein. [C51,§§3262, 3263; R60,§§5018, 5019; C73,§§4623, 4624; C97,§5542; C24, 27, 31, 35, 39, §13907; C46, 50, 54, 58, 62, 66, 71, 73, 75,§783.3]

783.4 Restored to reason—returned to custody. If the accused is committed to the Iowa security medical facility, as soon as he becomes mentally restored, the person in charge shall at once give notice to the sheriff and county attorney of the proper county of such fact, and the sheriff, without delay, must receive and hold him in custody until he is brought to trial or judgment, as the case may be, or is legally discharged, the expense for conveying and returning him, or any other, to be paid in the first instance by the county from which he is sent, but such county may recover the same from his estate, or a relative, or another county or municipal body bound to provide for or maintain him elsewhere, and the sheriff shall be allowed for his services the same fees as are allowed for conveying convicts to the penitentiary. [C51,§§3264–3267; R60,§§5020–5023; C73,§§4625–4628; C97,§5543; C24, 27, 31, 35, 39,§13908; C46, 50, 54, 58, 62, 66, 71, 73, 75,§783.4]

Referred to in §783.5

783.5 Insanity after commitment to jail. If, after conviction for a misdemeanor and judgment of imprisonment in jail, the defendant is suspected of being insane, the same proceedings shall be taken as is provided in chapters 228, 229, and 230, and, if found insane, he shall be committed to the Iowa security medical facility, and all subsequent proceedings shall be as provided in section 783.4. [C97,§5544; C24, 27, 31, 35, 39,§13909; C46, 50, 54, 58, 62, 66, 71, 73, 75,§783.5]

Referred to in §229.20

CHAPTER 784

JURY AFTER SUBMISSION

784.1 Papers taken by jury.
784.2 Report for information.
784.3 Discharge of jury—grounds.
784.4 Retrial—when allowed.
784.5 Adjournment pending deliberation — effect.

784.1 Papers taken by jury. Upon retiring for deliberation, the jury may take with it all papers which have been received in evidence, except depositions, and copies of such parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession, also any notes of the testimony or other proceedings taken in the trial by themselves or any of them. [C51,§§3021, 3022; R60,§§4817, 4818; C73,§§4452, 4453; C97,§5397; C24, 27, 31, 35, 39,§13910; C46, 50, 54, 58, 62, 66, 71, 73, 75, §784.1]

Similar provision, R.C.P. 198

784.2 Report for information. After the jury has retired for deliberation, if there be any disagreement as to any part of the testi-

mony, or if it desires to be informed on any point of law arising in the cause, it must require the officer to conduct it into court, and, upon its being brought in, the information required must be given as provided by law, in the presence of or after oral notice to the county attorney and defendant's counsel. [C51, §3023; R60,§4819; C73,§4454; C97,§5398; C24, 27, 31, 35, 39,§13911; C46, 50, 54, 58, 62, 66, 71, 73, 75,§784.2]

Similar provision, R.C.P. 197

784.3 Discharge of jury—grounds. If, after retirement, one of the jury is taken sick so as to prevent further deliberation, or any other accident or cause occurs to prevent its being kept together, the court may discharge it; otherwise the jury cannot be discharged after the cause is submitted to it until it has agreed upon its verdict and rendered it in open court, unless, by the consent of both parties entered upon the record, or unless, at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that it can agree. [C51,§§3024, 3025; R60,§§4820, 4821; C73,§§4455, 4456; C97, §5399; C24, 27, 31, 35, 39,§13912; C46, 50, 54, 58, 62, 66, 71, 73, 75,§784.3]

Similar provisions, R.C.P. 189 and 200

784.4 Retrial—when allowed. In all cases where a jury is discharged or prevented from giving a verdict, except where the defendant is discharged during the progress of the trial, or after submission to it, the cause may be again tried at a later trial assignment. [C51,§3026; R60,§4822; C73,§4457; C97,§5400; C24, 27, 31, 35, 39,§13913; C46, 50, 54, 58, 62, 66, 71, 73, 75,§784.4]

Similar provision, R.C.P. 200

784.5 Adjournment pending deliberation — effect. While the jury is absent, the court may adjourn from time to time as to other business, but it shall be nevertheless deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury is discharged, but a final adjournment of the court discharges the jury. [C51, §§3027, 3028; R60,§§4823, 4824; C73,§§4458, 4459; C97,§5401; C24, 27, 31, 35, 39,§13914; C46, 50, 54, 58, 62, 66, 71, 73, 75,§784.5]

Similar provision, R.C.P. 201

CHAPTER 785

VERDICT

785.1 General and special verdicts.
785.2 Answers to interrogatories.
785.3 Reasonable doubt.
785.4 Reasonable doubt as to degree.
785.5 Finding offense of different degree.
785.6 Finding included offense.
785.7 Verdict against one of several.
785.8 Verdict as to several defendants.
785.9 Return of jury—roll call.
785.10 Presence of defendant—when necessary.
785.11 Verdict rendered.
785.12 Verdict insufficient—reconsideration.
785.13 Informal verdict.
785.14 Certainty in verdict required.
785.15 Jury polled.
785.16 Prior conviction affirmed or denied.
785.17 Reading and entry of verdict—disagreement.
785.18 Defendant discharged on acquittal.
785.19 Acquittal on ground of mental illness—commitment.

785.1 General and special verdicts. The jury must render a general verdict of "guilty" or "not guilty", which imports a conviction or acquittal on every material allegation in the indictment, except upon a plea of former conviction or acquittal of the same offense, in which case it shall be "for the state" or "for the defendant", and except in cases submitted to determine the grade of the offense and, when authorized, fixing the punishment therefor. [C51,§§3032–3037; R60,§§4828–4833; C73, §§4463, 4464, 4474–4477; C97,§5405; C24, 27, 31, 35, 39,§13915; C46, 50, 54, 58, 62, 66, 71, 73, 75, §785.1]

C97,§5405, editorially divided

785.2 Answers to interrogatories. It must also return with the general verdict answers to special interrogatories submitted by the court upon its own motion, or at the request of the defendant in prosecutions where the defense is an affirmative one, or it is claimed any witness is an accomplice, or there has been a failure to corroborate where corroboration is required. [C97,§5405; C24, 27, 31, 35, 39,§13916; C46, 50, 54, 58, 62, 66, 71, 73, 75,§785.2]

In civil cases, R.C.P. 206

785.3 Reasonable doubt. Where there is a reasonable doubt of the defendant being proven to be guilty, he is entitled to an acquittal. [R60,§4807; C73,§4428; C97,§5376; C24, 27, 31, 35, 39,§13917; C46, 50, 54, 58, 62, 66, 71, 73, 75,§785.3]

785.4 Reasonable doubt as to degree. Where there is a reasonable doubt of the degree of the offense of which the defendant is proven to be guilty, he shall only be convicted of the lower degree. [R60,§4808; C73,§4429; C97,§5377;

C24, 27, 31, 35, 39,§13918; C46, 50, 54, 58, 62, 66, 71, 73, 75,§785.4]

785.5 Finding offense of different degree. Upon an indictment for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the offense, if punishable by indictment. [C51,§2918; R60, §4835; C73,§4465; C97,§5406; C24, 27, 31, 35, 39, §13919; C46, 50, 54, 58, 62, 66, 71, 73, 75,§785.5]

785.6 Finding included offense. In all other cases, the defendant may be found guilty of any offense the commission of which is necessarily included in that with which he is charged in the indictment. [C51,§3039; R60, §4836; C73,§4466; C97,§5407; C24, 27, 31, 35, 39, §13920; C46, 50, 54, 58, 62, 66, 71, 73, 75,§785.6]

785.7 Verdict against one of several. On an indictment against several, if the jury cannot agree upon a verdict as to all, it may render a verdict as to those in regard to whom it does agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury. [C51,§3040; R60, §4837; C73,§4467; C97,§5408; C24, 27, 31, 35, 39, §13921; C46, 50, 54, 58, 62, 66, 71, 73, 75,§785.7]

785.8 Verdict as to several defendants. Upon an indictment against several defendants, any one or more may be convicted or acquitted. [C51,§3014; R60,§4810; C73,§4437; C97,§5384; C24, 27, 31, 35, 39,§13922; C46, 50, 54, 58, 62, 66, 71, 73, 75,§785.8]

785.9 Return of jury—roll call. When the jury has agreed upon its verdict, it must be conducted into court by the officer having it in charge; the names of the jurors must then be called, and if all do not appear the rest must be discharged without giving a verdict; in such case, the cause may again be tried at a subsequent trial assignment. [C51,§3029; R60,§4825; C73,§4460; C97,§5402; C24, 27, 31, 35, 39,§13923; C46, 50, 54, 58, 62, 66, 71, 73, 75,§785.9]

Similar provisions, §785.17 and R.C.P. 203

785.10 Presence of defendant—when necessary. If the indictment be for a felony, the defendant must be present at the rendition of the verdict; if it be for a misdemeanor, it may be rendered in his absence. [C51,§3030; R60, §4826; C73,§4461; C97,§5403; C24, 27, 31, 35, 39, §13924; C46, 50, 54, 58, 62, 66, 71, 73, 75,§785.10]

785.11 Verdict rendered. When the members of the jury have answered to their names, the court or the clerk shall ask them whether they have agreed upon the verdict, and if the foreman answers in the affirmative they must declare the same. [C51,§3031; R60,§4827; C73, §4462; C97,§5404; C24, 27, 31, 35, 39,§13925; C46, 50, 54, 58, 62, 66, 71, 73, 75,§785.11]

785.12 Verdict insufficient—reconsideration. If the jury renders a verdict which is neither a general nor special one, the court may direct it to reconsider it, and it shall not be recorded until it is rendered in some form from which the intent of the jury can be clearly understood, whether to render a general verdict, or to find the facts specially and leave the judgment to the court. [C51,§§3038, 3041; R60, §§4834, 4838; C73,§§4468, 4478; C97,§5409; C24, 27, 31, 35, 39,§13926; C46, 50, 54, 58, 62, 66, 71, 73, 75,§785.12]

785.13 Informal verdict. If the jury persists in finding an informal verdict, from which, however, it can be understood that the intention is to find for the defendant upon the issue, it shall be entered in the terms in which it is found, and the court must give judgment of acquittal. [C51,§3042; R60,§4839; C73,§4469; C97,§5410; C24, 27, 31, 35, 39,§13927; C46, 50, 54, 58, 62, 66, 71, 73, 75,§785.13]

C97,§5410, editorially divided

785.14 Certainty in verdict required. No judgment of conviction can be given unless the jury expressly finds against the defendant upon the issue, or judgment is given against him upon a special verdict. [C51,§3042; R60,§4839; C73,§4469; C97,§5410; C24, 27, 31, 35, 39,§13928; C46, 50, 54, 58, 62, 66, 71, 73, 75,§785.14]

785.15 Jury polled. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party; in which case each member thereof shall be asked whether it is his verdict, and if anyone answers in the negative the jury must be sent out for further deliberation. [C51,§3043; R60, §4840; C73,§4470; C97,§5411; C24, 27, 31, 35, 39, §13929; C46, 50, 54, 58, 62, 66, 71, 73, 75,§785.15]

Similar provision, R.C.P. 203

785.16 Prior conviction affirmed or denied. After conviction, but prior to pronouncement of sentence, if the indictment alleges one or more prior convictions which by the Code, subject the offender to an increased sentence, he shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies the identity, sentence shall be postponed for such time as to permit a trial before a jury on the sole issue of the offender's identity with the person previously convicted.

The court may in its discretion reconvene the jury which heard the current offense or dismiss that jury and submit the issue of identity to another jury to be later impaneled. If the offender is found by the jury to be the person previously convicted, or if he acknowledges that he is such person, he shall be sentenced as prescribed in the Code. [C66, 71, 73, 75,§785.16]

785.17 Reading and entry of verdict — disagreement. When the verdict is given and is such as the court may receive, the clerk may immediately enter it in full upon the record, and must read it to the jury, and inquire of the members thereof whether it is their verdict. If any juror disagrees, the fact must be entered upon the record and the jury again sent out. But if no disagreement is expressed, the ver-

dict is complete and the jury must be discharged from the case. [R60,§4841; C73,§4471; C97,§5412; C24, 27, 31, 35, 39,§13930; C46, 50, 54, 58, 62,§785.16; C66, 71, 73, 75,§785.17]

Similar provisions, §785.9 and R.C.P. 203

785.18 Defendant discharged on acquittal. If judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given. [C51,§3045; R60,§4843; C73,§4473; C97,§5413; C24, 27, 31, 35, 39,§13931; C46, 50, 54, 58, 62,§785.17; C66, 71, 73, 75,§785.18]

785.19 Acquittal on ground of mental illness —commitment. If the defense is mental illness of the defendant, the jury must be instructed, if it acquits him on that ground, to state that fact in its verdict. The court may thereupon, if the defendant is in custody, and his discharge is found to be dangerous to the public peace and safety, order him committed to one of the mental health institutes or the Iowa security medical facility, or retained in custody, until he demonstrates good mental health and is considered no longer dangerous to the public peace and safety or to himself. [C51, §3044; R60,§4842; C73,§4472; C97,§5414; C24, 27, 31, 35, 39,§13932; C46, 50, 54, 58, 62,§785.18; C66, 71, 73, 75,§785.19]

CHAPTER 786

EXCEPTIONS

786.1 Bill of exceptions—purpose.
786.2 What constitutes record—exceptions unnecessary.
786.3 Grounds for exceptions.
786.4 Action affecting substantial right.
786.5 Bill by judge.
786.6 Bill by bystanders.
786.7 Time to approve bill.
786.8 Modification of bill.
786.9 Time allowed to prepare bill.

786.1 Bill of exceptions—purpose. The office of a bill of exceptions is to make the proceedings or evidence appear of record which would not otherwise so appear. [R60, §4846; C73,§4481; C97,§5416; C24, 27, 31, 35, 39, §13933; C46, 50, 54, 58, 62, 66, 71, 73, 75,§786.1]

786.2 What constitutes record — exceptions unnecessary. All papers pertaining to the cause and filed with the clerk, and all entries made by him in the record book pertaining to them, and showing the action or decision of the court upon them or any part of them, and the judgment, are to be deemed parts of the record, and it is not necessary to except to any action or decision of the court so appearing of record. [R60,§4847; C73,§4482; C97,§5417; C24, 27, 31, 35, 39,§13934; C46, 50, 54, 58, 62, 66, 71, 73, 75,§786.2]

786.3 Grounds for exceptions. On the trial of an indictment, exceptions may be taken by the state or by the defendant to any decision of the court upon matters of law, in any of the following cases:

1. In disallowing a challenge to an individual juror.
2. In admitting or rejecting witnesses or evidence on the trial of any challenge.
3. In admitting or rejecting witnesses or evidence.
4. In deciding any matter of law, not purely discretionary on the trial of the issue. [C51, §3046; R60,§4844; C73,§4479; C97,§5415; C24, 27, 31, 35, 39,§13935; C46, 50, 54, 58, 62, 66, 71, 73, 75,§786.3]

C97,§5415, editorially divided

786.4 Action affecting substantial right. Exceptions may also be taken to any action or decision of the court which affects any other material or substantial right of either party, whether before or after the trial of the indictment, or on the trial. [R60,§4845; C73,§4480; C97,§5415; C24, 27, 31, 35, 39,§13936; C46, 50, 54, 58, 62, 66, 71, 73, 75,§786.4]

Similar provision, §624.15

786.5 Bill by judge. Either party may take an exception to any decision or action of the court, in any stage of the proceedings, not required to be and not entered in the record book, and reduce the same to writing, and tender the same to the judge, who shall sign it if true, and if signed it shall be filed with the clerk and become a part of the record of the cause. [C51,§3047; R60,§4848; C73,§4483; C97, §5418; C24, 27, 31, 35, 39,§13937; C46, 50, 54, 58, 62, 66, 71, 73, 75,§786.5]

C97,§5418, editorially divided

786.6 Bill by bystanders. If the judge refuses to sign it, such refusal must be stated at the end thereof, and it may then be signed by two or more attorneys or officers of the court or disinterested bystanders, and sworn to by them, and filed with the clerk, and it shall thereupon become a part of the record of the cause. [R60,§4848; C73,§4483; C97,§5418; C24, 27, 31, 35, 39,§13938; C46, 50, 54, 58, 62, 66, 71, 73, 75,§786.6]

786.7 Time to approve bill. The judge shall be allowed one clear day to examine the bill of exceptions, and the party excepting shall be

allowed three clear days thereafter to procure the signatures and file the same. [R60,§4849; C73,§4484; C97,§5419; C24, 27, 31, 35, 39,§13939; C46, 50, 54, 58, 62, 66, 71, 73, 75,§786.7]

786.8 Modification of bill. If the judge and the party excepting can agree in modifying the bill of exceptions, it shall be modified accordingly. [R60,§4850; C73,§4485; C97,§5420; C24, 27, 31, 35, 39,§13940; C46, 50, 54, 58, 62, 66, 71, 73, 75,§786.8]

786.9 Time allowed to prepare bill. Time must be given to prepare the bill of exceptions when it is necessary; if it can reasonably be done, it shall be settled at the time of taking the exception. [R60,§4851; C73,§4486; C97,§5421; C24, 27, 31, 35, 39,§13941; C46, 50, 54, 58, 62, 66, 71, 73, 75,§786.9]

CHAPTER 787

NEW TRIAL

787.1 Definition.
787.2 Application—when made.
787.3 Grounds.
787.4 Effect of a new trial.

787.1 Definition. A new trial is a re-examination of the issue in the same court before another jury, after a verdict has been given. [C51,§3050; R60,§4852; C73,§4487; C97,§5422; C24, 27, 31, 35, 39,§13942; C46, 50, 54, 58, 62, 66, 71, 73, 75,§787.1]

787.2 Application—when made. The application for a new trial can be made only by the defendant, and must be made before judgment. [C51,§3053; R60,§4855; C73,§4490; C97,§5425; C24, 27, 31, 35, 39,§13943; C46, 50, 54, 58, 62, 66, 71, 73, 75,§787.2]

787.3 Grounds. The court may grant a new trial for the following causes, or any of them:

1. When the trial has been had in the absence of the defendant, if the indictment be for a felony.

2. When the jury has received any evidence, paper, or document out of court not authorized by the court.

3. When the jury have separated without leave of the court, after retiring to deliberate upon their verdict, or have been guilty of any misconduct tending to prevent a fair and due consideration of the case.

4. When the verdict has been decided by lot, or by means other than a fair expression of opinion on the part of all the jurors.

5. When the court has misdirected the jury in a material matter of law.

6. When the verdict is contrary to law or evidence; but no more than two new trials shall be granted for this cause alone.

7. When the court has refused properly to instruct the jury.

8. When from any other cause the defendant has not received a fair and impartial trial. [C51,§3052; R60,§4854; C73,§4489; C97,§5424; C24, 27, 31, 35, 39,§13944; C46, 50, 54, 58, 62, 66, 71, 73, 75,§787.3]

Knowledge of juror, §780.17

787.4 Effect of a new trial. The granting of a new trial places the parties in the same position as if no trial had been had; all the testimony must be produced anew and the former verdict cannot be used or referred to either in the evidence or in argument. [C51, §3051; R60,§4853; C73,§4488; C97,§5423; C24, 27, 31, 35, 39,§13945; C46, 50, 54, 58, 62, 66, 71, 73, 75,§787.4]

CHAPTER 788

ARREST OF JUDGMENT

788.1 "Motion in arrest" defined—grounds.
788.2 Time of making motion.
788.3 On motion of court.
788.4 Defendant held to answer.

788.1 "Motion in arrest" defined—grounds. A motion in arrest of judgment is an application to the court in which the trial was had, on the part of the defendant, that no judgment be rendered upon a verdict against him, or on a plea of guilty, and shall be granted when upon the whole record no legal judgment can be pronounced. [C51,§3054; R60,§4856; C73, §4491; C97,§5426; C24, 27, 31, 35, 39,§13946; C46, 50, 54, 58, 62, 66, 71, 73, 75,§788.1]

788.2 Time of making motion. The motion may be made at any time before or within

ninety days after judgment. [R60,§4859; C73, §4494; C97,§5429; C24, 27, 31, 35, 39,§13947; C46, 50, 54, 58, 62, 66, 71, 73, 75,§788.2]

788.3 On motion of court. The court may also, upon its own observation of any of these grounds, arrest the judgment on its own motion. [C51,§3055; R60,§4857; C73,§4492; C97, §5427; C24, 27, 31, 35, 39,§13948; C46, 50, 54, 58, 62, 66, 71, 73, 75,§788.3]

788.4 Defendant held to answer. If the court is of opinion from the evidence on the trial that the defendant is guilty of a public offense of which no legal conviction can be had on the indictment, he may be held to answer the offense in like manner as upon a preliminary examination. [C51,§3057; R60, §4858; C73,§4493; C97,§5428; C24, 27, 31, 35, 39, §13949; C46, 50, 54, 58, 62, 66, 71, 73, 75,§788.4]

CHAPTER 789

JUDGMENT

789.1 Judgment of acquittal—time.
789.2 Judgment of conviction—time.
789.3 Presence of defendant.
789.4 Forfeiture of bail—warrant of arrest.
789.5 Defendant arrested.
789.6 Appearance for judgment—showing of cause.
789.7 What may be shown for cause.
789.8 Insanity.
789.9 New trial—motion in arrest.
789.10 Repealed by 62GA, ch 400,§257.
789.11 Judgment entered.
789.12 Cumulative sentences.
789.13 Indeterminate sentences.
789.14 Sentences for two or more offenses.
789.15 Discretion as to sentence.
789.16 Place of commitment.
789.17 Satisfaction of judgment.
789.18 Commitment to jail of another county.
789.19 Allowance of bail upon appeal.
789.20 Costs—when payable by state.

789.1 Judgment of acquittal—time. Upon a verdict of not guilty for the defendant, or special verdict upon which a judgment of acquittal must be given, the court must render judgment of acquittal immediately. [R60,§4860; C73,§4495; C97,§5430; C24, 27, 31, 35, 39,§13950; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.1]

789.2 Judgment of conviction—time. Upon a plea of guilty, verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, the court must fix a time for pronouncing judgment, which must be within a reasonable time but not less than eight days after the plea is entered or the verdict is rendered, unless the defendant consents thereto. [C51,§3058; R60,§§4861, 4862; C73,§4496; C97,§5431; C24, 27, 31, 35, 39,§13951; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.2]

Deferred judgment or suspended sentence — probation, §789A.1

789.3 Presence of defendant. When judgment is pronounced, if the conviction be for a felony, the defendant must be personally present; if for a misdemeanor, he need not. [C51, §3059; R60,§4863; C73,§4497; C97,§5432; C24, 27, 31, 35, 39,§13952; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.3]

789.4 Forfeiture of bail—warrant of arrest. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail or money deposited, may make an order directing the clerk, on the application of the county attorney at any time thereafter, to issue a warrant into one or more counties for his arrest, which may be substantially in the following form:

County of .....
The State of Iowa.

To any peace officer in the state:

A..... B....., having been duly convicted on the .... day of ....., A.D., ..., in the district court of ..... county, of the crime of (here designate it generally, as in the indictment).

You are hereby commanded to arrest the said A..... B..... and bring him before said court for judgment.

Given under my hand and seal of said court, at my office in ....., in said county, this .... day of ....., A. D. .....

[Seal.]

.....
Clerk.

The warrant may be served in any county in the state. [C51,§§3061–3063; R60,§§4865–4868; C73,§§4498–4501; C97,§5433; C24, 27, 31, 35, 39, §13953; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.4]

Approval of warrant and expenses, §§79.12, 79.13

789.5 Defendant arrested. The officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant. [C51,§3064; R60,§4869; C73, §4502; C97,§5434; C24, 27, 31, 35, 39,§13954; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.5]

789.6 Appearance for judgment — showing of cause. When the defendant appears for

judgment, he must be informed by the court, or the clerk under its direction, of the nature of the indictment, his plea, and the verdict, if any, thereon, and be asked whether he has any legal cause to show why judgment should not be pronounced against him. [C51,§3065; R60,§4870; C73,§4503; C97,§5435; C24, 27, 31, 35, 39,§13955; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.6]

789.7 What may be shown for cause. He may show for cause against the judgment that he is insane, or any sufficient ground for a new trial, or in arrest of judgment. [R60,§4871; C73,§4504; C97,§5436; C24, 27, 31, 35, 39,§13956; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.7]

789.8 Insanity. If the court is of opinion that there is reasonable ground for believing him insane, the question of his insanity shall be determined as provided in this Code, and if he is found to be insane, such proceedings shall be had as are herein directed. [R60, §4872; C73,§4505; C97,§5437; C24, 27, 31, 35, 39, §13957; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.8]

Insanity of defendant, ch 783

789.9 New trial—motion in arrest. If he moves for a new trial, or in arrest of judgment, the court shall defer the judgment and proceed to hear and decide the motions. [C51,§3066; R60,§§4873, 4874; C73,§§4506, 4507; C97,§5438; C24, 27, 31, 35, 39,§13958; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.9]

Referred to in §229.20
C24,§13958, editorially divided

789.10 Repealed by 62GA, ch 400,§257.

789.11 Judgment entered. If judgment is not deferred, and no sufficient cause is shown why judgment should not be pronounced, and none appears to the court upon the record, judgment shall be rendered. In every case in which judgment is entered, the court shall include in the judgment entry the number of the particular section of the Code under which the defendant is sentenced. [C51,§3066; R60, §§4873, 4874; C73,§§4506, 4507; C97,§5438; C24, §13958; C27, 31, 35,§13958-a1; C39,§13958.2; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.11]

Deferred judgment or suspended sentence — probation, §789A.1

789.12 Cumulative sentences. If the defendant is convicted of two or more offenses, the punishment of each of which is or may be imprisonment, the judgment may be so rendered that the imprisonment upon any one shall commence at the expiration of the imprisonment upon any other of the offenses. [C51,§3070; R60,§4880; C73,§4508; C97,§5439; C24, 27, 31, 35, 39,§13959; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.12]

789.13 Indeterminate sentences. When any person over sixteen years of age is convicted of a felony, except the crime of escape, treason, murder, or any other crime the maximum penalty for which is life imprisonment, the court imposing a sentence of confinement in the penitentiary, men's or women's reformatory shall not fix the limit or duration of the same, but the term of such imprisonment shall not exceed the maximum term provided by law for the crime of which the prisoner was convicted. [S13,§5718-a13; C24, 27, 31, 35, 39,§13960; C46, 50, 54, 58, 62, 66, 71, 73, 75, §789.13]

Referred to in §§217.14, 789.14
S13,§5718-a13, editorially divided
Further exception in case of rape, §§698.1, 698.4

789.14 Sentences for two or more offenses. If a person be sentenced for two or more separate offenses and the second or further term is ordered to begin at the expiration of the first and such succeeding term of sentence is specified in the order of commitment, the several terms shall for the purpose of section 789.13 be construed as one continuous term of imprisonment. [S13,§5718-a13; C24, 27, 31, 35, 39,§13961; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.14]

789.15 Discretion as to sentence. Where one is convicted of a felony that is punishable by imprisonment in the penitentiary, or by fine, or by imprisonment in the county jail, or both, the court may impose the lighter sentence if it shall so elect. [S13,§5718-a13; C24, 27, 31, 35, 39,§13962; C46, 50, 54, 58, 62, 66, 71, 73, 75, §789.15]

789.16 Place of commitment. Any male person who shall be committed to the penitentiary, except those convicted of murder, treason, sodomy, or incest, and who at the time of commitment is between the ages of sixteen and thirty years, and who has never before been convicted of a felony, shall be confined in the men's reformatory; provided, however, that persons between the ages of sixteen and thirty years convicted of rape, robbery, or of breaking and entering a dwelling house in the nighttime with intent to commit a public offense therein, may, as the particular circumstances may warrant, in the discretion of the court, be committed to either the men's reformatory at Anamosa, or the penitentiary at Fort Madison. [S13,§5718-a5; C24, 27, 31, 35, 39, §13963; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.16]

789.17 Satisfaction of judgment. Upon entering a judgment imposing a fine, the court may provide that the judgment be paid in installments. If the defendant willfully fails to pay installments when due, he shall be guilty of contempt and shall be punished as provided in chapter 665. [C51,§3071; R60,§4881; C73, §4509; C97,§5440; C24, 27, 31, 35, 39,§13964; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.17]

789.18 Commitment to jail of another county. When a person is to be committed to jail, if there is no jail or no sufficient one in the county where the party would be committed under the ordinary provisions of law, the court or magistrate committing may order him to be committed to the jail of some other county, which shall be the one which is most convenient and safe, and the county to which the cause originally belonged shall be liable for

all the expenses thereof. [C51,§3073; R60,§4884; C73,§4510; C97,§5441; C24, 27, 31, 35, 39,§13965; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.18]

789.19 Allowance of bail upon appeal. In all cases, except murder in the first degree and treason, the court rendering judgment must make an order fixing the amount in which bail must be taken, and there shall be no execution of the judgment until such order is made. [R60,§4885; C73,§4511; C97,§5442; C24, 27, 31, 35, 39,§13966; C46, 50, 54, 58, 62, 66, 71, 73, 75, §789.19]

Similar provision, §763.2

789.20 Costs—when payable by state. All costs and fees, including any award of attorney fees to a court-appointed attorney, incurred in any criminal case brought against an inmate of any state institution for a crime committed while confined in such institution, or for a crime committed by such inmate while placed outside the walls or confines of the institution under the control and direction of a warden, supervisor, officer, or employee thereof, or for a crime committed by such inmate during an escape or other unauthorized departure from such institution or from the control of a warden, supervisor, officer, or employee thereof, wherever the said inmate may have been placed by authorized personnel thereof, shall be paid out of the state treasury from the general fund in case the prosecution fails, or where such costs and fees, including an award of attorney fees to a court-appointed attorney, cannot be made from the person liable to pay the same, the facts being certified by the clerk of the district court under his seal of office to the state comptroller, including a statement of the amount of fees or costs incurred, such statement to be approved by the presiding judge in writing appended thereto or endorsed thereon. [C24, 27, 31, 35, 39,§13968; C46, 50, 54, 58, 62, 66, 71, 73, 75,§789.20]

Similar provision, §337.12
This section retroactive to January 1, 1966; see 63GA, ch 1275,§3(4)

CHAPTER 789A

SENTENCING IN CRIMINAL CASES

789A.1 Deferred judgment or suspended sentence—probation.
789A.2 Length of probation.
789A.3 Presentence investigation.
789A.4 Presentence investigation and report.
789A.5 Report confidential.
789A.6 Discharge from probation.
789A.7 Custody of court probationer—record to chief parole officer.
789A.8 Restitution.
789A.9 Prosecutions prohibited.

789A.1 Deferred judgment or suspended sentence—probation. The trial court may, upon a plea of guilty, verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise either of the options contained in subsections 1 and 2. However, this section shall not apply to the crimes of treason, murder, or violation of section 204.401, subsection 1 or 2, to which section 204.409, subsection 2 is not applicable and which is not proved to be an accommodation offense under section 204.410.

1. With the consent of the defendant, the court may defer judgment and place the defendant on probation upon such terms and conditions as it may require. Upon fulfillment of the terms of probation the defendant shall be discharged without entry of judgment. Upon violation of the terms, the court may enter an adjudication of guilt and proceed as otherwise provided.

However, this subsection shall not be available if any of the following is true:

a. The defendant attempted to kill anyone during the commission of the offense.

b. The defendant purposefully inflicted or attempted to inflict a serious injury upon anyone during the commission of the offense. "Serious injury" means death, permanent disability or disfigurement, protracted loss or impairment of the function of any body member or organ, an injury requiring extended treatment or a prolonged healing period, a disabling mental illness requiring extended treatment or prolonged care, or an injury which at the time of deferment of judgment appears likely to result in any of the foregoing.

c. The defendant used, threatened to use or displayed in a threatening manner a dangerous weapon during the commission of the offense. "Dangerous weapon" means any instrument or device designed primarily for use in inflicting death or injury upon a human being or other living creature, and which is capable of inflicting death upon a human being when used in the manner for which it was designed. "Dangerous weapon" also includes any instrument or device of any sort whatsoever which is actually used in such a manner as to indicate that the defendant intends to inflict death or serious injury upon anyone and which, when so used, is capable of inflicting death upon a human being.

d. The defendant kidnaped any person for ransom during the commission of the offense.

e. During the commission of the offense the defendant committed rape or sodomy by force or threat of force, committed assault with intent to commit rape by force or threat of force, committed or attempted to commit rape of or sodomy with a child twelve years of age or under, or committed a violation of section 725.2 with respect to a child twelve years of age or under and which included any of the following: Force or threat of force, fondling or touching the child in a lewd manner, or soliciting a sexual act with the child.

f. The defendant has been previously convicted of a felony. "Felony" means a conviction in a court of this or any other state or of the United States, of an offense classified as a felony by the law under which he was convicted at the time of his conviction.

g. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief, two or more times anywhere in the United States.

h. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief in a felony prosecution anywhere in the United States within the preceding five years, measured from the date of granting of deferment of judgment to the date of commission of the offense.

Any deferment of judgment under this subsection shall be promptly reported to the supreme court administrator who shall maintain a permanent record thereof including the name of the defendant, the district court docket number, the nature of the offense, and the date of the deferment. Before granting deferment in any case, the court shall request of the supreme court administrator a search of the deferred judgment docket and shall consider any prior record of a deferment of judgment against the defendant. The permanent record provided for in this subsection shall constitute a confidential record exempted from public access under section 68A.7 and shall be available only to justices of the supreme court, district judges, district associate judges, and judicial magistrates requesting information pursuant to this subsection.

2. By record entry at time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require.

Before exercising either of the options contained in subsections 1 and 2, the court shall first determine which of them will provide maximum opportunity for the rehabilitation of the defendant and protection of the community from further offenses by the defendant and others. In making this determination the court shall consider the age of the defendant, his prior record of convictions, if any, his employment circumstances, his family circumstances, the nature of the offense committed, whether a dangerous weapon or force was used in the commission of such offense, and such other factors as shall be appropriate. The court shall file a specific written statement of its reasons for and the facts supporting its decision to defer judgment or to suspend sentence and its decision on the length of probation. [S13,§5447-a; C24, 27, 31, 35, 39,§3800; C46, 50, 54, 58, 62, 66, 71, 73,§247.20; C75,§789A.1]

Referred to in §§321.218, 789A.6–789A.8

789A.2 Length of probation. The length of the probation shall be for such term as the court may fix but not to exceed five years if the offense is a felony or not to exceed two years if the offense is a misdemeanor, unless the person is ordered placed under the supervision of the chief parole officer, in which case the term of probation shall be determined by the board of parole and the probation of the defendant shall be supervised by the chief parole officer.

The length of the probation shall not be less than one year and shall not be less than two years if the offense is a felony. However, the court may subsequently reduce the length of the probation if the court determines that the purposes of probation have been fulfilled, as provided in section 789A.6.

In determining the length of the probation, the court shall first determine what period is most likely to provide maximum opportunity for the rehabilitation of the defendant, to allow enough time to determine whether or not rehabilitation has been successful, and to protect the community from further offenses by the defendant and others. [S13,§5447-a; C24, 27, 31, 35, 39,§3800; C46, 50, 54, 58, 62, 66, 71, 73,§247.20; C75,§789A.2]

Referred to in §789A.8

789A.3 Presentence investigation. Upon a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction of any public offense may be rendered, the court shall receive from the state and from the defendant any information which may be offered which is relevant to the question of sentencing. The court may consider information from other sources, and shall,* if the offense is a felony, order a presentence investigation to be made.

The court may withhold execution of any judgment or sentence for such time as shall be reasonably necessary for an investigation with respect to deferment of judgment or suspension of sentence and probation. The investigation shall be made by a probation officer, by the agency in charge of parole agents, or by another appropriate agency, as determined by the court. [S13,§5447-a; C24, 27, 31, 35, 39, §3800; C46, 50, 54, 58, 62, 66, 71, 73,§247.20; C75, §789A.3]

*Amendment effective July 1, 1974; 65GA, ch 295,§15

789A.4 Presentence investigation and report. Whenever a presentence investigation is ordered by the court, the investigator shall promptly inquire into the defendant's characteristics, family and financial circumstances, needs, and potentialities; his criminal record and social history; the circumstances of the offense; the time the defendant has been in de-

tention; and the harm to the victim, his immediate family, and the community. All local and state mental and correctional institutions, courts, and police agencies shall furnish to the investigator on request the defendant's criminal record and other relevant information. With the approval of the court, a physical examination of the defendant may be ordered, or the defendant may be committed to a psychiatric facility for an evaluation of his personality and mental health. The results of any such examination shall be included in the report of the investigator. [C75,§789A.4]

789A.5 Report confidential. The court may, in its discretion, make the presentence investigation report or parts of it available to the defendant, or the court may make the report or parts of it available while concealing the identity of the person who provided confidential information. The report of any medical examination or psychiatric evaluation shall be made available to the attorney for the state and to the defendant upon request. Such reports shall be part of the record but shall be sealed and opened only on order of the court. In any case where the defendant is committed to the custody of the department of social services, a copy of the presentence investigation report shall be sent to the department at the time of commitment. [C75,§789A.5]

789A.6 Discharge from probation. At any time that the court determines that the purposes of probation have been fulfilled, the court may order the discharge of any person from probation. At the expiration of the period of probation, in cases where the court fixes the term of probation, the court shall order the discharge of such person from probation, and the court shall forward to the governor a recommendation for or against restoration of citizenship rights to such person. A person who has been discharged from probation shall no longer be held to answer for his offense. Upon discharge from probation, if judgment has been deferred under section 789A.1, the court's criminal record with reference to the deferred judgment shall be expunged. The record maintained by the supreme court administrator required by section 789A.1 shall not be expunged. The court's record shall never be expunged in any other circumstances except as provided in section 602.15. [S13,§5447-a; C24, 27, 31, 35, 39,§3800; C46, 50, 54, 58, 62, 66, 71, 73,§247.20; C75,§789A.6]

Referred to in §§602.15, 789A.2

789A.7 Custody of court probationer—record to chief parole officer. When probation is granted under section 789A.1, the court shall order said person committed to the custody, care, and supervision:

1. Of any suitable resident of this state; or

2. Of the chief parole officer. The chief parole officer shall not, however, accept the custody, care and supervision of any person granted probation from a sentence to a term in a county jail or any other person who in the judgment of the chief parole officer could not be properly supervised.

In each case wherein the court shall order said person committed to the custody, care, and supervision of the chief parole officer, the clerk of the district court shall at once furnish the chief parole officer with certified copies of the indictment or information, the minutes of testimony attached thereto, the judgment entry if judgment is not deferred, and the original mittimus. The county attorney shall at once advise the chief parole officer, by letter, that the defendant has been placed under the chief parole officer's supervision and give to the chief parole officer a detailed statement of the facts and circumstances surrounding the crime committed and the record and history of the defendant as may be known to him. If the defendant is confined in the county jail at the time of sentence, the court may order him held until arrangements are made by the chief parole officer for his employment and he has signed the necessary probation papers. If the defendant is not confined in the county jail at the time of sentence, the court may order him to remain in the county wherein he has been convicted and sentenced and report to the sheriff as to his whereabouts. [S13,§5447-a; C24, 27, 31, 35, 39,§3801; C46, 50, 54, 58, 62, 66, 71, 73, §247.21; C75,§789A.7]

789A.8 Restitution.

1. As used in this section, unless the context otherwise requires:

a. "Victim" means any person who has suffered pecuniary damages as a result of the defendant's criminal activities. However, with respect to any part of a victim's pecuniary damages paid by an insurer, the insurer shall be regarded as the victim only if the insurer has no right of subrogation and the insured has no duty to pay the proceeds of restitution to the insurer.

b. "Pecuniary damages" means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, "pecuniary damages" includes damages for wrongful death.

c. "Criminal activities" includes any crime for which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction may be rendered and any other crime committed after July 1, 1972 which is admitted or not contested by the defendant, whether or not prosecuted. However, "criminal activities" does not include misdemeanors* under chapter 321.

*See §§321.97 and 321.281 and similar statutes

d. "Restitution" means full or partial payment of pecuniary damages to a victim.

2. It is the policy of this state that restitution be made by each violator of the criminal laws to the victims of his criminal activities to

the extent that the violator is reasonably able to do so. This section shall be interpreted and administered to effectuate this policy.

3. If the trial court exercises either of the sentencing options under section 789A.1, the court shall require as a condition of probation that the defendant, in co-operation with the probation officer assigned to the defendant, promptly prepare a plan of restitution, including a specific amount of restitution to each victim and a schedule of restitution payments. If the defendant is presently unable to make any restitution but there is a reasonable possibility that the defendant may be able to do so at some time during his probation period, the plan of restitution shall also state the conditions under which or the event after which the defendant will make restitution. If the defendant believes that he will not be able to make any restitution, he shall so state and shall specify the reasons. If the defendant believes that no person suffered pecuniary damages as a result of the defendant's criminal activities, he shall so state.

4. The defendant's plan of restitution and the comments of his probation officer shall be submitted promptly to the court. The court shall promptly enter an order approving the plan or modifying it and providing for restitution payments to the extent that the defendant is or may become reasonably able to make restitution, taking into account the factors enumerated in subsection 5. Compliance with the plan of restitution as approved or modified by the court shall be a condition of the defendant's probation. Restitution payments shall be made to the clerk unless otherwise directed by the court. The court thereafter may modify the plan at any time upon the defendant's request or upon the court's own motion. If the plan as approved or modified does not require full payment of pecuniary damages to all victims, or if the court determines that the defendant is not able and will not be able to make any restitution at any time during his probation period or that no person suffered pecuniary damages as a result of the defendant's criminal activities, the court shall file a specific written statement of its reasons for and the facts supporting its action or determination.

5. The probation officer when assisting the defendant in preparing the plan of restitution, and the court before approving or modifying the plan of restitution, shall consider the physical and mental health and condition of the defendant, his age, his education, his employment circumstances, his potential for employment and vocational training, his family circumstances, his financial condition, the number of victims, the pecuniary damages of each victim, what plan of restitution will most effectively aid the rehabilitation of the defendant, and such other factors as shall be appropriate. The probation officer shall attempt to determine the name and address of each victim and the amount of his pecuniary damages.

6. The clerk shall mail to each known victim a copy of the court's order approving or modifying the plan of restitution, including the court's statement, if any, under subsection 4.

7. At any time during the probation period the defendant may request and the court shall grant a hearing on any matter related to the plan of restitution.

8. Failure of the defendant to comply with subsection 3 or to comply with the plan of restitution as approved or modified by the court shall constitute a violation of the conditions of probation. Without limitation, the court may modify the plan of restitution or extend the period of time for restitution, but not beyond the maximum probation period specified in 789A.2.

9. This section and proceedings under this section shall not limit or impair the rights of victims to sue and recover damages from the defendant in a civil action. However, any restitution payment by the defendant to a victim shall be set off against any judgment in favor of the victim in a civil action arising out of the same facts or event. The fact that restitution was required or made shall not be admissible as evidence in a civil action unless offered by such defendant. [C75,§789A.8]

Referred to in §§247.6, 502.32

789A.9 Prosecutions prohibited. The action of any court in deferring judgment or conviction in a criminal case prior to August 15, 1973, is valid. No person previously prosecuted shall be tried, sentenced, or convicted based on the same facts as in a prior prosecution on the grounds that a sentence, conviction, or judgment as a result of that prosecution was deferred, and the deferment was later declared by the supreme court of this state to be unauthorized by law. This section shall not apply to any case in which an appeal was pending on June 1, 1973. [C75,§789A.9]

CHAPTER 790

LIEN OF JUDGMENTS AND STAY OF EXECUTIONS

790.1 Fines lien on real estate.
790.2 Stay of execution.

790.1 Fines lien on real estate. Judgments for fines, in all criminal actions rendered, are liens upon the real estate of the defendant, and shall be entered upon the lien index in the same manner and with like effect as judgments in civil actions. [R60,§5003; C73,§4609; C97, §5531; C24, 27, 31, 35, 39,§**13969**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§790.1]

Lien book, §606.7(7); lien of judgments, §624.23 et seq.

790.2 Stay of execution. The defendant may have a stay of execution for the same length of time and in the same manner as provided by law in civil actions, and with like effect, and the same proceedings may be had therein. [R60,§5004; C73,§4610; C97,§5532; C24, 27, 31, 35, 39,§**13970**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§790.2]

Stay of execution, §626.58 et seq.

CHAPTER 791

EXECUTIONS

791.1 Copy of judgment as execution.
791.2 Executions within county of trial.
791.3 Executions outside county of trial.
791.4 Record of discharge.
791.5 Preventing escape—recapture.
791.6 Execution for fine.
791.7 Execution for abatement of nuisance.
791.8 Days in jail before trial credited.

791.1 Copy of judgment as execution. When a judgment of imprisonment, either in the penitentiary or county jail, is pronounced, an execution, consisting of a certified copy of the entry thereof in the record book, must be forthwith furnished to the officer whose duty it is to execute the same, who shall proceed and execute it accordingly, and no other warrant or authority is necessary to justify or require its execution. [C51,§3074; R60,§4886; C73,§4512; C97,§5443; C24, 27, 31, 35, 39,§**13971**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§791.1]

791.2 Executions within county of trial. A judgment for imprisonment, or for imprisonment until a fine is paid, to be executed in the county where the trial is had, shall be executed by the sheriff thereof, and return made upon the execution, which shall be delivered to and filed by the clerk of said court. [C51,§§3075–3077; R60,§§4897–4899; C73,§§4513–4515; C97, §5444; C24, 27, 31, 35, 39,§**13972**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§791.2]

C97,§5444, editorially divided

791.3 Executions outside county of trial. Under all other judgments for imprisonment, the sheriff shall deliver a certified copy of the execution with the body of the defendant to the keeper of the jail or penitentiary in which the defendant is to be imprisoned in execution of the judgment, and take his receipt therefor on a duplicate copy thereof, which he must forthwith return to the clerk of the court in which the judgment was rendered, with his return thereon, and a minute of said return shall be entered by the clerk as a part of the record of the proceedings in the cause in which the execution issued. [C51,§3077; R60, §§4898, 4899, 4901; C73,§§4514, 4515; C97,§5444; C24, 27, 31, 35, 39,§**13973**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§791.3]

791.4 Record of discharge. When such defendant is discharged from custody, the jailer or warden of the penitentiary shall make return of such fact to the proper court, and an entry thereof shall be made by its clerk as is required in the first instance. [C97,§5444; C24, 27, 31, 35, 39,§**13974**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§791.4]

791.5 Preventing escape — recapture. The sheriff, or his deputy, while conveying the defendant to the proper prison, has the same authority to require the assistance of any citizen of the state in securing the defendant, and retaking him if he escapes, as if he were in his own county; and every person who neglects or refuses to assist him when so required shall be punishable accordingly. [C51,§3078; R60,§4900; C73,§4516; C97,§5445; C24, 27, 31, 35, 39,§**13975**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§791.5]

Punishment, §687.7

791.6 Execution for fine. Upon a judgment for a fine, an execution may be issued as upon a judgment in a civil case, and return thereof shall be made in like manner. [R60,§4902; C73, §4518; C97,§5446; C24, 27, 31, 35, 39,§**13976**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§791.6]

Executions, ch 626

791.7 Execution for abatement of nuisance. When the judgment is for the abatement or removal of a nuisance, or for anything other than the payment of money by the defendant, an execution consisting of a certified copy of the entry of such judgment, delivered to the sheriff of the proper county, shall authorize and require him to execute such judgment, and he shall return the same, with his doings under the same thereon endorsed, to the clerk of the court in which the judgment was rendered, within seventy days after the date of the certificate of such certified copy, except as herein-

before provided for. [R60,§4903; C73,§4519; C97, §5447; C24, 27, 31, 35, 39,§13977; C46, 50, 54, 58, 62, 66, 71, 73, 75,§791.7]

791.8 Days in jail before trial credited. Whenever any person who has been confined to jail at any time prior to sentencing because of failure to furnish bail, is sentenced to the county jail, the court shall backdate the execution of judgment or mittimus a sufficient number of days to give such person credit upon any sentence imposed for the time already spent in jail. [C71, 73, 75,§791.8]

CHAPTER 792

EXECUTION OF DEATH PENALTY

Repealed by 61GA, ch 435,§4

CHAPTER 793

APPEALS

793.1 Office of appeal—who may appeal.
793.2 Time of taking—from final judgment only.
793.3 Joinder.
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793.21 Reversal—effect.
793.22 Affirmance—effect.
793.23 Opinion of appellate court.
793.24 Decision recorded and transmitted.
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793.26 Time of imprisonment deducted.

793.1 Office of appeal—who may appeal. The mode of reviewing in the appellate courts any judgment, action, or decision of the district court in a criminal case which is an indictable offense is by appeal. Either the defendant or state may appeal. [R60,§§4904, 4905; C73,§§4520, 4521; C97,§5448; S13,§5448; C24, 27, 31, 35, 39,§13994; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.1; 66GA, ch 1241,§98]

S13,§5448, editorially divided
Discretionary review by supreme court, §631.16

793.2 Time of taking—from final judgment only. An appeal can only be taken from the final judgment, and within sixty days thereafter. [R60,§4906; C73,§4521; C97,§5448; S13, §5448; C24, 27, 31, 35, 39,§13995; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.2]

Referred to in Court Rule 15.1

793.3 Joinder. When several defendants are indicted and tried jointly, any one or more of them may join in taking the appeal, but those of their codefendants who do not join shall take no benefit therefrom, yet they may appeal afterwards. [R60,§4917; C73,§4526; C97, §5451; C24, 27, 31, 35, 39,§13996; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.3]

793.4 Taking and perfecting. An appeal is taken and perfected by the party or his attorney serving on the adverse party or his attorney of record in the district court at the time of the rendition of the judgment, a notice in writing of the taking of the appeal, and filing the same with such clerk, with evidence of service thereof endorsed thereon or annexed thereto. [R60,§§4907, 4908; C73,§§4523, 4524; C97,§5449; C24, 27, 31, 35, 39,§13997; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.4]

Referred to in Court Rule 15.1

793.5 Abstracts and other filings—service. When an appeal has been taken by the defendant in a criminal case, all filings by the appellant on appeal shall be served on the attorney general. [C27, 31, 35,§13997-b1; C39,§13997.1; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.5]

793.6 Duty of clerk when appeal is taken. When an appeal is taken, the clerk of the court in which the judgment was rendered shall:

1. Forthwith prepare and transmit to the attorney general a certified copy of the notice of appeal, together with the date of the service and filing thereof.

2. Promptly prepare and transmit to the clerk of the supreme court a transcript of all record entries in the cause, together with copies of all papers in the case on file in his office, except those returned by the examining

magistrate on the preliminary examination, all duly certified under the seal of his court. [R60, §4909; C73,§4525; C97,§5450; C24, 27, 31, 35, 39, §13998; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.6]

Referred to in Court Rule 15

793.7 Duties of county attorney. The county attorney shall:

1. When an appeal is taken by the state, at least forty days prior to the term at which the cause is to be heard, prepare and deliver to the attorney general a typewritten manuscript for the abstract of record in the cause.

2. When an appeal is taken by the defendant, prepare and transmit to the attorney general a typewritten manuscript covering all matters which may be required to be embraced in any amended abstract which should be filed by the state in order to properly present said appeal.

3. When served with a notice of appeal in a criminal case, immediately furnish the attorney general with a copy of said notice.

Such manuscripts shall be prepared in ample time so that the same may be printed and filed within the time and in the manner prescribed by law and the rules of appellate procedure. [C97,§301; SS15,§301; C24, 27, 31, 35, 39,§13999; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.7; 66GA, ch 1241,§99]

793.8 Transcript at expense of county. If a defendant in a criminal cause has perfected an appeal from a judgment against him and shall satisfy a judge of the district court from which the appeal is taken that he is unable to pay for a transcript of the evidence, such judge may order the same made at the expense of the county where said defendant was tried. [C73, §3777; C97,§254; SS15,§254-a2; C24, 27, 31, 35, 39, §14000; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.8]

Referred to in Court Rule 15.1

793.9 Appeal by state—effect. An appeal taken by the state in no case stays the operation of a judgment in favor of the defendant. [R60,§4911; C73,§4527; C97,§5452; C24, 27, 31, 35, 39,§14001; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.9]

793.10 Appeal by defendant—effect. An appeal taken by the defendant does not stay the execution of the judgment, unless bail is put in; but where the judgment is imprisonment in the penitentiary, and an appeal is taken within the time provided after judgment is rendered, and the defendant is unable to give bail, and that fact is satisfactorily shown to the court, or judge thereof, it may, in its discretion, order the sheriff or officer having the defendant in custody to detain him in custody, without taking him to the penitentiary, to abide the judgment on the appeal, if the defendant desires it. [R60,§§4914, 4915; C73,§§4528, 4529; C97, §5453; C24, 27, 31, 35, 39,§14002; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.10]

793.11 Bail—proceedings when given. When an appeal is taken by the defendant, and bail is given, the clerk must give to the defendant, or his attorney, a certificate, under the seal of the court, that an appeal has been taken and bail given, and the sheriff or other officer having the defendant in custody must, upon receiving it, discharge the defendant from custody and cease all further proceedings in execution thereof, and forthwith return to the clerk of the court who issued it the execution under which he acted, with his return thereon; and if it has not been issued, it shall not be until after final judgment on the appeal. [R60, §4916; C73,§4530; C97,§5454; C24, 27, 31, 35, 39, §14003; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.11]

793.12 Title of case — how docketed. The party appealing is the appellant, the adverse party the appellee, but the title of the action shall not be changed on the appeal, and the cause shall be so docketed at the commencement of the period assigned for trying causes from the judicial district from which the appeal comes, which causes shall take precedence of all other business, be tried at the term at which the transcript is filed, unless continued for cause or by consent of the parties, and be decided, if practicable, at the same term. [R60, §§4818, 4819; C73,§§4531, 4532; C97,§5455; C24, 27, 31, 35, 39,§14004; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.12]

793.13 Personal appearance of defendant. The personal appearance of the defendant in the appellate courts on the trial of an appeal is not required. [R60,§4920; C73,§4533; C97, §5456; C24, 27, 31, 35, 39,§14005; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.13; 66GA, ch 1294,§100]

793.14 Informality or defect. An appeal shall not be dismissed for any informality or defect in taking it, if corrected in a reasonable time; and the appellate court must direct how it shall be corrected. [R60,§4921; C73,§4534; C97,§5457; C24, 27, 31, 35, 39,§14006; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.14; 66GA, ch 1294,§101]

793.15 Assignment of error. No assignment of error is necessary. [R60,§4922; C73,§4535; C97,§5458; C24, 27, 31, 35, 39,§14007; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.15]

See R.C.P. 342 and 343

793.16 Closing argument. The defendant is entitled to close the argument. [R60,§4923; C73,§4536; C97,§5459; C24, 27, 31, 35, 39,§14008; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.16]

793.17 Rules of procedure. The record and case may be presented in the appellate court by printed abstracts, arguments, motions, and petitions for rehearing as provided by the rules of appellate procedure; and the provisions of law in civil procedure relating to certification of the record and the filing of decisions and opinions of the appellate courts shall apply in such cases. [C97,§5461; C24, 27, 31, 35, 39, §14009; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.17; 66GA, ch 1294,§102]

793.18 Decision of appellate court. If the appeal is taken by the defendant, the appellate court must examine the record, without regard to technical errors or defects which do

not affect the substantial rights of the parties, and render such judgment on the record as the law demands; it may affirm, reverse, or modify the judgment, or render such judgment as the district court should have done, or order a new trial, or reduce the punishment, but cannot increase it. [C51,§§3097, 3098; R60,§4925; C73,§4538; C97,§5462; C24, 27, 31, 35, 39,§**14010**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.18; 66GA, ch 1241,§103]

C97,§5462, editorially divided

793.19 Costs on reversal. In case the judgment of the trial court is reversed or modified in favor of the defendant, on the appeal of defendant, he shall be entitled to recover the cost of printing abstract and briefs, not exceeding one dollar for each page thereof, to be paid by the county from which the appeal was taken. [C97,§5462; C24, 27, 31, 35, 39,§**14011**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.19]

793.20 Decisions in appeals by state. If the state appeals, the appellate court cannot reverse or modify the judgment so as to increase the punishment, but may affirm it, and shall point out any error in the proceedings or in the measure of punishment, and its decision shall be obligatory as law. [R60,§4926; C73,§4539; C97,§5463; C24, 27, 31, 35, 39,§**14012**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.20; 66GA, ch 1241,§104]

793.21 Reversal — effect. If a judgment against the defendant is reversed, such reversal shall be deemed an order for a new trial, unless the appellate court shall direct that the defendant be discharged and his bail exonerated, or if money be deposited instead, that it be refunded to him. [C51,§3099; R60, §4927; C73,§4540; C97,§5464; C24, 27, 31, 35, 39, §**14013**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.21; 66GA, ch 1241,§105]

793.22 Affirmance—effect. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution as the appellate court shall direct, except as otherwise provided. [C51,§3100; R60,§4928; C73, §4541; C97,§5465; C24, 27, 31, 35, 39,§**14014**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.22; 66GA, ch 1241, §106]

793.23 Opinion of appellate court. The opinion of the appellate court must be in writing, filed with its clerk, and recorded. [R60,§4924; C73,§4537; C97,§5460; C24, 27, 31, 35, 39,§**14015**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.23; 66GA, ch 1241,§107]

793.24 Decision recorded and transmitted. The decision of the appellate court, with any opinion filed or judgment rendered, must be recorded by its clerk, and, after the expiration of the period allowed for a rehearing, or as ordered by the court or provided by the rules of appellate procedure, a certified copy of the decision and opinion shall be transmitted to the clerk of the trial court, filed and entered of record by him, and thereafter the jurisdiction of the appellate court shall cease, and all proceedings necessary for executing the judgment shall be had in the trial court, or by its clerk. [C51,§§3101, 3102; R60,§§4929, 4930; C73,§§4542, 4543; C97,§5466; C24, 27, 31, 35, 39,§**14016**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.24; 66GA, ch 1241, §108]

793.25 Judgment enforced. Unless some proceeding in the district court is directed, a copy of the judgment of the trial court and decision on appeal, or of the judgment and decision on appeal certified by the clerk of the trial court, shall be delivered to the sheriff, or other proper officer, as an execution, and shall authorize him to execute the judgment of the court, or take any steps required to bring the action to a conclusion. [R60,§4931; C73,§4544; C97,§5467; C24, 27, 31, 35, 39,§**14017**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.25]

793.26 Time of imprisonment deducted. If a defendant, imprisoned during the pendancy of an appeal, upon a new trial ordered by the appellate court is again convicted, the period of his former imprisonment shall be deducted from the period of imprisonment to be fixed on the last verdict of conviction. [R60,§4933; C73, §4545; C97,§5468; C24, 27, 31, 35, 39,§**14018**; C46, 50, 54, 58, 62, 66, 71, 73, 75,§793.26; 66GA, ch 1241,§109]

CHAPTER 794

COMPROMISING CERTAIN OFFENSES

794.1 Compromisable offenses.
794.2 Procedure.
794.3 Discharge—effect.
794.4 Limitation.

794.1 Compromisable offenses. When a defendant is prosecuted in a criminal action for a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in section 794.2, except when it was committed:

1. By or upon an officer while in the execution of the duties of his office;

2. Riotously; or,

3. With an intent to commit a felony. [R60, §5106; C73,§4708; C97,§5622; C24, 27, 31, 35, 39, §14019; C46, 50, 54, 58, 62, 66, 71, 73, 75,§794.1]

794.2 Procedure. If the party injured in such a case appear before the court to which the papers on a preliminary examination are returned, at any time before trial on an indictment for the offense, or the trial of an appeal in the district court, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom. In that case the reasons for the order must be set forth therein and entered upon the minutes. [R60,§5107; C73,§4709; C97,§5623; C24, 27, 31, 35, 39,§14020; C46, 50, 54, 58, 62, 66, 71, 73, 75,§794.2]

Referred to in §§794.1, 794.3

794.3 Discharge—effect. The order authorized by section 794.2 is a bar to another prosecution for the same offense. [R60,§5108; C73, §4710; C97,§5624; C24, 27, 31, 35, 39,§14021; C46, 50, 54, 58, 62, 66, 71, 73, 75,§794.3]

794.4 Limitation. No public offense can be compromised, nor can any proceedings for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in this chapter. [R60,§5109; C73,§4711; C97,§5625; C24, 27, 31, 35, 39,§14022; C46, 50, 54, 58, 62, 66, 71, 73, 75,§794.4]

CHAPTER 795

DISMISSAL OF CRIMINAL ACTIONS

795.1 Failure to indict.
795.2 Delay in trial.
795.3 Discharge on undertaking.
795.4 Discharge on dismissal.
795.5 Dismissal by court—effect.

795.1 Failure to indict. When a person is held to answer for a public offense, if an indictment be not found against him within thirty days, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown. An accused not admitted to bail and unrepresented by legal counsel shall not be deemed to have waived the privilege of dismissal or be held to make demand or request to enforce a guarantee of speedy trial, and the court on its own motion shall carry out the provisions of this section as to dismissal. [C51,§3248; R60,§5007; C73, §4613; C97,§5535; C24, 27, 31, 35, 39,§14023; C46, 50, 54, 58, 62, 66, 71, 73, 75,§795.1]

Related provision, §771.21

795.2 Delay in trial. If a defendant indicted for a public offense, whose trial has not been postponed upon his application, be not brought to trial within sixty days after the indictment is found, the court must order it to be dismissed, unless good cause to the contrary be shown. An accused not admitted to bail and unrepresented by legal counsel, shall not be deemed to have waived his privilege of dismissal or be held to make demand or request to enforce a guarantee of speedy trial, and the court on its own motion shall carry out the provisions of this section as to dismissal. [C51,§3249; R60,§5008; C73,§4614; C97, §5536; C24, 27, 31, 35, 39,§14024; C46, 50, 54, 58, 62, 66, 71, 73, 75,§795.2]

795.3 Discharge on undertaking. If the defendant be not indicted or tried as above provided, and sufficient reason therefor is shown, the court may order the prosecution continued and discharge the defendant from custody on his own undertaking, or on the undertaking of bail for his appearance to answer the charge at the time to which the same is continued, but no continuance under this section shall be extended for more than ninety days beyond the date within which the trial would otherwise be required. [C51,§3250; R60,§5009; C73,§4615; C97,§5537; C24, 27, 31, 35, 39,§14025; C46, 50, 54, 58, 62, 66, 71, 73, 75,§795.3]

795.4 Discharge on dismissal. If the court direct the prosecution to be dismissed, the defendant, if in custody, must be discharged, or his bail, if any, exonerated, and if money has been deposited instead of bail, it must be refunded to him. [R60,§5010; C73,§4616; C97, §5538; C24, 27, 31, 35, 39,§14026; C46, 50, 54, 58, 62, 66, 71, 73, 75,§795.4]

795.5 Dismissal by court—effect. The court, upon its own motion or the application of the county attorney, in the furtherance of justice, may order the dismissal of any pending criminal prosecution, the reasons therefor being stated in the order and entered of record, and no such prosecution shall be discontinued or abandoned in any other manner. Such a dismissal is a bar to another prosecution for the same offense if it is a misdemeanor; but it is not a bar if the offense charged be a felony. [C51,§§3251, 3252; R60,§§5011–5013; C73,§§4617–4619; C97,§5539; C24, 27, 31, 35, 39,§14027; C46, 50, 54, 58, 62, 66, 71, 73, 75,§795.5]

RULES OF CIVIL PROCEDURE

Sections 684.18 and 684.19 of the Code provide as follows:

684.18 Rules for actions and proceedings.

1. The supreme court shall have the power to prescribe all rules of pleading, practice and procedure, and the forms of process, writs and notices, for all proceedings of a civil nature in all courts of this state, for the purpose of simplifying the same, and of promoting the speedy determination of litigation upon its merits. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant.

2. The supreme court shall have the power to prescribe rules of appellate procedure relating to appeals to and review by the supreme court, discretionary review by the courts of small claims actions, review by the supreme court by writ of certiorari to inferior courts, and appeal or review by the court of appeals of a matter transferred to that court by the supreme court. Rules prescribed pursuant to this subsection shall be known as "Rules of Appellate Procedure", and shall be codified apart from rules of civil procedure applicable in the district court and other rules prescribed by the supreme court.

3. Rules prescribed pursuant to this section shall be subject to section 684.19.

684.19 Report to general assembly—enrollment. Any such rules and forms prescribed by the supreme court shall be reported by it to the general assembly within twenty days after the commencement of either regular session and shall take effect July 1 following the adjournment of such session, with such changes, if any, as may have been enacted at such session; and thereafter all laws in conflict therewith shall be of no further force or effect.

At adjournment of the general assembly where such report has been filed, an enrolled copy thereof, together with any changes, shall be made in substantially the same manner as Acts are enrolled. The enrolled copy shall be certified as to whether or not any action was taken by the general assembly and if any, what action, and thereupon it shall be filed with the secretary of state and bound with the Acts of the general assembly.

Pursuant to said sections the Supreme Court reported the following Rules of Civil Procedure effective July 4, 1943. The Rules as printed herein have the subsequent amendments incorporated therein.

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DIVISION I

OPERATION OF RULES

1. Applicability—effective date—statutes affected. These rules shall govern the practice and procedure in all courts of the state, except where they expressly provide otherwise, or statutes not affected hereby provide different procedure in particular courts or cases. [Report 1943]

DIVISION II

ACTIONS, JOINDER OF ACTIONS AND PARTIES

See also chapter 613 of the Code

(A) Parties generally—capacity

2. Real party in interest. Every action must be prosecuted in the name of the real party in interest. But an executor, administrator, guardian, trustee of an express trust; or a party with whom or in whose name a contract is made for another's benefit, or a party specially authorized by statute, may sue in his own name without joining the party for whose benefit the action is prosecuted. [Report 1943]

See also ch 613

3. Public bond. When a bond or other instrument given to the state, county, school or other municipal corporation, or to any officer or person, is intended for the security of the public generally, or of particular individuals, action may be brought thereon, in the name of any person intended to be thus secured, who has sustained an injury in consequence of a breach thereof, except when otherwise provided. [Report 1943]

See also ch 613

4. Partnerships. Actions may be brought by or against partnerships as such; or against any or all partners with or without joining the firm. Judgment against a partnership may be enforced against partnership property and that of any partner served or appearing in the suit. A new action will lie on the original cause against any partner not so served or appearing. The court may order absent partners brought in. [Report 1943]

See also ch 613

5. Foreign corporations. Foreign corporations may sue and be sued in their corporate name, except as prohibited by statute. [Report 1943]

See §494.9
See also ch 613

6. Seduction. An unmarried female may sue for her own seduction. [Report 1943]

See also ch 613

7. Assignees—exception. In cases not governed by the uniform commercial code the assignment of a thing in action shall be without prejudice to any defense, counterclaim or cause of action matured or not, if matured when pleaded, existing against the assignor in favor of the party pleading it. [Report 1943; amendment 1967]

Assignment of accounts and nonnegotiable instruments, §§539.1–539.6
See also ch 613

8. Injury or death of a minor. A parent, or the parents, may sue for the expense and actual loss of services, companionship and society resulting from injury to or death of a minor child. [Report 1943; amendment 1973]

See also ch 613

9. Actions by and against state. The state may sue in the same way as an individual. No security shall be required of it. [Report 1943; amendment 1974]

See also ch 613
Action to abate nuisance, §469.16
Attachment by state, ch 641
Right to bid under execution sale, ch 569

10. Married women—husband and wife. A married woman may sue or be sued without joining her husband. If both are sued, she may defend in her own right; and if either fails to defend, the other may defend for both. [Report 1943]

See also ch 613

11. Desertion of family. When a husband has deserted his family, the wife may prosecute or defend in his name any action which he might have prosecuted or defended, and shall have the same powers and rights therein as he might have had; under like circumstances the husband shall have the same right. [Report 1943]

See also ch 613

12. Minors—incompetents. An action of a minor or any person judicially adjudged incompetent shall be brought by his guardian if he have one; otherwise the minor may sue by a next friend, and the incompetent by a guardian appointed by the court for that purpose. The court may dismiss such action or substitute another guardian or friend for the ward's benefit. [Report 1943]

Referred to in R.C.P. 298
See also ch 613

13. Defense by incompetent, prisoner, etc. No judgment without a defense shall be entered against a party then a minor, or confined in a penitentiary, reformatory or any state hospital for the mentally ill, or one judicially adjudged incompetent, or whose physician certifies to the court that he appears to be mentally incapable of conducting his defense. Such defense shall be by guardian ad litem; but the regular guardian or the attorney appearing for a competent party may defend unless the court supersedes him by a guardian ad litem appointed in the ward's interest. [Report 1943; amended, 58GA, ch 152,§199]

Referred to in R.C.P. 14, 298
See also ch 613

14. Guardian ad litem. If a party, served with original notice, appears to be subject to rule 13, the court may appoint a guardian ad litem for him, or substitute another, in the

ward's interest. Application for such appointment or substitution may be by the ward, if competent, or a minor over fourteen years old; otherwise by his regular guardian or if there be none by any friend, or any party to the action. [Report 1943]

As to mental illness, etc., occurring pending suit, see rule 17.

For class actions, see rule 42.

For answer of guardian ad litem, see rule 71.

Referred to in R.C.P. 71, 298
See also ch 613

(B) Substitution of parties

15. Substitution at death—limitation. Any substitution of legal representatives or successors in interest of a deceased party, permitted by statute, must be ordered within two years after the death of the original party. If his right survives entirely to those already parties, the action shall continue among the surviving parties without substitution. [Report 1943]

See also ch 611

16. Transfer of interest. Transfer of an interest in a pending action shall not abate it, but may be the occasion for bringing in new parties. [Report 1943]

See also ch 613

17. Incapacity pending action. If, during pendency of an action, a party is judicially adjudged incompetent, or confined in any state hospital for the mentally ill, or if his physician certifies to the court that he appears to be mentally incapable of acting in his own behalf, his guardian shall be joined with him, or, if there be none the court shall appoint a guardian ad litem for any party thus adjudged, confined or certified. [Report 1943; amended 58GA, ch 152,§200]

See also ch 613

18. Nonabatement in case of guardianship. When a guardianship shall cease by the death of the guardian, his removal, or otherwise, or by the decease of his ward, any action or proceeding then pending shall not abate, but his successor or the person for whom he was guardian, or the executor or administrator of such person, as the case may require, shall be substituted or joined as a party thereto; or, if no application is made for substitution, the court may, on its own motion, appoint a special guardian or administrator to represent the deceased party in the action. [Report 1943]

19. Majority of minor. If a minor party attains legal majority, he shall continue as a party in his own right. [Report 1943]

See also ch 613

20. Officers — representatives. When any public official, or any administrator, express trustee or other person in a representative capacity, ceases to be such while a party to a suit, the court may order his successor brought in and substituted for him. [Report 1943]

See also ch 611

21. Notice to substituted party. The order for substitution shall fix the time when the substituted party shall appear, and the notice to be given him. In case of substitution of a legal representative of a deceased party the notice shall be served as in case of original notices. In all other cases a shorter time may be prescribed. [Report 1943]

See also ch 611

(C) Joinder—misjoinder and nonjoinder

22. Actions joined. A single plaintiff may join in the same petition as many causes of action, legal or equitable, independent or alternative, as he may have against a single defendant. [Report 1943]

Referred to in R.C.P. 31

23. Multiple plaintiffs. Any number of persons who claim any relief, jointly, severally or alternatively, arising out of or respecting the same transaction, occurrence or series of transactions or occurrences, may join as plaintiffs in a single action, when it presents or involves any question of law or fact common to all of them. They may join any causes of action, legal or equitable, independent or alternative, held by any one or more of them which arise out of such transaction, occurrence or series, and which present or involve any common question of law or fact. [Report 1943]

Referred to in R.C.P. 31

24. Permissive joinder of defendants. Any number of defendants may be joined in one action which asserts against them, jointly, severally or in the alternative, any right to relief in respect of, or arising out of the same transaction, occurrence, or series of transactions or occurrences, when any question of law or fact common to all of them is presented or involved. [Report 1943]

25. Necessary parties—nonjoinder.

(*a*) *Remedy for nonjoinder as plaintiff.* Except as provided in this rule, all persons having a joint interest in any action shall be joined on the same side, but such persons failing to join as plaintiffs may be made defendants. This rule does not apply to class actions under rules 42–47, nor affect the options permitted by sections 613.1 and 613.2 of the Code.

(*b*) *Definition of indispensable party.* A party is indispensable if his interest is not severable, and his absence will prevent the court from rendering any judgment between the parties before it; or if notwithstanding his absence his interest would necessarily be inequitably affected by a judgment rendered between those before the court.

(*c*) *Indispensable party not before court.* If an indispensable party is not before the court, it shall order him brought in. When persons are not before the court who, although not indispensable, ought to be parties if complete relief is to be accorded between those already parties, and when necessary jurisdiction can be obtained by service of original notice in any

manner provided by these rules or by statute, the court shall order their names added as parties and original notice served upon them. If such jurisdiction cannot be had except by their consent or voluntary appearance, the court may proceed with the hearing and determination of the cause, but the judgment rendered therein shall not affect their rights or liabilities. [Report 1943]

For method of bringing in parties see rule 34.

26. Parties partly interested. A party need not be interested in obtaining or defending against all the relief demanded. Judgment may be given respecting one or more parties according to their respective rights or liabilities. [Report 1943]

See rules 121 and 186.

27. Remedy for misjoinder.

(*a*) *Parties.* Misjoinder of parties is no ground for dismissal of the action, but parties may be dropped by order of the court on its own motion or that of any party at any stage of the action, on such terms as are just, or any claim against a party improperly joined may be severed and proceeded with separately.

For separate trials as to separate parties, see rule 186.

(*b*) *Actions.* The only remedy for improper joinder of actions shall be by motion. On such motion the court shall either order the causes docketed separately or strike those causes which should be stricken, always retaining at least one cause docketed in the original case. Before ruling on such motion, the party whose pleading is attacked may withdraw any of the causes claimed to be misjoined. [Report 1943]

28. Dependent remedies joined. An action heretofore cognizable only after another has been prosecuted to conclusion may be joined with the latter; and the court shall grant relief according to the substantive rights of the parties. But there shall be no joinder of an action against an indemnitor or insurer with one against the indemnified party, unless a statute so provides. [Report 1943]

(D) Counterclaims and cross-claims

29. Compulsory counterclaims. A pleading must contain a counterclaim for every cause of action then matured, and not the subject of a pending action, held by the pleader against any opposing party and arising out of the transaction or occurrence that is the basis of such opposing party's claim, unless its adjudication would require the presence of indispensable parties of whom jurisdiction cannot be acquired. A final judgment on the merits shall bar such a counterclaim, although not pleaded. [Report 1943]

Indispensable parties are defined in rule 25 (b).

Referred to in §631.7, R.C.P. 34
See §611.15
See also ch 619

30. Permissive counterclaims. Unless prohibited by rule or statute, a party may counterclaim against an opposing party on any cause of action held by him when the action was originally commenced, and matured when pleaded. [Report 1943]

For prohibited counterclaims see Code sec. 643.2, on replevin and rule 275 on partition.

See also ch 619

31. Joinder of counterclaims. A party pleading a counterclaim shall have the same right to join more than one cause of action as a plaintiff is granted under rules 22 and 23. [Report 1943]

See also rules 72 and 74.

See also ch 619

32. Counterclaim not limited. A counterclaim may, but need not, diminish or defeat recovery sought by the opposing party. It may claim relief in excess of, or different from, that sought in the opponent's pleadings. [Report 1943]

See also ch 619

33. Cross-claim against coparty. A pleading may state as a cross-claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or a counter-claim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant. [Report 1943; amendment 1973; amendment 1976]

(Substance of Federal Rule 13-g)
Referred to in R.C.P. 34, 74
See also ch 619

34. Third party practice.

(*a*) *When defendant may bring in third party.* At any time after commencement of the action a defending party, as a third-party plaintiff, may file a cross-petition and cause an original notice to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. The third-party plaintiff need not obtain leave to make the service if he files the cross-petition not later than 10 days after he files his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the original notice, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in rule 85 and his counterclaims against the third-party plaintiff as provided in rule 29 and cross-claims against other third-party defendants as provided in rule 33. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff,

and the plaintiff thereupon shall assert his defenses as provided in rule 85 and his counterclaims under rule 29. Any party may move to strike the third-party claim or for its severance or for separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

(*b*) *When plaintiff may bring in third party.* When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so. [Report 1943; amendment 1973; 65GA, ch 315, §1]

Referred to in §§631.7, 631.8, R.C.P. 68, 74
See also ch 619

(E) Interpleader

35. Right of interpleader. A person who is or may be exposed to multiple liability or vexatious litigation because of several claims against him for the same thing, may bring an equitable action of interpleader against all such claimants. Their claims or titles need not have a common origin, nor be identical, and may be adverse to, or independent of each other. Such person may dispute his liability, wholly or in part. [Report 1943]

See also ch 613

36. By defendants. A defendant to an action which exposes him to similar liability or litigation may obtain such interpleader by counterclaim or cross-petition. Any claimant not already before the court may be brought in to maintain or relinquish his claim to the subject of the action, and on his default after due service, the court may decree him barred of such claim. [Report 1943]

For procedure to bring in, see rule 34.

See also ch 613

37. Deposit—discharge. If a party initiating interpleader admits liability for, or nonownership of, any property or amount involved, the court may order it deposited in court or otherwise preserved, or secured by bond. After such deposit the court, on hearing all parties, may absolve the depositor from obligation to such parties as to the property or amount deposited, before determining the rights of the adverse claimants. [Report 1943]

Referred to in R.C.P. 38
See also ch 613

38. Substitution of claimant. If a defendant seeks an interpleader involving a third person, the latter may appear and make himself a defendant in lieu of the original defendant, who may then be discharged on complying with rule 37. [Report 1943]

See also ch 613

39. Injunction. After petition and returns of original notices are filed in an interpleader, the court may enjoin all parties before it from beginning or prosecuting any other suit as to the subject of the interpleader until its further order. [Report 1943]

For injunctions generally, see rules 320 et seq.

See also ch 613

40. Costs. Costs may be taxed against the unsuccessful claimant in favor of the successful claimant and the party initiating the interpleader. [Report 1943]

See also ch 613

41. Sheriff or officer — creditor. When a sheriff or other officer is sued for taking personal property under a writ, or for the property so taken, he may exhibit such writ to the court, with his affidavit that the property involved was taken under it. The attaching or execution creditor shall then be joined with the officer as a defendant; or may join on his own application. Any judgment against the officer and creditor shall provide that the latter's property be first exhausted to discharge it. [Report 1943]

See rule 224.

See also ch 613

(F) Class actions

42. Class actions. If the persons composing a class are so numerous that it is impracticable to bring all before the court, such number of them as will insure adequate representation of all may sue or be sued on behalf of all, where the character of the right involved is:

(*a*) Joint or common, or held primarily by one who has refused to enforce it, thereby entitling the class or its members to do so; or

(*b*) Several, and the action seeks to adjudicate claims which do, or may, affect specific property; or

(*c*) Several, and a common question of law or fact affects the several rights, and a common relief is sought. [Report 1943]

Referred to in R.C.P. 25(*a*), 45
See also ch 613

43. Virtual representation. Where persons composing a class which may be increased by others later born, do or may make a claim affecting specific property involved in an action to which all living members of the class are parties, any others later born shall also be deemed to have been parties to the action and bound by any decree rendered therein. [Report 1943]

Referred to in R.C.P. 25(*a*)
See also ch 613

44. Shareholder's actions. Shareholders in an incorporated or unincorporated association, who sue to enforce its rights because of its failure to do so, shall support their petition by affidavit, and allege their efforts to have the directors, trustees or other shareholders bring the action or enforce the right, or a sufficient reason for not making such effort. [Report 1943]

Referred to in R.C.P. 25(*a*)
See also ch 613

45. Compromise or dismissal. No class action shall be compromised or voluntarily dismissed without approval of the court. In actions under rule 42 *"a"*, notice of the proposed compromise or dismissal shall be given all members of the class in such manner as the court may prescribe, otherwise notice may be given or omitted as the court may direct. [Report 1943]

For dismissal generally, see rule 215.

Referred to in R.C.P. 25(a)
See also ch 613

46. Adequate representation. Before final judgment in a class action, the court shall inquire and determine that the parties before it adequately represent the class. If it deems such representation inadequate, it may order new parties brought in. [Report 1943]

Referred to in R.C.P. 25(a)
See also ch 613

47. Default judgment. No judgment by default for lack of appearance shall be entered in a class action. If no member of the class appears, the court shall appoint an attorney to represent it, taxing his reasonable fees as costs in the case. [Report 1943]

Referred to in R.C.P. 25(a)
See also ch 613

DIVISION III

COMMENCEMENT OF ACTIONS

Referred to in R.C.P. 253(b)

48. Commencement of Actions. A civil action is commenced by filing a petition with the court. [Report 1943; amendment 1975]

See also ch 617

49. Original notice—issuance and form.

(a) Written directions for the service of the original notice and copy of petition shall be delivered to the clerk with the petition. There shall also be delivered to the clerk with the petition the original notice to be served and sufficient copies of both. The original notice shall contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify defendant that in case of defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the petition.

(b) Upon the filing of the petition the clerk shall forthwith deliver for service the original notice and copies, copies of the petition, and the directions for service to the sheriff, to a person specially appointed to serve it, or other appropriate person. Upon request of the plaintiff, separate or additional original notices shall issue against any defendants.

(c) The original notice shall be signed by the clerk and be under the seal of the court. The clerk may require the party delivering the original notice to the clerk to advance reasonable costs of service. [Report 1943; amendment 1951; amendment 1974, amendment 1975]

R.C.P. 49 (Tolling limitations), Code 1975, stricken by report of 1975, 66GA, ch 260; see R.C.P. 55

50. Serving copies of original notice and petition. The original notice and copy of petition shall be served together except when service is by publication. If service is by publication the original notice alone shall be published and shall also contain a general statement of the cause or causes of action and the relief demanded, and, if for money, the amount thereof. [Report 1943; amendment 1975]

Referred to in R.C.P. 61
Motor vehicle action, §321.498
Motorboat action, ch 106A
See also ch 617

51. Notice of no personal claim. A defendant who unreasonably defends when the original notice states that no personal judgment is asked against him, shall pay the costs occasioned thereby. [Report 1943]

See also ch 617

52. By whom served. Original notices may be served by any person who is neither a party nor the attorney for a party to the action. A party, his agent or attorney may take an acknowledgment of service and deliver copy of notice in connection therewith, and may mail copy of original notice when mailing is required or permitted under any rule or statute. [Report 1943; amendment 1951]

See also ch 617
Referred to in §631.4

53. Time for appearance. A defendant served as provided in these rules by publication or by publication and mailing must appear on or before the date fixed in the notice as published, which date shall not be less than twenty days after the date of last publication.

A defendant served in a manner prescribed by a statute or order of court shall appear on or before the date fixed as provided by said statute or order of court.

In the event service of process is made by mail under rule 56.2 the appearance date shall be on the date fixed in the original notice which shall not be less than sixty days following the date of mailing.

In all other cases the defendant shall appear within twenty days after the service of the original notice and petition upon such defendant. [Report 1943; amendment 1951; amendment 1975]

Referred to in R.C.P. 54, 85(b), 230
See also ch 617
Time computed, §4.1(22)

54. Special cases—appearance of garnishee.

(a) Any statute of Iowa which specially requires appearance by a particular defendant, or in a particular action, within a specified time, shall govern the time for appearance in such cases, rather than rule 53.

(b) The officer serving a writ of attachment or execution shall garnish such persons as the plaintiff may direct as supposed debtors, or having in possession property of the principal

defendant, which shall be effected by a notice served in the manner and as an original notice in civil actions, forbidding his paying any debt owing such defendant, due or to become due, and requiring him to retain possession of all property of the defendant in his hands or under his control, to the end that the same may be dealt with according to law, and, unless answers are required to be taken as provided by statute, it shall cite the garnishee to appear in not less than ten days after service of the notice and at a time specified when court will be in session and a judge will be present, and answer such interrogatories as may be propounded, or he will be liable to pay any judgment which the plaintiff may obtain against the defendant. [Report 1943; amendment 1945]

Referred to in R.C.P. 50, 230
See also ch 617

55. Tolling limitations. For the purpose of determining whether an action has been commenced within the time allowed by statutes for limitation of actions, whether the limitation inheres in the statutes creating the remedy or not, the filing of a petition shall be deemed a commencement of the action. [Report 1943; amendment 1951; amendment 1974; amendment, 1975]

For filing petition and copies, see rule 82.

See also ch 617
R.C.P. 55 (Failure to file petition), Code 1975, stricken by report of 1975, 66GA, ch 260

56.1 Personal service. Original notices are "served" by delivering a copy to the proper person. Personal service may be made as follows:

(*a*) Upon any individual aged eighteen years or more who has not been adjudged incompetent, either by taking his signed, dated acknowledgment of service endorsed on the notice; or by serving him personally; or by serving, at his dwelling house or usual place of abode, any person residing therein who is at least eighteen years old, but if such place is a rooming house, hotel, club or apartment building, the copy shall there be delivered to such a person who is either a member of his family or the manager, clerk, proprietor or custodian of such place.

Referred to in §626.78, R.C.P. 59(*b*), 233

(*b*) Upon a minor under eighteen years old, by serving either the guardian of his person or property, unless the notice is served on behalf of such guardian, or his parent, or some person aged eighteen years or more who has his care and custody, or with whom he resides, or in whose service he is employed. Where the notice upon a minor is served on behalf of one who is the guardian or other fiduciary and the guardian or other fiduciary is the only person who would be available upon whom service could be made, the court or a judge shall appoint, without prior notice on the ward, a guardian ad litem upon whom service shall be made and who shall defend for the minor.

(*c*) Upon any person judicially adjudged incompetent but not confined in a state hospital for the mentally ill, by serving the guardian of his person or property, unless the notice is served on behalf of such guardian, or his spouse, or some person aged eighteen years or more who has his care and custody, or with whom he resides. Where the notice upon an incompetent is served on behalf of one who is the guardian or other fiduciary and the guardian or other fiduciary is the only person who would be available upon whom service could be made, the court or a judge shall appoint, without prior notice to the ward, a guardian ad litem upon whom service shall be made and who shall defend for the incompetent.

(*d*) Any person, whether competent or not, confined in a county home, or in any state hospital for the mentally ill, or any patient in the State University of Iowa hospital or its psychopathic ward, or any patient or inmate of any institution in the control of a director of a division of the department of social services or of the United States, may be served by the official in charge of such institution or his assistant. Proof of such service may be made by the certificate of such official, if the institution is in Iowa, or his affidavit if it is out of Iowa.

Referred to in R.C.P. 59(*a*)

(*e*) If any defendant is a patient in any state or federal hospital for the mentally ill, in or out of Iowa, or has been adjudged incompetent and is confined to a county home*, the official in charge of such institution or his assistant shall accept service on his behalf, if in his opinion direct service on the defendant would injuriously affect him, which shall be stated in such acceptance.

Referred to in R.C.P. 59(*a*)
*County care facility

(*f*) Upon a partnership, or an association suable under a common name, or a domestic or foreign corporation, by serving any present or acting or last known officer thereof, or any general or managing agent, or any agent or person now authorized by appointment or by law to receive service of original notice, or on the general partner of a partnership.

(*g*) If the action, whether against an individual, corporation, partnership or other association suable under a common name, arises out of or is connected with the business of any office or agency maintained by the defendant in a county other than where the principal resides, by serving any agent or clerk employed in such office or agency.

(*h*) Upon any city or town* by serving its mayor or clerk.

(*i*) Upon any county by serving its auditor or the chairman of its board of supervisors.

(*j*) Upon any school district, school township or school corporation by serving its president or secretary.

(*k*) Upon the state, where made a party pursuant to statutory consent or authorization for suit in the manner provided by such statute or any statute applicable thereto.

(*l*) Upon any individual, corporation, partnership or association suable under a common

name which shall have filed in this state a consent to service, or shall be subject to service, in any special manner provided by the statutes of this state, either as provided in these rules or as provided in any such consent to service, or in accordance with any such statute relating thereto.

(*m*) Upon a governmental board, commission or agency, by serving its presiding officer, clerk or secretary.

(*n*) If service cannot be made by any of the methods provided by this rule, any defendant may be served as provided by court order, consistent with due process of law. [Report 1943; amendment 1945; amended 58GA, ch 152,§201; amended 62GA, ch 209,§443; amendment 1974; amended 1975]

Referred to in §§626.78, 631.4, R.C.P. 56.2, 59, 64, 82.
Referred to in §§626.78, 631.4, R.C.P. 56.2, 59, 64, 82, 233, Court Rule 121.3(i, 7), 123.5
See also ch 617
*Abolished by Home Rule Act

56.2 Alternate method of service. Every corporation, individual, personal representative, partnership or association that shall have the necessary minimum contact with the state of Iowa shall be subject to the jurisdiction of the courts of this state, and the courts of this state shall hold such corporation, individual, personal representative, partnership or association amenable to suit in Iowa in every case not contrary to the provisions of the constitution of the United States.

Service may be made on any such corporation, individual, personal representative, partnership or association (a) as provided in rule 56.1 within or without the state, or (b) if such service cannot be so made, in any manner consistent with due process of law prescribed by order of the court in which the action is brought.

Nothing herein shall limit or affect the right to serve an original notice upon any corporation, individual, personal representative, partnership or association within or without this state in any manner now or hereafter permitted by statute or rule. [Filed 1975]

Referred to in R.C.P. 53
Forms, see rule 381

57. Service on Sunday. Original notice shall not be served on Sunday unless the plaintiff, his agent or attorney endorses thereon his oath that personal service shall be impossible unless then made. [Report 1943]

Analogous or related provisions, §§605.18, 626.6, 639.5, 643.3, 667.3
See also ch 617

58. Member of general assembly. No member of the general assembly shall be held to appear or answer in any civil action in any court in this state while such general assembly is in session. [Report 1943]

See also ch 617

59. Returns of service.

(*a*) *Signature—fees.* Iowa officers may make unsworn returns of original notices served by them, as follows: Any sheriff or deputy sheriff, as to service in his own or a contiguous county; any other peace officer, or bailiff or marshal, as to service in his own territorial jurisdiction. The court shall take judicial notice of such signatures. All other returns, except those specified in rules 56.1*"d"* and 56.1*"e"*, shall be proved by the affidavit of the person making the service. If served in the state of Iowa by a person other than such peace officer acting within the territories above defined or in another state by a person other than a sheriff or other peace officer, no fees or mileage shall be allowed therefor.

(*b*) *Contents.* A return of personal service shall state the time, manner, and place thereof and name the person to whom copy was delivered; and if delivered under rule 56.1*"a"* to a person other than defendant, it must also state the facts showing compliance with said rule.

(*c*) *Endorsement and filing.* If a sheriff receives the notice for service, he shall note thereon the date when received, and serve it without delay in his own or a contiguous county, and upon receiving his fees, shall either file it and his return with the clerk, or deliver it by mail or otherwise to the person from whom he received it. [Report 1943; amendment 1975]

(d) Proof of service. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. Failure to make proof of service does not affect the validity of the service.

(*e*) *By mail.* Where service includes notice by mail, proof of such mailing shall be by affidavit. The affidavit, with a duplicate copy of the papers referred to in the affidavit attached thereto, shall be forthwith filed with the court.

Referred to in §631.5(4)
See also ch 617

59.1 Amendment of process of proof of service. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued. [Filed 1975]

60. Service by publication — what cases. After filing an affidavit that personal service cannot be had on an adverse party in Iowa, the original notice may be served by publication, in any action brought:

(*a*) For recovery of real property or any estate or interest therein;

(*b*) For the partition of real or personal property in Iowa;

(*c*) To foreclose a mortgage, lien, encumbrance or charge on real or personal property;

(*d*) For specific performance of a contract for sale of real estate;

(*e*) To establish, set aside or construe a will, if defendant resides out of Iowa, or if his residence is unknown;

(*f*) Against a nonresident of Iowa or a foreign corporation which has property, or debts

owing to it in Iowa, sought to be taken by any provisional remedy, or appropriated in any way;

(*g*) Against any defendant who, being a nonresident of Iowa, or a foreign corporation, has or claims any actual or contingent interest in or lien on real or personal property in Iowa which is the subject of such action, or to which it relates; or where the action seeks to exclude such defendant from any lien, interest or claim therein;

(*h*) Against any resident of the state who has departed therefrom, or from the county of his residence, with intent to delay or defraud his creditors, or to avoid service, or who keeps himself concealed with like intent;

(*i*) For divorce* or separate maintenance or to modify a decree in such action, or to annul an illegal marriage, against a defendant who is a nonresident of Iowa or whose residence is unknown;

(*j*) To quiet title to real estate, against a defendant who is a nonresident of Iowa, or whose residence is unknown;

(*k*) Against a partnership, corporation or association suable under a common name, when no person can be found on whom personal service can be made;

(*l*) To vacate or modify a judgment or for a new trial under rules 252 and 253. [Report 1943; amendment 1945]

Referred to in §§587.8, 587.12(1)
*See ch 598
Prior service by publication legalized, 54GA, ch 210; see §587.12
See §587.8, judgments and decrees legalized
See also chs 617, 618

60.1. Known defendants.

(*a*) In every case where service of original notice is made upon a known defendant by publication, copy of the notice shall also be sent by ordinary mail addressed to such defendant at his last known mailing address, unless an affidavit of a party or his attorney is filed stating that no mailing address is known and that diligent inquiry has been made to ascertain it.

(*b*) Such copy of notice shall be mailed by the party, his agent or attorney not less than twenty days before the date set for appearance.

(*c*) Proof of such mailing shall be by affidavit, and such affidavit or the affidavit referred to in rule 60.1"*a*" shall be filed before the entry of judgment or decree. The court, in its judgment or decree, or prior thereto, shall make a finding that the address to which such copy was directed is the last known mailing address, or that no such address is known, after diligent inquiry. [Report 1951]

Referred to in R.C.P. 53, 234, 251
See also ch 617

61. Unknown defendants. The original notice against unknown defendants shall be directed to the unknown claimants of the property involved, describing it. It shall otherwise comply with rule 50. [Report 1943]

See also ch 617

62. How published. Publication of original notice shall be made after the filing of the petition, once each week for three consecutive weeks in a newspaper of general circulation, published in the county where the petition is filed; such newspaper to be selected by the plaintiff or his attorney. [Report 1943; amendment 1951]

See also §618.9
See also ch 617

63. Proof of publication. Before default is taken, proof of such publication shall be filed, sworn to by the publisher or an employee of the newspaper. [Report 1943]

Proof of publication, §622.92
See also ch 617

64. Actual service. Service of original notice in or out of Iowa according to rule 56.1 supersedes the need of its publication. [Report 1943]

See also ch 617

65. Appearances. An attorney making an appearance shall, either by filing written appearance or by signature to the first pleading or motion filed by the attorney, clearly indicate the attorney or attorneys in charge of the case and shall not sign in the name of the firm only. [Report 1943; amendment 1976]

See rule 87 limiting the effect of appearance alone.

See also ch 617

66. Special appearance. A defendant may appear specially for the sole purpose of attacking the jurisdiction of the court, but only before taking any part in a hearing or trial of the case, personally or by attorney, or filing a motion, written appearance, or pleading. The special appearance shall be in writing, filed with the clerk and shall state the grounds thereof. If the special appearance is erroneously overruled, defendant may plead to the merits or proceed to trial without waiving such error. [Report 1943; amendment 1976]

See also rule 104(a).

See also ch 617

DIVISION IV
PLEADINGS AND MOTIONS

See also chapter 619 of the Code

67. Technical forms abolished. All common counts, general issues, demurrers, fictions and technical forms of action or pleading, are abolished. The form and sufficiency of all motions and pleadings shall be determined by these rules, construed and enforced to secure a just, speedy and inexpensive determination of all controversies on their merits. [Report 1943]

See also ch 619

68. Allowable pleadings. There shall be a petition and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party petition, if a person who was not an original party is summoned under

the provisions of rule 34; and a third-party answer, if a third-party petition is served. [Report 1943; amendment 1974]

For counterclaims, see rules 29–32. For cross-petitions, see rules 33, 34.

See also ch 619

69. General rules of pleading.

(a) Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Pleading to be concise and direct—consistency. (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required. (2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds. "Pleadings" as used in these rules do not include motions. [Report 1943; amendment 1976; 66GA, ch 1264,§1]

See also ch 619

70. Petition. The petition shall state whether it is at law or in equity. [Report 1943; amendment 1976]

For title, signature, etc., see rule 78.

Referred to in §618.13
See also ch 619

71. Answers for ward. All answers by guardians or guardians ad litem, or filed under rule 14, shall state whether there is a return on file, showing that proper service has been had on the ward; and they shall deny all material allegations prejudicial to the ward. [Report 1943]

See also ch 619

72. Answer. The answer shall show on whose behalf it is filed, and specifically admit or deny each allegation or paragraph of the petition, which denial may be for lack of information. It must state any additional facts deemed to show a defense. It may raise points of law appearing on the face of the petition to which it responds. It may contain as many defenses, legal or equitable, as the pleader may claim, which may be inconsistent. It may contain a counterclaim which must be in a separate division. [Report 1943]

For counterclaims, see rule 29 et seq. See also rules 79, 103, 105, 110 and 176.

See also ch 619

73. Reply. The court may order a reply to an answer or a third-party answer. [Report 1943; amendment 1974]

Under rule 102 facts asserted in a reply are denied by operation of law.

For disposition of points of law raised by reply, see rules 105, 176.

See also ch 619

74. Cross-claim, cross-petition — judgment. Any cross-claim under rule 33 or cross-petition under rule 34, and the answer and reply to it, shall be governed by these rules. Where judgment in the original case can be entered without prejudice to the rights in issue under a cross-petition, cross-claim or counterclaim, it shall not be delayed thereby. [Report 1943; amendment 1973, 65GA, ch 315,§1; amendment 1976]

See also rules 186, 221.

See also ch 619

75. Interventions. Any person interested in the subject matter of the litigation, or the success of either party to the action, or against both parties, may intervene at any time before trial begins, by joining with plaintiff or defendant or claiming adversely to both. [Report 1943]

Intervention in attachment, §639.60
See also ch 619

76. Manner. Every intervenor shall file a petition, and a separate copy for each party against whom he asserts a right. The clerk shall transmit such copy to the attorney for the adversary party, who shall, without further notice, move or plead thereto within seven days from the date of filing unless the court fixes a shorter time and notice thereof is given. [Report 1943]

See also ch 619
Time computed, §4.1(22)

77. Disposition. The intervenor shall have no right to delay, and shall pay the costs of the intervention unless he prevails. [Report 1943]

See also ch 619

78. Caption and signature. Each appearance, notice, motion, or pleading shall be captioned with the title of the case, naming the court, parties, and instrument, and shall bear the signature and address of the party or attorney filing it. After the petition, the caption need name only the first of several coparties. [Report 1943]

See also ch 619

79. Paragraphs — separate statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or

defense whenever a separation facilitates the clear presentation of the matters set forth. [Report 1943; amendment 1976]

See also ch 619

80. Verification abolished—affidavits.

(*a*) Pleadings need not be verified unless special statutes so require and, where a pleading is verified, it is not necessary that subsequent pleadings be verified unless special statutes so require. Counsel's signature to every motion or pleading shall be deemed his certificate that there are good grounds for making the claims therein, and that it is not interposed for delay.

(*b*) Any motion asserting facts as the basis of the order it seeks, and any pleading seeking interlocutory relief, shall contain affidavit of the person or persons knowing the facts requisite to such relief. A similar affidavit shall be appended to all petitions which special statutes require to be verified. [Report 1943; amendment 1945]

Referred to in R.C.P. 253
See also R.C.P. 88
See also ch 619

81. Correcting or recasting pleadings. On its own motion or that of any party, the court may order any prolix, confused or multiple pleading, to be recast in a concise single document within such time as the order may fix. In like manner, it may order any pleading not complying with these rules to be corrected on such terms as it may impose. [Report 1943]

See also ch 619

82. Service and filing of pleadings and other papers.

(*a*) *When service required.* Everything required by these rules to be filed, every order required by its terms to be served, every pleading subsequent to the original petition unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of original notice in rule 56.1.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(*b*) *Same: How made.* Service upon a party represented by an attorney shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(*c*) *Same: Numerous defendants.* In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(*d*) *Filing.* All papers after the petition required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Whenever these rules require a filing within a certain time said filing shall be deemed timely if service is made within said time and filing is completed within a reasonable time thereafter.

(*e*) *Filing with the court defined.* The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(*f*) *Notice of orders or judgments.* Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in rule 82 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. In the event a case involves an appeal or review relating to an administrative agency, officer, commissioner, board, administrator, or judge, the clerk shall mail without cost to the applicable administrative agency, officer, commissioner, board, administrator, or judge a copy of any remand order, final judgment or decision in the case and a copy of any procedendo from the supreme court. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in rule 82 for the service of papers. Lack of no-

tice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in rule 335(a).

(*g*) *Proof of service.* Proof of service of all papers required or permitted to be served, shall be filed in the clerk's office promptly, and, in any event, before action is to be taken thereon by the court or the parties. The proof shall show the time and manner of service and may be by written acknowledgment of service, by certification of a member of the bar of this state, by affidavit of the person who served the papers, or by any other proof satisfactory to the court. [Report 1943; amendment 1974; amendment 1975]

Referred to in §631.8 and R.C.P. 126, 177, 181, 215.1, 238, 336

83. Enlargement; additional time after service by mail.

(*a*) *Enlargement.* When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under rules 241, 243 and 244, except to the extent and under the conditions stated in them.

(*b*) *Additional time after service by mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period. Such additional time shall not be applicable where a court has prescribed the method of service of notice and the number of days to be given. [Report 1943; amendment 1974; amendment 1975]

See also ch 619

84. Copy fees. A fee of ten cents per hundred words for each copy shall be taxed with the costs, to be the property of the attorney filing or serving the copy. [Report 1943; amendment 1974]

See also ch 619

85. Time to move or plead.

(*a*) *Motions.* Motions attacking a pleading must be served before responding to a pleading or, if no responsive pleading is required by these rules, upon motion made by a party within twenty days after the service of the pleading on such party.

(*b*) *Pleading.* Answer to a petition must be served on or before the appearance date prescribed in accordance with rule 53. A party served with a pleading stating a cross-claim against the party shall serve an answer thereto within twenty days after the service of the pleading upon the party. The plaintiff shall serve a reply to a counterclaim in the answer within twenty days after service of the answer, or if a reply is ordered by the court, within twenty days after service of the order, unless the order otherwise directs.

(*c*) *Time after filing motions.* The service of a motion permitted under these rules alters these periods of time as follows, unless a different time is fixed by order of the court:

(1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the court's action;

(2) If the court grants a motion for a more specific statement, the responsive pleading shall be served within ten days after the service of the more specific statement; provided, however, unless the parties stipulate in writing otherwise, the filing of a motion for additional time shall delay the responsive pleading for a period of ten days after the service of the motion unless within such time the court orders otherwise.

(*d*) *Response to amendments.* A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(*e*) *Shortening time.* The court may order any motion or pleading to be filed within a shorter time than above, but cannot require a defendant to answer sooner than seven days after the appearance date.

(*f*) *Extending time.* For good cause, but not ex parte, the court may extend the time to answer or reply for not more than thirty days beyond the times above specified. For good cause but not ex parte, and upon such terms as the court prescribes, the court may grant a party the right to file a motion, answer or reply where the time to file same has expired.

(*g*) *Petition for removal to federal court.* The filing of a petition for removal to the federal court, accompanied by the bond required by the Removal Act, shall suspend the time for filing any motions or pleadings until an order of the federal court is filed in the state court, remanding the cause, or until it is made to appear the removal has not been perfected, whereupon the times hereinabove fixed for motions or pleadings shall begin anew. [Report 1943; amendment 1945; amendment 1976]

See rule 86 as to when time for repleader begins to run.

Referred to in R.C.P. 34
See also ch 619
Time computed, §4.1(22)

86. Pleading over—election to stand. If a party is required or permitted to plead further by an order or ruling, the clerk shall forthwith mail or deliver notice of such order or ruling to the attorneys of record. Presence of counsel when the court announces such ruling or order shall be the equivalent of such mailing or delivery. Unless otherwise provided by order or ruling, such party shall file such further pleading within seven days after such mailing or delivery; and if such party fails to do so within such time, he thereby elects to stand on the record theretofore made. On such election, the ruling shall be deemed a final adjudication in the trial court without further judgment or order; reserving only such issues, if any, which remain undisposed of by such ruling and election. [Report 1943; amendment 1945]

Referred to in R.C.P. 230, 331, 332
See also ch 619
Time computed, §4.1(22)

87. Appearance alone. An appearance without motion or pleading shall have the effect only of submitting to the jurisdiction. The court shall have no power to treat such appearance as sufficient to delay or prevent a default or any other order which would be made in absence thereof, or of timely pleading. [Report 1943]

For time of pleading, see rule 85(a, b).

For defaults, see rule 230; for appearances, see rules 65, 66.

Referred to in R.C.P. 230
See also ch 619

88. Amendments. A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial calendar, the party may so amend it at any time within twenty days after it is served. Otherwise, a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. [Report 1943; amendment 1976]

Amendment to cure defect, R.C.P. 249
See also ch 619

89. Making and construing amendments. All amendments must be on a separate paper, duly filed, without interlining or expunging prior pleadings. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him. [Report 1943; amendment 1976]

See also ch 619

90. Supplemental pleadings. By leave of court, upon reasonable notice and upon such terms as are just, or by written consent of the adverse party, a party may serve and file a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Leave may be granted even though the original pleading is defective in its statement of a claim for relief or defense. No responsive pleading to the supplemental pleading is required unless the court, upon its own motion or the motion of a party, so orders, specifying the time therefor. [Report 1943; amendment 1976]

See also ch 619

91. Contract. Every pleading referring to a contract must state whether it is written or oral. If the contract is the basis of the action or defense, it must be set forth in full. [Report 1943]

See also ch 619

92. Allegation of time or place. When time is not material, it need not be averred, and if averred, need not be proved. When it is material, the date or duration of a continuous act, must be alleged. The place need be alleged only when it is part of the substance of the issue. [Report 1943]

See also ch 619

93. Exception. A claim in derogation of general law, or founded on any kind of exception, shall be so pleaded as to set forth such claim or exception. [Report 1943]

See also ch 619

94. Judicial notice —— statutes. Matters of which judicial notice is taken, including statutes of Iowa, need not be stated in any pleading. A pleading asserting any statute of another state, territory or jurisdiction of the United States, or a right derived therefrom, shall refer to such statute by plain designation and if such reference is made the court shall judicially notice such statute. [Report 1943; amendment 1963]

See also ch 619

95. Unliquidated damages. No order shall require any pleading to itemize or apportion unliquidated damages claimed therein, nor to attribute any part thereof to any portion of the claim asserted. [Report 1943]

See also ch 619

96. Malice. A party intending to prove malice to affect damages must aver the same. [Report 1943]

See also ch 619

97. Negligence — mitigation. In an action by an employee against an employer, or by a passenger against a common carrier to recover for negligence, plaintiff need not plead or prove his freedom from contributory negligence, but defendant may plead and prove contributory negligence in mitigation of damages. [Report 1943]

Contributory and comparative negligence, §327D.188
See also ch 619

98. Permissible conclusions—denials thereof. Partnership, corporate or representative capacity; or corporate authority to sue or do business in Iowa; or performance of conditions precedent; or judgments of a court, board or officer of special jurisdiction, may be pleaded as legal conclusions, without averring the facts comprising them. It shall not be sufficient to deny such averment in terms contradicting it, but the facts relied on must be stated. [Report 1943]

See also ch 619

99. Account—bill of particulars—denial. A pleading founded on an account shall contain a bill of particulars thereof, by consecutively numbered items, which shall define and limit the proof, and may be amended as other pleadings. A pleading controverting such account, must specify the items denied, and any items not thus specified shall be deemed admitted. [Report 1943]

For affidavit required for default, see rule 232(a).

See also ch 619

100. Denying signature.

(*a*) *By party.* If a pleading copies a writing purporting to be signed by an adverse party, such signature shall be deemed genuine for all purposes in the case, unless such party shall not only deny it, but support his denial by his own affidavit that it is not his genuine or authorized signature. He may, on application made during his time to plead, procure an inspection of the original writing.

(*b*) *By nonparty.* If a pleading copies a nonnegotiable writing purporting to be signed by a nonparty to the action, such signature shall be deemed genuine, unless a party denies it, and supports his denial by affidavit, which denial, may be for lack of information. [Report 1943]

See also ch 619

101. Defenses to be specially pleaded. Any defense that a contract or writing sued on is void or voidable, or was delivered in escrow, or which alleges any matter in justification, excuse, release or discharge, or which admits the facts of the adverse pleading but seeks to avoid their legal effect, must be specially pleaded. [Report 1943]

See also ch 619

102. What admitted. Every fact pleaded and not denied in a subsequent pleading as permitted by these rules shall be deemed admitted except (1) allegations of value or amount of damage, (2) averments in a pleading to which no responsive pleading is required or permitted, and (3) facts not previously pleaded that are set forth in pleadings filed subsequent to the seventh day preceding the trial, all of which shall be deemed denied by operation of law. [Report 1943; amendment 1955; amendment 1974]

See also ch 619

103. All defenses in answer. Every defense in bar or abatement, or to the jurisdiction after a general appearance, shall be made in the answer or reply, save as allowed by rule 104. No such defense shall overrule any other. But a party who presents and tries a defense in abatement alone, shall not thereafter be allowed to plead in bar. [Report 1943]

See rules 72, 73, 104.

See also ch 619

104. Exceptions. Every defense in law or fact to any pleading must be asserted in the pleading responsive thereto, if one is required, or if none is required, then at the trial, except that:

(*a*) Want of jurisdiction of the person, or insufficiency of the original notice, or its service must be raised by special appearance before any other appearance, motion or pleading is filed; and want of jurisdiction of the subject matter may be so raised;

See also rule 66.

(*b*) Failure to state a claim on which any relief can be granted, may be raised by motion to dismiss such claim, filed before answer.

(*c*) Sufficiency of any defense may be raised by motion to strike it, filed before pleading to it.

(*d*) Such motions must specify wherein the pleading they attack is claimed to be insufficient. [Report 1943]

Referred to in R.C.P. 103
See also ch 619

105. Separate adjudication of law points. The court may in its discretion, and must on application of either party, made after issues joined and before trial, separately hear and determine any point of law raised in any pleading which goes to the whole or any material part of the case. It shall enter an appropriate final order before trial of the remaining issues, adjudicating the point so determined, which shall not be questioned on the trial of any part of the case of which it does not dispose. If such ruling does not dispose of the whole case, it shall be deemed interlocutory for purposes of appeal. [Report 1943]

See also last sentence of rule 176.

See also ch 619

106. Variance—failure of proof. No variance between pleading and proof shall be deemed material unless it is shown to have misled the opposite party to his prejudice in maintaining his cause of action or defense. But where an allegation or defense is unproved in its gener-

al meaning, this shall not be held a mere variance but a failure of proof. [Report 1943]

See also ch 619

107. Special action—proper remedy awarded. In any case of mandamus, certiorari, appeal to the district court, or for specific equitable relief, where the facts pleaded and proved do not entitle the petitioner to the specific remedy asked, but do show him entitled to another remedy, the court shall permit him on such terms, if any, as it may prescribe, to amend by asking for such latter remedy, which may be awarded. [Report 1943]

See also ch 619

108. Lost pleading—substitution. If an original pleading is lost or withheld, the court may order a copy substituted, or a substituted pleading filed. [Report 1943]

See also ch 619

109. Motion defined. A motion is an application made by any party or interested person for an order. It may contain several objects which grow out of, or are connected with, the action. It is not a "pleading". [Report 1943]

110. Failure to move—effect of overruling motion. No pleading shall be held sufficient for failure to move to strike or dismiss it. If such motion is filed and overruled, error in such ruling is not waived by pleading over or proceeding further; and the moving party may always question the sufficiency of the pleading during subsequent proceedings. [Report 1943]

See also R.C.P. 87
See also ch 619

111. Motions combined. Motions to strike, for a more specific statement, and to dismiss, shall be contained in a single motion and only one such motion assailing the same pleading shall be permitted, unless the pleading is amended thereafter. [Report 1943]

See also ch 619

112. Motion for more specific statement. A party may move for a more specific statement of any matter not pleaded with sufficient definiteness to enable him to plead to it and for no other purpose. It shall point out the insufficiency claimed and particulars desired. [Report 1943]

See also ch 619

113. Striking improper matter. Improper or unnecessary matter in a pleading may be stricken out on motion of the adverse party. [Report 1943]

See also ch 619

114. Notice of motion days unnecessary. A party who has been served with original notice or has appeared, shall take notice of the regular motion day on which motions will be heard. [Report 1943; amended 1974]

For motion days and submission and determination of motions, see rule 117.

115. Discretionary notice. The court may require counsel to be appraised, in any manner it directs, of the time and place at which it will hear or act on any motion, application or other matter other than at the regular motion day or pursuant to general assignment. This rule shall be applied to expedite, not to delay, hearings and submissions. [Report 1943]

116. Proof of facts in motions. Evidence to sustain or resist a motion may be by affidavit or in any other form to which the parties agree or the court directs. The court may require any affiant to appear for cross-examination. [Report 1943]

Referred to in R.C.P. 167, 245

117. Motion days—disposition of motions.

(*a*) The chief judge of each judicial district shall provide by order for at least one motion day to be held each month in each county, when all motions made prior to trial on issues of fact on file ten days or more shall be deemed submitted unless by other rule, statute or order of court entered for good cause shown another time for submission is fixed. Such motions not orally argued for any reason shall be deemed submitted without argument unless they are then, or have previously been, set down for argument at some time somewhere in the judicial district not more than ten days thereafter, when they must be submitted without further postponement. Each motion filed shall set out the specific points upon which it is based. A concise memorandum brief may be appended if it is desired to cite supporting rules, statutes or other authorities.

(*b*) The court may hear and rule on any motion prior to motion day so as not to delay completing the issues or trial of the case.

(*c*) The trial court shall rule on all motions within thirty days after their submission, unless it extends the time for reasons stated of record.

(*d*) A "motion" within this rule is any paper denominated as such, or any other matter requiring attention or order of court before the trial of the issues on their merits, including a special appearance and objections to interrogatories.

(*e*) The clerk of each court shall maintain a motion calendar on which every "motion" within the purview of "*d*", above, shall be entered. It shall be arranged to show (1) docket, page and cause number of action in which filed, (2) abbreviated title of the case with surname of the first-named party on each side, (3) counsel of record for parties, (4) denomination of the "motion," (5) date filed, (6) party by whom filed, (7) date entered on calendar, and (8) date of disposition by ruling, order or otherwise. Separate motion calendars for law, equity or other divisions may be maintained. [Report 1943; amendment 1945; amendment 1961; amendment 1967; amendment 1969; amendment 1975]

Referred to in R.C.P. 238
See also ch 619

118. Specific rulings required. A motion, or other matter involving separate grounds or parts, shall be disposed of by separate ruling on each and not sustained generally. [Report 1943]

See also ch 619

119. Order defined. Every direction of the court, made in writing and not included in the judgment or decree, is an order. [Report 1943]

120. When and how entered. A judge may enter judgments, orders or decrees at any time after the matter has been submitted, effective when filed with the clerk, regardless of where signed. The clerk shall promptly mail or deliver notice of such entry, or copy thereof, to each party appearing, or to one of his attorneys. [Report 1943]

For entry of record, see rule 226.

For clerk's notice to counsel, see rule 86.

Referred to in R.C.P. 232
Orders entered, R.C.P. 227

DIVISION V

DISCOVERY AND INSPECTION

See also Court Rule 118.6

121. Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under rule 123, the frequency of use of these methods is not limited. [Report 1943; amendment 1957; amendment 1967; amendment 1973]

Referred to in Court Rule 118.6
Remnant of common law bill of discovery, §611.16
See also ch 619

122. Scope of discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(*a*) *In general.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(*b*) *Insurance agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(*c*) *Trial preparation—materials.* Subject to the provisions of subdivision "*d*" of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision "*a*" of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of rule 134 "*a*" (4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is

(1) A written statement signed or otherwise adopted or approved by the person making it, or

(2) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(*d*) *Trial preparation — experts.* Except as provided in rule 133, discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision "*a*" of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1) (A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(B) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provi-

sions, pursuant to subdivision "*d*" (3) of this rule, concerning fees and expenses as the court may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in rule 133 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result, (A) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions "*d*"(1) B and "*d*"(2) of this rule; and (B) with respect to discovery obtained under subdivision "*d*"(1) B of this rule the court may require, and with respect to discovery obtained under subdivision "*d*" (2) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert. [Report of 1943; amendment 1973; 65GA, ch 315,§3]

Referred to in R.C.P. 126, 127, 129, 143, Court Rule 118.6

123. Protective orders. Upon motion by a party or by the person from whom discovery is sought or by any person who may be affected thereby, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(*a*) That the discovery not be had;

(*b*) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(*c*) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(*d*) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(*e*) That discovery be conducted with no one present except persons designated by the court;

(*f*) That a deposition after being sealed be opened only by order of the court;

(*g*) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(*h*) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 134"*a*"(4) apply to the award of expenses incurred in relation to the motion. [Report 1943; amendment 1965; amendment 1970; amendment 1973]

Referred to in R.C.P. 121, 134(*a*, *d*), 148, Court Rule 118.6

124. Sequence and timing of discovery. Unless the court upon motion orders otherwise for the convenience of parties and witnesses and in the interests of justice, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery. [Report 1943; amendment 1957; amendment 1973]

Referred to in Court Rule 118.6
See also ch 619

124.1. Stipulations regarding discovery procedure. Unless the court orders otherwise, the parties may by written stipulation (*a*) provide that depositions may be taken before any qualified person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (*b*) modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time provided in rules 126, 127 and 130 for responses to discovery must be filed with the court and may be superseded by court order, in which event the time shall be extended to twenty days after notice of the court's action. [Filed 1975; amendment 66GA, ch 259,§1; amendment 1976]

125. Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(*a*) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to

(1) The identity and location of persons having knowledge of discoverable matters, and

(2) The identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(*b*) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which

(1) He knows that the response was incorrect when made, or

(2) He knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(*c*) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial

through new requests for supplementation of prior responses. [Report 1943; amendment 1957; amendment 1973]

Referred to in Court Rule 118.6
See also ch 619

126. Interrogatories to parties.

(*a*) *Availability—procedures for use.* Except in small claims, any party may file written interrogatories to be answered by another party served or, if the other party is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Copies of interrogatories and answers shall be filed for each adverse party. Interrogatories may, without leave of court, be directed to the plaintiff after commencement of the action and upon any other party with or after service of the original notice upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. A party answering interrogatories must set out the interrogatory immediately preceding the answer thereto. A failure to comply with this rule shall be deemed a failure to answer and shall be subject to sanctions as provided in rule 134. The answers are to be signed by the person making them. The party to whom the interrogatories are directed shall file the answers, and objections if any, within thirty days after they are filed, except that a defendant may file answers or objections within forty-five days after service of the original notice upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under rule 134 "*a*" with respect to any objection to or other failure to answer an interrogatory. Copies of answers shall be delivered as provided in rule 82.

(*b*) *Scope—use at trial.* Interrogatories may relate to any matters which can be inquired into under rule 122, and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(*c*) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. [Report 1943; amendment 1957; amendment 1973; amendment 1975; amendment 1976]

Referred to in R.C.P. 124.1, 134(*a, d*), Court Rule 118.6

127. Requests for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of rule 122 set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the original notice upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may on motion allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five days after service of the original notice upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of rule 134 "*c*", deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admission may move to determine the sufficiency of the

answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of rule 134 *"a"* (4) apply to the award of expenses incurred in relation to the motion. [Report 1943; amendment 1957; amendment 1973]

Referred to in R.C.P. 124.1, 134(*c*), Court Rule 118.6

128. Effect of admission. Any matter admitted under this rule is conclusively established in the pending action unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of rule 138 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule may be used as an evidentiary admission only in any other proceeding. [Report 1943; amendment 1957; amendment 1973]

Referred to in Court Rule 118.6

129. Production of documents and things and entry upon land for inspection and other purposes. Any party may serve on any other party a request

(*a*) To produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of rule 122 and which are in the possession, custody or control of the party upon whom the request is served; or

(*b*) Except as otherwise provided by statute, to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of rule 122. [Report 1943; amendment 1973]

Referred to in R.C. P. 130, 131, 134(*a, d*), 140, Court Rule 118.6

130. Procedure under rule 129. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the original notice upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within thirty days after the service of the request, except that a defendant may serve a response within forty-five days after service of the original notice upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under rule 134 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. [Report 1943; amendment 1973]

Referred to in R.C.P. 124.1, 131, 140, Court Rule 118.6

131. Action for production or entry against persons not parties. Rules 129 and 130 do not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land. [Report 1943; amendment 1957; amendment 1973]

Referred to in R.C.P. 181, Court Rule 118.6
See also ch 619

132. Physical and mental examination of persons. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. [Report 1943; amendment 1957; amendment 1973]

Referred to in R.C.P. 133, 134(*b*, 2), 181, Court Rule 118.6
See also ch 619

133. Report of examining physician.

(*a*) If requested by the party against whom an order is made under rule 132 or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall

be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at the trial.

(*b*) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(*c*) This rule applies to examination made by agreement of the parties, unless the agreement expressly provides otherwise. This rule does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule or statute. [Report 1943; amendment 1973]

Referred to in R.C.P. 122(*d*), 181, Court Rule 118.6
See also ch 619

134. Failure to make discovery — consequences.

(*a*) *Motion for order compelling discovery.* A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) *Appropriate court.* An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken.

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under rule 140 or 150, or a corporation or other entity fails to make a designation under rule 147 *"e"*, or a party fails to answer an interrogatory submitted under rule 126, or if a party, in response to a request for inspection submitted under rule 129, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

In ruling on such motion, the court may make such protective order as it would have been empowered to make on a motion pursuant to rule 123.

(3) *Evasive or incomplete answer.* For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) *Award of expenses of motion.* If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(*b*) *Failure to comply with order.*

(1) *Sanctions by court in district where deposition is taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) *Sanctions by court in which action is pending.* If a party or an officer, director, or managing agent of a party or a person designated under rule 147 *"e"* to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision *"a"* of this rule or rule 132, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party ;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(*c*) *Expenses on failure to admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 127, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that

(1) The request was held objectionable pursuant to rule 127, or

(2) The admission sought was of no substantial importance, or

(3) The party failing to admit had reasonable ground to believe that he might prevail on the matter, or

(4) There was other good reason for the failure to admit.

(*d*) *Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.* If a party or an officer, director, or managing agent of a party or a person designated under rule 147 "*e*" to testify on behalf of a party fails

(1) To appear before the officer who is to take his deposition, after being served with a proper notice, or

(2) To serve answers or objections to interrogatories submitted under rule 126, after proper service of the interrogatories, or

(3) To serve a written response to a request for inspection submitted under rule 129, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs "A", "B", and "C" of subdivision "b" (2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by rule 123. [Report 1943; amendment 1957; amendment 1973]

Referred to in R. C.P. 122 (c), 123, 126, 127, 130, 148, Court Rule 118.6

DIVISION VI

PRETRIAL PROCEDURE

135. Pretrail calendar. The court may provide for a pretrial calendar in any county, which may extend to all actions, or be limited either to jury or nonjury actions. [Report 1943]

See also ch 621

136. Pretrial conference. After issues are joined the court may in its discretion, and shall on written request of any attorney in the case, direct all attorneys in the action to appear before it for a conference to consider, so far as applicable to the particular case:

(*a*) The necessity or desirability of amending pleadings by formal amendment or pretrial order;

(*b*) Agreeing to admissions of facts, documents or records not really controverted, to avoid unnecessary proof;

(*c*) Limiting the number of expert witnesses;

(*d*) Settling any facts of which the court is to be asked to take judicial notice;

(*e*) Stating and simplifying the factual and legal issues to be litigated;

(*f*) Specifying all damage claims in detail as of the date of the conference;

(*g*) All proposed exhibits and mortality tables and proof thereof;

(*h*) Consolidation, separation for trial, and determination of points of law;

(*i*) Questions relating to voir dire examination of jurors and selection of alternate jurors, to serve if a juror becomes incapacitated;

(*j*) Possibility of settlement;

(*k*) Filing of advance briefs when required;

(*l*) Any other matter which may aid, expedite or simplify the trial of any issue.

The pretrial judge may direct the parties to the action to be present or immediately available at the time of conference. [Report 1943; amendment 1961]

See also ch 621

137. Pretrial conference—record. On the request of any interested counsel or the court, the reporter must record the entire conference, or any designated part thereof. [Report 1943]

See also ch 621

138. Orders. The court shall make an order reciting any action taken at the conference which will control the subsequent course of the action relative to matters it includes, unless modified to prevent manifest injustice. [Report 1943; amendment 1957]

Referred to in R.C.P. 128
See also ch 621

139. Restriction on orders. The court shall not, under any pretrial procedure or other rules, require a party to list or name the witnesses he expects to call to testify at the trial. [Report 1943; amendment 1957]

See also ch 621

DIVISION VII

DEPOSITION AND PERPETUATION OF TESTIMONY

See also chapter 622 of the Code, Court Rule 118.6

(A) Depositions

140. Depositions upon oral examination. (*a*) *When depositions may be taken.* After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of ten days after the appearance date for any defendant, except that leave is not required:

(1) If a defendant has served a notice of taking deposition or otherwise sought discovery, or

(2) If special notice is given as provided in subdivision "*b*" (2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in rule 155. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(*b*) *Notice of examination—general requirements — special notice — nonstenographic recording—production of documents and things —deposition of organization.*

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice

(A) States that the person to be examined is about to go out of the state and will be unavailable for examination unless his deposition is taken before expiration of the thirty-day period, and

(B) Sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true.

If a party shows that when he was served with notice under this subdivision "*b*" (2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The court may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

(5) The notice to a party deponent may be accompanied by a request made in compliance with rules 129 and 130 for the production of documents and tangible things at the taking of the deposition. The procedure of rule 130 shall apply to the request.

(*c*) *Failure to attend or to serve subpoena —expenses.*

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness does not attend because of such failure, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney attending, including reasonable attorney's fees. [Report 1943; amendment 1957; amendment 1973]

Referred to in §29B.50, R.C.P. 134(*a*, 2), 148, Court Rule 118.6

141. Restrictions. In small claims, depositions for discovery may not be taken unless leave of court is first obtained on notice and showing of just cause therefor and upon such terms as justice may require. [Report 1943; amendment 1957; amendment 1973]

Referred to in §29B.50, R.C.P. 147, Court Rule 118.6
See also ch 622

142. Defaults—notice. If a party requires proof to obtain a judgment upon a default, he may take depositions, after serving notice on the attorney of record for the defaulted party, or, if none, on the clerk. Parties in default need not be given notice as to depositions taken under any other rule. [Report 1943]

Referred to in §29B.50
See also ch 622

143. Witness lists. Except as provided in rule 122, a party shall not be required to list the witnesses expected to be called at trial. [Report 1943; amendment 1957; amendment 1973]

Referred to in §29B.50, Court Rule 118.6
See also ch 622

144. Use of depositions. Any part of a deposition, so far as admissible under the rules of evidence, may be used upon the trial or at an interlocutory hearing or upon the hearing of a motion in the same action against any

party who appeared when it was taken, or stipulated therefor, or had due notice thereof, either:

(*a*) To impeach or contradict deponent's testimony as a witness; or

(*b*) For any purpose if, when it was taken, deponent was a party adverse to the offeror, or was an officer, partner or managing agent of any adverse party which is not a natural person; or

(*c*) For any purpose, if the court finds that the offeror was unable to procure deponent's presence at the trial by subpoena; or that deponent is out of the state or more than one hundred miles distant from the trial, and such absence was not procured by the offeror; or that deponent is dead, or unable to testify because of age, illness, infirmity or imprisonment.

(*d*) On application and notice, the court may also permit a deposition to be used for any purpose, under exceptional circumstances making it desirable in the interests of justice; having due regard for the importance of witnesses testifying in open court. [Report 1943; amendment 1957]

Referred to in §29B.50, R.C.P. 145, Court Rule 118.6
See also ch 622

145. Effect of taking or using.

(*a*) If a party offers only part of a deposition, his adversary may require him to offer all of it relevant to the portion offered; and any other party may offer other relevant parts.

(*b*) A party does not make deponent his own witness by taking his deposition or using it solely under rules 144"*a*" or 144"*b*". A party introducing a deposition for any other purpose makes the deponent his witness, but may contradict his testimony by relevant evidence. [Report 1943]

Referred to in §29B.50, Court Rule 118.6
See also ch 622

146. Substituted parties—successive actions. Substitution of parties does not prevent use of depositions previously taken and filed in the action. If an action is dismissed, depositions legally taken therein may be used in any subsequent action involving the same subject matter, between the same parties, their representatives or successors in interest. [Report 1943]

Referred to in §29B.50, Court Rule 118.6
See also ch 622

147. Oral examination—notice.

(*a*) Oral depositions may be taken only in this state, or outside it at a place within one hundred miles from the nearest Iowa point. But, on hearing, on notice, of a motion of a party desiring it, the court may order it orally taken at any other specified place, if the issue is sufficiently important and the testimony cannot reasonably be obtained on written interrogatories.

(*b*) The party taking an oral deposition must first serve reasonable notice on all other parties not in default for want of appearance, stating the time and place thereof and the name and address of the deponent, or if that is unknown, a description identifying him or the class or group to which he belongs. The court, on motion of any party so served, may for good cause enlarge or shorten the time.

(*c*) No subpoena is necessary to require the appearance of a party for a deposition. Service on the party or his attorney of record of notice of the taking of the deposition of the party or of an officer, partner or managing agent of any party who is not a natural person, as provided in "*b*" hereof, is sufficient to require the appearance of a deponent for the deposition.

(*d*) If the deponent is a party or the officer, partner or managing agent of a party which is not a natural person, the deponent shall be required to submit to examination in the county where the action is pending, unless otherwise ordered by the court, as provided in rule 141 "*d*"*.

(*e*) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in these rules. [Report 1943; amendment 1957; amendment 1973]

For manner of serving notice see rule 56.1 and 56.2.

On objecting to notice see rule 158"a."

Referred to in §29B.50, R.C.P. 134(*a, b, d*), 155, Court Rule 118.6
*R.C.P. 141(*d*), Code 1973, repealed by amendment 1973
See also ch 622

148. Conduct of oral examination.

(*a*) *Examination and cross-examination — record of examination—oath—objections.* Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with rule 140 "*b*"(4). If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be

taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(*b*) *Motion to terminate or limit examination.* At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in rule 123. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of rule 134"*a*"(4) apply to the award of expenses incurred in relation to the motion. [Report 1943; amendment 1957; amendment 1973]

Referred to in §29B.50, R.C.P. 151, 164, Court Rule 118.6
See also ch 622

149. Reading and signing.

(*a*) No oral deposition reported and transcribed by an official court reporter or certified shorthand reporter of Iowa need be submitted to, read or signed by the deponent.

(*b*) *Submission to witness—changes, signing.* In other cases, when the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. If "*a*" is not applicable, the deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or dead or cannot be found or refuses to sign. If the deposition is not signed by the witness within thirty days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness, death, or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under rule 158"*f*" the court holds that the reason given for the refusal to sign require rejection of the deposition in whole or in part. [Report 1943; amendment 1963; amendment 1973]

Referred to in §29B.50, R.C.P. 151, 164
See also ch 622

150. On written interrogatories.

(*a*) A party may take depositions on written interrogatories after first serving all other parties not in default for want of appearance with copies thereof and with a notice stating the name, or title, and address of the officer to take them, and the name and address of the deponents.

(*b*) The adversary parties may thereafter serve successive interrogatories on each other, but only as follows: Cross-interrogatories within ten days after the notice; redirect interrogatories within five days after the latter service; and recross interrogatories within three days thereafter. On application of any party, the court may, for good cause shown, shorten or enlarge the time for serving any such succeeding interrogatories.

(*c*) Within the time required for cross-interrogatories, the adverse party may elect instead, to appear and orally cross-examine, by serving notice thereof on the party taking the deposition. The latter shall then within five days serve the former with notice of the date, hour and place where the deposition will be taken, which shall allow a reasonable time to enable the adverse party to attend; and may also waive his original written interrogatories and examine the deponent orally. [Report 1943]

For manner of service see rule 56.1 and 56.2.

Referred to in §29B.50, R.C.P. 151, 164, Court Rule 118.6
See also ch 622

151. Answers to interrogatories. The party taking a deposition on written interrogatories shall promptly transmit a copy of the notice and all interrogatories to the officer designated in the notice. The officer shall promptly take deponent's answers thereto and complete the deposition, all as provided in rules 148 and 149, except that answers need not be taken stenographically. [Report 1943]

Referred to in §29B.50, R.C.P. 134(*a*), 155, 158, 164, Court
See also ch 622

152. Certification and return—copies.

(*a*) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing. Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that

(1) The person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and

(2) If the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(*b*) The clerk shall immediately give notice of the filing of all depositions to all parties who have appeared in the action.

(*c*) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. [Report 1943; amendment 1973]

Referred to in §29B.50, R.C.P. 164
See also ch 622

153. Before whom taken.

(*a*) No deposition shall be taken before any party, or any person financially interested in the action, or an attorney or employee of any party, or any person related by consanguinity or affinity within the fourth degree to any party, his attorney, or an employee of either of them.

(*b*) Depositions within the United States or a territory or insular possession thereof may be taken before any person authorized to administer oaths, by the laws of the United States or of the place where the examination is held.

(*c*) Depositions in a foreign land may be taken before a secretary of embassy or legation, or a consul, vice-consul, consul-general or consular agent of the United States, or under rule 154.

(*d*) When the witness is in the military or naval service of the United States, his deposition may be taken before any commissioned officer under whose command he is serving, or any commissioned officer in the judge advocate general's department. [Report 1943; amendment 1945]

Referred to in §29B.50, R.C.P. 164
Depositions ordered by magistrate, §761.8 et seq.
See also ch 622

154. Letters rogatory. A commission or letters rogatory to take depositions in a foreign land shall be issued only when convenient or necessary, on application and notice, and on such terms and with such directions as are just and appropriate. They shall specify the officer to take the deposition, by name or descriptive title, and may be addressed: "To the Appropriate Judicial Authority of (country)". [Report 1943]

Referred to in §29B.50, R.C.P. 153
See also ch 622

155. Subpoena.

(*a*) On application of any party, or proof of service of a notice to take depositions under rule 147 or rule 150, the clerk of court where the action is pending shall issue subpoenas for persons named in and described in said notice or application. Subpoenas may also be issued as provided by statute:

(*b*) No resident of Iowa shall be thus subpoenaed to attend out of the county where he resides, or is employed, or transacts his business in person.

(*c*) A subpoena may also command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein; but the court, upon motion promptly made by the person to whom the subpoena is directed, or by any other person stating an interest in the documents affected, and in any event at or before the time specified in the subpoena for compliance therewith, may

(1) Quash or modify the subpoena if it is unreasonable and oppressive or

(2) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible things. [Report 1943; amendment 1957; amendment 1973]

Referred to in §29B.50, R.C.P. 140
See also ch 622

156. Notice—service. Stricken by amendment 1974.

Service generally, see rules 56.1 and 56.2

157. Costs.

(*a*) *Generally.* Costs of taking and proceeding to procure a deposition shall be advanced by the party taking it, and he cannot use it in evidence until such costs are paid. The costs shall be noted in the return or certificate, and taxed by the clerk. The judgment shall award against the losing party only such portion of these costs as were necessarily incurred for testimony offered and admitted upon the trial.

(*b*) *Failure to attend.* The court may order the party taking a deposition to pay the adverse party his costs and expenses, including reasonable attorney fees, for attending at the specified time and place for oral cross-examination (being entitled thereto), if the deposition is not then taken for absence of the party, or of the witness due to the party's failure to subpoena him. [Report 1943]

Referred to in §29B.50
See also ch 622

158. Irregularities—objections.

(*a*) *Notice.* All objections to any notice of taking any depositions are waived unless promptly served in writing upon the party giving the notice.

(*b*) *Officer.* Objections to the officer's qualification to take a deposition is waived unless made before such taking begins, or as soon thereafter as objector knows it or could discover it with reasonable diligence.

(c) *Interrogatories.* All objections to the form of any written interrogatory served under rule 150 are waived unless the objector serves them on the interrogating party in the time allowed him for serving succeeding interrogatories and, as to the last interrogatories authorized, within three days after the service thereof.

(d) *Taking deposition.* Errors or irregularities occurring during an oral deposition as to any conduct or manner of taking it, or the oath, or the form of any question or answer; and any other errors which might thereupon have been cured, obviated or removed, are waived unless seasonably objected to when it is taken.

(e) *Testimony.* Except as above provided, testimony taken by deposition may be objected to at the trial on any ground which would require its exclusion if given by a witness in open court, and objections to testimony, or competency of a witness, need not be made prior to or during the deposition, unless the grounds thereof could then have been obviated or removed.

(f) *Motion to suppress.* All objections to the manner of transcribing the testimony, or to preparing, signing, certifying, sealing, endorsing, transmitting, filing the deposition, or the officer's dealing with it, are waived unless made by motion to suppress it, or the part complained of, filed with reasonable promptness after the objector knows of, or could with reasonable diligence discover, the defect. No such motion shall be sustained unless the defect is substantial and materially affects the right of some party. [Report 1943]

Referred to in §29B.50, R.C.P. 149, 164
See also ch 622
Time computed, §4.1 (22)

(B) Perpetuating testimony

159. Common law preserved. The following rules do not limit the court's common law powers to entertain actions to perpetuate testimony. [Report 1943]

Referred to in §29B.50, Court Rule 118.6
See also ch 622

160. Before action—application. An application to take depositions to perpetuate testimony for use in an action not yet pending, shall be entitled in the name of the applicant, be supported by affidavit, and show:

(a) That he expects to be a party to an action cognizable in some court of record of Iowa, which he is then unable to bring or cause to be brought;

(b) The subject matter of such action, and his interest therein;

(c) The facts to be shown by the proposed testimony, and his reasons for desiring to perpetuate it;

(d) The name or description of each expected adverse party, with address if known;

(e) The name and address of each deponent and the substance of his testimony. It shall be filed in the court where the prospective action might be brought. [Report 1943]

Referred to in §29B.50, Court Rule 118.6
See also ch 622
Transaction with deceased, §622.4; affidavits, §622.85

161. Notice. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty days before the date of hearing, the notice shall be served as provided for the service of original notices other than by publication; but if such service cannot with due diligence be so made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, or the court upon a showing of extraordinary circumstances may prescribe a hearing upon less than twenty days' notice. [Report 1943]

Referred to in §29B.50, Court Rule 118.6
See also ch 622
Time computed, §4.1(22)

162. Guardian ad litem. Before hearing the application, the court shall appoint some attorney to act as guardian ad litem for any party under legal disability or not personally served with notice, who shall cross-examine for his ward if any deposition is ordered, and unless an attorney has been so appointed the deposition shall not be admissible against such party in any subsequent action. [Report 1943]

Referred to in §29B.50, Court Rule 118.6
See also ch 622

163. When ordered—who not examined. If satisfied that the petition is not for the purpose of discovery, and that its allowance may prevent future delay or failure of justice, and that applicant is unable to bring the contemplated action or cause it to be brought, the court shall order the testimony perpetuated, designating the deponents, the subject matter of their examination, when, where and before whom their deposition shall be taken, and whether orally or on written interrogatories. [Report 1943]

Referred to in §29B.50, Court Rule 118.6
See also ch 622

164. Taking and filing testimony. Depositions shall be taken as directed in said order; and shall be otherwise governed by rules 148 to 153 and 158. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the application was filed shall be deemed to refer to the court in which the petition for such deposition was filed. Unless the court enlarges the time, all such depositions must be filed therein within thirty days after the date fixed for taking them, and if not so filed cannot be later received in evidence. [Report 1943]

Referred to in §29B.50, Court Rule 118.6
See also ch 622
Time computed, §4.1(23)

165. Use—limitation. Any party to any later action involving any expected adverse party who was named in the application, and served with notice as hereinbefore required, or involving his privies or successors in interest, may use such deposition, or a certified copy thereof, if the deponent is dead or mentally ill or his attendance cannot be obtained. [Report 1943; 58GA, ch 152,§202]

Referred to in §29B.50, Court Rule 118.6
See also ch 622

166. Perpetuating testimony pending appeal. During the time allowed for taking an appeal from judgment of a court of record or during the pendency of such appeal, that court may, on motion, allow testimony to be perpetuated for use in the event of further proceedings before it. The motion shall state the name and address of each proposed deponent, the substance of his expected testimony, and the reason for perpetuating it. If the court finds such perpetuation is proper to avoid a failure or delay of justice, and the depositions are not sought for discovery, it may order them taken as in rules 163 and 164. When taken and filed as thus provided, they shall be used and treated as though they had been taken pending the trial of the action. [Report 1943]

Referred to in §29B.50, Court Rule 118.6
See also ch 622

DIVISION VIII

CHANGE OF VENUE

167. Grounds for change. On motion, the place of trial may be changed as follows:

(*a*) *County.* If the county where the case would be tried is a party and the motion is by an adverse party, the issue being triable by a jury, and a jury having been demanded;

(*b*) *Interest of judge.* Where the trial judge is directly interested in the action, or related by consanguinity or affinity within the fourth degree to any party so interested;

(*c*) *Prejudice or influence.* If the trial judge, or the inhabitants of the county, are so prejudiced against the moving party, or if an adverse party has such undue influence over such inhabitants, that the movant cannot obtain a fair trial. The motion in such case shall be supported by affidavit of the movant and three disinterested persons, none being his agent, servant, employee or attorney, nor related to him by consanguinity or affinity within the fourth degree. The other party shall have a reasonable time to file counter affidavits. Affiants may be examined pursuant to rule 116;

(*d*) *Agreement.* Pursuant to written agreement of the parties;

(*e*) *Fraud in contract.* A defendant, sued in a county where he does not reside, on a written contract expressly performable in such county, who has filed a sworn answer claiming fraud in the inception of said contract as a complete defense thereto, may have the case transferred to the county of his residence. Within ten days after the transfer is ordered, he must file a bond in an amount fixed by the court, with sureties approved by the clerk, for payment of all costs; and any judgment rendered against him shall include in such costs a reasonable amount fixed by the court for expenses incurred by plaintiff and his attorney by reason of the change. [Report 1943]

Referred to in R.C.P. 168, 169, 171, 172, 174, §421.20
Change when action in wrong county, R.C.P. 175

168. Limitations. Change of venue shall not be allowed:

(*a*) In an appeal from a justice of the peace; or

(*b*) Under rule 167"*c*" where the issues are triable to the court alone, except for prejudice of the judge; or

(*c*) Until the issues are made up, unless the objection is to the judge; or

(*d*) After a continuance, except for a cause arising since such continuance or not known to movant prior thereto; or

(*e*) After one change, for any cause then existing, and known or ascertainable with reasonable diligence.

In no event shall more than two changes be allowed to any party. [Report 1943]

Referred to in R.C.P. 169

169. Subsequent change. Where the case is tried after a change of place of trial, and the jury disagrees or a new trial is granted, the court may in its discretion allow a subsequent change, under rule 167"*a*", "*b*", "*c*" or "*d*"; subject to rule 168. [Report 1943]

170. Of whole case. A change may be granted on motion of one of several coparties; and the whole cause shall then be transferred, unless separate trials are granted under rule 186. [Report 1943]

171. Where tried. Unless the change is under rule 167"*e*", the court granting it shall order the trial held in a convenient county in the judicial district, or if the ground applies to all such counties, then of another judicial district. If the ground applies only to a judge, the court in its discretion may refuse a change and procure another judge to try the case where it was brought, or the supreme court may designate such other judge. [Report 1943]

172. Costs. Unless the change is under rule 167"*d*" or 167"*e*", the order shall designate generally all costs occasioned by the change, which movant must pay before the change is perfected. Failure to make such payment within ten days from the order waives the change of venue. [Report 1943]

173. Transferring cause. When a change is ordered and the required costs paid, the clerk shall forthwith transmit to the proper court his transcript of the proceedings, with any original papers, of which he shall retain an authenticated copy. The case shall be docketed in the second court without fee and shall proceed. [Report 1943]

174. Jury fees. If trial is by a jury after change pursuant to rule 167 the court shall certify the amount of county expenses incurred for meals, lodging, mileage and fees of jurors and the county where the action was brought shall pay the county where it was tried the difference between the sum so certified and the jury fee taxable as a part of the costs in the action. [Report 1943; amendments 1961, 1963]

175. Action brought in wrong county.

(*a*) An action brought in the wrong county may be prosecuted there until termination, unless a defendant, before answer, moves for its change to the proper county. Thereupon the court shall order the change at plaintiff's costs, which may include reasonable compensation for defendant's trouble and expense, including attorney's fees, in attending in the wrong county.

(*b*) If all such costs are not paid within a time to be fixed by the court, or the papers are not filed in the proper court within twenty days after such order, the action shall be dismissed. [Report 1943]

Referred to in §616.6
See also ch 616
Time computed, §4.1 (22)

DIVISION IX

TRIAL AND JUDGMENT

See also chapter 624 of the Code

(A) Trials

176. Trials and issues. A trial is a judicial examination of issues in an action, whether of law or fact. Issues arise where a pleading of one party maintains a claim controverted by an adverse party. Issues are either of law or fact. An issue of fact arises on a material allegation of fact in a pleading which is denied in an adversary's pleading or by operation of law. All other issues are issues of law which must be tried first. [Report 1943]

For allegations and denials of fact, see rules 70–76, 100.

For denials by operation of law, see e.g. rule 102.

For separate adjudication of law issue, see rule 105.

See also ch 624

177. Demand for jury trial.

(*a*) Jury trial is waived if not demanded according to this rule; but a demand once filed may not be withdrawn without consent of all parties not in default.

(*b*) A party desiring jury trial of an issue must make written demand therefor by filing a separate instrument clearly designating such demand not later than ten days after the last pleading directed to that issue. A copy thereof must be filed for each adverse party appearing and it shall be mailed or delivered by the clerk in the manner provided by rule 82.

(*c*) Unless limited to a specific issue, every such demand shall be deemed to include all issues triable to a jury. If a limited demand is filed, any other party may, within ten days thereafter or such shorter time as the court may order, file his demand for a jury trial of some or all other issues.

(*d*) Notwithstanding the failure of a party to demand a jury in an action in which such demand might have been made of right, the court, in its discretion on motion and for good cause shown, but not ex parte, and upon such terms as the court prescribes, may order a trial by jury of any or all issues. [Report 1943; amendment 1945; amendment 1961]

Referred to in R.C.P. 232
See also ch 624, §§633.447, 633.555
Time computed, §4.1 (22)

178. To court or jury. All issues shall be tried to the court except those for which a jury is demanded. Issues for which a jury is demanded shall be tried to a jury unless the court finds that there is no right thereto or all parties appearing at the trial waive a jury in writing or orally in open court. [Report 1943]

See also ch 624

178.1. Reporter's fee—small cases. No court reporter shall be provided in the trial of actions when the amount in controversy as shown by the pleadings is less than one thousand dollars, unless the party demanding one shall pay the clerk in advance the taxable fee of the reporter for one day, at the beginning of each day. Amounts so paid shall be taxed as costs in the case, unless otherwise ordered by the court. [Report 1961; amendment 1970]

See also ch 624

179. Findings by court.

(*a*) The court trying an issue of fact without a jury, whether by equitable or ordinary proceedings, shall find the facts in writing, separately stating its conclusions of law; and direct an appropriate judgment. No request for findings is necessary for purposes of review. Findings of a master shall be deemed those of the court to the extent it adopts them.

(*b*) On motion joined with or filed within the time allowed for a motion for new trial, the findings and conclusions may be enlarged or amended and the judgment or decree modified accordingly or a different judgment or decree substituted. But a party, on appeal, may challenge the sufficiency of the evidence to sustain any finding without having objected to it by such motion or otherwise. [Report 1943; amendment 1973]

Referred to in R.C.P. 335 "*a*"
See also ch 624

180. Exceptions unnecessary. Exceptions to rulings or orders of court are unnecessary whenever a matter has been called to the attention of the court, by objection, motion or otherwise and the court has ruled thereon. [Report 1943]

This rule has nothing to do with bills of exceptions to complete an otherwise incomplete record, for which see rule 241.

See also ch 624

181. Certificate of readiness for trial. If a certificate of readiness for trial of any action is filed, the action shall be entered on the Ready Calendar List. If parties stipulate for trial assignment, the certificate shall be filed with the stipulation.

The certificate shall be in substantially the following form:

In the ..... Court of ..... Iowa

Caption — Law / Equity / Probate — **No. ...**

Certificate of Readiness for Trial

The undersigned hereby certifies that:

1. The issues are joined and the case is ready for trial in all respects;

2. Necessary use of discovery rules has been completed and the taking of desired depositions concluded;

3. The adverse party has had reasonable time to obtain inspections, examinations and reports under rules 131 to 133;

4. Sufficient time has elapsed to afford the adverse party reasonable opportunity to be ready for trial;

5. Pretrial conference (*a*) has or (*b*) has not been held;

6. Settlement of the case (*a*) has or (*b*) has not been discussed; and

7. Assignment for trial (*a*) by jury upon timely demand filed or (*b*) by the court is requested.

Dated this .... day of ....., 19....

.....
Attorney for .....
P. O. Address .....
Telephone No. .....

Strike 3 and "*a*" or "*b*" of 5, 6 and 7 if not applicable.

A copy of the certificate must be filed for each adverse party appearing and it shall be mailed or delivered by the clerk in the manner provided by rule 82.

Objections must be filed, if at all, within seven days after the date of mailing or delivery of copy of certificate. Hearing thereon shall be held at the earliest practicable date and the action shall not be removed from the Ready Calendar List unless the objector establishes that it is not ready for trial notwithstanding reasonable diligence on his part, or other good cause is shown. [Report 1943; amendment 1961]

Referred to in R.C.P. 181.2
See also ch 624
Time computed, §4.1 (22)

181.1. Ready Calendar List. The clerk shall maintain a current list of pending actions wherein a certificate of readiness for trial has been filed. It shall be known as the Ready Calendar List and be available for public examination. It shall be arranged in columnar form to show: (1) Caption of cause, (2) docket, page and cause number, (3) date of filing of certificate of readiness, (4) jury or nonjury case, and (5) if removed from list, date of such removal. If removed by order of court the clerk may relist it only upon the filing of a new certificate of readiness. If not so removed, actions will remain on list until final disposition. [Report 1961]

See also ch 624

181.2. Trial assignments.

(*a*) *Initial assignment day—actions having precedence.* On each court day in each county or at such other times as the chief judge shall order the judges shall examine the pending criminal cases and those civil cases on the Ready Calendar List which have been certified by one of the parties for a period of twenty days and rule on all objections permitted under rule 181. In the event an examination of the papers in the case discloses that a case is ready for trial and the matters certified in the ready certificates have been completed, he shall place the case on a trial list for disposition at the next trial session to be held in that county and direct that notice be given the attorneys of record that said case is subject to trial at any time thereafter. By oral or written agreement of the parties the chief judge may specially assign a case for trial on a day certain. Any judge presiding at a trial session may make such assignment for a day certain during the session. Actions on the Ready Calendar List shall have precedence in the assignment for trial of civil and special actions, except those entitled to priority under a statute. No action shall have precedence if objections under rule 181 have been filed and not determined or if the time for filing such objections has not expired. Insofar as practicable, actions are to be assigned in the order in which the certificates of readiness were filed. The court may assign a case for trial even though no certificate of readiness for trial has been filed. Municipal courts shall provide for an initial assignment day and assign cases for trial.

(*b*) *Trial sessions assigned.* The chief judge shall designate trial sessions in the various counties in the district at such times as the business in each county shall require and shall assign a judge to try such cases as are placed on the trial list or assigned for trial under the provisions of this rule. The designation of trial sessions shall be as long in advance as is compatible with a speedy and efficient administration of justice and a minimum of conflict with previous commitments of time of parties, witnesses and attorneys. The chief judge shall direct that notice of the trial session so designated shall be given to attorneys of record in

cases on the trial list. [Report 1961; amended by 62GA, ch 474,§1; amendment 1969]

See also ch 624

181.3. Duty to notify court.

(*a*) *Of settlements.* Whenever a case assigned for trial has been settled it shall be the duty of the attorneys or parties appearing in person to so notify the court immediately.

(*b*) *Of conflicting engagements and termination thereof.* When a case assigned for trial is reached and an attorney of record therein is then actually engaged in a trial in another court, it shall be his duty to so inform the court who may hold the trial of such case in abeyance until the engagement is concluded. As soon as the attorney is free from such engagement it shall be his duty to notify the court immediately and stand ready to proceed with trial of the case. [Report 1961]

See also ch 624

182. Motions for continuance.

(*a*) Motions for continuance shall be filed without delay after the grounds therefor become known to the party or his counsel. Such a motion may be amended only to correct a clerical error.

(*b*) A case shall not lose its place on the calendar when a party applies for time to seek a continuance, unless it is then continued at the option of the other party at applicant's costs, whereupon the clerk shall forthwith enter judgment for costs unless otherwise ordered by the court or agreed by the parties. [Report 1943]

That the motion need not be served, see rule 115.

See also ch 624

183. Causes for continuance.

(*a*) A continuance may be allowed for any cause not growing out of the fault or negligence of the applicant, which satisfies the court that substantial justice will be more nearly obtained. It shall be allowed if all parties so agree and the court approves.

(*b*) All such motions based on absence of evidence must be supported by affidavit of the party, his agent or attorney, and must show: (1) The name and residence of the absent witness, or, if unknown, that affiant has used diligence to ascertain them; (2) what efforts, constituting due diligence, have been made to obtain such witness or his testimony, and facts showing reasonable grounds to believe the testimony will be procured by the next term; (3) what particular facts, distinct from legal conclusions, affiant believes the witness will prove, and that he believes them to be true and knows of no other witness by whom they can be fully proved. If the court finds such motion sufficient, the adverse party may avoid the continuance by admitting that the witness if present, would testify to the facts therein stated, as the evidence of such witness. [Report 1943; amendment 1961]

See also ch 624

184. Objections—ruling—costs. The adverse party may at once, or within such reasonable time as the court allows, file specific written objections to the motion for continuance, which shall be part of the record. Where the defenses are distinct, the cause may be continued as to any one or more defendants. Every continuance shall be at the cost of the movant unless otherwise ordered by the court. [Report 1943]

See also ch 624

185. Consolidation. Unless some party shows he will be prejudiced thereby the court may consolidate separate actions which involve common questions of law or fact or order a single trial of any or all issues therein. In such cases it may make such orders concerning the proceedings as tend to avoid unnecessary cost or delay. [Report 1943; amendment 1955]

See also ch 619

186. Separate trials. In any action the court may, for convenience or to avoid prejudice, order a separate trial of any claim, counterclaim, cross-claim, or of any separate issue of fact, or any number of any of them. Any claim against a party may be thus severed and proceeded with separately. [Report 1943]

As to separate adjudication of points of law, see rule 105.

Referred to in R.C.P. 170
See also ch 624
See also rule 74

187. Impaneling jury.

(*a*) *Selection.* The clerk shall prepare and deposit in a box separate ballots containing the names of all persons returned or added as jurors. At each jury trial he shall select sixteen jurors by closing and shaking the box to intermingle the ballots, and drawing them from the box without seeing the names. He shall list all jurors so drawn. Before drawing begins, either party may require that the names of all jurors be called, and have an attachment for those absent who are not engaged in other trials; but the court may wait for its return or not, in its discretion.

(*b*) *Oath or examination.* The prospective jurors shall be sworn. The parties may then examine those drawn. The court may conduct such examination as it deems proper. It may on its own motion exclude any juror.

(*c*) *Challenges.* Challenges are objections to trial jurors, and may be either to the panel or to an individual juror. Coparties at the trial cannot sever their peremptory challenges, but must join in them unless the court otherwise orders. The court shall determine the law and fact as to all challenges, and must either allow or deny them.

(*d*) *To panel.* Before any juror is sworn, either party may challenge the panel, in writing, distinctly specifying the grounds, which can be founded only on a material departure from the statutory requirements for drawing or returning the jury. On trial thereof, any

officer, judicial or ministerial, whose irregularity is complained of, and any other persons, may be examined concerning the facts specified. If the court sustains the challenge it shall discharge the jury, no member of which can serve at that trial.

(*e*) *To juror.* Challenge to an individual juror, peremptory or for cause, must be made before the jury is sworn to try the case. A juror peremptorily challenged must be excused without reasons being given. On demand of either party to a challenge for cause, the juror shall answer every question pertinent to the inquiry, and other evidence may be taken.

(*f*) *For cause.* A juror may be challenged by either party for any of the following causes: (1) Conviction of a felony; (2) want of any statutory qualification required to make him a competent juror; (3) physical or mental defects rendering him incapable of performing the duties of a juror; (4) consanguinity or affinity within the ninth degree to the adverse party; (5) being guardian, ward, master, servant, landlord or tenant of the adverse party, or a member of his family or in his employ; or being a client of any attorney engaged in the cause; (6) being a party adverse to the challenging party in any civil action; or having complained of or been accused by him in a criminal prosecution; (7) having already sat upon a trial of the same issues; (8) having served as a grand or trial juror in a criminal case based on the same transaction; (9) when it appears the juror has formed or expressed an unqualified opinion on the merits of the controversy, or shows a state of mind which will prevent him from rendering a just verdict; (10) being interested in a question like the issue to be tried; (11) having requested, directly, or indirectly, that his name be returned as a juror for the regular biennial period; (12) having served in the district court as a grand or petit juror during the last preceding calendar year.

Exemption from jury service is not a ground of challenge, but the privilege of the person exempt.

(*g*) *Number—striking.* Each side may peremptorily challenge three jurors and must strike off two but before the examination of the jury commences the court may in its discretion authorize and fix the number of additional peremptory challenges where there are two or more parties represented by different counsel. After all challenges for cause are completed, plaintiff and defendant shall alternately make or waive their peremptory challenges by appropriate notations on the jury list. Thereafter each side in like manner shall strike off two jurors from the list.

(*h*) *Vacancies.* After a peremptory challenge is exercised or a challenge for cause sustained, another juror shall be called and examined before further challenges are made, and shall be subject to being challenged or stricken as are other jurors.

(*i*) *Jury sworn.* The clerk shall read the names of the twelve jurors who remain on the list after all others have been challenged or stricken. These shall constitute the jury and shall be sworn substantially as follows:

"You and each of you do solemnly swear (or affirm) that you will well and truly try the issues wherein ..... is plaintiff and ..... is defendant, and a true verdict render; and that you will do so solely on the evidence introduced and in accordance with the instructions of the court; so help you God." [Report 1943]

Referred to in §29B.42, R.C.P. 189
See also chs 607–609, 624

188. Saturday a religious day. No juror whose religious faith requires him to keep the seventh day of the week can be compelled to attend on that day, prior to final submission of the case. [Report 1943]

See also ch 624

189. Alternate jurors. The court may impanel one or two alternate jurors whose qualifications, powers, functions, facilities, and privileges shall be the same as regular jurors. After the regular jury is selected, the clerk shall draw the names of two more persons than are to serve under this rule, who shall be sworn and subject to examination and challenge for cause as provided in rule 187. Each party must then strike off one such name, and the one or two remaining shall be sworn to try the case with the regular jury, and sit at the trial. Alternate jurors shall, in the order they were drawn, replace any juror who becomes unable to act, or is disqualified, before the jury retires, and if not so needed shall then be discharged. [Report 1943]

See also ch 624

190. Returning ballots to box. When a jury is sworn, the ballots containing the names of those absent or excused from the trial shall be immediately returned to the box. Those containing the names of jurors sworn shall be set aside, and returned to the box immediately on the discharge of that jury. [Report 1943]

See also ch 624

191. Procedure after jury sworn. After the jury is sworn, the trial shall proceed in the following order:

(*a*) The party having the burden of proof on the whole action may briefly state his claim, and by what evidence he expects to prove it;

(*b*) The other party may similarly state his defense and evidence;

(*c*) The first above party must then produce his evidence; to be followed by that of the adverse party;

(*d*) The parties will be confined to rebutting evidence, unless the court in furtherance of justice, permits them to offer evidence in their original case;

(*e*) But one counsel on each side shall examine the same witness, unless otherwise permitted by the court. [Report 1943]

See also ch 624

192. Further testimony for mistake. At any time before final submission, the court may allow any party to offer further testimony to correct an evident oversight or mistake, imposing such terms as it deems just. [Report 1943]

See also ch 624

193. Adjournments. After trial begins, the court may, in furtherance of justice, adjourn it for such time, and on such conditions as to costs or otherwise, as it deems just. [Report 1943]

For admonishing jury on adjournment, see rule 199 "a."

See also ch 624

194. View. When the court deems proper, it may order an officer to conduct the jury in a body to view any real or personal property, or any place where a material fact occurred, and to show it to them. No other person shall speak to them during their absence on any subject connected with the trial. [Report 1943]

Similar provisions, §780.15
See also ch 624

195. Arguments. The parties may either submit the case or argue it. The party with the burden of the issue shall have the opening and closing arguments. In opening, he shall disclose all points he relies on, and if his closing argument refers to any new material point or fact not so disclosed, the adverse party may reply thereto, which shall close the argument. A party waiving opening argument is limited, in closing, to reply to the adverse argument; otherwise the adverse party shall have the closing argument. The court may limit the time for argument to itself, but not for arguments to the jury. [Report 1943]

See also ch 624

196. Instructions. The court shall instruct the jury as to the law applicable to all material issues in the case and such instructions shall be in writing, in consecutively numbered paragraphs, and shall be read to the jury without comment or explanation; provided, however, that in actions triable to a jury where the amount in controversy as shown by the pleadings is less than one thousand dollars, and in any action where the parties so agree, the instructions may be oral. At the close of the evidence, or such prior time as the court may reasonably fix, any party may file written requests that the jury be instructed as set forth in such requests. Before argument to the jury begins, the court shall furnish counsel with a preliminary draft of instructions which it expects to give on all controversial issues, which shall not be part of the record. Before jury arguments, the court shall give to each counsel a copy of its instructions in their final form, noting this fact of record and granting reasonable time for counsel to make objections, which shall be made and ruled on before arguments to the jury. Within such time, all objections to giving or failing to give any instruction must be made in writing or dictated into the record, out of the jury's presence, specifying the matter objected to and on what grounds. No other grounds or objections shall be asserted thereafter, or considered on appeal. But if the court thereafter revises or adds to the instructions, similar specific objection to the revision or addition may be made in the motion for new trial, and if not so made shall be deemed waived. All instructions and objections, except as above provided, shall be part of the record. [Report 1943; amendment 1961; amendment 1970; amendment 1973; 65GA, ch 315,§2]

Instructions in criminal cases, §§780.9, 780.35
See also ch 624

197. Additional instructions. While the jury is deliberating, the court may in its discretion further instruct the jury, in the presence of or after notice to counsel. Such instruction shall be in writing, be filed as other instructions in the case, and be a part of the record and any objections thereto shall be made in a motion for a new trial. [Report 1943]

Similar provision, §784.2
See also ch 624

198. What jury may take. When retiring to deliberate, the jury shall take with them all exhibits in evidence except as otherwise ordered. Depositions shall not be so taken unless all the evidence is in writing and none has been stricken out. [Report 1943]

Similar provision, §784.1
See also ch 624

199. Separation and deliberation of jury.

(*a*) A jury once sworn shall not separate unless so ordered by the court, who must then advise them that it is the duty of each juror not to converse with any other juror or person, nor suffer himself to be addressed on the subject of the trial; and that, during the trial it is the duty of each juror to avoid, as far as possible, forming any opinion thereon until the cause is finally submitted to him.

(*b*) On final submission, the jury shall retire for deliberation, and be kept together in charge of an officer until they agree on a verdict or are discharged by the court, unless the court permits the jurors to separate temporarily overnight, on weekends or holidays, or in emergencies. During their deliberations, the officer in charge must not suffer any communication to be made to them, nor make any himself, except to ask them if they have agreed on a verdict, unless by order of court; nor communicate to any person the state of their deliberations, or the verdict agreed upon before it is rendered. [Report 1943; amendment 1967]

Similar provisions, §§780.19, 780.21, 780.37
See also ch 624
See R.C.P. 203 for less than unanimous verdict

200. Discharge—retrial. The court may discharge a jury because of any accident or calamity requiring it, or by consent of all parties, or when on an amendment a continuance is ordered, or if they have deliberated until it satisfactorily appears that they cannot agree. The case shall be retried immediately

or at a future time, as the court directs. [Report 1943]

Similar provisions, §§784.3, 784.4
See also ch 624

201. Court open for verdict. The court may adjourn as to other business while the jury is absent, but shall be open for every purpose connected with the cause submitted to the jury until it returns a verdict or is discharged. [Report 1943]

Similar provision, §784.5
See also ch 624

202. Food and lodging. The court may order the sheriff to provide suitable food and lodging at the expense of the county for a jury being kept together to try or deliberate on a cause. [Report 1943]

See also ch 624

203. Rendering verdict and answering interrogatories.

(*a*) *Number.* Before a general verdict, special verdicts, or answers to interrogatories are returned, the parties may stipulate that the finding may be rendered by a stated majority of the jurors. In the absence of such stipulation, a general verdict, special verdicts, or answers to interrogatories may be rendered by five-sixths of the jurors. However, no general verdict, special verdict, or answers to interrogatories may be rendered by five-sixths of the jurors or less until the jurors have deliberated for a period of not less than six hours after the issues to be decided have been submitted to them.

(*b*) *Return—poll.* The jury agreeing on a general verdict, special verdicts, or answers to interrogatories shall bring the finding into court where it shall be read to the jury and inquiry made if it is the jury's finding. A party may then require a poll, whereupon the court or clerk shall ask each juror if it is his finding. If the required number of jurors do not express agreement, the jury shall be sent out for further deliberation; otherwise, the finding is complete and the jury shall be discharged.

(*c*) *Sealed.* When, by consent of the parties and the court, the jury has been permitted to seal its finding and separates before it is rendered, such sealing is equivalent to a rendition and a recording thereof in open court, and such jury shall not be polled or permitted to disagree with respect thereto. [Report 1943; amendment 1973, 65GA, ch 315,§4]

Similar provisions, §§785.9, 785.15, 785.17
See also ch 624

204. Form and entry of verdicts. General verdicts, special verdicts, and answers to interrogatories shall be in writing. When unanimous they shall be signed by the foreman chosen by the jury, and when they are not unanimous they shall be signed by all jurors concurring therein. They shall be sufficient in form if they express the intent of the jury. They shall be filed with the clerk and be entered of record after being put in form by the court if need be. [Report 1943; amendment 1973]

For judgment on verdict, see rule 223.

See also ch 624

205. Special verdicts. The court may require that the verdict consist wholly of special written findings on each issue of fact. It shall then submit in writing questions susceptible of categorical or brief answers, or forms of several special findings that the jury might properly make under the issues and evidence, or submit the issues and require the findings in any other appropriate manner. It shall so instruct the jury as to enable it to find upon each issue submitted. If the submission omits any issue of fact, any party not demanding submission of such issue before the jury retires waives jury trial thereof, and the court may find upon it; failing which, it shall be deemed found in accord with the judgment on the special verdict. The court shall direct such judgment on the special verdict and answers as is appropriate thereto. [Report 1943]

See federal rule 49
See also ch 624

206. Interrogatories. The jury in any case in which it renders a general verdict may be required by the court, and must be so required on the request of any party to the action, to find specially upon any particular questions of fact, to be stated to it in writing, which questions of fact shall be submitted to the attorneys of the adverse party before argument to the jury is commenced. The instructions shall be such as will enable the jury to answer the interrogatories and return the verdict. If both are harmonious, the court shall order the appropriate judgment. If the answers are consistent with each other, but any is inconsistent with the general verdict, the court may order judgment appropriate to the answers notwithstanding the verdict, or a new trial, or send the jury back for further deliberation. If the answers are inconsistent with each other, and any is inconsistent with the verdict, the court shall not order judgment, but either send the jury back or order a new trial. [Report 1943]

See federal rule 49
See also ch 624

207. Reference. A "master" includes a referee, auditor or examiner. On a showing of exceptional conditions requiring it, the court may appoint a master as to any issues not to be tried to a jury. The clerk shall forthwith furnish the master with a copy of the order appointing him. [Report 1943]

See also ch 624

208. Compensation. The court shall fix the master's compensation and order it paid or advanced by such parties, or from such fund or property, as it may deem just. Execution

may issue on such order at the master's demand. He shall not retain his reports as security for his compensation. [Report 1943]

See also ch 624

209. Powers. The order may specify or limit the master's powers or duties or the issue on which he is to report, or the time within which he shall hold hearings or file his report; or specify that he merely take and report evidence. But except as so limited he shall have and exercise power to regulate all proceedings before him; to administer oaths and to do all acts and take all measures appropriate for the efficient performance of his duties; to compel production before him of any witness or party, whom he may himself examine, or of any evidence on any matters embraced in the reference, and to rule on admissibilty of evidence. He shall, on request, make a record of evidence offered and excluded. He may appoint a shorthand reporter whose fees shall be advanced by the requesting party. [Report 1943]

See also ch 624

210. Speedy hearing. Upon his appointment the master shall forthwith notify the parties of the time and place of their first meeting before him, which shall be within twenty days or such other time as the court's order may fix. If a party so notified fails to appear, the master may proceed ex parte, or, in his discretion, adjourn to a future day, giving notice thereof to the absent party. It is the duty of the master to proceed with all reasonable diligence; and the court, after notice to the master and the parties, may order him to expedite proceedings or make his report. [Report 1943]

See also ch 624

211. Witnesses. Any party may subpoena witnesses before a master as for trial in open court; and a witness failing to appear or testify without good cause shall be subject to the same punishment and consequences. [Report 1943]

See also ch 624

212. Accounts. The master may prescribe the form for submission of accounts which are in issue before him. In any proper case he may require or receive in evidence the statement of a certified public accountant who testifies as a witness. If any item submitted or stated is objected to, or shown insufficient in form, the master may require that a different form be furnished, or that the accounts or any item thereof be proved by oral testimony or written interrogatories of the accounting parties, or in such other manner as he directs. [Report 1943]

See also ch 624

213. Filing report. The master shall file with the clerk the original exhibits, and a transcript of the proceedings and evidence before him, if there be one, otherwise his summary thereof, with his report on the matters submitted to him in the order of reference, including separate findings and conclusions if so ordered. He may previously submit a draft of his report to counsel for their suggestions. [Report 1943]

See also ch 624

214. Disposition. The clerk shall forthwith mail notice of filing the report to all attorneys of record; and within ten days thereafter, unless the court enlarges the time, any party may file written objections to it. Application for action on said report, or objections, shall be by motion, to be heard on such notice as the court prescribes. The report shall have the same effect whether or not the reference was by consent; but where parties stipulate that the master's findings shall be final, only questions of law arising upon the report shall thereafter be considered. The court shall accept the master's findings of fact unless clearly erroneous; and may adopt, reject or modify the report wholly or in any part, or recommit it with instructions. [Report 1943]

See also ch 624
Time computed, §4.1 (22)

215. Voluntary dismissal. A party may, without order of court, dismiss his own petition, counterclaim, cross-petition or petition of intervention, at any time before the trial has begun. Thereafter a party may dismiss his action or his claim therein only by consent of the court which may impose such terms or conditions as it deems proper; and it shall require the consent of any other party asserting a counterclaim against the movant, unless that will still remain for an independent adjudication. A dismissal under this rule shall be without prejudice, unless otherwise stated; but if made by any party who has previously dismissed an action against the same defendant, in any court of any state or of the United States, including or based on the same cause, such dismissal shall operate as an adjudication against him on the merits, unless otherwise ordered by the court, in the interests of justice. [Report 1943]

Referred to in R.C.P. 217
See also ch 624

215.1. Uniform rule for dismissal for want of prosecution. It is the declared policy that in the exercise of reasonable diligence every civil and special action, except under unusual circumstances, shall be brought to issue and tried within one year from the date it is filed and docketed and in most instances within a shorter time.

All cases at law or in equity where the petition has been filed more than one year prior to July 15 of any year shall be for trial at any time prior to January 1 of the next succeeding year. The clerk shall prior to August 15 of each year give notice to counsel of record as provided in rule 82 of:

(*a*) the docket number,
(*b*) the names of parties,
(*c*) counsel appearing,
(*d*) date of filing petition,

and the notice shall state that such case will be for trial and subject to dismissal if not tried prior to January 1 of the next succeeding year pursuant to this rule. All such cases shall be assigned and tried or dismissed without prejudice at plaintiff's costs unless satisfactory reasons for want of prosecution or grounds for continuance be shown by application and ruling thereon after notice and not ex parte. This rule shall not apply to cases (*a*) pending on appeal from a court of record to a higher court or under order of submission to the court; (*b*) in which proceedings subsequent to judgment or decree are pending; (*c*) which have been stayed pursuant to the Soldiers and Sailors Civil Relief Act [40 Stat. L. 440; now covered by 50 USC App. §501 et seq.]; (*d*) where a party is paying a claim pursuant to written stipulation on file or court order; and (*e*) awaiting the action of a referee, master or other court appointed officer; provided, however, that a finding as to "*a*" through "*e*" is made and entered of record. The case shall not be dismissed if there is a timely showing that the original notice and petition have not been served and that the party resisting dismissal has used due diligence in attempting to cause process to be served.

No continuance under this rule shall be by stipulation of parties alone but must be by order of court. Where appropriate the order of continuance shall be to a date certain.

The trial court may, in its discretion, and shall upon a showing that such dismissal was the result of oversight, mistake or other reasonable cause, reinstate the action or actions so dismissed. Application for such reinstatement, setting forth the grounds therefor, shall be filed within six months from the date of dismissal. [Report 1961; amended by 61GA, ch 487,§2; amendment 1969; amendment 1975]

See also ch 624

216. Involuntary dismissal. A party may move for dismissal of any action or claim against him or for any appropriate order of court, if the party asserting it fails to comply with these rules or any order of court. After the plaintiff has completed his evidence, a defendant may move for dismissal because plaintiff has shown no right to relief, under the law or facts, without waiving his right to offer evidence thereafter. [Report 1943; amendment 1967]

See also ch 624

217. Effect of dismissal. All dismissals not governed by rule 215 or not for want of jurisdiction or improper venue, shall operate as adjudications on the merits unless they specify otherwise. [Report 1943]

See also ch 624

218. Costs of previously dismissed action. Where a plaintiff sues on a cause of action that was previously dismissed against the same defendant in any court of any state or the United States the court may stay such suit until the costs of the prior action are paid. [Report 1943]

See also ch 624

(B) Judgments generally

219. Judgment defined. Every final adjudication of any of the rights of the parties in an action is a judgment. [Report 1943]

See also ch 624

220. For part—in abatement. A party who succeeds in part only may have judgment expressly for the part on which he succeeds, and against him as to the rest. The findings and judgment must distinguish between matter in abatement and bar; and a judgment in abatement and not on the merits must so declare. [Report 1943]

Bar or abatement, see also rule 103.

See also ch 624

221. As to some parties only. Where the action involves two or more parties, the court may, in its discretion, and though it has jurisdiction of them all, render judgment for or against some of them only, whenever the prevailing party would have been entitled thereto had the action involved him alone, or whenever a several judgment is proper; leaving the action to proceed as to the other parties. [Report 1943]

See also rule 74.

See also ch 624

222. Judgment on the pleadings, etc. Any party may, at any time, on motion, have any judgment to which he is entitled under the uncontroverted facts stated in all the pleadings, or on any portion of his claim or defense which is not controverted, leaving the action to proceed as to any other matter of which such judgment does not dispose. [Report 1943]

See also ch 624

223. On verdict. The clerk must forthwith enter judgment upon a verdict when filed, unless it is special, or the court has ordered the case reserved for future argument or consideration. [Report 1943]

For judgment on special verdict, see rule 205.

For judgment on election by standing on or failing to amend pleading, see rule 87.

Referred to in R.C.P. 250
See also ch 624

224. Principal and surety—order of liability. A judgment against principal and surety shall recite the order of their liability upon it. A "surety" includes all persons whose liability on the claim is posterior to that of another. [Report 1943]

See rule 41.

Similar provisions, §§626.17, 626.64
See also ch 624

225. On counterclaim—excess. If any party recovers judgment against an adverse party in excess of a judgment recovered by the latter against him, judgment shall be given for the

excess, with any other affirmative relief to which either may be entitled. [Report 1943]

See also ch 624

226. By agreement. Except in actions for divorce, separate maintenance and annulment of marriage, the clerk shall forthwith enter any judgment upon which all parties agree in open court, or by writing filed with the clerk; and execution may issue forthwith unless otherwise agreed. [Report 1943]

See also ch 624

227. Entry. All judgments and orders must be entered on the record of the court and clearly specify the relief granted or the order made. [Report 1943]

See rule 120.

See also ch 624

227.1. Taxation of costs. Where an action is disposed of without payment, or provision for assessment, of court costs the clerk shall at once enter judgment for costs against the plaintiff. [Report 1961]

See also ch 624

228. Notes surrendered. The clerk shall not, unless by special order of the court, enter or record any judgment based on a note or other written evidence of indebtedness until such note or writing is first filed with him for cancellation. [Report 1943; amendment 1945]

See also ch 624

229. Affidavit of identity. The clerk shall not enter a personal judgment until the creditor, his agent or attorney, files an affidavit stating the full name, occupation and residence of the judgment debtor, to affiant's information and belief. If such residence is in an incorporated place of more than five thousand population, the affidavit shall include the street number of debtor's residence and business address, if any. But a judgment entered or recorded without such affidavit shall not be invalid. [Report 1943]

See also ch 624

(C) Defaults and judgments thereon

230. Default defined. A party shall be in default whenever he (*a*) fails to appear as required in rule 53 or 54, or, has appeared, without thereafter filing any motion or pleading as stated in rule 87; or (*b*) fails to move or plead further as required in rule 86, unless judgment has already resulted under rule 87; or (*c*) withdraws his pleading without permission to replead, or withdraws his appearance or fails to present himself for trial; or (*d*) fails to comply with any order of court or do any act which permits entry of default against him, under any rule or statute. [Report 1943]

Referred to in R.C.P. 231
See also ch 624

231. How entered. If a party not under legal disability or not a prisoner in a reformatory or penitentiary is in default under rule 230 "*a*", the clerk, on demand of the adverse party, must forthwith enter such default of record without any order of court. All other defaults shall be entered by the court. [Report 1943]

See also ch 624

232. Judgment on default. Judgment upon a default shall be rendered as follows:

(*a*) Where the claim is for a sum certain, or which by computation, can be made certain, the clerk, upon request, shall make such computation as may be necessary, and upon affidavit that the amount is due shall enter judgment for that amount, and costs against the party in default.

(*b*) In all cases the court on request of the prevailing party, shall order the judgment to which he is entitled, and the clerk shall enter the judgment so ordered. If no judge is holding court in the county, such order may be made by a judge anywhere in the judicial district as provided in rule 120. The court may, and on demand of any party not in default shall, either hear any evidence or accounting required to warrant the judgment or refer it to a master; or submit it to a jury if proper demand has been made therefor under rule 177. [Report 1943]

See rules 13, 14, 17 and 71 as to hearings on default against incompetents, prisoners, etc., and guardians ad litem therein.

See rules 46 and 47 as to required hearing in defaulted class suit.

See also ch 624

233. Notice — notice of default in certain cases. When any judgment other than one in rem has been taken by default against a party served with notice delivered to another person as provided in rule 56.1 "*a*", the clerk shall immediately give written notice thereof, by ordinary mail to such party at his last known address, or the address where such service was had. The clerk shall make a record of such mailing. Failure to give such notice shall not invalidate the judgment. [Report 1943]

See also ch 624

234. On published service. No personal judgment shall be entered against a person served only by publication or by publication and mailing, as provided in rule 60.1, unless he has appeared. [Report 1943; amendment 1951]

See also ch 624

235. Relief in other cases. The judgment may award any relief consistent with the petition and embraced in its issues; but unless the defaulting party has appeared, it cannot exceed what is demanded against him in the petition as limited by the original notice. [Report 1943]

See also ch 624

236. Setting aside default. On motion and for good cause shown, and upon such terms as the court prescribes, but not ex parte, the court may set aside a default or the judgment

thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. Such motion must be filed promptly after the discovery of the grounds thereof, but not more than sixty days after entry of the judgment. Its filing shall not affect the finality of the judgment or impair its operation. [Report 1943]

For new trial after 60 days, see rules 251–253.

Referred to in R.C.P. 253
See also ch 624

(D) Summary judgments

237. On what claims. Summary judgment may be had under the following conditions and circumstances:

(*a*) *For claimant.* A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the appearance day or after the filing of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(*b*) *For defending party.* A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(*c*) *Motion and proceedings thereon.* The motion shall be filed at least ten days before the time fixed for the hearing. The adverse party prior to the day of hearing may file opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(*d*) *Case not fully adjudicated on motion.* If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(*e*) *Form of affidavits—further testimony—defense required.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or filed therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or oral testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(*f*) *When affidavits are unavailable.* Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(*g*) *Affidavits made in bad faith.* Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(*h*) *Supporting statement and memorandum.* Upon any motion for summary judgment pursuant to rule 237, there shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file and affidavits which support such contentions and a memorandum of authorities. [Report 1943; amendment 1967; amendment 1975]

Referred to in R.C.P. 238, 240
See also ch 624

238. Procedure. Motions and affidavits relating to any claim under rule 237 shall be filed and copies delivered as provided in rule 82 and hearing shall be had thereon as provided in rule 117. [Report 1943; amendment 1967]

See also ch 624
Time computed, §4.1(22)

239. On motion in other cases. Judgments may be obtained on motion by sureties against principals or cosureties for money due because

paid by them as such; by clients against attorneys, by plaintiffs in execution against sheriffs, constables or other officers for money or property collected by them, and for damages; and in all other cases specially authorized by statute. [Report 1943]

Referred to in R.C.P. 240
See also ch 624,§626.19

240. Procedure. If motion under rule 239 is filed in an action already pending, the procedure shall be as in rule 237. Otherwise notice shall be served on the party against whom relief is sought at least ten days before the hearing thereof, stating when the motion will be filed and, in plain ordinary language, its nature and grounds, fixing the time and place of the hearing thereon. If the motion is not filed by the day specified it shall be deemed abandoned, if it is filed the court shall hear it at the time fixed in the notice without further pleadings, and give judgment according to the very right of the matter. [Report 1943; amendment 1967]

For declaratory judgments, a species of special action, see rule 261, et seq.

See also ch 624
Time computed, §4.1(22)

DIVISION X

PROCEEDINGS AFTER JUDGMENT

241. Bill of exceptions.

(*a*) *When necessary.* A bill of exceptions shall be necessary only to effect a showing of material portions of the record of the cause not shown by the court files, entries, or legally certified shorthand notes of the trial, if any.

(*b*) *Affidavits.* Not more than five affidavits in support of any exception may be filed with the bill. Controverting affidavits, not exceeding five, may be filed within seven days thereafter; the court, for good cause shown, may extend the time for filing such affidavits.

(*c*) *Certification — judge — bystanders.* The proposed bill of exceptions shall be promptly presented to the trial judge, who shall sign it if it fairly presents the facts. If he refuses, and counsel so certifies, and at least two bystanders attest in writing that the exceptions are correctly stated, the bill thus certified and attested shall be filed and become part of the record.

(*d*) *Disability.* Whenever the judge or master who tried the cause is for any reason unable to sign a bill of exceptions or certify the shorthand reporter's record, the same may be done by his suecessor, or by any judge of the court in which the proceeding was pending. [Report 1943]

Referred to in R.C.P. 83, 247, 340
See also ch 624

242. New trial defined. A new trial is the re-examination in the same court of any issue of fact or part thereof, after a verdict, or master's report, or a decision of the court. [Report 1943]

See also ch 624

243. Judgment notwithstanding verdict, etc. Any party may, on motion, have judgment in his favor despite an adverse verdict, or the jury's failure to return any verdict:

(*a*) If the pleadings of the opposing party omit to aver some material fact or facts necessary to constitute a complete cause of action or defense and the motion clearly specifies such failure or omission; or

See also rule 244"i".

(*b*) If the movant was entitled to have a verdict directed for him at the close of all the evidence, and moved therefor, and the jury did not return such verdict, the court may then either grant a new trial or enter judgment as though it had directed a verdict for the movant. [Report 1943]

Referred to in R.C.P. 83, 244-250, 349
See also ch 624

244. New trial. The aggrieved party may, on motion, have an adverse verdict, decision or report or some portion thereof vacated and a new trial granted, for any of the following causes, but only if they materially affected his substantial rights:

(*a*) Irregularity in the proceedings of the court, jury, master, or prevailing party; or any order of the court or master or abuse of discretion which prevented the movant from having a fair trial;

(*b*) Misconduct of the jury or prevailing party;

(*c*) Accident or surprise which ordinary prudence could not have guarded against;

(*d*) Excessive or inadequate damages appearing to have been influenced by passion or prejudice;

(*e*) Error in fixing the amount of the recovery, whether too large or too small, in an action upon contract or for injury to or detention of property;

(*f*) That the verdict, report or decision is not sustained by sufficient evidence, or is contrary to law;

(*g*) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial;

(*h*) Errors of law occurring in the proceedings, or mistakes of fact by the court;

(*i*) On any ground stated in rule 243, the motion specifying the defect or cause giving rise thereto. [Report 1943; amendment 1945]

For setting aside defaults, see rule 236; other new trials, see rules 251 and 252.

Referred to in R.C.P. 83, 245-250, 252, 253
See also ch 624.

245. Motion—affidavits. Motion under rules 243 and 244 shall be in writing; and if based on grounds stated in rule 244"*b*", 244"*c*", or 244 "*g*" may be sustained and controverted by affidavits and heard pursuant to rule 116. [Report 1943]

See also ch 624

246. Stay. If motions under rule 243 or 244 or petition under rule 252 are timely filed, the court may, in its discretion and on such terms, if any, as it deems proper order a stay of any or all further proceedings, executions or process to enforce the judgment, pending disposition of such motion or petition. [Report 1943]

Referred to in R.C.P. 253
See also ch 624

247. Time for motions and exceptions. Motions under rules 243 and 244 and bills of exception under rule 241 must be filed within ten days after the verdict, report or decision is filed, or the jury is discharged, as the case may be, unless the court, for good cause shown and not ex parte, grants an additional time not to exceed thirty days. [Report 1943]

Referred to in R.C.P. 335
See also ch 624
Time computed, §4.1(22)

248. Conditional rulings on grant of motion. Any motion may be filed under rule 243 or 244 without waiving the right to file or rely on any other of such motions.

(*a*) If the motion for judgment notwithstanding the verdict provided for in rule 243 is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless otherwise ordered by the supreme court. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the supreme court.

(*b*) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may file a motion for a new trial pursuant to rule 244, not later than ten days after the entry of the judgment notwithstanding the verdict. [Report 1943; amendment 1953; amendment 1973]

See also ch 624

249. Issues tried by consent — amendment. In deciding motions under rule 243 or 244, the court shall treat issues actually tried by express or implied consent of the parties but not embraced in the pleadings, as though they had been pleaded. Either party may then amend to conform his pleadings to such issues and the evidence upon them; but failure so to amend shall not affect the result of the trial. [Report 1943]

Amendments generally, R.C.P. 88
See also ch 624

250. Conditional new trial. The court may permit a party to avoid a new trial under rule 243 or 244 by agreeing to such terms or conditions as it may impose, which shall then be shown of record and a judgment entered accordingly.

Any such term or condition or judgment entered pursuant thereto shall be deemed of no force and effect and the original judgment entered pursuant to rule 223 shall be deemed reinstated in the event of an appeal. [Report 1943; amendment 1953]

See also ch 624

251. Retrial after published notice.

(*a*) *Retrial.* Except in actions for divorce and annulment of marriage, if judgment is entered against a defendant who did not appear and was served only by publication or by publication and mailing, as provided in rule 60.1, he or any person legally representing him may apply for retrial within six months after entry of judgment, and on giving security for costs is then entitled to his defense and trial as though there were no judgment.

(*b*) *New judgment.* After such retrial, the court may confirm the judgment, or modify or set it aside and order a party to restore any money or property remaining in his possession under it, or to repay the value of any money or property he thus received. [Report 1943; amendment 1951]

For effect on title of good faith purchaser, see rule 254.

Referred to in §647.2, R.C.P. 254
See also ch 624
Time computed, §4.1(22)

252. Judgment vacated or modified—grounds. Upon timely petition and notice under rule 253 the court may correct, vacate or modify a final judgment or order, or grant a new trial on any of the following grounds:

(*a*) Mistake, neglect or omission of the clerk;

(*b*) Irregularity or fraud practiced in obtaining the same;

(*c*) Erroneous proceedings against a minor or person of unsound mind, when such errors or condition of mind do not appear in the record;

(*d*) Death of a party before entry of the judgment or order, and its entry without substitution of his proper representative;

(*e*) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(*f*) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial, and was not discovered within the time for moving for new trial under rule 244. [Report 1943]

Referred to in R.C.P. 60, 246, 253, 254, 255
See also ch 683

253. Petition, notice, trial.

(*a*) *Petition.* A petition for relief under rule 252 must be filed in the original action within one year after the rendition of the judgment or order involved. It shall state

the grounds for relief, and, if it seeks a new trial, show that they could not have been discovered in time to proceed under rule 236 or 244, and were discovered afterwards. Unless the pleadings in the original action alleged a meritorious action or defense the petition shall do so. It shall be supported by affidavit as provided in rule 80"*b*".

(*b*) *Notice.* After filing the petition, and also within the year aforesaid, petitioner must serve the adverse party with an original notice in the manner provided in division III of these rules.

(*c*) *Trial.* The court shall promptly assign the petition for trial, not less than twenty days after notice is served. The petition shall stand denied without answer; otherwise the issues and pleadings, and form and manner of the trial shall be the same, as nearly as may be, as in the trial of an ordinary action to the court, and with the same right of appeal. No new cause of action shall be introduced.

(*d*) *Preliminary determination.* The court may try and determine the validity of the grounds to vacate or modify a judgment or order before trying the validity of the cause of action or defense claimed.

(*e*) *Judgment.* After a stay under rule 246 if the original judgment or order is affirmed, additional judgment shall be entered against the petitioner for the costs of the trial, and also, in the court's discretion, for damages not exceeding ten percent of the judgment affirmed. [Report 1943]

Referred to in R.C.P. 60, 252, 254, 255
See also ch 683

253.1. Disposition of exhibits. One year after the final determination of a case, the clerk may destroy all exhibits filed with him provided that he shall notify counsel of record in writing that the exhibits will be destroyed unless receipted for within sixty days thereafter. [Report 1965]

See also ch 683

254. Titles and liens protected.

(*a*) The title of a good faith purchaser to property sold under the original judgment shall not be affected or impaired by any judgment, order or proceeding under rules 251 to 253, inclusive.

(*b*) If the original judgment is merely modified pursuant to either of said rules, all liens or securities obtained under it shall be preserved in the modified judgment. [Report 1943]

Referred to in R.C.P. 255
See also ch 683

255. Other proceedings not invoked.

Code sections 12255–12257, inclusive [Code 1939] shall not be invoked. Rules 252, 253 and 254 shall apply in lieu thereof. [Report 1943]

See also ch 646

256. Judgment discharged on motion. Where matter in discharge of a judgment has arisen since its rendition, the defendant or any interested person may, on motion in a summary way, have the same discharged in whole or in part, according to the circumstances. [Report 1943]

See also ch 624

257. Fraudulent assignment — motion. The court may, on motion, inquire into the assignment of a judgment, or its entry to the use of any party, and cancel the assignment or strike out such use, in whole or in part, whenever it determines the same to be inequitable, fraudulent or done in bad faith. [Report 1943]

See also ch 624

258. Execution—duty of officer. An officer receiving an execution must execute it with diligence. He shall levy on such property of the judgment debtor as is likely to bring the exact amount, as nearly as practicable. He may make successive levies if necessary. He shall collect the things in action, by suit in his own name if need be, or sell them. He shall sell sufficient property levied on to satisfy the execution, paying the proceeds, less his own costs, to the clerk. [Report 1943]

Analogous provision, §639.26
Sales legalized, §588.1
See also ch 626

259. Endorsement. The officer shall endorse on the execution, the day and hour he receives it; and the levy, sale, or other act done by virtue of it, with the date thereof; and the date and amount of any receipts or payments toward its satisfaction. Each endorsement shall be made at the time of the act or receipt; but no levy or sale under the execution shall be impaired by failure to make any such endorsement at the time here provided. [Report 1943]

Sales legalized, §588.1
See also ch 626

260. Levy on personalty. Levy on personalty may be made under an attachment or general execution by either of the following methods, but no lien is created until compliance with one of them.

(*a*) By the officer taking possession of the property, and appending to the execution its exact description at length, with the date of the levy, and affixing his signature; or

(*b*) If the creditor or his agent first so requests in writing, the officer may view the property, inventory its exact description at length, and append such inventory to the execution, with his signed statement of the number and title of the case, the amount claimed under the execution, the exact location of the property and in whose possession and the last known address of the judgment debtor; and, if the property is consumer goods or if the judgment debtor is not a resident of this state, file with the county recorder of the county where the property is located his certified transcript of such inventory and statement; and, in all other cases, file with the secretary of state his certified transcript of such inventory and statement. Such filing shall be accepted by the county recorder or

the secretary of state as a financing statement and shall be marked, indexed and certified in the same manner, and shall be constructive notice of the levy to all persons. Whenever the writ is satisfied or the levy discharged the officer shall file a termination statement with the county recorder or secretary of state. The fees normally charged by the county recorder or secretary of state for the filing of a financing statement and the filing of a termination statement shall be paid by the officer and shall be taxed by him as a part of his costs of the levy. [Report 1943; amendment 1967; amendment 1975]

See also ch 626

DIVISION XI

DECLARATORY JUDGMENTS

261. Declaratory judgments permitted. Courts of record within their respective jurisdictions shall declare rights, status, and other legal relations whether or not further relief is or could be claimed. It shall be no objection that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form or effect, and such declarations shall have the force and effect of a final decree. The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The enumeration in the next three rules does not limit or restrict the exercise of the general power herein referred to. [Report 1943]

Referred to in R.C.P. 267, 268, 269
See also ch 624

262. Construing contracts, etc. Any person interested in a contract, oral or written, or a will, or whose rights, status or other legal relations are affected by a statute, or any municipal ordinance, rule, regulation, contract or franchise, may have determined any question of the construction or validity thereof or arising thereunder, and obtain a declaration of rights, status or legal relations thereunder. [Report 1943]

Referred to in R.C.P. 267, 268, 269
See also ch 624

263. Before or after breach. A contract may be construed either before or after there has been a breach thereof. [Report 1943]

Referred to in R.C.P. 267, 268, 269
See also ch 624

264. Fiduciaries, beneficiaries. Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust, in the administration of a trust or the estate of a decedent, insolvent, an infant or other person for whom a guardian has been appointed, may have a declaration of rights or legal relations in respect thereto:

(*a*) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

(*b*) To direct executors, administrators, guardians, trustees or other fiduciaries, to do or abstain from doing any particular act in their fiduciary capacity; or

(*c*) To determine any question arising in the administration of the estate, guardianship or trust, including questions of construction of wills and other writings. [Report 1943]

Referred to in R.C.P. 267, 268, 269
See also ch 624

265. Discretionary. The court may refuse to render a declaratory judgment or decree where it would not, if rendered, terminate the uncertainty or controversy giving rise to the proceeding. [Report 1943]

Referred to in R.C.P. 267, 268, 269
See also ch 624

266. Supplemental relief. Supplemental relief based on a declaratory judgment may be granted wherever necessary or proper. The application therefor shall be by petition in the original case. If the court deems the petition sufficient, it shall, on such reasonable notice as it prescribes, require any adverse party whose rights have been adjudicated to show cause why such relief should not be granted forthwith. [Report 1943]

Referred to in R.C.P. 267, 268, 269
See also ch 624

267. Review. All orders, judgments or decrees under rules 261–266 inclusive, may be reviewed as other judgments, orders or decrees. [Report 1943]

Referred to in R.C.P. 268, 269
See also ch 624

268. Jury trial. The right of trial by jury shall not be abridged or extended by rules 261–267. [Report 1943]

Referred to in R.C.P. 269
See also ch 624

269. "Person." The word "person", in rules 261–268, shall include any individual or entity capable of suing or being sued under the laws of Iowa. [Report 1943]

See also ch 624

DIVISION XII

PARTITION OF REAL AND PERSONAL PROPERTY

See also chapter 651 of the Code

270. The action—pending probate. Real or personal property may be partitioned by equitable proceedings. Where the entire interest in real estate is owned by a decedent on whose estate administration or probate is pending, the action cannot be begun until six months after the second publication of the notice of the appointment of the personal representative, nor at any time while an application for authority to sell such real estate is pending in the probate proceeding. [Report 1943; amendment 1967]

See also ch 651

271. Petition. The petition shall describe the property and plaintiff's interest therein. It shall name the other owners and all indispensable lienholders as defined in rule 273"*a*",

and state the nature and extent of each interest or lien, all so far as known. [Report 1943]

See also ch 651

272. Abstracts. The court may order a complete abstract to be filed covering any real estate involved, requiring that any party produce any abstract he has or controls, and that plaintiff complete the same, or supply the whole if no part is available. The expense thereof shall be taxed as costs. Such abstracts shall be available for use of the court or any party during the proceedings. A like order may be made as to plats and surveys. [Report 1943]

See also ch 651

273. Parties.

(*a*) *Indispensable parties.* All owners of undivided interests, and all holders of liens against less than the entire property are indispensable parties to any partition. All holders of any liens on personalty are also indispensable to its partition.

(*b*) *Optional parties.* Other persons having actual, apparent, claimed or contingent interests, and holders of liens on the entire real estate, may also be made parties. [Report 1943]

Referred to in R.C.P. 271
See also ch 651

274. Early appearance. After a petition is filed seeking partition of personalty only, the court may order appearance and hearing at any specified time and place in the judicial district on not less than five days' personal service of original notice on all defendants. [Report 1943]

See also ch 651

275. Joinder and counterclaim. Except as permitted by this rule there shall be no joinder of any other cause of action and no counterclaim. But any party may perfect or quiet title to the property, or have an adjudication of the rights of any or all parties as to any or all matters growing out of or connected with it, including liens between them. Real and personal property owned by the same persons may be partitioned in the same action; and the same referee may act as to both. [Report 1943]

See also ch 651

276. Jurisdiction of property—proceeds. The property or its proceeds shall be subject to the order of the court until the right becomes fully vested. After a sale, each party, including holders of liens from which the property has been freed by the sale, shall have the same rights or interests in the proceeds as they had in the property sold, subject to a prior charge for costs. [Report 1943]

See also ch 651

277. Estate less than fee. The court shall make suitable provision as to the proceeds of any share held for life or years or in remainder, which may be done by appointing a trustee for the proceeds involved. [Report 1943]

See also ch 651

278. Division or sale. Property shall be partitioned by sale and division of the proceeds, unless a party prays for partition in kind by its division into parcels, and shows that such partition is equitable and practicable. But personalty which is subject to any lien on the whole or any part can only be partitioned by sale. [Report 1943]

See also ch 651

279. Decree. The decree shall establish the shares and interests of the owners in the property. A decree for partition in kind shall appoint three referees unless the parties agree on a smaller number. A decree ordering a sale shall appoint one or more referees, and three disinterested freeholders to appraise the property, and may direct either a public or private sale. All other matters involved in the cause, including those relating to liens, may be determined by the same decree, or later supplemental decree or decrees. [Report 1943]

Sale for less than appraisement, see rule 291.

See also ch 651

280. Liens. The court shall by supplemental decree, adjudge the nature, extent, priority or validity of any lien of any party, not previously determined, after causing the referees to give such notice to the interested parties as it may prescribe, and upon issues made up as the court directs. No partition in kind shall be had until after such adjudication; but a sale need not wait thereon, and the pendency of any such controversy shall not delay distribution of the proceeds to any party not affected by the lien. [Report 1943]

See also ch 651

281. Sale free of liens. Personalty must be sold free of liens. Real property must be sold free of all liens, except those which are held against the entire property sold. [Report 1943]

For initial or supplemental decree as to liens, see rules 279 and 280.

See also ch 651

282. Possession and preservation of property. The court may order the referee to lease or take possession of any property involved in the action. It may also preserve the property either by injunction or by any other appropriate provision for its care and custody. Expenses incurred under this rule, when allowed by the court, shall be part of the costs. [Report 1943]

See also ch 651

283. Referees to divide — oath — inability. Referees authorized to make partition in kind shall qualify by taking oath and need give no bond. If they are unable to make such division, they shall so report to the court, which will then order a sale of personal property

without further notice. As to real estate, such report will be heard under rule 286, whereupon any further decree of sale or otherwise, may be made which is proper under the exigencies of the case. [Report 1943]

See also ch 651

284. Partition in kind. The referees who partition real estate in kind shall mark out each parcel by visible monuments, and file report thereof. They may employ a surveyor or assistants to aid them, if necessary, whose fees and expenses, when allowed by the court, shall be part of the costs. [Report 1943]

See also ch 651

285. Specific allotment. The court may, for good reasons shown, order referees making a partition in kind to allot a particular tract or article to a particular party. [Report 1943]

See also ch 651

286. Report — notice — hearing. Referees shall file a report of their proposed partition in kind, describing with reasonable particularity the respective shares and the specific property allotted to each owner, with a plat of any real estate involved. The court shall promptly fix a time and place of hearing thereon, and the referee shall give at least ten days' notice thereof in such manner as the court directs. On hearing, the court may approve, modify or disapprove the report, and refer it to the same or different referees or order a sale. [Report 1943]

Referred to in R.C.P. 288
See also ch 651

287. Decree—recording.

(*a*) *Decree—costs.* On approving a partition in kind, the court shall enter a decree allotting each party the property or share set off to him, apportioning the costs among the allottees and entering judgment against each for his share thereof, which shall be a lien on the property allotted to him, and for which special execution may issue on demand of anyone interested.

Further as to costs, see rule 293.

(*b*) *Recording.* If the decree involves real estate, the clerk shall file with the recorder of his own county and each other county where any of the real estate lies, a certified transcript of so much of the decree as shows the book and page where it is recorded, the confirmation of the shares and interests in the property apportioned, the names of the parties found entitled to share therein, and an accurate description of each parcel allotted to each several owner. Such transcript shall be presented to the county auditor for transfer, and recorded in the deed records, and indexed as a conveyance of each parcel, with the name of the allottee as grantee and names of all other parties as grantors. [Report 1943]

Referred to in R.C.P. 293
See also ch 651

288. Referees to sell—bond. A referee to make sale shall qualify by taking oath. No bond shall be required before the referee conveys real estate unless he is to sell personalty or take possession of real estate or is to receive a payment on the sale before conveyance, in which case, he shall give such bond as the court directs. Before conveying real estate, he shall also give bond for one hundred twenty-five percent of the total sale price, payable to the parties entitled to the proceeds, conditioned for the faithful discharge of his duties in connection with the sale and its proceeds. [Report 1943; amendment 1945]

See also ch 651

289. Sales—notice—expense—approval.

(*a*) *Approval.* All sales shall be subject to the approval of the court, unless it dispenses with approval of a public sale of personalty, which may then be sold on full payment of the price bid.

(*b*) *Expense.* If authorized by the court, referees may advertise the sale beyond the required notice, or employ an auctioneer, clerk or assistant; and the expense thereof when allowed by the court, shall be part of the costs.

(*c*) *Notice of public sale.* The referees shall give notice of the time and place of any public sale, by two publications, at least six days apart, in some newspaper of general circulation in the county where the sale is to be held. The last publication shall be at least seven days prior to the sale in case of real estate, and at least four days prior thereto in case of personalty. [Report 1943]

Notice, §626.74 et seq.
See also ch 651

290. Report of sale—notice.

(*a*) *Generally.* The referees shall report all proposed sales to the court, which in its discretion, may require a hearing thereon at a specified time and place, in which event the referees shall give notice to the interested parties as the court then directs.

(*b*) *Notice mandatory.* Such notice and hearing must be accorded to any party who, before the report is approved, files with the clerk, a duplicate request therefor, bearing his name and the address to which notice is to be sent. The clerk shall docket the request, and transmit the copy to any referee forthwith, or if none has been appointed, then as soon as appointment is made. The referee shall mail notice of the hearing to such party at his address shown in the request within a time prescribed by the court, which may direct that other parties be also notified. [Report 1943]

See also ch 651

291. Approving sale—conveyance. The court by express order may approve a private sale though it be for less than the appraised value. No real estate shall be conveyed until the

sale is approved by the court; and no conveyance shall be made until the price is fully paid. [Report 1943]

See also ch 651

292. Deed — validity. A referee's deed, recorded in the county where the land lies, shall be valid against all subsequent purchasers, and against all persons interested at the time, who were parties to the proceeding. [Report 1943]

See also ch 651

293. Costs. All costs shall be advanced by the plaintiff, but eventually paid by all parties proportionately to their interests; except costs created by contests, which shall be taxed against the losing contestant unless otherwise ordered. No contest shall deprive plaintiff's attorney of the fee specified in rule 294. If partition is in kind, costs shall be adjudged, and may be collected as provided in rule 287"*a*". If partition is by sale, the costs shall be paid from the proceeds and deducted from the shares of the parties against whom they are taxed. These remedies for collecting costs shall be cumulative of other remedies. [Report 1943]

See also ch 651

294. Attorney fees. On partition of real estate, but not of personalty, the court shall fix, and tax as costs, a fee in favor of plaintiff's attorney, which cannot exceed the following amount, computed on the sale price, or by appraisement if no sale is made:

1. On the first two hundred dollars or fraction thereof obtained, ten percent;

2. On the excess of two hundred to five hundred dollars, five percent;

3. On the excess of five hundred to one thousand dollars, three percent; and

4. On all sums in excess of one thousand dollars, two percent. Provided further that in contested partition cases, plaintiff's attorney shall receive such additional reasonable compensation as the court may allow, to be taxed as part of the costs. [Report 1943; amendment 1955]

Referred to in R.C.P. 293
See also ch 651

295. Other fees. Appraisers and referees in all partition suits, as well as any attorney employed by a referee with approval of the court, shall receive such reasonable compensation as the court allows, which shall be part of the costs. [Report 1943]

See also ch 651

296. Final reports. Unless all interested parties waive it in writing, the court shall fix a time and place of hearing the referee's final report, and prescribe the time and manner of notice which the referees shall give to all interested persons. [Report 1943]

See also ch 651

297. Paying small sums. Whenever a minor, having no legal guardian, is entitled to proceeds of a partition sale, not in excess of one thousand dollars, the court may order the referee discharged of all liability therefor, by paying them to the minor's parent or natural guardian, or the person with whom he resides, for the use of such minor, and taking a receipt therefor. [Report 1943; amendment 1961; amendment 1973]

See also ch 651 and §§633.108, 633.676, 633.678, 633.681

298. Unborn parties. When a person not in being may have a contingent or a prospective vested interest as a cotenant of real estate, the court shall have jurisdiction over the interest of such person, and shall appoint a suitable guardian ad litem, to act for him in such proceeding, and rules 12 to 14 shall apply in such cases. The decree of partition and the division or sale thereunder shall be of the same force and effect as to all such persons, or persons claiming by, through or under them, as though they were in being when the decree was entered, and the property or proceeds of the interest of such person shall be subject to the order of the court until the right thereto becomes fully vested. [Report 1943]

See also ch 651

DIVISION XIII

QUO WARRANTO

See also chapter 660 of the Code

299. For what causes. A civil action in the nature of quo warranto, triable by equitable proceedings, may be brought in the name of the state against any defendant who is:

(*a*) Unlawfully holding or exercising any public office or franchise in Iowa, or an office in any Iowa corporation; or

(*b*) A public officer who has done or suffered to be done, an act which works a forfeiture of his office; or

(*c*) Acting as a corporation in Iowa without being authorized by law so to act; or

(*d*) A corporation exercising powers not conferred by law, or doing or omitting acts, which work a forfeiture of its corporate rights or privileges; or

(*e*) A person or corporation claiming under a patent, permit, certificate of convenience and necessity or license of any nature which was granted by the state because of fraud, or mistake or ignorance of a material fact, or the terms of which have expired or been violated by the defendant, or which the defendant has in any manner forfeited. The action in such cases shall be to annul or vacate the patent, permit, certificate or license in question. [Report 1943]

See also ch 660

300. By whom brought.

(*a*) The county attorney of the county where the action lies may bring it in his discretion, and must do so when directed by the governor, general assembly or the supreme or district court, unless he may be a defend-

ant, in which event the attorney general may, and shall when so directed, bring the action.

(*b*) If on demand of any citizen of the state, the county attorney fails to bring the action, the attorney general may do so, or such citizen may apply to the court where the action lies for leave to bring it. On leave so granted, and after filing bond for costs in an amount fixed by the court, with sureties approved by the clerk, the citizen may bring the action and prosecute it to completion. [Report 1943]

See also ch 660

301. No joinder or counterclaim. In such action there shall be no joinder of any other cause of action, and no counterclaim. [Report 1943]

See also ch 660

302. Petition. The petition shall state the grounds on which the action is brought, and if it involves an office, franchise or right claimed by others than the defendant, it shall name them; and they may be made parties. [Report 1943]

See also ch 660

303. Judgment.

(*a*) The judgment shall determine all rights and claims of all parties respecting the matters involved, and shall include any provision necessary to enforce their rights as so determined, or to accomplish the objects of the decision.

(*b*) The judgment shall also determine which party, if any, is entitled to hold any office in controversy.

(*c*) If a party is unlawfully holding or exercising any office, franchise or privilege, or if a corporation has violated the law by which it exists or been guilty of any act or omission which amounts to a surrender or forfeiture of its privileges, the judgment shall oust such party from such office or franchise, or forfeit such privilege, and forbid such party to exercise or use any such office, franchise or privilege.

(*d*) If a party has merely exercised powers or privileges to which he was not entitled, but which does not warrant forfeiture under the law, the judgment shall prohibit him from the further exercise thereof. [Report 1943]

Manner of qualifying, ch 63
See also ch 660

304. Costs.

(*a*) Judgment against any defendant or intervenor shall include judgment for the costs of the action. Judgment against a pretended corporation shall adjudge the costs against the person or persons acting as such.

(*b*) If the action fails, the court may adjudge the costs against any private individual who brought it; otherwise they shall be paid as provided by the statutes governing costs in criminal cases. [Report 1943]

See also ch 660

305. Corporation dissolved. If the judgment dissolves a corporation, the court shall make appropriate orders for the dissolution as provided by the statutes in force. [Report 1943]

See also ch 660

DIVISION XIV

CERTIORARI

306. When writ may issue. A writ of certiorari shall only be granted when specifically authorized by statute; or where an inferior tribunal, board or officer, exercising judicial functions, is alleged to have exceeded its, or his proper jurisdiction or otherwise acted illegally. [Report 1943]

307. Title. The petition shall be entitled in the name of the petitioner as plaintiff, against the inferior tribunal, board or officer as defendant. [Report 1943]

308. Other remedies. The writ shall not be denied or annulled because plaintiff has another plain, speedy or adequate remedy; but the relief by way of certiorari shall be strictly limited to questions of jurisdiction or illegality of the acts complained of, unless otherwise specially provided by statute. [Report 1943]

See also rule 107 as to treating petition as one for other proper relief.

309. The writ. The writ may be granted only by the district court unless it is directed to that court or a municipal or superior court; and then by the supreme court or a justice thereof. It shall be issued by the clerk of the court where the petition is filed, under its seal. It shall command the defendant to certify to that court, at a specified time and place, a transcript of so much of defendant's records and proceedings as are complained of in the petition or as may be pertinent thereto, together with the facts of the case, describing or referring to them or any of them with convenient certainty; and also to have then and there the writ. [Report 1943]

310. Stay—bond. The court or justice granting the writ may, in its or his discretion, stay the original proceedings, though no stay is asked. Such stay, when sought by plaintiff, can be granted only on his filing bond with penalty and conditions, including security for costs, prescribed by such court or justice, and sureties approved by it or its clerk. [Report 1943]

311. Notice of issuing writ. The writ may issue without notice on filing the petition, unless it is filed before a final order or decree in the original proceedings, or the plaintiff seeks a stay. Before issuing the writ in the latter cases, the court or justice shall, and in any case may in his discretion, fix a time and place for hearing and prescribe reasonable notice to defendant thereof. Such hearing shall be confined to the sufficiency of the petition,

what records or proceedings shall be certified, and the terms of any bond to be given. [Report 1943]

312. Service of writ. Unless the defendant accepts service of the writ, it shall be served by a sheriff or deputy sheriff. If directed to a court, service shall be on a judge or clerk thereof; if to a board or other tribunal on its secretary, clerk or any member. Service shall be by delivery of the original writ; and a copy, with return of service, shall be returned to the office of its issuance. [Report 1943]

Personal service, R.C.P. 56.1

313. Return to writ—by whom. Where the writ is directed to a court, return thereto, if practicable, shall be made and signed by the judge whose action is complained of, otherwise by any judge of that court; where directed to an officer, he shall make and sign the return; where directed to a board or tribunal, return thereto shall be made and signed by its presiding officer, or its clerk or secretary. [Report 1943]

314. Defective return. If the return is defective, the court or justice who issued the writ, on his own motion or that of any party, may order a further return; or compel obedience to the writ or to such order, by attachment or citation for contempt. [Report 1943]

315. Trial. When full return has been made, the court shall fix a time and place of hearing, and hear the parties upon the record made by the return. In its discretion, it may receive any transcript of the evidence taken in the original proceeding, and such other oral or written evidence as is explanatory of the matters contained in the return. Such transcript and additional evidence shall be considered for the sole purpose of determining the legality of the proceedings, and the sufficiency of the evidence before the original tribunal, board or officer to sustain its, or his action, unless otherwise specially provided by statute. [Report 1943]

316. Judgment limited. Unless otherwise specially provided by statute, the judgment on certiorari shall be limited to sustaining the proceedings below, or annulling the same wholly or in part, to the extent that they were illegal or in excess of jurisdiction, and prescribing the manner in which either party may proceed further, nor shall such judgment substitute a different or amended decree or order for that being reviewed. [Report 1943]

317. Nature of proceeding. The action shall be by ordinary proceedings, so far as applicable. [Report 1943]

318. Appeal. Appeal to the supreme court lies from a judgment of the district court in a certiorari proceeding, and will be governed by the rules applicable to appeals in ordinary actions. [Report 1943]

319. Limitation. No writ of certiorari shall issue or be sustained unless the petition is filed within thirty days from the time the inferior tribunal, board or officer exceeded its jurisdiction or otherwise acted illegally. [Report 1943; amendment 1973]

Time computed, §4.1 (22)

DIVISION XV
INJUNCTIONS

320. Independent or auxiliary remedy. An injunction may be obtained as an independent remedy by an action in equity, or as an auxiliary remedy in any action. In either case, the party applying therefor may claim damages or other relief in the same action. An injunction may be granted as part of the judgment; or may be granted by order at any prior stage of the proceedings, and is then known as a temporary injunction. [Report 1943]

Referred to in §§20.11, 20.12

321. Temporary—when allowed. A temporary injunction may be allowed:

(*a*) When the petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure him, or,

(*b*) Where, during the litigation, it appears that a party is doing, procuring or suffering to be done, or threatens or is about to do, an act violating the other party's right respecting the subject of the action and tending to make the judgment ineffectual, or,

(*c*) In any case specially authorized by statute. [Report 1943]

For injunctions in interpleader actions, see rule 39.

Referred to in §§20.11, 20.12

322. Endorsing refusal. A court, or justice of the supreme court, refusing a temporary injunction shall endorse the refusal on the petition therefor. [Report 1943]

Referred to in §§20.11, 20.12

323. Statement re prior presentation. A petition seeking a temporary injunction shall state, or the attorney shall certify thereon, whether a petition for the same relief, or part thereof, has been previously presented to and refused by any court or justice, and if so, by whom and when. [Report 1943]

Referred to in §§20.11, 20.12

324. Outside district. No temporary injunction shall be granted by a district court different from the one where the action is, or will be, pending, except upon affidavit that the application therefor cannot be promptly made to the latter court. [Report 1943]

Referred to in R.C.P. 325, 328, §§20.11, 20.12

325. By whom granted. A temporary injunction may be granted by:

(*a*) The court in which the action is or will be pending;

(*b*) The supreme court or a justice thereof;

(*c*) Any other district court, when permitted by rule 324. [Report 1943]

Referred to in §§20.11, 20.12

326. Notice. Before granting a temporary injunction, the court may require reasonable notice of the time and place of hearing therefor to be given the party to be enjoined. Such notice and hearing must be had for a temporary injunction to stop the general and ordinary business of a corporation, or the operations of a railway or of a municipal corporation, or the erection of a building or other work, or the board of supervisors of a county, or to restrain a nuisance. [Report 1943]

Referred to in §§20.11, 20.12

327. Bond. The order directing a temporary injunction must require that before the writ issues, a bond be filed, with a penalty to be specified in the order, which shall be one hundred twenty-five percent of the probable liability to be incurred. Such bond with sureties to be approved by the clerk, shall be conditioned to pay all damages which may be adjudged against the petitioner by reason of the injunction. But in actions for divorce,* separate maintenance or annulment of marriage, the court in its discretion may waive any bond, or fix its penalty in any amount deemed just and reasonable. [Report 1943]

Referred to in §§20.11, 20.12
*See ch 598

328. Dissolution. A party against whom a temporary injunction is issued without notice may, at any time, move the court where the action is pending to dissolve, vacate or modify it. Such motion shall be submitted to that court. But if the injunction was granted by a justice or court of a different district under rule 324, the court or justice that ordered it shall hear the motion, if it be shown by affidavit, that prompt hearing cannot be obtained in the court where the action is pending. [Report 1943]

Referred to in §§20.11, 20.12

329. Enjoining proceedings or judgment — venue — bond. An action seeking to enjoin proceedings in a civil action, or on a judgment or final order, must be brought in the county and court where such proceedings are pending or such judgment or order was obtained, unless that be the supreme court, in which case the action must be brought in the court from which appeal was taken. Any bond in such action must be further conditioned to pay or comply with such judgment or order, or to pay any judgment that may be recovered against the petitioner on the cause of action enjoined. [Report 1943]

Referred to in §§20.11, 20.12

330. Violation as contempt. Violation of any provision of any temporary or permanent injunction shall constitute contempt and be punished accordingly. [Report 1943]

Referred to in §§20.11, 20.12
Contempts, ch 665

DIVISION XVI

APPELLATE PROCEDURE

Referred to in R.C.P. 371, 381

(Supreme Court may amend rules in this division without report to general assembly except rules 331 to 339)

See also chapter 686 of the Code

331. From final judgment.

(*a*) All final judgments and decisions of courts of record, and any final adjudication in the trial court under rule 86 involving the merits or materially affecting the final decision, may be appealed to the supreme court, except as provided in this rule and in rule 333. For the purpose of this rule any order granting a new trial (not including an order setting aside a judgment by default other than in actions for divorce* or annulment) and any order denying a new trial shall be deemed a final decision. Any order setting aside a default decree of divorce* or annulment shall also be deemed a final decision.

(*b*) No interlocutory ruling or decision may be appealed, except as provided in rule 332, until after the final judgment or order. No error in such interlocutory ruling or decision is waived by pleading over, or proceeding to trial. On appeal from the final judgment, there may be assigned as error such interlocutory ruling or decision or any final adjudication in the trial court under rule 86 from which no appeal has been taken, where such ruling, decision, or final adjudication is shown to have substantially affected the rights of the complaining party. [Report 1943; amendment 1945; amendment 1951]

Referred to in R.C.P. 332, 335, 353, 371
*See ch 598
See also ch 686 and Supreme Court rules

332. From interlocutory orders.

(*a*) Any party aggrieved by an interlocutory ruling or decision, including one appearing specially whose objections to jurisdiction have been overruled, may apply to the supreme court or any justice thereof to grant an appeal in advance of final judgment. Such appeal may be granted, after notice, and hearing as provided in rules 347 and 353, on finding that such ruling or decision involves substantial rights and will materially affect the final decision, and that a determination of its correctness before trial on the merits will better serve the interests of justice. No such application is necessary where the appeal is, pursuant to rule 331, from a final adjudication in the trial court under rule 86.

(*b*) The order granting such appeal may be on terms of advancing it for prompt submission. It shall stay further proceedings below, and may require bond. [Report 1943; amendment 1945]

Referred to in R.C.P. 331, 335, 336, 352, 353, 371
See also ch 686 and Supreme Court rules

333. Amount in controversy. Except where the action involves an interest in real estate, no appeal shall be taken in any case where the amount in controversy, as shown by the

pleadings, is less than one thousand dollars, unless the trial judge, within thirty days after the judgment or order is entered, certifies that the cause is one in which appeal should be allowed. The right of appeal is not affected by any remission of any part of the verdict or judgment. [Report 1943; amendment 1969]

Referred to in R.C.P. 331, 353, 371
See also ch 686 and Supreme Court rules

334. Scope of review. Review in equity cases shall be de novo. In all other cases the supreme court shall constitute a court for correction of errors at law; and findings of fact in jury-waived cases shall have the effect of a special verdict. [Report 1943]

Referred to in R.C.P. 353, 371
See also ch 686 and Supreme Court rules

335. Time for appeal.

(*a*) Appeals to the supreme court must be taken within, and not after, thirty days from the entry of the order, judgment or decree, unless a motion for new trial or judgment notwithstanding the verdict is filed as provided in rule 247 or a motion as provided in rule 179 "b", and then within thirty days after the entry of the ruling on such motion; provided however that where an application to the supreme court or any justice thereof to grant an appeal under rule 332 is made within thirty days from the date of such ruling or decision any appeal allowed upon such application shall be deemed timely taken.

Provided further that if the supreme court or any justice determines that the order or decision from which application to appeal under rule 332 is timely made is a final judgment or decision from which appeal would lie under rule 331 an appeal therefrom shall also be deemed timely taken and perfected when the order making such determination is filed with the clerk of the supreme court and the provisions of rule 336 "*b*" and "*c*" shall apply.

Provided however a cross-appeal may be taken within said thirty-day period, or in any event within five days after the appeal is taken.

(*b*) No appeal from a judgment, ruling or order taken after it has actually been made by the trial court shall be held insufficient because the clerk of the trial court has not recorded such judgment, ruling or order upon the court records at the time the appeal is taken, if it shall appear that such record has been made prior to ten days after the date on which the appeal is docketed. [Report 1943; amendment 1945; amendment 1949; amendment 1969; amendment 1970; amendment 1974; amendment 1975]

Referred to in R.C.P. 82, 336, 353, 371
See also ch 686 and Supreme Court rules
Time computed, §4.1(23)

336. How taken.

(*a*) Appeal other than those allowed by order under rule 332 or rule 335 is taken and perfected by filing a notice with the clerk of the court where the order, judgment or decree was entered, signed by the appellant or his attorney. It shall specify the parties taking the appeal, and the decree, judgment, order or part thereof appealed from. The appellant shall serve a copy of the notice on each other party or his counsel in the manner prescribed in rule 82"*b*". The notice presented to the clerk of the trial court for filing shall be accompanied by a proof of service in the form prescribed in rule 82"*g*". Promptly after filing the notice of appeal with the clerk of the trial court the appellant shall mail or deliver to the clerk of the supreme court an informational copy of such notice.

(*b*) Interlocutory appeal under rule 332 shall be deemed taken and perfected when the order allowing it is filed with the clerk of the supreme court. No notice of such appeal is necessary. The time for any further proceeding on such appeal which would run from the notice of appeal shall run from the date such order is so filed.

(*c*) The clerk of the supreme court shall promptly transmit a copy of such order to the attorneys of record and the clerk of the trial court. [Report 1943; amendment 1969; amendment 1975; amendment 1976]

Referred to in R.C.P. 335, 353, 371
See also ch 686 and Supreme Court rules

337. Supersedeas—bond.

(*a*) No appeal shall stay proceedings under a judgment or order unless appellant executes a bond with sureties, to be filed with and approved by the clerk of the court where the judgment or order was entered. The condition of such bond shall be that he will satisfy and perform the judgment if affirmed, or any judgment or order, not exceeding in amount or value, the obligation of the judgment or order appealed from, which the supreme court may render or order to be rendered by the trial court; and also all costs and damages adjudged against him on the appeal, and all rents of or damage to property during the pendency of the appeal, of which appellee is deprived by reason of the appeal.

Referred to in §321A.1(2)

(*b*) If the judgment or order appealed from be for money, the penalty of such bond shall be one hundred twenty-five percent of the amount, including costs, unless, in exceptional cases, the trial court fix a larger amount; in all other cases, an amount sufficient to save appellee harmless from the consequences of the appeal; but in no event less than three hundred dollars.

(*c*) No appeal shall vacate or affect the judgment or order appealed from; but the clerk shall issue a written order requiring the appellee and all others to stay proceedings under it, or such part of it as has been appealed from, when the appeal bond is filed and approved. [Report 1943]

Referred to in §§321A.1(2), R.C.P. 353, 371
See also ch 686 and Supreme Court rules

338. Bond—hearing on sufficiency. If any party to an appeal is aggrieved by the clerk's approval of, or refusal to approve, a superse-

deas bond tendered by appellant, he may apply to the trial court, on at least three days' notice to the adverse party, to review the clerk's action. Pending such hearing, the court may recall or stay all proceedings under the order or judgment appealed from. On such hearing, it shall itself determine the sufficiency of the bond, and if the clerk has not approved the bond, the court shall, by written order, fix its conditions and determine the sufficiency of the security; or if the court determines that a bond approved by the clerk is insufficient in security or defective in form, it shall discharge such bond and fix a time for filing a new one; all as appears by the circumstances shown at the hearing. [Report 1943]

Referred to in R.C.P. 353, 371
See also ch 686 and Supreme Court rules

339. Judgment on bond. If the supreme court affirms the judgment appealed from, it may, on motion of the appellee, render judgment against appellant and the sureties on the appeal bond for the amount of the judgment, with damages and costs; or may remand the cause to the trial court for the determination of such damages and costs, and the entry of judgment on the bond. [Report 1943]

Referred to in R.C.P. 353, 371
(See R.C.P. 371 for procedure to amend Rules 340 to 353, inclusive.)
See also ch 686 and Supreme Court rules

340. The record on appeal.

(*a*) *Composition of record on appeal.* The original papers and exhibits filed in the trial court, the transcript of proceedings, if any, and a certified copy of the docket and court calendar entries prepared by the clerk of trial court shall constitute the record on appeal in all cases.

(*b*) *Transcript; duty of appellant to order; notice if partial transcript ordered.* Within ten days after filing the notice of appeal, the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless the entire transcript is to be included, the appellant shall, within the time above provided, file and serve on the appellee a description of the parts of the transcript which he intends to include in the record and a statement of the issues he intends to present on appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary, he shall, within ten days after the service of the statement of appellant, file and serve on the appellant a designation of additional parts to be included. If the appellant shall within four days fail or refuse to order such parts, the appellee shall either order the parts or apply to the trial court for an order requiring the appellant to do so. At the time of order, the party so ordering must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

The reporter's transcript shall be filed with the clerk of the trial court within the time fixed or allowed for docketing the appeal; and these rules relative to it shall also apply to bills of exceptions under rule 241. The cost of the transcript shall be taxed in the trial court.

(*c*) *Statement of the evidence or proceedings when no report was made or when the transcript is unavailable.* If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within ten days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval and as settled and approved shall be included in the record on appeal.

(*d*) *Agreed statement as the record on appeal.* The parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. It shall be filed in the office of the clerk of trial court and be certified to the supreme court within the time provided in rule 341"*b*" as the record on appeal. Copies of the agreed statement shall be filed as the appendix required by rule 344.1.

(*e*) *Correction or modification of the record.* If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the supeme court, or the supreme court, on proper suggestion or on its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court. [Report 1943; Court Order November 20, 1961; Court Order March 24, 1972]

Referred to in R.C.P. 341, 353
See also ch 686 and Supreme Court rules

341. Transmission of record.

(*a*) *Time for transmission of docket entries.* Within fourteen days after the filing of the notice of appeal, the clerk of the trial court shall transmit a certified copy of the docket and calendar entries in the proceeding below to the clerk of the supreme court and all par-

ties or their attorneys. The clerk shall thereupon prepare a docket page and assign a number to the case.

(*b*) *Transmission of remaining record.* Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the court may order; the appellant shall request the clerk of the trial court to transmit the remaining record to the clerk of the supreme court, including the transcript and the exhibits necessary for the determination of the appeal. After filing the notice of appeal the appellant shall comply with the provisions of rule 340"*b*" and shall take any other action necessary to enable the clerk of trial court to assemble and transmit the record. If more than one appeal is taken, each appellant shall comply with the provisions of rule 340"*b*" and this subdivision.

When request is made by either party for transmission to the supreme court of portions of the record in addition to the certified copy of the docket entries, the clerk of the trial court shall transmit the same to the clerk of the supreme court. The clerk of the trial court shall transmit with the record a list of the documents and exhibits identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the supreme court. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the clerk of the supreme court. The clerk of the trial court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the supreme court.

Referred to in R.C.P. 340(*d*)

(*c*) *Retention of trial record in trial court.* If the record or any part thereof is required in the trial court for use there pending the appeal, the trial court may make an order to that effect, and the clerk of the trial court shall retain the record or parts thereof subject to the request of the supreme court, and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the parties may designate and as the trial court shall allow.

(*d*) *Portions of record not transmitted.* Any parts of the record which have not been transmitted to the supreme court shall, on the order of the supreme court or on the request of any party, be transmitted to the supreme court by the clerk of the trial court. The parts of the record not transmitted to the supreme court shall nevertheless be part of the record on appeal for all purposes. [Report 1943; Court Order March 24, 1972]

Referred to in R.C.P. 340(*d*), 353
See also ch 686 and Supreme Court rules

342. Docketing appeal; filing record.

(*a*) *Docketing the appeal.* Within forty days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under rule 345.1, the appellant shall pay the docket fee to the clerk of the supreme court, and the clerk shall thereupon enter the appeal upon the docket. If an appellant is authorized by trial court or supreme court to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket at the request of the party within the time provided above. An appeal shall be docketed under the title given to the action in the trial court, with the appellant identified as such, but if such title does not contain the name of the appellant, his name identified as appellant, shall be added to the title. The clerk of the supreme court shall immediately give notice to all parties or their attorneys of the date on which the appeal is entered on the docket.

(*b*) *Certificate of Ordering Transcript.* The Certificate of Ordering Transcript shall be signed by appellant or his attorney and shall include the name of the reporter and the date on which the transcript was ordered from said reporter. Such certificate shall be filed with the clerk of the supreme court within fourteen days after filing notice of appeal.

(*c*) *Dismissal for failure to transmit or docket.* If the appellant shall fail to cause timely transmission of the record or to pay the docket fee when required, any appellee may file a motion in the supreme court to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the trial court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, the expiration date of any order extending the time for transmitting the record, and by proof of service. The appellant may respond within fourteen days of such service. The clerk shall docket the appeal for the purpose of permitting the court to entertain the motion without requiring payment of the docket fee, but the appellant shall not be permitted to respond without payment of the fee unless he is otherwise exempt from prepayment.

(*d*) *Trial court jurisdiction.* After an appeal is taken, the filing with the clerk of the trial court of a stipulation in which all parties agree to a dismissal of an appeal shall restore jurisdiction to the trial court for the entry of an order of dismissal of the appeal, which will be a final adjudication. The clerk of the trial court shall forward a copy of such stipulation and order to the clerk of the supreme court.

(*e*) *Limited remand.* The supreme court during appeal or pending application for appeal may remand the cause to the trial court which shall have jurisdiction for such specific proceedings as may be directed by the supreme court. [Report 1943; Court Order December

12, 1945; Court Order January 29, 1953; Court Order January 26, 1970; Court Order March 24, 1972]

Referred to in R.C.P. 344.2, 353; Court Rule 11
See also ch 686 and Supreme Court rules
Time computed, §4.1(22)

343. Filing and service of briefs.

(a) *Time for serving and filing briefs.* The appellant shall serve and file his brief within fifty days after the date on which the appeal is docketed. The appellee shall serve and file his brief within thirty days after service of the brief of the appellant. The appellant may serve and file a reply brief within fourteen days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least three days before argument. The supreme court may shorten the periods prescribed above for serving and filing briefs, either by rule for all cases or for classes of cases, or by order for specific cases.

(b) *Number of copies to be filed and served.* Eighteen copies of each brief shall be filed with the clerk of the supreme court, unless the court by order in a particular case shall direct a different number; and two copies shall be served on counsel for each party separately represented. If a party is allowed to file typewritten ribbon and carbon copies of the brief, the original and three legible copies shall be filed with the clerk, and one copy shall be served on counsel for each party separately represented.

(c) *Consequence of failure to file briefs.* If an appellant fails to file his brief within the time provided by this rule, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to timely file his brief, he will not be heard at oral argument except by permission of the court. [Report 1943; Court Order January 14, 1949; Court Order January 29, 1953; Court Order March 24, 1972]

Referred to in R.C.P. 344, 344.1, 344.3, 350, 353
See also ch 686 and Supreme Court rules
Time computed, §4.1(22)

344. Briefs.

(a) *Appellant's brief.* The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.

(2) A statement of the issues presented for review which shall include a complete list of all cases and statutes referred to in the argument covering the point. The cases which are considered to be the most pertinent and convincing, not exceeding four in number, shall be printed in bold-face type.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see subdivision "*g*").

(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.

(5) A short conclusion stating the precise relief sought.

(b) *Appellee's brief.* The brief of the appellee shall conform to the requirements of subdivision "*a*"(1)–(5), except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(c) *Reply brief.* The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. No further briefs may be filed except with leave of court.

(d) *References in briefs to parties.* Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee". It promotes clarity to use the designations used in the lower court, or the actual names of the parties, or descriptive terms such as "the employee", "the injured person", "the taxpayer", "the decedent", etc.

(e) *References in briefs to legal authorities.* In citing cases the names of parties must be given. In citing cases determined by this court, reference must be made to the volume and page where the case may be found in the Iowa Reports, if reported therein, and also in the North Western Reporter, if reported therein. In citing cases from other jurisdictions, reference must be made to the court that rendered the opinion and the volume and page where the same may be found in the National Reporter System, if reported therein. When textbooks are cited, the edition must be designated with the proper volume and page. In citing authorities references shall be made as follows: Codes, to section number; treatises, to section and page; all others, to specific page or pages relied upon.

(f) *References in briefs to legal propositions.* The following propositions are deemed so well established that authorities need not be cited in support of any of them:

(1) Findings of fact in a law action, which means generally any action triable by ordinary proceedings, are binding upon the appellate court if supported by substantial evidence.

(2) In considering the propriety of a motion for directed verdict the court views the evidence in the light most favorable to the party against whom the motion was made.

(3) In ruling upon motions for new trial the trial court has a broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties.

(4) The court is slower to interfere with the grant of a new trial than with its denial.

(5) Ordinarily the burden of proof follows the pleading; that is, he who pleads and relies upon the affirmative of an issue must carry the burden of proving it.

(6) In civil cases the burden of proof is measured by the test of preponderance of the evidence.

(7) In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the trial court; but is not bound by them.

(8) The party who so alleges must, unless otherwise provided by statute, prove negligence and proximate cause by a preponderance of the evidence.

(9) A motorist upon a public highway has a right to assume that others using the road will obey the law, including statutes, rules of the road and necessity for due care, at least until he knows, or in the exercise of due care should have known otherwise.

(10) Generally questions of negligence, contributory negligence, and proximate cause are for the jury; it is only in exceptional cases that they may be decided as matters of law.

(11) Reformation of written instruments may be granted only upon clear, satisfactory and convincing evidence of fraud, deceit, duress, or mutual mistake.

(12) Written instruments affecting real estate may be set aside only upon evidence that is clear, satisfactory and convincing.

(13) In construing statutes the courts search for the legislative intent as shown by what the legislature said, rather than what it should or might have said.

(14) In the construction of written contracts, the cardinal principle is that the intent of the parties must control; and except in cases of ambiguity, this is determined by what the contract itself says.

(15) In child custody cases the first and governing consideration of the courts must be the best interest of the child.

(16) An issue may be proven by circumstantial evidence; but this evidence must be such as to make the theory of causation reasonably probable, not merely possible, and more probable than any other theory based on such evidence. Generally, however, it will be for the jury or other trier of the facts to say whether circumstantial evidence meets this test.

(17) Even when the facts are not in dispute or contradicted, if reasonable minds might draw different inferences from them, a jury question is engendered.

(*g*) *References in briefs to the record.* References in the briefs to parts of the record reproduced in the appendix filed with the brief of the appellant (see rule 344.1"*a*") shall be to the pages of the appendix at which those parts appear. If the appendix is prepared after the briefs are filed, references in the briefs to the record shall be made by one of the methods allowed by rule 344.1"*c*". If the record is reproduced in accordance with the provisions of rule 344.1"*f*", or if references are made in the briefs to parts of the record not reproduced, the references shall be to the pages of the parts of the record involved; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(*h*) *Length of briefs.* Except by permission of the court principal briefs shall not exceed fifty pages of standard typographic printing or seventy pages of printing by any other process of duplicating or copying, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc. And except by permission of the court, reply briefs shall not exceed twenty-five pages of standard typographic printing or thirty-five pages of printing by any other process of duplicating or copying. All such permissions may be granted ex parte.

(*i*) *Briefs in cross appeals.* If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and rules 344.1 and 343, unless the parties otherwise agree or the court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

(*j*) *Multiple appellants or appellees.* In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs. [Report 1943; Court Order December 12, 1945; Court Order September 17, 1962; Court Order March 13, 1967; Court Order March 24, 1972]

Referred to in R.C.P. 353, Court Rule 118
See also ch 686 and Supreme Court rules

344.1. Appendix to briefs.

(*a*) *Duty of appellant: content; time; number.* The appellant shall prepare and file an appendix to the briefs which shall contain: (1) the relevant docket entries in the proceeding below; (2) any relevant portions of the pleadings, transcript, instructions, findings, conclusions and opinion; (3) the judgment, order or decision in question; and (4) any other parts of the record to which the parties wish to direct the particular attention of the court. The

fact that parts of the record are not included in the appendix shall not prevent the parties or the courts from relying on such parts.

Unless filing is to be deferred pursuant to the provisions of subdivision "*c*" of this rule, the appellant shall serve and file the appendix with his brief. Eighteen copies of the appendix shall be filed with the clerk of the supreme court and two copies shall be served on counsel for each party separately represented unless the court shall by rule or order direct the filing of a different number.

(*b*) *Determination of contents: cost of producing.* The parties are encouraged to agree as to the contents of the appendix. In the absence of agreement, the appellant shall, not later than ten days after the date on which the appeal is docketed, serve on the appellee a designation of the parts of the record which he intends to include in the appendix and a statement of the issues which he intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, he shall, within ten days after receipt of the designation, serve upon the appellant a designation of those parts. The appellant shall include in the appendix the parts thus designated. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issues presented he may so advise the appellee and the appellee shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case, but if either party shall cause matters to be unnecessarily included in the appendix the court may impose the cost of producing such parts on that party.

(*c*) *Alternative method of designating contents.* Preparation of the appendix may be deferred until after the briefs have been filed, and the appendix may be filed twenty-one days after service of the brief of the appellee. If the preparation and filing of the appendix is thus deferred, the provisions of subdivision "*b*" of this rule shall apply, except that the designations referred to therein shall be made by each party at the time his brief is served, and a statement of the issues presented shall be unnecessary.

If the deferred appendix authorized by this subdivision is employed, references in the briefs to the record may be to the pages of the parts of the record involved, in which event the original paging of each part of the record shall be indicated in the appendix by placing in brackets the number of each page at the place in the appendix where that page begins. Or if a party desires to refer in his brief directly to pages of the appendix, he may serve and file typewritten or page proof copies of his brief within the time required by rule 343"*a*", with appropriate references to the pages of the parts of the record involved. In that event, within fourteen days after the appendix is filed, he shall serve and file copies of the brief in the form prescribed by rule 344.2 containing references to the pages of the appendix in place of or in addition to the initial references to the pages of the parts of the record involved. No other changes may be made in the brief as initially served and filed, except that typographical errors may be corrected.

Referred to in R.C.P. 344(*g*)

(*d*) *Arrangement of the appendix.* At the beginning of the appendix there shall be inserted a list of the parts of the record which it contains, in the order in which the parts are set out therein, with references to the pages of the appendix at which each part begins. The relevant docket entries shall be set out following the list of contents. Thereafter, other parts of the record shall be set out in chronological order. When matter contained in the reporter's transcript of proceedings is set out in the appendix, the page of the transcript at which such matter may be found shall be indicated in brackets immediately before the matter which is set out. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matter (captions, subscriptions, acknowledgments, etc.) shall be omitted. A question and its answer may be contained in a single paragraph.

(*e*) *Reproduction of exhibits.* Exhibits designated for inclusion in the appendix may be contained in a separate volume, or volumes suitably indexed. Eighteen copies thereof shall be filed with the appendix and two copies shall be served on counsel for each party separately represented. The transcript of a proceeding before an administrative agency, board, commission or officer used in an action in the trial court may be regarded as an exhibit for the purpose of this subdivision.

(*f*) *Hearing on original record without appendix.* The supreme court may by rule applicable to all cases, or to classes of cases, or by order in specific cases, dispense with the requirement of an appendix and permit appeals to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court may require. [Court Order March 24, 1972]

Referred to in R.C.P. 340, 344(*g,i*), 344.3, 353
See also Supreme Court rules

344.2. Form of briefs, the appendix and other papers.

(*a*) *Form of briefs and the appendix.* Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black

image on white paper. All appendices and briefs shall be printed on both sides of the sheet. Carbon copies of briefs and appendices may not be submitted without permission of the court. All printed matter must appear in at least eleven-point type on opaque, unglazed paper. Briefs and appendices shall be bound in volumes having pages eight and one-half by eleven inches and type matter six by nine inches. Margins on the bound side of the sheet shall be not less than one and one-eighth inches suitable for permanent binding procedures. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this rule may be inserted in the appendix, but not in such manner as to prevent eventual uniform permanent binding. Such papers may be informally renumbered if necessary.

If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix should be white. The front covers of the briefs and of the appendices shall contain: (1) the name of the court and the number of the case; (2) the title of the case (see rule 342"*a*"; (3) the nature of the proceeding in court (e.g., Appeal) and the name of the court (and the name of the judge who rendered the decision from which the appeal is taken), agency, or board below; (4) the title of the document (e.g., Brief for Appellant, Appendix); and (5) the name and addresses of counsel representing the party on whose behalf the document is filed.

(*b*) *Form of other papers.* Petitions for rehearing shall be produced in a manner prescribed by subdivision "*a*". Motions and other papers may be produced in like manner, or they may be typewritten upon opaque, unglazed paper eight and one-half by eleven inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

A motion or other paper addressed to the court shall contain a caption setting forth the name of the court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

(*c*) *Printing taxed as costs.* The amount actually paid for printing or otherwise producing necessary copies of briefs, appendices, or copies of records authorized by these rules, exclusive of stenographic expense, shall be certified by the attorney, and if reasonable, taxed in the supreme court as costs. [Court Order March 24, 1972]

Referred to in R.C.P. 344.1, 350, 353
See also ch 686 and Supreme Court rules

344.3 Requirements in contested child custody cases. In appeals involving a contest as to custody of children, adoption, termination of parent-child relationship, and juvenile court proceedings affecting child placement, the times providing in rule 343(*a*) for filing briefs shall be reduced by one-half. Reply briefs are unnecessary. If filing of the appendix is deferred pursuant to rule 344.1(*c*), it shall be filed not more than fifteen days after service of the appellee's brief. Court reporters shall give priority to transcription of the record in these cases over other civil transcript work. The appeals shall be accorded submission precedence over other civil cases. [Court Order November 4, 1974]

345. Dismissal for failure to prosecute. When an appellant in either a docketed or nondocketed appeal fails to comply with the Iowa Rules of Civil Procedure and the rules of this court, the clerk shall notify the appellant and his counsel that upon the expiration of fifteen days from the date thereof the appeal will be dismissed for want of prosecution, unless prior to that date appellant remedies the default. Should the appellant fail to comply within said fifteen-day period, the clerk shall then enter an order dismissing said appeal for want of prosecution, and shall issue a certified copy thereof to the clerk of the district court as and for the mandate. In no case shall the appellant be entitled to remedy his default after the same shall have been dismissed under this rule, unless by order of this court. The dismissal of an appeal shall not limit the authority of this court, in an appropriate case, to take disciplinary action against defaulting counsel.

The court may, whether or not notice of default is given, dismiss any appeal for failure to comply with the Iowa Rules of Civil Procedure or the rules of this court on motion of a party or upon its own motion. [Court Order March 24, 1972]

Referred to in R.C.P. 353
See also Supreme Court rules

345.1 Supreme court: power to shorten or enlarge time. The supreme court upon its own motion or on motion of any litigant may shorten or enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time, but the court may not enlarge the time for filing a notice of appeal. [Court Order March 24, 1972]

Referred to in R.C.P. 342, 353
See also Supreme Court rules

346. Submission and oral argument. A party desiring to be heard orally shall so state at the end of his brief; and unless he does so he will be heard orally only in reply to his adversary's oral argument, if any. The oral arguments shall conform to rules prescribed by the supreme court. [Report 1943]

Referred to in R.C.P. 353
See also ch 686 and Supreme Court rules

347. Writs and orders in the supreme court.

(*a*) *Writs and process.* The supreme court shall issue all writs and processes necessary for the exercise and enforcement of its appellate jurisdiction and in the furtherance of its supervisory control over all inferior judicial tribunals and officers thereof throughout the state; and may enforce its mandates by fine and imprisonment, and imprisonment may be continued until obeyed.

(*b*) *Orders.* Every application for an order in the supreme court shall be in writing, served upon the adverse party or his attorney of record, with a notice that it will come on for hearing before the supreme court or a justice thereof at a stated time and place. By stipulation and arrangement with the court or justice the parties may fix the time and place of hearing.

(*c*) *Hearings.* No order shall be issued except upon reasonable notice and opportunity to make resistance, but if it be made to appear that great and irreparable loss would ensue if the matter were delayed, an order may be entered effective only until final order is made. The supreme court may hear oral arguments on an application for order if it deems them desirable; otherwise, the matter shall be submitted without oral argument. One or more justices may act for the court in such matters. [Report 1943]

Referred to in R.C.P. 332, 353; Court Rule 11
See also ch 686 and Supreme Court rules

348. Motions to dismiss or affirm.

(*a*) Appellee's motion to dismiss an appeal or motion to affirm must be in printing or typewriting, supported by printed or typewritten brief, and served on appellant's counsel and filed with the clerk of the supreme court within twenty days after filing the record, if the grounds therefor then exist. If appellee desires to present the motion orally, he shall so request therein, and the court may make such order as it deems proper in regard thereto.

(*b*) The day immediately preceding the first day of each period, as fixed by the docket for the term, shall be and is hereby designated as motion day and, except when otherwise specially ordered by the court or a judge thereof, such motion day shall be and the same is hereby fixed as the time for submission of every such motion to dismiss, served and filed ten days or more prior thereto, and also every such motion to dismiss to which resistance has been filed. If the chief justice or the court determines oral argument is desirable, such motion shall be assigned for oral argument, otherwise it shall be assigned for submission on the briefs. The clerk shall forthwith notify each party of the time and manner of the submission.

(*c*) Appellant's resistance, if any, shall be served and filed not less than three days prior to the date fixed for such submission.

(*d*) The court may rule on the motion to dismiss or motion to affirm before requiring submission of the appeal or may order the motion submitted with the appeal. The time intervening between service of the motion and the court's order overruling the motion, or providing that it be submitted with the appeal, shall be excluded in determining the time within which the parties' respective briefs on the merits must be filed.

(*e*) If grounds for dismissal of an appeal or affirmance arise after the record is filed, appellee may file and serve such motion to dismiss or motion to affirm and supporting brief. The court shall then determine when and on what notice, the same shall be heard, and whether submission of the appeal shall be stayed and may make appropriate orders respecting the time for filing briefs on the merits. [Report 1943; Court Order December 12, 1945; Court Order March 6, 1956]

Referred to in R.C.P. 353
See also ch 686 and Supreme Court rules
Time computed, §4.1(22)

348.1 Affirmed or enforced without opinion. When the court determines that any one or more of the following circumstances exists and is dispositive of a matter submitted to the court for decision: (*a*) that a judgment of the district court is correct; (*b*) that the evidence in support of a jury verdict is sufficient; (*c*) that the order of an administrative agency is supported by substantial evidence; or (*d*) that no error of law appears; and the court also determines that the questions are not of sufficient importance to justify an opinion and that an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

In such case, the court may in its discretion enter the following order: "AFFIRMED, See rule 348.1." [Court Order March 24, 1972]

Referred to in R.C.P. 353
See also ch 686 and Supreme Court rules

349. Remands. When a judgment is reversed for error in overruling a motion to direct a verdict, or a motion for judgment under rule 243"*b*", or a motion to withdraw an issue from the consideration of the jury, and the granting of the motion would have terminated the case in favor of appellant, the supreme court may enter, or direct the trial court to enter final judgment as if such motion had been initially sustained; providing that, if it appears from the record that the material facts relating thereto were not fully developed at the trial, or if, in the opinion of the supreme court, the ends of justice will be served thereby, a new trial shall be awarded of such issue or of the whole case. [Report 1943, Court Order January 26, 1945]

Referred to in R.C.P. 353
See also ch 686 and Supreme Court rules

350. Petition for rehearing.

(*a*) *Time for filing: content; answer; action by court if granted.* A petition for rehearing may be filed within fourteen days after filing of opinion unless the time is shortened or

enlarged by order. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(*b*) *Form of petition; length.* The petition shall be in a form prescribed by rule 344.2"*a*" and copies shall be served and filed as prescribed by rule 343"*b*" for the service and filing of briefs. Except by permission of the court, a petition for rehearing shall not exceed ten pages of standard typographic printing or fifteen pages of printing by any other process of duplicating or copying. [Report 1943; Court Order March 24, 1972]

Referred to in R.C.P. 353
See also ch 686 and Supreme Court rules

351. Procedendo. Unless otherwise ordered by the court, no procedendo shall issue for fifteen days after an opinion is filed, nor thereafter while a petition for rehearing, filed according to these rules, is pending. [Report 1943; Court Order March 24, 1972]

Referred to in R.C.P. 353
See also ch 686 and Supreme Court rules

352. Certiorari or appeal. If any case is brought to the supreme court by appeal or certiorari, and the court is of the opinion that the other of these remedies was the proper one, the case shall not be dismissed, but shall proceed as though the proper form of review had been sought.

A petition for writ of certiorari may under this rule be treated by the court as application to grant an appeal (as provided in rule 332) and conversely an application to grant an appeal may be treated as a petition for certiorari.

Provided, however, nothing in this rule shall operate to extend the time within which an appeal may be taken. [Report 1943; Court Order January 14, 1949]

Referred to in R.C.P. 353
See also ch 686 and Supreme Court rules

353. Filing and service.

(*a*) *Filing.* Papers required or permitted to be filed in the supreme court shall be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, and shall be deemed filed on the day of mailing if the most expeditious form of delivery by mail, except special delivery, is utilized. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit it to the clerk.

(*b*) *Service of all papers required.* Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(*c*) *Manner of service.* Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(*d*) *Proof of service.* Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

(*e*) *Additional time after service by mail.* Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, three days shall be added to the prescribed period.

(*f*) *Applicability.* This rule shall govern filing and service under rules 331 to 353* inclusive. [Report 1943; Court Order March 24, 1972]

Referred to in R.C.P. 332, Court Rule 118
See also ch 686 and Supreme Court rules
***Rule 344.3 adopted in 1974**

DIVISION XVII

COURTS OF JUSTICES OF THE PEACE

This court abolished as of July 1, 1973

DIVISION XVIII

MUNICIPAL COURT

This court abolished as of July 1, 1973

DIVISION XIX

RULES OF A GENERAL NATURE

366. Computing time—holidays. In computing time under these rules the provisions of Code section 4.1 subsection 22 shall govern. [Report 1943; amendment 1967]

See also §4.1(22)

367. Death, retirement or disability of judge.

(*a*) In the event of the death or disability of a judge in the course of a proceeding at which he is presiding, or while a motion for new trial or for judgment notwithstanding the verdict, or for other relief, is pending, any other judge of the district may hear or act upon the same, and, if in his opinion he can proceed with the matter or determine the motion he

shall do so; otherwise, he may order a continuance, declare a mistrial, order a new trial of all or any of the issues, or make such disposition of the matter as the situation warrants.

(*b*) In the event of the death or disability of a judge who has under advisement an undecided motion, or case tried to him without a jury, any other judge of the district may be called in, or a judge from another district may be appointed by the chief justice of the supreme court to consider the same, and, if by a review of the transcript or a reargument he can, in his opinion, sufficiently inform himself to enable him to render a decision, he shall do so; otherwise he may order a continuance, declare a mistrial, or order a new trial of all or any of the issues, or direct the recalling of any witnesses, or make such disposition of the matter as the situation warrants.

(*c*) In the event of the death, disability or retirement of a judge before the record for appeal in any case tried by him shall have been settled, the same shall be settled by another judge of the district, or by a judge of another district appointed for that purpose by the chief justice of the supreme court. [Report 1943; amendment 1945]

See also ch 605

368. Appeal to district court from administrative body. Where appeal to the district court from an action or decision of any officer, body or board is provided for by statute and the statute does not provide for the formulation of the issues either before such officer, body or board, or in the district court, the appellant shall file a petition in the district court within ten days after perfecting the appeal, or within such time as may be prescribed by the court. The appellee shall file motion or an answer to such petition within ten days thereafter, or within such further time as may be prescribed by the court. Thereafter the rules of pleading and procedure in actions in the district court shall be applicable. [Report 1943]

See also ch 605
Time computed, §4.1(22)

369. Effect of notice by posting. Notice by posting shall not have legal effect except where expressly authorized by statute. [Report 1943; amendment 1945; amendment 1973]

370. General provisions, comments and footnotes.

(*a*) The past, present and future tense shall each include the others; the masculine, feminine and neuter gender shall include the others; and the singular and plural number shall each include the other.

(*b*) Rule and subdivision headings do not in any manner affect the scope, meaning or intent of the provisions of these rules.

(*c*) All references to sources, comments, and footnotes are incorporated solely for convenience in the use of the rules and do not form a part thereof. [Report 1943; amendment 1961]

371. Power of supreme court to change. The supreme court shall have power to revoke, change or supplement any of these rules which prescribe the procedure in that court. Under this power the court may revoke, change or supplement any rule in division XVI hereof except rules 331–339, inclusive. Any such change or addition shall take effect at such time as the court shall prescribe. [Report 1943]

372. Rules by trial courts. Each district, superior and municipal court, by action of a majority of its judges, may from time to time make and amend rules governing its practice and administration not inconsistent with these rules. A copy of all rules in effect July 4, 1961, and any amendments thereafter made by any such court shall be transmitted to the clerk of the supreme court. In all cases not provided for by rule courts may regulate their practice in any manner not inconsistent with these rules. [Report 1961; amendment 1969]

373. Purpose of administrative rules. The purpose of all rules for court administration shall be to provide for the administration of justice in an orderly, efficient and effective manner, in accordance with the highest standards of justice and judicial service. [Report 1969]

Referred to in R.C.P. 377, 380

374. Supervision of courts. The supreme court, by and through the chief justice, shall exercise supervisory and administrative control over all trial courts in the state, and over the judges and other personnel thereof, including but not limited to authority to make and issue any order a chief judge may make under rule 377, or to modify, amend or revoke any such order or court schedule. [Report 1969]

375. Recall and transfer of judges. The supreme court by and through the chief justice may at any time order the recall of eligible retired judges for active service, and the transfer of active judges and other court personnel from one judicial district to another to provide a sufficient number of judges to handle the judicial business in all districts promptly and efficiently. [Report 1969]

376. Selection of chief judges. Not later than December 15 in each odd numbered year the chief justice, with the approval of the supreme court, shall appoint from the district judges of each district one of their number to serve as chief judge. The judge so appointed shall serve for a two-year term and shall be eligible for reappointment. Vacancies in the office of chief judge shall be filled in the same manner within thirty days after the vacancy occurs. Provided if there is a vacant judgeship in a district, the chief judge therein shall be appointed within thirty days after such vacancy is filled by qualification of the appointee.

During any period of vacancy the judge of longest service in the district shall be the acting chief judge. [Report 1969]

377. Duties and powers of chief judges. In addition to their ordinary judicial duties, chief judges shall exercise continuing administrative supervision within their respective districts over all district courts, judges, officials and employees thereof for the purposes stated in rule 373. They shall by order fix times and places of holding court and designate the respective presiding judges; they shall supervise and direct the performance of all administrative business of their district courts; they may call meetings of the municipal judges in their district for the purpose of considering mutual problems; they may conduct judicial conferences of their district judges to consider, study and plan for improvement of the administration of justice; and may make such administrative orders as necessary. No chief judge shall at any time direct or influence any judge in any ruling or decision in any proceeding or matter whatsoever.

The chief judge of a judicial district may appoint from the other judges an assistant or assistants to serve on a judicial district-wide basis and at his pleasure. When so acting, such an assistant shall have those powers and duties given to the chief judge by statute or rule of court which are specified in the order of his appointment. Such appointment shall by general order be made a matter of record in each county in the judicial district. [Report 1969; amendment 1972]

Referred to in R.C.P. 374

378. Court and trial sessions. Chief judges shall by order provide for:

(*a*) A court session by a district judge at least once each week in each county of the district, announced in advance in the form of a written or printed schedule, provided that, if in the opinion of the chief judge more efficient operations in the district will result, such court sessions may be at different intervals than once each week.

(*b*) Additional sessions in each county for the trial of cases, and other judicial matters, of such duration and frequency as will best serve to expeditiously dispose of pending cases ready for trial, and other pending judicial matters. [Report 1969]

379. Order appointing chief judges. The order appointing chief judges shall be filed with the clerk of the supreme court who shall mail certified copies to the clerk of each district court. [Report 1969]

380. Judicial council. There is hereby created a judicial council composed of all chief judges and the chief justice, or his designee, who shall be the chairman. The council shall convene not less than twice each year at such times and places as the chairman shall order. The council shall consider all court administrative rules, directives and regulations for the achievement of the purposes stated in rule 373 and may propose to the supreme court such rules as deemed appropriate. [Report 1969]

381. Forms. The forms contained in the Appendix of Forms following this rule are for use and are sufficient under the Iowa Rules of Civil Procedure, excluding the rules appearing in division XVI. The supreme court shall have the power to prescribe forms for use under the rules appearing in division XVI. [Report 1976]

APPENDIX OF FORMS

1. *FORM OF ORIGINAL NOTICE FOR PERSONAL SERVICE.*

IN THE IOWA DISTRICT COURT FOR ..... COUNTY

Plaintiff(s), ... (INSERT "LAW" OR "EQUITY".) No. .....

VS.

Defendant(s). ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified that there is now on file in the office of the clerk of the above court, a petition in the above-entitled action, a copy of which petition is attached hereto. The plaintiff's attorney is ...., whose address is ....., Iowa .....

You are further notified that unless you appear thereto and defend in the Iowa District Court for ..... County, at the county courthouse in ....., Iowa, within 20 days after the service of this original notice upon you, judgment by default will be rendered against you for the relief demanded in the petition.

(SEAL)

.....
CLERK OF THE ABOVE COURT
.....County Courthouse
....., Iowa .....

NOTE:

Persons named as defendants are told to "appear thereto and defend." These words are not always understood. The required appearance may be made either by the defendant or by defendant's attorney. IT IS NECESSARY TO SERVE AND FILE A SPECIAL APPEARANCE, MOTION OR PLEADING TO PREVENT A DEFAULT (RULE 87). The attorney who is expected to appear for the defendant should be promptly advised by defendant of the service of this notice.

2. *FORM OF ORIGINAL NOTICE AGAINST A NONRESIDENT MOTOR VEHICLE OWNER OR OPERATOR UNDER §321.500; THE CODE.*

IN THE IOWA DISTRICT COURT FOR ..... COUNTY

Plaintiff(s), ... (INSERT "LAW" OR "EQUITY.") No. .....

VS.

Defendant(s). ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified that there is now on file in the office of the clerk of the above court, a petition in the above-entitled action, a copy of which petition is attached hereto. The plaintiff's attorney is ....., whose address is ....., Iowa .....

You are further notified that unless you appear thereto and defend in the Iowa District Court for ..... County, at the courthouse in ....., Iowa, before noon of the sixtieth day following the filing of this notice with the director of transportation of this state, default will be entered and judgment rendered against you by the court.

(SEAL)

.....
CLERK OF THE ABOVE COURT
.....County Courthouse
....., Iowa .....

NOTE:

Persons named as defendants are told to "appear thereto and defend." These words are not always understood. The required appearance may be made either by the defendant or by defendant's attorney. IT IS NECESSARY TO SERVE AND FILE A SPECIAL APPEARANCE, MOTION OR PLEADING TO PREVENT A DEFAULT (RULE 87). The attorney who is expected to appear for the defendant should be promptly advised by defendant of the service of this notice.

3. *FORM OF ORIGINAL NOTICE AGAINST FOREIGN CORPORATION OR NONRESIDENT UNDER §617.3, THE CODE.*

IN THE IOWA DISTRICT COURT FOR ..... COUNTY

Plaintiff(s), ... (INSERT "LAW" OR "EQUITY".) No. .....

VS.

Defendant(s). ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified that there is now on file in the office of the clerk of the above court, a petition in the above-entitled action, a copy of which petition is attached hereto. The plaintiff's attorney is ...., whose address is ....., Iowa .....

You are further notified that unless you appear thereto and defend in the Iowa District Court for ..... County, at the courthouse in ....., Iowa, within 60 days following the filing of this notice with the secretary of state of the state of Iowa, default will be entered and judgment rendered againt you by the court.

(SEAL)

.....
CLERK OF THE ABOVE COURT
.....County Courthouse
....., Iowa .....

NOTE:

Persons named as defendants are told to "appear thereto and defend." These words are not always understood. The required appearance may be made either by the defendant or by defendant's attorney. IT IS NECESSARY TO SERVE AND FILE A SPECIAL APPEARANCE, MOTION OR PLEADING TO PREVENT A DEFAULT (RULE 87). The attorney who is expected to appear for the defendant should be promptly advised by defendant of the service of this notice.

4. *FORM OF ORIGINAL NOTICE FOR PUBLICATION.*

IN THE IOWA DISTRICT COURT FOR ..... COUNTY

Plaintiff(s), ... (INSERT "LAW" OR "EQUITY.") No. .....

VS.

Defendant(s). ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified that there is now on file in the office of the clerk of the above court, a petition in the above-entitled action, which petition prays[1] ..... The plaintiff's attorney is ....., whose address is ....., Iowa .....

You are further notified that unless you appear thereto and defend in the Iowa District Court for ..... County, at the courthouse in ....., Iowa, on or before the[2] ..... day of ....., 19....., judgment by default will be rendered against you for the relief demanded in the petition.

(SEAL)

.....
CLERK OF THE ABOVE COURT
.....County Courthouse
....., Iowa .....

NOTE:

Persons named as defendants are told to "appear thereto and defend." These words are not always understood. The required appearance may be made either by the defendant or by defendant's attorney. IT IS NECESSARY TO SERVE AND FILE A SPECIAL APPEARANCE, MOTION OR PLEADING TO PREVENT A DEFAULT (RULE 87). The attorney who is expected to appear for the defendant should be promptly advised by defendant of the service of this notice.

[[1]Here make a general statement of the cause or causes of action and the relief demanded, and, if for money, the amount thereof (Rule 50).

[2]Date inserted here must not be less than 20 days after the day of the last publication of the original notice (Rule 53).]

5. *DIRECTIONS FOR SERVICE OF ORIGINAL NOTICE.*

COMPLETE ONE OF THESE DIRECTIONS FOR EACH INDIVIDUAL, COMPANY, CORPORATION, ETC. TO BE SERVED.

DIRECTIONS FOR SERVICE OF ORIGINAL NOTICE

TO: Sheriff ..... County OR, TO: .....

.....Court House .....

....., Iowa .....

Serve: .....

At: .....

ON COMPLETION OF SERVICE NOTIFY: _____

Special Instructions or Information Relating to Service: .....

.....

.....

NAME AND SIGNATURE OF ATTORNEY

OR OTHER ORIGINATOR: _____

BY: _____

DATE: _____ TELEPHONE NO. _____

DEPOSIT FOR COST OF SERVICE

☐ Deposit Waived

☐ Deposit for $..... required and receipt thereof acknowledged.

.....

Clerk of Court

The Supreme Court of Iowa

STATUTES, RULES OF CIVIL PROCEDURE, AND COURT RULES

See court orders, §231.8

REGULATING APPELLATE PRACTICE AND PROCEDURE
IN THE
SUPREME COURT

PUBLISHED HEREIN BY ORDER OF THE COURT

This division contains the essential statutes, Rules of Civil Procedure and Rules of the Supreme Court, pertaining to appellate practice before that tribunal.

Court Rule 1

ORGANIZATION OF SUPREME COURT

Code Sec. 684.1
Code Sec. 684.2
Court Rule 4
Code Sec. 684.4
Court Rule 6
Code Sec. 684.5
Code Sec. 684.6
Code Sec. 684.9
Court Rule 9
Court Rule 10, Revoked December 30, 1971

JURISDICTION

R.C.P. 331
R.C.P. 332
R.C.P. 333
R.C.P. 334
Code Sec. 686.1
Code Sec. 686.2

APPEALS IN CIVIL CASES

R.C.P. 335
Code Sec. 686.3
Code Sec. 686.4
Code Sec. 686.5
R.C.P. 336
R.C.P. 337
R.C.P. 338
R.C.P. 339
Code Sec. 686.9
Code Sec. 686.10
Code Sec. 686.11
Code Sec. 686.12
R.C.P. 340
Code Sec. 686.6
Code Sec. 686.13
R.C.P. 341
Code Sec. 686.7
Code Sec. 686.8
R.C.P. 342
Court Rule 11
R.C.P. 343
R.C.P. 344
R.C.P. 344.1
R.C.P. 344.2
R.C.P. 345
R.C.P. 345.1
R.C.P. 346
Court Rule 12, Revoked December 30, 1971
Court Rule 13
Court Rule 14, Revoked December 30, 1971

APPEALS IN CRIMINAL CASES

Code Sec. 793.1
Code Sec. 793.2
Code Sec. 793.3
Code Sec. 793.4
Code Sec. 793.5
Code Sec. 793.6
Code Sec. 793.7
Code Sec. 793.8
Code Sec. 793.9
Code Sec. 793.10
Code Sec. 793.11
Code Sec. 793.12
Code Sec. 793.13
Code Sec. 793.14
Code Sec. 793.15
Code Sec. 793.16
Code Sec. 793.17
Code Sec. 793.18
Code Sec. 793.19
Court Rule 15
Court Rule 15.1
Court Rule 15.2
Court Rule 16
Court Rule 17
Court Rule 18
Code Sec. 793.20
Code Sec. 793.21
Code Sec. 793.22
Code Sec. 793.23
Code Sec. 793.24
Code Sec. 793.25
Code Sec. 793.26

GENERAL PROVISIONS

R.C.P. 347
R.C.P. 348
R.C.P. 348.1
R.C.P. 349
Code Sec. 686.14
Code Sec. 686.15
Code Sec. 686.16
Code Sec. 686.17
Code Sec. 686.18
Court Rule 19
Court Rule 20
R.C.P. 350
R.C.P. 351
Court Rule 21, Revoked November 16, 1973
R.C.P. 352
R.C.P. 353
Court Rule 22
Court Rule 23

Court Rule 1. The Rules of Civil Procedure prescribed by this court took effect July 4, 1943. From time to time thereafter such rules have been amended.

ORGANIZATION OF SUPREME COURT

Jurisdiction, See Code sec. 684.1

Judges—quorum—divisions. See Code sec. 684.2.

(Court Rules 2, 3, 5, 7 and 8 are omitted.)

Court Rule 4. Causes may be advanced to an earlier period or term or passed to a later period as convenience or necessity may warrant and the right to oral argument shall not be affected thereby; said order of advancement may be without notice and by special or general order of the chief justice when the prompt filing of briefs makes an earlier submission date possible. If a cause involves a question of public importance or rights which are likely to be lost or greatly impaired by delay, the court may, in its discretion, upon motion duly served, order the submission of the cause in advance of the time at which it would otherwise be submitted.

Chief justice. See Code sec. 684.4

Court Rule 6. If the chief justice is absent or ill or from any other disability is unable to act and does not select some other member of the court to act as chief justice during his absence or disability the court shall select one of its other members to act during such time.

Terms of court. See Code sec. 684.5

Business at each term—docket. See Code sec. 684.6

Rules for assignment of causes. See Code sec. 684.9

Court Rule 9. The attorneys and guardians ad litem of the respective parties in the court below shall be deemed the attorneys and guardians ad litem of the same parties respectively in this court until others are retained or appointed and notice thereof is given the adverse party and the clerk of this court.

Court Rule 10. Revoked December 30, 1971.

JURISDICTION

R. C. P. 331. From final judgment.

(*a*) All final judgments and decisions of courts of record, and any final adjudication in the trial court under rule 86 involving the merits or materially affecting the final decision, may be appealed to the supreme court, except as provided in this rule and in rule 333. For the purpose of this rule any order granting a new trial (not including an order setting aside a judgment by default other than in actions for divorce* or annulment) and any order denying a new trial shall be deemed a final decision. Any order setting aside a default decree of divorce* or annulment shall also be deemed a final decision.

(*b*) No interlocutory ruling or decision may be appealed, except as provided in rule 332, until after the final judgment or order. No error in such interlocutory ruling or decision is waived by pleading over, or proceeding to trial. On appeal from the final judgment, there may be assigned as error such interlocutory ruling or decision or any final adjudication in the trial court under rule 86 from which no appeal has been taken, where such ruling, decision, or final adjudication is shown to have substantially affected the rights of the complaining party.

Referred to in R.C.P. 332, 335, 353, 371
*See ch 598

R. C. P. 332. From interlocutory orders.

(*a*) Any party aggrieved by an interlocutory ruling or decision, including one appearing specially whose objections to jurisdiction have been overruled, may apply to the supreme court or any justice thereof to grant an appeal in advance of final judgment. Such appeal may be granted, after notice, and hearing as provided in rules 347 and 353, on finding that such ruling or decision involves substantial rights and will materially affect the final decision, and that a determination of its correctness before trial on the merits will better serve the interests of justice. No such application is necessary where the appeal is, pursuant to rule 331, from a final adjudication in the trial court under rule 86.

(*b*) The order granting such appeal may be on terms of advancing it for prompt submission. It shall stay further proceedings below, and may require bond.

Referred to in R.C.P. 331, 335, 336, 352, 353, 371

R. C. P. 333. Amount in controversy. Except where the action involves an interest in real estate, no appeal shall be taken in any case where the amount in controversy, as shown by the pleadings, is less than one thousand dollars, unless the trial judge, within thirty days after the judgment or order is entered, certifies that the cause is one in which appeal should be allowed. The right of appeal is not affected by any remission of any part of the verdict or judgment.

Referred to in R.C.P. 331, 353, 371

R. C. P. 334. Scope of review. Review in equity cases shall be de novo. In all other cases the supreme court shall constitute a court for correction of errors at law; and findings of fact in jury-waived cases shall have the effect of a special verdict.

Referred to in R.C.P. 353, 371

Mistake of clerk below. See Code sec. 686.1

Motion for new trial. See Code sec. 686.2

APPEALS IN CIVIL CASES

R. C. P. 335. Time for appeal.

(*a*) Appeals to the supreme court must be taken within, and not after, thirty days from the entry of the order, judgment or decree, unless a motion for new trial or judgment notwithstanding the verdict is filed as provided in rule 247 or a motion as provided in rule 179 "*b*", and then within thirty days after the entry of the ruling on such motion; provided however that where an application to the supreme court or any justice thereof to grant an appeal under rule 332 is made within thirty days from the date of such ruling or decision any appeal allowed upon such application shall be deemed timely taken.

Provided further that if the supreme court or any justice determines that the order or decision from which application to appeal under rule 332 is timely made is a final judgment or decision from which appeal would lie under rule 331 an appeal therefrom shall also be deemed timely taken and perfected when the order making such determination is filed with the clerk of the supreme court and the provisions of rule 336 "*b*" and "*c*" shall apply.

Provided however a cross-appeal may be taken within said thirty-day period, or in any event within five days after the appeal is taken.

(*b*) No appeal from a judgment, ruling or order taken after it has actually been made by

the trial court shall be held insufficient because the clerk of the trial court has not recorded such judgment, ruling or order upon the court records at the time the appeal is taken, if it shall appear that such record has been made prior to ten days after the date on which the appeal is docketed.

Referred to in R.C.P. 82, 336, 353, 371

Time for appealing in re constitutional test. See Code sec. 686.3

Coparties not joining. See Code sec. 686.4

Appeal from part of judgment or order—effect. See Code sec. 686.5

R. C. P. 336. How taken.

(*a*) Appeal other than those allowed by order under rule 332 or rule 335 is taken and perfected by filing a notice with the clerk of the court where the order, judgment or decree was entered, signed by the appellant or his attorney. It shall specify the parties taking the appeal, and the decree, judgment, order or part thereof appealed from. The appellant shall serve a copy of the notice on each other party or his counsel in the manner prescribed in rule 82 "*b*." The notice presented to the clerk of the trial court for filing shall be accompanied by a proof of service in the form prescribed in rule 82 "*g*." Promptly after filing the notice of appeal with the clerk of the trial court the appellant shall mail or deliver to the clerk of the supreme court an informational copy of such notice.

(*b*) Interlocutory appeal under rule 332 shall be deemed taken and perfected when the order allowing it is filed with the clerk of the supreme court. No notice of such appeal is necessary. The time for any further proceeding on such appeal which would run from the notice of appeal shall run from the date such order is so filed.

(*c*) The clerk of the supreme court shall promptly transmit a copy of such order to the attorneys of record and the clerk of the trial court.

Referred to in R.C.P. 335, 353, 371

R. C. P. 337. Supersedeas—bond.

(*a*) No appeal shall stay proceedings under a judgment or order unless appellant executes a bond with sureties, to be filed with and approved by the clerk of the court where the judgment or order was entered. The condition of such bond shall be that he will satisfy and perform the judgment if affirmed, or any judgment or order, not exceeding in amount or value, the obligation of the judgment or order appealed from, which the supreme court may render or order to be rendered by the trial court; and also all costs and damages adjudged against him on the appeal, and all rents of or damage to property during the pendency of the appeal, of which appellee is deprived by reason of the appeal.

Referred to in §321A.1(2)

(*b*) If the judgment or order appealed from be for money, the penalty of such bond shall be one hundred twenty-five percent of the amount, including costs, unless, in exceptional cases, the trial court fix a larger amount; in all other cases, an amount sufficient to save appellee harmless from the consequences of the appeal; but in no event less than three hundred dollars.

(*c*) No appeal shall vacate or affect the judgment or order appealed from; but the clerk shall issue a written order requiring the appellee and all others to stay proceedings under it, or such part of it as has been appealed from, when the appeal bond is filed and approved.

Referred to in §§321A.1(2), R.C.P. 353, 371

R. C. P. 338. Bond—hearing on sufficiency. If any party to an appeal is aggrieved by the clerk's approval of, or refusal to approve, a supersedeas bond tendered by appellant, he may apply to the trial court, on at least three days' notice to the adverse party, to review the clerk's action. Pending such hearing, the court may recall or stay all proceedings under the order or judgment appealed from. On such hearing, it shall itself determine the sufficiency of the bond, and if the clerk has not approved the bond, the court shall, by written order, fix its conditions and determine the sufficiency of the security; or if the court determines that a bond approved by the clerk is insufficient in security or defective in form, it shall discharge such bond and fix a time for filing a new one; all as appears by the circumstances shown at the hearing.

Referred to in R.C.P. 353, 371

R. C. P. 339. Judgment on bond. If the supreme court affirms the judgment appealed from, it may, on motion of the appellee, render judgment against appellant and the sureties on the appeal bond for the amount of the judgment, with damages and costs; or may remand the cause to the trial court for the determination of such damages and costs, and the entry of judgment on the bond.

Referred to in R.C.P. 353, 371

Execution on unstayed part of judgment. See Code sec. 686.9

Execution recalled. See Code sec. 686.10

Surrender of property. See Code sec. 686.11

Bond for costs. See Code sec. 686.12

R. C. P. 340. The record on appeal.

(*a*) *Composition of record on appeal.* The original papers and exhibits filed in the trial court, the transcript of proceedings, if any, and a certified copy of the docket and court calendar entries prepared by the clerk of trial court shall constitute the record on appeal in all cases.

(*b*) *Transcript; duty of appellant to order; notice if partial transcript ordered.* Within ten days after filing the notice of appeal, the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclu-

sion in the record. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless the entire transcript is to be included, the appellant shall, within the time above provided, file and serve on the appellee a description of the parts of the transcript which he intends to include in the record and a statement of the issues he intends to present on appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary, he shall, within ten days after the service of the statement of appellant, file and serve on the appellant a designation of additional parts to be included. If the appellant shall within four days fail or refuse to order such parts, the appellee shall either order the parts or apply to the trial court for an order requiring the appellant to do so. At the time of order, the party so ordering must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

The reporter's transcript shall be filed with the clerk of the trial court within the time fixed or allowed for docketing the appeal; and these rules relative to it shall also apply to bills of exceptions under rule 241. The cost of the transcript shall be taxed in the trial court.

(*c*) *Statement of the evidence or proceedings when no report was made or when the transcript is unavailable.* If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within ten days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval and as settled and approved shall be included in the record on appeal.

(*d*) *Agreed statement as the record on appeal.* The parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. It shall be filed in the office of the clerk of trial court and be certified to the supreme court within the time provided in rule 341 *"b"* as the record on appeal. Copies of the agreed statement shall be filed as the appendix required by rule 344.1.

(*e*) *Correction or modification of the record.* If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the supreme court, or the supreme court, on proper suggestion or on its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court.

Referred to in R.C.P. 341, 353

Filing in re action to test constitutionality. See Code sec. 686.6

Arguments in re constitutional test. See Code sec. 686.13

R. C. P. 341. Transmission of record.

(*a*) *Time for transmission of docket entries.* Within fourteen days after the filing of the notice of appeal, the clerk of the trial court shall transmit a certified copy of the docket and calendar entries in the proceeding below to the clerk of the supreme court and all parties or their attorneys. The clerk shall thereupon prepare a docket page and assign a number to the case.

(*b*) *Transmission of remaining record.* Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the court may order, the appellant shall request the clerk of the trial court to transmit the remaining record to the clerk of the supreme court, including the transcript and the exhibits necessary for the determination of the appeal. After filing the notice of appeal the appellant shall comply with the provisions of rule 340 *"b"* and shall take any other action necessary to enable the clerk of trial court to assemble and transmit the record. If more than one appeal is taken, each appellant shall comply with the provisions of rule 340 *"b"* and this subdivision.

When request is made by either party for transmission to the supreme court of portions of the record in addition to the certified copy of the docket entries, the clerk of the trial court shall transmit the same to the clerk of the supreme court. The clerk of the trial court shall transmit with the record a list of the documents and exhibits identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the supreme court. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the clerk of the supreme court. The clerk of the trial court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the supreme court.

Referred to in R.C.P. 340(*d*)

(*c*) *Retention of trial record in trial court.* If the record or any part thereof is required in the trial court for use there pending the ap-

peal, the trial court may make an order to that effect, and the clerk of the trial court shall retain the record or parts thereof subject to the request of the supreme court, and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the parties may designate and as the trial court shall allow.

(*d*) *Portions of record not transmitted.* Any parts of the record which have not been transmitted to the supreme court shall, on the order of the supreme court or on the request of any party, be transmitted to the supreme court by the clerk of the trial court. The parts of the record not transmitted to the supreme court shall nevertheless be part of the record on appeal for all purposes.

Referred to in R.C.P. 340(*d*), 353

Transmission. See Code sec. 686.7

Return of original papers. See Code sec. 686.8

R. C. P. 342. Docketing appeal; filing record.

(*a*) *Docketing the appeal.* Within forty days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under rule 345.1, the appellant shall pay the docket fee to the clerk of the supreme court, and the clerk shall thereupon enter the appeal upon the docket. If an appellant is authorized by trial court or supreme court to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket at the request of the party within the time provided above. An appeal shall be docketed under the title given to the action in the trial court, with the appellant identified as such, but if such title does not contain the name of the appellant, his name identified as appellant, shall be added to the title. The clerk of the supreme court shall immediately give notice to all parties or their attorneys of the date on which the appeal is entered on the docket.

(*b*) *Certificate of Ordering Transcript.* The Certificate of Ordering Transcript shall be signed by appellant or his attorney and shall include the name of the reporter and the date on which the transcript was ordered from said reporter. Such certificate shall be filed with the clerk of the supreme court within fourteen days after filing notice of appeal.

(*c*) *Dismissal for failure to transmit or docket.* If the appellant shall fail to cause timely transmission of the record or to pay the docket fee when required, any appellee may file a motion in the supreme court to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the trial court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, the expiration date of any order extending the time for transmitting the record, and by proof of service. The appellant may respond within fourteen days of such service. The clerk shall docket the appeal for the purpose of permitting the court to entertain the motion without requiring payment of the docket fee, but the appellant shall not be permitted to respond without payment of the fee unless he is otherwise exempt from prepayment.

(*d*) *Trial court jurisdiction.* After an appeal is taken, the filing with the clerk of the trial court of a stipulation in which all parties agree to a dismissal of an appeal shall restore jurisdiction to the trial court for the entry of an order of dismissal of the appeal, which will be a final adjudication. The clerk of the trial court shall forward a copy of such stipulation and order to the clerk of the supreme court.

(*e*) *Limited remand.* The supreme court during appeal or pending application for appeal may remand the cause to the trial court which shall have jurisdiction for such specific proceedings as may be directed by the supreme court.

Referred to in R.C.P. 344.2, 353; Court Rule 11

Court Rule 11. In the event the trial court has refused to grant sufficient time, under Rule 342 of the Rules of Civil Procedure, to prepare, print, and file the record on appeal, application may be made to this court for an extension of time, if the right to file the record has not then been lost by delay, and, after notice and hearing, the court may grant additional time if sufficient reasons therefor are found to exist; provided, however, that temporary extensions of time may be granted without notice pursuant to Rule 347(*c*) of the Rules of Civil Procedure.

R. C. P. 343. Filing and service of briefs.

(*a*) *Time for serving and filing briefs.* The appellant shall serve and file his brief within fifty days after the date on which the appeal is docketed. The appellee shall serve and file his brief within thirty days after service of the brief of the appellant. The appellant may serve and file a reply brief within fourteen days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least three days before argument. The supreme court may shorten the periods prescribed above for serving and filing briefs, either by rule for all cases or for classes of cases, or by order for specific cases.

(*b*) *Number of copies to be filed and served.* Eighteen copies of each brief shall be filed with the clerk of the supreme court, unless the court by order in a particular case shall direct a different number; and two copies shall be served on counsel for each party separately represented. If a party is allowed to file typewritten ribbon and carbon copies of the brief, the original and three legible copies shall be filed with the clerk, and one copy shall be served on counsel for each party separately represented.

(*c*) *Consequence of failure to file briefs.* If an appellant fails to file his brief within the time provided by this rule, or within the time as extended, an appellee may move for dismis-

sal of the appeal. If an appellee fails to timely file his brief, he will not be heard at oral argument except by permission of the court.

Referred to in R.C.P. 344, 344.1, 344.3, 350, 353

R. C. P. 344. Briefs.

(*a*) *Appellant's brief.* The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.

(2) A statement of the issues presented for review which shall include a complete list of all cases and statutes referred to in the argument covering the point. The cases which are considered to be the most pertinent and convincing, not exceeding four in number, shall be printed in bold-face type.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see subdivision *"g"*).

(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.

(5) A short conclusion stating the precise relief sought.

(*b*) *Appellee's brief.* The brief of the appellee shall conform to the requirements of subdivision *"a"* (1)–(5), except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(*c*) *Reply brief.* The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. No further briefs may be filed except with leave of court.

(*d*) *References in briefs to parties.* Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee". It promotes clarity to use the designations used in the lower court, or the actual names of the parties, or descriptive terms such as "the employee", "the injured person", "the taxpayer", "the decedent", etc.

(*e*) *References in briefs to legal authorities.* In citing cases the names of parties must be given. In citing cases determined by this court, reference must be made to the volume and page where the case may be found in the Iowa Reports, if reported therein, and also in the North Western Reporter, if reported therein. In citing cases from other jurisdictions, reference must be made to the court that rendered the opinion and the volume and page where the same may be found in the National Reporter System, if reported therein. When textbooks are cited, the edition must be designated with the proper volume and page. In citing authorities references shall be made as follows: Codes, to section number; treatises, to section and page; all others, to specific page or pages relied upon.

(*f*) *References in briefs to legal propositions.* The following propositions are deemed so well established that authorities need not be cited in support of any of them:

(1) Findings of fact in a law action, which means generally any action triable by ordinary proceedings, are binding upon the appellate court if supported by substantial evidence.

(2) In considering the propriety of a motion for directed verdict the court views the evidence in the light most favorable to the party against whom the motion was made.

(3) In ruling upon motions for new trial the trial court has a broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties.

(4) The court is slower to interfere with the grant of a new trial than with its denial.

(5) Ordinarily the burden of proof follows the pleading; that is, he who pleads and relies upon the affirmative of an issue must carry the burden of proving it.

(6) In civil cases the burden of proof is measured by the test of preponderance of the evidence.

(7) In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the trial court; but is not bound by them.

(8) The party who so alleges must, unless otherwise provided by statute, prove negligence and proximate cause by a preponderance of the evidence.

(9) A motorist upon a public highway has a right to assume that others using the road will obey the law, including statutes, rules of the road and necessity for due care, at least until he knows, or in the exercise of due care should have known otherwise.

(10) Generally questions of negligence, contributory negligence, and proximate cause are for the jury; it is only in exceptional cases that they may be decided as matters of law.

(11) Reformation of written instruments may be granted only upon clear, satisfactory and convincing evidence of fraud, deceit, duress, or mutual mistake.

(12) Written instruments affecting real estate may be set aside only upon evidence that is clear, satisfactory and convincing.

(13) In construing statutes the courts search for the legislative intent as shown by what the legislature said, rather than what it should or might have said.

(14) In the construction of written contracts, the cardinal principle is that the intent of the parties must control; and except in cases of ambiguity, this is determined by what the contract itself says.

(15) In child custody cases the first and governing consideration of the courts must be the best interest of the child.

(16) An issue may be proven by circumstantial evidence; but this evidence must be such as to make the theory of causation reasonably probable, not merely possible, and more probable than any other theory based on such evidence. Generally, however, it will be for the jury or other trier of the facts to say whether circumstantial evidence meets this test.

(17) Even when the facts are not in dispute or contradicted, if reasonable minds might draw different inferences from them, a jury question is engendered.

(*g*) *References in briefs to the record.* References in the briefs to parts of the record reproduced in the appendix filed with the brief of the appellant (see rule 344.1"*a*") shall be to the pages of the appendix at which those parts appear. If the appendix is prepared after the briefs are filed, references in the briefs to the record shall be made by one of the methods allowed by rule 344.1"*c*." If the record is reproduced in accordance with the provisions of rule 344.1"*f*," or if references are made in the briefs to parts of the record not reproduced, the references shall be to the pages of the parts of the record involved; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(*h*) *Length of briefs.* Except by permission of the court principal briefs shall not exceed fifty pages of standard typographic printing or seventy pages of printing by any other process of duplicating or copying, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc. And except by permission of the court, reply briefs shall not exceed twenty-five pages of standard typographic printing or thirty-five pages of printing by any other process of duplicating or copying. All such permissions may be granted ex parte.

(*i*) *Briefs in cross appeals.* If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and rules 344.1 and 343, unless the parties otherwise agree or the court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

(*j*) *Multiple appellants or appellees.* In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

Referred to in R.C.P. 353, Court Rule 118

R. C. P. 344.1. Appendix to briefs.

(*a*) *Duty of appellant: content; time; number.* The appellant shall prepare and file an appendix to the briefs which shall contain: (1) the relevant docket entries in the proceeding below; (2) any relevant portions of the pleadings, transcript, instructions, findings, conclusions and opinion; (3) the judgment, order or decision in question; and (4) any other parts of the record to which the parties wish to direct the particular attention of the court. The fact that parts of the record are not included in the appendix shall not prevent the parties or the courts from relying on such parts.

Unless filing is to be deferred pursuant to the provisions of subdivision (*c*) of this rule, the appellant shall serve and file the appendix with his brief. Eighteen copies of the appendix shall be filed with the clerk of the supreme court and two copies shall be served on counsel for each party separately represented unless the court shall by rule or order direct the filing of a different number.

(*b*) *Determination of contents: cost of producing.* The parties are encouraged to agree as to the contents of the appendix. In the absence of agreement, the appellant shall, not later than ten days after the date on which the appeal is docketed, serve on the appellee a designation of the parts of the record which he intends to include in the appendix and a statement of the issues which he intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, he shall, within ten days after receipt of the designation, serve upon the appellant a designation of those parts. The appellant shall include in the appendix the parts thus designated. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issues presented he may so advise the appellee and the appellee shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case, but if either party shall cause matters to be unnecessarily included in the appendix the court may impose the cost of producing such parts on that party.

(*c*) *Alternative method of designating contents.* Preparation of the appendix may be

deferred until after the briefs have been filed, and the appendix may be filed twenty-one days after service of the brief of the appellee. If the preparation and filing of the appendix is thus deferred, the provisions of subdivision (*b*) of this rule shall apply, except that the designations referred to therein shall be made by each party at the time his brief is served, and a statement of the issues presented shall be unnecessary.

If the deferred appendix authorized by this subdivision is employed, references in the briefs to the record may be to the pages of the parts of the record involved, in which event the original paging of each part of the record shall be indicated in the appendix by placing in brackets the number of each page at the place in the appendix where that page begins. Or if a party desires to refer in his brief directly to pages of the appendix, he may serve and file typewritten or page proof copies of his brief within the time required by rule 343 (*a*), with appropriate references to the pages of the parts of the record involved. In that event, within fourteen days after the appendix is filed, he shall serve and file copies of the brief in the form prescribed by rule 344.2 containing references to the pages of the appendix in place of or in addition to the initial references to the pages of the parts of the record involved. No other changes may be made in the brief as initially served and filed, except that typographical errors may be corrected.

Referred to in R.C.P. 344(*g*)

(*d*) *Arrangement of the appendix.* At the beginning of the appendix there shall be inserted a list of the parts of the record which it contains, in the order in which the parts are set out therein, with references to the pages of the appendix at which each part begins. The relevant docket entries shall be set out following the list of contents. Thereafter, other parts of the record shall be set out in chronological order. When matter contained in the reporter's transcript of proceedings is set out in the appendix, the page of the transcript at which such matter may be found shall be indicated in brackets immediately before the matter which is set out. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matter (captions, subscriptions, acknowledgments, etc.) shall be omitted. A question and its answer may be contained in a single paragraph.

(*e*) *Reproduction of exhibits.* Exhibits designated for inclusion in the appendix may be contained in a separate volume, or volumes suitably indexed. Eighteen copies thereof shall be filed with the appendix and two copies shall be served on counsel for each party separately represented. The transcript of a proceeding before an administrative agency, board, commission or officer used in an action in the trial court may be regarded as an exhibit for the purpose of this subdivision.

(*f*) *Hearing on original record without appendix.* The supreme court may by rule applicable to all cases, or to classes of cases, or by order in specific cases, dispense with the requirement of an appendix and permit appeals to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court may require.

Referred to in R.C.P. 340, 344(*g,i*), 344.3, 353

R. C. P. 344.2. Form of briefs, the appendix and other papers.

(*a*) *Form of briefs and the appendix.* Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. All appendices and briefs shall be printed on both sides of the sheet. Carbon copies of briefs and appendices may not be submitted without permission of the court. All printed matter must appear in at least eleven-point type on opaque, unglazed paper. Briefs and appendices shall be bound in volumes having pages eight and one-half by eleven inches and type matter six by nine inches. Margins on the bound side of the sheet shall be not less than one and one-eighth inches suitable for permanent binding procedures. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this rule may be inserted in the appendix, but not in such manner as to prevent eventual uniform permanent binding. Such papers may be informally renumbered if necessary.

If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix should be white. The front covers of the briefs and of the appendices shall contain: (1) the name of the court and the number of the case; (2) the title of the case (see rule 342"*a*"); (3) the nature of the proceeding in court (e.g., Appeal) and the name of the court (and the name of the judge who rendered the decision from which the appeal is taken), agency, or board below; (4) the title of the document (e.g., Brief for Appellant, Appendix); and (5) the name and addresses of counsel representing the party on whose behalf the document is filed.

(*b*) *Form of other papers.* Petitions for rehearing shall be produced in a manner prescribed by subdivision "*a*". Motions and other papers may be produced in like manner, or they may be typewritten upon opaque, unglazed paper eight and one-half by eleven inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

A motion or other paper addressed to the court shall contain a caption setting forth the name of the court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

(*c*) *Printing taxed as costs.* The amount actually paid for printing or otherwise produc-

ing necessary copies of briefs, appendices, or copies of records authorized by these rules, exclusive of stenographic expense, shall be certified by the attorney, and if reasonable, taxed in the supreme court as costs.

Referred to in R.C.P. 344.1, 350, 353

R. C. P. 345. Dismissal for failure to prosecute. When an appellant in either a docketed or nondocketed appeal fails to comply with the Iowa Rules of Civil Procedure and the rules of this court, the clerk shall notify the appellant and his counsel that upon the expiration of fifteen days from the date thereof the appeal will be dismissed for want of prosecution, unless prior to that date appellant remedies the default. Should the appellant fail to comply within said fifteen-day period, the clerk shall then enter an order dismissing said appeal for want of prosecution, and shall issue a certified copy thereof to the clerk of the district court as and for the mandate. In no case shall the appellant be entitled to remedy his default after the same shall have been dismissed under this rule, unless by order of this court. The dismissal of an appeal shall not limit the authority of this court, in an appropriate case, to take disciplinary action against defaulting counsel.

The court may, whether or not notice of default is given, dismiss any appeal for failure to comply with the Iowa Rules of Civil Procedure or the rules of this court on motion of a party or upon its own motion.

Referred to in R.C.P. 353

R. C. P. 345.1. Supreme court: power to shorten or enlarge time. The supreme court upon its own motion or on motion of any litigant may shorten or enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time, but the court may not enlarge the time for filing a notice of appeal.

Referred to in R.C.P. 342, 353

R. C. P. 346. Submission and oral argument. A party desiring to be heard orally shall so state at the end of his brief; and unless he does so he will be heard orally only in reply to his adversary's oral argument, if any. The oral arguments shall conform to rules prescribed by the supreme court.

Referred to in R.C.P. 353

Court Rule 12. Revoked December 30, 1971.

Court Rule 13.

(*a*) In all cases submitted with oral argument, appellant's opening argument and appellee's argument shall not exceed twenty-five minutes each. Appellant's reply shall not exceed ten minutes. The chief justice may extend or shorten the time for oral argument.

(*b*) The court may conclude, after appellant's reply brief has been filed or the time for such has expired, that even though there may be a substantial question, oral argument would not be of assistance or should be shortened. In such event counsel will be advised accordingly before submission.

(*c*) Failure to discuss in oral argument points properly made in the briefs shall not be deemed a waiver thereof. [Revised by Court Order December 30, 1971]

Court Rule 14. Revoked December 30, 1971.

APPEALS IN CRIMINAL CASES

Office of appeal—who may appeal. See Code sec. 793.1

Time of taking—from final judgment only. See Code sec. 793.2

Joinder. See Code sec. 793.3

Taking and perfecting. See Code sec. 793.4

Abstracts and other filings — service. See Code sec. 793.5

Duty of clerk when appeal is taken. See Code sec. 793.6

Duties of county attorney. See Code sec. 793.7

Transcript at expense of county. See Code sec. 793.8

Appeal by state—effect. See Code sec. 793.9

Appeal by defendant—effect. See Code sec. 793.10

Bail—proceedings when given. See Code sec. 793.11

Title of case—how docketed. See Code sec. 793.12

Personal appearance of defendant. See Code sec. 793.13

Informality or defect. See Code sec. 793.14

Assignment of error. See Code sec. 793.15

Closing argument. See Code sec. 793.16

Rules of procedure. See Code sec. 793.17

Decision of appellate court. See Code sec. 793.18

Costs on reversal. See Code sec. 793.19

Court Rule 15. When an appeal is taken in a criminal case and the clerk's transcript of the record, required by section 793.6 of the Code, is filed with the clerk of this court, the cause shall be assigned for submission on such transcript, but the date set for such submission shall be not less than ninety days after the date the appeal was perfected as shown by such transcript.

Court Rule 15.1.

Notification of Right to Appeal in Criminal Cases.

Immediately after imposing sentence the court shall advise defendant of his right to

appeal and the right of a person who is unable to pay the costs of appeal to apply to the court for appointment of counsel, the furnishing of a transcript of the evidence, the printing of the record and necessary briefs in his behalf as provided in Code sections 775.5 and 793.8.

Such notification shall advise defendant that filing a notice of appeal within the time and in the manner specified in Code sections 793.2 and 793.4 is jurisdictional and failure to comply with these provisions shall be deemed a voluntary waiver of defendant's right of appeal.

The trial court shall make compliance with this rule a matter of record. [Court Order July 10, 1967]

Court Rule 15.2.

(*a*) If a defendant in a criminal case appeals and desires to submit the appeal upon a printed abstract of the record, brief and argument he shall serve on the attorney general and file with the clerk of this court a notice to that effect within thirty days following the service and filing of the notice of appeal. In that event the appellant shall file the printed abstract of the record with the clerk of this court and serve a copy upon the attorney general within ninety days following the service and filing of the notice of appeal, unless, within such ninety days, additional time is granted by one or more justices of this court on application to it after at least ten days' notice, and opportunity to be heard, have been given the attorney general, and the cause shall then be reassigned for submission on a date at least ninety days subsequent to the filing of the printed abstract of the record.

(*b*) Appellant shall serve his brief and argument on the attorney general and file it with the clerk of this court within forty-five days after filing the abstract.

The state shall have thirty days after the filing of appellant's brief within which to deny the abstract, serve and file amendment thereto and brief and argument.

Appellant shall serve and file his reply brief, if any, within fifteen days after the state's brief is filed.

A denial by appellant of the state's additional abstract, if not confessed, will be disregarded unless sustained by a certification of the record.

(*c*) If the printed abstract or defendant's brief and argument is not filed within the time herein specified or any extension thereof this court shall on its own motion or on application of the state dismiss the appeal with prejudice.

(*d*) Counsel appointed to represent an indigent defendant should take note of and abide by Court Rule 16. [Court Order July 10, 1967; amended by Court Order June 12, 1969, effective September 1, 1969]

Referred to in Court Rule 16, 17

Court Rule 16.

(*a*) If counsel appointed to represent a convicted indigent defendant in an appeal to this court is convinced after conscientious investigation of the trial transcript that the appeal is frivolous and that he cannot, in good conscience, proceed with the appeal he may ask this court in writing to withdraw. This request must be accompanied by a brief referring to anything in the transcript that might arguably support the appeal.

(*b*) Prior to filing any request to withdraw from an appeal counsel shall advise his client in writing of the decision as to frivolity accompanied by a copy of counsel's application and brief and attach to the request return showing service thereof. Counsel's notice to his client shall further advise him that if he agrees with counsel's decision and does not desire to proceed further with the appeal, defendant shall within thirty days from service of this application and brief clearly and expressly communicate such desire in writing, signed by him, to this court.

(*c*) Receipt of such communication shall result in the appeal being forthwith dismissed.

(*d*) Counsel's notice to his client shall further advise him that in the event he desires to proceed with the appeal he shall within the time above provided give like communication to this court, raising any points he chooses; this court will then proceed, after a full examination of all the proceedings, to decide whether the appeal is wholly frivolous. If it so finds, it may grant counsel's request to withdraw and dismiss the appeal.

(*e*) In order to protect his client's rights, counsel desiring to withdraw shall within the time permitted by Rule 15.2 make application in the manner provided by that Rule for extension of time in which a printed abstract of the record may be filed in the event such record is required as hereinafter provided.

(*f*) However, if this court finds the legal points arguable on their merits, and therefore not frivolous, it may grant counsel's request to withdraw and will prior to submission of the appeal afford the indigent the assistance of new counsel, to be appointed by the trial court, who shall file a printed record, brief and argument. The brief shall urge any errors counsel believes to be meritorious after a conscientious examination of the record. Counsel shall also inform this court in the brief of the points his client urges and otherwise see that the case is reviewed in accordance with the rules relative to criminal appeals.

(*g*) Defendant's failure to communicate to this court within the time provided in this Rule or any extension thereof his disagreement with counsel's decision that the appeal is frivolous, or of defendant's desire to proceed with the appeal, shall be deemed an election by him to agree with counsel's decision.

(*h*) Failure to file the record or any argument within the time specified in Rule 15.2 or any extension thereof shall result in dismissal of defendant's appeal with prejudice. [Court Order July 10, 1967; amended by Court Order October 8, 1970]

Referred to in Court Rule 15.2

Court Rule 17. When the state appeals in a criminal case, Rule 15.2 shall govern the time and manner of filing abstracts, denials, amendments, and briefs and arguments, insofar as practicable. [Amended by Court Order October 8, 1970]

Court Rule 18. All printed abstracts, amendments, and briefs and arguments in criminal cases shall be served on the adverse party or his attorney of record and filed with the clerk of this court, with proof of such service. The Rules of Civil Procedure and these rules, relating to the printing of abstracts, printing and filing of arguments, petitions for rehearing, oral arguments, motions and resistances thereto, the certification of the record and the filing of decisions and opinions shall apply in criminal cases insofar as consistent with the provisions of the Code.

Decisions in appeals by state. See Code sec. 793.20

Reversal—effect. See Code sec. 793.21

Affirmance—effect. See Code sec. 793.22

Opinion of appellate court. See Code sec. 793.23

Decision recorded and transmitted. See Code sec. 793.24

Judgment enforced. See Code sec. 793.25

Time of imprisonment deducted. See Code sec. 793.26

GENERAL PROVISIONS

R. C. P. 347. Writs and orders in the supreme court.

(*a*) *Writs and process.* The supreme court shall issue all writs and processes necessary for the exercise and enforcement of its appellate jurisdiction and in the furtherance of its supervisory control over all inferior judicial tribunals and officers thereof throughout the state; and may enforce its mandates by fine and imprisonment, and imprisonment may be continued until obeyed.

(*b*) *Orders.* Every application for an order in the supreme court shall be in writing, served upon the adverse party or his attorney of record, with a notice that it will come on for hearing before the supreme court or a justice thereof at a stated time and place. By stipulation and arrangement with the court or justice the parties may fix the time and place of hearing.

(*c*) *Hearings.* No order shall be issued except upon reasonable notice and opportunity to make resistance, but if it be made to appear that great and irreparable loss would ensue if the matter were delayed, an order may be entered effective only until final order is made. The supreme court may hear oral arguments on an application for order if it deems them desirable; otherwise, the matter shall be submitted without oral argument. One or more justices may act for the court in such matter.

Referred to in R.C.P. 332, 353, Court Rule 11

R. C. P. 348. Motions to dismiss or affirm.

(*a*) Appellee's motion to dismiss an appeal or motion to affirm must be in printing or typewriting, supported by printed or typewritten brief, and served on appellant's counsel and filed with the clerk of the supreme court within twenty days after filing the record, if the grounds therefor then exist. If appellee desires to present the motion orally, he shall so request therein, and the court may make such order as it deems proper in regard thereto.

(*b*) The day immediately preceding the first day of each period, as fixed by the docket for the term, shall be and is hereby designated as motion day and, except when otherwise specially ordered by the court or a judge thereof, such motion day shall be and the same is hereby fixed as the time for submission of every such motion to dismiss, served and filed ten days or more prior thereto, and also every such motion to dismiss to which resistance has been filed. If the chief justice or the court determines oral argument is desirable, such motion shall be assigned for oral argument, otherwise it shall be assigned for submission on the briefs. The clerk shall forthwith notify each party of the time and manner of the submission.

(*c*) Appellant's resistance, if any, shall be served and filed not less than three days prior to the date fixed for such submission.

(*d*) The court may rule on the motion to dismiss or motion to affirm before requiring submission of the appeal or may order the motion submitted with the appeal. The time intervening between service of the motion and the court's order overruling the motion, or providing that it be submitted with the appeal, shall be excluded in determining the time within which the parties' respective briefs on the merits must be filed.

(*e*) If grounds for dismissal of an appeal or affirmance arise after the record is filed, appellee may file and serve such motion to dismiss or motion to affirm and supporting brief. The court shall then determine when and on what notice, the same shall be heard, and whether submission of the appeal shall be stayed and may make appropriate orders respecting the time for filing briefs on the merits.

Referred to in R.C.P. 353

R. C. P. 348.1. Affirmed or enforced without opinion.

When the court determines that any one or more of the following circumstances exists and is dispositive of a matter submitted to the court for decision: (*a*) that a judgment of the district court is correct; (*b*) that the evidence in support of a jury verdict is sufficient; (*c*) that the order of an administrative agency is supported by substantial evidence; or (*d*) that no error of law appears; and the court also determines that the questions are not of sufficient importance to justify an opinion and that an opinion would have no precedential

value, the judgment or order may be affirmed or enforced without opinion.

In such case, the court may in its discretion enter the following order: "AFFIRMED, see rule 348.1."

Referred to in R.C.P. 353

R. C. P. 349. Remands. When a judgment is reversed for error in overruling a motion to direct a verdict, or a motion for judgment under rule 243"*b*", or a motion to withdraw an issue from the consideration of the jury, and the granting of the motion would have terminated the case in favor of appellant, the supreme court may enter, or direct the trial court to enter final judgment as if such motion had been initially sustained; providing that, if it appears from the record that the material facts relating thereto were not fully developed at the trial, or if, in the opinion of the supreme court, the ends of justice will be served thereby, a new trial shall be awarded of such issue or of the whole case.

Referred to in R.C.P. 353

Remand—process. See Code sec. 686.14

Restitution of property. See Code sec. 686.15

Title not affected. See Code sec. 686.16

Death of party—continuance. See Code sec. 686.17

Executions. See Code sec. 686.18

Court Rule 19. Causes not fully argued at the period for which assigned may be passed to a later period or continued to the next term on the court's own motion. Subject to the approval of the court or any judge, causes may also be passed or continued upon stipulation of the parties. [Amended by Court Order December 30, 1971]

Court Rule 20. Each opinion shall show what judges participated therein.

R. C. P. 350. Petition for rehearing.

(*a*) *Time for filing: content; answer; action by court if granted.* A petition for rehearing may be filed within fourteen days after filing of opinion unless the time is shortened or enlarged by order. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(*b*) *Form of petition; length.* The petition shall be in a form prescribed by rule 344.2 "*a*", and copies shall be served and filed as prescribed by rule 343 "*b*" for the service and filing of briefs. Except by permission of the court, a petition for rehearing shall not exceed ten pages of standard typographic printing or fifteen pages of printing by any other process of duplicating or copying.

Referred to in R.C.P. 353

R. C. P. 351. Procedendo. Unless otherwise ordered by the court, no procedendo shall issue for fifteen days after an opinion is filed, nor thereafter while a petition for rehearing, filed according to these rules, is pending.

Referred to in R.C.P. 353

Court Rule 21. Revoked November 16, 1973.

R. C. P. 352. Certiorari or appeal. If any case is brought to the supreme court by appeal or certiorari, and the court is of the opinion that the other of these remedies was the proper one, the case shall not be dismissed, but shall proceed as though the proper form of review had been sought.

A petition for writ of certiorari may under this rule be treated by the court as application to grant an appeal (as provided in rule 332) and conversely an application to grant an appeal may be treated as a petition for certiorari.

Provided, however, nothing in this rule shall operate to extend the time within which an appeal may be taken.

Referred to in R.C.P. 353

R. C. P. 353. Filing and service.

(*a*) *Filing.* Papers required or permitted to be filed in the supreme court shall be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, and shall be deemed filed on the day of mailing if the most expeditious form of delivery by mail, except special delivery, is utilized. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit it to the clerk.

(*b*) *Service of all papers required.* Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(*c*) *Manner of service.* Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(*d*) *Proof of service.* Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the

persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

(*e*) *Additional time after service by mail.* Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, three days shall be added to the prescribed period.

(*f*) *Applicability.* This rule shall govern filing and service under rules 331 to 353 inclusive.

Referred to in R.C.P. 332; Court Rule 118

Court Rule 22. The clerk shall make the following distribution of all printed records, abstracts, amendments to abstracts, briefs, and arguments received under the foregoing rules: A copy to each judge of this court, the state law library, the law department of the State University, the law department of Drake University; the remainder shall be placed in the clerk's office, one copy to be kept permanently.

Court Rule 23. All taxable fees and costs shall abide the result of the appeal and be taxed to the unsuccessful party, unless otherwise ordered.

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BOARD OF LAW EXAMINERS

Court Rule 100. The board of law examiners shall consist of five persons admitted to practice law in this state and two persons not admitted to practice law in this state. Members shall be appointed by the supreme court. A member admitted to practice law shall be actively engaged in the practice of law in this state.

Appointment shall be for three-year terms and shall commence on July 1 of the year in which the appointment is made. Vacancies shall be filled for the unexpired term by appointment of the supreme court. Members shall serve no more than three terms or nine years, whichever is less.

The members thus appointed shall subscribe an oath in writing to faithfully and impartially discharge the duties of the office, and shall file the oath in the office of the clerk of the supreme court. They shall be compensated for their services in accordance with the provisions of section 610.6, the Code.

The supreme court may appoint from time to time, when necessary, temporary examiners to assist the board, who shall receive their actual and necessary expenses to be paid from funds appropriated to the board.

The members of the board authorized to grade examinations shall make the final decision on passage or failure of each applicant, subject to the rules of the supreme court. The board shall, also, recommend to the supreme court for admission to practice law in this state all applicants who pass the examination and who meet the requisite character requirements. The supreme court shall make the final decision in determining who shall be admitted.

The members of the board of law examiners and the temporary examiners shall be paid a per diem in an amount to be set by the supreme court for each day spent in conducting the examinations of the applicants for admission to the bar and in performing and conducting administrative duties and shall also be reimbursed for additional expenses necessarily incurred in the performance of such duties. [Amended by Court Order July 2, 1975; amended September 20, 1976]

Court Rule 101. Written examinations for admission to the bar shall be held at Des Moines, Iowa, on the second Monday of June in each even-numbered year, and on the second Monday in January in each odd-numbered year.

Such examinations shall be held in Iowa City, Iowa, on the second Monday in June in each odd-numbered year and on the second Monday in January in each even-numbered year.

Each examination shall be for a period of not less than three days, the subjects for the examination to be determined by the board of law examiners. Twenty-five questions must be answered. A grade of fifteen points for an answer is a passing grade for that answer. The board shall not recommend anyone for admission who does not receive on the foregoing basis a grade of at least 375 points. All passes and all failures shall be on a vote of at least four members of the board of law examiners admitted to practice law in Iowa. No candidate shall fail unless those members of the board of law examiners admitted to practice law in Iowa shall have reviewed the answers and grades of that candidate. [Court Order, July 2, 1975].

Before 1975 this rule was CR 102; Amended by Court Order November 19, 1959; Court Order December 30, 1971

Court Rule 102. The bar examination shall consist of twenty-five questions, five questions to be covered at each of the five sessions of the

examination. The examination shall cover the following basic subjects:

(1) Civil procedure (Iowa and federal)
(2) Constitutional law (federal)
(3) Contracts
(4) Corporations (rights and liabilities of officers, directors and stockholders)
(5) Criminal law and procedure (Iowa)
(6) Evidence (Iowa and federal)
(7) Federal income taxation of individuals
(8) Ethics and professional responsibility
(9) Basic real property
(10) Torts
(11) Probate (wills and administration of decedent's estates, excluding guardianships, conservatorship and trusts)
(12) Conflicts of laws
(13) Family law

(Except where noted otherwise, the common law shall apply.)

There shall be two questions on each of the basic subjects except that there shall be one only on ethics and professional responsibility.

In addition, the Iowa board of law examiners shall have the discretion to examine on the following additional subjects:

(1) Administrative law
(2) Federal estate and gift taxation
(3) Future interests
(4) Uniform commercial code (Article 9 only)
(5) Examination of abstracts of title to real estate
(6) Labor law
(7) Bankruptcy law
(8) Trial court practice (Iowa and federal)
(9) Federal jurisdiction
(10) Trusts

Provided, however, that at any given session of the bar examination, not more than two of the questions shall be taken from the list of additional subjects and that when additional subjects are used, the examinee shall have the option at each session to select the five questions he or she desires to answer.

The question on legal ethics and professional responsibility must be answered by every student taking the bar examination.

If questions are to be included on the bar examination from the list of additional subjects, the board of law examiners shall notify the deans of the University of Iowa College of Law and the School of Law of Drake University and the clerk of the Iowa supreme court at least four weeks prior to the date of the bar examination so that examinees may obtain knowledge of this fact. [Court Order July 2, 1975]

Court Rule 103. The board of law examiners and clerk of this court shall prepare such forms as may be necessary, for application for examination, and the board may make such rules not inconsistent with the rules of this court, with reference to the method of conducting the examinations herein provided for, as it may deem expedient.

Every applicant for admission to the bar shall make application, under oath, and upon the form prescribed, which will be furnished by the clerk of the supreme court, upon request, and shall file his application with the clerk of the supreme court at least ninety days before the first day of the next bar examination. A new and complete application shall be filed for each examination for admission. [Amended by Court Order October 14, 1968; Court Order July 2, 1975]

Referred to in Court Rule 112

Court Rule 104. The Iowa Board of law examiners shall make an investigation of the moral fitness of any applicant and may procure the services of any bar association, agency, organization, or individual qualified to make a moral or character report.

The Iowa board of law examiners shall, subject to review by the supreme court, determine whether or not the applicant is of good moral character. [Amended by Court Order July 2, 1975]

Court Rule 105. Proof of qualifications as to place and period of residence, place of parents' residence, and time and place of study shall be by affidavit made before some officer authorized to administer oaths and having a seal. Proof of term of study shall be shown by the affidavit of the dean of such law school; such affidavits must show that the applicant has actually, and in good faith, pursued the study of law in the manner, and for the time prescribed by statute and the rules of the supreme court; and must also show that the affiant is a dean of the law school at which the applicant studied. [Amended by Court Order July 2, 1975]

Court Rule 106. No person shall be permitted to take the examination for admission without proof that he has received the degree of L.L.B. or J.D. from a reputable law school; provided however, that a student in a reputable law school who expects to receive the degree of L.L.B. or J.D. within seventy-five days from the first day of the June examination shall be permitted to take such examination upon the filing of an affidavit by the dean of said school stating that he expects such student to receive such degree within said time. The requirement of such affidavit is in addition to the other requirements of statute or court rule. No certificate of admission or license to practice law shall be issued until the applicant has received the required degree.

A law school fully approved by the American Bar Association or the Iowa supreme court shall be deemed a reputable law school. [Amended by Court Order July 15, 1963; Court Order February 9, 1967; Court Order December 30, 1971; Court Order February 15, 1973; Court Order July 2, 1975]

Referred to in Court Rule 120

Court Rule 107. Each applicant permitted to take the bar examination shall draw a num-

ber at the beginning of the examination, by which number he or she shall be known throughout the examination. [Amended by Court Order July 2, 1975]

Court Rule 108. Either the clerk of the Iowa supreme court or the Iowa supreme court administrator, or their representatives, shall prepare a list of the applicants, showing the number drawn by each at the beginning of the examination, certify to such facts, seal said list in an envelope immediately after the beginning of said examination and retain the same sealed, in his possession, unopened until after the written examination has been completed and the applicant's score properly recorded. On such completion, the envelope shall be opened in the presence of the Iowa board of law examiners and the correct name entered opposite the number drawn by each applicant, in the presence of the Iowa board of law examiners. [Amended by Court Order July 2, 1975]

Court Rule 109. The Iowa board of law examiners is authorized to employ the character investigation services of the National Conference of Bar Examiners, the Bureau of Criminal Identification or any other agency. Such character investigation and report shall be procured in all cases where application for admission on motion is made, and where the required investigation fee has been paid by the applicant. Such service may be utilized in cases of applications for admission upon examination where the same is deemed necessary by the Iowa board of law examiners. [Court Order July 2, 1975]

Before 1975 this rule was CR 110

Court Rule 110. The authority to pass on the sufficiency of applications for permission to take the bar examination is vested in the Iowa board of law examiners, subject, however, to review by the Iowa supreme court. [Court Order July 2, 1975]

Before 1975 this rule was CR 112

Court Rule 111. Immediately upon the filing of the application, the chairman of the Iowa board of law examiners shall notify the president of the county bar association, and the county attorney of the county in which the applicant resides, of the filing of the application. If either of said officers is possessed of information which reflects adversely on the moral character of the applicant, such information shall be transmitted to the chairman of the board of law examiners not less than thirty days in advance of the holding of the examination. [Court Order July 2, 1975; amended September 20, 1976]

Before 1975 this rule was CR 113

Court Rule 112. Registration by law students. (1) Every person intending to apply for admission to the bar of this state by examination shall, within sixty days following the commencement of the study of law in an accredited law school, register with the Iowa board of law examiners on forms furnished by the board and by paying the required fee of ten dollars.

(2) If any person shall fail to so register, but shall do so at least ninety days prior to the date established by Court Rule 103 for filing an application to take the bar examination, the board may, if it finds that a strict enforcement of this rule would work a hardship and that sufficient excuse exists for failing to comply with paragraph (1) hereof, waive the requirements of this rule as to date of filing. Refusal of the board to waive such requirement shall be subject to review by the supreme court.

A late registration filed under this provision shall be accompanied by a fee of fifty dollars, which shall be in addition to the fee required under Court Rule 113.

(3) The registration as a law student under this rule is not deemed an application for permission to take the bar examination.

(4) The registration shall be accompanied by letters prepared by three persons not related to applicant by consanguinity or affinity attesting the registrant's good moral character.

(5) The board shall review such registration at such time and in such manner as it may elect, and may require the personal presence of any registrant at such time and place as the board may prescribe for interview and examination concerning the registrant's character and fitness. The board may at any time find it advisable to make further inquiry into the character, fitness and general qualifications of the registrant, and with regard to each registration, the board shall have all of the powers given it in respect to inquiry and investigation of candidates for admission to the bar.

(6) The requirements of this rule shall not be applicable to any person who has commenced the study of law in an accredited law school prior to August 1, 1975. [Court Order July 2, 1975; amended September 20, 1976]

Court Rule 113. Every applicant for admission to the bar upon examination shall, as a part of his application, remit to the Iowa board of law examiners a fee in the amount of fifty dollars. [Court Order July 2, 1975]

Before 1975 this rule was CR 114
Referred to in Court Rule 112

Court Rule 114. Any person a resident of this state, having been admitted to the bar of any other of the United States or the District of Columbia, may, in the discretion of the court, be admitted to practice in this state, without examination or proof of period of study. Such person, in his application for admission to practice law in this state, in addition to all other requirements of law, shall establish: That he has practiced law five full years under license in such jurisdiction within the seven years immediately preceding the date of his application and still holds a license, provided that the teaching of law as a full-time instructor in a law school approved by the section of legal education and admissions

to the bar of the American Bar Association in this state or some other state shall, for the purposes of this rule, be deemed the practice of law, provided further that the period during which such person shall have discharged actual legal duties as a member of one of the armed services of the United States shall be considered as the practice of law for the purposes of this rule, if certified to as such by the judge advocate general of such service. Any person applying for admission pursuant to this rule shall pay to the clerk of the supreme court at the time of filing application for admission, a fee of one hundred seventy-five dollars. The portion of the fee so paid which exceeds the admission fee now required by law shall be considered an investigation fee. No part of the fee paid to the clerk of the supreme court shall be refunded to a person making application under this rule. [Court Order July 2, 1975; Amended September 20, 1976]

Before 1975 this rule was CR 115; Amended by Court Order March 20, 1963; November 15, 1965

Court Rule 115. The following proofs must be filed with the Iowa board of law examiners to qualify an applicant for admission under the last preceding Court Rule:

(1) Certificate of admission in state of former residence;

(2) Certificate of clerk or judge of a court of record in such state that he was regularly engaged in practice of law in said state for five years;

(3) Certificate of judge or clerk of district court where applicant intends to practice in this state that he is of good moral character;

(4) Affidavits of two citizens and affidavit of applicant as to residence in this state.

Applicants must appear for admission in open session of the supreme court. [Court Order July 2, 1975]

Before 1975 this rule was CR 116

Court Rule 116. Attorneys not admitted in Iowa—appointment of local attorney — contested cases before administrative agency. Any attorney admitted to practice in any state and not admitted in Iowa, may commence an action in an Iowa court and may, further, in the discretion of the court in which the action is pending, be permitted to conduct such cause or other matter pending, including the defense of a cause without being admitted to practice in Iowa providing that he promptly files with the clerk of such court the written appearance of a resident attorney admitted to practice in this state upon whom service may be had in all matters connected with said cause or matter with the same effect as if personally made upon the attorney not admitted to practice in Iowa. In case of failure to file and maintain such appearance, the court before which the matter is pending shall notify the attorney not admitted to practice in Iowa and the parties he represents to comply with section 610.13, the Code, within twenty days of the date of the notice. In event of failure to comply within such period, the court, on its motion or on motion of the adverse party or parties, may dismiss the action, or strike the pleadings of the noncomplying party from the files, and enter thereafter such judgment as is then appropriate.

Any attorney admitted to practice in any state and not admitted in Iowa may represent others in a contested case before an administrative agency of this state, at the discretion of such agency, providing that such attorney promptly files with the agency the written appearance of a resident attorney admitted to practice in Iowa upon whom service may be had in all matters connected with said case with the same effect as if personally made on the attorney not admitted to practice in Iowa. The terms "agency" and "contested case" as used in this rule are defined in section 17A.2, the Code. [Court Order July 2, 1975; Amended June 22, 1976]

Court Rule 117. Any attorney who has been disbarred by a court of this state, or who has surrendered his certificate to practice law, shall, upon application for readmission to the bar, be subject to the following rules:

(1) A proceeding for reinstatement as a member of the bar must be commenced by a written application to this court, which must be filed with the clerk of this court, and it shall state the age of the applicant, the date of the original admission, the date of disbarment, or surrender of certificate of applicant, and the same shall be verified by the oath of the applicant as to the truth of the statements made therein and shall be accompanied by a recommendation of at least three reputable attorneys practicing in the judicial district in which the applicant then lives, and has lived at least one year prior to filing application. If the applicant lives in a judicial district other than the district in which he lived at the time of the disbarment or surrender of his certificate, he shall file a recommendation of three reputable practicing attorneys in such district.

(2) Upon filing of such application and recommendations with the clerk of this court, the clerk shall give written notice thereof to the attorney general, to the county attorney of the county in which the applicant resides, to the county attorney where applicant resided at the time of disbarment or surrender of certificate, to the chairman of the Iowa board of law examiners, and to each of the judges of the district in which the applicant resided at the time of disbarment or surrender of certificate, and to the president of the county bar association, and to the president of the state bar association, of the residence of the applicant, and of the county where applicant resided when disbarred or when he surrendered his certificate.

(3) Such notice shall contain the date of the disbarment or of the cancellation of the certificate; the date of filing the application, and the date of hearing thereon fixed by the court, which shall in no case be less than sixty days after the filing of such application for reinstatement.

(4) If an attorney is reinstated it shall be upon such conditions as this court shall prescribe. [Amended By Court Order July 2, 1975]

Referred to in Court Rule 118.13, 118.17

Court Rule 117.1. Review and appeal. Review of final action by the Iowa board of law examiners shall be as follows:

(1) The following rules shall govern the review of examinations of unsuccessful applicants for admission:

(*a*) An applicant who has failed the Iowa Bar Examination but once shall have no right of review except the opportunity to apply to take the examination at some subsequent regular examination.

(*b*) An applicant who has failed the bar examinations two or more times shall have the rights hereinafter set forth.

(*c*) Such applicant, and attorneys for such applicant, may examine applicant's examination papers in the office of the clerk of the supreme court of Iowa and obtain copies thereof at the expense of applicant.

(*d*) Applicant's attorneys shall be attorneys admitted to practice law in the state of Iowa.

(*e*) Within forty-five days from the last day of the bar examination failed by the applicant, the applicant shall file a petition for review with the chairman of the board. The petition shall be typed or printed, shall state specifically wherein the board is alleged to have erred, and shall contain a legible copy of all of the bar examination answers of applicant. Said petition shall be signed by the applicant, and if applicant has engaged an attorney, it shall also be signed by said attorney.

(*f*) With the petition, applicant shall also file a typed or printed brief of law and applicable authorities in support of each allegation of claimed error.

(*g*) Eight copies of said petition and brief shall be served upon the chairman of the board by taking the written acknowledgment of the chairman of the delivery of the petition and brief, with the necessary copies, or by mailing the same by certified mail to said chairman at the address supplied by the clerk of the supreme court of Iowa.

(*h*) No review and no relief shall be granted to any applicant who fails to comply substantially with these rules.

(*i*) Upon substantial compliance with these rules, the board shall fix the time and place of hearing on the review, and shall notify either applicant or applicant's attorney of said time and place, by mailing a notice in writing to the person and at the address designated in the petition for such purpose, such mailing to be completed not less than ten days prior to the date of the hearing.

(*j*) Applicant shall be personally present at said hearing, may be represented by counsel, and may produce witnesses and introduce relevant material and competent evidence confined to the errors claimed in the petition filed. At the request of applicant, the board may waive the personal appearance of applicant.

(*k*) The board, at its expense, shall provide a reporter to report the evidence and the arguments of applicant during the hearing, and the board and applicant shall each bear the expense of the reporter for such typed transcripts thereof as the respective parties may require.

(*l*) Subsequent to said hearing, the board shall review the examination answers of said applicant and its previous decision, and either affirm its previous decision or recommend to the supreme court of Iowa that the applicant be admitted to practice law in Iowa. The decision shall be in writing, addressed to the supreme court of the state of Iowa, and the original filed in the office of the clerk of said court, and thereafter said court shall enter such order as in its judgment is proper. A copy of said decision shall be mailed by certified mail to the person and at the address designated in the petition for such purpose.

(*m*) The board for such hearing shall be at least three of the five attorneys and one of the lay persons, but the lay members of the board shall have no vote in the decision rendered.

(*n*) Any further review of an applicant who has, on a second or subsequent attempt, failed the bar examination, shall be governed by court rule 117.1(2), *infra*.

(2) Any applicant aggrieved by the final action of the Iowa board of law examiners in refusing to recommend to the supreme court of Iowa, the admission of the applicant to practice law in Iowa, for any reason other than the failure to pass the examination as set forth in paragraph (1) may, within twenty days of such final determination by said board, file a petition with the supreme court of Iowa requesting a review by said court of such final determination. Said petition shall set forth therein specifically the reasons, in fact or law, assigned as error in the board's determination. The Court may order further consideration of the application. On receipt of such an order, the chairman of the board of law examiners shall promptly transmit to the court the complete file relating to such applicant and his application, including the transcript of the record of any hearing held by the Iowa board of law examiners relating thereto. Thereafter, the Court shall enter such order as in its judgment is proper. Said order shall thereupon become final, without further review or appeal. [Court Order July 2, 1975; amended September 20, 1976]

GRIEVANCE COMMISSIONERS

Court Rule 118 Complaint Procedure

118.1 Grievance commission. There is hereby created the Grievance Commission of the Supreme Court of Iowa whose members shall be the Committee on Grievances of the Iowa State Bar Association and their successors as confirmed by order of this court. Such members are appointed commissioners of this

court. The grievance commission, or a duly appointed division thereof shall hold hearings and receive evidence concerning alleged violations, wherever such violations occur, of the Iowa Code of Professional Responsibility for Lawyers or laws of the United States, and the laws of the state of Iowa or any other state or territory within their respective jurisdictions by lawyers who are members of the bar of this court. The grievance commission shall have such other powers and duties as are provided in these rules.

118.2 Processing of complaints. The members of the Committee on Professional Ethics and Conduct of the Iowa State Bar Association and their successors, as confirmed by order of this court are appointed commissioners of this court to initiate or receive, and process complaints against any attorney licensed to practice law in this state for alleged violations of the Iowa Code of Professional Responsibility for Lawyers and laws of the United States or the state of Iowa. Upon completion of any such investigation the committee on professional ethics and conduct shall either dismiss the complaint made, or admonish or reprimand the complained against attorney, or file and prosecute the complaint before the grievance commission or any division thereof.

118.3 Reprimand. In event an attorney is reprimanded by the committee on professional ethics and conduct, a copy of the reprimand shall be filed with the clerk of the grievance commission who shall immediately forward a copy thereof, by restricted certified mail, to the attorney reprimanded, therein stating that he or she has thirty days from the date of receipt thereof to file exceptions thereto with the clerk of the grievance commission. If the attorney fails to file an exception such failure shall constitute a waiver of any further proceedings and a consent that the reprimand be final and public. In that event, the clerk of the grievance commission shall cause a copy of the reprimand to be forwarded to the clerk of this court, together with proof of the aforesaid service thereof and a statement that no exceptions had been filed within the time prescribed. This court shall thereupon cause the reprimand to be spread upon the records of the court as a public document. In event, however, the attorney concerned files timely exception to the reprimand, no report of the reprimand shall be made to the clerk of this court and the reprimand shall be stricken from the records. The committee on professional ethics and conduct may, however, proceed further with any complaint against such attorney before the grievance commission. When a reprimand has been filed but exception is duly taken thereto such reprimand shall not be admissible in evidence in any hearing before the grievance commission.

118.4 Rules. The grievance commission and the committee on professional ethics and conduct shall each adopt reasonable rules prescribing the procedure to be followed in all disciplinary proceedings before each such body, which rules shall be subject to approval by this court.

118.5 Complaints. Every complaint filed against an attorney with the grievance commission shall be signed and sworn to by the chairman of the committee on professional ethics and conduct and served upon the attorney concerned as provided by the rules of the grievance commission. Such complaints shall be sufficiently clear and specific in their charges to reasonably inform the attorney against whom the complaint is made of the misconduct he or she is alleged to have committed. All complaints, motions, pleadings, records, reports, exhibits, evidence and all other documents or things filed under this rule or received in evidence in a hearing before the grievance commission shall be filed with and preserved by the secretary of the grievance commission in Des Moines, Iowa, all of which shall at all times be available to this court or anyone designated by this court.

118.6 Discovery. In any disciplinary proceeding or action taken by the committee on professional ethics and conduct, discovery shall be permitted as provided in R.C.P. 121 to 134 inclusive; 140 and 141; and in 143 to 158. The attorney against whom a complaint has been filed, in addition to the restriction stated in R.C.P. 122 (*a*) shall not be required to answer an interrogatory pursuant to R.C.P. 126; a request for admission pursuant to R.C.P. 127; a question upon oral examination pursuant to R.C.P. 140; or a question upon written interrogatories, pursuant to R.C.P. 150; if the answer would be self-discriminatory. In addition thereto, evidence and testimony may be perpetuated as provided in R.C.P. 159 to 166. If either party is to utilize discovery, it must be commenced within thirty days after the date the complaint was filed. The commission may permit amendments to the complaint to conform to the proof or to raise new matters as long as the respondent has notice thereof and a reasonable time to prepare his defense thereto prior to the date set for hearing. The grievance commission, or any division thereof, shall receive an application and may enter an order to enforce discovery or to perpetuate any evidence.

118.7 Hearing. After a complaint has been filed with the grievance commission and an answer filed thereto pursuant to its rules or the time provided for such answer has expired, the grievance commission shall immediately upon the expiration of thirty days from the date the complaint was filed set the matter for hearing and notify all parties thereof at least ten days prior to the date set for such hearing, by restricted certified mail or personal service. If neither party has commenced any discovery within thirty days of the filing of the complaint, the hearing date shall be set not less than forty-five days nor more than

sixty days after the filing of the complaint. If a party has commenced discovery, the hearing date shall be set not less than sixty days nor more than seventy-five days from the date the complaint is filed. The commission may grant reasonable continuances but only upon written application supported by affidavit. Proceedings and hearings before the grievance commission or any division thereof shall be confidential unless the attorney involved requests otherwise.

118.8 Subpoenas. The clerk of the district court of the county in which any disciplinary hearing is to be held shall issue subpoenas of all kinds upon request of the grievance commission, the complainant, or the attorney against whom a complaint has been filed. Any member of the grievance commission is hereby empowered to administer oaths to all witnesses, and shall cause such testimony to be officially reported by a court reporter. The grievance commission shall report to the supreme court of Iowa the failure or refusal of any person to attend or testify in response to any subpoena or any ruling of said commission.

118.9 Decision. At the conclusion of a hearing upon any complaint against an attorney the grievance commission shall dismiss the complaint, or reprimand the attorney, or recommend to this court that the license to practice law of the accused attorney be suspended or revoked. If the grievance commission reprimands the attorney or recommends suspension or revocation of the attorney's license, it shall report to this court, in writing, its findings of fact, conclusions of law, and recommendations. The commission may permit a reasonable time for the parties to file post hearing briefs and arguments. The disposition or report of the commission shall be made or filed with this court within thirty days of the date set for the filing of the last responsive brief and argument. If the commission cannot reasonably make its determination or file its report within such time limit, it shall report that fact and the reasons therefor to the parties and the clerk of this court. Any determination or report of the commission need only be concurred in by a majority of the commissioners sitting. Any commissioner has the right to file with this court his or her dissent from the majority determination or report. Such matter shall then stand for final disposition in this court. If the grievance commission dismisses the complaint, no report shall be made to this court, except as provided in rule 118.19. Any report of reprimand or recommendations for license suspension or revocation shall be a public document upon the filing thereof with the clerk of this court.

Referred to in Court Rule 118.11

118.10 Disposition by the supreme court. Any report filed by the grievance commission with this court shall be served upon the attorney concerned as provided by the rules of the grievance commission. Such report shall be entitled in the name of the complainant versus the accused attorney as the respondent. If no exceptions are filed or no appeal is taken as hereinafter provided in these rules, the court shall proceed to determine the matter.

This court may revoke or suspend the license of an attorney admitted to practice in Iowa upon any of the following grounds: conviction of a felony, conviction of a misdemeanor involving moral turpitude, violation of any provision of the Iowa code of Professional Responsibility for Lawyers, or any cause now or hereafter provided by statute or these rules.

118.11 Exceptions and appeal. The respondent shall have twenty days to file with the clerk of this court a statement of exceptions to such report filed by the grievance commission pursuant to rule 118.9 and to give notice of appeal therefrom to this court. Such appeal shall thereafter be reviewed de novo by this court upon the record made before the grievance commission, and shall proceed as provided for appeals of civil cases. The complainant, within twenty days after filing of final disposition of a case by the grievance commission may apply to this court for permission to appeal from a ruling, report, or recommendation of the grievance commission. This court may grant such appeal, but not ex parte, and if the appeal is granted, it shall proceed as provided in appeals of civil cases. If such appeal is from the grievance commission's dismissal of a complaint, or of any charge contained therein, such appeal shall remain confidential. In event, however, this court reverses or modifies the report of the grievance commission, such court order of reversal or modification shall become a public record.

118.12 Suspension. In event an order of this court provides for the suspension of the license of an attorney to practice law, such suspension shall continue for the minimum time specified in such order and until this court has approved the attorney's written application for reinstatement.

118.13 Application for reinstatement. An application for reinstatement from any suspension shall be filed with the clerk of this court not more than sixty days prior to expiration of such suspension or time fixed for making application therefor in accordance with the provisions of court rule 117. In addition thereto the applicant shall state, in said application, that he or she has complied in all respects with the orders and judgments of this court relating to the suspension. The applicant shall also submit to this court satisfactory proof that he or she, at time of the application, is of good moral character and in all respects worthy of the right to practice law.

118.14 Conviction of a crime. Upon receipt by this court of satisfactory evidence that an attorney had pled guilty to, or nolo contendere

to, or has been convicted of a crime which would be grounds for license suspension or revocation, such attorney may be temporarily suspended from the practice of law by this court regardless of the pendency of an appeal. Not less than twenty days prior to the effective date of such suspension, the attorney concerned shall be notified, in writing directed by restricted certified mail to his last address as shown by the records accessible to this court, that he has a right to appear before one or more justices of this court at a specified time, at a designated place and show cause why such suspension should not take place. Any hearing so held shall be informal and the strict rules of evidence shall not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to him in written form at a later time.

For good cause shown, this court may set aside an order temporarily suspending an attorney from the practice of law as hereinabove provided, upon application by such attorney and hearing thereon in accordance with court rule 117, but such reinstatement shall neither terminate a disciplinary proceeding then pending nor stand as a bar to any such proceeding thereafter instituted against such attorney.

An attorney temporarily suspended under the aforesaid provisions of this rule shall be promptly reinstated upon the filing of a good and sufficient certificate disclosing the underlying conviction of a crime has been finally reversed or set aside, but such reinstatement shall neither terminate a disciplinary proceeding then pending nor stand as a bar to any such proceeding thereafter instituted against such attorney.

The clerk of any court in this state in which an attorney has pled guilty or nolo contendere to, or been convicted of a crime as aforesaid shall, within ten days thereafter transmit a certificate thereof to the clerk of this court.

118.15 Disbarment on consent. An attorney subject to investigation or a pending proceeding involving allegations of misconduct subject to disciplinary action may acquiesce in his or her disbarment, but only by delivering to the grievance commission an affidavit stating he or she consents to disbarment and that (1) the consent is freely and voluntarily given absent any coercion or duress, with full recognition of all implication attendant upon such consent; (2) he or she is aware of a presently pending investigation into, or proceeding involving allegations that there exist grounds for discipline the nature of which shall be specifically set forth; (3) he or she acknowledges the material facts so alleged are true; and (4) in event proceedings were instituted upon the matters under investigation, or if existent proceedings were pursued, he or she could not successfully defend against same.

Upon receipt of such affidavit the grievance commission shall cause same to be filed with the clerk of this court whereupon this court shall enter an order disbarring such attorney on consent.

Any order disbarring an attorney on consent shall be a matter of public record. However, the affidavit required as aforesaid shall not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

118.16 Disability suspension. In event an attorney shall at any time in any jurisdiction be duly adjudicated a mentally incapacitated person, or an alcoholic, or a drug addict, or shall be committed to an institution or hospital for treatment thereof, the clerk of any court in Iowa in which any such adjudication or commitment is entered shall, within ten days thereafter, certify same to the clerk of this court.

Upon the filing of any such certificate or a like certificate from another jurisdiction this court may enter an order suspending the license of such attorney to practice law in this state until further order of this court. Not less than twenty days prior to the effective date of such suspension, the attorney concerned or his or her guardian and the director of the institution or hospital to which such attorney has been committed, if any, shall be notified, in writing directed by restricted certified mail to his last address as shown by the records accessible to this court, that he has a right to appear before one or more justices of this court at a specified time, at a designated place and show cause why such suspension should not take place. Any hearing so held shall be informal and the strict rules of evidence shall not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to him in written form at a later time. A copy of such suspension order shall be given the suspended attorney, or to his or her guardian and the director of the institution or hospital to which such suspended attorney has been committed, if any, by restricted mail or personal service as this court may direct.

No attorney suspended due to disability under the aforesaid provisions of this rule may engage in the practice of law in this state until reinstated by order of this court. Any attorney so suspended shall be entitled to apply for reinstatement to active status once each year or at such shorter intervals as this court may, in the suspension order, provide or specify. An attorney suspended due to any aforesaid disability may be reinstated by this court upon a showing, by clear and convincing evidence, that the attorney's disability has been removed and he or she is fully qualified to resume the practice of law. Upon the filing of an application for reinstatement this court may take or direct any action deemed neces-

sary or proper to determine whether such suspended attorney's disability has been removed, including a direction for an examination of the applicant by such qualified medical experts as this court shall designate. In its discretion this court may direct that the expenses of such an examination be paid by the petitioning attorney.

The filing of an application for reinstatement to active status by an attorney suspended due to disability shall constitute a waiver of any doctor-patient privilege with regard to any treatment of the petitioning attorney during the period of his or her disability. Such attorney shall also set forth in his or her application for reinstatement the name of every psychiatrist, psychologist, physician and hospital or any other institution by whom or in which the petitioning attorney has been examined or treated since his or her suspension due to disability, and shall also furnish to this court written consent that any such psychiatrist, psychologist, physician and hospital or other institution by whom or in which the petitioner has been examined or treated as aforesaid may divulge any and all information and records requested by this court or any court-appointed medical experts.

Where an attorney has been suspended due to any aforesaid disability and thereafter, in proceedings duly had, he or she shall be judicially held to be competent or cured, this court may dispense with further evidence regarding removal of his or her disability and may order his or her reinstatement to active status upon such terms as are deemed reasonably proper and advisable.

118.17 Reciprocal discipline. Any attorney admitted to practice in this state, upon being subjected to professional disciplinary action in another jurisdiction or in any federal court, shall promptly advise the grievance commission, in writing, of such action. Upon being informed that an attorney admitted to practice in this state has been subjected to discipline in another jurisdiction or any federal court, the grievance commission shall obtain a certified copy of such disciplinary order and cause same to be filed in the office of the clerk of this court.

Upon receipt of a certified copy of an order disclosing an attorney admitted to practice in this state has been disciplined in another jurisdiction or any federal court, this court shall promptly give notice thereof by restricted certified mail or personal service directed to such attorney containing: (1) A copy of said disciplinary order from the other jurisdiction or federal court, and (2) an order directing that such disciplined attorney inform this court, within thirty days after receipt of said notice, of any claim by such attorney that imposition of identical discipline in this state would be too severe, too lenient or otherwise unwarranted, giving the specific reasons therefore. A like notice shall be mailed to the committee on professional ethics and conduct of the Iowa State Bar Association. If either party so informs this court, the matter shall be set for hearing before five or more justices of this court and the parties notified thereof by restricted certified mail at least ten days prior to the date set. At such hearing a certified copy of the testimony, transcripts, exhibits, affidavits and other matters introduced into evidence in such jurisdiction or federal court shall be admitted into evidence as well as any findings of fact, conclusions of law, decision and orders decided or issued. Any such findings of fact shall be conclusive and not subject to readjudication. Thereafter, the court shall enter such findings, conclusions and orders that it deems appropriate. If neither party so informs this court within thirty days from service of notice issued pursuant to the foregoing provisions hereof, this court may impose the identical discipline, unless this court finds that on the face of the record upon which the discipline is predicated it clearly appears: (1) The disciplinary procedure was so lacking in notice and opportunity to be heard as to constitute a deprivation of due process; or (2) there was such infirmity of proof establishing misconduct as to give rise to the clear conviction that this court could not, conscientiously, accept as final the conclusion on that subject; or (3) the misconduct established warrants substantially different discipline in this state.

Where this court determines that any of the aforesaid factors exist, such order as is deemed appropriate may be entered by this court. Rule 117 shall apply to any subsequent reinstatement or reduction or stay of discipline.

118.18 Immunity. Complaints submitted to the grievance commission or testimony with respect thereto shall be privileged and no law suit predicated thereon may be instituted.

Members of the grievance commission, members of the committee on professional ethics and conduct, and their respective staffs shall be immune from suit for any conduct in the course of their official duties.

A true copy of any complaint against a member of the grievance commission or the committee on professional ethics and conduct involving alleged violations of the attorney's oath of office or of the Iowa Code of Professional Responsibility for Lawyers and laws of the United States or state of Iowa shall be promptly forwarded to the chief justice of this court.

118.19 Reports. The chairman of the grievance commission and the chairman of the committee on professional ethics and conduct shall, on July 1 of each year, submit to this court a report of the number of complaints received and processed during the prior period, a synopsis of each such complaint, and the disposition thereof. In event such disposition was by way of dismissal of the complaint, the name of the attorney charged shall be omitted, but a synopsis of the charges made and by whom and a report of disposition shall be included.

Referred to in Court Rule 118.9

118.20 Effective dates. These rules shall have prospective and retrospective application to all alleged violations, complaints, hearings, and dispositions thereof on which a hearing has not actually been commenced before the grievance commission prior to the effective date of these rules.

[Amended by Court Order June 10, 1964; Amended by Court Order October 8, 1970; Amended by Court Order November 8, 1974; 118.10 amended by Court Order January 15, 1975]

Referred to in Court Rule 121.2–121.5, 123.5

CANONS OF ETHICS AND PROFESSIONAL RESPONSIBILITY

[Also available by separate publication through supreme court]

Court Rule 119

IOWA CODE OF JUDICIAL CONDUCT

CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

CANON 3

A Judge Should Perform the Duties of His Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. **Adjudicative Responsibilities.**

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(*a*) The use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(*b*) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(*c*) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(I) the means of recording will not distract participants or impair the dignity of the proceedings;

(II) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(III) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(IV) the reproduction will be exhibited only for the instructional purposes in educational institutions.

B. **Administrative Responsibilities.**

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

C. **Disqualification.**

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(*a*) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(*b*) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(*c*) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(*d*) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person;

(I) is a party to the proceeding, or an officer, director, or trustee of a party;

(II) is acting as a lawyer in the proceeding;

(III) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(IV) is to the judge's knowledge likely to be a material witness in the proceeding;

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(*a*) the degree of relationship is calculated according to the civil law system;

(*b*) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(*c*) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(I) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(II) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(III) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(IV) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. **Remittal of Disqualification.** A judge disqualified by the terms of Canon 3C(1) (*c*) or Canon 3C(1) (*d*) may, instead of withdrawing from the proceeding, disclose on the record the basis of his

disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

Referred to in Canon 5

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

CANON 5

A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties

A. **Avocational Activities.** A judge may write, lecture, teach, and speak on nonlegal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. **Civic and Charitable Activities.** A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

(3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C. **Financial Activities.**

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, manager, advisor, or employee of any business.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

(*a*) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted

to the improvement of the law, the legal system, or the administration of justice;

(*b*) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(*c*) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to to come before him, and, if its value exceeds $100, the judge reports it in the same manner as he reports compensation in Canon 6C.

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. **Fiduciary Activities.** A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

E. **Arbitration.** A judge should not act as an arbitrator or mediator.

F. **Practice of Law.** A judge should not practice law.

G. **Extra-judicial Appointments.** A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Referred to in Canon 7

CANON 6

A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. **Compensation.** Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. **Expense Reimbursement.** Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

C. **Public Reports.** A judge should report the date, place, and nature of any activity for which he received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. His report should be made at least annually and should be filed as a public document in the office of Clerk of the Supreme Court of Iowa by April 1 each year for the last preceding calendar year.

Referred to in Canon 5, 7

CANON 7

A Judge Should Refrain from Political Activity Inappropriate to His Judicial Office

A. **Political Conduct in General.**

(1) A judge should not:

(*a*) act as a leader or hold any office in a political organization;

(*b*) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(*c*) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party diners, or other functions.

(2) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a nonjudicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(3) A judge should not engage in any political activity except on behalf of measures to improve the law, the legal system, or the administration of justice except as provided in section B hereof.

B. Campaign Conduct.

(1) A judge who is a candidate for retention in judicial office:

(*a*) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(*b*) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2), he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(*c*) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

(2) A judge who is a candidate for retention in office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may establish committees of responsible persons to obtain publicly stated support and campaign funds.

Compliance with the Code of Judicial Conduct

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a special master or magistrate*, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. **Part-time Judge.** A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) is not required to comply with Canon 5C(2), D, E, F, and G, and Canon 6C;

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.**

B. **Retired Judge.** A retired judge who is eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5G, but he should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by 5G.

*Referee in bankruptcy and court commissioner omitted as not applicable in Iowa.

**In the opinion of this court, the Code of Judicial Conduct only prohibits the practice of law by part-time magistrates in the part-time magistrate level of the district court in the county of his or her residence and in any other county to which he or she is regularly assigned to hold court. A part-time magistrate is not prohibited by the above-quoted portion of the Code from practicing law at the part-time magistrate level of the district court in any other county, or before the full-time magistrate level or any higher level of the district court in any county, or before the Supreme Court. A part-time magistrate may not act as lawyer in proceedings in which he or she has acted as magistrate or in any proceeding related thereto, nor may he or she act as magistrate in any proceeding in which he or she has acted as lawyer, or in any proceeding related thereto. [Supreme Court Interpretive Opinion, December 14, 1973]

Effective Date of Compliance

A person to whom this Code becomes applicable should arrange his affairs as soon as reasonably possible to comply with it. If, however, the demands on his time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:

(*a*) continue to act as an officer, director, or nonlegal advisor of a family business;

(*b*) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family.

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IOWA CODE OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS

CANON 1

A Lawyer Should Assist in Maintaining the Integrity and competence of the Legal Profession

ETHICAL CONSIDERATIONS

EC 1-1 A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence. Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer.

EC 1-2 The public should be protected from those who are not qualified to be lawyers by reason of a deficiency in education or moral standards or of other relevant factors but who nevertheless seek to practice law. To assure the maintenance of high moral and educational standards of the legal profession, lawyers should affirmatively assist courts and other appropriate bodies in promulgating, enforcing, and improving requirements for admission to the bar. In like manner, the bar has a positive obligation to aid in the continued improvement of all phases of pre-admission and post-admission legal education.

EC 1-3 Before recommending an applicant for admission, a lawyer should satisfy himself that the applicant is of good moral character. Although a lawyer should not become a self-appointed investigator or judge of applicants for admission, he should report to proper officials all unfavorable information he possesses relating to the character or other qualifications of an applicant.

EC 1-4 The integrity of the profession can be maintained only if conduct of lawyers in violation of the Disciplinary Rules is brought to the attention of the proper officials. A lawyer should reveal voluntarily to those officials all unprivileged knowledge of conduct of lawyers which he believes clearly to be in violation of the Disciplinary Rules. A lawyer should, upon request, serve on and assist committees and boards having responsibility for the administration of the Disciplinary Rules.

EC 1-5 A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct. Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude.

EC 1-6 An applicant for admission to the bar or a lawyer may be unqualified, temporarily or permanently, for other than moral and educational reasons, such as mental or emotional instability. Lawyers should be diligent in taking steps to see that during a period of disqualification such person is not granted a license or, if licensed, is not permitted to practice. In like manner, when the disqualification has terminated, members of the bar should assist such person in being licensed, or, if licensed, in being restored to his full right to practice.

DISCIPLINARY RULES

DR 1-101 Maintaining Integrity and Competence of the Legal Profession.

(A) A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar.

(B) A lawyer shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute.

DR 1-102 Misconduct.

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness to practice law.

DR 1-103 Disclosure of Information to Authorities.

(A) A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

(C) A lawyer possessing unprivileged knowledge or evidence that another lawyer or judge is suffering from such mental or emotional instability as renders him unfit or unable to furnish competent legal services shall report such knowledge to a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

CANON 2

A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available

ETHICAL CONSIDERATIONS

EC 2-1 The need of members of the public for legal services is met only if they recognize their legal problems, appreciate the importance of seeking assistance, and are able to obtain the services of acceptable legal counsel. Hence, important functions of the legal profession are to educate laymen to recognize their problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.

Recognition of Legal Problems

EC 2-2 The legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers acting under proper auspices should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. Such educational programs should be motivated by a desire to benefit the public rather than to obtain publicity or employment for particular lawyers. Examples of permissible activities include preparation of institutional advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs. But a lawyer who participates in such activities should shun personal publicity.

EC 2-3 Whether a lawyer acts properly in volunteering advice to a layman to seek legal services depends upon the circumstances. The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laymen in recognizing legal problems. The advice is proper only if motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. Hence, the advice is improper if motivated by a desire to obtain personal benefit, secure personal publicity, or cause litigation to be brought merely to harass or injure another. Obviously, a lawyer should not contact a non-client, directly or indirectly, for the purpose of being retained to represent him for compensation.

EC 2-4 Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers advice likely to produce legal controversy may well be suspect if he receives professional employment or other benefits as a result. A lawyer who volunteers advice that one should obtain the services of a lawyer generally should not himself accept employment, compensation, or other benefit in connection with that matter. However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients (in regard to matters germane to former employment), and regular clients.

EC 2-5 A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems, since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for laymen should caution them not to attempt to solve individual problems upon the basis of the information contained therein.

Selection of a Lawyer: Generally

EC 2-6 Formerly a potential client usually knew the reputations of local lawyers for competency and integrity and therefore could select a practitioner in whom he had confidence. This traditional selection process worked well because it was initiated by the client and the choice was an informed one.

EC 2-7 Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable laymen to make intelligent choices. The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many laymen have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers.

EC 2-8 Selection of a lawyer by a layman often is the result of the advice and recommendation of third parties—relatives, friends, acquaintances, business associates, or other lawyers. A layman is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his employment. A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations.

Selection of a Lawyer: Professional Notices and Listings

EC 2-9 The traditional ban against advertising by lawyers, which is subject to certain limited exceptions, is rooted in the public interest. Competitive advertising would encourage extravagant, artful, self-laudatory brashness in seeking business and thus could mislead the layman. Furthermore, it would inevitably produce unrealistic expectations in particular cases and bring about distrust of

the law and lawyers. Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship is personal and unique and should not be established as the result of pressures and deceptions. History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising.

EC 2-10 Methods of advertising that are subject to the objections stated above should be and are prohibited. However, the Disciplinary Rules recognize the value of giving assistance in the selection process through forms of advertising that furnish identification of a lawyer while avoiding such objections. For example, a lawyer may be identified in the classified section of the telephone directory, in the office building directory, and on his letterhead and professional card. But at all times the permitted notices should be dignified and accurate.

EC 2-11 The name under which a lawyer conducts his practice may be a factor in the selection process. The use of a trade name or an assumed name could mislead laymen concerning the identity, responsibility, and status of those practicing thereunder. Accordingly, a lawyer in private practice should practice only under his own name, the name of a lawyer employing him, a partnership name composed of the name of one or more of the lawyers practicing in a partnership, or, if permitted by law, in the name of a professional legal corporation, which should be clearly designated as such. For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, if the use of the name is authorized by law or by contract, and if the public is not misled thereby. However, the name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.

EC 2-12 A lawyer occupying a judicial, legislative, or public executive or administrative position who has the right to practice law concurrently may allow his name to remain in the name of the firm if he actively continues to practice law as a member thereof. Otherwise, his name should be removed from the firm name, and he should not be identified as a past or present member of the firm; and he should not hold himself out as being a practicing lawyer.

EC 2-13 In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status. He should not hold himself out as being a partner or associate of a law firm if he is not one in fact, and thus should not hold himself out as a partner or associate if he only shares offices with another lawyer.

EC 2-14 In some instances a lawyer confines his practice to a particular field of law. In the absence of state controls to insure the existence of special competence, a lawyer should not be permitted to hold himself out as a specialist or as having special training or ability, other than in the historically excepted fields of admiralty, trademark, and patent law.

EC 2-15 The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral system enables a layman to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel.

EC 2-16 The legal profession cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered, and reasonable fees should be charged in appropriate cases to clients able to pay them. Nevertheless, persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services, and lawyers should support and participate in ethical activities designed to achieve that objective.

Financial Ability to Employ Counsel: Persons Able to Pay Reasonable Fees

EC 2-17 The determination of a proper fee requires consideration of the interests of both client and lawyer. A lawyer should not charge more than a reasonable fee, for excessive cost of legal service would deter laymen from utilizing the legal system in protection of their rights. Furthermore, an excessive charge abuses the professional relationship between lawyer and client. On the other hand, adequate compensation is necessary in order to enable the lawyer to serve his client effectively and to preserve the integrity and independence of the profession.

EC 2-18 The determination of the reasonableness of a fee requires consideration of all relevant circumstances, including those stated in the Disciplinary Rules. The fees of a lawyer will vary according to many factors, including the time required, his experience, ability, and reputation, the nature of the employment, the responsibility involved, and the results obtained. Suggested fee schedules and economic reports of state and local bar associations provide some guidance on the subject of reasonable fees. It is a commendable and long-standing tradition of the bar that special consideration is given in the fixing of any fee

for services rendered a brother lawyer or a member of his immediate family.

EC 2-19 As soon as feasible after a lawyer has been employed, it is desirable that he reach a clear agreement with his client as to the basis of the fee charges to be made. Such a course will not only prevent later misunderstanding but will also work for good relations between the lawyer and the client. It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ him may have had little or no experience with fee charges of lawyers, and for this reason he should explain fully to such persons the reasons for the particular fee arrangement he proposes.

EC 2-20 Contingent fee arrangements in civil cases have long been commonly accepted in the United States in proceedings to enforce claims. The historical bases of their acceptance are that (1) they often, and in a variety of circumstances, provide the only practical means by which one having a claim against another can economically afford, finance, and obtain the services of a competent lawyer to prosecute his claim, and (2) a successful prosecution of the claim produces a *res* out of which the fee can be paid. Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relation cases are rarely justified. In administrative agency proceedings contingent fee contracts should be governed by the same consideration as in other civil cases. Public policy properly condemns contingent fee arrangements in criminal cases, largely on the ground that legal services in criminal cases do not produce a *res* with which to pay the fee.

EC 2-21 A lawyer should not accept compensation or any thing of value incident to his employment or services from one other than his client without the knowledge and consent of his client after full disclosure.

EC 2-22 Without the consent of his client, a lawyer should not associate in a particular matter another lawyer outside his firm. A fee may properly be divided between lawyers properly associated if the division is in proportion to the services performed and the responsibility assumed by each lawyer and if the total fee is reasonable.

EC 2-23 A lawyer should be zealous in his efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject. He should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client.

Financial Ability to Employ Counsel: Persons Unable to Pay Reasonable Fees

EC 2-24 A layman whose financial ability is not sufficient to permit payment of any fee cannot obtain legal services, other than in cases where a contingent fee is appropriate, unless the services are provided for him. Even a person of moderate means may be unable to pay a reasonable fee which is large because of the complexity, novelty, or difficulty of the problem or similar factors.

EC 2-25 Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus it has been necessary for the profession to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed, by the profession. Every lawyer should support all proper efforts to meet this need for legal services.

Acceptance and Retention of Employment

EC 2-26 A lawyer is under no obligation to act as adviser or advocate for every person who may wish to become his client; but in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment. The fulfillment of this objective requires acceptance by a lawyer of his share of tendered employment which may be unattractive both to him and the bar generally.

EC 2-27 History is replete with instances of distinguished and sacrificial services by lawyers who have represented unpopular clients and causes. Regardless of his personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse.

EC 2-28 The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers, public officials, or influential members of the community does not justify his rejection of tendered employment.

EC 2-29 When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, he should not seek to be excused from undertaking the representation except for compelling reasons. Compelling reasons do not include such factors as the repugnance of the subject matter of the pro-

ceeding, the identity or position of a person involved in the case, the belief of the lawyer that the defendant in a criminal proceeding is guilty, or the belief of the lawyer regarding the merits of the civil case.

EC 2-30 Employment should not be accepted by a lawyer when he is unable to render competent service or when he knows or it is obvious that the person seeking to employ him desires to institute or maintain an action merely for the purpose of harassing or maliciously injuring another. Likewise, a lawyer should decline employment if the intensity of his personal feeling, as distinguished from a community attitude, may impair his effective representation of a prospective client. If a lawyer knows a client has previously obtained counsel, he should not accept employment in the matter unless the other counsel approves or withdraws, or the client terminates the prior employment.

EC 2-31 Full availability of legal counsel requires both that persons be able to obtain counsel and that lawyers who undertake representation complete the work involved. Trial counsel for a convicted defendant should continue to represent his client by advising whether to take an appeal and, if the appeal is prosecuted, by representing him through the appeal unless new counsel is substituted or withdrawal is permitted by the appropriate court.

EC 2-32 A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances, and in a matter pending before a tribunal he must comply with the rules of the tribunal regarding withdrawal. A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of his client and the possibility of prejudice to his client as a result of his withdrawal. Even when he justifiably withdraws, a lawyer should protect the welfare of his client by giving due notice of his withdrawal, suggesting employment of other counsel, delivering to the client all papers and property to which the client is entitled, co-operating with counsel subsequently employed, and otherwise endeavoring to minimize the possibility of harm. Further, he should refund to the client any compensation not earned during the employment.

DISCIPLINARY RULES

DR 2-101 Publicity in General.

(A) A lawyer shall not prepare, cause to be prepared, use, or participate in the use of, any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients; as used herein, "public communication" includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, magazine, or book.

(B) A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf except as permitted under DR 2-103. This does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:

(1) In political advertisements when his professional status is germane to the political campaign or to a political issue.

(2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients.

(3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.

(4) In and on legal documents prepared by him.

(5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.

(6) As provided in Section 610.24, Code of Iowa.

(C) A lawyer shall not compensate or give anything of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.

DR 2-102 Professional Notices, Letterheads, Offices, and Law Lists.

(A) A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, except that the following may be used if they are in dignified form:

(1) A professional card of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, and any information permitted under DR 2-105. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification but may not be published in periodicals, magazines, newspapers, or other media.

(2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional office of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, per-

sonal friends, and relatives. It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but it may state the immediate past position of the lawyer. It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2-105.

(3) A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under DR 2-105.

(4) A letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, associates and any information permitted under DR 2-105. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer may be designated "Of Counsel" on a letterhead if he has a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if he or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

(5) A listing of the office of a lawyer or law firm in the alphabetical and classified sections of the telephone directory or directories for the geographical area or areas in which the lawyer resides or maintains offices or in which a significant part of his clientele resides and in the city directory of the city in which his or the firm's office is located; but the listing may give only the name of the lawyer or law firm, the fact he is a lawyer, addresses, and telephone numbers. The listing shall not be in distinctive form or type. A law firm may have a listing in the firm name separate from that of its members and associates. The listing in the classified section shall not be under a heading or classification other than "Attorneys" or "Lawyers," except that additional headings or classifications descriptive of the types of practice referred to in DR 2-105 are permitted.

(6) A listing in a reputable law list or legal directory giving brief biographical and other informative data. A law list or directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession. A law list is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards. The published data may include only the following: Name, including name of law firm and names of professional associates; addresses and telephone numbers; one or more fields of law in which the lawyer or law firm concentrates; a statement that practice is limited to one or more fields of law; a statement that the lawyer or law firm specializes in a particular field of law or law practice but only if authorized under DR 2-105 (A)(1); date and place of birth; date and place of admission to the bar of state and federal courts; schools attended, with dates of graduation, degrees, and other scholastic distinctions; public or quasi-public offices; military service; posts of honor; legal authorships; legal teaching positions; memberships, offices, committee assignments, and section memberships in bar associations; memberships and offices in legal fraternities and legal societies; technical and professional licenses; memberships in scientific, technical and professional associations and societies; foreign language ability; names and addresses of references, and, with their consent, names of clients regularly represented.

(B) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or professional association may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm, and during such period other members of the firm shall not use his name in the

firm name or in professional notices of the firm.

(C) A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners.

(D) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

(E) A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.

(F) Nothing contained herein shall prohibit a lawyer from using or permitting the use, in connection with his name in an approved law list, an earned degree or title derived therefrom indicating his training in the law.

Referred to in DR 2-105

DR 2-103 Recommendation of Professional Employment.

(A) A lawyer shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a nonlawyer who has not sought his advice regarding employment of a lawyer.

(B) Except as permitted under DR 2-103 (C), a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client.

(C) A lawyer shall not request a person or organization to recommend employment, as a private practitioner, of himself, his partner, or associate, except that he may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists and may pay its fees incident thereto.

(D) Except as specifically permitted by decision of the Supreme Court of the United States, the Supreme Court of Iowa or by statute, a lawyer shall not knowingly assist a person or organization that recommends, furnishes or pays for legal services to promote the use of his services or those of his partners or associates. However, he may co-operate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

(1) A legal aid office or public defender office:

(a) Operated or sponsored by a duly accredited law school.

(b) Operated or sponsored by a bona fide nonprofit community organization.

(c) Operated or sponsored by a governmental agency.

(d) Operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.

(2) A military legal assistance office.

(3) A lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.

(4) A bar association representative of the general bar of the geographical area in which the association exists.

(5) Omitted by Court Order, October 4, 1971

(E) A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under this Disciplinary Rule.

Referred to in DR 2-101 and 2-104

DR 2-104 Suggestion of Need of Legal Services.

(A) A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.

(2) A lawyer may accept employment that results from his participation in activities designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2-103 (D) (1) through (4), to the extent and under the conditions prescribed therein.

(3) A lawyer who is furnished or paid by any of the offices or organizations enumerated in DR 2-103 (D) (1) or (2) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.

(4) Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.

(5) If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the the purpose of obtaining their joinder.

DR 2-105 Limitation of Practice.

(A) A lawyer shall not hold himself out publicly as a specialist or as limiting his practice, except as permitted under DR 2-102(A) (6) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation of "Patents", "Patent Attorney" or "Patent Lawyer" or any combination of those terms in his letterhead and office sign. A lawyer engaged in the trademark practice may use the designation "Trademarks", "Trademark Attorney" or "Trademark Lawyer" or any combination of those terms on his letterhead and office sign, and a lawyer engaged in the admiralty practice may use the designation "Admiralty", "Proctor in Admiralty" or "Admiralty Lawyer" or any combination of those terms on his letterhead and office sign.

(2) A lawyer may permit his name to be listed in lawyer referral service offices according to the fields of law in which he will accept referrals.

(3) A lawyer available to act as a consultant to or as an associate of other lawyers in a particular branch of law or legal service may distribute to other lawyers and publish in legal journals a dignified announcement of such availability, but the announcement shall not contain a representation of special competence or experience. The announcement shall not be distributed to lawyers more frequently than once in a calendar year, but it may be published periodically in legal journals.

(4) A lawyer who is certified as a specialist in a particular field of law or law practice by the authority having jurisdiction under state law over the subject of specialization by lawyers may hold himself out as such specialist but only in accordance with the rules prescribed by that authority.

Referred to in DR 2-102 and Definitions (7)

DR 2-106 Fees for Legal Services.

(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

(C) A lawyer shall not enter into an arrangement for, charge or collect a contingent fee for representing a defendant in a criminal case, or either party in any action involving domestic relations.

DR 2-107 Division of Fees Among Lawyers.

(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:

(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

(2) The division is made in proportion to the services performed and responsibility assumed by each.

(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

(B) This Disciplinary Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

DR 2-108 Agreements Restricting the Practice of a Lawyer.

(A) A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as

a condition to payment of retirement benefits.

(B) In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law.

DR 2-109 Acceptance of Employment.

(A) A lawyer shall not accept employment on behalf of a person if he knows or it is obvious that such person wishes to:

(1) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

DR 2-110 Withdrawal from Employment.

(A) In general.

(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.

(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

(4) He is discharged by his client.

(C) Permissive withdrawal.

If DR 2-110 (B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) His client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

(b) Personally seeks to pursue an illegal course of conduct.

(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively.

(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

(3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

(5) His client knowingly and freely assents to termination of his employment.

(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

Referred to in DR 7-101

CANON 3

A Lawyer Should Assist in Preventing the Unauthorized Practice of Law

ETHICAL CONSIDERATIONS

EC 3-1 The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to render legal services. Because of the fiduciary and personal character of the lawyer-client relationship and the inherently complex nature of our legal system, the public can better be assured of the requisite responsibility and competence if the practice of law is confined to those who are

subject to the requirements and regulations imposed upon members of the legal profession.

EC 3-2 The sensitive variations in the considerations that bear on legal determinations often make it difficult even for a lawyer to exercise appropriate professional judgment, and it is therefore essential that the personal nature of the relationship of client and lawyer be preserved. Competent professional judgment is the product of a trained familiarity with law and legal processes, a disciplined, analytical approach to legal problems, and a firm ethical commitment.

EC 3-3 A nonlawyer who undertakes to handle legal matters is not governed as to integrity or legal competence by the same rules that govern the conduct of a lawyer. A lawyer is not only subject to that regulation but also is committed to high standards of ethical conduct. The public interest is best served in legal matters by a regulated profession committed to such standards. The Disciplinary Rules protect the public in that they prohibit a lawyer from seeking employment by improper overtures, from acting in cases of divided loyalties, and from submitting to the control of others in the exercise of his judgment. Moreover, a person who entrusts legal matters to a lawyer is protected by the attorney-client privilege and by the duty of the lawyer to hold inviolate the confidences and secrets of his client.

EC 3-4 A layman who seeks legal services often is not in a position to judge whether he will receive proper professional attention. The entrustment of a legal matter may well involve the confidences, the reputation, the property, the freedom, or even the life of the client. Proper protection of members of the public demands that no person be permitted to act in the confidential and demanding capacity of a lawyer unless he is subject to the regulations of the legal profession.

EC 3-5 It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law. However, the practice of law includes, but is not limited to, representing another before the courts; giving of legal advice and counsel to others relating to their rights and obligations under the law; and preparation or approval of the use of legal instruments by which legal rights of others are either obtained, secured or transferred even if such matters never become the subject of a court proceeding. Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved, nonlawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional legal judgment is required.

EC 3-6 A lawyer often delegates tasks required in performance of legal services to his clients to clerks, secretaries and other nonlawyer personnel whom he employs. Such delegation which extends beyond duties merely ministerial in nature is proper under the following circumstances:

(1) If it is for the purposes of (a) investigation of a factual situation or consultation with a lawyer's client for the purpose, only, of obtaining factual information; or (b) legal research; or (c) preparation or selection of legal instruments and documents, provided, however, that in each such situation the delegated work will assist the employer-lawyer in carrying the matter to a completed service either through the lawyer's personal examination and approval thereof or by other additional participation by the lawyer. However, the delegated work must be such as loses its separate identity and becomes the service or is merged in the service of the lawyer.

(2) The lawyer must maintain an initial, continuing and direct relationship with his client, directly supervise the delegated work, and assume complete professional responsibility for the work product. This requirement must not be ignored by a lawyer or given superficial recognition.

(3) The lawyer shall not permit employed lay persons to counsel the lawyer's clients about legal matters, appear in any court or administrative proceeding except to the extent authorized by court rule or administrative rule or regulation, or otherwise engage in the unauthorized practice of law. A lawyer should recognize the importance of being present, if practicable, when a client executes a will, contract, deed or other legal document, to insure that it is executed in compliance with the law and to answer the client's questions. A lawyer has a continuing affirmative duty to preserve and enhance the public's confidence in the legal profession. This is best accomplished when the client has direct access to a lawyer for the purpose of asking for and receiving legal advice prior to or at the time the client takes any contemplated legal action.

(4) When communicating with persons outside the law office, including other lawyers, a nonlawyer employed by a lawyer must disclose his status as such. The disclosure must be made in a way that avoids confusion. With respect to oral communi-

cations, disclosure must be made at the outset of the conversation. It is permissible for lay person office personnel to sign letters on the firm's stationery as long as the nonlawyer status is clearly indicated.

(5) The supervising lawyer must exercise care to insure his lay person-employees comply with all applicable provisions of the Code of Professional Responsibility. This includes the obligation referred to in DR 4-101(D) and EC 4-2 to see that such employees preserve and refrain from using the confidence and secrets of the lawyer's clients.

EC 3-7 The prohibition against a nonlawyer practicing law does not prevent a layman from representing himself, for then he is ordinarily exposing only himself to possible injury. The purpose of the legal profession is to make educated legal representation available to the public; but anyone who does not wish to avail himself of such representation is not required to do so. Even so, the legal profession should help members of the public to recognize legal problems and to understand why it may be unwise for them to act for themselves in matters having legal consequences.

EC 3-8 Since a lawyer should not aid or encourage a layman to practice law, he should not practice law in association with a layman or otherwise share legal fees with a layman. This does not mean, however, that the pecuniary value of the interest of a deceased lawyer in his firm or practice may not be paid to his estate or specified persons such as his widow or heirs. In like manner, profit-sharing retirement plans of a lawyer or law firm which include nonlawyer office employees are not improper. These limited exceptions to the rule against sharing legal fees with laymen are permissible since they do not aid or encourage laymen to practice law.

EC 3-9 Regulation of the practice of law is accomplished principally by the respective states. Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he is not permitted by law or by court order to do so. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by the states. In furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle the legal affairs of his client or upon the opportunity of a client to obtain the services of a lawyer of his choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice.

DISCIPLINARY RULES

DR 3-101 Aiding Unauthorized Practice of Law.

(A) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.

(B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

DR 3-102 Dividing Legal Fees with a Nonlawyer.

(A) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) An agreement by a lawyer with his firm, partner, or associate may provide for the payment of money, over a reasonable period of time after his death, to his estate or to one or more specified persons.

(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(3) A lawyer or law firm may include nonlawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

DR 3-103 Forming a Partnership with a Nonlawyer.

(A) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

DR 3-104 Nonlawyer personnel.

(A) A lawyer or law firm may employ nonlawyer personnel to perform delegated functions under the direct supervision of a licensed attorney, but shall not permit such nonlawyer personnel to (i) counsel clients about legal matters, (ii) appear in court or in proceedings which are a part of the judicial process (except as permitted by Court Rule 120 or rules of this or other courts or agencies), or (iii) otherwise engage in the unauthorized practice of law.

(B) A lawyer or law firm employing nonlawyer personnel shall not permit any representation that such nonlawyer is a member of the Iowa Bar.

(C) A lawyer or law firm employing nonlawyer personnel shall exercise care to assure compliance by the nonlawyer personnel with all applicable provisions of the Code of Professional Responsibility. The initial and continuing relationship with the client must be the responsibility of the employing lawyer or law firm.

(D) The delegated work of nonlawyer personnel shall be such that it will assist only the employing lawyer or law firm and will be merged into the lawyer's completed work product. A lawyer shall examine, supervise and be responsible

for all work delegated to nonlawyer personnel.

(E) The lawyer or law firm employing nonlawyer personnel shall not permit such nonlawyer to communicate with clients or the public, including lawyers outside his firm, without first disclosing his nonlawyer status.

CANON 4

A Lawyer Should Preserve the Confidences and Secrets of a Client

ETHICAL CONSIDERATIONS

EC 4-1 Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him. A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client. A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance.

EC 4-2 The obligation to protect confidences and secrets obviously does not preclude a lawyer from revealing information when his client consents after full disclosure, when necessary to perform his professional employment, when permitted by a Disciplinary Rule, or when required by law. Unless the client otherwise directs, a lawyer may disclose the affairs of his client to partners or associates of his firm. It is a matter of common knowledge that the normal operation of a law office exposes confidential professional information to nonlawyer employees of the office, particularly secretaries and those having access to the files; and this obligates a lawyer to exercise care in selecting and training his employees so that the sanctity of all confidences and secrets of his clients may be preserved. If the obligation extends to two or more clients as to the same information, a lawyer should obtain the permission of all before revealing the information. A lawyer must always be sensitive to the rights and wishes of his client and act scrupulously in the making of decisions which may involve the disclosure of information obtained in his professional relationship. Thus, in the absence of consent of his client after full disclosure, a lawyer should not associate another lawyer in the handling of a matter; nor should he, in the absence of consent, seek counsel from another lawyer if there is a reasonable possibility that the identity of the client or his confidences or secrets would be revealed to such lawyer. Both social amenities and professional duty should cause a lawyer to shun indiscreet conversations concerning his clients.

EC 4-3 Unless the client otherwise directs, it is not improper for a lawyer to give limited information from his files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing, or other legitimate purposes, provided he exercises due care in the selection of the agency and warns the agency that the information must be kept confidential.

EC 4-4 The attorney-client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of his client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share the knowledge. A lawyer should endeavor to act in a manner which preserves the evidentiary privilege; for example, he should avoid professional discussions in the presence of persons to whom the privilege does not extend. A lawyer owes an obligation to advise the client of the attorney-client privilege and timely to assert the privilege unless it is waived by the client.

EC 4-5 A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes. Likewise, a lawyer should be diligent in his efforts to prevent the misuse of such information by his employees and associates. Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another, and no employment should be accepted that might require such disclosure.

EC 4-6 The obligation of a lawyer to preserve the confidences and secrets of his client continues after the termination of his employment. Thus a lawyer should not attempt to sell a law practice as a going business because, among other reasons, to do so would involve the disclosure of confidences and secrets. A lawyer should also provide for the protection of the confidences and secrets of his client following the termination of the practice of the lawyer, whether termination is due to death, disability, or retirement. For example, a lawyer might provide for the personal papers of the client to be returned to him and for the papers of the lawyer to be delivered to another lawyer or to be destroyed. In determining the method of disposition, the instructions and wishes of the client should be a dominant consideration.

DISCIPLINARY RULES

DR 4-101 Preservation of Confidences and Secrets of a Client.

(A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(B) Except when permitted under DR 4-101 (C), a lawyer shall not knowingly:
  (1) Reveal a confidence or secret of his client.
  (2) Use a confidence or secret of his client to the disadvantage of the client.
  (3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

(C) A lawyer may reveal:
  (1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.
  (2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.
  (3) The intention of his client to commit a crime and the information necessary to prevent the crime.
  (4) Confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

(D) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101 (C) through an employee.

Referred to in EC 3-6(5)

CANON 5

A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client

ETHICAL CONSIDERATIONS

EC 5-1 The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

Interests of a Lawyer That May Affect His Judgment

EC 5-2 A lawyer should not accept proffered employment if his personal interests or desires will, or there is reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client. After accepting employment, a lawyer carefully should refrain from acquiring a property right or assuming a position that would tend to make his judgment less protective of the interests of his client.

EC 5-3 The self-interest of a lawyer resulting from his ownership of property in which his client also has an interest or which may affect property of his client may interfere with the exercise of free judgment on behalf of his client. If such interference would occur with respect to a prospective client, a lawyer should decline employment proffered by him. After accepting employment, a lawyer should not acquire property rights that would adversely affect his professional judgment in the representation of his client. Even if the property interests of a lawyer do not presently interfere with the exercise of his independent judgment, but the likelihood of interference can reasonably be foreseen by him, a lawyer should explain the situation to his client and should decline employment or withdraw unless the client consents to the continuance of the relationship after full disclosure. A lawyer should not seek to persuade his client to permit him to invest in an undertaking of his client nor make improper use of his professional relationship to influence his client to invest in an enterprise in which the lawyer is interested.

EC 5-4 If, in the course of his representation of a client, a lawyer is permitted to receive from his client a beneficial ownership in publication rights relating to the subject matter of the employment, he may be tempted to subordinate the interests of his client to his own anticipated pecuniary gain. For example, a lawyer in a criminal case who obtains from his client television, radio, motion picture, newspaper, magazine, book, or other publication rights with respect to the case may be influenced, consciously or unconsciously, to a course of conduct that will enhance the value of his publication rights to the prejudice of his client. To prevent these potentially differing interests, such arrangements, should be scrupulously avoided prior to the termination of all aspects of the matter giving rise to the employment, even though his employment has previously ended.

EC 5-5 A lawyer should not suggest to his client that a gift be made to himself or for his benefit. If a lawyer accepts a gift from his client, he is peculiarly susceptible to the charge that he unduly influenced or overreached the client. If a client voluntarily offers to make a gift to his lawyer, the lawyer may accept the gift, but before doing so, he should urge that his client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances. Other than in exceptional circumstances, a lawyer should insist that an instrument in which his client desires to name him beneficially be prepared by another lawyer selected by the client.

EC 5-6 A lawyer should not consciously influence a client to name him as executor,

trustee, or lawyer in an instrument. In those cases where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety.

EC 5-7 The possibility of an adverse effect upon the exercise of free judgment by a lawyer on behalf of his client during litigation generally makes it undesirable for the lawyer to acquire a proprietary interest in the cause of his client or otherwise to become financially interested in the outcome of the litigation. However, it is not improper for a lawyer to protect his right to collect a fee for his services by the assertion of legally permissible liens, even though by doing so he may acquire an interest in the outcome of litigation. Although a contingent fee arrangement gives a lawyer a financial interest in the outcome of litigation, a reasonable contingent fee is permissible in civil cases because it may be the only means by which a layman can obtain the services of a lawyer of his choice. But a lawyer, because he is in a better position to evaluate a cause of action, should enter into a contingent fee arrangement only in those instances where the arrangement will be beneficial to the client.

EC 5-8 A financial interest in the outcome of litigation also results if monetary advances are made by the lawyer to his client. Although this assistance generally is not encouraged, there are instances when it is not improper to make loans to a client. For example, the advancing or guaranteeing of payment of the costs and expenses of litigation by a lawyer may be the only way a client can enforce his cause of action, but the ultimate liability for such costs and expenses must be that of the client.

EC 5-9 Occasionally a lawyer is called upon to decide in a particular case whether he will be a witness or an advocate. If a lawyer is both counsel and witness, he becomes more easily impeachable for interest and thus may be a less effective witness. Conversely, the opposing counsel may be handicapped in challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case. An advocate who becomes a witness is in the unseemly and ineffective position of arguing his own credibility. The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively.

EC 5-10 Problems incident to the lawyer-witness relationship arise at different stages; they relate either to whether a lawyer should accept employment or should withdraw from employment. Regardless of when the problem arises, his decision is to be governed by the same basic considerations. It is not objectionable for a lawyer who is a potential witness to be an advocate if it is unlikely that he will be called as a witness because his testimony would be merely cumulative or if his testimony will relate only to an uncontested issue. In the exceptional situation where it will be manifestly unfair to the client for the lawyer to refuse employment or to withdraw when he will likely be a witness on a contested issue, he may serve as advocate even though he may be a witness. In making such decision, he should determine the personal or financial sacrifice of the client that may result from his refusal of employment or withdrawal therefrom, the materiality of his testimony, and the effectiveness of his representation in view of his personal involvement. In weighing these factors, it should be clear that refusal or withdrawal will impose an unreasonable hardship upon the client before the lawyer accepts or continues the employment. Where the question arises, doubts should be resolved in favor of the lawyer testifying and against his becoming or continuing as an advocate.

EC 5-11 A lawyer should not permit his personal interests to influence his advice relative to a suggestion by his client that additional counsel be employed. In like manner, his personal interests should not deter him from suggesting that additional counsel be employed; on the contrary, he should be alert to the desirability of recommending additional counsel when, in his judgment, the proper representation of his client requires it. However, a lawyer should advise his client not to employ additional counsel suggested by the client if the lawyer believes that such employment would be a disservice to the client, and he should disclose the reasons for his belief.

EC 5-12 Inability of co-counsel to agree on a matter vital to the representation of their client requires that their disagreement be submitted by them jointly to their client for his resolution, and the decision of the client shall control the action to be taken.

EC 5-13 A lawyer should not maintain membership in or be influenced by any organization of employees that undertakes to prescribe, direct, or suggest when or how he should fulfill his professional obligations to a person or organization that employs him as a lawyer. Although it is not necessarily improper for a lawyer employed by a corporation or similar entity to be a member of an organization of employees, he should be vigilant to safeguard his fidelity as a lawyer to his employer, free from outside influences.

Interests of Multiple Clients

EC 5-14 Maintaining the independence of professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant.

EC 5-15 If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, he must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues the employment. He should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests; and there are few situations in which he would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such employment and the interests did become actually differing, he would have to withdraw from employment with likelihood of resulting hardship on the clients; and for this reason it is preferable that he refuse the employment initially. On the other hand, there are many instances in which a lawyer may properly serve multiple clients having potentially differing interests in matters not involving litigation. If the interests vary only slightly, it is generally likely that the lawyer will not be subjected to an adverse influence and that he can retain his independent judgment on behalf of each client; and if the interests become differing, withdrawal is less likely to have a disruptive effect upon the causes of his clients.

EC 5-16 In those instances in which a lawyer is justified in representing two or more clients having differing interests, it is nevertheless essential that each client be given the opportunity to evaluate his need for representation free of any potential conflict and to obtain other counsel if he so desires. Thus before a lawyer may represent multiple clients, he should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent. If there are present other circumstances that might cause any of the multiple clients to question the undivided loyalty of the lawyer, he should also advise all of the clients of those circumstances.

EC 5-17 Typically recurring situations involving potentially differing interests are those in which a lawyer is asked to represent co-defendants in a criminal case, co-plaintiffs in a personal injury case, an insured and his insurer, and beneficiaries of the estate of a decedent. Whether a lawyer can fairly and adequately protect the interests of multiple clients in these and similar situations depends upon an analysis of each case. In certain circumstances, there may exist little chance of the judgment of the lawyer being adversely affected by the slight possibility that the interests will become actually differing; in other circumstances, the chance of adverse effect upon his judgment is not unlikely.

EC 5-18 A lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and his professional judgment should not be influenced by the personal desires of any person or organization. Occasionally a lawyer for an entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent him in an individual capacity; in such case the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present.

EC 5-19 A lawyer may represent several clients whose interests are not actually or potentially differing. Nevertheless, he should explain any circumstances that might cause a client to question his undivided loyalty. Regardless of the belief of a lawyer that he may properly represent multiple clients, he must defer to a client who holds the contrary belief and withdraw from representation of that client.

EC 5-20 A lawyer is often asked to serve as an impartial arbitrator or mediator in matters which involve present or former clients. He may serve in either capacity if he first discloses such present or former relationships. After a lawyer has undertaken to act as an impartial arbitrator or mediator, he should not thereafter represent in the dispute any of the parties involved.

Desires of Third Persons

EC 5-21 The obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment. The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political, or social pressures upon the lawyer. These influences are often subtle, and a lawyer must be alert to their existence. A lawyer subjected to outside pressures should make full disclosure of them to his client; and if he or his client believes that the effectiveness of his representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of his client.

EC 5-22 Economic, political, or social pressures by third persons are less likely to impinge upon the independent judgment of a lawyer in a matter in which he is compensated directly by his client and his professional work is exclusively with his client. On the other hand, if a lawyer is compensated from a source other than his client, he may feel a sense of responsibility to someone other than his client.

EC 5-23 A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. Some employers may be

interested in furthering their own economic, political, or social goals without regard to the professional responsibility of the lawyer to his individual client. Others may be far more concerned with establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client. On some occasions, decisions on priority of work may be made by the employer rather than the lawyer with the result that prosecution of work already undertaken for clients is postponed to their detriment. Similarly, an employer may seek, consciously or unconsciously, to further its own economic interests through the actions of the lawyers employed by it. Since a lawyer must always be free to exercise his professional judgment without regard to the interests or motives of a third person, the lawyer who is employed by one to represent another must constantly guard against erosion of his professional freedom.

EC 5-24 To assist a lawyer in preserving his professional independence, a number of courses are available to him. For example, a lawyer should not practice with or in the form of a professional legal corporation, even though the corporate form is permitted by law, if any director, officer, or stockholder of it is a nonlawyer. Although a lawyer may be employed by a business corporation with nonlawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of his professional judgment from any layman. Various types of legal aid offices are administered by boards of directors composed of lawyers and laymen. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client he serves. Where a lawyer is employed by an organization, a written agreement that defines the relationship between him and the organization and provides for his independence is desirable since it may serve to prevent misunderstanding as to their respective roles. Although other innovations in the means of supplying legal counsel may develop, the responsibility of the lawyer to maintain his professional independence remains constant, and the legal profession must insure that changing circumstances do not result in loss of the professional independence of the lawyer.

DISCIPLINARY RULES

DR 5-101 Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.

(A) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

(B) A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case.

Referred to in DR 5-102

DR 5-102 Withdrawal as Counsel When the Lawyer Becomes a Witness.

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5-101(B)(1) through (4).

(B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm may be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client.

Referred to in DR 7-101

DR 5-103 Avoiding Acquisition of Interest in Litigation.

(A) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation he is conducting for a client, except that he may:

(1) Acquire a lien granted by law to secure his fee or expenses.

(2) Contract with a client for a reasonable contingent fee in a civil case.

(B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, ex-

penses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

DR 5-104 Limiting Business Relations with a Client.

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

(B) Prior to conclusion of all aspects of the matter giving rise to his employment, a lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which he acquires an interest in publication rights with respect to the subject matter of his employment or proposed employment.

DR 5-105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105 (C).

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105(C).

(C) In the situations covered by DR 5-105 (A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

(D) If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment.

Referred to in DR 7-101

DR 5-106 Settling Similar Claims of Clients.

(A) A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement, and of the participation of each person in the settlement.

DR 5-107 Avoiding Influence by Others Than the Client.

(A) Except with the consent of his client after full disclosure, a lawyer shall not:
(1) Accept compensation for his legal services from one other than his client.
(2) Accept from one other than his client any thing of value related to his representation of or his employment by his client.

(B) A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services.

(C) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
(1) A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
(2) A nonlawyer is a corporate director or officer thereof; or
(3) A nonlawyer has the right to direct or control the professional judgment of a lawyer.

CANON 6

A Lawyer Should Represent a Client Competently

ETHICAL CONSIDERATIONS

EC 6-1 Because of his vital role in the legal process, a lawyer should act with competence and proper care in representing clients. He should strive to become and remain proficient in his practice and should accept employment only in matters which he is or intends to become competent to handle.

EC 6-2 A lawyer is aided in attaining and maintaining his competence by keeping abreast of current legal literature and developments, participating in continuing legal education programs, concentrating in particular areas of the law, and by utilizing other available means. He has the additional ethical obligation to assist in improving the legal profession, and he may do so by participating in bar activities intended to advance the quality and standards of members of the profession. Of particular importance is the careful training of his younger associates and the giving of sound guidance to all lawyers who consult him. In short, a lawyer should strive at all levels to aid the legal profession in advancing the highest possible standards of integrity and competence and to meet those standards himself.

EC 6-3 While the licensing of a lawyer is evidence that he has met the standards then prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which he is not qualified. However, he may accept such employment if in good faith he expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to his client. Proper preparation and representation may require the association by the lawyer of professionals in other disciplines. A lawyer offered employment in a matter in which he is not and does not expect to become so qualified should either decline the employment or, with the consent of his client, accept the employment and associate a lawyer who is competent in the matter.

EC 6-4 Having undertaken representation, a lawyer should use proper care to safeguard the interests of his client. If a lawyer has accepted employment in a matter beyond his competence but in which he expected to become competent, he should diligently undertake the work and study necessary to qualify himself. In addition to being qualified to handle a particular matter, his obligation to his client requires him to prepare adequately for and give appropriate attention to his legal work.

EC 6-5 A lawyer should have pride in his professional endeavors. His obligation to act competently calls for higher motivation than that arising from fear of civil liability or disciplinary penalty.

EC 6-6 A lawyer should not seek, by contract or other means, to limit his individual liability to his client for his malpractice. A lawyer who handles the affairs of his client properly has no need to attempt to limit his liability for his professional activities and one who does not handle the affairs of his client properly should not be permitted to do so. A lawyer who is a stockholder in or is associated with a professional legal corporation may, however, limit his liability for malpractice of his associates in the corporation, but only to the extent permitted by law.

DISCIPLINARY RULES

DR 6-101 Failing to Act Competently.

(A) A lawyer shall not:

(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a legal matter entrusted to him.

DR 6-102 Limiting Liability to Client.

(A) A lawyer shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice.

CANON 7

A Lawyer Should Represent a Client Zealously Within the Bounds of the Law

ETHICAL CONSIDERATIONS

EC 7-1 The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law, which includes Disciplinary Rules and enforceable professional regulations. The professional responsibility of a lawyer derives from his membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of men, each member of our society is entitled to have his conduct judged and regulated in accordance with the law; to seek any lawful objective through legally permissible means; and to present for adjudication any lawful claim, issue, or defense.

EC 7-2 The bounds of the law in a given case are often difficult to ascertain. The language of legislative enactments and judicial opinions may be uncertain as applied to varying factual situations. The limits and specific meaning of apparently relevant law may be made doubtful by changing or developing constitutional interpretations, inadequately expressed statutes or judicial opinions, and changing public and judicial attitudes. Certainty of law ranges from well-settled rules through areas of conflicting authority to areas without precedent.

EC 7-3 Where the bounds of law are uncertain, the action of a lawyer may depend on whether he is serving as advocate or adviser. A lawyer may serve simultaneously as both advocate and adviser, but the two roles are essentially different. In asserting a position on behalf of his client, an advocate for the most part deals with past conduct and must take the facts as he finds them. By contrast, a lawyer serving as adviser primarily assists his client in determining the course of future conduct and relationships. While serving as advocate, a lawyer should resolve in favor of his client doubts as to the bounds of the law. In serving a client as adviser, a lawyer in appropriate circumstances should give his professional opinion as to what the ultimate decisions of the courts would likely be as to the applicable law.

Duty of the Lawyer to a Client

EC 7-4 The advocate may urge any permissible construction of the law favorable to his client, without regard to his professional opinion as to the likelihood that the construction will ultimately prevail. His conduct is within the bounds of the law, and therefore permissible, if the position taken is supported by the law or is supportable by a good faith argument for an extension, modification,

or reversal of the law. However, a lawyer is not justified in asserting a position in litigation that is frivolous.

EC 7-5 A lawyer as adviser furthers the interest of his client by giving his professional opinion as to what he believes would likely be the ultimate decision of the courts on the matter at hand and by informing his client of the practical effect of such decision. He may continue in the representation of his client even though his client has elected to pursue a course of conduct contrary to the advice of the lawyer so long as he does not thereby knowingly assist the client to engage in illegal conduct or to take a frivolous legal position. A lawyer should never encourage or aid his client to commit criminal acts or counsel his client on how to violate the law and avoid punishment therefor.

EC 7-6 Whether the proposed action of a lawyer is within the bounds of the law may be a perplexing question when his client is contemplating a course of conduct having legal consequences that vary according to the client's intent, motive, or desires at the time of the action. Often a lawyer is asked to assist his client in developing evidence relevant to the state of mind of the client at a particular time. He may properly assist his client in the development and preservation of evidence of existing motive, intent, or desire; obviously, he may not do anything furthering the creation or preservation of false evidence. In many cases a lawyer may not be certain as to the state of mind of his client, and in those situations he should resolve reasonable doubts in favor of his client.

EC 7-7 In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on his lawyer. As typical examples in civil cases, it is for the client to decide whether he will accept a settlement offer or whether he will waive his right to plead an affirmative defense. A defense lawyer in a criminal case has the duty to advise his client fully on whether a particular plea to a charge appears to be desirable and as to the prospects of success on appeal, but it is for the client to decide what plea should be entered and whether an appeal should be taken.

EC 7-8 A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision-making process if the client does not do so. Advice of a lawyer to his client need not be confined to purely legal considerations. A lawyer should advise his client of the possible effect of each legal alternative. A lawyer should bring to bear upon this decision-making process the fullness of his experience as well as his objective viewpoint. In assisting his client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible. He may emphasize the possibility of harsh consequences that might result from assertion of legally permissible positions. In the final analysis, however, the lawyer should always remember that the decision whether to forego legally available objectives or methods because of nonlegal factors is ultimately for the client and not for himself. In the event that the client in a non-adjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by Disciplinary Rules, the lawyer may withdraw from the employment.

EC 7-9 In the exercise of his professional judgment on those decisions which are for his determination in the handling of a legal matter, a lawyer should always act in a manner consistent with the best interests of his client. However, when an action in the best interest of his client seems to him to be unjust, he may ask his client for permission to forego such action.

EC 7-10 The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.

EC 7-11 The responsibilities of a lawyer may vary according to the intelligence, experience, mental condition or age of a client, the obligation of a public officer, or the nature of a particular proceeding. Examples include the representation of an illiterate or an incompetent, service as a public prosecutor or other government lawyer, and appearances before administrative and legislative bodies.

EC 7-12 Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representative, his lawyer may be compelled in court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or of contributing to the advancement of his interests, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible

aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for his client, the lawyer should consider all circumstances then prevailing and act with care to safeguard and advance the interests of his client. But obviously a lawyer cannot perform any act or make any decision which the law requires his client to perform or make, either acting for himself if competent, or by a duly constituted representative if legally incompetent.

EC 7-13 The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice: the prosecutor should make timely disclosure to the defense of available evidence, known to him, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he believes it will damage the prosecutor's case or aid the accused.

EC 7-14 A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair. A government lawyer not having such discretionary power who believes there is lack of merit in a controversy submitted to him should so advise his superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.

EC 7-15 The nature and purpose of proceedings before administrative agencies vary widely. The proceedings may be legislative or quasi-judicial or a combination of both. They may be *ex parte* in character, in which event they may originate either at the instance of the agency or upon motion of an interested party. The scope of an inquiry may be purely investigative or it may be truly adversary looking toward the adjudication of specific rights of a party or of classes of parties. The foregoing are but examples of some of the types of proceedings conducted by administrative agencies. A lawyer appearing before an administrative agency, regardless of the nature of the proceeding it is conducting, has the continuing duty to advance the cause of his client within the bounds of the law. Where the applicable rules of the agency impose specific obligations upon a lawyer, it is his duty to comply therewith, unless the lawyer has a legitimate basis for challenging the validity thereof. In all appearances before administrative agencies, a lawyer should identify himself, his client if identity of his client is not privileged, and the representative nature of his appearance. It is not improper, however, for a lawyer to seek from an agency information available to the public without indentifying his client.

EC 7-16 The primary business of a legislative body is to enact laws rather than to adjudicate controversies, although on occasion the activities of a legislative body may take on the characteristics of an adversary proceeding, particularly in investigative and impeachment matters. The role of a lawyer supporting or opposing proposed legislation normally is quite different from his role in representing a person under investigation or on trial by a legislative body. When a lawyer appears in connection with proposed legislation, he seeks to affect the lawmaking process, but when he appears on behalf of a client in investigatory or impeachment proceedings, he is concerned with the protection of the rights of his client. In either event, he should identify himself and his client, if identity of his client is not privileged, and should comply with applicable laws and legislative rules.

EC 7-17 The obligation of loyalty to his client applies only to a lawyer in the discharge of his professional duties and implies no obligation to adopt a personal viewpoint favorable to the interests or desires of his client. While a lawyer must act always with circumspection in order that his conduct will not adversely affect the rights of a client in a matter he is then handling, he may take positions on public issues and espouse legal reforms he favors without regard to the individual views of any client.

EC 7-18 The legal system in its broadest sense functions best when persons in need of legal advice or assistance are represented by their own counsel. For this reason a lawyer should not communicate on the subject matter of the representation of his client with a person he knows to be represented in the matter by a lawyer, unless pursuant to law or rule of court or unless he has the consent of the lawyer for that person. If one is not represented by counsel, a lawyer representing another may have to deal directly with the unrepresented person; in such an instance, a lawyer should not undertake to give

advice to the person who is attempting to represent himself, except that he may advise him to obtain a lawyer.

Duty of the Lawyer to the Adversary System of Justice

EC 7-19 Our legal system provides for the adjudication of disputes governed by the rules of substantive, evidentiary, and procedural law. An adversary presentation counters the natural human tendency to judge too swiftly in terms of the familiar that which is not yet fully known; the advocate, by his zealous preparation and presentation of facts and law, enables the tribunal to come to the hearing with an open and neutral mind and to render impartial judgments. The duty of a lawyer to his client and his duty to the legal system are the same: to represent his client zealously within the bounds of the law.

EC 7-20 In order to function properly, our adjudicative process requires an informed, impartial tribunal capable of administering justice promptly and efficiently according to procedures that command public confidence and respect. Not only must there be competent, adverse presentation of evidence and issues, but a tribunal must be aided by rules appropriate to an effective and dignified process. The procedures under which tribunals operate in our adversary system have been prescribed largely by legislative enactments, court rules and decisions, and administrative rules. Through the years certain concepts of proper professional conduct have become rules of law applicable to the adversary adjudicative process. Many of these concepts are the bases for standards of professional conduct set forth in the Disciplinary Rules.

EC 7-21 The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process; further, the person against whom the criminal process is so misused may be deterred from asserting his legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

EC 7-22 Respect for judicial rulings is essential to the proper administration of justice; however, a litigant or his lawyer may, in good faith and within the framework of the law, take steps to test the correctness of a ruling of a tribunal.

EC 7-23 The complexity of law often makes it difficult for a tribunal to be fully informed unless the pertinent law is presented by the lawyers in the cause. A tribunal that is fully informed on the applicable law is better able to make a fair and accurate determination of the matter before it. The adversary system contemplates that each lawyer will present and argue the existing law in the light most favorable to his client. Where a lawyer knows of legal authority in the controlling jurisdiction directly adverse to the position of his client, he should inform the tribunal of its existence unless his adversary has done so; but, having made such disclosure, he may challenge its soundness in whole or in part.

EC 7-24 In order to bring about just and informed decisions, evidentiary and procedural rules have been established by tribunals to permit the inclusion of relevant evidence and argument and the exclusion of all other considerations. The expression by a lawyer of his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact. It is improper as to factual matters because admissible evidence possessed by a lawyer should be presented only as sworn testimony. It is improper as to all other matters because, were the rule otherwise, the silence of a lawyer on a given occasion could be construed unfavorably to his client. However, a lawyer may argue, on his analysis of the evidence, for any position or conclusion with respect to any of the foregoing matters.

EC 7-25 Rules of evidence and procedure are designed to lead to just decisions and are part of the framework of the law. Thus while a lawyer may take steps in good faith and within the framework of the law to test the validity of rules, he is not justified in consciously violating such rules and he should be diligent in his efforts to guard against his unintentional violation of them. As examples, a lawyer should subscribe to or verify only those pleadings that he believes are in compliance with applicable law and rules; a lawyer should not make any prefatory statement before a tribunal in regard to the purported facts of the case on trial unless he believes that his statement will be supported by admissible evidence; a lawyer should not ask a witness a question solely for the purpose of harassing or embarrassing him; and a lawyer should not by subterfuge put before a jury matters which it cannot properly consider.

EC 7-26 The law and Disciplinary Rules prohibit the use of fraudulent, false, or perjured testimony or evidence. A lawyer who knowingly participates in introduction of such testimony or evidence is subject to discipline. A lawyer should, however, present any admissible evidence his client desires to have presented unless he knows, or from facts with-

in his knowledge should know, that such testimony or evidence is false, fraudulent, or perjured.

EC 7-27 Because it interferes with the proper administration of justice, a lawyer should not suppress evidence that he or his client has a legal obligation to reveal or produce. In like manner, a lawyer should not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

EC 7-28 Witnesses should always testify truthfully and should be free from any financial inducements that might tempt them to do otherwise. A lawyer should not pay or agree to pay a nonexpert witness an amount in excess of reimbursement for expenses and financial loss incident to his being a witness; however, a lawyer may pay or agree to pay an expert witness a reasonable fee for his services as an expert. But in no event should a lawyer pay or agree to pay a contingent fee to any witness. A lawyer should exercise reasonable diligence to see that his client and lay associates conform to these standards.

EC 7-29 To safeguard the impartiality that is essential to the judicial process, veniremen and jurors should be protected against extraneous influences. When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with veniremen prior to trial or with jurors during trial by or on behalf of a lawyer connected with the case. Futhermore, a lawyer who is not connected with the case should not communicate with or cause another to communicate with a venireman or a juror about the case. After the trial, communication by a lawyer with jurors is permitted so long as he refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. Were a lawyer to be prohibited from communicating after trial with a juror, he could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected. When an extrajudicial communication by a lawyer with a juror is permitted by law, it should be made considerately and with deference to the personal feelings of the juror.

EC 7-30 Vexatious or harassing investigations of veniremen or jurors seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on his behalf who conducts an investigation of veniremen or jurors should act with circumspection and restraint.

EC 7-31 Communications with or investigations of members of families of veniremen or jurors by a lawyer or by anyone on his behalf are subject to the restrictions imposed upon the lawyer with respect to his communications with or investigations of veniremen and jurors.

EC 7-32 Because of his duty to aid in preserving the integrity of the jury system, a lawyer who learns of improper conduct by or towards a venireman, a juror, or a member of the family of either should make a prompt report to the court regarding such conduct.

EC 7-33 A goal of our legal system is that each party shall have his case, criminal or civil, adjudicated by an impartial tribunal. The attainment of this goal may be defeated by dissemination of news or comments which tend to influence judge or jury. Such news or comments may prevent prospective jurors from being impartial at the outset of the trial and may also interfere with the obligation of jurors to base their verdict solely upon the evidence admitted in the trial. The release by a lawyer of out-of-court statements regarding an anticipated or pending trial may improperly affect the impartiality of the tribunal. For these reasons, standards for permissible and prohibited conduct of a lawyer with respect to trial publicity have been established.

EC 7-34 The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans. A lawyer, therefore, is never justified in making a gift or a loan to a judge, a hearing officer, or an official or employee of a tribunal.

EC 7-35 All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party. For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if he is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel, or, if there is none, to the opposing party. A lawyer should not condone or lend himself to private importunities by another with a judge or hearing officer on behalf of himself or his client.

EC 7-36 Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealously, he should not engage in any conduct that offends the dignity and decorum of proceedings. While maintaining his independence, a lawyer should be respectful, courteous, and aboveboard in his

relations with a judge or hearing officer before whom he appears. He should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration.

EC 7-37 In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and demeanor towards opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

EC 7-38 A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of his client. He should follow local customs of courtesy or practice, unless he gives timely notice to opposing counsel of his intention not to do so. A lawyer should be punctual in fulfilling all professional commitments.

EC 7-39 In the final analysis, proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of tribunals and make their decisional processes prompt and just, without impinging upon the obligation of lawyers to represent their clients zealously within the framework of the law.

DISCIPLINARY RULES

DR 7-101 Representing a Client Zealously.

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101 (B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

(3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102 (B).

(B) In his representation of a client, a lawyer may:

(1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client.

(2) Refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

DR 7-102 Representing a Client Within the Bounds of the Law.

(A) In his representation of a client, a lawyer shall not:

(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

Referred to in DR 7-101

DR 7-103 Performing the Duty of Public Prosecutor or Other Government Lawyer.

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

DR 7-104 Communicating With One of Adverse Interest.

(A) During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.

DR 7-105 Threatening Criminal Prosecution.

(A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

DR 7-106 Trial Conduct.

(A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose:

(1) Legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel.

(2) Unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him.

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any established rule of procedure or of evidence.

DR 7-107 Trial Publicity.

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existence or contents of any confession, admission, or statement given

by the accused or his refusal or failure to make a statement.

(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7-107 (B) does not preclude a lawyer during such period from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

(3) A request for assistance in obtaining evidence.

(4) The identity of the victim of the crime.

(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(8) The nature, substance, or text of the charge.

(9) Quotations from or references to public records of the court in the case.

(10) The scheduling or result of any step in the judicial proceedings.

(11) That the accused denies the charges made against him.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(F) The foregoing provisions of DR 7-107 also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistent with other law applicable to such proceedings.

(G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

(H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims, defenses, or positions of an interested person.

(5) Any other matter reasonably likely to interfere with a fair hearing.

(I) The foregoing provisions of DR 7-107 do not preclude a lawyer from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(J) A lawyer shall exercise reasonable care to prevent his employees and associates from making an extrajudicial statement that he would be prohibited from making under DR 7-107.

DR 7-108 Communication with or Investigation of Jurors.

(A) Before the trial of a case a lawyer connected therewith shall not communicate

with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case.

(B) During the trial of a case:
(1) A lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury.
(2) A lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.

(C) DR 7-108 (A) and (B) do not prohibit a lawyer from communicating with veniremen or jurors in the course of official proceedings.

(D) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.

(E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.

(F) All restrictions imposed by DR 7-108 upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.

(G) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

DR 7-109 Contact with Witnesses.

(A) A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce.

(B) A lawyer shall not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

(C) A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:
(1) Expenses reasonably incurred by a witness in attending or testifying.
(2) Reasonable compensation to a witness for his loss of time in attending or testifying.
(3) A reasonable fee for the professional services of an expert witness.

DR 7-110 Contact with Officials.

(A) A lawyer shall not give or lend anything of substantial value to a judge, official or employee of a tribunal.

(B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:
(1) In the course of official proceedings in the cause.
(2) In writing if he promptly delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer.
(3) Orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.
(4) As otherwise authorized by law.

CANON 8

A Lawyer Should Assist in Improving the Legal System

ETHICAL CONSIDERATIONS

EC 8-1 Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system. This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients.

EC 8-2 Rules of law are deficient if they are not just, understandable, and responsive to the needs of society. If a lawyer believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, he should endeavor by lawful means to obtain appropriate changes in the law. He should encourage the simplification of laws and the repeal or amendment of laws that are outmoded. Likewise, legal procedures should be improved whenever experience indicates a change is needed.

EC 8-3 The fair administration of justice requires the availability of competent lawyers. Members of the public should be educated to recognize the existence of legal problems and the resultant need for legal services, and should be provided methods for intelligent selection of counsel. Those persons unable to pay for legal services should be provided needed services. Clients and lawyers should not be penalized by undue geographical restraints upon representation in legal matters, and the bar should address itself to improvements in licensing, reciprocity, and admission procedures consistent with the needs of modern commerce.

EC 8-4 Whenever a lawyer seeks legislative or administrative changes, he should identify

the capacity in which he appears, whether on behalf of himself, a client, or the public. A lawyer may advocate such changes on behalf of a client even though he does not agree with them. But when a lawyer purports to act on behalf of the public, he should espouse only those changes which he conscientiously believes to be in the public interest.

EC 8-5 Fraudulent, deceptive, or otherwise illegal conduct by a participant in a proceeding before a tribunal or legislative body is inconsistent with fair administration of justice, and it should never be participated in or condoned by lawyers. Unless constrained by his obligation to preserve the confidences and secrets of his client, a lawyer should reveal to appropriate authorities any knowledge he may have of such improper conduct.

EC 8-6 Judges and administrative officials having adjudicatory powers ought to be persons of integrity, competence, and suitable temperament. Generally, lawyers are qualified, by personal observation or investigation, to evaluate the qualifications of persons seeking or being considered for such public offices, and for this reason they have a special responsibility to aid in the selection of only those who are qualified. It is the duty of lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. Lawyers should protest earnestly against the appointment or election of those who are unsuited for the bench and should strive to have elected or appointed thereto only those who are willing to forego pursuits, whether of a business, political, or other nature, that may interfere with the free and fair consideration of questions presented for adjudication. Adjudicatory officials, not being wholly free to defend themselves, are entitled to receive the support of the bar against unjust criticism. While a lawyer as a citizen has a right to criticize such officials publicly, he should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system. Criticisms motivated by reasons other than a desire to improve the legal system are not justified.

EC 8-7 Since lawyers are a vital part of the legal system, they should be persons of integrity, of professional skill, and of dedication to the improvement of the system. Thus a lawyer should aid in establishing, as well as enforcing, standards of conduct adequate to protect the public by insuring that those who practice law are qualified to do so.

EC 8-8 Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties.

EC 8-9 The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements.

DISCIPLINARY RULES

DR 8-101 Action as a Public Official.

(A) A lawyer who holds public office shall not:
  (1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.
  (2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client.
  (3) Accept any thing of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official.

DR 8-102 Statements Concerning Judges and Other Adjudicatory Officers.

(A) A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.

(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

CANON 9

A Lawyer Should Avoid Even the Appearance of Professional Impropriety

Referred to in Court Rule 121.2 (c)(3)

ETHICAL CONSIDERATIONS

EC 9-1 Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system. A lawyer should promote public confidence in our system and in the legal profession.

EC 9-2 Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical conduct of a lawyer may appear to laymen to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client. While a lawyer

should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, his duty to clients or to the public should never be subordinate merely because the full discharge of his obligation may be misunderstood or may tend to subject him or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.

EC 9-3 After a lawyer leaves judicial office or other public employment, he should not accept employment in connection with any matter in which he had substantial responsibility prior to his leaving, since to accept employment would give the appearance of impropriety even if none exists.

EC 9-4 Because the very essence of the legal system is to provide procedures by which matters can be presented in an impartial manner so that they may be decided solely upon the merits, any statement or suggestion by a lawyer that he can or would attempt to circumvent those procedures is detrimental to the legal system and tends to undermine public confidence in it.

EC 9-5 Separation of the funds of a client from those of his lawyer not only serves to protect the client but also avoids even the appearance of impropriety, and therefore commingling of such funds should be avoided.

EC 9-6 Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.

DISCIPLINARY RULES

DR 9-101 Avoiding Even the Appearance of Impropriety.

(A) A lawyer shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity.

(B) A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.

(C) A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

DR 9-102 Preserving Identity of Funds and Property of a Client.

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

Referred to in Court Rules 121.2 and 121.4

DEFINITIONS*

As used in the Disciplinary Rules of the Code of Professional Responsibility:

(1) "Differing interests" include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

(2) "Law firm" includes a professional legal corporation.

(3) "Person" includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

(4) "Professional legal corporation" means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

(5) "State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.
(6) "Tribunal" includes all courts and all other adjudicatory bodies.
(7) "A bar association representative of the general bar" includes a bar association of specialists as referred to in DR 2-105-A (1) or (4).

Copies of the Iowa Code of Professional Responsibility For Lawyers are available on request at the office of the Clerk of the Supreme Court of Iowa. [Court Order September 16, 1958; amended December 29, 1969; Revised October 4, 1971; Revised November 1, 1973; amended October 15, 1976]

*"Confidence" and "secret" are defined in DR 4-101 (A)

PERMITTED PRACTICE BY LAW STUDENTS

Court Rule 120 A law student enrolled in a reputable law school as defined by Court Rule 106 and Iowa Code section 610.2 certified to the supreme court of Iowa by the dean of the school to have completed satisfactorily not less than the equivalent of one and one-half years of the work required by the school to qualify for the J.D. or LL.B. degree, may appear as counsel in the trial courts of this state under the following conditions:

(1) Appearance by students as defense counsel in a criminal matter in any court shall be confined to misdemeanors and shall be under direct supervision of licensed Iowa counsel who shall be personally present.

(2) Appearance by students in other matters shall be under general supervision of licensed Iowa counsel, but they need not be present in court unless required by order of the court.

(3) No student shall appear as counsel in any court of this state unless such appearance (*a*) is part of an educational program approved by the faculty of his law school and not disapproved by the supreme court of the state of Iowa, and (*b*) such program is supervised by at least one member of the law school's faculty.

(4) A student shall not receive compensation for court appearance. This prohibition shall not prevent a student from receiving general compensation from an employer-attorney or from a law school administered fund. [Court Order April 4, 1967; Amended May 15, 1972; Amended January 14, 1974; Amended April 8, 1975 [withdrawn]; Amended April 9, 1975]

Referred to in DR 3-104

Court Rule 121 Client security and attorney disciplinary system.

PREAMBLE

WHEREAS, the Constitution of the State of Iowa, Article III, Section 1, declares:

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

and,

WHEREAS, this court is not only constitutionally vested with judicial power but charged by the constitution with exercising a supervisory control over all inferior judicial tribunals throughout the state, and,

WHEREAS, lawyers have the professional responsibility and role of officers of the judicial department and its courts and necessarily are subject to the discipline of those charged with the exercise of constitutional judicial power, THEREFORE,

This court declares that it has inherent and exclusive power to supervise the conduct of attorneys who are its officers and to prescribe reasonable conditions upon which persons may be admitted and permitted to practice in the courts of this state. The supreme court in the exercise of this power has the duty to protect insofar as reasonably possible those persons who may be injured by attorney defalcations. [Court Order, December 5, 1973]

Court Rule 121.1 Client security and attorney disciplinary commission.

(*a*) *Commission.* There is hereby created a Client Security and Attorney Disciplinary Commission, hereinafter referred to as "commission," which shall have the duties and powers provided in these rules.

(*b*) *Duties of commission.* The commission shall have the following duties and powers as hereinafter limited and defined in these rules:

(1) To examine lawyer defalcations and breaches of the Iowa Code of Professional Responsibility for Lawyers, the rules of this court relating to the discipline of members of the Iowa bar, and to make recommendations to this court concerning rule changes deemed necessary or desirable in this area.

(2) To assist the court in administering both preventive and remedial attorney disciplinary procedures contained in this or other court rules, or rules hereafter adopted.

(3) To administer and operate the Clients' Security Fund of the Bar of Iowa, as hereinafter created, designated as the "fund."

(*c*) *Appointment of commissioners.* This court shall appoint five members of the bar of this state and two residents of this state who are not lawyers, representing the public, to the commission. The original appointment shall be two commissioners for a one-year term, two for a two-year term, one for a three-year term, one for a four-year term and one for a five-year term. At the expiration of such terms all subsequent appointments shall be for a term of five years, and no commissioner who has served two five-year terms shall be eligible for reappointment. A vacancy occurring during a term shall be filled by the court for the unexpired portion thereof.

(*d*) *Organization and meetings.* The commissioners shall organize annually and shall then elect from among their number a chairman and a treasurer to serve for a one-year term and such other officers for such terms as they deem necessary or appropriate. Meetings thereafter shall be held at the call of the chairman or of the majority of the commissioners. Five commissioners shall constitute a quorum and may transact all business except as may be otherwise provided by these rules or by regulations promulgated by the commission.

(*e*) *Regulations.* The commission shall adopt regulations, consistent with these rules and subject to the approval of this court, concerning all of the powers and duties granted to and imposed upon the commission by these rules.

(*f*) *Reimbursement.* The commissioners shall serve without compensation but shall be entitled to reimbursement from the fund hereinafter created, for their expenses reasonably incurred in the performance of their duties. [Court Order, December 5, 1973]

Court Rule 121.2 Assistant court administrator for the disciplinary system.

(*a*) *Appointment.* This court will appoint an assistant court administrator for the disciplinary system (hereinafter "assistant administrator") to serve at its pleasure as the principal executive officer of the disciplinary system. He shall file a bond annually with the commission with such surety as may be approved by it and in such amount as it may fix. Premiums on said bond shall be paid by the fund.

(*b*) *Compensation.* The assistant administrator shall receive such compensation and expenses reasonably incurred in the performance of his duties as the court shall fix upon recommendations of the commission. His compensation and expenses shall be paid from the fund.

(*c*) *Duties of assistant administrator.* Subject to the supervision of this court and the commission, the assistant administrator shall:

(1) Collect attorney assessments for the fund, hereinafter created, and report to the commission the names and addresses of all attorneys who fail to pay said assessment;

(2) Serve as executive secretary to the commission and assist in the operation and administration of the fund;

(3) Conduct investigations and audits of attorneys' accounts and office procedures to determine compliance with these rules, the Iowa Code of Professional Responsibility for Lawyers, and specifically Canon 9 and DR 9-102; and to report violations to the commission;

(4) Maintain an office in such place as the court shall designate, act as a liaison between this court, the commission, and other commissions, committees and personnel serving a function in the disciplinary system, and maintain for this court records of disciplinary proceedings and such other information and data as the court shall require;

(5) Upon request of the commission, institute disciplinary proceedings before the grievance commission pursuant to court rule 118;

(6) Perform such other functions and duties as may be directed by this court. [Court Order, December 5, 1973]

Court Rule 121.3 Clients' security trust fund of the bar of Iowa.

(*a*) *Creation, operation and purpose.* A trust fund, to be known as the "Clients' Security Trust Fund of the Bar of Iowa" (hereinafter, the "Fund") is hereby authorized and created.

(*b*) *Administration.* The fund shall be operated and administered by the commission in accordance with these rules.

(*c*) *Purpose.* The purpose of the fund shall be to prevent defalcations by members of the Iowa bar, and insofar as practicable, to provide for the indemnification by the profession for losses caused to the public by the dishonest conduct of members of the bar of this state.

(*d*) *Powers and duties of commission relating to the fund.* The commission, in addition to the powers granted elsewhere in these rules, shall have the following powers and duties:

(1) To receive, hold, manage, and distribute, pursuant to these rules, the moneys raised hereunder, and any other amounts that may be received by the fund through voluntary contributions or otherwise;

(2) To adopt, subject to the approval of the court, regulations for the administration of the fund and the procedures for presentation, consideration, recognition, rejection and payment of claims, and for conducting business. A copy of such regulations shall be filed with the clerk of this court;

(3) To enforce claims for restitution, arising by subrogation or assignment or otherwise;

(4) To invest the fund, or any portion thereof, in those investments and in the percentages authorized by section 97B.7, The Code, 1973, as amended (investments for Iowa public employees' retirement system; provided, however, the commission shall not be required to invest such portions of the fund as it may deem necessary to be currently available for payment of claims and other expenses required by these rules. All interest or other income received in the operation of the fund shall become a part of the fund;

(5) To employ and compensate consultants, agents, legal counsel and employees;

(6) To delegate the power to perform routine acts which may be necessary or desirable for the operation of the fund, including the power to authorize disbursements for routine operating expenses of the fund, and all neces-

sary expenses of the assistant administrator and his staff in the performance of their duties; but authorization for payment of claims shall be made only by the commission under the provisions of these rules;

(7) To sue in the name of the commission without joining any or all individual commissioners;

(8) To purchase complementary fidelity coverage for the fund in such amount and with such limitations or deductible limits as in its discretion it determines proper.

(*e*) *Audit and report.* At least once a year, and at such additional times as the supreme court may order, the commission shall file with the supreme court a written report reviewing in detail the administration of the fund during the year together with an audit of the fund, its operation, its assets and liabilities certified by a certified public accountant licensed to practice in Iowa.

(*f*) *Applications to the supreme court.* The commission may apply to the supreme court for interpretations of these rules and of the extent of their powers thereunder and for advice regarding the proper administration of the fund. Interpretations of this court shall be obligatory when rendered.

(*g*) *Treasurer's duties.* The treasurer elected by the commission shall maintain the assets of the fund in a separate account and shall disburse moneys from the fund only upon the action of the commission pursuant to these rules. He shall file a bond annually with the commission with such surety as may be approved by it and in such amount as it may fix. Premiums on said bond shall be paid by the fund.

(*h*) *Budget.* At least sixty days prior to the commencement of each calendar year, the commission shall submit to this court its budget of operations of such year, which may be amended thereafter as necessity dictates.

(*i*) *Payment to the fund, enforcement.*

(1) As a condition to continuing membership in the bar of this court, including the right to practice law before Iowa courts, every bar member, except one to whom a certificate of exemption has been issued pursuant to the provisions of subsection (4) hereof, shall pay to the commission through the office of the assistant administrator the assessment hereinafter specified [subject to subsections (2), (3), and (5) below] annually after the adoption of this rule. Assessments shall be due on or before March 1 of each year, for that calendar year. A calendar year is defined as the period of time from January 1 through December 31.

For the calendar year of the member's admission on examination to the bar of Iowa, and for the calendar year thereafter.....
.....None.

For the calendar year of member's admission on motion to the bar of Iowa .....$50.

For the years other than those heretofore exempted, up to and including the fifth calendar year of admission to the bar of Iowa ....
..... $50 annually.

For the years after the fifth calendar year of admission to the bar of Iowa .....
.....$100 annually.

In making any of the above calculations, time spent full time in the military service of the United States following admission to the Iowa Bar and during the years under consideration shall be excluded.

WHEREAS this court and the bar initially determined a Clients' Security Trust Fund in the sum of $600,000 would adequately provide public protection and would reach said amount within two years, at which time the assessments woud be reduced for those lawyers who had paid a $200 minimum into the fund, and,

WHEREAS it appears imposition of the full Court Rule 121.3(i) assessment schedule will generate a fund exceeding $800,000 in 1976, more than $200,000 in excess of the amount this court and the bar deemed adequate,

WHEREAS the modified assessment for 1976 hereinafter provided should generate the desired goal of $600,000 in the trust fund during the year 1976,

NOW THEREFORE it is ordered that the assessment provisions of Court Rule 121.3(i) are hereby modified for the calendar year 1976 as follows:

(1) Each member of the bar obligated to pay any assessment to the fund in 1976 whose paid assessments in 1974 and 1975 totaled $200 shall pay only a $15 assessment on or before March 1, 1976, for the calendar year 1976.

(2) All other members of the bar obligated to pay any assessment in 1976 shall pay pursuant to applicable provisions of Court Rule 121.3(i), but in no event pay an amount which would make his or her total payments into the Fund since its inception, including the 1976 assessment, exceed $215.

[Amended by Court Order August 29, 1975]

(2) Any member of the bar of this court may, at his or her election, instead of the fixed sum set forth in the above schedule, pay to the commission, as his or her assessment for the purposes of the fund for any particular calendar year, an amount equal to one percent of his or her net income derived from the practice of law in Iowa for the preceding calendar year, but in no event less than twenty-five dollars. Net income from the practice of law shall be for the purposes of this section that amount shown on the federal income tax return of such member for the appropriate year as "profit or loss from business or profession." The commission may require any member so electing to submit to the commission a copy of his or her federal income tax return for the appropriate year to substantiate the amount due hereunder.

(3) The commission shall determine the net value of the cash and securities in the fund as of December 1 of each year. Whenever the value of such assets shall equal $600,000 after deducting all claims and requests for reimbursement against the fund, not disposed of at the date of valuation, and all expenses properly chargeable against the fund, the commission shall file with this court prior to December 31 of such year a certificate to that effect which shall be known as a certificate of sufficiency. When a certificate of sufficiency is filed with this court, the annual assessment of the fund for the next calendar year after the date of evaluation in said cer-

tificate shall be ten dollars for each member of the bar obligated under the above schedule to pay any amount and who has paid assessments to the fund in the total sum of two hundred dollars in prior years notwithstanding anything heretofore or hereinafter provided.

(4) A member of the bar of this court who is not engaged in the practice of law in the state of Iowa may be granted a certificate of exemption by the commission, and thereafter no assessment shall be required from such member unless he or she thereafter engages in the practice of law in the state of Iowa, in which case the certificate of exemption shall without further order of court stand revoked and the member shall file at once the statement required by rule 121.3(*i*)(6), below, and the questionnaire required by rule 121.4(*b*) and pay the assessment due. A member of the bar requesting a certificate of exemption shall file with the assistant administrator the statement required by rule 121.3(*i*)(6), below, and such part of the rule 121.4(*b*) questionnaire as the assistant administrator may deem necessary to enable him to determine the member's status. The practice of law as that term is employed in these rules includes the representation of others in any Iowa courts, the right to represent others in any Iowa courts, or to regularly prepare legal instruments, secure legal rights, advise others as to their legal rights or the effect of contemplated actions upon their legal rights, or to hold oneself out to so do; or to be one who instructs others in legal rights; or to be a judge or one who rules upon the legal rights of others unless neither the state nor federal law requires the person so judging or ruling to hold a license to practice law.

Referred to in Court Rule 121.4(*b*)(1)

(5) In lieu of the payments otherwise required by this rule, any member of the bar of this court who certifies in writing to the commission that he or she is a justice, judge, associate judge, or full-time magistrate of any court, or one who performs legal services only for a governmental unit, or one who performs legal services only for a particular person, firm or corporation (other than a professional legal corporation or a law firm) and stands in the legal capacity with such person, firm or corporation as an employee, shall pay to the commission the sum of twenty-five dollars annually during the time he or she is so engaged, provided that if under court rule 121.3(*i*) (3) the commission has filed a certificate of sufficiency with the court then the annual assessment for each bar member referred to herein who has paid to the commission a total of two hundred dollars shall be reduced to ten dollars for each year that the certificate of sufficiency is filed by the commission. Provided, however, that a retired judge or justice recalled for temporary service shall not be required to pay an assessment or surrender his certificate of exemption.

(6) To facilitate the collection of the annual assessment provided for above, all members of the Iowa bar required by this rule to pay an assessment, and those exempted other than by (*i*)(4), above, shall, on or before March 1 of each year, commencing March 1, 1974, file a statement, on a form prescribed by the assistant administrator, setting forth his or her date of admission to practice before this court, his or her current residence and office addresses, and such other information as the assistant administrator may from time to time direct. In addition to such statement, every bar member shall file a supplemental statement of any change in the information previously submitted within thirty days of such change. All persons admitted to practice before this court after January 1, 1974 shall file the statement required by this rule at the time of admission but no annual fee shall be payable until the time above provided.

Referred to in Court Rule 121.4(*b*)(1)

(7) Any attorney who fails to timely pay the assessment required under the above rule, or fails to file the statement or supplement thereto provided in the last subparagraph may have his or her right to practice law suspended by this Court, provided that at least 30 days prior to such suspension, a notice of delinquency has been served upon him or her in the manner provided for the service of original notices in rule 56.1, Iowa Rules of Civil Procedure, or has been forwarded to him or her by restricted certified mail, return receipt requested, addressed to him or her at his or her last known address. Such person shall be given the opportunity during said 30 days to file in duplicate in the office of the Clerk of this Court an affidavit disclosing facts demonstrating his or her noncompliance was not willful and tendering such documents and sums which, if accepted, would cure the delinquency, or to file in duplicate in the office of the Clerk of this Court a request for hearing to show cause why his or her license to practice law should not be suspended. A hearing shall be granted if requested. If, after hearing, or failure to cure the delinquency by satisfactory affidavit and compliance, such person is suspended, he or she shall be notified thereof by either of the two methods above provided for notice of delinquency.

Referred to in Court Rule 121.4(*c*)(1)

(8) Any person who has been suspended pursuant to these rules or who currently holds a certificate of exemption and who practices law or who holds himself or herself out as being authorized to practice law in this state is engaged in the unauthorized practice of law and may also be held in contempt of the court or may be subject to disciplinary action as provided by court rule 118.

(9) An attorney who has been suspended under the provisions of this rule solely for failure to pay the annual assessment may be reinstated upon a showing such failure was

not willful and upon paying the assessment prescribed for the period of his or her suspension. An attorney suspended under these rules solely for failure to file the statement, or supplement, or questionnaire required by these rules may be reinstated upon a showing such failure was not willful and upon filing such statement, supplement or questionnaire.

(10) An attorney who has been summarily suspended under this Rule 121.3 must file an application with the Clerk of the Supreme Court for reinstatement and a copy of said application shall be forwarded to the Assistant Court Administrator and to the Committee on Professional Ethics and Conduct of The Iowa State Bar Association at least ten days prior to any action upon the application.

(*j*) *Claims.*

(1) The commission shall consider for payment all claims resulting from the dishonest conduct of a member of the bar of this state acting either as an attorney or fiduciary, provided that:

a. Said conduct was engaged in while the attorney was a practicing member of the bar of this state and the claim arises out of the practice of law in this state;

b. Such defalcation or dishonest conduct occurred after January 1, 1974;

c. The claim is made within one year after the client's discovery of the loss; provided, however, such time limitation in unusual circumstances may be extended by the commission in its discretion for good cause shown;

d. The claim is made directly by or on behalf of the injured client or his personal representative or, if a corporation, by or on behalf of itself or its successors in interest;

e. The commission is satisfied that there is no other source or collateral source for the reimbursement of the loss; and

f. Claims shall not be paid which arise out of an employer-employee relationship as distinguished from a lawyer-client relationship or a fiduciary relationship.

(2) The commission is invested with the power, which it shall exercise in its sole discretion, to determine whether a claim merits reimbursement from the fund, and if so, the amount of such reimbursement, the time, place and manner of its payment, the conditions upon which payment shall be made, and the order in which payment shall be made. The commission's powers in this respect may be exercised only by the affirmative vote of at least four commissioners. In making such determinations the commission shall consider among other appropriate factors, the following:

a. The amounts available and likely to become available to the fund for the payment of claims and the size and number of claims which are likely to be presented;

b. The total amount of reimbursable losses in previous years for which total reimbursement has not been made, if any, and the total assets of the fund;

c. The amount of the claimant's loss as compared to the amount of losses sustained by other eligible claimants;

d. The degree of hardship suffered by the claimant as a result of the loss;

e. The degree of negligence, if any, of the claimant which may have contributed to the loss;

f. The total amount of losses caused by defalcations of any one attorney or associated group of attorneys.

(3) The commission shall, by regulation approved by the court, fix the maximum amount which any one claimant may recover from the fund and the aggregate maximum amount which may be recovered because of the dishonest conduct of any one attorney.

(4) No claimant or any other person or organization shall have any right in the fund as third party beneficiary or otherwise. Reimbursement by claim on the fund shall be a matter of grace and not of right.

(5) The commission may require as a condition to payment that the claimant execute an assignment of claimant's right against the defaulting lawyer.

(6) No claimant need be represented by counsel before the commission. No attorney representing a claimant shall receive a fee for his services from the fund. Any agreement for compensation between a claimant and any attorney retained for prosecution of the claim shall be subject to the approval of the commission.

(7) The commission may request individual lawyers, bar associations, and other organizations of lawyers to assist the commission in the investigation of claims.

(8) The payment or denial of any claim filed under the provisions of this rule shall be inadmissible as evidence in any disciplinary or contempt proceeding. [Court Order, December 5, 1973; amended by Court Order, April 22, 1974; amended by **Court Order October 16,** 1974; amended by Court Order April 9, 1975; April 10, 1975; August 29, 1975; October 28, 1976]

Referred to in Court Rule 121.4, 123.7, continuing education, sections 6, 7

Regulations of the client security and attorney disciplinary commission, sections 1, 3, 6

Court Rule 121.4 Investigations, audits and annual questionnaire.

(*a*) *Investigations and audits.*

(1) Each member of the bar of Iowa, in filing the statement required by court rule 121.3 (*i*)(6), shall authorize the assistant administrator to investigate, audit and verify all funds, securities, and other property held in trust by the member, and all related accounts, safe deposit boxes and any other form of maintaining trust property as required by the Iowa Code of Professional Responsibility for Lawyers, including but not restricted to DR 9-102,

together with deposit slips, canceled checks and all other records pertaining to transactions concerning such property.

(2) Each member of the bar of Iowa shall comply promptly with any request by the assistant administrator to execute and deliver to him a written authorization, directed to any bank or depository, for the assistant administrator to audit and inspect such accounts, safe deposit boxes, securities and other forms of maintaining trust property by the member in such bank or other depository.

(3) Each member of the bar of Iowa shall co-operate fully in any investigation, audit, or verification by the assistant administrator of funds, securities and property held in trust by the member, and shall co-operate fully with the assistant administrator and answer all questions pertaining thereto unless the member claims the privilege against self-incrimination. Each bar member, in implementation of DR 9-101*(B)(3), Iowa Code of Professional Responsibility for Lawyers, shall retain complete records of all trust fund transactions for a period of five years from the conclusion of each such transaction.

*DR 9-102 probably intended

(4) The commission with the approval of this court may retain, compensate from the fund, and furnish as staff for the assistant administrator, such public or certified accountants, investigators or attorneys as may be deemed necessary to carry out the duties and functions imposed upon him, and when acting under his supervision and direction such staff personnel shall have all the powers granted to the assistant administrator by these rules.

(5) When the investigation, audit or verification provided in the above provisions of this rule disclose, in the opinion of the assistant administrator, a violation of the Iowa Code of Professional Responsibility for Lawyers, or when the member of the bar of Iowa affected by the investigation, audit or verification has refused to comply with the provisions of this rule, the assistant administrator shall promptly report such circumstances to the commission. A copy of such report shall be furnished to the member affected.

Provided, however, client trust funds and property held by an Iowa licensed attorney whose law office is situated in another state shall not be subject to investigation, audit or verification except to the extent such funds and property are related to matters affecting Iowa clients. State or federal funds or property subject to state or federal auditing procedures and in control of an Iowa licensed attorney employed full or part time by a state or the United States shall not be subject to investigation, audit or verification under the provisions of these rules.

(*b*) *Annual questionnaire.*

(1) The assistant administrator under the supervision of this court and the commission shall prepare a questionnaire to be annually submitted to and completed by each member of the bar of Iowa except those who have been issued, a certificate of exemption pursuant to court rule 121.3(*i*)(4). Said questionnaire may be (but is not required to be) incorporated as a part of the annual statement provided in court rule 121.3(*i*)(6). This questionnaire shall elicit information to determine whether the member is complying with the Iowa Code of Professional Responsibility for Lawyers, including but not restricted to DR 9-102, filing state and federal income tax returns as required, and other relevant data.

(2) A failure to complete and return a questionnaire shall be dealt with as provided in court rule 121.4(*c*).

(*c*) *Failure of bar members to co-operate.*

(1) The continued right of a member of the Iowa bar to practice law in this state is conditioned upon the member executing and delivering the authorization provided in court rule 121.4(*a*)(2), furnishing the co-operation required in court rule 121.4(*a*)(3) and completing and returning the annual questionnaire described in court rule 121.4(*b*). Upon failure of a member of the Iowa bar to comply with any of the rules specified in this paragraph, his or her membership in the Iowa bar and right to practice law before Iowa courts may be suspended, following the procedure specified in court rule 121.3(*i*) (7).

(2) A member of the bar of Iowa who willfully fails to comply with those rules enumerated in the last paragraph [court rule 121.4(*c*)(1)] may be held in contempt of this court or may be subject to disciplinary action as provided in court rule 118.

(*d*) *Violation of Iowa Code of Professional Responsibility.*

(1) When the audit, investigation or verification of funds, securities or other property held in trust by any member of the bar of Iowa, or a return of any member on the annual questionnaire, discloses an apparent violation of the Iowa Code of Professional Responsibility for Lawyers the assistant administrator upon request of the commission, or the commission, may institute disciplinary proceedings under court rule 118 for the suspension or revocation of the member's license to practice law in this state.

(2) All information obtained by the assistant administrator and his staff by virtue of the audits, investigations and verifications, and annual questionnaire, shall be held in strict confidence by them and by the court and the commission unless otherwise directed by the court or unless proceedings are initiated pursuant to court rule 118. [Court Order, December 5, 1973; amended September 19, 1974; amended by Court Order October 16, 1974; amended by Court Order April 9, 1975]

Referred to in Court Rule 121.3 (i)(4)

Court Rule 121.5 Attorneys acting as fiduciaries.

(*a*) *Surety bonds.*

(1) After January 1, 1974 unless a lawyer is the spouse of or is the son-in-law or daughter-in-law of or is related by consanguinity or affinity, within the third degree, to the decedent in an estate, the ward in a guardianship or a conservatorship, the settlor or beneficiary of a trust, or unless such attorney is coexecutor, cotrustee, coconservator or coguardian with another party or parties and such other party or parties will receive and pay out any of the funds, securities or other property of the estate, trust, guardianship or conservatorship, such lawyer shall not be appointed by a court in any fiduciary capacity for an estate, trust, guardianship or conservatorship until he has posted a fidelity bond in an amount to be determined by the court with sureties approved by the court, and no waiver of such bond shall be recognized by any court of this state. In the event the surety on the bond posted by the lawyer is not a corporate surety, the surety thereon shall not be the ward, any beneficiary or distributee or be related to the lawyer, the ward, or any beneficiary or distributee within the third degree of consanguinity or affinity.

(2) A lawyer who willfully fails to comply with the provisions of this rule may be held in contempt of this court, or may be subject to disciplinary action as provided in court rule 118.

(*b*) *Delinquent inventories and reports.* On January 1 and July 1 of each year, each clerk of the district court shall report to the commission all delinquent inventories or reports in estates, trusts, guardianships or conservatorships in which an attorney is acting as fiduciary. [Court Order, December 5, 1973; amended December 26, 1973; amended May 18, 1976]

See Probate Code, §§633.173 and 633.175

REGULATIONS OF THE CLIENT SECURITY AND ATTORNEY DISCIPLINARY COMMISSION

Section 1. Definitions. For the purpose of these regulations, the following definitions shall apply:

(*a*) The "*commissioner*" shall mean the commissioners of the Client Security and Attorney Disciplinary Commission.

(*b*) The "*fund*" shall mean the Clients' Security Trust Fund of the bar of Iowa.

(*c*) A "*lawyer*" shall mean one who, at the time of the act complained of, had the right to practice law in Iowa. The fact that the act complained of took place outside the state of Iowa does not necessarily mean that the lawyer was not engaged in the practice of law in the state of Iowa.

(*d*) "*Reimbursable losses*" are only those losses as set out in rule 121.3"*j*".

(*e*) "*Dishonest conduct*" shall mean wrongful acts committed by a lawyer against a person in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value.

Sec. 2. Applications for reimbursement.

(*a*) The commissioners shall prepare a form of application for reimbursement; in their discretion, the commissioners may waive a requirement that a request be filed on such form.

(*b*) The form shall require, as minimum information:

(1) The name and address of the lawyer.

(2) The amount of the alleged loss claimed.

(3) The date or period of time during which the alleged loss was incurred.

(4) Name and address of the party requesting reimbursement.

(5) The general statement of facts relative to the request for reimbursement.

(6) Verification by the party requesting reimbursement.

(*c*) The form or application shall contain the following statement in bold type:

"IN ESTABLISHING THE CLIENTS' SECURITY TRUST FUND OF THE BAR OF IOWA THE SUPREME COURT OF IOWA DID NOT CREATE, NOR ACKNOWLEDGE ANY LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS IN THE PRACTICE OF LAW. ALL REIMBURSEMENTS OF LOSSES OF THE CLIENTS' SECURITY TRUST FUND SHALL BE A MATTER OF GRACE IN THE SOLE DISCRETION OF THE COMMISSIONERS ADMINISTERING THE FUND AND NOT AS A MATTER OF RIGHT. NO CLIENT OR ANY OTHER PERSON OR ORGANIZATION SHALL HAVE ANY RIGHT IN THE FUND AS A THIRD PARTY BENEFICIARY OR OTHERWISE."

(*d*) Applications shall be in the form attached and shall be addressed to the office of the Client Security and Attorney Disciplinary Commission, Care of the Assistant Administrator of the Supreme Court, Statehouse, Des Moines, Iowa 50319.

Sec. 3. Processing applications.

(*a*) The chairman shall cause each such application to be sent to the commissioners or other parties or organizations for investigation and report. A copy shall be served upon or sent by certified mail to the lawyer, at his last known address, who it is claimed committed the dishonest act. Whenever feasible, any lawyer to whom such application is referred shall not practice in the county wherein the alleged defalcating attorney practiced. From time to time, the chairman may request of the applicant further information with respect to the alleged claim.

(*b*) When, in the opinion of the person or persons to whom the application has been referred the application is clearly not for a reimbursable loss, no further investigation need be conducted, but a report with respect to such application shall be made to the commission.

(*c*) The person or persons to whom a report is referred for investigation shall conduct such investigation as to them seems necessary and desirable in order to determine whether the same is for a reimbursable loss and in order to guide the commissioners in determining the extent, if any, to which the claim shall be re-

imbursed from the fund. Any information so obtained by the person or persons shall be used solely by or for the commissioners and shall otherwise constitute confidential information.

(*d*) Reports with respect to applications shall be submitted by the person or persons to whom they have been referred for investigation to the chairman as soon as reasonably possible. The chairman shall summarize each report in detail as to him shall seem necessary and shall send to each member of the commission a copy of such summary.

(*e*) At the meetings of the commission the commissioners will conduct such investigation or review as seems necessary or desirable in order to determine whether the applications are for a reimbursable loss, and to guide the commissioners in determining the extent, if any, to which the applicant shall be reimbursed. After studying the summaries or applications to be processed, any commissioner may request that testimony be presented. Absent such recommendation or request, applications shall be processed on the basis of information contained in the report of the person or persons who investigated such application and in the summary. In all cases, the alleged defalcating attorney or his personal representative shall be given an opportunity to be heard by the commissioners if he or she so requests.

(*f*) The commission in its sole discretion, shall determine the amount of loss, if any, for which any person shall be reimbursed from the fund. [See Supreme Court Rule 121.3 (*j*) (2)]

(1) The maximum amount which any one claimant may recover from the fund shall be $25,000.00 and the aggregate maximum amount which may be recovered from the fund because of the dishonest conduct of any one attorney shall be $100,000.00.

Sec. 4. Subrogation for reimbursement made. In the event reimbursement is made to a person or organization, the fund shall be subrogated to his or its rights in said amount and may bring such action as is deemed advisable against the lawyer, his assets or his estate, either in the name of the person, or in the name of the Clients' Security Trust Fund of the bar of Iowa. The party receiving funds shall be required to execute a subrogation agreement in said regard. Upon commencement of an action by the fund pursuant to its subrogation rights, it shall advise the reimbursed party at his or her last known address. That party may then join in such action to press a claim for his or her loss in excess of the amount of the above reimbursement, but the fund shall have first priority to any recovery on such suit.

Sec. 5. General purposes. In any given case, the commissioners may waive technical adherence to these regulations in order to achieve the objectives of the fund.

Sec. 6. General provisions. With the exception of reports of the commissioners to the supreme court no publicity shall be given to applications for reimbursement, payment made by the fund or to any action of the commissioners without the express prior approval of the supreme court. [Pursuant to Court Rule 121.3(*d*)(2) the Regulations of the Client Security and Attorney Disciplinary Commission, submitted to this court December 26, 1973, are hereby adopted. Done this 4th day of January 1974.]

Court Rule 122 Reserved.

Court Rule 123 Continuing legal education of the members of the bar of Iowa

123.1 Purpose.

Only by continuing their legal education throughout their period of the practice of law can attorneys fulfill their obligation competently to serve their clients. Failure to do so shall be grounds for disciplinary action by this court. This rule establishes minimum requirements for such continuing legal education and the means by which the requirements shall be enforced.

123.2 Continuing legal education commission.

There is hereby established a commission on continuing legal education consisting of twelve members. This court shall appoint to the commission ten resident members of this state who are currently licensed to practice law in the state of Iowa, and two residents of this state who are not lawyers. This court shall designate from among the members of the commission a chairman who shall serve as such at the pleasure of the court. Of the members first appointed to the commission four shall serve a term of three years, four shall serve a term of four years and four shall serve a term of five years. Members thereafter appointed, except for those appointed to fill unexpired terms, shall be appointed for a term of three years. No member shall serve more than two consecutive complete terms as a member of the commission. This court shall adopt rules and regulations governing the operations and activities of the commission.

The commission shall have the following duties:

(*a*) To exercise general supervisory authority over the administration of this rule.

(*b*) To accredit sponsors of courses, programs and other educational activities which will satisfy the educational requirements of this rule or in the event that the sponsor is not accredited the commission shall accredit courses, programs and other educational activities which will satisfy the educational requirements of this rule; all being subject to continuous review by the commission.

(*c*) To foster and encourage the offering of such courses, programs and educational activities.

(*d*) To submit to the court proposed rules and regulations* not inconsistent with this rule to govern the operations and activities of the commission.

(*e*) Subject to the approval of this court, to employ such persons as it deems necessary for the proper administration of this rule.

*See Regulations following this rule 123

(*f*) To report at least annually to the court concerning its activities and, from time to time, to make recommendations to the court concerning this rule and the enforcement thereof; to present an annual budget and a recommended annual fee for costs of administering this rule.

(*g*) To report promptly to the court concerning any violation of this rule by any member of the bar of this state.

Members of the commission shall not be compensated but shall be reimbursed for expenses incurred by them in the performance of their duties upon vouchers approved by this court.

Referred to in continuing education, sec. 4

123.3 Continuing legal education requirement.

Commencing January 1, 1976, each attorney admitted to practice in this state shall complete a minimum of fifteen hours of legal education accredited by the commission, during each calendar year. The commission is authorized, pursuant to guidelines established by the court, to determine the number of hours for which credit will be given for particular courses, programs or other legal education activities. Under rules to be promulgated by the court, an attorney may be given credit in one or more succeeding calendar years, not exceeding three such years, for completing more than fifteen hours of accredited education during any one calendar year.

Referred to in Court Rule 123.4, continuing education, sec. 2

123.4 Annual fee and report by attorneys to commission.

(*a*) On or before March 1 of each year, commencing March 1, 1976, each attorney admitted to practice in this state shall pay to the commission a prescribed fee for costs of administering this rule.

(*b*) On or before March 1 of each year, commencing March 1, 1977, each attorney admitted to practice in this state shall make a written report to the commission, in such form as the commission shall prescribe, concerning his or her completion of accredited legal education during the preceding calendar year; provided, however, that an attorney shall not be required to comply with this subparagraph (b) nor comply with the continuing legal education requirement set forth in 123.3 for the year during which he or she was admitted to practice. Each annual report shall be accompanied by proof satisfactory to the commission that he or she has met the requirements for continuing legal education for the calendar year for which such report is made.

Referred to in Court Rule 123.5, continuing education, sec. 11

123.5 Penalty for failure to satisfy continuing legal education requirements.

(*a*) Any attorney who fails to comply with the provisions of rule 123.4 or who files a report showing on its face that he or she has failed to complete the required number of hours of continuing legal education may have his or her right to practice law suspended by this court, provided that at least thirty days prior to such suspension, notice of such delinquency has been served upon him or her in the manner provided for the service of original notices in R.C.P. 56.1 or has been forwarded to him or her by restricted certified mail, return receipt requested, addressed to him or her at his or her last known address. Such person shall be given the opportunity during said thirty days to file in duplicate in the office of the clerk of this court an affidavit disclosing facts demonstrating his or her noncompliance was not willful and tendering such documents and sums which, if accepted, would cure the delinquency, or to file in duplicate in the office of clerk of this court a request for hearing to show cause why his or her license to practice law should not be suspended. A hearing shall be granted if requested. If, after hearing, or failure to cure the delinquency by satisfactory affidavit and compliance, such person is suspended, he or she shall be notified thereof by either of the two methods above provided for notice of delinquency.

(*b*) In addition, any attorney who willfully fails to comply with this rule 123 may be subject to disciplinary action as provided in court rule 118, upon report filed by the commission with the committee on professional ethics and conduct.

(*c*) For good cause shown, the commission may, in individual cases involving hardship or extenuating circumstances, grant waivers of the minimum educational requirements or extensions of time within which to fulfill the same or make the required reports.

Referred to in continuing education, sec. 10

123.6 Confidentiality.

Unless otherwise directed by this court, the files, records and proceedings of the commission, as they relate to or arise out of any failure of any attorney to satisfy the requirements of this rule, shall be deemed confidential and shall not be disclosed, except in furtherance of its duties or upon the request of the attorney affected, or as they may be introduced in evidence or otherwise produced in proceedings taken in accordance with this rule.

123.7 Inactive practitioners.

A member of the bar who is not engaged in the practice of law in the state of Iowa as de-

fined in rule 121.3(*i*) (4), upon application to the commission, may be granted a waiver of compliance with this rule and obtain a certificate of exemption. No person holding such certificate of exemption shall practice law in this state until reinstated. This court will make rules and regulations governing the continuing legal education requirements for reinstatement of attorneys who, for any reason, have not theretofore been entitled to practice law in this state for any period of time subsequent to their admission to the bar.

123.8 Application of this rule.
This rule shall apply to every person licensed to practice law in the state of Iowa. [Court Order April 9, 1975; amended by Court Order August 28, 1975]

Referred to in continuing education, sections 2, 4, 7, 8, 10, 11

REGULATIONS OF THE COMMISSION ON CONTINUING LEGAL EDUCATION
(See Court Rule 123.2(*d*))

Section 1. Definitions. For the purpose of these regulations, the following definitions shall apply:

(*a*) An *"attorney"* shall mean any person licensed to practice law in the state of Iowa.

(*b*) An *"hour"* of continuing legal education shall mean a clock-hour spent after December 31, 1975 by an attorney in actual attendance at or completion of an accredited legal education activity.

(*c*) An *"accredited sponsor"* shall mean an organization or person sponsoring continuing legal education activities which has been accredited by the commission as a sponsor pursuant to section 4(*a*) hereof. During the time an organization or person is an accredited sponsor all continuing legal education activities of such organization or person shall be deemed automatically accredited.

(*d*) An *"accredited program or activity"* shall mean a continuing legal education activity meeting the standards set forth in section 3 hereof which has received advanced accreditation by the commission pursuant to section 4 hereof.

(*e*) The *"commission"* shall mean the Commission on Continuing Legal Education or any division thereof.

(*f*) A *quorum* of the entire commission shall mean six or more members of the commission.

Sec. 2. Continuing legal education requirement. A minimum of fifteen hours of continuing legal education must be completed by each attorney for each calendar year in the manner stated in court rule 123.3.

Hours of continuing legal education credit may be obtained by attending or participating in a continuing legal education activity, either previously accredited by the commission or which otherwise meets the requirements herein and is retroactively accredited by the commission pursuant to section 4(*c*) of these regulations.

An attorney desiring to obtain credit for one or more succeeding calendar years, not exceeding three such years, for completing more than fifteen hours of accredited legal education during any one calendar year shall report such "carry-over" credit at the time of filing the annual report to the commission on or before March 1 of the year following the calendar year during which the claimed additional legal education hours were completed.

Sec. 3. Standards for accreditation. A continuing legal education activity qualifies for accreditation if the commission determines that:

(*a*) It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of an attorney; and

(*b*) It pertains to common legal subjects or other subject matters which integrally relate to the practice of law; and

(*c*) It is conducted by attorneys or individuals who have a special education, training and experience by reason of which said individuals should be considered experts concerning the subject matter of the program, and preferably is accompanied by a paper, manual or written outline which substantively pertains to the subject matter of the program.

No activity will be accredited which involves solely self-study, including TV viewing, video or sound recorded programs, or correspondence work, except as may be allowed pursuant to section 5 hereof.

Sec. 4. Accreditation of sponsors, programs and activities.

(*a*) *Accreditation of sponsors.* An organization or person not previously accredited by the commission, which desires accreditation as a sponsor of courses, programs, or other legal education activities satisfying court rule 123.2, shall apply for accreditation to the commission stating its legal education history for the preceding two years, including approximate dates, subjects offered, total hours of instruction presented, and the names and qualifications of speakers. By January 31 of each year, commencing January 31, 1977, all accredited sponsors shall report to the commission in writing the legal education programs conducted during the preceding calendar year on a form approved by the commission.

The commission may at any time re-evaluate an accredited sponsor. If after such re-evaluation, the commission finds there is basis for consideration of revocation of the accreditation of an accredited sponsor, the commission shall give notice by ordinary mail to that sponsor of a hearing on such possible revocation at least thirty days prior to said hearing. The decision of the commission after such hearing shall be final.

(*b*) *Prior accreditation of activites.* An organization or person other than an accredited sponsor, which desires prior accreditation of a course, program or other legal education activity satisfying court rule 123.2, or

an attorney who desires to establish accreditation of such activity prior to attendance thereat, shall apply for accreditation to the commission at least sixty days in advance of the commencement of the activity on a form provided by the commission. The commission shall approve or deny such application in writing within thirty days of receipt of such application. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers and other pertinent information.

(c) Post accreditation of activities. An attorney seeking credit for attendance at or participation in an educational activity which was not conducted by an accredited sponsor nor otherwise accredited shall submit to the commission, within thirty days after completion of such activity, a request for credit, including a brief resume of the activity, its dates, subjects, instructors and their qualifications and the number of credit hours requested therefor. Within thirty days after receipt of such application the commission shall advise the attorney in writing by ordinary mail whether the activity is accredited and the number of hours allowed therefor. An attorney not complying with the requirements of this subparagraph may be denied credit for such activity.

Sec. 5. Hardships or extenuating circumstances. The commission may, in individual cases involving hardship or extenuating circumstances, grant waivers of the minimum educational requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms prescribed by the commission.

Waivers of the minimum educational requirements may be granted by the commission for any period of time not to exceed one year. In the event that the hardship or extenuating circumstances upon which a waiver has been granted continue beyond the period of the waiver, the attorney must reapply for an extension of the waiver. The commission may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the commission.

Extensions of time within which to fulfill the minimum educational requirements may, in individual cases involving hardship or extenuating circumstances, be granted by the commission for a period not to exceed six months immediately following expiration of the year in which the requirements were not met. Hours of minimum educational requirement completed within such an extension period shall be applied first to the minimum educational requirement for the preceding year and shall be applied to the current or following year only to the extent that such hours are not required to fulfill the minimum educational requirement for the preceding year.

Sec. 6. Exemptions for inactive practioners. A member of the bar who is not engaged in the practice of law in the state of Iowa as defined in court rule 121.3(*i*)(4) residing within or without the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the commission. The application shall contain a statement that the applicant will not engage in the practice of law in Iowa, as defined in court rule 121.3(*i*)(4), without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form prescribed by the commission.

Sec. 7. Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption shall, prior to engaging in the practice of law in the state of Iowa as defined in court rule 121.3(*i*)(4), satisfy the following requirements for reinstatement:

(*a*) Submit written application for reinstatement to the commission upon forms prescribed by the commission together with a reinstatement fee of twenty-five dollars, and

(*b*) Furnish in the application evidence of one of the following:

1. The full time practice of law, as defined in court rule 121.3(*i*) (4), in another state of the United States or the District of Columbia and completion of continuing legal education for each year of inactive status substantially equivalent in the opinion of the commission to that required under court rule 123.

2. Successful completion of an Iowa state bar examination conducted within one year immediately prior to the submission of such application for reinstatement.

3. Completion of a total number of hours of accredited continuing legal education computed by multiplying fifteen by the number of years a certificate of exemption shall have been in effect for such applicant.

Sec. 8. Staff. The commission may, subject to the approval of the court, employ a director and such other employees as the commission deems necessary to carry out its duties under court rule 123, who shall perform such duties as the commission may from time to time direct.

Sec. 9. Divisions. The commission may organize itself into divisions of not fewer than three members for the purpose of considering and deciding matters assigned to them.

Sec. 10. Hearings. In the event of denial, in whole or in part, of any application, the applicant shall have the right, within twenty days after the sending of the notification of the denial by ordinary mail, to request in writing a hearing before the commission which

shall be held within ninety days after receipt of the request for hearing. The decision of the commission after such hearing shall be final. Any hearing on a revocation of the accreditation of an accredited sponsor, the denial of a hardship application, or a recommendation for disciplinary action under court rule 123.5(b) shall be before a quorum of the entire commission.

Sec. 11. Notice of failure to comply. In the event an attorney fails to comply with the provisions of court rule 123.4 or files a report showing on its face failure to complete the required number of accredited hours of continuing legal education, the commission shall notify said attorney in writing of such apparent noncompliance and said attorney shall have fifteen days from the mailing of said notice to cure said failure to comply or make an appropriate application under section 5 of these regulations. If the failure to comply is not cured or such application not approved, the commission shall report promptly to the court the failure of the attorney to comply with court rule 123. [Above regulations adopted by the Supreme Court November 25, 1975]

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MORTALITY TABLES

The American Experience Table of Mortality was published in the Code of 1939. As stated in the heading to said table it is "no part of any statute and is set out as a convenience only to meet numerous requests therefor."

From information obtained from the Commissioner of Insurance and numerous experts on insurance law, the Code Editor is advised that the American Experience Table of Mortality is outmoded. Longevity has increased and greater scientific study has been made of the subject of mortality tables since that table was prepared. The results have been that new and more modern tables have been made which are known as the Commissioners 1941 Standard Ordinary Mortality Table and the Commissioners 1958 Standard Ordinary Mortality Table. The tables have been prepared under the supervision of the National Association of Insurance Commissioners and have been adopted by statute or by the approval of the Insurance Commissioners in practically all of the states including Iowa.

The Code Editor is authorized by the Commissioner of Insurance to say that they are approved by him and used and accepted by him in his official work. They are included herein as a matter of convenience to those who may have use for such tables. [December 2, 1976]

See sections 508.36 and 508.37 of the Code for reference to other Mortality tables under the "Standard Valuation and Nonforfeiture Law". Also, see the State Revenue Department's table at the end of chapter 450 of the Code adopted pursuant to the Inheritance Tax Law.

1958 C.S.O. MORTALITY TABLE
Commissioners Standard Ordinary

Age	Expectation of Life	Age	Expectation of Life	Age	Expectation of Life
1	67.78	34	37.60	67	11.73
2	66.90	35	36.69	68	11.17
3	66.00	36	35.78	69	10.64
4	65.10	37	34.88	70	10.12
5	64.19	38	33.97	71	9.63
6	63.27	39	33.07	72	9.15
7	62.35	40	32.18	73	8.69
8	61.43	41	31.29	74	8.24
9	60.51	42	30.41	75	7.81
10	59.58	43	29.54	76	7.39
11	58.65	44	28.67	77	6.98
12	57.72	45	27.81	78	6.59
13	56.80	46	26.95	79	6.21
14	55.87	47	26.11	80	5.85
15	54.95	48	25.27	81	5.51
16	54.03	49	24.45	82	5.19
17	53.11	50	23.63	83	4.89
18	52.19	51	22.82	84	4.60
19	51.28	52	22.03	85	4.32
20	50.37	53	21.25	86	4.06
21	49.46	54	20.47	87	3.80
22	48.55	55	19.71	88	3.55
23	47.64	56	18.97	89	3.31
24	46.73	57	18.23	90	3.06
25	45.82	58	17.51	91	2.82
26	44.90	59	16.81	92	2.58
27	43.99	60	16.12	93	2.33
28	43.08	61	15.44	94	2.07
29	42.16	62	14.78	95	1.80
30	41.25	63	14.14	96	1.51
31	40.34	64	13.51	97	1.18
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See also Mortality Tables, ch 450 and §512.43

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